TITLE 10—ARMED FORCES

This title was enacted by act Aug. 10, 1956, ch. 1041, §1, 70A Stat. 1

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

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(a), Oct. 5, 1994, 108 Stat. 3013, added item for subtitle E.

TABLE I

(Showing disposition of all sections of former Title 10)

Title 10 Former Sections	*Title 10 New Sections*
1	Rep.
1a(a)	3001
1a(b)	101
1a(c), (d)	Rep.
1b	3062
1c	3075
1d, 1e	3074
1f	Rep.
1g(a)	3063
1g(b)	3064
1g(c)–(f)	3065
2–10	Rep.
11	3536
12–14	Rep.
15	T. 18 §1385
15a	4711, 9711
16	3061, 8061
16a	3492, 8492
17, 17a	Rep.
18	T. 37 §31a (See Rev. T. 37 Table)
19	1031
19a	4833
20	3062, 8062
20a	4503, 4531, 9503, 9531
20b	122
20c	Rep.
20i	3062
20j(a)	3201
20j(b)	3205, 3213
20j(c)	3225
20j(d)	3222, 3223
20r	8062
20s(a)	8201
20s(b)	8205, 8213
20s(c)	8225
20s(d)	8222, 8223
20t	8062
21	Rep.
21a	3031
21b	3034
21c	3035
21d	3034
21e	3032
21f	3036
21g	3039
21h	3037, 3040
22, 22a	Rep.
23, 23a	Rep.
24–32a	Rep.
33, 33a	Rep.
34–37	Rep.
38	3033, 3034, 8033, 8034
41, 42	Rep.
51	Rep.
52	4024
53	Rep.
61	Rep.
61–1	3072, 3209, 3210
61a	3037
62	3037, 8072
62a	3037
63, 64	Rep.
65	3292
66–70c	Rep.
71, 72	Rep.
72a	(See former 1195a)
73	(See former 1377)
74	Elim.
75	(See former 1259d)
76	(See former 1259e)
77	Elim.
81, 81a	Rep.
81–1	3067–3070
81–2	3311, 3685, 3818, 8067, 8685, 8818
82	3579, 8579
83	Rep.
91	Rep.
91a (less (c)–(f))	3294, 8294
91a(c)	3294 nt.
91a(d)	3444, 8444
91a(e)	3452, 8452
91a(f)	5652a
91b	Rep.
92, 92a	Rep.
93	3289, 8289
94	Rep.
95	(See former 82)
96	3546, 8546
97–100	Rep.
101–103	3302, 8302
104	Rep.
105, 106	3539
107, 108	4022, 9022
121	Rep.
121a (less (c)–(f))	3294, 8294
121a(c)	3294 nt.
121a(d)	3444, 8444
121a(e)	3452, 8452
121a(f)	5652a
121b	Rep.
122–124	Rep.
125	3302
126–131	Rep.
141	Rep.
142	Rep. in part. Elim. in part.
143	Rep.
143a	3302, 8302
144, 145	Rep.
145a, 145a–1	Rep.
146	Rep.
151	Rep.
152	Rep. in part. Elim. in part.
153–156	Rep.
156a	3068, 3209
156b	3068
156c	3504, 3962, 3991
156d	3068
156e	3287, 3290
156f–156i	Rep.
161–165	Rep.
166(a)	3069, 3206, 8206
166(b)	3069
166(c)	3291, 8291
166(d)	Rep. See 3291(c)
166a(a)	3070, 3207, 8207
166a(b)	3070
166a(c)	3291, 8291
166a(d)	Rep. See 3291(c)
166b to 166b–2	Rep.
166b–3	8067, 8209, 8296, 8579, 8683, 8963
166c to 166d–1	Rep.
166e(a)	3574, 3579, 8574, 8579
166e(b), (c)	Rep.
166f	3206, 3207, 3212, 3304, 8206, 8207, 8212, 8304
166g(a), (b)	3504, 3881, 3882, 3887, 3912, 3928, 3962, 3991, 8881, 8882, 8887, 8912, 8928, 8891
166g(c)	Rep.
166h	Rep.
166i	3683, 8683
166j	3818, 8818
166k	3205

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
166*l*	Rep.
171–177	Rep.
181	3036, 3040, 3074, 3209, 3216
181a	3040, 3209, 3493; T. 33 § 583a
181b	3038
181c	3535
181d	3535 nt.
182–186	Rep.
187	Elim.
188	Rep.
189 (1st sent.)	Elim.
189 (less 1st sent.)	3534
190	3534
190a	T. 33 §§ 575, 701b–9
190b	T. 33 §§ 576, 701b–10
191–196	Rep.
197, 197a	Elim.
198	T. 50 § 64a
199	(See former 190a)
211, 212	Rep.
213	Elim.
214, 215	Rep.
221, 222	Rep.
223	Elim.
231	Rep.
231a	3073
232	3293, 8293
233	Rep. in part. Elim. in part.
234	Rep.
235	3581, 8581
236, 237	Rep.
238, 239	3547, 8547
240	Rep.
251–253	Rep.
261, 262	Rep.
271–277	Rep.
281–283	Rep.
291–291b	Rep.
291c, 291c–1	3691, 8691
291d	3692, 8692
291e	3691, 8691
291f, 291f–1	Rep.
291f–2	8257
291g	Rep.
292	Rep.
292–1, 292a	Rep.
292a–1, 292a–3	Rep.
292b to 292b–3	Rep.
292c	8537
292c–1	9305
292d, 293	Rep.
294	8577
295	Rep.
296, 296a	9303
297	Rep.
297a	8257
298, 298a	Rep.
298a–1	9304
298b	4656, 9656
298c	4628, 9628
299	8257, 8356, 8817
299a–299d	Rep.
299e	8356
300	Rep.
300a–300c	Elim.
301, 302	Rep.
303	Rep.
304	Rep. See T. 37 § 402(a)–(c)
304a	Rep.
304b	Rep. See T. 37 § 402(a)–(c)
305, 306	Rep.
307	Elim.
308, 308a	Rep.
309	Elim.
310(a), (b)	2271
310(c)	2272
310(d)	2273
310(e)	2271, 2272
310(f), (g)	2272
310(h)	2271
310(i)	2273
310(j)	2272, 2279
310(k)	2274
310(*l*), (m)	2276
310(n)	2272
310(*o*)	2277
310(p)	2276
310(q)	Rep.
310(r)	Elim.
310(s)	2271
310(t)	2275
311	2382
312	2278
313	Rep.
316, 316–1	3071
316a	3209, 3215
316b	3071, 3504, 3962, 3991
316c(a)	3311
316c(b)	Rep.
316c(c)	3211

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
316d	3580
316e	3685
321	Rep. See 3063 nt.
321a	Elim.
322–332	Rep.
333	Elim.
334, 335	Rep.
336	Elim.
337–343	Rep.
351–353	Rep.
354	3355, 8355
355, 355a	Rep.
356–359a	Rep.
360, 361	Rep.
361a	Rep.
361b	Rep.
362, 362a	Rep.
363–365	Rep.
366	Rep.
367	Elim.
367a, 368	Rep.
369, 369a	Rep.
369b	684
370	Rep.
371	Rep. See T. 5 §§ 3551, 6323(a), (b)
371a	Rep. See T. 5 § 6323(a), (b)
371b	Rep. See T. 5 §§ 502, 5534
371c	Elim.
372–375	Rep.
376	3357
377, 378	Rep.
381, 382	4382, 9382
383, 384	4383, 9383
385	4384, 9384
385a	4387, 9387
385b	4387
386	3540, 8540
386a	4387, 9387
387, 387a	4387, 9387
388	Rep.
389	4386, 9386. Rep. in part.
390	4386, 9386
391	Elim.
421–424	Rep.
425	(See former 628–1)
426, 427	Rep.
441	4385, 9385
442	4411–4414, 9411–9414
443	4385, 9385
444	(See former 387a)
445	Rep.
451–455	Rep.
455a–455c	3722, 8722
455d	Rep.
455e	3723, 8723; T. 32 § 320
455f	Rep.
456	3687, 3688, 3721, 8687, 8688, 8721
456–1	3687 nt.
456–2	Rep.
456a, 457	Rep.
481	3205
481a	Rep.
481b	Rep.
482–482c	Rep.
483, 484	Rep.
484a	3814, 8814
485, 486	Rep.
486a	4353, 9353. Rep. in part. See 4353 nt.
487, 487a	Rep.
488, 489	Rep.
490, 491	3302, 8302
491a–491c	1521
491c–1	1521 nt.
491d	1523
492–494	Rep.
495	3544, 8544
496	Rep.
497	3545, 8545
498	3543, 8543
498a	Rep.
499	3446, 8446
499a, 499b	Rep.
500	3681, 8681
501	Elim.
502–504	Rep.
505–505e	Rep.
506(a)	3281, 3284, 8281, 8284
506(b)	3282, 3283
506(c)	3283, 3533
506(d)	3209, 8209
506(e), (f)	Rep.
506a(a)	3210, 8210
506a(b), (c)	3573, 8573
506b(a)	Rep.
506b(b)	3066, 3531, 8066, 8531
506b(c)	711. Rep. in part. See T. 37 § 414
506b(d)	3962, 3991, 8962, 8991. Rep. in part. See 3962 nt.
506c(a)	3284, 8284

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
506c(b)	3285, 8285
506c(c)	3287, 8287
506c(d)	3288, 3295, 8288, 8295
506c(e)	3286, 8286
506c(f)	3212, 3287, 3574, 4353, 8212, 8287, 8574, 9353
506c(g)	Rep.
506c–1	Rep.
506c–2(a)	Rep. See 3284
506c–2(b)	3285
506c–3	3286
506c–4(a)	3287. Rep. in part. See 3287 nt.
506c–4(b)	3287
506c–4(c)	3212, 3287, 3574, 4353
506c–5	3288, 3295
506c–6	3888, 3927
506c–7	3285–3288, 3295, 3314. Rep. in part. See 3287 nt.
506c–8	Rep.
506c–9	3314
506c–10	Rep. See 3287 nt.
506d(a), (b)	3442, 8442
506d(c)	3442, 3572, 8442, 8572
506d(d)	3443, 8443
506d(e)	3444, 8444
506d(f)	3447, 8447
506d(g)	Rep.
506d(h)	3491, 8491
506d(i)	3441, 8441
506d–1 to 506d–3	3202
506d–4	686
507	3578, 8578
507a	3576, 5954, 8576
511	3571, 8571
512, 512a	Rep.
513	3395, 3445, 3447, 8395, 8445, 8447
514	Rep.
515	744
516	Rep.
517	741
521–528	Rep.
531–534	Rep.
535, 535a	4301
536–539	Rep.
540	712
541	Elim.
551, 551a	Rep.
552–552c	Rep.
553–553b	Rep.
554, 555	Rep.
555a	3302, 3309, 8302, 8309
556	3309, 8309
556a	3302, 3309, 8302, 8309
557	Rep.
558	3312, 3394, 3451, 8312, 8394, 8451
559(a)	3296, 8296
559(b)	3211, 3212, 8211, 8212
559(c)	3296, 8296
559(d)	3296, 3574, 8296, 8574
559(e)	Rep.
559a(a)	3297, 3308, 8297, 8308
559a(b)	3313, 8313
559a(c)	3297, 8297
559a(d)	Rep.
559b	3212, 3298, 8212, 8298
559c(a)–(d)	3299, 8299
559c(e)	3300, 8300
559c(f)	3299, 8299
559c(g)	3303, 8303
559c(h)	3303, 3913, 8303, 8913
559c(i)	3913, 8913
559c(j)	3299, 8299
559c(k)	3212, 3299, 8212, 8299
559c(*l*)	8301
559c(m)	Rep.
559c–1	3299
559d	3305, 8305
559e	3306, 8306
559f	3307, 8307
559g	3036, 3212
559h, 559i	Rep.
559j	3296
559k	3818
559*l*–559*o*	Rep.
571–575	Rep.
576	3544, 8544
576a	Rep.
577	3544, 8544
578, 579	Rep.
580	3784, 8784
581	3781, 8781
582	3782, 8782
583	3782–3784, 3786, 8782–8784, 8786
584	3785, 8785
585	3786, 8786
586	Elim.
587	Rep.
591	3310, 8310
591–1	3311, 3818
591a	3448, 8448

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
592	Rep.
593	3548, 3575, 8548, 8575
593a	Rep.
594	3964, 3992, 8964, 8992
595	Elim.
596, 597	Rep.
598	(See former 631a)
599	Rep.
600(a), (b)	101
600(c)	564
600(d)	564, 1166, 1167, 1255, 1263, 1293, 1305. Rep. in part. See 1164 nt.
600a	555, 597, 745, 3445, 3448, 8445, 8448
600b	Rep.
600c	555, 556, 597, 3448, 8448
600d	515, 1165
600e	557, 598, 3449, 8449
600f	558
600g	559, 561
600h	560, 562
600i	562, 563
600j	557
600k	564
600*l*(a)	1293
600*l*(b)	1255, 1263, 1305. Rep. in part. See 1164 nt.
600*l*(c)	1164
600*l*(d)	1371, 1401
600*l*(e)	564, 1164, 1166, 1255, 1263, 1305
600*l*(f)	1371, 1401
600*l*(g)	Elim.
600m	515, 1166
600n	1167
600*o*	Rep.
600p	565, 599, 3450, 8450
600q	Rep.
600r	564, 1164, 1255, 1263, 1305
602	Rep.
603–604a	Rep.
605–607	Rep.
608	3639, 8639
609	3635, 8635
610	3690, 8690
611	Rep.
612	1522
621	3256, 8256
621a	Rep.
621b	3256, 3818
621c, 621d	Elim.
622–625	3253, 8253
626, 626a	Rep.
627	3256, 8256
628	3256, 3815, 3816, 8256, 8815, 8816
628–1	3256, 8256
628a	3262, 8262
628b	3263, 8263
629	3638, 8638
629a	972
630, 631	Rep.
631a	3258, 3684, 8258, 8684
632, 633	Rep.
634	3254, 3812, 8254, 8812
635	3255, 8255
636	3256, 8256
636a	Rep.
637	Elim.
641–642a	Rep.
643, 644	Rep.
645	Elim.
651	Rep.
652	3813, 8813
652a	3811, 8811
653, 653a	Rep.
654, 654a	Rep.
654b, 655	Elim.
656	Rep.
657	Elim.
658	Rep.
661	Elim.
662	Rep.
663	4023, 9023
664, 665	Rep.
671	Elim.
671a	Rep.
672, 673	Elim.
681, 682	Elim.
683, 683a	Rep.
684	T. 37 §4c (See Rev. T. 37 Table)
685	Elim.
686	Rep.
691, 692	Rep.
693	Elim.
694	T. 37 §235a (See Rev. T. 37 Table)
695–699	Rep.
711–716	Elim.
716a	Rep.
716b	4561, 9561
717–722	Rep.
723	4593, 9593

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
724–726	4561, 9561
727	Elim.
728	4775, 9775
729	Rep.
741	Elim.
742–748a	Rep.
749	4743, 9743
757	Elim.
758–760	Rep.
771, 772	Rep.
781	Elim.
782–786	Rep.
787	Elim.
801–811	Rep.
821–823	Rep.
824	T. 5 § 73c (See Rev. T. 5 Table)
825	4748, 9748
831	4562, 9562
832	Elim.
833	Rep.
834	4563, 9563
835	Rep.
841, 842	Rep.
843	4306, 9306
844, 845	Rep.
846	Rep.
847	Rep.
847a	3632, 8632
847b	Rep.
847c, 847d	3632, 8632
848	Rep.
849	3633, 8633
850–852	Rep.
861, 861a	Rep.
862	T. 37 § 310b (See Rev. T. 37 Table)
862a	T. 31 § 493b
862b	Rep.
863–866j	Rep.
867	Rep.
868	2771
869	T. 31 § 492d
870	Rep.
871, 872	4837, 9837
873, 874	Rep.
875–875c	4837, 9837
876	3636, 8636
877	2772
878	4840, 9840
891–894	3689, 8689
895	Elim.
902, 902a	Rep.
903, 903a	3688, 8688
904	4621, 9621
904a–904d	Rep.
905	3634, 8634
906–906a	Rep.
907, 908	Rep.
908a–908c	1035
909	Elim.
910	Rep.
911	Elim.
912–914	Rep.
914a	Elim.
915–916d	Rep.
917	Rep.
918	Elim.
919	Rep.
920	1584 nt.
921	3532
931–938	Rep.
938a	(See former 984)
939–940a	Rep.
941	Rep.
941a(a)	3883, 3885, 3886, 3961, 3991, 8883, 8885, 8886, 8961, 8991
941a(b)	3888, 3927, 8888, 8927
941a(c)	3919, 8919
941a(d)	3211, 3913, 3915, 3916, 3921–3923, 8211, 8913, 8916, 8921–8923
941a(e)	3303, 3888, 3913, 3927, 3961, 3991, 8303, 8888, 8913, 8927, 8961, 8991
941a(f)	3313, 8313
942	3924, 8924
943	3918, 8918
943a	3911, 8911
944–946	Rep.
947	3917, 3925, 8917, 8925
947a	3917, 3961, 8917, 8961
948	3914, 3991, 8914, 8991
948a	3914, 8914
951	3887, 3926, 3928, 8887, 8926, 8928
951a	3926, 8926
951b	3887, 3926, 3928, 8887, 8926, 8928
952	Elim.
953	Rep.
953a	3926, 8926
954, 955	Rep.
956	3914 nt.
957	Rep.

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
958	3925, 8925
961–966	Rep.
970	Rep.
971	3991, 8991
971a	Rep.
971b	3911, 3991, 8911, 8991. Elim. in part.
971c	3963 nt.
972–973a	Rep.
974–979	Rep.
980	3991, 8991
981–982a	Rep.
983–985h	Rep.
986	Rep.
990–996	Rep.
997	3504
998	T. 32 § 314
999	3503, 8503
1001	3966, 8966
1002, 1003	3963, 3991, 8963, 8991
1004	3964, 3992, 8964, 8992
1005	Elim.
1006	3965, 8965
1007	Rep.
1011–1013	Rep.
1014	1375
1015	Rep.
1021, 1022	Rep.
1023	772, 3681, 8681
1024	3582, 8582
1025	3961, 8961
1026	3961, 3962, 3991
1026a	Rep.
1026b	T. 33 § 642a
1026b–1, 1026c	Rep.
1027–1028a	Rep.
1028b	772
1028c	Elim.
1028d	Rep.
1028e	Elim.
1029–1035	Rep.
1036	3966, 8966
1036a	676, 1331, 1332. Rep. in part. See 1331
1036b	1333, 1401
1036c	1001, 1334
1036d	1331, 1336
1036e	101, 1332, 1333
1036f	Rep.
1036g	1334, 1335
1036h	1337
1036i	Rep.
1041	4334
1042	4334, 9334
1043, 1044	4349, 9349
1051–1052a	Rep.
1053–1054a	Rep.
1055–1060	4355, 9355
1061	4331, 9331
1061a	4332, 9332
1062, 1063	4333, 9333
1064	4333
1065	4334
1066	Rep.
1067	4340
1068–1070	Rep.
1071	4331
1072	Rep.
1073	4331
1074–1076	Rep.
1077, 1077a	4331
1078	Rep.
1078a	4331
1079	4334, 9334
1079a(a)	4336, 9336
1079a(b)	3962, 3991, 8962, 8991
1079a(c)	3886, 3920, 8886, 8920
1080–1082	Rep.
1083	4337, 9337
1084, 1085	Rep.
1086	4338
1087	4331, 4332, 9331, 9332
1088	4331
1089	4331, 4335, 9331, 9335
1091	Rep.
1091–1	4347, 9347
1091a–1091e	Rep.
1092	Rep.
1092a	4342, 9342
1092b	4342, 4346, 4351, 9342, 9346, 9351
1092c	4348, 9348
1092c–1	541
1092d	4343, 9343
1093	4345, 9345
1093a, 1093b	Rep.
1093c	4344, 9344
1093d	T. 20 § 221a
1094	Rep.
1095, 1096	4346, 9346
1097	Rep.

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
1098	4342, 9342
1099	4346
1100, 1101	Rep.
1102	4349, 9349
1103, 1104	4351, 9351
1105	4349, 9349
1106	4350, 9350
1111, 1112	Rep.
1121, 1121a	Elim.
1122–1124	Rep.
1125	4354
1126	4354, 9354
1127	Rep.
1131–1136	Rep.
1137	4337, 9337
1138, 1139	4339
1140–1143	Rep.
1144	4341, 9341
1145	Elim.
1146–1149	Rep.
1149a	4350, 9350
1150	T. 37 §308a (See Rev. T. 37 Table)
1151	Rep.
1161	Rep.
1161a	4333 nt.
1162	T. 44 §87 (See Rev. T. 44 Table)
1163	4352, 9352
1171	Rep.
1172	4302, 9302
1173, 1174	Rep.
1175	Elim.
1176	4302, 9302
1177–1178a	Rep.
1179	4627, 4629, 9627, 9629
1180	4651, 9651
1180a, 1180b	Rep.
1181	3540, 8540
1182	4654, 9654
1182a	Rep.
1183	4653, 9653
1184	Rep.
1185	4652, 9652
1186–1186b	Rep.
1191, 1192	Rep.
1192a	4506, 9506
1193–1195	Rep.
1195a	4533, 4561
1196	4621, 9621
1197	4535, 9535
1198	4534, 9534
1199, 1199a	Rep.
1200–1203	Rep.
1204	Elim.
1205, 1206	Rep.
1206a	4539
1207	2384
1208	Rep.
1209, 1210	4538
1210a	Rep.
1211	Elim.
1212	Rep.
1213, 1214	2421
1221–1225	Rep.
1231	Rep.
1232	4622, 9622
1233–1235	4621, 9621
1236	4624, 9624
1237, 1238	4621, 9621
1239	4623, 9623
1240	Rep.
1241	4621, 9621
1251, 1252	Rep.
1253	4621, 9621
1254	4624, 9624
1255, 1256	2542
1257	Rep.
1257a	T. 5 §150p (See Rev. T. 5 Table)
1257b	2573
1258	Rep.
1259	4682, 9682
1259a–1259c	Rep.
1259d, 1259e	4564, 9564
1261	Rep.
1262	4681, 9681
1262a	Rep.
1262b	2574
1263–1267	Rep.
1268	Elim.
1269–1269b	2481
1270	2667
1270a–1270c	Rep.
1270d	2667
1271, 1271a	Rep.
1272–1274	Rep.
1281–1286	Rep.
1287	4591, 9591
1288	Rep.
1289	Rep.
1301	4832, 9832

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
1302	4838, 9838
1303	4839, 9839. See T. 18 §702
1304	4835
1305	9835
1311	Rep.
1312	4834. Rep. in part.
1313	4834
1314	Rep.
1315	3631, 8631
1316, 1317	4836, 9836
1318	Rep.
1319	4592, 9592
1320	Rep.
1331	Rep.
1332	4779, 9779
1333	Rep.
1334	4536, 9536
1335	4779, 9779
1336, 1336a	Rep.
1337	Rep.
1337a	4774, 9774
1337b	4774
1337c	Elim.
1337d	Rep.
1337e	Elim.
1338	Rep.
1339	4774, 9774
1340	Rep.
1341	4772, 9772
1342	4771, 9771
1343	Rep.
1343a–1343c	9773
1343d	9774
1344	4771, 9771
1345	4779, 9779
1346	4778, 9778
1347	T. 36 §12
1348	4777, 9777
1349	Rep.
1350	Elim.
1351	2669
1352–1354	Rep.
1361	4742, 9742
1362	T. 49 §6
1363	4741, 9741
1364	Rep.
1365	2631
1366	Rep.
1367	4745
1368	4747
1369, 1370	4744
1371	4744, 4747
1371a	4746, 9746
1372–1375b	Rep.
1376	Rep.
1377	4749
1391	3611, 8611
1392	Rep.
1393	771–774, 3612, 6297, 8612
1394	Rep.
1395	4621, 4629, 9621, 9629
1401, 1402	Rep.
1403	3741, 8741
1404, 1405	Rep.
1406	3742, 8742
1407	3743, 8743
1408, 1408a	Rep.
1408b	1121, 1122
1409	3744, 3752, 8744, 8752
1410	3745, 8745
1411	3744, 8744
1412	3746, 8746
1413, 1413a	Elim.
1414, 1414a	Elim.
1415	Elim.
1415a	3751, 3752, 8751, 8752. Rep. in part. See 3751 nt.
1415b, 1415c	3751, 8751. Rep. in part. See 3751 nt.
1416	3747, 8747
1417–1421	Rep.
1422, 1423	Elim.
1423a, 1423b	Rep.
1423c	Elim.
1424	3748, 8748
1425	Rep. See T. 18 §704
1426	Elim.
1427	1123
1428	3750, 8750
1429	3749, 3752, 8749, 8752
1430–1430b	Rep.
1430c–1430h	Elim.
1431	807 nt.
1432	3637, 8637
1433	Rep.
1434–1443	Elim.
1451	3661
1452	Rep.
1453–1455	3661
1456	3662, 8662

TABLE I—CONTINUED

Title 10 Former Sections	*Title 10 New Sections*
1457–1457b	3663, 8663
1458, 1459	3661
1460	858 nt.
1461	Elim.
1471–1578	Rep.
1579	(See former 629)
1580	(See former 652a)
1581–1583	Rep.
1584–1584c	T. 5 §150j to 150j–3 (See Rev. T. 5 Table)
1585	(See former 15a)
1586–1590	Rep.
1591	(See former 507)
1592	(See former 507a)
1593, 1593a	Rep.
1594–1594b	Rep.
1595–1597a	Rep.
1598–1605	Rep.
1701–1710	Rep.
1711	Elim.
1712–1719	Rep.
1801 (less (b))	Rep.
1801(b)	101
1802–1804	Rep.
1805	9833
1806	Rep.
1811	8031
1812	8034
1813	8035
1814	8034
1815	8032
1831	8062
1832	8075
1833	8076
1834	Rep.
1835	101, 8078; T. 32 §101
1836	Rep.
1837	8067, 8211, 8296, 8574
1838, 1839	8074
1840	8072. Elim. in part.
1843–1849	8202
1850	686
1850a	8285, 8287. Rep. in part. See 8284
1850b	8286
1850c(a)	8287, 8888, 8927
1850c(b)	8287
1850c(c)	8287, 8888, 8927
1850c(d)	8287
1850c(e)	8212, 8287, 8574, 9353. Rep. in part. See 8212 nt.
1850d	8288, 8295
1850e	Rep.
1850f	8314
1850g (less (c))	Rep.
1850g(c)	Rep. See 8299 nt.
1850h	Rep. See 8287 nt.
1850i	Rep. See 8287 nt., 8299 nt.
1850j	8285–8288, 8295, 8314
1850k	8285
1851	9331
1852(a)	Rep.
1852(b)	Elim.
1853	9331 nt.
1854	9331
1855	Elim.
1856	541
1857	9331 nt.
1861	4802, 4806, 9802, 9806
1862	4803, 4806, 9803, 9806
1863	4804, 9804
1864, 1865	4805, 9805
1866	4802, 4803, 9802, 9803

TABLE II

(Showing disposition of all sections of former Title 34)

Title 34 Former Sections	*Title 10 New Sections*
1	5501
2	5403, 5405
3	5404
3a(a), (b)	5447, 5448
3a(c)	5701 nt.
3a(d)	6387
3a(e)	5701 nt.
3b(a), (b)	5449
3b(c)	5701 nt.
3b(d)	6388
3b(e)	5701 nt.
3c(a)	5442–5444, 5446, 5596, 5652–5661, 5663, 5711, 5786, 6386. Rep. in part.
3c(b)	5442–5444, 5666, 5786, 6371–6380, 6382, 6383, 6385
3c(c)	5596
3c(d)	5784, 5788
3c(e)	5596, 5784, 6326
3c(f)	See T. 37 §415

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
3c(g)	5596
3c(h)	5596, 5784, 5786, 5788
3c(i)	Rep.
3c(j)	6381, 6383, 6400
3d	5445, 5546, 5596, 5662, 5711, 5784, 5785, 6386
3e	5234, 5451, 5662, 5711, 5785, 6386
3f	5442 nt.
4(a)	5447, 5448
4(b–e)	5447
4(f)	5447, 5448, 5455
4(g)	5454
5	5449, 5454, 5455
5a(a)–(e)	5442
5a(f)	5444
5a(g)	5442, 5443
5a(h)	5444
5a(i)	5442–5444, 5447–5449
5a(j)	5454, 5507
5a(k)	5442–5444
5a–1	5451
5a–2	686
5b	5591–5594
6–10	Rep.
10a	5501. Rep. in part.
11	5572
12	5572, 5573
13, 14	5572, 5582
15	Rep.
16	Elim.
17	5573a
17a–17c	Rep.
21	5599
21a	Rep.
21b	5574
21c(c)	3294 nt.
21c(d)	3444, 8444
21c(e)	5787a
21c(f)	5652a
21c (less (c)–(f))	5572, 5574
21d	5574
21e	5446, 5574, 5578, 5579, 5581, 5663, 5702, 5707, 5708, 5710, 5711, 5753, 5762, 5766, 5773, 5776, 6033, 6393
22, 23	5574
24, 25	Rep.
26	5987
30a	5404, 6027, 6028. Rep. in part.
30a–1	5139
30b, 30c	Rep.
30d	Elim.
30e	5579
30f	5572
30g	6392
30h	5579, 5945
30i	Rep.
30j	5579
30k–30m	5579 nt.
31	Rep.
32	Rep.
33	Rep.
34	5412, 6013, 6014
34a	6014
35–37	Rep.
41, 42	Rep.
43	5572, 6027. Rep. in part.
43a	5140
43b	Rep.
43b–1	Elim.
43c	5580, 6392
43c–1	5601
43d	5945, 6030
43e, 43f	Rep.
43g(a)	6396
43g(b)	5140
43g(c)	6151
43g(d)	6325, 6396
43g(e)	Rep.
43g(f)	6151, 6325, 6396
43g(g)	6151, 6329, 6404
43g(h)	6324, 6396
43g(i)	772
43h(a) (provisos)	6033, 6086, 7577
43h (less provisos of (a))	Rep.
43i	6393
43j	Elim.
43k–43*o*	Rep.
51	5578, 6027
51a	Rep.
51b(c)	3294 nt.
51b(d)	3444, 8444
51b(e)	5787a
51b(f)	5652a
51b (less (c)–(f))	5572, 5578
51c	5578, 5787a
52	5578
53, 54	T. 5 §§456b, 456c (See Rev. T. 5 Table)
55	T. 5 §456d (See Rev. T. 5 Table)
61	5575

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
61a–63	Rep.
64–66	6026
67	6113
71	5587
71a, 71b	Rep.
72	5406
73	5587
74, 74a	Rep.
75, 76	Rep.
77	5572, 5587
78	5407, 5587
79	Rep.
81	Rep.
82–86	Rep.
91	5576
92, 93	Rep.
93a	5572, 5576
94	Rep.
95, 96	6031
97	5142
101	Elim.
102	Rep.
105	5532–5534, 5572, 5590
105a (proviso)	Rep.
105a (less proviso)	5410
105b (1st sent.)	Rep.
105b (less 1st sent.)	5452–5455
105c	5590
105d	5143
105e (proviso)	Rep.
105e (less proviso)	5777
105f	Rep.
105g	6015
105h	6033
105i	6294, 6393
105j	5446, 5504, 5596, 5663, 5704–5707, 5710, 5711, 5784
105k	5446, 5504, 5590, 5663, 5664, 5711, 5753, 5763, 5774
111, 112	Rep.
121–132a	Rep.
133, 134	Rep.
135(a), (b)	101
135(c)	564
135(d)	564, 1166, 1167, 1255, 1263, 1293, 1305. Rep. in part. See 1164 nt.
135a	555, 597, 5503, 5596–5593, 5787; T. 14 §§ 435–438
135b	Rep.
135c	555, 556, 597, 5596–5598, 5787; T. 14 §§ 435–438
135d	515, 1165
135e, 135f	Rep.
135g	T. 14 §§ 435–438
141–146	Rep.
151	5401
152	Rep.
153	5401, 5402
161	5532, 5533
161a	(See former 206)
162	5535
163	5532
171–175	Rep.
176	6013
177	Rep.
181	5533, 5534, 5538, 6293
181a	5538
182	5534
183, 183a	5536
183b	972
184	5539
185	5537
186	5538
187	5531. Rep in part. See T. 14 § 350
188	5534. Rep. in part. See T. 14 § 351
189	Rep. See T. 14 §§ 350, 351
191	5401, 5410, 5412, 6296
192, 193	6291
194	Rep.
195	6295
196	Rep.
197	6297
197a, 198	Rep.
199	6298
200	Rep.
201–201b	5540
202	Rep.
203	6293
204	Rep.
205, 206	Elim.
211	6019
211a(a) (1st proviso of 2d sent.)	Rep.
211a(a) (less 1st proviso of 2d sent.).	5504, 5786
211a(b)–(d)	Rep.
211a(e) (words before 2d proviso).	Rep.
211a(e) (less words before 2d proviso).	Elim.
211a(f)–(h)	Rep.

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
211a(i) (less 1st proviso)	5504
211a(j)	Rep.
211a(k) (1st, 2d, 4th, 5th provisos).	Elim.
211a(k) (less 1st, 2d, 4th, 5th provisos).	Rep.
211a(*l*), (m)	Rep.
211a(n)	5597, 5787
211a(*o*)	5504, 5505, 5786
211a(p)	Rep.
211a(q)	5780–5782
211a(r)	6371
211a(s)	Rep.
211a(t)	Elim.
211b	5408, 5587
211b–1 to 211b–5	Elim.
211c(a)	5572, 5589
211c(e)–(g)	5409
211c(h)	Rep.
211c (less (e)–(h))	5589
211d	5231, 5501
211e	5450
212, 212a	Rep.
213–215	Rep.
216	5981
217	5948
217a, 217a–1	Rep.
217a–2	1031
217b	7476
218	5950
219	6143
220	5949
221	Rep.
222	6018
223, 224	Rep.
225	5133
226	6405
227	Rep.
228	6406
228a	Elim.
228b, 229	Rep.
230	T. 37 § 4c–1 (See Rev. T. 37 Table)
231, 232	Rep.
233	5862
234, 235	Rep.
241, 241a	741
242–244a	Rep.
245	Rep.
246	5946
247, 248	5953
249–251	Rep.
251a	744
252	Rep.
253	5945
254, 255	Rep.
256	5577
257	Rep.
258	5504
259	Rep.
259a	745
260–263	Rep.
264	5951
265	5947
266	6031
271, 272	5861
272a	Elim.
273	Rep.
274, 275	5862
276–279	5863
280	5866
281, 282	5863
283	5865
284, 285	5862
285a	5442, 5444, 5447, 5449, 5452
285b–285d	1521
285e	1522
285e–1	1521 nt.
285f	1523
286 to 286h–2	Rep.
286i–294a	Rep.
295–297b	Rep.
298–303	Rep.
304–304g	5701 nt.
305–305g	5701 nt.
306	5701–5703
306a	5705
306b(a)(1)	6371
306b(a)(2)	6378
306b(a)(3)	5751, 5754
306b(a)(4), (5)	5751
306b(b)(1)	6378
306b(b)(2)	5753, 5754
306b(b)(3)	5753
306c(a)(1)	5706
306c(a)(2)	5756
306c(a)(3)	5757
306c(a)(4), (5)	5758, 5759
306c(a)(6), (7)	5758
306c(a)(8)	6371

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
306c(a)(9)	5707
306c(a)(10)–(12)	5764, 5765
306c(a)(13), (14)	5768
306c(b)(1)	5706
306c(b)(2)–(8)	5762
306c(b)(9)	5761
306c(b)(10)	5707
306c(b)(11), (12)	5766
306c(c)	5755, 6407
306d(a)	5707, 5776. Rep. in part.
306d(b)	5707, 5776
306d(c)(1)	5707
306d(c)(2)	5708, 6384
306e	5708, 5710
306f(a)(1)	5769, 5771
306f(a)(2)	5769, 5771, 5775
306f(a)(3)	5770
306f(b)(1), (2)	5773, 5775
306f(b)(3)	5772, 5775
306f(c)(1)	5777
306f(c)(2)	5780, 5791
306f(c)(3)	5781, 5791
306f(c)(4)	5782, 5791
306f(c)(5), (6)	5783
306f(d)(1)	Rep.
306f(d)(2)	5508
306f(d)(3)	5652, 5652b
306f(d)(4)	5653
306f(d)(5)	5655
306f(d)(6)	5654
306f(d)(7)	5656
306f(d)(8)	5657
306f(d)(9)	5658
306f(d)(10)	5659
306f(d)(11)	5660
306f(d)(12)	5661
306f(d)(13)	5651
306f(d)(14)	5507
306g	5788
306h	5596, 5779, 5784
306i–306k	Rep.
306*l*	5862
306m	Rep.
306n	Elim.
306*o*	5788
306p	5861, 5862
306q	5751, 6371, 6376, 6377
306r	Rep.
306s	5767
306t	Rep.
307(a)	5704, 5754, 5755, 5771
307(b)	5787b, 5788
307(c)	5704
307(d)	5752, 5754
307(e)	5664
307(f)	5753
307(g), (h)	5707
307(i)	5760. Rep. in part. See 6401 nt.
307(j)	5707, 5760, 5771, 5775
307(k)	5707, 5763. Rep. in part. See 6401 nt.
307(*l*)	5707, 5708
307(m)	5710
307(n)	5775
307(*o*)	5774, 5775
307(p) (1st sent.)	5403–5405, 5447–5449
307(p) (less 1st sent.)	Rep.
307(q)	5770
307(r)	Rep.
311–313a	Rep.
314	5788
321–324	Rep.
330	557, 598, 5596–5598, 5787; T. 14 §§ 435–438
330a	558
330b	559, 561
330c	560, 562
330d	562, 563
330e	557
330f	564
330g	565, 599
331–331b	Rep.
332–332c	Rep.
333–335b	Rep.
336, 337	Rep.
338	5572, 5586
338a (provisos)	Rep.
338a (less provisos)	5586
338b	5586
338c (proviso)	Rep.
338c (less proviso)	5504
338d	5586
338e	Rep.
338f (proviso)	5586
338f (less proviso)	Rep.
338g	5504, 5586
339(a), (b)	5586
339(c)	Elim.
341–343	5790
344	Rep.

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
345–347	5789
348–348u	Rep.
349–349k	Rep.
350, 350a	5597, 5787; T. 14 §§ 435–438
350b	5787; T. 14 §§ 435–438
350c(a)	5597, 5787; T. 14 §§ 435–438
350c(b)	Rep.
350d	5597, 5787, 6395; T. 14 §§ 435–438
350e	5501, 5597, 5787; T. 14 §§ 435–438
350f(a) (1st, 3d, 4th provisos)	Rep.
350f(a) (less 1st, 3d, 4th provisos).	5597, 5787, 6326; T. 14 §§ 435–438
350f(b)	Rep. See T. 37 § 414
350g	Rep.
350h	5442–5444, 5447–5449; T. 14 §§ 758a, 759a
350i(a)	5597, 5787, 6488; T. 14 §§ 435–438, 758a, 759a
350i(b)(1)	Rep.
350i(b)(2)	6151. Rep. in part. See T. 42 § 212(g)
350i(c)	Rep.
350i(d)	6488
350i(e)	6161, 6326
350j	5597, 5787. Rep. in part. See T. 14 § 351; T. 42 § 212(g)
350k	5597, 5787. Rep. in part. See T. 42 § 212(g)
351–353	Rep.
354	6241
355	6243
356	6242
356a	6244
356b	6246
357	Rep.
358	6247
358a	6255
359	6253, 6254
360	6248
361	Elim.
362	6249
363	6250
364	6245, 6247, 6249–6252
364a	T. 14 § 492a. Rep. in part. See T. 14 §§ 494, 497
364b	Rep.
365	T. 38 §§ 391–394 (See Rev. T. 38 Table)
366	Elim.
367	7218
371	1123
372–375	(See former 371)
381	6321
382	Rep.
383	6322
384	Rep.
385	6329
386	5864
387–388a	Rep.
389	772, 6016, 6325, 6381, 6383, 6394, 6400
390–393	Rep.
394	1375
395–396a	Rep.
397	Rep.
399 to 399c–1	Rep.
399d	772
399e	Elim.
399f	Rep.
399g	(See former 399c–1)
399h	Rep.
400	Rep.
401	5955
402, 402a	Rep.
403–405	Rep.
405a	6392
406–410	Rep.
410a	6394
410b, 410b–1	6323
410c	6151, 6325, 6328, 6404
410d	6390, 6404
410e	Rep.
410f–410i	5701 nt.
410j(a)	6376–6384
410j(b)	6376–6378
410j(c)	6379
410j(d)	6383
410j(e)	6380
410j(f)	6383
410j(g)	6381, 6383, 6400, 6404
410j(h)	6382–6384, 6404
410j(i)	Rep.
410j(j)	5865
410j(k)	6381
410j(*l*)	Elim.
410j(m)	6382–6384. Elim. in part.
410k	Elim.
410*l*(a)	6371, 6381
410*l*(b)	5709, 5710, 6372, 6381
410*l*(c)	6381

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
410*l*(d)–(k)	Rep.
410m	6325, 6326, 6381
410n	6150, 6483
410*o* (last proviso)	Elim.
410*o* (less last proviso)	5233
410p(a)	6390
410p(b)	Rep.
410q	6149
410r(a)	5776, 6151, 6380, 6382, 6400
410r(b)	5143, 6398
410r(c)	6399
410r(d)	5143
410r(e)	5143, 6398, 6399
410r(f)	Rep.
410r(g)	5143, 6151, 6325
410r(h)	5143, 6151, 6328, 6404
410r(i)	6400
410r(j)	6401, 6402, 6404. Rep. in part. See 6401 nt.
410r(k)	5143, 6398, 6399
410s–418	Rep.
419–419b	6394
421–423	6481
423a	Rep.
424–426	5982
427	Rep.
428	5507, 6487. Rep. in part. See T. 42 §212(g)
429 (proviso)	Rep.
429 (less proviso)	5507
430(a)	1293
430(b)(1)	1255
430(b)(2)	1305
430(b)(3)	Rep. See 1164 nt.
430(b) (less (1)–(3))	1263
430(c)	1164
430(d)	1371, 1401
430(e)	564, 1164, 1166, 1255, 1263, 1305
430(f)	1371, 1401, 6325
430(g)	Elim.
430a	515, 1166
430b	1167
430c	564, 1164, 1255, 1263, 1305
430d	565, 599, 6409
431, 432	6326
433	6482
434	6484
435–440a	Rep.
440h	6017
440h–1	6323. Rep. in part.
440i	676, 1331, 1332
440j	1333, 1401
440k	1001, 1334
440*l*	1331, 1336
440m	101, 1332, 1333
440n	6034
440*o*	1334, 1335
440p	1337
440q, 441	Rep.
441a	712
442–448	Rep.
448a, 448b	Elim.
449	6114
450	Rep.
450a, 450b	Elim.
450b–1	Rep.
450c	Elim.
451	5941
452	7293
453	Rep.
461–463	7292
471–473	Rep.
474	7224
481–486a	Rep.
487	Rep.
488	7301
489	Elim.
490	7297
491	7304
492	7305
493, 493a	Rep.
493a–1	7307
493b	7306
493c	7298
494	Elim.
495 (2d proviso of 1st par.)	Rep.
495 (1st par., less 2d proviso)	Elim.
495 (less 1st par.)	7342, 7343
495a	7342
496	2382, 7300
496a	Rep.
496b	Elim.
497	Rep.
498 to 498–5	Elim.
498a to 498a–2	Elim.
498a–3, 498a–4	Rep.
498a–5	Elim.
498b	(See former 749b)
498c to 498c–3	Elim.
498c–4	Rep.

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
498c–5, 498c–6	Elim.
498c–7 to 498c–13	Rep.
498c–14, 498c–15	Elim.
498d	Rep.
498d–1	7296
498d–2	Elim.
498e	Rep.
498f to 498f–2	Elim.
498g	Rep.
498g–1	7295
498h	7294, 7344
498i	Rep.
498j	7302
498k	Rep.
498*l*	7299
498m (2d sent. of 3d par.)	7296
498m (less 2d sent of 3d par.)	Elim.
498n–498q	Elim.
501	5943
502–504	Rep.
505	7474
506–508	Rep.
509	7475
510–514	Rep.
520	T. 33 §733; T. 40 §255 (See Rev. T. 40 Table); T. 50 §175
520a	Rep.
521	7219
522	Rep.
522a	2667
522b–522d	Rep.
522e	2667
523	7223
524 (1st par.)	7421–7423, 7426, 7430
524 (2d par.)	7426, 7430
524 (3d par.)	7430, 7432
524 (4th par.)	7424, 7431
524 (5th par.)	7425, 7432, 7434
524 (6th par.)	7428, 7429
524 (7th par.)	Rep.
524 (8th par.)	7435
524 (9th par.)	7436
524 (10th par.)	7433
524 (11th par.)	7437, 7438
524a	7421
525	Rep.
526	Elim.
527	7580
528	2631
528a	Rep.
529–531a	Rep.
532–532a	Rep.
533, 533a	7601
534	Rep.
535	Rep. See T. 14 §§144, 145
536	7603
537	6155
538	7602
539	4621, 9621
540	4625, 9625
540a	Rep.
541	4564, 9564
542	7604
543, 544	Rep.
544a	T. 31 §495a
545	2574
546	T. 5 §150p (See Rev. T. 5 Table)
546a	Rep.
546b	7541
546c	Rep.
546d	7542
546e	7307. Rep. in part.
546f	7308
546g	7545
546h	7545, 7546
546i	7544
546j	Elim.
546k	7308, 7545
546*l*–546n	Rep.
547, 548	Rep.
549, 550	2542
551–551a	Rep.
551b	2573
552	7605
553	Rep.
553a–553c	2481
554, 555	Rep.
555a, 555b	2421
555c	Elim.
555d, 555e	7227
555f	7228
556	7212
557	7213
558	7575
559	7206
560–567	Rep.
568	2383
569–579	Rep.
580	7229
580a	Elim.

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
581	Rep.
582	7521
583	2384
584	7210
591	6011
592, 593	Rep.
593a	5792
594	Rep.
595	6202
596	6221, 6224
597	1551
598, 599	Rep.
600	7625
600a	7623
600b	7624
600c, 600d	7623
601–603	Rep.
604	T. 37 §31a (See Rev. T. 37 Table)
605	7215
606	7214
607	Rep.
608	6156
609	122
610	Rep.
621	5201
622	5201, 5502
623	Rep.
623a	5202
623b	5232, 5233, 5502
623c	5952
624–625b	Rep.
625c	5588, 5707
625d	5588
625e, 625f	5204
625g	6020
625h(a)	5405, 5448, 5453–5455, 5532–5534, 5572, 5590, 5596, 5704–5708, 5711, 5752, 5755, 5760, 5771, 5775, 5777, 5784, 5787b, 5788, 6015, 6033, 6151, 6325, 6328, 6380, 6382, 6398–6402, 6404
625h(b) (proviso)	Rep.
625h(b) (less proviso)	5410
625h(c) (proviso)	Rep.
625h(c) (less proviso)	5411
625h(d)	5206, 5453, 5787b
625h(f)	Rep. See 5760
625h(g)	Rep. See 6401, 6402, 6404
626(a)	5405, 5448, 5454, 5455, 6387
626(b)–(d)	5448
626(e)–(n)	5701 nt.
626(*o*), (p)	5448
626(q)–(y)	5701 nt.
626	5405, 5448, 5454, 5455, 6387.
626–1(a)	5443, 5445, 5454, 5504, 5505, 5703, 5705, 5707, 5708, 5711, 5751, 5755, 5756, 5765, 5768, 5769, 5775, 5777, 5780, 5783, 5785, 5786, 5788, 5791, 5862, 5865, 6321, 6322, 6325, 6329, 6376, 6377, 6379–6384, 6386
626–1(b)–(d)	5443
626–1(e)	5770
626–1(f)	5703, 5707
626–1(g)	5703
626–1(h)	5751, 5769, 5775
626–1(i)	5765
626–1(j)	741
626–1(k)	5703, 5709
626–1(*l*)	5709, 5710, 6373, 6381
626–1(m)	5709, 6373
626–1(n)	6374, 6381
626–1(*o*)	5443, 5703, 5707, 5708, 5757, 5765, 5769, 5775, 6383
626–1(p)	5703, 5707, 5708, 5759, 5765, 5769, 5775, 6377, 6378
626–1(q)	5709, 5710, 6375, 6381
626–1(r)	5709, 6375
626–1(s)	5706, 6378
626–1(t)	5707
626–1(u)	Rep.
626–1(v)	Elim.
626–1(w)	(See former 626–1(t))
626–1(x)	(See former 626–1(u))
626–1(y)	Rep.
626a, 626b	Rep.
627, 627a	Rep.
628	Rep.
629	5502
630–632a	Rep.
632b (1st par.)	Rep.
632b (less 1st par.)	5203
632c	Rep.
632d	5588
633	Rep.
634	5583, 5585
635	5595
636	Rep.
637	5584
638	Rep.
639	5504, 5572, 5584

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
639a–646	Rep.
651	741, 5502
651a–654	Rep.
661–662c	Rep.
663, 664	Rep.
665, 666	5861
667–667f	Rep.
668–669b	Rep.
670, 671	5790
671a	5443, 5448, 5453
672	5789
681–685	Rep.
685a	5201
685b	5205
686–688	Rep.
691, 691–1	Rep.
691a	Rep.
691b	Elim.
691c, 691d	Rep.
692	5533, 5534, 5538, 6293
692a	5538
693	5531
694	Rep.
695	6158
696, 697	Elim.
701	6222, 6224
701–1 to 701–5	6222 nt.
701a	Rep.
702	6223
711, 712	Rep.
713	5944
714	6012
715–718	Rep.
721–723	Rep.
724	7581
725	6032
731	Rep.
732, 732a	6021
733, 734	Rep.
735 (par. 1)	6023
735 (par. 2)	6025
735 (par. 3)	6024
735 (pars. 4, 5)	5942
735 (par. 6)	Rep.
735 (par. 7)	5942
735 (par. 8)	Rep.
735a	Rep.
735b	6911
736	6022
737, 737a	6914
738 (last sent.)	6914
738 (less last sent.)	Rep.
741–748	Rep.
749 (2d proviso of par. 7)	7341
749 (less 2d proviso of par. 7)	Rep.
749a to 749c–1	Rep.
749d, 749e	7341
749f	Rep.
751, 751a	Rep.
752–770	Rep.
771, 772	6115
773, 774	Rep.
781–783b	Rep.
784–790	Rep.
801–805	Rep.
811	Rep.
821(a), (b)	6901
821(c), (d)	Rep.
822	6901
831	Rep.
841	Rep.
841a–841e	6915; T. 14 §§758a, 759a
841f	Rep.
841g	T. 14 §§758a, 759a
841h	6915; T. 14 §§758a, 759a
842–843a	Rep.
844 to 849d–1	Rep.
849e–849i	Rep.
850	Rep.
850a, 850b	6911
850c	6912. Rep. in part. See T. 37 §402(a)–(c)
850d	Rep.
850e	6912
850f, 850g	6913
850h	5788
850i, 850j	Rep.
850k to 850k–2	Elim.
850*l*, 850m	Rep.
851 to 853a–1	Rep.
835b to 853c–1	Rep.
853c–2 to 853c–2a	6902
853c–3	6902
853c–4 (proviso)	6902
853c–4 (less proviso)	Rep.
853c–5	Rep.
853c–6	Elim.
853d, 853e	Rep.
853e–1	684
853f to 853g–1	Rep.

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
853h–853j	Rep.
854 (proviso)	Rep.
854 (less proviso)	6330
854a	6330, 6332
854b	Elim.
854c	6330, 6331. Rep. in part.
854c–1 to 854c–5	6330 nt.
854d	6485, 6486. Rep. in part.
854e (2d, 4th provisos)	6331
854e (3d, 5th provisos)	Elim.
854e (less 3d–5th provisos)	6485
854f	6201
854g	Rep.
855–855b	Rep.
855c(a)	6148
855c (less (a))	Elim.
855c–1	6148
855c–2	Rep.
855c–3	8687 nt.
855c–4	Rep.
855d to 855i–1	Rep.
855j–855s	Rep.
856 to 857c–1	Rep.
857d–857g	Rep.
858–858c	Rep.
861–861f	(See former 842, 843, 844–848)
862, 863	6141
864	Rep.
864a	5701 nt.
864b	5507
865	Rep.
865a	T. 37 §257 (See Rev. T. 37 Table)
865b	5062
866–869	Rep.
870	5788
870a	Elim.
871–875	Rep.
875a	T. 37 §310c (See Rev. T. 37 Table)
875b	T. 37 §310d (See Rev. T. 37 Table)
876–877a	Rep.
878	Rep.
879	6321, 6322, 6326
879a	Elim.
879b, 880	Rep.
881	6406
882	Rep.
882a	6111
882b	Rep.
882c, 882d	6111
883	6112
884	Rep.
885	6152
886, 887	Rep.
887a–889	Rep.
890	2772
891	6154
892–894a	Rep.
895–895a	Rep.
896–896b	Rep.
897	Rep.
898	6157; T. 14 §471a
899	Rep.
899a	7523
900	Rep.
900a	6292
900b, 901	Rep.
901a	6081, 6086
902	Rep.
902a–902c	6082
902d	6083
903–907	Rep.
908	6084
909	6085
911	7571
911a	7571, 7572
911b–911d	7574
911e	Rep.
912–914	Rep.
915	7572
915a	7576
915b	6087, 7578, 7579
915c	Elim.
916, 916a	Rep.
917, 919	Rep.
921	Rep.
921a, 921b	6203
922–929	Rep.
931	6146
932	6142
933, 933a	Rep.
935–936	Rep.
937–939	1035
941	Rep.
941a	2771
942	6522
943, 944	6521
945	Elim.
951	T. 37 §243 (See Rev. T. 37 Table)

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
952	T. 37 §244 (See Rev. T. 37 Table)
953	6145
954	6144
961	6147
962	Rep.
963	6147
971–977	Rep.
981–984a	Rep.
985–989	Rep.
991–993d	Rep.
993e	Elim.
994–995a	Rep.
996–1001	Rep.
1011	Rep.
1012–1017	Elim.
1020, 1020a	6903
1020b, 1020c	6904–6906
1020d	6023, 6906
1020e(a)	6904, 6906
1020e(b)	6909
1020e(c)	6904, 6909
1020e(d) (1st sent.)	5504, 6904, 6906, 6909
1020e(d) (less 1st sent.)	Rep.
1020f	6907, 6909
1020g, 1020h	6907–6909
1020i	6910
1020j	6913
1020k	Rep.
1020*l*	6901
1020m	Rep.
1021	6951
1031	Rep.
1032	6954, 6958
1032–1	6955
1032a, 1033	Rep.
1033a, 1034	6954
1035	Rep.
1035a	6954
1036 to 1036–2	6957
1036a–1039	6954
1040, 1041	6956
1042, 1043	6958
1044–1045a	Rep.
1046	Rep.
1047	6956, 6958
1048	6959
1049	6956
1051, 1052	Rep.
1052a	6960
1053	6963
1054	6966
1055	Rep.
1056	6966
1057 (Proviso of 3d sent.)	Rep.
1057 (3d sent. less proviso)	5504
1057 (less 3d sent.)	5573
1057–1	541
1057a (last sent.)	Rep. See 4353 nt., 6967 nt.; T. 46 §1126a–1 nt.
1057a (less last sent.)	6976
1057a–1	(See former 1076f)
1057b	Rep.
1061	Rep.
1062	6961
1062a	6962
1063–1067	6964
1068	6965
1071	6952, 7478
1072	Rep.
1073	7082
1073a	7083
1073b	7084
1073c	7081
1073c–1	7081, 7085
1073c–2	7086
1073c–3	7087
1073d	7081
1073e	7088
1073f	Rep. See 7085 nt.
1074	7043, 7081
1076	7041
1076a	7042
1076b	7044, 7081
1076c	7043
1076d	7046
1076e	7045
1076f	7047
1081, 1082	Rep.
1083–1088	6968
1091	Rep.
1091a	6969
1101–1103	6970
1104	Elim.
1105	Rep.
1106	6971
1107, 1108	Rep.
1108a	Elim.
1108b (last proviso)	Elim.
1108b (less last proviso)	6971
1109	Rep.

TABLE II—CONTINUED

Title 34 Former Sections	*Title 10 New Sections*
1109a	Elim.
1110	Rep.
1111	6972
1115–1115c	6973
1116	Rep.
1117	Elim.
1118–1120	6974
1121	T. 46 §1335
1122	T. 46 §1336
1123	5985. Rep. in part. See T. 46 §1337
1123a	T. 46 §1337
1123b	T. 46 §1338
1123c	T. 46 §1339
1123d	T. 46 §1340
1123e	T. 46 §1341
1123f–1125	Rep.
1126	5986
1127	Rep.
1128	7547
1129, 1130	5984
1131, 1132	7651
1133	7657
1134	7658
1135	7659
1136	7656
1137	7655, 7676
1138	7660, 7661
1139	7662
1140	7663
1141	7653, 7654
1142	7664
1143	7665
1144	7666
1145	7667
1146	7680
1147	7679
1148	7669
1149	7670
1150	7670, 7671
1151	7668
1152	7677
1153	7673
1154, 1155	7676
1156	7675
1157	7674
1158	7651, 7672
1158a	Rep.
1159	7651, 7652
1160	7653
1161	7652
1162	7663
1163	7655, 7676
1164 (1st sent.)	Rep.
1164 (less 1st sent.)	7652
1165	7681
1166	7652
1167	7678
1200, 1201	Rep.

POSITIVE LAW; CITATION

This title has been enacted into positive law by section 1 of act Aug. 10, 1956, ch. 1041, 70A Stat. 1, which provided in part that: ''Title 10 of the United States Code, entitled 'Armed Forces', is revised, codified, and enacted into law, and may be cited as 'Title 10, United States Code, §—.' ''

REPEALS

Section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641, repealed the sections or parts of sections of the Revised Statutes or Statutes at large covering provisions codified in this act, ''except with respect to rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of this act [Aug. 10, 1956] and except as provided in section 49.''

SAVINGS PROVISION AND SEPARABILITY

Section 49 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that:

''(a) In sections 1–48 of this Act [see Tables for classification], it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act [Aug. 10, 1956]. However, laws effective after March 31, 1955, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

''(b) References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of sections 1–48.

''(c) Actions taken and offenses committed under the replaced law shall be considered to have been taken or committed under the corresponding provisions of sections 1–48.

''(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

''(e) In chapter 47 of title 10, United States Code, enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.

''(f) The enactment of this Act does not increase or decrease the pay or allowances, including retired pay and retainer pay, of any person.

''(g) The enactment of this Act does not affect the status of persons who, on the effective date of this Act [Aug. 10, 1956], have the status of warrant officers of the Army Mine Planter Service.''

EFFECTIVE DATE OF UNIFORM CODE OF MILITARY JUSTICE

Section 51 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that chapter 47 of this title takes effect January 1, 1957.

RESTATEMENT OF SUSPENDED OR TEMPORARILY SUPERSEDED PROVISIONS

Section 50 of act Aug. 10, 1956, ch. 1041, 70A Stat. 640, provided that: ''If on the effective date of this Act [Aug. 10, 1956] a provision of law that is restated in this Act and repealed by section 53 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status.''

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 85–861; LEGISLATIVE PURPOSE; REPEAL OF INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS PROVISION AND SEPARABILITY; STATUS; REPEALS

Section 34 of Pub. L. 85–861 provided that:

''(a) In sections 1–32 of this Act [see Tables for classification], it is the legislative purpose to restate, without substantive change, the law replaced by those sections on the effective date of this Act [Sept. 2, 1958]. However, laws effective after December 31, 1957, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

''(b) References that other laws, regulations, and orders make to the replaced law shall be considered to be made to the corresponding provisions of sections 1–32.

''(c) Actions taken under the replaced law shall be considered to have been taken under the corresponding provisions of sections 1–32.

''(d) If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

''(e) The enactment of this Act does not increase or decrease the pay or allowances, including retired and retainer pay, of any person.''

Section 35 of Pub. L. 85–861 provided that: ''If on the effective date of this Act [Sept. 2, 1958] a provision of law that is restated in this Act and repealed by section 36 would have been in a suspended or temporarily superseded status but for its repeal, the provisions of this Act that restate that provision have the same suspended or temporarily superseded status.''

Section 36 of Pub. L. 85–861 repealed certain laws except with respect to rights and duties that matured,

penalties that were incurred, and proceedings that were begun, before Sept. 2, 1958.

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 87–651; INCONSISTENT PROVISIONS SUPERSEDED; CORRESPONDING PROVISIONS

Section 306 of Pub. L. 87–651 provided that:

''(a) Laws becoming effective after January 9, 1962, that are inconsistent with this Act [see Tables for classification] shall be considered as superseding it to the extent of the inconsistency.

''(b) References made by other laws, regulations and orders to the laws shall be considered to be made to the corresponding provisions of this Act.

''(c) Actions taken under the replaced law shall be considered to have been taken under the corresponding provisions of this Act.

''(d) The enactment of this Act, except section 108 [amending section 1334 [now 12734] of this title], does not increase or decrease the pay or allowances, including retired and retainer pay, of any person.''

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 89–718; INCONSISTENT PROVISIONS SUPERSEDED; CORRESPONDING PROVISIONS

Section 74 of Pub. L. 89–718 provided that:

''(a) Laws becoming effective after June 1, 1965, that are inconsistent with this Act shall be considered as superseding it to the extent of the inconsistency.

''(b) References made by other laws, regulations, and orders to the laws restated by this Act shall be considered to be made to the corresponding provisions of this Act.

''(c) Actions taken under the laws restated by this Act shall be considered to have been taken under the corresponding provisions of this Act.''

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 97–295; LEGISLATIVE PURPOSE; REPEAL OF INCONSISTENT PROVISIONS; CORRESPONDING PROVISIONS; SAVINGS PROVISION AND SEPARABILITY

Pub. L. 97–295, §5, Oct. 12, 1982, 96 Stat. 1313, provided that:

''(a) Sections 1–4 of this Act [see Tables for classification] restate, without substantive change, laws enacted before December 2, 1981, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after December 1, 1981, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

''(b) A reference to a law replaced by sections 1–4 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

''(c) An order, rule, or regulation in effect under a law replaced by sections 1–4 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(d) An action taken or an offense committed under a law replaced by sections 1–4 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

''(e) An inference of a legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of the caption or catchline of the provision.

''(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.''

Section 6(a) of Pub. L. 97–295 provided that: ''The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.''

Section 6(b) of Pub. L. 97–295 repealed certain sections or parts of sections of the Statutes at Large, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before Oct. 12, 1982.

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 100–370; CORRESPONDING PROVISIONS; SAVINGS PROVISION

Pub. L. 100–370, §4, July 19, 1988, 102 Stat. 856, provided that:

''(a) REFERENCES TO REPLACED LAWS.—A reference to a law replaced by the provisions of title 10, United States Code, enacted by this Act [see Tables for classification] (including a reference in a regulation, order, or other law) shall be treated as referring to the corresponding provision enacted by this Act.

''(b) SAVINGS PROVISION FOR REGULATIONS.—A regulation, rule, or order in effect under a law replaced by the provisions of title 10, United States Code, enacted by this Act shall continue in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

''(c) GENERAL SAVINGS PROVISION.—An action taken or an offense committed under a law replaced by the provisions of title 10, United States Code, enacted by this Act shall be treated as having been taken or committed under the corresponding provision enacted by this Act.''

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 101–510; CORRESPONDING PROVISIONS; SAVINGS PROVISION

Pub. L. 101–510, div. A, title XIV, §1481(k), Nov. 5, 1990, 104 Stat. 1709, provided that:

''(1) A reference to a law replaced by the provisions of title 10, United States Code, enacted by this section [enacting sections 129b, 1056, 2245, 2549, 2550, 2678, and 2732 of this title, amending sections 114, 1584, 1593, 2701, 2734, 2734a, and 2734b of this title, enacting provisions set out as a note under section 1056 of this title, and repealing provisions set out as notes under sections 113, 114, 1584, 1593, 2241, and 2701 of this title] (including a reference in a regulation, order, or other law) shall be treated as referring to the corresponding provision enacted by this section.

''(2) A regulation, rule, or order in effect under a law replaced by the provisions of title 10, United States Code, enacted by this section shall continue in effect under the corresponding provision enacted by this title until repealed, amended, or superseded.

''(3) An action taken or an offense committed under a law replaced by the provisions of title 10, United States Code, enacted by this section shall be treated as having been taken or committed under the corresponding provision enacted by this title.''

IMPROVEMENT OF UNITED STATES CODE BY PUB. L. 103–337; CORRESPONDING PROVISIONS; SAVINGS PROVISION

Pub. L. 103–337, div. A, title XVI, §1665, Oct. 5, 1994, 108 Stat. 3012, provided that:

''(a) REFERENCES TO TRANSFERRED OR REPLACED PROVISIONS.—A reference to a provision of title 10, United States Code, transferred or replaced by the provisions of sections 1661 through 1664 [see Tables for classification] (including a reference in a regulation, order, or other law) shall be treated as referring to that provision as transferred or to the corresponding provision as so enacted by this subtitle [subtitle C (§§1661–1665) of title XVI of div. A of Pub. L. 103–337].

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

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

treated as having been taken, or having matured, under the corresponding provision so enacted.''

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 20 section 6673; title 22 section 2715c; title 33 section 3071; title 36 section 40727; title 37 sections 211, 435; title 42 sections 1320d, 1395ggg, 14405; title 49 section 40125; title 50 sections 415, 2031.

Subtitle A—General Military Law

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

Chap.		Sec.
1.	Definitions	101
2.	Department of Defense	111
3.	General Powers and Functions	121
4.	Office of the Secretary of Defense	131
5.	Joint Chiefs of Staff	151
6.	Combatant Commands	161
7.	Boards, Councils, and Committees	171
8.	Defense Agencies and Department of Defense Field Activities	191
9.	Defense Budget Matters	221
11.	Reserve Components	261
13.	The Militia	311
15.	Insurrection	331
17.	Arming of American Vessels	351
18.	Military Support for Civilian Law Enforcement Agencies	371
20.	Humanitarian and Other Assistance	401
21.	Department of Defense Intelligence Matters	421
22.	National Imagery and Mapping Agency	441
23.	Miscellaneous Studies and Reports	481 [1]

PART II—PERSONNEL

31.	Enlistments	501
32.	Officer Strength and Distribution in Grade	521
33.	Original Appointments of Regular Officers in Grades Above Warrant Officer Grades	531
33A.	Appointment, Promotion, and Involuntary Separation and Retirement for Members on the Warrant Officer Active-Duty List	571
34.	Appointments as Reserve Officers	591
35.	Temporary Appointments in Officer Grades	601
36.	Promotion, Separation, and Involuntary Retirement of Officers on the Active-Duty List	611
37.	General Service Requirements	651
38.	Joint Officer Management	661
39.	Active Duty	671
40.	Leave	701
41.	Special Appointments, Assignments, Details, and Duties	711
43.	Rank and Command	741
45.	The Uniform	771
47.	Uniform Code of Military Justice	801
48.	Military Correctional Facilities	951
49.	Miscellaneous Prohibitions and Penalties	971
50.	Miscellaneous Command Responsibilities	991
51.	Reserve Components: Standards and Procedures for Retention and Promotion	1001
53.	Miscellaneous Rights and Benefits	1031
54.	Commissary and Exchange Benefits	1061
55.	Medical and Dental Care	1071
56.	Department of Defense Medicare-Eligible Retiree Health Care Fund	1111
57.	Decorations and Awards	1121
58.	Benefits and Services for Members Being Separated or Recently Separated	1141
59.	Separation	1161
60.	Separation of Regular Officers for Substandard Performance of Duty or for Certain Other Reasons	1181
61.	Retirement or Separation for Physical Disability	1201
63.	Retirement for Age	1251
65.	Retirement of Warrant Officers for Length of Service	1293
67.	Retired Pay for Non-Regular Service	1331
69.	Retired Grade	1370
71.	Computation of Retired Pay	1401
73.	Annuities Based on Retired or Retainer Pay	1431
74.	Department of Defense Military Retirement Fund	1461
75.	Deceased Personnel	1471
76.	Missing Persons	1501
77.	Posthumous Commissions and Warrants	1521
79.	Correction of Military Records	1551
80.	Miscellaneous Investigation Requirements and Other Duties	1561
81.	Civilian Employees	1581
83.	Civilian Defense Intelligence Employees	1601
[85.	Repealed.]	
87.	Defense Acquisition Workforce	1701
88.	Military Family Programs and Military Child Care	1781
[89.	Repealed.]	

PART III—TRAINING AND EDUCATION

101.	Training Generally	2001
102.	Junior Reserve Officers' Training Corps	2031
103.	Senior Reserve Officers' Training Corps	2101
104.	Uniformed Services University of the Health Sciences	2112
105.	Armed Forces Health Professions Financial Assistance Programs	2120
106.	Educational Assistance for Members of the Selected Reserve	2131
107.	Educational Assistance for Persons Enlisting for Active Duty	2141
108.	Department of Defense Schools	2161
109.	Educational Loan Repayment Programs	2171
110.	Educational Assistance for Members Held as Captives and Their Dependents	2181
111.	Support of Science, Mathematics, and Engineering Education	2191

[1] Chapter 23 amended by Pub. L. 107–107 by adding section 480 without corresponding amendment of subtitle analysis.

112. Information Security Scholarship Program 2200

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

131. Planning and Coordination 2201
133. Facilities for Reserve Components 2231
134. Miscellaneous Administrative Provisions 2241
135. Space Programs 2271
136. Provisions Relating to Specific Programs 2281
137. Procurement Generally 2301
138. Cooperative Agreements with NATO Allies and Other Countries 2341
139. Research and Development 2351
140. Procurement of Commercial Items 2375
141. Miscellaneous Procurement Provisions 2381
142. Procurement Technical Assistance Cooperative Agreement Program 2411
143. Production by Military Agencies 2421
144. Major Defense Acquisition Programs 2430
145. Cataloging and Standardization 2451
146. Contracting for Performance of Civilian Commercial or Industrial Type Functions 2460
147. Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities 2481
148. National Defense Technology and Industrial Base, Defense Reinvestment, and Defense Conversion 2500
[149. Repealed.]
[150. Repealed.]
152. Issue of Supplies, Services, and Facilities 2541
153. Exchange of Material and Disposal of Obsolete, Surplus, or Unclaimed Property 2571
155. Acceptance of Gifts and Services 2601
157. Transportation 2631
159. Real Property; Related Personal Property; and Lease of Non-Excess Property 2661
160. Environmental Restoration 2701
161. Property Records and Report of Theft or Loss of Certain Property 2721
163. Military Claims 2731
165. Accountability and Responsibility 2771
[167. Repealed.]
169. Military Construction and Military Family Housing 2801
[171. Repealed.]
172. Strategic Environmental Research and Development Program 2901

AMENDMENTS

2001—Pub. L. 107–107, div. A, title IX, §911(b), title X, §1048(a)(1), Dec. 28, 2001, 115 Stat. 1196, 1222, struck out period after ''1111'' in item for chapter 56 and added item for chapter 135.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(2), title IX, §922(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, 1654A–236, added items for chapters 56 and 112.

1999—Pub. L. 106–65, div. A, title V, §586(c)(1), title VII, §721(c)(2), Oct. 5, 1999, 113 Stat. 638, 694, added item for chapter 50 and substituted ''Deceased Personnel'' for ''Death Benefits'' and ''1471'' for ''1475'' in item for chapter 75.

1997—Pub. L. 105–85, div. A, title III, §§355(c)(2), 371(a)(2), (c)(5), title V, §591(a)(2), title X, §§1073(a)(1), (2), 1074(d)(2), Nov. 18, 1997, 111 Stat. 1694, 1705, 1762, 1900, 1910, substituted ''481'' for ''471'' in item for chapter 23, added items for chapters 80 and 136, and substituted ''2460'' for ''2461'' in item for chapter 146, ''Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities'' for ''Utilities and Services'' in item for chapter 147, ''2500'' for ''2491'' in item for chapter 148, and ''2541'' for ''2540'' in item for chapter 152.

1996—Pub. L. 104–201, div. A, title XI, §1123(a)(1), (2), title XVI, §1633(c)(3), Sept. 23, 1996, 110 Stat. 2687, 2688, 2751, substituted ''National Imagery and Mapping Agency'' for ''Miscellaneous Studies and Reports'' and ''441'' for ''451'' in item for chapter 22, added item for chapter 23, substituted ''Civilian Defense Intelligence Employees'' for ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' in item for chapter 83, and struck out item for chapter 167 ''Defense Mapping Agency''.

Pub. L. 104–106, div. A, title V, §§568(a)(2), 569(b)(2), title X, §1061(a)(2), (b)(2), Feb. 10, 1996, 110 Stat. 335, 351, 442, added items for chapters 76 and 88 and struck out items for chapters 89 ''Volunteers Investing in Peace and Security'' and 171 ''Security and Control of Supplies''.

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

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 100–26, §§7(c)(1), 9(b)(4), Apr. 21, 1987, 101 Stat. 280, 287, added item for chapter 21, substituted ''Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries'' for ''North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements'' in item for chapter 138, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' and ''2430'' for ''2431'' in item for chapter 144, and substituted ''2721'' for ''2701'' in item for chapter 161.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART I—ORGANIZATION AND GENERAL MILITARY POWERS

Chap.		Sec.
1.	Definitions	101
2.	Department of Defense	111
3.	General Powers and Functions	121
4.	Office of the Secretary of Defense	131
5.	Joint Chiefs of Staff	151
6.	Combatant Commands	161
7.	Boards, Councils, and Committees	171
8.	Defense Agencies and Department of Defense Field Activities	191
9.	Defense Budget Matters	221
11.	Reserve Components	261
13.	The Militia	311
15.	Insurrection	331
17.	Arming of American Vessels	351
18.	Military Support for Civilian Law Enforcement Agencies	371
20.	Humanitarian and Other Assistance	401
21.	Department of Defense Intelligence Matters	421

Chap. Sec.
22. National Imagery and Mapping Agency 441
23. Miscellaneous Studies and Reports ..... 481[1]

AMENDMENTS

1997—Pub. L. 105–85, div. A, title X, §1073(a)(1), Nov. 18, 1997, 111 Stat. 1900, substituted ''481'' for ''471'' in item for chapter 23.

1996—Pub. L. 104–201, div. A, title XI, §1123(a)(2), Sept. 23, 1996, 110 Stat. 2688, substituted ''National Imagery and Mapping Agency'' for ''Miscellaneous Studies and Reports'' and ''441'' for ''451'' in item for chapter 22 and added item for chapter 23.

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

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

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

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

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

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

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

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

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

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

CHAPTER 1—DEFINITIONS

Sec.
101. Definitions.

§101. Definitions

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

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

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

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

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

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

(A) the armed forces;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[1] Chapter 23 amended by Pub. L. 107–107 by adding section 480 without corresponding amendment of part analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) is a land force;

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

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

(D) is federally recognized.

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

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

(A) is an air force;

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

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

(D) is federally recognized.

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

(6) The term ''reserve'', with respect to an enlistment, appointment, grade, or office, means enlistment, appointment, grade, or of-

fice held as a Reserve of one of the armed forces.

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

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

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

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

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

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

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

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

(B) Such term does not include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Aug. 10, 1956, ch. 1041, 70A Stat. 3; Pub. L. 85–861, §§1(1), 33(a)(1), Sept. 2, 1958, 72 Stat. 1437, 1564; Pub. L. 86–70, §6(a), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, §4(a), July 12, 1960, 74 Stat. 411; Pub. L. 87–649, §6(f)(1), Sept. 7, 1962, 76 Stat. 494; Pub. L. 90–235, §7(a)(1), Jan. 2, 1968, 81 Stat. 762; Pub. L. 90–623, §2(1), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 92–492, §1, Oct. 13, 1972, 86 Stat. 810; Pub. L. 96–513, title I, §§101, 115(a), title V, §501(2), Dec. 12, 1980, 94 Stat. 2839, 2877, 2907; Pub. L. 97–22, §2(a), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title IV, §414(a)(1), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–348, title III, §303, July 1, 1986, 100 Stat. 703; Pub. L. 99–433, title III, §302, Oct. 1, 1986, 100 Stat. 1022; Pub. L. 100–26, §7(i), (k)(1), Apr. 21, 1987, 101 Stat. 282, 283; Pub. L. 100–180, div. A, title XII, §§1231(1), (20), 1233(a)(2), Dec. 4, 1987, 101 Stat. 1160, 1161; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–510, div. A, title XII, §1204, Nov. 5, 1990, 104 Stat. 1658; Pub. L. 102–190, div. A, title VI, §631(a), Dec. 5, 1991, 105 Stat. 1380; Pub. L. 102–484, div. A, title X, §1051(a), Oct. 23, 1992, 106 Stat. 2494; Pub. L. 103–337, div. A, title V, §514, title XVI, §§1621, 1671(c)(1), Oct. 5, 1994, 108 Stat. 2753, 2960, 3014; Pub. L. 104–106, div. A, title XV, §1501(c)(1), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104–201, div. A, title V, §522, Sept. 23, 1996, 110 Stat. 2517; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
101(1)	50:351 (clause (b)).	Sept. 16, 1942, ch. 561, § 401 (clause (b)); added Apr. 1, 1944, ch. 150, § 401 (clause (b)); restated Apr. 19, 1946, ch. 142, § 401 (clause (b)), 60 Stat. 102.
101(2)	32:4c (1st 33 words).	
101(3)	[No source].	
101(4)	50:901(e).	
101(5)	5:181–1(c) (for definition purposes); 5:411a(a) (for definition purposes); 5:626(c) (for definition purposes).	July 9, 1952, ch. 608, § 101(d) (less 2d sentence), (e), (g), § 702 (for definition purposes), 66 Stat. 481, 482, 501.
101(6)	[No source].	
101(7)	5:171(b) (last 23 words of clause (1), for definition purposes).	
101(8)	10:600(a); 34:135(a).	July 26, 1947, ch. 343, §§ 205(c) (for definition purposes), 206(a) (for definition purposes), 207(c) (for definition purposes), 61 Stat. 501, 502.
101(9)	[No source].	
101(10)	32:2 (for definition purposes); 32:4b (for definition purposes).	
101(11)	50:1112(a) (for definition purposes).	
101(12)	10:1835 (less last 16 words, for definition purposes); 32:2 (for definition purposes); 32:4b (for definition purposes).	July 26, 1947, ch. 343, § 201(b) (last 31 words of clause (1), for definition purposes); restated Aug. 10, 1949, ch. 412, § 4 (last 31 words of clause (1) of 201(b), for definition purposes), 63 Stat. 579.
101(13)	50:1112(b) (for definition purposes).	
101(14)	5:181–3(b) (less last sentence); 10:1a(b) (less last sentence); 10:1801(b) (less last sentence); 37:231(c) (1st sentence, for definition purposes); 50:901(g).	June 3, 1916, ch. 134, § 62 (1st 36 words of last proviso), 39 Stat. 198. June 3, 1916, ch. 134, § 117 (for definition purposes), 39 Stat. 212.
101(15)	[No source].	
101(16)	10:600(b); 34:135(b).	June 3, 1916, ch. 134, § 71 (for definition purposes); added June 15, 1933, ch. 87, § 9 (for definition purposes), 48 Stat. 157; Oct. 12, 1949, ch. 681, § 530 (for definition purposes), 63 Stat. 837; July 9, 1952, ch. 608, § 803 (9th par., for definition purposes), 66 Stat. 505.
101(17)	5:181–3(b) (last sentence); 10:1a(b) (last sentence); 10:1801(b) (last sentence); 50:551(9).	
101(18)	[No source].	
101(19)	[No source].	
101(20)	[No source].	
101(21)	[No source].	
101(22)	10:1036e(d) (for definition purposes); 34: 440m(d) (for definition purposes).	
101(23)	[No source].	Sept. 19, 1951, ch. 407, §§ 2(b), 305 (less last 16 words, for definition purposes), 65 Stat. 326, 330. June 28, 1950, ch. 383, § 2(b), 64 Stat. 263; July 9, 1952, ch. 608, § 807(a), 66 Stat. 508. Oct. 12, 1949, ch. 681, § 102(c) (1st sentence, for definition purposes), 63 Stat. 804. May 5, 1950, ch. 169, § 1 (Art. 1 (clause (9))), 64 Stat. 108. May 29, 1954, ch. 249, § 2(a), (b), 68 Stat. 157. June 29, 1948, ch. 708, § 306(d) (for definition purposes), 62 Stat. 1089.
101(24)	[No source].	
101(26)	[No source].	
101(27)	[No source].	
101(28)	[No source].	
101(29)	[No source].	
101(30)	[No source].	
101(31)	50:901(d) (less 2d sentence).	
101(32)	[No source].	
101(33)	[No source].	
101(34)	[No source].	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1958 ACT

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

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

[Clause (35).] The word ''original'' is defined to make clear that when used in relation to an appointment it refers to the member's first appointment in his current

series of appointments and excludes any appointment made before a lapse in service.

REFERENCES IN TEXT

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

AMENDMENTS

2002—Subsec. (a)(9)(D). Pub. L. 107–296, which directed the substitution of ''of Homeland Security'' for ''of Transportation'' wherever appearing in section 101(9), was executed to subsec. (a)(9) of this section to reflect the probable intent of Congress.

1996—Subsec. (d)(4). Pub. L. 104–201 substituted ''a member of a reserve component'' for ''a reserve commissioned officer, other than a commissioned warrant officer,''.

Subsec. (d)(6)(B)(i). Pub. L. 104–160 substituted ''section 10301'' for ''section 175''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–296, title XVII, §1704(g), Nov. 25, 2002, 116 Stat. 2316, provided that: ''The amendments made by this section (other than subsection (f)) [see Tables for classification] shall take effect on the date of transfer of the Coast Guard to the Department [of Homeland Security].''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

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

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

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

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

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

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE OF 1962 AMENDMENT

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

EFFECTIVE DATE OF 1958 AMENDMENT

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

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–38, §1, July 22, 1999, 113 Stat. 205, provided that: ''This Act [enacting provisions set out as notes under section 2431 of this title and section 5901 of Title 22, Foreign Relations and Intercourse] may be cited as the 'National Missile Defense Act of 1999'.''

SHORT TITLE OF 1991 AMENDMENT

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

SHORT TITLE OF 1987 AMENDMENT

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

SHORT TITLE OF 1981 AMENDMENT

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

SHORT TITLE OF 1980 AMENDMENT

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

SAVINGS PROVISION

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

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

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

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

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

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

COORDINATION OF CERTAIN SECTIONS OF AN ACT WITH OTHER PROVISIONS OF THAT ACT

Pub. L. 107–107, div. A, title X, §1048(j), Dec. 28, 2001, 115 Stat. 1230, provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

Pub. L. 106–398, §1 [[div. A], title X, §1087(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this section [section 1087 of H.R. 5408, as enacted by section 1 of Pub. L. 106–398, see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

Pub. L. 106–65, div. A, title X, §1066(e), Oct. 5, 1999, 113 Stat. 773, provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

Pub. L. 105–261, div. A, title X, §1069(e), Oct. 17, 1998, 112 Stat. 2137, provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

Pub. L. 105–85, div. A, title X, §1073(i), Nov. 18, 1997, 111 Stat. 1907, provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

Section 1074(e) of Pub. L. 104–201 provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

Section 1506 of title XV of div. A of Pub. L. 104–106 provided that: ''For purposes of applying amendments made by provisions of this Act other than provisions of this title [see Tables for classification], this title shall be treated as having been enacted immediately before the other provisions of this Act.''

Section 1070(h) of Pub. L. 103–337 provided that: ''For purposes of applying amendments made by provisions

of this Act other than this section [see Tables for classification], this section shall be treated as having been enacted immediately before the other provisions of this Act.''

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

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

DEFINITIONS FOR PURPOSES OF PUB. L. 102–25

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

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

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

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

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

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3750, 6246, 8750 of this title; title 5 sections 8331, 8401, 8906; title 8 section 1154; title 14 section 423; title 15 section 636; title 18 sections 232, 3267; title 20 sections 1078, 1087dd, 6673; title 31 section 3711; title 33 section 3002; title 37 sections 101, 308; title 39 section 3401; title 41 section 259; title 42 sections 2651, 5170b, 7235, 12639; title 46 App. section 1187b; title 49 section 40125; title 50 App. section 592.

CHAPTER 2—DEPARTMENT OF DEFENSE

Sec.
111. Executive department.
112. Department of Defense: seal.
113. Secretary of Defense.
113a. Transmission of annual defense authorization request.
114. Annual authorization of appropriations.
[114a. Renumbered.]
115. Personnel strengths: requirement for annual authorization.
115a. Annual manpower requirements report.
[115b. Renumbered.]
116. Annual operations and maintenance report.
117. Readiness reporting system: establishment; reporting to congressional committees.
118. Quadrennial defense review.
118a. Quadrennial quality of life review.
119. Special access programs: congressional oversight.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §581(a)(2), title X, §1061(b), Dec. 2, 2002, 116 Stat. 2561, 2649, added items 113a and 118a.

1999—Pub. L. 106–65, div. A, title IX, §901(a)(2), Oct. 5, 1999, 113 Stat. 717, added item 118.

1998—Pub. L. 105–261, div. A, title III, §373(a)(2), Oct. 17, 1998, 112 Stat. 1992, added item 117.

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

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

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

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

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

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

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

CHAPTER REFERRED TO IN OTHER SECTIONS

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

§111. Executive department

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

(b) The Department is composed of the following:

(1) The Office of the Secretary of Defense.

(2) The Joint Chiefs of Staff.

(3) The Joint Staff.

(4) The Defense Agencies.

(5) Department of Defense Field Activities.

(6) The Department of the Army.

(7) The Department of the Navy.

(8) The Department of the Air Force.

(9) The unified and specified combatant commands.

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

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

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

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

HISTORICAL AND REVISION NOTES

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

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

AMENDMENTS

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

CHANGE OF NAME

Pub. L. 104–106, div. A, title IX, §908, Feb. 10, 1996, 110 Stat. 406, provided that:

''(a) REDESIGNATION.—The agency in the Department of Defense known as the Advanced Research Projects Agency shall after the date of the enactment of this Act [Feb. 10, 1996] be designated as the Defense Advanced Research Projects Agency.

''(b) REFERENCES.—Any reference in any law, regulation, document, record, or other paper of the United States or in any provision of this Act to the Advanced Research Projects Agency shall be considered to be a reference to the Defense Advanced Research Projects Agency.''

SHORT TITLE OF 1986 AMENDMENT

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

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Department of Defense, including the functions of the Secretary of Defense relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 121(g)(2), 183(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Missions and functions of elements of Department of Defense as specified in classified annex to Pub. L. 104–201, and related personnel, assets, and balances of appropriations and authorizations of appropriations, transferred to National Imagery and Mapping Agency, see sections 1111 and 1113 of Pub. L. 104–201, set out as notes under section 441 of this title.

COMMISSION TO ASSESS UNITED STATES NATIONAL SECURITY SPACE MANAGEMENT AND ORGANIZATION

Pub. L. 106–65, div. A, title XVI, subtitle C, Oct. 5, 1999, 113 Stat. 813, as amended by Pub. L. 106–398, §1 [[div. A], title X, §1091], Oct. 30, 2000, 114 Stat. 1654, 1654A–300, established Commission To Assess United States National Security Space Management and Organization for purpose of assessing (1) manner in which military space assets may be exploited to provide support for United States military operations, (2) current interagency coordination process regarding operation of national security space assets, (3) relationship between intelligence and nonintelligence aspects of national security space, and potential costs and benefits of partial or complete merger of programs, projects, (4) manner in which military space issues are addressed by professional military education institutions, (5) potential costs and benefits of establishing changes to existing organizational structure of Department of Defense for national security space management and organization, and (6) advisability of certain actions relating to assignment of specified officers in United States Space Command; and further provided for report to Congress and Secretary of Defense on its findings and conclusions not later than six months after first meeting, submission to Congress by Secretary of Defense of assessment of Commission's report not later than 90 days after submission of Commission's report, and for termination of Commission 60 days after submission of its report to Congress.

COMMISSION ON NATIONAL MILITARY MUSEUM

Pub. L. 106–65, div. B, title XXIX, Oct. 5, 1999, 113 Stat. 881, as amended by Pub. L. 107–107, div. A, title X, §1048(g)(9), Dec. 28, 2001, 115 Stat. 1228, provided that:

''SEC. 2901. ESTABLISHMENT.

''(a) ESTABLISHMENT.—There is hereby established a commission to be known as the 'Commission on the National Military Museum' (in this title referred to as the 'Commission').

''(b) COMPOSITION.—(1) The Commission shall be composed of 11 voting members appointed from among individuals who have an expertise in military or museum matters as follows:

''(A) Five shall be appointed by the President.

''(B) Two shall be appointed by the Speaker of the House of Representatives, in consultation with the chairman of the Committee on Armed Services of the House of Representatives.

''(C) One shall be appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Committee on Armed Services of the House of Representatives.

''(D) Two shall be appointed by the majority leader of the Senate, in consultation with the chairman of the Committee on Armed Services of the Senate.

''(E) One shall be appointed by the minority leader of the Senate, in consultation with the ranking member of the Committee on Armed Services of the Senate.

''(2) The following shall be nonvoting members of the Commission:

''(A) The Secretary of Defense.

''(B) The Secretary of the Army.

''(C) The Secretary of the Navy.

''(D) The Secretary of the Air Force.

''(E) The Secretary of Transportation.

''(F) The Secretary of the Smithsonian Institution.

''(G) The Chairman of the National Capital Planning Commission.

''(H) The Chairperson of the Commission of Fine Arts.

''(c) CHAIRMAN.—The President shall designate one of the individuals first appointed to the Commission under subsection (b)(1)(A) as the chairman of the Commission.

''(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall be filled in the same manner as the original appointment.

''(e) INITIAL ORGANIZATION REQUIREMENTS.—(1) All appointments to the Commission shall be made not later than 90 days after the date of the enactment of this Act [Oct. 5, 1999].

''(2) The Commission shall convene its first meeting not later than 60 days after the date as of which all members of the Commission have been appointed.

''SEC. 2902. DUTIES OF COMMISSION.

''(a) STUDY OF NATIONAL MILITARY MUSEUM.—The Commission shall conduct a study in order to make recommendations to Congress regarding an authorization for the construction of a national military museum in the National Capital Area.

''(b) STUDY ELEMENTS.—In conducting the study, the Commission shall do the following:

''(1) Determine whether existing military museums, historic sites, and memorials in the United States are adequate—

''(A) to provide in a cost-effective manner for display of, and interaction with, adequately visited and adequately preserved artifacts and representations of the Armed Forces and of the wars in which the United States has been engaged;

''(B) to honor the service to the United States of the active and reserve members of the Armed Forces and the veterans of the United States;

''(C) to educate current and future generations regarding the Armed Forces and the sacrifices of members of the Armed Forces and the Nation in furtherance of the defense of freedom; and

''(D) to foster public pride in the achievements and activities of the Armed Forces.

''(2) Determine whether adequate inventories of artifacts and representations of the Armed Forces and of the wars in which the United States has been engaged are available, either in current inventories or in private or public collections, for loan or other provision to a national military museum.

''(3) Develop preliminary proposals for—

''(A) the dimensions and design of a national military museum in the National Capital Area;

''(B) the location of the museum in that Area; and

''(C) the approximate cost of the final design and construction of the museum and of the costs of operating the museum.

''(c) ADDITIONAL DUTIES.—If the Commission determines to recommend that Congress authorize the construction of a national military museum in the National Capital Area, the Commission shall also, as a part of the study under subsection (a), do the following:

''(1) Recommend not fewer than three sites for the museum ranked by preference.

''(2) Propose a schedule for construction of the museum.

''(3) Assess the potential effects of the museum on the environment, facilities, and roadways in the vicinity of the site or sites where the museum is proposed to be located.

''(4) Recommend the percentages of funding for the museum to be provided by the United States, State and local governments, and private sources, respectively.

''(5) Assess the potential for fundraising for the museum during the 20-year period following the authorization of construction of the museum.

''(6) Assess and recommend various governing structures for the museum, including a governing structure that places the museum within the Smithsonian Institution.

''(d) REQUIREMENTS FOR LOCATION ON NAVY ANNEX PROPERTY.—In the case of a recommendation under subsection (c)(1) to authorize construction of a national military museum on the Navy Annex property authorized for reservation for such purpose by section 2881(b) [113 Stat. 879], the design of the national military museum on such property shall be subject to the following requirements:

''(1) The design shall be prepared in consultation with the Superintendent of Arlington National Cemetery.

''(2) The design may not provide for access by vehicles to the national military museum through Arlington National Cemetery.

''SEC. 2903. REPORT.

''The Commission shall, not later than 12 months after the date of its first meeting, submit to Congress a report on its findings and conclusions under this title, including any recommendations under section 2902.

''SEC. 2904. POWERS.

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

''(b) INFORMATION.—The Commission may secure directly from the Department of Defense and any other Federal department or agency information that the Commission considers necessary to enable the Commission to carry out its responsibilities under this title.

''SEC. 2905. COMMISSION PROCEDURES.

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

''(b) QUORUM.—(1) Six of the members appointed under section 2901(b)(1) shall constitute a quorum other than for the purpose of holding hearings.

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

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

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

''SEC. 2906. PERSONNEL MATTERS.

''(a) PAY OF MEMBERS.—Members of the Commission appointed under section 2901(b)(1) shall serve without pay by reason of their work on the Commission.

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

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

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

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

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

''SEC. 2907. MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

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

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

''SEC. 2908. FUNDING.

''(a) IN GENERAL.—Funds for activities of the Commission shall be provided from amounts appropriated for the Department of Defense for operation and maintenance for Defense-wide activities for fiscal year 2000.

''(b) REQUEST.—Upon receipt of a written certification from the chairman of the Commission specifying the funds required for the activities of the Commission, the Secretary of Defense shall promptly disburse to the Commission, from such amounts, the funds required by the Commission as stated in such certification.

''(c) AVAILABILITY OF CERTAIN FUNDS.—Of the funds available for activities of the Commission under this section, $2,000,000 shall be available for the activities, if any, of the Commission under section 2902(c).

''SEC. 2909. TERMINATION OF COMMISSION.

''The Commission shall terminate 60 days after the date of the submission of its report under section 2903.''

PROHIBITION ON RESTRICTION OF ARMED FORCES UNDER KYOTO PROTOCOL TO UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

Pub. L. 105–261, div. A, title XII, §1232, Oct. 17, 1998, 112 Stat. 2155, provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, no provision of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or any regulation issued pursuant to such protocol, shall restrict the training or operations of the United States Armed Forces or limit the military equipment procured by the United States Armed Forces.

''(b) WAIVER.—A provision of law may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law—

''(1) specifically refers to this section; and

''(2) specifically states that such provision of law modifies or supersedes the provisions of this section.

''(c) MATTERS NOT AFFECTED.—Nothing in this section shall be construed to preclude the Department of Defense from implementing any measure to achieve efficiencies or for any other reason independent of the Kyoto Protocol.''

APPLICABILITY OF CERTAIN PAY AUTHORITIES TO MEMBERS OF SPECIFIED INDEPENDENT STUDY ORGANIZATIONS

Pub. L. 105–85, div. A, title X, §1081, Nov. 18, 1997, 111 Stat. 1916, provided that:

''(a) APPLICABILITY OF CERTAIN PAY AUTHORITIES.—(1) An individual who is a member of a commission or panel specified in subsection (b) and is an annuitant otherwise covered by section 8344 or 8468 of title 5, United States Code, by reason of membership on the commission or panel is not subject to the provisions of that section with respect to such membership.

''(2) An individual who is a member of a commission or panel specified in subsection (b) and is a member or former member of a uniformed service is not subject to the provisions of subsections (b) and (c) of section 5532 of such title with respect to membership on the commission or panel.

''(b) SPECIFIED ENTITIES.—Subsection (a) applies—

''(1) effective as of September 23, 1996, to members of the National Defense Panel established by section 924 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2626) [formerly set out below]; and

''(2) effective as of October 9, 1996, to members of the Commission on Servicemembers and Veterans Transition Assistance established by section 701 of the Veterans' Benefits Improvements Act of 1996 (Public Law 104–275; 110 Stat. 3346; 38 U.S.C. 545 note).''

MISSION OF WHITE HOUSE COMMUNICATIONS AGENCY

Pub. L. 104–201, div. A, title IX, §912, Sept. 23, 1996, 110 Stat. 2623, provided that:

''(a) TELECOMMUNICATIONS SUPPORT.—The Secretary of Defense shall ensure that the activities of the White House Communications Agency in providing support services on a nonreimbursable basis for the President from funds appropriated for the Department of Defense for any fiscal year are limited to the provision of telecommunications support to the President and Vice President and to related elements (as defined in regulations of that agency and specified by the President with respect to particular individuals within those related elements).

''(b) OTHER SUPPORT.—Support services other than telecommunications support services described in subsection (a) may be provided by the Department of Defense for the President through the White House Communications Agency on a reimbursable basis.

''(c) WHITE HOUSE COMMUNICATIONS AGENCY.—For purposes of this section, the term 'White House Communications Agency' means the element of the Department of Defense within the Defense Communications Agency that is known on the date of the enactment of this Act [Sept. 23, 1996] as the White House Communications Agency and includes any successor agency.

''(d) REPORT ON ISSUES RAISED BY DOD INSPECTOR GENERAL REVIEW OF WHITE HOUSE COMMUNICATIONS AGENCY.—Not later than October 1, 1996, or 30 days after the date of the enactment of this Act [Sept. 23, 1996], whichever is later, the Secretary of Defense shall submit to Congress a report setting forth the actions taken by the Secretary to address the issues raised by the report of the Department of Defense Inspector General reviewing the mission of the White House Communications Agency.

''(e) QUARTERLY REPORTS DURING FISCAL YEAR 1997.—Not later than 30 days after the end of each quarter of fiscal year 1997, the Secretary of Defense shall submit to Congress a report describing the support services other than telecommunications support services described in subsection (a) that were provided during the preceding quarter by the Department of Defense for the President through the White House Communications Agency.

''(f) EFFECTIVE DATE.—This section takes effect on October 1, 1997, and applies to funds appropriated for the Department of Defense for any fiscal year after fiscal year 1997.''

MILITARY FORCE STRUCTURE REVIEW

Pub. L. 104–201, div. A, title IX, subtitle B, Sept. 23, 1996, 110 Stat. 2623, directed Secretary of Defense, in consultation with Chairman of the Joint Chiefs of Staff, to complete in 1997 a review of defense program of United States, which was to include comprehensive examination of defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of defense program and policies with view toward determining and expressing defense strategy of United States and establishing revised defense program through year 2005, further established National Defense Panel to complete review and report to Secretary not later than Dec. 1, 1997, further directed Secretary to submit final report to Congress not later than Dec. 15, 1997, and provided for termination of Panel 30 days after submission of report to Secretary.

COMMISSION ON ROLES AND MISSIONS OF ARMED FORCES

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

''SEC. 951. FINDINGS.

''Congress makes the following findings:

''(1) The current allocation of roles and missions among the Armed Forces evolved from the practice

during World War II to meet the Cold War threat and may no longer be appropriate for the post-Cold War era.

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

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

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

''SEC. 952. ESTABLISHMENT OF COMMISSION.

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

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

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

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

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

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

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

''SEC. 953. DUTIES OF COMMISSION.

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

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

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

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

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

''(1) Defense of the United States.

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

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

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

''(5) Support of law enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

''(e) RECOMMENDATIONS CONCERNING MILITARY ROLES AND MISSIONS.—Based upon the conceptual framework developed under subsection (d) to evaluate possible changes to the existing allocation among the Armed Forces of military roles, missions, and functions, the Commission shall recommend—

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

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

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

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

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

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

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

''SEC. 954. REPORTS.

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

''(b) COMMISSION REPORT.—The Commission shall, not later than one year after the date of its first meeting, submit to the committees named in subsection (a) and

to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for legislation that the Commission considers advisable.

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

''SEC. 955. POWERS.

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

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

''SEC. 956. COMMISSION PROCEDURES.

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

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

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

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

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

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

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

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

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

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

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

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

''(f) FFRDC SUPPORT.—(1) Upon the request of the chairman of the Commission, the Secretary of Defense shall make available to the Commission, without reimbursement, the services of any federally funded research and development center that is covered by a sponsoring agreement of the Department of Defense. The cost of the services made available under this subsection may not exceed $20,000,000.

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

''SEC. 958. MISCELLANEOUS ADMINISTRATIVE PROVISIONS.

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

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

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

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

''SEC. 959. PAYMENT OF COMMISSION EXPENSES.

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

''SEC. 960. TERMINATION OF THE COMMISSION.

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

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

[''(3) The additional members of the Commission on Roles and Missions of the Armed Forces authorized by

the amendment made by paragraph (1) [amending section 952(b)(1) of Pub. L. 103–160, set out above] shall be appointed by the Secretary of Defense not later than 30 days after the date of the enactment of this Act [Oct. 5, 1994].

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

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

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

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

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

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

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

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

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

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

REPORT PROVISIONS PREVIOUSLY TERMINATED BY GOLDWATER-NICHOLS ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

REDUCTION OF REPORTING REQUIREMENTS

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

LEGISLATION TO MAKE REQUIRED CONFORMING CHANGES IN LAW

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

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

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

DEFENSE MANPOWER COMMISSION

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

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

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

REORGANIZATION PLAN NO. 6 OF 1953

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

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

DEPARTMENT OF DEFENSE

SECTION 1. TRANSFERS OF FUNCTIONS

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

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

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

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

SEC. 2. ABOLITION OF AGENCIES AND FUNCTIONS

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

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

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

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

SEC. 3. ASSISTANT SECRETARIES OF DEFENSE

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

SEC. 4. GENERAL COUNSEL

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

SEC. 5. PERFORMANCE OF FUNCTIONS

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

SEC. 6. MISCELLANEOUS PROVISIONS

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

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

EXECUTIVE ORDER NO. 12049

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

SECTION REFERRED TO IN OTHER SECTIONS

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

§ 112. Department of Defense: seal

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

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

HISTORICAL AND REVISION NOTES

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

AMENDMENTS

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

§ 113. Secretary of Defense

(a) There is a Secretary of Defense, who is the head of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Secretary of Defense

within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

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

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

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

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

(C) such recommendations as he considers appropriate.

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

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

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

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

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

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

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

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

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

(A) national security objectives and policies;

(B) the priorities of military missions; and

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

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

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

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

(2) Each such report shall—

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

(B) include an examination of the trends experienced in those capabilities and programs during the five years immediately preceding the year in which the report is transmitted and an examination of the expected trends in those capabilities and programs during the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221 of this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 517, § 133; amended Pub. L. 96–513, title V, § 511(3), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–252, title XI, § 1105, Sept. 8, 1982, 96 Stat. 739; Pub. L. 97–295, § 1(1), Oct. 12, 1982, 96 Stat. 1287; renumbered § 113 and amended Pub. L. 99–433, title I, §§ 101(a)(2), 102, 110(b)(2), (d)(2), title III, § 301(b)(2), title VI, § 603(b), Oct. 1, 1986, 100 Stat. 994, 996, 1002, 1022, 1075; Pub. L. 100–26, § 7(d)(1), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title XII, § 1214, Dec. 4, 1987, 101 Stat. 1157; Pub. L. 100–370, § 1(*o*)(1), July 19, 1988, 102 Stat. 850; Pub. L. 100–456, div. A, title VII, § 731, title XI, § 1101, Sept. 29, 1988, 102 Stat. 2003, 2042; Pub. L. 101–189, div. A, title XVI, § 1622(c)(1), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, § 1322(a)(1), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–190, div. A, title III, § 341, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 103–337, div. A, title X, § 1070(a)(1), title XVI, § 1671(c)(2), Oct. 5, 1994, 108 Stat. 2855, 3014; Pub. L. 104–106, div. A, title XV, §§ 1501(a)(8)(B), 1502(a)(3), 1503(a)(1), Feb. 10, 1996, 110 Stat. 495, 502, 510; Pub. L. 104–201, div. A, title XII, § 1255(c), Sept. 23, 1996, 110 Stat. 2698; Pub. L. 105–85, div. A, title IX, § 903, Nov. 18, 1997, 111 Stat. 1854; Pub. L. 105–261, div. A, title IX, § 915(a), title XII, § 1212(b), Oct. 17, 1998, 112 Stat. 2101, 2152; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES
1962 ACT

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

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

In subsection (b), the words ''this title and section 401 of title 50'' are substituted for 5 U.S.C. 171a(b) (13th

through 30th words of last sentence), since those words merely described the coverage of this title and section 401 of title 50.

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

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

1982 ACT

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

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

1988 ACT

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

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

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

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

AMENDMENTS

1999—Subsec. (j)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (*l*). Pub. L. 105–261, §915(a), added subsec. (*l*).

Subsec. (m). Pub. L. 105–261, §1212(b), added subsec. (m).

1997—Subsec. (g)(2). Pub. L. 105–85 struck out ''annually'' after ''Staff, shall provide'' and inserted ''be provided every two years or more frequently as needed and shall'' after ''Such guidance shall''.

1996—Subsec. (c). Pub. L. 104–201, §1255(c)(2)–(5), inserted ''(1)'' after ''(c)'', redesignated former pars. (1), (2), and (4) as subpars. (A), (B), and (C), respectively, inserted ''and'' at end of subpar. (B), and added par. (2).

Subsec. (c)(3). Pub. L. 104–201, §1255(c)(1), struck out par. (3) which read as follows: ''a report from the Reserve Forces Policy Board on the reserve programs of the Department of Defense, including a review of the effectiveness of chapters 51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers; and''.

Pub. L. 104–106, §1501(a)(8)(B), made technical correction to directory language of Pub. L. 103–337, §1671(c)(2). See 1994 Amendment note below.

Subsec. (i)(2)(B). Pub. L. 104–106, §1503(a)(1), substituted ''the period covered by the future-years defense program submitted to Congress during that year pursuant to section 221'' for ''the five years covered by the five-year defense program submitted to Congress during that year pursuant to section 114(g)''.

Subsec. (j)(1). Pub. L. 104–106, §1502(a)(3), substituted ''Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''Committees on Armed Services and Committees on Appropriations of the Senate and''.

1994—Subsec. (c)(3). Pub. L. 103–337, §1671(c)(2), as amended by Pub. L. 104–106, §1501(a)(8)(B), which directed the substitution of ''1219 and 1401 through 1411 of this title'' for ''51, 337, 361, 363, 549, 573, 837, 861 and 863 of this title, as far as they apply to reserve officers'', effective Oct. 1, 1996, could not be executed because of the intervening amendment by Pub. L. 104–201, §1255(c)(1). See 1996 Amendment note above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(f)(3) of Pub. L. 104–106 provided that: ''The amendments made by this section [see Tables for classification] shall take effect as if included in the Reserve Officer Personnel Management Act [Pub. L. 103–337, div. A, title XVI] as enacted on October 5, 1994.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(2) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

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

DELEGATION OF FUNCTIONS

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

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to Secretary of Defense, see Parts 1, 2, and 5 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

UNIFORM FINANCIAL MANAGEMENT SYSTEM FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION FACILITIES

Pub. L. 107–314, div. A, title II, §233, Dec. 2, 2002, 116 Stat. 2490, provided that:

''(a) REQUIREMENT FOR SYSTEM.—The Secretary of Defense shall implement a single financial management and accounting system for all test and evaluation facilities of the Department of Defense. The Secretary shall implement such system as soon as practicable, and shall establish the objective that such system be implemented not later than September 30, 2006.

''(b) SYSTEM FEATURES.—The system required by subsection (a) shall be designed to achieve, at a minimum, the following functional objectives:

''(1) Enable managers within the Department of Defense to compare the costs of carrying out test and evaluation activities in the various facilities of the military departments.

''(2) Enable the Secretary of Defense—

''(A) to make prudent investment decisions; and

''(B) to reduce the extent to which unnecessary costs of owning and operating test and evaluation facilities of the Department of Defense are incurred.

''(3) Enable the Department of Defense to track the total cost of test and evaluation activities.

''(4) Comply with the financial management architecture established by the Secretary.''

TRAINING RANGE SUSTAINMENT PLAN, GLOBAL STATUS OF RESOURCES AND TRAINING SYSTEM, AND TRAINING RANGE INVENTORY

Pub. L. 107–314, div. A, title III, §366, Dec. 2, 2002, 116 Stat. 2522, provided that:

''(a) PLAN REQUIRED.—(1) The Secretary of Defense shall develop a comprehensive plan for using existing authorities available to the Secretary of Defense and the Secretaries of the military departments to address training constraints caused by limitations on the use of military lands, marine areas, and airspace that are available in the United States and overseas for training of the Armed Forces.

''(2) As part of the preparation of the plan, the Secretary of Defense shall conduct the following:

''(A) An assessment of current and future training range requirements of the Armed Forces.

''(B) An evaluation of the adequacy of current Department of Defense resources (including virtual and constructive training assets as well as military lands, marine areas, and airspace available in the United States and overseas) to meet those current and future training range requirements.

''(3) The plan shall include the following:

''(A) Proposals to enhance training range capabilities and address any shortfalls in current Department of Defense resources identified pursuant to the assessment and evaluation conducted under paragraph (2).

''(B) Goals and milestones for tracking planned actions and measuring progress.

''(C) Projected funding requirements for implementing planned actions.

''(D) Designation of an office in the Office of the Secretary of Defense and in each of the military departments that will have lead responsibility for overseeing implementation of the plan.

''(4) At the same time as the President submits to Congress the budget for fiscal year 2004, the Secretary of Defense shall submit to Congress a report describing the progress made in implementing this subsection, including—

''(A) the plan developed under paragraph (1);

''(B) the results of the assessment and evaluation conducted under paragraph (2); and

''(C) any recommendations that the Secretary may have for legislative or regulatory changes to address training constraints identified pursuant to this section.

''(5) At the same time as the President submits to Congress the budget for each of fiscal years 2005 through 2008, the Secretary shall submit to Congress a report describing the progress made in implementing the plan and any additional actions taken, or to be taken, to address training constraints caused by limitations on the use of military lands, marine areas, and airspace.

''(b) READINESS REPORTING IMPROVEMENT.—Not later than June 30, 2003, the Secretary of Defense, using ex-

isting measures within the authority of the Secretary, shall submit to Congress a report on the plans of the Department of Defense to improve the Global Status of Resources and Training System to reflect the readiness impact that training constraints caused by limitations on the use of military lands, marine areas, and airspace have on specific units of the Armed Forces.

''(c) TRAINING RANGE INVENTORY.—(1) The Secretary of Defense shall develop and maintain a training range inventory for each of the Armed Forces—

''(A) to identify all available operational training ranges;

''(B) to identify all training capacities and capabilities available at each training range; and

''(C) to identify training constraints caused by limitations on the use of military lands, marine areas, and airspace at each training range.

''(2) The Secretary of Defense shall submit an initial inventory to Congress at the same time as the President submits the budget for fiscal year 2004 and shall submit an updated inventory to Congress at the same time as the President submits the budget for fiscal years 2005 through 2008.

''(d) GAO EVALUATION.—The Secretary of Defense shall transmit copies of each report required by subsections (a) and (b) to the Comptroller General. Within 60 days after receiving a report, the Comptroller General shall submit to Congress an evaluation of the report.

''(e) ARMED FORCES DEFINED.—In this section, the term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.''

DEVELOPMENT AND IMPLEMENTATION OF FINANCIAL MANAGEMENT ENTERPRISE ARCHITECTURE

Pub. L. 107–314, div. A, title X, §1004, Dec. 2, 2002, 116 Stat. 2629, provided that:

''(a) REQUIREMENT FOR ENTERPRISE ARCHITECTURE AND FOR TRANSITION PLAN.—Not later than May 1, 2003, the Secretary of Defense shall develop—

''(1) a financial management enterprise architecture for all budgetary, accounting, finance, enterprise resource planning, and mixed information systems of the Department of Defense; and

''(2) a transition plan for implementing that financial management enterprise architecture.

''(b) COMPOSITION OF ENTERPRISE ARCHITECTURE.—(1) The financial management enterprise architecture developed under subsection (a)(1) shall describe an information infrastructure that, at a minimum, would enable the Department of Defense to—

''(A) comply with all Federal accounting, financial management, and reporting requirements;

''(B) routinely produce timely, accurate, and reliable financial information for management purposes;

''(C) integrate budget, accounting, and program information and systems; and

''(D) provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

''(2) That enterprise architecture shall also include policies, procedures, data standards, and system interface requirements that are to apply uniformly throughout the Department of Defense.

''(c) COMPOSITION OF TRANSITION PLAN.—The transition plan developed under subsection (a)(2) shall include the following:

''(1) The acquisition strategy for the enterprise architecture, including specific time-phased milestones, performance metrics, and financial and nonfinancial resource needs.

''(2) A listing of the mission critical or mission essential operational and developmental financial and nonfinancial management systems of the Department of Defense, as defined by the Under Secretary of Defense (Comptroller), consistent with budget justification documentation, together with—

''(A) the costs to operate and maintain each of those systems during fiscal year 2002; and

''(B) the estimated cost to operate and maintain each of those systems during fiscal year 2003.

''(3) A listing of the operational and developmental financial management systems of the Department of Defense as of the date of the enactment of this Act [Dec. 2, 2002] (known as 'legacy systems') that will not be part of the objective financial and nonfinancial management system, together with the schedule for terminating those legacy systems that provides for reducing the use of those legacy systems in phases.

''(d) CONDITIONS FOR OBLIGATION OF SIGNIFICANT AMOUNTS FOR FINANCIAL SYSTEM IMPROVEMENTS.—An amount in excess of $1,000,000 may be obligated for a defense financial system improvement only if the Under Secretary of Defense (Comptroller) makes a determination regarding that improvement as follows:

''(1) Before the date of an approval specified in paragraph (2), a determination that the defense financial system improvement is necessary for either of the following reasons:

''(A) To achieve a critical national security capability or address a critical requirement in an area such as safety or security.

''(B) To prevent a significant adverse effect (in terms of a technical matter, cost, or schedule) on a project that is needed to achieve an essential capability, taking into consideration in the determination the alternative solutions for preventing the adverse effect.

''(2) On and after the date of any approval by the Secretary of Defense of a financial management enterprise architecture and a transition plan that satisfy the requirements of this section, a determination that the defense financial system improvement is consistent with both the enterprise architecture and the transition plan.

''(e) CONGRESSIONAL REPORTS.—Not later than March 15 of each year from 2004 through 2007, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress of the Department of Defense in implementing the enterprise architecture and transition plan required by this section. Each report shall include, at a minimum—

''(1) a description of the actions taken during the preceding fiscal year to implement the enterprise architecture and transition plan (together with the estimated costs of such actions);

''(2) an explanation of any action planned in the enterprise architecture and transition plan to be taken during the preceding fiscal year that was not taken during that fiscal year;

''(3) a description of the actions taken and planned to be taken during the current fiscal year to implement the enterprise architecture and transition plan (together with the estimated costs of such actions); and

''(4) a description of the actions taken and planned to be taken during the next fiscal year to implement the enterprise architecture and transition plan (together with the estimated costs of such actions).

''(f) COMPTROLLER GENERAL REVIEW.—Not later than 60 days after the approval of an enterprise architecture and transition plan in accordance with the requirements of subsection (a), and not later than 60 days after the submission of an annual report required by subsection (e), the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] an assessment of the extent to which the actions taken by the Department comply with the requirements of this section.

''(g) DEFINITIONS.—In this section:

''(1) The term 'defense financial system improvement' means the acquisition of a new budgetary, accounting, finance, enterprise resource planning, or mixed information system for the Department of Defense or a modification of an existing budgetary, accounting, finance, enterprise resource planning, or mixed information system of the Department of De-

fense. Such term does not include routine maintenance and operation of any such system.

''(2) The term 'mixed information system' means an information system that supports financial and nonfinancial functions of the Federal Government as defined in Office of Management and Budget Circular A–127 (Financial management Systems).

''(h) REPEAL.—(1) [Repealed section 2222 of this title and amended analysis for chapter 131 of this title.]

''(2) [Amended section 185 of this title.]''

RELIABILITY OF DEPARTMENT OF DEFENSE FINANCIAL STATEMENTS

Pub. L. 107–107, div. A, title X, §1008, Dec. 28, 2001, 115 Stat. 1204, provided that:

''(a) ANNUAL REPORT ON RELIABILITY.—(1) Not later than September 30 of each year but subject to subsection (f), the Secretary of Defense shall submit to the recipients specified in paragraph (3) a report on the reliability of the Department of Defense financial statements, including the financial statements of each component of the Department that is required to prepare a financial statement under section 3515(c) of title 31, United States Code.

''(2) The annual report shall contain the following:

''(A) A conclusion regarding whether the policies and procedures of the Department of Defense, and the systems used within the Department of Defense, for the preparation of financial statements allow the achievement of reliability in those financial statements.

''(B) For each of the financial statements prepared for the Department of Defense for the fiscal year in which the report is submitted, a conclusion regarding the expected reliability of the financial statement (evaluated on the basis of Office of Management and Budget guidance on financial statements), together with a discussion of the major deficiencies to be expected in the statement.

''(C) A summary of the specific sections of the annual Financial Management Improvement Plan of the Department of Defense, current as of the date of the report, that—

''(i) detail the priorities, milestones, and measures of success that apply to the preparation of the financial statements;

''(ii) detail the planned improvements in the process for the preparation of financial statements that are to be implemented within 12 months after the date on which the plan is issued; and

''(iii) provide an estimate of when each financial statement will convey reliable information.

''(3) The annual report shall be submitted to the following:

''(A) The Committee on Armed Services and the Committee on Governmental Affairs of the Senate.

''(B) The Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

''(C) The Director of the Office of Management and Budget.

''(D) The Secretary of the Treasury.

''(E) The Comptroller General of the United States.

''(4) The Secretary of Defense shall make a copy of the annual report available to the Inspector General of the Department of Defense.

''(b) MINIMIZATION OF USE OF RESOURCES FOR UNRELIABLE FINANCIAL STATEMENTS.—(1) With respect to each financial statement for a fiscal year that the Secretary of Defense assesses as being expected to be unreliable in the annual report under subsection (a), the Under Secretary of Defense (Comptroller) shall take appropriate actions to minimize, consistent with the benefits to be derived, the resources (including contractor support) that are used to develop, compile, and report the financial statement.

''(2) With the annual budget justifications for the Department of Defense submitted to Congress each year, the Under Secretary of Defense (Comptroller) shall submit, with respect to the fiscal year in which submitted, the preceding fiscal year, and the following fiscal year, the following information:

''(A) An estimate of the resources that the Department of Defense is saving or expects to save as a result of actions taken and to be taken under paragraph (1) with respect to the preparation of financial statements.

''(B) A discussion of how the resources saved as estimated under subparagraph (A) have been redirected or are to be redirected from the preparation of financial statements to the improvement of systems underlying financial management within the Department of Defense and to the improvement of financial management policies, procedures, and internal controls within the Department of Defense.

''(c) INFORMATION TO AUDITORS.—Not later than October 31 of each year, the Under Secretary of Defense (Comptroller) and the Assistant Secretary of each military department with responsibility for financial management and comptroller functions shall each provide to the auditors of the financial statement of that official's department for the fiscal year ending during the preceding month that official's preliminary management representation, in writing, regarding the expected reliability of the financial statement. The representation shall be consistent with guidance issued by the Director of the Office of Management and Budget and shall include the basis for the reliability assessment stated in the representation.

''(d) LIMITATION ON INSPECTOR GENERAL AUDITS.—(1) On each financial statement that an official asserts is unreliable under subsection (b) or (c), the Inspector General of the Department of Defense shall only perform the audit procedures required by generally accepted government auditing standards consistent with any representation made by management.

''(2) With the annual budget justifications for the Department of Defense submitted to Congress each year, the Under Secretary of Defense (Comptroller) shall submit, with respect to the fiscal year in which submitted, the preceding fiscal year, and the following fiscal year, information which the Inspector General shall report to the Under Secretary, as follows:

''(A) An estimate of the resources that the Inspector General is saving or expects to save as a result of actions taken and to be taken under paragraph (1) with respect to the auditing of financial statements.

''(B) A discussion of how the resources saved as estimated under subparagraph (A) have been redirected or are to be redirected from the auditing of financial statements to the oversight and improvement of systems underlying financial management within the Department of Defense and to the oversight and improvement of financial management policies, procedures, and internal controls within the Department of Defense.

''(e) EFFECTIVE DATE.—The requirements of this section shall apply with respect to financial statements for fiscal years after fiscal year 2001 and to the auditing of those financial statements.

''(f) TERMINATION OF APPLICABILITY.—If the Secretary of Defense certifies to the Inspector General of the Department of Defense that the financial statement for the Department of Defense, or a financial statement for a component of the Department of Defense, for a fiscal year is reliable, this section shall not apply with respect to that financial statement or to any successive financial statement for the Department of Defense, or for that component, as the case may be, for any later fiscal year.''

ANNUAL REPORT ON THE CONDUCT OF MILITARY OPERATIONS CONDUCTED AS PART OF OPERATION ENDURING FREEDOM

Pub. L. 107–314, div. A, title X, §1043, Dec. 2, 2002, 116 Stat. 2646, provided that:

''(a) REPORTS REQUIRED.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (d) an annual report on the conduct of military operations conducted as part of Oper-

ation Enduring Freedom. The first report, which shall include a definition of the military operations carried out as part of Operation Enduring Freedom, shall be submitted not later than June 15, 2003. Subsequent reports shall be submitted not later than June 15 each year, and the final report shall be submitted not later than 180 days after the date (as determined by the Secretary of Defense) of the cessation of hostilities undertaken as part of Operation Enduring Freedom.

''(2) Each report under this section shall be prepared in consultation with the Chairman of the Joint Chiefs of Staff, the commander of the United States Central Command, the Director of Central Intelligence, and such other officials as the Secretary considers appropriate.

''(3) Each such report shall be submitted in both a classified form and an unclassified form, as necessary.

''(b) SPECIAL MATTERS TO BE INCLUDED.—Each report under this section shall include the following:

''(1) A discussion of the command, control, coordination, and support relationship between United States special operations forces and Central Intelligence Agency elements participating in Operation Enduring Freedom and any lessons learned from the joint conduct of operations by those forces and elements.

''(2) Recommendations to improve operational readiness and effectiveness of these forces and elements.

''(c) OTHER MATTERS TO BE INCLUDED.—Each report under this section shall include a discussion, with a particular emphasis on accomplishments and shortcomings, of the following matters with respect to Operation Enduring Freedom:

''(1) The political and military objectives of the United States.

''(2) The military strategy of the United States to achieve those political and military objectives.

''(3) The concept of operations, including any new operational concepts, for the operation.

''(4) The benefits and disadvantages of operating with local opposition forces.

''(5) The benefits and disadvantages of operating in a coalition with the military forces of allied and friendly nations.

''(6) The cooperation of nations in the region for overflight, basing, command and control, and logistic and other support.

''(7) The conduct of relief operations both during and after the period of hostilities.

''(8) The conduct of close air support (CAS), particularly with respect to the timeliness, efficiency, and effectiveness of such support.

''(9) The use of unmanned aerial vehicles for intelligence, surveillance, reconnaissance, and combat support to operational forces.

''(10) The use and performance of United States and coalition military equipment, weapon systems, and munitions.

''(11) The effectiveness of reserve component forces, including their use and performance in the theater of operations.

''(12) The importance and effectiveness of the International Security Assistance Force.

''(13) The importance and effectiveness of United States civil affairs forces.

''(14) The anticipated duration of the United States military presence in Afghanistan.

''(15) The most critical lessons learned that could lead to long-term doctrinal, organizational, and technological changes.

''(d) CONGRESSIONAL COMMITTEES.—The committees referred to in subsection (a)(1) are the following:

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

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

COMPREHENSIVE PLAN FOR IMPROVING THE PREPAREDNESS OF MILITARY INSTALLATIONS FOR TERRORIST INCIDENTS

Pub. L. 107–314, div. A, title XIV, §1402, Dec. 2, 2002, 116 Stat. 2675, provided that:

''(a) COMPREHENSIVE PLAN.—The Secretary of Defense shall develop a comprehensive plan for improving the preparedness of military installations for preventing and responding to terrorist attacks, including attacks involving the use or threat of use of weapons of mass destruction.

''(b) PREPAREDNESS STRATEGY.—The plan under subsection (a) shall include a preparedness strategy that includes each of the following:

''(1) Identification of long-term goals and objectives for improving the preparedness of military installations for preventing and responding to terrorist attacks.

''(2) Identification of budget and other resource requirements necessary to achieve those goals and objectives.

''(3) Identification of factors beyond the control of the Secretary that could impede the achievement of those goals and objectives.

''(4) A discussion of the extent to which local, regional, or national military response capabilities are to be developed, integrated, and used.

''(5) A discussion of how the Secretary will coordinate the capabilities referred to in paragraph (4) with local, regional, or national civilian and other military capabilities.

''(c) PERFORMANCE PLAN.—The plan under subsection (a) shall include a performance plan that includes each of the following:

''(1) A reasonable schedule, with milestones, for achieving the goals and objectives of the strategy under subsection (b).

''(2) Performance criteria for measuring progress in achieving those goals and objectives.

''(3) A description of the process, together with a discussion of the resources, necessary to achieve those goals and objectives.

''(4) A description of the process for evaluating results in achieving those goals and objectives.

''(d) SUBMITTAL TO CONGRESS.—The Secretary shall submit the comprehensive plan developed under subsection (a) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002].

''(e) COMPTROLLER GENERAL REVIEW AND REPORT.—Not later than 60 days after the date on which the Secretary submits the comprehensive plan under subsection (a), the Comptroller General shall review the plan and submit to the committees referred to in subsection (d) the Comptroller General's assessment of the plan.

''(f) ANNUAL REPORT.—(1) In each of 2004, 2005, and 2006, the Secretary of Defense shall include a report on the comprehensive plan developed under subsection (a) with the materials that the Secretary submits to Congress in support of the budget submitted by the President that year pursuant to section 1105(a) of title 31, United States Code.

''(2) Each such report shall include—

''(A) a discussion of any revision that the Secretary has made in the comprehensive plan developed under subsection (a) since the last report under this subsection or, in the case of the first such report, since the plan was submitted under subsection (d); and

''(B) an assessment of the progress made in achieving the goals and objectives of the strategy set forth in the plan.

''(3) If the Secretary includes in the report for 2004 or 2005 under this subsection a declaration that the goals and objectives of the preparedness strategy set forth in the comprehensive plan have been achieved, no further report is required under this subsection.''

POLICY CONCERNING RIGHTS OF INDIVIDUALS WHOSE NAMES HAVE BEEN ENTERED INTO DEPARTMENT OF DEFENSE OFFICIAL CRIMINAL INVESTIGATIVE REPORTS

Pub. L. 106–398, §1 [[div. A], title V, §552], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, provided that:

''(a) POLICY REQUIREMENT.—The Secretary of Defense shall establish a policy creating a uniform process within the Department of Defense that—

''(1) affords any individual who, in connection with the investigation of a reported crime, is designated (by name or by any other identifying information) as a suspect in the case in any official investigative report, or in a central index for potential retrieval and analysis by law enforcement organizations, an opportunity to obtain a review of that designation; and

''(2) requires the expungement of the name and other identifying information of any such individual from such report or index in any case in which it is determined the entry of such identifying information on that individual was made contrary to Department of Defense requirements.

''(b) EFFECTIVE DATE.—The policy required by subsection (a) shall be established not later than 120 days after the date of the enactment of this Act [Oct. 30, 2000].''

TEST OF ABILITY OF RESERVE COMPONENT INTELLIGENCE UNITS AND PERSONNEL TO MEET CURRENT AND EMERGING DEFENSE INTELLIGENCE NEEDS

Pub. L. 106–398, §1 [[div. A], title V, §576], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, provided that:

''(a) TEST PROGRAM REQUIRED.—(1) Beginning not later than June 1, 2001, the Secretary of Defense shall conduct a three-year test program of reserve component intelligence units and personnel. The purpose of the test program shall be—

''(A) to determine the most effective peacetime structure and operational employment of reserve component intelligence assets for meeting current and future Department of Defense peacetime operational intelligence requirements; and

''(B) to establish a means to coordinate and transition that peacetime intelligence operational support network into use for meeting wartime requirements.

''(2) The test program shall be carried out using the Joint Reserve Intelligence Program and appropriate reserve component intelligence units and personnel.

''(3) In conducting the test program, the Secretary of Defense shall expand the current Joint Reserve Intelligence Program as needed to meet the objectives of the test program.

''(b) OVERSIGHT PANEL.—The Secretary shall establish an oversight panel to structure the test program so as to achieve the objectives of the test program, ensure proper funding for the test program, and oversee the conduct and evaluation of the test program. The panel members shall include—

''(1) the Assistant Secretary of Defense for Command, Control, Communications and Intelligence;

''(2) the Assistant Secretary of Defense for Reserve Affairs; and

''(3) representatives from the Defense Intelligence Agency, the Army, Navy, Air Force, and Marine Corps, the Joint Staff, and the combatant commands.

''(c) TEST PROGRAM OBJECTIVES.—The test program shall have the following objectives:

''(1) To identify the range of peacetime roles and missions that are appropriate for reserve component intelligence units and personnel, including the following missions: counterdrug, counterintelligence, counterterrorism, information operations, information warfare, and other emerging threats.

''(2) To recommend a process for justifying and validating reserve component intelligence force structure and manpower to support the peacetime roles and missions identified under paragraph (1) and to establish a means to coordinate and transition that peacetime operational support network and structure into wartime requirements.

''(3) To provide, pursuant to paragraphs (1) and (2), the basis for new or revised intelligence and reserve component policy guidelines for the peacetime use, organization, management, infrastructure, and funding of reserve component intelligence units and personnel.

''(4) To determine the most effective structure, organization, manning, and management of Joint Reserve Intelligence Centers to enable them to be both reserve training facilities and virtual collaborative production facilities in support of Department of Defense peacetime operational intelligence requirements.

''(5) To determine the most effective uses of technology for virtual collaborative intelligence operational support during peacetime and wartime.

''(6) To determine personnel and career management initiatives or modifications that are required to improve the recruiting and retention of personnel in the reserve component intelligence specialties and occupational skills.

''(7) To identify and make recommendations for the elimination of statutory prohibitions and barriers to using reserve component intelligence units and individuals to carry out peacetime operational requirements.

''(d) REPORTS.—The Secretary of Defense shall submit to Congress—

''(1) interim reports on the status of the test program not later than July 1, 2002, and July 1, 2003; and

''(2) a final report, with such recommendations for changes as the Secretary considers necessary, not later than December 1, 2004.''

STUDY ON CIVILIAN PERSONNEL SERVICES

Pub. L. 106–398, §1 [[div. A], title XI, §1105], Oct. 30, 2000, 114 Stat. 1654, 1654A–311, provided that:

''(a) STUDY REQUIRED.—The Secretary of Defense shall assess the manner in which personnel services are provided for civilian personnel in the Department of Defense and determine whether—

''(1) administration of such services should continue to be centralized in individual military services and Defense Agencies or whether such services should be centralized within designated geographical areas to provide services to all Department of Defense elements;

''(2) offices that perform such services should be established to perform specific functions rather than cover an established geographical area;

''(3) processes and functions of civilian personnel offices should be reengineered to provide greater efficiency and better service to management and employees of the Department of Defense; and

''(4) efficiencies could be gained by public-private competition of the delivery of any of the personnel services for civilian personnel of the Department of Defense.

''(b) REPORT.—Not later than January 1, 2002, the Secretary of Defense shall submit a report on the study, including recommendations, to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the Secretary's assessment of the items described in subsection (a), and, if appropriate, a proposal for a demonstration program to test the concepts developed under the study. The Secretary may also include any recommendations for legislation or other actions that the Secretary considers appropriate to increase the effectiveness and efficiency of the delivery of personnel services with respect to civilian personnel of the Department of Defense.''

PILOT PROGRAM FOR REENGINEERING EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESS

Pub. L. 106–398, §1 [[div. A], title XI, §1111], Oct. 30, 2000, 114 Stat. 1654, 1654A–312, provided that:

''(a) PILOT PROGRAM.—(1) The Secretary of Defense shall carry out a pilot program to improve processes for the resolution of equal employment opportunity complaints by civilian employees of the Department of Defense. Complaints processed under the pilot program shall be subject to the procedural requirements established for the pilot program and shall not be subject to the procedural requirements of part 1614 of title 29 of the Code of Federal Regulations or other regulations, directives, or regulatory restrictions prescribed by the Equal Employment Opportunity Commission.

''(2) The pilot program shall include procedures to reduce processing time and eliminate redundancy with respect to processes for the resolution of equal employment opportunity complaints, reinforce local management and chain-of-command accountability, and provide the parties involved with early opportunity for resolution.

''(3) The Secretary may carry out the pilot program for a period of three years, beginning on January 1, 2001.

''(4)(A) Participation in the pilot program shall be voluntary on the part of the complainant. Complainants who participate in the pilot program shall retain the right to appeal a final agency decision to the Equal Employment Opportunity Commission and to file suit in district court. The Equal Employment Opportunity Commission shall not reverse a final agency decision on the grounds that the agency did not comply with the regulatory requirements promulgated by the Commission.

''(B) Subparagraph (A) shall apply to all cases—

''(i) pending as of January 1, 2001, before the Equal Employment Opportunity Commission involving a civilian employee who filed a complaint under the pilot program of the Department of the Navy to improve processes for the resolution of equal employment opportunity complaints; and

''(ii) hereinafter filed with the Commission under the pilot program established by this section.

''(5) The pilot program shall be carried out in at least one military department and two Defense Agencies.

''(b) REPORT.—Not later than 90 days following the end of the first and last full or partial fiscal years during which the pilot program is implemented, the Comptroller General shall submit to Congress a report on the pilot program. Such report shall contain the following:

''(1) A description of the processes tested by the pilot program.

''(2) The results of such testing.

''(3) Recommendations for changes to the processes for the resolution of equal employment opportunity complaints as a result of such pilot program.

''(4) A comparison of the processes used, and results obtained, under the pilot program to traditional and alternative dispute resolution processes used in the government or private industry.''

WORK SAFETY DEMONSTRATION PROGRAM

Pub. L. 106–398, §1 [[div. A], title XI, §1112], Oct. 30, 2000, 114 Stat. 1654, 1654A–313, as amended by Pub. L. 107–314, div. A, title III, §363, Dec. 2, 2002, 116 Stat. 2520, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a defense employees work safety demonstration program.

''(b) PRIVATE SECTOR WORK SAFETY MODELS.—Under the demonstration program, the Secretary shall—

''(1) adopt for use in the workplace of civilian employees of the Department of Defense such work safety models used by employers in the private sector that the Secretary considers as being representative of the best work safety practices in use by private sector employers; and

''(2) determine whether the use of those practices in the Department of Defense improves the work safety record of Department of Defense employees.

''(c) SITES.—(1) The Secretary shall carry out the demonstration program—

''(A) at not fewer than two installations of each of the Armed Forces (other than the Coast Guard), for employees of the military department concerned; and

''(B) in at least two Defense Agencies (as defined in section 101(a)(11) of title 10, United States Code).

''(2) The Secretary shall select the installations and Defense Agencies from among the installations and Defense Agencies listed in the Federal Worker 2000 Presidential Initiative.

''(d) PERIOD FOR PROGRAM.—The demonstration program shall begin not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000] and shall terminate on September 30, 2003.

''(e) REPORTS.—(1) The Secretary of Defense shall submit an interim report on the demonstration program to the Committees on Armed Services of the Senate and the House of Representatives not later than December 1, 2001. The interim report shall contain, at a minimum, for each site of the demonstration program the following:

''(A) A baseline assessment of the lost workday injury rate.

''(B) A comparison of the lost workday injury rate for fiscal year 2000 with the lost workday injury rate for fiscal year 1999.

''(C) The direct and indirect costs associated with all lost workday injuries.

''(2) The Secretary of Defense shall submit a final report on the demonstration program to the Committees on Armed Services of the Senate and the House of Representatives not later than December 1, 2003. The final report shall contain, at a minimum, for each site of the demonstration program the following:

''(A) The Secretary's determination on the issue described in subsection (b)(2).

''(B) A comparison of the lost workday injury rate under the program with the baseline assessment of the lost workday injury rate.

''(C) The lost workday injury rate for fiscal years 2002 and 2003.

''(D) A comparison of the direct and indirect costs associated with all lost workday injuries for fiscal years 2002 and 2003 with the direct and indirect costs associated with all lost workday injuries for fiscal year 2001.

''(f) FUNDING.—Of the amount authorized to be appropriated under section 301(5) [114 Stat. 1654A–52], $5,000,000 shall be available for the demonstration program under this section.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

GAO STUDY ON BENEFITS AND COSTS OF UNITED STATES MILITARY ENGAGEMENT IN EUROPE

Pub. L. 106–398, §1 [[div. A], title XII, §1223], Oct. 30, 2000, 114 Stat. 1654, 1654A–328, provided that:

''(a) COMPTROLLER GENERAL STUDY.—The Comptroller General shall conduct a study assessing the benefits and costs to the United States and United States national security interests of the engagement of United States forces in Europe and of United States military strategies used to shape the international security environment in Europe.

''(b) MATTERS TO BE INCLUDED.—The study shall include an assessment of the following matters:

''(1) The benefits and costs to the United States of having forces stationed in Europe and assigned to areas of regional conflict such as Bosnia and Kosovo.

''(2) The benefits and costs associated with stationing United States forces in Europe and with assigning those forces to areas of regional conflict, including an analysis of the benefits and costs of deploying United States forces with the forces of European allies.

''(3) The amount and type of the following kinds of contributions to European security made by European allies in 1999 and 2000:

''(A) Financial contributions.

''(B) Contributions of military personnel and units.

''(C) Contributions of nonmilitary personnel, such as medical personnel, police officers, judicial officers, and other civic officials.

''(D) Contributions, including contributions in kind, for humanitarian and reconstruction assistance and infrastructure building or activities that

contribute to regional stability, whether in lieu of or in addition to military-related contributions.

''(4) The extent to which a forward United States military presence compensates for existing shortfalls of air and sea lift capability in the event of regional conflict in Europe or the Middle East.

''(c) REPORT.—The Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the study not later than December 1, 2001.''

ESTABLISHMENT OF LOGISTICS STANDARDS FOR SUSTAINED MILITARY OPERATIONS

Pub. L. 106–65, div. A, title III, §366, Oct. 5, 1999, 113 Stat. 578, provided that:

''(a) ESTABLISHMENT OF STANDARDS.—The Secretary of each military department shall establish, for deployable units of each of the Armed Forces under the jurisdiction of the Secretary, standards regarding—

''(1) the level of spare parts that the units must have on hand; and

''(2) similar logistics and sustainment needs of the units.

''(b) BASIS FOR STANDARDS.—The standards to be established for a unit under subsection (a) shall be based upon the following:

''(1) The unit's wartime mission, as reflected in the war-fighting plans of the relevant combatant commanders.

''(2) An assessment of the likely requirement for sustained operations under each such war-fighting plan.

''(3) An assessment of the likely requirement for that unit to conduct sustained operations in an austere environment, while drawing exclusively on its own internal logistics capabilities.

''(c) SUFFICIENCY CAPABILITIES.—The standards to be established by the Secretary of a military department under subsection (a) shall reflect those spare parts and similar logistics capabilities that the Secretary considers sufficient for the units of each of the Armed Forces under the Secretary's jurisdiction to successfully execute their missions under the conditions described in subsection (b).

''(d) RELATION TO READINESS REPORTING SYSTEM.—The standards established under subsection (a) shall be taken into account in designing the comprehensive readiness reporting system for the Department of Defense required by section 117 of title 10, United States Code, and shall be an element in determining a unit's readiness status.

''(e) RELATION TO ANNUAL FUNDING NEEDS.—The Secretary of Defense shall consider the standards established under subsection (a) in establishing the annual funding requirements for the Department of Defense.

''(f) REPORTING REQUIREMENT.—The Secretary of Defense shall include in the annual report required by section 113(c) of title 10, United States Code, an analysis of the then current spare parts, logistics, and sustainment standards of the Armed Forces, as described in subsection (a), including any shortfalls and the cost of addressing these shortfalls.''

USE OF SMART CARD TECHNOLOGY IN THE DEPARTMENT OF DEFENSE

Pub. L. 106–65, div. A, title III, §373(a)–(g), Oct. 5, 1999, 113 Stat. 580, 581, provided that:

''(a) DEPARTMENT OF NAVY AS LEAD AGENCY.—The Department of the Navy shall serve as the lead agency for the development and implementation of a Smart Card program for the Department of Defense.

''(b) COOPERATION OF OTHER MILITARY DEPARTMENTS.—The Department of the Army and the Department of the Air Force shall each establish a project office and cooperate with the Department of the Navy to develop implementation plans for exploiting the capability of Smart Card technology as a means for enhancing readiness and improving business processes throughout the military departments.

''(c) SENIOR COORDINATING GROUP.—(1) Not later than November 30, 1999, the Secretary of Defense shall establish a senior coordinating group to develop and implement—

''(A) Department-wide interoperability standards for use of Smart Card technology; and

''(B) a plan to exploit Smart Card technology as a means for enhancing readiness and improving business processes.

''(2) The senior coordinating group shall be chaired by a representative of the Secretary of the Navy and shall include senior representatives from each of the Armed Forces and such other persons as the Secretary of Defense considers appropriate.

''(3) Not later than March 31, 2000, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing a detailed discussion of the progress made by the senior coordinating group in carrying out its duties.

''(d) ROLE OF DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICE.—The senior coordinating group established under subsection (c) shall report to and receive guidance from the Department of Defense Chief Information Office.

''(e) INCREASED USE TARGETED TO CERTAIN NAVAL REGIONS.—Not later than November 30, 1999, the Secretary of the Navy shall establish a business plan to implement the use of Smart Cards in one major Naval region of the continental United States that is in the area of operations of the United States Atlantic Command and one major Naval region of the continental United States that is in the area of operations of the United States Pacific Command. The regions selected shall include a major fleet concentration area. The implementation of the use of Smart Cards in each region shall cover the Navy and Marine Corps bases and all non-deployed units in the region. The Secretary of the Navy shall submit the business plan to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(f) FUNDING FOR INCREASED USE OF SMART CARDS.—Of the funds authorized to be appropriated for the Navy by section 102(a)(4) [113 Stat. 530] or 301(2) [113 Stat. 557], the Secretary of the Navy—

''(1) shall allocate such amounts as may be necessary, but not to exceed $30,000,000, to ensure that significant progress is made toward complete implementation of the use of Smart Card technology in the Department of the Navy; and

''(2) may allocate additional amounts for the conversion of paper-based records to electronic media for records systems that have been modified to use Smart Card technology.

''(g) DEFINITIONS.—In this section:

''(1) The term 'Smart Card' means a credit card-size device, normally for carrying and use by personnel, that contains one or more integrated circuits and may also employ one or more of the following technologies:

''(A) Magnetic stripe.

''(B) Bar codes, linear or two-dimensional.

''(C) Non-contact and radio frequency transmitters.

''(D) Biometric information.

''(E) Encryption and authentication.

''(F) Photo identification.

''(2) The term 'Smart Card technology' means a Smart Card together with all of the associated information technology hardware and software that comprise the system for support and operation.''

SECRETARY OF DEFENSE REVIEW OF ARMY TECHNICIAN COSTING PROCESS

Pub. L. 106–65, div. A, title V, §526, Oct. 5, 1999, 113 Stat. 600, required Secretary of Defense to review process used by the Army to develop estimates of annual authorizations and appropriations required for civilian personnel of Department of the Army generally and for

National Guard and Army Reserve technicians in particular and to report on results of review to the Committees on Armed Services of the Senate and House of Representatives not later than Mar. 31, 2000.

SURVEY OF MEMBERS LEAVING MILITARY SERVICE ON ATTITUDES TOWARD MILITARY SERVICE

Pub. L. 106–65, div. A, title V, §581, Oct. 5, 1999, 113 Stat. 633, provided that:

''(a) EXIT SURVEY.—The Secretary of Defense shall develop and implement, as part of outprocessing activities, a survey on attitudes toward military service to be completed by all members of the Armed Forces who during the period beginning on January 1, 2000, and ending on June 30, 2000, are voluntarily discharged or separated from the Armed Forces or transfer from a regular component to a reserve component.

''(b) MATTERS TO BE COVERED.—The survey shall, at a minimum, cover the following subjects:

''(1) Reasons for leaving military service.

''(2) Command climate.

''(3) Attitude toward leadership.

''(4) Attitude toward pay and benefits.

''(5) Job satisfaction during service as a member of the Armed Forces.

''(6) Plans for activities after separation (such as enrollment in school, use of Montgomery GI Bill benefits, and work).

''(7) Affiliation with a reserve component, together with the reasons for affiliating or not affiliating, as the case may be.

''(8) Such other matters as the Secretary determines appropriate to the survey concerning reasons why military personnel are leaving military service.

''(c) REPORT TO CONGRESS.—Not later than October 1, 2000, the Secretary shall submit to Congress a report containing the results of the survey under subsection (a). The Secretary shall compile the information in the report so as to assist in assessing reasons why military personnel are leaving military service.''

ANNUAL REPORT ON UNITED STATES MILITARY ACTIVITIES IN COLOMBIA

Pub. L. 106–65, div. A, title X, §1025, Oct. 5, 1999, 113 Stat. 748, provided that: ''Not later than January 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report detailing the number of members of the United States Armed Forces deployed or otherwise assigned to duty in Colombia at any time during the preceding year, the length and purpose of the deployment or assignment, and the costs and force protection risks associated with such deployments and assignments.''

REPORT ON NATO DEFENSE CAPABILITIES INITIATIVE

Pub. L. 106–65, div. A, title X, §1039, Oct. 5, 1999, 113 Stat. 756, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) At the meeting of the North Atlantic Council held in Washington, DC, in April 1999, the NATO Heads of State and Governments launched a Defense Capabilities Initiative.

''(2) The Defense Capabilities Initiative is designed to improve the defense capabilities of the individual nations of the NATO Alliance to ensure the effectiveness of future operations across the full spectrum of Alliance missions in the present and foreseeable security environment.

''(3) Under the Defense Capabilities Initiative, special focus will be given to improving interoperability among Alliance forces and to increasing defense capabilities through improvements in the deployability and mobility of Alliance forces, the sustainability and logistics of those forces, the survivability and effective engagement capability of those forces, and command and control and information systems.

''(4) The successful implementation of the Defense Capabilities Initiative will serve to enable all members of the Alliance to make a more equitable contribution to the full spectrum of Alliance missions, thereby increasing burdensharing within the Alliance and enhancing the ability of European members of the Alliance to undertake operations pursuant to the European Security and Defense Identity within the Alliance.

''(b) ANNUAL REPORT.—(1) Not later than January 31 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and International Relations of the House of Representatives a report, to be prepared in consultation with the Secretary of State, on implementation of the Defense Capabilities Initiative by the nations of the NATO Alliance. The report shall include the following:

''(A) A discussion of the work of the temporary High-Level Steering Group, or any successor group, established to oversee the implementation of the Defense Capabilities Initiative and to meet the requirement of coordination and harmonization among relevant planning disciplines.

''(B) A description of the actions taken, including implementation of the Multinational Logistics Center concept and development of the C3 system architecture, by the Alliance as a whole to further the Defense Capabilities Initiative.

''(C) A description of the actions taken by each member of the Alliance other than the United States to improve the capabilities of its forces in each of the following areas:

''(i) Interoperability with forces of other Alliance members.

''(ii) Deployability and mobility.

''(iii) Sustainability and logistics.

''(iv) Survivability and effective engagement capability.

''(v) Command and control and information systems.

''(2) The report shall be submitted in unclassified form, but may also be submitted in classified form if necessary.''

COMMEMORATION OF THE VICTORY OF FREEDOM IN THE COLD WAR

Pub. L. 106–65, div. A, title X, §1053, Oct. 5, 1999, 113 Stat. 764, as amended by Pub. L. 107–107, div. A, title X, §1048(g)(7), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Cold War between the United States and its allies and the former Union of Soviet Socialist Republics and its allies was the longest and most costly struggle for democracy and freedom in the history of mankind.

''(2) Whether millions of people all over the world would live in freedom hinged on the outcome of the Cold War.

''(3) Democratic countries bore the burden of the struggle and paid the costs in order to preserve and promote democracy and freedom.

''(4) The Armed Forces and the taxpayers of the United States bore the greatest portion of that burden and struggle in order to protect those principles.

''(5) Tens of thousands of United States soldiers, sailors, airmen, and Marines paid the ultimate price during the Cold War in order to preserve the freedoms and liberties enjoyed in democratic countries.

''(6) The Berlin Wall erected in Berlin, Germany, epitomized the totalitarianism that the United States struggled to eradicate during the Cold War.

''(7) The fall of the Berlin Wall on November 9, 1989, was a major event of the Cold War.

''(8) The Soviet Union collapsed on December 25, 1991.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should issue a proclamation calling

on the people of the United States to observe the victory in the Cold War with appropriate ceremonies and activities.

''(c) PARTICIPATION OF ARMED FORCES IN CELEBRATION OF END OF COLD WAR.—(1) Subject to paragraphs (2), (3), and (4), amounts authorized to be appropriated by section 301 [113 Stat. 556] may be available for costs of the Armed Forces in participating in a celebration of the end of the Cold War to be held in Washington, District of Columbia.

''(2) The total amount of funds available under paragraph (1) for the purpose set forth in that paragraph shall not exceed $5,000,000.

''(3) The Secretary of Defense may accept contributions from the private sector for the purpose of reducing the costs of the Armed Forces described in paragraph (1). The amount of funds available under paragraph (1) for the purpose set forth in that paragraph shall be reduced by an amount equal to the amount of contributions accepted by the Secretary under the preceding sentence.

''(4) The funding authorized in paragraph (1) shall not be available until 30 days after the date upon which the plan required by subsection (d) is submitted.

''(d) REPORT.—(1) The President shall transmit to Congress—

''(A) a report on the content of the proclamation referred to in subsection (b); and

''(B) a plan for appropriate ceremonies and activities.

''(2) The plan submitted under paragraph (1) shall include the following:

''(A) A discussion of the content, location, date, and time of each ceremony and activity included in the plan.

''(B) The funding allocated to support those ceremonies and activities.

''(C) The organizations and individuals consulted while developing the plan for those ceremonies and activities.

''(D) A list of private sector organizations and individuals that are expected to participate in each ceremony and activity.

''(E) A list of local, State, and Federal agencies that are expected to participate in each ceremony and activity.

''(e) COMMISSION ON VICTORY IN THE COLD WAR.—(1) There is hereby established a commission to be known as the 'Commission on Victory in the Cold War'.

''(2) The Commission shall be composed of twelve members, as follows:

''(A) Two shall be appointed by the President.

''(B) Three shall be appointed by the Speaker of the House of Representatives.

''(C) Two shall be appointed by the minority leader of the House of Representatives.

''(D) Three shall be appointed by the majority leader of the Senate.

''(E) Two shall be appointed by the minority leader of the Senate.

''(3) The Commission shall review and make recommendations regarding the celebration of the victory in the Cold War, to include the date of the celebration, usage of facilities, participation of the Armed Forces, and expenditure of funds.

''(4) The Secretary shall—

''(A) consult with the Commission on matters relating to the celebration of the victory in the Cold War;

''(B) reimburse Commission members for expenses relating to participation of Commission members in Commission activities from funds made available under subsection (c); and

''(C) provide the Commission with administrative support.

''(5) The Commission shall be co-chaired by two members as follows:

''(A) One selected by and from among those appointed pursuant to subparagraphs (A), (C), and (E) of paragraph (2).

''(B) One selected by and from among those appointed pursuant to subparagraphs (B) and (D) of paragraph (2).''

ANNUAL REPORT ON MILITARY POWER OF THE PEOPLE'S REPUBLIC OF CHINA

Pub. L. 106–65, div. A, title XII, §1202, Oct. 5, 1999, 113 Stat. 781, as amended by Pub. L. 107–107, div. A, title XII, §1221, Dec. 28, 2001, 115 Stat. 1252, provided that:

''(a) ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense shall submit to the specified congressional committees a report, in both classified and unclassified form, on the current and future military strategy of the People's Republic of China. The report shall address the current and probable future course of military-technological development on the People's Liberation Army and the tenets and probable development of Chinese grand strategy, security strategy, and military strategy, and of military organizations and operational concepts, through the next 20 years.

''(b) MATTERS TO BE INCLUDED.—Each report under this section shall include analyses and forecasts of the following:

''(1) The goals of Chinese grand strategy, security strategy, and military strategy.

''(2) Trends in Chinese strategy that would be designed to establish the People's Republic of China as the leading political power in the Asia-Pacific region and as a political and military presence in other regions of the world.

''(3) The security situation in the Taiwan Strait.

''(4) Chinese strategy regarding Taiwan.

''(5) The size, location, and capabilities of Chinese strategic, land, sea, and air forces, including detailed analysis of those forces facing Taiwan.

''(6) Developments in Chinese military doctrine, focusing on (but not limited to) efforts to exploit a transformation in military affairs or to conduct preemptive strikes.

''(7) Efforts, including technology transfers and espionage, by the People's Republic of China to develop, acquire, or gain access to information, communication, space and other advanced technologies that would enhance military capabilities.

''(8) An assessment of any challenges during the preceding year to the deterrent forces of the Republic of China on Taiwan, consistent with the commitments made by the United States in the Taiwan Relations Act (Public Law 96–8) [22 U.S.C. 3301 et seq.].

''(c) SPECIFIED CONGRESSIONAL COMMITTEES.—For purposes of this section, the term 'specified congressional committees' means the following:

''(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

''(2) The Committee on Armed Services and the Committee on International Relations of the House of Representatives.

''(d) REPORT ON SIGNIFICANT SALES AND TRANSFERS TO CHINA.—(1) The report to be submitted under this section not later than March 1, 2002, shall include in a separate section a report describing any significant sale or transfer of military hardware, expertise, and technology to the People's Republic of China. The report shall set forth the history of such sales and transfers since 1995, forecast possible future sales and transfers, and address the implications of those sales and transfers for the security of the United States and its friends and allies in Asia.

''(2) The report shall include analysis and forecasts of the following matters related to military cooperation between selling states and the People's Republic of China:

''(A) The extent in each selling state of government knowledge, cooperation, or condoning of sales or transfers of military hardware, expertise, or technology to the People's Republic of China.

''(B) An itemization of significant sales and transfers of military hardware, expertise, or technology from each selling state to the People's Republic of China that have taken place since 1995, with a particular focus on command, control, communications, and intelligence systems.

''(C) Significant assistance by any selling state to key research and development programs of China, including programs for development of weapons of mass destruction and delivery vehicles for such weapons, programs for development of advanced conventional weapons, and programs for development of unconventional weapons.

''(D) The extent to which arms sales by any selling state to the People's Republic of China are a source of funds for military research and development or procurement programs in the selling state.

''(3) The report under paragraph (1) shall include, with respect to each area of analysis and forecasts specified in paragraph (2)—

''(A) an assessment of the military effects of such sales or transfers to entities in the People's Republic of China;

''(B) an assessment of the ability of the People's Liberation Army to assimilate such sales or transfers, mass produce new equipment, or develop doctrine for use; and

''(C) the potential threat of developments related to such effects on the security interests of the United States and its friends and allies in Asia.''

NUCLEAR MISSION MANAGEMENT PLAN

Pub. L. 106–65, div. C, title XXXI, §3163(d), Oct. 5, 1999, 113 Stat. 945, provided that:

''(1) The Secretary of Defense shall develop and implement a plan to ensure the continued reliability of the capability of the Department of Defense to carry out its nuclear deterrent mission.

''(2) The plan shall do the following:

''(A) Articulate the current policy of the United States on the role of nuclear weapons and nuclear deterrence in the conduct of defense and foreign relations matters.

''(B) Establish stockpile viability and capability requirements with respect to that mission, including the number and variety of warheads required.

''(C) Establish requirements relating to the contractor industrial base, support infrastructure, and surveillance, testing, assessment, and certification of nuclear weapons necessary to support that mission.

''(3) The plan shall take into account the following:

''(A) Requirements for the critical skills, readiness, training, exercise, and testing of personnel necessary to meet that mission.

''(B) The relevant programs and plans of the military departments and the Defense Agencies with respect to readiness, sustainment (including research and development), and modernization of the strategic deterrent forces.''

REPORT ON FOOD STAMP ASSISTANCE FOR MEMBERS OF ARMED FORCES

Pub. L. 105–262, title VIII, §8119, Oct. 17, 1998, 112 Stat. 2331, provided that:

''(a) The Secretary of Defense shall submit to the Committees on Appropriations of the Senate and the House of Representatives a report on food stamp assistance for members of the Armed Forces. The Secretary shall submit the report at the same time that the Secretary submits to Congress, in support of the fiscal year 2001 budget, the materials that relate to the funding provided in that budget for the Department of Defense.

''(b) The report shall include the following:

''(1) The number of members of the Armed Forces and dependents of members of the Armed Forces who are eligible for food stamps.

''(2) The number of members of the Armed Forces and dependents of members of the Armed Forces who received food stamps in fiscal year 1998.

''(3) A proposal for using, as a means for eliminating or reducing significantly the need of such personnel for food stamps, the authority under section 2828 of title 10, United States Code, to lease housing facilities for enlisted members of the Armed Forces and their families when Government quarters are not available for such personnel.

''(4) A proposal for increased locality adjustments through the basic allowance for housing and other methods as a means for eliminating or reducing significantly the need of such personnel for food stamps.

''(5) Other potential alternative actions (including any recommended legislation) for eliminating or reducing significantly the need of such personnel for food stamps.

''(6) A discussion of the potential for each alternative action referred to in paragraph (3) or (4) to result in the elimination or a significant reduction in the need of such personnel for food stamps.

''(c) Each potential alternative action included in the report under paragraph (3) or (4) of subsection (b) shall meet the following requirements:

''(1) Apply only to persons referred to in paragraph (1) of such subsection.

''(2) Be limited in cost to the lowest amount feasible to achieve the objectives.

''(d) In this section:

''(1) The term 'fiscal year 2001 budget' means the budget for fiscal year 2001 that the President submits to Congress under section 1105(a) of title 31, United States Code.

''(2) The term 'food stamps' means assistance under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).''

DEFENSE REFORM INITIATIVE ENTERPRISE PILOT PROGRAM FOR MILITARY MANPOWER AND PERSONNEL INFORMATION

Pub. L. 106–65, div. A, title IX, §924, Oct. 5, 1999, 113 Stat. 726, provided that:

''(a) EXECUTIVE AGENT.—The Secretary of Defense may designate the Secretary of the Navy as the Department of Defense executive agent for carrying out the pilot program described in subsection (c).

''(b) IMPLEMENTING OFFICE.—If the Secretary of Defense makes the designation referred to in subsection (a), the Secretary of the Navy, in carrying out that pilot program, shall act through the head of the Systems Executive Office for Manpower and Personnel of the Department of the Navy, who shall act in coordination with the Under Secretary of Defense for Personnel and Readiness and the Chief Information Officer of the Department of Defense.

''(c) PILOT PROGRAM.—The pilot program referred to in subsection (a) is the defense reform initiative enterprise pilot program for military manpower and personnel information established pursuant to section 8147 of the Department of Defense Appropriations Act, 1999 (Public Law 105–262; 112 Stat. 2341; 10 U.S.C. 113 note).''

Pub. L. 105–262, title VIII, §8147, Oct. 17, 1998, 112 Stat. 2341, provided that: ''The Secretary of Defense shall establish, through a revised Defense Integrated Military Human Resources System (DIMHRS), a defense reform initiative enterprise pilot program for military manpower and personnel information: *Provided*, That this pilot program should include all functions and systems currently included in DIMHRS and shall be expanded to include all appropriate systems within the enterprise of personnel, manpower, training, and compensation: *Provided further*, That in establishing a revised DIMHRS enterprise program for manpower and personnel information superiority the functions of this program shall include, but not be limited to: (1) an analysis and determination of the number and kinds of information systems necessary to support manpower and personnel within the Department of Defense; and (2) the establishment of programs to develop and implement information systems in support of manpower and personnel to include an enterprise level strategic approach, performance and results based management, business process improvement and other non-material solutions, the use of commercial or government off-the-shelf technology, the use of modular contracting as defined by Public Law 104–106 [see 41 U.S.C. 434], and the integration and consolidation of existing manpower and personnel information systems: *Provided further*, That the

Secretary of Defense shall re-instate fulfillment standards designated as ADS–97–03–GD, dated January, 1997: *Provided further*, That the requirements of this section should be implemented not later than 6 months after the date of the enactment of this Act [Oct. 17, 1998].''

OVERSIGHT OF DEVELOPMENT AND IMPLEMENTATION OF AUTOMATED IDENTIFICATION TECHNOLOGY

Pub. L. 105–261, div. A, title III, §344, Oct. 17, 1998, 112 Stat. 1977, as amended by Pub. L. 106–65, div. A, title III, §373(h), title X, §1067(3), Oct. 5, 1999, 113 Stat. 581, 774, provided that:

''(a) DEFINITIONS.—In this section:

''(1) The term 'automated identification technology program' means a program in the Department of Defense, including any pilot program, employing one or more of the following technologies:

''(A) Magnetic stripe.

''(B) Bar codes, both linear and two-dimensional (including matrix symbologies).

''(C) Smart Card.

''(D) Optical memory.

''(E) Personal computer memory card international association carriers.

''(F) Any other established or emerging automated identification technology, including biometrics and radio frequency identification.

''(2) The term 'Smart Card' means a credit card size device that contains one or more integrated circuits.

''[(b) Repealed. Pub. L. 106–65, div. A, title III, §373(h), Oct. 5, 1999, 113 Stat. 581.]

''(c) FUNDING FOR INCREASED USE OF SMART CARDS.—(1) Of the funds available for the Navy for fiscal year 1999 for operation and maintenance, the Secretary of the Navy shall allocate sufficient amounts, up to $25,000,000, for the purpose of making significant progress toward ensuring that Smart Cards with a multi-application, multi-technology automated reading capability are issued and used throughout the Navy and the Marine Corps for purposes for which Smart Cards are suitable.

''(2) Not later than June 30, 1999, the Secretary of the Navy shall equip with Smart Card technology at least one carrier battle group, one carrier air wing, and one amphibious readiness group (including the Marine Corps units embarked on the vessels of such battle and readiness groups) in each of the United States Atlantic Command and the United States Pacific Command.

''(3) None of the funds appropriated pursuant to any authorization of appropriations in this Act [see Tables for classification] may be expended after June 30, 1999, for the procurement of the Joint Uniformed Services Identification card for members of the Navy or the Marine Corps or for the issuance of such card to such members, until the Secretary of the Navy certifies in writing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that the Secretary has completed the issuance of Smart Cards in accordance with paragraph (2).

''(d) DEFENSE-WIDE PLAN.—Not later than March 31, 1999, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a plan for the use of Smart Card technology by each military department. The Secretary shall include in the plan an estimate of the costs of the plan, the savings to be derived from carrying out the plan, and a description of the ways in which the Department of Defense will review and revise business practices to take advantage of Smart Card technology.''

PILOT PROGRAM FOR ACCEPTANCE AND USE OF LANDING FEES CHARGED FOR USE OF DOMESTIC MILITARY AIRFIELDS BY CIVIL AIRCRAFT

Pub. L. 105–261, div. A, title III, §377, Oct. 17, 1998, 112 Stat. 1993, as amended by Pub. L. 106–398, §1 [[div. A], title III, §387], Oct. 30, 2000, 114 Stat. 1654, 1654A–88, provided that:

''(a) PILOT PROGRAM AUTHORIZED.—The Secretary of each military department may carry out a pilot program to demonstrate the use of landing fees as a source of funding for the operation and maintenance of airfields of that department.

''(b) LANDING FEE DEFINED.—In this section, the term 'landing fee' means any fee that is established under or in accordance with regulations of the military department concerned (whether prescribed in a fee schedule or imposed under a joint-use agreement) to recover costs incurred for use by civil aircraft of an airfield of the military department in the United States or in a territory or possession of the United States.

''(c) USE OF PROCEEDS.—Amounts received in payment of landing fees for use of a military airfield in a fiscal year of the pilot program shall be credited to the appropriation that is available for that fiscal year for the operation and maintenance of the military airfield, shall be merged with amounts in the appropriation to which credited, and shall be available for that military airfield for the same period and purposes as the appropriation is available.

''(d) REPORT.—Not later than March 31, 2003, the Secretary of Defense shall submit to Congress a report on the pilot programs carried out under this section by the Secretaries of the military departments. The report shall specify the amounts of fees received and retained by each military department under its pilot program as of December 31, 2002.''

''(e) DURATION OF PILOT PROGRAM.—The pilot program under this section may not be carried out after September 30, 2010.''

REPORT ON TERMINOLOGY FOR ANNUAL REPORT REQUIREMENT

Pub. L. 105–261, div. A, title IX, §915(b), Oct. 17, 1998, 112 Stat. 2102, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report setting forth the definitions of the terms 'support' and 'mission' that the Secretary proposes to use for purposes of the report requirement under section 113(*l*) of title 10, United States Code, as added by subsection (a).''

PROGRAM TO INVESTIGATE FRAUD, WASTE, AND ABUSE WITHIN DEPARTMENT OF DEFENSE

Section 392 of Pub. L. 105–85, as amended by Pub. L. 105–261, div. A, title III, §374, Oct. 17, 1998, 112 Stat. 1992, provided that: ''The Secretary of Defense shall maintain a specific coordinated program for the investigation of evidence of fraud, waste, and abuse within the Department of Defense, particularly fraud, waste, and abuse regarding finance and accounting matters and any fraud, waste, and abuse occurring in connection with overpayments made to vendors by the Department of Defense, including overpayments identified under section 354 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2461 note).''

COMMISSION ON MILITARY TRAINING AND GENDER-RELATED ISSUES

Subtitle F of title V of div. A of Pub. L. 105–85, as amended by Pub. L. 105–261, div. A, title V, §524, Oct. 17, 1998, 112 Stat. 2014; Pub. L. 106–65, div. A, title X, §1066(c)(2), Oct. 5, 1999, 113 Stat. 773, established a Commission on Military Training and Gender-Related Issues to review requirements and restrictions regarding cross-gender relationships of members of the Armed Forces, to review the basic training programs of the Army, Navy, Air Force, and Marine Corps, and to make recommendations on improvements to those programs, requirements, and restrictions, and further provided for composition, powers, and duties of Commission, administrative matters, funding, an interim report to Con-

gress not later than Oct. 15, 1998, and a final report to Congress not later than Mar. 15, 1999, and for termination of Commission 60 days after submission of final report.

COORDINATION OF DEPARTMENT OF DEFENSE CRIMINAL INVESTIGATIONS AND AUDITS

Section 907 of Pub. L. 105–85 provided that:

''(a) MILITARY DEPARTMENT CRIMINAL INVESTIGATIVE ORGANIZATIONS.—(1) The heads of the military department criminal investigative organizations shall take such action as may be practicable to conserve the limited resources available to the military department criminal investigative organizations by sharing personnel, expertise, infrastructure, training, equipment, software, and other resources.

''(2) The heads of the military department criminal investigative organizations shall meet on a regular basis to determine the manner in which and the extent to which the military department criminal investigative organizations will be able to share resources.

''(b) DEFENSE AUDITING ORGANIZATIONS.—(1) The heads of the defense auditing organizations shall take such action as may be practicable to conserve the limited resources available to the defense auditing organizations by sharing personnel, expertise, infrastructure, training, equipment, software, and other resources.

''(2) The heads of the defense auditing organizations shall meet on a regular basis to determine the manner in which and the extent to which the defense auditing organizations will be able to share resources.

''(c) IMPLEMENTATION PLAN.—Not later than December 31, 1997, the Secretary of Defense shall submit to Congress a plan designed to maximize the resources available to the military department criminal investigative organizations and the defense auditing organizations, as required by this section.

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

''(1) The term 'military department criminal investigative organizations' means—

''(A) the Army Criminal Investigation Command;

''(B) the Naval Criminal Investigative Service; and

''(C) the Air Force Office of Special Investigations.

''(2) The term 'defense auditing organizations' means—

''(A) the Office of the Inspector General of the Department of Defense;

''(B) the Defense Contract Audit Agency;

''(C) the Army Audit Agency;

''(D) the Naval Audit Service; and

''(E) the Air Force Audit Agency.''

PROVISION OF ADEQUATE TROOP PROTECTION EQUIPMENT FOR ARMED FORCES PERSONNEL ENGAGED IN PEACE OPERATIONS; REPORT ON ANTITERRORISM ACTIVITIES AND PROTECTION OF PERSONNEL

Section 1052 of Pub. L. 105–85 provided that:

''(a) PROTECTION OF PERSONNEL.—The Secretary of Defense shall take appropriate actions to ensure that units of the Armed Forces engaged in a peace operation are provided adequate troop protection equipment for that operation.

''(b) SPECIFIC ACTIONS.—In taking actions under subsection (a), the Secretary shall—

''(1) identify the additional troop protection equipment, if any, required to equip a division (or the equivalent of a division) with adequate troop protection equipment for peace operations; and

''(2) establish procedures to facilitate the exchange or transfer of troop protection equipment among units of the Armed Forces.

''(c) DESIGNATION OF RESPONSIBLE OFFICIAL.—The Secretary of Defense shall designate an official within the Department of Defense to be responsible for—

''(1) ensuring the appropriate allocation of troop protection equipment among the units of the Armed Forces engaged in peace operations; and

''(2) monitoring the availability, status or condition, and location of such equipment.

''(d) TROOP PROTECTION EQUIPMENT DEFINED.—In this section, the term 'troop protection equipment' means the equipment required by units of the Armed Forces to defend against any hostile threat that is likely during a peace operation, including an attack by a hostile crowd, small arms fire, mines, and a terrorist bombing attack.

''(e) REPORT ON ANTITERRORISM ACTIVITIES OF THE DEPARTMENT OF DEFENSE AND PROTECTION OF PERSONNEL.—Not later than 120 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a report, in classified and unclassified form, on antiterrorism activities of the Department of Defense and the actions taken by the Secretary under subsections (a), (b), and (c). The report shall include the following:

''(1) A description of the programs designed to carry out antiterrorism activities of the Department of Defense, any deficiencies in those programs, and any actions taken by the Secretary to improve implementation of such programs.

''(2) An assessment of the current policies and practices of the Department of Defense with respect to the protection of members of the Armed Forces overseas against terrorist attack, including any modifications to such policies or practices that are proposed or implemented as a result of the assessment.

''(3) An assessment of the procedures of the Department of Defense for determining accountability, if any, in the command structure of the Armed Forces in instances in which a terrorist attack results in the loss of life at an overseas military installation or facility.

''(4) A detailed description of the roles of the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, and the combatant commanders in providing guidance and support with respect to the protection of members of the Armed Forces deployed overseas against terrorist attack (both before and after the November 1995 bombing in Riyadh, Saudi Arabia) and how these roles have changed since the June 25, 1996, terrorist bombing at Khobar Towers in Dhahran, Saudi Arabia.

''(5) A description of the actions taken by the Secretary of Defense under subsections (a), (b), and (c) to provide adequate troop protection equipment for units of the Armed Forces engaged in a peace operation.''

STUDY OF INVESTIGATIVE PRACTICES OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS RELATING TO SEX CRIMES

Section 1072 of Pub. L. 105–85 provided that:

''(a) INDEPENDENT STUDY REQUIRED.—(1) The Secretary of Defense shall provide for an independent study of the policies, procedures, and practices of the military criminal investigative organizations for the conduct of investigations of complaints of sex crimes and other criminal sexual misconduct arising in the Armed Forces.

''(2) The Secretary shall provide for the study to be conducted by the National Academy of Public Administration. The amount of a contract for the study may not exceed $2,000,000.

''(3) The Secretary shall require that all components of the Department of Defense cooperate fully with the organization carrying out the study.

''(b) MATTERS TO BE INCLUDED IN STUDY.—The Secretary shall require that the organization conducting the study under this section specifically consider each of the following matters:

''(1) The need (if any) for greater organizational independence and autonomy for the military criminal investigative organizations than exists under current chain-of-command structures within the military departments.

''(2) The authority of each of the military criminal investigative organizations to investigate allegations

of sex crimes and other criminal sexual misconduct and the policies of those organizations for carrying out such investigations.

''(3) The training (including training in skills and techniques related to the conduct of interviews) provided by each of those organizations to agents or prospective agents responsible for conducting or providing support to investigations of alleged sex crimes and other criminal sexual misconduct, including—

''(A) the extent to which that training is comparable to the training provided by the Federal Bureau of Investigation and other civilian law enforcement agencies; and

''(B) the coordination of training and investigative policies related to alleged sex crimes and other criminal sexual misconduct of each of those organizations with the Federal Bureau of Investigation and other civilian Federal law enforcement agencies.

''(4) The procedures and relevant professional standards of each military criminal investigative organization with regard to recruitment and hiring of agents, including an evaluation of the extent to which those procedures and standards provide for—

''(A) sufficient screening of prospective agents based on background investigations; and

''(B) obtaining sufficient information about the qualifications and relevant experience of prospective agents.

''(5) The advantages and disadvantages of establishing, within each of the military criminal investigative organizations or within the Defense Criminal Investigative Service only, a special unit for the investigation of alleged sex crimes and other criminal sexual misconduct.

''(6) The clarity of guidance for, and consistency of investigative tactics used by, each of the military criminal investigative organizations for the investigation of alleged sex crimes and other criminal sexual misconduct, together with a comparison with the guidance and tactics used by the Federal Bureau of Investigation and other civilian law enforcement agencies for such investigations.

''(7) The number of allegations of agent misconduct in the investigation of sex crimes and other criminal sexual misconduct for each of those organizations, together with a comparison with the number of such allegations concerning agents of the Federal Bureau of Investigation and other civilian law enforcement agencies for such investigations.

''(8) The procedures of each of the military criminal investigative organizations for administrative identification (known as 'titling') of persons suspected of committing sex crimes or other criminal sexual misconduct, together with a comparison with the comparable procedures of the Federal Bureau of Investigation and other civilian Federal law enforcement agencies for such investigations.

''(9) The accuracy, timeliness, and completeness of reporting of sex crimes and other criminal sexual misconduct by each of the military criminal investigative organizations to the National Crime Information Center maintained by the Department of Justice.

''(10) Any recommendation for legislation or administrative action to revise the organizational or operational arrangements of the military criminal investigative organizations or to alter recruitment, training, or operational procedures, as they pertain to the investigation of sex crimes and other criminal sexual misconduct.

''(c) REPORT.—(1) The Secretary of Defense shall require the organization conducting the study under this section to submit to the Secretary a report on the study not later than one year after the date of the enactment of this Act [Nov. 18, 1997]. The organization shall include in the report its findings and conclusions concerning each of the matters specified in subsection (b).

''(2) The Secretary shall submit the report under paragraph (1), together with the Secretary's comments on the report, to Congress not later than 30 days after the date on which the report is submitted to the Secretary under paragraph (1).

''(d) MILITARY CRIMINAL INVESTIGATIVE ORGANIZATION DEFINED.—For the purposes of this section, the term 'military criminal investigative organization' means any of the following:

''(1) The Army Criminal Investigation Command.

''(2) The Naval Criminal Investigative Service.

''(3) The Air Force Office of Special Investigations.

''(4) The Defense Criminal Investigative Service.

''(e) CRIMINAL SEXUAL MISCONDUCT DEFINED.—For the purposes of this section, the term 'criminal sexual misconduct' means conduct by a member of the Armed Forces involving sexual abuse, sexual harassment, or other sexual misconduct that constitutes an offense under the Uniform Code of Military Justice [10 U.S.C. 801 et seq.].''

PROGRAM TO COMMEMORATE 50TH ANNIVERSARY OF THE KOREAN WAR

Pub. L. 106–65, div. A, title X, §1052(b)(3), Oct. 5, 1999, 113 Stat. 764, provided that: ''Any reference to the Department of Defense Korean War Commemoration in any law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the United States of America Korean War Commemoration.''

Pub. L. 105–261, div. A, title X, §1067(b), (d), Oct. 17, 1998, 112 Stat. 2134, 2135, provided that:

''(b) REDESIGNATION OF COMMEMORATION ACCOUNT.—The account in the Treasury known as the 'Department of Defense Korean Conflict Commemoration Account' is redesignated as the 'Department of Defense Korean War Commemoration Account'.

''(d) CROSS REFERENCES.—Any reference to the Department of Defense Korean Conflict Commemoration or the Department of Defense Korean Conflict Commemoration Account in any law, regulation, document, record, or other paper of the United States shall be considered to be a reference to the Department of Defense Korean War Commemoration or the Department of Defense Korean War Commemoration Account, respectively.''

Pub. L. 105–85, div. A, title X, §1083, Nov. 18, 1997, 111 Stat. 1918, as amended by Pub. L. 105–129, §1(b)(1), Dec. 1, 1997, 111 Stat. 2551; Pub. L. 105–261, div. A, title X, §1067(a), (c), Oct. 17, 1998, 112 Stat. 2134; Pub. L. 106–65, div. A, title X, §1052(a), (b)(1), (c), Oct. 5, 1999, 113 Stat. 764; Pub. L. 107–107, div. A, title X, §1048(g)(6), (i)(1), Dec. 28, 2001, 115 Stat. 1228, 1229; Pub. L. 107–314, div. A, title X, §1069, Dec. 2, 2002, 116 Stat. 2660, provided that:

''(a) COMMEMORATIVE PROGRAM.—During fiscal years 2000 through 2004, the Secretary of Defense may conduct a program to commemorate the 50th anniversary of the Korean War. In conducting the commemorative program, the Secretary may coordinate, support, and facilitate other programs and activities of the Federal Government, State and local governments, and other persons in commemoration of the Korean War.

''(b) COMMEMORATIVE ACTIVITIES.—The commemorative program may include activities and ceremonies—

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

''(2) to thank and honor veterans of the Korean War and their families;

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

''(4) to highlight advances in technology, science, and medicine related to military research conducted during the Korean War;

''(5) to recognize the contributions and sacrifices made by the allies of the United States in the Korean War; and

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

''(c) NAME AND SYMBOLS.—The Secretary of Defense shall have the sole and exclusive right to use the name

'The United States of America Korean War Commemoration', and such seal, emblems, and badges incorporating such name as the Secretary may lawfully adopt. Nothing in this section may be construed to supersede rights that are established or vested before the date of the enactment of this Act [Nov. 18, 1997].

''(d) COMMEMORATIVE ACCOUNT.—(1) There is established in the Treasury an account to be known as the 'Department of Defense Korean War Commemoration Account', which shall be administered by the Secretary of Defense. There shall be deposited into the account all proceeds derived from the Secretary's use of the exclusive rights described in subsection (c). The Secretary may use funds in the account only for the purpose of conducting the commemorative program.

''(2) Not later than 60 days after completion of all activities and ceremonies conducted as part of the commemorative program, the Secretary shall submit to Congress a report containing an accounting of all of the funds deposited into and expended from the account or otherwise expended under this section, and of any funds remaining in the account. Unobligated funds remaining in the account on that date shall be held in the account until transferred by law.

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

''(2) A person providing voluntary services under this subsection shall be considered to be a Federal employee for purposes of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries. The person shall also be considered a special governmental employee for purposes of standards of conduct and sections 202, 203, 205, 207, 208, and 209 of title 18, United States Code. A person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of voluntary services under this subsection.

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

''(f) USE OF FUNDS.—(1) Funds appropriated for the Army for fiscal years 2000 through 2004 for operation and maintenance shall be available for the commemorative program authorized under subsection (a).

''(2) The total amount expended by the Department of Defense through the Department of Defense 50th Anniversary of the Korean War Commemoration Committee, an entity within the Department of the Army, to carry out the commemorative program authorized under subsection (a) for fiscal years 2000 through 2004 may not exceed $10,000,000.''

[Pub. L. 106–65, div. A, title X, §1052(b)(2), Oct. 5, 1999, 113 Stat. 764, provided that: ''The amendment made by paragraph (1) [amending section 1083 of Pub. L. 105–85, set out above] may not be construed to supersede rights that are established or vested before the date of the enactment of this Act [Oct. 5, 1995].'']

[Pub. L. 106–65, div. A, title X, §1052(d), Oct. 5, 1999, 113 Stat. 764, provided that: ''The amendments made by this section [amending section 1083 of Pub. L. 105–85, set out above] shall take effect on October 1, 1999.'']

[Section 1(b)(2) of Pub. L. 105–129 provided that: ''The amendment made by paragraph (1) [amending section 1083 of Pub. L. 105–85, set out above] shall take effect as if included in the provisions of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105–85] to which such amendment relates.'']

ANNUAL REPORT ON MORATORIUM ON USE BY ARMED FORCES OF ANTIPERSONNEL LANDMINES

Section 1309 of Pub. L. 105–85 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The United States has stated its support for a ban on antipersonnel landmines that is global in scope and verifiable.

''(2) On May 16, 1996, the President announced that the United States, as a matter of policy, would eliminate its stockpile of non-self-destructing antipersonnel landmines, except those used for training purposes and in Korea, and that the United States would reserve the right to use self-destructing antipersonnel landmines in the event of conflict.

''(3) On May 16, 1996, the President also announced that the United States would lead an effort to negotiate an international treaty permanently banning the use of all antipersonnel landmines.

''(4) The United States is currently participating at the United Nations Conference on Disarmament in negotiations aimed at achieving a global ban on the use of antipersonnel landmines.

''(5) On August 18, 1997, the administration agreed to participate in international negotiations sponsored by Canada (the so-called 'Ottawa process') designed to achieve a treaty that would outlaw the production, use, and sale of antipersonnel landmines.

''(6) On September 17, 1997, the President announced that the United States would not sign the antipersonnel landmine treaty concluded in Oslo, Norway, by participants in the Ottawa process because the treaty would not provide a geographic exception to allow the United States to stockpile and use antipersonnel landmines in Korea or an exemption that would preserve the ability of the United States to use mixed antitank mine systems which could be used to deter an armored assault against United States forces.

''(7) The President also announced a change in United States policy whereby the United States—

''(A) would no longer deploy antipersonnel landmines, including self-destructing antipersonnel landmines, by 2003, except in Korea;

''(B) would seek to field alternatives by that date, or by 2006 in the case of Korea;

''(C) would undertake a new initiative in the United Nations Conference on Disarmament to establish a global ban on the transfer of antipersonnel landmines; and

''(D) would increase its current humanitarian demining activities around the world.

''(8) The President's decision would allow the continued use by United States forces of self-destructing antipersonnel landmines that are used as part of a mixed antitank mine system.

''(9) Under existing law (as provided in section 580 of Public Law 104–107; 110 Stat. 751), on February 12, 1999, the United States will implement a one-year moratorium on the use of antipersonnel landmines by United States forces except along internationally recognized national borders or in demilitarized zones within a perimeter marked area that is monitored by military personnel and protected by adequate means to ensure the exclusion of civilians.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the United States should not implement a moratorium on the use of antipersonnel landmines by United States Armed Forces in a manner that would endanger United States personnel or undermine the military effectiveness of United States Armed Forces in executing their missions; and

''(2) the United States should pursue the development of alternatives to self-destructing antipersonnel landmines.

''(c) ANNUAL REPORT.—Not later than December 31 each year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report concerning antipersonnel landmines. Each such report shall include the Secretary's description of the following:

''(1) The military utility of the continued deployment and use by the United States of antipersonnel landmines.

''(2) The effect of a moratorium on the production, stockpiling, and use of antipersonnel landmines on

the ability of United States forces to deter and defend against attack on land by hostile forces, including on the Korean peninsula.

''(3) Progress in developing and fielding systems that are effective substitutes for antipersonnel landmines, including an identification and description of the types of systems that are being developed and fielded, the costs associated with those systems, and the estimated timetable for developing and fielding those systems.

''(4) The effect of a moratorium on the use of antipersonnel landmines on the military effectiveness of current antitank mine systems.

''(5) The number and type of pure antipersonnel landmines that remain in the United States inventory and that are subject to elimination under the President's September 17, 1997, declaration on United States antipersonnel landmine policy.

''(6) The number and type of mixed antitank mine systems that are in the United States inventory, the locations where they are deployed, and their effect on the deterrence and warfighting ability of United States Armed Forces.

''(7) The effect of the elimination of pure antipersonnel landmines on the warfighting effectiveness of the United States Armed Forces.

''(8) The costs already incurred and anticipated of eliminating antipersonnel landmines from the United States inventory in accordance with the policy enunciated by the President on September 17, 1997.

''(9) The benefits that would result to United States military and civilian personnel from an international treaty banning the production, use, transfer, and stockpiling of antipersonnel landmines.''

HATE CRIMES IN THE MILITARY

Section 571(a), (b) of Pub. L. 104–201 provided that:

''(a) HUMAN RELATIONS TRAINING.—(1) The Secretary of Defense shall ensure that the Secretary of each military department conducts ongoing programs for human relations training for all members of the Armed Forces under the jurisdiction of the Secretary. Matters to be covered by such training include race relations, equal opportunity, opposition to gender discrimination, and sensitivity to 'hate group' activity. Such training shall be provided during basic training (or other initial military training) and on a regular basis thereafter.

''(2) The Secretary of Defense shall also ensure that unit commanders are aware of their responsibilities in ensuring that impermissible activity based upon discriminatory motives does not occur in units under their command.

''(b) INFORMATION TO BE PROVIDED TO PROSPECTIVE RECRUITS.—The Secretary of Defense shall ensure that each individual preparing to enter an officer accession program or to execute an original enlistment agreement is provided information concerning the meaning of the oath of office or oath of enlistment for service in the Armed Forces in terms of the equal protection and civil liberties guarantees of the Constitution, and each such individual shall be informed that if supporting those guarantees is not possible personally for that individual, then that individual should decline to enter the Armed Forces.''

ANNUAL REPORT ON OPERATION PROVIDE COMFORT AND OPERATION ENHANCED SOUTHERN WATCH

Section 1041 of Pub. L. 104–201 provided that:

''(a) ANNUAL REPORT.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report on Operation Provide Comfort and Operation Enhanced Southern Watch.

''(b) MATTERS RELATING TO OPERATION PROVIDE COMFORT.—Each report under subsection (a) shall include, with respect to Operation Provide Comfort, the following:

''(1) A detailed presentation of the projected costs to be incurred by the Department of Defense for that operation during the fiscal year in which the report is submitted and projected for the following fiscal year, together with a discussion of missions and functions expected to be performed by the Department as part of that operation during each of those fiscal years.

''(2) A detailed presentation of the projected costs to be incurred by other departments and agencies of the Federal Government participating in or providing support to that operation during each of those fiscal years.

''(3) A discussion of options being pursued to reduce the involvement of the Department of Defense in those aspects of that operation that are not directly related to the military mission of the Department of Defense.

''(4) A discussion of the exit strategy for United States involvement in, and support for, that operation.

''(5) A description of alternative approaches to accomplishing the mission of that operation that are designed to limit the scope and cost to the Department of Defense of accomplishing that mission while maintaining mission success.

''(6) The contributions (both in-kind and actual) by other nations to the costs of conducting that operation.

''(7) A detailed presentation of significant Iraqi military activity (including specific violations of the no-fly zone) determined to jeopardize the security of the Kurdish population in northern Iraq.

''(c) MATTERS RELATING TO OPERATION ENHANCED SOUTHERN WATCH.—Each report under subsection (a) shall include, with respect to Operation Enhanced Southern Watch, the following:

''(1) The expected duration and annual costs of the various elements of that operation.

''(2) The political and military objectives associated with that operation.

''(3) The contributions (both in-kind and actual) by other nations to the costs of conducting that operation.

''(4) A description of alternative approaches to accomplishing the mission of that operation that are designed to limit the scope and cost of accomplishing that mission while maintaining mission success.

''(5) A comprehensive discussion of the political and military objectives and initiatives that the Department of Defense has pursued, and intends to pursue, in order to reduce United States involvement in that operation.

''(6) A detailed presentation of significant Iraqi military activity (including specific violations of the no-fly zone) determined to jeopardize the security of the Shiite population by air attack in southern Iraq or to jeopardize the security of Kuwait.

''(d) TERMINATION OF REPORT REQUIREMENT.—The requirement under subsection (a) shall cease to apply with respect to an operation named in that subsection upon the termination of United States involvement in that operation.

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

''(1) OPERATION ENHANCED SOUTHERN WATCH.—The term 'Operation Enhanced Southern Watch' means the operation of the Department of Defense that as of October 30, 1995, is designated as Operation Enhanced Southern Watch.

''(2) OPERATION PROVIDE COMFORT.—The term 'Operation Provide Comfort' means the operation of the Department of Defense that as of October 30, 1995, is designated as Operation Provide Comfort.''

ANNUAL REPORT ON EMERGING OPERATIONAL CONCEPTS

Pub. L. 104–201, div. A, title X, § 1042, Sept. 23, 1996, 110 Stat. 2642, as amended by Pub. L. 106–65, div. A, title X, § 1067(5), Oct. 5, 1999, 113 Stat. 774, directed Secretary of Defense to submit to Committees on Armed Services of the Senate and the House of Representatives a report on emerging operational concepts not later than March 1 of each year through 2000, prior to repeal by Pub. L. 106–65, div. A, title II, § 241(b), Oct. 5, 1999, 113 Stat. 550.

GEORGE C. MARSHALL EUROPEAN CENTER FOR STRATEGIC SECURITY STUDIES

Section 1065 of Pub. L. 104–201 provided that:

''(a) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) The Secretary of Defense may, on behalf of the George C. Marshall European Center for Strategic Security Studies (in this section referred to as the 'Marshall Center'), accept foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Marshall Center.

''(2) Funds received by the Secretary under paragraph (1) shall be credited to appropriations available for the Department of Defense for the Marshall Center. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Marshall Center for the same purposes and same period as the appropriations with which merged.

''(3) The Secretary of Defense shall notify Congress if the total amount of money accepted under paragraph (1) exceeds $2,000,000 in any fiscal year. Any such notice shall list each of the contributors of such amounts and the amount of each contribution in such fiscal year.

''(4) For purposes of this subsection, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.

''(b) MARSHALL CENTER PARTICIPATION BY FOREIGN NATIONS.—(1) Notwithstanding any other provision of law, the Secretary of Defense may authorize participation by a European or Eurasian nation in Marshall Center programs if the Secretary determines, after consultation with the Secretary of State, that such participation is in the national interest of the United States.

''(2) Not later than January 31 of each year, the Secretary of Defense shall submit to Congress a report setting forth the names of the foreign nations permitted to participate in programs of the Marshall Center during the preceding year under paragraph (1). Each such report shall be prepared by the Secretary with the assistance of the Director of the Marshall Center.

''(c) EXEMPTIONS FOR MEMBERS OF MARSHALL CENTER BOARD OF VISITORS FROM CERTAIN REQUIREMENTS.—(1) In the case of any person invited to serve without compensation on the Marshall Center Board of Visitors, the Secretary of Defense may waive any requirement for financial disclosure that would otherwise apply to that person solely by reason of service on such Board.

''(2) Notwithstanding any other provision of law, a member of the Marshall Center Board of Visitors may not be required to register as an agent of a foreign government solely by reason of service as a member of the Board.

''(3) Notwithstanding section 219 of title 18, United States Code, a non-United States citizen may serve on the Marshall Center Board of Visitors even though registered as a foreign agent.''

PARTICIPATION OF MEMBERS, DEPENDENTS, AND OTHER PERSONS IN CRIME PREVENTION EFFORTS AT INSTALLATIONS

Section 1070 of Pub. L. 104–201 provided that:

''(a) CRIME PREVENTION PLAN.—The Secretary of Defense shall prepare and implement an incentive-based plan to encourage members of the Armed Forces, dependents of members, civilian employees of the Department of Defense, and employees of defense contractors performing work at military installations to report to an appropriate military law enforcement agency any crime or criminal activity that the person reasonably believes occurred on a military installation or involves a member of the Armed Forces.

''(b) INCENTIVES TO REPORT CRIMINAL ACTIVITY.—The Secretary of Defense shall include in the plan developed under subsection (a) incentives for members and other persons described in such subsection to provide information to appropriate military law enforcement agencies regarding any crime or criminal activity occurring on a military installation or involving a member of the Armed Forces.

''(c) REPORT REGARDING IMPLEMENTATION.—Not later than February 1, 1997, the Secretary shall submit to Congress a report describing the plan being developed under subsection (a).''

ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF MEMBERS OF THE ARMED FORCES

Pub. L. 104–193, title III, §363(a), Aug. 22, 1996, 110 Stat. 2247, as amended by Pub. L. 107–296, title XVII, §1704(e)(1)(A), Nov. 25, 2002, 116 Stat. 2315, provided that:

''(1) MAINTENANCE OF ADDRESS INFORMATION.—The Secretary of Defense shall establish a centralized personnel locator service that includes the address of each member of the Armed Forces under the jurisdiction of the Secretary. Upon request of the Secretary of Homeland Security, addresses for members of the Coast Guard shall be included in the centralized personnel locator service.

''(2) TYPE OF ADDRESS.—

''(A) RESIDENTIAL ADDRESS.—Except as provided in subparagraph (B), the address for a member of the Armed Forces shown in the locator service shall be the residential address of that member.

''(B) DUTY ADDRESS.—The address for a member of the Armed Forces shown in the locator service shall be the duty address of that member in the case of a member—

''(i) who is permanently assigned overseas, to a vessel, or to a routinely deployable unit; or

''(ii) with respect to whom the Secretary concerned makes a determination that the member's residential address should not be disclosed due to national security or safety concerns.

''(3) UPDATING OF LOCATOR INFORMATION.—Within 30 days after a member listed in the locator service establishes a new residential address (or a new duty address, in the case of a member covered by paragraph (2)(B)), the Secretary concerned shall update the locator service to indicate the new address of the member.

''(4) AVAILABILITY OF INFORMATION.—The Secretary of Defense shall make information regarding the address of a member of the Armed Forces listed in the locator service available, on request, to the Federal Parent Locator Service established under section 453 of the Social Security Act [42 U.S.C. 653].''

REVIEW OF C4I BY NATIONAL RESEARCH COUNCIL

Section 262 of Pub. L. 104–106 provided that:

''(a) REVIEW BY NATIONAL RESEARCH COUNCIL.—Not later than 90 days after the date of the enactment of this Act [Feb. 10, 1996], the Secretary of Defense shall request the National Research Council of the National Academy of Sciences to conduct a comprehensive review of current and planned service and defense-wide programs for command, control, communications, computers, and intelligence (C4I) with a special focus on cross-service and inter-service issues.

''(b) MATTERS TO BE ASSESSED IN REVIEW.—The review shall address the following:

''(1) The match between the capabilities provided by current service and defense-wide C4I programs and the actual needs of users of these programs.

''(2) The interoperability of service and defense-wide C4I systems that are planned to be operational in the future.

''(3) The need for an overall defense-wide architecture for C4I.

''(4) Proposed strategies for ensuring that future C4I acquisitions are compatible and interoperable with an overall architecture.

''(5) Technological and administrative aspects of the C4I modernization effort to determine the soundness of the underlying plan and the extent to which it is consistent with concepts for joint military operations in the future.

''(c) TWO-YEAR PERIOD FOR CONDUCTING REVIEW.—The review shall be conducted over the two-year period beginning on the date on which the National Research Council and the Secretary of Defense enter into a contract or other agreement for the conduct of the review.

''(d) REPORTS.—(1) In the contract or other agreement for the conduct of the review, the Secretary of Defense shall provide that the National Research Council shall submit to the Department of Defense and Congress interim reports and progress updates on a regular basis as the review proceeds. A final report on the review shall set forth the findings, conclusions, and recommendations of the Council for defense-wide and service C4I programs and shall be submitted to the Committee on Armed Services of the Senate, the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives], and the Secretary of Defense.

''(2) To the maximum degree possible, the final report shall be submitted in unclassified form with classified annexes as necessary.

''(e) INTERAGENCY COOPERATION WITH STUDY.—All military departments, defense agencies, and other components of the Department of Defense shall cooperate fully with the National Research Council in its activities in carrying out the review under this section.

''(f) EXPEDITED PROCESSING OF SECURITY CLEARANCES FOR STUDY.—For the purpose of facilitating the commencement of the study under this section, the Secretary of Defense shall expedite to the fullest degree possible the processing of security clearances that are necessary for the National Research Council to conduct the study.

''(g) FUNDING.—Of the amount authorized to be appropriated in section 201 [110 Stat. 216] for defense-wide activities, $900,000 shall be available for the study under this section.''

STRATEGY AND REPORT ON AUTOMATED INFORMATION SYSTEMS OF DEPARTMENT OF DEFENSE

Section 366 of Pub. L. 104–106 provided that:

''(a) DEVELOPMENT OF STRATEGY.—The Secretary of Defense shall develop a strategy for the development or modernization of automated information systems for the Department of Defense.

''(b) MATTERS TO CONSIDER.—In developing the strategy required under subsection (a), the Secretary shall consider the following:

''(1) The use of performance measures and management controls.

''(2) Findings of the Functional Management Review conducted by the Secretary.

''(3) Program management actions planned by the Secretary.

''(4) Actions and milestones necessary for completion of functional and economic analyses for—

''(A) the Automated System for Transportation data;

''(B) continuous acquisition and life cycle support;

''(C) electronic data interchange;

''(D) flexible computer integrated manufacturing;

''(E) the Navy Tactical Command Support System; and

''(F) the Defense Information System Network.

''(5) Progress made by the Secretary in resolving problems with respect to the Defense Information System Network and the Joint Computer-Aided Acquisition and Logistics Support System.

''(6) Tasks identified in the review conducted by the Secretary of the Standard Installation/Division Personnel System-3.

''(7) Such other matters as the Secretary considers appropriate.

''(c) REPORT ON STRATEGY.—(1) Not later than April 15, 1996, the Secretary shall submit to Congress a report on the development of the strategy required under subsection (a).

''(2) In the case of the Air Force Wargaming Center, the Air Force Command Exercise System, the Cheyenne Mountain Upgrade, the Transportation Coordinator Automated Command and Control Information Systems, and the Wing Command and Control Systems, the report required by paragraph (1) shall provide functional economic analyses and address waivers exercised for compelling military importance under section 381(d) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2739) [set out below].

''(3) The report required by paragraph (1) shall also include the following:

''(A) A certification by the Secretary of the termination of the Personnel Electronic Record Management System or a justification for the continued need for such system.

''(B) Findings of the Functional Management Review conducted by the Secretary and program management actions planned by the Secretary for—

''(i) the Base Level System Modernization and the Sustaining Base Information System; and

''(ii) the Standard Installation/Division Personnel System-3.

''(C) An assessment of the implementation of migration systems and applications, including—

''(i) identification of the systems and applications by functional or business area, specifying target dates for operation of the systems and applications;

''(ii) identification of the legacy systems and applications that will be terminated;

''(iii) the cost of and schedules for implementing the migration systems and applications; and

''(iv) termination schedules.

''(D) A certification by the Secretary that each information system that is subject to review by the Major Automated Information System Review Committee of the Department is cost-effective and supports the corporate information management goals of the Department, including the results of the review conducted for each such system by the Committee.''

REPORT CONCERNING APPROPRIATE FORUM FOR JUDICIAL REVIEW OF DEPARTMENT OF DEFENSE PERSONNEL ACTIONS

Section 551 of Pub. L. 104–106 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish an advisory committee to consider issues relating to the appropriate forum for judicial review of Department of Defense administrative personnel actions.

''(b) MEMBERSHIP.—(1) The committee shall be composed of five members, who shall be appointed by the Secretary of Defense after consultation with the Attorney General and the Chief Justice of the United States.

''(2) All members of the committee shall be appointed not later than 30 days after the date of the enactment of this Act [Feb. 10, 1996].

''(c) DUTIES.—The committee shall review, and provide findings and recommendations regarding, the following matters with respect to judicial review of administrative personnel actions of the Department of Defense:

''(1) Whether the existing forum for such review through the United States district courts provides appropriate and adequate review of such actions.

''(2) Whether jurisdiction to conduct judicial review of such actions should be established in a single court in order to provide a centralized review of such actions and, if so, in which court that jurisdiction should be vested.

''(d) REPORT.—(1) Not later than December 15, 1996, the committee shall submit to the Secretary of Defense a report setting forth its findings and recommendations, including its recommendations pursuant to subsection (c).

''(2) Not later than January 1, 1997, the Secretary of Defense, after consultation with the Attorney General, shall transmit the committee's report to Congress. The Secretary may include in the transmittal any comments on the report that the Secretary or the Attorney General consider appropriate.

''(e) TERMINATION OF COMMITTEE.—The committee shall terminate 30 days after the date of the submission of its report to Congress under subsection (d)(2).''

REQUIREMENTS FOR AUTOMATED INFORMATION SYSTEMS OF DEPARTMENT OF DEFENSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(A) Accelerated implementation of migration systems.

''(B) Establishment of data standards.

''(C) Process improvement.

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

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

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

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

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

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

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

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

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

''(h) DEFINITIONS.—In this section:

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

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

Section 830 of Pub. L. 104–201, as amended by Pub. L. 104–208, div. A, title I, §101(f) [title VIII, §808(c)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–394, provided that Secretary of Defense was to include in report submitted in 1997 under section 381(f) of Pub. L. 103–337 [set out above] a discussion of progress made in implementing div. E of Pub. L. 104–106 [§§5001–5703, see Tables for classification] and strategy for development or modernization of automated information systems for Department of Defense, as required by section 366 of Pub. L. 104–106 [set out as a note above] and plans of Department of Defense for establishing an integrated framework for management of information resources within the Department, and provided further specifications of the elements to be included in the discussion.

DEPARTMENT OF DEFENSE POLICIES AND PROCEDURES ON DISCRIMINATION AND SEXUAL HARASSMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANNUAL REPORT ON PERSONNEL READINESS FACTORS BY RACE AND GENDER

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

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

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

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

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

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

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

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

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

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

VICTIMS' ADVOCATES PROGRAMS IN DEPARTMENT OF DEFENSE

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

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

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

''(A) Victim and witness assistance programs.

''(B) Family advocacy programs.

''(C) Equal opportunity programs.

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

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

''(1) Crime.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 107–248, title VIII, §8098, Oct. 23, 2002, 116 Stat. 1559, provided that, ''Section 8106 of the Department of Defense Appropriations Act, 1997 (titles I through VIII of the matter under subsection 101(b) of Public Law 104–208; 110 Stat. 3009–111; 10 U.S.C. 113 note) shall continue in effect to apply to disbursements that are made by the Department of Defense in fiscal year 2003.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8118, Jan. 10, 2002, 115 Stat. 2273.

Pub. L. 106–259, title VIII, §8137, Aug. 9, 2000, 114 Stat. 704.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8106], Sept. 30, 1996, 110 Stat. 3009–71, 3009–111, as amended by Pub. L. 105–56, title VIII, §8113, Oct. 8, 1997, 111 Stat. 1245; Pub. L. 105–277, div. C, title I, §143, Oct. 21, 1998, 112 Stat. 2681–609; Pub. L. 106–79, title VIII, §8135, Oct. 25, 1999, 113 Stat. 1268, provided that:

''(a) The Secretary of Defense shall require each disbursement by the Department of Defense in an amount in excess of $500,000 be matched to a particular obligation before the disbursement is made.

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

[Section 8113 of Pub. L. 105–56 provided that the amendment made by that section [amending section 101(b) [title VIII, §8106] of Pub. L. 104–208] set out above, is effective June 30, 1998.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, §8102, Dec. 1, 1995, 109 Stat. 672.

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

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

Pub. L. 103–160, div. A, title V, §542, Nov. 30, 1993, 107 Stat. 1659, as amended by Pub. L. 106–398, §1 [[div. A],

title V, § 573(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136; Pub. L. 107–107, div. A, title V, § 591, Dec. 28, 2001, 115 Stat. 1125, provided that:

''(a) IN GENERAL.—(1) Except in a case covered by subsection (b) or by section 6035 of title 10, United States Code, whenever the Secretary of Defense proposes to change military personnel policies in order to make available to female members of the Armed Forces assignment to any type of combat unit, class of combat vessel, or type of combat platform that is not open to such assignments, the Secretary shall, not less than 30 days before such change is implemented, transmit to the Committees on Armed Services of the Senate and House of Representatives notice of the proposed change in personnel policy.

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

''(b) SPECIAL RULE FOR GROUND COMBAT EXCLUSION POLICY.—(1) If the Secretary of Defense proposes to make any change described in paragraph (2) to the ground combat exclusion policy, the Secretary shall, before any such change is implemented, submit to Congress a report providing notice of the proposed change. Such a change may then be implemented only after the end of a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) following the date on which the report is received.

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

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

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

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

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

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

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

''(5) For purposes of this subsection, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die.''

GENDER-NEUTRAL OCCUPATIONAL PERFORMANCE STANDARDS

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

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

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

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

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

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

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

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

FOREIGN LANGUAGE PROFICIENCY TEST PROGRAM

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

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

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

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

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

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

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

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

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

''(4) Revised policies of each of the military departments to foster maintenance of highly perishable linguistic skills through improved management of the

careers of language-trained personnel, including more effective use of language skills, improved career opportunities within the linguistics field, and specific linkage of language proficiency to promotions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECURITY CLEARANCES

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

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

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

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

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

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

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

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

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

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

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

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

''(2) Such review shall specifically consider—

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

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

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

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

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

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

Pub. L. 103–160, div. A, title XI, § 1185, Nov. 30, 1993, 107 Stat. 1774, required the Secretary of Defense to review, not later than June 30, 1994, the procedures of the military departments for investigating deaths of members of the Armed Forces that may have resulted from self-inflicted causes, to submit to Congress, not later than July 15, 1994, a report on the review, and to prescribe, not later than Oct. 1, 1994, regulations governing the investigation of deaths of members of the Armed Forces that may have resulted from self-inflicted causes, required the Inspector General of the Department of Defense to review certain death investigations, and required the Secretary of Transportation to implement with respect to the Coast Guard the requirements that were imposed on the Secretary of Defense and the Inspector General of the Department of Defense.

PROGRAM TO COMMEMORATE WORLD WAR II

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(2) A person providing voluntary services under this subsection shall be considered to be an employee for

the purposes of chapter 81 of title 5, relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

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

REVIEW OF MILITARY FLIGHT TRAINING ACTIVITIES AT CIVILIAN AIRFIELDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(c) DEFINITIONS.—In this section:

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

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

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

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

LIMITATION ON SUPPORT FOR UNITED STATES CONTRACTORS SELLING ARMS OVERSEAS

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

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

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

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

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

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

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

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

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

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

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

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

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

OVERSEAS MILITARY END STRENGTH

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

REPORTS ON OVERSEAS BASING

Pub. L. 102–484, div. A, title XIII, §1304, Oct. 23, 1992, 106 Stat. 2546, as amended by Pub. L. 103–160, div. B, title XXIX, §2924(a), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 104–106, div. A, title XV, §1502(c)(2)(A), Feb. 10, 1996, 110 Stat. 506, provided that:

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

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

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

''(3) both—

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

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

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

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

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

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

''(b) REPORT ON BUDGET IMPLICATIONS OF OVERSEAS BASING AGREEMENTS.—Whenever the Secretary of De-

fense enters into a basing agreement between the United States and a foreign country with respect to United States military forces outside the United States, the Secretary of Defense shall, in advance of the signing of the agreement, submit to the congressional defense committees a report on the Federal budget implications of the agreement.''

COMMISSION ON ASSIGNMENT OF WOMEN IN ARMED FORCES

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

REQUIREMENTS RELATING TO EUROPEAN MILITARY PROCUREMENT PRACTICES

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

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

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

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

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

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

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

DEPARTMENT OF DEFENSE USE OF NATIONAL INTELLIGENCE COLLECTION SYSTEMS

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

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

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

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

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

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

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

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

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

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

REPORTS ON FOREIGN CONTRIBUTIONS AND COSTS OF OPERATION DESERT STORM

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

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

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

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

''(b) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated from the De-

fense Cooperation Account for fiscal year 1991 under section 101(a) [105 Stat. 78], $20,000,000 shall be available to carry out the provisions of this section. The costs of carrying out such provisions are incremental costs associated with Operation Desert Storm.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(1) Family crisis intervention.

''(2) Family counseling.

''(3) Family support groups.

''(4) Expenses for volunteer activities.

''(5) Respite care.

''(6) Housing protection and advocacy.

''(7) Food assistance.

''(8) Employment assistance.

''(9) Child care.

''(10) Benefits eligibility determination services.

''(11) Transportation assistance.

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

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

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

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

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

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

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

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

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

PROGRAMMING LANGUAGE FOR DEPARTMENT OF DEFENSE SOFTWARE

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

Similar provisions were contained in the following prior appropriation acts:

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

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

CONTRIBUTIONS BY JAPAN TO SUPPORT OF UNITED STATES FORCES IN JAPAN

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

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

''(b) ANNUAL REDUCTION IN CEILING UNLESS SUPPORT FURNISHED.—Unless the President certifies to Congress before the end of each fiscal year that Japan has agreed to offset for that fiscal year the direct costs incurred by the United States related to the presence of all United States military personnel in Japan, excluding

the military personnel title costs, the end strength level for that fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

''(2) This section may be waived by the President if the President—

''(A) declares an emergency or determines that such a waiver is required by the national security interests of the United States; and

''(B) immediately informs the Congress of the waiver and the reasons for the waiver.''

NATIONAL MILITARY STRATEGY REPORTS

Section 901 of Pub. L. 101–510 provided that:

''(a) REPORTS BY THE SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall submit to Congress a national military strategy report during each of fiscal years 1992, 1993, and 1994. Each such report shall be submitted with the Secretary's annual report to Congress for that year under section 113(j) of title 10, United States Code.

''(b) MATTERS TO BE COVERED IN REPORTS.—Each such report shall cover a period of at least ten years and shall address the following:

''(1) The threats facing the United States and its allies.

''(2) The degree to which military forces can contribute to the achievement of national objectives.

''(3) The strategic military plan for applying those forces to the achievement of national objectives.

''(4) The risk to the national security of the United States and its allies that ensues.

''(5) The organization and structure of military forces to implement the strategy.

''(6) The broad mission areas for various components of the forces and the broad support requirements to implement the strategy.

''(7) The functions for which each military department should organize, train, and equip forces for the combatant commands responsible for implementing the strategy.

''(8) The priorities assigned to major weapons and equipment acquisitions and to research and development programs in order to fill the needs and eliminate deficiencies of the combatant commands.

''(c) RELATIONSHIP OF PLANS TO BUDGET.—The strategic military plans and other matters covered by each report shall be fiscally constrained and shall relate to the current Department of Defense Multiyear Defense Plan and resource levels projected by the Secretary of Defense to be available over the period covered by the report.

''(d) EFFECTS OF ALTERNATIVE BUDGET LEVELS.—Each such report shall also include an assessment of the effect on the risk and the other components of subsection (b) in the event that (1) an additional $50,000,000,000 is available in budget authority in the fiscal year which is addressed by the budget request that the report accompanies, and (2) budget authority for that fiscal year is reduced by $50,000,000,000. For these assessments the Secretary of Defense shall make appropriate assumptions about the funds available for the remainder of the period covered by the report.

''(e) ROLE OF CHAIRMAN OF JOINT CHIEFS OF STAFF.—In accordance with his role as principal military adviser to the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall participate fully in the development of each such report. The Secretary of Defense shall provide the Chairman such additional guidance as is necessary to enable the Chairman to develop and recommend fiscally constrained strategic plans for the Secretary's consideration in accordance with section 153(a)(2) of title 10, United States Code. In accordance with additional responsibilities of the Chairman set out in section 153, the Chairman shall provide recommendations to the Secretary on the other components of paragraph (2).

''(f) CLASSIFICATION OF REPORTS.—The reports submitted to Congress under subsection (a) shall be submitted in both classified and (to the extent practicable) unclassified versions.''

ANNUAL REPORT ON BALANCED TECHNOLOGY INITIATIVE

Section 211(e) of Pub. L. 101–189, which required Secretary of Defense to submit annual report to congressional defense committees on Balanced Technology Initiative, was repealed by Pub. L. 104–106, div. A, title X, §1061(*l*), Feb. 10, 1996, 110 Stat. 443.

MILITARY RELOCATION ASSISTANCE PROGRAMS

Section 661 of Pub. L. 101–189, which related to establishment by Secretary of Defense of programs to provide relocation assistance to members of Armed Forces and their families, was repealed and restated in section 1056 of this title by Pub. L. 101–510, div. A, title XIV, §1481(c)(1), (3), Nov. 5, 1990, 104 Stat. 1705.

MILITARY CHILD CARE

Title XV of div. A of Pub. L. 101–189, which provided that such title could be cited as the ''Military Child Care Act of 1989'', and which related to funding for military child care for fiscal year 1990, child care employees, parent fees, child abuse prevention and safety at facilities, parent partnerships with child development centers, report on 5-year demand for child care, subsidies for family home day care, early childhood education demonstration program, and deadline for regulations, was repealed and restated in subchapter II (§1791 et seq.) of chapter 88 of this title by Pub. L. 104–106, div. A, title V, §568(a)(1), (e)(2), Feb. 10, 1996, 110 Stat. 331, 336.

LEAD AGENCY FOR DETECTION OF TRANSIT OF ILLEGAL DRUGS

Section 1102 of Pub. L. 100–456, which designated the Department of Defense as the single lead agency of the Federal Government for detection and monitoring of aerial and maritime transit of illegal drugs into the United States, was repealed and restated as section 124 of this title by Pub. L. 101–189, §1202(a)(1), (b).

ANNUAL ASSESSMENT OF SECURITY AT UNITED STATES BASES IN PHILIPPINES

Section 1309 of Pub. L. 100–456 directed Secretary of Defense to submit to Congress annual reports assessing security at United States military facilities in Republic of Philippines, prior to repeal by Pub. L. 102–484, div. A, title X, §1074, Oct. 23, 1992, 106 Stat. 2511.

DEPARTMENT OF DEFENSE OVERSEAS PERSONNEL; ACTIONS RESULTING IN MORE BALANCED SHARING OF DEFENSE AND FOREIGN ASSISTANCE SPENDING BURDENS BY UNITED STATES AND ALLIES; REPORTS TO CONGRESS; LIMITATION ON ACTIVE DUTY ARMED FORCES MEMBERS IN JAPAN AND REPUBLIC OF KOREA

Pub. L. 100–463, title VIII, §8125, Oct. 1, 1988, 102 Stat. 2270–41, as amended by Pub. L. 101–189, div. A, title XVI, §1623, Nov. 29, 1989, 103 Stat. 1606; Pub. L. 103–236, title I, §162(j), Apr. 30, 1994, 108 Stat. 408; Pub. L. 104–106, div. A, title XV, §1502(f)(1), Feb. 10, 1996, 110 Stat. 509; Pub. L. 106–65, div. A, title X, §1067(14), Oct. 5, 1999, 113 Stat. 775, provided that:

''(a)(1) Not later than March 1, 1989, the Secretary of Defense shall submit to Congress a report on the assignment of military missions among the member countries of North Atlantic Treaty Organization (NATO) and on the prospects for the more effective assignment of such missions among such countries.

''(2) The report shall include a discussion of the following:

''(A) The current assignment of military missions among the member countries of NATO.

''(B) Military missions for which there is duplication of capability or for which there is inadequate capability within the current assignment of military missions within NATO.

''(C) Alternatives to the current assignment of military missions that would maximize the military contributions of the member countries of NATO.

''(D) Any efforts that are underway within NATO or between individual member countries of NATO at the time the report is submitted that are intended to result in a more effective assignment of military missions within NATO.

''(b) The Secretary of Defense and the Secretary of State shall (1) conduct a review of the long-term strategic interests of the United States overseas and the future requirements for the assignment of members of the Armed Forces of the United States to permanent duty ashore outside the United States, and (2) determine specific actions that, if taken, would result in a more balanced sharing of defense and foreign assistance spending burdens by the United States and its allies. Not later than August 1, 1989, the Secretary of Defense and the Secretary of State shall transmit to Congress a report containing the findings resulting from the review and their determinations.

''[(c) Repealed. Pub. L. 103–236, title I, §162(j), Apr. 30, 1994, 108 Stat. 408.]

''(d) The President shall specify (separately by appropriation account) in the Department of Defense items included in each budget submitted to Congress under section 1105 of title 31, United States Code, (1) the amounts necessary for payment of all personnel, operations, maintenance, facilities, and support costs for Department of Defense overseas military units, and (2) the costs for all dependents who accompany Department of Defense personnel outside the Unied [sic] States.

''(e) Not later than May 1, 1989, the Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives a report that sets forth the total costs required to support the dependents who accompany Department of Defense personnel assigned to permanent duty overseas.

''(f) As of September 30 of each fiscal year, the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea may not exceed 94,450 (the number of members of the Armed Forces on active duty assigned to permanent duty ashore in Japan and the Republic of Korea on September 30, 1987). The limitation in the preceding sentence may be increased if and when (1) a major reduction of United States forces in the Republic of the Philippines is required because of a loss of basing rights in that nation, and (2) the President determines and certifies to Congress that, as a consequence of such loss, an increase in United States forces stationed in Japan and the Republic of Korea is necessary.

''(g)(1) After fiscal year 1990, budget submissions to Congress under section 1105 of title 31, United States Code, shall identify funds requested for Department of Defense personnel and units in permanent duty stations ashore outside the United States that exceed the amount of such costs incurred in fiscal year 1989 and shall set forth a detailed description of (A) the types of expenditures increased, by appropriation account, activity and program; and (B) specific efforts to obtain allied host nations' financing for these cost increases.

''(2) The Secretary of Defense shall notify in advance the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on Armed Services of the House of Representatives, through existing notification procedures, when costs of maintaining Department of Defense personnel and units in permanent duty stations ashore outside the United States will exceed the amounts as defined in the Department of Defense budget as enacted for that fiscal year. Such notification shall describe: (A) the type of expenditures that increased; and (B) the source of funds (including prior year unobligated balances) by appropriation account, activity and program, proposed to finance these costs.

''(3) In computing the costs incurred for maintaining Department of Defense personnel and forces in permanent duty stations ashore outside the United States compared with the amount of such costs incurred in fiscal year 1989, the Secretary shall—

''(A) exclude increased costs resulting from increases in the rates of pay provided for members of the Armed Forces and civilian employees of the United States Government and exclude any cost increases in supplies and services resulting from inflation; and

''(B) include (i) the costs of operation and maintenance and of facilities for the support of Department of Defense overseas personnel, and (ii) increased costs resulting from any decline in the foreign exchange rate of the United States dollar.

''(h) The provisions of subsections (f) and (g) shall not apply in time of war or during a national emergency declared by the President or Congress.

''(i) In this section—

''(1) the term 'personnel' means members of the Armed Forces of the United States and civilian employees of the Department of Defense;

''(2) the term 'Department of Defense overseas personnel' means those Department of Defense personnel who are assigned to permanent duty ashore outside the United States; and

''(3) the term 'United States' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.''

ANNUAL REPORT ON COSTS OF STATIONING UNITED STATES TROOPS OVERSEAS

Pub. L. 100–202, §101(b) [title VIII, §8042], Dec. 22, 1987, 101 Stat. 1329–43, 1329–69, which required Secretary of Defense to submit annual report on full costs of stationing United States troops overseas, etc., was repealed and restated in subsec. (k) [now (j)] of this section by Pub. L. 100–370, §1(*o*).

REGULATIONS REGARDING EMPLOYMENT AND VOLUNTEER WORK OF SPOUSES OF MILITARY PERSONNEL

Section 637 of Pub. L. 100–180 provided that: ''Not later than 60 days after the date of the enactment of this Act [Dec. 4, 1987], the Secretary of Defense shall prescribe regulations to establish the policy that—

''(1) the decision by a spouse of a member of the Armed Forces to be employed or to voluntarily participate in activities relating to the Armed Forces should not be influenced by the preferences or requirements of the Armed Forces; and

''(2) neither such decision nor the marital status of a member of the Armed Forces should have an effect on the assignment or promotion opportunities of the member.''

TEST PROGRAM FOR REIMBURSEMENT FOR ADOPTION EXPENSES

Section 638 of Pub. L. 100–180, as amended by Pub. L. 101–189, div. A, title VI, §662, Nov. 29, 1989, 103 Stat. 1465; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(1), Nov. 5, 1990, 104 Stat. 1719, provided that the Secretary of Defense, with respect to members of the Armed Forces, and the Secretary of Transportation, with respect to members of the Coast Guard, were to carry out a test program providing for reimbursement for qualifying adoption expenses incurred by members of the Army, Navy, Air Force, or Marine Corps for adoption proceedings inititated after September 30, 1987, and before October 1, 1990, and for qualifying adoption expenses incurred by members of the Coast Guard for adoption proceedings inititated after September 30, 1989, and before October 1, 1990.

COUNTERINTELLIGENCE POLYGRAPH PROGRAM

Section 1121 of Pub. L. 100–180, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(5), Nov. 18, 1997, 111 Stat. 1906, provided that:

''(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may carry out a program for the administration of counterintelligence polygraph examinations to persons described in subsection (b). The program shall be based on Department of Defense Directive 5210.48, dated December 24, 1984.

''(b) PERSONS COVERED.—Except as provided in subsection (d), the following persons whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 [set out as a note under section 435 of Title 50, War and National Defense] (or a successor Executive order) are subject to this section:

''(1) Military and civilian personnel of the Department of Defense.

''(2) Personnel of defense contractors.

''(c) LIMITATION ON NUMBER OF EXAMINATIONS.—The number of counterintelligence polygraph examinations that may be administered under this section may not exceed 5,000 during any fiscal year for which a specific number is not otherwise provided by law.

''(d) EXCEPTIONS FROM COVERAGE FOR CERTAIN INTELLIGENCE AGENCIES AND FUNCTIONS.—This section does not apply—

''(1) to a person assigned or detailed to the Central Intelligence Agency or to an expert or consultant under a contract with the Central Intelligence Agency;

''(2) to (A) a person employed by or assigned or detailed to the National Security Agency, (B) an expert or consultant under contract to the National Security Agency, (C) an employee of a contractor of the National Security Agency, or (D) a person applying for a position in the National Security Agency;

''(3) to a person assigned to a space where sensitive cryptographic information is produced, processed, or stored; or

''(4) to a person employed by, or assigned or detailed to, an office within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs or a contractor of such an office.

''(e) POLYGRAPH RESEARCH PROGRAM.—The Secretary of Defense shall carry out a continuing research program to support the polygraph activities of the Department of Defense. The program shall include—

''(1) an on-going evaluation of the validity of polygraph techniques used by the Department;

''(2) research on polygraph countermeasures and anti-countermeasures; and

''(3) developmental research on polygraph techniques, instrumentation, and analytic methods.

''(f) ANNUAL REPORT ON POLYGRAPH PROGRAMS.—(1) Not later than January 15 of each year, the Secretary of Defense shall submit to Congress a report on polygraph examinations administered by or for the Department of Defense during the previous fiscal year (whether administered under this section or any other authority).

''(2) Each such report shall include the following with regard to the program authorized by subsection (a):

''(A) A statement of the number of polygraph examinations administered by or for the Department of Defense during such fiscal year.

''(B) A description of the purposes and results of such examinations.

''(C) A description of the criteria used for selecting programs and persons for such examination.

''(D) A statement of the number of persons who refused to submit to such an examination and a description of the actions taken as a result of the refusals.

''(E) A statement of the number of persons for which such an examination indicated deception and the action taken as a result of the examinations.

''(F) A detailed accounting of those cases in which more than two such examinations were needed to attempt to resolve discrepancies and those cases in which the examination of a person extended over more than one day.

''(3) Each such report shall also include the following:

''(A) A description of any plans to expand the use of polygraph examinations in the Department of Defense.

''(B) A discussion of any plans of the Secretary for recruiting and training additional polygraph operators together with statistical data on the employment turnover of Department of Defense polygraph operators.

''(C) A description of the results during the preceding fiscal year of the research program under subsection (e).

''(D) A statement of the number of polygraph examinations administered to persons described in subsection (d) (which number may be set forth in a classified annex to the report).

''(g) REPEAL.—Section 1221 of the Department of Defense Authorization Act, 1986 (Public Law 99–145; 99 Stat. 726) [not classified to the Code], is repealed.

''(h) EFFECTIVE DATE.—This section shall take effect as of October 1, 1987.''

COORDINATION OF PERMANENT CHANGE OF STATION MOVES WITH SCHOOL YEAR

Pub. L. 99–661, div. A, title VI, §612, Nov. 14, 1986, 100 Stat. 3878, provided that: ''The Secretary of each mili-

tary department shall establish procedures to ensure that, to the maximum extent practicable within operational and other military requirements, permanent change of station moves for members of the Armed Forces under the jurisdiction of the Secretary who have dependents in elementary or secondary school occur at times that avoid disruption of the school schedules of such dependents.''

COMPARABLE BUDGETING FOR SIMILAR SYSTEMS

Pub. L. 99–500, §101(c) [title X, §955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, §101(c) [title X, §955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, which provided that in preparing the defense budget for any fiscal year, the Secretary of Defense was to specifically identify each common procurement weapon system included in the budget, take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system, and identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems, and that the Secretary of Defense carry out this section through the Assistant Secretary of Defense (Comptroller), was repealed and restated in section 2217 of this title by Pub. L. 100–370, §1(d)(3).

ANNUAL REPORT TO CONGRESS ON IMPLEMENTATION OF JOINT OFFICER PERSONNEL POLICY

Section 405 of Pub. L. 99–433 provided that: ''The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of title 10, United States Code (as redesignated by section 101(a)), for each year from 1987 through 1991 a detailed report on the implementation of this title and the amendments made by this title [enacting chapter 38 of this title, amending sections 601, 612, 615, 618, and 619 of this title, and enacting provisions set out as notes under sections 113, 612, 661, 663, and 664 of this title].''

INITIAL REPORT TO CONGRESS

Section 406(g) of Pub. L. 99–433 provided that: ''The first report submitted by the Secretary of Defense after the date of the enactment of this Act [Oct. 1, 1986] under section 113(c) of title 10, United States Code (as redesignated by section 101), shall contain as much of the information required by section 667 of such title (as added by section 401) as is available to the Secretary at the time of the preparation of the report.''

SECURITY AT MILITARY BASES ABROAD

Pub. L. 99–399, title XI, Aug. 27, 1986, 100 Stat. 894, provided that:

''SEC. 1101. FINDINGS.

''The Congress finds that—

''(1) there is evidence that terrorists consider bases and installations of United States Armed Forces outside the United States to be targets for attack;

''(2) more attention should be given to the protection of members of the Armed Forces, and members of their families, stationed outside the United States; and

''(3) current programs to educate members of the Armed Forces, and members of their families, stationed outside of the United States to the threats of terrorist activity and how to protect themselves should be substantially expanded.

''SEC. 1102. RECOMMENDED ACTIONS BY THE SECRETARY OF DEFENSE.

''It is the sense of the Congress that—

''(1) the Secretary of Defense should review the security of each base and installation of the Department of Defense outside the United States, including the family housing and support activities of each such base or installation, and take the steps the Secretary considers necessary to improve the security of such bases and installations; and

''(2) the Secretary of Defense should institute a program of training for members of the Armed Forces, and for members of their families, stationed outside the United States concerning security and antiterrorism.

''SEC. 1103. REPORT TO THE CONGRESS.

''No later than June 30, 1987, the Secretary of Defense shall report to the Congress on any actions taken by the Secretary described in section 1102.''

SURCHARGE FOR SALES BY ANIMAL DISEASE PREVENTION AND CONTROL CENTERS; FEE FOR VETERINARY SERVICES

Pub. L. 99–145, title VI, §685(a), (b), (d), Nov. 8, 1985, 99 Stat. 666, provided that:

''(a) REQUIRED SURCHARGE.—The Secretary of Defense shall require that each time a sale is recorded at a military animal disease prevention and control center the person to whom the sale is made shall be charged a surcharge of $2.

''(b) DEPOSIT OF RECEIPTS IN TREASURY.—Amounts received from surcharges under this section shall be deposited in the Treasury in accordance with section 3302 of title 31.''

''(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1985.''

Pub. L. 98–94, title X, §1033, Sept. 24, 1983, 97 Stat. 672, as amended by Pub. L. 98–525, title VI, §656, Oct. 19, 1984, 98 Stat. 2553, effective Oct. 1, 1985, required payment by a member of the Armed Forces of a $10 fee for veterinary services, prior to repeal by Pub. L. 99–145, title VI, §685(c), (d), Nov. 8, 1985, 99 Stat. 666, effective Oct. 1, 1985.

MILITARY FAMILY POLICY AND PROGRAMS

Pub. L. 99–145, title VIII, Nov. 8, 1985, 99 Stat. 678, as amended by Pub. L. 99–661, div. A, title VI, §653, Nov. 14, 1986, 100 Stat. 3890; Pub. L. 100–180, div. A, title VI, §635, Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–456, div. A, title V, §524, Sept. 29, 1988, 102 Stat. 1975, which provided that such title could be cited as the ''Military Family Act of 1985'', and which related to Office of Family Policy, transfer of Military Family Resource Center, surveys of military families, family members serving on advisory committees, employment opportunities for military spouses, youth sponsorship program, dependent student travel within United States, relocation and housing, food programs, reporting of child abuse, miscellaneous reporting requirements, and effective date, was repealed and restated in subchapter I (§1781 et seq.) of chapter 88 of this title by Pub. L. 104–106, div. A, title V, §568(a)(1), (e)(1), Feb. 10, 1996, 110 Stat. 329, 336.

ACADEMIC INSTITUTIONS ELIGIBLE TO PROVIDE EDUCATIONAL SERVICES; PROHIBITION OF CERTAIN RESTRICTIONS

Pub. L. 99–145, title XII, §1212, Nov. 8, 1985, 99 Stat. 726, as amended by Pub. L. 101–189, div. A, title V, §518, Nov. 29, 1989, 103 Stat. 1443, provided that:

''(a) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees may discriminate against or preclude any accredited academic institution authorized to award one or more associate degrees from offering courses within its lawful scope of authority solely on the basis of such institution's lack of authority to award a baccalaureate degree.

''(b) No solicitation, contract, or agreement for the provision of off-duty postsecondary education services for members of the Armed Forces of the United States, civilian employees of the Department of Defense, or the dependents of such members or employees, other than

those for services at the graduate or postgraduate level, may limit the offering of such services or any group, category, or level of courses to a single academic institution. However, nothing in this section shall prohibit such actions taken in accordance with regulations of the Secretary of Defense which are uniform for all armed services as may be necessary to avoid unnecessary duplication of offerings, consistent with the purpose of this provision of ensuring the availability of alternative offerors of such services to the maximum extent feasible.

''(c)(1) The Secretary of Defense shall conduct a study to determine the current and future needs of members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees for postsecondary education services at overseas locations. The Secretary shall determine on the basis of the results of that study whether the policies and procedures of the Department in effect on the date of the enactment of the Department of Defense Authorization Act for Fiscal Years 1990 and 1991 [probably means date of enactment of Pub. L. 101–189, Nov. 29, 1989] with respect to the procurement of such services are—

''(A) consistent with the provisions of subsections (a) and (b);

''(B) adequate to ensure the recipients of such services the benefit of a choice in the offering of such services; and

''(C) adequate to ensure that persons stationed at geographically isolated military installations or at installations with small complements of military personnel are adequately served.

The Secretary shall complete the study in such time as necessary to enable the Secretary to submit the report required by paragraph (2)(A) by the deadline specified in that paragraph.

''(2)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the study referred to in paragraph (1), together with a copy of any revisions in policies and procedures made as a result of such study. The report shall be submitted not later than March 1, 1990.

''(B) The Secretary shall include in the report an explanation of how determinations are made with regard to—

''(i) affording members, employees, and dependents a choice in the offering of courses of postsecondary education; and

''(ii) whether the services provided under a contract for such services should be limited to an installation, theater, or other geographic area.

''(3)(A) Except as provided in subparagraph (B), no contract for the provision of services referred to in subsection (a) may be awarded, and no contract or agreement entered into before the date of the enactment of this paragraph [Nov. 29, 1989] may be renewed or extended on or after such date, until the end of the 60-day period beginning on the date on which the report referred to in paragraph (2)(A) is received by the committees named in that paragraph.

''(B) A contract or an agreement in effect on October 1, 1989, for the provision of postsecondary education services in the European Theater for members of the Armed Forces, civilian employees of the Department of Defense, and the dependents of such members and employees may be renewed or extended without regard to the limitation in subparagraph (A).

''(C) In the case of a contract for services with respect to which a solicitation is pending on the date of the enactment of this paragraph [Nov. 29, 1989], the contract may be awarded—

''(i) on the basis of the solicitation as issued before the date of the enactment of this paragraph;

''(ii) on the basis of the solicitation issued before the date of the enactment of this paragraph modified so as to conform to any changes in policies and procedures the Secretary determines should be made as a result of the study required under paragraph (1); or

''(iii) on the basis of a new solicitation.

''(d) Nothing in this section shall be construed to require more than one academic institution to be authorized to offer courses aboard a particular naval vessel.''

Report of Unobligated Balances

Pub. L. 99–145, title XIV, §1407, Nov. 8, 1985, 99 Stat. 745, required reports on unobligated balances, prior to repeal by Pub. L. 99–661, div. A, title XIII, §1307(b), Nov. 14, 1986, 100 Stat. 3981. See section 2215 of this title.

Defense Industrial Base for Textile and Apparel Products

Pub. L. 99–145, title XIV, §1456, Nov. 8, 1985, 99 Stat. 762, which directed Secretary of Defense to monitor capability of domestic textile and apparel industrial base to support defense mobilization requirements and to make annual reports to Congress on status of such industrial base, was repealed and restated in section 2510 of this title by Pub. L. 101–510, §826(a)(1), (b).

Hotline Between United States and Soviet Union

Pub. L. 99–85, Aug. 8, 1985, 99 Stat. 286, as amended by Pub. L. 103–199, title IV, §404(a), Dec. 17, 1993, 107 Stat. 2325, provided: ''That the Secretary of Defense may provide to Russia, as provided in the Exchange of Notes Between the United States of America and the Union of Soviet Socialist Republics Concerning the Direct Communications Link Upgrade, concluded on July 17, 1984, such equipment and services as may be necessary to upgrade or maintain the Russian part of the Direct Communications Link agreed to in the Memorandum of Understanding between the United States and the Soviet Union signed June 20, 1963. The Secretary shall provide such equipment and services to Russia at the cost thereof to the United States.

''Sec. 2. (a) The Secretary of Defense may use any funds available to the Department of Defense for the procurement of the equipment and providing the services referred to in the first section.

''(b) Funds received from Russia as payment for such equipment and services shall be credited to the appropriate account of Department of Defense.''

[Pub. L. 103–199, title IV, §404(b), Dec. 17, 1993, 107 Stat. 2325, provided that: ''The amendment made by subsection (a)(2) [amending section 2(b) of Pub. L. 99–85, set out above] does not affect the applicability of section 2(b) of that joint resolution to funds received from the Soviet Union.'']

Consolidation of Functions of Military Transportation Commands Prohibited

Pub. L. 97–252, title XI, §1110, Sept. 8, 1982, 96 Stat. 747, provided that none of funds appropriated pursuant to an authorization of appropriations could be used for purpose of consolidating any functions being performed on Sept. 8, 1982, by Military Traffic Management Command of Army, Military Sealift Command of Navy, or Military Airlift Command of Air Force with any function being performed on such date by either or both of the other commands, prior to repeal by Pub. L. 99–433, title II, §213(a), Oct. 1, 1986, 100 Stat. 1018.

Reports to Congress on Recommendations With Respect to Elimination of Waste, Fraud, Abuse, and Mismanagement in Department of Defense

Pub. L. 97–86, title IX, §918, Dec. 1, 1981, 95 Stat. 1132, directed Secretary of Defense, not later than Jan. 15, 1982 and 1983, to submit to Congress reports containing recommendations to improve efficiency and management of, and to eliminate waste, fraud, abuse, and mismanagement in, operation of Department of Defense, and to include each recommendation by Comptroller General since Jan. 1, 1979, for elimination of waste, fraud, abuse, or mismanagement in Department of Defense with a statement as to which have been adopted and, to extent practicable actual and projected cost savings from each, and which have not been adopted and, to extent practicable, projected cost savings from

each and an explanation of why each such recommendation was not adopted.

MILITARY INSTALLATIONS TO BE CLOSED IN UNITED STATES, GUAM, OR PUERTO RICO; STUDIES TO DETERMINE POTENTIAL USE

Pub. L. 94–431, title VI, § 610, Sept. 30, 1976, 90 Stat. 1365, authorized Secretary of Defense to conduct studies with regard to possible use of military installations being closed and to make recommendations with regard to such installations, prior to repeal by Pub. L. 97–86, title IX, § 912(b), Dec. 1, 1981, 95 Stat. 1123. See section 2391 of this title.

REPORTS TO CONGRESSIONAL COMMITTEES ON FOREIGN POLICY AND MILITARY FORCE STRUCTURE

Pub. L. 94–106, title VIII, § 812, Oct. 7, 1975, 89 Stat. 540, which directed Secretary of Defense, after consultation with Secretary of State, to prepare and submit not later than January 31 of each year to Committees on Armed Services of Senate and House of Representatives a written annual report on foreign policy and military force structure of United States for next fiscal year, how such policy and force structure relate to each other, and justification for each, was repealed and restated as subsec. (e) of section 133 [now § 113] of this title by Pub. L. 97–295, §§ 1(1), 6(b).

REPORT TO CONGRESS ON SALE OR TRANSFER OF DEFENSE ARTICLES

Pub. L. 94–106, title VIII, § 813, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 95–79, title VIII, § 814, July 30, 1977, 91 Stat. 337; Pub. L. 97–252, title XI, § 1104, Sept. 8, 1982, 96 Stat. 739, which directed Secretary of Defense to report to Congress on any letter proposing to transfer $50,000,000 or more of defense articles, detailing impact of such a sale on readiness, adequacy of price for replacement, and armed forces needs and supply for each article, was repealed and restated as section 133b (renumbered § 118 and repealed) of this title by Pub. L. 97–295, §§ 1(2)(A), 6(b).

PROCUREMENT OF AIRCRAFT, MISSILES, NAVAL VESSELS, TRACKED COMBAT VEHICLES, AND OTHER WEAPONS; AUTHORIZATION OF APPROPRIATIONS FOR PROCUREMENT, RESEARCH, DEVELOPMENT, TEST, AND EVALUATION ACTIVITIES; SELECTED RESERVE OF RESERVE COMPONENTS: ANNUAL AUTHORIZATION OF PERSONNEL STRENGTH

Section 412 of Pub. L. 86–149, title IV, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, § 2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, § 610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, § 304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, § 6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, § 405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§ 505, 509, Oct. 7, 1970, 84 Stat. 912, 913; Pub. L. 92–129, title VII, § 701, Sept. 28, 1971, 85 Stat. 362; Pub. L. 92–436, title III, § 302, title VI, § 604, Sept. 26, 1972, 86 Stat. 736, 739, was repealed by Pub. L. 93–155, title VIII, § 803(b)(1), Nov. 16, 1973, 87 Stat. 615. See sections 114 to 116 of this title.

EX. ORD. NO. 12765. DELEGATION OF CERTAIN DEFENSE RELATED AUTHORITIES OF PRESIDENT TO SECRETARY OF DEFENSE

Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 749 of title 10 of the United States Code to assign the command without regard to rank in grade to any commissioned officer otherwise eligible to command when two or more commissioned officers of the same grade or corresponding grades are assigned to the same area, field command, or organization.

SEC. 2. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7299a(a) of title 10 of the United States Code to direct that combatant vessels and escort vessels be constructed in a Navy or private yard, as the case may be, if the requirement of the Act of March 27, 1934 (ch. 95, 48 Stat. 503) that the first and each succeeding alternate vessel of the same class be constructed in a Navy yard is inconsistent with the public interest.

SEC. 3. For vessels, and for any major component of the hull or superstructure of vessels to be constructed or repaired for any of the armed forces, the Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by section 7309(b) of title 10 of the United States Code to authorize exceptions to the prohibition in section 7309(a) of title 10 of the United States Code. Such exceptions shall be based on a determination that it is in the national security interest of the United States to authorize an exception. The Secretary of Defense shall transmit notice of any such determination to the Congress, as required by section 7309(b).

SEC. 4. The Secretary of Defense may redelegate the authority delegated to him by this order, in accordance with applicable law.

SEC. 5. This order shall be effective immediately.

GEORGE BUSH.

WAIVER OF LIMITATION WITH RESPECT TO END STRENGTH LEVEL OF U.S. ARMED FORCES IN JAPAN FOR FISCAL YEAR 1991

Memorandum of the President of the United States, May 14, 1991, 56 F.R. 23991, provided:

Memorandum for the Secretary of Defense

Consistent with section 8105(d)(2) of the Department of Defense Appropriation Act, 1991 (Public Law 101–511; 104 Stat. 1856) [set out above], I hereby waive the limitation in section 8105(b) which states that the end strength level for each fiscal year of all personnel of the Armed Forces of the United States stationed in Japan may not exceed the number that is 5,000 less than such end strength level for the preceding fiscal year, and declare that it is in the national interest to do so.

You are authorized and directed to inform the Congress of this waiver and of the reasons for the waiver contained in the attached justification, and to publish this memorandum in the Federal Register.

GEORGE BUSH.

JUSTIFICATION PURSUANT TO SECTION 8105(d)(2) OF THE DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, 1991 (PUBLIC LAW NO. 101–511; 104 STAT. 1856)

In January of this year the Department of Defense signed a new Host Nation Support Agreement with the Government of Japan in which that government agreed to pay all utility and Japanese labor costs incrementally over the next five years (worth $1.7 billion). Because United States forward deployed forces stationed in Japan have regional missions in addition to the defense of Japan, we did not seek to have the Government of Japan offset all of the direct costs incurred by the United States related to the presence of all United States military personnel in Japan (excluding military personnel title costs).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 117, 487, 667, 2501, 3038, 5143, 5144, 8038, 10504 of this title; title 22 section 2595a; title 50 section 1523; title 50 App. sections 2077, 2152.

§113a. Transmission of annual defense authorization request

(a) TIME FOR TRANSMITTAL.—The Secretary of Defense shall transmit to Congress the annual defense authorization request for a fiscal year during the first 30 days after the date on which the President transmits to Congress the budget for that fiscal year pursuant to section 1105 of title 31.

(b) DEFENSE AUTHORIZATION REQUEST DEFINED.—In this section, the term ''defense authorization request'', with respect to a fiscal year, means a legislative proposal submitted to Congress for the enactment of the following:

(1) Authorizations of appropriations for that fiscal year, as required by section 114 of this title.

(2) Personnel strengths for that fiscal year, as required by section 115 of this title.

(3) Any other matter that is proposed by the Secretary of Defense to be enacted as part of the annual defense authorization bill for that fiscal year.

(Added Pub. L. 107–314, div. A, title X, §1061(a), Dec. 2, 2002, 116 Stat. 2649.)

§114. Annual authorization of appropriations

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

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

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

(3) procurement of tracked combat vehicles;

(4) procurement of other weapons;

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

(6) military construction;

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

(8) procurement of ammunition; or

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

unless funds therefor have been specifically authorized by law.

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

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

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

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

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

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

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

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

(Added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, §138; amended Pub. L. 94–106, title VIII, §801(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 94–361, title III, §302, July 14, 1976, 90 Stat. 924; Pub. L. 96–107, title III, §303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–342, title X, §1001(a)(1), (b)–(d)(1), Sept. 8, 1980, 94 Stat. 1117–1119; Pub. L. 96–513, title I, §102, title V, §511(4), Dec. 12, 1980, 94 Stat. 2840, 2920; Pub. L. 97–22, §2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title III, §302, title IX, §§901(a), 902, 903, Dec. 1, 1981, 95 Stat. 1104, 1113, 1114; Pub. L. 97–113, title I, §108(b), Dec. 29, 1981, 95 Stat. 1524; Pub. L. 97–214, §4, July 12, 1982, 96 Stat. 170; Pub. L. 97–252, title IV, §402(a), title XI, §§1103, 1105, Sept. 8, 1982, 96 Stat. 725, 738, 739; Pub. L. 97–295, §1(3), (4), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–525, title XIV, §1405(2), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99–145, title XII, §1208, title XIV, §1403, Nov. 8, 1985, 99 Stat. 723, 743; renumbered §114 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(b)(1)–(9), (11), Oct. 1, 1986, 100 Stat. 994, 1001, 1002; Pub. L. 99–661, div. A, title I, §105(d), title XIII, §1304(a), Nov. 14, 1986, 100 Stat. 3827, 3979; Pub. L. 100–26, §7(j)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–180, div. A, title XII, §1203, Dec. 4, 1987, 101 Stat. 1154; Pub. L. 101–189, div. A, title XVI, §1602(b), Nov. 29, 1989, 103 Stat. 1597; Pub. L. 101–510, div. A, title XIV, §1481(a)(1), Nov. 5, 1990, 104 Stat. 1704; Pub. L. 104–106, div. A, title XV, §1501(c)(2), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104–201, div. A, title X, §1005, Sept. 23, 1996, 110 Stat. 2632.)

HISTORICAL AND REVISION NOTES
1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
138(c)(5) ..	10:138 (note).	Aug. 5, 1974, Pub. L. 93–365, § 502, 88 Stat. 404.
138(i)	10:135 (note).	June 11, 1965, Pub. L. 89–37, § 305, 79 Stat. 128.

In subsection (c)(5), the words ''It is the sense of Congress that'' are omitted as unnecessary. The words ''Secretary of Defense'' are substituted for ''Department of Defense'' the first time it appears because the responsibility is in the head of the agency. The word ''Therefore'' is omitted as surplus. The word ''complete'' is substituted for ''full'', and the word ''personnel'' is substituted for ''manpower'' except in the phrase ''manpower requirements'', for consistency.

In subsection (i), the words ''may be . . . only if'' are substituted for ''No . . . may be . . . unless'' to use the positive voice. The words ''after June 30, 1966'' are substituted for ''after that date'' for clarity.

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended. Chapter 5 of the Arms Export Control Act is classified generally to subchapter V (§ 2795 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (c)(2) of this section were contained in Pub. L. 101–165, title IX, § 9017, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note below, prior to repeal by Pub. L. 101–510, § 1481(a)(2).

Prior similar provisions were contained in Pub. L. 86–149, title IV, § 412, Aug. 10, 1959, 73 Stat. 322, as amended by Pub. L. 87–436, § 2, Apr. 27, 1962, 76 Stat. 55; Pub. L. 88–174, title VI, § 610, Nov. 7, 1963, 77 Stat. 329; Pub. L. 89–37, title III, § 304, June 11, 1965, 79 Stat. 128; Pub. L. 90–168, § 6, Dec. 1, 1967, 81 Stat. 526; Pub. L. 91–121, title IV, § 405, Nov. 19, 1969, 83 Stat. 207; Pub. L. 91–441, title V, §§ 505, 509, Oct. 7, 1970, 84 Stat. 912, 913; Pub. L. 92–129, title VII, § 701, Sept. 28, 1971, 85 Stat. 362; Pub. L. 92–436, title III, § 302, title VI, § 604, Sept. 26, 1972, 86 Stat. 736, 739, prior to repeal by Pub. L. 93–155, § 803(b)(1).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''chapter 1803'' for ''chapter 133''.

Subsec. (f). Pub. L. 104–201 added subsec. (f).

1990—Subsec. (c). Pub. L. 101–510 designated existing provisions as par. (1) and added par. (2).

1989—Subsecs. (f), (g). Pub. L. 101–189 struck out subsecs. (f) and (g) which read as follows:

''(f) The amounts of the estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress by the President under such section for any fiscal year or years and the amounts specified in all program and budget information submitted to Congress by the Department of Defense in support of such estimates and proposed appropriations shall be mutually consistent unless, in the case of each inconsistency, there is included detailed reasons for the inconsistency.

''(g) The Secretary of Defense shall submit to Congress not later than April 1 of each year, the five-year defense program (including associated annexes) used by the Secretary in formulating the estimated expenditures and proposed appropriations included in such budget to support programs, projects, and activities of the Department of Defense.''

1987—Subsec. (e). Pub. L. 100–26 redesignated subsec. (f) as (e).

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

Pub. L. 100–26, § 7(j)(1), redesignated subsec. (f) as (e).

Subsec. (g). Pub. L. 100–180, § 1203, added subsec. (g).

1986—Pub. L. 99–433, § 101(a)(2), renumbered section 138 of this title as this section.

Pub. L. 99–433, § 110(b)(1), struck out ''and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' at end of section catchline.

Subsec. (a)(6). Pub. L. 99–433, § 110(b)(3), struck out ''(as defined in subsection (f))'' after ''military construction''.

Subsec. (b). Pub. L. 99–433, § 110(b)(4), (5), (8), redesignated subsec. (f)(1) as (b). Former subsec. (b) redesignated section 115(a) of this title.

Subsec. (c). Pub. L. 99–661, § 1304(a), substituted ''$1,070,000,000'' for ''$1,000,000,000''.

Pub. L. 99–433, § 110(b)(4), (5), (11), redesignated subsec. (g) as (c). Former subsec. (c) redesignated section 115(b) of this title.

Subsec. (d). Pub. L. 99–433, § 110(b)(4), (5), (11), redesignated subsec. (i) as (d). Former subsec. (d) redesignated section 115(c) of this title.

Subsec. (e). Pub. L. 99–433, § 110(b)(6), (7), redesignated subsec. (e) as section 116(a) of this title.

Subsec. (f). Pub. L. 99–661, § 105(d), added subsec. (f).

Subsec. (f)(1). Pub. L. 99–433, § 110(b)(8), redesignated subsec. (f)(1) as (b).

Subsec. (f)(2). Pub. L. 99–433, § 110(b)(9), redesignated subsec. (f)(2) as section 116(b) of this title.

Subsec. (g). Pub. L. 99–433, § 110(b)(11), redesignated subsec. (g) as (c).

Subsec. (h). Pub. L. 99–433, § 110(b)(2), redesignated subsec. (h) as section 113(i) of this title.

Subsec. (i). Pub. L. 99–433, § 110(b)(11), redesignated subsec. (i) as (d).

1985—Subsec. (b)(3). Pub. L. 99–145, § 1208, added par. (3).

Subsec. (g). Pub. L. 99–145, § 1403, substituted ''$1,000,000,000'' for ''$300,000,000 in fiscal year 1982, may not exceed $600,000,000 in fiscal year 1983, and may not exceed $900,000,000 in fiscal year 1984 or any fiscal year thereafter''.

1984—Subsec. (g). Pub. L. 98–525 inserted ''(22 U.S.C. 2795 et seq.)''.

1982—Subsec. (c)(1)(A). Pub. L. 97–252, § 402(a), authorized increase in fiscal year end-strength authorizations determined by the Secretary of Defense to be in the national interest.

Subsec. (c)(5). Pub. L. 97–295, § 1(3), added par. (5).

Subsec. (f)(1). Pub. L. 97–214 substituted '', any activity to which section 2807 of this title applies, any activity to which chapter 133 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23'' for ''but excludes any activity to which section 2673 or 2674, or chapter 133, of this title apply, or to which section 406(a) of Public Law 85–241 (42 U.S.C. 1594i) applies'' and inserted provision that ''military construction'' does not include any activity to which section 2821 or 2854 of this title applies.

Subsec. (g). Pub. L. 97–252, § 1103, limited size of Special Defense Acquisition Fund to $600,000,000 in fiscal year 1983, striking out such sum as a limit in any fiscal year thereafter, and limited size of Fund to $900,000,000 in fiscal year 1984 or any fiscal year thereafter.

Subsec. (h). Pub. L. 97–252, § 1105, added subsec. (h).

Subsec. (i). Pub. L. 97–295, § 1(4), added subsec. (i).

1981—Subsec. (a)(8), (9). Pub. L. 97–86, § 901(a), added pars. (8) and (9).

Subsec. (b). Pub. L. 97–86, § 902, designated existing provisions as par. (1), substituted ''authorize the average personnel strength'' for ''authorize the personnel strength'', and added par. (2).

Subsec. (c)(3)(D)(iii)(I). Pub. L. 97–22 struck out ''and active military service'' after ''active commissioned service''.

Subsec. (c)(4). Pub. L. 97–86, § 903, added par. (4).

Subsec. (e)(3), (4). Pub. L. 97–86, §302, struck out pars. (3) and (4) which required the Secretary to include in each report a projection of the combat readiness of specified military units proposed to be maintained during the next fiscal year.

Subsec. (g). Pub. L. 97–113 added subsec. (g).

1980—Pub. L. 96–342, §1001(d)(1), substituted ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' for ''Secretary of Defense: Annual authorization of appropriations for armed forces'' in section catchline.

Subsec. (a). Pub. L. 96–342, §1001(a)(1), (b)(1), in cl. (6) substituted reference to subsec. (f) for reference to subsec. (e), and added cl. (7).

Subsec. (c)(1). Pub. L. 96–513, §102(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (c)(3)(D). Pub. L. 96–513, §102(b), substituted provisions relating to expanded coverage in the annual report of the Secretary of Defense for provisions under which the report had formerly covered only the estimated requirements in members on active duty during the next fiscal year, the estimated number of commissioned officers in each grade on active duty and to be promoted during the next fiscal year, and an analysis of the distribution by grade of commissioned officers on active duty at the time the report was prepared.

Subsec. (e). Pub. L. 96–342, §1001(b)(2), (3), added subsec. (e). Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 96–513, §511(4), substituted ''(42 U.S.C. 1594i)'' for ''(71 Stat. 556)'' in par. (1), and substituted ''In subsection (e)'' for ''In subsection (f)'' in par. (2).

Pub. L. 96–342, §1001(b)(2), (c), redesignated subsec. (e) as (f), substituted ''(1) In subsection (a)(6)'' for ''For purposes of subsection (a)(6) of this section'', and added par. (2).

1979—Subsec. (c)(3). Pub. L. 96–107 restructured existing provisions into subpars. (A) to (C) with minor changes in phraseology and added subpar. (D).

1976—Subsec. (c)(3). Pub. L. 94–361 required the report to Congress to identify, define, and group by mission and by region the types of military bases, installations, and facilities and to provide an explanation and justification of the relationship between the base structure and the proposed military force structure together with a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce the costs.

1975—Subsec. (a)(6). Pub. L. 94–106, §801(a)(1), added par. (6).

Subsec. (e). Pub. L. 94–106, §801(a)(2), added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 402(b) of Pub. L. 97–252 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to end strengths for active-duty personnel authorized for fiscal years beginning after September 30, 1981.''

Amendment by Pub. L. 97–214 applicable with respect to funds appropriated for fiscal years beginning after Sept. 30, 1983, see section 12(b) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 901(b) of Pub. L. 97–86 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 102 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511(4) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Section 1001(a)(2) of Pub. L. 96–342 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1981.''

APPLICABILITY OF PROVISIONS RELATING TO FUNDS NOT HERETOFORE REQUIRED TO BE AUTHORIZED

Section 801(b) of Pub. L. 94–106 provided that: ''The amendment provided by paragraph (2) of subsection (a) above [enacting subsec. (e) of this section] with respect to funds not heretofore required to be authorized shall only apply to funds authorized for appropriation for fiscal year 1977 and thereafter.''

AVAILABILITY OF APPROPRIATIONS

Pub. L. 101–165, title IX, §9017, Nov. 21, 1989, 103 Stat. 1133, which prohibited funding to be used for planning or executing programs which utilized amounts credited to the Department of Defense pursuant to section 2777(a) of Title 22, Foreign Relations and Intercourse, was repealed and restated in subsec. (c)(2) of this section by Pub. L. 101–510, div. A, title XIV, §1481(a), Nov. 5, 1990, 104 Stat. 1704.

The following general provisions, which had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1986, Pub. L. 99–190, §101(b) [title VIII, §§8005, 8006, 8009], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203, 1204:

''SEC. 8005. [Authorized use of appropriated funds for expenses in connection with administration of occupied areas; payment of rewards for information leading to discovery of missing naval property or recovery thereof; payment of deficiency judgments and interests thereon arising out of condemnation proceedings; leasing of buildings and facilities; payments under contracts for maintenance of tools and facilities for twelve months; maintenance of defense access roads; purchase of milk for enlisted personnel; payments under leases for real or personal property, including maintenance; purchase of right-hand-drive vehicles not to exceed $12,000 per vehicle; payment of unusual cost overruns incident to ship overhaul, maintenance, and repair; payments from annual appropriations to industrial fund activities and/or under contract for changes in scope of ship overhaul, maintenance, and repair after expiration of such appropriations; and payments for depot maintenance contracts for twelve months; and was repealed and (except for section 8005(e)) restated in sections 2242(2), 2252, 2253(a)(2), 2389(b), 2410a, 2661(b), and 7313 of this title by Pub. L. 100–370, §1(e)(1), (h)(1), (2), (*l*)(3), (n)(1), (p)(3), July 19, 1988, 102 Stat. 844, 847, 849–851. Section 8005(c) was not restated in view of section 2676(e) of this title.]

''SEC. 8006. [Authorized use of appropriated funds for military courts, boards, and commissions; utility services for buildings erected at private cost and buildings on military reservations authorized by regulations to be used for welfare and recreational purposes; and exchange fees, and losses in accounts of disbursing officers or agents; and was repealed and restated in sections 2242(3), 2490, and 2781 of this title by Pub. L. 100–370, §1(e)(1), (j)(1), (m)(1), (p)(3), July 19, 1988, 102 Stat. 844, 848, 849, 851.]

''SEC. 8009. [Provided for exemption from apportionment requirement; exceptions for cost of airborne alerts and cost of increased military personnel on active duty; and for reports to Congress; and was repealed and restated in section 2201 of this title by Pub. L. 100–370, §1(d)(1), July 19, 1988, 102 Stat. 841.]''

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department

of Defense Appropriation Act, 1984, Pub. L. 98–212, title VII, §§705–707, 723, 728, 735, 774, Dec. 8, 1983, 97 Stat. 1437, 1438, 1443, 1444, 1452:

''SEC. 705. [Authorized use of appropriated funds for insurance of official motor vehicles in foreign countries; advance payments for investigations in foreign countries; security guard services for protection of confidential files; and other necessary expenses; and was repealed and restated in sections 2241(b), 2242(1), (4), and 2253(a)(1) of this title by Pub. L. 100–370, §1(e)(1), (p)(1), July 19, 1988, 102 Stat. 844, 851.]

''SEC. 706. [Authorized use of appropriated funds for expenses incident to maintenance, pay, and allowances of prisoners of war, other persons in Army, Navy, or Air Force custody whose status was determined by Secretary concerned to be similar to prisoners of war, and persons detained in such custody pursuant to Presidential proclamation, and was repealed by Pub. L. 98–525, title XIV, §§1403(a)(1), 1404, Oct. 19, 1984, 98 Stat. 2621, effective Oct. 1, 1985. See section 956(5) of this title.]

''SEC. 707. [Authorized use of appropriated funds for acquisition of certain interests in land, and was repealed and restated in sections 2673 and 2828(h) of this title by Pub. L. 100–370, §1(*l*)(1), (2), (p)(1), July 19, 1988, 102 Stat. 849, 851.]

''SEC. 723. [Authorized use of appropriated funds for purchase of household furnishings, and automobiles from military and civilian personnel on duty outside continental United States, for purpose of resale at cost to incoming personnel, and for providing furnishings, without charge, in other than public quarters occupied by military or civilian personnel of Department of Defense on duty outside continental United States or in Alaska, and was repealed and restated in section 2251 of this title by Pub. L. 100–370, §1(e)(1), (p)(1), July 19, 1988, 102 Stat. 844, 851.]

''SEC. 728. [Prohibited use of appropriated funds for payment of costs of advertising by any defense contractor, except advertising for which payment is made from profits, provided exemptions for advertising for personnel recruitment, procurement of scarce required items, and disposal of scrap or surplus materials, and was repealed by Pub. L. 100–370, §1(p)(1), July 19, 1988, 102 Stat. 851. See section 2324(e)(1)(H) of this title.]

''SEC. 735. [Authorized use of appropriated funds for operation and maintenance of the active forces for welfare and recreation; hire of passenger motor vehicles; repair of facilities; modification of personal property; design of vessels; industrial mobilization; installation of equipment in public and private plants; military communications facilities on merchant vessels; acquisition of services, special clothing, supplies, and equipment; and expenses for the Reserve Officers' Training Corps and other units at educational institutions was amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, and was repealed and restated in sections 2241(a) and 2661(a) of this title by Pub. L. 100–370, §1(e)(1), (*l*)(3), (p)(1), July 19, 1988, 102 Stat. 844, 849, 851.]

''SEC. 774. During the current fiscal year and subsequent fiscal years, for the purposes of the appropriation 'Foreign Currency Fluctuations, Defense' the foreign currency exchange rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on this Act.''

WITHDRAWAL OF UNITED STATES GROUND FORCES FROM REPUBLIC OF BOSNIA AND HERZEGOVINA

Pub. L. 105–85, div. A, title XII, §§1203, 1206, Nov. 18, 1997, 111 Stat. 1929, 1932, provided that:

''SEC. 1203. WITHDRAWAL OF UNITED STATES GROUND FORCES FROM REPUBLIC OF BOSNIA AND HERZEGOVINA.

''(a) LIMITATION.—No funds appropriated or otherwise made available for the Department of Defense for fiscal year 1998 or any subsequent fiscal year may be used for the deployment of any United States ground combat forces in the Republic of Bosnia and Herzegovina after June 30, 1998, unless the President, not later than May 15, 1998, and after consultation with the bipartisan leadership of the two Houses of Congress, transmits to Congress a certification—

''(1) that the continued presence of United States ground combat forces, after June 30, 1998, in the Republic of Bosnia and Herzegovina is required in order to meet the national security interests of the United States; and

''(2) that after June 30, 1998, it will remain United States policy that United States ground forces will not serve as, or be used as, civil police in the Republic of Bosnia and Herzegovina.

''(b) REPORT.—The President shall submit with the certification under subsection (a) a report that includes the following:

''(1) The reasons why that presence is in the national security interest of the United States.

''(2) The number of United States military personnel to be deployed in and around the Republic of Bosnia and Herzegovina and other areas of the former Yugoslavia after that date.

''(3) The expected duration of any such deployment.

''(4) The mission and objectives of the United States Armed Forces to be deployed in and around the Republic of Bosnia and Herzegovina and other areas of the former Yugoslavia after June 30, 1998.

''(5) The exit strategy of such forces.

''(6) The incremental costs associated with any such deployment.

''(7) The effect of such deployment on the morale, retention, and effectiveness of United States armed forces.

''(8) A description of the forces from other nations involved in a follow-on mission, shown on a nation-by-nation basis.

''(9) A description of the command and control arrangement established for United States forces involved in a follow-on mission.

''(10) An assessment of the expected threats to United States forces involved in a follow-on mission.

''(11) The plan for rotating units and personnel to and from the Republic of Bosnia and Herzegovina during a follow-on mission, including the level of participation by reserve component units and personnel.

''(12) The mission statement and operational goals of the United States forces involved in a follow-on mission.

''(c) REQUEST FOR SUPPLEMENTAL APPROPRIATIONS.—The President shall transmit to Congress with a certification under subsection (a) a supplemental appropriations request for the Department of Defense for such amounts as are necessary for the costs of any continued deployment beyond June 30, 1998.

''(d) CONSTRUCTION WITH PRESIDENT'S CONSTITUTIONAL AUTHORITY.—Nothing in this section shall be deemed to restrict the authority of the President under the Constitution to protect the lives of United States citizens.

''(e) CONSTRUCTION WITH APPROPRIATIONS PROVISION.—The provisions of this section are enacted, and shall be applied, as supplemental to (and not in lieu of) the provisions of section 8132 of the Department of Defense Appropriations Act, 1998 (Public Law 105–56) [111 Stat. 1250].

''SEC. 1206. DEFINITIONS.

''As used in this subtitle [subtitle A (§§1201–1206) of title XII of div. A of Pub. L. 105–85, enacting this note]:

''(1) DAYTON PEACE AGREEMENT.—The term 'Dayton Peace Agreement' means the General Framework Agreement for Peace in Bosnia and Herzegovina, initialed by the parties in Dayton, Ohio, on November 21, 1995, and signed in Paris on December 14, 1995.

''(2) IMPLEMENTATION FORCE.—The term 'Implementation Force' means the NATO-led multinational military force in the Republic of Bosnia and Herzegovina (commonly referred to as 'IFOR'), authorized under the Dayton Peace Agreement.

''(3) STABILIZATION FORCE.—The term 'Stabilization Force' means the NATO-led follow-on force to the Im-

plementation Force in the Republic of Bosnia and Herzegovina and other countries in the region (commonly referred to as 'SFOR'), authorized under United Nations Security Council Resolution 1088 (December 12, 1996).

''(4) FOLLOW-ON MISSION.—The term 'follow-on mission' means a mission involving the deployment of ground elements of the United States Armed Forces in the Republic of Bosnia and Herzegovina after June 30, 1998 (other than as described in section 1203(b)).

''(5) NATO.—The term 'NATO' means the North Atlantic Treaty Organization.''

BUDGET DETERMINATION BY DIRECTOR OF OMB

Pub. L. 102–484, div. D, title XLV, §4501, Oct. 23, 1992, 106 Stat. 2769, provided that:

''(a) REQUIREMENT FOR DETERMINATION.—An amount made available under this Act [see Tables for classification] for a program described in subsection (b) may be obligated for that program only if expenditures for that program have been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 665(a)(2)]) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

''(b) COVERED PROGRAMS.—The programs referred to in subsection (a) are the programs under title XLIII [enacting section 2552 of this title, amending section 2391 of this title, and enacting provisions set out as notes under section 2391 of this title] and subtitles D through G of title XLIV [§§4441 to 4497, enacting sections 1143a, 1151, 1598, 2410c, and 2410d of this title and section 1662d–1 of Title 29, Labor, amending sections 1142 and 1144 of this title and sections 1551, 1661, 1661c, and 1662d of Title 29, and enacting provisions set out as notes under sections 1143, 1143a, 2410d, 2501, 2504, and 2701 of this title and section 1662d–1 of Title 29].

''(c) EFFECT ON APPROPRIATIONS FOR PROGRAMS NOT COUNTED AGAINST DEFENSE CATEGORY.—(1) Not later than the third day after the date of the enactment of this Act [Oct. 23, 1992], the Director of the Office of Management and Budget shall make a determination as to the classification by discretionary spending limit category for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 [see Short Title note set out under section 900 of Title 2, The Congress] of amounts appropriated for fiscal year 1993 for each of the programs described in subsection (b). If the Director determines that any such amount shall not classify against the defense category, then the President shall submit to Congress a report listing all such amounts that the Director has determined will not classify against the defense category (as described in subsection (a)). Such report shall contain an explanation for each such determination.

''(2) All amounts listed in the report under paragraph (1) may be transferred only to the programs under titles XLII, XLIII, and XLIV [see Tables for classification] that are classified against the defense category by virtue of the report of the President submitted under paragraph (1) pursuant to amounts specified in appropriation Acts. Any such transfer shall be taken into account for purposes of calculating all reports under section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 904].''

CLASSIFIED ANNEX

Pub. L. 107–107, div. A, title X, §1002, Dec. 28, 2001, 115 Stat. 1202, provided that:

''(a) STATUS OF CLASSIFIED ANNEX.—The Classified Annex prepared by the committee of conference to accompany the conference report on the bill S. 1438 of the One Hundred Seventh Congress [Pub. L. 107–107] and transmitted to the President is hereby incorporated into this Act [see Tables for classification].

''(b) CONSTRUCTION WITH OTHER PROVISIONS OF ACT.—The amounts specified in the Classified Annex are not in addition to amounts authorized to be appropriated by other provisions of this Act.

''(c) LIMITATION ON USE OF FUNDS.—Funds appropriated pursuant to an authorization contained in this Act that are made available for a program, project, or activity referred to in the Classified Annex may only be expended for such program, project, or activity in accordance with such terms, conditions, limitations, restrictions, and requirements as are set out for that program, project, or activity in the Classified Annex.

''(d) DISTRIBUTION OF CLASSIFIED ANNEX.—The President shall provide for appropriate distribution of the Classified Annex, or of appropriate portions of the annex, within the executive branch of the Government.''

Similar provisions were contained in the following prior authorization or appropriation acts:

Pub. L. 106–398, §1 [[div. A], title X, §1002], Oct. 30, 2000, 114 Stat. 1654, 1654A–245.

Pub. L. 106–65, div. A, title X, §1002, Oct. 5, 1999, 113 Stat. 732.

Pub. L. 105–261, div. A, title X, §1002, Oct. 17, 1998, 112 Stat. 2111.

Pub. L. 105–85, div. A, title X, §1002, Nov. 18, 1997, 111 Stat. 1868.

Pub. L. 104–201, div. A, title X, §1002, Sept. 23, 1998, 110 Stat. 2631.

Pub. L. 104–106, div. A, title X, §1002, Feb. 10, 1996, 110 Stat. 414.

Pub. L. 103–337, div. A, title X, §1003, Oct. 5, 1994, 108 Stat. 2834.

Pub. L. 103–335, title VIII, §8084, Sept. 30, 1994, 108 Stat. 2637.

Pub. L. 103–160, div. A, title XI, §1103, Nov. 30, 1993, 107 Stat. 1749.

Pub. L. 103–139, title VIII, §8108, Nov. 11, 1993, 107 Stat. 1464.

Pub. L. 102–484, div. A, title X, §1006, Oct. 23, 1992, 106 Stat. 2482.

Pub. L. 102–396, title IX, §9126, Oct. 6, 1992, 106 Stat. 1931.

Pub. L. 102–190, div. A, title X, §1005, Dec. 5, 1991, 105 Stat. 1457.

Pub. L. 102–172, title VIII, §8124, Nov. 26, 1991, 105 Stat. 1206.

Pub. L. 101–511, title VIII, §8111, Nov. 5, 1990, 104 Stat. 1904.

Pub. L. 101–510, div. A, title XIV, §1409, Nov. 5, 1990, 104 Stat. 1681.

BUDGET ACT LIMITATION

Section 1304(b) of Pub. L. 99–661 provided that: ''New spending authority (as defined in section 401(c)(2) of the Congressional Budget Act of 1974 [2 U.S.C. 651(c)(2)]) provided by the amendment made by subsection (a) [amending this section] shall be effective for any fiscal year only to the extent or in such amounts as are provided in appropriation Acts.''

LIMITATION ON SOURCE OF FUNDS FOR NICARAGUAN DEMOCRATIC RESISTANCE

Section 1351 of Pub. L. 99–661, as amended by Pub. L. 104–106, div. A, title X, §1063(a), Feb. 10, 1996, 110 Stat. 444, provided that: ''Notwithstanding title II of the Military Construction Appropriations Act, 1987 [Pub. L. 99–500, §101(k) [title II], Oct. 18, 1986, 100 Stat. 1783–287, 1783–295, and Pub. L. 99–591, §101(k) [title II], Oct. 30, 1986, 100 Stat. 3341–287, 3341–295], or any other provision of law, funds appropriated or otherwise made available to the Department of Defense for any fiscal year for operation and maintenance may not be used to provide assistance for the democratic resistance forces in Nicaragua. If funds appropriated or otherwise made available to the Department of Defense for any fiscal year are authorized by law to be used for such assistance, funds for such purpose may only be derived from amounts appropriated or otherwise made available to

the Department for procurement (other than ammunition).''

USE OF APPROPRIATED FUNDS TO SUPPORT REVENUE GENERATING ACTIVITIES IN LARGE METROPOLITAN AREAS PROHIBITED

Pub. L. 99–500, §101(c) [title IX, §9102], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, and Pub. L. 99–591, §101(c) [title IX, §9102], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, which provided that after Sept. 30, 1987, no appropriated funds could be used to support revenue generating morale, welfare, and recreation activities in large metropolitan areas, was repealed by Pub. L. 100–202, §101(b) [title VIII, §8099], Dec. 22, 1987, 101 Stat. 1329–43, 1329–78.

TRANSFER OF OPERATION AND MAINTENANCE APPROPRIATIONS UNOBLIGATED BALANCES TO FOREIGN CURRENCY FLUCTUATIONS, DEFENSE, APPROPRIATION

Pub. L. 97–377, title I, §101(c) [title VII, §791], Dec. 21, 1982, 96 Stat. 1865, which provided that no later than end of second fiscal year following fiscal year for which appropriations for Operation and Maintenance have been made available to Department of Defense, unobligated balances of such appropriations provided for fiscal year 1982 and thereafter could be transferred into appropriation ''Foreign Currency Fluctuations, Defense'' to be merged with and available for same time period and same purposes as appropriation to which transferred, except that any transfer made pursuant to any use of this authority was limited so that amount in appropriation did not exceed $970,000,000 at time of transfer, was repealed and restated in section 2779(d) of this title by Pub. L. 104–106, div. A, title IX, §911(b), (d)(2), (f), Feb. 10, 1996, 110 Stat. 406, 407, applicable only with respect to amounts appropriated for a fiscal year after fiscal year 1995.

WAIVER OF APPLICABILITY OF OMB CIRCULAR A–76 TO CONTRACTING OUT OF CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Section 802 of Pub. L. 96–107 provided that:

''(a) Except as provided in subsection (b), neither the implementing instructions for, nor the provisions of, Office of Management and Budget Circular A–76 (issued on August 30, 1967, and reissued on October 18, 1976, June 13, 1977, and March 29, 1979) shall control or be used for policy guidance for the obligation or expenditure of any funds which under section 138(a)(2) [now 114(a)(2)] of title 10, United States Code, are required to be specifically authorized by law.

''(b) Funds which under section 138(a)(2) [now 114(a)(2)] of title 10, United States Code, are required to be specifically authorized by law may be obligated or expended for operation or support of installations or equipment used for research and development (including maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships) in compliance with the implementing instructions for and the provisions of such Office of Management and Budget Circular.

''(c) No law enacted after the date of the enactment of this Act [Nov. 9, 1979] shall be held, considered, or construed as amending, superseding, or otherwise modifying any provision of this section unless such law does so by specifically and explicitly amending, repealing, or superseding this section.''

MANPOWER CONVERSION POLICIES; DEVELOPMENT FOR ANNUAL MANPOWER AUTHORIZATION REQUESTS; JUSTIFICATION FOR CONVERSION TO BE CONTAINED IN ANNUAL MANPOWER REQUIREMENTS REPORT TO CONGRESS

Pub. L. 93–365, title V, §502, Aug. 5, 1974, 88 Stat. 404, which provided that it was the sense of Congress that the Department of Defense use the least costly form of manpower consistent with military requirements and other needs of the Department of Defense, that in developing the annual manpower authorization requests to the Congress and in carrying out manpower policies, the Secretary of Defense was to consider the advantages of converting from one form of manpower to another (military, civilian, or private contract) for the performance of a specified job, and that a full justification of any conversion from one form of manpower to another be contained in the annual manpower requirements report to the Congress required by subsec. (c)(3) of this section, was repealed and restated as subsec. (c)(5) of this section by Pub. L. 97–295, §§1(3), 6(b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 113a, 2431, 2561, 2608 of this title; title 22 section 2795.

[§ 114a. Renumbered § 221]

§ 115. Personnel strengths: requirement for annual authorization

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

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

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

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

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

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

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

(1) increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for any of the armed forces by a number equal to not more than 3 percent of that end strength;

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

(3) vary the end strength authorized pursuant to subsection (a)(2) for a fiscal year for the Selected Reserve of any of the reserve components by a number equal to not more than 2 percent of that end strength.

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

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

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

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

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

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

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

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

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

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

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

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

(10) Members of reserve components on active duty to prepare for and to perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.

(11) Members on full-time National Guard duty to prepare for and perform funeral honors functions for funerals of veterans in accordance with section 1491 of this title.

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

(f) Upon determination by the Secretary of a military department that such action would enhance manning and readiness in essential units or in critical specialties or ratings, the Secretary may increase the end strength authorized pursuant to subsection (a)(1)(A) for a fiscal year for the armed force under the jurisdiction of that Secretary or, in the case of the Secretary of the Navy, for any of the armed forces under the jurisdiction of that Secretary. Any such increase for a fiscal year—

(1) shall be by a number equal to not more than 2 percent of such authorized end strength; and

(2) shall be counted as part of the increase for that armed force for that fiscal year authorized under subsection (c)(1).

(g) Congress shall authorize for each fiscal year the end strength for military technicians (dual status) for each reserve component of the Army and Air Force. Funds available to the Department of Defense for any fiscal year may not be used for the pay of a military technician (dual status) during that fiscal year unless the technician fills a position that is within the number of such positions authorized by law for that fiscal year for the reserve component of that technician. This subsection applies without regard to section 129 of this title. In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.

(Added Pub. L. 101–510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1710; amended Pub. L. 102–190, div. A, title III, §312(a), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104–106, div. A, title IV, §§401(c), 415, title V, §513(a)(1), title X, §1061(c), title XV, §1501(c)(3), Feb. 10, 1996, 110 Stat. 286, 288, 305, 442, 498; Pub. L. 105–85, div. A, title IV, §413(b), title V, §522(i)(1), Nov. 18, 1997, 111 Stat. 1720, 1736; Pub. L. 106–65, div. A, title IV, §415, Oct. 5, 1999, 113 Stat. 587; Pub. L. 106–398, §1 [[div. A], title IV, §422], Oct. 30, 2000, 114 Stat. 1654, 1654A–96; Pub. L. 107–107, div. A, title IV, §§421(a), 422, Dec. 28, 2001, 115 Stat. 1076, 1077; Pub. L. 107–314, div. A, title IV, §403, Dec. 2, 2002, 116 Stat. 2525.)

PRIOR PROVISIONS

A prior section 115, added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, §138(b)–(d); amended Pub. L. 94–361, title III, §302, July 14, 1976, 90 Stat. 924; Pub. L. 96–107, title III, §303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title I, §102, Dec. 12, 1980, 94 Stat. 2840; Pub. L. 97–22, §2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–86, title IX, §§902, 903, Dec. 1, 1981, 95 Stat. 1113, 1114; Pub. L. 97–252, title IV, §402(a), Sept. 8, 1982, 96 Stat. 725; Pub. L. 97–295, §1(3), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 99–145, title XII, §1208, Nov. 8, 1985, 99 Stat. 723; renumbered §115 Pub. L. 99–433, title I, §§101(a)(2), 110(b)(4), (5), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 99–661, div. A, title IV, §§411(c) [(d)], 413, Nov. 14, 1986, 100 Stat. 3861, 3862; Pub. L. 100–26, §7(j)(2), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–456, div. A, title VI, §641, Sept. 29, 1988, 102 Stat. 1987, related to annual authorization of personnel strengths and annual manpower requirements reports, prior to repeal and reenactment as sections 115, 115a, 115b [now 10541], 123a, and 129a of this title by Pub. L. 101–510, §1483(a), (b).

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–314, §403(a), substituted ''3 percent'' for ''2 percent''.

Subsec. (f). Pub. L. 107–314, §403(b), added subsec. (f).

2001—Subsec. (c)(1). Pub. L. 107–107, §421(a), substituted ''2 percent'' for ''1 percent''.

Subsec. (d)(10), (11). Pub. L. 107–107, §422, added pars. (10) and (11).

2000—Subsec. (d)(9). Pub. L. 106–398 added par. (9).

1999—Subsec. (c)(3). Pub. L. 106–65 added par. (3).

1997—Subsec. (g). Pub. L. 105–85, §522(i)(1), inserted ''(dual status)'' after ''military technicians'' in first sentence and after ''military technician'' in second sentence.

Pub. L. 105–85, §413(b), inserted at end ''In each budget submitted by the President to Congress under section 1105 of title 31, the end strength requested for military technicians (dual status) for each reserve component of the Army and Air Force shall be specifically set forth.''

1996—Subsec. (a)(3). Pub. L. 104–106, §1061(c)(1), struck out par. (3) which read as follows: ''The average military training student loads for each of the armed forces (other than the Coast Guard).''

Subsec. (b). Pub. L. 104–106, §1061(c)(2), inserted ''or'' at end of par. (1), substituted a period for ''; or'' at end of par. (2), and struck out par. (3) which read as follows: ''training military personnel in the training categories described in subsection (f) of any of the armed forces (other than the Coast Guard) unless the average stu-

dent load of that armed force for that fiscal year has been authorized by law.''

Subsec. (c)(1). Pub. L. 104–106, § 401(c), substituted ''1 percent'' for ''0.5 percent''.

Subsec. (d)(1). Pub. L. 104–106, § 1501(c)(3)(A), substituted ''section 12302'' for ''section 673''.

Subsec. (d)(2). Pub. L. 104–106, § 1501(c)(3)(B), substituted ''section 12304'' for ''section 673b''.

Subsec. (d)(3). Pub. L. 104–106, § 1501(c)(3)(C), substituted ''section 12406'' for ''section 3500 or 8500''.

Subsec. (d)(8). Pub. L. 104–106, § 415, added par. (8).

Subsec. (f). Pub. L. 104–106, § 1061(c)(3), struck out subsec. (f) which read as follows: ''Authorization under subsection (a)(3) is not required for unit or crew training student loads, but is required for student loads for the following individual training categories:

''(1) Recruit and specialized training.

''(2) Flight training.

''(3) Professional training in military and civilian institutions.

''(4) Officer acquisition training.''

Subsec. (g). Pub. L. 104–106, § 513(a)(1), added subsec. (g).

1991—Subsec. (a)(4). Pub. L. 102–190, § 312(a)(1), struck out par. (4) which read as follows: ''The end strength for civilian personnel for each component of the Department of Defense.''

Subsec. (b)(2) to (4). Pub. L. 102–190, § 312(a)(2), inserted ''or'' at end of par. (2), substituted a period for ''; or'' at end of par. (3), and struck out par. (4) which read as follows: ''the use of the civilian personnel of any component of the Department of Defense unless the end strength for civilian personnel of that component for that fiscal year has been authorized by law.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 513(a)(2) of Pub. L. 104–106 provided that: ''The amendment made by paragraph (1) [amending this section] does not apply with respect to fiscal year 1995.''

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

AUTHORIZATION FOR INCREASE IN ACTIVE-DUTY END STRENGTHS FOR FISCAL YEAR 1996

Section 432 of Pub. L. 104–106 provided that:

''(a) AUTHORIZATION.—There is hereby authorized to be appropriated to the Department of Defense for fiscal year 1996 for military personnel the sum of $112,000,000. Any amount appropriated pursuant to this section shall be allocated, in such manner as the Secretary of Defense prescribes, among appropriations for active-component military personnel for that fiscal year and shall be available only to increase the number of members of the Armed Forces on active duty during that fiscal year (compared to the number of members that would be on active duty but for such appropriation).

''(b) EFFECT ON END STRENGTHS.—The end-strength authorizations in section 401 [set out below] shall each be deemed to be increased by such number as necessary to take account of additional members of the Armed Forces authorized by the Secretary of Defense pursuant to subsection (a).''

MINIMUM NUMBER OF MILITARY TECHNICIANS

Pub. L. 107–314, div. A, title IV, § 413, Dec. 2, 2002, 116 Stat. 2527, provided that: ''The minimum number of military technicians (dual status) as of the last day of fiscal year 2003 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

''(1) For the Army National Guard of the United States, 24,102.

''(2) For the Army Reserve, 6,599.

''(3) For the Air National Guard of the United States, 22,495.

''(4) For the Air Force Reserve, 9,911.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 107–107, div. A, title IV, § 413, Dec. 28, 2001, 115 Stat. 1070.

Pub. L. 106–398, § 1 [[div. A], title IV, § 413], Oct. 30, 2000, 114 Stat. 1654, 1654A–93.

Pub. L. 106–65, div. A, title IV, § 413, Oct. 5, 1999, 113 Stat. 586.

Pub. L. 105–261, div. A, title IV, § 413, Oct. 17, 1998, 112 Stat. 1997.

Pub. L. 105–85, div. A, title IV, § 413(a), Nov. 18, 1997, 111 Stat. 1720.

Pub. L. 104–201, div. A, title IV, § 413(a), Sept. 23, 1996, 110 Stat. 2507.

Pub. L. 104–106, div. A, title V, § 513(b), Feb. 10, 1996, 110 Stat. 305.

COMPTROLLER GENERAL REVIEW OF PROPOSED ARMY END STRENGTH ALLOCATIONS

Pub. L. 104–106, title V, § 552, Feb. 10, 1996, 110 Stat. 319, provided that, during fiscal years 1996 through 2001, the Comptroller General was (1) to analyze the plans of the Secretary of the Army for the allocation of assigned active component end strengths for the Army through the requirements process known as Total Army Analysis 2003 and through any subsequent similar requirements process of the Army that was conducted before 2002, (2) to consider whether the proposed active component end strengths and planned allocation of forces for that period was sufficient to implement the national military strategy, and (3) to submit to Congress an annual report by Mar. 1 of each year through 2002 on the Comptroller General's findings and conclusions, prior to repeal by Pub. L. 107–107, div. A, title V, § 595, Dec. 28, 2001, 115 Stat. 1126.

EFFECT OF RESERVE COMPONENT ON COMPUTATION OF END STRENGTH LIMITATION FOR ACTIVE FORCES FOR FISCAL YEAR 1995

Pub. L. 103–337, div. A, title XIII, § 1316(c), Oct. 5, 1994, 108 Stat. 2899, provided that a member of a reserve component who is on active duty under a call or order to active duty for 180 days or more for activities under section 168 of this title shall not be counted (under section 115(a)(1) of this title) against the applicable end strength limitation for members of the Armed Forces on active duty for fiscal year 1995 prescribed in section 401 of Pub. L. 103–337, formerly set out below.

END STRENGTHS FOR ACTIVE FORCES

Pub. L. 107–314, div. A, title IV, § 401, Dec. 2, 2002, 116 Stat. 2524, provided that: ''The Armed Forces are authorized strengths for active duty personnel as of September 30, 2003, as follows:

''(1) The Army, 480,000.

''(2) The Navy, 375,700.

''(3) The Marine Corps, 175,000.

''(4) The Air Force, 359,000.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 107–107, div. A, title IV, § 401, Dec. 28, 2001, 115 Stat. 1069.

Pub. L. 106–398, § 1 [[div. A], title IV, § 401], Oct. 30, 2000, 114 Stat. 1654, 1654A–92.

Pub. L. 106–65, div. A, title IV, § 401, Oct. 5, 1999, 113 Stat. 585.

Pub. L. 105–261, div. A, title IV, § 401, Oct. 17, 1998, 112 Stat. 1995.

Pub. L. 105–85, div. A, title IV, § 401, Nov. 18, 1997, 111 Stat. 1719.

Pub. L. 104–201, div. A, title IV, § 401, Sept. 23, 1996, 110 Stat. 2503.
Pub. L. 104–106, div. A, title IV, § 401(a), Feb. 10, 1996, 110 Stat. 285.
Pub. L. 103–337, div. A, title IV, § 401, Oct. 5, 1994, 108 Stat. 2743.
Pub. L. 103–160, div. A, title IV, §§ 401, 403, Nov. 30, 1993, 107 Stat. 1639, 1640.
Pub. L. 102–484, div. A, title IV, §§ 401, 402, Oct. 23, 1992, 106 Stat. 2397.
Pub. L. 102–190, div. A, title IV, § 401, title VI, § 664, Dec. 5, 1991, 105 Stat. 1349, 1399.
Pub. L. 101–510, div. A, title IV, §§ 401, 402, Nov. 5, 1990, 104 Stat. 1543, 1544; Pub. L. 102–25, title II, §§ 201(a), 202, 205(a), Apr. 6, 1991, 105 Stat. 79, 80; Pub. L. 104–106, div. A, title XV, § 1502(c)(4)(A), Feb. 10, 1996, 110 Stat. 507.
Pub. L. 101–189, div. A, title IV, § 401, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, § 401(d), Nov. 5, 1990, 104 Stat. 1544.
Pub. L. 100–456, div. A, title IV, § 401, Sept. 29, 1988, 102 Stat. 1963.
Pub. L. 100–180, div. A, title IV, § 401, Dec. 4, 1987, 101 Stat. 1081.
Pub. L. 99–661, div. A, title IV, § 401, Nov. 14, 1986, 100 Stat. 3859.
Pub. L. 99–145, title IV, § 401, Nov. 8, 1985, 99 Stat. 618.
Pub. L. 98–525, title IV, § 401, Oct. 19, 1984, 98 Stat. 2516.
Pub. L. 98–94, title IV, § 401, Sept. 24, 1983, 97 Stat. 629.
Pub. L. 97–252, title IV, § 401, Sept. 8, 1982, 96 Stat. 725.
Pub. L. 97–86, title IV, § 401, Dec. 1, 1981, 95 Stat. 1104, as amended by Pub. L. 97–252, title IX, § 903, Sept. 8, 1982, 96 Stat. 729.
Pub. L. 96–342, title III, § 301, Sept. 8, 1980, 94 Stat. 1082, as amended by Pub. L. 97–39, title III, § 301, Aug. 14, 1981, 95 Stat. 940.
Pub. L. 96–107, title III, § 301, Nov. 9, 1979, 93 Stat. 806.
Pub. L. 95–485, title III, § 301, Oct. 20, 1978, 92 Stat. 1613.
Pub. L. 95–79, title III, § 301, July 30, 1977, 91 Stat. 326.
Pub. L. 94–361, title III, § 301, July 14, 1976, 90 Stat. 924.
Pub. L. 94–106, title III, § 301, Oct. 7, 1975, 89 Stat. 532.
Pub. L. 93–365, title III, § 301, Aug. 5, 1974, 88 Stat. 401.
Pub. L. 93–155, title III, § 301, Nov. 16, 1973, 87 Stat. 607.
Pub. L. 92–436, title III, § 301, Sept. 26, 1972, 86 Stat. 735.

MINIMUM NUMBER OF NAVY HEALTH PROFESSIONS OFFICERS

Section 718(b) of Pub. L. 102–190 provided that, of the total number of officers authorized to be serving on active duty in Navy on last day of a fiscal year, 12,510 were to be available only for assignment to duties in health profession specialties, prior to repeal by Pub. L. 104–106, div. A, title V, § 564(d)(2), Feb. 10, 1996, 110 Stat. 327.

LIMITATIONS ON REDUCTIONS IN MEDICAL PERSONNEL

Section 711 of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title VII, § 718(a), Dec. 5, 1991, 105 Stat. 1404, prohibited Secretary of Defense from reducing number of medical personnel of Department of Defense below baseline number unless Secretary certified to Congress that number of such personnel being reduced was excess to current and projected needs of military departments, and such reduction would not result in increase in cost of health care services provided under Civilian Health and Medical Program of the Uniformed Services, and, in case of military medical personnel, included in certification information on strength levels for individual category of medical personnel involved in reduction as of Sept. 30, 1989, projected requirements of Department over 5-fiscal year period following fiscal year in which certification was submitted for medical personnel in category of medical personnel involved, and strength level recommended for each component of Armed Forces for most recent fiscal year for which Secretary submitted recommendations pursuant to section 115a(g)(1) of this title for personnel in category of medical personnel involved, prior to repeal by Pub. L. 104–106, div. A, title V, § 564(d)(1), Feb. 10, 1996, 110 Stat. 327. See section 129c of this title.

OPERATION DESERT SHIELD INCREASE IN END STRENGTHS OF ACTIVE DUTY PERSONNEL; AUTHORITY; CERTIFICATION

Section 1117 of Pub. L. 101–510, authorized Secretary of Defense, after determining that operational requirements of Operation Desert Shield so require, to increase the end strengths of active duty personnel for fiscal year 1991 by an amount not greater than 0.5 percent of the total end strengths authorized by section 401 of Pub. L. 101–510, set out above, and required certification by Secretary to Committees on Armed Services of Senate and House of Representatives of necessity of such increase, prior to repeal by Pub. L. 102–25, title II, § 204, Apr. 6, 1991, 105 Stat. 80.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 113a, 168, 691, 3201, 8062, 10216, 12310, 16132 of this title.

§ 115a. Annual manpower requirements report

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

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

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

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

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

(A) Unit mission and capability.

(B) Strategy which the unit supports.

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

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

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

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

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

(d) The Secretary shall also include in each such report, with respect to each armed force

under the jurisdiction of the Secretary of a military department, the following:

(1) The number of positions that require warrant officers or commissioned officers serving on active duty in each of the officer grades during the current fiscal year and the estimated number of such positions for each of the next five fiscal years.

(2) The estimated number of officers that will be serving on active duty in each grade on the last day of the current fiscal year and the estimated numbers of officers that will be needed on active duty on the last day of each of the next five fiscal years.

(3) An estimate and analysis for the current fiscal year and for each of the next five fiscal years of gains to and losses from the number of members on active duty in each officer grade, including a tabulation of—

(A) retirements displayed by year of active commissioned service;

(B) discharges;

(C) other separations;

(D) deaths;

(E) promotions; and

(F) reserve and regular officers ordered to active duty.

(e)(1) In each such report, the Secretary shall also include recommendations for the end-strength levels for medical personnel for each component of the armed forces as of the end of the next fiscal year.

(2) For purposes of this subsection, the term ''medical personnel'' includes—

(A) in the case of the Army, members of the Medical Corps, Dental Corps, Nurse Corps, Medical Service Corps, Veterinary Corps, and Army Medical Specialist Corps;

(B) in the case of the Navy, members of the Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps;

(C) in the case of the Air Force, members designated as medical officers, dental officers, Air Force nurses, medical service officers, and biomedical science officers;

(D) enlisted members engaged in or supporting medically related activities; and

(E) such other personnel as the Secretary considers appropriate.

[(f) Repealed. Pub. L. 104–106, div. A, title X, §1061(d)(4), Feb. 10, 1996, 110 Stat. 442.]

[(g) Redesignated (e)]

(h) In each such report, the Secretary shall include a separate report on the Army and Air Force military technician programs. The report shall include a presentation, shown by reserve component and shown both as of the end of the preceding fiscal year and for the next fiscal year, of the following (displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians):

(1) The number of military technicians required to be employed (as specified in accordance with Department of Defense procedures), the number authorized to be employed under Department of Defense personnel procedures, and the number actually employed.

(2) Within each of the numbers under paragraph (1)—

(A) the number applicable to a reserve component management headquarter organization; and

(B) the number applicable to high-priority units and organizations (as specified in section 10216(a) of this title).

(Added Pub. L. 101–510, div. A, title XIV, §1483(a), Nov. 5, 1990, 104 Stat. 1711; amended Pub. L. 102–190, div. A, title X, §1061(a)(1), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 104–106, div. A, title V, §513(e), title X, §1061(d), Feb. 10, 1996, 110 Stat. 307, 442; Pub. L. 105–85, div. A, title V, §522(i)(2), Nov. 18, 1997, 111 Stat. 1736; Pub. L. 105–261, div. A, title IV, §403, Oct. 17, 1998, 112 Stat. 1996.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(1)(D), (3), (c)(2) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–261, in introductory provisions, struck out '', not later than February 15 of each fiscal year,'' after ''submit to Congress'' and substituted ''The report, which shall be in writing, shall be submitted each year not later than 45 days after the date on which the President submits to Congress the budget for the next fiscal year under section 1105 of title 31. The report'' for ''The report shall be in writing and''.

1997—Subsec. (h). Pub. L. 105–85, §522(i)(2)(A), inserted ''(displayed in the aggregate and separately for military technicians (dual status) and non-dual status military technicians)'' after ''of the following'' in introductory provisions.

Subsec. (h)(3). Pub. L. 105–85, §522(i)(2)(B), struck out par. (3) which read as follows: ''Within each of the numbers under paragraph (1), the numbers of military technicians who are not themselves members of a reserve component (so-called 'single-status' technicians), with a further display of such numbers as specified in paragraph (2).''

1996—Subsec. (b)(2)(C). Pub. L. 104–106, §1061(d)(1), struck out subpar. (C) which read as follows: ''Area of deployment and illustrative areas of potential deployment, including a description of any United States commitment to defend such areas.''

Subsec. (d). Pub. L. 104–106, §1061(d)(3), redesignated subsec. (e) as (d) and struck out pars. (4) and (5) which read as follows:

''(4) An analysis of the distribution of each of the following categories of officers serving on active duty on the last day of the preceding fiscal year by grade in which serving and years of active commissioned service:

''(A) Regular officers.

''(B) Reserve officers on the active-duty list.

''(C) Reserve officers described in clauses (B) and (C) of section 523(b)(1) of this title.

''(D) Officers other than those specified in subparagraphs (A), (B), and (C) serving in a temporary grade.

''(5) An analysis of the number of officers and enlisted members serving on active duty for training as of the last day of the preceding fiscal year under orders specifying an aggregate period in excess of 180 days and an estimate for the current fiscal year of the number that will be ordered to such duty, tabulated by—

''(A) recruit and specialized training;

''(B) flight training;

''(C) professional training in military and civilian institutions; and

''(D) officer acquisition training.''

Pub. L. 104–106, §1061(d)(2), struck out subsec. (d) which read as follows: ''In each such report, the Secretary shall also—

''(1) identify, define, and group by mission and by region the types of military bases, installations, and facilities;

''(2) provide an explanation and justification of the relationship between this base structure and the proposed military force structure; and

''(3) provide a comprehensive identification of base operating support costs and an evaluation of possible alternatives to reduce those costs.''

Subsec. (e). Pub. L. 104–106, §1061(d)(5), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 104–106, §1061(d)(4), struck out subsec. (f) which read as follows: ''In each such report, the Secretary shall also include recommendations for the average student load for each category of training for each component of the armed forces for the next three fiscal years. The Secretary shall include in the report justification for, and explanation of, the average student loads recommended.''

Subsec. (g). Pub. L. 104–106, §1061(d)(5), redesignated subsec. (g) as (e).

Subsec. (h). Pub. L. 104–106, §513(e), added subsec. (h).

1991—Subsec. (d)(3). Pub. L. 102–190 inserted ''provide'' before ''a comprehensive''.

ASSESSMENT OF STRUCTURE AND MIX OF ACTIVE AND RESERVE FORCES

Section 402 of Pub. L. 102–190, as amended by Pub. L. 102–484, div. A, title V, §513(b), Oct. 23, 1992, 106 Stat. 2406, required Secretary of Defense to submit to Congress a report containing an assessment of alternatives relating to structure and mix of active and reserve forces appropriate for carrying out assigned missions in mid- to late-1990s and an evaluation and recommendations of Secretary and Chairman of Joint Chiefs of Staff as to mix or mixes of reserve and active forces considered acceptable to carry out expected future missions, and further provided for matters to be included in report and evaluation, commencement of assessment, submission of interim and final reports, and funding for assessment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 129a, 129c of this title.

[§115b. Renumbered §10541]

§116. Annual operations and maintenance report

(a)(1) The Secretary of Defense shall submit to Congress a written report, not later than February 15 of each fiscal year, with respect to the operations and maintenance of the Army, Navy, Air Force, and Marine Corps for the next fiscal year. The Secretary shall include in each such report recommendations for—

(A) the number of aircraft flying hours for the Army, Navy, Air Force, and Marine Corps for the next fiscal year, the number of ship steaming hours for the Navy for the next fiscal year, and the number of field training days for the combat arms battalions of the Army and Marine Corps for the next fiscal year;

(B) the number of ships over 3,000 tons (full load displacement) in each Navy ship classification on which major repair work should be performed during the next fiscal year; and

(C) the number of airframe reworks, aircraft engine reworks, and vehicle overhauls which should be performed by the Army, Navy, Air Force, and Marine Corps during the next fiscal year.

(2) The Secretary shall also include in each such report the justification for and an explanation of the level of funding recommended in the Budget of the President for the next fiscal year for aircraft flying hours, ship steaming hours, field training days for the combat arms battalions, major repair work to be performed on ships of the Navy, airframe reworks, aircraft engine reworks, and vehicle overhauls.

(b) In this section:

(1) The term ''combat arms battalions'' means armor, infantry, mechanized infantry, air assault infantry, airborne infantry, ranger, artillery, and combat engineer battalions and armored cavalry and air cavalry squadrons.

(2) The term ''major repair work'' means, in the case of any ship to which subsection (a) is applicable, any overhaul, modification, alteration, or conversion work which will result in a total cost to the United States of more than $10,000,000.

(Added Pub. L. 96–342, title X, §1001(b)(3), (c)(2), Sept. 8, 1980, 94 Stat. 1118, 1119, §138(e), (f)(2); amended Pub. L. 96–513, title V, §511(4)(B), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title III, §302, Dec. 1, 1981, 95 Stat. 1104; renumbered §116 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(b)(6), (7), (9), (10), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 105–85, div. A, title X, §1073(a)(3), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (b)(2). Pub. L. 105–85 substituted ''subsection (a)'' for ''such subsection''.

1986—Pub. L. 99–433 successively redesignated subsecs. (e) and (f)(2) of section 138 of this title as subsecs. (e) and (f)(2) of section 114 of this title and then as subsecs. (a) and (b), respectively, of this section, added section catchline, and made minor conforming changes in text.

1981—Subsec. (a)(3), (4), formerly §138(e)(3), (4). Pub. L. 97–86 struck out pars. (3) and (4) which required the Secretary to include in each report a projection of the combat readiness of specified military units proposed to be maintained during the next fiscal year.

1980—Subsec. (b), formerly §138(f)(2). Pub. L. 96–513 substituted ''In subsection (e)'' for ''In subsection (f)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

§117. Readiness reporting system: establishment; reporting to congressional committees

(a) REQUIRED READINESS REPORTING SYSTEM.—The Secretary of Defense shall establish a comprehensive readiness reporting system for the Department of Defense. The readiness reporting system shall measure in an objective, accurate, and timely manner the capability of the armed forces to carry out—

(1) the National Security Strategy prescribed by the President in the most recent annual national security strategy report under section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(2) the defense planning guidance provided by the Secretary of Defense pursuant to section 113(g) of this title; and

(3) the National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff.

(b) READINESS REPORTING SYSTEM CHARACTERISTICS.—In establishing the readiness reporting system, the Secretary shall ensure—

(1) that the readiness reporting system is applied uniformly throughout the Department of Defense;

(2) that information in the readiness reporting system is continually updated, with (A) any change in the overall readiness status of a unit that is required to be reported as part of the readiness reporting system being reported within 24 hours of the event necessitating the change in readiness status, and (B) any change in the overall readiness status of an element of the training establishment or an element of defense infrastructure that is required to be reported as part of the readiness reporting system being reported within 72 hours of the event necessitating the change in readiness status; and

(3) that sufficient resources are provided to establish and maintain the system so as to allow reporting of changes in readiness status as required by this section.

(c) CAPABILITIES.—The readiness reporting system shall measure such factors relating to readiness as the Secretary prescribes, except that the system shall include the capability to do each of the following:

(1) Measure, on a monthly basis, the capability of units (both as elements of their respective armed force and as elements of joint forces) to conduct their assigned wartime missions.

(2) Measure, on an annual basis, the capability of training establishments to provide trained and ready forces for wartime missions.

(3) Measure, on an annual basis, the capability of defense installations and facilities and other elements of Department of Defense infrastructure, both in the United States and abroad, to provide appropriate support to forces in the conduct of their wartime missions.

(4) Measure, on a monthly basis, critical warfighting deficiencies in unit capability.

(5) Measure, on an annual basis, critical warfighting deficiencies in training establishments and defense infrastructure.

(6) Measure, on a monthly basis, the level of current risk based upon the readiness reporting system relative to the capability of forces to carry out their wartime missions.

(7) Measure, on a quarterly basis, the extent to which units of the armed forces remove serviceable parts, supplies, or equipment from one vehicle, vessel, or aircraft in order to render a different vehicle, vessel, or aircraft operational.

(d) QUARTERLY AND MONTHLY JOINT READINESS REVIEWS.—(1) The Chairman of the Joint Chiefs of Staff shall—

(A) on a quarterly basis, conduct a joint readiness review; and

(B) on a monthly basis, review any changes that have been reported in readiness since the previous joint readiness review.

(2) The Chairman shall incorporate into both the joint readiness review required under paragraph (1)(A) and the monthly review required under paragraph (1)(B) the current information derived from the readiness reporting system and shall assess the capability of the armed forces to execute their wartime missions based upon their posture at the time the review is conducted. The Chairman shall submit to the Secretary of Defense the results of each review under paragraph (1), including the deficiencies in readiness identified during that review.

(e) SUBMISSION TO CONGRESSIONAL COMMITTEES.—The Secretary shall each month submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report in writing containing the results of the most recent joint readiness review or monthly review conducted under subsection (d), including the current information derived from the readiness reporting system. Each such report shall be submitted in unclassified form and may, as the Secretary determines necessary, also be submitted in classified form.

(f) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. In those regulations, the Secretary shall prescribe the units that are subject to reporting in the readiness reporting system, what type of equipment is subject to such reporting, and the elements of the training establishment and of defense infrastructure that are subject to such reporting.

(Added Pub. L. 105–261, div. A, title III, §373(a)(1), Oct. 17, 1998, 112 Stat. 1990; amended Pub. L. 106–65, div. A, title III, §361(d)(1), title X, §1067(1), Oct. 5, 1999, 113 Stat. 575, 774; Pub. L. 106–398, §1 [[div. A], title III, §371], Oct. 30, 2000, 114 Stat. 1654, 1654A–80.)

PRIOR PROVISIONS

A prior section 117, added Pub. L. 97–295, §1(2)(A), Oct. 12, 1982, 96 Stat. 1287, §133a; renumbered §117 and amended Pub. L. 99–433, title I, §§101(a)(2), 110(d)(3), Oct. 1, 1986, 100 Stat. 994, 1002, required annual report on North Atlantic Treaty Organization readiness, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1301(1), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2000—Subsec. (c)(7). Pub. L. 106–398 added par. (7).

1999—Subsec. (b)(2). Pub. L. 106–65, §361(d)(1)(A), substituted ''with (A) any change in the overall readiness status of a unit that is required to be reported as part of the readiness reporting system being reported within 24 hours of the event necessitating the change in readiness status, and (B) any change in the overall readiness status of an element of the training establishment or an element of defense infrastructure that is required to be reported as part of the readiness reporting system being reported within 72 hours'' for ''with any change in the overall readiness status of a unit, an element of the training establishment, or an element of defense infrastructure, that is required to be reported as part of the readiness reporting system, being reported within 24 hours''.

Subsec. (c)(2), (3), (5). Pub. L. 106–65, §361(d)(1)(B), substituted ''an annual'' for ''a quarterly''.

Subsec. (e). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

IMPLEMENTATION

Pub. L. 105–261, div. A, title III, §373(b), (c), Oct. 17, 1998, 112 Stat. 1992, as amended by Pub. L. 106–65, div. A, title III, §361(d)(2), Oct. 5, 1999, 113 Stat. 575, provided that:

''(b) IMPLEMENTATION.—The Secretary of Defense shall establish and implement the readiness reporting system required by section 117 of title 10, United States Code, as added by subsection (a), so as to ensure that the capabilities required by subsection (c) of that section are attained not later than April 1, 2000.

''(c) IMPLEMENTATION PLAN.—Not later than March 1, 1999, the Secretary of Defense shall submit to Congress a report setting forth the Secretary's plan for implementation of section 117 of title 10, United States Code, as added by subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 153 of this title.

§118. Quadrennial defense review

(a) REVIEW REQUIRED.—The Secretary of Defense shall every four years, during a year following a year evenly divisible by four, conduct a comprehensive examination (to be known as a ''quadrennial defense review'') of the national defense strategy, force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program and policies of the United States with a view toward determining and expressing the defense strategy of the United States and establishing a defense program for the next 20 years. Each such quadrennial defense review shall be conducted in consultation with the Chairman of the Joint Chiefs of Staff.

(b) CONDUCT OF REVIEW.—Each quadrennial defense review shall be conducted so as—

(1) to delineate a national defense strategy consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(2) to define sufficient force structure, force modernization plans, infrastructure, budget plan, and other elements of the defense program of the United States associated with that national defense strategy that would be required to execute successfully the full range of missions called for in that national defense strategy; and

(3) to identify (A) the budget plan that would be required to provide sufficient resources to execute successfully the full range of missions called for in that national defense strategy at a low-to-moderate level of risk, and (B) any additional resources (beyond those programmed in the current future-years defense program) required to achieve such a level of risk.

(c) ASSESSMENT OF RISK.—The assessment of risk for the purposes of subsection (b) shall be undertaken by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff. That assessment shall define the nature and magnitude of the political, strategic, and military risks associated with executing the missions called for under the national defense strategy.

(d) SUBMISSION OF QDR TO CONGRESSIONAL COMMITTEES.—The Secretary shall submit a report on each quadrennial defense review to the Committees on Armed Services of the Senate and the House of Representatives. The report shall be submitted in the year following the year in which the review is conducted, but not later than the date on which the President submits the budget for the next fiscal year to Congress under section 1105(a) of title 31. The report shall include the following:

(1) The results of the review, including a comprehensive discussion of the national defense strategy of the United States and the force structure best suited to implement that strategy at a low-to-moderate level of risk.

(2) The assumed or defined national security interests of the United States that inform the national defense strategy defined in the review.

(3) The threats to the assumed or defined national security interests of the United States that were examined for the purposes of the review and the scenarios developed in the examination of those threats.

(4) The assumptions used in the review, including assumptions relating to—

(A) the status of readiness of United States forces;

(B) the cooperation of allies, mission-sharing and additional benefits to and burdens on United States forces resulting from coalition operations;

(C) warning times;

(D) levels of engagement in operations other than war and smaller-scale contingencies and withdrawal from such operations and contingencies; and

(E) the intensity, duration, and military and political end-states of conflicts and smaller-scale contingencies.

(5) The effect on the force structure and on readiness for high-intensity combat of preparations for and participation in operations other than war and smaller-scale contingencies.

(6) The manpower and sustainment policies required under the national defense strategy to support engagement in conflicts lasting longer than 120 days.

(7) The anticipated roles and missions of the reserve components in the national defense strategy and the strength, capabilities, and equipment necessary to assure that the reserve components can capably discharge those roles and missions.

(8) The appropriate ratio of combat forces to support forces (commonly referred to as the ''tooth-to-tail'' ratio) under the national defense strategy, including, in particular, the appropriate number and size of headquarters units and Defense Agencies for that purpose.

(9) The strategic and tactical air-lift, sea-lift, and ground transportation capabilities required to support the national defense strategy.

(10) The forward presence, pre-positioning, and other anticipatory deployments necessary under the national defense strategy for conflict deterrence and adequate military response to anticipated conflicts.

(11) The extent to which resources must be shifted among two or more theaters under the national defense strategy in the event of conflict in such theaters.

(12) The advisability of revisions to the Unified Command Plan as a result of the national defense strategy.

(13) The effect on force structure of the use by the armed forces of technologies anticipated to be available for the ensuing 20 years.

(14) The national defense mission of the Coast Guard.

(15) Any other matter the Secretary considers appropriate.

(e) CJCS REVIEW.—(1) Upon the completion of each review under subsection (a), the Chairman of the Joint Chiefs of Staff shall prepare and submit to the Secretary of Defense the Chairman's assessment of the review, including the Chairman's assessment of risk.

(2) The Chairman shall include as part of that assessment the Chairman's assessment of the assignment of functions (or roles and missions) to the armed forces, together with any recommendations for changes in assignment that the Chairman considers necessary to achieve maximum efficiency of the armed forces. In preparing the assessment under this paragraph, the Chairman shall consider (among other matters) the following:

(A) Unnecessary duplication of effort among the armed forces.

(B) Changes in technology that can be applied effectively to warfare.

(3) The Chairman's assessment shall be submitted to the Secretary in time for the inclusion of the assessment in the report. The Secretary shall include the Chairman's assessment, together with the Secretary's comments, in the report in its entirety.

(Added Pub. L. 106–65, div. A, title IX, §901(a)(1), Oct. 5, 1999, 113 Stat. 715; amended Pub. L. 107–107, div. A, title IX, §921(a), Dec. 28, 2001, 115 Stat. 1198; Pub. L. 107–314, div. A, title IX, §§922, 923, Dec. 2, 2002, 116 Stat. 2623.)

PRIOR PROVISIONS

A prior section 118, added Pub. L. 97–295, §1(2)(A), Oct. 12, 1982, 96 Stat. 1288, §133b; renumbered §118, Pub. L. 99–433, title I, §101(a)(2), Oct. 1, 1986, 100 Stat. 994, required reports to Congress on sales or transfers of defense articles, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1301(2), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314, §922, substituted ''in the year following the year in which the review is conducted, but not later than the date on which the President submits the budget for the next fiscal year to Congress under section 1105(a) of title 31'' for ''not later than September 30 of the year in which the review is conducted'' in second sentence of introductory provisions.

Subsec. (d)(14), (15). Pub. L. 107–314, §923, added par. (14) and redesignated former par. (14) as (15).

2001—Subsec. (e). Pub. L. 107–107 designated the first sentence of existing provisions as par. (1), the second and third sentences of existing provisions as par. (3), and added par. (2).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ASSESSMENT WITH RESPECT TO 2001 QDR

Pub. L. 107–107, div. A, title IX, §921(c), Dec. 28, 2001, 115 Stat. 1198, provided that: ''With respect to the 2001 Quadrennial Defense Review, the Chairman of the Joint Chiefs of Staff shall submit to Congress a separate assessment of functions (or roles and missions) of the Armed Forces in accordance with paragraph (2) of section 118(e) of title 10, United States Code, as added by subsection (a)(3). Such assessment shall be based on the findings in the 2001 Quadrennial Defense Review, issued by the Secretary of Defense on September 30, 2001, and shall be submitted to Congress not later than one year after the date of the enactment of this Act [Dec. 28, 2001].''

REVISED NUCLEAR POSTURE REVIEW

Pub. L. 106–398, §1 [[div. A], title X, §1041], Oct. 30, 2000, 114 Stat. 1654, 1654A–262, as amended by Pub. L. 107–107, div. A, title X, §1033, Dec. 28, 2001, 115 Stat. 1216, provided that:

''(a) REQUIREMENT FOR COMPREHENSIVE REVIEW.—In order to clarify United States nuclear deterrence policy and strategy for the near term, the Secretary of Defense shall conduct a comprehensive review of the nuclear posture of the United States for the next 5 to 10 years. The Secretary shall conduct the review in consultation with the Secretary of Energy.

''(b) ELEMENTS OF REVIEW.—The nuclear posture review shall include the following elements:

''(1) The role of nuclear forces in United States military strategy, planning, and programming.

''(2) The policy requirements and objectives for the United States to maintain a safe, reliable, and credible nuclear deterrence posture.

''(3) The relationship among United States nuclear deterrence policy, targeting strategy, and arms control objectives.

''(4) The levels and composition of the nuclear delivery systems that will be required for implementing the United States national and military strategy, including any plans for replacing or modifying existing systems.

''(5) The nuclear weapons complex that will be required for implementing the United States national and military strategy, including any plans to modernize or modify the complex.

''(6) The active and inactive nuclear weapons stockpile that will be required for implementing the United States national and military strategy, including any plans for replacing or modifying warheads.

''(7) The possibility of deactivating or dealerting nuclear warheads or delivery systems immediately, or immediately after a decision to retire any specific warhead, class of warheads, or delivery system.

''(c) REPORT TO CONGRESS.—The Secretary of Defense shall submit to Congress, in unclassified and classified forms as necessary, a report on the results of the nuclear posture review conducted under this section. The report shall be submitted concurrently with the Quadrennial Defense Review report due in December 2001.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that the nuclear posture review conducted under this section should be used as the basis for establishing future United States arms control objectives and negotiating positions.''

SPECIFIED MATTER FOR NEXT QDR

Pub. L. 106–65, div. A, title IX, §901(c), Oct. 5, 1999, 113 Stat. 717, provided that: ''In the first quadrennial defense review conducted under section 118 of title 10, United States Code, as added by subsection (a), the Secretary shall include in the technologies considered for the purposes of paragraph (13) of subsection (d) of that section the following: precision guided munitions, stealth, night vision, digitization, and communications.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 231, 7296 of this title.

§118a. Quadrennial quality of life review

(a) REVIEW REQUIRED.—(1) The Secretary of Defense shall every four years conduct a comprehensive examination of the quality of life of

the members of the armed forces (to be known as the ''quadrennial quality of life review''). The review shall include examination of the programs, projects, and activities of the Department of Defense, including the morale, welfare, and recreation activities.

(2) The quadrennial quality of life review shall be designed to result in determinations, and to foster policies and actions, that reflect the priority given the quality of life of members of the armed forces as a primary concern of the Department of Defense leadership.

(b) CONDUCT OF REVIEW.—Each quadrennial quality of life review shall be conducted so as—

(1) to assess quality of life priorities and issues consistent with the most recent National Security Strategy prescribed by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(2) to identify actions that are needed in order to provide members of the armed forces with the quality of life reasonably necessary to encourage the successful execution of the full range of missions that the members are called on to perform under the national security strategy; and

(3) to identify other actions that have the potential for improving the quality of life of the members of the armed forces.

(c) CONSIDERATIONS.—The Secretary shall consider addressing the following matters as part of the quadrennial quality of life review:

(1) Infrastructure.

(2) Military construction.

(3) Physical conditions at military installations and other Department of Defense facilities.

(4) Budget plans.

(5) Adequacy of medical care for members of the armed forces and their dependents.

(6) Adequacy of housing and the basic allowance for housing and basic allowance for subsistence.

(7) Housing-related utility costs.

(8) Educational opportunities and costs.

(9) Length of deployments.

(10) Rates of pay and pay differentials between the pay of members and the pay of civilians.

(11) Retention and recruiting efforts.

(12) Workplace safety.

(13) Support services for spouses and children.

(14) Other elements of Department of Defense programs and Government policies and programs that affect the quality of life of members.

(d) SUBMISSION TO CONGRESSIONAL COMMITTEES.—(1) The Secretary shall submit a report on each quadrennial quality of life review to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The report shall include the following:

(A) The assumptions used in the review.

(B) The results of the review, including a comprehensive discussion of how the quality of life of members of the armed forces affects the national security strategy of the United States.

(2) The report shall be submitted in the year following the year in which the review is conducted, but not later than the date on which the President submits the budget for the next fiscal year to Congress under section 1105(a) of title 31.

(Added Pub. L. 107–314, div. A, title V, §581(a)(1), Dec. 2, 2002, 116 Stat. 2559.)

FIRST QUADRENNIAL QUALITY OF LIFE REVIEW

Pub. L. 107–314, div. A, title V, §581(b), Dec. 2, 2002, 116 Stat. 2561, provided that: ''The first quadrennial quality of life review under section 118a of title 10, United States Code, as added by subsection (a), shall be conducted during 2003, and the report on that review required to be submitted to Congress under subsection (d) of such section shall be submitted not later than the date on which the President submits the budget for fiscal year 2005 to Congress.''

§119. Special access programs: congressional oversight

(a)(1) Not later than March 1 of each year, the Secretary of Defense shall submit to the defense committees a report on special access programs.

(2) Each such report shall set forth—

(A) the total amount requested for special access programs of the Department of Defense in the President's budget for the next fiscal year submitted under section 1105 of title 31; and

(B) for each program in that budget that is a special access program—

(i) a brief description of the program;

(ii) a brief discussion of the major milestones established for the program;

(iii) the actual cost of the program for each fiscal year during which the program has been conducted before the fiscal year during which that budget is submitted; and

(iv) the estimated total cost of the program and the estimated cost of the program for (I) the current fiscal year, (II) the fiscal year for which the budget is submitted, and (III) each of the four succeeding fiscal years during which the program is expected to be conducted.

(3) In the case of a report under paragraph (1) submitted in a year during which the President's budget for the next fiscal year, because of multiyear budgeting for the Department of Defense, does not include a full budget request for the Department of Defense, the report required by paragraph (1) shall set forth—

(A) the total amount already appropriated for the next fiscal year for special access programs of the Department of Defense and any additional amount requested in that budget for such programs for such fiscal year; and

(B) for each program of the Department of Defense that is a special access program, the information specified in paragraph (2)(B).

(b)(1) Not later than February 1 of each year, the Secretary of Defense shall submit to the defense committees a report that, with respect to each new special access program, provides—

(A) notice of the designation of the program as a special access program; and

(B) justification for such designation.

(2) A report under paragraph (1) with respect to a program shall include—

(A) the current estimate of the total program cost for the program; and

(B) an identification of existing programs or technologies that are similar to the technology, or that have a mission similar to the mission, of the program that is the subject of the notice.

(3) In this subsection, the term ''new special access program'' means a special access program that has not previously been covered in a notice and justification under this subsection.

(c)(1) Whenever a change in the classification of a special access program of the Department of Defense is planned to be made or whenever classified information concerning a special access program of the Department of Defense is to be declassified and made public, the Secretary of Defense shall submit to the defense committees a report containing a description of the proposed change, the reasons for the proposed change, and notice of any public announcement planned to be made with respect to the proposed change.

(2) Except as provided in paragraph (3), any report referred to in paragraph (1) shall be submitted not less than 14 days before the date on which the proposed change or public announcement is to occur.

(3) If the Secretary determines that because of exceptional circumstances the requirement of paragraph (2) cannot be met with respect to a proposed change or public announcement concerning a special access program of the Department of Defense, the Secretary may submit the report required by paragraph (1) regarding the proposed change or public announcement at any time before the proposed change or public announcement is made and shall include in the report an explanation of the exceptional circumstances.

(d) Whenever there is a modification or termination of the policy and criteria used for designating a program of the Department of Defense as a special access program, the Secretary of Defense shall promptly notify the defense committees of such modification or termination. Any such notification shall contain the reasons for the modification or termination and, in the case of a modification, the provisions of the policy as modified.

(e)(1) The Secretary of Defense may waive any requirement under subsection (a), (b), or (c) that certain information be included in a report under that subsection if the Secretary determines that inclusion of that information in the report would adversely affect the national security. Any such waiver shall be made on a case-by-case basis.

(2) If the Secretary exercises the authority provided under paragraph (1), the Secretary shall provide the information described in that subsection with respect to the special access program concerned, and the justification for the waiver, jointly to the chairman and ranking minority member of each of the defense committees.

(f) A special access program may not be initiated until—

(1) the defense committees are notified of the program; and

(2) a period of 30 days elapses after such notification is received.

(g) In this section, the term ''defense committees'' means—

(1) the Committee on Armed Services and the Committee on Appropriations, and the Defense Subcommittee of the Committee on Appropriations, of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations, of the House of Representatives.

(Added Pub. L. 100–180, div. A, title XI, §1132(a)(1), Dec. 4, 1987, 101 Stat. 1151; amended Pub. L. 101–510, div. A, title XIV, §§1461, 1482(a), Nov. 5, 1990, 104 Stat. 1698, 1709; Pub. L. 104–106, div. A, title X, §1055, title XV, §1502(a)(4), Feb. 10, 1996, 110 Stat. 442, 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title X, §1048(a)(2), Dec. 28, 2001, 115 Stat. 1222.)

AMENDMENTS

2001—Subsec. (g)(2). Pub. L. 107–107 substituted ''Subcommittee on Defense'' for ''National Security Subcommittee''.

1999—Subsec. (g)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (a)(1). Pub. L. 104–106, §1055, substituted ''March 1'' for ''February 1''.

Subsec. (g). Pub. L. 104–106, §1502(a)(4), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) the Committees on Armed Services and Appropriations of the Senate and House of Representatives; and

''(2) the Defense Subcommittees of the Committees on Appropriations of the Senate and House of Representatives.''

1990—Subsec. (c). Pub. L. 101–510, §1461(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Whenever a change is made in the status of a program of the Department of Defense as a special access program, the Secretary of Defense shall submit to the defense committees a report describing the change. Any such report shall be submitted not later than 30 days after the date on which the change takes effect.''

Subsec. (f). Pub. L. 101–510, §1482(a)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 101–510, §1461(b), inserted ''and Appropriations'' after ''Armed Services'' in par. (1).

Subsec. (g). Pub. L. 101–510, §1482(a)(1), redesignated subsec. (f) as (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1482(d) of Pub. L. 101–510 provided that: ''The amendments made by this section [enacting section 2214 of this title and amending this section and section 1584 of this title] shall take effect on October 1, 1991.''

INITIAL REPORTS ON SPECIAL ACCESS PROGRAMS

Section 1132(b), (c) of Pub. L. 100–180 provided that:

''(b) FIVE-YEAR REFERENCE AMOUNTS.—The first report under subsection (a) of section 119 of title 10, United States Code (as added by subsection (a)), shall set forth—

''(1) the total amount requested in the President's budget for each of the five previous fiscal years for special access programs of the Department of Defense that were included in the budget; and

''(2) the total amount appropriated for each such year for such programs.

''(c) INITIAL REPORT ON SPECIAL ACCESS PROGRAM DESIGNATIONS.—The first report under subsection (b) of section 119 of title 10, United States Code (as added by

subsection (a)), shall cover each existing special access program.''

CHAPTER 3—GENERAL POWERS AND FUNCTIONS

Sec.
121. Regulations.
122. Official registers.
123. Authority to suspend officer personnel laws during war or national emergency.
123a. Suspension of end-strength limitations in time of war or national emergency.
123b. Forces stationed abroad: limitation on number.
124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency.
125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition.
126. Transfer of funds and employees.
127. Emergency and extraordinary expenses.
127a. Operations for which funds are not provided in advance: funding mechanisms.
127b. Assistance in combating terrorism: rewards.
128. Physical protection of special nuclear material: limitation on dissemination of unclassified information.
129. Prohibition of certain civilian personnel management constraints.
129a. General personnel policy.
129b. Experts and consultants: authority to procure services of.
129c. Medical personnel: limitations on reductions.
130. Authority to withhold from public disclosure certain technical data.
130a. Major Department of Defense headquarters activities personnel: limitation.
130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information.
130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1065(b), Dec. 2, 2002, 116 Stat. 2656, added item 127b.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1073(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280, added item 130c.

1999—Pub. L. 106–65, div. A, title IX, §921(a)(2), title X, §1044(b), Oct. 5, 1999, 113 Stat. 723, 762, substituted ''Major Department of Defense headquarters activities personnel: limitation'' for ''Management headquarters and headquarters support activities personnel: limitation'' in item 130a and added item 130b.

1997—Pub. L. 105–85, div. A, title IX, §911(a)(2), Nov. 18, 1997, 111 Stat. 1858, added item 130a.

1996—Pub. L. 104–106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, made technical correction to directory language of Pub. L. 103–337, §1312(a)(2). See 1994 Amendment note below.

Pub. L. 104–106, div. A, title V, §564(a)(2), title X, §1003(a)(2), Feb. 10, 1996, 110 Stat. 326, 417, substituted ''Operations for which funds are not provided in advance: funding mechanisms'' for ''Expenses for contingency operations'' in item 127a and added item 129c.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(2), Oct. 5, 1994, 108 Stat. 3013, added item 123 and struck out former item 123 ''Suspension of certain provisions of law relating to reserve commissioned officers''.

Pub. L. 103–337, div. A, title XIII, §1312(a)(2), Oct. 5, 1994, 108 Stat. 2894, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(8), Feb. 10, 1996, 110 Stat. 513, added item 123b.

1993—Pub. L. 103–160, div. A, title XI, §1108(a)(2), Nov. 30, 1993, 107 Stat. 1752, added item 127a.

1990—Pub. L. 101–510, div. A, title XIV, §§1481(b)(2), 1483(c)(2), Nov. 5, 1990, 104 Stat. 1705, 1715, added items 123a, 129a, and 129b.

1989—Pub. L. 101–189, div. A, title XII, §1202(a)(2), Nov. 29, 1989, 103 Stat. 1563, added item 124.

1987—Pub. L. 100–180, div. A, title XI, §1123(b), Dec. 4, 1987, 101 Stat. 1150, added item 128.

Pub. L. 100–26, §9(b)(1), Apr. 21, 1987, 101 Stat. 287, struck out item 128 ''Funds transfers for foreign cryptologic support''.

1986—Pub. L. 99–433, title I, §110(c)(2), (e)(1), title II, §211(c)(2), Oct. 1, 1986, 100 Stat. 1002, 1003, 1017, inserted ''and Functions'' after ''General Powers'' in chapter heading, struck out item 124 ''Combatant commands: establishment; composition; functions; administration and support'', and added items 127 to 130.

1962—Pub. L. 87–651, title II, §201(b), Sept. 7, 1962, 76 Stat. 517, added items 124 to 126.

1958—Pub. L. 85–861, §1(2)(B), Sept. 2, 1958, 72 Stat. 1437, added items 122 and 123.

§121. Regulations

The President may prescribe regulations to carry out his functions, powers, and duties under this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 6.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
121	[No source].	[No source].

The revised section is inserted to make express the President's general authority to issue regulations, which has been expressly reflected in many laws and left to inference in the remainder.

§122. Official registers

The Secretary of a military department may have published, annually or at such other times as he may designate, official registers containing the names of, and other pertinent information about, such regular and reserve officers of the armed forces under his jurisdiction as he considers appropriate. The register may also contain any other list that the Secretary considers appropriate.

(Added Pub. L. 85–861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
122	10 App.:20b. 34 App.:609.	July 24, 1956, ch. 677, §1, 70 Stat. 623.

§123. Authority to suspend officer personnel laws during war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard Reserve. So long as such war or national emergency continues, any such suspension may be extended by the President.

(b) Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or na-

tional emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(c) If a provision of law pertaining to the promotion of reserve officers is suspended under this section and if the Secretary of Defense submits to Congress proposed legislation to adjust the grades and dates of rank of reserve commissioned officers other than commissioned warrant officers, such proposed legislation shall, so far as practicable, be the same as that recommended for adjusting the grades and dates of rank of officers of the regular component of the armed force concerned.

(d) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(Added Pub. L. 85–861, §1(2)(A), Sept. 2, 1958, 72 Stat. 1437; amended Pub. L. 86–559, §1(1), June 30, 1960, 74 Stat. 264; Pub. L. 89–718, §1, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, §1(1), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, §§501(3), 511(1), Dec. 12, 1980, 94 Stat. 2907, 2920; Pub. L. 97–22, §10(b)(1), July 10, 1981, 95 Stat. 137; Pub. L. 103–337, div. A, title XVI, §1622(a), Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104–106, div. A, title XV, §1501(c)(4), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–107, div. A, title V, §508(b), Dec. 28, 2001, 115 Stat. 1090.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
123	50:1199 (less applicability to National Guard).	Sept. 3, 1954, ch. 1257, §209 (less applicability to National Guard), 68 Stat. 1152.

In subsection (b), the words ''the same as'' are substituted for the word ''comparable'', since any necessary differences in the recommended legislation between Reserves and Regulars are fully taken account of in the words ''So far as practicable''.

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 644 of this title prior to repeal by Pub. L. 103–337, §1622(b).

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104–106 struck out ''281, 592, 1002, 1005, 1006, 1007, 1374, 3217, 3218, 3219, 3220, 3352(a) (last sentence),'' after ''armed force:'', ''5414, 5457, 5458, 5506,'' after ''3855,'', and ''8217, 8218, 8219,'' after ''6410,'' and substituted ''8855, 10214, 12003, 12004, 12005, 12007, 12202, 12213(a) (second sentence), 12642, 12645, 12646, 12647, 12771, 12772, and 12773'' for ''and 8855''.

1994—Pub. L. 103–337 substituted ''Authority to suspend officer personnel laws during war or national emergency'' for ''Suspension of certain provisions of law relating to reserve commissioned officers'' as section catchline and amended text generally, substituting subsecs. (a) to (c) for former subsecs. (a) and (b).

1981—Subsec. (a). Pub. L. 97–22 struck out references to sections 3494 and 8494.

1980—Subsec. (a). Pub. L. 96–513 struck out references to sections 3571, 3847, 5867, 8370, 8571, and 8847.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 3391.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to section 5907.

1960—Subsec. (a). Pub. L. 86–559 inserted references to sections 281, 3855, and 8855 and struck out references to sections 3841, 3842, 3849, 8841, 8842, and 8849.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(3) of Pub. L. 96–513, striking out references to sections 3571, 5867, and 8571, effective Sept. 15, 1981, and amendment by section 511(1) of Pub. L. 96–513, striking out references to sections 3847, 8370, and 8847, effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(11) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14317 of this title; title 37 section 909.

§123a. Suspension of end-strength limitations in time of war or national emergency

(a) DURING WAR OR NATIONAL EMERGENCY.—If at the end of any fiscal year there is in effect a war or national emergency, the President may waive any statutory end strength with respect to that fiscal year. Any such waiver may be issued only for a statutory end strength that is prescribed by law before the waiver is issued.

(b) UPON TERMINATION OF WAR OR NATIONAL EMERGENCY.—Upon the termination of a war or national emergency with respect to which the President has exercised the authority provided by subsection (a), the President may defer the effectiveness of any statutory end strength with respect to the fiscal year during which the termination occurs. Any such deferral may not extend beyond the last day of the sixth month beginning after the date of such termination.

(c) STATUTORY END STRENGTH.—In this section, the term ''statutory end strength'' means any end-strength limitation with respect to a fiscal year that is prescribed by law for any military or civilian component of the armed forces or of the Department of Defense.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(1), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 107–107, div. A, title IV, §421(b), Dec. 28, 2001, 115 Stat. 1076.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(4) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

AMENDMENTS

2001—Pub. L. 107–107 amended text generally. Prior to amendment, text read as follows: ''If at the end of any fiscal year there is in effect a war or national emergency, the President may defer the effectiveness of any end-strength limitation with respect to that fiscal year prescribed by law for any military or civilian component of the armed forces or of the Department of Defense. Any such deferral may not extend beyond November 30 of the following fiscal year.''

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, and authority of President under this section as invoked by section 2 of Ex. Ord. No. 13223 delegated to Secretary of Homeland Security by section 5 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

§123b. Forces stationed abroad: limitation on number

(a) END-STRENGTH LIMITATION.—No funds appropriated to the Department of Defense may be used to support a strength level of members of the armed forces assigned to permanent duty ashore in nations outside the United States at the end of any fiscal year at a level in excess of 203,000.

(b) EXCEPTION FOR WARTIME.—Subsection (a) does not apply in the event of a declaration of war or an armed attack on any member nation of the North Atlantic Treaty Organization, Japan, the Republic of Korea, or any other ally of the United States.

(c) PRESIDENTIAL WAIVER.—The President may waive the operation of subsection (a) if the President declares an emergency. The President shall immediately notify Congress of any such waiver.

(Added Pub. L. 103–337, div. A, title XIII, §1312(a)(1), Oct. 5, 1994, 108 Stat. 2894.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102–484, div. A, title XIII, §1302, Oct. 23, 1992, 106 Stat. 2545, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 103–337, §1312(c).

EFFECTIVE DATE

Section 1312(b) of Pub. L. 103–337 provided that: ''Section 123b of title 10, United States Code, as added by subsection (a), does not apply with respect to a fiscal year before fiscal year 1996.''

§124. Detection and monitoring of aerial and maritime transit of illegal drugs: Department of Defense to be lead agency

(a) LEAD AGENCY.—(1) The Department of Defense shall serve as the single lead agency of the Federal Government for the detection and monitoring of aerial and maritime transit of illegal drugs into the United States.

(2) The responsibility conferred by paragraph (1) shall be carried out in support of the counterdrug activities of Federal, State, local, and foreign law enforcement agencies.

(b) PERFORMANCE OF DETECTION AND MONITORING FUNCTION.—(1) To carry out subsection (a), Department of Defense personnel may operate equipment of the Department to intercept a vessel or an aircraft detected outside the land area of the United States for the purposes of—

(A) identifying and communicating with that vessel or aircraft; and

(B) directing that vessel or aircraft to go to a location designated by appropriate civilian officials.

(2) In cases in which a vessel or an aircraft is detected outside the land area of the United States, Department of Defense personnel may begin or continue pursuit of that vessel or aircraft over the land area of the United States.

(c) UNITED STATES DEFINED.—In this section, the term ''United States'' means the land area of the several States and any territory, commonwealth, or possession of the United States.

(Added Pub. L. 101–189, div. A, title XII, §1202(a)(1), Nov. 29, 1989, 103 Stat. 1563; amended Pub. L. 102–190, div. A, title X, §1088(b), Dec. 5, 1991, 105 Stat. 1485.)

PRIOR PROVISIONS

A prior section 124, added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 514; amended Pub. L. 98–525, title XIII, §1301(a), Oct. 19, 1984, 98 Stat. 2611; Pub. L. 99–145, title XIII, §1303(a)(1), Nov. 8, 1985, 99 Stat. 738, related to establishment, composition, and functions of combatant commands, prior to repeal by Pub. L. 99–433, §211(c)(1). See section 161 et seq. of this title. Similar provisions were contained in Pub. L. 100–456, div. A, title XI, §1102, Sept. 29, 1988, 102 Stat.

2042, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–189, § 1202(b).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

CONDITION ON DEVELOPMENT OF FORWARD OPERATING LOCATIONS FOR UNITED STATES SOUTHERN COMMAND COUNTER-DRUG DETECTION AND MONITORING FLIGHTS

Pub. L. 106–65, div. A, title X, § 1024, Oct. 5, 1999, 113 Stat. 748, provided that:

''(a) CONDITION.—Except as provided in subsection (b), none of the funds appropriated or otherwise made available to the Department of Defense for any fiscal year may be obligated or expended for the purpose of improving the physical infrastructure at any proposed forward operating location outside the United States from which the United States Southern Command may conduct counter-drug detection and monitoring flights until a formal agreement regarding the extent and use of, and host nation support for, the forward operating location is executed by both the host nation and the United States.

''(b) EXCEPTION.—The limitation in subsection (a) does not apply to an unspecified minor military construction project authorized by section 2805 of title 10, United States Code.''

COUNTER-DRUG DETECTION AND MONITORING SYSTEMS PLAN

Pub. L. 102–484, div. A, title X, § 1043, Oct. 23, 1992, 106 Stat. 2492, provided that:

''(a) REQUIREMENTS OF DETECTION AND MONITORING SYSTEMS.—The Secretary of Defense shall establish requirements for counter-drug detection and monitoring systems to be used by the Department of Defense in the performance of its mission under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the transit of illegal drugs into the United States. Such requirements shall be designed—

''(1) to minimize unnecessary redundancy between counter-drug detection and monitoring systems;

''(2) to grant priority to assets and technologies of the Department of Defense that are already in existence or that would require little additional development to be available for use in the performance of such mission;

''(3) to promote commonality and interoperability between counter-drug detection and monitoring systems in a cost-effective manner; and

''(4) to maximize the potential of using counter-drug detection and monitoring systems for other defense missions whenever practicable.

''(b) EVALUATION OF SYSTEMS.—The Secretary of Defense shall identify and evaluate existing and proposed counter-drug detection and monitoring systems in light of the requirements established under subsection (a). In carrying out such evaluation, the Secretary shall—

''(1) assess the capabilities, strengths, and weaknesses of counter-drug detection and monitoring systems; and

''(2) determine the optimal and most cost-effective combination of use of counter-drug detection and monitoring systems to carry out activities relating to the reconnaissance, detection, and monitoring of drug traffic.

''(c) SYSTEMS PLAN.—Based on the results of the evaluation under subsection (b), the Secretary of Defense shall prepare a plan for the development, acquisition, and use of improved counter-drug detection and monitoring systems by the Armed Forces. In developing the plan, the Secretary shall also make every effort to determine which counter-drug detection and monitoring systems should be eliminated from the counter-drug program based on the results of such evaluation. The plan shall include an estimate by the Secretary of the full cost to implement the plan, including the cost to develop, procure, operate, and maintain equipment used in counter-drug detection and monitoring activities performed under the plan and training and personnel costs associated with such activities.

''(d) REPORT.—Not later than six months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to Congress a report on the requirements established under subsection (a) and the results of the evaluation conducted under subsection (b). The report shall include the plan prepared under subsection (c).

''(e) LIMITATION ON OBLIGATION OF FUNDS.—(1) Except as provided in paragraph (2), none of the funds appropriated or otherwise made available for the Department of Defense for fiscal year 1993 pursuant to an authorization of appropriations in this Act [see Tables for classification] may be obligated or expended for the procurement or upgrading of a counter-drug detection and monitoring system, for research and development with respect to such a system, or for the lease or rental of such a system until after the date on which the Secretary of Defense submits to Congress the report required under subsection (d).

''(2) Paragraph (1) shall not prohibit obligations or expenditures of funds for—

''(A) any procurement, upgrading, research and development, or lease of a counter-drug detection and monitoring system that is necessary to carry out the evaluation required under subsection (b); or

''(B) the operation and maintenance of counter-drug detection and monitoring systems used by the Department of Defense as of the date of the enactment of this Act.

''(f) DEFINITION.—For purposes of this section, the term 'counter-drug detection and monitoring systems' means land-, air-, and sea-based detection and monitoring systems suitable for use by the Department of Defense in the performance of its mission—

''(1) under section 124(a) of title 10, United States Code, as lead agency of the Federal Government for the detection and monitoring of the aerial and maritime transit of illegal drugs into the United States; and

''(2) to provide support to law enforcement agencies in the detection, monitoring, and communication of the movement of traffic at, near, and outside the geographic boundaries of the United States.''

INTEGRATION OF COMMUNICATIONS NETWORK

Section 1204(a) of Pub. L. 101–189 provided that:

''(1) The Secretary of Defense shall integrate into an effective communications network the command, control, communications, and technical intelligence assets of the United States that are dedicated (in whole or in part) to the interdiction of illegal drugs into the United States.

''(2) The Secretary shall carry out this subsection in consultation with the Director of National Drug Control Policy.''

RESEARCH AND DEVELOPMENT

Section 1205 of Pub. L. 101–189 provided that: ''The Secretary of Defense shall ensure that adequate research and development activities of the Department of Defense, including research and development activities of the Defense Advanced Research Projects Agency, are devoted to technologies designed to improve—

''(1) the ability of the Department to carry out the detection and monitoring function of the Department under section 124 of title 10, United States Code, as added by section 1202; and

''(2) the ability to detect illicit drugs and other dangerous and illegal substances that are concealed in containers.''

TRAINING EXERCISES IN DRUG-INTERDICTION AREAS

Section 1206 of Pub. L. 101–189 provided that:

''(a) EXERCISES REQUIRED.—The Secretary of Defense shall direct that the armed forces, to the maximum ex-

tent practicable, shall conduct military training exercises (including training exercises conducted by the reserve components) in drug-interdiction areas.

''(b) REPORT.—(1) Not later than February 1 of 1991 and 1992, the Secretary shall submit to Congress a report on the implementation of subsection (a) during the preceding fiscal year.

''(2) The report shall include—

''(A) a description of the exercises conducted in drug-interdiction areas and the effectiveness of those exercises in the national counter-drug effort; and

''(B) a description of those additional actions that could be taken (and an assessment of the results of those actions) if additional funds were made available to the Department of Defense for additional military training exercises in drug-interdiction areas for the purpose of enhancing interdiction and deterrence of drug smuggling.

''(c) DRUG-INTERDICTION AREAS DEFINED.—For purposes of this section, the term 'drug-interdiction areas' includes land and sea areas in which, as determined by the Secretary, the smuggling of drugs into the United States occurs or is believed by the Secretary to have occurred.''

§125. Functions, powers, and duties: transfer, reassignment, consolidation, or abolition

(a) Subject to section 2 of the National Security Act of 1947 (50 U.S.C. 401), the Secretary of Defense shall take appropriate action (including the transfer, reassignment, consolidation, or abolition of any function, power, or duty) to provide more effective, efficient, and economical administration and operation, and to eliminate duplication, in the Department of Defense. However, except as provided by subsections (b) and (c), a function, power, or duty vested in the Department of Defense, or an officer, official, or agency thereof, by law may not be substantially transferred, reassigned, consolidated, or abolished.

(b) Notwithstanding subsection (a), if the President determines it to be necessary because of hostilities or an imminent threat of hostilities, any function, power, or duty vested by law in the Department of Defense, or an officer, official, or agency thereof, including one assigned to the Army, Navy, Air Force, or Marine Corps by section 3062(b), 5062, 5063, or 8062(c) of this title, may be transferred, reassigned, or consolidated. The transfer, reassignment, or consolidation remains in effect until the President determines that hostilities have terminated or that there is no longer an imminent threat of hostilities, as the case may be.

(c) Notwithstanding subsection (a), the Secretary of Defense may assign or reassign the development and operational use of new weapons or weapons systems to one or more of the military departments or one or more of the armed forces.

(Added Pub. L. 87–651, title II, §201(a), Sept. 7, 1962, 76 Stat. 515; amended Pub. L. 89–501, title IV, §401, July 13, 1966, 80 Stat. 278; Pub. L. 98–525, title XIV, §1405(1), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99–433, title I, §103, title III, §301(b)(1), title V, §514(c)(1), Oct. 1, 1986, 100 Stat. 996, 1022, 1055; Pub. L. 101–510, div. A, title XIII, §1301(3), Nov. 5, 1990, 104 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
125(a)	5:171a(c)(1), (2). 5:171n(a) (as applicable to 5:171a(c)(1)).	July 26, 1947, ch. 343, §202(c)(1), (2), (4), (5), (6); added Aug. 10, 1949, ch. 412, §5(3d, 4th, 6th, 7th, and 8th pars.); restated Aug. 6, 1958, Pub. L. 85–599, §3(a), (1st, 2d, 5th, 6th, and 7th pars.), 72 Stat. 514, 515. July 26, 1947, ch. 343, §308(a) (as applicable to §202(c)(1), (5), (6)), 61 Stat. 509.
125(b)	5:171a(c)(5). 5:171n(a) (as applicable to 5:171a(c)(5)).	
125(c)	5:171a(c)(4).	
125(d)	5:171a(c)(6). 5:171n(a) (as applicable to 5:171a(c)(6)).	

In subsection (a), the following substitutions are made: ''Except as provided by subsections (b) and (c)'' for ''except as otherwise provided in this subsection''; ''vested . . . by law'' for ''established by law to be performed by''; ''recommending'' for ''stating''; ''proposes'' for ''contemplates''; and ''the period'' for ''the thirty-day period or the forty-day period''. The words ''on the first day after'' are inserted for clarity. The words ''if carried out'' are omitted as surplusage.

In subsection (b), the words ''Notwithstanding subsection (a)'' are substituted for the words ''Notwithstanding other provisions of this subsection''; and ''Unless the President determines otherwise'' for ''subject to the determination of the President''.

In subsection (c), the following substitutions are made: ''Notwithstanding subsection (a)'' for ''Notwithstanding the provisions of paragraph (1) hereof''; and ''armed forces'' for ''services''.

In subsection (d), the following substitutions are made: ''In subsection (a) (1)'' for ''within the meaning of paragraph (1) hereof''; and ''considers'' for ''deems''. The words ''advantageous to the Government in terms of'' are omitted as surplusage.

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 struck out at end ''However, notwithstanding any other provision of this title or any other law, the Secretary of Defense shall not direct or approve a plan to initiate or effect a substantial reduction or elimination of a major weapons system until the Secretary of Defense has reported all the pertinent details of the proposed action to the Congress of the United States while the Congress is in session.''

1986—Subsec. (a). Pub. L. 99–433, §103(1), struck out provision under which the Secretary of Defense could substantially transfer, reassign, consolidate, or abolish functions, powers, or duties vested in the Department of Defense by law if the Secretary reported the details of the proposed transfer, reassignment, consolidation, or abolition to Congress and if Congress did not affirmatively reject the proposal.

Subsec. (b). Pub. L. 99–433, §§103(2), 514(c)(1), inserted ''vested by law in the Department of Defense, or an officer, official, or agency thereof'' and substituted ''5062, 5063'' for ''5012, 5013''.

Subsec. (d). Pub. L. 99–433, §301(b)(1), struck out subsec. (d) which read as follows: ''In subsection (a)(1), 'major combatant function, power, or duty' does not include a supply or service activity common to more than one military department. The Secretary of Defense shall, whenever he determines it will be more effective, economical, or efficient, provide for the performance of such an activity by one agency or such other organizations as he considers appropriate.''

1984—Subsec. (a). Pub. L. 98–525 substituted ''section 2 of the National Security Act of 1947 (50 U.S.C. 401)'' for ''section 401 of title 50''.

1966—Subsec. (c). Pub. L. 89–501 required the Secretary of Defense to report to the Congress all the pertinent details regarding any substantial reduction or elimination of a major weapons system before action

could be initiated or effected by the Department of Defense.

RESOLUTIONS RELATING TO TRANSFERS, REASSIGNMENTS, CONSOLIDATIONS, OR ABOLITIONS OF COMBATANT FUNCTIONS

Section 303 of Pub. L. 87–651 provided that:

''(a) For the purposes of this section, any resolution reported to the Senate or the House of Representatives pursuant to the provisions of section 125 of title 10, United States Code, shall be treated for the purpose of consideration by either House, in the same manner as a resolution with respect to a reorganization plan reported by a committee within the meaning of the Reorganization Act of 1949 as in effect on July 1, 1958 (5 U.S.C. 133z and the following) [63 Stat. 203; 71 Stat. 611], and shall be governed by the provisions applicable to the consideration of any such resolution by either House of the Congress as provided by sections 205 and 206 of that Act [63 Stat. 207].

''(b) The provisions of this section are enacted by the Congress—

''(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they shall be considered as part of the rules of each House, respectively, and supersede other rules only to the extent that they are inconsistent therewith; and

''(2) with full recognition of the constitutional right of either House to change the rules (as far as relating to the procedure in that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 113, 191 of this title.

§ 126. Transfer of funds and employees

(a) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred or assigned to another department or agency of that department, balances of appropriations that the Secretary of Defense determines are available and needed to finance or discharge that function, power, duty, or activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty or activity, as the case may be, is transferred, and used for any purpose for which those appropriations were originally available. Balances of appropriations so transferred shall—

(1) be credited to any applicable appropriation account of the receiving department or agency; or

(2) be credited to a new account that may be established on the books of the Department of the Treasury;

and be merged with the funds already credited to that account and accounted for as one fund. Balances of appropriations credited to an account under clause (1) are subject only to such limitations as are specifically applicable to that account. Balances of appropriations credited to an account under clause (2) are subject only to such limitations as are applicable to the appropriations from which they are transferred.

(b) When a function, power, or duty or an activity of a department or agency of the Department of Defense is transferred to another department or agency of that department, those civilian employees of the department or agency from which the transfer is made that the Secretary of Defense determines are needed to perform that function, power, or duty, or for that activity, as the case may be, may, with the approval of the President, be transferred to the department or agency to which that function, power, duty, or activity, as the case may be, is transferred. The authorized strength in civilian employees of a department or agency from which employees are transferred under this section is reduced by the number of employees so transferred. The authorized strength in civilian employees of a department or agency to which employees are transferred under this section is increased by the number of employees so transferred.

(Added Pub. L. 87–651, title II, § 201(a), Sept. 7, 1962, 76 Stat. 516; amended Pub. L. 96–513, title V, § 511(2), Dec. 12, 1980, 94 Stat. 2920.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
126(a)	5:172f(a). 5:171n(a) (as applicable to 5:172f(a)).	July 26, 1947, ch. 343, § 407; added Aug. 10, 1949, ch. 412, § 11 (21st and 22d pars.), 63 Stat. 589.
126(b)	5:172f (less (a)).	July 26, 1947, ch. 343, § 308(a) (as applicable to § 407), 61 Stat. 509.

In subsection (a), the words ''under authority of law'' are omitted as surplusage. The following substitutions are made: ''needed'' for ''necessary''; ''used'' for ''be available for use by''; and ''those appropriations'' for ''said funds''.

In subsection (b), 5 U.S.C. 172f(b) is restated to reflect more clearly its purpose to authorize ''transfers of personnel'' (Senate Report No. 366, 81st Congress, p. 23).

AMENDMENTS

1980—Subsec. (b) Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (a) of this section to approve transfers of balances of appropriations provided for therein delegated to Director of Office of Management and Budget, see section 9(2) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 127. Emergency and extraordinary expenses

(a) Subject to the limitations of subsection (c), and within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States. The Secretary concerned or the Inspector General may certify the amount of any such expenditure authorized by him that he considers

advisable not to specify, and his certificate is sufficient voucher for the expenditure of that amount.

(b) The authority conferred by this section may be delegated by the Secretary of Defense to any person in the Department of Defense, by the Inspector General to any person in the Office of the Inspector General, or by the Secretary of a military department to any person within his department, with or without the authority to make successive redelegations.

(c)(1) Funds may not be obligated or expended in an amount in excess of $500,000 under the authority of subsection (a) or (b) until the Secretary of Defense has notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the intent to obligate or expend the funds, and—

(A) in the case of an obligation or expenditure in excess of $1,000,000, 15 days have elapsed since the date of the notification; or

(B) in the case of an obligation or expenditure in excess of $500,000, but not in excess of $1,000,000, 5 days have elapsed since the date of the notification.

(2) Subparagraph (A) or (B) of paragraph (1) shall not apply to an obligation or expenditure of funds otherwise covered by such subparagraph if the Secretary of Defense determines that the national security objectives of the United States will be compromised by the application of the subparagraph to the obligation or expenditure. If the Secretary makes a determination with respect to an obligation or expenditure under the preceding sentence, the Secretary shall immediately notify the committees referred to in paragraph (1) that such obligation or expenditure is necessary and provide any relevant information (in classified form, if necessary) jointly to the chairman and ranking minority member (or their designees) of such committees.

(3) A notification under paragraph (1) and information referred to in paragraph (2) shall include the amount to be obligated or expended, as the case may be, and the purpose of the obligation or expenditure.

(d) In any case in which funds are expended under the authority of subsections (a) and (b), the Secretary of Defense shall submit a report of such expenditures on a quarterly basis to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 94–106, title VIII, § 804(a), Oct. 7, 1975, 89 Stat. 538, § 140; amended Pub. L. 98–94, title XII, § 1268(2), Sept. 24, 1983, 97 Stat. 705; renumbered § 127 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(4), Oct. 1, 1986, 100 Stat. 994, 1002; Pub. L. 103–160, div. A, title III, § 361, Nov. 30, 1993, 107 Stat. 1627; Pub. L. 103–337, div. A, title III, § 378, Oct. 5, 1994, 108 Stat. 2737; Pub. L. 104–106, div. A, title IX, § 915, title XV, § 1502(a)(5), Feb. 10, 1996, 110 Stat. 413, 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsecs. (c)(1), (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c). Pub. L. 104–106, § 915(2), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 104–106, § 1502(a)(5), substituted ''Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of'' for ''Committees on Armed Services and Appropriations of the Senate and''.

Subsec. (d). Pub. L. 104–106, § 915(1), redesignated subsec. (c), as amended by Pub. L. 104–106, §§ 1502(a)(5), 1506, as (d).

1994—Subsec. (c). Pub. L. 103–337 struck out par. (1) designation before ''In any case'' and struck out par. (2) which read as follows: ''The amount of funds expended by the Inspector General of the Department of Defense under subsections (a) and (b) during a fiscal year may not exceed $400,000.''

1993—Subsec. (a). Pub. L. 103–160, § 361(1), inserted '', the Inspector General of the Department of Defense,'' after ''the Secretary of Defense'' and ''or the Inspector General'' after ''the Secretary concerned'' and after ''The Secretary concerned''.

Subsec. (b). Pub. L. 103–160, § 361(2), inserted '', by the Inspector General to any person in the Office of the Inspector General,'' after ''the Department of Defense''.

Subsec. (c). Pub. L. 103–160, § 361(3), designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433 renumbered section 140 of this title as this section and substituted ''Emergency'' for ''Emergencies'' in section catchline.

1983—Subsec. (a). Pub. L. 98–94 struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–94 struck out ''of this section'' after ''subsections (a) and (b)''.

CONSTRUCTION AUTHORITY OF SECRETARY OF DEFENSE UNDER DECLARATION OF WAR OR NATIONAL EMERGENCY

Pub. L. 97–99, title IX, § 903, Dec. 23, 1981, 95 Stat. 1382, which authorized the Secretary of Defense, in the event of a declaration of war or the declaration of a national emergency by the President, to undertake military construction without regard to any other provisions of law, was repealed and restated as section 2808 of this title by Pub. L. 97–214, §§ 2(a), 7(18), July 12, 1982, 96 Stat. 157, 174, effective Oct. 1, 1982.

§ 127a. Operations for which funds are not provided in advance: funding mechanisms

(a) IN GENERAL.—(1) The Secretary of Defense shall use the procedures prescribed by this section with respect to any operation specified in paragraph (2) that involves—

(A) the deployment (other than for a training exercise) of elements of the Armed Forces for a purpose other than a purpose for which funds have been specifically provided in advance; or

(B) the provision of humanitarian assistance, disaster relief, or support for law enforcement (including immigration control) for which funds have not been specifically provided in advance.

(2) This section applies to—

(A) any operation the incremental cost of which is expected to exceed $50,000,000; and

(B) any other operation the expected incremental cost of which, when added to the expected incremental costs of other operations that are currently ongoing, is expected to result in a cumulative incremental cost of ongoing operations of the Department of Defense in excess of $100,000,000.

Any operation the incremental cost of which is expected not to exceed $10,000,000 shall be disregarded for the purposes of subparagraph (B).

(3) Whenever an operation to which this section applies is commenced or subsequently becomes covered by this section, the Secretary of Defense shall designate and identify that operation for the purposes of this section and shall promptly notify Congress of that designation (and of the identification of the operation).

(4) This section does not provide authority for the President or the Secretary of Defense to carry out any operation, but establishes mechanisms for the Department of Defense by which funds are provided for operations that the armed forces are required to carry out under some other authority.

(b) WAIVER OF REQUIREMENT TO REIMBURSE SUPPORT UNITS.—(1) The Secretary of Defense shall direct that, when a unit of the Armed Forces participating in an operation described in subsection (a) receives services from an element of the Department of Defense that operates through the Defense Business Operations Fund (or a successor fund), such unit of the Armed Forces may not be required to reimburse that element for the incremental costs incurred by that element in providing such services, notwithstanding any other provision of law or any Government accounting practice.

(2) The amounts which but for paragraph (1) would be required to be reimbursed to an element of the Department of Defense (or a fund) shall be recorded as an expense attributable to the operation and shall be accounted for separately.

(c) TRANSFER AUTHORITY.—(1) Whenever there is an operation of the Department of Defense described in subsection (a), the Secretary of Defense may transfer amounts described in paragraph (3) to accounts from which incremental expenses for that operation were incurred in order to reimburse those accounts for those incremental expenses. Amounts so transferred shall be merged with and be available for the same purposes as the accounts to which transferred.

(2) The total amount that the Secretary of Defense may transfer under the authority of this section in any fiscal year is $200,000,000.

(3) Transfers under this subsection may only be made from amounts appropriated to the Department of Defense for any fiscal year that remain available for obligation, other than amounts within any operation and maintenance appropriation that are available for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(4) The authority provided by this subsection is in addition to any other authority provided by law authorizing the transfer of amounts available to the Department of Defense. However, the Secretary may not use any such authority under another provision of law for a purpose described in paragraph (1) if there is authority available under this subsection for that purpose.

(5) The authority provided by this subsection to transfer amounts may not be used to provide authority for an activity that has been denied authorization by Congress.

(6) A transfer made from one account to another under the authority of this subsection shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) REPORT UPON DESIGNATION OF AN OPERATION.—Within 45 days after the Secretary of Defense identifies an operation pursuant to subsection (a)(2), the Secretary of Defense shall submit to Congress a report that sets forth the following:

(1) The manner by which the Secretary proposes to obtain funds for the cost to the United States of the operation, including a specific discussion of how the Secretary proposes to restore balances in—

(A) the Defense Business Operations Fund (or a successor fund), or

(B) the accounts from which the Secretary transfers funds under the authority of subsection (c), to the levels that would have been anticipated but for the provisions of subsection (c).

(2) If the operation is described in subsection (a)(1)(B), a justification why the budgetary resources of another department or agency of the Federal Government, instead of resources of the Department of Defense, are not being used for carrying out the operation.

(3) The objectives of the operation.

(4) The estimated duration of the operation and of any deployment of armed forces personnel in such operation.

(5) The estimated incremental cost of the operation to the United States.

(6) The exit criteria for the operation and for the withdrawal of the elements of the armed forces involved in the operation.

(e) LIMITATIONS.—(1) The Secretary may not restore balances in the Defense Business Operations Fund through increases in rates charged by that fund in order to compensate for costs incurred and not reimbursed due to subsection (b).

(2) The Secretary may not restore balances in the Defense Business Operations Fund or any other fund or account through the use of unobligated amounts in an operation and maintenance appropriation that are available within that appropriation for (A) an account (known as a budget activity 1 account) that is specified as being for operating forces, or (B) an account (known as a budget activity 2 account) that is specified as being for mobilization.

(f) SUBMISSION OF REQUESTS FOR SUPPLEMENTAL APPROPRIATIONS.—It is the sense of Congress that whenever there is an operation described in subsection (a), the President should, not later than 90 days after the date on which notification is provided pursuant to subsection (a)(3), submit to Congress a request for the enactment of supplemental appropriations for the then-current fiscal year in order to provide funds to replenish the Defense Business Operations Fund or any other fund or account of the Department of Defense from which funds for the incremental expenses of that operation were derived under this section and should, as nec-

essary, submit subsequent requests for the enactment of such appropriations.

(g) INCREMENTAL COSTS.—For purposes of this section, incremental costs of the Department of Defense with respect to an operation are the costs of the Department that are directly attributable to the operation (and would not have been incurred but for the operation). Incremental costs do not include the cost of property or services acquired by the Department that are paid for by a source outside the Department or out of funds contributed by such a source.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—This section may not be construed as altering or superseding the War Powers Resolution. This section does not provide authority to conduct any military operation.

(i) GAO COMPLIANCE REVIEWS.—The Comptroller General of the United States shall from time to time, and when requested by a committee of Congress, conduct a review of the defense funding structure under this section to determine whether the Department of Defense is complying with the requirements and limitations of this section.

(Added Pub. L. 103–160, div. A, title XI, §1108(a)(1), Nov. 30, 1993, 107 Stat. 1751; amended Pub. L. 104–106, div. A, title X, §1003(a)(1), Feb. 10, 1996, 110 Stat. 415.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§1541 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''Operations for which funds are not provided in advance: funding mechanisms'' for ''Expenses for contingency operations'' as section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (h) relating to funding procedures for operations designated by the Secretary of Defense as National Contingency Operations.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1003(b) of Pub. L. 104–106 provided that: ''The amendment to section 127a of title 10, United States Code, made by subsection (a) shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any operation of the Department of Defense that is in effect on or after that date, whether such operation is begun before, on, or after such date of enactment. In the case of an operation begun before such date, any reference in such section to the commencement of such operation shall be treated as referring to the effective date under the preceding sentence.''

§ 127b. Assistance in combating terrorism: rewards

(a) AUTHORITY.—The Secretary of Defense may pay a monetary amount, or provide a payment-in-kind, to a person as a reward for providing United States Government personnel with information or nonlethal assistance that is beneficial to—

(1) an operation or activity of the armed forces conducted outside the United States against international terrorism; or

(2) force protection of the armed forces.

(b) LIMITATION.—The amount or value of a reward provided under this section may not exceed $200,000.

(c) DELEGATION OF AUTHORITY.—(1) The authority of the Secretary of Defense under subsection (a) may be delegated only—

(A) to the Deputy Secretary of Defense and an Under Secretary of Defense, without further redelegation; and

(B) to the commander of a combatant command, but only for a reward in an amount or with a value not in excess of $50,000.

(2) A commander of a combatant command to whom authority to provide rewards under this section is delegated under paragraph (1) may further delegate that authority, but only for a reward in an amount or with a value not in excess of $2,500, except that such a delegation may be made to the commander's deputy commander without regard to such limitation.

(d) COORDINATION.—(1) The Secretary of Defense shall prescribe policies and procedures for the offering and making of rewards under this section and otherwise for administering the authority under this section. Such polices[1] and procedures shall be prescribed in consultation with the Secretary of State and the Attorney General and shall ensure that the making of a reward under this section does not duplicate or interfere with the payment of a reward authorized by the Secretary of State or the Attorney General.

(2) The Secretary of Defense shall consult with the Secretary of State regarding the making of any reward under this section in an amount or with a value in excess of $100,000.

(e) PERSONS NOT ELIGIBLE.—The following persons are not eligible to receive a reward under this section:

(1) A citizen of the United States.

(2) An officer or employee of the United States.

(3) An employee of a contractor of the United States.

(f) ANNUAL REPORT.—(1) Not later than December 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the rewards program under this section during the preceding fiscal year.

(2) Each report for a fiscal year under this subsection shall include the following:

(A) Information on the total amount expended during that fiscal year to carry out the rewards program under this section during that fiscal year.

(B) Specification of the amount, if any, expended during that fiscal year to publicize the availability of rewards under this section.

(C) With respect to each reward provided during that fiscal year—

(i) the amount or value of the reward and whether the reward was provided as a monetary payment or in some other form;

(ii) the recipient of the reward; and

(iii) a description of the information or assistance for which the reward was paid, to-

[1] So in original. Probably should be ''policies''.

gether with an assessment of the significance and benefit of the information or assistance.

(3) The Secretary may submit the report in classified form if the Secretary determines that it is necessary to do so.

(g) DETERMINATIONS BY THE SECRETARY.—A determination by the Secretary under this section is final and conclusive and is not subject to judicial review.

(Added Pub. L. 107–314, div. A, title X, § 1065(a), Dec. 2, 2002, 116 Stat. 2655.)

§ 128. Physical protection of special nuclear material: limitation on dissemination of unclassified information

(a)(1) In addition to any other authority or requirement regarding protection from dissemination of information, and subject to section 552(b)(3) of title 5, the Secretary of Defense, with respect to special nuclear materials, shall prescribe such regulations, after notice and opportunity for public comment thereon, or issue such orders as may be necessary to prohibit the unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material.

(2) The Secretary may prescribe regulations or issue orders under paragraph (1) to prohibit the dissemination of any information described in such paragraph only if and to the extent that the Secretary determines that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) illegal production of nuclear weapons, or

(B) theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making a determination under paragraph (2), the Secretary may consider what the likelihood of an illegal production, theft, diversion, or sabotage referred to in such paragraph would be if the information proposed to be prohibited from dissemination under this section were at no time available for dissemination.

(4) The Secretary shall exercise his authority under this subsection to prohibit the dissemination of any information described in paragraph (1)—

(A) so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(B) upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) illegal production of nuclear weapons, or

(ii) theft, diversion, or sabotage of nuclear materials, equipment, or facilities.

(b) Nothing in this section shall be construed to authorize the Secretary to withhold, or to authorize the withholding of, information from the appropriate committees of the Congress.

(c) Any determination by the Secretary concerning the applicability of this section shall be subject to judicial review pursuant to section 552(a)(4)(B) of title 5.

(d) The Secretary shall prepare on an annual basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

(1) identify any information protected from disclosure pursuant to such regulation or order;

(2) specifically state the Secretary's justification for determining that unauthorized dissemination of the information protected from disclosure under such regulation or order could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons or the theft, diversion, or sabotage of special nuclear materials, equipment, or facilities, as specified under subsection (a); and

(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

(Added Pub. L. 100–180, div. A, title XI, § 1123(a), Dec. 4, 1987, 101 Stat. 1149; amended Pub. L. 101–510, div. A, title XIII, § 1311(1), Nov. 5, 1990, 104 Stat. 1669.)

PRIOR PROVISIONS

A prior section 128 was renumbered section 421 of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''on an annual basis'' for ''on a quarterly basis''.

§ 129. Prohibition of certain civilian personnel management constraints

(a) The civilian personnel of the Department of Defense shall be managed each fiscal year solely on the basis of and consistent with (1) the workload required to carry out the functions and activities of the department and (2) the funds made available to the department for such fiscal year. The management of such personnel in any fiscal year shall not be subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after February 10, 1996, and that refers specifically to this subsection.

(b) The number of, and the amount of funds available to be paid to, indirectly funded Gov-

ernment employees of the Department of Defense may not be—

(1) subject to any constraint or limitation on the number of such personnel who may be employed on the last day of a fiscal year;

(2) managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees; or

(3) controlled under any policy of the Secretary of a military department for control of civilian manpower resources.

(c) In this section, the term ''indirectly funded Government employees'' means civilian employees of the Department of Defense—

(1) who are employed by industrial-type activities, the Major Range and Test Facility Base, or commercial-type activities described in section 2208 of this title; and

(2) whose salaries and benefits are funded from sources other than appropriated funds.

(d) With respect to each budget activity within an appropriation for a fiscal year for operations and maintenance, the Secretary of Defense shall ensure that there are employed during that fiscal year employees in the number and with the combination of skills and qualifications that are necessary to carry out the functions within that budget activity for which funds are provided for that fiscal year.

(e) Subsections (a), (b), and (c) apply to the Major Range and Test Facility Base (MRTFB) at the installation level. With respect to the MRTFB structure, the term ''funds made available'' includes both direct appropriated funds and funds provided by MRTFB customers.

(f)(1) Not later than February 1 of each year, the Secretary of each military department and the head of each Defense Agency shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the management of the civilian workforce under the jurisdiction of that official.

(2) Each report of an official under paragraph (1) shall contain the following:

(A) The official's certification (i) that the civilian workforce under the jurisdiction of the official is not subject to any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees, and (ii) that, during the 12 months preceding the date on which the report is due, such workforce has not been subject to any such constraint or limitation.

(B) A description of how the civilian workforce is managed.

(C) A detailed description of the analytical tools used to determine civilian workforce requirements during the 12-month period referred to in subparagraph (A).

(Added Pub. L. 97–86, title IX, §904(a), Dec. 1, 1981, 95 Stat. 1114, §140b; renumbered §129, Pub. L. 99–433, title I, §101(a)(3), Oct. 1, 1986, 100 Stat. 994; amended Pub. L. 99–661, div. A, title V, §533, Nov. 14, 1986, 100 Stat. 3873; Pub. L. 102–190, div. A, title III, §312(b), Dec. 5, 1991, 105 Stat. 1335; Pub. L. 104–106, div. A, title X, §1031, Feb. 10, 1996, 110 Stat. 428; Pub. L. 104–201, div. A, title X, §1074(a)(1), title XVI, §1603, Sept. 23, 1996, 110 Stat. 2658, 2735; Pub. L. 105–85, div. A, title XI, §1101, Nov. 18, 1997, 111 Stat. 1922; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (f)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (f). Pub. L. 105–85 added subsec. (f).

1996—Subsec. (a). Pub. L. 104–201, §1074(a)(1), substituted ''February 10, 1996,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106, §1031(1), substituted ''constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. The Secretary of Defense and the Secretaries of the military departments may not be required to make a reduction in the number of full-time equivalent positions in the Department of Defense unless such reduction is necessary due to a reduction in funds available to the Department or is required under a law that is enacted after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 and that refers specifically to this subsection.'' for ''man-year constraint or limitation.''

Subsec. (b)(2). Pub. L. 104–106, §1031(2), substituted ''any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees'' for ''any end-strength''.

Subsec. (c)(1). Pub. L. 104–201, §1603(1), inserted '', the Major Range and Test Facility Base,'' after ''industrial-type activities''.

Subsec. (d). Pub. L. 104–106, §1031(3), added subsec. (d).

Subsec. (e). Pub. L. 104–201, §1603(2), added subsec. (e).

1991—Subsec. (a). Pub. L. 102–190 substituted ''department and (2)'' for ''department, (2)'' and struck out '', and (3) the authorized end strength for the civilian personnel of the department for such fiscal year'' at end of first sentence.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Pub. L. 99–433 renumbered section 140b of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 115 of this title.

§ 129a. General personnel policy

The Secretary of Defense shall use the least costly form of personnel consistent with military requirements and other needs of the Department. In developing the annual personnel authorization requests to Congress and in carrying out personnel policies, the Secretary shall—

(1) consider particularly the advantages of converting from one form of personnel (military, civilian, or private contract) to another for the performance of a specified job; and

(2) include in each manpower requirements report submitted under section 115a of this title a complete justification for converting from one form of personnel to another.

(Added Pub. L. 101–510, div. A, title XIV, §1483(b)(2), Nov. 5, 1990, 104 Stat. 1715.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(b)(5) of this title, prior to repeal by Pub. L. 101–510, §1483(a).

CONVERSION OF MILITARY POSITIONS TO CIVILIAN POSITIONS

Pub. L. 104–106, div. A, title X, §1032, Feb. 10, 1996, 110 Stat. 429, as amended by Pub. L. 104–201, div. A, title

XVI, §1601, Sept. 23, 1996, 110 Stat. 2734, directed Secretary of Defense, by Sept. 30, 1996, to convert at least 3,000 military positions to civilian positions and, not later than Mar. 31, 1996, submit to Congress a plan for the implementation of conversion.

PROHIBITION ON USE OF FUNDS TO ASSIGN SUPERVISOR'S TITLE OR GRADE BASED UPON NUMBER OF PEOPLE SUPERVISED

Pub. L. 104–61, title VIII, §8031, Dec. 1, 1995, 109 Stat. 658, provided that: ''None of the funds appropriated during the current fiscal year and hereafter, may be used by the Department of Defense to assign a supervisor's title or grade when the number of people he or she supervises is considered as a basis for this determination: *Provided*, That savings that result from this provision are represented as such in future budget proposals.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8036, Sept. 30, 1994, 108 Stat. 2626.

Pub. L. 103–139, title VIII, §8040, Nov. 11, 1993, 107 Stat. 1449.

Pub. L. 102–396, title IX, §9053, Oct. 6, 1992, 106 Stat. 1914.

Pub. L. 102–172, title VIII, §8055, Nov. 26, 1991, 105 Stat. 1184.

Pub. L. 101–511, title VIII, §8063, Nov. 5, 1990, 104 Stat. 1888.

Pub. L. 101–165, title IX, §9085, Nov. 21, 1989, 103 Stat. 1147.

Pub. L. 100–463, title VIII, §8079, Oct. 1, 1988, 102 Stat. 2270–30.

Pub. L. 100–202, §101(b) [title VIII, §8105], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§ 129b. Experts and consultants: authority to procure services of

(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense and the Secretaries of the military departments may—

(1) procure the services of experts or consultants (or of organizations of experts or consultants) in accordance with section 3109 of title 5; and

(2) pay in connection with such services travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals are traveling from their homes or places of business to official duty stations and return as may be authorized by law.

(b) CONDITIONS.—The services of experts or consultants (or organizations thereof) may be procured under subsection (a) only if the Secretary of Defense or the Secretary of the military department concerned, as the case may be, determines that—

(1) the procurement of such services is advantageous to the United States; and

(2) such services cannot adequately be provided by the Department of Defense.

(c) REGULATIONS.—Procurement of the services of experts and consultants (or organizations thereof) under subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–510, div. A, title XIV, §1481(b)(1), Nov. 5, 1990, 104 Stat. 1704; amended Pub. L. 102–190, div. A, title X, §1061(a)(2), Dec. 5, 1991, 105 Stat. 1472.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, §9002, Nov. 21, 1989, 103 Stat. 1129, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(b)(3).

AMENDMENTS

1991—Pub. L. 102–190 inserted ''of'' after ''services'' in section catchline.

§ 129c. Medical personnel: limitations on reductions

(a) LIMITATION ON REDUCTION.—For any fiscal year, the Secretary of Defense may not make a reduction in the number of medical personnel of the Department of Defense described in subsection (b) unless the Secretary makes a certification for that fiscal year described in subsection (c).

(b) COVERED REDUCTIONS.—Subsection (a) applies to a reduction in the number of medical personnel of the Department of Defense as of the end of a fiscal year to a number that is less than—

(1) 95 percent of the number of such personnel at the end of the immediately preceding fiscal year; or

(2) 90 percent of the number of such personnel at the end of the third fiscal year preceding the fiscal year.

(c) CERTIFICATION.—A certification referred to in subsection (a) with respect to reductions in medical personnel of the Department of Defense for any fiscal year is a certification by the Secretary of Defense to Congress that—

(1) the number of medical personnel being reduced is excess to the current and projected needs of the Department of Defense; and

(2) such reduction will not result in an increase in the cost of health care services provided under the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of this title.

(d) POLICY FOR IMPLEMENTING REDUCTIONS.—Whenever the Secretary of Defense directs that there be a reduction in the total number of military medical personnel of the Department of Defense, the Secretary shall require that the reduction be carried out so as to ensure that the reduction is not exclusively or disproportionately borne by any one of the armed forces and is not exclusively or disproportionately borne by either the active or the reserve components.

(e) DEFINITION.—In this section, the term ''medical personnel'' means—

(1) the members of the armed forces covered by the term ''medical personnel'' as defined in section 115a(e)(2) of this title; and

(2) the civilian personnel of the Department of Defense assigned to military medical facilities.

(Added Pub. L. 104–106, div. A, title V, §564(a)(1), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 105–85, div. A, title X, §1073(a)(4), Nov. 18, 1997, 111 Stat. 1900.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title VII, §711, Nov. 5, 1990, 104 Stat. 1582, as amended, which was set out as a note under section 115 of this title, prior to repeal by Pub. L. 104–106, §564(d)(1).

AMENDMENTS

1997—Subsec. (e)(1). Pub. L. 105–85 substituted ''section 115a(e)(2)'' for ''section 115a(g)(2)''.

SPECIAL TRANSITION RULE FOR FISCAL YEAR 1996

Section 564(b) of Pub. L. 104–106 provided that: ''For purposes of applying subsection (b)(1) of section 129c of title 10, United States Code, as added by subsection (a), during fiscal year 1996, the number against which the percentage limitation of 95 percent is computed shall be the number of medical personnel of the Department of Defense as of the end of fiscal year 1994 (rather than the number as of the end of fiscal year 1995).''

§ 130. Authority to withhold from public disclosure certain technical data

(a) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully outside the United States without an approval, authorization, or license under the Export Administration Act of 1979 (50 U.S.C. App. 2401–2420) or the Arms Export Control Act (22 U.S.C. 2751 et seq.). However, technical data may not be withheld under this section if regulations promulgated under either such Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations.

(b) Regulations under this section shall be published in the Federal Register for a period of no less than 30 days for public comment before promulgation. Such regulations shall address, where appropriate, releases of technical data to allies of the United States and to qualified United States contractors, including United States contractors that are small business concerns, for use in performing United States Government contracts.

(c) In this section, the term ''technical data with military or space application'' means any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used, or be adapted for use, to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(Added Pub. L. 98–94, title XII, § 1217(a), Sept. 24, 1983, 97 Stat. 690, § 140c; amended Pub. L. 99–145, title XIII, § 1303(a)(3), Nov. 8, 1985, 99 Stat. 738; renumbered § 130 and amended Pub. L. 99–433, title I, §§ 101(a)(3), 110(d)(6), Oct. 1, 1986, 100 Stat. 994, 1003; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIV, § 1484(b)(1), Nov. 5, 1990, 104 Stat. 1715.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (a), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''Regulations under this section'' for ''(1) Within 90 days after September 24, 1983, the Secretary of Defense shall propose regulations to implement this section. Such regulations'' in subsec. (b) and redesignated former subsec. (b)(2) as subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1986—Pub. L. 99–433 renumbered section 140c of this title as this section and substituted ''Authority'' for ''Secretary of Defense: authority'' in section catchline.

1985—Subsec. (b)(1). Pub. L. 99–145 substituted ''September 24, 1983'' for ''enactment of this section''.

§ 130a. Major Department of Defense headquarters activities personnel: limitation

(a) LIMITATION.—Effective October 1, 2002, the number of major headquarters activities personnel in the Department of Defense may not exceed 85 percent of the baseline number.

(b) PHASED REDUCTION.—The number of major headquarters activities personnel in the Department of Defense—

(1) as of October 1, 2000, may not exceed 95 percent of the baseline number; and

(2) as of October 1, 2001, may not exceed 90 percent of the baseline number.

(c) BASELINE NUMBER.—In this section, the term ''baseline number'' means the number of major headquarters activities personnel in the Department of Defense as of October 1, 1999.

(d) MAJOR HEADQUARTERS ACTIVITIES.—(1) For purposes of this section, major headquarters activities are those headquarters (and the direct support integral to their operation) the primary mission of which is to manage or command the programs and operations of the Department of Defense, the Department of Defense components, and their major military units, organizations, or agencies. Such term includes management headquarters, combatant headquarters, and direct support.

(2) The specific elements of the Department of Defense that are major headquarters activities for the purposes of this section are those elements identified as Major DoD Headquarters Activities in accordance with Department of Defense Directive 5100.73, entitled ''Major Department of Defense Headquarters Activities'', issued on May 13, 1999. The provisions of that directive applicable to identification of any activity as a ''Major DoD Headquarters Activity'' may not be changed except as provided by law.

(e) MAJOR HEADQUARTERS ACTIVITIES PERSONNEL.—In this section, the term ''major headquarters activities personnel'' means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in major headquarters activities.

(f) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, major headquarters activities in order to comply with this section, the Secretary of Defense and the Secretaries of the military departments may not reassign functions in order to evade the requirements of this section.

(g) FLEXIBILITY.—(1) If during fiscal year 2001 or fiscal year 2002 the Secretary of Defense determines, and certifies to Congress, that the limitation under subsection (a), or a limitation under subsection (b), would adversely affect United States national security, the Secretary may take any of the following actions:

(A) Increase the percentage specified in subsection (b)(1) by such amount as the Secretary determines necessary or waive the limitation under that subsection.

(B) Increase the percentage specified in subsection (b)(2) by such amount as the Secretary determines necessary, not to exceed a cumulative increase of 7.5 percentage points.

(C) Increase the percentage specified in subsection (a) by such amount as the Secretary determines necessary, not to exceed a cumulative increase of 7.5 percentage points.

(2) Any certification under paragraph (1) shall include notice of the specific waiver or increases made pursuant to the authority provided in that paragraph.

(Added Pub. L. 105–85, div. A, title IX, §911(a)(1), Nov. 18, 1997, 111 Stat. 1857; amended Pub. L. 106–65, div. A, title IX, §921(a)(1), Oct. 5, 1999, 113 Stat. 722; Pub. L. 106–398, §1 [[div. A], title IX, §941], Oct. 30, 2000, 114 Stat. 1654, 1654A–241.)

AMENDMENTS

2000—Subsec. (g). Pub. L. 106–398 added subsec. (g).

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (g) limiting and requiring phased reductions in management headquarters and headquarters support activities personnel.

IMPLEMENTATION REPORT

Pub. L. 105–85, div. A, title IX, §911(b), Nov. 18, 1997, 111 Stat. 1858, provided that not later than Jan. 15, 1998, the Secretary of Defense was to submit to Congress a report containing a plan to achieve the personnel reductions required by this section as added by section 911(a) of Pub. L. 105–85.

§ 130b. Personnel in overseas, sensitive, or routinely deployable units: nondisclosure of personally identifying information

(a) EXEMPTION FROM DISCLOSURE.—The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security may, notwithstanding section 552 of title 5, authorize to be withheld from disclosure to the public personally identifying information regarding—

(1) any member of the armed forces assigned to an overseas unit, a sensitive unit, or a routinely deployable unit; and

(2) any employee of the Department of Defense or of the Coast Guard whose duty station is with any such unit.

(b) EXCEPTIONS.—(1) The authority in subsection (a) is subject to such exceptions as the President may direct.

(2) Subsection (a) does not authorize any official to withhold, or to authorize the withholding of, information from Congress.

(c) DEFINITIONS.—In this section:

(1) The term ''personally identifying information'', with respect to any person, means the person's name, rank, duty address, and official title and information regarding the person's pay.

(2) The term ''unit'' means a military organization of the armed forces designated as a unit by competent authority.

(3) The term ''overseas unit'' means a unit that is located outside the United States and its territories.

(4) The term ''sensitive unit'' means a unit that is primarily involved in training for the conduct of, or conducting, special activities or classified missions, including—

(A) a unit involved in collecting, handling, disposing, or storing of classified information and materials;

(B) a unit engaged in training—

(i) special operations units;

(ii) security group commands weapons stations; or

(iii) communications stations; and

(C) any other unit that is designated as a sensitive unit by the Secretary of Defense or, in the case of the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security.

(5) The term ''routinely deployable unit'' means a unit that normally deploys from its permanent home station on a periodic or rotating basis to meet peacetime operational requirements that, or to participate in scheduled training exercises that, routinely require deployments outside the United States and its territories. Such term includes a unit that is alerted for deployment outside the United States and its territories during an actual execution of a contingency plan or in support of a crisis operation.

(Added Pub. L. 106–65, div. A, title X, §1044(a), Oct. 5, 1999, 113 Stat. 761; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (c)(4)(C). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 130c. Nondisclosure of information: certain sensitive information of foreign governments and international organizations

(a) EXEMPTION FROM DISCLOSURE.—The national security official concerned (as defined in subsection (h)) may withhold from public disclosure otherwise required by law sensitive information of foreign governments in accordance with this section.

(b) INFORMATION ELIGIBLE FOR EXEMPTION.—For the purposes of this section, information is sensitive information of a foreign government only if the national security official concerned makes each of the following determinations with respect to the information:

(1) That the information was provided by, otherwise made available by, or produced in

cooperation with, a foreign government or international organization.

(2) That the foreign government or international organization is withholding the information from public disclosure (relying for that determination on the written representation of the foreign government or international organization to that effect).

(3) That any of the following conditions are met:

(A) The foreign government or international organization requests, in writing, that the information be withheld.

(B) The information was provided or made available to the United States Government on the condition that it not be released to the public.

(C) The information is an item of information, or is in a category of information, that the national security official concerned has specified in regulations prescribed under subsection (g) as being information the release of which would have an adverse effect on the ability of the United States Government to obtain the same or similar information in the future.

(c) INFORMATION OF OTHER AGENCIES.—If the national security official concerned provides to the head of another agency sensitive information of a foreign government, as determined by that national security official under subsection (b), and informs the head of the other agency of that determination, then the head of the other agency shall withhold the information from any public disclosure unless that national security official specifically authorizes the disclosure.

(d) LIMITATIONS.—(1) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government before October 30, 2000, and more than 25 years before the request is received by an agency, the information may be withheld only as set forth in paragraph (3).

(2)(A) If a request for disclosure covers any sensitive information of a foreign government (as described in subsection (b)) that came into the possession or under the control of the United States Government on or after the date referred to in paragraph (1), the authority to withhold the information under this section is subject to the provisions of subparagraphs (B) and (C).

(B) Information referred to in subparagraph (A) may not be withheld under this section after—

(i) the date that is specified by a foreign government or international organization in a request or expression of a condition described in paragraph (1) or (2) of subsection (b) that is made by the foreign government or international organization concerning the information; or

(ii) if there are more than one such foreign governments or international organizations, the latest date so specified by any of them.

(C) If no date is applicable under subparagraph (B) to a request referred to in subparagraph (A) and the information referred to in that subparagraph came into possession or under the control of the United States more than 10 years before the date on which the request is received by an agency, the information may be withheld under this section only as set forth in paragraph (3).

(3) Information referred to in paragraph (1) or (2)(C) may be withheld under this section in the case of a request for disclosure only if, upon the notification of each foreign government and international organization concerned in accordance with the regulations prescribed under subsection (g)(2), any such government or organization requests in writing that the information not be disclosed for an additional period stated in the request of that government or organization. After the national security official concerned considers the request of the foreign government or international organization, the official shall designate a later date as the date after which the information is not to be withheld under this section. The later date may be extended in accordance with a later request of any such foreign government or international organization under this paragraph.

(e) INFORMATION PROTECTED UNDER OTHER AUTHORITY.—This section does not apply to information or matters that are specifically required in the interest of national defense or foreign policy to be protected against unauthorized disclosure under criteria established by an Executive order and are classified, properly, at the confidential, secret, or top secret level pursuant to such Executive order.

(f) DISCLOSURES NOT AFFECTED.—Nothing in this section shall be construed to authorize any official to withhold, or to authorize the withholding of, information from the following:

(1) Congress.

(2) The Comptroller General, unless the information relates to activities that the President designates as foreign intelligence or counterintelligence activities.

(g) REGULATIONS.—(1) The national security officials referred to in subsection (h)(1) shall each prescribe regulations to carry out this section. The regulations shall include criteria for making the determinations required under subsection (b). The regulations may provide for controls on access to and use of, and special markings and specific safeguards for, a category or categories of information subject to this section.

(2) The regulations shall include procedures for notifying and consulting with each foreign government or international organization concerned about requests for disclosure of information to which this section applies.

(h) DEFINITIONS.—In this section:

(1) The term ''national security official concerned'' means the following:

(A) The Secretary of Defense, with respect to information of concern to the Department of Defense, as determined by the Secretary.

(B) The Secretary of Homeland Security, with respect to information of concern to the Coast Guard, as determined by the Secretary, but only while the Coast Guard is not operating as a service in the Navy.

(C) The Secretary of Energy, with respect to information concerning the national security programs of the Department of Energy, as determined by the Secretary.

(2) The term ''agency'' has the meaning given that term in section 552(f) of title 5.

(3) The term ''international organization'' means the following:

(A) A public international organization designated pursuant to section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) as being entitled to enjoy the privileges, exemptions, and immunities provided in such Act.

(B) A public international organization created pursuant to a treaty or other international agreement as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(C) An official mission, except a United States mission, to a public international organization referred to in subparagraph (A) or (B).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1073(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277; amended Pub. L. 107–107, div. A, title X, §1048(a)(3), (c)(1), Dec. 28, 2001, 115 Stat. 1222, 1226; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The International Organizations Immunities Act, referred to in subsec. (h)(3)(A), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

AMENDMENTS

2002—Subsec. (h)(1)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (b)(3)(C). Pub. L. 107–107, §1048(a)(3), substituted ''subsection (g)'' for ''subsection (f)''.

Subsec. (d)(1). Pub. L. 107–107, §1048(c)(1), substituted ''October 30, 2000,'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

CHAPTER 4—OFFICE OF THE SECRETARY OF DEFENSE

Sec.
131. Office of the Secretary of Defense.
132. Deputy Secretary of Defense.
133. Under Secretary of Defense for Acquisition, Technology, and Logistics.
133a. Deputy Under Secretary of Defense for Acquisition and Technology.
133b. Deputy Under Secretary of Defense for Logistics and Materiel Readiness.
134. Under Secretary of Defense for Policy.
134a. Deputy Under Secretary of Defense for Policy.
134b. Deputy Under Secretary of Defense for Technology Security Policy.
135. Under Secretary of Defense (Comptroller).
136. Under Secretary of Defense for Personnel and Readiness.
136a. Deputy Under Secretary of Defense for Personnel and Readiness.
137. Under Secretary of Defense for Intelligence.
138. Assistant Secretaries of Defense.
139. Director of Operational Test and Evaluation.
139a. Director of Defense Research and Engineering.
[139b, 139c. Renumbered.]
140. General Counsel.
[140a to 140c. Renumbered.]
141. Inspector General.
142. Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs.
143. Office of the Secretary of Defense personnel: limitation.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title IX, §901(b)(2), Dec. 2, 2002, 116 Stat. 2619, added items 137 and 139a and struck out former item 137 ''Director of Defense Research and Engineering''.

2001—Pub. L. 107–107, div. A, title IX, §901(a)(2), Dec. 28, 2001, 115 Stat. 1194, added item 136a.

1999—Pub. L. 106–65, div. A, title IX, §911(d)(3), Oct. 5, 1999, 113 Stat. 719, added items 133 and 133b and struck out former item 133 ''Under Secretary of Defense for Acquisition and Technology''.

1998—Pub. L. 105–261, div. A, title XV, §1521(b)(2), Oct. 17, 1998, 112 Stat. 2179, added item 134b.

1997—Pub. L. 105–85, div. A, title IX, §911(d)(2), Nov. 18, 1997, 111 Stat. 1859, added item 143.

1996—Pub. L. 104–106, div. A, title IX, §904(a)(2), Feb. 10, 1996, 110 Stat. 403, substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy'' in item 142.

Pub. L. 104–106, div. A, title IX, §903(a), (e)(3), Feb. 10, 1996, 110 Stat. 401, 402, which directed amendment of analysis, eff. Jan. 31, 1997, by striking out items 133a, 134a, 137, and 142, was repealed by Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.

1994—Pub. L. 103–337, div. A, title IX, §903(a)(3), Oct. 5, 1994, 108 Stat. 2823, substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' in item 135.

1993—Pub. L. 103–160, div. A, title IX, §906(b), Nov. 30, 1993, 107 Stat. 1729, amended table of sections generally, inserting ''and Technology'' after ''Acquisition'' in items 133 and 133a, adding item 136, and redesignating former items 135, 136, 137, 138, 139, 140, and 141 as 137, 138, 135, 139, 140, 141, and 142, respectively.

1991—Pub. L. 102–190, div. A, title IX, §901(a)(2), Dec. 5, 1991, 105 Stat. 1450, added item 134a.

1987—Pub. L. 100–180, div. A, title XII, §1245(a)(2), Dec. 4, 1987, 101 Stat. 1165, added item 141.

Pub. L. 100–26, §9(b)(2), Apr. 21, 1987, 101 Stat. 287, struck out item 140a ''Counterintelligence official reception and representation expenses'' and item 140b ''Authority to use proceeds from counterintelligence operations of the military departments''.

1986—Pub. L. 99–500, §101(c) [title X, §902(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–131, and Pub. L. 99–591, §101(c) [title X, §902(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–131; Pub. L. 99–661, div. A, title IX, formerly title IV, §902(a)(2), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 133a.

Pub. L. 99–569, title IV, §§401(d), 403(b), Oct. 27, 1986, 100 Stat. 3196, 3197, added items 140a and 140b.

Pub. L. 99–433, title I, §§101(a)(6), 110(e)(2), Oct. 1, 1986, 100 Stat. 995, 1003, substituted ''Office of the Secretary of Defense'' for ''Department of Defense'' in chapter heading, and amended analysis generally, substituting items 131 to 140 for former items 131 ''Executive department'', 132 ''Seal'', 133 ''Secretary of Defense: appointment; powers and duties; delegation by'', 133a ''Secretary of Defense: annual report on North Atlantic Treaty Organization readiness'', 133b ''Sale or transfer of defense articles: reports to Congress'', 134 ''Deputy Secretary of Defense: appointment; powers and duties; precedence'', 134a ''Under Secretary of Defense for Ac-

quisition: appointment'', 135 ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments; powers and duties; precedence'', 136 ''Assistant Secretaries of Defense: appointment; powers and duties; precedence'', 136a ''Director of Operational Test and Evaluation: appointment, powers and duties'', 137 ''General Counsel: appointment; powers and duties'', 138 ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'', 139 ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'', 139a ''Oversight of cost growth in major programs: Selected Acquisition Reports'', 139b ''Oversight of cost growth in major programs: unit cost reports'', 139c ''Major defense acquisition programs: independent cost estimates'', 140 ''Emergencies and extraordinary expenses'', 140a ''Secretary of Defense: funds transfers for foreign cryptologic support'', 140b ''Prohibition of certain civilian personnel management constraints'', and 140c ''Secretary of Defense: authority to withhold from public disclosure certain technical data''.

Pub. L. 99–348, title V, §501(e)(2), July 1, 1986, 100 Stat. 708, added item 134a and substituted ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments'' for ''Under Secretaries of Defense: appointment'' in item 135.

1983—Pub. L. 98–94, title XII, §§1203(a)(2), 1211(a)(2), 1217(b), Sept. 24, 1983, 97 Stat. 683, 686, 690, added items 136a, 139c, and 140c.

1982—Pub. L. 97–295, §1(2)(B), Oct. 12, 1982, 96 Stat. 1288, added items 133a and 133b.

Pub. L. 97–252, title XI, §1107(a)(2), Sept. 8, 1982, 96 Stat. 745, added items 139a and 139b.

1981—Pub. L. 97–86, title IX, §904(b), Dec. 1, 1981, 95 Stat. 1114, added item 140b.

1980—Pub. L. 96–450, title IV, §401(b), Oct. 14, 1980, 94 Stat. 1977, added item 140a.

Pub. L. 96–342, title X, §1001(d)(2), Sept. 8, 1980, 94 Stat. 1119, substituted ''Annual authorization of appropriations and personnel strengths for the armed forces; annual manpower requirements and operations and maintenance reports'' for ''Secretary of Defense: Annual authorization of appropriations for armed forces'' in item 138.

1977—Pub. L. 95–140, §§1(b), 2(b), Oct. 21, 1977, 91 Stat. 1172, 1173, substituted ''Deputy Secretary'' for ''Deputy Secretaries'' in item 134 and ''Under Secretaries of Defense'' for ''Director of Defense Research and Engineering'' in item 135.

1975—Pub. L. 94–106, title VIII, §804(a), Oct. 7, 1975, 89 Stat. 538, added item 140.

1973—Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 612, added items 138 and 139.

1972—Pub. L. 92–596, §4(3), Oct. 27, 1972, 86 Stat. 1318, substituted ''Deputy Secretaries'' for ''Deputy Secretary'' in item 134.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 41 section 421.

§131. Office of the Secretary of Defense

(a) There is in the Department of Defense an Office of the Secretary of Defense. The function of the Office is to assist the Secretary of Defense in carrying out his duties and responsibilities and to carry out such other duties as may be prescribed by law.

(b) The Office of the Secretary of Defense is composed of the following:

(1) The Deputy Secretary of Defense.

(2) The Under Secretaries of Defense, as follows:

(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(B) The Under Secretary of Defense for Policy.

(C) The Under Secretary of Defense (Comptroller).

(D) The Under Secretary of Defense for Personnel and Readiness.

(E) The Under Secretary of Defense for Intelligence.

(3) The Director of Defense Research and Engineering.

(4) The Assistant Secretaries of Defense.

(5) The Director of Operational Test and Evaluation.

(6) The General Counsel of the Department of Defense.

(7) The Inspector General of the Department of Defense.

(8) Such other offices and officials as may be established by law or the Secretary of Defense may establish or designate in the Office.

(c) Officers of the armed forces may be assigned or detailed to permanent duty in the Office of the Secretary of Defense. However, the Secretary may not establish a military staff in the Office of the Secretary of Defense.

(d) The Secretary of each military department, and the civilian employees and members of the armed forces under the jurisdiction of the Secretary, shall cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 99–433, title I, §104, Oct. 1, 1986, 100 Stat. 996; amended Pub. L. 103–160, div. A, title IX, §906(a), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 103–337, div. A, title IX, §903(b)(1), Oct. 5, 1994, 108 Stat. 2823; Pub. L. 104–106, div. A, title IX, §903(e)(1), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, §911(d)(1), Oct. 5, 1999, 113 Stat. 719; Pub. L. 107–314, div. A, title IX, §901(b)(1), Dec. 2, 2002, 116 Stat. 2619.)

PRIOR PROVISIONS

A prior section 131 was renumbered section 111 of this title.

AMENDMENTS

2002—Subsec. (b)(2) to (11). Pub. L. 107–314 added par. (2), redesignated pars. (6) to (11) as (3) to (8), respectively, and struck out former pars. (2) to (5) which read as follows:

''(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(3) The Under Secretary of Defense for Policy.

''(4) The Under Secretary of Defense (Comptroller).

''(5) The Under Secretary of Defense for Personnel and Readiness.''

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1996—Subsec. (b)(6) to (11). Pub. L. 104–106, §903(a), (e)(1), which directed amendment of subsec. (b), eff. Jan. 31, 1997, by striking out pars. (6) and (8) and redesignating pars. (7), (9), (10), and (11) as (6), (7), (8), and (9), respectively, was repealed by Pub. L. 104–201.

1994—Subsec. (b)(4). Pub. L. 103–337 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller''.

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: ''The Office of the Secretary of Defense is composed of the following:

''(1) The Deputy Secretary of Defense.

''(2) The Under Secretary of Defense for Acquisition.

''(3) The Under Secretary of Defense for Policy.

''(4) The Director of Defense Research and Engineering.

''(5) The Assistant Secretaries of Defense.

''(6) The Comptroller of the Department of Defense.

''(7) The Director of Operational Test and Evaluation.

''(8) The General Counsel of the Department of Defense.

''(9) The Inspector General of the Department of Defense.

''(10) Such other offices and officials as may be established by law or the Secretary of Defense may establish or designate in the Office.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 903(a) of Pub. L. 104–106, which provided that the amendments made by section 903 of Pub. L. 104–106 (amending this section and sections 138, 176, 1056, 1216, 1587, and 10201 of this title, repealing sections 133a, 134a, 137, and 142 of this title, and amending provisions set out as a note under section 167 of this title) were to take effect on Jan. 31, 1997, was repealed by Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.

DEFENSE ACQUISITION WORKFORCE

Pub. L. 105–85, div. A, title IX, §912(a)–(e), Nov. 18, 1997, 111 Stat. 1860, 1861, required Secretary of Defense to accomplish reductions in defense acquisition personnel positions, to report on specific acquisition positions previously eliminated, to submit an implementation plan to streamline and improve acquisition organizations, to review acquisition organizations and functions, and to require certain duties of Task Force on Defense Reform.

REDUCTION OF PERSONNEL ASSIGNED TO OFFICE OF THE SECRETARY OF DEFENSE

Section 903 of Pub. L. 104–201, which provided for phased reduction of number of personnel assigned to or employed in functions in Office of the Secretary of Defense, was repealed and restated in section 143 of this title by Pub. L. 105–85, div. A, title IX, §911(d)(1), (3), Nov. 18, 1997, 111 Stat. 1859, 1860.

ORGANIZATION OF OFFICE OF THE SECRETARY OF DEFENSE

Section 901 of Pub. L. 104–106, as amended by Pub. L. 104–201, div. A, title IX, §903(g), Sept. 23, 1996, 110 Stat. 2618, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The statutory provisions that as of the date of the enactment of this Act [Feb. 10, 1996] govern the organization of the Office of the Secretary of Defense have evolved from enactment of a number of executive branch legislative proposals and congressional initiatives over a period of years.

''(2) The May 1995 report of the congressionally mandated Commission on Roles and Missions of the Armed Forces included a number of recommendations relating to the Office of the Secretary of Defense.

''(3) The Secretary of Defense has decided to create a special Department task force and to conduct other reviews to review many of the Commission's recommendations.

''(4) The Secretary of Defense has decided to institute a 5 percent per year reduction of civilian personnel assigned to the Office of the Secretary of Defense, including the Washington Headquarters Service and the Defense Support Activities, for the period from fiscal year 1996 through fiscal year 2001.

''(5) Over the ten-year period from 1986 through 1995, defense spending in real dollars has been reduced by 34 percent and military end-strengths have been reduced by 28 percent. During the same period, the number of civilian employees of the Office of the Secretary of Defense has increased by 22 percent.

''(6) To achieve greater efficiency and to revalidate the role and mission of the Office of the Secretary of Defense, a comprehensive review of the organizations and functions of that Office and of the personnel needed to carry out those functions is required.

''(b) REVIEW.—The Secretary of Defense shall conduct a further review of the organizations and functions of the Office of the Secretary of Defense, including the Washington Headquarters Service and the Defense Support Activities, and the personnel needed to carry out those functions. The review shall include the following:

''(1) An assessment of the appropriate functions of the Office and whether the Office of the Secretary of Defense or some of its component parts should be organized along mission lines.

''(2) An assessment of the adequacy of the present organizational structure to efficiently and effectively support the Secretary in carrying out his responsibilities in a manner that ensures civilian authority in the Department of Defense.

''(3) An assessment of the advantages and disadvantages of the use of political appointees to fill the positions of the various Under Secretaries of Defense, Assistant Secretaries of Defense, and Deputy Under Secretaries of Defense.

''(4) An assessment of the extent of unnecessary duplication of functions between the Office of the Secretary of Defense and the Joint Staff.

''(5) An assessment of the extent of unnecessary duplication of functions between the Office of the Secretary of Defense and the military departments.

''(6) An assessment of the appropriate number of positions referred to in paragraph (3) and of Deputy Assistant Secretaries of Defense.

''(7) An assessment of whether some or any of the functions currently performed by the Office of Humanitarian and Refugee Affairs are more properly or effectively performed by another agency of Government or elsewhere within the Department of Defense.

''(8) An assessment of the efficacy of the Joint Requirements Oversight Council and whether it is advisable or necessary to establish a statutory charter for this organization.

''(9) An assessment of any benefits or efficiencies derived from decentralizing certain functions currently performed by the Office of the Secretary of Defense.

''(10) An assessment of the appropriate size, number, and functional responsibilities of the Defense Agencies and other Department of Defense support organizations.

''(c) REPORT.—Not later than March 1, 1996, the Secretary of Defense shall submit to the congressional defense committees a report containing—

''(1) his findings and conclusions resulting from the review under subsection (b); and

''(2) a plan for implementing resulting recommendations, including proposals for legislation (with supporting rationale) that would be required as a result of the review.''

MANAGEMENT STUDIES OF OFFICE OF THE SECRETARY OF DEFENSE

Section 109 of Pub. L. 99–433 provided that:

''(a) SECRETARY OF DEFENSE STUDY.—The Secretary of Defense shall conduct a study of the functions and organization of the Office of the Secretary of Defense. The study shall consider whether the present allocation of functions to, and the organizational structure of, the Office constitute the most effective, efficient, and economical allocation and structure of the Office to assist the Secretary in carrying out his duties and responsibilities. The study shall include consideration of each of the matters specified in subsection (d).

''(b) SERVICE SECRETARIES JOINT STUDY.—(1) The Secretaries of the military departments shall conduct a

joint study of the functions and organization of the Office of the Secretary of Defense. The study shall be conducted independently of the study conducted by the Secretary of Defense under subsection (a). The Secretaries shall submit a joint report to the Secretary of Defense on such study at a time specified by the Secretary. Except as provided in paragraph (2), the report shall include a discussion of and recommendations concerning each of the matters specified in subsection (d).

''(2) The Secretary of Defense shall determine the extent to which, and prescribe the procedures under which, the Secretaries of the military departments shall study the matters specified in subsection (d)(1)(A) relating to contingency planning and military operations.

''(c) CHAIRMAN OF JCS STUDY.—The Chairman of the Joint Chiefs of Staff shall conduct a study of the functions and organization of the Office of the Secretary of Defense. The study shall be conducted independently of the study conducted by the Secretary of Defense under subsection (a). The Chairman shall submit a report to the Secretary of Defense on such study at a time specified by the Secretary. The report shall include a discussion of and recommendations concerning the matters specified in paragraphs (1)(C), (1)(D), (2), (3), (5), and (6) of subsection (d).

''(d) MATTERS TO BE INCLUDED.—The study required by subsection (a) shall include consideration of the following:

''(1) Whether the present organization of the Office—

''(A) is optimally structured to assist the Secretary of Defense in the effective exercise of civilian control of the Department of Defense, including civilian control of—

''(i) defense policy development and strategic planning;

''(ii) program and budget development;

''(iii) policy, program, and budget execution;

''(iv) contingency planning; and

''(v) military operations;

''(B) is the most effective and efficient organization for the initiation, development, and articulation of defense policy;

''(C) ensures that strategic planning and contingency planning are linked to, and derived from, national security strategy, policies, and objectives; and

''(D) inhibits integration of the capabilities of the Armed Forces along mission lines.

''(2) Whether the planning, programming, and budgeting system of the Department of Defense (including the role of the Office in such system) needs to be revised—

''(A) to strengthen strategic planning and policy direction;

''(B) to ensure that strategic planning is consistent with national security strategy, policies, and objectives;

''(C) to ensure that there is a sufficient relationship between strategic planning and the resource levels projected to be available for the period for which the planning is to be effective;

''(D) to ensure that strategic planning and program development give sufficient attention to alliances with other nations;

''(E) to provide for more effective oversight, control, and evaluation of policy, program, and budget execution; and

''(F) to ensure that past program and budget decisions are effectively evaluated, that such evaluations are supported by consistent, complete, and timely financial and performance data, and that such evaluations are fully considered in the next planning, programming, and budgeting cycle.

''(3) Whether the major force program categories of the Five-Year Defense Plan could be restructured to better assist decisionmaking and management control.

''(4) Means to improve and strengthen the oversight function within each element of the Office in policy areas not addressed by the planning, programming, and budgeting system.

''(5) Factors inhibiting efficient and effective execution of the functions of the Office, including factors relating to—

''(A) duplication of functions (both within the Office and between the Office and other elements of the Department);

''(B) insufficient information; and

''(C) insufficient resources (including personnel).

''(6) Alternative allocations of authorities and functions of the Office and other reorganization proposals for the Office, including the desirability of—

''(A) establishing Under Secretaries of Defense for mission-oriented areas of responsibility;

''(B) decentralizing functions of the Office;

''(C) reducing the number of officials reporting directly to the Secretary of Defense; and

''(D) changing the ratio of members of the Armed Forces to civilian employees in the Office.

''(7) Whether political appointees in the Office of the Secretary of Defense have sufficient experience and expertise, upon appointment, to be capable of contributing immediately to effective policy formulation and management.

''(e) ANALYSIS OF CIVILIAN CONTROL.—(1) The Secretary of Defense, in considering under subsection (d)(1)(A) whether effective civilian control of the Department of Defense is best assisted by the current structure of the Office, shall examine the functions performed in the Office by—

''(A) members of the Armed Forces on the active-duty list; and

''(B) members of the Armed Forces in a retired status and members of the reserve components who are employed in a civilian capacity.

''(2) Such examination shall include a determination of the total number of positions in the Office of the Secretary of Defense above grade GS–8 and the military equivalent (as determined by the Secretary of Defense), and of such number—

''(A) the number of positions held by members of the Armed Forces on the active-duty list, shown for the military equivalent of each civilian pay grade by number and as a percentage of the total number of positions in the Office in the civilian pay grade concerned and in the military equivalent of such civilian pay grade;

''(B) the number of such positions held by members of the Armed Forces in a retired status who are serving in a civilian capacity, shown for each civilian pay grade in the same manner as provided under clause (A); and

''(C) the number of such positions held by members of the reserve components who are serving in a civilian capacity, shown for each civilian pay grade in the same manner as provided under clause (A).

''(3) In determining the total number of positions in the Office of the Secretary of Defense in grades above GS–8, the Secretary shall exclude positions which are primarily clerical or secretarial.

''(f) INDEPENDENT CONTRACTOR STUDY.—The Secretary shall provide for an independent study to be carried out by a contractor to consider the same matters required to be considered by the Secretary under subsection (d). The Secretary shall ensure that the contractor has full access to such information as the contractor requires and that the contractor otherwise receives full cooperation from all officials and entities of the Department of Defense.

''(g) REPORT TO CONGRESS.—(1) The Secretary of Defense shall submit to Congress a report on the Secretary's study under subsection (a). The report shall include—

''(A) the findings and conclusions of the Secretary with respect to each of the matters set forth in subsection (d);

''(B) the findings and statistical determinations required under subsection (e); and

''(C) any recommendations of the Secretary for organizational changes in the Office of the Secretary of

Defense and a description of the means for implementing each recommendation.

''(2) The Secretary shall include with the report a copy of the reports to the Secretary under subsections (b) and (c) and a copy of the report of the independent contractor under subsection (f), together with such comments on each such report as the Secretary considers appropriate.

''(3) The report under this subsection shall be submitted not later than one year after the date of the enactment of this Act [Oct. 1, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 192 of this title.

§ 132. Deputy Secretary of Defense

(a) There is a Deputy Secretary of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Deputy Secretary of Defense within ten years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) The Deputy Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Deputy Secretary shall act for, and exercise the powers of, the Secretary when the Secretary is disabled or there is no Secretary of Defense.

(c) The Deputy Secretary takes precedence in the Department of Defense immediately after the Secretary.

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518, § 134; amended Pub. L. 92–596, § 4(1), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, § 1(a), Oct. 21, 1977, 91 Stat. 1172; renumbered § 132 and amended Pub. L. 99–433, title I, §§ 101(a)(7), 110(d)(7), Oct. 1, 1986, 100 Stat. 995, 1003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
134(a)	5:171c(a) (1st sentence).	July 26, 1947, ch. 343, § 203(a); added Aug. 10, 1949, ch. 412, § 6(a) (1st par.), 63 Stat. 581.
134(b)	5:171c(a) (less 1st sentence and last 15 words of 2d sentence).	
134(c)	5:171c(a) (last 15 words of 2d sentence).	

In subsection (a), the last sentence is substituted for 5 U.S.C. 171c(a) (proviso).

PRIOR PROVISIONS

A prior section 132 was renumbered section 112 of this title.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 134 of this title as this section and struck out '': appointment; powers and duties; precedence'' at end of section catchline.

1977—Pub. L. 95–140, § 1(a)(4), substituted ''Deputy Secretary'' for ''Deputy Secretaries'' in section catchline.

Subsec. (a). Pub. L. 95–140, § 1(a)(1), substituted ''There is a Deputy Secretary'' for ''There are two Deputy Secretaries'' and struck out ''a'' before ''Deputy Secretary''.

Subsec. (b). Pub. L. 95–140, § 1(a)(2), substituted ''Deputy Secretary'' for ''Deputy Secretaries'' and ''Deputy Secretary'' for ''Deputy Secretaries, in the order of precedence, designated by the President''.

Subsec. (c). Pub. L. 95–140, § 1(a)(3), substituted ''The Deputy Secretary takes'' for ''The Deputy Secretaries take''.

1972—Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary'' in section catchline.

Subsec. (a). Pub. L. 92–596 substituted ''There are two Deputy Secretaries of Defense'' for ''There is a Deputy Secretary of Defense''.

Subsec. (b). Pub. L. 92–596 provided for the exercise of powers and duties consequent to the creation of a second Deputy Secretary.

Subsec. (c). Pub. L. 92–596 substituted ''The Deputy Secretaries take'' for ''The Deputy Secretary takes''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

§ 133. Under Secretary of Defense for Acquisition, Technology, and Logistics

(a) There is an Under Secretary of Defense for Acquisition, Technology, and Logistics, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive management background in the private sector.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall perform such duties and exercise such powers relating to acquisition as the Secretary of Defense may prescribe, including—

(1) supervising Department of Defense acquisition;

(2) establishing policies for acquisition (including procurement of goods and services, research and development, developmental testing, and contract administration) for all elements of the Department of Defense;

(3) establishing policies for logistics, maintenance, and sustainment support for all elements of the Department of Defense;

(4) establishing policies of the Department of Defense for maintenance of the defense industrial base of the United States; and

(5) the authority to direct the Secretaries of the military departments and the heads of all other elements of the Department of Defense with regard to matters for which the Under Secretary has responsibility.

(c) The Under Secretary—

(1) is the senior procurement executive for the Department of Defense for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

(2) is the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive; and

(3) to the extent directed by the Secretary, exercises overall supervision of all personnel (civilian and military) in the Office of the Secretary of Defense with regard to matters for which the Under Secretary has responsibility, unless otherwise provided by law.

(d)(1) The Under Secretary shall prescribe policies to ensure that audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication by different elements of the Department. Such policies shall provide for coordination of the annual

plans developed by each such element for the conduct of audit and oversight functions within each contracting activity.

(2) In carrying out this subsection, the Under Secretary shall consult with the Inspector General of the Department of Defense.

(3) Nothing in this subsection shall affect the authority of the Inspector General of the Department of Defense to establish audit policy for the Department of Defense under the Inspector General Act of 1978 and otherwise to carry out the functions of the Inspector General under that Act.

(e)(1) With regard to all matters for which he has responsibility by law or by direction of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics takes precedence in the Department of Defense after the Secretary of Defense and the Deputy Secretary of Defense.

(2) With regard to all matters other than matters for which he has responsibility by law or by direction of the Secretary of Defense, the Under Secretary takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments.

(Added Pub. L. 99–348, title V, §501(a), July 1, 1986, 100 Stat. 707, §134a; renumbered §133 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(c)(1), (d)(8), Oct. 1, 1986, 100 Stat. 995, 1002, 1003; Pub. L. 99–500, §101(c) [title X, §901], Oct. 18, 1986, 100 Stat. 1783–82, 1783–130, and Pub. L. 99–591, §101(c) [title X, §901], Oct. 30, 1986, 100 Stat. 3341–82, 3341–130; Pub. L. 99–661, div. A, title IX, formerly title IV, §901, Nov. 14, 1986, 100 Stat. 3910, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–456, div. A, title VIII, §809(d), Sept. 29, 1988, 102 Stat. 2013; Pub. L. 103–160, div. A, title IX, §904(b), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 106–65, div. A, title IX, §911(a)(2), (d)(2), Oct. 5, 1999, 113 Stat. 717, 719; Pub. L. 107–107, div. A, title VIII, §801(a), Dec. 28, 2001, 115 Stat. 1174.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (d)(3), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 133 was renumbered section 113 of this title.

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107 inserted ''of goods and services'' after ''procurement''.

1999—Pub. L. 106–65, §911(d)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in section catchline.

Subsec. (a). Pub. L. 106–65, §911(a)(2)(A), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (b). Pub. L. 106–65, §911(a)(2)(A), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in introductory provisions.

Subsec. (b)(2). Pub. L. 106–65, §911(a)(2)(B)(i), struck out ''logistics,'' after ''research and development,''.

Subsec. (b)(3) to (5). Pub. L. 106–65, §911(a)(2)(B)(ii), (iii), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1). Pub. L. 106–65, §911(a)(2)(A), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in section catchline and in subsecs. (a), (b), and (e)(1).

1988—Subsec. (d)(1). Pub. L. 100–456 inserted provision that policies provide for coordination of annual plans developed by each such element for the conduct of audit and oversight functions within each contracting activity.

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 generally amended section identically. Prior to amendment, section read as follows:

''(a) There is an Under Secretary of Defense for Acquisition, appointed from civilian life by the President, by and with the advice and consent of the Senate.

''(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe, except as otherwise provided by law.''

Pub. L. 99–433 renumbered section 134a of this title as this section, struck out '': appointment'' at end of section catchline, and inserted ''of Defense'' after ''Under Secretary'' in subsec. (a).

CHANGE OF NAME

Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''The position of Under Secretary of Defense for Acquisition and Technology in the Department of Defense is hereby redesignated as the Under Secretary of Defense for Acquisition, Technology, and Logistics. Any reference in any law, regulation, document, or other record of the United States to the Under Secretary of Defense for Acquisition and Technology shall be treated as referring to the Under Secretary of Defense for Acquisition, Technology, and Logistics.''

Pub. L. 103–160, div. A, title IX, §904(a), (f), Nov. 30, 1993, 107 Stat. 1728, 1729, provided that the office of Under Secretary of Defense for Acquisition in the Department of Defense was redesignated as Under Secretary of Defense for Acquisition and Technology, the office of Deputy Under Secretary of Defense for Acquisition in the Department of Defense was redesignated as Deputy Under Secretary of Defense for Acquisition and Technology, and any reference to the Under Secretary of Defense for Acquisition or the Deputy Under Secretary of Defense for Acquisition in any provision of law other than this title, or in any rule, regulation, or other paper of the United States was to be treated as referring to the Under Secretary of Defense for Acquisition and Technology or the Deputy Under Secretary of Defense for Acquisition and Technology, respectively.

IMPROVEMENT IN DEFENSE RESEARCH AND PROCUREMENT LIAISON WITH ISRAEL

Section 1006 of Pub. L. 100–456, as amended by Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''The Secretary of Defense, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall designate for duty in Israel an individual or individuals to serve as the primary liaison between the procurement and research and development activities of the United States Armed Forces and those of the State of Israel.''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section

3345 of Title 5, Government Organization and Employees.

§ 133a. Deputy Under Secretary of Defense for Acquisition and Technology

(a) There is a Deputy Under Secretary of Defense for Acquisition and Technology, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Deputy Under Secretary of Defense for Acquisition and Technology shall assist the Under Secretary of Defense for Acquisition, Technology, and Logistics in the performance of the Under Secretary's duties relating to acquisition and technology.

(Added Pub. L. 99–500, § 101(c) [title X, § 902(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–131, and Pub. L. 99–591, § 101(c) [title X, § 902(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–131; Pub. L. 99–661, div. A, title IX, formerly title IV, § 902(a)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–160, div. A, title IX, § 904(c), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(2), Oct. 5, 1994, 108 Stat. 2855; Pub. L. 104–106, div. A, title IX, § 903(c)(1), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, § 911(c), Oct. 5, 1999, 113 Stat. 718; Pub. L. 107–107, div. A, title X, § 1048(b)(1), Dec. 28, 2001, 115 Stat. 1225.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500 and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 133a was renumbered section 117 of this title.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''shall assist the Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''shall assist the Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (b). Pub. L. 106–65 substituted ''the Under Secretary's duties relating to acquisition and technology.'' for ''his duties. The Deputy Under Secretary shall act for, and exercise the powers of, the Under Secretary when the Under Secretary is absent or disabled.''

1996—Pub. L. 104–106, § 903(a), (c)(1), which directed repeal of this section eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

1994—Subsec. (b). Pub. L. 103–337 inserted ''and Technology'' before ''in the performance of''.

1993—Pub. L. 103–160 substituted ''Deputy Under Secretary of Defense for Acquisition and Technology'' for ''Deputy Under Secretary of Defense for Acquisition'' as section catchline and in subsecs. (a) and (b).

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

§ 133b. Deputy Under Secretary of Defense for Logistics and Materiel Readiness

(a) There is a Deputy Under Secretary of Defense for Logistics and Materiel Readiness, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Deputy Under Secretary shall be appointed from among persons with an extensive background in the sustainment of major weapon systems and combat support equipment.

(b) The Deputy Under Secretary is the principal adviser to the Secretary and the Under Secretary of Defense for Acquisition, Technology, and Logistics on logistics and materiel readiness in the Department of Defense and is the principal logistics official within the senior management of the Department of Defense.

(c) The Deputy Under Secretary shall perform such duties relating to logistics and materiel readiness as the Under Secretary of Defense for Acquisition, Technology, and Logistics may assign, including—

(1) prescribing, by authority of the Secretary of Defense, policies and procedures for the conduct of logistics, maintenance, materiel readiness, and sustainment support in the Department of Defense;

(2) advising and assisting the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense for Acquisition, Technology, and Logistics providing guidance to and consulting with the Secretaries of the military departments, with respect to logistics, maintenance, materiel readiness, and sustainment support in the Department of Defense; and

(3) monitoring and reviewing all logistics, maintenance, materiel readiness, and sustainment support programs in the Department of Defense.

(Added Pub. L. 106–65, div. A, title IX, § 911(b)(1), Oct. 5, 1999, 113 Stat. 718.)

PRIOR PROVISIONS

A prior section 133b was renumbered section 118 of this title.

§ 134. Under Secretary of Defense for Policy

(a) There is an Under Secretary of Defense for Policy, appointed from civilian life by the President, by and with the advice and consent of the Senate. A person may not be appointed as Under Secretary within 10 years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b)(1) The Under Secretary shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) The Under Secretary shall assist the Secretary of Defense—

(A) in preparing written policy guidance for the preparation and review of contingency plans; and

(B) in reviewing such plans.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary shall have responsibility for supervising and directing activities of the Department of Defense relating to export controls.

(4) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Policy shall have overall direction and supervision for policy, program planning and execution, and allocation and use

of resources for the activities of the Department of Defense for combating terrorism.

(c) The Under Secretary takes precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Secretaries of the military departments.

(Added Pub. L. 99–433, title I, § 105(1), Oct. 1, 1986, 100 Stat. 997; amended Pub. L. 99–500, § 101(c) [title X, § 903(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, § 101(c) [title X, § 903(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, § 903(a), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–261, div. A, title XV, § 1521(a), Oct. 17, 1998, 112 Stat. 2178; Pub. L. 106–65, div. A, title IX, § 911(d)(1), Oct. 5, 1999, 113 Stat. 719; Pub. L. 107–314, div. A, title IX, § 902(b), Dec. 2, 2002, 116 Stat. 2620.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Provisions of this section were contained in section 135 of this title prior to amendment by Pub. L. 99–433.

A prior section 134 was renumbered section 132 of this title.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–314 added par. (4).

1999—Subsec. (c). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1998—Subsec. (b)(3). Pub. L. 105–261 added par. (3).

1993—Subsec. (c). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1986—Subsec. (c). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (c) identically, inserting ''the Under Secretary of Defense for Acquisition,''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

IMPLEMENTATION OF AMENDMENTS BY PUB. L. 105–261

Pub. L. 105–261, div. A, title XV, § 1521(c), (d), Oct. 17, 1998, 112 Stat. 2179, provided that:

''(c) TIME FOR IMPLEMENTATION.—The Secretary of Defense shall complete the actions necessary to implement the amendment made by subsection (a) [amending this section] and to establish the office of Deputy Under Secretary of Defense for Technology Security Policy in accordance with section 134b of title 10, United States Code, as added by subsection (b), not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998].

''(d) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report on the plans of the Secretary for implementing the amendments made by subsections (a) and (b) [enacting section 134b of this title and amending this section]. The report shall include the following:

''(1) A description of any organizational changes that are to be made within the Department of Defense to implement those amendments.

''(2) A description of the role of the Chairman of the Joint Chiefs of Staff in the export control activities of the Department of Defense after those subsections are implemented, together with a discussion of how that role compares to the Chairman's role in those activities before the implementation of those subsections.''

§ 134a. Deputy Under Secretary of Defense for Policy

(a) There is a Deputy Under Secretary of Defense for Policy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Deputy Under Secretary of Defense for Policy shall assist the Under Secretary of Defense for Policy in the performance of his duties. The Deputy Under Secretary of Defense for Policy shall act for, and exercise the powers of, the Under Secretary when the Under Secretary is absent or disabled.

(Added Pub. L. 102–190, div. A, title IX, § 901(a)(1), Dec. 5, 1991, 105 Stat. 1450; amended Pub. L. 104–106, div. A, title IX, § 903(c)(2), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617.)

PRIOR PROVISIONS

A prior section 134a was renumbered section 133 of this title.

AMENDMENTS

1996—Pub. L. 104–106, § 903(a), (c)(2), which directed repeal of this section eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

§ 134b. Deputy Under Secretary of Defense for Technology Security Policy

(a) There is in the Office of the Under Secretary of Defense for Policy a Deputy Under Secretary of Defense for Technology Security Policy.

(b) The Deputy Under Secretary serves as the Director of the Defense Technology Security Administration (or any successor organization charged with similar responsibilities).

(c) The principal duties of the Deputy Under Secretary are—

(1) assisting the Under Secretary of Defense for Policy in supervising and directing the activities of the Department of Defense relating to export controls; and

(2) assisting the Under Secretary of Defense for Policy in developing policies and positions regarding the appropriate export control policies and procedures that are necessary to protect the national security interests of the United States.

(d) The Deputy Under Secretary shall perform such additional duties and exercise such authority as the Secretary of Defense may prescribe.

(Added Pub. L. 105–261, div. A, title XV, § 1521(b)(1), Oct. 17, 1998, 112 Stat. 2178.)

§ 135. Under Secretary of Defense (Comptroller)

(a) There is an Under Secretary of Defense (Comptroller), appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary of Defense (Comptroller) is the agency Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31. The Under Secretary of Defense (Comptroller) shall perform such additional duties and exercise such powers as the Secretary of Defense may prescribe.

(c) The Under Secretary of Defense (Comptroller) shall advise and assist the Secretary of Defense—

(1) in performing such budgetary and fiscal functions and duties, and in exercising such budgetary and fiscal powers, as are needed to carry out the powers of the Secretary;

(2) in supervising and directing the preparation of budget estimates of the Department of Defense;

(3) in establishing and supervising the execution of principles, policies, and procedures to be followed in connection with organizational and administrative matters relating to—

(A) the preparation and execution of budgets;

(B) fiscal, cost, operating, and capital property accounting; and

(C) progress and statistical reporting;

(4) in establishing and supervising the execution of policies and procedures relating to the expenditure and collection of funds administered by the Department of Defense; and

(5) in establishing uniform terminologies, classifications, and procedures concerning matters covered by clauses (1) through (4).

(d) The Under Secretary of Defense (Comptroller) takes precedence in the Department of Defense after the Under Secretary of Defense for Policy.

(e)(1) The Under Secretary of Defense (Comptroller) shall ensure that each congressional committee specified in paragraph (2) is informed, in a timely manner, regarding all matters relating to the budgetary, fiscal, and analytic activities of the Department of Defense that are under the supervision of the Under Secretary of Defense (Comptroller).

(2) The committees referred to in paragraph (1) are—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 99–433, title I, §107, Oct. 1, 1986, 100 Stat. 998, §137; renumbered §135 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(2), 902(a)(1), (b), Nov. 30, 1993, 107 Stat. 1726, 1727; Pub. L. 103–337, div. A, title IX, §903(a)(1), (2), Oct. 5, 1994, 108 Stat. 2823; Pub. L. 104–106, div. A, title XV, §1502(a)(6), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

PRIOR PROVISIONS

A prior section 135 was renumbered section 139a of this title.

AMENDMENTS

1999—Subsec. (e)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (e). Pub. L. 104–106 designated existing provisions as par. (1), substituted ''each congressional committee specified in paragraph (2) is'' for ''the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives are each'', and added par. (2).

1994—Pub. L. 103–337, §903(a)(2), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' as section catchline.

Subsec. (a). Pub. L. 103–337, §903(a)(1)(A), substituted ''an Under Secretary of Defense (Comptroller)'' for ''a Comptroller of the Department of Defense''.

Subsecs. (b) to (e). Pub. L. 103–337, §903(a)(1)(B), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller'' wherever appearing.

1993—Pub. L. 103–160, §901(a)(2), renumbered section 137 of this title as this section.

Subsec. (b). Pub. L. 103–160, §902(a)(1), inserted ''The Comptroller is the agency Chief Financial Officer of the Department of Defense for the purposes of chapter 9 of title 31.'' after ''(b)'' and ''additional'' after ''shall perform such''.

Subsec. (d). Pub. L. 103–160, §901(a)(2), added subsec. (d).

Subsec. (e). Pub. L. 103–160, §902(b), added subsec. (e).

CHANGE OF NAME

Section 903(d) of Pub. L. 103–337 provided that: ''Any reference to the Comptroller of the Department of Defense in any provision of law other than title 10, United States Code, or in any rule, regulation, or other paper of the United States shall be treated as referring to the Under Secretary of Defense (Comptroller).''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3022, 5025, 8022 of this title.

§ 136. Under Secretary of Defense for Personnel and Readiness

(a) There is an Under Secretary of Defense for Personnel and Readiness, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Personnel and Readiness shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the areas of military readiness, total force management, military and civilian personnel requirements, military and civilian personnel training, military and civilian family matters, exchange, commissary, and nonappropriated fund activities, personnel requirements for weapons support, National Guard and reserve components, and health affairs.

(c) The Under Secretary of Defense for Personnel and Readiness takes precedence in the Department of Defense after the Under Secretary of Defense (Comptroller).

(d) The Under Secretary of Defense for Personnel and Readiness is responsible, subject to the authority, direction, and control of the Sec-

retary of Defense, for the monitoring of the operations tempo and personnel tempo of the armed forces. The Under Secretary shall establish, to the extent practicable, uniform standards within the Department of Defense for terminology and policies relating to deployment of units and personnel away from their assigned duty stations (including the length of time units or personnel may be away for such a deployment) and shall establish uniform reporting systems for tracking deployments.

(Added Pub. L. 103–160, div. A, title IX, §903(a), Nov. 30, 1993, 107 Stat. 1727; amended Pub. L. 104–106, div. A, title XV, §1503(a)(2), Feb. 10, 1996, 110 Stat. 510; Pub. L. 106–65, div. A, title IX, §923(a), title X, §1066(a)(1), Oct. 5, 1999, 113 Stat. 724, 770.)

PRIOR PROVISIONS

A prior section 136 was renumbered section 138 of this title.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65, §1066(a)(1), inserted ''advice and'' after ''by and with the''.

Subsec. (d). Pub. L. 106–65, §923(a), added subsec. (d).

1996—Subsec. (c). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

§136a. Deputy Under Secretary of Defense for Personnel and Readiness

(a) There is a Deputy Under Secretary of Defense for Personnel and Readiness, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Deputy Under Secretary of Defense for Personnel and Readiness shall assist the Under Secretary of Defense for Personnel and Readiness in the performance of the duties of that position. The Deputy Under Secretary of Defense for Personnel and Readiness shall act for, and exercise the powers of, the Under Secretary when the Under Secretary is absent or disabled.

(Added Pub. L. 107–107, div. A, title IX, §901(a)(1), Dec. 28, 2001, 115 Stat. 1193.)

PRIOR PROVISIONS

A prior section 136a was renumbered section 139 of this title.

§137. Under Secretary of Defense for Intelligence

(a) There is an Under Secretary of Defense for Intelligence, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Intelligence shall perform such duties and exercise such powers as the Secretary of Defense may prescribe in the area of intelligence.

(c) The Under Secretary of Defense for Intelligence takes precedence in the Department of Defense after the Under Secretary of Defense for Personnel and Readiness.

(Added Pub. L. 107–314, div. A, title IX, §901(a)(2), Dec. 2, 2002, 116 Stat. 2619.)

PRIOR PROVISIONS

A prior section 137 was renumbered section 139a of this title.

Another prior section 137 was renumbered section 135 of this title.

Another prior section 137 was renumbered section 140 of this title.

RELATIONSHIP TO AUTHORITIES UNDER NATIONAL SECURITY ACT OF 1947

Pub. L. 107–314, div. A, title IX, §901(d), Dec. 2, 2002, 116 Stat. 2620, provided that: ''Nothing in section 137 of title 10, United States Code, as added by subsection (a), shall supersede or modify the authorities of the Secretary of Defense and the Director of Central Intelligence as established by the National Security Act of 1947 (50 U.S.C. 401 et seq.).''

§138. Assistant Secretaries of Defense

(a) There are nine Assistant Secretaries of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Reserve Affairs. He shall have as his principal duty the overall supervision of reserve component affairs of the Department of Defense.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Homeland Defense. He shall have as his principal duty the overall supervision of the homeland defense activities of the Department of Defense.

(4) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict. He shall have as his principal duty the overall supervision (including oversight of policy and resources) of special operations activities (as defined in section 167(j) of this title) and low intensity conflict activities of the Department of Defense. The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense.

(5) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Legislative Affairs. He shall have as his principal duty the overall supervision of legislative affairs of the Department of Defense.

(c) Except as otherwise specifically provided by law, an Assistant Secretary may not issue an order to a military department unless—

(1) the Secretary of Defense has specifically delegated that authority to the Assistant Secretary in writing; and

(2) the order is issued through the Secretary of the military department concerned.

(d) The Assistant Secretaries take precedence in the Department of Defense after the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the military depart-

ments, the Under Secretaries of Defense, and the Director of Defense Research and Engineering. The Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense.

(Added Pub. L. 87–651, title II, § 202, Sept. 7, 1962, 76 Stat. 518, § 136; amended Pub. L. 90–168, § 2(1), (2), Dec. 1, 1967, 81 Stat. 521; Pub. L. 91–121, title IV, § 404(a), Nov. 19, 1969, 83 Stat. 207; Pub. L. 92–215, § 1, Dec. 22, 1971, 85 Stat. 777; Pub. L. 92–596, § 4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, § 3(a), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 96–107, title VIII, § 820(a), Nov. 9, 1979, 93 Stat. 819; Pub. L. 98–94, title XII, § 1212(a), Sept. 24, 1983, 97 Stat. 686; Pub. L. 99–433, title I, §§ 106, 110(d)(9), Oct. 1, 1986, 100 Stat. 997, 1003; Pub. L. 99–500, § 101(c) [title IX, § 9115(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–122, and Pub. L. 99–591, § 101(c) [title IX, § 9115(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–122; Pub. L. 99–661, div. A, title XIII, § 1311(a), Nov. 14, 1986, 100 Stat. 3983; Pub. L. 100–180, div. A, title XII, § 1211(a)(1), Dec. 4, 1987, 101 Stat. 1154; Pub. L. 100–453, title VII, § 702, Sept. 29, 1988, 102 Stat. 1912; Pub. L. 100–456, div. A, title VII, § 701, Sept. 29, 1988, 102 Stat. 1992; renumbered § 138 and amended Pub. L. 103–160, div. A, title IX, §§ 901(a)(1), (c), 903(c)(1), 905, Nov. 30, 1993, 107 Stat. 1726, 1727, 1729; Pub. L. 103–337, div. A, title IX, §§ 901(a), 903(b)(2), Oct. 5, 1994, 108 Stat. 2822, 2823; Pub. L. 104–106, div. A, title IX, §§ 902(a), 903(b), (e)(2), Feb. 10, 1996, 110 Stat. 401, 402; Pub. L. 104–201, div. A, title IX, § 901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 105–261, div. A, title IX, §§ 901(a), 902, Oct. 17, 1998, 112 Stat. 2091; Pub. L. 106–398, § 1 [[div. A], title IX, § 901], Oct. 30, 2000, 114 Stat. 1654, 1654A–223; Pub. L. 107–107, div. A, title IX, § 901(c)(1), Dec. 28, 2001, 115 Stat. 1194; Pub. L. 107–314, div. A, title IX, § 902(a), (c), (d), Dec. 2, 2002, 116 Stat. 2620, 2621.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
136(a)	5:171c(c) (1st sentence).	July 26, 1947, ch. 343, § 202(c)(7) (less 1st 2 sentences); added Aug. 6, 1958, Pub. L. 85–599, § 3(a) (8th par., less 1st 2 sentences), 72 Stat. 516.
136(b)	5:171c(c) (1st 18 words of 2d sentence). 5:171c–2 (less 1st sentence). 5:171n(a) (as applicable to 5:172). 5:172.	
136(c)	5:171a(c)(7) (3rd sentence).	July 26, 1947, ch. 343, § 203(c); added Aug. 10, 1949, ch. 412, § 6(a), (2d par.), 63 Stat. 581; redesignated Aug. 6, 1958, Pub. L. 85–599, §§ 9(a) (1st par., as applicable to § 203(c)), 10(a), 72 Stat. 520, 521.
136(d)	5:171a(c)(7) (less 1st 3 sentences).	
136(e)	5:171c(c) (less 1st sentence and less 1st 18 words of 2d sentence).	July 26, 1947, ch. 343, § 302 (less 1st sentence); restated Aug. 10, 1949, ch. 412, § 10(b) (less 1st sentence) restated Aug. 10, 1956, ch. 1041, § 21 (less 1st sentence), 70A Stat. 629. July 26, 1947, ch. 343, § 308(a) (as applicable to § 401), 61 Stat. 509. July 26, 1947, ch. 343, § 401; added Aug. 10, 1949, ch. 412, § 11 (1st 2 pars.), 63 Stat. 585.

In subsection (b)(1), 5 U.S.C. 172(b) (last 13 words of 1st sentence) is omitted as surplusage, since they are only a general description of the powers of the Secretary of Defense under this title. 5 U.S.C. 171c–2 (less 1st sentence) is omitted as covered by 5 U.S.C. 171c(c) (1st 18 words of 2d sentence).

In subsection (d), the following substitutions are made: ''In carrying out subsection (c) and sections 3010, 3012(b) (last two sentences), 5011 (first two sentences), 5031(a) (last two sentences), 8010, and 8012(b) last two sentences of this title,'' for ''In implementation of this paragraph''; and ''members of the armed forces under the jurisdiction of his department'' for ''the military personnel in such department''. The words ''in a continuous effort'' are omitted as surplusage.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 138 was renumbered section 139 of this title.

Another prior section 138 was renumbered by Pub. L. 99–433 as follows:

Section 138(a) was renumbered section 114(a) of this title.

Section 138(b) was renumbered successively as section 114(b) and section 115(a) of this title.

Section 138(c) was renumbered successively as section 114(c) and section 115(b) of this title.

Section 138(d) was renumbered successively as section 114(d) and section 115(c) of this title.

Section 138(e) was renumbered successively as section 114(e) and section 116(a) of this title.

Section 138(f)(1) was renumbered successively as section 114(f)(1) and section 114(b) of this title.

Section 138(f)(2) was renumbered successively as section 114(f)(2) and section 116(b) of this title.

Section 138(g) was renumbered successively as section 114(g) and section 114(c) of this title.

Section 138(h) was renumbered successively as section 114(h) and section 113(i) of this title.

Section 138(i) was renumbered successively as section 114(i) and section 114(d) of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, § 902(d), which directed the repeal of Pub. L. 107–107, § 901(c), was executed by substituting ''nine'' for ''eight'' to reflect the probable intent of Congress. See 2001 Amendment note below.

Subsec. (b)(3). Pub. L. 107–314, § 902(a), added par. (3).

Subsec. (b)(6). Pub. L. 107–314, § 902(c), struck out par. (6) which read as follows:

''(6)(A) One of the Assistant Secretaries, as designated by the Secretary of Defense from among those Assistant Secretaries with responsibilities that include responsibilities related to combating terrorism, shall have, among that Assistant Secretary's duties, the duty to provide overall direction and supervision for policy, program planning and execution, and allocation and use of resources for the activities of the Department of Defense for combating terrorism, including antiterrorism activities, counterterrorism activities, terrorism consequences management activities, and terrorism-related intelligence support activities.

''(B) The Assistant Secretary designated under subparagraph (A) shall be the principal civilian adviser to the Secretary of Defense on combating terrorism and (after the Secretary and Deputy Secretary) shall be the principal official within the senior management of the Department of Defense responsible for combating terrorism.

''(C) If the Secretary of Defense designates under subparagraph (A) an Assistant Secretary other than the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, then the responsibilities of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict related to combating terrorism shall be exercised subject to subparagraph (B).''

2001—Subsec. (a). Pub. L. 107–107, which substituted ''eight Assistant Secretaries of Defense'' for ''nine Assistant Secretaries of Defense'', was repealed by Pub. L. 107–314, § 902(d). See 2002 Amendment note above.

2000—Subsec. (b)(6). Pub. L. 106–398 added par. (6).

1998—Subsec. (a). Pub. L. 105–261, §901(a), substituted ''nine'' for ''ten''.

Subsec. (b)(3). Pub. L. 105–261, §902, struck out par. (3) which read as follows:

''(3)(A) One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.

''(B) Notwithstanding subparagraph (A), one of the Assistant Secretaries established by the Secretary of Defense may be an Assistant Secretary of Defense for Intelligence, who shall have as his principal duty the overall supervision of intelligence affairs of the Department of Defense.

''(C) If the Secretary of Defense establishes an Assistant Secretary of Defense for Intelligence, the Assistant Secretary provided for under subparagraph (A) shall be the Assistant Secretary of Defense for Command, Control, and Communications and shall have as his principal duty the overall supervision of command, control, and communications affairs of the Department of Defense.''

1996—Subsec. (a). Pub. L. 104–106, §902(a), substituted ''ten'' for ''eleven''.

Subsec. (b). Pub. L. 104–106, §903(a), (b), which directed the general amendment of subsec. (b), eff. Jan. 31, 1997, designating par. (1) as entire subsec. and striking out pars. (2) to (5), was repealed by Pub. L. 104–201.

Subsec. (d). Pub. L. 104–106, §903(a), (e)(2), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''and the Under Secretaries of Defense'' for ''the Under Secretaries of Defense, and the Director of Defense Research and Engineering'', was repealed by Pub. L. 104–201.

1994—Subsec. (a). Pub. L. 103–337, §901(a), substituted ''eleven'' for ''ten''.

Subsec. (d). Pub. L. 103–337, §903(b)(2), struck out ''and Comptroller'' after ''Under Secretaries of Defense''.

1993—Pub. L. 103–160, §901(a)(1), renumbered section 136 of this title as this section.

Subsec. (a). Pub. L. 103–160, §903(c)(1), substituted ''ten'' for ''eleven''.

Subsec. (b)(5). Pub. L. 103–160, §905, added par. (5).

Subsec. (d). Pub. L. 103–160, §901(c), inserted ''and Comptroller'' after ''Under Secretaries of Defense''.

1988—Subsec. (b)(3). Pub. L. 100–453 and Pub. L. 100–456 generally amended par. (3) identically. Prior to amendment, par. (3) read as follows: ''One of the Assistant Secretaries shall be the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. He shall have as his principal duty the overall supervision of command, control, communications, and intelligence affairs of the Department of Defense.''

1987—Subsec. (b)(4). Pub. L. 100–180 inserted at end ''The Assistant Secretary is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters and (after the Secretary and Deputy Secretary) is the principal special operations and low intensity conflict official within the senior management of the Department of Defense.''

1986—Pub. L. 99–433, §110(d)(9), struck out '': appointment; powers and duties; precedence'' at end of section catchline.

Subsec. (b)(2), (3). Pub. L. 99–433, §106(a)(1), (2), redesignated pars. (4) and (5) as pars. (2) and (3), respectively, and struck out former par. (2) relating to the Assistant Secretary of Defense for Health Affairs and former par. (3) relating to the Assistant Secretary of Defense for Manpower and Logistics.

Subsec. (b)(4). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, adding par. (4).

Pub. L. 99–433, §106(a)(2), redesignated par. (4) as (2).

Subsec. (b)(5). Pub. L. 99–433, §106(a)(2), redesignated par. (5) as (3).

Subsec. (b)(6). Pub. L. 99–433, §106(a)(3), struck out par. (6) relating to Comptroller of Department of Defense. See section 135 of this title.

Subsec. (c)(1). Pub. L. 99–433, §106(c)(1)(A), substituted ''the Assistant Secretary'' for ''him''.

Subsec. (c)(2). Pub. L. 99–433, §106(c)(1)(B), struck out '', or his designee'' after ''concerned''.

Subsecs. (d), (e). Pub. L. 99–433, §106(b), (c)(2), (3), redesignated subsec. (e) as (d), substituted ''the Under Secretaries of Defense, and the Director of Defense Research and Engineering'' for ''and the Under Secretaries of Defense'', inserted sentence directing that the Assistant Secretaries take precedence among themselves in the order prescribed by the Secretary of Defense, and struck out former subsec. (d) which directed the Secretary of each military department, his civilian assistants, and members of the armed forces under the jurisdiction of his department to cooperate fully with personnel of the Office of the Secretary of Defense to achieve efficient administration of the Department of Defense and to carry out effectively the authority, direction, and control of the Secretary of Defense.

1983—Subsec. (a). Pub. L. 98–94, §1212(a)(1), substituted ''eleven'' for ''seven''.

Subsec. (b)(1). Pub. L. 98–94, §1212(a)(2)(A), designated existing first sentence as par. (1).

Subsec. (b)(2). Pub. L. 98–94, §1212(a)(2)(B), designated existing second and third sentences as par. (2).

Subsec. (b)(3). Pub. L. 98–94, §1212(a)(2)(C), (D), designated existing fourth and fifth sentences as par. (3) and substituted ''Logistics'' for ''Reserve Affairs'' and ''logistics'' for ''reserve component''.

Subsec. (b)(4), (5). Pub. L. 98–94, §1212(a)(2)(E), added pars. (4) and (5).

Subsec. (b)(6). Pub. L. 98–94, §1212(a)(2)(F), designated existing sixth sentence as par. (6), substituted ''One of the Assistant Secretaries'' for ''In addition, one of the Assistant Secretaries'', redesignated pars. (1) to (5) as subpars. (A) to (E), respectively, redesignated former subpars. (A) to (D) as cls. (1) to (4), respectively, and in subpar. (E) substituted ''clauses (A) through (D)'' for ''clauses (1)–(4)''.

Subsec. (f). Pub. L. 98–94, §1212(a)(3), struck out subsec. (f) which provided for appointment of a Deputy Assistant Secretary of Defense for Reserve Affairs within the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs. See subsec. (b)(4) of this section.

1979—Subsec. (a). Pub. L. 96–107 substituted ''seven'' for ''nine''.

1977—Subsec. (e). Pub. L. 95–140 inserted ''of Defense'' after ''Secretary'' and substituted ''Secretary of Defense'' for ''Secretaries of Defense'' and '', and the Under Secretaries of Defense'' for '', and the Director of Defense Research and Engineering''.

1972—Subsec. (e). Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary''.

1971—Subsec. (a). Pub. L. 92–215 substituted ''nine'' for ''eight''.

1969—Subsec. (a). Pub. L. 91–121, §404(a)(1), substituted ''eight'' for ''seven''.

Subsec. (b). Pub. L. 91–121, §404(a)(2), provided for an Assistant Secretary of Defense for Health Affairs having as his principal duty the overall supervision of health affairs of Department of Defense.

1967—Subsec. (b). Pub. L. 90–168, §2(1), inserted provisions for an Assistant Secretary of Defense for Manpower and Reserve Affairs with principal duty of overall supervision of manpower and reserve component affairs of Department of Defense.

Subsec. (f). Pub. L. 90–168, §2(2), added subsec. (f).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1212(e) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section, sections 175, 3013, and 5034 of this title, and section 5315 of Title 5, Government Organization and Employees] shall take effect on October 1, 1983.''

EFFECTIVE DATE OF 1967 AMENDMENT

Section 7 of Pub. L. 90–168 provided that: ''The provisions of this Act [see Short Title of 1967 Amendment

note below] shall become effective on the first day of the first calendar month following the date of enactment [Dec. 1, 1967].''

SHORT TITLE OF 1967 AMENDMENT

Section 1 of Pub. L. 90–168 provided: ''That this Act [amending this section, sections 175, 262, 264, 268, 269, 270, 511 [now 12103], 3014, 5034, 8014, and 8850 of this title, section 502 of Title 32, National Guard, and section 404 of Title 37, Pay and Allowances of the Uniformed Services, enacting sections 3021 [now 10302], 3038, 8021 [now 10305], and 8038 of this title, enacting provisions set out as notes under this section and section 8212 of this title, and amending provisions set out as a note under section 113 of this title] may be cited as the 'Reserve Forces Bill of Rights and Vitalization Act'.''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

CHARTER OF THE ASSISTANT SECRETARY OF DEFENSE FOR SPECIAL OPERATIONS AND LOW INTENSITY CONFLICT

Section 1211(a)(2)–(5) of Pub. L. 100–180 provided that:

''(2) The Secretary of Defense shall publish a directive setting forth the charter of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987]. The directive shall set forth—

''(A) the duties and responsibilities of the Assistant Secretary;

''(B) the relationships between the Assistant Secretary and other Department of Defense officials;

''(C) any delegation of authority from the Secretary of Defense to the Assistant Secretary; and

''(D) such other matters as the Secretary considers appropriate.

''(3) On the date that such directive is published, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(A) a copy of the directive; and

''(B) a report explaining how the charter of the Assistant Secretary fulfills the provisions of section 136(b)(4) [now 138(b)(4)] of title 10, United States Code (as amended by paragraph (1)), that provide that the Assistant Secretary—

''(i) exercises overall supervision of special operations activities and low intensity conflict activities of the Department of Defense;

''(ii) is the principal civilian adviser to the Secretary of Defense on special operations and low intensity conflict matters; and

''(iii) is the principal special operations and low intensity conflict official (after the Secretary and Deputy Secretary) within the senior management of the Department of Defense.

''(4)(A) Until the office of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict is filled for the first time by a person appointed from civilian life by the President, by and with the advice and consent of the Senate, the Secretary of the Army shall carry out the duties and responsibilities of that office.

''(B) Throughout the period of time during which the Secretary of the Army is carrying out the duties and responsibilities of that office, he shall submit to the Committees on Armed Services of the Senate and House of Representatives a monthly report on the administrative actions that he has taken and the policy guidance that he has issued to carry out such duties and responsibilities. Each such report shall also describe the actions that he intends to take and the guidance that he intends to issue to fulfill the provisions of section 136(b)(4) [now 138(b)(4)] of title 10, United States Code (as amended by paragraph (1)), along with a timetable for completion of such actions and issuance of such guidance. The first such report shall be submitted not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987].

''(5) Until the first individual appointed to the position of Assistant Secretary of Defense for Special Operations and Low Intensity Conflict by the President, by and with the advice and consent of the Senate, leaves that office, that Assistant Secretary (and the Secretary of the Army when carrying out the duties and responsibilities of the Assistant Secretary) shall, with respect to the duties and responsibilities of that office, report directly, without intervening review or approval, to the Secretary of Defense personally or, as designated by the Secretary, to the Deputy Secretary of Defense personally.''

TEMPORARY INCREASE IN NUMBER OF ASSISTANT SECRETARIES OF DEFENSE

Section 1311 of Pub. L. 100–180 provided that until Jan. 20, 1989, the number of Assistant Secretaries of Defense authorized under subsec. (a) of this section and the number of positions at level IV of the Executive Schedule are each increased by one (to a total of 12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10201 of this title.

§ 139. Director of Operational Test and Evaluation

(a)(1) There is a Director of Operational Test and Evaluation in the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Director shall be appointed without regard to political affiliation and solely on the basis of fitness to perform the duties of the office of Director. The Director may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(2) In this section:

(A) The term ''operational test and evaluation'' means—

(i) the field test, under realistic combat conditions, of any item of (or key component of) weapons, equipment, or munitions for the purpose of determining the effectiveness and suitability of the weapons, equipment, or munitions for use in combat by typical military users; and

(ii) the evaluation of the results of such test.

(B) The term ''major defense acquisition program'' means a Department of Defense acquisition program that is a major defense acquisition program for purposes of section 2430 of this title or that is designated as such a program by the Director for purposes of this section.

(b) The Director is the principal adviser to the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics on operational test and evaluation in the Department of Defense and the principal operational test and evaluation official within the senior management of the Department of Defense. The Director shall—

(1) prescribe, by authority of the Secretary of Defense, policies and procedures for the con-

duct of operational test and evaluation in the Department of Defense;

(2) provide guidance to and consult with the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretaries of the military departments with respect to operational test and evaluation in the Department of Defense in general and with respect to specific operational test and evaluation to be conducted in connection with a major defense acquisition program;

(3) monitor and review all operational test and evaluation in the Department of Defense;

(4) coordinate operational testing conducted jointly by more than one military department or defense agency;

(5) review and make recommendations to the Secretary of Defense on all budgetary and financial matters relating to operational test and evaluation, including operational test facilities and equipment, in the Department of Defense; and

(6) monitor and review the live fire testing activities of the Department of Defense provided for under section 2366 of this title.

(c) The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense. The Director shall consult closely with, but the Director and the Director's staff are independent of, the Under Secretary of Defense for Acquisition, Technology, and Logistics and all other officers and entities of the Department of Defense responsible for acquisition.

(d) The Director may not be assigned any responsibility for developmental test and evaluation, other than the provision of advice to officials responsible for such testing.

(e)(1) The Secretary of a military department shall report promptly to the Director the results of all operational test and evaluation conducted by the military department and of all studies conducted by the military department in connection with operational test and evaluation in the military department.

(2) The Director may require that such observers as he designates be present during the preparation for and the conduct of the test part of any operational test and evaluation conducted in the Department of Defense.

(3) The Director shall have access to all records and data in the Department of Defense (including the records and data of each military department) that the Director considers necessary to review in order to carry out his duties under this section.

(f) The Director shall ensure that safety concerns developed during the operational test and evaluation of a weapon system under a major defense acquisition program are communicated in a timely manner to the program manager for that program for consideration in the acquisition decisionmaking process.

(g)(1) The Director shall prepare an annual report summarizing the operational test and evaluation activities (including live fire testing activities) of the Department of Defense during the preceding fiscal year.

(2) Each such report shall be submitted concurrently to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Congress not later than 10 days after the transmission of the budget for the next fiscal year under section 1105 of title 31.

(3) If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.

(4) The report shall include such comments and recommendations as the Director considers appropriate, including comments and recommendations on resources and facilities available for operational test and evaluation and levels of funding made available for operational test and evaluation activities. The report for a fiscal year shall also include an assessment of the waivers of and deviations from requirements in test and evaluation master plans and other testing requirements that occurred during the fiscal year, any concerns raised by the waivers or deviations, and the actions that have been taken or are planned to be taken to address the concerns.

(5) The Secretary may comment on any report of the Director to Congress under this subsection.

(h) The Director shall comply with requests from Congress (or any committee of either House of Congress) for information relating to operational test and evaluation in the Department of Defense.

(i) The President shall include in the Budget transmitted to Congress pursuant to section 1105 of title 31 for each fiscal year a separate statement of estimated expenditures and proposed appropriations for that fiscal year for the activities of the Director of Operational Test and Evaluation in carrying out the duties and responsibilities of the Director under this section.

(j) The Director shall have sufficient professional staff of military and civilian personnel to enable the Director to carry out the duties and responsibilities of the Director prescribed by law.

(Added Pub. L. 98–94, title XII, §1211(a)(1), Sept. 24, 1983, 97 Stat. 684, §136a; amended Pub. L. 99–348, title V, §501(c), July 1, 1986, 100 Stat. 708; renumbered §138 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(d)(10), (g)(1), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, §101(c) [title X, §§903(c), 910(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, 1783–145, and Pub. L. 99–591, §101(c) [title X, §§903(c), 910(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132, 3341–145; Pub. L. 99–661, div. A, title IX, formerly title IV, §§903(c), 910(c), Nov. 14, 1986, 100 Stat. 3912, 3924, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §7(a)(1), (c)(2), Apr. 21, 1987, 101 Stat. 275, 280; Pub. L. 100–180, div. A, title VIII, §801, Dec. 4, 1987, 101 Stat. 1123; Pub. L. 101–189, div. A, title VIII, §802(b), title XVI, §1622(e)(1), Nov. 29, 1989, 103 Stat. 1486, 1605; Pub. L. 101–510, div. A, title XIV, §1484(k)(1), Nov. 5, 1990, 104 Stat. 1719; renumbered §139 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(1), 904(d)(1), 907, Nov. 30, 1993, 107 Stat. 1726, 1728, 1730; Pub. L. 103–355, title III, §§3011–3013, Oct. 13, 1994, 108 Stat. 3331, 3332; Pub. L. 106–65, div. A, title IX, §911(d)(1), Oct. 5, 1999, 113 Stat. 719; Pub.

L. 107–107, div. A, title II, §263, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1044, 1225; Pub. L. 107–314, div. A, title II, §235, Dec. 2, 2002, 116 Stat. 2491.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 139 was renumbered section 140 of this title.

Another prior section 139 was renumbered section 2431 of this title.

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–314, §235(b), designated first sentence as par. (1), second sentence as par. (2), third sentence as par. (3), fourth and fifth sentences as par. (4), and sixth sentence as par. (5).

Pub. L. 107–314, §235(a), inserted after fourth sentence ''The report for a fiscal year shall also include an assessment of the waivers of and deviations from requirements in test and evaluation master plans and other testing requirements that occurred during the fiscal year, any concerns raised by the waivers or deviations, and the actions that have been taken or are planned to be taken to address the concerns.''

2001—Subsec. (c). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f). Pub. L. 107–107, §263(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Pub. L. 107–107, §263(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsecs. (h) to (j). Pub. L. 107–107, §263(1), redesignated subsecs. (g) to (i) as (h) to (j), respectively.

1999—Subsec. (b). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in introductory provisions and in par. (2).

1994—Subsec. (b)(6). Pub. L. 103–355, §3012(a), added par. (6).

Subsec. (c). Pub. L. 103–355, §3011, inserted ''The Director may communicate views on matters within the responsibility of the Director directly to the Secretary of Defense and the Deputy Secretary of Defense without obtaining the approval or concurrence of any other official within the Department of Defense.'' after ''(c)''.

Subsec. (f). Pub. L. 103–355, §§3012(b), 3013, in first sentence inserted ''(including live fire testing activities)'' after ''operational test and evaluation activities'' and after second sentence inserted ''If the Director submits the report to Congress in a classified form, the Director shall concurrently submit an unclassified version of the report to Congress.''

1993—Pub. L. 103–160, §901(a)(1), renumbered section 138 of this title as this section.

Subsec. (b). Pub. L. 103–160, §904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in introductory provisions and in par. (2).

Subsec. (c). Pub. L. 103–160, §907, struck out ''The Director reports directly, without intervening review or approval, to the Secretary of Defense personally.'' after ''(c)'' and substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Director of Defense Research and Engineering'' and ''responsible for acquisition'' for ''responsible for research and development''.

Subsec. (f). Pub. L. 103–160, §904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (a)(2)(A). Pub. L. 101–510, §1484(k)(1)(A), substituted ''(A) The term 'operational test and evaluation'' for ''(A) 'Operational test and evaluation''.

Subsec. (a)(2)(B). Pub. L. 101–510, §1484(k)(1)(B), substituted ''(B) The term 'major defense acquisition program'' for ''(B) 'Major defense acquisition program''.

1989—Subsec. (a)(2)(A). Pub. L. 101–189, §1622(e)(1)(A), which directed amendment of subpar. (A) by substituting ''(A) The term 'operational'' for ''(A) 'Operational'', could not be executed because a closing quotation mark did not follow ''Operational''.

Subsec. (a)(2)(B). Pub. L. 101–189, §1622(e)(1)(B), which directed amendment of subpar. (B) by substituting ''(B) The term 'major'' for ''(B) 'Major'', could not be executed because a closing quotation mark did not follow ''Major''.

Subsec. (b)(4). Pub. L. 101–189, §802(b)(1)(A), inserted ''and'' after ''defense agency;''.

Subsec. (b)(5), (6). Pub. L. 101–189, §802(b)(1)(B), (C), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''analyze the results of the operational test and evaluation conducted for each major defense acquisition program and, at the conclusion of such operational test and evaluation, report to the Secretary of Defense, to the Under Secretary of Defense for Acquisition, and to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives as provided in subsection (c) on—

''(A) whether the test and evaluation performed was adequate; and

''(B) whether the test and evaluation results confirm that the items or components actually tested are effective and suitable for combat; and''.

Subsec. (c). Pub. L. 101–189, §802(b)(2), (3), redesignated subsec. (d)(1) as (c) and struck out former subsec. (c) which read as follows: ''Each report of the Director required under subsection (b)(5) shall be submitted to the committees specified in that subsection in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary of Defense and the Under Secretary of Defense for Acquisition and shall be accompanied by such comments as the Secretary may wish to make on the report.''

Subsec. (d). Pub. L. 101–189, §802(b)(4), redesignated former par. (2) of subsec. (d) as entire subsec. Former par. (1) of subsec. (d) redesignated subsec. (c).

Subsec. (f). Pub. L. 101–189, §802(b)(5)–(7), redesignated subsec. (g)(1) as (f), substituted ''this subsection'' for ''this paragraph'', and struck out former subsec. (f) which read as follows:

''(1) Operational testing of a major defense acquisition program may not be conducted until the Director has approved in writing the adequacy of the plans (including the adequacy of projected levels of funding) for operational test and evaluation to be conducted in connection with that program.

''(2) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program required by subsection (b)(5) and the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have received that report.''

Subsec. (g). Pub. L. 101–189, §802(b)(6), (8), redesignated former par. (2) of subsec. (g) as entire subsec. (g), and redesignated former par. (1) of subsec. (g) as subsec. (f).

1987—Subsec. (a)(2)(B). Pub. L. 100–26, §7(c)(2), substituted ''section 2430'' for ''section 2432(a)(1)''.

Subsec. (c). Pub. L. 100–26, §7(a)(1), substituted ''to the Secretary of Defense and the Under Secretary of Defense for Acquisition and shall be accompanied by such comments as the Secretary may wish to make on the report.'' for ''to the Secretary, to the Under Secretary of Defense for Acquisition, and shall be accompanied by such comments as the Secretary of Defense may wish to make on such report.''

Subsec. (d). Pub. L. 100–180 designated existing provisions as par. (1) and added par. (2).

1986—Pub. L. 99–433, §§101(a)(7), 110(d)(10), renumbered section 136a of this title as this section, and struck out ''; appointment; powers and duties'' at end of section catchline.

Subsec. (a)(2)(B). Pub. L. 99–433, §110(g)(1), substituted ''section 2432(a)(1)'' for ''section 139a(a)(1)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(1)–(3)] and Pub. L. 99–661, §903(c)(1)–(3), amended subsec. (b) identically, in provisions preceding par. (1) and in par. (2), inserting ''and the Under Secretary of Defense for Acquisition'' and, in par. (5), inserting '', to the Under Secretary of Defense for Acquisition,''.

Subsec. (c). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(4)], and Pub. L. 99–661, §903(c)(4), amended subsec. (c) identically by directing the insertion of '', to the Under Secretary of Defense for Acquisition,'' after ''Secretary of Defense'' the first place it appears which was executed by making the insertion after ''the Secretary'' the first place it appears as the probable intent of Congress.

Subsec. (d). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(5)], and Pub. L. 99–661, §903(c)(5), amended subsec. (d) identically inserting ''personally'' after ''Secretary of Defense''.

Pub. L. 99–348 substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

Subsec. (g)(1). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§§903(c)(6), 910(c)], and Pub. L. 99–661, §§903(c)(6), 910(c), amended par. (1) identically, inserting '', the Under Secretary of Defense for Acquisition,'' and substituting ''10 days after transmission of the budget for the next fiscal year under section 1105 of title 31'' for ''January 15 immediately following the end of the fiscal year for which the report is prepared''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§903(c)(7)], and Pub. L. 99–661, §903(c)(7), amended section identically adding subsec. (i).

EFFECTIVE DATE

Section 1211(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall take effect on November 1, 1983.''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2399 of this title.

§ 139a. Director of Defense Research and Engineering

(a) There is a Director of Defense Research and Engineering, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) Except as otherwise prescribed by the Secretary of Defense, the Director of Defense Research and Engineering shall perform such duties relating to research and engineering as the Under Secretary of Defense for Acquisition, Technology, and Logistics may prescribe.

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 518, §135; amended Pub. L. 92–596, §4(2), Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, §2(a), Oct. 21, 1977, 91 Stat. 1172; Pub. L. 99–348, title V, §501(b)(1), (2), (e)(1), July 1, 1986, 100 Stat. 707, 708; Pub. L. 99–433, title I, §105, Oct. 1, 1986, 100 Stat. 997; Pub. L. 99–500, §101(c) [title X, §903(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, and Pub. L. 99–591, §101(c) [title X, §903(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132; Pub. L. 99–661, div. A, title IX, formerly title IV, §903(b)(1), Nov. 14, 1986, 100 Stat. 3911, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; renumbered §137 and amended Pub. L. 103–160, div. A, title IX, §§901(a)(1), 904(d)(1), Nov. 30, 1993, 107 Stat. 1726, 1728; Pub. L. 104–106, div. A, title IX, §903(c)(3), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 106–65, div. A, title IX, §911(d)(1), Oct. 5, 1999, 113 Stat. 719; renumbered §139a, Pub. L. 107–314, div. A, title IX, §901(a)(1), Dec. 2, 2002, 116 Stat. 2619.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
135(a)	5:171c(b)(1) (1st 30 words of 1st sentence).	July 26, 1947, ch. 343, §203(b)(1) (less last sentence); added Aug. 6, 1958, Pub. L. 85–599, §9(a) (2d par., less last sentence), 72 Stat. 520.
135(b)	5:171c(b)(1) (2d sentence).	
135(c)	5:171c(b)(1) (1st sentence, less 1st 30 words).	

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

A prior section 139a was renumbered section 2432 of this title.

AMENDMENTS

2002—Pub. L. 107–314 renumbered section 137 of this title as this section.

1999—Subsec. (b). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1996—Pub. L. 104–106, §903(a), (c)(3), which directed repeal of this section eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

1993—Pub. L. 103–160, §901(a)(1), renumbered section 135 of this title as this section.

Subsec. (b). Pub. L. 103–160, §904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1986—Pub. L. 99–433, §105(1), amended section catchline generally, substituting ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments; powers and duties; precedence''.

Pub. L. 99–348, §501(e)(1), substituted ''Under Secretary of Defense for Policy; Director of Defense Research and Engineering: appointments'' for ''Under Secretaries of Defense: appointment'' in section catchline.

Subsec. (a). Pub. L. 99–433, §105(1), substituted a new subsec. (a) for former provisions establishing the positions of Under Secretary of Defense for Policy and Director of Defense for Research and Engineering to be appointed from civilian life by the President with the advice and consent of the Senate and prohibiting the appointment as Under Secretary of Defense for Policy of a person within ten years after relief from active duty as a commissioned officer of a regular component of an armed force. See section 134 of this title.

Pub. L. 99–348, §501(b)(1), substituted ''is an Under Secretary of Defense for Policy and a Director of Defense Research and Engineering'' for ''are two Under Secretaries of Defense, one of whom shall be the Under Secretary of Defense for Policy and one of whom shall be the Under Secretary of Defense for Research and Engineering'' and ''They shall'' for ''The Under Secretaries of Defense shall''.

Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section identically adding subsec. (b) and striking out former subsec. (b) which read as follows: ''The Director of Defense Research and Engineering shall perform such duties relating to research and engineering as the Secretary of Defense may prescribe, including—

''(1) being the principal adviser to the Secretary on scientific and technical matters;

''(2) supervising all research and engineering activities in the Department of Defense; and

''(3) directing, controlling, assigning, and reassigning research and engineering activities that the Secretary considers need centralized management.''

Pub. L. 99–433, §105(2), struck out provisions that the Under Secretary of Defense for Policy would perform duties and exercise powers as the Secretary of Defense might prescribe.

Pub. L. 99–348, §501(b)(2), substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

Subsec. (c). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section identically striking out subsec. (c) which read as follows: ''The Director of Defense Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.''

Pub. L. 99–433, §105(2), struck out provisions that the Under Secretary of Defense for Policy would take precedence in the Department of Defense after Secretary of Defense, the Deputy Secretary of Defense, and the Secretaries of the military departments.

Pub. L. 99–348, §501(b)(2), substituted ''Director of Defense Research and Engineering'' for ''Under Secretary of Defense for Research and Engineering''.

1977—Pub. L. 95–140, §2(a)(4), substituted ''Under Secretaries of Defense'' for ''Director of Defense Research and Engineering'' in section catchline.

Subsec. (a). Pub. L. 95–140, §2(a)(1), substituted provisions relating to the appointment of the Under Secretary of Defense for Policy and the Under Secretary of Defense for Research and Engineering for provisions relating to the appointment of the Director of Defense Research and Engineering and inserted provisions relating to the prohibition of the appointment of a person as Under Secretary of Defense for policy within ten years after relief from active duty as a commissioned officer of an armed force.

Subsec. (b). Pub. L. 95–140, §2(a)(2), substituted ''The Under Secretary of Defense for Policy shall perform such duties and exercise such powers as the Secretary of Defense may prescribe. The Under Secretary of Defense for Research and Engineering shall perform'' for ''The Director performs''.

Subsec. (c). Pub. L. 95–140, §2(a)(3), substituted ''Under Secretary of Defense for Policy'' for ''Director'' and ''Deputy Secretary'' for ''Deputy Secretaries'' and inserted provision that the Under Secretary of Defense for Research and Engineering takes precedence in the Department of Defense immediately after the Under Secretary of Defense for Policy.

1972—Subsec. (c). Pub. L. 92–596 substituted ''Deputy Secretaries'' for ''Deputy Secretary''.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

REDESIGNATION OF POSITION OF UNDER SECRETARY OF DEFENSE FOR RESEARCH AND ENGINEERING; EFFECT ON INDIVIDUAL HOLDING POSITION

Pub. L. 99–348, title V, §501(b)(3), July 1, 1986, 100 Stat. 708, provided that the redesignation by Pub. L. 99–348, §501(b)(1) (amending this section), of the position of Under Secretary of Defense for Research and Engineering as Director of Defense Research and Engineering was not to affect the appointment to such position of the individual holding such position on July 1, 1986.

EMERGENCY FUND FOR RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Pub. L. 89–37, title III, §305, June 11, 1965, 79 Stat. 128, which provided that no funds were to be appropriated after June 30, 1966, to or for the use of any armed force of the United States for use as an emergency fund for research, development, test, and evaluation, or procurement or production related thereto unless the appropriation of such funds has been authorized by legislation enacted after that date, was repealed and restated as subsec. (i) of section 138 [now §114(d)] of this title by Pub. L. 97–295, §§1(4), 6(b), Oct. 12, 1982, 96 Stat. 1289, 1314.

[§ 139b. Renumbered § 2433]

[§ 139c. Renumbered § 2434]

§ 140. General Counsel

(a) There is a General Counsel of the Department of Defense, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel is the chief legal officer of the Department of Defense. He shall perform such functions as the Secretary of Defense may prescribe.

(Added Pub. L. 87–651, title II, §202, Sept. 7, 1962, 76 Stat. 519, §137; amended Pub. L. 88–426, title III, §305(9), Aug. 14, 1964, 78 Stat. 423; renumbered §139 and amended Pub. L. 99–433, title I, §§101(a)(7), 110(d)(11), Oct. 1, 1986, 100 Stat. 995, 1003; renumbered §140, Pub. L. 103–160, div. A, title IX, §901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
137(a)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, §4 (1st 25 words of 1st sentence), 67 Stat. 639].	1953 Reorg. Plan No. 6, eff. June 30, 1953, §4, 67 Stat. 639.
137(b)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, §4 (1st sentence, less 1st 25 words), 67 Stat. 639].	
137(c)	[Uncodified: 1953 Reorg. Plan No. 6, eff. June 30, 1953, §4 (2d sentence), 67 Stat. 639].	

In subsection (b), the words ''from time to time'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 140 was renumbered section 141 of this title.

Another prior section 140 was renumbered section 127 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 139 of this title as this section.

1986—Pub. L. 99–433, §§101(a)(7), 110(d)(11), renumbered section 137 of this title as this section, and struck out '': powers and duties'' at end of section catchline.

1964—Subsec. (c). Pub. L. 88–426 repealed subsec. (c) which related to compensation of General Counsel. See section 5315 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

[§140a. Renumbered §422]

PRIOR PROVISIONS

A prior section 140a was renumbered section 421 of this title.

[§140b. Renumbered §423]

PRIOR PROVISIONS

A prior section 140b was renumbered section 129 of this title.

[§140c. Renumbered §130]

§141. Inspector General

(a) There is an Inspector General of the Department of Defense, who is appointed as provided in section 3 of the Inspector General Act of 1978 (Public Law 95–452; 5 U.S.C. App. 3).

(b) The Inspector General performs the duties, has the responsibilities, and exercises the powers specified in the Inspector General Act of 1978.

(Added Pub. L. 99–433, title I, §108, Oct. 1, 1986, 100 Stat. 998, §140; renumbered §141, Pub. L. 103–160, div. A, title IX, §901(a)(1), Nov. 30, 1993, 107 Stat. 1726.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in text, is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 141 was renumbered section 142 of this title.

Another prior section 141 of this title was contained in chapter 5 of this title, prior to amendment by Pub. L. 99–433. See note preceding section 151 of this title.

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 140 of this title as this section.

§142. Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs

(a) There is an Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs, appointed by the President, by and with the advice and consent of the Senate.

(b) The Assistant to the Secretary shall—

(1) advise the Secretary of Defense on nuclear energy, nuclear weapons, and chemical and biological defense;

(2) serve as the Staff Director of the Nuclear Weapons Council established by section 179 of this title; and

(3) perform such additional duties as the Secretary may prescribe.

(Added Pub. L. 100–180, div. A, title XII, §1245(a)(1), Dec. 4, 1987, 101 Stat. 1165, §141; renumbered §142, Pub. L. 103–160, div. A, title IX, §901(a)(1), Nov. 30, 1993, 107 Stat. 1726; amended Pub. L. 104–106, div. A, title IX, §§903(c)(4), 904(a)(1), Feb. 10, 1996, 110 Stat. 402, 403; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.)

PRIOR PROVISIONS

A prior section 142 of this title was contained in chapter 5 of this title, prior to amendment by Pub. L. 99–433. See note preceding section 151 of this title.

AMENDMENTS

1996—Pub. L. 104–106, §904(a)(1)(A), substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy'' in section catchline.

Pub. L. 104–106, §903(a), (c)(4), which directed repeal of this section eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

Subsec. (a). Pub. L. 104–106, §904(a)(1)(B), substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy''.

Subsec. (b). Pub. L. 104–106, §904(a)(1)(C), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The Assistant to the Secretary shall advise the Secretary of Defense and the Nuclear Weapons Council on nuclear energy and nuclear weapons matters.''

1993—Pub. L. 103–160 renumbered section 141 of this title as this section.

EXCEPTION TO SENATE CONFIRMATION REQUIREMENT

Section 1245(b) of Pub. L. 100–180 provided that: ''The person serving as Chairman of the Military Liaison Committee, Department of Defense, under section 27 of the Atomic Energy Act of 1946 (42 U.S.C. 2037) on October 16, 1986, may be appointed as the Assistant to the Secretary of Defense for Atomic Energy under section 141 [now 142] of title 10, United States Code (as added by subsection (a)), without the advice and consent of the Senate.''

§143. Office of the Secretary of Defense personnel: limitation

(a) PERMANENT LIMITATION ON OSD PERSONNEL.—The number of OSD personnel may not exceed 3,767.

(b) OSD PERSONNEL DEFINED.—For purposes of this section, the term ''OSD personnel'' means military and civilian personnel of the Department of Defense who are assigned to, or employed in, functions in the Office of the Secretary of Defense (including Direct Support Activities of that Office and the Washington Headquarters Services of the Department of Defense).

(c) LIMITATION ON REASSIGNMENT OF FUNCTIONS.—In carrying out reductions in the number of personnel assigned to, or employed in, the Office of the Secretary of Defense in order to comply with this section, the Secretary of Defense may not reassign functions solely in order to evade the requirements contained in this section.

(Added Pub. L. 105–85, div. A, title IX, §911(d)(1), Nov. 18, 1997, 111 Stat. 1859; amended Pub. L. 106–65, div. A, title IX, §921(c), Oct. 5, 1999, 113 Stat. 723.)

CODIFICATION

Section, as added by Pub. L. 105–85, consists of text of Pub. L. 104–201, div. A, title IX, §903(a)–(f), Sept. 23, 1996, 110 Stat. 2617. Section 903 of Pub. L. 104–201, which was formerly set out as a note under section 131 of this title, was repealed by Pub. L. 105–85, div. A, title IX, §911(d)(3), Nov. 18, 1997, 111 Stat. 1860.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65, §921(c)(1), substituted ''The number'' for ''Effective October 1, 1999, the number'' and ''3,767'' for ''75 percent of the baseline number''.

Subsec. (b). Pub. L. 106–65, §921(c)(2), (3), redesignated subsec. (d) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The number of OSD personnel—

''(1) as of October 1, 1997, may not exceed 85 percent of the baseline number; and

''(2) as of October 1, 1998, may not exceed 80 percent of the baseline number.''

Subsec. (c). Pub. L. 106–65, §921(c)(2), (3), redesignated subsec. (e) as (c) and struck out heading and text of former subsec. (c). Text read as follows: ''For purposes of this section, the term 'baseline number' means the number of OSD personnel as of October 1, 1994.''

Subsecs. (d), (e). Pub. L. 106–65, §921(c)(3), redesignated subsecs. (d) and (e) as (b) and (c), respectively.

Subsec. (f). Pub. L. 106–65, §921(c)(2), struck out heading and text of subsec. (f). Text read as follows: ''If the Secretary of Defense determines, and certifies to Congress, that the limitation in subsection (b) with respect to any fiscal year would adversely affect United States national security, the Secretary may waive the limitation under that subsection with respect to that fiscal year. If the Secretary of Defense determines, and certifies to Congress, that the limitation in subsection (a) during fiscal year 1999 would adversely affect United States national security, the Secretary may waive the limitation under that subsection with respect to that fiscal year. The authority under this subsection may be used only once, with respect to a single fiscal year.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IX, §921(c), Oct. 5, 1999, 113 Stat. 723, provided that the amendment made by section 921(c) is effective Oct. 1, 1999.

CHAPTER 5—JOINT CHIEFS OF STAFF

Sec.
151. Joint Chiefs of Staff: composition; functions.
152. Chairman: appointment; grade and rank.
153. Chairman: functions.
154. Vice Chairman.
155. Joint Staff.

PRIOR PROVISIONS

A prior chapter 5 related to Joint Chiefs of Staff, prior to the general revision of this chapter by Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1004, consisted of sections 141 to 143 as follows:

Section 141, acts Aug. 10, 1956, ch. 1041, 70A Stat. 6; Aug. 6, 1958, Pub. L. 85–599, §7, 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–651, title II, §204, 76 Stat. 519; Oct. 20, 1978, Pub. L. 95–485, title VIII, §807, 92 Stat. 1622, provided for composition and functions of Joint Chiefs. See section 151 of this title.

Section 142, acts Aug. 10, 1956, ch. 1041, 70A Stat. 7; Sept. 7, 1962, Pub. L. 87–649, §14c(1), 76 Stat. 501; Oct. 19, 1984, Pub. L. 98–525, title XIII, §1301(b), 98 Stat. 2611, provided for appointment and duties of Chairman of Joint Chiefs. See sections 152 and 153 of this title.

Section 143, acts Aug. 10, 1956, ch. 1041, 70A Stat. 7; Aug. 6, 1958, Pub. L. 85–599, §5(a), 72 Stat. 517; Oct. 19, 1984, Pub. L. 98–525, title XIII, §1301(c), 98 Stat. 2611, provided for a Joint Staff. See section 155 of this title.

AMENDMENTS

1987—Pub. L. 100–180, div. A, title XIII, §1314(b)(1)(B), Dec. 4, 1987, 101 Stat. 1175, substituted ''grade and rank'' for ''rank'' in item 152.

1986—Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1005, amended chapter 5 heading and analysis generally, substituting items 151–155 for items 141–143.

§151. Joint Chiefs of Staff: composition; functions

(a) COMPOSITION.—There are in the Department of Defense the Joint Chiefs of Staff, headed by the Chairman of the Joint Chiefs of Staff. The Joint Chiefs of Staff consist of the following:

(1) The Chairman.
(2) The Vice Chairman.
(3) The Chief of Staff of the Army.
(4) The Chief of Naval Operations.
(5) The Chief of Staff of the Air Force.
(6) The Commandant of the Marine Corps.

(b) FUNCTION AS MILITARY ADVISERS.—The Chairman of the Joint Chiefs of Staff is the principal military adviser to the President, the National Security Council, and the Secretary of Defense.

(2) The other members of the Joint Chiefs of Staff are military advisers to the President, the National Security Council, and the Secretary of Defense as specified in subsections (d) and (e).

(c) CONSULTATION BY CHAIRMAN.—(1) In carrying out his functions, duties, and responsibilities, the Chairman shall, as he considers appropriate, consult with and seek the advice of—

(A) the other members of the Joint Chiefs of Staff; and

(B) the commanders of the unified and specified combatant commands.

(2) Subject to subsection (d), in presenting advice with respect to any matter to the President, the National Security Council, or the Secretary of Defense, the Chairman shall, as he considers appropriate, inform the President, the National Security Council, or the Secretary of Defense, as the case may be, of the range of military advice and opinion with respect to that matter.

(d) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Chiefs of Staff (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the Chairman to the President, the National Security Council, or the Secretary of Defense. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time he presents his own advice to the President, the National Security Council, or the Secretary of Defense, as the case may be.

(2) The Chairman shall establish procedures to ensure that the presentation of his own advice to the President, the National Security Council, or the Secretary of Defense is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Joint Chiefs of Staff.

(e) ADVICE ON REQUEST.—The members of the Joint Chiefs of Staff, individually or collectively, in their capacity as military advisers, shall provide advice to the President, the National Security Council, or the Secretary of Defense on a particular matter when the President, the National Security Council, or the Secretary requests such advice.

(f) RECOMMENDATIONS TO CONGRESS.—After first informing the Secretary of Defense, a mem-

ber of the Joint Chiefs of Staff may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(g) MEETINGS OF JCS.—(1) The Chairman shall convene regular meetings of the Joint Chiefs of Staff.

(2) Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman shall—

(A) preside over the Joint Chiefs of Staff;

(B) provide agenda for the meetings of the Joint Chiefs of Staff (including, as the Chairman considers appropriate, any subject for the agenda recommended by any other member of the Joint Chiefs of Staff);

(C) assist the Joint Chiefs of Staff in carrying on their business as promptly as practicable; and

(D) determine when issues under consideration by the Joint Chiefs of Staff shall be decided.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1005; amended Pub. L. 102–484, div. A, title IX, §911(a), Oct. 23, 1992, 106 Stat. 2473.)

AMENDMENTS

1992—Subsec. (a)(2) to (6). Pub. L. 102–484 added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3033, 5033, 5043, 8033 of this title.

§152. Chairman: appointment; grade and rank

(a) APPOINTMENT; TERM OF OFFICE.—(1) There is a Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces. The Chairman serves at the pleasure of the President for a term of two years, beginning on October 1 of odd-numbered years. Subject to paragraph (3), an officer serving as Chairman may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.

(2) In the event of the death, retirement, resignation, or reassignment of the officer serving as Chairman before the end of the term for which the officer was appointed, an officer appointed to fill the vacancy shall serve as Chairman only for the remainder of the original term, but may be reappointed as provided in paragraph (1).

(3) An officer may not serve as Chairman or Vice Chairman of the Joint Chiefs of Staff if the combined period of service of such officer in such positions exceeds six years. However, the President may extend to eight years the combined period of service an officer may serve in such positions if he determines such action is in the national interest. The limitations of this paragraph do not apply in time of war.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Chairman of the Joint Chiefs of Staff only if the officer has served as—

(A) the Vice Chairman of the Joint Chiefs of Staff;

(B) the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps; or

(C) the commander of a unified or specified combatant command.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) GRADE AND RANK.—The Chairman, while so serving, holds the grade of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces. However, he may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1006; amended Pub. L. 100–180, div. A, title XIII, §1314(b)(1)(A), Dec. 4, 1987, 101 Stat. 1175.)

AMENDMENTS

1987—Pub. L. 100–180 substituted ''grade and rank'' for ''rank'' in section catchline.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 163 of this title.

§153. Chairman: functions

(a) PLANNING; ADVICE; POLICY FORMULATION.—Subject to the authority, direction, and control of the President and the Secretary of Defense, the Chairman of the Joint Chiefs of Staff shall be responsible for the following:

(1) STRATEGIC DIRECTION.—Assisting the President and the Secretary of Defense in providing for the strategic direction of the armed forces.

(2) STRATEGIC PLANNING.—(A) Preparing strategic plans, including plans which conform with resource levels projected by the Secretary of Defense to be available for the period of time for which the plans are to be effective.

(B) Preparing joint logistic and mobility plans to support those strategic plans and recommending the assignment of logistic and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(C) Performing net assessments to determine the capabilities of the armed forces of the United States and its allies as compared with those of their potential adversaries.

(3) CONTINGENCY PLANNING; PREPAREDNESS.—(A) Providing for the preparation and review of contingency plans which conform to policy guidance from the President and the Secretary of Defense.

(B) Preparing joint logistic and mobility plans to support those contingency plans and recommending the assignment of logistic and mobility responsibilities to the armed forces in accordance with those logistic and mobility plans.

(C) Advising the Secretary on critical deficiencies and strengths in force capabilities (including manpower, logistic, and mobility support) identified during the preparation and review of contingency plans and assessing the effect of such deficiencies and strengths on

meeting national security objectives and policy and on strategic plans.

(D) Establishing and maintaining, after consultation with the commanders of the unified and specified combatant commands, a uniform system of evaluating the preparedness of each such command to carry out missions assigned to the command.

(4) ADVICE ON REQUIREMENTS, PROGRAMS, AND BUDGET.—(A) Advising the Secretary, under section 163(b)(2) of this title, on the priorities of the requirements identified by the commanders of the unified and specified combatant commands.

(B) Advising the Secretary on the extent to which the program recommendations and budget proposals of the military departments and other components of the Department of Defense for a fiscal year conform with the priorities established in strategic plans and with the priorities established for the requirements of the unified and specified combatant commands.

(C) Submitting to the Secretary alternative program recommendations and budget proposals, within projected resource levels and guidance provided by the Secretary, in order to achieve greater conformance with the priorities referred to in clause (B).

(D) Recommending to the Secretary, in accordance with section 166 of this title, a budget proposal for activities of each unified and specified combatant command.

(E) Advising the Secretary on the extent to which the major programs and policies of the armed forces in the area of manpower conform with strategic plans.

(F) Assessing military requirements for defense acquisition programs.

(5) DOCTRINE, TRAINING, AND EDUCATION.—(A) Developing doctrine for the joint employment of the armed forces.

(B) Formulating policies for the joint training of the armed forces.

(C) Formulating policies for coordinating the military education and training of members of the armed forces.

(6) OTHER MATTERS.—(A) Providing for representation of the United States on the Military Staff Committee of the United Nations in accordance with the Charter of the United Nations.

(B) Performing such other duties as may be prescribed by law or by the President or the Secretary of Defense.

(b) RISKS UNDER NATIONAL MILITARY STRATEGY.—(1) Not later than January 1 each year, the Chairman shall submit to the Secretary of Defense a report providing the Chairman's assessment of the nature and magnitude of the strategic and military risks associated with executing the missions called for under the current National Military Strategy.

(2) The Secretary shall forward the report received under paragraph (1) in any year, with the Secretary's comments thereon (if any), to Congress with the Secretary's next transmission to Congress of the annual Department of Defense budget justification materials in support of the Department of Defense component of the budget of the President submitted under section 1105 of title 31 for the next fiscal year. If the Chairman's assessment in such report in any year is that risk associated with executing the missions called for under the National Military Strategy is significant, the Secretary shall include with the report as submitted to Congress the Secretary's plan for mitigating that risk.

(c) ANNUAL REPORT ON COMBATANT COMMAND REQUIREMENTS.—(1) At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, the Chairman shall submit to the committees of Congress named in paragraph (2) a report on the requirements of the combatant commands established under section 161 of this title. The report shall contain the following:

(A) A consolidation of the integrated priority lists of requirements of the combatant commands.

(B) The Chairman's views on the consolidated lists.

(C) A description of the extent to which the most recent future-years defense program (under section 221 of this title) addresses the requirements on the consolidated lists.

(D) A description of the funding proposed in the President's budget for the next fiscal year, and for the subsequent fiscal years covered by the most recent future-years defense program, to address each deficiency in readiness identified during the joint readiness review conducted under section 117 of this title for the first quarter of the current fiscal year.

(2) The committees of Congress referred to in paragraph (1) are the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1007; amended Pub. L. 106–65, div. A, title X, §1033, Oct. 5, 1999, 113 Stat. 751; Pub. L. 106–398, §1 [[div. A], title IX, §905], Oct. 30, 2000, 114 Stat. 1654, 1654A–226; Pub. L. 107–107, div. A, title IX, §921(b), Dec. 28, 2001, 115 Stat. 1198; Pub. L. 107–314, div. A, title X, §1062(a)(1), Dec. 2, 2002, 116 Stat. 2649.)

AMENDMENTS

2002—Pub. L. 107–314 inserted subsec. (a) heading and redesignated subsecs. (c) and (d) as (b) and (c), respectively.

2001—Subsec. (a). Pub. L. 107–107, §921(b)(1), struck out ''(a) PLANNING; ADVICE; POLICY FORMULATION.—'' before ''Subject to the authority''.

Subsec. (b). Pub. L. 107–107, §921(b)(2), struck out heading and text of subsec. (b) which read as follows:

''(b) REPORT ON ASSIGNMENT OF ROLES AND MISSIONS.—(1) Not less than once every three years, or upon the request of the President or the Secretary of Defense, the Chairman shall submit to the Secretary of Defense a report containing such recommendations for changes in the assignment of functions (or roles and missions) to the armed forces as the Chairman considers necessary to achieve maximum effectiveness of the armed forces. In preparing each such report, the Chairman shall consider (among other matters) the following:

''(A) Changes in the nature of the threats faced by the United States.

''(B) Unnecessary duplication of effort among the armed forces.

''(C) Changes in technology that can be applied effectively to warfare.

''(2) The Chairman shall include in each such report recommendations for such changes in policies, direc-

tives, regulations, and legislation as may be necessary to achieve the changes in the assignment of functions recommended by the Chairman.''

2000—Subsec. (d)(1). Pub. L. 106–398, §1 [[div. A], title IX, §905(b)], substituted ''At or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31,'' for ''Not later than August 15 of each year,'' in introductory provisions.

Subsec. (d)(1)(C), (D). Pub. L. 106–398, §1 [[div. A], title IX, §905(a)], added subpars. (C) and (D).

1999—Subsecs. (c), (d). Pub. L. 106–65 added subsecs. (c) and (d).

COMMON MEASUREMENT OF OPERATIONS TEMPO AND PERSONNEL TEMPO

Pub. L. 105–85, div. A, title III, §326, Nov. 18, 1997, 111 Stat. 1679, provided that:

''(a) MEANS FOR MEASUREMENT.—The Chairman of the Joint Chiefs of Staff shall, to the maximum extent practicable, develop (1) a common means of measuring the operations tempo (OPTEMPO) of each of the Armed Forces, and (2) a common means of measuring the personnel tempo (PERSTEMPO) of each of the Armed Forces. The Chairman shall consult with the other members of the Joint Chiefs of Staff in developing those common means of measurement.

''(b) PERSTEMPO MEASUREMENT.—The measurement of personnel tempo developed by the Chairman shall include a means of identifying the rate of deployment for individual members of the Armed Forces in addition to the rate of deployment for units.''

ANNUAL ASSESSMENT OF FORCE READINESS

Pub. L. 103–160, div. A, title III, §376, Nov. 30, 1993, 107 Stat. 1637, provided for an annual assessment of readiness and capability of the Armed Forces by the Chairman of the Joint Chiefs of Staff to be submitted to Congress not later than March 1 of each of 1994, 1995, and 1996 and for interim assessments between annual submissions in the event of a significant change in readiness or capability of the Armed Forces.

REPORT OF CHAIRMAN OF JOINT CHIEFS OF STAFF ON ROLES AND MISSIONS OF ARMED FORCES

Pub. L. 102–484, div. A, title IX, §901, Oct. 23, 1992, 106 Stat. 2469, provided for the Secretary of Defense to transmit to Congress a copy of the first report relating to the roles and missions of the Armed Forces that was submitted by the Chairman of the Joint Chiefs of Staff under subsec. (b) of this section after Jan. 1, 1992, and directed the Chairman to include in the report comments and recommendations.

TRANSITION PROVISIONS

Pub. L. 99–433, title II, §204(a), (b), Oct. 1, 1986, 100 Stat. 1011, provided dates for establishment of the uniform system of evaluating the preparedness of each unified and specified combatant command and for submission of the first report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2464 of this title.

§154. Vice Chairman

(a) APPOINTMENT.—(1) There is a Vice Chairman of the Joint Chiefs of Staff, appointed by the President, by and with the advice and consent of the Senate, from the officers of the regular components of the armed forces.

(2) The Chairman and Vice Chairman may not be members of the same armed force. However, the President may waive the restriction in the preceding sentence for a limited period of time in order to provide for the orderly transition of officers appointed to serve in the positions of Chairman and Vice Chairman.

(3) The Vice Chairman serves at the pleasure of the President for a term of two years and may be reappointed in the same manner for two additional terms. However, in time of war there is no limit on the number of reappointments.

(b) REQUIREMENT FOR APPOINTMENT.—(1) The President may appoint an officer as Vice Chairman of the Joint Chiefs of Staff only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines such action is necessary in the national interest.

(c) DUTIES.—The Vice Chairman performs the duties prescribed for him as a member of the Joint Chiefs of Staff and such other duties as may be prescribed by the Chairman with the approval of the Secretary of Defense.

(d) FUNCTION AS ACTING CHAIRMAN.—When there is a vacancy in the office of Chairman or in the absence or disability of the Chairman, the Vice Chairman acts as Chairman and performs the duties of the Chairman until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHAIRMAN AND VICE CHAIRMAN.—When there is a vacancy in the offices of both Chairman and Vice Chairman or in the absence or disability of both the Chairman and the Vice Chairman, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the President shall designate a member of the Joint Chiefs of Staff to act as and perform the duties of the Chairman until a successor to the Chairman or Vice Chairman is appointed or the absence or disability of the Chairman or Vice Chairman ceases.

(f) GRADE AND RANK.—The Vice Chairman, while so serving, holds the grade of general or, in the case of an officer of the Navy, admiral and outranks all other officers of the armed forces except the Chairman. The Vice Chairman may not exercise military command over the Joint Chiefs of Staff or any of the armed forces.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1008; amended Pub. L. 100–456, div. A, title V, §519(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 102–484, div. A, title IX, §911(b)(1), Oct. 23, 1992, 106 Stat. 2473.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484, §911(b)(1)(A), substituted ''the duties prescribed for him as a member of the Joint Chiefs of Staff and such other'' for ''such''.

Subsecs. (f), (g). Pub. L. 102–484, §911(b)(1)(B), (C), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ''PARTICIPATION IN JCS MEETINGS.—The Vice Chairman may participate in all meetings of the Joint Chiefs of Staff, but may not vote on a matter before the Joint Chiefs of Staff except when acting as Chairman.''

1988—Subsec. (b)(1)(B). Pub. L. 100–456 substituted ''completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''served in at least one joint duty assignment (as defined under section 668(b) of this title)''.

EXTENSION OF TERM OF OFFICE OF VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Pub. L. 100–526, title I, §107, Oct. 24, 1988, 102 Stat. 2625, authorized President to extend until June 1, 1989, term of office of officer serving as Vice Chairman of Joint Chiefs of Staff for term which began on Feb. 6, 1987.

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS VICE CHAIRMAN OF JOINT CHIEFS OF STAFF

Section 204(c) of Pub. L. 99–433 authorized President, until Oct. 1, 1990, to waive certain requirements otherwise applicable for appointment of an officer as Vice Chairman of Joint Chiefs of Staff.

§ 155. Joint Staff

(a) APPOINTMENT OF OFFICERS TO JOINT STAFF.—(1) There is a Joint Staff under the Chairman of the Joint Chiefs of Staff. The Joint Staff assists the Chairman and, subject to the authority, direction, and control of the Chairman, the other members of the Joint Chiefs of Staff in carrying out their responsibilities.

(2) Officers of the armed forces (other than the Coast Guard) assigned to serve on the Joint Staff shall be selected by the Chairman in approximately equal numbers from—

(A) the Army;

(B) the Navy and the Marine Corps; and

(C) the Air Force.

(3) Selection of officers of an armed force to serve on the Joint Staff shall be made by the Chairman from a list of officers submitted by the Secretary of the military department having jurisdiction over that armed force. Each officer whose name is submitted shall be among those officers considered to be the most outstanding officers of that armed force. The Chairman may specify the number of officers to be included on any such list.

(b) DIRECTOR.—The Chairman of the Joint Chiefs of Staff, after consultation with the other members of the Joint Chiefs of Staff and with the approval of the Secretary of Defense, may select an officer to serve as Director of the Joint Staff.

(c) MANAGEMENT OF JOINT STAFF.—The Chairman of the Joint Chiefs of Staff manages the Joint Staff and the Director of the Joint Staff. The Joint Staff shall perform such duties as the Chairman prescribes and shall perform such duties under such procedures as the Chairman prescribes.

(d) OPERATION OF JOINT STAFF.—The Secretary of Defense shall ensure that the Joint Staff is independently organized and operated so that the Joint Staff supports the Chairman of the Joint Chiefs of Staff in meeting the congressional purpose set forth in the last clause of section 2 of the National Security Act of 1947 (50 U.S.C. 401) to provide—

(1) for the unified strategic direction of the combatant forces;

(2) for their operation under unified command; and

(3) for their integration into an efficient team of land, naval, and air forces.

(e) PROHIBITION OF FUNCTION AS ARMED FORCES GENERAL STAFF.—The Joint Staff shall not operate or be organized as an overall Armed Forces General Staff and shall have no executive authority. The Joint Staff may be organized and may operate along conventional staff lines.

(f) TOUR OF DUTY OF JOINT STAFF OFFICERS.—(1) An officer who is assigned or detailed to permanent duty on the Joint Staff may not serve for a tour of duty of more than four years. However, such a tour of duty may be extended with the approval of the Secretary of Defense.

(2) In accordance with procedures established by the Secretary of Defense, the Chairman of the Joint Chiefs of Staff may suspend from duty and recommend the reassignment of any officer assigned to the Joint Staff. Upon receipt of such a recommendation, the Secretary concerned shall promptly reassign the officer.

(3) An officer completing a tour of duty with the Joint Staff may not be assigned or detailed to permanent duty on the Joint Staff within two years after relief from that duty except with the approval of the Secretary.

(4) Paragraphs (1) and (3) do not apply—

(A) in time of war; or

(B) during a national emergency declared by the President or Congress.

(g) COMPOSITION OF JOINT STAFF.—(1) The Joint Staff is composed of all members of the armed forces and civilian employees assigned or detailed to permanent duty in the executive part of the Department of Defense to perform the functions and duties prescribed under subsections (a) and (c).

(2) The Joint Staff does not include members of the armed forces or civilian employees assigned or detailed to permanent duty in a military department.

(Added Pub. L. 99–433, title II, §201, Oct. 1, 1986, 100 Stat. 1009; amended Pub. L. 100–180, div. A, title XIII, §1314(b)(2), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title IX, §902, Nov. 5, 1990, 104 Stat. 1620; Pub. L. 102–484, div. A, title IX, §911(b)(2), Oct. 23, 1992, 106 Stat. 2473; Pub. L. 103–35, title II, §202(a)(8), May 31, 1993, 107 Stat. 101.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484. See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, as amended by Pub. L. 103–35, struck out ''and the Vice Chairman'' before ''in carrying out''.

1990—Subsecs. (g), (h). Pub. L. 101–510 redesignated subsec. (h) as (g) and struck out former subsec. (g) which read as follows: ''LIMITATION ON SIZE OF JOINT STAFF.—(1) Effective on October 1, 1988, the total number of members of the armed forces and civilian personnel assigned or detailed to permanent duty on the Joint Staff may not exceed 1,627.

''(2) Paragraph (1) does not apply—

''(A) in time of war; or

''(B) during a national emergency declared by the President or Congress.''

1987—Subsec. (f)(4)(B). Pub. L. 100–180, §1314(b)(2)(A), inserted ''or Congress'' after ''by the President''.

Subsec. (g)(2)(B). Pub. L. 100–180, §1314(b)(2)(B), inserted ''the President or'' after ''declared by''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 202(b) of Pub. L. 103–35 provided that: ''The amendments made by this section [amending this section, sections 1079, 1086a, 1174a, 1463, 2323, 2347, 2391, and 2410d of this title, and sections 5013 and 5113 of [former] Title 36, Patriotic Societies and Observances, and

amending provisions set out as notes under sections 664, 2350a, 2431, 2501, 2505, 10105, and 12681 of this title and section 5611 of Title 15, Commerce and Trade] shall apply as if included in the enactment of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484).''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ASSISTANTS TO CHAIRMAN OF THE JOINT CHIEFS OF STAFF FOR NATIONAL GUARD MATTERS AND FOR RESERVE MATTERS

Pub. L. 105–85, div. A, title IX, § 901, Nov. 18, 1997, 111 Stat. 1853, provided that:

''(a) ESTABLISHMENT OF POSITIONS.—The Secretary of Defense shall establish the following positions within the Joint Staff:

''(1) Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters.

''(2) Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters.

''(b) SELECTION.—(1) The Assistant to the Chairman of the Joint Chiefs of Staff for National Guard Matters shall be selected by the Chairman from officers of the Army National Guard of the United States or the Air Guard of the United States who—

''(A) are recommended for such selection by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

''(B) have had at least 10 years of federally recognized commissioned service in the National Guard; and

''(C) are in a grade above the grade of colonel.

''(2) The Assistant to the Chairman of the Joint Chiefs of Staff for Reserve Matters shall be selected by the Chairman from officers of the Army Reserve, the Naval Reserve, the Marine Corps Reserve, or the Air Force Reserve who—

''(A) are recommended for such selection by the Secretary of the military department concerned;

''(B) have had at least 10 years of commissioned service in their reserve component; and

''(C) are in a grade above the grade of colonel or, in the case of the Naval Reserve, captain.

''(c) TERM OF OFFICE.—Each Assistant to the Chairman under subsection (a) serves at the pleasure of the Chairman for a term of two years and may be continued in that assignment in the same manner for one additional term. However, in time of war there is no limit on the number of terms.

''(d) GRADE.—Each Assistant to the Chairman, while so serving, holds the grade of major general or, in the case of the Naval Reserve, rear admiral. Each such officer shall be considered to be serving in a position external to that officer's Armed Force for purposes of section 721 of title 10, United States Code, as added by section 501(a).

''(e) DUTIES.—The Assistant to the Chairman for National Guard Matters is an adviser to the Chairman on matters relating to the National Guard and performs the duties prescribed for that position by the Chairman. The Assistant to the Chairman for Reserve Matters is an adviser to the Chairman on matters relating to the reserves and performs the duties prescribed for that position by the Chairman.

''(f) OTHER RESERVE COMPONENT REPRESENTATION ON JOINT STAFF.—(1) The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs, shall develop appropriate policy guidance to ensure that, to the maximum extent practicable, the level of reserve component officer representation within the Joint Staff is commensurate with the significant role of the reserve components within the Total Force.

''(2) Not later than March 1, 1998, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report describing the steps taken and being taken to implement this subsection.

''(g) EFFECTIVE DATE.—The positions specified in subsection (a) shall be established by the Secretary of Defense not later than 60 days after the date of the enactment of this Act [Nov. 18, 1997].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 525, 664 of this title.

CHAPTER 6—COMBATANT COMMANDS

Sec.
161. Combatant commands: establishment.
162. Combatant commands: assigned forces; chain of command.
163. Role of Chairman of Joint Chiefs of Staff.
164. Commanders of combatant commands: assignment; powers and duties.
165. Combatant commands: administration and support.
166. Combatant commands: budget proposals.
166a. Combatant commands: funding through the Chairman of Joint Chiefs of Staff.
166b. Combatant commands: funding for combating terrorism readiness initiatives.
167. Unified combatant command for special operations forces.
168. Military-to-military contacts and comparable activities.

PRIOR PROVISIONS

Prior to enactment of this chapter by Pub. L. 99–433, provisions relating to combat commands were contained in section 124 of this title.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title XV, § 1512(b), Dec. 28, 2001, 115 Stat. 1273, added item 166b.

1994—Pub. L. 103–337, div. A, title XIII, § 1316(a)(2), Oct. 5, 1994, 108 Stat. 2899, added item 168.

1991—Pub. L. 102–190, div. A, title IX, § 902(b), Dec. 5, 1991, 105 Stat. 1451, added item 166a.

1986—Pub. L. 99–500, § 101(c) [title IX, § 9115(b)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–124, and Pub. L. 99–591, § 101(c) [title IX, § 9115(b)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–124; Pub. L. 99–661, div. A, title XIII, § 1311(b)(2), Nov. 14, 1986, 100 Stat. 3985, amended analysis identically adding item 167.

Pub. L. 99–433, title II, § 211(a), Oct. 1, 1986, 100 Stat. 1012, added chapter 6 heading and analysis.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 721, 3013, 3033, 5013, 5033, 5043, 8013, 8033 of this title.

§ 161. Combatant commands: establishment

(a) UNIFIED AND SPECIFIED COMBATANT COMMANDS.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall—

(1) establish unified combatant commands and specified combatant commands to perform military missions; and

(2) prescribe the force structure of those commands.

(b) PERIODIC REVIEW.—(1) The Chairman periodically (and not less often than every two years) shall—

(A) review the missions, responsibilities (including geographic boundaries), and force structure of each combatant command; and

(B) recommend to the President, through the Secretary of Defense, any changes to such missions, responsibilities, and force structures as may be necessary.

(2) Except during time of hostilities or imminent threat of hostilities, the President shall notify Congress not more than 60 days after—

(A) establishing a new combatant command; or

(B) significantly revising the missions, responsibilities, or force structure of an existing combatant command.

(c) DEFINITIONS.—In this chapter:

(1) The term ''unified combatant command'' means a military command which has broad, continuing missions and which is composed of forces from two or more military departments.

(2) The term ''specified combatant command'' means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

(3) The term ''combatant command'' means a unified combatant command or a specified combatant command.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1012.)

MATTERS TO BE CONSIDERED IN NEXT ASSESSMENT OF CURRENT MISSIONS, RESPONSIBILITIES, AND FORCE STRUCTURE OF UNIFIED COMBATANT COMMANDS

Pub. L. 104–201, div. A, title IX, §905, Sept. 23, 1996, 110 Stat. 2619, provided that: ''The Chairman of the Joint Chiefs of Staff shall consider, as part of the next periodic review by the Chairman of the missions, responsibilities, and force structure of the unified combatant commands pursuant to section 161(b) of title 10, United States Code, the following matters:

''(1) Whether there exists an adequate distribution of threats, mission requirements, and responsibilities for geographic areas among the regional unified combatant commands.

''(2) Whether reductions in the overall force structure of the Armed Forces permit the United States to better execute its warfighting plans through fewer or differently configured unified combatant commands, including—

''(A) a total of five or fewer commands, all of which are regional;

''(B) a total of three commands consisting of an eastward-oriented command, a westward-oriented command, and a central command;

''(C) a purely functional command structure, involving (for example) a first theater command, a second theater command, a logistics command, a special contingencies command, and a strategic command; or

''(D) any other command structure or configuration the Chairman finds appropriate.

''(3) Whether any missions, staff, facilities, equipment, training programs, or other assets or activities of the unified combatant commands are redundant.

''(4) Whether warfighting requirements are adequate to justify the current functional commands.

''(5) Whether the exclusion of certain nations from the Areas of Responsibility of the unified combatant commands presents difficulties with respect to the achievement of United States national security objectives in those areas.

''(6) Whether the current geographic boundary between the United States Central Command and the United States European Command through the Middle East could create command conflicts in the context of a major regional conflict in the Middle East region.''

INITIAL REVIEW OF COMBATANT COMMANDS

Section 212 of Pub. L. 99–433 set out 10 areas to be covered in first review of missions, responsibilities, and force structure of unified combatant commands under subsec. (b) of this section, and directed that first report to President be made not later than Oct. 1, 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 167, 1051 of this title.

§ 162. Combatant commands: assigned forces; chain of command

(a) ASSIGNMENT OF FORCES.—(1) Except as provided in paragraph (2), the Secretaries of the military departments shall assign all forces under their jurisdiction to unified and specified combatant commands or to the United States element of the North American Aerospace Defense Command to perform missions assigned to those commands. Such assignments shall be made as directed by the Secretary of Defense, including direction as to the command to which forces are to be assigned. The Secretary of Defense shall ensure that such assignments are consistent with the force structure prescribed by the President for each combatant command.

(2) Except as otherwise directed by the Secretary of Defense, forces to be assigned by the Secretaries of the military departments to the combatant commands or to the United States element of the North American Aerospace Defense Command under paragraph (1) do not include forces assigned to carry out functions of the Secretary of a military department listed in sections 3013(b), 5013(b), and 8013(b) of this title or forces assigned to multinational peacekeeping organizations.

(3) A force assigned to a combatant command or to the United States element of the North American Aerospace Defense Command under this section may be transferred from the command to which it is assigned only—

(A) by authority of the Secretary of Defense; and

(B) under procedures prescribed by the Secretary and approved by the President.

(4) Except as otherwise directed by the Secretary of Defense, all forces operating within the geographic area assigned to a unified combatant command shall be assigned to, and under the command of, the commander of that command. The preceding sentence applies to forces assigned to a specified combatant command only as prescribed by the Secretary of Defense.

(b) CHAIN OF COMMAND.—Unless otherwise directed by the President, the chain of command to a unified or specified combatant command runs—

(1) from the President to the Secretary of Defense; and

(2) from the Secretary of Defense to the commander of the combatant command.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1012; amended Pub. L. 100–180, div. A, title XIII, §1313, Dec. 4, 1987, 101 Stat. 1175;

Pub. L. 100–456, div. A, title VII, §711, Sept. 29, 1988, 102 Stat. 1997; Pub. L. 104–201, div. A, title X, §1073(a), Sept. 23, 1996, 110 Stat. 2657.)

AMENDMENTS

1996—Subsec. (a)(1) to (3). Pub. L. 104–201 substituted ''North American Aerospace Defense Command'' for ''North American Air Defense Command''.

1988—Subsec. (a)(1) to (3). Pub. L. 100–456 inserted ''or to the United States element of the North American Air Defense Command''.

1987—Subsec. (a)(2). Pub. L. 100–180 inserted before period at end ''or forces assigned to multinational peacekeeping organizations''.

IMPLEMENTATION OF ASSIGNMENT OF FORCES TO COMBATANT COMMANDS

Section 214(a) of Pub. L. 99–433 provided that section 162(a) of this title shall be implemented not later than 90 days after Oct. 1, 1986.

§163. Role of Chairman of Joint Chiefs of Staff

(a) COMMUNICATIONS THROUGH CHAIRMAN OF JCS; ASSIGNMENT OF DUTIES.—Subject to the limitations in section 152(c) of this title, the President may—

(1) direct that communications between the President or the Secretary of Defense and the commanders of the unified and specified combatant commands be transmitted through the Chairman of the Joint Chiefs of Staff; and

(2) assign duties to the Chairman to assist the President and the Secretary of Defense in performing their command function.

(b) OVERSIGHT BY CHAIRMAN OF JOINT CHIEFS OF STAFF.—(1) The Secretary of Defense may assign to the Chairman of the Joint Chiefs of Staff responsibility for overseeing the activities of the combatant commands. Such assignment by the Secretary to the Chairman does not confer any command authority on the Chairman and does not alter the responsibility of the commanders of the combatant commands prescribed in section 164(b)(2) of this title.

(2) Subject to the authority, direction, and control of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff serves as the spokesman for the commanders of the combatant commands, especially on the operational requirements of their commands. In performing such function, the Chairman shall—

(A) confer with and obtain information from the commanders of the combatant commands with respect to the requirements of their commands;

(B) evaluate and integrate such information;

(C) advise and make recommendations to the Secretary of Defense with respect to the requirements of the combatant commands, individually and collectively; and

(D) communicate, as appropriate, the requirements of the combatant commands to other elements of the Department of Defense.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1013.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 153 of this title.

§164. Commanders of combatant commands: assignment; powers and duties

(a) ASSIGNMENT AS COMBATANT COMMANDER.—(1) The President may assign an officer to serve as the commander of a unified or specified combatant command only if the officer—

(A) has the joint specialty under section 661 of this title; and

(B) has completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general or flag officer.

(2) The President may waive paragraph (1) in the case of an officer if the President determines that such action is necessary in the national interest.

(b) RESPONSIBILITIES OF COMBATANT COMMANDERS.—(1) The commander of a combatant command is responsible to the President and to the Secretary of Defense for the performance of missions assigned to that command by the President or by the Secretary with the approval of the President.

(2) Subject to the direction of the President, the commander of a combatant command—

(A) performs his duties under the authority, direction, and control of the Secretary of Defense; and

(B) is directly responsible to the Secretary for the preparedness of the command to carry out missions assigned to the command.

(c) COMMAND AUTHORITY OF COMBATANT COMMANDERS.—(1) Unless otherwise directed by the President or the Secretary of Defense, the authority, direction, and control of the commander of a combatant command with respect to the commands and forces assigned to that command include the command functions of—

(A) giving authoritative direction to subordinate commands and forces necessary to carry out missions assigned to the command, including authoritative direction over all aspects of military operations, joint training, and logistics;

(B) prescribing the chain of command to the commands and forces within the command;

(C) organizing commands and forces within that command as he considers necessary to carry out missions assigned to the command;

(D) employing forces within that command as he considers necessary to carry out missions assigned to the command;

(E) assigning command functions to subordinate commanders;

(F) coordinating and approving those aspects of administration and support (including control of resources and equipment, internal organization, and training) and discipline necessary to carry out missions assigned to the command; and

(G) exercising the authority with respect to selecting subordinate commanders, selecting combatant command staff, suspending subordinates, and convening courts-martial, as provided in subsections (e), (f), and (g) of this section and section 822(a) of this title, respectively.

(2)(A) The Secretary of Defense shall ensure that a commander of a combatant command has sufficient authority, direction, and control over the commands and forces assigned to the command to exercise effective command over those commands and forces. In carrying out this subparagraph, the Secretary shall consult with the Chairman of the Joint Chiefs of Staff.

(B) The Secretary shall periodically review and, after consultation with the Secretaries of the military departments, the Chairman of the Joint Chiefs of Staff, and the commander of the combatant command, assign authority to the commander of the combatant command for those aspects of administration and support that the Secretary considers necessary to carry out missions assigned to the command.

(3) If a commander of a combatant command at any time considers his authority, direction, or control with respect to any of the commands or forces assigned to the command to be insufficient to command effectively, the commander shall promptly inform the Secretary of Defense.

(d) AUTHORITY OVER SUBORDINATE COMMANDERS.—Unless otherwise directed by the President or the Secretary of Defense—

(1) commanders of commands and forces assigned to a combatant command are under the authority, direction, and control of, and are responsible to, the commander of the combatant command on all matters for which the commander of the combatant command has been assigned authority under subsection (c);

(2) the commander of a command or force referred to in clause (1) shall communicate with other elements of the Department of Defense on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command;

(3) other elements of the Department of Defense shall communicate with the commander of a command or force referred to in clause (1) on any matter for which the commander of the combatant command has been assigned authority under subsection (c) in accordance with procedures, if any, established by the commander of the combatant command; and

(4) if directed by the commander of the combatant command, the commander of a command or force referred to in clause (1) shall advise the commander of the combatant command of all communications to and from other elements of the Department of Defense on any matter for which the commander of the combatant command has not been assigned authority under subsection (c).

(e) SELECTION OF SUBORDINATE COMMANDERS.—(1) An officer may be assigned to a position as the commander of a command directly subordinate to the commander of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of the combatant command; and

(B) in accordance with procedures established by the Secretary of Defense.

(2) The Secretary of Defense may waive the requirement under paragraph (1) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for assignment) of a particular officer if the Secretary of Defense determines that such action is in the national interest.

(3) The commander of a combatant command shall—

(A) evaluate the duty performance of each commander of a command directly subordinate to the commander of such combatant command; and

(B) submit the evaluation to the Secretary of the military department concerned and the Chairman of the Joint Chiefs of Staff.

(f) COMBATANT COMMAND STAFF.—(1) Each unified and specified combatant command shall have a staff to assist the commander of the command in carrying out his responsibilities. Positions of responsibility on the combatant command staff shall be filled by officers from each of the armed forces having significant forces assigned to the command.

(2) An officer may be assigned to a position on the staff of a combatant command or, in the case of such a position that is designated under section 601 of this title as a position of importance and responsibility, may be recommended to the President for assignment to that position, only—

(A) with the concurrence of the commander of such command; and

(B) in accordance with procedures established by the Secretary of Defense.

(3) The Secretary of Defense may waive the requirement under paragraph (2) for the concurrence of the commander of a combatant command with regard to the assignment (or recommendation for assignment) of a particular officer to serve on the staff of the combatant command if the Secretary of Defense determines that such action is in the national interest.

(g) AUTHORITY TO SUSPEND SUBORDINATES.—In accordance with procedures established by the Secretary of Defense, the commander of a combatant command may suspend from duty and recommend the reassignment of any officer assigned to such combatant command.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1013; amended Pub. L. 100–456, div. A, title V, §519(a)(2), Sept. 29, 1988, 102 Stat. 1972.)

AMENDMENTS

1988—Subsec. (a)(1)(B). Pub. L. 100–456 substituted ''completed a full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''served in at least one joint duty assignment (as defined under section 668(b) of this title)''.

EFFECTIVE DATE

Section 214(c) of Pub. L. 99–433 provided that: ''Subsections (e), (f), and (g) of section 164 of title 10, United States Code (as added by section 211 of this Act), shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986], or on such earlier date as may be prescribed by the Secretary of Defense.''

WAIVER OF QUALIFICATIONS FOR ASSIGNMENT AS COMBATANT COMMANDER

Section 214(b) of Pub. L. 99–433 authorized President, until Oct. 1, 1990, to waive, on a case-by-case basis, certain requirements provided for in subsec. (a) of this section relating to assignment of commanders of combatant commands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 163, 165, 167, 664 of this title.

§ 165. Combatant commands: administration and support

(a) IN GENERAL.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall provide for the administration and support of forces assigned to each combatant command.

(b) RESPONSIBILITY OF SECRETARIES OF MILITARY DEPARTMENTS.—Subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title, the Secretary of a military department is responsible for the administration and support of forces assigned by him to a combatant command.

(c) ASSIGNMENT OF RESPONSIBILITY TO OTHER COMPONENTS OF DOD.—After consultation with the Secretaries of the military departments, the Secretary of Defense may assign the responsibility (or any part of the responsibility) for the administration and support of forces assigned to the combatant commands to other components of the Department of Defense (including Defense Agencies and combatant commands). A component assigned such a responsibility shall discharge that responsibility subject to the authority, direction, and control of the Secretary of Defense and subject to the authority of commanders of the combatant commands under section 164(c) of this title.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1016.)

§ 166. Combatant commands: budget proposals

(a) COMBATANT COMMAND BUDGETS.—The Secretary of Defense shall include in the annual budget of the Department of Defense submitted to Congress a separate budget proposal for such activities of each of the unified and specified combatant commands as may be determined under subsection (b).

(b) CONTENT OF PROPOSALS.—A budget proposal under subsection (a) for funding of activities of a combatant command shall include funding proposals for such activities of the combatant command as the Secretary (after consultation with the Chairman of the Joint Chiefs of Staff) determines to be appropriate for inclusion. Activities of a combatant command for which funding may be requested in such a proposal include the following:

(1) Joint exercises.
(2) Force training.
(3) Contingencies.
(4) Selected operations.

(c) SOF TRAINING WITH FOREIGN FORCES.—A funding proposal for force training under subsection (b)(2) may include amounts for training expense payments authorized in section 2011 of this title.

(Added Pub. L. 99–433, title II, §211(a), Oct. 1, 1986, 100 Stat. 1016; amended Pub. L. 102–190, div. A, title X, §1052(b), Dec. 5, 1991, 105 Stat. 1471.)

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–190 added subsec. (c).

EFFECTIVE DATE

Section 214(d) of Pub. L. 99–433 provided that: ''Section 166 of title 10, United States Code (as added by section 211 of this Act), shall take effect with budget proposals for fiscal year 1989.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 167 of this title.

§ 166a. Combatant commands: funding through the Chairman of Joint Chiefs of Staff

(a) CINC INITIATIVE FUND.—From funds made available in any fiscal year for the budget account in the Department of Defense known as the ''CINC Initiative Fund'', the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for any of the activities named in subsection (b).

(b) AUTHORIZED ACTIVITIES.—Activities for which funds may be provided under subsection (a) are the following:

(1) Force training.
(2) Contingencies.
(3) Selected operations.
(4) Command and control.
(5) Joint exercises (including activities of participating foreign countries).
(6) Humanitarian and civil assistance.
(7) Military education and training to military and related civilian personnel of foreign countries (including transportation, translation, and administrative expenses).
(8) Personnel expenses of defense personnel for bilateral or regional cooperation programs.
(9) Force protection.

(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund, should give priority consideration to—

(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided by the Chairman of the Joint Chiefs of Staff during any fiscal year out of the CINC Initiative Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) LIMITATIONS.—(1) Of funds made available under this section for any fiscal year—

(A) not more than $7,000,000 may be used to purchase items with a unit cost in excess of $15,000;

(B) not more than $1,000,000 may be used to pay for any expenses of foreign countries participating in joint exercises as authorized by subsection (b)(5); and

(C) not more than $2,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).

(2) Funds may not be provided under this section for any activity that has been denied authorization by Congress.

(f) INCLUSION OF NORAD.—For purposes of this section, the Commander, United States Element, North American Aerospace Defense Command shall be considered to be a commander of a combatant command.

(Added Pub. L. 102–190, div. A, title IX, §902(a), Dec. 5, 1991, 105 Stat. 1450; amended Pub. L. 102–396, title IX, §9128, Oct. 6, 1992, 106 Stat. 1935; Pub. L. 102–484, div. A, title IX, §934, Oct. 23, 1992, 106 Stat. 2477; Pub. L. 103–35, title II, §201(a), May 31, 1993, 107 Stat. 97; Pub. L. 105–85, div. A, title IX, §902, Nov. 18, 1997, 111 Stat. 1854.)

AMENDMENTS

1997—Subsec. (b)(9). Pub. L. 105–85 added par. (9).

1993—Subsec. (a). Pub. L. 103–35, §201(a)(1), substituted ''the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose'' for ''the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or to the Director of the Joint Staff with respect to an area or areas not within the area of responsibility of a commander of a combatant command.''

Subsec. (b)(7). Pub. L. 103–35, §201(a)(2), struck out second of two identical parenthetical phrases at end of par. (7) which read as follows: ''(including transportation, translation, and administrative expenses)''.

1992—Subsec. (a). Pub. L. 102–484, §934(a), which directed substitution of ''funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose.'' for ''funds, upon request,'' and all that follows through the period, could not be executed because the words did not appear subsequent to the amendment by Pub. L. 102–396, §9128(a). See below.

Pub. L. 102–396, §9128(a), substituted ''funds to the commander of a combatant command, upon the request of the commander, or to the Director of the Joint Staff with respect to an area or areas not within the area of responsibility of a commander of a combatant command.'' for ''funds, upon request, to the commanders of the combatant commands.''

Subsec. (b)(7). Pub. L. 102–396, §9128(b), and Pub. L. 102–484, §934(b), both inserted before period at end ''(including transportation, translation, and administrative expenses)''.

Subsec. (c). Pub. L. 102–484, §934(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund, should give priority consideration to requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds (c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund or the provision of funds to the Director of the Joint Staff under subsection (a), should give priority consideration to—

''(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

''(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States..[sic]''

Pub. L. 102–396, §9128(c), inserted before period at end ''(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds in the CINC Initiative Fund or the provision of funds to the Director of the Joint Staff under subsection (a), should give priority consideration to—

''(1) requests for funds to be used for activities that would enhance the war fighting capability, readiness, and sustainability of the forces assigned to the commander requesting the funds; and

''(2) the provision of funds to be used for activities with respect to an area or areas not within the area of responsibility of a commander of a combatant command that would reduce the threat to, or otherwise increase, the national security of the United States.''

Subsec. (e)(1)(C). Pub. L. 102–484, §934(d), amended subpar. (C) generally. Prior to amendment, subsec. (C) read as follows: ''not more than $5,000,000 may be used to provide military education and training (including transportation, translation, and administrative expenses) to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).''

Pub. L. 102–396, §9128(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''not more than $500,000 may be used to provide military education and training to military and related civilian personnel of foreign countries as authorized by subsection (b)(7).''

§ 166b. Combatant commands: funding for combating terrorism readiness initiatives

(a) COMBATING TERRORISM READINESS INITIATIVES FUND.—From funds made available in any fiscal year for the budget account in the Department of Defense known as the ''Combating Terrorism Readiness Initiatives Fund'', the Chairman of the Joint Chiefs of Staff may provide funds to the commander of a combatant command, upon the request of the commander, or, with respect to a geographic area or areas not within the area of responsibility of a commander of a combatant command, to an officer designated by the Chairman of the Joint Chiefs of Staff for such purpose. The Chairman may provide such funds for initiating any activity named in subsection (b) and for maintaining and sustaining the activity for the fiscal year in which initiated and one additional fiscal year.

(b) AUTHORIZED ACTIVITIES.—Activities for which funds may be provided under subsection (a) are the following:

(1) Procurement and maintenance of physical security equipment.

(2) Improvement of physical security sites.

(3) Under extraordinary circumstances—

(A) physical security management planning;

(B) procurement and support of security forces and security technicians;

(C) security reviews and investigations and vulnerability assessments; and

(D) any other activity relating to physical security.

(c) PRIORITY.—The Chairman of the Joint Chiefs of Staff, in considering requests for funds

in the Combating Terrorism Readiness Initiatives Fund, should give priority consideration to emergency or emergent unforeseen high-priority requirements for combating terrorism.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided by the Chairman of the Joint Chiefs of Staff for a fiscal year out of the Combating Terrorism Readiness Initiatives Fund for an activity referred to in subsection (b) shall be in addition to amounts otherwise available for that activity for that fiscal year.

(e) LIMITATION.—Funds may not be provided under this section for any activity that has been denied authorization by Congress.

(Added Pub. L. 107–107, div. A, title XV, §1512(a), Dec. 28, 2001, 115 Stat. 1272.)

§167. Unified combatant command for special operations forces

(a) ESTABLISHMENT.—With the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish under section 161 of this title a unified combatant command for special operations forces (hereinafter in this section referred to as the ''special operations command''). The principal function of the command is to prepare special operations forces to carry out assigned missions.

(b) ASSIGNMENT OF FORCES.—Unless otherwise directed by the Secretary of Defense, all active and reserve special operations forces of the armed forces stationed in the United States shall be assigned to the special operations command.

(c) GRADE OF COMMANDER.—The commander of the special operations command shall hold the grade of general or, in the case of an officer of the Navy, admiral while serving in that position, without vacating his permanent grade. The commander of such command shall be appointed to that grade by the President, by and with the advice and consent of the Senate, for service in that position.

(d) COMMAND OF ACTIVITY OR MISSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, a special operations activity or mission shall be conducted under the command of the commander of the unified combatant command in whose geographic area the activity or mission is to be conducted.

(2) The commander of the special operations command shall exercise command of a selected special operations mission if directed to do so by the President or the Secretary of Defense.

(e) AUTHORITY OF COMBATANT COMMANDER.—(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities.

(2) The commander of such command shall be responsible for, and shall have the authority to conduct, the following functions relating to special operations activities (whether or not relating to the special operations command):

(A) Developing strategy, doctrine, and tactics.

(B) Preparing and submitting to the Secretary of Defense program recommendations and budget proposals for special operations forces and for other forces assigned to the special operations command.

(C) Exercising authority, direction, and control over the expenditure of funds—

(i) for forces assigned to the special operations command; and

(ii) for special operations forces assigned to unified combatant commands other than the special operations command, with respect to all matters covered by paragraph (4) and, with respect to a matter not covered by paragraph (4), to the extent directed by the Secretary of Defense.

(D) Training assigned forces.

(E) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

(F) Validating requirements.

(G) Establishing priorities for requirements.

(H) Ensuring the interoperability of equipment and forces.

(I) Formulating and submitting requirements for intelligence support.

(J) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

(3) The commander of the special operations command shall be responsible for—

(A) ensuring the combat readiness of forces assigned to the special operations command; and

(B) monitoring the preparedness to carry out assigned missions of special operations forces assigned to unified combatant commands other than the special operations command.

(4)(A) The commander of the special operations command shall be responsible for, and shall have the authority to conduct, the following:

(i) Development and acquisition of special operations-peculiar equipment.

(ii) Acquisition of special operations-peculiar material, supplies, and services.

(B) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under subparagraph (A), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title.

(C) The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.

(f) BUDGET.—In addition to the activities of a combatant command for which funding may be requested under section 166(b) of this title, the budget proposal of the special operations command shall include requests for funding for—

(1) development and acquisition of special operations-peculiar equipment; and

(2) acquisition of other material, supplies, or services that are peculiar to special operations activities.

(g) INTELLIGENCE AND SPECIAL ACTIVITIES.—This section does not constitute authority to conduct any activity which, if carried out as an

intelligence activity by the Department of Defense, would require a notice to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the activities of the special operations command. Such regulations shall include authorization for the commander of such command to provide for operational security of special operations forces and activities.

(i) IDENTIFICATION OF SPECIAL OPERATIONS FORCES.—(1) Subject to paragraph (2), for the purposes of this section special operations forces are those forces of the armed forces that—

(A) are identified as core forces or as augmenting forces in the Joint Chiefs of Staff Joint Strategic Capabilities Plan, Annex E, dated December 17, 1985;

(B) are described in the Terms of Reference and Conceptual Operations Plan for the Joint Special Operations Command, as in effect on April 1, 1986; or

(C) are designated as special operations forces by the Secretary of Defense.

(2) The Secretary of Defense, after consulting with the Chairman of the Joint Chiefs of Staff and the commander of the special operations command, may direct that any force included within the description in paragraph (1)(A) or (1)(B) shall not be considered as a special operations force for the purposes of this section.

(j) SPECIAL OPERATIONS ACTIVITIES.—For purposes of this section, special operations activities include each of the following insofar as it relates to special operations:

(1) Direct action.
(2) Strategic reconnaissance.
(3) Unconventional warfare.
(4) Foreign internal defense.
(5) Civil affairs.
(6) Psychological operations.
(7) Counterterrorism.
(8) Humanitarian assistance.
(9) Theater search and rescue.
(10) Such other activities as may be specified by the President or the Secretary of Defense.

(k) BUDGET SUPPORT FOR RESERVE ELEMENTS.—(1) Before the budget proposal for the special operations command for any fiscal year is submitted to the Secretary of Defense, the commander of the command shall consult with the Secretaries of the military departments concerning funding for reserve component special operations units. If the Secretary of a military department does not concur in the recommended level of funding with respect to any such unit that is under the jurisdiction of the Secretary, the commander shall include with the budget proposal submitted to the Secretary of Defense the views of the Secretary of the military department concerning such funding.

(2) Before the budget proposal for a military department for any fiscal year is submitted to the Secretary of Defense, the Secretary of that military department shall consult with the commander of the special operations command concerning funding for special operations forces in the military personnel budget for a reserve component in that military department. If the commander of that command does not concur in the recommended level of funding with respect to reserve component special operations units, the Secretary shall include with the budget proposal submitted to the Secretary of Defense the views of the commander of that command.

(Added Pub. L. 99–500, §101(c) [title IX, §9115(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–122, and Pub. L. 99–591, §101(c) [title IX, §9115(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–122; Pub. L. 99–661, div. A, title XIII, §1311(b)(1), Nov. 14, 1986, 100 Stat. 3983; amended Pub. L. 100–180, div. A, title XII, §1211(d), Dec. 4, 1987, 101 Stat. 1156; Pub. L. 100–456, div. A, title VII, §712, Sept. 29, 1988, 102 Stat. 1997; Pub. L. 102–88, title VI, §602(c)(3), Aug. 14, 1991, 105 Stat. 444; Pub. L. 103–337, div. A, title IX, §925, Oct. 5, 1994, 108 Stat. 2832.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (g), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–661 and Pub. L. 99–500 added identical sections.

AMENDMENTS

1994—Subsec. (k). Pub. L. 103–337 added subsec. (k).

1991—Subsec. (g). Pub. L. 102–88 substituted ''would require a notice'' for ''would require—

''(1) a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or

''(2) a notice'' and ''title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)'' for ''section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)''.

1988—Subsec. (e). Pub. L. 100–456 revised and restated subsec. (e). Prior to amendment, subsec. (e) read as follows:

''(1) In addition to the authority prescribed in section 164(c) of this title, the commander of the special operations command shall be responsible for, and shall have the authority to conduct, all affairs of such command relating to special operations activities, including the following functions:

''(A) Developing strategy, doctrine, and tactics.

''(B) Training assigned forces.

''(C) Conducting specialized courses of instruction for commissioned and noncommissioned officers.

''(D) Validating requirements.

''(E) Establishing priorities for requirements.

''(F) Ensuring combat readiness.

''(G) Developing and acquiring special operations-peculiar equipment and acquiring special operations-peculiar material, supplies, and services.

''(H) Ensuring the interoperability of equipment and forces.

''(I) Formulating and submitting requirements for intelligence support.

''(J) Monitoring the promotions, assignments, retention, training, and professional military education of special operations forces officers.

''(2) The commander of such command shall be responsible for monitoring the preparedness of special operations forces assigned to other unified combatant commands to carry out assigned missions.

''(3) Subject to the authority, direction, and control of the Secretary of Defense, the commander of the command, in carrying out his functions under paragraph (1)(G), shall have authority to exercise the functions of the head of an agency under chapter 137 of this title. The staff of the commander shall include an inspector general who shall conduct internal audits and inspections of purchasing and contracting actions through the special operations command and such other inspector general functions as may be assigned.''

1987—Subsec. (e)(3). Pub. L. 100–180 added par. (3).

EFFECTIVE DATE

Section 101(c) [§9115(i)] of Pub. L. 99–500 and Pub. L. 99–591, and section 1311(i) of Pub. L. 99–661, provided that: ''Section 167 of title 10, United States Code (as added by subsection (b)), shall be implemented not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].''

GRADE OF CERTAIN COMMANDERS OF SPECIAL OPERATIONS FORCES

Pub. L. 102–484, div. A, title IX, §936(a), (b), Oct. 23, 1992, 106 Stat. 2479, provided that:

''(a) GRADE FOR CERTAIN REGIONAL SOF COMMANDERS.—During the period beginning on February 1, 1993, and ending on February 1, 1995, the provisions of section 1311(e) of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 167 note) shall apply as if the Secretary of Defense had designated the United States Southern Command and the United States Central Command for the purposes of that section.

''(b) REPORT.—Not later than March 1, 1994, the Secretary of Defense shall submit to Congress a report setting forth the Secretary's recommendations for the grade structure for the special operations forces component commander for each unified command, particularly as to whether each such commander should be of general or flag officer grade.''

RESOURCES FOR CINCSOF

Section 1211(b) of Pub. L. 100–180, as amended by Pub. L. 104–106, div. A, title IX, §903(f)(5), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617, provided that: ''The Secretary of Defense shall provide sufficient resources for the commander of the unified combatant command for special operations forces established pursuant to section 167 of title 10, United States Code, to carry out his duties and responsibilities, including particularly his duties and responsibilities relating to the following functions:

''(1) Developing and acquiring special operations-peculiar equipment and acquiring special operations-peculiar material, supplies, and services.

''(2) Providing advice and assistance to the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict in the Assistant Secretary's overall supervision of the preparation and justification of the program recommendations and budget proposals for special operations forces.

''(3) Managing assigned resources from the major force program category for special operations forces of the Five-Year Defense Plan of the Department of Defense (as required to be created pursuant to subsection (e)).''

RESOURCES AND PROGRAMMING

Section 1211(e) of Pub. L. 100–180 provided that:

''(1) The major force program category for special operations forces of the Five-Year Defense Plan of the Department of Defense, to be created pursuant to section 1311(c) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661) [set out below], shall be created not later than 30 days after the date of the enactment of this Act [Dec. 4, 1987].

''(2) On the date that such major force program category is created, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(A) a certification that all program recommendations and budget proposals for special operations forces are included in such category; and

''(B) a report explaining the program recommendations and budget proposals that have been included in such category.''

MAJOR FORCE PROGRAM CATEGORY; PROGRAM AND BUDGET EXECUTION; GRADE FOR COMMANDERS OF CERTAIN AREA SPECIAL OPERATIONS COMMANDS

Section 1311(c)–(e) of Pub. L. 99–661 provided that:

''(c) MAJOR FORCE PROGRAM CATEGORY.—The Secretary of Defense shall create for the special operations forces a major force program category for the Five-Year Defense Plan of the Department of Defense. The Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, with the advice and assistance of the commander of the special operations command, shall provide overall supervision of the preparation and justification of program recommendations and budget proposals to be included in such major force program category.

''(d) PROGRAM AND BUDGET EXECUTION.—To the extent that there is authority to revise programs and budgets approved by Congress for special operations forces, such authority may be exercised only by the Secretary of Defense, after consulting with the commander of the special operations command.

''(e) GRADE FOR COMMANDERS OF CERTAIN AREA SPECIAL OPERATIONS COMMANDS.—The commander of the special operations command of the United States European Command, the United States Pacific Command, and any other unified combatant command that the Secretary of Defense may designate for the purposes of this section shall be of general or flag officer grade.''

[Identical provisions were contained in section 101(c) [§9115(c)–(e)] of Pub. L. 99–500 and Pub. L. 99–591, which was repealed by Pub. L. 102–484, div. A, title IX, §936(c), Oct. 23, 1992, 106 Stat. 2479.]

REPORT ON CAPABILITIES OF UNITED STATES TO CONDUCT SPECIAL OPERATIONS AND ENGAGE IN LOW INTENSITY CONFLICTS

Section 101(c) [§9115(h)(2)] of Pub. L. 99–500 and Pub. L. 99–591, and section 1311(h)(2) of Pub. L. 99–661, required President, not later than one year after Oct. 1, 1986, to transmit to Congress a report on capabilities of United States to conduct special operations and engage in low intensity conflicts, the report to include a description of deficiencies in such capabilities, actions being taken throughout executive branch to correct such deficiencies, the principal low intensity conflict threats to interests of United States, and the actions taken and to be taken to implement this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 138, 2011, 2680, 10171, 10172, 10173, 10174 of this title.

§168. Military-to-military contacts and comparable activities

(a) PROGRAM AUTHORITY.—The Secretary of Defense may conduct military-to-military contacts and comparable activities that are designed to encourage a democratic orientation of defense establishments and military forces of other countries.

(b) ADMINISTRATION.—The Secretary may provide funds appropriated for carrying out subsection (a) to the following officials for use as provided in subsection (c):

(1) The commander of a combatant command, upon the request of the commander.

(2) An officer designated by the Chairman of the Joint Chiefs of Staff, with respect to an area or areas not under the area of responsibility of a commander of a combatant command.

(3) The head of any Department of Defense component.

(c) AUTHORIZED ACTIVITIES.—An official provided funds under subsection (b) may use those funds for the following activities and expenses:

(1) The activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities.

(2) The activities of military liaison teams.

(3) Exchanges of civilian or military personnel between the Department of Defense and defense ministries of foreign governments.

(4) Exchanges of military personnel between units of the armed forces and units of foreign armed forces.

(5) Seminars and conferences held primarily in a theater of operations.

(6) Distribution of publications primarily in a theater of operations.

(7) Personnel expenses for Department of Defense civilian and military personnel to the extent that those expenses relate to participation in an activity described in paragraph (3), (4), (5), or (6).

(8) Reimbursement of military personnel appropriations accounts for the pay and allowances paid to reserve component personnel for service while engaged in any activity referred to in another paragraph of this subsection.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided during any fiscal year to an official under subsection (b) for an activity or expense referred to in subsection (c) shall be in addition to amounts otherwise available for those activities and expenses for that fiscal year.

(e) LIMITATIONS.—(1) Funds may not be provided under this section for a fiscal year for any activity for which—

(A) funding was proposed in the budget submitted to Congress for that fiscal year pursuant to section 1105(a) of title 31; and

(B) Congress did not authorize appropriations.

(2) An activity may not be conducted under this section with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.

(3) Funds may not be provided under this section for a fiscal year for any country that is not eligible in that fiscal year for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(4) Except for those activities specifically authorized under subsection (c), funds may not be used under this section for the provision of defense articles or defense services to any country or for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(f) ACTIVE DUTY END STRENGTHS.—(1) A member of a reserve component referred to in paragraph (2) shall not be counted for purposes of the following personnel strength limitations:

(A) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to in paragraph (2).

(B) The authorized daily average for members in pay grades E–8 and E–9 under section 517 of this title for the calendar year in which the member carries out such activities.

(C) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.

(2) A member of a reserve component referred to in paragraph (1) is any member on active duty under an order to active duty for 180 days or more who is engaged in activities authorized under this section.

(g) MILITARY-TO-MILITARY CONTACTS DEFINED.—In this section, the term ''military-to-military contacts'' means contacts between members of the armed forces and members of foreign armed forces through activities described in subsection (c).

(Added Pub. L. 103–337, div. A, title XIII, §1316(a)(1), Oct. 5, 1994, 108 Stat. 2898; amended Pub. L. 104–106, div. A, title IV, §416, Feb. 10, 1996, 110 Stat. 289.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (e)(3), (4), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 5 of part II of the Act is classified generally to part V (§2347 et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

1996—Subsecs. (f), (g). Pub. L. 104–106 added subsec. (f) and redesignated former subsec. (f) as (g).

LIMITATION ON MILITARY-TO-MILITARY EXCHANGES AND CONTACTS WITH CHINESE PEOPLE'S LIBERATION ARMY

Pub. L. 106–65, div. A, title XII, §1201, Oct. 5, 1999, 113 Stat. 779, provided that:

''(a) LIMITATION.—The Secretary of Defense may not authorize any military-to-military exchange or contact described in subsection (b) to be conducted by the armed forces with representatives of the People's Liberation Army of the People's Republic of China if that exchange or contact would create a national security risk due to an inappropriate exposure specified in subsection (b).

''(b) COVERED EXCHANGES AND CONTACTS.—Subsection (a) applies to any military-to-military exchange or contact that includes inappropriate exposure to any of the following:

''(1) Force projection operations.

''(2) Nuclear operations.

''(3) Advanced combined-arms and joint combat operations.

''(4) Advanced logistical operations.

''(5) Chemical and biological defense and other capabilities related to weapons of mass destruction.

''(6) Surveillance and reconnaissance operations.

''(7) Joint warfighting experiments and other activities related to a transformation in warfare.

''(8) Military space operations.

''(9) Other advanced capabilities of the Armed Forces.

''(10) Arms sales or military-related technology transfers.

''(11) Release of classified or restricted information.

''(12) Access to a Department of Defense laboratory.

''(c) EXCEPTIONS.—Subsection (a) does not apply to any search-and-rescue or humanitarian operation or exercise.

''(d) ANNUAL CERTIFICATION BY SECRETARY.—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on

Armed Services of the House of Representatives, not later than December 31 each year, a certification in writing as to whether or not any military-to-military exchange or contact during that calendar year was conducted in violation of subsection (a).

''(e) ANNUAL REPORT.—Not later than March 31 each year beginning in 2001, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing the Secretary's assessment of the current state of military-to-military exchanges and contacts with the People's Liberation Army. The report shall include the following:

''(1) A summary of all such military-to-military contacts during the period since the last such report, including a summary of topics discussed and questions asked by the Chinese participants in those contacts.

''(2) A description of the military-to-military exchanges and contacts scheduled for the next 12-month period and a plan for future contacts and exchanges.

''(3) The Secretary's assessment of the benefits the Chinese expect to gain from those military-to-military exchanges and contacts.

''(4) The Secretary's assessment of the benefits the Department of Defense expects to gain from those military-to-military exchanges and contacts.

''(5) The Secretary's assessment of how military-to-military exchanges and contacts with the People's Liberation Army fit into the larger security relationship between the United States and the People's Republic of China.

''(f) REPORT OF PAST MILITARY-TO-MILITARY EXCHANGES AND CONTACTS WITH THE PRC.—Not later than March 31, 2000, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on past military-to-military exchanges and contacts between the United States and the People's Republic of China. The report shall be unclassified, but may contain a classified annex, and shall include the following:

''(1) A list of the general and flag grade officers of the People's Liberation Army who have visited United States military installations since January 1, 1993.

''(2) The itinerary of the visits referred to in paragraph (2)[(1)], including the installations visited, the duration of the visits, and the activities conducted during the visits.

''(3) The involvement, if any, of the general and flag officers referred to in paragraph (1) in the Tiananmen Square massacre of June 1989.

''(4) A list of the facilities in the People's Republic of China that United States military officers have visited as a result of any military-to-military exchange or contact program between the United States and the People's Republic of China since January 1, 1993.

''(5) A list of facilities in the People's Republic of China that have been the subject of a requested visit by the Department of Defense that has been denied by People's Republic of China authorities.

''(6) A list of facilities in the United States that have been the subject of a requested visit by the People's Liberation Army that has been denied by the United States.

''(7) Any official documentation (such as memoranda for the record, after-action reports, and final itineraries) and all receipts for expenses over $1,000, concerning military-to-military exchanges or contacts between the United States and the People's Republic of China in 1999.

''(8) A description of military-to-military exchanges or contacts between the United States and the People's Republic of China scheduled for 2000.

''(9) An assessment regarding whether or not any People's Republic of China military officials have been shown classified material as a result of military-to-military exchanges or contacts between the United States and the People's Republic of China.''

AGREEMENTS FOR EXCHANGE OF DEFENSE PERSONNEL BETWEEN UNITED STATES AND FOREIGN COUNTRIES

Pub. L. 104–201, div. A, title X, §1082, Sept. 23, 1996, 110 Stat. 2672, provided that:

''(a) AUTHORITY TO ENTER INTO INTERNATIONAL EXCHANGE AGREEMENTS.—(1) The Secretary of Defense may enter into international defense personnel exchange agreements.

''(2) For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of an ally of the United States or another friendly foreign country for the exchange of—

''(A) military and civilian personnel of the Department of Defense; and

''(B) military and civilian personnel of the defense ministry of that foreign government.

''(b) ASSIGNMENT OF PERSONNEL.—(1) Pursuant to an international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense and personnel of the Department of Defense may be assigned to positions in the defense ministry of such foreign government. Positions to which exchanged personnel are assigned may include positions of instructors.

''(2) An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of Department of Defense personnel to positions in private industry that support the defense ministry of the host foreign government.

''(3) An individual may not be assigned to a position pursuant to an international defense personnel exchange agreement unless the assignment is acceptable to both governments.

''(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—Each government shall be required under an international defense personnel exchange agreement to provide personnel with qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

''(d) PAYMENT OF PERSONNEL COSTS.—(1) Each government shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its own personnel in accordance with the applicable laws and regulations of such government.

''(2) Paragraph (1) does not apply to the following costs:

''(A) The cost of temporary duty directed by the host government.

''(B) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

''(C) Costs incident to the use of the facilities of the host government in the performance of assigned duties.

''(e) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to an agreement under this section may take or be required to take an oath of allegiance to the host country or to hold an official capacity in the government of such country.

''(f) RELATIONSHIP TO OTHER AUTHORITY.—The requirements in subsections (c) and (d) shall apply in the exercise of any authority of the Secretaries of the military departments to enter into an agreement with the government of a foreign country to provide for the exchange of members of the armed forces and military personnel of the foreign country. The Secretary of Defense may prescribe regulations for the application of such subsections in the exercise of such authority.''

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

Sec.
171. Armed Forces Policy Council.
172. Ammunition storage board.
173. Advisory personnel.

Sec.
174. Advisory personnel: research and development.
175. Reserve Forces Policy Board.
176. Armed Forces Institute of Pathology.
177. American Registry of Pathology.
178. The Henry M. Jackson Foundation for the Advancement of Military Medicine.
179. Nuclear Weapons Council.
180. Service academy athletic programs: review board.
181. Joint Requirements Oversight Council.
182. Center for Excellence in Disaster Management and Humanitarian Assistance.
[183. Repealed.]
184. Department of Defense regional centers for security studies.
185. Financial Management Modernization Executive Committee.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1041(a)(1)(B), Dec. 2, 2002, 116 Stat. 2645, struck out item 183 ''Advisory committees: annual justification required''.

2001—Pub. L. 107–107, div. A, title X, §1009(a)(2), Dec. 28, 2001, 115 Stat. 1208, added item 185.

2000—Pub. L. 106–398, §1 [[div. A], title IX, §912(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–229, added item 184.

1997—Pub. L. 105–85, div. A, title III, §382(a)(2), title IX, §904(b), Nov. 18, 1997, 111 Stat. 1711, 1855, added items 182 and 183.

1996—Pub. L. 104–106, div. A, title IX, §905(a)(2), Feb. 10, 1996, 110 Stat. 404, added item 181.

1991—Pub. L. 102–190, div. A, title V, §513(b), Dec. 5, 1991, 105 Stat. 1361, added item 180.

1986—Pub. L. 99–661, div. C, title I, §3137(a)(2), Nov. 14, 1986, 100 Stat. 4066, added item 179.

1983—Pub. L. 98–132, §2(a)(2), Oct. 17, 1983, 97 Stat. 849, inserted ''The Henry M. Jackson'' before ''Foundation'' in item 178.

Pub. L. 98–36, §2(b), May 27, 1983, 97 Stat. 201, added item 178.

1976—Pub. L. 94–361, title VIII, §811(c), July 14, 1976, 90 Stat. 936, added items 176 and 177.

§ 171. Armed Forces Policy Council

(a) There is in the Department of Defense an Armed Forces Policy Council consisting of—

(1) the Secretary of Defense, as Chairman, with the power of decision;

(2) the Deputy Secretary of Defense;

(3) the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(4) the Secretary of the Army;

(5) the Secretary of the Navy;

(6) the Secretary of the Air Force;

(7) the Under Secretary of Defense for Policy;

(8) the Deputy Under Secretary of Defense for Acquisition and Technology;

(9) the Chairman of the Joint Chiefs of Staff;

(10) the Chief of Staff of the Army;

(11) the Chief of Naval Operations;

(12) the Chief of Staff of the Air Force; and

(13) the Commandant of the Marine Corps.

(b) The Armed Forces Policy Council shall advise the Secretary of Defense on matters of broad policy relating to the armed forces and shall consider and report on such other matters as the Secretary of Defense may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Pub. L. 85–599, §9(c), Aug. 6, 1958, 72 Stat. 521; Pub. L. 92–596, §5, Oct. 27, 1972, 86 Stat. 1318; Pub. L. 95–140, §3(b), Oct. 21, 1977, 91 Stat. 1173; Pub. L. 98–94, title XII, §1213, Sept. 24, 1983, 97 Stat. 687; Pub. L. 99–500, §101(c) [title X, §903(e)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, §101(c) [title X, §903(e)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133; Pub. L. 99–661, div. A, title IX, formerly title IV, §903(e), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–160, div. A, title IX, §904(d)(1), (3), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
171(a)	5:171e (less last sentence).	July 26, 1947, ch. 343, §210; restated Aug. 10, 1949, ch. 412, §7(a), 63 Stat. 581.
171(b)	5:171e (last sentence).	

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (a)(3). Pub. L. 103–160, §904(d)(1), substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

Subsec. (a)(8). Pub. L. 103–160, §904(d)(3), substituted ''Deputy Under Secretary of Defense for Acquisition and Technology'' for ''Deputy Under Secretary of Defense for Acquisition''.

1986—Subsec. (a)(3) to (13) Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically, redesignating pars. (3) to (11) as (4), (5), (6), (7), (9), (10), (11), (12), and (13), respectively, adding new pars. (3) and (8), and substituting ''the Under Secretary of Defense for Acquisition'' for ''the Under Secretaries of Defense'' in par. (7).

1983—Subsec. (a)(11). Pub. L. 98–94 added par. (11).

1977—Subsec. (a)(2). Pub. L. 95–140, §3(b)(1), substituted ''the Deputy'' for ''a Deputy''.

Subsec. (a)(6). Pub. L. 95–140, §3(b)(2), substituted ''the Under Secretaries of Defense;'' for ''the Director of Defense Research and Engineering;''.

1972—Subsec. (a)(2). Pub. L. 92–596 substituted ''a Deputy Secretary'' for ''the Deputy Secretary''.

1958—Subsec. (a)(6) to (10). Pub. L. 85–599 added par. (6) and redesignated former pars. (6) to (9) as (7) to (10), respectively.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–36, §1, May 27, 1983, 97 Stat. 200, provided: ''That this Act [enacting section 178 of this title and amending section 2113 of this title] may be cited as the 'Foundation for the Advancement of Military Medicine Act of 1983'.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3033, 5033, 5043, 8033 of this title.

§ 172. Ammunition storage board

(a) The Secretaries of the military departments, acting through a joint board selected by them composed of officers, civilian officers and employees of the Department of Defense, or both, shall keep informed on stored supplies of ammunition and components thereof for use of the Army, Navy, Air Force, and Marine Corps, with particular regard to keeping those supplies properly dispersed and stored and to preventing

hazardous conditions from arising to endanger life and property inside or outside of storage reservations.

(b) The board shall confer with and advise the Secretaries of the military departments in carrying out the recommendations in House Document No. 199 of the Seventieth Congress.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Pub. L. 104–201, div. A, title IX, §909, Sept. 23, 1996, 110 Stat. 2621.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
172(a)	50:83 (less last sentence).	May 29, 1928, ch. 853 (last par. under ''Ordnance Establishment''), 45 Stat. 928.
172(b)	50:83 (last sentence).	

In subsection (a), the words ''informed on stored'' are substituted for the words ''advised of storage''. The words ''particular regard'' are substituted for the words ''special reference''. The words ''inside or outside of'' are substituted for the words ''within or without''. The word ''selected'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the words ''in carrying out'' are substituted for the words ''in the execution of''.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 substituted ''a joint board selected by them composed of officers, civilian officers and employees of the Department of Defense, or both'' for ''a joint board of officers selected by them''.

§173. Advisory personnel

(a) The Secretary of Defense may establish such advisory committees and employ such part-time advisers as he considers necessary for the performance of his functions and those of the agencies under his control.

(b) A person who serves as a member of a committee may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 8; Pub. L. 89–718, §2, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 104–106, div. A, title X, §1061(e)(1), Feb. 10, 1996, 110 Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
173(a)	5:171j(a) (1st sentence, as applicable to Secretary of Defense).	July 26, 1947, ch. 343, §303 (as applicable to Secretary of Defense); Aug. 10, 1949, ch. 412, §10(c) (as applicable to Secretary of Defense); Sept. 3, 1954, ch. 1263, §8 (as applicable to Secretary of Defense), 68 Stat. 1228.
173(b)	5:171j(a) (less 1st sentence, as applicable to Secretary of Defense).	
173(c)	5:171j(b) (as applicable to Secretary of Defense).	

In subsection (a), the words ''consistent with other provisions of sections 171–171n, 172–172j, 181–1, 181–2, 411a, 411b, and 626–626d of this title and sections 401–405 of Title 50'' are omitted as surplusage. The word ''establish'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''Secretary'' is substituted for the words ''appointing authority''.

In subsection (c), the words ''as a part-time adviser'' are substituted for the words ''in any other part-time capacity for a department or agency'' to conform to subsections (a) and (b).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.'' for ''Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary determines.''

1966—Subsec. (c). Pub. L. 89–718 repealed subsec. (c) which provided that sections 281, 283, and 284 of title 18 did not apply to a person because of his service on a committee or as a part-time advisor under subsec. (a) of this section unless the unlawful act related to a matter directly involving a department or agency which he was advising or to a matter in which that department or agency was directly interested.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§174. Advisory personnel: research and development

(a) The Secretary of each military department may establish such advisory committees and panels as are necessary for the research and development activities of his department and may employ such part-time advisers as he considers necessary to carry out those activities.

(b) A person who serves as a member of such a committee or panel may not be paid for that service while holding another position or office under the United States for which he receives compensation. Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.

(c) The Secretary concerned may delegate any authority under this section to—

(1) the Under Secretary of his department;

(2) an Assistant Secretary of his department; or

(3) the chief, and one assistant to the chief, of any technical service, bureau, or office.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Pub. L. 104–106, div. A, title X, §1061(e)(1), Feb. 10, 1996, 110 Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
174(a)	5:235b (1st sentence). 5:475g (1st sentence). 5:628b (1st sentence).	July 16, 1952, ch. 882, §§1, 7 (as applicable to §1), 66 Stat. 725, 726.
174(b)	5:235b (less 1st sentence). 5:475g (less 1st sentence). 5:628b (less 1st sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
174(c)	5:235h (as applicable to 5:235b). 5:475m (as applicable to 5:475g). 5:628h (as applicable to 5:628b).	

In subsection (a), the words ''the conduct of'' are omitted as surplusage.

In subsection (b), the words ''or panel'' are inserted for clarity. The words ''Secretary concerned'' are substituted for the words ''appointing authority''.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''Other members and part-time advisers shall (except as otherwise specifically authorized by law) serve without compensation for such service.'' for ''Other members and part-time advisers may serve without compensation or may be paid not more than $50 for each day of service, as the Secretary concerned determines.''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 175. Reserve Forces Policy Board

There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The functions, membership, and organization of that board are set forth in section 10301 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 9; Pub. L. 90–168, §2(3), (4), Dec. 1, 1967, 81 Stat. 521; Pub. L. 98–94, title XII, §1212(b), Sept. 24, 1983, 97 Stat. 687; Pub. L. 98–525, title XIII, §1306, title XIV, §1405(4), Oct. 19, 1984, 98 Stat. 2613, 2622; Pub. L. 98–557, §21, Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–433, title V, §531(a)(1), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103–337, div. A, title IX, §921, title XVI, §1661(b)(3), Oct. 5, 1994, 108 Stat. 2829, 2981.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
175(a) ..... 175(b) ..... 175(c) ..... 175(d) ..... 175(e)	50:1008(a). 50:1008(b). 50:1008(c). 50:1008(d) (less proviso). 50:1008(d) (proviso).	July 9, 1952, ch. 608, §257 (less (e)), 66 Stat. 497.

In subsection (a), the word ''are'' is substituted for the words ''is established'', to make clear the continuing authority of the organization established by the source statute. Clauses (3), (4), and (5) are substituted for 50:1008(a)(iii) for clarity. In clauses (6), (7), (8), and (9), the word ''designated'' is substituted for the word ''appointed'', in 50:1008(iv), (v), (vi), and (vii), to make it clear that the positions described are not constitutional offices.

In subsection (b), the words ''Regular Coast Guard or Coast Guard Reserve'' are substituted for the words ''Regular or Reserve * * * Coast Guard''.

AMENDMENTS

1994—Pub. L. 103–337, §1661(b)(3), amended section generally, substituting single undesignated par. for former subsecs. (a) to (f) relating to establishment, composition, functions, and powers of Reserve Forces Policy Board.

Subsec. (a)(4). Pub. L. 103–337, §921(1), substituted ''and an officer of the Regular Marine Corps each'' for ''or Regular Marine Corps''.

Subsec. (a)(10). Pub. L. 103–337, §921(2)–(4), added par. (10).

1986—Subsec. (d). Pub. L. 99–433 substituted ''3021'' and ''8021'' for ''3033'' and ''8033'', respectively.

1984—Subsec. (b). Pub. L. 98–557 substituted ''Regular or Reserve, to serve as voting members'' for ''regular or reserve, to serve as a voting member''.

Pub. L. 98–525, §1306, substituted ''two officers of the Coast Guard, regular or reserve'' for ''an officer of the Regular Coast Guard or the Coast Guard Reserve''.

Subsec. (c). Pub. L. 98–525, §1405(4), inserted a comma following ''Reserve Affairs''.

1983—Subsec. (c). Pub. L. 98–94 substituted ''Assistant Secretary of Defense for Reserve Affairs'' for ''Assistant Secretary of Defense for Manpower and Reserve Affairs''.

1967—Subsec. (a)(2). Pub. L. 90–168, §2(3), substituted ''the Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs'' for ''the Secretary, the Under Secretary, or an Assistant Secretary designated under section 264(b) of this title, of each of the military departments''.

Subsec. (b). Pub. L. 90–168, §2(4), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' as the Secretary empowered to designate officers to serve on the Board and substituted ''serve as a voting member'' for ''serve without vote as a member'' in the description of the officer's service on the Board.

Subsec. (c). Pub. L. 90–168, §2(4), substituted ''Assistant Secretary of Defense for Manpower and Reserve Affairs'' for ''Assistant Secretary of Defense designated under section 264(a) of this title''.

Subsec. (d). Pub. L. 90–168, §2(4), inserted references to sections 5251 and 5252 of this title.

Subsec. (e). Pub. L. 90–168, §2(4), substituted ''member of a committee or board prescribed under a section listed in subsection (d)'' for ''member of a committee under section 3033 or 8033 of this title''.

Subsec. (f). Pub. L. 90–168, §2(4), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1661(b)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 1212(e) of Pub. L. 98–94 set out as a note under section 138 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90–168, see section 7 of Pub. L. 90–168, set out as a note under section 138 of this title.

§ 176. Armed Forces Institute of Pathology

(a)(1) There is in the Department of Defense an Institute to be known as the Armed Forces Institute of Pathology (hereinafter in this section referred to as the ''Institute''), which has the responsibilities, functions, authority, and relationships set forth in this section. The Institute shall be a joint entity of the three military departments, subject to the authority, direction, and control of the Secretary of Defense.

(2) The Institute shall consist of a Board of Governors, a Director, two Deputy Directors,

and a staff of such professional, technical, and clerical personnel as may be required.

(3) The Board of Governors shall consist of the Assistant Secretary of Defense for Health Affairs, who shall serve as chairman of the Board of Governors, the Assistant Secretary of Health and Human Services for Health, the Surgeons General of the Army, Navy, and Air Force, the Under Secretary for Health of the Department of Veterans Affairs, and a former Director of the Institute, as designated by the Secretary of Defense, or the designee of any of the foregoing.

(4) The Director and the Deputy Directors shall be appointed by the Secretary of Defense.

(b)(1) In carrying out the provisions of this section, the Institute is authorized to—

(A) contract with the American Registry of Pathology (established under section 177 of this title) for cooperative enterprises in medical research, consultation, and education between the Institute and the civilian medical profession under such conditions as may be agreed upon between the Board of Governors and the American Registry of Pathology;

(B) make available at no cost to the American Registry of Pathology such space, facilities, equipment, and support services within the Institute as the Board of Governors deems necessary for the accomplishment of their mutual cooperative enterprises; and

(C) contract with the American Registry of Pathology for the services of such professional, technical, or clerical personnel as are necessary to fulfill their cooperative enterprises.

(2) No contract may be entered into under paragraph (1) which obligates the Institute to make outlays in advance of the enactment of budget authority for such outlays.

(c) The Director is authorized, with the approval of the Board of Governors, to enter into agreements with the American Registry of Pathology for the services at any time of not more than six distinguished pathologists or scientists of demonstrated ability and experience for the purpose of enhancing the activities of the Institute in education, consultation, and research. Such pathologists or scientists may be appointed by the Director to administrative positions within the components or subcomponents of the Institute and may be authorized by the Director to exercise any or all professional duties within the Institute, notwithstanding any other provision of law. The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.

(d) The Secretary of Defense shall promulgate such regulations as may be necessary to prescribe the organization, functions, and responsibilities of the Institute.

(Added Pub. L. 94–361, title VIII, §811(b), July 14, 1976, 90 Stat. 933; amended Pub. L. 96–513, title V, §511(6), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–160, div. A, title VII, §733, Nov. 30, 1993, 107 Stat. 1697; Pub. L. 104–106, div. A, title IX, §903(f)(1), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 107–107, div. A, title X, §1048(a)(4), Dec. 28, 2001, 115 Stat. 1222.)

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107–107 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1996—Subsec. (a)(3). Pub. L. 104–106, §903(a), (f)(1), which directed amendment of subsec. (a)(3), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for health affairs'' for ''Assistant Secretary of Defense for Health Affairs'' and ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs'', was repealed by Pub. L. 104–201.

1993—Subsec. (c). Pub. L. 103–160 inserted at end ''The Secretary of Defense, on a case-by-case basis, may waive the limitation on the number of distinguished pathologists or scientists with whom agreements may be entered into under this subsection if the Secretary determines that such waiver is in the best interest of the Department of Defense.''

1989—Subsec. (a)(3). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a)(3). Pub. L. 96–513, §511(6)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b)(1)(A). Pub. L. 96–513, §511(6)(B), inserted ''of this title'' after ''177''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

NATIONAL MUSEUM OF HEALTH AND MEDICINE

Pub. L. 103–337, div. A, title X, §1067, Oct. 5, 1994, 108 Stat. 2851, as amended by Pub. L. 105–78, title VII, §702, Nov. 13, 1997, 111 Stat. 1524, provided that:

''(a) PURPOSE.—It is the purpose of this section—

''(1) to display and interpret the collections of the Armed Forces Institute of Pathology currently located at Walter Reed Medical Center; and

''(2) to designate the public facility of the Armed Forces Institute of Pathology as the National Museum of Health and Medicine.

''(b) DESIGNATION.—The public facility of the Armed Forces Institute of Pathology shall also be known as the National Museum of Health and Medicine.''

CONGRESSIONAL FINDINGS AND DECLARATION

Section 811(a) of Pub. L. 94–361 provided that:

''(1) The Congress hereby finds and declares that—

''(A) the Armed Forces Institute of Pathology offers unique pathologic support to national and international medicine;

''(B) the Institute contains the Nation's most comprehensive collection of pathologic specimens for study and a staff of prestigious pathologists engaged in consultation, education, and research;

''(C) the activities of the Institute are of unique and vital importance in support of the health care of the Armed Forces of the United States;

''(D) the activities of the Institute are also of unique and vital importance in support of the civilian health care system of the United States;

''(E) the Institute provides an important focus for the exchange of information between civilian and military medicine, to the benefit of both; and

''(F) it is important to the health of the American people and of the members of the Armed Forces of the United States that the Institute continue its activities in serving both the military and civilian sectors

in education, consultation, and research in the medical, dental, and veterinary sciences.

''(2) The Congress further finds and declares that beneficial cooperative efforts between private individuals, professional societies, and other entities on the one hand and the Armed Forces Institute of Pathology on the other can be carried out most effectively through the establishment of a private corporation.''

§ 177. American Registry of Pathology

(a)(1) There is authorized to be established a nonprofit corporation to be known as the American Registry of Pathology which shall not for any purpose be an agency or establishment of the United States Government. The American Registry of Pathology shall be subject to the provisions of this section and, to the extent not inconsistent with this section, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–501 et seq.).

(2) The American Registry of Pathology shall have a Board of Members (hereinafter in this section referred to as the ''Board'') consisting of not less than eleven individuals who are representatives of those professional societies and organizations which sponsor individual registries of pathology at the Armed Forces Institute of Pathology, of whom one shall be elected annually by the Board to serve as chairman. Each such sponsor shall appoint one member to the Board for a term of four years.

(3) The American Registry of Pathology shall have a Director, who shall be appointed by the Board with the concurrence of the Director of the Armed Forces Institute of Pathology, and such other officers as may be named and appointed by the Board. Such officers shall be compensated at rates fixed by the Board and shall serve at the pleasure of the Board.

(4) The members of the initial Board shall serve as incorporators and shall take whatever actions are necessary to establish under the District of Columbia Nonprofit Corporation Act the corporation authorized by paragraph (1).

(5) The term of office of each member of the Board shall be four years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (B) the terms of office of members first taking office shall begin on the date of incorporation and shall expire, as designated at the time of their appointment and to the maximum extent practicable, one fourth at the end of one year, one fourth at the end of two years, one fourth at the end of three years, and one fourth at the end of four years, and (C) a member whose term has expired may serve until his successor has qualified. No member shall be eligible to serve more than two consecutive terms of four years each.

(6) Any vacancy in the Board shall not affect its powers, but such vacancy shall be filled in the manner in which the original appointment was made.

(b) In order to carry out the purposes of this section, the American Registry of Pathology is authorized to—

(1) enter into contracts with the Armed Forces Institute of Pathology for the provision of such services and personnel as may be necessary to carry out their cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of fascicles of tumor pathology, atlases, and other material;

(3) accept gifts and grants from and enter into contracts with individuals, private foundations, professional societies, institutions, and governmental agencies;

(4) enter into agreements with professional societies for the establishment and maintenance of Registries of Pathology; and

(5) serve as a focus for the interchange between military and civilian pathology and encourage the participation of medical, dental, and veterinary sciences in pathology for the mutual benefit of military and civilian medicine.

(c) In the performance of the functions set forth in subsection (b), the American Registry of Pathology is authorized to—

(1) enter into such other contracts, leases, cooperative agreements, or other transactions as the Board deems appropriate to conduct the activities of the American Registry of Pathology; and

(2) charge such fees for professional services as the Board deems reasonable and appropriate.

(d) The American Registry of Pathology may transmit to the Director and the Board of Governors of the Armed Forces Institute of Pathology and to the sponsors referred to in subsection (a)(2) annually, and at such other times as it deems desirable, a comprehensive and detailed report of its operations, activities, and accomplishments.

(Added Pub. L. 94–361, title VIII, § 811(b), July 14, 1976, 90 Stat. 934; amended Pub. L. 98–525, title XIV, § 1405(5), Oct. 19, 1984, 98 Stat. 2622.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a)(1), (4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, as amended, which is not classified to the Code.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''sec. 29–501'' for ''sec. 29–1001''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 176 of this title.

§ 178. The Henry M. Jackson Foundation for the Advancement of Military Medicine

(a) There is authorized to be established a nonprofit corporation to be known as the Henry M. Jackson Foundation for the Advancement of Military Medicine (hereinafter in this section referred to as the ''Foundation'') which shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Articles of the State of Maryland.

(b) It shall be the purpose of the Foundation (1) to carry out medical research and education projects under cooperative arrangements with the Uniformed Services University of the Health

Sciences, (2) to serve as a focus for the interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.

(c)(1) The Foundation shall have a Council of Directors (hereinafter in this section referred to as the ''Council'') composed of—

(A) the Chairmen and ranking minority members of the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives (or their designees from the membership of such committees), who shall be ex officio members,

(B) the Dean of the Uniformed Services University of the Health Sciences, who shall be an ex officio member, and

(C) four members appointed by the ex officio members of the Council designated in clauses (A) and (B).

(2) The term of office of each member of the Council appointed under clause (C) of paragraph (1) shall be four years, except that—

(A) any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(B) the terms of office of members first taking office shall expire, as designated by the ex officio members of the Council at the time of the appointment, two at the end of two years and two at the end of four years.

(3) The Council shall elect a chairman from among its members.

(d)(1) The Foundation shall have an Executive Director who shall be appointed by the Council and shall serve at the pleasure of the Council. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Council shall prescribe.

(2) The rate of compensation of the Executive Director shall be fixed by the Council.

(e) The initial members of the Council shall serve as incorporators and take whatever actions as are necessary to establish under the Corporations and Associations Articles of the State of Maryland the corporation authorized by subsection (a).

(f) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner in which the original designation or appointment was made.

(g) In order to carry out the purposes of this section, the Foundation is authorized to—

(1) enter into contracts with, accept grants from, and make grants to the Uniformed Services University of the Health Sciences for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education, including contracts for provision of such personnel and services as may be necessary to carry out such cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(3) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(4) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(5) enter into contracts with individuals, public or private organizations, professional societies, and government agencies for the purpose of carrying out the functions of the Foundation;

(6) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(7) charge such fees for professional services furnished by the Foundation as the Executive Director determines reasonable and appropriate.

(h) A person who is a full-time or part-time employee of the Foundation may not be an employee (full-time or part-time) of the Federal Government.

(i) The Council shall transmit to the President annually, and at such other times as the Council considers desirable, a report on the operations, activities, and accomplishments of the Foundation.

(Added Pub. L. 98–36, §2(a), May 27, 1983, 97 Stat. 200; amended Pub. L. 98–132, §2(a)(1), Oct. 17, 1983, 97 Stat. 849; Pub. L. 101–189, div. A, title VII, §726(b)(2), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(1)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(1)(A). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1989—Subsec. (g)(1). Pub. L. 101–189 inserted '', accept grants from, and make grants to'' after ''contracts with''.

1983—Pub. L. 98–132, §2(a)(1)(A), inserted ''The Henry M. Jackson'' before ''Foundation'' in section catchline.

Subsec. (a). Pub. L. 98–132, §2(a)(1)(B), inserted ''Henry M. Jackson''.

CHANGE OF NAME

Section 1 of Pub. L. 98–132 provided: ''That (a) the Foundation for the Advancement of Military Medicine established pursuant to section 178 of title 10, United States Code, shall be designated and hereafter known as the 'Henry M. Jackson Foundation for the Advancement of Military Medicine', in honor of the late Henry M. Jackson, United States Senator from the State of Washington. Any reference to the Foundation for the Advancement of Military Medicine in any law, regulation, document, record, or other paper of the United States shall be held and considered to be a reference to the 'Henry M. Jackson Foundation for the Advancement of Military Medicine'.

''(b) The Council of Directors referred to in subsection (c) of section 178 of such title shall take such action as is necessary under the Corporations and Associations Articles of the State of Maryland to amend the corporate name of the Foundation for the Advancement

of Military Medicine established under such section to reflect the designation made by the first sentence of subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2113 of this title.

§ 179. Nuclear Weapons Council

(a) There is a Joint Nuclear Weapons Council (hereinafter in this section referred to as the ''Council'') composed of three members as follows:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The Under Secretary for Nuclear Security of the Department of Energy.

(b)(1) Except as provided in paragraph (2), the Chairman of the Council shall be the member designated under subsection (a)(1).

(2) A meeting of the Council shall be chaired by the Under Secretary for Nuclear Security of the Department of Energy whenever the matter under consideration is within the primary responsibility or concern of the Department of Energy, as determined by majority vote of the Council.

(3) The Council shall meet not less often than once every three months.

(c)(1) The Secretary of Defense and the Secretary of Energy shall enter into an agreement with the Council to furnish necessary staff and administrative services to the Council.

(2) The Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs shall be the Staff Director of the Council.

(3)(A) Whenever the position of Assistant to the Secretary of Defense for Nuclear and Chemical and Biological Defense Programs has been vacant a period of more than 6 months, the Secretary of Energy shall designate a qualified individual to serve as acting staff director of the Council until the position of that Assistant to the Secretary is filled.

(B) An individual appointed under subparagraph (A) shall possess substantial technical and policy experience relevant to the management and oversight of nuclear weapons programs.

(d) The Council shall be responsible for the following matters:

(1) Preparing the annual Nuclear Weapons Stockpile Memorandum.

(2) Developing nuclear weapons stockpiles options and the costs of such options.

(3) Coordinating programming and budget matters pertaining to nuclear weapons programs between the Department of Defense and the Department of Energy.

(4) Identifying various options for cost-effective schedules for nuclear weapons production.

(5) Considering safety, security, and control issues for existing weapons and for proposed new weapon program starts.

(6) Ensuring that adequate consideration is given to design, performance, and cost tradeoffs for all proposed new nuclear weapons programs.

(7) Providing broad guidance regarding priorities for research on nuclear weapons.

(8) Coordinating and approving activities conducted by the Department of Energy for the study, development, production, and retirement of nuclear warheads, including concept definition studies, feasibility studies, engineering development, hardware component fabrication, warhead production, and warhead retirement.

(9) Preparing comments on annual proposals for budget levels for research on nuclear weapons and transmitting those comments to the Secretary of Defense and the Secretary of Energy before the preparation of the annual budget requests by the Secretaries of those departments.

(10) Providing—

(A) broad guidance regarding priorities for research on improved conventional weapons, and

(B) comments on annual proposals for budget levels for research on improved conventional weapons,

and transmitting such guidance and comments to the Secretary of Defense before the preparation of the annual budget request of the Department of Defense.

(e) In addition to the responsibilities set forth in subsection (d), the Council shall also submit to Congress a report on any analysis conducted by the Council with respect to difficulties at nuclear weapons laboratories or nuclear weapons production plants that have significant bearing on confidence in the safety or reliability of nuclear weapons or nuclear weapon types.

(f) Each fiscal year, at the same time the President submits the budget pursuant to section 1105 of title 31, the Chairman of the Council, through the Secretary of Energy, shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report, in classified form, on the following:

(1) The effectiveness and efficiency of the Council, and of the deliberative and decisionmaking processes used by the Council, in carrying out the responsibilities described in subsection (d).

(2) A description of all activities conducted by the Department of Energy during that fiscal year, or planned to be conducted by the Department of Energy during the next fiscal year, for the study, development, production, and retirement of nuclear warheads and that have been approved by the Council, including a description of—

(A) the concept definition activities and feasibility studies conducted or planned to be conducted by the Department of Energy;

(B) the schedule for completion of each such activity or study; and

(C) the degree to which each such activity or study is consistent with United States policy for new nuclear warhead development or warhead modification and with established or projected military requirements.

(3) A description of the activities of the Council during the 12-month period ending on the date of the report together with any as-

sessments or studies conducted by the Council during that period.

(4) A description of the highest priority requirements of the Department of Defense with respect to the Department of Energy stockpile stewardship and management program as of that date.

(5) An assessment of the extent to which the requirements referred to in paragraph (4) are being addressed by the Department of Energy as of that date.

(Added Pub. L. 99–661, div. C, title I, §3137(a)(1), Nov. 14, 1986, 100 Stat. 4065; amended Pub. L. 100–180, div. A, title XII, §1231(2), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–456, div. A, title XII, §1233(h), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 102–484, div. C, title XXXI, §3133, Oct. 23, 1992, 106 Stat. 2639; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. C, title XXXI, §3152, Oct. 5, 1994, 108 Stat. 3090; Pub. L. 104–106, div. A, title IX, §904(b)(1), title XV, §1502(a)(7), Feb. 10, 1996, 110 Stat. 403, 502; Pub. L. 104–201, div. C, title XXXI, §3159(c), Sept. 23, 1996, 110 Stat. 2842; Pub. L. 106–65, div. A, title X, §1067(1), div. C, title XXXI, §3163(a), (c), Oct. 5, 1999, 113 Stat. 774, 944; Pub. L. 106–398, §1 [div. C, title XXXI, §3152(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–464; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

2000—Subsec. (a)(3). Pub. L. 106–398, §1 [div. C, title XXXI, §3152(a)(1)], added par. (3) and struck out former par. (3) which read as follows: ''One senior representative of the Department of Energy designated by the Secretary of Energy.''

Subsec. (b)(2). Pub. L. 106–398, §1 [div. C, title XXXI, §3152(a)(2)], substituted ''the Under Secretary for Nuclear Security of the Department of Energy'' for ''the representative designated under subsection (a)(3)''.

1999—Subsec. (b)(3). Pub. L. 106–65, §3163(a)(1), added par. (3).

Subsec. (c)(3). Pub. L. 106–65, §3163(a)(2), added par. (3).

Subsec. (f). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (f)(3) to (5). Pub. L. 106–65, §3163(c), added pars. (3) to (5).

1996—Subsec. (c)(2). Pub. L. 104–106, §904(b)(1), substituted ''Nuclear and Chemical and Biological Defense Programs'' for ''Atomic Energy''.

Subsec. (e). Pub. L. 104–201, §3159(c)(2), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 104–106, §1502(a)(7), substituted ''to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''to the Committees on Armed Services and Appropriations of the Senate and''.

Subsec. (f). Pub. L. 104–201, §3159(c)(1), redesignated subsec. (e) as (f).

1994—Subsecs. (a)(3), (b). Pub. L. 103–337, §3152(c), substituted ''designated'' for ''appointed'' wherever appearing.

Subsec. (d)(8) to (10). Pub. L. 103–337, §3152(a), added par. (8) and redesignated former pars. (8) and (9) as (9) and (10), respectively.

Subsec. (e). Pub. L. 103–337, §3152(b), added subsec. (e).

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (a)(1). Pub. L. 102–484 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Director of Defense Research and Engineering.''

1988—Subsec. (e). Pub. L. 100–456 struck out subsec. (e) which read as follows: ''The Council shall submit to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives a report on the actions that have been taken by the Department of Defense and the Department of Energy to implement the recommendations of the President's Blue Ribbon Task Group on Nuclear Weapons Program Management. The Council shall include in such report its recommendation on the role and composition of the staff on the Council. The Council shall submit such report to the Committees not later than March 1, 1987.''

1987—Subsec. (e). Pub. L. 100–180 realigned margins of subsec. (e).

CHAIRMAN OF JCS TO SERVE ON COUNCIL IF THERE IS NO VICE CHAIRMAN OF JCS

Section 3137(b) of Pub. L. 99–661 provided that: ''If on the date of the enactment of this section [Nov. 14, 1986] the position of Vice Chairman of the Joint Chiefs of Staff, or comparable position, has not been established by law, the Chairman of the Joint Chiefs of Staff shall be a member of the Nuclear Weapons Council established by section 179 of title 10, United States Code, as added by subsection (a). If the position of Vice Chairman of the Joint Chiefs of Staff (or comparable position) is established by law after the date of the enactment of this section, the Chairman of the Joint Chiefs of Staff shall remain a member of such Council only until an individual has been appointed Vice Chairman of the Joint Chiefs of Staff.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 142 of this title; title 42 section 7274p; title 50 section 2402.

§180. Service academy athletic programs: review board

(a) INDEPENDENT REVIEW BOARD.—The Secretary of Defense shall appoint a board to review the administration of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

(b) COMPOSITION OF BOARD.—The Secretary shall appoint the members of the board from among distinguished administrators of institutions of higher education, members of Congress, members of the Boards of Visitors of the academies, and other experts in collegiate athletics programs. The Superintendents of the three academies shall be members of the board. The Secretary shall designate one member of the board, other than a Superintendent of an academy, as Chairman.

(c) DUTIES.—The board shall, on an annual basis—

(1) review all aspects of the athletics programs of the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy, including—

(A) the policies relating to the administration of such programs;

(B) the appropriateness of the balance between the emphasis placed by each academy on athletics and the emphasis placed by such academy on academic pursuits; and

(C) the extent to which all athletes in all sports are treated equitably under the athletics program of each academy; and

(2) determine ways in which the administration of the athletics programs at the academies can serve as models for the administration of athletics programs at civilian institutions of higher education.

(d) ADMINISTRATIVE PROVISIONS.—(1) Each member of the board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for Executive Schedule Level IV under section 5315 of title 5, for each day (including travel time) during which such member is engaged in the performance of the duties of the board. Members of the board who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) The members of the board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the board.

(Added Pub. L. 102–190, div. A, title V, §513(a), Dec. 5, 1991, 105 Stat. 1360; amended Pub. L. 106–65, div. A, title X, §1066(a)(2), Oct. 5, 1999, 113 Stat. 770; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–398 substituted ''section 5315'' for ''section 5376''.

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''Executive Schedule Level IV under section 5376 of title 5'' for ''grade GS–18 of the General Schedule under section 5332 of title 5''.

§ 181. Joint Requirements Oversight Council

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Requirements Oversight Council in the Department of Defense.

(b) MISSION.—In addition to other matters assigned to it by the President or Secretary of Defense, the Joint Requirements Oversight Council shall—

(1) assist the Chairman of the Joint Chiefs of Staff in identifying and assessing the priority of joint military requirements (including existing systems and equipment) to meet the national military strategy;

(2) assist the Chairman in considering alternatives to any acquisition program that has been identified to meet military requirements by evaluating the cost, schedule, and performance criteria of the program and of the identified alternatives; and

(3) as part of its mission to assist the Chairman in assigning joint priority among existing and future programs meeting valid requirements, ensure that the assignment of such priorities conforms to and reflects resource levels projected by the Secretary of Defense through defense planning guidance.

(c) COMPOSITION.—(1) The Joint Requirements Oversight Council is composed of—

(A) the Chairman of the Joint Chiefs of Staff, who is the chairman of the Council;

(B) an Army officer in the grade of general;

(C) a Navy officer in the grade of admiral;

(D) an Air Force officer in the grade of general; and

(E) a Marine Corps officer in the grade of general.

(2) Members of the Council, other than the Chairman of the Joint Chiefs of Staff, shall be selected by the Chairman of the Joint Chiefs of Staff, after consultation with the Secretary of Defense, from officers in the grade of general or admiral, as the case may be, who are recommended for such selection by the Secretary of the military department concerned.

(3) The functions of the Chairman of the Joint Chiefs of Staff as chairman of the Council may only be delegated to the Vice Chairman of the Joint Chiefs of Staff.

(d) AVAILABILITY OF OVERSIGHT INFORMATION TO CONGRESSIONAL DEFENSE COMMITTEES.—(1) The Secretary of Defense shall ensure that, in the case of a recommendation by the Chairman to the Secretary that is approved by the Secretary, oversight information with respect to such recommendation that is produced as a result of the activities of the Joint Requirements Oversight Council is made available in a timely fashion to the congressional defense committees.

(2) In this subsection:

(A) The term ''oversight information'' means information and materials comprising analysis and justification that are prepared to support a recommendation that is made to, and approved by, the Secretary of Defense.

(B) The term ''congressional defense committees'' means—

(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 104–106, div. A, title IX, §905(a)(1), Feb. 10, 1996, 110 Stat. 403; amended Pub. L. 104–201, div. A, title IX, §908, Sept. 23, 1996, 110 Stat. 2621; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (d)(2)(B)(ii). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–201 added subsec. (d).

EFFECTIVE DATE

Section 905(b) of Pub. L. 104–106 provided that: ''The amendments made by this section [enacting this section] shall take effect on January 31, 1997.''

REPORTS ON JOINT REQUIREMENTS OVERSIGHT COUNCIL REFORM INITIATIVE

Pub. L. 106–398, §1 [[div. A], title IX, §916], Oct. 30, 2000, 114 Stat. 1654, 1654A–231, as amended by Pub. L. 107–107, div. A, title IX, §923, Dec. 28, 2001, 115 Stat. 1199, provided that:

''(a) REPORTS REQUIRED.—The Chairman of the Joints Chiefs of Staff shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a series of reports, as prescribed by subsection (b), on the activities of the Joint Requirements Oversight Council.

The principal focus of each such report shall be on the progress made on the initiative of the Chairman to reform and refocus the Joint Requirements Oversight Council.

''(b) SUBMISSION OF REPORTS.—Reports under this section shall be submitted not later than March 1, 2001, September 1, 2001, March 1, 2002, and March 1, 2003. Each report shall cover the half of a fiscal year that ends five months before the date on which the report is due, except that the last report shall cover all of the preceding fiscal year.

''(c) CONTENT.—In the case of any report under this section after the first such report, if any matter to be included is unchanged from the preceding report, that matter may be included by reference to the preceding report. Each such report shall include, to the extent practicable, the following:

''(1) A listing of each of the capability areas designated by the Chairman of the Joints Chiefs of Staff as being within the principal domain of the Joint Requirements Oversight Council and a justification for each such designation.

''(2) A listing of the joint requirements developed, considered, or approved within each of the capability areas listed pursuant to paragraph (1).

''(3) A listing and explanation of the decisions made by the Joint Requirements Oversight Council and, to the extent appropriate, a listing of each of the recommendations to the Council made by the commander of the United States Joint Forces Command.

''(4) An assessment of—

''(A) the progress made in shifting the Joint Requirements Oversight Council to having a more strategic focus on future war fighting requirements;

''(B) the progress made on integration of requirements; and

''(C) the progress made on development of overarching common architectures for defense information systems to ensure that common defense information systems are fully interoperable.

''(5) A description of any actions that have been taken to improve the Joint Requirements Oversight Council.''

§ 182. Center for Excellence in Disaster Management and Humanitarian Assistance

(a) ESTABLISHMENT.—The Secretary of Defense may operate a Center for Excellence in Disaster Management and Humanitarian Assistance (in this section referred to as the ''Center'').

(b) MISSIONS.—(1) The Center shall be used to provide and facilitate education, training, and research in civil-military operations, particularly operations that require international disaster management and humanitarian assistance and operations that require coordination between the Department of Defense and other agencies.

(2) The Center shall be used to make available high-quality disaster management and humanitarian assistance in response to disasters.

(3) The Center shall be used to provide and facilitate education, training, interagency coordination, and research on the following additional matters:

(A) Management of the consequences of nuclear, biological, and chemical events.

(B) Management of the consequences of terrorism.

(C) Appropriate roles for the reserve components in the management of such consequences and in disaster management and humanitarian assistance in response to natural disasters.

(D) Meeting requirements for information in connection with regional and global disasters, including the use of advanced communications technology as a virtual library.

(E) Tropical medicine, particularly in relation to the medical readiness requirements of the Department of Defense.

(4) The Center shall develop a repository of disaster risk indicators for the Asia-Pacific region.

(5) The Center shall perform such other missions as the Secretary of Defense may specify.

(c) JOINT OPERATION WITH EDUCATIONAL INSTITUTION AUTHORIZED.—The Secretary of Defense may enter into an agreement with appropriate officials of an institution of higher education to provide for joint operation of the Center. Any such agreement shall provide for the institution to furnish necessary administrative services for the Center, including administration and allocation of funds.

(d) ACCEPTANCE OF DONATIONS.—(1) Except as provided in paragraph (2), the Secretary of Defense may accept, on behalf of the Center, donations to be used to defray the costs of the Center or to enhance the operation of the Center. Such donations may be accepted from any agency of the Federal Government, any State or local government, any foreign government, any foundation or other charitable organization (including any that is organized or operates under the laws of a foreign country), or any other private source in the United States or a foreign country.

(2) The Secretary may not accept a donation under paragraph (1) if the acceptance of the donation would compromise or appear to compromise—

(A) the ability of the Department of Defense, any employee of the Department, or members of the armed forces, to carry out any responsibility or duty of the Department in a fair and objective manner; or

(B) the integrity of any program of the Department of Defense or of any person involved in such a program.

(3) The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether or not the acceptance of a foreign donation would have a result described in paragraph (2).

(4) Funds accepted by the Secretary under paragraph (1) as a donation on behalf of the Center shall be credited to appropriations available to the Department of Defense for the Center. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Center for the same purposes and the same period as the appropriations with which merged.

(Added Pub. L. 105–85, div. A, title III, § 382(a)(1), Nov. 18, 1997, 111 Stat. 1709.)

PAYMENTS FOR EDUCATION AND TRAINING OF PERSONNEL OF FOREIGN COUNTRIES

Pub. L. 107–248, title VIII, § 8093, Oct. 23, 2002, 116 Stat. 1558, provided that: ''During the current fiscal year and hereafter, under regulations prescribed by the Secretary of Defense, the Center of Excellence for Disaster Management and Humanitarian Assistance [probably should be Center for Excellence in Disaster Management and Humanitarian Assistance] may also pay, or authorize payment for, the expenses of providing or facilitating education and training for appropriate mili-

tary and civilian personnel of foreign countries in disaster management, peace operations, and humanitarian assistance.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8109, Jan. 10, 2002, 115 Stat. 2272.

Pub. L. 106–259, title VIII, §8109, Aug. 9, 2000, 114 Stat. 698.

Pub. L. 106–79, title VIII, §8139, Oct. 25, 1999, 113 Stat. 1269.

[§ 183. Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(1)(A), Dec. 2, 2002, 116 Stat. 2645]

Section, added Pub. L. 105–85, div. A, title IX, §904(a), Nov. 18, 1997, 111 Stat. 1854, required the Secretary of Defense to report annually on the justification or requirement and projected costs of Department of Defense advisory committees.

§ 184. Department of Defense regional centers for security studies

(a) ADVANCE NOTIFICATION TO CONGRESS OF THE ESTABLISHMENT OF NEW REGIONAL CENTERS.—After October 30, 2000, a regional center for security studies may not be established in the Department of Defense until—

(1) the Secretary of Defense submits to Congress a notification of the intent of the Secretary to establish the center, including a description of the mission and functions of the proposed center and a justification for the proposed center; and

(2) a period of 90 days has elapsed after the date on which that notification is submitted.

(b) REQUIREMENT FOR ANNUAL REPORT.—Not later than February 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the operation of the Department of Defense regional centers for security studies during the preceding fiscal year. The annual report shall include, for each regional center, the following information:

(1) The status and objectives of the center.

(2) The budget of the center, including the costs of operating the center.

(3) A description of the extent of the international participation in the programs of the center, including the costs incurred by the United States for the participation of each foreign nation.

(4) A description of the foreign gifts and donations, if any, accepted under any of the following provisions of law:

(A) Section 2611 of this title.

(B) Section 1306 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2892).

(C) Section 1065 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2653; 10 U.S.C. 113 note).

(c) REGIONAL CENTER FOR SECURITY STUDIES DEFINED.—For the purposes of this section, a regional center for security studies is any center within the Department of Defense that—

(1) is operated, and designated as such, by the Secretary of Defense for the study of security issues relating to a specified geographic region of the world; and

(2) serves as a forum for bilateral and multilateral communication and military and civilian exchanges with nations in that region.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §912(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–228; amended Pub. L. 107–107, div. A, title X, §1048(c)(2), Dec. 28, 2001, 115 Stat. 1226.)

REFERENCES IN TEXT

Section 1306 of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (b)(4)(B), is section 1306 of Pub. L. 103–337, div. A, title XIII, Oct. 5, 1994, 108 Stat. 2892, which is not classified to the Code.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''October 30, 2000,'' for ''the date of the enactment of this section,'' in introductory provisions.

§ 185. Financial Management Modernization Executive Committee

(a) ESTABLISHMENT OF FINANCIAL MANAGEMENT MODERNIZATION EXECUTIVE COMMITTEE.—(1) The Secretary of Defense shall establish a Financial Management Modernization Executive Committee.

(2) The Committee shall be composed of the following:

(A) The Under Secretary of Defense (Comptroller), who shall be the chairman of the committee.

(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(C) The Under Secretary of Defense for Personnel and Readiness.

(D) The Chief Information Officer of the Department of Defense.

(E) Such additional personnel of the Department of Defense (including appropriate personnel of the military departments and Defense Agencies) as are designated by the Secretary.

(3) The Committee shall be accountable to the Senior Executive Council (composed of the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force).

(b) DUTIES.—In addition to other matters assigned to it by the Secretary of Defense, the Committee shall have the following duties:

(1) To establish a process that ensures that each critical accounting system, financial management system, and data feeder system of the Department of Defense is compliant with applicable Federal financial management and reporting requirements.

(2) To develop a management plan for the implementation of the financial and data feeder systems compliance process established pursuant to paragraph (1).

(3) To supervise and monitor the actions that are necessary to implement the management plan developed pursuant to paragraph (2), as approved by the Secretary of Defense.

(4) To ensure that a Department of Defense financial management enterprise architecture is developed and maintained in accordance with—

(A) the overall business process transformation strategy of the Department; and

(B) the architecture framework of the Department for command, control, communications, computers, intelligence, surveillance, and reconnaissance functions.

(5) To ensure that investments in existing or proposed financial management systems for the Department comply with the overall business practice transformation strategy of the Department and the financial management enterprise architecture developed under paragraph (4).

(6) To provide an annual accounting of each financial and data feeder system investment technology project to ensure that each such project is being implemented at acceptable cost and within a reasonable schedule and is contributing to tangible, observable improvements in mission performance.

(c) MANAGEMENT PLAN FOR IMPLEMENTATION OF FINANCIAL DATA FEEDER SYSTEMS COMPLIANCE PROCESS.—The management plan developed under subsection (b)(2) shall include among its principal elements at least the following elements:

(1) A requirement for the establishment and maintenance of a complete inventory of all budgetary, accounting, finance, and data feeder systems that support the transformed business processes of the Department and produce financial statements.

(2) A phased process (consisting of the successive phases of Awareness, Evaluation, Renovation, Validation, and Compliance) for improving systems referred to in paragraph (1) that provides for mapping financial data flow from the cognizant Department business function source (as part of the overall business process transformation strategy of the Department) to Department financial statements.

(3) Periodic submittal to the Secretary of Defense, the Deputy Secretary of Defense, and the Senior Executive Council (or any combination thereof) of reports on the progress being made in achieving financial management transformation goals and milestones included in the annual financial management improvement plan in 2002.

(4) Documentation of the completion of each phase specified in paragraph (2) of improvements made to each accounting, finance, and data feeder system of the Department.

(5) Independent audit by the Inspector General of the Department, the audit agencies of the military departments, and private sector firms contracted to conduct validation audits (or any combination thereof) at the validation phase for each accounting, finance, and data feeder system.

(d) DATA FEEDER SYSTEMS.—In this section, the term ''data feeder system'' means an automated or manual system from which information is derived for a financial management system or an accounting system.

(Added Pub. L. 107–107, div. A, title X, § 1009(a)(1), Dec. 28, 2001, 115 Stat. 1206; amended Pub. L. 107–314, div. A, title X, § 1004(h)(2), Dec. 2, 2002, 116 Stat. 2631.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 substituted ''means an automated or manual system from which information is derived for a financial management system or an accounting system'' for ''has the meaning given that term in section 2222(c)(2) of this title''.

CHAPTER 8—DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

Subchapter		Sec.
I.	Common Supply and Service Activities	191
II.	Miscellaneous Defense Agency Matters	201

SUBCHAPTER I—COMMON SUPPLY AND SERVICE ACTIVITIES

Sec.
191. Secretary of Defense: authority to provide for common performance of supply or service activities.
192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense.
193. Combat support agencies: oversight.
194. Limitations on personnel.
195. Defense Automated Printing Service: applicability of Federal printing requirements.
196. Department of Defense Test Resource Management Center.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title II, § 231(a)(2), Dec. 2, 2002, 116 Stat. 2489, added item 196.

1997—Pub. L. 105–85, div. A, title III, § 383(b), Nov. 18, 1997, 111 Stat. 1711, added item 195.

1986—Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019, inserted ''AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES'' in chapter heading, added subchapter analysis and subchapter I analysis, and struck out former chapter analysis consisting of item 191 ''Unauthorized use of Defense Intelligence Agency name, initials, or seal''.

1985—Pub. L. 99–145, title XIII, § 1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 ''Benefits for certain employees of the Defense Intelligence Agency'' as item 1605 and transferred it to chapter 83 of this title.

1983—Pub. L. 98–215, title V, § 501(b), Dec. 9, 1983, 97 Stat. 1479, added item 192.

1982—Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1144, added chapter 8 heading and analysis of sections for chapter 8, consisting of a single item 191.

§ 191. Secretary of Defense: authority to provide for common performance of supply or service activities

(a) AUTHORITY.—Whenever the Secretary of Defense determines such action would be more effective, economical, or efficient, the Secretary may provide for the performance of a supply or service activity that is common to more than one military department by a single agency of the Department of Defense.

(b) DESIGNATION OF COMMON SUPPLY OR SERVICE AGENCY.—Any agency of the Department of Defense established under subsection (a) (or under the second sentence of section 125(d) of this title (as in effect before October 1, 1986)) for the performance of a supply or service activity referred to in such subsection shall be designated as a Defense Agency or a Department of Defense Field Activity.

(Added Pub. L. 99–433, title III, § 301(a)(2), Oct. 1, 1986, 100 Stat. 1019; amended Pub. L. 100–26, § 7(i)(1), Apr. 21, 1987, 101 Stat. 282.)

REFERENCES IN TEXT

Subsection (d) of section 125 of this title, referred to in subsec. (b), was repealed by section 301(b)(1) of Pub. L. 99–433.

PRIOR PROVISIONS

A prior section 191 was renumbered section 202 of this title and subsequently repealed.

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–26 substituted ''October 1, 1986'' for ''the date of the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986''.

COMPTROLLER GENERAL REVIEW OF OPERATIONS OF DEFENSE LOGISTICS AGENCY

Pub. L. 106–398, §1 [[div. A], title IX, §917], Oct. 30, 2000, 114 Stat. 1654, 1654A–232, provided that:

''(a) COMPTROLLER GENERAL REVIEW REQUIRED.—The Comptroller General shall review the operations of the Defense Logistics Agency—

''(1) to assess—

''(A) the efficiency of those operations;

''(B) the effectiveness of those operations in meeting customer requirements; and

''(C) the flexibility of those operations to adopt best business practices; and

''(2) to identify alternative approaches for improving the operations of that agency.

''(b) REPORT.—Not later than February 1, 2002, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives one or more reports setting forth the Comptroller General's findings resulting from the review under subsection (a).''

COMPTROLLER GENERAL REVIEW OF OPERATIONS OF DEFENSE INFORMATION SYSTEMS AGENCY

Pub. L. 106–398, §1 [[div. A], title IX, §918], Oct. 30, 2000, 114 Stat. 1654, 1654A–232, provided that:

''(a) COMPTROLLER GENERAL REVIEW REQUIRED.—The Comptroller General shall review the operations of the Defense Information Systems Agency—

''(1) to assess—

''(A) the efficiency of those operations;

''(B) the effectiveness of those operations in meeting customer requirements; and

''(C) the flexibility of those operations to adopt best business practices; and

''(2) to identify alternative approaches for improving the operations of that agency.

''(b) REPORT.—Not later than February 1, 2002, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives one or more reports setting forth the Comptroller General's findings resulting from the review under subsection (a).''

REASSESSMENT OF DEFENSE AGENCIES AND DEPARTMENT OF DEFENSE FIELD ACTIVITIES

Section 303 of Pub. L. 99–433 directed Secretary of Defense to conduct a study of functions and organizational structure of Defense Agencies and Department of Defense Field Activities to determine the most effective, economical, or efficient means of providing supply or service activities common to more than one military department, with Secretary to submit a report to Congress not later than Oct. 1, 1987. The report was to include a study of improved application of computer systems to functions of Defense Agencies and Department of Defense Field Activities, including a plan for rapid replacement, where necessary, of existing automated data processing equipment with new equipment, and plans to achieve reductions in total number of members of Armed Forces and civilian employees assigned or detailed to permanent duty in Defense Agencies and Department of Defense Field Activities (other than National Security Agency) by 5 percent, 10 percent, and 15 percent of total number of such members and employees projected to be assigned or detailed to such duty on Sept. 30, 1988, together with a discussion of implications of each such reduction and a draft of any legislation that would be required to implement each such plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 113, 192, 196 of this title.

§ 192. Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense

(a) OVERALL SUPERVISION.—(1) The Secretary of Defense shall assign responsibility for the overall supervision of each Defense Agency and Department of Defense Field Activity designated under section 191(b) of this title—

(A) to a civilian officer within the Office of the Secretary of Defense listed in section 131(b) of this title; or

(B) to the Chairman of the Joint Chiefs of Staff.

(2) An official assigned such a responsibility with respect to a Defense Agency or Department of Defense Field Activity shall advise the Secretary of Defense on the extent to which the program recommendations and budget proposals of such agency or activity conform with the requirements of the military departments and of the unified and specified combatant commands.

(3) This subsection does not apply to the Defense Intelligence Agency or the National Security Agency.

(b) PROGRAM AND BUDGET REVIEW.—The Secretary of Defense shall establish procedures to ensure that there is full and effective review of the program recommendations and budget proposals of each Defense Agency and Department of Defense Field Activity.

(c) PERIODIC REVIEW.—(1) Periodically (and not less often than every two years), the Secretary of Defense shall review the services and supplies provided by each Defense Agency and Department of Defense Field Activity to ensure that—

(A) there is a continuing need for each such agency and activity; and

(B) the provision of those services and supplies by each such agency and activity, rather than by the military departments, is a more effective, economical, or efficient manner of providing those services and supplies or of meeting the requirements for combat readiness of the armed forces.

(2) Paragraph (1) shall apply to the National Security Agency as determined appropriate by the Secretary, in consultation with the Director of Central Intelligence. The Secretary shall establish procedures under which information required for review of the National Security Agency shall be obtained.

(d) SPECIAL RULE FOR DEFENSE COMMISSARY AGENCY.—Notwithstanding the results of any periodic review under subsection (c) with regard to the Defense Commissary Agency, the Secretary of Defense may not transfer to the Secretary of a military department the responsibility to manage and fund the provision of services and supplies provided by the Defense Commissary Agency unless the transfer of the management and funding responsibility is specifically authorized by a law enacted after October 17, 1998.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1020; amended Pub. L. 105–261, div. A, title III, §361(a), Oct. 17, 1998, 112 Stat. 1984; Pub. L. 106–65, div. A, title X, §1066(a)(3), Oct. 5, 1999, 113 Stat. 770.)

PRIOR PROVISIONS

A prior section 192, Pub. L. 98–215, title V, §501(a), Dec. 9, 1983, 97 Stat. 1478, which related to benefits for certain personnel of the Defense Intelligence Agency, was redesignated as section 1605 of this title and amended by Pub. L. 99–145, title XIII, §1302(a)(1), Nov. 8, 1985, 99 Stat. 737. Provisions of prior section 192 as related to members of the armed forces were enacted as section 431 of Title 37, Pay and Allowances of the Uniformed Services, by section 1302(b)(1) of Pub. L. 99–145.

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–65 substituted ''October 17, 1998'' for ''the date of the enactment of this subsection''.

1998—Subsec. (d). Pub. L. 105–261 added subsec. (d).

FIRST REVIEW OF DEFENSE AGENCIES BY SECRETARY OF DEFENSE

Section 304(a) of Pub. L. 99–433 provided that: ''The first review under section 192(c) of title 10, United States Code (as added by section 301(a)), shall be completed not later than two years after the date that the report under section 303(e) [see section 303(f) of Pub. L. 99–433, set out as a note under section 191 of this title] is required to be submitted to Congress.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2482 of this title.

§193. Combat support agencies: oversight

(a) COMBAT READINESS.—(1) Periodically (and not less often than every two years), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense a report on the combat support agencies. Each such report shall include—

(A) a determination with respect to the responsiveness and readiness of each such agency to support operating forces in the event of a war or threat to national security; and

(B) any recommendations that the Chairman considers appropriate.

(2) In preparing each such report, the Chairman shall review the plans of each such agency with respect to its support of operating forces in the event of a war or threat to national security. After consultation with the Secretaries of the military departments and the commanders of the unified and specified combatant commands, as appropriate, the Chairman may, with the approval of the Secretary of Defense, take steps to provide for any revision of those plans that the Chairman considers appropriate.

(b) PARTICIPATION IN JOINT TRAINING EXERCISES.—The Chairman shall—

(1) provide for the participation of the combat support agencies in joint training exercises to the extent necessary to ensure that those agencies are capable of performing their support missions with respect to a war or threat to national security; and

(2) assess the performance in joint training exercises of each such agency and, in accordance with guidelines established by the Secretary of Defense, take steps to provide for any change that the Chairman considers appropriate to improve that performance.

(c) READINESS REPORTING SYSTEM.—The Chairman shall develop, in consultation with the director of each combat support agency, a uniform system for reporting to the Secretary of Defense, the commanders of the unified and specified combatant commands, and the Secretaries of the military departments concerning the readiness of each such agency to perform with respect to a war or threat to national security.

(d) REVIEW OF NATIONAL SECURITY AGENCY AND NATIONAL IMAGERY AND MAPPING AGENCY.—(1) Subsections (a), (b), and (c) shall apply to the National Security Agency and the National Imagery and Mapping Agency, but only with respect to combat support functions that the agencies perform for the Department of Defense.

(2) The Secretary, after consulting with the Director of Central Intelligence, shall establish policies and procedures with respect to the application of subsections (a), (b), and (c) to the National Security Agency and the National Imagery and Mapping Agency.

(e) COMBAT SUPPORT CAPABILITIES OF DIA, NSA, AND NIMA.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall develop and implement, as they may determine to be necessary, policies and programs to correct such deficiencies as the Chairman of the Joint Chiefs of Staff and other officials of the Department of Defense may identify in the capabilities of the Defense Intelligence Agency, the National Security Agency, and the National Imagery and Mapping Agency to accomplish assigned missions in support of military combat operations.

(f) DEFINITION OF COMBAT SUPPORT AGENCY.—In this section, the term ''combat support agency'' means any of the following Defense Agencies:

(1) The Defense Communications Agency.

(2) The Defense Intelligence Agency.

(3) The Defense Logistics Agency.

(4) The National Imagery and Mapping Agency.

(5) Any other Defense Agency designated as a combat support agency by the Secretary of Defense.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1020; amended Pub. L. 104–201, div. A, title XI, §1112(c), Sept. 23, 1996, 110 Stat. 2683; Pub. L. 105–85, div. A, title X, §1073(a)(5), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–85 substituted ''agencies perform'' for ''agencies performs''.

1996—Subsec. (d). Pub. L. 104–201, §1112(c)(1)(A), substituted ''Review of National Security Agency and National Imagery and Mapping Agency'' for ''Review of National Security Agency'' in heading.

Subsec. (d)(1). Pub. L. 104–201, §1112(c)(1)(B), inserted ''and the National Imagery and Mapping Agency'' after ''the National Security Agency'' and substituted ''that the agencies'' for ''the Agency''.

Subsec. (d)(2). Pub. L. 104–201, §1112(c)(1)(C), inserted ''and the National Imagery and Mapping Agency'' after ''the National Security Agency''.

Subsec. (e). Pub. L. 104–201, §1112(c)(2), substituted ''DIA, NSA, and NIMA'' for ''DIA and NSA'' in heading and '', the National Security Agency, and the National Imagery and Mapping Agency'' for ''and the National Security Agency'' in text.

Subsec. (f)(4). Pub. L. 104–201, §1112(c)(3), substituted ''The National Imagery and Mapping Agency'' for ''Defense Mapping Agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1124 of title XI of div. A of Pub. L. 104–201 provided that: ''This title [enacting section 424 and chapter 22 of this title and sections 404e and 404f of Title 50, War and National Defense, amending this section, sections 201 and 451 to 456 of this title, sections 2302, 3132, 4301, 4701, 5102, 5342, 6339, and 7323 of Title 5, Government Organization and Employees, section 105 of the Ethics in Government Act of 1978, set out in the Appendix to Title 5, section 82 of Title 14, Coast Guard, section 2006 of Title 29, Labor, section 1336 of Title 44, Public Printing and Documents, and sections 401a and 403–5 of Title 50, renumbering chapter 22 and sections 451, 452, 2792 to 2796, and 2798 of this title as chapter 23 and sections 481, 482, 451 to 455, and 456 of this title, respectively, repealing sections 424, 425, 2791, and 2797 of this title, enacting provisions set out as notes under section 441 of this title, and amending provisions set out as a note under section 501 of Title 44] and the amendments made by this title shall take effect on October 1, 1996, or the date of the enactment of this Act [Sept. 23, 1996], whichever is later.''

FIRST REPORT AND OTHER ACTIONS BY CHAIRMAN OF JOINT CHIEFS OF STAFF

Section 304(b) of Pub. L. 99–433 required the first report under subsec. (a) of section 193 of this title to be submitted and subsecs. (b) and (c) of section 193 to be implemented not later than one year after Oct. 1, 1986, and a report on implementation to be submitted to Congress for 1988 under section 113(c) of this title.

§ 194. Limitations on personnel

(a) CAP ON HEADQUARTERS MANAGEMENT PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities or management headquarters support activities in the Defense Agencies and Department of Defense Field Activities may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(b) CAP ON OTHER PERSONNEL.—The total number of members of the armed forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned to management headquarters activities or management headquarters support activities, may not exceed the number that is the number of such members and employees assigned or detailed to such duty on September 30, 1989.

(c) PROHIBITION AGAINST CERTAIN ACTIONS TO EXCEED LIMITATIONS.—The limitations in subsections (a) and (b) may not be exceeded by recategorizing or redefining duties, functions, offices, or organizations.

(d) EXCLUSION OF NSA.—The National Security Agency shall be excluded in computing and maintaining the limitations required by this section.

(e) WAIVER.—The limitations in this section do not apply—

(1) in time of war; or

(2) during a national emergency declared by the President or Congress.

(f) DEFINITIONS.—In this section, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Directive 5100.73, entitled ''Department of Defense Management Headquarters and Headquarters Support Activities'' and dated January 7, 1985.

(Added Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1021; amended Pub. L. 100–180, div. A, title XIII, §1314(b)(3), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title XVI, §1622(h)(1), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''The'' for ''After September 30, 1989, the''.

1987—Subsec. (e)(2). Pub. L. 100–180 inserted ''the President or'' after ''declared by''.

REDUCTIONS IN DEFENSE INTELLIGENCE AGENCY PERSONNEL

Pub. L. 100–202, §101(b) [title VIII, §8122], Dec. 22, 1987, 101 Stat. 1329–43, 1329–85, provided that nothing in section 102d(1) of Public Law 100–178, 101 Stat. 1010, section 601(b)(2)(A) of Public Law 99–433, 100 Stat. 1065 [set out below], or section 601(d) of Public Law 99–433, 100 Stat. 1065 [set out below], shall be construed as requiring or suggesting that the Secretary of Defense avoid allocating personnel reductions to the Defense Intelligence Agency, prior to repeal by Pub. L. 100–456, div. A, title XII, §1213, Sept. 29, 1988, 102 Stat. 2053.

REDUCTION IN PERSONNEL ASSIGNED TO MANAGEMENT HEADQUARTERS ACTIVITIES AND CERTAIN OTHER ACTIVITIES

Section 601 of Pub. L. 99–433, as amended by Pub. L. 100–180, div. A, title XIII, §1312, Dec. 4, 1987, 101 Stat. 1174; Pub. L. 101–189, div. A, title XVI, §1622(h)(2), Nov. 29, 1989, 103 Stat. 1606, provided that:

''(a) MILITARY DEPARTMENTS AND COMBATANT COMMANDS.—(1) The total number of members of the Armed Forces and civilian employees assigned or detailed to duty described in paragraph (2) may not exceed the number equal to 90 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(2) Duty referred to in paragraph (1) is permanent duty in the military departments and in the unified and specified combatant commands to perform management headquarters activities or management headquarters support activities.

''(3) In computing and implementing the limitation in paragraph (1), the Secretary of Defense shall exclude members and employees who are assigned or detailed to permanent duty to perform management headquarters activities or management headquarters support activities in the following:

''(A) The Office of the Secretary of the Army and the Army Staff.

''(B) The Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.

''(C) The Office of the Secretary of the Air Force and the Air Staff.

''(D) The immediate headquarters staff of the commander of each unified or specified combatant command.

''(4) If the Secretary of Defense applies any reduction in personnel required by the limitation in paragraph (1) to a unified or specified combatant command, the commander of that command, after consulting with his directly subordinate commanders, shall determine the manner in which the reduction shall be accomplished.

''(b) DEFENSE AGENCIES AND DOD FIELD ACTIVITIES.—(1)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the management headquarters activities and management headquarters support activities in the Defense Agencies and Department of Defense Field Activities by a number that is at least 5 percent of the total number of such members and em-

ployees assigned or detailed to such duty on September 30, 1986.

''(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 10 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

''(C) If the number of members and employees reduced under subparagraph (A) or (B) is in excess of the reduction required to be made by that subparagraph, such excess number may be applied to the number required to be reduced under paragraph (2).

''(2)(A) Not later than September 30, 1988, the Secretary of Defense shall reduce the total number of members of the Armed Forces and civilian employees assigned or detailed to permanent duty in the Defense Agencies and Department of Defense Field Activities, other than members and employees assigned or detailed to duty in management headquarters activities or management headquarters support activities, by a number that is at least 5 percent of the total number of such members and employees assigned or detailed to such duty on September 30, 1986.

''(B) Not later than September 30, 1989, the Secretary shall carry out an additional reduction in such members and employees of not less than 5 percent of the number of such members and employees assigned or detailed to such duty on September 30, 1988.

''(3) If after the date of the enactment of this Act [Oct. 1, 1986] and before October 1, 1988, the total number of members and employees described in paragraph (1)(A) or (2)(A) is reduced by a number that is in excess of the number required to be reduced under that paragraph, the Secretary may, in meeting the additional reduction required by paragraph (1)(B) or (2)(B), as the case may be, offset such additional reduction by that excess number.

''(4) The National Security Agency shall be excluded in computing and making reductions under this subsection.

''(c) PROHIBITION AGAINST CERTAIN ACTIONS TO ACHIEVE REDUCTIONS.—Compliance with the limitations and reductions required by subsections (a) and (b) may not be accomplished by recategorizing or redefining duties, functions, offices, or organizations.

''(d) ALLOCATIONS TO BE MADE BY SECRETARY OF DEFENSE.—(1) The Secretary of Defense shall allocate the reductions required to comply with the limitations in subsections (a) and (b) in a manner consistent with the efficient operation of the Department of Defense. If the Secretary determines that national security requirements dictate that a reduction (or any portion of a reduction) required by subsection (b) not be made from the Defense Agencies and Department of Defense Field Activities, the Secretary may allocate such reduction (or any portion of such reduction) (A) to personnel assigned or detailed to permanent duty in management headquarters activities or management headquarters support activities, or (B) to personnel assigned or detailed to permanent duty in other than management headquarters activities or management headquarters support activities, as the case may be, of the Department of Defense other than the Defense Agencies and Department of Defense Field Activities.

''(2) Among the actions that are taken to carry out the reductions required by subsections (a) and (b), the Secretary shall consolidate and eliminate unnecessary management headquarters activities and management headquarters support activities.

''(e) TOTAL REDUCTIONS.—Reductions in personnel required to be made under this section are in addition to any reductions required to be made under other provisions of this Act or any amendment made by this Act [see Short Title of 1986 Amendment note set out under section 111 of the title].

''(f) EXCLUSION.—In computing and making reductions under this section, there shall be excluded not more than 1,600 personnel transferred during fiscal year 1988 from the General Services Administration to the Department of Defense for the purpose of having the Department of Defense assume responsibility for the management, operation, and administration of certain real property under the jurisdiction of that Department.

''(g) DEFINITIONS.—For purposes of this section, the terms 'management headquarters activities' and 'management headquarters support activities' have the meanings given those terms in Department of Defense Directive 5100.73, entitled 'Department of Defense Management Headquarters and Headquarters Support Activities' and dated January 7, 1985.''

§ 195. Defense Automated Printing Service: applicability of Federal printing requirements

The Defense Automated Printing Service shall comply fully with the requirements of section 501 of title 44 relating to the production and procurement of printing, binding, and blank-book work.

(Added Pub. L. 105–85, div. A, title III, § 383(a), Nov. 18, 1997, 111 Stat. 1711.)

AUTHORITY TO PROCURE SERVICES FROM GOVERNMENT PRINTING OFFICE

Section 387(c) of Pub. L. 105–85 provided that: ''Consistent with section 501 of title 44, United States Code, the Secretary of a military department or head of a Defense Agency may contract directly with the Government Printing Office for printing and duplication services otherwise available through the Defense Automated Printing Service.''

§ 196. Department of Defense Test Resource Management Center

(a) ESTABLISHMENT AS DEPARTMENT OF DEFENSE FIELD ACTIVITY.—The Secretary of Defense shall establish within the Department of Defense under section 191 of this title a Department of Defense Test Resource Management Center (hereinafter in this section referred to as the ''Center''). The Secretary shall designate the Center as a Department of Defense Field Activity.

(b) DIRECTOR AND DEPUTY DIRECTOR.—(1) At the head of the Center shall be a Director, selected by the Secretary from among commissioned officers of the armed forces on active duty. The Director, while so serving, holds the grade of lieutenant general or, in the case of an officer of the Navy, vice admiral.

(2) There shall be a Deputy Director of the Center, selected by the Secretary from among senior civilian officers and employees of the Department of Defense who have substantial experience in the field of test and evaluation. The Deputy Director shall act for, and exercise the powers of, the Director when the Director is disabled or the position of Director is vacant.

(c) DUTIES OF DIRECTOR.—The Director shall have the following duties:

(1) To review and provide oversight of proposed Department of Defense budgets and expenditures for—

(A) the test and evaluation facilities and resources of the Major Range and Test Facility Base of the Department of Defense; and

(B) all other test and evaluation facilities and resources within and outside of the Department of Defense.

(2) To complete and maintain the strategic plan required by subsection (d).

(3) To review proposed budgets under subsection (e) and submit reports and certifications required by such subsection.

(4) To administer the Central Test and Evaluation Investment Program and the program of the Department of Defense for test and evaluation science and technology.

(d) STRATEGIC PLAN FOR DEPARTMENT OF DEFENSE TEST AND EVALUATION RESOURCES.—(1) Not less often than once every two fiscal years, the Director, in coordination with the Director of Operational Test and Evaluation, the Secretaries of the military departments, and the heads of Defense Agencies with test and evaluation responsibilities, shall complete a strategic plan reflecting the needs of the Department of Defense with respect to test and evaluation facilities and resources. Each such strategic plan shall cover the period of ten fiscal years beginning with the fiscal year in which the plan is submitted under paragraph (3). The strategic plan shall be based on a comprehensive review of the test and evaluation requirements of the Department and the adequacy of the test and evaluation facilities and resources of the Department to meet those requirements.

(2) The strategic plan shall include the following:

(A) An assessment of the test and evaluation requirements of the Department for the period covered by the plan.

(B) An identification of performance measures associated with the successful achievement of test and evaluation objectives for the period covered by the plan.

(C) An assessment of the test and evaluation facilities and resources that will be needed to meet such requirements and satisfy such performance measures.

(D) An assessment of the current state of the test and evaluation facilities and resources of the Department.

(E) An itemization of acquisitions, upgrades, and improvements necessary to ensure that the test and evaluation facilities and resources of the Department are adequate to meet such requirements and satisfy such performance measures.

(F) An assessment of the budgetary resources necessary to implement such acquisitions, upgrades, and improvements.

(3) Upon completing a strategic plan under paragraph (1), the Director shall submit to the Secretary of Defense a report on that plan. The report shall include the plan and a description of the review on which the plan is based.

(4) Not later than 60 days after the date on which the report is submitted under paragraph (3), the Secretary of Defense shall transmit to the Committee on Armed Services and Committee on Appropriations of the Senate and the Committee on Armed Services and Committee on Appropriations of the House of Representatives the report, together with any comments with respect to the report that the Secretary considers appropriate.

(e) CERTIFICATION OF BUDGETS.—(1) The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall require that the Secretary of each military department, the Director of Operational Test and Evaluation, and the head of each Defense Agency with test and evaluation responsibilities transmit such Secretary's, Director's, or head's proposed budget for test and evaluation activities for a fiscal year to the Director of the Center for review under paragraph (2) before submitting such proposed budget to the Under Secretary of Defense (Comptroller).

(2)(A) The Director of the Center shall review each proposed budget transmitted under paragraph (1) and shall, not later than January 31 of the year preceding the fiscal year for which such budgets are proposed, submit to the Secretary of Defense a report containing the comments of the Director with respect to all such proposed budgets, together with the certification of the Director as to whether such proposed budgets are adequate.

(B) The Director shall also submit, together with such report and such certification, an additional certification as to whether such proposed budgets provide balanced support for such strategic plan.

(3) The Secretary of Defense shall, not later than March 31 of the year preceding the fiscal year for which such budgets are proposed, submit to Congress a report on those proposed budgets which the Director has not certified under paragraph (2)(A) to be adequate. The report shall include the following matters:

(A) A discussion of the actions that the Secretary proposes to take, together with any recommended legislation that the Secretary considers appropriate, to address the inadequacy of the proposed budgets.

(B) Any additional comments that the Secretary considers appropriate regarding the inadequacy of the proposed budgets.

(f) SUPERVISION OF DIRECTOR BY UNDER SECRETARY.—The Director of the Center shall be subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics. The Director shall report directly to the Under Secretary, without the interposition of any other supervising official.

(g) ADMINISTRATIVE SUPPORT OF CENTER.—The Secretary of Defense shall provide the Director with administrative support adequate for carrying out the Director's responsibilities under this section. The Secretary shall provide the support out of the headquarters activities of the Department or any other activities that the Secretary considers appropriate.

(h) DEFINITION.—In this section, the term ''Major Range and Test Facility Base'' means the test and evaluation facilities and resources that are designated by the Director of Operational Test and Evaluation as facilities and resources comprising the Major Range and Test Facility Base.

(Added Pub. L. 107–314, div. A, title II, § 231(a)(1), Dec. 2, 2002, 116 Stat. 2487.)

ADMINISTRATION OF PROGRAMS TO BEGIN AFTER FIRST STRATEGIC PLAN

Pub. L. 107–314, div. A, title II, § 231(b), (c), Dec. 2, 2002, 116 Stat. 2489, provided that:

''(b) FIRST STRATEGIC PLAN.—The first strategic plan required to be completed under subsection (d)(1) of section 196 of title 10, United States Code (as added by sub-

section (a)), shall be completed not later than six months after the date of the enactment of this Act [Dec. 2, 2002].

''(c) ADMINISTRATION OF CTEIP AND DOD T&E S&T PROGRAMS.—The duty of the Director of the Department of Defense Test Resource Management Center to administer the programs specified in subsection (c)(4) of section 196 of title 10, United States Code (as added by subsection (a)), shall take effect, and such programs shall be placed under control of such Director, upon the beginning of the first fiscal year that begins after the report on the first strategic plan referred to subsection (b) is transmitted to the congressional committees required by subsection (d)(4) of such section 196.''

SUBCHAPTER II—MISCELLANEOUS DEFENSE AGENCY MATTERS

Sec.
201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance.
[202. Repealed.]
203. Director of Missile Defense Agency.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title II, §225(b)(1)(B)(ii), Dec. 2, 2002, 116 Stat. 2486, substituted ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization'' in item 203.

1997—Pub. L. 105–107, title V, §503(d)(1), Nov. 20, 1997, 111 Stat. 2262, struck out item 202 ''Unauthorized use of Defense Intelligence Agency name, initials, or seal''.

Pub. L. 105–85, div. A, title II, §235(b), Nov. 18, 1997, 111 Stat. 1665, added item 203.

1996—Pub. L. 104–201, div. A, title XI, §1103(b), Sept. 23, 1996, 110 Stat. 2677, substituted ''Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance'' for ''Consultation regarding appointment of certain intelligence officials'' in item 201.

1991—Pub. L. 102–190, div. A, title IX, §922(b), Dec. 5, 1991, 105 Stat. 1453, added item 201 and redesignated former item 201 as 202.

1986—Pub. L. 99–433, title III, §301(a)(2), Oct. 1, 1986, 100 Stat. 1022, added subchapter heading and analysis of sections for subchapter II.

§201. Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance

(a) CONSULTATION REGARDING APPOINTMENT.—Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.

(b) CONCURRENCE IN APPOINTMENT.—(1) Before submitting a recommendation to the President regarding the appointment of an individual to a position referred to in paragraph (2), the Secretary of Defense shall seek the concurrence of the Director of Central Intelligence in the recommendation. If the Director does not concur in the recommendation, the Secretary may make the recommendation to the President without the Director's concurrence, but shall include in the recommendation a statement that the Director does not concur in the recommendation.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Imagery and Mapping Agency.

(c) PERFORMANCE EVALUATIONS.—(1) The Director of Central Intelligence shall provide annually to the Secretary of Defense, for the Secretary's consideration, an evaluation of the performance of the individuals holding the positions referred to in paragraph (2) in fulfilling their respective responsibilities with regard to the National Foreign Intelligence Program.

(2) The positions referred to in paragraph (1) are the following:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Imagery and Mapping Agency.

(Added Pub. L. 102–190, div. A, title IX, §922(a)(2), Dec. 5, 1991, 105 Stat. 1453; amended Pub. L. 104–201, div. A, title XI, §1103(a), Sept. 23, 1996, 110 Stat. 2676.)

PRIOR PROVISIONS

A prior section 201 was renumbered section 202 of this title and subsequently repealed.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''Certain intelligence officials: consultation and concurrence regarding appointments; evaluation of performance'' for ''Consultation regarding appointment of certain intelligence officials'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Before submitting a recommendation to the President regarding the appointment of an individual to the position of Director of the Defense Intelligence Agency or Director of the National Security Agency, the Secretary of Defense shall consult with the Director of Central Intelligence regarding the recommendation.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

SIMILAR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section are contained in section 403–6(a) and (b) of Title 50, War and National Defense.

DEFENSE INTELLIGENCE AGENCY

Section 921 of Pub. L. 102–190, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(1), Oct. 5, 1994, 108 Stat. 2858, provided that:

''(a) SUPERVISION.—Subject to the authority, direction, and control of the Secretary of Defense, the Assistant Secretary of Defense referred to in section 138(b)(3) of title 10, United States Code, may during the period beginning on the date of the enactment of this Act [Dec. 5, 1991] and ending on January 1, 1993, be assigned supervision of the Defense Intelligence Agency but, notwithstanding any other provision of law, may not be assigned day-to-day operational control over the Defense Intelligence Agency.

''(b) RESPONSIBILITIES OF DIRECTOR.—Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the Director of the Defense Intelligence Agency during the period beginning on the date of the enactment of this Act [Dec. 5, 1991] and ending on January 1, 1993, shall include the following:

''(1) Providing intelligence and intelligence support to—

''(A) the Secretary of Defense;

''(B) the Director of Central Intelligence;

''(C) the Chairman of the Joint Chiefs of Staff; and

''(D) the commanders of the unified and specified combatant commands.

''(2) Managing the General Defense Intelligence Program, including—

''(A) preparing, reviewing, and submitting to the Secretary of Defense and the Director of Central Intelligence the budget proposal for that program for any fiscal year; and

''(B) supervising the overall execution of the budgets and programs of all functional areas within the General Defense Intelligence Program, with emphasis on science and technology activities, human intelligence activities, and imagery activities.

''(3) Ensuring that the roles and authorities of the functional managers within the Defense Intelligence Agency are strong enough to ensure that those managers have a significant role in the preparation, review, approval, and supervision of the overall execution of the budgets and programs within their areas of responsibility.

The provision of substantive intelligence by the Director to the officers named in paragraph (1) shall not be subject to prior screening by any other official.

''(c) TRANSFER OF CERTAIN ACTIVITIES TO DIA.—The Secretary of the Army and the Director of the Defense Intelligence Agency shall take all required actions, including transfer of all necessary resources, in order to transfer the Armed Forces Medical Intelligence Center and the Missile and Space Intelligence Center from the Department of the Army to the control of the Defense Intelligence Agency. Transfers pursuant to the preceding sentence shall be completed not later than January 1, 1992.''

JOINT INTELLIGENCE CENTER

Section 923 of Pub. L. 102–190 provided that:

''(a) REQUIREMENT FOR CENTER.—The Secretary of Defense shall direct the consolidation of existing single-service current intelligence centers that are located within the District of Columbia or its vicinity into a joint intelligence center that is responsible for preparing current intelligence assessments (including indications and warning). The joint intelligence center shall be located within the District of Columbia or its vicinity. As appropriate for the support of military operations, the joint intelligence center shall provide for and manage the collection and analysis of intelligence.

''(b) MANAGEMENT.—The center shall be managed by the Defense Intelligence Agency in its capacity as the intelligence staff activity of the Chairman of the Joint Chiefs of Staff.

''(c) RESPONSIVENESS TO COMMAND AUTHORITIES.—The Secretary shall ensure that the center is fully responsive to the intelligence needs of the Secretary, the Chairman of the Joint Chiefs of Staff, and the commanders of the combatant commands.''

[§ 202. Repealed. Pub. L. 105–107, title V, § 503(c), Nov. 20, 1997, 111 Stat. 2262]

Section, added Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1145, § 191; amended Pub. L. 98–525, title XIV, § 1405(6), Oct. 19, 1984, 98 Stat. 2622; renumbered § 201, Pub. L. 99–433, title III, § 301(a)(1), Oct. 1, 1986, 100 Stat. 1019; renumbered § 202, Pub. L. 102–190, div. A, title IX, § 922(a)(1), Dec. 5, 1991, 105 Stat. 1453; Pub. L. 105–107, title V, § 503(b), Nov. 20, 1997, 111 Stat. 2262, related to unauthorized use of Defense Intelligence Agency name, initials, or seal, after amendment by Pub. L. 105–107, which transferred subsec. (b) to end of section 425.

§ 203. Director of Missile Defense Agency

If an officer of the armed forces on active duty is appointed to the position of Director of the Missile Defense Agency, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general or general or, in the case of an officer of the Navy, vice admiral or admiral.

(Added Pub. L. 105–85, div. A, title II, § 235(a), Nov. 18, 1997, 111 Stat. 1665; amended Pub. L. 107–314, div. A, title II, § 225(b)(1)(A), (B)(i), Dec. 2, 2002, 116 Stat. 2486.)

AMENDMENTS

2002—Pub. L. 107–314 substituted ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization'' in section catchline and text.

CHAPTER 9—DEFENSE BUDGET MATTERS

Sec.
221. Future-years defense program: submission to Congress; consistency in budgeting.
222. Future-years mission budget.
223. Ballistic missile defense programs: program elements.
224. Ballistic missile defense programs: display of amounts for research, development, test, and evaluation.
226. Scoring of outlays.
[227. Repealed.]
228. Monthly reports on allocation of funds within operation and maintenance budget sub-activities.
229. Programs for combating terrorism: display of budget information.
[230. Repealed.]
231. Budgeting for construction of naval vessels: annual plan and certification.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §§ 1022(b), 1041(a)(2)(B), Dec. 2, 2002, 116 Stat. 2640, 2645, struck out item 230 ''Amounts for declassification of records'' and added item 231.

2001—Pub. L. 107–107, div. A, title II, § 231(b)(2), Dec. 28, 2001, 115 Stat. 1037, substituted ''research, development, test, and evaluation'' for ''procurement'' in item 224.

1999—Pub. L. 106–65, div. A, title IX, § 932(b)(2), title X, § 1041(a)(2), Oct. 5, 1999, 113 Stat. 728, 758, added items 229 and 230.

1998—Pub. L. 105–261, div. A, title II, § 235(a)(2), Oct. 17, 1998, 112 Stat. 1953, added item 223.

1997—Pub. L. 105–85, div. A, title II, § 232(a)(2), title III, § 321(a)(2), Nov. 18, 1997, 111 Stat. 1663, 1673, added items 224 and 228.

1996—Pub. L. 104–106, div. A, title X, § 1061(f)(2), Feb. 10, 1996, 110 Stat. 443, struck out item 227 ''Recruiting costs''.

1993—Pub. L. 103–160, div. A, title III, § 374(b), Nov. 30, 1993, 107 Stat. 1637, added item 227.

1992—Pub. L. 102–484, div. A, title X, § 1002(d)(2), Oct. 23, 1992, 106 Stat. 2481, added items 221 and 222 and redesignated former item 221 as 226.

1991—Pub. L. 102–190, div. A, title X, § 1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, substituted ''DEFENSE BUDGET MATTERS'' for ''REGULAR COMPONENTS'' in chapter heading and added item 221.

§ 221. Future-years defense program: submission to Congress; consistency in budgeting

(a) The Secretary of Defense shall submit to Congress each year, at or about the time that the President's budget is submitted to Congress that year under section 1105(a) of title 31, a future-years defense program (including associated annexes) reflecting the estimated expendi-

tures and proposed appropriations included in that budget. Any such future-years defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.

(b)(1) The Secretary of Defense shall ensure that amounts described in subparagraph (A) of paragraph (2) for any fiscal year are consistent with amounts described in subparagraph (B) of paragraph (2) for that fiscal year.

(2) Amounts referred to in paragraph (1) are the following:

(A) The amounts specified in program and budget information submitted to Congress by the Secretary in support of expenditure estimates and proposed appropriations in the budget submitted to Congress by the President under section 1105(a) of title 31 for any fiscal year, as shown in the future-years defense program submitted pursuant to subsection (a).

(B) The total amounts of estimated expenditures and proposed appropriations necessary to support the programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress under that section for any fiscal year.

(c) Nothing in this section shall be construed to prohibit the inclusion in the future-years defense program of amounts for management contingencies, subject to the requirements of subsection (b).

(Added Pub. L. 101–189, div. A, title XVI, §1602(a)(1), Nov. 29, 1989, 103 Stat. 1596, §114a; amended Pub. L. 101–510, div. A, title XIV, §1402(a)(1)–(3)(A), Nov. 5, 1990, 104 Stat. 1674; renumbered §221 and amended Pub. L. 102–484, div. A, title X, §1002(c), Oct. 23, 1992, 106 Stat. 2480.)

PRIOR PROVISIONS

A prior section 221 was renumbered section 226 of this title.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 114a of this title as this section, amended section catchline generally, and substituted ''future-years'' for ''multiyear'' wherever appearing in text.

1990—Pub. L. 101–510, §1402(a)(3)(A), which directed amendment of section catchline by substituting ''Multiyear'' for ''Five-year'', was executed by substituting ''Multiyear'' for ''Five-Year'' as the probable intent of Congress.

Subsec. (a). Pub. L. 101–510, §1402(a)(1), (2), substituted ''a multiyear'' for ''the current five-year'' and inserted at end ''Any such multiyear defense program shall cover the fiscal year with respect to which the budget is submitted and at least the four succeeding fiscal years.''

Subsecs. (b)(2)(A), (c). Pub. L. 101–510, §1402(a)(2)(A), substituted ''multiyear'' for ''five-year''.

ANNUAL SUBMISSION OF INFORMATION REGARDING INFORMATION TECHNOLOGY CAPITAL ASSETS

Pub. L. 107–314, div. A, title III, §351, Dec. 2, 2002, 116 Stat. 2516, provided that:

''(a) REQUIREMENT TO SUBMIT INFORMATION.—Not later than 30 days after the date on which the President submits the budget for a fiscal year to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress information on the following information technology capital assets, including information technology capital assets that are a national security system, of the Department of Defense:

''(1) Information technology capital assets not covered by paragraph (2) that have an estimated total cost for the fiscal year for which the budget is submitted in excess of $10,000,000.

''(2) Information technology capital assets that have an estimated total cost for the fiscal year for which the budget is submitted in excess of $30,000,000 and an estimated total life cycle cost (as computed in fiscal year 2003 constant dollars) in excess of $120,000,000.

''(b) REQUIRED INFORMATION FOR LOW-THRESHOLD ASSETS.—With respect to each information technology capital asset described in subsection (a)(1), the Secretary of Defense shall include the following information:

''(1) The name of the information technology capital asset.

''(2) The function of the asset.

''(3) The total cost of the asset for the fiscal year for which the budget is submitted, the current fiscal year, and the preceding fiscal year.

''(c) REQUIRED INFORMATION FOR HIGH-THRESHOLD ASSETS.—With respect to each information technology capital asset described in subsection (a)(2), the Secretary of Defense shall include the following information:

''(1) The name and identifying acronym of the information technology capital asset.

''(2) The date of initiation of the asset.

''(3) A summary of performance measurements and metrics.

''(4) The total amount of funds, by appropriation account, appropriated and obligated for prior fiscal years, with a specific breakout of such information for the two preceding fiscal years.

''(5) The funds, by appropriation account, requested for the next fiscal year.

''(6) The name of each prime contractor and the work to be performed.

''(7) Program management and management oversight information.

''(8) The original baseline cost and most current baseline information.

''(9) Information regarding compliance with the provisions of law enacted or amended by the Government Performance Results Act of 1993 (Public Law 103–62; 107 Stat. 285) [see Short Title of 1993 Amendment note under 31 U.S.C. 1101] and the Clinger–Cohen Act of 1996 (divisions D and E of Public Law 104–106; 110 Stat. 642) [§§5001–5703 and §§4001–4402, see Tables for classification].

''(d) TOTAL COST DETERMINATIONS.—In estimating the total cost for a fiscal year or total life cycle cost of an information technology capital asset, the Secretary of Defense shall consider research and development costs, procurement costs, and operation and maintenance costs related to the information technology capital asset.

''(e) DEFINITIONS.—In this section:

''(1) The term 'information technology' has the meaning given that term in section 11101 of title 40, United States Code.

''(2) The term 'capital asset' has the meaning given that term in Office of Management and Budget Circular A–11.

''(3) The term 'national security system' has the meaning given that term in section 11103 of title 40, United States Code.''

DEPARTMENT OF DEFENSE REQUESTS FOR FUNDS FOR ENVIRONMENTAL RESTORATION AT BRAC SITES IN FUTURE FISCAL YEARS

Pub. L. 107–249, §131, Oct. 23, 2002, 116 Stat. 1586, provided that:

''(a) REQUESTS FOR FUNDS FOR ENVIRONMENTAL RESTORATION AT BRAC SITES IN FUTURE FISCAL YEARS.—In the budget justification materials submitted to Congress in support of the Department of Defense budget

for any fiscal year after fiscal year 2003, the amount requested for environmental restoration, waste management, and environmental compliance activities in such fiscal year with respect to military installations approved for closure or realignment under the base closure laws shall accurately reflect the anticipated cost of such activities in such fiscal year.

''(b) BASE CLOSURE LAWS DEFINED.—In this section, the term 'base closure laws' means the following:

''(1) Section 2687 of title 10, United States Code.

''(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(3) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 107–64, §131, Nov. 5, 2001, 115 Stat. 482.

BUDGET JUSTIFICATION DOCUMENTS FOR COSTS OF ARMED FORCES' PARTICIPATION IN CONTINGENCY OPERATIONS

Pub. L. 107–248, title VIII, §8132, Oct. 23, 2002, 116 Stat. 1568, provided that: ''The budget of the President for fiscal year 2004 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include separate budget justification documents for costs of United States Armed Forces' participation in contingency operations for the Military Personnel accounts, the Overseas Contingency Operations Transfer Fund, the Operation and Maintenance accounts, and the Procurement accounts: *Provided*, That these budget justification documents shall include a description of the funding requested for each anticipated contingency operation, for each military service, to include active duty and Guard and Reserve components, and for each appropriation account: *Provided further*, That these documents shall include estimated costs for each element of expense or object class, a reconciliation of increases and decreases for ongoing contingency operations, and programmatic data including, but not limited to troop strength for each active duty and Guard and Reserve component, and estimates of the major weapons systems deployed in support of each contingency: *Provided further*, That these documents shall include budget exhibits OP–5 and OP–32, as defined in the Department of Defense Financial Management Regulation, for the Overseas Contingency Operations Transfer Fund for fiscal years 2002 and 2003.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8097, Jan. 10, 2002, 115 Stat. 2268.

Pub. L. 106–259, title VIII, §8097, Aug. 9, 2000, 114 Stat. 695.

Pub. L. 106–79, title VIII, §8110, Oct. 25, 1999, 113 Stat. 1257.

BUDGET SUBMISSIONS ON ACTIVE AND RESERVE MILITARY PERSONNEL ACCOUNTS

Pub. L. 105–262, title VIII, §8093, Oct. 17, 1998, 112 Stat. 2319, provided that: ''At the time the President submits his budget for fiscal year 2000 and any fiscal year thereafter, the Department of Defense shall transmit to the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate] a budget justification document for the active and reserve Military Personnel accounts, to be known as the 'M–1', which shall identify, at the budget activity, activity group, and subactivity group level, the amounts requested by the President to be appropriated to the Department of Defense for military personnel in any budget request, or amended budget request, for that fiscal year.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105–56, title VIII, §8104, Oct. 8, 1997, 111 Stat. 1243.

MODIFICATION OF BUDGET DATA EXHIBITS

Pub. L. 105–85, div. A, title III, §324(c), Nov. 18, 1997, 111 Stat. 1678, provided that: ''The Under Secretary of Defense (Comptroller) shall ensure that aircraft budget data exhibits of the Department of Defense that are submitted to Congress display total numbers of active aircraft where numbers of primary aircraft or primary authorized aircraft are displayed in those exhibits.''

INCLUSION OF AIR FORCE DEPOT MAINTENANCE AS OPERATION AND MAINTENANCE BUDGET LINE ITEMS

Pub. L. 105–85, div. A, title III, §327, Nov. 18, 1997, 111 Stat. 1679, provided that: ''For fiscal year 1999 and each fiscal year thereafter, Air Force depot-level maintenance of materiel shall be displayed as one or more separate line items under each subactivity within the authorization request for operation and maintenance, Air Force, in the proposed budget for that fiscal year submitted to Congress pursuant to section 1105 of title 31, United States Code.''

IDENTIFICATION IN PRESIDENT'S BUDGET OF NATO COSTS

Pub. L. 106–79, title VIII, §8091, Oct. 25, 1999, 113 Stat. 1253, provided that: ''The budget of the President for fiscal year 2001 submitted to the Congress pursuant to section 1105 of title 31, United States Code, and each annual budget request thereafter, shall include budget activity groups (known as 'subactivities') in all appropriations accounts provided in this Act [see Tables for classification], as may be necessary, to separately identify all costs incurred by the Department of Defense to support the North Atlantic Treaty Organization and all Partnership For Peace programs and initiatives. The budget justification materials submitted to the Congress in support of the budget of the Department of Defense for fiscal year 2001, and subsequent fiscal years, shall provide complete, detailed estimates for all such costs.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 105–262, title VIII, §8095, Oct. 17, 1998, 112 Stat. 2319.

Pub. L. 105–56, title VIII, §8116, Oct. 8, 1997, 111 Stat. 1245.

PROGRAM ELEMENTS FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 104–106, div. A, title II, §251, Feb. 10, 1996, 110 Stat. 233, which required that in budget justification materials submitted to Congress in support of Department of Defense budget, the amount requested for activities of the Ballistic Missile Defense Organization be set forth in accordance with specified program elements, was repealed and restated as section 223 of this title by Pub. L. 105–261, div. A, title II, §235(a)(1), (b), Oct. 17, 1998, 112 Stat. 1953.

BUDGET SUBMISSIONS ON SALARIES AND EXPENSES RELATED TO ADMINISTRATIVE ACTIVITIES

Pub. L. 107–248, title VIII, §8036, Oct. 23, 2002, 116 Stat. 1544, provided that: ''The President shall include with each budget for a fiscal year submitted to the Congress under section 1105 of title 31, United States Code, materials that shall identify clearly and separately the amounts requested in the budget for appropriation for that fiscal year for salaries and expenses related to administrative activities of the Department of Defense, the military departments, and the defense agencies.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8039, Jan. 10, 2002, 115 Stat. 2256.

Pub. L. 106–259, title VIII, §8039, Aug. 9, 2000, 114 Stat. 683.

Pub. L. 106–79, title VIII, §8042, Oct. 25, 1999, 113 Stat. 1240.
Pub. L. 105–262, title VIII, §8042, Oct. 17, 1998, 112 Stat. 2306.
Pub. L. 105–56, title VIII, §8046, Oct. 8, 1997, 111 Stat. 1231.
Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8047], Sept. 30, 1996, 110 Stat. 3009–71, 3009–98.
Pub. L. 104–61, title VIII, §8058, Dec. 1, 1995, 109 Stat. 663.
Pub. L. 103–335, title VIII, §8069, Sept. 30, 1994, 108 Stat. 2635.
Pub. L. 103–139, title VIII, §8082, Nov. 11, 1993, 107 Stat. 1458.
Pub. L. 102–396, title IX, §9132, Oct. 6, 1992, 106 Stat. 1936.

SUBMISSION OF MULTIYEAR DEFENSE PROGRAM

Section 1402(b) of Pub. L. 101–510 provided for limitations on obligation by Secretary of Defense of fiscal year 1991 advance procurement funds if, as of end of 90-day period beginning on date on which President's budget for fiscal year 1992 was submitted to Congress, the Secretary had not submitted to Congress fiscal year 1992 multiyear defense program.

MISSION ORIENTED PRESENTATION OF DEPARTMENT OF DEFENSE MATTERS IN BUDGET

Section 1404 of Pub. L. 101–510 directed President to submit with budget submitted to Congress each year of programs of Department of Defense, a budget that organizes programs within major functional category 050 (National Defense) on basis of major roles and missions of Department of Defense, prior to repeal by Pub. L. 102–484, div. A, title X, §1002(b), Oct. 23, 1992, 106 Stat. 2480. See section 222 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 113, 153, 222, 224, 231, 2461a, 2501, 10543 of this title; title 6 section 454; title 50 section 404b.

§222. Future-years mission budget

(a) FUTURE-YEARS MISSION BUDGET.—The Secretary of Defense shall submit to Congress for each fiscal year a future-years mission budget for the military programs of the Department of Defense. That budget shall be submitted for any fiscal year not later than 60 days after the date on which the President's budget for that fiscal year is submitted to Congress pursuant to section 1105 of title 31.

(b) CONSISTENCY WITH FUTURE-YEARS DEFENSE PROGRAM.—The future-years mission budget shall be consistent with the future-years defense program required under section 221 of this title. In the future-years mission budget, the military programs of the Department of Defense shall be organized on the basis of major roles, missions, or forces of the Department of Defense.

(c) RELATIONSHIP TO OTHER DEFENSE BUDGET FORMATS.—The requirement in subsection (a) is in addition to the requirements in any other provision of law regarding the format for the presentation regarding military programs of the Department of Defense in the budget submitted pursuant to section 1105 of title 31 for any fiscal year.

(Added Pub. L. 102–484, div. A, title X, §1002(a)(2), Oct. 23, 1992, 106 Stat. 2480; amended Pub. L. 103–337, div. A, title X, §1004, Oct. 5, 1994, 108 Stat. 2834.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title XIV, §1404, Nov. 5, 1990, 104 Stat. 1675, which was set out as a note under section 114a [now 221] of this title, prior to repeal by Pub. L. 102–484, §1002(b).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''not later than 60 days after the date on which'' for ''at the same time that''.

§223. Ballistic missile defense programs: program elements

(a) PROGRAM ELEMENTS SPECIFIED.—In the budget justification materials submitted to Congress in support of the Department of Defense budget for any fiscal year (as submitted with the budget of the President under section 1105(a) of title 31), the amount requested for activities of the Missile Defense Agency shall be set forth in accordance with program elements governing functional areas as follows:

(1) Technology.
(2) Ballistic Missile Defense System.
(3) Terminal Defense Segment.
(4) Midcourse Defense Segment.
(5) Boost Defense Segment.
(6) Sensors Segment.

(b) SEPARATE PROGRAM ELEMENTS FOR PROGRAMS ENTERING ENGINEERING AND MANUFACTURING DEVELOPMENT.—(1) The Secretary of Defense shall ensure that each ballistic missile defense program that enters engineering and manufacturing development is assigned a separate, dedicated program element.

(2) In this subsection, the term ''engineering and manufacturing development'' means the development phase whose primary objectives are to—

(A) translate the most promising design approach into a stable, interoperable, producible, supportable, and cost-effective design;
(B) validate the manufacturing or production process; and
(C) demonstrate system capabilities through testing.

(c) MANAGEMENT AND SUPPORT.—The amount requested for each program element specified in subsection (a) shall include requests for the amounts necessary for the management and support of the programs, projects, and activities contained in that program element.

(Added Pub. L. 105–261, div. A, title II, §235(a)(1), Oct. 17, 1998, 112 Stat. 1953; amended Pub. L. 107–107, div. A, title II, §232(a), (b), Dec. 28, 2001, 115 Stat. 1037; Pub. L. 107–314, div. A, title II, §225(b)(1)(A), Dec. 2, 2002, 116 Stat. 2486.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 104–106, div. A, title II, §251, Feb. 10, 1996, 110 Stat. 233, which was set out as a note under section 221 of this title, prior to repeal by Pub. L. 105–261, §235(b).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization''.

2001—Subsec. (a). Pub. L. 107–107, §232(a), substituted ''in accordance with program elements governing functional areas as follows:'' for ''in accordance with the following program elements:'' in introductory provi-

sions, added pars. (1) to (6), and struck out former pars. (1) to (12) which read as follows:

''(1) The Patriot system.

''(2) The Navy Area system.

''(3) The Theater High-Altitude Area Defense system.

''(4) The Navy Theater Wide system.

''(5) The Medium Extended Air Defense System.

''(6) Joint Theater Missile Defense.

''(7) National Missile Defense.

''(8) Support Technologies.

''(9) Family of Systems Engineering and Integration.

''(10) Ballistic Missile Defense Technical Operations.

''(11) Threat and Countermeasures.

''(12) International Cooperative Programs.''

Subsec. (b). Pub. L. 107–107, § 232(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Amounts requested for Theater Missile Defense and National Missile Defense major defense acquisition programs shall be specified in individual, dedicated program elements, and amounts appropriated for those programs shall be available only for Ballistic Missile Defense activities.''

REFERENCES TO NEW NAME FOR BALLISTIC MISSILE DEFENSE ORGANIZATION

Pub. L. 107–314, div. A, title II, § 225(a), Dec. 2, 2002, 116 Stat. 2486, provided that: ''Any reference to the Ballistic Missile Defense Organization in any provision of law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Missile Defense Agency.''

COOPERATIVE BALLISTIC MISSILE DEFENSE PROGRAM ELEMENT

Pub. L. 105–85, div. A, title II, § 233, Nov. 18, 1997, 111 Stat. 1663, as amended by Pub. L. 107–314, div. A, title II, § 225(b)(4)(A), Dec. 2, 2002, 116 Stat. 2486, provided that:

''(a) REQUIREMENT FOR NEW PROGRAM ELEMENT.—The Secretary of Defense shall establish a program element for the Missile Defense Agency, to be referred to as the 'Cooperative Ballistic Missile Defense Program', to support technical and analytical cooperative efforts between the United States and other nations that contribute to United States ballistic missile defense capabilities. Except as provided in subsection (b), all international cooperative ballistic missile defense programs of the Department of Defense shall be budgeted and administered through that program element.

''(b) AUTHORITY FOR EXCEPTIONS.—The Secretary of Defense may exclude from the program element established pursuant to subsection (a) any international cooperative ballistic missile defense program of the Department of Defense that after the date of the enactment of this Act [Nov. 18, 1997] is designated by the Secretary of Defense (pursuant to applicable Department of Defense acquisition regulations and policy) to be managed as a separate acquisition program.

''(c) RELATIONSHIP TO OTHER PROGRAM ELEMENTS.—The program element established pursuant to subsection (a) is in addition to the program elements for activities of the Missile Defense Agency required under section 251 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 233; [former] 10 U.S.C. 221 note).''

§ 224. Ballistic missile defense programs: display of amounts for research, development, test, and evaluation

(a) REQUIREMENT.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for research, development, test, and evaluation for a Department of Defense missile defense program described in subsection (b) shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation and, within that account, under the subaccount (or other budget activity level) for the Missile Defense Agency.

(b) TRANSFER CRITERIA.—(1) The Secretary of Defense shall establish criteria for the transfer of responsibility for a ballistic missile defense program from the Director of the Missile Defense Agency to the Secretary of a military department. The criteria established for such a transfer shall, at a minimum, address the following:

(A) The technical maturity of the program.

(B) The availability of facilities for production.

(C) The commitment of the Secretary of the military department concerned to procurement funding for that program, as shown by funding through the future-years defense program and other defense planning documents.

(2) The Secretary shall submit the criteria established, and any modifications to those criteria, to the congressional defense committees.

(c) NOTIFICATION OF TRANSFER.—Before responsibility for a ballistic missile defense program is transferred from the Director of the Missile Defense Agency to the Secretary of a military department, the Secretary of Defense shall submit to the congressional defense committees notice in writing of the Secretary's intent to make that transfer. The Secretary shall include with such notice a certification that the program has met the criteria established under subsection (b) for such a transfer. The transfer may then be carried out after the end of the 60-day period beginning on the date of such notice.

(d) CONFORMING BUDGET AND PLANNING TRANSFERS.—When a ballistic missile defense program is transferred from the Missile Defense Agency to the Secretary of a military department in accordance with this section, the Secretary of Defense shall ensure that all appropriate conforming changes are made to proposed or projected funding allocations in the future-years defense program under section 221 of this title and other Department of Defense program, budget, and planning documents.

(e) FOLLOW-ON RESEARCH, DEVELOPMENT, TEST, AND EVALUATION.—The Secretary of Defense shall ensure that, for each ballistic missile defense program transferred from the Director of the Missile Defense Agency to the Secretary of a military department, responsibility for research, development, test, and evaluation related to system improvements for that program remains with the Director.

(f) CONGRESSIONAL DEFENSE COMMITTEES.—In this section, the term ''congressional defense committees'' means the following:

(1) The Committee on Armed Services and the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 105–85, div. A, title II, § 232(a)(1), Nov. 18, 1997, 111 Stat. 1662; amended Pub. L. 107–107, div. A, title II, § 231(a), (b)(1), Dec. 28, 2001, 115 Stat. 1035, 1036; Pub. L. 107–314, div. A,

title II, §§ 222, 225(b)(1)(A), Dec. 2, 2002, 116 Stat. 2485, 2486.)

AMENDMENTS

2002—Subsecs. (a), (b)(1), (c), (d). Pub. L. 107–314, § 225(b)(1)(A), substituted ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization''.

Subsec. (e). Pub. L. 107–314 substituted ''for each'' for ''before a'', ''transferred'' for ''is transferred'', ''Missile Defense Agency'' for ''Ballistic Missile Defense Organization'', and ''responsibility for research, development, test, and evaluation related to system improvements for that program remains with the Director'' for ''roles and responsibilities for research, development, test, and evaluation related to system improvements for that program are clearly defined''.

2001—Pub. L. 107–107, § 231(b)(1), substituted ''research, development, test, and evaluation'' for ''procurement'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 231(a)(1), substituted ''research, development, test, and evaluation'' for ''procurement'' in two places.

Subsecs. (b) to (f). Pub. L. 107–107, § 231(a)(2), added subsecs. (b) to (f) and struck out former subsecs. (b) and (c) which related to covered programs and core theater ballistic missile defense program, respectively.

§ 226. Scoring of outlays

(a) ANNUAL OMB/CBO REPORT.—Not later than December 15 of each year, the Director of the Office of Management and Budget and the Director of the Congressional Budget Office shall submit to the Speaker of the House of Representatives and the Committees on Armed Services, Appropriations, and the Budget of the Senate a joint report containing an agreed resolution of all differences between—

(1) the technical assumptions to be used by the Office of Management and Budget in preparing estimates with respect to all accounts in major functional category 050 (National Defense) for the budget to be submitted to Congress in the following year pursuant to section 1105 of title 31; and

(2) the technical assumptions to be used by the Congressional Budget Office in preparing estimates with respect to those accounts for that budget.

(b) USE OF AVERAGES.—If the two Directors are unable to agree upon any technical assumption, the report shall reflect the average of the relevant outlay rates or assumptions used by the two offices.

(c) MATTERS TO BE INCLUDED.—The report with respect to a budget shall identify the following:

(1) The agreed first-year and outyear outlay rates for each account in budget function 050 (National Defense) for each fiscal year covered by the budget.

(2) The agreed amount of outlays estimated to occur from unexpended appropriations made for fiscal years before the fiscal year that begins after submission of the report.

(Added Pub. L. 102–190, div. A, title X, § 1002(a)(1), Dec. 5, 1991, 105 Stat. 1455, § 221; renumbered § 226, Pub. L. 102–484, div. A, title X, § 1002(a)(1), Oct. 23, 1992, 106 Stat. 2480; amended Pub. L. 103–160, div. A, title XI, § 1104, Nov. 30, 1993, 107 Stat. 1749.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, § 5(a), Nov. 29, 1989, 103 Stat. 1364, which was set out as a note under section 114a [now 221] of this title, prior to repeal by Pub. L. 102–190, § 1002(b)(1).

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''Not later than December 15 of each year'' for ''Not later than the day on which the budget for any fiscal year is submitted to Congress pursuant to section 1105 of title 31'' in introductory provisions and ''the budget to be submitted to Congress in the following year pursuant to section 1105 of title 31'' for ''that budget'' in par. (1).

1992—Pub. L. 102–484 renumbered section 221 of this title as this section.

SENSE OF CONGRESS REGARDING BUDGET RESOLUTIONS, BUDGET SCOREKEEPING, AND REQUIRED REDUCTIONS IN NATIONAL DEFENSE OUTLAYS

Pub. L. 101–189, § 5, Nov. 29, 1989, 103 Stat. 1364, as amended by Pub. L. 102–190, div. A, title X, § 1002(b), Dec. 5, 1991, 105 Stat. 1455, provided that:

''(a) SENSE OF CONGRESS REGARDING BUDGET RESOLUTIONS AND BUDGET SCOREKEEPING.—It is the sense of Congress that, in order to prevent a recurrence of a mismatch between budget authority and outlays for budget function 050 (National Defense), the technical assumptions contained in the report under section 221 [now 226] of title 10, United States Code, with respect to any budget should be used in the preparation of that budget, the preparation of the budget resolution, and in all scorekeeping in connection with budget function 050 (National Defense).

''(b) SENSE OF CONGRESS REGARDING REQUIRED REDUCTIONS AND OTHER CHANGES IN NATIONAL DEFENSE OUTLAYS IN RELATION TO BUDGET AUTHORITY.—It is the sense of Congress that the outlay level specified for national defense for any fiscal year in the budget resolution for that fiscal year should not require a reduction (or other change) in outlays for national defense for that fiscal year below (or in relation to) the estimated outlays specified for national defense in the budget for such fiscal year (submitted to Congress pursuant to section 1105 of title 31, United States Code) by more than the amount by which such estimated outlays would be reduced (or otherwise changed) if the amount of budget authority provided for in each title of the President's request for budget authority for national defense (as contained in such budget) were reduced (or otherwise changed) by the uniform percentage necessary for the requested budget authority for national defense to be equal to the budget authority specified for national defense in that budget resolution unless the budget resolution is accompanied by a report that describes the difference between the budget authority and outlays for National Defense (function 050) in the President's budget and the budget resolution.''

[§ 227. Repealed. Pub. L. 104–106, div. A, title X, § 1061(f)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 103–160, div. A, title III, § 374(a), Nov. 30, 1993, 107 Stat. 1636, directed Secretary of Defense to include recruiting costs in budget justification documents submitted to Congress each year in connection with submission of budget.

§ 228. Monthly reports on allocation of funds within operation and maintenance budget subactivities

(a) MONTHLY REPORT.—The Secretary of Defense shall submit to the congressional defense committees a monthly report on the allocation of appropriations to O&M budget activities and to the subactivities of those budget activities. Each such report shall be submitted not later than 60 days after the end of the month to which the report pertains.

(b) MATTERS TO BE INCLUDED.—Each such report shall set forth the following for each subactivity of the O&M budget activities:

(1) The amount of budget authority appropriated for that subactivity in the most recent regular Department of Defense Appropriations Act.

(2) The amount of budget authority actually made available for that subactivity, taking into consideration supplemental appropriations, rescissions, and other adjustments required by law or made pursuant to law.

(3) The amount programmed to be expended from such subactivity.

(c) IDENTIFICATION OF CERTAIN FLUCTUATIONS.—(1) If, in the report under this section for a month of a fiscal year after the first month of that fiscal year, an amount shown under subsection (b) for a subactivity is different by more than $15,000,000 from the corresponding amount for that subactivity in the report for the first month of that fiscal year, the Secretary shall include in the report notice of that difference.

(2) If, in the report under this section for a month of a fiscal year after a month for which the report under this section includes a notice under paragraph (1), an amount shown under subsection (b) for a subactivity is different by more than $15,000,000 from the corresponding amount for that subactivity in the most recent report that includes a notice under paragraph (1) or this paragraph, the Secretary shall include in the report notice of that difference.

(d) REPORT ON FLUCTUATIONS.—If a report under this section includes a notice under subsection (c), the Secretary shall include in the report with each such notice the following:

(1) The reasons for the reallocations of funds resulting in the inclusion of that notice in the report.

(2) Each budget subactivity involved in those reallocations.

(3) The effect of those reallocations on the operation and maintenance activities funded through the subactivity with respect to which the notice is included in the report.

(e) DEFINITIONS.—In this section:

(1) The term ''O&M budget activity'' means a budget activity within an operation and maintenance appropriation of the Department of Defense for a fiscal year.

(2) The term ''congressional defense committees'' means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 105–85, div. A, title III, §321(a)(1), Nov. 18, 1997, 111 Stat. 1672; amended Pub. L. 107–314, div. A, title III, §361, Dec. 2, 2002, 116 Stat. 2519.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, §361(a), substituted ''to the congressional defense committees'' for ''to Congress''.

Subsec. (e). Pub. L. 107–314, §361(b), substituted ''Definitions'' for ''O&M Budget Activity Defined'' in heading, inserted introductory provisions, designated existing provisions as par. (1) and substituted ''The'' for ''For purposes of this section, the'', and added par. (2).

FIRST REPORT

Section 321(b) of Pub. L. 105–85 provided that: ''The first report under section 228 of title 10, United States Code, as added by subsection (a), shall be for the month of December 1997.''

§ 229. Programs for combating terrorism: display of budget information

(a) SUBMISSION WITH ANNUAL BUDGET JUSTIFICATION DOCUMENTS.—The Secretary of Defense shall submit to Congress, as a part of the documentation that supports the President's annual budget for the Department of Defense, a consolidated budget justification display, in classified and unclassified form, that includes all programs and activities of the Department of Defense combating terrorism program.

(b) REQUIREMENTS FOR BUDGET DISPLAY.—The budget display under subsection (a) shall include—

(1) the amount requested, by appropriation and functional area, for each of the program elements, projects, and initiatives that support the Department of Defense combating terrorism program, with supporting narrative descriptions and rationale for the funding levels requested; and

(2) a summary, to the program element and project level of detail, of estimated expenditures for the current year, funds requested for the budget year, and budget estimates through the completion of the current future-years defense plan for the Department of Defense combating terrorism program.

(c) EXPLANATION OF INCONSISTENCIES.—As part of the budget display under subsection (a) for any fiscal year, the Secretary shall identify and explain—

(1) any inconsistencies between (A) the information submitted under subsection (b) for that fiscal year, and (B) the information provided to the Director of the Office of Management and Budget in support of the annual report of the President to Congress on funding for executive branch counterterrorism and antiterrorism programs and activities for that fiscal year in accordance with section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998 (31 U.S.C. 1113 note); and

(2) any inconsistencies between (A) the execution, during the previous fiscal year and the current fiscal year, of programs and activities of the Department of Defense combating terrorism program, and (B) the funding and specification for such programs and activities for those fiscal years in the manner provided by Congress (both in statutes and in relevant legislative history).

(d) SEMIANNUAL REPORTS ON OBLIGATIONS AND EXPENDITURES.—The Secretary shall submit to the congressional defense committees a semiannual report on the obligation and expenditure of funds for the Department of Defense combating terrorism program. Such reports shall be submitted not later than April 15 each year, with respect to the first half of a fiscal year, and not later than November 15 each year, with respect to the second half of a fiscal year. Each such report shall compare the amounts of those obligations and expenditures to the amounts au-

thorized and appropriated for the Department of Defense combating terrorism program for that fiscal year, by budget activity, sub-budget activity, and program element or line item. The second report for a fiscal year shall show such information for the second half of the fiscal year and cumulatively for the whole fiscal year. The report shall be submitted in unclassified form, but may have a classified annex.

(e) DEPARTMENT OF DEFENSE COMBATING TERRORISM PROGRAM.—In this section, the term ''Department of Defense combating terrorism program'' means the programs, projects, and activities of the Department of Defense related to combating terrorism inside and outside the United States.

(f) CONGRESSIONAL DEFENSE COMMITTEES DEFINED.—In this section, the term ''congressional defense committees'' means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 106–65, div. A, title IX, §932(b)(1), Oct. 5, 1999, 113 Stat. 727.)

REFERENCES IN TEXT

Section 1051(b) of the National Defense Authorization Act for Fiscal Year 1998, referred to in subsec. (c)(1), is section 1051(b) of Pub. L. 105–85, which is set out as a note under section 1113 of Title 31, Money and Finance.

[§230. Repealed. Pub. L. 107–314, div. A, title X, §1041(a)(2)(A), Dec. 2, 2002, 116 Stat. 2645]

Section, added Pub. L. 106–65, div. A, title X, §1041(a)(1), Oct. 5, 1999, 113 Stat. 758; amended Pub. L. 106–398, §1 [[div. A], title X, §1075(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–280, related to inclusion in the budget justification materials submitted to Congress of specific identification of amounts required for declassification of records.

§231. Budgeting for construction of naval vessels: annual plan and certification

(a) ANNUAL NAVAL VESSEL CONSTRUCTION PLAN AND CERTIFICATION.—The Secretary of Defense shall include with the defense budget materials for a fiscal year—

(1) a plan for the construction of combatant and support vessels for the Navy developed in accordance with this section; and

(2) a certification by the Secretary that both the budget for that fiscal year and the future-years defense program submitted to Congress in relation to such budget under section 221 of this title provide for funding of the construction of naval vessels at a level that is sufficient for the procurement of the vessels provided for in the plan under paragraph (1) on the schedule provided in that plan.

(b) ANNUAL NAVAL VESSEL CONSTRUCTION PLAN.—(1) The annual naval vessel construction plan developed for a fiscal year for purposes of subsection (a)(1) should be designed so that the naval vessel force provided for under that plan is capable of supporting the national security strategy of the United States as set forth in the most recent national security strategy report of the President under section 108 of the National Security Act of 1947 (50 U.S.C. 404a), except that, if at the time such plan is submitted with the defense budget materials for that fiscal year, a national security strategy report required under such section 108 has not been submitted to Congress as required by paragraph (2) or paragraph (3), if applicable, of subsection (a) of such section, then such annual plan should be designed so that the naval vessel force provided for under that plan is capable of supporting the ship force structure recommended in the report of the most recent Quadrennial Defense Review.

(2) Each such naval vessel construction plan shall include the following:

(A) A detailed program for the construction of combatant and support vessels for the Navy over the next 30 fiscal years.

(B) A description of the necessary naval vessel force structure to meet the requirements of the national security strategy of the United States or the most recent Quadrennial Defense Review, whichever is applicable under paragraph (1).

(C) The estimated levels of annual funding necessary to carry out the program, together with a discussion of the procurement strategies on which such estimated levels of annual funding are based.

(c) ASSESSMENT WHEN VESSEL CONSTRUCTION BUDGET IS INSUFFICIENT TO MEET APPLICABLE REQUIREMENTS.—If the budget for a fiscal year provides for funding of the construction of naval vessels at a level that is not sufficient to sustain the naval vessel force structure specified in the naval vessel construction plan for that fiscal year under subsection (a), the Secretary shall include with the defense budget materials for that fiscal year an assessment that describes and discusses the risks associated with the reduced force structure of naval vessels that will result from funding naval vessel construction at such level. Such assessment shall be coordinated in advance with the commanders of the combatant commands.

(d) DEFINITIONS.—In this section:

(1) The term ''budget'', with respect to a fiscal year, means the budget for that fiscal year that is submitted to Congress by the President under section 1105(a) of title 31.

(2) The term ''defense budget materials'', with respect to a fiscal year, means the materials submitted to Congress by the Secretary of Defense in support of the budget for that fiscal year.

(3) The term ''Quadrennial Defense Review'' means the review of the defense programs and policies of the United States that is carried out every four years under section 118 of this title.

(Added Pub. L. 107–314, div. A, title X, §1022(a)(1), Dec. 2, 2002, 116 Stat. 2639.)

CHAPTER 11—RESERVE COMPONENTS

Sec.
261. Reference to chapters 1003, 1005, and 1007.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2979, added item 261 and struck out former items 261 to 281.

1993—Pub. L. 103–160, div. A, title VIII, §828(c)(1), Nov. 30, 1993, 107 Stat. 1714, added item 279.

1984—Pub. L. 98–525, title XIV, §1405(7)(C), Oct. 19, 1984, 98 Stat. 2622, in item 264 substituted ''armed force'' for ''military department'' and ''Reserves'' for ''reserves'' and struck out ''; reports to Congress'' at end.

1978—Pub. L. 95–485, title IV, §406(b)(2), Oct. 20, 1978, 92 Stat. 1616, struck out item 279 ''Training reports''.

1967—Pub. L. 90–168, §2(7), Dec. 1, 1967, 81 Stat. 522, substituted ''designation of general or flag officers of each military department; personnel and logistic support for reserves; reports to Congress'' for ''responsibility for'' in item 264.

1960—Pub. L. 86–559, §1(2)(D), June 30, 1960, 74 Stat. 264, added item 281.

1958—Pub. L. 85–861, §1(6), Sept. 2, 1958, 72 Stat. 1439, added items 270, 271, 272 and 279.

§ 261. Reference to chapters 1003, 1005, and 1007

Provisions of law relating to the reserve components generally, including provisions relating to the organization and administration of the reserve components, are set forth in chapter 1003 (beginning with section 10101), chapter 1005 (beginning with section 10141), and chapter 1007 (beginning with section 10201) of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(2)(B), Oct. 5, 1994, 108 Stat. 2980.)

PRIOR PROVISIONS

Prior sections 261 to 265 were repealed by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994.

Section 261, act Aug. 10, 1956, ch. 1041, 70A Stat. 10, named the reserve components of the armed forces. See sections 10101 and 10213 of this title.

Section 262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 10; Dec. 1, 1967, Pub. L. 90–168, §2(5), 81 Stat. 521, related to purpose of reserve components. See section 10102 of this title.

Section 263, act Aug. 10, 1956, ch. 1041, 70A Stat. 11, related to basic policy for ordering Army National Guard of the United States and Air National Guard of the United States into Federal service. See section 10103 of this title.

Section 264, acts Aug. 10, 1956, ch. 1041, 70A Stat. 11; Dec. 1, 1967, Pub. L. 90–168, §2(6), 81 Stat. 521; Nov. 19, 1969, Pub. L. 91–121, title III, §303, 83 Stat. 206; Oct. 20, 1978, Pub. L. 95–485, title IV, §406(a), 92 Stat. 1616; Oct. 19, 1984, Pub. L. 98–525, title XIV, §1405(7)(A), (B), 98 Stat. 2622, authorized Secretaries of each armed force to designate officers to be responsible for reserve affairs and assigned responsibility for providing personnel and logistic support for reserves. See sections 10203 and 18501 of this title.

Section 265, act Aug. 10, 1956, ch. 1041, 70A Stat. 11, related to participation of reserve officers in preparation and administration of policies and regulations affecting reserve components. See section 10211 of this title.

Prior section 266 was renumbered section 12643 of this title.

Prior sections 267 to 281 were repealed by Pub. L. 103–337, div. A, title XVI, §§1661(a)(2)(A), 1691, Oct. 5, 1994, 108 Stat. 2979, 3026, effective Dec. 1, 1994.

Section 267, act Aug. 10, 1956, ch. 1041, 70A Stat. 12, related to placement and status of members of Ready Reserve, Standby Reserve, and Retired Reserve. See section 10141(a), (b) of this title.

Section 268, acts Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85–861, §1(3), 72 Stat. 1437; Dec. 1, 1967, Pub. L. 90–168, §2(8), 81 Stat. 522; Oct. 12, 1982, Pub. L. 97–295, §1(5), 96 Stat. 1289, related to composition, organization, and structure of Ready Reserve. See sections 10142 and 10143 of this title.

Section 269, acts Aug. 10, 1956, ch. 1041, 70A Stat. 12; Sept. 2, 1958, Pub. L. 85–861, §1(4), 72 Stat. 1437; June 30, 1960, Pub. L. 86–559, §1(2)(A), 74 Stat. 264; Dec. 1, 1967, Pub. L. 90–168, §2(9), 81 Stat. 522; Oct. 20, 1978, Pub. L. 95–485, title IV, §405(a)(1), 92 Stat. 1615; Sept. 24, 1983, Pub. L. 98–94, title X, §1018, 97 Stat. 669; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1234(a)(1), 102 Stat. 2059, related to placement in and transfer from Ready Reserve. See sections 10145 and 10146 of this title.

Section 270, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 87–378, §2, Oct. 4, 1961, 75 Stat. 807; Pub. L. 88–110, §4, Sept. 3, 1963, 77 Stat. 136; Pub. L. 90–168, §2(10), Dec. 1, 1967, 81 Stat. 523; Pub. L. 92–156, title III, §303(a), Nov. 17, 1971, 85 Stat. 425; Pub. L. 96–513, title V, §511(7), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 100–456, div. A, title XII, §1234(a)(2), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–189, div. A, title V, §501(b), Nov. 29, 1989, 103 Stat. 1435, related to training requirements of Ready Reserve. See sections 10147 and 10148 of this title.

Section 271, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 95–485, title IV, §405(b), Oct. 20, 1978, 92 Stat. 1615, related to system of continuous screening of units and members of Ready Reserve. See section 10149 of this title.

Section 272, added Pub. L. 85–861, §1(5)(A), Sept. 2, 1958, 72 Stat. 1438; amended Pub. L. 96–513, title V, §511(8), Dec. 12, 1980, 94 Stat. 2920, related to transfers back from Standby Reserve to Ready Reserve. See section 10150 of this title.

Section 273, act Aug. 10, 1956, ch. 1041, 70A Stat. 13, related to composition of Standby Reserve and maintenance of inactive status list in Standby Reserve. See sections 10151 to 10153 of this title.

Section 274, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; June 30, 1960, Pub. L. 86–559, §1(2)(B), 74 Stat. 264; Dec. 12, 1980, Pub. L. 96–513, title V, §511(9), 94 Stat. 2920, related to composition of Retired Reserve. See section 10154 of this title.

Section 275, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; Sept. 2, 1958, Pub. L. 85–861, §1(5)(B), 72 Stat. 1439, related to maintenance of personnel records of members of reserve components. See section 10204 of this title.

Section 276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 13; Apr. 21, 1987, Pub. L. 100–26, §7(k)(4), 101 Stat. 284, related to maintenance of mobilization forces. See section 10207 of this title.

Section 277, act Aug. 10, 1956, ch. 1041, 70A Stat. 14, prohibited discrimination in administering laws applicable to both Regulars and Reserves. See section 10209 of this title.

Section 278, act Aug. 10, 1956, ch. 1041, 70A Stat. 14, related to dissemination of information of interest to reserve components. See section 10210 of this title.

Section 279, added Pub. L. 103–160, div. A, title VIII, §822(d)(1), Nov. 30, 1993, 107 Stat. 1707, authorized acceptance of gratuitous services of officers of reserve components. See section 10212 of this title.

A prior section 279, added Pub. L. 85–861, §1(5)(C), Sept. 2, 1958, 72 Stat. 1439; amended Pub. L. 94–273, §11(2), Apr. 21, 1976, 90 Stat. 378, directed Secretary of Defense to report to President and Congress, in January of each year, on the status of training of each reserve component and the progress made in strengthening the reserve components during the preceding fiscal year, prior to repeal by Pub. L. 95–485, §406(b)(1).

Section 280, acts Aug. 10, 1956, ch. 1041, 70A Stat. 14; Sept. 2, 1958, Pub. L. 85–861, §33(a)(2), 72 Stat. 1564; Sept. 7, 1962, Pub. L. 87–651, title I, §101, 76 Stat. 506; Sept. 11, 1967, Pub. L. 90–83, §3(1), 81 Stat. 220; Aug. 17, 1977, Pub. L. 95–105, title V, §509(d)(3), 91 Stat. 860; Dec. 12, 1980, Pub. L. 96–513, title V, §§501(5), 511(10), 94 Stat. 2907, 2920; Oct. 19, 1984, Pub. L. 98–525, title XIV, §1405(8), 98 Stat. 2622; Dec. 5, 1991, Pub. L. 102–190, div. A, title X, §1061(a)(3), 105 Stat. 1472, authorized Secretary of each military department and Secretary of Transportation to prescribe regulations. See section 10202 of this title.

Section 281, added Pub. L. 86–559, §1(2)(C), June 30, 1960, 74 Stat. 264; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, provided that certain references in this title to the adjutant general or assistant adjutant general of the National

Guard of a jurisdiction be applied to another officer of the National Guard performing the duties of that office. See section 10214 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 13—THE MILITIA

Sec.
311. Militia: composition and classes.
312. Militia duty: exemptions.

§311. Militia: composition and classes

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 14; Pub. L. 85–861, §1(7), Sept. 2, 1958, 72 Stat. 1439; Pub. L. 103–160, div. A, title V, §524(a), Nov. 30, 1993, 107 Stat. 1656.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
311(a)	32:1 (less last 19 words).	June 3, 1916, ch. 134, §57, 39 Stat. 197; June 28, 1947, ch. 162, §7 (as applicable to §57 of the Act of June 3, 1916, ch. 134), 61 Stat. 192.
311(b)	32:1 (last 19 words).	

In subsection (a), the words ''who have made a declaration of intention'' are substituted for the words ''who have or shall have declared their intention''. The words ''at least 17 years of age and * * * under 45 years of age'' are substituted for the words ''who shall be more than seventeen years of age and * * * not more than forty-five years of age''. The words ''except as provided in section 313 of title 32'' are substituted for the words ''except as hereinafter provided'', to make explicit the exception as to maximum age.

In subsection (b), the words ''The organized militia, which consists of the National Guard and the Naval Militia'' are substituted for the words ''the National Guard, the Naval Militia'', since the National Guard and the Naval Militia constitute the organized militia.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
311(a)	32 App.:1.	July 30, 1956, ch. 789, §1, 70 Stat. 729.

The words ''appointed as . . . under section 4 of this title'' are omitted as surplusage.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160 substituted ''members'' for ''commissioned officers''.

1958—Subsec. (a). Pub. L. 85–861 included female citizens of the United States who are commissioned officers of the National Guard.

§312. Militia duty: exemptions

(a) The following persons are exempt from militia duty:

(1) The Vice President.

(2) The judicial and executive officers of the United States, the several States and Territories, and Puerto Rico.

(3) Members of the armed forces, except members who are not on active duty.

(4) Customhouse clerks.

(5) Persons employed by the United States in the transmission of mail.

(6) Workmen employed in armories, arsenals, and naval shipyards of the United States.

(7) Pilots on navigable waters.

(8) Mariners in the sea service of a citizen of, or a merchant in, the United States.

(b) A person who claims exemption because of religious belief is exempt from militia duty in a combatant capacity, if the conscientious holding of that belief is established under such regulations as the President may prescribe. However, such a person is not exempt from militia duty that the President determines to be noncombatant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15; Pub. L. 100–456, div. A, title XII, §1234(a)(3), Sept. 29, 1988, 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
312(a)	32:3 (less last 67 words).	June 3, 1916, ch. 134, §59, 39 Stat. 197.
312(b)	32:3 (last 67 words).	

In subsection (a), the words ''Members of the armed forces'' are substituted for the words ''persons in the military or naval service''. The words ''except members who are not on active duty'' are inserted to reflect an opinion of the Judge Advocate General of the Army (JAGA 1952/4374, 9 July 1952). The word ''artificers'' is omitted as covered by the word ''workmen''. The words ''naval shipyards'' are substituted for the words ''navy yards'' to reflect modern terminology. The words ''on navigable waters'' are inserted to preserve the original coverage of the word ''pilots''. The words ''actually'' and ''without regard to age'' are omitted as surplusage.

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–456 substituted ''and Puerto Rico'' for ''Puerto Rico, and the Canal Zone''.

CHAPTER 15—INSURRECTION

Sec.
331. Federal aid for State governments.
332. Use of militia and armed forces to enforce Federal authority.
333. Interference with State and Federal law.
334. Proclamation to disperse.
335. Guam and Virgin Islands included as ''State''.
[336. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, §511(11)(C), Dec. 12, 1980, 94 Stat. 2921, added item 335.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 101, 115 of this title; title 6 section 466; title 38 section 4312.

§331. Federal aid for State governments

Whenever there is an insurrections in any State against its government, the President

may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
331	50:201.	R.S. 5297.

The words ''armed forces'' are substituted for the words ''land or naval forces of the United States''. The word ''governor'' is substituted for the word ''executive''. The word ''may'' is substituted for the words ''it shall be lawful * * * to''. The words ''into Federal service'' are substituted for the word ''forth'' for uniformity and clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§ 332. Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
332	50:202.	R.S. 5298.

50:202 (last 22 words) is omitted as surplusage. The words ''armed forces'' are substituted for the words ''land and naval forces of the United States''. The words ''call into Federal service such of the militia'' are substituted for the words ''call forth the militia of any or all the States'' for clarity and uniformity. The word ''may'' is substituted for the words ''it shall be lawful''. The words ''faithful execution of the'' and ''in whatever State or Territory thereof the laws of the United States may be forcibly opposed'' are omitted as surplusage.

DERIVATION

Act July 29, 1861, ch. 25, §1, 12 Stat. 281.

EX. ORD. NO. 10730. ASSISTANCE FOR REMOVAL OF AN OBSTRUCTION OF JUSTICE WITHIN THE STATE OF ARKANSAS

Ex. Ord. No. 10730, Sept. 24, 1957, 22 F.R. 7628, authorized the Secretary of Defense to order into the active military service of the United States units of the National Guard of the United States and of the Air National Guard of the United States within the State of Arkansas for an indefinite period and until relieved by appropriate orders in order to enforce any orders of the United States District Court for the Eastern District of Arkansas for the removal of obstructions to justice in respect to enrollment and attendance at public schools in the Little Rock School District, Little Rock, Arkansas; authorized the Secretary of Defense to also use the armed forces of the United States to enforce such orders of the district court; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11053. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF MISSISSIPPI

Ex. Ord. No. 11053, Sept. 30, 1962, 27 F.R. 9681, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Mississippi for an indefinite period and until relieved by appropriate orders in order to enforce all orders of the United States District Court for the Southern District of Mississippi and of the United States Court of Appeals for the Fifth Circuit for the removal of obstructions to justice in the State of Mississippi; authorized the Secretary of Defense to also use the armed forces of the United States to enforce such court orders; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11111. ASSISTANCE FOR REMOVAL OF OBSTRUCTIONS OF JUSTICE AND SUPPRESSION OF UNLAWFUL COMBINATIONS WITHIN THE STATE OF ALABAMA

Ex. Ord. No. 11111, June 11, 1963, 28 F.R. 5709, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Alabama for an indefinite period and until relieved by appropriate orders in order to enforce the laws of the United States within that State and the orders of the United States District Court for the Northern District of Alabama, to remove obstructions to justice, and to suppress unlawful assemblies, conspiracies, and domestic violence which oppose the laws of the United States or impede the course of justice under those laws within that State; authorized the Secretary of Defense to also use the armed forces of the United States for such purposes; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

EX. ORD. NO. 11118. ASSISTANCE FOR REMOVAL OF UNLAWFUL OBSTRUCTIONS OF JUSTICE IN THE STATE OF ALABAMA

Ex. Ord. No. 11118, Sept. 10, 1963, 28 F.R. 9863, authorized the Secretary of Defense to call into the active military service of the United States units of the Army National Guard and of the Air National Guard of the State of Alabama for an indefinite period and until relieved by appropriate orders in order to enforce the laws of the United States and any orders of United States Courts relating to the enrollment and attendance of students in public schools in the State of Alabama and to suppress unlawful assemblies, conspiracies, and domestic violence which oppose the law or impede the course of justice under the law within that State; authorized the Secretary of Defense to also use the armed forces of the United States for such purposes; and authorized the Secretary of Defense to delegate his authority to the Secretary of the Army or the Secretary of the Air Force.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§ 333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

(Aug. 10, 1956, ch. 1041, 70A Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
333	50:203.	R.S. 5299.

The words ''armed forces'' are substituted for the words ''land or naval forces of the United States''. The word ''shall'' is substituted for the words ''it shall be lawful for * * * and it shall be his duty''.

DERIVATION

Act Apr. 20, 1871, ch. 22, § 3, 17 Stat. 14.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§ 334. Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
334	50:204.	R.S. 5300.

The words ''militia or the armed forces'' are substituted for the words ''military forces'' for clarity and to conform to sections 331, 332, and 333 of this title.

DERIVATION

Act July 29, 1861, ch. 25, § 2, 12 Stat. 282.

PROC. NO. 3204. OBSTRUCTION OF JUSTICE IN THE STATE OF ARKANSAS

Proc. No. 3204, Sept. 23, 1957, 22 F.R. 7628, commanded all persons in the State of Arkansas who were obstructing the enforcement of orders of the United States District Court for the Eastern District of Arkansas relating to enrollment and attendance at public schools, particularly Central High School at Little Rock, Arkansas, to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3497. OBSTRUCTION OF JUSTICE IN THE STATE OF MISSISSIPPI

Proc. No. 3497, Sept. 30, 1962, 27 F.R. 9681, commanded all persons in the State of Mississippi who were obstructing the enforcement of orders entered by the United States District Court for the Southern District of Mississippi and the United States Court of Appeals for the Fifth Circuit to cease and desist therefrom and to disperse and retire peaceably forthwith.

PROC. NO. 3542. UNLAWFUL OBSTRUCTION OF JUSTICE AND COMBINATIONS IN THE STATE OF ALABAMA

Proc. No. 3542, June 11, 1963, 28 F.R. 5707, commanded the Governor of the State of Alabama and all other persons who were obstructing the orders of the United States District Court for the Northern District of Alabama relating to the enrollment and attendance of Negro students at the University of Alabama to cease and desist therefrom.

PROC. NO. 3554. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3554, Sept. 10, 1963, 28 F.R. 9861, commanded all persons obstructing the enforcement of orders entered by the United States District Courts in the State of Alabama relating to the enrollment and attendance of students in public schools in that State to cease and desist therefrom and to disperse and retire peaceably forthwith.

PROC. NO. 3645. OBSTRUCTION OF JUSTICE IN THE STATE OF ALABAMA

Proc. No. 3645, Mar. 23, 1965, 30 F.R. 3739, commanded all persons engaged or who may engage in domestic violence obstructing the enforcement of the laws and the judicial order approving the right to march along U.S. Highway 80 from Selma to Montgomery, Alabama commencing during the period from Mar. 19, 1965 to Mar. 22, 1965 and terminating within 5 days of the commencement to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3795. OBSTRUCTION OF JUSTICE IN THE STATE OF MICHIGAN

Proc. No. 3795, July 26, 1967, 32 F.R. 10905, commanded all persons engaged in domestic violence and disorder in Detroit, Michigan, and obstructing the enforcement of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3840. OBSTRUCTION OF JUSTICE IN THE WASHINGTON METROPOLITAN AREA

Proc. No. 3840, Apr. 9, 1968, 33 F.R. 5495, commanded all persons engaged in acts of violence threatening the Washington Metropolitan Area and obstructing the execution of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3841. OBSTRUCTION OF JUSTICE IN THE STATE OF ILLINOIS

Proc. No. 3841, Apr. 9, 1968, 33 F.R. 5497, commanded all persons engaged in violence in and about the City of Chicago and obstructing the enforcement of the laws to cease and desist therefrom and to disperse forthwith.

PROC. NO. 3842. OBSTRUCTION OF JUSTICE IN THE STATE OF MARYLAND

Proc. No. 3842, Apr. 9, 1968, 33 F.R. 5499, commanded all persons engaged in acts of violence and obstructing the enforcement of the laws in and about the City of Baltimore to cease and desist therefrom and to disperse forthwith.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2662 of this title.

§ 335. Guam and Virgin Islands included as "State"

For purposes of this chapter, the term ''State'' includes the unincorporated territories of Guam and the Virgin Islands.

(Added Pub. L. 90–497, § 11, Sept. 11, 1968, 82 Stat. 847; amended Pub. L. 96–513, title V, § 511(11)(A), Dec. 12, 1980, 94 Stat. 2920.)

AMENDMENTS

1980—Pub. L. 96–513 inserted ''and Virgin Islands'' after ''Guam'' in section catchline and inserted provision respecting applicability to the Virgin Islands.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 11 of Pub. L. 90–497 provided that this section is effective on date of enactment of Pub. L. 90–497, which was approved on Sept. 11, 1968.

[§ 336. Repealed. Pub. L. 96–513, title V, § 511(11)(B), Dec. 12, 1980, 94 Stat. 2921]

Section, added Pub. L. 90–496, § 12, Aug. 23, 1968, 82 Stat. 841, included Virgin Islands within ''State''. See section 335 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 17—ARMING OF AMERICAN VESSELS

Sec.
351. During war or threat to national security.

§ 351. During war or threat to national security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 16; Pub. L. 96–513, title V, § 511(12), Dec. 12, 1980, 94 Stat. 2921.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
351(a)	50:481 (1st sentence, less 1st 7 words).	June 29, 1948, ch. 715, 62 Stat. 1095.
351(b)	50:481 (1st 7 words of 1st sentence and 2d sentence).	
351(c)	50:481 (less 1st and 2d sentences).	

In subsection (a), the wording of the special definition of ''vessel'' and ''American vessel'', contained in section 16 of the Neutrality Act of 1939, 54 Stat. 12 (22 U.S.C. 456), is substituted for the words ''any American vessel as defined in the Neutrality Act of 1939''.

In subsection (b), the words ''or national emergency'' are omitted, since the words of the source statute defining that term have been substituted for it.

In subsection (c), the words ''(relating to bonds from armed vessels on clearing)'' are omitted as surplusage.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–513 substituted ''Section 16 of the Act of March 4, 1909 (22 U.S.C. 463)'' for ''Section 463 of title 22''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CHAPTER 18—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES

Sec.
371. Use of information collected during military operations.
372. Use of military equipment and facilities.
373. Training and advising civilian law enforcement officials.
374. Maintenance and operation of equipment.
375. Restriction on direct participation by military personnel.
376. Support not to affect adversely military preparedness.
377. Reimbursement.
378. Nonpreemption of other law.
379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes.
380. Enhancement of cooperation with civilian law enforcement officials.
381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense.
382. Emergency situations involving chemical or biological weapons of mass destruction.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XIV, § 1416(a)(2), Sept. 23, 1996, 110 Stat. 2723, added item 382.

1993—Pub. L. 103–160, div. A, title XI, § 1122(a)(2), Nov. 30, 1993, 107 Stat. 1755, added item 381.

1989—Pub. L. 101–189, div. A, title XII, § 1216(a), Nov. 29, 1989, 103 Stat. 1569, in chapter heading substituted ''18'' for ''8''.

1988—Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2043, amended chapter analysis generally substituting, in chapter heading ''CHAPTER 8—MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES'' for ''CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS'', in item 374 ''Maintenance and operation of equipment'' for ''Assistance by Department of Defense personnel'', in item 376 ''Support not to affect adversely military preparedness'' for ''Assistance not to affect adversely military preparedness'' and in item 380 ''Enhancement of cooperation with civilian law enforcement officials'' for ''Department of Defense drug law enforcement assistance: annual plan''.

1987—Pub. L. 100–180, div. A, title XII, § 1243(b), Dec. 4, 1987, 101 Stat. 1164, added item 380.

1986—Pub. L. 99–570, title III, § 3053(b)(2), Oct. 27, 1986, 100 Stat. 3207–76, added item 379.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 831; title 50 section 2312.

§ 371. Use of information collected during military operations

(a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, designating existing provisions as subsec. (a), inserting reference to military training, and adding subsecs. (b) and (c).

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–570, title III, §3051, Oct. 27, 1986, 100 Stat. 3207–74, provided that: ''This subtitle [subtitle A (§§3051–3059) of title III of Pub. L. 99–570, enacting section 379 of this title, amending sections 374 and 911 of this title, enacting provisions set out as notes under sections 374, 525, and 9441 of this title, and repealing provisions set out as a note under section 89 of Title 14, Coast Guard] may be cited as the 'Defense Drug Interdiction Assistance Act'.''

§372. Use of military equipment and facilities

(a) IN GENERAL.—The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(b) EMERGENCIES INVOLVING CHEMICAL AND BIOLOGICAL AGENTS.—(1) In addition to equipment and facilities described in subsection (a), the Secretary may provide an item referred to in paragraph (2) to a Federal, State, or local law enforcement or emergency response agency to prepare for or respond to an emergency involving chemical or biological agents if the Secretary determines that the item is not reasonably available from another source. The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.

(2) An item referred to in paragraph (1) is any material or expertise of the Department of Defense appropriate for use in preparing for or responding to an emergency involving chemical or biological agents, including the following:

(A) Training facilities.

(B) Sensors.

(C) Protective clothing.

(D) Antidotes.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043; Pub. L. 104–106, div. A, title III, §378, Feb. 10, 1996, 110 Stat. 284; Pub. L. 104–201, div. A, title XIV, §1416(b), Sept. 23, 1996, 110 Stat. 2723.)

AMENDMENTS

1996—Pub. L. 104–106 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (b)(1). Pub. L. 104–201 inserted at end ''The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.''

1988—Pub. L. 100–456 amended section generally, inserting ''(including associated supplies or spare parts)'' and substituting ''Department of Defense'' for ''Army, Navy, Air Force, or Marine Corps''.

TRANSFER OF EXCESS PERSONAL PROPERTY

Pub. L. 101–189, div. A, title XII, §1208, Nov. 29, 1989, 103 Stat. 1566, as amended by Pub. L. 102–484, div. A, title X, §1044, Oct. 23, 1992, 106 Stat. 2493, which authorized the Secretary of Defense to transfer excess personal property of the Department of Defense to Federal and State agencies, provided conditions for transfer, and terminated the Secretary's authority on Sept. 30, 1997, was repealed and restated in section 2576a of this title by Pub. L. 104–201, div. A, title X, §1033(a)(1), (b)(1), Sept. 23, 1996, 110 Stat. 2639, 2640.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 373, 374, 382 of this title.

§373. Training and advising civilian law enforcement officials

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available—

(1) to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and

(2) to provide such law enforcement officials with expert advice relevant to the purposes of this chapter.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 99–145, title XIV, §1423(a), Nov. 8, 1985, 99 Stat. 752; Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, substituting provisions authorizing Secretary of Defense, in accordance with applicable law, to make Defense Department personnel available for training, etc., for former subsecs. (a) to (c) authorizing Secretary of Defense to assign members of Army, Navy, Air Force, and Marine Corps, etc., for training, etc., briefing sessions by Attorney General, and other functions of Attorney General and Administrator of General Services.

1985—Pub. L. 99–145 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1423(b) of Pub. L. 99–145 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1986.''

§374. Maintenance and operation of equipment

(a) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available for the maintenance of equipment for Federal, State, and local civilian law enforcement officials, including equipment made available under section 372 of this title.

(b)(1) Subject to paragraph (2) and in accordance with other applicable law, the Secretary of Defense may, upon request from the head of a Federal law enforcement agency, make Depart-

ment of Defense personnel available to operate equipment (including equipment made available under section 372 of this title) with respect to—

(A) a criminal violation of a provision of law specified in paragraph (4)(A);

(B) assistance that such agency is authorized to furnish to a State, local, or foreign government which is involved in the enforcement of similar laws;

(C) a foreign or domestic counter-terrorism operation; or

(D) a rendition of a suspected terrorist from a foreign country to the United States to stand trial.

(2) Department of Defense personnel made available to a civilian law enforcement agency under this subsection may operate equipment for the following purposes:

(A) Detection, monitoring, and communication of the movement of air and sea traffic.

(B) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(C) Aerial reconnaissance.

(D) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(E) Operation of equipment to facilitate communications in connection with law enforcement programs specified in paragraph (4)(A).

(F) Subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)—

(i) the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;

(ii) the operation of a base of operations for civilian law enforcement and supporting personnel; and

(iii) the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).

(3) Department of Defense personnel made available to operate equipment for the purpose stated in paragraph (2)(D) may continue to operate such equipment into the land area of the United States in cases involving the pursuit of vessels or aircraft where the detection began outside such land area.

(4) In this subsection:

(A) The term ''Federal law enforcement agency'' means a Federal agency with jurisdiction to enforce any of the following:

(i) The Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.).

(ii) Any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328).

(iii) A law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) into or out of the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States) or any other territory or possession of the United States.

(iv) The Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(v) Any law, foreign or domestic, prohibiting terrorist activities.

(B) The term ''land area of the United States'' includes the land area of any territory, commonwealth, or possession of the United States.

(c) The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in subsection (b)(2) only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1115; amended Pub. L. 98–525, title XIV, §1405(9), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–570, title III, §3056, Oct. 27, 1986, 100 Stat. 3207–77; Pub. L. 99–661, div. A, title XIII, §1373(c), Nov. 14, 1986, 100 Stat. 4007; Pub. L. 100–418, title I, §1214(a)(1), Aug. 23, 1988, 102 Stat. 1155; Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2043; Pub. L. 101–189, div. A, title XII, §§1210, 1216(b), (c), Nov. 29, 1989, 103 Stat. 1566, 1569; Pub. L. 102–484, div. A, title X, §1042, Oct. 23, 1992, 106 Stat. 2492; Pub. L. 105–277, div. B, title II, §201, Oct. 21, 1998, 112 Stat. 2681–567; Pub. L. 106–65, div. A, title X, §1066(a)(4), Oct. 5, 1999, 113 Stat. 770.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (b)(4)(A)(i), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (b)(4)(A)(i), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of chapter 13 of Title 21. For complete classification of the Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

The Harmonized Tariff Schedule of the United States, referred to in subsec. (b)(4)(A)(iii), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Maritime Drug Law Enforcement Act, referred to in subsec. (b)(4)(A)(iv), is Pub. L. 96–350, Sept. 15, 1980, 94 Stat. 1159, as amended, which is classified generally to chapter 38 (§1901 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1901 of Title 46, Appendix, and Tables.

AMENDMENTS

1999—Subsec. (b)(1)(C), (D). Pub. L. 106–65, §1066(a)(4)(A), realigned margins.

Subsec. (b)(2)(F)(i). Pub. L. 106–65, §1066(a)(4)(B), struck out semicolon after ''law enforcement personnel;''.

1998—Subsec. (b)(1)(C), (D). Pub. L. 105–277, §201(1), (2), added subpars. (C) and (D).

Subsec. (b)(2)(F)(i). Pub. L. 105–277, §201(3), inserted ''along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel;'' after ''transportation of civilian law enforcement personnel'' and struck out ''and'' at end.

Subsec. (b)(2)(F)(ii). Pub. L. 105–277, §201(4)(A), inserted ''and supporting'' before ''personnel''.

Subsec. (b)(2)(F)(iii). Pub. L. 105–277, §201(4)(B), (C), added cl. (iii).

Subsec. (b)(4)(A). Pub. L. 105–277, §201(5), substituted ''a Federal agency'' for ''an agency'' in introductory provisions.

Subsec. (b)(4)(A)(v). Pub. L. 105–277, §201(6), added cl. (v).

1992—Subsec. (b)(2)(B) to (F). Pub. L. 102–484, §1042(1), added subpar. (B) and redesignated former subpars. (B) to (E) as (C) to (F), respectively.

Subsec. (b)(3). Pub. L. 102–484, §1042(2), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)''.

1989—Subsec. (b)(2)(E). Pub. L. 101–189, §1210, substituted ''and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States)'' for '', the Attorney General, and the Secretary of State, in connection with a law enforcement operation outside the land area of the United States'' in introductory provisions.

Subsec. (b)(4)(A)(iii). Pub. L. 101–189, §1216(b), substituted ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 of the Tariff Schedules of the United States''.

Subsec. (c). Pub. L. 101–189, §1216(c), substituted ''subsection (b)(2)'' for ''paragraph (2)''.

1988—Pub. L. 100–456 substituted ''Maintenance and operation of equipment'' for ''Assistance by Department of Defense personnel'' in section catchline, and amended text generally, revising and restating former subsecs. (a) to (d) as subsecs. (a) to (c).

Subsec. (a)(3). Pub. L. 100–418, which directed substitution of ''general note 2 of the Harmonized Tariff Schedule of the United States'' for ''general headnote 2 of the Tariff Schedules of the United States'', could not be executed because of intervening general amendment by Pub. L. 100–456.

1986—Subsec. (a). Pub. L. 99–570, §3056(a), inserted provision at end relating to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.

Subsec. (c). Pub. L. 99–570, §3056(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if—

''(A) equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft; and

''(B) the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

''(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when—

''(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

''(B) enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.''

Subsec. (d). Pub. L. 99–661 added subsec. (d).

1984—Subsec. (a)(3). Pub. L. 98–525 struck out ''(19 U.S.C. 1202)'' after ''Tariff Schedules of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100–418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

COUNTER-DRUG ACTIVITIES; CONDITIONS ON TRANSFERS OF FUNDS AND DETAILING PERSONNEL; RELATIONSHIP TO OTHER LAW

Pub. L. 103–337, div. A, title X, §1011(b)–(d), Oct. 5, 1994, 108 Stat. 2836, provided that:

''(b) CONDITION ON TRANSFER OF FUNDS.—Funds appropriated for the Department of Defense may not be transferred to a National Drug Control Program agency account except to the extent provided in a law that specifically states—

''(1) the amount authorized to be transferred;

''(2) the account from which such amount is authorized to be transferred; and

''(3) the account to which such amount is authorized to be transferred.

''(c) CONDITION ON DETAILING PERSONNEL.—Personnel of the Department of Defense may not be detailed to another department or agency in order to implement the National Drug Control Strategy unless the Secretary of Defense certifies to Congress that the detail of such personnel is in the national security interest of the United States.

''(d) RELATIONSHIP TO OTHER LAW.—A provision of law may not be construed as modifying or superseding the provisions of subsection (b) or (c) unless that provision of law—

''(1) specifically refers to this section; and

''(2) specifically states that such provision of law modifies or supersedes the provisions of subsection (b) or (c), as the case may be.''

Pub. L. 107–248, title VIII, §8058(a), Oct. 23, 2002, 116 Stat. 1549, provided that: ''None of the funds available to the Department of Defense for any fiscal year for drug interdiction or counter-drug activities may be transferred to any other department or agency of the United States except as specifically provided in an appropriations law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8063(a), Jan. 10, 2002, 115 Stat. 2261.

Pub. L. 106–259, title VIII, §8062(a), Aug. 9, 2000, 114 Stat. 688.

Pub. L. 106–79, title VIII, §8065(a), Oct. 25, 1999, 113 Stat. 1244.

Pub. L. 105–262, title VIII, §8065(a), Oct. 17, 1998, 112 Stat. 2311.

Pub. L. 105–56, title VIII, §8071(a), Oct. 8, 1997, 111 Stat. 1235.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8080(a)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–104.

Pub. L. 104–61, title VIII, §8096(a), Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–335, title VIII, §8154(a), Sept. 30, 1994, 108 Stat. 2658.

ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES

Pub. L. 101–510, div. A, title X, §1004, Nov. 5, 1990, 104 Stat. 1629, as amended by Pub. L. 102–190, div. A, title X, §1088(a), Dec. 5, 1991, 105 Stat. 1484; Pub. L. 102–484, div. A, title X, §1041(a)–(d)(1), Oct. 23, 1992, 106 Stat. 2491; Pub. L. 103–160, div. A, title XI, §1121(a), (b), Nov. 30, 1993, 107 Stat. 1753; Pub. L. 103–337, div. A, title X, §1011(a), Oct. 5, 1994, 108 Stat. 2836; Pub. L. 105–261, div.

A, title X, § 1021, Oct. 17, 1998, 112 Stat. 2120; Pub. L. 107–107, div. A, title X, § 1021, Dec. 28, 2001, 115 Stat. 1212, provided that:

''(a) SUPPORT TO OTHER AGENCIES.—During fiscal years 2002 through 2006, the Secretary of Defense may provide support for the counter-drug activities of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

''(1) by the official who has responsibility for the counter-drug activities of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

''(2) by the appropriate official of a State or local government, in the case of support for State or local law enforcement agencies; or

''(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities, in the case of support for foreign law enforcement agencies.

''(b) TYPES OF SUPPORT.—The purposes for which the Secretary of Defense may provide support under subsection (a) are the following:

''(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local government by the Department of Defense for the purposes of—

''(A) preserving the potential future utility of such equipment for the Department of Defense; and

''(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

''(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in paragraph (1) for the purpose of—

''(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

''(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

''(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities within or outside the United States.

''(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities of the Department of Defense or any Federal, State, or local law enforcement agency within or outside the United States or counter-drug activities of a foreign law enforcement agency outside the United States.

''(5) Counter-drug related training of law enforcement personnel of the Federal Government, of State and local governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

''(6) The detection, monitoring, and communication of the movement of—

''(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

''(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

''(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

''(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

''(9) The provision of linguist and intelligence analysis services.

''(10) Aerial and ground reconnaissance.

''(c) LIMITATION ON COUNTER-DRUG REQUIREMENTS.—The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

''(d) CONTRACT AUTHORITY.—In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

''(e) LIMITED WAIVER OF PROHIBITION.—Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

''(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1564 [10 U.S.C. 124 note])) for the purpose of aiding civilian law enforcement agencies.

''(g) RELATIONSHIP TO OTHER LAWS.—(1) The authority provided in this section for the support of counter-drug activities by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

''(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title 10, United States Code.

''(h) CONGRESSIONAL NOTIFICATION OF FACILITIES PROJECTS.—(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

''(2) Paragraph (1) applies to an unspecified minor military construction project that—

''(A) is intended for the modification or repair of a Department of Defense facility for the purpose set forth in subsection (b)(4); and

''(B) has an estimated cost of more than $500,000.''

COMMUNICATIONS NETWORK

Section 1103 of Pub. L. 100–456 related to integration of United States assets dedicated to interdiction of illegal drugs into an effective communications network, prior to repeal by Pub. L. 101–189, div. A, title XII, § 1204(b), Nov. 29, 1989, 103 Stat. 1564. See section 1204(a) of Pub. L. 101–189 set out as a note under section 124 of this title.

ENHANCED DRUG INTERDICTION AND ENFORCEMENT ROLE FOR NATIONAL GUARD

Section 1105 of Pub. L. 100–456 related to funding and training of National Guard for purpose of drug interdiction and enforcement operations and for operation and maintenance of equipment and facilities for such purpose, prior to repeal by Pub. L. 101–189, div. A, title XII, § 1207(b), Nov. 29, 1989, 103 Stat. 1566. See section 112 of Title 32, National Guard.

ADDITIONAL DEPARTMENT OF DEFENSE DRUG LAW ENFORCEMENT ASSISTANCE

Section 3057 of Pub. L. 99–570 provided that the Secretary of Defense was to submit to Congress, within 90 days after Oct. 27, 1986, a list of all forms of assistance that were to be made available by the Department of Defense to civilian drug law enforcement and drug interdiction agencies and a plan for promptly lending equipment and rendering drug interdiction-related assistance included on the list, provided for Congressional approval of the list and plan, required the Secretary to convene a conference of the heads of Government agencies with jurisdiction over drug law enforcement to determine the appropriate distribution of the assets or other assistance to be made available by the Department to such agencies, and provided for monitoring of the Department's performance by the General Accounting Office.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 379 of this title.

§375. Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(Added Pub. L. 97–86, title IX §905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub. L. 101–189, div. A, title XII, §1211, Nov. 29, 1989, 103 Stat. 1567.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''any activity'' for ''the provision of any support'', struck out ''to any civilian law enforcement official'' after ''any personnel)'', and substituted ''a search, seizure, arrest,'' for ''a search and seizure, an arrest,''.

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2564 of this title.

§376. Support not to affect adversely military preparedness

Support (including the provision of any equipment or facility or the assignment or detail of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness of the United States. The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that the provision of any such support does not adversely affect the military preparedness of the United States.

(Added Pub. L. 97–86, title, IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 substituted ''Support'' for ''Assistance'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any such assistance does not adversely affect the military preparedness of the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2564 of this title.

§377. Reimbursement

(a) To the extent otherwise required by section 1535 of title 31 (popularly known as the ''Economy Act'') or other applicable law, the Secretary of Defense shall require a civilian law enforcement agency to which support is provided under this chapter to reimburse the Department of Defense for that support.

(b) An agency to which support is provided under this chapter is not required to reimburse the Department of Defense for such support if such support—

(1) is provided in the normal course of military training or operations; or

(2) results in a benefit to the element of the Department of Defense providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 382, 2564 of this title.

§378. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law before December 1, 1981.

(Added Pub. L. 97–86, title IX, §905(a)(1), Dec. 1, 1981, 95 Stat. 1116; amended Pub. L. 98–525, title XIV, §1405(10), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 100–456, div. A, title XI, §1104(a), Sept. 29, 1988, 102 Stat. 2045.)

AMENDMENTS

1988—Pub. L. 100–456 reenacted section without change.

1984—Pub. L. 98–525 substituted ''before December 1, 1981'' for ''prior to the enactment of this chapter''.

§ 379. Assignment of Coast Guard personnel to naval vessels for law enforcement purposes

(a) The Secretary of Defense and the Secretary of Homeland Security shall provide that there be assigned on board every appropriate surface naval vessel at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and have powers of the Coast Guard under title 14, including the power to make arrests and to carry out searches and seizures.

(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

(1) as may be agreed upon by the Secretary of Defense and the Secretary of Homeland Security; and

(2) as are otherwise within the jurisdiction of the Coast Guard.

(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty under this section. However, if at any time the Secretary of Homeland Security, after consultation with the Secretary of Defense, determines that there are insufficient naval vessels available for purposes of this section, such personnel may be assigned other duty involving enforcement of laws listed in section 374(b)(4)(A) of this title.

(d) In this section, the term ''drug-interdiction area'' means an area outside the land area of the United States (as defined in section 374(b)(4)(B) of this title) in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.

(Added Pub. L. 99–570, title III, § 3053(b)(1), Oct. 27, 1986, 100 Stat. 3207–75; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (b)(1), (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1988—Pub. L. 100–456 amended section generally, substituting ''every appropriate surface naval vessel'' for ''appropriate surface naval vessels'' in subsec. (a), substituting ''section 374(b)(4)(A)'' for ''section 374(a)(1)'' in subsec. (c), and inserting ''(as defined in section 374(b)(4)(B) of this title)'' in subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 637.

§ 380. Enhancement of cooperation with civilian law enforcement officials

(a) The Secretary of Defense, in cooperation with the Attorney General, shall conduct an annual briefing of law enforcement personnel of each State (including law enforcement personnel of the political subdivisions of each State) regarding information, training, technical support, and equipment and facilities available to civilian law enforcement personnel from the Department of Defense.

(b) Each briefing conducted under subsection (a) shall include the following:

(1) An explanation of the procedures for civilian law enforcement officials—

(A) to obtain information, equipment, training, expert advice, and other personnel support under this chapter; and

(B) to obtain surplus military equipment.

(2) A description of the types of information, equipment and facilities, and training and advice available to civilian law enforcement officials from the Department of Defense.

(3) A current, comprehensive list of military equipment which is suitable for law enforcement officials from the Department of Defense or available as surplus property from the Administrator of General Services.

(c) The Attorney General and the Administrator of General Services shall—

(1) establish or designate an appropriate office or offices to maintain the list described in subsection (b)(3) and to furnish information to civilian law enforcement officials on the availability of surplus military equipment; and

(2) make available to civilian law enforcement personnel nationwide, tollfree telephone communication with such office or offices.

(Added Pub. L. 100–180, div. A, title XII, § 1243(a), Dec. 4, 1987, 101 Stat. 1163; amended Pub. L. 100–456, div. A, title XI, § 1104(a), Sept. 29, 1988, 102 Stat. 2046.)

AMENDMENTS

1988—Pub. L. 100–456 amended section generally, substituting provisions relating to annual briefing of law enforcement personnel of each State by Secretary of Defense and Attorney General and establishment of offices and telephone communication with those offices regarding surplus military equipment for provisions requiring the Secretary to report to Congress on the availability of assistance, etc., to civilian law enforcement and drug interdiction agencies and to convene a conference and requiring the Comptroller General to monitor and report on the Secretary's compliance with those requirements.

§ 381. Procurement by State and local governments of law enforcement equipment suitable for counter-drug activities through the Department of Defense

(a) PROCEDURES.—(1) The Secretary of Defense shall establish procedures in accordance with this subsection under which States and units of local government may purchase law enforcement equipment suitable for counter-drug activities through the Department of Defense. The procedures shall require the following:

(A) Each State desiring to participate in a procurement of equipment suitable for counter-drug activities through the Department of Defense shall submit to the Department, in such form and manner and at such times as the Secretary prescribes, the following:

(i) A request for law enforcement equipment.

(ii) Advance payment for such equipment, in an amount determined by the Secretary based on estimated or actual costs of the equipment and administrative costs incurred by the Department.

(B) A State may include in a request submitted under subparagraph (A) only the type of equipment listed in the catalog produced under subsection (c).

(C) A request for law enforcement equipment shall consist of an enumeration of the law enforcement equipment that is desired by the State and units of local government within the State. The Governor of a State may establish such procedures as the Governor considers appropriate for administering and coordinating requests for law enforcement equipment from units of local government within the State.

(D) A State requesting law enforcement equipment shall be responsible for arranging and paying for shipment of the equipment to the State and localities within the State.

(2) In establishing the procedures, the Secretary of Defense shall coordinate with the General Services Administration and other Federal agencies for purposes of avoiding duplication of effort.

(b) REIMBURSEMENT OF ADMINISTRATIVE COSTS.—In the case of any purchase made by a State or unit of local government under the procedures established under subsection (a), the Secretary of Defense shall require the State or unit of local government to reimburse the Department of Defense for the administrative costs to the Department of such purchase.

(c) GSA CATALOG.—The Administrator of General Services, in coordination with the Secretary of Defense, shall produce and maintain a catalog of law enforcement equipment suitable for counter-drug activities for purchase by States and units of local government under the procedures established by the Secretary under this section.

(d) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) The term ''unit of local government'' means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State; an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior; or any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia or the Trust Territory of the Pacific Islands.

(3) The term ''law enforcement equipment suitable for counter-drug activities'' has the meaning given such term in regulations prescribed by the Secretary of Defense. In prescribing the meaning of the term, the Secretary may not include any equipment that the Department of Defense does not procure for its own purposes.

(Added Pub. L. 103–160, div. A, title XI, § 1122(a)(1), Nov. 30, 1993, 107 Stat. 1754.)

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

DEADLINE FOR ESTABLISHING PROCEDURES

Section 1122(b) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall establish procedures under section 381(a) of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Nov. 30, 1993].''

§ 382. Emergency situations involving chemical or biological weapons of mass destruction

(a) IN GENERAL.—The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175 or 2332c[1] of title 18 during an emergency situation involving a biological or chemical weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) EMERGENCY SITUATIONS COVERED.—In this section, the term ''emergency situation involving a biological or chemical weapon of mass destruction'' means a circumstance involving a biological or chemical weapon of mass destruction—

(1) that poses a serious threat to the interests of the United States; and

(2) in which—

(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved;

(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and

(C) enforcement of section 175 or 2332c[1] of title 18 would be seriously impaired if the Department of Defense assistance were not provided.

(c) FORMS OF ASSISTANCE.—The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.

(d) REGULATIONS.—(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:

[1] See References in Text note below.

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 or 2332c [1] of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.

(e) REIMBURSEMENTS.—The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.

(f) DELEGATIONS OF AUTHORITY.—(1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) RELATIONSHIP TO OTHER AUTHORITY.—Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before September 23, 1996.

(Added Pub. L. 104–201, div. A, title XIV, §1416(a)(1), Sept. 23, 1996, 110 Stat. 2721; amended Pub. L. 105–85, div. A, title X, §1073(a)(6), Nov. 18, 1997, 111 Stat. 1900.)

REFERENCES IN TEXT

Section 2332c of title 18, referred to in subsecs. (a), (b)(2)(C), and (d)(2)(A)(ii), was repealed by Pub. L. 105–277, div. I, title II, §201(c)(1), Oct. 21, 1998, 112 Stat. 2681–871.

AMENDMENTS

1997—Subsec. (g). Pub. L. 105–85 substituted ''September 23, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997''.

MILITARY ASSISTANCE TO CIVIL AUTHORITIES TO RESPOND TO ACT OR THREAT OF TERRORISM

Pub. L. 106–65, div. A, title X, §1023, Oct. 5, 1999, 113 Stat. 747, provided that:

''(a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Defense, upon the request of the Attorney General, may provide assistance to civil authorities in responding to an act of terrorism or threat of an act of terrorism, including an act of terrorism or threat of an act of terrorism that involves a weapon of mass destruction, within the United States, if the Secretary determines that—

''(1) special capabilities and expertise of the Department of Defense are necessary and critical to respond to the act of terrorism or the threat of an act of terrorism; and

''(2) the provision of such assistance will not adversely affect the military preparedness of the Armed Forces.

''(b) NATURE OF ASSISTANCE.—Assistance provided under subsection (a) may include the deployment of Department of Defense personnel and the use of any Department of Defense resources to the extent and for such period as the Secretary of Defense determines necessary to prepare for, prevent, or respond to an act or threat of an act of terrorism described in that subsection. Actions taken to provide the assistance may include the prepositioning of Department of Defense personnel, equipment, and supplies.

''(c) REIMBURSEMENT.—(1) Except as provided in paragraph (2), assistance provided under this section shall be provided on a reimbursable basis. Notwithstanding any other provision of law, the amounts of reimbursement shall be limited to the amounts of the incremental costs incurred by the Department of Defense to provide the assistance.

''(2) In extraordinary circumstances, the Secretary of Defense may waive the requirement for reimbursement if the Secretary determines that such a waiver is in the national security interests of the United States and submits to Congress a notification of the determination.

''(3) If funds are appropriated for the Department of Justice to cover the costs of responding to an act or threat of an act of terrorism for which assistance is provided under subsection (a), the Attorney General shall reimburse the Department of Defense out of such funds for the costs incurred by the Department in providing the assistance, without regard to whether the assistance was provided on a nonreimbursable basis pursuant to a waiver under paragraph (2).

''(d) ANNUAL LIMITATION ON FUNDING.—Not more than $10,000,000 may be obligated to provide assistance under subsection (a) during any fiscal year.

''(e) PERSONNEL RESTRICTIONS.—In providing assistance under this section, a member of the Army, Navy, Air Force, or Marine Corps may not, unless otherwise authorized by law—

''(1) directly participate in a search, seizure, arrest, or other similar activity; or

''(2) collect intelligence for law enforcement purposes.

''(f) NONDELEGABILITY OF AUTHORITY.—(1) The Secretary of Defense may not delegate to any other official the authority to make determinations and to authorize assistance under this section.

''(2) The Attorney General may not delegate to any other official authority to make a request for assistance under subsection (a).

''(g) RELATIONSHIP TO OTHER AUTHORITY.—The authority provided in this section is in addition to any other authority available to the Secretary of Defense, and nothing in this section shall be construed to restrict any authority regarding use of members of the Armed Forces or equipment of the Department of Defense that was in effect before the date of the enactment of this Act [Oct. 5, 1999].

''(h) DEFINITIONS.—In this section:

''(1) THREAT OF AN ACT OF TERRORISM.—The term 'threat of an act of terrorism' includes any circumstance providing a basis for reasonably anticipating an act of terrorism, as determined by the Secretary of Defense in consultation with the Attorney General and the Secretary of the Treasury.

''(2) WEAPON OF MASS DESTRUCTION.—The term 'weapon of mass destruction' has the meaning given the term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

''(i) DURATION OF AUTHORITY.—The authority provided by this section applies during the period beginning on October 1, 1999, and ending on September 30, 2004.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 372 of this title; title 18 sections 175a, 229E, 2332e.

CHAPTER 20—HUMANITARIAN AND OTHER ASSISTANCE

Sec.
401. Humanitarian and civic assistance provided in conjunction with military operations.
402. Transportation of humanitarian relief supplies to foreign countries.
[403. Repealed.]
404. Foreign disaster assistance.
405. Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation.

PRIOR PROVISIONS

Chapter was comprised of subchapter I, sections 401 to 404, and subchapter II, section 410, prior to amendment by Pub. L. 104–106, div. A, title V, §571(c), Feb. 10, 1996, 110 Stat. 353, which struck out headings for subchapters I and II.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title X, §1061(g)(2), title XIII, §1301(b), Feb. 10, 1996, 110 Stat. 443, 473, which directed amendment of table of sections at beginning of subchapter I of this chapter by striking out item 403 and adding item 405, were executed by striking out item 403 ''International peacekeeping activities'' and adding item 405 in analysis for this chapter to reflect the probable intent of Congress and amendments by Pub. L. 104–106, §571(c)(1), (2). See below.

Pub. L. 104–106, div. A, title V, §571(c)(1), (2), Feb. 10, 1996, 110 Stat. 353, struck out subchapter analysis, consisting of items for subchapter I ''Humanitarian Assistance'' and subchapter II ''Civil-Military Cooperation'' and struck out subchapter I heading ''HUMANITARIAN ASSISTANCE''.

1994—Pub. L. 103–337, div. A, title XIV, §1412(b), Oct. 5, 1994, 108 Stat. 2913, added item 404.

1992—Pub. L. 102–484, div. A, title X, §1081(b)(2), title XIII, §1342(c)(2), Oct. 23, 1992, 106 Stat. 2516, 2558, added subchapter analysis, subchapter I heading, and item 403.

1987—Pub. L. 100–180, div. A, title III, §332(b)(6), Dec. 4, 1987, 101 Stat. 1080, substituted ''HUMANITARIAN AND OTHER ASSISTANCE'' for ''HUMANITARIAN AND CIVIC ASSISTANCE PROVIDED IN CONJUNCTION WITH MILITARY OPERATIONS'' in chapter heading, ''Humanitarian and civic assistance provided in conjunction with military operations'' for ''Armed forces participation in humanitarian and civic assistance activities'' in item 401, and ''Transportation of humanitarian relief supplies to foreign countries'' for ''Approval of Secretary of State'' in item 402, and struck out items 403 ''Payment of expenses'', 404 ''Annual report to Congress'', 405 ''Definition of humanitarian and civic assistance'', and 406 ''Expenditure limitation''.

§401. Humanitarian and civic assistance provided in conjunction with military operations

(a)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may carry out humanitarian and civic assistance activities in conjunction with authorized military operations of the armed forces in a country if the Secretary concerned determines that the activities will promote—

(A) the security interests of both the United States and the country in which the activities are to be carried out; and

(B) the specific operational readiness skills of the members of the armed forces who participate in the activities.

(2) Humanitarian and civic assistance activities carried out under this section shall complement, and may not duplicate, any other form of social or economic assistance which may be provided to the country concerned by any other department or agency of the United States. Such activities shall serve the basic economic and social needs of the people of the country concerned.

(3) Humanitarian and civic assistance may not be provided under this section (directly or indirectly) to any individual, group, or organization engaged in military or paramilitary activity.

(4) The Secretary of Defense shall ensure that no member of the armed forces, while providing assistance under this section that is described in subsection (e)(5)—

(A) engages in the physical detection, lifting, or destroying of landmines (unless the member does so for the concurrent purpose of supporting a United States military operation); or

(B) provides such assistance as part of a military operation that does not involve the armed forces.

(b)(1) Humanitarian and civic assistance may not be provided under this section to any foreign country unless the Secretary of State specifically approves the provision of such assistance.

(2) Any authority provided under any other provision of law to provide assistance that is described in subsection (e)(5) to a foreign country shall be carried out in accordance with, and subject to, the limitations prescribed in this section. Any such provision may be construed as superseding a provision of this section only if, and to the extent that, such provision specifically refers to this section and specifically identifies the provision of this section that is to be considered superseded or otherwise inapplicable under such provision.

(c)(1) Expenses incurred as a direct result of providing humanitarian and civic assistance under this section to a foreign country shall be paid for out of funds specifically appropriated for such purpose.

(2) Expenses covered by paragraph (1) include the following expenses incurred in providing assistance described in subsection (e)(5):

(A) Travel, transportation, and subsistence expenses of Department of Defense personnel providing such assistance.

(B) The cost of any equipment, services, or supplies acquired for the purpose of carrying out or supporting the activities described in subsection (e)(5), including any nonlethal, individual, or small-team landmine clearing equipment or supplies that are to be transferred or otherwise furnished to a foreign country in furtherance of the provision of assistance under this section.

(3) The cost of equipment, services, and supplies provided in any fiscal year under paragraph (2)(B) may not exceed $5,000,000.

(4) Nothing in this section may be interpreted to preclude the incurring of minimal expenditures by the Department of Defense for purposes of humanitarian and civic assistance out of funds other than funds appropriated pursuant to paragraph (1), except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance.

(d) The Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report, not later than March 1 of each year, on activities carried out under this section during the preceding fiscal year. The Secretary shall include in each such report—

(1) a list of the countries in which humanitarian and civic assistance activities were carried out during the preceding fiscal year;

(2) the type and description of such activities carried out in each country during the preceding fiscal year; and

(3) the amount expended in carrying out each such activity in each such country during the preceding fiscal year.

(e) In this section, the term ''humanitarian and civic assistance'' means any of the following:

(1) Medical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, dental, and veterinary professionals, respectively.

(2) Construction of rudimentary surface transportation systems.

(3) Well drilling and construction of basic sanitation facilities.

(4) Rudimentary construction and repair of public facilities.

(5) Detection and clearance of landmines, including activities relating to the furnishing of education, training, and technical assistance with respect to the detection and clearance of landmines.

(Added Pub. L. 99–661, div. A, title III, §333(a)(1), Nov. 14, 1986, 100 Stat. 3857; amended Pub. L. 100–180, div. A, title III, §332(b)(1)–(5), Dec. 4, 1987, 101 Stat. 1080; Pub. L. 100–456, div. A, title XII, §1233(g)(1), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title XI, §1182(a)(1), title XV, §1504(b), Nov. 30, 1993, 107 Stat. 1771, 1839; Pub. L. 104–106, div. A, title XIII, §1313(a), (b), title XV, §1502(a)(8), Feb. 10, 1996, 110 Stat. 474, 475, 503; Pub. L. 104–201, div. A, title X, §1074(a)(2), title XIII, §1304, Sept. 23, 1996, 110 Stat. 2658, 2704; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title XII, §1235], Oct. 30, 2000, 114 Stat. 1654, 1654A–331.)

AMENDMENTS

2000—Subsec. (e)(1). Pub. L. 106–398 substituted ''areas of a country that are rural or are underserved by medical, dental, and veterinary professionals, respectively'' for ''rural areas of a country''.

1999—Subsec. (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1996—Subsec. (a)(4). Pub. L. 104–201, §1074(a)(2)(A), substituted ''armed forces'' for ''Armed Forces'' in two places.

Pub. L. 104–106, §1313(b), added par. (4).

Subsec. (b). Pub. L. 104–201, §1304(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(2) to (4). Pub. L. 104–201, §1304(a), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (d). Pub. L. 104–106, §1502(a)(8), substituted ''Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations'' for ''Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs''.

Subsec. (e). Pub. L. 104–201, §1074(a)(2)(B), inserted ''any of the following'' after ''means'' in introductory provisions.

Pub. L. 104–106, §1313(a)(1), substituted ''means:'' for ''means—'' in introductory provisions.

Subsec. (e)(1). Pub. L. 104–106, §1313(a)(2), (3), substituted ''Medical'' for ''medical'' and ''country.'' for ''country;''.

Subsec. (e)(2). Pub. L. 104–106, §1313(a)(2), (3), substituted ''Construction'' for ''construction'' and ''systems.'' for ''systems;''.

Subsec. (e)(3). Pub. L. 104–106, §1313(a)(2), (4), substituted ''Well'' for ''well'' and ''facilities.'' for ''facilities; and''.

Subsec. (e)(4). Pub. L. 104–106, §1313(a)(2), substituted ''Rudimentary'' for ''rudimentary''.

Subsec. (e)(5). Pub. L. 104–106, §1313(a)(5), added par. (5).

1993—Subsec. (c)(2). Pub. L. 103–160, §1504(b), inserted before period '', except that funds appropriated to the Department of Defense for operation and maintenance (other than funds appropriated pursuant to such paragraph) may be obligated for humanitarian and civic assistance under this section only for incidental costs of carrying out such assistance''.

Subsec. (f). Pub. L. 103–160, §1182(a)(1), struck out subsec. (f) which read as follows: ''Not more than $16,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.''

1988—Subsec. (c)(2). Pub. L. 100–456 substituted ''paragraph (1)'' for ''subsection (a)''.

1987—Pub. L. 100–180, §332(b)(1)(A), substituted ''Humanitarian and civic assistance provided in conjunction with military operations'' for ''Armed forces participation in humanitarian and civic assistance activities'' in section catchline.

Subsec. (a). Pub. L. 100–180, §332(b)(1)(B), (C), (5), redesignated former subsec. (a) as par. (1) and former cls. (1) and (2) as cls. (A) and (B), respectively, redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively, and substituted ''section'' for ''chapter'' wherever appearing.

Subsec. (b). Pub. L. 100–180, §332(b)(2), (5), struck out section catchline of former section 402 ''Approval of Secretary of State'', designated text of former section 402 as subsec. (b) of this section, and substituted ''section'' for ''chapter''.

Subsec. (c). Pub. L. 100–180, §332(b)(3), (5), struck out section catchline of former section 403 ''Payment of expenses'', redesignated former section 403(a) and (b) as subsec. (c)(1) and (2), respectively, of this section, and substituted ''section'' for ''chapter'' wherever appearing.

Subsec. (d). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 404 ''Annual report to Congress'', designated text of former section 404 as subsec. (d) of this section, and substituted ''section'' for ''chapter''.

Subsec. (e). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 405 ''Definition of

humanitarian and civic assistance'', designated text of former section 405 as subsec. (e) of this section, and substituted ''section'' for ''chapter''.

Subsec. (f). Pub. L. 100–180, §332(b)(4), (5), struck out section catchline of former section 406 ''Expenditure limitation'', designated text of former section 406 as subsec. (f) of this section, and substituted ''section'' for ''chapter''.

HUMANITARIAN ASSISTANCE PROGRAM FOR CLEARING LANDMINES

Pub. L. 103–337, div. A, title XIV, §1413, Oct. 5, 1994, 108 Stat. 2913, required Secretary of Defense to carry out program for humanitarian purposes to provide assistance to other nations in detection and clearance of landmines, specified that such assistance was to be provided through instruction, education, training, and advising of personnel of those nations in procedures determined effective for detecting and clearing landmines, specified forms of assistance, required Secretary to ensure that no member of Armed Forces engaged in physical detection, lifting, or destroying of landmines (unless done for concurrent purpose of supporting United States military operations) or gave such assistance as part of military operation not involving Armed Forces, made funds available, specified uses of funds, and required Secretary to provide notice to Congress of activities carried out under the program, prior to repeal by Pub. L. 104–106, div. A, title XIII, §1313(c), Feb. 10, 1996, 110 Stat. 475.

HUMANITARIAN AND CIVIC ASSISTANCE

Section 1504 of Pub. L. 103–160 provided that:

''(a) REGULATIONS.—The regulations required to be prescribed under section 401 of title 10, United States Code, shall be prescribed not later than March 1, 1994. In prescribing such regulations, the Secretary of Defense shall consult with the Secretary of State.

''(b) LIMITATION ON USE OF FUNDS.—[Amended section 401(c)(2) of this title.]

''(c) NOTIFICATIONS REGARDING HUMANITARIAN RELIEF.—Any notification provided to the appropriate congressional committees with respect to assistance activities under section 2551 [now 2561] of title 10, United States Code, shall include a detailed description of any items for which transportation is provided that are excess nonlethal supplies of the Department of Defense, including the quantity, acquisition value, and value at the time of the transportation of such items.

''(d) REPORT ON HUMANITARIAN ASSISTANCE ACTIVITIES.—(1) The Secretary of Defense shall submit to the appropriate congressional committees a report on the activities planned to be carried out by the Department of Defense during fiscal year 1995 under sections 401, 402, 2547 [now 2557], and 2551 [now 2561] of title 10, United States Code. The report shall include information, developed after consultation with the Secretary of State, on the distribution of excess nonlethal supplies transferred to the Secretary of State during fiscal year 1993 pursuant to section 2547 of that title.

''(2) The report shall be submitted at the same time that the President submits the budget for fiscal year 1995 to Congress pursuant to section 1105 of title 31, United States Code.

''(e) AUTHORIZATION OF APPROPRIATIONS.—The funds authorized to be appropriated by section 301(18) [107 Stat. 1616] shall be available to carry out humanitarian and civic assistance activities under sections 401, 402, and 2551 [now 2561] of title 10, United States Code.

''(f) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term 'appropriate congressional committees' means—

''(1) the Committee on Appropriations, the Committee on Armed Services [now Committee on National Security], and the Committee on Foreign Affairs [now Committee on International Relations] of the House of Representatives; and

''(2) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Foreign Relations of the Senate.''

HUMANITARIAN ASSISTANCE; EMERGENCY TRANSPORTATION OF INDIVIDUALS

Pub. L. 102–396, title II, Oct. 6, 1992, 106 Stat. 1884, provided: ''That where required and notwithstanding any other provision of law, funds made available under this heading [Humanitarian Assistance] for fiscal year 1993 or thereafter, shall be available for emergency transportation of United States or foreign nationals or the emergency transportation of humanitarian relief personnel in conjunction with humanitarian relief operations.''

APPROPRIATION OF FUNDS FOR HUMANITARIAN AND CIVIC ASSISTANCE; ANNUAL REPORT TO CONGRESS ON OBLIGATIONS; USE OF CIVIC ACTION TEAMS IN TRUST TERRITORIES OF PACIFIC ISLANDS AND FREELY ASSOCIATED STATES OF MICRONESIA

Pub. L. 107–248, title VIII, §8009, Oct. 23, 2002, 116 Stat. 1538, provided that: ''Within the funds appropriated for the operation and maintenance of the Armed Forces, funds are hereby appropriated pursuant to section 401 of title 10, United States Code, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. Such funds may also be obligated for humanitarian and civic assistance costs incidental to authorized operations and pursuant to authority granted in section 401 of chapter 20 of title 10, United States Code, and these obligations shall be reported to the Congress as of September 30 of each year: *Provided*, That funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using Civic Action Teams in the Trust Territories of the Pacific Islands and freely associated states of Micronesia, pursuant to the Compact of Free Association as authorized by Public Law 99–239 [48 U.S.C. 1901 note]: *Provided further*, That upon a determination by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at Army medical facilities located in Hawaii, the Secretary of the Army may authorize the provision of medical services at such facilities and transportation to such facilities, on a nonreimbursable basis, for civilian patients from American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam.''

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8009, Jan. 10, 2002, 115 Stat. 2249.

Pub. L. 106–259, title VIII, §8009, Aug. 9, 2000, 114 Stat. 676.

Pub. L. 106–79, title VIII, §8009, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105–262, title VIII, §8009, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 105–56, title VIII, §8009, Oct. 8, 1997, 111 Stat. 1222.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8010], Sept. 30, 1996, 110 Stat. 3009–71, 3009–90.

Pub. L. 104–61, title VIII, §8011, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103–335, title VIII, §8011, Sept. 30, 1994, 108 Stat. 2619.

Pub. L. 103–139, title VIII, §8012, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102–396, title IX, §9021, Oct. 6, 1992, 106 Stat. 1904.

Pub. L. 102–172, title VIII, §8021, Nov. 26, 1991, 105 Stat. 1175.

Pub. L. 101–511, title VIII, §8021, Nov. 5, 1990, 104 Stat. 1879.

Pub. L. 101–165, title IX, §9031, Nov. 21, 1989, 103 Stat. 1135.

Pub. L. 100–463, title VIII, §8051, Oct. 1, 1988, 102 Stat. 2270–25.

Pub. L. 100–202, § 101(b) [title VIII, § 8063], Dec. 22, 1987, 101 Stat. 1329–43, 1329–73.

§ 402. Transportation of humanitarian relief supplies to foreign countries

(a) Notwithstanding any other provision of law, and subject to subsection (b), the Secretary of Defense may transport to any country, without charge, supplies which have been furnished by a nongovernmental source and which are intended for humanitarian assistance. Such supplies may be transported only on a space available basis.

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that—

(A) the transportation of such supplies is consistent with the foreign policy of the United States;

(B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;

(C) there is a legitimate humanitarian need for such supplies by the people for whom they are intended;

(D) the supplies will in fact be used for humanitarian purposes; and

(E) adequate arrangements have been made for the distribution of such supplies in the destination country.

(2) The President shall establish procedures for making the determinations required under paragraph (1). Such procedures shall include inspection of supplies before acceptance for transport.

(3) It shall be the responsibility of the donor to ensure that supplies to be transported under this section are suitable for transport.

(c)(1) Supplies transported under this section may be distributed by an agency of the United States Government, a foreign government, an international organization, or a private nonprofit relief organization.

(2) Supplies transported under this section may not be distributed, directly or indirectly, to any individual, group, or organization engaged in a military or paramilitary activity.

(d) Not later than July 31 each year, the Secretary of State shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

(Added Pub. L. 100–180, div. A, title III, § 332(a), Dec. 4, 1987, 101 Stat. 1079; amended Pub. L. 101–510, div. A, title XIII, § 1311(2), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 104–106, div. A, title XV, § 1502(a)(8), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

PRIOR PROVISIONS

A prior section 402 was renumbered section 401(b) of this title.

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations'' for ''Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs''.

1990—Subsec. (d). Pub. L. 101–510 substituted ''Not later than July 31 each year'' for ''At the end of each six-month period'' and ''the 12-month period ending on the preceding June 30'' for ''such six-month period''.

DELEGATION OF FUNCTIONS

For delegation of functions of President under this section, see Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended, set out as a note under section 2381 of Title 22, Foreign Relations and Intercourse.

PROCESSING OF APPLICATIONS FOR TRANSPORTATION OF HUMANITARIAN ASSISTANCE ABROAD BY DEPARTMENT OF DEFENSE

Pub. L. 106–309, title IV, § 403, Oct. 17, 2000, 114 Stat. 1097, provided that:

''(a) PRIORITY FOR DISASTER RELIEF ASSISTANCE.—In processing applications for the transportation of humanitarian assistance abroad under section 402 of title 10, United States Code, the Administrator of the United States Agency for International Development shall afford a priority to applications for the transportation of disaster relief assistance.

''(b) MODIFICATION OF APPLICATIONS.—The Administrator of the United States Agency for International Development shall take all possible actions to assist applicants for the transportation of humanitarian assistance abroad under such section 402 in modifying or completing applications submitted under such section in order to meet applicable requirements under such section. The actions shall include efforts to contact such applicants for purposes of the modification or completion of such applications.''

FIRST REPORT DEADLINE

Section 332(d) of Pub. L. 100–180 directed that first report under section 402(d) of this title be submitted not more than six months after the date on which the most recent report was submitted under section 1540(e) of the Department of Defense Authorization Act, 1985 (Pub. L. 98–525; 98 Stat. 2638).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 5463.

[§ 403. Repealed. Pub. L. 104–106, div. A, title X, § 1061(g)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 102–484, div. A, title XIII, § 1342(c)(1), Oct. 23, 1992, 106 Stat. 2557; amended Pub. L. 103–160, div. A, title XV, § 1501(b), (c), Nov. 30, 1993, 107 Stat. 1836, related to international peacekeeping activities.

§ 404. Foreign disaster assistance

(a) IN GENERAL.—The President may direct the Secretary of Defense to provide disaster assistance outside the United States to respond to manmade or natural disasters when necessary to prevent loss of lives.

(b) FORMS OF ASSISTANCE.—Assistance provided under this section may include transportation, supplies, services, and equipment.

(c) NOTIFICATION REQUIRED.—Not later than 48 hours after the commencement of disaster assistance activities to provide assistance under this section, the President shall transmit to Congress a report containing notification of the assistance provided, and proposed to be provided, under this section and a description of so much of the following as is then available:

(1) The manmade or natural disaster for which disaster assistance is necessary.

(2) The threat to human lives presented by the disaster.

(3) The United States military personnel and material resources that are involved or expected to be involved.

(4) The disaster assistance that is being provided or is expected to be provided by other nations or public or private relief organizations.

(5) The anticipated duration of the disaster assistance activities.

(d) ORGANIZING POLICIES AND PROGRAMS.—Amounts appropriated to the Department of Defense for any fiscal year for Overseas Humanitarian, Disaster, and Civic Aid (OHDACA) programs of the Department shall be available for organizing general policies and programs for disaster relief programs for disasters occurring outside the United States.

(Added Pub. L. 103–337, div. A, title XIV, § 1412(a), Oct. 5, 1994, 108 Stat. 2912.)

PRIOR PROVISIONS

A prior section 404 was renumbered section 401(d) of this title.

EX. ORD. NO. 12966. FOREIGN DISASTER ASSISTANCE

Ex. Ord. No. 12966, July 14, 1995, 60 F.R. 36949, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Defense Authorization Act for Fiscal Year 1995, Public Law 103–337 (the ''Act'') [see Tables for classification] and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. This order governs the implementation of section 404 of title 10, United States Code, as added by amendment set forth in section 1412(a) of the Act. Pursuant to 10 U.S.C. 404(a), the Secretary of Defense is hereby directed to provide disaster assistance outside the United States to respond to manmade or natural disasters when the Secretary of Defense determines that such assistance is necessary to prevent loss of lives. The Secretary of Defense shall exercise the notification functions required of the President by 10 U.S.C. 404(c).

SEC. 2. The Secretary of Defense shall provide disaster assistance only: (a) at the direction of the President; or

(b) with the concurrence of the Secretary of State; or

(c) in emergency situations in order to save human lives, where there is not sufficient time to seek the prior initial concurrence of the Secretary of State, in which case the Secretary of Defense shall advise, and seek the concurrence of, the Secretary of State as soon as practicable thereafter.

For the purpose of section 2(b) of this order, only the Secretary of State, or the Deputy Secretary of State, or persons acting in those capacities, shall have the authority to withhold concurrence. Concurrence of the Secretary of State is not required for the execution of military operations undertaken pursuant to, and consistent with, assistance provided in accordance with parts (b) and (c) of this section, or with respect to matters relating to the internal financial processes of the Department of Defense.

SEC. 3. In providing assistance covered by this order, the Secretary of Defense shall consult with the Administrator of the Agency for International Development, in the Administrator's capacity as the President's Special Coordinator for International Disaster Assistance.

SEC. 4. This order does not affect any activity or program authorized under any other provision of law, except that referred to in section 1 of this order.

SEC. 5. This order is effective at 12:01 a.m., e.d.t. on July 15, 1995.

WILLIAM J. CLINTON.

§ 405. Use of Department of Defense funds for United States share of costs of United Nations peacekeeping activities: limitation

(a) PROHIBITION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to make a financial contribution (directly or through another department or agency of the United States) to the United Nations—

(1) for the costs of a United Nations peacekeeping activity; or

(2) for any United States arrearage to the United Nations.

(b) APPLICATION OF PROHIBITION.—The prohibition in subsection (a) applies to voluntary contributions, as well as to contributions pursuant to assessment by the United Nations for the United States share of the costs of a peacekeeping activity.

(Added Pub. L. 104–106, div. A, title XIII, § 1301(a), Feb. 10, 1996, 110 Stat. 473.)

PRIOR PROVISIONS

A prior section 405 was renumbered section 401(e) of this title.

USE OF DEPARTMENT OF DEFENSE FUNDS FOR UNITED NATIONS FORCES

Pub. L. 105–261, div. A, title XII, § 1231(b), Oct. 17, 1998, 112 Stat. 2155, provided that: ''No funds available to the Department of Defense may be used—

''(1) for a monetary contribution to the United Nations for the establishment of a standing international force under the United Nations; or

''(2) to assign or detail any member of the Armed Forces to duty with a United Nations Stand By Force.''

[§ 406. Renumbered § 401(f)]

[§ 410. Repealed. Pub. L. 104–106, div. A, title V, § 571(a)(1), Feb. 10, 1996, 110 Stat. 353]

Section, added Pub. L. 102–484, div. A, title X, § 1081(b)(1), Oct. 23, 1992, 106 Stat. 2515, related to Civil-Military Cooperative Action Program.

PILOT OUTREACH PROGRAM TO REDUCE DEMAND FOR ILLEGAL DRUGS

Section 1045 of Pub. L. 102–484, required Secretary of Defense to conduct pilot outreach program to reduce demand for illegal drugs, required program to include outreach activities by active and reserve components of Armed Forces and focus primarily on youths in general and inner-city youths in particular, and related to payment of travel and living expenses, funding, duration of program, and reporting requirements, prior to repeal by Pub. L. 104–106, div. A, title V, § 571(b), Feb. 10, 1996, 110 Stat. 353.

CONGRESSIONAL FINDINGS

Section 1081(a) of Pub. L. 102–484, related to findings of Congress as to use of military resources to assist in addressing domestic needs, prior to repeal by Pub. L. 104–106, div. A, title V, § 571(a)(2), Feb. 10, 1996, 110 Stat. 353.

CHAPTER 21—DEPARTMENT OF DEFENSE INTELLIGENCE MATTERS

Subchapter		Sec.
I.	General Matters	421

Subchapter Sec.
II. Intelligence Commercial Activities 431

AMENDMENTS

1991—Pub. L. 102–88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added items for subchapters I and II.

SUBCHAPTER I—GENERAL MATTERS

Sec.
421. Funds for foreign cryptologic support.
422. Use of funds for certain incidental purposes.
423. Authority to use proceeds from counterintelligence operations of the military departments.
424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency.
425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies.

AMENDMENTS

2001—Pub. L. 107–108, title V, §501(b)(3), Dec. 28, 2001, 115 Stat. 1404, substituted ''Use of funds for certain incidental purposes'' for ''Counterintelligence official reception and representation expenses'' in item 422.

1997—Pub. L. 105–107, title V, §503(d)(2), Nov. 20, 1997, 111 Stat. 2263, added items 424 and 425 and struck out former items 424 ''Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency'' and 425 ''Disclosure of personnel information: exemption for National Reconnaissance Office''.

1993—Pub. L. 103–178, title V, §503(a)(2), Dec. 3, 1993, 107 Stat. 2039, added item 425.

1991—Pub. L. 102–88, title V, §504(a)(1), Aug. 14, 1991, 105 Stat. 437, added subchapter heading.

1989—Pub. L. 101–189, div. A, title XVI, §1622(c)(2), Nov. 29, 1989, 103 Stat. 1604, substituted ''Funds for foreign cryptologic support'' for ''Funds for Foreign Cryptologic Support'' in item 421.

1988—Pub. L. 100–453, title VII, §§701(b), 703(b), Sept. 29, 1988, 102 Stat. 1912, 1913, in item 421 substituted ''Funds for Foreign Cryptologic Support'' for ''Funds transfers for foreign cryptologic support'' and added item 424.

1987—Pub. L. 100–180, div. A, title XII, §1231(3), Dec. 4, 1987, 101 Stat. 1160, substituted ''departments'' for ''department'' in item 423.

§ 421. Funds for foreign cryptologic support

(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.

(b) The Secretary of Defense may use funds other than appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support without regard for the provisions of law relating to the expenditure of United States Government funds, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the Department of Defense for a purpose for which Congress had previously denied funds; and

(2) proceeds from the sale of cryptologic items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) Any funds expended under the authority of subsection (a) shall be reported to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.). Funds expended under the authority of subsection (b) shall be reported pursuant to procedures jointly agreed upon by such committees and the Secretary of Defense.

(Added Pub. L. 96–450, title IV, §401(a), Oct. 14, 1980, 94 Stat. 1977, §140a; amended Pub. L. 97–258, §3(b)(2), Sept. 13, 1982, 96 Stat. 1063; renumbered §128 and amended Pub. L. 99–433, title I, §§101(a)(3), 110(d)(5), Oct. 1, 1986, 100 Stat. 994, 1002; renumbered §421, Pub. L. 100–26, §9(a)(2), Apr. 21, 1987, 101 Stat. 287; Pub. L. 100–453, title VII, §701(a), Sept. 29, 1988, 102 Stat. 1911; Pub. L. 101–189, div. A, title XVI, §1622(c)(3), Nov. 29, 1989, 103 Stat. 1604.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''House of Representatives pursuant to the provisions of title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.). Funds'' for ''House pursuant to the provisions of title V of the National Security Act of 1947, as amended, and funds''.

1988—Pub. L. 100–453 struck out ''transfers'' after ''Funds'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense may use funds available to the Department of Defense for intelligence and communications purposes to pay for the expenses of arrangements with foreign countries for cryptologic support.''

1987—Pub. L. 100–26 renumbered section 128 of this title as this section.

1986—Pub. L. 99–433 renumbered section 140a of this title as section 128 of this title and substituted ''Funds'' for ''Secretary of Defense: funds'' in section catchline.

1982—Pub. L. 97–258 struck out provision that payments under this section could be made without regard to section 3651 of the Revised Statutes of the United States (31 U.S.C. 543).

COMPREHENSIVE INDEPENDENT STUDY OF NATIONAL CRYPTOGRAPHY POLICY

Pub. L. 103–160, div. A, title II, §267, Nov. 30, 1993, 107 Stat. 1611, directed Secretary of Defense, not later than 90 days after Nov. 30, 1993, to request National Research Council of National Academy of Sciences to conduct a comprehensive study to assess effect of cryptographic technologies on national security, law enforcement, commercial, and privacy interests, and effect of export controls on commercial interests, with cooperation of other agencies, and report findings and conclusions within 2 years after processing of security clearances to Secretary of Defense, and directed Secretary to submit a report in unclassified form to Committee on Armed Services, Committee on the Judiciary, and Select Committee on Intelligence of Senate and to Committee on Armed Services, Committee on the Judiciary, and Permanent Select Committee on Intelligence of House of Representatives, not later than 120 days after the report is submitted to the Secretary.

§422. Use of funds for certain incidental purposes

(a) COUNTERINTELLIGENCE OFFICIAL RECEPTION AND REPRESENTATION EXPENSES.—The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.

(b) PROMOTIONAL ITEMS FOR RECRUITMENT PURPOSES.—The Secretary of Defense may use funds available for an intelligence element of the Department of Defense to purchase promotional items of nominal value for use in the recruitment of individuals for employment by that element.

(Added Pub. L. 99–569, title IV, §401(c), Oct. 27, 1986, 100 Stat. 3195, §140a; renumbered §422, Pub. L. 100–26, §9(a)(3), Apr. 21, 1987, 101 Stat. 287; amended Pub. L. 107–108, title V, §501(a)–(b)(2), Dec. 28, 2001, 115 Stat. 1404.)

AMENDMENTS

2001—Pub. L. 107–108 substituted ''Use of funds for certain incidental purposes'' for ''Counterintelligence official reception and representation expenses'' in section catchline, designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1987—Pub. L. 100–26 renumbered section 140a of this title as this section.

§423. Authority to use proceeds from counterintelligence operations of the military departments

(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, use of proceeds from counterintelligence operations conducted by components of the military departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make exceptional performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.

(Added Pub. L. 99–569, title IV, §403(a), Oct. 27, 1986, 100 Stat. 3196, §140b; renumbered §423 and amended Pub. L. 100–26, §9(a)(3), (b)(3), Apr. 21, 1987, 101 Stat. 287.)

AMENDMENTS

1987—Pub. L. 100–26 renumbered section 140b of this title as this section and struck out ''United States Code,'' after ''section 3302 of title 31,'' in subsec. (a).

§424. Disclosure of organizational and personnel information: exemption for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency

(a) EXEMPTION FROM DISCLOSURE.—Except as required by the President or as provided in subsection (c), no provision of law shall be construed to require the disclosure of—

(1) the organization or any function of an organization of the Department of Defense named in subsection (b); or

(2) the number of persons employed by or assigned or detailed to any such organization or the name, official title, occupational series, grade, or salary of any such person.

(b) COVERED ORGANIZATIONS.—This section applies to the following organizations of the Department of Defense:

(1) The Defense Intelligence Agency.

(2) The National Reconnaissance Office.

(3) The National Imagery and Mapping Agency.

(c) PROVISION OF INFORMATION TO CONGRESS.—Subsection (a) does not apply with respect to the provision of information to Congress.

(Added Pub. L. 104–201, div. A, title XI, §1112(d), Sept. 23, 1996, 110 Stat. 2683.)

PRIOR PROVISIONS

A prior section 424, added Pub. L. 100–178, title VI, §603(a), Dec. 2, 1987, 101 Stat. 1016, §1607; renumbered §424 and amended Pub. L. 100–453, title VII, §703(a), Sept. 29, 1988, 102 Stat. 1912, related to disclosure of organizational and personnel information with respect to the Defense Intelligence Agency prior to repeal by Pub. L. 104–201, div. A, title XI, §§1112(d), 1124, Sept. 23, 1996, 110 Stat. 2683, 2688, effective Oct. 1, 1996.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

DISCLOSURE OF GOVERNMENTAL AFFILIATION BY DEPARTMENT OF DEFENSE INTELLIGENCE PERSONNEL OUTSIDE OF UNITED STATES

Pub. L. 103–359, title V, §503, Oct. 14, 1994, 108 Stat. 3430, provided that:

''(a) IN GENERAL.—Notwithstanding section 552a(e)(3) of title 5, United States Code, intelligence personnel of the Department of Defense who are authorized by the Secretary of Defense to collect intelligence from human sources shall not be required, when making an initial assessment contact outside the United States, to give notice of governmental affiliation to potential sources who are United States persons.

''(b) RECORDS.—Records concerning such contacts shall be maintained by the Department of Defense and made available upon request to the appropriate committees of the Congress in accordance with applicable security procedures. Such records shall include for each such contact an explanation of why notice of government affiliation could not reasonably be provided, the nature of the information obtained from the United States person as a result of the contact, and whether additional contacts resulted with the person concerned.

''(c) DEFINITIONS.—For the purposes of this section—

''(1) the term 'United States' includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

''(2) the term 'United States person' means any citizen, national, or permanent resident alien of the United States.''

EXEMPTION FOR NATIONAL RECONNAISSANCE OFFICE FROM ANY REQUIREMENT FOR DISCLOSURE OF PERSONNEL INFORMATION

Pub. L. 102–496, title IV, § 406, Oct. 24, 1992, 106 Stat. 3186, which provided that, except as required by President and except with respect to provision of information to Congress, nothing in Pub. L. 102–496 or any other provision of law was to be construed to require disclosure of name, title, or salary of any person employed by, or assigned or detailed to, National Reconnaissance Office or disclosure of number of such persons, was repealed and restated in former section 425 of this title by Pub. L. 103–178, title V, § 503(a)(1), (b), Dec. 3, 1993, 107 Stat. 2038, 2039.

§ 425. Prohibition of unauthorized use of name, initials, or seal: specified intelligence agencies

(a) PROHIBITION.—Except with the written permission of both the Secretary of Defense and the Director of Central Intelligence, no person may knowingly use, in connection with any merchandise, retail product, impersonation, solicitation, or commercial activity in a manner reasonably calculated to convey the impression that such use is approved, endorsed, or authorized by the Secretary and the Director, any of the following (or any colorable imitation thereof):

(1) The words ''Defense Intelligence Agency'', the initials ''DIA'', or the seal of the Defense Intelligence Agency.

(2) The words ''National Reconnaissance Office'', the initials ''NRO'', or the seal of the National Reconnaissance Office.

(3) The words ''National Imagery and Mapping Agency'', the initials ''NIMA'', or the seal of the National Imagery and Mapping Agency.

(4) The words ''Defense Mapping Agency'', the initials ''DMA'', or the seal of the Defense Mapping Agency.

(b) AUTHORITY TO ENJOIN VIOLATIONS.—Whenever it appears to the Attorney General that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (a), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court shall proceed as soon as practicable to the hearing and determination of such action and may, at any time before final determination, enter such restraining orders or prohibitions, or take such other actions as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added and amended Pub. L. 105–107, title V, § 503(a), (b), Nov. 20, 1997, 111 Stat. 2262.)

CODIFICATION

The text of section 202(b) of this title, which was transferred to this section by Pub. L. 105–107, § 503(b), was based on Pub. L. 97–269, title V, § 501(a), Sept. 27, 1982, 96 Stat. 1145, § 191; renumbered § 201, Pub. L. 99–433, title III, § 301(a)(1), Oct. 1, 1986, 100 Stat. 1019; renumbered § 202, Pub. L. 102–190, div. A, title IX, § 922(a)(1), Dec. 5, 1991, 105 Stat. 1453.

PRIOR PROVISIONS

A prior section 425, added Pub. L. 103–178, title V, § 503(a)(1), Dec. 3, 1993, 107 Stat. 2038, related to disclosure of information about personnel at National Reconnaissance Office prior to repeal by Pub. L. 104–201, div. A, title XI, §§ 1112(d), 1124, Sept. 23, 1996, 110 Stat. 2683, 2688, effective Oct. 1, 1996. See section 424 of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–107, § 503(b), renumbered section 202(b) of this title as subsec. (b) of this section and inserted heading.

SUBCHAPTER II—INTELLIGENCE COMMERCIAL ACTIVITIES

Sec.
431. Authority to engage in commercial activities as security for intelligence collection activities.
432. Use, disposition, and auditing of funds.
433. Relationship with other Federal laws.
434. Reservation of defenses and immunities.
435. Limitations.
436. Regulations.
437. Congressional oversight.

AMENDMENTS

1992—Pub. L. 102–484, div. A, title X, § 1052(1), Oct. 23, 1992, 106 Stat. 2499, inserted ''Sec.'' above item ''431''.

1991—Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437, added subchapter heading and analysis of sections.

§ 431. Authority to engage in commercial activities as security for intelligence collection activities

(a) AUTHORITY.—The Secretary of Defense, subject to the provisions of this subchapter, may authorize the conduct of those commercial activities necessary to provide security for authorized intelligence collection activities abroad undertaken by the Department of Defense. No commercial activity may be initiated pursuant to this subchapter after December 31, 2004.

(b) INTERAGENCY COORDINATION AND SUPPORT.—Any such activity shall—

(1) be coordinated with, and (where appropriate) be supported by, the Director of Central Intelligence; and

(2) to the extent the activity takes place within the United States, be coordinated with, and (where appropriate) be supported by, the Director of the Federal Bureau of Investigation.

(c) DEFINITIONS.—In this subchapter:

(1) The term ''commercial activities'' means activities that are conducted in a manner consistent with prevailing commercial practices and includes—

(A) the acquisition, use, sale, storage and disposal of goods and services;

(B) entering into employment contracts and leases and other agreements for real and personal property;

(C) depositing funds into and withdrawing funds from domestic and foreign commercial business or financial institutions;

(D) acquiring licenses, registrations, permits, and insurance; and

(E) establishing corporations, partnerships, and other legal entities.

(2) The term ''intelligence collection activities'' means the collection of foreign intelligence and counterintelligence information.

(Added Pub. L. 102–88, title V, § 504(a)(2), Aug. 14, 1991, 105 Stat. 437; amended Pub. L. 104–93, title

V, §503, Jan. 6, 1996, 109 Stat. 973; Pub. L. 105–272, title V, §501, Oct. 20, 1998, 112 Stat. 2404; Pub. L. 106–398, §1 [[div. A], title X, §1077], Oct. 30, 2000, 114 Stat. 1654, 1654A–282; Pub. L. 107–314, div. A, title X, §1053, Dec. 2, 2002, 116 Stat. 2649.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''2004'' for ''2002''.

2000—Subsec. (a). Pub. L. 106–398 substituted ''2002'' for ''2000''.

1998—Subsec. (a). Pub. L. 105–272 substituted ''2000'' for ''1998''.

1996—Subsec. (a). Pub. L. 104–93 substituted ''1998'' for ''1995''.

EFFECTIVE DATE

Section 504(b) of Pub. L. 102–88 provided that: ''The Secretary of Defense may not authorize any activity under section 431 of title 10, United States Code, as added by subsection (a), until the later of—

''(1) the end of the 90-day period beginning on the date of the enactment of this Act [Aug. 14, 1991]; or

''(2) the effective date of regulations first prescribed under section 436 of such title, as added by subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 433 of this title.

§432. Use, disposition, and auditing of funds

(a) USE OF FUNDS.—Funds generated by a commercial activity authorized pursuant to this subchapter may be used to offset necessary and reasonable expenses arising from that activity. Use of such funds for that purpose shall be kept to the minimum necessary to conduct the activity concerned in a secure manner. Any funds generated by the activity in excess of those required for that purpose shall be deposited, as often as may be practicable, into the Treasury as miscellaneous receipts.

(b) AUDITS.—(1) The Secretary of Defense shall assign an organization within the Department of Defense to have auditing responsibility with respect to activities authorized under this subchapter.

(2) That organization shall audit the use and disposition of funds generated by any commercial activity authorized under this subchapter not less often than annually. The results of all such audits shall be promptly reported to the intelligence committees (as defined in section 437(d) of this title).

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 437 of this title.

§433. Relationship with other Federal laws

(a) IN GENERAL.—Except as provided by subsection (b), a commercial activity conducted pursuant to this subchapter shall be carried out in accordance with applicable Federal law.

(b) AUTHORIZATION OF WAIVERS WHEN NECESSARY TO MAINTAIN SECURITY.—(1) If the Secretary of Defense determines, in connection with a commercial activity authorized pursuant to section 431 of this title, that compliance with certain Federal laws or regulations pertaining to the management and administration of Federal agencies would create an unacceptable risk of compromise of an authorized intelligence activity, the Secretary may, to the extent necessary to prevent such compromise, waive compliance with such laws or regulations.

(2) Any determination and waiver by the Secretary under paragraph (1) shall be made in writing and shall include a specification of the laws and regulations for which compliance by the commercial activity concerned is not required consistent with this section.

(3) The authority of the Secretary under paragraph (1) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, an Assistant Secretary of Defense, or a Secretary of a military department.

(c) FEDERAL LAWS AND REGULATIONS.—For purposes of this section, Federal laws and regulations pertaining to the management and administration of Federal agencies are only those Federal laws and regulations pertaining to the following:

(1) The receipt and use of appropriated and nonappropriated funds.

(2) The acquisition or management of property or services.

(3) Information disclosure, retention, and management.

(4) The employment of personnel.

(5) Payments for travel and housing.

(6) The establishment of legal entities or government instrumentalities.

(7) Foreign trade or financial transaction restrictions that would reveal the commercial activity as an activity of the United States Government.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 438.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 436, 437 of this title.

§434. Reservation of defenses and immunities

The submission to judicial proceedings in a State or other legal jurisdiction, in connection with a commercial activity undertaken pursuant to this subchapter, shall not constitute a waiver of the defenses and immunities of the United States.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§435. Limitations

(a) LAWFUL ACTIVITIES.—Nothing in this subchapter authorizes the conduct of any intelligence activity that is not otherwise authorized by law or Executive order.

(b) DOMESTIC ACTIVITIES.—Personnel conducting commercial activity authorized by this subchapter may only engage in those activities in the United States to the extent necessary to support intelligence activities abroad.

(c) PROVIDING GOODS AND SERVICES TO THE DEPARTMENT OF DEFENSE.—Commercial activity may not be undertaken within the United States for the purpose of providing goods and services to the Department of Defense, other than as may be necessary to provide security for the activities subject to this subchapter.

(d) NOTICE TO UNITED STATES PERSONS.—(1) In carrying out a commercial activity authorized under this subchapter, the Secretary of Defense may not permit an entity engaged in such activity to employ a United States person in an operational, managerial, or supervisory position, and may not assign or detail a United States person to perform operational, managerial, or supervisory duties for such an entity, unless that person is informed in advance of the intelligence security purpose of that activity.

(2) In this subsection, the term ''United States person'' means an individual who is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

§ 436. Regulations

The Secretary of Defense shall prescribe regulations to implement the authority provided in this subchapter. Such regulations shall be consistent with this subchapter and shall at a minimum—

(1) specify all elements of the Department of Defense who are authorized to engage in commercial activities pursuant to this subchapter;

(2) require the personal approval of the Secretary or Deputy Secretary of Defense for all sensitive activities to be authorized pursuant to this subchapter;

(3) specify all officials who are authorized to grant waivers of laws or regulations pursuant to section 433(b) of this title, or to approve the establishment or conduct of commercial activities pursuant to this subchapter;

(4) designate a single office within the Defense Intelligence Agency to be responsible for the management and supervision of all activities authorized under this subchapter;

(5) require that each commercial activity proposed to be authorized under this subchapter be subject to appropriate legal review before the activity is authorized; and

(6) provide for appropriate internal audit controls and oversight for such activities.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 439.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 437 of this title.

§ 437. Congressional oversight

(a) PROPOSED REGULATIONS.—Copies of regulations proposed to be prescribed under section 436 of this title (including any proposed revision to such regulations) shall be submitted to the intelligence committees not less than 30 days before they take effect.

(b) CURRENT INFORMATION.—Consistent with title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Secretary of Defense shall ensure that the intelligence committees are kept fully and currently informed of actions taken pursuant to this subchapter, including any significant anticipated activity to be authorized pursuant to this subchapter. The Secretary shall promptly notify the appropriate committees of Congress whenever a corporation, partnership, or other legal entity is established pursuant to this subchapter.

(c) ANNUAL REPORT.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report on all commercial activities authorized under this subchapter that were undertaken during the previous fiscal year. Such report shall include (with respect to the fiscal year covered by the report)—

(1) a description of any exercise of the authority provided by section 433(b) of this title;

(2) a description of any expenditure of funds made pursuant to this subchapter (whether from appropriated or non-appropriated funds); and

(3) a description of any actions taken with respect to audits conducted pursuant to section 432 of this title to implement recommendations or correct deficiencies identified in such audits.

(Added Pub. L. 102–88, title V, §504(a)(2), Aug. 14, 1991, 105 Stat. 440; amended Pub. L. 107–306, title VIII, §811(b)(4)(A), Nov. 27, 2002, 116 Stat. 2423.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsecs. (b) and (c), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§413 et seq.) of chapter 15 of Title 50, War and National Defense. Section 507 of the Act is classified to section 415b of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–306, §811(b)(4)(A)(i), in introductory provisions, substituted ''Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))'' for ''Not later than January 15 of each year, the Secretary shall submit to the appropriate committees of Congress''.

Subsec. (d). Pub. L. 107–306, §811(b)(4)(A)(ii), struck out heading and text of subsec. (d). Text read as follows: ''In this section, the term 'intelligence committees' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 432 of this title; title 50 section 415b.

CHAPTER 22—NATIONAL IMAGERY AND MAPPING AGENCY

Subchapter		Sec.
I.	Missions and Authority	441
II.	Maps, Charts, and Geodetic Products	451
III.	Personnel Management	461
IV.	Definitions	467

PRIOR PROVISIONS

A prior chapter 22 was renumbered chapter 23 of this title.

SUBCHAPTER I—MISSIONS AND AUTHORITY

Sec.
441. Establishment.
442. Missions.
443. Imagery intelligence and geospatial information: support for foreign countries.

Sec.
444. Support from Central Intelligence Agency.
[445. Repealed.]

AMENDMENTS

1997—Pub. L. 105–107, title V, §503(d)(3), Nov. 20, 1997, 111 Stat. 2263, struck out item 445 ''Protection of agency identifications and organizational information''.

§441. Establishment

(a) ESTABLISHMENT.—The National Imagery and Mapping Agency is a combat support agency of the Department of Defense and has significant national missions.

(b) DIRECTOR.—(1) The Director of the National Imagery and Mapping Agency is the head of the agency.

(2) Upon a vacancy in the position of Director, the Secretary of Defense shall recommend to the President an individual for appointment to the position.

(3) If an officer of the armed forces on active duty is appointed to the position of Director, the position shall be treated as having been designated by the President as a position of importance and responsibility for purposes of section 601 of this title and shall carry the grade of lieutenant general, or, in the case of an officer of the Navy, vice admiral.

(c) DIRECTOR OF CENTRAL INTELLIGENCE COLLECTION TASKING AUTHORITY.—Unless otherwise directed by the President, the Director of Central Intelligence shall have authority (except as otherwise agreed by the Director and the Secretary of Defense) to—

(1) approve collection requirements levied on national imagery collection assets;

(2) determine priorities for such requirements; and

(3) resolve conflicts in such priorities.

(d) AVAILABILITY AND CONTINUED IMPROVEMENT OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION FUNCTION.—The Secretary of Defense, in consultation with the Director of Central Intelligence, shall take all necessary steps to ensure the full availability and continued improvement of imagery intelligence support for all-source analysis and production.

(Added Pub. L. 104–201, div. A, title XI, §1112(a)(2), Sept. 23, 1996, 110 Stat. 2678.)

EFFECTIVE DATE

Subchapter effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

SHORT TITLE OF 1996 AMENDMENT

Section 1101 of title XI of div. A of Pub. L. 104–201 provided that: ''This title [enacting this chapter, section 424 of this title, and sections 404e and 404f of Title 50, War and National Defense, amending sections 193, 201, and 451 to 456 of this title, sections 2302, 3132, 4301, 4701, 5102, 5342, 6339, and 7323 of Title 5, Government Organization and Employees, section 105 of the Ethics in Government Act of 1978, set out in the Appendix to Title 5, section 82 of Title 14, Coast Guard, section 2006 of Title 29, Labor, section 1336 of Title 44, Public Printing and Documents, and sections 401a and 403–5 of Title 50, renumbering chapter 22 and sections 451, 452, 2792 to 2796, and 2798 of this title as chapter 23 and sections 481, 482, 451 to 455, and 456 of this title, respectively, repealing sections 424, 425, 2791, and 2797 of this title, enacting provisions set out as notes under this section and section 193 of this title, and amending provisions set out as a note under section 501 of Title 44] may be cited as the 'National Imagery and Mapping Agency Act of 1996'.''

SAVINGS PROVISIONS

Section 1116 of title XI of div. A of Pub. L. 104–201, as amended by Pub. L. 105–85, div. A, title X, §1073(c)(8), Nov. 18, 1997, 111 Stat. 1904, provided that:

''(a) CONTINUING EFFECT ON LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, international agreements, grants, contracts, leases, certificates, licenses, registrations, privileges, and other administrative actions—

''(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in connection with any of the functions which are transferred under this title [see Short Title of 1996 Amendment note above] or any function that the National Imagery and Mapping Agency is authorized to perform by law, and

''(2) which are in effect at the time this title takes effect, or were final before the effective date of this title [Oct. 1, 1996] and are to become effective on or after the effective date of this title,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Defense, the Director of the National Imagery and Mapping Agency or other authorized official, a court of competent jurisdiction, or by operation of law.

''(b) PROCEEDINGS NOT AFFECTED.—This title and the amendments made by this title shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending before an element of the Department of Defense or Central Intelligence Agency at the time this title takes effect, with respect to function of that element transferred by section 1111 [set out below], but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this section shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.''

CONGRESSIONAL FINDINGS

Section 1102 of Pub. L. 104–201 provided that: ''Congress makes the following findings:

''(1) There is a need within the Department of Defense and the Intelligence Community of the United States to provide a single agency focus for the growing number and diverse types of customers for imagery and geospatial information resources within the Government, to ensure visibility and accountability for those resources, and to harness, leverage, and focus rapid technological developments to serve the imagery, imagery intelligence, and geospatial information customers.

''(2) There is a need for a single Government agency to solicit and advocate the needs of that growing and diverse pool of customers.

''(3) A single combat support agency dedicated to imagery, imagery intelligence, and geospatial information could act as a focal point for support of all imagery intelligence and geospatial information customers, including customers in the Department of Defense, the Intelligence Community, and related agencies outside of the Department of Defense.

''(4) Such an agency would best serve the needs of the imagery, imagery intelligence, and geospatial information customers if it were organized—

''(A) to carry out its mission responsibilities under the authority, direction, and control of the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff; and

''(B) to carry out its responsibilities to national intelligence customers in accordance with policies and priorities established by the Director of Central Intelligence.''

ESTABLISHMENT OF NATIONAL IMAGERY AND MAPPING AGENCY; TRANSFER OF FUNCTIONS

Section 1111 of Pub. L. 104–201 provided that:

''(a) ESTABLISHMENT.—There is hereby established in the Department of Defense a Defense Agency to be known as the National Imagery and Mapping Agency.

''(b) TRANSFER OF FUNCTIONS FROM DEPARTMENT OF DEFENSE ENTITIES.—The missions and functions of the following elements of the Department of Defense are transferred to the National Imagery and Mapping Agency:

''(1) The Defense Mapping Agency.

''(2) The Central Imagery Office.

''(3) Other elements of the Department of Defense as specified in the classified annex to this Act [see section 1002 of Pub. L. 104–201, set out as a note under section 114 of this title].

''(c) TRANSFER OF FUNCTIONS FROM CENTRAL INTELLIGENCE AGENCY.—The missions and functions of the following elements of the Central Intelligence Agency are transferred to the National Imagery and Mapping Agency:

''(1) The National Photographic Interpretation Center.

''(2) Other elements of the Central Intelligence Agency as specified in the classified annex to this Act.

''(d) PRESERVATION OF LEVEL AND QUALITY OF IMAGERY INTELLIGENCE SUPPORT TO ALL-SOURCE ANALYSIS AND PRODUCTION.—In managing the establishment of the National Imagery and Mapping Agency, the Secretary of Defense, in consultation with the Director of Central Intelligence, shall ensure that imagery intelligence support provided to all-source analysis and production is in no way degraded or compromised.''

TRANSFERS OF PERSONNEL AND ASSETS

Section 1113 of Pub. L. 104–201 provided that:

''(a) PERSONNEL AND ASSETS.—Subject to subsections (b) and (c), the personnel, assets, unobligated balances of appropriations and authorizations of appropriations, and, to the extent jointly determined appropriate by the Secretary of Defense and Director of Central Intelligence, obligated balances of appropriations and authorizations of appropriations employed, used, held, arising from, or available in connection with the missions and functions transferred under section 1111(b) or section 1111(c) [set out above] are transferred to the National Imagery and Mapping Agency. Transfers of appropriations from the Central Intelligence Agency under this subsection shall be made in accordance with section 1531 of title 31, United States Code.

''(b) DETERMINATION OF CIA POSITIONS TO BE TRANSFERRED.—Not earlier than two years after the effective date of this subtitle [Oct. 1, 1996], the Secretary of Defense and the Director of Central Intelligence shall determine which, if any, positions and personnel of the Central Intelligence Agency are to be transferred to the National Imagery and Mapping Agency. The positions to be transferred, and the employees serving in such positions, shall be transferred to the National Imagery and Mapping Agency under terms and conditions prescribed by the Secretary of Defense and the Director of Central Intelligence.

''(c) RULE FOR CIA IMAGERY ACTIVITIES ONLY PARTIALLY TRANSFERRED.—If the National Photographic Interpretation Center of the Central Intelligence Agency or any imagery-related activity of the Central Intelligence Agency authorized to be performed by the National Imagery and Mapping Agency is not completely transferred to the National Imagery and Mapping Agency, the Secretary of Defense and the Director of Central Intelligence shall—

''(1) jointly determine which, if any, contracts, leases, property, and records employed, used, held, arising from, available to, or otherwise relating to such Center or activity is to be transferred to the National Imagery and Intelligence Agency; and

''(2) provide by written agreement for the transfer of such items.''

CREDITABLE CIVILIAN SERVICE FOR CAREER CONDITIONAL EMPLOYEES OF DEFENSE MAPPING AGENCY

Section 1115 of Pub. L. 104–201 provided that: ''In the case of an employee of the National Imagery and Mapping Agency who, on the day before the effective date of this title [Oct. 1, 1996], was an employee of the Defense Mapping Agency in a career-conditional status, the continuous service of that employee as an employee of the National Imagery and Mapping Agency on and after such date shall be considered creditable service for the purpose of any determination of the career status of the employee.''

DEFINITIONS

Section 1117 of Pub. L. 104–201 provided that: ''In this subtitle [subtitle A (§§1111–1118) of title XI of div. A of Pub. L. 104–201, enacting this chapter, section 424 of this title, and sections 404e and 404f of Title 50, War and National Defense, amending sections 193 and 451 to 456 of this title, section 1336 of Title 44, Public Printing and Documents, and section 403–5 of Title 50, renumbering chapter 22 and sections 2792 to 2796 and 2798 of this title as chapter 23 and sections 451 to 455 and 456 of this title, respectively, repealing sections 424 and 425 of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 501 of Title 44], the terms 'function', 'imagery', 'imagery intelligence', and 'geospatial information' have the meanings given those terms in section 467 of title 10, United States Code, as added by section 1112.''

§ 442. Missions

(a) NATIONAL SECURITY MISSIONS.—(1) The National Imagery and Mapping Agency shall, in support of the national security objectives of the United States, provide the following:

(A) Imagery.

(B) Imagery intelligence.

(C) Geospatial information.

(2) Imagery, intelligence, and information provided in carrying out paragraph (1) shall be timely, relevant, and accurate.

(b) NAVIGATION INFORMATION.—The National Imagery and Mapping Agency shall improve means of navigating vessels of the Navy and the merchant marine by providing, under the authority of the Secretary of Defense, accurate and inexpensive nautical charts, sailing directions, books on navigation, and manuals of instructions for the use of all vessels of the United States and of navigators generally.

(c) MAPS, CHARTS, ETC.—The National Imagery and Mapping Agency shall prepare and distribute maps, charts, books, and geodetic products as authorized under subchapter II of this chapter.

(d) NATIONAL MISSIONS.—The National Imagery and Mapping Agency also has national missions as specified in section 120(a) of the National Security Act of 1947.

(e) SYSTEMS.—The National Imagery and Mapping Agency may, in furtherance of a mission of the Agency, design, develop, deploy, operate, and maintain systems related to the processing and dissemination of imagery intelligence and geospatial information that may be transferred to, accepted or used by, or used on behalf of—

(1) the armed forces, including any combatant command, component of a combatant command, joint task force, or tactical unit; or

(2) any other department or agency of the United States.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2678.)

REFERENCES IN TEXT

Section 120(a) of the National Security Act of 1947, referred to in subsec. (d), is classified to section 404e(a) of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 404e.

§ 443. Imagery intelligence and geospatial information: support for foreign countries

(a) USE OF APPROPRIATED FUNDS.—The Director of the National Imagery and Mapping Agency may use appropriated funds available to the National Imagery and Mapping Agency to provide foreign countries with imagery intelligence and geospatial information support.

(b) USE OF FUNDS OTHER THAN APPROPRIATED FUNDS.—The Director may use funds other than appropriated funds to provide foreign countries with imagery intelligence and geospatial information support, notwithstanding provisions of law relating to the expenditure of funds of the United States, except that—

(1) no such funds may be expended, in whole or in part, by or for the benefit of the National Imagery and Mapping Agency for a purpose for which Congress had previously denied funds;

(2) proceeds from the sale of imagery intelligence or geospatial information items may be used only to purchase replacement items similar to the items that are sold; and

(3) the authority provided by this subsection may not be used to acquire items or services for the principal benefit of the United States.

(c) ACCOMMODATION PROCUREMENTS.—The authority under this section may be exercised to conduct accommodation procurements on behalf of foreign countries.

(d) COORDINATION WITH DIRECTOR OF CENTRAL INTELLIGENCE.—The Director of the Agency shall coordinate with the Director of Central Intelligence any action under this section that involves imagery intelligence or intelligence products or involves providing support to an intelligence or security service of a foreign country.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2679; amended Pub. L. 105–85, div. A, title X, § 1073(a)(7), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–85 substituted semicolon for period after ''denied funds''.

§ 444. Support from Central Intelligence Agency

(a) SUPPORT AUTHORIZED.—The Director of Central Intelligence may provide support in accordance with this section to the Director of the National Imagery and Mapping Agency. The Director of the National Imagery and Mapping Agency may accept support provided under this section.

(b) ADMINISTRATIVE AND CONTRACT SERVICES.—(1) In furtherance of the national intelligence effort, the Director of Central Intelligence may provide administrative and contract services to the National Imagery and Mapping Agency as if that agency were an organizational element of the Central Intelligence Agency.

(2) Services provided under paragraph (1) may include the services of security police. For purposes of section 15 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403*o*), an installation of the National Imagery and Mapping Agency that is provided security police services under this section shall be considered an installation of the Central Intelligence Agency.

(3) Support provided under this subsection shall be provided under terms and conditions agreed upon by the Secretary of Defense and the Director of Central Intelligence.

(c) DETAIL OF PERSONNEL.—The Director of Central Intelligence may detail personnel of the Central Intelligence Agency indefinitely to the National Imagery and Mapping Agency without regard to any limitation on the duration of interagency details of Federal Government personnel.

(d) REIMBURSABLE OR NONREIMBURSABLE SUPPORT.—Support under this section may be provided and accepted on either a reimbursable basis or a nonreimbursable basis.

(e) AUTHORITY TO TRANSFER FUNDS.—(1) The Director of the National Imagery and Mapping Agency may transfer funds available for that agency to the Director of Central Intelligence for the Central Intelligence Agency.

(2) The Director of Central Intelligence—

(A) may accept funds transferred under paragraph (1); and

(B) shall expend such funds, in accordance with the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), to provide administrative and contract services or detail personnel to the National Imagery and Mapping Agency under this section.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2680.)

REFERENCES IN TEXT

The Central Intelligence Agency Act of 1949, referred to in subsec. (e)(2)(B), is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to section 403a et seq. of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.

[§ 445. Repealed. Pub. L. 105–107, title V, § 503(c), Nov. 20, 1997, 111 Stat. 2262]

Section, added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2680; amended Pub. L. 105–85, div. A, title X, § 1073(a)(8), Nov. 18, 1997, 111 Stat. 1900, related to protection of agency identifications and organizational information.

SUBCHAPTER II—MAPS, CHARTS, AND GEODETIC PRODUCTS

Sec.
451. Maps, charts, and books.

Sec.
452. Pilot charts.
453. Sale of maps, charts, and navigational publications: prices; use of proceeds.
454. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations.
455. Maps, charts, and geodetic data: public availability; exceptions.
456. Civil actions barred.
457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title X, §§1010(b), 1045(b), Oct. 5, 1999, 113 Stat. 739, 763, substituted ''Sale of maps, charts, and navigational publications: prices; use of proceeds'' for ''Prices of maps, charts, and navigational publications'' in item 453 and added item 457.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 442 of this title; title 14 section 82.

§ 451. Maps, charts, and books

The Secretary of Defense may—

(1) have the National Imagery and Mapping Agency prepare maps, charts, and nautical books required in navigation and have those materials published and furnished to navigators; and

(2) buy the plates and copyrights of existing maps, charts, books on navigation, and sailing directions and instructions.

(Added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299, §2792; renumbered §451 and amended Pub. L. 104–201, div. A, title XI, §1112(b), Sept. 23, 1996, 110 Stat. 2682.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2792	10:7392.	

In the section, the words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The words ''under such regulations as he prescribes'' are omitted as unnecessary.

PRIOR PROVISIONS

A prior section 451 was renumbered section 481 of this title.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 2792 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' in par. (1).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§ 452. Pilot charts

(a) There shall be conspicuously printed on pilot charts prepared in the National Imagery and Mapping Agency the following: ''Prepared from data furnished by the National Imagery and Mapping Agency of the Department of Defense and by the Department of Commerce, and published at the National Imagery and Mapping Agency under the authority of the Secretary of Defense''.

(b) The Secretary of Commerce shall furnish to the National Imagery and Mapping Agency, as quickly as possible, all meteorological information received by the Secretary that is necessary for, and of the character used in, preparing pilot charts.

(Added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299, §2793; renumbered §452 and amended Pub. L. 104–201, div. A, title XI, §1112(b), Sept. 23, 1996, 110 Stat. 2682.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2793	10:7393.	

The words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The words ''Secretary of Commerce'' are substituted for ''Weather Bureau of the Department of Commerce'' to reflect the transfer of functions from the Weather Bureau to the Secretary of Commerce under Reorganization Plan No. 2 of 1965 (eff. July 13, 1965, 79 Stat. 1318). The word ''quickly'' is substituted for ''expeditiously'' for consistency in title 10.

PRIOR PROVISIONS

A prior section 452 was renumbered section 482 of this title.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 2793 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§ 453. Sale of maps, charts, and navigational publications: prices; use of proceeds

(a) PRICES.—All maps, charts, and other publications offered for sale by the National Imagery and Mapping Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.

(b) USE OF PROCEEDS TO PAY FOREIGN LICENSING FEES.—(1) The Secretary of Defense may pay any NIMA foreign data acquisition fee out of the proceeds of the sale of maps, charts, and other publications of the Agency, and those proceeds are hereby made available for that purpose.

(2) In this subsection, the term ''NIMA foreign data acquisition fee'' means any licensing or other fee imposed by a foreign country or international organization for the acquisition or use of data or products by the National Imagery and Mapping Agency.

(Added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299, §2794; renumbered §453 and amended Pub. L. 104–201, div. A, title XI, §1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 106–65, div. A, title X, §1010(a), Oct. 5, 1999, 113 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2794	10:7394.	

The words ''Secretary of Defense'' and ''Defense Mapping Agency'' are substituted for ''Secretary of the Navy'' and ''United States Naval Oceanographic Office'', respectively, for consistency with 10:2791. The word ''prescribed'' is substituted for ''determined'' for consistency in title 10. The last sentence, which provided that money from sales be covered into the Treasury, is omitted because of 31:3302.

AMENDMENTS

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, text read as follows: ''All maps, charts, and other publications offered for sale by the National Imagery and Mapping Agency shall be sold at prices and under regulations that may be prescribed by the Secretary of Defense.''

1996—Pub. L. 104–201 renumbered section 2794 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§454. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations

The Secretary of Defense may authorize the National Imagery and Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.

(Added Pub. L. 99–569, title VI, §601(a), Oct. 27, 1986, 100 Stat. 3202, §2795; renumbered §454 and amended Pub. L. 104–201, div. A, title XI, §1112(b), Sept. 23, 1996, 110 Stat. 2682.)

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 2795 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

§455. Maps, charts, and geodetic data: public availability; exceptions

(a) The National Imagery and Mapping Agency shall offer for sale maps and charts at scales of 1:500,000 and smaller, except those withheld in accordance with subsection (b) or those specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order.

(b)(1) Notwithstanding any other provision of law, the Secretary of Defense may withhold from public disclosure any geodetic product in the possession of, or under the control of, the Department of Defense—

(A) that was obtained or produced, or that contains information that was provided, pursuant to an international agreement that restricts disclosure of such product or information to government officials of the agreeing parties or that restricts use of such product or information to government purposes only;

(B) that contains information that the Secretary of Defense has determined in writing would, if disclosed, reveal sources and methods, or capabilities, used to obtain source material for production of the geodetic product; or

(C) that contains information that the Director of the National Imagery and Mapping Agency has determined in writing would, if disclosed, jeopardize or interfere with ongoing military or intelligence operations, reveal military operational or contingency plans, or reveal, jeopardize, or compromise military or intelligence capabilities.

(2) In this subsection, the term ''geodetic product'' means imagery, imagery intelligence, or geospatial information.

(c)(1) Regulations to implement this section (including any amendments to such regulations) shall be published in the Federal Register for public comment for a period of not less than 30 days before they take effect.

(2) Regulations under this section shall address the conditions under which release of geodetic products authorized under subsection (b) to be withheld from public disclosure would be appropriate—

(A) in the case of allies of the United States; and

(B) in the case of qualified United States contractors (including contractors that are small business concerns) who need such products for use in the performance of contracts with the United States.

(Added Pub. L. 102–88, title V, §502(a)(1), Aug. 14, 1991, 105 Stat. 435, §2796; amended Pub. L. 103–359, title V, §502, Oct. 14, 1994, 108 Stat. 3430; renumbered §455 and amended Pub. L. 104–201, div. A, title XI, §1112(b), Sept. 23, 1996, 110 Stat. 2682; Pub. L. 105–85, div. A, title IX, §933(a), (b)(1), Nov. 18, 1997, 111 Stat. 1866; Pub. L. 106–398, §1 [[div. A], title X, §1074], Oct. 30, 2000, 114 Stat. 1654, 1654A–280.)

AMENDMENTS

2000—Subsec. (b)(1)(C). Pub. L. 106–398 substituted '', reveal military operational or contingency plans, or reveal, jeopardize, or compromise military or intelligence capabilities'' for ''or reveal military operational or contingency plans''.

1997—Subsec. (b)(1)(B). Pub. L. 105–85, §933(a), inserted '', or capabilities,'' after ''methods''.

Subsec. (b)(2). Pub. L. 105–85, §933(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In this subsection, the term 'geodetic product' means any map, chart, geodetic data, or related product.''

1996—Pub. L. 104–201 renumbered section 2796 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' in subsecs. (a) and (b)(1)(C).

1994—Subsec. (b)(1)(C). Pub. L. 103–359 inserted ''jeopardize or interfere with ongoing military or intelligence operations or'' after ''disclosed,''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

REGULATIONS

Section 502(b) of Pub. L. 102–88 provided that: ''Regulations to implement section 2796 [now 455] of title 10, United States Code, as added by subsection (a), shall be published in the Federal Register for public comment in accordance with subsection (c) of that section not later than 90 days after the date of the enactment of this Act [Aug. 14, 1991].''

§ 456. Civil actions barred

(a) CLAIMS BARRED.—No civil action may be brought against the United States on the basis of the content of a navigational aid prepared or disseminated by the National Imagery and Mapping Agency.

(b) NAVIGATIONAL AIDS COVERED.—Subsection (a) applies with respect to a navigational aid in the form of a map, a chart, or a publication and any other form or medium of product or information in which the National Imagery and Mapping Agency prepares or disseminates navigational aids.

(Added Pub. L. 103–337, div. A, title X, § 1074(b), Oct. 5, 1994, 108 Stat. 2861, § 2798; renumbered § 456 and amended Pub. L. 104–201, div. A, title XI, § 1112(b), Sept. 23, 1996, 110 Stat. 2682.)

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 2798 of this title as this section and substituted ''National Imagery and Mapping Agency'' for ''Defense Mapping Agency'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of this title.

EFFECTIVE DATE

Section 1074(d) of Pub. L. 103–337 provided that: ''Section 2798 [now 456] of title 10, United States Code, as added by subsection (b), shall take effect on the date of the enactment of this Act [Oct. 5, 1994] and shall apply with respect to (1) civil actions brought before such date that are pending adjudication on such date, and (2) civil actions brought on or after such date.''

§ 457. Operational files previously maintained by or concerning activities of National Photographic Interpretation Center: authority to withhold from public disclosure

(a) AUTHORITY.—The Secretary of Defense may withhold from public disclosure operational files described in subsection (b) to the same extent that operational files may be withheld under section 701 of the National Security Act of 1947 (50 U.S.C. 431).

(b) COVERED OPERATIONAL FILES.—The authority under subsection (a) applies to operational files in the possession of the National Imagery and Mapping Agency that—

(1) as of September 22, 1996, were maintained by the National Photographic Interpretation Center; or

(2) concern the activities of the Agency that, as of such date, were performed by the National Photographic Interpretation Center.

(c) OPERATIONAL FILES DEFINED.—In this section, the term ''operational files'' has the meaning given that term in section 701(b) of the National Security Act of 1947 (50 U.S.C. 431(b)).

(Added Pub. L. 106–65, div. A, title X, § 1045(a), Oct. 5, 1999, 113 Stat. 762.)

SUBCHAPTER III—PERSONNEL MANAGEMENT

Sec.
461. Management rights.
462. Financial assistance to certain employees in acquisition of critical skills.

AMENDMENTS

2001—Pub. L. 107–108, title V, § 504(b), Dec. 28, 2001, 115 Stat. 1406, added item 462.

§ 461. Management rights

(a) SCOPE.—If there is no obligation under the provisions of chapter 71 of title 5 for the head of an agency of the United States to consult or negotiate with a labor organization on a particular matter by reason of that matter being covered by a provision of law or a Governmentwide regulation, the Director of the National Imagery and Mapping Agency is not obligated to consult or negotiate with a labor organization on that matter even if that provision of law or regulation is inapplicable to the National Imagery and Mapping Agency.

(b) BARGAINING UNITS.—The National Imagery and Mapping Agency shall accord exclusive recognition to a labor organization under section 7111 of title 5 only for a bargaining unit that was recognized as appropriate for the Defense Mapping Agency on the day before the date on which employees and positions of the Defense Mapping Agency in that bargaining unit became employees and positions of the National Imagery and Mapping Agency under the National Imagery and Mapping Agency Act of 1996 (title XI of the National Defense Authorization Act for Fiscal Year 1997).

(c) TERMINATION OF BARGAINING UNIT COVERAGE OF POSITION MODIFIED TO AFFECT NATIONAL SECURITY DIRECTLY.—(1) If the Director of the National Imagery and Mapping Agency determines that the responsibilities of a position within a collective bargaining unit should be modified to include intelligence, counterintelligence, investigative, or security duties not previously assigned to that position and that the performance of the newly assigned duties directly affects the national security of the United States, then, upon such a modification of the responsibilities of that position, the position shall cease to be covered by the collective bargaining unit and the employee in that position shall cease to be entitled to representation by a labor organization accorded exclusive recognition for that collective bargaining unit.

(2) A determination described in paragraph (1) that is made by the Director of the National Imagery and Mapping Agency may not be reviewed by the Federal Labor Relations Authority or any court of the United States.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2681.)

REFERENCES IN TEXT

The National Imagery and Mapping Agency Act of 1996 (title XI of the National Defense Authorization Act for Fiscal Year 1997), referred to in subsec. (b), is title XI of Pub. L. 104–201, div. A, Sept. 23, 1996, 110 Stat.

2675. For complete classification of this Act to the Code, see Short Title of 1996 Amendment note set out under section 441 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

§ 462. Financial assistance to certain employees in acquisition of critical skills

The Secretary of Defense may establish an undergraduate training program with respect to civilian employees of the National Imagery and Mapping Agency that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(Added Pub. L. 107–108, title V, § 504(a), Dec. 28, 2001, 115 Stat. 1405.)

REFERENCES IN TEXT

Section 16 of the National Security Agency Act of 1959, referred to in text, is section 16 of Pub. L. 86–36, which is set out as a note under section 402 of Title 50, War and National Defense.

SUBCHAPTER IV—DEFINITIONS

Sec.
467. Definitions.

§ 467. Definitions

In this chapter:

(1) The term ''function'' means any duty, obligation, responsibility, privilege, activity, or program.

(2)(A) The term ''imagery'' means, except as provided in subparagraph (B), a likeness or presentation of any natural or manmade feature or related object or activity and the positional data acquired at the same time the likeness or representation was acquired, including—

(i) products produced by space-based national intelligence reconnaissance systems; and

(ii) likenesses or presentations produced by satellites, airborne platforms, unmanned aerial vehicles, or other similar means.

(B) Such term does not include handheld or clandestine photography taken by or on behalf of human intelligence collection organizations.

(3) The term ''imagery intelligence'' means the technical, geographic, and intelligence information derived through the interpretation or analysis of imagery and collateral materials.

(4) The term ''geospatial information'' means information that identifies the geographic location and characteristics of natural or constructed features and boundaries on the earth and includes—

(A) statistical data and information derived from, among other things, remote sensing, mapping, and surveying technologies; and

(B) mapping, charting, geodetic data, and related products.

(Added Pub. L. 104–201, div. A, title XI, § 1112(a)(2), Sept. 23, 1996, 110 Stat. 2682; amended Pub. L. 105–85, div. A, title IX, § 933(b)(2), Nov. 18, 1997, 111 Stat. 1866.)

AMENDMENTS

1997—Par. (4). Pub. L. 105–85 inserted ''and'' at end of subpar. (A), substituted ''geodetic data, and related products.'' for ''and geodetic data; and'' in subpar. (B), and struck out subpar. (C) which read as follows: ''geodetic products, as defined in section 455(c) of this title.''

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

CHAPTER 23—MISCELLANEOUS STUDIES AND REPORTS

Sec.
480. Reports to Congress: submission in electronic form.
481. Racial and ethnic issues; gender issues: surveys.
482. Quarterly reports: personnel and unit readiness.
483. Reports on transfers from high-priority readiness appropriations.
484. Annual report on aircraft inventory.
485. Joint warfighting experimentation.
486. Quadrennial report on emerging operational concepts.
487. Unit operations tempo and personnel tempo: annual report.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 561(a)(2), Dec. 2, 2002, 116 Stat. 2554, substituted ''Racial and ethnic issues; gender issues: surveys'' for ''Race relations, gender discrimination, and hate group activity: annual survey and report'' in item 481.

2001—Pub. L. 107–107, div. A, title X, § 1042(b), Dec. 28, 2001, 115 Stat. 1218, added item 480.

1999—Pub. L. 106–65, div. A, title II, § 241(a)(2), title III, § 361(d)(3), title IX, § 923(b)(2), Oct. 5, 1999, 113 Stat. 550, 575, 725, added items 486 and 487 and repealed Pub. L. 105–261, § 373(d)(2). See 1998 Amendment note below.

1998—Pub. L. 105–261, div. A, title IX, § 923(b)(2), title X, § 1069(a)(1), Oct. 17, 1998, 112 Stat. 2105, 2135, substituted ''Annual report'' for ''Report'' in item 484 and added item 485.

Pub. L. 105–261, div. A, title III, § 373(d)(2), Oct. 17, 1998, 112 Stat. 1992, which directed amendment of analysis, effective June 1, 2001, by striking out item 482, was repealed by Pub. L. 106–65, div. A, title III, § 361(d)(3), Oct. 5, 1999, 113 Stat. 575.

1997—Pub. L. 105–85, div. A, title III, §§ 322(a)(2), 323(b), 324(a)(2), Nov. 18, 1997, 111 Stat. 1675, 1677, substituted ''Quarterly reports: personnel and unit readiness'' for ''Quarterly readiness reports'' in item 482 and added items 483 and 484.

1996—Pub. L. 104–201, div. A, title V, § 571(c)(2), title XI, §§ 1112(a)(1), 1123(a)(4), Sept. 23, 1996, 110 Stat. 2532, 2677, 2688, substituted ''Race relations, gender discrimination, and hate group activity: annual survey and report'' for ''Racial and ethnic issues; biennial survey; biennial report'' in item 451, renumbered chapter 22 of this title as this chapter, and redesignated items 451 and 452 as 481 and 482, respectively.

Pub. L. 104–106, div. A, title III, § 361(a)(2), Feb. 10, 1996, 110 Stat. 273, added item 452.

§ 480. Reports to Congress: submission in electronic form

(a) REQUIREMENT.—Whenever the Secretary of Defense or any other official of the Department of Defense submits to Congress (or any commit-

tee of either House of Congress) a report that the Secretary (or other official) is required by law to submit, the Secretary (or other official) shall provide to Congress (or such committee) a copy of the report in an electronic medium.

(b) EXCEPTION.—Subsection (a) does not apply to a report submitted in classified form.

(c) DEFINITION.—In this section, the term ''report'' includes any certification, notification, or other communication in writing.

(Added Pub. L. 107–107, div. A, title X, §1042(a), Dec. 28, 2001, 115 Stat. 1218; amended Pub. L. 107–314, div. A, title X, §1042, Dec. 2, 2002, 116 Stat. 2646.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''shall provide to Congress (or'' for ''shall, upon request by any committee of Congress to which the report is submitted or referred, provide to Congress (or each''.

§ 481. Racial and ethnic issues; gender issues: surveys

(a) IN GENERAL.—(1) The Secretary of Defense shall carry out four quadrennial surveys (each in a separate year) in accordance with this section to identify and assess racial and ethnic issues and discrimination, and to identify and assess gender issues and discrimination, among members of the armed forces. Each such survey shall be conducted so as to identify and assess the extent (if any) of activity among such members that may be seen as so-called ''hate group'' activity.

(2) The four surveys shall be as follows:

(A) To identify and assess racial and ethnic issues and discrimination among members of the armed forces serving on active duty.

(B) To identify and assess racial and ethnic issues and discrimination among members of the armed forces in the reserve components.

(C) To identify and assess gender issues and discrimination among members of the armed forces serving on active duty.

(D) To identify and assess gender issues and discrimination members of the armed forces in the reserve components.

(3) The surveys under this section relating to racial and ethnic issues and discrimination shall be known as the ''Armed Forces Workplace and Equal Opportunity Surveys''. The surveys under this section relating to gender issues and discrimination shall be known as the ''Armed Forces Workplace and Gender Relations Surveys''.

(4) Each survey under this section shall be conducted separately from any other survey conducted by the Department of Defense.

(b) ARMED FORCES WORKPLACE AND EQUAL OPPORTUNITY SURVEYS.—The Armed Forces Workplace and Equal Opportunity Surveys shall be conducted so as to solicit information on racial and ethnic issues, including issues relating to harassment and discrimination, and the climate in the armed forces for forming professional relationships among members of the armed forces of various racial and ethnic groups. Both such surveys shall be conducted so as to solicit information on the following:

(1) Indicators of positive and negative trends for professional and personal relationships among members of all racial and ethnic groups.

(2) The effectiveness of Department of Defense policies designed to improve relationships among all racial and ethnic groups.

(3) The effectiveness of current processes for complaints on and investigations into racial and ethnic discrimination.

(c) ARMED FORCES WORKPLACE AND GENDER RELATIONS SURVEYS.—The Armed Forces Workplace and Gender Relations Surveys shall be conducted so as to solicit information on gender issues, including issues relating to gender-based harassment and discrimination, and the climate in the armed forces for forming professional relationships between male and female members of the armed forces. Both such surveys shall be conducted so as to solicit information on the following:

(1) Indicators of positive and negative trends for professional and personal relationships between male and female members of the armed forces.

(2) The effectiveness of Department of Defense policies designed to improve professional relationships between male and female members of the armed forces.

(3) The effectiveness of current processes for complaints on and investigations into gender-based discrimination.

(d) SURVEYS TO BE CONDUCTED IN DIFFERENT YEARS.—Each of the four quadrennial surveys conducted under this section shall be conducted in a different year from any other survey conducted under this section, so that one such survey is conducted during each year.

(e) REPORTS TO CONGRESS.—Upon the completion of a survey under this section, the Secretary shall submit to Congress a report containing the results of the survey.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 103–337, div. A, title V, §554(a)(1), Oct. 5, 1994, 108 Stat. 2773, §451; renumbered §481 and amended Pub. L. 104–201, div. A, title V, §571(c)(1), title XI, §1121(a), Sept. 23, 1996, 110 Stat. 2532, 2687; Pub. L. 107–314, div. A, title V, §561(a)(1), Dec. 2, 2002, 116 Stat. 2553.)

AMENDMENTS

2002—Pub. L. 107–314 substituted ''Racial and ethnic issues; gender issues: surveys'' for ''Race relations, gender discrimination, and hate group activity: annual survey and report'' as section catchline and amended text generally, substituting provisions requiring four quadrennial surveys and report for provisions requiring an annual survey and report.

1996—Pub. L. 104–201, §1121(a), renumbered section 451 of this title as this section.

Pub. L. 104–201, §571(c)(1), substituted ''Race relations, gender discrimination, and hate group activity: annual survey and report'' for ''Racial and ethnic issues; biennial survey; biennial report'' as section catchline and amended text generally, substituting provisions requiring an annual survey and report for provisions requiring a biennial survey and report.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title V, §561(b), Dec. 2, 2002, 116 Stat. 2554, provided that: ''The first survey under section 481 of title 10, United States Code, as amended by subsection (a)(1), shall be carried out during 2003.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ANNUAL REPORT ON STATUS OF FEMALE MEMBERS OF THE ARMED FORCES

Pub. L. 107–314, div. A, title V, § 562, Dec. 2, 2002, 116 Stat. 2554, provided that:

''(a) REQUIREMENT FOR REPORT.—The Secretary of Defense shall submit to Congress, for each of fiscal years 2002 through 2006, a report on the status of female members of the Armed Forces. Information in the annual report shall be shown for the Department of Defense as a whole and separately for each of the Army, Navy, Air Force, and Marine Corps.

''(b) MATTERS TO BE INCLUDED.—The report for a fiscal year under subsection (a) shall include the following information:

''(1) The positions, weapon systems, and fields of skills for which, by policy, female members are not eligible for assignment, as follows:

''(A) In the report for fiscal year 2002—

''(i) an identification of each position, weapon system, and field of skills for which, by policy, female members are not eligible; and

''(ii) the rationale for the applicability of the policy to each such position, weapon system, and field.

''(B) In the report for each fiscal year after fiscal year 2002, the positions, weapon systems, and fields for which policy on the eligibility of female members for assignment has changed during that fiscal year, including a discussion of how the policy has changed and the rationale for the change.

''(2) Information on joint spouse assignments, as follows:

''(A) The number of cases in which members of the Armed Forces married to each other are in assignments to which they were jointly assigned during that fiscal year, as defined in the applicable Department of Defense and military department personnel assignment policies.

''(B) The number of cases in which members of the Armed Forces married to each other are in assignments to which they were assigned during that fiscal year, but were not jointly assigned (as so defined).

''(3) Promotion selection rates for female members, for male members, and for all personnel in the reports submitted by promotion selection boards in that fiscal year for promotion to grades E–7, E–8, and E–9, and, in the case of commissioned officers, promotion to grades O–4, O–5, and O–6.

''(4) Retention rates for female members in each grade and for male members in each grade during that fiscal year.

''(5) Selection rates for female members and for male members for assignment to grade O–6 and grade O–5 command positions in reports of command selection boards that were submitted during that fiscal year.

''(6) Selection rates for female members and for male members for attendance at intermediate service schools (ISS) and, separately, for attendance at senior service schools (SSS) in reports of selection boards that were submitted during that fiscal year.

''(7) The extent of assignments of female members during that fiscal year in each field in which at least 80 percent of the Armed Forces personnel assigned in the field are men.

''(8) The incidence of sexual harassment complaints made during that fiscal year, stated as the number of cases in which complaints of sexual harassment were filed under procedures of military departments that are applicable to the submission of sexual harassment complaints, together with the number and percent of the complaints that were substantiated.

''(9) Satisfaction (based on surveys) of female active-duty members, female dependents of active-duty members, and female dependents of nonactive duty members entitled to health care provided by the Department of Defense with access to, and quality of, women's health care benefits provided by the Department of Defense.

''(c) TIME FOR REPORT.—The report for a fiscal year under this section shall be submitted not later than 120 days after the end of that fiscal year.''

FIRST REPORT REQUIRED UNDER SUBSECTION (c)

Section 554(b) of Pub. L. 103–337 required Secretary of Defense to submit first report under former subsec. (c) of this section not later than May 1, 1995.

§ 482. Quarterly reports: personnel and unit readiness

(a) QUARTERLY REPORTS REQUIRED.—Not later than 45 days after the end of each calendar-year quarter, the Secretary of Defense shall submit to Congress a report regarding military readiness. The report for a quarter shall contain the information required by subsections (b), (d), and (e).

(b) READINESS PROBLEMS AND REMEDIAL ACTIONS.—Each report shall specifically describe—

(1) each readiness problem and deficiency identified using the assessments considered under subsection (c);

(2) planned remedial actions; and

(3) the key indicators and other relevant information related to each identified problem and deficiency.

(c) CONSIDERATION OF READINESS ASSESSMENTS.—The information required under subsection (b) to be included in the report for a quarter shall be based on readiness assessments that are provided during that quarter—

(1) to any council, committee, or other body of the Department of Defense—

(A) that has responsibility for readiness oversight; and

(B) whose membership includes at least one civilian officer in the Office of the Secretary of Defense at the level of Assistant Secretary of Defense or higher;

(2) by senior civilian and military officers of the military departments and the commanders of the unified and specified commands; and

(3) as part of any regularly established process of periodic readiness reviews for the Department of Defense as a whole.

(d) COMPREHENSIVE READINESS INDICATORS FOR ACTIVE COMPONENTS.—Each report shall also include information regarding each of the active components of the armed forces (and an evaluation of such information) with respect to each of the following readiness indicators:

(1) PERSONNEL STRENGTH.—

(A) Personnel status, including the extent to which members of the armed forces are serving in positions outside of their military occupational specialty, serving in grades other than the grades for which they are qualified, or both.

(B) Historical data and projected trends in personnel strength and status.

(2) PERSONNEL TURBULENCE.—
(A) Recruit quality.
(B) Borrowed manpower.
(C) Personnel stability.

(3) OTHER PERSONNEL MATTERS.—
(A) Personnel morale.
(B) Recruiting status.

(4) TRAINING.—
(A) Training unit readiness and proficiency.
(B) Operations tempo.
(C) Training funding.
(D) Training commitments and deployments.

(5) LOGISTICS—EQUIPMENT FILL.—
(A) Deployed equipment.
(B) Equipment availability.
(C) Equipment that is not mission capable.
(D) Age of equipment.
(E) Condition of nonpacing items.

(6) LOGISTICS—EQUIPMENT MAINTENANCE.—
(A) Maintenance backlog.

(7) LOGISTICS—SUPPLY.—
(A) Availability of ordnance and spares.
(B) Status of prepositioned equipment.

(e) UNIT READINESS INDICATORS.—Each report shall also include information regarding the readiness of each active component unit of the armed forces at the battalion, squadron, or an equivalent level (or a higher level) that received a readiness rating of C–3 (or below) for any month of the calendar-year quarter covered by the report. With respect to each such unit, the report shall separately provide the following information:

(1) The unit designation and level of organization.

(2) The overall readiness rating for the unit for the quarter and each month of the quarter.

(3) The resource area or areas (personnel, equipment and supplies on hand, equipment condition, or training) that adversely affected the unit's readiness rating for the quarter.

(4) The reasons why the unit received a readiness rating of C–3 (or below).

(f) CLASSIFICATION OF REPORTS.—A report under this section shall be submitted in unclassified form. To the extent the Secretary of Defense determines necessary, the report may also be submitted in classified form.

(Added Pub. L. 104–106, div. A, title III, §361(a)(1), Feb. 10, 1996, 110 Stat. 272, §452; renumbered §482, Pub. L. 104–201, div. A, title XI, §1121(a), Sept. 23, 1996, 110 Stat. 2687; amended Pub. L. 105–85, div. A, title III, §322(a)(1), Nov. 18, 1997, 111 Stat. 1673; Pub. L. 106–65, div. A, title III, §361(d)(3), (e), Oct. 5, 1999, 113 Stat. 575.)

AMENDMENTS

1999—Pub. L. 106–65, §361(d)(3), repealed Pub. L. 105–261, §373(d)(2). See 1998 Amendment note below.

Subsec. (a). Pub. L. 106–65, §361(e), substituted ''45 days'' for ''30 days''.

1998—Pub. L. 105–261, §373(d)(2), which directed the repeal of this section effective June 1, 2001, was repealed by Pub. L. 106–65, §361(d)(3).

1997—Pub. L. 105–85 substituted ''Quarterly reports: personnel and unit readiness'' for ''Quarterly readiness reports'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to requirement for submission of quarterly readiness reports, matters to be included in reports, and form of reports.

1996—Pub. L. 104–201 renumbered section 452 of this title as this section.

EFFECTIVE DATE OF PUB. L. 105–261

Pub. L. 105–261, div. A, title III, §373(d)(2), Oct. 17, 1998, 112 Stat. 1992, which provided that the repeal of this section was to be effective June 1, 2001, was repealed by Pub. L. 106–65, div. A, title III, §361(d)(3), Oct. 5, 1999, 113 Stat. 575.

EFFECTIVE DATE

Section 361(b) of Pub. L. 104–106 provided that: ''Section 452 [now 482] of title 10, United States Code, as added by subsection (a), shall take effect with the calendar-year quarter during which this Act is enacted [enacted Feb. 10, 1996].''

QUARTERLY READINESS REPORT REQUIREMENT

Pub. L. 105–261, div. A, title III, §373(d)(1), Oct. 17, 1998, 112 Stat. 1992, which provided that effective Jan. 15, 2000, or the date on which the first report of the Secretary of Defense is submitted under section 117(e) of this title, whichever is later, the Secretary of Defense was to cease to submit reports under this section, was repealed by Pub. L. 106–65, div. A, title III, §361(d)(3), Oct. 5, 1999, 113 Stat. 575.

IMPLEMENTATION PLAN TO EXAMINE READINESS INDICATORS

Section 322(b) of Pub. L. 105–85 provided that: ''Not later than January 15, 1998, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan—

''(1) specifying the manner in which the Secretary will implement the additional reporting requirement of subsection (d) of section 482 of title 10, United States Code, as added by this section; and

''(2) specifying the criteria proposed to be used to evaluate the readiness indicators identified in such subsection (d).''

TRANSITION TO COMPLETE REPORT

Section 322(d) of Pub. L. 105–85 provided that: ''Until the report under section 482 of title 10, United States Code, as amended by subsection (a), for the third quarter of 1998 is submitted, the Secretary of Defense may omit the information required by subsection (d) of such section if the Secretary determines that it is impracticable to comply with such subsection with regard to the preceding reports.''

§ 483. Reports on transfers from high-priority readiness appropriations

(a) ANNUAL REPORTS.—Not later than the date on which the President submits the budget for a fiscal year to Congress pursuant to section 1105 of title 31, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report on transfers during the preceding fiscal year from funds available for each covered budget activity.

(b) MIDYEAR REPORTS.—Not later than June 1 of each fiscal year, the Secretary of Defense shall submit to the congressional committees specified in subsection (a) a report on transfers,

during the first six months of that fiscal year, from funds available for each covered budget activity.

(c) MATTERS TO BE INCLUDED.—In each report under subsection (a) or (b), the Secretary of Defense shall include for each covered budget activity the following:

(1) A statement, for the period covered by the report, of—

(A) the total amount of transfers into funds available for that activity;

(B) the total amount of transfers from funds available for that activity; and

(C) the net amount of transfers into, or out of, funds available for that activity.

(2) A detailed explanation of the transfers into, and out of, funds available for that activity during the period covered by the report, including identification of the sources from which funds were transferred into that activity and identification of the recipients of the funds transferred out of that activity.

(d) COVERED BUDGET ACTIVITY DEFINED.—In this section, the term ''covered budget activity'' means each of the following:

(1) The budget activity groups (known as ''subactivities'') within the Operating Forces budget activity of the annual Operation and Maintenance, Army, appropriation that are designated as follows:

(A) All subactivities under the category of Land Forces.

(B) Land Forces Depot Maintenance.

(C) Base Support.

(D) Maintenance of Real Property.

(2) The Air Operations budget activity groups (known as ''subactivities'') within the Operating Forces budget activity of the annual Operation and Maintenance, Navy, appropriation that are designated as follows:

(A) Mission and Other Flight Operations.

(B) Fleet Air Training.

(C) Aircraft Depot Maintenance.

(D) Base Support.

(E) Maintenance of Real Property.

(3) The Ship Operations budget activity groups (known as ''subactivities'') within the Operating Forces budget activity of the annual Operation and Maintenance, Navy, appropriation that are designated as follows:

(A) Mission and Other Ship Operations.

(B) Ship Operational Support and Training.

(C) Ship Depot Maintenance.

(D) Base Support.

(E) Maintenance of Real Property.

(4) The Expeditionary Forces budget activity groups (known as ''subactivities'') within the Operating Forces budget activity of the annual Operation and Maintenance, Marine Corps, appropriation that are designated as follows:

(A) Operational Forces.

(B) Depot Maintenance.

(C) Base Support.

(D) Maintenance of Real Property.

(5) The Air Operations and Combat Related Operations budget activity groups (known as ''subactivities'') within the Operating Forces budget activity of the annual Operation and Maintenance, Air Force, appropriation that are designated as follows:

(A) Primary Combat Forces.

(B) Primary Combat Weapons.

(C) Air Operations Training.

(D) Depot Maintenance.

(E) Base Support.

(F) Maintenance of Real Property.

(G) Combat Enhancement Forces.

(H) Combat Communications.

(6) The Mobility Operations budget activity group (known as a ''subactivity'') within the Mobilization budget activity of the annual Operation and Maintenance, Air Force, appropriation that is designated as Airlift Operations.

(Added Pub. L. 105–85, div. A, title III, §323(a), Nov. 18, 1997, 111 Stat. 1675; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title III, §372], Oct. 30, 2000, 114 Stat. 1654, 1654A–80.)

AMENDMENTS

2000—Subsec. (c)(2). Pub. L. 106–398, §1 [[div. A], title III, §372(b)], inserted before period '', including identification of the sources from which funds were transferred into that activity and identification of the recipients of the funds transferred out of that activity''.

Subsec. (d)(5)(G), (H). Pub. L. 106–398, §1 [[div. A], title III, §372(c)], added subpars. (G) and (H).

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title III, §372(a)], struck out heading and text of subsec. (e). Text read as follows: ''The requirements specified in subsections (a) and (b) shall terminate upon the submission of the annual report under subsection (a) covering fiscal year 2000.''

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

§484. Annual report on aircraft inventory

(a) ANNUAL REPORT.—The Under Secretary of Defense (Comptroller) shall submit to Congress each year a report on the aircraft in the inventory of the Department of Defense. The Under Secretary shall submit the report when the President submits the budget to Congress under section 1105(a) of title 31.

(b) CONTENT.—The report shall set forth, in accordance with subsection (c), the following information:

(1) The total number of aircraft in the inventory.

(2) The total number of the aircraft in the inventory that are active, stated in the following categories (with appropriate subcategories for mission aircraft, training aircraft, dedicated test aircraft, and other aircraft):

(A) Primary aircraft.

(B) Backup aircraft.

(C) Attrition and reconstitution reserve aircraft.

(3) The total number of the aircraft in the inventory that are inactive, stated in the following categories:

(A) Bailment aircraft.

(B) Drone aircraft.

(C) Aircraft for sale or other transfer to foreign governments.

(D) Leased or loaned aircraft.
(E) Aircraft for maintenance training.
(F) Aircraft for reclamation.
(G) Aircraft in storage.

(4) The aircraft inventory requirements approved by the Joint Chiefs of Staff.

(c) DISPLAY OF INFORMATION.—The report shall specify the information required by subsection (b) separately for the active component of each armed force and for each reserve component of each armed force and, within the information set forth for each such component, shall specify the information separately for each type, model, and series of aircraft provided for in the future-years defense program submitted to Congress.

(Added Pub. L. 105–85, div. A, title III, § 324(a)(1), Nov. 18, 1997, 111 Stat. 1677.)

FIRST REPORT

Section 324(b) of Pub. L. 105–85 provided that: ''The Under Secretary of Defense (Comptroller) shall submit the first report required under section 484 of title 10, United States Code (as added by subsection (a)), not later than January 30, 1998.''

§ 485. Joint warfighting experimentation

(a) ANNUAL REPORT.—The commander of the combatant command assigned by the Secretary of Defense to have the mission for joint warfighting experimentation shall submit to the Secretary an annual report on the conduct of joint experimentation activities for the fiscal year ending in the year of the report. Not later than December 1 of each year, the Secretary shall submit that report, together with any comments that the Secretary considers appropriate and any comments that the Chairman of the Joint Chiefs of Staff considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(b) MATTERS TO BE INCLUDED.—Each report under this section shall include, for the fiscal year covered by the report, the following:

(1) Any changes in the assessments of the matters described in section 923(a)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 since the preparation of the assessments of those matters set forth in the latest report submitted under this section.

(2) A description of the conduct of joint experimentation activities, including the number of activities, the forces involved, the national security challenges addressed, the operational concepts assessed, and the scenarios and measures of effectiveness used.

(3) An assessment of the results of joint warfighting experimentation within the Department of Defense.

(4) With respect to joint warfighting experimentation, any recommendations that the commander considers appropriate regarding—

(A) the development or acquisition of advanced technologies;

(B) changes in organizational structure, operational concepts, or joint doctrine;

(C) the conduct of experiments;

(D) the adequacy of resources; or

(E) changes in authority of the commander to develop or acquire (by lease or by purchase) materiel, supplies, services, or equipment (including any prototype) directly for the conduct of joint warfighting experimentation.

(5) With respect to improving the effectiveness of joint warfighting, any recommendations that the commander considers appropriate, based on the results of joint warfighting experimentation, regarding—

(A) the development, procurement, or fielding of advanced technologies, systems, or weapons or systems platforms or other changes in doctrine, operational concepts, organization, training, materiel, leadership, personnel, or the allocation of resources;

(B) the reduction or elimination of redundant equipment and forces, including guidance regarding the synchronization of the fielding of advanced technologies among the armed forces to enable the development and execution of joint operational concepts;

(C) recommendations for mission needs statements, operational requirements, and relative priorities for acquisition programs to meet joint requirements; and

(D) a description of any actions taken by the Secretary of Defense to implement the recommendations of the commander.

(6) A specific assessment of whether there is a need for a major force program for funding—

(A) joint warfighting experimentation; and

(B) the development and acquisition of any technology the value of which has been empirically demonstrated through such experimentation.

(Added Pub. L. 105–261, div. A, title IX, § 923(b)(1), Oct. 17, 1998, 112 Stat. 2105; amended Pub. L. 106–65, div. A, title IX, § 931, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 726, 774; Pub. L. 107–107, div. A, title IX, § 922, Dec. 28, 2001, 115 Stat. 1198.)

REFERENCES IN TEXT

Section 923(a)(2) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, referred to in subsec. (b)(1), is section 923(a)(2) of Pub. L. 105–261, which is set out in a note below.

AMENDMENTS

2001—Subsec. (b)(4)(E). Pub. L. 107–107, § 922(1), inserted ''(by lease or by purchase)'' after ''acquire'' and ''(including any prototype)'' after ''or equipment''.

Subsec. (b)(6). Pub. L. 107–107, § 922(2), added par. (6).

1999—Subsec. (a). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (b)(5). Pub. L. 106–65, § 931, added par. (5).

JOINT WARFIGHTING EXPERIMENTATION

Pub. L. 105–261, div. A, title IX, subtitle C, Oct. 17, 1998, 112 Stat. 2102, provided that:

''SEC. 921. FINDINGS CONCERNING JOINT WARFIGHTING EXPERIMENTATION.

''Congress makes the following findings:

''(1) The assessments of the Quadrennial Defense Review and the National Defense Panel provide a compelling argument—

''(A) that the security environment in the early 21st century will include fundamentally different military challenges than the security environment in the late 20th century; and

''(B) reinforce the premise of the Goldwater-Nichols Department of Defense Reorganization Act of

1986 [Pub. L. 99–433, see Tables for classification] that future warfare will require more effective joint operational concepts.

''(2) Joint experimentation is necessary for—

''(A) integrating advances in technology with changes in organizational structure and joint operational concepts; and

''(B) determining the interdependent aspects of joint warfare that are key for transforming the conduct of military operations to meet future challenges successfully.

''(3) It is essential that an energetic and innovative organization be established in the Department of Defense with the authority (subject to the authority and guidance of the Secretary of Defense and Chairman of the Joint Chiefs of Staff) to design and implement a process of joint experimentation to investigate and test technologies and alternative forces and concepts in field environments under realistic conditions against the full range of future challenges to assist in developing and validating new joint warfighting concepts and transforming the Armed Forces to meet the threats to national security anticipated for the early 21st century.

''SEC. 922. SENSE OF CONGRESS CONCERNING JOINT WARFIGHTING EXPERIMENTATION.

''(a) DESIGNATION OF COMMANDER TO HAVE JOINT WARFIGHTING EXPERIMENTATION MISSION.—It is the sense of Congress that the initiative of the Secretary of Defense to designate the commander of a combatant command to have the mission of joint warfighting experimentation is a key step in exploiting the potential of advanced technologies, new organizational structures, and new joint operational concepts to transform the conduct of military operations by the Armed Forces.

''(b) RESOURCES AND AUTHORITY OF COMMANDER.—It is, further, the sense of Congress that the commander of the combatant command referred to in subsection (a) should be provided with appropriate and sufficient resources for joint warfighting experimentation and with the appropriate authority to execute the commander's assigned responsibilities and that such authority should include the following:

''(1) Planning, preparing, and conducting the program of joint warfighting experimentation, which program should include analyses, simulations, wargames, experiments, advanced concept technology demonstrations, joint exercises conducted in virtual and field environments, and, as a particularly critical aspect, assessments of 'red team' vulnerability.

''(2) Developing scenarios and measures of effectiveness to meet the operational challenges expected to be encountered in the early 21st century and assessing the effectiveness of current and new organizational structures, operational concepts, and technologies in addressing those challenges.

''(3) Integrating and testing in joint experimentation the systems and concepts that result from warfighting experimentation conducted by the Armed Forces and the Defense Agencies.

''(4) Coordinating with each of the Armed Forces and Defense Agencies regarding the development and acquisition of equipment (including surrogate or real technologies, platforms, and systems), supplies, and services necessary for joint experimentation.

''(5) Providing the Secretary of Defense and the Chairman of the Joint Chiefs of Staff with recommendations, based on the conduct of joint warfighting experimentation, for—

''(A) improving interoperability;

''(B) reducing unnecessary redundancy;

''(C) synchronizing technology fielding;

''(D) developing joint operational concepts;

''(E) prioritizing the most promising joint capabilities for future experimentation; and

''(F) prioritizing joint requirements and acquisition programs.

''(6) Making recommendations to the Chairman of the Joint Chiefs of Staff on mission needs statements and operational requirements documents.

''(c) CONGRESSIONAL REVIEW.—It is, further, the sense of Congress that Congress—

''(1) should review the adequacy of the process of transformation to meet future challenges to the national security; and

''(2) if progress is determined inadequate, should consider legislation to—

''(A) establish an appropriate organization to conduct the mission described in subsection (a); and

''(B) provide to the commander given the responsibility for that mission appropriate and sufficient resources for joint warfighting experimentation and the appropriate authority to execute that commander's assigned responsibilities for that mission, including the authorities specified in subsection (b).

''SEC. 923. REPORTS ON JOINT WARFIGHTING EXPERIMENTATION.

''(a) INITIAL REPORT.—(1) The commander of the combatant command assigned by the Secretary of Defense to have the mission for joint warfighting experimentation shall submit to the Secretary an initial report on the implementation of joint experimentation. Not later than April 1, 1999, the Secretary shall submit that report, together with any comments that the Secretary considers appropriate and any comments that the Chairman of the Joint Chiefs of Staff considers appropriate, to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report of the commander under paragraph (1) shall include the commander's assessment of the following:

''(A) The authority and responsibilities of the commander as described in section 922(b).

''(B) The organization of the commander's combatant command, and of its staff, for carrying out the joint warfighting experimentation mission.

''(C) The process established for tasking forces to participate in experimentation and the commander's specific authority over those forces, including forces designated as joint experimentation forces.

''(D) The resources provided for initial implementation of joint warfighting experimentation, the process for providing those resources to the commander, the categories of the funding, and the authority of the commander for budget execution.

''(E) The process established for the development and acquisition of the materiel, supplies, services, and equipment necessary for the conduct of joint warfighting experimentation.

''(F) The process established for designing, preparing, and conducting joint experiments.

''(G) The role assigned the commander for—

''(i) integrating and testing in joint warfighting experimentation the systems that emerge from warfighting experimentation by the Armed Forces or the Defense Agencies;

''(ii) assessing the effectiveness of organizational structures, operational concepts, and technologies; and

''(iii) assisting the Secretary of Defense and Chairman of the Joint Chiefs of Staff to prioritize requirements or acquisition programs.

''(b) ANNUAL REPORT.—(1) [Enacted this section.]

''(2) [Amended analysis of this chapter.]

''(c) FIRST ANNUAL REPORT.—The first report under section 485 of title 10, United States Code, as added by subsection (b), shall be made with respect to fiscal year 1999. In the case of the report under that section for fiscal year 1999, the reference in subsection (b)(1) of that section to the most recent report under that section shall be treated as referring to the report under subsection (a) of this section.''

§486. Quadrennial report on emerging operational concepts

(a) QUADRENNIAL REPORT REQUIRED.—Not later than March 1 of each year evenly divisible by

four, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on emerging operational concepts. Each such report shall be prepared by the Secretary in consultation with the Chairman of the Joint Chiefs of Staff.

(b) CONTENT OF REPORT RELATING TO DOD PROCESSES.—Each such report shall contain a description, for the four years preceding the year in which the report is submitted, of the following:

(1) The process undertaken in the Department of Defense, and in each of the Army, Navy, Air Force, and Marine Corps, to define and develop doctrine, operational concepts, organizational concepts, and acquisition strategies to address—

(A) the potential of emerging technologies for significantly improving the operational effectiveness of the armed forces;

(B) changes in the international order that may necessitate changes in the operational capabilities of the armed forces;

(C) emerging capabilities of potential adversary states; and

(D) changes in defense budget projections.

(2) The manner in which the processes described in paragraph (1) are harmonized to ensure that there is a sufficient consideration of the development of joint doctrine, operational concepts, and acquisition strategies.

(3) The manner in which the processes described in paragraph (1) are coordinated through the Joint Requirements Oversight Council and reflected in the planning, programming, and budgeting process of the Department of Defense.

(c) CONTENT OF REPORT RELATING TO IDENTIFICATION OF TECHNOLOGICAL OBJECTIVES FOR RESEARCH AND DEVELOPMENT.—Each report under this section shall set forth the military capabilities that are necessary for meeting national security requirements over the next two to three decades, including—

(1) the most significant strategic and operational capabilities (including both armed force-specific and joint capabilities) that are necessary for the armed forces to prevail against the most dangerous threats, including asymmetrical threats, that could be posed to the national security interests of the United States by potential adversaries from 20 to 30 years in the future;

(2) the key characteristics and capabilities of future military systems (including both armed force-specific and joint systems) that will be needed to meet each such threat; and

(3) the most significant research and development challenges that must be met, and the technological breakthroughs that must be made, to develop and field such systems.

(Added Pub. L. 106–65, div. A, title II, § 241(a)(1), Oct. 5, 1999, 113 Stat. 549.)

§ 487. Unit operations tempo and personnel tempo: annual report

(a) INCLUSION IN ANNUAL REPORT.—The Secretary of Defense shall include in the annual report required by section 113(c) of this title a description of the operations tempo and personnel tempo of the armed forces.

(b) SPECIFIC REQUIREMENTS.—(1) Until such time as the Secretary of Defense develops a common method to measure operations tempo and personnel tempo for the armed forces, the description required under subsection (a) shall include the methods by which each of the armed forces measures operations tempo and personnel tempo.

(2) The description shall include the personnel tempo policies of each of the armed forces and any changes to these policies since the preceding report.

(3) The description shall include a table depicting the active duty end strength for each of the armed forces for each of the preceding five years and also depicting the number of members of each of the armed forces deployed over the same period, as determined by the Secretary concerned.

(4) The description shall identify the active and reserve component units of the armed forces participating at the battalion, squadron, or an equivalent level (or a higher level) in contingency operations, major training events, and other exercises and contingencies of such a scale that the exercises and contingencies receive an official designation, that were conducted during the period covered by the report and the duration of their participation.

(5) For each of the armed forces, the description shall indicate the average number of days a member of that armed force was deployed away from the member's home station during the period covered by the report as compared to recent previous years for which such information is available.

(6) For each of the armed forces, the description shall indicate the number of days that high demand, low density units (as defined by the Chairman of the Joint Chiefs of Staff) were deployed during the period covered by the report, and whether these units met the force goals for limiting deployments, as described in the personnel tempo policies applicable to that armed force.

(c) OPERATIONS TEMPO AND PERSONNEL TEMPO DEFINED.—Until such time as the Secretary of Defense establishes definitions of operations tempo and personnel tempo applicable to all of the armed forces, the following definitions shall apply for purposes of the preparation of the description required under subsection (a):

(1) The term ''operations tempo'' means the rate at which units of the armed forces are involved in all military activities, including contingency operations, exercises, and training deployments.

(2) The term ''personnel tempo'' means the amount of time members of the armed forces are engaged in their official duties, including official duties at a location or under circumstances that make it infeasible for a member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station.

(d) OTHER DEFINITIONS.—In this section, the term ''armed forces'' does not include the Coast Guard when it is not operating as a service in the Department of the Navy.

(Added Pub. L. 106–65, div. A, title IX, §923(b)(1), Oct. 5, 1999, 113 Stat. 724.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART II—PERSONNEL

Chap.		Sec.
31.	Enlistments	501
32.	Officer Strength and Distribution in Grade	521
33.	Original Appointments of Regular Officers in Grades Above Warrant Officer Grades	531
33A.	Appointment, Promotion, and Involuntary Separation and Retirement for Members on the Warrant Officer Active-Duty List	571
34.	Appointments as Reserve Officers	591
35.	Temporary Appointments in Officer Grades	601
36.	Promotion, Separation, and Involuntary Retirement of Officers on the Active-Duty List	611
37.	General Service Requirements	651
38.	Joint Officer Management	661
39.	Active Duty	671
40.	Leave	701
41.	Special Appointments, Assignments, Details, and Duties	711
43.	Rank and Command	741
45.	The Uniform	771
47.	Uniform Code of Military Justice	801
48.	Military Correctional Facilities	951
49.	Miscellaneous Prohibitions and Penalties	971
50.	Miscellaneous Command Responsibilities	991
51.	Reserve Components: Standards and Procedures for Retention and Promotion	1001
53.	Miscellaneous Rights and Benefits	1031
54.	Commissary and Exchange Benefits	1061
55.	Medical and Dental Care	1071
56.	Department of Defense Medicare-Eligible Retiree Health Care Fund	1111
57.	Decorations and Awards	1121
58.	Benefits and Services for Members Being Separated or Recently Separated	1141
59.	Separation	1161
60.	Separation of Regular Officers for Substandard Performance of Duty or for Certain Other Reasons	1181
61.	Retirement or Separation for Physical Disability	1201
63.	Retirement for Age	1251
65.	Retirement of Warrant Officers for Length of Service	1293
67.	Retired Pay for Non-Regular Service	1331
69.	Retired Grade	1370
71.	Computation of Retired Pay	1401
73.	Annuities Based on Retired or Retainer Pay	1431
74.	Department of Defense Military Retirement Fund	1461
75.	Deceased Personnel	1471
76.	Missing Persons	1501
77.	Posthumous Commissions and Warrants	1521
79.	Correction of Military Records	1551
80.	Miscellaneous Investigation Requirements and Other Duties	1561
81.	Civilian Employees	1581
83.	Civilian Defense Intelligence Employees	1601
[85.	Repealed.]	
87.	Defense Acquisition Workforce	1701
88.	Military Family Programs and Military Child Care	1781
[89.	Repealed.]	

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, §1048(a)(1), Dec. 28, 2001, 115 Stat. 1222, struck out period after ''1111'' in item for chapter 56.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, added item for chapter 56.

1999—Pub. L. 106–65, div. A, title V, §586(c)(1), title VII, §721(c)(2), Oct. 5, 1999, 113 Stat. 638, 694, added item for chapter 50 and substituted ''Deceased Personnel'' for ''Death Benefits'' and ''1471'' for ''1475'' in item for chapter 75.

1997—Pub. L. 105–85, div. A, title V, §591(a)(2), Nov. 18, 1997, 111 Stat. 1762, added item for chapter 80.

1996—Pub. L. 104–201, div. A, title XVI, §1633(c)(3), Sept. 23, 1996, 110 Stat. 2751, substituted ''Civilian Defense Intelligence Employees'' for ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' in item for chapter 83.

Pub. L. 104–106, div. A, title V, §§568(a)(2), 569(b)(2), title X, §1061(a)(2), Feb. 10, 1996, 110 Stat. 335, 351, 442, added items for chapters 76 and 88 and struck out item for chapter 89 ''Volunteers Investing in Peace and Security''.

1994—Pub. L. 103–359, title V, §501(b)(2), Oct. 14, 1994, 108 Stat. 3429, substituted ''Defense Intelligence Agency and Central Imagery Office Civilian Personnel'' for ''Defense Intelligence Agency Civilian Personnel'' in item for chapter 83.

1992—Pub. L. 102–484, div. A, title XIII, §1322(a)(2), Oct. 23, 1992, 106 Stat. 2553, added item for chapter 89.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(ii), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993, struck out item for chapter 85 ''Procurement Management Personnel''.

Pub. L. 102–190, div. A, title XI, §1112(b)(2), Dec. 5, 1991, 105 Stat. 1501, substituted ''Original Appointments of Regular Officers in Grades Above Warrant Officer Grades'' for ''Appointments in Regular Components'' in item for chapter 33 and added item for chapter 33A.

Pub. L. 102–25, title VII, §701(e)(1), Apr. 6, 1991, 105 Stat. 114, added item for chapter 85.

1990—Pub. L. 101–510, div. A, title V, §502(a)(2), title XII, §1202(b), Nov. 5, 1990, 104 Stat. 1557, 1656, added items for chapters 58 and 87 and struck out item for chapter 85 ''Procurement Management Personnel''.

1988—Pub. L. 100–370, §1(c)(3), July 19, 1988, 102 Stat. 841, added item for chapter 54.

1986—Pub. L. 99–433, title IV, §401(b), Oct. 1, 1986, 100 Stat. 1030, added item for chapter 38.

1985—Pub. L. 99–145, title IX, §924(a)(2), Nov. 8, 1985, 99 Stat. 698, added item for chapter 85.

1983—Pub. L. 98–94, tile IX, §925(a)(2), title XII, §1268(15), Sept. 24, 1983, 97 Stat. 648, 707, added item for chapter 74, and substituted ''or'' for ''and'' in item for chapter 60.

1981—Pub. L. 97–89, title VII, §701(a)(2), Dec. 4, 1981, 95 Stat. 1160, added item for chapter 83.

1980—Pub. L. 96–513, title V, §§501(1), 511(29), (54)(B), Dec. 12, 1980, 94 Stat. 2907, 2922, 2925, added item for chapter 32, substituted ''531'' for ''541'' as section number in item for chapter 33, substituted ''34'' for ''35'' as chapter number of chapter relating to appointments as reserve officers, added items for chapters 35 and 36, substituted ''Reserve Components: Standards and Procedures for Retention and Promotion'' for ''Retention of Reserves'' in item for chapter 51, added item for chapter 60, substituted ''1251'' for ''1255'' as section number

in item for chapter 63, substituted ''Retirement of Warrant Officers'' for ''Retirement'' in item for chapter 65, substituted ''1370'' for ''1371'' as section number in item for chapter 69, and amended item for chapter 73 to read: ''Annuities Based on Retired or Retainer Pay''.

1972—Pub. L. 92–425, §2, Sept. 21, 1972, 86 Stat. 711, amended item for chapter 73 by inserting ''; Survivor Benefit Plan'' after ''Pay'' which could not be executed as directed in view of amendment by Pub. L. 87–381. See 1961 Amendment note below.

1968—Pub. L. 90–377, §2, July 5, 1968, 82 Stat. 288, added item for chapter 48.

1967—Pub. L. 90–83, §3(2), Sept. 11, 1967, 81 Stat. 220, struck out item for chapter 80 ''Exemplary Rehabilitation Certificates''.

1966—Pub. L. 89–690, §2, Oct. 15, 1966, 80 Stat. 1017, added item for chapter 80.

1962—Pub. L. 87–649, §3(2), Sept. 7, 1962, 76 Stat. 493, added item for chapter 40.

1961—Pub. L. 87–381, §1(2), Oct. 4, 1961, 75 Stat. 810, substituted ''Retired Servicemen's Family Protection Plan'' for ''Annuities Based on Retired or Retainer Pay'' in item for chapter 73.

1958—Pub. L. 85–861, §§1(21), (26), (33), 33(a)(4)(B), Sept. 2, 1958, 72 Stat. 1443, 1450, 1455, 1564, substituted ''General Service Requirements'' for ''Service Requirements for Reserves'' in item for chapter 37, ''971'' for ''[No present sections]'' in item for chapter 49, ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in item for chapter 55, and struck out ''Care of the Dead'' and substituted ''1475'' for ''1481'' in item for chapter 75.

CHAPTER 31—ENLISTMENTS

Sec.
501. Definition.
502. Enlistment oath: who may administer.
503. Enlistments: recruiting campaigns; compilation of directory information.
504. Persons not qualified.
505. Regular components: qualifications, term, grade.
506. Regular components: extension of enlistments during war.
507. Extension of enlistment for members needing medical care or hospitalization.
508. Reenlistment: qualifications.
509. Voluntary extension of enlistments: periods and benefits.
510. Enlistment incentives for pursuit of skills to facilitate national service.
[511, 512. Renumbered.]
513. Enlistments: Delayed Entry Program.
514. Bounties prohibited; substitutes prohibited.
515. Reenlistment after discharge as warrant officer.
516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman.
517. Authorized daily average: members in pay grades E–8 and E–9.
518. Temporary enlistments.
519. Temporary enlistments: during war or emergency.
520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level.
[520a. Repealed.]
520b. Applicants for enlistment: authority to use funds for the issue of authorized articles.
520c. Recruiting functions: use of funds.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §531(a)(2), Dec. 2, 2002, 116 Stat. 2544, added item 510.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1076(g)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282, struck out item 520a ''Criminal history information for military recruiting purposes''.

1996—Pub. L. 104–201, div. A, title III, §361(b), Sept. 23, 1996, 110 Stat. 2491, added item 520c.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(3), Oct. 5, 1994, 108 Stat. 3013, as amended by Pub. L. 104–106, div. A, title XV, §1501(a)(8)(A), Feb. 10, 1996, 110 Stat. 495, struck out items 510 ''Reserve components: qualifications'', 511 ''Reserve components: terms'', and 512 ''Reserve components: transfers''.

1989—Pub. L. 101–189, div. A, title V, §501(a)(2), Nov. 29, 1989, 103 Stat. 1435, added item 513.

1985—Pub. L. 99–145, title XIII, §1303(a)(4)(B), Nov. 8, 1985, 99 Stat. 738, substituted ''enlistment'' for ''enlistments'' in item 520b.

1984—Pub. L. 98–525, title XIV, §1401(a)(2), Oct. 19, 1984, 98 Stat. 2614, added item 520b.

1982—Pub. L. 97–252, title XI, §1114(b)(3), (c)(2), Sept. 8, 1982, 96 Stat. 749, 750, inserted ''; compilation of directory information'' in item 503, and added item 520a.

1980—Pub. L. 96–342, title III, §302(b)(2), Sept. 8, 1980, 94 Stat. 1083, added item 520.

1968—Pub. L. 90–623, §2(2), Oct. 22, 1968, 82 Stat. 1314, struck out ''or national emergency'' after ''extension of enlistments during war'' in item 506.

Pub. L. 90–235, §2(a)(1)(C), Jan. 2, 1968, 81 Stat. 755, redesignated item 501 as 502, and added items 501, 503 to 509, 518 and 519.

1962—Pub. L. 87–649, §2(2), Sept. 7, 1962, 76 Stat. 492, added item 517.

1958—Pub. L. 85–861, §1(9)(B), (C), Sept. 2, 1958, 72 Stat. 1440, struck out item 513 ''Reserve components: promotions'' and added item 516.

§ 501. Definition

In this chapter ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 753.)

PRIOR PROVISIONS

A prior section 501 was renumbered 502 of this title.

§ 502. Enlistment oath: who may administer

Each person enlisting in an armed force shall take the following oath:

''I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.''

This oath may be taken before any commissioned officer of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, §501; Pub. L. 87–751, §1, Oct. 5, 1962, 76 Stat. 748; renumbered §502, Pub. L. 90–235, §2(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; Pub. L. 101–189, div. A, title VI, §653(a)(1), Nov. 29, 1989, 103 Stat. 1462.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
501	50:737.	May 5, 1950, ch. 169, §8, 64 Stat. 146.

The words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1. The words ''of any armed force'' are inserted in the last sentence, since they are necessarily implied by their use in the source statute.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in the oath, is classified to chapter 47 (§801 et seq.) of this title.

AMENDMENTS

1989—Pub. L. 101–189 struck out ''or affirmation'' after ''This oath''.

1962—Pub. L. 87–751 substituted ''support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same'' for ''bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever'' and inserted ''So help me God'' in the oath, and ''or affirmation'' in text.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 3 of Pub. L. 87–751 provided that: ''This Act [amending this section and section 304 of Title 32, National Guard] does not affect any oath taken before one year after its enactment [Oct. 5, 1962].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12102 of this title.

§503. Enlistments: recruiting campaigns; compilation of directory information

(a) RECRUITING CAMPAIGNS.—(1) The Secretary concerned shall conduct intensive recruiting campaigns to obtain enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, and Regular Coast Guard.

(2) The Secretary of Defense shall act on a continuing basis to enhance the effectiveness of recruitment programs of the Department of Defense (including programs conducted jointly and programs conducted by the separate armed forces) through an aggressive program of advertising and market research targeted at prospective recruits for the armed forces and those who may influence prospective recruits. Subchapter I of chapter 35 of title 44 shall not apply to actions taken as part of that program.

(b) COMPILATION OF DIRECTORY INFORMATION.—(1) The Secretary of Defense may collect and compile directory information pertaining to each student who is 17 years of age or older or in the eleventh grade (or its equivalent) or higher and who is enrolled in a secondary school in the United States or its territories, possessions, or the Commonwealth of Puerto Rico.

(2) The Secretary may make directory information collected and compiled under this subsection available to the armed forces for military recruiting purposes. Such information may not be disclosed for any other purpose.

(3) Directory information pertaining to any person may not be maintained for more than 3 years after the date the information pertaining to such person is first collected and compiled under this subsection.

(4) Directory information collected and compiled under this subsection shall be confidential, and a person who has had access to such information may not disclose such information except for the purposes described in paragraph (2).

(5) The Secretary of Defense shall prescribe regulations to carry out this subsection. Regulations prescribed under this subsection shall be submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. Regulations prescribed by the Secretaries concerned to carry out this subsection shall be as uniform as practicable.

(6) Nothing in this subsection shall be construed as requiring, or authorizing the Secretary of Defense to require, that any educational institution furnish directory information to the Secretary.

(c) ACCESS TO SECONDARY SCHOOLS.—(1)(A) Each local educational agency receiving assistance under the Elementary and Secondary Education Act of 1965—

(i) shall provide to military recruiters the same access to secondary school students as is provided generally to postsecondary educational institutions or to prospective employers of those students; and

(ii) shall, upon a request made by military recruiters for military recruiting purposes, provide access to secondary school student names, addresses, and telephone listings, notwithstanding section 444(a)(5)(B) of the General Education Provisions Act (20 U.S.C. 1232g(a)(5)(B)).

(B) A local educational agency may not release a student's name, address, and telephone listing under subparagraph (A)(ii) without the prior written consent of a parent of the student if the student, or a parent of the student, has submitted a request to the local educational agency that the student's information not be released for a purpose covered by that subparagraph without prior written parental consent. Each local education[1] agency shall notify parents of the rights provided under the preceding sentence.

(2) If a local educational agency denies a request by the Department of Defense for recruiting access, the Secretary of Defense, in cooperation with the Secretary of the military department concerned, shall designate an officer in a grade not below the grade of colonel or, in the case of the Navy, captain, or a senior executive of that military department to meet with representatives of that local educational agency in person, at the offices of that agency, for the purpose of arranging for recruiting access. The designated officer or senior executive shall seek to have that meeting within 120 days of the date of the denial of the request for recruiting access.

(3) If, after a meeting under paragraph (2) with representatives of a local educational agency that has denied a request for recruiting access or (if the educational agency declines a request for the meeting) after the end of such 120-day period, the Secretary of Defense determines that the agency continues to deny recruiting access, the Secretary shall transmit to the chief executive of the State in which the agency is located a notification of the denial of recruiting access and a request for assistance in obtaining that access. The notification shall be transmitted within 60 days after the date of the determination. The Secretary shall provide to the Secretary of Education a copy of such notification and any other communication between the Sec-

[1] So in original. Probably should be ''educational''.

retary and that chief executive with respect to such access.

(4) If a local educational agency continues to deny recruiting access one year after the date of the transmittal of a notification regarding that agency under paragraph (3), the Secretary—

(A) shall determine whether the agency denies recruiting access to at least two of the armed forces (other than the Coast Guard when it is not operating as a service in the Navy); and

(B) upon making an affirmative determination under subparagraph (A), shall transmit a notification of the denial of recruiting access to—

(i) the specified congressional committees;

(ii) the Senators of the State in which the local educational agency is located; and

(iii) the member of the House of Representatives who represents the district in which the local educational agency is located.

(5) The requirements of this subsection do not apply to—

(A) a local educational agency with respect to access to secondary school students or access to directory information concerning such students for any period during which there is in effect a policy of that agency, established by majority vote of the governing body of the agency, to deny recruiting access to those students or to that directory information, respectively; or

(B) a private secondary school which maintains a religious objection to service in the armed forces and which objection is verifiable through the corporate or other organizational documents or materials of that school.

(6) In this subsection:

(A) The term ''local educational agency'' means—

(i) a local educational agency, within the meaning of that term in section 14101[2] of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801); and

(ii) a private secondary school.

(B) The term ''recruiting access'' means access requested as described in paragraph (1).

(C) The term ''senior executive'' has the meaning given that term in section 3132(a)(3) of title 5.

(D) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(E) The term ''specified congressional committees'' means the following:

(i) The Committee on Armed Services and the Committee on Health, Education, Labor, and Pensions of the Senate.

(ii) The Committee on Armed Services and the Committee on Education and the Workforce of the House of Representatives.

(F) The term ''member of the House of Representatives'' includes a Delegate or Resident Commissioner to Congress.

[2] See References in Text note below.

(d) DIRECTORY INFORMATION DEFINED.—In this section, the term ''directory information'' has the meaning given that term in subsection (a)(5)(A) of section 444 of the General Education Provisions Act (20 U.S.C. 1232g).

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 97–252, title XI, §1114(b)(1), (2), Sept. 8, 1982, 96 Stat. 749; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title V, §571, title X, §1067(1), Oct. 5, 1999, 113 Stat. 622, 774; Pub. L. 106–398, §1 [[div. A], title V, §§562, 563(a)–(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–131 to 1654A–133; Pub. L. 107–107, div. A, title V, §544(a), title X, §1048(a)(5)(A), Dec. 28, 2001, 115 Stat. 1112, 1222.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(1)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended, which is classified generally to chapter 70 (§6301 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 14101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(6)(A)(i), is section 14101 of Pub. L. 89–10, which was classified to section 8801 of Title 20, Education, prior to repeal by Pub. L. 107–110, title X, §1011(5)(C), Jan. 8, 2002, 115 Stat. 1986. For provisions relating to definitions, see section 7801 of Title 20.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–107, §544(a), reenacted section heading without change and amended text of par. (1) generally. Prior to amendment, par. (1) read as follows: ''Each local educational agency shall (except as provided under paragraph (5)) provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.''

Subsec. (c)(6)(A)(i). Pub. L. 107–107, §1048(a)(5)(A), substituted ''14101'' for ''14101(18)'' and ''8801'' for ''8801(18)''.

2000—Subsec. (a). Pub. L. 106–398, §1 [[div. A], title V, §§562, 563(c)(1)], inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title V, §563(c)(2)], inserted heading.

Subsec. (b)(7). Pub. L. 106–398, §1 [[div. A], title V, §563(b)(1)], struck out par. (7) which read as follows: ''In this subsection, 'directory information' means, with respect to a student, the student's name, address, telephone listing, date and place of birth, level of education, degrees received, and the most recent previous educational agency or institution attended by the student.''

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title V, §563(a)], amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each local educational agency is requested to provide to the Department of Defense, upon a request made for military recruiting purposes, the same access to secondary school students, and to directory information concerning such students, as is provided generally to post-secondary educational institutions or to prospective employers of those students.''

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title V, §563(b)(2)], added subsec. (d).

1999—Subsec. (b)(5). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (c). Pub. L. 106–65, §571, added subsec. (c).

1996—Subsec. (b)(5). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1982—Pub. L. 97–252, §1114(b)(2), inserted ''; compilation of directory information'' in section catchline.

Subsec. (a). Pub. L. 97–252, §1114(b)(1)(A), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 97–252, §1114(b)(1)(B), added subsec. (b).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §544(b), Dec. 28, 2001, 115 Stat. 1113, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 2002, immediately after the amendment to section 503(c) of title 10, United States Code, made, effective that date, by section 563(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–131).''

Pub. L. 107–107, div. A, title X, §1048(a)(5)(B), Dec. 28, 2001, 115 Stat. 1222, provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on July 1, 2002, immediately after the amendment to such section [this section] effective that date by section 563(a) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–131).''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §563(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–133, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 2002.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

NOTIFICATION TO LOCAL EDUCATIONAL AGENCIES

Pub. L. 107–107, div. A, title V, §544(c), Dec. 28, 2001, 115 Stat. 1113, provided that: ''The Secretary of Education shall provide to local educational agencies notice of the provisions of subsection (c) of section 503 of title 10, United States Code, as in effect upon the amendments made by subsection (a) [amending this section]. Such notice shall be provided not later than 120 days after the date of the enactment of this Act [Dec. 28, 2001] and shall be provided in consultation with the Secretary of Defense.''

ARMY RECRUITING PILOT PROGRAMS

Pub. L. 106–398, §1 [[div. A], title V, §561], Oct. 30, 2000, 114 Stat. 1654, 1654A–129, as amended by Pub. L. 107–107, div. A, title V, §543, Dec. 28, 2001, 115 Stat. 1112, provided that:

''(a) REQUIREMENT FOR PROGRAMS.—The Secretary of the Army shall carry out pilot programs to test various recruiting approaches under this section for the following purposes:

''(1) To assess the effectiveness of the recruiting approaches for creating enhanced opportunities for recruiters to make direct, personal contact with potential recruits.

''(2) To improve the overall effectiveness and efficiency of Army recruiting activities.

''(b) OUTREACH THROUGH MOTOR SPORTS.—(1) One of the pilot programs shall be a pilot program of public outreach that associates the Army with motor sports competitions to achieve the objectives set forth in paragraph (2).

''(2) The events and activities undertaken under the pilot program shall be designed to provide opportunities for Army recruiters to make direct, personal contact with high school students to achieve the following objectives:

''(A) To increase enlistments by students graduating from high school.

''(B) To reduce attrition in the Delayed Entry Program of the Army by sustaining the personal commitment of students who have elected delayed entry into the Army under the program.

''(3) Under the pilot program, the Secretary of the Army shall provide for the following:

''(A) For Army recruiters or other Army personnel—

''(i) to organize Army sponsored career day events in association with national motor sports competitions; and

''(ii) to arrange for or encourage attendance at the competitions by high school students, teachers, guidance counselors, and administrators of high schools located near the competitions.

''(B) For Army recruiters and other soldiers to attend national motor sports competitions—

''(i) to display exhibits depicting the contemporary Army and career opportunities in the Army; and

''(ii) to discuss those opportunities with potential recruits.

''(C) For the Army to sponsor a motor sports racing team as part of an integrated program of recruitment and publicity for the Army.

''(D) For the Army to sponsor motor sports competitions for high school students at which recruiters meet with potential recruits.

''(E) For Army recruiters or other Army personnel to compile in an Internet accessible database the names, addresses, telephone numbers, and electronic mail addresses of persons who are identified as potential recruits through activities under the pilot program.

''(F) Any other activities associated with motor sports competition that the Secretary determines appropriate for Army recruitment purposes.

''(c) OUTREACH AT VOCATIONAL SCHOOLS AND COMMUNITY COLLEGES.—(1) One of the pilot programs shall be a pilot program under which Army recruiters are assigned, as their primary responsibility, at postsecondary vocational institutions and community colleges for the purpose of recruiting students graduating from those institutions and colleges, recent graduates of those institutions and colleges, and students withdrawing from enrollments in those institutions and colleges.

''(2) The Secretary of the Army shall select the institutions and colleges to be invited to participate in the pilot program.

''(3) The conduct of the pilot program at an institution or college shall be subject to an agreement which the Secretary shall enter into with the governing body or authorized official of the institution or college, as the case may be.

''(4) Under the pilot program, the Secretary shall provide for the following:

''(A) For Army recruiters to be placed in postsecondary vocational institutions and community colleges to serve as a resource for guidance counselors and to recruit for the Army.

''(B) For Army recruiters to recruit from among students and graduates described in paragraph (1).

''(C) For the use of telemarketing, direct mail, interactive voice response systems, and Internet website capabilities to assist the recruiters in the postsecondary vocational institutions and community colleges.

''(D) For any other activities that the Secretary determines appropriate for recruitment activities in postsecondary vocational institutions and community colleges.

''(5) In this subsection, the term 'postsecondary vocational institution' has the meaning given the term in section 102(c) of the Higher Education Act of 1965 (20 U.S.C. 1002(c)).

''(d) CONTRACT RECRUITING INITIATIVES.—(1) One of the pilot programs shall be a program that expands in accordance with this subsection the scope of the Army's contract recruiting initiatives that are ongoing as of the date of the enactment of this Act [Oct. 30, 2000]. Under the pilot program, the Secretary of the Army shall select at least 10 recruiting companies to apply the initiatives in efforts to recruit personnel for the Army.

''(2) Under the pilot program, the Secretary shall provide for the following:

''(A) For replacement of the Regular Army and Army Reserve recruiters by contract recruiters in the 10 recruiting companies selected under paragraph (1).

''(B) For operation of the 10 companies under the same rules as the other Army recruiting companies.

''(C) For use of the offices, facilities, and equipment of the 10 companies by the contract recruiters.

''(D) For reversion to performance of the recruiting activities by Regular Army and Army Reserve soldiers in the 10 companies upon termination of the pilot program.

''(E) For any other uses of contractor personnel for Army recruiting activities that the Secretary determines appropriate.

''(e) DURATION OF PILOT PROGRAMS.—The pilot programs required by this section shall be carried out during the period beginning on October 1, 2000, and, subject to subsection (f), ending on September 30, 2007.

''(f) AUTHORITY TO EXPAND OR EXTEND PILOT PROGRAMS.—The Secretary may expand the scope of any of the pilot programs (under subsection (b)(3)(F), (c)(4)(D), (d)(2)(E), or otherwise) or extend the period for any of the pilot programs. Before doing so in the case of a pilot program, the Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the expansion of the pilot program (together with the scope of the expansion) or the continuation of the pilot program (together with the period of the extension), as the case may be.

''(g) REPORTS.—Not later than February 1, 2008, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a separate report on each of the pilot programs carried out under this section. The report on a pilot program shall include the following:

''(1) The Secretary's assessment of the value of the actions taken in the administration of the pilot program for increasing the effectiveness and efficiency of Army recruiting.

''(2) Any recommendations for legislation or other action that the Secretary considers appropriate to increase the effectiveness and efficiency of Army recruiting.''

PILOT PROGRAM TO ENHANCE MILITARY RECRUITING BY IMPROVING MILITARY AWARENESS OF SCHOOL COUNSELORS AND EDUCATORS

Pub. L. 106–398, §1 [[div. A], title V, §564], Oct. 30, 2000, 114 Stat. 1654, 1654A–133, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a pilot program to determine if cooperation with military recruiters by local educational agencies and by institutions of higher education could be enhanced by improving the understanding of school counselors and educators about military recruiting and military career opportunities. The pilot program shall be conducted during a three-year period beginning not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000].

''(b) CONDUCT OF PILOT PROGRAM THROUGH PARTICIPATION IN INTERACTIVE INTERNET SITE.—(1) The pilot program shall be conducted by means of participation by the Department of Defense in a qualifying interactive Internet site.

''(2) For purposes of this section, a qualifying interactive Internet site is an Internet site in existence as of the date of the enactment of this Act [Oct. 30, 2000] that is designed to provide to employees of local educational agencies and institutions of higher education participating in the Internet site—

''(A) systems for communicating;

''(B) resources for individual professional development;

''(C) resources to enhance individual on-the-job effectiveness; and

''(D) resources to improve organizational effectiveness.

''(3) Participation in an Internet site by the Department of Defense for purposes of this section shall include—

''(A) funding;

''(B) assistance; and

''(C) access by other Internet site participants to Department of Defense aptitude testing programs, career development information, and other resources, in addition to information on military recruiting and career opportunities.

''(c) REPORT.—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing the Secretary's findings and conclusions on the pilot program not later than 180 days after the end of the three-year program period.''

MEASURES TO IMPROVE RECRUIT QUALITY AND REDUCE RECRUIT ATTRITION

Pub. L. 105–85, div. A, title V, subtitle D, Nov. 18, 1997, 111 Stat. 1738, provided that:

''SEC. 531. REFORM OF MILITARY RECRUITING SYSTEMS.

''(a) IN GENERAL.—The Secretary of Defense shall carry out reforms in the recruiting systems of the Army, Navy, Air Force, and Marine Corps in order to improve the quality of new recruits and to reduce attrition among recruits.

''(b) SPECIFIC REFORMS.—As part of the reforms in military recruiting systems to be undertaken under subsection (a), the Secretary shall take the following steps:

''(1) Improve the system of pre-enlistment waivers and separation codes used for recruits by (A) revising and updating those waivers and codes to allow more accurate and useful data collection about those separations, and (B) prescribing regulations to ensure that those waivers and codes are interpreted in a uniform manner by the military services.

''(2) Develop a reliable database for (A) analyzing (at both the Department of Defense and service-level) data on reasons for attrition of new recruits, and (B) undertaking Department of Defense or service-specific measures (or both) to control and manage such attrition.

''(3) Require that the Secretary of each military department (A) adopt or strengthen incentives for recruiters to thoroughly prescreen potential candidates for recruitment, and (B) link incentives for recruiters, in part, to the ability of a recruiter to screen out unqualified candidates before enlistment.

''(4) Require that the Secretary of each military department include as a measurement of recruiter performance the percentage of persons enlisted by a recruiter who complete initial combat training or basic training.

''(5) Assess trends in the number and use of waivers over the 1991–1997 period that were issued to permit applicants to enlist with medical or other conditions that would otherwise be disqualifying.

''(6) Require the Secretary of each military department to implement policies and procedures (A) to ensure the prompt separation of recruits who are unable to successfully complete basic training, and (B) to remove those recruits from the training environment while separation proceedings are pending.

''(c) REPORT.—Not later than March 31, 1998, the Secretary shall submit to Congress a report of the trends assessed under subsection (b)(5). The information on those trends provided in the report shall be shown by armed force and by category of waiver. The report shall include recommendations of the Secretary for changing, revising, or limiting the use of waivers referred to in that subsection.

''SEC. 532. IMPROVEMENTS IN MEDICAL PRESCREENING OF APPLICANTS FOR MILITARY SERVICE.

''(a) IN GENERAL.—The Secretary of Defense shall improve the medical prescreening of applicants for entrance into the Army, Navy, Air Force, or Marine Corps.

''(b) SPECIFIC STEPS.—As part of those improvements, the Secretary shall take the following steps:

''(1) Require that each applicant for service in the Army, Navy, Air Force, or Marine Corps (A) provide to the Secretary the name of the applicant's medical insurer and the names of past medical providers, and (B) sign a release allowing the Secretary to request and obtain medical records of the applicant.

''(2) Require that the forms and procedures for medical prescreening of applicants that are used by recruiters and by Military Entrance Processing Commands be revised so as to ensure that medical questions are specific, unambiguous, and tied directly to the types of medical separations most common for recruits during basic training and follow-on training.

''(3) Add medical screening tests to the examinations of recruits carried out by Military Entrance Processing Stations, provide more thorough medical examinations to selected groups of applicants, or both, to the extent that the Secretary determines that to do so could be cost effective in reducing attrition at basic training.

''(4) Provide for an annual quality control assessment of the effectiveness of the Military Entrance Processing Commands in identifying medical conditions in recruits that existed before enlistment in the Armed Forces, each such assessment to be performed by an agency or contractor other than the Military Entrance Processing Commands.

''SEC. 533. IMPROVEMENTS IN PHYSICAL FITNESS OF RECRUITS.

''(a) IN GENERAL.—The Secretary of Defense shall take steps to improve the physical fitness of recruits before they enter basic training.

''(b) SPECIFIC STEPS.—As part of those improvements, the Secretary shall take the following steps:

''(1) Direct the Secretary of each military department to implement programs under which new recruits who are in the Delayed Entry Program are encouraged to participate in physical fitness activities before reporting to basic training.

''(2) Develop a range of incentives for new recruits to participate in physical fitness programs, as well as for those recruits who improve their level of fitness while in the Delayed Entry Program, which may include access to Department of Defense military fitness facilities, and access to military medical facilities in the case of a recruit who is injured while participating in physical activities with recruiters or other military personnel.

''(3) Evaluate whether partnerships between recruiters and reserve components, or other innovative arrangements, could provide a pool of qualified personnel to assist in the conduct of physical training programs for new recruits in the Delayed Entry Program.''

DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS OR FEDERAL MILITARY RECRUITING ON CAMPUS; EXCEPTIONS

Pub. L. 104–208, div. A, title I, §101(e) [title V, §514], Sept. 30, 1996, 110 Stat. 3009–233, 3009–270, which provided that none of the funds made available in any Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for any fiscal year could be provided by contract or by grant to a covered educational entity if the Secretary of Defense determined that the covered educational entity had a policy or practice that prohibited or prevented the maintaining, establishing, or operation of a unit of the Senior Reserve Officer Training Corps at the covered educational entity, or a student at the covered educational entity from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education, or prohibited or prevented entry to campuses, or access to students on campuses, for purposes of Federal military recruiting or access by military recruiters for purposes of Federal military recruiting to student names, addresses, and telephone listings and, if known, student ages, levels of education, and majors, was repealed and restated in section 983 of this title by Pub. L. 106–65, div. A, title V, §549(a)(1), (b)(2), Oct. 5, 1999, 113 Stat. 609, 611.

MILITARY RECRUITING ON CAMPUS

Pub. L. 103–337, div. A, title V, §558, Oct. 5, 1994, 108 Stat. 2776, as amended by Pub. L. 104–324, title II, §206(a), Oct. 19, 1996, 110 Stat. 3908, which provided that no funds available to the Department of Defense or the Department of Transportation could be provided by grant or contract to any institution of higher education that had a policy of denying or preventing the Secretary of Defense or the Secretary of Transportation from obtaining for military recruiting purposes entry to campuses or access to students on campuses or access to directory information pertaining to students, was repealed and restated in section 983 of this title by Pub. L. 106–65, div. A, title V, §549(a)(1), (b)(1), Oct. 5, 1999, 113 Stat. 609, 611.

MILITARY RECRUITING INFORMATION

Section 1114(a) of Pub. L. 97–252 provided that: ''The Congress finds that in order for Congress to carry out effectively its constitutional authority to raise and support armies, it is essential—

''(1) that the Secretary of Defense obtain and compile directory information pertaining to students enrolled in secondary schools throughout the United States; and

''(2) that such directory information be used only for military recruiting purposes and be retained in the case of each person with respect to whom such information is obtained and compiled for a limited period of time.''

ACCESS OF ARMED FORCES RECRUITING PERSONNEL TO SECONDARY EDUCATIONAL INSTITUTIONS; RELEASE OF DATA

Pub. L. 96–342, title III, §302(d), Sept. 8, 1980, 94 Stat. 1083, provided that: ''It is the sense of the Congress—

''(1) that secondary educational institutions in the United States, the Commonwealth of Puerto Rico, and the territories of the United States should cooperate with the Armed Forces by allowing recruiting personnel access to such institutions; and

''(2) that it is appropriate for such institutions to release to the Armed Forces information regarding students at such institutions (including such data as names, addresses, and education levels) which is relevant to recruiting individuals for service in the Armed Forces.''

§504. Persons not qualified

No person who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony, may be enlisted in any armed force. However, the Secretary concerned may authorize exceptions, in meritorious cases, for the enlistment of deserters and persons convicted of felonies.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 802 of this title.

§ 505. Regular components: qualifications, term, grade

(a) The Secretary concerned may accept original enlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, of qualified, effective, and able-bodied persons who are not less than seventeen years of age nor more than thirty-five years of age. However, no person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian, if he has a parent or guardian entitled to his custody and control.

(b) A person is enlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in the grade or rating prescribed by the Secretary concerned.

(c) The Secretary concerned may accept original enlistments of persons for the duration of their minority or for a period of at least two but not more than six years, in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be.

(d)(1) The Secretary concerned may accept a reenlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for a period determined under this subsection.

(2) In the case of a member who has less than 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the period for which the member reenlists shall be at least two years but not more than six years.

(3) In the case of a member who has at least 10 years of service in the armed forces as of the day before the first day of the period for which reenlisted, the Secretary concerned may accept a reenlistment for either—

(A) a specified period of at least two years but not more than six years; or

(B) an unspecified period.

(4) No enlisted member is entitled to be reenlisted for a period that would expire before the end of the member's current enlistment.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754; amended Pub. L. 93–290, May 24, 1974, 88 Stat. 173; Pub. L. 95–485, title VIII, § 820(a), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98–94, title X, § 1023, Sept. 24, 1983, 97 Stat. 671; Pub. L. 104–201, div. A, title V, § 511, Sept. 23, 1996, 110 Stat. 2514.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–201 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The Secretary concerned may accept reenlistments in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, for period of at least two but not more than six years. No enlisted member is entitled to be reenlisted for a period that would expire before the end of his current enlistment.''

1983—Subsecs. (c), (d). Pub. L. 98–94 substituted ''at least two but not more than six years'' for ''two, three, four, five, or six years''.

1978—Subsecs. (d), (e). Pub. L. 95–485 redesignated subsec. (e) as (d). Former subsec. (d), which provided that in the Regular Army female persons may be enlisted only in the Women's Army Corps, was struck out.

1974—Subsec. (a). Pub. L. 93–290, § 1, struck out provisions which prohibited the Secretary from accepting original enlistments from female persons less than 18 years of age, and which required consent of the parent or guardian for an original enlistment of a female person under 21 years of age.

Subsec. (c). Pub. L. 93–290, § 2, substituted provisions permitting the Secretary to accept original enlistments of persons for the duration of their minority or for a period of two, three, four, five, or six years, for provisions which limited the Secretary to accept original enlistments from male persons for the duration of their minority or for a period of two, three, four, five, or six years, and from female persons for a period of two, three, four, five, or six years.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 513, 519, 802, 16401 of this title.

§ 506. Regular components: extension of enlistments during war

An enlistment in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard in effect at the beginning of a war, or entered into during a war, unless sooner terminated by the President, continues in effect until six months after the termination of that war.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 507. Extension of enlistment for members needing medical care or hospitalization

(a) An enlisted member of an armed force on active duty whose term of enlistment expires while he is suffering from disease or injury incident to service and not due to his misconduct, and who needs medical care or hospitalization, may be retained on active duty, with his consent, until he recovers to the extent that he is able to meet the physical requirements for reenlistment, or it is determined that recovery to that extent is impossible.

(b) This section does not prevent the retention in service, without his consent, of an enlisted member of an armed force under section 972 of this title.

(Added Pub. L. 90–235, § 2(a)(1)(B), Jan. 2, 1968, 81 Stat. 754.)

§508. Reenlistment: qualifications

(a) No person whose service during his last term of enlistment was not honest and faithful may be reenlisted in an armed force. However, the Secretary concerned may authorize the reenlistment in the armed force under his jurisdiction of such a person if his conduct after that service has been good.

(b) A person discharged from a Regular component may be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard, as the case may be, under such regulations as the Secretary concerned may prescribe.

(c) This section does not deprive a person of any right to be reenlisted in the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard under any other provision of law.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§509. Voluntary extension of enlistments: periods and benefits

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharged from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 906.

§510. Enlistment incentives for pursuit of skills to facilitate national service

(a) ENLISTMENT INCENTIVE PROGRAM.—The Secretary of Defense shall carry out an enlistment incentive program in accordance with this section under which a person who is a National Call to Service participant shall be entitled to one of the incentives specified in subsection (e). The program shall be carried out during the period ending on December 31, 2007, and may be carried out after that date.

(b) NATIONAL CALL TO SERVICE PARTICIPANT.—In this section, the term ''National Call to Service participant'' means a person who has not previously served in the armed forces who enters into an original enlistment pursuant to a written agreement with the Secretary of a military department (in such form and manner as may be prescribed by that Secretary) under which the person agrees to perform a period of national service as specified in subsection (c).

(c) NATIONAL SERVICE.—The total period of national service to which a National Call to Service participant is obligated under the agreement under this section shall be specified in the agreement. Under the agreement, the participant shall—

(1) upon completion of initial entry training (as prescribed by the Secretary of Defense), serve on active duty in a military occupational specialty designated by the Secretary of Defense under subsection (d) for a period of 15 months;

(2) upon completion of the period of active duty specified in paragraph (1) and without a break in service, serve either (A) an additional period of active duty as determined by the Secretary of Defense, or (B) a period of 24 months in an active status in the Selected Reserve; and

(3) upon completion of the period of service specified in paragraph (2), and without a break in service, serve the remaining period of obligated service specified in the agreement—

(A) on active duty in the armed forces;

(B) in the Selected Reserve;

(C) in the Individual Ready Reserve;

(D) in the Peace Corps, Americorps, or another national service program jointly designated by the Secretary of Defense and the head of such program for purposes of this section; or

(E) in any combination of service referred to in subparagraphs (A) through (D) that is approved by the Secretary of the military department concerned pursuant to regulations prescribed by the Secretary of Defense and specified in the agreement.

(d) DESIGNATED MILITARY OCCUPATIONAL SPECIALTIES.—The Secretary of Defense shall designate military occupational specialties for purposes of subsection (c)(1). Such military occupational specialties shall be military occupational specialties that, as determined by the Secretary, will facilitate pursuit of national service by National Call to Service participants.

(e) INCENTIVES.—The incentives specified in this subsection are as follows:

(1) Payment of a bonus in the amount of $5,000.

(2) Payment in an amount not to exceed $18,000 of outstanding principal and interest on qualifying student loans of the National Call to Service participant.

(3) Entitlement to an allowance for educational assistance at the monthly rate equal to the monthly rate payable for basic educational assistance allowances under section 3015(a)(1) of title 38 for a total of 12 months.

(4) Entitlement to an allowance for educational assistance at the monthly rate equal to 50 percent of the monthly rate payable for basic educational assistance allowances under section 3015(b)(1) of title 38 for a total of 36 months.

(f) ELECTION OF INCENTIVE.—A National Call to Service participant shall elect in the agreement under subsection (b) which incentive under sub-

section (e) to receive. An election under this subsection is irrevocable.

(g) PAYMENT OF BONUS AMOUNTS.—(1) Payment to a National Call to Service participant of the bonus elected by the National Call to Service participant under subsection (e)(1) shall be made in such time and manner as the Secretary of Defense shall prescribe.

(2)(A) Payment of outstanding principal and interest on the qualifying student loans of a National Call to Service participant, as elected under subsection (e)(2), shall be made in such time and manner as the Secretary of Defense shall prescribe.

(B) Payment under this paragraph of the outstanding principal and interest on the qualifying student loans of a National Call to Service participant shall be made to the holder of such student loans, as identified by the National Call to Service participant to the Secretary of the military department concerned for purposes of such payment.

(3) Payment of a bonus or incentive in accordance with this subsection shall be made by the Secretary of the military department concerned.

(h) COORDINATION WITH MONTGOMERY GI BILL BENEFITS.—(1)(A) Subject to subparagraph (B), a National Call to Service participant who elects an incentive under paragraph (3) or (4) of subsection (e) is not entitled to additional educational assistance under chapter 1606 of this title or to basic educational assistance under subchapter II of chapter 30 of title 38.

(B) If a National Call to Service participant meets all eligibility requirements specified in chapter 1606 of this title or chapter 30 of title 38 for entitlement to allowances for educational assistance under either such chapter, the participant may become eligible for allowances for educational assistance benefits under either such chapter up to the maximum allowance provided less the total amount of allowance paid under paragraph (3) or (4) of subsection (e).

(2)(A) The Secretary of Defense shall, to the maximum extent practicable, administer the receipt by National Call to Service participants of incentives under paragraph (3) or (4) of subsection (e) as if such National Call to Service participants were, in receiving such incentives, receiving educational assistance for members of the Selected Reserve under chapter 1606 of this title.

(B) The Secretary of Defense shall, in consultation with the Secretary of Veterans Affairs, prescribe regulations for purposes of subparagraph (A). Such regulations shall, to the maximum extent practicable, take into account the administrative provisions of chapters 30 and 36 of title 38 that are specified in section 16136 of this title.

(3)(A) Except as provided in paragraph (1), nothing in this section shall prohibit a National Call to Service participant who satisfies through service under subsection (c) the eligibility requirements for educational assistance under chapter 1606 of this title or basic educational assistance under chapter 30 of title 38 from an entitlement to such educational assistance under chapter 1606 of this title or basic educational assistance under chapter 30 of title 38, as the case may be.

(B)(i) A participant who made an election not to receive educational assistance under either such chapter at the applicable time specified under law or who was denied the opportunity to make an election may revoke that election or make an initial election, as the case may be, at such time and in such manner as the Secretary concerned may specify. A revocation or initial election under the preceding sentence is irrevocable.

(ii) The participant making a revocation or initial election under clause (i) shall be eligible for educational assistance under either such chapter at such time as the participant satisfies through service the applicable eligibility requirements under either such chapter.

(i) REPAYMENT.—(1) If a National Call to Service participant who has entered into an agreement under subsection (b) and received or benefited from an incentive under subsection (e)(1) or (e)(2) fails to complete the total period of service specified in such agreement, the National Call to Service participant shall refund to the United States the amount that bears the same ratio to the amount of the incentive as the uncompleted part of such service bears to the total period of such service.

(2) Subject to paragraph (3), an obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary concerned may waive, in whole or in part, a reimbursement required under paragraph (1) if the Secretary concerned determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) A discharge in bankruptcy under title 11 that is entered into less than five years after the termination of an agreement entered into under subsection (b) does not discharge the person signing the agreement from a debt arising under the agreement or under paragraph (1).

(j) FUNDING.—Amounts for payment of incentives under subsection (e), including payment of allowances for educational assistance under that subsection, shall be derived from amounts available to the Secretary of the military department concerned for payment of pay, allowances, and other expenses of the members of the armed force concerned.

(k) REGULATIONS.—The Secretary of Defense and the Secretaries of the military departments shall prescribe regulations for purposes of the program under this section.

(*l*) DEFINITIONS.—In this section:

(1) The term ''Americorps'' means the Americorps program carried out under subtitle C of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

(2) The term ''qualifying student loan'' means a loan, the proceeds of which were used to pay any part or all of the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ''Secretary of a military department'' includes, with respect to matters

concerning the Coast Guard when it is not operating as a service in the Navy, the Secretary of the Department in which the Coast Guard is operating.

(Added Pub. L. 107–314, div. A, title V, §531(a)(1), Dec. 2, 2002, 116 Stat. 2541.)

REFERENCES IN TEXT

The National and Community Service Act of 1990, referred to in subsec. (*l*)(1), is Pub. L. 101–610, Nov. 16, 1990, 104 Stat. 3127, as amended. Subtitle C of title I of the Act is classified generally to division C (§12571 et seq.) of subchapter I of chapter 129 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12501 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 510 was renumbered section 12102 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

COMMENCEMENT OF PROGRAM

Pub. L. 107–314, div. A, title V, §531(b), Dec. 2, 2002, 116 Stat. 2544, provided that: ''The Secretary of Defense shall prescribe the date on which the program provided for [sic] section 510 of title 10, United States Code, as added by subsection (a), shall commence. Such date shall be not later than October 1, 2003.''

IMPLEMENTATION REPORT

Pub. L. 107–314, div. A, title V, §531(d), Dec. 2, 2002, 116 Stat. 2544, provided that: ''Not later than March 31, 2003, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the Secretary's plans for implementation of section 510 of title 10, United States Code, as added by subsection (a).''

EFFECTIVENESS REPORTS

Pub. L. 107–314, div. A, title V, §531(e), Dec. 2, 2002, 116 Stat. 2545, provided that: ''Not later than March 31, 2005, and March 31, 2007, the Secretary of Defense shall submit to the committees specified in subsection (d) reports on the effectiveness of the program under section 510 of title 10, United States Code, as added by subsection (a), in attracting new recruits to national service.''

[§511. Renumbered §12103]

[§512. Renumbered §12104]

§513. Enlistments: Delayed Entry Program

(a) A person with no prior military service who is qualified under section 505 of this title and applicable regulations for enlistment in a regular component of an armed force may (except as provided in subsection (c)) be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve for a term of not less than six years nor more than eight years.

(b)(1) Unless sooner ordered to active duty under chapter 39 of this title or another provision of law, a person enlisted under subsection (a) shall, within 365 days after such enlistment, be discharged from the reserve component in which enlisted and immediately be enlisted in the regular component of an armed force. The Secretary concerned may extend the 365-day period for any person for up to an additional 365 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.

(2) During the period beginning on the date on which the person enlists under subsection (a) and ending on the date on which the person is enlisted in a regular component under paragraph (1), the person shall be in the Ready Reserve of the armed force concerned.

(c) A person who is under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in clause (ii) or (iii) of section 6(c)(2)(A) of that Act, may not be enlisted under subsection (a).

(d) This section shall be carried out under regulations to be prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–189, div. A, title V, §501(a)(1), Nov. 29, 1989, 103 Stat. 1435; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(2), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–201, div. A, title V, §512, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 106–65, div. A, title V, §572(a), Oct. 5, 1999, 113 Stat. 623; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (c), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. Section 6 of the Act is classified to section 456 of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

PRIOR PROVISIONS

A prior section 513, act Aug. 10, 1956, ch. 1041, 70A Stat. 18, related to promotion of enlisted members of Reserve components, prior to repeal by Pub. L. 85–861, §36B(1), Sept. 2, 1958, 72 Stat. 1570.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''additional 365 days'' for ''additional 180 days'' in second sentence.

1996—Subsec. (b). Pub. L. 104–201 inserted ''The Secretary concerned may extend the 365-day period for any person for up to an additional 180 days if the Secretary determines that it is in the best interests of the armed force of which that person is a member to do so.'' after first sentence, ''(1)'' before ''Unless'', and ''(2)'' before ''During'' and substituted ''paragraph (1)'' for ''the preceding sentence''.

1990—Subsecs. (b), (c). Pub. L. 101–510 substituted ''subsection (a)'' for ''paragraph (1)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 572(b), Oct. 5, 1999, 113 Stat. 623, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999, and shall apply with respect to enlistments entered into, on or after that date.''

ARMY COLLEGE FIRST PILOT PROGRAM

Pub. L. 106–65, div. A, title V, § 573, Oct. 5, 1999, 113 Stat. 623, as amended by Pub. L. 107–107, div. A, title V, § 542(a)–(c), Dec. 28, 2001, 115 Stat. 1110, 1111; Pub. L. 107–314, div. A, title V, § 535, title X, § 1062(j)(1), Dec. 2, 2002, 116 Stat. 2548, 2651, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of the Army shall establish a pilot program (to be known as the 'Army College First' program) to assess whether the Army could increase the number of, and the level of the qualifications of, persons entering the Army as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service in the Army.

''(b) DELAYED ENTRY WITH ALLOWANCE FOR HIGHER EDUCATION.—Under the pilot program, the Secretary may—

''(1) exercise the authority under section 513 of title 10, United States Code—

''(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of the Army Reserve or, notwithstanding the scope of the authority under subsection (a) of that section, in the Army National Guard of the United States; and

''(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

''(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

''(c) MAXIMUM PERIOD OF DELAY.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

''(d) ALLOWANCE.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37, United States Code.

''(2) An allowance may not be paid to a person under this section for more than 24 months.

''(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section 10147(a)(1) of title 10, United States Code, or section 502(a) of title 32, United States Code. Satisfactory performance shall be determined under regulations prescribed by the Secretary.

''(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

''[(e) Repealed. Pub. L. 107–314, div. A, title V, § 535, Dec. 2, 2002, 116 Stat. 2548.]

''(f) RECOUPMENT OF ALLOWANCE.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 of title 10, United States Code, shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the unserved part of the total required period of service bears to the total period.

''(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

''(3) A discharge of a person in bankruptcy under title 11, United States Code, that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 of title 10, United States Code, does not discharge that person from a debt arising under paragraph (1).

''(4) The Secretary of the Army may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(g) COMPARISON GROUP.—To perform the assessment under subsection (a), the Secretary may define and study any group not including persons receiving a benefit under subsection (b) and compare that group with any group or groups of persons who receive such benefits under the pilot program.

''(h) DURATION OF PILOT PROGRAM.—The pilot program shall be in effect during the period beginning on October 1, 1999, and ending on September 30, 2004.

''(i) REPORT.—Not later than February 1, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the pilot program. The report shall include the following:

''(1) The assessment of the Secretary regarding the value of the authority under this section for achieving the objectives of increasing the number of, and the level of the qualifications of, persons entering the Army as enlisted members.

''(2) Any recommendation for legislation or other action that the Secretary considers appropriate to achieve those objectives through grants of entry delays and financial benefits for advanced education and training of recruits.''

[Pub. L. 107–107, div. A, title V, § 542(d), Dec. 28, 2001, 115 Stat. 1112, provided that: ''The amendments made by this section [amending section 573 of Pub. L. 106–65, set out above] shall apply with respect to persons who, on or after the date of the enactment of this Act [Dec. 28, 2001], are enlisted as described in subsection (a) of section 513 of title 10, United States Code, with delayed entry authorized under that section.'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 520c, 10147 of this title; title 37 section 205.

§ 514. Bounties prohibited; substitutes prohibited

(a) No bounty may be paid to induce any person to enlist in an armed force. A clothing allowance or enlistment bonus authorized by law is not a bounty for the purposes of this subsection.

(b) No person liable for active duty in an armed force under this subtitle may furnish a substitute for that active duty. No person may be enlisted or appointed in an armed force as a substitute for another person.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
514(a)	50 App.:458 (1st sentence, less applicability to induction).	June 24, 1948, ch. 625, §8 (less applicability to induction), 62 Stat. 614.
514(b)	50 App.:458 (last sentence, less applicability to induction).	

In subsection (b), the words ''active duty'' are substituted for the words ''training and service''. The word ''may'' is substituted for the words ''shall be permitted or allowed''. The last sentence is substituted for 50 App.:458 (words between 1st and last semicolons). 50 App.:458 (words after last semicolon) is omitted as applicable only to induction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 309.

§515. Reenlistment after discharge as warrant officer

A person who has been discharged from a regular component of an armed force under section 1165 or 1166 of this title may, upon his request and in the discretion of the Secretary concerned, be enlisted in that armed force in the grade prescribed by the Secretary. However, a person discharged under section 1165 of this title may not be enlisted in a grade lower than the grade that he held immediately before appointment as a warrant officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
515	10:600d (last 36 words of last sentence). 34:135d (last 36 words of last sentence). 10:600m (last 21 words of 3d sentence). 34:430a (last 21 words of 3d sentence).	May 29, 1954, ch. 249, §§6 (last 36 words of last sentence), 15 (last 21 words of 3d sentence), 68 Stat. 159, 164.

The first 20 words are inserted for clarity. The word ''request'' is substituted for the word ''application''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1165, 1166 of this title.

§516. Effect upon enlisted status of acceptance of appointment as cadet or midshipman

(a) The enlistment or period of obligated service of an enlisted member of the armed forces who accepts an appointment as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or in the Naval Reserve, may not be terminated because of the acceptance of that appointment. However, while serving as a cadet or midshipman at an Academy, he is entitled only to the pay, allowances, compensation, pensions, and other benefits provided by law for such a cadet or midshipman or, if he is a midshipman in the Naval Reserve, to the compensation and emoluments of a midshipman in the Naval Reserve.

(b) If a person covered by subsection (a) is separated from service as a cadet or midshipman, or from service as a midshipman in the Naval Reserve, for any reason other than his appointment as a commissioned officer of a regular or reserve component of an armed force or because of a physical disability, he resumes his enlisted status and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged. In computing the unexpired part of an enlistment or period of obligated service for the purposes of this subsection, all service as a cadet or midshipman is counted as service under that enlistment or period of obligated service.

(Added Pub. L. 85–861, §1(9)(A), Sept. 2, 1958, 72 Stat. 1439.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
516(a)	50:1411.	June 25, 1956, ch. 439, §§1, 2, 70 Stat. 333.
516(b)	50:1412.	

In subsection (a), the words ''on or after June 25, 1956'' are omitted as executed. The words ''Regular, Reserve'' and ''during the continuation of the cadet or midshipman status of such member'' are omitted as surplusage. The words ''if he is a midshipman in the Naval Reserve * * * of a midshipman in the Naval Reserve'' are substituted for the words ''accruing to such reserve midshipman by virtue of his status in the Naval Reserve''.

In subsection (b), the words ''a person covered by subsection (a)'' are substituted for 50:1412 (1st 84 words of 1st sentence). The words ''his appointment as a commissioned officer of'' are substituted for the words ''the acceptance of a commission in''. The words ''and shall complete the period of service for which he was enlisted or for which he has an obligation, unless he is sooner discharged'' are substituted for 50:1412 (2d sentence). The words ''promoted or'' are omitted as unnecessary, since the only kind of promotion involved is that to officer, in which case the member is discharged from his enlisted status. The words ''as service under that enlistment'' are substituted for the words ''as time serviced under such contract''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§517. Authorized daily average: members in pay grades E–8 and E–9

(a) The authorized daily average number of enlisted members on active duty (other than for training) in an armed force in pay grades E–8 and E–9 in a fiscal year may not be more than 2.5 percent and 1 percent, respectively, of the number of enlisted members of that armed force who are on active duty (other than for training) on the first day of that fiscal year. In computing the limitations prescribed in the preceding sentence, there shall be excluded enlisted members of an armed force on active duty (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force.

(b) Whenever the number of members serving in pay grade E–9 is less than the number author-

ized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.

(c) Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.

(Added Pub. L. 87–649, § 2(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–584, § 4, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97–86, title V, § 503(1), (2), Dec. 1, 1981, 95 Stat. 1107, 1108; Pub. L. 97–252, title V, § 503(a), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98–94, title V, § 503(a), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98–525, title IV, §§ 413(a), 414(a)(2), Oct. 19, 1984, 98 Stat. 2517, 2518; Pub. L. 99–145, title IV, § 413(a), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100–180, div. A, title IV, § 413(a), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101–189, div. A, title IV, § 413(a), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102–190, div. A, title IV, § 413(a), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103–160, div. A, title IV, § 413(a), Nov. 30, 1993, 107 Stat. 1642; Pub. L. 103–337, div. A, title V, § 552(a), title XVI, § 1662(a)(4), Oct. 5, 1994, 108 Stat. 2772, 2988; Pub. L. 105–261, div. A, title IV, § 407(a), title X, § 1069(a)(2), Oct. 17, 1998, 112 Stat. 1996, 2135; Pub. L. 106–398, § 1 [[div. A], title IV, § 421(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–95; Pub. L. 107–107, div. A, title IV, § 403, Dec. 28, 2001, 115 Stat. 1069.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
517	37:232(c) (last sentence).	Oct. 12, 1949, ch. 681, § 201(c) (last sentence); added May 20, 1958, Pub. L. 85–422, § 1(3) (last sentence), 72 Stat. 124.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''2.5 percent'' for ''2 percent (or, in the case of the Army, 2.5 percent)''.

2000—Subsec. (c). Pub. L. 106–398 added subsec. (c).

1998—Subsec. (a). Pub. L. 105–261, § 1069(a)(2), substituted ''The authorized'' for ''Except as provided in section 307 of title 37, the authorized''.

Pub. L. 105–261, § 407(a), substituted ''a fiscal year'' for ''a calendar year'' and ''the first day of that fiscal year'' for ''January 1 of that year''.

1994—Subsec. (a). Pub. L. 103–337, § 552(a), inserted ''(or, in the case of the Army, 2.5 percent)'' after ''may not be more than 2 percent''.

Subsec. (b). Pub. L. 103–337, § 1661(a)(4)(B), redesignated subsec. (c) as (b) and struck out ''or whenever the number of members serving in pay grade E–9 for duty described in subsection (b) is less than the number authorized for that grade under subsection (b),'' after ''under subsection (a),''.

Pub. L. 103–337, § 1662(a)(4)(A), struck out subsec. (b) which limited the number of enlisted members in pay grades E–8 and E–9 who could be on active duty (other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard.

Subsec. (c). Pub. L. 103–337, § 1662(a)(4)(B), redesignated subsec. (c) as (b).

1993—Subsec. (b). Pub. L. 103–160, in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the Air Force to 328 and 840 from 279 and 800, respectively.

1991—Subsec. (b). Pub. L. 102–190, in table, increased fiscal year limitation on number of enlisted men in pay grade E–8 on active duty affecting reserve components of the Air Force from 670 to 800, and increased limitation on number of enlisted men in pay grade E–9 on active duty affecting reserve components of the Army from 557 to 569, the Air Force from 231 to 279, and the Marine Corps from 13 to 14.

1989—Subsec. (b). Pub. L. 101–189, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 557 and 2,585 from 542 and 2,504, respectively; Navy, to 202 and 429 from 200 and 425, respectively; Air Force, to 231 and 670 from 224 and 637, respectively. Marine Corps figures remained unchanged.

Pub. L. 101–189, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 542 and 2,504 from 529 and 2,350, respectively; Navy, to 200 and 425 from 180 and 400, respectively; Air Force, to 224 and 637 from 150 and 425, respectively. Marine Corps figures remained unchanged.

1987—Subsec. (b). Pub. L. 100–180, § 413(a)(2), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 529 and 2,350 from 517 and 2,295, respectively; Navy, to 180 and 400 from 175 and 390, respectively; Air Force, to 150 and 425 from 125 and 425, respectively. Marine Corps figures remained unchanged.

Pub. L. 100–180, § 413(a)(1), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 175 and 390 from 165 and 381, respectively; Air Force, to 125 and 425 from 80 and 358, respectively; Marine Corps, to 13 and 74 from 9 and 74, respectively. Army figures remained unchanged.

1985—Subsec. (b). Pub. L. 99–145 in table, changed fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Navy, to 165 and 381 from 156 and 381, respectively; Air Force, to 80 and 358 from 87 and 455, respectively. Army and Marine Corps figures remained unchanged.

1984—Subsec. (b). Pub. L. 98–525, § 414(a)(2), inserted ''(other than for training) or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training)'' and substituted ''or the National Guard'' for ''of the armed forces'' and ''for that grade and armed force'' for ''prescribed for the grade and the armed force''.

Pub. L. 98–525, § 413(a), in table, increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 2,295 and 517 from 1,494 and 314; Air Force, to 455 and 87 from 617 and 143; Marine Corps, to 74 and 9 from 56 and 6. Navy figures remained unchanged.

1983—Subsec. (b). Pub. L. 98–94 increased fiscal year limitation on number of enlisted men in pay grades E–8 and E–9 on active duty affecting reserve components of the armed forces: Army, to 1,494 and 314 from 1,244 and 265; Navy, to 381 and 156 from 329 and 156; Air Force, to 617 and 143 from 441 and 132; Marine Corps figures remained unchanged.

1982—Subsec. (b). Pub. L. 97–252 increased the numbers in columns from 222, 146, 76, and 4 in the line for E–9 to 265, 156, 132, and 6, respectively, and from 908, 319, 307, and 12 in line for E–8 to 1,244, 329, 441, and 56, respectively.

1981—Subsec. (b). Pub. L. 97–86, § 503(1), inserted column for ''Marine Corps'' in table and increased num-

bers in existing columns headed ''Army'', ''Navy'', and ''Air Force'' from 209, 140, and 71 in line for E–9 to 222, 146, and 76, respectively, and from 823, 302, and 302 in line for E–8 to 908, 319, and 307, respectively.

Subsec. (c). Pub. L. 97–86, §503(2), added subsec. (c).

1980—Pub. L. 96–584 designated existing provisions as subsec. (a), inserted provisions respecting computation of limitations, and added subsec. (b).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, §407(b), Oct. 17, 1998, 112 Stat. 1996, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 552(c) of Pub. L. 103–337 provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to the number of enlisted members of the Army on active duty in pay grade E–8 during 1994.''

Amendment by section 1662(a)(4) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 413(a)(2) of Pub. L. 101–189 provided that the amendment made by that section is effective Oct. 1, 1990.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 413(a)(2) of Pub. L. 100–180 provided that the amendment made by that section is effective Oct. 1, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 413(c) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 413(c) of Pub. L. 98–525 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 503(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 524 [now 12011] of this title] shall take effect on October 1, 1983.''

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

AUTHORIZED ACTIVE DUTY STRENGTHS FOR ARMY ENLISTED MEMBERS IN PAY GRADE E–8; SPECIAL RULE FOR 1995

Section 552(b) of Pub. L. 103–337 provided that: ''The percentage applicable to enlisted members of the Army in pay grade E–8 under section 517(a) of title 10, United States Code, during 1995 shall be 2.3 percent (rather than the percentage provided by the amendment made by subsection (a) [amending this section]).''

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of this section and section 523, 524 (now 12011), 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in section 527 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 168 of this title.

§518. Temporary enlistments

Temporary enlistments may be made only in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, without specification of component.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1172 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§519. Temporary enlistments: during war or emergency

Except as provided in section 505 of this title and except for enlistments as Reserves of an armed force—

(1) temporary enlistments in an armed force entered into in time of war or of emergency declared by Congress shall be for the duration of the war or emergency plus six months; and

(2) only persons at least eighteen years of age and otherwise qualified under regulations to be prescribed by the Secretary concerned are eligible for such enlistments.

(Added Pub. L. 90–235, §2(a)(1)(B), Jan. 2, 1968, 81 Stat. 755.)

§520. Limitation on enlistment and induction of persons whose score on the Armed Forces Qualification Test is below a prescribed level

(a) The number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in any armed force during any fiscal year whose score on the Armed Forces Qualification Test is at or above the tenth percentile and below the thirty-first percentile may not exceed 20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force during such fiscal year.

(b) A person who is not a high school graduate may not be accepted for enlistment in the armed forces unless the score of that person on the Armed Forces Qualification Test is at or above the thirty-first percentile; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements.

(Added Pub. L. 96–342, title III, § 302(b)(1), Sept. 8, 1980, 94 Stat. 1082; amended Pub. L. 96–579, § 9, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–86, title IV, § 402(b)(1), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 98–94, title XII, § 1268(3), Sept. 24, 1983, 97 Stat. 705; Pub. L. 100–370, § 1(a)(1), July 19, 1988, 102 Stat. 840.)

HISTORICAL AND REVISION NOTES

1988 ACT

Amendment of subsection (b) is based on Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–370 inserted before period at end ''; however, a person may not be denied enlistment in the armed forces solely because of his not having a high school diploma if his enlistment is needed to meet established strength requirements''.

1983—Subsec. (a). Pub. L. 98–94 struck out provisions under which, for fiscal years beginning on October 1, 1980, and October 1, 1981, the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in the armed forces during such fiscal years whose score on the Armed Forces Qualification Test was at or above the tenth percentile and below the thirty-first percentile could not exceed 25 percent of the number of such persons enlisted or inducted into the armed forces during such fiscal years, and, in the provisions remaining applicable to fiscal years beginning after Sept. 30, 1982, substituted ''20 percent of the total number of persons originally enlisted or inducted to serve on active duty (other than active duty for training) in such armed force'' for ''20 percent of the number of such persons enlisted or inducted into such armed force''.

1981—Pub. L. 97–86 designated existing provisions as subsec. (a) and added subsec. (b).

1980—Pub. L. 96–579 struck out subsec. (a) designation and subsec. (b) authorizing the Secretary of Defense for national security reasons to waive the enlistment and induction limitation based on percentile limits conditioned upon notification of the Congress and a concurrent resolution of approval.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 402(b)(2) of Pub. L. 97–86 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981].''

PILOT PROGRAM FOR TREATING GED AND HOME SCHOOL DIPLOMA RECIPIENTS AS HIGH SCHOOL GRADUATES FOR DETERMINATIONS OF ELIGIBILITY FOR ENLISTMENT IN ARMED FORCES

Pub. L. 105–261, div. A, title V, § 571, Oct. 17, 1998, 112 Stat. 2033, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a pilot program to assess whether the Armed Forces could better meet recruiting requirements by treating GED recipients and home school diploma recipients as having graduated from high school with a high school diploma for the purpose of determining the eligibility of those persons to enlist in the Armed Forces. The Secretary of each military department shall administer the pilot program for the Armed Force or armed forces under the jurisdiction of that Secretary.

''(b) PERSONS ELIGIBLE UNDER THE PILOT PROGRAM AS HIGH SCHOOL GRADUATES.—Under the pilot program, a person shall be treated as having graduated from high school with a high school diploma for the purpose described in subsection (a) if—

''(1) the person has completed a general education development program while participating in the National Guard Challenge Program under section 509 of title 32, United States Code, and is a GED recipient; or

''(2) the person is a home school diploma recipient and provides a transcript demonstrating completion of high school to the military department involved under the pilot program.

''(c) GED AND HOME SCHOOL DIPLOMA RECIPIENTS.—For the purposes of this section—

''(1) a person is a GED recipient if the person, after completing a general education development program, has obtained certification of high school equivalency by meeting State requirements and passing a State approved exam that is administered for the purpose of providing an appraisal of the person's achievement or performance in the broad subject matter areas usually required for high school graduates; and

''(2) a person is a home school diploma recipient if the person has received a diploma for completing a program of education through the high school level at a home school, without regard to whether the home school is treated as a private school under the law of the State in which located.

''(d) ANNUAL LIMIT ON NUMBER.—Not more than 1,250 GED recipients and home school diploma recipients enlisted by an armed force during a fiscal year may be treated under the pilot program as having graduated from high school with a high school diploma.

''(e) DURATION OF PILOT PROGRAM.—The pilot program shall be in effect during the period beginning on October 1, 1998, and ending on September 30, 2003.

''(f) REPORT.—Not later than February 1, 2004, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the pilot program. The report shall include the following, set forth separately for GED recipients and home school diploma recipients:

''(1) The assessment of the Secretary of Defense, and any assessment of any of the Secretaries of the military departments, regarding the value of, and any necessity for, authority to treat GED recipients and home school diploma recipients as having graduated from high school with a high school diploma for the purpose of determining the eligibility of those persons to enlist in the Armed Forces.

''(2) A comparison (shown by armed force and by each fiscal year of the pilot program) of the performance of the persons who enlisted during the fiscal year as GED or home school diploma recipients treated under the pilot program as having graduated from high school with a high school diploma with the performance of the persons who enlisted in that armed force during the same fiscal year after having graduated from high school with a high school diploma, with respect to the following:

''(A) Attrition.

''(B) Discipline.

''(C) Adaptability to military life.

''(D) Aptitude for mastering the skills necessary for technical specialties.

''(E) Reenlistment rates.

''(g) STATE DEFINED.—For purposes of this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.''

MAXIMUM NUMBER OF ARMY ENLISTEES AND INDUCTEES WHO ARE NOT HIGH SCHOOL GRADUATES

Section 302(a) of Pub. L. 96–342, as amended by Pub. L. 97–86, title IV, § 402(a), Dec. 1, 1981, 95 Stat. 1104; Pub. L. 97–252, title IV, § 403, Sept. 8, 1982, 96 Stat. 725; Pub. L. 98–94, title IV, § 402, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98–525, title IV, § 402, Oct. 19, 1984, 98 Stat. 2516; Pub. L. 99–145, title IV, § 402, Nov. 8, 1985, 99 Stat. 618, provided that: ''The number of male individuals (with no prior military service) enlisted or inducted into the

Army during the fiscal year beginning on October 1, 1985, who are not high school graduates may not exceed, as of September 30, 1986, 35 percent of all male individuals (with no prior military service) enlisted or inducted into the Army during such fiscal year.''

[Section 402 of Pub. L. 99–145 provided that amendment of this note by Pub. L. 99–145 is effective Oct. 1, 1985.]

[Section 402 of Pub. L. 98–525 provided that amendment of this note by Pub. L. 98–525 is effective Oct. 1, 1984.]

[Section 402 of Pub. L. 98–94 provided that amendment of this note by Pub. L. 98–94 is effective Oct. 1, 1983.]

[Section 403 of Pub. L. 97–252 provided that amendment of this note by Pub. L. 97–252 is effective Oct. 1, 1982.]

DENIAL OF ENLISTMENT FOR LACK OF HIGH SCHOOL DIPLOMA PROHIBITED

Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406, which provided that no volunteer for enlistment into the Armed Forces shall be denied enlistment solely because of his not having a high school diploma when his enlistment is needed to meet established strength requirements, was repealed and restated in sections 520(b) and 3262 of this title by Pub. L. 100–370, § 1(a), July 19, 1988, 102 Stat. 840.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3262 of this title.

[§ 520a. Repealed. Pub. L. 106–398, § 1 [[div. A], title X, § 1076(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–282]

Section, added Pub. L. 97–252, title XI, § 1114(c)(1), Sept. 8, 1982, 96 Stat. 749; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774, related to criminal history information for military recruiting purposes.

§ 520b. Applicants for enlistment: authority to use funds for the issue of authorized articles

Funds appropriated to the Department of Defense may be used for the issue of authorized articles to applicants for enlistment.

(Added Pub. L. 98–525, title XIV, § 1401(a)(1), Oct. 19, 1984, 98 Stat. 2614; amended Pub. L. 99–145, title XIII, § 1303(a)(4)(A), Nov. 8, 1985, 99 Stat. 738.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 709, 97 Stat. 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 709], 96 Stat. 1833, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 709, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 709, 93 Stat. 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 809, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 808, 91 Stat. 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 708, 90 Stat. 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 708, 90 Stat. 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 808, 88 Stat. 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 708, 87 Stat. 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 708, 86 Stat. 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 708, 85 Stat. 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 808, 84 Stat. 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, § 507, 82 Stat. 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 607, 79 Stat. 874.

Aug. 19, 1964, Pub. L. 88–446, title V, § 507, 78 Stat. 475.

Oct. 17, 1963, Pub. L. 88–149, title V, § 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title V, § 507, 76 Stat. 328.

Aug. 17, 1961, Pub. L. 87–144, title II, § 201, 75 Stat. 367, 369.

July 7, 1960, Pub. L. 86–601, title II, § 201, 74 Stat. 340, 342.

Aug. 18, 1959, Pub. L. 86–166, title II, § 201, 73 Stat. 368, 370.

Aug. 22, 1958, Pub. L. 85–724, title III, § 301, title V, § 501, 72 Stat. 714, 721.

Aug. 2, 1957, Pub. L. 85–117, title III, § 301, title V, § 501, 71 Stat. 314, 321.

July 2, 1956, ch. 488, title III, § 301, title V, § 501, 70 Stat. 457, 464.

July 13, 1955, ch. 358, title III, § 301, title V, § 501, 69 Stat. 304, 312.

June 30, 1954, ch. 432, title IV, § 401, title VI, § 601, 68 Stat. 339, 347.

Aug. 1, 1953, ch. 305, title III, § 301, title V, § 501, 67 Stat. 339, 348.

July 10, 1952, ch. 630, title III, § 301, title V, § 501, 66 Stat. 520, 530.

Oct. 18, 1951, ch. 512, title III, § 301, title V, § 501, 65 Stat. 429, 443.

Sept. 6, 1950, ch. 896, Ch. X, title III, § 301, title V, § 501, 64 Stat. 735, 750.

Oct. 29, 1949, ch. 787, title III, § 301, title V, § 501, 63 Stat. 992, 1015.

June 24, 1948, ch. 632, 62 Stat. 655.

July 30, 1947, ch. 357, title I, § 1, 61 Stat. 557.

July 16, 1946, ch. 583, § 1, 60 Stat. 547, 548.

July 3, 1945, ch. 265, § 1, 59 Stat. 390.

June 28, 1944, ch. 303, § 1, 58 Stat. 580.

July 1, 1943, ch. 185, § 1, 57 Stat. 354.

July 2, 1942, ch. 477, § 1, 56 Stat. 617.

June 30, 1941, ch. 262, § 1, 55 Stat. 373.

June 13, 1940, ch. 343, § 1, 54 Stat. 358, 359.

Apr. 26, 1939, ch. 88, § 1, 53 Stat. 600.

June 11, 1938, ch. 37, § 1, 52 Stat. 649.

July 1, 1937, ch. 423, § 1, 50 Stat. 450.

May 15, 1936, ch. 404, § 1, title I, 49 Stat. 1286.

Apr. 9, 1935, ch. 54, § 1, title I, 49 Stat. 128.

Apr. 26, 1934, ch. 165, title I, 48 Stat. 621.

Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.

July 14, 1932, ch. 482, title I, 47 Stat. 670, 671.

Feb. 23, 1931, ch. 279, title I, 46 Stat. 1283, 1284.

May 28, 1930, ch. 348, title I, 46 Stat. 438.

Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.

Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.

Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.

Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.

Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''enlistment'' for ''enlistments''.

EFFECTIVE DATE

Section 1404 of Pub. L. 98–525 provided that: ''The amendments made by sections 1401 [enacting this section and sections 956, 979 to 981, 1047 to 1050, 1074b [now 1074c], 1093, 1589, 2007 to 2009, 2484, 2638, and 2639 of this title, amending sections 1074, 1077, 1079, 2104, and 7204 of this title, and repealing section 7208 of this title], 1402

[enacting section 306a of Title 37, Pay and Allowances of the Uniformed Services, and amending sections 206 and 404 of Title 37], and 1403 [amending provisions set out as a note under section 138 of this title and repealing provisions set out as notes under sections 138 and 2102 of this title] take effect on October 1, 1985.''

§ 520c. Recruiting functions: use of funds

(a) PROVISION OF MEALS AND REFRESHMENTS.—Under regulations prescribed by the Secretary concerned, funds appropriated to the Department of Defense for recruitment of military personnel may be expended for small meals and refreshments during recruiting functions for the following persons:

(1) Persons who have enlisted under the Delayed Entry Program authorized by section 513 of this title.

(2) Persons who are objects of armed forces recruiting efforts.

(3) Persons whose assistance in recruiting efforts of the military departments is determined to be influential by the Secretary concerned.

(4) Members of the armed forces and Federal employees when attending recruiting functions in accordance with a requirement to do so.

(5) Other persons whose presence at recruiting functions will contribute to recruiting efforts.

(b) ANNUAL REPORT.—Not later than February 1 of each of the years 1998 through 2002, the Secretary of Defense shall submit to Congress a report on the extent to which the authority under subsection (a) was exercised during the fiscal year ending in the preceding year.

(Added Pub. L. 104–201, div. A, title III, § 361(a), Sept. 23, 1996, 110 Stat. 2491; amended Pub. L. 107–107, div. A, title V, § 545, Dec. 28, 2001, 115 Stat. 1113.)

AMENDMENTS

2001—Subsec. (a)(4). Pub. L. 107–107, § 545(b)(1), substituted ''recruiting functions'' for ''recruiting events''.

Subsec. (a)(5). Pub. L. 107–107, § 545(b)(2), substituted ''presence at recruiting functions'' for ''presence at recruiting efforts''.

Subsec. (c). Pub. L. 107–107, § 545(a), struck out heading and text of subsec. (c). Text read as follows: ''The authority in subsection (a) may not be exercised after September 30, 2001.''

CHAPTER 32—OFFICER STRENGTH AND DISTRIBUTION IN GRADE

Sec.
521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories.
522. Authorized total strengths: regular commissioned officers on active duty.
523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain.
[524. Renumbered.]
525. Distribution of commissioned officers on active duty in general officer and flag officer grades.
526. Authorized strength: general and flag officers on active duty.
527. Authority to suspend sections 523, 525, and 526.
Sec.
[528. Repealed.]

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 501(b), Dec. 28, 2001, 115 Stat. 1079, struck out item 528 ''Limitation on number of officers on active duty in grades of general and admiral''.

1994—Pub. L. 103–337, div. A, title IV, § 405(b)(2), title XVI, § 1671(b)(4), Oct. 5, 1994, 108 Stat. 2745, 3013, struck out item 524 ''Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain'', struck out ''524,'' after ''523,'' in item 527, and added item 528.

1988—Pub. L. 100–370, § 1(b)(3), July 19, 1988, 102 Stat. 840, struck out former item 526 ''Authority to suspend sections 523, 524, and 525'', and added items 526 and 527.

1984—Pub. L. 98–525, title IV, § 414(a)(4)(B)(ii), inserted references to the National Guard and to full-time National Guard duty in item 524.

§ 521. Authority to prescribe total strengths of officers on active duty and officer strengths in various categories

(a) Whenever the needs of the services require, but at least once each fiscal year, the Secretary of Defense shall prescribe the total authorized active-duty strength as of the end of the fiscal year for officers in grades above chief warrant officer, W–5, for each of the armed forces under the jurisdiction of the Secretary of a military department.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of each military department may, for an armed force under his jurisdiction, prescribe the strength of any category of officers that may serve on active duty.

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 102–190, div. A, title XI, § 1131(1)(A), Dec. 5, 1991, 105 Stat. 1505.)

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1132 of title XI of Pub. L. 102–190 provided that: ''This title [enacting sections 571 to 583 and 742 of this title, amending this section, sections 522, 597 [now 12241], 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under sections 555 and 571 of this title and section 1009 of Title 37] and the amendments made by this title shall take effect on February 1, 1992.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings

that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

EVALUATION OF EFFECTS OF OFFICER STRENGTH REDUCTIONS ON OFFICER PERSONNEL MANAGEMENT SYSTEMS

Pub. L. 102–484, div. A, title V, §502, Oct. 23, 1992, 106 Stat. 2402, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall provide for a federally funded research and development center that is independent of the military departments to review the officer personnel management system of each of the military departments and to determine and evaluate the effects of the post-Cold War officer strength reductions on that officer personnel management system.

''(b) MATTERS TO BE CONSIDERED.—The review and evaluation shall include, for the officer personnel management system of each military department, the effects of the officer strength reductions on the following:

''(1) The timing and opportunities for officer promotions.

''(2) The expected lengths of officer careers.

''(3) Other features of the officer personnel management system under the Defense Officer Personnel Management Act (Public Law 96–513) [see Tables for classification], including the provisions of law added and amended by that Act.

''(4) Any other aspect of the officer personnel management system that the federally funded research and development center personnel conducting the review and evaluation consider appropriate or as directed by the Secretary of Defense.

''(c) REPORT.—Not later than December 31, 1993, the federally funded research and development center shall submit to the Secretary of Defense a report on the results of the review and evaluation. Within 60 days after receiving the report, the Secretary shall transmit the report to the Committees on Armed Services of the Senate and House of Representatives. The Secretary may submit to such committees any comments that the Secretary considers appropriate regarding the matters contained in the report.

''(d) FUNDING.—Funds appropriated for fiscal year 1993 pursuant to title II [106 Stat. 2349, see Tables for classification] and made available for federally funded research and development centers shall be available for the conduct of the review and evaluation under this section.''

STRENGTH OF ACTIVE DUTY OFFICER CORPS

Pub. L. 100–456, div. A, title IV, §402(c), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(1) The number of officers serving on active duty (excluding officers in categories specified in paragraph (2)) as of September 30, 1990, may not exceed—

''(A) in the case of the Army, 106,427; and

''(B) in the case of the Air Force, 102,438.

''(2) Officers in the categories described in section 403(b) of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661, set out below] shall be excluded in counting officers under this subsection.''

Pub. L. 100–180, div. A, title IV, §402, Dec. 4, 1987, 101 Stat. 1081, as amended by Pub. L. 100–456, div. A, title IV, §402(b), Sept. 29, 1988, 102 Stat. 1963, provided that:

''(a) AUTHORITY TO INCREASE FOR FISCAL YEAR 1988.—Subject to subsection (b), the Secretary of Defense may increase by not more than 1 percentage point (to not more than 98 percent) the percentage limitation prescribed in section 403(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3859) [set out below] applicable to the total number of commissioned officers of the Army, Navy, Air Force, and Marine Corps that may be serving on active duty as of September 30, 1988.

''(b) CERTIFICATION AND REPORT.—The Secretary may exercise the authority under subsection (a) only if—

''(1) the Secretary makes a determination that such increase is necessary in order to avoid severe personnel management problems in the Army, Navy, Air Force, and Marine Corps during fiscal year 1988 and certifies such determination to the Committees on Armed Services of the Senate and the House of Representatives; and

''(2) the Secretary submits to those Committees with such certification a report providing legislative recommendations for temporary changes in chapter 36 of title 10, United States Code, and other provisions of law enacted by the Defense Officer Personnel Management Act (Public Law 96–513) [see Tables for classification] that the Secretary considers necessary in order to implement the required officer reductions under such section 403 [set out below] with the least possible adverse effect on the Armed Forces.''

Pub. L. 99–661, div. A, title IV, §403, Nov. 14, 1986, 100 Stat. 3859, as amended by Pub. L. 100–456, div. A, title IV, §402(a), Sept. 29, 1988, 102 Stat. 1963; Pub. L. 101–189, div. A, title VI, §653(e)(2), Nov. 29, 1989, 103 Stat. 1463; Pub. L. 103–337, div. A, title XVI, §1677(e), Oct. 5, 1994, 108 Stat. 3020, provided that:

''(a) REDUCTION IN SIZE OF OFFICER CORPS.—On and after each of the dates set forth in column 1 of the following table, the total number of commissioned officers serving on active duty in the Army, Navy, Air Force, and Marine Corps (excluding officers in categories specified in subsection (b)) may not exceed the percentage, set forth in column 2 opposite such date, of the total number of commissioned officers serving on active duty as of September 30, 1986 (excluding officers in categories specified in subsection (b)):

Column 1	Column 2
On and after:	Percentage of total commissioned officers serving on active duty as of September 30, 1986:
September 30, 1987	99
September 30, 1988	97

''(b) EXCLUSIONS.—In computing the authorized strength of commissioned officers under subsection (a), officers in the following categories shall be excluded:

''(1) Reserve officers—

''(A) on active duty for training;

''(B) on active duty under section 10148(a), 10211, 10302 through 10305, 12301(a), or 12402 of title 10, United States Code, or under section 708 of title 32, United States Code;

''(C) on active duty under section 12301(d) of title 10, United States Code, in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard;

''(D) on active duty to pursue special work;

''(E) ordered to active duty under section 12304 of title 10, United States Code; or

''(F) on full-time National Guard duty.

''(2) Retired officers on active duty under a call or order to active duty for 180 days or less.

''(3) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

''(c) APPORTIONMENT OF REDUCTIONS BY SECRETARY OF DEFENSE.—The Secretary of Defense shall apportion the reductions in the number of commissioned officers serving on active duty required by subsection (a) among the Army, Navy, Air Force, and Marine Corps. Not later than February 1 of each fiscal year in which reductions are required under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the manner in which the reductions have been or are to be apportioned for that fiscal year and for the next fiscal year for which such reductions are required.''

§ 522. Authorized total strengths: regular commissioned officers on active duty

The authorized strengths of the Army, Navy, Air Force, and Marine Corps in regular officers (other than retired officers) in grades above chief warrant officer, W–5, are as follows:

Army	63,000
Navy	55,000
Air Force	80,000
Marine Corps	17,000

(Added Pub. L. 96–513, title I, § 103, Dec. 12, 1980, 94 Stat. 2841; amended Pub. L. 98–525, title V, § 522, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 102–190, div. A, title XI, § 1131(1)(B), Dec. 5, 1991, 105 Stat. 1505.)

AMENDMENTS

1991—Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''chief warrant officer (W–4)''.

1984—Pub. L. 98–525 increased number limit for regular officers in the Navy, Air Force, and Marine Corps to 55,000, 80,000, and 17,000 from 48,000, 69,425, and 13,000, respectively. The number limit for the Army remained unchanged.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

§ 523. Authorized strengths: commissioned officers on active duty in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain

(a)(1) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Army, Air Force, or Marine Corps at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in the grade of:		
	Major	Lieutenant Colonel	Colonel
Army:			
20,000	6,848	5,253	1,613
25,000	7,539	5,642	1,796
30,000	8,231	6,030	1,980
35,000	8,922	6,419	2,163
40,000	9,614	6,807	2,347
45,000	10,305	7,196	2,530
50,000	10,997	7,584	2,713
55,000	11,688	7,973	2,897
60,000	12,380	8,361	3,080
65,000	13,071	8,750	3,264
70,000	13,763	9,138	3,447
75,000	14,454	9,527	3,631
80,000	15,146	9,915	3,814
85,000	15,837	10,304	3,997
90,000	16,529	10,692	4,181
95,000	17,220	11,081	4,364
100,000	17,912	11,469	4,548
110,000	19,295	12,246	4,915
120,000	20,678	13,023	5,281
130,000	22,061	13,800	5,648
170,000	27,593	16,908	7,116
Air Force:			
35,000	9,216	7,090	2,125
40,000	10,025	7,478	2,306
45,000	10,835	7,866	2,487
50,000	11,645	8,253	2,668
55,000	12,454	8,641	2,849
60,000	13,264	9,029	3,030
65,000	14,073	9,417	3,211
70,000	14,883	9,805	3,392
75,000	15,693	10,193	3,573
80,000	16,502	10,582	3,754
85,000	17,312	10,971	3,935
90,000	18,121	11,360	4,115
95,000	18,931	11,749	4,296
100,000	19,741	12,138	4,477
105,000	20,550	12,527	4,658
110,000	21,360	12,915	4,838
115,000	22,169	13,304	5,019
120,000	22,979	13,692	5,200
125,000	23,789	14,081	5,381
Marine Corps:			
10,000	2,525	1,480	571
12,500	2,900	1,600	632
15,000	3,275	1,720	653
17,500	3,650	1,840	673
20,000	4,025	1,960	694
22,500	4,400	2,080	715
25,000	4,775	2,200	735.

(2) Except as provided in subsection (c), of the total number of commissioned officers serving on active duty in the Navy at the end of any fiscal year (excluding officers in categories specified in subsection (b)), the number of officers who may be serving on active duty in each of the grades of lieutenant commander, commander, and captain may not, as of the end of such fiscal year, exceed a number determined in accordance with the following table:

Total number of commissioned officers (excluding officers in categories specified in subsection (b)) on active duty:	Number of officers who may be serving on active duty in grade of:		
	Lieutenant commander	Commander	Captain
Navy:			
30,000	7,331	5,018	2,116
33,000	7,799	5,239	2,223
36,000	8,267	5,460	2,330
39,000	8,735	5,681	2,437
42,000	9,203	5,902	2,544
45,000	9,671	6,123	2,651
48,000	10,139	6,343	2,758
51,000	10,606	6,561	2,864
54,000	11,074	6,782	2,971
57,000	11,541	7,002	3,078
60,000	12,009	7,222	3,185
63,000	12,476	7,441	3,292
66,000	12,944	7,661	3,398
70,000	13,567	7,954	3,541
90,000	16,683	9,419	4,254.

(3) If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is between any two consecutive figures listed in the first column of the appropriate

table in paragraph (1) or (2), the corresponding authorized strengths for each of the grades shown in that table for that armed force are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of commissioned officers serving on active duty in an armed force (excluding officers in categories specified in subsection (b)) is greater or less than the figures listed in the first column of the appropriate table in paragraph (1) or (2), the Secretary concerned shall fix the corresponding strengths for the grades shown in that table in the same proportion as reflected in the nearest limit shown in the table.

(b) Officers in the following categories shall be excluded in computing and determining authorized strengths under this section:

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32;

(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty to pursue special work;

(E) ordered to active duty under section 12304 of this title; or

(F) on full-time National Guard duty.

(2) General and flag officers.

(3) Medical officers.

(4) Dental officers.

(5) Warrant officers.

(6) Retired officers on active duty under a call or order to active duty for 180 days or less.

(7) Reserve or retired officers on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

(c) Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) An officer may not be reduced in grade, or have his pay or allowances reduced, because of a reduction in the number of commissioned officers authorized for his grade under this section.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2842; amended Pub. L. 98–525, title IV, §414(a)(3), Oct. 19, 1984, 98 Stat. 2518; Pub. L. 99–145, title V, §511(a), Nov. 8, 1985, 99 Stat. 623; Pub. L. 99–433, title V, §531(a)(1), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 102–190, div. A, title IV, §431, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–337, div. A, title XVI, §1673(c)(3), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title IV, §403(a), (b), Sept. 23, 1996, 110 Stat. 2504, 2505; Pub. L. 107–314, div. A, title IV, §406, Dec. 2, 2002, 116 Stat. 2526.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–314, in table, increased number of officers authorized to serve on active duty in the Marine Corps in the grade of Colonel to 571, 632, 653, 673, 694, 715, and 735 from 571, 592, 613, 633, 654, 675, and 695, respectively.

1996—Subsec. (a)(1). Pub. L. 104–201, §403(a), amended table generally, expanding the range of numbers of commissioned officers covered and extensively revising the numbers in each grade covered.

Subsec. (a)(2). Pub. L. 104–201, §403(b), amended table generally, expanding the range of numbers of commissioned officers covered and extensively revising the numbers in each grade covered.

1994—Subsec. (b)(1)(B). Pub. L. 103–337, §1671(c)(3)(A), substituted ''10211, 10302 through 10305, or 12402'' for ''265, 3021, 3496, 5251, 5252, 8021, or 8496''.

Subsec. (b)(1)(C). Pub. L. 103–337, §1671(c)(3)(B), substituted ''12301(d)'' for ''672(d)''.

Subsec. (b)(1)(E). Pub. L. 103–337, §1671(c)(3)(C), substituted ''12304'' for ''673b''.

1991—Subsec. (a)(1). Pub. L. 102–190, in table, decreased numbers of officers authorized to serve on active duty in the Air Force in the grade of Colonel to 3,392, 3,573, 3,754, 3,935, 4,115, 4,296, 4,477, 4,658, 4,838, 5,019, 5,200, and 5,381 from 3,642, 3,823, 4,004, 4,185, 4,365, 4,546, 4,727, 4,908, 5,088, 5,269, 5,450, and 5,631, respectively.

1986—Subsec. (b)(1)(B). Pub. L. 99–433 substituted ''3021'' and ''8021'' for ''3033'' and ''8033'', respectively.

1985—Subsec. (a)(1). Pub. L. 99–145 increased fiscal year limitation on authorized number of Marine Corps majors to 2,766, 3,085, 3,404, 3,723, and 4,042 from 2,717, 2,936, 3,154, 3,373, and 3,591, respectively.

1984—Subsec. (b)(1)(C). Pub. L. 98–525, §414(a)(3)(A), struck out ''or section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Subsec. (b)(1)(F). Pub. L. 98–525, §414(a)(3)(B)–(D), added subpar. (F).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 403(d) of Pub. L. 104–201 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and repealing provisions set out as notes below] shall take effect on September 1, 1997.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 511(b) of Pub. L. 99–145 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1985.''

TEMPORARY VARIATION IN DOPMA AUTHORIZED END STRENGTH LIMITATIONS FOR ACTIVE DUTY AIR FORCE AND NAVY OFFICERS IN CERTAIN GRADES

Pub. L. 104–106, div. A, title IV, §402, Feb. 10, 1996, 110 Stat. 286, provided that the numbers of officers of the Air Force authorized under subsec. (a)(1) of this section to be serving on active duty in the grades of major, lieutenant colonel, and colonel for fiscal years 1996 and 1997 and the numbers of officers in the Navy authorized under subsec. (a)(2) of this section to be serving on active duty in the grades of lieutenant commander, commander, and captain for fiscal years 1996 and 1997 were limited to numbers in tables, prior to repeal by Pub. L. 104–201, div. A, title IV, §403(c)(3), Sept. 23, 1996, 110 Stat. 2506.

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR ARMY MAJORS AND LIEUTENANT COLONELS

Section 402 of Pub. L. 103–337 provided that number of officers of the Army authorized under subsec. (a)(1) of this section to be serving on active duty in grades of major and lieutenant colonel for fiscal years 1995 through 1997 was limited to numbers set forth in table

prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(2), Sept. 23, 1996, 110 Stat. 2506.

TEMPORARY VARIATION OF END STRENGTH LIMITATIONS FOR MARINE CORPS MAJORS AND LIEUTENANT COLONELS

Pub. L. 103–160, div. A, title IV, § 402, Nov. 30, 1993, 107 Stat. 1639, as amended by Pub. L. 103–337, div. A, title IV, § 403, Oct. 5, 1994, 108 Stat. 2743, provided that number of officers of the Marine Corps authorized under subsec. (a)(1) of this section to be serving on active duty in grades of major and lieutenant colonel for fiscal years 1994 through 1997 was limited to numbers set forth in table prior to repeal by Pub. L. 104–201, div. A, title IV, § 403(c)(1), Sept. 23, 1996, 110 Stat. 2505.

TEMPORARY INCREASE IN OFFICER GRADE LIMITATIONS

Pub. L. 101–189, div. A, title IV, § 403, Nov. 29, 1989, 103 Stat. 1431, authorized the Secretary of Defense, until Sept. 30, 1991, to increase the strength-in-grade limitations specified in subsec. (a) of this section by a total of 250 positions, to be distributed among grades and services as the Secretary considers appropriate and directed the Secretary to submit to Congress a comprehensive report on the adequacy of the strength-in-grade limitations prescribed in subsec. (a) of this section.

TEMPORARY REDUCTION IN NUMBER OF AIR FORCE COLONELS

Pub. L. 101–189, div. A, title IV, § 402, Nov. 29, 1989, 103 Stat. 1431, as amended by Pub. L. 101–510, div. A, title IV, § 404, Nov. 5, 1990, 104 Stat. 1545, provided that the number of officers authorized under subsec. (a) of this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1992 was reduced by 250.

Pub. L. 100–456, div. A, title IV, § 403, Sept. 29, 1988, 102 Stat. 1963, provided that the number of officers authorized under this section to be serving on active duty in the Air Force in the grade of colonel during fiscal year 1989 was reduced by 125, and the number of such officers authorized to be serving on active duty during fiscal year 1990 was reduced by 250.

CEILINGS ON COMMISSIONED OFFICERS ON ACTIVE DUTY

Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, § 1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, § 602, Dec. 1, 1981, 95 Stat. 1110, which provided that after Oct. 1, 1981, the total number of commissioned officers on active duty in the Army, Air Force, and Marine Corps above the grade of colonel, and on active duty in the Navy above the grade of captain, could not exceed 1,073, and that in time of war, or of national emergency declared by Congress, the President could suspend the operation of this provision, was repealed and restated in section 526 of this title by Pub. L. 100–370, § 1(b)(1)(B), (4).

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions increasing for the fiscal year ending on Sept. 30, 1981, the maximum number of officers authorized by this section to be serving on active duty, see section 627 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 168, 517, 527, 623, 777, 5721 of this title.

[§ 524. Renumbered § 12011]

§ 525. Distribution of commissioned officers on active duty in general officer and flag officer grades

(a) No appointment may be made in a grade above brigadier general in the Army, Air Force, or Marine Corps if that appointment would result in more than 50 percent of the general officers of that armed force on active duty being in grades above brigadier general. No appointment may be made in a grade above rear admiral (lower half) in the Navy if that appointment would result in more than 50 percent of the flag officers of the Navy on active duty being in grades above rear admiral (lower half).

(b)(1) No appointment may be made in a grade above major general in the Army or Air Force if that appointment would result in more than 15.7 percent of the general officers of that armed force on active duty being in grades above major general. Of the 15.7 percent of general officers of the Army or Air Force on active duty who may be serving in grades above major general, not more than 25 percent may be serving in the grade of general.

(2)(A) No appointment may be made in a grade above rear admiral in the Navy if that appointment would result in more than 15.7 percent of the flag officers of the Navy on active duty being in grades above rear admiral. Of the 15.7 percent of flag officers on active duty who may be serving in grades above rear admiral, not more than 25 percent may be serving in the grade of admiral.

(B) No appointment may be made in a grade above major general in the Marine Corps if that appointment would result in more than 17.5 percent of the general officers of the Marine Corps on active duty being in grades above major general.

(3) An officer while serving as Chairman or Vice Chairman of the Joint Chiefs of Staff or as Chief of Staff to the President, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for his armed force for that grade under paragraph (1) or (2).

(4)(A) An officer while serving in a position designated under subparagraph (B), if serving in the grade of lieutenant general or vice admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for that grade under paragraph (1) or (2).

(B) The President, with the advice and assistance of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, may designate not more than seven positions within the Joint Staff (provided for under section 155 of this title) as positions referred to in subparagraph (A). The authority of the President under the preceding sentence may not be delegated.

(5)(A) An officer while serving in a position specified in section 604(b) of this title, if serving in the grade of general or admiral, is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general or rear admiral, as the case may be, under the first sentence of paragraph (1) or (2), as applicable. Any increase by reason of the preceding sentence in the number of officers of an armed force serving on active duty in grades above major general or rear admiral may only be realized by an increase in the number of lieutenant generals or vice admirals, as the case may be, serving on active duty, and any such increase may not be construed as authorizing an

increase in the limitation on the total number of general or flag officers for that armed force under section 526(a) of this title or in the number of general and flag officers that may be designated under section 526(b) of this title.

(B) Subparagraph (A) does not apply in the case of an officer serving in such a position if the Secretary of Defense, when considering officers for recommendation to the President for appointment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that appointment from each Secretary of a military department who (pursuant to section 604(a) of this title) was required to make such a recommendation.

(C) This paragraph shall cease to be effective at the end of December 31, 2004.

(6) An officer while serving as Chief of the National Guard Bureau is in addition to the number that would otherwise be permitted for that officer's armed force for officers serving on active duty in grades above major general under paragraph (1).

(7) An officer of the Army while serving as Superintendent of the United States Military Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Army for officers serving on active duty in grades above major general under paragraph (1). An officer of the Navy or Marine Corps while serving as Superintendent of the United States Naval Academy, if serving in the grade of vice admiral or lieutenant general, is in addition to the number that would otherwise be permitted for the Navy or Marine Corps, respectively, for officers serving on active duty in grades above major general or rear admiral under paragraph (1) or (2). An officer while serving as Superintendent of the United States Air Force Academy, if serving in the grade of lieutenant general, is in addition to the number that would otherwise be permitted for the Air Force for officers serving on active duty in grades above major general under paragraph (1).

(8) An officer while serving in a position designated by the Secretary of Defense as Senior Military Assistant to the Secretary of Defense, if serving in the grade of lieutenant general or vice admiral, is in addition to the number that otherwise would be permitted for that officer's armed force for that grade under paragraph (1) or (2). Only one officer may be designated as Senior Military Assistant to the Secretary of Defense for purposes of this paragraph.

(c)(1) Subject to paragraph (3), the President—

(A) may make appointments in the Army, Air Force, and Marine Corps in the grade of lieutenant general and in the Army and Air Force in the grade of general in excess of the applicable numbers determined under subsection (b)(1), and may make appointments in the Marine Corps in the grade of general in addition to the Commandant and Assistant Commandant, if each such appointment is made in conjunction with an offsetting reduction under paragraph (2); and

(B) may make appointments in the Navy in the grades of vice admiral and admiral in excess of the applicable numbers determined under subsection (b)(2) if each such appointment is made in conjunction with an offsetting reduction under paragraph (2).

(2) For each appointment made under the authority of paragraph (1) in the Army, Air Force, or Marine Corps in the grade of lieutenant general or general or in the Navy in the grade of vice admiral or admiral, the number of appointments that may be made in the equivalent grade in one of the other armed forces (other than the Coast Guard) shall be reduced by one. When such an appointment is made, the President shall specify the armed force in which the reduction required by this paragraph is to be made.

(3)(A) The number of officers that may be serving on active duty in the grades of lieutenant general and vice admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 10 percent of the total number of officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps under subsection (b).

(B) The number of officers that may be serving on active duty in the grades of general and admiral by reason of appointments made under the authority of paragraph (1) may not exceed the number equal to 15 percent of the total number of general officers and flag officers that may be serving on active duty in those grades in the Army, Navy, Air Force, and Marine Corps.

(4) Upon the termination of the appointment of an officer in the grade of lieutenant general or vice admiral or general or admiral that was made in connection with an increase under paragraph (1) in the number of officers that may be serving on active duty in that armed force in that grade, the reduction made under paragraph (2) in the number of appointments permitted in such grade in another armed force by reason of that increase shall no longer be in effect.

(d) An officer continuing to hold the grade of general or admiral under section 601(b)(4) of this title after relief from the position of Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps shall not be counted for purposes of this section.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2844; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title II, §202(a), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title V, §511(a), Dec. 4, 1987, 101 Stat. 1088; Pub. L. 101–510, div. A, title IV, §405, Nov. 5, 1990, 104 Stat. 1546; Pub. L. 103–337, div. A, title IV, §405(a), Oct. 5, 1994, 108 Stat. 2744; Pub. L. 104–106, div. A, title IV, §403(a), Feb. 10, 1996, 110 Stat. 286; Pub. L. 104–201, div. A, title IV, §404(b), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105–261, div. A, title IV, §§404, 406, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106–65, div. A, title V, §§509(b), (c), 532(b), Oct. 5, 1999, 113 Stat. 592, 604; Pub. L. 106–398, §1 [[div. A], title V, §507(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105; Pub. L. 107–314, div. A, title IV, §§404(a), (b), 405(b), Dec. 2, 2002, 116 Stat. 2525, 2526.)

AMENDMENTS

2002—Subsec. (b)(2)(B). Pub. L. 107–314, §404(b), substituted ''17.5 percent'' for ''16.2 percent''.

Subsec. (b)(5)(C). Pub. L. 107–314, § 405(b), substituted ''December 31, 2004'' for ''September 30, 2003''.

Subsec. (b)(8). Pub. L. 107–314, § 404(a), added par. (8).

2000—Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title V, § 507(g)(1)], in first sentence, substituted ''Army or Air Force'' for ''Army, Air Force, or Marine Corps'' and ''15.7 percent'' for ''15 percent'' and, in second sentence, substituted ''Of'' for ''In the case of the Army and Air Force, of'' and ''15.7 percent'' for ''15 percent'' and inserted ''of the Army or Air Force'' after ''general officers''.

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 507(g)(2)], designated existing provisions as subpar. (A), substituted ''15.7 percent'' for ''15 percent'' in two places, and added subpar. (B).

1999—Subsec. (b)(5)(A). Pub. L. 106–65, § 509(c), inserted at end ''Any increase by reason of the preceding sentence in the number of officers of an armed force serving on active duty in grades above major general or rear admiral may only be realized by an increase in the number of lieutenant generals or vice admirals, as the case may be, serving on active duty, and any such increase may not be construed as authorizing an increase in the limitation on the total number of general or flag officers for that armed force under section 526(a) of this title or in the number of general and flag officers that may be designated under section 526(b) of this title.''

Subsec. (b)(5)(C). Pub. L. 106–65, § 509(b), substituted ''September 30, 2003'' for ''September 30, 2000''.

Subsec. (b)(7). Pub. L. 106–65, § 532(b), added par. (7).

1998—Subsec. (b)(4)(B). Pub. L. 105–261, § 404, substituted ''seven'' for ''six''.

Subsec. (b)(6). Pub. L. 105–261, § 406, added par. (6).

1996—Subsec. (b)(5)(C). Pub. L. 104–201 substituted ''September 30, 2000'' for ''September 30, 1997''.

Subsec. (d). Pub. L. 104–106 added subsec. (d).

1994—Subsec. (b)(5). Pub. L. 103–337 added par. (5).

1990—Subsec. (b)(3). Pub. L. 101–510, § 405(b), substituted ''that would otherwise be permitted for'' for ''authorized''.

Subsec. (b)(4). Pub. L. 101–510, § 405(a), added par. (4).

1987—Pub. L. 100–180 added subsec. (c).

1986—Subsec. (b)(3). Pub. L. 99–433 inserted ''or Vice Chairman''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in two places.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in two places.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title IV, § 404(d), Dec. 2, 2002, 116 Stat. 2526, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the receipt by Congress of the report required by subsection (c) [set out below].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

IMPLEMENTATION OF 2000 AMENDMENTS

Pub. L. 106–398, § 1 [[div. A], title V, § 507(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–106, provided that:

''(1) An appointment or reappointment, in the case of the incumbent in a reserve component chief position, shall be made to each of the reserve component chief positions not later than 12 months after the date of the enactment of this Act [Oct. 30, 2000], in accordance with the amendments made by subsections (a) through (e) [amending sections 3038, 5143, 5144, 8038, and 10506 of this title].

''(2) An officer serving in a reserve component chief position on the date of the enactment of this Act [Oct. 30, 2000] may be reappointed to that position under the amendments made by subsection (a) through (e), if eligible and otherwise qualified in accordance with those amendments. If such an officer is so reappointed, the appointment may be made for the remainder of the officer's original term or for a full new term, as specified at the time of the appointment.

''(3) An officer serving on the date of the enactment of this Act [Oct. 30, 2000] in a reserve component chief position may continue to serve in that position in accordance with the provisions of law in effect immediately before the amendments made by this section [amending this section and sections 3038, 5143, 5144, 8038, and 10506 of this title and repealing section 12505 of this title] until a successor is appointed under paragraph (1) (or that officer is reappointed under paragraph (1)).

''(4) The amendments made by subsection (g) [amending this section] shall be implemented so that each increase authorized by those amendments in the number of officers in the grades of lieutenant general and vice admiral is implemented on a case-by-case basis with an initial appointment made after the date of the enactment of this Act [Oct. 30, 2000], as specified in paragraph (1), to a reserve component chief position.

''(5) For purposes of this subsection, the term 'reserve component chief position' means a position specified in section 3038, 5143, 5144, or 8038 of title 10, United States Code, or the position of Director, Army National Guard or Director, Air National Guard under section 10506(a)(1) of such title.''

SAVINGS PROVISION

Section 511(b) of Pub. L. 100–180 provided that: ''An officer of the Armed Forces on active duty holding an appointment in the grade of lieutenant general or vice admiral or general or admiral on September 30, 1987, shall not have that appointment terminated by reason of the numerical limitations determined under section 525(b) of title 10, United States Code. In the case of an officer of the Marine Corps serving in the grade of general by reason of an appointment authorized by section 511(3) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3869) [see below], that appointment shall not be terminated except as provided in section 601 of title 10, United States Code.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REVIEW OF ACTIVE DUTY AND RESERVE GENERAL AND FLAG OFFICER AUTHORIZATIONS

Pub. L. 107–314, div. A, title IV, § 404(c), Dec. 2, 2002, 116 Stat. 2525, provided that:

''(1) The Secretary of Defense shall submit to Congress a report containing any recommendations of the Secretary (together with the rationale of the Secretary for the recommendations) concerning the following:

''(A) Revision of the limitations on general and flag officer grade authorizations and distribution in grade prescribed by sections 525, 526, and 12004 of title 10, United States Code.

''(B) Statutory designation of the positions and grades of any additional general and flag officers in the commands specified in chapter 1006 of title 10, United States Code, and the reserve component offices specified in sections 3038, 5143, 5144, and 8038 of such title.

''(2) The provisions of subsection (b) through (e) of section 1213 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2694) shall apply to the report under paragraph (1) in the same manner as they applied to the report required by subsection (a) of that section.''

REPORT ON MANAGEMENT OF SENIOR GENERAL AND FLAG OFFICER POSITIONS

Section 405(d) of Pub. L. 103–337 provided that: ''Not later than March 1, 1996, the Secretary of Defense shall submit to Congress a report on the implementation of the amendments made by this section [enacting sections 528 and 604 of this title and amending this section]. The report shall include an assessment of the effectiveness of those amendments in meeting the objective of encouraging more competition among all services for appointment of officers to joint three-star and four-star positions. The report may include such additional recommendations concerning general and flag officer selection policy as the Secretary considers appropriate.''

TEMPORARY EXCLUSION OF SUPERINTENDENT OF NAVAL ACADEMY FROM COUNTING TOWARD NUMBER OF SENIOR ADMIRALS AUTHORIZED TO BE ON ACTIVE DUTY

Section 406 of Pub. L. 103–337 provided that: ''The officer serving as Superintendent of the United States Naval Academy on the date of the enactment of this Act [Oct. 5, 1994], while so serving, shall not be counted for purposes of the limitations contained in section 525(b)(2) of title 10, United States Code.''

TEMPORARY INCREASE IN NUMBER OF GENERAL AND FLAG OFFICERS AUTHORIZED TO BE ON ACTIVE DUTY

Temporary increases in the number of officers authorized in particular grades under this section were contained in the following authorization acts:

Pub. L. 99–661, div. A, title V, §511, Nov. 14, 1986, 100 Stat. 3869.

Pub. L. 99–570, title III, §3058, Oct. 27, 1986, 100 Stat. 3207–79.

Pub. L. 99–145, title V, §515, Nov. 8, 1985, 99 Stat. 630.

Pub. L. 98–525, title V, §511, Oct. 19, 1984, 98 Stat. 2521.

Pub. L. 98–94, title X, §1001, Sept. 24, 1983, 97 Stat. 654.

Pub. L. 97–252, title XI, §1116, Sept. 8, 1982, 96 Stat. 750.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 517, 526, 527, 3038, 5143, 5144, 8038, 10506 of this title.

§526. Authorized strength: general and flag officers on active duty

(a) LIMITATIONS.—The number of general officers on active duty in the Army, Air Force, and Marine Corps, and the number of flag officers on active duty in the Navy, may not exceed the number specified for the armed force concerned as follows:

(1) For the Army, 302.
(2) For the Navy, 216.
(3) For the Air Force, 279.
(4) For the Marine Corps, 80.

(b) LIMITED EXCLUSION FOR JOINT DUTY REQUIREMENTS.—(1) The Chairman of the Joint Chiefs of Staff may designate up to 12 general officer and flag officer positions that are joint duty assignments for purposes of chapter 38 of this title for exclusion from the limitations in subsection (a). Officers in positions so designated shall not be counted for the purposes of those limitations.

(2)(A) The Chairman of the Joint Chiefs of Staff may designate up to 10 general and flag officer positions on the staffs of the commanders of the unified and specified combatant commands as positions to be held only by reserve component officers who are in a general or flag officer grade below lieutenant general or vice admiral. Each position so designated shall be considered to be a joint duty assignment position for purposes of chapter 38 of this title.

(B) A reserve component officer serving in a position designated under subparagraph (A) while on active duty under a call or order to active duty that does not specify a period of 180 days or less shall not be counted for the purposes of the limitations under subsection (a) and under section 525 of this title if the officer was selected for service in that position in accordance with the procedures specified in subparagraph (C).

(C) Whenever a vacancy occurs, or is anticipated to occur, in a position designated under subparagraph (A)—

(i) the Secretary of Defense shall require the Secretary of the Army to submit the name of at least one Army reserve component officer, the Secretary of the Navy to submit the name of at least one Naval Reserve officer and the name of at least one Marine Corps Reserve officer, and the Secretary of the Air Force to submit the name of at least one Air Force reserve component officer for consideration by the Secretary for assignment to that position; and

(ii) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to clause (i)) for consideration by the Secretary for assignment to that position.

(D) Whenever the Secretaries of the military departments are required to submit the names of officers under subparagraph (C)(i), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that subparagraph (and of any officer whose name the Chairman submits to the Secretary under subparagraph (C)(ii) for consideration for the same vacancy).

(E) Subparagraph (B) does not apply in the case of an officer serving in a position designated under subparagraph (A) if the Secretary of Defense, when considering officers for assignment to fill the vacancy in that position which was filled by that officer, did not have a recommendation for that assignment from each Secretary of a military department who (pursuant to subparagraph (C)) was required to make such a recommendation.

(3) This subsection shall cease to be effective on December 31, 2004.

[(c) Repealed. Pub. L. 107–314, div. A, title X, §1041(a)(3), Dec. 2, 2002, 116 Stat. 2645.]

(d) EXCLUSION OF CERTAIN OFFICERS.—The limitations of this section do not apply to a reserve component general or flag officer who is on active duty for training or who is on active duty under a call or order specifying a period of less than 180 days.

(Added Pub. L. 100–370, §1(b)(1)(B), July 19, 1988, 102 Stat. 840; amended Pub. L. 101–510, div. A, title IV, §403(a), Nov. 5, 1990, 104 Stat. 1545; Pub. L. 102–484, div. A, title IV, §403, Oct. 23, 1992, 106 Stat. 2398; Pub. L. 103–337, div. A, title IV, §404, title V, §512, Oct. 5, 1994, 108 Stat. 2744, 2752; Pub. L. 104–106, div. A, title XV, §§1502(a)(1), 1503(a)(3), Feb. 10, 1996, 110 Stat. 502, 510; Pub. L. 104–201,

div. A, title IV, § 405, Sept. 23, 1996, 110 Stat. 2506; Pub. L. 105–261, div. A, title IV, § 405, Oct. 17, 1998, 112 Stat. 1996; Pub. L. 106–65, div. A, title V, § 553, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 615, 774; Pub. L. 107–314, div. A, title IV, § 405(c), title X, § 1041(a)(3), Dec. 2, 2002, 116 Stat. 2526, 2645.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 95–79, title VIII, § 811(a), July 30, 1977, 91 Stat. 335, as amended by Pub. L. 96–107, title VIII, § 817, Nov. 9, 1979, 93 Stat. 818; Pub. L. 96–342, title X, § 1003, Sept. 8, 1980, 94 Stat. 1120; Pub. L. 97–86, title VI, § 602, Dec. 1, 1981, 95 Stat. 1110.

Present law (section 811(a) of Public Law 95–79, as amended) provides that the authority to suspend the limitation on the number of general and flag officers who may be serving on active duty applies during war or national emergency. In codifying the limitation (in section 526 of title 10 as proposed to be added by section 1(b) of the bill), the committee determined that the same war and emergency waiver authority as applies to other limitations on the number of officers on active duty under the existing 10 U.S.C. 526 (redesignated as 10 U.S.C. 527 by the bill) should apply with respect to this limitation and accordingly amended the suspension authority in present law to include the codified general and flag officer limitation. This authority is slightly different from the waiver authority in the source law in that the suspension would expire 2 years after it takes effect or 1 year after the end of the war or national emergency, whichever occurs first, rather than upon termination of the war or emergency.

PRIOR PROVISIONS

A prior section 526 was renumbered section 527 of this title.

AMENDMENTS

2002—Subsec. (b)(3). Pub. L. 107–314, § 405(c), substituted ''December 31, 2004'' for ''October 1, 2002''.

Subsec. (c). Pub. L. 107–314, § 1041(a)(3), struck out heading and text of subsec. (c). Text read as follows:

''(1) Not later than 60 days before an action specified in paragraph (2) may become effective, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing notice of the intended action and an analytically based justification for the intended action.

''(2) Paragraph (1) applies in the case of the following actions:

''(A) A change in the grade authorized as of July 1, 1994, for a general officer position in the National Guard Bureau, a general or flag officer position in the Office of a Chief of a reserve component, or a general or flag officer position in the headquarters of a reserve component command.

''(B) Assignment of a reserve component officer to a general officer position in the National Guard Bureau, to a general or flag officer position in the Office of a Chief of a reserve component, or to a general or flag officer position in the headquarters of a reserve component command in a grade other than the grade authorized for that position as of July 1, 1994.

''(C) Assignment of an officer other than a general or flag officer as the military executive to the Reserve Forces Policy Board.''

1999—Subsec. (b)(2), (3). Pub. L. 106–65, § 553, added par. (2) and redesignated former par. (2) as (3).

Subsec. (c)(1). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1998—Subsec. (b)(2). Pub. L. 105–261 substituted ''October 1, 2002'' for ''October 1, 1998''.

1996—Subsec. (a)(1) to (3). Pub. L. 104–106, § 1503(a)(3)(A), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

''(1) For the Army, 386 before October 1, 1995, and 302 on and after that date.

''(2) For the Navy, 250 before October 1, 1995, and 216 on and after that date.

''(3) For the Air Force, 326 before October 1, 1995, and 279 on and after that date.''

Subsec. (a)(4). Pub. L. 104–201 substituted ''80'' for ''68''.

Subsec. (b). Pub. L. 104–106, § 1503(a)(3)(B)–(D), redesignated subsec. (c) as (b), struck out ''that are applicable on and after October 1, 1995'' after ''limitations in subsection (a)'', and struck out former subsec. (b) which read as follows: ''TRANSFERS BETWEEN SERVICES.—During the period before October 1, 1995, the Secretary of Defense may increase the number of general officers on active duty in the Army, Air Force, or Marine Corps, or the number of flag officers on active duty in the Navy, above the applicable number specified in subsection (a) by a total of not more than five. Whenever any such increase is made, the Secretary shall make a corresponding reduction in the number of such officers that may serve on active duty in general or flag officer grades in one of the other armed forces.''

Subsec. (c). Pub. L. 104–106, § 1503(a)(3)(C), (E), redesignated subsec. (d) as (c) and, in par. (2)(B), struck out ''the'' after ''general officer position in the'' and inserted ''to'' after ''reserve component, or'' and ''than'' after ''in a grade other''. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 104–106, § 1503(a)(3)(C), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(1). Pub. L. 104–106, § 1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (e). Pub. L. 104–106, § 1503(a)(3)(C), redesignated subsec. (e) as (d).

1994—Subsec. (a)(4). Pub. L. 103–337, § 404, struck out ''before October 1, 1995, and 61 on and after that date'' after ''Corps, 68''.

Subsecs. (d), (e). Pub. L. 103–337, § 512, added subsecs. (d) and (e).

1992—Subsec. (b). Pub. L. 102–484, § 403(b), inserted heading.

Subsec. (c). Pub. L. 102–484, § 403(a), added subsec. (c).

1990—Pub. L. 101–510 amended section generally. Prior to amendment, text read as follows: ''The total number of general officers on active duty in the Army, Air Force, and Marine Corps and flag officers on active duty in the Navy may not exceed 1,073.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 403(a) of Pub. L. 101–510 provided that the amendment made by that section is effective Sept. 30, 1991.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 517, 525, 527, 721, 3038, 3210, 4335, 5143, 5144, 5150, 8038, 8210, 9335, 10506, 12004 of this title.

§ 527. Authority to suspend sections 523, 525, and 526

In time of war, or of national emergency declared by Congress or the President after November 30, 1980, the President may suspend the operation of any provision of section 523, 525, or 526 of this title. So long as such war or national emergency continues, any such suspension may be extended by the President. Any such suspension shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end

of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621–1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of the termination of the emergency.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2845, §526; renumbered §527 and amended Pub. L. 100–370, §1(b)(1)(A), (2), July 19, 1988, 102 Stat. 840; Pub. L. 103–337, div. A, title XVI, §1671(c)(4), Oct. 5, 1994, 108 Stat. 3014.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in text, is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the National Emergencies Act is classified generally to subchapter II (§1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

AMENDMENTS

1994—Pub. L. 103–337 struck out ''524,'' after ''523,'' in section catchline and in text.

1988—Pub. L. 100–370 renumbered section 526 of this title as this section, substituted ''524, 525, and 526'' for ''524, and 525'' in section catchline, and ''524, 525, or 526'' for ''524, or 525'' in text.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section to suspend operation of sections 523, 524 [now 12011], and 525 of this title, relating to authorized strength of commissioned officers, delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, the exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure that actions taken pursuant to any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

AUTHORITY TO WAIVE GRADE STRENGTH LAWS FOR FISCAL YEAR 1991; CERTIFICATION; RELATIONSHIP TO OTHER SUSPENSION AUTHORITY

Pub. L. 102–25, title II, §§201(b), 202, 205(b), Apr. 6, 1991, 105 Stat. 79, 80, authorized Secretary of a military department to suspend, for fiscal year 1991, the operation of any provision of section 517, 523, 524, 525, or 526 of this title with respect to that military department, that such Secretary may exercise such authority only after submission to the congressional defense committees of a certification in writing that such authority is necessary because of personnel actions associated with Operation Desert Storm, and that such authority is in addition to the authority provided in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 517 of this title.

[§528. Repealed. Pub. L. 107–107, div. A, title V, §501(a), Dec. 28, 2001, 115 Stat. 1079]

Section, added Pub. L. 103–337, div. A, title IV, §405(b)(1), Oct. 5, 1994, 108 Stat. 2744; amended Pub. L. 104–106, div. A, title IV, §403(b), title XV, §1503(a)(4), Feb. 10, 1996, 110 Stat. 287, 511; Pub. L. 104–201, div. A, title X, §1074(a)(3), Sept. 23, 1996, 110 Stat. 2658, related to limitation on number of officers on active duty in grades of general and admiral.

CHAPTER 33—ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES

Sec.
531. Original appointments of commissioned officers.
532. Qualifications for original appointment as a commissioned officer.
533. Service credit upon original appointment as a commissioned officer.
541. Graduates of the United States Military, Naval, and Air Force Academies.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, §1112(b)(1), Dec. 5, 1991, 105 Stat. 1501, substituted ''ORIGINAL APPOINTMENTS OF REGULAR OFFICERS IN GRADES ABOVE WARRANT OFFICER GRADES'' for ''APPOINTMENTS IN REGULAR COMPONENTS'' as chapter heading, struck out analysis of subchapters listing subchapter I ''Original Appointments of Regular Officers in Grades above Warrant Officer Grades'' and subchapter II ''Appointments of Regular Warrant Officers'', and struck out subchapter I heading.

1980—Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845, inserted an analysis of subchapters immediately following chapter heading, added subchapter I heading, and, in analysis of sections following subchapter I heading, added items 531, 532, and 533 preceding item 541, re-enacted item 541 without change, and struck out, following item 541, items 555 to 565. The items 555 to 565 formerly set out in the analysis of sections immediately following chapter heading were transferred to a position following a new heading for subchapter II preceding section 555.

§531. Original appointments of commissioned officers

(a) Original appointments in the grades of second lieutenant through colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign through captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.

(b) The grade of a person receiving an appointment under this section who at the time of appointment (1) is credited with service under section 533 of this title, and (2) is not a commissioned officer of a reserve component shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited. The grade of a person receiving an appointment under this section who at the time of the appointment is a commissioned officer of a reserve component is determined under section 533(f) of this title.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, §3(a), July 10, 1981, 95 Stat. 124.)

AMENDMENTS

1981—Pub. L. 97–22 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

PROGRAM TO INCREASE USE OF CERTAIN NURSES BY MILITARY DEPARTMENTS

Pub. L. 101–189, div. A, title VII, §708, Nov. 29, 1989, 103 Stat. 1475, provided that:

''(a) PROGRAM REQUIRED.—(1) Not later than September 30, 1991, the Secretary of each military department shall implement a program to appoint persons who have an associate degree or diploma in nursing (but have not received a baccalaureate degree in nursing) as officers and to assign such officers to duty as nurses.

''(2) An officer appointed pursuant to the program required by subsection (a) shall be appointed in a warrant officer grade or in a commissioned grade not higher than O–3. Such officer may not be promoted above the grade of O–3 unless the officer receives a baccalaureate degree in nursing.

''(b) REPORT ON IMPLEMENTATION.—Not later than April 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the actions taken by the Secretaries of the military departments to implement the program required by this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4353, 9353 of this title.

§ 532. Qualifications for original appointment as a commissioned officer

(a) Under regulations prescribed by the Secretary of Defense, an original appointment as a commissioned officer (other than as a commissioned warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps may be given only to a person who—

(1) is a citizen of the United States;

(2) is able to complete 20 years of active commissioned service before his fifty-fifth birthday;

(3) is of good moral character;

(4) is physically qualified for active service; and

(5) has such other special qualifications as the Secretary of the military department concerned may prescribe by regulation.

(b)(1) Original appointments in the Regular Army in the Medical Corps or Dental Corps, and original appointments in the Regular Air Force with a view to designation of an officer as a medical or dental officer, may be made in the grades of first lieutenant through colonel. Original appointments in the Regular Navy in the Medical Corps or Dental Corps may be made in the grades of lieutenant (junior grade) through captain. Such appointments may be made only from persons who are qualified doctors of medicine, osteopathy, or dentistry.

(2) To be eligible for an original appointment as a medical officer, a doctor of osteopathy must—

(A) be a graduate of a college of osteopathy whose graduates are eligible to be licensed to practice medicine or surgery in a majority of the States;

(B) be licensed to practice medicine, surgery, or osteopathy in a State or in the District of Columbia;

(C) under regulations prescribed by the Secretary of Defense, have completed a number of years of osteopathic and preosteopathic education equal to the number of years of medical and premedical education prescribed for persons entering recognized schools of medicine who become doctors of medicine and who would be qualified for an original appointment in the grade for which that person is being considered for appointment; and

(D) have such other qualifications as the Secretary of the military department concerned prescribes after considering the recommendations, if any, of the Surgeon General of the armed force concerned.

(c) Original appointments in the Regular Navy or Regular Marine Corps of officers designated for limited duty shall be made under section 5589 or 5596 of this title.

(d)(1) A person receiving an original appointment as a medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps is not subject to clause (2) of subsection (a).

(2) A reserve commissioned officer appointed in a medical skill other than as a medical officer or dental officer (as defined in regulations prescribed by the Secretary of Defense) is not subject to clause (2) of subsection (a).

(e) After September 30, 1996, no person may receive an original appointment as a commissioned officer in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps until that person has completed one year of service on active duty as a commissioned officer (other than a warrant officer) of a reserve component.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2845; amended Pub. L. 97–22, §3(b), July 10, 1981, 95 Stat. 124; Pub. L. 97–295, §1(7), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 102–190, div. A, title V, §501, Dec. 5, 1991, 105 Stat. 1354; Pub. L. 103–160, div. A, title V, §510, Nov. 30, 1993, 107 Stat. 1648.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 designated existing provisions as par. (1) and added par. (2).

1991—Subsec. (e). Pub. L. 102–190 added subsec. (e).

1982—Pub. L. 97–295 inserted ''a'' after ''original appointment as'' in section catchline.

1981—Subsec. (d). Pub. L. 97–22 substituted ''medical or dental officer, as a chaplain, or as an officer designated for limited duty in the Regular Navy or Regular Marine Corps'' for ''medical officer or dental officer or as a chaplain''.

APPOINTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS AS COMMISSIONED OFFICERS

Pub. L. 98–94, title X, §1006, Sept. 24, 1983, 97 Stat. 661, provided that a citizen of the Northern Mariana Islands

who indicates in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States, and who is otherwise qualified for military service under applicable laws and regulations, may be appointed as an officer in the Armed Forces of the United States, may be appointed or enrolled in the Senior Reserve Officers' Training Corps program of any of the Armed Forces under chapter 103 of title 10, United States Code, and may be selected to be a participant in the Armed Forces Health Professions Scholarship program under chapter 105 of such title, and that this section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands. The Commonwealth was established as of 12:01 a.m., Nov. 4, 1986, see section 2(a), (b) of Proc. No. 5564, set out as a note under section 1801 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5589, 16401 of this title; title 33 section 3021.

§533. Service credit upon original appointment as a commissioned officer

(a)(1) For the purpose of determining the grade and rank within grade of a person receiving an original appointment in a commissioned grade (other than a warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, such person shall be credited at the time of such appointment with any active commissioned service (other than service as a commissioned warrant officer) that he performed in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service before such appointment.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior active commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned shall credit a person who is receiving an original appointment in a commissioned grade (other than a commissioned warrant officer grade) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps and who has advanced education or training or special experience with constructive service for such education, training, or experience as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed, designated, or assigned in officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a specialty required by the armed forces.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed as a medical or dental officer in the Army or Navy or, in the case of the Air Force, with a view to designation as a medical or dental officer.

(2) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment in the grade of major in the Army, Air Force, or Marine Corps or lieutenant commander in the Navy.

(3) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer.

(c) Constructive service credited an officer under subsection (b) shall be used only for determining the officer's—

(1) initial grade as a regular officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(d)(1) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(2) A graduate of the United States Military Academy, the United States Naval Academy, or

the United States Air Force Academy is not entitled to service credit under this section for service performed, or education, training, or experience obtained, before graduation from such Academy.

(e) If the Secretary of Defense determines that the number of qualified judge advocates serving on active duty in the Army, Navy, Air Force, or Marine Corps in grades below major or lieutenant commander is critically below the number needed by such armed force in such grades, he may authorize the Secretary of the military department concerned to credit any person receiving an original appointment in the Judge Advocate General's Corps of the Army or Navy, or any person receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any period of service credited such person under subsection (b)(1)) as will result in the grade of such person being that of captain or, in the case of an officer of the Navy, lieutenant and the date of rank of such person being junior to that of all other officers of the same grade serving on active duty.

(f) A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall—

(1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and

(2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer.

(Added Pub. L. 96–513, title I, §104(a), Dec. 12, 1980, 94 Stat. 2846; amended Pub. L. 97–22, §3(c), July 10, 1981, 95 Stat. 125; Pub. L. 98–94, title X, §1007(c)(1), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103–160, div. A, title V, §509(a), Nov. 30, 1993, 107 Stat. 1647.)

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–160, §509(a)(1), in second sentence, substituted ''In determining'' for ''Except as provided in clause (E), in determining'' and ''advanced education required'' for ''postsecondary education in excess of four that are required''.

Subsec. (b)(1)(E), (F). Pub. L. 103–160, §509(a)(2), (3), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''Additional credit of one year for advanced education in a health profession if the number of years of baccalaureate education completed by 75 percent or more of the students entering advanced training in that health profession exceeds, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees in that health profession. The percentage of such persons shall be computed on an annual basis for each health profession from the data for the year in which the person being appointed, designated, or assigned was admitted to a professional school. However, a person may not receive additional credit under this clause if the amount of his baccalaureate education does not exceed, by one or more, the minimum number of years of preprofessional education required by a majority of institutions which award degrees for that health profession, determined on the basis prescribed in the preceding sentence.''

1987—Subsec. (b)(1)(B). Pub. L. 100–180 designated existing provisions as cl. (i) and added cl. (ii).

1983—Subsec. (a)(1). Pub. L. 98–94 inserted '', the National Oceanic and Atmospheric Administration, or the Public Health Service''.

1981—Subsec. (b)(1)(A). Pub. L. 97–22, §3(c)(1), inserted '', designated, or assigned'' in first sentence after ''persons appointed'' and substituted ''Except as provided in clause (E), in determining the number of years of constructive service to be credited under this clause to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of postsecondary education in excess of four that are required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree'' for ''(Except as provided in clause (E), in determining the years of constructive service under this clause, the Secretary concerned shall grant credit for only the number of years normally required to complete the advanced education or receive the advanced degree''.

Subsec. (b)(1)(B). Pub. L. 97–22, §3(c)(2), substituted ''appointment, designation, or assignment, if such advanced education'' for ''appointment as an officer, if such advanced education''.

Subsec. (b)(1)(E). Pub. L. 97–22, §3(c)(3), substituted ''person being appointed, designated, or assigned was admitted'' for ''person being appointed was admitted''.

Subsec. (d)(1). Pub. L. 97–22, §3(c)(4), inserted provision that, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

Subsec. (f). Pub. L. 97–22, §3(c)(5), substituted ''A reserve officer (other than a warrant officer) who receives an original appointment as an officer (other than as a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall (1) in the case of an officer on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank held by the officer on the active-duty list immediately before the appointment; and (2) in the case of an officer not on the active-duty list immediately before that appointment as a regular officer, be appointed in the same grade and with the same date of rank as the grade and date of rank which the officer would have held had the officer been serving on the active-duty list on the date of the appointment as a regular officer'' for ''An officer of a reserve component who receives an original appointment as an officer (other than a warrant officer) in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps shall be appointed in the grade and with the date of rank to which he would have been entitled had he been serving on active duty as an officer of a reserve component on the date of such original appointment as a regular officer''.

RATIFICATION OF SERVICE CREDIT AWARDED PRIOR TO NOVEMBER 30, 1993

Section 509(e) of Pub. L. 103–160 provided that: ''To the extent that service credit awarded before the date

of the enactment of this Act [Nov. 30, 1993] under section 533, 3353, 5600, or 8353 of title 10, United States Code, based on advanced education in medicine or dentistry was awarded consistent with that section as amended by this section (whether or not properly awarded under that section as in effect before such amendment), the awarding of that service credit is hereby ratified.''

TRANSITION PROVISION UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For savings provision relating to constructive service previously granted, see section 625 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 531, 603 of this title; title 33 section 3071.

§ 541. Graduates of the United States Military, Naval, and Air Force Academies

(a) Notwithstanding any other provision of law, each cadet at the United States Military Academy or the United States Air Force Academy, and each midshipman at the United States Naval Academy, is entitled, before graduating from that Academy, to state his preference for appointment, upon graduation, as a commissioned officer in either the Army, Navy, Air Force, or Marine Corps.

(b) With the consent of the Secretary of the military department administering the Academy from which the cadet or midshipman is to be graduated, and of the Secretary of the military department having jurisdiction over the armed force for which that graduate stated his preference, the graduate is entitled to be accepted for appointment in that armed force. However, not more than 12½ percent of any graduating class at an Academy may be appointed in armed forces not under the jurisdiction of the military department administering that Academy.

(c) The Secretary of Defense shall, by regulation, provide for the equitable distribution of appointments in cases where more than 12½ percent of the graduating class of any Academy request appointment in armed forces not under the jurisdiction of the military department administering that Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 19.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
541(a)	10:1092c–1(a) (1st 59 words of 1st sentence). 10:1856(a) (1st 59 words of 1st sentence). 34:1057–1(a) (1st 59 words of 1st sentence).	Apr. 1, 1954, ch. 127, § 8, 68 Stat. 48.
541(b)	10:1092c–1(a) (1st sentence, less 1st 59 words). 10:1856(a) (1st sentence, less 1st 59 words). 34:1057–1(a) (1st sentence, less 1st 59 words).	
541(c)	10:1092c–1 (less (a)). 10:1856 (less (a)). 34:1057–1 (less (a)).	

In subsection (a), the words ''is entitled * * * to'' are substituted for the words ''shall * * * be afforded an opportunity to''.

In subsection (b), the words ''is entitled'' are substituted for the word ''shall''.

In subsection (c), the words ''and fair'' are omitted as surplusage. 10:1092c–1(c), 10:1856(c), and 34:1057–1(c) are omitted as covered by section 51(a) of the bill.

EFFECTIVE DATE

Section 52(a) of act Aug. 10, 1956, provided that: ''Section 541 of title 10, United States Code, enacted by section 1 of this Act, takes effect (1) in the year in which the initial class graduates from the United States Air Force Academy, or (2) upon the rescission of the agreement under which graduates of the United States Military Academy and the United States Naval Academy may volunteer for appointment in the Air Force, whichever is earlier.''

APPOINTMENT OF UNITED STATES MILITARY ACADEMY GRADUATES IN AIR FORCE

Section 44 of act Aug. 10, 1956, provided that:

''(a) Notwithstanding any other provision of law, a cadet who graduates from the United States Military Academy may, upon graduation and before the effective date of section 541 of title 10, United States Code, be appointed a second lieutenant in the Regular Air Force.

''(b) Notwithstanding any other provision of law, no person who was a cadet at the United States Military Academy may be originally appointed in a commissioned grade in the Regular Air Force under this section before the date on which his classmates at the Academy are graduated and appointed as officers. No person who was a cadet at, but did not graduate from, the Academy may be credited, upon appointment as a commissioned officer of the Regular Air Force, with longer service than that credited to any member of his class at the Academy whose service in the Air Force, or in the Army and the Air Force, has been continuous since graduation.

''(c) A graduate of the United States Military Academy who is originally appointed a second lieutenant in the Regular Air Force under this section is not entitled to any service credit under this section.

''(d) Rank among graduates of each class of the United States Military Academy who, upon graduation, are appointed in the Regular Air Force under this section shall be fixed under regulations prescribed by the Secretary of the Air Force.

''(e) The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 583 of this title.

[§§ 555 to 565. Repealed. Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1492]

Section 555, acts Aug. 10, 1956, ch. 1041, 70A Stat. 20; Sept. 7, 1962, Pub. L. 87–649, §§ 6(f)(2), 14c(2), 76 Stat. 494, 501; July 30, 1977, Pub. L. 95–79, title III, § 302(a)(4), 91 Stat. 326; Nov. 8, 1985, Pub. L. 99–145, title V, § 531(a), title XIII, § 1303(a)(5), 99 Stat. 633, 739, related to warrant officer grades. See section 571(a) and (b) of this title.

Section 556, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to credit for service of persons originally appointed in regular warrant officer grades under section 555 of this title. See section 572 of this title.

Section 557, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to qualifications for promotion of regular warrant officers.

Section 558, act Aug. 10, 1956, ch. 1041, 70A Stat. 20, related to appointment of selection boards to consider promotions of regular warrant officers. See section 573(a), (b), (e), and (f) of this title.

Section 559, act Aug. 10, 1956, ch. 1041, 70A Stat. 21, related to eligibility of regular warrant officers for promotion.

Section 560, acts Aug. 10, 1956, ch. 1041, 70A Stat. 21; Sept. 2, 1958, Pub. L. 85–861, §33(a)(3), 72 Stat. 1564, related to selection procedure for promotion of warrant officers. See section 576(a) to (e) of this title.

Section 561, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effect of failure of selection of regular warrant officers for promotion. See section 577 of this title.

Section 562, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to disapproval of promotion of regular warrant officers by Secretary concerned, President, or Senate. See section 579 of this title.

Section 563, act Aug. 10, 1956, ch. 1041, 70A Stat. 22, related to effective date of promotion of regular warrant officer.

Section 564, acts Aug. 10, 1956, ch. 1041, 70A Stat. 22; Sept. 7, 1962, Pub. L. 87–649, §6(f)(3), 76 Stat. 494; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115; Dec. 12, 1980, Pub. L. 96–513, title V, §501(6), 94 Stat. 2907, related to effect of second failure of promotion for regular warrant officers. See section 580(a) to (d) of this title.

Section 565, act Aug. 10, 1956, ch. 1041, 70A Stat. 24, related to suspension of laws for promotion or mandatory retirement or separation of regular warrant officers during war or emergency.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

PRESERVATION OF EXISTING LAW FOR COAST GUARD

Pub. L. 102–190, div. A, title XI, §1125(a), Dec. 5, 1991, 105 Stat. 1505, provided that sections 555 to 565 of this title, as in effect on the day before Feb. 1, 1992, would continue to apply to the Coast Guard on and after that date, prior to repeal by Pub. L. 103–337, div. A, title V, §541(f)(1), Oct. 5, 1994, 108 Stat. 2766.

CHAPTER 33A—APPOINTMENT, PROMOTION, AND INVOLUNTARY SEPARATION AND RETIREMENT FOR MEMBERS ON THE WARRANT OFFICER ACTIVE-DUTY LIST

Sec.
571. Warrant officers: grades.
572. Warrant officers: original appointment; service credit.
573. Convening of selection boards.
574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones.
575. Recommendations for promotion by selection boards.
576. Information to be furnished to selection boards; selection procedures.
577. Promotions: effect of failure of selection for.
578. Promotions: how made; effective date.
579. Removal from a promotion list.
580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation.
580a. Enhanced authority for selective early discharges.
581. Selective retirement.
582. Warrant officer active-duty list: exclusions.
583. Definitions.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title V, §504(b), Nov. 30, 1993, 107 Stat. 1645, added item 580a.

1992—Pub. L. 102–484, div. A, title X, §1052(6), Oct. 23, 1992, 106 Stat. 2499, inserted ''to be'' after ''Information'' in item 576 and substituted ''Promotions:'' for ''Promotions;'' in item 578.

§ 571. Warrant officers: grades

(a) The regular warrant officer grades in the armed forces corresponding to the pay grades prescribed for warrant officers by section 201(b) of title 37 are as follows:

Warrant officer grade:
Chief warrant officer, W–5.
Chief warrant officer, W–4.
Chief warrant officer, W–3.
Chief warrant officer, W–2.
Warrant officer, W–1.

(b) Appointments in the grade of regular warrant officer, W–1, shall be made by warrant by the Secretary concerned. Appointments in regular chief warrant officer grades shall be made by commission by the President.

(c) An appointment may not be made in any of the armed forces in the regular warrant officer grade of chief warrant officer, W–5, if the appointment would result in more than 5 percent of the warrant officers of that armed force on active duty being in the grade of chief warrant officer, W–5. In computing the limitation prescribed in the preceding sentence, there shall be excluded warrant officers described in section 582 of this title.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 102–484, div. A, title X, §1052(2), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(a)(2), Oct. 5, 1994, 108 Stat. 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 555 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps''.

1992—Subsec. (a). Pub. L. 102–484 inserted a period at end of each item in table.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 541(h) of Pub. L. 103–337 provided that: ''This section [enacting section 215 of Title 14, Coast Guard, amending this section, sections 573 to 576, 580, 580a, 581, and 583 of this title, and sections 41, 214, 286a, and 334 of Title 14, repealing sections 212 and 213 of Title 14, enacting provisions set out as notes under this section, and repealing a provision set out as a note under former section 555 of this title] and the amendments made by this section shall take effect on the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE

Chapter effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

SHORT TITLE

Section 1101 of title XI of Pub. L. 102–190 provided that: ''This title [enacting this chapter and section 742 of this title, amending sections 521, 522, 597, 598 [now 12242], 603, 628, 644, 741, 1166, 1174, 1305, 1406, 5414, 5457, 5458, 5501 to 5503, 5596, 5600, 5665, 6389, and 6391 of this title, sections 286a and 334 of Title 14, Coast Guard, and sections 201, 301, 301c, 305a, and 406 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 555 to 565, 602, and 745 of this title, and enacting provisions set out as notes under this section, sections 521 and 555 of this title, and section 1009 of Title 37] may be cited as the 'Warrant Officer Management Act'.''

TRANSITION AND SAVINGS PROVISIONS

Section 541(c), (d) of Pub. L. 103–337, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(3), Feb. 10, 1996, 110 Stat. 513, provided that:

''(c) TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1) A regular warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is on active duty and—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade;

''(B) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

''(C) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which that warrant officer is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the grade in which that warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(2) An officer referred to in subparagraph (A) of paragraph (1) who is not promoted to the grade to which that warrant officer is considered under such subsection to have been recommended for promotion because that officer's name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by subsection (b), for promotion to the permanent grade equivalent to the temporary grade in which that warrant officer was serving on the effective date of this section as if that warrant officer were serving in the permanent grade.

''(3) The date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade in which that warrant officer is serving on the effective date of this section is the date of that officer's temporary appointment in that grade.

''(d) TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.—(1)(A) Except as provided in paragraph (2), a reserve warrant officer of the Coast Guard who on the effective date of this section [see Effective Date of 1994 Amendment note above] is subject to placement on the warrant officer active-duty list and who—

''(i) is serving in a temporary grade below chief warrant officer, W–5, that is higher than that warrant officer's permanent grade; or

''(ii) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than that warrant officer's permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which the warrant officer is serving or for which that warrant officer has been recommended for promotion, as the case may be.

''(B) The date of rank of a warrant officer referred to in subparagraph (A)(i) who is promoted to the grade in which that warrant officer is considered under such subparagraph to have been recommended for promotion is the date of the temporary appointment of that warrant officer in that grade.

''(2) A reserve warrant officer of the Coast Guard who on the effective date of this section—

''(A) is subject to placement on the warrant officer active-duty list;

''(B) is serving on active duty in a temporary grade; and

''(C) holds a permanent grade higher than the temporary grade in which that warrant officer is serving;

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than the permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, the appointment of that warrant officer to such grade shall be a temporary appointment.''

Part B (§§1121–1124) of title XI of Pub. L. 102–190 provided that:

''SEC. 1121. TRANSITION FOR CERTAIN REGULAR WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—A regular warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is on active duty and—

''(1) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below chief warrant officer, W–5; or

''(3) is on a list of officers recommended for promotion to a permanent grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 573 of title 10, United States Code, as added by this title, for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(b) BOARD CONSIDERATION FOR OFFICERS REMOVED FROM PROMOTION LIST.—An officer referred to in paragraph (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such paragraph to have been recommended for promotion shall be considered by a board convened under section 573 of title 10, United States Code, as amended by this title, for promotion to the permanent grade equivalent to the temporary grade in which he was serving on the effective date of this title as if he were serving in his permanent grade.

''(c) DATE OF RANK.—The date of rank of an officer referred to in subsection (a)(1) who is promoted to the grade in which he is serving on the effective date of this title is the date of his temporary appointment in that grade.

''SEC. 1122. TRANSITION FOR CERTAIN RESERVE WARRANT OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW CHIEF WARRANT OFFICER, W–5.

''(a) CERTAIN OFFICERS TO BE CONSIDERED AS RECOMMENDED FOR PROMOTION.—(1) Except as provided in subsection (b), a reserve warrant officer of the Armed Forces (other than the Coast Guard) who on the effective date of this title [Feb. 1, 1992] is subject to placement on the warrant officer active-duty list and who—

''(A) is serving in a temporary grade below chief warrant officer, W–5, that is higher than his permanent grade; or

''(B) is on a list of warrant officers recommended for promotion to a temporary grade below chief warrant officer, W–5, that is the same as or higher than his permanent grade;

shall be considered to have been recommended by a board convened under section 598 [now 12242] of title 10, United States Code, for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(2) The date of rank of a warrant officer referred to in paragraph (1)(A) who is promoted to the grade in which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

''(b) RESERVES ON ACTIVE DUTY.—A reserve warrant officer who on the effective date of this title—

''(1) is subject to placement on the warrant officer active-duty list;

''(2) is serving on active duty in a temporary grade; and

''(3) holds a permanent grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion to a grade equal to or lower than his permanent grade as if such temporary grade is a permanent grade. If such warrant officer is recommended for promotion, his appointment to such grade shall be a temporary appointment.

''SEC. 1123. CONTINUATION OF CERTAIN TEMPORARY APPOINTMENTS OF NAVY AND MARINE CORPS WARRANT OFFICERS.

''A warrant officer of the Navy or Marine Corps who, on the effective date of this title [Feb. 1, 1992], is subject to placement on the warrant officer active-duty list and who—

''(1) was appointed as a temporary warrant officer under section 5596 of title 10, United States Code, and

''(2) has retained a permanent enlisted status,

shall, while continuing on active duty, retain such temporary status and grade. Such an officer shall be considered for promotion to a higher warrant officer grade under this title [see Short Title note above] as if that temporary grade is a permanent grade. If the officer is recommended for promotion, the officer's appointment to that grade shall be a temporary appointment.

''SEC. 1124. SAVINGS PROVISION FOR CERTAIN REGULAR ARMY WARRANT OFFICERS FACING MANDATORY RETIREMENT FOR LENGTH OF SERVICE.

''(a) SAVINGS PROVISION.—Subject to subsection (b), a regular warrant officer of the Army who on the effective date of this title [Feb. 1, 1992]—

''(1) is a permanent regular chief warrant officer; or

''(2) is on a list of officers recommended for promotion to a regular chief warrant officer grade,

may be retained on active duty until he completes 30 years of active service or 24 years of active warrant officer service, whichever is later, that could be credited to him under section 511 of the Career Compensation Act of 1949 (70 Stat. 114) [set out as a note under section 580 of this title] (as in effect on the day before the effective date of this part [Feb. 1, 1992]), and then be retired under the appropriate provision of title 10, United States Code, on the first day of the month after the month in which he completes that service.

''(b) EXCEPTIONS.—Subsection (a) does not apply to a regular warrant officer who—

''(1) is sooner retired or separated under another provision of law;

''(2) is promoted to the regular grade of chief warrant officer, W–5; or

''(3) is continued on active duty under section 580(e) of title 10, United States Code, as added by this title.''

ESTABLISHMENT OF PERMANENT GRADE OF CHIEF WARRANT OFFICER, W–5

Section 541(a)(1) of Pub. L. 103–337 provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Coast Guard.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Section 1111(a) of Pub. L. 102–190 provided that: ''The grade of chief warrant officer, W–5, is hereby established in the Army, Navy, Air Force, and Marine Corps.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12241 of this title.

§ 572. Warrant officers: original appointment; service credit

For the purposes of promotion, persons originally appointed in regular or reserve warrant officer grades shall be credited with such service as the Secretary concerned may prescribe. However, such a person may not be credited with a period of service greater than the period of active service performed in the grade, or pay grade corresponding to the grade, in which so appointed, or in any higher grade or pay grade.

(Added Pub. L. 102–190, div. A, title XI, § 1112(a), Dec. 5, 1991, 105 Stat. 1493.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 556 of this title prior to repeal by Pub. L. 102–190, § 1112(a).

§ 573. Convening of selection boards

(a)(1) Whenever the Secretary concerned determines that the needs of the service so require, he shall convene a selection board to recommend for promotion to the next higher warrant officer grade warrant officers on the warrant officer active-duty list who are in the grade of chief warrant officer, W–2, chief warrant officer, W–3, or chief warrant officer, W–4.

(2) Warrant officers serving on the warrant officer active-duty list in the grade of warrant officer, W–1, shall be promoted to the grade of chief warrant officer, W–2, in accordance with regulations prescribed by the Secretary concerned. Such regulations shall require that an officer have served not less than 18 months on active duty in the grade of warrant officer, W–1, before promotion to the grade of warrant officer, W–2.

(b) A selection board shall consist of five or more officers who are on the active-duty list of the same armed force as the warrant officers under consideration by the board. At least five members of a selection board must be serving in a permanent grade above major or lieutenant commander. The Secretary concerned may appoint warrant officers, senior in grade to those under consideration, as additional members of the selection board. If warrant officers are appointed members of the selection board and if competitive categories have been established by the Secretary under section 574(b) of this title, at least one must be appointed from each warrant officer competitive category under consideration by the board, unless there is an insufficient number of warrant officers in the competitive category concerned who are senior in grade to those under consideration and qualified, as determined by the Secretary concerned, to be appointed as additional members of the board.

(c) The Secretary concerned may convene selection boards to recommend regular warrant officers for continuation on active duty under section 580 of this title and for retirement under section 581 of this title.

(d) When reserve warrant officers of one of the armed forces are to be considered by a selection board convened under subsection (a), the membership of the board shall, if practicable, include at least one reserve officer of that armed force, with the exact number of reserve officers to be determined by the Secretary concerned.

(e) No officer may serve on two consecutive boards under this section, if the second board considers any warrant officer who was considered by the first board.

(f) The Secretary concerned shall prescribe all other matters relating to the functions and duties of the boards, including the number of members constituting a quorum, and instructions concerning notice of convening of boards and communications with boards.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1493; amended Pub. L. 103–337, div. A, title V, §541(b)(1), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 104–106, div. A, title XV, §1503(a)(5), Feb. 10, 1996, 110 Stat. 511.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 558 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–106 substituted ''active-duty list'' for ''active duty list''.

1994—Subsec. (a)(1). Pub. L. 103–337, §541(b)(1)(A), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (a)(2). Pub. L. 103–337, §541(b)(1)(B), struck out ''of the military department'' after ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 574, 575, 576, 577, 580, 580a, 581, 583, 1558 of this title.

§574. Warrant officer active-duty lists; competitive categories; number to be recommended for promotion; promotion zones

(a) The Secretary concerned shall maintain for each armed force under the jurisdiction of that Secretary a single list of all warrant officers (other than warrant officers described in section 582 of this title) who are on active duty.

(b) The Secretary concerned may establish competitive categories for promotion. Warrant officers in the same competitive category shall compete among themselves for promotion.

(c) Before convening a selection board under section 573 of this title, the Secretary concerned shall determine for each grade (or grade and competitive category) to be considered by the board the following:

(1) The maximum number of warrant officers to be recommended for promotion.

(2) A promotion zone for warrant officers on the warrant officer active-duty list.

(d) The position of a warrant officer on the warrant officer active-duty list shall be determined as follows:

(1) Warrant officers shall be carried in the order of seniority of the grade in which they are serving on active duty.

(2) Warrant officers serving in the same grade shall be carried in the order of their rank in that grade.

(3) A warrant officer on the warrant officer active-duty list who receives a temporary appointment or a temporary assignment in a grade other than a warrant officer grade or chief warrant officer grade shall retain his position on the warrant officer active-duty list while so serving.

(e) A chief warrant officer may not be considered for promotion to the next higher grade under this chapter until the officer has completed two years of service on active duty in the grade in which the officer is serving.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1494; amended Pub. L. 102–484, div. A, title X, §1052(3), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(b)(2), Oct. 5, 1994, 108 Stat. 2764; Pub. L. 104–201, div. A, title V, §506(a), Sept. 23, 1996, 110 Stat. 2512.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 substituted ''two years of service'' for ''three years of service''.

1994—Subsecs. (a), (b). Pub. L. 103–337 substituted ''Secretary concerned'' for ''Secretary of each military department''.

1992—Subsec. (d)(3). Pub. L. 102–484 substituted ''active-duty list'' for ''active duty list'' before ''while''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 575, 576 of this title.

§575. Recommendations for promotion by selection boards

(a) A selection board convened under section 573(a) of this title shall recommend for promotion to the next higher grade those warrant officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for warrant officers with particular skills, considers best qualified for promotion within each grade (or grade and competitive category) considered by the board.

(b)(1) In the case of a selection board to consider warrant officers for selection for promotion to the grade of chief warrant officer, W–3, chief warrant officer, W–4, or chief warrant officer, W–5, the Secretary concerned shall establish the number of warrant officers that the selection board may recommend from among warrant officers being considered from below the promotion zone within each grade (or grade and competitive category). The number of warrant officers recommended for promotion from below the promotion zone does not increase the maximum number of warrant officers which the board is authorized under section 574 of this title to recommend for promotion.

(2) The number of officers recommended for promotion from below the promotion zone may not exceed 10 percent of the total number rec-

ommended, except that the Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, may authorize such percentage to be increased to not more than 15 percent. If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).

(c) A selection board convened under section 573(a) of this title may not recommend a warrant officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board find that the officer is fully qualified for promotion.

(d) Each time a selection board is convened under section 573(a) of this title to consider warrant officers in a competitive category for promotion to the next higher grade, each warrant officer in the promotion zone, and each warrant officer above the promotion zone, for the grade and competitive category under consideration (except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title) shall be considered for promotion.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1495; amended Pub. L. 103–337, div. A, title V, §§501(a), 541(b)(3), Oct. 5, 1994, 108 Stat. 2748, 2764; Pub. L. 104–201, div. A, title V, §506(b), Sept. 23, 1996, 110 Stat. 2512; Pub. L. 106–65, div. A, title V, §505, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(2). Pub. L. 106–65 inserted at end ''If the number determined under this subsection with respect to a promotion zone within a grade (or grade and competitive category) is less than one, the board may recommend one such officer for promotion from below the zone within that grade (or grade and competitive category).''

1996—Subsec. (b)(1). Pub. L. 104–201 inserted ''chief warrant officer, W–3,'' after ''promotion to the grade of'' in first sentence.

1994—Subsec. (b)(2). Pub. L. 103–337, §541(b)(3), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, §501(a), inserted ''(except for a warrant officer precluded from consideration under regulations prescribed by the Secretary concerned under section 577 of this title)'' after ''under consideration''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(3) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

§576. Information to be furnished to selection boards; selection procedures

(a) The Secretary concerned shall furnish to each selection board convened under section 573 of this title the following:

(1) The maximum number of warrant officers that may be recommended for promotion from those serving in any grade (or grade and competitive category) to be considered, as determined in accordance with section 574 of this title.

(2) The names and pertinent records of all officers in each grade (or grade and competitive category) to be considered.

(3) Such information or guidelines relating to the needs of the armed force concerned for warrant officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a grade or competitive category, as the Secretary concerned determines to be relevant in relation to the requirements of that armed force.

(b) From each promotion zone for a grade (or grade and competitive category), the selection board shall recommend for promotion to the next higher warrant officer grade those warrant officers whom it considers best qualified for promotion, but no more than the number specified by the Secretary concerned.

(c) The names of warrant officers selected for promotion under this section shall be arranged in the board's report in order of the seniority on the warrant officer active-duty list.

(d) Under such regulations as the Secretary concerned may prescribe, the selection board shall report the names of those warrant officers considered by it whose records establish, in its opinion, their unfitness or unsatisfactory performance. A regular warrant officer whose name is so reported shall be considered, under regulations provided by the Secretary concerned, for retirement or separation under section 1166 of this title.

(e) The report of the selection board shall be submitted to the Secretary concerned. The Secretary may approve or disapprove all or part of the report.

(f)(1) Upon receipt of the report of a selection board submitted to him under subsection (e), the Secretary concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under this section.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under this section, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 573 of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guide-

lines and shall resubmit the report, as revised, to the Secretary in accordance with subsection (e).

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1496; amended Pub. L. 103–337, div. A, title V, §§501(b), 541(b)(4), Oct. 5, 1994, 108 Stat. 2748, 2764.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 560 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §541(b)(4)(A), struck out ''of the military department'' after ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–337, §541(b)(4)(B), struck out ''of the military department'' after ''submitted to the Secretary''.

Subsec. (f)(1). Pub. L. 103–337, §501(b), struck out after first sentence ''Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (e).''

Subsec. (f)(2). Pub. L. 103–337, §541(b)(4)(C), struck out ''of the military department'' after ''paragraph (1), the Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(b)(4) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 628, 1166 of this title.

§577. Promotions: effect of failure of selection for

A warrant officer who has been considered for promotion by a selection board convened under section 573 of this title, but not selected, shall be considered for promotion by each subsequent selection board that considers officers in his grade (or grade and competitive category) until he is retired or separated or he is selected for promotion. However, the Secretary concerned may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, a warrant officer who has an established separation date that is within 90 days after the date on which the board is convened.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 561 of this title prior to repeal by Pub. L. 102–190, §1112(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 575 of this title.

§578. Promotions: how made; effective date

(a) When the report of a selection board convened under this chapter is approved by the Secretary concerned, the Secretary shall place the names of the warrant officers approved for promotion on a single promotion list for each grade (or grade and competitive category), in the order of the seniority of such officers on the warrant officer active-duty list.

(b) Promotions of warrant officers on the warrant officer promotion list shall be made when, in accordance with regulations issued by the Secretary concerned, additional warrant officers in that grade (or grade and competitive category), are needed.

(c) A regular warrant officer who is promoted is appointed in the regular grade to which promoted, and a reserve warrant officer who is promoted is appointed in the reserve grade to which promoted. The date of appointment in that grade and date of rank shall be prescribed by the Secretary concerned. A warrant officer is entitled to the pay and allowances for the grade to which appointed from the date specified in the appointment order.

(d) Promotions shall be made in the order in which the names of warrant officers appear on the promotion list and after warrant officers previously selected for promotion in the applicable grade (or grade and competitive category) have been promoted.

(e) A warrant officer who is appointed to a higher grade under this section is considered to have accepted such appointment on the date on which the appointment is made unless the officer expressly declines the appointment.

(f) A warrant officer who has served continuously as an officer since subscribing to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497; amended Pub. L. 102–484, div. A, title X, §1052(4), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §501(c), Oct. 5, 1994, 108 Stat. 2748.)

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–337 added subsecs. (e) and (f).

1992—Pub. L. 102–484 substituted ''Promotions:'' for ''Promotions;'' in section catchline.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 628 of this title.

§579. Removal from a promotion list

(a) The name of a warrant officer recommended for promotion by a selection board convened under this chapter may be removed from the report of the selection board by the President.

(b) The Secretary concerned may remove the name of a warrant officer who is on a promotion list as a result of being recommended for promotion by a selection board convened under this chapter at any time before the promotion is effective.

(c) An officer whose name is removed from the list of officers recommended for promotion by a selection board continues to be eligible for consideration for promotion.

(d) If the next selection board that considers the warrant officer for promotion under this chapter selects the warrant officer for promotion and the warrant officer is promoted, the Secretary concerned may, upon his promotion,

grant him the same effective date for pay and allowances and the same date of rank, and the same position on the warrant officer active-duty list as the warrant officer would have had if his name had not been so removed.

(e) If the next selection board does not select the warrant officer for promotion, or if his name is again removed under subsection (a) from the list of officers recommended for promotion by the selection board or under subsection (b) from the warrant officer promotion list, he shall be treated for all purposes as if he has twice failed of selection for promotion.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 562 of this title prior to repeal by Pub. L. 102–190, §1112(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 580 of this title.

§ 580. Regular warrant officers twice failing of selection for promotion: involuntary retirement or separation

(a)(1) Unless retired or separated sooner under some other provision of law, a regular chief warrant officer who has twice failed of selection for promotion to the next higher regular warrant officer grade shall be retired under paragraph (2) or (3) or separated from active duty under paragraph (4).

(2) If a warrant officer described in paragraph (1) has more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired. The date of such retirement shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(3) If a warrant officer described in paragraph (1) has at least 18 but not more than 20 years of creditable active service on (A) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (B) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be retired not later than the date determined under the next sentence unless he is selected for promotion to the next higher regular warrant officer grade before that date. The date of the retirement of a warrant officer under the preceding sentence shall be on a date specified by the Secretary concerned, but not later than the first day of the seventh calendar month beginning after the date upon which he completes 20 years of active service, except as provided by section 8301 of title 5. A warrant officer retired under this paragraph shall receive retired pay computed under section 1401 of this title.

(4)(A) If a warrant officer described in paragraph (1) has less than 18 years of creditable active service on (i) the date on which the Secretary concerned approves the report of the board under section 576(e) of this title, or (ii) the date on which his name was removed from the recommended list under section 579 of this title, whichever applies, the warrant officer shall be separated (except as provided in subparagraph (C)). The date of such separation shall be not later than the first day of the seventh calendar month beginning after the applicable date under the preceding sentence.

(B) A warrant officer separated under this paragraph shall receive separation pay computed under section 1174 of this title, or severance pay computed under section 286a of title 14, as appropriate, except in a case in which—

(i) upon his request and in the discretion of the Secretary concerned, he is enlisted in the grade prescribed by the Secretary; or

(ii) he is serving on active duty in a grade above chief warrant officer, W–5, and he elects, with the consent of the Secretary concerned, to remain on active duty in that status.

(C) If on the date on which a warrant officer is to be separated under subparagraph (A) the warrant officer has at least 18 years of creditable active service, the warrant officer shall be retained on active duty until retired under paragraph (3) in the same manner as if the warrant officer had had at least 18 years of service on the applicable date under subparagraph (A) or (B) of that paragraph.

(5) A warrant officer who is subject to retirement or discharge under this subsection is not eligible for further consideration for promotion.

(6) In this subsection, the term ''creditable active service'' means active service that could be credited to a warrant officer under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under this section of a warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which he would otherwise be required to retire or be separated under this section.

(c) The Secretary concerned may defer, until such date as he prescribes, the retirement under subsection (a) of a warrant officer who is serving on active duty in a grade above chief warrant officer, W–5, and who elects to continue to so serve.

(d) If a warrant officer who also holds a grade above chief warrant officer, W–5, is retired or separated under subsection (a), his commission in the higher grade shall be terminated on the date on which he is so retired or separated.

(e)(1) A regular warrant officer subject to discharge or retirement under this section may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 573(c) of this title.

(2) A warrant officer who is selected for continuation on active duty under this subsection

but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with this section.

(3) Each warrant officer who is continued on active duty under this subsection, not subsequently promoted or continued on active duty, and not on a list of warrant officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding subparagraph (A), a warrant officer who would otherwise be discharged under such subparagraph and who is within two years of qualifying for retirement under section 1293 of this title shall, unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(4) The retirement or discharge of a warrant officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(5) Continuation of a warrant officer on active duty under this subsection pursuant to the action of a selection board convened under section 573(c) of this title is subject to the approval of the Secretary concerned.

(6) The Secretary of Defense and the Secretary of Homeland Security, when the Coast Guard is not operating as a service in the Navy, shall prescribe regulations for the administration of this subsection.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1498; amended Pub. L. 103–160, div. A, title V, §505(a), Nov. 30, 1993, 107 Stat. 1645; Pub. L. 103–337, div. A, title V, §541(b)(5), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a)(6), is set out below.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 564 of this title prior to repeal by Pub. L. 102–190, §1112(a).

AMENDMENTS

2002—Subsec. (e)(6). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a)(4)(B). Pub. L. 103–337, §541(b)(5)(A), inserted '', or severance pay computed under section 286a of title 14, as appropriate,'' after ''section 1174 of this title''.

Subsec. (e)(6). Pub. L. 103–337, §541(b)(5)(B), inserted ''and the Secretary of Transportation, when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1993—Subsec. (a)(4)(A). Pub. L. 103–160, §505(a)(1), inserted ''(except as provided in subparagraph (C))'' after ''shall be separated''.

Subsec. (a)(4)(C). Pub. L. 103–160, §505(a)(2), added subpar. (C).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 505(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to warrant officers who have not been separated pursuant to section 580(a)(4) of title 10, United States Code, before the date of enactment of this Act [Nov. 30, 1993].''

RETIRED AND RETAINER PAY OF MEMBERS ON RETIRED LISTS OR RECEIVING RETAINER PAY

Section 511 of act Oct. 12, 1949, ch. 681, title V, 63 Stat. 829, as amended May 19, 1952, ch. 310, §4, 66 Stat. 80; Apr. 23, 1956, ch. 208, §1, 70 Stat. 114, provided that: ''On and after the effective date of this section [Oct. 1, 1949] (1) members of the uniformed services heretofore retired for reasons other than for physical disability, (2) members heretofore transferred to the Fleet Reserve or the Fleet Marine Corps Reserve, and (3) members of the Army Nurse Corps or the Navy Nurse Corps heretofore retired under the Act of May 13, 1926 (44 Stat. 513), shall be entitled to receive retired pay, retirement pay, retainer pay, or equivalent pay, in the amount whichever is the greater, computed by one of the following methods: (a) The monthly retired pay, retainer pay, or equivalent pay in the amount authorized for such members and former members by provisions of law in effect on the day immediately preceding the date of enactment of this Act [Oct. 12, 1949], or (b) monthly retired pay, retirement pay, retainer pay, or equivalent pay equal to 2½ per centum of the monthly basic pay of the highest federally recognized rank, grade, or rating, whether under a permanent or temporary appointment, satisfactorily held, by such member or former member, as determined by the Secretary concerned, and which such member, former member, or person would be entitled to receive if serving on active duty in such rank, grade, or rating, multiplied by the number of years of active service creditable to him: *Provided*, That for the purpose of the computation of (b) above, the retired or retirement pay of each commissioned officer of the Coast Guard who, upon retirement, was advanced one grade pursuant to the provisions of the Act of January 12, 1923 (Public Law 381, Sixty-seventh Congress), shall, unless a higher rank or grade is authorized by any provision of law, be based upon the commissioned officer grade authorized for such officer by such Act: *Provided further*, That for the purpose of the computation of (b) above, fractions of one-half year or more of active service shall be counted as a whole year: *Provided further*, That in no case shall such retired pay, retainer pay, or equivalent pay exceed 75 per centum of the monthly basic pay upon which the computation is based: *Provided further*, That for the purposes of this section, the term 'active service' as used herein shall mean all service as a member or as a former member of the uniformed services, service as a cadet or midshipman in the case of those members appointed to the United States Military Academy prior to August 24, 1912, or to the United States Naval Academy prior to March 4, 1913, if such service was creditable for longevity pay purposes at the time of retirement, or as a nurse, or as a contract nurse prior to February 2, 1901, or as a reserve nurse subsequent to February 2, 1901, or as a contract surgeon, or as a contract dental surgeon,

or as an acting dental surgeon, or as a veterinarian in the Quartermaster Department, Cavalry, or Field Artillery, or as an Army field clerk or as a field clerk, Army Quartermaster Corps, while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in other provisions of law, including participation in exercises or performance of the duties provided for by sections 5, 81, 92, 94, 97, and 99 of the National Defense Act, as amended, and in the case of commissioned officers of the Public Health Service, that service which is creditable pursuant to part (3) of section 412 of this Act: *Provided further*, That the retired or retirement pay of each member referred to in (3) above shall, unless a higher rank or grade is authorized by any provision of law, be based upon the commissioned-officer grade authorized for such member by the Act of May 7, 1948 (Public Law 517, Eightieth Congress): *Provided further*, That (a) enlisted persons or former enlisted persons of the Regular Army or Regular Air Force who have been transferred prior to the effective date of this section to the Enlisted Reserve Corps or to the enlisted section of the Air Force Reserve and placed on the retired list of the Regular Army or the Regular Air Force, respectively, under the provisions of section 4 of the Act of October 6, 1945 (59 Stat. 539; 10 U.S.C. 948) [section 948 of former title 10], as amended, and (b) enlisted persons or former enlisted persons of the Regular Navy or Regular Marine Corps who have been transferred prior to the effective date of this section to the Fleet Reserve or the Fleet Marine Corps Reserve under the provisions of title II of the Naval Reserve Act of 1938, as amended, shall not be entitled to have their retired pay or retainer pay computed on the basis of the highest officer or warrant-officer grade held by them as authorized by this section until they have completed thirty years of service, to include the sum of their active service and their service on the retired list or in the Fleet Reserve or in the Fleet Marine Corps Reserve, as required by existing law: *And provided further*, That enlisted persons and warrant officers of the uniform services, heretofore or hereafter advanced on the retired list to a higher officer rank or grade pursuant to any provision of law shall, if application therefore is made to the Secretary concerned within one year from the effective date of this section or within one year after the date of advancement on the retired list, whichever is the later, and subject to the approval of the Secretary concerned, be restored to their former retired enlisted or warrant-officer status, as the case may be, and shall thereafter be deemed to be enlisted or warrant-officer personnel, as appropriate, for all purposes, including the computation of their retired pay based on such enlisted or warrant-officer rank, grade, or rating, as the case may be.''

[Section 2 of act Apr. 23, 1956, provided that: ''The amendment made by this Act shall be effective as of October 1, 1949.'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 1174, 1401, 1406, 1558 of this title; title 14 sections 286a, 334.

§ 580a. Enhanced authority for selective early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on November 30, 1993, and ending on October 1, 1999, to take the action set forth in subsection (b) with respect to regular warrant officers of an armed force under the jurisdiction of that Secretary.

(b) The Secretary of a military department may, with respect to regular warrant officers of an armed force, when authorized to do so under subsection (a), convene selection boards under section 573(c) of this title to consider for discharge regular warrant officers on the warrant officer active-duty list—

(1) who have served at least one year of active duty in the grade currently held;

(2) whose names are not on a list of warrant officers recommended for promotion; and

(3) who are not eligible to be retired under any provision of law and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all regular warrant officers described in that subsection in a particular grade and competitive category; or

(B) the names of all regular warrant officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of warrant officers to be recommended for discharge by a selection board convened pursuant to subsection (b). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of regular warrant officers described in subsection (b) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of warrant officers of that armed force (or the number of warrant officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) A warrant officer who is recommended for discharge by a selection board convened pursuant to subsection (b) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of warrant officers for discharge under this subsection shall be based on the needs of the service.

(d) The discharge of any warrant officer pursuant to this section shall be considered involuntary for purposes of any other provision of law.

(e) This section applies to the Secretary of Homeland Security in the same manner and to the same extent as it applies to the Secretary of Defense. The Commandant of the Coast Guard shall take the action set forth in subsection (b) with respect to regular warrant officers of the Coast Guard.

(Added Pub. L. 103–160, div. A, title V, § 504(a), Nov. 30, 1993, 107 Stat. 1644; amended Pub. L. 103–337, div. A, title V, § 541(g), title X, § 1070(a)(3), Oct. 5, 1994, 108 Stat. 2767, 2855; Pub.

L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a). Pub. L. 103–337, §1070(a)(3), substituted ''November 30, 1993,'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 103–337, §541(g), added subsec. (e).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 541(g) of Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1558 of this title.

§581. Selective retirement

(a) A regular warrant officer who holds a warrant officer grade above warrant officer, W–1, and whose name is not on a list of warrant officers recommended for promotion and who is eligible to retire under any provision of law may be considered for retirement by a selection board convened under section 573(c) of this title. The Secretary concerned shall specify the maximum number of warrant officers that such a board may recommend for retirement.

(b) A warrant officer who is recommended for retirement under this section and whose retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for retirement.

(c) The retirement of a warrant officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(d)(1) The Secretary concerned shall prescribe regulations for the administration of this section. Such regulations shall require that when the Secretary concerned submits a list of regular warrant officers to a selection board convened under section 573(c) of this title to consider regular warrant officers for selection for retirement under this section, the list shall include each warrant officer on the active-duty list in the same grade or same grade and competitive category whose position on the active-duty list is between that of the most junior regular warrant officer in that grade whose name is submitted to the board and that of the most senior regular warrant officer in that grade whose name is submitted to the board.

(2) Such regulations shall establish procedures to exclude from consideration by the board any warrant officer who has been approved for voluntary retirement, or who is to be mandatorily retired under any other provision of law, during the fiscal year in which the board is convened or during the following fiscal year. An officer not considered by a selection board convened under section 573(c) of this title under such regulations because the officer has been approved for voluntary retirement shall be retired on the date approved for the retirement of such officer as of the convening date of such selection board unless the Secretary concerned approves a modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(e) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L. 102–484, div. A, title X, §1052(5), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title V, §541(b)(6), Oct. 5, 1994, 108 Stat. 2765; Pub. L. 104–106, div. A, title V, §504(a), Feb. 10, 1996, 110 Stat. 295.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).

1994—Subsec. (a). Pub. L. 103–337 struck out ''in the Army, Navy, Air Force, or Marine Corps'' after ''A regular warrant officer''.

1992—Subsec. (d)(2). Pub. L. 102–484 substituted ''board'' for ''Board'' in two places in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 573, 1558 of this title.

§582. Warrant officer active-duty list: exclusions

Warrant officers in the following categories are not subject to this chapter:

(1) Reserve warrant officers—

(A) on active duty for training;

(B) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(C) on active duty to pursue special work;

(D) ordered to active duty under section 12304 of this title; or

(E) on full-time National Guard duty.

(2) Retired warrant officers on active duty (other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date).

(3) Students enrolled in the Army Physician's Assistant Program.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1500; amended Pub. L.

103–337, div. A, title V, §501(d), Oct. 5, 1994, 108 Stat. 2748; Pub. L. 104–106, div. A, title XV, §1501(c)(5), Feb. 10, 1996, 110 Stat. 498.)

AMENDMENTS

1996—Par. (1)(B). Pub. L. 104–106 substituted ''section 12301(d)'' for ''section 672(d)''.

Par. (1)(D). Pub. L. 104–106 substituted ''section 12304'' for ''section 673b''.

1994—Par. (2). Pub. L. 103–337 inserted before period at end ''(other than retired warrant officers who were recalled to active duty before February 1, 1992, and have served continuously on active duty since that date)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 571, 574 of this title.

§ 583. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) in the case of grades below chief warrant officer, W–5, have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of warrant officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the warrant officer designated by the Secretary concerned to be the junior warrant officer in the promotion zone eligible for promotion to the next higher grade.

(2) The term ''warrant officers above the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are senior to the senior warrant officer in the promotion zone.

(3) The term ''warrant officers below the promotion zone'' means a group of officers on a warrant officer active-duty list in the same grade (or the same grade and competitive category) who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as warrant officers in the promotion zone; and

(C) are junior to the junior warrant officer in the promotion zone.

(4) The active-duty list referred to in section 573(b) of this title includes the active-duty promotion list established by section 41a of title 14.

(Added Pub. L. 102–190, div. A, title XI, §1112(a), Dec. 5, 1991, 105 Stat. 1501; amended Pub. L. 103–337, div. A, title V, §541(f)(7), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Par. (4). Pub. L. 103–337 added par. (4).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective on the first day of the fourth month beginning after Oct. 5, 1994, see section 541(h) of Pub. L. 103–337, set out as a note under section 571 of this title.

CHAPTER 34—APPOINTMENTS AS RESERVE OFFICERS

Sec.
591. Reference to chapters 1205 and 1207.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1662(d)(3), Oct. 5, 1994, 108 Stat. 2991, amended analysis generally, substituting item 591 for former items 591 to 600a.

1992—Pub. L. 102–484, div. A, title V, §515(b), Oct. 23, 1992, 106 Stat. 2407, added item 596.

1986—Pub. L. 99–661, div. A, title V, §508(d)(1)(B), Nov. 14, 1986, 100 Stat. 3867, added item 600a.

1980—Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2849, substituted ''34'' for ''35'' as chapter number.

1958—Pub. L. 85–861, §1(11), Sept. 2, 1958, 72 Stat. 1440, added item 592 and struck out item 596 ''Officers: promotion''.

§ 591. Reference to chapters 1205 and 1207

Provisions of law relating to appointments of reserve officers other than warrant officers are set forth in chapter 1205 of this title (beginning with section 12201). Provisions of law relating to appointments and promotion of reserve warrant officers are set forth in chapter 1207 (beginning with section 12241).

(Added Pub. L. 103–337, div. A, title XVI, §1662(d)(3), Oct. 5, 1994, 108 Stat. 2991.)

PRIOR PROVISIONS

Prior sections 591 to 594, 595, and 596 were renumbered sections 12201 to 12204, 12208, and 12205 of this title, respectively.

Another prior section 596, act Aug. 10, 1956, ch. 1041, 70A Stat. 25, related to promotion of officers in the Reserve components, prior to repeal by Pub. L. 85–861, §36B(2), Sept. 2, 1958, 72 Stat. 1570.

Prior sections 596a, 596b, 597 to 599, 600, and 600a were renumbered sections 12206, 12207, 12241 to 12243, 12209, and 12210 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 35—TEMPORARY APPOINTMENTS IN OFFICER GRADES

Sec.
601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals.
[602. Repealed.]
603. Appointments in time of war or national emergency.
604. Senior joint officer positions: recommendations to the Secretary of Defense.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IV, §405(c)(2), Oct. 5, 1994, 108 Stat. 2745, added item 604.

1991—Pub. L. 102–190, div. A, title XI, §1113(d)(1)(B), Dec. 5, 1991, 105 Stat. 1502, struck out item 602 ''Warrant officers: temporary promotions'' and substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in item 603.

§601. Positions of importance and responsibility: generals and lieutenant generals; admirals and vice admirals

(a) The President may designate positions of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral. The President may assign to any such position an officer of the Army, Navy, Air Force, or Marine Corps who is serving on active duty in any grade above colonel or, in the case of an officer of the Navy, any grade above captain. An officer assigned to any such position has the grade specified for that position if he is appointed to that grade by the President, by and with the advice and consent of the Senate. Except as provided in subsection (b), the appointment of an officer to a grade under this section for service in a position of importance and responsibility ends on the date of the termination of the assignment of the officer to that position.

(b) An officer who is appointed to the grade of general, admiral, lieutenant general, or vice admiral for service in a position designated under subsection (a) or by law to carry that grade shall continue to hold that grade—

(1) while serving in that position;

(2) while under orders transferring him to another position designated under subsection (a) or by law to carry one of those grades, beginning on the day his assignment to the first position is terminated and ending on the day before the day on which he assumes the second position;

(3) while hospitalized, beginning on the day of the hospitalization and ending on the day he is discharged from the hospital, but not for more than 180 days; and

(4) while awaiting retirement, beginning on the day he is relieved from the position designated under subsection (a) or by law to carry one of those grades and ending on the day before his retirement, but not for more than 60 days.

(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

(2) An officer serving in a grade above major general or rear admiral who holds the permanent grade of brigadier general or rear admiral (lower half) shall be considered for promotion to the permanent grade of major general or rear admiral, as appropriate, as if he were serving in his permanent grade.

(d)(1) When an officer is recommended to the President for an initial appointment to the grade of lieutenant general or vice admiral, or for an initial appointment to the grade of general or admiral, the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of that officer as a member of the Joint Staff and in other joint duty assignments. The Secretary of Defense shall submit the Chairman's evaluation to the President at the same time the recommendation for the appointment is submitted to the President.

(2) Whenever a vacancy occurs in a position within the Department of Defense that the President has designated as a position of importance and responsibility to carry the grade of general or admiral or lieutenant general or vice admiral or in an office that is designated by law to carry such a grade, the Secretary of Defense shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2849; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §523, Oct. 19, 1984, 98 Stat. 2523; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, §403, Oct. 1, 1986, 100 Stat. 1031; Pub. L. 102–190, div. A, title V, §502(a), Dec. 5, 1991, 105 Stat. 1354; Pub. L. 104–106, div. A, title IV, §403(c), Feb. 10, 1996, 110 Stat. 287.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, §403(c)(1), in introductory provisions substituted ''designated under subsection (a) or by law'' for ''of importance and responsibility designated''.

Subsec. (b)(1). Pub. L. 104–106, §403(c)(2), struck out ''of importance and responsibility'' after ''position''.

Subsec. (b)(2). Pub. L. 104–106, §403(c)(3), substituted ''designated under subsection (a) or by law'' for ''designating''.

Subsec. (b)(4). Pub. L. 104–106, §403(c)(4), inserted ''under subsection (a) or by law'' after ''designated''.

1991—Subsec. (b)(4). Pub. L. 102–190 substituted ''60 days'' for ''90 days''.

1986—Subsec. (d). Pub. L. 99–433 added subsec. (d).

1985—Subsec. (c)(2). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, which prior to amendment had provided that if the assignment of an officer who was serving in a position designated to carry the grade of general, admiral, lieutenant general, or vice admiral was terminated (1) by the assignment of such officer to another position designated to carry one of those grades, such officers would hold, during the period beginning on the day of that termination and ending on the day before the day on which he assumed the other position, the grade that he had held on the day before the termination; (2) by the hospitalization of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day he was discharged from the hospital, but not for more than 180 days, the grade that he had held on the day before the termination; or (3) by the retirement of such officer, such officer would hold, during the period beginning on the day of that termination and ending on the day before his retirement, but not for more than 90 days, the grade that he had held on the day before the termination.

1981—Subsec. (c)(2). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 502(b) of Pub. L. 102–190 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to temporary appointments of officers serving in grades above major general or rear admiral, see section 623 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 164, 203, 441, 525, 720, 6325 of this title.

[§ 602. Repealed. Pub. L. 102–190, div. A, title XI, § 1113(a), Dec. 5, 1991, 105 Stat. 1502]

Section, Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2849, related to temporary promotions of warrant officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 603. Appointments in time of war or national emergency

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following:

(1) The second anniversary of the appointment.

(2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.

(3) The date the person appointed is released from active duty.

(Added Pub. L. 96–513, title I, § 105, Dec. 12. 1980, 94 Stat. 2850; amended Pub. L. 101–189, div. A, title VI, § 653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub. L. 102–190, div. A, title XI, § 1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502.)

AMENDMENTS

1991—Pub. L. 102–190, § 1113(d)(1)(A), substituted ''Appointments in time of war or national emergency'' for ''Commissioned officer grades: time of war or national emergency'' in section catchline.

Subsec. (a). Pub. L. 102–190, § 1113(b), struck out ''commissioned'' before ''officer grade in the Army'' and ''in warrant officer grades or'' before ''in grades above major general'' and inserted before period at end '', except that an appointment in the grade warrant officer, W–1, shall be made by warrant by the Secretary concerned''.

1989—Subsec. (f). Pub. L. 101–189 substituted ''terminates on the earliest of the following:'' for ''terminates—'' in introductory provisions, and made numerous amendments to style and punctuation. Prior to amendment, subsec. (f) read as follows: ''Unless sooner terminated, an appointment under this section terminates—

''(1) on the second anniversary of the appointment;

''(2) at the end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made; or

''(3) on the date the person appointed is released from active duty;

whichever is earliest.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsecs. (a) and (b) to make or vacate certain temporary commissioned appointments delegated to Secretary of Defense to perform during a time of war or national emergency, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, provided that, during a national emergency declared by President, exercise of any such authority be specifically directed by President in accordance with section 1631 of Title 50, War and National Defense, and that Secretary ensure any authority so delegated be accounted for as required by section 1641 of Title 50, see Ex. Ord. No. 12396, §§2, 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

§ 604. Senior joint officer positions: recommendations to the Secretary of Defense

(a) JOINT 4-STAR OFFICER POSITIONS.—(1) Whenever a vacancy occurs, or is anticipated to occur, in a position specified in subsection (b)—

(A) the Secretary of Defense shall require the Secretary of the Army to submit the name

of at least one Army officer, the Secretary of the Navy to submit the name of at least one Navy officer and the name of at least one Marine Corps officer, and the Secretary of the Air Force to submit the name of at least one Air Force officer for consideration by the Secretary for recommendation to the President for appointment to that position; and

(B) the Chairman of the Joint Chiefs of Staff may submit to the Secretary of Defense the name of one or more officers (in addition to the officers whose names are submitted pursuant to subparagraph (A)) for consideration by the Secretary for recommendation to the President for appointment to that position.

(2) Whenever the Secretaries of the military departments are required to submit the names of officers under paragraph (1)(A), the Chairman of the Joint Chiefs of Staff shall submit to the Secretary of Defense the Chairman's evaluation of the performance of each officer whose name is submitted under that paragraph (and of any officer whose name the Chairman submits to the Secretary under paragraph (1)(B) for consideration for the same vacancy). The Chairman's evaluation shall primarily consider the performance of the officer as a member of the Joint Staff and in other joint duty assignments, but may include consideration of other aspects of the officer's performance as the Chairman considers appropriate.

(b) COVERED POSITIONS.—Subsection (a) applies to the following positions:

(1) Commander of a combatant command.

(2) Commander, United States Forces, Korea.

(3) Deputy commander, United States European Command, but only if the commander of that command is also the Supreme Allied Commander, Europe.

(c) EXPIRATION.—This section shall cease to be effective at the end of December 31, 2004.

(Added Pub. L. 103–337, div. A, title IV, §405(c)(1), Oct. 5, 1994, 108 Stat. 2745; amended Pub. L. 104–201, div. A, title IV, §404(a), Sept. 23, 1996, 110 Stat. 2506; Pub. L. 106–65, div. A, title V, §509(a), Oct. 5, 1999, 113 Stat. 592; Pub. L. 107–314, div. A, title IV, §405(a), Dec. 2, 2002, 116 Stat. 2526.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 substituted ''December 31, 2004'' for ''September 30, 2003''.

1999—Subsec. (c). Pub. L. 106–65 substituted ''September 30, 2003'' for ''September 30, 2000''.

1996—Subsec. (c). Pub. L. 104–201 substituted ''September 30, 2000'' for ''September 30, 1997''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 525 of this title.

CHAPTER 36—PROMOTION, SEPARATION, AND INVOLUNTARY RETIREMENT OF OFFICERS ON THE ACTIVE-DUTY LIST

Subchapter		Sec.
I.	Selection Boards	611
II.	Promotions	619
III.	Failure of Selection for Promotion and Retirement for Years of Service	627
IV.	Continuation on Active Duty and Selective Early Retirement	637
V.	Additional Provisions Relating to Promotion, Separation, and Retirement	641

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1174, 3037, 5046, 5148, 5149, 5596, 8037, 14301, 14306, 14308, 14317 of this title.

SUBCHAPTER I—SELECTION BOARDS

Sec.
611. Convening of selection boards.
612. Composition of selection boards.
613. Oath of members of selection boards.
614. Notice of convening of selection boards.
615. Information furnished to selection boards.
616. Recommendations for promotion by selection boards.
617. Reports of selection boards.
618. Action on reports of selection boards.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title V, §504(a)(2)(B), Dec. 5, 1991, 105 Stat. 1357, struck out ''; communications with boards'' after ''selection boards'' in item 614.

§611. Convening of selection boards

(a) Whenever the needs of the service require, the Secretary of the military department concerned shall convene selection boards to recommend for promotion to the next higher permanent grade, under subchapter II of this chapter, officers on the active-duty list in each permanent grade from first lieutenant through brigadier general in the Army, Air Force, or Marine Corps and from lieutenant (junior grade) through rear admiral (lower half) in the Navy. The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) Whenever the needs of the service require, the Secretary of the military department concerned may convene selection boards to recommend officers for continuation on active duty under section 637 of this title or for early retirement under section 638 of this title.

(c) The convening of selection boards under subsections (a) and (b) shall be under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 107–107, div. A, title V, §505(a)(3), Dec. 28, 2001, 115 Stat. 1086.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §505(a)(3)(A), substituted ''Whenever the needs of the service require, the Secretary of the military department concerned'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require,'' and inserted at end ''The preceding sentence does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 624(a)(3) of this title all such officers whom the Secretary finds to be fully qualified for promotion.''

Subsec. (b). Pub. L. 107–107, § 505(a)(3)(B), substituted ''Whenever the needs of the service require, the Secretary of the military department concerned'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned, whenever the needs of the service require,''.

Subsec. (c). Pub. L. 107–107, § 505(a)(3)(C), added subsec. (c).

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION FROM GRADE OF COMMODORE TO GRADE OF REAR ADMIRAL (LOWER HALF)

Section 514(e) of Pub. L. 99–145 provided that:

''(1) An officer who on the day before the date of the enactment of this Act [Nov. 8, 1985] is serving in or has the grade of commodore shall as of the date of the enactment of this Act be serving in or have the grade of rear admiral (lower half).

''(2) An officer who on the day before the date of the enactment of this Act is on a list of officers selected for promotion to the grade of commodore shall as of the date of the enactment of this Act be considered to be on a list of officers selected for promotion to the grade of rear admiral (lower half).''

TRANSITION PROVISIONS COVERING 1980 AMENDMENTS BY DEFENSE OFFICER PERSONNEL MANAGEMENT ACT [PUB. L. 96–513]

Parts A to C of title VI of Pub. L. 96–513, as amended by Pub. L. 97–22, § 8(a)–(n), July 10, 1981, 95 Stat. 132–135; Pub. L. 97–86, title IV, § 405(d)(1), (2)(A), (e), (f), Dec. 1, 1981, 95 Stat. 1106, eff. Sept. 15, 1981; Pub. L. 98–525, title V, §§ 530–532, Oct. 19, 1984, 98 Stat. 2527; Pub. L. 100–456, div. A, title V, § 503, Sept. 29, 1988, 102 Stat. 1967, provided that:

''TITLE VI—TRANSITION PROVISIONS

''PART A—TRANSITION PROVISIONS RELATING ONLY TO THE ARMY AND AIR FORCE

''REGULAR OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

''SEC. 601. (a) Except as provided in sections 603 and 604, any regular officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981, except as otherwise provided in section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title] is on active duty and—

''(1) is serving in a temporary grade below lieutenant general that is higher than his regular grade;

''(2) is on a list of officers recommended for promotion to a temporary grade below lieutenant general; or

''(3) is on a list of officers recommended for promotion to a regular grade higher than the grade in which he is serving;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(b) An officer referred to in clause (1) of subsection (a) who is not promoted to the grade to which he is considered under such subsection to have been recommended for promotion because his name is removed from a list of officers who are considered under such subsection to have been recommended for promotion shall be considered under chapter 36 of title 10, United States Code, as added by this Act, for promotion to the regular grade equivalent to the temporary grade in which he was serving on the effective date of this Act [Sept. 15, 1981] as if he were serving in his regular grade.

''(c) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in subsection (a)(1) who is promoted to the temporary grade in which he is serving on the effective date of this Act [Sept. 15, 1981] is the date of his temporary appointment in that grade.

''(d)(1) Any delay of a promotion of an officer referred to in clause (2) or (3) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) or (3) of subsection (a) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''RESERVE OFFICERS SERVING IN A HIGHER TEMPORARY GRADE BELOW LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION TO A HIGHER GRADE

''SEC. 602. (a)(1) Except as provided in subsection (b) and sections 605 and 606, any reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list of his armed force and—

''(A) is serving in a temporary grade below lieutenant general that is higher than his reserve grade; or

''(B) is on a list of officers recommended for promotion to a temporary grade below lieutenant general that is the same as or higher than his reserve grade;

shall be considered to have been recommended by a board convened under section 611(a) of title 10, United States Code, as added by this Act, for promotion to the reserve grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be.

''(2) Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in paragraph (1)(A) who is promoted to the grade to which he is considered under such paragraph to have been recommended for promotion is the date of his temporary appointment in that grade.

''(b) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(1) is subject to placement on the active-duty list of his armed force;

''(2) is serving on active duty in a temporary grade; and

''(3) either holds a reserve grade higher than the temporary grade in which he is serving or is on a list of officers recommended for promotion to a reserve grade higher than the temporary grade in which he is serving,

shall while continuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment.

''(c)(1) Any delay of a promotion of an officer referred to in clause (B) of subsection (a)(1) that was in effect on

September 14, 1981, under the laws and regulations in effect on such date shall continue in effect on and after September 15, 1981, as if such promotion has been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (B) of subsection (a)(1) that was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''REGULAR OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

''SEC. 603. (a) An officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(1) holds the regular grade of first lieutenant, captain, or major; and

''(2) has been considered once but not recommended for promotion to the next higher regular grade by a selection board convened under the laws in effect on the day before the effective date of this Act,

shall, within one year after the effective date of this Act, be considered for promotion to the next higher regular grade by a selection board convened by the Secretary concerned under the laws in effect on the day before the effective date of this Act.

''(b)(1)(A) An officer described in subsection (a) who is recommended for promotion by the selection board which considers him pursuant to such subsection shall be considered to have been recommended for promotion to the next higher regular grade or the grade in which he is serving, whichever grade is higher, by a board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who was serving in the temporary grade equivalent to the grade to which he is considered to have been recommended for promotion and who is promoted to that grade is the date of his temporary appointment in that grade.

''(2) An officer described in subsection (a) who is not recommended for promotion by such board shall, unless continued on active duty under section 637 of such title, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws applicable on the day before the effective date of this Act [Sept. 15, 1981].

''REGULAR OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

''SEC. 604. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) holds the regular grade of first lieutenant, captain, or major; and

''(2) has twice failed of selection for promotion to the next higher regular grade,

shall, unless continued on active duty under section 637 of title 10, United States Code, as added by this Act, be retired, if eligible to retire, be discharged, or be continued on active duty until eligible to retire and then be retired, under the laws in effect on the day before the effective date of this Act.

''RESERVE OFFICERS ONCE FAILED OF SELECTION FOR PROMOTION

''SEC. 605. (a) A reserve officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(1) is on active duty and subject to placement on the active-duty list of his armed force;

''(2) holds the reserve grade of first lieutenant, captain, or major; and

''(3) has been considered once but not selected for promotion to the next higher reserve grade under section 3366, 3367, 8366, or 8367 [see section 14301 et seq. of this title], as appropriate, of title 10, United States Code,

shall, unless sooner promoted, be considered again for promotion to that grade by a selection board convened under section 3366, 3367, 8366, or 8367, as appropriate, of such title.

''(b)(1) An officer described in subsection (a) who is serving on active duty in a temporary grade higher than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to the reserve grade equivalent to the temporary grade in which he is serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 611(a) of title 10, United States Code, as added by this Act. Notwithstanding section 741(d) of title 10, United States Code, as added by this Act, the date of rank of an officer referred to in the preceding sentence who is promoted to the reserve grade equivalent to the temporary grade in which he is serving on such date is the date of his temporary appointment in that grade.

''(2) An officer described in subsection (a) who is serving on active duty in a temporary grade equivalent to or lower than his reserve grade on the effective date of this Act [Sept. 15, 1981] and who is recommended by the selection board which considers him pursuant to such subsection for promotion to a reserve grade higher than the temporary grade in which he was serving on such date shall be considered as having been recommended for promotion to that reserve grade in the report of a selection board convened under section 3366, 3367, 8366, or 8367 [see section 14301 et seq. of this title], as appropriate, of such title. If such an officer is not ordered to active duty in his reserve grade, he shall while continuing on active duty retain such temporary grade and shall be considered for promotion under chapter 36 of title 10, United States Code, as added by this Act, to a grade equal to or lower than his reserve grade as if such temporary grade is a permanent grade. If such officer is recommended for promotion under such chapter to such a grade, his appointment to such grade shall be a temporary appointment to such grade.

''(3) An officer described in subsection (a) who is not recommended for promotion by the selection board which considers him pursuant to such subsection shall be governed by section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

''RESERVE OFFICERS TWICE FAILED OF SELECTION FOR PROMOTION

''SEC. 606. An officer of the Army or Air Force who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was on active duty and subject to placement on the active-duty list of his armed force; and

''(2) held the reserve grade of first lieutenant, captain, or major; and

''(3) was considered to have twice failed of selection for promotion to the next higher reserve grade,

shall be governed by [former] section 3846 or 8846, as appropriate, of title 10, United States Code, as a deferred officer.

''ENTITLEMENT TO SEVERANCE PAY OR SEPARATION PAY OF OFFICERS SEPARATED OR DISCHARGED PURSUANT TO THIS PART

''SEC. 607. (a) An officer who is discharged in accordance with section 603(b)(2) or 604 is entitled, at his election, to—

''(1) the severance pay to which he would have been entitled under the laws in effect before the effective date of this Act [Sept. 15, 1981]; or

''(2) separation pay, if eligible therefor, under section 1174(a) of title 10, United States Code, as added by this Act.

''(b) An officer who is separated in accordance with section 605(b)(3) or 606 is entitled, at his election, to—

''(1) readjustment pay under section 687 of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]; or

''(2) separation pay, if eligible therefor, under section 1174(c) of title 10, United States Code, as added by this Act.

''SPECIAL TENURE PROVISIONS FOR OFFICERS SERVING IN TEMPORARY GRADES OF BRIGADIER GENERAL AND MAJOR GENERAL

''SEC. 608. (a) Notwithstanding section 635 or 636 of title 10, United States Code, as added by this Act, but subject to subsection (b), a regular officer of the Army or Air Force—

''(1) who on the effective date of this Act [Sept. 15, 1981] is serving in or is on a list of officers recommended for promotion to the temporary grade of brigadier general or major general;

''(2) whose regular grade on such date is below such temporary grade; and

''(3) who is promoted pursuant to section 601(a) to the regular grade equivalent to such temporary grade,

shall be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act to officers in the permanent grade he held on such date. However, such an officer shall not be subject to a mandatory retirement date which is earlier than the first day of the month following the month of the thirtieth day after he completes 30 years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act.

''(b)(1) The Secretary of the Army or the Secretary of the Air Force, as appropriate, may convene selection boards under this section for the purpose of recommending from among officers described in subsection (a) officers to be selected to be subject to mandatory retirement for years of service in accordance with the laws applicable on the day before the effective date of this Act [Sept. 15, 1981] to officers in the permanent grade to which such officers were promoted pursuant to section 601(a) or to officers in a lower permanent grade higher than the permanent grade held by such officers on the day before the effective date of this Act.

''(2) Upon the recommendation of a selection board convened under this section, the Secretary concerned may select officers described in subsection (a) to be subject to mandatory retirement in accordance with the provisions of section 3922, 3923, 8922, or 8923, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981], rather than in the manner described in subsection (a).

''(3) Any selection board convened under this section shall be convened in accordance with the provisions of section 3297 or 8297, as appropriate, of title 10, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981].

''(c) This section does not apply to an officer who—

''(1) is sooner retired or separated under another provision of law;

''(2) is promoted to the permanent grade of brigadier general pursuant to section 601(a) and is subsequently promoted to the permanent grade of major general under chapter 36 of title 10, United States Code, as added by this Act; or

''(3) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''RIGHT OF MAJORS AND COLONELS TO COMPLETE YEARS OF SERVICE ALLOWED UNDER PRIOR LAW

''SEC. 609. (a)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(A) holds the regular grade of major; or

''(B) is on a list of officers recommended for promotion to the regular grade of major,

shall be retained on active duty until he completes twenty-one years of service as computed under section 3927(a) or 8927(a), as appropriate, of title 10, United States Code (as in effect on the day before the effective date of this Act), and then be retired under the provisions of section 3913 or 8913 of such title (as in effect on the day before the effective date of this Act) on the first day of the month after the month in which he completes that service.

''(2) Paragraph (1) does not apply to an officer who—

''(A) is sooner retired or separated under another provision of law;

''(B) is promoted to the regular grade of lieutenant colonel; or

''(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''(b)(1) Subject to paragraph (2), an officer of the Army or Air Force who on the effective date of this Act [Sept. 15, 1981]—

''(A) holds the regular grade of colonel; or

''(B) is on a list of officers recommended for promotion to the regular grade of colonel,

shall be retired under section 3921 or 8921, as appropriate, of such title (as in effect on the day before the effective date of this Act).

''(2) Paragraph (1) does not apply to an officer who—

''(A) is sooner retired or separated under another provision of law;

''(B) is promoted to the regular grade of brigadier general; or

''(C) is continued on active duty under section 637 of title 10, United States Code, as added by this Act.

''REGULAR OFFICERS WHOSE RETIREMENT HAS BEEN DEFERRED

''SEC. 610. A regular officer of the Army or Air Force serving on active duty on the effective date of this Act [Sept. 15, 1981] whose retirement under chapter 367 or 867 of title 10, United States Code, has been deferred before that date—

''(1) under a provision of such chapter; or

''(2) by virtue of a suspension, under any provision of law, of provisions of such chapter which would otherwise require such retirement,

may continue to serve on active duty to complete the period for which his retirement was deferred or until such suspension is removed.

''PART B—TRANSITION PROVISIONS RELATING ONLY TO THE NAVY AND MARINE CORPS

''OFFICERS SERVING IN A TEMPORARY GRADE BELOW VICE ADMIRAL OR LIEUTENANT GENERAL OR RECOMMENDED FOR PROMOTION

''SEC. 611. (a) Subject to subsection (b), any regular officer of the Navy or Marine Corps, and any reserve officer of the Navy and Marine Corps who on the effective date of this Act [Sept. 15, 1981] is subject to placement on the active-duty list, who on the effective date of this Act—

''(1) is serving on active duty in a temporary grade below vice admiral or lieutenant general that is higher than his permanent grade; or

''(2) is on a promotion list,

shall be considered to have been recommended for promotion to the permanent grade equivalent to the grade in which he is serving or for which he has been recommended for promotion, as the case may be, by a board convened under section 611(a) of title 10, United States Code, as added by this Act.

''(b) This section does not apply to an officer—

''(1) serving in a temporary grade which, by its own terms, is limited in duration;

''(2) designated for limited duty in a grade to which he was appointed under section 5596 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981]; or

''(3) recommended for promotion or promoted to a grade under section 5787 of such title, as in effect before the effective date of this Act.

''(c)(1) Any delay of a promotion of an officer referred to in clause (2) of subsection (a) that was in effect on September 14, 1981, under the laws and regulations in effect on such date, shall continue in effect on and after September 15, 1981, as if such promotion had been delayed under section 624(d) of title 10, United States Code, as added by this Act.

''(2) Any action to remove from a promotion list the name of an officer referred to in clause (2) of subsection (a) which was initiated before September 15, 1981, under the laws and regulations in effect before such date shall continue on and after such date as if such removal action had been initiated under section 629 of title 10, United States Code, as added by this Act.

''OFFICERS FAILED OF SELECTION FOR PROMOTION

''SEC. 612. (a) Except as provided in subsection (b), an officer of the Navy or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is considered to have failed of selection for promotion one or more times to a grade below the grade of captain, in the case of an officer of the Navy, or below the grade of colonel, in the case of an officer of the Marine Corps, is subject to chapter 36 of title 10, United States Code, as added by this Act, as if such failure or failures had occurred under the provisions of such chapter.

''(b) An officer who during fiscal year 1981—

''(1) failed twice of selection for promotion to the grade of either lieutenant or lieutenant commander, in the case of an officer in the Navy, or to either captain or major, in the case of an officer in the Marine Corps; and

''(2) had not previously failed of selection for promotion to that grade,

may not, because of such failures of selection, be involuntarily separated, involuntarily discharged, or retired under chapter 36 of title 10, United States Code, as added by this Act, before June 30, 1982, unless the officer so requests.

''RIGHT OF CERTAIN OFFICERS TO RETIRE UNDER PRIOR LAW

''SEC. 613. (a)(1) Subject to paragraph (2), an officer who on September 15, 1981—

''(A) holds the grade of lieutenant commander, commander, or captain in the Regular Navy or the grade of major, lieutenant colonel, or colonel in the Regular Marine Corps; or

''(B) is on a promotion list to any such grade,

shall be retired on the date provided under the laws in effect on September 14, 1981, except that an officer for whom no means can be established under the laws in effect on September 14, 1981, for computing creditable service in determining whether the officer is subject to involuntary retirement shall be retired under chapter 573 of title 10, United States Code, as in effect on September 14, 1981, on the basis of the years of service of such officer as determined under regulations prescribed under section 624(b).

''(2) This subsection does not apply to an officer—

''(A) removed from active duty under section 1184 of title 10, United States Code, as added by this Act;

''(B) promoted to a higher grade in the Regular Navy or Regular Marine Corps;

''(C) continued on active duty under section 637 of title 10, United States Code, as added by this Act; or

''(D) selected for early retirement under section 638 of title 10, United States Code.

''(b)(1) An officer of the Navy who on September 14, 1981—

''(A) has the grade of rear admiral in the Regular Navy; or

''(B) was on a promotion list to such grade,

shall be continued on active duty or retired in accordance with the laws in effect on September 14, 1981.

''(2) An officer of the Marine Corps who on September 14, 1981—

''(A) has the grade of brigadier general in the Regular Marine Corps; or

''(B) was on a promotion list to such grade,

shall be retired in accordance with the laws in effect on September 14, 1981.

''TRANSITION PROVISIONS TO NEW COMMODORE GRADE

''SEC. 614. (a)(1) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the upper half; or

''(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the upper half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of rear admiral.

''(2) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(A) was serving on active duty in the grade of rear admiral and was receiving the basic pay of a rear admiral of the lower half; or

''(B) was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date,

shall after such date hold the permanent grade of commodore, but shall retain the title of rear admiral.

''(3) An officer who on the day before the effective date of this Act [Sept. 15, 1981] was on a list of officers recommended for promotion to the grade of rear admiral shall, upon promotion, hold the grade of commodore with the title of rear admiral.

''(b) An officer who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half; or

''(2) was on a list of officers recommended for promotion to the grade of rear admiral,

shall, on and after the effective date of this Act, or in the case of an officer on such a list, upon promotion to the grade of commodore, be entitled to wear the uniform and insignia of a rear admiral.

''(c) Except as otherwise provided by law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] held the grade of rear admiral on the retired list or the temporary disability retired list retains the grade of rear admiral and is entitled after such date to wear the uniform and insignia of a rear admiral. Such an officer, when ordered to active duty—

''(1) holds the grade and has the right to wear the uniform and insignia of a rear admiral; and

''(2) ranks among commissioned officers of the armed forces as and is entitled to the basic pay of—

''(A) a commodore, if his retired pay was based on the basic pay of a rear admiral of the lower half on the day before the effective date of this Act; or

''(B) a rear admiral, if his retired pay was based on the basic pay of a rear admiral of the upper half on the day before the effective date of this Act.

''(d)(1) An officer of the Navy who—

''(A) on the effective date of this Act [Sept. 15, 1981]—

''(i) was serving on active duty in the grade of rear admiral and was entitled to the basic pay of a rear admiral of the lower half or was serving on active duty in the grade of admiral or vice admiral and would have been entitled to receive the basic pay of a rear admiral of the lower half had he not been serving in such grade on such date; or

''(ii) was on a list of officers recommended for promotion to the grade of rear admiral; and

''(B) after such date holds the permanent grade of commodore pursuant to subsection (a),

shall not be subject to the provisions of chapter 36 of title 10, United States Code, as added by this Act, relating to selection for promotion and promotion to the next higher grade.

''(2) Officers to whom this subsection applies become entitled to hold the permanent grade of rear admiral under the circumstances prescribed for entitlement to the basic pay of a rear admiral of the upper half under the provisions of subsections (a) through (d) of section 202 of title 37, United States Code, as in effect on the day before the effective date of this Act [Sept. 15, 1981]. For the purposes of this subsection, officers serving in the permanent grade of rear admiral or commodore in accordance with subsection (a) shall be considered as serving in the grade of rear admiral, as such grade was in effect on the day before the effective date of this Act.

''(e) Unless entitled to a higher grade under another provision of law, an officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) was serving on active duty; and

''(2) held the grade of rear admiral;

and who retires on or after the effective date of this Act, retires in the grade of rear admiral and is entitled to wear the uniform and insignia of a rear admiral. If such an officer is ordered to active duty after his retirement, he is considered, for the purposes of determining his pay, uniform and insignia, and rank among other commissioned officers, as having held the grade of rear admiral on the retired list on the day before the effective date of this Act.

''(f) A reserve officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was in an active status and was serving in the grade of rear admiral or was on a list of reserve officers recommended for promotion to the grade of rear admiral is not subject to [former] subsection (f) of section 6389 of title 10, United States Code, as added by this Act.

''FEMALE OFFICERS

''SEC. 615. (a) Except as provided under subsection (c), each regular officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy or on the active list of the Marine Corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in the line of the Navy or in the Marine Corps, as appropriate, in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

''(b) Each officer of the Navy who on the effective date of this Act [Sept. 15, 1981] is serving in a staff corps under an appointment made under section 5590 of title 10, United States Code, shall be reappointed in that corps in the grade and with the date of rank held by such officer immediately before such reappointment. Each such reappointment shall be made in accordance with the provisions of such title as amended by this Act but notwithstanding any limitation otherwise applicable with regard to age, grade, or physical standards.

''(c) Any officer who on the effective date of this Act [Sept. 15, 1981] is serving on the active list in the line of the Navy under an appointment made under section 5590 of title 10, United States Code, and who meets the qualifications for appointment in a staff corps of the Navy may, request appointment in a staff corps and, with the approval of the Secretary of the Navy, be appointed in that staff corps. Any appointment under this subsection shall be in lieu of the reappointment of the officer under subsection (a).

''(d) Each officer reappointed in a staff corps pursuant to subsection (b) or appointed in a staff corps under subsection (c) shall be considered for all purposes as having been originally appointed in such staff corps in accordance with the provisions of title 10, United States Code, as amended by this Act.

''(e) Except as otherwise specifically provided by law, all provisions of law relating to appointment, promotion, separation, and retirement which are applicable to male officers of the Regular Navy or Regular Marine Corps, as appropriate, apply to officers reappointed pursuant to subsection (a) or (b) or appointed under subsection (c).

''(f)(1) As soon as practicable after completion of the appointments and reappointments provided for in subsections (a), (b), and (c), the name of each officer so appointed or reappointed shall be entered on the appropriate active-duty list of the Navy or the Marine Corps in a position among officers of her grade determined in accordance with regulations prescribed by the Secretary of the Navy. Such officers shall be placed on the appropriate active-duty list without change in their relative positions held on the lineal list or any list for promotion established for them while they were serving under an appointment under any provision of title 10, United States Code, repealed by this Act.

''(2) Any female officer—

''(A) who, by virtue of her date of rank and other considerations, would be placed on a list of officers eligible for consideration for promotion in a position senior to an officer who has failed of selection for promotion one or more times; and

''(B) who is considered to have failed of selection for promotion once or is considered to have never failed of selection for promotion,

shall, for purposes of determining her eligibility for consideration for promotion to the next higher grade, be considered with those officers who are considered to have failed of selection for promotion once, or who are considered never to have failed of selection for promotion, as the case may be.

''(3) A female officer who is considered to have failed of selection for promotion one or more times and whose position on the active-duty list is junior to the position of any male officer who is considered to have failed of selection for promotion a fewer number of times or not at all may not derive any advantage in the selection process by virtue of such position on the active-duty list.

''(g) Except as provided in section 638 of title 10, United States Code, as added by this Act, a regular officer of the Navy or Marine Corps appointed under section 5590 of such title who—

''(1) before the effective date of this Act [Sept. 15, 1981] had not twice failed of selection for promotion to the next higher grade; and

''(2) is not selected for promotion to a higher regular grade on or after such effective date,

may not be retired earlier than such officer would have been retired had this Act not been enacted.

''(h)(1) Any officer who—

''(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant in the Navy or a captain in the Marine Corps;

''(B) under section 6396(c) or 6401 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 13 years of active commissioned service; and

''(C) because of the enactment of this Act, is subject to discharge under section 632 of such title because such officer has twice failed of selection for promotion,

shall, if such officer has not completed 13 years of active commissioned service at the time otherwise prescribed for the discharge of such officer under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 13 years of active commissioned service.

''(2) Any officer who—

''(A) on the effective date of this Act [Sept. 15, 1981] is a lieutenant (junior grade) in the Navy or a first lieutenant in the Marine Corps;

''(B) under section 6396(d) or 6402 of title 10, United States Code (as in effect on the day before the effective date of this Act), would have been discharged on June 30 of the fiscal year in which that officer (i) was not on a promotion list, and (ii) had completed 7 years of active commissioned service; and

''(C) because of the enactment of this Act, is subject to discharge under section 631 of such title because such officer has twice failed of selection for promotion,

shall, if that officer has not completed 7 years of active commissioned service at the time otherwise prescribed for such discharge under such section and such officer so requests, not be discharged until June 30 of the fiscal year in which the officer completes 7 years of active commissioned service.

''LIMITED-DUTY OFFICERS

''SEC. 616. (a) An officer of the Regular Navy or Regular Marine Corps who on the effective date of this Act [Sept. 15, 1981] is an officer who was designated for limited duty before that date under section 5589 of title 10, United States Code, is subject to section 6383 of such title (as in effect on the day before the effective date of this Act), unless promoted to a higher permanent grade under chapter 36 of title 10, United States Code, as added by this Act.

''(b) Any female member of the Navy who on April 2, 1981, was appointed under section 591 [now 12201] or 5590 of title 10, United States Code, in the grade of ensign as an officer designated for limited duty may after September 14, 1981, be reappointed as an officer designated for limited duty under section 5596 of title 10, United States Code, as amended by this Act. A member so reappointed shall have a date of rank as an ensign of April 2, 1981, and shall have the same permanent pay grade and status as that member held on April 1, 1981.

''(c) An officer of the Navy or Marine Corps who on September 15, 1981, was an officer designated for limited duty under section 5589 of title 10, United States Code, and who on the date of the enactment of this subsection [Oct. 19, 1984] is serving in a temporary grade above the grade of lieutenant, in the case of an officer of the Navy, or captain, in the case of an officer of the Marine Corps, may be reappointed under section 5589 of title 10, United States Code (as in effect on or after September 15, 1981), in the same permanent grade and with the same date of rank held by that officer on the active-duty list immediately before such reappointment if he is otherwise eligible for appointment under that section.

''CERTAIN NAVY LIEUTENANTS HOLDING TEMPORARY APPOINTMENTS IN THE GRADE OF LIEUTENANT COMMANDER

''SEC. 617. Any officer who on the effective date of this Act [Sept. 15, 1981] holds a temporary appointment in the grade of lieutenant commander under section 5787d of title 10, United States Code, shall on and after such date be considered to be serving in such grade as if such appointment had been made under section 5721 of such title, as added by this Act.

''DIRECTOR OF BUDGET AND REPORTS OF THE NAVY

''SEC. 618. (a) An officer of the Navy who on the day before the effective date of this Act [Sept. 15, 1981] was serving on active duty and entitled to rank and privileges of retirement under section 5064 of title 10, United States Code, as in effect on the day before the effective date of this Act, shall have his rank and retirement privileges determined under the laws in effect on such date.

''CONTINGENCY AUTHORITY FOR NAVY PROMOTIONS UNDER PRIOR LAW

''SEC. 619. If necessary because of unforeseen circumstances, the Secretary of the Navy, during fiscal year 1982, may convene boards to select officers for promotion under chapters 545 and 549 of title 10, United States Code, as in effect on September 14, 1981, and officers so selected may be promoted in accordance with such chapters. An officer promoted to a higher grade under the authority of this section shall be subject to sections 613 and 629 as if he held that grade on September 14, 1981, and shall have a date of rank to be determined under section 741 of title 10, United States Code, as amended by this Act.

''RETENTION ON ACTIVE DUTY OF CERTAIN RESERVE LIEUTENANT COMMANDERS

''SEC. 620. Notwithstanding section 6389 of title 10, United States Code, an officer who on September 14, 1981—

''(1) holds the grade of lieutenant commander in the Naval Reserve;

''(2) is on active duty as the result of recall orders accepted subsequent to a break in active commissioned service;

''(3) is subject to placement on the active-duty list; and

''(4) is considered—

''(A) to have failed of selection for promotion to the grade of commander one or more times under chapter 545 of title 10, United States Code, as in effect on September 14, 1981; or

''(B) to have been later considered to have failed of selection for promotion to the grade of commander one or more times under chapter 36 of title 10, United States Code, as added by this Act,

may be retained on active duty by the Secretary of the Navy for such period as the Secretary considers appropriate.

''PART C—GENERAL TRANSITION PROVISIONS

''ESTABLISHMENT OF INITIAL ACTIVE-DUTY LISTS

''SEC. 621. (a)(1) Not later than 6 months after the effective date of this Act [Sept. 15, 1981], all officers of the Army, Navy, Air Force, and Marine Corps who are required to be placed on the active-duty list for their armed force under chapter 36 of title 10, United States Code, as added by this Act, shall be placed on such list with the same relative seniority which they held on the day before the effective date of this Act. An officer placed on an active-duty list under this section shall be considered to have been placed on such list as of the effective date of this Act.

''(2) Regulations prescribed under section 620 of title 10, United States Code, as added by this Act, shall be applicable to the placement of officers on the active-duty list under paragraph (1).

''(b) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the Secretary of the military department concerned, in order to maintain the relative seniority among officers of the Army, Navy, Air Force, and Marine Corps as it existed on September 14, 1981, may adjust the date of rank of officers—

''(1) below the grade of brigadier general or commodore during the one-year period beginning on September 15, 1981; and

''(2) above the grade of colonel or, in the case of the Navy, captain until there are no longer any officers to whom section 614(d) is applicable.

''OFFICERS SERVING IN THE SAME TEMPORARY GRADE AND PERMANENT GRADE; DATE OF RANK

''SEC. 622. (a) Any officer of the Army, Navy, Air Force, or Marine Corps who on the effective date of this Act [Sept. 15, 1981] is serving on active duty in a temporary grade which is the same as his permanent grade shall on such date be serving in such grade subject to this title and the amendments made by this Act. The date of rank of such officer in that grade is the date of his temporary appointment to that grade.

''OFFICERS SERVING IN GRADES ABOVE MAJOR GENERAL OR REAR ADMIRAL

''SEC. 623. (a) Any officer who on the day before the effective date of this Act [Sept. 15, 1981] held a temporary appointment in the grade of lieutenant general or general under section 3066, 5232, or 8066 of title 10, United States Code, or a temporary appointment in the

grade of vice admiral or admiral under section 5231 of such title, shall on and after such date be considered to be serving in such grade as if such appointment had been made under section 601 of such title, as added by this Act.

''(b)(1) Any designation of a position as a position of importance and responsibility made by the President under section 3066 or 8066 of title 10, United States Code, before the effective date of this Act [Sept. 15, 1981], shall remain in effect, unless changed by the President, as a designation of such position as a position of importance and responsibility under section 601 of such title, as added by this Act.

''(2) Any position held by an officer under section 5231 or 5232 of title 10, United States Code, on the effective date of this Act [Sept. 15, 1981] shall, unless changed by the President, be deemed to be a position of importance and responsibility designated by the President under section 601 of title 10, United States Code.

''(c) Any officer who before the effective date of this Act [Sept. 15, 1981] served in the grade of lieutenant general, general, vice admiral, or admiral but was not serving in such grade on the day before the effective date of this Act shall for the purposes of section 1370(c) of title 10, United States Code, as added by this Act, be deemed to have held such position under an appointment made under section 601 of such title, as added by this Act.

''YEARS OF SERVICE FOR INVOLUNTARY RETIREMENT OR DISCHARGE

''SEC. 624. (a) In determining whether any officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] is subject to involuntary retirement or discharge under chapter 36 of title 10, United States Code, as added by this Act, the years of service of the officer for such purpose shall be computed by adding—

''(1) the amount of service creditable to such officer on the day before the effective date of this Act for the purpose of determining whether the officer is subject to involuntary retirement or discharge; and

''(2) all subsequent active commissioned service of such officer.

''(b) In the case of an officer subject to placement on the active-duty list on September 15, 1981, for whom no means of computing service creditable in determining whether the officer is subject to involuntary retirement or discharge existed under the law in effect on the day before the effective date of this Act [Sept. 15, 1981], the amount of creditable service of such officer for such purpose for the period before the effective date of this Act shall be determined under regulations prescribed by the Secretary of the military department concerned, except that such an officer may not be credited with an amount of service less than the amount of his active commissioned service.

''SAVINGS PROVISION FOR CONSTRUCTIVE SERVICE PREVIOUSLY GRANTED

''SEC. 625. (a) The amendments made by this Act do not affect the crediting of years of service to any person who on the day before the effective date of this Act [Sept. 15, 1981]—

''(1) had been credited with years of service upon an original appointment as an officer or after such an appointment; or

''(2) was participating in a program leading to an appointment as an officer in the Army, Navy, Air Force, or Marine Corps and the crediting of years of service.

''(b)(1) Any officer who on the effective date of this Act [Sept. 15, 1981] is an officer of the Army or Navy in the Medical or Dental Corps of his armed force, an officer of the Air Force designated as a medical or dental officer, or an officer of the Public Health Service commissioned as a medical or dental officer is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service creditable to him for such purposes under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act.

''(2) Any person who on the day before the effective date of this Act [Sept. 15, 1981] was enrolled in the Uniformed Services University of the Health Sciences under chapter 104 of this title or the Armed Forces Health Professions Scholarship Program under chapter 105 of this title and who on or after the effective date of this Act graduates from such university or completes such program, as the case may be, and is appointed in one of the categories specified in paragraph (1) is entitled to include in the years of service creditable to him for the computation of basic pay and retired pay the years of service that would have been credited to him under clauses (7) and (8) of section 205(a) of title 37, United States Code, as in effect on the day before the effective date of this Act, had such clauses not been repealed by this Act.

''MISCELLANEOUS PROVISIONS RELATING TO YEARS OF SERVICE

''SEC. 626. (a) For the purpose of computing the years of service for pay and allowances of an officer of the Army, Navy, Air Force, or Marine Corps, including retired pay, severance pay, readjustment pay, separation pay, and basic pay, the total years of service of such officer shall be computed by adding to that service so creditable on the day before the effective date of this Act [Sept. 15, 1981] all subsequent service as computed under title 10, United States Code, as amended by this Act.

''(b) An officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the effective date of this Act [Sept. 15, 1981] and who is retired under section 1251 of title 10, United States Code, as added by this Act, shall be entitled to retired pay in an amount equal to not less than 50 percent of the basic pay upon which his retired pay is based.

''(c) The service that an officer of the Army, Navy, Air Force, or Marine Corps has in a particular grade is the sum of—

''(A) the years, months, and days of service in that grade accrued under the laws in effect before the effective date of this Act [Sept. 15, 1981]; and

''(B) the years, months, and days of service in that grade accrued under the laws in effect on and after the effective date of this Act.

''TRANSITION TO OFFICER GRADE-STRENGTH TABLES DURING FISCAL YEAR 1981

''SEC. 627. For the fiscal year ending on September 30, 1981, the maximum number of officers authorized to be serving on active duty as of the end of such fiscal year in each of the grades of major, lieutenant colonel, and colonel for the Army, Air Force, and Marine Corps, and in each of the grades of lieutenant commander, commander, and captain for the Navy, under section 523 of title 10, United States Code, as added by this Act, is increased by the number equal to one-half the difference between (1) the actual number of officers of that armed force serving on active duty in that grade on September 30, 1980 (excluding officers in categories specified in subsection (b) of such section), and (2) the number specified in the table contained in such section for such armed force and grade based upon the total number of commissioned officers of such armed force on active duty on September 30, 1981 (excluding officers in categories specified in subsection (b) of such section).

''RIGHT OF COMMISSIONED OFFICERS WITH PERMANENT ENLISTED OR WARRANT OFFICER STATUS TO RETIRE IN HIGHEST ENLISTED OR WARRANT OFFICER GRADE HELD

''SEC. 628. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

''(1) on the day before the effective date of this Act [Sept. 15, 1981] had a permanent status as an enlisted

member or as a warrant officer (or had a statutory right to be enlisted or to be appointed as a warrant officer) and was serving as an officer under a temporary appointment; and

''(2) on or after the effective date of this Act and before completing 10 years of commissioned service for purposes of retirement eligibility under section 3911, 6323, or 8911 of title 10, United States Code, completes 20 years of total service, as determined under section 1405 of such title,

is entitled to retire or transfer to the Fleet Reserve or Fleet Marine Corps Reserve in the highest grade he held as an enlisted member or a warrant officer.

''SAVINGS PROVISION FOR RETIRED GRADE FOR OFFICERS NOT SUBSEQUENTLY PROMOTED

''SEC. 629. In applying section 1370(a)(2) of title 10, United States Code, as added by this Act, to an officer of the Army, Navy, Air Force, or Marine Corps who was on active duty on the day before the effective date of this Act [Sept. 15, 1981] and who on or after the effective date of this Act is not promoted to a grade higher than the grade he held on the day before the effective date of this Act or, in the case of an officer who was on a list of officers recommended for promotion on such date, is not promoted to a grade higher than the grade to which he was recommended for promotion, 'two years' shall be substituted for 'three years'. The Secretary of the military department concerned may waive the requirements of this section and of section 1370(a)(2) of title 10, United States Code, as added by this Act, with respect to any officer described in the preceding sentence.

''EXEMPTION OF CERTAIN OFFICERS FROM SELECTIVE EARLY RETIREMENT PROVISIONS

''SEC. 630. An officer of the Army, Navy, Air Force, or Marine Corps who was recommended for continuation on the active list under the Act entitled 'An Act to provide improved opportunity for promotion for certain officers in the naval service, and for other purposes', approved August 11, 1959 (Public Law 86–155; 10 U.S.C. 5701 note), or under section 10 of the Act entitled 'An Act relating to the promotion and separation of certain officers of the regular components of the armed forces', approved July 12, 1960 (Public Law 86–616; 10 U.S.C. 3297 note), is not subject to section 638 of title 10, United States Code, as added by this Act, relating to selective early retirement.

''SAVINGS PROVISION FOR ENTITLEMENT TO READJUSTMENT PAY OR SEVERANCE PAY UNDER PRIOR PROVISIONS OF LAW

''SEC. 631. (a) A member of the Army, Navy, Air Force, or Marine Corps who—

''(1) was on active duty (other than for training) on Sept. 14, 1981; and

''(2) after such date is involuntarily discharged or released from active duty under any provision of title 10, United States Code, as in effect after such date,

is entitled to receive any readjustment payment or severance pay to which he would have been entitled under laws in effect on Sept. 14, 1981, unless (in the case of a member discharged or released on or after the date of the enactment of the Department of Defense Authorization Act, 1985 [Oct. 19, 1984]) the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay.

''(b) If a member who is entitled to receive a readjustment payment or severance pay under subsection (a) is also eligible to receive separation pay under section 1174 of title 10, United States Code, as added by this Act, the member may not receive both the readjustment payment and severance pay under laws in effect on Sept. 14, 1981, and separation pay under such section, but shall elect which he will receive. If the number fails to make an election in a timely manner, he shall be paid the amount which is more favorable to him.

''OFFICERS ON ACTIVE DUTY IN GRADE ABOVE GENERAL

''SEC. 632. Section 1251 of title 10, United States Code, as added by this Act, relating to mandatory retirement for age, shall not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general.

''DEFINITIONS

''SEC. 633. For the purposes of this title:

''(1) The term 'officer' does not include warrant officers.

''(2) The term 'active-duty list' means the active-duty list established by the Secretary of the military department concerned pursuant to section 620 of title 10, United States Code, as added by this Act.

''SAVINGS PROVISION FOR RETIRED GRADE OF CERTAIN RESERVE OFFICERS

''SEC. 634. Unless entitled to a higher grade under any other provision of law, a member of the Army or Air Force who is a reserve officer and who—

''(1) is on active duty on September 14, 1981; and

''(2) after such date retires under section 3911 or 8911 of title 10, United States Code,

is entitled to retire in the reserve grade which he held or to which he had been selected for promotion on September 14, 1981.

''SAVINGS PROVISION FOR ORIGINAL APPOINTMENT IN CERTAIN GRADES UNDER EXISTING REGULATIONS

''SEC. 635. Any person who before September 15, 1981—

''(1) was selected for participation in a postbaccalaureate educational program leading to an appointment as a commissioned officer or had completed a postbaccalaureate program and was selected for appointment as a commissioned officer of the Army, Navy, Air Force, or Marine Corps;

''(2) under regulations of the Secretary of the military department concerned in effect on December 12, 1980, would have been appointed and ordered to active duty in a grade specified or determined in accordance with such regulations; and

''(3) had not been so appointed and ordered to active duty,

may be appointed and ordered to active duty in such grade with a date of rank and position on the active-duty list junior to that of all other officers of the same grade and competitive category serving on active duty.

''RETENTION IN GRADE OF CERTAIN RESERVE OFFICERS

''SEC. 636. A reserve officer of the Army, Navy, Air Force, or Marine Corps who on September 14, 1981—

''(1) is serving on active duty (A) under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System, or (B) under section 708 of title 32; and

''(2) is serving in a temporary grade or is selected for promotion to a temporary grade,

may continue to serve in or may be promoted to and serve in such grade until promoted to a higher grade, separated, or retired.

''SAVINGS PROVISION REGARDING DISCHARGE OF REGULAR OFFICERS

''SEC. 637. An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps who on September 14, 1981, was serving on active duty may not be discharged under section 630(1)(A) of title 10, United States Code, as added by this Act, on or after the day on which that officer completes three years of continuous service as a regular commissioned officer.

''REPAYMENT OF READJUSTMENT AND SEVERANCE PAY

''SEC. 638. Notwithstanding section 1174(h) of title 10, United States Code, as added by this Act, a person who received readjustment or severance pay before September 15, 1981, and who, on or after September 15, 1981, be-

comes entitled to retired or retainer pay under any provision of title 10 or title 14, United States Code, shall be required to repay that readjustment pay or severance pay in accordance with the laws in effect on September 14, 1981.

''SAVINGS PROVISION FOR PROMOTION CONSIDERATION OF CERTAIN RETIRED OFFICERS

''SEC. 639. Notwithstanding sections 619, 620, and 641(4) of title 10, United States Code, a retired officer serving on active duty on the date of the enactment of this section [Oct. 19, 1984] who on September 14, 1981, was on active duty as a retired officer recalled to active duty and who—

''(1) was eligible for consideration for promotion on that date; and

''(2) has served continuously on active duty since that date,

may be considered for promotion (under regulations prescribed by the Secretary of the military department concerned) by a selection board that convenes after the date of the enactment of this section as if he had been placed on the active-duty list pursuant to section 621 of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612, 614, 615, 616, 617, 618, 619, 622, 623, 624, 627, 628, 631, 637, 638, 638a, 688, 1558, 5150, 6383 of this title.

§ 612. Composition of selection boards

(a)(1) Members of selection boards shall be appointed by the Secretary of the military department concerned in accordance with this section. A selection board shall consist of five or more officers of the same armed force as the officers under consideration by the board. Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list. Each member of a selection board must be serving in a grade higher than the grade of the officers under consideration by the board, except that no member of a board may be serving in a grade below major or lieutenant commander.

(2)(A) Except as provided in subparagraph (B), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(B) A selection board need not include an officer from a competitive category to be considered by the board when there are no officers of that competitive category on the active-duty list in a grade higher than the grade of the officers to be considered by the board and eligible to serve on the board. However, in such a case the Secretary of the military department concerned, in his discretion, may appoint as a member of the board an officer of that competitive category who is not on the active-duty list from among officers of the same armed force as the officers under consideration by the board who hold a higher grade than the grade of the officers under consideration and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(3) When reserve officers of an armed force are to be considered by a selection board, the membership of the board shall include at least one reserve officer of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be determined by the Secretary of the military department concerned, in the Secretary's discretion. Notwithstanding the first sentence of this paragraph, in the case of a board which is considering officers in the grade of colonel or brigadier general or, in the case of officers of the Navy, captain or rear admiral (lower half), no reserve officer need be included if there are no reserve officers of that armed force on active duty in the next higher grade who are eligible to serve on the board.

(4) Except as provided in paragraphs (2) and (3), if qualified officers on the active-duty list are not available in sufficient number to comprise a selection board, the Secretary of the military department concerned shall complete the membership of the board by appointing as members of the board officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve.

(5) A retired general or flag officer who is on active duty for the purpose of serving on a selection board shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(b) No officer may be a member of two successive selection boards convened under section 611(a) of this title for the consideration of officers of the same competitive category and grade.

(c) Each selection board convened under section 611(a) of this title that will consider officers who are serving in, or have served in, joint duty assignments shall include at least one officer designated by the Chairman of the Joint Chiefs of Staff who is currently serving in a joint duty assignment. The Secretary of Defense may waive the preceding sentence in the case of any selection board of the Marine Corps.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2851; amended Pub. L. 97–22, §4(a), July 10, 1981, 95 Stat. 125; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, §402(a), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 106–398, §1 [[div. A], title V, §504(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–101.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398, §1 [[div. A], title V, §504(a)(1)], struck out ''who are on the active-duty list'' after ''five or more officers'' in second sentence and inserted after second sentence ''Each member of a selection board (except as provided in paragraphs (2), (3), and (4)) shall be an officer on the active-duty list.''

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title V, §504(a)(2)], substituted ''of that armed force on active duty (whether or not on the active-duty list). The actual number of reserve officers shall be'' for ''of that armed force, with the exact number of reserve officers to be'' and ''the Secretary's discretion. Notwithstanding the first sentence of this paragraph,'' for ''his discretion, except that''.

1986—Subsec. (c). Pub. L. 99–433 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a)(2). Pub. L. 97–22, §4(a)(1), designated existing provisions as subpar. (A), substituted ''Except

as provided in subparagraph (B), a selection board'' for ''A selection board'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22, §4(a)(2), inserted '', with the exact number of reserve officers to be determined by the Secretary of the military department concerned in his discretion'' after ''at least one reserve officer of that armed force'' and inserted ''who are eligible to serve on the board'' after ''the next higher grade''.

Subsec. (a)(4). Pub. L. 97–22, §4(a)(3), substituted ''Except as provided in paragraphs (2) and (3)'' for ''Except as provided in paragraph (3)'' and ''officers who are members of the same armed force and hold a grade higher than the grade of the officers under consideration by the board and who are retired officers, reserve officers serving on active duty but not on the active-duty list, or members of the Ready Reserve'' for ''retired officers of the same armed force who hold a retired grade higher than the grade of the officers under consideration by the board'' and designated as par. (5) provisions that retired general or flag officers on active duty for the purpose of serving on a selection board not be counted against any limitation on the number of general and flag officers who may be on active duty.

Subsec. (a)(5). Pub. L. 97–22, §4(a)(3), added par. (5) consisting of provisions, formerly contained in par. (4).

Subsec. (b). Pub. L. 97–22, §4(a)(4), inserted ''convened under section 611(a) of this title'' after ''selection boards''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §504(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any selection board convened under section 611(a) of title 10, United States Code, on or after August 1, 1981.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 406(f) of Pub. L. 99–433 provided that: ''The amendments made by section 402 [amending this section and sections 615 and 618 of this title] shall take effect with respect to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 628, 12643 of this title.

§613. Oath of members of selection boards

Each member of a selection board shall swear that he will perform his duties as a member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2851.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 628 of this title.

§614. Notice of convening of selection boards

(a) At least 30 days before a selection board is convened under section 611(a) of this title to recommend officers in a grade for promotion to the next higher grade, the Secretary concerned (1) shall notify in writing the officers eligible for consideration for promotion of the date on which the board is to convene and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification, or (2) shall issue a general written notice to the armed force concerned regarding the convening of the board which shall include the convening date of the board and the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notification.

(b) An officer eligible for consideration by a selection board convened under section 611(a) of this title may send a written communication to the board, to arrive not later than the date the board convenes, calling attention to any matter concerning himself that the officer considers important to his case. The selection board shall give consideration to any timely communication under this subsection.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 97–22, §4(b), July 10, 1981, 95 Stat. 126; Pub. L. 102–190, div. A, title V, §504(a)(2)(A), Dec. 5, 1991, 105 Stat. 1357.)

AMENDMENTS

1991—Pub. L. 102–190 struck out ''; communications with boards'' after ''selection boards'' in section catchline.

1981—Subsec. (a). Pub. L. 97–22 substituted ''which shall include the convening date of the board'' for '', the names of the officers eligible for consideration by the board as of the date of the notification, the convening date of the board,''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 617, 1174 of this title.

§615. Information furnished to selection boards

(a)(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 611(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in accordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the selection board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 614(b) of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1), is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) Information provided to a selection board in accordance with paragraph (2) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the selection board.

(4) Paragraphs (2) and (3) do not apply to the furnishing of appropriate administrative processing information to the selection board by administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(5) Information furnished to a selection board that is described in subparagraph (B), (C), or (D) of paragraph (2) may not be furnished to a later selection board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2).

(6)(A) Before information described in paragraph (2)(B) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the selection board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished with an appropriate summary of the information.

(b) The Secretary of the military department concerned shall furnish each selection board convened under section 611(a) of this title with—

(1) the maximum number, as determined in accordance with section 622 of this title, of officers in each competitive category under consideration that the board may recommend for promotion to the next higher grade;

(2) the names of all officers in each competitive category to be considered by the board for promotion;

(3) the pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board;

(4) information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including guidelines or information relating to the need for either a minimum number or a maximum number of officers with particular skills within a competitive category;

(5) guidelines, based upon guidelines received by the Secretary from the Secretary of Defense under subsection (c), for the purpose of ensuring that the board gives appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments; and

(6) such other information and guidelines as may be necessary to enable the board to properly perform its functions.

(c) The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall furnish to the Secretaries of the military departments guidelines for the purpose of ensuring that each selection board convened under section 611(a) of this title gives appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments.

(d) Information or guidelines furnished to a selection board under subsection (b) may not be modified, withdrawn, or supplemented after the board submits the report to the Secretary of the military department concerned pursuant to section 617(a) of this title, except that, in the case of a report returned to a board pursuant to section 618(a)(2) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(e) The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a selection board convened under section 611(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of the Navy, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 99–433, title IV, §402(b), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100–456, div. A, title V, §501(a), Sept. 29, 1988, 102 Stat. 1965; Pub. L. 101–189, div. A, title V, §519, Nov. 29, 1989, 103 Stat. 1444; Pub. L. 102–190, div. A, title V, §504(a)(1), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title X, §1052(7), Oct. 23, 1992, 106 Stat. 2499.)

AMENDMENTS

1992—Subsec. (b)(5). Pub. L. 102–484, §1052(7)(A), substituted ''subsection (c)'' for ''subsection (b)''.

Subsec. (d). Pub. L. 102–484, §1052(7)(B), substituted ''subsection (b)'' for ''subsection (a)''.

1991—Pub. L. 102–190 added subsec. (a) and redesignated former subsecs. (a) to (d) as (b) to (e), respectively.

1989—Subsec. (d). Pub. L. 101–189 added subsec. (d).

1988—Subsec. (a)(4). Pub. L. 100–456, §501(a)(1), added cl. (4) and struck out former cl. (4) which read as follows: ''information relating to the needs of the armed force concerned for officers having particular skills;''.

Subsec. (c). Pub. L. 100–456, §501(a)(2), added subsec. (c).

1986—Pub. L. 99–433 designated existing provisions as subsec. (a), added par. (5), redesignated former par. (5) as (6), and added subsec. (b).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 504(e) of Pub. L. 102–190 provided that: ''The amendments made by this section [amending this section and sections 614, 616, 618, and 619 of this title] shall apply to selection boards convened under section 611(a) of title 10, United States Code, after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 501(e) of Pub. L. 100–456 provided that: ''The amendments made by this section [amending this section and sections 616 to 618 of this title] shall take effect 60 days after the date of the enactment of this Act [Sept. 29, 1988] and shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after that effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99–433, set out as a note under section 612 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 616, 617, 618 of this title.

§616. Recommendations for promotion by selection boards

(a) A selection board convened under section 611(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board, giving due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 615(b) of this title), considers best qualified for promotion within each competitive category considered by the board.

(b) The Secretary of the military department concerned shall establish the number of officers such a selection board may recommend for promotion from among officers being considered from below the promotion zone in any competitive category. Such number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the service so require. If the number determined under this subsection is less than one, the board may recommend one such officer. The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers which the board is authorized under section 615 of this title to recommend for promotion.

(c) A selection board convened under section 611(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

(d) Except as otherwise provided by law, an officer on the active-duty list may not be promoted to a higher grade under this chapter unless he is considered and recommended for promotion to that grade by a selection board convened under this chapter.

(e) The recommendations of a selection board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 617 of this title, is signed by each member of the board.

(f) The Secretary convening a selection board under section 611(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a selection board or any member of a selection board in the formulation of the board's recommendations.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2852; amended Pub. L. 100–456, div. A, title V, §501(b), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–190, div. A, title V, §504(b), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102–484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499.)

AMENDMENTS

1992—Pub. L. 102–484 substituted ''section 615(b)'' for ''section 615(a)''.

1991—Subsecs. (e), (f). Pub. L. 102–190 added subsecs. (e) and (f).

1988—Subsec. (a). Pub. L. 100–456 inserted ''(as noted in the guidelines or information furnished the board under section 615(a) of this title)'' after ''particular skills''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

§617. Reports of selection boards

(a) Each selection board convened under section 611(a) of this title shall submit to the Sec-

retary of the military department concerned a written report, signed by each member of the board, containing a list of the names of the officers it recommends for promotion and certifying (1) that the board has carefully considered the record of each officer whose name was furnished to it under section 615 of this title, and (2) that, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 615(b) of this title) among those officers whose names were furnished to the selection board.

(b) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any regular or reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required under chapter 60 or 1411 of this title to show cause for his retention on active duty.

(c) A selection board convened under section 611(a) of this title shall include in its report to the Secretary concerned the name of any officer considered and not recommended for promotion by the board who submitted to the board a request not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 100–456, div. A, title V, §501(c), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–484, div. A, title X, §1052(8), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–337, div. A, title XVI, §1623, Oct. 5, 1994, 108 Stat. 2961; Pub. L. 105–261, div. A, title V, §502(b), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–65, div. A, title V, §503(a), Oct. 5, 1999, 113 Stat. 590.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 struck out ''regular'' before ''officer''.

1998—Subsec. (c). Pub. L. 105–261 added subsec. (c).

1994—Subsec. (b). Pub. L. 103–337 inserted ''or reserve'' after ''any regular'' and ''or 1411'' after ''chapter 60''.

1992—Subsec. (a). Pub. L. 102–484 substituted ''section 615(b)'' for ''section 615(a)''.

1988—Subsec. (a)(2). Pub. L. 100–456 inserted ''(as noted in the guidelines or information furnished the board under section 615(a) of this title)'' after ''concerned''.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §503(b), Oct. 5, 1999, 113 Stat. 590, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to boards convened under section 611(a) of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 5, 1999].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, §502(c), Oct. 17, 1998, 112 Stat. 2003, provided that: ''The amendments made by this section [amending this section and section 1174 of this title] shall apply with respect to selection boards convened under section 611(a) of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 616, 618, 628 of this title.

§ 618. Action on reports of selection boards

(a)(1) Upon receipt of the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title. Following such review, unless the Secretary concerned makes a determination as described in paragraph (2), the Secretary shall submit the report as required by subsection (b) or (c), as appropriate.

(2) If, on the basis of a review of the report under paragraph (1), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 615(b) of this title, the Secretary shall return the report, together with a written explanation of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this paragraph, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.

(b)(1) After completing the requirements of subsection (a), the Secretary concerned, in the case of the report of a selection board that considered officers who are serving, or have served, in joint duty assignments, shall submit the report to the Chairman of the Joint Chiefs of Staff.

(2) The Chairman, in accordance with guidelines furnished to the Chairman by the Secretary of Defense, shall review the report for the purpose of determining if—

(A) the selection board acted consistent with the guidelines of the Secretary of Defense under section 615(c) of this title to ensure that selection boards give appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments; and

(B) the selection board otherwise gave appropriate consideration to the performance in joint duty assignments of officers who are serving, or have served, in such assignments.

(3) After reviewing the report, the Chairman shall return the report, with his determinations and comments, to the Secretary concerned.

(4) If the Chairman determines that the board acted contrary to the guidelines of the Secretary of Defense under section 615(c) of this title or otherwise failed to give appropriate consideration to the performance of officers in joint duty assignments, the Secretary concerned may—

(A) return the report, together with the Chairman's determinations and comments, to the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) for further proceedings in accordance with subsection (a);

(B) convene a special selection board in the manner provided for under section 628 of this title; or

(C) take other appropriate action to satisfy the concerns of the Chairman.

(5) If, after completion of all actions taken under paragraph (4), the Secretary concerned and the Chairman remain in disagreement with respect to the report of a selection board, the Secretary concerned shall indicate such disagreement, and the reasons for such disagreement, as part of his transmittal of the report of the selection board to the Secretary of Defense under subsection (c). Such transmittal shall include any comments submitted by the Chairman.

(c)(1) After his final review of the report of a selection board, the Secretary concerned shall submit the report, with his recommendations thereon, to the Secretary of Defense for transmittal to the President for his approval or disapproval. The Secretary of Defense shall, before transmitting the report of a selection board to the President, take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman transmitted to him under subsection (b)(5). If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.

(2) If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title.

(d) The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(e)(1) The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(A) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(B) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(C) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated upon confirmation by the Senate.

(2) A list of names of officers disseminated under paragraph (1) may not include—

(A) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of subparagraph (B) of such paragraph; or

(B) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of subparagraph (C) of such paragraph.

(f) Except as authorized or required by this section, proceedings of a selection board convened under section 611(a) of this title may not be disclosed to any person not a member of the board.

(g) If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from a report of a selection board and the recommendation is accompanied by information that was not presented to that selection board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2853; amended Pub. L. 98–525, title V, §524(a), Oct. 19, 1984, 98 Stat. 2524; Pub. L. 99–433, title IV, §402(c), Oct. 1, 1986, 100 Stat. 1030; Pub. L. 100–456, div. A, title V, §501(d), Sept. 29, 1988, 102 Stat. 1966; Pub. L. 102–190, div. A, title V, §504(c), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 102–484, div. A, title X, §1052(8), (9), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 106–398, §1 [[div. A], title V, §503(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–100.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–398 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Upon approval by the President of the report of a selection board, the names of the officers recommended for promotion by the selection board (other than any name removed by the President) may be disseminated to the armed force concerned. If such names have not been sooner disseminated, such names (other than the name of any officer whose promotion the Senate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.''

1992—Subsec. (a)(1), (2). Pub. L. 102–484, §1052(8), substituted ''section 615(b)'' for ''section 615(a)''.

Subsec. (b)(2)(A), (4). Pub. L. 102–484, §1052(9), substituted ''section 615(c)'' for ''section 615(b)''.

1991—Subsec. (g). Pub. L. 102–190 added subsec. (g).

1988—Subsec. (a). Pub. L. 100–456, §501(d)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''If, after reviewing the report of a selection board submitted to him under section 617(a) of this title, the Secretary of the military department

concerned determines that the board has acted contrary to law or regulation, the Secretary shall return the report to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 611(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report and shall resubmit the report, as revised, to the Secretary in accordance with section 617 of this title.''

Subsec. (c)(1). Pub. L. 100–456, §501(d)(2), struck out '', modification,'' after ''for his approval'' and inserted at end ''If the authority of the President under this paragraph to approve or disapprove the report of a selection board is delegated to the Secretary of Defense, it may not be redelegated except to an official in the Office of the Secretary of Defense.''

1986—Subsec. (b). Pub. L. 99–433, §402(c)(1), (2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–433, §402(c)(1), (3), redesignated subsec. (b) as (c) and in par. (1) inserted provisions directing the Secretary of Defense, before transmitting the report, to take appropriate action to resolve any disagreement between the Secretary concerned and the Chairman. Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 99–433, §402(c)(1), redesignated subsecs. (c) to (e) as (d) to (f), respectively.

1984—Subsec. (b)(2). Pub. L. 98–525 substituted ''If the report of a selection board names an officer as having a record which indicates that the officer should be required to show cause for his retention on active duty, the Secretary concerned may provide for the review of the record of that officer as provided for under regulations prescribed under section 1181 of this title'' for ''The Secretary concerned may submit to a board of officers convened under section 1181 of this title the name of any officer who is named in the report of a selection board as having a record which indicates that the officer should be required to show cause for his retention on active duty''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective 60 days after Sept. 29, 1988, and applicable with respect to selection boards convened under section 611(a) of this title on or after that effective date, see section 501(e) of Pub. L. 100–456, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–433 effective with respect to selection boards convened under section 611(a) of this title after end of 120-day period beginning on Oct. 1, 1986, see section 406(f) of Pub. L. 99–433, set out as a note under section 612 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

Nothing in section 1 of Ex. Ord. No. 12396 deemed to delegate authority vested in President by subsec. (c) of this section to remove a name from a selection board report, see section 1(g) of Ex. Ord. No. 12396.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 615, 628 of this title.

SUBCHAPTER II—PROMOTIONS

Sec.
619. Eligibility for consideration for promotion: time-in-grade and other requirements.
619a. Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions.
620. Active-duty lists.
621. Competitive categories for promotion.
622. Numbers to be recommended for promotion.
623. Establishment of promotion zones.
624. Promotions: how made.
625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half).
626. Acceptance of promotions; oath of office.

AMENDMENTS

1993—Pub. L. 103–160, div. A, title IX, §931(c)(2), Nov. 30, 1993, 107 Stat. 1734, added items 619 and 619a and struck out former item 619 ''Eligibility for consideration for promotion''.

1985—Pub. L. 99–145, title V, §514(b)(4)(B), Nov. 8, 1985, 99 Stat. 628, substituted ''rear admiral (lower half)'' for ''commodore'' in item 625.

1981—Pub. L. 97–86, title IV, §405(b)(4)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodore'' for ''commodore admiral'' in item 625.

§ 619. Eligibility for consideration for promotion: time-in-grade and other requirements

(a) TIME-IN-GRADE REQUIREMENTS.—(1) An officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in the grade of ensign or lieutenant (junior grade) may not be promoted to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(B) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade), except that the minimum period of service in effect under this subparagraph before October 1, 2005, shall be eighteen months.

(2) Subject to paragraph (4), an officer who is on the active-duty list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant or is on the active-duty list of the Navy and holds a permanent appointment in a grade above lieutenant (junior grade) may not be considered for selection for promotion to the next higher permanent grade until he has completed the following period of service in the grade in which he holds a permanent appointment:

(A) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or of an officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(B) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colo-

nel or brigadier general or of an officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

(3) When the needs of the service require, the Secretary of the military department concerned may prescribe a longer period of service in grade for eligibility for promotion, in the case of officers to whom paragraph (1) applies, or for eligibility for consideration for promotion, in the case of officers to whom paragraph (2) applies.

(4) The Secretary of the military department concerned may waive paragraph (2) to the extent necessary to assure that officers described in subparagraph (A) of such paragraph have at least two opportunities for consideration for promotion to the next higher grade as officers below the promotion zone.

(5) In computing service in grade for purposes of this section, service in a grade held as a result of assignment to a position is counted as service in the grade in which the officer would have served except for such assignment or appointment.

(b) CONTINUED ELIGIBILITY FOR CONSIDERATION FOR PROMOTION OF OFFICERS WHO HAVE PREVIOUSLY FAILED OF SELECTION.—(1) Except as provided in paragraph (2), an officer who has failed of selection for promotion to the next higher grade remains eligible for consideration for promotion to that grade as long as he continues on active duty in other than a retired status and is not promoted.

(2) Paragraph (1) does not apply to a regular officer who is ineligible for consideration for promotion under section 631(c) of this title or to a reserve officer who has failed of selection for promotion to the grade of captain or, in the case of an officer of the Navy, lieutenant for the second time.

(c) OFFICERS TO BE CONSIDERED BY PROMOTION BOARDS.—(1) Each time a selection board is convened under section 611(a) of this title for consideration of officers in a competitive category for promotion to the next higher grade, each officer in the promotion zone (except as provided under paragraph (2)), and each officer above the promotion zone, for the grade and competitive category under consideration shall be considered for promotion.

(2) The Secretary of the military department concerned—

(A) may, in accordance with standards and procedures prescribed by the Secretary of Defense in regulations which shall apply uniformly among the military departments, limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion;

(B) may, by regulation, prescribe a period of time, not to exceed one year, from the time an officer is placed on the active-duty list during which the officer shall be ineligible for consideration for promotion; and

(C) may, by regulation, preclude from consideration by a selection board by which he would otherwise be eligible to be considered, an officer who has an established separation date that is within 90 days after the date the board is convened.

(3)(A) The Secretary of Defense may authorize the Secretaries of the military departments to preclude from consideration by selection boards for promotion to the grade of brigadier general or rear admiral (lower half) officers in the grade of colonel or, in the case of the Navy, captain who—

(i) have been considered and not selected for promotion to the grade of brigadier general or rear admiral (lower half) by at least two selection boards; and

(ii) are determined, in accordance with standards and procedures prescribed pursuant to subparagraph (B), as not being exceptionally well qualified for promotion.

(B) If the Secretary of Defense authorizes the Secretaries of the military departments to have the authority described in subparagraph (A), the Secretary shall prescribe by regulation the standards and procedures for the exercise of such authority. Those regulations shall apply uniformly among the military departments and shall include the following provisions:

(i) A requirement that the Secretary of a military department may exercise such authority in the case of a particular selection board only if the Secretary of Defense approves the exercise of that authority for that board.

(ii) A requirement that an officer may be precluded from consideration by a selection board under this paragraph only upon the recommendation of a preselection board of officers convened by the Secretary of the military department concerned and composed of at least three officers all of whom are serving in a grade higher than the grade of such officer.

(iii) A requirement that such a preselection board may not recommend that an officer be precluded from such consideration unless the Secretary concerned has given the officer advance written notice of the convening of such board and of the military records that will be considered by the board and has given the officer a reasonable period before the convening of the board in which to submit comments to the board.

(iv) A requirement that the Secretary convening such a preselection board shall provide general guidance to the board in accordance with standards and procedures prescribed by the Secretary of Defense in those regulations.

(v) A requirement that the preselection board may recommend that an officer be precluded from consideration by a selection board only on the basis of the general guidance provided by the Secretary of the military department concerned, information in the officer's official military personnel records that has been described in the notice provided the officer as required pursuant to clause (iii), and any communication to the board received from that officer before the board convenes.

(d) CERTAIN OFFICERS NOT TO BE CONSIDERED.—A selection board convened under section 611(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of his selection

for promotion to that grade by an earlier selection board convened under that section.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under that section, in the case of such a report that has not yet been approved by the President.

(3) An officer of the Marine Corps who is an officer designated for limited duty and who holds a grade above major.

(4) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 624(a)(3) of this title.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2854; amended Pub. L. 97–22, §4(c), July 10, 1981, 95 Stat. 126; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §§525(a), (b), 529(a), Oct. 19, 1984, 98 Stat. 2524, 2525, 2526; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–433, title IV, §404, Oct. 1, 1986, 100 Stat. 1032; Pub. L. 100–180, div. A, title XIII, §§1305(a), 1314(b)(4), Dec. 4, 1987, 101 Stat. 1173, 1175; Pub. L. 100–456, div. A, title V, §515(a)(1), (b), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 102–190, div. A, title V, §504(d), Dec. 5, 1991, 105 Stat. 1357; Pub. L. 103–160, div. A, title IX, §931(b), (c)(1), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103–337, div. A, title X, §1070(b)(7), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–85, div. A, title V, §503(a), Nov. 18, 1997, 111 Stat. 1724; Pub. L. 107–107, div. A, title V, §§504, 505(c)(1)(A), Dec. 28, 2001, 115 Stat. 1085, 1087.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §504(b)(1), inserted heading.

Subsec. (a)(1)(B). Pub. L. 107–107, §504(a), inserted '', except that the minimum period of service in effect under this subparagraph before October 1, 2005, shall be eighteen months'' before period at end.

Subsec. (a)(4). Pub. L. 107–107, §504(c), substituted ''subparagraph (A)'' for ''clause (A)''.

Subsec. (b). Pub. L. 107–107, §504(b)(2), inserted heading.

Subsec. (c). Pub. L. 107–107, §504(b)(3), inserted heading.

Subsec. (d). Pub. L. 107–107, §504(b)(4), inserted heading.

Subsec. (d)(4). Pub. L. 107–107, §505(c)(1)(A), added par. (4).

1997—Subsec. (d). Pub. L. 105–85, §503(a)(1), substituted ''grade any of the following officers:'' for ''grade—'' in introductory provisions.

Subsec. (d)(1). Pub. L. 105–85, §503(a)(2), substituted ''An officer'' for ''an officer'' and a period for ''; or''.

Subsec. (d)(2). Pub. L. 105–85, §503(a)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 105–85, §503(a)(3), redesignated par. (2) as (3) and substituted ''An officer'' for ''an officer''.

1994—Pub. L. 103–337 made technical correction to directory language of Pub. L. 103–160, §931(c)(1). See 1993 Amendment note below.

1993—Pub. L. 103–160, §931(c)(1), as amended by Pub. L. 103–337, inserted '': time-in-grade and other requirements'' in section catchline.

Subsec. (e). Pub. L. 103–160, §931(b), struck out subsec. (e) which specified certain requirements for appointment to grade of brigadier general or rear admiral (lower half). See section 619a of this title.

1991—Subsec. (c)(2). Pub. L. 102–190, §504(d)(1), added subpar. (A), redesignated subpars. (C) and (D) as (B) and (C) respectively, and struck out former subpars. (A) and (B) which read as follows:

''(A) may, by regulation, prescribe procedures to limit the officers to be considered by a selection board—

''(i) from below the promotion zone; or

''(ii) in the case of a selection board to recommend officers for promotion to the grade of brigadier general or rear admiral (lower half),

to those officers who are determined to be exceptionally well qualified for promotion;

''(B) may, by regulation, prescribe criteria for determining which officers below the promotion zone or in the grades of colonel and, in the case of officers of the Navy, captain are exceptionally well qualified for promotion for the purposes of clause (A);''.

Subsec. (c)(3). Pub. L. 102–190, §504(d)(2), added par. (3).

1988—Subsec. (e)(1). Pub. L. 100–456, §515(a)(1)(A), substituted ''January 1, 1994'' for ''January 1, 1992'' in second sentence.

Subsec. (e)(2)(D), (E). Pub. L. 100–456, §515(b)(1), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: ''until January 1, 1992, in the case of an officer who served before October 1, 1986, in an assignment (other than a joint duty assignment) that involved significant experience in joint matters (as determined by the Secretary).''

Subsec. (e)(3)(C). Pub. L. 100–456, §515(b)(2), substituted ''paragraph (2) (other than under subparagraph (A) of that paragraph)'' for ''paragraph (2)(B), (2)(C), or (2)(D)''.

Subsec. (e)(5). Pub. L. 100–456, §515(a)(1)(B), added par. (5).

1987—Subsec. (e)(1). Pub. L. 100–180, §1305(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''An officer may not be selected for promotion to the grade of brigadier general or rear admiral (lower half) unless the officer has served in a joint duty assignment.''

Subsec. (e)(2)(D). Pub. L. 100–180, §1314(b)(4), substituted ''October 1, 1986,'' for ''the date of the enactment of this subsection''.

1986—Subsec. (e). Pub. L. 99–433 added subsec. (e).

1985—Subsecs. (a)(2)(B), (c)(2)(A)(ii). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (b). Pub. L. 98–525, §525(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), an officer'' for ''An officer'', and added par. (2).

Subsec. (c)(2)(D). Pub. L. 98–525, §525(b), added subpar. (D).

Subsec. (d)(2). Pub. L. 98–525, §529(a), struck out ''Navy or'' before ''Marine Corps'' and struck out ''lieutenant commander or'' before ''major''.

1981—Subsec. (a)(2)(B). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (c)(2)(A). Pub. L. 97–22, §4(c)(1), struck out ''and'' after ''promotion;''.

Subsec. (c)(2)(A)(ii). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (c)(2)(B). Pub. L. 97–22, §4(c)(2), substituted ''for the purposes of clause (A); and'' for the period at end of cl. (B).

Subsec. (c)(2)(C). Pub. L. 97–22, §4(c)(3), added cl. (C).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 503(d) of Pub. L. 105–85 provided that: ''The amendments made by this section [amending this section and section 14301 of this title] shall take effect on the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to selection boards that are convened under section 611(a), 14101(a), or 14502 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 applicable to selection boards convened under section 611(a) of this title after end of 60-day period beginning Dec. 5, 1991, see section 504(e) of Pub. L. 102–190, set out as a note under section 615 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 663 of this title.

§ 619a. Eligibility for consideration for promotion: joint duty assignment required before promotion to general or flag grade; exceptions

(a) GENERAL RULE.—An officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may not be appointed to the grade of brigadier general or rear admiral (lower half) unless—

(1) the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title); and

(2) for appointments after September 30, 2007, the officer has been selected for the joint specialty in accordance with section 661 of this title.

(b) EXCEPTIONS.—Subject to subsection (c), the Secretary of Defense may waive paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1) and (2) of subsection (a), in the following circumstances:

(1) When necessary for the good of the service.

(2) In the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(3) In the case of—

(A) a medical officer, dental officer, veterinary officer, medical service officer, nurse, or biomedical science officer;

(B) a chaplain; or

(C) a judge advocate.

(4) In the case of an officer selected by a promotion board for appointment to the grade of brigadier general or rear admiral (lower half) while serving in a joint duty assignment if—

(A) at least 180 days of that joint duty assignment have been completed on the date of the convening of that selection board; and

(B) the officer's total consecutive service in joint duty assignments within that immediate organization is not less than two years.

(5) In the case of an officer who served in a joint duty assignment that began before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for the officer's service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

(c) WAIVER TO BE INDIVIDUAL.—A waiver may be granted under subsection (b) only on a case-by-case basis in the case of an individual officer.

(d) SPECIAL RULE FOR GOOD-OF-THE-SERVICE WAIVER.—In the case of a waiver under subsection (b)(1), the Secretary shall provide that the first duty assignment as a general or flag officer of the officer for whom the waiver is granted shall be in a joint duty assignment.

(e) LIMITATION ON DELEGATION OF WAIVER AUTHORITY.—The authority of the Secretary of Defense to grant a waiver under subsection (b) (other than under paragraph (1) of that subsection) may be delegated only to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall specifically identify for purposes of subsection (b)(2) those categories of officers for which selection for promotion to brigadier general or, in the case of the Navy, rear admiral (lower half) is based primarily upon scientific and technical qualifications for which joint requirements do not exist.

(g) LIMITATION FOR GENERAL AND FLAG OFFICERS PREVIOUSLY RECEIVING JOINT DUTY ASSIGNMENT WAIVER.—A general officer or flag officer who before January 1, 1999, received a waiver of subsection (a) under the authority of this subsection (as in effect before that date) may not be appointed to the grade of lieutenant general or vice admiral until the officer completes a full tour of duty in a joint duty assignment.

(h) SPECIAL TRANSITION RULES FOR NUCLEAR PROPULSION OFFICERS.—An officer of the Navy designated as a qualified nuclear propulsion officer who before January 1, 1997, is appointed to the grade of rear admiral (lower half) without regard to subsection (a) may not be appointed to the grade of rear admiral until the officer completes a full tour of duty in a joint duty assignment.

(Added Pub. L. 103–160, div. A, title IX, § 931(a), Nov. 30, 1993, 107 Stat. 1732; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title V, § 508, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–107, div. A, title V, § 525(a), (b), Dec. 28, 2001, 115 Stat. 1099.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, § 525(a), substituted ''unless—'' and pars. (1) and (2) for ''unless the officer has completed a full tour of duty in a joint duty assignment (as described in section 664(f) of this title).''

Subsec. (b). Pub. L. 107–107, § 525(b), in introductory provisions, substituted ''may waive paragraph (1) or paragraph (2) of subsection (a), or both paragraphs (1)

and (2) of subsection (a), in the following circumstances:'' for ''may waive subsection (a) in the following circumstances:''.

1999—Subsec. (g). Pub. L. 106–65, §508(a), amended heading and text of subsec. (g) generally. Prior to amendment, subsec. (g) authorized the Secretary until Jan. 1, 1999, to waive subsecs. (a) and (d) for certain officers and contained restrictions on appointments of those officers.

Subsec. (h). Pub. L. 106–65, §508(b), substituted ''An officer of the Navy'' for ''(1) Until January 1, 1997, an officer of the Navy'' and ''who before January 1, 1997, is'' for ''may be'' and struck out ''. An officer so appointed'' before ''may not be appointed'' and par. (2) which read as follows: ''Not later than March 1 of each year from 1994 through 1997, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the implementation during the preceding calendar year of the transition plan developed by the Secretary pursuant to section 1305(b) of Public Law 100–180 (10 U.S.C. 619a note) with respect to service by qualified nuclear propulsion officers in joint duty assignments.''

1996—Subsec. (h)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

PROPOSED LEGISLATIVE CHANGES

Pub. L. 107–107, div. A, title V, §525(c), Dec. 28, 2001, 115 Stat. 1099, provided that: ''Not later than December 1, 2002, the Secretary of Defense shall submit to Congress a draft proposal for such legislative changes as the Secretary considers needed to implement the amendment made by subsections (a) and (b) [amending this section].''

REPORT ON PLANS FOR COMPLIANCE

Section 931(d) of Pub. L. 103–160 provided that: ''Not later than February 1, 1994, the Secretary of Defense shall certify to Congress that the Army, Navy, Air Force, and Marine Corps have each developed and implemented a plan for their officer personnel assignment and promotion policies so as to ensure compliance with the requirements of section 619a of title 10, United States Code, as added by subsection (a). Each such plan should particularly ensure that by January 1, 1999, the service covered by the plan shall have enough officers who have completed a full tour of duty in a joint duty assignment so as to permit the orderly promotion of officers to brigadier general or, in the case of the Navy, rear admiral (lower half) pursuant to the requirements of chapter 38 of title 10, United States Code.''

REVISION OF TRANSITION PLAN

Section 931(f)(2) of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(8)(A), Oct. 5, 1994, 108 Stat. 2857, provided that: ''The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall revise the transition plan developed pursuant to section 1305(b) of Public Law 100–180 [set out below] to take account of the amendments made by subsection (a) and by paragraph (1) of this subsection [enacting this section and amending provisions set out below]. The Secretary shall include with the next report of the Secretary after the date of the enactment of this Act [Nov. 30, 1993] under section 619a(h)(2) of title 10, United States Code, as added by subsection (a), a report on the actions of the Secretary in revising such transition plan.''

Section 515(a)(3) of Pub. L. 100–456 provided that: ''The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall revise the transition plan developed pursuant to section 1305(b) of Public Law 100–180 [set out below] to take account of the amendments made by paragraphs (1) and (2) [amending section 619 of this title and provisions set out below]. The Secretary shall include with the first report of the Secretary under section 619(e)(5) of title 10, United States Code, as added by paragraph (1)(B), a report on the actions of the Secretary in revising such transition plan.''

PLAN FOR SERVICE BY QUALIFIED NUCLEAR PROPULSION OFFICERS IN JOINT DUTY ASSIGNMENTS BY JANUARY 1, 1997; IMPLEMENTATION; REPORT

Section 1305(b)–(d) of Pub. L. 100–180, as amended by Pub. L. 100–456, div. A, title V, §515(a)(2), Sept. 29, 1988, 102 Stat. 1970; Pub. L. 103–160, div. A, title IX, §931(f)(1), (3), Nov. 30, 1993, 107 Stat. 1734; Pub. L. 103–337, div. A, title X, §1070(b)(8), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(b) TRANSITION PLAN.—(1) The Secretary of Defense, after consultation with the Chairman of the Joint Chiefs of Staff, shall develop and carry out a plan for ensuring that—

''(A) during the period before January 1, 1997, the maximum practicable number of officers of the Navy who are qualified nuclear propulsion officers serve in joint duty assignments and otherwise fulfill the provisions of chapter 38 of title 10, United States Code; and

''(B) by January 1, 1997, the maximum practicable number of qualified nuclear propulsion officers in the grade of captain have qualified for appointment to the grade of rear admiral (lower half) by completing a full tour of duty in a joint duty assignment.

''(2) The plan shall include milestones for each calendar year beginning with 1989 requiring that a progressively greater proportion of qualified nuclear propulsion officers fulfill the various requirements of chapter 38 of title 10, United States Code, and other provisions of law enacted by title IV of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433) [sections 401–406 of Pub. L. 99–433, see Tables for classification] so that after January 1, 1997, the nuclear propulsion community will be capable of complying with the requirements of that chapter without undue reliance on waivers granted by the Secretary of Defense.

''(c) IMPLEMENTATION.—The plan required to be developed under subsection (b) shall be implemented at the earliest practicable date, but in no event later than six months after the date of enactment of this Act [Dec. 4, 1987]. The Chairman of the Joint Chiefs of Staff shall monitor the implementation of such plan.

''(d) REPORT.—On the date on which the plan required to be developed under subsection (b) is implemented, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives—

''(1) a copy of the plan; and

''(2) a report explaining how the plan fulfills the objectives prescribed in subsection (b).''

§ 620. Active-duty lists

(a) The Secretary of the military department concerned shall maintain a single list of all officers (other than officers described in section 641 of this title) who are on active duty for each armed force under his jurisdiction (other than the Coast Guard when it is operating as a service in the Navy).

(b) Officers shall be carried on the active-duty list of the armed force of which they are members in the order of seniority of the grade in which they are serving on active duty. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(c) An officer whose position on the active-duty list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position

on the active-duty list that he would have held if he had not received that appointment or assignment.

(d) Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is ordered to active duty (whether voluntarily or involuntarily) during a war or national emergency and who would otherwise be placed on the active-duty list may be excluded from that list as determined by the Secretary concerned. Exclusion of an officer from the active-duty list as the result of action by the Secretary concerned under the preceding sentence shall expire not later than 24 months after the date on which the officer enters active duty under an order to active duty covered by that sentence.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2855; amended Pub. L. 103–337, div. A, title XVI, §1624, Oct. 5, 1994, 108 Stat. 2961; Pub. L. 104–106, div. A, title XV, §1501(a)(1), Feb. 10, 1996, 110 Stat. 495.)

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106 made technical amendment to Pub. L. 103–337, §1624. See 1994 Amendment note below.

1994—Subsec. (d). Pub. L. 103–337, §1624, as amended by Pub. L. 104–106, added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

Regulations prescribed under this section applicable to establishment of initial active-duty lists, see section 621(a) of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 14002 of this title.

§621. Competitive categories for promotion

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

§622. Numbers to be recommended for promotion

Before convening a selection board under section 611(a) of this title for any grade and competitive category, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, and (3) the number of officers authorized by the Secretary of the military department concerned to serve on active duty in the grade and competitive category under consideration. Based on such determinations, the Secretary of the military department concerned shall determine the maximum number of officers in such competitive category which the selection board may recommend for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 615 of this title.

§623. Establishment of promotion zones

(a) Before convening a selection board under section 611(a) of this title to consider officers for promotion to any grade above first lieutenant or lieutenant (junior grade), the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) The secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category. Such determination shall be made on the basis of an estimate of—

(1) the number of officers needed in that competitive category in the next higher grade in each of the next five years;

(2) the number of officers to be serving in that competitive category in the next higher grade in each of the next five years;

(3) in the case of a promotion zone for officers to be promoted to a grade to which section 523 of this title is applicable, the number of officers authorized for such grade under such section to be on active duty on the last day of each of the next five fiscal years; and

(4) the number of officers that should be placed in that promotion zone in each of the next five years to provide to officers in those years relatively similar opportunity for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 627 of this title.

§ 624. Promotions: how made

(a)(1) When the report of a selection board convened under section 611(a) of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers approved for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of the seniority of such officers on the active-duty list.

(2) Except as provided in subsection (d), officers on a promotion list for a competitive category shall be promoted to the next higher grade when additional officers in that grade and competitive category are needed. Promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted. Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

(3)(A) Except as provided in subsection (d), officers on the active-duty list in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the active-duty list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title upon the convening of such a board.

(b)(1) A regular officer who is promoted under this section is appointed in the regular grade to which promoted and a reserve officer who is promoted under this section is appointed in the reserve grade to which promoted.

(2) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d) of this title.

(c) Appointments under this section shall be made by the President, by and with the advice and consent of the Senate, except that appointments under this section in the grade of first lieutenant or captain, in the case of officers of the Army, Air Force, or Marine Corps, or lieutenant (junior grade) or lieutenant, in the case of officers of the Navy, shall be made by the President alone.

(d)(1) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed if—

(A) sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and such charges have not been disposed of;

(B) an investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer;

(C) a board of officers has been convened under chapter 60 of this title to review the record of the officer; or

(D) a criminal proceeding in a Federal or State court is pending against the officer.

If no disciplinary action is taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not ordered removed from active duty by the Secretary concerned under chapter 60 of this title, or if the officer is acquitted of the charges brought against him, as the case may be, then unless action to delay an appointment has also been taken under paragraph (2) the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(2) Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade for which he was selected for promotion. If the Secretary concerned later determines that the officer is qualified for promotion to such grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and shall, upon such promotion, have the same date of rank, the same effective date for pay and allowances in the higher grade to which appointed, and the same position on the active-duty list as he would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considers appropriate under the circumstances.

(3) The appointment of an officer may not be delayed under this subsection unless the officer has been given written notice of the grounds for the delay, unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable. An officer

whose promotion has been delayed under this subsection shall be afforded an opportunity to make a written statement to the Secretary concerned in response to the action taken. Any such statement shall be given careful consideration by the Secretary.

(4) An appointment of an officer may not be delayed under this subsection for more than six months after the date on which the officer would otherwise have been appointed unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against such officer in a Federal or State court, more than 90 days after final action has been taken in any court-martial case against such officer, or more than 18 months after the date on which such officer would otherwise have been appointed, whichever is later.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2857; amended Pub. L. 97–22, §4(d), July 10, 1981, 95 Stat. 126; Pub. L. 97–295, §1(8), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–525, title V, §526, Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107–107, div. A, title V, §505(a)(1), (c)(2)(A), (d)(1), Dec. 28, 2001, 115 Stat. 1085, 1087, 1088; Pub. L. 107–314, div. A, title X, §1062(a)(2), Dec. 2, 2002, 116 Stat. 2649.)

AMENDMENTS

2002—Subsec. (d)(1). Pub. L. 107–314 substituted ''paragraph (2)'' for ''subsection (d)(2)'' in concluding provisions.

2001—Subsec. (a)(3). Pub. L. 107–107, §505(a)(1), added par. (3).

Subsec. (c). Pub. L. 107–107, §505(d)(1), inserted '', in the case of officers of the Army, Air Force, or Marine Corps,'' after ''captain'' and '', in the case of officers of the Navy,'' after ''(junior grade) or lieutenant''.

Subsec. (d)(1). Pub. L. 107–107, §505(c)(2)(A)(i), inserted ''(including an approved all-fully-qualified-officers list, if applicable)'' after ''retained on the promotion list'' in concluding provisions.

Subsec. (d)(2). Pub. L. 107–107, §505(c)(2)(A)(ii), inserted ''shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable) and'' after ''to such grade, the officer'' in second sentence.

1984—Subsec. (d)(1), (2). Pub. L. 98–525 inserted provision for a determination by the Secretary concerned that the officer was unqualified for promotion for any part of the delay in the officer's promotion, with the inserted provision that if the Secretary made such a determination, the Secretary could adjust such date of rank, effective date of pay and allowances, and position on the active-duty list as the Secretary considered appropriate under the circumstances.

1982—Subsec. (d)(4). Pub. L. 97–295 substituted ''this subsection'' for ''the subsection''.

1981—Subsec. (a)(1). Pub. L. 97–22, §4(d)(1)(A), struck out ''or in the case of officers selected for promotion to the grade of first lieutenant or lieutenant (junior grade), when a list of officers selected for promotion is approved by the President,'' after ''by the President,''.

Subsec. (a)(2). Pub. L. 97–22, §4(d)(1)(B), inserted provision that officers to be promoted to grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary concerned.

Subsec. (c). Pub. L. 97–22, §4(d)(2), substituted ''under this section in the grade of first lieutenant or captain or lieutenant (junior grade) or lieutenant'' for ''in the grade of first lieutenant or lieutenant (junior grade) under this section''.

Subsec. (d)(1). Pub. L. 97–22, §4(d)(3)(A), (B), substituted ''Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may be delayed'' for ''The Secretary concerned may delay the appointment of an officer under this section'' in provisions preceding subpar. (A) and, in provisions following subpar. (D), inserted ''then unless action to delay an appointment has also been taken under subsection (d)(2)'' after ''as the case may be,''.

Subsec. (d)(2). Pub. L. 97–22, §4(d)(3)(C), substituted ''Under regulations prescribed by the Secretary concerned, the appointment of an officer under this section may also be delayed in any case in which'' for ''the Secretary concerned may also delay the appointment of an officer to the next higher grade under this section in any case in which the Secretary finds that''.

Subsec. (d)(3). Pub. L. 97–22, §4(d)(3)(D), (E), inserted '', unless it is impracticable to give such written notice before the effective date of the appointment, in which case such written notice shall be given as soon as practicable'' after ''grounds for the delay'' and struck out ''by the Secretary'' after ''the action taken''.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) to appoint officers in grades of first lieutenant and captain in Army, Air Force, and Marine Corps or in grades of lieutenant (junior grade) and lieutenant in Navy delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(c), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 611, 619, 626, 628, 631, 741, 12203, 14308 of this title.

§625. Authority to vacate promotions to grades of brigadier general and rear admiral (lower half)

(a) The President may vacate the promotion to the grade of brigadier general or rear admiral (lower half) of an officer who has served less than 18 months in that grade after promotion to that grade under this chapter.

(b) An officer of the Army, Air Force, or Marine Corps whose promotion is vacated under this section holds the regular grade of colonel, if he is a regular officer, or the reserve grade of colonel, if he is a reserve officer. An officer of the Navy whose promotion is vacated under this section holds the regular grade of captain, if he is a regular officer, or the reserve grade of captain, if he is a reserve officer.

(c) The position on the active-duty list of an officer whose promotion is vacated under this section is the position he would have held had he not been promoted to the grade of brigadier general or rear admiral (lower half).

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2858; amended Pub. L. 97–86, title IV, §405(b)(1), (4)(A), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), (4)(A), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in section catchline and subsecs. (a) and (c).

1981—Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in section catchline and subsecs. (a) and (c).

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

§ 626. Acceptance of promotions; oath of office

(a) An officer who is appointed to a higher grade under section 624 of this title is considered to have accepted such appointment on the date on which the appointment is made unless he expressly declines the appointment.

(b) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under section 624 of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2858.)

SUBCHAPTER III—FAILURE OF SELECTION FOR PROMOTION AND RETIREMENT FOR YEARS OF SERVICE

Sec.
627. Failure of selection for promotion.
628. Special selection boards.
629. Removal from a list of officers recommended for promotion.
630. Discharge of commissioned officers with less than five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade).
631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade).
632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy.
633. Retirement for years of service: regular lieutenant colonels and commanders.
634. Retirement for years of service: regular colonels and Navy captains.
635. Retirement for years of service: regular brigadier generals and rear admirals (lower half).
636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half).

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 505(d)(4), Dec. 28, 2001, 115 Stat. 1088, struck out ''regular'' before ''commissioned officers'' in item 630, struck out ''regular'' before ''first lieutenants'' in item 631, and struck out ''regular'' before ''captains and majors'' and before ''lieutenants and lieutenant commanders'' in item 632.

1997—Pub. L. 105–85, div. A, title V, § 506(c), Nov. 18, 1997, 111 Stat. 1726, substituted ''regular officers in grades above brigadier general and rear admiral (lower half)'' for ''regular major generals and rear admirals'' in item 636.

1985—Pub. L. 99–145, title V, § 514(b)(5)(B), Nov. 8, 1985, 99 Stat. 628, substituted ''rear admirals (lower half)'' for ''commodores'' in item 635.

1981—Pub. L. 97–86, title IV, § 405(b)(5)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodores'' for ''commodore admirals'' in item 635.

§ 627. Failure of selection for promotion

An officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain who is in or above the promotion zone established for his grade and competitive category under section 623 of this title and is considered but not selected for promotion by a selection board convened under section 611(a) of this title shall be considered to have failed of selection for promotion.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2859.)

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 628. Special selection boards

(a) PERSONS NOT CONSIDERED BY PROMOTION BOARDS DUE TO ADMINISTRATIVE ERROR.—(1) If the Secretary of the military department concerned determines that because of administrative error a person who should have been considered for selection for promotion by a promotion board was not so considered, or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed, the Secretary shall convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record would have appeared to the board that should have considered him. That record shall be compared with a sampling of the records of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that should have considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person shall be considered to have failed of selection for promotion.

(b) PERSONS CONSIDERED BY PROMOTION BOARDS IN UNFAIR MANNER.—(1) If the Secretary of the military department concerned determines, in the case of a person who was considered for selection for promotion by a promotion board but was not selected, that there was material unfairness with respect to that person, the Secretary may convene a special selection board under this subsection to determine whether that person (whether or not then on active duty) should be recommended for promotion. In order to determine that there was material unfairness, the Secretary must determine that—

(A) the action of the promotion board that considered the person was contrary to law or involved material error of fact or material administrative error; or

(B) the board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall consider the record of the person whose name was referred to it for consideration as that record, if corrected, would have appeared to the board that considered him. That record shall be compared with the records of a sampling of those officers of the same competitive category who were recommended for promotion, and those officers who were not recommended for promotion, by the board that considered him.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion a person whose name was referred to it for consideration, the person incurs no additional failure of selection for promotion.

(c) REPORTS OF BOARDS.—(1) Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each person it recommends for promotion and certifying that the board has carefully considered the record of each person whose name was referred to it.

(2) The provisions of sections 617(b) and 618 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a selection board convened under section 611(a) of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, the provisions of sections 576(d) and 576(f) of this title (rather than the provisions of sections 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.

(d) APPOINTMENT OF PERSONS SELECTED BY BOARDS.—(1) If the report of a special selection board convened under this section, as approved by the President, recommends for promotion to the next higher grade a person whose name was referred to it for consideration, that person shall, as soon as practicable, be appointed to that grade in accordance with subsections (b), (c), and (d) of section 624 of this title. However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).

(2) A person who is appointed to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon that appointment, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the active-duty list as he would have had if he had been recommended for promotion to that grade by the board which should have considered, or which did consider, him. In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.

(e) DECEASED PERSONS.—If a person whose name is being considered for referral to a special selection board under this section dies before the completion of proceedings under this section with respect to that person, this section shall be applied to that person posthumously.

(f) CONVENING OF BOARDS.—A board convened under this section—

(1) shall be convened under regulations prescribed by the Secretary of Defense;

(2) shall be composed in accordance with section 612 of this title or, in the case of board to consider a warrant officer or former warrant officer, in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned; and

(3) shall be subject to the provisions of section 613 of this title.

(g) JUDICIAL REVIEW.—(1)(A) A court of the United States may review a determination by the Secretary of a military department under subsection (a)(1) or (b)(1) not to convene a special selection board in the case of any person. In any such case, the court may set aside the Secretary's determination only if the court finds the determination to be—

(i) arbitrary or capricious;

(ii) not based on substantial evidence;

(iii) a result of material error of fact or material administrative error; or

(iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special selection board under this section, it shall remand the case to the Secretary concerned, who shall provide for consideration by such a board.

(2) A court of the United States may review the action of a special selection board convened under this section or an action of the Secretary of the military department concerned on the report of such a board. In any such case, a court may set aside the action only if the court finds that the action was—

(A) arbitrary or capricious;

(B) not based on substantial evidence;

(C) a result of material error of fact or material administrative error; or

(D) otherwise contrary to law.

(3)(A) If, six months after receiving a complete application for consideration by a special selection board under this section in any case, the Secretary concerned has not convened such a board and has not denied consideration by such a board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied the consideration of the case by such a board.

(B) If, six months after the convening of a special selection board under this section in any case, the Secretary concerned has not taken final action on the report of the board, the Sec-

retary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (j), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(h) LIMITATIONS OF OTHER JURISDICTION.—No official or court of the United States may, with respect to a claim based to any extent on the failure of a person to be selected for promotion by a promotion board—

(1) consider the claim unless the person has first been referred by the Secretary concerned to a special selection board convened under this section and acted upon by that board and the report of the board has been approved by the President; or

(2) except as provided in subsection (g), grant any relief on the claim unless the person has been selected for promotion by a special selection board convened under this section to consider the person for recommendation for promotion and the report of the board has been approved by the President.

(i) EXISTING JURISDICTION.—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(j) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (g), other than to paragraph (3)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special selection board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person's case by a special selection board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(k) PROMOTION BOARD DEFINED.—In this section, the term ''promotion board'' means a selection board convened by the Secretary of a military department under section 573(a) or 611(a) of this title.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2859; amended Pub. L. 98–525, title V, §527(a), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 102–190, div. A, title XI, §1131(4), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 102–484, div. A, title X, §1052(10), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 105–261, div. A, title V, §501(a)–(e), Oct. 17, 1998, 112 Stat. 2000–2002; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–107, div. A, title V, §§503(b), 505(c)(3)(A), Dec. 28, 2001, 115 Stat. 1083, 1088.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107, §505(c)(3)(A), inserted ''or the name of a person that should have been placed on an all-fully-qualified-officers list under section 624(a)(3) of this title was not so placed,'' after ''not so considered,''.

Subsecs. (g) to (k). Pub. L. 107–107, §503(b), added subsecs. (g) to (j) and redesignated former subsec. (g) as (k).

2000—Subsec. (c)(2). Pub. L. 106–398 substituted ''sections'' for ''section'' after ''rather than the provisions of''.

1998—Subsec. (a). Pub. L. 105–261, §501(a)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: ''In the case of an officer who is eligible for promotion who the Secretary of the military department concerned determines was not considered for selection for promotion by a selection board because of administrative error, the Secretary concerned, under regulations prescribed by the Secretary of Defense, shall convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion.''

Subsec. (a)(2). Pub. L. 105–261, §501(a)(2), substituted ''the person whose name was referred to it for consideration as that record'' for ''the officer as his record''.

Subsec. (a)(3). Pub. L. 105–261, §501(a)(3), substituted ''a person whose name was referred to it for consideration for selection for appointment to a grade other than a general officer or flag officer grade, the person'' for ''an officer in a grade below the grade of colonel or, in the case of an officer of the Navy, captain whose name was referred to it for consideration, the officer''.

Subsec. (b). Pub. L. 105–261, §501(b)(1), inserted subsec. heading, added par. (1), and struck out former par. (1) which read as follows: ''In the case of an officer who is eligible for promotion who was considered for selection for promotion by a selection board but was not selected, the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, may convene a special selection board under this subsection (composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 573 of this title and regulations prescribed by the Secretary of the military department concerned) to determine whether such officer should be recommended for promotion if the Secretary concerned determines that—

''(A) the action of the board which considered the officer was contrary to law or involved material error of fact or material administrative error; or

''(B) the board did not have before it for its consideration material information.''

Subsec. (b)(2). Pub. L. 105–261, §501(b)(2), substituted ''the person whose name was referred to it for consideration as that record'' for ''the officer as his record''.

Subsec. (b)(3). Pub. L. 105–261, §501(b)(3)(A), substituted ''a person'' for ''an officer'' and ''the person'' for ''the officer''.

Subsec. (c). Pub. L. 105–261, §501(c)(1)(A), inserted heading.

Subsec. (c)(1). Pub. L. 105–261, §501(c)(1)(B), substituted ''person'' for ''officer'' in two places.

Subsec. (c)(2). Pub. L. 105–261, §501(c)(1)(C), inserted at end ''However, in the case of a board convened under this section to consider a warrant officer or former

warrant officer, the provisions of sections 576(d) and 576(f) of this title (rather than the provisions of section 617(b) and 618 of this title) apply to the report and proceedings of the board in the same manner as they apply to the report and proceedings of a selection board convened under section 573 of this title.''

Subsec. (d). Pub. L. 105–261, §501(c)(2)(A), inserted heading.

Subsec. (d)(1). Pub. L. 105–261, §501(c)(2)(B)–(E), substituted ''a person'' for ''an officer'', ''that person'' for ''such officer'', and ''that grade in'' for ''the next higher grade in'' and inserted at end ''However, in the case of a board convened under this section to consider a warrant officer or former warrant officer, if the report of that board, as approved by the Secretary concerned, recommends that warrant officer or former warrant officer for promotion to the next higher grade, that person shall, as soon as practicable, be appointed to the next higher grade in accordance with provisions of section 578(c) of this title (rather than subsections (b), (c), and (d) of section 624 of this title).''

Subsec. (d)(2). Pub. L. 105–261, §501(c)(3), substituted ''A person who is appointed'' for ''An officer who is promoted'' and ''that appointment'' for ''such promotion'' and inserted at end ''In the case of a person who is not on the active-duty list when appointed to the next higher grade, placement of that person on the active-duty list pursuant to the preceding sentence shall be only for purposes of determination of eligibility of that person for consideration for promotion by any subsequent special selection board under this section.''

Subsec. (e). Pub. L. 105–261, §501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The provisions of section 613 of this title apply to members of special selection boards convened under this section.''

Subsecs. (f), (g). Pub. L. 105–261, §501(e), added subsecs. (f) and (g).

1992—Subsec. (b)(1). Pub. L. 102–484 substituted ''section 573'' for ''section 558''.

1991—Subsec. (a)(1). Pub. L. 102–190 substituted ''section 573'' for ''section 558''.

1984—Subsecs. (a)(1), (b)(1). Pub. L. 98–525 substituted ''(composed in accordance with section 612 of this title or, in the case of a warrant officer, composed in accordance with section 558 of this title and regulations prescribed by the Secretary of the military department concerned)'' for ''(composed in accordance with section 612 of this title)''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §503(c), Dec. 28, 2001, 115 Stat. 1084, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 1558 of this title and amending this section] shall apply with respect to any proceeding pending on or after the date of the enactment of this Act [Dec. 28, 2001] without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date.

''(2) The amendments made by this section shall not apply with respect to any action commenced in a court of the United States before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (d)(1) to approve, modify, or disapprove report of a selection board delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(a), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

RATIFICATION OF CODIFIED PRACTICE

Pub. L. 105–261, div. A, title V, §501(f), Oct. 17, 1998, 112 Stat. 2002, provided that: ''The consideration by a special selection board convened under section 628 of title 10, United States Code, before the date of the enactment of this Act [Oct. 17, 1998] of a person who, at the time of consideration, was a retired officer or former officer of the Armed Forces (including a deceased retired or former officer) is hereby ratified.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 618, 641, 1558 of this title.

§629. Removal from a list of officers recommended for promotion

(a) The President may remove the name of any officer from a list of officers recommended for promotion by a selection board convened under this chapter.

(b) If, after consideration of a list of officers approved for promotion by the President, the Senate does not give its advice and consent to the appointment of an officer whose name is on the list, that officer's name shall be removed from the list.

(c)(1) An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If he is recommended for promotion by the next selection board convened for his grade and competitive category and he is promoted, the Secretary of the military department concerned may, upon such promotion, grant him the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the active-duty list as he would have had if his name had not been so removed.

(2) If such an officer who is in a grade below the grade of colonel or, in the case of the Navy, captain is not recommended for promotion by the next selection board convened for his grade and competitive category, or if his name is again removed from the list of officers recommended for promotion, of if the Senate again does not give its advice and consent to his promotion, he shall be considered for all purposes to have twice failed of selection for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2860.)

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) to remove name of any officer from a promotion list to any grade below commodore or brigadier general delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(b), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

§630. Discharge of commissioned officers with less then five years of active commissioned service or found not qualified for promotion for first lieutenant or lieutenant (junior grade)

The Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense—

(1) may discharge any officer on the active-duty list who—

(A) has less than five years of active commissioned service; or

(B) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade); and

(2) shall, unless the officer has been promoted, discharge any officer described in clause (1)(B) at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98–525, title XIV, §1405(11), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 107–107, div. A, title V, §505(d)(2), (4)(A), Dec. 28, 2001, 115 Stat. 1088.)

AMENDMENTS

2001—Pub. L. 107–107, §505(d)(4)(A), struck out ''regular'' before ''commissioned officers'' in section catchline.

Par. (1). Pub. L. 107–107, §505(d)(2), struck out ''regular'' before ''officer'' in introductory provisions and before ''grade of first lieutenant'' in subpar. (B).

1984—Par. (2). Pub. L. 98–525 substituted ''18-month'' for ''eighteen-month''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1174 of this title.

§ 631. Effect of failure of selection for promotion: first lieutenants and lieutenants (junior grade)

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies), each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of first lieutenant and has failed of selection for promotion to the grade of captain for the second time, and each officer of the Navy on the active-duty list who holds the grade of lieutenant (junior grade) and has failed of selection for promotion to the grade of lieutenant for the second time, whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) be discharged on the date requested by him and approved by the Secretary of the military department concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then be retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(c) An officer who is subject to discharge under subsection (a)(1) is not eligible for further consideration for promotion.

(d) For the purposes of this chapter, an officer of the Army, Air Force, or Marine Corps who holds the grade of first lieutenant, and an officer of the Navy who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 611(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 624(a)(3) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2861; amended Pub. L. 98–525, title V, §525(c), Oct. 19, 1984, 98 Stat. 2525; Pub. L. 107–107, div. A, title V, §505(a)(2), (d)(3), (4)(B), Dec. 28, 2001, 115 Stat. 1086, 1088.)

AMENDMENTS

2001—Pub. L. 107–107, §505(d)(4)(B), struck out ''regular'' before ''first lieutenants'' in section catchline.

Subsec. (a). Pub. L. 107–107, §505(d)(3), in introductory provisions, substituted ''Army, Air Force, or Marine Corps on the active-duty list'' for ''Regular Army, Regular Air Force, or Regular Marine Corps'' and ''Navy on the active-duty list'' for ''Regular Navy'' and struck out ''regular'' before ''grade'' wherever appearing.

Subsec. (d). Pub. L. 107–107, §505(a)(2), added subsec. (d).

1984—Subsec. (c). Pub. L. 98–525 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 619 of this title.

§ 632. Effect of failure of selection for promotion: captains and majors of the Army, Air Force, and Marine Corps and lieutenants and lieutenant commanders of the Navy

(a) Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies) and except as provided under section 637(a) of this title, each officer of the Army, Air Force, or Marine Corps on the active-duty list who holds the grade of captain or major, and each officer of the Navy on the active-duty list who holds the grade of lieutenant or lieutenant commander, who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall—

(1) be discharged on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the

report of the board which considered him for the second time;

(2) if he is eligible for retirement under any provision of law, be retired under that law on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time; or

(3) if on the date on which he is to be discharged under clause (1) he is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, be retained on active duty until he is qualified for retirement and then retired under that section, unless he is sooner retired or discharged under another provision of law.

(b) The retirement or discharge of an officer pursuant to this section shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 107–107, div. A, title V, §505(d)(3), (4)(C), Dec. 28, 2001, 115 Stat. 1088.)

AMENDMENTS

2001—Pub. L. 107–107, §505(d)(4)(C), struck out ''regular'' before ''captains and majors'' and before ''lieutenants and lieutenant commanders'' in section catchline.

Subsec. (a). Pub. L. 107–107, §505(d)(3), in introductory provisions, substituted ''Army, Air Force, or Marine Corps on the active-duty list'' for ''Regular Army, Regular Air Force, or Regular Marine Corps'' and ''Navy on the active-duty list'' for ''Regular Navy'' and struck out ''regular'' before ''grade'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 637 of this title.

§633. Retirement for years of service: regular lieutenant colonels and commanders

Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of lieutenant colonel, and each officer of the Regular Navy who holds the regular grade of commander, who is not on a list of officers recommended for promotion to the regular grade of colonel or captain, respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 28 years of active commissioned service.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 98–525, title V, §529(b), title XIV, §1405(12), Oct. 19, 1984, 98 Stat. 2526, 2622; Pub. L. 102–484, div. A, title V, §504(a), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103–160, div. A, title V, §561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, §504(a), Oct. 17, 1998, 112 Stat. 2004.)

AMENDMENTS

1998—Pub. L. 105–261 substituted ''Except an officer of the Navy or Marine Corps who is an officer designated for limited duty to whom section 5596(e) or 6383 of this title applies'' for ''Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies'' and struck out at end ''During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies.''

1993—Pub. L. 103–160 substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Pub. L. 102–484 inserted at end ''During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Navy designated for limited duty to whom section 6383 of this title applies.''

1984—Pub. L. 98–525, §1405(12), substituted ''28'' for ''twenty-eight''.

Pub. L. 98–525, §529(b), substituted ''Except an officer of the Navy designated for limited duty to whom section 5596(e) of this title applies and an officer of the Marine Corps designated for limited duty to whom section 5596(e) or section 6383 of this title applies'' for ''Except an officer of the Navy and Marine Corps who is an officer designated for limited duty (to whom section 5596(e) or 6383 of this title applies)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

§634. Retirement for years of service: regular colonels and Navy captains

Except an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of colonel, and each officer of the Regular Navy who holds the regular grade of captain, who is not on a list of officers recommended for promotion to the regular grade of brigadier general or rear admiral (lower half), respectively, shall, if not earlier retired, be retired on the first day of the month after the month in which he completes 30 years of active commissioned service.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2862; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title XIV, §1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–484, div. A, title V, §504(b), Oct. 23, 1992, 106 Stat. 2403; Pub. L. 103–160, div. A, title V, §561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, §504(b), Oct. 17, 1998, 112 Stat. 2004.)

AMENDMENTS

1998—Pub. L. 105–261 inserted ''an officer of the Navy who is designated for limited duty to whom section 6383(a)(4) of this title applies and except'' after ''Except'' and struck out at end ''During the period beginning on July 1, 1993, and ending on October 1, 1999, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.''

1993—Pub. L. 103–160 substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Pub. L. 102–484 inserted at end ''During the period beginning on July 1, 1993, and ending on October 1, 1995, the preceding sentence shall not apply to an officer of the Regular Navy designated for limited duty to whom section 6383(a)(4) of this title applies.''

1985—Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.
1984—Pub. L. 98–525 substituted ''30'' for ''thirty''.
1981—Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

§ 635. Retirement for years of service: regular brigadier generals and rear admirals (lower half)

Except as provided under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of brigadier general, and each officer of the Regular Navy who holds the regular grade of rear admiral (lower half), who is not on a list of officers recommended for promotion to the regular grade of major general or rear admiral, respectively, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 30 years of active commissioned service, whichever is later.

(Added Pub. L. 96–513, title I. §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97–86, title IV, §405(b)(1), (5)(A), Dec. 1, 1981, 95 Stat. 1105, 1106; Pub. L. 98–525, title XIV, §1405(13), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, §514(b)(1), (5)(A), Nov. 8, 1985, 99 Stat. 628.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''rear admirals (lower half)'' for ''commodores'' in section catchline and ''rear admiral (lower half)'' for ''commodore'' in text.
1984—Pub. L. 98–525 substituted ''30'' for ''thirty''.
1981—Pub. L. 97–86 substituted ''commodores'' for ''commodore admirals'' in section catchline and ''commodore'' for ''commodore admiral'' in text.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

§ 636. Retirement for years of service: regular officers in grades above brigadier general and rear admiral (lower half)

(a) MAJOR GENERALS AND REAR ADMIRALS SERVING IN GRADE.—Except as provided in subsection (b) or (c) and under section 637(b) of this title, each officer of the Regular Army, Regular Air Force, or Regular Marine Corps who holds the regular grade of major general, and each officer of the Regular Navy who holds the regular grade of rear admiral, shall, if not earlier retired, be retired on the first day of the first month beginning after the date of the fifth anniversary of his appointment to that grade or on the first day of the month after the month in which he completes 35 years of active commissioned service, whichever is later.

(b) LIEUTENANT GENERALS AND VICE ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of lieutenant general or vice admiral, the number of years of active commissioned service applicable to the officer is 38 years.

(c) GENERALS AND ADMIRALS.—In the administration of subsection (a) in the case of an officer who is serving in the grade of general or admiral, the number of years of active commissioned service applicable to the officer is 40 years.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 98–525, title XIV, §1405(14), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 105–85, div. A, title V, §506(a), (b), Nov. 18, 1997, 111 Stat. 1726.)

AMENDMENTS

1997—Pub. L. 105–85, §506(b), substituted ''regular officers in grades above brigadier general and rear admiral (lower half)'' for ''regular major generals and rear admirals'' in section catchline.
Pub. L. 105–85, §506(a), designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b) or (c) and'' for ''Except as provided'', and added subsecs. (b) and (c).
1984—Pub. L. 98–525 substituted ''35'' for ''thirty-five''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 1401, 1406 of this title.

SUBCHAPTER IV—CONTINUATION ON ACTIVE DUTY AND SELECTIVE EARLY RETIREMENT

Sec.
637. Selection of regular officers for continuation on active duty.
638. Selective early retirement.
638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges.
639. Continuation on active duty to complete disciplinary action.
640. Deferment of retirement or separation for medical reasons.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title V, §521(a)(2), Nov. 5, 1990, 104 Stat. 1561, added item 638a.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 33 section 3048.

§ 637. Selection of regular officers for continuation on active duty

(a)(1) An officer subject to discharge or retirement in accordance with section 632 of this title may, subject to the needs of the service, be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer who holds the regular grade of captain in the Army, Air Force, or Marine Corps, or the regular grade of lieutenant in the Navy, and who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond

the last day of the month in which he completes 20 years of active commissioned service unless he is promoted to the regular grade of major or lieutenant commander, respectively.

(3) An officer who holds the regular grade of major or lieutenant commander who is subject to discharge or retirement in accordance with section 632 of this title may not be continued on active duty under this subsection for a period which extends beyond the last day of the month in which he completes 24 years of active commissioned service unless he is promoted to the regular grade of lieutenant colonel or commander, respectively.

(4) An officer who is selected for continuation on active duty under this subsection but declines to continue on active duty shall be discharged, retired, or retained on active duty, as appropriate, in accordance with section 632 of this title.

(5) Each officer who is continued on active duty under this subsection, is not subsequently promoted or continued on active duty, and is not on a list of officers recommended for continuation or for promotion to the next higher regular grade shall, unless sooner retired or discharged under another provision of law—

(A) be discharged upon the expiration of his period of continued service; or

(B) if he is eligible for retirement under any provision of law, be retired under that law on the first day of the first month following the month in which he completes his period of continued service.

Notwithstanding the provisions of clause (A), any officer who would otherwise be discharged under such clause and is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, shall unless he is sooner retired or discharged under some other provision of law, be retained on active duty until he is qualified for retirement under that section and then be retired.

(6) The retirement or discharge of an officer pursuant to this subsection shall be considered to be an involuntary retirement or discharge for purposes of any other provision of law.

(b)(1) An officer subject to retirement under section 633 or 634 of this title may, subject to the needs of the service, have his retirement deferred and be continued on active duty if he is selected for continuation on active duty by a selection board convened under section 611(b) of this title.

(2) An officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, rear admiral (lower half), major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned. An officer subject to retirement under section 635 or 636 of this title who is serving in a grade above major general or rear admiral may have his retirement deferred and be continued on active duty by the President.

(3) Any deferral of retirement and continuation on active duty under this subsection shall be for a period not to exceed five years, but such period may not (except as provided under section 1251(b) of this title) extend beyond the date of the officer's sixty-second birthday.

(c) Continuation of an officer on active duty under this section pursuant to the action of a selection board convened under section 611(b) of this title is subject to the approval of the Secretary of the military department concerned. The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.

(d) For purposes of this section, a period of continuation on active duty under this section expires or is completed on the earlier of (1) the date originally established for the termination of such period, or (2) the date established for the termination of such period by any shortening of such period under section 638a of this title.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2863; amended Pub. L. 97–22, §4(e), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title XIV, §1405(15), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101–510, div. A, title V, §521(b)(1), Nov. 5, 1990, 104 Stat. 1561.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510, §521(b)(1)(A), inserted at end ''The period of the continuation on active duty of an officer under this section may be reduced by the Secretary concerned in the case of any officer as provided in section 638a of this title.''

Subsecs. (d), (e). Pub. L. 101–510, §521(b)(1)(B), (C), added subsec. (d) and redesignated former subsec. (d) as (e).

1985—Subsec. (b)(2). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (a)(2). Pub. L. 98–525, §1405(15)(A), substituted ''20'' for ''twenty''.

Subsec. (a)(3). Pub. L. 98–525, §1405(15)(B), substituted ''24'' for ''twenty-four''.

1981—Subsec. (b)(1). Pub. L. 97–22, §4(e)(1), substituted ''section 633 or 634'' for ''section 633, 634, 635, or 636''.

Subsec. (b)(2). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22, §4(e)(2), inserted provision that an officer subject to retirement under section 635 or 636 of this title who is serving in the grade of brigadier general, commodore admiral, major general, or rear admiral may, subject to the needs of the service, have his retirement deferred and be continued on active duty by the Secretary concerned and struck out requirement that the deferral of the retirement of an officer subject to retirement under section 635 or 636 of this title serving in a grade above major general or rear admiral was subject to the needs of the service.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings

that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 611, 632, 633, 634, 635, 636, 638a, 1558 of this title.

§ 638. Selective early retirement

(a)(1) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may be considered for selective early retirement by a selection board convened under section 611(b) of this title if the officer is described in any of subparagraphs (A) through (D) as follows:

(A) An officer holding the regular grade of lieutenant colonel or commander who has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion.

(B) An officer holding the regular grade of colonel or, in the case of an officer of the Navy, captain who has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(C) An officer holding the regular grade of brigadier general or rear admiral (lower half) who has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion.

(D) An officer holding the regular grade of major general or rear admiral who has served at least three and one-half years of active duty in that grade.

(2) The Secretary of the military department concerned shall specify the number of officers described in paragraphs (1)(A) and (1)(B) which a selection board convened under section 611(b) of this title may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(3) A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps may also be considered for early retirement under the circumstances prescribed in section 638a of this title.

(b)(1) An officer in a grade below brigadier general or rear admiral (lower half) who is recommended for early retirement under this section or section 638a of this title and whose early retirement is approved by the Secretary concerned shall—

(A) be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the seventh calendar month beginning after the month in which the Secretary concerned approves the report of the board which recommended the officer for early retirement; or

(B) if the officer is not eligible for retirement under any provision of law, be retained on active duty until he is qualified for retirement under section 3911, 6323, or 8911 of this title, and then be retired under that section, unless he is sooner retired or discharged under some other provision of law.

(2) An officer who holds the regular grade of brigadier general, major general, rear admiral (lower half), or rear admiral who is recommended for early retirement under this section and whose early retirement is approved by the Secretary concerned shall be retired, under any provision of law under which he is eligible to retire, on the date requested by him and approved by the Secretary concerned, which date shall be not later than the first day of the tenth calendar month beginning after the month in which the Secretary concerned approved the report of the board which recommended the officer for early retirement.

(3) The Secretary concerned may defer for not more than 90 days the retirement of an officer otherwise approved for early retirement under this section or section 638a of this title in order to prevent a personal hardship to the officer or for other humanitarian reasons. Any such deferral shall be made on a case-by-case basis considering the circumstances of the case of the particular officer concerned. The authority of the Secretary to grant such a deferral may not be delegated.

(c) So long as an officer in a grade below brigadier general or rear admiral (lower half) holds the same grade, he may not be considered for early retirement under this section more than once in any five-year period.

(d) The retirement of an officer pursuant to this section shall be considered to be an involuntary retirement for purposes of any other provision of law.

(e)(1) The Secretary of Defense shall prescribe regulations for the administration of this section.

(2)(A) Such regulations shall require that when the Secretary of the military department concerned submits a list of officers to a selection board convened under section 611(b) of this title to consider officers for selection for early retirement under this section, such list (except as provided in subparagraph (B)) shall include each officer on the active-duty list in the same grade and competitive category whose position on the active-duty list is between that of the most junior officer in that grade and competitive category whose name is submitted to the board and that of the most senior officer in that grade and competitive category whose name is submitted to the board.

(B) A list under subparagraph (A) may not include an officer in that grade and competitive category (i) who has been approved for voluntary retirement under section 3911, 6323, or 8911 of this title, or (ii) who is to be involuntarily retired under any provision of law during the fiscal year in which the selection board is convened or during the following fiscal year.

(C) An officer not considered by a selection board convened under section 611(b) of this title by reason of subparagraph (B) shall be retired on the date approved for the retirement of that officer as of the convening date of such selection board unless the Secretary concerned approves a

modification of such date in order to prevent a personal hardship for the officer or for other humanitarian reasons.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2864; amended Pub. L. 97–22, § 4(f), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 100–456, div. A, title V, § 504, Sept. 29, 1988, 102 Stat. 1967; Pub. L. 101–510, div. A, title V, § 521(b)(2), Nov. 5, 1990, 104 Stat. 1561; Pub. L. 102–190, div. A, title V, § 503(a), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 103–160, div. A, title V, § 506, Nov. 30, 1993, 107 Stat. 1646; Pub. L. 104–106, div. A, title V, § 504(b), Feb. 10, 1996, 110 Stat. 295.)

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–106 added par. (3).

1993—Subsec. (e)(2)(B). Pub. L. 103–160 inserted ''(i)'' after ''grade and competitive category'', inserted ''(ii)'' after ''of this title, or'', and struck out comma after ''any provision of law''.

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as pars. (1) and (2)(A), in par. (2)(A) inserted ''(except as provided in subparagraph (B))'' after ''under this section, such list'', and added subpars. (B) and (C).

1990—Subsec. (a)(3). Pub. L. 101–510, § 521(b)(2)(A), added par. (3).

Subsec. (b)(1). Pub. L. 101–510, § 521(b)(2)(B), inserted ''or section 638a of this title'' after ''under this section''.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A regular officer on the active-duty list of the Army, Navy, Air Force, or Marine Corps—

''(1) who holds the regular grade of lieutenant colonel or commander and has failed of selection for promotion to the grade of colonel or, in the case of an officer of the Navy, captain two or more times and whose name is not on a list of officers recommended for promotion;

''(2) who holds the regular grade of colonel or, in the case of an officer of the Navy, captain and has served at least four years of active duty in that grade and whose name is not on a list of officers recommended for promotion;

''(3) who holds the regular grade of brigadier general or rear admiral (lower half) and has served at least three and one-half years of active duty in that grade and whose name is not on a list of officers recommended for promotion; or

''(4) who holds the regular grade of major general or rear admiral and has served at least three and one-half years of active duty in that grade,

may be considered for early retirement by a selection board convened under section 611(b) of this title. The Secretary of the military department concerned shall specify the number of officers described in clauses (1) and (2) which such a board may recommend for early retirement, but such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.''

1985—Subsecs. (a)(3), (b), (c). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' wherever appearing.

1981—Subsec. (a)(3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Subsec. (a)(3), (4). Pub. L. 97–22 substituted ''three and one-half years of active duty'' for ''four years of active duty''.

Subsecs. (b), (c). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 611, 638a, 688, 1558 of this title.

§ 638a. Modification to rules for continuation on active duty; enhanced authority for selective early retirement and early discharges

(a) The Secretary of Defense may authorize the Secretary of a military department, during the period beginning on October 1, 1990, and ending on December 31, 2001, to take any of the actions set forth in subsection (b) with respect to officers of an armed force under the jurisdiction of that Secretary.

(b) Actions which the Secretary of a military department may take with respect to officers of an armed force when authorized to do so under subsection (a) are the following:

(1) Shortening the period of the continuation on active duty established under section 637 of this title for a regular officer who is serving on active duty pursuant to a selection under that section for continuation on active duty.

(2) Providing that regular officers on the active-duty list may be considered for early retirement by a selection board convened under section 611(b) of this title in the case of officers described in any of subparagraphs (A) through (C) as follows:

(A) Officers in the regular grade of lieutenant colonel or commander who would be subject to consideration for selection for early retirement under section 638(a)(1)(A) of this title except that they have failed of selection for promotion only one time (rather than two or more times).

(B) Officers in the regular grade of colonel or, in the case of the Navy, captain who would be subject to consideration for selection for early retirement under section 638(a)(1)(B) of this title except that they have served on active duty in that grade less than four years (but not less than two years).

(C) Officers, other than those described in subparagraphs (A) and (B), holding a regular grade below the grade of colonel, or in the case of the Navy, captain, who are eligible for retirement under section 3911, 6323, or 8911 of this title, or who after two additional years or less of active service would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.

(3) Suspending section 638(c) of this title.

(4) Convening selection boards under section 611(b) of this title to consider for discharge regular officers on the active-duty list in a grade below lieutenant colonel or commander—

(A) who have served at least one year of active duty in the grade currently held;

(B) whose names are not on a list of officers recommended for promotion; and

(C) who are not eligible to be retired under any provision of law (other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993) and are not within two years of becoming so eligible.

(c)(1) In the case of an action under subsection (b)(2), the Secretary of the military department concerned shall specify the number of officers described in that subsection which a selection board convened under section 611(b) of this title pursuant to the authority of that subsection may recommend for early retirement. Such number may not be more than 30 percent of the number of officers considered in each grade in each competitive category.

(2) In the case of an action authorized under subsection (b)(2), the Secretary of Defense may also authorize the Secretary of the military department concerned when convening a selection board under section 611(b) of this title to consider regular officers on the active-duty list for early retirement to include within the officers to be considered by the board reserve officers on the active-duty list on the same basis as regular officers.

(3) In the case of an action under subsection (b)(2), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all eligible officers described in that subsection in a particular grade and competitive category; or

(B) the names of all eligible officers described in that subsection in a particular grade and competitive category who are also in particular year groups, specialties, or retirement categories, or any combination thereof, within that competitive category.

(d)(1) In the case of an action under subsection (b)(4), the Secretary of the military department concerned may submit to a selection board convened pursuant to that subsection—

(A) the names of all officers described in that subsection in a particular grade and competitive category; or

(B) the names of all officers described in that subsection in a particular grade and competitive category who also are in particular year groups or specialties, or both, within that competitive category.

(2) The Secretary concerned shall specify the total number of officers to be recommended for discharge by a selection board convened pursuant to subsection (b)(4). That number may not be more than 30 percent of the number of officers considered—

(A) in each grade in each competitive category; or

(B) in each grade, year group, or specialty (or combination thereof) in each competitive category.

(3) The total number of officers described in subsection (b)(4) from any of the armed forces (or from any of the armed forces in a particular grade) who may be recommended during a fiscal year for discharge by a selection board convened pursuant to the authority of that subsection may not exceed 70 percent of the decrease, as compared to the preceding fiscal year, in the number of officers of that armed force (or the number of officers of that armed force in that grade) authorized to be serving on active duty as of the end of that fiscal year.

(4) An officer who is recommended for discharge by a selection board convened pursuant to the authority of subsection (b)(4) and whose discharge is approved by the Secretary concerned shall be discharged on a date specified by the Secretary concerned.

(5) Selection of officers for discharge under this subsection shall be based on the needs of the service.

(e) The discharge or retirement of an officer pursuant to this section shall be considered to be involuntary for purposes of any other provision of law.

(Added Pub. L. 101–510, div. A, title V, §521(a)(1), Nov. 5, 1990, 104 Stat. 1559; amended Pub. L. 102–190, div. A, title V, §503(b), Dec. 5, 1991, 105 Stat. 1355; Pub. L. 102–484, div. A, title V, §503, title LXIV, §4403(g)(2), Oct. 23, 1992, 106 Stat. 2402, 2703; Pub. L. 103–160, div. A, title V, §561(b), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, §561(c), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, §1 [[div. A], title V, §571(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

REFERENCES IN TEXT

Section 4403 of the National Defense Authorization Act for Fiscal Year 1993, referred to in subsec. (b)(4)(C), is section 4403 of Pub. L. 102–484, which is set out as a note under section 1293 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (a). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (b)(4)(C). Pub. L. 102–484, §4403(g)(2), inserted ''(other than by reason of eligibility pursuant to section 4403 of the National Defense Authorization Act for Fiscal Year 1993)'' after ''any provision of law''.

Subsec. (c)(3). Pub. L. 102–484, §503, added par. (3).

1991—Subsec. (b)(2)(C). Pub. L. 102–190, §503(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Officers holding a regular grade below the grade of colonel or, in the case of the Navy, captain who are not eligible for retirement under section 3911, 6323, or 8911 of this title but who after two additional years of active service as a commissioned officer would be eligible for retirement under one of those sections and whose names are not on a list of officers recommended for promotion.''

Subsec. (c). Pub. L. 102–190, §503(b)(2), designated existing provisions as par. (1) and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 637, 638, 1558 of this title.

§ 639. Continuation on active duty to complete disciplinary action

When any action has been commenced against an officer with a view to trying such officer by court-martial and such officer is to be separated or retired in accordance with this chapter, the Secretary of the military department concerned may delay the separation or retirement of the officer, without prejudice to such action, until the completion of the action.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2866.)

§640. Deferment of retirement or separation for medical reasons

(a) If the Secretary of the military department concerned determines that the evaluation of the physical condition of an officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the member's well being before the date on which the officer would otherwise be required to retire or be separated under this title, the Secretary may defer the retirement or separation of the officer under this title.

(b) A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 107–107, div. A, title V, §507, Dec. 28, 2001, 115 Stat. 1090.)

AMENDMENTS

2001—Pub. L. 107–107 amended text generally. Prior to amendment, text read as follows: ''The Secretary of the military department concerned may defer the retirement or separation under this title of any officer if the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date on which the officer would otherwise be required to retire or be separated under this title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

SUBCHAPTER V—ADDITIONAL PROVISIONS RELATING TO PROMOTION, SEPARATION, AND RETIREMENT

Sec.

641. Applicability of chapter.
642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay.
643. Chaplains: discharge or retirement upon loss of professional qualifications.
[644. Repealed.]
645. Definitions.
646. Consideration of performance as a member of the Joint Staff.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(5), Oct. 5, 1994, 108 Stat. 3013, struck out item 644 ''Authority to suspend officer personnel laws''.

1984—Pub. L. 98–525, title XIII, §1301(d)(2), Oct. 19, 1984, 98 Stat. 2612, added item 646.

§641. Applicability of chapter

Officers in the following categories are not subject to this chapter (other than section 640 and, in the case of warrant officers, section 628):

(1) Reserve officers—

(A) on active duty for training;

(B) on active duty under section 3038, 5143, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32;

(C) on active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components;

(D) on active duty under section 12301(d) of this title, other than as provided under subparagraph (C), if the call or order to active duty, under regulations prescribed by the Secretary concerned, specifies a period of three years or less and continued placement on the reserve active-status list;

(E) on active duty to pursue special work;

(F) ordered to active duty under section 12304 of this title;

(G) on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System; or

(H) on full-time National Guard duty.

(2) The director of admissions, dean, and permanent professors at the United States Military Academy and the registrar, dean, and permanent professors at the United States Air Force Academy.

(3) Warrant officers.

(4) Retired officers on active duty.

(5) Students at the Uniformed Services University of the Health Sciences.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2866; amended Pub. L. 98–525, title IV, §414(a)(5), title V, §527(b), Oct. 19, 1984, 98 Stat. 2519, 2525; Pub. L. 99–433, title V, §531(a)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103–337, div. A, title XVI, §1671(c)(5), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–106, div. A, title XV, §1501(c)(6), Feb. 10, 1996, 110 Stat. 498; Pub. L. 104–201, div. A, title XII, §1212(e), Sept. 23, 1996, 110 Stat. 2694; Pub. L. 106–398, §1 [[div. A], title V, §521], Oct. 30, 2000, 114 Stat. 1654, 1654A–108; Pub. L. 107–107, div. A, title V, §511(a), Dec. 28, 2001, 115 Stat. 1092.)

CODIFICATION

Pub. L. 103–337, div. A, title XVI, §§1624, 1691(b)(1), Oct. 5, 1994, 108 Stat. 2961, 3026, which directed amendment of this section effective Oct. 1, 1996, by inserting ''(a)'' before ''Officers in the following'' and by adding at the end a new subsec. (b), was amended by Pub. L. 104–106, div. A, title XV, §1501(a)(1)(A), Feb. 10, 1996, 110 Stat. 495, and, as so amended, amends section 620 of this title instead of this section.

AMENDMENTS

2001—Par. (1)(D). Pub. L. 107–107 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''on the reserve active-status list who are on active duty under section 12301(d) of this title, other than as provided in subparagraph (C), under a call or order to active duty specifying a period of three years or less;''.

2000—Par. (1)(D) to (H). Pub. L. 106–398 added subpar. (D) and redesignated former subpars. (D) to (G) as (E) to (H), respectively.

1996—Par. (1)(B). Pub. L. 104–201 inserted ''5143, 5144,'' after ''3038,''.

Pub. L. 104–106 substituted ''10502, 10505, 10506(a), 10506(b), 10507'' for ''10501''.

1994—Par. (1)(B). Pub. L. 103–337, §1671(c)(5)(A), substituted ''3038, 8038, 10211, 10301 through 10305, 10501, or 12402'' for ''175, 265, 3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038, or 8496''.

Par. (1)(C). Pub. L. 103–337, §1671(c)(5)(B), substituted ''12301(d)'' for ''672(d)''.

Par. (1)(E). Pub. L. 103–337, §1671(c)(5)(C), substituted ''12304'' for ''673b''.

1986—Par. (1)(B). Pub. L. 99–433 substituted ''3021, 3038, 3040, 3496, 5251, 5252, 8021, 8038'' for ''3015, 3019, 3033, 3496, 5251, 5252, 8019, 8033''.

1984—Pub. L. 98–525, § 527(b), substituted ''(other than section 640 and, in the case of warrant officers, section 628)'' for ''(other than section 640)'' in provisions preceding par. (1).

Par. (1)(C). Pub. L. 98–525, § 414(a)(5)(A), struck out ''or under section 502 or 503 of title 32'' after ''section 672(d) of this title''.

Par. (1)(G). Pub. L. 98–525, § 414(a)(5)(B)–(D), added subpar. (G).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE

Subchapter effective Sept. 15, 1981, but the authority to prescribe regulations under this subchapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

RETROACTIVE APPLICATION

Pub. L. 107–107, div. A, title V, § 511(b), Dec. 28, 2001, 115 Stat. 1092, provided that:

''(1) The Secretary of the military department concerned may provide that an officer who was excluded from the active-duty list under section 641(1)(D) of title 10, United States Code, as amended by section 521 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–108), shall be considered to have been on the active-duty list during the period beginning on the date on which the officer was so excluded and ending on the date of the enactment of this Act [Dec. 28, 2001].

''(2) The Secretary of the military department concerned may provide that a Reserve officer who was placed on the active-duty list on or after October 30, 1997, shall be placed on the reserve active-status list if the officer otherwise meets the conditions specified in section 641(1)(D) of title 10, United States Code, as amended by subsection (a).''

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 620 of this title.

§ 642. Entitlement of officers discharged or retired under this chapter to separation pay or retired pay

(a) An officer who is discharged under this chapter is entitled, if eligible therefor, to separation pay under section 1174 of this title.

(b) An officer who is retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

§ 643. Chaplains: discharge or retirement upon loss of professional qualifications

Under regulations prescribed by the Secretary of Defense, a commissioned officer on the active-duty list of the Army, Navy, or Air Force who is appointed or designated as a chaplain may, if he fails to maintain the qualifications needed to perform his professional function, be discharged or, if eligible for retirement, may be retired.

(Added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1174 of this title.

[§ 644. Repealed. Pub. L. 103–337, div. A, title XVI, § 1622(b), Oct. 5, 1994, 108 Stat. 2961]

Section, added Pub. L. 96–513, title I, § 105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 102–190, div. A, title XI, § 1115, Dec. 5, 1991, 105 Stat. 1503, related to authority to suspend officer personnel laws. See section 123 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 645. Definitions

In this chapter:

(1) The term ''promotion zone'' means a promotion eligibility category consisting of the officers on an active-duty list in the same grade and competitive category—

(A) who—

(i) in the case of officers in grades below colonel, for officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Navy, have neither (I) failed of selection for promotion to the next higher grade, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); or

(ii) in the case of officers in the grade of colonel or brigadier general, for officers of the Army, Air Force, and Marine Corps, or captain or rear admiral (lower half), for officers of the Navy, have neither (I) not been recommended for promotion to the next higher grade when considered in the promotion zone, nor (II) been removed from a list of officers recommended for promotion to that grade (other than after having been placed on that list after a selection from below the promotion zone); and

(B) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade.

(2) The term ''officers above the promotion zone'' means a group of officers on an active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as those officers in the promotion zone for that competitive category; and

(C) are senior to the senior officer in the promotion zone for that competitive category.

(3) The term ''officers below the promotion zone'' means a group of officers on the active-duty list in the same grade and competitive category who—

(A) are eligible for consideration for promotion to the next higher grade;

(B) are in the same grade as the officers in the promotion zone for that competitive category; and

(C) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 96–513, title I, §105, Dec. 12, 1980, 94 Stat. 2867; amended Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §533(a), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–25, title VII, §701(i)(1), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Pars. (1) to (3). Pub. L. 102–25 inserted ''The term'' after par. designations and lowercased initial letter of quoted phrases.

1985—Par. (1)(A)(ii). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Par. (1)(A)(i)(II), (ii)(II). Pub. L. 98–525, §533(a)(1), inserted ''(other than after having been placed on that list after a selection from below the promotion zone)''.

Par. (1)(B). Pub. L. 98–525, §533(a)(2), inserted ''in the promotion zone'' after ''the junior officer'' and struck out ''in the promotion zone'' after ''higher grade''.

1981—Par. (1)(A)(ii). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

§646. Consideration of performance as a member of the Joint Staff

The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, shall ensure that officer personnel policies of the Army, Navy, Air Force, and Marine Corps concerning promotion, retention, and assignment give appropriate consideration to the performance of an officer as a member of the Joint Staff.

(Added Pub. L. 98–525, title XIII, §1301(d)(1), Oct. 19, 1984, 98 Stat. 2612.)

CHAPTER 37—GENERAL SERVICE REQUIREMENTS

Sec.
651. Members: required service.
[652. Repealed.]
653. Minimum service requirement for certain flight crew positions.
654. Policy concerning homosexuality in the armed forces.
655. Designation of persons having interest in status of a missing member.

Sec.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title V, §569(d)(2), Feb. 10, 1996, 110 Stat. 352, added item 655.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(6), Oct. 5, 1994, 108 Stat. 3013, struck out item 652 ''Ready Reserves: requirement of notification of change of status''.

1993—Pub. L. 103–160, div. A, title V, §571(a)(2), Nov. 30, 1993, 107 Stat. 1673, added item 654.

1989—Pub. L. 101–189, div. A, title VI, §634(a)(2), Nov. 29, 1989, 103 Stat. 1454, added item 653.

1978—Pub. L. 95–485, title IV, §405(d)(2), Oct. 20, 1978, 92 Stat. 1616, added item 652.

1958—Pub. L. 85–861, §33(a)(4)(A), Sept. 2, 1958, 72 Stat. 1564, substituted ''GENERAL SERVICE REQUIREMENTS'' for ''SERVICE REQUIREMENTS FOR RESERVES'' in chapter heading.

§651. Members: required service

(a) Each person who becomes a member of an armed force, other than a person deferred under the next to the last sentence of section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1)) shall serve in the armed forces for a total initial period of not less than six years nor more than eight years, as provided in regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction and by the Secretary of Homeland Security for the Coast Guard when it is not operating as service in the Navy, unless such person is sooner discharged under such regulations because of personal hardship. Any part of such service that is not active duty or that is active duty for training shall be performed in a reserve component.

(b) Each person covered by subsection (a) who is not a Reserve, and who is qualified, shall, upon his release from active duty, be transferred to a reserve component of his armed force to complete the service required by subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Pub. L. 85–861, §§1(12), 36B(3), Sept. 2, 1958, 72 Stat. 1440, 1570; Pub. L. 89–718, §5, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 95–79, title VIII, §803(a), July 30, 1977, 91 Stat. 333; Pub. L. 96–107, title VIII, §805(b), Nov. 9, 1979, 93 Stat. 813; Pub. L. 96–513, title V, §511(18), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–94, title X, §1022(b)(1), Sept. 24, 1983, 97 Stat. 670; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (1st sentence, and less applicability to members of National Security Training Corps).	June 24, 1948, ch. 625, §4(d)(3) (less 4th sentence, and less applicability to members of National Security Training Corps); added June 19, 1951, ch. 144, §1(g) (last par., less 4th sentence, and less applicability to members of National Security Training Corps), 65 Stat. 79; July 9, 1952, ch. 608, §813, 66 Stat. 509.
651(b)	50 App.:454(d)(3) (2d sentence, and less applicability to members of National Security Training Corps).	
651(c)	50 App.:454(d)(3) (3d and last sentences).	

In subsection (a), the word ''male'' is inserted, since the source statute (Universal Military Training and Service Act (50 U.S.C. App. 451 et seq.)) applies only to male persons. The words ''subsequent to the date of enactment of this paragraph [June 19, 1951]'' are omitted

as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed * * * in''. The words ''in the armed forces'' are substituted for the words ''on active training and service in the Armed Forces * * * and in a reserve component''. The last sentence is substituted for the words ''or in training in the National Security Training Corps''. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

In subsection (b), the words ''who is not a Reserve'' are inserted, since the eight year obligation for Reserves is covered by subsection (a). The words ''active duty'' are substituted for the words ''active training and service''. The last eight words are substituted for the words ''and shall serve therein for the remainder of the period which he is required to serve under this paragraph''. The words ''physically and mentally'' and 50 App.:454(d)(3) (last 15 words of 2d sentence) are omitted as surplusage.

In [former] subsection (c), the words ''who is released from active duty'' are inserted for clarity. The words ''shall become a member'' are substituted for the words ''it shall be the duty of such person to enlist, enroll, or accept appointment in, or accept assignment to''. The words ''there is a vacancy'' are substituted for the words ''enlistment, enrollment, or appointment in, or assignment to''. 50 App.:454(d)(3) (last sentence) is omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
651(a)	50 App.:454(d)(3) (2d sentence).	Aug. 9, 1955, ch. 665, §3(a) (last sentence), 69 Stat. 603.

In subsection (a), the word ''male'' is inserted, since the source statute applies only to male persons. The words ''subsequent to the date of enactment of the Reserve Forces Act of 1955'' are omitted as executed. The words ''becomes a member'' are substituted for the words ''is inducted, enlisted, or appointed . . . in''. The last sentence is substituted for the words ''on active training and service . . . and in a reserve component''. The requirement of transfer to and service in a reserve component, after active training and service is covered by subsection (b) of this section. The words ''under any provision of law'' and ''including the reserve components thereof'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1983—Subsec. (a). Pub. L. 98–94 amended subsec. (a) generally, substituting a reference to service in the armed forces for a total initial period of not less than six years nor more than eight years under prescribed regulations for the prior reference to service in the armed forces for a total of six years.

1980—Subsec. (a). Pub. L. 96–513, substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'', and ''section 6(d)(1) of the Military Selective Service Act (50 U.S.C. App. 456(d)(1))'' for ''section 456(d)(1) of title 50, appendix''.

1979—Subsec. (a). Pub. L. 96–107 struck out ''before his twenty-sixth birthday'' after ''force''.

1977—Subsec. (a). Pub. L. 95–79 struck out ''male'' after ''Each'' and ''after August 9, 1955,'' after ''who''.

1966—Subsec. (a). Pub. L. 89–718 struck out reference to persons who enlisted under section 1013 of title 50 in the description of persons not required to serve in the armed forces for a total of six years.

1958—Subsec. (a). Pub. L. 85–861, §1(12), restricted section to male persons who became members of the armed forces after Aug. 9, 1955, excluded persons enlisted under section 1013 of Title 50 or deferred under the next to last sentence of section 456(d)(1) of Title 50, Appendix, reduced from eight to six years the required period of service, required any part of such service that is not active duty or is active duty for training to be performed in a reserve component, and struck out provisions which permitted members of the armed forces to count service in the National Security Training Corps as if it were service in the armed forces for the purposes of this subsection.

Subsec. (c). Pub. L. 85–861, §36B(3), repealed subsec. (c) which required members released from active duty to become members of an organized unit of a reserve component of an officers' training program.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(b)(2) of Pub. L. 98–94 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to persons who enter the Armed Forces 60 or more days after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable to individuals who become members of an Armed Force after Nov. 9, 1979, see section 805(c) of Pub. L. 96–107, set out as a note under section 511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 803(b) of Pub. L. 95–79 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the seventh calendar month beginning after the month in which this Act is enacted [July 1977] and shall apply to any female person who becomes a member of an Armed Force on or after such day.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174, 4348, 6959, 9348, 12104, 12208, 12645 of this title; title 14 section 182; title 37 section 308e; title 50 App. section 456.

[§ 652. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section, added Pub. L. 95–485, title IV, §405(d)(1), Oct. 20, 1978, 92 Stat. 1616, related to Ready Reserve requirement of notification of change of status. See section 10205 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 653. Minimum service requirement for certain flight crew positions

(a) PILOTS.—The minimum service obligation of any member who successfully completes training in the armed forces as a pilot shall be 8 years, if the member is trained to fly fixed-wing jet aircraft, or 6 years, if the member is trained to fly any other type of aircraft.

(b) NAVIGATORS AND NAVAL FLIGHT OFFICERS.—The minimum service obligation of any member who successfully completes training in the armed forces as a navigator or naval flight officer shall be 6 years.

(c) DEFINITION.—In this section, the term ''service obligation'' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve required to be served after—

(1) completion of undergraduate pilot training, in the case of training as a pilot;

(2) completion of undergraduate navigator training, in the case of training as a navigator; or

(3) completion of undergraduate training as a naval flight officer, in the case of training as a naval flight officer.

(Added Pub. L. 101–189, div. A, title VI, §634(a)(1), Nov. 29, 1989, 103 Stat. 1454; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(3), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title V, §506(a), Oct. 23, 1992, 106 Stat. 2404.)

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–484, §506(a)(1), substituted ''service obligation'' for ''active duty obligation''.

Subsec. (c). Pub. L. 102–484, §506(a)(2), substituted ''the term 'service obligation' means the period of active duty or, in the case of a member of a reserve component who completed flight training in an active duty for training status as a member of a reserve component, the period of service in an active status in the Selected Reserve'' for ''the term 'active duty obligation' means the period of active duty''.

1990—Subsec. (a). Pub. L. 101–510, §1484(k)(3)(A), substituted ''or'' for ''and'' before ''6 years''.

Subsec. (c). Pub. L. 101–510, §1484(k)(3)(B), inserted a comma after first reference to ''training'' in pars. (1) and (2) and after first reference to ''naval flight officer'' in par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 506(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of November 29, 1989.''

EFFECTIVE DATE

Section 634(b) of Pub. L. 101–189 provided that:

''(1) Except as provided in paragraphs (2) and (3), section 653 of title 10, United States Code, as added by subsection (a)(1), shall apply to persons who begin undergraduate pilot training, undergraduate navigator training, or undergraduate naval flight officer training, as the case may be, after September 30, 1990.

''(2) Such section shall apply to persons who graduate from the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the Coast Guard Academy after December 31, 1991, and to persons who satisfactorily complete the academic and military requirements of the Senior Reserve Officers' Training Corps program (provided for in chapter 103 of title 10, United States Code) after December 31, 1991.

''(3) The minimum service requirements provided for such section shall not apply in the case of any person who entered into an agreement with the Secretary concerned before October 1, 1990, and who is obligated under the terms of such agreement to serve on active duty for a period less than the applicable period specified in section 653 of such title.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(8) of title 10, United States Code.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§654. Policy concerning homosexuality in the armed forces

(a) FINDINGS.—Congress makes the following findings:

(1) Section 8 of article I of the Constitution of the United States commits exclusively to the Congress the powers to raise and support armies, provide and maintain a Navy, and make rules for the government and regulation of the land and naval forces.

(2) There is no constitutional right to serve in the armed forces.

(3) Pursuant to the powers conferred by section 8 of article I of the Constitution of the United States, it lies within the discretion of the Congress to establish qualifications for and conditions of service in the armed forces.

(4) The primary purpose of the armed forces is to prepare for and to prevail in combat should the need arise.

(5) The conduct of military operations requires members of the armed forces to make extraordinary sacrifices, including the ultimate sacrifice, in order to provide for the common defense.

(6) Success in combat requires military units that are characterized by high morale, good order and discipline, and unit cohesion.

(7) One of the most critical elements in combat capability is unit cohesion, that is, the bonds of trust among individual service members that make the combat effectiveness of a military unit greater than the sum of the combat effectiveness of the individual unit members.

(8) Military life is fundamentally different from civilian life in that—

(A) the extraordinary responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and

(B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.

(9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day beginning at the moment the member enters military status and not ending until that person is discharged or otherwise separated from the armed forces.

(10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

(11) The pervasive application of the standards of conduct is necessary because members of the armed forces must be ready at all times for worldwide deployment to a combat environment.

(12) The worldwide deployment of United States military forces, the international responsibilities of the United States, and the potential for involvement of the armed forces in actual combat routinely make it necessary for members of the armed forces involuntarily to accept living conditions and working conditions that are often spartan, primitive, and characterized by forced intimacy with little or no privacy.

(13) The prohibition against homosexual conduct is a longstanding element of military law that continues to be necessary in the unique circumstances of military service.

(14) The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(15) The presence in the armed forces of persons who demonstrate a propensity or intent to engage in homosexual acts would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability.

(b) POLICY.—A member of the armed forces shall be separated from the armed forces under regulations prescribed by the Secretary of Defense if one or more of the following findings is made and approved in accordance with procedures set forth in such regulations:

(1) That the member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts unless there are further findings, made and approved in accordance with procedures set forth in such regulations, that the member has demonstrated that—

(A) such conduct is a departure from the member's usual and customary behavior;

(B) such conduct, under all the circumstances, is unlikely to recur;

(C) such conduct was not accomplished by use of force, coercion, or intimidation;

(D) under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and

(E) the member does not have a propensity or intent to engage in homosexual acts.

(2) That the member has stated that he or she is a homosexual or bisexual, or words to that effect, unless there is a further finding, made and approved in accordance with procedures set forth in the regulations, that the member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

(3) That the member has married or attempted to marry a person known to be of the same biological sex.

(c) ENTRY STANDARDS AND DOCUMENTS.—(1) The Secretary of Defense shall ensure that the standards for enlistment and appointment of members of the armed forces reflect the policies set forth in subsection (b).

(2) The documents used to effectuate the enlistment or appointment of a person as a member of the armed forces shall set forth the provisions of subsection (b).

(d) REQUIRED BRIEFINGS.—The briefings that members of the armed forces receive upon entry into the armed forces and periodically thereafter under section 937 of this title (article 137 of the Uniform Code of Military Justice) shall include a detailed explanation of the applicable laws and regulations governing sexual conduct by members of the armed forces, including the policies prescribed under subsection (b).

(e) RULE OF CONSTRUCTION.—Nothing in subsection (b) shall be construed to require that a member of the armed forces be processed for separation from the armed forces when a determination is made in accordance with regulations prescribed by the Secretary of Defense that—

(1) the member engaged in conduct or made statements for the purpose of avoiding or terminating military service; and

(2) separation of the member would not be in the best interest of the armed forces.

(f) DEFINITIONS.—In this section:

(1) The term ''homosexual'' means a person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts, and includes the terms ''gay'' and ''lesbian''.

(2) The term ''bisexual'' means a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

(3) The term ''homosexual act'' means—

(A) any bodily contact, actively undertaken or passively permitted, between members of the same sex for the purpose of satisfying sexual desires; and

(B) any bodily contact which a reasonable person would understand to demonstrate a propensity or intent to engage in an act described in subparagraph (A).

(Added Pub. L. 103–160, div. A, title V, §571(a)(1), Nov. 30, 1993, 107 Stat. 1670.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a)(10), is classified to chapter 47 (§801 et seq.) of this title.

IMPLEMENTATION OF SECTION; REGULATIONS; SAVINGS PROVISION; SENSE OF CONGRESS

Section 571(b)–(d) of Pub. L. 103–160 provided that:

''(b) REGULATIONS.—Not later than 90 days after the date of enactment of this Act [Nov. 30, 1993], the Secretary of Defense shall revise Department of Defense regulations, and issue such new regulations as may be necessary, to implement section 654 of title 10, United States Code, as added by subsection (a).

''(c) SAVINGS PROVISION.—Nothing in this section or section 654 of title 10, United States Code, as added by subsection (a), may be construed to invalidate any inquiry, investigation, administrative action or proceeding, court-martial, or judicial proceeding conducted before the effective date of regulations issued by the Secretary of Defense to implement such section 654.

''(d) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the suspension of questioning concerning homosexuality as part of the processing of individuals for accession into the Armed Forces under the in-

terim policy of January 29, 1993, should be continued, but the Secretary of Defense may reinstate that questioning with such questions or such revised questions as he considers appropriate if the Secretary determines that it is necessary to do so in order to effectuate the policy set forth in section 654 of title 10, United States Code, as added by subsection (a); and

''(2) the Secretary of Defense should consider issuing guidance governing the circumstances under which members of the Armed Forces questioned about homosexuality for administrative purposes should be afforded warnings similar to the warnings under section 831(b) of title 10, United States Code (article 31(b) of the Uniform Code of Military Justice).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 983 of this title.

§ 655. Designation of persons having interest in status of a missing member

(a) The Secretary concerned shall, upon the enlistment or appointment of a person in the armed forces, require that the person specify in writing the person or persons, if any, other than that person's primary next of kin or immediate family, to whom information on the whereabouts and status of the member shall be provided if such whereabouts and status are investigated under chapter 76 of this title. The Secretary shall periodically, and whenever the member is deployed as part of a contingency operation or in other circumstances specified by the Secretary, require that such designation be reconfirmed, or modified, by the member.

(b) The Secretary concerned shall, upon the request of a member, permit the member to revise the person or persons specified by the member under subsection (a) at any time. Any such revision shall be in writing.

(Added Pub. L. 104–106, div. A, title V, § 569(d)(1), Feb. 10, 1996, 110 Stat. 352.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1513 of this title.

CHAPTER 38—JOINT OFFICER MANAGEMENT

Sec.

661. Management policies for joint specialty officers.
662. Promotion policy objectives for joint officers.
663. Education.
664. Length of joint duty assignments.
665. Procedures for monitoring careers of joint officers.
666. Reserve officers not on the active-duty list.
667. Annual report to Congress.
668. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 526, 721, 2271 of this title.

§ 661. Management policies for joint specialty officers

(a) ESTABLISHMENT.—The Secretary of Defense shall establish policies, procedures, and practices for the effective management of officers of the Army, Navy, Air Force, and Marine Corps on the active-duty list who are particularly trained in, and oriented toward, joint matters (as defined in section 668 of this title). Such officers shall be identified or designated (in addition to their principal military occupational specialty) in such manner as the Secretary of Defense directs. For purposes of this chapter, officers to be managed by such policies, procedures, and practices are referred to as having, or having been nominated for, the ''joint specialty''.

(b) NUMBERS AND SELECTION.—(1) The number of officers with the joint specialty shall be determined by the Secretary. Such number shall be large enough to meet the requirements of subsection (d).

(2) Officers shall be selected for the joint specialty by the Secretary of Defense with the advice of the Chairman of the Joint Chiefs of Staff. Each officer on the active-duty list on December 28, 2001, who has not before that date been nominated for the joint specialty by the Secretary of a military department, and each officer who is placed on the active-duty list after such date, who meets the requirements of subsection (c) shall automatically be considered to have been nominated for the joint specialty. From among those officers considered to be nominated for the joint specialty, the Secretary may select for the joint specialty only officers—

(A) who meet qualifications prescribed by the Secretary of Defense; and

(B) who—

(i) are senior captains or, in the case of the Navy, senior lieutenants; or

(ii) are serving in the grade of major or lieutenant commander or a higher grade.

(3) The authority of the Secretary of Defense under paragraph (2) to select officers for the joint specialty may be delegated only to the Deputy Secretary of Defense.

(c) EDUCATION AND EXPERIENCE REQUIREMENTS.—(1) An officer who is nominated for the joint specialty may not be selected for the joint specialty until the officer—

(A) successfully completes an appropriate program at a joint professional military education school; and

(B) after completing such program of education, successfully completes a full tour of duty in a joint duty assignment (as described in section 664(f) of this title (other than in paragraph (2) thereof)).

(2)(A) An officer (other than a general or flag officer) who has a military occupational specialty that is a critical occupational specialty involving combat operations (as designated by the Secretary of Defense) and who is nominated for the joint specialty may be selected for the joint specialty after successful completion of a full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title) and successful completion of a program under paragraph (1)(A).

(B) The Secretary may not for the purposes of this paragraph designate a military occupational specialty as a critical occupational specialty involving combat operations unless that occupational specialty is within the combat arms, in the case of the Army, or the equivalent, in the case of the Navy, Air Force, and Marine Corps. In determining for the purposes of this paragraph what military occupational specialties within the combat arms (or the equivalent) are critical, the Secretary shall designate as

critical any military occupational specialty experiencing severe shortages of trained officers.

(3)(A) In the case of an officer who has completed both a program of education referred to in paragraph (1)(A) and a full tour of duty in a joint duty assignment (as described in section 664(f) of this title (other than in paragraph (2) thereof)) and is subsequently nominated for the joint specialty, the Secretary of Defense may waive the requirement in paragraph (1)(B) that the tour of duty in a joint duty assignment be performed after the officer completes the program of education if the Secretary determines that the waiver is necessary in the interests of sound personnel management.

(B) In the case of an officer who has completed two full tours of duty in a joint duty assignment (as described in section 664(f) of this title) and is subsequently nominated for the joint specialty, the Secretary may waive the requirement that the officer have successfully completed a program of education referred to in paragraph (1)(A) if the Secretary determines that—

(i) it would be impractical to require the officer to complete such a program at the current stage of the officer's career; and

(ii) the types of joint duty assignments completed by the officer have been of sufficient breadth to prepare the officer adequately for the joint specialty.

(C) A waiver under subparagraph (A) or (B) may be made only under unusual circumstances justifying deviation from the conditions established in paragraph (1) for selection of an officer for the joint specialty.

(D) The authority of the Secretary of Defense to grant a waiver under this paragraph may be delegated only to the Deputy Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer and in the case of a general or flag officer only under exceptional circumstances in which the waiver is necessary to meet a critical need of the armed forces, as determined by the Chairman of the Joint Chiefs of Staff. In the case of officers in grades below brigadier general and rear admiral (lower half), the total number of waivers granted under this paragraph for officers in the same pay grade during any fiscal year may not exceed 10 percent of the total number of officers in that pay grade selected for the joint specialty during that fiscal year.

(E) There may not be more than 32 general and flag officers on active duty at the same time who were selected for the joint specialty while holding a general or flag officer grade and for whom a waiver was granted under this paragraph.

(4) For purposes of this chapter, a school that is organized within, and operated by, a military department may not be construed to be a joint professional military education school.

(d) NUMBER OF JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that approximately one-half of the joint duty assignment positions in grades above captain or, in the case of the Navy, lieutenant are filled at any time by officers who—

(A) have the joint specialty; or

(B) have been nominated for the joint specialty and—

(i) have successfully completed a program of education referred to in subsection (c)(1)(A); or

(ii) have a military occupational specialty that is designated under subsection (c)(2)(A) as a critical occupational specialty involving combat operations.

(2)(A) The Secretary shall designate not fewer than 800 joint duty assignment positions as critical joint duty assignment positions. Such designation shall be made by examining each joint duty assignment position and designating under the preceding sentence those positions for which, considering the duties and responsibilities of the position, it is highly important that the occupant be particularly trained in, and oriented toward, joint matters.

(B) Each position designated by the Secretary under subparagraph (A) may (subject to subparagraph (C)) be held only by an officer who has the joint specialty.

(C) The Secretary of Defense may, on a case-by-case basis, waive the requirement in subparagraph (B) with respect to a particular assignment of an officer to a position designated as a critical joint duty assignment position. The authority of the Secretary to make such a waiver may be delegated only to the Chairman of the Joint Chiefs of Staff.

(3)(A) The Secretary shall ensure that, of those joint duty assignment positions that are filled by general or flag officers, a substantial portion are among those positions that are designated under paragraph (2) as critical joint duty assignment positions.

(B) The Secretary shall ensure that, of those positions designated under paragraph (2) as critical joint duty assignment positions, an appropriate portion are filled by officers with the joint specialty who were selected for the joint specialty under subsection (c)(2).

(4) Of the officers serving in joint duty assignment positions covered by paragraph (1) who are described in subparagraph (A) or (B) of that paragraph, not more than 25 percent at any time may be officers described in subparagraph (B)(ii) of that paragraph.

(e) CAREER GUIDELINES.—The Secretary, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish career guidelines for officers with the joint specialty. Such guidelines shall include guidelines for—

(1) selection;

(2) military education;

(3) training;

(4) types of duty assignments; and

(5) such other matters as the Secretary considers appropriate.

(f) TREATMENT OF CERTAIN SERVICE.—Any service by an officer in the grade of captain or, in the case of the Navy, lieutenant in a joint duty assignment shall be considered to be service in a joint duty assignment for purposes of all laws (including section 619(e)(1) of this title) establishing a requirement or condition with respect to an officer's service in a joint duty assignment.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1025; amended Pub. L. 100–180, div. A, title XIII, §1301–1302(b), Dec. 4, 1987, 101 Stat.

1168, 1169; Pub. L. 100–456, div. A, title V, §§511, 512(a), 517(a), 518, Sept. 29, 1988, 102 Stat. 1968, 1971; Pub. L. 101–189, div. A, title XI, §§1113, 1122, Nov. 29, 1989, 103 Stat. 1554, 1556; Pub. L. 104–106, div. A, title V, §501(a), (d), title XV, §1503(a)(6), Feb. 10, 1996, 110 Stat. 290, 292, 511; Pub. L. 107–107, div. A, title V, §521(a), Dec. 28, 2001, 115 Stat. 1097; Pub. L. 107–314, div. A, title V, §502(c), title X, §1062(a)(3), Dec. 2, 2002, 116 Stat. 2530, 2649.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–314, §1062(a)(3), substituted ''December 28, 2001,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002''.

Subsec. (c)(3)(E). Pub. L. 107–314, §502(c), substituted ''paragraph'' for ''subparagraph''.

2001—Subsec. (b)(2). Pub. L. 107–107, in introductory provisions, substituted ''Each officer on the active-duty list on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002 who has not before that date been nominated for the joint specialty by the Secretary of a military department, and each officer who is placed on the active-duty list after such date, who meets the requirements of subsection (c) shall automatically be considered to have been nominated for the joint specialty. From among those officers considered to be nominated for the joint specialty, the Secretary may select for the joint specialty only officers—'' for ''The Secretaries of the military departments shall nominate officers for selection for the joint specialty. Nominations shall be made from among officers—''.

1996—Subsec. (c)(3)(D). Pub. L. 104–106, §501(d)(1), in third sentence, substituted ''In the case of officers in grades below brigadier general and rear admiral (lower half), the total number'' for ''The total number''.

Subsec. (c)(3)(E). Pub. L. 104–106, §501(d)(2), added subpar. (E).

Subsec. (d)(2)(A). Pub. L. 104–106, §501(a), substituted ''800'' for ''1,000''.

Subsec. (d)(2)(B). Pub. L. 104–106, §1503(a)(6)(A), substituted ''Each position designated by the Secretary under subparagraph (A)'' for ''Until January 1, 1994, at least 80 percent of the positions designated by the Secretary under subparagraph (A) shall be held at all times by officers who have the joint specialty. On and after January 1, 1994, each position so designated''.

Subsec. (d)(2)(C). Pub. L. 104–106, §1503(a)(6)(B), struck out ''the second sentence of'' after ''the requirement in''.

Subsec. (d)(2)(D). Pub. L. 104–106, §1503(a)(6)(C), struck out subpar. (D) which read as follows: ''During the period beginning on October 1, 1992, and ending on January 1, 1993, the Secretary of Defense shall submit to Congress a report on the operation, to the date of the report, of the first sentence of subparagraph (B) and on the Secretary's projection for the use of the waiver authority provided under subparagraph (C), including the Secretary's estimate of the average annual number of waivers to be provided under subparagraph (C).''

1989—Subsec. (c)(1)(B), (3)(A). Pub. L. 101–189, §1113, substituted ''(as described in section 664(f) of this title (other than in paragraph (2) thereof))'' for ''(as described in section 664(f)(1) or (f)(3) of this title)''.

Subsec. (c)(4). Pub. L. 101–189, §1122, added par. (4).

1988—Subsec. (c)(3)(D). Pub. L. 100–456, §511, inserted ''for officers in the same pay grade'' after ''under this paragraph'', substituted ''10 percent'' for ''5 percent'', and inserted ''in that pay grade'' after ''numbers of officers''.

Subsec. (d)(2). Pub. L. 100–456, §512(a), designated existing provisions as subpar. (A), struck out sentence at end which directed that each position so designated by the Secretary could be held only by an officer who had the joint specialty, and added subpars. (B) to (D).

Subsec. (d)(4). Pub. L. 100–456, §517(a), substituted ''25 percent'' for ''one-third''.

Subsec. (f). Pub. L. 100–456, §518, added subsec. (f).

1987—Subsec. (b)(3). Pub. L. 100–180, §1301(a)(1), added par. (3).

Subsec. (c)(1)(B). Pub. L. 100–180, §1301(b)(1), inserted ''(as described in section 664(f)(1) or (f)(3) of this title)'' after ''joint duty assignment''.

Subsec. (c)(2)(A). Pub. L. 100–180, §1301(b)(2)(A)–(C), designated existing provisions as subpar. (A), substituted ''An officer (other than a general or flag officer) who has a military occupational specialty that is'' for ''An officer who has'' and ''full tour of duty in a joint duty assignment (as described in section 664(f)(2) of this title)'' for ''joint duty assignment of not less than two years'', and struck out provisions that an officer selected for the joint specialty complete generally applicable requirements for selection under par. (1)(B) as soon as practicable after such officer's selection.

Subsec. (c)(2)(B). Pub. L. 100–180, §1301(b)(2)(D), added subpar. (B).

Subsec. (c)(3). Pub. L. 100–180, §1301(b)(3), added par. (3).

Subsec. (d)(1). Pub. L. 100–180, §1302(a)(1), added subpars. (A) and (B) and substituted ''by officers who—'' for ''by officers who have (or have been nominated for) the joint specialty.'' in introductory provisions.

Subsec. (d)(2) to (4). Pub. L. 100–180, §1302(b), added pars. (2) to (4) and struck out former par. (2) which read as follows: ''The Secretary of Defense shall designate not fewer than 1,000 joint duty assignment positions as critical joint duty assignment positions. Each such position shall be held only by an officer with the joint specialty.''

EXCLUSION OF CERTAIN OFFICERS FROM LIMITATION ON AUTHORITY TO GRANT A WAIVER OF REQUIRED COMPLETION OR SEQUENCING FOR JOINT PROFESSIONAL MILITARY EDUCATION

Pub. L. 107–314, div. A, title V, §502(a), (b), Dec. 2, 2002, 116 Stat. 2530, provided that:

''(a) EXCLUSION FROM LIMITATION.—There shall be excluded from counting for purposes of the 10-percent limitation set forth in the last sentence of section 661(c)(3)(D) of title 10, United States Code (limiting the authority to grant waivers related to sequencing or completion of program of joint professional military education), any officer selected for the joint specialty who—

''(1) on December 28, 2001, met the requirements of section 661(c) of such title for nomination for the joint specialty, but who had not been nominated for that specialty before that date by the Secretary of the military department concerned; and

''(2) before the date of the enactment of this Act [Dec. 2, 2002] was automatically nominated for the joint specialty as a result of section 661(b)(2) of such title.

''(b) TERMINATION.—The provisions of subsection (a) shall terminate on October 1, 2006.''

INDEPENDENT STUDY OF JOINT OFFICER MANAGEMENT AND JOINT PROFESSIONAL MILITARY EDUCATION REFORMS

Pub. L. 107–107, div. A, title V, §526, Dec. 28, 2001, 115 Stat. 1099, provided that:

''(a) STUDY.—The Secretary of Defense shall provide for an independent study of the joint officer management system and the joint professional military education system. The Secretary shall ensure that the entity conducting the study is provided such information and support as required. The Secretary shall include in the contract for the study a requirement that the entity conducting the study submit a report to Congress on the study not later than one year after the date of the enactment of this Act [Dec. 28, 2001].

''(b) MATTERS TO BE INCLUDED WITH RESPECT TO JOINT OFFICER MANAGEMENT.—With respect to the joint officer management system, the entity conducting the independent study shall provide for the following:

''(1) Assessment of implications for joint officer education, development, and management that would

result from proposed joint organizational operational concepts (such as standing joint task forces) and from emerging officer management and personnel reforms (such as longer careers and more stabilization), that are under consideration by the Secretary of Defense.

''(2) Assessment of the effectiveness of the current joint officer management system to develop and use joint specialty qualified officers in meeting both current and future requirements for joint specialty officers.

''(3) Recommendations, based on empirical and other data, to improve the effectiveness of the joint officer management system, especially with regard to the following:

''(A) The proper mix and sequencing of education assignments and experience assignments (to include, with respect to both types of assignments, consideration of the type and quality, and the length, of such assignments) to qualify an officer as a joint specialty officer, as well as the implications of adopting a variable joint duty tour length and the advisability and implications of a system of qualifying officers as joint specialty officers that uses multiple shorter qualification tracks to selection as a joint specialty officer than are now codified.

''(B) The system of using joint specialty officers, including the continued utility of such measures as—

''(i) the required fill of positions on the joint duty assignment list, as specified in paragraphs (1) and (4) of section 661(d) of title 10, United States Code;

''(ii) the fill by such officers of a required number of critical billets, as prescribed by section 661(d)(2) of such title;

''(iii) the mandated fill by general and flag officers of a minimum number of critical billets, as prescribed by section 661(d)(3) of such title; and

''(iv) current promotion policy objectives for officers with the joint specialty, officers serving on the Joint Staff, and officers serving in joint duty assignment list positions, as prescribed by section 662 of such title.

''(C) Changes in policy and law required to provide officers the required joint specialty qualification before promotion to general or flag officer grade.

''(D) A determination of the number of reserve component officers who would be qualified for designation as a joint specialty officer by reason of experience or education if the standards of existing law, including waiver authorities, were applied to them, and recommendations for a process for qualifying and employing future reserve component officers as joint specialty officers.

''(c) MATTERS TO BE INCLUDED WITH RESPECT TO JOINT PROFESSIONAL MILITARY EDUCATION.—With respect to the joint professional military education system, the entity conducting the independent study shall provide for the following:

''(1) The number of officers who under the current system (A) qualified as joint specialty officers by attending joint professional military education programs before their first joint duty assignment, (B) qualified as joint specialty officers after arriving at their first joint duty assignment but before completing that assignment, and (C) qualified as joint specialty officers without any joint professional military education.

''(2) Recommended initiatives (include changes in officer personnel management law, if necessary) to provide incentives and otherwise facilitate attendance at joint professional military education programs before an officer's first joint duty assignment.

''(3) Recommended goals for attendance at the Joint Forces Staff College en route to a first joint duty assignment.

''(4) An assessment of the continuing utility of statutory requirements for use of officers following joint professional military education, as prescribed by section 662(d) of title 10, United States Code.

''(5) Determination of whether joint professional military education programs should remain principally an in-resident, multi-service experience and what role non-resident or distributive learning can or should play in future joint professional military education programs.

''(6) Examination of options for the length of and increased capacity at Joint Forces Staff College, and whether other in-resident joint professional military education sources should be opened, and if opened, how they might be properly accredited and overseen to provide instruction at the level of the program designated as 'joint professional military education'.

''(d) CHAIRMAN OF JOINT CHIEFS OF STAFF.—With respect to the roles of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, the entity conducting the independent study shall—

''(1) provide for an evaluation of the current roles of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, and joint staff in law, policy, and implementation with regard to establishing and maintaining oversight of joint officer management, career guidelines, and joint professional military education; and

''(2) make recommendations to improve and strengthen those roles.

''(e) REQUIREMENTS FOR STUDY ENTITY.—In providing for the independent study required by subsection (a), the Secretary of Defense shall ensure that the entity conducting the study—

''(1) is not a Department of Defense organization; and

''(2) shall, at a minimum, involve in the study, in an integral way, the following persons:

''(A) The Chairman of the Joint Chiefs of Staff and available former Chairmen of the Joint Chiefs of Staff.

''(B) Members and former members of the Joint Staff, the Armed Forces, the Congress, and congressional staff who are or who have been significantly involved in the development, implementation, or modification of joint officer management and joint professional military education.

''(C) Experts in joint officer management and education from civilian academic and research centers.''

STUDY OF DISTRIBUTION OF GENERAL AND FLAG OFFICER POSITIONS IN JOINT DUTY ASSIGNMENTS

Pub. L. 102–484, div. A, title IV, §404, Oct. 23, 1992, 106 Stat. 2398, directed Secretary of Defense to conduct a study of whether joint organizations of Department of Defense are fully staffed with appropriate number of general and flag officers and, not later than one year after Oct. 23, 1992, submit a report to Congress.

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Section 406(a)–(c) of Pub. L. 99–433, as amended by Pub. L. 100–456, div. A, title V, §516, Sept. 29, 1988, 102 Stat. 1971, provided that:

''(a) JOINT DUTY ASSIGNMENTS.—(1) Section 661(d) of title 10, United States Code, shall be implemented as rapidly as possible and (except as provided under paragraph (2)) not later than October 1, 1989.

''(2) The first sentence of section 661(d)(2)(B) of such title shall apply with respect to positions designated under the first sentence of section 661(d)(2)(A) of that title as critical joint duty assignment positions which become vacant after January 1, 1989.

''(b) JOINT SPECIALTY.—

''(1) INITIAL SELECTIONS.—(A) In making the initial selections of officers for the joint specialty under section 661 of title 10, United States Code (as added by section 401 of this Act), the Secretary of Defense may waive the requirement of either subparagraph (A) or (B) (but not both) of subsection (c)(1) of such section in the case of any officer in a grade above captain or, in the case of the Navy, lieutenant.

''(B) In applying such subparagraph (B) to the initial selections of officers for the joint specialty, the Secretary may in the case of any officer—

''(i) waive the requirement that a joint duty assignment be served after the officer has completed an appropriate program at a joint professional military education school;

''(ii) waive the requirement for the length of a joint duty assignment in the case of a joint duty assignment begun by an officer before January 1, 1987, if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986; or

''(iii) consider as a joint duty assignment any tour of duty begun by an officer before October 1, 1986, that involved significant experience in joint matters (as determined by the Secretary) if the officer served in that assignment for a period of sufficient duration (which may not be less than 12 months) for his service to have been considered a full tour of duty under the policies and regulations in effect on September 30, 1986.

''(C) A waiver under subparagraph (A) of this paragraph or under any provision of subparagraph (B) of this paragraph may only be made on a case-by-case basis.

''(D) The authority of the Secretary of Defense to grant a waiver under subparagraph (A) or (B) of this paragraph may be delegated only to the Deputy Secretary of Defense.

''(2) REQUIREMENT FOR HIGH STANDARDS.—In exercising the authority provided by paragraph (1), the Secretary of Defense shall ensure that the highest standards of performance, education, and experience are established and maintained for officers selected for the joint specialty.

''(3) SUNSET.—The authority provided by paragraph (1) shall expire on October 1, 1989.

''(c) CAREER GUIDELINES.—The career guidelines required to be established by section 661(e) of such title, the procedures required to be established by section 665(a) of such title, and the personnel policies required to be established by section 666 of such title (as added by section 401) shall be established not later than the end of the eight-month period beginning on the date of the enactment of this Act [Oct. 1, 1986]. The provisions of section 665(b) of such title shall be implemented not later than the end of such period.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 164, 619a, 664, 665, 667 of this title.

§662. Promotion policy objectives for joint officers

(a) QUALIFICATIONS.—The Secretary of Defense shall ensure that the qualifications of officers assigned to joint duty assignments are such that—

(1) officers who are serving on, or have served on, the Joint Staff are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force;

(2) officers who have the joint specialty are expected, as a group, to be promoted—

(A) during the period beginning on December 28, 2001, and ending on December 27, 2004, at a rate not less than the rate for officers of the same armed force in the same grade and competitive category; and

(B) after December 27, 2004, at a rate not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and

(3) officers who are serving in, or have served in, joint duty assignments (other than officers covered in paragraphs (1) and (2)) are expected, as a group, to be promoted to the next higher grade at a rate not less than the rate for all officers of the same armed force in the same grade and competitive category.

(b) ANNUAL REPORT.—Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year of officers who are serving in, or have served in, joint duty assignments, especially with respect to the record of officer selection boards in meeting the objectives of paragraphs (1), (2), and (3) of subsection (a). If such promotion rates fail to meet such objectives for any fiscal year, the Secretary shall include in the report for that fiscal year information on such failure and on what action the Secretary has taken or plans to take to prevent further failures.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1026; amended Pub. L. 100–456, div. A, title V, §513, Sept. 29, 1988, 102 Stat. 1969; Pub. L. 101–510, div. A, title XIII, §1311(3), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 104–201, div. A, title V, §510, Sept. 23, 1996, 110 Stat. 2514; Pub. L. 107–107, div. A, title V, §521(b), Dec. 28, 2001, 115 Stat. 1097; Pub. L. 107–314, div. A, title X, §1062(a)(4), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Subsec. (a)(2)(A). Pub. L. 107–314, §1062(a)(4)(A), substituted ''during the period beginning on December 28, 2001, and ending on December 27, 2004,'' for ''during the three-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002,''.

Subsec. (a)(2)(B). Pub. L. 107–314, §1062(a)(4)(B), substituted ''after December 27, 2004'' for ''after the end of the period specified in subparagraph (A)''.

2001—Subsec. (a)(2). Pub. L. 107–107 substituted ''promoted—'' for ''promoted at a rate'', added subpar. (A), designated ''not less than the rate for officers of the same armed force in the same grade and competitive category who are serving on, or have served on, the headquarters staff of their armed force; and'' as subpar. (B), and inserted ''after the end of the period specified in subparagraph (A), at a rate'' after subpar. (B) designation.

1996—Subsec. (b). Pub. L. 104–201, §510(b), in first sentence, substituted ''paragraphs'' for ''clauses'' and, in second sentence, inserted ''for any fiscal year'' after ''such objectives'' and substituted ''report for that fiscal year'' for ''periodic report required by this subsection''.

Pub. L. 104–201, §510(a), substituted ''Annual Report'' for ''Report'' in heading and ''Not later than January 1 of each year, the Secretary of Defense shall submit to Congress a report on the promotion rates during the preceding fiscal year'' for ''The Secretary of Defense shall periodically (and not less often than every six months) report to Congress on the promotion rates'' in text.

1990—Subsec. (b). Pub. L. 101–510 substituted ''the Secretary shall include in the periodic report required by this subsection information on such failure and on'' for ''the Secretary shall immediately notify Congress of such failure and of''.

1988—Subsec. (a)(1), (3). Pub. L. 100–456 inserted ''to the next higher grade'' after ''promoted''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 664 of this title.

§ 663. Education

(a) CAPSTONE COURSE FOR NEW GENERAL AND FLAG OFFICERS.—(1) Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other armed forces.

(2) Subject to paragraph (3), the Secretary of Defense may waive paragraph (1)—

(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

(B) when necessary for the good of the service;

(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

(3) The authority of the Secretary of Defense to grant a waiver under paragraph (2) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

(b) JOINT MILITARY EDUCATION SCHOOLS.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall periodically review and revise the curriculum of each school of the National Defense University (and of any other joint professional military education school) to enhance the education and training of officers in joint matters. The Secretary shall require such schools to maintain rigorous standards for the military education of officers with the joint specialty.

(c) OTHER PROFESSIONAL MILITARY EDUCATION SCHOOLS.—The Secretary of Defense shall require that each Department of Defense school concerned with professional military education periodically review and revise its curriculum for senior and intermediate grade officers in order to strengthen the focus on—

(1) joint matters; and

(2) preparing officers for joint duty assignments.

(d) POST-EDUCATION JOINT DUTY ASSIGNMENTS.—(1) The Secretary of Defense shall ensure that each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment after such graduation (unless the officer receives a waiver of that requirement by the Secretary in an individual case).

(2)(A) The Secretary of Defense shall ensure that a high proportion (which shall be greater than 50 percent) of the officers graduating from a joint professional military education school who do not have the joint specialty shall receive assignments to a joint duty assignment as their next duty assignment after such graduation or, to the extent authorized in subparagraph (B), as their second duty assignment after such graduation.

(B) The Secretary may, if the Secretary determines that it is necessary to do so for the efficient management of officer personnel, establish procedures to allow up to one-half of the officers subject to the joint duty assignment requirement in subparagraph (A) to be assigned to a joint duty assignment as their second (rather than first) assignment after such graduation from a joint professional military education school.

(e) DURATION OF PRINCIPAL COURSE OF INSTRUCTION AT JOINT FORCES STAFF COLLEGE.—(1) The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than three months.

(2) In this subsection, the term ''principal course of instruction'' means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1027; amended Pub. L. 101–189, div. A, title XI, § 1123(c)(1), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 102–190, div. A, title IX, § 912(a), Dec. 5, 1991, 105 Stat. 1452; Pub. L. 103–160, div. A, title IX, § 933(a), Nov. 30, 1993, 107 Stat. 1735; Pub. L. 107–107, div. A, title X, § 1048(a)(6), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–314, div. A, title X, § 1062(a)(5), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Subsec. (e)(2). Pub. L. 107–314 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College''.

2001—Subsec. (e). Pub. L. 107–107 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College'' in subsec. heading and in text of par. (1).

1993—Subsec. (d). Pub. L. 103–160 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''POST-EDUCATION DUTY ASSIGNMENTS.—The Secretary of Defense shall ensure that—

''(1) unless waived by the Secretary in an individual case, each officer with the joint specialty who graduates from a joint professional military education school shall be assigned to a joint duty assignment for that officer's next duty assignment; and

''(2) a high proportion (which shall be greater than 50 percent) of the other officers graduating from a joint professional military education school also receive assignments to a joint duty assignment as their next duty assignment.''

1991—Subsec. (e). Pub. L. 102–190 designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (e). Pub. L. 101–189 added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 933(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to officers graduating from joint professional military education schools after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–190, div. A, title IX, § 912(b), Dec. 5, 1991, 105 Stat. 1452, as amended by Pub. L. 102–484, div. A,

title IX, §921, Oct. 23, 1992, 106 Stat. 2473, provided that the amendment made by section 912(a)(2) of Pub. L. 102–190 to this section was not to apply with respect to the Armed Forces Staff College until Jan. 1, 1994.

IMPLEMENTATION OF SUBSECTION (e)

Section 1123(c)(2) of Pub. L. 101–189 provided that: ''Subsection (e) of such section, as added by paragraph (1), shall be implemented by the Secretary of Defense not later than two years after the date of the enactment of this Act [Nov. 29, 1989].''

EDUCATION REQUIREMENTS; JOINT OFFICER MANAGEMENT PROGRAM

Section 406(d) of Pub. L. 99–433 provided that:

''(1) CAPSTONE COURSE.—Subsection (a) of section 663 of such title [10 U.S.C. 663(a)] (as added by section 401) shall apply with respect to officers selected in reports of officer selection boards submitted to the Secretary concerned after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 1, 1986].

''(2) REVIEW OF MILITARY EDUCATION SCHOOLS.—(A) The first review under subsections (b) and (c) of such section shall be completed not later than 120 days after the date of the enactment of this Act. The Secretary of Defense shall submit to Congress a report on the results of the review at each Department of Defense school not later than 60 days thereafter.

''(B) Such subsections shall be implemented so that the revised curricula take effect with respect to courses beginning after July 1987.

''(3) POST-EDUCATION DUTY ASSIGNMENTS.—Subsection (d) of such section shall take effect with respect to classes graduating from joint professional military education schools after January 1987.''

§664. Length of joint duty assignments

(a) GENERAL RULE.—The length of a joint duty assignment—

(1) for general and flag officers shall be not less than two years; and

(2) for other officers shall be not less than three years.

(b) WAIVER AUTHORITY.—The Secretary of Defense may waive subsection (a) in the case of any officer.

(c) INITIAL ASSIGNMENT OF OFFICERS WITH CRITICAL OCCUPATIONAL SPECIALTIES.—The Secretary may for purposes of section 661(c)(2) of this title authorize a joint duty assignment of less than the period prescribed by subsection (a), but not less than two years, without the requirement for a waiver under subsection (b) in the case of an officer—

(1) who is nominated for the joint specialty;

(2) who has a military occupational specialty designated under section 661(c)(2) of this title as a critical occupational specialty; and

(3) for whom such joint duty assignment is the initial joint duty assignment.

(d) EXCLUSIONS FROM TOUR LENGTH.—The Secretary of Defense may exclude the following service from the standards prescribed in subsection (a):

(1) Service in a joint duty assignment in which the full tour of duty in the assignment is not completed by the officer because of—

(A) retirement;

(B) release from active duty;

(C) suspension from duty under section 155(f)(2) or 164(g) of this title; or

(D) a qualifying reassignment (as described in subsection (g)(4)).

(2) Service in a joint duty assignment outside the United States or in Alaska or Hawaii which is less than the applicable standard prescribed in subsection (a).

(3) Service in a joint duty assignment in a case in which—

(A) the officer's tour of duty in that assignment brings the officer's cumulative service for purposes of subsection (f)(3) to the applicable standard prescribed in subsection (a); and

(B) the length of time served in that assignment (in any case other than an assignment which is described in subsection (g)(4)(B)) was not less than two years.

(e) AVERAGE TOUR LENGTHS.—(1) The Secretary shall ensure that the average length of joint duty assignments during any fiscal year, measured by the lengths of the joint duty assignments ending during that fiscal year, meets the standards prescribed in subsection (a).

(2) In computing the average length of joint duty assignments for purposes of paragraph (1), the Secretary may exclude the following service:

(A) Service described in subsection (c), except that not more than 12½ percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

(B) Service described in subsection (d).

(C) Service described in subsection (f)(6), except that no more than 10 percent of all joint duty assignments shown on the list published pursuant to section 668(b)(2)(A) of this title may be so excluded in any year.

(f) FULL TOUR OF DUTY.—An officer shall be considered to have completed a full tour of duty in a joint duty assignment upon completion of any of the following:

(1) A joint duty assignment that meets the standards prescribed in subsection (a).

(2) A joint duty assignment under the circumstances described in subsection (c).

(3) Cumulative service in joint duty assignments as described in subsection (g).

(4) A joint duty assignment outside the United States or in Alaska or Hawaii for which the normal accompanied-by-dependents tour of duty is prescribed by regulation to be at least two years in length, if the officer serves in the assignment for a period equivalent to the accompanied-by-dependents tour length (except that not more than 6 percent of all joint duty assignments may be considered to be under this paragraph at any time).

(5) A joint duty assignment with respect to which the Secretary of Defense has granted a waiver under subsection (b), but only in a case in which the Secretary determines that the service completed by that officer in that duty assignment shall be considered to be a full tour of duty in a joint duty assignment.

(6) A second joint duty assignment that is less than the period required under subsection (a), but not less than two years, without regard to whether a waiver was granted for such assignment under subsection (b).

(g) CUMULATIVE CREDIT.—(1) Cumulative service for purposes of subsection (f)(3) is service in joint duty assignments which totals in length

not less than the applicable standard prescribed in subsection (a) and which includes at least one tour of duty in a joint duty assignment that—

(A) was performed outside the United States or in Alaska or Hawaii; or

(B) was terminated because of a qualifying reassignment (as described in paragraph (4)).

(2) In computing cumulative service of an officer in joint duty assignments for purposes of paragraph (1), a tour of duty of the officer in a joint duty assignment other than a tour of duty specified in subparagraph (A) or (B) of paragraph (1) may not be counted unless the officer served at least two years in the assignment. The prohibition on counting certain tours of duty in the preceding sentence does not apply to a joint duty assignment which follows a reassignment described in paragraph (4)(B).

(3) In computing the cumulative service of an officer in joint duty assignments for purposes of paragraph (1), a tour of duty in a joint duty assignment shall be excluded if the officer served less than 10 months in that assignment.

(4) For purposes of paragraph (1)(B), a qualifying reassignment is a reassignment of an officer from a joint duty assignment—

(A) for unusual personal reasons (including extreme hardship and medical conditions) beyond the control of the officer or the armed forces; or

(B) to another joint duty assignment immediately after—

(i) the officer was promoted to a higher grade if the reassignment was made because no joint duty assignment was available within the same organization that was commensurate with the officer's new grade; or

(ii) the officer's position was eliminated in a reorganization.

(h) CONSTRUCTIVE CREDIT.—(1) The Secretary of Defense may accord constructive credit in the case of an officer (other than a general or flag officer) who, for reasons of military necessity, is reassigned from a joint duty assignment within 60 days of meeting the tour length criteria prescribed in subsection (f)(1), (f)(2), (f)(4), or (g)(2). The amount of constructive service that may be credited to such officer shall be the amount sufficient for the completion of the applicable tour of duty requirement, but in no case more than 60 days.

(2) For the purpose of computing under subsection (e) the average length of joint duty assignments during a fiscal year, the amount of any constructive service credited under this subsection with respect to a joint duty assignment to be counted in that computation shall be excluded.

(3) This subsection shall not apply in the case of an officer who serves less than 10 months in the joint duty assignment.

(i) JOINT DUTY CREDIT FOR CERTAIN JOINT TASK FORCE ASSIGNMENTS.—(1) In the case of an officer who completes service in a qualifying temporary joint task force assignment, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, may (subject to the criteria prescribed under paragraph (4)) grant the officer—

(A) credit for having completed a full tour of duty in a joint duty assignment; or

(B) credit countable for determining cumulative service in joint duty assignments.

(2)(A) For purposes of paragraph (1), a qualifying temporary joint task force assignment of an officer is a temporary assignment, any part of which is performed by the officer on or after February 10, 1996—

(i) to the headquarters staff of a United States joint task force that is part of a unified command or the United States element of the headquarters staff of a multinational force; and

(ii) with respect to which the Secretary of Defense determines that service of the officer in that assignment is equivalent to that which would be gained by the officer in a joint duty assignment.

(B) An officer may not be granted credit under this subsection unless the officer is recommended for such credit by the Chairman of the Joint Chiefs of Staff.

(3) Credit under paragraph (1) (including a determination under paragraph (2)(A)(ii) and a recommendation under paragraph (2)(B) with respect to such credit) may be granted only on a case-by-case basis in the case of an individual officer.

(4) The Secretary of Defense shall prescribe by regulation criteria for determining whether an officer may be granted credit under paragraph (1) with respect to service in a qualifying temporary joint task force assignment. The criteria shall apply uniformly among the armed forces and shall include the following requirements:

(A) For an officer to be credited as having completed a full tour of duty in a joint duty assignment, the length of the officer's service in the qualifying temporary joint task force assignment must meet the requirements of subsection (a) or (c).

(B) For an officer to be credited with service for purposes of determining cumulative service in joint duty assignments, the officer must serve at least 90 consecutive days in the qualifying temporary joint task force assignment.

(C) The service must be performed in support of a mission that is directed by the President or that is assigned by the President to United States forces in the joint task force involved.

(D) The joint task force must be constituted or designated by the Secretary of Defense or by the commander of a combatant command or of another force.

(E) Except as provided in subparagraph (F), the joint task force must conduct combat or combat-related operations in a unified action under joint or multinational command and control.

(F) Service in a temporary joint task force assignment not involved in combat or combat-related operations may not be credited for the purposes of joint duty, unless, and only if—

(i) the service of the officer and the nature of the joint task force not only meet all criteria of this section, except subparagraph (E), but also any additional criteria the Secretary may establish;

(ii) the Secretary has specifically approved the operation conducted by the joint task force as one that qualifies for joint service

credit, and notifies Congress upon each approval, providing the criteria that led to that approval; and

(iii) the operation is conducted by the joint task force in an environment where an extremely fragile state of peace and high potential for hostilities coexist.

(5) Officers for whom joint duty credit is granted pursuant to this subsection may not be taken into account for the purposes of any of the following provisions of this title: section 661(d)(1), section 662(a)(3), section 662(b), subsection (a) of this section, and paragraphs (7), (8), (9), (11), and (12) of section 667.

(6) In the case of an officer credited with having completed a full tour of duty in a joint duty assignment pursuant to this subsection, the Secretary of Defense may waive the requirement in paragraph (1)(B) of section 661(c) of this title that the tour of duty in a joint duty assignment be performed after the officer completes a program of education referred to in paragraph (1)(A) of that section. The provisions of subparagraphs (C) and (D) of section 661(c)(3) of this title shall apply to such a waiver in the same manner as to a waiver under subparagraph (A) of that section.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1028; amended Pub. L. 100–180, div. A, title XIII, §1303(a), Dec. 4, 1987, 101 Stat. 1170; Pub. L. 100–456, div. A, title V, §§514, 517(b), Sept. 29, 1988, 102 Stat. 1969, 1971; Pub. L. 104–106, div. A, title V, §501(b), (e), (f), Feb. 10, 1996, 110 Stat. 290, 292; Pub. L. 106–65, div. A, title X, §1066(a)(5), Oct. 5, 1999, 113 Stat. 770; Pub. L. 107–107, div. A, title V, §522, Dec. 28, 2001, 115 Stat. 1097.)

AMENDMENTS

2001—Subsec. (i)(4)(E). Pub. L. 107–107, §522(1), substituted ''Except as provided in subparagraph (F), the joint task force'' for ''The joint task force''.

Subsec. (i)(4)(F). Pub. L. 107–107, §522(2), added subpar. (F).

1999—Subsec. (i)(2)(A). Pub. L. 106–65 substituted ''February 10, 1996'' for ''the date of the enactment of this subsection'' in introductory provisions.

1996—Subsec. (e)(1). Pub. L. 104–106, §501(f), struck out ''(after fiscal year 1990)'' after ''any fiscal year''.

Subsec. (e)(2)(C). Pub. L. 104–106, §501(e)(1), added subpar. (E).

Subsec. (f). Pub. L. 104–106, §501(e)(2)(A), substituted ''completion of any of the following:'' for ''completion of—'' in introductory provisions.

Subsec. (f)(1). Pub. L. 104–106, §501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''subsection (a).'' for ''subsection (a);''.

Subsec. (f)(2). Pub. L. 104–106, §501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''subsection (c).'' for ''subsection (c);''.

Subsec. (f)(3). Pub. L. 104–106, §501(e)(2)(C), (D), substituted ''Cumulative'' for ''cumulative'' and ''subsection (g).'' for ''subsection (g);''.

Subsec. (f)(4). Pub. L. 104–106, §501(e)(2)(B), (D), substituted ''A joint duty'' for ''a joint duty'' and ''any time).'' for ''any time); or''.

Subsec. (f)(5). Pub. L. 104–106, §501(e)(2)(B), substituted ''A joint duty'' for ''a joint duty''.

Subsec. (f)(6). Pub. L. 104–106, §501(e)(2)(E), added par. (6).

Subsec. (i). Pub. L. 104–106, §501(b), added subsec. (i).

1988—Subsec. (a)(1). Pub. L. 100–456, §514(1)(A), substituted ''two years'' for ''three years''.

Subsec. (a)(2). Pub. L. 100–456, §514(1)(B), substituted ''three years'' for ''three and one-half years''.

Subsec. (c)(1). Pub. L. 100–456, §514(2), substituted ''is'' for ''has been'' and struck out ''before such assignment begins'' after ''specialty''.

Subsec. (d)(2). Pub. L. 100–456, §514(3), inserted ''which is less than the applicable standard prescribed in subsection (a)'' after ''Hawaii''.

Subsec. (e)(2)(A). Pub. L. 100–456, §517(b), substituted ''12½ percent'' for ''10 percent''.

Subsec. (f)(4), (5). Pub. L. 100–456, §514(4), added pars. (4) and (5).

Subsec. (g)(3). Pub. L. 100–456, §514(5), substituted ''shall be excluded if the officer served less than 10 months in that assignment'' for ''shall be excluded—

''(A) if the officer served less than 10 months in that assignment; and

''(B) to the extent that the assignment was served more than eight years before the date of computation of the cumulative service.''

Subsec. (h). Pub. L. 100–456, §514(6), added subsec. (h).

1987—Subsec. (b). Pub. L. 100–180 added subsec. (b) and struck out former subsec. (b) which read as follows: ''The Secretary of Defense may waive subsection (a) in the case of any officer, but the Secretary shall ensure that the average length of joint duty assignments meets the standards prescribed in that subsection.''

Subsec. (c). Pub. L. 100–180 added subsec. (c) and struck out former subsec. (c), ''Certain officers with critical combat operations skills'', which read as follows: ''Joint duty assignments of less than the period prescribed by subsection (a), but not less than two years, may be authorized for the purposes of section 661(c)(2) of this title. Such an assignment may not be counted for the purposes of determining the average length of joint duty assignments under subsection (b).''

Subsec. (d). Pub. L. 100–180 added subsec. (d) and struck out former subsec. (d), ''Exception'', which read as follows:

''(1) Subsection (a) does not apply in the case of an officer who fails to complete a joint duty assignment as the result of—

''(A) retirement;

''(B) separation from active duty; or

''(C) suspension from duty under section 155(f)(2) or 164(g) of this title.

''(2) In computing the average length of joint duty assignments for purposes of this section, the Secretary of Defense shall exclude joint duty assignments not completed because of a reason specified in paragraph (1).''

Subsecs. (e) to (g). Pub. L. 100–180 added subsecs. (e) to (g).

RETROACTIVE JOINT SERVICE CREDIT FOR DUTY IN CERTAIN JOINT TASK FORCES

Pub. L. 107–107, div. A, title V, §523, Dec. 28, 2001, 115 Stat. 1097, provided that:

''(a) AUTHORITY.—In accordance with section 664(i) of title 10, United States Code, as amended by section 522, the Secretary of Defense may award joint service credit to any officer who served on the staff of a United States joint task force headquarters in an operation and during the period set forth in subsection (b) and who meets the criteria specified in such section. To determine which officers qualify for such retroactive credit, the Secretary shall undertake a case-by-case review of the records of officers.

''(b) ELIGIBLE OPERATIONS.—Service in the following operations, during the specified periods, may be counted for credit under subsection (a):

''(1) Operation Northern Watch, during the period beginning on August 1, 1992, and ending on a date to be determined.

''(2) Operation Southern Watch, during the period beginning on August 27, 1992, and ending on a date to be determined.

''(3) Operation Able Sentry, during the period beginning on June 26, 1993, and ending on February 28, 1999.

''(4) Operation Joint Endeavor, during the period beginning on December 25, 1995, and ending on December 19, 1996.

''(5) Operation Joint Guard, during the period beginning on December 20, 1996, and ending on June 20, 1998.

''(6) Operation Desert Thunder, beginning on January 24, 1998, and ending on December 15, 1998.

''(7) Operation Joint Forge, beginning on June 20, 1998, and ending on June 10, 1999.

''(8) Operation Noble Anvil, beginning on March 24, 1999, and ending on July 20, 1999.

''(9) Operation Joint Guardian, beginning on June 11, 1999, and ending on a date to be determined.

''(c) REPORT.—Not later than one year after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of Defense shall submit to Congress a report of the numbers, by service, grade, and operation, of the officers given joint service credit in accordance with this section.''

JOINT DUTY CREDIT FOR CERTAIN DUTY PERFORMED DURING OPERATIONS DESERT SHIELD AND DESERT STORM

Pub. L. 103–160, div. A, title IX, §932, Nov. 30, 1993, 107 Stat. 1735, provided that:

''(a) AUTHORITY TO GIVE JOINT DUTY CREDIT.—(1) An officer described in paragraph (2) may (subject to paragraph (3)) be given credit for service in a joint duty assignment pursuant to the provisions of section 933 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2476; 10 U.S.C. 664 note), notwithstanding the expiration (under subsection (e) of that section) of authority to give such credit under that section.

''(2) Paragraph (1) applies—

''(A) in the case of an officer who was recommended for such credit under subsection (a)(3) of that section before the expiration (under subsection (e) of that section) of authority to give such credit, but for whom such credit either was denied or was granted as credit for less than a full tour of duty in a joint duty assignment; and

''(B) in the case of an officer who did not submit a timely request for consideration for such credit.

''(3)(A) In the case of an officer described in paragraph (2)(A), joint duty credit may be granted by reason of this subsection only if the Secretary determines that the decision not to give the credit or not to give greater credit, as the case may be, to that officer was incorrect.

''(B) In the case of an officer described in paragraph (2)(B), joint duty credit may be granted by reason of this subsection only if the Secretary determines that the officer's ability to submit a timely request was impaired by involvement of the officer in an operational assignment and, as a result of the failure to submit such a timely request, the officer was not recommended for such credit.

''(b) DURATION OF AUTHORITY.—Subsection (a) expires at the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993].

''(c) CLARIFICATION OF INTENDED RELATIONSHIP BETWEEN CREDIT AND PROMOTIONS.—[Amended section 933(a)(1) of Pub. L. 102–484, below.]

''(2) Any joint duty service credit given to an officer under section 933(a)(1) of the National Defense Authorization Act for Fiscal Year 1993 before the date of the enactment of this Act [Nov. 30, 1993] may be applied to any provision of title 10, United States Code.''

Pub. L. 102–484, div. A, title IX, §933, Oct. 23, 1992, 106 Stat. 2476, as amended by Pub. L. 103–35, title II, §202(a)(9), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title IX, §932(c)(1), Nov. 30, 1993, 107 Stat. 1735, provided that:

''(a) AUTHORITY TO GIVE JOINT DUTY CREDIT.—(1) The Secretary of Defense, in consultation with the Chairman of the Joint Chiefs of Staff, may give an officer who has completed service described in paragraph (2) credit for having completed a full tour of duty in a joint duty assignment, or credit countable for determining cumulative service in joint duty assignments, for the purposes of any provision of title 10, United States Code, notwithstanding the length of such service or whether that service is within the definition of 'joint duty assignment' in section 668 of title 10, United States Code.

''(2) Service referred to in paragraph (1) is service performed by an officer, any portion of which took place during the period beginning on August 2, 1990, and ending on February 28, 1991, in an assignment in the Persian Gulf combat zone that (as determined by the Secretary of Defense) provided significant experience in joint matters.

''(3) The Secretary, after consultation with the Chairman of the Joint Chiefs of Staff, may give credit for service in a joint duty assignment under paragraph (1) in the case of an officer recommended for such credit by the Chief of Staff of the Army (for officers in the Army), the Chief of Naval Operations (for officers in the Navy), the Chief of Staff of the Air Force (for officers in the Air Force), and the Commandant of the Marine Corps (for officers in the Marine Corps). Any such credit shall be granted by the Secretary on a case-by-case basis.

''(4) The Secretary of Defense shall establish uniform criteria for defining the standards to be used in determining whether to give an officer credit for service in a joint duty assignment under paragraph (1). Such criteria shall be consistent with the congressional declarations of policy in section 2 of the National Security Act of 1947 (50 U.S.C. 401) and section 3 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 [Pub. L. 99–433] (10 U.S.C. 111 note). The criteria shall include standards to be used in determining whether to give an officer credit for completion of a full tour of duty, or credit countable for determining cumulative service, in a joint duty assignment. Such criteria may not result in the extension of eligibility for joint duty credit under this section to all officers in a specified category of officers that exists other than for reasons of this section.

''(b) INAPPLICABILITY OF CERTAIN REPORTING AND POLICY REQUIREMENTS.—(1) Officers for whom joint duty credit is granted pursuant to subsection (a) shall not be counted for the purposes of paragraphs (7), (8), (9), (11), and (12) of section 667 of title 10, United States Code, and subsections (a)(3) and (b) of section 662 of such title.

''(2) In the case of an officer for whom credit for completion of a full tour of duty in a joint duty assignment is granted pursuant to subsection (a), the Secretary of Defense may waive the requirement in paragraph (1)(B) of section 661(c) of title 10, United States Code, that, for purposes of nomination to the joint specialty under chapter 38 of such title, a full tour of duty in a joint duty assignment be performed after the officer completes a program of education referred to in paragraph (1)(A) of that section.

''(c) INFORMATION TO BE INCLUDED IN NEXT ANNUAL REPORT.—The joint specialty report of the Secretary of Defense under section 667 of title 10, United States Code, for fiscal year 1993 shall include the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

''(1) The number of officers granted credit for a joint duty assignment pursuant to subsection (a).

''(2) Of such officers, the number granted credit for a full tour of duty in a joint duty assignment pursuant to subsection (a) and the number granted credit for a joint duty assignment that is not treated as a full tour of duty.

''(3) Of the officers granted credit for a joint duty assignment pursuant to subsection (a), the number in each grade and each occupational specialty.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'joint matters' has the meaning given such term in section 668(a) of title 10, United States Code.

''(2) The term 'Persian Gulf combat zone' means the area designated by the President as the combat zone for Operation Desert Shield, Operation Desert Storm,

and related operations for purposes of section 112 of the Internal Revenue Code of 1986 [26 U.S.C. 112].

''(3) The term 'joint specialty report' means that part of the annual report of the Secretary of Defense submitted to Congress under section 113(c) of title 10, United States Code, that is included in such report pursuant to section 667 of title 10, United States Code.

''(e) DURATION OF AUTHORITY.—The authority of the Secretary of Defense under this section expires at the end of the six-month period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

LENGTH OF JOINT DUTY ASSIGNMENTS

Section 406(e) of Pub. L. 99–433 provided that: ''Subsection (a) of section 664 of title 10, United States Code (as added by section 401), shall apply to officers assigned to joint duty assignments after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 1, 1986]. In computing an average under subsection (b) of such section, only joint duty assignments to which such subsection applies shall be considered.''

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For waiver of the requirements of this section for the length of a joint duty assignment, see section 532(c) of Pub. L. 99–433, formerly set out as a note under section 3033 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 154, 164, 619a, 661, 667, 3033, 5033, 5043, 8033 of this title.

§ 665. Procedures for monitoring careers of joint officers

(a) PROCEDURES.—(1) The Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall establish procedures for overseeing the careers of—

(A) officers with the joint specialty; and

(B) other officers who serve in joint duty assignments.

(2) Such oversight shall include monitoring of the implementation of the career guidelines established under section 661(e) of this title.

(b) FUNCTION OF JOINT STAFF.—The Secretary shall take such action as necessary to enhance the capabilities of the Joint Staff so that it can—

(1) monitor the promotions and career assignments of officers with the joint specialty and of other officers who have served in joint duty assignments; and

(2) otherwise advise the Chairman on joint personnel matters.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1028.)

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Procedures under subsec. (a) of this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, and provisions of subsec. (b) of this section to be implemented not later than the end of such period, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§ 666. Reserve officers not on the active-duty list

The Secretary of Defense shall establish personnel policies emphasizing education and experience in joint matters for reserve officers not on the active-duty list. Such policies shall, to the extent practicable for the reserve components, be similar to the policies provided by this chapter.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1028.)

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

Personnel policies under this section to be established not later than the end of the eight-month period beginning Oct. 1, 1986, see section 406(c) of Pub. L. 99–433, set out as a note under section 661 of this title.

§ 667. Annual report to Congress

The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps):

(1)(A) The number of officers selected for the joint specialty and their education and experience.

(B) The number of officers who meet the criteria for selection for the joint specialty but were not selected, together with the reasons why.

(2) The number of officers with the joint specialty, shown by grade and branch or specialty and by education.

(3) The number of officers on the active-duty list with a military occupational specialty designated under section 661(c)(2) of this title as a critical occupational specialty who—

(A) have been selected for the joint specialty;

(B) have been selected for the joint specialty and are serving in a joint duty assignment;

(C) have completed a joint duty assignment and are attending an appropriate program at a joint professional military education school;

(D) have completed an appropriate program at a joint professional military education school; and

(E) have served, or are serving in, a second joint duty assignment after being selected for the joint specialty, with the number of such officers who have served, or are serving, in a critical joint duty assignment shown separately for general and flag officers, and for all other officers.

(4) For each fiscal year—

(A) the number of officers selected for the joint specialty and, of those, the number who have a military occupational specialty designated as a critical occupational specialty; and

(B) a comparison of the number of officers who have the joint specialty who qualified for the joint specialty under section 661(c)(1) of this title with the number of officers who have the joint specialty who were selected for the joint specialty under section 661(c)(2) of this title.

(5) The promotion rate for officers considered for promotion from within the promotion zone who are serving on the Joint Staff compared with the promotion rate for other offi-

cers considered for promotion from within the promotion zone in the same pay grade and the same competitive category, shown for all officers of the armed force and for officers serving on the headquarters staff of the armed force concerned.

(6) The promotion rate for officers with the joint specialty, compared in the same manner as specified in paragraph (5).

(7) The promotion rate for other officers who are serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(8) The promotion rate for officers considered for promotion from below the promotion zone, shown for officers serving on the Joint Staff, officers with the joint specialty, and other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(9) The promotion rate for officers considered for promotion from above the promotion zone, shown for officers serving on the Joint Staff, officers with the joint specialty, and other officers serving in joint duty assignments, compared in the same manner as specified in paragraph (5).

(10) An analysis of assignments of officers after selection for the joint specialty.

(11) The average length of tours of duty in joint duty assignments—

(A) for general and flag officers, shown separately for assignments to the Joint Staff and other joint duty assignments; and

(B) for other officers, shown separately for assignments to the Joint Staff and other joint duty assignments.

(12) The number of times, in the case of each category of exclusion, that service in a joint duty assignment was excluded in computing the average length of joint duty assignments.

(13) In any case in which the information under paragraphs (5) through (9) shows a significant imbalance between officers serving in joint duty assignments or having the joint specialty and other officers, a description of what action has been taken (or is planned to be taken) by the Secretary to correct the imbalance.

(14)(A) An analysis of the extent to which the Secretary of each military department is providing officers to fill that department's share (as determined by law or by the Secretary of Defense) of Joint Staff and other joint duty assignments, including the reason for any significant failure by a military department to fill its share of such positions and a discussion of the actions being taken to correct the shortfall.

(B) An assessment of the extent to which the Secretary of each military department is assigning personnel to joint duty assignments in accordance with this chapter and the policies, procedures, and practices established by the Secretary of Defense under section 661(a) of this title.

(15) The number of times a waiver authority was exercised under this chapter (or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments) and in the case of each such authority—

(A) whether the authority was exercised for a general or flag officer;

(B) an analysis of the reasons for exercising the authority; and

(C) the number of times in which action was taken without exercise of the waiver authority compared with the number of times waiver authority was exercised (in the case of each waiver authority under this chapter or under any other provision of law which permits the waiver of any requirement relating to joint duty assignments).

(16) The number of officers granted credit for service in joint duty assignments under subparagraphs (E) and (F) of section 664(i)(4) of this title and—

(A) of those officers—

(i) the number of officers credited with having completed a tour of duty in a joint duty assignment; and

(ii) the number of officers granted credit for purposes of determining cumulative service in joint duty assignments; and

(B) the identity of each operation for which an officer has been granted credit pursuant to subparagraphs (E) and (F) of section 664(i)(4) of this title and a brief description of the mission of the operation.

(17) With regard to each time the principal course of instruction at the Joint Forces Staff College is offered—

(A) the number of officers selected to attend that course who did not first complete while in residence at a professional military education school operated by a military department the principal course of instruction offered at that school;

(B) the number of those officers as a percentage of all officers who attended that course of instruction at the Joint Forces Staff College;

(C) a description of the different reasons why officers were selected to attend that course without first attending the principal course of instruction offered at a professional military education school operated by a military department; and

(D) the number of officers so selected for each such reason.

(18) Such other information and comparative data as the Secretary of Defense considers appropriate to demonstrate the performance of the Department of Defense and the performance of each military department in carrying out this chapter.

(Added Pub. L. 99–433, title IV, §401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §1304(a), Dec. 4, 1987, 101 Stat. 1172; Pub. L. 100–456, div. A, title V, §512(b), Sept. 29, 1988, 102 Stat. 1968; Pub. L. 101–189, div. A, title XI, §1123(d), Nov. 29, 1989, 103 Stat. 1557; Pub. L. 104–106, div. A, title V, §501(c), Feb. 10, 1996, 110 Stat. 292; Pub. L. 107–107, div. A, title V, §524, title X, §1048(a)(7), Dec. 28, 2001, 115 Stat. 1098, 1223.)

AMENDMENTS

2001—Par. (1). Pub. L. 107–107, §524(1), designated existing provisions as subpar. (A) and added subpar. (B).

Par. (2). Pub. L. 107–107, § 524(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The military occupational specialties within each of the armed forces that have been designated as critical occupational specialties under section 661(c)(2) of this title, separately identifying those specialties for which there is a severe shortage of trained officers, together with an explanation of how those specialties meet the criteria for that designation in section 661(c)(2)(B) of this title.''

Par. (3)(A), (B). Pub. L. 107–107, § 524(3)(A), substituted ''selected'' for ''nominated''.

Par. (3)(D). Pub. L. 107–107, § 524(3)(B), inserted ''and'' after semicolon at end.

Par. (3)(E), (F). Pub. L. 107–107, § 524(3)(C), (D), redesignated subpar. (F) as (E) and struck out former subpar. (E) which read as follows: ''have been selected for the joint specialty; and''.

Par. (4)(A). Pub. L. 107–107, § 524(4), substituted ''selected'' for ''nominated''.

Par. (14). Pub. L. 107–107, § 524(5), designated existing provisions as subpar. (A) and added subpar. (B).

Par. (16). Pub. L. 107–107, § 524(6), substituted ''subparagraphs (E) and (F) of section 664(i)(4)'' for ''section 664(i)'' in introductory provisions and in subpar. (B).

Par. (17). Pub. L. 107–107, § 1048(a)(7), substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College'' in introductory provisions and in subpar. (B).

1996—Par. (16). Pub. L. 104–106 added par. (16) and struck out former par. (16) which read as follows: ''During the period of the applicability of the first sentence of subparagraph (B) of section 661(d)(2) of this title, information on critical positions not filled by officers with the joint specialty, including—

''(A) a listing by organization of the joint duty assignment positions which were not filled by officers with the joint specialty;

''(B) an explanation of the reasons such positions were not filled by officers with the joint specialty, described by the categories of such reasons; and

''(C) the percentage of critical joint duty assignment positions held by officers who have the joint specialty.''

1989—Pars. (17), (18). Pub. L. 101–189 added par. (17) and redesignated former par. (17) as (18).

1988—Pars. (16), (17). Pub. L. 100–456 added par. (16) and redesignated former par. (16) as (17).

1987—Par. (2). Pub. L. 100–180, § 1304(a)(1), (2), added par. (2) and redesignated former par. (2) as (5).

Par. (3). Pub. L. 100–180, § 1304(a)(1), (2), added par. (3) and redesignated former par. (3) as (6).

Par. (4). Pub. L. 100–180, § 1304(a)(1), (2), added par. (4) and redesignated former par. (4) as (7).

Par. (5). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (2) as (5) and former par. (5) as (8).

Par. (6). Pub. L. 100–180, § 1304(a)(1), (3), redesignated former par. (3) as (6) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (6) redesignated (10).

Par. (7). Pub. L. 100–180, § 1304(a)(1), (3), redesignated former par. (4) as (7) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (7) redesignated (11).

Par. (8). Pub. L. 100–180, § 1304(a)(1), (3), redesignated former par. (5) as (8) and substituted ''paragraph (5)'' for ''paragraph (2)''. Former par. (8) redesignated (13).

Par. (9). Pub. L. 100–180, § 1304(a)(1), (4), added par. (9) and redesignated former par. (9) as (14).

Par. (10). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (6) as (10). Former par. (10) redesignated (16).

Par. (11). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (7) as (11).

Par. (12). Pub. L. 100–180, § 1304(a)(5), added par. (12).

Par. (13). Pub. L. 100–180, § 1304(a)(1), (6), redesignated former par. (8) as (13) and substituted ''paragraphs (5) through (9)'' for ''paragraphs (2) through (5)''.

Par. (14). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (9) as (14).

Par. (15). Pub. L. 100–180, § 1304(a)(7), added par. (15).

Par. (16). Pub. L. 100–180, § 1304(a)(1), redesignated former par. (10) as (16).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1304(b) of Pub. L. 100–180 provided that: ''Paragraphs (3) and (4) of section 667 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1987.''

ADDITIONAL INFORMATION TO BE INCLUDED IN FIVE ANNUAL JOINT OFFICER POLICY REPORTS AFTER NOVEMBER 30, 1993

Pub. L. 103–160, div. A, title IX, § 931(e), Nov. 30, 1993, 107 Stat. 1734, provided that: ''The Secretary of Defense shall include as part of the information submitted to Congress pursuant to section 667 of title 10, United States Code, for each of the next five years after the date of the enactment of this Act [Nov. 30, 1993] the following:

''(1) The degree of progress made toward meeting the requirements of section 619a of title 10, United States Code.

''(2) The compliance achieved with each of the plans developed pursuant to subsection (d) [set out as a note under section 619a of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 664 of this title.

§ 668. Definitions

(a) JOINT MATTERS.—In this chapter, the term ''joint matters'' means matters relating to the integrated employment of land, sea, and air forces, including matters relating to—

(1) national military strategy;

(2) strategic planning and contingency planning; and

(3) command and control of combat operations under unified command.

(b) JOINT DUTY ASSIGNMENT.—(1) The Secretary of Defense shall by regulation define the term ''joint duty assignment'' for the purposes of this chapter. That definition shall be limited to assignments in which the officer gains significant experience in joint matters and shall exclude—

(A) assignments for joint training or joint education; and

(B) assignments within an officer's own military department.

(2) The Secretary shall publish a list showing—

(A) the positions that are joint duty assignment positions under such regulation and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions; and

(B) of the positions listed under subparagraph (A), those that are critical joint duty assignment positions and the number of such positions and, of those positions, those that are positions held by general or flag officers and the number of such positions.

(c) CLARIFICATION OF ''TOUR OF DUTY''.—For purposes of this chapter, a tour of duty in which an officer serves in more than one joint duty assignment within the same organization without a break between such assignments shall be considered to be a single tour of duty in a joint duty assignment.

(Added Pub. L. 99–433, title IV, § 401(a), Oct. 1, 1986, 100 Stat. 1029; amended Pub. L. 100–180, div. A, title XIII, §§ 1302(c)(1), 1303(b), Dec. 4, 1987, 101

Stat. 1170, 1172; Pub. L. 100–456, div. A, title V, §519(b), Sept. 29, 1988, 102 Stat. 1972.)

AMENDMENTS

1988—Subsecs. (c), (f). Pub. L. 100–456 redesignated subsec. (f) as (c).

1987—Subsec. (b)(2). Pub. L. 100–180, §1302(c)(1), inserted ''and, of those positions, those that are positions held by general or flag officers and the number of such positions'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 100–180, §1303(b), added subsec. (f).

PUBLICATION OF REVISED JOINT DUTY ASSIGNMENT LIST

Section 1302(c)(2) of Pub. L. 100–180 provided that: ''The Secretary of Defense shall publish a revised list under section 668(b)(2) of title 10, United States Code, taking into account the amendments made by this section [amending sections 661 and 668 of this title], not later than six months after the date of the enactment of this Act [Dec. 4, 1987].''

TRANSITION TO JOINT OFFICER PERSONNEL POLICY

The list of positions required to be published by subsec. (b)(2) of this section to be published not later than six months after Oct. 1, 1986, see section 406(a)(2) of Pub. L. 99–433, set out as a note under section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 664 of this title.

CHAPTER 39—ACTIVE DUTY

Sec.
671. Members not to be assigned outside United States before completing training.
671a. Members: service extension during war.
671b. Members: service extension when Congress is not in session.
672. Reference to chapter 1209.
[673 to 687. Renumbered.]
688. Retired members: authority to order to active duty; duties.
688a. Retired aviators: temporary authority to order to active duty.
689. Retired members: grade in which ordered to active duty and upon release from active duty.
690. Retired members ordered to active duty: limitation on number.
691. Permanent end strength levels to support two major regional contingencies.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §503(a)(2), Dec. 2, 2002, 116 Stat. 2530, added item 688a.

1996—Pub. L. 104–201, div. A, title V, §521(c), Sept. 23, 1996, 110 Stat. 2517, added items 688, 689, and 690 and struck out former item 688 ''Retired members''.

Pub. L. 104–106, div. A, title IV, §401(b)(2), title XV, §1501(c)(7), Feb. 10, 1996, 110 Stat. 286, 499, struck out items 687 ''Ready Reserve: muster duty'' and 690 ''Limitation on duty with Reserve Officer Training Corps units'' and added item 691.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(7), Oct. 5, 1994, 108 Stat. 3013, substituted ''Reference to chapter 1209'' for ''Reserve components generally'' in item 672 and struck out former items 673 to 686 and 689.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(4)(B), Dec. 5, 1991, 105 Stat. 1472, substituted ''Corps'' for ''Corp'' in item 690.

Pub. L. 102–25, title VII, §701(e)(3), Apr. 6, 1991, 105 Stat. 114, transferred item 687 ''Limitation on duty with Reserve Officer Training Corp units'' to appear after item 689 and redesignated that item as 690.

1990—Pub. L. 101–510, div. A, title V, §559(a)(2), Nov. 5, 1990, 104 Stat. 1571, added item 687 ''Limitation on duty with Reserve Officer Training Corp units''.

1989—Pub. L. 101–189, div. A, title V, §502(a)(2), Nov. 29, 1989, 103 Stat. 1436, added item 687.

1987—Pub. L. 100–180, div. A, title XII, §1231(4), Dec. 4, 1987, 101 Stat. 1160, amended analysis by transferring item 686 from the end to a position immediately below item 685.

1986—Pub. L. 99–661, div. A, title IV, §412(b)(2), Nov. 14, 1986, 100 Stat. 3862, added item 686 at end of analysis.

1983—Pub. L. 98–94, title X, §§1017(b)(4), 1021(b), Sept. 24, 1983, 97 Stat. 669, 670, substituted ''Retired members'' for ''Regular components: retired members'' in item 688, and added item 673c.

1980—Pub. L. 96–513, title V, §501(8), Dec 12, 1980, 94 Stat. 2907, struck out item 687 ''Non-Regulars: readjustment payment upon involuntary release from active duty'' and added items 688 and 689.

1979—Pub. L. 96–107, title III, §303(a)(2), Nov. 9, 1979, 93 Stat. 806, struck out item 686 ''Reports to Congress''.

1976—Pub. L. 94–286, §1, May 14, 1976, 90 Stat. 517, added item 673b.

1968—Pub. L. 90–235, §1(a)(1)(B), Jan. 2, 1968, 81 Stat. 753, added items 671a and 671b.

1967—Pub. L. 90–40, §6(2), June 30, 1967, 81 Stat. 106, added item 673a.

1962—Pub. L. 87–651, title I, §102(b), Sept. 7, 1962, 76 Stat. 508, added item 687.

1958—Pub. L. 85–861, §1(16), Sept. 2, 1958, 72 Stat. 1441, added items 684 and 685.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 513 of this title; title 33 section 3049.

§ 671. Members not to be assigned outside United States before completing training

(a) A member of the armed forces may not be assigned to active duty on land outside the United States and its territories and possessions until the member has completed the basic training requirements of the armed force of which he is a member.

(b) In time of war or a national emergency declared by Congress or the President, the period of required basic training (or its equivalent) may not (except as provided in subsection (c)) be less than 12 weeks.

(c)(1) A period of basic training (or equivalent training) shorter than 12 weeks may be established by the Secretary concerned for members of the armed forces who have been credentialed in a medical profession or occupation and are serving in a health-care occupational specialty, as determined under regulations prescribed under paragraph (2). Any such period shall be established under regulations prescribed under paragraph (2) and may be established notwithstanding section 4(a) of the Military Selective Service Act (50 U.S.C. App. 454(a)).

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations for the purposes of paragraph (1). The regulations prescribed by the Secretary of Defense shall apply uniformly to the military departments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27; Pub. L. 94–106, title VIII, §802(b), Oct. 7, 1975, 89 Stat. 537; Pub. L. 99–661, div. A, title V, §501, Nov. 14, 1986, 100 Stat. 3863; Pub. L. 103–160, div. A, title V, §511, Nov. 30, 1993, 107 Stat. 1648; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
671	50 App.:454(a) (words between semicolon and proviso of 6th par.).	June 24, 1948, ch. 625, §4(a) (words between semicolon and proviso of 6th par.); restated June 19, 1951, ch. 144, §1(d) (words between semicolon and proviso of 6th par.), 65 Stat. 78.

The words ''four months of basic training or its equivalent'' are substituted for the words ''the equivalent of at least four months of basic training''. The words ''who is enlisted, inducted, appointed, or ordered to active duty after the date of enactment of the 1951 Amendments to the Universal Military Training and Service Act [June 19, 1951]'' and ''at any installation located'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1993—Subsec. (b). Pub. L. 103–160, §511(1), inserted ''(except as provided in subsection (c))'' after ''may not''.

Subsec. (c). Pub. L. 103–160, §511(2), added subsec. (c).

1986—Pub. L. 99–661 amended section generally. Prior to amendment, section read as follows: ''No member of an armed force may be assigned to active duty on land outside the United States and its Territories and possessions, until he has had twelve weeks of basic training or its equivalent.''

1975—Pub. L. 94–106 reduced minimum period of basic training from four months to twelve weeks.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 671a. Members: service extension during war

Unless terminated at an earlier date by the Secretary concerned, the period of active service of any member of an armed force is extended for the duration of any war in which the United States may be engaged and for six months thereafter.

(Added Pub. L. 90–235, §1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753.)

§ 671b. Members: service extension when Congress is not in session

(a) Notwithstanding any other provision of law, when the President determines that the national interest so requires, he may, if Congress is not in session, having adjourned sine die, authorize the Secretary of Defense to extend for not more than six months enlistments, appointments, periods of active duty, periods of active duty for training, periods of obligated service, or other military status, in any component of the armed forces, that expire before the thirtieth day after Congress next convenes or reconvenes.

(b) An extension under this section continues until the sixtieth day after Congress next convenes or reconvenes or until the expiration of the period of extension specified by the Secretary of Defense, whichever occurs earlier, unless sooner terminated by law or Executive order.

(Added Pub. L. 90–235, §1(a)(1)(A), Jan. 2, 1968, 81 Stat. 753; amended Pub. L. 101–189, div. A, title VI, §653(a)(3), Nov. 29, 1989, 103 Stat. 1462.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 substituted ''armed forces'' for ''Armed Forces of the United States''.

§ 672. Reference to chapter 1209

Provisions of law relating to service of members of reserve components on active duty are set forth in chapter 1209 of this title (beginning with section 12301).

(Added Pub. L. 103–337, div. A, title XVI, §1662(e)(4), Oct. 5, 1994, 108 Stat. 2992.)

PRIOR PROVISIONS

A prior section 672 was renumbered section 12301 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

[§ 673. Renumbered § 12302]

[§ 673a. Renumbered § 12303]

[§ 673b. Renumbered § 12304]

[§ 673c. Renumbered § 12305]

[§ 674. Renumbered § 12306]

[§ 675. Renumbered § 12307]

[§ 676. Renumbered § 12308]

[§ 677. Renumbered § 12309]

[§ 678. Renumbered § 12310]

[§ 679. Renumbered § 12311]

[§ 680. Renumbered § 12312]

[§ 681. Renumbered § 12313]

[§ 682. Renumbered § 12314]

[§ 683. Renumbered § 12315]

[§ 684. Renumbered § 12316]

[§ 685. Renumbered § 12317]

[§ 686. Renumbered § 12318]

PRIOR PROVISIONS

A prior section 686, acts Aug. 10, 1956, ch. 1041, 70A Stat. 32; Apr. 21, 1976, Pub. L. 94–273, §11(2), 90 Stat. 378, provided for an annual officer grade distribution report, prior to repeal by Pub. L. 96–107, title III, §303(a)(1), Nov. 9, 1979, 93 Stat. 806.

[§ 687. Renumbered § 12319]

CODIFICATION

Another section 687 was renumbered section 12321 of this title.

PRIOR PROVISIONS

A prior section 687, added Pub. L. 87–651, title I, §102(a), Sept. 7, 1962, 76 Stat. 506; amended Pub. L. 89–718, §6, Nov. 2, 1966, 80 Stat. 1115, related to readjustment payment upon involuntary release of non-regulars from active duty, prior to repeal by Pub. L. 96–513, title I, §109(a), Dec. 12, 1980, 94 Stat. 2870, effective Sept. 15, 1981.

§ 688. Retired members: authority to order to active duty; duties

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, a member described in subsection (b) may be ordered to active duty by the Secretary of the military department concerned at any time.

(b) COVERED MEMBERS.—Except as provided in subsection (d), subsection (a) applies to the following members of the armed forces:

(1) A retired member of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps.

(2) A member of the Retired Reserve who was retired under section 1293, 3911, 3914, 6323, 8911, or 8914 of this title.

(3) A member of the Fleet Reserve or Fleet Marine Corps Reserve.

(c) DUTIES OF MEMBER ORDERED TO ACTIVE DUTY.—The Secretary concerned may, to the extent consistent with other provisions of law, assign a member ordered to active duty under this section to such duties as the Secretary considers necessary in the interests of national defense.

(d) EXCLUSION OF OFFICERS RETIRED ON SELECTIVE EARLY RETIREMENT BASIS.—The following officers may not be ordered to active duty under this section:

(1) An officer who retired under section 638 of this title.

(2) An officer who—

(A) after having been notified that the officer was to be considered for early retirement under section 638 of this title by a board convened under section 611(b) of this title and before being considered by that board, requested retirement under section 3911, 6323, or 8911 of this title; and

(B) was retired pursuant to that request.

(e) LIMITATION OF PERIOD OF RECALL SERVICE.—(1) A member ordered to active duty under subsection (a) may not serve on active duty pursuant to orders under that subsection for more than 12 months within the 24 months following the first day of the active duty to which ordered under that subsection.

(2) Paragraph (1) does not apply to the following officers:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of active duty to which ordered.

(C) An officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(f) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsections (d) and (e) do not apply in time of war or of national emergency declared by Congress or the President.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2515; amended Pub. L. 105–85, div. A, title V, § 502, Nov. 18, 1997, 111 Stat. 1724; Pub. L. 107–107, div. A, title V, § 509(a), Dec. 28, 2001, 115 Stat. 1091.)

PRIOR PROVISIONS

A prior section 688, added Pub. L. 96–513, title I, § 106, Dec. 12, 1980, 94 Stat. 2868; amended Pub. L. 98–94, title X, § 1017(b)(1)–(3), Sept. 24, 1983, 97 Stat. 669; Pub. L. 99–145, title V, § 516, Nov. 8, 1985, 99 Stat. 630; Pub. L. 102–190, div. A, title V, § 506(a), Dec. 5, 1991, 105 Stat. 1359; Pub. L. 103–160, div. A, title V, § 563, Nov. 30, 1993, 107 Stat. 1669, provided that certain retired members of the armed forces could be ordered to active duty, prior to repeal by Pub. L. 104–201, div. A, title V, § 521(a), (b), Sept. 23, 1996, 110 Stat. 2515, 2517, effective Sept. 30, 1997. See sections 688 to 690 of this title.

AMENDMENTS

2001—Subsec. (e)(2)(D). Pub. L. 107–107 added subpar. (D).

1997—Subsec. (e). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 509(c), Dec. 28, 2001, 115 Stat. 1091, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 690 of this title] shall apply with respect to officers serving on active duty as a defense attaché or service attaché on or after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE

Section 521(b) of Pub. L. 104–201 provided that: ''The amendments made by this section [enacting this section and sections 689 and 690 of this title, amending section 6151 of this title, and repealing former section 688 of this title] shall take effect on September 30, 1997.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 688a, 689, 690, 12307 of this title; title 37 sections 302f, 403; title 38 sections 3013, 3103, 3105, 3231, 3511, 3512, 4312; title 50 App. section 592.

§ 688a. Retired aviators: temporary authority to order to active duty

(a) AUTHORITY.—The Secretary of a military department may order to active duty a retired officer having expertise as an aviator to fill staff positions normally filled by aviators on active duty. Any such order may be made only with the consent of the officer ordered to active duty and in accordance with an agreement between the Secretary and the officer.

(b) DURATION.—The period of active duty of an officer under an order to active duty under subsection (a) shall be specified in the agreement entered into under that subsection.

(c) LIMITATION.—No more than a total of 500 officers may be on active duty at any time under subsection (a).

(d) RELATIONSHIP TO OTHER AUTHORITY.—The authority to order a retired officer to active duty under this section is in addition to the authority under section 688 of this title or any other provision of law authorizing the Secretary concerned to order a retired member to active duty.

(e) INAPPLICABILITY OF CERTAIN PROVISIONS.—Officers ordered to active duty under subsection (a) shall not be counted for purposes of section 688 or 690 of this title.

(f) EXPIRATION OF AUTHORITY.—An officer may not be ordered to active duty under this section after September 30, 2008.

(Added Pub. L. 107–314, div. A, title V, § 503(a)(1), Dec. 2, 2002, 116 Stat. 2530.)

TRANSITION PROVISION

Pub. L. 107–314, div. A, title V, § 503(c), Dec. 2, 2002, 116 Stat. 2531, provided that: ''Any officer ordered to active duty under section 501 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) who continues on active duty under such order to active duty after the date of the enactment of this Act [Dec. 2, 2002] shall be counted for purposes of the limitation under subsection (c) of section 688a of title 10, United States Code, as added by subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 689 of this title.

§ 689. Retired members: grade in which ordered to active duty and upon release from active duty

(a) GENERAL RULE FOR GRADE IN WHICH ORDERED TO ACTIVE DUTY.—Except as provided in subsections (b) and (c), a retired member ordered to active duty under section 688 or 688a of this title shall be ordered to active duty in the member's retired grade.

(b) MEMBERS RETIRED IN O–9 AND O–10 GRADES.—A retired member ordered to active duty under section 688 or 688a of this title whose retired grade is above the grade of major general or rear admiral shall be ordered to active duty in the highest permanent grade held by such member while serving on active duty.

(c) MEMBERS WHO PREVIOUSLY SERVED IN GRADE HIGHER THAN RETIRED GRADE.—(1) A retired member ordered to active duty under section 688 or 688a of this title who has previously served on active duty satisfactorily, as determined by the Secretary of the military department concerned, in a grade higher than that member's retired grade may be ordered to active duty in the highest grade in which the member had so served satisfactorily, except that such a member may not be so ordered to active duty in a grade above major general or rear admiral.

(2) A retired member ordered to active duty in a grade that is higher than the member's retired grade pursuant to subsection (a) shall be treated for purposes of section 690 of this title as if the member was promoted to that higher grade while on that tour of active duty.

(3) If, upon being released from that tour of active duty, such a retired member has served on active duty satisfactorily, as determined by the Secretary concerned, for not less than a total of 36 months in a grade that is a higher grade than the member's retired grade, the member is entitled to placement on the retired list in that grade.

(d) GRADE UPON RELEASE FROM ACTIVE DUTY.—A member ordered to active duty under section 688 or 688a of this title who, while on active duty, is promoted to a grade that is higher than that member's retired grade is entitled, upon that member's release from that tour of active duty, to placement on the retired list in the highest grade in which the member served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2516; amended Pub. L. 107–314, div. A, title V, § 503(b)(1), Dec. 2, 2002, 116 Stat. 2531.)

PRIOR PROVISIONS

A prior section 689 was renumbered section 12320 of this title.

Provisions similar to those in this section were contained in section 688(b) and (d) of this title prior to repeal by Pub. L. 104–201, § 521(a).

AMENDMENTS

2002—Subsecs. (a), (b), (c)(1), (d). Pub. L. 107–314 inserted ''or 688a'' after ''section 688''.

EFFECTIVE DATE

Section effective Sept. 30, 1997, see section 521(b) of Pub. L. 104–201, set out as a note under section 688 of this title.

APPLICABILITY

Pub. L. 107–314, div. A, title V, § 503(b)(2), Dec. 2, 2002, 116 Stat. 2531, provided that: ''The provisions of section 689(d) of title 10, United States Code, shall apply with respect to an officer ordered to active duty under section 501 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 589) before the date of the enactment of this Act [Dec. 2, 2002] in the same manner as such provisions apply to an officer ordered to active duty under section 688 of such title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6151 of this title.

§ 690. Retired members ordered to active duty: limitation on number

(a) GENERAL AND FLAG OFFICERS.—Not more than 15 retired general officers of the Army, Air Force, or Marine Corps, and not more than 15 retired flag officers of the Navy, may be on active duty at any one time. For the purposes of this subsection a retired officer ordered to active duty for a period of 60 days or less is not counted.

(b) LIMITATION BY SERVICE.—(1) Not more than 25 officers of any one armed force may be serving on active duty concurrently pursuant to orders to active duty issued under section 688 of this title.

(2) In the administration of paragraph (1), the following officers shall not be counted:

(A) A chaplain who is assigned to duty as a chaplain for the period of active duty to which ordered.

(B) A health care professional (as characterized by the Secretary concerned) who is assigned to duty as a health care professional for the period of the active duty to which ordered.

(C) Any officer assigned to duty with the American Battle Monuments Commission for the period of active duty to which ordered.

(D) Any member of the Retiree Council of the Army, Navy, or Air Force for the period on active duty to attend the annual meeting of the Retiree Council.

(E) An officer who is assigned to duty as a defense attaché or service attaché for the period of active duty to which ordered.

(c) WAIVER FOR PERIODS OF WAR OR NATIONAL EMERGENCY.—Subsection (a) does not apply in time of war or of national emergency declared by Congress or the President after November 30, 1980. Subsection (b) does not apply in time of war or of national emergency declared by Congress or the President.

(Added Pub. L. 104–201, div. A, title V, § 521(a), Sept. 23, 1996, 110 Stat. 2516; amended Pub. L.

106–65, div. A, title V, § 507, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–107, div. A, title V, § 509(b), Dec. 28, 2001, 115 Stat. 1091.)

PRIOR PROVISIONS

A prior section 690 was renumbered section 12321 of this title.

Provisions similar to those in subsecs. (a) and (c) of this section were contained in section 688(c) of this title prior to repeal by Pub. L. 104–201, § 521(a).

AMENDMENTS

2001—Subsec. (b)(2)(E). Pub. L. 107–107 added subpar. (E).

1999—Subsec. (b)(2)(D). Pub. L. 106–65 added subpar. (D).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to officers serving on active duty as a defense attaché or service attaché on or after Dec. 28, 2001, see section 509(c) of Pub. L. 107–107, set out as a note under section 688 of this title.

EFFECTIVE DATE

Section effective Sept. 30, 1997, see section 521(b) of Pub. L. 104–201, set out as a note under section 688 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 688a, 689 of this title.

§ 691. Permanent end strength levels to support two major regional contingencies

(a) The end strengths specified in subsection (b) are the minimum strengths necessary to enable the armed forces to fulfill a national defense strategy calling for the United States to be able to successfully conduct two nearly simultaneous major regional contingencies.

(b) Unless otherwise provided by law, the number of members of the armed forces (other than the Coast Guard) on active duty at the end of any fiscal year shall be not less than the following:

(1) For the Army, 480,000.

(2) For the Navy, 375,700.

(3) For the Marine Corps, 175,000.

(4) For the Air Force, 359,000.

(c) The budget for the Department of Defense for any fiscal year as submitted to Congress shall include amounts for funding for each of the armed forces (other than the Coast Guard) at least in the amounts necessary to maintain the active duty end strengths prescribed in subsection (b), as in effect at the time that such budget is submitted.

(d) No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces (other than the Coast Guard) for any fiscal year below the level specified in subsection (b) unless the reduction in end strength for that armed force for that fiscal year is specifically authorized by law.

[(e) Repealed. Pub. L. 107–314, div. A, title IV, § 402(b), Dec. 2, 2002, 116 Stat. 2525.]

(f) The number of members of the armed forces on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(Added Pub. L. 104–106, div. A, title IV, § 401(b)(1), Feb. 10, 1996, 110 Stat. 285; amended Pub. L. 104–201, div. A, title IV, § 402, Sept. 23, 1996, 110 Stat. 2503; Pub. L. 105–85, div. A, title IV, § 402, Nov. 18, 1997, 111 Stat. 1719; Pub. L. 105–261, div. A, title IV, § 402(a), (b), Oct. 17, 1998, 112 Stat. 1995, 1996; Pub. L. 106–65, div. A, title IV, § 402(a), title X, § 1066(b)(1), Oct. 5, 1999, 113 Stat. 585, 772; Pub. L. 106–398, § 1 [[div. A], title IV, §§ 402(a), 403], Oct. 30, 2000, 114 Stat. 1654, 1654A–92; Pub. L. 107–107, div. A, title IV, § 402, Dec. 28, 2001, 115 Stat. 1069; Pub. L. 107–314, div. A, title IV, § 402, Dec. 2, 2002, 116 Stat. 2524.)

AMENDMENTS

2002—Subsec. (b)(2) to (4). Pub. L. 107–314, § 402(a), substituted ''375,700'' for ''376,000'' in par. (2), ''175,000'' for ''172,600'' in par. (3), and ''359,000'' for ''358,800'' in par. (4).

Subsec. (e). Pub. L. 107–314, § 402(b), struck out subsec. (e) which read as follows: ''For a fiscal year for which the active duty end strength authorized by law pursuant to section 115(a)(1)(A) of this title for any of the armed forces is identical to or greater than the number applicable to that armed force under subsection (b), the Secretary of Defense may reduce that number by not more than 0.5 percent.''

2001—Subsec. (b)(2). Pub. L. 107–107, § 402(1), substituted ''376,000'' for ''372,000''.

Subsec. (b)(4). Pub. L. 107–107, § 402(2), substituted ''358,800'' for ''357,000''.

2000—Subsec. (b)(2) to (4). Pub. L. 106–398, § 1 [[div. A], title IV, § 402(a)], substituted ''372,000'' for ''371,781'' in par. (2), ''172,600'' for ''172,148'' in par. (3), and ''357,000'' for ''360,877'' in par. (4).

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title IV, § 403], inserted ''or greater than'' after ''identical to''.

1999—Subsec. (b)(2) to (4). Pub. L. 106–65, § 402(a), substituted ''371,781'' for ''372,696'' in par. (2), ''172,148'' for ''172,200'' in par. (3), and ''360,877'' for ''370,802'' in par. (4).

Subsec. (e). Pub. L. 106–65, § 1066(b)(1), made technical amendment to directory language of Pub. L. 105–261, § 402(b). See 1998 Amendment note below.

1998—Subsec. (b). Pub. L. 105–261, § 402(a), substituted ''480,000'' for ''495,000'' in par. (1), ''372,696'' for ''390,802'' in par. (2), ''172,200'' for ''174,000'' in par. (3), and ''370,802'' for ''371,577'' in par. (4).

Subsec. (e). Pub. L. 105–261, § 402(b), as amended by Pub. L. 106–65, § 1066(b)(1), substituted ''0.5 percent.'' for ''1 percent or, in the case of the Army, by not more than 1.5 percent.''

1997—Subsec. (b)(2). Pub. L. 105–85, § 402(a)(1), substituted ''390,802'' for ''395,000''.

Subsec. (b)(4). Pub. L. 105–85, § 402(a)(2), substituted ''371,577'' for ''381,000''.

Subsec. (e). Pub. L. 105–85, § 402(b), inserted ''or, in the case of the Army, by not more than 1.5 percent'' before period at end.

1996—Subsec. (c). Pub. L. 104–201, § 402(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''No funds appropriated to the Department of Defense may be used to implement a reduction of the active duty end strength for any of the armed forces for any fiscal year below the level specified in subsection (b) unless the Secretary of Defense submits to Congress notice of the proposed lower end strength levels and a justification for those levels. No action may then be taken to implement such a reduction for that fiscal year until the end of the six-month period beginning on the date of the receipt of such notice by Congress.''

Subsec. (d). Pub. L. 104–201, § 402(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–201, § 402(a)(1), (b), redesignated subsec. (d) as (e) and substituted ''not more than 1 percent'' for ''not more than 0.5 percent''. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 104–201, § 402(a)(1), redesignated subsec. (e) as (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IV, § 402(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–92, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IV, § 402(b), Oct. 5, 1999, 113 Stat. 585, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

Pub. L. 106–65, div. A, title X, § 1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, § 402(c), Oct. 17, 1998, 112 Stat. 1996, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1998.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 40—LEAVE

Sec.
701. Entitlement and accumulation.
702. Cadets and midshipmen.
703. Reenlistment leave.
704. Use of leave; regulations.
705. Rest and recuperative absence: qualified enlisted members extending duty at designated locations overseas.
706. Administration of leave required to be taken.
707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken.
707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken.
708. Educational leave of absence.
709. Emergency leave of absence.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §§ 506(d), 572(b), 574(b)(2)(B), Dec. 2, 2002, 116 Stat. 2536, 2558, substituted ''Rest and recuperation absence: qualified enlisted members extending duty at designated locations overseas'' for ''Rest and recuperative absence for qualified enlisted members extending duty at designated locations overseas'' in item 705, added items 706, 707a, and 709, and struck out former item 706 ''Administration of leave required to be taken pending review of certain court-martial convictions''.

1984—Pub. L. 98–525, title VII, § 707(a)(2), Oct. 19, 1984, 98 Stat. 2572, added item 708.

1981—Pub. L. 97–81, § 2(b)(2), Nov. 20, 1981, 95 Stat. 1087, added items 706 and 707.

1980—Pub. L. 96–579, § 5(b)(2), Dec. 23, 1980, 94 Stat. 3367, added item 705.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 3071.

§ 701. Entitlement and accumulation

(a) A member of an armed force is entitled to leave at the rate of 2½ calendar days for each month of active service, excluding periods of—

(1) absence from duty without leave;

(2) absence over leave;

(3) confinement as the result of a sentence of a court-martial; and

(4) leave required to be taken under section 876a of this title.

Full-time training, or other full-time duty for a period of more than 29 days, performed under section 316, 502, 503, 504, or 505 of title 32 by a member of the Army National Guard of the United States or the Air National Guard of the United States in his status as a member of the National Guard, and for which he is entitled to pay, is active service for the purposes of this section.

(b) Except as provided in subsection (f) and subsection (g), a member may not accumulate more than 60 days' leave. However, leave taken during a fiscal year may be charged to leave accumulated during that fiscal year without regard to this limitation.

(c) A member who retired after August 9, 1946, who is continued on, or is recalled to active duty, may have his leave which accumulated during his service before retirement carried over to his period of service after retirement.

[(d) Repealed. Pub. L. 89–151, § 3, Aug. 28, 1965, 79 Stat. 586.]

(e) Leave taken before discharge is considered to be active service.

(f)(1) Under uniform regulations to be prescribed by the Secretary concerned, and approved by the Secretary of Defense, a member who serves on active duty for a continuous period of at least 120 days in an area in which he is entitled to special pay under section 310(a) of title 37 or a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section, may accumulate 90 days' leave. Except as provided in paragraph (2), leave in excess of 60 days accumulated under this subsection is lost unless it is used by the member before the end of the third fiscal year after the fiscal year in which the service terminated.

(2) Under the uniform regulations referred to in paragraph (1), a member of an armed force who serves on active duty in a duty assignment in support of a contingency operation during a fiscal year and who, except for this paragraph—

(A) would lose any accumulated leave in excess of 60 days at the end of that fiscal year, shall be permitted to retain such leave (not to exceed 90 days) until the end of the succeeding fiscal year; or

(B) would lose any accumulated leave in excess of 60 days at the end of the succeeding fiscal year (other than by reason of subparagraph (A)), shall be permitted to retain such leave (not to exceed 90 days) until the end of the next succeeding fiscal year.

(g) A member who is in a missing status, as defined in section 551(2) of title 37, accumulates leave without regard to the 60-day limitation in subsection (b) and the 90-day limitation in subsection (f). Notwithstanding the death of a member while in a missing status, he continues to earn leave through the date—

(1) the Secretary concerned receives evidence that the member is dead; or

(2) that his death is prescribed or determined under section 555 of title 37.

Leave accumulated while in missing status shall be accounted for separately. It may not be taken, but shall be paid for under section 501(h) of title 37. However, a member whose death is prescribed or determined under section 555 or 556 of title 37 may, in addition to leave accrued before entering a missing status, accrue not more than 150 days' leave during the period he is in a missing status, unless his actual death occurs on a date when, had he lived, he would have accrued leave in excess of 150 days, in which event settlement will be made for the number of days accrued to the actual date of death. Leave so accrued in a missing status shall be accounted for separately and paid for under the provisions of section 501 of title 37.

(h) A member who has taken leave in excess of that authorized by this section and who is being discharged or released from active duty for the purpose of accepting an appointment or a warrant in an armed force, or of entering into an enlistment or an extension of an enlistment in an armed force, may elect to have excess leave of up to 30 days or the maximum number of days of leave that could be earned in the new term of service, whichever is less, carried over to that new term of service to count against leave that will accrue on the new term of service. A member shall be required, at the time of his discharge or release from active duty, to pay for excess leave not carried over under this subsection.

(Added Pub. L. 87–649, §3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 89–151, §3, Aug. 28, 1965, 79 Stat. 586; Pub. L. 90–245, §1, Jan. 2, 1968, 81 Stat. 782; Pub. L. 92–596, §1, Oct. 27, 1972, 86 Stat. 1317; Pub. L. 96–579, §10, Dec. 23, 1980, 94 Stat. 3368; Pub. L. 97–81, §2(a), Nov. 20, 1981, 95 Stat. 1085; Pub. L. 98–94, title X, §1031(a), Sept. 24, 1983, 97 Stat. 671; Pub. L. 98–525, title XIV, §1405(18), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 99–661, div. A, title V, §506(a), Nov. 14, 1986, 100 Stat. 3864; Pub. L. 102–190, div. A, title VI, §638, Dec. 5, 1991, 105 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
701(a)	37:31a(a) (1st, 2d, and last sentences).	Aug. 9, 1946, ch. 931, §3(a) (less 4th, 5th, 6th, and 7th sentences), (b) (less proviso), 60 Stat. 963; Sept. 23, 1950, ch. 998, §1, 64 Stat. 978; Aug. 10, 1956, ch. 1041, §23, 70A, Stat. 630.
701(b)	37:31a(b) (less proviso).	
701(c)	37:31a(a) (8th sentence).	
701(d)	37:31a(a) (3d sentence).	
701(e)	37:31a(a) (9th sentence).	

In subsection (a), the 2d sentence of section 31a(a) of existing title 37 is omitted as inconsistent with subsection (b).

In subsection (b), the words ''(other than a member on terminal leave on September 1, 1946)'' and ''at any time after August 31, 1946'' are omitted as executed. The words ''or regulation'' are omitted, since a regulation cannot override a statute. The words ''or have to his credit'' are omitted as surplusage.

In subsections (b) and (c), the word ''accrued'' is omitted as covered by the word ''accumulated''.

In subsection (e), the words ''before or after August 9, 1946'' and section 31a(a) (words after semicolon in 9th sentence) of existing title 37 are omitted as executed.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), leave'' for ''Leave'' in last sentence, and added par. (2).

1986—Subsec. (h). Pub. L. 99–661 added subsec. (h).

1984—Subsec. (g). Pub. L. 98–525 substituted ''60-day'' for ''sixty-day'', ''90-day'' for ''ninety-day'', and ''150'' for ''one hundred and fifty'' in two places.

1983—Subsec. (f). Pub. L. 98–94 substituted ''the end of the third fiscal year'' for ''the end of the fiscal year''.

1981—Subsec. (a)(2). Pub. L. 97–81, §2(a)(1), struck out ''and'' at end of par. (2).

Subsec. (a)(3). Pub. L. 97–81, §2(a)(2), substituted ''; and'' for a period at end of par. (3).

Subsec. (a)(4). Pub. L. 97–81, §2(a)(3), added par. (4).

1980—Subsec. (f). Pub. L. 96–579 authorized accumulation of leave for service as a member assigned to a deployable ship, mobile unit, or to other duty designated for the purpose of this section.

1972—Subsec. (b). Pub. L. 92–596, §1(1), inserted reference to subsec. (g).

Subsec. (g). Pub. L. 92–596, §1(2), added subsec. (g).

1968—Subsec. (b). Pub. L. 90–245, §1(1), inserted reference to subsec. (f).

Subsec. (f). Pub. L. 90–245, §1(2), added subsec. (f).

1965—Subsec. (d). Pub. L. 89–151 repealed subsec. (d) which provided that accumulated leave did not survive the death of a member during active service.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1031(b)(1), (2) of Pub. L. 98–94 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Sept. 24, 1983] and shall apply to leave accumulated under section 701(f) of such title [this title] after September 30, 1980.

''(2) A member of the Armed Forces who was authorized under section 701(f) of such title to accumulate 90 days' leave during fiscal year 1980, 1981, or 1982 and lost any leave at the end of fiscal year 1981, 1982, or 1983, respectively, because of the provisions of the last sentence of such section, as in effect on the day before the date of the enactment of this Act, shall be credited with the amount of the leave lost and may retain leave in excess of 60 days until (A) September 30, 1984, or (B) the end of the third fiscal year after the year in which such leave was accumulated, whichever is later, but in no case may such a member accumulate leave in excess of 90 days.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a) and (b)(1) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 3 of Pub. L. 92–596 provided that: ''The first and second sections of this Act [amending this section and section 501 of Title 37, Pay and Allowances of the Uniformed Services] become effective as of February 28, 1961.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 2 of Pub. L. 90–245 provided that: ''Section 1 of this Act [amending this section] applies only to active duty performed after January 1, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–151 effective only in the case of members who die on or after Aug. 28, 1965, see

section 4 of Pub. L. 89–151, set out as a note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

ACCUMULATION OF LEAVE AFTER SEPTEMBER 30, 1980, PURSUANT TO SUBSECTION (f)

Pub. L. 97–39, title VII, § 702, Aug. 14, 1981, 95 Stat. 943, provided that: ''The amendment made by section 10 of the Military Pay and Allowances Benefits Act of 1980 (Public Law 96–579; 94 Stat. 3368) [amending this section] shall apply with respect to the accumulation of leave by members of the Armed Forces who after September 30, 1979, are assigned (1) to a deployable ship or mobile unit, or (2) to other duty designated after the date of the enactment of this Act [Aug. 14, 1981] as duty qualifying for the purpose of section 701(f) of title 10, United States Code, as amended by that amendment.''

For savings provision extending period for which certain accrued leave under subsec. (f) of this section may be retained by members of Armed Forces, see section 1115 of Pub. L. 101–510, set out as a Treatment of Accumulated Leave note under section 501 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 703 of this title; title 37 sections 501, 502.

§ 702. Cadets and midshipmen

(a) GRADUATION LEAVE.—Graduates of the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, or the Coast Guard Academy who, upon graduation, are appointed in a component of an armed force, may, in the discretion of the Secretary concerned or his designated representative, be granted graduation leave of not more than 60 days. Leave granted under this subsection is in addition to any other leave and may not be deducted from or charged against other leave authorized by this chapter, and must be completed within three months of the date of graduation. Leave under this subsection may not be carried forward as credit beyond the date of reporting to the first permanent duty station or to a port of embarkation for permanent duty outside the United States or in Alaska or Hawaii.

(b) INVOLUNTARY LEAVE WITHOUT PAY FOR SUSPENDED ACADEMY CADETS AND MIDSHIPMEN.—(1) Under regulations prescribed under subsection (d), the Secretary concerned may place an academy cadet or midshipman on involuntary leave for any period during which the Superintendent of the Academy at which the cadet or midshipman is admitted has suspended the cadet or midshipman from duty at the Academy—

(A) pending separation from the Academy;

(B) pending return to the Academy to repeat an academic semester or year; or

(C) for other good cause.

(2) A cadet or midshipman placed on involuntary leave under paragraph (1) is not entitled to any pay under section 203(c) of title 37 for the period of the leave.

(3) Return of an academy cadet or midshipman to a pay status at the Academy concerned from involuntary leave status under paragraph (1) does not restore any entitlement of the cadet or midshipman to pay for the period of the involuntary leave.

(c) INAPPLICABLE LEAVE PROVISIONS.—Sections 701, 703, and 704 of this title and subsection (a) do not apply to academy cadets or midshipmen or cadets or midshipmen serving elsewhere in the armed forces.

(d) REGULATIONS.—The Secretary concerned, or his designated representative, may prescribe regulations relating to leave for cadets and midshipmen.

(e) DEFINITION.—In this section, the term ''academy cadet or midshipman'' means—

(1) a cadet of the United States Military Academy;

(2) a midshipman of the United States Naval Academy;

(3) a cadet of the United States Air Force Academy; or

(4) a cadet of the United States Coast Guard Academy.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 492; amended Pub. L. 96–513, title V, § 511(20), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 103–160, div. A, title V, § 532, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 105–261, div. A, title V, § 562, Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
702(a)	37:31a(c).	Aug. 9, 1946, ch. 931, § 3(c); added June 2, 1950, ch. 217, § 1, 64 Stat. 194.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.
702(b)	37:38 (less applicability to payment for leave).	Aug. 9, 1946, ch. 931, § 10 (less applicability to payment for leave); added Aug. 4, 1947, ch. 475, § 3 (less applicability to payment for leave), 61 Stat. 749.
	37:32(f) (last 8 words).	Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the words ''outside the United States or in Alaska or Hawaii'' are substituted for the words ''outside the continental limits of the United States'' to conform to the interpretation of those words in other sections of title 10 and revised title 37.

In subsections (a) and (b), the words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–398 substituted ''section 203(c)'' for ''section 230(c)''.

1998—Subsec. (a). Pub. L. 105–261, § 562(c)(1), inserted heading.

Subsec. (b). Pub. L. 105–261, § 562(a)(3), added subsec. (b). Former first and second sentences of subsec. (b) redesignated subsecs. (c) and (d), respectively.

Subsec. (c). Pub. L. 105–261, § 562(a)(2), (b)(1), (c)(2), redesignated first sentence of subsec. (b) as subsec. (c), inserted heading, and substituted ''academy cadets or midshipmen'' for ''cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, midshipmen at the United States Naval Academy,''.

Subsec. (d). Pub. L. 105–261, § 562(a)(1), (c)(3), redesignated second sentence of subsec. (b) as subsec. (d) and inserted heading.

Subsec. (e). Pub. L. 105–261, § 562(b)(2), added subsec. (e).

1993—Subsec. (a). Pub. L. 103–160 struck out ''regular'' before ''component'' in first sentence.

1980—Subsec. (b). Pub. L. 96–513 substituted ''Sections 701, 703, and 704 of this title and subsection (a)'' for ''Sections 701, 702(a), 703, and 704 of this chapter''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 703. Reenlistment leave

(a) Leave for not more than 90 days may be authorized, in the discretion of the Secretary concerned, or his designated representative, to a member of an armed force who reenlists. Leave authorized under this section shall be deducted from leave accrued during active service before reenlistment or charged against leave that may accrue during future active service, or both.

(b) Under regulations prescribed by the Secretary of Defense, and notwithstanding subsection (a), a member who is on active duty in an area described in section 310(a)(2) of title 37 and who, by reenlistment, extension of enlistment, or other voluntary action, extends his required tour of duty in that area for at least six months may be—

(1) authorized not more than thirty days of leave, exclusive of travel time, at an authorized place selected by the member; and

(2) transported at the expense of the United States to and from that place.

Leave under this subsection may not be charged or credited to leave that accrued or that may accrue under section 701 of this title. The provisions of this subsection shall be effective only in the case of members who extend their required tours of duty on or before June 30, 1973.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493; amended Pub. L. 89–735, Nov. 2, 1966, 80 Stat. 1163; Pub. L. 90–330, June 5, 1968, 82 Stat. 170; Pub. L. 91–302, July 2, 1970, 84 Stat. 368; Pub. L. 92–481, Oct. 9, 1972, 86 Stat. 795.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
703	37:31a(a) (4th and 7th sentences). 37:32(f) (last 8 words)	Aug. 9, 1946, ch. 931, § 3(a) (4th and 7th sentences), 60 Stat. 963. Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

The 4th sentence of section 31a(a) of existing title 37 is omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92–481 substituted ''June 30, 1973'' for ''June 30, 1972''.

1970—Subsec. (b). Pub. L. 91–302 substituted ''June 30, 1972'' for ''June 30, 1970''.

1968—Subsec. (b). Pub. L. 90–330 substituted ''June 30, 1970'' for ''June 30, 1968''.

1966—Pub. L. 89–735 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

§ 704. Use of leave; regulations

(a) Under regulations prescribed by the Secretary concerned, or his designated representative, leave may be taken by a member on a calendar-day basis as vacation or absence from duty with pay, annually as accruing, or otherwise.

(b) Regulations prescribed under subsection (a) shall—

(1) provide equal treatment of officers and enlisted members;

(2) establish to the fullest extent practicable uniform policies for the several armed forces;

(3) provide that leave shall be taken annually as accruing to the extent consistent with military requirements and other exigencies; and

(4) provide for the determination of the number of calendar days of leave to which a member is entitled, including the number of calendar days of absence from duty or vacation to be counted or charged against leave.

(Added Pub. L. 87–649, § 3(1), Sept. 7, 1962, 76 Stat. 493.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
704(a) ..... 704(b)	37:31a(a) (5th sentence). 37:31a(a) (6th sentence). 37:33(e). 37:32(f) (last 8 words).	Aug. 9, 1946, ch. 391, §§ 3(a) (5th and 6th sentences), 4(e), 60 Stat. 963; Aug. 4, 1947, ch. 475, § 1 (5th par.), 61 Stat. 749. Aug. 9, 1946, ch. 931, § 2(f) (last 8 words), 60 Stat. 963.

In subsection (a), the 1st 18 words of the 5th sentence of section 31a(a) of existing title 37 are omitted as executed. The words '', or his designated representative,'' are substituted for the last 8 words of section 32(f) of existing title 37.

In subsection (b), 37:33(e) (less 1st sentence) is omitted as executed.

EFFECTIVE DATE

Section effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

FACILITATING GRANTING OF LEAVE FOR ATTENDANCE AT HEARINGS INVOLVING PARENTAL SUPPORT OBLIGATIONS

Pub. L. 104–193, title III, § 363(b), Aug. 22, 1996, 110 Stat. 2248, as amended by Pub. L. 107–296, title XVII, § 1704(e)(1)(B), Nov. 25, 2002, 116 Stat. 2315, provided that:

''(1) REGULATIONS.—The Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to facilitate the granting of leave to a member of the Armed Forces under the jurisdiction of that Secretary in a case in which—

''(A) the leave is needed for the member to attend a hearing described in paragraph (2);

''(B) the member is not serving in or with a unit deployed in a contingency operation (as defined in section 101 of title 10, United States Code); and

''(C) the exigencies of military service (as determined by the Secretary concerned) do not otherwise require that such leave not be granted.

''(2) COVERED HEARINGS.—Paragraph (1) applies to a hearing that is conducted by a court or pursuant to an administrative process established under State law, in connection with a civil action—

''(A) to determine whether a member of the Armed Forces is a natural parent of a child; or

''(B) to determine an obligation of a member of the Armed Forces to provide child support.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) The term 'court' has the meaning given that term in section 1408(a) of title 10, United States Code.

''(B) The term 'child support' has the meaning given such term in section 459(i) of the Social Security Act (42 U.S.C. 659(i)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702 of this title.

§ 705. Rest and recuperative absence: qualified enlisted members extending duty at designated locations overseas

(a) Under regulations prescribed by the Secretary concerned, an enlisted member of an armed force who—

(1) is entitled to basic pay;

(2) has a specialty that is designated by the Secretary concerned for the purposes of this section;

(3) has completed a tour of duty (as defined in accordance with regulations prescribed by the Secretary concerned) at a location outside the 48 contiguous States and the District of Columbia that is designated by the Secretary concerned for the purposes of this section; and

(4) at the end of that tour of duty executes an agreement to extend that tour for a period of not less than one year;

may, in lieu of receiving special pay under section 314 of title 37 for duty performed during such extension of duty, elect to receive one of the benefits specified in subsection (b). Receipt of any such benefit is in addition to any other leave or transportation to which the member may be entitled.

(b) The benefits authorized by subsection (a) are—

(1) a period of rest and recuperation absence for not more than 30 days; or

(2) a period of rest and recuperation absence for not more than 15 days and round-trip transportation at Government expense from the location of the extended tour of duty to the nearest port in the 48 contiguous States and return, or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port.

(c) The provisions of this section shall not be effective unless the Secretary concerned determines that the application of this section will not adversely affect combat or unit readiness.

(Added Pub. L. 96–579, § 5(b)(1), Dec. 23, 1980, 94 Stat. 3366; amended Pub. L. 107–314, div. A, title V, § 574(a)–(b)(2)(A), Dec. 2, 2002, 116 Stat. 2558.)

AMENDMENTS

2002—Pub. L. 107–314, § 574(b)(2)(A), substituted '': qualified enlisted members'' for ''for qualified enlisted members'' in section catchline.

Subsec. (b). Pub. L. 107–314 substituted ''recuperation'' for ''recuperative'' in pars. (1) and (2) and inserted before period at end of par. (2) '', or to an alternative destination and return at a cost not to exceed the cost of round-trip transportation from the location of the extended tour of duty to such nearest port''.

EFFECTIVE DATE

Section 5(c)(2) of Pub. L. 96–579 provided: ''Section 705 of title 10, United States Code, as added by subsection (b), shall take effect upon the date of the enactment of this section [Dec. 23, 1980] and shall apply only with respect to periods of extended duty overseas beginning on or after such date of enactment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 314, 411g.

§ 706. Administration of leave required to be taken

(a) A period of leave required to be taken under section 876a or 1182(c)(2) of this title shall be charged against any accrued leave to the member's credit on the day before the day such leave begins unless the member elects to be paid for such accrued leave under subsection (b). If the member does not elect to be paid for such accrued leave under subsection (b), or does not have sufficient accrued leave to his credit to cover the total period of leave required to be taken, the leave not covered by accrued leave shall be charged as excess leave. If the member elects to be paid for accrued leave under subsection (b), the total period of leave required to be taken shall be charged as excess leave.

(b)(1) A member who is required to take leave under section 876a or 1182(c)(2) of this title and who has accrued leave to his credit on the day before the day such leave begins may elect to be paid for such accrued leave. Any such payment shall be based on the rate of basic pay to which the member was entitled on the day before the day such leave began. If the member does not elect to be paid for such accrued leave, the mem-

ber is entitled to pay and allowances during the period of accrued leave required to be taken.

(2) Except as provided in paragraph (1) and in sections 707 and 707a of this title, a member may not accrue or receive pay or allowances during a period of leave required to be taken under section 876a or 1182(c)(2) of this title.

(c) A member required to take leave under section 876a or 1182(c)(2) of this title is not entitled to any right or benefit under chapter 43 of title 38 solely because of employment during the period of such leave.

(Added Pub. L. 97–81, §2(b)(1), Nov. 20, 1981, 95 Stat. 1085; amended Pub. L. 102–568, title V, §506(c)(5), Oct. 29, 1992, 106 Stat. 4341; Pub. L. 103–337, div. A, title X, §1070(e)(1), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 103–353, §2(b)(3), Oct. 13, 1994, 108 Stat. 3169; Pub. L. 104–106, div. A, title XV, §1503(a)(7), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–314, div. A, title V, §506(c), Dec. 2, 2002, 116 Stat. 2535.)

AMENDMENTS

2002—Pub. L. 107–314, §506(c)(2), struck out ''pending review of certain court-martial convictions'' at end of section catchline.

Subsec. (a). Pub. L. 107–314, §506(c)(1)(A), inserted ''or 1182(c)(2)'' after ''section 876a''.

Subsec. (b). Pub. L. 107–314, §506(c)(1), inserted ''or 1182(c)(2)'' after ''section 876a'' in pars. (1) and (2) and substituted ''sections 707 and 707a'' for ''section 707'' in par. (2).

Subsec. (c). Pub. L. 107–314, §506(c)(1)(A), inserted ''or 1182(c)(2)'' after ''section 876a''.

2000—Subsec. (c). Pub. L. 106–398 struck out ''(1)'' before ''A member required'' and struck out par. (2) which read as follows: ''Section 974 of this title does not apply to a member required to take leave under section 876a of this title during the period of such leave.''

1996—Subsec. (c)(1). Pub. L. 104–106 substituted ''chapter 43 of title 38'' for ''section 4301 of title 38''.

1994—Subsec. (c)(1). Pub. L. 103–353, which directed the amendment of par. (1) by substituting ''chapter 43'' for ''section 4321'', could not be executed because intervening amendment by Pub. L. 103–337 had substituted ''section 4301'' for ''section 4321''. See below.

Pub. L. 103–337 substituted ''4301'' for ''4321''.

1992—Subsec. (c)(1). Pub. L. 102–568 substituted ''section 4321'' for ''section 2021''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103–353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE

Section 7 of Pub. L. 97–81, as amended by Pub. L. 98–209, §12(b), Dec. 6, 1983, 97 Stat. 1407, provided that:

''(a) The amendments made by this Act [enacting this section and sections 707 and 876a of this title and amending sections 701, 813, 832, 838, 867, and 869 of this title] shall take effect at the end of the sixty-day period beginning on the date of the enactment of this Act.

''(b)(1) The amendments made by section 2 [enacting this section and sections 707 and 876a of this title and amending section 701 of this title] shall apply to each member whose sentence by court-martial is approved on or after January 20, 1982—

''(A) under section 864 or 865 (article 64 or 65) of title 10, United States Code, by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 [see Effective Date of 1983 Amendment note set out under section 801 of this title]; or

''(B) under section 860 (article 60) of title 10, United States Code, by the officer empowered to act on the sentence on or after the effective date of the Military Justice Act of 1983.

''(2) The amendments made by section 3 [amending section 813 of this title] shall apply to each person held as the result of a court-martial sentence announced on or after the effective date of such amendments.

''(3) The amendment made by section 4(a) [amending section 832 of this title] shall apply with respect to investigations under section 832 (article 32) of title 10, United States Code, that begin on or after the effective date of such amendment.

''(4) The amendment made by section 4(b) [amending section 838 of this title] shall apply to trials by courts-martial in which all charges are referred to trial on or after the effective date of such amendment.

''(5) The amendment made by section 5 [amending section 867 of this title] shall apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after the effective date of such amendment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 707a of this title.

§ 707. Payment upon disapproval of certain court-martial sentences for excess leave required to be taken

(a) A member—

(1) who is required to take leave under section 876a of this title, any period of which is charged as excess leave under section 706(a) of this title; and

(2) whose sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge is set aside or disapproved by a Court of Criminal Appeals under section 866 of this title or by the United States Court of Appeals for the Armed Forces under section 867 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave, unless a rehearing or new trial is ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of the rehearing or new trial and such dismissal or discharge is later executed.

(b)(1) A member entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 876a of this title that is charged as excess leave (except any day of accrued leave for which the member has been paid under section 706(b)(1) of this title and which has been charged as excess leave). If the pay grade of the member was reduced to a lower grade as a result of the court-martial sentence (including any reduction in pay grade under section 858a of this title) and such reduction has not been set aside, disapproved, or otherwise vacated, pay and allowances to be paid under this section shall be deemed to have accrued in such lower grade. Otherwise, such pay and allowances shall be deemed to have accrued in the pay grade held by the member on the day before the day on which

his court-martial sentence was approved by the convening authority.

(2) Such a member shall be paid the amount of pay and allowances that he is deemed to have accrued, reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period he is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made as follows:

(A) Payment shall be made within 60 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if no rehearing or new trial has been ordered.

(B) Payment shall be made within 180 days from the date of the order setting aside or disapproving the sentence by court-martial to a dismissal or a dishonorable or bad-conduct discharge if a rehearing or new trial has been ordered but charges have not been referred to a rehearing or new trial within 120 days from the date of that order.

(C) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is not included in the result of such rehearing or new trial, payment shall be made within 60 days of the date of the announcement of the result of such rehearing or new trial.

(D) If a rehearing or new trial has been ordered and a dismissal or a dishonorable or bad-conduct discharge is included in the result of such rehearing or new trial, but such dismissal or discharge is not later executed, payment shall be made within 60 days of the date of the order which set aside, disapproved, or otherwise vacated such dismissal or discharge.

(3) If a member is entitled to be paid under this section but fails to provide sufficient information in a timely manner regarding his income when such information is requested under regulations prescribed under subsection (c), the periods of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. Such regulations may provide for the method of determining a member's income during any period the member is deemed to have accrued pay and allowances, including a requirement that the member provide income tax returns and other documentation to verify the amount of his income.

(Added Pub. L. 97–81, §2(b)(1), Nov. 20, 1981, 95 Stat. 1086; amended Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by officer exercising general court-martial jurisdiction under provisions of such section as it existed on day before effective date of Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by officer empowered to act on sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

§ 707a. Payment upon disapproval of certain board of inquiry recommendations for excess leave required to be taken

(a) An officer—

(1) who is required to take leave under section 1182(c)(2) of this title, any period of which is charged as excess leave under section 706(a) of this title, and

(2) whose recommendation for removal from active duty in a report of a board of inquiry is not approved by the Secretary concerned under section 1184 of this title,

shall be paid, as provided in subsection (b), for the period of leave charged as excess leave.

(b)(1) An officer entitled to be paid under this section shall be deemed, for purposes of this section, to have accrued pay and allowances for each day of leave required to be taken under section 1182(c)(2) of this title that is charged as excess leave (except any day of accrued leave for which the officer has been paid under section 706(b)(1) of this title and which has been charged as excess leave).

(2) The officer shall be paid the amount of pay and allowances that is deemed to have accrued to the officer under paragraph (1), reduced by the total amount of his income from wages, salaries, tips, other personal service income, unemployment compensation, and public assistance benefits from any Government agency during the period the officer is deemed to have accrued pay and allowances. Except as provided in paragraph (3), such payment shall be made within 60 days after the date on which the Secretary concerned decides not to remove the officer from active duty.

(3) If an officer is entitled to be paid under this section, but fails to provide sufficient information in a timely manner regarding the officer's income when such information is requested under regulations prescribed under subsection (c), the period of time prescribed in paragraph (2) shall be extended until 30 days after the date on which the member provides the information requested.

(c) This section shall be administered under uniform regulations prescribed by the Secretaries concerned. The regulations may provide for the method of determining an officer's income during any period the officer is deemed to have accrued pay and allowances, including a requirement that the officer provide income tax returns and other documentation to verify the amount of the officer's income.

(Added Pub. L. 107–314, div. A, title V, §506(b), Dec. 2, 2002, 116 Stat. 2535.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

§ 708. Educational leave of absence

(a) Under such regulations as the Secretary of Defense may prescribe after consultation with the Secretary of Homeland Security and subject to subsection (b), the Secretary concerned may grant to any eligible member (as defined in subsection (e)) a leave of absence for a period of not to exceed two years for the purpose of permitting the member to pursue a program of education.

(b)(1) A member may not be granted a leave of absence under this section unless—

(A) in the case of an enlisted member, the member agrees in writing to extend his current enlistment after completion (or other termination) of the program of education for which the leave of absence was granted for a period of two months for each month of the period of the leave of absence; and

(B) in the case of an officer, the member agrees to serve on active duty after completion (or other termination) of the program of education for which the leave of absence was granted for a period (in addition to any other period of obligated service on active duty) of two months for each month of the period of the leave of absence.

(2) A member may not be granted a leave of absence under this section until he has completed any extension of enlistment or reenlistment, or any period of obligated service, incurred by reason of any previous leave of absence granted under this section.

(c)(1) While on a leave of absence under this section, a member shall be paid basic pay but may not receive basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title, or any other pay and allowances to which he would otherwise be entitled for such period.

(2) A period during which a member is on a leave of absence under this section shall be counted for the purposes of computing the amount of the member's basic pay, for the purpose of determining the member's eligibility for retired pay, and for the purpose of determining the member's time in grade for promotion purposes, but may not be counted for the purposes of completion of the term of enlistment of the member (in the case of an enlisted member) or for purposes of section 3021 of title 38, relating to entitlement to supplemental educational assistance.

(d)(1) In time of war, or of national emergency declared by the President or the Congress after October 19, 1984, the Secretary concerned may cancel any leave of absence granted under this section.

(2) The Secretary concerned may cancel a leave of absence granted to a member under this section if the Secretary determines that the member is not satisfactorily pursuing the program of education for which the leave was granted.

(e) In this section, the term ''eligible member'' means a member of the armed forces on active duty who is eligible for basic educational assistance under chapter 30 of title 38 and who—

(1) in the case of an enlisted member, has completed at least one term of enlistment and has reenlisted; and

(2) in the case of an officer, has completed the officer's initial period of obligated service on active duty.

(Added Pub. L. 98–525, title VII, §707(a)(1), Oct. 19, 1984, 98 Stat. 2571; amended Pub. L. 100–26, §7(i)(2), (k)(3), Apr. 21, 1987, 101 Stat. 282, 284; Pub. L. 103–337, div. A, title X, §1070(e)(2), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 105–85, div. A, title VI, §603(d)(2)(A), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (c)(1). Pub. L. 105–85 substituted ''basic allowance for housing under section 403 of title 37, basic allowance for subsistence under section 402 of such title,'' for ''basic allowance for quarters or basic allowance for subsistence''.

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 3021 of title 38'' for ''section 1421 of title 38''.

1987—Subsec. (d)(1). Pub. L. 100–26, §7(i)(2), substituted ''October 19, 1984'' for ''the date of the enactment of this section''.

Subsec. (e). Pub. L. 100–26, §7(k)(3), inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section 707(b) of Pub. L. 98–525 provided that: ''Section 708 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1985.''

§ 709. Emergency leave of absence

(a) EMERGENCY LEAVE OF ABSENCE.—The Secretary concerned may grant a member of the armed forces emergency leave of absence for a qualifying emergency.

(b) LIMITATIONS.—An emergency leave of absence under this section—

(1) may be granted only once for any member;

(2) may be granted only to prevent the member from entering unearned leave status or excess leave status; and

(3) may not extend for a period of more than 14 days.

(c) QUALIFYING EMERGENCY.—In this section, the term ''qualifying emergency'', with respect to a member of the armed forces, means a circumstance that—

(1) is due to—

(A) a medical condition of a member of the immediate family of the member; or

(B) any other hardship that the Secretary concerned determines appropriate for purposes of this section; and

(2) is verified to the Secretary's satisfaction based upon information or opinion from a source in addition to the member that the

Secretary considers to be objective and reliable.

(d) MILITARY DEPARTMENT REGULATIONS.—Regulations prescribed under this section by the Secretaries of the military department shall be as uniform as practicable and shall be subject to approval by the Secretary of Defense.

(e) DEFINITIONS.—In this section:

(1) The term ''unearned leave status'' means leave approved to be used by a member of the armed forces that exceeds the amount of leave credit that has been accrued as a result of the member's active service and that has not been previously used by the member.

(2) The term ''excess leave status'' means leave approved to be used by a member of the armed forces that is unearned leave for which a member is unable to accrue leave credit during the member's current term of service before the member's separation.

(Added Pub. L. 107–314, div. A, title V, § 572(a), Dec. 2, 2002, 116 Stat. 2557.)

CHAPTER 41—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
711. Senior members of Military Staff Committee of United Nations: appointment.
711a. American National Red Cross: detail of commissioned officers.
712. Foreign governments: detail to assist.
713. State Department: assignment or detail as couriers and building inspectors.
714. Defense attaché in France: required grade.
[715. Repealed.]
716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.
717. Members of the armed forces: participation in international sports.
[718. Repealed.]
719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration.
720. Chief of Staff to President: appointment.
721. General and flag officers: limitation on appointments, assignments, details, and duties outside an officer's own service.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, §§ 501(b), 597(b), Nov. 18, 1997, 111 Stat. 1724, 1766, added items 714 and 721.

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(8), Oct. 5, 1994, 108 Stat. 3013, struck out item 715 ''Reserve components: detail of members of regular and reserve components to assist''.

1986—Pub. L. 99–433, title I, § 110(a)(2), Oct. 1, 1986, 100 Stat. 1001, struck out item 718 ''Secretary of Defense: detail of officers to assist''.

1983—Pub. L. 98–94, title X, § 1007(a)(2), Sept. 24, 1983, 97 Stat. 662, included reference to the Public Health Service in item 716.

1980—Pub. L. 96–513, title V, §§ 501(9)(B), 511(23)(C), Dec. 12, 1980, 94 Stat. 2908, 2922, substituted ''assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration'' for ''assignment or detail to Environmental Science Services Administration'' in item 719 and added item 720.

Pub. L. 96–215, § 2(b), Mar. 25, 1980, 94 Stat. 123, inserted ''and to and from National Oceanic and Atmospheric Administration'' after ''between armed forces'' in item 716.

1970—Pub. L. 91–392, § 2, Sept. 1, 1970, 84 Stat. 834, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 716.

1968—Pub. L. 90–235, § 4(a)(1)(B), Jan. 2, 1968, 81 Stat. 759, added item 711a.

1966—Pub. L. 89–683, § 1(2), Oct. 15, 1966, 80 Stat. 960, added item 719.

1962—Pub. L. 87–651, title I, § 103(b), title II, § 205(b), Sept. 7, 1962, 76 Stat. 508, 519, redesignated item 716, relating to participation of members of the armed forces in international sports, as 717, and added item 718.

1960—Pub. L. 86–533, § 1(5)(B), June 29, 1960, 74 Stat. 246, repealed item 714 ''Reports to Congress on length of tours of duty outside United States by members of Army and Air Force''.

1958—Pub. L. 85–861, § 1(18), Sept. 2, 1958, 72 Stat. 1442, added item 716, relating to participation of members of the armed forces in international sports.

Pub. L. 85–599, § 11(1), Aug. 6, 1958, 72 Stat. 521, added item 716, relating to transfers of commissioned officers.

§ 711. Senior members of Military Staff Committee of United Nations: appointment

The President, by and with the advice and consent of the Senate, may appoint an officer of the Army, an officer of the Navy or the Marine Corps, and an officer of the Air Force, as senior members of the Military Staff Committee of the United Nations. An officer so appointed has the grade of lieutenant general or vice admiral, as the case may be, while serving under that appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
711	10:506b(c) (less last 12 words).	Aug. 7, 1947, ch. 512, § 504(c) (less last 12 words), 61 Stat 886.

The words ''Within the limitations as to numbers in grade prescribed in this Act'', so far as they relate to the Army and the Air Force, are omitted as executed by the declaration of the national emergency on December 16, 1950, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1951/6180, 17 Oct. 1951). So far as they relate to the Navy and the Marine Corps they are omitted as surplusage. The words ''may appoint'' are inserted to make it explicit that the revised section prescribes the appointment as well as the rank and pay that go with it. The word ''grade'' is substituted for the word ''rank''. The words ''Navy or Marine Corps'' are substituted for the words ''Navy, including the Marine Corps''. The words ''Army, * * * Air Force'' are substituted for the words ''Army less the Air Corps * * * Air Corps''. The words ''pay and allowances of a vice admiral or lieutenant general'' are omitted as surplusage, since this is implicit upon appointment to the grade. The words ''and Naval'' are omitted to conform to the name ''Military Staff Committee'' established by Article 47 of the United Nations Charter.

§ 711a. American National Red Cross: detail of commissioned officers

Commissioned officers of the Army, Navy, and Air Force may be detailed for duty with the American National Red Cross, by the Secretary of the military department concerned, as follows:

(1) for duty with the Service to the Armed Forces Division—

(A) one or more officers of the Army Medical Department;

(B) one or more officers of the Medical Department of the Navy; and

(C) one or more officers selected from among medical officers, dental officers, veterinary officers, medical service officers, nurses, and medical specialists of the Air Force; and

(2) to be in charge of the first-aid department—

(A) an officer of the Medical Corps of the Army;

(B) an officer of the Medical Corps of the Navy; or

(C) a medical officer of the Air Force.

(Added Pub. L. 90–235, § 4(a)(1)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title V, § 511(21), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 struck out ''(a)'' before ''Commissioned''.

1968—Subsec. (a)(1)(A). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 712. Foreign governments: detail to assist

(a) Upon the application of the country concerned, the President, whenever he considers it in the public interest, may detail members of the Army, Navy, Air Force, and Marine Corps to assist in military matters—

(1) any republic in North America, Central America, or South America;

(2) the Republic of Cuba, Haiti, or Santo Domingo; and

(3) during a war or a declared national emergency, any other country that he considers it advisable to assist in the interest of national defense.

(b) Subject to the prior approval of the Secretary of the military department concerned, a member detailed under this section may accept any office from the country to which he is detailed. He is entitled to credit for all service while so detailed, as if serving with the armed forces of the United States. Arrangements may be made by the President, with countries to which such members are detailed to perform functions under this section, for reimbursement to the United States or other sharing of the cost of performing such functions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 32; Pub. L. 85–477, ch. V, § 502(k), June 30, 1958, 72 Stat. 275.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
712(a)	10:540 (less provisos).	May 19, 1926, ch. 334, 44 Stat. 565; May 14, 1935, ch. 109, 49 Stat. 218; Oct. 1, 1942, ch. 571, 56 Stat. 763.
712(b)	34:441a (less provisos). 10:540 (provisos). 34:441a (provisos).	

In subsection (a), the words ''and the Commonwealth of the Philippine Islands'', in the Act of May 19, 1926, ch. 334, added by the Act of May 14, 1935, ch. 109, 49 Stat. 218, are not contained in 10:540 or 34:441a. They are also omitted from the revised section, since Proclamation No. 2695, effective July 4, 1946, 60 Stat. 1352 (48 U.S.C. 1240 (note)), proclaimed the independence of the Philippine Islands. Similar provisions relating to the Philippines are now contained in section 5 of the Act of June 26, 1946, ch. 500, 60 Stat. 315. The word ''members'' is substituted for the words ''officers and enlisted men'', in 10:540 and 34:441a.

In subsection (b), the words ''entitled to credit for all service'' are substituted for the words ''and shall be allowed the same credit for longevity, retirement, and for all other purposes'', in 10:540 and 34:441a.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–477 struck out provisions which authorized members of the armed forces to accept compensation or emoluments from countries to which they are detailed, and inserted provisions permitting arrangements for reimbursement or other sharing of cost.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 502(k) of Pub. L. 85–477 provided that the amendment made by that section is effective nine months after June 30, 1958.

§ 713. State Department: assignment or detail as couriers and building inspectors

(a) Upon the request of the Secretary of State, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty—

(1) as inspectors of buildings owned or occupied abroad by the United States;

(2) as inspectors or supervisors of buildings under construction or repair abroad by or for the United States; and

(3) as couriers of the Department of State.

(b) The Secretary concerned may assign or detail a member for duty under subsection (a) with or without reimbursement from the Department of State. However, a member so assigned or detailed may be paid the traveling expenses authorized for officers of the Foreign Service of the United States. These expenses shall be paid from appropriations of the Department of State.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
713(a)	22:956 (words before semicolon of 1st sentence).	Aug. 13, 1946, ch. 957, § 561, 60 Stat. 1011.
713(b)	22:956 (less words before semicolon of 1st sentence).	

In subsection (a), the words ''members of the armed forces under his jurisdiction'' are substituted for the words ''military and naval personnel serving under their supervision''.

In subsection (b), the words ''The Secretary concerned may'' are substituted for the words ''in the discretion of the head of the department concerned''.

§ 714. Defense attaché in France: required grade

An officer may not be selected for assignment to the position of defense attaché to the United States embassy in France unless the officer holds (or is on a promotion list for promotion to) the grade of brigadier general or, in the case of the Navy, rear admiral (lower half).

(Added Pub. L. 105–85, div. A, title V, §597(a), Nov. 18, 1997, 111 Stat. 1766.)

PRIOR PROVISIONS

A prior section 714, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to reports to Congress on length of tours of duty outside the United States by members of the Army and Air Force, prior to repeal by Pub. L. 86–533, §1(5)(A), June 29, 1960, 74 Stat. 246.

[§715. Repealed. Pub. L. 103–337, div. A, title XVI, §1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 33, related to detail of members of regular and reserve components to assist those components. See section 12501 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§716. Commissioned officers: transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service

(a) Notwithstanding any other provision of law, the President, within authorized strengths and with the consent of the officer involved, may transfer any commissioned officer of a uniformed service from his uniformed service to, and appoint him in, another uniformed service. The Secretary of Defense, the Secretary of Homeland Security, the Secretary of Commerce, and the Secretary of Health and Human Services shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

(b) An officer transferred under this section may not be assigned precedence or relative rank higher than that which he held on the day before the transfer.

(Added Pub. L. 85–599, §11(2), Aug. 6, 1958, 72 Stat. 521; amended Pub. L. 91–392, §1, Sept. 1, 1970, 84 Stat. 834; Pub. L. 96–215, §2(a), Mar. 25, 1980, 94 Stat. 123; Pub. L. 97–295, §1(10), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–94, title X, §1007(a)(1), Sept. 24, 1983, 97 Stat. 661; Pub. L. 99–348, title III, §304(a)(1), July 1, 1986, 100 Stat. 703; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Another section 716 was renumbered section 717 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ''uniformed service'' for purposes of this section. See section 101(43) of this title.

1983—Pub. L. 98–94 amended section generally, substituting ''transfers among the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service'' for ''transfers between armed forces and to and from National Oceanic and Atmospheric Administration'' in section catchline and adding subsec. (c). Prior to amendment subsecs. (a) and (b) read as follows:

''(a) Notwithstanding any other provision of law, the President may, within authorized strengths, transfer any commissioned officer with his consent from his armed force or from the National Oceanic and Atmospheric Administration to, and appoint him in, another armed force or the National Oceanic and Atmospheric Administration. The Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, and the Secretary of Commerce shall jointly establish, by regulations approved by the President, policies and procedures for such transfers and appointments.

''(b) An officer transferred under this section—

''(1) may not be assigned precedence or relative rank higher than that which he held on the day before his transfer; and

''(2) shall be credited for retirement and pay purposes with the same years of service with which he has been credited on the day before his transfer.''

1982—Subsec. (a). Pub. L. 97–295 struck out the comma after ''policies''.

1980—Pub. L. 96–215 inserted ''and to and from National Oceanic and Atmospheric Administration'' in section catchline, divided existing unlettered provisions into subsecs. (a) and (b)(1), inserted references to National Oceanic and Atmospheric Administration and to Secretary of Commerce in subsec. (a) as so redesignated, and added subsec. (b)(2).

1970—Pub. L. 91–392 substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline and ''his armed force'', ''another armed force'', ''An officer transferred under this section may not be assigned'', and ''before his transfer'' for ''the Army, Navy, Air Force, or Marine Corps'', ''any other of those armed forces'', ''No officer transferred pursuant to this authority shall be assigned'', and ''prior to such transfer'' in text, respectively, and authorized interservice transfers of officers of the Coast Guard.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071.

§717. Members of the armed forces: participation in international sports

(a) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may permit members of the armed forces under his jurisdiction to train for, attend, and participate in—

(1) Pan-American Games and Olympic Games and qualifying events and preparatory competition for those games; and

(2) any other international competition in amateur sports, if the Secretary of State determines that the interests of the United States will be served by participation in that competition, and qualifying events and preparatory competition for that competition.

(b) Subject to subsections (c) and (d), the Secretary of Defense or the Secretary of Homeland Security, as the case may be, may spend such funds, and acquire and use such supplies, as he determines to be necessary to provide for—

(1) the training of members of the armed forces for the competitions covered by subsection (a);

(2) their attendance at and participation in those competitions; and

(3) the training of animals of the armed forces for, and their attendance at and participation in, those competitions.

(c)(1) Not more than $3,000,000, to be apportioned among the military departments as the Secretary of Defense prescribes, may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Army, Navy, Air Force, and Marine Corps in the competitions covered by subsection (a).

(2) Not more than $100,000 may be spent during each successive four-year period beginning on October 1, 1980, for the participation of members of the Coast Guard in the competitions covered by subsection (a).

(d) Appropriations available to the Department of Defense or to the Department of Homeland Security, as the case may be, may be used to carry out this section.

(Added Pub. L. 85–861, §1(17), Sept. 2, 1958, 72 Stat. 1442, §716; renumbered §717, Pub. L. 87–651, title I, §103(a), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 89–348, §1(12), Nov. 8, 1965, 79 Stat. 1311; Pub. L. 89–718, §7, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §511(22), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 98–525, title XV, §1534, Oct. 19, 1984, 98 Stat. 2632; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
716 [now 717].	22:1981. 22:1982. 22:1983.	Mar. 14, 1955, ch. 11 (less last 2 pars.), 69 Stat. 11.

In subsection (a), the first 27 words are substituted for section 1 of the source statute. The reference to the Second Pan-American Games, the Seventh Olympic Winter Games, and the Games of the XVI Olympiad are omitted as covered by clause (1) of the revised subsection. The words ''subject to the limitation contained in subsection (b) herein'' are omitted as covered by revised subsection (b). The words ''any other'' are substituted for the words ''other * * * not specified in (1) above''.

In subsection (b), the word ''entry'' is substituted for the word ''commitment'' for clarity. The words ''or the Secretary of the Treasury, as the case may be'' are inserted since, under subsection (a), the Secretary of the Treasury has the prescribed authority with respect to members of the Coast Guard when it is not operating as a service in the Navy.

In subsection (c), the words ''materiel, and equipment'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title.

1962 ACT

This section corrects a duplication in numbering occasioned by the addition of a duplicate section 716 by Pub. L. 85–861. (The first section 716 was added by Pub. L. 85–599.)

AMENDMENTS

2002—Subsecs. (a), (b), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1984—Subsec. (a)(1). Pub. L. 98–525, §1534(1), included qualifying events and preparatory competition.

Subsec. (a)(2). Pub. L. 98–525, §1534(2), included qualifying events and preparatory competition.

Subsec. (b). Pub. L. 98–525, §1534(3), struck out reference to subsec. (e).

Subsec. (c). Pub. L. 98–525, §1534(4), (6), designated existing provisions as par. (1), substituted ''$3,000,000'' for ''$800,000'' and ''October 1, 1980'' for ''March 14, 1955'', redesignated subsec. (d) as par. (2), and substituted ''October 1, 1980'' for ''March 14, 1955''.

Subsecs. (d), (e). Pub. L. 98–525, §1534(7), redesignated subsec. (e) as (d). Former subsec. (d) redesignated par. (2) of subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, §511(22)(A), substituted ''Transportation'' for ''the Treasury''.

Subsec. (b). Pub. L. 96–513, §511(22), redesignated subsec. (c) as (b) and substituted reference to subsec. (c) for reference to subsec. (f), and ''Transportation'' for ''the Treasury''.

Subsecs. (c), (d). Pub. L. 96–513, §511(22)(C), redesignated subsecs. (d) and (e) as (c) and (d), respectively. Former subsec. (c) redesignated (b).

Subsecs. (e), (f). Pub. L. 96–513, §511(22) (A), (C), redesignated subsec. (f) as (e) and substituted ''Transportation'' for ''the Treasury''. Former subsection (e) redesignated (d).

1966—Subsec. (b). Pub. L. 89–718 repealed subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury to report to the Committees on Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition. See also Pub. L. 89–348, §1(12), Nov. 8, 1965, 79 Stat. 1311, which earlier repealed the reporting requirement of subsec. (b).

1965—Subsec. (b). Pub. L. 89–348 repealed provision of subsec. (b) which required the Secretary of Defense or the Secretary of the Treasury, as the case may be, to report to the Committees on the Armed Services of the Senate and House of Representatives the details of the proposed participation by members of the Armed Forces under his jurisdiction in international amateur sports competition.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 420.

[§ 718. Repealed. Pub. L. 99–433, title I, § 110(a)(1), Oct. 1, 1986, 100 Stat. 1001]

Section, added Pub. L. 87–651, title II, §205(a), Sept. 7, 1962, 76 Stat. 519, provided that officers of the armed forces could be detailed for duty as assistants or personal aides to the Secretary of Defense.

§ 719. Department of Commerce: assignment or detail of members of the armed forces to National Oceanic and Atmospheric Administration

Upon the request of the Secretary of Commerce, the Secretary of a military department may assign or detail members of the armed forces under his jurisdiction for duty in the National Oceanic and Atmospheric Administration, Department of Commerce, with reimbursement from the Department of Commerce. Notwithstanding any other provision of law, a member so assigned or detailed may exercise the functions, and assume the title, of any position in that Administration without affecting his status as a member of an armed force, but he is not entitled to the compensation fixed for that position.

(Added Pub. L. 89–683, §1(1), Oct. 15, 1966, 80 Stat. 960; amended Pub. L. 96–513, title I, §511(23)(A), (B), Dec. 12, 1980, 94 Stat. 2921.)

AMENDMENTS

1980—Pub. L. 96–513 substituted ''of members of the armed forces to National Oceanic and Atmospheric'' for ''to Environmental Science Services'' in section catchline, and substituted ''National Oceanic and Atmospheric'' for ''Environmental Science Services'' in text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 720. Chief of Staff to President: appointment

The President, by and with the advice and consent of the Senate, may appoint a general officer of the Army, Air Force, or Marine Corps or a flag officer of the Navy as the Chief of Staff to the President and may designate such position as a position of importance and responsibility under section 601 of this title.

(Added Pub. L. 96–513, title V, § 501(9)(A), Dec. 12, 1980, 94 Stat. 2907.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 721. General and flag officers: limitation on appointments, assignments, details, and duties outside an officer's own service

(a) LIMITATION.—An officer described in subsection (b) may not be appointed, assigned, or detailed for a period in excess of 180 days to a position external to that officer's armed force if, immediately following such appointment, assignment, or detail, the number of officers described in subsection (b) serving in positions external to such officers' armed force would be in excess of 26.5 percent of the total number of the officers described in subsection (b).

(b) COVERED OFFICERS.—The officers covered by subsection (a), and to be counted for the purposes of the limitation in that subsection, are the following:

(1) Any general or flag officer counted for purposes of section 526(a) of this title.

(2) Any general or flag officer serving in a joint duty assignment position designated by the Chairman of the Joint Chiefs of Staff under section 526(b) of this title.

(3) Any colonel or Navy captain counted for purposes of section 777(d)(1) of this title.

(c) EXTERNAL POSITIONS.—For purposes of this section, the following positions shall be considered to be external to an officer's armed force:

(1) Any position (including a position in joint education) that is a joint duty assignment for purposes of chapter 38 of this title.

(2) Any position in the Office of the Secretary of Defense, a Defense Agency, or a Department of Defense Field Activity.

(3) Any position in the Joint Chiefs of Staff, the Joint Staff, or the headquarters of a combatant command (as defined in chapter 6 of this title).

(4) Any position in the National Guard Bureau.

(5) Any position outside the Department of Defense, including any position in the headquarters of the North Atlantic Treaty Organization or any other international military command, any combined or multinational command, or military mission.

(d) TREATMENT OF OFFICERS HOLDING MULTIPLE POSITIONS.—If an officer described in subsection (b) simultaneously holds both a position external to that officer's armed force and another position not external to that officer's armed force, the Secretary of Defense shall determine whether that officer shall be counted for the purposes of this section.

(e) ASSIGNMENTS, ETC., FOR PERIODS IN EXCESS OF 180 DAYS.—For purposes of this section, the appointment, assignment, or detail of an officer to a position shall be considered to be for a period in excess of 180 days unless the appointment, assignment, or detail specifies that it is made for a period of 180 days or less.

(f) WAIVER DURING PERIOD OF WAR OR NATIONAL EMERGENCY.—The President may suspend the operation of this section during any period of war or of national emergency declared by Congress or the President.

(Added Pub. L. 105–85, div. A, title V, § 501(a), Nov. 18, 1997, 111 Stat. 1723; amended Pub. L. 107–314, div. A, title X, § 1041(a)(4), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out par. (1) designation and par. (2) which read as follows: ''The Secretary of Defense shall submit to Congress an annual report on the number of officers to whom paragraph (1) was applicable during the year covered by the report. The report shall set forth the determination made by the Secretary under that paragraph in each such case.''

CHAPTER 43—RANK AND COMMAND

Sec.
741. Rank: commissioned officers of the armed forces.
742. Rank: warrant officers.
743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps.
744. Physician to White House: assignment; grade.
[745. Repealed.]
747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join.
749. Command: commissioned officers in same grade or corresponding grades on duty at same place.
750. Command: retired officers.

AMENDMENTS

1991—Pub. L. 102–190, div. A, title XI, § 1114(c), Dec. 5, 1991, 105 Stat. 1502, added item 742 and struck out item 745 ''Warrant officers: rank''.

1987—Pub. L. 100–180, div. A, title XIII, § 1314(b)(5)(B), Dec. 4, 1987, 101 Stat. 1175, inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in item 743.

1980—Pub. L. 96–513, title V, § 501(10)(A), Dec. 12, 1980, 94 Stat. 2908, as amended Pub. L. 97–22, § 10(a)(1), July

10, 1981, 95 Stat. 136, substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in item 741.

Pub. L. 96–513, title V, §501(10)(B), Dec. 12, 1980, 94 Stat. 2908, added item 750.

1968—Pub. L. 90–235, §5(a)(1)(B), Jan. 2, 1968, 81 Stat. 761, added items 747 and 749.

1958—Pub. L. 85–861, §1(19), Sept. 2, 1958, 72 Stat. 1442, struck out item 742 ''Rank: officers of regular and reserve components''.

§ 741. Rank: commissioned officers of the armed forces

(a) Among the grades listed below, the grades of general and admiral are equivalent and are senior to other grades and the grades of second lieutenant and ensign are equivalent and are junior to other grades. Intermediate grades rank in the order listed as follows:

Army, Air Force, and Marine Corps	*Navy and Coast Guard*
General	Admiral.
Lieutenant general	Vice admiral.
Major general	Rear admiral.
Brigadier general	Rear admiral (lower half).
Colonel	Captain.
Lieutenant colonel	Commander.
Major	Lieutenant commander.
Captain	Lieutenant.
First lieutenant	Lieutenant (junior grade).
Second lieutenant	Ensign.

(b) Rank among officers of the same grade or of equivalent grades is determined by comparing dates of rank. An officer whose date of rank is earlier than the date of rank of another officer of the same or equivalent grade is senior to that officer.

(c) Rank among officers of the Army, Navy, Air Force, and Marine Corps of the same grade or of equivalent grades who have the same date of rank is determined by regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(d)(1) The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment shall be determined by the Secretary of the military department concerned at the time of such appointment. The date of rank of an officer of the Army, Navy, Air Force, or Marine Corps who holds a grade as the result of an original appointment and who at the time of such appointment was awarded service credit for prior commissioned service or constructive credit for advanced education or training, or special experience shall be determined so as to reflect such prior commissioned service or constructive service. Determinations by the Secretary concerned under this paragraph shall be made under regulations prescribed by the Secretary of Defense which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(2) Except as otherwise provided by law, the date of rank of an officer who holds a grade as the result of a promotion is the date of his appointment to that grade.

(3) Under regulations prescribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, the date of rank of a reserve commissioned officer (other than a warrant officer) of the Army, Navy, Air Force, or Marine Corps who is to be placed on the active-duty list and who has not been on continuous active duty since his original appointment as a reserve commissioned officer in a grade above chief warrant officer, W–5, or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list or reserve active-status list, be changed by the Secretary concerned to a later date to reflect such officer's qualifications and experience. The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.

(4)(A) The Secretary concerned may adjust the date of rank of an officer appointed under section 624(a) of this title to a higher grade that is not a general officer or flag officer grade if the appointment of that officer to that grade is delayed from the date on which (as determined by the Secretary) it would otherwise have been made by reason of unusual circumstances (as determined by the Secretary) that cause an unintended delay in—

(i) the processing or approval of the report of the selection board recommending the appointment of that officer to that grade; or

(ii) the processing or approval of the promotion list established on the basis of that report.

(B) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be consistent—

(i) with the officer's position on the promotion list for that grade and competitive category when additional officers in that grade and competitive category were needed; and

(ii) with compliance with the applicable authorized strengths for officers in that grade and competitive category.

(C) The adjusted date of rank applicable to the grade of an officer under subparagraph (A) shall be the effective date for—

(i) the officer's pay and allowances for that grade; and

(ii) the officer's position on the active-duty list.

(D) When under subparagraph (A) the Secretary concerned adjusts the date of rank of an officer in a grade to which the officer was appointed by and with the advice and consent of the Senate and the adjustment is to a date before the date of the advice and consent of the Senate to that appointment, the Secretary shall promptly transmit to the Committee on Armed Services of the Senate a notification of that adjustment. Any such notification shall include the name of the officer and a discussion of the reasons for the adjustment of date of rank.

(E) Any adjustment in date of rank under this paragraph shall be made under regulations pre-

scribed by the Secretary of Defense, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 33; Pub. L. 96–513, title I, §107, Dec. 12, 1980, 94 Stat. 2869; Pub. L. 97–22, §4(h), July 10, 1981, 95 Stat. 127; Pub. L. 97–86, title IV, §405(b)(8), Dec. 1, 1981, 95 Stat. 1106; Pub. L. 97–295, §1(11), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–557, §25(c), Oct. 30, 1984, 98 Stat. 2873; Pub. L. 99–145, title V, §514(b)(8), Nov. 8, 1985, 99 Stat. 629; Pub. L. 102–190, div. A, title XI, §1131(1)(A), Dec. 5, 1991, 105 Stat. 1505; Pub. L. 103–337, div. A, title XVI, §1626, Oct. 5, 1994, 108 Stat. 2962; Pub. L. 104–106, div. A, title XV, §1501(a)(3), Feb. 10, 1996, 110 Stat. 495; Pub. L. 107–107, div. A, title V, §506(a), Dec. 28, 2001, 115 Stat. 1089.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
741(a)	10:517 (1st and 2d sentences, less applicability to rank within grade). 14:43. 34:651 (less applicability to establishment of commissioned grades, and less applicability to rank within grade). 34:241. 34:241a (1st and 2d sentences, less applicability to rank within grade).	Aug. 7, 1947, ch. 512, §§314(j), 516, 61 Stat. 865, 908. R.S. 1603 (less applicability to establishment of commissioned grades). R.S. 1466. Aug. 4, 1949, ch. 393, §1(43), 63 Stat. 498.
741(b)	10:517 (1st and 2d sentences, as applicable to rank within grade). 34:241a (1st and 2d sentences, as applicable to rank within grade). 34:626–1(j). 34:651 (less applicability to establishment of commissioned grades, and as applicable to rank within grade).	
741(c)	10:517 (less 1st and 2d sentences). 34:241a (less 1st and 2d sentences).	

In subsection (a), the word ''Regular'', pertaining to major generals and brigadier generals, in 10:517 and 34:241a, is omitted, since the last sentence of 10:517 and 34:241a establish the rank of nonregular officers of the Army and the Air Force, with respect to officers of the Regular Army and the Regular Air Force. The effect of establishing their rank with respect to regular officers, when read in connection with the provisions prescribing the rank of officers of the regular components with officers of the other services, under 10:517 (less last sentence), 34:241a (less last sentence), and 34:241, is therefore to establish the rank of nonregular officers with respect to officers of the other listed services. This allows a consolidation of 10:517 (less last sentence, as applicable to rank), 34:241, and 34:241a (less last sentence, as applicable to rank), together with 34:651, into a table of rank among officers of the Army, Navy, Air Force, and Marine Corps. The words ''lineal rank only being considered'', in 34:241, are covered by setting forth the grades in tabular form. The words ''whether on the active or retired list'', in 34:241, are omitted, since retired officers of the Navy continue to be officers of the Navy. The words ''Lieutenant (junior grade)'' are substituted for the word ''masters'', in R.S. 1466, to reflect the change made in the name of that grade by the Act of March 3, 1883, ch. 97 (2d par.), 22 Stat. 472.

In subsections (a) and (b), the words ''entitled to pay'' and ''entitled to the pay'', respectively, are inserted, since rear admiral is one grade with two ranks depending on the amount of pay to which the incumbent is entitled.

In subsection (b), the words ''in such grades'', in 10:517 and 34:241a, are omitted as surplusage.

In subsection (c), the words ''A commissioned officer of the Army or the Air Force'' are substituted for the words ''All officers of the Army of the United States, including all components thereof'', since rank among officers of the Regular Army and Regular Air Force is determined under sections 3573, 3574, 8573, and 8574 of this title.

AMENDMENTS

2001—Subsec. (d)(4). Pub. L. 107–107 added par. (4).

1996—Subsec. (d)(3). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, §1626(1). See 1994 Amendment note below.

1994—Subsec. (d)(3). Pub. L. 103–337, §1626(3), inserted at end ''The authority to change the date of rank of a reserve officer who is placed on the active-duty list to a later date does not apply in the case of an officer who (A) has served continuously in the Selected Reserve of the Ready Reserve since the officer's last promotion, or (B) is placed on the active-duty list while on a promotion list as described in section 14317(b) of this title.''

Pub. L. 103–337, §1626(2), inserted ''or reserve active-status list'' after ''he is placed on the active-duty list''.

Pub. L. 103–337, §1626(1), as amended by Pub. L. 104–106, inserted ''or who is transferred from an inactive status to an active status and placed on the active-duty list or the reserve active-status list may, effective on the date on which he is placed on the active-duty list'' after ''warrant officer, W–5,''.

1991—Subsec. (d)(3). Pub. L. 102–190 substituted ''chief warrant officer, W–5,'' for ''warrant officer (W–4)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''Rear admiral (lower half)'' for ''Commodore'' in table.

1984—Subsec. (a). Pub. L. 98–557 struck out ''(Navy) and Rear admiral (upper half) (Coast Guard)'' after ''Rear admiral'' and ''(Navy) and Rear admiral (lower half) (Coast Guard)'' after ''Commodore'' in table.

1982—Subsec. (c). Pub. L. 97–295 substituted ''the'' for ''the the'' after ''uniformly among''.

1981—Pub. L. 97–22, §4(h)(4), substituted ''armed forces'' for ''Army, Navy, Air Force, and Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 97–86 substituted ''Commodore'' for ''Commodore admiral'' in right column of table opposite Brigadier general.

Pub. L. 97–22, §4(h)(1), inserted reference to the Coast Guard in column heading and inserted references to Rear admiral (upper half) (Coast Guard) and Rear admiral (lower half) (Coast Guard).

Subsec. (c). Pub. L. 97–22, §4(h)(2), inserted ''of the Army, Navy, Air Force, and Marine Corps'' after ''Rank among officers''.

Subsec. (d)(1). Pub. L. 97–22, §4(h)(3)(A), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''officer'' in two places.

Subsec. (d)(3). Pub. L. 97–22, §4(h)(3)(B), inserted ''of the Army, Navy, Air Force, or Marine Corps'' after ''(other than a warrant officer)''.

1980—Pub. L. 96–513 completely revised section to restructure and redefine various ranks of commissioned officers of the Army, Air Force, Marine Corps, and Navy and relationships of officers in those ranks among themselves.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §506(c), Dec. 28, 2001, 115 Stat. 1090, provided that:

''(1) Paragraph (4) of section 741(d) of title 10, United States Code, as added by subsection (a), and paragraph (2) of section 14308(c) of such title, as added by subsection (b), shall apply with respect to any report of a selection board recommending officers for promotion to the next higher grade that is submitted to the Secretary of the military department concerned on or after the date of the enactment of this Act [Dec. 28, 2001].

''(2) The Secretary of the military department concerned may apply the applicable paragraph referred to in paragraph (1) in the case of an appointment of an officer to a higher grade resulting from a report of a selection board submitted to the Secretary before the date of the enactment of this Act if the Secretary determines that such appointment would have been made on an earlier date that is on or after October 1, 2001, and was delayed under the circumstances specified in paragraph (4) of section 741(d) of title 10, United States Code, as added by subsection (a).''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 624, 742, 12206, 14006, 14308 of this title.

§ 742. Rank: warrant officers

(a) Among warrant officer grades, warrant officer grades of a higher numerical designation are senior to warrant officer grades of a lower numerical designation.

(b) Rank among warrant officers of the same grade, and date of rank of warrant officers, is determined in the same manner as prescribed in section 741 of this title for officers in grades above warrant officer grades.

(Added Pub. L. 102–190, div. A, title XI, §1114(a), Dec. 5, 1991, 105 Stat. 1502.)

PRIOR PROVISIONS

A prior section 742, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to rank of regular officers and reserve officers, prior to repeal by Pub. L. 85–861, §36B(4), Sept. 2, 1958, 72 Stat. 1570.

EFFECTIVE DATE

Section effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§ 743. Rank: Chief of Staff of the Army; Chief of Naval Operations; Chief of Staff of the Air Force; Commandant of the Marine Corps

The Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, and the Commandant of the Marine Corps rank among themselves according to dates of appointment to those offices, and rank above all other officers on the active-duty list of the Army, Navy, Air Force, and Marine Corps, except the Chairman and the Vice Chairman of the Joint Chiefs of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34; Pub. L. 96–513, title I, §501(11), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99–433, title II, §202(b), Oct. 1, 1986, 100 Stat. 1010; Pub. L. 100–180, div. A, title XIII, §1314(a)(2), (b)(5)(A), Dec. 4, 1987, 101 Stat. 1175.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
743	5:626c(b).	July 26, 1947, ch. 343, §208(b), 61 Stat. 503; Sept. 19, 1951, ch. 407, §402, 65 Stat. 333.

5:626c(b) (1st sentence) is omitted as superseded by sections 8031(a)(1) and 8034(a) of this title. 5:626c(b) (2d sentence) is omitted as covered by section 8034(d) of this title. 5:626c(b) (3d and 4th sentences) is omitted as executed. 5:626c(b) (5th sentence) is omitted as covered by section 8034(b) of this title. 5:626c(b) (proviso of last sentence) is omitted as executed, since the incumbents to whom it is applied no longer hold the offices mentioned. The exception as to the Chairman of the Joint Chiefs of Staff is included because of section 142(c) of this title. The words ''and the Marine Corps'' are inserted, since under section 5081 of this title the Chief of Naval Operations takes precedence over all other officers of the naval service.

AMENDMENTS

1987—Pub. L. 100–180, §1314(b)(5)(A), inserted ''; Commandant of the Marine Corps'' after ''Air Force'' in section catchline.

Pub. L. 100–180, §1314(a)(2), made technical correction in directory language of Pub. L. 99–433. See 1986 Amendment note below.

1986—Pub. L. 99–433, as amended by Pub. L. 100–180, §1314(a)(2), inserted reference to the Commandant of the Marine Corp and the Vice Chairman of the Joint Chiefs of Staff.

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1314(e)(1) of Pub. L. 100–180 provided that: ''The amendments made by subsection (a) [amending this section, sections 2431 to 2434 of this title, and provisions set out as notes under sections 111 and 3033 of this title] shall apply as if included in the enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433).''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§744. Physician to White House: assignment; grade

An officer of the Medical Corps of the Army, or a medical officer of the Air Force, who is below the grade of colonel and who is assigned to duty as physician to the White House has the rank, pay, and allowances of colonel while so serving. An officer of the Medical Corps of the Navy who is below the grade of captain and who is assigned to that duty has the rank, pay, and allowances of captain while so serving.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
744	10:515. 34:251a.	Apr. 4, 1930, ch. 104, 46 Stat. 140.

The word ''temporary'', in 10:515 and 34:251a, is omitted as surplusage.

[§745. Repealed. Pub. L. 102–190, div. A, title XI, §1114(b), Dec. 5, 1991, 105 Stat. 1502]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 34, related to ranking of warrant officers. See section 742 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 521 of this title.

§747. Command: when different commands of Army, Navy, Air Force, Marine Corps, and Coast Guard join

When different commands of the Army, Navy, Air Force, Marine Corps, and Coast Guard join or serve together, the officer highest in rank in the Army, Navy, Air Force, Marine Corps, or Coast Guard on duty there, who is otherwise eligible to command, commands all those forces unless otherwise directed by the President.

(Added Pub. L. 90–235, §5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§749. Command: commissioned officers in same grade or corresponding grades on duty at same place

(a) When the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, has on duty in the same area, field command, or organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.

(b) When officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard are on duty in the same area, field, command, or organization and two or more commissioned officers of different services, who are otherwise eligible to command, have the same grade or corresponding grades, the President may assign the command without regard to rank in that grade.

(Added Pub. L. 90–235, §5(a)(1)(A), Jan. 2, 1968, 81 Stat. 760.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DELEGATION OF AUTHORITY

For delegation of authority of President under this section, see section 1 of Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

§750. Command: retired officers

A retired officer has no right to command except when on active duty.

(Added Pub. L. 96–513, title I, §108, Dec. 12, 1980, 94 Stat. 2870.)

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 45—THE UNIFORM

Sec.
771. Unauthorized wearing prohibited.
771a. Disposition on discharge.
772. When wearing by persons not on active duty authorized.
773. When distinctive insignia required.
774. Religious apparel: wearing while in uniform.
775. Issue of uniform without charge.
776. Applicability of chapter.
777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title V, §503(a)(2), Feb. 10, 1996, 110 Stat. 294, added item 777.

1992—Pub. L. 102–484, div. A, title III, §377(b), Oct. 23, 1992, 106 Stat. 2387, added item 775 and redesignated former item 775 as 776.

1987—Pub. L. 100–180, div. A, title V, §508(b), Dec. 4, 1987, 101 Stat. 1087, added item 774 and redesignated former item 774 as 775.

1968—Pub. L. 90–235, §8(1)(B), Jan. 2, 1968, 81 Stat. 764, added item 771a.

§771. Unauthorized wearing prohibited

Except as otherwise provided by law, no person except a member of the Army, Navy, Air Force, or Marine Corps, as the case may be, may wear—

(1) the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps; or

(2) a uniform any part of which is similar to a distinctive part of the uniform of the Army, Navy, Air Force, or Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 34.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
771	10:1393 (1st par., less provisos).	June 3, 1916, ch. 134, §125 (1st par., less provisos), 39 Stat. 216.

The words ''Except as otherwise provided by law'' are inserted to give effect to exceptions in other revised sections of this title and to provisions of other laws giving such organizations as the Coast and Geodetic Survey and the Public Health Service permission to wear military uniforms under certain conditions.

§ 771a. Disposition on discharge

(a) Except as provided in subsections (b) and (c), when an enlisted member of an armed force is discharged, the exterior articles of uniform in his possession that were issued to him, other than those that he may wear from the place of discharge to his home under section 772(d) of this title, shall be retained for military use.

(b) When an enlisted member of an armed force is discharged for bad conduct, undesirability, unsuitability, inaptitude, or otherwise than honorably—

(1) the exterior articles of uniform in his possession shall be retained for military use;

(2) under such regulations as the Secretary concerned prescribes, a suit of civilian clothing and an overcoat when necessary, both to cost not more than $30, may be issued to him; and

(3) if he would be otherwise without funds to meet his immediate needs, he may be paid an amount, fixed by the Secretary concerned, of not more than $25.

(c) When an enlisted member of the Army National Guard or the Air National Guard who has been called into Federal service is released from that service, the exterior articles of uniform in his possession shall be accounted for as property issued to the Army National Guard or the Air National Guard, as the case may be, of the State or territory, Puerto Rico, or the District of Columbia of whose Army National Guard or Air National Guard he is a member, as prescribed in section 708 of title 32.

(Added Pub. L. 90–235, §8(1)(A), Jan. 2, 1968, 81 Stat. 763; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 775 of this title.

§ 772. When wearing by persons not on active duty authorized

(a) A member of the Army National Guard or the Air National Guard may wear the uniform prescribed for the Army National Guard or the Air National Guard, as the case may be.

(b) A member of the Naval Militia may wear the uniform prescribed for the Naval Militia.

(c) A retired officer of the Army, Navy, Air Force, or Marine Corps may bear the title and wear the uniform of his retired grade.

(d) A person who is discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps may wear his uniform while going from the place of discharge to his home, within three months after his discharge.

(e) A person not on active duty who served honorably in time of war in the Army, Navy, Air Force, or Marine Corps may bear the title, and, when authorized by regulations prescribed by the President, wear the uniform, of the highest grade held by him during that war.

(f) While portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production may wear the uniform of that armed force if the portrayal does not tend to discredit that armed force.

(g) An officer or resident of a veterans' home administered by the Department of Veterans Affairs may wear such uniform as the Secretary of the military department concerned may prescribe.

(h) While attending a course of military instruction conducted by the Army, Navy, Air Force, or Marine Corps, a civilian may wear the uniform prescribed by that armed force if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned.

(i) Under such regulations as the Secretary of the Air Force may prescribe, a citizen of a foreign country who graduates from an Air Force school may wear the appropriate aviation badges of the Air Force.

(j) A person in any of the following categories may wear the uniform prescribed for that category:

(1) Members of the Boy Scouts of America.

(2) Members of any other organization designated by the Secretary of a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Pub. L. 99–145, title XIII, §1301(a)(1), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–201, div. A, title V, §551(b), Sept. 23, 1996, 110 Stat. 2525.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
772(a)	10:1393 (words before 1st semicolon of 1st proviso of 1st par.).	June 3, 1916, ch. 134, §12 (words before 4th semicolon, and words after 7th semicolon, of 1st proviso of 1st par.; and last proviso of last par.), 39 Stat. 216; July 9, 1918, ch. 143, subch. XVII, §10 (last proviso), 40 Stat. 892; June 4, 1920, ch. 228, §8, 41 Stat. 836; June 6, 1942, ch. 382, 56 Stat. 328; May 24, 1949, ch. 139, §15(b) (last proviso), 63 Stat. 91; July 6, 1953, ch. 180, §1, 67 Stat. 140.
772(b)	10:1393 (15th through 18th words after 1st semicolon of 1st proviso of 1st par.).	
772(c)	10:1023 (1st sentence). 34:43g(i). 34:389 (less 1st and 3d sentences).	
772(d)	10:1393 (words between 3d and 4th semicolons of 1st proviso of 1st par.).	
772(e)	10:1028b. 10:1393 (words between 2d and 3d semicolons of 1st proviso of 1st par.). 34:399d.	R.S. 1256 (1st sentence).
772(f)	10:1393 (words between 8th and 9th semicolons of 1st proviso of 1st par.).	R.S. 1457 (less 1st and 3d sentences); May 5, 1950, ch. 169, §14(f), 64 Stat. 147.
772(g)	10:1393 (last proviso of last par.).	Apr. 16, 1947, ch. 38, §207(j), 61 Stat. 50; as redesignated (i); Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882.
772(h)	10:1393 (words between 7th and 8th semicolons of 1st proviso of 1st par.).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
772(i)	10:1393 (words after 9th semicolon of 1st proviso of 1st par.).	June 21, 1930, ch. 563, §2; restated Aug. 4, 1949, ch. 393, §12, 63 Stat. 559; July 6, 1953, ch. 180, §2, 67 Stat. 140.
772(j)	10:1393 (words between 1st and 2d semicolons of 1st proviso of 1st par., less 15th through 18th words).	

In subsections (a), (b), (d), (f), (g), (h), (i), and (j), the rules stated in the corresponding clauses of the first proviso of the first paragraph, and the last proviso of the last paragraph, of 10:1393, are restated to make positive the authority of the persons described in those subsections to wear the uniform prescribed for the appropriate organization or activity.

In subsection (c), the words ''bear the title'', in 34:43g(i), applicable only to retired officers of the Navy Nurse Corps, are made applicable to other retired officers, to make explicit what has heretofore been implicit, that a retired officer may continue to bear the title of his retired grade.

In subsection (e), the words between the second and third semicolons of the first proviso of the first paragraph of 10:1393 are omitted as superseded by 10:1028b and 34:399d, which authorize the wearing of the uniform by members who are discharged honorably or under honorable conditions. The words ''when authorized by regulations prescribed by'' are substituted for the words ''occasions authorized by regulations of''.

In subsection (f), the words ''while portraying a member of the Army, Navy, Air Force, or Marine Corps, an actor in a theatrical or motion-picture production'' are substituted for the words ''any person from wearing the uniform of the United States Army, Navy, or Marine Corps, in any playhouse or theater or in moving-picture films while actually engaged in representing therein a military or naval character''.

In subsection (g), the word ''resident'' is substituted for the word ''members'', since the word ''members'' related to members of the now disbanded National Home for disabled volunteer soldiers to which were admitted ''members'' of an organization called the ''Disabled Volunteer Soldiers''. The words ''veterans' home'' are substituted for the words ''national home for veterans'', since there are now no ''national homes'' administered by the Veterans' Administration.

In subsection (h), the words ''authorized and'' and ''for wear during such course of instruction'' are omitted as surplusage. The word ''naval'' is omitted as covered by the word ''military''. The words ''Army, Navy, Air Force, or Marine Corps'' are substituted for the words ''military or naval authorities''. The words ''that armed force'' are substituted for the words ''such military or naval authorities''.

In subsection (i), the words ''Air Force school'' are substituted for the words ''Air Force advanced flying schools or Air Force service schools''. The words ''in such manner'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–201 inserted before period at end ''if the wear of such uniform is specifically authorized under regulations prescribed by the Secretary of the military department concerned''.

1989—Subsec. (g). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (c). Pub. L. 99–145 struck out provisions relating to a retired officer of the Navy Nurse Corps.

EX. ORD. NO. 10554. DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS

Ex. Ord. No. 10554, Aug. 18, 1954, 19 F.R. 5295, as amended by Ex. Ord. No. 13286, §77, Feb. 28, 2003, 68 F.R. 10631, provided:

The authority vested in the President (1) by section 125 of the act of June 3, 1916, 39 Stat. 216, as amended by the first section of the act of July 6, 1953, 67 Stat. 140, and (2) by section 2 of the act of June 21, 1930, 46 Stat. 793, as amended by section 2 of said act of July 6, 1953, to prescribe regulations authorizing occasions upon which the uniform may be worn by persons who have served honorably in the armed forces of the United States in time of war is hereby delegated to the Secretary of Defense so far as it pertains to the uniforms of the Army, Navy, Air Force, and Marine Corps, and to the Secretary of Homeland Security so far as it pertains to the uniform of the Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 771a, 4621, 6156, 7606, 9621 of this title.

§ 773. When distinctive insignia required

(a) A person for whom one of the following uniforms is prescribed may wear it, if it includes distinctive insignia prescribed by the Secretary of the military department concerned to distinguish it from the uniform of the Army, Navy, Air Force, or Marine Corps, as the case may be:

(1) The uniform prescribed by the university, college, or school for an instructor or member of the organized cadet corps of—

(A) a State university or college, or a public high school, having a regular course of military instruction; or

(B) an educational institution having a regular course of military instruction, and having a member of the Army, Navy, Air Force, or Marine Corps as instructor in military science and tactics.

(2) The uniform prescribed by a military society composed of persons discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps to be worn by a member of that society when authorized by regulations prescribed by the President.

(b) A uniform prescribed under subsection (a) may not include insignia of grade the same as, or similar to, those prescribed for officers of the Army, Navy, Air Force, or Marine Corps.

(c) Under such regulations as the Secretary of the military department concerned may prescribe, any person who is permitted to attend a course of instruction prescribed for members of a reserve officers' training corps, and who is not a member of that corps, may, while attending that course of instruction, wear the uniform of that corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 35; Pub. L. 85–355, Mar. 28, 1958, 72 Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
773(a)	10:1393 (words between 4th and 7th semicolons of 1st proviso, and 2d proviso, of 1st par.).	June 3, 1916, ch. 134, §125 (words between 4th and 7th semicolons of 1st proviso, and 2d and last provisos, of 1st par.), 39 Stat. 216; June 4, 1920, ch. 228, §8, 41 Stat. 836; Sept. 15, 1951, ch. 402, 65 Stat. 323; July 6, 1953, ch. 180, §1, 67 Stat. 140.
773(b)	10:1393 (last proviso of 1st par.).	

In subsection (a), the word ''mark'' is omitted as surplusage.

In subsection (a)(2), the words ''persons discharged honorably or under honorable conditions from'' are

substituted for the words ''entirely of honorably discharged officers or enlisted men, or both, of''. The words ''Regular or Volunteer'' are omitted as surplusage. The words ''when authorized by regulations prescribed by'' are substituted for the words ''upon occasions authorized by regulations of''.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–355 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4621, 6156, 7606, 9621 of this title.

§ 774. Religious apparel: wearing while in uniform

(a) GENERAL RULE.—Except as provided under subsection (b), a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member's armed force.

(b) EXCEPTIONS.—The Secretary concerned may prohibit the wearing of an item of religious apparel—

(1) in circumstances with respect to which the Secretary determines that the wearing of the item would interfere with the performance of the member's military duties; or

(2) if the Secretary determines, under regulations under subsection (c), that the item of apparel is not neat and conservative.

(c) REGULATIONS.—The Secretary concerned shall prescribe regulations concerning the wearing of religious apparel by members of the armed forces under the Secretary's jurisdiction while the members are wearing the uniform. Such regulations shall be consistent with subsections (a) and (b).

(d) RELIGIOUS APPAREL DEFINED.—In this section, the term ''religious apparel'' means apparel the wearing of which is part of the observance of the religious faith practiced by the member.

(Added Pub. L. 100–180, div. A, title V, § 508(a)(2), Dec. 4, 1987, 101 Stat. 1086.)

PRIOR PROVISIONS

A prior section 774 was renumbered section 776 of this title.

REGULATIONS

Section 508(c) of Pub. L. 100–180 provided that: ''The Secretary concerned shall prescribe the regulations required by section 774(c) of title 10, United States Code, as added by subsection (a), not later than the end of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

§ 775. Issue of uniform without charge

(a) ISSUE OF UNIFORM.—The Secretary concerned may issue a uniform, without charge, to any of the following members:

(1) A member who is being repatriated after being held as a prisoner of war.

(2) A member who is being treated at or released from a medical treatment facility as a consequence of being wounded or injured during military hostilities.

(3) A member who, as a result of the member's duties, has unique uniform requirements.

(4) Any other member, if the Secretary concerned determines, under exceptional circumstances, that the issue of the uniform to that member would significantly benefit the morale and welfare of the member and be advantageous to the armed force concerned.

(b) RETENTION OF UNIFORM AS A PERSONAL ITEM.—Notwithstanding section 771a of this title, a uniform issued to a member under this section may be retained by the member as a personal item.

(Added Pub. L. 102–484, div. A, title III, § 377(a)(2), Oct. 23, 1992, 106 Stat. 2386.)

PRIOR PROVISIONS

A prior section 775 was renumbered section 776 of this title.

§ 776. Applicability of chapter

This chapter applies in—

(1) the United States;

(2) the territories, commonwealths, and possessions of the United States; and

(3) all other places under the jurisdiction of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36, § 774; Pub. L. 99–661, div. A, title XIII, § 1343(a)(1), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, § 3(6), Apr. 21, 1987, 101 Stat. 273; renumbered § 775, Pub. L. 100–180, div. A, title V, § 508(a)(1), Dec. 4, 1987, 101 Stat. 1086; renumbered § 776, Pub. L. 102–484, div. A, title III, § 377(a)(1), Oct. 23, 1992, 106 Stat. 2386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
774	10:1393 (less 1st and last pars.).	June 3, 1916, ch. 134, § 125 (less 1st and last pars.), 39 Stat. 216; Apr. 15, 1948, ch. 188, 62 Stat. 172; June 25, 1948, ch. 645, § 21 (as applicable to § 125 of the Act of June 3, 1916, ch. 134), 62 Stat. 864; May 24, 1949, ch. 139, §§ 15(b) (less last par.), 142 (as applicable to the Act of Apr. 15, 1948, ch. 188), 63 Stat. 91, 110.

The words ''the Canal Zone, Guam, American Samoa, and the Virgin Islands as well as to * * * other'' are omitted as covered by the words ''possessions, and all other places under its jurisdiction''.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 775 of this title as this section.

1987—Pub. L. 100–180 renumbered section 774 of this title as this section.

Pub. L. 100–26 amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, as amended by Pub. L. 100–26, amended section generally. Prior to amendment, section read as follows: ''This chapter applies in the United States, the Territories, Commonwealths, and possessions, and all other places under its jurisdiction.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(a) of Pub. L. 100–26 provided that: ''The amendments made by section 3 [amending this section and sections 1032, 1408, 1450, 1588, 2007, 2364, and 5150 of this title, and section 4703 of Title 20, Education, and amending provisions set out as a note under section 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Law 99–661 when enacted on November 14, 1986.''

§777. Wearing of insignia of higher grade before promotion (frocking): authority; restrictions

(a) AUTHORITY.—An officer who has been selected for promotion to the next higher grade may be authorized, under regulations and policies of the Department of Defense and subject to subsection (b), to wear the insignia for that next higher grade. An officer who is so authorized to wear the insignia of the next higher grade is said to be ''frocked'' to that grade.

(b) RESTRICTIONS.—An officer may not be authorized to wear the insignia for a grade as described in subsection (a) unless—

(1) the Senate has given its advice and consent to the appointment of the officer to that grade; and

(2) the officer is serving in, or has received orders to serve in, a position for which that grade is authorized.

(c) BENEFITS NOT TO BE CONSTRUED AS ACCRUING.—(1) Authority provided to an officer as described in subsection (a) to wear the insignia of the next higher grade may not be construed as conferring authority for that officer to—

(A) be paid the rate of pay provided for an officer in that grade having the same number of years of service as that officer; or

(B) assume any legal authority associated with that grade.

(2) The period for which an officer wears the insignia of the next higher grade under such authority may not be taken into account for any of the following purposes:

(A) Seniority in that grade.

(B) Time of service in that grade.

(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—(1) The total number of colonels and Navy captains on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of brigadier general or rear admiral (lower half), as the case may be, may not exceed 55.

(2) The number of officers of an armed force on the active-duty list who are authorized as described in subsection (a) to wear the insignia for a grade to which a limitation on total number applies under section 523(a) of this title for a fiscal year may not exceed 1 percent, or, for the grades of colonel and Navy captain, 2 percent, of the total number provided for the officers in that grade in that armed force in the administration of the limitation under that section for that fiscal year.

(Added Pub. L. 104–106, div. A, title V, §503(a)(1), Feb. 10, 1996, 110 Stat. 294; amended Pub. L. 105–85, div. A, title V, §505, Nov. 18, 1997, 111 Stat. 1726; Pub. L. 106–65, div. A, title V, §502, Oct. 5, 1999, 113 Stat. 590.)

AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''55.'' for ''the following:'' and struck out subpars. (A) to (C) which read as follows:

''(A) During fiscal years 1996 and 1997, 75.

''(B) During fiscal year 1998, 55.

''(C) After fiscal year 1998, 35.''

1997—Subsec. (d)(2). Pub. L. 105–85 inserted '', or, for the grades of colonel and Navy captain, 2 percent,'' after ''1 percent''.

TEMPORARY VARIATION OF LIMITATIONS ON NUMBERS OF FROCKED OFFICERS

Section 503(b) of Pub. L. 104–106 provided that: ''In the administration of section 777(d)(2) of title 10, United States Code (as added by subsection (a)), the percent limitation applied under that section for fiscal year 1996 shall be 2 percent (instead of 1 percent).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

CHAPTER 47—UNIFORM CODE OF MILITARY JUSTICE

Subchapter		Sec.	Art.
I.	General Provisions	801	1
II.	Apprehension and Restraint	807	7
III.	Non-Judicial Punishment	815	15
IV.	Court-Martial Jurisdiction	816	16
V.	Composition of Courts-Martial	822	22
VI.	Pre-Trial Procedure	830	30
VII.	Trial Procedure	836	36
VIII.	Sentences	855	55
IX.	Post-Trial Procedure and Review of Courts-Martial	859	59
X.	Punitive Articles	877	77
XI.	Miscellaneous Provisions	935	135
XII.	United States Court of Appeals for the Armed Forces	941	141

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(B), Oct. 5, 1994, 108 Stat. 2832, substituted ''United States Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item for subchapter XII.

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(1), Nov. 29, 1989, 103 Stat. 1576, added item for subchapter XII.

1983—Pub. L. 98–209, §5(h)(1), Dec. 6, 1983, 97 Stat. 1400, substituted ''IX. Post-Trial Procedure and Review of Courts-Martial'' for ''IX. Review of Courts-Martial''.

1958—Pub. L. 85–861, §33(a)(6), Sept. 2, 1958, 72 Stat. 1564, substituted 801, 807, 815, 816, 822, 830, 836, 855, 859, 877 and 935 for 1901, 1913, 1929, 1931, 1943, 1959, 1971, 2009, 2017, 2053 and 2169, respectively.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 654, 951, 955, 1037, 1044a, 1058, 1059, 1094, 1167, 1552, 1553, 1565, 2783, 2784, 5148, 12687, 12740 of this title; title 5 sections 8312, 8313, 8331, 8401; title 18 sections 3261, 3262, 3551, 4247; title 28 section 535; title 37 section 559; title 42 sections 217, 10601; title 49 section 1155; title 50 App. section 473.

SUBCHAPTER I—GENERAL PROVISIONS

Sec.	Art.	
801.	1.	Definitions.
802.	2.	Persons subject to this chapter.
803.	3.	Jurisdiction to try certain personnel.
804.	4.	Dismissed officer's right to trial by court-martial.
805.	5.	Territorial applicability of this chapter.
806.	6.	Judge advocates and legal officers.
806a.	6a.	Investigation and disposition of matters pertaining to the fitness of military judges.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title XIII, §1304(a)(2), Nov. 29, 1989, 103 Stat. 1576, added item 806a.

§801. Article 1. Definitions

In this chapter:

(1) The term ''Judge Advocate General'' means, severally, the Judge Advocates General of the Army, Navy, and Air Force and, except when the Coast Guard is operating as a

service in the Navy, an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security.

(2) The Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy, shall be considered as one armed force.

(3) The term ''commanding officer'' includes only commissioned officers.

(4) The term ''officer in charge'' means a member of the Navy, the Marine Corps, or the Coast Guard designated as such by appropriate authority.

(5) The term ''superior commissioned officer'' means a commissioned officer superior in rank or command.

(6) The term ''cadet'' means a cadet of the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy.

(7) The term ''midshipman'' means a midshipman of the United States Naval Academy and any other midshipman on active duty in the naval service.

(8) The term ''military'' refers to any or all of the armed forces.

(9) The term ''accuser'' means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

(10) The term ''military judge'' means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26).

(11) The term ''law specialist'' means a commissioned officer of the Coast Guard designated for special duty (law).

(12) The term ''legal officer'' means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command.

(13) The term ''judge advocate'' means—

(A) an officer of the Judge Advocate General's Corps of the Army or the Navy;

(B) an officer of the Air Force or the Marine Corps who is designated as a judge advocate; or

(C) an officer of the Coast Guard who is designated as a law specialist.

(14) The term ''record'', when used in connection with the proceedings of a court-martial, means—

(A) an official written transcript, written summary, or other writing relating to the proceedings; or

(B) an official audiotape, videotape, or similar material from which sound, or sound and visual images, depicting the proceedings may be reproduced.

(15) The term ''classified information'' means (A) any information or material that has been determined by an official of the United States pursuant to law, an Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security, and (B) any restricted data, as defined in section 11(y) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

(16) The term ''national security'' means the national defense and foreign relations of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 36; Pub. L. 89–670, § 10(g), Oct. 15, 1966, 80 Stat. 948; Pub. L. 90–179, § 1(1), (2), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, § 2(1), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §§ 2(a), 6(a), Dec. 6, 1983, 97 Stat. 1393, 1400; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, § 1233(f)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 104–106, div. A, title XI, § 1141(b), Feb. 10, 1996, 110 Stat. 467; Pub. L. 107–296, title XVII, § 1704(b)(2), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
801	50:551 (less (9)).	May 5, 1950, ch. 169, § 1 (Art. 1 (less (9))), 64 Stat. 108.

The words ''In this chapter'' are substituted for the introductory clause.

In the introductory clause and throughout the revised chapter the word ''chapter'' is substituted for the word ''code''.

Clauses (1), (2), and (5) of 50:551 are omitted as respectively covered by the definitions in clauses (4), (6), and (14) of section 101 of this title. The words ''commissioned officer'' are substituted for the word ''officer'' for clarity throughout this chapter, since the latter term was defined in the limited sense of commissioned officer in clause (5) of 50:551, and is now covered by section 101(14) of this title.

In clauses (1), (4)–(7), and (9)–(12) of the revised section, the word ''means'' is substituted for the words ''shall be construed to refer to'' and ''shall be construed to refer * * * to''.

In clause (1), the words ''service in'' are substituted for the words ''part of'' to conform to section 1 of title 14. The words ''Department of the Treasury'' are substituted for the words ''Treasury Department''.

Clauses (3) and (4) are inserted for clarity.

In clause (6), the words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (63 Stat. 47).

In clause (8), the word ''refers'' is substituted for the words ''shall be construed to refer''.

In clause (12), the words ''Marine Corps'' are inserted to make explicit that the clause applies to the Marine Corps. The word ''commissioned'' is inserted for clarity.

AMENDMENTS

2002—Cl. (1). Pub. L. 107–296 substituted ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security'' for ''the General Counsel of the Department of Transportation''.

1996—Cls. (15), (16). Pub. L. 104–106 added cls. (15) and (16).

1988—Cl. (1). Pub. L. 100–456 substituted ''term 'Judge'' for ''term 'judge''.

1987—Cls. (1), (3) to (14). Pub. L. 100–180 inserted ''The term'' after each clause designation and revised first word in quotes in each clause to make initial letter of such word lowercase.

1983—Cl. (13). Pub. L. 98–209, § 2(a), added officers of the Coast Guard who are designated as law specialists to definition of ''Judge Advocate''.

Cl. (14). Pub. L. 98–209, § 6(a), added cl. (14).

1968—Cl. (10). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' as term being defined and inserted reference to special court-martial in the definition thereof.

1967—Cl. (11). Pub. L. 90–179, § 1(1), struck out ''Navy or'' before ''Coast Guard''.

Cl. (13). Pub. L. 90–179, §1(2), added cl. (13).

1966—Pub. L. 89–670 substituted the General Counsel of the Department of Transportation for the General Counsel of the Department of the Treasury in definition of ''Judge Advocate General'' applicable to the Coast Guard when operating as a service in the Navy.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 12(a) of Pub. L. 98–209 provided that:

''(1) The amendments made by this Act [see Short Title of 1983 Amendment note below] shall take effect on the first day of the eighth calendar month that begins after the date of enactment of this Act [Dec. 6, 1983], except that the amendments made by sections 9, 11 and 13 [amending sections 802, 815, 825, 867, 1552, and 1553 of this title and enacting provisions set out as a note under section 867 of this title] shall be effective on the date of the enactment of this Act. The amendments made by section 11 [amending sections 1552 and 1553 of this title] shall only apply with respect to cases filed after the date of enactment of this Act with the boards established under sections 1552 and 1553 of title 10, United States Code.

''(2) The amendments made by section 3(c) and 3(e) [amending sections 826, 827, and 838 of this title] do not affect the designation or detail of a military judge or military counsel to a court-martial before the effective date of such amendments.

''(3) The amendments made by section 4 [amending section 834 of this title] shall not apply to any case in which charges were referred to trial before the effective date of such amendments, and proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(4) The amendments made by sections 5, 6, and 7 [amending this section and sections 849, 854, 857, 860 to 867, 869, 871, and 876a of this title and enacting provisions set out as a note under section 869 of this title] shall not apply to any case in which the findings and sentence were adjudged by a court-martial before the effective date of such amendments. The proceedings in any such case shall be held in the same manner and with the same effect as if such amendments had not been enacted.

''(5) The amendments made by section 8 [enacting section 912a of this title] shall not apply to any offense committed before the effective date of such amendments. Nothing in this provision shall be construed to invalidate the prosecution of any offense committed before the effective date of such amendments.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4 of Pub. L. 90–632 provided that:

''(a) Except for the amendments made by paragraphs (30) and (33) of section 2, this Act [see Short Title of 1968 Amendment note below] shall become effective on the first day of the tenth month following the month in which it is enacted [October 1968].

''(b) The amendment made by paragraph (30) of section 2 [amending section 869 of this title] shall become effective upon the date of enactment of this Act [Oct. 24, 1968].

''(c) The amendment made by paragraph (33) [amending section 873 of this title] shall apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before, the date of its enactment [Oct. 24, 1968].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–670 effective Apr. 1, 1967, as prescribed by the President and published in the Federal Register, see section 16(a), formerly §15(a), of Pub. L. 89–670, and Ex. Ord. No. 11340, Mar. 30, 1967, 32 F.R. 5453.

EFFECTIVE DATE

Section 51 of act Aug. 10, 1956, provided that: ''Chapter 47 of title 10, United States Code, enacted by section 1 of this Act, takes effect January 1, 1957.''

SHORT TITLE OF 1996 AMENDMENT

Section 1101 of title XI of div. A of Pub. L. 104–106 provided that: ''This title [enacting sections 857a, 858b, and 876b of this title, amending this section and sections 802, 832, 847, 857, 860, 862, 866, 895, 920, and 937 of this title, repealing section 804 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 802, 857, 858b, and 876b of this title, and amending provisions set out as a note under section 942 of this title] may be cited as the 'Military Justice Amendments of 1995'.''

SHORT TITLE OF 1986 AMENDMENT

Pub. L. 99–661, div. A, title VIII, §801(a), Nov. 14, 1986, 100 Stat. 3905, provided that: ''This title [enacting section 850a of this title, amending sections 802, 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under sections 802, 806, 825, 843, 850a, and 860 of this title] may be cited as the 'Military Justice Amendments of 1986'.''

SHORT TITLE OF 1983 AMENDMENT

Section 1(a) of Pub. L. 98–209 provided that: ''This Act [enacting sections 912a of this title and section 1259 of Title 28, Judiciary and Judicial Procedure, amending this section, sections 802, 806, 815, 816, 825, 826, 827, 829, 834, 838, 842, 849, 854, 857, 860 to 867, 869, 870, 871, 876a, 936, 1552, and 1553 of this title, and section 2101 of Title 28, and enacting provisions set out as notes under sections 801, 867, and 869 of this title and amending provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Act of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–81, §1(a), Nov. 20, 1981, 95 Stat. 1085, provided that: ''This Act [enacting sections 706, 707, and 876a of this title, amending sections 701, 813, 832, 838, 867, and 869 of this title, and enacting provisions set out as a note under section 706 of this title] may be cited as the 'Military Justice Amendments of 1981'.''

SHORT TITLE OF 1968 AMENDMENT

Section 1 of Pub. L. 90–632 provided: ''That this Act [amending this section and sections 806, 816, 818, 819, 820, 825, 826, 827, 829, 835, 837, 838, 839, 840, 841, 842, 845, 849, 851, 852, 854, 857, 865, 866, 867, 868, 869, 870, 871, 873, and 936 of this title and enacting provisions set out as notes under this section and sections 826 and 866 of this title] may be cited as the 'Military Justice Act of 1968'.''

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Navy law specialists redesignated judge advocates, see section 8 of Pub. L. 90–179, set out as a note under section 5148 of this title.

SAVINGS PROVISION

Rights, duties, and proceedings not affected by Pub. L. 90–179 establishing Judge Advocate General's Corps in Navy, see section 10 of Pub. L. 90–179, set out as a note under section 5148 of this title.

LEGISLATIVE CONSTRUCTION

Section 49(e) of act Aug. 10, 1956, provided that: ''In chapter 47 of title 10, United States Code [this chapter], enacted by section 1 of this Act, no inference of a legislative construction is to be drawn from the part in which any article is placed nor from the catchlines of the part or the article as set out in that chapter.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

DETENTION, TREATMENT, AND TRIAL OF CERTAIN NON-CITIZENS IN THE WAR AGAINST TERRORISM

Military Order of President of the United States, dated Nov. 13, 2001, 66 F.R. 57833, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces of the United States by the Constitution and the laws of the United States of America, including the Authorization for Use of Military Force Joint Resolution (Public Law 107–40, 115 Stat. 224) [50 U.S.C. 1541 note] and sections 821 and 836 of title 10, United States Code, it is hereby ordered as follows:

SECTION 1. *Findings.*

(a) International terrorists, including members of al Qaida, have carried out attacks on United States diplomatic and military personnel and facilities abroad and on citizens and property within the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.

(b) In light of grave acts of terrorism and threats of terrorism, including the terrorist attacks on September 11, 2001, on the headquarters of the United States Department of Defense in the national capital region, on the World Trade Center in New York, and on civilian aircraft such as in Pennsylvania, I proclaimed a national emergency on September 14, 2001 (Proc. 7463, Declaration of National Emergency by Reason of Certain Terrorist Attacks [50 U.S.C. 1621 note]).

(c) Individuals acting alone and in concert involved in international terrorism possess both the capability and the intention to undertake further terrorist attacks against the United States that, if not detected and prevented, will cause mass deaths, mass injuries, and massive destruction of property, and may place at risk the continuity of the operations of the United States Government.

(d) The ability of the United States to protect the United States and its citizens, and to help its allies and other cooperating nations protect their nations and their citizens, from such further terrorist attacks depends in significant part upon using the United States Armed Forces to identify terrorists and those who support them, to disrupt their activities, and to eliminate their ability to conduct or support such attacks.

(e) To protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks, it is necessary for individuals subject to this order pursuant to section 2 hereof to be detained, and, when tried, to be tried for violations of the laws of war and other applicable laws by military tribunals.

(f) Given the danger to the safety of the United States and the nature of international terrorism, and to the extent provided by and under this order, I find consistent with section 836 of title 10, United States Code, that it is not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts.

(g) Having fully considered the magnitude of the potential deaths, injuries, and property destruction that would result from potential acts of terrorism against the United States, and the probability that such acts will occur, I have determined that an extraordinary emergency exists for national defense purposes, that this emergency constitutes an urgent and compelling government interest, and that issuance of this order is necessary to meet the emergency.

SEC. 2. *Definition and Policy.*

(a) The term ''individual subject to this order'' shall mean any individual who is not a United States citizen with respect to whom I determine from time to time in writing that:

(1) there is reason to believe that such individual, at the relevant times,

(i) is or was a member of the organization known as al Qaida;

(ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

(iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order; and

(2) it is in the interest of the United States that such individual be subject to this order.

(b) It is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4.

(c) It is further the policy of the United States that any individual subject to this order who is not already under the control of the Secretary of Defense but who is under the control of any other officer or agent of the United States or any State shall, upon delivery of a copy of such written determination to such officer or agent, forthwith be placed under the control of the Secretary of Defense.

SEC. 3. *Detention Authority of the Secretary of Defense.* Any individual subject to this order shall be—

(a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States;

(b) treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria;

(c) afforded adequate food, drinking water, shelter, clothing, and medical treatment;

(d) allowed the free exercise of religion consistent with the requirements of such detention; and

(e) detained in accordance with such other conditions as the Secretary of Defense may prescribe.

SEC. 4. *Authority of the Secretary of Defense Regarding Trials of Individuals Subject to this Order.*

(a) Any individual subject to this order shall, when tried, be tried by military commission for any and all offenses triable by military commission that such individual is alleged to have committed, and may be punished in accordance with the penalties provided under applicable law, including life imprisonment or death.

(b) As a military function and in light of the findings in section 1, including subsection (f) thereof, the Secretary of Defense shall issue such orders and regulations, including orders for the appointment of one or more military commissions, as may be necessary to carry out subsection (a) of this section.

(c) Orders and regulations issued under subsection (b) of this section shall include, but not be limited to, rules for the conduct of the proceedings of military commissions, including pretrial, trial, and post-trial procedures, modes of proof, issuance of process, and qualifications of attorneys, which shall at a minimum provide for—

(1) military commissions to sit at any time and any place, consistent with such guidance regarding time and place as the Secretary of Defense may provide;

(2) a full and fair trial, with the military commission sitting as the triers of both fact and law;

(3) admission of such evidence as would, in the opinion of the presiding officer of the military commission (or instead, if any other member of the commission so requests at the time the presiding officer renders that opinion, the opinion of the commission rendered at that time by a majority of the commission), have probative value to a reasonable person;

(4) in a manner consistent with the protection of information classified or classifiable under Executive Order 12958 of April 17, 1995, as amended [50 U.S.C. 435 note], or any successor Executive Order, protected by statute or rule from unauthorized disclosure, or otherwise protected by law, (A) the handling of, admission into evidence of, and access to materials and information, and (B) the conduct, closure of, and access to proceedings;

(5) conduct of the prosecution by one or more attorneys designated by the Secretary of Defense and conduct of the defense by attorneys for the individual subject to this order;

(6) conviction only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present;

(7) sentencing only upon the concurrence of two-thirds of the members of the commission present at the time of the vote, a majority being present; and

(8) submission of the record of the trial, including any conviction or sentence, for review and final decision by me or by the Secretary of Defense if so designated by me for that purpose.

SEC. 5. *Obligation of Other Agencies to Assist the Secretary of Defense.*

Departments, agencies, entities, and officers of the United States shall, to the maximum extent permitted by law, provide to the Secretary of Defense such assistance as he may request to implement this order.

SEC. 6. *Additional Authorities of the Secretary of Defense.*

(a) As a military function and in light of the findings in section 1, the Secretary of Defense shall issue such orders and regulations as may be necessary to carry out any of the provisions of this order.

(b) The Secretary of Defense may perform any of his functions or duties, and may exercise any of the powers provided to him under this order (other than under section 4(c)(8) hereof) in accordance with section 113(d) of title 10, United States Code.

SEC. 7. *Relationship to Other Law and Forums.*

(a) Nothing in this order shall be construed to—

(1) authorize the disclosure of state secrets to any person not otherwise authorized to have access to them;

(2) limit the authority of the President as Commander in Chief of the Armed Forces or the power of the President to grant reprieves and pardons; or

(3) limit the lawful authority of the Secretary of Defense, any military commander, or any other officer or agent of the United States or of any State to detain or try any person who is not an individual subject to this order.

(b) With respect to any individual subject to this order—

(1) military tribunals shall have exclusive jurisdiction with respect to offenses by the individual; and

(2) the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly, or to have any such remedy or proceeding sought on the individual's behalf, in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.

(c) This order is not intended to and does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or equity by any party, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

(d) For purposes of this order, the term ''State'' includes any State, district, territory, or possession of the United States.

(e) I reserve the authority to direct the Secretary of Defense, at any time hereafter, to transfer to a governmental authority control of any individual subject to this order. Nothing in this order shall be construed to limit the authority of any such governmental authority to prosecute any individual for whom control is transferred.

SEC. 8. *Publication.*

This order shall be published in the Federal Register.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1044, 1044d of this title; title 18 section 3267; title 37 section 321; title 42 section 665.

§ 802. Art. 2. Persons subject to this chapter

(a) The following persons are subject to this chapter:

(1) Members of a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; volunteers from the time of their muster or acceptance into the armed forces; inductees from the time of their actual induction into the armed forces; and other persons lawfully called or ordered into, or to duty in or for training in, the armed forces, from the dates when they are required by the terms of the call or order to obey it.

(2) Cadets, aviation cadets, and midshipmen.

(3) Members of a reserve component while on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(4) Retired members of a regular component of the armed forces who are entitled to pay.

(5) Retired members of a reserve component who are receiving hospitalization from an armed force.

(6) Members of the Fleet Reserve and Fleet Marine Corps Reserve.

(7) Persons in custody of the armed forces serving a sentence imposed by a court-martial.

(8) Members of the National Oceanic and Atmospheric Administration, Public Health Service, and other organizations, when assigned to and serving with the armed forces.

(9) Prisoners of war in custody of the armed forces.

(10) In time of war, persons serving with or accompanying an armed force in the field.

(11) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(12) Subject to any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of the Secretary concerned and which is outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(b) The voluntary enlistment of any person who has the capacity to understand the significance of enlisting in the armed forces shall be valid for purposes of jurisdiction under subsection (a) and a change of status from civilian to member of the armed forces shall be effective upon the taking of the oath of enlistment.

(c) Notwithstanding any other provision of law, a person serving with an armed force who—

(1) submitted voluntarily to military authority;

(2) met the mental competency and minimum age qualifications of sections 504 and 505 of this title at the time of voluntary submission to military authority;

(3) received military pay or allowances; and

(4) performed military duties;

is subject to this chapter until such person's active service has been terminated in accordance with law or regulations promulgated by the Secretary concerned.

(d)(1) A member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of—

(A) investigation under section 832 of this title (article 32);

(B) trial by court-martial; or

(C) nonjudicial punishment under section 815 of this title (article 15).

(2) A member of a reserve component may not be ordered to active duty under paragraph (1) except with respect to an offense committed while the member was—

(A) on active duty; or

(B) on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service.

(3) Authority to order a member to active duty under paragraph (1) shall be exercised under regulations prescribed by the President.

(4) A member may be ordered to active duty under paragraph (1) only by a person empowered to convene general courts-martial in a regular component of the armed forces.

(5) A member ordered to active duty under paragraph (1), unless the order to active duty was approved by the Secretary concerned, may not—

(A) be sentenced to confinement; or

(B) be required to serve a punishment consisting of any restriction on liberty during a period other than a period of inactive-duty training or active duty (other than active duty ordered under paragraph (1)).

(e) The provisions of this section are subject to section 876b(d)(2) of this title (article 76b(d)(2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 37; Pub. L. 86–70, §6(b), June 25, 1959, 73 Stat. 142; Pub. L. 86–624, §4(b), July 12, 1960, 74 Stat. 411; Pub. L. 87–651, title I, §104, Sept. 7, 1962, 76 Stat. 508; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–107, title VIII, §801(a), Nov. 9, 1979, 93 Stat. 810; Pub. L. 96–513, title V, §511(24), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–209, §13(a), Dec. 6, 1983, 97 Stat. 1408; Pub. L. 99–661, div. A, title VIII, §804(a), Nov. 14, 1986, 100 Stat. 3906; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 104–106, div. A, title XI, §1133(b), Feb. 10, 1996, 110 Stat. 466.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802	50:552.	May 5, 1950, ch. 169, §1 (Art. 2), 64 Stat. 109.

In clause (1), the words ''Members of'' are substituted for the words ''All persons belonging to''. The words ''all'' and ''the same'' are omitted as surplusage. The word ''when'' is inserted after the word ''dates''.

In clauses (1) and (8), the words ''of the United States'' are omitted as surplusage.

In clause (3), the words ''Members of a reserve component'' are substituted for the words ''Reserve personnel''. The word ''orders'' in the last clause is omitted as surplusage.

In clause (4), the word ''receive'' is omitted as surplusage.

In clauses (4) and (5), the word ''members'' is substituted for the word ''personnel''.

In clause (8), the word ''members'' is substituted for the word ''personnel''.

In clauses (11) and (12), the word ''outside'' is substituted for the word ''without'' wherever it occurs. The words ''the continental limits of'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia. The words ''the provision of'', ''all'', and ''territories'' are omitted as surplusage.

In clause (12), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
802(11), (12).	50:552(11) and (12).	Aug. 1, 1956, ch. 852, §23, 70 Stat. 911.

The Act of August 1, 1956, was enacted during the pendency of the codification bill.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).

1988—Subsec. (a)(11), (12). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''the Commonwealth''.

1986—Subsec. (a)(3). Pub. L. 99–661, §804(a)(1), substituted ''on inactive-duty training, but in the case of members of the Army National Guard of the United States or the Air National Guard of the United States only when in Federal service'' for ''they are on inactive duty training authorized by written orders which are voluntarily accepted by them and which specify that they are subject to this chapter''.

Subsec. (d). Pub. L. 99–661, §804(a)(2), added subsec. (d).

1983—Subsec. (a)(11), (12). Pub. L. 98–209, §13(a)(1), substituted ''outside the Canal Zone'' for ''outside the following: the Canal Zone'' and inserted ''the Commonwealth of'' before ''Puerto Rico''.

Subsec. (b). Pub. L. 98–209, §13(a)(2), struck out ''of this section'' after ''subsection (a)''.

1980—Subsec. (a)(8). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1979—Pub. L. 96–107 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in cl. (8).

1962—Pub. L. 87–651 inserted ''Guam,'' after ''Puerto Rico,'' in cls. (11) and (12).

1960—Pub. L. 86–624 struck out ''the main group of the Hawaiian Islands,'' before ''Puerto Rico'' in cls. (11) and (12).

1959—Pub. L. 86–70 struck out ''that part of Alaska east of longitude 172 degrees west,'' before ''the Canal Zone'' in cls. (11) and (12).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(e) of Pub. L. 99–661 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 803 of this title] shall apply only to an offense committed on or after the effective date of this title [see section 808 of Pub. L. 99–661, set out below].''

Section 808 of Pub. L. 99–661 provided that: ''Except as provided in sections 802(b), 805(c), and 807(b) [set out as notes under sections 850a, 843, and 806, respectively, of this title], this title and the amendments made by this title [enacting section 850a of this title, amending this section and sections 803, 806, 825, 843, 860, 936, and 937 of this title, and enacting provisions set out as notes under this section and sections 801, 806, 825, 843, 850a, and 860 of this title] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Nov. 14, 1986]; or

''(2) the date specified in an Executive order for such amendments to take effect.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by 1966 Reorg. Plan No. 3, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees.

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508(b) of Title 20, Education.

ADVISORY COMMITTEE ON CRIMINAL LAW JURISDICTION OVER CIVILIANS ACCOMPANYING ARMED FORCES IN TIME OF ARMED CONFLICT

Section 1151 of Pub. L. 104–106 provided that:

''(a) ESTABLISHMENT.—Not later than 45 days after the date of the enactment of this Act [Feb. 10, 1996], the Secretary of Defense and the Attorney General shall jointly appoint an advisory committee to review and make recommendations concerning the appropriate forum for criminal jurisdiction over civilians accompanying the Armed Forces in the field outside the United States in time of armed conflict.

''(b) MEMBERSHIP.—The committee shall be composed of at least five individuals, including experts in military law, international law, and Federal civilian criminal law. In making appointments to the committee, the Secretary and the Attorney General shall ensure that the members of the committee reflect diverse experiences in the conduct of prosecution and defense functions.

''(c) DUTIES.—The committee shall do the following:

''(1) Review historical experiences and current practices concerning the use, training, discipline, and functions of civilians accompanying the Armed Forces in the field.

''(2) Based upon such review and other information available to the committee, develop specific recommendations concerning the advisability and feasibility of establishing United States criminal law jurisdiction over persons who as civilians accompany the Armed Forces in the field outside the United States during time of armed conflict not involving a war declared by Congress, including whether such jurisdiction should be established through any of the following means (or a combination of such means depending upon the degree of the armed conflict involved):

''(A) Establishing court-martial jurisdiction over such persons.

''(B) Extending the jurisdiction of the Article III courts to cover such persons.

''(C) Establishing an Article I court to exercise criminal jurisdiction over such persons.

''(3) Develop such additional recommendations as the committee considers appropriate as a result of the review.

''(d) REPORT.—(1) Not later than December 15, 1996, the advisory committee shall transmit to the Secretary of Defense and the Attorney General a report setting forth its findings and recommendations, including the recommendations required under subsection (c)(2).

''(2) Not later than January 15, 1997, the Secretary of Defense and the Attorney General shall jointly transmit the report of the advisory committee to Congress. The Secretary and the Attorney General may include in the transmittal any joint comments on the report that they consider appropriate, and either such official may include in the transmittal any separate comments on the report that such official considers appropriate.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'Article I court' means a court established under Article I of the Constitution.

''(2) The term 'Article III court' means a court established under Article III of the Constitution.

''(f) TERMINATION OF COMMITTEE.—The advisory committee shall terminate 30 days after the date on which the report of the committee is submitted to Congress under subsection (d)(2).''

EX. ORD. NO. 10631. CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES

Ex. Ord. No. 10631, Aug. 17, 1955, 20 F.R. 6057, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12017, Nov. 3, 1977, 42 F.R. 57941; Ex. Ord. No. 12633, Mar. 28, 1988, 53 F.R. 10355; Ex. Ord. No. 13286, §76, Feb. 28, 2003, 68 F.R. 106231, provided:

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

All members of the Armed Forces of the United States are expected to measure up to the standards embodied in this Code of Conduct while in combat or in captivity. To ensure achievement of these standards, members of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip them to counter and withstand all enemy efforts against them, and shall be fully instructed as to the behavior and obligations expected of them during combat or captivity.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES ARMED FORCES

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 876b, 937 of this title.

§ 803. Art. 3. Jurisdiction to try certain personnel

(a) Subject to section 843 of this title (article 43), a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter while formerly in a status in which the person was subject to this chapter is not relieved from amenability to the jurisdiction of this chapter for that offense by reason of a termination of that person's former status.

(b) Each person discharged from the armed forces who is later charged with having fraudulently obtained his discharge is, subject to section 843 of this title (article 43), subject to trial by court-martial on that charge and is after apprehension subject to this chapter while in the custody of the armed forces for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under this chapter committed before the fraudulent discharge.

(c) No person who has deserted from the armed forces may be relieved from amenability to the jurisdiction of this chapter by virtue of a separation from any later period of service.

(d) A member of a reserve component who is subject to this chapter is not, by virtue of the termination of a period of active duty or inactive-duty training, relieved from amenability to the jurisdiction of this chapter for an offense against this chapter committed during such period of active duty or inactive-duty training.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38; Pub. L. 99–661, div. A, title VIII, § 804(b), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 102–484, div. A, title X, § 1063, Oct. 23, 1992, 106 Stat. 2505.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
803(a)	50:553(a).	May 5, 1950, ch. 169, § 1 (Art. 3), 64 Stat. 109.
803(b)	50:553(b).	
803(c)	50:553(c).	

In subsection (a), the words ''the provisions of'' are omitted as surplusage. The words ''no * * * may'' are substituted for the words ''any * * * shall not''. The word ''for'' is substituted for the word ''of'' before the words ''five years''. The words ''of a State, a Territory, or'' are substituted for the words ''any State or Territory thereof or of''. The word ''court-martial'' is substituted for the word ''courts-martial''.

In subsection (b), the words ''Each person'' are substituted for the words ''All persons''. The words ''who is later'' are substituted for the word ''subsequently''. The words ''his discharge is'' are substituted for the words ''said discharge shall * * * be''. The words ''the provisions of'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall * * * be''. The words ''he is'' are substituted for the words ''they shall be''. The word ''before'' is substituted for the words ''prior to''.

In subsection (c), the words ''No * * * may'' are substituted for the words ''Any * * * shall not''. The word ''later'' is substituted for the word ''subsequent''.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Subject to section 843 of this title (article 43), no person charged with having committed, while in a status in which he was subject to this chapter, an offense against this chapter, punishable by confinement for five years or more and for which the person cannot be tried in the courts of the United States or of a State, a Territory, or the District of Columbia, may be relieved from amenability to trial by court-martial by reason of the termination of that status.''

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1067 of Pub. L. 102–484 provided that: ''The amendments made by sections 1063, 1064, 1065, and 1066 [amending this section and sections 857, 863, 911, 918, and 920 of this title] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply with respect to offenses committed on or after that date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable to offenses committed on or after the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order, see sections 804(e) and 808 of Pub. L. 99–661, set out as notes under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 804. Art. 4. Dismissed officer's right to trial by court-martial

(a) If any commissioned officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which he was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and he shall be considered to have waived the right to plead any statute of limita-

tions applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the Secretary concerned shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issue.

(c) If a discharge is substituted for a dismissal under this article, the President alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the President, that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(d) If an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, he has no right to trial under this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 38.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
804(a)	50:554(a).	May 5, 1950, ch. 169, §1 (Art. 4), 64 Stat. 110.
804(b)	50:554(b).	
804(c)	50:554(c).	
804(d)	50:554(d).	

In subsection (a), the word ''If'' is substituted for the word ''When''. The word ''commissioned'' is inserted before the word ''officer''. The word ''considered'' is substituted for the word ''held''.

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''If'' is substituted for the word ''Where''. The words ''the authority of'' are omitted as surplusage. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not to a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position'' for clarity. The word ''receive'' is omitted as surplusage.

In subsection (d), the word ''If'' is substituted for the word ''When''. The words ''he has no'' are substituted for the words ''there shall not be a''.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2 of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§805. Art. 5. Territorial applicability of this chapter

This chapter applies in all places.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
805	50:555.	May 5, 1950, ch. 169, §1 (Art. 5), 64 Stat. 110.

The word ''applies'' is substituted for the words ''shall be applicable''.

§806. Art. 6. Judge advocates and legal officers

(a) The assignment for duty of judge advocates of the Army, Navy, Air Force, and Coast Guard shall be made upon the recommendation of the Judge Advocate General of the armed force of which they are members. The assignment for duty of judge advocates of the Marine Corps shall be made by direction of the Commandant of the Marine Corps. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is entitled to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the Judge Advocate General.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

(d)(1) A judge advocate who is assigned or detailed to perform the functions of a civil office in the Government of the United States under section 973(b)(2)(B) of this title may perform such duties as may be requested by the agency concerned, including representation of the United States in civil and criminal cases.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations providing that reimbursement may be a condition of assistance by judge advocates assigned or detailed under section 973(b)(2)(B) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39; Pub. L. 90–179, §1(3), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–632, §2(2), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §2(b), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99–661, div. A, title VIII, §807(a), Nov. 14, 1986, 100 Stat. 3909; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
806(a)	50:556(a).	May 5, 1950, ch. 169, §1 (Art. 6), 64 Stat. 110.
806(b)	50:556(b).	
806(c)	50:556(c).	

In subsection (b), the word ''entitled'' is substituted for the word ''authorized''.

In subsection (c), the words ''may later'' are substituted for the words ''shall subsequently''.

AMENDMENTS

2002—Subsec. (d)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (d). Pub. L. 99–661 added subsec. (d).

1983—Subsec. (a). Pub. L. 98–209 substituted ''Air Force, and'' for ''and Air Force and law specialists of the''.

1968—Subsec. (c). Pub. L. 90–632 substituted ''military judge'' for ''law officer''.

1967—Subsec. (a). Pub. L. 90–179 substituted reference to judge advocates of the Navy for reference to law specialists of the Navy and provided for the assignment of judge advocates of the Marine Corps.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 807(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section]—

''(1) shall take effect on the date of the enactment of this Act [Nov. 14, 1986]; and

''(2) may not be construed to invalidate an action taken by a judge advocate, pursuant to an assignment or detail under section 973(b)(2)(B) of title 10, United States Code, before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 806a. Art. 6a. Investigation and disposition of matters pertaining to the fitness of military judges

(a) The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge's position. To the extent practicable, the procedures shall be uniform for all armed forces.

(b) The President shall transmit a copy of the procedures prescribed pursuant to this section to the Committee on Armed Services of the Senate and the Committee on Armed Forces of the House of Representatives.

(Added Pub. L. 101–189, div. A, title XIII, §1303, Nov. 29, 1989, 103 Stat. 1576; amended Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

SUBCHAPTER II—APPREHENSION AND RESTRAINT

Sec.	Art.	
807.	7.	Apprehension.
808.	8.	Apprehension of deserters.
809.	9.	Imposition of restraint.
810.	10.	Restraint of persons charged with offenses.
811.	11.	Reports and receiving of prisoners.
812.	12.	Confinement with enemy prisoners prohibited.
813.	13.	Punishment prohibited before trial.
814.	14.	Delivery of offenders to civil authorities.

§ 807. Art. 7. Apprehension

(a) Apprehension is the taking of a person into custody.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this chapter or to trial thereunder may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) Commissioned officers, warrant officers, petty officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this chapter and to apprehend persons subject to this chapter who take part therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 39.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
807(a)	50:561(a).	May 5, 1950, ch. 169, §1 (Art. 7), 64 Stat. 111.
807(b)	50:561(b).	
807(c)	50:561(c).	

In subsection (a), the words ''into custody'' and ''of a person'' are transposed.

In subsection (c), the words ''All'' and ''shall'' are omitted as surplusage. The word ''Commissioned'' is inserted before the word ''officers'' for clarity. The word ''therein'' is substituted for the words ''in the same''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 808. Art. 8. Apprehension of deserters

Any civil officer having authority to apprehend offenders under the laws of the United States or of a State, Territory, Commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the armed forces and deliver him into the custody of those forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
808	50:562.	May 5, 1950, ch. 169, §1 (Art. 8), 64 Stat. 111.

The word ''may'' is substituted for the words ''It shall be lawful for * * * to''. The words ''a State, Territory, Commonwealth, or possession, or the District of Columbia'' are substituted for the words ''any State, District, Territory, or possession of the United States''. The words ''of the United States'', before the words ''and deliver'', are omitted as surplusage. The words ''those forces'' are substituted for the words ''the

armed forces of the United States'', after the words ''custody of''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 809. Art. 9. Imposition of restraint

(a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

(c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person may be ordered into arrest or confinement except for probable cause.

(e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
809(a)	50:563(a).	May 5, 1950, ch. 169, § 1 (Art. 9), 64 Stat. 111.
809(b)	50:563(b).	
809(c)	50:563(c).	
809(d)	50:563(d).	
809(e)	50:563(e).	

In subsection (b), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The words ''member'' and ''members'', respectively, are substituted for the words ''person'' and ''persons''.

In subsection (c), the words ''A commissioned'' are substituted for the word ''An'' for clarity. The word ''commissioned'' is inserted after the word ''another'' for clarity.

In subsection (d), the word ''may'' is substituted for the word ''shall''.

In subsection (e), the word ''limits'' is substituted for the words ''shall be construed to limit''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 810. Art. 10. Restraint of persons charged with offenses

Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
810	50:564.	May 5, 1950, ch. 169, § 1 (Art. 10), 64 Stat. 111.

The word ''he'' is substituted for the words ''such person''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 811. Art. 11. Reports and receiving of prisoners

(a) No provost marshal, commander of a guard, or master at arms may refuse to receive or keep any prisoner committed to his charge by a commissioned officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commanding officer the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 40.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
811(a)	50:565(a).	May 5, 1950, ch. 169, § 1 (Art. 11), 64 Stat. 112.
811(b)	50:565(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 812. Art. 12. Confinement with enemy prisoners prohibited

No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
812	50:566.	May 5, 1950, ch. 169, § 1 (Art. 12), 64 Stat. 112.

The words ''of the United States'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 813. Art. 13. Punishment prohibited before trial

No person, while being held for trial, may be subjected to punishment or penalty other than

arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 97–81, § 3, Nov. 20, 1981, 95 Stat. 1087.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
813	50:567.	May 5, 1950, ch. 169, § 1 (Art. 13), 64 Stat. 112.

The words ''the provisions of'' are omitted as surplusage. The word ''results'' is changed to the singular. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1981—Pub. L. 97–81 substituted ''No person, while being held for trial, may be subjected'' for ''Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at the end of the 60-day period beginning on Nov. 20, 1981, and to apply to each person held as the result of a court-martial sentence announced on or after that date, see section 7(a) and (b)(2) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 814. Art. 14. Delivery of offenders to civil authorities

(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
814(a)	50:568(a).	May 5, 1950, ch. 169, § 1 (Art. 14), 64 Stat. 112.
814(b)	50:568(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (b), the word ''interrupts'' is substituted for the words ''shall be held to interrupt''. The word ''his'' is substituted for the words ''the said court-martial''.

REGULATIONS FOR DELIVERY OF MILITARY PERSONNEL TO CIVIL AUTHORITIES WHEN CHARGED WITH CERTAIN OFFENSES

Pub. L. 100–456, div. A, title VII, § 721, Sept. 29, 1988, 102 Stat. 2001, provided that:

''(a) Not later than 90 days after the date of enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall ensure that the Secretaries of the military departments have issued uniform regulations pursuant to section 814 of title 10, United States Code, to provide for the delivery of members of the Armed Forces to civilian authority when such members have been accused of offenses against civil authority. Such regulations shall specifically provide for the delivery of such members to civilian authority, in appropriate cases, when such members are accused of parental kidnapping and other similar offenses, including criminal contempt arising from such offenses and from child custody matters, and shall specifically address the special needs for the exercise of the authority contained in section 814 of title 10, United States Code, when members of the Armed Forces assigned overseas are accused of offenses by civilian authorities.

''(b) Not later than 120 days after the enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall transmit to the Committees on Armed Services of the Senate and House of Representatives a copy of all regulations promulgated under section 814 of title 10, United States Code, as a result of this section and any recommendations that the Secretary may have concerning the need for additional legislation related to the amenability of members of the Armed Forces to civil authority.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER III—NON-JUDICIAL PUNISHMENT

Sec. Art.
815. 15. Commanding officer's non-judicial punishment.

§ 815. Art. 15. Commanding officer's non-judicial punishment

(a) Under such regulations as the President may prescribe, and under such additional regulations as may be prescribed by the Secretary concerned, limitations may be placed on the powers granted by this article with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this article to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Secretary concerned, a commanding officer exercising general court-martial jurisdiction or an officer or general or flag rank in command may delegate his powers under this article to a principal assistant.

(b) Subject to subsection (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command—

(A) restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days;

(B) if imposed by an officer exercising general court-martial jurisdiction or an officer of general or flag rank in command—

(i) arrest in quarters for not more than 30 consecutive days;

(ii) forfeiture of not more than one-half of one month's pay per month for two months;

(iii) restriction to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(iv) detention of not more than one-half of one month's pay per month for three months;

(2) upon other personnel of his command—

(A) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days;

(B) correctional custody for not more than seven consecutive days;

(C) forfeiture of not more than seven days' pay;

(D) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(E) extra duties, including fatigue or other duties, for not more than 14 consecutive days;

(F) restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days;

(G) detention of not more than 14 days' pay;

(H) if imposed by an officer of the grade of major or lieutenant commander, or above—

(i) the punishment authorized under clause (A);

(ii) correctional custody for not more than 30 consecutive days;

(iii) forfeiture of not more than one-half of one month's pay per month for two months;

(iv) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E–4 may not be reduced more than two pay grades;

(v) extra duties, including fatigue or other duties, for not more than 45 consecutive days;

(vi) restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days;

(vii) detention of not more than one-half of one month's pay per month for three months.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subsection, ''correctional custody'' is the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If practicable, correctional custody will not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subsection (b), or his successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed under subsection (b), whether or not executed. In addition, he may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating—

(1) arrest in quarters to restriction;

(2) confinement on bread and water or diminished rations to correctional custody;

(3) correctional custody or confinement on bread and water or diminished rations to extra duties or restriction, or both; or

(4) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating forfeiture of pay to detention of pay, the amount of the detention shall not be greater than the amount of the forfeiture. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture of detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d)

by the officer who imposed the punishment. Before acting on an appeal from a punishment of—

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) forfeiture of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate or a lawyer of the Department of Homeland Security for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (b).

(f) The imposition and enforcement of disciplinary punishment under this article for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Secretary concerned may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 41; Pub. L. 87–648, §1, Sept. 7, 1962, 76 Stat. 447; Pub. L. 90–179, §1(4), Dec. 8, 1967, 81 Stat. 545; Pub. L. 90–623, §2(4), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 98–209, §§2(c), 13(b), Dec. 6, 1983, 97 Stat. 1393, 1408; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
815(a)	50:571(a).	May 5, 1950, ch. 169, §1 (Art. 15), 64 Stat. 112.
815(b)	50:571(b).	
815(c)	50:571(c).	
815(d)	50:571(d).	
815(e)	50:571(e).	

In subsection (a), the words ''not more than'' are substituted for the words ''a period not to exceed'', ''not to exceed'', and ''a period not exceeding''.

In subsection (a)(1), the words ''and warrant officers'' are omitted, since the word ''officer'', as defined in section 101(14) of this title, includes warrant officers.

In clause (1)(C), the words ''one month's pay'' are substituted for the words ''his pay per month for a period not exceeding one month''.

In subsection (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (c), the word ''subsections'' is substituted for the word ''subdivisions''. The words ''enlisted members'' are substituted for the words ''enlisted persons''.

In subsections (d) and (e), the words ''authority of'' are omitted as surplusage.

In subsection (d), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall have power to * * * to''.

In subsection (e), the words ''is not'' are substituted for the words ''shall not be''.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in concluding provisions.

1983—Pub. L. 98–209, §13(b)(1), substituted ''non-judicial'' for ''nonjudicial'' in section catchline.

Subsec. (b). Pub. L. 98–209, §13(b)(2)(A), struck out ''of this section'' after ''subsection (a)'' in provisions preceding par. (1).

Subsec. (b)(2)(H)(i). Pub. L. 98–209, §13(b)(2)(B), substituted ''clause (A)'' for ''subsection (b)(2)(A)''.

Subsec. (e). Pub. L. 98–209, §2(c), substituted ''or a lawyer of the'' for ''of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or''.

1968—Subsec. (e). Pub. L. 90–623 substituted ''or a law specialist or lawyer of the Coast Guard or Department of Transportation'' for ''or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department''.

1967—Subsec. (e). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

1962—Subsec. (a). Pub. L. 87–648 redesignated former subsec. (b) as (a), inserted references to such regulations as the President may prescribe, permitted limitations to be placed on the categories of warrant officers exercising command authorized to exercise powers under this article, and on the kinds of courts-martial to which a case may be referred upon demand therefor, promulgation of regulations prescribing rules with respect to the suspension of punishment authorized by this article, and the delegation of powers to a principal assistant by a commanding officer exercising general court-martial jurisdiction or an officer of general or flag rank in command, if so authorized by the Secretary's regulations, and prohibited, except for members attached to or embarked in a vessel, imposition of punishment under this article on any member of the armed forces who, before imposition of such punishment, demands trial by court-martial. Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 87–648 redesignated former subsec. (a) as (b), enlarged authority of commanding officers to impose punishment upon officers by increasing the number of days restriction from not more than 14 to not more than 30 days, and the number of months one-half of one month's pay may be ordered forfeited by an officer exercising general court-martial jurisdiction from one to two months, empowering officers exercising general court-martial jurisdiction and officers of general or flag rank in command to impose arrest in quarters for not more than 30 consecutive days, restriction, with or without suspension from duty, for not more than 60 consecutive days, and detention of not more than one-half of one month's pay per month for three months, and officers of general or flag rank in command to order forfeiture of not more than one-half of one month's pay per month for two months, and the authority of commanding officers to impose punishment upon other personnel of his command to permit correctional custody for not more than seven consecutive days, forfeiture of not more than seven days' pay, and detention of not more than 14 days' pay, empowered officers of the grade of major or lieutenant commander, or above, to impose the punishments prescribed in clauses (i) to (vii) of subpar. (2) (H) upon personnel of his command other than officers, changed provisions which permitted reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command to permit reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, and provisions which permitted extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included, to authorize

extra duties, including fatigue or other duties, for not more than 14 consecutive days, inserted provisions limiting detention of pay for a stated period of not more than one year, prohibiting two or more of the punishments of arrest in quarters, confinement on bread and water or diminished rations, correctional custody, extra duties, and restriction to be combined to run consecutively in the maximum amount imposable for each, combining of forfeiture of pay with detention without an apportionment, and service of correctional custody, if practicable, in immediate association with persons awaiting trial or held in confinement pursuant to court-martial, requiring apportionment of punishments combined to run consecutively, and in those cases where forfeiture of pay is combined with detention of pay, defining ''correctional custody'', and struck out provisions which permitted withholding of privileges of officers and other personnel for not more than two consecutive weeks and which authorized confinement for not more than seven consecutive days if imposed upon a person attached to or embarked in a vessel. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 87–648 substituted ''under subsection (b)(2)(A)–(G) as the Secretary concerned may specifically prescribe by regulation'' for ''to be imposed by commanding officers as the Secretary concerned may by regulation specifically prescribe, as provided in subsections (a) and (b),'' and deleted ''for minor offenses'' after ''an officer in charge may''.

Subsecs. (d), (e). Pub. L. 87–648 added subsec. (d), redesignated former subsec. (d) as (e), inserted provisions requiring the authority who is to act on an appeal from any of the seven enumerated punishments to refer the case to a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Marine Corps, Coast Guard, or Treasury Department for advice, and authorizing such referral of any case on appeal from punishments under subsec. (b) of this section, and substituted ''The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (d) by the officer who imposed the punishment'' for ''The officer who imposes the punishment, his successor in command, and superior authority may suspend, set aside, or remit any part or amount of the punishment, and restore all rights, privileges, and property affected.'' Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 87–648 redesignated former subsec. (e) as (f) and added subsec. (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(b) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 2(c) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 2 of Pub. L. 87–648 provided that: ''This Act [amending this section] becomes effective on the first day of the fifth month following the month in which it is enacted [September 1962].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 843, 937, 2772 of this title.

SUBCHAPTER IV—COURT-MARTIAL JURISDICTION

Sec.	Art.	
816.	16.	Courts-martial classified.
817.	17.	Jurisdiction of courts-martial in general.
818.	18.	Jurisdiction of general courts-martial.
819.	19.	Jurisdiction of special courts-martial.
820.	20.	Jurisdiction of summary courts-martial.
821.	21.	Jurisdiction of courts-martial not exclusive.

§816. Art. 16. Courts-martial classified

The three kinds of courts-martial in each of the armed forces are—

(1) general courts-martial, consisting of—

(A) a military judge and not less than five members or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a); or

(B) only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(2) special courts-martial, consisting of—

(A) not less than three members; or

(B) a military judge and not less than three members; or

(C) only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)(B) so requests; and

(3) summary courts-martial, consisting of one commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 42; Pub. L. 90–632, §2(3), Oct. 24, 1968, 82 Stat. 1335; Pub. L. 98–209, §3(a), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107–107, div. A, title V, §582(a), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
816	50:576.	May 5, 1950, ch. 169, §1 (Art. 16), 64 Stat. 113.

The word ''The'' is substituted for the words ''There shall be''. The word ''are'' is substituted for the word ''namely''. The words ''not less than five members'' are substituted for the words ''any number of members not less than five''. The words ''not less than three members'' are substituted for the words ''any number of members not less than three''. The word ''commissioned'' is inserted before the word ''officer'' in clause (3) for clarity.

AMENDMENTS

2001—Par. (1)(A). Pub. L. 107–107 inserted ''or, in a case in which the accused may be sentenced to a penalty of death, the number of members determined under section 825a of this title (article 25a)'' after ''five members''.

1983—Par. (1)(B). Pub. L. 98–209 substituted ''orally on the record or in writing'' for ''in writing''.

1968—Pub. L. 90–632 provided that a general or special court-martial shall consist of only a military judge if the accused, before the court is assembled, so requests in writing and the military judge approves, with the added requirements that the accused know the identity

of the military judge and have the advice of counsel, and that the election be available in the case of a special court-martial only if a military judge has been detailed to the court.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §582(d), Dec. 28, 2001, 115 Stat. 1125, provided that: ''The amendments made by this section [enacting section 825a of this title and amending this section and section 829 of this title] shall apply with respect to offenses committed after December 31, 2002.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 829, 841 of this title.

§ 817. Art. 17. Jurisdiction of courts-martial in general

(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review after that by the officer with authority to convene a general court-martial for the command which held the trial, where that review is required under this chapter, shall be carried out by the department that includes the armed force of which the accused is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
817(a)	50:577(a).	May 5, 1950, ch. 169, §1 (Art. 17), 64 Stat. 114.
817(b)	50:577(b).	

In subsection (a), the word ''has'' is substituted for the words ''shall have''.

In subsection (b), the word ''after'' is substituted for the words ''subsequent to''. The words ''the provisions of'' are omitted as surplusage. The words ''department that includes the'' are inserted before the words ''armed force'', since the review is carried out by the department and not by the armed force.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 819, 820 of this title.

§ 818. Art. 18. Jurisdiction of general courts-martial

Subject to section 817 of this title (article 17), general courts-martial have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when specifically authorized by this chapter. General courts-martial also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. However, a general court-martial of the kind specified in section 816(1)(B) of this title (article 16(1)(B)) shall not have jurisdiction to try any person for any offense for which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, §2(4), Oct. 24, 1968, 82 Stat. 1335.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
818	50:578.	May 5, 1950, ch. 169, §1 (Art. 18), 64 Stat. 114.

The word ''shall'' is omitted as surplusage wherever it occurs.

AMENDMENTS

1968—Pub. L. 90–632 provided that a general court-martial consisting of only a military judge has no jurisdiction in cases in which the death penalty may be adjudged unless the case has been previously referred to trial as a noncapital case.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 819. Art. 19. Jurisdiction of special courts-martial

Subject to section 817 of this title (article 17), special courts-martial have jurisdiction to try persons subject to this chapter for any noncapital offense made punishable by this chapter and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dishonorable discharge, dismissal, confinement for more than one year, hard labor without confinement for more than three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year. A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, §2(5), Oct. 24, 1968, 82 Stat. 1335; Pub. L.

106–65, div. A, title V, §577(a), Oct. 5, 1999, 113 Stat. 625; Pub. L. 107–107, div. A, title X, §1048(g)(4), Dec. 28, 2001, 115 Stat. 1228.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
819	50:579.	May 5, 1950, ch. 169, §1 (Art. 19), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''a period exceeding''. The word ''may'' is substituted for the word ''shall'' in the last sentence.

AMENDMENTS

2001—Pub. L. 107–107, §1048(g)(4), amended directory language of Pub. L. 106–65, §577(a)(2). See 1999 Amendment note below.

1999—Pub. L. 106–65, §577(a)(2), as amended by Pub. L. 107–107, §1048(g)(4), inserted '', confinement for more than six months, or forfeiture of pay for more than six months'' after ''A bad-conduct discharge'' in third sentence.

Pub. L. 106–65, §577(a)(1), substituted ''one year'' for ''six months'' in two places in second sentence.

1968—Pub. L. 90–632 provided that before a bad-conduct discharge may be adjudged by a special court-martial the accused must be detailed counsel who is legally qualified under the Code and a military judge must be detailed to the trial, with a detailed written statement appended to the record if a military judge was not detailed to the trial, because of physical conditions and military exigencies, stating the reasons that a military judge could not be so detailed.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title X, §1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(4) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106–65 as enacted.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §577(b), Oct. 5, 1999, 113 Stat. 625, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the sixth month beginning after the date of the enactment of this Act [Oct. 5, 1999] and shall apply with respect to charges referred on or after that effective date to trial by special courts-martial.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§820. Art. 20. Jurisdiction of summary courts-martial

Subject to section 817 of this title (article 17), summary courts-martial have jurisdiction to try persons subject to this chapter, except officers, cadets, aviation cadets, and midshipmen, for any noncapital offense made punishable by this chapter. No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if he objects thereto. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter except death, dismissal, dishonorable or bad-conduct discharge, confinement for more than one month, hard-labor without confinement for more than 45 days, restriction to specified limits for more than two months, or forfeiture of more than two-thirds of one month's pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 43; Pub. L. 90–632, §2(6), Oct. 24, 1968, 82 Stat. 1336.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
820	50:580.	May 5, 1950, ch. 169, §1 (Art. 20), 64 Stat. 114.

The word ''shall'' in the first sentence is omitted as surplusage. The word ''may'' is substituted for the word ''shall'' in the second sentence. The words ''the provisions of'' are omitted as surplusage. The word ''If'' is substituted for the word ''Where''. The words ''for more than'' are substituted for the words ''in excess of''. The words ''more than'' are substituted for the words ''pay in excess of''.

AMENDMENTS

1968—Pub. L. 90–632 substituted provisions prohibiting trial by summary court-martial in all cases if the person objects thereto for provisions allowing such trial over the person's objection if he has previously been offered and has refused article 15 punishment.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§821. Art. 21. Jurisdiction of courts-martial not exclusive

The provisions of this chapter conferring jurisdiction upon courts-martial do not deprive military commissions, provost courts, or other military tribunals of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by military commissions, provost courts, or other military tribunals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
821	50:581.	May 5, 1950, ch. 169, §1 (Art. 21), 64 Stat. 115.

The words ''do not deprive'' are substituted for the words ''shall not be construed as depriving''. The words ''with respect to'' are substituted for the words ''in respect of''.

SUBCHAPTER V—COMPOSITION OF COURTS-MARTIAL

Sec.	Art.	
822.	22.	Who may convene general courts-martial.
823.	23.	Who may convene special courts-martial.
824.	24.	Who may convene summary courts-martial.
825.	25.	Who may serve on courts-martial.
825a.	25a.	Number of members in capital cases.
826.	26.	Military judge of a general or special court-martial.
827.	27.	Detail of trial counsel and defense counsel.

Sec. Art.
828. 28. Detail or employment of reporters and interpreters.
829. 29. Absent and additional members.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, §582(b)(2), Dec. 28, 2001, 115 Stat. 1124, added item 825a.

1968—Pub. L. 90–632, §2(8), Oct. 24, 1968, 82 Stat. 1336, substituted ''Military judge of a general or special court-martial'' for ''Law officer of a general court-martial'' in item 826.

§ 822. Art. 22. Who may convene general courts-martial

(a) General courts-martial may be convened by—

(1) the President of the United States;

(2) the Secretary of Defense;

(3) the commanding officer of a unified or specified combatant command;

(4) the Secretary concerned;

(5) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;

(6) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;

(7) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;

(8) any other commanding officer designated by the Secretary concerned; or

(9) any other commanding officer in any of the armed forces when empowered by the President.

(b) If any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44; Pub. L. 99–433, title II, §211(b), Oct. 1, 1986, 100 Stat. 1017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
822(a)	50:586(a).	May 5, 1950, ch. 169, §1 (Art. 22), 64 Stat. 115.
822(b)	50:586(b).	

Subsection (a)(2) is substituted for the words ''the Secretary of a Department''.

In subsection (a)(4), the words ''continental limits of the'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (a)(6), the words ''any other commanding officer'' are substituted for the words ''such other commanding officers as may be''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

AMENDMENTS

1986—Subsec. (a)(2) to (9). Pub. L. 99–433 added pars. (2) and (3) and redesignated existing pars. (2) to (7) as (4) to (9), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 164 of this title.

§ 823. Art. 23. Who may convene special courts-martial

(a) Special courts-martial may be convened by—

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or the Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) If any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority if considered advisable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 44.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
823(a)	50:587(a).	May 5, 1950, ch. 169, §1 (Art. 23), 64 Stat. 115.
823(b)	50:587(b).	

In subsection (a)(7), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''If'' is substituted for the word ''When''. The words ''if considered'' are substituted for the words ''when deemed''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 824. Art. 24. Who may convene summary courts-martial

(a) Summary courts-martial may be convened by—

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary concerned.

(b) When only one commissioned officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
824(a)	50:588(a).	May 5, 1950, ch. 169, §1 (Art. 24), 64 Stat. 116.
824(b)	50:588(b).	

In subsection (a)(4), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the words ''only one commissioned'' are substituted for the words ''but one'' for clarity. The word ''considered'' is substituted for the word ''deemed''.

§825. Art. 25. Who may serve on courts-martial

(a) Any commissioned officer on active duty is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(c)(1) Any enlisted member of an armed force on active duty who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member of an armed force who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under section 839(a) of this title (article 39(a)) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested orally on the record or in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least, one-third of the total membership of the court, unless eligible enlisted members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) In this article, ''unit'' means any regularly organized body as defined by the Secretary concerned, but in no case may it be a body larger than a company, squadron, ship's crew, or body corresponding to one of them.

(d)(1) When it can be avoided, no member of an armed force may be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(e) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the Secretary concerned may prescribe, the convening authority may delegate his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 45; Pub. L. 90–632, §2(7), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, §§3(b), 13(c), Dec. 6, 1983, 97 Stat. 1394, 1408; Pub. L. 99–661, div. A, title VIII, §803(a), Nov. 14, 1986, 100 Stat. 3906.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
825(a)	50:589(a).	May 5, 1950, ch. 169, §1 (Art. 25), 64 Stat. 116.
825(b)	50:589(b).	
825(c)	50:589(c).	
825(d)	50:589(d).	

In subsection (a), the word ''commissioned'' is inserted before the word ''officer'' for clarity. The word ''is'' is substituted for the words ''shall be''.

In subsections (a), (b), and (c)(1), the words ''with the armed forces'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be''. The words ''a commissioned'' are substituted for the word ''an'' for clarity.

In subsection (c), the words ''member'' and ''members'', respectively are substituted for the words ''person'' and ''persons''. The words ''of an armed force'' are inserted for clarity.

In subsection (c)(1), the word ''is'' is substituted for the words ''shall be''. The word ''before'' is substituted for the words ''prior to''. The words ''the accused may not'' are substituted for the words ''no enlisted person shall'', for clarity. The word ''If'' is substituted for the word ''Where''.

In subsection (c)(2), the word ''means'' is substituted for the words ''shall mean''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''may'' is substituted for the word ''shall''. The word ''than'', before the words ''a body'', is omitted as surplusage.

In subsection (d)(1), the word ''may'' is substituted for the word ''shall''. The word ''member'' is substituted for the word ''person''.

In subsection (d)(2), the word ''is'' is substituted for the words ''shall be''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The words ''member of an armed force'' and ''members of the armed forces'', respectively, are substituted for the words ''person'' and ''persons''.

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–661 substituted ''has requested orally on the record or in writing'' for ''has requested in writing''.

1983—Subsec. (c)(2). Pub. L. 98–209, §13(c), struck out ''the word'' before '' 'unit' ''.

Subsec. (e). Pub. L. 98–209, § 3(b), added subsec. (e).

1968—Subsec. (c)(1). Pub. L. 90–632 inserted requirement that an accused's request for inclusion of enlisted members on his court-martial be made before conclusion of a pre-trial session called by the military judge under section 839(a) or before the court is assembled for his trial and substituted ''assembled'' for ''convened'' to describe the calling together of the court for the trial in provision allowing such calling together without requested enlisted members if such members cannot be obtained.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(b) of title VIII of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to a case in which arraignment is completed on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 13(c) of Pub. L. 98–209 effective Dec. 6, 1983, and amendment by section 3(b) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 825a. Art. 25a. Number of members in capital cases

In a case in which the accused may be sentenced to a penalty of death, the number of members shall be not less than 12, unless 12 members are not reasonably available because of physical conditions or military exigencies, in which case the convening authority shall specify a lesser number of members not less than five, and the court may be assembled and the trial held with not less than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

(Added Pub. L. 107–107, div. A, title V, § 582(b)(1), Dec. 28, 2001, 115 Stat. 1124.)

EFFECTIVE DATE

Section applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 816 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 829 of this title.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–632, § 2(9), Oct. 24, 1968, 82 Stat. 1336; Pub. L. 98–209, § 3(c)(1), Dec. 6, 1983, 97 Stat. 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
826(a)	50:590(a).	May 5, 1950, ch. 169, § 1 (Art. 26), 64 Stat. 117.
826(b)	50:590(b).	

In subsection (a), the words ''a commissioned'' are substituted for the word ''an'' for clarity. The words ''of the United States'' are omitted as surplusage. The word ''is'' is substituted for the words ''shall be''. The word ''if'' is substituted for the word ''when''. The word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, §3(c)(1)(A), amended subsec. (a) generally, inserting provision requiring the Secretary concerned to prescribe regulations providing for the manner in which military judges are detailed for courts-martial and for the persons who are authorized to detail military judges for such courts-martial.

Subsec. (c). Pub. L. 98–209, §3(c)(1)(B), substituted ''in accordance with regulations prescribed under subsection (a). Unless'' for ''by the convening authority, and, unless''.

1968—Pub. L. 90–632 substituted ''military judge'' for ''law officer'' and inserted reference to special court-martial.

Subsec. (a). Pub. L. 90–632 substituted reference to military judge for references to law officer and such law officer's requisite qualifications, inserted reference to special court-martial and regulations of the Secretary concerned governing the convening of a special court-martial, inserted provisions directing the military judge to preside over the open sessions of the court-martial to which he was assigned, and struck out provisions making law officers ineligible in a case in which he was the accuser or a witness for the prosecution or acted as investigating officer or as counsel.

Subsecs. (b) to (d). Pub. L. 90–632 added subsecs. (b) to (d). Former subsec. (b) redesignated as subsec. (e) and amended.

Subsec. (e). Pub. L. 90–632 redesignated former subsec. (b) as (e) and substituted ''military judge'' for ''law officer'' and struck out provision allowing consultation with members of the court on the form of the findings as provided in section 839 of this title (article 39).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO LAW OFFICER DEEMED REFERENCES TO MILITARY JUDGE

Section 3(a) of Pub. L. 90–632 provided that: ''Whenever the term law officer is used, with reference to any officer detailed to a court-martial pursuant to section 826(a) (article 26(a)) of title 10, United States Code [subsec. (a) of this section], in any provision of Federal law (other than provisions amended by this Act [see Short Title of 1968 Amendment note set out under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean military judge.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 801 of this title.

§827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 46; Pub. L. 90–179, §1(5), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, §2(10), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98–209, §§2(d), 3(c)(2), Dec. 6, 1983, 97 Stat. 1393, 1394.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
827(a)	50:591(a).	May 5, 1950, ch. 169, §1 (Art. 27), 64 Stat. 117.
827(b)	50:591(b).	
827(c)	50:591(c).	

The words, ''detail'' and ''detailed'' are substituted for the words ''appoint'' and ''appointed'' throughout the revised section, since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (a), the word ''and'' is substituted for the words ''together with''. The word ''considers'' is substituted for the word ''deems''. The words ''necessary or'' are omitted as surplusage, since what is necessary is also appropriate. The word ''may'' is substituted for the word ''shall''. The word ''later'' is substituted for the word ''subsequently''.

In subsections (b) and (c), the word ''must'' is substituted for the word ''shall'', since the clauses prescribe conditions and not commands.

In subsection (b), the word ''for'' is substituted for the words ''in the case of''. The words ''person * * * a person who is'' are omitted as surplusage.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98–209, §3(c)(2)(A), designated first sentence of existing provisions as par. (1), substituted provisions requiring that trial counsel and defense counsel be detailed for each general and special court-martial, and permitting the detailing of assistant trial counsel and assistant and associate defense counsel for each general and special court-martial for provisions requiring that for each general and special court-martial the authority convening the court had to detail trial counsel and defense counsel and such assistants as he considered appropriate, and inserted provision requiring the Secretary concerned to prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

Subsec. (a)(2). Pub. L. 98–209, §3(c)(2)(B), designated existing provision, less first sentence, as par. (2) and substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

Subsec. (b)(1). Pub. L. 98–209, §2(d)(1), substituted ''judge advocate'' for ''judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard,''.

Subsec. (c)(3). Pub. L. 98–209, §2(d)(2), struck out '', or a law specialist,'' after ''is a judge advocate''.

1968—Subsec. (a). Pub. L. 90–632, §2(10)(A), substituted ''military judge'' for ''law officer''.

Subsec. (c). Pub. L. 90–632, §2(10)(B), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, and added par. (1).

1967—Subsec. (b)(1). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 3(c)(2) of Pub. L. 98–209 not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 819, 838, 870, 937, 1503, 5587a of this title; title 14 section 357.

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
828	50:592.	May 5, 1950, ch. 169, §1 (Art. 28), 64 Stat. 117.

The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words, ''detail or employ'' are substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b)(1) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below the applicable minimum number of members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than the applicable minimum number of members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(2) In this section, the term ''applicable minimum number of members'' means five members or, in a case in which the death penalty may be adjudged, the number of members determined under section 825a of this title (article 25a).

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 816(1)(B) or (2)(C) of this title (article 16(1)(B) or (2)(C)), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47; Pub. L. 90–632, §2(11), Oct. 24, 1968, 82 Stat. 1337; Pub. L. 98–209, §3(d), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 107–107, div. A, title V, §582(c), Dec. 28, 2001, 115 Stat. 1124.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
829(a)	50:593(a).	May 5, 1950, ch. 169, §1 (Art. 29), 64 Stat. 117.
829(b)	50:593(b).	
829(c)	50:593(c).	

In subsections (a), (b), and (c), the word ''may'' is substituted for the word ''shall''.

In subsections (b) and (c), the word ''details'' is substituted for the word ''appoints'', since the filling of the position involved is not appointment to an office in the constitutional sense.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 designated existing provisions as par. (1), substituted ''the applicable minimum number of members'' for ''five members'' in two places, and added par. (2).

1983—Subsec. (a). Pub. L. 98–209 substituted ''unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause'' for ''except for physical disability or as a result of a challenge or by order of the convening authority for good cause''.

1968—Subsec. (a). Pub. L. 90–632, §2(11)(A), substituted ''court has been assembled for the trial of the accused'' for ''accused has been arraigned''.

Subsec. (b). Pub. L. 90–632, §2(11)(B), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and inserted provisions requiring that only the evidence which has been introduced before members of the court be read to the court and that all evidence, not merely testimony, be included.

Subsec. (c). Pub. L. 90–632, §2(11)(C), inserted reference to court-martial composed of a military judge alone, struck out reference to oath of members, and substituted evidence previously introduced for testimony of previously examined witnesses as the body of evidence which the verbatim record must cover.

Subsec. (d) Pub. L. 90–632, §2(11)(D), added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to offenses committed after Dec. 31, 2002, see section 582(d) of Pub. L. 107–107, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 839, 841 of this title.

SUBCHAPTER VI—PRE-TRIAL PROCEDURE

Sec.	Art.	
830.	30.	Charges and specifications.
831.	31.	Compulsory self-incrimination prohibited.
832.	32.	Investigation.
833.	33.	Forwarding of charges.
834.	34.	Advice of staff judge advocate and reference for trial.
835.	35.	Service of charges.

§830. Art. 30. Charges and specifications

(a) Charges and specifications shall be signed by a person subject to this chapter under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

(1) that the signer has personal knowledge of or has investigated, the matters set forth therein; and

(2) that they are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 47.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
830(a)	50:601(a).	May 5, 1950, ch. 169, §1 (Art. 30), 64 Stat. 118.
830(b)	50:601(b).	

In subsection (a), the word ''they'' is substituted for the words ''the same''. The word ''commissioned'' is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 849 of this title.

§831. Art. 31. Compulsory self-incrimination prohibited

(a) No person subject to this chapter may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this chapter may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
831(a)	50:602(a).	May 5, 1950, ch. 169, §1 (Art 31), 64 Stat. 118.
831(b)	50:602(b).	
831(c)	50:602(c).	
831(d)	50:602(d).	

The word ''may'' is substituted for the word ''shall'' throughout the revised section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 832. Art. 32. Investigation

(a) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section. At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b), no further investigation of that charge is necessary under this article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) If evidence adduced in an investigation under this article indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused—

(1) is present at the investigation;

(2) is informed of the nature of each uncharged offense investigated; and

(3) is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (b).

(e) The requirements of this article are binding on all persons administering this chapter but failure to follow them does not constitute jurisdictional error.

(Aug. 10, 1956, ch. 1041, 70A Stat. 48; Pub. L. 97–81, §4(a), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 104–106, div. A, title XI, §1131, Feb. 10, 1996, 110 Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
832(a)	50:603(a).	May 5, 1950, ch. 169, §1 (Art. 32), 64 Stat. 118.
832(b)	50:603(b).	
832(c)	50:603(c).	
832(d)	50:603(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''. The words ''consideration of the'' and ''a recommendation as to'' are inserted in the interest of accuracy and precision of statement.

In subsection (b), the word ''detailed'' is substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''before'' is substituted for the words ''prior to the time''. The words ''of this section'' are omitted as surplusage.

In subsection (d), the word ''are'' is substituted for the words ''shall be.'' The word ''does'' is substituted for the words ''in any case shall''.

AMENDMENTS

1996—Subsecs. (d), (e). Pub. L. 104–106 added subsec. (d) and redesignated former subsec. (d) as (e).

1981—Subsec. (b). Pub. L. 97–81 substituted ''The accused has the right to be represented at that investigation as provided in section 838 of this title (article 38) and in regulations prescribed under that section'' for ''Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel is reasonably available, or by counsel detailed by the officer exercising general court-martial jurisdiction over the command''.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply with respect to investigations under this section that begin on or after that date, see section 7(a) and (b)(3) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 802, 834, 838 of this title.

§ 833. Art. 33. Forwarding of charges

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that officer the reasons for delay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
833	50:604.	May 5, 1950, ch. 169, §1 (Art. 33), 64 Stat. 119.

§ 834. Art. 34. Advice of staff judge advocate and reference for trial

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that—

(1) the specification alleges an offense under this chapter;

(2) the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report); and

(3) a court-martial would have jurisdiction over the accused and the offense.

(b) The advice of the staff judge advocate under subsection (a) with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate—

(1) expressing his conclusions with respect to each matter set forth in subsection (a); and

(2) recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the staff judge advocate shall accompany the specification.

(c) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 98–209, § 4, Dec. 6, 1983, 97 Stat. 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
834(a)	50:605(a).	May 5, 1950, ch. 169, § 1 (Art. 34), 64 Stat. 119.
834(b)	50:605(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209, § 4(a), substituted ''judge advocate'' for ''judge advocate or legal officer'', and provisions that the convening authority may not refer a specification under a charge to a general court-martial for trial unless he has been advised in writing by the staff judge advocate that the specification alleges an offense under this chapter, the specification is warranted by the evidence indicated in the report of investigation under section 832 of this title (article 32) (if there is such a report), and a court-martial would have jurisdiction over the accused and the offense, for provision that the convening authority could not refer a charge to a general court-martial for trial unless he found that the charge alleged an offense under this chapter and was warranted by evidence indicated in the report of investigation.

Subsecs. (b), (c). Pub. L. 98–209, § 4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which charges were referred to trial before that date, and proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (3) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 835. Art. 35. Service of charges

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under section 839(a) of this title (article 39(a)), in a general court-martial case within a period of five days after the service of charges upon him, or in a special court-martial case within a period of three days after the service of charges upon him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 49; Pub. L. 90–632, § 2(12), Oct. 24, 1968, 82 Stat. 1337.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
835	50:606.	May 5, 1950, ch. 169, § 1 (Art. 35), 64 Stat. 119.

The word ''may'' is substituted for the word ''shall''. The word ''after'' is substituted for the words ''subsequent to''.

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to a session called by the military judge under section 839(a) of this title (article 39(a)).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 839 of this title.

SUBCHAPTER VII—TRIAL PROCEDURE

Sec.	Art.	
836.	36.	President may prescribe rules.
837.	37.	Unlawfully influencing action of court.
838.	38.	Duties of trial counsel and defense counsel.
839.	39.	Sessions.
840.	40.	Continuances.
841.	41.	Challenges.
842.	42.	Oaths.
843.	43.	Statute of limitations.
844.	44.	Former jeopardy.
845.	45.	Pleas of the accused.
846.	46.	Opportunity to obtain witnesses and other evidence.
847.	47.	Refusal to appear or testify.
848.	48.	Contempts.
849.	49.	Depositions.
850.	50.	Admissibility of records of courts of inquiry.
850a.	50a.	Defense of lack of mental responsibility.
851.	51.	Voting and rulings.
852.	52.	Number of votes required.
853.	53.	Court to announce action.
854.	54.	Record of trial.

AMENDMENTS

1986—Pub. L. 99–661, div. A, title VIII, § 802(a)(2), Nov. 14, 1986, 100 Stat. 3906, added item 850a.

§ 836. Art. 36. President may prescribe rules

(a) Pretrial, trial, and post-trial procedures, including modes of proof, for cases arising under this chapter triable in courts-martial, military commissions and other military tribunals, and procedures for courts of inquiry, may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.

(b) All rules and regulations made under this article shall be uniform insofar as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 96–107, title VIII, § 801(b), Nov. 9, 1979, 93 Stat.

811; Pub. L. 101–510, div. A, title XIII, §1301(4), Nov. 5, 1990, 104 Stat. 1668.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
836(a)	50:611(a).	May 5, 1950, ch. 169, §1 (Art. 36), 64 Stat. 120.
836(b)	50:611(b).	

In subsection (a), the word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''under'' is substituted for the words ''in pursuance of''.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–510 struck out ''and shall be reported to Congress'' after ''as practicable''.

1979—Subsec. (a). Pub. L. 96–107 substituted provisions authorizing pretrial, trial, and post-trial procedures for cases under this chapter triable in courts-martial, military commissions and other military tribunals, for provisions authorizing procedure in cases before courts-martial, military commissions, and other military tribunals.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 839, 906a of this title.

§ 837. Art. 37. Unlawfully influencing action of court

(a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subsection shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any accused before a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, §2(13), Oct. 24, 1968, 82 Stat. 1338.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
837	50:612.	May 5, 1950, ch. 169, §1 (Art. 37), 64 Stat. 120.

The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1968—Pub. L. 90–632 designated existing provisions as subsec. (a), substituted ''military judge'' for ''law officer'', inserted provisions specifically exempting instructional or general informational lectures on military justice and statements and instructions given in open court by the military judge, president of a special court-martial, or counsel from prohibitions of subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 838. Art. 38. Duties of trial counsel and defense counsel

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b)(1) The accused has the right to be represented in his defense before a general or special court-martial or at an investigation under section 832 of this title (article 32) as provided in this subsection.

(2) The accused may be represented by civilian counsel if provided by him.

(3) The accused may be represented—

(A) by military counsel detailed under section 827 of this title (article 27); or

(B) by military counsel of his own selection if that counsel is reasonably available (as determined under regulations prescribed under paragraph (7)).

(4) If the accused is represented by civilian counsel, military counsel detailed or selected under paragraph (3) shall act as associate counsel unless excused at the request of the accused.

(5) Except as provided under paragraph (6), if the accused is represented by military counsel of his own selection under paragraph (3)(B), any military counsel detailed under paragraph (3)(A) shall be excused.

(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel, in his sole discretion—

(A) may detail additional military counsel as assistant defense counsel; and

(B) if the accused is represented by military counsel of his own selection under paragraph (3)(B), may approve a request from the accused that military counsel detailed under paragraph (3)(A) act as associate defense counsel.

(7) The Secretary concerned shall, by regulation, define ''reasonably available'' for the purpose of paragraph (3)(B) and establish procedures for determining whether the military counsel selected by an accused under that paragraph is reasonably available. Such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member. To the maximum extent practicable, such regulations shall establish uniform policies among the armed forces while recognizing the differences in the circumstances and needs of the various armed forces. The Secretary concerned shall submit copies of regulations prescribed under this paragraph to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) In any court-martial proceeding resulting in a conviction, the defense counsel—

(1) may forward the attachment to the record of proceedings a brief of such matters as he determines should be considered in behalf of the accused on review (including any objection to the contents of the record which he considers appropriate);

(2) may assist the accused in the submission of any matter under section 860 of this title (article 60); and

(3) may take other action authorized by this chapter.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 827 of this title (article 27), perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 50; Pub. L. 90–632, § 2(14), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 97–81, § 4(b), Nov. 20, 1981, 95 Stat. 1088; Pub. L. 98–209, § 3(e), Dec. 6, 1983, 97 Stat. 1394; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
838(a)	50:613(a).	May 5, 1950, ch. 169, § 1 (Art. 38), 64 Stat. 120.
838(b)	50:613(b).	
838(c)	50:613(c).	
838(d)	50:613(d).	
838(e)	50:613(e).	

In subsection (b), the word ''has'' is substituted for the words ''shall have''. The word ''under'' is substituted for the words ''pursuant to''. The word ''duly'' is omitted as surplusage. The words ''detailed'' and ''who were detailed'' are substituted for the word ''appointed'', since the filling of the position involved is not appointment to an office in the constitutional sense.

In subsection (c), the word ''considers'' is substituted for the words ''may deem''.

AMENDMENTS

1999—Subsec. (b)(7). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(7). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1983—Subsec. (b)(6). Pub. L. 98–209, § 3(e)(1), substituted ''the person authorized under regulations prescribed under section 827 of this title (article 27) to detail counsel'' for ''a convening authority''.

Subsec. (b)(7). Pub. L. 98–209, § 3(e)(2), inserted provision that such regulations may not prescribe any limitation based on the reasonable availability of counsel solely on the grounds that the counsel selected by the accused is from an armed force other than the armed force of which the accused is a member.

Subsec. (c). Pub. L. 98–209, § 3(e)(3), designated existing provisions as par. (1), made minor changes in phraseology and punctuation, and added pars. (2) and (3).

1981—Subsec. (b). Pub. L. 97–81 revised subsec. (b) by dividing its provisions into seven numbered paragraphs and inserted provisions relating to the right to counsel at an investigation under section 832 of this title (article 32), authorizing the promulgation of regulations relating to the ''reasonable availability'' of military counsel, and authorizing the detailing of additional military counsel for the accused under specified circumstances.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge or by the president of a court-martial without a military judge'' for ''president of the court''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month after Dec. 6, 1983, but not to affect the designation or detail of a military judge or military counsel to a court-martial before that date, see section 12(a)(1), (2) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to trials by courts-martial in which all charges are referred to trial on or after that date, see section 7(a) and (b)(4) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective on first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 832, 937 of this title.

§ 839. Art. 39. Sessions

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 835 of this title (article 35), call the court into session without the presence of the members for the purpose of—

(1) hearing and determining motions raising defenses or objections which are capable of de-

termination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) if permitted by regulations of the Secretary concerned, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 836 of this title (article 36) and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, §2(15), Oct. 24, 1968, 82 Stat. 1338; Pub. L. 101–510, div. A, title V, §541(a), Nov. 5, 1990, 104 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
839	50:614.	May 5, 1950, ch. 169, §1 (Art. 39), 64 Stat. 121.

The word ''When'' is substituted for the word ''Whenever''. The words ''deliberates or votes'' are substituted for the words ''is to deliberate or vote''. The word ''may'' is substituted for the word ''shall''. The word ''shall'' is inserted before the words ''be in the presence'' for clarity.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510 inserted at end ''These proceedings may be conducted notwithstanding the number of members of the court and without regard to section 829 of this title (article 29).''

1968—Pub. L. 90–632 added subsec. (a), designated existing provisions as subsec. (b), substituted ''military judge'' for ''law officer'', and struck out provisions authorizing the court after voting on the findings in a general court-martial to request the law officer and the reporter to appear before the court to put the findings in proper form.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 541(e) of Pub. L. 101–510 provided that: ''The amendments made by subsections (a) through (d) [amending this section and section 841 of this title] shall apply only to a court-martial convened on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 825, 835 of this title.

§ 840. Art. 40. Continuances

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, §2(16), Oct. 24, 1968, 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
840	50:615.	May 5, 1950, ch. 169, §1 (Art. 40), 64 Stat. 121.

AMENDMENTS

1968—Pub. L. 90–632 inserted reference to military judge.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 841. Art. 41. Challenges

(a)(1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) If exercise of a challenge for cause reduces the court below the minimum number of members required by section 816 of this title (article 16), all parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(b)(1) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(2) If exercise of a peremptory challenge reduces the court below the minimum number of members required by section 816 of this title (article 16), the parties shall (notwithstanding section 829 of this title (article 29)) either exercise or waive any remaining peremptory challenge (not previously waived) against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trail counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, §2(17), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 101–510, div. A, title V, §541(b)–(d), Nov. 5, 1990, 104 Stat. 1565.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
841(a)	50:616(a).	May 5, 1950, ch. 169, §1 (Art. 41), 64 Stat. 121.
841(b)	50:616(b).	

In subsection (a), the word ''may'' is substituted for the word ''shall'' before the words ''not receive''.

In subsection (b), the word ''the'' is inserted before the word ''trial''. The word ''is'' is substituted for the words ''shall be''. The word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, §541(b), designated existing provision as par. (1) and added par. (2).

Subsec. (b). Pub. L. 101–510, §541(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.''

Subsec. (c). Pub. L. 101–510, §541(d), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–632, §2(17)(A), (B), inserted reference to the military judge and struck out references to the law officer of a general court-martial.

Subsec. (b). Pub. L. 90–632, §2(17)(C), substituted ''military judge'' for ''law officer''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable only to court-martial convened on or after Nov. 5, 1990, see section 541(e) of Pub. L. 101–510, set out as a note under section 839 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§842. Art. 42. Oaths

(a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary concerned. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) Each witness before a court-martial shall be examined on oath.

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 90–632, §2(18), Oct. 24, 1968, 82 Stat. 1339; Pub. L. 98–209, §§2(e), 3(f), Dec. 6, 1983, 97 Stat. 1393, 1395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
842(a)	50:617(a).	May 5, 1950, ch. 169, §1 (Art. 42), 64 Stat. 121.
842(b)	50:617(b).	

In subsection (a), the word ''all'' and the word ''the'' before the words ''members'', ''trial'', ''defense'', and ''reporter'' are omitted as surplusage.

In subsections (a) and (b), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of Title 1.

In subsection (b), the words ''Each witness'' are substituted for the words ''All witnesses''.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–209 struck out '', law specialist,'' after ''judge advocate'' in two places, substituted ''assistant or associate defense counsel'' for ''assistant defense counsel''.

1968—Subsec. (a). Pub. L. 90–632 struck out requirement that the oath given to court-martial personnel be taken in the presence of the accused and provided that the form of the oath, the time and place of its taking, the manner of recording thereof, and whether the oath shall be taken for all cases or for a particular case shall be as prescribed by regulations of the Secretary concerned and contemplated secretarial regulations allowing the administration of an oath to certified legal personnel on a one-time basis.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§843. Art. 43. Statute of limitations

(a) A person charged with absence without leave or missing movement in time of war, or with any offense punishable by death, may be tried and punished at any time without limitation.

(b)(1) Except as otherwise provided in this section (article), a person charged with an offense is not liable to be tried by court-martial if the offense was committed more than five years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(2) A person charged with an offense is not liable to be punished under section 815 of this title (article 15) if the offense was committed more than two years before the imposition of punishment.

(c) Periods in which the accused is absent without authority or fleeing from justice shall be excluded in computing the period of limitation prescribed in this section (article).

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this article.

(e) For an offense the trial of which in time of war is certified to the President by the Secretary concerned to be detrimental to the pros-

ecution of the war or inimical to the national security, the period of limitation prescribed in this article is extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense under this chapter—

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not;

(2) committed in connection with the acquisition, care, handling, custody, control, or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation, or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

is suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(g)(1) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations—

(A) has expired; or

(B) will expire within 180 days after the date of dismissal of the charges and specifications,

trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in paragraph (2) are met.

(2) The conditions referred to in paragraph (1) are that the new charges and specifications must—

(A) be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(B) allege the same acts or omissions that were alleged in the dismissed charges or specifications (or allege acts or omissions that were included in the dismissed charges or specifications).

(Aug. 10, 1956, ch. 1041, 70A Stat. 51; Pub. L. 99–661, div. A, title VIII, §805(a), (b), Nov. 14, 1986, 100 Stat. 3908.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
843(a)	50:618(a).	May 5, 1950, ch. 169, §1 (Art. 43), 64 Stat. 121.
843(b)	50:618(b).	
843(c)	50:618(c).	
843(d)	50:618(d).	
843(e)	50:618(e).	
843(f)	50:618(f).	

In subsection (b), the word ''inclusive'' is omitted as surplusage.

In subsections (b) and (c), the words ''is not'' are substituted for the words ''shall not be''.

In subsection (e), the words ''For an'' are substituted for the words ''In the case of any''. The word ''is'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

1986—Subsecs. (a) to (c). Pub. L. 99–661, §805(a), amended subsecs. (a) to (c) generally. Prior to amendment, subsecs. (a) to (c) read as follows:

''(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

''(b) Except as otherwise provided in this article, a person charged with desertion in time of peace or any of the offenses punishable under sections 919–932 of this title (articles 119–132) is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

''(c) Except as otherwise provided in this article, a person charged with any offense is not liable to be tried by court-martial or punished under section 815 of this title (article 15) if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 815 of this title (article 15).''

Subsec. (g). Pub. L. 99–661, §805(b), added subsec. (g).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 805(c) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply to an offense committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 803 of this title.

§ 844. Art. 44. Former jeopardy

(a) No person may, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this article.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
844(a)	50:619(a).	May 5, 1950, ch. 169, §1 (Art. 44), 64 Stat. 122.
844(b)	50:619(b).	
844(c)	50:619(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''is'' is substituted for the words ''shall be held to be''.

In subsection (c), the word ''after'' is substituted for the words ''subsequent to''. The word ''before'' is substituted for the words ''prior to''. The word ''is'' is substituted for the words ''shall be''.

§ 845. Art. 45. Pleas of the accused

(a) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets

up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused may not be received to any charge or specification alleging an offense for which the death penalty may be adjudged. With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations of the Secretary concerned, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 52; Pub. L. 90–632, §2(19), Oct. 24, 1968, 82 Stat. 1339.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
845(a)	50:620(a).	May 5, 1950, ch. 169, §1 (Art. 45), 64 Stat. 122.
845(b)	50:620(b).	

In subsection (b), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, §2(19)(A), substituted ''after arraignment'' for ''arraigned before a court-martial''.

Subsec. (b). Pub. L. 90–632, §2(19)(B), inserted provisions covering the making and accepting of a guilty plea to charges or specifications other than charges and specifications alleging an offense for which the death penalty may be adjudged.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 852 of this title.

§846. Art. 46. Opportunity to obtain witnesses and other evidence

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, or the Territories, Commonwealths, and possessions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
846	50:621.	May 5, 1950, ch. 169, §1 (Art. 46), 64 Stat. 122.

The word ''Commonwealths'' is inserted to reflect the present status of Puerto Rico.

§847. Art. 47. Refusal to appear or testify

(a) Any person not subject to this chapter who—

(1) has been duly subpenaed to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board;

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpenaed to produce;

is guilty of an offense against the United States.

(b) Any person who commits an offense named in subsection (a) shall be tried on indictment or information in a United States district court or in a court of original criminal jurisdiction in any of the Territories, Commonwealths, or possessions of the United States, and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be fined or imprisoned, or both, at the court's discretion.

(c) The United States attorney or the officer prosecuting for the United States in any such court of original criminal jurisdiction shall, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, file an information against and prosecute any person violating this article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

(Aug. 10, 1956, ch. 1041. 70A Stat. 53; Pub. L. 104–106, div. A, title XI, §1111, Feb. 10, 1996, 110 Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
847(a)	50:622(a).	May 5, 1950, ch. 169, §1 (Art. 47), 64 Stat. 123.
847(b)	50:622(b).	
847(c)	50:622(c).	
847(d)	50:622(d).	

In subsection (a), the word ''Any'' is substituted for the word ''Every''. The word ''is'' is substituted for the words ''shall be deemed''.

In subsection (b), the words ''named in subsection (a)'' are substituted for the words ''denounced by this article''. The words ''Territories, Commonwealths, or'' are substituted for the word ''Territorial''. The words ''not more than'' are substituted for the words ''a period not exceeding''.

In subsection (c), the words ''It shall be the duty of * * * to'' are omitted as surplusage. The words ''United States Attorney'' are substituted for the words ''United States district attorney'', to conform to the terminol-

ogy of section 501 of title 28. The word ''shall'' is inserted after the word ''jurisdiction''.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 inserted ''indictment or'' after ''shall be tried on'' and substituted ''shall be fined or imprisoned, or both, at the court's discretion'' for ''shall be punished by a fine of not more than $500, or imprisonment for not more than six months, or both''.

§ 848. Art. 48. Contempts

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for 30 days or a fine of $100, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
848	50:623.	May 5, 1950, ch. 169, §1 (Art. 48), 64 Stat. 123.

The word ''may'' is substituted for the word ''shall''.

§ 849. Art. 49. Depositions

(a) At any time after charges have been signed as provided in section 830 of this title (article 30), any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

(1) that the witness resides or is beyond the State, Territory, Commonwealth, or District of Columbia in which the court, commission, or board is ordered to sit, or beyond 100 miles from the place of trial or hearing;

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Subject to subsection (d), testimony by deposition may be presented by the defense in capital cases.

(f) Subject to subsection (d), a deposition may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence in any case in which the death penalty is authorized but is not mandatory, whenever the convening authority directs that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 53; Pub. L. 90–632, §2(20), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98–209, §6(b), Dec. 6, 1983, 97 Stat. 1400.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
849(a)	50:624(a).	May 5, 1950, ch. 169, §1 (Art. 49), 64 Stat. 123.
849(b)	50:624(b).	
849(c)	50:624(c).	
849(d)	50:624(d).	
849(e)	50:624(e).	
849(f)	50:624(f).	

In subsection (a), the word ''commissioned'' is inserted for clarity.

In subsection (d), the word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico. The words ''of Columbia'' are inserted after the word ''District'' for clarity. The words ''the distance of'' are omitted as surplusage.

In subsections (e) and (f), the words ''the requirements of'' and the words ''of this article'' are omitted as surplusage. The word ''presented'' is substituted for the word ''adduced'' in subsection (e).

In subsection (f), the word ''directs'' is substituted for the words ''shall have directed''. The words ''by law'' are omitted as surplusage.

AMENDMENTS

1983—Subsecs. (d), (f). Pub. L. 98–209 inserted ''or, in the case of audiotape, videotape, or similar material, may be played in evidence'' after ''read in evidence''.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to the taking of depositions being forbidden by the military judge or the court-martial without a military judge if the case is being heard.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective on first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 850. Art. 50. Admissibility of records of courts of inquiry

(a) In any case not capital and not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of in-

quiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of a commissioned officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
850(a)	50:625(a).	May 5, 1950, ch. 169, §1 (Art. 50), 64 Stat. 124.
850(b)	50:625(b).	
850(c)	50:625(c).	

In subsections (a) and (b), the word ''commissioned'' is inserted for clarity.

§850a. Art. 50a. Defense of lack of mental responsibility

(a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

(b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(c) Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of lack of mental responsibility under this section and charge them to find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(d) Subsection (c) does not apply to a court-martial composed of a military judge only. In the case of a court-martial composed of a military judge only, whenever lack of mental responsibility of the accused with respect to an offense is properly at issue, the military judge shall find the accused—

(1) guilty;

(2) not guilty; or

(3) not guilty only by reason of lack of mental responsibility.

(e) Notwithstanding the provisions of section 852 of this title (article 52), the accused shall be found not guilty only by reason of lack of mental responsibility if—

(1) a majority of the members of the court-martial present at the time the vote is taken determines that the defense of lack of mental responsibility has been established; or

(2) in the case of a court-martial composed of a military judge only, the military judge determines that the defense of lack of mental responsibility has been established.

(Added Pub. L. 99–661, div. A, title VIII, §802(a)(1), Nov. 14, 1986, 100 Stat. 3905.)

EFFECTIVE DATE

Section 802(b) of Pub. L. 99–661 provided that: ''Section 850a of title 10, United States Code, as added by subsection (a)(1), shall apply only to offenses committed on or after the date of the enactment of this Act [Nov. 14, 1986].''

§851. Art. 51. Voting and rulings

(a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a voice vote as provided in section 852 of this title (article 52), beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them—

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

(3) that, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the United States.

(d) Subsections (a), (b), and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the ac-

cused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 54; Pub. L. 90–632, § 2(21), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
851(a)	50:626(a).	May 5, 1950, ch. 169, § 1 (Art. 51), 64 Stat. 124.
851(b)	50:626(b).	
851(c)	50:626(c).	

In subsection (a), the words ''in each case'' are omitted as surplusage.

In subsection (b), the word ''is'' is substituted for the words ''shall be'' in the second sentence. The word ''constitutes'' is substituted for the words ''shall constitute''. The word ''However,'' is substituted for the word ''but''. The word ''his'' is substituted for the words ''any such''. The words ''the ruling is'' are substituted for the words ''such ruling be''. The words ''voice vote'' are substituted for the words ''vote * * * viva voce''.

In subsection (c), the word ''must'' is substituted for the word ''shall'' in clause (2), since a condition is prescribed, not a command. The words ''United States'' are substituted for the word ''Government''.

AMENDMENTS

1968—Subsec. (a). Pub. L. 90–632, § 2(21)(A), limited the balloting on the question of challenges to courts-martial without military judges.

Subsec. (b). Pub. L. 90–632, § 2(21)(B), substituted ''military judge'' for ''law officer'' and inserted reference to the military judge's ruling upon challenges for cause when a military judge is part of a court-martial and reference to questions of law.

Subsec. (c). Pub. L. 90–632, § 2(21)(C), substituted ''military judge'' for ''law officer'' and made minor changes in phraseology eliminating the division between general and special court-martials.

Subsec. (d). Pub. L. 90–632, § 2(21)(D), added subsec. (d).

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 852. Art. 52. Number of votes required

(a)(1) No person may be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person may be convicted of any other offense, except as provided in section 845(b) of this title (article 45(b)) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person may be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this chapter expressly made punishable by death.

(2) No person may be sentenced to life imprisonment or to confinement for more than ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

(Aug. 10, 1956, ch. 1041, 70A Stat. 55; Pub. L. 90–632, § 2(22), Oct. 24, 1968, 82 Stat. 1340.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
852(a)	50:627(a).	May 5, 1950, ch. 169, § 1 (Art. 52), 64 Stat. 125.
852(b)	50:627(b)	
852(c)	50:627(c).	

In subsections (a) and (b), the word ''may'' is substituted for the word ''shall''.

In subsection (b)(2), the words ''for more than'' are substituted for the words ''in excess of''.

In subsection (c), the word ''disqualifies'' is substituted for the words ''shall disqualify''. The word ''is'' is substituted for the words ''shall be'' in the last two sentences.

AMENDMENTS

1968—Subsec. (a)(2). Pub. L. 90–632, § 2(22)(A), inserted reference to the exception provided in section 845(b) of this title (article 45(b)).

Subsec. (c). Pub. L. 90–632, § 2(22)(B), provided that a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by a vote of less than a majority vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 850a, 851 of this title.

§ 853. Art. 53. Court to announce action

A court-martial shall announce its findings and sentence to the parties as soon as determined.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
853	50:628.	May 5, 1950, ch. 169, § 1 (Art. 53), 64 Stat. 125.

The word ''A'' is substituted for the word ''Every''.

§854. Art. 54. Record of trial

(a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the President may prescribe.

(c)(1) A complete record of the proceedings and testimony shall be prepared—

(A) in each general court-martial case in which the sentence adjudged includes death, a dismissal, a discharge, or (if the sentence adjudged does not include a discharge) any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(B) in each special court-martial case in which the sentence adjudged includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months.

(2) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the President.

(d) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90–632, §2(23), Oct. 24, 1968, 82 Stat. 1340; Pub. L. 98–209, §6(c), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 106–398, §1 [[div. A], title V, §555(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
854(a)	50:629(a).	May 5, 1950, ch. 169, §1 (Art. 54), 64 Stat. 125.
854(b)	50:629(b).	
854(c)	50:629(c).	

In subsection (a), the word ''If'' is substituted for the words ''In case''. The words ''any of those'' are substituted for the word ''such'' in the last sentence.

In subsection (b), the words ''and the'' are substituted for the word ''which'' before the word ''record''. The words ''the matter and shall be authenticated in the manner required by such regulations as'' are substituted for the words ''such matter and be authenticated in such manner as may be required by regulations which''.

In subsection (c), the words ''it is'' are inserted before the word ''authenticated''.

AMENDMENTS

2000—Subsec. (c)(1)(B). Pub. L. 106–398 inserted '', confinement for more than six months, or forfeiture of pay for more than six months'' after ''bad-conduct discharge''.

1983—Subsec. (a). Pub. L. 98–209, §6(c)(1), struck out provision that if the proceedings had resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which could otherwise be adjudged by a special court-martial, the record had to contain such matters as might be prescribed by regulations of the President.

Subsec. (b). Pub. L. 98–209, §6(c)(2), substituted ''the record'' for ''the record shall contain the matter and''.

Subsecs. (c), (d). Pub. L. 98–209, §6(c)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (a). Pub. L. 90–632 provided for authentication of a record of trial by general court-martial by the signature of the military judge, for alternate methods of authentication if the military judge for specified reasons is unable to authenticate it, for authentication when a court-martial consists only of a military judge, and for summarized records of trial in specified cases.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §555(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of April 1, 2000, and shall apply with respect to charges referred on or after that date to trial by special court-martial.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SUBCHAPTER VIII—SENTENCES

Sec.	Art.	
855.	55.	Cruel and unusual punishments prohibited.
856.	56.	Maximum limits.
856a.	56a.	Sentence of confinement for life without eligibility for parole.
857.	57.	Effective date of sentences.
857a.	57a.	Deferment of sentences.
858.	58.	Execution of confinement.
858a.	58a.	Sentences: reduction in enlisted grade upon approval.
858b.	58b.	Sentences: forfeiture of pay and allowances during confinement.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, §581(a)(2), Nov. 18, 1997, 111 Stat. 1760, added item 856a.

1996—Pub. L. 104–106, div. A, title XI, §§1122(a)(2), 1123(b), Feb. 10, 1996, 110 Stat. 463, 464, added items 857a and 858b.

1960—Pub. L. 86–633, §1(2), July 12, 1960, 74 Stat. 468, added item 858a.

§855. Art. 55. Cruel and unusual punishments prohibited

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
855	50:636.	May 5, 1950, ch. 169, §1 (Art. 55), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 856. Art. 56. Maximum limits

The punishment which a court-martial may direct for an offense may not exceed such limits as the President may prescribe for that offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
856	50:637.	May 5, 1950, ch. 169, §1 (Art. 56), 64 Stat. 126.

The word ''may'' is substituted for the word ''shall''.

§ 856a. Art. 56a. Sentence of confinement for life without eligibility for parole

(a) For any offense for which a sentence of confinement for life may be adjudged, a court-martial may adjudge a sentence of confinement for life without eligibility for parole.

(b) An accused who is sentenced to confinement for life without eligibility for parole shall be confined for the remainder of the accused's life unless—

(1) the sentence is set aside or otherwise modified as a result of—

(A) action taken by the convening authority, the Secretary concerned, or another person authorized to act under section 860 of this title (article 60); or

(B) any other action taken during post-trial procedure and review under any other provision of subchapter IX;

(2) the sentence is set aside or otherwise modified as a result of action taken by a Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court; or

(3) the accused is pardoned.

(Added Pub. L. 105–85, div. A, title V, §581(a)(1), Nov. 18, 1997, 111 Stat. 1759.)

EFFECTIVE DATE

Section 581(b) of Pub. L. 105–85 provided that: ''Section 856a of title 10, United States Code (article 56a of the Uniform Code of Military Justice), as added by subsection (a), shall be applicable only with respect to an offense committed after the date of the enactment of this Act [Nov. 18, 1997].''

§ 857. Art. 57. Effective date of sentences

(a)(1) Any forfeiture of pay or allowances or reduction in grade that is included in a sentence of a court-martial takes effect on the earlier of—

(A) the date that is 14 days after the date on which the sentence is adjudged; or

(B) the date on which the sentence is approved by the convening authority.

(2) On application by an accused, the convening authority may defer a forfeiture of pay or allowances or reduction in grade that would otherwise become effective under paragraph (1)(A) until the date on which the sentence is approved by the convening authority. Such a deferment may be rescinded at any time by the convening authority.

(3) A forfeiture of pay or allowances shall be applicable to pay and allowances accruing on and after the date on which the sentence takes effect.

(4) In this subsection, the term ''convening authority'', with respect to a sentence of a court-martial, means any person authorized to act on the sentence under section 860 of this title (article 60).

(b) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement.

(c) All other sentences of courts-martial are effective on the date ordered executed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 56; Pub. L. 90–632, §2(24), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98–209, §5(f), Dec. 6, 1983, 97 Stat. 1400; Pub. L. 102–484, div. A, title X, §1064, Oct. 23, 1992, 106 Stat. 2505; Pub. L. 104–106, div. A, title XI, §§1121(a), 1123(a)(1), (2), Feb. 10, 1996, 110 Stat. 462–464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
857(a)	50:638(a).	May 5, 1950, ch. 169, §1 (Art. 57), 64 Stat. 126.
857(b)	50:638(b).	
857(c)	50:638(c).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''begins'' is substituted for the words ''shall begin''.

In subsection (c), the word ''are'' is substituted for the words ''shall become''.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, §1121(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title (article 60(c)).''

Subsecs. (d), (e). Pub. L. 104–106, §1123(a)(1), (2), redesignated subsecs. (d) and (e) as section 857a(a) and (b), respectively, of this title.

1992—Subsec. (e). Pub. L. 102–484 added subsec. (e).

1983—Subsec. (a). Pub. L. 98–209 substituted provision that no forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under section 860(c) of this title, for provision that whenever a sentence of a court-martial as lawfully adjudged and approved included a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture could apply to pay or allowances becoming due on or after the date the sentence was approved by the convening authority, and that no forfeiture could extend to any pay or allowances accrued before that date.

1968—Subsec. (a). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (b). Pub. L. 90–632 inserted reference to deferral of sentence of confinement.

Subsec. (d). Pub. L. 90–632 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1121(b) of Pub. L. 104–106 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 858b of this title.

§857a. Art. 57a. Deferment of sentences

(a) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

(b)(1) In any case in which a court-martial sentences a person referred to in paragraph (2) to confinement, the convening authority may defer the service of the sentence to confinement, without the consent of that person, until after the person has been permanently released to the armed forces by a State or foreign country referred to in that paragraph.

(2) Paragraph (1) applies to a person subject to this chapter who—

(A) while in the custody of a State or foreign country is temporarily returned by that State or foreign country to the armed forces for trial by court-martial; and

(B) after the court-martial, is returned to that State or foreign country under the authority of a mutual agreement or treaty, as the case may be.

(3) In this subsection, the term ''State'' includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(c) In any case in which a court-martial sentences a person to confinement and the sentence to confinement has been ordered executed, but in which review of the case under section 867(a)(2) of this title (article 67(a)(2)) is pending, the Secretary concerned may defer further service of the sentence to confinement while that review is pending.

(Added Pub. L. 90–632, §2(24), Oct. 24, 1968, 82 Stat. 1341, §857(d); amended Pub. L. 102–484, div. A, title X, §1064, Oct. 23, 1992, 106 Stat. 2505; renumbered §857a and amended Pub. L. 104–106, div. A, title XI, §1123(a), Feb. 10, 1996, 110 Stat. 463.)

AMENDMENTS

1996—Pub. L. 104–106 redesignated subsecs. (d) and (e) of section 857 of this title as subsecs. (a) and (b), respectively, of this section, added section catchline, in subsec. (b)(1), substituted ''defer'' for ''postpone'', and added subsec. (c).

1992—Subsec. (b), formerly §857(e). Pub. L. 102–484 added subsec. (e). See 1996 Amendment note above.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

§858. Art. 58. Execution of confinement

(a) Under such instructions as the Secretary concerned may prescribe, a sentence of confinement adjudged by a court-martial or other military tribunal, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use. Persons so confined in a penal or correctional institution not under the control of one of the armed forces are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District of Columbia, or place in which the institution is situated.

(b) The omission of the words ''hard labor'' from any sentence of a court-martial adjudging confinement does not deprive the authority executing that sentence of the power to require hard labor as a part of the punishment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
858(a)	50:639(a).	May 5, 1950, ch. 169, §1 (Art. 58), 64 Stat. 126.
858(b)	50:639(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Department concerned'', since the ''Department'' as an entity, cannot issue instructions. The word ''are'' is substituted for the words ''shall be''. The words ''of Columbia'' are inserted after ''District'' for clarity.

In subsection (b), the word ''from'' is substituted for the word ''in''. The words ''does not deprive'' are substituted for the words ''shall not be construed as depriving''.

§ 858a. Art. 58a. Sentences: reduction in enlisted grade upon approval

(a) Unless otherwise provided in regulations to be prescribed by the Secretary concerned, a court-martial sentence of an enlisted member in a pay grade above E–1, as approved by the convening authority, that includes—

(1) a dishonorable or bad-conduct discharge;

(2) confinement; or

(3) hard labor without confinement;

reduces that member to pay grade E–1, effective on the date of that approval.

(b) If the sentence of a member who is reduced in pay grade under subsection (a) is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (a)(1), (2), or (3), the rights and privileges of which he was deprived because of that reduction shall be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

(Added Pub. L. 86–633, §1(1), July 12, 1960, 74 Stat. 468.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 707 of this title.

§ 858b. Art. 58b. Sentences: forfeiture of pay and allowances during confinement

(a)(1) A court-martial sentence described in paragraph (2) shall result in the forfeiture of pay, or of pay and allowances, due that member during any period of confinement or parole. The forfeiture pursuant to this section shall take effect on the date determined under section 857(a) of this title (article 57(a)) and may be deferred as provided in that section. The pay and allowances forfeited, in the case of a general court-martial, shall be all pay and allowances due that member during such period and, in the case of a special court-martial, shall be two-thirds of all pay due that member during such period.

(2) A sentence covered by this section is any sentence that includes—

(A) confinement for more than six months or death; or

(B) confinement for six months or less and a dishonorable or bad-conduct discharge or dismissal.

(b) In a case involving an accused who has dependents, the convening authority or other person acting under section 860 of this title (article 60) may waive any or all of the forfeitures of pay and allowances required by subsection (a) for a period not to exceed six months. Any amount of pay or allowances that, except for a waiver under this subsection, would be forfeited shall be paid, as the convening authority or other person taking action directs, to the dependents of the accused.

(c) If the sentence of a member who forfeits pay and allowances under subsection (a) is set aside or disapproved or, as finally approved, does not provide for a punishment referred to in subsection (a)(2), the member shall be paid the pay and allowances which the member would have been paid, except for the forfeiture, for the period during which the forfeiture was in effect.

(Added Pub. L. 104–106, div. A, title XI, §1122(a)(1), Feb. 10, 1996, 110 Stat. 463; amended Pub. L. 104–201, div. A, title X, §1068(a)(1), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105–85, div. A, title X, §1073(a)(9), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''forfeiture of pay, or of pay and allowances, due that member'' for ''forfeiture of pay and (if adjudged by a general court-martial) allowances due that member'' in first sentence.

1996—Subsec. (a)(1). Pub. L. 104–201, §1068(a)(1)(B), substituted ''two-thirds of all pay'' for ''two-thirds of all pay and allowances'' in third sentence.

Pub. L. 104–201, §1068(a)(1)(A), which directed amendment of first sentence by inserting ''(if adjudged by a general court-martial)'' after ''all pay and'', was executed by making the insertion after ''of pay and'' in first sentence to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1068(a)(2) of Pub. L. 104–201 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as of April 1, 1996, and shall apply to any case in which a sentence is adjudged by a court-martial on or after that date.''

EFFECTIVE DATE

Section 1122(b) of Pub. L. 104–106 provided that: ''The section (article) added by the amendment made by subsection (a)(1) [this section] shall apply to a case in which a sentence is adjudged by a court-martial on or after the first day of the first month that begins at least 30 days after the date of the enactment of this Act [Feb. 10, 1996].''

SUBCHAPTER IX—POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

Sec.	Art.	
859.	59.	Error of law; lesser included offense.
860.	60.	Action by the convening authority.
861.	61.	Waiver or withdrawal of appeal.
862.	62.	Appeal by the United States.
863.	63.	Rehearings.
864.	64.	Review by a judge advocate.
865.	65.	Disposition of records.
866.	66.	Review by Court of Criminal Appeals.
867.	67.	Review by the Court of Appeals for the Armed Forces.
867a.	67a.	Review by the Supreme Court.
868.	68.	Branch offices.
869.	69.	Review in the office of the Judge Advocate General.
870.	70.	Appellate counsel.
871.	71.	Execution of sentence; suspension of sentence.
872.	72.	Vacation of suspension.
873.	73.	Petition for a new trial.
874.	74.	Remission and suspension.
875.	75.	Restoration.
876.	76.	Finality of proceedings, findings, and sentences.
876a.	76a.	Leave required to be taken pending review of certain court-martial convictions.
876b.	76b.	Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XI, §1133(a)(2), Feb. 10, 1996, 110 Stat. 466, added item 876b.

1994—Pub. L. 103–337, div. A, title IX, §924(c)(4)(C), Oct. 5, 1994, 108 Stat. 2832, substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in item

866 and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in item 867.

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(1), Nov. 5, 1990, 104 Stat. 1718, added item 867a.

1983—Pub. L. 98–209, §§ 5(a)(2), (b)(2), (c)(2), (h)(2), 6(d)(2), 7(a)(2), Dec. 6, 1983, 97 Stat. 1397, 1398, 1400–1402, substituted ''Post-trial Procedure and Review of Courts-Martial'' for ''Review of Courts-Martial'' as subchapter heading, ''Action by the convening authority'' for ''Initial action on the record'' in item 860, ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' in item 861, ''Appeal by the United States'' for ''Reconsideration and revision'' in item 862, ''Review by a judge advocate'' for ''Approval by the convening authority'' in item 864, and ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in item 865.

1981—Pub. L. 97–81, § 2(c)(2), Nov. 20, 1981, 95 Stat. 1087, added item 876a.

1968—Pub. L. 90–632, § 2(25), Oct. 24, 1968, 82 Stat. 1341, substituted ''Court of Military Review'' for ''board of review'' in item 866 (article 66).

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 856a of this title.

§ 859. Art. 59. Error of law; lesser included offense

(a) A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
859(a)	50:646(a).	May 5, 1950, ch. 169, § 1 (Art. 59), 64 Stat. 127.
859(b)	50:646(b).	

The word ''may'' is substituted for the word ''shall''.

§ 860. Art. 60. Action by the convening authority

(a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b)(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. Any such submission shall be in writing. Except in a summary court-martial case, such a submission shall be made within 10 days after the accused has been given an authenticated record of trial and, if applicable, the recommendation of the staff judge advocate or legal officer under subsection (d). In a summary court-martial case, such a submission shall be made within seven days after the sentence is announced.

(2) If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the applicable period under paragraph (1) for not more than an additional 20 days.

(3) In a summary court-martial case, the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph (1).

(4) The accused may waive his right to make a submission to the convening authority under paragraph (1). Such a waiver must be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submission under this subsection shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c)(1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the Secretary concerned, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the Secretary concerned, such action may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may—

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of his staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal officer shall include such matters as the President may prescribe by regulation and shall be served on the accused, who may submit any matter in response under subsection (b). Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e)(1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or incon-

sistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision—

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subsection disapproves the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 57; Pub. L. 98–209, §5(a)(1), Dec. 6, 1983, 97 Stat. 1395; Pub. L. 99–661, div. A, title VIII, §806(a)–(c), Nov. 14, 1986, 100 Stat. 3908, 3909; Pub. L. 104–106, div. A, title XI, §1132, Feb. 10, 1996, 110 Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
860	50:647.	May 5, 1950, ch. 169, §1 (Art. 60), 64 Stat. 127.

The word ''a'' is substituted for the word ''every''. The word ''by'' before the words ''any officer'' is omitted as surplusage. The word ''person'' is substituted for the word ''officer'' before the words ''who convened'', since, under sections 823 and 824 of this title (articles 23 and 24), noncommissioned officers who are ''officers in charge'' may convene special and summary courts-martial.

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104–106 inserted after first sentence ''Any such submission shall be in writing.''

1986—Subsec. (b)(1). Pub. L. 99–661, §806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Within 30 days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within 20 days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for good cause, may extend the period—

''(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional 20 days; and

''(B) in the case of all other courts-martial, for not more than an additional 10 days.''

Subsec. (b)(2). Pub. L. 99–661, §806(a)(2), (3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–661, §806(a)(1), (2), redesignated par. (2) as (3), inserted a comma after ''case'', and struck out former par. (3) which read as follows: ''In no event shall the accused in any general or special court-martial case have less than a seven-day period after the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph (1). The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional 10 days.''

Subsec. (c)(2). Pub. L. 99–661, §806(b), struck out ''and, if applicable, under subsection (d),'' after ''under subsection (b)''.

Subsec. (d). Pub. L. 99–661, §806(c), substituted ''who may submit any matter in response under subsection (b)'' for ''who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional 20 days.''

1983—Pub. L. 98–209 amended section generally, substituting ''Action by the convening authority'' for ''Initial action on the record'' as section catchline, and, in text, substituting new provision for provision that after a trial by court-martial the record had to be forwarded to the convening authority, and action thereon could be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any officer exercising general court-martial jurisdiction.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 806(c) [(d)] of title VIII of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply in cases in which the sentence is adjudged on or after the effective date of this title.''

Title VIII of Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 838, 856a, 857, 858b, 861, 864, 869, 871, 876a, 1059, 1408 of this title.

§ 861. Art. 61. Waiver or withdrawal of appeal

(a) In each case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)), except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within 10 days after the action under sec-

tion 860(c) of this title (article 60(c)) is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than 30 days.

(b) Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 866 or 869(a) of this title (article 66 or 69(a)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(b)(1), Dec. 6, 1983, 97 Stat. 1397.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
861	50:648.	May 5, 1950, ch. 169, § 1 (Art. 61), 64 Stat. 127.

The word ''each'' is substituted for the word ''every''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Waiver or withdrawal of appeal'' for ''Same—General court-martial records'' as section catchline, and, in text, substituting provisions relating to waiver or withdrawal of appeal for provisions relating to initial action by the convening authority on general court-martial records.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 865, 866, 869, 871 of this title.

§ 862. Art. 62. Appeal by the United States

(a)(1) In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal the following (other than an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification):

(A) An order or ruling of the military judge which terminates the proceedings with respect to a charge or specification.

(B) An order or ruling which excludes evidence that is substantial proof of a fact material in the proceeding.

(C) An order or ruling which directs the disclosure of classified information.

(D) An order or ruling which imposes sanctions for nondisclosure of classified information.

(E) A refusal of the military judge to issue a protective order sought by the United States to prevent the disclosure of classified information.

(F) A refusal by the military judge to enforce an order described in subparagraph (E) that has previously been issued by appropriate authority.

(2) An appeal of an order or ruling may not be taken unless the trial counsel provides the military judge with written notice of appeal from the order or ruling within 72 hours of the order or ruling. Such notice shall include a certification by the trial counsel that the appeal is not taken for the purpose of delay and (if the order or ruling appealed is one which excludes evidence) that the evidence excluded is substantial proof of a fact material in the proceeding.

(3) An appeal under this section shall be diligently prosecuted by appellate Government counsel.

(b) An appeal under this section shall be forwarded by a means prescribed under regulations of the President directly to the Court of Criminal Appeals and shall, whenever practicable, have priority over all other proceedings before that court. In ruling on an appeal under this section, the Court of Criminal Appeals may act only with respect to matters of law, notwithstanding section 866(c) of this title (article 66(c)).

(c) Any period of delay resulting from an appeal under this section shall be excluded in deciding any issue regarding denial of a speedy trial unless an appropriate authority determines that the appeal was filed solely for the purpose of delay with the knowledge that it was totally frivolous and without merit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(c)(1), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XI, § 1141(a), Feb. 10, 1996, 110 Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
862(a)	50:649(a).	May 5, 1950, ch. 169, § 1 (Art. 62), 64 Stat. 127.
862(b)	50:649(b).	

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In a trial by court-martial in which a military judge presides and in which a punitive discharge may be adjudged, the United States may appeal an order or ruling of the military judge which terminates the proceedings with respect to a charge or specification or which excludes evidence that is substantial proof of a fact material in the proceeding. However, the United States may not appeal an order or ruling that is, or that amounts to, a finding of not guilty with respect to the charge or specification.''

1994—Subsec. (b). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in two places.

1983—Pub. L. 98–209 amended section generally, substituting ''Appeal by the United States'' for ''Reconsideration and revision'' as section catchline, and, in text, substituting provisions relating to appeals by the United States for provisions relating to the convening authority returning the record to the court for reconsideration and appropriate action.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that

date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 863. Art. 63. Rehearings

Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be approved, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the approved sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 5(d), Dec. 6, 1983, 97 Stat. 1398; Pub. L. 102–484, div. A, title X, § 1065, Oct. 23, 1992, 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
863(a)	50:650(a).	May 5, 1950, ch. 169, § 1 (Art. 63), 64 Stat. 127.
863(b)	50:650(b).	

In subsection (a), the words ''In such a'' are substituted for the words ''in which''.

In subsection (b), the word ''Each'' is substituted for the word ''Every''. The word ''may'' is substituted for the word ''shall'' in the second sentence.

AMENDMENTS

1992—Pub. L. 102–484 substituted ''approved'' for ''imposed'' in second sentence and inserted ''approved'' before last reference to ''sentence'' in third sentence.

1983—Pub. L. 98–209 struck out subsec. (a) which provided that if the convening authority disapproved the findings and sentence of a court-martial he could, except where there was lack of sufficient evidence in the record to support the findings, order a rehearing, stating the reasons for disapproval, and that if he disapproved the findings without reordering a rehearing, he had to dismiss the charges, and redesignated former subsec. (b) as entire section, and, as so redesignated, inserted ''under this chapter'' after ''Each rehearing'', and inserted provision that if the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

§ 864. Art. 64. Review by a judge advocate

(a) Each case in which there has been a finding of guilty that is not reviewed under section 866 or 869(a) of this title (article 66 or 69(a)) shall be reviewed by a judge advocate under regulations of the Secretary concerned. A judge advocate may not review a case under this subsection if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the following:

(1) Conclusions as to whether—

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subsection (b), a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subsection (a) shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if—

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under section 860(c) of this title (article 60(c)) extends to dismissal, a bad-conduct or dishonorable discharge, or confinement for more than six months; or

(3) such action is otherwise required by regulations of the Secretary concerned.

(c)(1) The person to whom the record of trial and related documents are sent under subsection (b) may—

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate in the judge advocate's review under subsection (a) is

that corrective action is required as a matter of law and if the person required to take action under subsection (b) does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the Judge Advocate General for review under section 869(b) of this title (article 69(b)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 58; Pub. L. 98–209, § 7(a)(1), Dec. 6, 1983, 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
864	50:651.	May 5, 1950, ch. 169, § 1 (Art. 64), 64 Stat. 128.

The word ''may'' is substituted for the word ''shall''. The word ''is'' is substituted for the words ''shall constitute''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Review by a judge advocate'' for ''Approval by the convening authority'' in section catchline, and, in text, substituting provisions relating to review by a judge advocate for provision that in acting on the findings and sentence of a court-martial, the convening authority could approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he found correct in law and fact and as he in his discretion determined should be approved, and that unless he indicated otherwise, approval of the sentence was approval of the findings and sentence.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 871 of this title.

§ 865. Art. 65. Disposition of records

(a) In a case subject to appellate review under section 866 or 869(a) of this title (article 66 or 69(a)) in which the right to such review is not waived, or an appeal is not withdrawn, under section 861 of this title (article 61), the record of trial and action thereon shall be transmitted to the Judge Advocate General for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the Secretary concerned may prescribe by regulation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90–179, § 1(6), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, § 2(26), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 96–513, title V, § 511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–209, § 6(d)(1), Dec. 6, 1983, 97 Stat. 1401.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
865(a)	50:652(a).	May 5, 1950, ch. 169, § 1 (Art. 65), 64 Stat. 128.
865(b)	50:652(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
865(c)	50:652(c).	

In subsection (b), the word ''If'' is substituted for the word ''Where''.

In subsections (a) and (b), the words ''send'' and ''sent'' are substituted for the words ''forward'' and ''forwarded'', respectively.

In subsection (c), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

1983—Pub. L. 98–209 amended section generally, substituting ''Disposition of records'' for ''Disposition of records after review by the convening authority'' in section catchline, and, in text, substituting provisions relating to disposition of records for prior provisions relating to disposition of records that required when the convening authority had taken final action in a general court-martial case, he had to send the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General, required that where sentences of special courts-martial included a bad-conduct discharge, the record had to be sent for review either to the officer exercising general court-martial jurisdiction over the command to be reviewed or directly to the appropriate Judge Advocate General to be reviewed by a Court of Military Review, and required that all other special and summary court-martial records had to be reviewed by a judge advocate of the Army, Navy, Air Force, or Marine Corps, or a law specialist or lawyer of the Coast Guard or Department of Transportation, and had to be transmitted and disposed of as the Secretary concerned might prescribe by regulation.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1968—Subsec. (b). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–179 inserted reference to judge advocate of the Marine Corps and substituted reference to judge advocate of the Navy for reference to law specialist of the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 866. Art. 66. Review by Court of Criminal Appeals

(a) Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such

panel shall be composed of not less than three appellate military judges. For the purpose of reviewing court-martial cases, the court may sit in panels or as a whole in accordance with rules prescribed under subsection (f). Any decision of a panel may be reconsidered by the court sitting as a whole in accordance with such rules. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or of the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. The chief judge shall determine on which panels of the court the appellate judges assigned to the court will serve and which military judge assigned to the court will act as the senior judge on each panel.

(b) The Judge Advocate General shall refer to a Court of Criminal Appeals the record in each case of trial by court-martial—

(1) in which the sentence, as approved, extends to death, dismissal of a commissioned officer, cadet, or midshipman, dishonorable or bad-conduct discharge, or confinement for one year or more; and

(2) except in the case of a sentence extending to death, the right to appellate review has not been waived or an appeal has not been withdrawn under section 861 of this title (article 61).

(c) In a case referred to it, the Court of Criminal Appeals may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Court of Criminal Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President, the Secretary concerned, the Court of Appeals for the Armed Forces, or the Supreme Court, instruct the convening authority to take action in accordance with the decision of the Court of Criminal Appeals. If the Court of Criminal Appeals has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(f) The Judge Advocates General shall prescribe uniform rules of procedure for Courts of Criminal Appeals and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the offices of the Judge Advocates General and by Courts of Criminal Appeals.

(g) No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty.

(h) No member of a Court of Criminal Appeals shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 59; Pub. L. 90–632, § 2(27), Oct. 24, 1968, 82 Stat. 1341; Pub. L. 98–209, §§ 7(b), (c), 10(c)(1), Dec. 6, 1983, 97 Stat. 1402, 1406; Pub. L. 103–337, div. A, title IX, § 924(b)(2), (c)(1), (4)(A), Oct. 5, 1994, 108 Stat. 2831, 2832; Pub. L. 104–106, div. A, title XI, § 1153, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
866(a)	50:653(a).	May 5, 1950, ch. 169, § 1 (Art. 66), 64 Stat. 128.
866(b)	50:653(b).	
866(c)	50:653(c).	
866(d)	50:653(d).	
866(e)	50:653(e).	
866(f)	50:653(f).	

In subsection (a), the word ''Each'' is substituted for the words ''The * * * of each of the armed forces''. The word ''must'' is substituted for the word ''shall'' after the word ''whom'', since a condition is prescribed, not a command. The words ''of the United States'' are omitted as surplusage.

In subsections (a) and (b), the word ''commissioned'' is inserted before the word ''officer''.

In subsection (c), the word ''may'' is substituted for the word ''shall'' and for the words ''shall have authority to''.

In subsection (e), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (f), the words ''of the armed forces'' and ''proceedings in and before'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (f). Pub. L. 104–106 substituted ''Courts of Criminal Appeals'' for ''Courts of Military Review'' in two places.

1994—Pub. L. 103–337, § 924(c)(4)(A), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' in section catchline.

Pub. L. 103–337, § 924(b)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

Pub. L. 103–337, § 924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in subsec. (e).

1983—Subsec. (a). Pub. L. 98–209, § 7(b), inserted provision that any decision of a panel may be reconsidered by the court sitting as a whole in accordance with the rules.

Subsec. (b). Pub. L. 98–209, § 7(c), amended subsec. (b) generally, designating existing provisions as par. (1), struck out provision extending applicability of provisions to sentences affecting a general or flag officer, and added par. (2).

Subsec. (e). Pub. L. 98–209, § 10(c)(1), substituted ''the Court of Military Appeals, or the Supreme Court'' for ''or the Court of Military Appeals''.

1968—Subsec. (a). Pub. L. 90–632, §2(27)(A), (B), substituted ''Court of Military Review'' for ''board of review'' in section catchline and, in subsec. (a), substituted ''Court of Military Review'' for ''board of review'' as name of reviewing body established by each Judge Advocate General, and inserted provisions setting out procedures for such Courts of Military Review, their composition and functions.

Subsecs. (b) to (e). Pub. L. 90–632, §2(27)(C), substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

Subsec. (f). Pub. L. 90–632, §2(27)(D), substituted ''Courts of Military Review'' for ''boards of review'' in two places.

Subsecs. (g), (h). Pub. L. 90–632, §2(27)(E), added subsecs. (g) and (h).

CHANGE OF NAME

Section 924(b)(1) of Pub. L. 103–337 provided that: ''Each Court of Military Review shall hereafter be known and designated as a Court of Criminal Appeals.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendments by section 7(b), (c) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

STATUTORY REFERENCES TO BOARD OF REVIEW DEEMED REFERENCES TO COURT OF MILITARY REVIEW

Section 3(b) of Pub. L. 90–632 provided that: ''Whenever the term board of review is used, with reference to or in connection with the appellate review of courts-martial cases, in any provision of Federal law (other than provisions amended by this Act) [see Short Title of 1968 Amendment note under section 801 of this title] or in any regulation, document, or record of the United States, such term shall be deemed to mean Court of Military Review [now Court of Criminal Appeals].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 861, 862, 864, 865, 869 of this title.

§867. Art. 67. Review by the Court of Appeals for the Armed Forces

(a) The Court of Appeals for the Armed Forces shall review the record in—

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

(b) The accused may petition the Court of Appeals for the Armed Forces for review of a decision of a Court of Criminal Appeals within 60 days from the earlier of—

(1) the date on which the accused is notified of the decision of the Court of Criminal Appeals; or

(2) the date on which a copy of the decision of the Court of Criminal Appeals, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

The Court of Appeals for the Armed Forces shall act upon such a petition promptly in accordance with the rules of the court.

(c) In any case reviewed by it, the Court of Appeals for the Armed Forces may act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Court of Criminal Appeals. In a case which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces, that action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, that action need be taken only with respect to issues specified in the grant of review. The Court of Appeals for the Armed Forces shall take action only with respect to matters of law.

(d) If the Court of Appeals for the Armed Forces sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) After it has acted on a case, the Court of Appeals for the Armed Forces may direct the Judge Advocate General to return the record to the Court of Criminal Appeals for further review in accordance with the decision of the court. Otherwise, unless there is to be further action by the President or the Secretary concerned, the Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the court has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(Aug. 10, 1956, ch. 1041, 70A Stat. 60; Pub. L. 88–426, title IV, §403(j), Aug. 14, 1964, 78 Stat. 434; Pub. L. 90–340, §1, June 15, 1968, 82 Stat. 178; Pub. L. 90–632, §2(28), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 96–579, §12(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 97–81, §5, Nov. 20, 1981, 95 Stat. 1088; Pub. L. 97–295, §1(12), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–209, §§7(d), 9(a), 10(c)(2), 13(d), Dec. 6, 1983, 97 Stat. 1402, 1404, 1406, 1408; Pub. L. 100–26, §7(a)(2), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–456, div. A, title VII, §722(a), (c), Sept. 29, 1988, 102 Stat. 2002, 2003; Pub. L. 101–189, div. A, title XIII, §1301(a), Nov. 29, 1989, 103 Stat. 1569; Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), (4)(B), Oct. 5, 1994, 108 Stat. 2831, 2832.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
867(a)	50:654(a).	May 5, 1950, ch. 169, §1 (Art. 67), 64 Stat. 129; Mar. 2, 1955, ch. 9, §1(i), 69 Stat. 10.
867(b)	50:654(b).	
867(c)	50:654(c).	
867(d)	50:654(d).	
867(e)	50:654(e).	
867(f)	50:654(f).	
867(g)	50:654(g).	

In subsection (a)(1), the word ''is'' is substituted for the words ''is hereby established''. The words ''all'' and ''which shall be'' are omitted as surplusage. The word ''consists'' is substituted for the words ''shall consist''. The word ''civil'' is substituted for the word ''civilian''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''. The word ''is'' is substituted for the word ''shall'' before the words ''any person''. The words ''is entitled to'' are substituted for the words ''shall receive''. The word ''is'' is substituted for the words ''shall be'' in the fourth sentence. The word ''may'' is substituted for the words ''shall have power to * * * to''. The word ''does'' is substituted for the word ''shall'' in the next to the last sentence. In the last sentence, the words ''is entitled * * * to'' are substituted for the word ''shall''. The word ''outside'' is substituted for the words ''at a place other than his official station. The official station of such judges for such purpose shall be''. The words ''also'' and ''actually'' are omitted as surplusage.

In subsection (a)(2), the words ''February 28, 1951,'' are substituted for the words ''the effective date of this subdivision''. The word ''shall'' in the first sentence, and the word ''shall'' before the word ''expire'' in the second sentence, are omitted as surplusage. The word ''before'' is substituted for the words ''prior to''. The word ''may'' is substituted for the word ''shall'' before the words ''be appointed''.

In subsection (a)(3), the word ''for'' is substituted for the words ''upon the ground of''.

In subsection (b), the words ''the following cases'' are omitted as surplusage.

In subsections (b) and (d), the word ''sent'' is substituted for the word ''forwarded''.

In subsection (c), the word ''when'' is inserted after the word ''time''. The words ''a grant of'' are omitted as surplusage.

In subsection (d), the word ''may'' is substituted for the word ''shall'' in the first sentence.

In subsection (f), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (g), the words ''of the armed forces'' are omitted as surplusage. The words ''policies as to sentences'' are substituted for the words ''sentence policies''. The word ''considered'' is substituted for the word ''deemed''. The words ''Secretaries of the military departments, and the Secretary of the Treasury'' are substituted for the words ''Secretaries of the Departments''.

1982 ACT

In subsection (d), the words ''Court of Military Review'' are substituted for ''board of review'' because of section 3(b) of the Military Justice Act of 1968 (Pub. L. 90–632, Oct. 24, 1968, 82 Stat. 1343).

The change in subsection (g) reflects the transfer of functions from the Secretary of the Treasury to the Secretary of Transportation under 49:1655(b).

AMENDMENTS

1994—Pub. L. 103–337, §924(c)(4)(B), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in section catchline.

Pub. L. 103–337, §924(c)(2), substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing in subsecs. (a) to (c) and (e).

Pub. L. 103–337, §924(c)(1), substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1989—Pub. L. 101–189 redesignated subsecs. (b) to (f) as (a) to (e), respectively, struck out former subsec. (a) which related to establishment of the United States Court of Military Appeals, and appointment, removal, allowances and compensation, etc., of judges of such court, struck out subsec. (g) which related to a committee required to make annual comprehensive surveys of the operation of this chapter, struck out subsec. (h) which related to review of decisions of the Court of Military Appeals by the Supreme Court, and struck out subsec. (i) which related to annuities for judges and former or retired judges, and survivors and former spouses of judges and former judges.

1988—Subsec. (a)(4). Pub. L. 100–456, §722(c), inserted ''or an annuity under subsection (i) or subchapter III of chapter 83 or chapter 84 of title 5'' after ''retired pay'' in two places.

Subsec. (i). Pub. L. 100–456, §722(a), added subsec. (i).

1987—Subsec. (g)(1). Pub. L. 100–26 substituted ''the Staff Judge Advocate to the Commandant of the Marine Corps'' for ''the Director, Judge Advocate Division, Headquarters, United States Marine Corps''.

1983—Subsec. (a)(3). Pub. L. 98–209, §13(d), inserted ''Circuit'' after ''District of Columbia''.

Subsec. (b)(1). Pub. L. 98–209, §7(d), struck out ''affects a general or flag officer or'' before ''extends to death''.

Subsec. (g). Pub. L. 98–209, §9(a), designated existing provisions as par. (1), substituted ''A committee consisting of the judges of the Court of Military Appeals, the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, and two members of the public appointed by the Secretary of Defense shall meet at least annually. The committee shall make an annual comprehensive survey of the operation of this chapter. After each such survey, the committee shall report'' for ''The Court of Military Appeals and the Judge Advocates General shall meet annually to make a comprehensive survey of the operation of this chapter and report'', and added pars. (2) and (3).

Subsec. (h). Pub. L. 98–209, §10(c)(2), added subsec. (h).

1982—Subsec. (d). Pub. L. 97–295, §1(12)(A), substituted ''Court of Military Review'' for ''board of review'' after ''incorrect in law by the''.

Subsec. (g). Pub. L. 97–295, §1(12)(B), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' after ''military departments, and the''.

1981—Subsec. (c). Pub. L. 97–81 substituted provisions authorizing the accused to petition the Court of Military Appeals for review of a decision of a Court of Military Review within 60 days from the earlier of (1) the date on which the accused is notified of the decision of the Court of Military Review, or (2) the date on which a copy of the decision of the Court of Military Review, after being served on appellate counsel of record for the accused (if any), is deposited in the United States mails for delivery by first-class certified mail to the accused at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record, and directing the Court of Military Appeals to act upon such a petition promptly in accordance with the rules of the court for provision which had given the accused 30 days from the time when he was notified of the decision of a board of review to petition the Court of Military Appeals for review and which had directed the court to act upon such a petition within 30 days of the receipt thereof.

1980—Subsec. (a)(1). Pub. L. 96–579 struck out third sentence prescribing expiration of terms of office of all successors of judges of the Court of Military Appeals serving on June 15, 1968, fifteen years after expiration of term of their predecessors subject to requirement that any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed should be appointed only for the unexpired term of the predecessor.

1968—Subsec. (a)(1). Pub. L. 90–340 changed the name of the Court of Military Appeals to the United States

Court of Military Appeals, and established it under Article I of the United States Constitution, provided that the terms of office of all successors of the judges serving on June 15, 1968, shall expire 15 years after the expiration of the terms for which their predecessors were appointed but that any judge appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed only for the unexpired term of his predecessor, substituted provisions that each judge is entitled to the same salary and travel allowances as are judges of the United States Court of Appeals for provisions that entitled each judge to a salary of $33,000 a year and a travel and maintenance allowance, for expenses incurred while attending court or transacting official business outside the District of Columbia, not to exceed $15 a day, and provided for the precedence of the chief judge, and of the other judges based on their seniority.

Subsec. (a)(2). Pub. L. 90–340 redesignated former par. (3) as (2) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals. Provisions of former par. (2) pertaining to the terms of office of judges were placed in par. (1). Provisions of former par. (2) pertaining to the terms of office of the three judges first taking office after February 28, 1951, and expiring, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966, were struck out.

Subsec. (a)(3). Pub. L. 90–340 redesignated former par. (4) as (3) and changed the name of the Court of Military Appeals to the United States Court of Military Appeals, and provided that a judge appointed to fill a temporary vacancy due to illness or disability may only be a judge of the Court of Appeals for the District of Columbia. Former par. (3) redesignated (2).

Subsec. (a)(4). Pub. L. 90–340 added par. (4). Former par. (4) redesignated (3).

Subsecs. (b), (f). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

1964—Subsec. (a)(1). Pub. L. 88–426 increased salary of judges from $25,500 to $33,000.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 722(d) of Pub. L. 100–456 provided that: ''Subsection (i) of section 867 of title 10, United States Code, as added by subsection (a), shall apply with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose term of service on such court ends on or after the date of the enactment of this Act [Sept. 29, 1988] and to the survivors of such judges.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 9(a) and 13(d) Pub. L. 98–209 effective Dec. 6, 1983, and amendment by sections 7(d) and 10(c)(2) of Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but amendment by section 7(d) of Pub. L. 98–209 not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 to take effect at end of 60-day period beginning on Nov. 20, 1981, and to apply to any accused with respect to a Court of Military Review [now Court of Criminal Appeals] decision that is dated on or after that date, see section 7(a), (b)(5) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

For effective date of amendment by Pub. L. 88–426, see section 501 of Pub. L. 88–426.

DEADLINE FOR ESTABLISHMENT OF SURVIVOR PROGRAM

Section 722(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense shall establish the program required by paragraph (4) of section 867(i) of title 10, United States Code, as added by subsection (a), not later than one year after the date of the enactment of this Act [Sept. 29, 1988].''

COMMISSION TO STUDY AND MAKE RECOMMENDATIONS CONCERNING SENTENCING AUTHORITY, JURISDICTION, TENURE, AND RETIREMENT OF MILITARY JUDGES; ESTABLISHMENT; COMPOSITION; REPORT TO CONGRESSIONAL COMMITTEES

Section 9(b) of Pub. L. 98–209, as amended by Pub. L. 98–525, title XV, §1521, Oct. 19, 1984, 98 Stat. 2628, directed Secretary of Defense to establish a commission to study the sentencing authority, jurisdiction, tenure, and retirement system of military judges, and to report, not later than Dec. 15, 1984, its findings and recommendations to committees of Congress and to the committee established under former section 867(g) of this title.

TERMS OF OFFICE OF JUDGES OF UNITED STATES COURT OF MILITARY APPEALS

Section 12(b) of Pub. L. 96–579 provided that the term of office of a judge of United States Court of Military Appeals serving on such court on Dec. 23, 1980, expire (1) on the date the term of such judge would have expired under the law in effect on the day before Dec. 23, 1980, or (2) ten years after the date on which such judge took office as a judge of the United States Court of Military Appeals, whichever is later.

CONTINUATION OF POWERS AND JURISDICTION OF COURT OF MILITARY APPEALS; STATUS OF JUDGES

Section 2 of Pub. L. 90–340 provided that: ''The United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] established under this Act [which amended subsec. (a) of this section] is a continuation of the Court of Military Appeals as it existed prior to the effective date of this Act [June 15, 1968], and no loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Court of Military Appeals before the effective date of this Act shall result. A judge of the Court of Military Appeals so serving on the day before the effective date of this Act shall, for all purposes, be a judge of the United States Court of Military Appeals under this Act.''

SALARY INCREASES

1987—Salaries of judges increased to $95,000 per annum, on recommendation of President, see note set out under section 358 of Title 2, The Congress.

1977—Salaries of judges increased to $57,500 per annum, on recommendation of President, see note set out under section 358 of Title 2.

1969—Salaries of judges increased from $33,000 to $42,500 per annum, commencing first day of pay period which begins after Feb. 14, 1969, on recommendation of President, see note set out under section 358 of Title 2.

EXECUTIVE ORDER NO. 12063

Ex. Ord. No. 12063, June 5, 1978, 43 F.R. 24659, which related to the United States Court of Military Appeals Nominating Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707, 857a, 869 of this title; title 28 section 1259.

§ 867a. Art. 67a. Review by the Supreme Court

(a) Decisions of the United States Court of Appeals for the Armed Forces are subject to review by the Supreme Court by writ of certiorari as provided in section 1259 of title 28. The Supreme Court may not review by a writ of certiorari under this section any action of the Court of Appeals for the Armed Forces in refusing to grant a petition for review.

(b) The accused may petition the Supreme Court for a writ of certiorari without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

(Added Pub. L. 101–189, div. A, title XIII, § 1301(b), Nov. 29, 1989, 103 Stat. 1569; amended Pub. L. 103–337, div. A, title IX, § 924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' in two places.

§ 868. Art. 68. Branch offices

The Secretary concerned may direct the Judge Advocate General to establish a branch office with any command. The branch office shall be under an Assistant Judge Advocate General who, with the consent of the Judge Advocate General, may establish a Court of Criminal Appeals with one or more panels. That Assistant Judge Advocate General and any Court of Criminal Appeals established by him may perform for that command under the general supervision of the Judge Advocate General, the respective duties which the Judge Advocate General and a Court of Criminal Appeals established by the Judge Advocate General would otherwise be required to perform as to all cases involving sentences not requiring approval by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90–632, § 2(29), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
868	50:655.	May 5, 1950, ch. 169, § 1 (Art. 68), 64 Stat. 130.

The word ''considers'' is substituted for the word ''deems''. The word ''may'' is substituted for the words ''shall be empowered to''. The word ''respective'' is inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1968—Pub. L. 90–632 substituted the Secretary concerned for the President as the individual authorized to direct the Judge Advocate General to establish a branch office under an Assistant Judge Advocate General with any command and substituted ''Court of Military Review'' for ''board of review'' as the name of the body established by the Assistant Judge Advocate General in charge of the branch office.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 869. Art. 69. Review in the office of the Judge Advocate General

(a) The record of trial in each general court-martial that is not otherwise reviewed under section 866 of this title (article 66) shall be examined in the office of the Judge Advocate General if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 861 of this title (article 61). If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the Judge Advocate General may modify or set aside the findings or sentence or both.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subsection (a) or under section 866 of this title (article 66) may be modified or set aside, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the office of the Judge Advocate General by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under section 860(c) of this title (article 60(c)), unless the accused establishes good cause for failure to file within that time.

(c) If the Judge Advocate General sets aside the findings or sentence, he may, except when the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed. If the Judge Advocate General orders a rehearing but the convening authority finds a rehearing impractical, the convening authority shall dismiss the charges.

(d) A Court of Criminal Appeals may review, under section 866 of this title (article 66)—

(1) any court-martial case which (A) is subject to action by the Judge Advocate General under this section, and (B) is sent to the Court of Criminal Appeals by order of the Judge Advocate General; and

(2) any action taken by the Judge Advocate General under this section in such case.

(e) Notwithstanding section 866 of this title (article 66), in any case reviewed by a Court of Criminal Appeals under this section, the Court may take action only with respect to matters of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 61; Pub. L. 90–632, § 2(30), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 97–81, § 6, Nov. 20, 1981, 95 Stat. 1089; Pub. L. 98–209, § 7(e)(1), Dec. 6, 1983, 97 Stat. 1402; Pub. L. 101–189, div. A, title XIII, §§ 1302(a), 1304(b)(1), Nov. 29, 1989, 103 Stat. 1576, 1577; Pub. L. 103–337, div. A, title IX, § 924(c)(2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
869	50:656.	May 5, 1950, ch. 169, §1 (Art. 69), 64 Stat. 130.

The word ''may'' is substituted for the word ''will''. The word ''under'' is substituted for the words ''pursuant to the provisions of''.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' wherever appearing.

1989—Subsec. (a). Pub. L. 101–189, §1304(b)(1), which directed amendment of subsec. (a) by striking ''section 867(b)(2) of this title (article 67(b)(2))'' in the third sentence and inserting in lieu thereof ''section 867(a)(2) of this title (article 67(a)(2))'', could not be executed because of the intervening amendment by Pub. L. 101–189, §1302(a)(1), which struck out the third sentence, see below.

Pub. L. 101–189, §1302(a)(1), struck out the third sentence, which read as follows: ''If the Judge Advocate General so directs, the record shall be reviewed by a Court of Military Review under section 866 of this title (article 66), but in that event there may be no further review by the Court of Military Appeals except under section 867(b)(2) of this title (article 67(b)(2)).''

Subsecs. (d), (e). Pub. L. 101–189, §1302(a)(2), added subsecs. (d) and (e).

1983—Pub. L. 98–209 amended section generally. Prior to amendment section provided that every record of trial by general court-martial, in which there had been a finding of guilty and a sentence, the appellate review of which was not otherwise provided for by section 866 of this title, was to be examined in the office of the Judge Advocate General; that if any part of the findings or sentence was found unsupported in law, or if the Judge Advocate General so directed, the record was to be reviewed by a board of review in accordance with section 866 of this title, but in that event there could be no further review by the Court of Military Appeals except under section 867(b)(2) of this title, that notwithstanding section 876 of this title, the findings or sentence, or both, in a court-martial case which had been finally reviewed, but had not been reviewed by a Court of Military Review could be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused; and that when such a case was considered upon application of the accused, the application had to be filed in the Office of the Judge Advocate General by the accused before: (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence was approved by the convening authority or, in a special court-martial case which required action under section 865(b) of this title, the officer exercising general court-martial jurisdiction, whichever was later, unless the accused established good cause for failure to file within that time.

1981—Pub. L. 97–81 inserted provision that, when a case is considered upon application of the accused, the application must be filed in the Office of the Judge Advocate General by the accused before (1) October 1, 1983, or (2) the last day of the two-year period beginning on the date the sentence is approved by the convening authority or, in a special court-martial case which requires action under section 865(b) of this title (article 65(b)), the officer exercising general court-martial jurisdiction, whichever is later, unless the accused establishes good cause for failure to file within that time.

1968—Pub. L. 90–632 authorized the Judge Advocate General to either vacate or modify the findings or sentence, or both, in whole or in part, in any court-martial case which has been finally reviewed, but which has not been reviewed by a Court of Military Review, because of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1302(b) of Pub. L. 101–189 provided that: ''Subsection (e) of section 869 of title 10, United States Code, as added by subsection (a), shall apply with respect to cases in which a finding of guilty is adjudged by a general court-martial after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–81 effective at end of 60-day period beginning on Nov. 20, 1981, see section 7(a) of Pub. L. 97–81, set out as an Effective Date note under section 706 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective Oct. 24, 1968, see section 4(b) of Pub. L. 90–632, set out as a note under section 801 of this title.

TWO-YEAR PERIOD FOR APPLICATIONS FOR MODIFICATION OR SET-ASIDE INAPPLICABLE TO APPLICATIONS FILED ON OR BEFORE OCTOBER 1, 1983

Section 7(e)(2) of Pub. L. 98–209 provided that: ''The two-year period specified under the second sentence of section 869(b) (article 69(b)) of title 10, United States Code, as amended by paragraph (1), does not apply to any application filed in the office of the appropriate Judge Advocate General (as defined in section 801(1) of such title) on or before October 1, 1983. The application in such a case shall be considered in the same manner and with the same effect as if such two-year period had not been enacted.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 864, 865 of this title.

§870. Art. 70. Appellate counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, and one or more commissioned officers as appellate defense counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Criminal Appeals or the Court of Appeals for the Armed Forces when directed to do so by the Judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Appeals for the Armed Forces.

(d) The accused has the right to be represented before the Court of Criminal Appeals, the Court of Appeals for the Armed Forces, or the Supreme Court by civilian counsel if provided by him.

(e) Military appellate counsel shall also perform such other functions in connection with the review of court martial cases as the Judge Advocate General directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90–632, §2(31), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98–209, §10(c)(3), Dec. 6, 1983, 97 Stat. 1406; Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
870(a)	50:657(a).	May 5, 1950, ch. 169, §1 (Art. 70), 64 Stat. 130.
870(b)	50:657(b).	
870(c)	50:657(c).	
870(d)	50:657(d).	
870(e)	50:657(e).	

In subsection (a), the word ''detail'' is substituted for the word ''appoint'', since the filling of the position involved is not appointment to an office in the constitutional sense. The word ''commissioned'' is inserted for clarity. The word ''are'' is substituted for the words ''shall be''. The words ''the provisions of'' are omitted as surplusage.

In subsections (b) and (c), the word ''shall'' is substituted for the words ''It shall be the duty of * * * to''.

In subsection (c)(3), the word ''sent'' is substituted for the word ''transmitted''.

In subsection (d), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the word ''directs'' is substituted for the words ''shall direct''.

AMENDMENTS

1994—Subsecs. (b) to (d). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (b). Pub. L. 98–209, §10(c)(3)(A), inserted provision that Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

Subsecs. (c), (d). Pub. L. 98–209, §10(c)(3)(B), amended subsecs. (c) and (d) generally, inserting references to the Supreme Court.

1968—Subsecs. (b) to (d). Pub. L. 90–632 substituted ''Court of Military Review'' for ''board of review'' wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

§ 871. Art. 71. Execution of sentence; suspension of sentence

(a) If the sentence of the court-martial extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit. That part of the sentence providing for death may not be suspended.

(b) If in the case of a commissioned officer, cadet, or midshipman, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the Secretary concerned or such Under Secretary or Assistant Secretary as may be designated by the Secretary concerned. In such a case, the Secretary, Under Secretary, or Assistant Secretary, as the case may be, may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c)(1) If a sentence extends to death, dismissal, or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to death, dismissal, or a dishonorable or bad-conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death or dismissal, approval under subsection (a) or (b), as appropriate). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Criminal Appeals and—

(A) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

(B) such a petition is rejected by the Court of Appeals for the Armed Forces; or

(C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

(ii) such a petition is rejected by the Supreme Court; or

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

(2) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.

(d) The convening authority or other person acting on the case under section 860 of this title

(article 60) may suspend the execution of any sentence or part thereof, except a death sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 62; Pub. L. 90–632, §2(32), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 98–209, §5(e), Dec. 6, 1983, 97 Stat. 1399; Pub. L. 103–337, div. A, title IX, §924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
871(a)	50:658(a).	May 5, 1950, ch. 169, §1 (Art. 71), 64 Stat. 131.
871(b)	50:658(b).	
871(c)	50:658(c).	
871(d)	50:658(d).	

In subsection (a), the word ''may'' is substituted for the word ''shall''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''may'' is substituted for the word ''shall'' in the first sentence. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The words ''who is'' are omitted as surplusage.

In subsection (c), the word ''may'' is substituted for the word ''shall''.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals'' wherever appearing.

1983—Subsec. (a). Pub. L. 98–209, §5(e)(1), amended subsec. (a) generally, substituting provision that part of the court-martial sentence extending to death may not be executed without Presidential approval, and granting the President authority to commute, remit, or suspend the sentence, except that a death sentence may not be suspended, for provision that no sentence extending to death or involving a general or flag officer could be executed without Presidential approval, and authorizing the President to approve the sentence or any part, amount, or commuted form thereof, and suspend the execution of the sentence or any part thereof, except a death sentence.

Subsec. (b). Pub. L. 98–209, §5(e)(2), substituted provision that where a court-martial sentence extends to dismissal of a commissioned officer, cadet, or midshipman, the dismissal may not be executed without approval by the Secretary concerned, or Under Secretary or Assistant Secretary designated by him, and authorizing such official to commute, remit, or suspend the sentence, or any part thereof, for provision that no dismissal of a commissioned officer (other than a general or flag officer), cadet or midshipman may be executed without such approval, and that such official could approve the sentence or such part, amount, or commuted form the sentence as he saw fit, and could suspend the execution of any part of the sentence.

Subsec. (c). Pub. L. 98–209, §5(e)(3), amended subsec. (c) generally. Prior to amendment subsec. (c) read as follows: ''No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more, may be executed until affirmed by a Court of Military Review and, in cases reviewed by it, the Court of Military Appeals.''

Subsec. (d). Pub. L. 98–209, §5(e)(3), amended subsec. (d) generally. Prior to amendment subsec. (d) read as follows: ''All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.''

1968—Subsec. (c). Pub. L. 90–632, §2(32)(A), substituted ''Court of Military Review'' for ''board of review''.

Subsec. (d). Pub. L. 90–632, §2(32)(B), inserted reference to deferred court-martial sentences.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendments by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 872 of this title.

§872. Art. 72. Vacation of suspension

(a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in section 871 (c) of this title (article 71(c)). The vacation of the suspension of a dismissal is not effective until approved by the Secretary concerned.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
872(a)	50:659(a).	May 5, 1950, ch. 169, §1 (Art. 72), 64 Stat. 131.
872(b)	50:659(b).	
872(c)	50:659(c).	

In subsection (a), the word ''Before'' is substituted for the words ''Prior to''.

In subsection (b), the words ''be effective * * * to'' are omitted as surplusage.

The second sentence is restated to make it clear that the execution of the rest of the court-martial sentence is not automatic. The word ''is'' is substituted for the words ''shall * * * be'' in the last sentence. The word ''sent'' is substituted for the word ''forwarded''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

§873. Art. 73. Petition for a new trial

At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the

court. If the accused's case is pending before a Court of Criminal Appeals or before the Court of Appeals for the Armed Forces, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 90–632, § 2(33), Oct. 24, 1968, 82 Stat. 1342; Pub. L. 103–337, div. A, title IX, § 924(c)(1), (2), Oct. 5, 1994, 108 Stat. 2831.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
873	50:660.	May 5, 1950, ch. 169, § 1 (Art. 73), 64 Stat. 132.

The words ''the ground'' are substituted for the word ''grounds''. The words ''as the case may be'' are substituted for the word ''respectively'', since the prescribed action is alternative, not distributive.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Criminal Appeals'' for ''Court of Military Review'' and ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1968—Pub. L. 90–632 extended time during which accused may petition Judge Advocate General for a new trial from 1 to 2 years and struck out provisions which limited right to petition for a new trial to cases of death, dismissal, a punitive discharge, or a year or more in confinement.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 to apply in the case of all court-martial sentences approved by the convening authority on or after, or not more than two years before Oct. 24, 1968, see section 4(c) of Pub. L. 90–632, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 874. Art. 74. Remission and suspension

(a) The Secretary concerned and, when designated by him, any Under Secretary, Assistant Secretary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the President. However, in the case of a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed after October 29, 2000, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.

(b) The Secretary concerned may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63; Pub. L. 106–398, § 1 [[div. A], title V, § 553(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125; Pub. L. 107–107, div. A, title X, § 1048(a)(8), Dec. 28, 2001, 115 Stat. 1223.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
874(a)	50:661(a).	May 5, 1950, ch. 169, § 1 (Art. 74), 64 Stat. 132.
874(b)	50:661(b).	

In subsections (a) and (b), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted ''that is adjudged for an offense committed after October 29, 2000'' after ''a sentence of confinement for life without eligibility for parole''.

2000—Subsec. (a). Pub. L. 106–398 inserted at end ''However, in the case of a sentence of confinement for life without eligibility for parole, after the sentence is ordered executed, the authority of the Secretary concerned under the preceding sentence (1) may not be delegated, and (2) may be exercised only after the service of a period of confinement of not less than 20 years.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 553(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, provided that: ''The amendment made by subsection (a) [amending this section] shall not apply with respect to a sentence of confinement for life without eligibility for parole that is adjudged for an offense committed before the date of the enactment of this Act [Oct. 30, 2000].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 876 of this title.

§ 875. Art. 75. Restoration

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct discharge is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the Secretary concerned shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the President alone to such commissioned grade and with such rank as in the opinion of the President that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to the existence of a vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and the reappointment shall be considered as actual service for all purposes, including the right to pay and allowances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 63.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
875(a)	50:662(a).	May 5, 1950, ch. 169, § 1 (Art. 75), 64 Stat. 132.
875(b)	50:662(b).	
875(c)	50:662(c).	

In subsections (b) and (c), the word ''If'' is substituted for the word ''Where''. The word ''imposed'' is sub-

stituted for the word ''sustained''. The words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''.

In subsection (c), the word ''issue'' is substituted for the word ''issuance''. The word ''commissioned'' is inserted for clarity. The words ''grade and with such rank'' are substituted for the words ''rank and precedence'', since a person is appointed to a grade, not a position of precedence, and the word ''rank'' is the accepted military word denoting the general idea of precedence. The words ''the existence of a'' are substituted for the word ''position''. The word ''receive'' is omitted as surplusage.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of certain authority vested in President by this section, see section 2(b) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

§ 876. Art. 76. Finality of proceedings, findings, and sentences

The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in section 873 of this title (article 73) and to action by the Secretary concerned as provided in section 874 of this title (article 74) and the authority of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 64.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
876	50:663.	May 5, 1950, ch. 169, §1 (Art. 76), 64 Stat. 132.

The word ''under'' is substituted for the words ''pursuant to''. The word ''are'' is substituted for the words ''shall be''. The words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

§ 876a. Art. 76a. Leave required to be taken pending review of certain court-martial convictions

Under regulations prescribed by the Secretary concerned, an accused who has been sentenced by a court-martial may be required to take leave pending completion of action under this subchapter if the sentence, as approved under section 860 of this title (article 60), includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the sentence is approved under section 860 of this title (article 60) or at any time after such date, and such leave may be continued until the date on which action under this subchapter is completed or may be terminated at any earlier time.

(Added Pub. L. 97–81, §2(c)(1), Nov. 20, 1981, 95 Stat. 1087; amended Pub. L. 98–209, §5(g), Dec. 6, 1983, 97 Stat. 1400.)

AMENDMENTS

1983—Pub. L. 98–209 substituted ''under section 860 of this title (article 60)'' for ''under section 864 or 865 of this title (article 64 or 65) by the officer exercising general court-martial jurisdiction'' and ''by the officer exercising general court-martial jurisdiction'', respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, but not to apply to any case in which the findings and sentence were adjudged by a court-martial before that date, and the proceedings in any such case to be held in the same manner and with the same effect as if such amendments had not been enacted, see section 12(a)(1), (4) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE

Section to take effect at end of 60-day period beginning on Nov. 20, 1981, to apply to each member whose sentence by court-martial is approved on or after Jan. 20, 1982, under section 864 or 865 of this title by the officer exercising general court-martial jurisdiction under the provisions of such section as it existed on the day before the effective date of the Military Justice Act of 1983 (Pub. L. 98–209), or under section 860 of this title by the officer empowered to act on the sentence on or after that effective date, see section 7(a), (b)(1) of Pub. L. 97–81, set out as a note under section 706 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 707 of this title.

§ 876b. Art. 76b. Lack of mental capacity or mental responsibility: commitment of accused for examination and treatment

(a) PERSONS INCOMPETENT TO STAND TRIAL.—(1) In the case of a person determined under this chapter to be presently suffering from a mental disease or defect rendering the person mentally incompetent to the extent that the person is unable to understand the nature of the proceedings against that person or to conduct or cooperate intelligently in the defense of the case, the general court-martial convening authority for that person shall commit the person to the custody of the Attorney General.

(2) The Attorney General shall take action in accordance with section 4241(d) of title 18.

(3) If at the end of the period for hospitalization provided for in section 4241(d) of title 18, it is determined that the committed person's mental condition has not so improved as to permit the trial to proceed, action shall be taken in accordance with section 4246 of such title.

(4)(A) When the director of a facility in which a person is hospitalized pursuant to paragraph (2) determines that the person has recovered to such an extent that the person is able to understand the nature of the proceedings against the person and to conduct or cooperate intelligently in the defense of the case, the director shall promptly transmit a notification of that determination to the Attorney General and to the general court-martial convening authority for the person. The director shall send a copy of the notification to the person's counsel.

(B) Upon receipt of a notification, the general court-martial convening authority shall promptly take custody of the person unless the

person covered by the notification is no longer subject to this chapter. If the person is no longer subject to this chapter, the Attorney General shall take any action within the authority of the Attorney General that the Attorney General considers appropriate regarding the person.

(C) The director of the facility may retain custody of the person for not more than 30 days after transmitting the notifications required by subparagraph (A).

(5) In the application of section 4246 of title 18 to a case under this subsection, references to the court that ordered the commitment of a person, and to the clerk of such court, shall be deemed to refer to the general court-martial convening authority for that person. However, if the person is no longer subject to this chapter at a time relevant to the application of such section to the person, the United States district court for the district where the person is hospitalized or otherwise may be found shall be considered as the court that ordered the commitment of the person.

(b) PERSONS FOUND NOT GUILTY BY REASON OF LACK OF MENTAL RESPONSIBILITY.—(1) If a person is found by a court-martial not guilty only by reason of lack of mental responsibility, the person shall be committed to a suitable facility until the person is eligible for release in accordance with this section.

(2) The court-martial shall conduct a hearing on the mental condition in accordance with subsection (c) of section 4243 of title 18. Subsections (b) and (d) of that section shall apply with respect to the hearing.

(3) A report of the results of the hearing shall be made to the general court-martial convening authority for the person.

(4) If the court-martial fails to find by the standard specified in subsection (d) of section 4243 of title 18 that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect—

(A) the general court-martial convening authority may commit the person to the custody of the Attorney General; and

(B) the Attorney General shall take action in accordance with subsection (e) of section 4243 of title 18.

(5) Subsections (f), (g), and (h) of section 4243 of title 18 shall apply in the case of a person hospitalized pursuant to paragraph (4)(B), except that the United States district court for the district where the person is hospitalized shall be considered as the court that ordered the person's commitment.

(c) GENERAL PROVISIONS.—(1) Except as otherwise provided in this subsection and subsection (d)(1), the provisions of section 4247 of title 18 apply in the administration of this section.

(2) In the application of section 4247(d) of title 18 to hearings conducted by a court-martial under this section or by (or by order of) a general court-martial convening authority under this section, the reference in that section to section 3006A of such title does not apply.

(d) APPLICABILITY.—(1) The provisions of chapter 313 of title 18 referred to in this section apply according to the provisions of this section notwithstanding section 4247(j) of title 18.

(2) If the status of a person as described in section 802 of this title (article 2) terminates while the person is, pursuant to this section, in the custody of the Attorney General, hospitalized, or on conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, the provisions of this section establishing requirements and procedures regarding a person no longer subject to this chapter shall continue to apply to that person notwithstanding the change of status.

(Added Pub. L. 104–106, div. A, title XI, §1133(a)(1), Feb. 10, 1996, 110 Stat. 464.)

EFFECTIVE DATE

Section 1133(c) of Pub. L. 104–106 provided that: ''Section 876b of title 10, United States Code (article 76b of the Uniform Code of Military Justice), as added by subsection (a), shall take effect at the end of the six-month period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply with respect to charges referred to courts-martial after the end of that period.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 802 of this title.

SUBCHAPTER X—PUNITIVE ARTICLES

Sec.	Art.	
877.	77.	Principals.
878.	78.	Accessory after the fact.
879.	79.	Conviction of lesser included offense.
880.	80.	Attempts.
881.	81.	Conspiracy.
882.	82.	Solicitation.
883.	83.	Fraudulent enlistment, appointment, or separation.
884.	84.	Unlawful enlistment, appointment, or separation.
885.	85.	Desertion.
886.	86.	Absence without leave.
887.	87.	Missing movement.
888.	88.	Contempt toward officials.
889.	89.	Disrespect toward superior commissioned officer.
890.	90.	Assaulting or willfully disobeying superior commissioned officer.
891.	91.	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer.
892.	92.	Failure to obey order or regulation.
893.	93.	Cruelty and maltreatment.
894.	94.	Mutiny or sedition.
895.	95.	Resistance, flight, breach of arrest, and escape.
896.	96.	Releasing prisoner without proper authority.
897.	97.	Unlawful detention.
898.	98.	Noncompliance with procedural rules.
899.	99.	Misbehavior before the enemy.
900.	100.	Subordinate compelling surrender.
901.	101.	Improper use of countersign.
902.	102.	Forcing a safeguard.
903.	103.	Captured or abandoned property.
904.	104.	Aiding the enemy.
905.	105.	Misconduct as prisoner.
906.	106.	Spies.
906a.	106a.	Espionage.
907.	107.	False official statements.
908.	108.	Military property of United States—Loss, damage, destruction, or wrongful disposition.
909.	109.	Property other than military property of United States—Waste, spoilage, or destruction.
910.	110.	Improper hazarding of vessel.

Sec.	Art.	
911.	111.	Drunken or reckless operation of a vehicle, aircraft, or vessel.
912.	112.	Drunk on duty.
912a.	112a.	Wrongful use, possession, etc., of controlled substances.
913.	113.	Misbehavior of sentinel.
914.	114.	Dueling.
915.	115.	Malingering.
916.	116.	Riot or breach of peace.
917.	117.	Provoking speeches or gestures.
918.	118.	Murder.
919.	119.	Manslaughter.
920.	120.	Rape and carnal knowledge.
921.	121.	Larceny and wrongful appropriation.
922.	122.	Robbery.
923.	123.	Forgery.
923a.	123a.	Making, drawing, or uttering check, draft, or order without sufficient funds.
924.	124.	Maiming.
925.	125.	Sodomy.
926.	126.	Arson.
927.	127.	Extortion.
928.	128.	Assault.
929.	129.	Burglary.
930.	130.	Housebreaking.
931.	131.	Perjury.
932.	132.	Frauds against the United States.
933.	133.	Conduct unbecoming an officer and a gentleman.
934.	134.	General article.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title X, §1073(a)(10), Nov. 18, 1997, 111 Stat. 1900, struck out ''Art.'' before ''95'' in item 895.

1996—Pub. L. 104–106, div. A, title XI, §1112(b), Feb. 10, 1996, 110 Stat. 461, inserted ''flight,'' after ''Resistance,'' in item 895.

1992—Pub. L. 102–484, div. A, title X, §1066(a)(2), Oct. 23, 1992, 106 Stat. 2506, substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in item 911.

1985—Pub. L. 99–145, title V, §534(b), Nov. 8, 1985, 99 Stat. 635, added item 906a.

1983—Pub. L. 98–209, §8(b), Dec. 6, 1983, 97 Stat. 1404, added item 912a.

1961—Pub. L. 87–385, §1(2), Oct. 4, 1961, 75 Stat. 814, added item 923a.

§ 877. Art. 77. Principals

Any person punishable under this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this chapter;

is a principal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
877	50:671.	May 5, 1950, ch. 169, §1 (Art. 77), 64 Stat. 134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 878. Art. 78. Accessory after the fact

Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
878	50:672.	May 5, 1950, ch. 169, §1 (Art. 78), 64 Stat. 134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 879. Art. 79. Conviction of lesser included offense

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
879	50:673.	May 5, 1950, ch. 169, §1 (Art. 79), 64 Stat. 134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 880. Art. 80. Attempts

(a) An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 65.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
880(a)	50:674(a).	May 5, 1950, ch. 169, §1 (Art. 80), 64 Stat. 134.
880(b)	50:674(b).	
880(c)	50:674(c).	

In subsection (a), the words ''even though'' are substituted for the word ''but'' for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 881. Art. 81. Conspiracy

Any person subject to this chapter who conspires with any other person to commit an offense under this chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct,

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
881	50:675.	May 5, 1950, ch. 169, §1 (Art. 81), 64 Stat. 134.

The words ''or persons'' are omitted as surplusage, since under section 1 of title 1 words importing the singular may apply to several persons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 882. Art. 82. Solicitation

(a) Any person subject to this chapter who solicits or advises another or others to desert in violation of section 885 of this title (article 85) or mutiny in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 899 of this title (article 99) or sedition in violation of section 894 of this title (article 94) shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
882(a)	50:676(a).	May 5, 1950, ch. 169, §1, (Art. 82), 64 Stat. 134.
882(b)	50:676(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 883. Art. 83. Fraudulent enlistment, appointment, or separation

Any person who—

(1) procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
883	50:677.	May 5, 1950, ch. 169, §1 (Art. 83), 64 Stat. 134.

In clauses (1) and (2), the words ''means of'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 884. Art. 84. Unlawful enlistment, appointment, or separation

Any person subject to this chapter who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 66.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
884	50:678.	May 5, 1950, ch. 169, §1 (Art. 84), 64 Stat. 135.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 885. Art. 85. Desertion

(a) Any member of the armed forces who—

(1) without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
885(a)	50:679(a).	May 5, 1950, ch. 169, §1 (Art. 85), 64 Stat. 135.
885(b)	50:679(b).	
885(c)	50:679(c).	

In subsection (a), the word ''unit'' is substituted for the words ''place of service'' to conform to clause (2) of this section and section 886(3) of this title. The word ''proper'' is omitted as surplusage.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''before'' is substituted for the words ''prior to''. The words ''its acceptance'' are substituted for the words ''the acceptance of the

same''. The words ''after tender of'' are substituted for the words ''having tendered'' for clarity. The word ''due'' is omitted as surplusage.

In subsection (c), the words ''attempt to desert'' are substituted for the words ''attempted desertion''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 886. Art. 86. Absence without leave

Any member of the armed forces who, without authority—

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
886	50:680.	May 5, 1950, ch. 169, § 1 (Art. 86), 64 Stat. 135.

The words ''proper'' and ''other'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 887. Art. 87. Missing movement

Any person subject to this chapter who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
887	50:681.	May 5, 1950, ch. 169, § 1 (Art. 87), 64 Stat. 135.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 888. Art. 88. Contempt toward officials

Any commissioned officer who uses contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Homeland Security, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67; Pub. L. 96–513, title V, § 511(25), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
888	50:682.	May 5, 1950, ch. 169, § 1 (Art. 88), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity. The words ''the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any State, Territory, Commonwealth, or possession'' are substituted for the words ''Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory, or other possession of the United States''.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1980—Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 889. Art. 89. Disrespect toward superior commissioned officer

Any person subject to this chapter who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 67.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
889	50:683.	May 5, 1950, ch. 169, § 1 (Art. 89), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 890. Art. 90. Assaulting or willfully disobeying superior commissioned officer

Any person subject to this chapter who—

(1) strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) willfully disobeys a lawful command of his superior commissioned officer;

shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
890	50:684.	May 5, 1950, ch. 169, §1 (Art. 90), 64 Stat. 135.

The word ''commissioned'' is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 891. Art. 91. Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

Any warrant officer or enlisted member who—

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer, while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
891	50:685.	May 5, 1950, ch. 169, §1 (Art. 91), 64 Stat. 136.

The word ''member'' is substituted for the word ''person''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 892. Art. 92. Failure to obey order or regulation

Any person subject to this chapter who—

(1) violates or fails to obey any lawful general order or regulation;

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
892	50:686.	May 5, 1950, ch. 169, §1 (Art. 92), 64 Stat. 136.

The word ''order'' is substituted for the word ''same''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 937, 2783, 2784 of this title.

§ 893. Art. 93. Cruelty and maltreatment

Any person subject to this chapter who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
893	50:687.	May 5, 1950, ch. 169, §1 (Art. 93), 64 Stat. 136.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 894. Art. 94. Mutiny or sedition

(a) Any person subject to this chapter who—

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 68.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
894(a)	50:688(a).	May 5, 1950, ch. 169, §1 (Art. 94), 64 Stat. 136.
894(b)	50:688(b).	

In subsection (a)(1) and (2), the words ''or persons'' are omitted, since, under section 1 of title 1, words importing the singular may apply to several persons.

In subsection (a)(3), the word ''a'' is substituted for the words ''an offense of''. The words ''commissioned officer'' are inserted after the word ''superior'', for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title; title 38 section 6105.

§ 895. Art. 95. Resistance, flight, breach of arrest, and escape

Any person subject to this chapter who—

(1) resists apprehension;

(2) flees from apprehension;

(3) breaks arrest; or

(4) escapes from custody or confinement;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69; Pub. L. 104–106, div. A, title XI, §1112(a), Feb. 10, 1996, 110 Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
895	50:689.	May 5, 1950, ch. 169, § 1 (Art. 95), 64 Stat. 136.

AMENDMENTS

1996—Pub. L. 104–106 inserted ''flight,'' after ''Resistance,'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 896. Art. 96. Releasing prisoner without proper authority

Any person subject to this chapter who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
896	50:690.	May 5, 1950, ch. 169, § 1 (Art. 96), 64 Stat. 136.

The words ''whether or not the prisoner was committed in strict compliance with law'' are substituted for the word ''duly'', to reflect the long standing construction expressed in the Manual for Courts-Martial, United States, 1951, par. 175a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 897. Art. 97. Unlawful detention

Any person subject to this chapter who, except as provided by law, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
897	50:691.	May 5, 1950, ch. 169, § 1 (Art. 97), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 898. Art. 98. Noncompliance with procedural rules

Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
898	50:692.	May 5, 1950, ch. 169, § 1 (Art. 98), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 899. Art. 99. Misbehavior before the enemy

Any member of the armed forces who before or in the presence of the enemy—

(1) runs away;

(2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;

(3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) casts away his arms or ammunition;

(5) is guilty of cowardly conduct;

(6) quits his place of duty to plunder or pillage;

(7) causes false alarms in any command, unit, or place under control of the armed forces;

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 69.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
899	50:693.	May 5, 1950, ch. 169, § 1 (Art. 99), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 937 of this title.

§ 900. Art. 100. Subordinate compelling surrender

Any person subject to this chapter who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
900	50:694.	May 5, 1950, ch. 169, § 1 (Art. 100), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 901. Art. 101. Improper use of countersign

Any person subject to this chapter who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
901	50:695.	May 5, 1950, ch. 169, §1 (Art. 101), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 902. Art. 102. Forcing a safeguard

Any person subject to this chapter who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
902	50:696.	May 5, 1950, ch. 169, §1 (Art. 102), 64 Stat. 137.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 903. Art. 103. Captured or abandoned property

(a) All persons subject to this chapter shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this chapter who—

(1) fails to carry out the duties prescribed in subsection (a);

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
903(a)	50:697(a).	May 5, 1950, ch. 169, §1 (Art. 103), 64 Stat. 138.
903(b)	50:697(b).	

In subsection (b)(1), the words ''of this section'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 904. Art. 104. Aiding the enemy

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 70.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
904	50:698.	May 5, 1950, ch. 169, §1 (Art. 104), 64 Stat. 138.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 6105.

§ 905. Art. 105. Misconduct as prisoner

Any person subject to this chapter who, while in the hands of the enemy in time of war—

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
905	50:699.	May 5, 1950, ch. 169, §1 (Art. 105), 64 Stat. 138.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 906. Art. 106. Spies

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant, or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
906	50:700.	May 5, 1950, ch. 169, §1 (Art. 106), 64 Stat. 138.

The words ''of the United States'' are omitted as surplusage.

PROCLAMATION NO. 2561. ENEMIES DENIED ACCESS TO UNITED STATES COURTS

Proc. No. 2561, July 2, 1942, 7 F.R. 5101, 56 Stat. 1964, provided:

Whereas the safety of the United States demands that all enemies who have entered upon the territory of the United States as part of an invasion or predatory incursion, or who have entered in order to commit sabotage, espionage or other hostile or warlike acts, should be promptly tried in accordance with the law of war;

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America and Commander in Chief of the Army and Navy of the United States, by virtue of the authority vested in me by the Constitution and the statutes of the United States, do hereby proclaim that all persons who are subjects, citizens or residents of any nation at war with the United States or who give obedience to or act under the direction of any such nation, and who during time of war enter or attempt to enter the United States or any territory or possession thereof, through coastal or boundary defenses, and are charged with committing or attempting or preparing to commit sabotage, espionage, hostile or warlike acts, or violations of the law of war, shall be subject to the law of war and to the jurisdiction of military tribunals; and that such persons shall not be privileged to seek any remedy or maintain any proceeding directly or indirectly, or to have any such remedy or proceeding sought on their behalf, in the courts of the United States, or of its States, territories, and possessions, except under such regulations as the Attorney General, with the approval of the Secretary of War, may from time to time prescribe.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title; title 5 section 8312; title 38 section 6105.

§906a. Art. 106a. Espionage

(a)(1) Any person subject to this chapter who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any entity described in paragraph (2), either directly or indirectly, anything described in paragraph (3) shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns (A) nuclear weaponry, military spacecraft or satellites, early warning systems, or other means of defense or retaliation against large scale attack, (B) war plans, (C) communications intelligence or cryptographic information, or (D) any other major weapons system or major element of defense strategy, the accused shall be punished by death or such other punishment as a court-martial may direct.

(2) An entity referred to in paragraph (1) is—

(A) a foreign government;

(B) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or

(C) a representative, officer, agent, employee, subject, or citizen of such a government, faction, party, or force.

(3) A thing referred to in paragraph (1) is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense.

(b)(1) No person may be sentenced by court-martial to suffer death for an offense under this section (article) unless—

(A) the members of the court-martial unanimously find at least one of the aggravating factors set out in subsection (c); and

(B) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out in subsection (c).

(2) Findings under this subsection may be based on—

(A) evidence introduced on the issue of guilt or innocence;

(B) evidence introduced during the sentencing proceeding; or

(C) all such evidence.

(3) The accused shall be given broad latitude to present matters in extenuation and mitigation.

(c) A sentence of death may be adjudged by a court-martial for an offense under this section (article) only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) The accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute.

(2) In the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security.

(3) In the commission of the offense, the accused knowingly created a grave risk of death to another person.

(4) Any other factor that may be prescribed by the President by regulations under section 836 of this title (article 36).

(Added Pub. L. 99–145, title V, §534(a), Nov. 8, 1985, 99 Stat. 634.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8312.

§907. Art. 107. False official statements

Any person subject to this chapter who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
907	50:701.	May 5, 1950, ch. 169, §1 (Art. 107), 64 Stat. 138.

The word ''it'' is substituted for the words ''the same''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 908. Art. 108. Military property of United States—Loss, damage, destruction, or wrongful disposition

Any person subject to this chapter who, without proper authority—

(1) sells or otherwise disposes of;

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold, or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
908	50:702.	May 5, 1950, ch. 169, §1 (Art. 108), 64 Stat. 138.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 909. Art. 109. Property other than military property of United States—Waste, spoilage, or destruction

Any person subject to this chapter who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
909	50:703.	May 5, 1950, ch. 169, §1 (Art. 109), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 910. Art. 110. Improper hazarding of vessel

(a) Any person subject to this chapter who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 71.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
910(a)	50:704(a).	May 5, 1950, ch. 169, §1 (Art. 110), 64 Stat. 139.
910(b)	50:704(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 911. Art. 111. Drunken or reckless operation of a vehicle, aircraft, or vessel

(a) Any person subject to this chapter who—

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is in excess of the applicable limit under subsection (b),

shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows:

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State and subject to the maximum blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the maximum blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the maximum blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.10 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

(4) In this subsection:

(A) The term ''blood alcohol content limit'' means the maximum permissible alcohol concentration in a person's blood or breath for purposes of operation or control of a vehicle, aircraft, or vessel.

(B) The term ''United States'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term ''State'' includes each of those jurisdictions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 99–570, title III, §3055, Oct. 27, 1986, 100 Stat. 3207–76; Pub. L. 102–484, div. A, title X, §1066(a)(1), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 103–160, div. A, title V, §576(a), Nov. 30, 1993, 107 Stat. 1677; Pub. L. 107–107, div. A, title V, §581, Dec. 28, 2001, 115 Stat. 1123.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
911	50:705.	May 5, 1950, ch. 169, §1 (Art. 111), 64 Stat. 139.

AMENDMENTS

2001—Pub. L. 107–107 designated existing provisions as subsec. (a), substituted ''in excess of the applicable

limit under subsection (b)'' for ''0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams or more of alcohol per 210 liters of breath, as shown by chemical analysis'' in par. (2), and added subsec. (b).

1993—Par. (2). Pub. L. 103–160 inserted ''or more'' after ''0.10 grams'' in two places.

1992—Pub. L. 102–484 substituted ''operation of a vehicle, aircraft, or vessel'' for ''driving'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Any person subject to this chapter who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in section 912a(b) of this title (article 112a(b)), shall be punished as a court-martial may direct.''

1986—Pub. L. 99–570 inserted ''or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 576(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendment to section 911 of title 10, United States Code, made by section 1066(a)(1) of Public Law 102–484 on October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§912. Art. 112. Drunk on duty

Any person subject to this chapter other than a sentinel or look-out, who is found drunk on duty, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
912	50:706.	May 5, 1950, ch. 169, §1 (Art. 112), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§912a. Art. 112a. Wrongful use, possession, etc., of controlled substances

(a) Any person subject to this chapter who wrongfully uses, possesses, manufacturers, distributes, imports into the customs territory of the United States, exports from the United States, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces a substance described in subsection (b) shall be punished as a court-martial may direct.

(b) The substances referred to in subsection (a) are the following:

(1) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance.

(2) Any substance not specified in clause (1) that is listed on a schedule of controlled substances prescribed by the President for the purposes of this article.

(3) Any other substance not specified in clause (1) or contained on a list prescribed by the President under clause (2) that is listed in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(Added Pub. L. 98–209, §8(a), Dec. 6, 1983, 97 Stat. 1403.)

EFFECTIVE DATE

Section effective first day of eighth calendar month beginning after Dec. 6, 1983, but not applicable to any offense committed before that date and not to be construed to invalidate the prosecution of any offense committed before that date, see section 12(a)(1), (5) of Pub. L. 98–209, set out as an Effective Date of 1983 Amendment note under section 801 of this title.

PROCEDURES FOR FORENSIC EXAMINATION OF CERTAIN PHYSIOLOGICAL EVIDENCE

Pub. L. 100–180, div. A, title XII, §1248, Dec. 4, 1987, 101 Stat. 1166, provided that:

''(a) ESTABLISHMENT OF PROCEDURES.—The Secretary of Defense shall establish procedures to ensure that whenever, in connection with a criminal investigation conducted by or for a military department, a physiological specimen is obtained from a person for the purpose of determining whether that person has used a controlled substance—

''(1) the specimen is in a condition that is suitable for forensic examination when delivered to a forensic laboratory; and

''(2) the investigative agency that submits the specimen to the laboratory receives a written statement of the results of the forensic examination from the laboratory within such period as is necessary to use such results in a court-martial or other criminal proceeding resulting from the investigation.

''(b) TRANSPORTATION OF SPECIMENS.—The procedures prescribed under subsection (a)—

''(1) shall ensure that physiological specimens are preserved and transported in accordance with valid medical and forensic practices; and

''(2) insofar as practicable, shall require transportation of the specimen to an appropriate laboratory by the most expeditious means necessary to carry out the requirement in subsection (a)(1).

''(c) TESTS FOR USE OF LSD.—Procedures established under subsection (a) shall ensure that whenever the controlled substance with respect to which a physiological specimen is to be examined is lysergic acid diethylamide (LSD), the specimen is submitted to a forensic laboratory that is capable of determining with a reasonable degree of scientific certainty, on the basis of the examination of that specimen, whether the person providing the specimen has used lysergic acid diethylamide (LSD).

''(d) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as providing a basis, that is not otherwise available in law, for a defense to a charge or a motion for exclusion of evidence or other appropriate relief in any criminal or administrative proceeding.

''(e) CONTROLLED SUBSTANCES COVERED.—For purposes of this section, a controlled substance is a substance described in section 912a(b) of title 10, United States Code.

''(f) REPORT.—Not later than March 1, 1988, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, a report describing the procedures established under this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 911 of this title.

§913. Art. 113. Misbehavior of sentinel

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he

is regularly relieved, shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
913	50:707.	May 5, 1950, ch. 169, § 1 (Art. 113), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 914. Art. 114. Dueling

Any person subject to this chapter who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the facts promptly to the proper authority, shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
914	50:708.	May 5, 1950, ch. 169, § 1 (Art. 114), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 915. Art. 115. Malingering

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

(1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
915	50:709.	May 5, 1950, ch. 169, § 1 (Art. 115), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 916. Art. 116. Riot or breach of peace

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
916	50:710.	May 5, 1950, ch. 169, § 1 (Art. 116), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 917. Art. 117. Provoking speeches or gestures

Any person subject to this chapter who uses provoking or reproachful words or gestures towards any other person subject to this chapter shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
917	50:711.	May 5, 1950, ch. 169, § 1 (Art. 117), 64 Stat. 139.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 918. Art. 118. Murder

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 72; Pub. L. 102–484, div. A, title X, § 1066(b), Oct. 23, 1992, 106 Stat. 2506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
918	50:712.	May 5, 1950, ch. 169, § 1 (Art. 118), 64 Stat. 140.

The words ''of this section'' are omitted as surplusage.

AMENDMENTS

1992—Par. (3). Pub. L. 102–484 substituted ''another'' for ''others''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 919, 929, 937 of this title.

§ 919. Art. 119. Manslaughter

(a) Any person subject to this chapter who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being—

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in clause (4) of section 918 of this title (article 118), directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
919(a)	50:713(a).	May 5, 1950, ch. 169, § 1 (Art. 119), 64 Stat. 140.
919(b)	50:713(b).	

The word ''named'' is substituted for the word ''specified''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 920. Art. 120. Rape and carnal knowledge

(a) Any person subject to this chapter who commits an act of sexual intercourse, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.

(b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a person—

(1) who is not that person's spouse; and

(2) who has not attained the age of sixteen years;

is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete either of these offenses.

(d)(1) In a prosecution under subsection (b), it is an affirmative defense that—

(A) the person with whom the accused committed the act of sexual intercourse had at the time of the alleged offense attained the age of twelve years; and

(B) the accused reasonably believed that that person had at the time of the alleged offense attained the age of sixteen years.

(2) The accused has the burden of proving a defense under paragraph (1) by a preponderance of the evidence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 102–484, div. A, title X, § 1066(c), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 104–106, div. A, title XI, § 1113, Feb. 10, 1996, 110 Stat. 462.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
920(a)	50:714(a).	May 5, 1950, ch. 169, § 1 (Art. 120), 64 Stat. 140.
920(b)	50:714(b).	
920(c)	50:714(c).	

In subsection (c), the words ''either of'' are inserted for clarity.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, § 1113(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.''

Subsec. (d). Pub. L. 104–106, § 1113(b), added subsec. (d).

1992—Subsec. (a). Pub. L. 102–484 struck out ''with a female not his wife'' after ''intercourse'' and ''her'' after ''without''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 921. Art. 121. Larceny and wrongful appropriation

(a) Any person subject to this chapter who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
921(a)	50:715(a).	May 5, 1950, ch. 169, § 1 (Art. 121), 64 Stat. 140.
921(b)	50:715(b).	

In subsection (a), the words ''whatever'' and ''true'' are omitted as surplusage. The word ''it'' is substituted for the words ''the same'' in clauses (1) and (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 922. Art. 122. Robbery

Any person subject to this chapter who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 73.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
922	50:716.	May 5, 1950, ch. 169, §1 (Art. 122), 64 Stat. 140.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923. Art. 123. Forgery

Any person subject to this chapter who, with intent to defraud—

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
923	50:717.	May 5, 1950, ch. 169, §1 (Art. 123), 64 Stat. 141.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 923a. Art. 123a. Making, drawing, or uttering check, draft, or order without sufficient funds

Any person subject to this chapter who—

(1) for the procurement of any article or thing of value, with intent to defraud; or

(2) for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters, or delivers any check, draft, or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft, or order in full upon its presentment, shall be punished as a court-martial may direct. The making, drawing, uttering, or delivering by a maker or drawer of a check, draft, or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft, or order was not paid on presentment. In this section, the word ''credit'' means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft, or order.

(Added Pub. L. 87–385, §1(1), Oct. 4, 1961, 75 Stat. 814.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–385 provided that: ''This Act [enacting this section] becomes effective on the first day of the fifth month following the month in which it is enacted [October 1961].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 924. Art. 124. Maiming

Any person subject to this chapter who, with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which—

(1) seriously disfigures his person by any mutilation thereof;

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
924	50:718.	May 5, 1950, ch. 169, §1 (Art. 124), 64 Stat. 141.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 925. Art. 125. Sodomy

(a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
925(a)	50:719(a).	May 5, 1950, ch. 169, §1 (Art. 125), 64 Stat. 141.
925(b)	50:719(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 926. Art. 126. Arson

(a) Any person subject to this chapter who willfully and maliciously burns or sets on fire an inhabited dwelling, or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who willfully and maliciously burns or sets fire to the property of another, except as provided in

subsection (a), is guilty of simple arson and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
926(a)	50:720(a).	May 5, 1950, ch. 169, § 1 (Art. 126), 64 Stat. 141.
926(b)	50:720(b).	

In subsection (b), the words ''of this section'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 927. Art. 127. Extortion

Any person subject to this chapter who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 74.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
927	50:721.	May 5, 1950, ch. 169, § 1 (Art. 127), 64 Stat. 141.

The words ''of any description'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 928. Art. 128. Assault

(a) Any person subject to this chapter who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this chapter who—

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
928(a)	50:722(a).	May 5, 1950, ch. 169, § 1 (Art. 128), 64 Stat. 141.
928(b)	50:722(b).	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 929, 937 of this title.

§ 929. Art. 129. Burglary

Any person subject to this chapter who, with intent to commit an offense punishable under sections 918–928 of this title (articles 118–128), breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
929	50:723.	May 5, 1950, ch. 169, § 1 (Art. 129), 64 Stat. 142.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 930. Art. 130. Housebreaking

Any person subject to this chapter who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
930	50:724.	May 5, 1950, ch. 169, § 1 (Art. 130), 64 Stat. 142.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 931. Art. 131. Perjury

Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly—

(1) upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75; Pub. L. 94–550, § 3, Oct. 18, 1976, 90 Stat. 2535; Pub. L. 97–295, § 1(13), Oct. 12, 1982, 96 Stat. 1289.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
931	50:725.	May 5, 1950, ch. 169, § 1 (Art. 131), 64 Stat. 142.

The words ''in a'' are inserted before the words ''course of justice''.

AMENDMENTS

1982—Par. (2). Pub. L. 97–295 struck out ''United States Code,'' after ''title 28,''.

1976—Pub. L. 94–550 divided existing provisions into an introductory phrase, par. (1), and a closing phrase, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 932. Art. 132. Frauds against the United States

Any person subject to this chapter—

(1) who, knowing it to be false or fraudulent—

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof—

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States;

shall, upon conviction, be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 75.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
932	50:726.	May 5, 1950, ch. 169, §1 (Art. 132), 64 Stat. 142.

The word ''it'' is substituted for the words ''the same'' throughout the revised section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 933. Art. 133. Conduct unbecoming an officer and a gentleman

Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
933	50:727.	May 5, 1950, ch. 169, §1 (Art. 133), 64 Stat. 142.

The word ''commissioned'' is inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 934. Art. 134. General article

Though not specifically mentioned in this chapter, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
934	50:728.	May 5, 1950, ch. 169, §1 (Art. 134), 64 Stat. 142.

The words ''shall be'' are inserted before the word ''punished''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

SUBCHAPTER XI—MISCELLANEOUS PROVISIONS

Sec.	Art.	
935.	135.	Courts of inquiry.
936.	136.	Authority to administer oaths and to act as notary.
937.	137.	Articles to be explained.
938.	138.	Complaints of wrongs.
939.	139.	Redress of injuries to property.
940.	140.	Delegation by the President.

§ 935. Art. 135. Courts of inquiry

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary concerned for that purpose, whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this chapter whose conduct is subject to inquiry shall be designated as a party. Any person subject to this chapter or employed by the Department of Defense who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 76.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
935(a)	50:731(a).	May 5, 1950, ch. 169, §1 (Art. 135), 64 Stat. 143.
935(b)	50:731(b).	
935(c)	50:731(c).	
935(d)	50:731(d).	
935(e)	50:731(e).	
935(f)	50:731(f).	
935(g)	50:731(g).	
935(h)	50:731(h).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of a Department''.

In subsection (b), the word ''commissioned'' is inserted for clarity. The word ''consists'' is substituted for the words ''shall consist''.

In subsection (c), the word ''has'' is substituted for the words ''shall have''.

In subsection (e), the words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1.

In subsection (g), the word ''may'' is substituted for the word ''shall''.

In subsection (h), the word ''If'' is substituted for the words ''In case''.

§936. Art. 136. Authority to administer oaths and to act as notary

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

(1) All judge advocates.

(2) All summary courts-martial.

(3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

(1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.

(2) The president and the counsel for the court of any court of inquiry.

(3) All officers designated to take a deposition.

(4) All persons detailed to conduct an investigation.

(5) All recruiting officers.

(6) All other persons designated by regulations of the armed forces or by statute.

(Aug. 10, 1956, ch. 1041, 70A Stat. 77; Pub. L. 86–589, July 5, 1960, 74 Stat. 329; Pub. L. 90–179, §1(7), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–632, §2(34), Oct. 24, 1968, 82 Stat. 1343; Pub. L. 98–209, §2(f), Dec. 6, 1983, 97 Stat. 1393; Pub. L. 99–661, div. A, title VIII, §804(c), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 101–510, div. A, title V, §551(b), Nov. 5, 1990, 104 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
936(a)	50:732(a).	May 5, 1950, ch. 169, §1 (Art. 136), 64 Stat. 143.
936(b)	50:732(b).	
936(c)	50:732(c).	
936(d)	50:732(d).	

In subsection (a), the word ''may'' is substituted for the words ''shall have authority to''. The word ''shall'' before the words ''have the general powers'' is omitted as surplusage. The words ''the continental limits'' are omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsections (a) and (b), the words ''in the armed forces'' are omitted as surplusage.

In subsection (b), the word ''may'' is substituted for the words ''shall have authority to''.

In subsection (c), the words ''of any character'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

In subsection (d), the word ''is'' is substituted for the words ''shall be''.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, §551(b)(1), struck out '', and have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, by persons serving with, employed by, or accompanying the armed forces outside the United States and outside Puerto Rico, Guam, and the Virgin Islands, and by other persons subject to this chapter outside of the United States'' after ''including military justice'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–510, §551(b)(2), struck out subsecs. (c) and (d) which read as follows:

''(c) No fee may be paid to or received by any person for the performance of any notarial act herein authorized.

''(d) The signature without seal of any such person acting as notary, together with the title of his office, is prima facie evidence of his authority.''

1988—Subsec. (a). Pub. L. 100–456 struck out ''the Canal Zone,'' before ''Puerto Rico,''.

1986—Subsecs. (a), (b). Pub. L. 99–661 inserted ''or performing inactive-duty training'' after ''active duty''.

1983—Subsec. (a)(1). Pub. L. 98–209, §2(f)(1), struck out ''of the Army, Navy, Air Force, and Marine Corps'' after ''All judge advocates''.

Subsec. (a)(2) to (7). Pub. L. 98–209, §2(f)(2), struck out par. (2) which included law specialists among those persons authorized to administer oaths and to act as notaries under this section, and redesignated pars. (3) to (7) as (2) to (6), respectively.

1968—Subsec. (b). Pub. L. 90–632 substituted ''military judge'' for ''law officer'' in par. (1).

1967—Subsec. (a)(1). Pub. L. 90–179 inserted references to judge advocates of the Navy and the Marine Corps.

1960—Subsec. (a). Pub. L. 86–589 permitted the administration of oaths and the performance of notarial acts for persons serving, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–209 effective first day of eighth calendar month beginning after Dec. 6, 1983, see section 12(a)(1) of Pub. L. 98–209, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–632 effective first day of tenth month following October 1968, see section 4 of Pub. L. 90–632, set out as a note under section 801 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 937. Art. 137. Articles to be explained

(a)(1) The sections of this title (articles of the Uniform Code of Military Justice) specified in paragraph (3) shall be carefully explained to each enlisted member at the time of (or within fourteen days after)—

(A) the member's initial entrance on active duty; or

(B) the member's initial entrance into a duty status with a reserve component.

(2) Such sections (articles) shall be explained again—

(A) after the member has completed six months of active duty or, in the case of a member of a reserve component, after the member has completed basic or recruit training; and

(B) at the time when the member reenlists.

(3) This subsection applies with respect to sections 802, 803, 807–815, 825, 827, 831, 837, 838, 855, 877–934, and 937–939 of this title (articles 2, 3, 7–15, 25, 27, 31, 37, 38, 55, 77–134, and 137–139).

(b) The text of the Uniform Code of Military Justice and of the regulations prescribed by the President under such Code shall be made available to a member on active duty or to a member of a reserve component, upon request by the member, for the member's personal examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78; Pub. L. 99–661, div. A, title VIII, §804(d), Nov. 14, 1986, 100 Stat. 3907; Pub. L. 104–106, div. A, title XI, §1152, Feb. 10, 1996, 110 Stat. 468.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
937	50:733.	May 5, 1950, ch. 169, §1 (Art. 137), 64 Stat. 144.

The word ''each'' is substituted for the word ''every''. The word ''member'' is substituted for the word ''person''. The words ''in [any of] the armed forces of the United States'' are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsecs. (a)(1) and (b), is classified to this chapter.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''within fourteen days'' for ''within six days''.

1986—Pub. L. 99–661 amended section generally, inserting provisions relating to reserve components.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 effective the earlier of (1) the last day of the 120-day period beginning on Nov. 14, 1986; or (2) the date specified in an Executive order for such amendment to take effect, see section 808 of Pub. L. 99–661, set out as a note under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 938. Art. 138. Complaints of wrongs

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
938	50:734.	May 5, 1950, ch. 169, §1 (Art. 138), 64 Stat. 144.

The words ''commanding officer'' are substituted for the word ''commander''. The word ''who'' is inserted after the word ''and''. The word ''commissioned'' is inserted after the word ''superior'' for clarity. The words ''The officer exercising general court-martial jurisdiction'' are substituted for the words ''That officer'' for clarity. The word ''send'' is substituted for the word ''transmit''. The word ''Secretary'' is substituted for the word ''Department'' for accuracy, since the ''Department'', as an entity, could not act upon the complaint.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§ 939. Art. 139. Redress of injuries to property

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces, he may, under such regulations as the Secretary concerned may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon wit-

nesses and examine them upon oath, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
939(a)	50:735(a).	May 5, 1950, ch. 169, §1 (Art. 139), 64 Stat. 144.
939(b)	50:735(b).	

In subsection (a), the words ''Secretary concerned'' are substituted for the words ''Secretary of the Department''. The word ''under'' is substituted for the words ''subject to''. The words ''or affirmation'' are omitted as covered by the definition of the word ''oath'' in section 1 of title 1. The words ''it has'' are substituted for the words ''shall have'' in the second sentence. The word ''is'' is substituted for the words ''shall be'' before the words ''subject'' and ''conclusive''. The word ''commissioned'' is inserted for clarity.

In subsection (b), the word ''If'' is substituted for the word ''Where''. The word ''considered'' is substituted for the word ''deemed''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 937 of this title.

§940. Art. 140. Delegation by the President

The President may delegate any authority vested in him under this chapter, and provide for the subdelegation of any such authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 78.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
940	50:736.	May 5, 1950, ch. 169, §1 (Art. 140), 64 Stat. 145.

The word ''may'' is substituted for the words ''is authorized to * * * to''.

SUBCHAPTER XII—UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Sec.	Art.	
941.	141.	Status.
942.	142.	Judges.
943.	143.	Organization and employees.
944.	144.	Procedure.
945.	145.	Annuities for judges and survivors.
946.	146.	Code committee.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, §924(c)(3)(A), Oct. 5, 1994, 108 Stat. 2831, substituted ''UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES'' for ''COURT OF MILITARY APPEALS'' as subchapter heading.

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(2), Nov. 5, 1990, 104 Stat. 1718, redesignated subchapter XI as XII.

§941. Art. 141. Status

There is a court of record known as the United States Court of Appeals for the Armed Forces. The court is established under article I of the Constitution. The court is located for administrative purposes only in the Department of Defense.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 103–337, div. A, title IX, §924(a)(2), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

CHANGE OF NAME

Section 924(a)(1) of Pub. L. 103–337 provided that: ''The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces.''

§942. Art. 142. Judges

(a) NUMBER.—The United States Court of Appeals for the Armed Forces consists of five judges.

(b) APPOINTMENT; QUALIFICATION.—(1) Each judge of the court shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, for a specified term determined under paragraph (2). A judge may serve as a senior judge as provided in subsection (e).

(2) The term of a judge shall expire as follows:

(A) In the case of a judge who is appointed after March 31 and before October 1 of any year, the term shall expire on September 30 of the year in which the fifteenth anniversary of the appointment occurs.

(B) In the case of a judge who is appointed after September 30 of any year and before April 1 of the following year, the term shall expire fifteen years after such September 30.

(3) Not more than three of the judges of the court may be appointed from the same political party, and no person may be appointed to be a judge of the court unless the person is a member of the bar of a Federal court or the highest court of a State.

(4) For purposes of appointment of judges to the court, a person retired from the armed forces after 20 or more years of active service (whether or not such person is on the retired list) shall not be considered to be in civilian life.

(c) REMOVAL.—Judges of the court may be removed from office by the President, upon notice and hearing, for—

(1) neglect of duty;

(2) misconduct; or

(3) mental or physical disability.

A judge may not be removed by the President for any other cause.

(d) PAY AND ALLOWANCES.—Each judge of the court is entitled to the same salary and travel

allowances as are, and from time to time may be, provided for judges of the United States Courts of Appeals.

(e) SENIOR JUDGES.—(1)(A) A former judge of the court who is receiving retired pay or an annuity under section 945 of this title (article 145) or under subchapter III of chapter 83 or chapter 84 of title 5 shall be a senior judge. The chief judge of the court may call upon an individual who is a senior judge of the court under this subparagraph, with the consent of the senior judge, to perform judicial duties with the court—

(i) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(ii) during a period in which a position of judge of the court is vacant; or

(iii) in any case in which a judge of the court recuses himself.

(B) If, at the time the term of a judge expires, no successor to that judge has been appointed, the chief judge of the court may call upon that judge (with that judge's consent) to continue to perform judicial duties with the court until the vacancy is filled. A judge who, upon the expiration of the judge's term, continues to perform judicial duties with the court without a break in service under this subparagraph shall be a senior judge while such service continues.

(2) A senior judge shall be paid for each day on which he performs judicial duties with the court an amount equal to the daily equivalent of the annual rate of pay provided for a judge of the court. Such pay shall be in lieu of retired pay and in lieu of an annuity under section 945 of this title (article 145), subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, or any other retirement system for employees of the Federal Government.

(3) A senior judge, while performing duties referred to in paragraph (1), shall be provided with such office space and staff assistance as the chief judge considers appropriate and shall be entitled to the per diem, travel allowances, and other allowances provided for judges of the court.

(4) A senior judge shall be considered to be an officer or employee of the United States with respect to his status as a senior judge, but only during periods the senior judge is performing duties referred to in paragraph (1). For the purposes of section 205 of title 18, a senior judge shall be considered to be a special government employee during such periods. Any provision of law that prohibits or limits the political or business activities of an employee of the United States shall apply to a senior judge only during such periods.

(5) The court shall prescribe rules for the use and conduct of senior judges of the court. The chief judge of the court shall transmit such rules, and any amendments to such rules, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 15 days after the issuance of such rules or amendments, as the case may be.

(6) For purposes of subchapter III of chapter 83 of title 5 (relating to the Civil Service Retirement and Disability System) and chapter 84 of such title (relating to the Federal Employees' Retirement System) and for purposes of any other Federal Government retirement system for employees of the Federal Government—

(A) a period during which a senior judge performs duties referred to in paragraph (1) shall not be considered creditable service;

(B) no amount shall be withheld from the pay of a senior judge as a retirement contribution under section 8334, 8343, 8422, or 8432 of title 5 or under any other such retirement system for any period during which the senior judge performs duties referred to in paragraph (1);

(C) no contribution shall be made by the Federal Government to any retirement system with respect to a senior judge for any period during which the senior judge performs duties referred to in paragraph (1); and

(D) a senior judge shall not be considered to be a reemployed annuitant for any period during which the senior judge performs duties referred to in paragraph (1).

(f) SERVICE OF ARTICLE III JUDGES.—(1) The Chief Justice of the United States, upon the request of the chief judge of the court, may designate a judge of a United States court of appeals or of a United States district court to perform the duties of judge of the United States Court of Appeals for the Armed Forces—

(A) during a period a judge of the court is unable to perform his duties because of illness or other disability;

(B) in any case in which a judge of the court recuses himself; or

(C) during a period when there is a vacancy on the court and in the opinion of the chief judge of the court such a designation is necessary for the proper dispatch of the business of the court.

(2) The chief judge of the court may not request that a designation be made under paragraph (1) unless the chief judge has determined that no person is available to perform judicial duties with the court as a senior judge under subsection (e).

(3) A designation under paragraph (1) may be made only with the consent of the designated judge and the concurrence of the chief judge of the court of appeals or district court concerned.

(4) Per diem, travel allowances, and other allowances paid to the designated judge in connection with the performance of duties for the court shall be paid from funds available for the payment of per diem and such allowances for judges of the court.

(g) EFFECT OF VACANCY ON COURT.—A vacancy on the court does not impair the right of the remaining judges to exercise the powers of the court.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1570; amended Pub. L. 101–510, div. A, title V, §541(f), Nov. 5, 1990, 104 Stat. 1565; Pub. L. 102–190, div. A, title X, §1061(b)(1)(A), (B), (2), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (e)(5). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (e)(5). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1994—Subsecs. (a), (f)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1991—Subsec. (e)(1). Pub. L. 102–190, §1061(b)(1)(A)(i)–(iv), designated existing provisions as subpar. (A), struck out ''(2)(A)'' before ''The chief judge'', moved sentence beginning ''The chief judge of the court'' to end of par. (1)(A), substituted ''an individual who is a senior judge of the court under this subparagraph'' for ''a senior judge of the court'', and added subpar. (B).

Subsec. (e)(2). Pub. L. 102–190, §1061(b)(1)(A)(ii), (v), redesignated par. (2)(B) as (2) and incorporated former par. (2)(A) into par. (1)(A).

Subsec. (e)(3), (4), (6). Pub. L. 102–190, §1061(b)(1)(B), substituted ''paragraph (1)'' for ''paragraph (2)'' wherever appearing.

Subsec. (f)(1)(C). Pub. L. 102–190, §1061(b)(2)(A), added subpar. (C).

Subsec. (f)(2) to (4). Pub. L. 102–190, §1061(b)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1990—Subsec. (b)(1). Pub. L. 101–510, §541(f)(1), substituted ''civilian life'' for ''civil life''.

Subsec. (b)(4). Pub. L. 101–510, §541(f)(2), added par. (4).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 1061(b)(1)(D) of Pub. L. 102–190 provided that: ''The amendments made by this paragraph [amending this section and section 945 of this title] shall take effect as of November 29, 1989.''

EFFECTIVE DATE FOR REPEAL OF TERMINATION OF AUTHORITY FOR CHIEF JUSTICE OF UNITED STATES TO DESIGNATE ARTICLE III JUDGES FOR TEMPORARY SERVICE ON COURT OF APPEALS FOR THE ARMED FORCES

Pub. L. 104–201, div. A, title X, §1074(c)(2), Sept. 23, 1996, 110 Stat. 2660, provided that: ''The authority provided under section 942(f) of title 10, United States Code, shall be effective as if section 1142 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 467) [repealing section 1301(i) of Pub. L. 101–189, set out below] had been enacted on September 29, 1995.''

TRANSITIONAL PROVISIONS

Section 1301(d)–(i) of Pub. L. 101–189, as amended by Pub. L. 104–106, div. A, title XI, §1142, Feb. 10, 1996, 110 Stat. 467; Pub. L. 104–201, div. A, title X, §1068(c), Sept. 23, 1996, 110 Stat. 2655, provided that:

''(d) TRANSITION FROM THREE-JUDGE COURT TO FIVE-JUDGE COURT.—(1) Effective during the period before October 1, 1990—

''(A) the number of members of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall (notwithstanding subsection (a) of section 942 of title 10, United States Code, as enacted by subsection (c)) be three; and

''(B) the maximum number of members of the court who may be appointed from the same political party shall (notwithstanding subsection (b)(3) of section 942) be two.

''(2) In the application of paragraph (2) of section 942(b) of title 10, United States Code (as enacted by subsection (c)) to the judge who is first appointed to one of the two new positions of the court created as of October 1, 1990, as designated by the President at the time of appointment, the anniversary referred to in subparagraph (A) of that paragraph shall be treated as being the seventh anniversary and the number of years referred to in subparagraph (B) of that paragraph shall be treated as being seven.

''(e) TRANSITION RULES RELATING TO RETIREMENT OF NEW JUDGES.—(1) Except as otherwise provided in paragraphs (2) and (3), a judge to whom subsection (d)(2) applies shall be eligible for an annuity as provided in section 945 of title 10, United States Code, as enacted by subsection (c).

''(2) The annuity of a judge referred to in paragraph (1) is computed under subsection (b) of such section 945 only if the judge—

''(A) completes the term of service for which he is first appointed;

''(B) is reappointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] at any time after the completion of such term of service;

''(C) is separated from civilian service in the Federal Government after completing a total of 15 years as a judge of such court; and

''(D) elects to receive an annuity under such section in accordance with subsection (a)(2) of such section.

''(3) In the case of a judge referred to in paragraph (1) who is separated from civilian service after completing the term of service for which he is first appointed as a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] and before completing a total of 15 years as a judge of such court, the annuity of such judge (if elected in accordance with section 945(a)(2) of title 10, United States Code) shall be 1/15 of the amount computed under subsection (b) of such section times the number of years (including any fraction thereof) of such judge's service as a judge of the court.

''(f) APPLICABILITY OF AMENDED RETIREMENT PROVISIONS.—Except as otherwise provided in subsections (c) and (d), section 945 of title 10, United States Code, as enacted by subsection (c), applies with respect to judges of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after September 28, 1988, and to the survivors of such judges.

''(g) TERMS OF CURRENT JUDGES.—Section 942(b) of title 10, United States Code, as enacted by subsection (c), shall not apply to the term of office of a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] serving on such court on the date of the enactment of this Act [Nov. 29, 1989]. The term of office of such a judge shall expire on the later of (A) the date the term of such judge would have expired under section 867(a)(1) of title 10, United States Code, as in effect on the day before such date of enactment, or (B) September 30 of the year in which the term of such judge would have expired under such section 867(a)(1).

''(h) CIVIL SERVICE STATUS OF CURRENT EMPLOYEES.—Section 943(c) of title 10, United States Code, as enacted by subsection (c), shall not be applied to change the civil service status of any attorney who is an employee of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the day before the date of the enactment of this Act [Nov. 29, 1989].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 945 of this title; title 5 section 8337.

§943. Art. 143. Organization and employees

(a) CHIEF JUDGE.—(1) The chief judge of the United States Court of Appeals for the Armed Forces shall be the judge of the court in regular active service who is senior in commission among the judges of the court who—

(A) have served for one or more years as judges of the court; and

(B) have not previously served as chief judge.

(2) In any case in which there is no judge of the court in regular active service who has served as a judge of the court for at least one year, the judge of the court in regular active service who is senior in commission and has not served previously as chief judge shall act as the chief judge.

(3) Except as provided in paragraph (4), a judge of the court shall serve as the chief judge under paragraph (1) for a term of five years. If no other judge is eligible under paragraph (1) to serve as chief judge upon the expiration of that term, the chief judge shall continue to serve as chief judge until another judge becomes eligible under that paragraph to serve as chief judge.

(4)(A) The term of a chief judge shall be terminated before the end of five years if—

(i) the chief judge leaves regular active service as a judge of the court; or

(ii) the chief judge notifies the other judges of the court in writing that such judge desires to be relieved of his duties as chief judge.

(B) The effective date of a termination of the term under subparagraph (A) shall be the date on which the chief judge leaves regular active service or the date of the notification under subparagraph (A)(ii), as the case may be.

(5) If a chief judge is temporarily unable to perform his duties as a chief judge, the duties shall be performed by the judge of the court in active service who is present, able and qualified to act, and is next in precedence.

(b) PRECEDENCE OF JUDGES.—The chief judge of the court shall have precedence and preside at any session that he attends. The other judges shall have precedence and preside according to the seniority of their original commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

(c) STATUS OF CERTAIN POSITIONS.—(1) Attorney positions of employment under the Court of Appeals for the Armed Forces are excepted from the competitive service. A position of employment under the court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service. Appointments to positions referred to in the preceding sentences shall be made by the court, without the concurrence of any other officer or employee of the executive branch, in the same manner as appointments are made to other executive branch positions of a confidential or policy-determining character for which it is not practicable to examine or to hold a competitive examination. Such positions shall not be counted as positions of that character for purposes of any limitation on the number of positions of that character provided in law.

(2) In making appointments to the positions described in paragraph (1), preference shall be given, among equally qualified persons, to persons who are preference eligibles (as defined in section 2108(3) of title 5).

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–484, div. A, title X, §1061(a)(1), Oct. 23, 1992, 106 Stat. 2503; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–201, div. A, title X, §1068(b), Sept. 23, 1996, 110 Stat. 2655; Pub. L. 105–85, div. A, title X, §1073(a)(11), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 made technical amendment to heading and substituted ''under the court'' for ''under the Court'' in second sentence and ''positions referred to in the preceding sentences'' for ''such positions'' in third sentence.

1996—Subsec. (c). Pub. L. 104–201 substituted ''Certain'' for ''Attorney'' in heading and inserted ''A position of employment under the Court that is provided primarily for the service of one judge of the court, reports directly to the judge, and is a position of a confidential character is excepted from the competitive service.'' after first sentence in par. (1).

1994—Subsecs. (a)(1), (c). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a). Pub. L. 102–484 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''CHIEF JUDGE.—The President shall designate from time to time one of the judges of the United States Court of Military Appeals to be chief judge of the court.''

TRANSITION PROVISION

Section 1061(b) of Pub. L. 102–484 provided that: ''For purposes of section 943(a) (article 943(a)) of title 10, United States Code, as amended by subsection (a)—

''(1) the person serving as the chief judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on the date of the enactment of this Act [Oct. 23, 1992] shall be deemed to have been designated as the chief judge under such section; and

''(2) the five-year term provided in paragraph (3) of such section shall be deemed to have begun on the date on which such judge was originally designated as the chief judge under section 867(a) or 943 of title 10, United States Code, as the case may be, as that provision of law was in effect on the date of the designation.''

INAPPLICABILITY OF SUBSECTION (c)

Subsec. (c) of this section not to be applied to change civil service status of any attorney who is an employee of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] on Nov. 28, 1989, see section 1301(h) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 2302.

§ 944. Art. 144. Procedure

The United States Court of Appeals for the Armed Forces may prescribe its rules of procedure and may determine the number of judges required to constitute a quorum.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

§ 945. Art. 145. Annuities for judges and survivors

(a) RETIREMENT ANNUITIES FOR JUDGES.—(1) A person who has completed a term of service for

which he was appointed as a judge of the United States Court of Appeals for the Armed Forces is eligible for an annuity under this section upon separation from civilian service in the Federal Government. A person who continues service with the court as a senior judge under section 942(e)(1)(B) of this title (article 142(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.

(2) A person who is eligible for an annuity under this section shall be paid that annuity if, at the time he becomes eligible to receive that annuity, he elects to receive that annuity in lieu of any other annuity for which he may be eligible at the time of such election (whether an immediate or a deferred annuity) under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 or any other retirement system for civilian employees of the Federal Government. Such an election may not be revoked.

(3)(A) The Secretary of Defense shall notify the Director of the Office of Personnel Management whenever an election under paragraph (2) is made affecting any right or interest under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5 based on service as a judge of the United States Court of Appeals for the Armed Forces.

(B) Upon receiving any notification under subparagraph (A) in the case of a person making an election under paragraph (2), the Director shall determine the amount of the person's lump-sum credit under subchapter III of chapter 83 or subchapter II of chapter 84 of title 5, as applicable, and shall request the Secretary of the Treasury to transfer such amount from the Civil Service Retirement and Disability Fund to the Department of Defense Military Retirement Fund. The Secretary of the Treasury shall make any transfer so requested.

(C) In determining the amount of a lump-sum credit under section 8331(8) of title 5 for purposes of this paragraph—

(i) interest shall be computed using the rates under section 8334(e)(3) of such title; and

(ii) the completion of 5 years of civilian service (or longer) shall not be a basis for excluding interest.

(b) AMOUNT OF ANNUITY.—The annuity payable under this section to a person who makes an election under subsection (a)(2) is 80 percent of the rate of pay for a judge in active service on the United States Court of Appeals for the Armed Forces as of the date on which the person is separated from civilian service.

(c) RELATION TO THRIFT SAVINGS PLAN.—Nothing in this section affects any right of any person to participate in the thrift savings plan under section 8351 of title 5 or subchapter III of chapter 84 of such title.

(d) SURVIVOR ANNUITIES.—The Secretary of Defense shall prescribe by regulation a program to provide annuities for survivors and former spouses of persons receiving annuities under this section by reason of elections made by such persons under subsection (a)(2). That program shall, to the maximum extent practicable, provide benefits and establish terms and conditions that are similar to those provided under survivor and former spouse annuity programs under other retirement systems for civilian employees of the Federal Government. The program may include provisions for the reduction in the annuity paid the person as a condition for the survivor annuity. An election by a judge (including a senior judge) or former judge to receive an annuity under this section terminates any right or interest which any other individual may have to a survivor annuity under any other retirement system for civilian employees of the Federal Government based on the service of that judge or former judge as a civilian officer or employee of the Federal Government (except with respect to an election under subsection (g)(1)(B)).

(e) COST-OF-LIVING INCREASES.—The Secretary of Defense shall periodically increase annuities and survivor annuities paid under this section in order to take account of changes in the cost of living. The Secretary shall prescribe by regulation procedures for increases in annuities under this section. Such system shall, to the maximum extent appropriate, provide cost-of-living adjustments that are similar to those that are provided under other retirement systems for civilian employees of the Federal Government.

(f) DUAL COMPENSATION.—A person who is receiving an annuity under this section by reason of service as a judge of the court and who is appointed to a position in the Federal Government shall, during the period of such person's service in such position, be entitled to receive only the annuity under this section or the pay for that position, whichever is higher.

(g) ELECTION OF JUDICIAL RETIREMENT BENEFITS.—(1) A person who is receiving an annuity under this section by reason of service as a judge of the court and who later is appointed as a justice or judge of the United States to hold office during good behavior and who retires from that office, or from regular active service in that office, shall be paid either (A) the annuity under this section, or (B) the annuity or salary to which he is entitled by reason of his service as such a justice or judge of the United States, as determined by an election by that person at the time of his retirement from the office, or from regular active service in the office, of justice or judge of the United States. Such an election may not be revoked.

(2) An election by a person to be paid an annuity or salary pursuant to paragraph (1)(B) terminates (A) any election previously made by such person to provide a survivor annuity pursuant to subsection (d), and (B) any right of any other individual to receive a survivor annuity pursuant to subsection (d) on the basis of the service of that person.

(h) SOURCE OF PAYMENT OF ANNUITIES.—Annuities and survivor annuities paid under this section shall be paid out of the Department of Defense Military Retirement Fund.

(i) ELIGIBILITY TO ELECT BETWEEN RETIREMENT SYSTEMS.—(1) This subsection applies with respect to any person who—

(A) prior to being appointed as a judge of the United States Court of Appeals for the Armed Forces, performed civilian service of a type making such person subject to the Civil Service Retirement System; and

(B) would be eligible to make an election under section 301(a)(2) of the Federal Employ-

ees' Retirement System Act of 1986, by virtue of being appointed as such a judge, but for the fact that such person has not had a break in service of sufficient duration to be considered someone who is being reemployed by the Federal Government.

(2) Any person with respect to whom this subsection applies shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 to the same extent and in the same manner (including subject to the condition set forth in section 301(d) of such Act) as if such person's appointment constituted reemployment with the Federal Government.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1572; amended Pub. L. 102–190, div. A, title X, §1061(b)(1)(C), Dec. 5, 1991, 105 Stat. 1474; Pub. L. 102–484, div. A, title X, §§1052(11), 1062(a)(1), Oct. 23, 1992, 106 Stat. 2499, 2504; Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831.)

REFERENCES IN TEXT

Section 301(a)(2) and (d) of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (i), is section 301(a)(2) and (d) of Pub. L. 99–335, which is set out in a note under section 8331 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsecs. (a)(1), (3)(A), (b), (i)(1)(A). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

1992—Subsec. (a)(1). Pub. L. 102–484, §1052(11), substituted ''section 942(e)(1)(B) of this title (article 142(e)(1)(B))'' for ''section 943(e)(1)(B) of this title (art. 143(e)(1)(B))''.

Subsec. (i). Pub. L. 102–484, §1062(a)(1), added subsec. (i).

1991—Subsec. (a)(1). Pub. L. 102–190 inserted at end ''A person who continues service with the court as a senior judge under section 943(e)(1)(B) of this title (art. 143(e)(1)(B)) upon the expiration of the judge's term shall be considered to have been separated from civilian service in the Federal Government only upon the termination of that continuous service.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1062(a)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to any appointment which takes effect on or after the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Nov. 29, 1989, see section 1061(b)(1)(D) of Pub. L. 102–190, set out as a note under section 942 of this title.

EFFECTIVE DATE

Except as otherwise provided, section applicable with respect to judges of United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] whose terms of service on such court end after Sept. 28, 1988, and to survivors of such judges, see section 1301(f) of Pub. L. 101–189, set out as a Transitional Provisions note under section 942 of this title.

ADDITIONAL ELECTIONS

Section 1062(b) of Pub. L. 102–484 provided that:

''(1) Any individual who is a judge in active service on the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be eligible to make an election under section 301(a)(2) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note] if—

''(A) such individual is such a judge on the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) as of the date of the election, such individual is—

''(i) subject to the Civil Service Retirement System; or

''(ii) covered by Social Security but not subject to the Federal Employees' Retirement System.

''(2) An election under this subsection—

''(A) shall not be effective unless it is—

''(i) made within 30 days after the date of the enactment of this Act; and

''(ii) in compliance with the condition set forth in section 301(d) of the Federal Employees' Retirement System Act of 1986 [Pub. L. 99–335, 5 U.S.C. 8331 note]; and

''(B) may not be revoked.

''(3) For the purpose of this subsection, a judge of the United States Court of Military Appeals [now United States Court of Appeals for the Armed Forces] shall be considered to be 'covered by Social Security' if such judge's service is employment for the purposes of title II of the Social Security Act [42 U.S.C. 401 et seq.] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 942 of this title.

§ 946. Art. 146. Code committee

(a) ANNUAL SURVEY.—A committee shall meet at least annually and shall make an annual comprehensive survey of the operation of this chapter.

(b) COMPOSITION OF COMMITTEE.—The committee shall consist of—

(1) the judges of the United States Court of Appeals for the Armed Forces;

(2) the Judge Advocates General of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, and the Staff Judge Advocate to the Commandant of the Marine Corps; and

(3) two members of the public appointed by the Secretary of Defense.

(c) REPORTS.—(1) After each such survey, the committee shall submit a report—

(A) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and

(B) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Homeland Security.

(2) Each report under paragraph (1) shall include the following:

(A) Information on the number and status of pending cases.

(B) Any recommendation of the committee relating to—

(i) uniformity of policies as to sentences;

(ii) amendments to this chapter; and

(iii) any other matter the committee considers appropriate.

(d) QUALIFICATIONS AND TERMS OF APPOINTED MEMBERS.—Each member of the committee appointed by the Secretary of Defense under subsection (b)(3) shall be a recognized authority in military justice or criminal law. Each such member shall be appointed for a term of three years.

(e) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. I) shall not apply to the committee.

(Added Pub. L. 101–189, div. A, title XIII, §1301(c), Nov. 29, 1989, 103 Stat. 1574; amended Pub. L. 103–337, div. A, title IX, §924(c)(1), Oct. 5, 1994, 108 Stat. 2831; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsec. (c)(1)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (c)(1)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(1)(A). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(1). Pub. L. 103–337 substituted ''Court of Appeals for the Armed Forces'' for ''Court of Military Appeals''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

CHAPTER 48—MILITARY CORRECTIONAL FACILITIES

Sec.
951. Establishment; organization; administration.
952. Parole.
953. Remission or suspension of sentence; restoration to duty; reenlistment.
954. Voluntary extension; probation.
955. Prisoners transferred to or from foreign countries.
956. Deserters, prisoners, members absent without leave: expenses and rewards.

AMENDMENTS

1984—Pub. L. 98–525, title XIV, §1401(b)(2), Oct. 19, 1984, 98 Stat. 2615, added item 956.

1980—Pub. L. 96–513, title V, §511(26), Dec. 13, 1980, 94 Stat. 2922, added item 955.

§951. Establishment; organization; administration

(a) The Secretaries concerned may provide for the establishment of such military correctional facilities as are necessary for the confinement of offenders against chapter 47 of this title.

(b) The Secretary concerned shall—

(1) designate an officer for each armed force under his jurisdiction to administer military correctional facilities established under this chapter;

(2) provide for the education, training, rehabilitation, and welfare of offenders confined in a military correctional facility of his department; and

(3) provide for the organization and equipping of offenders selected for training with a view to their honorable restoration to duty or possible reenlistment.

(c) There shall be an officer in command of each major military correctional facility. Under regulations to be prescribed by the Secretary concerned, the officer in command shall have custody and control of offenders confined within the facility which he commands, and shall usefully employ those offenders as he considers best for their health and reformation, with a view to their restoration to duty, enlistment for future service, or return to civilian life as useful citizens.

(d) There may be made or repaired at each military correctional facility such supplies for the armed forces or other agencies of the United States as can properly and economically be made or repaired at such facilities.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 287; amended Pub. L. 96–513, title V, §511(27), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–513 substituted ''at such facilities'' for ''as such facilities''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

OFFENSES AGAINST MINORS

Pub. L. 105–119, title I, §115(a)(8)(C), Nov. 26, 1997, 111 Stat. 2466, provided that:

''(i) The Secretary of Defense shall specify categories of conduct punishable under the Uniform Code of Military Justice which encompass a range of conduct comparable to that described in section 170101(a)(3)(A) and (B) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)(3)(A) and (B)), and such other conduct as the Secretary deems appropriate for inclusion for purposes of this subparagraph.

''(ii) In relation to persons sentenced by a court martial for conduct in the categories specified under clause (i), the Secretary shall prescribe procedures and implement a system to—

''(I) provide notice concerning the release from confinement or sentencing of such persons;

''(II) inform such persons concerning registration obligations; and

''(III) track and ensure compliance with registration requirements by such persons during any period of parole, probation, or other conditional release or supervision related to the offense.

''(iii) The procedures and requirements established by the Secretary under this subparagraph shall, to the maximum extent practicable, be consistent with those specified for Federal offenders under the amendments made by subparagraphs (A) and (B) [section 115(a)(8)(A), (B) of Pub. L. 105–119, amending sections 3563, 3583, 4042, and 4209 of Title 18, Crimes and Criminal Procedure].

''(iv) If a person within the scope of this subparagraph is confined in a facility under the control of the Bureau of Prisons at the time of release, the Bureau of Prisons shall provide notice of release and inform the person concerning registration obligations under the procedures specified in section 4042(c) of title 18, United States Code.''

NOTIFICATION OF VICTIMS AND WITNESSES OF STATUS OF PRISONERS IN MILITARY CORRECTIONAL FACILITIES

Pub. L. 103–160, div. A, title V, §552, Nov. 30, 1993, 107 Stat. 1662, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall prescribe procedures and implement a centralized system for notice of the status of offenders confined in military correctional facilities to be provided to victims and witnesses. Such procedures shall, to the maximum extent practicable, be consistent with procedures of the Federal Bureau of Prisons for victim and witness notification.

''(b) DEADLINE FOR PRESCRIBING PROCEDURES.—The Secretary of Defense—

''(1) shall prescribe the procedures required by subsection (a) not later than six months after the date of the enactment of this Act [Nov. 30, 1993]; and

''(2) shall implement the centralized system required by that section not later than six months after those procedures are prescribed.

''(c) NOTIFICATION AND REPORTING REQUIREMENT.—(1) Upon implementation of the centralized system of notice under subsection (a), the Secretary shall notify Congress of such implementation.

''(2) After such system has been in operation for one year, the Secretary shall submit to Congress a report detailing the lessons learned during the first year of operation.

''(d) TERMINATION OF REQUIREMENT.—The requirement to establish procedures and implement a centralized system of notice under subsection (a) shall expire 90 days after the receipt of the report required by subsection (c)(2).''

§ 952. Parole

(a) The Secretary concerned may provide a system of parole for offenders who are confined in military correctional facilities and who were at the time of commission of their offenses subject to the authority of that Secretary.

(b) In a case in which parole for an offender serving a sentence of confinement for life is denied, only the President or the Secretary concerned may grant the offender parole on appeal of that denial. The authority to grant parole on appeal in such a case may not be delegated.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 287; amended Pub. L. 105–85, div. A, title V, §582(a), Nov. 18, 1997, 111 Stat. 1760.)

AMENDMENTS

1997—Pub. L. 105–85 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 582(b) of Pub. L. 105–85 provided that: ''Subsection (b) of section 952 of title 10, United States Code (as added by subsection (a)), shall apply only with respect to any decision to deny parole made after the date of the enactment of this Act [Nov. 18, 1997].''

§ 953. Remission or suspension of sentence; restoration to duty; reenlistment

For offenders who were at the time of commission of their offenses subject to his authority and who merit such action, the Secretary concerned shall establish—

(1) a system for the remission or suspension of the unexecuted part of the sentences of selected offenders;

(2) a system for the restoration to duty of such offenders who have had the unexecuted part of their sentences remitted or suspended and who have not been discharged; and

(3) a system for the enlistment of such offenders who have had the unexecuted part of their sentences remitted and who have been discharged.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 287.)

§ 954. Voluntary extension; probation

The Secretary concerned may provide for persons who were subject to his authority at the time of commission of their offenses a system for retention of selected offenders beyond expiration of normal service obligation in order to voluntarily serve a period of probation with a view to honorable restoration to duty.

(Added Pub. L. 90–377, §1, July 5, 1968, 82 Stat. 288; amended Pub. L. 105–85, div. A, title X, §1073(a)(12), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Pub. L. 105–85 substituted ''his authority'' for ''this authority''.

§ 955. Prisoners transferred to or from foreign countries

(a) When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders, the Secretary concerned may, with the concurrence of the Attorney General, transfer to such foreign country any offender against chapter 47 of this title. Such transfer shall be effected subject to the terms of such treaty and chapter 306 of title 18.

(b) Whenever the United States is party to an agreement on the status of forces under which the United States may request that it take custody of a prisoner belonging to its armed forces who is confined by order of a foreign court, the Secretary concerned may provide for the carrying out of the terms of such confinement in a military correctional facility of his department or in any penal or correctional institution under the control of the United States or which the United States may be allowed to use. Except as otherwise specified in such agreement, such person shall be treated as if he were an offender against chapter 47 of this title.

(Added Pub. L. 95–144, §4, Oct. 28, 1977, 91 Stat. 1221; amended Pub. L. 96–513, title V, §511(28), Dec. 12, 1980, 94 Stat. 2922.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''such'' for ''said'' in two places, ''Such'' for ''Said'', and struck out '', United States Code'' after ''18''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 956. Deserters, prisoners, members absent without leave: expenses and rewards

Funds appropriated to the Department of Defense may be used for the following purposes:

(1) Expenses for the apprehension and delivery of deserters, prisoners, and members absent without leave, including the payment of rewards, in an amount not to exceed $75, for the apprehension of any such person.

(2) Expenses of prisoners confined in nonmilitary facilities.

(3) Payment of a gratuity of not to exceed $25 to each prisoner upon release from confinement in a military or contract prison facility.

(4) The issue of authorized articles to prisoners and other persons in military custody.

(5) Under such regulations as the Secretary concerned may prescribe, expenses incident to the maintenance, pay, and allowances of prisoners of war, other persons in the custody of the Army, Navy, or Air Force whose status is determined by the Secretary concerned to be similar to prisoners of war, and persons detained in the custody of the Army, Navy, or Air Force pursuant to Presidential proclamation.

(Added Pub. L. 98–525, title XIV, §1401(b)(1), Oct. 19, 1984, 98 Stat. 2614.)

PRIOR PROVISIONS

Provisions similar to those in pars. (1) to (5) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (2) which first appeared in the act of July 1, 1943:

Oct. 12, 1984, Pub. L. 98–473, title I, §101(h)[title VIII, §8006], 98 Stat. 1904, 1923.

Dec. 8, 1983, Pub. L. 98–212, title VII, §§706, 709, 97 Stat. 1437, 1439.

Dec. 21, 1982, Pub. L. 97–377, title I, §101(c)[title VII, §§706, 709], 96 Stat. 1833, 1850, 1851.

Dec. 29, 1981, Pub. L. 97–114, title VII, §§706, 709, 95 Stat. 1578, 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, §§706, 709, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, §§706, 709, 93 Stat. 1152, 1153.

Oct. 13, 1978, Pub. L. 95–457, title VIII, §§806, 809, 92 Stat. 1243, 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, §§805, 808, 91 Stat. 899, 900.

Sept. 22, 1976, Pub. L. 94–419, title VII, §§705, 708, 90 Stat. 1291, 1292.

Feb. 9, 1976, Pub. L. 94–212, title VII, §§705, 708, 90 Stat. 168, 169.

Oct. 8, 1974, Pub. L. 93–437, title VIII, §§805, 808, 88 Stat. 1224, 1225.

Jan. 2, 1974, Pub. L. 93–238, title VII, §§705, 708, 87 Stat. 1038, 1039.

Oct. 26, 1972, Pub. L. 92–570, title VII, §§705, 708, 86 Stat. 1196, 1197.

Dec. 18, 1971, Pub. L. 92–204, title VII, §§705, 708, 85 Stat. 727, 728.

Jan. 11, 1971, Pub. L. 91–668, title VIII, §§805, 808, 84 Stat. 2030, 2031.

Dec. 29, 1969, Pub. L. 91–171, title VI, §§605, 608, 83 Stat. 480.

Oct. 17, 1968, Pub. L. 90–580, title V, §§504, 507, 82 Stat. 1129, 1130.

Sept. 29, 1967, Pub. L. 90–96, title VI, §§604, 607, 81 Stat. 242.

Oct. 15, 1966, Pub. L. 89–687, title VI, §§604, 607, 80 Stat. 991.

Sept. 29, 1965, Pub. L. 89–213, title VI, §§604, 607, 79 Stat. 873, 874.

Aug. 19, 1964, Pub. L. 88–446, title V, §§504, 507, 78 Stat. 474, 475.

Oct. 17, 1963, Pub. L. 88–149, title V, §§504, 507, 77 Stat. 264.

Aug. 9, 1962, Pub. L. 87–577, title I, §101, title V, §§504, 507, 76 Stat. 318, 328.

Aug. 17, 1961, Pub. L. 87–144, title I, §101, title II, §201, title VI, §§604, 607, 75 Stat. 365–369, 375, 376.

July 7, 1960, Pub. L. 86–601, title I, §101, title II, §201, title V, §§504, 507, 74 Stat. 338–340, 342, 350.

Aug. 18, 1959, Pub. L. 86–166, title I, §101, title II, §201, title V, §§604, 607, 73 Stat. 366–368, 370, 378, 379.

Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, title VI, §604, 72 Stat. 713, 714, 721, 722, 723.

Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, title VI, §604, 71 Stat. 313, 314, 321, 323.

July 2, 1956, ch. 488, title III, §301, title V, §501, title VI, §604, 70 Stat. 456, 457, 464, 465, 467.

July 13, 1955, ch. 358, title III, §301, title V, §501, title VI, §606, 69 Stat. 303, 304, 312, 313, 315.

June 30, 1954, ch. 432, title IV, §401, title VI, §601, title VII, §706, 68 Stat. 338, 339, 347, 348, 350.

Aug. 1, 1953, ch. 305, title III, §301, title V, §501, title VI, §610, 67 Stat. 338, 339, 348, 350.

July 10, 1952, ch. 630, title III, §301, title V, §501, title VI, §612, 66 Stat. 519, 520, 530, 532.

Oct. 18, 1951, ch. 512, title III, §301, title V, §501, title VI, §612, 65 Stat. 426, 429, 443, 446.

Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, title VI, §614, 64 Stat. 732, 735, 750, 753.

Oct. 29, 1949, ch. 787, title III, §301, title V, §501, title VI, §616, 63 Stat. 990–992, 1015, 1020.

June 24, 1948, ch. 632, §§1, 11, 62 Stat. 653, 655, 669.

July 30, 1947, ch. 357, title I, §§1, 12, 61 Stat. 555, 557, 572.

July 16, 1946, ch. 583, §§1, 13, 60 Stat. 546–548, 565.

July 3, 1945, ch. 265, §§1, 15, 59 Stat. 388–390, 406.

June 28, 1944, ch. 303, §§1, 15, 58 Stat. 578, 580, 595.

July 1, 1943, ch. 185, §§1, 15, 57 Stat. 352, 354, 369.

July 2, 1942, ch. 477, §§1, 14, 56 Stat. 615, 617, 633.

Dec. 17, 1941, ch. 591, title I, §103, 55 Stat. 813.

June 30, 1941, ch. 262, §1, 55 Stat. 371, 373.

June 13, 1940, ch. 343, §1, 54 Stat. 357–359.

Apr. 26, 1939, ch. 88, §1, 53 Stat. 598, 600.

June 11, 1938, ch. 37, §1, 52 Stat. 648, 649.

July 1, 1937, ch. 423, §1, 50 Stat. 448, 450.

May 15, 1936, ch. 404, §1, title I, 49 Stat. 1284, 1286.

Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 127, 128.

Apr. 26, 1934, ch. 165, title I, 48 Stat. 619, 621.

Mar. 4, 1933, ch. 281, title I, 47 Stat. 1575, 1577.

July 14, 1932, ch. 482, title I, 47 Stat. 668, 670, 671.

Feb. 23, 1931, ch. 279, title I, 46 Stat. 1281–1284.

May 28, 1930, ch. 348, title I, 46 Stat. 436, 438.

Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354, 1356.

Mar. 23, 1928, ch. 232, title I, 45 Stat. 330, 332.

Feb. 23, 1927, ch. 167, title I, 44 Stat. 1110, 1113.

Apr. 15, 1926, ch. 146, title I, 44 Stat. 259, 262.

Feb. 12, 1925, ch. 225, title I, 43 Stat. 900.

Provisions similar to those in par. (5) of this section were contained in Pub. L. 98–212, title VII, §706, Dec. 8, 1983, 97 Stat. 1437, which was set out as a note under section 138 of this title, prior to repeal by Pub. L. 98–525, §§1403(a)(1), eff. Oct. 1, 1985.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

CHAPTER 49—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
971. Service credit: officers may not count service performed while serving as cadet or midshipman.
972. Members: effect of time lost.
973. Duties: officers on active duty; performance of civil functions restricted.
[974, 975. Repealed or Renumbered.]
976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited.
977. Operation of commissary stores: assignment of active duty members generally prohibited.
978. Drug and alcohol abuse and dependency: testing of new entrants.
979. Prohibition on loan and grant assistance to persons convicted of certain crimes.
980. Limitation on use of humans as experimental subjects.
981. Limitation on number of enlisted aides.
982. Members: service on State and local juries.
983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies.

Sec.
985. Persons convicted of capital crimes: denial of certain burial-related benefits.
986. Security clearances: limitations.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, §1048(g)(2), Dec. 28, 2001, 115 Stat. 1228, amended directory language of Pub. L. 106–65. See 1999 Amendment note below.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1071(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276, added item 986.

1999—Pub. L. 106–65, div. A, title V, §549(a)(2), Oct. 5, 1999, 113 Stat. 611, as amended by Pub. L. 107–107, div. A, title X, §1048(g)(2), Dec. 28, 2001, 115 Stat. 1228, substituted ''Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies'' for ''Institutions of higher education that prohibit Senior ROTC units: denial of Department of Defense grants and contracts'' in item 983.

1998—Pub. L. 105–261, div. A, title V, §569(b), Oct. 17, 1998, 112 Stat. 2032, struck out item 974 ''Civilian employment: enlisted members''.

1997—Pub. L. 105–85, div. A, title X, §1077(a)(2), Nov. 18, 1997, 111 Stat. 1915, added item 985.

1996—Pub. L. 104–201, div. A, title V, §581(c)(3), Sept. 23, 1996, 110 Stat. 2538, struck out ''enlisted'' after ''count'' in item 971.

Pub. L. 104–106, div. A, title V, §§541(b), 561(c)(2), Feb. 10, 1996, 110 Stat. 316, 322, substituted ''Members: effect of time lost'' for ''Enlisted members: required to make up time lost'' in item 972 and added item 983.

1993—Pub. L. 103–160, div. A, title III, §351(b), Nov. 30, 1993, 107 Stat. 1627, added item 977.

1989—Pub. L. 101–189, div. A, title XVI, §1622(b)(3), Nov. 29, 1989, 103 Stat. 1604, struck out item 975 ''Prohibition on the sale of certain defense articles from the stocks of the Department of Defense''.

1988—Pub. L. 100–456, div. A, title V, §521(a)(2), Sept. 29, 1988, 102 Stat. 1973, substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in item 978.

1987—Pub. L. 100–180, div. A, title V, §513(a)(2), Dec. 4, 1987, 101 Stat. 1091, substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in item 978.

1986—Pub. L. 99–661, div. A, title V, §502(b), Nov. 14, 1986, 100 Stat. 3864, added item 982.

1984—Pub. L. 98–525, title XIV, §1401(c)(2), Oct. 19, 1984, 98 Stat. 2615, added items 979 to 981.

1982—Pub. L. 97–306, title IV, §408(c)(2), Oct. 14, 1982, 96 Stat. 1446, struck out item 977 ''Denial of certain benefits to persons who fail to complete at least two years of an original enlistment''.

Pub. L. 97–295, §1(14)(B), Oct. 12, 1982, 96 Stat. 1290, added item 978.

1980—Pub. L. 96–513, title V, §501(12), Dec. 12, 1980, 94 Stat. 2908, substituted ''officers on active duty'' for ''Regular officers'' in item 973.

Pub. L. 96–342, title X, §1002(b), Sept. 8, 1980, 94 Stat. 1119, added item 977.

1979—Pub. L. 96–107, title VIII, §821(b), Nov. 9, 1979, 93 Stat. 820, redesignated item 975 relating to membership in military unions as 976.

1978—Pub. L. 95–610, §2(b), Nov. 8, 1978, 92 Stat. 3088, added item 975 relating to military unions.

Pub. L. 95–485, title VIII, §815(b), Oct. 20, 1978, 92 Stat. 1626, added item 975 relating to sale of certain defense articles.

1968—Pub. L. 90–235, §§4(a)(5)(B), 6(a)(6)(B), Jan. 2, 1968, 81 Stat. 759, 762, added items 973 and 974.

1958—Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1442, added items 971 and 972.

§ 971. Service credit: officers may not count service performed while serving as cadet or midshipman

(a) PROHIBITION ON COUNTING ENLISTED SERVICE PERFORMED WHILE AT SERVICE ACADEMY OR IN NAVAL RESERVE.—The period of service under an enlistment or period of obligated service while also performing service as a cadet or midshipman or serving as a midshipman in the Naval Reserve may not be counted in computing, for any purpose, the length of service of an officer of an armed force or an officer in the Commissioned Corps of the Public Health Service.

(b) PROHIBITION ON COUNTING SERVICE AS A CADET OR MIDSHIPMAN.—In computing length of service for any purpose, service as a cadet or midshipman may not be credited to any of the following officers:

(1) An officer of the Navy or Marine Corps.

(2) A commissioned officer of the Army or Air Force.

(3) An officer of the Coast Guard.

(4) An officer in the Commissioned Corps of the Public Health Service.

(c) SERVICE AS A CADET OR MIDSHIPMAN DEFINED.—In this section, the term ''service as a cadet or midshipman'' means—

(1) service as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; or

(2) service as a midshipman at the United States Naval Academy.

(Added Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1442; amended Pub. L. 90–235, §6(a) (1), Jan. 2, 1968, 81 Stat. 761; Pub. L. 98–557, §17(a), Oct. 30, 1984, 98 Stat. 2867; Pub. L. 101–189, div. A, title VI, §652(a)(1)(A), (2), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 104–201, div. A, title V, §581, Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title X, §1073(a)(13), Nov. 18, 1997, 111 Stat. 1900.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
971	50:1414.	June 25, 1956, ch. 439, §4, 70 Stat. 333.

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–85 substituted ''Commissioned Corps'' for ''commissioned corps''.

1996—Pub. L. 104–201, §581(c)(3), struck out ''enlisted'' after ''count'' in section catchline.

Subsec. (a). Pub. L. 104–201, §581(a), (c)(2), inserted heading, substituted ''while also performing service as a cadet or midshipman or serving as a midshipman'' for ''while also serving as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy or'', and inserted before period at end ''or an officer in the Commissioned Corps of the Public Health Service''.

Subsec. (b). Pub. L. 104–201, §581(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing length of service for any purpose—

''(1) no officer of the Navy or Marine Corps may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy;

''(2) no commissioned officer of the Army or Air Force may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy; and

''(3) no officer of the Coast Guard may be credited with service as a midshipman at the United States Naval Academy or as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy.''

Subsec. (c). Pub. L. 104–201, §581(c)(1), added subsec. (c).

1989—Subsec. (a). Pub. L. 101–189, §652(a)(1)(A), struck out '', under an appointment accepted after June 25, 1956,'' after ''Naval Reserve''.

Subsec. (b)(1). Pub. L. 101–189, §652(a)(2)(A), struck out '', if he was appointed as a midshipman or cadet after March 4, 1913'' after ''United States Coast Guard Academy''.

Subsec. (b)(2). Pub. L. 101–189, §652(a)(2)(B), struck out '', if he was appointed as a midshipman or cadet after August 24, 1912'' after ''United States Coast Guard Academy''.

1984—Subsec. (b)(3). Pub. L. 98–557 added par. (3).

1968—Pub. L. 90–235 designated existing provisions as subsec. (a) and added subsec. (b).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

APPLICATION OF SUBSECTION (a) TO SERVICE UNDER APPOINTMENT ACCEPTED BEFORE JUNE 26, 1956

Section 652(a)(1)(B) of Pub. L. 101–189 provided that: ''The limitation in section 971(a) of title 10, United States Code, shall not apply with respect to a period of service referred to in that section while also serving under an appointment as a cadet or midshipman accepted before June 26, 1956.''

§972. Members: effect of time lost

(a) ENLISTED MEMBERS REQUIRED TO MAKE UP TIME LOST.—An enlisted member of an armed force who—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

is liable, after his return to full duty, to serve for a period that, when added to the period that he served before his absence from duty, amounts to the term for which he was enlisted or inducted.

(b) OFFICERS NOT ALLOWED SERVICE CREDIT FOR TIME LOST.—In the case of an officer of an armed force who after February 10, 1996—

(1) deserts;

(2) is absent from his organization, station, or duty for more than one day without proper authority, as determined by competent authority;

(3) is confined by military or civilian authorities for more than one day in connection with a trial, whether before, during, or after the trial; or

(4) is unable for more than one day, as determined by competent authority, to perform his duties because of intemperate use of drugs or alcoholic liquor, or because of disease or injury resulting from his misconduct;

the period of such desertion, absence, confinement, or inability to perform duties may not be counted in computing, for any purpose other than basic pay under section 205 of title 37, the officer's length of service.

(Added Pub. L. 85–861, §1(20), Sept. 2, 1958, 72 Stat. 1443; amended Pub. L. 104–106, div. A, title V, §561(a)–(c)(1), Feb. 10, 1996, 110 Stat. 321, 322; Pub. L. 105–85, div. A, title X, §1073(a)(14), Nov. 18, 1997, 111 Stat. 1900.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
972	10 App.:629a. 34 App.:183b.	July 24, 1956, ch. 692, §1, 70 Stat. 631.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996'' in introductory provisions.

1996—Pub. L. 104–106, §561(c)(1), substituted ''Members: effect of time lost'' for ''Enlisted members: required to make up time lost'' as section catchline.

Pub. L. 104–106, §561(a), designated existing provisions as subsec. (a), inserted heading, added par. (3), redesignated par. (5) as (4), struck out former pars. (3) and (4), and added subsec. (b). Prior to amendment, subsec. (a)(3) and (4) read as follows:

''(3) is confined for more than one day while awaiting trial and disposition of his case, and whose conviction has become final;

''(4) is confined for more than one day under a sentence that has become final; or''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 561(e) of Pub. L. 104–106 provided that: ''The amendments made by this section [enacting section 6328 of this title and amending this section and sections 1405, 3925, 3926, 8925, and 8926 of this title] shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any period of time covered by section 972 of title 10, United States Code, that occurs after that date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 507, 1405, 3925, 3926, 6328, 8925, 8926 of this title.

§973. Duties: officers on active duty; performance of civil functions restricted

(a) No officer of an armed force on active duty may accept employment if that employment requires him to be separated from his organization, branch, or unit, or interferes with the performance of his military duties.

(b)(1) This subsection applies—

(A) to a regular officer of an armed force on the active-duty list (and a regular officer of the Coast Guard on the active duty promotion list);

(B) to a retired regular officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days; and

(C) to a reserve officer of an armed force serving on active duty under a call or order to active duty for a period in excess of 270 days.

(2)(A) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold, or exercise the functions of, a civil office in the Government of the United States—

(i) that is an elective office;

(ii) that requires an appointment by the President by and with the advice and consent of the Senate; or

(iii) that is a position in the Executive Schedule under sections 5312 through 5317 of title 5.

(B) An officer to whom this subsection applies may hold or exercise the functions of a civil office in the Government of the United States that is not described in subparagraph (A) when assigned or detailed to that office or to perform those functions.

(3) Except as otherwise authorized by law, an officer to whom this subsection applies may not hold or exercise, by election or appointment, the functions of a civil office in the government of a State, the District of Columbia, or a territory, possession, or commonwealth of the United States (or of any political subdivision of any such government).

(4) Nothing in this subsection shall be construed to invalidate any action undertaken by an officer in furtherance of assigned official duties.

(c) An officer to whom subsection (b) applies may seek and hold nonpartisan civil office on an independent school board that is located exclusively on a military reservation.

(d) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating in the Navy, shall prescribe regulations to implement this section.

(Added Pub. L. 90–235, §4(a)(5)(A), Jan. 2, 1968, 81 Stat. 759; amended Pub. L. 96–513, title I, §116, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 98–94, title X, §1002(a), Sept. 24, 1983, 97 Stat. 655; Pub. L. 101–510, div. A, title V, §556, Nov. 5, 1990, 104 Stat. 1570; Pub. L. 106–65, div. A, title V, §506, Oct. 5, 1999, 113 Stat. 591; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1)(B), (C). Pub. L. 106–65 substituted ''270 days'' for ''180 days''.

1990—Subsecs. (c), (d). Pub. L. 101–510 added subsec. (c) and redesignated former subsec. (c) as (d).

1983—Subsec. (b). Pub. L. 98–94 amended subsec. (b) generally. Prior to amendment subsec. (b) provided that, except as otherwise provided by law, no regular officer of an armed force on active duty could hold a civil office by election or appointment, whether under the United States, a Territory or possession, or a State, and that acceptance of such a civil office or the exercise of its functions by such an officer terminated his military appointment.

Subsec. (c). Pub. L. 98–94 added subsec. (c).

1980—Pub. L. 96–513, §116(c), substituted ''officers on active duty'' for ''regular officers'' in section catchline.

Subsec. (a). Pub. L. 96–513, §116(a), substituted ''of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

Subsec. (b). Pub. L. 96–513, §116(b), substituted ''regular officer of an armed force on active duty'' for ''on the active list of the Regular Army, Regular Navy, Regular Air Force, Regular Marine Corps, or Regular Coast Guard''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CONSTRUCTION AND APPLICABILITY OF SECTION 973(b)

Section 1002(b), (c) of Pub. L. 98–94 provided that:

''(b) Nothing in section 973(b) of title 10, United States Code, as in effect before the date of the enactment of this Act [Sept. 24, 1983], shall be construed—

''(1) to invalidate any action undertaken by an officer of an Armed Force in furtherance of assigned official duties; or

''(2) to have terminated the military appointment of an officer of an Armed Force by reason of the acceptance of a civil office, or the exercise of its functions, by that officer in furtherance of assigned official duties.

''(c) Nothing in section 973(b)(3) of title 10, United States Code, as added by subsection (a), shall preclude a Reserve office to whom such section applies from holding or exercising the functions of an office described in such section for the term to which the Reserve officer was elected or appointed if, before the date of the enactment of this Act [Sept. 24, 1983], the Reserve officer accepted appointment or election to that office in accordance with the laws and regulations in effect at the time of such appointment or election.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 806 of this title; title 40 section 311; title 44 section 2105.

[§ 974. Repealed. Pub. L. 105–261, div. A, title V, § 569(a), Oct. 17, 1998, 112 Stat. 2032]

Section, added Pub. L. 90–235, §6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762; amended Pub. L. 101–510, div. A, title III, §327(e), Nov. 5, 1990, 104 Stat. 1532, related to civilian employment by enlisted members.

[§ 975. Renumbered § 2390]

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term ''member of the armed forces'' means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term ''military labor organization'' means any organization that engages in or attempts to engage in—

(A) negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term ''civilian officer or employee'' means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a ''military labor organization'' as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(Added Pub. L. 95–610, §2(a), Nov. 8, 1978, 92 Stat. 3085, §975; renumbered §976, Pub. L. 96–107, title

VIII, § 821(a), Nov. 9, 1979, 93 Stat. 820; amended Pub. L. 98–525, title IV, § 414(a)(6), Oct. 19, 1984, 98 Stat. 2519; Pub. L. 99–661, div. A, title XIII, § 1343(a)(2), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 105–85, div. A, title X, § 1073(a)(15), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (f). Pub. L. 105–85 substituted ''shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.'' for ''shall, in the case of an individual, be fined not more than $10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than $25,000 and not more than $250,000.''

1987—Subsec. (a)(1) to (3). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each paragraph and substituted lowercase letter.

1986—Subsec. (a)(1). Pub. L. 99–661 struck out the second of two commas before ''(B)''.

1984—Subsec. (a)(1). Pub. L. 98–525 added cl. (B) and redesignated existing cl. (B) as (C).

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 95–610 provided that:

''(a) The Congress makes the following findings:

''(1) Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

''(2) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

''(3) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

''(4) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

''(5) Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

''(6) The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.

''(b) The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States.''

§ 977. Operation of commissary stores: assignment of active duty members generally prohibited

(a) GENERAL RULE.—A member of the armed forces on active duty may not be assigned to the operation of a commissary store.

(b) EXCEPTION FOR DCA DIRECTOR.—The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

(c) EXCEPTION FOR CERTAIN ADDITIONAL MEMBERS.—Not more than 18 members (in addition to the officer referred to in subsection (b)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subsection to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisors in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

(d) EXCEPTION FOR CERTAIN NAVY PERSONNEL.—(1) The Secretary of the Navy may assign to the Defense Commissary Agency a member of the Navy on active duty whose assignment afloat is part of the operation of a ship's food service or a ship's store. Any such assignment shall be on a nonreimbursable basis.

(2) The number of such members assigned to the Defense Commissary Agency during any period may not exceed 400.

(Added Pub. L. 103–160, div. A, title III, § 351(a), Nov. 30, 1993, 107 Stat. 1626; amended Pub. L. 105–85, div. A, title X, § 1073(a)(16), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106–65, div. A, title X, § 1066(a)(6), Oct. 5, 1999, 113 Stat. 770.)

PRIOR PROVISIONS

A prior section, added Pub. L. 96–342, title X, § 1002(a), Sept. 8, 1980, 94 Stat. 1119; amended Pub. L. 97–22, § 11(a)(1), July 10, 1981, 95 Stat. 137, provided that no one who originally enlisted after Sept. 7, 1980, in a regular armed services component and failed to serve at least 24 months of such enlistment would be eligible for Federal benefits otherwise receivable because of active service under such enlistment, except that such exclusion was not applicable to one discharged under section 1173 of chapter 61 of this title or to one later proved to be suffering from a disability resulting from an injury or disease incurred during enlistment, prior to repeal by Pub. L. 97–306, title IV, § 408(c)(1), Oct. 14, 1982, 96 Stat. 1446. See section 5303A of Title 38, Veterans' Benefits, and provisions set out as notes under that section.

AMENDMENTS

1999—Subsec. (d)(2). Pub. L. 106–65 struck out ''the lesser of (A) the number of members so assigned on October 1, 1993, and (B)'' after ''may not exceed''.

1997—Subsec. (c). Pub. L. 105–85, § 1073(a)(16)(A), substituted ''Not more than'' for ''Beginning on October 1, 1996, not more than''.

Subsec. (d)(2). Pub. L. 105–85, § 1073(a)(16)(B), struck out ''before October 1, 1996, may not exceed the number of such members so assigned on October 1, 1993. After September 30, 1996, the number of such members so assigned'' after ''during any period''.

§ 978. Drug and alcohol abuse and dependency: testing of new entrants

(a)(1) The Secretary concerned shall require that, except as provided under paragraph (2), each person applying for an original enlistment or appointment in the armed forces shall be required, before becoming a member of the armed forces, to—

(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

(B) be evaluated for drug and alcohol dependency.

(2) The Secretary concerned may provide that, in lieu of undergoing the testing and evaluation described in paragraph (1) before becoming a

member of the armed forces, a member of the armed forces under the Secretary's jurisdiction may be administered that testing and evaluation after the member's initial entry on active duty. In any such case, the testing and evaluation shall be carried out within 72 hours of the member's initial entry on active duty.

(3) The Secretary concerned shall require an applicant for appointment as a cadet or midshipman to undergo the testing and evaluation described in paragraph (1) within 72 hours of such appointment. The Secretary concerned shall require a person to whom a commission is offered under section 2106 of this title following completion of the program of advanced training under the Reserve Officers' Training Corps program to undergo such testing and evaluation before such an appointment is executed.

(b) A person who refuses to consent to testing and evaluation required by subsection (a) may not (unless that person subsequently consents to such testing and evaluation)—

(1) be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces; or

(2) if such person is already a member of the armed forces, be retained in the armed forces.

An original appointment of any such person as an officer shall be terminated.

(c)(1) A person determined, as the result of testing conducted under subsection (a)(1), to be dependent on drugs or alcohol shall be denied entrance into the armed forces.

(2) The enlistment or appointment of a person who is determined, as a result of an evaluation conducted under subsection (a)(2), to be dependent on drugs or alcohol at the time of such enlistment or appointment shall be void.

(3) A person who is denied entrance into the armed forces under paragraph (1), or whose enlistment or appointment is voided under paragraph (2), shall be referred to a civilian treatment facility.

(4) The Secretary concerned may place on excess leave any member of the armed forces whose test results under subsection (a)(2) are positive for drug or alcohol use. The Secretary may continue such member's status on excess leave pending disposition of the member's case and processing for administrative separation.

(d) The testing and evaluation required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Homeland Security. Those regulations shall apply uniformly throughout the armed forces.

(e) In time of war, or time of emergency declared by Congress or the President, the President may suspend the provisions of subsection (a).

(Added Pub. L. 97–295, §1(14)(A), Oct. 12, 1982, 96 Stat. 1289; amended Pub. L. 100–180, div. A, title V, §513(a)(1), Dec. 4, 1987, 101 Stat. 1091; Pub. L. 100–456, div. A, title V, §521(a)(1), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 101–189, div. A, title V, §513(a)–(c), Nov. 29, 1989, 103 Stat. 1440; Pub. L. 101–510, div. A, title XIV, §1484(k)(4), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 103–160, div. A, title V, §572, Nov. 30, 1993, 107 Stat. 1673; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
978	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, §501(a)(2), (b), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus. The word ''person'' is substituted for ''individuals'' for consistency. The text of subsection (b) is omitted as executed.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1993—Subsec. (a)(3). Pub. L. 103–160 substituted ''within 72 hours of such appointment'' for ''during the physical examination given the applicant before such appointment'' and ''before such an appointment is executed'' for ''during the precommissioning physical examination given such person''.

1990—Subsec. (c)(3). Pub. L. 101–510 struck out ''a'' before ''whose enlistment''.

1989—Subsec. (a)(1). Pub. L. 101–189, §513(a)(2), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), the Secretary concerned shall require each member of the armed forces under the Secretary's jurisdiction, within 72 hours after the member's initial entry on active duty after enlistment or appointment, to—

''(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

''(B) be evaluated for drug and alcohol dependency.''

Subsec. (a)(2), (3). Pub. L. 101–189, §513(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (b). Pub. L. 101–189, §513(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A person who refuses to consent to testing and evaluation required by subsection (a) may not be retained in the armed forces, and any original appointment of such person as an officer shall be terminated, unless that person consents to such testing and evaluation.''

Subsec. (c)(1). Pub. L. 101–189, §513(b)(2)(B), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 101–189, §513(b)(2)(A), (C), redesignated par. (1) as (2) and substituted ''subsection (a)(2)'' for ''subsection (a)(1)(B)''. Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 101–189, §513(b)(2)(A), (D), redesignated par. (2) as (3), inserted ''who is denied entrance into the armed forces under paragraph (1), or a'' after ''A person'', and substituted ''paragraph (2),'' for ''paragraph (1)''.

Subsec. (c)(4). Pub. L. 101–189, §513(c), added par. (4).

1988—Pub. L. 100–456 substituted ''Drug and alcohol abuse and dependency: testing of new entrants'' for ''Mandatory testing for drug, chemical, and alcohol abuse'' in section catchline, and amended text generally. Prior to amendment, text read as follows:

''(a) Before a person becomes a member of the armed forces, such person shall be required to undergo testing for drug, chemical, and alcohol use and dependency.

''(b) A person who refuses to consent to testing required by subsection (a) may not be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces unless that person consents to such testing.

''(c) A person determined, as the result of testing conducted under subsection (a), to be dependent on drugs, chemicals, or alcohol shall be—

''(1) denied entrance into the armed forces; and

''(2) referred to a civilian treatment facility.

''(d) The testing required by subsection (a) shall be carried out under regulations prescribed by the Secretary of Defense in consultation with the Secretary of Transportation. Those regulations shall apply uniformly throughout the armed forces.''

1987—Pub. L. 100–180 substituted ''Mandatory testing for drug, chemical, and alcohol abuse'' for ''Denial of entrance into the armed forces of persons dependent on drugs or alcohol'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (d) provisions formerly contained in subsecs. (a) and (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 513(d) of Pub. L. 101–189 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect as of October 1, 1989.''

REGULATIONS; IMPLEMENTATION OF PROGRAM

Section 521(b), (c) of Pub. L. 100–456 provided that:

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 60 days after the date of the enactment of this Act [Sept. 29, 1988].

''(c) EFFECTIVE DATE.—The testing and evaluation program prescribed by that section shall be implemented not later than October 1, 1989.''

IMPLEMENTATION

Section 513(b) of Pub. L. 100–180, as amended by Pub. L. 100–456, div. A, title V, §521(d), Sept. 29, 1988, 102 Stat. 1973, provided that:

''(1) The Secretary of Defense shall prescribe regulations for the implementation of section 978 of title 10, United States Code, as amended by subsection (a), not later than 45 days after the date of the enactment of this Act [Dec. 4, 1987].

''(2) [Repealed. Pub. L. 100–456, div. A, title V, §521(d), Sept. 29, 1988, 102 Stat. 1973].''

§ 979. Prohibition on loan and grant assistance to persons convicted of certain crimes

Funds appropriated to the Department of Defense may not be used to provide a loan, a guarantee of a loan, or a grant to any person who has been convicted by a court of general jurisdiction of any crime which involves the use of (or assisting others in the use of) force, trespass, or the seizure of property under the control of an institution of higher education to prevent officials or students of the institution from engaging in their duties or pursuing their studies.

(Added Pub. L. 98–525, title XIV, §1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8027], Oct. 12, 1984, 98 Stat. 1904, 1928.

Pub. L. 98–212, title VII, §732, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, §101(c)[title VII, §735], Dec. 21, 1982, 96 Stat. 1833, 1856.

Pub. L. 97–114, title VII, §736, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, §737, Dec. 15, 1980, 94 Stat. 3087.

Pub. L. 96–154, title VII, §739, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, §839, Oct. 13, 1978, 92 Stat. 1250.

Pub. L. 95–111, title VIII, §838, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, §737, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, §737, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, §838, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, §740, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, §740, Oct. 26, 1972, 86 Stat. 1203.

Pub. L. 92–204, title VII, §741, Dec. 18, 1971, 85 Stat. 734.

Pub. L. 91–668, title VIII, §841, Jan. 11, 1971, 84 Stat. 2037.

Pub. L. 91–171, title VI, §641, Dec. 29, 1969, 83 Stat. 486.

Pub. L. 90–580, title V, §540, Oct. 17, 1968, 82 Stat. 1136.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 980. Limitation on use of humans as experimental subjects

(a) Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless—

(1) the informed consent of the subject is obtained in advance; or

(2) in the case of research intended to be beneficial to the subject, the informed consent of the subject or a legal representative of the subject is obtained in advance.

(b) The Secretary of Defense may waive the prohibition in this section with respect to a specific research project to advance the development of a medical product necessary to the armed forces if the research project may directly benefit the subject and is carried out in accordance with all other applicable laws.

(Added Pub. L. 98–525, title XIV, §1401(c)(1), Oct. 19, 1984, 98 Stat. 2615; amended Pub. L. 107–107, div. A, title VII, §733, Dec. 28, 2001, 115 Stat. 1170.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8029], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, §734, Dec. 8, 1983, 97 Stat. 1444.

Pub. L. 97–377, title I, §101(c)[title VII, §737], Dec. 21, 1982, 96 Stat. 1833, 1857.

Pub. L. 97–114, title VII, §738, Dec. 29, 1981, 95 Stat. 1585.

Pub. L. 96–527, title VII, §739, Dec. 15, 1980, 94 Stat. 3088.

Pub. L. 96–154, title VII, §741, Dec. 21, 1979, 93 Stat. 1159.

Pub. L. 95–457, title VIII, §841, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, §840, Sept. 21, 1977, 91 Stat. 906.

Pub. L. 94–419, title VII, §739, Sept. 22, 1976, 90 Stat. 1297.

Pub. L. 94–212, title VII, §740, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, §841, Oct. 8, 1974, 88 Stat. 1231.

Pub. L. 93–238, title VII, §743, Jan. 2, 1974, 87 Stat. 1045.

Pub. L. 92–570, title VII, §745, Oct. 26, 1972, 86 Stat. 1203.

AMENDMENTS

2001—Pub. L. 107–107 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§981. Limitation on number of enlisted aides

(a) Subject to subsection (b), the total number of enlisted members that may be assigned or otherwise detailed to duty as enlisted aides on the personal staffs of officers of the Army, Navy, Marine Corps, Air Force, and Coast Guard (when operating as a service of the Navy) during a fiscal year is the number equal to the sum of (1) four times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of general or admiral, and (2) two times the number of officers serving on active duty at the end of the preceding fiscal year in the grade of lieutenant general or vice admiral.

(b) Not more than 300 enlisted members may be assigned to duty at any time as enlisted aides for officers of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 98–525, title XIV, §1401(c)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in Pub. L. 94–106, title VIII, §820(a), Oct. 7, 1975, 89 Stat. 544, prior to repeal by Pub. L. 98–525, §§1403(c), 1404, eff. Oct. 1, 1985.

Provisions similar to those in subsec. (b) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8034], Oct. 12, 1984, 98 Stat. 1904, 1930.

Pub. L. 98–212, title VII, §742, Dec. 8, 1983, 97 Stat. 1446.

Pub. L. 97–377, title I, §101(c)[title VII, §745], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, §746, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, §747, Dec. 15, 1980, 94 Stat. 3089.

Pub. L. 96–154, title VII, §748, Dec. 21, 1979, 93 Stat. 1160.

Pub. L. 95–457, title VIII, §848, Oct. 13, 1978, 92 Stat. 1252.

Pub. L. 95–111, title VIII, §849, Sept. 21, 1977, 91 Stat. 908.

Pub. L. 94–419, title VII, §748, Sept. 22, 1976, 90 Stat. 1299.

Pub. L. 94–212, title VII, §745, Feb. 9, 1976, 90 Stat. 175.

Pub. L. 93–437, title VIII, §848, Oct. 8, 1974, 88 Stat. 1232.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§982. Members: service on State and local juries

(a) A member of the armed forces on active duty may not be required to serve on a State or local jury if the Secretary concerned determines that such service—

(1) would unreasonably interfere with the performance of the member's military duties; or

(2) would adversely affect the readiness of the unit, command, or activity to which the member is assigned.

(b) A determination by the Secretary concerned under this section is conclusive.

(c) The Secretary concerned shall prescribe regulations for the administration of this section.

(d) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and each territory of the United States.

(Added Pub. L. 99–661, div. A, title V, §502(a), Nov. 14, 1986, 100 Stat. 3863.)

§983. Institutions of higher education that prevent ROTC access or military recruiting on campus: denial of grants and contracts from Department of Defense, Department of Education, and certain other departments and agencies

(a) DENIAL OF FUNDS FOR PREVENTING ROTC ACCESS TO CAMPUS.—No funds described in subsection (d)(1) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (in accordance with section 654 of this title and other applicable Federal laws) at that institution (or any subelement of that institution); or

(2) a student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior Reserve Officer Training Corps at another institution of higher education.

(b) DENIAL OF FUNDS FOR PREVENTING MILITARY RECRUITING ON CAMPUS.—No funds described in subsection (d)(2) may be provided by contract or by grant (including a grant of funds to be available for student aid) to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that that institution (or any subelement of that institution) has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents—

(1) the Secretary of a military department or Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(2) access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(A) Names, addresses, and telephone listings.

(B) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(c) EXCEPTIONS.—The limitation established in subsection (a) or (b) shall not apply to an institution of higher education (or any subelement of that institution) if the Secretary of Defense determines that—

(1) the institution (and each subelement of that institution) has ceased the policy or practice described in that subsection; or

(2) the institution of higher education involved has a longstanding policy of pacifism based on historical religious affiliation.

(d) COVERED FUNDS.—(1) The limitation established in subsection (a) applies to the following:

(A) Any funds made available for the Department of Defense.

(B) Any funds made available in a Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

(2) The limitation established in subsection (b) applies to the following:

(A) Funds described in paragraph (1).

(B) Any funds made available for the Department of Homeland Security.

(e) NOTICE OF DETERMINATIONS.—Whenever the Secretary of Defense makes a determination under subsection (a), (b), or (c), the Secretary—

(1) shall transmit a notice of the determination to the Secretary of Education and to Congress; and

(2) shall publish in the Federal Register a notice of the determination and the effect of the determination on the eligibility of the institution of higher education (and any subelement of that institution) for contracts and grants.

(f) SEMIANNUAL NOTICE IN FEDERAL REGISTER.—The Secretary of Defense shall publish in the Federal Register once every six months a list of each institution of higher education that is currently ineligible for contracts and grants by reason of a determination of the Secretary under subsection (a) or (b).

(Added Pub. L. 104–106, div. A, title V, §541(a), Feb. 10, 1996, 110 Stat. 315; amended Pub. L. 106–65, div. A, title V, §549(a)(1), Oct. 5, 1999, 113 Stat. 609; Pub. L. 107–296, title XVII, §1704(b)(1), (3), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 103–337, div. A, title V, §558, Oct. 5, 1994, 108 Stat. 2776, as amended, and Pub. L. 104–208, div. A, title I, §101(e) [title V, §514], Sept. 30, 1996, 110 Stat. 3009–233, 3009–270, which were set out as notes under section 503 of this title, prior to repeal by Pub. L. 106–65, §549(b).

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296, §1704(b)(1), substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

Subsec. (d)(2)(B). Pub. L. 107–296, §1704(b)(3), substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (d) relating to denial of Department of Defense grants and contracts to institutions of higher education that have anti-ROTC policies.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

FUNDS AVAILABLE SOLELY FOR STUDENT FINANCIAL ASSISTANCE

Pub. L. 106–79, title VIII, §8120, Oct. 25, 1999, 113 Stat. 1260, provided that: ''During the current fiscal year and hereafter, any Federal grant of funds to an institution of higher education to be available solely for student financial assistance or related administrative costs may be used for the purpose for which the grant is made without regard to any provision to the contrary in section 514 of the Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations Act, 1997 ([former] 10 U.S.C. 503 note), or section 983 of title 10, United States Code.''

§ 985. Persons convicted of capital crimes: denial of certain burial-related benefits

(a) PROHIBITION OF PERFORMANCE OF MILITARY HONORS.—The Secretary of a military department and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may not provide military honors at the funeral or burial of a person who has been convicted of a capital offense under Federal or State law for which the person was sentenced to death or life imprisonment without parole.

(b) DISQUALIFICATION FROM BURIAL IN MILITARY CEMETERIES.—A person convicted of a capital offense under Federal law is not entitled to or eligible for, and may not be provided, burial in—

(1) Arlington National Cemetery;

(2) the Soldiers' and Airmen's National Cemetery; or

(3) any other cemetery administered by the Secretary of a military department or the Secretary of Defense.

(c) DEFINITIONS.—In this section:

(1) The term ''capital offense'' means an offense for which the death penalty may be imposed.

(2) The term ''burial'' includes inurnment.

(3) The term ''State'' includes the District of Columbia and any commonwealth or territory of the United States.

(Added Pub. L. 105–85, div. A, title X, §1077(a)(1), Nov. 18, 1997, 111 Stat. 1914; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 1077(b) of Pub. L. 105–85 provided that: ''Section 985 of title 10, United States Code, as added by sub-

section (a), applies with respect to persons dying after January 1, 1997.''

§ 986. Security clearances: limitations

(a) PROHIBITION.—After October 30, 2000, the Department of Defense may not grant or renew a security clearance for a person to whom this section applies who is described in subsection (c).

(b) COVERED PERSONS.—This section applies to the following persons:

(1) An officer or employee of the Department of Defense.

(2) A member of the Army, Navy, Air Force, or Marine Corps who is on active duty or is in an active status.

(3) An officer or employee of a contractor of the Department of Defense.

(c) PERSONS DISQUALIFIED FROM BEING GRANTED SECURITY CLEARANCES.—A person is described in this subsection if any of the following applies to that person:

(1) The person has been convicted in any court of the United States of a crime and sentenced to imprisonment for a term exceeding one year.

(2) The person is an unlawful user of, or is addicted to, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(3) The person is mentally incompetent, as determined by a mental health professional approved by the Department of Defense.

(4) The person has been discharged or dismissed from the Armed Forces under dishonorable conditions.

(d) WAIVER AUTHORITY.—In a meritorious case, the Secretary of Defense or the Secretary of the military department concerned may authorize an exception to the prohibition in subsection (a) for a person described in paragraph (1) or (4) of subsection (c). The authority under the preceding sentence may not be delegated.

(e) ANNUAL REPORT.—Not later than February 1 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report identifying each waiver issued under subsection (d) during the preceding year with an explanation for each case of the disqualifying factor in subsection (c) that applied, and the reason for the waiver of the disqualification.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1071(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–275; amended Pub. L. 107–107, div. A, title X, § 1048(c)(3), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''October 30, 2000,'' for ''the date of the enactment of this section,''.

CHAPTER 50—MISCELLANEOUS COMMAND RESPONSIBILITIES

Sec.
991. Management of deployments of members.

§ 991. Management of deployments of members

(a) GENERAL OR FLAG OFFICER RESPONSIBILITIES.—(1) The deployment (or potential deployment) of a member of the armed forces shall be managed, during any period when the member is a high-deployment days member, by the officer in the chain of command of that member who is the lowest-ranking general or flag officer in that chain of command. That officer shall ensure that the member is not deployed, or continued in a deployment, on any day on which the total number of days on which the member has been deployed out of the preceding 365 days would exceed 220. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—

(A) in the case of a member who is assigned to a combatant command in a position under the operational control of the officer in that combatant command who is the service component commander for the members of that member's armed force in that combatant command, by that officer; and

(B) in the case of a member not assigned as described in subparagraph (A), by the service chief of that member's armed force (or, if so designated by that service chief, by an officer of the same armed force on active duty who is in the grade of general or admiral or who is the personnel chief for that armed force).

(2) In this section, the term ''high-deployment days member'' means a member who has been deployed 182 days or more out of the preceding 365 days.

(3) In paragraph (1)(B), the term ''service chief'' means the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps.

(b) DEPLOYMENT DEFINED.—(1) For the purposes of this section, a member of the armed forces shall be considered to be deployed or in a deployment on any day on which, pursuant to orders, the member is performing service in a training exercise or operation at a location or under circumstances that make it impossible or infeasible for the member to spend off-duty time in the housing in which the member resides when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(2) In the case of a member of a reserve component who is performing active service pursuant to orders that do not establish a permanent change of station, the housing referred to in paragraph (1) is any housing (which may include the member's residence) that the member usually occupies for use during off-duty time when on garrison duty at the member's permanent duty station or homeport, as the case may be.

(3) For the purposes of this section, a member is not deployed or in a deployment when the member is—

(A) performing service as a student or trainee at a school (including any Government school);

(B) performing administrative, guard, or detail duties in garrison at the member's permanent duty station; or

(C) unavailable solely because of—

(i) a hospitalization of the member at the member's permanent duty station or homeport or in the immediate vicinity of the member's permanent residence; or

(ii) a disciplinary action taken against the member.

(4) The Secretary of Defense may prescribe a definition of deployment for the purposes of this section other than the definition specified in paragraphs (1) and (2). Any such definition may not take effect until 90 days after the date on which the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the revised standard definition of deployment.

(c) RECORDKEEPING.—The Secretary of each military department shall establish a system for tracking and recording the number of days that each member of the armed forces under the jurisdiction of the Secretary is deployed.

(d) NATIONAL SECURITY WAIVER AUTHORITY.—The Secretary of the military department concerned may suspend the applicability of this section to a member or any group of members under the Secretary's jurisdiction when the Secretary determines that such a waiver is necessary in the national security interests of the United States.

(e) INAPPLICABILITY TO COAST GUARD.—This section does not apply to a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(Added Pub. L. 106–65, div. A, title V, §586(a), Oct. 5, 1999, 113 Stat. 637; amended Pub. L. 106–398, §1 [[div. A], title V, §574(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, 1654A–137; Pub. L. 107–107, div. A, title V, §515(a), Dec. 28, 2001, 115 Stat. 1093.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) In the case of a member of a reserve component performing active service, the member shall be considered deployed or in a deployment for the purposes of paragraph (1) on any day on which, pursuant to orders that do not establish a permanent change of station, the member is performing the active service at a location that—

''(A) is not the member's permanent training site; and

''(B) is—

''(i) at least 100 miles from the member's permanent residence; or

''(ii) a lesser distance from the member's permanent residence that, under the circumstances applicable to the member's travel, is a distance that requires at least three hours of travel to traverse.''

2000—Subsec. (a)(1). Pub. L. 106–398, §1 [[div. A], title V, §574(a)(1)], substituted ''. However, the member may be deployed, or continued in a deployment, without regard to the preceding sentence if such deployment, or continued deployment, is approved—'' and subpars. (A) and (B) for ''unless an officer in the grade of general or admiral in the member's chain of command approves the deployment, or continued deployment, of the member.''

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title V, §574(a)(2)], added par. (3).

Subsec. (b)(1). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(1)], inserted ''or homeport, as the case may be'' before period at end.

Subsec. (b)(2). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(3)], added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(2)], redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(3)(C). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(4)], added subpar. (C).

Subsec. (b)(4). Pub. L. 106–398, §1 [[div. A], title V, §574(b)(2)], redesignated par. (3) as (4).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §515(b), Dec. 28, 2001, 115 Stat. 1094, provided that: ''The amendment made by this section [amending this section] shall apply with respect to duty performed on or after October 1, 2001.''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, §586(d)(1), Oct. 5, 1999, 113 Stat. 639, provided that: ''Section 991 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2000. No day on which a member of the Armed Forces is deployed (as defined in subsection (b) of that section) before that date may be counted in determining the number of days on which a member has been deployed for purposes of that section.''

REGULATIONS

Pub. L. 106–65, div. A, title V, §586(e), Oct. 5, 1999, 113 Stat. 639, provided that: ''Not later than June 1, 2000, the Secretary of each military department shall prescribe in regulations the policies and procedures for implementing such provisions of law for that military department.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REVIEW OF MANAGEMENT OF DEPLOYMENTS OF INDIVIDUAL MEMBERS

Pub. L. 106–398, §1 [[div. A], title V, §574(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, as amended by Pub. L. 107–107, div. A, title V, §592(b), Dec. 28, 2001, 115 Stat. 1125, provided that: ''Not later than March 31, 2002, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of section 991 of title 10, United States Code, during fiscal year 2001. The report shall include—

''(1) a discussion of the experience in tracking and recording the deployments of members of the Armed Forces and the payment of the per diem allowance for lengthy or numerous deployments in accordance with section 436 of title 37, United States Code;

''(2) specific comments regarding the effect of section 991 of title 10, United States Code, and section 436 of title 37, United States Code, on the readiness of the Navy and Marine Corps given the deployment intensive mission of these services; and

''(3) any recommendations for revision of section 991 of title 10, United States Code, or section 436 of title 37, United States Code, that the Secretary considers appropriate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 436.

CHAPTER 51—RESERVE COMPONENTS: STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
1001. Reference to chapter 1219.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1662(h)(5), Oct. 5, 1994, 108 Stat. 2997, added item 1001 and struck out former items 1001 to 1007.

1960—Pub. L. 86–559, §1(3)(C), June 30, 1960, 74 Stat. 265, inserted ''or serving as United States property and fiscal officers'' in item 1007.

1958—Pub. L. 85–861, §1(23), Sept. 2, 1958, 72 Stat. 1445, added items 1002, 1005, 1006, and 1007.

§1001. Reference to chapter 1219

Provisions of law relating to standards and procedures for retention and promotion of members of reserve components are set forth in chapter 1219 of this title (beginning with section 12641).

(Added Pub. L. 103–337, div. A, title XVI, §1662(h)(5), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Prior sections 1001 and 1002 were renumbered sections 12641 and 12642 of this title, respectively.

A prior section 1003, act Aug. 10, 1956, ch. 1041, 70A Stat. 79, related to age limitations for reserve officers, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§1662(h)(3), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

Prior sections 1004 to 1007 were renumbered sections 12644 to 12647 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 53—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
1031. Administration of oath.
1032. Disability and death compensation: dependents of members held as captives.
1033. Participation in management of specified non-Federal entities: authorized activities.
1034. Protected communications; prohibition of retaliatory personnel actions.
1035. Deposits of savings.
1036. Escorts for dependents of members: transportation and travel allowances.
1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail.
1038. Service credit: certain service in Women's Army Auxiliary Corps.
1039. Crediting of minority service.
1040. Transportation of dependent patients.
1041. Replacement of certificate of discharge.
1042. Copy of certificate of service.
1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service.
1044. Legal assistance.
1044a. Authority to act as notary.
1044b. Military powers of attorney: requirement for recognition by States.
1044c. Advance medical directives of members and dependents: requirement for recognition by States.
1044d. Military testamentary instruments: requirement for recognition by States.
1045. Voluntary withholding of State income tax from retired or retainer pay.
1046. Overseas temporary foster care program.
1047. Allowance for civilian clothing.
1048. Gratuity payment to persons discharged for fraudulent enlistment.
1049. Subsistence: miscellaneous persons.
1050. Latin American cooperation: payment of personnel expenses.
1051. Bilateral or regional cooperation programs: payment of personnel expenses.
Sec.
1051a. Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses.
1052. Adoption expenses: reimbursement.
1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement.
1053a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement.
1054. Defense of certain suits arising out of legal malpractice.
1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord.
1056. Relocation assistance programs.
1057. Use of armed forces insignia on State license plates.
1058. Responsibilities of military law enforcement officials at scenes of domestic violence.
1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits.
1060. Military service of retired members with newly democratic nations: consent of Congress.
1060a. Special supplemental food program.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title XII, §1201(a)(2), Dec. 2, 2002, 116 Stat. 2663, added item 1051a.

2000—Pub. L. 106–398, §1 [[div. A], title V, §§551(b), 579(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–125, 1654A–142, added items 1044d, 1052, 1053, and 1053a, and struck out former items 1052 ''Reimbursement for adoption expenses'' and 1053 ''Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay''.

1997—Pub. L. 105–85, div. A, title V, §593(a)(2), Nov. 18, 1997, 111 Stat. 1763, added item 1033.

1996—Pub. L. 104–106, div. A, title VII, §749(a)(2), Feb. 10, 1996, 110 Stat. 389, added item 1044c.

Pub. L. 104–106, div. A, title XV, §1504(a)(2), Feb. 10, 1996, 110 Stat. 513, made technical correction to Pub. L. 103–337, §531(g)(2). See 1994 Amendment note below.

1994—Pub. L. 103–337, div. A, title V, §531(g)(2), Oct. 5, 1994, 108 Stat. 2758, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(2), Feb. 10, 1996, 110 Stat. 513, substituted ''Protected communications;'' for ''Communicating with a Member of Congress or Inspector General;'' in item 1034.

Pub. L. 103–337, div. A, title V, §535(c)(2), title VI, §653(b), title X, §1070(a)(5)(B), (6)(B), title XVI, §1671(b)(9), Oct. 5, 1994, 108 Stat. 2763, 2795, 2855, 3013, struck out item 1033 ''Compensation: Reserve on active duty accepting from any person'', redesignated item 1058 ''Dependents of members separated for dependent abuse: transitional compensation'' as item 1059 and amended it generally, redesignated item 1058 ''Military service of retired members with newly democratic nations: consent of Congress'' as item 1060, and added item 1060a.

Pub. L. 103–337, div. A, title X, §1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, made technical correction to Pub. L. 103–160, §554(a)(2). See 1993 Amendment note below.

1993—Pub. L. 103–160, div. A, title V, §§551(a)(2), 574(b), title XIV, §1433(b)(2), Nov. 30, 1993, 107 Stat. 1662, 1675, 1834, added item 1044b and items 1058 ''Responsibilities of military law enforcement officials at scenes of domestic violence'' and 1058 ''Military service of retired members with newly democratic nations: consent of Congress''.

Pub. L. 103–160, div. A, title V, §554(a)(2), Nov. 30, 1993, 107 Stat. 1666, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(4), Oct. 5, 1994, 108 Stat. 2856, added item 1058 ''Dependents of members separated for dependent abuse: transitional compensation''.

1992—Pub. L. 102–484, div. A, title VI, §651(b), title X, §1080(b), Oct. 23, 1992, 106 Stat. 2426, 2514, added items 1046 and 1057.

1991—Pub. L. 102–190, div. A, title VI, §651(a)(2), Dec. 5, 1991, 105 Stat. 1386, added item 1052.

Pub. L. 102–25, title VII, §701(e)(8)(B), Apr. 6, 1991, 105 Stat. 115, struck out ''mandatory'' after ''error in'' in item 1053.

1990—Pub. L. 101–510, div. A, title V, §§502(b)(2), 551(a)(2), title XIV, §1481(c)(2), Nov. 5, 1990, 104 Stat. 1557, 1566, 1705, added items 1044a and 1056 and struck out item 1046 ''Preseparation counseling requirement''.

1989—Pub. L. 101–189, div. A, title VI, §664(a)(3)(B), Nov. 29, 1989, 103 Stat. 1466, substituted ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of'' in item 1053.

1988—Pub. L. 100–456, div. A, title VI, §621(a)(2), title VIII, §846(a)(2), Sept. 29, 1988, 102 Stat. 1983, 2030, substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in item 1034 and added item 1055.

Pub. L. 100–370, §1(c)(2)(B), July 19, 1988, 102 Stat. 841, struck out item 1052 ''Period for use of commissary stores; eligibility attributable to active duty for training''.

1987—Pub. L. 100–26, §7(e)(1)(B), Apr. 21, 1987, 101 Stat. 281, added item 1032 and struck out second item 1051 ''Disability and death compensation: dependents of members held as captives''.

1986—Pub. L. 99–661, div. A, title VI, §§656(a)(2), 662(a)(2), title XIII, §§1322(b), 1356(a)(2), Nov. 14, 1986, 100 Stat. 3891, 3894, 3989, 3998, added item 1051 ''Bilateral or regional cooperation programs: payment of personnel expenses'' and items 1052 to 1054.

Pub. L. 99–399, title VIII, §806(b)(2), Aug. 27, 1986, 100 Stat. 886, added item 1051 ''Disability and death compensation: dependents of members held as captives''.

1985—Pub. L. 99–145, title XIII, §1303(a)(6), Nov. 8, 1985, 99 Stat. 739, substituted ''Atmospheric'' for ''Atomospheric'' in item 1043.

1984—Pub. L. 98–525, title VI, §§651(b), 654(b), title VII, §708(a)(2), title XIV, §§1401(d)(2), 1405(19)(B)(ii), Oct. 19, 1984, 98 Stat. 2549, 2552, 2572, 2616, 2623, added items 1044 to 1050 and substituted ''Member'' for ''member'' in item 1034.

1983—Pub. L. 98–94, title X, §1007(b)(2), Sept. 24, 1983, 97 Stat. 662, added item 1043.

1982—Pub. L. 97–258, §2(b)(2)(A), Sept. 13, 1982, 96 Stat. 1052, added item 1042.

1980—Pub. L. 96–513, title V, §511(33)(B), Dec. 12, 1980, 94 Stat. 2922, redesignated item 1040 as added by Pub. L. 90–285 as item 1041.

1977—Pub. L. 95–105, title V, §509(d)(2), Aug. 17, 1977, 91 Stat. 860, struck out item 1032 ''Dual capacity: Reserve accepting employment with foreign government or concern''.

1968—Pub. L. 90–235, §7(a)(2)(B), Jan. 2, 1968, 81 Stat. 763, added item 1040: ''Replacement of certificate of discharge''. Another item 1040: ''Transportation of dependent patients'', was added by Pub. L. 89–140, §1(2), Aug. 28, 1965, 79 Stat. 579.

1966—Pub. L. 89–538, §1(2), Aug. 14, 1966, 80 Stat. 347, substituted ''Deposits of savings'' for ''Enlisted members' deposits'' in item 1035.

1965—Pub. L. 89–140, §1(2), Aug. 28, 1965, 79 Stat. 579, added item 1040 ''Transportation of dependent patients''.

Pub. L. 89–132, §9(b), Aug. 21, 1965, 79 Stat. 548, added item 1040 ''Free postage from combat zone'' which was repealed by Pub. L. 89–315, §3(b), Nov. 1, 1965, 79 Stat. 1165.

1961—Pub. L. 87–165, §1(2), Aug. 25, 1961, 75 Stat. 401, added item 1039.

1959—Pub. L. 86–160, §1(2), Aug. 14, 1959, 73 Stat. 358, added item 1036.

Pub. L. 86–142, §1(2), Aug. 7, 1959, 73 Stat. 289, added item 1038.

1958—Pub. L. 85–861, §1(24)(B), Sept. 2, 1958, 72 Stat. 1445, added item 1037.

§ 1031. Administration of oath

Any commissioned officer of any component of an armed force, whether or not on active duty, may administer any oath—

(1) required for the enlistment or appointment of any person in the armed forces; or

(2) required by law in connection with such an enlistment or appointment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1031	10:19. 34:217a–2.	May 22, 1950, ch. 193, §1, 64 Stat. 187.

The words ''(including the reserve component)'' are omitted, since the words ''any component of an armed force'' include the reserve components. The words ''any oath required for the enlistment or appointment of any person'' are substituted for the words ''the oath required for the enlistment of any person, the oath required for the appointment of any person to commissioned or warrant officer grade, and any other oath required by law in connection with the enlistment or appointment of any person''.

§ 1032. Disability and death compensation: dependents of members held as captives

(a) The President shall prescribe regulations under which the Secretary concerned may pay compensation for the disability or death of a dependent of a member of the uniformed services if the President determines that the disability or death—

(1) was caused by hostile action; and

(2) was a result of the relationship of the dependent to the member of the uniformed services.

(b) Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

(c) A determination by the President under subsection (a) is conclusive and is not subject to judicial review.

(d) In this section:

(1) The term ''dependent'' has the meaning given that term in section 551 of title 37.

(2) The term ''Secretary concerned'' has the meaning given that term in section 101 of that title.

(Added Pub. L. 99–399, title VIII, §806(b)(1), Aug. 27, 1986, 100 Stat. 885, §1051; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(25), Nov. 14, 1986, 100 Stat. 3994; renumbered §1032 and amended Pub. L. 100–26, §§3(8), 7(e)(1)(A), Apr. 21, 1987, 101 Stat. 274, 281; Pub. L. 101–189, div. A, title XVI, §1622(e)(2), Nov. 29, 1989, 103 Stat. 1605.)

PRIOR PROVISIONS

A prior section 1032, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, provided that a Reserve may accept civil employment with a foreign government or concern, prior to repeal by Pub. L. 95–105, title V, §509(d)(1), Aug. 17, 1977, 91 Stat. 860.

AMENDMENTS

1989—Subsec. (d)(1). Pub. L. 101–189, § 1622(e)(2)(A), substituted ''The term 'dependent' has'' for '' 'Dependent' has''.

Subsec. (d)(2). Pub. L. 101–189, § 1622(e)(2)(B), inserted ''The term'' after ''(2)''.

1987—Pub. L. 100–26, § 7(e)(1)(A), renumbered the second section 1051 of this title as this section.

Subsec. (d)(1), (2). Pub. L. 100–26, § 3(8), amended directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (d). Pub. L. 99–661, § 1343(a)(25), as amended by Pub. L. 100–26, § 3(8), substituted ''title 37'' for ''that title'' in par. (1), and ''has the meaning given that term'' for ''and 'uniformed services' have the meanings given those terms'' in par. (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(8) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE

Section 806(b)(3) of Pub. L. 99–399 provided that: ''Section 1051 [now 1032] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any disability or death resulting from an injury that occurs after January 21, 1981.''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 4 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 1013.

§ 1033. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—The Secretary concerned may authorize a member of the armed forces under the Secretary's jurisdiction to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular member to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the member in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(b) DESIGNATED ENTITIES.—(1) The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society and may designate any other entity described in paragraph (3). No other entities may be designated.

(2) In this section, the term ''military welfare society'' means the following:

(A) Army Emergency Relief.

(B) Air Force Aid Society, Inc.

(C) Navy-Marine Corps Relief Society.

(D) Coast Guard Mutual Assistance.

(3) An entity described in this paragraph is an entity that is not operated for profit and is any of the following:

(A) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).

(B) An entity that regulates international athletic competitions.

(C) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(D) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the armed forces may serve if authorized under subsection (a).

(E) An entity that, operating in a foreign nation where United States military personnel are serving at United States military activities, promotes understanding and tolerance between such personnel (and their families) and the citizens of that host foreign nation through programs that foster social relations between those persons.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of a member of the armed forces to participate in the management of such an entity, shall be published in the Federal Register.

(d) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added Pub. L. 105–85, div. A, title V, § 593(a)(1), Nov. 18, 1997, 111 Stat. 1762; amended Pub. L. 106–65, div. A, title V, § 583, Oct. 5, 1999, 113 Stat. 634; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 1033, act Aug. 10, 1956, ch. 1041, 70A Stat. 80, related to Reserves continuing to accept compensation while on active duty that they were receiving prior to being ordered to active duty, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1662(g)(2), 1691, Oct. 5, 1994, 108 Stat. 2996, 3026, eff. Dec. 1, 1994.

AMENDMENTS

2002—Subsecs. (b)(1), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(3)(E). Pub. L. 106–65 added subpar. (E).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1589 of this title.

§ 1034. Protected communications; prohibition of retaliatory personnel actions

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PRO-

HIBITED.—(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization; or

(iv) any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (3).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(4) Neither an initial determination under paragraph (3)(A) nor an investigation under paragraph (3)(D) is required in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(5) The Inspector General of the Department of Defense, or the Inspector General of the Department of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A) or (B) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as

a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(g) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(h) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(i) DEFINITIONS.—In this section:

(1) The term ''Member of Congress'' includes any Delegate or Resident Commissioner to Congress.

(2) The term ''Inspector General'' means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term ''unlawful discrimination'' means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 98–525, title XIV, §1405(19)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2622; Pub. L. 100–456, div. A, title VIII, §846(a)(1), Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–225, title II, §202, Dec. 12, 1989, 103 Stat. 1910; Pub. L. 103–337, div. A, title V, §531(a)–(g)(1), Oct. 5, 1994, 108 Stat. 2756–2758; Pub. L. 105–261, div. A, title IX, §933, Oct. 17, 1998, 112 Stat. 2107; Pub. L. 106–398, §1 [[div. A], title IX, §903], Oct. 30, 2000, 114 Stat. 1654, 1654A–224; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1034	50 App.:454(a) (last par.)	June 24, 1948, ch. 625, §4(a) (last par.); restated June 19, 1951, ch. 144, §1(d) (last par.), 65 Stat. 78.

The words ''prevented'', ''directly or indirectly'', ''concerning any subject'', ''or Members'', and ''and safety'' are omitted as surplusage. The word ''unlawful'' is substituted for the words ''in violation of law''.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (b)(1)(B)(ii), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsecs. (c)(5), (e)(1), (3), (h), (i)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (c)(3)(A). Pub. L. 106–398, §1 [[div. A], title IX, §903(a)], inserted '', in accordance with regulations prescribed under subsection (h),'' after ''shall expeditiously determine''.

Subsec. (i)(2). Pub. L. 106–398, §1 [[div. A], title IX, §903(b)(1)], inserted ''any of'' after ''means'' in introductory provisions.

Subsec. (i)(2)(C) to (G). Pub. L. 106–398, §1 [[div. A], title IX, §903(b)(2), (3)], added subpar. (C) and struck out former subpars. (C) to (G) which read as follows:

''(C) The Inspector General of the Army, in the case of a member of the Army.

''(D) The Naval Inspector General, in the case of a member of the Navy.

''(E) The Inspector General of the Air Force, in the case of a member of the Air Force.

''(F) The Deputy Naval Inspector General for Marine Corps Matters, in the case of a member of the Marine Corps.

''(G) An officer of the armed forces assigned or detailed under regulations of the Secretary concerned to serve as an Inspector General at any command level in one of the armed forces.''

1998—Subsec. (b)(1)(B)(ii). Pub. L. 105–261, §933(f)(2), substituted ''subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978'' for ''subsection (j))''.

Subsec. (c)(1). Pub. L. 105–261, §933(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: ''If a member of the armed forces submits to the Inspector General of the Department of Defense (or the Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall expeditiously investigate the allegation. If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2)(B). Pub. L. 105–261, §933(b), substituted ''Gross mismanagement'' for ''Mismanagement''.

Subsec. (c)(3) to (5). Pub. L. 105–261, §933(a)(1)(B), added pars. (3) to (5) and struck out former par. (3) which read as follows: ''The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.''

Subsec. (d). Pub. L. 105–261, §933(a)(2), inserted ''receiving the allegation'' after '', the Inspector General'' and ''In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.'' at end.

Subsec. (e)(1). Pub. L. 105–261, §933(c)(1), substituted ''After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on'' for ''Not later than 30 days after completion of an investigation under subsection (c) or (d), the Inspector General shall submit a report on'' and inserted ''shall transmit a copy of the report on the results of the investigation to'' before ''the member of the armed forces'' and ''The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).'' at end.

Subsec. (e)(2). Pub. L. 105–261, §933(c)(2), substituted ''transmitted'' for ''submitted'' and inserted at end ''However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.''

Subsec. (e)(3). Pub. L. 105–261, §933(c)(3), substituted ''180 days'' for ''90 days''.

Subsec. (h). Pub. L. 105–261, §933(f)(1), redesignated subsec. (i) as (h).

Pub. L. 105–261, §933(d), struck out heading and text of subsec. (h). Text read as follows: ''After disposition of any case under this section, the Inspector General

shall, whenever possible, conduct an interview with the person making the allegation to determine the views of that person on the disposition of the matter.''

Subsec. (i). Pub. L. 105–261, §933(f)(1), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 105–261, §933(f)(1), redesignated subsec. (j) as (i).

Subsec. (j)(2). Pub. L. 105–261, §933(e), substituted ''means the following:'' for ''means—'' in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G) and substituted ''An officer'' for ''an officer'' in that subpar., and struck out former subpar. (A) which read as follows: ''an Inspector General appointed under the Inspector General Act of 1978; and''.

1994—Pub. L. 103–337, §531(g)(1), substituted ''Protected communications'' for ''Communicating with a Member of Congress or Inspector General'' in section catchline.

Subsec. (b). Pub. L. 103–337, §531(a), inserted ''(1)'' before ''No person may take'', substituted ''or preparing— '' for ''or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.'', added subpars. (A) and (B), inserted ''(2)'' before ''Any action prohibited'', and substituted ''paragraph (1)'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 103–337, §531(b)(3), substituted ''Allegations of Prohibited Personnel Actions'' for ''Certain Allegations'' in heading.

Subsec. (c)(1). Pub. L. 103–337, §531(b)(1), inserted at end ''If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.''

Subsec. (c)(2). Pub. L. 103–337, §531(b)(2), added par. (2) and struck out former par. (2) which read as follows: ''A communication described in this paragraph is a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted in which the member of the armed forces makes a complaint or discloses information that the member reasonably believes constitutes evidence of—

''(A) a violation of a law or regulation; or

''(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''

Subsec. (c)(4). Pub. L. 103–337, §531(c)(2), struck out par. (4) which read as follows: ''If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (2). The Inspector General is not required to make such an investigation if the information that the member believes evidences wrongdoing relates to actions which took place during combat.''

Subsec. (c)(5). Pub. L. 103–337, §531(d)(1), redesignated subsec. (c)(5) as subsec. (e)(1).

Subsec. (c)(6), (7). Pub. L. 103–337, §531(d)(4), redesignated subsec. (c)(6) and (7) as subsec. (e)(3) and (4), respectively.

Subsec. (d). Pub. L. 103–337, §531(c)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 103–337, §531(d)(1), redesignated subsec. (c)(5) as subsec. (e) and inserted subsec. heading and par. (1) designation before ''Not later than 30 days''. Former subsec. (e) redesignated (g).

Subsec. (e)(1). Pub. L. 103–337, §531(d)(2), substituted ''subsection (c) or (d)'' for ''this subsection'' and ''the member of the armed forces who made the allegation investigated'' for ''the member of the armed forces concerned'' and struck out at end ''In the copy of the report submitted to the member, the Inspector General may exclude any information that would not otherwise be available to the member under section 552 of title 5.''

Subsec. (e)(2). Pub. L. 103–337, §531(d)(3), added par. (2).

Subsec. (e)(3). Pub. L. 103–337, §531(d)(4), (5), redesignated subsec. (c)(6) as subsec. (e)(3) and substituted ''paragraph (1)'' for ''paragraph (5)''.

Subsec. (e)(4). Pub. L. 103–337, §531(d)(4), redesignated subsec. (c)(7) as subsec. (e)(4).

Subsec. (f). Pub. L. 103–337, §531(c)(1), (f)(1), redesignated subsec. (d) as (f) and substituted ''subsection (e)(1)'' for ''subsection (c)(5)'' in pars. (2)(A), (3)(A)(i) and (B). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 103–337, §531(c)(1), (f)(2), redesignated subsec. (e) as (g) and substituted ''subsection (f)'' for ''subsection (d)''. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 103–337, §531(c)(1), redesignated subsecs. (f) and (g) as (h) and (i), respectively. Former subsec. (h) redesignated (j).

Subsec. (j). Pub. L. 103–337, §531(c)(1), (e), redesignated subsec. (h) as (j) and added par. (3).

1989—Subsec. (c)(1). Pub. L. 101–225, §202(1), inserted ''when the Coast Guard is not operating as a service in the Navy'' after ''Coast Guard''.

Subsec. (c)(5). Pub. L. 101–225, §202(2), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (c)(6). Pub. L. 101–225, §202(3), inserted ''(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''Secretary of Defense''.

Subsec. (e). Pub. L. 101–225, §202(4), inserted ''(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)'' after ''armed forces''.

1988—Pub. L. 100–456 substituted ''Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions'' for ''Communicating with a Member of Congress'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''No person may restrict any member of an armed force in communicating with a Member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States.''

1984—Pub. L. 98–525 substituted ''Member'' for ''member'' in section catchline and text.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 846(d) of Pub. L. 100–456 provided that: ''The amendment to section 1034 of title 10, United States Code, made by subsection (a)(1), shall apply with respect to any personnel action taken (or threatened to be taken) on or after the date of the enactment of this Act [Sept. 29, 1988] as a reprisal prohibited by subsection (b) of that section.''

REGULATIONS

Section 531(h), (i) of Pub. L. 103–337 provided that:

''(h) DEADLINE FOR REGULATIONS.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations to implement the amendments made by this section [amending this section] not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

''(i) CONTENT OF REGULATIONS.—In prescribing regulations under section 1034 of title 10, United States Code, as amended by this section, the Secretary of Defense and the Secretary of Transportation shall provide for

appropriate procedural protections for the subject of any investigation carried out under the provisions of that section, including a process for appeal and review of investigative findings.''

Section 846(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense and the Secretary of Transportation shall prescribe the regulations required by subsection (g) [now (h)] of section 1034 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–190, div. A, title VIII, § 843, Dec. 5, 1991, 105 Stat. 1449, provided that:

''(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

''(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

''(c) DEADLINE.—The regulations required by this section shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON ACTIVITIES OF INSPECTOR GENERAL

Section 846(c) of Pub. L. 100–456 directed Inspector General of Department of Defense (and Inspector General of Department of Transportation with respect to Coast Guard) to submit, not later than Feb. 1, 1990, a report to Congress on activities of Inspector General under this section, with that report to include, in the case of each case handled by Inspector General under this section, a description of (A) nature of allegation described in subsec. (c) of this section; (B) evaluation and recommendation of Inspector General with respect to allegation; (C) any action of appropriate board for correction of military records with respect to allegation; (D) if allegation was determined to be meritorious, any corrective action taken; and (E) views of member or former member of armed forces making allegation (determined on basis of interview under subsec. (f) of this section) on disposition of case.

§ 1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of $5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is $10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status during the Vietnam conflict, the Persian Gulf conflict, or a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the member entered a missing status, or September 1, 1966, whichever is later.

(f) The Secretary of Defense may authorize a member of the armed forces who is on a temporary duty assignment outside of the United States or its possessions in support of a contingency operation to make deposits of unallotted current pay and allowances during that duty as provided in subsection (a). The Secretary shall prescribe regulations establishing standards and procedures for the administration of this subsection.

(g) In this section:

(1) The term ''missing status'' has the meaning given that term in section 551(2) of title 37.

(2) The term ''Vietnam conflict'' means the period beginning on February 28, 1961, and ending on May 7, 1975.

(3) The term ''Persian Gulf conflict'' means the period beginning on January 16, 1991, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Pub. L. 89–538, § 1(1), Aug. 14, 1966, 80 Stat. 347; Pub. L. 90–122, § 1, Nov. 3, 1967, 81 Stat. 361; Pub. L. 91–200, Feb. 26, 1970, 84 Stat. 16; Pub. L. 98–525, title XIV, § 1405(20), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, § 1343(a)(3), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 102–25, title III, § 310, Apr. 6, 1991, 105 Stat. 84; Pub. L. 102–190, div. A, title VI, § 639, Dec. 5, 1991, 105 Stat. 1384.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1035(a)	10:908(a) (less words after last semicolon). 34:937 (less words after last semicolon).	July 15, 1954, ch. 513, §§ 1–3, 68 Stat. 485.
1035(b)	10:908b (1st 20, and last 13, words). 34:938 (1st 20, and last 13, words).	
1035(c)	10:908a (words after last semicolon). 10:908b (less 1st 20, and last 13, words). 34:937 (words after last semicolon). 34:938 (less 1st 20, and last 13, words).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1035(d)	10:908c. 34:939.	

In subsection (a), the words ''in amounts of $5 or more'' are substituted for the words ''in sums not less than $5''. 10:908a (words before 1st semicolon of last sentence) and 34:937 (words before 1st semicolon of last sentence) are omitted as covered by subsection (c).

In subsection (b), the word ''accrues'' is substituted for the words ''shall be paid''.

In subsection (c), the words ''not less than $5'' are omitted as surplusage.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190, § 639(a), substituted '', the Persian Gulf conflict, or a contingency operation'' for ''or during the Persian Gulf conflict'' before period at end of second sentence and struck out at end ''For purposes of this subsection, the Vietnam conflict begins on February 28, 1961, and ends on May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law.''

Pub. L. 102–25, § 310(a), (c)(1), struck out '', as defined in section 551(2) of title 37,'' after ''missing status'', inserted ''or during the Persian Gulf conflict'' before period at end of second sentence, and substituted ''May 7, 1975, and the Persian Gulf conflict begins on January 16, 1991, and ends on the date thereafter prescribed by Presidential proclamation or by law'' for ''the date designated by the President by Executive order as the date of the termination of combatant activities in Vietnam''.

Subsec. (e). Pub. L. 102–25, § 310(c)(2), struck out ''(as defined in section 551(2) of title 37)'' after ''in a missing status''.

Subsec. (f). Pub. L. 102–190, § 639(b), added subsec. (f) and redesignated former subsec. (f) as (g).

Pub. L. 102–25, § 310(b), added subsec. (f).

Subsec. (g). Pub. L. 102–190, § 639(b)(1), (c), redesignated subsec. (f) as (g) and amended it generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'missing status' has the meaning given such term in section 551(2) of title 37.''

1986—Subsec. (a). Pub. L. 99–661 substituted ''armed forces'' for ''armed force''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''percent'' for ''per centum'', ''subsection'' for ''Act'' after ''paid under this'', and ''90'' for ''ninety''.

1970—Subsec. (b). Pub. 91–200 permitted accrual of interest on savings above $10,000 ceiling in case of soldiers involved in Vietnam conflicts who have made deposits on or after Sept. 1, 1966, and who are in missing status contemplated by section 551(2) of Title 37, and set out duration of Vietnam conflict as starting Feb. 28, 1961, and ending on the date that the President may designate by Executive order.

1967—Subsec. (e). Pub. L. 90–122 added subsec. (e).

1966—Subsec. (a). Pub. L. 89–538 permitted not only enlisted personnel but any member of the armed forces, provided he is on permanent duty outside the United States, to participate in the savings program organized under this section and changed the fund into which such savings deposits are made.

Subsec. (b). Pub. L. 89–538 changed rate of interest from 4 per centum per annum to a rate prescribed by the President, not to exceed 10 per centum per annum, did away with the necessity that amounts be on deposit for six months or more, set a maximum of $10,000 upon which interest shall be paid, and provided for termination of interest 90 days after the member's return to the United States or its possessions.

Subsec. (c). Pub. L. 89–538 substituted provisions that, unless changed by joint regulations of the Secretaries concerned, payments of deposits and interest may not be made to the individual while stationed outside of the United States, for provisions that payment of deposits and interest could be made only to the member upon discharge, or before discharge as prescribed by the Secretary concerned, or to the member's heirs or legal representatives.

Subsec. (d). Pub. L. 89–538 reenacted subsec. (d) substantially without change.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2 of Pub. L. 90–122 provided that: ''This Act [amending this section] becomes effective as of September 1, 1966.''

SAVINGS PROGRAM FOR OVERSEAS PERSONNEL

Pub. L. 101–510, div. A, title XI, § 1114, Nov. 5, 1990, 104 Stat. 1636, as amended by Pub. L. 102–25, title III, § 314(1), (3), Apr. 6, 1991, 105 Stat. 86, provided that:

''(a) ELIGIBILITY TO PARTICIPATE.—The Secretary of Defense may authorize a member of the Armed Forces who is serving outside the United States or its possessions under arduous conditions (as determined by the Secretary of Defense) pursuant to an assignment or duty detail as part of the Persian Gulf conflict to make deposits of unallotted current pay and allowances, and to earn interest, under section 1035 of title 10, United States Code.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations establishing standards and procedures for the administration of this section.''

ADJUSTMENT OF DEPOSIT ACCOUNTS OF CERTAIN ENLISTED MEN

Pub. L. 89–738, Nov. 2, 1966, 80 Stat. 1165, provided: ''That the Secretary of a military department or his designee, shall adjust the deposit account of any enlisted member or former enlisted member of the Army, Navy, Air Force, or Marine Corps, as the case may be, who, after July 14, 1954, and before the effective date of this Act [Nov. 2, 1966], upon discharge and immediate reenlistment or retirement and immediate recall to active duty, continued, without withdrawal and redeposit, his account for deposits made under section 1035 of title 10, United States Code, or prior laws authorizing enlisted members' deposits, to show that his deposits and interest accrued thereon were withdrawn and redeposited on the date of such reenlistment or recall to active duty.

''SEC. 2. The Secretary of the military department concerned, or his designee, shall pay to a former enlisted member described in section 1 of this Act any amount found due as a result of the adjustment prescribed by that section if he submits an application within two years following the date of enactment of this Act [Nov. 2, 1966]. If the member is currently serving on active duty and has an active deposit account, the amount due him will automatically be credited to such account. In the case of a deceased member, application under this section shall be made within two years following the date of enactment of this Act [Nov. 2, 1966] by the person determined to be eligible under section 2771 of Title 10, United States Code.

''SEC. 3. All payments heretofore made which would, but for the fact of such payment, be payable under this Act are validated. However, if such a payment has been repaid to the United States, the fact of payment shall not affect entitlement under this Act.''

RATES OF INTEREST ON DEPOSITS MADE BEFORE AUG. 14, 1966

Section 2 of Pub. L. 89–538 provided that:

''(a) Notwithstanding the first section of this Act [amending this section], an amount on deposit under section 1035 of title 10, United States Code, on the date of enactment of this Act [Aug. 14, 1966], shall accrue interest at the rate and under the conditions in effect on the day before the date of enactment of this Act [Aug. 14, 1966], until the member's current enlistment terminates or earlier, as may be jointly prescribed by the Secretaries concerned. However, a member who is on a

permanent duty assignment outside the United States or its possessions on the date of enactment of this Act [Aug. 14, 1966], or who reports for that duty on or after that date but before the termination of his current enlistment, will be entitled to interest on such deposit, on and after that date, at the rate and under the conditions prescribed pursuant to section 1 [amending this section]. Payments of deposits, and interest thereon, may be made to the member's heirs or legal representatives.

''(b) Any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] while a member was assigned to permanent duty within the United States and its possessions, and any amounts deposited between May 4, 1966, and the date of enactment of this Act [Aug. 14, 1966] by a member on permanent duty assignment outside the United States and its possessions which are in excess of his unallotted pay and allowances for that period, shall accrue interest at the rate in effect before enactment of this Act.''

EXTENSION OF COVERAGE TO PUBLIC HEALTH SERVICE AND COAST AND GEODETIC SURVEY PERSONNEL; RULES AND REGULATIONS

Section 3(c) of Pub. L. 89–538 provided that: ''Regulations prescribed by the Secretary of Commerce and the Secretary of Health, Education, and Welfare [now Health and Human Services] under subsections (a) and (b) [extending savings deposits benefits to commissioned officers of the Public Health Service and the Coast and Geodetic Survey (now the National Oceanic and Atmospheric Administration), respectively] shall be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of title 10, United States Code.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised with respect to commissioned officers of the Public Health Service, by the Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''the Secretary concerned'' to be exercised, with respect to commissioned officer corps of the National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EX. ORD. NO. 11298. INTEREST RATE

Ex. Ord. No. 11298, Aug. 14, 1966, 31 F.R. 10915, provided:

By virtue of the authority vested in me by Section 1035 of Title 10 of the United States Code, as amended by the Act of August 14, 1966, I hereby prescribe that amounts deposited by members of the uniformed services under that Section shall accrue interest at the rate of ten percent per annum, compounded quarterly.

This order shall be effective September 1, 1966.

LYNDON B. JOHNSON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071; title 42 section 213a.

§ 1036. Escorts for dependents of members: transportation and travel allowances

Under regulations to be prescribed by the Secretary concerned, round trip transportation and travel allowances may be paid to any person for travel performed or to be performed under competent orders as an escort for dependents of a member of the armed forces, if the travel is performed not later than one year after the member—

(1) dies;

(2) is missing; or

(3) is otherwise unable to accompany his dependents;

and it has been determined that travel by the dependents is necessary and that they are incapable of traveling alone because of age, mental or physical incapacity, or other extraordinary circumstances. Such allowances may be paid in advance.

(Added Pub. L. 86–160, §1(1), Aug. 14, 1959, 73 Stat. 358; amended Pub. L. 98–94, title IX, §913(a), Sept. 24, 1983, 97 Stat. 640.)

AMENDMENTS

1983—Pub. L. 98–94 inserted sentence allowing the payment of allowances in advance.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 913(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1040 of this title] shall apply to travel performed by escorts or attendants of dependents on or after the date of the enactment of this Act [Sept. 24, 1983].''

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Sections 4–7 of Pub. L. 86–160 provided that:

''SEC. 4. Travel and transportation allowances paid before the effective date of this Act [Aug. 14, 1959] to persons ordered by competent authority to escort dependents of members of the uniformed services are hereby validated, if they would have been authorized under section 1 of this Act [enacting this section].

''SEC. 5. Any person who was ordered by competent authority after January 1, 1950, and before the effective date of this Act [Aug. 14, 1959] to escort dependents of members of the uniformed services and who has not been paid travel and transportation allowances, or who has repaid the United States the amount so paid to him, is entitled to be paid the amount otherwise authorized by section 1 of this Act [enacting this section], if application for such payment is made not later than one year after the effective date of this Act [Aug. 14, 1959].

''SEC. 6. The Comptroller General of the United States, or his designee, shall relieve disbursing officers, including special disbursing agents, from accountability or responsibility for any payments described in section 4 of this Act, and shall allow credits in the settlement of the accounts of those disbursing officers or agents for payments which are found to be free from fraud or collusion.

''SEC. 7. No regulations under section 1 of this Act [enacting this section] relating to the military departments shall be prescribed by the Secretary of a military department unless such regulations are first approved under procedures prescribed by the Secretary of Defense. Regulations of the Secretaries of the Treasury, Commerce, and Health, Education, and Welfare [now Health and Human Services] under section 1, 2, or 3 of this Act [enacting this section and amending section 857a of Title 33, Navigation and Navigable Waters, and section 213a of Title 42, The Public Health and Welfare] shall, to the extent practicable, agree with regulations so approved.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commis-

sioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071; title 42 section 213a.

§ 1037. Counsel before foreign judicial tribunals and administrative agencies; court costs and bail

(a) Under regulations to be prescribed by him, the Secretary concerned may employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation, before the judicial tribunals and administrative agencies of any foreign nation, of persons subject to the Uniform Code of Military Justice and of persons not subject to the Uniform Code of Military Justice who are employed by or accompanying the armed forces in an area outside the United States and the territories and possessions of the United States, the Northern Mariana Islands, and the Commonwealth of Puerto Rico. So far as practicable, these regulations shall be uniform for all armed forces.

(b) The person on whose behalf a payment is made under this section is not liable to reimburse the United States for that payment, unless he is responsible for forfeiture of bail provided under subsection (a).

(c) Appropriations available to the military department concerned or the Department of Homeland Security, as the case may be, for the pay of persons under its jurisdiction may be used to carry out this section.

(Added Pub. L. 85–861, § 1(24)(A), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 96–513, title I, § 511(31), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 99–145, title VI, § 681(a), Nov. 8, 1985, 99 Stat. 665; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1037(a)	50:751. 50:752.	July 24, 1956, ch. 689 (less § 3), 70 Stat. 630.
1037(b)	50:754.	
1037(c)	50:755.	

In subsection (a), the words ''Under regulations to be prescribed by him'' and the last sentence are substituted for 50:752.

In subsection (b), the words ''subject to the Uniform Code of Military Justice'' are omitted as surplusage.

In subsection (c), the words ''the terms and provisions of'' are omitted as surplusage.

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in subsec. (a), is classified to chapter 47 (§ 801 et seq.) of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1985—Subsec. (a). Pub. L. 99–145 provided for payment of expenses for legal representation of civilians overseas.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 681(b) of Pub. L. 99–145 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to costs incurred after September 30, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3106; title 22 section 7427.

§ 1038. Service credit: certain service in Women's Army Auxiliary Corps

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member.

(Added Pub. L. 86–142, § 1(1), Aug. 7, 1959, 73 Stat. 289.)

ELECTION OF PENSION OR COMPENSATION

Section 2 of Pub. L. 86–142 provided that a person entitled to a pension or compensation under any law administered by the Veterans' Administration, based on the active service described in section 1 of Pub. L. 86–142, which added section 1038 to Title 10, Armed Forces, could elect within 1 year after Aug. 7, 1959 to receive that pension or compensation in lieu of any compensation under the Federal Employees' Compensation Act; that such an election is irrevocable; and that the election does not entitle that person to the pension or compensation for any period before the date of election.

BACK PAY OR ALLOWANCES

Section 3 of Pub. L. 86–142 provided that: ''No person is entitled to back pay or allowances because of any service credited under section 1 of this Act [enacting this section].''

§ 1039. Crediting of minority service

For the purpose of determining eligibility for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, entitlement to retired or retainer pay, and years of service in computing retired or retainer pay of a member of the armed forces, any service which would be creditable but for the fact that it was performed by him under an enlistment or induction entered into before he attained the age prescribed by law for that enlistment or induction, shall be credited.

(Added Pub. L. 87–165, § 1(1), Aug. 25, 1961, 75 Stat. 401.)

EFFECTIVE DATE

Section 2 of Pub. L. 87–165 provided that: ''Section 1 [enacting this section] applies to service performed, and retirements or transfers to the Fleet Reserve or the Fleet Marine Corps Reserve effected, before and after this Act takes effect [Aug. 25, 1961].''

§ 1040. Transportation of dependent patients

(a) Except as provided in subsection (b), if a dependent accompanying a member of the uniformed services who is stationed outside the United States or in Alaska or Hawaii and who is on active duty for a period of more than 30 days requires medical attention which is not available in the locality, transportation of the dependents at the expense of the United States is authorized to the nearest appropriate medical facility in which adequate medical care is available. On his recovery or when it is administratively determined that the patient should be removed from the medical facility involved, the dependent may be transported at the expense of the United States to the duty station of the member or to such other place determined to be appropriate under the circumstances. If a dependent is unable to travel unattended, round-trip transportation and travel expenses may be furnished necessary attendants. In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance.

(b) This section does not authorize transportation and travel expenses for a dependent for elective surgery which is determined to be not medically indicated by a medical authority designated under joint regulations to be prescribed under this section.

(c) In this section, the term ''dependent'' has the meaning given that term in section 1072 of this title.

(d) Transportation and travel expenses authorized by this section shall be furnished in accordance with joint regulations to be prescribed by the Secretary of Transportation, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Health and Human Services, which shall require the use of transportation facilities of the United States insofar as practicable.

(Added Pub. L. 89–140, §1(1), Aug. 28, 1965, 79 Stat. 579; amended Pub. L. 96–513, title V, §511(32), Dec. 12, 1980, 94 Stat. 2922; Pub. L. 98–94, title IX, §913(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98–525, title VI, §611, title XIV, §1405(21), Oct. 19, 1984, 98 Stat. 2538, 2623; Pub. L. 99–348, title III, §304(a)(2), July 1, 1986, 100 Stat. 703; Pub. L. 99–661, div. A, title VI, §616(a), Nov. 14, 1986, 100 Stat. 3880.)

CODIFICATION

Another section 1040 was renumbered section 1041 of this title.

Another section 1040, related to free postage from combat zones, was added by Pub. L. 89–132, §9(a), Aug. 21, 1965, 79 Stat. 548, prior to repeal by Pub. L. 89–315, §3(a), Nov. 1, 1965, 79 Stat. 1164. See section 3401 et seq. of Title 39, Postal Service.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–661 substituted ''In addition to transportation of a dependent at the expense of the United States authorized under this subsection, reasonable travel expenses incurred in connection with the transportation of the dependent may be paid at the expense of the United States. Travel expenses authorized by this section may include reimbursement for necessary local travel in the vicinity of the medical facility involved. The transportation and travel expenses authorized by this section may be paid in advance'' for '', and such expenses may be paid in advance''.

Subsec. (c). Pub. L. 99–348 substituted ''In this section, the term 'dependent' has the meaning given that term in'' for '' 'Dependent' and 'uniformed services' in this section have the meanings of those terms as defined in''.

1984—Subsec. (a). Pub. L. 98–525, §1405(21), substituted ''30'' for ''thirty''.

Pub. L. 98–525, §611, made provisions of section applicable to a dependent accompanying a member of the uniformed services stationed in Alaska or Hawaii.

1983—Subsec. (a). Pub. L. 98–94 inserted '', and such expenses may be paid in advance'' after ''attendants''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Transportation'' and ''Secretary of Health and Human Services'' for ''Secretary of the Treasury'' and ''Secretary of Health, Education, and Welfare'', respectively.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 616(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to travel performed on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 611 of Pub. L. 98–525 provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 applicable to travel performed by escorts or attendants of dependents on or after Sept. 24, 1983, see section 913(c) of Pub. L. 98–94, set out as a note under section 1036 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 1041. Replacement of certificate of discharge

If satisfactory proof is presented that a person who has discharged honorably or under honorable conditions has lost his certificate of discharge from an armed force or that it was destroyed without his procurement or connivance, the Secretary concerned may give that person, or his surviving spouse, a certificate of that discharge, indelibly marked to show that it is a certificate in place of the lost or destroyed certificate. A certificate given under this section may not be accepted as a voucher for the payment of a claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

(Added Pub. L. 90–235, §7(a)(2)(A), Jan. 2, 1968, 81 Stat. 762, §1040; renumbered §1041, Pub. L. 96–513, title V, §511(33)(A), Dec. 12, 1980, 94 Stat. 2922.)

§ 1042. Copy of certificate of service

A fee for a copy of a certificate showing service in the armed forces may not be charged to—

(1) a person discharged or released from the armed forces honorably or under honorable conditions;

(2) the next of kin of the person; or

(3) a legal representative of the person.

(Added Pub. L. 97–258, §2(b)(2)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1042	31:483b.	June 19, 1956, ch. 409, 70 Stat. 297.

The words ''armed forces'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4). The words ''honorably or'' are added for consistency with 10:1040.

§1043. Service credit: service in the National Oceanic and Atmospheric Administration or the Public Health Service

Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active commissioned service in the armed forces for purposes of determining the retirement eligibility and computing the retired pay of a member of the armed forces.

(Added Pub. L. 98–94, title X, §1007(b)(1), Sept. 24, 1983, 97 Stat. 662.)

§1044. Legal assistance

(a) Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to the following persons:

(1) Members of the armed forces who are on active duty.

(2) Members and former members entitled to retired or retainer pay or equivalent pay.

(3) Officers of the commissioned corps of the Public Health Service who are on active duty or entitled to retired or equivalent pay.

(4) Members of reserve components not covered by paragraph (1) or (2) following release from active duty under a call or order to active duty for more than 30 days issued under a mobilization authority (as determined by the Secretary of Defense), for a period of time, prescribed by the Secretary of Defense, that begins on the date of the release and is not less than twice the length of the period served on active duty under that call or order to active duty.

(5) Dependents of members and former members described in paragraphs (1), (2), (3), and (4).

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the uniformed services described in subsection (a), or the dependent of such a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d) The Secretary concerned shall define ''dependent'' for the purposes of this section.

(Added Pub. L. 98–525, title VI, §651(a), Oct. 19, 1984, 98 Stat. 2549; amended Pub. L. 104–201, div. A, title V, §583, Sept. 23, 1996, 110 Stat. 2538; Pub. L. 106–398, §1 [[div. A], title V, §524(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106–398, §1 [[div. A], title V, §524(a)(2)], added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 106–398, §1 [[div. A], title V, §524(b)], substituted ''(3), and (4)'' for ''and (3)''.

Pub. L. 106–398, §1 [[div. A], title V, §524(a)(1)], redesignated par. (4) as (5).

1996—Subsec. (a). Pub. L. 104–201, §583(d)(1), substituted ''to the following persons:'' for ''to—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–201, §583(c), (d)(2), (3), substituted ''Members'' for ''members'', struck out ''under his jurisdiction'' after ''armed forces'', and substituted a period for the semicolon at end.

Subsec. (a)(2). Pub. L. 104–201, §583(c), (d)(2), (4), substituted ''Members and'' for ''members and'', struck out ''under his jurisdiction'' after ''former members'', and substituted a period for ''; and'' at end.

Subsec. (a)(3), (4). Pub. L. 104–201, §583(a), added pars. (3) and (4) and struck out former par. (3) which read as follows: ''dependents of members and former members described in clauses (1) and (2).''

Subsec. (c). Pub. L. 104–201, §583(b), substituted ''uniformed services described in subsection (a)'' for ''armed forces'' and inserted ''such'' after ''dependent of''.

REGULATIONS

Pub. L. 106–398, §1 [[div. A], title V, §524(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, provided that: ''Regulations to implement the amendments made by this section [amending this section] shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1044a, 1044c, 1044d, 1052, 1588 of this title; title 14 section 514.

§1044a. Authority to act as notary

(a) The persons named in subsection (b) have the general powers of a notary public and of a consul of the United States in the performance of all notarial acts to be executed by any of the following:

(1) Members of any of the armed forces.

(2) Other persons eligible for legal assistance under the provisions of section 1044 of this title or regulations of the Department of Defense.

(3) Persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(4) Other persons subject to the Uniform Code of Military Justice (chapter 47 of this title) outside the United States.

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

(c) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(d) The signature of any such person acting as notary, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

(Added Pub. L. 101–510, div. A, title V, § 551(a)(1), Nov. 5, 1990, 104 Stat. 1566; amended Pub. L. 104–201, div. A, title V, § 573, Sept. 23, 1996, 110 Stat. 2534; Pub. L. 107–107, div. A, title XI, § 1103, Dec. 28, 2001, 115 Stat. 1236.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107, § 1103(a), substituted ''legal assistance attorneys'' for ''legal assistance officers''.

Subsec. (b)(5). Pub. L. 107–107, § 1103(b), added par. (5).

1996—Subsec. (b)(1). Pub. L. 104–201, § 573(1), substituted '', including reserve judge advocates when not in a duty status'' for ''on active duty or performing inactive-duty training''.

Subsec. (b)(3). Pub. L. 104–201, § 573(2), substituted ''adjutants, including reserve members when not in a duty status'' for ''adjutants on active duty or performing inactive-duty training''.

Subsec. (b)(4). Pub. L. 104–201, § 573(3), substituted ''members of the armed forces, including reserve members when not in a duty status,'' for ''persons on active duty or performing inactive-duty training''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1044b, 1052 of this title; title 14 section 514.

§ 1044b. Military powers of attorney: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—A military power of attorney—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for powers of attorney under the laws of a State; and

(2) shall be given the same legal effect as a power of attorney prepared and executed in accordance with the laws of the State concerned.

(b) MILITARY POWER OF ATTORNEY.—For purposes of this section, a military power of attorney is any general or special power of attorney that is notarized in accordance with section 1044a of this title or other applicable State or Federal law.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, each military power of attorney shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a military power of attorney that does not include a statement described in that paragraph.

(d) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(Added Pub. L. 103–160, div. A, title V, § 574(a), Nov. 30, 1993, 107 Stat. 1674.)

§ 1044c. Advance medical directives of members and dependents: requirement for recognition by States

(a) INSTRUMENTS TO BE GIVEN LEGAL EFFECT WITHOUT REGARD TO STATE LAW.—An advance medical directive executed by a person eligible for legal assistance—

(1) is exempt from any requirement of form, substance, formality, or recording that is provided for advance medical directives under the laws of a State; and

(2) shall be given the same legal effect as an advance medical directive prepared and executed in accordance with the laws of the State concerned.

(b) ADVANCE MEDICAL DIRECTIVES.—For purposes of this section, an advance medical directive is any written declaration that—

(1) sets forth directions regarding the provision, withdrawal, or withholding of life-prolonging procedures, including hydration and sustenance, for the declarant whenever the declarant has a terminal physical condition or is in a persistent vegetative state; or

(2) authorizes another person to make health care decisions for the declarant, under circumstances stated in the declaration, whenever the declarant is incapable of making informed health care decisions.

(c) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed by the Secretary concerned, an advance medical directive prepared by an attorney authorized to provide legal assistance shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to an advance medical directive that does not include a statement described in that paragraph.

(d) STATES NOT RECOGNIZING ADVANCE MEDICAL DIRECTIVES.—Subsection (a) does not make an advance medical directive enforceable in a State that does not otherwise recognize and enforce advance medical directives under the laws of the State.

(e) DEFINITIONS.—In this section:

(1) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(2) The term ''person eligible for legal assistance'' means a person who is eligible for legal assistance under section 1044 of this title.

(3) The term ''legal assistance'' means legal services authorized under section 1044 of this title.

(Added Pub. L. 104–106, div. A, title VII, § 749(a)(1), Feb. 10, 1996, 110 Stat. 388.)

EFFECTIVE DATE OF 1996 AMENDMENT

Section 749(b) of Pub. L. 104–106 provided that: ''Section 1044c of title 10, United States Code, shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to advance medical directives referred to in that section that are executed before, on, or after that date.''

§ 1044d. Military testamentary instruments: requirement for recognition by States

(a) TESTAMENTARY INSTRUMENTS TO BE GIVEN LEGAL EFFECT.—A military testamentary instrument—

(1) is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State; and

(2) has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate.

(b) MILITARY TESTAMENTARY INSTRUMENTS.—For purposes of this section, a military testamentary instrument is an instrument that is prepared with testamentary intent in accordance with regulations prescribed under this section and that—

(1) is executed in accordance with subsection (c) by (or on behalf of) a person, as a testator, who is eligible for military legal assistance;

(2) makes a disposition of property of the testator; and

(3) takes effect upon the death of the testator.

(c) REQUIREMENTS FOR EXECUTION OF MILITARY TESTAMENTARY INSTRUMENTS.—An instrument is valid as a military testamentary instrument only if—

(1) the instrument is executed by the testator (or, if the testator is unable to execute the instrument personally, the instrument is executed in the presence of, by the direction of, and on behalf of the testator);

(2) the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator's execution of the instrument by signing it; and

(4) the instrument is executed in accordance with such additional requirements as may be provided in regulations prescribed under this section.

(d) SELF-PROVING MILITARY TESTAMENTARY INSTRUMENTS.—(1) If the document setting forth a military testamentary instrument meets the requirements of paragraph (2), then the signature of a person on the document as the testator, an attesting witness, a notary, or the presiding attorney, together with a written representation of the person's status as such and the person's military grade (if any) or other title, is prima facie evidence of the following:

(A) That the signature is genuine.

(B) That the signatory had the represented status and title at the time of the execution of the will.

(C) That the signature was executed in compliance with the procedures required under the regulations prescribed under subsection (f).

(2) A document setting forth a military testamentary instrument meets the requirements of this paragraph if it includes (or has attached to it), in a form and content required under the regulations prescribed under subsection (f), each of the following:

(A) A certificate, executed by the testator, that includes the testator's acknowledgment of the testamentary instrument.

(B) An affidavit, executed by each witness signing the testamentary instrument, that attests to the circumstances under which the testamentary instrument was executed.

(C) A notarization, including a certificate of any administration of an oath required under the regulations, that is signed by the notary or other official administering the oath.

(e) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed under this section, each military testamentary instrument shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a testamentary instrument that does not include a statement described in that paragraph.

(f) REGULATIONS.—Regulations for the purposes of this section shall be prescribed jointly by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy.

(g) DEFINITIONS.—In this section:

(1) The term ''person eligible for military legal assistance'' means a person who is eligible for legal assistance under section 1044 of this title.

(2) The term ''military legal assistance counsel'' means—

(A) a judge advocate (as defined in section 801(13) of this title); or

(B) a civilian attorney serving as a legal assistance officer under the provisions of section 1044 of this title.

(3) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 551(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–123; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amounts withheld during any calendar quarter shall be retained by the Secretary concerned and disbursed to the States during the month following that calendar quarter.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned.

(e) In this section:

(1) The term ''State'' means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) The term ''Secretary concerned'' includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98–525, title VI, § 654(a), Oct. 19, 1984, 98 Stat. 2551; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation.

§ 1046. Overseas temporary foster care program

(a) PROGRAM AUTHORIZED.—The Secretary concerned may establish a program to provide temporary foster care services outside the United States for children accompanying members of the armed forces on duty at stations outside the United States. The foster care services provided under such a program shall be similar to those services provided by State and local governments in the United States.

(b) EXPENSES.—Under regulations prescribed by the Secretary concerned, the expenses related to providing foster care services under subsection (a) may be paid from appropriated funds available to the Secretary.

(Added Pub. L. 102–484, div. A, title VI, § 651(a), Oct. 23, 1992, 106 Stat. 2425.)

PRIOR PROVISIONS

A prior section 1046, added Pub. L. 98–525, title VII, § 708(a)(1), Oct. 19, 1984, 98 Stat. 2572, related to preseparation counseling, prior to repeal by Pub. L. 101–510, div. A, title V, § 502(b)(1), Nov. 5, 1990, 104 Stat. 1557.

§ 1047. Allowance for civilian clothing

The Secretary of the military department concerned may furnish civilian clothing, at a cost of not more than $40, to an enlisted member who is—

(1) discharged for misconduct or unsuitability or under conditions other than honorable;

(2) sentenced by a civil court to confinement in a prison;

(3) interned or discharged as an alien enemy; or

(4) discharged before completion of recruit training under honorable conditions for dependency, hardship, minority, or disability or for the convenience of the Government.

(Added Pub. L. 98–525, title XIV, § 1401(d)(1), Oct. 19, 1984, 98 Stat. 2615.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8024], 98 Stat. 1904, 1928.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 727, 97 Stat. 1443.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 730], 96 Stat. 1833, 1855.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 730, 95 Stat. 1584.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 731, 94 Stat. 3086.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 731, 93 Stat. 1157.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 831, 92 Stat. 1249.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 830, 91 Stat. 905.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 730, 90 Stat. 1296.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 730, 90 Stat. 173.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 831, 88 Stat. 1230.

Jan. 2, 1974, Pub. L. 93–238, title VII, §732, 87 Stat. 1044.
Oct. 26, 1972, Pub. L. 92–570, title VII, §732, 86 Stat. 1201.
Dec. 18, 1971, Pub. L. 92–204, title VII, §733, 85 Stat. 733.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §833, 84 Stat. 2036.
Dec. 29, 1969, Pub. L. 91–171, title VI, §633, 83 Stat. 485.
Oct. 17, 1968, Pub. L. 90–580, title V, §532, 82 Stat. 1135.
Sept. 29, 1967, Pub. L. 90–96, title VI, §632, 81 Stat. 247.
Oct. 15, 1966, Pub. L. 89–687, title VI, §633, 80 Stat. 996.
Sept. 29, 1965, Pub. L. 89–213, title VI, §633, 79 Stat. 879.
Aug. 19, 1964, Pub. L. 88–446, title V, §533, 78 Stat. 480.
Oct. 17, 1963, Pub. L. 88–149, title V, §533, 77 Stat. 269.
Aug. 9, 1962, Pub. L. 87–577, title V, §534, 76 Stat. 333.
Aug. 17, 1961, Pub. L. 87–144, title VI, §634, 75 Stat. 381.
July 7, 1960, Pub. L. 86–601, title II, §201, 74 Stat. 340–342.
Aug. 18, 1959, Pub. L. 86–166, title II, §201, 73 Stat. 368–370.
Aug. 22, 1958, Pub. L. 85–724, title III, §301, title IV, §401, title V, §501, 72 Stat. 714, 717, 721.
Aug. 2, 1957, Pub. L. 85–117, title III, §301, title IV, §401, title V, §501, 71 Stat. 314, 316, 321.
July 2, 1956, ch. 488, title III, §301, title IV, §401, title V, §501, 70 Stat. 457, 459, 464.
July 13, 1955, ch. 358, title III, §301, title IV, §401, title V, §501, 69 Stat. 304, 306, 312.
June 30, 1954, ch. 432, title IV, §401, title V, §501, title VI, §601, 68 Stat. 339, 342, 347.
Aug. 1, 1953, ch. 305, title III, §301, title IV, §401, title V, §501, 67 Stat. 339, 342, 348.
July 10, 1952, ch. 630, title III, §301, title IV, §401, title V, §501, 66 Stat. 520, 524, 529.
Oct. 18, 1951, ch. 512, title III, §301, title IV, §401, title V, §501, 65 Stat. 429, 437, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title IV, §401, title V, §501, 64 Stat. 735, 743, 749.
Oct. 29, 1949, ch. 787, title III, §301, title IV, §401, title V, §501, 63 Stat. 993, 1006, 1014.
June 24, 1948, ch. 632, 62 Stat. 655.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 557.
July 16, 1946, ch. 583, §1, 60 Stat. 548.
July 3, 1945, ch. 265, §1, 59 Stat. 391.
June 28, 1944, ch. 303, §1, 58 Stat. 580.
July 1, 1943, ch. 185, §1, 57 Stat. 354.
July 2, 1942, ch. 477, §1, 56 Stat. 617.
June 30, 1941, ch. 262, §1, 55 Stat. 373.
June 13, 1940, ch. 343, §1, 54 Stat. 359.
Apr. 26, 1939, ch. 88, §1, 53 Stat. 600.
June 11, 1938, ch. 37, §1, 52 Stat. 650.
July 1, 1937, ch. 423, §1, 50 Stat. 450.
May 15, 1936, ch. 404, §1, title I, 49 Stat. 1286.
Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 129.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 622.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1577.
July 14, 1932, ch. 482, title I, 47 Stat. 671.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1284.
May 28, 1930, ch. 348, title I, 46 Stat. 438.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1356.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 332.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1113.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 262.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1048. Gratuity payment to persons discharged for fraudulent enlistment

The Secretary concerned may pay a gratuity of not to exceed $25 to a person discharged for fraudulent enlistment.

(Added Pub. L. 98–525, title XIV, §1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:
Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98–212, title VII, §709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, §709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, §708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, §708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, §708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, §708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, §608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, §607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, §507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, §607, 75 Stat. 376.
July 7, 1960, Pub. L. 86–601, title V, §507, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, §607, 73 Stat. 379.
Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, 72 Stat. 713, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, 71 Stat. 313, 321.
July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 456, 465.
July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 303, 313.
June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, §301, title V, §501, 67 Stat. 338, 348.
July 10, 1952, ch. 630, title III, §301, title V, §501, 66 Stat. 519, 530.
Oct. 18, 1951, ch. 512, title III, §301, title V, §501, 65 Stat. 426, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, 64 Stat. 732, 750.
Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 991, 1015.
June 24, 1948, ch. 632, 62 Stat. 653.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 555.
July 16, 1946, ch. 583, §1, 60 Stat. 546.
July 3, 1945, ch. 265, §1, 59 Stat. 389.
June 28, 1944, ch. 303, §1, 58 Stat. 578.
July 1, 1943, ch. 185, §1, 57 Stat. 352.
July 2, 1942, ch. 477, §1, 56 Stat. 615.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1049. Subsistence: miscellaneous persons

The following persons may be provided subsistence at the expense of the United States:

(1) Enlisted members while sick in hospitals.
(2) Applicants for enlistment and selective service registrants called for induction.
(3) Prisoners.
(4) Civilian employees, as authorized by law.
(5) Supernumeraries, when necessitated by emergent military circumstances.

(Added Pub. L. 98–525, title XIV, §1401(d)(1), Oct. 19, 1984, 98 Stat. 2616.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:
Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8006], 98 Stat. 1904, 1923.
Dec. 8, 1983, Pub. L. 98–212, title VII, §709, 97 Stat. 1439.
Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §709], 96 Stat. 1833, 1851.
Dec. 29, 1981, Pub. L. 97–114, title VII, §709, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §709, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §709, 93 Stat. 1153.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §809, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §808, 91 Stat. 900.
Sept. 22, 1976, Pub. L. 94–419, title VII, §708, 90 Stat. 1292.
Feb. 9, 1976, Pub. L. 94–212, title VII, §708, 90 Stat. 169.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §808, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §708, 87 Stat. 1039.
Oct. 26, 1972, Pub. L. 92–570, title VII, §708, 86 Stat. 1197.
Dec. 18, 1971, Pub. L. 92–204, title VII, §708, 85 Stat. 728.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §808, 84 Stat. 2031.
Dec. 29, 1969, Pub. L. 91–171, title VI, §608, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §507, 82 Stat. 1130.
Sept. 29, 1967, Pub. L. 90–96, title VI, §607, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §607, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §607, 79 Stat. 874.
Aug. 19, 1964, Pub. L. 88–446, title V, §507, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §507, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §507, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title II, §201, title VI, §607, 75 Stat. 367, 376.
July 7, 1960, Pub. L. 86–601, title II, §201, title V, §507, 74 Stat. 340, 350.
Aug. 18, 1959, Pub. L. 86–166, title II, §201, title V, §607, 73 Stat. 368, 379.
Aug. 22, 1958, Pub. L. 85–724, title III, §301, title V, §501, 72 Stat. 713, 714, 721, 722.
Aug. 2, 1957, Pub. L. 85–117, title III, §301, title V, §501, 71 Stat. 313, 314, 321.
July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 456, 457, 465.
July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 303, 312.
June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 339, 348.
Aug. 1, 1953, ch. 305, title III, §301, title V, §501, 67 Stat. 338, 339, 348.
July 10, 1952, ch. 630, title III, §301, title V, §501, 66 Stat. 519, 520, 529.
Oct. 18, 1951, ch. 512, title III, §301, title V, §501, 65 Stat. 428, 443.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, 64 Stat. 734, 749, 750.
Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 991, 992, 1015.
June 24, 1948, ch. 632, 62 Stat. 654.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 556.
July 16, 1946, ch. 583, §1, 60 Stat. 546, 547.
July 3, 1945, ch. 265, §1, 59 Stat. 389, 390.
June 28, 1944, ch. 303, §1, 58 Stat. 579.
July 1, 1943, ch. 185, §1, 57 Stat. 353.
July 2, 1942, ch. 477, §1, 56 Stat. 616.
June 30, 1941, ch. 262, §1, 55 Stat. 372.
June 13, 1940, ch. 343, §1, 54 Stat. 357.
Apr. 26, 1939, ch. 88, §1, 53 Stat. 599.
June 11, 1938, ch. 37, §1, 52 Stat. 648.
July 1, 1937, ch. 423, §1, 50 Stat. 448.
May 15, 1936, ch. 404, §1, title I, 49 Stat. 1285.
Apr. 9, 1935, ch. 54, §1, title I, 49 Stat. 127.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 620.
Mar. 4, 1933, ch. 281, title I, 47 Stat. 1576.
July 14, 1932, ch. 482, title I, 47 Stat. 669.
Feb. 23, 1931, ch. 279, title I, 46 Stat. 1282.
May 28, 1930, ch. 348, title I, 46 Stat. 437.
Feb. 28, 1929, ch. 366, title I, 45 Stat. 1354.
Mar. 23, 1928, ch. 232, title I, 45 Stat. 331.
Feb. 23, 1927, ch. 167, title I, 44 Stat. 1111.
Apr. 15, 1926, ch. 146, title I, 44 Stat. 260.
Feb. 12, 1925, ch. 225, title I, 43 Stat. 898.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§1050. Latin American cooperation: payment of personnel expenses

The Secretary of Defense or the Secretary of a military department may pay the travel, subsistence, and special compensation of officers and students of Latin American countries and other expenses that the Secretary considers necessary for Latin American cooperation.

(Added Pub. L. 98–525, title XIV, §1401(d)(1), Oct. 19, 1984, 98 Stat. 2616; amended Pub. L. 105–261, div. A, title IX, §905(b), Oct. 17, 1998, 112 Stat. 2093.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:
Pub. L. 98–473, title I, §101(h) [title VIII, §8006], Oct. 12, 1984, 98 Stat. 1904, 1923.
Pub. L. 98–212, title VII, §709, Dec. 8, 1983, 97 Stat. 1439.
Pub. L. 97–377, title I, §101(c) [title VII, §709], Dec. 21, 1982, 96 Stat. 1833, 1851.
Pub. L. 97–114, title VII, §709, Dec. 29, 1981, 95 Stat. 1579.
Pub. L. 96–527, title VII, §709, Dec. 15, 1980, 94 Stat. 3081.
Pub. L. 96–154, title VII, §709, Dec. 21, 1979, 93 Stat. 1153.
Pub. L. 95–457, title VIII, §809, Oct. 13, 1978, 92 Stat. 1244.
Pub. L. 95–111, title VIII, §808, Sept. 21, 1977, 91 Stat. 900.
Pub. L. 94–419, title VII, §708, Sept. 22, 1976, 90 Stat. 1292.
Pub. L. 94–212, title VII, §708, Feb. 9, 1976, 90 Stat. 169.
Pub. L. 93–437, title VIII, §808, Oct. 8, 1974, 88 Stat. 1225.
Pub. L. 93–238, title VII, §708, Jan. 2, 1974, 87 Stat. 1039.
Pub. L. 92–570, title VII, §708, Oct. 26, 1972, 86 Stat. 1197.
Pub. L. 92–204, title VII, §708, Dec. 18, 1971, 85 Stat. 728.
Pub. L. 91–668, title VIII, §808, Jan. 11, 1971, 84 Stat. 2031.
Pub. L. 91–171, title VI, §608, Dec. 29, 1969, 83 Stat. 480.
Pub. L. 90–580, title V, §507, Oct. 17, 1968, 82 Stat. 1130.
Pub. L. 90–96, title VI, §607, Sept. 29, 1967, 81 Stat. 242.

Pub. L. 89–687, title VI, §607, Oct. 15, 1966, 80 Stat. 991.
Pub. L. 89–213, title VI, §607, Sept. 29, 1965, 79 Stat. 874.
Pub. L. 88–446, title V, §507, Aug. 19, 1964, 78 Stat. 475.
Pub. L. 88–149, title V, §507, Oct. 17, 1963, 77 Stat. 264.
Pub. L. 87–577, title V, §507, Aug. 9, 1962, 76 Stat. 328.
Pub. L. 87–144, title II, §201, Aug. 17, 1961, 75 Stat. 367, 369.
Pub. L. 86–601, title II, §201, July 7, 1960, 74 Stat. 341, 343.
Pub. L. 86–166, title II, §201, Aug. 18, 1959, 73 Stat. 369, 371.
Pub. L. 85–724, title III, §301, title V, §501, Aug. 22, 1958, 72 Stat. 714, 721.
Pub. L. 85–117, title III, §301, title V, §501, Aug. 2, 1957, 71 Stat. 314, 321.
July 2, 1956, ch. 488, title III, §301, title V, §501, 70 Stat. 457, 465.
July 13, 1955, ch. 358, title III, §301, title V, §501, 69 Stat. 304, 312.
June 30, 1954, ch. 432, title IV, §401, title VI, §601, 68 Stat. 340, 347.
Aug. 1, 1953, ch. 305, title III, §301, title V, §501, 67 Stat. 339, 347.
July 10, 1952, ch. 630, title III, §301, title V, §501, 66 Stat. 521, 529.
Oct. 18, 1951, ch. 512, title III, §301, title V, §501, 65 Stat. 426, 442.
Sept. 6, 1950, ch. 896, Ch. X, title III, §301, title V, §501, 64 Stat. 732, 749.
Oct. 29, 1949, ch. 787, title III, §301, title V, §501, 63 Stat. 989, 1014.
June 24, 1948, ch. 632, 62 Stat. 650.
July 30, 1947, ch. 357, title I, §1, 61 Stat. 568.
July 16, 1946, ch. 583, §1, 60 Stat. 560.
July 3, 1945, ch. 265, §1, 59 Stat. 401.
June 28, 1944, ch. 303, §1, 58 Stat. 591.
July 1, 1943, ch. 185, §1, 57 Stat. 365.
July 2, 1942, ch. 477, §1, 56 Stat. 628.

AMENDMENTS

1998—Pub. L. 105–261 inserted ''Secretary of Defense or the'' before ''Secretary of a military department''.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 2165 of this title.

§1051. Bilateral or regional cooperation programs: payment of personnel expenses

(a) The Secretary of Defense may pay the travel, subsistence, and similar personal expenses of defense personnel of developing countries in connection with the attendance of such personnel at a bilateral or regional conference, seminar, or similar meeting if the Secretary determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States.

(b)(1) Except as provided in paragraphs (2) and (3), expenses authorized to be paid under subsection (a) may be paid on behalf of personnel from a developing country only in connection with travel within the area of responsibility of the unified combatant command (as such term is defined in section 161(c) of this title) in which the developing country is located or in connection with travel to Canada or Mexico.

(2) In a case in which the headquarters of a unified combatant command is located within the United States, expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the United States to attend a bilateral or regional conference, seminar, or similar meeting.

(3) In the case of defense personnel of a developing country that is not a member of the North Atlantic Treaty Organization and that is participating in the Partnership for Peace program of the North Atlantic Treaty Organization (NATO), expenses authorized to be paid under subsection (a) may be paid in connection with travel of personnel to the territory of any of the countries participating in the Partnership for Peace program or the territory of any NATO member country.

(4) Expenses authorized to be paid under subsection (a) may not, in the case of any individual, exceed the amount that would be paid under chapter 7 of title 37 to a member of the armed forces of the United States (of a comparable grade) for authorized travel of a similar nature.

(c) In addition to the expenses authorized to be paid under subsection (a), the Secretary of Defense may pay such other expenses in connection with any such conference, seminar, or similar meeting as the Secretary considers in the national security interests of the United States.

(d) The authority to pay expenses under this section is in addition to the authority to pay certain expenses and compensation of officers and students of Latin American countries under section 1050 of this title.

(Added Pub. L. 99–661, div. A, title XIII, §1322(a), Nov. 14, 1986, 100 Stat. 3989; amended Pub. L. 101–189, div. A, title IX, §936, Nov. 29, 1989, 103 Stat. 1538; Pub. L. 101–510, div. A, title XIII, §1301(5), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–484, div. A, title XIII, §1362, Oct. 23, 1992, 106 Stat. 2560; Pub. L. 107–314, div. A, title XII, §1202(a), Dec. 2, 2002, 116 Stat. 2663.)

CODIFICATION

Another section 1051 was renumbered section 1032 of this title.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–314, §1202(a)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.
Subsec. (b)(3), (4). Pub. L. 107–314, §1202(a)(2), (3), added par. (3) and redesignated former par. (3) as (4).

1992—Subsec. (e). Pub. L. 102–484 struck out subsec. (e) which read as follows: ''The authority of the Secretary of Defense under this section shall expire on September 30, 1992.''

1990—Subsecs. (e) to (g). Pub. L. 101–510 redesignated subsec. (g) as (e) and struck out former subsecs. (e) and (f) which read as follows:

''(e) Not later than March 1 each year, the Secretary of Defense shall submit to Congress a report containing—

''(1) a list of the developing countries for which expenses have been paid under this section during the preceding fiscal year; and

''(2) the amount paid by the United States in the case of each such country.

''(f) During each of fiscal years 1987, 1988, and 1989, not more than $800,000 may be obligated or expended under this section.''

1989—Subsec. (b)(1). Pub. L. 101–189, §936(a), inserted before period at end ''or in connection with travel to Canada or Mexico''.

Subsec. (g). Pub. L. 101–189, §936(b), substituted ''1992'' for ''1989''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title XII, §1202(b), Dec. 2, 2002, 116 Stat. 2663, provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to travel performed on or after the date of the enactment of this Act [Dec. 2, 2002].''

§ 1051a. Coalition liaison officers: administrative services and support; travel, subsistence, and other personal expenses

(a) AUTHORITY.—The Secretary of Defense may provide administrative services and support for the performance of duties by a liaison officer of another nation involved in a coalition with the United States while the liaison officer is assigned temporarily to the headquarters of a combatant command, component command, or subordinate operational command of the United States in connection with the planning for, or conduct of, a coalition operation.

(b) TRAVEL AND SUBSISTENCE EXPENSES.—(1) The Secretary may pay the expenses specified in paragraph (2) of a liaison officer of a developing country in connection with the assignment of that officer to the headquarters of a combatant command as described in subsection (a), if the assignment is requested by the commander of the combatant command.

(2) Expenses of a liaison officer that may be paid under paragraph (1) in connection with an assignment described in that paragraph are the following:

(A) Travel and subsistence expenses.

(B) Personal expenses directly necessary to carry out the duties of that officer in connection with that assignment.

(c) REIMBURSEMENT.—To the extent that the Secretary determines appropriate, the Secretary may provide the services and support authorized by subsection (a) and the expenses authorized by subsection (b) with or without reimbursement from (or on behalf of) the recipients.

(d) DEFINITIONS.—In this section:

(1) The term ''administrative services and support'' includes base or installation support services, office space, utilities, copying services, fire and police protection, and computer support.

(2) The term ''coalition'' means an ad hoc arrangement between or among the United States and one or more other nations for common action.

(e) EXPIRATION OF AUTHORITY.—The authority under this section shall expire on September 30, 2005.

(Added Pub. L. 107–314, div. A, title XII, §1201(a)(1), Dec. 2, 2002, 116 Stat. 2662.)

GAO REPORT

Pub. L. 107–314, div. A, title XII, §1201(b), Dec. 2, 2002, 116 Stat. 2663, provided that: ''Not later than March 1, 2005, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report providing an assessment of the implementation of section 1051a of title 10, United States Code, as added by subsection (a). The assessment shall include the following:

''(1) A description of the benefits to coalition operations of the authority provided by that section.

''(2) A statement of the cost to the Department of Defense of the use of the authority provided by that section.

''(3) A summary of activities carried out under the authority provided by that section, including (A) the number of liaison officers for whom administrative services and support or expenses were provided under that authority and their countries of origin, and (B) the type of services, support, and expenses provided.''

§ 1052. Adoption expenses: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary of Defense shall carry out a program under which a member of the armed forces may be reimbursed, as provided in this section, for qualifying adoption expenses incurred by the member in the adoption of a child under 18 years of age.

(b) ADOPTIONS COVERED.—An adoption for which expenses may be reimbursed under this section includes an adoption by a single person, an infant adoption, an intercountry adoption, and an adoption of a child with special needs (as defined in section 473(c) of the Social Security Act (42 U.S.C. 673(c))).

(c) BENEFITS PAID AFTER ADOPTION IS FINAL.—Benefits paid under this section in the case of an adoption may be paid only after the adoption is final.

(d) TREATMENT OF OTHER BENEFITS.—A benefit may not be paid under this section for any expense paid to or for a member of the armed forces under any other adoption benefits program administered by the Federal Government or under any such program administered by a State or local government.

(e) LIMITATIONS.—(1) Not more than $2,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for expenses incurred in the adoption of a child.

(2) Not more than $5,000 may be paid under this section to a member of the armed forces, or to two such members who are spouses of each other, for adoptions by such member (or members) in any calendar year.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(g) DEFINITIONS.—In this section:

(1) The term ''qualifying adoption expenses'' means reasonable and necessary expenses that are directly related to the legal adoption of a child under 18 years of age, but only if such adoption is arranged by a qualified adoption agency. Such term does not include any expense incurred—

(A) by an adopting parent for travel; or

(B) in connection with an adoption arranged in violation of Federal, State, or local law.

(2) The term ''reasonable and necessary expenses'' includes—

(A) public and private agency fees, including adoption fees charged by an agency in a foreign country;

(B) placement fees, including fees charged adoptive parents for counseling;

(C) legal fees (including court costs) in connection with services that are unavailable to a member of the armed forces under section 1044 or 1044a of this title; and

(D) medical expenses, including hospital expenses of the biological mother of the

child to be adopted and of a newborn infant to be adopted.

(3) The term ''qualified adoption agency'' means any of the following:

(A) A State or local government agency which has responsibility under State or local law for child placement through adoption.

(B) A nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.

(C) Any other source authorized by a State to provide adoption placement if the adoption is supervised by a court under State or local law.

(Added Pub. L. 102–190, div. A, title VI, §651(a)(1), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 102–484, div. A, title X, §1052(12), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 104–201, div. A, title VI, §652(a), Sept. 23, 1996, 110 Stat. 2582; Pub. L. 106–398, §1 [[div. A], title V, §579(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

PRIOR PROVISIONS

A prior section 1052 was renumbered section 1063 of this title.

AMENDMENTS

2000—Pub. L. 106–398 substituted ''Adoption expenses: reimbursement'' for ''Reimbursement for adoption expenses'' in section catchline.

1996—Subsec. (g)(1). Pub. L. 104–201, §652(a)(1), substituted ''qualified adoption agency.'' for ''State or local government agency which has responsibility under State or local law for child placement through adoption or by a nonprofit, voluntary adoption agency which is authorized by State or local law to place children for adoption.''

Subsec. (g)(3). Pub. L. 104–201, §652(a)(2), added par. (3).

1992—Subsec. (b). Pub. L. 102–484 inserted close parenthesis before period at end.

EFFECTIVE DATE

Section 651(c) of Pub. L. 102–190 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and section 514 of Title 14, Coast Guard] shall take effect on the date of the enactment of this Act [Dec. 5, 1991] and shall apply to adoptions completed on or after that date.''

REIMBURSEMENT FOR ADOPTIONS COMPLETED DURING PERIOD BETWEEN TEST AND PERMANENT PROGRAM

Section 652 of Pub. L. 102–484 provided that:

''(a) REIMBURSEMENT OF ADOPTION EXPENSES.—Section 1052 of title 10, United States Code, and section 514 of title 14, United States Code, shall apply with respect to the reimbursement of adoption expenses incurred for an adoption proceeding completed during the period beginning on October 1, 1990, and ending on December 4, 1991, to the extent the adoption expenses would be covered by one of these sections if the adoption proceeding had been completed after December 4, 1991.

''(b) TIME PERIOD FOR APPLICATION.—Subsection (a) shall apply to a person covered by such subsection only if the person applies to the Secretary of Defense or the Secretary of Transportation for the reimbursement of adoption expenses under section 1052 of title 10, United States Code, or section 514 of title 14, United States Code, whichever applies, within one year after the date of the enactment of this Act [Oct. 23, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 137; title 33 section 3071; title 42 section 213a.

§1053. Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement

(a)(1) A member of the armed forces (or a former member of the armed forces entitled to retired pay under chapter 1223 of this title) who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed by the Secretary concerned for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance or average balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the person concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay and allowances of members of the armed force concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term ''pay'' includes (A) retired pay, and (B) allowances.

(Added Pub. L. 99–661, div. A, title VI, §662(a)(1), Nov. 14, 1986, 100 Stat. 3893; amended Pub. L. 101–189, div. A, title VI, §664(a)(1)–(3)(A), Nov. 29, 1989, 103 Stat. 1466; Pub. L. 102–25, title VII, §701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115; Pub. L. 104–106, div. A, title XV, §1501(c)(8), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title V, §564(a), Oct. 17, 1998, 112 Stat. 2029; Pub. L. 106–398, §1 [[div. A], title V, §579(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

AMENDMENTS

2000—Pub. L. 106–398 substituted ''Financial institution charges incurred because of Government error in direct deposit of pay: reimbursement'' for ''Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay'' in section catchline.

1998—Subsec. (d)(1). Pub. L. 105–261 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'financial institution' has the meaning given the term 'financial organization' in section 3332(a) of title 31.''

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1989—Pub. L. 101–189, §664(a)(3)(A), amended section catchline generally, substituting ''Reimbursement for financial institution charges incurred because of Government'' for ''Relief for expenses because of''.

Subsec. (a). Pub. L. 101–189, §664(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A member of the armed forces who, by law or regulation, is required to participate in a program for the automatic deposit of pay to a financial institution may be reimbursed for overdraft charges levied by the financial institution when such charges result from

an administrative or mechanical error on the part of the Government that causes such member's pay to be deposited late or in an incorrect amount or manner.''

Subsec. (d). Pub. L. 101–189, §664(a)(2), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'financial institution' has the meaning given that term in section 3332 of title 31.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 664(c) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section], and section 1594 of title 10, United States Code, as added by subsection (b), shall apply with respect to pay and allowances deposited (or scheduled to be deposited) on or after the first day of the first month beginning after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE

Section 662(c) of Pub. L. 99–661 provided that: ''Section 1053 of title 10, United States Code, as added by subsection (a), shall apply only with respect to charges levied as a result of errors occurring on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 1053a. Expenses incurred in connection with leave canceled due to contingency operations: reimbursement

(a) AUTHORIZATION TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces under the jurisdiction of the Secretary for travel and related expenses (to the extent not otherwise reimbursable under law) incurred by the member as a result of the cancellation of previously approved leave when the leave is canceled in connection with the member's participation in a contingency operation and the cancellation occurs within 48 hours of the time the leave would have commenced.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to establish the criteria for the applicability of subsection (a).

(c) CONCLUSIVENESS OF SETTLEMENT.—The settlement of an application for reimbursement under subsection (a) is final and conclusive.

(Added Pub. L. 106–398, §1 [[div. A], title V, §579(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141.)

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title V, §579(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–141, provided that: ''Section 1053a of title 10, United States Code, as added by subsection (a), shall apply with respect to any travel and related expenses incurred by a member in connection with leave canceled after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1054. Defense of certain suits arising out of legal malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any person who is an attorney, paralegal, or other member of a legal staff within the Department of Defense (including the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32) or within the Coast Guard, in connection with providing legal services while acting within the scope of the person's duties or employment, is exclusive of any other civil action or proceeding by reason of the same subject matter against the person (or the estate of the person) whose act or omission gave rise to such action or proceeding.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) (or the estate of such person) for any such injury. Any person against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person (or an attested true copy thereof) to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers. Such person shall promptly furnish copies of the pleading and process therein—

(1) to the United States attorney for the district embracing the place wherein the action or proceeding is brought;

(2) to the Attorney General; and

(3) to the head of the agency concerned.

(c) Upon a certification by the Attorney General that a person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court—

(1) shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending; and

(2) shall be deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to a cause of action arising out of a negligent or wrongful act or omission in the provision of legal assistance.

(f) The head of the agency concerned may hold harmless or provide liability insurance for any person described in subsection (a) for damages for injury or loss of property caused by such person's negligent or wrongful act or omission in the provision of authorized legal assistance while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with an entity other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third

persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(g) In this section, the term ''head of the agency concerned'' means the Secretary of Defense, the Secretary of a military department, or the Secretary of the department in which the Coast Guard is operating, as appropriate.

(Added Pub. L. 99–661, div. A, title XIII, §1356(a)(1), Nov. 14, 1986, 100 Stat. 3996; amended Pub. L. 100–448, §15(a), Sept. 28, 1988, 102 Stat. 1845.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–448, §15(a)(1), inserted ''or within the Coast Guard'' after ''of title 32)''.

Subsec. (g). Pub. L. 100–448, §15(a)(2), inserted reference to the Secretary of the department in which the Coast Guard is operating.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 15(b) of Pub. L. 100–448 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 28, 1988], regardless of when the alleged negligent act or omission occurred.''

EFFECTIVE DATE

Section 1356(b) of Pub. L. 99–661 provided that: ''Section 1054 of title 10, United States Code, as added by subsection (a), shall apply only to claims accruing on or after the date of the enactment of this Act [Nov. 14, 1986], regardless of when the alleged negligent or wrongful act or omission occurred.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1588 of this title.

§1055. Waiver of security deposits for members renting private housing; authority to indemnify landlord

(a) The Secretary of Defense may carry out a program under which the Secretary of a military department agrees to indemnify a landlord who leases a rental unit to a member of the armed forces against a breach of the lease by the member or for damage to the rental unit caused by the member. In exchange for agreement for such indemnification by the Secretary, the landlord shall be required to waive any requirement for payment by the member of a security deposit that the landlord would otherwise require.

(b)(1) For purposes of carrying out a program authorized by subsection (a), the Secretary of a military department, to the extent funds are provided in advance in appropriation Acts, may enter into an agreement with any landlord who agrees to waive the requirement for a security deposit in connection with the lease of a rental unit to a member of the armed forces under the jurisdiction of the Secretary. An agreement under this paragraph shall provide that—

(A) the term of the agreement shall remain in effect during the term of the member's lease and during any lease renewal periods with the lessor;

(B) the member shall not pay a security deposit;

(C) the Secretary (except as provided in subparagraphs (D) and (E)) shall compensate the landlord for breach of the lease by the member and for damage to the rental unit caused by the member or by a guest or dependent of the member;

(D) the total liability of the Secretary for a breach of the lease or for damage described in subparagraph (C) may not exceed an amount equal to the amount that the Secretary determines would have been required by the landlord as a security deposit in the absence of an agreement authorized in this paragraph;

(E) the Secretary may not compensate the landlord for any claim for breach of the lease or for damage described in subparagraph (C) until the landlord exhausts any remedies available to the landlord (including submission to binding arbitration by a panel composed of military personnel and persons from the private sector) against the member for the breach or damage; and

(F) the Secretary shall be subrogated to the rights of the landlord in any case in which the Secretary compensates the landlord for breach of the lease or for damage described in subparagraph (C).

(2) Any authority of the Secretary of a military department under this section shall be exercised under regulations prescribed by the Secretary of Defense.

(c)(1) The Secretary of a military department who compensates a landlord under subsection (b) for a breach of a lease or for damage described in subsection (b)(1)(C) may issue a special order under section 1007 of title 37 to authorize the withholding from the pay of the member of an amount equal to the amount paid by the Secretary to the landlord as compensation for the breach or damage.

(2) Before the Secretary of a military department issues a special order under section 1007 of title 37 to authorize the withholding of any amount from the pay of a member for a breach or damage referred to in paragraph (1), the Secretary concerned shall provide the member with the same notice and opportunity for hearing and record inspection as provided an individual under section 5514(a)(2) of title 5. The Secretary concerned shall prescribe regulations, subject to the approval of the President, to carry out this paragraph. Such regulations shall be as uniform for the military departments as practicable.

(d) In this section, the term ''landlord'' means a person who leases a rental unit to a member of the armed forces.

(Added Pub. L. 100–456, div. A, title VI, §621(a)(1), Sept. 29, 1988, 102 Stat. 1982.)

EFFECTIVE DATE

Section 621(b) of Pub. L. 100–456 provided that: ''Section 1055 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1988.''

§ 1056. Relocation assistance programs

(a) REQUIREMENT TO PROVIDE ASSISTANCE.—The Secretary of Defense shall carry out a program to provide relocation assistance to members of the armed forces and their families as provided in this section. In addition, the Secretary of Defense shall make every effort, consistent with readiness objectives, to stabilize and lengthen tours of duty to minimize the adverse effects of relocation.

(b) TYPES OF ASSISTANCE.—(1) The Secretary of each military department, under regulations prescribed by the Secretary of Defense, shall provide relocation assistance, through military relocation assistance programs described in subsection (c), to members of the armed forces who are ordered to make a change of permanent station which includes a move to a new location (and for dependents of such members who are authorized to move in connection with the change of permanent station).

(2) The relocation assistance provided shall include the following:

(A) Provision of destination area information and preparation (to be provided before the change of permanent station takes effect), with emphasis on information with regard to moving costs, housing costs and availability, child care, spouse employment opportunities, cultural adaptation, and community orientation.

(B) Provision of counseling about financial management, home buying and selling, renting, stress management aimed at intervention and prevention of abuse, property management, and shipment and storage of household goods (including motor vehicles and pets).

(C) Provision of settling-in services, with emphasis on available government living quarters, private housing, child care, spouse employment assistance information, cultural adaptation, and community orientation.

(D) Provision of home finding services, with emphasis on services for locating adequate, affordable temporary and permanent housing.

(c) MILITARY RELOCATION ASSISTANCE PROGRAMS.—(1) The Secretary shall provide for the establishment of military relocation assistance programs to provide the relocation assistance described in subsection (b). The Secretary shall establish such a program in each geographic area in which at least 500 members of the armed forces are assigned to or serving at a military installation. A member who is not stationed within a geographic area that contains such a program shall be given access to such a program. The Secretary shall ensure that persons on the staff of each program are trained in the techniques and delivery of professional relocation assistance.

(2) The Secretary shall ensure that information available through each military relocation assistance program shall be managed through a computerized information system that can interact with all other military relocation assistance programs of the military departments, including programs located outside the continental United States.

(3) Duties of each military relocation assistance program shall include assisting personnel offices on the military installation in using the computerized information available through the program to help provide members of the armed forces who are deciding whether to reenlist information on locations of possible future duty assignments.

(d) DIRECTOR.—The Secretary of Defense shall establish the position of Director of Military Relocation Assistance Programs in the office of the Assistant Secretary of Defense (Force Management and Personnel). The Director shall oversee development and implementation of the military relocation assistance programs under this section.

(e) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense.

(f) INAPPLICABILITY TO COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 101–510, div. A, title XIV, §1481(c)(1), Nov. 5, 1990, 104 Stat. 1705; amended Pub. L. 104–106, div. A, title IX, §903(d), title X, §1062(a), Feb. 10, 1996, 110 Stat. 402, 443; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617; Pub. L. 107–107, div. A, title X, §1048(a)(9), Dec. 28, 2001, 115 Stat. 1223.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title VI, §661(a)–(g), Nov. 29, 1989, 103 Stat. 1463, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 101–510, §1481(c)(3).

AMENDMENTS

2001—Subsec. (c)(2). Pub. L. 107–107 struck out ‘‘, not later than September 30, 1991,’’ before ‘‘information available’’.

1996—Subsec. (d). Pub. L. 104–106, §903(a), (d), which directed repeal of subsec. (d), eff. Jan. 31, 1997, was repealed by Pub. L. 104–201.

Subsecs. (f), (g). Pub. L. 104–106, §1062(a), redesignated subsec. (g) as (f) and struck out former subsec. (f) which read as follows: ‘‘ANNUAL REPORT.—Not later than March 1 each year, the Secretary of Defense, acting through the Director of Military Relocation Assistance Programs, shall submit to Congress a report on the program under this section and on military family relocation matters. The report shall include the following:

‘‘(1) An assessment of available, affordable private-sector housing for members of the armed forces and their families.

‘‘(2) An assessment of the actual nonreimbursed costs incurred by members of the armed forces and their families who are ordered to make a change of permanent station.

‘‘(3) Information (shown by military installation) on the types of locations at which members of the armed forces assigned to duty at military installations live, including the number of members of the armed forces who live on a military installation and the number who do not live on a military installation.

‘‘(4) Information on the effects of the relocation assistance programs established under this section on the quality of life of members of the armed forces and their families and on retention and productivity of members of the armed forces.’’

IMPLEMENTATION OF RELOCATION ASSISTANCE PROGRAMS

Section 1481(c)(4) of Pub. L. 101–510 provided that: ‘‘The program required to be carried out by section 1056 of title 10, United States Code, as added by paragraph (1), shall be established by the Secretary of Defense not

later than October 1, 1990. The Secretary shall prescribe regulations to implement that section not later than July 1, 1990.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1057. Use of armed forces insignia on State license plates

(a) The Secretary concerned may approve an application by a State to use or imitate the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on motor vehicle license plates issued by the State to an individual who is a member or former member of the armed forces.

(b) The Secretary concerned may prescribe any regulations necessary regarding the display of the seal or other insignia of the department (under the jurisdiction of such Secretary) or of armed forces (under the jurisdiction of such Secretary) on the license plates described in subsection (a).

(c) In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

(Added Pub. L. 102–484, div. A, title X, § 1080(a), Oct. 23, 1992, 106 Stat. 2514.)

§ 1058. Responsibilities of military law enforcement officials at scenes of domestic violence

(a) IMMEDIATE ACTIONS REQUIRED.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure, in any case of domestic violence in which a military law enforcement official at the scene determines that physical injury has been inflicted or a deadly weapon or dangerous instrument has been used, that military law enforcement officials—

(1) take immediate measures to reduce the potential for further violence at the scene; and

(2) within 24 hours of the incident, provide a report of the domestic violence to the appropriate commander and to a local military family advocacy representative exercising responsibility over the area in which the incident took place.

(b) FAMILY ADVOCACY COMMITTEE.—Under regulations prescribed pursuant to subsection (c), the Secretary concerned shall ensure that, whenever a report is provided to a commander under subsection (a)(2), a multidisciplinary family advocacy committee meets, with all due practicable speed, to review the situation and to make recommendations to the commander for appropriate action.

(c) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe by regulation the definition of ''domestic violence'' for purposes of this section and such other regulations as may be necessary for purposes of this section.

(d) MILITARY LAW ENFORCEMENT OFFICIAL.—In this section, the term ''military law enforcement official'' means a person authorized under regulations governing the armed forces to apprehend persons subject to the Uniform Code of Military Justice (chapter 47 of this title) or to trial thereunder.

(Added Pub. L. 103–160, div. A, title V, § 551(a)(1), Nov. 30, 1993, 107 Stat. 1661; amended Pub. L. 103–337, div. A, title X, § 1070(a)(4), (b)(3), Oct. 5, 1994, 108 Stat. 2855, 2856; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Other sections 1058 were renumbered sections 1059 and 1060 of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337, § 1070(b)(3), made technical correction to directory language of Pub. L. 103–160, § 551(a)(1), which enacted this section.

Subsec. (d). Pub. L. 103–337, § 1070(a)(4), substituted ''subject to the Uniform Code of Military Justice (chapter 47 of this title)'' for ''subject to this chapter''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

DEADLINE FOR PRESCRIBING PROCEDURES

Section 551(b) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall prescribe procedures to carry out section 1058 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1059. Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits

(a) AUTHORITY TO PAY COMPENSATION.—The Secretary of Defense, with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy), and the Secretary of Homeland Security, with respect to the Coast Guard when it is not operating as a service in the Navy, may each establish a program to pay monthly transitional compensation in accordance with this section to dependents or former dependents of a member of the armed forces described in subsection (b). Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.

(b) PUNITIVE AND OTHER ADVERSE ACTIONS COVERED.—This section applies in the case of a member of the armed forces on active duty for a period of more than 30 days—

(1) who is convicted of a dependent-abuse offense (as defined in subsection (c)) and whose conviction results in the member—

(A) being separated from active duty pursuant to a sentence of a court-martial; or

(B) forfeiting all pay and allowances pursuant to a sentence of a court-martial; or

(2) who is administratively separated from active duty in accordance with applicable regulations if the basis for the separation includes a dependent-abuse offense.

(c) DEPENDENT-ABUSE OFFENSES.—For purposes of this section, a dependent-abuse offense is conduct by an individual while a member of the armed forces on active duty for a period of more than 30 days—

(1) that involves abuse of the spouse or a dependent child of the member; and

(2) that is a criminal offense specified in regulations prescribed by the Secretary of Defense under subsection (k).

(d) RECIPIENTS OF PAYMENTS.—In the case of any individual described in subsection (b), the Secretary shall pay such compensation to dependents or former dependents of the individual as follows:

(1) If the individual was married at the time of the commission of the dependent-abuse offense resulting in the separation, such compensation shall be paid to the spouse or former spouse to whom the individual was married at that time, including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse.

(2) If there is a spouse or former spouse who is or, but for subsection (g), would be eligible for compensation under this section and if there is a dependent child of the individual described in subsection (b) who does not reside in the same household as that spouse or former spouse, compensation under this section shall be paid to each such dependent child of the individual described in subsection (b) who does not reside in that household.

(3) If there is no spouse or former spouse who is (or but for subsection (g) would be) eligible under paragraph (1), such compensation shall be paid to the dependent children of the individual described in subsection (b).

(4) For purposes of this subsection, an individual's status as a ''dependent child'' shall be determined as of the date on which the individual described in subsection (b) is convicted of the dependent-abuse offense or, in a case described in subsection (b)(2), as of the date on which the individual described in subsection (b) is separated from active duty.

(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section—

(A) in the case of a member convicted by a court-martial for a dependent-abuse offense, shall commence as of the date of the approval of the court-martial sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice) if the sentence, as approved, includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances; and

(B) in the case of a member being considered under applicable regulations for administrative separation from active duty in accordance with such regulations (if the basis for the separation includes a dependent-abuse offense), shall commence as of the date on which the separation action is initiated by a commander of the member pursuant to such regulations, as determined by the Secretary concerned.

(2) Transitional compensation with respect to a member shall be paid for a period of 36 months, except that, if as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

(A) the unserved portion of the member's period of obligated active duty service; or

(B) 12 months.

(3)(A) If a member is sentenced by a court-martial to receive punishment that includes a dismissal, dishonorable discharge, bad conduct discharge, or forfeiture of all pay and allowances as a result of a conviction by a court-martial for a dependent-abuse offense and each such punishment applicable to the member under the sentence is remitted, set aside, or mitigated to a lesser punishment that does not include any such punishment, any payment of transitional compensation that has commenced under this section on the basis of such sentence in that case shall cease.

(B) If administrative separation of a member from active duty is proposed on a basis that includes a dependent-abuse offense and the proposed administrative separation is disapproved by competent authority under applicable regulations, payment of transitional compensation in such case shall cease.

(C) Cessation of payments under subparagraph (A) or (B) shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such transitional compensation in writing that payment of the transitional compensation will cease. The recipient may not be required to repay amounts of transitional compensation received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(f) AMOUNT OF PAYMENT.—(1) Payment to a spouse or former spouse under this section for any month shall be at the rate in effect for that month for the payment of dependency and indemnity compensation under section 1311(a)(1) of title 38.

(2) If a spouse or former spouse to whom compensation is paid under this section has custody of a dependent child of the member who resides in the same household as that spouse or former spouse, the amount of such compensation paid for any month shall be increased for each such dependent child by the amount in effect for that month under section 1311(b) of title 38.

(3) If compensation is paid under this section to a child or children pursuant to subsection

(d)(2) or (d)(3), such compensation shall be paid in equal shares, with the amount of such compensation for any month determined in accordance with the rates in effect for that month under section 1313 of title 38.

(g) SPOUSE AND FORMER SPOUSE FORFEITURE PROVISIONS.—(1) If a former spouse receiving compensation under this section remarries, the Secretary shall terminate payment of such compensation, effective as of the date of such marriage. The Secretary may not renew payment of compensation under this section to such former spouse in the event of the termination of such subsequent marriage.

(2) If after a punitive or other adverse action is executed in the case of a former member as described in subsection (b) the former member resides in the same household as the spouse or former spouse, or dependent child, to whom compensation is otherwise payable under this section, the Secretary shall terminate payment of such compensation, effective as of the time the former member begins residing in such household. Compensation paid for a period after the former member's separation, but before the former member resides in the household, shall not be recouped. If the former member subsequently ceases to reside in such household before the end of the period of eligibility for such payments, the Secretary may not resume such payments.

(3) In a case in which the victim of the dependent-abuse offense resulting in a punitive or other adverse action described in subsection (b) was a dependent child, the Secretary concerned may not pay compensation under this section to a spouse or former spouse who would otherwise be eligible to receive such compensation if the Secretary determines (under regulations prescribed under subsection (k)) that the spouse or former spouse was an active participant in the conduct constituting the dependent-abuse offense.

(h) EFFECT OF CONTINUATION OF MILITARY PAY.—In the case of payment of transitional compensation by reason of a total forfeiture of pay and allowances pursuant to a sentence of a court-martial, payment of transitional compensation shall not be made for any period for which an order—

(1) suspends, in whole or in part, that part of a sentence that includes forfeiture of the member's pay and allowance; or

(2) otherwise results in continuation, in whole or in part, of the member's pay and allowances.

(i) COORDINATION OF BENEFITS.—The Secretary concerned may not make payments to a spouse or former spouse under both this section and section 1408(h)(1) of this title. In the case of a spouse or former spouse for whom a court order provides for payments by the Secretary pursuant to section 1408(h)(1) of this title and to whom the Secretary offers payments under this section, the spouse or former spouse shall elect which to receive.

(j) COMMISSARY AND EXCHANGE BENEFITS.—(1) A dependent or former dependent entitled to payment of monthly transitional compensation under this section shall, while receiving payments in accordance with this section, be entitled to use commissary and exchange stores to the same extent and in the same manner as a dependent of a member of the armed forces on active duty for a period of more than 30 days.

(2) If a dependent or former dependent eligible or entitled to use commissary and exchange stores under paragraph (1) is eligible or entitled to use commissary and exchange stores under another provision of law, the eligibility or entitlement of that dependent or former dependent to use commissary and exchange stores shall be determined under such other provision of law rather than under paragraph (1).

(k) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section with respect to the armed forces (other than the Coast Guard when it is not operating as a service in the Navy). The Secretary of Homeland Security shall prescribe regulations to carry out this section with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) Regulations prescribed under paragraph (1) shall include the criminal offenses, or categories of offenses, under the Uniform Code of Military Justice (chapter 47 of this title), Federal criminal law, the criminal laws of the States and other jurisdictions of the United States, and the laws of other nations that are to be considered to be dependent-abuse offenses for the purposes of this section.

(*l*) DEPENDENT CHILD DEFINED.—In this section, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in subsection (b), means an unmarried child, including an adopted child or a stepchild, who was residing with the member at the time of the dependent-abuse offense resulting in the separation of the former member and—

(1) who is under 18 years of age;

(2) who is 18 years of age or older and is incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support; or

(3) who is 18 years of age or older but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or, at the time a punitive or other adverse action was executed in the case of the former member as described in subsection (b), was) dependent on the former member for over one-half of the child's support.

(Added Pub. L. 103–160, div. A, title V, § 554(a)(1), Nov. 30, 1993, 107 Stat. 1663, § 1058; renumbered § 1059 and amended Pub. L. 103–337, div. A, title V, § 535(a)–(c)(1), title X, § 1070(a)(5)(A), Oct. 5, 1994, 108 Stat. 2762, 2763, 2855; Pub. L. 104–106, div. A, title VI, § 636(a), (b), title XV, § 1503(a)(8), Feb. 10, 1996, 110 Stat. 367, 511; Pub. L. 105–261, div. A, title V, § 570(a), (b), Oct. 17, 1998, 112 Stat. 2032; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (k)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1998—Subsec. (d)(1). Pub. L. 105–261, §570(a)(1), struck out ''(except as otherwise provided in this subsection)'' after ''such compensation shall'' and inserted before period at end '', including an amount (determined under subsection (f)(2)) for each, if any, dependent child of the individual described in subsection (b) who resides in the same household as that spouse or former spouse''.

Subsec. (d)(2). Pub. L. 105–261, §570(a)(2), substituted ''is or, but for subsection (g), would be eligible'' for ''(but for subsection (g)) would be eligible'' and ''compensation under this section shall'' for ''such compensation shall''.

Subsec. (d)(4). Pub. L. 105–261, §570(a)(3), substituted ''For purposes of this subsection'' for ''For purposes of paragraphs (2) and (3)''.

Subsec. (f)(2). Pub. L. 105–261, §570(b), substituted ''has custody of a dependent child of the member who resides in the same household as that spouse or former spouse'' for ''has custody of a dependent child or children of the member''.

1996—Subsec. (a). Pub. L. 104–106, §636(a), inserted at end ''Upon establishment of such a program, the program shall apply in the case of each such member described in subsection (b) who is under the jurisdiction of the Secretary establishing the program.''

Subsec. (c)(2). Pub. L. 104–106, §1503(a)(8), substituted ''subsection (k)'' for ''subsection (j)''.

Subsec. (d). Pub. L. 104–106, §636(b)(1), in introductory provisions, substituted ''the case of any individual described in subsection (b)'' for ''any case of a separation from active duty as described in subsection (b)'' and ''dependents of the individual'' for ''dependents of the former member''.

Subsec. (d)(1). Pub. L. 104–106, §636(b)(2), substituted ''If the individual'' for ''If the former member'' and ''to whom the individual'' for ''to whom the member''.

Subsec. (d)(2). Pub. L. 104–106, §636(b)(3), substituted ''individual described in subsection (b)'' for ''former member'' in two places.

Subsec. (d)(3). Pub. L. 104–106, §636(b)(4), substituted ''individual described in subsection (b)'' for ''former member''.

Subsec. (d)(4). Pub. L. 104–106, §636(b)(5), substituted ''individual described in subsection (b)'' for ''member'' in two places.

Subsec. (g)(3). Pub. L. 104–106, §1503(a)(8), substituted ''subsection (k))'' for ''subsection (j))''.

1994—Pub. L. 103–337, §1070(a)(5)(A), renumbered section 1058 of this title as this section.

Pub. L. 103–337, §535(c)(1), inserted ''; commissary and exchange benefits'' at end of section catchline.

Subsec. (e). Pub. L. 103–337, §535(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

''(e) COMMENCEMENT AND DURATION OF PAYMENT.—(1) Payment of transitional compensation under this section shall commence as of the date of the discontinuance of the member's pay and allowances pursuant to the separation or sentencing of the member and, except as provided in paragraph (2), shall be paid for a period of 36 months.

''(2) If as of the date on which payment of transitional compensation commences the unserved portion of the member's period of obligated active duty service is less than 36 months, the period for which transitional compensation is paid shall be equal to the greater of—

''(A) the unserved portion of the member's period of obligated active duty service; or

''(B) 12 months.''

Subsecs. (j) to (*l*). Pub. L. 103–337, §535(b), added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (*l*), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, §570(c), Oct. 17, 1998, 112 Stat. 2032, provided that: ''No benefits shall accrue by reason of the amendments made by this section [amending this section] for any month that begins before the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE

Section 554(b) of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(5), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title VI, §636(c), Feb. 10, 1996, 110 Stat. 367, provided that:

''(1) The section of title 10, United States Code, added by subsection (a)(1) [this section] shall apply with respect to a member of the Armed Forces who, after November 29, 1993—

''(A) is separated from active duty as described in subsection (b) of such section; or

''(B) forfeits all pay and allowances as described in such subsection.

''(2) Payments of transitional compensation under that section in the case of any person eligible to receive payments under that section shall be made for each month after November 1993 for which that person may be paid transitional compensation in accordance with that section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1076 of this title; title 42 section 213a.

§ 1060. Military service of retired members with newly democratic nations: consent of Congress

(a) CONSENT OF CONGRESS.—Subject to subsection (b), Congress consents to a retired member of the uniformed services—

(1) accepting employment by, or holding an office or position in, the military forces of a newly democratic nation; and

(2) accepting compensation associated with such employment, office, or position.

(b) APPROVAL REQUIRED.—The consent provided in subsection (a) for a retired member of the uniformed services to accept employment or hold an office or position shall apply to a retired member only if the Secretary concerned and the Secretary of State jointly approve the employment or the holding of such office or position.

(c) DETERMINATION OF NEWLY DEMOCRATIC NATIONS.—The Secretary concerned and the Secretary of State shall jointly determine whether a nation is a newly democratic nation for the purposes of this section.

(d) REPORTS TO CONGRESSIONAL COMMITTEES.—The Secretary concerned and the Secretary of State shall notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives of each approval under subsection (b) and each determination under subsection (c).

(e) CONTINUED ENTITLEMENT TO RETIRED PAY AND BENEFITS.—The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of such retired member to receive benefits on the basis of such retired member's status as a retired member of the uniformed services, may

not be terminated by reason of employment or holding of an office or position consented to in subsection (a).

(f) RETIRED MEMBER DEFINED.—In this section, the term ''retired member'' means a member or former member of the uniformed services who is entitled to receive retired or retainer pay.

(g) CIVIL EMPLOYMENT BY FOREIGN GOVERNMENTS.—For a provision of law providing the consent of Congress to civil employment by foreign governments, see section 908 of title 37.

(Added Pub. L. 103–160, div. A, title XIV, §1433(b)(1), Nov. 30, 1993, 107 Stat. 1834, §1058; renumbered §1060, Pub. L. 103–337, div. A, title X, §1070(a)(6)(A), Oct. 5, 1994, 108 Stat. 2855; amended Pub. L. 104–106, div. A, title XV, §1502(a)(13), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Committee on National Security and the Committee on International Relations'' for ''Committee on Armed Services and the Committee on Foreign Affairs''.

1994—Pub. L. 103–337 renumbered section 1058 of this title as this section.

EFFECTIVE DATE

Section 1433(d) of Pub. L. 103–160 provided that this section was to take effect as of Jan. 1, 1993, prior to repeal by Pub. L. 103–236, title I, §182(b), Apr. 30, 1994, 108 Stat. 418.

RESTORATION OF WITHHELD BENEFITS

Pub. L. 103–236, title I, §182(a), Apr. 30, 1994, 108 Stat. 418, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(7), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 103–415, §1(j), Oct. 25, 1994, 108 Stat. 4301, provided that: ''With respect to any person for which the Secretary of State and the Secretary concerned within the Department of Defense have approved the employment or the holding of a position pursuant to the provisions of section 1060 of title 10, United States Code, before April 30, 1994, the consents, approvals and determinations under that section shall be deemed to be effective as of January 1, 1993.''

CONGRESSIONAL FINDINGS

Section 1433(a) of Pub. L. 103–160 provided that: ''The Congress makes the following findings:

''(1) It is in the national security interest of the United States to promote democracy throughout the world.

''(2) The armed forces of newly democratic nations often lack the democratic traditions that are a hallmark of the Armed Forces of the United States.

''(3) The understanding of military roles and missions in a democracy is essential for the development and preservation of democratic forms of government.

''(4) The service of retired members of the Armed Forces of the United States in the armed forces of newly democratic nations could lead to a better understanding of military roles and missions in a democracy.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 908.

§1060a. Special supplemental food program

(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces outside the United States (and its territories and possessions).

(b) FUNDING MECHANISM.—The Secretary of Defense shall use funds available for the Department of Defense to carry out the program under subsection (a).

(c) PROGRAM ADMINISTRATION.—(1)(A) The Secretary of Defense shall administer the program referred to in subsection (a) and, except as provided in subparagraph (B), shall determine eligibility for program benefits under the criterion published by the Secretary of Agriculture under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.

(B) In determining eligibility for families of individuals participating in the program under this section, the Secretary of Defense shall, to the extent practicable, use the criterion described in subparagraph (A), including nutritional risk standards. In the application of such criterion, the Secretary shall exclude from income any basic allowance for housing as permitted under section 17(d)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(2)(B)).

(2) The program benefits provided under the program shall be similar to benefits provided by State and local agencies in the United States, particularly with respect to nutrition education.

(3) The Secretary of Agriculture shall provide technical assistance to the Secretary of Defense, if so requested by the Secretary of Defense, for the purpose of carrying out the program under subsection (a).

(d) DEPARTURE FROM STANDARDS.—The Secretary of Defense may authorize departures from standards prescribed by the Secretary of Agriculture regarding the supplemental foods to be made available in the program when local conditions preclude strict compliance or when such compliance is highly impracticable.

(e) REBATE AGREEMENTS WITH FOOD PRODUCERS.—(1) In the administration of the program under this section, the Secretary of Defense may enter into a contract with a producer of a particular brand of food that provides for—

(A) the Secretary of Defense to procure that particular brand of food, exclusive of other brands of the same or similar food, for the purpose of providing the food in commissary stores or Navy Exchange Markets of the Department of Defense as a supplemental food under the program; and

(B) the producer to rebate to the Secretary amounts equal to agreed portions of the amounts paid by the Secretary for the procurement of that particular brand of food for the program.

(2) The Secretary of Defense shall use competitive procedures under chapter 137 of this title to enter into contracts under this subsection.

(3) The period covered by a contract entered into under this subsection, including any period

of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years. No such contract may be extended by a modification of the contract, by exercise of an option, or by any other means. Nothing in this paragraph prohibits a contractor under a contract entered into under this subsection for any year from submitting an offer for, and being awarded, a contract that is to be entered into under this subsection for a successive year.

(4) Amounts rebated under a contract entered into under paragraph (1) shall be credited to the appropriation available for carrying out the program under this section in the fiscal year in which rebated, shall be merged with the other sums in that appropriation, and shall be available for the program for the same period as the other sums in the appropriation.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to administer the program authorized by this section.

(g) DEFINITIONS.—In this section:

(1) The term ''eligible civilian'' means—

(A) a dependent of a member of the armed forces residing with the member outside the United States;

(B) an employee of a military department who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States; or

(C) an employee of a Department of Defense contractor who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States.

(2) The term ''national of the United States'' means—

(A) a citizen of the United States; or

(B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States, as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) The term ''dependent'' has the meaning given such term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title.

(4) The terms ''nutrition education'' and ''supplemental foods'' have the meanings given the terms in section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)).

(Added Pub. L. 103–337, div. A, title VI, §653(a), Oct. 5, 1994, 108 Stat. 2794; amended Pub. L. 104–106, div. A, title XV, §1503(a)(9), Feb. 10, 1996, 110 Stat. 511; Pub. L. 105–85, div. A, title VI, §655(b)(1), Nov. 18, 1997, 111 Stat. 1805; Pub. L. 106–65, div. A, title VI, §674(a)–(d), Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–398, §1 [[div. A], title VI, §662], Oct. 30, 2000, 114 Stat. 1654, 1654A–167; Pub. L. 107–107, div. A, title III, §334, Dec. 28, 2001, 115 Stat. 1059; Pub. L. 107–314, div. A, title III, §324, Dec. 2, 2002, 116 Stat. 2511.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (g)(2)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

2002—Subsec. (e)(1)(A). Pub. L. 107–314, §324(a), inserted ''or Navy Exchange Markets'' after ''commissary stores''.

Subsec. (e)(3). Pub. L. 107–314, §324(b), in first sentence, substituted ''subsection, including any period of extension of the contract by modification of the contract, exercise of an option, or other cause, may not exceed three years'' for ''subsection may not exceed one year''.

2001—Subsecs. (e) to (g). Pub. L. 107–107 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

2000—Subsec. (c)(1)(B). Pub. L. 106–398 added second sentence and struck out former second sentence which read as follows: ''The Secretary shall also consider the value of housing in kind provided to the individual when determining program eligibility.''

1999—Subsec. (a). Pub. L. 106–65, §674(a), substituted ''Program Required'' for ''Authority'' in heading and ''The Secretary of Defense shall carry out a program to provide supplemental foods and nutrition education'' for ''The Secretary of Defense may carry out a program to provide special supplemental food benefits'' in text.

Subsec. (b). Pub. L. 106–65, §674(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786). The Secretary of Defense may use funds available for the Department of Defense to carry out the program under subsection (a).''

Subsec. (c)(1)(A). Pub. L. 106–65, §674(c)(1), inserted at end ''In determining eligibility for benefits, a person already certified for participation in the special supplemental nutrition program for women, infants, and children under such section 17 shall be considered eligible for the duration of the certification period under that special supplemental nutrition program.''

Subsec. (c)(1)(B). Pub. L. 106–65, §674(c)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''The Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of individuals participating in the program under this section.''

Subsec. (c)(2). Pub. L. 106–65, §674(c)(3), inserted '', particularly with respect to nutrition education'' before period at end.

Subsec. (c)(3). Pub. L. 106–65, §674(c)(4), added par. (3).

Subsec. (f)(4). Pub. L. 106–65, §674(d), added par. (4).

1997—Subsec. (b). Pub. L. 105–85 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For the purpose of obtaining Federal payments and commodities in order to carry out the program referred to in subsection (a), the Secretary of Agriculture shall make available to the Secretary of Defense from funds appropriated for such purpose, the same payments and commodities as are made for the special supplemental food program in the United States under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).''

1996—Subsec. (f)(2)(B). Pub. L. 104–106 substituted '', as determined in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' for ''(as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))''.

REPORT ON IMPLEMENTATION OF SPECIAL SUPPLEMENTAL FOOD PROGRAM

Section 655(b)(2) of Pub. L. 105–85 provided that: ''Not later than 90 days after the date of the enactment of

this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a report regarding the intentions of the Secretary regarding implementation of the program authorized under section 1060a of title 10, United States Code, including any plans to implement the program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1786.

CHAPTER 54—COMMISSARY AND EXCHANGE BENEFITS

Sec.
1061. Survivors of certain Reserve and Guard members.
1062. Certain former spouses.
1063. Use of commissary stores: members of Ready Reserve.
1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency.
1064. Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60.
1065. Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title III, § 322(b)(2), Dec. 2, 2002, 116 Stat. 2510, inserted ''or national emergency'' after ''disaster'' in item 1063a.

2001—Pub. L. 107–107, div. A, title III, § 331(d)(3), Dec. 28, 2001, 115 Stat. 1058, struck out ''with at least 50 creditable points'' after ''Ready Reserve'' in item 1063.

1998—Pub. L. 105–261, div. A, title III, § 362(e), Oct. 17, 1998, 112 Stat. 1985, added items 1063, 1063a, and 1064 and struck out former items 1063 ''Period for use of commissary stores: eligibility for members of the Ready Reserve'' and 1064 ''Use of commissary stores by certain members and former members''.

1996—Pub. L. 104–106, div. A, title III, § 342(b), Feb. 10, 1996, 110 Stat. 266, substituted ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' for ''Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents'' in item 1065.

1992—Pub. L. 102–484, div. A, title III, § 365(c)(2), Oct. 23, 1992, 106 Stat. 2382, substituted ''eligibility for members of the Ready Reserve'' for ''eligibility attributable to active duty for training''.

1990—Pub. L. 101–510, div. A, title III, § 321(d), Nov. 5, 1990, 104 Stat. 1528, added items 1064 and 1065.

§ 1061. Survivors of certain Reserve and Guard members

(a) BENEFITS.—The Secretary of Defense shall prescribe regulations to allow dependents of members of the uniformed services described in subsection (b) to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days.

(b) COVERED DEPENDENTS.—A dependent referred to in subsection (a) is a dependent of a member of a uniformed service who died—

(1) while on active duty, active duty for training, or inactive-duty training (regardless of the period of such duty); or

(2) while traveling to or from the place at which the member was to perform, or has performed, active duty, active duty for training, or inactive-duty training (regardless of the period of such duty).

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–145, title III, § 308, Nov. 8, 1985, 99 Stat. 618.

§ 1062. Certain former spouses

The Secretary of Defense shall prescribe such regulations as may be necessary to provide that an unremarried former spouse described in subparagraph (F)(i) of section 1072(2) of this title is entitled to commissary and exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services.

(Added Pub. L. 100–370, § 1(c)(1), July 19, 1988, 102 Stat. 841.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 97–252, title X, § 1005, Sept. 8, 1982, 96 Stat. 737.

§ 1063. Use of commissary stores: members of Ready Reserve

(a) ELIGIBILITY OF MEMBERS WITH 50 OR MORE CREDITABLE POINTS.—A member of the Ready Reserve who satisfactorily completes 50 or more points creditable under section 12732(a)(2) of this title in a calendar year shall be eligible to use commissary stores of the Department of Defense. The Secretary concerned shall authorize the member to have 24 days of eligibility for any calendar year that the member qualifies for eligibility under this subsection.

(b) ELIGIBILITY OF NEW MEMBERS.—(1) The Secretary concerned shall authorize a new member of the Ready Reserve to use commissary stores of the Department of Defense for a number of days accruing at the rate of two days for each month in which the member participates satisfactorily in training required under section 10147(a)(1) of this title or section 502(a) of title 32, as the case may be.

(2) For the purposes of paragraph (1), a person shall be considered a new member of the Ready Reserve upon becoming a member and continuing without a break in the membership until the earlier of—

(A) the date on which the member becomes eligible to use commissary stores under subsection (a); or

(B) December 31 of the first calendar year in which the membership has been continuous for the entire year.

(3) A new member may not be authorized under this subsection to use commissary stores for more than 24 days for any calendar year.

(c) EFFECT OF COMPENSATION OR TYPE OF DUTY.—Subsections (a) and (b) shall apply without regard to whether, during the calendar year, the member receives compensation for the duty or training performed by the member or performs active duty for training.

(d) REGULATIONS.—The Secretary concerned shall prescribe regulations, subject to the approval of the Secretary of Defense, to carry out this section. The regulations shall specify the required documentation of satisfactory participation in training for the purposes of subsection (b).

(Added Pub. L. 99–661, div. A, title VI, § 656(a)(1), Nov. 14, 1986, 100 Stat. 3891, § 1052; renumbered § 1063, Pub. L. 100–370, § 1(c)(2)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 101–510, div. A, title III, § 321(a)(1), Nov. 5, 1990, 104 Stat. 1527; Pub. L. 102–484, div. A, title III, § 365(a), (c)(1), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 104–106, div. A, title XV, § 1501(c)(9), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title III, § 362(a), (d)(1), Oct. 17, 1998, 112 Stat. 1984, 1985; Pub. L. 107–107, div. A, title III, § 331(a)–(d)(2), Dec. 28, 2001, 115 Stat. 1057.)

AMENDMENTS

2001—Pub. L. 107–107, § 331(d)(1), struck out ''with at least 50 creditable points'' after ''Ready Reserve'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 331(d)(2), substituted ''With 50 or More Creditable Points'' for ''of Ready Reserve'' in heading.

Subsec. (b). Pub. L. 107–107, § 331(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–107, § 331(c), substituted ''Subsections (a) and (b) shall apply'' for ''Subsection (a) shall apply''.

Pub. L. 107–107, § 331(a)(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107–107, § 331(b), inserted at end ''The regulations shall specify the required documentation of satisfactory participation in training for the purposes of subsection (b).''

Pub. L. 107–107, § 331(a)(1), redesignated subsec. (c) as (d).

1998—Pub. L. 105–261, § 362(d)(1), substituted ''Use of commissary stores: members of Ready Reserve with at least 50 creditable points'' for ''Period for use of commissary stores: eligibility for members of the Ready Reserve'' as section catchline.

Subsecs. (a), (b). Pub. L. 105–261, § 362(a), struck out ''(1)'' before ''A member of'' and substituted ''24 days of eligibility'' for ''12 days of eligibility'' in subsec. (a), redesignated subsec. (a)(2) as subsec. (b), inserted subsec. (b) heading, substituted ''Subsection (a)'' for ''Paragraph (1)'', and struck out former subsec. (b) which read as follows:

''(b) LIMITATION.—A member may not use commissary stores by reason of this section for more than 14 days in any period of 365 days.''

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''section 12732(a)(2)'' for ''section 1332(a)(2)''.

1992—Pub. L. 102–484, § 365(c)(1), substituted ''eligibility for members of the Ready Reserve'' for ''eligibility attributable to active duty for training'' in section catchline.

Subsec. (a). Pub. L. 102–484, § 365(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''ELIGIBILITY OF MEMBERS OF READY RESERVE.—A member of the Ready Reserve who performs active duty for training (or annual training without compensation equivalent to active duty for training) shall accrue eligibility to use commissary stores of the Department of Defense for each day of that training. The Secretary concerned shall authorize the member to have one day of eligibility for using commissary stores, up to 12 days each calendar year, for the performance of that duty.''

1990—Subsec. (a). Pub. L. 101–510 substituted ''Eligibility of members of Ready Reserve'' for ''Period for use of eligibility'' in heading and amended text generally. Prior to amendment, text read as follows: ''If under regulations establishing eligibility for use of commissary stores, a member of the armed forces accrues eligibility to use commissary stores of the Department of Defense by reason of the performance of active duty for training, the Secretary concerned shall authorize the member to have one year from the date on which the member performs active duty for training to use a day of eligibility for using commissary stores attributable to the performance of that duty.''

1988—Pub. L. 100–370 renumbered section 1052 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 365(b) of Pub. L. 102–484 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the completion of reserve points beginning in calendar year 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 321(a)(2) of Pub. L. 101–510 provided that: ''Section 1063(a) of title 10, United States Code (as amended by subsection (a)), shall apply with respect to active duty for training or annual training performed by a member of the Ready Reserve after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE

Section 656(c) of Pub. L. 99–661 provided that: ''Section 1052 [now 1063] of title 10, United States Code, as added by the amendments made by subsection (a), and the repeal made by subsection (b) [repealing section 1013 of Pub. L. 98–94], shall apply only with respect to active duty for training performed on or after the date of the enactment of this Act [Nov. 14, 1986].''

COMMISSARY AND EXCHANGE PRIVILEGES FOR SURVIVORS OF CERTAIN RESERVISTS

Pub. L. 99–145, title III, § 308, Nov. 8, 1985, 99 Stat. 618, which required the Secretary of Defense to prescribe regulations to allow dependents of certain deceased members of the uniformed services to use commissary and exchange stores on the same basis as dependents of members of the uniformed services who die while on active duty for a period of more than 30 days, was repealed and restated in section 1061 of this title by Pub. L. 100–370, § 1(c)(1), (4), July 19, 1988, 102 Stat. 841.

§ 1063a. Use of commissary stores and MWR retail facilities: members of National Guard serving in federally declared disaster or national emergency

(a) ELIGIBILITY OF MEMBERS.—A member of the National Guard who, although not in Federal service, is called or ordered to duty in response to a federally declared disaster or national emergency shall be permitted to use commissary stores and MWR retail facilities during the period of such duty on the same basis as members of the armed forces on active duty.

(b) ELIGIBILITY OF DEPENDENTS.—A dependent of a member of the National Guard who is permitted under subsection (a) to use commissary stores and MWR retail facilities shall be permitted to use such stores and facilities, during the same period as the member, on the same basis as dependents of members of the armed forces on active duty.

(c) DEFINITIONS.—In this section:

(1) FEDERALLY DECLARED DISASTER.—The term ''federally declared disaster'' means a disaster or other situation for which a Presidential declaration of major disaster is issued under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

(2) MWR RETAIL FACILITIES.—The term ''MWR retail facilities'' has the meaning given that term in section 1065(e) of this title.

(3) NATIONAL EMERGENCY.—The term ''national emergency'' means a national emergency declared by the President or Congress.

(Added Pub. L. 105–261, div. A, title III, §362(c), Oct. 17, 1998, 112 Stat. 1985; amended Pub. L. 107–314, div. A, title III, §322(a), (b)(1), Dec. 2, 2002, 116 Stat. 2510.)

AMENDMENTS

2002—Pub. L. 107–314, §322(b)(1), inserted ''or national emergency'' after ''disaster'' in section catchline.

Subsec. (a). Pub. L. 107–314, §322(a)(1), inserted ''or national emergency'' after ''disaster''.

Subsec. (c)(3). Pub. L. 107–314, §322(a)(2), added par. (3).

§1064. Use of commissary stores: persons qualified for retired pay under chapter 1223 but under age 60

Under regulations prescribed by the Secretary of Defense, a person who would be eligible for retired pay under chapter 1223 of this title but for the fact that the person is under 60 years of age shall be authorized to use commissary stores of the Department of Defense for 24 days each calendar year.

(Added Pub. L. 101–510, div. A, title III, §321(b), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 104–106, div. A, title XV, §1501(c)(8), Feb. 10, 1996, 110 Stat. 499; Pub. L. 105–261, div. A, title III, §362(b), (d)(2), Oct. 17, 1998, 112 Stat. 1984, 1985.)

AMENDMENTS

1998—Pub. L. 105–261 substituted ''stores: persons qualified for retired pay under chapter 1223 but under age 60'' for ''stores by certain members and former members'' in section catchline and ''for 24 days each calendar year'' for ''for 12 days each calendar year'' in text.

1996—Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE

Section 321(e)(1) of Pub. L. 101–510 provided that: ''The amendments made by subsections (b) and (c) [enacting this section and section 1065 of this title] shall take effect 120 days after the date of the enactment of this Act [Nov. 5, 1990].''

REGULATIONS

Section 321(e)(2) of Pub. L. 101–510 provided that: ''The Secretary of Defense shall prescribe such regulations as may be necessary for the proper administration of sections 1064 and 1065 of title 10, United States Code, as added by this section, not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

§1065. Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents

(a) MEMBERS OF THE SELECTED RESERVE.—A member of the Selected Reserve in good standing (as determined by the Secretary concerned) shall be permitted to use MWR retail facilities on the same basis as members on active duty.

(b) MEMBERS OF READY RESERVE NOT IN SELECTED RESERVE.—Subject to such regulations as the Secretary of Defense may prescribe, a member of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use MWR retail facilities on the same basis as members serving on active duty.

(c) RESERVE RETIREES UNDER AGE 60.—A member or former member of a reserve component under 60 years of age who, but for age, would be eligible for retired pay under chapter 1223 of this title shall be permitted to use MWR retail facilities on the same basis as members of the armed forces entitled to retired pay under any other provision of law.

(d) DEPENDENTS.—(1) Dependents of a member who is permitted under subsection (a) or (b) to use MWR retail facilities shall be permitted to use such facilities on the same basis as dependents of members on active duty.

(2) Dependents of a member who is permitted under subsection (c) to use MWR retail facilities shall be permitted to use such facilities on the same basis as dependents of members of the armed forces entitled to retired pay under any other provision of law.

(e) MWR RETAIL FACILITY DEFINED.—In this section, the term ''MWR retail facilities'' means exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 101–510, div. A, title III, §321(c), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 104–106, div. A, title III, §342(a), Feb. 10, 1996, 110 Stat. 265.)

AMENDMENTS

1996—Pub. L. 104–106 substituted ''Morale, welfare, and recreation retail facilities: use by members of reserve components and dependents'' for ''Use of certain morale, welfare, and recreation facilities by members of reserve components and dependents'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) UNRESTRICTED USE REQUIRED.—Members of the Selected Reserve in good standing (as determined by the Secretary concerned) and members who would be eligible for retired pay under chapter 67 of this title but for the fact that the member is under 60 years of age, and the dependents of such members, shall be permitted to use the exchange stores and other revenue generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces. Such use shall be permitted on the same basis as members on active duty.

''(b) ELIGIBILITY TO USE AUTHORIZED.—Subject to such regulations as the Secretary of Defense may prescribe, members of the Ready Reserve (other than members of the Selected Reserve) may be permitted to use the facilities referred to in subsection (a) on the same basis as members serving on active duty.''

EFFECTIVE DATE

Section effective 120 days after Nov. 5, 1990, see section 321(e)(1) of Pub. L. 101–510, set out as a note under section 1064 of this title.

REGULATIONS

For authority of Secretary of Defense to prescribe regulations necessary for proper administration of section, see section 321(e)(2) of Pub. L. 101–510, set out as a note under section 1064 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1063a of this title.

CHAPTER 55—MEDICAL AND DENTAL CARE

Sec.
1071. Purpose of this chapter.
1072. Definitions.
1073. Administration of this chapter.
1073a. Contracts for health care: best value contracting.
1074. Medical and dental care for members and certain former members.
1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days.
[1074b. Repealed.]
1074c. Medical care: authority to provide a wig.
1074d. Certain primary and preventive health care services.
1074e. Medical care: certain Reserves who served in Southwest Asia during the Persian Gulf Conflict.
1074f. Medical tracking system for members deployed overseas.
1074g. Pharmacy benefits program.
1074h. Medical and dental care: medal of honor recipients; dependents.
1074i. Reimbursement for certain travel expenses.
1074j. Sub-acute care program.
1074k. Long-term care insurance.
1075. Officers and certain enlisted members: subsistence charges.
1076. Medical and dental care for dependents: general rule.
1076a. TRICARE dental program.
[1076b. Repealed.]
1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents.
1077. Medical care for dependents: authorized care in facilities of uniformed services.
1078. Medical and dental care for dependents: charges.
1078a. Continued health benefits coverage.
1079. Contracts for medical care for spouses and children: plans.
1079a. CHAMPUS: treatment of refunds and other amounts collected.
1079b. Procedures for charging fees for care provided to civilians; retention and use of fees collected.
1080. Contracts for medical care for spouses and children: election of facilities.
1081. Contracts for medical care for spouses and children: review and adjustment of payments.
1082. Contracts for health care: advisory committees.
1083. Contracts for medical care for spouses and children: additional hospitalization.
1084. Determinations of dependency.
1085. Medical and dental care from another executive department: reimbursement.
1086. Contracts for health benefits for certain members, former members, and their dependents.
1086a. Certain former spouses: extension of period of eligibility for health benefits.
1086b. Prohibition against requiring retired members to receive health care solely through the Department of Defense.
1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services.
1088. Air evacuation patients: furnished subsistence.
1089. Defense of certain suits arising out of medical malpractice.
1090. Identifying and treating drug and alcohol dependence.
1091. Personal services contracts.
1092. Studies and demonstration projects relating to delivery of health and medical care.
1093. Performance of abortions: restrictions.
1094. Licensure requirement for health-care professionals.
1094a. Continuing medical education requirements: system for monitoring physician compliance.
1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers.
1095a. Medical care: members held as captives and their dependents.
1095b. TRICARE program: contractor payment of certain claims.
1095c. TRICARE program: facilitation of processing of claims.
1095d. TRICARE program: waiver of certain deductibles.
1095e. TRICARE program: beneficiary counseling and assistance coordinators.
1095f. TRICARE program: referrals for specialty health care.
1096. Military-civilian health services partnership program.
1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care.
1097a. TRICARE Prime: automatic enrollments; payment options.
1097b. TRICARE program: financial management.
1098. Incentives for participation in cost-effective health care plans.
1099. Health care enrollment system.
1100. Defense Health Program Account.
1101. Resource allocation methods: capitation or diagnosis-related groups.
1102. Confidentiality of medical quality assurance records: qualified immunity for participants.
1103. Contracts for medical and dental care: State and local preemption.
1104. Sharing of health-care resources with the Department of Veterans Affairs.
1105. Specialized treatment facility program.
1106. Submittal of claims: standard form; time limits.
1107. Notice of use of an investigational new drug or a drug unapproved for its applied use.
1108. Health care coverage through Federal Employees Health Benefits program: demonstration project.
1109. Organ and tissue donor program.
1110. Anthrax vaccine immunization program; procedures for exemptions and monitoring reactions.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title VII, §§701(a)(2), (f)(2), 731(b), 732(a)(2), 736(c)(2), title X, §1048(a)(10), Dec. 28, 2001, 115 Stat. 1158, 1161, 1169, 1173, 1223, struck out item 1074b ''Transitional medical and dental care: members on active duty in support of contingency operations'', transferred item 1074i to appear after item 1074h, and added items 1074j, 1074k, 1079b, and 1086b.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §§706(a)(2), 728(a)(2), 751(b)(2), 758(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, 1654A–189, 1654A–194, 1654A–200, added items 1074h, 1074i, 1095f, and 1110.

1999—Pub. L. 106–65, div. A, title VII, §§701(a)(2), 711(b), 713(a)(2), 714(b), 715(a)(2), 716(a)(2), 722(b), Oct. 5, 1999, 113 Stat. 680, 687, 689–691, 695, added items 1073a, 1074g, 1076a, 1095c, 1095d, 1095e, and 1097b and struck out former items 1076a ''Dependents' dental program'' and 1076b ''Selected Reserve dental insurance''.

1998—Pub. L. 105–261, div. A, title VII, §§711(b), 712(a)(2), 721(a)(2), 734(b)(2), 741(b)(2), Oct. 17, 1998, 112

Stat. 2058, 2059, 2065, 2073, 2074, added items 1094a, 1095b, 1097a, 1108, and 1109.

1997—Pub. L. 105–85, div. A, title VII, §§738(b), 764(b), 765(a)(2), 766(b), Nov. 18, 1997, 111 Stat. 1815, 1826–1828, added items 1074e, 1074f, 1106, and 1107 and struck out former item 1106 ''Submittal of claims under CHAMPUS''.

1996—Pub. L. 104–201, div. A, title VII, §§701(a)(2)(B), 703(a)(2), 733(a)(2), Sept. 23, 1996, 110 Stat. 2587, 2590, 2598, substituted ''Certain primary and preventive health care services'' for ''Primary and preventive health care services for women'' in item 1074d and added items 1076c and 1079a.

Pub. L. 104–106, div. A, title VII, §§705(a)(2), 735(d)(2), 738(b)(2), Feb. 10, 1996, 110 Stat. 373, 383, added item 1076b and substituted ''Performance of abortions: restrictions'' for ''Restriction on use of funds for abortions'' in item 1093 and ''Defense Health Program Account'' for ''Military Health Care Account'' in item 1100.

1993—Pub. L. 103–160, div. A, title VII, §§701(a)(2), 712(a)(2), 714(b)(2), 716(a)(2), Nov. 30, 1993, 107 Stat. 1686, 1689, 1690, 1692, added item 1074d, substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in item 1091 and ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' in item 1101, added item 1105, and struck out former item 1105 ''Issuance of nonavailability of health care statements''.

1992—Pub. L. 102–484, div. D, title XLIV, §4408(a)(2), Oct. 23, 1992, 106 Stat. 2712, added item 1078a.

1991—Pub. L. 102–190, div. A, title VI, §640(b), title VII, §§715(b), 716(a)(2), Dec. 5, 1991, 105 Stat. 1385, 1403, 1404, added item 1074b, redesignated former item 1074b as 1074c, and added items 1105 and 1106.

1990—Pub. L. 101–510, div. A, title VII, §713(d)(2)[(3)], Nov. 5, 1990, 104 Stat. 1584, substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in item 1095.

1989—Pub. L. 101–189, div. A, title VII, §§722(b), 731(b)(2), Nov. 29, 1989, 103 Stat. 1478, 1482, added items 1086a and 1104.

1987—Pub. L. 100–180, div. A, title VII, §725(a)(2), Dec. 4, 1987, 101 Stat. 1116, added item 1103.

Pub. L. 100–26, §7(e)(2), Apr. 21, 1987, 101 Stat. 281, redesignated item 1095 ''Medical care: members held as captives and their dependents'' as item 1095a.

1986—Pub. L. 99–661, div. A, title VI, §604(a)(2), title VII, §§701(a)(2), 705(a)(2), Nov. 14, 1986, 100 Stat. 3875, 3897, 3904 substituted ''active duty for a period of more than 30 days'' for ''active duty; injuries, diseases, and illnesses incident to duty'' in item 1074a and added items 1096 to 1102.

Pub. L. 99–399, title VIII, §801(c)(2), Aug. 27, 1986, 100 Stat. 886, added item 1095 ''Medical care: members held as captives and their dependents''.

Pub. L. 99–272, title II, §2001(a)(2), Apr. 7, 1986, 100 Stat. 101, added item 1095 ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents''.

1985—Pub. L. 99–145, title VI, §§651(a)(2), 653(a)(2), Nov. 8, 1985, 99 Stat. 656, 658, added items 1076a and 1094.

1984—Pub. L. 98–525, title VI, §631(a)(2), title XIV, §1401(e)(2)(B), (5)(B), Oct. 19, 1984, 98 Stat. 2543, 2616, 2618, substituted in item 1074a ''Medical and dental care: members on duty other than active duty; injuries, diseases, and illnesses incident to duty'' for ''Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training'' and added items 1074b and 1093.

1983—Pub. L. 98–94, title IX, §§932(a)(2), 933(a)(2), title X, §1012(a)(2), title XII, §1268(5)(B), Sept. 24, 1983, 97 Stat. 650, 651, 665, 706, added items 1074a, 1091, and 1092, and struck out ''; reports'' at end of item 1081.

1982—Pub. L. 97–295, §1(15)(B), Oct. 12, 1982, 96 Stat. 1290, added item 1090.

1980—Pub. L. 96–513, title V, §511(34)(D), Dec. 12, 1980, 94 Stat. 2923, in items 1071 and 1073 substituted ''this chapter'' for ''sections 1071–1087 of this title'', and in item 1086 substituted ''benefits'' for ''care''.

1976—Pub. L. 94–464, §1(b), Oct. 8, 1976, 90 Stat. 1986, added item 1089.

1970—Pub. L. 91–481, §2(2), Oct. 21, 1970, 84 Stat. 1082, added item 1088.

1966—Pub. L. 89–614, §2(9), Sept. 30, 1966, 80 Stat. 866, substituted ''1087'' for ''1085'' in items 1071 and 1073, ''Medical care'' and ''authorized care in facilities of uniformed services'' for ''Medical and dental care'' and ''specific inclusions and exclusions'' in item 1077, ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in item 1082, and added items 1086 and 1087.

1965—Pub. L. 89–264, §2, Oct. 19, 1965, 79 Stat. 989, substituted ''executive department'' for ''uniformed service'' in item 1085.

1958—Pub. L. 85–861, §1(25)(A), (C), Sept. 2, 1958, 72 Stat. 1445, 1450, substituted ''Medical and Dental Care'' for ''Voting by Members of Armed Forces'' in heading of chapter, and substituted items 1071 to 1085 for former items 1071 to 1086.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 129c, 1490 of this title; title 14 sections 668, 705; title 26 sections 35, 9801, 9832; title 29 sections 1181, 1191b, 2918; title 38 sections 1781, 7423, 8111; title 42 sections 300gg, 300gg–91, 1395w–21, 14402, 14405.

§ 1071. Purpose of this chapter

The purpose of this chapter is to create and maintain high morale in the uniformed services by providing an improved and uniform program of medical and dental care for members and certain former members of those services, and for their dependents.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1445; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, §511(34)(A), (B), Dec. 12, 1980, 94 Stat. 2922.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1071	37:401.	June 7, 1956, ch. 374, §101, 70 Stat. 250.

The words ''and certain former members'' are inserted to reflect the fact that many of the persons entitled to retired pay are former members only. The words ''and dental'' are inserted to reflect the fact that members and, in certain limited situations, dependents are entitled to dental care under sections 1071–1085 of this title.

PRIOR PROVISIONS

A prior section 1071, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, which stated the purpose of former sections 1071 to 1086 of this title, and provided for their construction, was repealed by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Purpose of this chapter'' for ''Purpose of sections 1071–1087 of this title'' in section catchline, and substituted reference to this chapter for reference to sections 1071–1087 of this title in text.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3 of Pub. L. 89–614 provided that: ''The amendments made by this Act [see Short Title of 1966 Amendment note below] shall become effective January 1, 1967, except that those amendments relating to outpatient care in civilian facilities for spouses and children of members of the uniformed services who are on active duty for a period of more than 30 days shall become effective on October 1, 1966.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–180, div. A, title VII, §701, Dec. 4, 1987, 101 Stat. 1108, provided that: ''This title [enacting sections 1103, 2128 to 2130 [now 16201 to 16203], and 6392 of this title, amending sections 533, 591, 1079, 1086, 1251, 2120, 2122, 2123, 2124, 2127, 2172 [now 16302], 3353, 3855, 5600, 8353, and 8855 of this title, section 302 of Title 37, Pay and Allowances of the Uniformed Services, and section 460 of Title 50, Appendix, War and National Defense, enacting provisions set out as notes under sections 1073, 1074, 1079, 1092, 1103, 2121, 2124, 12201, and 16201 of this title, amending provisions set out as notes under sections 1073 and 1101 of this title, and repealing provisions set out as notes under sections 2121 and 2124 of this title] may be cited as the 'Military Health Care Amendments of 1987'.''

SHORT TITLE OF 1966 AMENDMENT

Section 1 of Pub. L. 89–614 provided: ''That this Act [enacting sections 1086 and 1087 of this title, amending this section and sections 1072 to 1074, 1076 to 1079, 1082, and 1084 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Military Medical Benefits Amendments of 1966'.''

ACCESS TO HEALTH CARE SERVICES FOR BENEFICIARIES ELIGIBLE FOR TRICARE AND DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE

Pub. L. 107–314, div. A, title VII, §708, Dec. 2, 2002, 116 Stat. 2585, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCESS.—(1) The Secretary of Defense shall prescribe in regulations a process for resolving issues relating to patient safety and continuity of care for covered beneficiaries who are concurrently entitled to health care under the TRICARE program and eligible for health care services provided by the Department of Veterans Affairs. The Secretary shall—

''(A) ensure that the process provides for coordination of, and access to, health care from the two sources in a manner that prevents diminution of access to health care from either source; and

''(B) in consultation with the Secretary of Veterans Affairs, prescribe a clear definition of an 'episode of care' for use in the resolution of patient safety and continuity of care issues under such process.

''(2) Not later than May 1, 2003, the Secretary shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report describing the process prescribed under paragraph (1).

''(3) While prescribing the process under paragraph (1) and upon completion of the report under paragraph (2), the Secretary shall provide to the Comptroller General information that would be relevant in carrying out the study required by subsection (b).

''(b) COMPTROLLER GENERAL STUDY AND REPORT.—(1) The Comptroller General shall conduct a study of the health care issues of covered beneficiaries described in subsection (a). The study shall include the following:

''(A) An analysis of whether covered beneficiaries who seek services through the Department of Veterans Affairs are receiving needed health care services in a timely manner from the Department of Veterans Affairs, as compared to the timeliness of the care available to covered beneficiaries under TRICARE Prime (as set forth in access to care standards under TRICARE program policy that are applicable to the care being sought).

''(B) An evaluation of the quality of care for covered beneficiaries who do not receive needed services from the Department of Veterans Affairs within a time period that is comparable to the time period provided for under such access to care standards and who then must seek alternative care under the TRICARE program.

''(C) Recommendations to improve access to, and timeliness and quality of, care for covered beneficiaries described in subsection (a).

''(D) An evaluation of the feasibility and advisability of making access to care standards applicable jointly under the TRICARE program and the Department of Veterans Affairs health care system.

''(E) A review of the process prescribed by the Secretary of Defense under subsection (a) to determine whether the process ensures the adequacy and quality of the health care services provided to covered beneficiaries under the TRICARE program and through the Department of Veterans Affairs, together with timeliness of access to such services and patient safety.

''(2) Not later than 60 days after the congressional committees specified in subsection (a)(2) receive the report required under that subsection, the Comptroller General shall submit to those committees a report on the study conducted under this subsection.

''(c) DEFINITIONS.—In this section:

''(1) The term 'covered beneficiary' has the meaning provided by section 1072(5) of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning provided by section 1072(7) of such title.

''(3) The term 'TRICARE Prime' has the meaning provided by section 1097a(f) of such title.''

PILOT PROGRAM PROVIDING FOR DEPARTMENT OF VETERANS AFFAIRS SUPPORT IN THE PERFORMANCE OF SEPARATION PHYSICAL EXAMINATIONS

Pub. L. 107–107, div. A, title VII, §734, Dec. 28, 2001, 115 Stat. 1170, provided that:

''(a) AUTHORITY.—The Secretary of Defense and the Secretary of Veterans Affairs may jointly carry out a pilot program under which the Secretary of Veterans Affairs may perform the physical examinations required for members of the uniformed services separating from the uniformed services who are in one or more geographic areas designated for the pilot program by the Secretaries.

''(b) REIMBURSEMENT.—The Secretary of Defense shall reimburse the Secretary of Veterans Affairs for the cost incurred by the Secretary of Veterans Affairs in performing, under the pilot program, the elements of physical examination that are required by the Secretary concerned in connection with the separation of a member of a uniformed service. Reimbursements shall be paid out of funds available for the performance of separation physical examinations of members of that uniformed service in facilities of the uniformed services.

''(c) AGREEMENT.—(1) If the Secretary of Defense and the Secretary of Veterans Affairs carry out the pilot program authorized by this section, the Secretaries shall enter into an agreement specifying the geographic areas in which the pilot program is carried out and the means for making reimbursement payments under subsection (b).

''(2) The other administering Secretaries shall also enter into the agreement to the extent that the Secretary of Defense determines necessary to apply the pilot program, including the requirement for reimbursement, to the uniformed services not under the jurisdiction of the Secretary of a military department.

''(d) CONSULTATION REQUIREMENT.—In developing and carrying out the pilot program, the Secretary of De-

fense shall consult with the other administering Secretaries.

''(e) PERIOD OF PROGRAM.—The Secretary of Defense and the Secretary of Veterans Affairs may carry out the pilot program under this section beginning not later than July 1, 2002, and terminating on December 31, 2005.

''(f) REPORTS.—(1) If the Secretary of Defense and the Secretary of Veterans Affairs carry out the pilot program authorized by this section—

''(A) not later than January 31, 2004, the Secretaries shall jointly submit to Congress an interim report on the conduct of the pilot program; and

''(B) not later than March 1, 2005, the Secretaries shall jointly submit to Congress a final report on the conduct of the pilot program.

''(2) Reports under this subsection shall include the Secretaries' assessment, as of the date of the report, of the efficacy of the performance of separation physical examinations as provided for under the pilot program.

''(g) DEFINITIONS.—In this section:

''(1) The term 'administering Secretaries' has the meaning given that term in section 1072(3) of title 10, United States Code.

''(2) The term 'Secretary concerned' has the meaning given that term in section 101(5) of title 37, United States Code.''

HEALTH CARE MANAGEMENT DEMONSTRATION PROGRAM

Pub. L. 106–398, §1 [[div. A], title VII, §733], Oct. 30, 2000, 114 Stat. 1654, 1654A–191, as amended by Pub. L. 107–107, div. A, title VII, §737, Dec. 28, 2001, 115 Stat. 1173, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a demonstration program on health care management to explore opportunities for improving the planning, programming, budgeting systems, and management of the Department of Defense health care system.

''(b) TEST MODELS.—Under the demonstration program, the Secretary shall test the use of the following planning and management models:

''(1) A health care simulation model for studying alternative delivery policies, processes, organizations, and technologies.

''(2) A health care simulation model for studying long term disease management.

''(c) DEMONSTRATION SITES.—The Secretary shall test each model separately at one or more sites.

''(d) PERIOD FOR PROGRAM.—The demonstration program shall begin not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000] and shall terminate on December 31, 2003.

''(e) REPORT.—The Secretary of Defense shall submit a report on the demonstration program to the Committees on Armed Services of the Senate and the House of Representatives not later than March 15, 2004. The report shall include the Secretary's assessment of the value of incorporating the use of the tested planning and management models throughout the planning, programming, budgeting systems, and management of the Department of Defense health care system.

''(f) FUNDING.—Of the amount authorized to be appropriated under section 301(22) [114 Stat. 1654A–52], $6,000,000 shall be available for the demonstration program under this section.''

PROCESSES FOR PATIENT SAFETY IN MILITARY AND VETERANS HEALTH CARE SYSTEMS

Pub. L. 106–398, §1 [[div. A], title VII, §742], Oct. 30, 2000, 114 Stat. 1654, 1654A–192, provided that:

''(a) ERROR TRACKING PROCESS.—The Secretary of Defense shall implement a centralized process for reporting, compilation, and analysis of errors in the provision of health care under the defense health program that endanger patients beyond the normal risks associated with the care and treatment of such patients. To the extent practicable, that process shall emulate the system established by the Secretary of Veterans Affairs for reporting, compilation, and analysis of errors in the provision of health care under the Department of Veterans Affairs health care system that endanger patients beyond such risks.

''(b) SHARING OF INFORMATION.—The Secretary of Defense and the Secretary of Veterans Affairs—

''(1) shall share information regarding the designs of systems or protocols established to reduce errors in the provision of health care described in subsection (a); and

''(2) shall develop such protocols as the Secretaries consider necessary for the establishment and administration of effective processes for the reporting, compilation, and analysis of such errors.''

COOPERATION IN DEVELOPING PHARMACEUTICAL IDENTIFICATION TECHNOLOGY

Pub. L. 106–398, §1 [[div. A], title VII, §743], Oct. 30, 2000, 114 Stat. 1654, 1654A–192, provided that: ''The Secretary of Defense and the Secretary of Veterans Affairs shall cooperate in developing systems for the use of bar codes for the identification of pharmaceuticals in the health care programs of the Department of Defense and the Department of Veterans Affairs. In any case in which a common pharmaceutical is used in such programs, the bar codes for those pharmaceuticals shall, to the maximum extent practicable, be identical.''

PATIENT CARE REPORTING AND MANAGEMENT SYSTEM

Pub. L. 106–398, §1 [[div. A], title VII, §754], Oct. 30, 2000, 114 Stat. 1654, 1654A–196, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a patient care error reporting and management system.

''(b) PURPOSES OF SYSTEM.—The purposes of the system are as follows:

''(1) To study the occurrences of errors in the patient care provided under chapter 55 of title 10, United States Code.

''(2) To identify the systemic factors that are associated with such occurrences.

''(3) To provide for action to be taken to correct the identified systemic factors.

''(c) REQUIREMENTS FOR SYSTEM.—The patient care error reporting and management system shall include the following:

''(1) A hospital-level patient safety center, within the quality assurance department of each health care organization of the Department of Defense, to collect, assess, and report on the nature and frequency of errors related to patient care.

''(2) For each health care organization of the Department of Defense and for the entire Defense health program, patient safety standards that are necessary for the development of a full understanding of patient safety issues in each such organization and the entire program, including the nature and types of errors and the systemic causes of the errors.

''(3) Establishment of a Department of Defense Patient Safety Center within the Armed Forces Institute of Pathology, which shall have the following missions:

''(A) To analyze information on patient care errors that is submitted to the Center by each military health care organization.

''(B) To develop action plans for addressing patterns of patient care errors.

''(C) To execute those action plans to mitigate and control errors in patient care with a goal of ensuring that the health care organizations of the Department of Defense provide highly reliable patient care with virtually no error.

''(D) To provide, through the Assistant Secretary of Defense for Health Affairs, to the Agency for Healthcare Research and Quality of the Department of Health and Human Services any reports that the Assistant Secretary determines appropriate.

''(E) To review and integrate processes for reducing errors associated with patient care and for enhancing patient safety.

''(F) To contract with a qualified and objective external organization to manage the national patient safety database of the Department of Defense.

''(d) MEDTEAMS PROGRAM.—The Secretary shall expand the health care team coordination program to integrate that program into all Department of Defense health care operations. In carrying out this subsection, the Secretary shall take the following actions:

''(1) Establish not less than two Centers of Excellence for the development, validation, proliferation, and sustainment of the health care team coordination program, one of which shall support all fixed military health care organizations, the other of which shall support all combat casualty care organizations.

''(2) Deploy the program to all fixed and combat casualty care organizations of each of the Armed Forces, at the rate of not less than 10 organizations in each fiscal year.

''(3) Expand the scope of the health care team coordination program from a focus on emergency department care to a coverage that includes care in all major medical specialties, at the rate of not less than one specialty in each fiscal year.

''(4) Continue research and development investments to improve communication, coordination, and team work in the provision of health care.

''(e) CONSULTATION.—The Secretary shall consult with the other administering Secretaries (as defined in section 1072(3) of title 10, United States Code) in carrying out this section.''

CONFIDENTIALITY OF COMMUNICATIONS WITH PROFESSIONALS PROVIDING THERAPEUTIC OR RELATED SERVICES REGARDING SEXUAL OR DOMESTIC ABUSE

Pub. L. 106–65, div. A, title V, §585, Oct. 5, 1999, 113 Stat. 636, provided that:

''(a) STUDY AND REPORT.—(1) The Comptroller General of the United States shall study the policies, procedures, and practices of the military departments for protecting the confidentiality of communications between—

''(A) a dependent (as defined in section 1072(2) of title 10, United States Code, with respect to a member of the Armed Forces) of a member of the Armed Forces who—

''(i) is a victim of sexual harassment, sexual assault, or intrafamily abuse; or

''(ii) has engaged in such misconduct; and

''(B) a therapist, counselor, advocate, or other professional from whom the dependent seeks professional services in connection with effects of such misconduct.

''(2) Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Comptroller General shall conclude the study and submit a report on the results of the study to Congress and the Secretary of Defense.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the policies and procedures that the Secretary considers appropriate to provide the maximum protections for the confidentiality of communications described in subsection (a) relating to misconduct described in that subsection, taking into consideration—

''(1) the findings of the Comptroller General;

''(2) the standards of confidentiality and ethical standards issued by relevant professional organizations;

''(3) applicable requirements of Federal and State law;

''(4) the best interest of victims of sexual harassment, sexual assault, or intrafamily abuse;

''(5) military necessity; and

''(6) such other factors as the Secretary, in consultation with the Attorney General, may consider appropriate.

''(c) REPORT BY SECRETARY OF DEFENSE.—Not later than January 21, 2000, the Secretary of Defense shall submit to Congress a report on the actions taken under subsection (b) and any other actions taken by the Secretary to provide the maximum possible protections for confidentiality described in that subsection.''

HEALTH CARE QUALITY INFORMATION AND TECHNOLOGY ENHANCEMENT

Pub. L. 106–65, div. A, title VII, §723, Oct. 5, 1999, 113 Stat. 695, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §753(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that:

''(a) PURPOSE.—The purpose of this section is to ensure that the Department of Defense addresses issues of medical quality surveillance and implements solutions for those issues in a timely manner that is consistent with national policy and industry standards.

''(b) DEPARTMENT OF DEFENSE PROGRAM FOR MEDICAL INFORMATICS AND DATA.—The Secretary of Defense shall establish a Department of Defense program, the purposes of which shall be the following:

''(1) To develop parameters for assessing the quality of health care information.

''(2) To develop the defense digital patient record.

''(3) To develop a repository for data on quality of health care.

''(4) To develop capability for conducting research on quality of health care.

''(5) To conduct research on matters of quality of health care.

''(6) To develop decision support tools for health care providers.

''(7) To refine medical performance report cards.

''(8) To conduct educational programs on medical informatics to meet identified needs.

''(c) AUTOMATION AND CAPTURE OF CLINICAL DATA.—(1) Through the program established under subsection (b), the Secretary of Defense shall accelerate the efforts of the Department of Defense to automate, capture, and exchange controlled clinical data and present providers with clinical guidance using a personal information carrier, clinical lexicon, or digital patient record.

''(2) The program shall serve as a primary resource for the Department of Defense for matters concerning the capture, processing, and dissemination of data on health care quality.

''(d) MEDICAL INFORMATICS ADVISORY COMMITTEE.—(1) The Secretary of Defense shall establish a Medical Informatics Advisory Committee (hereinafter referred to as the 'Committee'), the members of which shall be the following:

''(A) The Assistant Secretary of Defense for Health Affairs.

''(B) The Director of the TRICARE Management Activity of the Department of Defense.

''(C) The Surgeon General of the Army.

''(D) The Surgeon General of the Navy.

''(E) The Surgeon General of the Air Force.

''(F) Representatives of the Department of Veterans Affairs, designated by the Secretary of Veterans Affairs.

''(G) Representatives of the Department of Health and Human Services, designated by the Secretary of Health and Human Services.

''(H) Any additional members appointed by the Secretary of Defense to represent health care insurers and managed care organizations, academic health institutions, health care providers (including representatives of physicians and representatives of hospitals), and accreditors of health care plans and organizations.

''(2) The primary mission of the Committee shall be to advise the Secretary on the development, deployment, and maintenance of health care informatics systems that allow for the collection, exchange, and processing of health care quality information for the Department of Defense in coordination with other Federal departments and agencies and with the private sector.

''(3) Specific areas of responsibility of the Committee shall include advising the Secretary on the following:

''(A) The ability of the medical informatics systems at the Department of Defense and Department of Vet-

erans Affairs to monitor, evaluate, and improve the quality of care provided to beneficiaries.

''(B) The coordination of key components of medical informatics systems, including digital patient records, both within the Federal Government and between the Federal Government and the private sector.

''(C) The development of operational capabilities for executive information systems and clinical decision support systems within the Department of Defense and Department of Veterans Affairs.

''(D) Standardization of processes used to collect, evaluate, and disseminate health care quality information.

''(E) Refinement of methodologies by which the quality of health care provided within the Department of Defense and Department of Veterans Affairs is evaluated.

''(F) Protecting the confidentiality of personal health information.

''(4) The Assistant Secretary of Defense for Health Affairs shall consult with the Committee on the issues described in paragraph (3).

''(5) The Secretary of Defense shall submit to Congress an annual report on medical informatics. The report shall include a discussion of the following matters:

''(A) The activities of the Committee.

''(B) The coordination of development, deployment, and maintenance of health care informatics systems within the Federal Government, and between the Federal Government and the private sector.

''(C) The progress or growth occurring in medical informatics.

''(D) How the TRICARE program and the Department of Veterans Affairs health care system can use the advancement of knowledge in medical informatics to raise the standards of health care and treatment and the expectations for improving health care and treatment.

''(6) Members of the Committee shall not be paid by reason of their service on the Committee.

''(7) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee.

''(e) ANNUAL REPORT.—The Assistant Secretary of Defense for Health Affairs shall submit to Congress on an annual basis a report on the quality of health care furnished under the health care programs of the Department of Defense. The report shall cover the most recent fiscal year ending before the date the report is submitted and shall contain a discussion of the quality of the health care measured on the basis of each statistical and customer satisfaction factor that the Assistant Secretary determines appropriate, including, at a minimum, a discussion of the following:

''(1) Health outcomes.

''(2) The extent of use of health report cards.

''(3) The extent of use of standard clinical pathways.

''(4) The extent of use of innovative processes for surveillance.''

JOINT DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REPORTS RELATING TO INTERDEPARTMENTAL COOPERATION IN DELIVERY OF MEDICAL CARE

Pub. L. 105–261, div. A, title VII, §745, Oct. 17, 1998, 112 Stat. 2075, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The military health care system of the Department of Defense and the Veterans Health Administration of the Department of Veterans Affairs are national institutions that collectively manage more than 1,500 hospitals, clinics, and health care facilities worldwide to provide services to more than 11,000,000 beneficiaries.

''(2) In the post-Cold War era, these institutions are in a profound transition that involves challenging opportunities.

''(3) During the period from 1988 to 1998, the number of military medical personnel has declined by 15 percent and the number of military hospitals has been reduced by one-third.

''(4) During the 2 years since 1996, the Department of Veterans Affairs has revitalized its structure by decentralizing authority into 22 Veterans Integrated Service Networks.

''(5) In the face of increasing costs of medical care, increased demands for health care services, and increasing budgetary constraints, the Department of Defense and the Department of Veterans Affairs have embarked on a variety of dynamic and innovative cooperative programs ranging from shared services to joint venture operations of medical facilities.

''(6) In 1984, there was a combined total of 102 Department of Veterans Affairs and Department of Defense facilities with sharing agreements. By 1997, that number had grown to 420. During the six years from fiscal year 1992 through fiscal year 1997, shared services increased from slightly over 3,000 services to more than 6,000 services, ranging from major medical and surgical services, laundry, blood, and laboratory services to unusual speciality care services.

''(7) The Department of Defense and the Department of Veterans Affairs are conducting four health care joint ventures in New Mexico, Nevada, Texas, and Oklahoma, and are planning to conduct four more such ventures in Alaska, Florida, Hawaii, and California.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that—

''(1) the Department of Defense and the Department of Veterans Affairs should be commended for the cooperation between the two departments in the delivery of medical care, of which the cooperation involved in the establishment and operation of the Department of Defense and the Department of Veterans Affairs Executive Council is a praiseworthy example;

''(2) the Department of Defense and the Department of Veterans Affairs are encouraged to continue to explore new opportunities to enhance the availability and delivery of medical care to beneficiaries by further enhancing the cooperative efforts of the departments; and

''(3) enhanced cooperation between the Department of Defense and the Department of Veterans Affairs is encouraged regarding—

''(A) the general areas of access to quality medical care, identification and elimination of impediments to enhanced cooperation, and joint research and program development; and

''(B) the specific areas in which there is significant potential to achieve progress in cooperation in a short term, including computerization of patient records systems, participation of the Department of Veterans Affairs in the TRICARE program, pharmaceutical programs, and joint physical examinations.

''(c) JOINT SURVEY OF POPULATIONS SERVED.—(1) The Secretary of Defense and the Secretary of Veterans Affairs shall jointly conduct a survey of their respective medical care beneficiary populations to identify, by category of beneficiary (defined as the Secretaries consider appropriate), the expectations of, requirements for, and behavior patterns of the beneficiaries with respect to medical care. The two Secretaries shall develop the protocol for the survey jointly, but shall obtain the services of an entity independent of the Department of Defense and the Department of Veterans Affairs to carry out the survey.

''(2) The survey shall include the following:

''(A) Demographic characteristics, economic characteristics, and geographic location of beneficiary populations with regard to catchment or service areas.

''(B) The types and frequency of care required by veterans, retirees, and dependents within catchment or service areas of Department of Defense and Department of Veterans Affairs medical facilities and outside those areas.

''(C) The numbers of, characteristics of, and types of medical care needed by the veterans, retirees, and dependents who, though eligible for medical care in Department of Defense or Department of Veterans Affairs treatment facilities or through other federally funded medical programs, choose not to seek medical care from those facilities or under those programs, and the reasons for that choice.

''(D) The obstacles or disincentives for seeking medical care from such facilities or under such programs that are perceived by veterans, retirees, and dependents.

''(E) Any other matters that the Secretary of Defense and the Secretary of Veterans Affairs consider appropriate for the survey.

''(3) The Secretary of Defense or the Secretary of Veterans Affairs may waive the survey requirements under this subsection with respect to information that can be better obtained from a source other than the survey.

''(4) The Secretary of Defense and the Secretary of Veterans Affairs shall submit a report on the results of the survey to the appropriate committees of Congress. The report shall contain the matters described in paragraph (2) and any proposals for legislation that the Secretaries recommend for enhancing Department of Defense and Department of Veterans Affairs cooperative efforts with respect to the delivery of medical care.

''(d) REVIEW OF LAW AND POLICIES.—(1) The Secretary of Defense and the Secretary of Veterans Affairs shall jointly conduct a review to identify impediments to cooperation between the Department of Defense and the Department of Veterans Affairs regarding the delivery of medical care. The matters reviewed shall include the following:

''(A) All laws, policies, and regulations, and any attitudes of beneficiaries of the health care systems of the two departments, that have the effect of preventing the establishment, or limiting the effectiveness, of cooperative health care programs of the departments.

''(B) The requirements and practices involved in the credentialling and licensure of health care providers.

''(C) The perceptions of beneficiaries in a variety of categories (defined as the Secretaries consider appropriate) regarding the various Federal health care systems available for their use.

''(D) The types and frequency of medical services furnished by the Department of Defense and the Department of Veterans Affairs through cooperative arrangements to each category of beneficiary (including active-duty members, retirees, dependents, veterans in the health-care eligibility categories referred to as Category A and Category C, and persons authorized to receive medical care under section 1713 [1781] of title 38, United States Code) of the other department.

''(E) The extent to which health care facilities of the Department of Defense and Department of Veterans Affairs have sufficient capacity, or could jointly or individually create sufficient capacity, to provide services to beneficiaries of the other department without diminution of access or services to their primary beneficiaries.

''(F) The extent to which the recruitment of scarce medical specialists and allied health personnel by the Department of Defense and the Department of Veterans Affairs could be enhanced through cooperative arrangements for providing health care services.

''(G) The obstacles and disincentives to providing health care services through cooperative arrangements between the Department of Defense and the Department of Veterans Affairs.

''(2) The Secretaries shall jointly submit a report on the results of the review to the appropriate committees of Congress. The report shall include any proposals for legislation that the Secretaries recommend for eliminating or reducing impediments to interdepartmental cooperation that are identified during the review.

''(e) PARTICIPATION IN TRICARE.—(1) The Secretary of Defense shall review the TRICARE program to identify opportunities for increased participation by the Department of Veterans Affairs in that program. The ongoing collaboration between Department of Defense officials and Department of Veterans Affairs officials regarding increased participation shall be included among the matters reviewed.

''(2) The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a semiannual report on the status of the review under this subsection and on efforts to increase the participation of the Department of Veterans Affairs in the TRICARE program. No report is required under this paragraph after the submission of a semiannual report in which the Secretaries declare that the Department of Veterans Affairs is participating in the TRICARE program to the extent that can reasonably be expected to be attained.

''(f) PHARMACEUTICAL BENEFITS AND PROGRAMS.—(1) The Department of Defense-Department of Veterans Affairs Federal Pharmacy Executive Steering Committee shall—

''(A) undertake a comprehensive examination of existing pharmaceutical benefits and programs for beneficiaries of Department of Defense medical care programs, including matters relating to the purchasing, distribution, and dispensing of pharmaceuticals and the management of mail order pharmaceuticals programs; and

''(B) review the existing methods for contracting for and distributing medical supplies and services.

''(2) The committee shall submit a report on the results of the examination to the appropriate committees of Congress.

''(g) STANDARDIZATION OF PHYSICAL EXAMINATIONS FOR DISABILITY.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to the appropriate committees of Congress a report on the status of the efforts of the Department of Defense and the Department of Veterans Affairs to standardize physical examinations administered by the two departments for the purpose of determining or rating disabilities.

''(h) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—For the purposes of this section, the appropriate committees of Congress are as follows:

''(1) The Committee on Armed Services and the Committee on Veterans' Affairs of the Senate.

''(2) The Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives.

''(i) DEADLINES FOR SUBMISSION OF REPORTS.—(1) The report required by subsection (c)(3) [probably should be (c)(4)] shall be submitted not later than January 1, 2000.

''(2) The report required by subsection (d)(2) shall be submitted not later than March 1, 1999.

''(3) The semiannual report required by subsection (e)(2) shall be submitted not later than March 1 and September 1 of each year.

''(4) The report on the examination required under subsection (f) shall be submitted not later than 60 days after the completion of the examination.

''(5) The report required by subsection (g) shall be submitted not later than March 1, 1999.''

EXTERNAL PEER REVIEW FOR DEFENSE HEALTH PROGRAM EXTRAMURAL MEDICAL RESEARCH INVOLVING HUMAN SUBJECTS

Pub. L. 104–201, div. A, title VII, §742, Sept. 23, 1996, 110 Stat. 2600, provided that:

''(a) ESTABLISHMENT OF EXTERNAL PEER REVIEW PROCESS.—The Secretary of Defense shall establish a peer review process that will use persons who are not officers or employees of the Government to review the research protocols of medical research projects.

''(b) PEER REVIEW REQUIREMENTS.—Funds of the Department of Defense may not be obligated or expended for any medical research project unless the research protocol for the project has been approved by the external peer review process established under subsection (a).

''(c) MEDICAL RESEARCH PROJECT DEFINED.—For purposes of this section, the term 'medical research project' means a research project that—

''(1) involves the participation of human subjects;

''(2) is conducted solely by a non-Federal entity; and

''(3) is funded through the Defense Health Program account.

''(d) EFFECTIVE DATE.—The peer review requirements of subsection (b) shall take effect on October 1, 1996, and, except as provided in subsection (e), shall apply to all medical research projects proposed funded on or after that date, including medical research projects funded pursuant to any requirement of law enacted before, on, or after that date.

''(e) EXCEPTIONS.—Only the following medical research projects shall be exempt from the peer review requirements of subsection (b):

''(1) A medical research project that the Secretary determines has been substantially completed by October 1, 1996.

''(2) A medical research project funded pursuant to any provision of law enacted on or after that date if the provision of law specifically refers to this section and specifically states that the peer review requirements do not apply.''

ANNUAL BENEFICIARY SURVEY

Pub. L. 102–484, div. A, title VII, § 724, Oct. 23, 1992, 106 Stat. 2440, as amended by Pub. L. 103–337, div. A, title VII, § 717, Oct. 5, 1994, 108 Stat. 2804, provided that:

''(a) SURVEY REQUIRED.—The administering Secretaries shall conduct annually a formal survey of persons receiving health care under chapter 55 of title 10, United States Code, in order to determine the following:

''(1) The availability of health care services to such persons through the health care system provided for under that chapter, the types of services received, and the facilities in which the services were provided.

''(2) The familiarity of such persons with the services available under that system and with the facilities in which such services are provided.

''(3) The health of such persons.

''(4) The level of satisfaction of such persons with that system and the quality of the health care provided through that system.

''(5) Such other matters as the administering Secretaries determine appropriate.

''(b) EXEMPTION.—An annual survey under subsection (a) shall be treated as not a collection of information for the purposes for which such term is defined in section 3502(4) of title 44, United States Code.

''(c) DEFINITION.—For purposes of this section, the term 'administering Secretaries' has the meaning given such term in section 1072(3) of title 10, United States Code.''

COMPREHENSIVE STUDY OF MILITARY MEDICAL CARE SYSTEM

Pub. L. 102–190, div. A, title VII, § 733, Dec. 5, 1991, 105 Stat. 1408, as amended by Pub. L. 102–484, div. A, title VII, § 723, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense to conduct a comprehensive study of the military medical care system, not later than Dec. 15, 1992, to submit to congressional defense committees a detailed accounting on progress of the study, including preliminary results of the study, and not later than Dec. 15, 1993, submit to congressional defense committees a final report on the study.

IDENTIFICATION AND TREATMENT OF DRUG AND ALCOHOL DEPENDENT PERSONS IN THE ARMED FORCES

Pub. L. 92–129, title V, § 501, Sept. 28, 1971, 85 Stat. 361, which directed Secretary of Defense to devise ways to identify, treat, and rehabilitate drug and alcohol dependent members of the armed forces, to identify, refuse admission to, and refer to civilian treatment facilities such persons seeking entrance to the armed forces, and to report to Congress on and suggest additional legislation concerning these matters, was repealed and restated as sections 978 and 1090 of this title by Pub. L. 97–295, §§ 1(14)(A), (15)(A), 6(b), Oct. 12, 1982, 96 Stat. 1289, 1290, 1314.

§ 1072. Definitions

In this chapter:

(1) The term ''uniformed services'' means the armed forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.

(2) The term ''dependent'', with respect to a member or former member of a uniformed service, means—

(A) the spouse;

(B) the unremarried widow;

(C) the unremarried widower;

(D) a child who—

(i) has not attained the age of 21;

(ii) has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support; or

(iii) is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a member or former member under clause (i) or (ii) and is, or was at the time of the member's or former member's death, in fact dependent on the member or former member for over one-half of the child's support;

(E) a parent or parent-in-law who is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support and residing in his household;

(F) the unremarried former spouse of a member or former member who (i) on the date of the final decree of divorce, dissolution, or annulment, had been married to the member or former member for a period of at least 20 years during which period the member or former member performed at least 20 years of service which is creditable in determining that member's or former member's eligibility for retired or retainer pay, or equivalent pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(G) a person who (i) is the unremarried former spouse of a member or former member who performed at least 20 years of service which is creditable in determining the member or former member's eligibility for retired or retainer pay, or equivalent pay, and on the date of the final decree of divorce, dissolution, or annulment before April 1, 1985, had been married to the member or former member for a period of at least 20 years, at least 15 of which, but less than 20 of which, were during the period the member or former member performed service creditable in determining the member or former member's eligibility for retired or retainer pay, and (ii) does not have medical coverage under an employer-sponsored health plan;

(H) a person who would qualify as a dependent under clause (G) but for the fact that the date of the final decree of divorce, dissolution, or annulment of the person is on or after April 1, 1985, except that the term does not include the person after the end of the one-year period beginning on the date of that final decree; and

(I) an unmarried person who—

(i) is placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a Territory or possession of the United States) for a period of at least 12 consecutive months;

(ii) either—

(I) has not attained the age of 21;

(II) has not attained the age of 23 and is enrolled in a full time course of study at an institution of higher learning approved by the administering Secretary; or

(III) is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member under this subparagraph pursuant to subclause (I) or (II);

(iii) is dependent on the member or former member for over one-half of the person's support;

(iv) resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and

(v) is not a dependent of a member or a former member under any other subparagraph.

(3) The term ''administering Secretaries'' means the Secretaries of executive departments specified in section 1073 of this title as having responsibility for administering this chapter.

(4) The term ''Civilian Health and Medical Program of the Uniformed Services'' means the program authorized under sections 1079 and 1086 of this title and includes contracts entered into under section 1091 or 1097 of this title and demonstration projects under section 1092 of this title.

(5) The term ''covered beneficiary'' means a beneficiary under this chapter other than a beneficiary under section 1074(a) of this title.

(6) The term ''child'', with respect to a member or former member of a uniformed service, means the following:

(A) An unmarried legitimate child.

(B) An unmarried adopted child.

(C) An unmarried stepchild.

(D) An unmarried person—

(i) who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the person by the member or former member; and

(ii) who otherwise meets the requirements specified in paragraph (2)(D).

(7) The term ''TRICARE program'' means the managed health care program that is established by the Department of Defense under the authority of this chapter, principally section 1097 of this title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

(8) The term ''custodial care'' means treatment or services, regardless of who recommends such treatment or services or where such treatment or services are provided, that—

(A) can be rendered safely and reasonably by a person who is not medically skilled; or

(B) is or are designed mainly to help the patient with the activities of daily living.

(9) The term ''domiciliary care'' means care provided to a patient in an institution or homelike environment because—

(A) providing support for the activities of daily living in the home is not available or is unsuitable; or

(B) members of the patient's family are unwilling to provide the care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title I, §115(b), title V, §511(34)(A), (35), (36), Dec. 12, 1980, 94 Stat. 2877, 2922, 2923; Pub. L. 97–252, title X, §1004(a), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–525, title VI, §645(a), Oct. 19, 1984, 98 Stat. 2548; Pub. L. 98–557, §19(1), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VII, §701(b), Nov. 14, 1986, 100 Stat. 3898; Pub. L. 101–189, div. A, title VII, §731(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 102–484, div. A, title VII, §706, Oct. 23, 1992, 106 Stat. 2433; Pub. L. 103–160, div. A, title VII, §702(a), Nov. 30, 1993, 107 Stat. 1686; Pub. L. 103–337, div. A, title VII, §701(a), Oct. 5, 1994, 108 Stat. 2797; Pub. L. 105–85, div. A, title VII, §711, Nov. 18, 1997, 111 Stat. 1808; Pub. L. 107–107, div. A, title VII, §701(c), Dec. 28, 2001, 115 Stat. 1160.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1072(1)	37:402(a)(1).	June 7, 1956, ch. 374, §102(a)(1), (4), 70 Stat. 250.
1072(2)	37:402(a)(4).	

In clause (1), the words ''the armed forces'' are substituted for the words ''the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard'' to reflect section 101(4) of this title.

In clause (2), the words ''or to a person who died while a member or retired member of a uniformed service'' and ''lawful'' are omitted as surplusage. The word ''former'' is substituted for the word ''retired'', since a retired member or a member of the Fleet Reserve or the Fleet Marine Corps Reserve is already included as a ''member'' of an armed force.

Clause (2)(E) combines 37:402(a)(4)(E) and (G).

PRIOR PROVISIONS

A prior section 1072, act Aug. 10, 1956, ch. 1041, 70A Stat. 81, defined terms used in former sections 1071 to 1086 of this title, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Pars. (8), (9). Pub. L. 107–107 added pars. (8) and (9).

1997—Par. (7). Pub. L. 105–85 added par. (7).

1994—Par. (2)(D). Pub. L. 103–337, § 701(a)(1), substituted ''a child who'' for ''an unmarried legitimate child, including an adopted child or stepchild, who'' in introductory provisions.

Par. (6). Pub. L. 103–337, § 701(a)(2), added par. (6).

1993—Par. (2)(I). Pub. L. 103–160 added subpar. (I).

1992—Par. (2)(D). Pub. L. 102–484 added subpar. (D) and struck out former subpar. (D) which read as follows: ''an unmarried legitimate child, including an adopted child or a stepchild, who either—

''(i) has not passed his twenty-first birthday;

''(ii) is incapable of self-support because of a mental or physical incapacity that existed before that birthday and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support; or

''(iii) has not passed his twenty-third birthday, is enrolled in a full-time course of study in an institution of higher learning approved by the administering Secretary and is, or was at the time of the member's or former member's death, in fact dependent on him for over one-half of his support;''.

1989—Par. (2)(H). Pub. L. 101–189 added subpar. (H).

1986—Par. (1). Pub. L. 99–661, § 701(b)(1), substituted ''The term 'uniformed services' means'' for '' 'Uniformed services' means''.

Par. (2). Pub. L. 99–661, § 701(b)(2), substituted ''The term 'dependent', with respect to'' for '' 'Dependent', with respect to''.

Par. (3). Pub. L. 99–661, § 701(b)(3), substituted ''The term 'administering Secretaries' means'' for '' 'Administering Secretaries' means''.

Pars. (4), (5). Pub. L. 99–661, § 701(b)(4), added pars. (4) and (5).

1984—Par. (2)(D)(iii). Pub. L. 98–557, § 19(1)(A), substituted reference to the administering Secretary for reference to the Secretary of Defense or the Secretary of Health and Human Services.

Par. (2)(G). Pub. L. 98–525 added subpar. (G).

Par. (3). Pub. L. 98–557, § 19(1)(B), added par. (3).

1982—Par. (2)(F). Pub. L. 97–252 added cl. (F).

1980—Pub. L. 96–513, § 511(34)(A), substituted in introductory material reference to this chapter for reference to sections 1071–1087 of this title.

Par. (1). Pub. L. 96–513, § 511(35), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Par. (2). Pub. L. 96–513, §§ 115(b), 511(36), substituted ''spouse'' for ''wife'' in cl. (A), struck out cl. (C) ''the husband, if he is in fact dependent on the member or former member for over one-half of his support;'', redesignated cls. (D), (E), and (F) as (C), (D), and (E), respectively, in cl. (C) as so redesignated, struck out '', if, because of mental or physical incapacity he was in fact dependent on the member or former member at the time of her death for over one-half of his support'' after ''the unremarried widower'', and in cl. (D)(iii) as so redesignated, substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (1).

Pub. L. 89–614 substituted ''1087'' for ''1085'' in introductory phrase.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 702(b) of Pub. L. 103–160 provided that: ''Section 1072(2)(I) of title 10, United States Code, as added by subsection (a), shall apply with respect to determinations of dependency made on or after July 1, 1994.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 731(d) of Pub. L. 101–189 provided that:

''(1) The amendments made by this section [enacting section 1086a of this title and amending this section and sections 1076 and 1086 of this title] apply to a person referred to in section 1072(2)(H) of title 10, United States Code (as added by subsection (a)), whose decree of divorce, dissolution, or annulment becomes final on or after the date of the enactment of this Act [Nov. 29, 1989].

''(2) The amendments made by this section shall also apply to a person referred to in such section whose decree of divorce, dissolution, or annulment became final during the period beginning on September 29, 1988, and ending on the day before the date of the enactment of this Act, as if the amendments had become effective on September 29, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 645(d) of Pub. L. 98–525 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and provisions set out as a note under section 1408 of this title and enacting provisions set out as a note under this section] shall be effective on January 1, 1985, and shall apply with respect to health care furnished on or after that date.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 115(b) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(34)(A), (35), (36) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

CONTINUATION OF INDIVIDUAL CASE MANAGEMENT SERVICES FOR CERTAIN ELIGIBLE BENEFICIARIES

Pub. L. 107–107, div. A, title VII, § 701(d), Dec. 28, 2001, 115 Stat. 1160, provided that:

''(1) Notwithstanding the termination of the Individual Case Management Program by subsection (g) [amending section 1079 of this title and repealing provisions set out as a note under section 1077 of this title], the Secretary of Defense shall, in any case in which the Secretary makes the determination described in paragraph (2), continue to provide payment as if such program were in effect for home health care or custodial care services provided to an eligible beneficiary that would otherwise be excluded from coverage under regulations implementing chapter 55 of title 10, United States Code.

''(2) The determination referred to in paragraph (1) is a determination that discontinuation of payment for services not otherwise provided under such chapter would result in the provision of services inadequate to meet the needs of the eligible beneficiary and would be unjust to such beneficiary.

''(3) For purposes of this subsection, 'eligible beneficiary' means a covered beneficiary (as that term is

defined in section 1072 of title 10, United States Code) who, before the effective date of this section [Dec. 28, 2001], was provided custodial care services under the Individual Case Management Program for which the Secretary provided payment.''

IMPROVEMENTS IN ADMINISTRATION OF THE TRICARE PROGRAM; FLEXIBILITY OF CONTRACTING

Pub. L. 107–107, div. A, title VII, §708(a), Dec. 28, 2001, 115 Stat. 1164, provided that:

''(1) During the one-year period following the date of the enactment of this Act [Dec. 28, 2001], section 1072(7) of title 10, United States Code, shall be deemed to be amended by striking 'the competitive selection of contractors to financially underwrite'.

''(2) The terms and conditions of any contract to provide health care services under the TRICARE program entered into during the period described in paragraph (1) shall not be considered to be modified or terminated as a result of the termination of such period.''

TRANSITIONAL PROVISIONS FOR QUALIFICATION FOR CONVERSION HEALTH POLICIES; PREEXISTING CONDITIONS

Section 731(e) of Pub. L. 101–189 provided that:

''(1) In the case of a person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 (Public Law 98–525; 98 Stat. 2549) [set out below], on September 28, 1988, the Secretary of Defense shall make a conversion health policy available for purchase by the person during the remaining period the person is considered to be a dependent under that section (or within a reasonable time after that period as prescribed by the Secretary of Defense).

''(2) Purchase of a conversion health policy under paragraph (1) by a person shall entitle the person to health care for preexisting conditions in the same manner and to the same extent as provided by section 1086a(b) of title 10, United States Code (as added by subsection (b)), until the end of the one-year period beginning on the later of—

''(A) the date the person is no longer qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985; and

''(B) the date of the purchase of the policy.

''(3) For purposes of this subsection, the term 'conversion health policy' has the meaning given that term in section 1086a(c) of title 10, United States Code (as added by subsection (b)).''

DEPENDENT; QUALIFICATION AS; EFFECTIVE DATE

Section 645(c) of Pub. L. 98–525, as amended by Pub. L. 99–661, div. A, title VI, §646, Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–271, §1, Mar. 29, 1988, 102 Stat. 45; Pub. L. 100–271, §1, Mar. 29, 1988, 102 Stat. 45, provided that a person who would qualify as a dependent under section 1072(2)(G) of title 10 but for the fact that the person's final decree of divorce, dissolution, or annulment was dated on or after Apr. 1, 1985, would be considered to be a dependent under such section until the later of (1) Dec. 31, 1988, and (2) the last day of the two-year period beginning on the date of such final decree, prior to repeal by Pub. L. 100–456, div. A, title VI, §651(b), Sept. 29, 1988, 102 Stat. 1990, effective Sept. 29, 1988, or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in section 1076(f) of title 10), whichever is later.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1040, 1060a, 1062, 1074h, 1076a, 1076c, 1078a, 1079, 1086, 1086a, 1095d, 1097a, 1108, 1111, 1481, 1490, 2114, 2147 of this title; title 42 section 1320d.

§ 1073. Administration of this chapter

(a) RESPONSIBLE OFFICIALS.—Except as otherwise provided in this chapter, the Secretary of Defense shall administer this chapter, for the armed forces under his jurisdiction, the Secretary of Homeland Security shall administer this chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services shall administer this chapter and for the National Oceanic and Atmospheric Administration and the Public Health Service. This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997 (42 U.S.C. 14401 et seq.).

(b) STABILITY IN PROGRAM OF BENEFITS.—The Secretary of Defense shall, to the maximum extent practicable, provide a stable program of benefits under this chapter throughout each fiscal year. To achieve the stability in the case of managed care support contracts entered into under this chapter, the contracts shall be administered so as to implement all changes in benefits and administration on a quarterly basis. However, the Secretary of Defense may implement any such change prior to the next fiscal quarter if the Secretary determines that the change would significantly improve the provision of care to eligible beneficiaries under this chapter.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §511(34)(A), (C), (35), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, §19(2), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 105–12, §9(h), Apr. 30, 1997, 111 Stat. 27; Pub. L. 106–65, div. A, title VII, §725, title X, §1066(a)(7), Oct. 5, 1999, 113 Stat. 698, 770; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1073	37:402(b).	June 7, 1956, ch. 374, §102(b), 70 Stat. 251.

The words ''armed forces under his jurisdiction'' are substituted for the words ''Army, Navy, Air Force, and Marine Corps and for the Coast Guard when it is operating as a service in the Navy'' to reflect section 101(4) of this title.

REFERENCES IN TEXT

The Assisted Suicide Funding Restriction Act of 1997, referred to in subsec. (a), is Pub. L. 105–12, Apr. 30, 1997, 111 Stat. 23, which is classified principally to chapter 138 (§14401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 14401 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1073, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to right to vote in war-time presidential and congressional election, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Pub. L. 106–65, §725, designated existing provisions, as amended by Pub. L. 106–65, §1066(a)(7), as subsec. (a), inserted heading, and added subsec. (b).

Pub. L. 106–65, §1066(a)(7), inserted ''(42 U.S.C. 14401 et seq.)'' after ''Act of 1997''.

1997—Pub. L. 105–12 inserted at end ''This chapter shall be administered consistent with the Assisted Suicide Funding Restriction Act of 1997.''

1984—Pub. L. 98–557 inserted provisions which transferred authority to administer chapter for the Coast Guard when the Coast Guard is not operating as a service in the Navy from the Secretary of Health and Human Services to the Secretary of Transportation.

1980—Pub. L. 96–513 substituted in section catchline ''of this chapter'' for ''of sections 1071–1087 of this title'', and substituted in text ''this chapter'' for ''sections 1071–1087 of this title'', ''those sections'', and ''them'', ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

Pub. L. 89–614 substituted ''1087'' for ''1085'' in section catchline and text.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–12 effective Apr. 30, 1997, and applicable to Federal payments made pursuant to obligations incurred after Apr. 30, 1997, for items and services provided on or after such date, subject to also being applicable with respect to contracts entered into, renewed, or extended after Apr. 30, 1997, as well as contracts entered into before Apr. 30, 1997, to the extent permitted under such contracts, see section 11 of Pub. L. 105–12, set out as an Effective Date note under section 14401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

MODERNIZATION OF TRICARE BUSINESS PRACTICES AND INCREASE OF USE OF MILITARY TREATMENT FACILITIES

Pub. L. 106–398, §1 [[div. A], title VII, §723], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that:

''(a) REQUIREMENT TO IMPLEMENT INTERNET-BASED SYSTEM.—Not later than October 1, 2001, the Secretary of Defense shall implement a system to simplify and make accessible through the use of the Internet, through commercially available systems and products, critical administrative processes within the military health care system and the TRICARE program. The purposes of the system shall be to enhance efficiency, improve service, and achieve commercially recognized standards of performance.

''(b) ELEMENTS OF SYSTEM.—The system required by subsection (a)—

''(1) shall comply with patient confidentiality and security requirements, and incorporate data requirements, that are currently widely used by insurers under medicare and commercial insurers;

''(2) shall be designed to achieve improvements with respect to—

''(A) the availability and scheduling of appointments;

''(B) the filing, processing, and payment of claims;

''(C) marketing and information initiatives;

''(D) the continuation of enrollments without expiration;

''(E) the portability of enrollments nationwide;

''(F) education of beneficiaries regarding the military health care system and the TRICARE program; and

''(G) education of health care providers regarding such system and program; and

''(3) may be implemented through a contractor under TRICARE Prime.

''(c) AREAS OF IMPLEMENTATION.—The Secretary shall implement the system required by subsection (a) in at least one region under the TRICARE program.

''(d) PLAN FOR IMPROVED PORTABILITY OF BENEFITS.—Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to provide portability and reciprocity of benefits for all enrollees under the TRICARE program throughout all TRICARE regions.

''(e) INCREASE OF USE OF MILITARY MEDICAL TREATMENT FACILITIES.—The Secretary shall initiate a program to maximize the use of military medical treatment facilities by improving the efficiency of health care operations in such facilities.

''(f) DEFINITION.—In this section the term 'TRICARE program' has the meaning given such term in section 1072 of title 10, United States Code.''

IMPROVEMENT OF ACCESS TO HEALTH CARE UNDER THE TRICARE PROGRAM

Pub. L. 107–107, div. A, title VII, §735(e), Dec. 28, 2001, 115 Stat. 1172, provided that: ''Not later than March 1, 2002, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the Secretary's plans for implementing section 721 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Pub. L. 106–398, set out below], as amended by this section.''

Pub. L. 106–398, §1 [[div. A], title VII, §721], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, as amended by Pub. L. 107–107, div. A, title VII, §735(a)–(d), Dec. 28, 2001, 115 Stat. 1171, 1172, provided that:

''(a) WAIVER OF NONAVAILABILITY STATEMENT OR PREAUTHORIZATION.—In the case of a covered beneficiary under TRICARE Standard pursuant to chapter 55 of title 10, United States Code, the Secretary of Defense may not require with regard to authorized health care services (other than mental health services) under such chapter that the beneficiary—

''(1) obtain a nonavailability statement or preauthorization from a military medical treatment facility in order to receive the services from a civilian provider; or

''(2) obtain a nonavailability statement for care in specialized treatment facilities outside the 200-mile radius of a military medical treatment facility.

''(b) WAIVER AUTHORITY.—The Secretary may waive the prohibition in subsection (a) if—

''(1) the Secretary—

''(A) demonstrates that significant costs would be avoided by performing specific procedures at the affected military medical treatment facility or facilities;

''(B) determines that a specific procedure must be provided at the affected military medical treatment facility or facilities to ensure the proficiency levels of the practitioners at the facility or facilities; or

''(C) determines that the lack of nonavailability statement data would significantly interfere with TRICARE contract administration;

''(2) the Secretary provides notification of the Secretary's intent to grant a waiver under this sub-

section to covered beneficiaries who receive care at the military medical treatment facility or facilities that will be affected by the decision to grant a waiver under this subsection;

''(3) the Secretary notifies the Committees on Armed Services of the House of Representatives and the Senate of the Secretary's intent to grant a waiver under this subsection, the reason for the waiver, and the date that a nonavailability statement will be required; and

''(4) 60 days have elapsed since the date of the notification described in paragraph (3).

''(c) WAIVER EXCEPTION FOR MATERNITY CARE.—Subsection (b) shall not apply with respect to maternity care.

''(d) EFFECTIVE DATE.—This section shall take effect on the earlier of the following:

''(1) The date that a new contract entered into by the Secretary to provide health care services under TRICARE Standard takes effect.

''(2) The date that is two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002 [Dec. 28, 2001].''.

Pub. L. 106–65, div. A, title VII, §712(a), (b), Oct. 5, 1999, 113 Stat. 687, provided that:

''(a) ACCESS.—The Secretary of Defense shall, to the maximum extent practicable, minimize the authorization and certification requirements imposed on covered beneficiaries under the TRICARE program as a condition of access to benefits under that program.

''(b) REPORT ON INITIATIVES TO IMPROVE ACCESS.—Not later than March 31, 2000, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on specific actions taken to—

''(1) reduce the requirements for preauthorization for care under the TRICARE program;

''(2) reduce the requirements for beneficiaries to obtain preventive services, such as obstetric or gynecologic examinations, mammograms for females over 35 years of age, and urological examinations for males over the age of 60 without preauthorization; and

''(3) reduce the requirements for statements of nonavailability of services.''

TRICARE MANAGED CARE SUPPORT CONTRACTS

Pub. L. 106–398, §1 [[div. A], title VII, §724], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, provided that:

''(a) AUTHORITY.—Notwithstanding any other provision of law and subject to subsection (b), any TRICARE managed care support contract in effect, or in the final stages of acquisition, on September 30, 1999, may be extended for four years.

''(b) CONDITIONS.—Any extension of a contract under subsection (a)—

''(1) may be made only if the Secretary of Defense determines that it is in the best interest of the United States to do so; and

''(2) shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Federal Government.''

Pub. L. 106–259, title VIII, §8090, Aug. 9, 2000, 114 Stat. 694, provided that: ''Notwithstanding any other provision of law, the TRICARE managed care support contracts in effect, or in final stages of acquisition as of September 30, 2000, may be extended for 2 years: *Provided*, That any such extension may only take place if the Secretary of Defense determines that it is in the best interest of the Government: *Provided further*, That any contract extension shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Government: *Provided further*, That notwithstanding any other provision of law, all future TRICARE managed care support contracts replacing contracts in effect, or in the final stages of acquisition as of September 30, 2000, may include a base contract period for transition and up to seven 1-year option periods.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 106–79, title VIII, §8095, Oct. 25, 1999, 113 Stat. 1254.

Pub. L. 105–262, title VIII, §8107, Oct. 17, 1998, 112 Stat. 2321.

REDESIGN OF MILITARY PHARMACY SYSTEM

Pub. L. 105–261, div. A, title VII, §703, Oct. 17, 1998, 112 Stat. 2057, provided that:

''(a) PLAN REQUIRED.—The Secretary of Defense shall submit to Congress a plan that would provide for a system-wide redesign of the military and contractor retail and mail-order pharmacy system of the Department of Defense by incorporating 'best business practices' of the private sector. The Secretary shall work with contractors of TRICARE retail pharmacy and national mail-order pharmacy programs to develop a plan for the redesign of the pharmacy system that—

''(1) may include a plan for an incentive-based formulary for military medical treatment facilities and contractors of TRICARE retail pharmacies and the national mail-order pharmacy; and

''(2) shall include a plan for each of the following:

''(A) A uniform formulary for such facilities and contractors.

''(B) A centralized database that integrates the patient databases of pharmacies of military medical treatment facilities and contractor retail and mail-order programs to implement automated prospective drug utilization review systems.

''(C) A system-wide drug benefit for covered beneficiaries under chapter 55 of title 10, United States Code, who are entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(b) SUBMISSION OF PLAN.—The Secretary shall submit the plan required under subsection (a) not later than March 1, 1999.

''(c) SUSPENSION OF IMPLEMENTATION OF PROGRAM.—The Secretary shall suspend any plan to establish a national retail pharmacy program for the Department of Defense until—

''(1) the plan required under subsection (a) is submitted; and

''(2) the Secretary implements cost-saving reforms with respect to the military and contractor retail and mail order pharmacy system.''

Pub. L. 105–261, div. A, title VII, §723, Oct. 17, 1998, 112 Stat. 2068, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title VII, §711(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, provided that:

''(a) IN GENERAL.—Not later than April 1, 2001, the Secretary of Defense shall implement, with respect to eligible individuals described in subsection (e), the redesign of the pharmacy system under TRICARE (including the mail-order and retail pharmacy benefit under TRICARE) to incorporate 'best business practices' of the private sector in providing pharmaceuticals, as developed under the plan described in section 703 [set out as a note above].

''(b) PROGRAM REQUIREMENTS.—The same coverage for pharmacy services and the same requirements for cost sharing and reimbursement as are applicable under section 1086 of title 10, United States Code, shall apply with respect to the program required by subsection (a).

''(c) EVALUATION.—The Secretary shall provide for an evaluation of the implementation of the redesign of the pharmacy system under TRICARE under this section by an appropriate person or entity that is independent of the Department of Defense. The evaluation shall include the following:

''(1) An analysis of the costs of the implementation of the redesign of the pharmacy system under TRICARE and to the eligible individuals who participate in the system.

''(2) An assessment of the extent to which the implementation of such system satisfies the requirements of the eligible individuals for the health care services available under TRICARE.

''(3) An assessment of the effect, if any, of the implementation of the system on military medical readiness.

''(4) A description of the rate of the participation in the system of the individuals who were eligible to participate.

''(5) An evaluation of any other matters that the Secretary considers appropriate.

''(d) REPORTS.—The Secretary shall submit two reports on the results of the evaluation under subsection (c), together with the evaluation, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives. The first report shall be submitted not later than December 31, 2001, and the second report shall be submitted not later than December 31, 2003.

''(e) ELIGIBLE INDIVIDUALS.—(1) An individual is eligible to participate under this section if the individual is a member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of that title, or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who—

''(A) is 65 years of age or older;

''(B) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.); and

''(C) except as provided in paragraph (2), is enrolled in the supplemental medical insurance program under part B of such title XVIII (42 U.S.C. 1395j et seq.).

''(2) Paragraph (1)(C) shall not apply in the case of an individual who, before April 1, 2001, has attained the age of 65 and did not enroll in the program described in such paragraph.''

SYSTEM FOR TRACKING DATA AND MEASURING PERFORMANCE IN MEETING TRICARE ACCESS STANDARDS

Pub. L. 105–261, div. A, title VII, § 713, Oct. 17, 1998, 112 Stat. 2060, provided that:

''(a) REQUIREMENT TO ESTABLISH SYSTEM.—(1) The Secretary of Defense shall establish a system—

''(A) to track data regarding access of covered beneficiaries under chapter 55 of title 10, United States Code, to primary health care under the TRICARE program; and

''(B) to measure performance in increasing such access against the primary care access standards established by the Secretary under the TRICARE program.

''(2) In implementing the system described in paragraph (1), the Secretary shall collect data on the timeliness of appointments and precise waiting times for appointments in order to measure performance in meeting the primary care access standards established under the TRICARE program.

''(b) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the system described in subsection (a) not later than April 1, 1999.''

TRICARE AS SUPPLEMENT TO MEDICARE DEMONSTRATION

Pub. L. 105–261, div. A, title VII, § 722, Oct. 17, 1998, 112 Stat. 2065, as amended by Pub. L. 106–65, div. A, title X, §§ 1066(b)(6), 1067(3), Oct. 5, 1999, 113 Stat. 773, 774, provided that:

''(a) IN GENERAL.—(1) The Secretary of Defense shall, after consultation with the other administering Secretaries, carry out a demonstration project in order to assess the feasibility and advisability of providing medical care coverage under the TRICARE program to the individuals described in subsection (c). The demonstration project shall be known as the 'TRICARE Senior Supplement'.

''(2) The Secretary shall commence the demonstration project not later than January 1, 2000, and shall terminate the demonstration project not later than December 31, 2002.

''(3) Under the demonstration project, the Secretary shall permit eligible individuals described in subsection (c) to enroll in the TRICARE program.

''(4) Payment for care and services received by eligible individuals who enroll in the TRICARE program under the demonstration project shall be made as follows:

''(A) First, under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], but only to the extent that payment for such care and services is provided for under that title.

''(B) Second, under the TRICARE program, but only to the extent that payment for such care and services is provided under that program and is not provided for under subparagraph (A).

''(C) Third, by the eligible individual concerned, but only to the extent that payment for such care and services is not provided for under subparagraph (A) or (B).

''(5)(A) The Secretary shall require each eligible individual who enrolls in the TRICARE program under the demonstration project to pay an enrollment fee. The Secretary shall provide, to the extent feasible, the option of payment of the enrollment fee through electronic transfers of funds and through withholding of such payment from the pay of a member or former member of the Armed Forces, and shall provide the option that payment of the enrollment fee be made in full at the beginning of the enrollment period or that payments be made on a monthly or quarterly basis.

''(B) The amount of the enrollment fee charged an eligible individual under subparagraph (A) for self-only or family enrollment in any year may not exceed the amount equal to 75 percent of the total subscription charges in that year for self-only or family, respectively, fee-for-service coverage under the health benefits plan under the Federal Employees Health Benefits program under chapter 89 of title 5, United States Code, that is most similar in coverage to the TRICARE program.

''(6) A covered beneficiary who enrolls in TRICARE Senior Supplement under this subsection shall not be eligible to receive health care at a facility of the uniformed services during the period such enrollment is in effect.

''(b) EVALUATION; REVIEW.—(1) The Secretary shall provide for an evaluation of the demonstration project conducted under this subsection by an appropriate person or entity that is independent of the Department of Defense. The evaluation shall include the following:

''(A) An analysis of the costs of the demonstration project to the United States and to the eligible individuals who participate in such demonstration project.

''(B) An assessment of the extent to which the demonstration project satisfies the requirements of such eligible individuals for the health care services available under the demonstration project.

''(C) An assessment of the effect, if any, of the demonstration project on military medical readiness.

''(D) A description of the rate of the enrollment in the demonstration project of the individuals who were eligible to enroll in the demonstration project.

''(E) An assessment of whether the demonstration project provides the most suitable model for a program to provide adequate health care services to the population of individuals consisting of the eligible individuals.

''(F) An evaluation of any other matters that the Secretary considers appropriate.

''(2) The Comptroller General shall review the evaluation conducted under paragraph (1). In carrying out the review, the Comptroller General shall—

''(A) assess the validity of the processes used in the evaluation; and

''(B) assess the validity of any findings under the evaluation, including any limitations with respect to the data contained in the evaluation as a result of the size and design of the demonstration project.

''(3)(A) The Secretary shall submit a report on the results of the evaluation under paragraph (1), together with the evaluation, to the Committee on Armed Services of the Senate and the Committee on Armed Serv-

ices of the House of Representatives not later than December 31, 2002.

''(B) The Comptroller General shall submit a report on the results of the review under paragraph (2) to the committees referred to in subparagraph (A) not later than February 15, 2003.

''(c) ELIGIBLE INDIVIDUALS.—An individual is eligible to participate under this section if the individual is a member or former member of the uniformed services described in section 1074(b) of title 10, United States Code, a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of that title, or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who—

''(1) is 65 years of age or older;

''(2) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);

''(3) is enrolled in the supplemental medical insurance program under part B of such title XVIII (42 U.S.C. 1395j et seq.); and

''(4) resides in an area selected by the Secretary under subsection (d).

''(d) AREAS OF IMPLEMENTATION.—(1) The Secretary shall carry out the demonstration project under this section in two separate areas selected by the Secretary.

''(2) The areas selected by the Secretary under paragraph (1) shall be as follows:

''(A) One area shall be an area outside the catchment area of a military medical treatment facility in which—

''(i) no eligible organization has a contract in effect under section 1876 of the Social Security Act (42 U.S.C. 1395mm) and no Medicare+Choice organization has a contract in effect under part C of title XVIII of that Act (42 U.S.C. 1395w–21 [et seq.]); or

''(ii) the aggregate number of enrollees with an eligible organization with a contract in effect under section 1876 of that Act or with a Medicare+Choice organization with a contract in effect under part C of title XVIII of that Act is less than 2.5 percent of the total number of individuals in the area who are entitled to hospital insurance benefits under part A of title XVIII of that Act.

''(B) The other area shall be an area outside the catchment area of a military medical treatment facility in which—

''(i) at least one eligible organization has a contract in effect under section 1876 of that Act or one Medicare+Choice organization has a contract in effect under part C of title XVIII of that Act; and

''(ii) the aggregate number of enrollees with an eligible organization with a contract in effect under section 1876 of that Act or with a Medicare+Choice organization with a contract in effect under part C of title XVIII of that Act exceeds 10 percent of the total number of individuals in the area who are entitled to hospital insurance benefits under part A of title XVIII of that Act.

''(e) DEFINITIONS.—In this section:

''(1) The term 'administering Secretaries' has the meaning given that term in section 1072(3) of title 10, United States Code.

''(2) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.''

STUDY CONCERNING PROVISION OF COMPARATIVE INFORMATION

Pub. L. 105–85, div. A, title VII, §703, Nov. 18, 1997, 111 Stat. 1807, provided that:

''(a) STUDY.—The Secretary of Defense shall conduct a study concerning the provision of the information described in subsection (b) to beneficiaries under the TRICARE program established under the authority of chapter 55 of title 10, United States Code, and prepare and submit to Congress a report concerning such study.

''(b) PROVISION OF COMPARATIVE INFORMATION.—Information described in this subsection, with respect to a managed care entity that contracts with the Secretary of Defense to provide medical assistance under the program described in subsection (a), shall include the following:

''(1) The benefits covered by the entity involved, including—

''(A) covered items and services beyond those provided under a traditional fee-for-service program;

''(B) any beneficiary cost sharing; and

''(C) any maximum limitations on out-of-pocket expenses.

''(2) The net monthly premium, if any, under the entity.

''(3) The service area of the entity.

''(4) To the extent available, quality and performance indicators for the benefits under the entity (and how they compare to such indicators under the traditional fee-for-service programs in the area involved), including—

''(A) disenrollment rates for enrollees electing to receive benefits through the entity for the previous two years (excluding disenrollment due to death or moving outside the service area of the entity);

''(B) information on enrollee satisfaction;

''(C) information on health process and outcomes;

''(D) grievance procedures;

''(E) the extent to which an enrollee may select the health care provider of their [sic] choice, including health care providers within the network of the entity and out-of-network health care providers (if the entity covers out-of-network items and services); and

''(F) an indication of enrollee exposure to balance billing and the restrictions on coverage of items and services provided to such enrollee by an out-of-network health care provider.

''(5) Whether the entity offers optional supplemental benefits and the terms and conditions (including premiums) for such coverage.

''(6) An overall summary description as to the method of compensation of participating physicians.''

DISCLOSURE OF CAUTIONARY INFORMATION ON PRESCRIPTION MEDICATIONS

Pub. L. 105–85, div. A, title VII, §744, Nov. 18, 1997, 111 Stat. 1820, provided that:

''(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense, in consultation with the administering Secretaries referred to in section 1073 of title 10, United States Code, shall prescribe regulations to require each source described in subsection (d) that dispenses a prescription medication to a beneficiary under chapter 55 of such title to include with the medication the written cautionary information required by subsection (b).

''(b) INFORMATION TO BE DISCLOSED.—Information required to be disclosed about a medication under the regulations shall include appropriate cautions about usage of the medication, including possible side effects and potentially hazardous interactions with foods.

''(c) FORM OF INFORMATION.—The regulations shall require that information be furnished in a form that, to the maximum extent practicable, is easily read and understood.

''(d) COVERED SOURCES.—The regulations shall apply to the following:

''(1) Pharmacies and any other dispensers of prescription medications in medical facilities of the uniformed services.

''(2) Sources of prescription medications under any mail order pharmaceuticals program provided by any of the administering Secretaries under chapter 55 of title 10, United States Code.

''(3) Pharmacies paid under the Civilian Health and Medical Program of the Uniformed Services (including the TRICARE program).

''(4) Pharmacies, and any other pharmaceutical dispensers, of designated providers referred to in section 721(5) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note).''

COMPETITIVE PROCUREMENT OF OPHTHALMIC SERVICES

Pub. L. 105–85, div. A, title VII, §745, Nov. 18, 1997, 111 Stat. 1820, provided that:

''(a) COMPETITIVE PROCUREMENT REQUIRED.—Beginning not later than October 1, 1998, the Secretary of Defense shall competitively procure from private-sector sources, or other sources outside of the Department of Defense, all ophthalmic services related to the provision of single vision and multivision eyeware for members of the Armed Forces, retired members, and certain covered beneficiaries under chapter 55 of title 10, United States Code, who would otherwise receive such ophthalmic services through the Department of Defense.

''(b) EXCEPTION.—Subsection (a) shall not apply to the extent that the Secretary of Defense determines that the use of sources within the Department of Defense to provide such ophthalmic services—

''(1) is necessary to meet the readiness requirements of the Armed Forces; or

''(2) is more cost effective.

''(c) COMPLETION OF EXISTING ORDERS.—Subsection (a) shall not apply to orders for ophthalmic services received on or before September 30, 1998.''

INCLUSION OF CERTAIN DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM

Pub. L. 104–201, div. A, title VII, subtitle C, Sept. 23, 1996, 110 Stat. 2592, as amended by Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8131(a)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–117; Pub. L. 105–85, div. A, title VII, §§721–723, Nov. 18, 1997, 111 Stat. 1809, 1810; Pub. L. 106–65, div. A, title VII, §707, Oct. 5, 1999, 113 Stat. 684; Pub. L. 107–296, title XVII, §1704(e)(2), Nov. 25, 2002, 116 Stat. 2315, provided that:

''SEC. 721. DEFINITIONS.

''In this subtitle:

''(1) The term 'administering Secretaries' means the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Health and Human Services.

''(2) The term 'agreement' means the agreement required under section 722(b) between the Secretary of Defense and a designated provider.

''(3) The term 'capitation payment' means an actuarially sound payment for a defined set of health care services that is established on a per enrollee per month basis.

''(4) The term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(5) The term 'designated provider' means a public or nonprofit private entity that was a transferee of a Public Health Service hospital or other station under section 987 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 42 U.S.C. 248b) and that, before the date of the enactment of this Act [Sept. 23, 1996], was deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code. The term includes any legal successor in interest of the transferee.

''(6) The term 'enrollee' means a covered beneficiary who enrolls with a designated provider.

''(7) The term 'health care services' means the health care services provided under the health plan known as the 'TRICARE PRIME' option under the TRICARE program.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''SEC. 722. INCLUSION OF DESIGNATED PROVIDERS IN UNIFORMED SERVICES HEALTH CARE DELIVERY SYSTEM.

''(a) INCLUSION IN SYSTEM.—The health care delivery system of the uniformed services shall include the designated providers.

''(b) AGREEMENTS TO PROVIDE MANAGED HEALTH CARE SERVICES.—(1) After consultation with the other administering Secretaries, the Secretary of Defense shall negotiate and enter into an agreement with each designated provider under which the designated provider will provide health care services in or through managed care plans to covered beneficiaries who enroll with the designated provider.

''(2) The agreement shall be entered into on a sole source basis. The Federal Acquisition Regulation, except for those requirements regarding competition, issued pursuant to section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)) shall apply to the agreements as acquisitions of commercial items.

''(3) The implementation of an agreement is subject to availability of funds for such purpose.

''(c) EFFECTIVE DATE OF AGREEMENTS.—(1) Unless an earlier effective date is agreed upon by the Secretary and the designated provider, the agreement shall take effect upon the later of the following:

''(A) The date on which a managed care support contract under the TRICARE program is implemented in the service area of the designated provider.

''(B) October 1, 1997.

''(2) The Secretary may modify the effective date established under paragraph (1) for an agreement to permit a transition period of not more than six months between the date on which the agreement is executed by the parties and the date on which the designated provider commences the delivery of health care services under the agreement.

''(d) TEMPORARY CONTINUATION OF EXISTING PARTICIPATION AGREEMENTS.—The Secretary shall extend the participation agreement of a designated provider in effect immediately before the date of the enactment of this Act [Sept. 23, 1996] under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [former] 42 U.S.C. 248c [note]) until the agreement required by this section takes effect under subsection (c), including any transitional period provided by the Secretary under paragraph (2) of such subsection.

''(e) SERVICE AREA.—The Secretary may not reduce the size of the service area of a designated provider below the size of the service area in effect as of September 30, 1996.

''(f) COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS.—(1) Unless otherwise agreed upon by the Secretary and a designated provider, the designated provider shall comply with necessary and appropriate administrative requirements established by the Secretary for other providers of health care services and requirements established by the Secretary of Health and Human Services for risk-sharing contractors under section 1876 of the Social Security Act (42 U.S.C. 1395mm). The Secretary and the designated provider shall determine and apply only such administrative requirements as are minimally necessary and appropriate. A designated provider shall not be required to comply with a law or regulation of a State government requiring licensure as a health insurer or health maintenance organization.

''(2) A designated provider may not contract out more than five percent of its primary care enrollment without the approval of the Secretary, except in the case of primary care contracts between a designated provider and a primary care contractor in force on the date of the enactment of this Act [Sept. 23, 1996].

''(g) CONTINUED ACQUISITION OF REDUCED-COST DRUGS.—A designated provider shall be treated as part of the Department of Defense for purposes of section 8126 of title 38, United States Code, in connection with the provision by the designated provider of health care services to covered beneficiaries pursuant to the par-

ticipation agreement of the designated provider under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; [former] 42 U.S.C. 248c note) or pursuant to the agreement entered into under subsection (b).

''SEC. 723. PROVISION OF UNIFORM BENEFIT BY DESIGNATED PROVIDERS.

''(a) UNIFORM BENEFIT REQUIRED.—A designated provider shall offer to enrollees the health benefit option prescribed and implemented by the Secretary under section 731 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 1073 note), including accompanying cost-sharing requirements.

''(b) TIME FOR IMPLEMENTATION OF BENEFIT.—A designated provider shall offer the health benefit option described in subsection (a) to enrollees upon the later of the following:

''(1) The date on which health care services within the health care delivery system of the uniformed services are rendered through the TRICARE program in the region in which the designated provider operates.

''(2) October 1, 1997.

''(c) ADJUSTMENTS.—The Secretary may establish a later date under subsection (b)(2) or prescribe reduced cost-sharing requirements for enrollees.

''SEC. 724. ENROLLMENT OF COVERED BENEFICIARIES.

''(a) FISCAL YEAR 1997 LIMITATION.—(1) During fiscal year 1997, the number of covered beneficiaries who are enrolled in managed care plans offered by designated providers may not exceed the number of such enrollees as of October 1, 1995.

''(2) The Secretary may waive the limitation under paragraph (1) if the Secretary determines that additional enrollment authority for a designated provider is required to accommodate covered beneficiaries who are dependents of members of the uniformed services entitled to health care under section 1074(a) of title 10, United States Code.

''(b) PERMANENT LIMITATION.—For each fiscal year beginning after September 30, 1997, the number of enrollees in managed care plans offered by designated providers may not exceed 110 percent of the number of such enrollees as of the first day of the immediately preceding fiscal year. The Secretary may waive this limitation as provided in subsection (a)(2).

''(c) RETENTION OF CURRENT ENROLLEES.—An enrollee in the managed care plan of a designated provider as of September 30, 1997, or such earlier date as the designated provider and the Secretary may agree upon, shall continue receiving services from the designated provider pursuant to the agreement entered into under section 722 unless the enrollee disenrolls from the designated provider. Except as provided in subsection (e), the administering Secretaries may not disenroll such an enrollee unless the disenrollment is agreed to by the Secretary and the designated provider.

''(d) ADDITIONAL ENROLLMENT AUTHORITY.—Other covered beneficiaries may also receive health care services from a designated provider, except that the designated provider may market such services to, and enroll, only those covered beneficiaries who—

''(1) do not have other primary health insurance coverage (other than Medicare coverage) covering basic primary care and inpatient and outpatient services; or

''(2) are enrolled in the direct care system under the TRICARE program, regardless of whether the covered beneficiaries were users of the health care delivery system of the uniformed services in prior years.

''(e) SPECIAL RULE FOR MEDICARE-ELIGIBLE BENEFICIARIES.—If a covered beneficiary who desires to enroll in the managed care program of a designated provider is also entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), the covered beneficiary shall elect whether to receive health care services as an enrollee or under part A of title XVIII of the Social Security Act. The Secretary may disenroll an enrollee who subsequently violates the election made under this subsection and receives benefits under part A of title XVIII of the Social Security Act.

''(f) INFORMATION REGARDING ELIGIBLE COVERED BENEFICIARIES.—The Secretary shall provide, in a timely manner, a designated provider with an accurate list of covered beneficiaries within the marketing area of the designated provider to whom the designated provider may offer enrollment.

''(g) OPEN ENROLLMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program under which covered beneficiaries shall be permitted to enroll at any time in a managed care plan offered by a designated provider consistent with the enrollment requirements for the TRICARE Prime option under the TRICARE program, but without regard to the limitation in subsection (b). The demonstration program under this subsection shall cover designated providers, selected by the Secretary of Defense, and the service areas of the designated providers.

''(2) The demonstration program carried out under this section shall commence on October 1, 1999, and end on September 30, 2001.

''(3) Not later than March 15, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program carried out under this subsection. The report shall include, at a minimum, an evaluation of the benefits of the open enrollment opportunity to covered beneficiaries and a recommendation on whether to authorize open enrollments in the managed care plans of designated providers permanently.

''SEC. 725. APPLICATION OF CHAMPUS PAYMENT RULES.

''(a) APPLICATION OF PAYMENT RULES.—Subject to subsection (b), the Secretary shall require a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services to apply the payment rules described in section 1074(c) of title 10, United States Code, in imposing charges for health care that the private facility or provider provides to enrollees of a designated provider.

''(b) AUTHORIZED ADJUSTMENTS.—The payment rules imposed under subsection (a) shall be subject to such modifications as the Secretary considers appropriate. The Secretary may authorize a lower rate than the maximum rate that would otherwise apply under subsection (a) if the lower rate is agreed to by the designated provider and the private facility or health care provider.

''(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section after consultation with the other administering Secretaries.

''(d) CONFORMING AMENDMENT.—[Amended section 1074 of this title.]

''SEC. 726. PAYMENTS FOR SERVICES.

''(a) FORM OF PAYMENT.—Unless otherwise agreed to by the Secretary and a designated provider, the form of payment for health care services provided by a designated provider shall be on a full risk capitation payment basis. The capitation payments shall be negotiated and agreed upon by the Secretary and the designated provider. In addition to such other factors as the parties may agree to apply, the capitation payments shall be based on the utilization experience of enrollees and competitive market rates for equivalent health care services for a comparable population to such enrollees in the area in which the designated provider is located.

''(b) LIMITATION ON TOTAL PAYMENTS.—Total capitation payments for health care services to a designated provider shall not exceed an amount equal to the cost that would have been incurred by the Government if the enrollees had received such health care services through a military treatment facility, the TRICARE

program, or the Medicare program, as the case may be. In establishing the ceiling rate for enrollees with the designated providers who are also eligible for the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense shall take into account the health status of the enrollees.

''(c) ESTABLISHMENT OF PAYMENT RATES ON ANNUAL BASIS.—The Secretary and a designated provider shall establish capitation payments on an annual basis, subject to periodic review for actuarial soundness and to adjustment for any adverse or favorable selection reasonably anticipated to result from the design of the program under this subtitle.

''(d) ALTERNATIVE BASIS FOR CALCULATING PAYMENTS.—After September 30, 1999, the Secretary and a designated provider may mutually agree upon a new basis for calculating capitation payments.

''SEC. 727. REPEAL OF SUPERSEDED AUTHORITIES.

''(a) REPEALS.—[Repealed sections 248c and 248d of Title 42, The Public Health and Welfare, and section 718(c) of Pub. L. 101–510 and section 726 of Pub. L. 104–106, set out as notes under section 248c of Title 42.]

''(b) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) of subsection (a) shall take effect on October 1, 1997.''

[Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8131(b)], Sept. 30, 1996, 110 Stat. 3009–71, 3009–117, provided that: ''The amendments made by subsection (a) [amending section 722 of Pub. L. 104–201, set out above] shall take effect as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 [Sept. 23, 1996] as if section 722 of such Act had been enacted as so amended.'']

DEFINITION OF TRICARE PROGRAM

Pub. L. 104–106, div. A, title VII, §711, Feb. 10, 1996, 110 Stat. 374, provided that: ''For purposes of this subtitle [subtitle B (§§711–718) of title VII of div. A of Pub. L. 104–106, amending section 1097 of this title, enacting provisions set out as notes below, and amending provisions set out as a note below], the term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.''

TRAINING IN HEALTH CARE MANAGEMENT AND ADMINISTRATION FOR TRICARE LEAD AGENTS

Pub. L. 104–106, div. A, title VII, §715, Feb. 10, 1996, 110 Stat. 375, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §760(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–200, provided that:

''(a) PROVISION OF TRAINING.—The Secretary of Defense shall implement a professional educational program to provide appropriate training in health care management and administration—

''(1) to each commander, deputy commander, and managed care coordinator of a military medical treatment facility of the Department of Defense, and any other person, who is selected to serve as a lead agent to coordinate the delivery of health care by military and civilian providers under the TRICARE program; and

''(2) to appropriate members of the support staff of the treatment facility who will be responsible for daily operation of the TRICARE program.

''(b) LIMITATION ON ASSIGNMENT UNTIL COMPLETION OF TRAINING.—No person may be assigned as the commander, deputy commander, or managed care coordinator of a military medical treatment facility or as a TRICARE lead agent or senior member of the staff of a TRICARE lead agent office until the Secretary of the military department concerned submits a certification to the Secretary of Defense that such person has completed the training described in subsection (a).''

[Pub. L. 106–398, §1 [[div. A], title VII, §760(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–200, provided that: ''The amendments made by subsection (a) to section 715 of such Act [section 715 of Pub. L. 104–106, set out above]—

[''(1) shall apply to a deputy commander, a managed care coordinator of a military medical treatment facility, or a lead agent for coordinating the delivery of health care by military and civilian providers under the TRICARE program, who is assigned to such position on or after the date that is one year after the date of the enactment of this Act [Oct. 30, 2000]; and

[''(2) may apply, in the discretion of the Secretary of Defense, to a deputy commander, a managed care coordinator of such a facility, or a lead agent for coordinating the delivery of such health care, who is assigned to such position before the date that is one year after the date of the enactment of this Act.'']

PILOT PROGRAM OF INDIVIDUALIZED RESIDENTIAL MENTAL HEALTH SERVICES

Pub. L. 104–106, div. A, title VII, §716, Feb. 10, 1996, 110 Stat. 375, provided that:

''(a) PROGRAM REQUIRED.—(1) During fiscal year 1996, the Secretary of Defense, in consultation with the other administering Secretaries under chapter 55 of title 10, United States Code, shall implement a pilot program to provide residential and wraparound services to children described in paragraph (2) who are in need of mental health services. The Secretary shall implement the pilot program for an initial period of at least two years in a military health care region in which the TRICARE program has been implemented.

''(2) A child shall be eligible for selection to participate in the pilot program if the child is a dependent (as described in subparagraph (D) or (I) of section 1072(2) of title 10, United States Code) who—

''(A) is eligible for health care under section 1079 or 1086 of such title; and

''(B) has a serious emotional disturbance that is generally regarded as amenable to treatment.

''(b) WRAPAROUND SERVICES DEFINED.—For purposes of this section, the term 'wraparound services' means individualized mental health services that are provided principally to allow a child to remain in the family home or other least-restrictive and least-costly setting, but also are provided as an aftercare planning service for children who have received acute or residential care. Such term includes nontraditional mental health services that will assist the child to be maintained in the least-restrictive and least-costly setting.

''(c) PILOT PROGRAM AGREEMENT.—Under the pilot program the Secretary of Defense shall enter into one or more agreements that require a mental health services provider under the agreement—

''(1) to provide wraparound services to a child described in subsection (a)(2);

''(2) to continue to provide such services as needed during the period of the agreement even if the child moves to another location within the same TRICARE program region during that period; and

''(3) to share financial risk by accepting as a maximum annual payment for such services a case-rate reimbursement not in excess of the amount of the annual standard CHAMPUS residential treatment benefit payable (as determined in accordance with section 8.1 of chapter 3 of volume II of the CHAMPUS policy manual).

''(d) REPORT.—Not later than March 1, 1998, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the program carried out under this section. The report shall contain—

''(1) an assessment of the effectiveness of the program; and

''(2) the Secretary's views regarding whether the program should be implemented throughout the military health care system.''

EVALUATION AND REPORT ON TRICARE PROGRAM EFFECTIVENESS

Pub. L. 104–106, div. A, title VII, § 717, Feb. 10, 1996, 110 Stat. 376, provided that:

''(a) EVALUATION REQUIRED.—The Secretary of Defense shall arrange for an on-going evaluation of the effectiveness of the TRICARE program in meeting the goals of increasing the access of covered beneficiaries under chapter 55 of title 10, United States Code, to health care and improving the quality of health care provided to covered beneficiaries, without increasing the costs incurred by the Government or covered beneficiaries. The evaluation shall specifically address—

''(1) the impact of the TRICARE program on military retirees with regard to access, costs, and quality of health care services; and

''(2) identify noncatchment areas in which the health maintenance organization option of the TRICARE program is available or is proposed to become available.

''(b) ENTITY TO CONDUCT EVALUATION.—The Secretary may use a federally funded research and development center to conduct the evaluation required by subsection (a).

''(c) ANNUAL REPORT.—Not later than March 1, 1997, and each March 1 thereafter, the Secretary shall submit to Congress a report describing the results of the evaluation under subsection (a) during the preceding year.''

USE OF HEALTH MAINTENANCE ORGANIZATION MODEL AS OPTION FOR MILITARY HEALTH CARE

Pub. L. 103–160, div. A, title VII, § 731, Nov. 30, 1993, 107 Stat. 1696, as amended by Pub. L. 103–337, div. A, title VII, § 715, Oct. 5, 1994, 108 Stat. 2803; Pub. L. 104–106, div. A, title VII, § 714, Feb. 10, 1996, 110 Stat. 374, provided that:

''(a) USE OF MODEL.—The Secretary of Defense shall prescribe and implement a health benefit option (and accompanying cost-sharing requirements) for covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code, that is modelled on health maintenance organization plans offered in the private sector and other similar Government health insurance programs. The Secretary shall include, to the maximum extent practicable, the health benefit option required under this subsection as one of the options available to covered beneficiaries in all managed health care initiatives undertaken by the Secretary after December 31, 1994.

''(b) ELEMENTS OF OPTION.—The Secretary shall offer covered beneficiaries who enroll in the health benefit option required under subsection (a) reduced out-of-pocket costs and a benefit structure that is as uniform as possible throughout the United States. The Secretary shall allow enrollees to seek health care outside of the option, except that the Secretary may prescribe higher out-of-pocket costs than are provided under section 1079 or 1086 of title 10, United States Code, for enrollees who obtain health care outside of the option.

''(c) GOVERNMENT COSTS.—The health benefit option required under subsection (a) shall be administered so that the costs incurred by the Secretary under the TRICARE program are no greater than the costs that would otherwise be incurred to provide health care to the members of the uniformed services and covered beneficiaries who participate in the TRICARE program.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'covered beneficiary' means a beneficiary under chapter 55 of title 10, United States Code, other than a beneficiary under section 1074(a) of such title.

''(2) The term 'TRICARE program' means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of such title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''(e) REGULATIONS.—Not later than December 31, 1994, the Secretary shall prescribe final regulations to implement the health benefit option required by subsection (a).

''(f) MODIFICATION OF EXISTING CONTRACTS.—In the case of managed health care contracts in effect or in final stages of acquisition as of December 31, 1994, the Secretary may modify such contracts to incorporate the health benefit option required under subsection (a).''

MANAGED HEALTH CARE PROGRAM AND CONTRACTS FOR MILITARY HEALTH SERVICES SYSTEM

Pub. L. 104–61, title VI, Dec. 1, 1995, 109 Stat. 649, provided in part: ''That the date for implementation of the nation-wide managed care military health services system shall be extended to September 30, 1997''.

Pub. L. 103–139, title VIII, § 8025, Nov. 11, 1993, 107 Stat. 1443, provided that: ''Notwithstanding any other provision of law, to establish region-wide, at-risk, fixed price managed care contracts possessing features similar to those of the CHAMPUS Reform Initiative, the Secretary of Defense shall submit to the Congress a plan to implement a nation-wide managed health care program for the military health services system not later than December 31, 1993: *Provided*, That the program shall include, but not be limited to: (1) a uniform, stabilized benefit structure characterized by a triple option health benefit feature; (2) a regionally-based health care management system; (3) cost minimization incentives including 'gatekeeping' and annual enrollment procedures, capitation budgeting, and at-risk managed care support contracts; and (4) full and open competition for all managed care support contracts: *Provided further*, That the implementation of the nation-wide managed care military health services system shall be completed by September 30, 1996: *Provided further*, That the Department shall competitively award contracts in fiscal year 1994 for at least four new region-wide, at-risk, fixed price managed care support contracts consistent with the nation-wide plan, that one such contract shall include the State of Florida (which may include Department of Veterans Affairs' medical facilities with the concurrence of the Secretary of Veterans Affairs), one such contract shall include the States of Washington and Oregon, and one such contract shall include the State of Texas: *Provided further*, That any law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery, administration, and financing methods shall be preempted and shall not apply to any region-wide, at-risk, fixed price managed care contract entered into pursuant to chapter 55 of title 10, United States Code: *Provided further*, That the Department shall competitively award within 13 months after the date of enactment of this Act [Nov. 11, 1993] two contracts for stand-alone, at-risk managed mental health services in high utilization, high-cost areas, consistent with the management and service delivery features in operation in Department of Defense managed mental health care contracts: *Provided further*, That the Assistant Secretary of Defense for Health Affairs shall, during the current fiscal year, initiate through competitive procedures a managed health care program for eligible beneficiaries in the area of Homestead Air Force Base with benefits and services substantially identical to those established to serve beneficiary populations in areas where military medical facilities have been terminated, to include retail pharmacy networks available to Medicare-eligible beneficiaries, and shall present a plan to implement this program to the House and Senate Committees on Appropriations not later than January 15, 1994.''

CONDITION ON EXPANSION OF CHAMPUS REFORM INITIATIVE TO OTHER LOCATIONS

Pub. L. 102–484, div. A, title VII, § 712, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title

VII, § 720, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 714(c), Oct. 5, 1994, 108 Stat. 2803, provided that:

''(a) CONDITION.—(1) Except as provided in subsection (b), the Secretary of Defense may not expand the CHAMPUS reform initiative underway in the States of California and Hawaii to another location until not less than 90 days after the date on which the Secretary certifies to Congress that expansion of the initiative to that location is the most efficient method of providing health care to covered beneficiaries in that location. In determining whether the expansion of the CHAMPUS reform initiative to a location is the most efficient method of providing health care to covered beneficiaries in that location, the Secretary shall consider the cost-effectiveness of the initiative (while assuring that the combined cost of care in military treatment facilities and under the Civilian Health and Medical Program of the Uniformed Services will not be increased as a result of the expansion) and the effect of the expansion of the initiative on the access of covered beneficiaries to health care and on the quality of health care received by covered beneficiaries.

''(2) To the extent any revision of the CHAMPUS reform initiative is necessary in order to make the certification required by this subsection, the Secretary shall assure that enrolled covered beneficiaries may obtain health care services with reduced out-of-pocket costs, as compared to standard CHAMPUS.

''(b) EXCEPTION.—The Secretary of Defense may waive the operation of the condition on the expansion of the CHAMPUS reform initiative specified in subsection (a) in order to expand the initiative to a location adversely affected by the closure or realignment of a military installation in that location, as determined by the Secretary.

''(c) EVALUATION OF CERTIFICATION.—The Comptroller General of the United States and the Director of the Congressional Budget Office shall evaluate each certification made by the Secretary of Defense under subsection (a) that expansion of the CHAMPUS reform initiative to another location is the most efficient method of providing health care to covered beneficiaries in that location. They shall submit their findings to Congress if these findings differ substantially from the findings upon which the Secretary made the decision to expand the CHAMPUS reform initiative.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The terms 'CHAMPUS reform initiative' and 'initiative' mean the health care delivery project required by section 702 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 10 U.S.C. 1073 note).

''(2) The term 'covered beneficiary' has the meaning given that term in section 1072(5) of title 10, United States Code.

''(3) The terms 'Civilian Health and Medical Program of the Uniformed Services' and 'CHAMPUS' have the meaning given the term 'Civilian Health and Medical Program of the Uniformed Services' in section 1072(4) of title 10, United States Code.''

ALTERNATIVE HEALTH CARE DELIVERY METHODOLOGIES

Pub. L. 102–484, div. A, title VII, § 713, Oct. 23, 1992, 106 Stat. 2435, as amended by Pub. L. 103–160, div. A, title VII, § 719, Nov. 30, 1993, 107 Stat. 1694, provided that:

''(a) CONTINUATION OF HEALTH CARE REFORM INITIATIVES.—(1) During fiscal years 1993 through 1996, the Secretary of Defense shall continue to conduct a broad array of reform initiatives for furnishing health care to persons who are eligible to receive health care under chapter 55 of title 10, United States Code.

''(2) The health care reform initiatives conducted in accordance with paragraph (1) shall include CHAMPUS alternatives, the CHAMPUS reform initiative, catchment area management, coordinated care, and such other reform initiatives as the Secretary of Defense considers to be appropriate.

''(3) Not later than September 30, 1994, the Secretary shall submit to Congress a report regarding the health care reform initiatives conducted during fiscal years 1993 and 1994. The report shall include a discussion of the cost effectiveness of the initiatives and the extent to which the persons who received health care under such initiatives are satisfied with that health care.

''(b) CONTINUATION OF CHAMPUS REFORM INITIATIVE IN HAWAII AND CALIFORNIA.—(1) The Secretary of Defense shall ensure that a replacement or successor contract for the CHAMPUS reform initiative contract applicable to the States of California and Hawaii is awarded in sufficient time for the contractor to begin to provide health care in those States under the replacement or successor contract as soon as practicable after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''(2) The Secretary shall use competitive procedures for awarding a replacement or successor contract under paragraph (1).

''(c) EVALUATION OF CHAMPUS REFORM INITIATIVE.—(1) Not later than June 1, 1994, the Secretary of Defense shall enter into a contract with a non-Federal entity under which the entity will perform an evaluation of the performance of the CHAMPUS reform initiative in the States of California and Hawaii. The evaluation shall cover each of the fiscal years during which the initiative is carried out in those States under the replacement or successor contract referred to in subsection (b) and under the predecessor contracts. The evaluation shall include a comparison of the cost savings and claims experience resulting in each such fiscal year from carrying out the CHAMPUS reform initiative in those States.

''(2) Not later than one year after the date on which the contract for evaluation is entered into under paragraph (1), the non-Federal entity making the evaluation shall submit to the Secretary and to Congress a report on the results of the evaluation.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The term 'CHAMPUS' means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of section 1072 of title 10, United States Code.

''(2) The term 'covered beneficiary' has the meaning given that term in paragraph (5) of such section.

''(3) The term 'CHAMPUS reform initiative' means the health care delivery project required by section 702 of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 10 U.S.C. 1073 note).

''(4) The term 'catchment area management' means the methodology provided for demonstration in accordance with section 731 of the National Defense Authorization Act for Fiscal Years 1988 and 1989 (Public Law 100–180; 10 U.S.C. 1092 note).''

MILITARY HEALTH CARE FOR PERSONS RELIANT ON HEALTH CARE FACILITIES AT BASES BEING CLOSED OR REALIGNED

Pub. L. 102–484, div. A, title VII, § 722, Oct. 23, 1992, 106 Stat. 2439, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a joint services working group on the provision of military health care to persons who rely for health care on health care facilities at military installations being closed or realigned.

''(b) MEMBERSHIP.—The members of the working group shall include the Assistant Secretary of Defense for Health Affairs, the Surgeon General of the Army, the Surgeon General of the Navy, the Surgeon General of the Air Force, or a designee of each such person, and one independent member appointed by the Secretary of Defense from among private citizens whose interest in matters within the responsibility of the working group qualify that person to represent all personnel entitled to health care under chapter 55 of title 10, United States Code.

''(c) DUTIES.—(1) In the case of each closure or realignment of a military installation that will adversely affect the accessibility of health care in a facility of the uniformed services for persons entitled to such health care under chapter 55 of title 10, United States

Code, the working group shall solicit the views of such persons regarding suitable substitutes for the furnishing of health care to those persons under that chapter.

''(2) In carrying out paragraph (1), the working group—

''(A) shall conduct meetings with persons referred to in that paragraph, or representatives of such persons;

''(B) may use reliable sampling techniques;

''(C) shall visit the areas where closures or realignments of military installations will adversely affect the accessibility of health care in a facility of the uniformed services for persons referred to in paragraph (1) and shall conduct public meetings; and

''(D) shall ensure that members of the uniformed services on active duty, members and former members of the uniformed services entitled to retired or retainer pay, and dependents and survivors of such members and retired personnel are afforded the opportunity to express views.

''(d) RECOMMENDATIONS.—With respect to each closure and realignment of a military installation referred to in subsection (c), the working group shall submit to the Congress and the Secretary of Defense the working group's recommendations regarding the alternative means for continuing to provide accessible health care under chapter 55 of title 10, United States Code, to persons referred to in that subsection.

''(e) APPLICATION OF ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the joint services working group established pursuant to this section.''

AUTHORIZATION FOR EXTENSION OF CHAMPUS REFORM INITIATIVE

Pub. L. 102–190, div. A, title VII, §722, Dec. 5, 1991, 105 Stat. 1406, provided that:

''(a) AUTHORITY.—Upon the termination (for any reason) of the contract of the Department of Defense in effect on the date of the enactment of this Act [Dec. 5, 1991] under the CHAMPUS reform initiative established under section 702 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 1073 note), the Secretary of Defense may enter into a replacement or successor contract with the same or a different contractor and for such amount as may be determined in accordance with applicable procurement laws and regulations and without regard to any limitation (enacted before, on, or after the date of the enactment of this Act) on the availability of funds for that purpose.

''(b) TREATMENT OF LIMITATION ON FUNDS FOR PROGRAM.—No provision of law stated as a limitation on the availability of funds may be treated as constituting the extension of, or as requiring the extension of, any contract under the CHAMPUS reform initiative that would otherwise expire in accordance with its terms.''

EXTENSION OF CHAMPUS REFORM INITIATIVE FOR CERTAIN STATES

Pub. L. 102–172, title VIII, §8032, Nov. 26, 1991, 105 Stat. 1178, provided: ''That notwithstanding any other provision of law, the CHAMPUS Reform Initiative contract for California and Hawaii shall be extended until February 1, 1994, within the limits and rates specified in the contract: *Provided further*, That the Department shall competitively award contracts for the geographic expansion of the CHAMPUS Reform Initiative in Florida (which may include Department of Veterans Affairs medical facilities with the concurrence of the Secretary of Veterans Affairs), Washington, Oregon, and the Tidewater region of Virginia: *Provided further*, That competitive expansion of the CHAMPUS Reform Initiative may occur in any other regions that the Assistant Secretary of Defense for Health Affairs deems appropriate.''

CONDITIONS ON EXPANSION OF CHAMPUS REFORM INITIATIVE

Pub. L. 101–510, div. A, title VII, §715, Nov. 5, 1990, 104 Stat. 1584, provided that:

''(a) CERTIFICATION OF COST-EFFECTIVENESS.—The Secretary of Defense may not proceed with the proposed expansion of the CHAMPUS reform initiative underway in the States of California and Hawaii until not less than 90 days after the date on which the Secretary certifies to the Congress that—

''(1) such CHAMPUS reform initiative has been demonstrated to be more cost-effective than the Civilian Health and Medical Program of the Uniformed Services or any other health care demonstration program being conducted by the Secretary;

''(2) the contractor selected to underwrite the delivery of health care under the CHAMPUS reform initiative will accomplish the expansion without the disruption of services to beneficiaries under the Civilian Health and Medical Program of the Uniformed Services or delays in the processing of claims; and

''(3) such contractor is currently, and projected to remain, financially able to underwrite the CHAMPUS reform initiative.

''(b) REPORT ON CERTIFICATION.—Not later than 30 days after the date on which the Secretary of Defense submits the certification required by subsection (a), the Comptroller General of the United States and the Director of the Congressional Budget Office shall jointly submit to Congress a report evaluating such certification.

''(c) CHAMPUS REFORM INITIATIVE DEFINED.—For purposes of this section, the term 'CHAMPUS reform initiative' has the meaning given that term in section 702(d)(1) of the Department of Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (10 U.S.C. 1073 note).''

REQUIREMENTS PRIOR TO TERMINATION OF MEDICAL SERVICES AT MILITARY MEDICAL TREATMENT FACILITIES

Pub. L. 101–510, div. A, title VII, §716, Nov. 5, 1990, 104 Stat. 1585, provided that:

''(a) PROHIBITION.—During the period beginning on the date of the enactment of this Act [Nov. 5, 1990] and ending on September 30, 1995, the Secretary of a military department may not take any action to close a military medical facility under the jurisdiction of that Secretary or reduce the level of care provided at such a medical facility until 90 days after the date on which the Secretary submits to Congress a report described in subsection (b).

''(b) ELEMENTS OF REPORT.—A report referred to in subsection (a) shall include the following:

''(1) The reason for the action.

''(2) The projected savings to the Government from the action.

''(3) The impact on CHAMPUS and MEDICARE costs in the catchment area of the facility.

''(4) The impact on beneficiary cost-sharing.

''(5) An examination of alternative ways to provide care to the persons served by the facility that the Secretary determines would not result in adverse consequences to such persons.

''(6) An explanation of how care will be provided for and the cost, if any, to those persons to receive such care.

''(c) EXCEPTION.—Subsection (a) shall not apply with respect to the closing of a military medical facility (or the reduction of the level of care provided at a military medical facility) as a result of a base closure or an operational deployment.''

REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE; FUNDING LIMITATIONS; DEFINITION

Pub. L. 100–180, div. A, title VII, §732(e)–(g), Dec. 4, 1987, 101 Stat. 1120, 1121, provided that:

''(e) REQUIREMENT FOR AVAILABILITY OF ADDITIONAL INSURANCE COVERAGE.—(1) The Secretary of Defense shall make every effort to enter into an agreement, similar to the one being negotiated with a private insurer on the date of the enactment of this Act [Dec. 4, 1987], that would provide an insurance plan that meets the requirements described in paragraph (3).

''(2) If an agreement referred to in paragraph (1) is not entered into before a request for proposals with respect to the second phase of the CHAMPUS reform initiative is issued, the Secretary shall provide for an insurance plan which meets the requirements described in paragraph (3) through either of the following means:

''(A) By including, in any request for proposals with respect to the second (and any subsequent) phase of the CHAMPUS reform initiative, a requirement for the contractor to offer an option to elect an insurance plan which meets the requirements described in paragraph (3).

''(B) By including, in any request for proposals for a contract to process claims for CHAMPUS, a requirement for the contractor (known as a fiscal intermediary) to offer an option to elect an insurance plan which meets the requirements described in paragraph (3).

''(3) The insurance plan requirements referred to in paragraphs (1) and (2) are the following:

''(A) At the election of the individual, the plan shall be available to an individual losing eligibility (by reason of discharge, release from active duty, a change in family status (including divorce or annulment, or, in the case of a child, reaching age 22), or other similar reason) to be a covered beneficiary under chapter 55 of title 10, United States Code.

''(B) The plan shall provide for coverage of benefits similar to the coverage of benefits available to the individual under CHAMPUS, regardless of any pre-existing condition.

''(C) The plan shall provide that enrollees in the plan shall pay the full periodic charges for the benefit coverage.

''(f) FUNDING LIMITATIONS.—(1) None of the funds appropriated or otherwise made available to the Department of Defense may be obligated or expended for the purpose of entering into a contract for the demonstration phase of the CHAMPUS reform initiative required by section 702(a)(1) of the National Defense Authorization Act for Fiscal Year 1987 [section 702(a)(1) of Pub. L. 99–661, set out as a note below] until the requirements of section 702(a)(4) of such Act (as added by subsection (a)) are met.

''(2) None of the funds appropriated or otherwise made available to the Department of Defense may be obligated or expended for the purpose of requesting a proposal for the second (or any subsequent) phase of the CHAMPUS reform initiative as described in section 702(c) of the National Defense Authorization Act for Fiscal Year 1987 until the requirements of paragraph (2) of section 702(c) of such Act (as added by subsection (c)) are met.

''(g) CHAMPUS DEFINED.—In this section, the term 'CHAMPUS' has the meaning given such term by section 1072(4) of title 10, United States Code.''

CHAMPUS REFORM INITIATIVE

Pub. L. 99–661, div. A, title VII, § 702, Nov. 14, 1986, 100 Stat. 3899, as amended by Pub. L. 100–180, div. A, title VII, § 732(a), (c), Dec. 4, 1987, 101 Stat. 1119, provided that:

''(a) DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct a project designed to demonstrate the feasibility of improving the effectiveness of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) through the competitive selection of contractors to financially underwrite the delivery of health care services under the program.

''(2) The demonstration project required by paragraph (1)—

''(A) shall begin not later than September 30, 1988, and continue for not less than one year;

''(B) shall include not more than one-third of covered beneficiaries; and

''(C) shall include a health care enrollment system that meets the requirements specified in section 1099 of title 10, United States Code (as added by section 701(a)(1)).

''(3)(A) The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the development of the demonstration project required by paragraph (1). Such report shall include—

''(i) a description of the scope and structure of the project;

''(ii) an estimate of the costs of the care to be provided under the project; and

''(iii) a description of the health care enrollment system included in the project.

''(B) The report required by subparagraph (A) shall be submitted—

''(i) not later than 60 days before the initiation of the project, if the project is to be restricted to a contiguous area of the United States; or

''(ii) not later than 60 days before a solicitation for bids or proposals with respect to such project is issued, if the project will not be restricted to a contiguous area of the United States.

''(4) The Secretary of Defense shall develop a methodology to be used in evaluating the results of the demonstration project required by paragraph (1) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on such methodology.

''(b) STUDY OF HEALTH CARE ALTERNATIVES.—(1) The demonstration project required by subsection (a)(1) shall include a study of—

''(A) methods to guarantee the maintenance of competition among providers of health care to persons under the jurisdiction of the Secretary;

''(B) the merits of the use of a voucher system or a fee schedule for provision of health care to such persons; and

''(C) methods to guarantee that community hospitals are given equal consideration with other health care providers for provision of health care services under contracts with the Department of Defense.

''(2) The Secretary shall submit to Congress a report discussing the matters evaluated in the study required by paragraph (1) before the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 14, 1986].

''(c) PHASED IMPLEMENTATION OF CHAMPUS REFORM INITIATIVE.—(1) The Secretary of Defense may proceed with implementation of the CHAMPUS reform initiative, to be carried out in two phases during a period of not less than two years, if—

''(A) the Secretary determines, based on the results of the demonstration project required by subsection (a)(1), that such initiative should be implemented;

''(B) not less than one year elapses after the date on which the demonstration project required by subsection (a)(1) is initiated; and

''(C) 90 days elapse after the date on which the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report that includes—

''(i) a description of the results of the demonstration project, evaluated in accordance with the methodology developed under subsection (a)(4);

''(ii) a description of any changes the Secretary intends to make in the initiative during the proposed implementation; and

''(iii) a comparison of the costs of providing health care under CHAMPUS with the costs of providing health care under the demonstration project and the estimated costs of providing health care under the CHAMPUS reform initiative if fully implemented.

''(2) The Secretary may not issue a request for proposals with respect to the second (or any subsequent) phase of the CHAMPUS reform initiative until—

''(A) all principal features of the demonstration project, including networks of providers of health care, have been in operation for not less than one year; and

''(B) the expiration of 60 days after the date on which the report described in paragraph (1)(C) has been received by the committees referred to in such paragraph.

''(d) DEFINITIONS.—In this section:

''(1) The term 'CHAMPUS reform initiative' means the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

''(2) The term 'Civilian Health and Medical Program of the Uniformed Services' has the meaning given such term in section 1072(4) of title 10, United States Code (as added by section 701(b)).

''(3) The term 'covered beneficiary' has the meaning given such term in section 1072(5) of title 10, United States Code (as added by section 701(b)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1072 of this title.

§ 1073a. Contracts for health care: best value contracting

(a) AUTHORITY.—Under regulations prescribed by the administering Secretaries, health care contracts shall be awarded in the administration of this chapter to the offeror or offerors that will provide the best value to the United States to the maximum extent consistent with furnishing high-quality health care in a manner that protects the fiscal and other interests of the United States.

(b) FACTORS CONSIDERED.—In the determination of best value under subsection (a)—

(1) consideration shall be given to the factors specified in the regulations; and

(2) greater weight shall be accorded to technical and performance-related factors than to cost and price-related factors.

(c) APPLICABILITY.—The authority under the regulations prescribed under subsection (a) shall apply to any contract in excess of $5,000,000.

(Added Pub. L. 106–65, div. A, title VII, § 722(a), Oct. 5, 1999, 113 Stat. 695.)

§ 1074. Medical and dental care for members and certain former members

(a) Under joint regulations to be prescribed by the administering Secretaries, a member of a uniformed service who is on active duty is entitled to medical and dental care in any facility of any uniformed service.

(b) Under joint regulations to be prescribed by the administering Secretaries, a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may, upon request, be given medical and dental care in any facility of any uniformed service, subject to the availability of space and facilities and the capabilities of the medical and dental staff. The administering Secretaries may, with the agreement of the Secretary of Veterans Affairs, provide care to persons covered by this subsection in facilities operated by the Secretary of Veterans Affairs and determined by him to be available for this purpose on a reimbursable basis at rates approved by the President.

(c)(1) Funds appropriated to a military department, the Department of Homeland Security (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service) may be used to provide medical and dental care to persons entitled to such care by law or regulations, including the provision of such care (other than elective private treatment) in private facilities for members of the uniformed services. If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.

(2)(A) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care for members of the uniformed services under this subsection, and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(B) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(C) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this paragraph.

(3)(A) A member of the uniformed services described in subparagraph (B) may not be required to receive routine primary medical care at a military medical treatment facility.

(B) A member referred to in subparagraph (A) is a member of the uniformed services on active duty who is entitled to medical care under this subsection and who—

(i) receives a duty assignment described in subparagraph (C); and

(ii) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(C) A duty assignment referred to in subparagraph (B) means any of the following:

(i) Permanent duty as a recruiter.

(ii) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

(iii) Permanent duty as a full-time adviser to a unit of a reserve component.

(iv) Any other permanent duty designated by the Secretary concerned for purposes of this paragraph.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1446; amended Pub. L. 89–614, § 2(2), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, § 511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–525, title XIV, § 1401(e)(1), Oct. 19, 1984, 98 Stat. 2616; Pub. L. 98–557, § 19(3), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 101–189, div. A, title VII, § 729,

title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1481, 1603; Pub. L. 101–510, div. A, title XIV, §1484(j)(1), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 104–106, div. A, title VII, §723, Feb. 10, 1996, 110 Stat. 377; Pub. L. 104–201, div. A, title VII, §725(d), Sept. 23, 1996, 110 Stat. 2596; Pub. L. 105–85, div. A, title VII, §731(a)(1), Nov. 18, 1997, 111 Stat. 1810; Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1074(a)	37:421(a).	June 7, 1956, ch. 374, §§102(a)(3) (as applicable to §301(b)), 301(a), (b), 70 Stat. 250, 253.
1074(b)	37:402(a)(3) (as applicable to 37:421(b)). 37:421(b).	

In subsection (a), words of entitlement are substituted for the correlative words of obligation.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active duty as defined in section 901(b) of Title 50'' to reflect section 101(22) of this title. The words ''and dental'' are inserted before the word ''staff'' for clarity. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

PRIOR PROVISIONS

Provisions similar to those in subsec. (c) of this section were contained in Pub. L. 98–212, title VII, §735, Dec. 8, 1983, 97 Stat. 1444, which was formerly set out as a note under section 138 [now 114] of this title, and which was amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985, to strike out these provisions.

A prior section 1074, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to enactment of legislation relating to voting in other elections, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (c). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(A)], substituted ''uniformed services'' for ''armed forces'' in pars. (1), (2)(A), and (3)(B).

Subsec. (c)(1). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(B)], inserted '', the Department of Transportation (with respect to the Coast Guard when it is not operating as a service in the Navy), or the Department of Health and Human Services (with respect to the National Oceanic and Atmospheric Administration and the Public Health Service)'' after ''military department''.

Subsec. (c)(2)(C). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(C)], added subpar. (C).

Subsec. (c)(3)(A). Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(1)(D)], substituted ''A member of the uniformed services described in subparagraph (B) may not be required'' for ''The Secretary of Defense may not require a member of the armed forces described in subparagraph (B)''.

1997—Subsec. (c). Pub. L. 105–85 designated existing provisions as par. (1) and added pars. (2) and (3).

1996—Subsec. (d). Pub. L. 104–201 struck out subsec. (d) which read as follows:

''(d)(1) The Secretary of Defense may require, by regulation, a private CHAMPUS provider to apply the CHAMPUS payment rules (subject to any modifications considered appropriate by the Secretary) in imposing charges for health care that the private CHAMPUS provider provides to a member of the uniformed services who is enrolled in a health care plan of a facility deemed to be a facility of the uniformed services under section 911(a) of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c(a)) when the health care is provided outside the catchment area of the facility.

''(2) In this subsection:

''(A) The term 'private CHAMPUS provider' means a private facility or health care provider that is a health care provider under the Civilian Health and Medical Program of the Uniformed Services.

''(B) The term 'CHAMPUS payment rules' means the payment rules referred to in subsection (c).

''(3) The Secretary of Defense shall prescribe regulations under this subsection after consultation with the other administering Secretaries.''

Pub. L. 104–106 added subsec. (d).

1990—Subsec. (b). Pub. L. 101–510 substituted ''Secretary of Veterans Affairs'' for ''Administrator'' after ''operated by the''.

1989—Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, §729, inserted at end ''If a private facility or health care provider providing care under this subsection is a health care provider under the Civilian Health and Medical Program of the Uniformed Services, the Secretary of Defense, after consultation with the other administering Secretaries, may by regulation require the private facility or health care provider to provide such care in accordance with the same payment rules (subject to any modifications considered appropriate by the Secretary) as apply under that program.''

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services wherever appearing.

Subsec. (c). Pub. L. 98–525 added subsec. (c).

1980—Subsec. (a). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, §511(36), (37), substituted ''Secretary of Health and Human Services'' and ''President'' for ''Secretary of Health, Education, and Welfare'' and ''Bureau of the Budget'', respectively.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training) and authorized care to be provided to persons covered by subsec. (b) in facilities operated by the Administrator of Veterans' Affairs and available on a reimbursable basis at rates approved by the Bureau of the Budget.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §722(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that: ''The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 1079 of this title] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 731(a)(2) of Pub. L. 105–85 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to coverage of medical care for, and the provision of such care to, a member of the Armed Forces under section 1074(c) of title 10, United States Code, on and after the later of the following:

''(A) April 1, 1998.

''(B) The date on which the TRICARE program is in place in the service area of the member.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

DELEGATION OF FUNCTIONS

Authority of President under subsec. (b) to approve uniform rates of reimbursement for care provided in facilities operated by Secretary of Veterans Affairs delegated to Secretary of Veterans Affairs, see section 7(a) of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

DISCLOSURE OF INFORMATION ON PROJECT 112 TO DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 107–314, div. A, title VII, §709, Dec. 2, 2002, 116 Stat. 2586, provided that:

''(a) PLAN FOR DISCLOSURE OF INFORMATION.—Not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall submit to Congress and the Secretary of Veterans Affairs a comprehensive plan for the review, declassification, and submittal to the Department of Veterans Affairs of all records and information of the Department of Defense on Project 112 that are relevant to the provision of benefits by the Secretary of Veterans Affairs to members of the Armed Forces who participated in that project.

''(b) PLAN REQUIREMENTS.—(1) The records and information covered by the plan under subsection (a) shall be the records and information necessary to permit the identification of members of the Armed Forces who were or may have been exposed to chemical or biological agents as a result of Project 112.

''(2) The plan shall provide for completion of all activities contemplated by the plan not later than one year after the date of the enactment of this Act [Dec. 2, 2002].

''(c) IDENTIFICATION OF OTHER PROJECTS OR TESTS.—The Secretary of Defense also shall work with veterans and veterans service organizations to identify other projects or tests conducted by the Department of Defense that may have exposed members of the Armed Forces to chemical or biological agents.

''(d) GAO REPORTS ON PLAN AND IMPLEMENTATION.—(1) Not later than 30 days after submission of the plan under subsection (a), the Comptroller General shall submit to Congress a report reviewing the plan. The report shall include an examination of whether adequate resources have been committed, the timeliness of the information to be released to the Department of Veterans Affairs, and the adequacy of the procedures to notify affected veterans of potential exposure.

''(2) Not later than six months after implementation of the plan begins, the Comptroller General shall submit to Congress a report evaluating the progress in the implementation of the plan.

''(e) DOD REPORTS ON IMPLEMENTATION.—(1) Not later than six months after the date of the enactment of this Act [Dec. 2, 2002], and upon completion of all activities contemplated by the plan under subsection (a), the Secretary of Defense shall submit to Congress and the Secretary of Veterans Affairs a report on progress in the implementation of the plan.

''(2) Each report under paragraph (1) shall include, for the period covered by such report—

''(A) the number of records reviewed;

''(B) each test, if any, under Project 112 identified during such review;

''(C) for each test so identified—

''(i) the test name;

''(ii) the test objective;

''(iii) the chemical or biological agent or agents involved; and

''(iv) the number of members of the Armed Forces, and civilian personnel, potentially effected by such test; and

''(D) the extent of submittal of records and information to the Secretary of Veterans Affairs under this section.

''(f) PROJECT 112.—For purposes of this section, Project 112 refers to the chemical and biological weapons vulnerability-testing program of the Department of Defense conducted by the Deseret Test Center from 1963 to 1969. The project included the Shipboard Hazard and Defense (SHAD) project of the Navy.''

HEALTH CARE AT FORMER UNIFORMED SERVICES TREATMENT FACILITIES FOR ACTIVE DUTY MEMBERS STATIONED AT CERTAIN REMOTE LOCATIONS

Pub. L. 106–65, div. A, title VII, §706, Oct. 5, 1999, 113 Stat. 684, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185, provided that:

''(a) AUTHORITY.—Health care may be furnished by a designated provider pursuant to any contract entered into by the designated provider under section 722(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 1073 note) to eligible members who reside within the service area of the designated provider.

''(b) ELIGIBILITY.—A member of the uniformed services (as defined in section 1072(1) of title 10, United States Code) is eligible for health care under subsection (a) if the member is a member described in section 731(c) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1811; 10 U.S.C. 1074 note).

''(c) APPLICABLE POLICIES.—In furnishing health care to an eligible member under subsection (a), a designated provider shall adhere to the Department of Defense policies applicable to the furnishing of care under the TRICARE Prime Remote program, including coordinating with uniformed services medical authorities for hospitalizations and all referrals for specialty care.

''(d) REIMBURSEMENT RATES.—The Secretary of Defense, in consultation with the designated providers, shall prescribe reimbursement rates for care furnished to eligible members under subsection (a). The rates prescribed for health care may not exceed the amounts allowable under the TRICARE Standard plan for the same care.''

TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS; ''TRICARE PROGRAM'' AND ''TRICARE PRIME PLAN'' DEFINED

Pub. L. 105–85, div. A, title VII, §731(b)–(f), Nov. 18, 1997, 111 Stat. 1811, 1812, as amended by Pub. L. 106–398, §1 [[div. A], title VII, §722(a)(2), (b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–185, 1654A–186, provided that:

''(b) TEMPORARY AUTHORITY FOR MANAGED CARE EXPANSION TO MEMBERS ON ACTIVE DUTY AT CERTAIN REMOTE LOCATIONS.—(1) A member of the uniformed services described in subsection (c) is entitled to receive care under the Civilian Health and Medical Program of the Uniformed Services. In connection with such care, the Secretary of Defense shall waive the obligation of the member to pay a deductible, copayment, or annual fee that would otherwise be applicable under that program for care provided to the members under the program. A dependent of the member, as described in subparagraph (A), (D), or (I) of section 1072(2) of title 10, United States Code, who is residing with the member shall have the same entitlement to care and to waiver of charges as the member.

''(2) A member or dependent of the member, as the case may be, who is entitled under paragraph (1) to re-

ceive health care services under CHAMPUS shall receive such care from a network provider under the TRICARE program if such a provider is available in the service area of the member.

''(3) Paragraph (1) shall take effect on the date of the enactment of this Act [Nov. 18, 1997] and shall expire with respect to a member upon the later of the following:

''(A) The date that is one year after the date of the enactment of this Act.

''(B) The date on which the amendments made by subsection (a) [amending this section] apply with respect to the coverage of medical care for, and provision of such care to, the member.

''(4) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

''(c) ELIGIBLE MEMBERS.—A member referred to in subsection (b) is a member of the uniformed services on active duty who—

''(1) receives a duty assignment described in subsection (d); and

''(2) pursuant to the assignment of such duty, resides at a location that is more than 50 miles, or approximately one hour of driving time, from—

''(A) the nearest health care facility of the uniformed services adequate to provide the needed care under chapter 55 of title 10, United States Code; and

''(B) the nearest source of the needed care that is available to the member under the TRICARE Prime plan.

''(d) DUTY ASSIGNMENTS COVERED.—A duty assignment referred to in subsection (c)(1) means any of the following:

''(1) Permanent duty as a recruiter.

''(2) Permanent duty at an educational institution to instruct, administer a program of instruction, or provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps.

''(3) Permanent duty as a full-time adviser to a unit of a reserve component of the uniformed services.

''(4) Any other permanent duty designated by the Secretary concerned for purposes of this subsection.

''(e) PAYMENT OF COSTS.—Deductibles, copayments, and annual fees not payable by a member by reason of a waiver granted under the regulations prescribed pursuant to subsection (b) shall be paid out of funds available to the Department of Defense for the Defense Health Program.

''(f) DEFINITIONS.—In this section [amending this section and enacting provisions set out as a note above]:

''(1) The term 'TRICARE program' has the meaning given that term in section 1072(7) of title 10, United States Code.

''(2) The term 'TRICARE Prime plan' means a plan under the TRICARE program that provides for the voluntary enrollment of persons for the receipt of health care services to be furnished in a manner similar to the manner in which health care services are furnished by health maintenance organizations.

''(3) The terms 'uniformed services' and 'administering Secretaries' have the meanings given those terms in section 1072 of title 10, United States Code.''

[Pub. L. 106–398, §1 [[div. A], title VII, §722(c)(2), (3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–186, provided that:

[''(2) The amendments made by subsection (a)(2) [amending section 731(b)–(f) of Pub. L. 105–85, set out above], with respect to members of the uniformed services, and the amendments made by subsection (b)(2) [amending section 731(b)–(f) of Pub. L. 105–85, set out above], with respect to dependents of members, shall take effect on the date of the enactment of this Act [Oct. 30, 2000] and shall expire with respect to a member or the dependents of a member, respectively, on the later of the following:

[''(A) The date that is one year after the date of the enactment of this Act.

[''(B) The date on which the policies required by the amendments made by subsection (a)(1) or (b)(1) [amending this section and section 1079 of this title] are implemented with respect to the coverage of medical care for and provision of such care to the member or dependents, respectively.

[''(3) Section 731(b)(3) of Public Law 105–85 [set out above] does not apply to a member of the Coast Guard, the National Oceanic and Atmospheric Administration, or the Commissioned Corps of the Public Health Service, or to a dependent of a member of a uniformed service.'']

INDEPENDENT RESEARCH REGARDING GULF WAR SYNDROME

Section 743 of Pub. L. 104–201 provided that:

''(a) DEFINITIONS.—For purposes of this section:

''(1) The term 'Gulf War service' means service on active duty as a member of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) The term 'Gulf War syndrome' means the complex of illnesses and symptoms commonly known as Gulf War syndrome.

''(3) The term 'Persian Gulf War' has the meaning given that term in section 101(33) of title 38, United States Code.

''(b) RESEARCH.—The Secretary of Defense shall provide, by contract, grant, or other transaction, for scientific research to be carried out by entities independent of the Federal Government on possible causal relationships between Gulf War syndrome and—

''(1) the possible exposures of members of the Armed Forces to chemical warfare agents or other hazardous materials during Gulf War service; and

''(2) the use by the Department of Defense during the Persian Gulf War of combinations of various inoculations and investigational new drugs.

''(c) PROCEDURES FOR AWARDING GRANTS.—The Secretary shall prescribe the procedures to be used to make research awards under subsection (b). The procedures shall—

''(1) include a comprehensive, independent peer-review process for the evaluation of proposals for scientific research that are submitted to the Department of Defense; and

''(2) provide for the final selection of proposals for award to be based on the scientific merit and program relevance of the proposed research.

''(d) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated under section 301(21) [110 Stat. 2475] for defense medical programs, $10,000,000 is available for research under subsection (b).''

PERSIAN GULF ILLNESS

Sections 761, 762, and 770 of title VII of Pub. L. 105–85 provided that:

''SEC. 761. DEFINITIONS.

''For purposes of this subtitle [subtitle F (§§761–771) of title VII of Pub. L. 105–85, enacting sections 1074e, 1074f, and 1107 of this title and this note]:

''(1) The term 'Gulf War illness' means any one of the complex of illnesses and symptoms that might have been contracted by members of the Armed Forces as a result of service in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) The term 'Persian Gulf War' has the meaning given that term in section 101 of title 38, United States Code.

''(3) The term 'Persian Gulf veteran' means an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(4) The term 'contingency operation' has the meaning given that term in section 101(a) of title 10, United States Code, and includes a humanitarian operation, peacekeeping operation, or similar operation.

''SEC. 762. PLAN FOR HEALTH CARE SERVICES FOR PERSIAN GULF VETERANS.

''(a) PLAN REQUIRED.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, shall

prepare a plan to provide appropriate health care to Persian Gulf veterans (and dependents eligible by law) who suffer from a Gulf War illness.

''(b) CONTENTS OF PLAN.—In preparing the plan, the Secretaries shall—

''(1) use the presumptions of service connection and illness specified in paragraphs (1) and (2) of section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1074 note) to determine the Persian Gulf veterans (and dependents eligible by law) who should be covered by the plan;

''(2) consider the need and methods available to provide health care services to Persian Gulf veterans who are no longer on active duty in the Armed Forces, such as Persian Gulf veterans who are members of the reserve components and Persian Gulf veterans who have been separated from the Armed Forces; and

''(3) estimate the costs to the Government of providing full or partial health care services under the plan to covered Persian Gulf veterans (and covered dependents eligible by law).

''(c) FOLLOW-UP TREATMENT.—The plan required by subsection (a) shall specifically address the measures to be used to monitor the quality, appropriateness, and effectiveness of, and patient satisfaction with, health care services provided to Persian Gulf veterans after their initial medical examination as part of registration in the Persian Gulf War Veterans Health Registry or the Comprehensive Clinical Evaluation Program.

''(d) SUBMISSION OF PLAN.—Not later than March 1, 1998, the Secretaries shall submit to Congress the plan required by subsection (a).

''SEC. 770. PERSIAN GULF ILLNESS CLINICAL TRIALS PROGRAM.

''(a) FINDINGS.—Congress finds the following:

''(1) There are many ongoing studies that investigate risk factors which may be associated with the health problems experienced by Persian Gulf veterans; however, there have been no studies that examine health outcomes and the effectiveness of the treatment received by such veterans.

''(2) The medical literature and testimony presented in hearings on Gulf War illnesses indicate that there are therapies, such as cognitive behavioral therapy, that have been effective in treating patients with symptoms similar to those seen in many Persian Gulf veterans.

''(b) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense and the Secretary of Veterans Affairs, acting jointly, shall establish a program of cooperative clinical trials at multiple sites to assess the effectiveness of protocols for treating Persian Gulf veterans who suffer from ill-defined or undiagnosed conditions. Such protocols shall include a multidisciplinary treatment model, of which cognitive behavioral therapy is a component.

''(c) FUNDING.—Of the funds authorized to be appropriated in section 201(1) [111 Stat. 1655] for research, development, test, and evaluation for the Army, the sum of $4,500,000 shall be available for program element 62787A (medical technology) in the budget of the Department of Defense for fiscal year 1998 to carry out the clinical trials program established pursuant to subsection (b).''

Pub. L. 103–337, div. A, title VII, §§721, 722, Oct. 5, 1994, 108 Stat. 2804, 2807, as amended by Pub. L. 104–106, div. A, title XV, §1504(a)(4), (5), Feb. 10, 1996, 110 Stat. 513, provided that:

''SEC. 721. PROGRAMS RELATED TO DESERT STORM MYSTERY ILLNESS.

''(a) OUTREACH PROGRAM TO PERSIAN GULF VETERANS AND FAMILIES.—The Secretary of Defense shall institute a comprehensive outreach program to inform members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf Conflict, and the families of such members, of illnesses that may result from such service. The program shall be carried out through both medical and command channels, as well as any other means the Secretary considers appropriate. Under the program, the Secretary shall—

''(1) inform such individuals regarding—

''(A) common disease symptoms reported by Persian Gulf veterans that may be due to service in the Southwest Asia theater of operations;

''(B) blood donation policy;

''(C) available counseling and medical care for such members; and

''(D) possible health risks to children of Persian Gulf veterans;

''(2) inform such individuals of the procedures for registering in either the Persian Gulf Veterans Health Surveillance System of the Department of Defense or the Persian Gulf War Health Registry of the Department of Veterans Affairs; and

''(3) encourage such members to report any symptoms they may have and to register in the appropriate health surveillance registry.

''(b) INCENTIVES TO PERSIAN GULF VETERANS TO REGISTER.—In order to encourage Persian Gulf veterans to register any symptoms they may have in one of the existing health registries, the Secretary of Defense shall provide the following:

''(1) For any Persian Gulf veteran who is on active duty and who registers with the Department of Defense's Persian Gulf War Veterans Health Surveillance System, a full medical evaluation and any required medical care.

''(2) For any Persian Gulf War veteran who is, as of the date of the enactment of this Act [Oct. 5, 1994], a member of a reserve component, opportunity to register at a military medical facility in the Persian Gulf Veterans Health Care Surveillance System and, in the case of a Reserve who registers in that registry, a full medical evaluation by the Department of Defense. Depending on the results of the evaluation and on eligibility status, reserve personnel may be provided medical care by the Department of Defense.

''(3) For a Persian Gulf veteran who is not, as of the date of the enactment of this Act [Oct. 5, 1994], on active duty or a member of a reserve component, assistance and information at a military medical facility on registering with the Persian Gulf War Registry of the Department of Veterans Affairs and information related to support services provided by the Department of Veterans Affairs.

''(c) COMPATIBILITY OF DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS REGISTRIES.—The Secretary of Defense shall take appropriate actions to ensure—

''(1) that the data collected by and the testing protocols of the Persian Gulf War Health Surveillance System maintained by the Department of Defense are compatible with the data collected by and the testing protocols of the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs; and

''(2) that all information on individuals who register with the Department of Defense for purposes of the Persian Gulf War Health Surveillance System is provided to the Secretary of Veterans Affairs for incorporation into the Persian Gulf War Veterans Health Registry.

''(d) PRESUMPTIONS ON BEHALF OF SERVICE MEMBER.—(1) A member of the Armed Forces who is a Persian Gulf veteran, who has symptoms of illness, and who the Secretary concerned finds may have become ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of operations.

''(2) A member of the Armed Forces who is a Persian Gulf veteran and who reports being ill as a result of serving on active duty in the Southwest Asia theater of operations during the Persian Gulf War shall be considered for Department of Defense purposes to have become ill as a result of serving in that theater of oper-

ations until such time as the weight of medical evidence establishes other cause or causes of the member's illness.

''(3) The Secretary concerned shall ensure that, for the purposes of health care treatment by the Department of Defense, health care and personnel administration, and disability evaluation by the Department of Defense, the symptoms of any member of the Armed Forces covered by paragraph (1) or (2) are examined in light of the member's service in the Persian Gulf War and in light of the reported symptoms of other Persian Gulf veterans. The Secretary shall ensure that, in providing health care diagnosis and treatment of the member, a broad range of potential causes of the member's symptoms are considered and that the member's symptoms are considered collectively, as well as by type of symptom or medical specialty, and that treatment across medical specialties is coordinated appropriately.

''(4) The Secretary of Defense shall ensure that the presumptions of service connection and illness specified in paragraphs (1) and (2) are incorporated in appropriate service medical and personnel regulations and are widely disseminated throughout the Department of Defense.

''(e) REVISION OF THE PHYSICAL EVALUATION BOARD CRITERIA.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall ensure that case definitions of Persian Gulf related illnesses, as well as the Physical Evaluation Board criteria used to set disability ratings for members no longer medically qualified for continuation on active duty, are established as soon as possible to permit accurate disability ratings related to a diagnosis of Persian Gulf illnesses.

''(2) Until revised disability criteria can be implemented and members of the Armed Forces can be rated against those criteria, the Secretary of Defense shall ensure—

''(A) that any member of the Armed Forces on active duty who may be suffering from a Persian Gulf-related illness is afforded continued military medical care; and

''(B) that any member of the Armed Forces on active duty who is found by a Physical Evaluation Board to be unfit for continuation on active duty as a result of a Persian Gulf-related illness for which the board has no rating criteria (or inadequate rating criteria) for the illness or condition from which the member suffers is placed on the temporary disability retired list.

''(f) REVIEW OF RECORDS AND RERATING OF PREVIOUSLY DISCHARGED GULF WAR VETERANS.—(1) The Secretary of Defense, in consultation with the Secretary of Veterans Affairs, shall ensure that a review is made of the health and personnel records of each Persian Gulf veteran who before the date of the enactment of this Act [Oct. 5, 1994] was discharged from active duty, or was medically retired, as a result of a Physical Evaluation Board process.

''(2) The review under paragraph (1) shall be carried out to ensure that former Persian Gulf veterans who may have been suffering from a Persian Gulf-related illness at the time of discharge or retirement from active duty as a result of the Physical Evaluation Board process are reevaluated in accordance with the criteria established under subsection (e)(1) and, if appropriate, are rerated.

''(g) PERSIAN GULF ILLNESS MEDICAL REFERRAL CENTERS.—The Secretary of Defense shall evaluate the feasibility of establishing one or more medical referral centers to provide uniform, coordinated medical care for Persian Gulf veterans on active duty who are or may be suffering from a Persian Gulf-related illness. The Secretary shall submit a report on such feasibility to the Committees on Armed Services of the Senate and House of Representatives not later than six months after the date of the enactment of this Act [Oct. 5, 1994].

''(h) ANNUAL REPORT TO CONGRESS.—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on—

''(A) efforts taken and results achieved in notifying members of the Armed Forces and their families as part of the outreach program required by subsection (a);

''(B) efforts taken to revise the Physical Evaluation Board disability rating criteria and interim efforts to adjudicate cases before the revision of the criteria; and

''(C) results of the review and rerating of previously separated servicemembers.

''(2) The first report under paragraph (1) shall be submitted not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

''(i) PERSIAN GULF VETERAN.—For purposes of this section, a Persian Gulf veteran is an individual who served on active duty in the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf Conflict.

''SEC. 722. STUDIES OF HEALTH CONSEQUENCES OF MILITARY SERVICE OR EMPLOYMENT IN SOUTHWEST ASIA DURING THE PERSIAN GULF WAR.

''(a) IN GENERAL.—The Secretary of Defense, in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services, shall conduct studies and administer grants for studies to determine—

''(1) the nature and causes of illnesses suffered by individuals as a consequence of service or employment by the United States in the Southwest Asia theater of operations during the Persian Gulf War; and

''(2) the appropriate treatment for those illnesses.

''(b) NATURE OF THE STUDIES.—(1) Studies under subsection (a)—

''(A) shall include consideration of the range of potential exposure of individuals to environmental, battlefield, and other conditions incident to service in the theater;

''(B) shall be conducted so as to provide assessments of both short-term and long-term effects to the health of individuals as a result of those exposures; and

''(C) shall include, at a minimum, the following types of studies:

''(i) An epidemiological study or studies on the incidence, prevalence, and nature of the illness and symptoms and the risk factors associated with symptoms or illnesses.

''(ii) Studies to determine the health consequences of the use of pyridostigmine bromide as a pretreatment antidote enhancer during the Persian Gulf War, alone or in combination with exposure to pesticides, environmental toxins, and other hazardous substances.

''(iii) Clinical research and other studies on the causes, possible transmission, and treatment of Persian Gulf-related illnesses.

''(2)(A) The first project carried out under paragraph (1)(C)(ii) shall be a retrospective study of members of the Armed Forces who served in the Southwest Asia theater of operations during the Persian Gulf War.

''(B) The second project carried out under paragraph (1)(C)(ii) shall consist of animal research and non-animal research, including in vitro systems, as required, designed to determine whether the use of pyridostigmine bromide in combination with exposure to pesticides or other organophosphates, carbamates, or relevant chemicals will result in increased toxicity in animals and is likely to have a similar effect on humans.

''(c) INDIVIDUALS COVERED BY THE STUDIES.—Studies conducted pursuant to subsections [sic] (a) shall apply to the following individuals:

''(1) Individuals who served as members of the Armed Forces in the Southwest Asia theater of operations during the Persian Gulf War.

''(2) Individuals who were civilian employees of the Department of Defense in that theater during that period.

''(3) To the extent appropriate, individuals who were employees of contractors of the Department of Defense in that theater during that period.

''(4) To the extent appropriate, the spouses and children of individuals described in paragraph (1).

''(d) PLAN FOR THE STUDIES.—(1) The Secretary of Defense shall prepare a coordinated plan for the studies to be conducted pursuant to subsection (a). The plan shall include plans and requirements for research grants in support of the studies. The Secretary shall submit the plan to the National Academy of Sciences for review and comment.

''(2) The plan for studies pursuant to subsection (a) shall be updated annually. The Secretary of Defense shall request an annual review by the National Academy of Sciences of the updated plan and study progress and results achieved during the preceding year.

''(3) The plan, and annual updates to the plan, shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(e) FUNDING.—(1) From the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690] for Defense-wide activities, the Secretary of Defense shall make available such funds as the Secretary considers necessary to support the studies conducted pursuant to subsection (a).

''(2) For each year in which activities continue in support of the studies conducted pursuant to subsection (a), the Secretary of Defense shall include in the budget request for the Department of Defense a request for such funds as the Secretary determines necessary to continue the activities during that fiscal year.

''(f) REPORTS.—(1) Not later than March 31, 1995, the Secretary of Defense shall submit to Congress the coordinated plan for the studies to be conducted pursuant to subsection (a) and the results of the review of that plan by the National Academy of Sciences.

''(2) Not later than October 1 of each year through 1998, the Secretary shall submit to Congress a report on the results of the studies conducted pursuant to subsection (a), plans for continuation of the studies, and the results of the annual review of the studies by the National Academy of Sciences.

''(3) Each report under this section shall be prepared in coordination with the Secretary of Veterans Affairs and the Secretary of Health and Human Services.

''(g) DEFINITION.—In this section, the term 'Persian Gulf War' has the meaning given such term in section 101 of title 38, United States Code.''

[For provisions establishing the Persian Gulf War Veterans Health Registry, provisions requiring a study by the Office of Technology Assessment of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry, provisions relating to an agreement with the National Academy of Sciences for review of health consequences of service during the Persian Gulf War, and coordination of government activities on health-related research on the Persian Gulf War, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

FUNDING OF FISHER HOUSES ASSOCIATED WITH ARMY MEDICAL TREATMENT FACILITIES

Pub. L. 103–335, title VIII, §8017, Sept. 30, 1994, 108 Stat. 2620, which provided that during fiscal year 1995 and thereafter, proceeds from investment of Fisher House Investment Trust Fund were to be used to support operation and maintenance of Fisher Houses associated with Army medical treatment facilities, was repealed and restated in section 2221(c)(1) of this title by Pub. L. 104–106, div. A, title IX, §914(a)(1), (d)(4), Feb. 10, 1996, 110 Stat. 412, 413.

MENTAL HEALTH EVALUATIONS OF MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. A, title V, §546(a)–(h), Oct. 23, 1992, 106 Stat. 2416–2419, directed Secretary of Defense, not later than 180 days after Oct. 23, 1992, to revise applicable regulations to incorporate certain requirements with respect to mental health evaluations of members of Armed Forces, including requirements relating to procedures for outpatient and inpatient evaluations, rights of members, additional rights of members and procedures for emergency or involuntary inpatient evaluations, and prohibition against use of referrals for mental health evaluations to retaliate against whistleblowers, and directed Secretary to submit to Committees on Armed Services of Senate and House of Representatives a report describing process of preparing regulations.

STUDY ON RISK-SHARING CONTRACTS FOR HEALTH CARE

Pub. L. 102–484, div. A, title VII, §725, Oct. 23, 1992, 106 Stat. 2440, directed Secretary of Defense, in consultation with Secretary of Health and Human Services, not later than 18 months after Oct. 23, 1992, to carry out a study of the feasibility and advisability of entering into risk-sharing contracts with eligible organizations described in 42 U.S.C. 1395mm(b) to furnish health care services to persons entitled to health care in a facility of a uniformed service under section 1074(b) or 1076(b) of this title, to develop a plan for the entry into contracts in accordance with the Secretary's determinations under the study, and to submit to Congress a report describing the results of the study and containing any plan developed.

REGISTRY OF MEMBERS OF ARMED FORCES SERVING IN OPERATION DESERT STORM

Pub. L. 102–190, div. A, title VII, §734, Dec. 5, 1991, 105 Stat. 1411, as amended by Pub. L. 102–585, title VII, §704, Nov. 4, 1992, 106 Stat. 4977, provided that:

''(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

''(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

''(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

''(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

''(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

''(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

''(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

''(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.

''(c) REPORTING REQUIREMENT RELATING TO EXPOSURE STUDIES.—The Secretary shall submit to Congress each year, at or about the time that the President's budget is submitted that year under section 1105 of title 31, United States Code, a report regarding—

''(1) the results of all on-going studies on the members referred to in subsection (a)(1) to determine the health consequences (including any short- or long-term consequences) of the exposure of such members to the fumes of burning oil; and

''(2) the need for additional studies relating to the exposure of such members to such fumes.

''(d) MEDICAL EXAMINATION.—Upon the request of any member listed in the Registry pursuant to subsection (a)(1), the Secretary of the military department concerned shall, if medically appropriate, furnish a pulmonary function examination and chest x-ray to such person.

''(e) EFFECTIVE DATE.—The Secretary shall establish the Registry not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'Operation Desert Storm' has the meaning given such term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 105 Stat. 77; 10 U.S.C. 101 note).

''(2) The term 'Persian Gulf conflict' has the meaning given such term in section 3(3) of such Act.''

[For provisions relating to the Persian Gulf War Veterans Health Registry, see title VII of Pub. L. 102–585, set out as a note under section 527 of Title 38, Veterans' Benefits.]

ADVISORY COMMITTEE ON MENTAL HEALTH EVALUATION PROTECTIONS

Section 554 of Pub. L. 101–510, as amended by Pub. L. 102–484, div. A, title V, §546(j)[(i)], Oct. 23, 1992, 106 Stat. 2419, directed Secretary of Defense, not later than 60 days after Nov. 5, 1990, to establish an advisory committee to develop and recommend to the Secretary, not later than 6 months after Nov. 5, 1990, regulations on procedural protections that should be afforded to any member of the Armed Forces who is referred by a commanding officer for a mental health evaluation by a mental health professional and directed Secretary, not later than 30 days after receipt of the report, to submit to Congress the report of the advisory committee, along with such additional comments and recommendations by the Secretary as the Secretary considers appropriate.

PROHIBITION ON FEE FOR OUTPATIENT CARE AT MILITARY MEDICAL TREATMENT FACILITIES

Section 721 of Pub. L. 101–189 provided that during fiscal years 1990 and 1991, the Secretary of Defense could not impose a charge for the receipt of outpatient medical or dental care at a military medical treatment facility. Similar provisions were contained in the following prior authorization act:

Pub. L. 100–180, div. A, title VII, §722, Dec. 4, 1987, 101 Stat. 1116.

RESTRICTION ON USE OF INFORMATION OBTAINED DURING CERTAIN EPIDEMIOLOGIC-ASSESSMENT INTERVIEWS

Pub. L. 99–661, div. A, title VII, §705(c), Nov. 14, 1986, 100 Stat. 3904, provided that:

''(1) Information obtained by the Department of Defense during or as a result of an epidemiologic-assessment interview with a serum-positive member of the Armed Forces may not be used to support any adverse personnel action against the member.

''(2) For purposes of paragraph (1):

''(A) The term 'epidemiologic-assessment interview' means questioning of a serum-positive member of the Armed Forces for purposes of medical treatment or counseling or for epidemiologic or statistical purposes.

''(B) The term 'serum-positive member of the Armed Forces' means a member of the Armed Forces who has been identified as having been exposed to a virus associated with the acquired immune deficiency syndrome.

''(C) The term 'adverse personnel action' includes—

''(i) a court-martial;

''(ii) non-judicial punishment;

''(iii) involuntary separation (other than for medical reasons);

''(iv) administrative or punitive reduction in grade;

''(v) denial of promotion;

''(vi) an unfavorable entry in a personnel record;

''(vii) a bar to reenlistment; and

''(viii) any other action considered by the Secretary concerned to be an adverse personnel action.''

STUDY OF MEDICAL NEEDS OF ARMED FORCES; REPORT TO PRESIDENT AND CONGRESS

Pub. L. 92–129, title I, §101(c), Sept. 28, 1971, 85 Stat. 354, authorized Secretary of Defense and Secretary of Health, Education, and Welfare to conduct a joint study of means of meeting medical needs of Armed Forces through means requiring less dependence on Armed Forces medical personnel, giving consideration to providing medical care for military personnel and their dependents under contracts with clinics, hospitals, and individual members of the medical profession at or near military installations within and outside the United States. The study and recommendations were to be submitted to President and Congress no later than 6 months after Sept. 28, 1971.

EXECUTIVE ORDER NO. 13075

Ex. Ord. No. 13075, Feb. 19, 1997, 63 F.R. 9085, which established the Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, was revoked by Ex. Ord. No. 13225, §3(e), Sept. 28, 2001, 66 F.R. 50292.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1074a, 1074d, 1074e, 1075, 1078a, 1079, 1086, 1087, 1095, 1095a, 1097, 1097a, 1108 of this title; title 38 section 8111; title 42 section 1395ggg.

§1074a. Medical and dental care: members on duty other than active duty for a period of more than 30 days

(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

(1) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease in the line of duty while performing—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(2) Each member of a uniformed service who incurs or aggravates an injury, illness, or disease while traveling directly to or from the place at which that member is to perform or has performed—

(A) active duty for a period of 30 days or less;

(B) inactive-duty training; or

(C) service on funeral honors duty under section 12503 of this title or section 115 of title 32.

(3) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(4) Each member of the armed forces who incurs or aggravates an injury, illness, or disease in the line of duty while remaining over-

night immediately before serving on funeral honors duty under section 12503 of this title or section 115 of title 32 at or in the vicinity of the place at which the member was to so serve, if the place is outside reasonable commuting distance from the member's residence.

(b) A person described in subsection (a) is entitled to—

(1) the medical and dental care appropriate for the treatment of the injury, illness, or disease of that person until the resulting disability cannot be materially improved by further hospitalization or treatment; and

(2) subsistence during hospitalization.

(c) A member is not entitled to benefits under subsection (b) if the injury, illness, or disease, or aggravation of an injury, illness, or disease described in subsection (a)(2), is the result of the gross negligence or misconduct of the member.

(d)(1) The Secretary of the Army shall provide to members of the Selected Reserve of the Army who are assigned to units scheduled for deployment within 75 days after mobilization the following medical and dental services:

(A) An annual medical screening.

(B) For members who are over 40 years of age, a full physical examination not less often than once every two years.

(C) An annual dental screening.

(D) The dental care identified in an annual dental screening as required to ensure that a member meets the dental standards required for deployment in the event of mobilization.

(2) The services provided under this subsection shall be provided at no cost to the member.

(e)(1) A member of a uniformed service on active duty for health care or recuperation reasons, as described in paragraph (2), is entitled to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title while the member remains on active duty.

(2) Paragraph (1) applies to a member described in paragraph (1) or (2) of subsection (a) who, while being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty, is continued on active duty pursuant to a modification or extension of orders, or is ordered to active duty, so as to result in active duty for a period of more than 30 days.

(Added Pub. L. 98–94, title X, §1012(a)(1), Sept. 24, 1983, 97 Stat. 664; amended Pub. L. 98–525, title VI, §631(a)(1), Oct. 19, 1984, 98 Stat. 2542; Pub. L. 98–557, §19(4), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title XIII, §1303(a)(7), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–661, div. A, title VI, §604(a)(1), Nov. 14, 1986, 100 Stat. 3874; Pub. L. 104–106, div. A, title VII, §§702(a), 704(a), Feb. 10, 1996, 110 Stat. 371, 372; Pub. L. 105–85, div. A, title V, §513(a), Nov. 18, 1997, 111 Stat. 1730; Pub. L. 106–65, div. A, title V, §578(i)(1), title VII, §705(b), Oct. 5, 1999, 113 Stat. 629, 683; Pub. L. 107–107, div. A, title V, §513(a), Dec. 28, 2001, 115 Stat. 1093.)

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107–107 struck out ", if the site is outside reasonable commuting distance from the member's residence" before period at end.

1999—Subsec. (a)(1)(C). Pub. L. 106–65, §578(i)(1)(A), added subpar. (C).

Subsec. (a)(2)(C). Pub. L. 106–65, §578(i)(1)(A), added subpar. (C).

Subsec. (a)(4). Pub. L. 106–65, §578(i)(1)(B), added par. (4).

Subsec. (e). Pub. L. 106–65, §705(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "A member of a uniformed service described in paragraph (1)(A) or (2)(A) of subsection (a) whose orders are modified or extended, while the member is being treated for (or recovering from) the injury, illness, or disease incurred or aggravated in the line of duty, so as to result in active duty for a period of more than 30 days shall be entitled, while the member remains on active duty, to medical and dental care on the same basis and to the same extent as members covered by section 1074(a) of this title."

1997—Subsec. (a)(3). Pub. L. 105–85, §513(a)(1), inserted "while remaining overnight immediately before the commencement of inactive-duty training, or" after "in the line of duty".

Subsec. (e). Pub. L. 105–85, §513(a)(2), added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–106, §702(a), added par. (3).

Subsec. (c). Pub. L. 104–106, §704(a)(1), substituted "subsection (b)" for "this section".

Subsec. (d). Pub. L. 104–106, §704(a)(2), added subsec. (d).

1986—Pub. L. 99–661 amended section generally substituting "active duty for a period of more than 30 days" for "active duty; injuries, diseases and illnesses incident to duty" in section catchline and new text for prior text which read as follows:

"(a) Under joint regulations prescribed by the administering Secretaries, the following persons are entitled to the benefits described in subsection (b):

"(1) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on active duty for a period of 30 days or less, or while traveling to or from that duty.

"(2) Each member of the National Guard who contracts a disease or becomes ill in line of duty while on full-time National Guard duty, or while traveling to or from that duty.

"(3) Each member of a uniformed service who contracts a disease or becomes ill in line of duty while on inactive duty training under circumstances in which it is determined that the disease or illness was contracted or aggravated as an incident of that inactive duty training.

"(4) Each member of a uniformed service who incurs or aggravates an injury while traveling directly to or from the place at which he is to perform, or has performed, inactive duty training, unless the injury is incurred or aggravated as a result of the member's own gross negligence or misconduct.

"(b) A person described in subsection (a) is entitled to—

"(1) the medical and dental care appropriate for the treatment of his injury, disease, or illness until the resulting disability cannot be materially improved by further hospitalization or treatment; and

"(2) subsistence during hospitalization."

1985—Subsec. (a). Pub. L. 99–145 substituted reference to the administering Secretaries, for references to Secretaries of Defense, Transportation, and Health and Human Services.

1984—Pub. L. 98–525 substituted "Medical and dental care: members on duty other than active duty; injuries, diseases and illnesses incident to duty" for "Medical and dental care for members of the uniformed services for injuries incurred or aggravated while traveling to and from inactive duty training" in section catchline.

Subsec. (a). Pub. L. 98–557, which directed the amendment of subsec. (a) by substituting "administering Secretaries" for "Secretary of Defense and the Secretary of Health and Human Services", could not be executed in view of the prior amendment by Pub. L. 98–525.

Pub. L. 98–525 amended subsec. (a) generally, thereby authorizing the Secretary of Transportation to partici-

pate in issuance of joint regulations, adding pars. (1) to (3), and incorporating existing provisions in par. (4).

Subsec. (b). Pub. L. 98–525 amended subsec. (b) generally, thereby including treatment of diseases or illnesses.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 604(g) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section, sections 1076, 1086, 1204–1206, 1475, 1476, 1481, 3723, and 8723 of this title, and sections 204 and 206 of Title 37, Pay and Allowances of the Uniformed Services and repealing sections 3687, 3721, 3722, 6148, 8687, 8721, and 8722 of this title and sections 318–321 of Title 32, National Guard] shall apply with respect to persons who, after the date of enactment of this Act [Nov. 14, 1986], incur or aggravate an injury, illness, or disease or die.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 631(c) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section and section 6148 of this title] shall apply only with respect to injuries incurred or aggravated and diseases or illnesses contracted or aggravated after September 30, 1984.''

EFFECTIVE DATE

Section 1012(c) of Pub. L. 98–94 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 204 of Title 37, Pay and Allowances of the Uniformed Services] shall apply only in cases of injuries incurred or aggravated on or after the date of the enactment of this Act [Sept. 24, 1983].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1074d, 1076, 12322 of this title; title 37 section 204.

[§ 1074b. Repealed. Pub. L. 107–107, div. A, title VII, § 736(c)(1), Dec. 28, 2001, 115 Stat. 1173]

Section, added Pub. L. 102–190, div. A, title VI, § 640(a)(2), Dec. 5, 1991, 105 Stat. 1385; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(10), Feb. 10, 1996, 110 Stat. 499, related to transitional medical and dental care for members on active duty in support of contingency operations.

A prior section 1074b was renumbered section 1074c of this title.

TRANSITION PROVISION

Pub. L. 107–107, div. A, title VII, § 736(d), Dec. 28, 2001, 115 Stat. 1173, provided that: ''Notwithstanding the repeal of section 1074b of title 10, United States Code, by subsection (c), the provisions of that section, as in effect before the date of the enactment of this Act [Dec. 28, 2001], shall continue to apply to a member of the Armed Forces who is released from active duty in support of a contingency operation before that date.''

§ 1074c. Medical care: authority to provide a wig

A person entitled to medical care under this chapter who has alopecia resulting from the treatment of a malignant disease may be furnished a wig if the person has not previously been furnished one at the expense of the United States.

(Added Pub. L. 98–525, title XIV, § 1401(e)(2)(A), Oct. 19, 1984, 98 Stat. 2616, § 1074b; renumbered § 1074c, Pub. L. 102–190, div. A, title VI, § 640(a)(1), Dec. 5, 1991, 105 Stat. 1385.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8033], Oct. 12, 1984, 98 Stat. 1904, 1929.

Pub. L. 98–212, title VII, § 739, Dec. 8, 1983, 97 Stat. 1445.

Pub. L. 97–377, title I, § 101(c) [title VII, § 742], Dec. 21, 1982, 96 Stat. 1833, 1858.

Pub. L. 97–114, title VII, § 743, Dec. 29, 1981, 95 Stat. 1586.

Pub. L. 96–527, title VII, § 744, Dec. 15, 1980, 94 Stat. 3089.

AMENDMENTS

1991—Pub. L. 102–190 renumbered section 1074b of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 1074d. Certain primary and preventive health care services

(a) SERVICES AVAILABLE.—(1) Female members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to primary and preventive health care services for women as part of such medical care.

(2) Male members and former members of the uniformed services entitled to medical care under section 1074 or 1074a of this title shall also be entitled to preventive health care screening for colon or prostate cancer at such intervals and using such screening methods as the administering Secretaries consider appropriate.

(b) DEFINITION.—In this section, the term ''primary and preventive health care services for women'' means health care services, including related counseling services, provided to women with respect to the following:

(1) Papanicolaou tests (pap smear).

(2) Breast examinations and mammography.

(3) Comprehensive obstetrical and gynecological care, including care related to pregnancy and the prevention of pregnancy.

(4) Infertility and sexually transmitted diseases, including prevention.

(5) Menopause, including hormone replacement therapy and counseling regarding the benefits and risks of hormone replacement therapy.

(6) Physical or psychological conditions arising out of acts of sexual violence.

(7) Gynecological cancers.

(8) Colon cancer screening, at the intervals and using the screening methods prescribed under subsection (a)(2).

(Added Pub. L. 103–160, div. A, title VII, § 701(a)(1), Nov. 30, 1993, 107 Stat. 1685; amended Pub. L. 104–201, div. A, title VII, § 701(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2587.)

AMENDMENTS

1996—Pub. L. 104–201, § 701(a)(2)(A), amended catchline generally, substituting ''Certain primary and preventive health care services'' for ''Primary and preventive health care services for women''.

Subsec. (a). Pub. L. 104–201, § 701(a)(1)(A), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(8). Pub. L. 104–201, § 701(a)(1)(B), added par. (8).

DEFENSE WOMEN'S HEALTH RESEARCH PROGRAM

Pub. L. 103–337, div. A, title II, § 241, Oct. 5, 1994, 108 Stat. 2701, provided that:

''(a) CONTINUATION OF PROGRAM.—The Secretary of Defense shall continue the Defense Women's Health Research Program established in fiscal year 1994 pursuant to the authority in section 251 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1606) [set out below]. The program shall continue to serve as the coordinating agent for multi-disciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces. The program also shall continue to coordinate with research supported by other Federal agencies that is aimed at improving the health of women.

''(b) PARTICIPATION BY ALL MILITARY DEPARTMENTS.—The Departments of the Army, Navy, and Air Force shall each participate in the activities under the program.

''(c) ARMY TO BE EXECUTIVE AGENT.—The Secretary of Defense shall designate the Secretary of the Army to be the executive agent for administering the program.

''(d) IMPLEMENTATION PLAN.—If the Secretary of Defense intends to change the plan for the implementation of the program previously submitted to the Committees on Armed Services of the Senate and House of Representatives, the amended plan shall be submitted to such committees before implementation.

''(e) PROGRAM ACTIVITIES.—The program shall include the following activities regarding health risks and health care for women in the Armed Forces:

''(1) The coordination and support activities described in section 251 of Public Law 103–160 [set out below].

''(2) Epidemiologic research regarding women deployed for military operations, including research on patterns of illness and injury, environmental and occupational hazards (including exposure to toxins), side-effects of pharmaceuticals used by women so deployed, psychological stress associated with military training, deployment, combat and other traumatic incidents, and other conditions of life, and human factor research regarding women so deployed.

''(3) Development of a data base to facilitate long-term research studies on issues related to the health of women in military service, and continued development and support of a women's health information clearinghouse to serve as an information resource for clinical, research, and policy issues affecting women in the Armed Forces.

''(4) Research on policies and standards issues, including research supporting the development of military standards related to training, operations, deployment, and retention and the relationship between such activities and factors affecting women's health.

''(5) Research on interventions having a potential for addressing conditions of military service that adversely affect the health of women in the Armed Forces.

''(f) FUNDING.—Of the amount authorized to be appropriated pursuant to section 201 [108 Stat. 2690], $40,000,000 shall be available for the Defense Women's Health Research Program referred to in subsection (a).''

Pub. L. 103–160, div. A, title II, §251, Nov. 30, 1993, 107 Stat. 1606, provided that:

''(a) AUTHORITY TO ESTABLISH CENTER.—The Secretary of Defense may establish a Defense Women's Health Research Center (hereinafter in this section referred to as the 'Center') at an existing Department of Defense medical center to serve as the coordinating agent for multidisciplinary and multi-institutional research within the Department of Defense on women's health issues related to service in the Armed Forces. The Secretary shall determine whether or not to establish the Center not later than May 1, 1994. If established, the Center shall also coordinate with research supported by the Department of Health and Human Services and other agencies that is aimed at improving the health of women.

''(b) SUPPORT OF RESEARCH.—The Center shall support health research into matters relating to the service of women in the military, including the following matters:

''(1) Combat stress and trauma.

''(2) Exposure to toxins and other environmental hazards associated with military equipment.

''(3) Psychology related stress in warfare situations.

''(4) Mental health, including post-traumatic stress disorder and depression.

''(5) Human factor studies related to women in combat areas.

''(c) COMPETITION REQUIREMENT RELATING TO ESTABLISHMENT OF CENTER.—The Center may be established only pursuant to a competition among existing Department of Defense medical centers.

''(d) IMPLEMENTATION PLAN.—The Secretary of Defense shall prepare a plan for the implementation of subsection (a). The plan shall be submitted to the Committees on Armed Services of the Senate and House of Representatives before May 1, 1994.

''(e) ACTIVITIES FOR FISCAL YEAR 1994.—During fiscal year 1994, the Center may address the following:

''(1) Program planning, infrastructure development, baseline information gathering, technology infusion, and connectivity.

''(2) Management and technical staffing.

''(3) Data base development of health issues related to service by women on active duty as compared to service by women in the National Guard or Reserves.

''(4) Research protocols, cohort development, health surveillance, and epidemiologic studies, to be developed in coordination with the Centers for Disease Control and the National Institutes of Health whenever possible.

''(f) FUNDING.—Of the funds authorized to be appropriated pursuant to section 201 [107 Stat. 1583], $20,000,000 shall be available for the establishment of the Center or for medical research at existing Department of Defense medical centers into matters relating to service by women in the military.

''(g) REPORT.—(1) If the Secretary of Defense determines not to establish a women's health center under subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives, not later than May 1, 1994, a report on the plans of the Secretary for the use of the funds described in subsection (f).

''(2) If the Secretary determines to establish the Center, the Secretary shall, not less than 60 days before the establishment of the Center, submit to those committees a report describing the planned location for the Center and the competitive process used in the selection of that location.''

REPORT ON PROVISION OF PRIMARY AND PREVENTATIVE HEALTH CARE SERVICES FOR WOMEN

Section 735 of Pub. L. 103–160 provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall prepare a report evaluating the provision of primary and preventive health care services through military medical treatment facilities and the Civilian Health and Medical Program of the Uniformed Services to female members of the uniformed services and female covered beneficiaries eligible for health care under chapter 55 of title 10, United States Code.

''(b) CONTENTS.—The report required by subsection (a) shall contain the following:

''(1) A description of the number and types of health care providers who are providing health care services in military medical treatment facilities or through the Civilian Health and Medical Program of the Uniformed Services to female members and female covered beneficiaries.

''(2) A description of the health care programs implemented (or planned) by the administering Secretaries to assess the health needs of women or to meet the special health needs of women.

''(3) A description of the demographics of the population of female members and female covered beneficiaries and the leading categories of morbidity and mortality among such members and beneficiaries.

''(4) A description of any actions, including the use of special pays and incentives, undertaken by the Secretary during fiscal year 1993—

''(A) to ensure the retention of health care providers who are providing health care services to female members and female covered beneficiaries;

''(B) to recruit additional health care providers to provide such health care services; and

''(C) to replace departing health care providers who provided such health care services.

''(5) A description of any existing or proposed programs to encourage specialization of health care providers in fields related to primary and preventive health care services for women.

''(6) An assessment of any difficulties experienced by military medical treatment facilities or health care providers under the Civilian Health and Medical Program of the Uniformed Services in furnishing primary and preventive health care services for women and a description of the actions taken by the Secretary to resolve such difficulties.

''(7) A description of the actions taken by the Secretary to foster and encourage the expansion of research relating to health care issues of concern to female members of the uniformed services and female covered beneficiaries.

''(c) STUDY OF THE NEEDS OF FEMALE MEMBERS AND FEMALE COVERED BENEFICIARIES FOR HEALTH CARE SERVICES.—(1) As part of the report required by subsection (a), the Secretary shall conduct a study to determine the needs of female members of the uniformed services and female covered beneficiaries for health care services, including primary and preventive health care services for women.

''(2) The study shall examine the health care needs of current female members and female covered beneficiaries and anticipated future female members and female covered beneficiaries, taking into consideration the anticipated size and composition of the Armed Forces in the year 2000 and the demographics of the entire United States.

''(d) SUBMISSION AND REVISION.—The Secretary shall submit to Congress the report required by subsection (a) not later than October 1, 1994. The Secretary shall revise and resubmit the report to Congress not later than October 1, 1999.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The term 'primary and preventive health care services for women' has the meaning given that term in section 1074d(b) of title 10, United States Code, as added by section 701(a)).

''(2) The term 'covered beneficiary' has the meaning given that term in section 1072(5) of such title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1077 of this title.

§ 1074e. Medical care: certain Reserves who served in Southwest Asia during the Persian Gulf Conflict

(a) ENTITLEMENT TO MEDICAL CARE.—A member of the armed forces described in subsection (b) is entitled to medical care for a qualifying Persian Gulf symptom or illness to the same extent and under the same conditions (other than the requirement that the member be on active duty) as a member of a uniformed service who is entitled to such care under section 1074(a) of this title.

(b) COVERED MEMBERS.—Subsection (a) applies to a member of a reserve component who—

(1) is a Persian Gulf veteran;

(2) has a qualifying Persian Gulf symptom or illness; and

(3) is not otherwise entitled to medical care for such symptom or illness under this chapter and is not otherwise eligible for hospital care and medical services for such symptom or illness under section 1710 of title 38.

(c) DEFINITIONS.—In this section:

(1) The term ''Persian Gulf veteran'' means a member of the armed forces who served on active duty in the Southwest Asia theater of operations during the Persian Gulf Conflict.

(2) The term ''qualifying Persian Gulf symptom or illness'' means, with respect to a member described in subsection (b), a symptom or illness—

(A) that the member registered before September 1, 1997, in the Comprehensive Clinical Evaluation Program of the Department of Defense and that is presumed under section 721(d) of the National Defense Authorization Act for Fiscal Year 1995 (10 U.S.C. 1074 note) to be a result of service in the Southwest Asia theater of operations during the Persian Gulf Conflict; or

(B) that the member registered before September 1, 1997, in the Persian Gulf War Veterans Health Registry maintained by the Department of Veterans Affairs pursuant to section 702 of the Persian Gulf War Veterans' Health Status Act (38 U.S.C. 527 note).

(Added Pub. L. 105–85, div. A, title VII, § 764(a), Nov. 18, 1997, 111 Stat. 1825.)

REFERENCES IN TEXT

Section 721(d) of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c)(2)(A), is section 721(d) of Pub. L. 103–337, which is set out as a note under section 1074 of this title.

Section 702 of the Persian Gulf War Veterans' Health Status Act, referred to in subsec. (c)(2)(B), is section 702 of Pub. L. 102–585, which is set out as a note under section 527 of Title 38, Veterans' Benefits.

§ 1074f. Medical tracking system for members deployed overseas

(a) SYSTEM REQUIRED.—The Secretary of Defense shall establish a system to assess the medical condition of members of the armed forces (including members of the reserve components) who are deployed outside the United States or its territories or possessions as part of a contingency operation (including a humanitarian operation, peacekeeping operation, or similar operation) or combat operation.

(b) ELEMENTS OF SYSTEM.—The system described in subsection (a) shall include the use of predeployment medical examinations and postdeployment medical examinations (including an assessment of mental health and the drawing of blood samples) to accurately record the medical condition of members before their deployment and any changes in their medical condition during the course of their deployment. The postdeployment examination shall be conducted when the member is redeployed or otherwise leaves an area in which the system is in operation (or as soon as possible thereafter).

(c) RECORDKEEPING.—The results of all medical examinations conducted under the system, records of all health care services (including immunizations) received by members described in subsection (a) in anticipation of their deployment or during the course of their deployment, and records of events occurring in the deployment area that may affect the health of such

members shall be retained and maintained in a centralized location to improve future access to the records.

(d) QUALITY ASSURANCE.—The Secretary of Defense shall establish a quality assurance program to evaluate the success of the system in ensuring that members described in subsection (a) receive predeployment medical examinations and postdeployment medical examinations and that the recordkeeping requirements with respect to the system are met.

(Added Pub. L. 105–85, div. A, title VII, § 765(a)(1), Nov. 18, 1997, 111 Stat. 1826.)

§ 1074g. Pharmacy benefits program

(a) PHARMACY BENEFITS.—(1) The Secretary of Defense, after consulting with the other administering Secretaries, shall establish an effective, efficient, integrated pharmacy benefits program under this chapter (hereinafter in this section referred to as the ''pharmacy benefits program'').

(2)(A) The pharmacy benefits program shall include a uniform formulary of pharmaceutical agents, which shall assure the availability of pharmaceutical agents in the complete range of therapeutic classes. The selection for inclusion on the uniform formulary of particular pharmaceutical agents in each therapeutic class shall be based on the relative clinical and cost effectiveness of the agents in such class.

(B) In considering the relative clinical effectiveness of agents under subparagraph (A), the Secretary shall presume inclusion in a therapeutic class of a pharmaceutical agent, unless the Pharmacy and Therapeutics Committee established under subsection (b) finds that a pharmaceutical agent does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome over the other drugs included on the uniform formulary.

(C) In considering the relative cost effectiveness of agents under subparagraph (A), the Secretary shall rely on the evaluation by the Pharmacy and Therapeutics Committee of the costs of agents in a therapeutic class in relation to the safety, effectiveness, and clinical outcomes of such agents.

(D) The Secretary shall establish procedures for the selection of particular pharmaceutical agents for the uniform formulary. Such procedures shall be established so as best to accomplish, in the judgment of the Secretary, the objectives set forth in paragraph (1). No pharmaceutical agent may be excluded from the uniform formulary except upon the recommendation of the Pharmacy and Therapeutics Committee. The Secretary shall begin to implement the uniform formulary not later than October 1, 2000.

(E) Pharmaceutical agents included on the uniform formulary shall be available to eligible covered beneficiaries through—

(i) facilities of the uniformed services, consistent with the scope of health care services offered in such facilities;

(ii) retail pharmacies designated or eligible under the TRICARE program or the Civilian Health and Medical Program of the Uniformed Services to provide pharmaceutical agents to covered beneficiaries; or

(iii) the national mail-order pharmacy program.

(3) The pharmacy benefits program shall assure the availability of clinically appropriate pharmaceutical agents to members of the armed forces, including, where appropriate, agents not included on the uniform formulary described in paragraph (2).

(4) The pharmacy benefits program may provide that prior authorization be required for certain pharmaceutical agents to assure that the use of such agents is clinically appropriate.

(5) The pharmacy benefits program shall assure the availability to eligible covered beneficiaries of pharmaceutical agents not included on the uniform formulary. Such pharmaceutical agents shall be available through at least one of the means described in paragraph (2)(E) under terms and conditions that may include cost sharing by the eligible covered beneficiary in addition to any such cost sharing applicable to agents on the uniform formulary.

(6) The Secretary, in the regulations prescribed under subsection (g), may establish cost sharing requirements (which may be established as a percentage or fixed dollar amount) under the pharmacy benefits program for generic, formulary, and nonformulary agents. For nonformulary agents, cost sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries covered by section 1079 of this title or 25 percent for beneficiaries covered by section 1086 of this title.

(7) The Secretary shall establish procedures for eligible covered beneficiaries to receive pharmaceutical agents that are not included on the uniform formulary but that are considered to be clinically necessary. Such procedures shall include peer review procedures under which the Secretary may determine that there is a clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary, in which case the pharmaceutical agent shall be provided under the same terms and conditions as an agent on the uniform formulary. Such procedures shall also include an expeditious appeals process for an eligible covered beneficiary, or a network or uniformed provider on behalf of the beneficiary, to establish clinical justification for the use of a pharmaceutical agent that is not on the uniform formulary.

(8) In carrying out this subsection, the Secretary shall ensure that an eligible covered beneficiary may continue to receive coverage for any maintenance pharmaceutical that is not on the uniform formulary and that was prescribed for the beneficiary before October 5, 1999, and stabilized the medical condition of the beneficiary.

(b) ESTABLISHMENT OF COMMITTEE.—(1) The Secretary of Defense shall, in consultation with the Secretaries of the military departments, establish a Pharmacy and Therapeutics Committee for the purpose of developing the uniform formulary of pharmaceutical agents required by subsection (a), reviewing such formulary on a periodic basis, and making additional recommendations regarding the formulary as the com-

mittee determines necessary and appropriate. The committee shall include representatives of pharmacies of the uniformed services facilities, contractors responsible for the TRICARE retail pharmacy program, contractors responsible for the national mail-order pharmacy program, providers in facilities of the uniformed services, and TRICARE network providers. Committee members shall have expertise in treating the medical needs of the populations served through such entities and in the range of pharmaceutical and biological medicines available for treating such populations. The committee shall function under procedures established by the Secretary under the regulations prescribed under subsection (g).

(2) Not later than 90 days after the establishment of the Pharmacy and Therapeutics Committee by the Secretary, the committee shall convene to design a proposed uniform formulary for submission to the Secretary. After such 90-day period, the committee shall meet at least quarterly and shall, during meetings, consider for inclusion on the uniform formulary under the standards established in subsection (a) any drugs newly approved by the Food and Drug Administration.

(c) ADVISORY PANEL.—(1) Concurrent with the establishment of the Pharmacy and Therapeutics Committee under subsection (b), the Secretary shall establish a Uniform Formulary Beneficiary Advisory Panel to review and comment on the development of the uniform formulary. The Secretary shall consider the comments of the panel before implementing the uniform formulary or implementing changes to the uniform formulary.

(2) The Secretary shall determine the size and membership of the panel established under paragraph (1), which shall include members that represent nongovernmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries.

(d) PROCEDURES.—(1) In the operation of the pharmacy benefits program under subsection (a), the Secretary of Defense shall assure through management and new contractual arrangements that financial resources are aligned such that the cost of prescriptions is borne by the organization that is financially responsible for the health care of the eligible covered beneficiary.

(2) Effective not later than April 5, 2000, the Secretary shall use a modification to the bid price adjustment methodology in the current managed care support contracts to ensure equitable and timely reimbursement to the TRICARE managed care support contractors for pharmaceutical products delivered in the nonmilitary environments. The methodology shall take into account the ''at-risk'' nature of the contracts as well as managed care support contractor pharmacy costs attributable to changes to pharmacy service or formulary management at military medical treatment facilities, and other military activities and policies that affect costs of pharmacy benefits provided through the Civilian Health and Medical Program of the Uniformed Services. The methodology shall also account for military treatment facility costs attributable to the delivery of pharmaceutical products in the military facility environment which were prescribed by a network provider.

(e) PHARMACY DATA TRANSACTION SERVICE.—The Secretary of Defense shall implement the use of the Pharmacy Data Transaction Service in all fixed facilities of the uniformed services under the jurisdiction of the Secretary, in the TRICARE retail pharmacy program, and in the national mail-order pharmacy program.

(f) DEFINITIONS.—In this section:

(1) The term ''eligible covered beneficiary'' means a covered beneficiary for whom eligibility to receive pharmacy benefits through the means described in subsection (a)(2)(E) is established under this chapter or another provision of law.

(2) The term ''pharmaceutical agent'' means drugs, biological products, and medical devices under the regulatory authority of the Food and Drug Administration.

(g) REGULATIONS.—The Secretary of Defense shall, after consultation with the other administering Secretaries, prescribe regulations to carry out this section.

(Added Pub. L. 106–65, div. A, title VII, §701(a)(1), Oct. 5, 1999, 113 Stat. 677; amended Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–107, div. A, title X, §1048(c)(4), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsec. (a)(8). Pub. L. 107–107 substituted ''October 5, 1999,'' for ''the date of the enactment of this section''.

2000—Subsec. (a)(6). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(A)], substituted ''in the regulations prescribed'' for ''as part of the regulations established''.

Subsec. (a)(7). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(B)], substituted ''that are not included on the uniform formulary but that are'' for ''not included on the uniform formulary, but,''.

Subsec. (b)(1). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(C)], substituted ''prescribed under'' for ''required by'' in last sentence.

Subsec. (d)(2). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(D)], substituted ''Effective not later than April 5, 2000, the Secretary shall use'' for ''Not later than 6 months after the date of the enactment of this section, the Secretary shall utilize''.

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(E)], substituted ''The'' for ''Not later than April 1, 2000, the'' and inserted ''in'' before ''the TRICARE'' and before ''the national''.

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(F)], substituted ''In this section:'' for ''As used in this section—'' in introductory provisions, ''The term'' for ''the term'' in pars. (1) and (2), and a period for ''; and'' at end of par. (1).

Subsec. (g). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(5)(G)], substituted ''prescribe'' for ''promulgate''.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463,

Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

INTEROPERABILITY OF DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE PHARMACY DATA SYSTEMS

Pub. L. 107–314, div. A, title VII, §724, Dec. 2, 2002, 116 Stat. 2598, provided that:

''(a) INTEROPERABILITY.—The Secretary of Veterans Affairs and the Secretary of Defense shall seek to ensure that on or before October 1, 2004, the Department of Veterans Affairs pharmacy data system and the Department of Defense pharmacy data system (known as the 'Pharmacy Data Transaction System') are interoperable for both Department of Defense beneficiaries and Department of Veterans Affairs beneficiaries by achieving real-time interface, data exchange, and checking of prescription drug data of outpatients, and using national standards for the exchange of outpatient medication information.

''(b) ALTERNATIVE REQUIREMENT.—If the interoperability specified in subsection (a) is not achieved by October 1, 2004, as determined jointly by the Secretary of Defense and the Secretary of Veterans Affairs, the Secretary of Veterans Affairs shall adopt the Department of Defense Pharmacy Data Transaction System for use by the Department of Veterans Affairs health care system. Such system shall be fully operational not later than October 1, 2005.

''(c) IMPLEMENTATION FUNDING FOR ALTERNATIVE REQUIREMENT.—The Secretary of Defense shall transfer to the Secretary of Veterans Affairs, or shall otherwise bear the cost of, an amount sufficient to cover three-fourths of the cost to the Department of Veterans Affairs for computer programming activities and relevant staff training expenses related to implementation of subsection (b). Such amount shall be determined in such manner as agreed to by the two Secretaries.''

DEADLINE FOR ESTABLISHMENT OF COMMITTEE

Pub. L. 106–65, div. A, title VII, §701(b), Oct. 5, 1999, 113 Stat. 680, provided that: ''Not later than 30 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary shall establish the Pharmacy and Therapeutics Committee required by section 1074g(b) of title 10, United States Code.''

REPORTS REQUIRED

Pub. L. 106–65, div. A, title VII, §701(c), Oct. 5, 1999, 113 Stat. 680, provided that: ''Not later than April 1 and October 1 of fiscal years 2000 and 2001, the Secretary of Defense shall submit to Congress a report on—

''(1) implementation of the uniform formulary required under subsection (a) of section 1074g of title 10, United States Code (as added by subsection (a));

''(2) the results of a confidential survey conducted by the Secretary of prescribers for military medical treatment facilities and TRICARE contractors to determine—

''(A) during the most recent fiscal year, how often prescribers attempted to prescribe non-formulary or non-preferred prescription drugs, how often such prescribers were able to do so, and whether covered beneficiaries were able to fill such prescriptions without undue delay;

''(B) the understanding by prescribers of the reasons that military medical treatment facilities or civilian contractors preferred certain pharmaceuticals to others; and

''(C) the impact of any restrictions on access to non-formulary prescriptions on the clinical decisions of the prescribers and the aggregate cost, quality, and accessibility of health care provided to covered beneficiaries;

''(3) the operation of the Pharmacy Data Transaction Service required by subsection (e) of such section 1074g; and

''(4) any other actions taken by the Secretary to improve management of the pharmacy benefits program under such section.''

STUDY FOR DESIGN OF PHARMACY BENEFIT FOR CERTAIN COVERED BENEFICIARIES

Pub. L. 106–65, div. A, title VII, §701(d), Oct. 5, 1999, 113 Stat. 680, required the Secretary of Defense to prepare and submit to Congress, by Apr. 15, 2001, a study on a design for a comprehensive pharmacy benefit for covered beneficiaries under chapter 55 of title 10, who are entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act, and to provide an estimate of the costs of implementing and operating such design, prior to repeal by Pub. L. 107–107, div. A, title VII, §723, Dec. 28, 2001, 115 Stat. 1168.

§ 1074h. Medical and dental care: medal of honor recipients; dependents

(a) MEDAL OF HONOR RECIPIENTS.—A former member of the armed forces who is a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if entitled to retired pay.

(b) IMMEDIATE DEPENDENTS.—A person who is an immediate dependent of a Medal of Honor recipient and who is not otherwise entitled to medical and dental benefits under this chapter may, upon request, be given medical and dental care provided by the administering Secretaries in the same manner as if the Medal of Honor recipient were, or (if deceased) was at the time of death, entitled to retired pay.

(c) DEFINITIONS.—In this section:

(1) The term ''Medal of Honor recipient'' means a person who has been awarded a medal of honor under section 3741, 6241, or 8741 of this title or section 491 of title 14.

(2) The term ''immediate dependent'' means a dependent described in subparagraph (A), (B), (C), or (D) of section 1072(2) of this title.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §706(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175.)

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VII, §706(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–175, provided that: ''Section 1074h of title 10, United States Code, shall apply with respect to medical and dental care provided on or after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1074i. Reimbursement for certain travel expenses

In any case in which a covered beneficiary is referred by a primary care physician to a specialty care provider who provides services more than 100 miles from the location in which the primary care provider provides services to the covered beneficiary, the Secretary shall provide reimbursement for reasonable travel expenses for the covered beneficiary and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §758(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199; amended Pub. L. 107–107, div. A, title VII, §706, Dec. 28, 2001, 115 Stat. 1163.)

AMENDMENTS

2001—Pub. L. 107–107 inserted before period at end ''and, when accompaniment by an adult is necessary,

for a parent or guardian of the covered beneficiary or another member of the covered beneficiary's family who is at least 21 years of age''.

§ 1074j. Sub-acute care program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish an effective, efficient, and integrated sub-acute care benefits program under this chapter (hereinafter referred to in this section as the ''program''). Except as otherwise provided in this section, the types of health care authorized under the program shall be the same as those provided under section 1079 of this title. The Secretary, after consultation with the other administering Secretaries, shall promulgate regulations to carry out this section.

(b) BENEFITS.—(1) The program shall include a uniform skilled nursing facility benefit that shall be provided in the manner and under the conditions described in section 1861 (h) and (i) of the Social Security Act (42 U.S.C. 1395x (h) and (i)), except that the limitation on the number of days of coverage under section 1812 (a) and (b) of such Act (42 U.S.C. 1395d (a) and (b)) shall not be applicable under the program. Skilled nursing facility care for each spell of illness shall continue to be provided for as long as medically necessary and appropriate.

(2) In this subsection:

(A) The term ''skilled nursing facility'' has the meaning given such term in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a)).

(B) The term ''spell of illness'' has the meaning given such term in section 1861(a) of such Act (42 U.S.C. 1395x(a)).

(3) The program shall include a comprehensive, part-time or intermittent home health care benefit that shall be provided in the manner and under the conditions described in section 1861(m) of the Social Security Act (42 U.S.C. 1395x(m)).

(Added Pub. L. 107–107, div. A, title VII, § 701(a)(1), Dec. 28, 2001, 115 Stat. 1158.)

§ 1074k. Long-term care insurance

Provisions regarding long-term care insurance for members and certain former members of the uniformed services and their families are set forth in chapter 90 of title 5.

(Added Pub. L. 107–107, div. A, title VII, § 701(f)(1), Dec. 28, 2001, 115 Stat. 1161.)

§ 1075. Officers and certain enlisted members: subsistence charges

When an officer or former officer of a uniformed service, or an enlisted member of a uniformed service entitled to basic allowance for subsistence, is hospitalized under section 1074 of this title, he shall pay an amount equal to the part of the charge prescribed under section 1078 of this title that is attributable to subsistence. An enlisted member, or former enlisted member, of a uniformed service who is entitled to retired or retainer pay, or equivalent pay may not be so charged.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 97–22, § 10(b)(2), July 10, 1981, 95 Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1075	37:422.	June 7, 1956, ch. 374, § 302, 70 Stat. 254.

The word ''officer'' is substituted for the words ''Commissioned officers and warrant officers'' to reflect section 101(14) of this title. The words ''or former officer'' are substituted for the words ''and retired''. The word ''active'' is omitted as surplusage.

PRIOR PROVISIONS

A prior section 1075, act Aug. 10, 1956, ch. 1041, 70A Stat. 82, related to post card requests for absentee ballots, and for printing and transmission thereof, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1981—Pub. L. 97–22 inserted '', or an enlisted member of a uniformed service entitled to basic allowance for subsistence,'' after ''officer of a uniformed service''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1096 of this title.

§ 1076. Medical and dental care for dependents: general rule

(a)(1) A dependent described in paragraph (2) is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(2) A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service described in one of the following subparagraphs:

(A) A member who is on active duty for a period of more than 30 days or died while on that duty.

(B) A member who died from an injury, illness, or disease incurred or aggravated—

(i) while the member was on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive-duty training; or

(ii) while the member was traveling to or from the place at which the member was to perform, or had performed, such active duty, active duty for training, or inactive-duty training.

(C) A member who died from an injury, illness, or disease incurred or aggravated in the line of duty while the member remained overnight immediately before the commencement of inactive-duty training, or while the member remained overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training.

(D) A member on active duty who is entitled to benefits under subsection (e) of section 1074a of this title by reason of paragraph (1), (2), or (3) of subsection (a) of such section.

(E) A member who died from an injury, illness, or disease incurred or aggravated while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence.

(b) Under regulations to be prescribed jointly by the administering Secretaries, a dependent of a member or former member—

(1) who is, or (if deceased) was at the time of his death, entitled to retired or retainer pay or equivalent pay; or

(2) who died before attaining age 60 and at the time of his death would have been eligible for retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before December 1, 1994) but for the fact that he was under 60 years of age;

may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff, except that a dependent of a member or former member described in paragraph (2) may not be given such medical or dental care until the date on which such member or former member would have attained age 60.

(c) A determination by the medical or dental officer in charge, or the contract surgeon in charge, or his designee, as to the availability of space and facilities and to the capabilities of the medical and dental staff is conclusive. Care under this section may not be permitted to interfere with the primary mission of those facilities.

(d) To utilize more effectively the medical and dental facilities of the uniformed services, the administering Secretaries shall prescribe joint regulations to assure that dependents entitled to medical or dental care under this section will not be denied equal opportunity for that care because the facility concerned is that of a uniformed service other than that of the member.

(e)(1) Subject to paragraph (3), the administering Secretary shall furnish an abused dependent of a former member of a uniformed service described in paragraph (4), during that period that the abused dependent is in receipt of transitional compensation under section 1059 of this title, with medical and dental care, including mental health services, in facilities of the uniformed services in accordance with the same eligibility and benefits as were applicable for that abused dependent during the period of active service of the former member.

(2) Subject to paragraph (3), upon request of any dependent of a former member of a uniformed service punished for an abuse described in paragraph (4), the administering Secretary for such uniformed service may furnish medical care in facilities of the uniformed services to the dependent for the treatment of any adverse health condition resulting from such dependent's knowledge of (A) the abuse, or (B) any injury or illness suffered by the abused person as a result of such abuse.

(3) Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services under paragraph (1) or (2)—

(A) shall be limited to the health care prescribed by section 1077 of this title; and

(B) shall be subject to the availability of space and facilities and the capabilities of the medical and dental staff.

(4)(A) A former member of a uniformed service referred to in paragraph (1) is a member who—

(i) received a dishonorable or bad-conduct discharge or was dismissed from a uniformed service as a result of a court-martial conviction for an offense, under either military or civil law, involving abuse of a dependent of the member; or

(ii) was administratively discharged from a uniformed service as a result of such an offense.

(B) A determination of whether an offense involved abuse of a dependent of the member shall be made in accordance with regulations prescribed by the administering Secretary for such uniformed service.

(f)(1) The administering Secretaries shall furnish an eligible dependent a physical examination that is required by a school in connection with the enrollment of the dependent as a student in that school.

(2) A dependent is eligible for a physical examination under paragraph (1) if the dependent—

(A) is entitled to receive medical care under subsection (a) or is authorized to receive medical care under subsection (b); and

(B) is at least 5 years of age and less than 12 years of age.

(3) Nothing in paragraph (2) may be construed to prohibit the furnishing of a school-required physical examination to any dependent who, except for not satisfying the age requirement under that paragraph, would otherwise be eligible for a physical examination required to be furnished under this subsection.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, §2(3), Sept. 30, 1966, 80 Stat. 862; Pub. L. 95–397, title III, §301, Sept. 30, 1978, 92 Stat. 849; Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–252, title X, §1004(b), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–557, §19(5), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–145, title VI, §652(a), Nov. 8, 1985, 99 Stat. 656; Pub. L. 99–661, div. A, title VI, §§604(f)(1)(C), 652(c), Nov. 14, 1986, 100 Stat. 3877, 3889; Pub. L. 100–456, div. A, title VI, §651(a), Sept. 29, 1988, 102 Stat. 1990; Pub. L. 101–189, div. A, title VI, §653(a)(4), title VII, §731(c)(1), Nov. 29, 1989, 103 Stat. 1462, 1482; Pub. L. 103–337, div. A, title VII, §§704(a), (b), title XVI, §1671(c)(7)(A), Oct. 5, 1994, 108 Stat. 2798, 2799, 3014; Pub. L. 104–106, div. A, title VII, §703, title XV, §1501(c)(11), Feb. 10, 1996, 110 Stat. 372, 499; Pub. L. 105–85, div. A, title V, §513(b), title X, §1073(d)(1)(D), Nov. 18, 1997, 111 Stat. 1730, 1905; Pub. L. 105–261, div. A, title VII, §732, Oct. 17,

1998, 112 Stat. 2071; Pub. L. 106–65, div. A, title V, §578(i)(2), title VII, §705(c), Oct. 5, 1999, 113 Stat. 629, 684; Pub. L. 106–398, §1 [[div. A], title VII, §703], Oct. 30, 2000, 114 Stat. 1654, 1654A–174; Pub. L. 107–107, div. A, title V, §513(a), Dec. 28, 2001, 115 Stat. 1093.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1076(a)	37:402(a)(2) (as applicable to 37:403(a)). 37:403(a) (1st sentence).	June 7, 1956, ch. 374, §§102(a)(2) (as applicable to §103(a)), (3) (as applicable to §301(c)), 103(a), (b), 301(c), 70 Stat. 250, 251, 253.
1076(b)	37:402(a)(3) (as applicable to 37:421(c)). 37:421(c) (less last 28 words).	
1076(c)	37:403(a) (less 1st sentence). 37:421(c) (last 28 words).	
1076(d)	37:403(b).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations dependents are entitled to dental care under 37:403(h)(4), restated as section 1077 of this title.

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'' are omitted as surplusage, since it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'' to reflect section 101(22) and (23) of this title.

In subsection (b), the words ''active duty (other than for training)'' are substituted for the words ''active duty as defined in section 901(b) of title 50'' to reflect section 101(22) of this title. The words ''retirement'' and ''retirement pay'' are omitted as surplusage.

In subsection (c), 37:421(c) (last 28 words) is omitted as unnecessary since this subsection and section 1077 of this title are written so as to apply to subsection (b) as well as subsection (a).

In subsection (d), the words ''because the facility concerned is that of a uniformed service other than that of the member'' is substituted for the words ''because of the service affiliation of the service member''.

REFERENCES IN TEXT

Chapter 67 of this title as in effect before December 1, 1994, referred to in subsec. (b)(2), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337.

PRIOR PROVISIONS

A prior section 1076, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to use of post cards, waiver of registration, and voting by discharged persons, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (a)(2)(C). Pub. L. 107–107 struck out '', if the site was outside reasonable commuting distance from the member's residence'' before period at end.

2000—Subsec. (f). Pub. L. 106–398 added subsec. (f).

1999—Subsec. (a)(2)(D). Pub. L. 106–65, §705(c), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''A member who incurred or aggravated an injury, illness, or disease in the line of duty while serving on active duty for a period of 30 days or less (or while traveling to or from the place of such duty) and the member's orders are modified or extended, while the member is being treated for (or recovering from) the injury, illness, or disease, so as to result in active duty for a period of more than 30 days. However, this subparagraph entitles the dependent to medical and dental care only while the member remains on active duty.''

Subsec. (a)(2)(E). Pub. L. 106–65, §578(i)(2), added subpar. (E).

1998—Subsec. (e)(1). Pub. L. 105–261, §732(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subject to paragraph (3), if an abused dependent of a former member of a uniformed service described in paragraph (4) needs medical or dental care for an injury or illness resulting from abuse by the member, the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(3). Pub. L. 105–261, §732(2), inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''shall terminate one year after the date on which the former member was discharged or dismissed from a uniformed service as described in paragraph (4).''

1997—Subsec. (a)(2). Pub. L. 105–85, §513(b), added par. (2) and struck out former par. (2) which read as follows: ''A dependent referred to in paragraph (1) is a dependent of a member of a uniformed service—

''(A) who is on active duty for a period of more than 30 days or who died while on that duty; or

''(B) who died from an injury, illness, or disease incurred or aggravated—

''(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

''(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.''

Subsec. (b). Pub. L. 105–85, §1073(d)(1)(D), made technical correction to directory language of Pub. L. 104–106, §703(b). See 1996 Amendment note below.

1996—Subsec. (b). Pub. L. 104–106, §703(b), as amended by Pub. L. 105–85, §1073(d)(1)(D), in concluding provisions, substituted ''paragraph (2) may'' for ''clause (2) may'' and struck out ''A dependent described in section 1072(2)(F) of this title may be provided medical and dental care pursuant to clause (2) without regard to subclause (B) of such clause.'' after ''age 60.''

Subsec. (b)(2). Pub. L. 104–106, §703(a), substituted ''death would'' for ''death (A) would'' and struck out '', and (B) had elected to participate in the Survivor Benefit Plan established under subchapter II of chapter 73 of this title'' after ''60 years of age''.

Pub. L. 104–106, §1501(c)(11), substituted ''before December 1, 1994'' for ''before the effective date of the Reserve Officer Personnel Management Act'' in subpar. (A).

1994—Subsec. (b)(2)(A). Pub. L. 103–337, §1671(c)(7)(A), substituted ''under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''under chapter 67 of this title''.

Subsec. (e)(1). Pub. L. 103–337, §704(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''Subject to paragraph (3), if—

''(A) a member of a uniformed service receives a dishonorable or bad-conduct discharge or is dismissed from a uniformed service as a result of a court-martial conviction for an offense involving abuse of a dependent of the member, as determined in accordance with regulations prescribed by the administering Secretary for such uniformed service; and

''(B) the abused dependent needs medical or dental care for an injury or illness resulting from the abuse, the administering Secretary may, upon request of the abused dependent, furnish medical or dental care to the dependent for the treatment of such injury or illness in facilities of the uniformed services.''

Subsec. (e)(2). Pub. L. 103–337, § 704(b)(1), (2), inserted ''former'' before ''member'' and substituted ''paragraph (4)'' for ''paragraph (1)(A)''.

Subsec. (e)(3). Pub. L. 103–337, § 704(b)(1), (3), inserted ''former'' before ''member'' in introductory provisions and in subpar. (C) and substituted ''was'' for ''is'' and ''paragraph (4)'' for ''paragraph (1)(A)'' in subpar. (C).

Subsec. (e)(4). Pub. L. 103–337, § 704(a)(2), added par. (4).

1989—Subsec. (e)(3)(C). Pub. L. 101–189, § 653(a)(4), substituted ''one year'' for ''1 year''.

Subsec. (f). Pub. L. 101–189, § 731(c)(1), struck out subsec. (f) which read as follows:

''(1) A person described in paragraph (2) shall be considered a dependent for purposes of this section for a period of one year after the date of the person's final decree of divorce, dissolution, or annulment. In addition, if such a person purchases a conversion health policy within the one-year period referred to in the preceding sentence, such person shall be entitled, upon request, to medical and dental care prescribed by section 1077 of this title for a period of one year after the purchase of the policy for any condition of the person that existed on the date on which coverage under the policy begins and for which care is not provided under that policy.

''(2) A person referred to in paragraph (1) is a person who would qualify as a dependent under section 1072(2)(G) but for the fact that the person's final decree of divorce, dissolution, or annulment is dated on or after April 1, 1985.

''(3) In this subsection, the term 'conversion health policy' means a health insurance plan with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of persons described in paragraph (2).''

1988—Subsec. (f). Pub. L. 100–456 added subsec. (f).

1986—Subsec. (a)(2)(B). Pub. L. 99–661, § 604(f)(1)(C), inserted reference to disease.

Subsec. (e). Pub. L. 99–661, § 652(c), added subsec. (e).

1985—Subsec. (a). Pub. L. 99–145 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A dependent of a member of a uniformed service who is on active duty for a period of more than 30 days, or of such a member who died while on that duty, is entitled, upon request, to the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff.''

1984—Subsecs. (b), (d). Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Defense and Secretary of Health and Human Services.

1982—Subsec. (b). Pub. L. 97–252 provided for medical and dental care, for a dependent described in section 1072(2)(F) of this title, pursuant to clause (2) without regard to subclause (B) of such clause.

1980—Subsecs. (b), (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (b). Pub. L. 95–397 substituted ''Under regulations to be prescribed jointly by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member-'' for ''Under joint regulations to be prescribed by the Secretary of Defense and the Secretary of Health, Education, and Welfare, a dependent of a member or former member who is, or was at the time of his death, entitled to retired or retainer pay, or equivalent pay, may, upon request, be given the medical and dental care prescribed by section 1077 of this title in facilities of the uniformed services, subject to the availability of space and facilities and the capabilities of the medical and dental staff'', added pars. (1), (2), and provisions following par. (2) relating to medical and dental care on request in facilities of the uniformed services subject to the availability of space, facilities and capabilities of staff, and excepting from such care provision a dependent of a member or former member until such member or former member would have attained age 60.

1966—Subsec. (b). Pub. L. 89–614 struck out provision which excepted from medical and dental care a member or former member who is, or was at the time of his death, entitled to retired pay under chapter 67 of this title and has served less than eight years on active duty (other than for training).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(d)(1) of Pub. L. 105–85 provided that the amendment made by that section is effective Feb. 10, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104–106, as enacted.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(A) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(1) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 651(d) of Pub. L. 100–456 provided that: ''Section 1076(f) of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Sept. 29, 1988] or 30 days after the Secretary of Defense first makes available a conversion health policy (as defined in such section), whichever is later. Such section shall apply to persons whose decree of divorce, dissolution, or annulment becomes final after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 604 of Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

Section 652(e)(3) of Pub. L. 99–661 provided that: ''The amendment made by subsection (c) [amending this section] shall apply only with respect to dependents who request medical or dental care on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 652(c) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply only with respect to dependents of members of the uniformed services whose deaths occur after September 30, 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983,

see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302 of Pub. L. 95–397 provided that: ''The amendment made by section 301 [amending this section] shall become effective on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later.''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

Pub. L. 102–25, title III, § 313, Apr. 6, 1991, 105 Stat. 85, provided that:

''(a) HEALTH CARE PROVIDED.—A member of the Armed Forces described in subsection (b), and the dependents of the member, shall be entitled to receive health care described in subsection (c) upon the release of the member from active duty in connection with Operation Desert Storm until the earlier of—

''(1) 30 days after the date of the release of the member from active duty; or

''(2) the date on which the member and the dependents of the member are covered by a health plan sponsored by an employer.

''(b) ELIGIBLE MEMBER DESCRIBED.—A member of the Armed Forces referred to in subsection (a) is a member who—

''(1) is a member of a reserve component of the Armed Forces and is called or ordered to active duty under chapter 39 of title 10, United States Code, in connection with Operation Desert Storm;

''(2) is involuntarily retained on active duty under section 673c [now 12305] of title 10, United States Code, in connection with Operation Desert Storm; or

''(3) voluntarily agrees to remain on active duty for a period of less than one year in connection with Operation Desert Storm.

''(c) HEALTH CARE DESCRIBED.—The health care referred to in subsection (a) is—

''(1) medical and dental care under section 1076 of title 10, United States Code, in the same manner as a dependent described in subsection (a)(2) of that section; and

''(2) health benefits contracted under the authority of section 1079(a) of that title and subject to the same rates and conditions as apply to persons covered under that section.

''(d) DEPENDENT DEFINED.—For purposes of this section, the term 'dependent' has the meaning given that term in section 1072(2) of title 10, United States Code.''

DEPENDENT; QUALIFICATION AS; TRANSITION

Section 651(c) of Pub. L. 100–456 provided that: ''Any person who qualified as a dependent under section 645(c) of the Department of Defense Authorization Act, 1985 [Pub. L. 98–525, formerly set out as a note under section 1072 of this title], as in effect before its repeal by subsection (b), shall remain qualified as a dependent as specified in that section and shall become eligible for benefits in accordance with section 1076(f) of title 10, United States Code (as added by subsection (a)), when no longer qualified as a dependent pursuant to such section 645(c).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1077, 1078, 1079, 1080, 1086, 1086a, 1087, 1095a, 1097, 1097a, 1108, 1111, 1145 of this title; title 42 section 1395ggg.

§ 1076a. TRICARE dental program

(a) ESTABLISHMENT OF DENTAL PLANS.—The Secretary of Defense may establish, and in the case of the dental plan described in paragraph (1) shall establish, the following voluntary enrollment dental plans:

(1) PLAN FOR SELECTED RESERVE AND INDIVIDUAL READY RESERVE.—A dental insurance plan for members of the Selected Reserve of the Ready Reserve and for members of the Individual Ready Reserve described in subsection 10144(b) of this title.

(2) PLAN FOR OTHER RESERVES.—A dental insurance plan for members of the Individual Ready Reserve not eligible to enroll in the plan established under paragraph (1).

(3) PLAN FOR ACTIVE DUTY DEPENDENTS.—Dental benefits plans for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days.

(4) PLAN FOR READY RESERVE DEPENDENTS.—A dental benefits plan for eligible dependents of members of the Ready Reserve of the reserve components who are not on active duty for more than 30 days.

(b) ADMINISTRATION OF PLANS.—The plans established under this section shall be administered under regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries.

(c) CARE AVAILABLE UNDER PLANS.—Dental plans established under subsection (a) may provide for the following dental care:

(1) Diagnostic, oral examination, and preventive services and palliative emergency care.

(2) Basic restorative services of amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs.

(3) Orthodontic services, crowns, gold fillings, bridges, complete or partial dentures, and such other services as the Secretary of Defense considers to be appropriate.

(d) PREMIUMS.—

(1) PREMIUM SHARING PLANS.—(A) The dental insurance plan established under subsection (a)(1) and the dental benefits plans established under subsection (a)(3) are premium sharing plans.

(B) Members enrolled in a premium sharing plan for themselves or for their dependents shall be required to pay a share of the premium charged for the benefits provided under the plan. The member's share of the premium charge may not exceed $20 per month for the enrollment.

(C) Effective as of January 1 of each year, the amount of the premium required under subparagraph (A) shall be increased by the percent equal to the lesser of—

(i) the percent by which the rates of basic pay of members of the uniformed services are increased on such date; or

(ii) the sum of one-half percent and the percent computed under section 5303(a) of title 5 for the increase in rates of basic pay for statutory pay systems for pay periods beginning on or after such date.

(D) The Secretary of Defense may reduce the monthly premium required to be paid under

paragraph (1) in the case of enlisted members in pay grade E–1, E–2, E–3, or E–4 if the Secretary determines that such a reduction is appropriate to assist such members to participate in a dental plan referred to in subparagraph (A).

(2) FULL PREMIUM PLANS.—(A) The dental insurance plan established under subsection (a)(2) and the dental benefits plan established under subsection (a)(4) are full premium plans.

(B) Members enrolled in a full premium plan for themselves or for their dependents shall be required to pay the entire premium charged for the benefits provided under the plan.

(3) PAYMENT PROCEDURES.—A member's share of the premium for a plan established under subsection (a) may be paid by deductions from the basic pay of the member and from compensation paid under section 206 of title 37, as the case may be. The regulations prescribed under subsection (b) shall specify the procedures for payment of the premiums by enrollees who do not receive such pay.

(e) COPAYMENTS UNDER PREMIUM SHARING PLANS.—A member or dependent who receives dental care under a premium sharing plan referred to in subsection (d)(1) shall—

(1) in the case of care described in subsection (c)(1), pay no charge for the care;

(2) in the case of care described in subsection (c)(2), pay 20 percent of the charges for the care; and

(3) in the case of care described in subsection (c)(3), pay a percentage of the charges for the care that is determined appropriate by the Secretary of Defense, after consultation with the other administering Secretaries.

(f) TRANSFER OF MEMBERS.—If a member whose dependents are enrolled in the plan established under subsection (a)(3) is transferred to a duty station where dental care is provided to the member's eligible dependents under a program other than that plan, the member may discontinue participation under the plan. If the member is later transferred to a duty station where dental care is not provided to such member's eligible dependents except under the plan established under subsection (a)(3), the member may re-enroll the dependents in that plan.

(g) CARE OUTSIDE THE UNITED STATES.—The Secretary of Defense may exercise the authority provided under subsection (a) to establish dental insurance plans and dental benefits plans for dental benefits provided outside the United States for the eligible members and dependents of members of the uniformed services. In the case of such an overseas dental plan, the Secretary may waive or reduce any copayments required by subsection (e) to the extent the Secretary determines appropriate for the effective and efficient operation of the plan.

(h) WAIVER OF REQUIREMENTS FOR SURVIVING DEPENDENTS.—The Secretary of Defense may waive (in whole or in part) any requirements of a dental plan established under this section as the Secretary determines necessary for the effective administration of the plan for a dependent who is an eligible dependent described in subsection (k)(2).

(i) AUTHORITY SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.

(j) LIMITATION ON REDUCTION OF BENEFITS.—The Secretary of Defense may not reduce benefits provided under a plan established under this section until—

(1) the Secretary provides notice of the Secretary's intent to reduce such benefits to the Committees on Armed Services of the Senate and the House of Representatives; and

(2) one year has elapsed following the date of such notice.

(k) ELIGIBLE DEPENDENT DEFINED.—In this section, the term ''eligible dependent''—

(1) means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title; and

(2) includes any such dependent of a member who dies while on active duty for a period of more than 30 days or a member of the Ready Reserve if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f), except that the term does not include the dependent after the end of the three-year period beginning on the date of the member's death.

(Added Pub. L. 106–65, div. A, title VII, §711(a), Oct. 5, 1999, 113 Stat. 685; amended Pub. L. 106–398, §1 [[div. A], title VII, §704(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–174; Pub. L. 107–314, div. A, title VII, §703, Dec. 2, 2002, 116 Stat. 2584.)

PRIOR PROVISIONS

A prior section 1076a, added Pub. L. 99–145, title VI, §651(a)(1), Nov. 8, 1985, 99 Stat. 655; amended Pub. L. 99–661, div. A, title VII, §707(a), (b), Nov. 14, 1986, 100 Stat. 3905; Pub. L. 102–190, div. A, title VII, §701, Dec. 5, 1991, 105 Stat. 1399; Pub. L. 102–484, div. A, title VII, §701(a)–(e), Oct. 23, 1992, 106 Stat. 2430; Pub. L. 103–337, div. A, title VII, §§702(b), 703(a), 707(b), Oct. 5, 1994, 108 Stat. 2797, 2798, 2800; Pub. L. 105–85, div. A, title VII, §732, Nov. 18, 1997, 111 Stat. 1812; Pub. L. 105–261, div. A, title VII, §701(a)(1), (b), Oct. 17, 1998, 112 Stat. 2056; Pub. L. 106–65, div. A, title X, §1066(a)(8), Oct. 5, 1999, 113 Stat. 770; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, related to dependents' dental program, prior to repeal by Pub. L. 106–65, div. A, title VII, §711(a), Oct. 5, 1999, 113 Stat. 685.

AMENDMENTS

2002—Subsec. (k)(2). Pub. L. 107–314 substituted ''if, on the date of the death of the member, the dependent is enrolled in a dental benefits plan established under subsection (a) or is not enrolled in such a plan by reason of a discontinuance of a former enrollment under subsection (f)'' for ''if the dependent is enrolled on the date of the death of the member in a dental benefits plan established under subsection (a)''.

2000—Subsec. (k)(2). Pub. L. 106–398 substituted ''three-year period'' for ''one-year period''.

AUTHORIZATION TO EXPAND ENROLLMENT IN DEPENDENTS' DENTAL PROGRAM TO CERTAIN MEMBERS RETURNING FROM OVERSEAS ASSIGNMENTS

Pub. L. 103–160, div. A, title VII, §703, Nov. 30, 1993, 107 Stat. 1687, provided that:

''(a) AUTHORITY TO EXPAND PROGRAM.—After March 31, 1994, the Secretary of Defense may expand the dependents' dental program established under section

1076a of title 10, United States Code, to permit a member of the uniformed services described in subsection (b) to enroll dependents described in subsection (a) of such section in a dental benefits plan under the program without regard to the length of the uncompleted portion of the member's period of obligated service.

''(b) COVERED MEMBERS.—A member referred to in subsection (a) is a member of the uniformed services who is—

''(1) on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code); and

''(2) reassigned from a permanent duty station where a dental benefits plan under the dependents' dental program is not available to a permanent duty station where such a plan is available.

''(c) REPORT ON ADVISABILITY OF EXPANSION.—Not later than February 28, 1994, the Secretary shall submit to Congress a report evaluating the advisability of expanding the enrollment eligibility of members of the uniformed services in the dependents' dental program in the manner authorized in subsection (a). The report shall include an analysis of the cost implications for such an expansion to the Federal Government, beneficiaries under the dependents' dental program, and contractors under the program.

''(d) NOTIFICATION OF EXERCISE OF AUTHORITY.—The Secretary shall notify Congress of any decision to expand the enrollment eligibility of dependents in the dependents' dental program as provided in subsection (a) not later than 30 days before such expansion takes effect.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1076c, 1077 of this title.

[§ 1076b. Repealed. Pub. L. 106–65, div. A, title VII, § 711(a), Oct. 5, 1999, 113 Stat. 685]

Section, added Pub. L. 104–106, div. A, title VII, § 705(a)(1), Feb. 10, 1996, 110 Stat. 372; amended Pub. L. 104–201, div. A, title VII, § 702(a), (b), Sept. 23, 1996, 110 Stat. 2588; Pub. L. 105–85, div. A, title VII, § 733(a), Nov. 18, 1997, 111 Stat. 1812, related to Selected Reserve dental insurance.

§ 1076c. Dental insurance plan: certain retirees and their surviving spouses and other dependents

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services, certain unremarried surviving spouses, and dependents in accordance with this section.

(b) PERSONS ELIGIBLE FOR PLAN.—The following persons are eligible to enroll in the dental insurance plan established under subsection (a):

(1) Members of the uniformed services who are entitled to retired pay.

(2) Members of the Retired Reserve who would be entitled to retired pay under chapter 1223 of this title but for being under 60 years of age.

(3) Eligible dependents of a member described in paragraph (1) or (2) who are covered by the enrollment of the member in the plan.

(4) Eligible dependents of a member described in paragraph (1) or (2) who is not enrolled in the plan and who—

(A) is enrolled under section 1705 of title 38 to receive dental care from the Secretary of Veterans Affairs;

(B) is enrolled in a dental plan that—

(i) is available to the member as a result of employment by the member that is separate from the military service of the member; and

(ii) is not available to dependents of the member as a result of such separate employment by the member; or

(C) is prevented by a medical or dental condition from being able to obtain benefits under the plan.

(5) The unremarried surviving spouse and eligible child dependents of a deceased member—

(A) who died while in a status described in paragraph (1) or (2);

(B) who is described in section 1448(d)(1) of this title; or

(C) who died while on active duty for a period of more than 30 days and whose eligible dependents are not eligible, or no longer eligible, for dental benefits under section 1076a of this title.

(c) PREMIUMS.—(1) A member enrolled in the dental insurance plan established under subsection (a) shall pay the premiums charged for the insurance coverage.

(2) The Secretary of Defense shall establish procedures for the collection of the premiums charged for coverage by the dental insurance plan. To the maximum extent practicable, the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay of the member (if pay is available to the member).

(d) BENEFITS AVAILABLE UNDER THE PLAN.—The dental insurance plan established under subsection (a) shall provide benefits for dental care and treatment which may be comparable to the benefits authorized under section 1076a of this title for plans established under that section and shall include diagnostic services, preventative services, endodontics and other basic restorative services, surgical services, and emergency services.

(e) COVERAGE.—(1) The Secretary shall prescribe a minimum required period for enrollment by a member or surviving spouse in the dental insurance plan established under subsection (a).

(2) The dental insurance plan shall provide for voluntary enrollment of participants and shall authorize a member or eligible unremarried surviving spouse to enroll for self only or for self and eligible dependents.

(f) REQUIRED TERMINATIONS OF ENROLLMENT.—The Secretary shall terminate the enrollment of any enrollee, and any eligible dependents of the enrollee covered by the enrollment, in the dental insurance plan established under subsection (a) upon the occurrence of the following:

(1) In the case of an enrollment under subsection (b)(1), termination of the member's entitlement to retired pay.

(2) In the case of an enrollment under subsection (b)(2), termination of the member's status as a member of the Retired Reserve.

(3) In the case of an enrollment under subsection (b)(5), remarriage of the surviving spouse.

(g) CONTINUATION OF DEPENDENTS' ENROLLMENT UPON DEATH OF ENROLLEE.—Coverage of a de-

pendent in the dental insurance plan established under subsection (a) under an enrollment of a member or a surviving spouse who dies during the period of enrollment shall continue until the end of that period and may be renewed by (or for) the dependent, so long as the premium paid is sufficient to cover continuation of the dependent's enrollment. The Secretary may terminate coverage of the dependent when the premiums paid are no longer sufficient to cover continuation of the enrollment. The Secretary shall prescribe in regulations under subsection (h) the parties responsible for paying the remaining premiums due on the enrollment and the manner for collection of the premiums.

(h) REGULATIONS.—The dental insurance plan established under subsection (a) shall be administered under regulations prescribed by the Secretary of Defense, in consultation with the other administering Secretaries.

(i) VOLUNTARY DISENROLLMENT.—(1) With respect to enrollment in the dental insurance plan established under subsection (a), the Secretary of Defense—

(A) shall allow for a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; and

(B) shall provide for limited circumstances under which disenrollment shall be permitted during the prescribed enrollment period, without jeopardizing the fiscal integrity of the dental program.

(2) The circumstances described in paragraph (1)(B) shall include—

(A) a case in which a retired member, surviving spouse, or dependent of a retired member who is also a Federal employee is assigned to a location outside the jurisdiction of the dental insurance plan established under subsection (a) that prevents utilization of dental benefits under the plan;

(B) a case in which a retired member, surviving spouse, or dependent of a retired member is prevented by a serious medical condition from being able to obtain benefits under the plan;

(C) a case in which severe financial hardship would result; and

(D) any other circumstances which the Secretary considers appropriate.

(3) The Secretary shall establish procedures for timely decisions on requests for disenrollment under this section and for appeal to the TRICARE Management Activity of adverse decisions.

(j) DEFINITIONS.—In this section:

(1) The term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(2) The term ''eligible child dependent'' means a dependent described in subparagraph (D) or (I) of section 1072(2) of this title.

(3) The term ''retired pay'' includes retainer pay.

(Added Pub. L. 104–201, div. A, title VII, §703(a)(1), Sept. 23, 1996, 110 Stat. 2588; amended Pub. L. 105–85, div. A, title VII, §§701, 733(b), 734, Nov. 18, 1997, 111 Stat. 1807, 1812, 1813; Pub. L. 105–261, div. A, title VII, §702, Oct. 17, 1998, 112 Stat. 2056; Pub. L. 106–65, div. A, title VII, §704, Oct. 5, 1999, 113 Stat. 683; Pub. L. 106–398, §1 [[div. A], title VII, §726, title X, §1087(a)(6)], Oct. 30, 2000, 114 Stat. 1654, 1654A–187, 1654A–290.)

AMENDMENTS

2000—Subsec. (b)(5)(C). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(6)], struck out ''pursuant to subsection (i)(2) of such section'' after ''section 1076a of this title''.

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title VII, §726(b)], substituted ''Required Terminations'' for ''Termination'' in heading.

Subsecs. (i), (j). Pub. L. 106–398, §1 [[div. A], title VII, §726(a)], added subsec. (i) and redesignated former subsec. (i) as (j).

1999—Subsec. (d). Pub. L. 106–65 amended heading and text of subsec. (d) generally. Text read as follows: ''The dental insurance plan established under subsection (a) shall provide benefits for basic dental care and treatment, including diagnostic services, preventative services, basic restorative services (including endodontics), surgical services, and emergency services.''

1998—Subsec. (b)(4), (5). Pub. L. 105–261, §702(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f)(3). Pub. L. 105–261, §702(b), substituted ''(b)(5)'' for ''(b)(4)''.

1997—Subsec. (a). Pub. L. 105–85, §734(a)(1), (b)(1), substituted ''The Secretary of Defense, in consultation with the other administering Secretaries, shall establish a dental insurance plan for retirees of the uniformed services'' for ''The Secretary of Defense shall establish a dental insurance plan for military retirees''.

Subsec. (b)(1). Pub. L. 105–85, §734(a)(2), substituted ''uniformed services'' for ''Armed Forces''.

Subsec. (b)(4)(A). Pub. L. 105–85, §701(1)(A), substituted ''died'' for ''dies''.

Subsec. (b)(4)(C). Pub. L. 105–85, §701(1)(B), (2), (3), added subpar. (C).

Subsec. (c)(2). Pub. L. 105–85, §733(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The amount of the premiums payable by a member entitled to retired pay shall be deducted and withheld from the retired pay and shall be disbursed to pay the premiums. The regulations prescribed under subsection (h) shall specify the procedures for payment of the premiums by other enrolled members and by enrolled surviving spouses.''

Subsec. (h). Pub. L. 105–85, §734(b)(2), substituted ''other administering Secretaries'' for ''Secretary of Transportation''.

LIMITATION ON IMPLEMENTATION OF ALTERNATIVE COLLECTION PROCEDURES

Pub. L. 105–85, div. A, title VII, §733(d), Nov. 18, 1997, 111 Stat. 1813, provided that: ''The Secretary of Defense may not implement procedures for collecting premiums under [former] section 1076b(b)(3) of title 10, United States Code, or section 1076c(c)(2) of such title other than by deductions and withholding from pay until 120 days after the date that the Secretary submits a report to Congress describing the justifications for implementing such alternative procedures.''

IMPLEMENTATION OF DENTAL PLAN

Section 703(b) of Pub. L. 104–201, as amended by Pub. L. 105–85, div. A, title VII, §733(e), Nov. 18, 1997, 111 Stat. 1813, provided that: ''Beginning not later than April 1, 1998, the Secretary of Defense shall—

''(1) offer members of the Armed Forces and other persons described in subsection (b) of section 1076c of title 10, United States Code (as added by subsection (a)(1) of this section), the opportunity to enroll in the dental insurance plan required under that section; and

''(2) begin to provide benefits under the plan.''

§ 1077. Medical care for dependents: authorized care in facilities of uniformed services

(a) Only the following types of health care may be provided under section 1076 of this title:

(1) Hospitalization.
(2) Outpatient care.
(3) Drugs.
(4) Treatment of medical and surgical conditions.
(5) Treatment of nervous, mental, and chronic conditions.
(6) Treatment of contagious diseases.
(7) Physical examinations, including eye examinations, and immunizations.
(8) Maternity and infant care, including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant.
(9) Diagnostic tests and services, including laboratory and X-ray examinations.
(10) Dental care.
(11) Ambulance service and home calls when medically necessary.
(12) Durable equipment, which may be provided on a loan basis.
(13) Primary and preventive health care services for women (as defined in section 1074d(b) of this title).
(14) Preventive health care screening for colon or prostate cancer, at the intervals and using the screening methods prescribed under section 1074d(a)(2) of this title.
(15) Prosthetic devices, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease.
(16) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss, as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries.
(17) Any rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician.

(b) The following types of health care may not be provided under section 1076 of this title:
(1) Domiciliary or custodial care.
(2) Orthopedic footwear and spectacles, except that, outside of the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States.
(3) The elective correction of minor dermatological blemishes and marks or minor anatomical anomalies.

(c) A dependent participating under a dental plan established under section 1076a of this title may not be provided dental care under section 1076(a) of this title except for emergency dental care, dental care provided outside the United States, and dental care that is not covered by such plan.

(d)(1) Notwithstanding subsection (b)(1), hospice care may be provided under section 1076 of this title in facilities of the uniformed services to a terminally ill patient who chooses (pursuant to regulations prescribed by the Secretary of Defense in consultation with the other administering Secretaries) to receive hospice care rather than continuing hospitalization or other health care services for treatment of the patient's terminal illness.

(2) In this section, the term ''hospice care'' means the items and services described in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(e)(1) Authority to provide a prosthetic device under subsection (a)(15) includes authority to provide the following:
(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning.
(B) Services necessary to train the recipient of the device in the use of the device.
(C) Repair of the device for normal wear and tear or damage.
(D) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement.

(2) An augmentative communication device may be provided as a voice prosthesis under subsection (a)(15).

(3) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consultation with the administering Secretaries.

(f)(1) Items that may be provided to a patient under subsection (a)(12) include the following:
(A) Any durable medical equipment that can improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition.
(B) Any durable medical equipment that can maximize the patient's function consistent with the patient's physiological or medical needs.
(C) Wheelchairs.
(D) Iron lungs.
(E) Hospital beds.

(2) In addition to the authority to provide durable medical equipment under subsection (a)(12), any customization of equipment owned by the patient that is durable medical equipment authorized to be provided to the patient under this section or section 1079(a)(5) of this title, and any accessory or item of supply for any such equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—
(A) achieving therapeutic benefit for the patient;
(B) making the equipment serviceable; or
(C) otherwise assuring the proper functioning of the equipment.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1447; amended Pub. L. 89–614, §2(4), Sept. 30, 1966, 80 Stat. 863; Pub. L. 98–525, title VI, §633(a), title XIV, §§1401(e)(3), 1405(22), Oct. 19, 1984, 98 Stat. 2544, 2617, 2623; Pub. L. 99–145, title VI, §651(b), Nov. 8, 1985, 99 Stat. 656; Pub. L. 102–190, div. A, title VII, §§702(a), 703, Dec. 5, 1991, 105 Stat. 1400, 1401; Pub. L. 103–160, div. A, title VII, §701(b), Nov. 30, 1993, 107 Stat. 1686;

Pub. L. 103–337, div. A, title VII, §§ 703(b), 705, Oct. 5, 1994, 108 Stat. 2798, 2799; Pub. L. 104–201, div. A, title VII, § 701(b)(1), Sept. 23, 1996, 110 Stat. 2587; Pub. L. 105–85, div. A, title VII, § 702, Nov. 18, 1997, 111 Stat. 1807; Pub. L. 107–107, div. A, title VII, §§ 702, 703(a), 704, Dec. 28, 2001, 115 Stat. 1161, 1162.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1077(a)	37:403(f).	June 7, 1956, ch. 374, § 103(f), (g), (h), 70 Stat. 251, 252.
1077(b)	37:403(g).	
1077(c)	37:403(h) (less clause (4)).	
1077(d)	37:403(h) (clause (4)).	

In subsection (a), clause (6) is inserted to reflect subsection (b).

PRIOR PROVISIONS

Provisions similar to those in subsec. (b)(3) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8045], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, § 752, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, § 101(c) [title VII, § 756], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, § 759, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, § 763, Dec. 15, 1980, 94 Stat. 3092.

Pub. L. 96–154, title VII, § 769, Dec. 21, 1979, 93 Stat. 1163.

A prior section 1077, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to distribution of ballots, envelopes, and voting instructions, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2001—Subsec. (a)(12). Pub. L. 107–107, § 703(a)(1), substituted ''which'' for ''such as wheelchairs, iron lungs, and hospital beds''.

Subsec. (a)(16). Pub. L. 107–107, § 702(1), added par. (16).

Subsec. (a)(17). Pub. L. 107–107, § 704, added par. (17).

Subsec. (b)(2). Pub. L. 107–107, § 702(2), substituted ''Orthopedic footwear'' for ''Hearing aids, orthopedic footwear,''.

Subsec. (e). Pub. L. 107–107, § 702(3), added subsec. (e).

Subsec. (f). Pub. L. 107–107, § 703(a)(2), added subsec. (f).

1997—Subsec. (a)(15). Pub. L. 105–85, § 702(a), added cl. (15).

Subsec. (b)(2). Pub. L. 105–85, § 702(b), added par. (2) and struck out former par. (2) which read as follows: ''Prosthetic devices, hearing aids, orthopedic footwear, and spectacles except that—

''(A) outside the United States and at stations inside the United States where adequate civilian facilities are unavailable, such items may be sold to dependents at cost to the United States, and

''(B) artificial limbs, voice prostheses, and artificial eyes may be provided.''

1996—Subsec. (a)(14). Pub. L. 104–201 added cl. (14).

1994—Subsec. (b)(2)(B). Pub. L. 103–337, § 705, inserted '', voice prostheses,'' after ''artificial limbs''.

Subsec. (c). Pub. L. 103–337, § 703(b), substituted '', dental care provided outside the United States, and dental care'' for ''and care''.

1993—Subsec. (a)(13). Pub. L. 103–160 added cl. (13).

1991—Subsec. (a)(8). Pub. L. 102–190, § 703, inserted before period at end '', including well-baby care that includes one screening of an infant for the level of lead in the blood of the infant''.

Subsec. (d). Pub. L. 102–190, § 702(a), added subsec. (d).

1985—Subsec. (c). Pub. L. 99–145 added subsec. (c).

1984—Pub. L. 98–525, § 1405(22), substituted a colon for the semicolon in section catchline.

Subsec. (a)(10). Pub. L. 98–525, § 633(a)(1), added cl. (10). Former cl. (10) ''Emergency dental care worldwide.'' was struck out.

Subsec. (a)(11). Pub. L. 98–525, § 633(a)(1), redesignated cl. (13) as (11). Former cl. (11) ''Routine dental care outside the United States and at stations in the United States where adequate civilian facilities are unavailable.'' was struck out.

Subsec. (a)(12). Pub. L. 98–525, § 633(a)(1), redesignated cl. (14) as (12). Former cl. (12) ''Dental care worldwide as a necessary adjunct of medical, surgical, or preventive treatment.'' was struck out.

Subsec. (a)(13), (14). Pub. L. 98–525, § 633(a)(2), redesignated cls. (13) and (14) as cls. (11) and (12), respectively.

Subsec. (b)(3). Pub. L. 98–525, § 1401(e)(3), added par. (3).

1966—Pub. L. 89–614 authorized an improved health benefits program for dependents of active duty members of the uniformed services in facilities of such services, expanding health care to be provided to include: hospitalization, outpatient care, and drugs in clauses (1) to (3) of subsec. (a) (hospitalization being limited by former subsec. (b) to treatment of nervous or mental disturbances or chronic diseases or for elective medical and surgical treatment to one year period in special cases); treatment of mental and surgical conditions in clause (4) minus acute condition restriction of former subsec. (a)(2); treatment of nervous, mental, and chronic conditions in clause (5) formerly restricted as stated above; clause (6) reenactment of former subsec. (a)(3); physical, including eye, examinations in clause (7) reenacting former subsec. (a)(4) immunization provisions; clause (8) reenactment of former subsec. (a)(5); diagnostic tests and services, including laboratory and X-ray examinations (diagnosis being covered in former subsec. (a)(1)); dental care provisions in clauses (10) to (12) (provided in former subsec. (d)) as (1) emergency care to relieve pain and suffering, but not including permanent restorative work or dental prosthesis, (2) care as a necessary adjunct to medical or surgical treatment, and care outside the United States, and in remote areas inside the United States, where adequate civilian facilities are unavailable; ambulance service and home calls in clause 13 (covering former subsec. (c)(2), (3)); durable equipment on loan basis in clause (14); and to exclude in subsec. (b)(1) (incorporating last sentence of former subsec. (b)) custodial care; subsec. (b)(2)(A) reenactment of former subsec. (e)(1); and permitted in subsec. (b)(2)(B) artificial limbs and eyes to be provided.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 633(b) of Pub. L. 98–525 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1985.''

Amendment by section 1401(e)(3) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

PROVISION OF DOMICILIARY AND CUSTODIAL CARE FOR CERTAIN CHAMPUS BENEFICIARIES

Pub. L. 106–65, div. A, title VII, § 703, Oct. 5, 1999, 113 Stat. 682, as amended by Pub. L. 106–398, § 1 [[div. A], title VII, § 701(a), (b), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, related to the continued provision of domiciliary and custodial care for certain CHAMPUS beneficiaries, prohibited the establishment of a limited transition period for such program, required a survey and report of case management and custodial care poli-

cies, and provided for cost limitations for each fiscal year, prior to repeal by Pub. L. 107–107, div. A, title VII, § 701(g)(1)(A), Dec. 28, 2001, 115 Stat. 1161.

OBSTETRICAL CARE FACILITIES

Pub. L. 89–188, title VI, § 610, Sept. 16, 1965, 79 Stat. 818, required that military hospitals in the United States and its possessions be constructed so as to include facilities for obstetrical care, prior to repeal by Pub. L. 97–214, § 7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1076, 1079, 1080, 1086 of this title.

§ 1078. Medical and dental care for dependents: charges

(a) The Secretary of Defense, after consulting the other administering Secretaries, shall prescribe fair charges for inpatient medical and dental care given to dependents under section 1076 of this title. The charge or charges prescribed shall be applied equally to all classes of dependents.

(b) As a restraint on excessive demands for medical and dental care under section 1076 of this title, uniform minimal charges may be imposed for outpatient care. Charges may not be more than such amounts, if any, as the Secretary of Defense may prescribe after consulting the other administering Secretaries, and after a finding that such charges are necessary.

(c) Amounts received for subsistence and medical and dental care given under section 1076 of this title shall be deposited to the credit of the appropriation supporting the maintenance and operation of the facility furnishing the care.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, § 2(5), Sept. 30, 1966, 80 Stat. 863; Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, § 19(6), Oct. 30, 1984, 98 Stat. 2869.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1078(a)	37:403(c).	June 7, 1956, ch. 374, § 103(c)(d), (e), 70 Stat. 251.
1078(b)	37:403(d).	
1078(c)	37:403(e).	

Appropriate references are made to dental care throughout the section to reflect the fact that in certain limited situations, dependents are entitled to dental care under 37:403(h)(4), restated as section 1077(d) of this title.

In subsection (b), the word ''special'' is omitted as surplusage.

PRIOR PROVISIONS

A prior section 1078, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, prescribed instructions for marking ballots, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1966—Subsec. (a). Pub. L. 89–614 substituted ''The charge or charges prescribed shall be applied equally to all classes of dependents'' for ''Charges shall be the same for all dependents''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1079, 1080, 1086, 1096 of this title; title 42 section 253a.

§ 1078a. Continued health benefits coverage

(a) PROVISION OF CONTINUED HEALTH COVERAGE.—The Secretary of Defense shall implement and carry out a program of continued health benefits coverage in accordance with this section to provide persons described in subsection (b) with temporary health benefits comparable to the health benefits provided for former civilian employees of the Federal Government and other persons under section 8905a of title 5.

(b) ELIGIBLE PERSONS.—The persons referred to in subsection (a) are the following:

(1) A member of the armed forces who—

(A) is discharged or released from active duty (or full-time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions, as characterized by the Secretary concerned;

(B) immediately preceding that discharge or release, is entitled to medical and dental care under section 1074(a) of this title (except in the case of a member discharged or released from full-time National Guard duty); and

(C) after that discharge or release and any period of transitional health care provided under section 1145(a) of this title, would not otherwise be eligible for any benefits under this chapter.

(2) A person who—

(A) ceases to meet the requirements for being considered an unmarried dependent child of a member or former member of the armed forces under section 1072(2)(D) of this title or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title;

(B) on the day before ceasing to meet those requirements, was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) would not otherwise be eligible for any benefits under this chapter.

(3) A person who—

(A) is an unremarried former spouse of a member or former member of the armed forces; and

(B) on the day before the date of the final decree of divorce, dissolution, or annulment

was covered under a health benefits plan under this chapter or transitional health care under section 1145(a) of this title as a dependent of the member or former member; and

(C) is not a dependent of the member or former member under subparagraph (F) or (G) of section 1072(2) of this title or ends a one-year period of dependency under subparagraph (H) of such section.

(c) NOTIFICATION OF ELIGIBILITY.—(1) The Secretary of Defense shall prescribe regulations to provide for persons described in subsection (b) to be notified of eligibility to receive health benefits under this section.

(2) In the case of a member who becomes (or will become) eligible for continued coverage under subsection (b)(1), the regulations shall provide for the Secretary concerned to notify the member of the member's rights under this section as part of preseparation counseling conducted under section 1142 of this title or any other provision of other law.

(3) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the regulations shall provide that—

(A) the member or former member may submit to the Secretary concerned a written notice of the dependent's change in status (including the dependent's name, address, and such other information as the Secretary of Defense may require); and

(B) the Secretary concerned shall, within 14 days after receiving that notice, inform the dependent of the dependent's rights under this section.

(4) In the case of a former spouse of a member or former member who becomes eligible for continued coverage under subsection (b)(3), the regulations shall provide appropriate notification provisions and a 60-day election period under subsection (d)(3).

(d) ELECTION OF COVERAGE.—In order to obtain continued coverage under this section, an appropriate written election (submitted in such manner as the Secretary of Defense may prescribe) shall be made as follows:

(1) In the case of a member described in subsection (b)(1), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) the date on which the period of transitional health care applicable to the member under section 1145(a) of this title ends; or

(C) the date the member receives the notification required pursuant to subsection (c).

(2)(A) In the case of a dependent of a member or former member who becomes eligible for continued coverage under subsection (b)(2), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(i) the date on which the dependent first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; or

(ii) the date the dependent receives the notification pursuant to subsection (c).

(B) Notwithstanding subparagraph (A), if the Secretary concerned determines that the dependent's parent has failed to provide the notice referred to in subsection (c)(3)(A) with respect to the dependent in a timely fashion, the 60-day period under this paragraph shall be based only on the date under subparagraph (A)(i).

(3) In the case of a former spouse of a member or a former member who becomes eligible for continued coverage under subsection (b)(3), the written election shall be submitted to the Secretary concerned before the end of the 60-day period beginning on the later of—

(A) the date as of which the former spouse first ceases to meet the requirements for being considered a dependent under section 1072(2) of this title; or

(B) such other date as the Secretary of Defense may prescribe.

(e) COVERAGE OF DEPENDENTS.—A person eligible under subsection (b)(1) to elect to receive coverage may elect coverage either as an individual or, if appropriate, for self and dependents. A person eligible under subsection (b)(2) or subsection (b)(3) may elect only individual coverage.

(f) CHARGES.—(1) Under arrangements satisfactory to the Secretary of Defense, a person receiving continued coverage under this section shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the employee and agency contributions which would be required in the case of a similarly situated employee enrolled in a comparable health benefits plan under section 8905a(d)(1)(A)(i) of title 5; and

(B) an amount, not to exceed 10 percent of the amount determined under subparagraph (A), determined under regulations prescribed by the Secretary of Defense to be necessary for administrative expenses; and

(2) If a person elects to continue coverage under this section before the end of the applicable period under subsection (d), but after the person's coverage under this chapter (and any transitional extension of coverage under section 1145(a) of this title) expires, coverage shall be restored retroactively, with appropriate contributions (determined in accordance with paragraph (1)) and claims (if any), to the same extent and effect as though no break in coverage had occurred.

(g) PERIOD OF CONTINUED COVERAGE.—(1) Continued coverage under this section may not extend beyond—

(A) in the case of a member described in subsection (b)(1), the date which is 18 months after the date the member ceases to be entitled to care under section 1074(a) of this title and any transitional care under section 1145 of this title, as the case may be;

(B) in the case of a person described in subsection (b)(2), the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered a dependent under subparagraph (D) or (I) of section 1072(2) of this title; and

(C) in the case of a person described in subsection (b)(3), except as provided in paragraph (4), the date which is 36 months after the later of—

(i) the date on which the final decree of divorce, dissolution, or annulment occurs; and

(ii) if applicable, the date the one-year extension of dependency under section 1072(2)(H) of this title expires.

(2) Notwithstanding paragraph (1)(B), if a dependent of a member becomes eligible for continued coverage under subsection (b)(2) during a period of continued coverage of the member for self and dependents under this section, extended coverage of the dependent under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(3) Notwithstanding paragraph (1)(C), if a person becomes eligible for continued coverage under subsection (b)(3) as the former spouse of a member during a period of continued coverage of the member for self and dependents under this section, extended coverage of the former spouse under this section may not extend beyond the date which is 36 months after the date the member became ineligible for medical and dental care under section 1074(a) of this title and any transitional health care under section 1145(a) of this title.

(4)(A) Notwithstanding paragraph (1), in the case of a former spouse described in subparagraph (B), continued coverage under this section shall continue for such period as the former spouse may request.

(B) A former spouse referred to in subparagraph (A) is a former spouse of a member or former member (other than a former spouse whose marriage was dissolved after the separation of the member from the service unless such separation was by retirement)—

(i) who has not remarried before age 55 after the marriage to the employee, former employee, or annuitant was dissolved;

(ii) who was enrolled in an approved health benefits plan under this chapter as a family member at any time during the 18-month period before the date of the divorce, dissolution, or annulment; and

(iii)(I) who is receiving any portion of the retired or retainer pay of the member or former member or an annuity based on the retired or retainer pay of the member; or

(II) for whom a court order (as defined in section 1408(a)(2) of this title) has been issued for payment of any portion of the retired or retainer pay or for whom a court order (as defined in section 1447(13) of this title) or a written agreement (whether voluntary or pursuant to a court order) provides for an election by the member or former member to provide an annuity to the former spouse.

(Added Pub. L. 102–484, div. D, title XLIV, § 4408(a)(1), Oct. 23, 1992, 106 Stat. 2708; amended Pub. L. 103–35, title II, § 201(g)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title VII, § 702(c), Oct. 5, 1994, 108 Stat. 2798; Pub. L. 104–201, div. A, title X, § 1074(a)(4), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 105–85, div. A, title X, § 1073(a)(17), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (g)(4)(B)(iii)(II). Pub. L. 105–85 substituted ''section 1447(13)'' for ''section 1447(8)''.

1996—Subsec. (a). Pub. L. 104–201 substituted ''The Secretary'' for ''Beginning on October 1, 1994, the Secretary''.

1994—Subsec. (b)(2)(A). Pub. L. 103–337, § 702(c)(1), inserted before semicolon ''or ceases to meet the requirements for being considered an unmarried dependent under section 1072(2)(I) of this title''.

Subsec. (c)(3). Pub. L. 103–337, § 702(c)(2), substituted ''dependent'' for ''child'' in two places and ''dependent's'' for ''child's'' wherever appearing.

Subsec. (d)(2)(A). Pub. L. 103–337, § 702(c)(3), substituted ''a dependent'' for ''a child'' in introductory provisions, ''the dependent'' for ''the child'' in cls. (i) and (ii), and ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title;'' for ''an unmarried dependent child under section 1072(2)(D) of this title,'' in cl. (i).

Subsec. (d)(2)(B). Pub. L. 103–337, § 702(c)(4), substituted ''dependent's'' for ''child's'' and ''dependent'' for ''child''.

Subsec. (g)(1)(B). Pub. L. 103–337, § 702(c)(5), substituted ''a dependent under subparagraph (D) or (I) of section 1072(2) of this title'' for ''an unmarried dependent child under section 1072(2)(D) of this title''.

Subsec. (g)(2). Pub. L. 103–337, § 702(c)(6), substituted ''dependent'' for ''child'' in two places.

1993—Subsec. (b)(3)(C). Pub. L. 103–35, § 201(g)(1)(A), substituted ''subparagraph'' for ''subparagraphs'' after ''member under''.

Subsec. (d)(2)(A). Pub. L. 103–35, § 201(g)(1)(B), inserted ''under'' after ''coverage''.

§ 1079. Contracts for medical care for spouses and children: plans

(a) To assure that medical care is available for dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title, of members of the uniformed services who are on active duty for a period of more than 30 days, the Secretary of Defense, after consulting with the other administering Secretaries, shall contract, under the authority of this section, for medical care for those persons under such insurance, medical service, or health plans as he considers appropriate. The types of health care authorized under this section shall be the same as those provided under section 1076 of this title, except as follows:

(1) With respect to dental care, only that care required as a necessary adjunct to medical or surgical treatment may be provided.

(2) Consistent with such regulations as the Secretary of Defense may prescribe regarding the content of health promotion and disease prevention visits, the schedule of pap smears and mammograms, the schedule and method of colon and prostate cancer screenings, and the types and schedule of immunizations—

(A) for dependents under six years of age, both health promotion and disease prevention visits and immunizations may be provided; and

(B) for dependents six years of age or older, health promotion and disease prevention visits may be provided in connection with immunizations or with diagnostic or preventive pap smears and mammograms or colon and prostate cancer screenings.

(3) Not more than one eye examination may be provided to a patient in any calendar year.

(4) Under joint regulations to be prescribed by the administering Secretaries, the services of Christian Science practitioners and nurses and services obtained in Christian Science sanatoriums may be provided.

(5) Durable equipment provided under this section may be provided on a rental basis.

(6) Inpatient mental health services may not (except as provided in subsection (i)) be provided to a patient in excess of—

(A) 30 days in any year, in the case of a patient 19 years of age or older;

(B) 45 days in any year, in the case of a patient under 19 years of age; or

(C) 150 days in any year, in the case of inpatient mental health services provided as residential treatment care.

(7) Services in connection with nonemergency inpatient hospital care may not be provided if such services are available at a facility of the uniformed services located within a 40-mile radius of the residence of the patient, except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services.

(8) Services of pastoral counselors, family and child counselors, or marital counselors (other than certified marriage and family therapists) may not be provided unless the patient has been referred to the counselor by a medical doctor for treatment of a specific problem with the results of that treatment to be communicated back to the medical doctor who made the referral and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided.

(9) Special education may not be provided, except when provided as secondary to the active psychiatric treatment on an institutional inpatient basis.

(10) Therapy or counseling for sexual dysfunctions or sexual inadequacies may not be provided.

(11) Treatment of obesity may not be provided if obesity is the sole or major condition treated.

(12) Surgery which improves physical appearance but is not expected to significantly restore functions (including mammary augmentation, face lifts, and sex gender changes) may not be provided, except that—

(A) breast reconstructive surgery following a mastectomy may be provided;

(B) reconstructive surgery to correct serious deformities caused by congenital anomalies or accidental injuries may be provided; and

(C) neoplastic surgery may be provided.

(13) Any service or supply which is not medically or psychologically necessary to prevent, diagnose, or treat a mental or physical illness, injury, or bodily malfunction as assessed or diagnosed by a physician, dentist, clinical psychologist, certified marriage and family therapist, optometrist, podiatrist, certified nurse-midwife, certified nurse practitioner, or certified clinical social worker, as appropriate, may not be provided, except as authorized in paragraph (4). Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

(14) The prohibition contained in section 1077(b)(3) of this title shall not apply in the case of a member or former member of the uniformed services.

(15) Electronic cardio-respiratory home monitoring equipment (apnea monitors) for home use may be provided if a physician prescribes and supervises the use of the monitor for an infant—

(A) who has had an apparent life-threatening event,

(B) who is a subsequent sibling of a victim of sudden infant death syndrome,

(C) whose birth weight was 1,500 grams or less, or

(D) who is a pre-term infant with pathologic apnea,

in which case the coverage may include the cost of the equipment, hard copy analysis of physiological alarms, professional visits, diagnostic testing, family training on how to respond to apparent life threatening events, and assistance necessary for proper use of the equipment.

(16) Hospice care may be provided only in the manner and under the conditions provided in section 1861(dd) of the Social Security Act (42 U.S.C. 1395x(dd)).

(b) Plans covered by subsection (a) shall include provisions for payment by the patient of the following amounts:

(1) $25 for each admission to a hospital, or the amount the patient would have been charged under section 1078(a) of this title had the care being paid for been obtained in a hospital of the uniformed services, whichever amount is the greater. The Secretary of Defense may exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(2) Except as provided in clause (3), the first $150 each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of all subsequent charges for such care during a fiscal year. Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.

(3) A family group of two or more persons covered by this section shall not be required

to pay collectively more than the first $300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100) each fiscal year of the charges for all types of care authorized by subsection (a) and received while in an outpatient status and 20 percent of the additional charges for such care during a fiscal year.

(4) $25 for surgical care that is authorized by subsection (a) and received while in an outpatient status and that has been designated (under joint regulations to be prescribed by the administering Secretaries) as care to be treated as inpatient care for purposes of this subsection. Any care for which payment is made under this clause shall not be considered to be care received while in an outpatient status for purposes of clauses (2) and (3).

(5) An individual or family group of two or more persons covered by this section may not be required by reason of this subsection to pay a total of more than $1,000 for health care received during any fiscal year under a plan under subsection (a).

(c) The methods for making payment under subsection (b) shall be prescribed under joint regulations issued by the administering Secretaries.

(d)(1) The Secretary of Defense shall establish a program to provide extended benefits for eligible dependents, which may include the provision of comprehensive health care services, including case management services, to assist in the reduction of the disabling effects of a qualifying condition of an eligible dependent. Registration shall be required to receive the extended benefits.

(2) The Secretary of Defense, after consultation with the other administering Secretaries, shall promulgate regulations to carry out this subsection.

(3) In this subsection:

(A) The term ''eligible dependent'' means a dependent of a member of the uniformed services on active duty for a period of more than 30 days, as described in subparagraph (A), (D), or (I) of section 1072(2) of this title, who has a qualifying condition.

(B) The term ''qualifying condition'' means the condition of a dependent who is moderately or severely mentally retarded, has a serious physical disability, or has an extraordinary physical or psychological condition.

(e) Extended benefits for eligible dependents under subsection (d) may include comprehensive health care services (including services necessary to maintain, or minimize or prevent deterioration of, function of the patient) and case management services with respect to the qualifying condition of such a dependent, and include, to the extent such benefits are not provided under provisions of this chapter other than under this section, the following:

(1) Diagnosis.

(2) Inpatient, outpatient, and comprehensive home health care supplies and services which may include cost effective and medically appropriate services other than part-time or intermittent services (within the meaning of such terms as used in the second sentence of section 1861(m) of the Social Security Act).

(3) Training, rehabilitation, special education, and assistive technology devices.

(4) Institutional care in private nonprofit, public, and State institutions and facilities and, if appropriate, transportation to and from such institutions and facilities.

(5) Custodial care, notwithstanding the prohibition in section 1077(b)(1) of this title.

(6) Respite care for the primary caregiver of the eligible dependent.

(7) Such other services and supplies as determined appropriate by the Secretary, notwithstanding the limitations in subsection (a)(13).

(f)(1) Members shall be required to share in the cost of any benefits provided to their dependents under subsection (d) as follows:

(A) Members in the lowest enlisted pay grade shall be required to pay the first $25 incurred each month, and members in the highest commissioned pay grade shall be required to pay the first $250 incurred each month. The amounts to be paid by members in all other pay grades shall be determined under regulations to be prescribed by the Secretary of Defense in consultation with the administering Secretaries.

(B) A member who has more than one dependent incurring expenses in a given month under a plan covered by subsection (d) shall not be required to pay an amount greater than would be required if the member had only one such dependent.

(2) In the case of extended benefits provided under paragraph (3) or (4) of subsection (e) to a dependent of a member of the uniformed services—

(A) the Government's share of the total cost of providing such benefits in any month shall not exceed $2,500, except for costs that a member is exempt from paying under paragraph (3); and

(B) the member shall pay (in addition to any amount payable under paragraph (1)) the amount, if any, by which the amount of such total cost for the month exceeds the Government's maximum share under subparagraph (A).

(3) A member of the uniformed services who incurs expenses under paragraph (2) for a month for more than one dependent shall not be required to pay for the month under subparagraph (B) of that paragraph an amount greater than the amount the member would otherwise be required to pay under that subparagraph for the month if the member were incurring expenses under that subparagraph for only one dependent.

(4) To qualify for extended benefits under paragraph (3) or (4) of subsection (e), a dependent of a member of the uniformed services shall be required to use public facilities to the extent such facilities are available and adequate, as determined under joint regulations of the administering Secretaries.

(5) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to carry out this subsection.

(g) When a member dies while he is eligible for receipt of hostile fire pay under section 310 of title 37 or from a disease or injury incurred

while eligible for such pay, his dependents who are receiving benefits under a plan covered by subsection (d) shall continue to be eligible for such benefits until they pass their twenty-first birthday. In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the three-year period beginning on the date of the death of the member.

(h)(1) Except as provided in paragraphs (2) and (3), payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) shall be equal to an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.). The Secretary of Defense shall determine the appropriate payment amount under this paragraph in consultation with the other administering Secretaries.

(2) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to provide for such exceptions to the payment limitations under paragraph (1) as the Secretary determines to be necessary to assure that covered beneficiaries retain adequate access to health care services. Such exceptions may include the payment of amounts higher than the amount allowed under paragraph (1) when enrollees in managed care programs obtain covered services from nonparticipating providers. To provide a suitable transition from the payment methodologies in effect before February 10, 1996, to the methodology required by paragraph (1), the amount allowable for any service may not be reduced by more than 15 percent below the amount allowed for the same service during the immediately preceding 12-month period (or other period as established by the Secretary of Defense).

(3) In addition to the authority provided under paragraph (2), the Secretary of Defense may authorize the commander of a facility of the uniformed services, the lead agent (if other than the commander), and the health care contractor to modify the payment limitations under paragraph (1) for certain health care providers when necessary to ensure both the availability of certain services for covered beneficiaries and lower costs than would otherwise be incurred to provide the services. With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise required by the payment limitations under paragraph (1).

(4)(A) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations to establish limitations (similar to the limitations established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.)) on beneficiary liability for charges of an individual health care professional (or other noninstitutional health care provider).

(B) The regulations shall include a restriction that prohibits an individual health care professional (or other noninstitutional health care provider) from billing a beneficiary for services for more than the amount that is equal to—

(i) the excess of the limiting charge (as defined in section 1848(g)(2) of the Social Security Act (42 U.S.C. 1395w–4(g)(2))) that would be applicable if the services had been provided by the professional (or other provider) as an individual health care professional (or other noninstitutional health care provider) on a nonassignment-related basis under part B of title XVIII of such Act over the amount that is payable by the United States for those services under this subsection, plus

(ii) any unpaid amounts of deductibles or copayments that are payable directly to the professional (or other provider) by the beneficiary.

(5) To assure access to care for all covered beneficiaries, the Secretary of Defense, in consultation with the other administering Secretaries, shall designate specific rates for reimbursement for services in certain localities if the Secretary determines that without payment of such rates access to health care services would be severely impaired. Such a determination shall be based on consideration of the number of providers in a locality who provide the services, the number of such providers who are CHAMPUS participating providers, the number of covered beneficiaries under CHAMPUS in the locality, the availability of military providers in the location or a nearby location, and any other factors determined to be relevant by the Secretary.

(i)(1) The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

(A) provided under the program for the handicapped under subsection (d);

(B) provided as partial hospital care; or

(C) provided pursuant to a waiver authorized by the Secretary of Defense because of medical or psychological circumstances of the patient that are confirmed by a health professional who is not a Federal employee after a review, pursuant to rules prescribed by the Secretary, which takes into account the appropriate level of care for the patient, the intensity of services required by the patient, and the availability of that care.

(2) Notwithstanding subsection (b) or section 1086(b) of this title, the Secretary of Defense (after consulting with the other administering Secretaries) may prescribe separate payment requirements (including deductibles, copayments, and catastrophic limits) for the provision of mental health services to persons covered by this section or section 1086 of this title. The payment requirements may vary for different categories of covered beneficiaries, by type of mental health service provided, and based on the location of the covered beneficiaries.

(3)(A) Except as provided in subparagraph (B), the Secretary of Defense shall require preadmission authorization before inpatient mental health services may be provided to persons covered by this section or section 1086 of this title. In the case of the provision of emergency inpatient mental health services, approval for the continuation of such services shall be required within 72 hours after admission.

(B) Preadmission authorization for inpatient mental health services is not required under subparagraph (A) in the following cases:

(i) In the case of an emergency.

(ii) In a case in which any benefits are payable for such services under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.), subject to subparagraph (C).

(C) In a case of inpatient mental health services to which subparagraph (B)(ii) applies, the Secretary shall require advance authorization for a continuation of the provision of such services after benefits cease to be payable for such services under such part A.

(j)(1) A benefit may not be paid under a plan covered by this section in the case of a person enrolled in, or covered by, any other insurance, medical service, or health plan, including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title), to the extent that the benefit is also a benefit under the other plan, except in the case of a plan administered under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) The amount to be paid to a provider of services for services provided under a plan covered by this section shall be determined under joint regulations to be prescribed by the administering Secretaries which provide that the amount of such payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(3) A contract for a plan covered by this section shall include a clause that prohibits each provider of services under the plan from billing any person covered by the plan for any balance of charges for services in excess of the amount paid for those services under the joint regulations referred to in paragraph (2), except for any unpaid amounts of deductibles or copayments that are payable directly to the provider by the person.

(4) In this subsection, the term ''provider of services'' means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2))), or other institutional facility providing services for which payment may be made under a plan covered by this section.

(k) A plan covered by this section may include provision of liver transplants (including the cost of acquisition and transportation of the donated liver) in accordance with this subsection. Such a liver transplant may be provided if—

(1) the transplant is for a dependent considered appropriate for that procedure by the Secretary of Defense in consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate; and

(2) the transplant is to be carried out at a health-care facility that has been approved for that purpose by the Secretary of Defense after consultation with the other administering Secretaries and such other entities as the Secretary considers appropriate.

(*l*)(1) Contracts entered into under subsection (a) shall also provide for medical care for dependents of former members of the uniformed services who are authorized to receive medical and dental care under section 1076(e) of this title in facilities of the uniformed services.

(2) Except as provided in paragraph (3), medical care in the case of a dependent described in section 1076(e) shall be furnished under the same conditions and subject to the same limitations as medical care furnished under this section to spouses and children of members of the uniformed services described in the first sentence of subsection (a).

(3) Medical care may be furnished to a dependent pursuant to paragraph (1) only for an injury, illness, or other condition described in section 1076(e) of this title.

(m)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(n) The Secretary of Defense may enter into contracts (or amend existing contracts) with fiscal intermediaries under which the intermediaries agree to organize and operate, directly or through subcontractors, managed health care networks for the provision of health care under this chapter. The managed health care networks shall include cost containment methods, such as utilization review and contracting for care on a discounted basis.

(*o*)(1) Health care services provided pursuant to this section or section 1086 of this title (or pursuant to any other contract or project under the Civilian Health and Medical Program of the Uniformed Services) may not include services determined under the CHAMPUS Peer Review Organization program to be not medically or psychologically necessary.

(2) The Secretary of Defense, after consulting with the other administering Secretaries, may adopt or adapt for use under the CHAMPUS Peer Review Organization program, as the Secretary considers appropriate, any of the quality and utilization review requirements and procedures that are used by the Peer Review Organization program under part B of title XI of the Social Security Act (42 U.S.C. 1320c et seq.).

(p)(1) Subject to such exceptions as the Secretary of Defense considers necessary, coverage for medical care under this section for the de-

pendents described in paragraph (3), and standards with respect to timely access to such care, shall be comparable to coverage for medical care and standards for timely access to such care under the managed care option of the TRICARE program known as TRICARE Prime.

(2) The Secretary of Defense shall enter into arrangements with contractors under the TRICARE program or with other appropriate contractors for the timely and efficient processing of claims under this subsection.

(3) This subsection applies with respect to a dependent referred to in subsection (a) who—

(A) is a dependent of a member of the uniformed services referred to in section 1074(c)(3) of this title and is residing with the member;

(B) is a dependent of a member who, after having served in a duty assignment described in section 1074(c)(3) of this title, has relocated without the dependent pursuant to orders for a permanent change of duty station from a remote location described in subparagraph (B)(ii) of such section where the member and the dependent resided together while the member served in such assignment, if the orders do not authorize dependents to accompany the member to the new duty station at the expense of the United States and the dependent continues to reside at the same remote location, or

(C) is a dependent of a reserve component member ordered to active duty for a period of more than 30 days and is residing with the member, and the residence is located more than 50 miles, or approximately one hour of driving time, from the nearest military medical treatment facility adequate to provide the needed care.

(4) The Secretary of Defense shall consult with the other administering Secretaries in the administration of this subsection.

(q) Subject to subsection (a), a physician or other health care practitioner who is eligible to receive reimbursement for services provided under medicare (as defined in section 1086(d)(3)(C) of this title) shall be considered approved to provide medical care authorized under this section and section 1086 of this title unless the administering Secretaries have information indicating medicare, TRICARE, or other Federal health care program integrity violations by the physician or other health care practitioner.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1448; amended Pub. L. 89–614, §2(6), Sept. 30, 1966, 80 Stat. 863; Pub. L. 92–58, §1, July 29, 1971, 85 Stat. 157; Pub. L. 95–485, title VIII, §806(a)(1), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–342, title VIII, §810(a), (b), Sept. 8, 1980, 94 Stat. 1097; Pub. L. 96–513, title V, §§501(13), 511(36), (38), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 96–552, Dec. 19, 1980, 94 Stat. 3254; Pub. L. 97–22, §11(a)(2), July 10, 1981, 95 Stat. 137; Pub. L. 97–86, title IX, §906(a)(1), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 98–94, title IX, §931(a), title XII, §1268(4), Sept. 24, 1983, 97 Stat. 648, 705; Pub. L. 98–525, title VI, §632(a)(1), title XIV, §§1401(e)(4), 1405(23), Oct. 19, 1984, 98 Stat. 2543, 2617, 2623; Pub. L. 98–557, §19(7), Oct. 30, 1984, 98 Stat. 2869; Pub. L. 99–661, div. A, title VI, §652(d), title VII, §703, Nov. 14, 1986, 100 Stat. 3889, 3900; Pub. L. 100–180, div. A, title VII, §§721(a), 726(a), Dec. 4, 1987, 101 Stat. 1115, 1117; Pub. L. 100–456, div. A, title VI, §646(a), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, §730(a), Nov. 29, 1989, 103 Stat. 1481; Pub. L. 101–510, div. A, title VII, §§701(a), 702(a), 703(a), (b), 712(a), title XIV, §1484(g)(1), Nov. 5, 1990, 104 Stat. 1580, 1581, 1583, 1717; Pub. L. 102–25, title III, §316(b), Apr. 6, 1991, 105 Stat. 87; Pub. L. 102–190, div. A, title VII, §§702(b), 711, 712(a), 713, Dec. 5, 1991, 105 Stat. 1400, 1402, 1403; Pub. L. 102–484, div. A, title VII, §704, title X, §§1052(13), 1053(3), Oct. 23, 1992, 106 Stat. 2432, 2499, 2501; Pub. L. 103–35, title II, §202(a)(5), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VII, §§711, 716(c), Nov. 30, 1993, 107 Stat. 1688, 1693; Pub. L. 103–337, div. A, title VII, §§702(a), 707(a), Oct. 5, 1994, 108 Stat. 2797, 2800; Pub. L. 104–106, div. A, title VII, §§701, 731(a)–(d), Feb. 10, 1996, 110 Stat. 370, 380, 381; Pub. L. 104–201, div. A, title VII, §§701(b)(2), 711, 731, 732, 735(c), Sept. 23, 1996, 110 Stat. 2587, 2590, 2597, 2599; Pub. L. 105–85, div. A, title VII, §735, Nov. 18, 1997, 111 Stat. 1813; Pub. L. 106–398, §1 [[div. A], title VII, §§701(c)(1), 704(b), 722(b)(1), 757(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, 1654A–175, 1654A–185, 1654A–198; Pub. L. 107–107, div. A, title VII, §§701(b), (g)(2), 703(b), 707(a), (b), title X, §1048(c)(5), Dec. 28, 2001, 115 Stat. 1158, 1161–1163, 1226; Pub. L. 107–314, div. A, title VII, §§701(a), §702, §705(a), Dec. 2, 2002, 116 Stat. 2583, 2584.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1079(a)	37:402(a)(2) (as applicable to 37:411(a)).	June 7, 1956, ch. 374, §§102(a)(2) (as applicable to §201(a)), 201(a), (b), 204, 70 Stat. 250, 252, 253.
	37:411(a).	
1079(b)	37:411(b).	
	37:414.	

In subsection (a), the words ''appointed, enlisted, inducted or called, ordered or conscripted in a uniformed service'', in 37:402(a)(2) are omitted as surplusage, since it does not matter how a member became a member. The words ''active duty for a period of more than 30 days'' are substituted for the words ''active duty or active duty for training pursuant to a call or order that does not specify a period of thirty days or less'', in 37:402(a)(2), to reflect section 101(22) and (23) of this title. The words '', under the authority of this section,'' are substituted for the words ''pursuant to the provisions of this title'' to make clear that the section provides independent procurement authority. The words ''all'', ''by the hospital'', and ''a period of'', in 37:411(a), are omitted as surplusage.

In subsection (a)(1), the word ''rooms'', in 37:411(a), is substituted for the word ''accommodations''.

In subsection (a)(5), the word ''services'' is substituted for the word ''procedures'' and the word ''performed'' is substituted for the word ''accomplished'', in 37: 411(a). The words ''or surgeon'' are inserted for clarity.

In subsection (b), the word ''variances'' is substituted for the words ''limitations, additions, exclusions''. The words ''or care other than that provided for in sections 1076–1078 of this title'' are substituted for 37:414. The words ''definitions, and related provisions'', in 37:411(b), are omitted as surplusage, since the Secretary of an executive department has inherent authority to interpret laws and issue regulations.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (h)(1), (4)(A), (B)(i), (i)(3)(B)(ii), (C), (j)(1), (2), and (*o*)(2), is act Aug. 13, 1935, ch. 531, 49 Stat. 620, as amended. Part B

of title XI of the Act is classified generally to part B (§1320c et seq.) of subchapter XI of chapter 7 of Title 42, The Public Health and Welfare. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of Title 42. Parts A and B of title XVIII of the Act are classified generally to part A (§1395c et seq.) and part B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. Section 1861(m) of the Act is classified to section 1395x(m) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(7) to (14) of this section were contained in the following appropriation acts, with the exception of the provisions similar to par. (14) which first appeared in Pub. L. 96–154:

Pub. L. 98–473, title I, §101(h)[title VIII, §§8031, 8032, 8045], Oct. 12, 1984, 98 Stat. 1904, 1929, 1931.

Pub. L. 98–212, title VII, §§737, 738, 752, Dec. 8, 1983, 97 Stat. 1445, 1447.

Pub. L. 97–377, title I, §101(c) [title VII, §§740, 741, 756], Dec. 21, 1982, 96 Stat. 1833, 1857, 1860.

Pub. L. 97–114, title VII, §§741, 742, 759, Dec. 29, 1981, 95 Stat. 1585, 1588.

Pub. L. 96–527, title VII, §§742, 743, 763, Dec. 15, 1980, 94 Stat. 3088, 3092.

Pub. L. 96–154, title VII, §§744, 745, 769, Dec. 21, 1979, 93 Stat. 1159, 1163.

Pub. L. 95–457, title VIII, §§844, 845, Oct. 13, 1978, 92 Stat. 1251.

Pub. L. 95–111, title VIII, §§843, 844, Sept. 21, 1977, 91 Stat. 907.

Pub. L. 94–419, title VII, §§742, 743, Sept. 22, 1976, 90 Stat. 1298.

Pub. L. 94–212, title VII, §§750, 751, Feb. 9, 1976, 90 Stat. 176.

Provisions similar to those added to subsec. (h)(2) of this section by section 1401(e)(4)(B) of Pub. L. 98–525 were contained in the following prior appropriation acts:

Pub. L. 98–473, title I, §101(h)[title VIII, §8077], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98–212, title VII, §785, Dec. 8, 1983, 97 Stat. 1453.

A prior section 1079, act Aug. 10, 1956, ch. 1041, 70A Stat. 84, related to establishment of right to vote, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2002—Subsec. (i)(3). Pub. L. 107–314, §701(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B),'' for ''Except in the case of an emergency,'', and added subpars. (B) and (C).

Subsec. (p)(1). Pub. L. 107–314, §702(1), substituted ''dependents described in paragraph (3)'' for ''dependents referred to in subsection (a) of a member of the uniformed services referred to in section 1074(c)(3) of this title who are residing with the member''.

Subsec. (p)(3), (4). Pub. L. 107–314, §702(2), (3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (q). Pub. L. 107–314, §705(a), added subsec. (q).

2001—Subsec. (a)(5). Pub. L. 107–107, §703(b), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Durable equipment, such as wheelchairs, iron lungs and hospital beds may be provided on a rental basis.''

Subsec. (a)(17). Pub. L. 107–107, §701(g)(2), struck out par. (17) which read as follows:

''(17)(A) The Secretary of Defense may establish a program for the individual case management of a person covered by this section or section 1086 of this title who has extraordinary medical or psychological disorders and, under such a program, may waive benefit limitations contained in paragraphs (5) and (13) of this subsection or section 1077(b)(1) of this title and authorize the payment for comprehensive home health care services, supplies, and equipment if the Secretary determines that such a waiver is cost-effective and appropriate.

''(B) The total amount expended under subparagraph (A) for a fiscal year may not exceed $100,000,000.''

Subsec. (d) to (f). Pub. L. 107–107, §701(b), added subsecs. (d) to (f) and struck out former subsecs. (d) to (f) which related to medical care provided for retarded or handicapped dependents, the requirement of members sharing in cost of benefits provided, and the requirement that members use public facilities to the extent available and adequate, respectively.

Subsec. (h)(2). Pub. L. 107–107, §1048(c)(5), substituted ''February 10, 1996,'' for ''the date of the enactment of this paragraph''.

Subsec. (h)(4). Pub. L. 107–107, §707(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (j)(2) to (4). Pub. L. 107–107, §707(a), designated existing provisions of subpar. (A) of par. (2) as par. (2) and substituted ''shall be determined under joint regulations'' for ''may be determined under joint regulations'', redesignated subpar. (B) of par. (2) as par. (4) and substituted therein ''this subsection,'' for ''subparagraph (A),'', and added par. (3).

2000—Subsec. (a)(17). Pub. L. 106–398, §1 [[div. A], title VII, §701(c)(1)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g). Pub. L. 106–398, §1 [[div. A], title VII, §704(b)], substituted ''three-year period'' for ''one-year period''.

Subsec. (h)(5). Pub. L. 106–398, §1 [[div. A], title VII, §757(a)], added par. (5).

Subsec. (p). Pub. L. 106–398, §1 [[div. A], title VII, §722(b)(1)], added subsec. (p).

1997—Subsec. (h)(1). Pub. L. 105–85, §735(a), added par. (1) and struck out former par. (1) which read as follows: ''Payment for a charge for services by an individual health care professional (or other noninstitutional health care provider) for which a claim is submitted under a plan contracted for under subsection (a) may not exceed the lesser of—

''(A) the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period; or

''(B) an amount determined to be appropriate, to the extent practicable, in accordance with the same reimbursement rules as apply to payments for similar services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).''

Subsec. (h)(2). Pub. L. 105–85, §735(c)(2), redesignated par. (4) as (2).

Pub. L. 105–85, §735(a), struck out par. (2) which read as follows: ''For the purposes of paragraph (1)(A), the 80th percentile of charges shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries, and the base period shall be a period of twelve calendar months. The Secretary of Defense shall adjust the base period as frequently as he considers appropriate.''

Subsec. (h)(3). Pub. L. 105–85, §735(c)(2), redesignated par. (5) as (3).

Pub. L. 105–85, §735(a), struck out par. (3) which read as follows: ''For the purposes of paragraph (1)(B), the appropriate payment amount shall be determined by the Secretary of Defense, in consultation with the other administering Secretaries.''

Subsec. (h)(4). Pub. L. 105–85, §735(c)(2), redesignated par. (4) as (2).

Subsec. (h)(5). Pub. L. 105–85, §735(c)(2), redesignated par. (5) as (3).

Pub. L. 105–85, §735(b), (c)(1), substituted ''paragraph (2), the Secretary of Defense'' for ''paragraph (4), the Secretary'' and inserted at end ''With the consent of the health care provider, the Secretary is also authorized to reduce the authorized payment for certain health care services below the amount otherwise re-

quired by the payment limitations under paragraph (1).''

Subsec. (h)(6). Pub. L. 105–85, §735(c)(2), redesignated par. (6) as (4).

1996—Subsec. (a). Pub. L. 104–201, §731(b)(1), substituted ''except as follows:'' for ''except that—'' in introductory provisions.

Subsec. (a)(1). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(2). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Pub. L. 104–201, §701(b)(2), inserted ''the schedule and method of colon and prostate cancer screenings,'' after ''pap smears and mammograms,'' in introductory provisions and ''or colon and prostate cancer screenings'' after ''pap smears and mammograms'' in subpar. (B).

Pub. L. 104–106, §701, added par. (2) and struck out former par. (2) which read as follows: ''routine physical examinations and immunizations of dependents over two years of age may only be provided when required in the case of dependents who are traveling outside the United States as a result of a member's duty assignment and such travel is being performed under orders issued by a uniformed service, except that pap smears and mammograms may be provided on a diagnostic or preventive basis;''.

Subsec. (a)(3) to (12). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(13). Pub. L. 104–201, §731(a), (b)(2), substituted ''Any service'' for ''any service'' and ''paragraph (4).'' for ''paragraph (4);'' and inserted at end ''Pursuant to an agreement with the Secretary of Health and Human Services and under such regulations as the Secretary of Defense may prescribe, the Secretary of Defense may waive the operation of this paragraph in connection with clinical trials sponsored or approved by the National Institutes of Health if the Secretary of Defense determines that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.''

Subsec. (a)(14), (15). Pub. L. 104–201, §731(b)(2), (3), capitalized first letter of first word and substituted a period for the semicolon at end.

Subsec. (a)(16). Pub. L. 104–201, §731(b)(2), (4), capitalized first letter of first word and substituted a period for ''; and'' at end.

Subsec. (a)(17). Pub. L. 104–201, §731(b)(2), capitalized first letter of first word.

Subsec. (h)(1). Pub. L. 104–106, §731(a), added par. (1) and struck out former par. (1) which read as follows: ''Payment for a charge for services by an individual health-care professional (or other noninstitutional health-care provider) for which a claim is submitted under a plan contracted for under subsection (a) may be denied only to the extent that the charge exceeds the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.''

Subsec. (h)(2). Pub. L. 104–106, §731(d), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (h)(3). Pub. L. 104–106, §731(b), added par. (3).

Subsec. (h)(4). Pub. L. 104–201, §711, struck out ''emergency'' before ''services from nonparticipating providers.''

Pub. L. 104–106, §731(c), added par. (4).

Subsec. (h)(5). Pub. L. 104–201, §732(2), added par. (5). Former par. (5) redesignated (6).

Pub. L. 104–106, §731(c), added par. (5).

Subsec. (h)(6). Pub. L. 104–201, §732(1), redesignated par. (5) as (6).

Subsec. (j)(1). Pub. L. 104–201, §735(c), inserted '', including any plan offered by a third-party payer (as defined in section 1095(h)(1) of this title),'' after ''or health plan''.

1994—Subsec. (a). Pub. L. 103–337, §702(a)(1), substituted ''dependents, as described in subparagraphs (A), (D), and (I) of section 1072(2) of this title,'' for ''spouses and children''.

Subsec. (d). Pub. L. 103–337, §702(a)(2), substituted ''as described in subparagraph (A), (D), or (I) of section 1072(2)'' for ''as defined in section 1072(2)(A) or (D)''.

Subsec. (g). Pub. L. 103–337, §707(a), inserted at end ''In addition, when a member dies while on active duty for a period of more than 30 days, the member's dependents who are receiving benefits under a plan covered by subsection (a) shall continue to be eligible for such benefits during the one-year period beginning on the date of the death of the member.''

1993—Subsec. (a)(7). Pub. L. 103–160, §716(c), substituted ''except that those services may be provided in any case in which another insurance plan or program provides primary coverage for those services;'' for ''except that—

''(A) those services may be provided in any case in which another insurance plan or program provides primary coverage for those services; and

''(B) the Secretary of Defense may waive the 40-mile radius restriction with regard to the provision of a particular service before October 1, 1993, if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service;''.

Subsec. (a)(15). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, §704(1). See 1992 Amendment note below.

Subsec. (*o*). Pub. L. 103–160, §711, added subsec. (*o*).

1992—Subsec. (a)(15). Pub. L. 102–484, §1053(3), made technical amendment to directory language of Pub. L. 102–190, §702(b)(1)(C). See 1991 Amendment note below.

Pub. L. 102–484, §704(1), as amended by Pub. L. 103–35, struck out ''and'' at end of par. (15).

Subsec. (a)(16). Pub. L. 102–484, §704(2), substituted ''; and'' for period at end.

Subsec. (a)(17). Pub. L. 102–484, §704(3), added par. (17).

Subsec. (j)(2)(B). Pub. L. 102–484, §1052(13), inserted a close parenthesis after ''1395x(dd)(2)''.

1991—Subsec. (a)(6). Pub. L. 102–25, §316(b), revived par. (6) as in effect on Feb. 14, 1991, thus negating amendment to par. (6) by Pub. L. 101–510, §703(a), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (a)(7). Pub. L. 102–190, §711, substituted ''except that—'' and subpars. (A) and (B), for ''except that such services may be provided in any case in which another insurance plan or program provides primary coverage for the services;''.

Subsec. (a)(13). Pub. L. 102–190, §702(b)(1)(A), substituted ''paragraph (4)'' for ''clause (4)''.

Subsec. (a)(14). Pub. L. 102–190, §702(b)(1)(B), struck out ''and'' at end.

Subsec. (a)(15). Pub. L. 102–190, §702(b)(1)(C), as amended by Pub. L. 102–484, §1053(3), substituted ''; and'' for period at end.

Subsec. (a)(16). Pub. L. 102–190, §702(b)(1)(D), added par. (16).

Subsec. (i). Pub. L. 102–25, §316(b), revived subsec. (i) as in effect on Feb. 14, 1991, thus negating amendment to subsec. (i) by Pub. L. 101–510, §703(b), from its original effective date (Feb. 15, 1991) to the effective date as amended (Oct. 1, 1991). See 1990 Amendment note and Effective Date of 1990 Amendment note below.

Subsec. (j)(1). Pub. L. 102–190, §713, inserted '', or covered by,'' after ''person enrolled in''.

Subsec. (j)(2)(B). Pub. L. 102–190, §702(b)(2), inserted ''hospice program (as defined in section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)),''.

Subsec. (n). Pub. L. 102–190, §712(a), added subsec. (n).

1990—Subsec. (a)(2). Pub. L. 101–510, §701(a), inserted before the semicolon '', except that pap smears and mammograms may be provided on a diagnostic or preventive basis''.

Subsec. (a)(6). Pub. L. 101–510, §703(a), substituted ''in excess of—'' for ''in excess of 60 days in any year;'' and added subpars. (A) to (C).

Subsec. (a)(8). Pub. L. 101–510, §702(a)(1), inserted ''(other than certified marriage and family therapists)''

after ''marital counselors'' and inserted before semicolon ''and services of certified marriage and family therapists may be provided consistent with such rules as may be prescribed by the Secretary of Defense, including credentialing criteria and a requirement that the therapists accept payment under this section as full payment for all services provided''.

Subsec. (a)(13). Pub. L. 101–510, §702(a)(2), inserted ''certified marriage and family therapist,'' after ''psychologist,''.

Subsec. (b)(2). Pub. L. 101–510, §712(a)(1), substituted ''$150'' for ''$50'' and inserted at end ''Notwithstanding the preceding sentence, in the case of a dependent of an enlisted member in a pay grade below E–5, the initial deductible each fiscal year under this paragraph shall be limited to $50.''

Subsec. (b)(3). Pub. L. 101–510, §712(a)(2), substituted ''$300 (or in the case of the family group of an enlisted member in a pay grade below E–5, the first $100)'' for ''$100''.

Subsec. (i). Pub. L. 101–510, §703(b), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The limitation in subsection (a)(6) does not apply in the case of inpatient mental health services—

''(1) provided under the program for the handicapped under subsection (d);

''(2) provided as residential treatment care;

''(3) provided as partial hospital care; or

''(4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-Federal health professional pursuant to regulations prescribed by the Secretary of Defense.''

Subsec. (j)(2)(B). Pub. L. 101–510, §1484(g)(1), inserted ''the term'' after ''In subparagraph (A),''.

1989—Subsec. (h)(1), (2). Pub. L. 101–189 substituted ''80th percentile'' for ''90th percentile''.

1988—Subsec. (b)(1). Pub. L. 100–456, §646(a)(1), inserted provisions authorizing Secretary of Defense to exempt a patient from paying such amount if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (m). Pub. L. 100–456, §646(a)(2), added subsec. (m).

1987—Subsec. (a)(15). Pub. L. 100–180, §726(a), added par. (15).

Subsec. (b)(5). Pub. L. 100–180, §721(a), added par. (5).

1986—Subsec. (a)(7). Pub. L. 99–661, §703, substituted ''provides primary coverage for the services'' for ''pays for at least 75 percent of the services''.

Subsec. (*l*). Pub. L. 99–661, §652(d), added subsec. (*l*).

1984—Subsec. (a). Pub. L. 98–557, §19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services in provisions preceding cl. (1).

Subsec. (a)(3). Pub. L. 98–525, §632(a)(1), substituted ''not more than one eye examination may be provided to a patient in any calendar year'' for ''eye examinations may not be provided''.

Subsec. (a)(4). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (a)(7) to (14). Pub. L. 98–525, §1401(e)(4)(A), added cls. (7) to (14).

Subsecs. (b)(4), (c), (d). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (e). Pub. L. 98–525, §1405(23), substituted ''under subsection (d) as follows:'' for ''under subsection (d).'' in provisions preceding cl. (1).

Subsecs. (e)(1), (f). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (h)(2). Pub. L. 98–557, §19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525, §1401(e)(4)(B), substituted ''The Secretary of Defense shall adjust the base period as frequently as he considers appropriate'' for ''The base period shall be adjusted at least once a year''.

Subsec. (j)(2)(A). Pub. L. 98–557, §19(7)(A), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

Subsec. (k)(1), (2). Pub. L. 98–557, §19(7)(B), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1983—Subsec. (a). Pub. L. 98–94, §1268(4)(A), substituted ''30'' for ''thirty'' in provisions preceding par. (1).

Subsec. (a)(6). Pub. L. 98–94, §931(a)(1), added par. (6).

Subsec. (d). Pub. L. 98–94, §1268(4)(A), substituted ''30'' for ''thirty''.

Subsec. (g). Pub. L. 98–94, §1268(4)(B), struck out ''of this section'' after ''subsection (d)''.

Subsecs. (i) to (k). Pub. L. 98–94, §931(a)(2), added subsecs. (i) to (k).

1981—Subsec. (b)(4). Pub. L. 97–22 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (h). Pub. L. 97–86 substituted reference to services of individual health-care professionals for former reference to physician services, struck out provisions that had used the concept of a predetermined charge level based upon customary charges, and inserted provisions requiring a readjustment of the base period at least once a year.

1980—Subsec. (a). Pub. L. 96–513, §511(36), (38)(A), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing, and ''that—'' for ''that:''.

Subsec. (a)(2). Pub. L. 96–342, §810(a)(1), inserted ''of dependents over two years of age'' after ''immunizations''.

Subsec. (a)(3). Pub. L. 96–342, §810(a)(2), struck out ''routine care of the newborn, well-baby care, and'' after ''(3)''.

Subsec. (b)(4). Pub. L. 96–552 added par. (4).

Pub. L. 96–513, §511(38)(B), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (d). Pub. L. 96–513, §§501(13), 511(36), substituted ''section 1072(2)(A) or (D) of this title'' for ''section 1072(2)(A), (C), or (E) of this title'', and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (e). Pub. L. 96–513, §511(36), (38)(C), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''(d) as follows:'' for ''(d).''.

Subsec. (e)(2). Pub. L. 96–342, §810(b), substituted ''$1,000'' for ''$350''.

Subsec. (f). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (g). Pub. L. 96–513, §511(38)(D), struck out '', United States Code,'' after ''37''.

Subsec. (h). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

1978—Subsec. (h). Pub. L. 95–485 added subsec. (h).

1971—Subsec. (g). Pub. L. 92–58 added subsec. (g).

1966—Subsec. (a). Pub. L. 89–614 struck out ''dependent'' before ''spouses and children'' and substituted sentence providing that ''The types of health care authorized under this section, shall be the same as those provided under section 1076 of this title'', enumerating exceptions in pars. (1) to (5) for former provisions which required the insurance, medical service, or health plans to include (1) hospitalization in semiprivate rooms for not more than 365 days for each admission, (2) medical and surgical care incident to hospitalization, (3) obstetrical and maternity service, including prenatal and

postnatal care, (4) services of physician or surgeon before or after hospitalization for bodily injury or surgical operation, (5) diagnostic tests and services incident to hospitalization, and (6) payments by patient of hospital expenses, now incorporated in subsec. (b)(1).

Subsec. (b). Pub. L. 89–614 incorporated existing provisions of subsec. (a)(6) in par. (1) and added pars. (2) and (3). Former subsec. (b) authorized the Secretary of Defense to make variances from subsec. (a) requirements as appropriate other than outpatient care or care other than provided for in sections 1076 to 1078 of this title.

Subsecs. (c) to (f). Pub. L. 89–614 added subsecs. (c) to (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VII, §701(b), Dec. 2, 2002, 116 Stat. 2583, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 2003.''

Pub. L. 107–314, div. A, title VII, §705(b), Dec. 2, 2002, 116 Stat. 2585, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any contract under the TRICARE program entered into on or after the date of the enactment of this Act [Dec. 2, 2002].''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VII, §707(c), Dec. 28, 2001, 115 Stat. 1164, provided that: ''The amendments made by this section [amending this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §701(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–172, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note under section 1077 of this title] shall apply to fiscal years after fiscal year 1999.''

Amendment by section 1 [[div. A], title VII, §722(b)(1)] of Pub. L. 106–398 effective Oct. 1, 2001, see section 1 [[div. A], title VII, §722(c)(1)] of Pub. L. 106–398, set out as a note under section 1074 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–337, div. A, title VII, §707(c), Oct. 5, 1994, 108 Stat. 2801, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1076a of this title] shall apply with respect to the dependents described in such amendments of a member of a uniformed service who dies on or after October 1, 1993, while on active duty for a period of more than 30 days.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(3) of Pub. L. 102–484 provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 316(b) of Pub. L. 102–25 provided that the amendment made by that section is effective Feb. 15, 1991.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 701(b) of Pub. L. 101–510 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to the provision of pap smears and mammograms under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 702(b) of Pub. L. 101–510 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the services of certified marriage and family therapists provided under section 1079 or 1086 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 703(d) of Pub. L. 101–510, as amended by Pub. L. 102–25, title III, §316(a)(1), Apr. 6, 1991, 105 Stat. 87, provided that: ''This section and the amendments made by this section [amending this section] shall take effect on October 1, 1991, and shall apply with respect to mental health services provided under section 1079 or 1086 of title 10, United States Code, on or after that date.''

Section 712(c) of Pub. L. 101–510 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall apply with respect to health care provided under sections 1079 and 1086 of title 10, United States Code, on or after April 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 730(b) of Pub. L. 101–189 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services provided on or after October 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 646(c) of Pub. L. 100–456 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1086 of this title] shall apply with respect to medical care received after September 30, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 721(c) of Pub. L. 100–180 provided that: ''Paragraph (5) of section 1079(b) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1086(b) of such title, as added by subsection (b), shall apply with respect to fiscal years beginning after September 30, 1987.''

Section 726(b) of Pub. L. 100–180 provided that: ''Paragraph (15) of section 1079(a) of such title, as added by subsection (a), shall apply with respect to costs incurred for home monitoring equipment after the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 652(e)(4) of Pub. L. 99–661 provided that: ''The amendment made by subsection (d) [amending this section] shall apply only with respect to care furnished under section 1079 of title 10, United States Code, on or after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 632(a)(3) of Pub. L. 98–525 provided that: ''The amendments made by this subsection [amending this section and section 1086 of this title] shall apply only to health care furnished after September 30, 1984.''

Amendment by section 1401(e)(4) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 931(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section and section 1086 of this title] shall take effect on October 1, 1983, except that—

''(1) clause (6) of section 1079(a) of title 10, United States Code, as added by subsection (a)(1), shall not apply in the case of inpatient mental health services provided to a patient admitted before January 1, 1983, for so long as that patient remains continuously in inpatient status for medically or psychologically necessary reasons; and

''(2) subsection (k) of section 1079 of such title, as added by subsection (a)(1), shall apply with respect to

liver transplant operations performed on or after July 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 906(b) of Pub. L. 97–86 provided that: ''The amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 1, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by section 501(13) of Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511 of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

Section 810(c) of Pub. L. 96–342 provided that: ''The amendments made by this section [amending this section] shall apply to medical care provided after September 30, 1980.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 806(b) of Pub. L. 95–485 provided that: ''the amendments made by subsection (a) [amending this section and section 1086 of this title] shall apply with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after the date of enactment of this Act [Oct. 20, 1978].''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–58 provided that: ''This Act [amending this section] becomes effective as of January 1, 1967. However, no person is entitled to any benefits because of this Act for any period before the date of enactment [July 29, 1971].''

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

REPORT ON ACTIONS TO ESTABLISH SPECIAL REIMBURSEMENT RATES

Pub. L. 106–398, § 1 [[div. A], title VII, § 757(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–199, provided that: ''Not later than March 31, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the General Accounting Office a report on actions taken to carry out section 1079(h)(5) of title 10, United States Code (as added by subsection (a)) and section 1097b of such title.''

PROGRAMS RELATING TO SALE OF PHARMACEUTICALS

Section 702 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title VII, § 721, Nov. 30, 1993, 107 Stat. 1695; Pub. L. 103–337, div. A, title VII, § 706, Oct. 5, 1994, 108 Stat. 2800; Pub. L. 106–398, § 1 [[div. A], title VII, § 711(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, provided that:

''(a) DEMONSTRATION PROJECT FOR PHARMACEUTICALS BY MAIL.—Not later than 18 months after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the administering Secretaries, shall—

''(1) establish a demonstration project that permits eligible persons described in subsection (c) to obtain prescription pharmaceuticals by mail in connection with medical care furnished to such persons under chapter 55 of title 10, United States Code; and

''(2) conduct the demonstration project in two or more regions selected by the Secretary, each of which consists of two or more States.

''(b) RETAIL PHARMACY NETWORK.—To the maximum extent practicable, the Secretary of Defense shall include in each managed health care program initiated, awarded, or renewed by the Secretary after January 1, 1993, a program to supply prescription pharmaceuticals to eligible persons described in subsection (c) through a managed care network of community retail pharmacies in the area covered by the managed health care program.

''(c) ELIGIBLE PERSONS.—A person eligible to obtain pharmaceuticals under the demonstration project established under subsection (a) or the retail pharmacy network included in a managed health care program under subsection (b) is any person living in the area covered by the demonstration project or managed health care program—

''(1) who is eligible for medical care under a contract for medical care entered into by the Secretary of Defense under section 1079 or 1086 of title 10, United States Code; or

''(2) who—

''(A) would be eligible for medical care under a contract for medical care entered into under section 1086 of such title except for operation of subsection (d)(1) of such section; and

''(B) either—

''(i) resides in an area that is adversely affected (as determined by the Secretary) by the closure of a health care facility of the uniformed services as a result of the closure or realignment of the military installation at which such facility is located; or

''(ii) can demonstrate to the satisfaction of the Secretary that the person relied upon a health care facility referred to in clause (i) before the closure of the facility to obtain the person's pharmaceuticals.

''(d) PHARMACEUTICALS OFFERED; PURCHASE FEES.—(1) The Secretary of Defense, in consultation with the administering Secretaries, shall—

''(A) determine the pharmaceuticals that may be obtained by eligible persons under the demonstration project established under subsection (a) or the retail pharmacy network included in a managed health care program under subsection (b); and

''(B) establish an appropriate fee, charge, or copayment to be paid by such persons for pharmaceuticals obtained under the demonstration project or managed health care program.

''(2) In the case of persons eligible to participate in the demonstration project for pharmaceuticals or the retail pharmacy network by reason of clause (ii) of subsection (c)(2)(B), the Secretary of Defense may increase the fees, charges, and copayments established under paragraph (1)(B) and otherwise applicable to such persons by an amount necessary to cover any additional costs incurred by the administering Secretaries as a result of making pharmaceuticals available to such persons under this section.

''(e) REPORT REGARDING DEMONSTRATION PROJECT.—Not later than two years after the establishment of the demonstration project under subsection (a), the Secretary of Defense shall submit to Congress a report—

''(1) describing the results of the demonstration project required by subsection (a);

''(2) containing such recommendations for revision of the demonstration project as the Secretary considers to be necessary; and

''(3) containing a plan (including a schedule) for implementing the demonstration project throughout the United States.

''(f) ADDITIONAL REPORT REGARDING PROGRAMS.—Not later than January 1, 1994, the Secretary of Defense shall submit to Congress a report containing—

''(1) an evaluation of the feasibility and advisability of increasing the size of those areas determined by the Secretary under subsection (c)(2) to be adversely affected by the closure of a health care facility of the uniformed services in order to increase the number of persons described in such subsection who will be eligible to participate in the demonstration project for pharmaceuticals by mail or in the retail pharmacy network under this section;

''(2) an evaluation of the feasibility and advisability of expanding the demonstration project and the retail pharmacy network under this section to include all covered beneficiaries under chapter 55 of title 10, United States Code, including those persons currently excluded from participation in the Civilian Health and Medical Program of the Uniformed Services by operation of section 1086(d)(1) of such title;

''(3) an estimation of the costs that would be incurred, and any savings that would be achieved by improving efficiencies of operation, as a result of undertaking the increase or expansion described in paragraph (1) or (2); and

''(4) such recommendations as the Secretary considers to be appropriate.

''(g) DEFINITIONS.—In this section, the terms 'uniformed services' and 'administering Secretaries' have the meanings given those terms in section 1072 of title 10, United States Code.

''(h) TERMINATION.—This section shall cease to apply to the Secretary of Defense on the date after the implementation of section 711 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [section 1 [[div. A], title VII, §711] of Pub. L. 106–398, amending this note and provisions set out as a note under section 1073 of this title] that the Secretary determines appropriate, with a view to minimizing instability with respect to the provision of pharmacy benefits, but in no case later than the date that is one year after the date of the enactment of such Act [Oct. 30, 2000].''

CORRECTION OF OMISSION IN DELAY OF INCREASE OF CHAMPUS DEDUCTIBLES RELATED TO OPERATION DESERT STORM

Section 721 of Pub. L. 102–484 provided that:

''(a) LOWER CHAMPUS ANNUAL DEDUCTIBLE.—In the case of health care provided under section 1079 or 1086 of title 10, United States Code, during the period beginning on April 1, 1991, and ending on September 30, 1991, to a CHAMPUS beneficiary described in subsection (b), the annual deductibles specified in such sections applicable to that care may not exceed the annual deductibles in effect under such sections on November 4, 1990.

''(b) ELIGIBLE CHAMPUS BENEFICIARIES.—A CHAMPUS beneficiary referred to in subsection (a) is a covered beneficiary of the Civilian Health and Medical Program of the Uniformed Services who, during any portion of the period specified in that subsection—

''(1) was a member or former member of a uniformed service entitled to retired or retainer pay and served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm; or

''(2) was a dependent of a member of a uniformed service who served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm.

''(c) CREDIT OR REIMBURSEMENT OF EXCESS.—Subject to the availability of appropriated funds to the Secretary of Defense, the Secretary shall provide—

''(1) for the reimbursement of the amount of any deductible paid under section 1079 or 1086 of title 10, United States Code, during the period specified in subsection (a) in excess of the amount required to be paid by operation of that subsection; or

''(2) for a credit against the annual deductible required under such sections for a fiscal year equal to the amount of the excess deductible paid.

''(d) DEFINITIONS.—For purposes of this section, the term 'Operation Desert Storm' has the meaning given that term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 10 U.S.C. 101 note).''

TEMPORARY CHAMPUS PROVISIONS FOR DEPENDENTS OF OPERATION DESERT SHIELD/DESERT STORM ACTIVE DUTY PERSONNEL

Pub. L. 102–172, title VIII, §8085, Nov. 26, 1991, 105 Stat. 1192, provided that: ''Any CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) health care provider may voluntarily waive the patient copayment for medical services provided from August 2, 1990, until the termination of Operation Desert Shield/Desert Storm for dependents of active duty personnel: *Provided*, That the Government's share of medical services is not increased during the specified time period.''

Similar provisions were contained in Pub. L. 102–28, §105, Apr. 10, 1991, 105 Stat. 165.

Section 312 of Pub. L. 102–25 provided that:

''(a) DELAY IN THE INCREASE OF ANNUAL DEDUCTIBLES UNDER CHAMPUS.—The annual deductibles specified in subsection (b) of section 1079 of title 10, United States Code (as in effect on November 4, 1990), shall apply until October 1, 1991, in the case of health care provided under that section to the dependents of a member of the uniformed services who serves or served on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm.

''(b) WAIVER OF COPAYMENT REQUIREMENTS.—(1) Any civilian health care provider furnishing health care pursuant to a plan contracted for under the authority of section 1079 or 1086 of title 10, United States Code, may waive, in whole or in part, any requirement for payment under subsection (b) of that section by a patient described in paragraph (2) for health care furnished the patient by such health care provider during the Persian Gulf conflict.

''(2) A patient referred to in paragraph (1) is a dependent of a member of the uniformed services who serves on active duty in the Persian Gulf theater of operations in connection with Operation Desert Storm.

''(3) If a health care provider waives a payment for health care under paragraph (1), the health care provider shall certify to the Secretary of Defense that the amount charged the Federal Government for such health care was not increased above the amount that the health care provider would have charged the Federal Government for such health care had the payment not been waived. The Secretary of Defense may require a health care provider to provide information to the Secretary to show the compliance of the health care provider with this paragraph.''

TRANSITIONAL HEALTH CARE FOR MEMBERS, OR DEPENDENTS OF MEMBERS, UPON RELEASE OF MEMBER FROM ACTIVE DUTY IN CONNECTION WITH OPERATION DESERT STORM

For provision authorizing transitional health care, including health benefits contracted for under subsec. (a) of this section, for members, or dependents of members, upon release of member from active duty in connection with Operation Desert Storm, see section 313 of Pub. L. 102–25, set out as a note under section 1076 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1074g, 1074j, 1077, 1080, 1081, 1082, 1083, 1086, 1086a, 1095, 1096, 1097b, 1098, 1100, 1104, 1105, 1145 of this title; title 42 sections 300e–1, 1395cc.

§ 1079a. CHAMPUS: treatment of refunds and other amounts collected

All refunds and other amounts collected in the administration of the Civilian Health and Medical Program of the Uniformed Services shall be credited to the appropriation available for that program for the fiscal year in which the refund or amount is collected.

(Added Pub. L. 104–201, div. A, title VII, §733(a)(1), Sept. 23, 1996, 110 Stat. 2597.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriations acts:

Pub. L. 104–61, title VIII, §8094, Dec. 1, 1995, 109 Stat. 671.

Pub. L. 103–335, title VIII, §8144, Sept. 30, 1994, 108 Stat. 2656.

§1079b. Procedures for charging fees for care provided to civilians; retention and use of fees collected

(a) REQUIREMENT TO IMPLEMENT PROCEDURES.—The Secretary of Defense shall implement procedures under which a military medical treatment facility may charge civilians who are not covered beneficiaries (or their insurers) fees representing the costs, as determined by the Secretary, of trauma and other medical care provided to such civilians.

(b) USE OF FEES COLLECTED.—A military medical treatment facility may retain and use the amounts collected under subsection (a) for—

(1) trauma consortium activities;

(2) administrative, operating, and equipment costs; and

(3) readiness training.

(Added Pub. L. 107–107, div. A, title VII, §732(a)(1), Dec. 28, 2001, 115 Stat. 1169.)

DEADLINE FOR IMPLEMENTATION

Pub. L. 107–107, div. A, title VII, §732(b), Dec. 28, 2001, 115 Stat. 1170, provided that: ''The Secretary of Defense shall begin to implement the procedures required by section 1079b(a) of title 10, United States Code (as added by subsection (a)), not later than one year after the date of the enactment of this Act [Dec. 28, 2001].''

§1080. Contracts for medical care for spouses and children: election of facilities

(a) ELECTION.—A dependent covered by section 1079 of this title may elect to receive inpatient medical care either in (1) the facilities of the uniformed services, under the conditions prescribed by sections 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under section 1079 of this title. However, under such regulations as the Secretary of Defense, after consulting the other administering Secretaries, may prescribe, the right to make this election may be limited for dependents residing in the area where the member concerned is assigned, if adequate medical facilities of the uniformed services are available in that area for those dependents.

(b) ISSUANCE OF NONAVAILABILITY-OF-HEALTH-CARE STATEMENTS.—In determining whether to issue a nonavailability-of-health-care statement for a dependent described in subsection (a), the commanding officer of a facility of the uniformed services may consider the availability of health care services for the dependent pursuant to any contract or agreement entered into under this chapter for the provision of health care services. Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy.

(c) WAIVERS AND EXCEPTIONS TO REQUIREMENTS.—(1) A covered beneficiary enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter for the provision of health care services shall not be required to obtain a nonavailability-of-health-care statement as a condition for the receipt of health care.

(2) The Secretary of Defense may waive the requirement to obtain nonavailability-of-health-care statements following an evaluation of the effectiveness of such statements in optimizing the use of facilities of the uniformed services.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(8), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 103–160, div. A, title VII, §716(b)(1), Nov. 30, 1993, 107 Stat. 1692; Pub. L. 104–201, div. A, title VII, §734(a)(1), (b)(1), (c), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–65, div. A, title VII, §712(c), Oct. 5, 1999, 113 Stat. 687.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1080	37:411(c).	June 7, 1956, ch. 374, §201(c), 70 Stat. 252.

The words ''a plan contracted for under section 1079 of this title'' are substituted for the words ''such insurance, medical service, or health plan or plans as may be provided by the authority contained in this section''. The words ''under the terms of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1080, act Aug. 10, 1956, ch. 1041, 70A Stat. 85, related to style and marking of envelopes, inserts, return envelopes, and to weight of ballots, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 inserted at end ''Notwithstanding any other provision of law, with respect to obstetrics and gynecological care for beneficiaries not enrolled in a managed care plan offered pursuant to any contract or agreement under this chapter, a nonavailability-of-health-care statement shall be required for receipt of health care services related to outpatient prenatal, outpatient or inpatient delivery, and outpatient post-partum care subsequent to the visit which confirms the pregnancy.''

1996—Subsec. (a). Pub. L. 104–201, §734(a)(1), inserted ''inpatient'' before ''medical care'' in first sentence.

Subsec. (b). Pub. L. 104–201, §734(c), substituted ''Nonavailability-of-Health-Care Statements'' for ''Nonavailability of Health Care Statements'' in heading and ''nonavailability-of-health-care statement'' for ''nonavailability of health care statement'' in text.

Subsec. (c). Pub. L. 104–201, §734(b)(1), added subsec. (c).

1993—Pub. L. 103–160 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

1984—Pub. L. 98–557 substituted reference to administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1082, 1086 of this title.

§ 1081. Contracts for medical care for spouses and children: review and adjustment of payments

Each plan under section 1079 of this title shall provide for a review, and if necessary an adjustment of payments, by the appropriate administering Secretary, not later than 120 days after the close of each year the plan is in effect.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, § 511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–375, title I, § 104(a), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–94, title XII, § 1268(5)(A), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, § 19(9), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1081	37:412.	June 7, 1956, ch. 374, § 202, 70 Stat. 253.

The words ''Each plan under section 1079 of this title'' are substituted for the words ''Any insurance, medical service, or health plan or plans which may be entered into by the Secretary of Defense with respect to medical care under the provisions of this chapter''. The words ''after the close of each year the plan is in effect'' are substituted for the words ''after the first year the plan or plans have been in effect and each year thereafter''. The words ''Not later than'' are substituted for the word ''within''.

PRIOR PROVISIONS

A prior section 1081, act Aug. 10, 1956, ch. 1041, 70A Stat. 86, related to notification of elections, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to appropriate administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services.

1983—Pub. L. 98–94 struck out ''; reports'' after ''adjustment of payments'' in section catchline.

1982—Pub. L. 97–375 struck out requirement that the Secretary of Defense report to the Committees on Armed Services of the Congress amounts paid and adjustments made during the year covered by the review not later than 90 days after such review.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1082. Contracts for health care: advisory committees

To carry out sections 1079–1081 and 1086 of this title, the Secretary of Defense may establish advisory committees on insurance, medical service, and health plans, to advise and make recommendations to him. He shall prescribe regulations defining their scope, activities, and procedures. Each committee shall consist of the Secretary, or his designee, as chairman, and such other persons as the Secretary may select. So far as possible, the members shall be representative of the organizations in the field of insurance, medical service, and health plans. They shall serve without compensation but may be allowed transportation and a per diem payment in place of subsistence and other expenses.

(Added Pub. L. 85–861, § 1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 89–614, § 2(8), Sept. 30, 1966, 80 Stat. 866.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1082	37:413.	June 7, 1956, ch. 374, § 203, 70 Stat. 253.

The word ''organizations'' is inserted for clarity. The words ''consult'' and ''or plans'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1082, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to extension of time limit for making ballots available, prior to repeal by Pub. L. 85–861, § 36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§ 1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1966—Pub. L. 89–614 substituted ''Contracts for health care'' for ''Contracts for medical care for spouses and children'' in section catchline and included reference to section 1086 in text.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1083. Contracts for medical care for spouses and children: additional hospitalization

If a dependent covered by a plan under section 1079 of this title needs hospitalization beyond the time limits in that plan, and if the hospitalization is authorized in medical facilities of the uniformed services, he may be transferred to such a facility for additional hospitalization. If transfer is not feasible, the expenses of addi-

tional hospitalization in the civilian facility may be paid under such regulations as the Secretary of Defense may prescribe after consulting the other administering Secretaries.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1449; amended Pub. L. 96–513, title V, §511(36), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–557, §19(10), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1083	37:423.	June 7, 1956, ch. 374, §303, 70 Stat. 254.

The words ''dependent covered by a plan under section 1079 of this title'' are substituted for the words ''person who is covered under an insurance, medical service, or health plan or plans, as provided in this chapter''. The words ''period of'', ''or plans'', and ''required by such person in a civilian facility'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1083, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to transmission, delivery, and return of post cards, ballots, etc., prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§1084. Determinations of dependency

A determination of dependency by an administering Secretary under this chapter is conclusive. However, the administering Secretary may change a determination because of new evidence or for other good cause. The Secretary's determination may not be reviewed in any court or by the General Accounting Office, unless there has been fraud or gross negligence.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–614, §2(1), Sept. 30, 1966, 80 Stat. 862; Pub. L. 96–513, title V, §511(34)(A), (36), Dec. 12, 1980, 94 Stat. 2922, 2923; Pub. L. 98–557, §19(11), Oct. 30, 1984, 98 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1084	37:404.	June 7, 1956, ch. 374, §304, 70 Stat. 254.

The words ''the General Accounting Office'' are substituted for the words ''any accounting officer of the Government'' for clarity. The words ''All'' and ''for all purposes'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1084, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to administration of former sections 1071 to 1086 of this title, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Pub. L. 98–557 substituted reference to administering Secretary for reference to Secretary of Defense and Secretary of Health and Human Services and reference to administering Secretary for reference to he.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''this chapter'' for ''sections 1071–1087 of this title''.

1966—Pub. L. 89–614 substituted ''1087'' for ''1085''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

For effective date of amendment by Pub. L. 89–614, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§1085. Medical and dental care from another executive department: reimbursement

If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care.

(Added Pub. L. 85–861, §1(25)(B), Sept. 2, 1958, 72 Stat. 1450; amended Pub. L. 89–264, §1, Oct. 19, 1965, 79 Stat. 989; Pub. L. 96–513, title V, §511(36), (37), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 98–94, title XII, §1268(6), Sept. 24, 1983, 97 Stat. 706; Pub. L. 98–557, §19(12), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title XIII, §1303(a)(8), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1085	37:421(d).	June 7, 1956, ch. 374, §301(d), 70 Stat. 253.

The words ''other than that of the member or former member concerned'' are substituted for the words ''that is not the service of which he is a member or retired member, or that is not the service of the member or retired member upon whom he is dependent''. The word ''medical'' before the word ''facility'' is omitted to make clear that the provision also relates to dental care. The words ''pursuant to the provisions of this chapter'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 1085, act Aug. 10, 1956, ch. 1041, 70A Stat. 87, related to prevention of fraud, coercion, and undue influence, to free discussion, and to acts done in good faith, prior to repeal by Pub. L. 85–861, §36B(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

1985—Pub. L. 99–145 indented first line of text.

1984—Pub. L. 98–557 substituted ''If a member or former member of a uniformed service under the jurisdiction of one executive department (or a dependent of such a member or former member) receives inpatient medical or dental care in a facility under the jurisdiction of another executive department, the appropriation for maintaining and operating the facility furnishing the care shall be reimbursed at rates established by the President to reflect the average cost of providing the care'' for ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility under the jurisdiction of the Secretary of Health and Human Services, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives inpatient medical or dental care in a facility of an armed force under the jurisdiction of a military department, the appropriation for maintaining and operating the facility furnishing that care shall be reimbursed at rates established by the President to reflect the average cost of providing such care''.

1983—Pub. L. 98–94 inserted a comma after ''If a member or former member of an armed force under the jurisdiction of a military department, or his dependent''.

1980—Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', and ''President'' for ''Bureau of the Budget''.

1965—Pub. L. 89–264 substituted ''executive department'' for ''uniformed service'' in section catchline, and provisions requiring reimbursement if a member or former member of an armed force under the jurisdiction of a military department, or his dependent receives care in a facility under the jurisdiction of Secretary of Health, Education, and Welfare, or if a member or former member of a uniformed service not under the jurisdiction of a military department, or his dependent, receives care in a facility of an armed force under the jurisdiction of a military department, for provisions which required reimbursement if a person received care in a facility of a uniformed service other than that of the member or former member concerned.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Authority of President under this section to establish uniform rates of reimbursement for inpatient medical or dental care delegated to Secretary of Health and Human Services in respect of such care in a facility under his jurisdiction and to Secretary of Defense in respect of such care in a facility of an armed force under jurisdiction of a military department, see section 6 of Ex. Ord. No. 11609, July 22, 1971, 36 F.R. 13747, set out as a note under section 301 of Title 3, The President.

§ 1086. Contracts for health benefits for certain members, former members, and their dependents

(a) To assure that health benefits are available for the persons covered by subsection (c), the Secretary of Defense, after consulting with the other administering Secretaries, shall contract under the authority of this section for health benefits for those persons under the same insurance, medical service, or health plans he contracts for under section 1079(a) of this title. However, eye examinations may not be provided under such plans for persons covered by subsection (c).

(b) For persons covered by this section the plans contracted for under section 1079(a) of this title shall contain the following provisions for payment by the patient:

(1) Except as provided in clause (2), the first $150 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of all subsequent charges for such care during a fiscal year.

(2) A family group of two or more persons covered by this section shall not be required to pay collectively more than the first $300 each fiscal year of the charges for all types of care authorized by this section and received while in an outpatient status and 25 percent of the additional charges for such care during a fiscal year.

(3) 25 percent of the charges for inpatient care. The Secretary of Defense may exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

(4) A member or former member of a uniformed service covered by this section by reason of section 1074(b) of this title, or an individual or family group of two or more persons covered by this section, may not be required to pay a total of more than $3,000 for health care received during any fiscal year under a plan contracted for under section 1079(a) of this title.

(c) Except as provided in subsection (d), the following persons are eligible for health benefits under this section:

(1) Those covered by sections 1074(b) and 1076(b) of this title, except those covered by section 1072(2)(E) of this title.

(2) A dependent (other than a dependent covered by section 1072(2)(E) of this title) of a member of a uniformed service—

(A) who died while on active duty for a period of more than 30 days; or

(B) who died from an injury, illness, or disease incurred or aggravated—

(i) while on active duty under a call or order to active duty of 30 days or less, on active duty for training, or on inactive duty training; or

(ii) while traveling to or from the place at which the member is to perform, or has performed, such active duty, active duty for training, or inactive duty training.

(3) A dependent covered by clause (F), (G), or (H) of section 1072(2) of this title who is not eligible under paragraph (1).

(d)(1) A person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.

(2) The prohibition contained in paragraph (1) shall not apply to a person referred to in subsection (c) who—

(A) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.); and

(B) in the case of a person under 65 years of age, is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a)).

(3)(A) Subject to subparagraph (B), if a person described in paragraph (2) receives medical or dental care for which payment may be made under medicare and a plan contracted for under subsection (a), the amount payable for that care under the plan shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of—

(i) the amount paid for that care under medicare; and

(ii) the total of all amounts paid or payable by third party payers other than medicare.

(B) The amount payable for care under a plan pursuant to subparagraph (A) may not exceed the total amount that would be paid under the plan if payment for that care were made solely under the plan.

(C) In this paragraph:

(i) The term ''medicare'' means title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(ii) The term ''third party payer'' has the meaning given such term in section 1095(h)(1) of this title.

(4) The administering Secretaries shall develop a mechanism by which persons described in subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph are promptly notified of their ineligibility for health benefits under this section. In developing the notification mechanism, the administering Secretaries shall consult with the administrator of the Health Care Financing Administration.

(e) A person covered by this section may elect to receive inpatient medical care either in (1) Government facilities, under the conditions prescribed in sections 1074 and 1076–1078 of this title, or (2) the facilities provided under a plan contracted for under this section. However, under joint regulations issued by the administering Secretaries, the right to make this election may be limited for those persons residing in an area where adequate facilities of the uniformed service are available. In addition, subsections (b) and (c) of section 1080 of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.

(f) The provisions of section 1079(h) of this title shall apply to payments for services by an individual health-care professional (or other noninstitutional health-care provider) under a plan contracted for under subsection (a).

(g) Section 1079(j) of this title shall apply to a plan contracted for under this section, except that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service-connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs.

(h)(1) Subject to paragraph (2), the Secretary of Defense may, upon request, make payments under this section for a charge for services for which a claim is submitted under a plan contracted for under subsection (a) to a hospital that does not impose a legal obligation on any of its patients to pay for such services.

(2) A payment under paragraph (1) may not exceed the average amount paid for comparable services in the geographic area in which the hospital is located or, if no comparable services are available in that area, in an area similar to the area in which the hospital is located.

(3) The Secretary of Defense shall periodically review the billing practices of each hospital the Secretary approves for payment under this subsection to ensure that the hospital's practices of not billing patients for payment are not resulting in increased costs to the Government.

(4) The Secretary of Defense may require each hospital the Secretary approves for payment under this subsection to provide evidence that it has sources of revenue to cover unbilled costs.

(Added Pub. L. 89–614, §2(7), Sept. 30, 1966, 80 Stat. 865; amended Pub. L. 95–485, title VIII, §806(a)(2), Oct. 20, 1978, 92 Stat. 1622; Pub. L. 96–173, §1, Dec. 29, 1979, 93 Stat. 1287; Pub. L. 96–513, title V, §§501(14), 511(36), (39), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 97–86, title IX, §906(a)(2), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–252, title X, §1004(c), Sept. 8, 1982, 96 Stat. 737; Pub. L. 98–94, title IX, §931(b), Sept. 24, 1983, 97 Stat. 649; Pub. L. 98–525, title VI, §632(a)(2), Oct. 19, 1984, 98 Stat. 2543; Pub. L. 98–557, §19(13), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 99–145, title VI, §652(b), Nov. 8, 1985, 99 Stat. 657; Pub. L. 99–661, div. A, title VI, §604(f)(1)(C), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 100–180, div. A, title VII, §721(b), Dec. 4, 1987, 101 Stat. 1115; Pub. L. 100–456, div. A, title VI, §646(b), Sept. 29, 1988, 102 Stat. 1989; Pub. L. 101–189, div. A, title VII, §731(c)(2), title XVI, §1621(a)(3), Nov. 29, 1989, 103 Stat. 1482, 1603; Pub. L. 101–510, div. A, title VII, §712(b), Nov. 5, 1990, 104 Stat. 1583; Pub. L. 102–190, div. A, title VII, §704(a), (b)(1), Dec. 5, 1991, 105 Stat. 1401; Pub. L. 102–484, div. A, title VII, §§703(a), 705(a), Oct. 23, 1992, 106 Stat. 2432; Pub. L. 103–35, title II, §203(b)(2), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title VII, §716(b)(2), Nov. 30, 1993, 107 Stat. 1693; Pub. L. 103–337, div. A, title VII, §711, Oct. 5, 1994, 108 Stat. 2801; Pub. L. 104–106, div. A, title VII, §732, Feb. 10, 1996, 110 Stat. 381; Pub. L. 104–201, div. A, title VII, §734(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–398, §1 [[div. A], title VII, §§712(a)(1), 759], Oct. 30, 2000, 114 Stat. 1654, 1654A–176, 1654A–200.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Parts A and B of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

PRIOR PROVISIONS

A prior section 1086, act Aug. 10, 1956, ch. 1041, 70A Stat. 88, authorized the mailing of official post cards, ballots, voting instructions, and envelopes, free of postage, prior to repeal by Pub. L. 85–861, §36(B)(5), Sept. 2, 1958, 72 Stat. 1570, as superseded by the Federal Voting Assistance Act of 1955 which is classified to subchapter I–D (§1973cc et seq.) of chapter 20 of Title 42, The Public Health and Welfare.

AMENDMENTS

2000—Subsec. (b)(4). Pub. L. 106–398, §1 [[div. A], title VII, §759], substituted ''$3,000'' for ''$7,500''.

Subsec. (d)(2). Pub. L. 106–398, §1 [[div. A], title VII, §712(a)(1)(A)], added par. (2) and struck out former par. (2) which read as follows: ''The prohibition contained in paragraph (1) shall not apply in the case of a person referred to in subsection (c) who—

''(A) is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to subparagraph (A) or (C) of section 226(b)(2) of such Act (42 U.S.C. 426(b)(2)) or section 226A(a) of such Act (42 U.S.C. 426–1(a));

''(B) is under 65 years of age; and

''(C) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).''

Subsec. (d)(4). Pub. L. 106–398, §1 [[div. A], title VII, §712(a)(1)(B)], substituted ''subparagraph (B) of paragraph (2) who do not satisfy the condition specified in subparagraph (A) of such paragraph'' for ''paragraph (1) who satisfy only the criteria specified in subparagraphs (A) and (B) of paragraph (2), but not subparagraph (C) of such paragraph,''.

1996—Subsec. (d)(4). Pub. L. 104–106 added par. (4).

Subsec. (e). Pub. L. 104–201 substituted ''inpatient medical care'' for ''benefits'' in first sentence and ''subsections (b) and (c) of section 1080'' for ''section 1080(b)'' in last sentence.

1994—Subsec. (d)(3). Pub. L. 103–337 added par. (3) and struck out former par. (3) which read as follows: ''If a person described in paragraph (2) receives medical or dental care for which payment may be made under both title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) and a plan contracted for under subsection (a), the amount payable for that care under the plan may not exceed the difference between—

''(A) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under that title; and

''(B) the sum of any deductibles, coinsurance, and balance billing charges that would be imposed on the person if payment for that care were made solely under the plan.''

1993—Subsec. (d). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–190, §704(a). See 1991 Amendment note below.

Subsec. (e). Pub. L. 103–160 inserted at end ''In addition, section 1080(b) of this title shall apply in making the determination whether to issue a nonavailability of health care statement for a person covered by this section.''

1992—Subsec. (b)(4). Pub. L. 102–484, §703(a), substituted ''$7,500'' for ''$10,000''.

Subsec. (d)(2)(A). Pub. L. 102–484, §705(a), inserted before semicolon ''or section 226A(a) of such Act (42 U.S.C. 426–1(a))''.

1991—Subsec. (c). Pub. L. 102–190, §704(b)(1)(A), substituted ''Except as provided in subsection (d), the following'' for ''The following'' in introductory provisions and struck out at end ''However, a person who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.) is not eligible for health benefits under this section.''

Subsec. (d). Pub. L. 102–190, §704(a), as amended by Pub. L. 103–35, added subsec. (d) and struck out former subsec. (d) which read as follows: ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section.''

Subsec. (g). Pub. L. 102–190, §704(b)(1)(B), substituted ''Section 1079(j) of this title shall apply to a plan contracted for under this section, except that'' for ''Notwithstanding subsection (d) or any other provision of this chapter,''.

1990—Subsec. (b)(1), (2). Pub. L. 101–510 substituted ''$150'' for ''$50'' in par. (1) and ''$300'' for ''$100'' in par. (2).

1989—Subsec. (c)(3). Pub. L. 101–189, §731(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A dependent covered by section 1072(2)(F) of this title.''

Subsec. (g). Pub. L. 101–189, §1621(a)(3), substituted ''facilities of the Department of Veterans Affairs'' for ''Veterans' Administration facilities''.

1988—Subsec. (b)(3). Pub. L. 100–456, §646(b)(1), inserted provision authorizing Secretary of Defense to exempt a patient from paying such charges if the hospital to which the patient is admitted does not impose a legal obligation on any of its patients to pay for inpatient care.

Subsec. (h). Pub. L. 100–456, §646(b)(2), added subsec. (h).

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1986—Subsec. (c)(2)(B). Pub. L. 99–661 inserted reference to disease.

1985—Subsec. (c)(2). Pub. L. 99–145 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''A dependent of a member of a uniformed service who died while on active duty for a period of more than thirty days, except a dependent covered by section 1072(2)(E) of this title.''

1984—Subsec. (a). Pub. L. 98–557, §19(13)(A), substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

Pub. L. 98–525 inserted ''However, eye examinations may not be provided under such plans for persons covered by subsection (c).''

Subsec. (e). Pub. L. 98–557, §19(13)(B), substituted reference to the administering Secretaries for reference to the Secretary of Defense and the Secretary of Health and Human Services.

1983—Subsec. (d). Pub. L. 98–94 substituted ''The provisions of section 1079(j) of this title shall apply to a plan covered by this section'' for ''No benefits shall be payable under any plan covered by this section in the case of a person enrolled in any other insurance, medical service, or health plan provided by law or through employment unless that person certifies that the particular benefit he is claiming is not payable under the other plan''.

1982—Subsec. (c)(3). Pub. L. 97–252 added par. (3).

1981—Subsec. (f). Pub. L. 97–86 substituted ''services by an individual health-care professional (or other noninstitutional health-care provider)'' for ''physician services''.

1980—Subsec. (a). Pub. L. 96–513, §511(36), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 96–513, §511(39)(A), substituted ''percent'' for ''per centum'' wherever appearing.

Subsec. (c). Pub. L. 96–513, §§501(14), 511(39)(B), substituted ''section 1072(2)(E)'' for ''section 1072(2)(F)'' in pars. (1) and (2) and, in provisions following par. (2), substituted ''part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)'' for ''title I of the Social Security Amendments of 1965 (79 Stat. 286)''.

1979—Subsec. (g). Pub. L. 96–173 added subsec. (g).

1978—Subsec. (f). Pub. L. 95–485 added subsec. (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §712(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–177, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395ggg of Title 42, The Public Health and Welfare] shall take effect on October 1, 2001.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 703(b) of Pub. L. 102–484 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1992.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 704(c) of Pub. L. 102–190, which provided that subsection (d) of this section was to apply with respect to health care benefits or services received by a person

described in such subsection on or after Dec. 5, 1991, was repealed by Pub. L. 102–484, div. A, title VII, § 705(c)(1), Oct. 23, 1992, 106 Stat. 2433.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 applicable with respect to health care provided under this section and section 1079 of this title on or after Apr. 1, 1991, see section 712(c) of Pub. L. 101–510, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 731(c)(2) of Pub. L. 101–189 applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if the amendment had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as a note under section 1072 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable with respect to medical care received after September 30, 1988, see section 646(c) of Pub. L. 100–456, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable with respect to fiscal years beginning after September 30, 1987, see section 721(c) of Pub. L. 100–180, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 applicable only with respect to dependents of members of the uniformed services whose deaths occur after Sept. 30, 1985, see section 652(c) of Pub. L. 99–145, set out as a note under section 1076 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 applicable only to health care furnished after Sept. 30, 1984, see section 632(a)(3) of Pub. L. 98–525, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 931(c) of Pub. L. 98–94, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable in the case of any former spouse of a member or former member of the uniformed services whether final decree of divorce, dissolution, or annulment of marriage of former spouse and such member or former member is dated before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 to apply with respect to claims submitted for payment for services provided after the end of the 30-day period beginning on Dec. 1, 1981, see section 906(b) of Pub. L. 97–86, set out as a note under section 1079 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(14) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(36), (39) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 2 of Pub. L. 96–173 provided that: ''The amendment made by the first section of this Act [amending this section] shall take effect on October 1, 1979.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–485 applicable with respect to claims submitted for payment for services provided on or after the first day of the first calendar year beginning after Oct. 20, 1978, see section 806(b) of Pub. L. 95–485, set out as a note under section 1079 of this title.

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

TRANSITIONAL AUTHORITY TO PROVIDE CONTINUED HEALTH CARE COVERAGE FOR CERTAIN PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY

Pub. L. 105–261, div. A, title VII, § 704, Oct. 17, 1998, 112 Stat. 2057, provided that:

''(a) TRANSITIONAL COVERAGE.—The administering Secretaries may continue eligibility of a person described in subsection (b) for health care coverage under the Civilian Health and Medical Program of the Uniformed Services based on a determination that such continuation is appropriate to assure health care coverage for any such person who may have been unaware of the loss of eligibility to receive health benefits under that program.

''(b) PERSONS ELIGIBLE.—A person shall be eligible for transitional health care coverage under subsection (a) if the person—

''(1) is a person described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

''(2) in the absence of such paragraph, would be eligible for health benefits under such section; and

''(3) satisfies the criteria specified in subparagraphs (A) and (B) of paragraph (2) of such subsection.

''(c) EXTENT OF TRANSITIONAL AUTHORITY.—The authority to continue eligibility under this section shall apply with respect to health care services provided between October 1, 1998, and July 1, 1999.

''(d) DEFINITION.—In this section, the term 'administering Secretaries' has the meaning given that term in section 1072(3) of title 10, United States Code.''

WAIVER OF COLLECTION OF PAYMENTS DUE FROM CERTAIN PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY

Section 743 of Pub. L. 104–106 provided that:

''(a) AUTHORITY TO WAIVE COLLECTION.—The administering Secretaries may waive the collection of payments otherwise due from a person described in subsection (b) as a result of the receipt by the person of health benefits under section 1086 of title 10, United States Code, after the termination of the person's eligibility for such benefits.

''(b) PERSONS ELIGIBLE FOR WAIVER.—A person shall be eligible for relief under subsection (a) if the person—

''(1) is a person described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

''(2) in the absence of such paragraph, would have been eligible for health benefits under such section; and

''(3) at the time of the receipt of such benefits, satisfied the criteria specified in subparagraphs (A) and (B) of paragraph (2) of such subsection.

''(c) EXTENT OF WAIVER AUTHORITY.—The authority to waive the collection of payments pursuant to this section shall apply with regard to health benefits provided under section 1086 of title 10, United States Code, to persons described in subsection (b) during the period beginning on January 1, 1967, and ending on the later of—

''(1) the termination date of any special enrollment period provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) specifically for such persons; and

''(2) July 1, 1996.

''(d) DEFINITIONS.—For purposes of this section, the term 'administering Secretaries' has the meaning given such term in section 1072(3) of title 10, United States Code.''

MINIMUM AMOUNT PAYABLE FOR SERVICES PROVIDED UNDER THIS SECTION

Pub. L. 103–335, title VIII, §8052, Sept. 30, 1994, 108 Stat. 2629, provided that: ''Notwithstanding any other provision of law, of the funds appropriated for the Defense Health Program during this fiscal year and hereafter, the amount payable for services provided under this section shall not be less than the amount calculated under the coordination of benefits reimbursement formula utilized when CHAMPUS is a secondary payor to medical insurance programs other than Medicare, and such appropriations as necessary shall be available (notwithstanding the last sentence of section 1086(c) of title 10, United States Code) to continue Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits, until age 65, under such section for a former member of a uniformed service who is entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, or any other beneficiary described by section 1086(c) of title 10, United States Code, who becomes eligible for hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) [42 U.S.C. 1395c et seq.] solely on the grounds of physical disability, or end stage renal disease: *Provided*, That expenses under this section shall only be covered to the extent that such expenses are not covered under parts A and B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq., 1395; et seq.] and are otherwise covered under CHAMPUS: *Provided further*, That no reimbursement shall be made for services provided prior to October 1, 1991.''

AUTHORIZATION TO APPLY SECTION 1079 PAYMENT RULES FOR SPOUSE AND CHILDREN OF MEMBER WHO DIES WHILE ON ACTIVE DUTY

Pub. L. 103–160, div. A, title VII, §704, Nov. 30, 1993, 107 Stat. 1687, provided that in the case of an eligible dependent of a member of a uniformed service who died while on active duty for a period of more than 30 days, the administering Secretary could apply the payment provisions set forth in section 1079(b) of this title (in lieu of the payment provisions set forth in section 1086(b) of this title), with respect to health benefits received by the dependent under such section 1086 in connection with an illness or medical condition for which the dependent was receiving treatment under chapter 55 of this title at time of death of the member, prior to repeal by Pub. L. 103–337, div. A, title VII, §707(d), Oct. 5, 1994, 108 Stat. 2801.

[Section 707(d) of Pub. L. 103–337 provided in part that: ''The repeal of such section [section 704 of Pub. L. 103–160, formerly set out above] shall not terminate the special payment rules provided in such section with respect to any person eligible for such payment rules on the date of the enactment of this Act [Oct. 5, 1994].'']

COVERAGE OF CARE PROVIDED SINCE SEPTEMBER 30, 1991

Section 705(b) of Pub. L. 102–484 provided that: ''Subsection (d) of section 1086 of title 10, United States Code, as added by section 704(a) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1401) and amended by subsection (a) of this section, shall apply with respect to health care benefits or services received after September 30, 1991, by a person described in subsection (d)(2) of such section 1086 if such benefits or services would have been covered under a plan contracted for under such section 1086.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1074g, 1079, 1082, 1086a, 1087, 1095, 1096, 1097, 1097b, 1098, 1100, 1104, 1105, 1111 of this title; title 42 sections 300e–1, 1395cc, 1395ggg.

§ 1086a. Certain former spouses: extension of period of eligibility for health benefits

(a) AVAILABILITY OF CONVERSION HEALTH POLICIES.—The Secretary of Defense shall inform each person who has been a dependent for a period of one year or more under section 1072(2)(H) of this title of the availability of a conversion health policy for purchase by the person. A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.

(b) EFFECT OF PURCHASE.—(1) Subject to paragraph (2), if a person who is a dependent for a one-year period under section 1072(2)(H) of this title purchases a conversion health policy within that period (or within a reasonable time after that period as prescribed by the Secretary of Defense), the person shall continue to be eligible for medical and dental care in the manner described in section 1076 of this title and health benefits under section 1086 of this title until the end of the 24-month period beginning on the later of—

(A) the date the person is no longer a dependent under section 1072(2)(H) of this title; and

(B) the date of the purchase of the policy.

(2) The extended period of eligibility provided under paragraph (1) shall apply only with regard to a condition of the person that—

(A) exists on the date on which coverage under the conversion health policy begins; and

(B) for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(c) EFFECT OF UNAVAILABILITY OF POLICIES.—(1) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to offer conversion health policies under subsection (a) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall provide the coverage required under such a policy through the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (2), a person receiving coverage under this subsection shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(2) The amount paid by a person who purchases a conversion health policy from the Secretary of Defense under paragraph (1) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(3) In order to reduce premiums required under paragraph (1), the Secretary of Defense may offer a program of coverage that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(d) CONVERSION HEALTH POLICY DEFINED.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and the private insurer, that is available for purchase by or for the use of a person who is a dependent for a one-year period under section 1072(2)(H) of this title.

(Added Pub. L. 101–189, div. A, title VII, § 731(b)(1), Nov. 29, 1989, 103 Stat. 1482; amended Pub. L. 102–484, div. D, title XLIV, § 4407(b), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–35, title II, § 202(a)(16), May 31, 1993, 107 Stat. 102.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 4407(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, § 4407(b)(1), inserted at end ''A conversion health policy offered under this subsection shall provide coverage for not less than a 24-month period.''

Subsec. (b)(1). Pub. L. 102–484, § 4407(b)(2), as amended by Pub. L. 103–35, substituted ''24-month period'' for ''one-year period'' the second place appearing in the introductory provisions of par. (1).

Subsecs. (c), (d). Pub. L. 102–484, § 4407(b)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section applicable to a person referred to in 10 U.S.C. 1072(2)(H) whose decree of divorce, dissolution, or annulment becomes final on or after Nov. 29, 1989, and to a person so referred to whose decree became final during the period from Sept. 29, 1988 to Nov. 28, 1989, as if section had become effective on Sept. 29, 1988, see section 731(d) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1072 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

Section 4407(c) of Pub. L. 102–484 provided that: ''In the case of conversion health policies provided under section 1145(b) or 1086a(a) of title 10, United States Code, and in effect on the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall—

''(1) arrange with the private insurer providing these policies to extend the term of the policies (and coverage of preexisting conditions) as provided by the amendments made by this section [amending this section and section 1145 of this title]; or

''(2) make other arrangements to implement the amendments made by this section with respect to these policies.''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

Section 4408(c) of Pub. L. 102–484 provided that:

''(1) No person may purchase a conversion health policy under section 1145(b) or 1086a of title 10, United States Code, on or after October 1, 1994. A person covered by such a conversion health policy on that date may cancel that policy and enroll in a health benefits plan under section 1078a of such title.

''(2) No person may be covered concurrently by a conversion health policy under section 1145(b) or 1086a of such title and a health benefits plan under section 1078a of such title.''

§ 1086b. Prohibition against requiring retired members to receive health care solely through the Department of Defense

The Secretary of Defense may not take any action that would require, or have the effect of requiring, a member or former member of the armed forces who is entitled to retired or retainer pay to enroll to receive health care from the Federal Government only through the Department of Defense.

(Added Pub. L. 107–107, div. A, title VII, § 731(a), Dec. 28, 2001, 115 Stat. 1169.)

§ 1087. Programing facilities for certain members, former members, and their dependents in construction projects of the uniformed services

(a) Space for inpatient and outpatient care may be programed in facilities of the uniformed services for persons covered by sections 1074(b) and 1076(b) of this title. The maximum amount of space that may be so programed for a facility is the greater of—

(1) the amount of space that would be so programed for the facility in order to meet the requirements to be placed on the facility for support of the teaching and training of health-care professionals; and

(2) the amount of space that would be so programed for the facility based upon the most cost-effective provision of inpatient and outpatient care to persons covered by sections 1074(b) and 1076(b) of this title.

(b)(1) In making determinations for the purposes of clauses (1) and (2) of subsection (a), the Secretary concerned shall take into consideration—

(A) the amount of space that would be so programed for the facility based upon projected inpatient and outpatient workloads at the facility for persons covered by sections 1074(b) and 1076(b) of this title; and

(B) the anticipated capability of the medical and dental staff of the facility, determined in accordance with regulations prescribed by the Secretary of Defense and based upon realistic projections of the number of physicians and other health-care providers that it can reasonably be expected will be assigned to or will otherwise be available to the facility.

(2) In addition, a determination made for the purpose of clause (2) of subsection (a) shall be made in accordance with an economic analysis (including a life-cycle cost analysis) of the facility and consideration of all reasonable and available medical care treatment alternatives (including treatment provided under a contract under section 1086 of this title or under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.)).

(Added Pub. L. 89–614, §2(7), Sept. 30, 1966, 80 Stat. 866; amended Pub. L. 97–337, §1, Oct. 15, 1982, 96 Stat. 1631; Pub. L. 98–525, title XIV, §1405(24), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, §1343(a)(4), Nov. 14, 1986, 100 Stat. 3992.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Part A of title XVIII of the Social Security Act, is classified generally to Part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99–661 substituted ''Act (42 U.S.C. 1395c et seq.))'' for ''Act. (42 U.S.C. 1395c et seq.)''.

1984—Subsec. (b)(2). Pub. L. 98–525 which directed that ''(42 U.S.C. 1395c et seq.)'' be inserted after ''the Social Security Act.'', was executed by inserting parenthetical after ''the Social Security Act'' to reflect the probable intent of Congress. See 1986 Amendment note above.

1982—Subsec. (a). Pub. L. 97–337, §1(1), designated existing provisions as subsec. (a).

Pub. L. 97–337, §1(2), substituted provisions limiting the maximum amount of space to be programed as the greater of the amounts of space described in par. (1) or (2) for provisions limiting the amount of space to be programed to that amount needed to support teaching and training requirements, except that space may be programed in areas having large concentrations of retired members where there is a critical shortage of facilities.

Subsec. (b). Pub. L. 97–337, §1(2), added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 2 of Pub. L. 97–337 provided that: ''The amendment made by paragraph (2) of the first section of this Act [amending this section] shall apply only with respect to a facility for which funds for construction (or a major alteration) are first appropriated for a fiscal year after fiscal year 1983.''

EFFECTIVE DATE

For effective date of section, see section 3 of Pub. L. 89–614, set out as a note under section 1071 of this title.

§ 1088. Air evacuation patients: furnished subsistence

Notwithstanding any other provision of law, and under regulations to be prescribed by the Secretary concerned, a person entitled to medical and dental care under this chapter may be furnished subsistence without charge while being evacuated as a patient by military aircraft of the United States.

(Added Pub. L. 91–481, §2(1), Oct. 21, 1970, 84 Stat. 1081.)

§ 1089. Defense of certain suits arising out of medical malpractice

(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title.

(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the District Court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

(f)(1) The head of the agency concerned may, to the extent that the head of the agency con-

cerned considers appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

(2) With respect to the Secretary of Defense and the Armed Forces Retirement Home Board, the authority provided by paragraph (1) also includes the authority to provide for reasonable attorney's fees for persons described in subsection (a), as determined necessary pursuant to regulations prescribed by the head of the agency concerned.

(g) In this section, the term ''head of the agency concerned'' means—

(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

(2) the Secretary of Homeland Security, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy;

(3) the Armed Forces Retirement Home Board, in the case of an employee of the Armed Forces Retirement Home; and

(4) the Secretary of Defense, in all other cases.

(Added Pub. L. 94–464, §1(a), Oct. 8, 1976, 90 Stat. 1985; amended Pub. L. 97–124, §2, Dec. 29, 1981, 95 Stat. 1666; Pub. L. 98–94, title IX, §934(a)–(c), Sept. 24, 1983, 97 Stat. 651, 652; Pub. L. 100–180, div. A, title XII, §1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title XV, §1533(a)(1), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 105–85, div. A, title VII, §736(b), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (g)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (a). Pub. L. 105–85, §736(b)(1), inserted at end ''This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title.''

Subsec. (f). Pub. L. 105–85, §736(b)(2), designated existing provisions as par. (1) and added par. (2).

1990—Subsec. (a). Pub. L. 101–510, §1533(a)(1)(A), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home''.

Subsec. (g)(3). Pub. L. 101–510, §1533(a)(1)(B), added par. (3) and struck out former par. (3) which read as follows: ''the Board of Commissioners of the United States Soldiers' and Airmen's home, in the case of an employee of the United States Soldiers' and Airmen's Home; and''.

1987—Subsec. (g). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1983—Subsec. (a). Pub. L. 98–94, §934(a), inserted ''the United States Soldiers' and Airmen's Home,''.

Subsec. (f). Pub. L. 98–94, §934(b), substituted ''may, to the extent that the head of the agency concerned considers'' for ''or his designee may, to the extent that he or his designee deems''.

Subsec. (g)(3), (4). Pub. L. 98–94, §934(c)(3), added par. (3) and redesignated former par. (3) as (4).

1981—Subsec. (a). Pub. L. 97–124 inserted ''the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32,'' after ''armed forces,''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 934(d) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section] shall apply only to claims accruing on or after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4 of Pub. L. 97–124 provided that: ''The amendments made by this Act [amending this section and section 2671 of Title 28, Judiciary and Judicial Procedure] and the repeal made by section 3 of this Act [repealing section 334 of Title 32, National Guard] shall apply only with respect to claims arising on or after the date of enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE

Section 4 of Pub. L. 94–464 provided that: ''This Act [enacting this section, section 334 of Title 32, National Guard, section 2458a of Title 42, The Public Health and Welfare, and provisions set out as notes under this section and section 334 of Title 32] shall become effective on the date of its enactment [Oct. 8, 1976] and shall apply only to those claims accruing on or after such date of enactment.''

CONGRESSIONAL FINDINGS

Section 2(a) of Pub. L. 94–464 provided that: ''The Congress finds—

''(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

''(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

''(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

''(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises.''

§1090. Identifying and treating drug and alcohol dependence

The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations, implement procedures using each practical and available method, and provide necessary facilities to identify, treat, and rehabilitate members of the

armed forces who are dependent on drugs or alcohol.

(Added Pub. L. 97–295, §1(15)(A), Oct. 12, 1982, 96 Stat. 1290; amended Pub. L. 98–94, title XII, §1268(7), Sept. 24, 1983, 97 Stat. 706; Pub. L. 101–510, div. A, title V, §553, Nov. 5, 1990, 104 Stat. 1567; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1090	10:1071 (note).	Sept. 28, 1971, Pub. L. 92–129, §501(a)(1), 85 Stat. 361.

The word ''regulations'' is added for consistency. The word ''persons'' is omitted as surplus.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1990—Pub. L. 101–510 inserted '', and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy,'' after ''Secretary of Defense''.

1983—Pub. L. 98–94 struck out ''(a)'' before ''The Secretary of Defense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1091. Personal services contracts

(a) AUTHORITY.—(1) The Secretary of Defense, with respect to medical treatment facilities of the Department of Defense, and the Secretary of Homeland Security, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy, may enter into personal services contracts to carry out health care responsibilities in such facilities, as determined to be necessary by the Secretary. The authority provided in this subsection is in addition to any other contract authorities of the Secretary, including authorities relating to the management of such facilities and the administration of this chapter.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may also enter into personal services contracts to carry out other health care responsibilities of the Secretary (such as the provision of medical screening examinations at Military Entrance Processing Stations) at locations outside medical treatment facilities, as determined necessary pursuant to regulations prescribed by the Secretary. The Secretary may not enter into a contract under this paragraph after December 31, 2003.

(b) LIMITATION ON AMOUNT OF COMPENSATION.—In no case may the total amount of compensation paid to an individual in any year under a personal services contract entered into under subsection (a) exceed the amount of annual compensation (excluding the allowances for expenses) specified in section 102 of title 3.

(c) PROCEDURES.—(1) The Secretary shall establish by regulation procedures for entering into personal services contracts with individuals under subsection (a). At a minimum, such procedures shall assure—

(A) the provision of adequate notice of contract opportunities to individuals residing in the area of the medical treatment facility involved; and

(B) consideration of interested individuals solely on the basis of the qualifications established for the contract and the proposed contract price.

(2) Upon the establishment of the procedures under paragraph (1), the Secretary may exempt contracts covered by this section from the competitive contracting requirements specified in section 2304 of this title or any other similar requirements of law.

(d) EXCEPTIONS.—The procedures and exemptions provided under subsection (c) shall not apply to personal services contracts entered into under subsection (a) with entities other than individuals or to any contract that is not an authorized personal services contract under subsection (a).

(Added Pub. L. 98–94, title IX, §932(a)(1), Sept. 24, 1983, 97 Stat. 649; amended Pub. L. 101–510, div. A, title VII, §714, Nov. 5, 1990, 104 Stat. 1584; Pub. L. 103–160, div. A, title VII, §712(a)(1), Nov. 30, 1993, 107 Stat. 1688; Pub. L. 104–106, div. A, title VII, §733(a), Feb. 10, 1996, 110 Stat. 381; Pub. L. 105–85, div. A, title VII, §736(a), Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, §733(a), Oct. 17, 1998, 112 Stat. 2072; Pub. L. 106–398, §1 [[div. A], title VII, §705], Oct. 30, 2000, 114 Stat. 1654, 1654A–175; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, §707, Dec. 2, 2002, 116 Stat. 2585.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in two places.

Subsec. (a)(2). Pub. L. 107–314 substituted ''December 31, 2003'' for ''December 31, 2002''.

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''December 31, 2002'' for ''December 31, 2000''.

1998—Subsec. (a)(2). Pub. L. 105–261 substituted ''December 31, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this paragraph''.

1997—Subsec. (a). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

1996—Subsec. (a). Pub. L. 104–106 inserted '', with respect to medical treatment facilities of the Department of Defense, and the Secretary of Transportation, with respect to medical treatment facilities of the Coast Guard when the Coast Guard is not operating as a service in the Navy,'' after ''Secretary of Defense'' and substituted ''such facilities'' for ''medical treatment facilities of the Department of Defense''.

1993—Pub. L. 103–160 substituted ''Personal services contracts'' for ''Contracts for direct health care providers'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may contract with persons for services (including personal services) for the provision of direct health care services determined by the Secretary concerned to be required for the purposes of this chapter.

''(b) A person with whom the Secretary contracts under this section for the provision of direct health care services under this chapter may be compensated at a rate prescribed by the Secretary concerned, but at

a rate not greater than the rate of basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications in pay grade O–6 with 26 or more years of service computed under section 205 of such title.''

1990—Subsec. (b). Pub. L. 101–510 substituted ''basic pay, special and incentive pays and bonuses, and allowances authorized by chapters 3, 5, and 7 of title 37 for a commissioned officer with comparable professional qualifications'' for ''basic pay and allowances authorized by chapters 3 and 7 of title 37 for a commissioned officer''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 733(c) of Pub. L. 104–106 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as of October 1, 1995.''

EFFECTIVE DATE

Section 932(f) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting this section, amending section 201 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4022 and 9022 of this title and section 421 of Title 37] shall take effect on October 1, 1983. Any contract of employment entered into under the authority of section 4022 or 9022 of title 10, United States Code, before the effective date of this section and which is in effect on such date shall remain in effect in accordance with the terms of such contract.''

TEST OF ALTERNATIVE PROCESS FOR CONDUCTING MEDICAL SCREENINGS FOR ENLISTMENT QUALIFICATION

Pub. L. 105–261, div. A, title VII, § 733(b), Oct. 17, 1998, 112 Stat. 2072, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774, provided that:

''(1) The Secretary of Defense shall conduct a test to—

''(A) determine whether the use of an alternative to the system currently used by the Department of Defense of employing fee-basis physicians for determining the medical qualifications for enlistment of applicants for military service would reduce the number of disqualifying medical conditions that are detected during the initial entry training of such applicants;

''(B) determine whether any savings or cost avoidance may be achieved through use of an alternative system as a result of any increased detection of disqualifying medical conditions before entry by applicants into initial entry training; and

''(C) compare the capability of an alternative system to meet or exceed the cost, responsiveness, and timeliness standards of the system currently used by the Department.

''(2) The alternative system described in paragraph (1) may include the system used under the TRICARE system, the health-care system of the Department of Veterans Affairs, or any other system, or combination of systems, considered appropriate by the Secretary.

''(3) Not later than March 1, 2000, the Secretary shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a report on the results and findings of the test conducted under paragraph (1).''

RATIFICATION OF EXISTING CONTRACTS

Section 733(b) of Pub. L. 104–106 provided that: ''Any exercise of authority under section 1091 of title 10, United States Code, to enter into a personal services contract on behalf of the Coast Guard before the effective date of the amendments made by subsection (a) [Oct. 1, 1995] is hereby ratified.''

PERSONAL SERVICE CONTRACTS TO PROVIDE CARE

Pub. L. 103–337, div. A, title VII, § 704(c), Oct. 5, 1994, 108 Stat. 2799, provided that:

''(1) The Secretary of Defense may enter into personal service contracts under the authority of section 1091 of title 10, United States Code, with persons described in paragraph (2) to provide the services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services. Notwithstanding subsection (a) of such section, such services may be provided in medical treatment facilities of the Department of Defense or elsewhere as determined appropriate by the Secretary.

''(2) The persons with whom the Secretary may enter into a personal services contract under this subsection shall include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.''

REPORT ON COMPENSATION BY MEDICAL SPECIALTY

Section 712(b) of Pub. L. 103–160 provided that: ''Not later than 30 days after the end of the 180-day period beginning on the date on which the Secretary of Defense first uses the authority provided under section 1091 of title 10, United States Code (as amended by subsection (a)(1)), the Secretary shall submit to Congress a report specifying—

''(1) the compensation, by medical specialty, provided by the Secretary to individuals agreeing to enter into a personal services contract under such section during that period;

''(2) the extent to which the amounts of such compensation exceed the amounts previously provided by the Secretary for individuals in such medical specialties;

''(3) the total number and medical specialties of individuals serving in military medical treatment facilities during that period pursuant to such a contract; and

''(4) the number of such individuals (and their medical specialties) who are receiving compensation under such a contract in an amount in excess of the maximum amount authorized under such section, as such section was in effect on the day before the date of the enactment of this Act [Nov. 30, 1993].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1089 of this title.

§ 1092. Studies and demonstration projects relating to delivery of health and medical care

(a)(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall conduct studies and demonstration projects on the health care delivery system of the uniformed services with a view to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services (including dental care services) under this title to members and former members and their dependents. Such studies and demonstration projects may include the following:

(A) Alternative methods of payment for health and medical care services.

(B) Cost-sharing by eligible beneficiaries.

(C) Methods of encouraging efficient and economical delivery of health and medical care services.

(D) Innovative approaches to delivery and financing of health and medical care services.

(E) Alternative approaches to reimbursement for the administrative charges of health care plans.

(F) Prepayment for medical care services provided to maintain the health of a defined population.

(2) The Secretary of Defense shall include in the studies conducted under paragraph (1) alternative programs for the provision of dental care to the spouses and dependents of members of the uniformed services who are on active duty, including a program under which dental care would be provided the spouses and dependents of such members under insurance or dental plan contracts. A demonstration project may not be conducted under this section that provides for the furnishing of dental care under an insurance or dental plan contract.

(b) Subject to the availability of appropriations for that purpose, the Secretary of Defense may enter into contracts with public or private agencies, institutions, and organizations to conduct studies and demonstration projects under subsection (a).

(c) The Secretary of Defense may obtain the advice and recommendations of such advisory committees as the Secretary considers appropriate. Each such committee consulted by the Secretary under this subsection shall evaluate the proposed study or demonstration project as to the soundness of the objectives of such study or demonstration project, the likelihood of obtaining productive results based on such study or demonstration project, the resources which were required to conduct such study or demonstration project, and the relationship of such study or demonstration project to other ongoing or completed studies and demonstration projects.

(Added Pub. L. 98–94, title IX, § 933(a)(1), Sept. 24, 1983, 97 Stat. 650; amended Pub. L. 98–557, § 19(14), Oct. 30, 1984, 98 Stat. 2870; Pub. L. 105–261, div. A, title X, § 1031(a), Oct. 17, 1998, 112 Stat. 2123.)

AMENDMENTS

1998—Subsec. (a)(3). Pub. L. 105–261 struck out par. (3) which read as follows: ''The Secretary of Defense shall submit to Congress from time to time written reports on the results of the studies and demonstration projects conducted under this subsection and shall include in such reports such recommendations for improving the health-care delivery systems of the uniformed services as the Secretary considers appropriate.''

1984—Subsec. (a)(1). Pub. L. 98–557 substituted reference to other administering Secretaries for reference to Secretary of Health and Human Services.

EFFECTIVE DATE

Section 933(b) of Pub. L. 98–94 provided that: ''Section 1092 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

DEMONSTRATION PROJECT FOR EXPANDED ACCESS TO MENTAL HEALTH COUNSELORS

Pub. L. 106–398, § 1 [[div. A], title VII, § 731], Oct. 30, 2000, 114 Stat. 1654, 1654A–189, provided that:

''(a) REQUIREMENT TO CONDUCT DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project under which licensed and certified professional mental health counselors who meet eligibility requirements for participation as providers under the Civilian Health and Medical Program of the Uniformed Services (hereafter in this section referred to as 'CHAMPUS') or the TRICARE program may provide services to covered beneficiaries under chapter 55 of title 10, United States Code, without referral by physicians or adherence to supervision requirements.

''(b) DURATION AND LOCATION OF PROJECT.—The Secretary shall conduct the demonstration project required by subsection (a)—

''(1) during the 2-year period beginning October 1, 2001; and

''(2) in one established TRICARE region.

''(c) REGULATIONS.—The Secretary shall prescribe regulations regarding participation in the demonstration project required by subsection (a).

''(d) PLAN FOR PROJECT.—Not later than March 31, 2001, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan to carry out the demonstration project. The plan shall include, but not be limited to, a description of the following:

''(1) The TRICARE region in which the project will be conducted.

''(2) The estimated funds required to carry out the demonstration project.

''(3) The criteria for determining which professional mental health counselors will be authorized to participate under the demonstration project.

''(4) The plan of action, including critical milestone dates, for carrying out the demonstration project.

''(e) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the demonstration project carried out under this section. The report shall include the following:

''(1) A description of the extent to which expenditures for reimbursement of licensed or certified professional mental health counselors change as a result of allowing the independent practice of such counselors.

''(2) Data on utilization and reimbursement regarding non-physician mental health professionals other than licensed or certified professional mental health counselors under CHAMPUS and the TRICARE program.

''(3) Data on utilization and reimbursement regarding physicians who make referrals to, and supervise, mental health counselors.

''(4) A description of the administrative costs incurred as a result of the requirement for documentation of referral to mental health counselors and supervision activities for such counselors.

''(5) For each of the categories described in paragraphs (1) through (4), a comparison of data for a 1-year period for the area in which the demonstration project is being implemented with corresponding data for a similar area in which the demonstration project is not being implemented.

''(6) A description of the ways in which allowing for independent reimbursement of licensed or certified professional mental health counselors affects the confidentiality of mental health and substance abuse services for covered beneficiaries under CHAMPUS and the TRICARE program.

''(7) A description of the effect, if any, of changing reimbursement policies on the health and treatment of covered beneficiaries under CHAMPUS and the TRICARE program, including a comparison of the treatment outcomes of covered beneficiaries who receive mental health services from licensed or certified professional mental health counselors acting under physician referral and supervision, other nonphysician mental health providers recognized under CHAMPUS and the TRICARE program, and physicians, with treatment outcomes under the demonstration project allowing independent practice of professional counselors on the same basis as other non-physician mental health providers.

''(8) The effect of policies of the Department of Defense on the willingness of licensed or certified professional mental health counselors to participate as health care providers in CHAMPUS and the TRICARE program.

''(9) Any policy requests or recommendations regarding mental health counselors made by health

care plans and managed care organizations participating in CHAMPUS or the TRICARE program.''

TELERADIOLOGY DEMONSTRATION PROJECT

Pub. L. 106–398, §1 [[div. A], title VII, §732], Oct. 30, 2000, 114 Stat. 1654, 1654A–191, provided that:

''(a) AUTHORITY TO CONDUCT PROJECT.—(1) The Secretary of Defense may conduct a demonstration project for the purposes of increasing efficiency of operations with respect to teleradiology at military medical treatment facilities, supporting remote clinics, and increasing coordination with respect to teleradiology between such facilities and clinics. Under the project, a military medical treatment facility and each clinic supported by such facility shall be linked by a digital radiology network through which digital radiology X-rays may be sent electronically from clinics to the military medical treatment facility.

''(2) The demonstration project may be conducted at several multispecialty tertiary-care military medical treatment facilities affiliated with a university medical school. One of such facilities shall be supported by at least 5 geographically dispersed remote clinics of the Departments of the Army, Navy, and Air Force, and clinics of the Department of Veterans Affairs and the Coast Guard. Another of such facilities shall be in an underserved rural geographic region served under established telemedicine contracts between the Department of Defense, the Department of Veterans Affairs, and a local university.

''(b) DURATION OF PROJECT.—The Secretary shall conduct the project during the 2-year period beginning on the date of the enactment of this Act [Oct. 30, 2000].''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

JOINT TELEMEDICINE AND TELEPHARMACY DEMONSTRATION PROJECTS BY THE DEPARTMENT OF DEFENSE AND DEPARTMENT OF VETERANS AFFAIRS

Pub. L. 106–65, div. A, title VII, §724, Oct. 5, 1999, 113 Stat. 697, provided that:

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs may carry out joint demonstration projects for purposes of evaluating the feasibility and practicability of using telecommunications to provide health care services and pharmacy services.

''(b) SERVICES TO BE PROVIDED.—The services provided under the demonstration projects may include the following:

''(1) Radiology and imaging services.

''(2) Diagnostic services.

''(3) Referral services.

''(4) Clinical pharmacy services.

''(5) Any other health care services or pharmacy services designated by the Secretaries.

''(c) SELECTION OF LOCATIONS.—(1) The Secretaries may carry out the demonstration projects described in subsection (a) at not more than five locations selected by the Secretaries from locations in which are located both a uniformed services treatment facility and a Department of Veterans Affairs medical center that are affiliated with academic institutions having a demonstrated expertise in the provision of health care services or pharmacy services by means of telecommunications.

''(2) Representatives of a facility and medical center selected under paragraph (1) shall, to the maximum extent practicable, carry out the demonstration project in consultation with representatives of the academic institution or institutions with which affiliated.

''(d) PERIOD OF DEMONSTRATION PROJECTS.—The Secretaries may carry out the demonstration projects during the three-year period beginning on October 1, 1999.

''(e) REPORT.—Not later than December 31, 2002, the Secretaries shall jointly submit to Congress a report on the demonstration projects. The report shall include—

''(1) a description of each demonstration project; and

''(2) an evaluation, based on the demonstration projects, of the feasibility and practicability of using telecommunications to provide health care services and pharmacy services, including the provision of such services to field hospitals of the Armed Forces and to Department of Veterans Affairs outpatient health care clinics.''

DEMONSTRATION PROGRAM TO TRAIN MILITARY MEDICAL PERSONNEL IN CIVILIAN SHOCK TRAUMA UNITS

Pub. L. 104–106, div. A, title VII, §744, Feb. 10, 1996, 110 Stat. 386, provided that:

''(a) DEMONSTRATION PROGRAM.—(1) Not later than April 1, 1996, the Secretary of Defense shall implement a demonstration program to evaluate the feasibility of providing shock trauma training for military medical personnel through one or more public or nonprofit hospitals. The Secretary shall carry out the program pursuant to an agreement with such hospitals.

''(2) Under the agreement with a hospital, the Secretary shall assign military medical personnel participating in the demonstration program to temporary duty in shock trauma units operated by the hospitals that are parties to the agreement.

''(3) The agreement shall require, as consideration for the services provided by military medical personnel under the agreement, that the hospital provide appropriate care to members of the Armed Forces and to other persons whose care in the hospital would otherwise require reimbursement by the Secretary. The value of the services provided by the hospitals shall be at least equal to the value of the services provided by military medical personnel under the agreement.

''(b) TERMINATION OF PROGRAM.—The authority of the Secretary of Defense to conduct the demonstration program under this section, and any agreement entered into under the demonstration program, shall expire on March 31, 1998.

''(c) REPORT AND EVALUATION OF PROGRAM.—(1) Not later than March 1 of each year in which the demonstration program is conducted under this section, the Secretary of Defense shall submit to Congress a report describing the scope and activities of the demonstration program during the preceding year.

''(2) Not later than May 1, 1998, the Comptroller General of the United States shall submit to Congress a report evaluating the effectiveness of the demonstration program in providing shock trauma training for military medical personnel.''

DEMONSTRATION PROJECT ON MANAGEMENT OF HEALTH CARE IN CATCHMENT AREAS AND OTHER DEMONSTRATION PROJECTS

Pub. L. 100–180, div. A, title VII, §731, Dec. 4, 1987, 101 Stat. 1117, directed Secretary of Defense to conduct, beginning in fiscal year 1988 for at least two years, projects designed to demonstrate the alternative health care delivery system under which the commander of a medical facility of the uniformed services is responsible for all funding and all medical care of the covered beneficiaries in the catchment area of the facility and to conduct specific projects for the purpose of demonstrating alternatives to providing health care under the military health care system, directed Secretary not later than 60 days after Dec. 4, 1987, to submit to Congress a report that provides an outline and discussion of the manner in which the Secretary intends to structure and conduct each demonstration project and to develop and submit to Congress a methodology to be used in evaluating the results of the demonstration projects, and submit to Congress an interim report on each demonstration project after such project has been in effect for at least 12 months and a final report on each such project when each project is completed.

CHIROPRACTIC HEALTH CARE

Pub. L. 106–398, §1 [[div. A], title VII, §702], Oct. 30, 2000, 114 Stat. 1654, 1654A–173, provided that:

''(a) PLAN REQUIRED.—(1) Not later than March 31, 2001, the Secretary of Defense shall complete development of a plan to provide chiropractic health care services and benefits, as a permanent part of the Defense Health Program (including the TRICARE program), for all members of the uniformed services who are entitled to care under section 1074(a) of title 10, United States Code.

''(2) The plan shall provide for the following:

''(A) Access, at designated military medical treatment facilities, to the scope of chiropractic services as determined by the Secretary, which includes, at a minimum, care for neuro-musculoskeletal conditions typical among military personnel on active duty.

''(B) A detailed analysis of the projected costs of fully integrating chiropractic health care services into the military health care system.

''(C) An examination of the proposed military medical treatment facilities at which such services would be provided.

''(D) An examination of the military readiness requirements for chiropractors who would provide such services.

''(E) An examination of any other relevant factors that the Secretary considers appropriate.

''(F) Phased-in implementation of the plan over a 5-year period, beginning on October 1, 2001.

''(b) CONSULTATION REQUIREMENTS.—The Secretary of Defense shall consult with the other administering Secretaries described in section 1073 of title 10, United States Code, and the oversight advisory committee established under section 731 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1092 note) regarding the following:

''(1) The development and implementation of the plan required under subsection (a).

''(2) Each report that the Secretary is required to submit to Congress regarding the plan.

''(3) The selection of the military medical treatment facilities at which the chiropractic services described in subsection (a)(2)(A) are to be provided.

''(c) CONTINUATION OF CURRENT SERVICES.—Until the plan required under subsection (a) is implemented, the Secretary shall continue to furnish the same level of chiropractic health care services and benefits under the Defense Health Program that is provided during fiscal year 2000 at military medical treatment facilities that provide such services and benefits.

''(d) REPORT REQUIRED.—Not later than January 31, 2001, the Secretary of Defense shall submit a report on the plan required under subsection (a), together with appropriate appendices and attachments, to the Committees on Armed Services of the Senate and the House of Representatives.

''(e) GAO REPORTS.—The Comptroller General shall monitor the development and implementation of the plan required under subsection (a), including the administration of services and benefits under the plan, and periodically submit to the committees referred to in subsection (d) written reports on such development and implementation.''

Pub. L. 103–337, div. A, title VII, §731, Oct. 5, 1994, 108 Stat. 2809, as amended by Pub. L. 105–85, div. A, title VII, §739, Nov. 18, 1997, 111 Stat. 1815; Pub. L. 106–65, div. A, title VII, §702(a), Oct. 5, 1999, 113 Stat. 680, provided that:

''(a) REQUIREMENT FOR PROGRAM.—(1) Not later than 120 days after the date of enactment of this Act [Oct. 5, 1994], the Secretary of Defense shall develop and carry out a demonstration program to evaluate the feasibility and advisability of furnishing chiropractic care through the medical care facilities of the Armed Forces. The Secretary of Defense shall develop and carry out the program in consultation with the Secretaries of the military departments.

''(2) In carrying out the program, the Secretary of Defense shall—

''(A) subject to paragraph (3), designate the National Naval Medical Center, the Walter Reed Army Medical Center, and not less than 11 other major military medical treatment facilities of the Department of Defense to furnish chiropractic care under the program; and

''(B) enter into agreements with such number of chiropractors as the Secretary determines sufficient for the purposes of the program to furnish chiropractic care at such facilities under the program.

''(3) The Secretary may not designate under paragraph (2) any treatment facility that is located on a military installation scheduled for closure or realignment under a base closure law.

''(4) During fiscal year 2000, the Secretary shall continue to furnish the same chiropractic care in the military medical treatment facilities designated pursuant to paragraph (2)(A) as the chiropractic care furnished during the demonstration program.

''(b) PROGRAM PERIOD.—The Secretary shall carry out the demonstration program in fiscal years 1995 through 1999.

''(c) REPORTING REQUIREMENTS.—(1) Not later than January 30, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the demonstration program. The report shall—

''(A) identify the treatment facilities designated pursuant to subsection (a)(2)(A); and

''(B) include a discussion of the plan for the conduct of the program.

''(2) Not later than May 1, 1995, the Secretary of Defense shall submit to the committees referred to in paragraph (1) a plan for evaluating the program, including a schedule for conducting progress reviews and for submitting a final report to the committees.

''(3) Not later than January 30, 1998, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report that identifies the additional treatment facilities designated to furnish chiropractic care under the program that were not so designated before the report required by paragraph (1) was prepared, together with the plan for the conduct of the program at the additional treatment facilities.

''(4) Not later than May 1, 1998, the Secretary of Defense shall modify the plan for evaluating the program submitted pursuant to paragraph (2) in order to provide for the evaluation of the program at all of the designated treatment facilities under the program, including the treatment facilities referred to in paragraph (3).

''(5) Not later than January 31, 2000, the Secretary shall submit to the committees referred to in paragraph (3) a final report in accordance with the plan submitted pursuant to paragraph (2).

''(d) OVERSIGHT ADVISORY COMMITTEE.—(1) Not later than 30 days after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Defense shall establish an oversight advisory committee to assist and advise the Secretary with regard to the development and conduct of the demonstration program.

''(2) The oversight advisory committee shall include the following members:

''(A) The Comptroller General of the United States, or the designee of such person from within the General Accounting Office.

''(B) The Assistant Secretary of Defense for Health Affairs, or the designee of such person.

''(C) The Surgeons General of the Army, the Air Force, and the Navy, or the designees of such persons.

''(D) No fewer than four independent representatives of the chiropractic health care profession, appointed by the Secretary of Defense.

''(3) The oversight advisory committee shall assist the Secretary of Defense regarding—

''(A) issues involving the professional credentials of the chiropractors participating in the program;

''(B) the granting of professional practice privileges for the chiropractors at the treatment facilities participating in the program;

''(C) the preparation of the reports required under subsection (c);

''(D) the evaluation of the program; and

''(E) if the Secretary submits an implementation plan pursuant to subsection (e), the preparation of such plan.

''(4) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee.

''(5) The Secretary shall—

''(A) make full use of the oversight advisory committee in preparing—

''(i) the final report on the demonstration program conducted under this section; and

''(ii) the implementation plan described in subsection (e); and

''(B) provide opportunities for members of the committee to provide views as part of such final report and plan.

''(e) IMPLEMENTATION PLAN.—If the Secretary of Defense recommends in the final report submitted under subsection (c) that chiropractic health care services should be offered in medical care facilities of the Armed Forces or as a health care service covered under the TRICARE program, the Secretary shall, not later than March 31, 2000, submit to the Committees on Armed Services of the House of Representatives and the Senate an implementation plan for the full integration of chiropractic health care services into the military health care system of the Department of Defense, including the TRICARE program. Such implementation plan shall include—

''(1) a detailed analysis of the projected costs of fully integrating chiropractic health care services into the military health care system;

''(2) the proposed scope of practice for chiropractors who would provide services to covered beneficiaries under chapter 55 of title 10, United States Code;

''(3) the proposed military medical treatment facilities at which such services would be provided;

''(4) the military readiness requirements for chiropractors who would provide services to such covered beneficiaries; and

''(5) any other relevant factors that the Secretary considers appropriate.

''(f) DEFINITION.—For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.''

Pub. L. 98–525, title VI, § 632(b), Oct. 19, 1984, 98 Stat. 2543, provided that: ''The Secretary of Defense, in consultation with the Secretary of Health and Human Services, shall conduct demonstration projects under section 1092 of title 10, United States Code, for the purpose of evaluating the cost-effectiveness of chiropractic care. In the conduct of such demonstration projects, chiropractic care (including manual manipulation of the spine and other routine chiropractic procedures authorized under joint regulations prescribed by the Secretary of Defense and the Secretary of Health and Human Services and not otherwise prohibited by law) may be provided as appropriate under chapter 55 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1100 of this title.

§ 1093. Performance of abortions: restrictions

(a) RESTRICTION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.

(b) RESTRICTION ON USE OF FACILITIES.—No medical treatment facility or other facility of the Department of Defense may be used to perform an abortion except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.

(Added Pub. L. 98–525, title XIV, § 1401(e)(5)(A), Oct. 19, 1984, 98 Stat. 2617; amended Pub. L. 104–106, div. A, title VII, § 738(a), (b)(1), Feb. 10, 1996, 110 Stat. 383.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8044], Oct. 12, 1984, 98 Stat. 1904, 1931.

Pub. L. 98–212, title VII, § 751, Dec. 8, 1983, 97 Stat. 1447.

Pub. L. 97–377, title I, § 101(c) [title VII, § 755], Dec. 21, 1982, 96 Stat. 1833, 1860.

Pub. L. 97–114, title VII, § 757, Dec. 29, 1981, 95 Stat. 1588.

Pub. L. 96–527, title VII, § 760, Dec. 15, 1980, 94 Stat. 3091.

Pub. L. 96–154, title VII, § 762, Dec. 21, 1979, 93 Stat. 1162.

Pub. L. 95–457, title VIII, § 863, Oct. 13, 1978, 92 Stat. 1254.

AMENDMENTS

1996—Pub. L. 104–106, § 738(b)(1), amended section catchline generally, substituting ''Performance of abortions: restrictions'' for ''Restrictions on use of funds for abortions''.

Pub. L. 104–106, § 738(a), designated existing provisions as subsec. (a), inserted subsec. heading, and added subsec. (b).

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

PRIVATELY FUNDED ABORTIONS AT MILITARY HOSPITALS

Memorandum of the President of the United States, Jan. 22, 1993, 58 F.R. 6439, provided:

Memorandum for the Secretary of Defense

Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense (''DOD'') funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 1094. Licensure requirement for health-care professionals

(a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a health-care professional under this chapter unless the person has a current license to provide such care. In the case of a physician, the physician may not provide health care as a physician

under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.

(2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.

(b) The commanding officer of each health care facility of the Department of Defense shall ensure that each person who provides health care independently as a health-care professional at the facility meets the requirement of subsection (a).

(c)(1) A person (other than a person subject to chapter 47 of this title) who provides health care in violation of subsection (a) is subject to a civil money penalty of not more than $5,000.

(2) The provisions of subsections (c) and (e) through (h) of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) shall apply to the imposition of a civil money penalty under paragraph (1) in the same manner as they apply to the imposition of a civil money penalty under that section, except that for purposes of this subsection—

(A) a reference to the Secretary in that section is deemed a reference to the Secretary of Defense; and

(B) a reference to a claimant in subsection (e) of that section is deemed a reference to the person described in paragraph (1).

(d)(1) Notwithstanding any law regarding the licensure of health care providers, a health-care professional described in paragraph (2) may practice the health profession or professions of the health-care professional in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or any other location authorized by the Secretary of Defense.

(2) A health-care professional referred to in paragraph (1) is a member of the armed forces who—

(A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; and

(B) is performing authorized duties for the Department of Defense.

(e) In this section:

(1) The term ''license''—

(A) means a grant of permission by an official agency of a State, the District of Columbia, or a Commonwealth, territory, or possession of the United States to provide health care independently as a health-care professional; and

(B) includes, in the case of such care furnished in a foreign country by any person who is not a national of the United States, a grant of permission by an official agency of that foreign country for that person to provide health care independently as a health-care professional.

(2) The term ''health-care professional'' means a physician, dentist, clinical psychologist, or nurse and any other person providing direct patient care as may be designated by the Secretary of Defense in regulations.

(Added Pub. L. 99–145, title VI, §653(a)(1), Nov. 8, 1985, 99 Stat. 657; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(5), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title VI, §653(e)(1), title XVI, §1622(e)(3), Nov. 29, 1989, 103 Stat. 1463, 1605; Pub. L. 105–85, div. A, title VII, §737, Nov. 18, 1997, 111 Stat. 1814; Pub. L. 105–261, div. A, title VII, §734(a), Oct. 17, 1998, 112 Stat. 2072.)

AMENDMENTS

1998—Subsec. (a)(1). Pub. L. 105–261 inserted at end ''In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.''

1997—Subsecs. (d), (e). Pub. L. 105–85 added subsec. (d) and redesignated former subsec. (d) as (e).

1989—Subsec. (c)(2). Pub. L. 101–189, §653(e)(1), substituted ''subsections (c) and (e) through (h)'' for ''subsections (b) and (d) through (g)''.

Subsec. (d)(1). Pub. L. 101–189, §1622(e)(3)(A), substituted ''The term 'license'' for '' 'License'' in introductory provisions.

Subsec. (d)(2). Pub. L. 101–189, §1622(e)(3)(B), substituted ''The term 'health-care'' for '' 'Health-care''.

1986—Subsec. (d)(2). Pub. L. 99–661 realigned margin of par. (2) to conform to margin of par. (1).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VII, §734(c)(1), Oct. 17, 1998, 112 Stat. 2073, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1999.''

EFFECTIVE DATE

Section 653(b) of Pub. L. 99–145 provided that: ''Section 1094 of title 10, United States Code, as added by subsection (a), does not apply during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1985] with respect to the provision of health care by any person who on the date of the enactment of this Act is a member of the Armed Forces.''

§ 1094a. Continuing medical education requirements: system for monitoring physician compliance

The Secretary of Defense shall establish a mechanism for ensuring that each person under the jurisdiction of the Secretary of a military department who provides health care under this chapter as a physician satisfies the continuing medical education requirements applicable to the physician.

(Added Pub. L. 105–261, div. A, title VII, §734(b)(1), Oct. 17, 1998, 112 Stat. 2073.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title VII, §734(c)(2), Oct. 17, 1998, 112 Stat. 2073, provided that: ''The system required by section 1094a of title 10, United States Code (as added by subsection (b)), shall take effect on the date that is three years after the date of the enactment of this Act [Oct. 17, 1998].''

JOINT PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107–314, div. A, title VII, §725(a)–(d), Dec. 2, 2002, 116 Stat. 2599, provided that:

''(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly carry out a pilot program under which graduate medical education and training is provided to military physicians and physician employees of the Department of Defense and the Department of Veterans Affairs through one or more programs carried out in military medical treatment facilities of the Department of Defense and medical centers of the Department of Veterans Affairs. The pilot program shall begin not later than January 1, 2003.

''(b) COST-SHARING AGREEMENT.—The Secretaries shall enter into an agreement for carrying out the pilot program. The agreement shall establish means for each Secretary to assist in paying the costs, with respect to individuals under the jurisdiction of that Secretary, incurred by the other Secretary in providing medical education and training under the pilot program.

''(c) USE OF EXISTING AUTHORITIES.—To carry out the pilot program, the Secretary of Defense and the Secretary of Veterans Affairs may use authorities provided to them under this subtitle [subtitle C (§§ 721–726) of title VII of div. A of Pub. L. 107–314, amending section 1104 of this title and sections 8110 and 8111 of Title 38, Veterans' Benefits, enacting provisions set out as notes under section 1074g of this title and sections 8110 and 8111 of Title 38, and repealing provisions set out as a note under this section], section 8111 of title 38, United States Code (as amended by section 721(a)), and other laws relating to the furnishing or support of medical education and the cooperative use of facilities.

''(d) TERMINATION OF PROGRAM.—The pilot program under this section shall terminate on July 31, 2008.''

JOINT DOD-VA PILOT PROGRAM FOR PROVIDING GRADUATE MEDICAL EDUCATION AND TRAINING FOR PHYSICIANS

Pub. L. 107–107, div. A, title VII, § 738, Dec. 28, 2001, 115 Stat. 1173, authorized a pilot program providing graduate medical education and training for physicians to be carried out jointly by the Secretary of Defense and the Secretary of Veterans Affairs, prior to repeal by Pub. L. 107–314, div. A, title VII, § 725(e), Dec. 2, 2002, 116 Stat. 2599.

§ 1095. Health care services incurred on behalf of covered beneficiaries: collection from third-party payers

(a)(1) In the case of a person who is a covered beneficiary, the United States shall have the right to collect from a third-party payer reasonable charges for health care services incurred by the United States on behalf of such person through a facility of the uniformed services to the extent that the person would be eligible to receive reimbursement or indemnification from the third-party payer if the person were to incur such charges on the person's own behalf. If the insurance, medical service, or health plan of that payer includes a requirement for a deductible or copayment by the beneficiary of the plan, then the amount that the United States may collect from the third-party payer is a reasonable charge for the care provided less the appropriate deductible or copayment amount.

(2) A covered beneficiary may not be required to pay an additional amount to the United States for health care services by reason of this section.

(b) No provision of any insurance, medical service, or health plan contract or agreement having the effect of excluding from coverage or limiting payment of charges for certain care shall operate to prevent collection by the United States under subsection (a) if that care is provided—

(1) through a facility of the uniformed services;

(2) directly or indirectly by a governmental entity;

(3) to an individual who has no obligation to pay for that care or for whom no other person has a legal obligation to pay; or

(4) by a provider with which the third party payer has no participation agreement.

(c) Under regulations prescribed under subsection (f), records of the facility of the uniformed services that provided health care services to a beneficiary of an insurance, medical service, or health plan of a third-party payer shall be made available for inspection and review by representatives of the payer from which collection by the United States is sought.

(d) Notwithstanding subsections (a) and (b), and except as provided in subsection (j), collection may not be made under this section in the case of a plan administered under title XVIII or XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(e)(1) The United States may institute and prosecute legal proceedings against a third-party payer to enforce a right of the United States under this section.

(2) The administering Secretary may compromise, settle, or waive a claim of the United States under this section.

(f) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section. Such regulations shall provide for computation of the reasonable cost of health care services. Computation of such reasonable cost may be based on—

(1) per diem rates;

(2) all-inclusive per visit rates;

(3) diagnosis-related groups; or

(4) such other method as may be appropriate.

(g) Amounts collected under this section from a third-party payer or under any other provision of law from any other payer for health care services provided at or through a facility of the uniformed services shall be credited to the appropriation supporting the maintenance and operation of the facility and shall not be taken into consideration in establishing the operating budget of the facility.

(h) In this section:

(1) The term ''third-party payer'' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products. Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.

(2) The term ''insurance, medical service, or health plan'' includes a preferred provider organization, an insurance plan described as Medicare supplemental insurance, and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle.

(3) The term ''health care services'' includes products provided or purchased through a facility of the uniformed services.

(i)(1) In the case of a third-party payer that is an automobile liability insurance or no fault insurance carrier, the right of the United States to collect under this section shall extend to health care services provided to a person entitled to health care under section 1074(a) of this title.

(2) In cases in which a tort liability is created upon some third person, collection from a third-party payer that is an automobile liability insurance carrier shall be governed by the provisions of Public Law 87–693 (42 U.S.C. 2651 et seq.).

(j) The Secretary of Defense may enter into an agreement with any health maintenance organization, competitive medical plan, health care prepayment plan, or other similar plan (pursuant to regulations issued by the Secretary) providing for collection under this section from such organization or plan for services provided to a covered beneficiary who is an enrollee in such organization or plan.

(k)(1) To improve the administration of this section and sections 1079(j)(1) and 1086(d) of this title, the Secretary of Defense, in consultation with the other administering Secretaries, may prescribe regulations providing for the collection of information regarding insurance, medical service, or health plans of third-party payers held by covered beneficiaries.

(2) The collection of information under regulations prescribed under paragraph (1) shall be conducted in the same manner as is provided in section 1862(b)(5) of the Social Security Act (42 U.S.C. 1395y(b)(5)). The Secretary may provide for obtaining from the Commissioner of Social Security employment information comparable to the information provided to the Administrator of the Health Care Financing Administration pursuant to such section. Such regulations may require the mandatory disclosure of Social Security account numbers for all covered beneficiaries.

(3) The Secretary may disclose relevant employment information collected under this subsection to fiscal intermediaries or other designated contractors.

(4) The Secretary may provide for contacting employers of covered beneficiaries to obtain group health plan information comparable to the information authorized to be obtained under section 1862(b)(5)(C) of the Social Security Act (42 U.S.C. 1395y(b)(5)(C)). Notwithstanding clause (iii) of such section, clause (ii) of such section regarding the imposition of civil money penalties shall apply to the collection of information under this paragraph.

(5) Information obtained under this subsection may not be disclosed for any purpose other than to carry out the purpose of this section and sections 1079(j)(1) and 1086(d) of this title.

(Added Pub. L. 99–272, title II, §2001(a)(1), Apr. 7, 1986, 100 Stat. 100; amended Pub. L. 101–189, div. A, title VII, §727(a), title XVI, §1622(e)(5), Nov. 29, 1989, 103 Stat. 1480, 1605; Pub. L. 101–510, div. A, title VII, §713(a)–(d)(2), Nov. 5, 1990, 104 Stat. 1583, 1584; Pub. L. 102–25, title VII, §701(j)(8), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–190, div. A, title VII, §714, Dec. 5, 1991, 105 Stat. 1403; Pub. L. 103–160, div. A, title VII, §713, Nov. 30, 1993, 107 Stat. 1689; Pub. L. 103–337, div. A, title VII, §714(b), title X, §1070(b)(6), Oct. 5, 1994, 108 Stat. 2802, 2857; Pub. L. 104–106, div. A, title VII, §734, Feb. 10, 1996, 110 Stat. 381; Pub. L. 104–201, div. A, title VII, §735(a), (b), Sept. 23, 1996, 110 Stat. 2598; Pub. L. 106–65, div. A, title VII, §716(c)(1), Oct. 5, 1999, 113 Stat. 691; Pub. L. 107–314, div. A, title X, §1041(a)(5), Dec. 2, 2002, 116 Stat. 2645.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Public Law 87–693, referred to in subsec. (i)(2), is Pub. L. 87–693, Sept. 25, 1962, 76 Stat. 593, which is classified generally to chapter 32 (§2651 et seq.) of Title 42. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 1095 was renumbered section 1095a of this title.

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–314 struck out par. (1) designation and par. (2) which read as follows: ''Not later than February 15 of each year, the Secretary of Defense shall submit to Congress a report specifying for each facility of the uniformed services the amount credited to the facility under this subsection during the preceding fiscal year.''

1999—Subsec. (a)(1). Pub. L. 106–65, §716(c)(1)(A), substituted ''reasonable charges for'' for ''the reasonable costs of'', ''such charges'' for ''such costs'', and ''a reasonable charge for'' for ''the reasonable cost of''.

Subsec. (g)(1). Pub. L. 106–65, §716(c)(1)(B), struck out ''the costs of'' after ''any other payer for''.

Subsec. (h)(1). Pub. L. 106–65, §716(c)(1)(C), substituted ''The term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier, and any other plan or program that is designed to provide compensation or coverage for expenses incurred by a beneficiary for health care services or products.'' for ''The term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement, including an automobile liability insurance or no fault insurance carrier and a workers' compensation program or plan.''

1996—Subsec. (g)(1). Pub. L. 104–201, §735(a), inserted ''or through'' after ''provided at''.

Subsec. (h)(1). Pub. L. 104–201, §735(b)(1), inserted ''and a workers' compensation program or plan'' after ''insurance carrier''.

Subsec. (h)(2). Pub. L. 104–201, §735(b)(2), substituted ''organization,'' for ''organization and'' and inserted before period at end '', and a personal injury protection plan or medical payments benefit plan for personal injuries resulting from the operation of a motor vehicle''.

Subsec. (k). Pub. L. 104–106 added subsec. (k).

1994—Subsec. (b). Pub. L. 103–337, §714(b)(1), substituted ''shall operate to prevent collection by the United States under subsection (a) if that care is provided—'' and pars. (1) to (4) for ''if that care is provided through a facility of the uniformed services shall operate to prevent collection by the United States under subsection (a).''

Subsec. (d). Pub. L. 103–337, §714(b)(2), inserted ''and except as provided in subsection (j),'' after ''(b),''.

Subsec. (g). Pub. L. 103–337, §1070(b)(6), made technical correction to directory language of Pub. L. 103–160, §713(a)(1). See 1993 Amendment note below.

Subsec. (h)(1). Pub. L. 103–337, §714(b)(3), inserted at end ''Such term also includes entities described in subsection (j) under the terms and to the extent provided in such subsection.''

Subsec. (j). Pub. L. 103–337, §714(b)(4), added subsec. (j).

1993—Subsec. (g). Pub. L. 103–160, §713(c), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–160, §713(a)(2), inserted before period ''and shall not be taken into consideration in establishing the operating budget of the facility''.

Pub. L. 103–160, §713(a)(1), as amended by Pub. L. 103–337, §1070(b)(6), inserted ''or under any other provision of law from any other payer'' after ''third-party payer''.

Subsec. (h). Pub. L. 103–160, §713(b), inserted ''a preferred provider organization and'' after ''includes'' in par. (2) and added par. (3).

1991—Subsec. (a)(1). Pub. L. 102–25 inserted ''a'' before ''covered beneficiary''.

Subsec. (i)(2). Pub. L. 102–190 struck out ''or no fault insurance'' before ''carrier''.

1990—Pub. L. 101–510, §713(d)(2), substituted ''Health care services incurred on behalf of covered beneficiaries: collection from third-party payers'' for ''Collection from third-party payers of reasonable inpatient hospital care costs incurred on behalf of retirees and dependents'' in section catchline.

Subsec. (a)(1). Pub. L. 101–510, §713(d)(1)(A), substituted ''covered beneficiary'' for ''covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, §713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (a)(2). Pub. L. 101–510, §713(d)(1)(B), substituted ''covered beneficiary'' for ''person covered by section 1074(b), 1076(a), or 1076(b) of this title''.

Pub. L. 101–510, §713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (c). Pub. L. 101–510, §713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsec. (f). Pub. L. 101–510, §713(a)(1), substituted ''health care services'' for ''inpatient hospital care'' in introductory provisions.

Subsec. (f)(2) to (4). Pub. L. 101–510, §713(b), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (g). Pub. L. 101–510, §713(a)(1), substituted ''health care services'' for ''inpatient hospital care''.

Subsecs. (h), (i). Pub. L. 101–510, §713(c), added subsecs. (h) and (i) and struck out former subsec. (h) which read as follows: ''In this section, the term 'third-party payer' means an entity that provides an insurance, medical service, or health plan by contract or agreement.''

1989—Subsec. (g). Pub. L. 101–189, §727(a)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 101–189, §1622(e)(5), which directed amendment of subsec. (g) by insertion of ''the term'' after ''In this section,'' was executed by making the insertion in subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by Pub. L. 101–189, §727(a)(1), see below.

Pub. L. 101–189, §727(a)(1), redesignated subsec. (g) as (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 713(e) of Pub. L. 101–510 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to health care services provided in a medical facility of the uniformed services after the date of the enactment of this Act [Nov. 5, 1990], but not with respect to collection under any insurance, medical service, or health plan agreement entered into before the date of the enactment of this Act that the Secretary of Defense determines clearly excludes payment for such services. Such an exception shall apply until the amendment or renewal of such agreement after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 727(b) of Pub. L. 101–189 provided that: ''The amendment made by this section [amending this section] shall take effect on October 1, 1989, and shall apply to amounts collected under section 1095 of title 10, United States Code, on or after that date.''

EFFECTIVE DATE

Section 2001(b) of Pub. L. 99–272 provided that: ''Section 1095 of title 10, United States Code, as added by subsection (a), shall apply with respect to inpatient hospital care provided after September 30, 1986, but only with respect to an insurance, medical service, or health plan agreement entered into, amended, or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1079, 1086, 1095b, 1097b of this title.

§1095a. Medical care: members held as captives and their dependents

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) any person who is a former captive, and any dependent of that person or of a person who is in a captive status, for health care and other expenses related to such care, to the extent that such care—

(1) is incident to the captive status; and

(2) is not covered—

(A) by any other Government medical or health program; or

(B) by insurance.

(b) In the case of any person who is eligible for medical care under section 1074 or 1076 of this title, such regulations shall require that, whenever practicable, such care be provided in a facility of the uniformed services.

(c) In this section:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, §806(c)(1), Aug. 27, 1986, 100 Stat. 886, §1095; renumbered §1095a, Pub. L. 100–26, §7(e)(2), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 100–526, title I, §106(b)(1), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–526 substituted ''The terms 'captive status' '' for '' 'Captive status' '' in par. (1), and ''The term 'dependent' '' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE; REGULATIONS

Section 806(c)(3) of Pub. L. 99–399 provided that:

''(A) Section 1095 [now 1095a] of title 10, United States Code, as added by paragraph (1), shall apply with respect to any person whose captive status begins after January 21, 1981.

''(B) The President shall prescribe specific regulations regarding the carrying out of such section with respect to persons whose captive status begins during the period beginning on January 21, 1981, and ending on the effective date of that section [Aug. 27, 1986].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 3 of Ex. Ord. No.

12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 1013.

§ 1095b. TRICARE program: contractor payment of certain claims

(a) PAYMENT OF CLAIMS.—(1) The Secretary of Defense may authorize a contractor under the TRICARE program to pay a claim described in paragraph (2) before seeking to recover from a third-party payer the costs incurred by the contractor to provide health care services that are the basis of the claim to a beneficiary under such program.

(2) A claim under this paragraph is a claim—

(A) that is submitted to the contractor by a provider under the TRICARE program for payment for services for health care provided to a covered beneficiary; and

(B) that is identified by the contractor as a claim for which a third-party payer may be liable.

(b) RECOVERY FROM THIRD-PARTY PAYERS.—The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.

(c) DEFINITION OF THIRD-PARTY PAYER.—In this section, the term ''third-party payer'' has the meaning given that term in section 1095(h) of this title, except that such term excludes primary medical insurers.

(Added Pub. L. 105–261, div. A, title VII, § 711(a)(1), Oct. 17, 1998, 112 Stat. 2058; amended Pub. L. 106–65, div. A, title VII, § 716(c)(2), Oct. 5, 1999, 113 Stat. 692.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''The United States shall have the same right to collect charges related to claims described in subsection (a) as charges for claims under section 1095 of this title.'' for ''A contractor for the provision of health care services under the TRICARE program that pays a claim described in subsection (a)(2) shall have the right to collect from the third-party payer the costs incurred by such contractor on behalf of the covered beneficiary. The contractor shall have the same right to collect such costs under this subsection as the right of the United States to collect costs under section 1095 of this title.''

§ 1095c. TRICARE program: facilitation of processing of claims

(a) REDUCTION OF PROCESSING TIME.—(1) With respect to claims for payment for medical care provided under the TRICARE program, the Secretary of Defense shall implement a system for processing of claims under which—

(A) 95 percent of all clean claims must be processed not later than 30 days after the date that such claims are submitted to the claims processor; and

(B) 100 percent of all clean claims must be processed not later than 100 days after the date that such claims are submitted to the claims processor.

(2) The Secretary may, under the system required by paragraph (1) and consistent with the provisions in chapter 39 of title 31 (commonly referred to as the ''Prompt Payment Act''), require that interest be paid on clean claims that are not processed within 30 days.

(3) For purposes of this subsection, the term ''clean claim'' means a claim that has no defect, impropriety (including a lack of any required substantiating documentation), or particular circumstance requiring special treatment that prevents timely payment on the claim under this section.

(b) REQUIREMENT TO PROVIDE START-UP TIME FOR CERTAIN CONTRACTORS.—(1) Except as provided in paragraph (3), the Secretary of Defense shall not require that a contractor described in paragraph (2) begin to provide managed care support pursuant to a contract to provide such support under the TRICARE program until at least nine months after the date of the award of the contract, but in no case later than one year after the date of such award.

(2) A contractor under this paragraph is a contractor who is awarded a contract to provide managed care support under the TRICARE program—

(A) who has not previously been awarded such a contract by the Department of Defense; or

(B) who has previously been awarded such a contract by the Department of Defense but for whom the subcontractors have not previously been awarded the subcontracts for such a contract.

(3) The Secretary may reduce the nine-month start-up period required under paragraph (1) if—

(A) the Secretary—

(i) determines that a shorter period is sufficient to ensure effective implementation of all contract requirements; and

(ii) submits notification to the Committees on Armed Services of the House of Representatives and the Senate of the Secretary's intent to reduce the nine-month start-up period; and

(B) 60 days have elapsed since the date of such notification.

(c) INCENTIVES FOR ELECTRONIC PROCESSING.—The Secretary of Defense shall require that new contracts for managed care support under the TRICARE program provide that the contractor be permitted to provide financial incentives to health care providers who file claims for payment electronically.

(d) CORRESPONDENCE TO MEDICARE CLAIMS INFORMATION REQUIREMENTS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall limit the information required in support of claims for payment for health care items and services provided under the TRICARE program to that information that is identical to the information that would be required for claims for reimbursement for those items and services under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) except for that information, if any, that is uniquely required by the TRICARE program. The Secretary of Defense shall report to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any information that is excepted

under this provision, and the justification for that exception.

(Added Pub. L. 106–65, div. A, title VII, § 713(a)(1), Oct. 5, 1999, 113 Stat. 688; amended Pub. L. 107–107, div. A, title VII, § 708(b), Dec. 28, 2001, 115 Stat. 1164; Pub. L. 107–314, div. A, title VII, § 711(a), Dec. 2, 2002, 116 Stat. 2588.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 added subsec. (d).

2001—Subsec. (b)(1). Pub. L. 107–107, § 708(b)(1), substituted ''Except as provided in paragraph (3), the Secretary'' for ''The Secretary'' and struck out ''contract. In such case the contractor may begin to provide managed care support pursuant to the contract as soon as practicable after the award of the'' before ''contract, but in no case''.

Subsec. (b)(3). Pub. L. 107–107, § 708(b)(2), added par. (3).

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VII, § 713(d), Oct. 5, 1999, 113 Stat. 689, provided that: ''Section 1095c(b) of title 10, United States Code (as added by subsection (a)), shall apply with respect to any contract to provide managed care support under the TRICARE program negotiated after the date of the enactment of this Act [Oct. 5, 1999].''

APPLICABILITY

Pub. L. 107–314, div. A, title VII, § 711(b), Dec. 2, 2002, 116 Stat. 2588, provided that: ''The Secretary of Defense, in consultation with the other administering Secretaries referred to in section 1072(3) of title 10, United States Code, shall apply the limitations required under subsection (d) of section 1095c of such title (as added by subsection (a)) with respect to contracts entered into under the TRICARE program on or after October 1, 2002.''

CLAIMS PROCESSING IMPROVEMENTS

Pub. L. 106–398, § 1 [[div. A], title VII, § 727], Oct. 30, 2000, 114 Stat. 1654, 1654A–188, provided that: ''Beginning on the date of the enactment of this Act [Oct. 30, 2000], the Secretary of Defense shall, to the maximum extent practicable, take all necessary actions to implement the following improvements with respect to processing of claims under the TRICARE program:

''(1) Use of the TRICARE encounter data information system rather than the health care service record in maintaining information on covered beneficiaries under chapter 55 of title 10, United States Code.

''(2) Elimination of all delays in payment of claims to health care providers that may result from the development of the health care service record or TRICARE encounter data information.

''(3) Requiring all health care providers under the TRICARE program that the Secretary determines are high-volume providers to submit claims electronically.

''(4) Processing 50 percent of all claims by health care providers and institutions under the TRICARE program by electronic means.

''(5) Authorizing managed care support contractors under the TRICARE program to require providers to access information on the status of claims through the use of telephone automated voice response units.''

DEADLINE FOR IMPLEMENTATION

Pub. L. 106–65, div. A, title VII, § 713(c), Oct. 5, 1999, 113 Stat. 689, provided that: ''The system for processing claims required under section 1095c(a) of title 10, United States Code (as added by subsection (a)), shall be implemented not later than 6 months after the date of the enactment of this Act [Oct. 5, 1999].''

§ 1095d. TRICARE program: waiver of certain deductibles

(a) WAIVER AUTHORIZED.—The Secretary of Defense may waive the deductible payable for medical care provided under the TRICARE program to an eligible dependent of—

(1) a member of a reserve component on active duty pursuant to a call or order to active duty for a period of less than one year; or

(2) a member of the National Guard on full-time National Guard duty pursuant to a call or order to full-time National Guard duty for a period of less than one year.

(b) ELIGIBLE DEPENDENT.—As used in this section, the term ''eligible dependent'' means a dependent described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(Added Pub. L. 106–65, div. A, title VII, § 714(a), Oct. 5, 1999, 113 Stat. 689; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 substituted ''subparagraph'' for ''subparagraphs''.

§ 1095e. TRICARE program: beneficiary counseling and assistance coordinators

(a) ESTABLISHMENT OF POSITIONS.—The Secretary of Defense shall require in regulations that—

(1) each lead agent under the TRICARE program—

(A) designate a person to serve full-time as a beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program; and

(B) provide for toll-free telephone communication between such beneficiaries and the beneficiary counseling and assistance coordinator; and

(2) the commander of each military medical treatment facility under this chapter designate a person to serve, as a primary or collateral duty, as beneficiary counseling and assistance coordinator for beneficiaries under the TRICARE program served at that facility.

(b) DUTIES.—The Secretary shall prescribe the duties of the position of beneficiary counseling and assistance coordinator in the regulations required by subsection (a).

(Added Pub. L. 106–65, div. A, title VII, § 715(a)(1), Oct. 5, 1999, 113 Stat. 690.)

DEADLINE FOR INITIAL DESIGNATIONS

Pub. L. 106–65, div. A, title VII, § 715(b), Oct. 5, 1999, 113 Stat. 690, provided that: ''Each beneficiary counseling and assistance coordinator required under the regulations described in section 1095e(a) of title 10, United States Code (as added by subsection (a)), shall be designated not later than January 15, 2000.''

§ 1095f. TRICARE program: referrals for specialty health care

The Secretary of Defense shall ensure that no contract for managed care support under the TRICARE program includes any requirement that a managed care support contractor require a primary care or specialty care provider to obtain prior authorization before referring a patient to a specialty care provider that is part of the network of health care providers or institutions of the contractor.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §728(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189.)

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VII, §728(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–189, provided that: ''Section 1095f of title 10, United States Code, as added by subsection (a), shall apply with respect to a TRICARE managed care support contract entered into by the Department of Defense after the date of the enactment of this Act [Oct. 30, 2000].''

§ 1096. Military-civilian health services partnership program

(a) RESOURCES SHARING AGREEMENTS.—The Secretary of Defense may enter into an agreement providing for the sharing of resources between facilities of the uniformed services and facilities of a civilian health care provider or providers that the Secretary contracts with under section 1079, 1086, or 1097 of this title if the Secretary determines that such an agreement would result in the delivery of health care to which covered beneficiaries are entitled under this chapter in a more effective, efficient, or economical manner.

(b) ELIGIBLE RESOURCES.—An agreement entered into under subsection (a) may provide for the sharing of—

(1) personnel (including support personnel);

(2) equipment;

(3) supplies; and

(4) any other items or facilities necessary for the provision of health care services.

(c) COMPUTATION OF CHARGES.—A covered beneficiary, with respect to care provided to such beneficiary in facilities of the uniformed services under a sharing agreement entered into under subsection (a), shall pay—

(1) in the case of a dependent, the charges prescribed by section 1078 of this title; and

(2) in the case of a member or former member entitled to retired or retainer pay, the charges prescribed by section 1075 of this title.

(d) REIMBURSEMENT FOR LICENSE FEES.—In any case in which it is necessary for a member of the uniformed services to pay a professional license fee imposed by a government in order to provide health care services at a facility of a civilian health care provider pursuant to an agreement entered into under subsection (a), the Secretary of Defense may reimburse the member for up to $500 of the amount of the license fee paid by the member.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3894; amended Pub. L. 103–337, div. A, title VII, §712, Oct. 5, 1994, 108 Stat. 2801.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337 added subsec. (d).

§ 1097. Contracts for medical care for retirees, dependents, and survivors: alternative delivery of health care

(a) IN GENERAL.—The Secretary of Defense, after consulting with the other administering Secretaries, may contract for the delivery of health care to which covered beneficiaries are entitled under this chapter. The Secretary may enter into a contract under this section with any of the following:

(1) Health maintenance organizations.

(2) Preferred provider organizations.

(3) Individual providers, individual medical facilities, or insurers.

(4) Consortiums of such providers, facilities, or insurers.

(b) SCOPE OF COVERAGE UNDER HEALTH CARE PLANS.—A contract entered into under this section may provide for the delivery of—

(1) selected health care services;

(2) total health care services for selected covered beneficiaries; or

(3) total health care services for all covered beneficiaries who reside in a geographical area designated by the Secretary.

(c) COORDINATION WITH FACILITIES OF THE UNIFORMED SERVICES.—The Secretary of Defense may provide for the coordination of health care services provided pursuant to any contract or agreement under this section with those services provided in medical treatment facilities of the uniformed services. Subject to the availability of space and facilities and the capabilities of the medical or dental staff, the Secretary may not deny access to facilities of the uniformed services to a covered beneficiary on the basis of whether the beneficiary enrolled or declined enrollment in any program established under, or operating in connection with, any contract under this section. Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall, as an incentive for enrollment, establish reasonable preferences for services in facilities of the uniformed services for covered beneficiaries enrolled in any program established under, or operating in connection with, any contract under this section.

(d) COORDINATION WITH OTHER HEALTH CARE PROGRAMS.—In the case of a covered beneficiary who is enrolled in a managed health care program not operated under the authority of this chapter, the Secretary may contract under this section with such other managed health care program for the purpose of coordinating the beneficiary's dual entitlements under such program and this chapter. A managed health care program with which arrangements may be made under this subsection includes any health maintenance organization, competitive medical plan, health care prepayment plan, or other managed care program recognized pursuant to regulations issued by the Secretary.

(e) CHARGES FOR HEALTH CARE.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided under this section. In the case of contracts for health care services

under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans. Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 103–337, div. A, title VII, §§713, 714(a), Oct. 5, 1994, 108 Stat. 2802; Pub. L. 104–106, div. A, title VII, §§712, 713, Feb. 10, 1996, 110 Stat. 374.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106, §712, substituted ''Notwithstanding the preferences established by sections 1074(b) and 1076 of this title, the Secretary shall'' for ''However, the Secretary may''.

Subsec. (e). Pub. L. 104–106, §713, inserted at end ''Without imposing additional costs on covered beneficiaries who participate in contracts for health care services under this section or health care plans offered under section 1099 of this title, the Secretary shall permit such covered beneficiaries to pay, on a quarterly basis, any enrollment fee required for such participation.''

1994—Subsec. (c). Pub. L. 103–337, §714(a)(2), added subsec. (c). Former subsec. (c) redesignated (e).

Pub. L. 103–337, §713, inserted at end ''In the case of contracts for health care services under this section or health care plans offered under section 1099 of this title for which the Secretary permits covered beneficiaries who are covered by section 1086 of this title and who participate in such contracts or plans to pay an enrollment fee in lieu of meeting the applicable deductible amount specified in section 1086(b) of this title, the Secretary may establish the same (or a lower) enrollment fee for covered beneficiaries described in section 1086(d)(1) of this title who also participate in such contracts or plans.''

Subsecs. (d), (e). Pub. L. 103–337, §714(a), added subsec. (d) and redesignated former subsec. (c) as (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1072, 1096, 1100 of this title.

§1097a. TRICARE Prime: automatic enrollments; payment options

(a) AUTOMATIC ENROLLMENT OF CERTAIN DEPENDENTS.—Each dependent of a member of the uniformed services in grade E4 or below who is entitled to medical and dental care under section 1076(a)(2)(A) of this title and resides in the catchment area of a facility of a uniformed service offering TRICARE Prime shall be automatically enrolled in TRICARE Prime at the facility. The Secretary concerned shall provide written notice of the enrollment to the member. The enrollment of a dependent of the member may be terminated by the member or the dependent at any time.

(b) AUTOMATIC RENEWAL OF ENROLLMENTS OF COVERED BENEFICIARIES.—(1) An enrollment of a covered beneficiary in TRICARE Prime shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined.

(2) Not later than 15 days before the expiration date for an enrollment of a covered beneficiary in TRICARE Prime, the Secretary concerned shall—

(A) transmit a written notification of the pending expiration and renewal of enrollment to the covered beneficiary or, in the case of a dependent of a member of the uniformed services, to the member; and

(B) afford the beneficiary or member, as the case may be, an opportunity to decline the renewal of enrollment.

(c) PAYMENT OPTIONS FOR RETIREES.—A member or former member of the uniformed services eligible for medical care and dental care under section 1074(b) of this title may elect to have any fee payable by the member or former member for an enrollment in TRICARE Prime withheld from the member's retired pay, retainer pay, or equivalent pay, as the case may be, or to be paid from a financial institution through electronic transfers of funds. The fee shall be paid in accordance with the election. A member may elect under this section to pay the fee in full at the beginning of the enrollment period or to make payments on a monthly or quarterly basis.

(d) REGULATIONS AND EXCEPTIONS.—The Secretary of Defense shall prescribe regulations, including procedures, to carry out this section. Regulations prescribed to carry out the automatic enrollment requirements under this section may include such exceptions to the automatic enrollment procedures as the Secretary determines appropriate for the effective operation of TRICARE Prime.

(e) NO COPAYMENT FOR IMMEDIATE FAMILY.—No copayment shall be charged a member for care provided under TRICARE Prime to a dependent of a member of the uniformed services described in subparagraph (A), (D), or (I) of section 1072(2) of this title.

(f) DEFINITIONS.—In this section:

(1) The term ''TRICARE Prime'' means the managed care option of the TRICARE program.

(2) The term ''catchment area'', with respect to a facility of a uniformed service, means the service area of the facility, as designated under regulations prescribed by the administering Secretaries.

(Added Pub. L. 105–261, div. A, title VII, §712(a)(1), Oct. 17, 1998, 112 Stat. 2058; amended Pub. L. 106–398, §1 [[div. A], title VII, §752(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195; Pub. L. 107–107, div. A, title X, §1048(a)(11), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (e). Pub. L. 107–107 substituted ''section 1072(2)'' for ''section 1072''.

2000—Subsecs. (e), (f). Pub. L. 106–398 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VII, §752(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that: ''The

amendments made by subsection (a) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Oct. 30, 2000], and shall apply with respect to care provided on or after that date.''

EFFECTIVE DATE

Pub. L. 105–261, div. A, title VII, §712(b), Oct. 17, 1998, 112 Stat. 2059, provided that: ''The regulations required under subsection (d) of section 1097a of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than September 30, 1999. The section shall be applied under TRICARE Prime on and after the date on which the regulations take effect.''

§ 1097b. TRICARE program: financial management

(a) REIMBURSEMENT OF PROVIDERS.—(1) Subject to paragraph (2), the Secretary of Defense may reimburse health care providers under the TRICARE program at rates higher than the reimbursement rates otherwise authorized for the providers under that program if the Secretary determines that application of the higher rates is necessary in order to ensure the availability of an adequate number of qualified health care providers under that program.

(2) The amount of reimbursement provided under paragraph (1) with respect to a health care service may not exceed the lesser of the following:

(A) The amount equal to the local fee for service charge for the service in the service area in which the service is provided as determined by the Secretary based on one or more of the following payment rates:

(i) Usual, customary, and reasonable.

(ii) The Health Care Finance Administration's Resource Based Relative Value Scale.

(iii) Negotiated fee schedules.

(iv) Global fees.

(v) Sliding scale individual fee allowances.

(B) The amount equal to 115 percent of the CHAMPUS maximum allowable charge for the service.

(b) THIRD-PARTY COLLECTIONS.—(1) A medical treatment facility of the uniformed services under the TRICARE program has the same right as the United States under section 1095 of this title to collect from a third-party payer the reasonable charges for health care services described in paragraph (2) that are incurred by the facility on behalf of a covered beneficiary under that program.

(2) The Secretary of Defense shall prescribe regulations for the administration of this subsection. The regulations shall set forth the method to be used for the computation of the reasonable charges for inpatient, outpatient, and other health care services. The method of computation may be—

(A) a method that is based on—

(i) per diem rates;

(ii) all-inclusive rates for each visit;

(iii) diagnosis-related groups; or

(iv) rates prescribed under the regulations implementing sections 1079 and 1086 of this title; or

(B) any other method considered appropriate.

(c) CONSULTATION REQUIREMENT.—The Secretary of Defense shall carry out the responsibilities under this section after consultation with the other administering Secretaries.

(Added Pub. L. 106–65, div. A, title VII, §716(a)(1), Oct. 5, 1999, 113 Stat. 690.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VII, §716(d), Oct. 5, 1999, 113 Stat. 692, provided that: ''The amendments made by subsection (a) [enacting this section] shall take effect one year after the date of the enactment of this Act [Oct. 5, 1999].''

REPORT ON IMPLEMENTATION

Pub. L. 106–65, div. A, title VII, §716(b), Oct. 5, 1999, 113 Stat. 691, provided that:

''(1) Not later than 6 months after the date of the enactment of this Act [Oct. 5, 1999], the Secretary of Defense, in consultation with the other administering Secretaries, shall submit to Congress a report assessing the effects of the implementation of the requirements and authorities set forth in sections [sic] 1097b of title 10, United States Code (as added by subsection (a)).

''(2) The report shall include the following:

''(A) An assessment of the cost of the implementation of such requirements and authorities.

''(B) An assessment of whether the implementation of any such requirements and authorities will result in the utilization by the TRICARE program of the best industry practices with respect to the matters covered by such requirements and authorities.

''(3) In this subsection, the term 'administering Secretaries' has the meaning given that term in section 1072(3) of title 10, United States Code.''

§ 1098. Incentives for participation in cost-effective health care plans

(a) WAIVER OF LIMITATIONS AND COPAYMENTS.—Subject to subsection (b), the Secretary of Defense, with respect to any plan contracted for under the authority of section 1079 or 1086 of this title, may waive, in whole or in part—

(1) any limitation set out in the second sentence of section 1079(a) of this title; or

(2) any requirement for payment by the patient under section 1079(b) or 1086(b) of this title.

(b) DETERMINATION AND REPORT.—(1) Subject to paragraph (3), the Secretary may waive a limitation or requirement as authorized by subsection (a) if the Secretary determines that during the period of the waiver such a plan will—

(A) be less costly to the Government than a plan subject to such limitations or payment requirements; or

(B) provide better services than those provided by a plan subject to such limitations or payment requirements at no additional cost to the Government.

(2) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report with respect to a waiver under paragraph (1), including a comparison of costs of and benefits available under—

(A) a plan with respect to which the limitations and payment requirements are waived; and

(B) a plan with respect to which there is no such waiver.

(3) A waiver under paragraph (1) may not take effect until the end of the 180-day period beginning on the date on which the Secretary submits

the report required by paragraph (2) with respect to such waiver.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3895; amended Pub. L. 101–510, div. A, title XIV, §1484(h)(1), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1990—Subsec. (a). Pub. L. 101–510 substituted ''subsection (b)'' for ''subsections (b) and (c)'' in introductory provisions.

§1099. Health care enrollment system

(a) ESTABLISHMENT OF SYSTEM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish a system of health care enrollment for covered beneficiaries who reside in the United States.

(b) DESCRIPTION OF SYSTEM.—Such system shall—

(1) allow covered beneficiaries to elect a health care plan from eligible health care plans designated by the Secretary of Defense; or

(2) if necessary in order to ensure full use of facilities of the uniformed services in a geographical area, assign covered beneficiaries who reside in such area to such facilities.

(c) HEALTH CARE PLANS AVAILABLE UNDER SYSTEM.—A health care plan designated by the Secretary of Defense under the system described in subsection (a) shall provide all health care to which a covered beneficiary is entitled under this chapter. Such a plan may consist of any of the following:

(1) Use of facilities of the uniformed services.

(2) The Civilian Health and Medical Program of the Uniformed Services.

(3) Any other health care plan contracted for by the Secretary of Defense.

(4) Any combination of the plans described in paragraphs (1), (2), and (3).

(d) REGULATIONS.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3896.)

REGULATIONS

Section 701(d)(1), (2) of Pub. L. 99–661 provided that:

''(1) Except as provided in paragraph (2), the Secretary of Defense shall prescribe regulations as required by section 1099(d) of title 10, United States Code (as added by subsection (a)(1)) to implement the system of health care enrollment for covered beneficiaries—

''(A) on October 1, 1987, with respect to—

''(i) covered beneficiaries included in the demonstration project required under section 702 [10 U.S.C. 1073 note]; and

''(ii) facilities of the uniformed services located in the geographical area covered by the demonstration project; and

''(B) not later than September 30, 1990, for all other covered beneficiaries and facilities of the uniformed services.

''(2) The Secretary may not assign covered beneficiaries to facilities of the uniformed services, as authorized by section 1099(b)(2) of such title (as added by subsection (a)(1)), before October 1, 1990.''

REPORTS TO CONGRESS

Section 701(c)(1) of Pub. L. 99–661 required Secretary of Defense, not later than July 1, 1987, to submit to Congress a report detailing any plans to establish or implement a system of health care enrollment (other than as required under section 702(a)(2)(C)) under section 1099(a) of this title and the plan of the Secretary for completing implementation of such system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1097 of this title.

§1100. Defense Health Program Account

(a) ESTABLISHMENT OF ACCOUNT.—(1) There is hereby established in the Department of Defense an account to be known as the ''Defense Health Program Account''. All sums appropriated to carry out the functions of the Secretary of Defense with respect to medical and health care programs of the Department of Defense shall be appropriated to the account.

(2) Of the total amount appropriated for a fiscal year for programs and activities carried out under this chapter, the amount equal to three percent of such total amount shall remain available for obligation until the end of the following fiscal year.

(b) OBLIGATION OF AMOUNTS FROM ACCOUNT BY SECRETARY OF DEFENSE.—The Secretary of Defense may obligate or expend funds from the account for purposes of conducting programs and activities under this chapter, including contracts entered into under section 1079, 1086, 1092, or 1097 of this title, to the extent amounts are available in the account.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 99–661, div. A, title VII, §701(a)(1), Nov. 14, 1986, 100 Stat. 3896; amended Pub. L. 104–106, div. A, title VII, §735(a)–(d)(1), Feb. 10, 1996, 110 Stat. 382.)

AMENDMENTS

1996—Pub. L. 104–106, §735(d)(1), amended section catchline generally, substituting ''Defense Health Program Account'' for ''Military Health Care Account''.

Subsec. (a)(1). Pub. L. 104–106, §735(a)(1), substituted ''Defense Health Program Account'' for ''Military Health Care Account'' and ''medical and health care programs of the Department of Defense'' for ''the Civilian Health and Medical Program of the Uniformed Services''.

Subsec. (a)(2). Pub. L. 104–106, §735(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Amounts appropriated to the account shall remain available until obligated or expended under subsection (b) or (c).''

Subsec. (b). Pub. L. 104–106, §735(a)(2), substituted ''conducting programs and activities under this chapter, including contracts entered into'' for ''entering into a contract'' and inserted comma after ''title''.

Subsec. (c). Pub. L. 104–106, §735(c), redesignated subsec. (e) as (c) and struck out former subsec. (c) which

read as follows: ''ALLOCATION OF AMOUNTS IN ACCOUNT FOR PROVISION OF MEDICAL CARE BY SERVICE SECRETARIES.—(1) The Secretary of a military department shall, before the beginning of a fiscal year quarter, provide to the Secretary of Defense an estimate of the amounts necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of the Secretary for that quarter.

''(2) The Secretary of Defense shall, subject to amounts provided in advance in appropriation Acts, make available to each Secretary of a military department the amount from the account that the Secretary of Defense determines is necessary to pay for charges for benefits under the program for covered beneficiaries under the jurisdiction of such Secretary for that quarter.''

Subsec. (d). Pub. L. 104–106, § 735(c)(1), struck out subsec. (d) which read as follows: ''EXPENDITURE OF AMOUNTS FROM ACCOUNT BY SERVICE SECRETARIES.—The Secretary of a military department shall provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for a fiscal year quarter from amounts appropriated to the Secretary and from amounts from the account made available for that quarter to the Secretary by the Secretary of Defense. If the Secretary of a military department exhausts the amounts from the account made available to the Secretary for a fiscal year quarter, the Secretary shall transfer to the account from amounts appropriated to the Secretary an amount sufficient to provide medical and dental care to covered beneficiaries under the jurisdiction of the Secretary for the remainder of the fiscal year quarter.''

Subsec. (e). Pub. L. 104–106, § 735(c)(2), redesignated subsec. (e) as (c).

Subsec. (f). Pub. L. 104–106, § 735(c)(1), struck out subsec. (f) which read as follows: ''DEFINITIONS.—In this section:

''(1) The term 'account' means the Military Health Care Account established in subsection (a).

''(2) The term 'program' means the Civilian Health and Medical Program of the Uniformed Services.''

EFFECTIVE DATE

Section 701(d)(3) of Pub. L. 99–661 provided that: ''Section 1100 of such title (as added by subsection (a)(1)) shall take effect on October 1, 1987.''

REPORTS TO CONGRESS

Section 701(c)(2) of Pub. L. 99–661 required Secretary to submit to Congress not later than May 1, 1987, a report on plans of Secretary for establishing diagnosis-related groups for inpatient services under section 1100(a) of this title, and not later than May 1, 1988, a report on plans of Secretary for establishing diagnosis-related groups for outpatient services under such section.

§ 1101. Resource allocation methods: capitation or diagnosis-related groups

(a) ESTABLISHMENT OF CAPITATION OR DRG METHOD.—The Secretary of Defense, after consultation with the other administering Secretaries, shall establish by regulation the use of capitation or diagnosis-related groups as the primary criteria for allocation of resources to facilities of the uniformed services.

(b) EXCEPTION FOR MOBILIZATION MISSIONS.—Capitation or diagnosis-related groups shall not be used to allocate resources to the facilities of the uniformed services to the extent that such resources are required by such facilities for mobilization missions.

(c) CONTENT OF REGULATIONS.—Such regulations may establish a system of diagnosis-related groups similar to the system established under section 1886(d)(4) of the Social Security Act (42 U.S.C. 1395ww(d)(4)). Such regulations may include the following:

(1) A classification of inpatient treatments by diagnosis-related groups and a similar classification of outpatient treatment.

(2) A methodology for classifying specific treatments within such groups.

(3) An appropriate weighting factor for each such diagnosis-related group which reflects the relative resources used by a facility of a uniformed service with respect to treatments classified within that group compared to treatments classified within other groups.

(4) An appropriate method for calculating or estimating the annual per capita costs of providing comprehensive health care services to members of the uniformed services on active duty and covered beneficiaries.

(Added Pub. L. 99–661, div. A, title VII, § 701(a)(1), Nov. 14, 1986, 100 Stat. 3897; amended Pub. L. 100–456, div. A, title XII, § 1233(e)(1), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 103–160, div. A, title VII, § 714(a), (b)(1), Nov. 30, 1993, 107 Stat. 1690.)

AMENDMENTS

1993—Pub. L. 103–160, § 714(b)(1), substituted ''Resource allocation methods: capitation or diagnosis-related groups'' for ''Diagnosis-related groups'' as section catchline.

Subsec. (a). Pub. L. 103–160, § 714(a)(1), substituted ''Capitation or DRG Method'' for ''DRGs'' in heading and inserted ''capitation or'' before ''diagnosis-related groups'' in text.

Subsec. (b). Pub. L. 103–160, § 714(a)(2), substituted ''Capitation or diagnosis-related groups'' for ''Diagnosis-related groups''.

Subsec. (c). Pub. L. 103–160, § 714(a)(3), substituted ''may'' for ''shall'' in two places in introductory provisions and added par. (4).

1988—Subsec. (c). Pub. L. 100–456 struck out ''(1)'' before ''Such regulations'' in introductory provisions.

REGULATIONS

Pub. L. 101–189, div. A, title VII, § 724, Nov. 29, 1989, 103 Stat. 1478, as amended by Pub. L. 102–190, div. A, title VII, § 719, Dec. 5, 1991, 105 Stat. 1404, provided that: ''The regulations required by section 1101(a) of title 10, United States Code, to establish the use of diagnosis-related groups as the primary criteria for the allocation of resources to health care facilities of the uniformed services shall be prescribed to take effect not later than October 1, 1993, in the case of outpatient treatments.''

Section 701(d)(4) of Pub. L. 99–661, as amended by Pub. L. 100–180, div. A, title VII, § 724, Dec. 4, 1987, 101 Stat. 1116, provided that: ''The Secretary of Defense shall prescribe regulations as required by section 1101(a) of such title (as added by subsection (a)(1)) to take effect—

''(A) in the case of inpatient treatments, not later than October 1, 1988; and

''(B) in the case of outpatient treatments, not later than October 1, 1989.''

§ 1102. Confidentiality of medical quality assurance records: qualified immunity for participants

(a) CONFIDENTIALITY OF RECORDS.—Medical quality assurance records created by or for the Department of Defense as part of a medical quality assurance program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).

(b) PROHIBITION ON DISCLOSURE AND TESTIMONY.—(1) No part of any medical quality assurance record described in subsection (a) may be subject to discovery or admitted into evidence in any judicial or administrative proceeding, except as provided in subsection (c).

(2) A person who reviews or creates medical quality assurance records for the Department of Defense or who participates in any proceeding that reviews or creates such records may not be permitted or required to testify in any judicial or administrative proceeding with respect to such records or with respect to any finding, recommendation, evaluation, opinion, or action taken by such person or body in connection with such records except as provided in this section.

(c) AUTHORIZED DISCLOSURE AND TESTIMONY.—(1) Subject to paragraph (2), a medical quality assurance record described in subsection (a) may be disclosed, and a person referred to in subsection (b) may give testimony in connection with such a record, only as follows:

(A) To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense health care facilities or to perform monitoring, required by law, of Department of Defense health care facilities.

(B) To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

(C) To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

(D) To a hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

(E) To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

(F) To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

(G) In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in subparagraph (F), but only with respect to the subject of such proceeding.

(2) With the exception of the subject of a quality assurance action, the identity of any person receiving health care services from the Department of Defense or the identity of any other person associated with such department for purposes of a medical quality assurance program that is disclosed in a medical quality assurance record described in subsection (a) shall be deleted from that record or document before any disclosure of such record is made outside the Department of Defense. Such requirement does not apply to the release of information pursuant to section 552a of title 5.

(d) DISCLOSURE FOR CERTAIN PURPOSES.—(1) Nothing in this section shall be construed as authorizing or requiring the withholding from any person or entity aggregate statistical information regarding the results of Department of Defense medical quality assurance programs.

(2) Nothing in this section shall be construed as authority to withhold any medical quality assurance record from a committee of either House of Congress, any joint committee of Congress, or the General Accounting Office if such record pertains to any matter within their respective jurisdictions.

(e) PROHIBITION ON DISCLOSURE OF RECORD OR TESTIMONY.—A person or entity having possession of or access to a record or testimony described by this section may not disclose the contents of such record or testimony in any manner or for any purpose except as provided in this section.

(f) EXEMPTION FROM FREEDOM OF INFORMATION ACT.—Medical quality assurance records described in subsection (a) may not be made available to any person under section 552 of title 5.

(g) LIMITATION ON CIVIL LIABILITY.—A person who participates in or provides information to a person or body that reviews or creates medical quality assurance records described in subsection (a) shall not be civilly liable for such participation or for providing such information if the participation or provision of information was in good faith based on prevailing professional standards at the time the medical quality assurance program activity took place.

(h) APPLICATION TO INFORMATION IN CERTAIN OTHER RECORDS.—Nothing in this section shall be construed as limiting access to the information in a record created and maintained outside a medical quality assurance program, including a patient's medical records, on the grounds that the information was presented during meetings of a review body that are part of a medical quality assurance program.

(i) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(j) DEFINITIONS.—In this section:

(1) The term ''medical quality assurance program'' means any activity carried out before, on, or after November 14, 1986 by or for the Department of Defense to assess the quality of medical care, including activities conducted by individuals, military medical or dental treatment facility committees, or other review bodies responsible for quality assurance, credentials, infection control, patient care assessment (including treatment procedures, blood, drugs, and therapeutics), medical

records, health resources management review and identification and prevention of medical or dental incidents and risks.

(2) The term ''medical quality assurance record'' means the proceedings, records, minutes, and reports that emanate from quality assurance program activities described in paragraph (1) and are produced or compiled by the Department of Defense as part of a medical quality assurance program.

(3) The term ''health care provider'' means any military or civilian health care professional who, under regulations of a military department, is granted clinical practice privileges to provide health care services in a military medical or dental treatment facility or who is licensed or certified to perform health care services by a governmental board or agency or professional health care society or organization.

(k) PENALTY.—Any person who willfully discloses a medical quality assurance record other than as provided in this section, knowing that such record is a medical quality assurance record, shall be fined not more than $3,000 in the case of a first offense and not more than $20,000 in the case of a subsequent offense.

(Added Pub. L. 99–661, div. A, title VII, § 705(a)[(1)], Nov. 14, 1986, 100 Stat. 3902; amended Pub. L. 100–180, div. A, title XII, § 1231(5), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title VI, § 653(f), Nov. 29, 1989, 103 Stat. 1463.)

AMENDMENTS

1989—Subsec. (j)(1). Pub. L. 101–189 substituted ''November 14, 1986'' for ''the date of the enactment of this section''.

1987—Subsec. (c)(2). Pub. L. 100–180 struck out '', United States Code'' after ''title 5'' in second sentence.

EFFECTIVE DATE

Section 705(b) of Pub. L. 99–661 provided that: ''Section 1102 of title 10, United States Code, as added by subsection (a), shall apply to all records created before, on, or after the date of the enactment of this Act [Nov. 14, 1986] by or for the Department of Defense as part of a medical quality assurance program.''

§ 1103. Contracts for medical and dental care: State and local preemption

(a) OCCURRENCE OF PREEMPTION.—A law or regulation of a State or local government relating to health insurance, prepaid health plans, or other health care delivery or financing methods shall not apply to any contract entered into pursuant to this chapter by the Secretary of Defense or the administering Secretaries to the extent that the Secretary of Defense or the administering Secretaries determine that—

(1) the State or local law or regulation is inconsistent with a specific provision of the contract or a regulation promulgated by the Secretary of Defense or the administering Secretaries pursuant to this chapter; or

(2) the preemption of the State or local law or regulation is necessary to implement or administer the provisions of the contract or to achieve any other important Federal interest.

(b) EFFECT OF PREEMPTION.—In the case of the preemption under subsection (a) of a State or local law or regulation regarding financial solvency, the Secretary of Defense or the administering Secretaries shall require an independent audit of the prime contractor of each contract that is entered into pursuant to this chapter and covered by the preemption. The audit shall be performed by the Defense Contract Audit Agency.

(c) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each Territory and possession of the United States.

(Added Pub. L. 100–180, div. A, title VII, § 725(a)(1), Dec. 4, 1987, 101 Stat. 1116; amended Pub. L. 103–160, div. A, title VII, § 715(a), Nov. 30, 1993, 107 Stat. 1690.)

AMENDMENTS

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) The provisions of any contract under this chapter which relate to the nature and extent of coverage of benefits (including payments with respect to benefits) shall preempt any law of a State or local government, or any regulation issued under such a law, which relates to health insurance or plans to the extent that such law or regulation is inconsistent with such contractual provisions.

''(b) In this section, the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each territory and possession of the United States.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 715(b) of Pub. L. 103–160 provided that: ''Section 1103 of title 10, United States Code, as amended by subsection (a), shall apply with respect to any contract entered into under chapter 55 of such title before, on, or after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE

Section 725(b) of Pub. L. 100–180 provided that: ''Section 1103 of such title, as added by subsection (a), shall apply with respect to any contract entered into after October 1, 1987.''

APPLICABILITY OF PREEMPTION PROVISIONS TO CERTAIN CONTRACTS

Pub. L. 102–396, title IX, § 9032, Oct. 6, 1992, 106 Stat. 1908, as amended by Pub. L. 103–50, ch. III, § 301, July 2, 1993, 107 Stat. 250, provided in part ''That the preemption provisions of section 1103(a) of title 10, United States Code, shall not be limited to contractual provisions relating to coverage of benefits, but shall apply to all contracts entered into pursuant to this general provision, the California and Hawaii recompetition contract, and Solicitation Number MDA 906–92–R–0004 and shall preempt any and all State and local laws and regulations which relate to health insurance or health care plans''.

APPLICABILITY TO CONTRACTS ENTERED INTO PURSUANT TO SOLICITATION NUMBER MDA–903–87–R–0047

Pub. L. 100–463, title VIII, § 8078(b), Oct. 1, 1988, 102 Stat. 2270–30, provided that preemption provisions of 10 U.S.C. 1103 shall apply to contracts entered into pursuant to Solicitation Number MDA–903–87–R–0047 and shall preempt State and local laws or regulations which relate to health insurance or prepaid health care plans. Similar provisions were contained in the following prior appropriation act:

Pub. L. 100–202, § 101(b) [title VIII, § 8104(b)], Dec. 22, 1987, 101 Stat. 1329–43, 1329–81.

§1104. Sharing of health-care resources with the Department of Veterans Affairs

(a) SHARING OF HEALTH-CARE RESOURCES.—Health-care resources of the Department of Defense shall be shared with health-care resources of the Department of Veterans Affairs in accordance with section 8111 of title 38 or under section 1535 of title 31.

(b) REIMBURSEMENT FROM CHAMPUS FUNDS.—Pursuant to an agreement entered into under section 8111 of title 38 or section 1535 of title 31, the Secretary of a military department may reimburse the Secretary of Veterans Affairs from funds available for that military department for the payment of medical care provided under section 1079 or 1086 of this title.

(c) CHARGES.—The Secretary of Defense may prescribe by regulation a premium, deductible, copayment, or other charge for health care provided to covered beneficiaries under this chapter pursuant to an agreement entered into by the Secretary of a military department under section 8111 of title 38 or section 1535 of title 31.

(d) PROVISION OF SERVICES DURING WAR OR NATIONAL EMERGENCY.—Members of the armed forces on active duty during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict, may be provided health-care services by the Department of Veterans Affairs in accordance with section 8111A of title 38.

(Added Pub. L. 101–189, div. A, title VII, §722(a), Nov. 29, 1989, 103 Stat. 1477; amended Pub. L. 102–484, div. A, title X, §1052(14), Oct. 23, 1992, 106 Stat. 2499; Pub. L. 103–35, title II, §201(c)(1), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title VII, §721(b), Dec. 2, 2002, 116 Stat. 2595.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''shall'' for ''may''.

1993—Subsecs. (a) to (c). Pub. L. 103–35, §201(c)(1)(A), substituted ''section 8111 of title 38'' for ''section 8011 of title 38''.

Subsec. (d). Pub. L. 103–35, §201(c)(1)(B), substituted ''section 8111A of title 38'' for ''section 8011A of title 38''.

1992—Subsecs. (a) to (c). Pub. L. 102–484, §1052(14)(A), substituted ''section 8011 of title 38'' for ''section 5011 of title 38''.

Subsec. (d). Pub. L. 102–484, §1052(14)(B), substituted ''section 8011A of title 38'' for ''section 5011A of title 38''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–314 effective Oct. 1, 2003, see section 721(c) of Pub. L. 107–314, set out as a note under section 8111 of Title 38, Veterans' Benefits.

§1105. Specialized treatment facility program

(a) PROGRAM AUTHORIZED.—The Secretary of Defense may conduct a specialized treatment facility program pursuant to regulations prescribed by the Secretary of Defense. The Secretary shall consult with the other administering Secretaries in prescribing regulations for the program and in conducting the program.

(b) FACILITIES AUTHORIZED TO BE USED.—Under the specialized treatment facility program, the Secretary may designate health care facilities of the uniformed services and civilian health care facilities as specialized treatment facilities.

(c) WAIVER OF NONEMERGENCY HEALTH CARE RESTRICTION.—Under the specialized treatment facility program, the Secretary may waive, with regard to the provision of a particular service, the 40-mile radius restriction set forth in section 1079(a)(7) of this title if the Secretary determines that the use of a different geographical area restriction will result in a more cost-effective provision of the service.

(d) CIVILIAN FACILITY SERVICE AREA.—For purposes of the specialized treatment facility program, the service area of a civilian health care facility designated pursuant to subsection (b) shall be comparable in size to the service areas of facilities of the uniformed services.

(e) ISSUANCE OF NONAVAILABILITY OF HEALTH CARE STATEMENTS.—A covered beneficiary who resides within the service area of a specialized treatment facility designated under the specialized treatment facility program may be required to obtain a nonavailability of health care statement in the case of a specialized service offered by the facility in order for the covered beneficiary to receive the service outside of the program.

(f) PAYMENT OF COSTS RELATED TO CARE IN SPECIALIZED TREATMENT FACILITIES.—(1) Subject to paragraph (2), in connection with the treatment of a covered beneficiary under the specialized treatment facility program, the Secretary may provide the following benefits:

(A) Full or partial reimbursement of a member of the uniformed services for the reasonable expenses incurred by the member in transporting a covered beneficiary to or from a health care facility of the uniformed services or a civilian health care facility at which specialized health care services are provided pursuant to this chapter.

(B) Full or partial reimbursement of a person (including a member of the uniformed services) for the reasonable expenses of transportation, temporary lodging, and meals (not to exceed a per diem rate determined in accordance with implementing regulations) incurred by such person in accompanying a covered beneficiary as a nonmedical attendant to a health care facility referred to in subparagraph (A).

(C) In-kind transportation, lodging, or meals instead of reimbursements under subparagraph (A) or (B) for transportation, lodging, or meals, respectively.

(2) The Secretary may make reimbursements for or provide transportation, lodging, and meals under paragraph (1) in the case of a covered beneficiary only if the total cost to the Department of Defense of doing so and of providing the health care in such case is less than the cost to the Department of providing the health care to the covered beneficiary by other means authorized under this chapter.

(g) COVERED BENEFICIARY DEFINED.—In this section, the term ''covered beneficiary'' means a person covered under section 1079 or 1086 of this title.

(Added Pub. L. 102–190, div. A, title VII, §715(a), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L.

103–160, div. A, title VII, § 716(a)(1), Nov. 30, 1993, 107 Stat. 1691; Pub. L. 104–106, div. A, title VII, § 706, Feb. 10, 1996, 110 Stat. 373.)

AMENDMENTS

1996—Subsec. (h). Pub. L. 104–106 struck out subsec. (h) which read as follows: ''EXPIRATION OF PROGRAM.—The Secretary may not carry out the specialized treatment facility program authorized by this section after September 30, 1995.''

1993—Pub. L. 103–160 substituted ''Specialized treatment facility program'' for ''Issuance of nonavailability of health care statements'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''In determining whether to issue a nonavailability of health care statement for any person entitled to health care in facilities of the uniformed services under this chapter, the commanding officer of such a facility may consider the availability of health care services for such person pursuant to any contract or agreement entered into under this chapter for the provision of health care services within the area served by that facility.''

§ 1106. Submittal of claims: standard form; time limits

(a) STANDARD FORM.—The Secretary of Defense, after consultation with the other administering Secretaries, shall prescribe by regulation a standard form for the submission of claims for the payment of health care services provided under this chapter.

(b) TIME FOR SUBMISSION.—A claim for payment for services provided under this chapter shall be submitted as provided in such regulations not later than one year after the services are provided.

(Added Pub. L. 102–190, div. A, title VII, § 716(a)(1), Dec. 5, 1991, 105 Stat. 1403; amended Pub. L. 105–85, div. A, title VII, § 738(a), Nov. 18, 1997, 111 Stat. 1815.)

AMENDMENTS

1997—Pub. L. 105–85 substituted '': standard form; time limits'' for ''under CHAMPUS'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) SUBMITTAL TO CLAIMS PROCESSING OFFICE.—Each provider of services under the Civilian Health and Medical Program of the Uniformed Services shall submit claims for payment for such services directly to the claims processing office designated pursuant to regulations prescribed under subsection (b). A claim for payment for services shall be submitted in a standard form (as prescribed in the regulations) not later than one year after the services are provided.

''(b) REGULATIONS.—The regulations required by subsection (a) shall be prescribed by the Secretary of Defense after consultation with the other administering Secretaries.

''(c) WAIVER.—The Secretary of Defense may waive the requirements of subsection (a) if the Secretary determines that the waiver is necessary in order to ensure adequate access for covered beneficiaries to health care services under this chapter.''

REGULATIONS

Section 716(b) of Pub. L. 102–190 provided that: ''The regulations required by section 1106 of title 10, United States Code (as added by subsection (a)), shall be prescribed to take effect not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

ESTABLISHMENT OF APPEALS PROCESS FOR CLAIMCHECK DENIALS

Pub. L. 105–261, div. A, title VII, § 714, Oct. 17, 1998, 112 Stat. 2060, provided that:

''(a) ESTABLISHMENT OF APPEALS PROCESS.—Not later than January 1, 1999, the Secretary of Defense shall establish an appeals process in cases of denials through the ClaimCheck computer software system (or any other claims processing system that may be used by the Secretary) of claims by civilian providers for payment for health care services provided under the TRICARE program.

''(b) REPORT.—Not later than March 1, 1999, the Secretary shall submit to Congress a report on the implementation of this section.''

NATIONAL CLAIMS PROCESSING SYSTEM FOR CHAMPUS

Pub. L. 102–484, div. A, title VII, § 711, Oct. 23, 1992, 106 Stat. 2433, provided that:

''(a) CLAIMS PROCESSING SYSTEM REQUIRED.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, shall provide by contract for the operation of a claims processing system to be known as the 'National Claims Processing System for CHAMPUS'. The Secretary may procure the system in installments, including the use of incremental modules. The system, including completion and integration of all modules, shall be in full operation not later than seven years after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary shall use competitive procedures for entering into any contract or contracts under paragraph (1).

''(b) SYSTEM FUNCTIONS.—The claims processing system shall include at least the following functions:

''(1) The maintenance in electronic or written form, or both, of appropriate information on health care services provided to covered beneficiaries by or through third parties under CHAMPUS or any alternative CHAMPUS program or demonstration project. Such information shall include—

''(A) the services to which such beneficiaries are entitled or eligible under an insurance plan, medical service plan, or health plan under CHAMPUS;

''(B) the insurers, medical services, or health plans that provide such services; and

''(C) the services available to beneficiaries under each insurance plan, medical service plan, or health plan, and the payment required of the beneficiaries and the insurer, medical service, or health plan for such services under the plan.

''(2) The ability to receive in electronic or written form claims submitted by insurers, medical services, and health plans for services provided to covered beneficiaries.

''(3) The ability to process, adjudicate, and pay (by electronic or other means) such claims.

''(4) The provision of the information described in paragraphs (1) and (2) and information on the matters referred to in paragraph (3) by telephone, electronic, or other means to covered beneficiaries, insurers, medical services, and health plans.

''(c) CONSISTENCY WITH MEDICARE CLAIMS REQUIREMENTS.—The Secretary of Defense shall ensure, to the maximum extent practicable, that claims submitted to the claims processing system conform to the requirements applicable to claims submitted to the Secretary of Health and Human Services with respect to medical care provided under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(d) IDENTIFICATION CARD.—The Secretary of Defense shall take appropriate actions to determine whether the use by covered beneficiaries of a standard identification card containing electronically readable information will enhance the capability of the claims processing center to carry out the activities set forth in subsection (b).

''(e) TRANSITION TO SYSTEM.—After January 1, 1996, any modification or acquisition related to claims processing systems operations in the Office of the Civilian Health and Medical Program of the Uniformed Services shall contain provisions to transfer such operations to the claims processing system required by subsection (a). After January 1, 1999, any renewal or acquisition

for fiscal intermediary services (including coordinated care implementations in military hospitals and clinics) shall contain provisions to transfer claims processing systems operations related to such fiscal intermediary services to the claims processing system required by subsection (a).

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'administering Secretaries' has the meaning given that term in paragraph (3) of section 1072 of title 10, United States Code.

''(2) The term 'CHAMPUS' means the Civilian Health and Medical Program of the Uniformed Services, as defined in paragraph (4) of such section.

''(3) The term 'covered beneficiary' has the meaning given that term in paragraph (5) of such section.''

§1107. Notice of use of an investigational new drug or a drug unapproved for its applied use

(a) NOTICE REQUIRED.—(1) Whenever the Secretary of Defense requests or requires a member of the armed forces to receive an investigational new drug or a drug unapproved for its applied use, the Secretary shall provide the member with notice containing the information specified in subsection (d).

(2) The Secretary shall also ensure that health care providers who administer an investigational new drug or a drug unapproved for its applied use, or who are likely to treat members who receive such a drug, receive the information required to be provided under paragraphs (3) and (4) of subsection (d).

(b) TIME OF NOTICE.—The notice required to be provided to a member under subsection (a)(1) shall be provided before the investigational new drug or drug unapproved for its applied use is first administered to the member.

(c) FORM OF NOTICE.—The notice required under subsection (a)(1) shall be provided in writing.

(d) CONTENT OF NOTICE.—The notice required under subsection (a)(1) shall include the following:

(1) Clear notice that the drug being administered is an investigational new drug or a drug unapproved for its applied use.

(2) The reasons why the investigational new drug or drug unapproved for its applied use is being administered.

(3) Information regarding the possible side effects of the investigational new drug or drug unapproved for its applied use, including any known side effects possible as a result of the interaction of such drug with other drugs or treatments being administered to the members receiving such drug.

(4) Such other information that, as a condition of authorizing the use of the investigational new drug or drug unapproved for its applied use, the Secretary of Health and Human Services may require to be disclosed.

(e) RECORDS OF USE.—The Secretary of Defense shall ensure that the medical records of members accurately document—

(1) the receipt by members of any investigational new drug or drug unapproved for its applied use; and

(2) the notice required by subsection (a)(1).

(f) LIMITATION AND WAIVER.—(1) In the case of the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation, the requirement that the member provide prior consent to receive the drug in accordance with the prior consent requirement imposed under section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)) may be waived only by the President. The President may grant such a waiver only if the President determines, in writing, that obtaining consent—

(A) is not feasible;

(B) is contrary to the best interests of the member; or

(C) is not in the interests of national security.

(2) In making a determination to waive the prior consent requirement on a ground described in subparagraph (A) or (B) of paragraph (1), the President shall apply the standards and criteria that are set forth in the relevant FDA regulations for a waiver of the prior consent requirement on that ground.

(3) The Secretary of Defense may request the President to waive the prior consent requirement with respect to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the armed forces in connection with the member's participation in a particular military operation. With respect to any such administration—

(A) the Secretary may not delegate to any other official the authority to request the President to waive the prior consent requirement for the Department of Defense; and

(B) if the President grants the requested waiver, the Secretary shall submit to the chairman and ranking minority member of each congressional defense committee a notification of the waiver, together with the written determination of the President under paragraph (1) and the Secretary's justification for the request or requirement under subsection (a) for the member to receive the drug covered by the waiver.

(4) In this subsection:

(A) The term ''relevant FDA regulations'' means the regulations promulgated under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(B) The term ''prior consent requirement'' means the requirement included in the relevant FDA regulations pursuant to section 505(i)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)(4)).

(C) The term ''congressional defense committee'' means each of the following:

(i) The Committee on Armed Services and the Committee on Appropriations of the Senate.

(ii) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(g) DEFINITIONS.—In this section:

(1) The term ''investigational new drug'' means a drug covered by section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)).

(2) The term ''drug unapproved for its applied use'' means a drug administered for a use

not described in the approved labeling of the drug under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355).

(Added Pub. L. 105–85, div. A, title VII, §766(a), Nov. 18, 1997, 111 Stat. 1827; amended Pub. L. 105–261, div. A, title VII, §731(a)(1), (b), Oct. 17, 1998, 112 Stat. 2070, 2071; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (f)(4)(C)(ii). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1998—Subsec. (b). Pub. L. 105–261, §731(b)(1), struck out '', if practicable, but in no case later than 30 days after the drug is first administered to the member'' after ''administered to the member''.

Subsec. (c). Pub. L. 105–261, §731(b)(2), struck out ''unless the Secretary of Defense determines that the use of written notice is impractical because of the number of members receiving the investigational new drug or drug unapproved for its applied use, time constraints, or similar reasons. If the Secretary provides notice under subsection (a)(1) in a form other than in writing, the Secretary shall submit to Congress a report describing the notification method used and the reasons for the use of the alternative method'' after ''provided in writing''.

Subsecs. (f), (g). Pub. L. 105–261, §731(a)(1), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VII, §731(a)(2), Oct. 17, 1998, 112 Stat. 2071, provided that: ''Subsection (f) of section 1107 of title 10, United States Code (as added by paragraph (1)), shall apply to the administration of an investigational new drug or a drug unapproved for its applied use to a member of the Armed Forces in connection with the member's participation in a particular military operation on or after the date of the enactment of this Act [Oct. 17, 1998].''

WAIVERS OF REQUIREMENT FOR PRIOR CONSENT GRANTED BEFORE OCTOBER 17, 1998

Pub. L. 105–261, div. A, title VII, §731(a)(3), Oct. 17, 1998, 112 Stat. 2071, provided that: ''A waiver of the requirement for prior consent imposed under the regulations required under paragraph (4) of section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)(4)] (or under any antecedent provision of law or regulations) that has been granted under that section (or antecedent provision of law or regulations) before the date of the enactment of this Act [Oct. 17, 1998] for the administration of a drug to a member of the Armed Forces in connection with the member's participation in a particular military operation may be applied in that case after that date only if—

''(A) the Secretary of Defense personally determines that the waiver is justifiable on each ground on which the waiver was granted;

''(B) the President concurs in that determination in writing; and

''(C) the Secretary submits to the chairman and ranking minority member of each congressional committee referred to in section 1107(f)(4)(C) of title 10, United States Code (as added by paragraph (1))—

''(i) a notification of the waiver;

''(ii) the President's written concurrence; and

''(iii) the Secretary's justification for the request or for the requirement under subsection 1107(a) of such title for the member to receive the drug covered by the waiver.''

EX. ORD. NO. 13139. IMPROVING HEALTH PROTECTION OF MILITARY PERSONNEL PARTICIPATING IN PARTICULAR MILITARY OPERATIONS

Ex. Ord. No. 13139, Sept. 30, 1999, 64 F.R. 54175, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1107 of title 10, United States Code, and in order to provide the best health protection to military personnel participating in particular military operations, it is hereby ordered as follows:

SECTION 1. *Policy*. Military personnel deployed in particular military operations could potentially be exposed to a range of chemical, biological, and radiological weapons as well as diseases endemic to an area of operations. It is the policy of the United States Government to provide our military personnel with safe and effective vaccines, antidotes, and treatments that will negate or minimize the effects of these health threats.

SEC. 2. *Administration of Investigational New Drugs to Members of the Armed Forces*.

(a) The Secretary of Defense (Secretary) shall collect intelligence on potential health threats that might be encountered in an area of operations. The Secretary shall work together with the Secretary of Health and Human Services to ensure appropriate countermeasures are developed. When the Secretary considers an investigational new drug or a drug unapproved for its intended use (investigational drug) to represent the most appropriate countermeasure, it shall be studied through scientifically based research and development protocols to determine whether it is safe and effective for its intended use.

(b) It is the expectation that the United States Government will administer products approved for their intended use by the Food and Drug Administration (FDA). However, in the event that the Secretary considers a product to represent the most appropriate countermeasure for diseases endemic to the area of operations or to protect against possible chemical, biological, or radiological weapons, but the product has not yet been approved by the FDA for its intended use, the product may, under certain circumstances and strict controls, be administered to provide potential protection for the health and well-being of deployed military personnel in order to ensure the success of the military operation. The provisions of 21 CFR Part 312 contain the FDA requirements for investigational new drugs.

SEC. 3. *Informed Consent Requirements and Waiver Provisions*.

(a) Before administering an investigational drug to members of the Armed Forces, the Department of Defense (DoD) must obtain informed consent from each individual unless the Secretary can justify to the President a need for a waiver of informed consent in accordance with 10 U.S.C. 1107(f). Waivers of informed consent will be granted only when absolutely necessary.

(b) In accordance with 10 U.S.C. 1107(f), the President may waive the informed consent requirement for the administration of an investigational drug to a member of the Armed Forces in connection with the member's participation in a particular military operation, upon a written determination by the President that obtaining consent:

(1) is not feasible;

(2) is contrary to the best interests of the member; or

(3) is not in the interests of national security.

(c) In making a determination to waive the informed consent requirement on a ground described in subsection (b)(1) or (b)(2) of this section, the President is required by law to apply the standards and criteria set forth in the relevant FDA regulations, 21 CFR 50.23(d). In determining a waiver based on subsection (b)(3) of this section, the President will also consider the standards and criteria of the relevant FDA regulations.

(d) The Secretary may request that the President waive the informed consent requirement with respect to the administration of an investigational drug. The Secretary may not delegate the authority to make this waiver request. At a minimum, the waiver request shall contain:

(1) A full description of the threat, including the potential for exposure. If the threat is a chemical, biological, or radiological weapon, the waiver request shall contain an analysis of the probability the weapon will be used, the method or methods of delivery, and the likely magnitude of its affect on an exposed individual.

(2) Documentation that the Secretary has complied with 21 CFR 50.23(d). This documentation shall include:

(A) A statement that certifies and a written justification that documents that each of the criteria and standards set forth in 21 CFR 50.23(d) has been met; or

(B) If the Secretary finds it highly impracticable to certify that the criteria and standards set forth in 21 CFR 50.23(d) have been fully met because doing so would significantly impair the Secretary's ability to carry out the particular military mission, a written justification that documents which criteria and standards have or have not been met, explains the reasons for failing to meet any of the criteria and standards, and provides additional justification why a waiver should be granted solely in the interests of national security.

(3) Any additional information pertinent to the Secretary's determination, including the minutes of the Institutional Review Board's (IRB) deliberations and the IRB members' voting record.

(e) The Secretary shall develop the waiver request in consultation with the FDA.

(f) The Secretary shall submit the waiver request to the President and provide a copy to the Commissioner of the FDA (Commissioner).

(g) The Commissioner shall expeditiously review the waiver request and certify to the Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Science and Technology (APST) whether the standards and criteria of the relevant FDA regulations have been adequately addressed and whether the investigational new drug protocol may proceed subject to a decision by the President on the informed consent waiver request. FDA shall base its decision on, and the certification shall include an analysis describing, the extent and strength of the evidence on the safety and effectiveness of the investigational new drug in relation to the medical risk that could be encountered during the military operation.

(h) The APNSA and APST will prepare a joint advisory opinion as to whether the waiver of informed consent should be granted and will forward it, along with the waiver request and the FDA certification to the President.

(i) The President will approve or deny the waiver request and will provide written notification of the decision to the Secretary and the Commissioner.

SEC. 4. *Required Action After Waiver is Issued*. (a) Following a Presidential waiver under 10 U.S.C. 1107(f), the DoD offices responsible for implementing the waiver, DoD's Office of the Inspector General, and the FDA, consistent with its regulatory role, will conduct an ongoing review and monitoring to assess adherence to the standards and criteria under 21 CFR 50.23(d) and this order. The responsible DoD offices shall also adhere to any periodic reporting requirements specified by the President at the time of the waiver approval. The Secretary shall submit the findings to the President and provide a copy to the Commissioner.

(b) The Secretary shall, as soon as practicable, make the congressional notifications required by 10 U.S.C. 1107(f)(2)(B).

(c) The Secretary shall, as soon as practicable and consistent with classification requirements, issue a public notice in the Federal Register describing each waiver of informed consent determination and a summary of the most updated scientific information on the products used, as well as other information the President determines is appropriate.

(d) The waiver will expire at the end of 1 year (or an alternative time period not to exceed 1 year, specified by the President at the time of approval), or when the Secretary informs the President that the particular military operation creating the need for the use of the investigational drug has ended, whichever is earlier. The President may revoke the waiver based on changed circumstances or for any other reason. If the Secretary seeks to renew a waiver prior to its expiration, the Secretary must submit to the President an updated request, specifically identifying any new information available relevant to the standards and criteria under 21 CFR 50.23(d). To request to renew a waiver, the Secretary must satisfy the criteria for a waiver as described in section 3 of this order.

(e) The Secretary shall notify the President and the Commissioner if the threat countered by the investigational drug changes significantly or if significant new information on the investigational drug is received.

SEC. 5. *Training for Military Personnel*. (a) The DoD shall provide ongoing training and health risk communication on the requirements of using an investigational drug in support of a military operation to all military personnel, including those in leadership positions, during chemical and biological warfare defense training and other training, as appropriate. This ongoing training and health risk communication shall include general information about 10 U.S.C. 1107 and 21 CFR 50.23(d).

(b) If the President grants a waiver under 10 U.S.C. 1107(f), the DoD shall provide training to all military personnel conducting the waiver protocol and health risk communication to all military personnel receiving the specific investigational drug to be administered prior to its use.

(c) The Secretary shall submit the training and health risk communication plans as part of the investigational new drug protocol submission to the FDA and the reviewing IRB. Training and health risk communication shall include at a minimum:

(1) The basis for any determination by the President that informed consent is not or may not be feasible;

(2) The means for tracking use and adverse effects of the investigational drug;

(3) The benefits and risks of using the investigational drug; and

(4) A statement that the investigational drug is not approved (or not approved for the intended use).

(d) The DoD shall keep operational commanders informed of the overall requirements of successful protocol execution and their role, with the support of medical personnel, in ensuring successful execution of the protocol.

SEC. 6. *Scope*. (a) This order applies to the consideration and Presidential approval of a waiver of informed consent under 10 U.S.C. 1107 and does not apply to other FDA regulations.

(b) This order is intended only to improve the internal management of the Federal Government. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

WILLIAM J. CLINTON.

§ 1108. Health care coverage through Federal Employees Health Benefits program: demonstration project

(a) FEHBP OPTION DEMONSTRATION.—The Secretary of Defense, after consulting with the other administering Secretaries, shall enter into an agreement with the Office of Personnel Management to conduct a demonstration project (in this section referred to as the ''demonstration project'') under which eligible beneficiaries described in subsection (b) and residing within one of the areas covered by the demonstration project may enroll in health benefits plans of-

fered through the Federal Employees Health Benefits program under chapter 89 of title 5. The number of eligible beneficiaries and family members of such beneficiaries under subsection (b)(2) who may be enrolled in health benefits plans during the enrollment period under subsection (d)(2) may not exceed 66,000.

(b) ELIGIBLE BENEFICIARIES; COVERAGE.—(1) An eligible beneficiary under this subsection is—

(A) a member or former member of the uniformed services described in section 1074(b) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.);

(B) an individual who is an unremarried former spouse of a member or former member described in section 1072(2)(F) or 1072(2)(G));

(C) an individual who is—

(i) a dependent of a deceased member or former member described in section 1076(b) or 1076(a)(2)(B) of this title or of a member who died while on active duty for a period of more than 30 days; and

(ii) a member of family as defined in section 8901(5) of title 5; or

(D) an individual who is—

(i) a dependent of a living member or former member described in section 1076(b)(1) of this title who is entitled to hospital insurance benefits under part A of title XVIII of the Social Security Act, regardless of the member's or former member's eligibility for such hospital insurance benefits; and

(ii) a member of family as defined in section 8901(5) of title 5.

(2) Eligible beneficiaries may enroll in a Federal Employees Health Benefit plan under chapter 89 of title 5 under this section for self-only coverage or for self and family coverage which includes any dependent of the member or former member who is a family member for purposes of such chapter.

(3) A person eligible for coverage under this subsection shall not be required to satisfy any eligibility criteria specified in chapter 89 of title 5 (except as provided in paragraph (1)(C) or (1)(D)) as a condition for enrollment in health benefits plans offered through the Federal Employees Health Benefits program under the demonstration project.

(4) For purposes of determining whether an individual is a member of family under paragraph (5) of section 8901 of title 5 for purposes of paragraph (1)(C) or (1)(D), a member or former member described in section 1076(b) or 1076(a)(2)(B) of this title shall be deemed to be an employee under such section.

(5) An eligible beneficiary who is eligible to enroll in the Federal Employees Health Benefits program as an employee under chapter 89 of title 5 is not eligible to enroll in a Federal Employees Health Benefits plan under this section.

(c) AREA OF DEMONSTRATION PROJECT.—The Secretary of Defense and the Director of the Office of Personnel Management shall jointly identify and select the geographic areas in which the demonstration project will be conducted. The Secretary and the Director shall establish at least six, but not more than ten, such demonstration areas. In establishing the areas, the Secretary and Director shall include—

(1) an area that includes the catchment area of one or more military medical treatment facilities;

(2) an area that is not located in the catchment area of a military medical treatment facility;

(3) an area in which there is a Medicare Subvention Demonstration project area under section 1896 of title XVIII of the Social Security Act (42 U.S.C. 1395ggg); and

(4) not more than one area for each TRICARE region.

(d) DURATION OF DEMONSTRATION PROJECT.—(1) The Secretary of Defense shall conduct the demonstration project during three contract years under the Federal Employees Health Benefits program.

(2) Eligible beneficiaries shall, as provided under the agreement pursuant to subsection (a), be permitted to enroll in the demonstration project during an open enrollment period for the year 2000 (conducted in the fall of 1999). The demonstration project shall terminate on December 31, 2002.

(e) PROHIBITION AGAINST USE OF MTFS AND ENROLLMENT UNDER TRICARE.—Covered beneficiaries under this chapter who are provided coverage under the demonstration project shall not be eligible to receive care at a military medical treatment facility or to enroll in a heath care plan under the TRICARE program.

(f) TERM OF ENROLLMENT IN PROJECT.—(1) Subject to paragraphs (2) and (3), the period of enrollment of an eligible beneficiary who enrolls in the demonstration project during the open enrollment period for the year 2000 shall be three years unless the beneficiary disenrolls before the termination of the project.

(2) A beneficiary who elects to enroll in the project, and who subsequently discontinues enrollment in the project before the end of the period described in paragraph (1), shall not be eligible to reenroll in the project.

(3) An eligible beneficiary enrolled in a Federal Employees Health Benefits plan under this section may change health benefits plans and coverage in the same manner as any other Federal Employees Health Benefits program beneficiary may change such plans.

(g) EFFECT OF CANCELLATION.—The cancellation by an eligible beneficiary of coverage under the Federal Employee Health Benefits program shall be irrevocable during the term of the demonstration project.

(h) SEPARATE RISK POOLS; CHARGES.—(1) The Director of the Office of Personnel Management shall require health benefits plans under chapter 89 of title 5 that participate in the demonstration project to maintain a separate risk pool for purposes of establishing premium rates for eligible beneficiaries who enroll in such a plan in accordance with this section.

(2) The Director shall determine total subscription charges for self only or for family coverage for eligible beneficiaries who enroll in a health benefits plan under chapter 89 of title 5 in accordance with this section. The subscription charges shall include premium charges paid to the plan and amounts described in section

8906(c) of title 5 for administrative expenses and contingency reserves.

(i) GOVERNMENT CONTRIBUTIONS.—The Secretary of Defense shall be responsible for the Government contribution for an eligible beneficiary who enrolls in a health benefits plan under chapter 89 of title 5 in accordance with this section, except that the amount of the contribution may not exceed the amount of the Government contribution which would be payable if the electing beneficiary were an employee (as defined for purposes of such chapter) enrolled in the same health benefits plan and level of benefits.

(j) REPORT REQUIREMENTS.—(1) The Secretary of Defense and the Director of the Office of Personnel Management shall jointly submit to Congress two reports containing the information described in paragraph (2). The first report shall be submitted not later than the date that is 15 months after the date that the Secretary begins to implement the demonstration project. The second report shall be submitted not later than December 31, 2002.

(2) The reports required by paragraph (1) shall include the following:

(A) Information on the number of eligible beneficiaries who elect to participate in the demonstration project.

(B) An analysis of the percentage of eligible beneficiaries who participate in the demonstration project as compared to the percentage of covered beneficiaries under this chapter who elect to enroll in a health care plan under such chapter.

(C) Information on eligible beneficiaries who elect to participate in the demonstration project and did not have Medicare Part B coverage before electing to participate in the project.

(D) An analysis of the enrollment rates and cost of health services provided to eligible beneficiaries who elect to participate in the demonstration project as compared with similarly situated enrollees in the Federal Employees Health Benefits program under chapter 89 of title 5.

(E) An analysis of how the demonstration project affects the accessibility of health care in military medical treatment facilities, and a description of any unintended effects on the treatment priorities in those facilities in the demonstration area.

(F) An analysis of any problems experienced by the Department of Defense in managing the demonstration project.

(G) A description of the effects of the demonstration project on medical readiness and training of the Armed Forces at military medical treatment facilities located in the demonstration area, and a description of the probable effects that making the project permanent would have on the medical readiness and training.

(H) An examination of the effects that the demonstration project, if made permanent, would be expected to have on the overall budget of the Department of Defense, the budget of the Office of Personnel Management, and the budgets of individual military medical treatment facilities.

(I) An analysis of whether the demonstration project affects the cost to the Department of Defense of prescription drugs or the accessibility, availability, and cost of such drugs to eligible beneficiaries.

(J) Any additional information that the Secretary of Defense or the Director of the Office of Personnel Management considers appropriate to assist Congress in determining the viability of expanding the project to all Medicare-eligible members of the uniformed services and their dependents.

(K) Recommendations on whether eligible beneficiaries—

(i) should be given more than one chance to enroll in the demonstration project under this section;

(ii) should be eligible to enroll in the project only during the first year following the date that the eligible beneficiary becomes eligible to receive hospital insurance benefits under part A of title XVIII of the Social Security Act; or

(iii) should be eligible to enroll in the project only during the 2-year period following the date on which the beneficiary first becomes eligible to enroll in the project.

(k) COMPTROLLER GENERAL REPORT.—Not later than December 31, 2002, the Comptroller General shall submit to Congress a report addressing the same matters required to be addressed under subsection (j)(2). The report shall describe any limitations with respect to the data contained in the report as a result of the size and design of the demonstration project.

(*l*) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

(2) In applying paragraph (1)—

(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to 36 months; and

(B) the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Defense in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 105–261, div. A, title VII, §721(a)(1), Oct. 17, 1998, 112 Stat. 2061.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(1)(A), (D)(i), (j)(2)(K)(ii), and (*l*)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title XVIII of the Act is classified generally to Part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Section 1882 of the Act is classified to section 1395ss of Title 42. For com-

plete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

COMPREHENSIVE EVALUATION OF IMPLEMENTATION OF DEMONSTRATION PROJECTS AND TRICARE PHARMACY REDESIGN

Pub. L. 105–261, div. A, title VII, §724, Oct. 17, 1998, 112 Stat. 2069, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, provided that: ''Not later than March 31, 2003, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing a comprehensive comparative analysis of the FEHBP demonstration project conducted under section 1108 of title 10, United States Code (as added by section 721), the TRICARE Senior Supplement under section 722 [10 U.S.C. 1073 note], and the redesign of the TRICARE pharmacy system under section 723 [10 U.S.C. 1073 note]. The comprehensive analysis shall incorporate the findings of the evaluation submitted under section 723(c) and the report submitted under subsection (j) of such section 1108.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 8905, 8906, 8909.

§ 1109. Organ and tissue donor program

(a) RESPONSIBILITIES OF THE SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that the advanced systems developed for recording armed forces members' personal data and information (such as the SMARTCARD, MEDITAG, and Personal Information Carrier) include the capability to record organ and tissue donation elections.

(b) RESPONSIBILITIES OF THE SECRETARIES OF THE MILITARY DEPARTMENTS.—The Secretaries of the military departments shall ensure that—

(1) appropriate information about organ and tissue donation is provided—

(A) to each officer candidate during initial training; and

(B) to each recruit—

(i) after completion by the recruit of basic training; and

(ii) before arrival of the recruit at the first duty assignment of the recruit;

(2) members of the armed forces are given recurring, specific opportunities to elect to be organ or tissue donors during service in the armed forces and upon retirement; and

(3) members of the armed forces electing to be organ or tissue donors are encouraged to advise their next of kin concerning the donation decision and any subsequent change of that decision.

(c) RESPONSIBILITIES OF THE SURGEONS GENERAL OF THE MILITARY DEPARTMENTS.—The Surgeons General of the military departments shall ensure that—

(1) appropriate training is provided to enlisted and officer medical personnel to facilitate the effective operation of organ and tissue donation activities under garrison conditions and, to the extent possible, under operational conditions; and

(2) medical logistical activities can, to the extent possible without jeopardizing operational requirements, support an effective organ and tissue donation program.

(Added Pub. L. 105–261, div. A, title VII, §741(b)(1), Oct. 17, 1998, 112 Stat. 2073; amended Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(8)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 struck out ''(1)'' before ''The Secretaries'' in introductory provisions.

FINDINGS

Pub. L. 105–261, div. A, title VII, §741(a), Oct. 17, 1998, 112 Stat. 2073, provided that: ''Congress makes the following findings:

''(1) Organ and tissue transplantation is one of the most remarkable medical success stories in the history of medicine.

''(2) Each year, the number of people waiting for organ or tissue transplantation increases. It is estimated that there are approximately 39,000 patients, ranging in age from babies to those in retirement, awaiting transplants of kidneys, hearts, livers, and other solid organs.

''(3) The Department of Defense has made significant progress in increasing the awareness of the importance of organ and tissue donations among members of the Armed Forces.

''(4) The inclusion of organ and tissue donor elections in the Defense Enrollment Eligibility Reporting System (DEERS) central database represents a major step in ensuring that organ and tissue donor elections are a matter of record and are accessible in a timely manner.''

REPORT ON IMPLEMENTATION

Pub. L. 105–261, div. A, title VII, §741(c), Oct. 17, 1998, 112 Stat. 2074, as amended by Pub. L. 106–65, div. A, title X, §1067(3), Oct. 5, 1999, 113 Stat. 774, provided that: ''Not later than September 1, 1999, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the implementation of section 1109 of title 10, United States Code (as added by subsection (b)).''

§ 1110. Anthrax vaccine immunization program; procedures for exemptions and monitoring reactions

(a) PROCEDURES FOR MEDICAL AND ADMINISTRATIVE EXEMPTIONS.—(1) The Secretary of Defense shall establish uniform procedures under which members of the armed forces may be exempted from participating in the anthrax vaccine immunization program for either administrative or medical reasons.

(2) The Secretaries of the military departments shall provide for notification of all members of the armed forces of the procedures established pursuant to paragraph (1).

(b) SYSTEM FOR MONITORING ADVERSE REACTIONS.—(1) The Secretary shall establish a system for monitoring adverse reactions of members of the armed forces to the anthrax vaccine. That system shall include the following:

(A) Independent review of Vaccine Adverse Event Reporting System reports.

(B) Periodic surveys of personnel to whom the vaccine is administered.

(C) A continuing longitudinal study of a preidentified group of members of the armed forces (including men and women and members from all services).

(D) Active surveillance of a sample of members to whom the anthrax vaccine has been administered that is sufficient to identify, at the

earliest opportunity, any patterns of adverse reactions, the discovery of which might be delayed by reliance solely on the Vaccine Adverse Event Reporting System.

(2) The Secretary may extend or expand any ongoing or planned study or analysis of trends in adverse reactions of members of the armed forces to the anthrax vaccine in order to meet any of the requirements in paragraph (1).

(3) The Secretary shall establish guidelines under which members of the armed forces who are determined by an independent expert panel to be experiencing unexplained adverse reactions may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §751(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193.)

DEADLINES FOR ESTABLISHMENT AND IMPLEMENTATION

Pub. L. 106–398, §1 [[div. A], title VII, §751(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–195, provided that: ''The Secretary of Defense shall—

''(1) not later than April 1, 2001, establish the uniform procedures for exemption from participation in the anthrax vaccine immunization program of the Department of Defense required under subsection (a) of section 1110 of title 10, United States Code (as added by subsection (b));

''(2) not later than July 1, 2001, establish the system for monitoring adverse reactions of members of the Armed Forces to the anthrax vaccine required under subsection (b)(1) of such section;

''(3) not later than April 1, 2001, establish the guidelines under which members of the Armed Forces may obtain access to a Department of Defense Center of Excellence treatment facility for expedited treatment and follow up required under subsection (b)(3) of such section; and

''(4) not later than July 1, 2001, prescribe the regulations regarding emergency essential employees of the Department of Defense required under subsection (a) of section 1580a of such title (as added by subsection(c)).''

CHAPTER 56—DEPARTMENT OF DEFENSE MEDICARE-ELIGIBLE RETIREE HEALTH CARE FUND

Sec.
1111. Establishment and purpose of Fund; definitions; authority to enter into agreements.
1112. Assets of Fund.
1113. Payments from the Fund.
1114. Board of Actuaries.
1115. Determination of contributions to the Fund.
1116. Payments into the Fund.
1117. Investment of assets of Fund.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title VII, §711(e)(3), Dec. 28, 2001, 115 Stat. 1167, inserted ''; authority to enter into agreements'' after ''definitions'' in item 1111.

§1111. Establishment and purpose of Fund; definitions; authority to enter into agreements

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Medicare-Eligible Retiree Health Care Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under uniformed services retiree health care programs for medicare-eligible beneficiaries.

(b) In this chapter:

(1) The term ''uniformed services retiree health care programs'' means the provisions of this title or any other provision of law creating an entitlement to or eligibility for health care for a member or former member of a participating uniformed service who is entitled to retired or retainer pay, and an eligible dependent under such program.

(2) The term ''eligible dependent'' means a dependent described in section 1076(a)(2) (other than a dependent of a member on active duty), 1076(b), 1086(c)(2), or 1086(c)(3) of this title.

(3) The term ''medicare-eligible'', with respect to any person, means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

(4) The term ''participating uniformed service'' means the Army, Navy, Air Force, and Marine Corps, and any other uniformed service that is covered by an agreement entered into under subsection (c).

(c) The Secretary of Defense shall enter into an agreement with each other administering Secretary (as defined in section 1072(3) of this title) for participation in the Fund by a uniformed service under the jurisdiction of that Secretary. The agreement shall require that Secretary to determine contributions to the Fund on behalf of the members of the uniformed service under the jurisdiction of that Secretary in a manner comparable to the determination with respect to contributions to the Fund made by the Secretary of Defense under section 1116 of this title, and such administering Secretary may make such contributions.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–179; amended Pub. L. 107–107, div. A, title VII, §711(a), (b)(1), (e)(1), (2), title X, §1048(a)(12), Dec. 28, 2001, 115 Stat. 1164–1166, 1223; Pub. L. 107–314, div. A, title VII, §704(b), Dec. 2, 2002, 116 Stat. 2584.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title XVIII of the Act is classified generally to part A (§1395c et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 substituted ''shall enter into an agreement with each other administering Secretary'' for ''may enter into an agreement with any other administering Secretary'' in first sentence and ''The'' for ''Any such'' in second sentence.

2001—Pub. L. 107–107, §711(e)(2), inserted ''; authority to enter into agreements'' after ''definitions'' in section catchline.

Subsec. (a). Pub. L. 107–107, §1048(a)(12), substituted ''hereinafter'' for ''hereafter''.

Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (b). Pub. L. 107–107, §711(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In this chapter:

''(1) The term 'Department of Defense retiree health care programs for medicare-eligible beneficiaries' means the provisions of this title or any other provision of law creating entitlement to health care for a medicare-eligible member or former member of the uniformed services entitled to retired or retainer pay, or a medicare-eligible dependent of a member or former member of the uniformed services entitled to retired or retainer pay.

''(2) The term 'medicare-eligible' means entitled to benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.).

''(3) The term 'dependent' means a dependent (as such term is defined in section 1072 of this title) described in section 1076(b)(1) of this title.''

Subsec. (c). Pub. L. 107–107, §711(b)(1), added subsec. (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VII, §711(f), Dec. 28, 2001, 115 Stat. 1167, provided that: ''The amendments made by this section [amending this section and sections 1112, 1113, 1115, and 1116 of this title] shall take effect as if included in the enactment of chapter 56 of title 10, United States Code, by section 713(a)(1) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–179).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1112, 1113 of this title.

§ 1112. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1116 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(4) Amounts paid into the Fund pursuant to section 1111(c) of this title.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title VII, §711(b)(2), Dec. 28, 2001, 115 Stat. 1165.)

AMENDMENTS

2001—Par. (4). Pub. L. 107–107 added par. (4).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

§ 1113. Payments from the Fund

(a) There shall be paid from the Fund amounts payable for the costs of all uniformed service retiree health care programs for the benefit of members or former members of a participating uniformed service who are entitled to retired or retainer pay and are medicare eligible, and eligible dependents who are medicare eligible.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(c)(1) In carrying out subsection (a), the Secretary of Defense may transfer periodically from the Fund to applicable appropriations of the Department of Defense, or to applicable appropriations of other departments or agencies, such amounts as the Secretary determines necessary to cover the costs chargeable to those appropriations for uniformed service retiree health care programs for beneficiaries under those programs who are medicare-eligible. Such transfers may include amounts necessary for the administration of such programs. Amounts so transferred shall be merged with and be available for the same purposes and for the same time period as the appropriation to which transferred. Upon a determination that all or part of the funds transferred from the Fund are not necessary for the purposes for which transferred, such amounts may be transferred back to the Fund. This transfer authority is in addition to any other transfer authority that may be available to the Secretary.

(2) A transfer from the Fund under paragraph (1) may not be made to an appropriation after the end of the second fiscal year after the fiscal year that the appropriation is available for obligation. A transfer back to the Fund under paragraph (1) may not be made after the end of the second fiscal year after the fiscal year for which the appropriation to which the funds were originally transferred is available for obligation.

(d) The Secretary of Defense shall by regulation establish the method or methods for calculating amounts to be transferred under subsection (c). Such method or methods may be based (in whole or in part) on a proportionate share of the volume (measured as the Secretary determines appropriate) of health care services provided or paid for under uniformed service retiree health care programs for beneficiaries under those programs who are medicare-eligible in relation to the total volume of health care services provided or paid for under Department of Defense health care programs.

(e) The regulations prescribed by the Secretary under subsection (d) shall be provided to the Comptroller General not less than 60 days before such regulations become effective. The Comptroller General shall, not later than 30 days after receiving such regulations, report to the Secretary of Defense and Congress on the adequacy and appropriateness of the regulations.

(f) If the Secretary of Defense enters into an agreement with another administering Secretary pursuant to section 1111(c), the Secretary of Defense may take the actions described in subsections (c), (d), and (e) on behalf of the beneficiaries and programs of the other participating uniformed service.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title VII, §711(c), Dec. 28, 2001, 115 Stat. 1165.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §711(c)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be paid from the Fund amounts payable for Department of Defense retiree health care programs for medicare-eligible beneficiaries.''

Subsecs. (c) to (f). Pub. L. 107–107, §711(c)(2), added subsecs. (c) to (f).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see

section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VII, § 713(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, provided that: ''Sections 1113 and 1116 of title 10, United States Code (as added by subsection (a)), shall take effect on October 1, 2002.''

§ 1114. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (hereinafter in this chapter referred to as the ''Board''). The Board shall consist of three members who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and 15 years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1115(c) of this title and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added Pub. L. 106–398, § 1 [[div. A], title VII, § 713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–180; amended Pub. L. 107–107, div. A, title X, § 1048(a)(12), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''hereinafter'' for ''hereafter''.

§ 1115. Determination of contributions to the Fund

(a) The Board shall determine the amount that is the present value (as of October 1, 2002) of future benefits payable from the Fund that are attributable to service in the participating uniformed services performed before October 1, 2002. That amount is the original unfunded liability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1116(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1116(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the expected average force strength during that fiscal year for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training only).

(B) The product of—

(i) the current estimate of the value of the single level dollar amount to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the expected average force strength during that fiscal year for members of the Ready Reserve of the uniformed services under the jurisdiction of the Secretary of Defense (other than members on full-time National Guard duty other than for training) who are not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense (or to the other executive department having jurisdiction over the participating uniformed service) for that fiscal year for payments to be made to the Fund during that year under section 1116(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of the Fund. Each such actuarial valuation shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single

level dollar amount for members of the participating uniformed services on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

(B) a determination (using the aggregate entry-age normal cost method) of a single level dollar amount for members of the Ready Reserve of the participating uniformed services and other than members on full-time National Guard duty other than for training)[1] who are not otherwise described by subparagraph (A).

Such single level dollar amounts shall be used for the purposes of subsection (b) and section 1116(a) of this title.

(2) If at the time of any such valuation there has been a change in benefits under the uniformed services retiree health care programs for medicare-eligible beneficiaries that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon the Fund's actuarial experience (other than resulting from changes in benefits or actuarial assumptions) since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such actuarial experience and any previous actuarial experience through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Contributions to the Fund in accordance with amortization schedules under paragraphs (2), (3), and (4) shall be made as provided in section 1116(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and medical inflation) and in accordance with generally accepted actuarial principles and practices.

[1] So in original. There is no corresponding opening parenthesis.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–181; amended Pub. L. 107–107, div. A, title VII, §711(b)(3), (e)(1), Dec. 28, 2001, 115 Stat. 1165, 1166.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §711(b)(3)(A), inserted ''participating'' before ''uniformed services''.

Subsec. (b)(1)(A)(ii), (B)(ii). Pub. L. 107–107, §711(b)(3)(B), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services''.

Subsec. (b)(2). Pub. L. 107–107, §711(b)(3)(C), inserted ''(or to the other executive department having jurisdiction over the participating uniformed service)'' after ''Department of Defense''.

Subsec. (c)(1)(A), (B). Pub. L. 107–107, §711(b)(3)(D), inserted ''participating'' before ''uniformed services''.

Subsec. (c)(2). Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VII, §713(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184, provided that: ''Section 1115 of such title (as added by such subsection) shall take effect on October 1, 2001.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1114, 1116 of this title.

§ 1116. Payments into the Fund

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the monthly dollar amount determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1115(c)(1)(A) of this title (except that any statutory change in the uniformed services retiree health care programs for medicare-eligible beneficiaries that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total end strength for that month for members of the uniformed services under the jurisdiction of the Secretary of Defense on active duty (other than active duty for training) and full-time National Guard duty (other than full-time National Guard duty for training only).

(2) The product of—

(A) the level monthly dollar amount determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial

valuation under section 1115(c)(1)(B) of this title (except that any statutory change in the uniformed services retiree health care programs for medicare-eligible beneficiaries that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total end strength for that month for members of the Ready Reserve of the uniformed services under the jurisdiction of the Secretary of Defense other than members on full-time National Guard duty (other than for training) who are not otherwise described in paragraph (1)(B).

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1115(a) and 1115(c) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

(D) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(c) Amounts paid into the Fund under subsection (a) shall be paid from funds available for the pay of members of the participating uniformed services under the jurisdiction of the respective administering Secretaries.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–182; amended Pub. L. 107–107, div. A, title VII, §711(b)(4), (d), (e)(1), title X, §1048(a)(13), Dec. 28, 2001, 115 Stat. 1165, 1166, 1223; Pub. L. 107–314, div. A, title VII, §704(a), Dec. 2, 2002, 116 Stat. 2584.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 substituted ''pay of members'' for ''health care programs''.

2001—Subsec. (a)(1)(A). Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (a)(1)(B). Pub. L. 107–107, §711(b)(4), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services''.

Subsec. (a)(2)(A). Pub. L. 107–107, §711(e)(1), substituted ''uniformed services retiree health care programs'' for ''Department of Defense retiree health care programs''.

Subsec. (a)(2)(B). Pub. L. 107–107, §1048(a)(13)(A), inserted an opening parenthesis before ''other than for training''.

Pub. L. 107–107, §711(b)(4), (d)(1), inserted ''under the jurisdiction of the Secretary of Defense'' after ''uniformed services'' and struck out at end ''Amounts paid into the Fund under this subsection shall be paid from funds available for the Defense Health Program.''.

Subsec. (b)(2)(D). Pub. L. 107–107, §1048(a)(13)(B), substituted ''section 1115(c)(4)'' for ''section 111(c)(4)''.

Subsec. (c). Pub. L. 107–107, §711(d)(2), added subsec. (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 711 of Pub. L. 107–107 effective as if included in the enactment of this chapter by Pub. L. 106–398, see section 711(f) of Pub. L. 107–107, set out as a note under section 1111 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2002, see section 1 [[div. A], title VII, §713(b)(1)] of Pub. L. 106–398, set out as a note under section 1113 of this title.

FIRST YEAR CONTRIBUTIONS

Pub. L. 107–107, div. A, title VII, §711(g), Dec. 28, 2001, 115 Stat. 1167, provided that: ''With respect to contributions under section 1116(a) of title 10, United States Code, for the first year that the Department of Defense Medicare-Eligible Retiree Health Care Fund is established under chapter 56 of such title, if the Board of Actuaries is unable to execute its responsibilities with respect to such section, the Secretary of Defense may make contributions under such section using methods and assumptions developed by the Secretary.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1111, 1112, 1115 of this title.

§1117. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §713(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–184.)

CHAPTER 57—DECORATIONS AND AWARDS

Sec.
1121. Legion of Merit: award.
1122. Medal for Merit: award.
1123. Right to wear badges of military societies.
1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements.

Sec.
1125. Recognition for accomplishments: award of trophies.
1126. Gold star lapel button: eligibility and distribution.
1127. Precedence of the award of the Purple Heart.
1128. Prisoner-of-war medal: issue.
1129. Purple Heart: members killed or wounded in action by friendly fire.
1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review and recommendation.
1131. Purple Heart: limitation to members of the armed forces.
1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies.
1133. Bronze star: limitation to members receiving imminent danger pay.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §541(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114, added item 1133.

1998—Pub. L. 105–261, div. A, title V, §537(b), Oct. 17, 1998, 112 Stat. 2019, added item 1132.

1997—Pub. L. 105–85, div. A, title V, §571(a)(2), Nov. 18, 1997, 111 Stat. 1756, added item 1131.

1996—Pub. L. 104–106, div. A, title V, §526(b), Feb. 10, 1996, 110 Stat. 314, added item 1130.

1993—Pub. L. 103–160, div. A, title XI, §1141(b), Nov. 30, 1993, 107 Stat. 1757, added item 1129.

1985—Pub. L. 99–145, title V, §532(a)(2), title XII, §1225(a)(2)(B), Nov. 8, 1985, 99 Stat. 634, 730, inserted ''disclosures,'' and substituted ''and'' for ''or'' in item 1124, and added item 1128.

1984—Pub. L. 98–525, title V, §553(b), Oct. 19, 1984, 98 Stat. 2532, added item 1127.

1966—Pub. L. 89–718, §9, Nov. 2, 1966, 80 Stat. 1117, redesignated item 1124, added by Pub. L. 89–534, §1(2), Aug. 11, 1966, 80 Stat. 345, as 1126.

Pub. L. 89–534, §1(2), Aug. 11, 1966, 80 Stat. 345, added item 1124, relating to eligibility for and distribution of gold star lapel button.

Pub. L. 89–529, §1(2), Aug. 11, 1966, 80 Stat. 339, added item 1125.

1965—Pub. L. 89–198, §1(2), Sept. 22, 1965, 79 Stat. 831, added item 1124, relating to payment of cash awards for members of armed forces for suggestions, inventions, or scientific achievements.

COMMENDATION OF MEMBERS OF ARMED FORCES AND GOVERNMENT CIVILIAN PERSONNEL WHO SERVED DURING COLD WAR

Pub. L. 105–85, div. A, title X, §1084, Nov. 18, 1997, 111 Stat. 1919, provided that:

''(a) FINDINGS.—The Congress finds the following:

''(1) During the period of the Cold War, from the end of World War II until the collapse of the Soviet Union in 1991, the United States and the Soviet Union engaged in a global military rivalry.

''(2) This rivalry, potentially the most dangerous military confrontation in the history of mankind, has come to a close without a direct superpower military conflict.

''(3) Military and civilian personnel of the Department of Defense, personnel in the intelligence community, members of the foreign service, and other officers and employees of the United States faithfully performed their duties during the Cold War.

''(4) Many such personnel performed their duties while isolated from family and friends and served overseas under frequently arduous conditions in order to protect the United States and achieve a lasting peace.

''(5) The discipline and dedication of those personnel were fundamental to the prevention of a superpower military conflict.

''(b) CONGRESSIONAL COMMENDATION.—The Congress hereby commends the members of the Armed Forces and civilian personnel of the Government who contributed to the historic victory in the Cold War and expresses its gratitude and appreciation for their service and sacrifices.

''(c) CERTIFICATES OF RECOGNITION.—The Secretary of Defense shall prepare a certificate recognizing the Cold War service of qualifying members of the Armed Forces and civilian personnel of the Department of Defense and other Government agencies contributing to national security, as determined by the Secretary, and shall provide the certificate to such members and civilian personnel upon request.''

EX. ORD. NO. 11448. MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 11448, Jan. 16, 1969, 34 F.R. 915, as amended by Ex. Ord. No. 12312, July 2, 1981, 46 F.R. 35251; Ex. Ord. No. 13286, §61, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of a Military Department or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders or other appropriate officers as the Secretary concerned may designate, to any member of the armed forces of the United States, or to any member of the armed forces of a friendly foreign nation, who has distinguished himself by outstanding meritorious achievement or service.

SEC. 2. The Meritorious Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

SEC. 3. No more than one Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

SEC. 4. The Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

EXECUTIVE ORDER NO. 11544

Ex. Ord. No. 11544, July 8, 1970, 35 F.R. 11115, which established a Vice Presidential Service Certificate and a Vice Presidential Service Badge, was superseded by Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, set out below.

EX. ORD. NO. 11904. DEFENSE SUPERIOR SERVICE MEDAL

Ex. Ord. No. 11904, Feb. 6, 1976, 41 F.R. 5625, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Superior Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered superior meritorious service in a position of significant responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Superior Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These

regulations shall place the Defense Superior Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal and the Silver Star Medal, but before the Legion of Merit.

SEC. 3. No more than one Defense Superior Service Medal shall be awarded to any one person, but for each succeeding period of superior meritorious service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Superior Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

GERALD R. FORD.

EX. ORD. NO. 11926. VICE PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 11926, July 19, 1976, 41 F.R. 29805, as amended by Ex. Ord. No. 13286, §56, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. There is established a Vice Presidential Service Badge to be awarded in the name of the Vice President of the United States of America to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard who have been assigned to duty in the Office of the Vice President for a period of at least one year subsequent to December 19, 1974.

SEC. 2. The Vice Presidential Service Badge may be awarded, upon recommendation of the Military Assistant to the Vice President, by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security, to military personnel of their respective services who have been assigned to duty in the Office of the Vice President.

SEC. 3. The Vice Presidential Service Badge shall be accompanied by a certificate, the design of which is attached hereto and is made a part of this Order. The Vice Presidential Service Badge shall consist of a white enameled disc surrounded by 27 gold rays radiating from the center, $1^{15}/_{16}$ inches in diameter overall. Superimposed on the white disc shall be a gold color device taken from the seal of the Vice President of the United States. The overall design of the badge shall be as shown at the top of the certificate which accompanies the Badge and which is attached to this Order.

SEC. 4. Upon award, the Vice Presidential Service Badge may be worn as a part of the uniform of an individual both during and after his assignment to duty in the Office of the Vice President.

SEC. 5. Only one Vice Presidential Service Badge shall be awarded to an individual. It may be awarded posthumously.

SEC. 6. Notwithstanding the provisions of Sections 1 and 2 of this Order, any member of the Army, Navy, Air Force, Marine Corps, and Coast Guard, who has been assigned to duty in the Office of the Vice President, is authorized to wear the Vice Presidential Service Badge on his uniform commencing on the first day of duty in the Office of the Vice President and thereafter while assigned to such duty.

SEC. 7. Executive Order No. 11544 of July 8, 1970, is hereby superseded; however, individuals previously awarded a Vice Presidential Service Badge under that Order are authorized to continue to wear such badge as part of their uniform.

EX. ORD. NO. 11965. HUMANITARIAN SERVICE MEDAL

Ex. Ord. No. 11965, Jan. 19, 1977, 42 F.R. 4329, as amended by Ex. Ord. No. 13286, §55, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Humanitarian Service Medal with accompanying ribbons and appurtenances for award by the Secretary of Defense or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a Service in the Navy. Individuals eligible for the medal are members of the Armed Forces of the United States (including Reserve Components) who, subsequent to April 1, 1975, distinguished themselves by meritorious participation in a military act or operation of a humanitarian nature. The Secretary of Defense and the Secretary of Homeland Security for the Coast Guard will determine types of acts or operations that warrant award of the medal.

SEC. 2. The Humanitarian Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Homeland Security for the Coast Guard under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Humanitarian Service Medal in an order of precedence immediately after the Vietnam Service Medal.

SEC. 3. No more than one Humanitarian Service Medal shall be awarded to any one person, but for each subsequent participation in a humanitarian act or operation justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations of the Military Departments.

SEC. 4. The Humanitarian Service Medal or device may be awarded posthumously, and when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Homeland Security.

EX. ORD. NO. 12019. DEFENSE MERITORIOUS SERVICE MEDAL

Ex. Ord. No. 12019, Nov. 3, 1977, 42 F.R. 57945, provided:

By virtue of the authority vested in me as President of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to any member of the Armed Forces of the United States who has rendered outstanding non-combat meritorious achievement or service while assigned to the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or other such joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Meritorious Service Medal, with accompanying ribbons and appurtenances, shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as the Secretary of Defense may prescribe. These regulations shall place the Defense Meritorious Service Medal in an order of precedence after the Medal of Honor, the Distinguished Service Cross, the Defense Distinguished Service Medal, the Distinguished Service Medal, the Silver Star Medal, the Defense Superior Service Medal, the Legion of Merit Medal, and the Bronze Star Medal, but before the Meritorious Service Medal.

SEC. 3. No more than one Defense Meritorious Service Medal shall be awarded to any one person, but for each succeeding outstanding meritorious achievement or service justifying such an award a suitable device to be worn with that medal may be awarded under such regulations as the Secretary of Defense may prescribe.

SEC. 4. The Defense Meritorious Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

JIMMY CARTER.

EX. ORD. NO. 12793. PRESIDENTIAL SERVICE CERTIFICATE AND PRESIDENTIAL SERVICE BADGE

Ex. Ord. No. 12793, Mar. 20, 1992, 57 F.R. 10281, as amended by Ex. Ord. No. 13286, § 31, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces of the United States, it is ordered of follows:

SECTION 1. *Presidential Service Certificate*. The Presidential Service Certificate (''Certificate'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Certificate shall be awarded in the name of the President of the United States by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or, when the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security. It shall be awarded by the appropriate Secretary to members of the Army, Navy, Marine Corps, Air Force, and Coast Guard, respectively, who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office; or to other direct support positions within the Executive Office of the President (''EOP''). The Certificate shall not be issued to any member who is issued a Vice Presidential Certificate, or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

SEC. 2. *Presidential Service Badge*. The Presidential Service Badge (''Badge'') is hereby continued, the design of which accompanies and is hereby made a part of this order. The Badge shall be awarded to those members of the Armed Forces who have been granted the Certificate and shall be awarded in the same manner in which the Certificate has been given. The Badge shall be worn as a part of the uniform of those individuals under such regulations as their respective Secretaries may severally prescribe.

SEC. 3. Only one Certificate may be awarded to an individual.

SEC. 4. The Certificate and the Badge may be granted posthumously.

SEC. 5. This order shall supersede Executive Order No. 10879 of June 1, 1960, as amended.

EX. ORD. NO. 12830. MILITARY OUTSTANDING VOLUNTEER SERVICE MEDAL

Ex. Ord. No. 12830, Jan. 9, 1993, 58 F.R. 4061, as amended by Ex. Ord. No. 13286, § 28, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and as Commander in Chief of the Armed Forces, it is hereby ordered as follows:

SECTION 1. There is hereby established a Military Outstanding Volunteer Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security. Members of the Armed Forces of the United States (including Reserve components) who perform outstanding volunteer service to the civilian community of a sustained, direct, and consequential nature are eligible for the medal.

SEC. 2. The Military Outstanding Volunteer Service Medal and ribbons and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense. The Secretary of Defense shall prescribe regulations to govern the award and wear of the Military Outstanding Volunteer Service Medal. The regulations shall place the Military Outstanding Volunteer Service Medal in order of precedence immediately after the Humanitarian Service Medal.

SEC. 3. No more than one award of the Military Outstanding Volunteer Service Medal may be made to any one person, but for each subsequent act justifying such an award, a suitable device may be awarded to be worn with that medal as prescribed by appropriate regulations issued by the Secretary of Defense.

SEC. 4. The Military Outstanding Volunteer Service Medal may be awarded posthumously, and when so awarded, may be presented to such representatives of the deceased as may be deemed appropriate by the Secretary of Defense or, in the case of a member of the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security.

EX. ORD. NO. 12985. ESTABLISHING ARMED FORCES SERVICE MEDAL

Ex. Ord. No. 12985, Jan. 11, 1996, 61 F.R. 1209, as amended by Ex. Ord. No. 13286, § 20, Feb. 28, 2003, 68 F.R. 10624, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is hereby established the Armed Forces Service Medal with accompanying ribbons and appurtenances, for award to members of the Armed Forces of the United States who, on or after June 1, 1992, in the opinion of the Joint Chiefs of Staff:

(a) Participate, or have participated, as members of United States military units in a United States military operation in which personnel of any Armed Force participate that is deemed to be significant activity; and

(b) Encounter no foreign armed opposition or imminent hostile action.

SEC. 2. *Approval and Award*. The medal, with ribbons and appurtenances, shall be of an appropriate design approved by the Secretary of Defense and shall be awarded by the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, under uniform regulations, as prescribed by the Secretary of Defense. The regulations shall place the Armed Forces Service Medal in an order of precedence immediately before the Humanitarian Service Medal.

SEC. 3. *Criteria*. The medal shall be awarded only for operations for which no other United States service medal is approved. For operations in which personnel of only one Military Department or the Coast Guard participate, the medal shall be awarded only if there is no other suitable award available to the department or the Coast Guard. No more than one medal shall be awarded to any one person, but for each succeeding operation justifying such award a suitable device may be awarded to be worn on the medal or ribbon as prescribed by appropriate regulations.

SEC. 4. *Posthumous Provision*. The medal may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense or the Secretary of Transportation [sic].

§ 1121. Legion of Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Legion of Merit'', having suitable appurtenances and devices and not more than four degrees, to any member of the armed forces of the United States or of any friendly foreign nation who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1121	10:1408b(1).	July 20, 1942, ch. 508, § 2(1), 56 Stat. 662.

The words ''Government of the Philippines'' are omitted as covered by the words ''any friendly foreign nation''. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

§ 1122. Medal for Merit: award

The President, under regulations to be prescribed by him, may award a decoration called the ''Medal for Merit'', having distinctive appurtenances and devices and only one degree, to any civilian of any nation prosecuting the war in existence on July 20, 1942, under the joint declaration of the United Nations, as then constituted, or of any other friendly foreign nation, who, after September 8, 1939, has distinguished himself by exceptionally meritorious conduct in performing outstanding services. The Medal for Merit may be awarded to a civilian of a foreign nation but only for performing an exceptionally meritorious or courageous act in the furtherance of the war efforts of the United Nations as then constituted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1122	10:1408b (less (1)).	July 20, 1942, ch. 508, § 2 (less (1)), 56 Stat. 663.

The words ''in existence on July 20, 1942'' are inserted for clarity and refer to the war in existence on the date of enactment of the source statute. The words ''as then constituted'' are inserted for clarity, since the United Nations organization in existence on July 20, 1942, was not the present United Nations organization. The words ''There is created'', ''rules and'', and ''the proclamation of an emergency by the President on'' are omitted as surplusage.

EX. ORD. NO. 9637. MEDAL FOR MERIT

Ex. Ord. No. 9637, Oct. 3, 1945, 10 F.R. 12543, as amended by Ex. Ord. No. 9857A, May 27, 1947, 12 F.R. 3583, provided:

1. The decoration of the Medal for Merit shall be awarded only by the President of the United States or at his direction. Awards of the Medal for Merit may be made to such civilians of the nations prosecuting the war under the joint declaration of the United Nations and of other friendly foreign nations as have distinguished themselves by exceptionally meritorious conduct in the performance of outstanding services since the proclamation of an emergency by the President on September 8, 1939. Awards of the Medal for Merit made to civilians of foreign nations shall be for the performance of an exceptionally meritorious or courageous act or acts in furtherance of the war efforts of the United Nations.

2. There is hereby established the Medal for Merit Board, which shall be composed of three members appointed by the President, one of whom shall be designated by the President to act as Chairman of the Board.

3. The Medal for Merit Board shall receive and consider proposals for the award of the decoration of the Medal for Merit and submit to the President the recommendations of the Board with respect thereto. In the case of proposed awards to civilians of foreign nations, such recommendations shall include the recommendations of the Secretary of State.

4. The Medal for Merit Board is authorized to prescribe, with the approval of the President, such rules and regulations not inconsistent with the provisions of this order as may be necessary to accomplish its purposes.

5. Executive Order 9331 of April 19, 1943 and the Medal for Merit Board created thereby, are superseded by this order.

6. The Medal for Merit shall not be awarded for any services relating to the prosecution of World War II performed subsequent to the cessation of hostilities, as proclaimed by Proclamation No. 2714 of December 31, 1946, and no proposal for an award for such services submitted after June 30, 1947, shall be considered by the Medal for Merit Board.

§ 1123. Right to wear badges of military societies

(a) A member of the Army, Navy, Air Force, or Marine Corps who is a member of a military society originally composed of men who served in an armed force of the United States during the Revolutionary War, the War of 1812, the Mexican War, the Civil War, the Spanish-American War, the Philippine Insurrection, or the Chinese Relief Expedition of 1900 may wear, on occasions of ceremony, the distinctive badges adopted by that society.

(b) A member of the Army, Navy, Air Force, or Marine Corps who is a member of the Army and Navy Union of the United States may wear, on public occasions of ceremony, the distinctive badges adopted by that society.

(Aug. 10, 1956, ch. 1041, 70A Stat. 88.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1123(a)	10:1427 (1st sentence). 34:371 (1st sentence).	Sept. 25, 1890, J. Res. 50, 26 Stat. 681.
1123(b)	10:1427 (less 1st sentence). 34:371 (less 1st sentence).	May 11, 1894, J. Res. 26, 28 Stat. 583. Feb. 2, 1901, ch. 192, § 41, 31 Stat. 758. Jan. 12, 1903, J. Res. 2, 32 Stat. 1229. Mar. 2, 1907, J. Res. 18, 34 Stat. 1423.

In subsection (a), the words ''an armed force'' are substituted for the words ''armies and navies''. The words ''Revolutionary War'', ''Civil War'', and ''Philippine Insurrection'' are substituted for the words ''War of the Revolution'', ''War of the Rebellion'', and ''incident insurrection in the Philippines'', respectively, to reflect present terminology. The words ''originally composed'' are substituted for the words ''in their own right'', to reflect an opinion of the Attorney General (see 23 Op. Atty. Gen. 454).

In subsections (a) and (b), the word ''member'' is substituted for the words ''officers and enlisted men''. The words ''Navy * * * or Marine Corps'' are substituted for the word ''Navy'', since the word ''Navy'' in the source statute has, by long-standing administrative interpretation, been construed to include the Marine Corps.

In subsection (b), the words ''in their own right'' are omitted as surplusage.

§ 1124. Cash awards for disclosures, suggestions, inventions, and scientific achievements

(a) The Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may authorize the payment of a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces under his jurisdiction who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations or programs relating to the armed forces.

(b) Whenever the President considers it desirable, the Secretary of Defense, and the Sec-

retary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, are authorized to pay a cash award to, and incur necessary expense for the honorary recognition of, a member of the armed forces who by his disclosure, suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of operations of the Government of the United States. Such award is in addition to any other award made to that member under subsection (a).

(c) An award under this section may be paid notwithstanding the member's death, separation, or retirement from the armed force concerned. However, the disclosure, suggestion, invention, or scientific achievement forming the basis for the award must have been made while the member was on active duty or in an active reserve status and not otherwise eligible for an award under chapter 45 of title 5.

(d) A cash award under this section is in addition to the pay and allowances of the recipient. The acceptance of such an award shall constitute—

(1) an agreement by the member that the use by the United States of any idea, method, or device for which the award is made may not be the basis of a claim against the United States by the member, his heirs, or assigns, or by any person whose claim is alleged to be derived through the member; and

(2) a warranty by the member that he has not at the time of acceptance transferred, assigned, or otherwise divested himself of legal or equitable title in any property right residing in the idea, method, or device for which the award is made.

(e) Awards to, and expenses for the honorary recognition of, members of the armed forces under this section may be paid from (1) the funds or appropriations available to the activity primarily benefiting; or (2) the several funds or appropriations of the various activities benefiting, as may be determined by the President for awards under subsection (b), and by the Secretary concerned for awards under subsection (a).

(f) The total amount of the award, or awards, made under this section for a disclosure, suggestion, invention, or scientific achievement may not exceed $25,000, regardless of the number of persons who may be entitled to share therein.

(g) Awards under this section shall be made under regulations to be prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(h) For the purposes of this section, a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with an armed force shall be treated as if he were a member of that armed force.

(Added Pub. L. 89–198, §1(1), Sept. 22, 1965, 79 Stat. 830; amended Pub. L. 89–718, §10, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–623, §2(1), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–470, title I, §112(c), Oct. 19, 1980, 94 Stat. 2240; Pub. L. 96–513, title V, §511(40), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 96–527, title VII, §772, Dec. 15, 1980, 94 Stat. 3093; Pub. L. 99–145, title XII, §1225(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 730; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

CODIFICATION

Another section 1124 was renumbered 1126 of this title.

AMENDMENTS

2002—Subsecs. (a), (b), (g). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1985—Pub. L. 99–145 inserted ''disclosures,'' and substituted ''and'' for ''or'' in section catchline, and inserted ''disclosure,'' before ''suggestion'' in subsecs. (a), (b), (c), and (f).

1980—Subsec. (c). Pub. L. 96–527 authorized payment of awards to retired members of the armed forces, required the basis for awards to have been made when in an active reserve status, and required the member to be ineligible for incentive award under chapter 45 of title 5.

Subsec. (g). Pub. L. 96–470 struck out provision requiring the Secretary of Defense and the Secretary of Transportation to annually report to the President, for transmittal to Congress, on progress of the awards program.

Subsec. (h). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1968—Subsecs. (a), (b), (g). Pub. L. 90–623 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1966—Subsec. (g). Pub. L. 89–718 substituted ''progress report'' for ''program report''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1225(a)(3) of Pub. L. 99–145 provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

EX. ORD. NO. 11438. PROCEDURES GOVERNING INTERDEPARTMENTAL CASH AWARDS

Ex. Ord. No. 11438, Dec. 3, 1968, 33 F.R. 18085, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 13286, §63, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by section 1124(b) and (e) of title 10, United States Code, and section 301 of title 3, United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. Any suggestion, invention, or scientific achievement by a member of the armed forces that con-

tributes to the efficiency, economy, or other improvement of operations of the Government of the United States through its adoption or use by an executive department or agency other than the executive department having jurisdiction over the armed force of the member concerned may be the basis for honorary recognition or a cash award by the Secretary of Homeland Security in the case of a member of the Coast Guard when it is not operating as a service in the Navy or by the Secretary of Defense in the case of any other member of the armed forces.

SEC. 2. An executive department or agency that adopts or uses the suggestion, invention, or scientific achievement of a member of the armed forces who is not under its jurisdiction may recommend to the Department of Defense or to the Department of Homeland Security, as appropriate, a cash award or honorary recognition of the member and shall justify its recommendation with appropriate documentation and explanation of how the suggestion, invention, or scientific achievement contributes to the efficiency, economy, or other improvement of the operations of the Government of the United States. Awards shall be made under regulations to be prescribed by the Secretary of Defense or the Secretary of Homeland Security, as appropriate. The regulations of the Department of Defense and Department of Homeland Security may include designations of officials to whom authority for receiving, evaluating, and making awards may be assigned.

SEC. 3. No cash awards hereunder for a single suggestion, invention, or scientific achievement may exceed $25,000 regardless of the number of agencies or departments which may adopt or use the suggestion, invention, or scientific achievement.

SEC. 4. Funds to cover the costs of cash awards to members of the armed forces shall be transferred from the account of any executive department or agency which recommends the award to the appropriate account of the Department of Homeland Security or the Department of Defense, as the case may be. When several executive departments or agencies benefit from the adoption or use of the suggestion, invention, or scientific achievement, the amount transferred from each such benefiting department or agency to the Department of Homeland Security or the Department of Defense to cover the proportionate share of the cost of the cash award shall be determined under procedures prescribed by the Office of Personnel Management in accordance with the same guidelines and standards applying to awards to civilian employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 1125. Recognition for accomplishments: award of trophies

The Secretary of Defense may—

(1) award medals, trophies, badges, and similar devices to members, units, or agencies of an armed force under his jurisdiction for excellence in accomplishments or competitions related to that armed force; and

(2) provide badges or buttons in recognition of special service, good conduct, and discharge under conditions other than dishonorable.

(Added Pub. L. 89–529, §1(1), Aug. 11, 1966, 80 Stat. 339.)

EX. ORD. NO. 11545. DEFENSE DISTINGUISHED SERVICE MEDAL

Ex. Ord. 11545, July 9, 1970, 35 F.R. 11161, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is hereby established a Defense Distinguished Service Medal, with accompanying ribbons and appurtenances, for award by the Secretary of Defense to a military officer who performed exceptionally meritorious service in a duty of great responsibility with the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, a specified or unified command, a Defense agency, or such other joint activity as may be designated by the Secretary of Defense.

SEC. 2. The Defense Distinguished Service Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense and shall be awarded under such regulations as he shall prescribe. These regulations shall place the Defense Distinguished Service Medal in an order of precedence after the Medals of Honor and the Distinguished Service Crosses of the Armed Forces and before the Distinguished Service Medals of the Armed Forces.

SEC. 3. No more than one Defense Distinguished Service Medal shall be awarded to any one person, but for each succeeding exceptionally meritorious period of service justifying such an award, a suitable device may be awarded to be worn with that Medal as prescribed by appropriate regulations of the Department of Defense.

SEC. 4. The Defense Distinguished Service Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of Defense.

RICHARD NIXON.

§ 1126. Gold star lapel button: eligibility and distribution

(a) A lapel button, to be known as the gold star lapel button, shall be designed, as approved by the Secretary of Defense, to identify widows, parents, and next of kin of members of the armed forces—

(1) who lost their lives during World War I, World War II, or during any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958;

(2) who lost or lose their lives after June 30, 1958—

(A) while engaged in an action against an enemy of the United States;

(B) while engaged in military operations involving conflict with an opposing foreign force; or

(C) while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing armed force; or

(3) who lost or lose their lives after March 28, 1973, as a result of—

(A) an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or

(B) military operations while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peacekeeping force.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary concerned, upon application to him, shall furnish one gold star lapel button without cost to the widow and to each parent and next of kin of a member who lost or loses his or her life under any circumstances prescribed in subsection (a).

(c) Not more than one gold star lapel button may be furnished to any one individual except that, when a gold star lapel button furnished

under this section has been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was furnished, the button may be replaced upon application and payment of an amount sufficient to cover the cost of manufacture and distribution.

(d) In this section:

(1) The term ''widow'' includes widower.

(2) The term ''parents'' includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis.

(3) The term ''next of kin'' includes only children, brothers, sisters, half brothers, and half sisters.

(4) The term ''children'' includes stepchildren and children through adoption.

(5) The term ''World War I'' includes the period from April 6, 1917, to March 3, 1921.

(6) The term ''World War II'' includes the period from September 8, 1939, to July 25, 1947, at 12 o'clock noon.

(7) The term ''military operations'' includes those operations involving members of the armed forces assisting in United States Government sponsored training of military personnel of a foreign nation.

(8) The term ''peacekeeping force'' includes those personnel assigned to a force engaged in a peacekeeping operation authorized by the United Nations Security Council.

(Added Pub. L. 89–534, §1(1), Aug. 11, 1966, 80 Stat. 345, §1124; renumbered §1126, Pub. L. 89–718, §9, Nov. 2, 1966, 80 Stat. 1117; amended Pub. L. 98–94, title XII, §1268(8), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, §7(k)(5), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–160, div. A, title XI, §1143, Nov. 30, 1993, 107 Stat. 1757.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, §1143(a), struck out ''of the United States'' after ''armed forces'' in introductory provisions, redesignated cls. (i) to (iii) of par. (2) as subpars. (A) to (C), respectively, and added par. (3).

Subsec. (d)(7), (8). Pub. L. 103–160, §1143(b), added pars. (7) and (8).

1987—Subsec. (d). Pub. L. 100–26 substituted colon for dash at end of introductory provisions, inserted ''The term'' in each par., and substituted periods for semicolons in pars. (1) to (4) and period for ''; and'' in par. (5).

1983—Subsec. (a)(1). Pub. L. 98–94 substituted ''who'' for ''Who''.

§ 1127. Precedence of the award of the Purple Heart

In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary of the military department concerned shall accord the Purple Heart a position of precedence, in relation to other awards and decorations authorized to be displayed, not lower than that immediately following the bronze star.

(Added Pub. L. 98–525, title V, §553(a), Oct. 19, 1984, 98 Stat. 2532; amended Pub. L. 99–145, title V, §533, Nov. 8, 1985, 99 Stat. 634.)

AMENDMENTS

1985—Pub. L. 99–145 substituted ''the bronze star'' for ''the lowest position accorded any award or decoration for valor''.

§ 1128. Prisoner-of-war medal: issue

(a) The Secretary concerned shall issue a prisoner-of-war medal to any person who, while serving in any capacity with the armed forces, was taken prisoner and held captive—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force;

(3) while serving with friendly forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party; or

(4) by foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(b) The prisoner-of-war medal shall be of appropriate design, with ribbons and appurtenances.

(c) In prescribing regulations establishing the order of precedence of awards and decorations authorized to be displayed on the uniforms of members of the armed forces, the Secretary concerned shall accord the prisoner-of-war medal a position of precedence, in relation to other awards and decorations authorized to be displayed—

(1) immediately following decorations awarded for individual heroism, meritorious achievement, or meritorious service, and

(2) before any other service medal, campaign medal, or service ribbon authorized to be displayed.

(d) Not more than one prisoner-of-war medal may be issued to a person. However, for each succeeding service that would otherwise justify the issuance of such a medal, the Secretary concerned may issue a suitable device to be worn as the Secretary determines.

(e) For a person to be eligible for issuance of a prisoner-of-war medal, the person's conduct must have been honorable for the period of captivity which serves as the basis for the issuance.

(f) If a person dies before the issuance of a prisoner-of-war medal to which he is entitled, the medal may be issued to the person's representative, as designated by the Secretary concerned.

(g) Under regulations to be prescribed by the Secretary concerned, a prisoner-of-war medal that is lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued may be replaced without charge.

(h) The Secretary of Defense shall ensure that regulations prescribed by the Secretaries of the military departments under this section are uniform so far as practicable.

(Added Pub. L. 99–145, title V, §532(a)(1), Nov. 8, 1985, 99 Stat. 633; amended Pub. L. 101–189, div. A, title V, §516(a), Nov. 29, 1989, 103 Stat. 1441.)

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101–189 added par. (4).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 516(b) of Pub. L. 101–189 provided that: ''Paragraph (4) of section 1128(a) of title 10, United States Code, as added by subsection (a), applies with respect to periods of captivity after April 5, 1917.''

EFFECTIVE DATE

Section 532(b) of Pub. L. 99–145 provided that: ''Section 1128 of title 10, United States Code, as added by subsection (a), applies with respect to any person taken prisoner and held captive after April 5, 1917.''

§1129. Purple Heart: members killed or wounded in action by friendly fire

(a) For purposes of the award of the Purple Heart, the Secretary concerned shall treat a member of the armed forces described in subsection (b) in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(b) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(c) This section applies to members of the armed forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded as described in subsection (b) on or after December 7, 1941, and before November 30, 1993, the Secretary concerned shall award the Purple Heart under subsection (a) in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(Added Pub. L. 103–160, div. A, title XI, §1141(a), Nov. 30, 1993, 107 Stat. 1756; amended Pub. L. 105–85, div. A, title X, §1073(a)(18), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''November 30, 1993,'' for ''the date of the enactment of this section,'' and ''before such date or'' for ''before the date of the enactment of this section or''.

AWARD OF PURPLE HEART TO PERSONS WOUNDED WHILE HELD AS PRISONERS OF WAR BEFORE APRIL 25, 1962

Pub. L. 104–106, div. A, title V, §521, Feb. 10, 1996, 110 Stat. 309, provided that:

''(a) AWARD OF PURPLE HEART.—For purposes of the award of the Purple Heart, the Secretary concerned (as defined in section 101 of title 10, United States Code) shall treat a former prisoner of war who was wounded before April 25, 1962, while held as a prisoner of war (or while being taken captive) in the same manner as a former prisoner of war who is wounded on or after that date while held as a prisoner of war (or while being taken captive).

''(b) STANDARDS FOR AWARD.—An award of the Purple Heart under subsection (a) shall be made in accordance with the standards in effect on the date of the enactment of this Act [Feb. 10, 1996] for the award of the Purple Heart to persons wounded on or after April 25, 1962.

''(c) ELIGIBLE FORMER PRISONERS OF WAR.—A person shall be considered to be a former prisoner of war for purposes of this section if the person is eligible for the prisoner-of-war medal under section 1128 of title 10, United States Code.''

§1130. Consideration of proposals for decorations not previously submitted in timely fashion: procedures for review and recommendation

(a) Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the award or presentation of a decoration (or the upgrading of a decoration), either for an individual or a unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy for timely submission of a recommendation for such award or presentation. Based upon such review, the Secretary shall make a determination as to the merits of approving the award or presentation of the decoration and the other determinations necessary to comply with subsection (b).

(b) Upon making a determination under subsection (a) as to the merits of approving the award or presentation of the decoration, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting member of Congress notice in writing of one of the following:

(1) The award or presentation of the decoration does not warrant approval on the merits.

(2) The award or presentation of the decoration warrants approval and a waiver by law of time restrictions prescribed by law is recommended.

(3) The award or presentation of the decoration warrants approval on the merits and has been approved as an exception to policy.

(4) The award or presentation of the decoration warrants approval on the merits, but a waiver of the time restrictions prescribed by law or policy is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.

(c) Determinations under this section regarding the award or presentation of a decoration shall be made in accordance with the same procedures that apply to the approval or disapproval of the award or presentation of a decoration when a recommendation for such award or presentation is submitted in a timely manner as prescribed by law or regulation.

(d) In this section:

(1) The term ''Member of Congress'' means—

(A) a Senator; or

(B) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(2) The term ''decoration'' means any decoration or award that may be presented or awarded to a member or unit of the armed forces.

(Added Pub. L. 104–106, div. A, title V, §526(a), Feb. 10, 1996, 110 Stat. 313; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

ELIGIBILITY FOR ARMED FORCES EXPEDITIONARY MEDAL FOR PARTICIPATION IN OPERATION JOINT ENDEAVOR OR OPERATION JOINT GUARD

Pub. L. 105–85, div. A, title V, §572, Nov. 18, 1997, 111 Stat. 1756, provided that:

''(a) INCLUSION OF OPERATIONS.—For the purpose of determining the eligibility of members and former members of the Armed Forces for the Armed Forces Expeditionary Medal, the Secretary of Defense shall designate participation in Operation Joint Endeavor or Operation Joint Guard in the Republic of Bosnia and Herzegovina, and in such other areas in the region as the Secretary considers appropriate, as service in an area that meets the general requirements for the award of that medal.

''(b) INDIVIDUAL DETERMINATION.—The Secretary of the military department concerned shall determine whether individual members or former members of the Armed Forces who participated in Operation Joint Endeavor or Operation Joint Guard meet the individual service requirements for award of the Armed Forces Expeditionary Medal as established in applicable regulations. A member or former member shall be considered to have participated in Operation Joint Endeavor or Operation Joint Guard if the member—

''(1) was deployed in the Republic of Bosnia and Herzegovina, or in such other area in the region as the Secretary of Defense considers appropriate, in direct support of one or both of the operations;

''(2) served on board a United States naval vessel operating in the Adriatic Sea in direct support of one or both of the operations; or

''(3) operated in airspace above the Republic of Bosnia and Herzegovina, or in such other area in the region as the Secretary of Defense considers appropriate, while the operations were in effect.

''(c) OPERATIONS DEFINED.—For purposes of this section:

''(1) The term 'Operation Joint Endeavor' means operations of the United States Armed Forces conducted in the Republic of Bosnia and Herzegovina during the period beginning on November 20, 1995, and ending on December 20, 1996, to assist in implementing the General Framework Agreement and Associated Annexes, initialed on November 21, 1995, in Dayton, Ohio.

''(2) The term 'Operation Joint Guard' means operations of the United States Armed Forces conducted in the Republic of Bosnia and Herzegovina as a successor to Operation Joint Endeavor during the period beginning on December 20, 1996, and ending on such date as the Secretary of Defense may designate.''

ELIGIBILITY OF CERTAIN WORLD WAR II MILITARY ORGANIZATIONS FOR AWARD OF UNIT DECORATIONS

Pub. L. 105–85, div. A, title V, §576, Nov. 18, 1997, 111 Stat. 1758, provided that:

''(a) AUTHORITY.—A unit decoration may be awarded for any unit or other organization of the Armed Forces (such as the Military Intelligence Service of the Army) that (1) supported the planning or execution of combat operations during World War II primarily through unit personnel who were attached to other units of the Armed Forces or of other allied armed forces, and (2) is not otherwise eligible for award of the decoration by reason of not usually having been deployed as a unit in support of such operations.

''(b) TIME FOR SUBMISSION OF RECOMMENDATION.—Any recommendation for award of a unit decoration under subsection (a) shall be submitted to the Secretary concerned (as defined in section 101(a)(9) of title 10, United States Code), or to such other official as the Secretary concerned may designate, not later than two years after the date of the enactment of this Act [Nov. 18, 1997].''

AUTHORITY TO AWARD DECORATIONS RECOGNIZING ACTS OF VALOR PERFORMED IN COMBAT DURING THE VIETNAM CONFLICT

Section 522 of Pub. L. 104–106 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Ia Drang Valley (Pleiku) campaign, carried out by the Armed Forces in the Ia Drang Valley of Vietnam from October 23, 1965, to November 26, 1965, is illustrative of the many battles during the Vietnam conflict which pitted forces of the United States against North Vietnamese Army regulars and Viet Cong in vicious fighting.

''(2) Accounts of those battles that have been published since the end of that conflict authoritatively document numerous and repeated acts of extraordinary heroism, sacrifice, and bravery on the part of members of the Armed Forces, many of which have never been officially recognized.

''(3) In some of those battles, United States military units suffered substantial losses, with some units sustaining casualties in excess of 50 percent.

''(4) The incidence of heavy casualties throughout the Vietnam conflict inhibited the timely collection of comprehensive and detailed information to support recommendations for awards recognizing acts of heroism, sacrifice, and bravery.

''(5) Subsequent requests to the Secretaries of the military departments for review of award recommendations for such acts have been denied because of restrictions in law and regulations that require timely filing of such recommendations and documented justification.

''(6) Acts of heroism, sacrifice, and bravery performed in combat by members of the Armed Forces deserve appropriate and timely recognition by the people of the United States.

''(7) It is appropriate to recognize acts of heroism, sacrifice, or bravery that are belatedly, but properly, documented by persons who witnessed those acts.

''(b) WAIVER OF TIME LIMITATIONS FOR RECOMMENDATIONS FOR AWARDS.—(1) Any decoration covered by paragraph (2) may be awarded, without regard to any time limit imposed by law or regulation for a recommendation for such award to any person for actions by that person in the Southeast Asia theater of operations while serving on active duty during the Vietnam era. The waiver of time limitations under this paragraph applies only in the case of awards for acts of valor for which a request for consideration is submitted under subsection (c).

''(2) Paragraph (1) applies to any decoration (including any device in lieu of a decoration) that, during or after the Vietnam era and before the date of the enactment of this Act [Feb. 10, 1996], was authorized by law or under regulations of the Department of Defense or the military department concerned to be awarded to members of the Armed Forces for acts of valor.

''(c) REVIEW OF REQUESTS FOR CONSIDERATION OF AWARDS.—(1) The Secretary of each military department shall review each request for consideration of award of a decoration described in subsection (b) that are received by the Secretary during the one-year period beginning on the date of enactment of this Act [Feb. 10, 1996].

''(2) The Secretaries shall begin the review within 30 days after the date of the enactment of this Act and shall complete the review of each request for consideration not later than one year after the date on which the request is received.

''(3) The Secretary may use the same process for carrying out the review as the Secretary uses for reviewing other recommendations for award of decorations to members of the Armed Forces under the Secretary's jurisdiction for valorous acts.

''(d) REPORT.—(1) Upon completing the review of each such request under subsection (c), the Secretary shall

submit a report on the review to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report shall include, with respect to each request for consideration received, the following information:

''(A) A summary of the request for consideration.

''(B) The findings resulting from the review.

''(C) The final action taken on the request for consideration.

''(e) DEFINITION.—For purposes of this section:

''(1) The term 'Vietnam era' has the meaning given that term in section 101 of title 38, United States Code.

''(2) The term 'active duty' has the meaning given that term in section 101 of title 10, United States Code.''

MILITARY INTELLIGENCE PERSONNEL PREVENTED BY SECRECY FROM BEING CONSIDERED FOR DECORATIONS AND AWARDS

Section 523 of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title V, § 575, Nov. 18, 1997, 111 Stat. 1758, provided that:

''(a) WAIVER ON RESTRICTIONS OF AWARDS.—(1) Any decoration covered by paragraph (2) may be awarded, without regard to any time limit imposed by law or regulation for a recommendation for such award, to any person for an act, achievement, or service that the person performed in carrying out military intelligence duties during the period beginning on January 1, 1940, and ending on December 31, 1990.

''(2) Paragraph (1) applies to any decoration (including any device in lieu of a decoration) that, during or after the period described in paragraph (1) and before the date of the enactment of this Act [Feb. 10, 1996], was authorized by law or under the regulations of the Department of Defense or the military department concerned to be awarded to a person for an act, achievement, or service performed by that person while serving on active duty.

''(b) REVIEW OF REQUESTS FOR CONSIDERATION OF AWARDS.—(1) The Secretary of each military department shall review each request for consideration of award of a decoration described in subsection (a) that is received by the Secretary during the period beginning on February 10, 1996, and ending on February 9, 1998.

''(2) The Secretaries shall begin the review within 30 days after the date of the enactment of this Act and shall complete the review of each request for consideration not later than one year after the date on which the request is received.

''(3) The Secretary may use the same process for carrying out the review as the Secretary uses for reviewing other recommendations for awarding decorations to members of the Armed Forces under the Secretary's jurisdiction for acts, achievements, or service.

''(c) REPORT.—(1) Upon completing the review of each such request under subsection (b), the Secretary shall submit a report on the review to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives].

''(2) The report shall include, with respect to each request for consideration reviewed, the following information:

''(A) A summary of the request for consideration.

''(B) The findings resulting from the review.

''(C) The final action taken on the request for consideration.

''(D) Administrative or legislative recommendations to improve award procedures with respect to military intelligence personnel.

''(d) DEFINITION.—For purposes of this section, the term 'active duty' has the meaning given such term in section 101 of title 10, United States Code.''

ELIGIBILITY FOR ARMED FORCES EXPEDITIONARY MEDAL BASED UPON SERVICE IN EL SALVADOR

Section 525 of Pub. L. 104–106 provided that:

''(a) IN GENERAL.—For the purpose of determining eligibility of members and former members of the Armed Forces for the Armed Forces Expeditionary Medal, the country of El Salvador during the period beginning on January 1, 1981 and ending on February 1, 1992, shall be treated as having been designated as an area and a period of time in which members of the Armed Forces participated in operations in significant numbers and otherwise met the general requirements for the award of that medal.

''(b) INDIVIDUAL DETERMINATION.—The Secretary of the military department concerned shall determine whether individual members or former members of the Armed Forces who served in El Salvador during the period beginning on January 1, 1981 and ending on February 1, 1992 meet the individual service requirements for award of the Armed Forces Expeditionary Medal as established in applicable regulations. Such determinations shall be made as expeditiously as possible after the date of the enactment of this Act [Feb. 10, 1996].''

§ 1131. Purple Heart: limitation to members of the armed forces

The decoration known as the Purple Heart (authorized to be awarded pursuant to Executive Order 11016) may only be awarded to a person who is a member of the armed forces at the time the person is killed or wounded under circumstances otherwise qualifying that person for award of the Purple Heart.

(Added Pub. L. 105–85, div. A, title V, § 571(a)(1), Nov. 18, 1997, 111 Stat. 1756.)

REFERENCES IN TEXT

Executive Order 11016, referred to in text, is not classified to the Code.

EFFECTIVE DATE

Section 571(b) of Pub. L. 105–85 provided that: ''Section 1131 of title 10, United States Code, as added by subsection (a), shall apply with respect to persons who are killed or wounded after the end of the 180-day period beginning on the date of the enactment of this Act [Nov. 18, 1997].''

§ 1132. Presentation of decorations: prohibition on entering correctional facilities for presentation to prisoners convicted of serious violent felonies

(a) PROHIBITION.—A member of the armed forces may not enter a Federal, State, local, or foreign correctional facility to present a decoration to a person who is incarcerated due to conviction of a serious violent felony.

(b) DEFINITIONS.—In this section:

(1) The term ''decoration'' means any decoration or award that may be presented or awarded to a member of the armed forces.

(2) The term ''serious violent felony'' has the meaning given that term in section 3559(c)(2)(F) of title 18.

(Added Pub. L. 105–261, div. A, title V, § 537(a), Oct. 17, 1998, 112 Stat. 2019.)

§ 1133. Bronze Star: limitation to members receiving imminent danger pay

The decoration known as the ''Bronze Star'' may only be awarded to a member of the armed forces who is in receipt of special pay under sec-

tion 310 of title 37 at the time of the events for which the decoration is to be awarded or who receives such pay as a result of those events.

(Added Pub. L. 106–398, §1 [[div. A], title V, §541(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114.)

CHAPTER 58—BENEFITS AND SERVICES FOR MEMBERS BEING SEPARATED OR RECENTLY SEPARATED

Sec.
1141. Involuntary separation defined.
1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs.
1143. Employment assistance.
1143a. Encouragement of postseparation public and community service.
1144. Employment assistance, job training assistance, and other transitional services: Department of Labor.
1145. Health benefits.
1146. Commissary and exchange benefits.
1147. Use of military family housing.
1148. Relocation assistance for personnel overseas.
1149. Excess leave and permissive temporary duty.
1150. Affiliation with Guard and Reserve units: waiver of certain limitations.
[1151. Repealed.]
1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies.
1153. Assistance to separated members to obtain employment with health care providers.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title XVII, §1707(a)(2), Oct. 5, 1999, 113 Stat. 823, struck out item 1151 ''Assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides''.

1994—Pub. L. 103–337, div. A, title V, §542(a)(10), title XI, §1132(a)(2), Oct. 5, 1994, 108 Stat. 2768, 2873, struck out '': Department of Defense'' after ''assistance'' in item 1143 and after ''service'' in item 1143a and substituted ''eligible members and former members'' for ''separated members'' in item 1152.

1993—Pub. L. 103–160, div. A, title XIII, §1332(e), Nov. 30, 1993, 107 Stat. 1797, added items 1152 and 1153.

1992—Pub. L. 102–484, div. D, title XLIV, §§4441(a)(2), 4462(a)(2), Oct. 23, 1992, 106 Stat. 2730, 2740, added items 1143a and 1151.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1174a, 1175 of this title.

§1141. Involuntary separation defined

A member of the armed forces shall be considered to be involuntarily separated for purposes of this chapter if the member was on active duty or full-time National Guard duty on September 30, 1990, or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994, and—

(1) in the case of a regular officer (other than a retired officer), the officer is involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned;

(2) in the case of a reserve officer who is on the active-duty list or, if not on the active-duty list, is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the officer is involuntarily discharged or released from active duty or full-time National Guard (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions, as characterized by the Secretary concerned;

(3) in the case of a regular enlisted member serving on active duty, the member is (A) denied reenlistment, or (B) involuntarily discharged under other than adverse conditions, as characterized by the Secretary concerned; and

(4) in the case of a reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, the member (A) is denied reenlistment, or (B) is involuntarily discharged or released from active duty (or full-time National Guard) under other than adverse conditions, as characterized by the Secretary concerned.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1551; amended Pub. L. 103–160, div. A, title V, §503, Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, §542(a)(1), Oct. 5, 1994, 108 Stat. 2767.)

AMENDMENTS

1994—Pub. L. 103–337, in introductory provisions, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' and ''or after November 29, 1993, or, with respect to a member of the Coast Guard, if the member was on active duty in the Coast Guard after September 30, 1994,'' for ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994''.

1993—Pub. L. 103–160 inserted ''or on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994'' after ''September 30, 1990,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 542(e) of Pub. L. 103–337 provided that: ''This section [amending this section and sections 1143, 1143a, 1145 to 1150, 1174a, and 1175 of this title and enacting provisions set out as a note under section 1293 of this title] and the amendments made by this section shall apply only to members of the Coast Guard who are separated after September 30, 1994.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174a, 1175 of this title; title 20 section 932; title 29 section 2918; title 37 sections 404, 406; title 38 section 3018A; title 42 section 3796dd.

§1142. Preseparation counseling; transmittal of medical records to Department of Veterans Affairs

(a) REQUIREMENT.—(1) Within the time periods specified in paragraph (3), the Secretary concerned shall (except as provided in paragraph (4)) provide for individual preseparation counseling of each member of the armed forces whose discharge or release from active duty is anticipated as of a specific date. A notation of the provision of such counseling with respect to each matter specified in subsection (b), signed by the member, shall be placed in the service record of each member receiving such counseling.

(2) In carrying out this section, the Secretary concerned may use the services available under section 1144 of this title.

(3)(A) In the case of an anticipated retirement, preseparation counseling shall commence as soon as possible during the 24-month period preceding the anticipated retirement date. In the case of a separation other than a retirement, preseparation counseling shall commence as soon as possible during the 12-month period preceding the anticipated date. Except as provided in subparagraph (B), in no event shall preseparation counseling commence later than 90 days before the date of discharge or release.

(B) In the event that a retirement or other separation is unanticipated until there are 90 or fewer days before the anticipated retirement or separation date, preseparation counseling shall begin as soon as possible within the remaining period of service.

(4)(A) Subject to subparagraph (B), the Secretary concerned shall not provide preseparation counseling to a member who is being discharged or released before the completion of that member's first 180 days of active duty.

(B) Subparagraph (A) shall not apply in the case of a member who is being retired or separated for disability.

(b) MATTERS TO BE COVERED BY COUNSELING.—Counseling under this section shall include the following:

(1) A discussion of the educational assistance benefits to which the member is entitled under the Montgomery GI Bill and other educational assistance programs because of the member's service in the armed forces.

(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the compensation and vocational rehabilitation benefits to which the member may be entitled under laws administered by the Secretary of Veterans Affairs, if the member is being medically separated or is being retired under chapter 61 of this title.

(3) An explanation of the procedures for and advantages of affiliating with the Selected Reserve.

(4) Information concerning Government and private-sector programs for job search and job placement assistance, including the public and community service jobs program carried out under section 1143a of this title, and information regarding the placement programs established under sections 1152 and 1153 of this title and the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.).[1]

(5) If the member has a spouse, job placement counseling for the spouse.

(6) Information concerning the availability of relocation assistance services and other benefits and services available to persons leaving military service, as provided under section 1144 of this title.

(7) Information concerning the availability of medical and dental coverage following separation from active duty, including the opportunity to elect into the conversion health policy provided under section 1145 of this title.

(8) Counseling (for the member and dependents) on the effect of career change on individuals and their families.

(9) Financial planning assistance.

(10) The creation of a transition plan for the member to attempt to achieve the educational, training, and employment objectives of the member and, if the member has a spouse, the spouse of the member.

(c) TRANSMITTAL OF MEDICAL INFORMATION TO DEPARTMENT OF VETERANS AFFAIRS.—In the case of a member being medically separated or being retired under chapter 61 of this title, the Secretary concerned shall ensure (subject to the consent of the member) that a copy of the member's service medical record (including any results of a Physical Evaluation Board) is transmitted to the Secretary of Veterans Affairs within 60 days of the separation or retirement.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1552; amended Pub. L. 102–190, div. A, title X, §1061(a)(5), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§4401, 4441(b), 4462(b), Oct. 23, 1992, 106 Stat. 2701, 2730, 2740; Pub. L. 103–35, title II, §201(i)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §1332(c), Nov. 30, 1993, 107 Stat. 1797; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(9)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290; Pub. L. 107–103, title III, §302(a), Dec. 27, 2001, 115 Stat. 991.)

REFERENCES IN TEXT

The Troops-to-Teachers Program Act of 1999, referred to in subsec. (b)(4), is title XVII of div. A of Pub. L. 106–65, Oct. 5, 1999, 113 Stat. 817, which was classified principally to chapter 74 (§9301 et seq.) of Title 20, Education, prior to repeal by Pub. L. 107–110, title X, §1011(6), Jan. 8, 2002, 115 Stat. 1986.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–103, §302(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''As soon as possible before, but in no event later than 90 days before, the date of the discharge or release from active duty of a member of the armed forces, the Secretary concerned shall provide for individual preseparation counseling of the member.''

Subsec. (a)(3), (4). Pub. L. 107–103, §302(a)(2), added pars. (3) and (4).

2000—Subsec. (b)(4). Pub. L. 106–398 substituted ''sections 1152 and 1153 of this title and the Troops-to-Teachers Program Act of 1999 (20 U.S.C. 9301 et seq.)'' for ''sections 1151, 1152, and 1153 of this title''.

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''programs established under sections 1151, 1152, and 1153 of this title'' for ''program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides''.

Pub. L. 103–35 substituted ''job placement assistance, including the public and community service jobs pro-

[1] See References in Text note below.

gram carried out under section 1143a of this title, and information regarding the placement program established under section 1151 of this title to assist members to obtain employment as elementary or secondary school teachers or teachers' aides'' for ''job placement assistance and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides., including the public and community service jobs program carried out under section 1143a of this title''.

1992—Subsec. (a)(1). Pub. L. 102–484, § 4401(a), substituted ''As soon as possible before, but in no event later than 90 days before, the date of the discharge'' for ''Upon the discharge''.

Subsec. (b)(4). Pub. L. 102–484, § 4462(b), inserted before period at end '', including the public and community service jobs program carried out under section 1143a of this title''.

Pub. L. 102–484, § 4441(b), inserted before period at end ''and information regarding the placement program established under section 1151 of this title to assist members obtain employment as elementary or secondary school teachers or teachers' aides.''

Subsec. (b)(10). Pub. L. 102–484, § 4401(b), added par. (10).

1991—Subsec. (b)(5). Pub. L. 102–190 substituted period for semicolon at end.

APPLICATION OF PRESEPARATION COUNSELING REQUIREMENTS TO COAST GUARD

Pub. L. 103–337, div. A, title V, § 543(a), Oct. 5, 1994, 108 Stat. 2769, provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of section 1142 of title 10, United States Code, for the Coast Guard.''

LIMITATION ON FUNDING TO CARRY OUT SECTION 543 OF PUB. L. 103–337

Pub. L. 103–337, div. A, title V, § 543(h), Oct. 5, 1994, 108 Stat. 2772, provided that: ''Funds appropriated or otherwise made available to the Department of Defense, the Department of Education, the Department of Labor, or the Department of Veterans Affairs may not be used to carry out subsection (a) [set out above] or the amendments made by this section [amending sections 1144 and 1151 to 1153 of this title and provisions set out as notes under section 1143 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078a, 1144 of this title; title 20 section 6672.

§ 1143. Employment assistance

(a) EMPLOYMENT SKILLS VERIFICATION.—The Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard shall provide to members of the armed forces who are discharged or released from active duty a certification or verification of any job skills and experience acquired while on active duty that may have application to employment in the civilian sector. The preceding sentence shall be carried out in conjunction with the Secretary of Labor.

(b) EMPLOYMENT ASSISTANCE CENTERS.—The Secretary of Defense shall establish permanent employment assistance centers at appropriate military installations. The Secretary of Homeland Security shall establish permanent employment assistance centers at appropriate Coast Guard installations.

(c) INFORMATION TO CIVILIAN ENTITIES.—For the purpose of assisting members covered by subsection (a) and their spouses in locating civilian employment and training opportunities, the Secretary of Defense and the Secretary of Homeland Security shall establish and implement procedures to release to civilian employers, organizations, State employment agencies, and other appropriate entities the names (and other pertinent information) of such members and their spouses. Such names may be released for such purpose only with the consent of such members and spouses.

(d) EMPLOYMENT PREFERENCE BY NONAPPROPRIATED FUND INSTRUMENTALITIES.—The Secretary of Defense shall take such steps as necessary to provide that members of Army, Navy, Air Force, or Marine Corps who are involuntarily separated, and the dependents of such members, shall be provided a preference in hiring by nonappropriated fund instrumentalities of the Department. Such preference shall be administered in the same manner as the preference for military spouses provided under section 1784(a)(2) of this title, except that a preference under that section shall have priority over a preference under this subsection. A person may receive a preference in hiring under this subsection only once. The Secretary of Homeland Security shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 103–337, div. A, title V, § 542(a)(2), Oct. 5, 1994, 108 Stat. 2767; Pub. L. 105–85, div. A, title X, § 1073(a)(21), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a) to (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (d). Pub. L. 105–85 substituted ''section 1784(a)(2) of this title'' for ''section 806(a)(2) of the Military Family Act of 1985''.

1994—Pub. L. 103–337, § 542(a)(2)(A), struck out '': Department of Defense'' after ''assistance'' in section catchline.

Subsec. (a). Pub. L. 103–337, § 542(a)(2)(B), inserted ''and the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''under the jurisdiction of the Secretary'' after ''armed forces''.

Subsec. (b). Pub. L. 103–337, § 542(a)(2)(C), inserted at end ''The Secretary of Transportation shall establish permanent employment assistance centers at appropriate Coast Guard installations.''

Subsec. (c). Pub. L. 103–337, § 542(a)(2)(D), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d). Pub. L. 103–337, § 542(a)(2)(E), inserted at end ''The Secretary of Transportation shall provide the same preference in hiring to involuntarily separated members of the Coast Guard, and the dependents of such members, in Coast Guard nonappropriated fund instrumentalities.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after

Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

DEMONSTRATION PROGRAM FOR TRAINING RECENTLY DISCHARGED VETERANS FOR EMPLOYMENT IN CONSTRUCTION AND HAZARDOUS WASTE REMEDIATION

Pub. L. 103–160, div. A, title XIII, §1337, Nov. 30, 1993, 107 Stat. 1805, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense may establish a demonstration program to promote the training and employment of veterans in the construction and hazardous waste remediation industries. Using funds made available to carry out this section the Secretary shall make grants under the demonstration program to organizations that meet the eligibility criteria specified in subsection (b).

''(b) GRANT ELIGIBILITY CRITERIA.—An organization is eligible to receive a grant from the Secretary under subsection (a) if it—

''(1) demonstrates, to the satisfaction of the Secretary, an ability to recruit and counsel veterans for participation in the demonstration program under this section;

''(2) has entered into an agreement with a joint labor-management training fund established consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)) to implement and operate a training and employment program for veterans;

''(3) agrees under the agreement referred to in paragraph (2) to use grant funds to carry out a program that will provide eligible veterans with training for employment in the construction and hazardous waste remediation industries;

''(4) provides such training for an eligible veteran for not more than 18 months;

''(5) demonstrates actual experience in providing training for veterans under an agreement referred to in paragraph (2);

''(6) agrees to make, along with all subgrantees, a substantial in-kind contribution (as determined by the Secretary of Defense) from non-Federal sources to the demonstration program under this section; and

''(7) gives its assurances, to the satisfaction of the Secretary, that full time, permanent jobs will be available for individuals successfully completing the training program, with a special emphasis on jobs with employers in construction and hazardous waste remediation on Department of Defense facilities.

''(c) ELIGIBLE VETERANS.—An individual is an eligible veteran for the purposes of this section if the individual—

''(1)(A) served in the active military, naval, or air service for a period of at least two years;

''(B) was discharged or released from active duty because of a service-connected disability; or

''(C) is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more; and

''(2) was discharged or released on or after August 2, 1990, under conditions other than dishonorable.

''(d) PREFERENCE.—In carrying out the demonstration program under this section, the Secretary shall ensure that a preference is given to eligible veterans who had a primary or secondary occupational specialty in the Armed Forces that (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) is not readily transferable to the civilian work force.

''(e) HAZARDOUS WASTE OPERATIONS TRAINING GOAL.—It is the sense of Congress that at least 20 percent of the total number of veterans completing training under the demonstration program under this section should complete the training required—

''(1) for certification under section 126 of the Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499] (29 U.S.C. 655 note); and

''(2) under any other Federal law which requires certification for employees engaged in hazardous waste remediation operations.

''(f) USE OF FUNDS.—Funds made available to carry out this section may only be used for tuition and stipends to cover the living and travel expenses of participants, except that the Secretary may provide that not more than a total of four percent of all the funds made available under this section may be used for administrative expenses of grantees and subgrantees.

''(g) LIMITATION ON TUITION CHARGED.—The amount of tuition charged eligible veterans participating in a training program funded under the demonstration program may not exceed the amount of tuition charged to nonveterans participating in programs substantially similar to that training program.

''(h) LIMITATION ON EXPENDITURES PER PARTICIPANT.—Of the funds made available to carry out this section—

''(1) not more than $1,000 may be expended with respect to each veteran participating in the construction phase of the demonstration program; and

''(2) not more than an additional $1,000 may be expended with respect to each veteran participating in the hazardous waste remediation phase of the demonstration program, except that the Secretary may authorize an additional $300 for the training of a veteran participating in such phase if the Secretary determines that such additional amount is necessary because of the type of training needed for the particular kind of hazardous waste remediation involved.

''(i) REPORTS.—(1) Not later than November 1, 1994, the Secretary shall submit to Congress an interim report describing the manner in which the demonstration program under this section is being carried out, including a detailed description of the number of grants made, the number of veterans involved, the kinds of training received, and any job placements that have occurred or that are anticipated.

''(2) Not later than December 31, 1995, the Secretary shall submit to Congress a final report containing a description of the results of the demonstration program with a detailed description of the number of grants made, the number of veterans involved, the number of veterans who completed the program, the number of veterans who were placed in jobs, the number of veterans who failed to complete the program along with the reasons for such failure, and any recommendations the Secretary considers to be appropriate.

''(j) DEFINITIONS.—For purposes of this section, the terms 'veteran', 'service-connected', 'active duty', and 'active military, naval, or air service' have the meanings given such terms in paragraphs (2), (16), (21), and (24), respectively, of section 101 of title 38, United States Code.

''(k) TERMINATION.—Not later than October 1, 1994, the Secretary shall obligate, in accordance with the provisions of this section, the funds made available to carry out the demonstration program under this section.''

IMPROVED COORDINATION OF JOB TRAINING AND PLACEMENT PROGRAMS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–484, div. D, title XLIV, §4461, Oct. 23, 1992, 106 Stat. 2738, as amended by Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(7)(B), (f)(6)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430; Pub. L. 105–332, §3(b), Oct. 31, 1998, 112 Stat. 3125; Pub. L. 106–398, §1 [[div. A], title X, §1087(g)(7)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294; Pub. L. 107–107, div. A, title X, §1048(h)(3), Dec. 28, 2001, 115 Stat. 1229, provided that: ''The Secretary of Defense shall consult with the Secretary of Labor, the Secretary of Education, the Secretary of Veterans Affairs, and the Economic Adjustment Committee to improve the coordination of, and eliminate duplication between, the following job training and placement programs available to members of the Armed Forces who are discharged or released from active duty:

''(1) Title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.].

''(2) Sections 1143 and 1144 of title 10, United States Code.

''(3) Chapter 41 of title 38, United States Code.

''(4) The Act of August 16, 1937 (Chapter 663; 50 Stat 664; 29 U.S.C. 50 et seq.), commonly known as the National Apprenticeship Act.

''(5) The Wagner-Peyser Act (29 U.S.C. 49 et seq.).''

PARTICIPATION OF DISCHARGED MILITARY PERSONNEL IN UPWARD BOUND PROJECTS TO PREPARE FOR COLLEGE

Pub. L. 102–484, div. D, title XLIV, §4466, Oct. 23, 1992, 106 Stat. 2748, as amended by Pub. L. 103–337, div. A, title V, §543(f), Oct. 5, 1994, 108 Stat. 2771; Pub. L. 107–296, title XVII, §1704(e)(4), Nov. 25, 2002, 116 Stat. 2315, provided that:

''(a) PROGRAM.—The Secretary of Defense may carry out a program to assist a member of the Armed Forces described in subsection (b) who is accepted to participate in an upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to cover the cost of providing services through the project to the member to assist the member to prepare for and pursue a program of higher education upon separation from active duty. Assistance provided under the program may include a stipend provided under subsection (d) of such section.

''(b) ELIGIBLE MEMBERS.—A member of the Armed Forces shall be eligible for assistance under subsection (a) if the member—

''(1) was on active duty or full-time National Guard duty on September 30, 1990;

''(2) during the five-year period beginning on that date, was or is discharged or released from such duty (under other than adverse circumstances); and

''(3) submits an application to the Secretary of Defense within such time, in such form, and containing such information as the Secretary of Defense may require.

''(c) NOTIFICATION OF MEMBERS PREVIOUSLY SEPARATED.—To the extent feasible, the Secretary of Defense shall notify members of the Armed Forces who, between September 30, 1990, and the date of the enactment of this Act [Oct. 23, 1992], were discharged or released from active duty or full-time National Guard duty regarding the availability of the program under subsection (a). The Secretary may establish a time limit within which such members may apply to participate in the program.

''(d) PROVISION OF ASSISTANCE.—

''(1) DETERMINATION OF AMOUNT.—The amount of assistance provided under subsection (a) to a member of the Armed Forces shall be equal to the anticipated cost of providing services to the member through an upward bound project, subject to the limitation that such amount may not exceed the monthly basic pay to which the member is entitled at the time of the separation of the member. The Secretary of Defense may provide assistance in excess of that limitation if the Secretary determines, on a case by case basis, that such assistance is warranted by the special training needs of the member.

''(2) CONSULTATION.—The Secretary of Education may assist the Secretary of Defense in determining the amount to be provided under paragraph (1).

''(e) USE OF ASSISTANCE.—A member of the Armed Forces who is selected to participate in the program may receive services through any upward bound project assisted under section 402C of the Higher Education Act of 1965 (20 U.S.C. 1070a–13) to the same extent as other individuals eligible to receive such services. A member may not participate after the end of the two-year period beginning on the date on which the member is discharged or released from active duty, except that, in the case of a member described in subsection (b) who was discharged or released from active duty before the date of the enactment of this Act [Oct. 23, 1993], the period for participation in the program shall be two years from the date of the enactment of this Act.

''(f) REIMBURSEMENT.—Upon submission to the Secretary of Defense of a request for reimbursement of the costs to provide services to a participant, the Secretary shall reimburse the upward bound project submitting the request for the actual cost of providing services (including a stipend) to the member, not to exceed the amount provided under subsection (d)(1). Funds provided under this subsection shall be in addition to the funds otherwise provided to the project under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.). Not more than 10 percent of the funds provided under this subsection may be used for administrative costs.

''(g) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $5,000,000 shall be available to provide assistance under this section.

''(h) APPLICATION TO COAST GUARD.—The Secretary of Homeland Security may implement the provisions of this section for the Coast Guard in the same manner and to the same extent as such section applies to the Department of Defense.''

SERVICE MEMBERS OCCUPATIONAL CONVERSION AND TRAINING

Section 543(g)(2) of Pub. L. 103–337 provided that: ''As soon as possible after the date of the enactment of this Act [Oct. 5, 1994], the Secretary of Transportation shall implement the requirements of the Service Members Occupational Conversion and Training Act of 1992 (subtitle G of title XLIV of Public Law 102–484; 10 U.S.C. 1143 note) for the Coast Guard.''

Pub. L. 102–484, div. D, title XLIV, subtitle G, Oct. 23, 1992, 106 Stat. 2757, as amended by Pub. L. 103–160, div. A, title XIII, §1338, Nov. 30, 1993, 107 Stat. 1807; Pub. L. 103–337, div. A, title V, §543(g)(1), Oct. 5, 1994, 108 Stat. 2772; Pub. L. 103–446, title VI, §610(a)(1), (2)(A), (b), (c), Nov. 2, 1994, 108 Stat. 4673; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(7)(D), (f)(6)(D)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, provided that:

''SEC. 4481. SHORT TITLE.

''This subtitle [subtitle G (§§4481–4497) of title XLIV of Pub. L. 102–484] may be cited as the 'Service Members Occupational Conversion and Training Act of 1992'.

''SEC. 4482. FINDINGS AND PURPOSES.

''(a) FINDINGS.—The Congress finds that—

''(1) the men and women serving in our Nation's Armed Forces are of the highest caliber—intelligent, dedicated, and disciplined—and hundreds of thousands of these service members will be separating from the Armed Forces due to the drawdown in military personnel;

''(2) these men and women will be entering the civilian workforce during a time of economic instability and uncertainty;

''(3) many of these service personnel specialized in critical skills such as combat arms which will not transfer to the civilian workforce;

''(4) as part of the Nation's obligation to these service members, the Secretary of Defense has a unique responsibility and obligation to provide them with the tools they need to be reassimilated into the civilian community and continue to be outstanding, productive citizens;

''(5) the rapid placement of separated military personnel in civilian employment and training opportunities will significantly reduce the Department of Defense's costs relative to unemployment compensation for ex-service members;

''(6) military personnel are a national resource whose skills and abilities must be absorbed by and integrated into the civilian workforce; and

''(7) providing such training will reduce the total cost of the drawdown and is important to the national defense function of the Department of Defense.

''(b) PURPOSE.—The purpose of this subtitle is to provide additional means by which the Secretary of Defense can manage the drawdown of the Armed Forces and to provide additional forms of assistance to members of the Armed Forces who are forced or induced to leave military service by reason of the drawdown of the Armed Forces, thereby facilitating the Secretary's ability to achieve end strength reductions caused by the drawdown.

''SEC. 4483. DEFINITIONS.

''For the purposes of this subtitle:

''(1) The term 'Secretary' means the Secretary of Defense with respect to the Department of Defense and the Secretary of Transportation with respect to the Coast Guard.

''(2) The terms 'veteran', 'compensation', 'service-connected', 'State', and 'active military, naval, or air service' have the meanings given such terms in paragraphs (2), (13), (16), (20), and (24), respectively, of section 101 of title 38, United States Code.

''SEC. 4484. ESTABLISHMENT OF PROGRAM.

''(a) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary shall carry out a program in accordance with this subtitle to assist eligible persons in obtaining employment through participation in programs of significant training for employment in stable and permanent positions. The Secretary may enter into an agreement with the Secretary of Veterans Affairs, the Secretary of Labor, or both, for the implementation of the program. The program shall be carried out through payments to employers who employ and train eligible persons in such positions. Such payments shall be made to assist such employers in defraying the costs of necessary training.

''(b) STATE AGENCIES.—(1) The implementing official may enter into contracts or agreements with State approving agencies, as designated pursuant to section 3671(a) of title 38, United States Code, or other State agencies to carry out any duty of the implementing official under this subtitle. Payment may be made to such agencies pursuant to any such contract or agreement for reasonable and necessary expenses of salary and travel incurred by employees of such agencies in carrying out such duties. Each such payment may be made only from funds available to the implementing official pursuant to section 4495(a)(3).

''(2) Each State approving agency or other State agency with which a contract or agreement is entered into under this section shall submit to the implementing official on a monthly or quarterly basis, as determined by the agency, a report containing a certification of such expenses for the period covered by the report. The report shall be submitted in the form and manner required by such official.

''(c) EXPEDITIOUS IMPLEMENTATION.—A requirement in this subtitle to issue regulations shall not be the basis for a delay in carrying out this program within the time limit established by subsection (a).

''SEC. 4485. ELIGIBILITY FOR PROGRAM; PERIOD OF TRAINING.

''(a) IN GENERAL.—(1) To be eligible for participation in a program of job training under this subtitle, an eligible person must be an eligible person described in paragraph (2) who—

''(A)(i) is unemployed at the time of applying for participation in a program under this subtitle; and

''(ii) has been unemployed for at least 8 of the 15 weeks immediately preceding the date of such eligible person's application for participation in a program under this subtitle;

''(B) separates from the active military, naval, or air service and whose primary or secondary occupational specialty in the Armed Forces is (as determined under regulations prescribed by the Secretary and in effect before the date of such separation) not readily transferable to the civilian workforce; or

''(C) served in the active military, naval, or air service and is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under the laws administered by the Secretary of Veterans Affairs for a disability rated at 30 percent or more.

''(2) For purposes of paragraph (1), an eligible person referred to in paragraph (1) is a veteran who—

''(A) was discharged on or after August 2, 1990; and

''(B)(i) served in the active military, naval, or air service for a period of more than 90 days; or

''(ii) was discharged or released from active duty because of a service-connected disability.

''(3) For purposes of paragraph (1), an eligible person shall be considered to be unemployed during any period such person is without a job and wants and is available for work. In determining whether a person is unemployed for purposes of paragraph (1), the implementing official shall not take into consideration part-time or temporary employment, as defined by such official.

''(b) APPLICATION PROCESS.—(1) An eligible person who desires to participate in a program of job training under this subtitle shall submit to the implementing official an application for participation in such a program. Such an application—

''(A) shall include a certification by the eligible person that the eligible person meets the criteria for eligibility prescribed by subparagraph (A), (B), or (C) of subsection (a)(1);

''(B) shall include an opportunity for the eligible person to request counseling under section 4493(a); and

''(C) shall be in such form and contain such additional information as such official may prescribe.

''(2)(A) Subject to subparagraph (B), an application by an eligible person for participation in a program of job training under this subtitle shall be approved unless the implementing official finds that the eligible person is not eligible to participate in a program of job training under this subtitle.

''(B) Approval of an application of an eligible person under this subtitle may be withheld if the implementing official determines that, because of limited funds available for the purpose of making payments to employers under this subtitle, it is necessary to limit the number of participants in the program carried out under this subtitle.

''(3)(A) Subject to section 4491(c), the implementing official shall certify as eligible for participation under this subtitle an eligible person whose application is approved under this subsection and shall furnish the eligible person with a certificate of that eligible person's eligibility for presentation to an employer offering a program of job training under this subtitle. Any such certificate shall expire 180 days after it is furnished to the eligible person. The date on which a certificate is furnished to an eligible person under this paragraph shall be stated on the certificate.

''(B) A certificate furnished under this paragraph may, upon the eligible person's application, be renewed in accordance with the terms and conditions of subparagraph (A).

''(c) APPEAL OF DENIAL OF CERTIFICATE.—The implementing official shall permit each eligible person who is not issued a certificate of eligibility under subsection (b) (other than an eligible person who is not issued such a certificate by reason of subsection (b)(2)(B)) to challenge in a hearing before the implementing official the decision of the implementing official not to issue the certificate. The implementing official shall prescribe procedures with respect to the initiation and conduct of hearings under this subsection.

''(d) PERIOD OF TRAINING.—An employer shall provide a period of training under a program of job training under this subtitle of not less than 6 months in a field of employment providing a reasonable probability of stable, long-term employment.

''SEC. 4486. APPROVAL OF EMPLOYER PROGRAMS.

''(a) IN GENERAL.—(1) An employer may be paid assistance under section 4487(a) on behalf of an eligible person employed by such employer and participating in a program of job training offered by that employer only if the program is approved under this section.

''(2) Except as provided in subsection (b), a proposed program of job training of an employer shall be approved unless the implementing official determines that the application does not contain a certification and other information meeting the requirements established under this subtitle or that withholding of approval is warranted under subsection (g).

''(b) INELIGIBLE PROGRAMS.—A program of job training—

''(1) for employment which consists of seasonal, intermittent, or temporary jobs;

''(2) for employment under which commissions are the primary source of income;

''(3) for employment which involves political or religious activities;

''(4) for employment with any department, agency, instrumentality, or branch of the Federal Government (including the United States Postal Service and the Postal Rate Commission); or

''(5) for employment outside of a State,

may not be approved under this subtitle.

''(c) APPLICATION.—An employer offering a program of job training that the employer desires to have approved for the purposes of this subtitle shall submit to the implementing official a written application for such approval. Such application shall be in such form as such official shall prescribe.

''(d) CERTIFICATION.—An application under subsection (c) shall include a certification by the employer of the following:

''(1) That the employer is planning that, upon an eligible person's completion of the program of job training, the employer will employ the eligible person in a position for which the eligible person has been trained and that the employer expects that such a position will be available on a stable and permanent basis to the eligible person at the end of the training period.

''(2) That the wages and benefits to be paid to an eligible person participating in the employer's program of job training will be not less than the wages and benefits normally paid to other employees participating in the same or a comparable program of job training in the community for the entire period of training of the eligible person.

''(3) That the employment of an eligible person under the program—

''(A) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits); and

''(B) will not be in a job (i) while any other individual is on layoff from the same or any substantially equivalent job, or (ii) the opening for which was created as a result of the employer having terminated the employment of any regular employee or otherwise having reduced its work force with the intention of hiring an eligible person in such job under this subtitle.

''(4) That the employer will not employ in the program of job training an eligible person who is already qualified by training and experience for the job for which training is to be provided.

''(5) That the job which is the objective of the training program is one that involves significant training.

''(6) That the training content of the program is adequate, in light of the nature of the occupation for which training is to be provided and of comparable training opportunities in such occupation, to accomplish the training objective certified under paragraph (2) of subsection (e).

''(7) That each participating eligible person will be employed full time in the program of job training.

''(8) That the training period under the proposed program is not longer than the training periods that employers in the community customarily require new employees to complete in order to become competent in the occupation or job for which training is to be provided.

''(9) That there are in the training establishment or place of employment such space, equipment, instructional material, and instructor personnel as are needed to accomplish the training objective certified under subsection (e)(2).

''(10) That the employer will keep records adequate to show the progress made by each eligible person participating in the program and otherwise to demonstrate compliance with the requirements established under this subtitle.

''(11) That the employer will furnish each participating eligible person, before the eligible person's entry into training, with a copy of the employer's certification under this subsection and will obtain and retain the eligible person's signed acknowledgment of having received such certification.

''(12) That, as applicable, the employer will provide each participating eligible person with the full opportunity to participate in a personal interview pursuant to section 4493(b)(1)(B) during the eligible person's normal workday.

''(13) That the program meets such other criteria as the Secretary, in consultation with the Secretary of Veterans Affairs and the Secretary of Labor, may determine are essential for the effective implementation of the program established by this subtitle.

''(e) HOURS AND TRAINING CONTENT.—A certification under subsection (d) shall include—

''(1) a statement indicating (A) the total number of hours of participation in the program of job training to be offered an eligible person, (B) the length of the program of job training, and (C) the starting rate of wages to be paid to a participant in the program; and

''(2) a description of the training content of the program (including any agreement the employer has entered into with an educational institution under section 4489) and of the objective of the training.

''(f) STATUS OF CERTIFIED MATTERS.—(1) Except as specified in paragraph (2), each matter required to be certified to in paragraphs (1) through (11) of subsection (d) shall be considered to be a requirement established under this subtitle.

''(2)(A) For the purposes of section 4487(c), only matters required to be certified in paragraphs (1) through (10) of subsection (d) shall be so considered.

''(B) For the purposes of section 4490, a matter required to be certified under paragraph (12) of subsection (d) shall also be so considered.

''(g) WITHHOLDING APPROVAL; DISAPPROVAL.—In accordance with regulations which the Secretary shall prescribe, the implementing official may withhold approval of an employer's proposed program of job training pending the outcome of an investigation under section 4491 and, based on the outcome of such an investigation, may disapprove such program.

''(h) ON-JOB TRAINING.—For the purposes of this section, approval of a program of apprenticeship or other on-job training for the purposes of section 3687 of title 38, United States Code, shall be considered to meet all requirements established under the provisions of this subtitle (other than subsection (b) and (d)(3)) for approval of a program of job training.

''SEC. 4487. PAYMENTS TO EMPLOYERS; OVERPAYMENT.

''(a) PAYMENTS.—(1)(A) Except as provided in subsections (b) and (c) and subject to section 4485(d), the implementing official shall make payments to employers in accordance with this section. The amount payable to such an employer on behalf of an eligible person with respect to an approved program of job training under this subtitle shall be determined by such official at the beginning of such program. Except as provided in subparagraphs (B) and (C), that amount shall be equal to 50 percent of the product of (i) the starting hourly rate of wages paid to the eligible person by the employer (without regard to overtime or premium pay), and (ii) the number of hours to be worked by the eligible person during the entire program period but in no event to exceed hours equivalent to 18 months of training.

''(B) In no case may the amount determined under subparagraph (A) exceed—

''(i) $12,000 for an eligible person with a service-connected disability rated at 30 percent or more; or

''(ii) $10,000 for an eligible person not described in clause (i).

''(C) Assistance may be paid under this subtitle on behalf of an eligible person to that person's employer for training under two or more programs of job training under this subtitle if such employer has not received (or is not due) on that person's behalf assistance in an amount aggregating the applicable amount set forth in subparagraph (B).

''(b) PAYMENT PERIOD.—(1) Except as provided in paragraphs (2) and (3), the implementing official shall pay training assistance to employers under this section on a quarterly basis.

''(2) The implementing official may pay training assistance to an employer on a monthly basis if the implementing official determines (pursuant to regulations prescribed by the implementing official) that the number of employees of the employer is such that the payment of assistance on a quarterly basis would be burdensome to the employer.

''(3) The implementing official shall withhold 25 percent of each payment due under this subsection with respect to an eligible person. The total amount withheld with respect to an eligible person under this paragraph shall be paid to the employer at the end of the four month period of employment of such person under this subtitle beginning on the date of completion of training, or upon the completion of the 18th month of training under the last training program approved for the person's pursuit with that employer under this subtitle, whichever is earlier.

''(c) TOOLS AND OTHER WORK-RELATED MATERIALS.—In addition to payments under subsection (a), the implementing official shall reimburse the employer for the cost of tools and other work-related materials necessary for the eligible person's participation in the program of job training in an amount up to $500 if the employer presents to the implementing official a certification signed by the employer and eligible person that—

''(1) tools and other work-related materials are necessary for the eligible person's participation in the job training program,

''(2) the eligible person bought the tools and other work-related materials, and

''(3) the employer paid the eligible person for the cost of the tools and other work-related materials.

''(d) OVERPAYMENTS.—(1)(A) Whenever the implementing official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification, or information contained in an application, submitted by an employer which was false in any material respect, the amount of such overpayment shall constitute a liability of the employer to the United States.

''(B) Whenever such official finds that an employer has failed in any substantial respect to comply for a period of time with a requirement established under this subtitle (unless the employer's failure is the result of false or incomplete information provided by the eligible person), each amount paid to the employer on behalf of an eligible person for that period shall be considered to be an overpayment under this subtitle, and the amount of such overpayment shall constitute a liability of the employer to the United States.

''(2) Whenever such official finds that an overpayment under this subtitle has been made to an employer on behalf of an eligible person as a result of a certification by the eligible person, or as a result of information provided to an employer or contained in an application submitted by the eligible person, which was willfully or negligently false in any material respect, the amount of such overpayment shall constitute a liability of the eligible person to the United States.

''(3) Any overpayment referred to in paragraph (1) or (2) may be recovered in the same manner as any other debt due the United States. Any overpayment recovered shall be credited to funds available to make payments under this subtitle. If there are no such funds, any overpayment recovered shall be deposited into the Treasury.

''(4) Any overpayment referred to in paragraph (1) or (2) may be waived, in whole or in part, in accordance with the terms and conditions set forth in section 5302 of title 38, United States Code.

''(e) LIMITATIONS.—(1) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person until the implementing official has received—

''(A) from the eligible person, a certification that the eligible person was employed full time by the employer in a program of job training during such period; and

''(B) from the employer, a certification—

''(i) that the eligible person was employed by the employer during that period and that the eligible person's performance and progress during such period were satisfactory; and

''(ii) of the number of hours worked by the eligible person during that period.

With respect to the first such certification by an employer with respect to an eligible person, the certification shall indicate the date on which the employment of the eligible person began and the starting hourly rate of wages paid to the eligible person (without regard to overtime or premium pay).

''(2) Payment may not be made to an employer for a period of training under this subtitle on behalf of an eligible person for which a request for payment is made after two years after the date on which that period of training ends.

''SEC. 4488. ENTRY INTO PROGRAM OF JOB TRAINING.

''(a) IN GENERAL.—Notwithstanding any other provision of this subtitle, the implementing official shall withhold or deny approval of an eligible person's entry into an approved program of job training if such official determines that funds are not available to make payments under this subtitle on behalf of the eligible person to the employer offering that program. Before the entry of an eligible person into an approved program of job training of an employer for purposes of assistance under this subtitle, the employer shall notify such official of the employer's intention to employ that eligible person. The eligible person may begin such program of job training with the employer on the day that notice is transmitted to such official by means prescribed by such official. However, assistance under this subtitle may not be provided to the employer if such official, within two weeks after the date on which such notice is transmitted, disapproves the eligible person's entry into that program of job training in accordance with this section.

''(b) PERIOD FOR COMMENCEMENT OF PARTICIPATION UNDER CERTIFICATE.—An eligible person who is issued a certificate of eligibility for participation in a program of job training under this subtitle shall commence participation in such a program not more than 180 days after the date of the issuance of the certificate. The date on which a certificate is furnished to an eligible person shall be stated on the certificate.

''SEC. 4489. PROVISION OF TRAINING THROUGH EDUCATIONAL INSTITUTIONS.

''An employer may enter into an agreement with an educational institution that has been approved for the purposes of chapter 106 of title 10, United States Code, or any other institution offering a program of job training, as approved by the Secretary of Veterans Affairs, in order that such institution may provide a program of job training (or a portion of such a program) under this subtitle. When such an agreement has been entered into, the application of the employer under section 4486 shall so state and shall include a description of the training to be provided under the agreement.

''SEC. 4490. DISCONTINUANCE OF APPROVAL OF PARTICIPATION IN CERTAIN EMPLOYER PROGRAMS.

''(a) FAILURE TO MEET REQUIREMENTS.—If the implementing official finds at any time that a program of job training previously approved for the purposes of this subtitle thereafter fails to meet any of the require-

ments established under this subtitle, such official may immediately disapprove further participation by eligible persons in that program. Such official shall provide to the employer concerned, and to each eligible person participating in the employer's program, a statement of the reasons for, and an opportunity for a hearing with respect to, such disapproval. The employer and each such eligible person shall be notified of such disapproval, the reasons for such disapproval, and the opportunity for a hearing. Notification shall be by a certified or registered letter, and a return receipt shall be secured.

''(b) RATE OF COMPLETION.—(1) If the implementing official determines that the rate of eligible persons' successful completion of an employer's programs of job training previously approved for the purposes of this subtitle is disproportionately low because of deficiencies in the quality of such programs, such official shall disapprove participation in such programs on the part of eligible persons who had not begun such participation on the date that the employer is notified of the disapproval. In determining whether any such rate is disproportionately low because of such deficiencies, such official shall take into account appropriate data, including—

''(A) the quarterly data provided by the Secretary of Labor with respect to the number of eligible persons who receive counseling in connection with training under this subtitle, are referred to employers under this subtitle, participate in job training under this subtitle, and complete such training or do not complete such training, and the reasons for noncompletion; and

''(B) data compiled through the particular employer's compliance surveys.

''(2) With respect to a disapproval under paragraph (1), the implementing official shall provide to the employer concerned the kind of statement, opportunity for hearing, and notice described in subsection (a).

''(3) A disapproval under paragraph (1) shall remain in effect until such time as the implementing official determines that adequate remedial action has been taken.

''SEC. 4491. INSPECTION OF RECORDS; INVESTIGATIONS.

''(a) RECORDS.—The records and accounts of employers pertaining to eligible persons on behalf of whom assistance has been paid under this subtitle, as well as other records that the implementing official determines to be necessary to ascertain compliance with the requirements established under this subtitle, shall be available at reasonable times for examination by authorized representatives of the Federal Government.

''(b) COMPLIANCE MONITORING.—Such official may monitor employers and eligible persons participating in programs of job training under this subtitle to determine compliance with the requirements established under this subtitle.

''(c) INVESTIGATIONS.—Such official may investigate any matter such official considers necessary to determine compliance with the requirements established under this subtitle. The investigations authorized by this subsection may include examining records (including making certified copies of records), questioning employees, and entering into any premises or onto any site where any part of a program of job training is conducted under this subtitle, or where any of the records of the employer offering or providing such program are kept.

''(d) DEPARTMENT OF LABOR.—Functions may be administered under subsections (b) and (c) in accordance with an agreement between the Secretary and the Secretary of Labor providing for the administration of such subsections (or any portion of such subsections) by the Department of Labor. Under such an agreement, any entity of the Department of Labor specified in the agreement may administer such subsections.

''SEC. 4492. COORDINATION WITH OTHER PROGRAMS.

''(a) VETERANS EDUCATION PROGRAMS.—(1) Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period of time described in paragraph (2) and to such eligible person under chapter 30, 31, 32, 35, or 36 of title 38, United States Code, or chapter 106 of title 10, United States Code, for the same period of time.

''(2) A period of time referred to in paragraph (1) is the period of time beginning on the date on which the eligible person enters into an approved program of job training of an employer for purposes of assistance under this subtitle and ending on the last date for which such assistance is payable.

''(b) OTHER TRAINING AND EMPLOYMENT.—Assistance may not be paid under this subtitle to an employer on behalf of an eligible person for any period if the employer receives for that period any other form of assistance on account of the training or employment of the eligible person, including assistance under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.] or a credit under section 51 of the Internal Revenue Code of 1986 [26 U.S.C. 51] (relating to credit for employment of certain new employees).

''(c) PREVIOUS COMPLETION OF PROGRAM.—Assistance may not be paid under this subtitle on behalf of an eligible person who has completed a program of job training under this subtitle.

''(d) PROMOTION.—(1) In carrying out section 3116(b) of title 38, United States Code, the Secretary of Veterans Affairs shall take all feasible steps to establish and encourage, for eligible persons who are eligible to have payments made on their behalf under such section, the development of training opportunities through programs of job training under this subtitle.

''(2) The Secretary of Veterans Affairs, in cooperation with the implementing official (unless the Secretary of Veterans Affairs is the implementing official), shall take all feasible steps to ensure that, in the cases of eligible persons who are eligible to have payments made on their behalf under both this subtitle and section 3116(b) of title 38, United States Code, the authority under such section is utilized, to the maximum extent feasible and consistent with the eligible person's best interests, to make payments to employers on behalf of such eligible persons.

''SEC. 4493. COUNSELING.

''(a) IN GENERAL.—The implementing official shall, upon request, provide, by contract or otherwise, employment counseling services to any eligible person eligible to participate under this subtitle in order to assist such eligible person in selecting a suitable program of job training under this subtitle.

''(b) CASE MANAGER.—(1) The implementing official shall provide for a program under which—

''(A) except as provided in paragraph (2), a disabled veteran's outreach program specialist appointed under section 4103A(a) of title 38, United States Code, is assigned as a case manager for each eligible person participating in a program of job training under this subtitle;

''(B) the eligible person has an in-person interview with the case manager not later than 60 days after entering into a program of training under this subtitle; and

''(C) periodic (not less frequent than monthly) contact is maintained with each such eligible person for the purpose of (i) avoiding unnecessary termination of employment, (ii) referring the eligible person to appropriate counseling, if necessary, (iii) facilitating the eligible person's successful completion of such program, and (iv) following up with the employer and the eligible person in order to determine the eligible person's progress in the program and the outcome regarding the eligible person's participation in and successful completion of the program.

''(2) No case manager shall be assigned pursuant to paragraph (1)(A)—

''(A) for an eligible person if, on the basis of a recommendation made by a disabled veterans' outreach program specialist, the implementing official determines that there is no need for a case manager for such eligible person; or

''(B) in the case of the employees of an employer, if the implementing official determines that—

''(i) the employer has an appropriate and effective employee assistance program that is available to all eligible persons participating in the employer's programs of job training under this subtitle; or

''(ii) the rate of eligible persons' successful completion of the employer's programs of job training under this subtitle, either cumulatively or during the previous program year, is 60 percent or higher.

''(3) The implementing official shall provide, to the extent feasible, a program of counseling or other services designed to resolve difficulties that may be encountered by eligible persons during their training under this subtitle. Such counseling or other services shall be similar to the counseling and other services provided under sections 1712A, 3697A, 4103A, 4104, 7723, and 7724 of title 38, United States Code, and section 1144 of title 10, United States Code.

''(c) CASE MANAGER REQUIRED.—Before an eligible person who voluntarily terminates from a program of job training under this subtitle or is involuntarily terminated from such program by the employer may be eligible to be provided with a further certificate, or renewal of certification, of eligibility for participation under this subtitle, such eligible person must be provided by the Secretary of Labor, after consultation with the implementing official, with a case manager.

''SEC. 4494. INFORMATION AND OUTREACH; USE OF AGENCY RESOURCES.

''(a) IN GENERAL.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall jointly provide for an outreach and public information program—

''(A) to inform eligible persons about the employment and job training opportunities available under this subtitle and under other provisions of law; and

''(B) to inform private industry and business concerns (including small business concerns), public agencies and organizations, educational institutions, trade associations, and labor unions about the job training opportunities available under, and the advantages of participating in, the program established by this subtitle.

''(2) The Secretary, in consultation with the Secretary of Labor and the Secretary of Veterans Affairs, shall promote the development of employment and job training opportunities for eligible persons by encouraging potential employers to make programs of job training under this subtitle available for eligible persons, by advising other appropriate Federal departments and agencies of the program established by this subtitle, and by advising employers of applicable responsibilities under chapters 41 and 42 of title 38, United States Code, with respect to eligible persons.

''(b) COORDINATION.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall coordinate the outreach and public information program under subsection (a)(1), and job development activities under subsection (a)(2), with job counseling, placement, job development, and other services provided for under chapters 41 and 42 of title 38, United States Code, and with other similar services offered by other public agencies and organizations.

''(c) AGENCY RESOURCES.—(1) The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall make available such personnel as are necessary to facilitate the effective implementation of this subtitle.

''(2) In carrying out the responsibilities of the Secretary of Labor under this subtitle, the Secretary of Labor shall make maximum use of the services of Directors and Assistant Directors for Veterans' Employment and Training, disabled veterans' outreach program specialists, and employees of local offices, appointed pursuant to sections 4103, 4103A, and 4104 of title 38, United States Code. To the extent that the implementing official withholds approval of eligible persons' applications under this subtitle pursuant to section 4485(b)(2)(B), the Secretary of Labor shall take steps to assist such eligible persons in taking advantage of opportunities that may be available to them under any other program carried out with funds provided by the Secretary of Labor.

''(d) SMALL BUSINESS.—The implementing official shall request and obtain from the Administrator of the Small Business Administration a list of small business concerns and shall, on a regular basis, update such list. Such list shall be used to identify and promote possible training and employment opportunities for eligible persons.

''(e) ASSISTANCE TO PARTICIPATE.—The Secretary, the Secretary of Veterans Affairs, and the Secretary of Labor shall assist eligible persons and employers desiring to participate under this subtitle in making application and completing necessary certifications.

''(f) COLLECTION OF CERTAIN INFORMATION.—The Secretary of Labor shall, on a not less frequent than quarterly basis, collect and compile from the heads of State employment services and Directors for Veterans' Employment and Training for each State information available to such heads and Directors, and derived from programs carried out in their respective States, with respect to the numbers of eligible persons who receive counseling services pursuant to section 4493, who are referred to employers participating under this subtitle, who participate in programs of job training under this subtitle (including a description of the nature of the training and salaries that are part of such programs), and who complete such programs, and the reasons for eligible persons' noncompletion.

''SEC. 4495. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—(1) Of the amounts authorized to be appropriated in section 301 [106 Stat. 2360] for Defense Agencies, $75,000,000 shall be made available for the purpose of making payments to employers under this subtitle. Of the amounts made available pursuant to section 1302(a) of the National Defense Authorization Act for Fiscal Year 1994 [Pub. L. 103–160, 107 Stat. 1783], $25,000,000 shall be made available for the purpose of making payments to employers under this subtitle. The Secretary of Veterans Affairs and the Secretary of Labor shall submit an estimate to the Secretary of the amount needed to carry out any agreement entered into under section 4484(a), including administrative costs referred to in paragraph (3). Such agreements shall include administrative procedures to ensure the prompt and timely payments to employers by the implementing official.

''(2) Amounts made available pursuant to this section for a fiscal year shall remain available until the end of the second fiscal year following the fiscal year in which such amounts were appropriated.

''(3) Of the amounts made available pursuant to this section for a fiscal year, six percent of such amounts may be used for the purpose of administering this subtitle, including reimbursing expenses incurred.

''(b) AVAILABILITY OF DEOBLIGATED FUNDS.—Notwithstanding any other provision of law, any funds made available pursuant to this section for a fiscal year which are obligated for the purpose of making payments under section 4487 on behalf of an eligible person (including funds so obligated which previously had been obligated for such purpose on behalf of another eligible person and were thereafter deobligated) and are later deobligated shall immediately upon deobligation become available to the implementing official for obligation for such purpose. The further obligation of such funds by such official for such purpose shall not be delayed, directly or indirectly, in any manner by any officer or employee in the executive branch.

''SEC. 4496. TIME PERIODS FOR APPLICATION AND INITIATION OF TRAINING.

''Assistance may not be paid to an employer under this subtitle—

''(1) on behalf of an eligible person who initially applies for a program of job training under this subtitle after September 30, 1996; or

''(2) for any such program which begins after March 31, 1997.

''SEC. 4497. TREATMENT OF CERTAIN PROVISIONS OF LAW UPON TRANSFER OF AMOUNTS PROVIDED UNDER THIS ACT.

''(a) CONTINGENT AMENDMENT.—If a transfer is made in accordance with section 4501(c) of the full amount of the amount provided under section 4495(a) for the program established under section 4484(a), then, effective as of the date of the enactment of this Act [Oct. 23, 1992], the first sentence of section 4484(a) is amended by striking 'the Secretary shall carry out' and inserting 'the Secretary may carry out'.

''(b) PUBLICATION IN THE FEDERAL REGISTER.—If the transfer described in subsection (a) is made, then the Secretary of Defense shall promptly publish in the Federal Register a notice of such transfer. Such notice shall specify the date on which such transfer occurred.''

[Section 610(a)(2)(B) of Pub. L. 103–446 provided that: ''The amendment made by subparagraph (A) [amending section 4486(d)(2) of Pub. L. 102–484, set out above] shall apply with respect to programs of training under the Service Members Occupational Conversion and Training Act of 1992 [subtitle G of title XLIV of Pub. L. 102–484, set out above] beginning after the date of the enactment of this Act [Nov. 2, 1994].'']

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1143a. Encouragement of postseparation public and community service

(a) IN GENERAL.—The Secretary of Defense shall implement a program to encourage members and former members of the armed forces to enter into public and community service jobs after discharge or release from active duty.

(b) PERSONNEL REGISTRY.—The Secretary shall maintain a registry of members and former members of the armed forces discharged or released from active duty who request registration for assistance in pursuing public and community service job opportunities. The registry shall include information on the particular job skills, qualifications, and experience of the registered personnel.

(c) REGISTRY OF PUBLIC SERVICE AND COMMUNITY SERVICE ORGANIZATIONS.—The Secretary shall also maintain a registry of public service and community service organizations. The registry shall contain information regarding each organization, including its location, its size, the types of public and community service positions in the organization, points of contact, procedures for applying for such positions, and a description of each such position that is likely to be available. Any such organization may request registration under this subsection and, subject to guidelines prescribed by the Secretary, be registered.

(d) ASSISTANCE TO BE PROVIDED.—(1) The Secretary shall actively attempt to match personnel registered under subsection (b) with public and community service job opportunities and to facilitate job-seeking contacts between such personnel and the employers offering the jobs.

(2) The Secretary shall offer personnel registered under subsection (b) counselling services regarding—

(A) public service and community service organizations; and

(B) procedures and techniques for qualifying for and applying for jobs in such organizations.

(3) The Secretary may provide personnel registered under subsection (b) with access to the interstate job bank program of the United States Employment Service if the Secretary determines that such program meets the needs of separating members of the armed forces for job placement.

(e) CONSULTATION REQUIREMENT.—In carrying out this section, the Secretary shall consult closely with the Secretary of Labor, the Secretary of Veterans Affairs, the Secretary of Education, the Director of the Office of Personnel Management, appropriate representatives of State and local governments, and appropriate representatives of businesses and nonprofit organizations in the private sector.

(f) DELEGATION.—The Secretary, with the concurrence of the Secretary of Labor, may designate the Secretary of Labor as the executive agent of the Secretary of Defense for carrying out all or part of the responsibilities provided in this section. Such a designation does not relieve the Secretary of Defense from the responsibility for the implementation of the provisions of this section.

(g) DEFINITIONS.—In this section, the term ''public service and community service organization'' includes the following organizations:

(1) Any organization that provides the following services:

(A) Elementary, secondary, or postsecondary school teaching or administration.

(B) Support of such teaching or school administration.

(C) Law enforcement.

(D) Public health care.

(E) Social services.

(F) Any other public or community service.

(2) Any nonprofit organization that coordinates the provision of services described in paragraph (1).

(h) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Homeland Security shall implement the requirements of this section for the Coast Guard.

(Added Pub. L. 102–484, div. D, title XLIV, § 4462(a)(1), Oct. 23, 1992, 106 Stat. 2738; amended Pub. L. 103–337, div. A, title V, § 542(a)(3), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (h). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337, § 542(a)(3)(A), struck out '': Department of Defense'' after ''service'' in section catchline.

Subsec. (h). Pub. L. 103–337, § 542(a)(3)(B), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PROGRAM OF EDUCATIONAL LEAVE RELATING TO CONTINUING PUBLIC AND COMMUNITY SERVICE

Section 4463 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title V, §561(*o*), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 105–261, div. A, title V, §561(g), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, §1 [[div. A], title V, §571(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–296, title XVII, §1704(e)(3), Nov. 25, 2002, 116 Stat. 2315, provided that:

''(a) PROGRAM.—Under regulations prescribed by the Secretary of Defense and subject to subsections (b) and (c), the Secretary concerned may grant to an eligible member of the Armed Forces a leave of absence for a period not to exceed one year for the purpose of permitting the member to pursue a program of education or training (including an internship) for the development of skills that are relevant to the performance of public and community service. A program of education or training referred to in the preceding sentence includes any such program that is offered by the Department of Defense or by any civilian educational or training institution.

''(b) ELIGIBILITY REQUIREMENT.—(1) A member may not be granted a leave of absence under this section unless the member agrees in writing—

''(A) diligently to pursue employment in public service and community service organizations upon the separation of the member from active duty in the Armed Forces; and

''(B) to serve in the Ready Reserve of an armed force, upon such separation, for a period of 4 months for each month of the period of the leave of absence.

''(2)(A) A member may not be granted a leave of absence under this section until the member has completed any period of extension of enlistment or reenlistment, or any period of obligated active duty service, that the member has incurred under section 708 of title 10, United States Code.

''(B) The Secretary concerned may waive the limitation in subparagraph (A) for a member who enters into an agreement with the Secretary for the member to serve in the Ready Reserve of a reserve component for a period equal to the uncompleted portion of the member's period of service referred to in that subparagraph. Any such period of agreed service in the Ready Reserve shall be in addition to any other period that the member is obligated to serve in a reserve component.

''(c) TREATMENT OF LEAVE OF ABSENCE.—A leave of absence under this section shall be subject to the provisions of subsections (c) and (d) of section 708 of title 10, United States Code.

''(d) EXCLUSION FROM END STRENGTH LIMITATION.—A member of the Armed Forces, while on leave granted pursuant to this section, may not be counted for purposes of any provision of law that limits the active duty strength of the member's armed force.

''(e) DEFINITIONS.—In this section:

''(1) The term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code.

''(2) The term 'eligible member of the Armed Forces' means a member of the Armed Forces who is eligible for an educational leave of absence under section 708(e) of such title.

''(3) The term 'public service and community service organization' has the meaning given such term in section 1143a of such title (as added by section 531(a)).

''(f) EXPIRATION.—The authority to grant a leave of absence under subsection (a) shall expire on December 31, 2001.''

INCREASED EARLY RETIREMENT RETIRED PAY FOR PUBLIC OR COMMUNITY SERVICE

Section 4464 of Pub. L. 102–484 provided that:

''(a) RECOMPUTATION OF RETIRED PAY.—(1) If a member or former member of the Armed Forces retired under section 4403(a) [10 U.S.C. 1293 note] or any other provision of law authorizing retirement from the Armed Forces (other than for disability) before the completion of at least 20 years of active duty service (as computed under the applicable provision of law) is employed by a public service or community service organization listed on the registry maintained under section 1143a(c) of title 10, United States Code (as added by section 4462(a)), within the period of the member's enhanced retirement qualification period, the member's or former member's retired or retainer pay shall be recomputed effective on the first day of the first month beginning after the date on which the member or former member attains 62 years of age.

''(2) For purposes of recomputing a member's or former member's retired pay—

''(A) the years of the member's or former member's employment by a public service or community service organization referred to in paragraph (1) during the member's or former member's enhanced retirement qualification period shall be treated as years of active duty service in the Armed Forces; and

''(B) in applying section 1401a of title 10, United States Code, the member's or former member's years of active duty service shall be deemed as of the date of retirement to have included the years of employment referred to in subparagraph (A).

''(3) Section 1405(b) of title 10, United States Code, shall apply in determining years of service under this subsection.

''(4) In this subsection, the term 'enhanced retirement qualification period', with respect to a member or former member retired under a provision of law referred to in paragraph (1), means the period beginning on the date of the retirement of the member or former member and ending the number of years (including any fraction of a year) after that date which when added to the number of years (including any fraction of a year) of service credited for purposes of computing the retired pay of the member or former member upon retirement equals 20 years.

''(b) SBP ANNUITIES.—(1) Effective on the first day of the first month after a member or former member of the Armed Forces retired under a provision of law referred to in subsection (a)(1) attains 62 years of age or, in the event of death before attaining that age, would have attained that age, the base amount applicable under section 1447(2) [see 1447(6)] of title 10, United States Code, to any Survivor Benefit Plan annuity provided by that member or former member shall be recomputed. For the recomputation the total years (including any fraction of a year) of the member's or former member's active service shall be treated as having included the member's or former member's years (including any fraction of a year) of employment referred to in subsection (a)(1) as of the date when the member or former member became eligible for retired pay under this section.

''(2) In this subsection, the term 'Survivor Benefit Plan' means the plan established under subchapter II of chapter 73 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1142, 1144 of this title; title 42 section 12622.

§1144. Employment assistance, job training assistance, and other transitional services: Department of Labor

(a) IN GENERAL.—(1) The Secretary of Labor, in conjunction with the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs, shall establish

and maintain a program to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining such employment and training, and other related information and services to members of the armed forces under the jurisdiction of the Secretary concerned who are being separated from active duty and the spouses of such members. Such services shall be provided to a member within the time periods provided under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section.

(2) The Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs shall cooperate with the Secretary of Labor in establishing and maintaining the program under this section.

(3) The Secretaries referred to in paragraph (1) shall enter into a detailed agreement to carry out this section.

(b) ELEMENTS OF PROGRAM.—In establishing and carrying out a program under this section, the Secretary of Labor shall do the following:

(1) Provide information concerning employment and training assistance, including (A) labor market information, (B) civilian work place requirements and employment opportunities, (C) instruction in resumé preparation, and (D) job analysis techniques, job search techniques, and job interview techniques.

(2) In providing information under paragraph (1), use experience obtained from implementation of the pilot program established under section 408 of Public Law 101–237.

(3) Provide information concerning Federal, State, and local programs, and programs of military and veterans' service organizations, that may be of assistance to such members after separation from the armed forces, including, as appropriate, the information and services to be provided under section 1142 of this title.

(4) Inform such members that the Department of Defense and the Department of Homeland Security are required under section 1143(a) of this title to provide proper certification or verification of job skills and experience acquired while on active duty that may have application to employment in the civilian sector for use in seeking civilian employment and in obtaining job search skills.

(5) Provide information and other assistance to such members in their efforts to obtain loans and grants from the Small Business Administration and other Federal, State, and local agencies.

(6) Provide information about the geographic areas in which such members will relocate after separation from the armed forces, including, to the degree possible, information about employment opportunities, the labor market, and the cost of living in those areas (including, to the extent practicable, the cost and availability of housing, child care, education, and medical and dental care).

(7) Work with military and veterans' service organizations and other appropriate organizations in promoting and publicizing job fairs for such members.

(8) Provide information regarding the public and community service jobs program carried out under section 1143a of this title.

(c) PARTICIPATION.—The Secretary of Defense and the Secretary of Homeland Security shall encourage and otherwise promote maximum participation by members of the armed forces eligible for assistance under the program carried out under this section.

(d) USE OF PERSONNEL AND ORGANIZATIONS.—In carrying out the program established under this section, the Secretaries may—

(1) provide, as the case may be, for the use of disabled veterans outreach program specialists, local veterans' employment representatives, and other employment service personnel funded by the Department of Labor to the extent that the Secretary of Labor determines that such use will not significantly interfere with the provision of services or other benefits to eligible veterans and other eligible recipients of such services or benefits;

(2) use military and civilian personnel of the Department of Defense and the Department of Homeland Security;

(3) use personnel of the Veterans Benefits Administration of the Department of Veterans Affairs and other appropriate personnel of that Department;

(4) use representatives of military and veterans' service organizations;

(5) enter into contracts with public or private entities; and

(6) take other necessary action to develop and furnish the information and services to be provided under this section.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1553; amended Pub. L. 102–190, div. A, title X, § 1061(a)(6), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. D, title XLIV, §§ 4462(c), 4469, Oct. 23, 1992, 106 Stat. 2740, 2752; Pub. L. 103–337, div. A, title V, § 543(b), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 107–103, title III, § 302(b), Dec. 27, 2001, 115 Stat. 992; Pub. L. 107–107, div. A, title X, § 1048(e)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

Section 408 of Public Law 101–237, referred to in subsec. (b)(2), is set out as a note under section 4100 of Title 38, Veterans' Benefits.

AMENDMENTS

2002—Subsecs. (a)(1), (2), (b)(4), (c), (d)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(1). Pub. L. 107–103, in second sentence, substituted ''within the time periods provided under paragraph (3) of section 1142(a) of this title, except that the Secretary concerned shall not provide preseparation counseling to a member described in paragraph (4)(A) of such section'' for ''during the 180-day period before the member is separated from active duty''.

Subsec. (a)(3). Pub. L. 107–107, § 1048(e)(1)(A), struck out at end ''The agreement shall be entered into no later than 60 days after the date of the enactment of this section.''

Subsec. (e). Pub. L. 107–107, § 1048(e)(1)(B), struck out heading and text of subsec. (e). Text read as follows:

''(1) There is authorized to be appropriated to the Department of Labor to carry out this section $11,000,000

for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995.

''(2) There is authorized to be appropriated to the Department of Veterans Affairs to carry out this section $6,500,000 for each of fiscal years 1993, 1994, and 1995.''

1994—Subsec. (a)(1). Pub. L. 103–337, §543(b)(1), inserted '', the Secretary of Transportation,'' after ''Secretary of Defense'' and substituted ''concerned'' for ''of a military department''.

Subsec. (a)(2). Pub. L. 103–337, §543(b)(2), inserted '', the Secretary of Transportation,'' after ''Secretary of Defense''.

Subsec. (b)(4). Pub. L. 103–337, §543(b)(3), substituted ''Department of Defense and the Department of Transportation are'' for ''Department of Defense is''.

Subsec. (c). Pub. L. 103–337, §543(b)(4), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d)(2). Pub. L. 103–337, §543(b)(5), inserted ''and the Department of Transportation'' after ''Department of Defense''.

1992—Subsec. (b)(8). Pub. L. 102–484, §4462(c), added par. (8).

Subsec. (e)(1). Pub. L. 102–484, §4469(1), substituted ''$11,000,000 for fiscal year 1993 and $8,000,000 for each of fiscal years 1994 and 1995'' for ''$4,000,000 for fiscal year 1991 and $9,000,000 for each of fiscal years 1992 and 1993''.

Subsec. (e)(2). Pub. L. 102–484, §4469(2), substituted ''$6,500,000 for each of fiscal years 1993, 1994, and 1995'' for ''$1,000,000 for fiscal year 1991 and $4,000,000 for each of fiscal years 1992 and 1993''.

1991—Subsec. (b)(1). Pub. L. 102–190, §1061(a)(6)(A), substituted ''resumé'' for ''resume'' in cl. (C).

Subsec. (b)(3). Pub. L. 102–190, §1061(a)(6)(B), substituted ''veterans' service organizations'' for ''veterans service organization'' and ''armed forces'' for ''Armed Forces''.

Subsec. (b)(6). Pub. L. 102–190, §1061(a)(6)(C), substituted ''those areas'' for ''such area''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

IMPLEMENTATION REPORTS

Section 502(c) of Pub. L. 101–510 provided that:

''(1) Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Labor shall submit to Congress a report setting forth the agreement entered into to carry out section 1144 of title 10, United States Code, as added by subsection (a). The report shall include a detailed description of the responsibilities of the Secretary of Labor, the Secretary of Defense, and the Secretary of Veterans Affairs in carrying out that section and of the steps that have been taken to carry out those responsibilities.

''(2) Not later than one year after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress a report containing a detailed evaluation of the program carried out under that section to the date of the submission of the report.

''(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Secretary of Defense and the Secretary of Labor.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§1145. Health benefits

(a) TRANSITIONAL HEALTH CARE.—(1) For the applicable time period described in paragraph (3), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member) shall be entitled to receive—

(A) medical and dental care under section 1076 of this title in the same manner as a dependent described in subsection (a)(2) of such section; and

(B) health benefits contracted under the authority of section 1079(a) of this title and subject to the same rates and conditions as apply to persons covered under that section.

(2) This subsection applies to the following members of the armed forces:

(A) A member who is involuntarily separated from active duty.

(B) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days.

(C) A member who is separated from active duty for which the member is involuntarily retained under section 12305 of this title in support of a contingency operation.

(D) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation.

(3) Transitional health care shall be available under subsection (a) for a specified time period beginning on the date on which the member is separated as follows:

(A) For members separated with less than six years of active service, 60 days.

(B) For members separated with six or more years of active service, 120 days.

(b) CONVERSION HEALTH POLICIES.—(1) The Secretary of Defense shall inform each member referred to in subsection (a) before the date of the member's discharge or release from active duty of the availability for purchase by the member of a conversion health policy for the member and the dependents of that member. A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.

(2) If a member referred to in subsection (a) purchases a conversion health policy during the period applicable to the member (or within a reasonable time after that period as prescribed by the Secretary of Defense), the Secretary shall provide health care, or pay the costs of health care provided, to the member and the dependents of the member—

(A) during the 18-month period beginning on the date on which coverage under the conversion health policy begins; and

(B) for a condition (including pregnancy) that exists on such date and for which care is not provided under the policy solely on the grounds that the condition is a preexisting condition.

(3) The Secretary of Defense may arrange for the provision of health care described in paragraph (2) through a contract with the insurer offering the conversion health policy.

(4) If the Secretary of Defense is unable, within a reasonable time, to enter into a contract with a private insurer to provide the conversion health policy required under paragraph (1) at a rate not to exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage, the Secretary shall offer such a policy

under the Civilian Health and Medical Program of the Uniformed Services. Subject to paragraph (5), a member purchasing a policy from the Secretary shall be required to pay into the Military Health Care Account or other appropriate account an amount equal to the sum of—

(A) the individual and Government contributions which would be required in the case of a person enrolled in a health benefits plan contracted for under section 1079 of this title; and

(B) an amount necessary for administrative expenses, but not to exceed two percent of the amount under subparagraph (A).

(5) The amount paid by a member who purchases a conversion health policy from the Secretary of Defense under paragraph (4) may not exceed the payment required under section 8905a(d)(1)(A) of title 5 for comparable coverage.

(6) In order to reduce premiums required under paragraph (4), the Secretary of Defense may offer a conversion health policy that, with respect to mental health services, offers reduced coverage and increased cost-sharing by the purchaser.

(c) HEALTH CARE FOR CERTAIN SEPARATED MEMBERS NOT OTHERWISE ELIGIBLE.—(1) Consistent with the authority of the Secretary concerned to designate certain classes of persons as eligible to receive health care at a military medical facility, the Secretary concerned should consider authorizing, on an individual basis in cases of hardship, the provision of that care for a member who is separated from the armed forces, and is ineligible for transitional health care under subsection (a) or does not obtain a conversion health policy (or a dependent of the member).

(2) The Secretary concerned shall give special consideration to requests for such care in cases in which the condition for which treatment is required was incurred or aggravated by the member or the dependent before the date of the separation of the member, particularly if the condition is a result of the particular circumstances of the service of the member.

(d) DEFINITION.—In this section, the term ''conversion health policy'' means a health insurance policy with a private insurer, developed through negotiations between the Secretary of Defense and a private insurer, that is available for purchase by or for the use of a person who is no longer a member of the armed forces or a covered beneficiary.

(e) COAST GUARD.—The Secretary of Homeland Security shall implement this section for the members of the Coast Guard and their dependents.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1555; amended Pub. L. 102–484, div. D, title XLIV, §4407(a), Oct. 23, 1992, 106 Stat. 2707; Pub. L. 103–160, div. A, title V, §561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, §542(a)(4), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, §561(h), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, §1 [[div. A], title V, §571(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–107, div. A, title VII, §736(a), (b), Dec. 28, 2001, 115 Stat. 1172; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VII, §706(a), (b), Dec. 2, 2002, 116 Stat. 2585.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–314, §706(a), amended Pub. L. 107–107, §736(a)(1). See 2001 Amendment note below.

Subsec. (e). Pub. L. 107–314, §706(b), amended Pub. L. 107–107, §736(b)(2). See 2001 Amendment note below.

Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(1). Pub. L. 107–107, §736(a)(1), as amended by Pub. L. 107–314, §706(a), in introductory provisions, substituted ''paragraph (3), a member of the armed forces who is separated from active duty as described in paragraph (2) (and the dependents of the member)'' for ''paragraph (2), a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001 (and the dependents of the member),''.

Subsec. (a)(2). Pub. L. 107–107, §736(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 107–107, §736(a)(2), (4), redesignated par. (2) as (3) and struck out ''involuntarily'' before ''separated'' wherever appearing.

Subsec. (c)(1). Pub. L. 107–107, §736(b)(1), struck out ''during the period beginning on October 1, 1990, and ending on December 31, 2001'' after ''armed forces''.

Subsec. (e). Pub. L. 107–107, §736(b)(2), as amended by Pub. L. 107–314, §706(b), substituted ''the members of the Coast Guard and their dependents'' for ''the Coast Guard'' in second sentence and struck out first sentence which read as follows: ''The provisions of this section shall apply to members of the Coast Guard (and their dependents) involuntarily separated from active duty during the period beginning on October 1, 1994, and ending on December 31, 2001.''

2000—Subsecs. (a)(1), (c)(1), (e). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsecs. (a)(1), (c)(1). Pub. L. 105–261, §561(h)(1), substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

Subsec. (e). Pub. L. 105–261, §561(h)(2), substituted ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Subsec. (e). Pub. L. 103–337 added subsec. (e).

1993—Subsecs. (a)(1), (c)(1). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (b)(1). Pub. L. 102–484, §4407(a)(1), inserted at end ''A conversion health policy offered under this paragraph shall provide coverage for not less than an 18-month period.''

Subsec. (b)(2)(A). Pub. L. 102–484, §4407(a)(2), substituted ''18-month period'' for ''one-year period''.

Subsec. (b)(4) to (6). Pub. L. 102–484, §4407(a)(3), added pars. (4) to (6).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VII, §706(c), Dec. 2, 2002, 116 Stat. 2585, provided that: ''The amendments made by this section [amending this section] shall take effect as of December 28, 2001, and as if included in the National Defense Authorization Act for Fiscal Year 2002 [Pub. L. 107–107] as enacted.''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

APPLICATION OF AMENDMENTS BY PUB. L. 102–484 TO EXISTING CONTRACTS

For provisions relating to the application of the amendments by section 4407 of Pub. L. 102–484 to con-

version health policies provided under subsec. (b) of this section and in effect on Oct. 23, 1992, see section 4407(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

TRANSITIONAL PROVISION

Section 4408(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall provide a period for the enrollment for health benefits coverage under this section [enacting section 1078a of this title and provisions set out as notes under this section and section 1086a of this title] by members and former members of the Armed Services for whom the availability of transitional health care under section 1145(a) of title 10, United States Code, expires before the October 1, 1994, implementation date of section 1078a of such title, as added by subsection (a).''

TERMINATION OF APPLICABILITY OF OTHER CONVERSION HEALTH POLICIES

For provisions prohibiting purchase of, and allowing cancellation of, conversion health policies under subsec. (b) of this section on or after Oct. 1, 1994, see section 4408(c) of Pub. L. 102–484, set out as a note under section 1086a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078a, 1142 of this title.

§1146. Commissary and exchange benefits

The Secretary of Defense shall prescribe regulations to allow a member of the armed forces who is involuntarily separated from active duty during the period beginning on October 1, 1990, and ending on December 31, 2001, to continue to use commissary and exchange stores during the two-year period beginning on the date of the involuntary separation of the member in the same manner as a member on active duty. The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the period beginning on October 1, 1994, and ending on December 31, 2001.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, §561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, §542(a)(5), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, §561(i), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, §1 [[div. A], title V, §571(i)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

AMENDMENTS

2000—Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001'' in two places.

1998—Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990'' and ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Pub. L. 103–337 inserted at end ''The Secretary of Transportation shall implement this provision for Coast Guard members involuntarily separated during the five-year period beginning October 1, 1994.''

1993—Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§1147. Use of military family housing

(a) TRANSITION FOR INVOLUNTARILY SEPARATED MEMBERS.—(1) The Secretary of a military department may, pursuant to regulations prescribed by the Secretary of Defense, permit individuals who are involuntarily separated during the period beginning on October 1, 1990, and ending on December 31, 2001, to continue for not more than 180 days after the date of such separation to reside (along with other members of the individual's household) in military family housing provided or leased by the Department of Defense to such individual as a member of the armed forces.

(2) The Secretary of Transportation may prescribe regulations to permit members of the Coast Guard who are involuntarily separated during the period beginning on October 1, 1994, and ending on December 31, 2001, to continue for not more than 180 days after the date of such separation to reside (along with others of the member's household) in military family housing provided or leased by the Coast Guard to the individual as a member of the armed forces.

(b) RENTAL CHARGES.—The Secretary concerned, pursuant to such regulations, shall require a reasonable rental charge for the continued use of military family housing under subsection (a), except that such Secretary may waive all or any portion of such charge in any case of hardship.

(Added Pub. L. 101–510, div. A, title V, §502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–160, div. A, title V, §561(i), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, §542(a)(6), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, §561(j), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, §1 [[div. A], title V, §571(j)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001'' in pars. (1) and (2).

1998—Subsec. (a)(1). Pub. L. 105–261, §561(j)(1), substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

Subsec. (a)(2). Pub. L. 105–261, §561(j)(2), substituted ''during the period beginning on October 1, 1994, and ending on September 30, 2001'' for ''during the five-year period beginning on October 1, 1994''.

1994—Subsec. (a). Pub. L. 103–337 designated existing provisions as par. (1) and added par. (2).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1148. Relocation assistance for personnel overseas

The Secretary of Defense and the Secretary of Homeland Security shall develop a program specifically to assist members of the armed forces stationed overseas who are preparing for discharge or release from active duty, and the dependents of such members, in readjusting to civilian life. The program shall focus on the special needs and requirements of such members and dependents due to their overseas locations and shall include, to the maximum extent possible, computerized job relocation assistance and job search information.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1556; amended Pub. L. 103–337, div. A, title V, § 542(a)(7), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

PILOT PROGRAM

Section 502(d) of Pub. L. 101–510 provided that: ''During fiscal year 1991, the Secretary shall carry out the program required by section 1148 of title 10, United States Code, as added by subsection (a), at not less than 10 military installations located outside the United States.''

§ 1149. Excess leave and permissive temporary duty

Under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard, the Secretary concerned shall grant a member of the armed forces who is to be involuntarily separated such excess leave (for a period not in excess of 30 days), or such permissive temporary duty (for a period not in excess of 10 days), as the member requires in order to facilitate the member's carrying out necessary relocation activities (such as job search and residence search activities), unless to do so would interfere with military missions.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 103–337, div. A, title V, § 542(a)(8), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 inserted ''or the Secretary of Transportation with respect to the Coast Guard'' after ''Secretary of Defense'' and struck out ''of the military department'' before ''concerned''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

§ 1150. Affiliation with Guard and Reserve units: waiver of certain limitations

(a) PREFERENCE FOR CERTAIN PERSONS.—A person who is separated from the armed forces during the period beginning on October 1, 1990, and ending on December 31, 2001, and who applies to become a member of a National Guard or Reserve unit within one year after the date of such separation shall be given preference over other equally qualified applicants for existing or projected vacancies within the unit to which the member applies.

(b) LIMITED WAIVER OF STRENGTH LIMITATIONS.—Under regulations prescribed by the Secretary of Defense, a person covered by subsection (a) who enters a National Guard or Reserve unit pursuant to an application described in such subsection may be retained in that unit for up to three years without regard to reserve-component strength limitations so long as the individual maintains good standing in that unit.

(c) COAST GUARD.—This section shall apply to the Coast Guard in the same manner and to the same extent as it applies to the Department of Defense. The Secretary of Homeland Security shall prescribe regulations to implement this section for the Coast Guard.

(Added Pub. L. 101–510, div. A, title V, § 502(a)(1), Nov. 5, 1990, 104 Stat. 1557; amended Pub. L. 102–484, div. A, title V, § 514, Oct. 23, 1992, 106 Stat. 2406; Pub. L. 103–160, div. A, title V, § 561(j), Nov. 30, 1993, 107 Stat. 1668; Pub. L. 103–337, div. A, title V, § 542(a)(9), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(p), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title V, § 571(*o*)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (a). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (a). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (a). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1992—Subsec. (a). Pub. L. 102–484 struck out ''involuntarily'' after ''who is''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

[§ 1151. Repealed. Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823]

Section, added Pub. L. 102–484, div. D, title XLIV, § 4441(a)(1), Oct. 23, 1992, 106 Stat. 2725; amended Pub. L. 103–35, title II, § 201(f)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title V, § 561(k), title XIII, § 1331(a)–(c)(1), (d)–(g), Nov. 30, 1993, 107 Stat. 1668, 1791–1793; Pub. L. 103–337, div. A, title V, § 543(c), title X, § 1070(a)(7), title XI, § 1131(a), (b), Oct. 5, 1994, 108 Stat. 2769, 2855, 2871; Pub. L. 103–382, title III, § 391(b)(1), (2), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, § 1503(a)(10), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, § 576(a), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 105–85, div. A, title X, § 1073(a)(19), Nov. 18, 1997, 111 Stat. 1901, related to assistance to separated members to obtain certification and employment as teachers or employment as teachers' aides.

SAVINGS PROVISION

Pub. L. 106–65, div. A, title XVII, § 1707(a)(3), Oct. 5, 1999, 113 Stat. 823, which provided that the repeal of this section would not affect the validity or terms of any agreement entered into before Oct. 5, 1999, or the payment of assistance, making of grants, or obtaining of reimbursement in connection with such an agreement, was repealed by Pub. L. 107–110, title X, § 1011(6), Jan. 8, 2002, 115 Stat. 1986.

§ 1152. Assistance to eligible members and former members to obtain employment with law enforcement agencies

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement with the Attorney General to establish or participate in a program to assist eligible members and former members of the armed forces to obtain employment as law enforcement officers with eligible law enforcement agencies following the discharge or release of such members or former members from active duty. Eligible law enforcement agencies shall consist of State law enforcement agencies, local law enforcement agencies, and Indian tribes that perform law enforcement functions (as determined by the Secretary of the Interior).

(b) ELIGIBLE MEMBERS.—Any individual who, during the 6-year period beginning on October 1, 1993, is a member of the armed forces and is separated with an honorable discharge or is released from service on active duty characterized as honorable by the Secretary concerned shall be eligible to participate in a program covered by an agreement referred to in subsection (a).

(c) SELECTION.—In the selection of applicants for participation in a program covered by an agreement referred to in subsection (a), preference shall be given to a member or former member who—

(1) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note); and

(2) has a military occupational specialty, training, or experience related to law enforcement (such as service as a member of the military police) or satisfies such other criteria for selection as the Secretary, the Attorney General, or a participating eligible law enforcement agency prescribed in accordance with the agreement.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may provide funds to the Attorney General for grants under this section to reimburse participating eligible law enforcement agencies for costs, including salary and fringe benefits, of employing members or former members pursuant to a program referred to in subsection (a).

(2) No grant with respect to an eligible member or former member may exceed a total of $50,000.

(3) Any grant with respect to an eligible member or former member shall be disbursed within 5 years after the date of the placement of a member or former member with a participating eligible law enforcement agency.

(4) Preference in awarding grants through existing law enforcement hiring programs shall be given to State or local law enforcement agencies or Indian tribes that agree to hire eligible members and former members.

(e) ADMINISTRATIVE EXPENSES.—Ten percent of the amount, if any, appropriated for a fiscal year to carry out the program established pursuant to subsection (a) may be used to administer the program.

(f) REQUIREMENT FOR APPROPRIATION.—No person may be selected to participate in the program established pursuant to subsection (a) unless a sufficient amount of appropriated funds is available at the time of the selection to satisfy the obligations to be incurred by the United States under an agreement referred to in subsection (a) that applies with respect to the person.

(g) AUTHORITY TO EXPAND PLACEMENT TO INCLUDE FIREFIGHTERS.—(1) The Secretary may expand the placement activities authorized by subsection (a) to include the placement of eligible members and former members and eligible civilian employees of the Department of Defense as firefighters or members of rescue squads or ambulance crews with public fire departments.

(2) The expansion authorized by this subsection may be made through a program covered by an agreement referred to in subsection (a), if feasible, or in such other manner as the Secretary considers appropriate.

(3) A civilian employee of the Department of Defense shall be eligible to participate in the expanded placement activities authorized under this subsection if the employee, during the six-year period beginning October 1, 1993, is termi-

nated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense.

(Added Pub. L. 103–160, div. A, title XIII, §1332(a), Nov. 30, 1993, 107 Stat. 1793; amended Pub. L. 103–337, div. A, title V, §543(d), title XI, §1132(a)(1), Oct. 5, 1994, 108 Stat. 2771, 2872; Pub. L. 104–106, div. A, title XV, §1503(a)(11), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, §575, Sept. 23, 1996, 110 Stat. 2535; Pub. L. 105–85, div. A, title X, §1073(a)(20), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (d)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (g). Pub. L. 105–85 inserted ''(1)'' before ''The Secretary may''.

1996—Subsec. (g). Pub. L. 104–201, in heading, substituted ''Authority To Expand Placement To Include Firefighters'' for ''Conditional Expansion of Placement to Include Firefighters'', in par. (1), substituted ''The Secretary may'' for ''(1) Subject to paragraph (2), the Secretary may'', and in par. (2), struck out ''The Secretary may implement the expansion authorized by this subsection only if the Secretary certifies to Congress not later than April 3, 1994, that such expansion will facilitate personnel transition programs of the Department of Defense.'' after ''(2)'' and inserted ''authorized by this subsection'' after ''The expansion''.

Subsec. (g)(2). Pub. L. 104–106 substituted ''not later than April 3, 1994,'' for ''not later than 180 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995''.

1994—Pub. L. 103–337, §543(d), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' in subsecs. (a) and (d).

Pub. L. 103–337, §1132(a)(1), substituted ''eligible members and former members'' for ''separated members'' in section catchline and amended text generally, substituting subsecs. (a) to (g) for former subsecs. (a) to (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§ 1153. Assistance to separated members to obtain employment with health care providers

(a) PLACEMENT PROGRAM.—The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may establish a program to assist eligible members of the armed forces to obtain employment with health care providers upon their discharge or release from active duty.

(b) ELIGIBLE MEMBERS.—(1) Except as provided in paragraph (2), a member shall be eligible for selection to participate in the program established under subsection (a) if the member—

(A) is selected for involuntary separation, is approved for separation under section 1174a or 1175 of this title, or retires pursuant to the authority provided in section 4403 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 1293 note) during the six-year period beginning on October 1, 1993;

(B) has received an associate degree, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) has a military occupational specialty, training, or experience related to health care, is likely to be able to obtain such training in a short period of time (as determined by the Secretary concerned), or satisfies such other criteria for selection as the Secretary concerned may prescribe.

(2) For purposes of this section, a former member of the armed forces who did not meet the minimum educational qualification criterion set forth in paragraph (1)(B) for placement assistance before discharge or release from active duty shall be considered to be a member satisfying such educational qualification criterion upon satisfying that criterion within five years after discharge or release from active duty.

(3) A member who is discharged or released from service under other than honorable conditions shall not be eligible to participate in the program.

(c) SELECTION OF PARTICIPANTS.—(1) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, shall select members to participate in the program established under subsection (a) on the basis of applications submitted to the Secretary concerned not later than one year after the date of the discharge or release of the members from active duty or, in the case of an applicant becoming educationally qualified for teacher placement assistance in accordance with subsection (b)(2), not later than one year after the date on which the applicant becomes educationally qualified. An application shall be in such form and contain such information as the Secretaries may require.

(2) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may not select a member to participate in the program unless the Secretary concerned has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under subsection (d) with respect to that member.

(3)(A) The Secretaries shall provide under the program for identifying, during each fiscal year in the period referred to in subsection (b)(1)(A), noncommissioned officers who, on or before the end of such fiscal year, will have completed 10 or more years of continuous active duty, who have the potential to perform competently in employment positions with health care providers, but who do not satisfy the minimum educational qualification criterion under subsection (b)(1)(B) for placement assistance.

(B) The Secretaries shall inform noncommissioned officers identified under subparagraph (A) of the opportunity to qualify in accordance with subsection (b)(2) for placement assistance under the program.

(d) GRANTS TO FACILITATE EMPLOYMENT.—(1) The Secretary of Defense and the Secretary of Homeland Security may enter into an agreement with a health care provider to assist eligible members selected under subsection (c) to obtain suitable employment with the health care

provider. Under such an agreement, a health care provider shall agree to employ a participant in the program on a full-time basis for at least five years.

(2) Under an agreement referred to in paragraph (1), the Secretary concerned shall agree to pay to the health care provider involved an amount based upon the basic salary paid by the health care provider to the participant. The rate of payment by the Secretary concerned shall be as follows:

(A) For the first year of employment, 50 percent of the basic salary, except that the payment may not exceed $25,000.

(B) For the second year of employment, 40 percent of the basic salary, except that the payment may not exceed $10,000.

(C) For the third year of employment, 30 percent of the basic salary, except that the payment may not exceed $7,500.

(D) For the fourth year of employment, 20 percent of the basic salary, except that the payment may not exceed $5,000.

(E) For the fifth year of employment, 10 percent of the basic salary, except that the payment may not exceed $2,500.

(3) Payments required under paragraph (2) may be made by the Secretary concerned in such installments as the Secretary concerned may determine.

(4) If a participant who is placed under this program leaves the employment of the health care provider before the end of the five years of required employment service, the provider shall reimburse the Secretary concerned in an amount that bears the same ratio to the total amount already paid under the agreement as the unserved portion bears to the five years of required service.

(5) The Secretary concerned may not make a grant under this subsection to a health care provider if the Secretary concerned determines that the provider terminated the employment of another employee in order to fill the vacancy so created with a participant in this program.

(e) AGREEMENTS WITH STATES.—(1) In addition to the agreements referred to in subsection (d)(1), the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement directly with a State to allow the State to arrange the placement of participants in the program with health care providers. Paragraphs (2) through (5) of subsection (d) shall apply with respect to any placement made through such an agreement.

(2) The Secretary concerned may reserve up to 10 percent of the funds made available to carry out the program for a fiscal year for the placement of participants through agreements entered into under paragraph (1).

(f) DEFINITIONS.—In this section, the term ''State'' includes the District of Columbia, American Samoa, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Palau, and the Virgin Islands.

(Added Pub. L. 103–160, div. A, title XIII, §1332(b), Nov. 30, 1993, 107 Stat. 1795; amended Pub. L. 103–337, div. A, title V, §543(e), Oct. 5, 1994, 108 Stat. 2771; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a), (c)(1), (2), (d)(1), (e)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Subsec. (a). Pub. L. 103–337, §543(e)(1), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense''.

Subsec. (b)(1). Pub. L. 103–337, §543(e)(2), struck out ''by the Secretary of Defense'' after ''selection'' in introductory provisions and inserted ''concerned'' after ''Secretary'' in two places in subpar. (C).

Subsec. (c)(1). Pub. L. 103–337, §543(e)(3), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''Secretary of Defense'' and ''concerned'' after ''to the Secretary'' and substituted ''Secretaries may'' for ''Secretary may''.

Subsec. (c)(2). Pub. L. 103–337, §543(e)(4), inserted ''of Defense, and the Secretary of Transportation with respect to the Coast Guard,'' after ''The Secretary'' and ''concerned'' after ''unless the Secretary''.

Subsec. (c)(3). Pub. L. 103–337, §543(e)(5), substituted ''Secretaries'' for ''Secretary'' in subpars. (A) and (B).

Subsec. (d)(1). Pub. L. 103–337, §543(e)(6)(A), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (d)(2) to (5). Pub. L. 103–337, §543(e)(6)(B), inserted ''concerned'' after ''Secretary'' wherever appearing.

Subsec. (e)(1). Pub. L. 103–337, §543(e)(7)(A), inserted '', and the Secretary of Transportation with respect to the Coast Guard,'' after ''the Secretary of Defense''.

Subsec. (e)(2). Pub. L. 103–337, §543(e)(7)(B), inserted ''concerned'' after ''The Secretary''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

CHAPTER 59—SEPARATION

Sec.
1161. Commissioned officers: limitations on dismissal.
[1162, 1163. Repealed.]
1164. Warrant officers: separation for age.
1165. Regular warrant officers: separation during three-year probationary period.
1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance.
1167. Members under confinement by sentence of court-martial: separation after six months confinement.
1168. Discharge or release from active duty: limitations.
1169. Regular enlisted members: limitations on discharge.
1170. Regular enlisted members: minority discharge.
1171. Regular enlisted members: early discharge.
1172. Enlisted members: during war or emergency; discharge.
1173. Enlisted members: discharge for hardship.
1174. Separation pay upon involuntary discharge or release from active duty.
1174a. Special separation benefits programs.
1175. Voluntary separation incentive.
1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service.
[1177. Repealed.]

Sec.
1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title VII, §751(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193, added item 1178.

1996—Pub. L. 104–134, title II, §2707(a)(2), Apr. 26, 1996, 110 Stat. 1321–330, struck out item 1177 ''Members infected with HIV–1 virus: mandatory discharge or retirement''.

Pub. L. 104–106, div. A, title V, §§563(a)(1)(B), 567(a)(2), Feb. 10, 1996, 110 Stat. 325, 329, added item 1167 and substituted ''Members infected with HIV–1 virus: mandatory discharge or retirement'' for ''Members who are permanently nonworldwide assignable: mandatory discharge or retirement; counseling'' in item 1177.

1994—Pub. L. 103–337, div. A, title V, §560(a)(2), title XVI, §1671(b)(10), Oct. 5, 1994, 108 Stat. 2778, 3013, struck out items 1162 ''Reserves: discharge'' and 1163 ''Reserve components: members; limitations on separation'' and added item 1177.

1992—Pub. L. 102–484, div. A, title V, §541(b), Oct. 23, 1992, 106 Stat. 2413, added item 1176.

1991—Pub. L. 102–190, div. A, title VI, §§661(a)(2), 662(a)(2), Dec. 5, 1991, 105 Stat. 1395, 1398, added items 1174a and 1175.

1980—Pub. L. 96–513, title V, §501(15), Dec. 12, 1980, 94 Stat. 2908, struck out item 1167 ''Regular warrant officers: severance pay'' and added item 1174.

1973—Pub. L. 93–64, title I, §102, July 9, 1973, 87 Stat. 147, added item 1173.

1968—Pub. L. 90–235, §3(a)(1)(B), Jan. 2, 1968, 81 Stat. 757, added items 1169 to 1172.

1962—Pub. L. 87–651, title I, §106(c), Sept. 7, 1962, 76 Stat. 508, added item 1168.

§ 1161. Commissioned officers: limitations on dismissal

(a) No commissioned officer may be dismissed from any armed force except—

(1) by sentence of a general court-martial;

(2) in commutation of a sentence of a general court-martial; or

(3) in time of war, by order of the President.

(b) The President may drop from the rolls of any armed force any commissioned officer (1) who has been absent without authority for at least three months, (2) who may be separated under section 1167 of this title by reason of a sentence to confinement adjudged by a court-martial, or (3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 89; Pub. L. 104–106, div. A, title V, §563(b)(1), Feb. 10, 1996, 110 Stat. 325; Pub. L. 104–201, div. A, title X, §1074(a)(5), Sept. 23, 1996, 110 Stat. 2658.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1161(a)	50:739 (words before semicolon, less applicability to Navy and Marine Corps warrant officers).	May 5, 1950, ch. 169, §10 (less applicability to Navy and Marine Corps warrant officers), 64 Stat. 146.
1161(b)	50:739 (less words before semicolon, less applicability to Navy and Marine Corps warrant officers).	

In subsections (a) and (b), the word ''commissioned'' is inserted since, for the Army and the Air Force, the term ''officer'' is intended to have the same meaning in 50:739 as it has in the Uniform Code of Military Justice (article 4). For Navy warrant officers see section 6408 of this title.

In subsection (b), the words ''from his place of duty'' are omitted as surplusage. The words ''at least'' are substituted for the words ''or more''. The words ''by a court other than a court-martial or other military court'' are substituted for the words ''by the civil authorities''.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 substituted ''section 1167'' for ''section 1178'' in par. (2).

Pub. L. 104–106 struck out ''or'' after ''three months,'', added par. (2), and redesignated former par. (2) as (3).

RESTORATION OF RETIRED PAY TO OFFICERS DROPPED FROM ROLLS AFTER DECEMBER 31, 1954 AND BEFORE AUGUST 25, 1958

Pub. L. 85–754, Aug. 25, 1958, 72 Stat. 847, provided: ''That notwithstanding any other provisions of law, a former retired officer dropped from the rolls under section 10 of the Act of May 5, 1950, ch. 169 (64 Stat. 146), or section 1161 of title 10, United States Code, after December 31, 1954, and before the date of enactment of this Act [Aug. 25, 1958] shall, for the purposes of entitlement to retired or retirement pay after the date of enactment of this Act, be treated as if he had not been dropped from the rolls. Such an officer is also entitled to retroactive retired or retirement pay for the period beginning on the date he was dropped from the rolls and ending on the date of enactment of this Act, as if he had not been dropped from the rolls.

''SEC. 2. A former retired officer covered by this Act is subject to the penal, prohibitory, and restrictive provisions of law applicable to the pay and civil employment of retired officers of the Armed Forces and is not entitled to any other benefit provided by law or regulation for retired officers of the Armed Forces. After the date of enactment of this Act [Aug. 25, 1958], such a former retired officer may, in the discretion of the President, have his entitlement to retired or retirement pay under this Act terminated for any reason for which any retired officer may be dismissed from, or dropped from the rolls of, any Armed Force.

''SEC. 3. Appropriations available for the payment of retired pay to members of the Armed Forces are available for payments under this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12683 of this title; title 37 section 803; title 38 section 4304.

[§§ 1162, 1163. Repealed. Pub. L. 103–337, div. A, title XVI, §1662(i)(2), Oct. 5, 1994, 108 Stat. 2998]

Section 1162, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 2, 1958, Pub. L. 85–861, §1(27), 72 Stat. 1450, related to discharge of Reserves. See sections 12681 and 12682 of this title.

Section 1163, acts Aug. 10, 1956, ch. 1041, 70A Stat. 89; Sept. 7, 1962, Pub. L. 87–651, title I, §106(a), 76 Stat. 508; Dec. 30, 1987, Pub. L. 100–224, §4, 101 Stat. 1538, related to limitations on separation of Reserve members from their reserve components. See sections 12683 to 12686 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1164. Warrant officers: separation for age

(a) Unless retired or separated on or before the expiration of that period, each warrant officer

shall be retired or separated from his armed force not later than 60 days after the date when he becomes 62 years of age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, §1(5), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, §511(41), Dec. 12, 1980, 94 Stat. 2923; Pub. L. 97–295, §1(16), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1164(a)	10:600*l*(c) (as applicable to men). 10:600r(c) (as applicable to 10:600*l*(c)). 34:430(c) (as applicable to men). 34:430c (as applicable to 34:430(c)).	May 29, 1954, ch. 249, §§14(c), (e) (as applicable to (c)), 21(c) (as applicable to §14(c)), 68 Stat. 163, 168.
1164(b)	10:600*l*(c) (less applicability to men). 34:430(c) (less applicability to men).	
1164(c)	10:600*l*(e) (as applicable to 10:600*l*(c)). 34:430(e) (as applicable to 34:430(c)).	

In subsections (a) and (b), the words ''Except as provided in clause (3) of subsection (b) of this section and in subsection (g) of this section'' are omitted as covered by section 46 of the bill and section 14(g) of the source statute. The words ''Unless retired or separated on or before the expiration of that period'' are inserted for clarity. The words ''becomes 62[55] years of age'' are substituted for the words ''attains the age of sixty-two * * * or the age of fifty-five''.

In subsection (c), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''determination of his'' are inserted for clarity. The words ''he would otherwise be required to be separated under this section'' are substituted for the words ''separation would otherwise be required''. The words ''proper'', ''which is required'', ''possible'', and ''a period of'' are omitted as surplusage.

AMENDMENTS

1982—Pub. L. 97–295, §1(16), substituted a colon for a semicolon after ''officers'' in section catchline.

1980—Subsec. (b). Pub. L. 96–513 redesignated former subsec. (c) as (b).

Subsec. (c). Pub. L. 96–513 redesignated former subsec. (c) as (b).

1967—Subsec. (a). Pub. L. 90–130 struck out ''male'' before ''warrant officer''.

Subsec. (b). Pub. L. 90–130 struck out subsec. (b) which made special provisions for female warrant officers.

Subsec. (c). Pub. L. 90–130 struck out reference to subsec. (b) of this section.

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DEFERMENT OF SEPARATION WITH COMPLETION OF 20 YEARS OF SERVICE OR AT AGE 60

Section 46 of act Aug. 10, 1956, provided that:

''(a) The separation of any person who, on November 1, 1954, was a male permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 62 has completed less than 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, set out as a note under section 580 of this title] may be deferred by the Secretary concerned until he completes 20 years of that service, but not later than that date which is 60 days after the date on which he attains the age of 64.

''(b) The separation of any person who, on November 1, 1954, was a female permanent warrant officer of a regular component of an armed force, and who upon attaining the age of 55 has completed less than 20 years of active service that could be credited to her under section 511 of the Career Compensation Act of 1949 (37 U.S.C. 311) [act Oct. 12, 1949, ch. 681, title V, §511, 63 Stat. 829, set out as a note under section 580 of this title] may be deferred by the Secretary concerned until she completes 20 years of that service, but not later than that date which is 60 days after the date on which she attains the age of 60.''

§1165. Regular warrant officers: separation during three-year probationary period

The Secretary concerned may terminate the regular appointment of any permanent regular warrant officer at any time within three years after the date when the officer accepted his original permanent appointment as a warrant officer in that component. A warrant officer who is separated under this section is entitled, if eligible therefor, to separation pay under section 1174 or he may be enlisted under section 515 of this title. If such a warrant officer is enlisted under section 515 of this title, he is not entitled to separation pay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 96–513, title I, §109(b)(1), Dec. 12, 1980, 94 Stat. 2870.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1165	10:600d (less last 36 words of last sentence). 34:135d (less last 36 words of last sentence).	May 29, 1954, ch. 249, §6 (less last 36 words of last sentence), 68 Stat. 159.

The words ''in his discretion'' are omitted as surplusage. The last 10 words of the last sentence are inserted for clarity.

AMENDMENTS

1980—Pub. L. 96–513 authorized entitlement, if the regular warrant officer is eligible therefor, to separation pay under section 1174.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 515, 1166, 1174 of this title; title 14 section 286a.

§ 1166. Regular warrant officers: elimination for unfitness or unsatisfactory performance

(a) Under such regulations as the Secretary concerned may prescribe, and subject to the recommendations of a board of officers or a selection board under section 576 of this title, a permanent regular warrant officer who is eligible for retirement under any provision of law shall be retired under that law if his records and reports establish his unfitness or unsatisfactory performance of duty. If he is not eligible for retirement under any provision of law, but since the date when he accepted his original permanent appointment as a regular warrant officer he has at least three years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), he shall, if eligible therefor, be separated with separation pay under section 1174 of this title or severance pay under section 286a of title 14, as appropriate. However, instead of being paid separation pay or severance pay he may be enlisted under section 515 of this title. If he does not have three years of such service, he shall be separated under section 1165 of this title.

(b) The Secretary concerned may defer, for not more than four months, the retirement or separation under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to be retired or separated under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 90; Pub. L. 87–649, § 6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 96–513, title I, § 109(b)(2), Dec. 12, 1980, 94 Stat. 2870; Pub. L. 102–190, div. A, title XI, § 1131(5), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1166(a)	10:600m (less last 21 words of 3d sentence). 10:600(d) (as applicable to 10:600m). 34:430a (less last 21 words of 3d sentence). 34:135(d) (as applicable to 34:430a).	May 29, 1954, ch. 249, §§ 2(d) (as applicable to § 15), 14(e) (as applicable to § 15), 15 (less last 21 words of 3d sentence), 68 Stat. 157, 163, 164.
1166(b)	10:600*l*(e) (as applicable to 10:600m). 34:430(e) (as applicable to 34:430a).	

In subsection (a), the words ''he shall be separated'' are substituted for the words ''his appointment as a permanent warrant officer of the Regular service and any other appointment which he may hold in any warrant officer or commissioned officer grade shall be terminated'' and ''his appointment shall be terminated''. The words ''at least three'' are substituted for the words ''more than three'' for clarity.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to be retired or separated under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''determination of his'' are inserted for clarity. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, as amended, referred to in subsec. (a), is set out as a note under section 580 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 576'' for ''section 560''.

1980—Subsec. (a). Pub. L. 96–513 provided that officers discharged under this section are entitled, if eligible therefor, to separation pay under section 1174 or severance pay under section 286a of title 14.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 515, 576, 1174 of this title; title 14 section 286a.

§ 1167. Members under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a member sentenced by a court-martial to a period of confinement for more than six months may be separated from the member's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the member has served in confinement for a period of six months.

(Added Pub. L. 104–106, div. A, title V, § 563(a)(1)(A), Feb. 10, 1996, 110 Stat. 325; amended Pub. L. 104–201, div. A, title X, § 1074(a)(6), Sept. 23, 1996, 110 Stat. 2659.)

PRIOR PROVISIONS

A prior section 1167, acts Aug. 10, 1956, ch. 1041, 70A Stat. 91; June 28, 1962, Pub. L. 87–509, § 4(a), 76 Stat. 121; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(3), 76 Stat. 494, related to severance pay of regular warrant officers, prior to repeal by Pub. L. 96–513, title I, § 109(b)(3), title VII, § 701, Dec. 12, 1980, 94 Stat. 2870, 2955, effective Sept. 15, 1981.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''member has served'' for ''person has served''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1161 of this title.

§1168. Discharge or release from active duty: limitations

(a) A member of an armed force may not be discharged or released from active duty until his discharge certificate or certificate of release from active duty, respectively, and his final pay or a substantial part of that pay, are ready for delivery to him or his next of kin or legal representative.

(b) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 87–651, title I, §106(b), Sept. 7, 1962, 76 Stat. 508; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(4), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

The new section 1168 of title 10 is transferred from section 1218(a) and (c) of title 10 as being more appropriate in the chapter on separation.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189 substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

§1169. Regular enlisted members: limitations on discharge

No regular enlisted member of an armed force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary concerned;

(2) by sentence of a general or special court martial; or

(3) as otherwise provided by law.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§1170. Regular enlisted members: minority discharge

Upon application by the parents or guardian of a regular enlisted member of an armed force to the Secretary concerned within 90 days after the member's enlistment, the member shall be discharged for his own convenience, with the pay and form of discharge certificate to which his service entitles him, if—

(1) there is evidence satisfactory to the Secretary concerned that the member is under eighteen years of age; and

(2) the member enlisted without the written consent of his parent or guardian.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§1171. Regular enlisted members: early discharge

Under regulations prescribed by the Secretary concerned and approved by the President, any regular enlisted member of an armed force may be discharged within three months before the expiration of the term of his enlistment or extended enlistment. A discharge under this section does not affect any right, privilege, or benefit that a member would have had if he completed his enlistment or extended enlistment, except that the member is not entitled to pay and allowances for the period not served.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

EX. ORD. NO. 11498. DELEGATION OF AUTHORITY TO SECRETARY OF DEFENSE

Ex. Ord. No. 11498, Dec. 1, 1969, 34 F.R. 19125, provided: By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered that the Secretary of Defense is hereby designated and empowered to approve regulations issued by the Secretaries concerned under section 1171 of title 10, United States Code, effective January 2, 1968, which relate to the early discharge of regular enlisted members of the armed forces.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 5303A.

§1172. Enlisted members: during war or emergency; discharge

A person enlisted under section 518 of this title may be discharged at any time by the President, or otherwise according to law.

(Added Pub. L. 90–235, §3(a)(1)(A), Jan. 2, 1968, 81 Stat. 757.)

§1173. Enlisted members: discharge for hardship

Under regulations prescribed by the Secretary concerned, a regular enlisted member of an armed force who has dependents may be discharged for hardship.

(Added Pub. L. 93–64, title I, §102, July 9, 1973, 87 Stat. 147.)

EFFECTIVE DATE

Section effective July 1, 1973, see section 206 of Pub. L. 93–64, set out as a note under section 401 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 404, 406; title 38 section 5303A.

§1174. Separation pay upon involuntary discharge or release from active duty

(a) REGULAR OFFICERS.—(1) A regular officer who is discharged under chapter 36 of this title (except under section 630(1)(A) or 643 of such chapter) or under section 580 or 6383 of this title and who has completed six or more, but less than twenty, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d)(1).

(2) A regular commissioned officer of the Army, Navy, Air Force, or Marine Corps who is discharged under section 630(1)(A), 643, or 1186 of this title, and a regular warrant officer of the Army, Navy, Air Force, or Marine Corps who is separated under section 1165 or 1166 of this title, who has completed six or more, but less than twenty, years of active service immediately before that discharge or separation is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary of the military department concerned, unless the Sec-

retary concerned determines that the conditions under which the officer is discharged or separated do not warrant payment of such pay.

(3) Notwithstanding paragraphs (1) and (2), an officer discharged under any provision of chapter 36 of this title for twice failing of selection for promotion to the next higher grade is not entitled to separation pay under this section if either (or both) of those failures of selection for promotion was by the action of a selection board to which the officer submitted a request in writing not to be selected for promotion or who otherwise directly caused his nonselection through written communication to the Board under section 614(b) of this title.

(4) Notwithstanding paragraphs (1) and (2), an officer who is subject to discharge under any provision of chapter 36 of this title or under section 580 or 6383 of this title by reason of having twice failed of selection for promotion to the next higher grade is not entitled to separation pay under this section if that officer, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty for a period that is equal to or more than the amount of service required to qualify the officer for retirement.

(b) REGULAR ENLISTED MEMBERS.—(1) A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

(2) Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

(c) OTHER MEMBERS.—(1) Except as provided in paragraphs (2) and (3), a member of an armed force other than a regular member who is discharged or released from active duty and who has completed six or more, but fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay computed under subsection (d)(1) or (d)(2), as determined by the Secretary concerned, if—

(A) the member's discharge or release from active duty is involuntary; or

(B) the member was not accepted for an additional tour of active duty for which he volunteered.

(2) If the Secretary concerned determines that the conditions under which a member described in paragraph (1) is discharged or separated do not warrant separation pay under this section, that member is not entitled to that pay.

(3) A member described in paragraph (1) who was not on the active-duty list when discharged or separated is not entitled to separation pay under this section unless such member had completed at least six years of continuous active duty immediately before such discharge or release. For purposes of this paragraph, a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days.

(4) In the case of an officer who is subject to discharge or release from active duty under a law or regulation requiring that an officer who has failed of selection for promotion to the next higher grade for the second time be discharged or released from active duty and who, after such second failure of selection for promotion, is selected for, and declines, continuation on active duty—

(A) if the period of time for which the officer was selected for continuation on active duty is less than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall be considered to be involuntary for purposes of paragraph (1)(A); and

(B) if the period of time for which the officer was selected for continuation on active duty is equal to or more than the amount of service that would be required to qualify the officer for retirement, the officer's discharge or release from active duty shall not be considered to be involuntary for the purposes of paragraph (1)(A).

(d) AMOUNT OF SEPARATION PAY.—The amount of separation pay which may be paid to a member under this section is—

(1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or

(2) one-half of the amount computed under clause (1).

(e) REQUIREMENT FOR SERVICE IN READY RESERVE; EXCEPTIONS TO ELIGIBILITY.—(1)(A) As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement with the Secretary concerned to serve in the Ready Reserve of a reserve component for a period of not less than three years following the person's discharge or release from active duty. If the person has a service obligation under section 651 of this title or under any other provision of law that is not completed at the time the person is discharged or released from active duty, the three-year obligation under this subsection shall begin on the day after the date on which the person completes the person's obligation under such section or other provision of law.

(B) Each person who enters into an agreement referred to in subparagraph (A) who is not already a Reserve of an armed force and who is qualified shall, upon such person's discharge or release from active duty, be enlisted or appointed, as appropriate, as a Reserve and be transferred to a reserve component.

(2) A member who is discharged or released from active duty is not eligible for separation pay under this section if the member—

(A) is discharged or released from active duty at his request;

(B) is discharged or released from active duty during an initial term of enlistment or an initial period of obligated service;

(C) is released from active duty for training; or

(D) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service.

(f) COUNTING FRACTIONAL YEARS OF SERVICE.—In determining a member's years of active service for the purpose of computing separation pay under this section, each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(g) COORDINATION WITH OTHER SEPARATION OR SEVERANCE PAY BENEFITS.—A period for which a member has previously received separation pay under this section or severance pay or readjustment pay under any other provision of law based on service in the armed forces may not be included in determining the years of service that may be counted in computing the separation pay of the member under this section.

(h) COORDINATION WITH RETIRED OR RETAINER PAY AND DISABILITY COMPENSATION.—(1) A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received separation pay under this section or separation pay, severance pay, or readjustment pay under any other provision of law until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

(2) A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986). Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

(i) REGULATIONS; CREDITING OF OTHER COMMISSIONED SERVICE.—(1) The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

(2) Active commissioned service in the National Oceanic and Atmospheric Administration or the Public Health Service shall be credited as active service in the armed forces for the purposes of this section.

(Added Pub. L. 96–513, title I, §109(c), Dec. 12, 1980, 94 Stat. 2870; amended Pub. L. 97–22, §10(b)(10)(A), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, §§911(a), (b), 923(b), title X, §1007(c)(2), Sept. 24, 1983, 97 Stat. 639, 640, 643, 662; Pub. L. 98–498, title III, §320(a)(2), Oct. 19, 1984, 98 Stat. 2308; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, §501(a)–(d), (g), (h), Nov. 5, 1990, 104 Stat. 1549–1551; Pub. L. 102–190, div. A, title XI, §1131(6), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–160, div. A, title V, §501(a), Nov. 30, 1993, 107 Stat. 1644; Pub. L. 103–337, div. A, title V, §560(c), Oct. 5, 1994, 108 Stat. 2778; Pub. L. 104–201, div. A, title VI, §653(a), Sept. 23, 1996, 110 Stat. 2583; Pub. L. 105–85, div. A, title X, §1073(a)(22), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title V, §502(a), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–398, §1 [[div. A], title V, §508(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107.)

REFERENCES IN TEXT

Chapter 24 of the Internal Revenue Code of 1986, referred to in subsec. (h)(2), is classified generally to chapter 24 (§3401 et seq.) of Title 26, Internal Revenue Code.

AMENDMENTS

2000—Subsec. (a)(4). Pub. L. 106–398, §1 [[div. A], title V, §508(a)], added par. (4).

Subsec. (c)(4). Pub. L. 106–398, §1 [[div. A], title V, §508(b)], added par. (4).

1998—Subsec. (a)(3). Pub. L. 105–261 added par. (3).

1997—Subsec. (a)(1). Pub. L. 105–85 struck out '', 1177,'' before ''or 6383 of this title''.

1996—Subsec. (h)(2). Pub. L. 104–201 inserted '', less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986)'' before period at end of first sentence.

1994—Subsec. (a)(1). Pub. L. 103–337 inserted '', 1177,'' after ''section 580''.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''six'' for ''five''.

1991—Subsec. (a)(1). Pub. L. 102–190 substituted ''section 580'' for ''section 564''.

1990—Subsec. (a). Pub. L. 101–510, §501(a)(1), inserted heading.

Subsec. (a)(1). Pub. L. 101–510, §501(g)(1), substituted ''or under section 564 or 6383 of this title'' for '', under section 564 or 6383 of this title, or under section 603 or 604 of the Defense Officer Personnel Management Act'' and struck out ''or release'' after ''that discharge''.

Subsec. (a)(2). Pub. L. 101–510, §501(b)(1), substituted ''six or more'' for ''five or more''.

Pub. L. 101–510, §501(a)(2), redesignated subsec. (b) as subsec. (a)(2).

Subsec. (b). Pub. L. 101–510, §501(a)(3), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsec. (c). Pub. L. 101–510, §501(h)(1), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, §501(g)(2), struck out ''after September 14, 1981,'' after ''member who'' in introductory provisions.

Pub. L. 101–510, §501(b)(1), substituted ''six or more'' for ''five or more'' in introductory provisions.

Subsec. (c)(3). Pub. L. 101–510, §501(b)(2), substituted ''at least six years'' for ''at least five years''.

Subsec. (d). Pub. L. 101–510, §501(h)(2), inserted heading.

Subsec. (d)(1). Pub. L. 101–510, §501(c)(1)(A), struck out ''or $30,000, whichever is less'' after ''active duty''.

Subsec. (d)(2). Pub. L. 101–510, §501(c)(1)(B), struck out '', but in no event more than $15,000'' after ''under clause (1)''.

Subsec. (e). Pub. L. 101–510, §501(d), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''A member who—

''(1) is discharged or released from active duty at his request;

''(2) is released from active duty for training; or

''(3) upon discharge or release from active duty, is immediately eligible for retired or retainer pay based on his military service;

is not eligible for separation pay under this section.''

Subsec. (f). Pub. L. 101–510, §501(h)(3), inserted heading.

Subsec. (g). Pub. L. 101–510, §501(h)(4), inserted heading.

Pub. L. 101–510, §501(c)(2), struck out ''(1)'' after ''(g)'' and struck out par. (2) which read as follows: ''The total amount that a member may receive in separation pay under this section and severance pay and readjustment pay under any other provision of law, other than section 1212 of this title, based on service in the armed forces may not exceed $30,000.''

Subsec. (h). Pub. L. 101–510, §501(h)(5), inserted heading.

Subsec. (i). Pub. L. 101–510, §501(h)(6), inserted heading.

1989—Subsec. (h)(2). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1984—Subsec. (h)(1). Pub. L. 98–498 substituted ''separation pay, severance pay,'' for ''severance pay'' before ''or readjustment pay'' in two places.

1983—Subsec. (c). Pub. L. 98–94, §911(a), amended subsec. (c) generally, designating existing provisions as par. (1) and existing pars. (1) and (2) as subpars. (A) and (B), respectively, and in provisions preceding subpar. (A) substituted ''Except as provided in paragraphs (2) and (3), a member'' for ''A member'' and ''fewer than 20, years of active service immediately before that discharge or release is entitled to separation pay'' for ''less than twenty, years of active service immediately before that discharge or release is entitled, unless the Secretary concerned determines that the conditions under which the member is discharged or separated do not warrant such pay, to separation pay'', and added pars. (2) and (3).

Subsec. (f). Pub. L. 98–94, §923(b), amended subsec. (f) generally, substituting ''each full month of service that is in addition to the number of full years of service creditable to the member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded''.

Subsec. (g)(2). Pub. L. 98–94, §911(b), inserted '', other than section 1212 of this title,'' after ''any other provision of law''.

Subsec. (i). Pub. L. 98–94, §1007(c)(2), designated existing provisions as par. (1) and added par. (2).

1981—Subsec. (c). Pub. L. 97–22 substituted ''after September 14, 1981,'' for ''on or after the effective date of the Defense Officer Personnel Management Act''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §508(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–107, provided that: ''Paragraph (4) of section 1174(a) of title 10, United States Code, as added by subsection (a), and paragraph (4) of section 1174(c) of such title, as added by subsection (b), shall apply with respect to any offer of selective continuation on active duty that is declined on or after the date of the enactment of this Act [Oct. 30, 2000].''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 applicable with respect to selection boards convened under section 611(a) of this title on or after Oct. 17, 1998, see section 502(c) of Pub. L. 105–261, set out as a note under section 617 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 105–178, title VIII, §8208, June 9, 1998, 112 Stat. 495, provided that: ''The amendment made by section 653 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2583) to subsection (h)(2) of section 1174 of title 10, United States Code, shall apply to any payment of separation pay under the special separation benefits program under section 1174a of that title that was made during the period beginning on December 5, 1991, and ending on September 30, 1996.''

Section 653(b) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1996, and shall apply to payments of separation pay, severance pay, or readjustment pay that are made after September 30, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 501(b) of Pub. L. 103–160 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to any regular officer who is discharged after the date of the enactment of this Act [Nov. 30, 1993].

''(2) The amendment made by subsection (a) shall not apply with respect to an officer who on the date of the enactment of this Act has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 501(e) of Pub. L. 101–510 provided that:

''(1) Except as provided in paragraph (2), subsection (b) of section 1174 of title 10, United States Code, as added by subsection (a), and the amendments made by subsections (b), (c), and (d) [amending this section] shall apply with respect to a member of the Armed Forces who is discharged, or released from active duty, after the date of the enactment of this Act [Nov. 5, 1990].

''(2) The amendments made by subsection (b) [amending this section] shall not apply in the case of a member (other than a regular enlisted member) of the Armed Forces who (A) is serving on active duty on the date of the enactment of this Act, (B) is discharged, or released from active duty, after that date; and (C) on that date has five or more, but less than six, years of active service in the Armed Forces.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 911(c) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1983.''

Section 923(g) of Pub. L. 98–94 provided that: ''The amendments made by this section [amending this section and sections 1401, 1402, 1402a, 3991, 3992, 6151, 6328, 6330, 6404, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and section 212 of Title 42, The Public Health and Welfare] shall apply with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after September 30, 1983, and (2) the recomputation of retired pay under section 1402, 1402a, 3992, or 8992 of title 10, United States Code, of any individual who after September 30, 1983, becomes entitled to recompute retired pay under any such section.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on

Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 642, 1165, 1166, 1174a, 1186, 6383, 14517, 14905 of this title; title 14 sections 286, 286a; title 33 section 3042.

§1174a. Special separation benefits programs

(a) REQUIREMENT FOR PROGRAMS.—The Secretary concerned shall carry out a special separation benefits program under this section. An eligible member of the armed forces may request separation under the program. The request shall be subject to the approval of the Secretary.

(b) BENEFITS.—Upon the approval of the request of an eligible member, the member shall—

(1) be released from active duty or full-time National Guard duty or discharged, as the case may be; and

(2) be entitled to—

(A) separation pay equal to 15 percent of the product of (i) the member's years of active service, and (ii) 12 times the monthly basic pay to which the member is entitled at the time of his discharge or release from active duty; and

(B) the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(c) ELIGIBILITY.—Subject to subsections (d) and (e), a member of an armed force is eligible for voluntary separation under a program established for that armed force pursuant to this section if the member—

(1) has not been approved for payment of a voluntary separation incentive under section 1175 of this title;

(2) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 years;

(3) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for not more than 20 years;

(4) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of the member's separation from active duty; and

(5) meets such other requirements as the Secretary may prescribe, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(d) PROGRAM APPLICABILITY.—The Secretary concerned may provide for the program under this section to apply to any of the following members:

(1) A regular officer or warrant officer of an armed force.

(2) A regular enlisted member of an armed force.

(3) A member of an armed force other than a regular member.

(e) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to paragraphs (2) and (3), the Secretary concerned may limit the applicability of a program under this section to any category of personnel defined by the Secretary in order to meet a need of the armed force under the Secretary's jurisdiction to reduce the number of members in certain grades, the number of members who have completed a certain number of years of active service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) Any category prescribed by the Secretary concerned for regular officers, regular enlisted members, or other members pursuant to paragraph (1) shall be consistent with the categories applicable to regular officers, regular enlisted members, or other members, respectively, under the voluntary separation incentive program under section 1175 of this title or any other program established by law or by that Secretary for the involuntary separation of such members in the administration of a reduction in force.

(3) A member of the armed forces offered a voluntary separation incentive under section 1175 of this title shall also be offered the opportunity to request separation under a program established pursuant to this section. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(f) APPLICATION REQUIREMENTS.—(1) In order to be separated under a program established pursuant to this section—

(A) a regular enlisted member eligible for separation under that program shall—

(i) submit a request for separation under the program before the expiration of the member's term of enlistment; or

(ii) upon discharge at the end of such term, enter into a written agreement (pursuant to regulations prescribed by the Secretary concerned) not to request reenlistment in a regular component; and

(B) a member referred to in subsection (d)(3) eligible for separation under that program shall submit a request for separation to the Secretary concerned before the expiration of the member's established term of active service.

(2) For purposes of this section, the entry of a member into an agreement referred to in paragraph (1)(A)(ii) under a program established pur-

suant to this section shall be considered a request for separation under the program.

(g) OTHER CONDITIONS, REQUIREMENTS, AND ADMINISTRATIVE PROVISIONS.—Subsections (e) through (h), other than subsection (e)(2)(A), of section 1174 of this title shall apply in the administration of programs established under this section.

(h) TERMINATION OF PROGRAM.—(1) Except as provided in paragraph (2), the Secretary concerned may not conduct a program pursuant to this section after December 31, 2001.

(2) No member of the armed forces may be separated under a program established pursuant to this section after the date of the termination of that program.

(Added Pub. L. 102–190, div. A, title VI, § 661(a)(1), Dec. 5, 1991, 105 Stat. 1394; amended Pub. L. 102–484, div. A, title X, § 1052(15), div. D, title XLIV, §§ 4405(a), 4422(a), Oct. 23, 1992, 106 Stat. 2499, 2706, 2718; Pub. L. 103–35, title II, § 202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title V, §§ 502, 561(g), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, § 542(b), Oct. 5, 1994, 108 Stat. 2768; Pub. L. 105–261, div. A, title V, § 561(b), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

AMENDMENTS

2000—Subsec. (h)(1). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (h)(1). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1994—Subsec. (a). Pub. L. 103–337, § 542(b)(1), substituted ''concerned'' for ''of each military department''.

Subsec. (d). Pub. L. 103–337, § 542(b)(2), substituted ''concerned'' for ''of a military department''.

Subsec. (e)(3). Pub. L. 103–337, § 542(b)(3), struck out ''of the military department'' after ''Secretary''.

Subsec. (h). Pub. L. 103–337, § 542(b)(4), substituted ''concerned'' for ''of a military department''.

1993—Subsec. (c)(2). Pub. L. 103–160, § 502, struck out ''before December 5, 1991'' after ''6 years''.

Subsec. (c)(3). Pub. L. 103–35, § 202(a)(17)(A), made technical amendment to directory language of Pub. L. 102–484, § 4422(a)(3). See 1992 Amendment note below.

Subsec. (c)(4). Pub. L. 103–35, § 202(a)(17)(B), made technical amendment to directory language of Pub. L. 102–484, § 4422(a)(4). See 1992 Amendment note below.

Subsec. (h)(1). Pub. L. 103–160, § 561(g), substituted ''September 30, 1999'' for ''September 30, 1995''.

1992—Subsec. (b)(1). Pub. L. 102–484, § 4422(a)(1), inserted ''or full-time National Guard duty'' after ''active duty''.

Subsec. (b)(2)(B). Pub. L. 102–484, § 4405(a), inserted '', sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note)'' after ''chapter 58 of this title''.

Subsec. (c)(2). Pub. L. 102–484, §§ 1052(15), 4422(a)(2), substituted ''December 5, 1991'' for ''the date of the enactment of this section'' and inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(3). Pub. L. 102–484, § 4422(a)(3), as amended by Pub. L. 103–35, § 202(a)(17)(A), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (c)(4). Pub. L. 102–484, § 4422(a)(4), as amended by Pub. L. 103–35, § 202(a)(17)(B), inserted ''and'' after semicolon at end and ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty'' the first place it appeared.

Subsec. (c)(5), (6). Pub. L. 102–484, § 4424(a)(5), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''if a Reserve, is on an active duty list; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4405(c) of Pub. L. 102–484 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1175 of this title] shall apply as if included in sections 1174a and 1175 of title 10, United States Code, as enacted on December 5, 1991, but any benefits or services payable by reason of the applicability of the provisions of those amendments during the period beginning on December 5, 1991, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

REMEDY FOR INEFFECTIVE COUNSELING OF OFFICERS DISCHARGED FOLLOWING SELECTION BY EARLY DISCHARGE BOARDS

Pub. L. 103–160, div. A, title V, § 507, Nov. 30, 1993, 107 Stat. 1646, as amended by Pub. L. 103–337, div. A, title X, § 1070(b)(1), Oct. 5, 1994, 108 Stat. 2856, provided that:

''(a) PROCEDURE FOR REVIEW.—(1) The Secretary of each military department shall establish a procedure for the review of the individual circumstances of an officer described in paragraph (2) who is discharged, or who the Secretary concerned approves for discharge, following the report of a selection board convened by the Secretary to select officers for separation. The procedure established by the Secretary of a military department under this section shall provide that each review under that procedure be carried out by the Board for the Correction of Military Records of that military department.

''(2) This section applies in the case of any officer (including a warrant officer) who, having been offered the opportunity to be discharged or otherwise separated from active duty through the programs provided under section 1174a and 1175 of title 10, United States Code—

''(A) elected not to accept such discharge or separation; and

''(B) submits an application under subsection (b) during the two-year period beginning on the later of the date of the enactment of this Act [Nov. 30, 1993] and the date of such discharge or separation.

''(b) APPLICATION.—A review under this section shall be conducted in any case submitted to the Secretary concerned by application from the officer or former officer under regulations prescribed by the Secretary.

''(c) PURPOSE OF REVIEW.—(1) The review under this section shall be designed to evaluate the effectiveness of the counseling of the officer before the convening of the board to ensure that the officer was properly informed that selection for discharge or other separation from active duty was a potential result of being within the group of officers to be considered by the board and that the officer was not improperly informed that such selection in that officer's personal case was unlikely.

''(2) The Board for the Correction of Military Records of a military department shall render a decision in each case under this section not later than 60 days after receipt by the Secretary concerned of an application under subsection (b).

''(d) REMEDY.—Upon a finding of ineffective counseling under subsection (c), the Secretary shall provide

the officer the opportunity to participate, at the officer's option, in any one of the following programs for which the officer meets all eligibility criteria:

''(1) The Special Separation Benefits program under section 1174a of title 10, United States Code.

''(2) The Voluntary Separation Incentive program under section 1175 of such title.

''(3) Retirement under the authority provided by section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note).

''(e) EFFECTIVE DATE.—This section shall apply with respect to officers separated after September 30, 1990.''

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

Pub. L. 103–335, title VIII, §8106A, Sept. 30, 1994, 108 Stat. 2645, as amended by Pub. L. 104–6, title I, §105(a), Apr. 10, 1995, 109 Stat. 79, which provided that members who separated after Sept. 30, 1994, from active duty or full-time National Guard duty in a military department pursuant to a Special Separation Benefits program under section 1174a of this title or a Voluntary Separation Incentive program under section 1175 of this title would have their separation payments reduced by the amount of certain bonus payments and eliminated if they are rehired within 180 days by the Department of Defense in a civilian position and that civilian Department of Defense employees would not receive voluntary separation payments if rehired by a Federal agency within 180 days of separating from the Department of Defense, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation act:

Pub. L. 103–139, title VIII, §8127, Nov. 11, 1993, 107 Stat. 1469.

COMMENCEMENT OF PROGRAM

Section 661(b) of Pub. L. 102–190 provided that: ''The Secretary of each military department shall commence the program required by section 1174a of title 10, United States Code (as added by subsection (a)), not later than 60 days after the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON PROGRAMS

Section 663 of Pub. L. 102–190 directed Secretary, not later than 180 days after Dec. 5, 1991, to submit to Congress a report containing the Secretary's assessment of effectiveness of programs established under sections 1174a and 1175 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1153, 1175 of this title; title 29 section 2918; title 33 section 3071; title 38 section 3018B.

§1175. Voluntary separation incentive

(a)(1) Consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

(2)(A) Except as provided in subparagraph (B), a financial incentive provided a member under this section shall be paid for the period equal to twice the number of years of service of the member, computed as provided in subsection (e)(5).

(B) If, before the expiration of the period otherwise applicable under subparagraph (A) to a member receiving a financial incentive under this section, the member is separated from a reserve component or is transferred to the Retired Reserve, the period for payment of a financial incentive to the member under this section shall terminate on the date of the separation or transfer unless—

(i) the separation or transfer is required by reason of the age or number of years of service of the member;

(ii) the separation or transfer is required by reason of the failure of selection for promotion or the medical disqualification of the member, except in a case in which the Secretary of Defense or the Secretary of Homeland Security determines that the basis for the separation or transfer is a result of a deliberate action taken by the member with the intent to avoid retention in the Ready Reserve or Standby Reserve; or

(iii) in the case of a separation, the member is separated from the reserve component for appointment or enlistment in or transfer to another reserve component of an armed force for service in the Ready Reserve or Standby Reserve of that armed force.

(b) The Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member—

(1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years;

(2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation;

(3) meets such other requirements as the Secretary may prescribe from time to time, which may include requirements relating to—

(A) years of service;

(B) skill or rating;

(C) grade or rank; and

(D) remaining period of obligated service.

(c) A member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

(d)(1) A member of the armed forces described in subsection (b) may request voluntary appointment, enlistment, or transfer to a reserve component accompanied by this incentive, provided the member has completed 6 years of active service.

(2) The Secretary, in his discretion, may approve or disapprove a request according to the needs of the armed forces.

(3) After December 31, 2001, the Secretary may not approve a request.

(e)(1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service.

(2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.

(3)(A) A member who has received the voluntary separation incentive and who qualifies for retired or retainer pay under this title shall have deducted from each payment of such retired or retainer pay so much of such pay as is based on the service for which he received the voluntary separation incentive until the total amount deducted equals the total amount of voluntary separation incentive received. If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.

(B) If a member is receiving simultaneous voluntary separation incentive payments and retired or retainer pay, the member may elect to terminate the receipt of voluntary separation incentive payments. Any such election is permanent and irrevocable. The rate of monthly recoupment from retired or retainer pay of voluntary separation incentive payments received after such an election shall be reduced by a percentage that is equal to a fraction with a denominator equal to the number of months that the voluntary separation incentive payments were scheduled to be paid and a numerator equal to the number of months that would not be paid as a result of the member's decision to terminate the voluntary separation incentive.

(4) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

(5) The years of service of a member for purposes of this section shall be computed in accordance with section 1405 of this title.

(f) The member's right to incentive payments shall not be transferable, except that the member may designate beneficiaries to receive the payments in the event of the member's death.

(g) Subject to subsection (h), payments under this provision shall be paid from appropriations available to the Department of Defense and the Department of Homeland Security for the Coast Guard.

(h)(1) There is established on the books of the Treasury a fund to be known as the ''Voluntary Separation Incentive Fund'' (hereinafter in this subsection referred to as the ''Fund''). The Fund shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis the liabilities of the Department of Defense under this section.

(2) There shall be deposited in the Fund the following, which shall constitute the assets of the Fund:

(A) Amounts paid into the Fund under paragraphs (5), (6), and (7).

(B) Any amount appropriated to the Fund.

(C) Any return on investment of the assets of the Fund.

(3) All voluntary separation incentive payments made by the Secretary of Defense after December 31, 1992, under this section shall be paid out of the Fund. To the extent provided in appropriation Acts, the assets of the Fund shall be available to the Secretary to pay voluntary separation incentives under this section.

(4) The Department of Defense Retirement Board of Actuaries (hereinafter in this subsection referred to as the ''Board'') shall perform the same functions regarding the Fund, as provided in this subsection, as such Board performs regarding the Department of Defense Military Retirement Fund.

(5) Not later than January 1, 1993, the Board shall determine the amount that is the present value, as of that date, of the future benefits payable under this section in the case of persons who are separated pursuant to this section before that date. The amount so determined is the original unfunded liability of the Fund. The Board shall determine an appropriate amortization period and schedule for liquidation of the original unfunded liability. The Secretary shall make deposits to the Fund in accordance with that amortization schedule.

(6) For persons separated under this section on or after January 1, 1993, the Secretary shall deposit in the Fund during the period beginning on that date and ending on September 30, 1999—

(A) such sums as are necessary to pay the current liabilities under this section during such period; and

(B) the amount equal to the present value, as of September 30, 1999, of the future benefits payable under this section, as determined by the Board.

(7)(A) For each fiscal year after fiscal year 1999, the Board shall—

(i) carry out an actuarial valuation of the Fund and determine any unfunded liability of the Fund which deposits under paragraphs (5) and (6) do not liquidate, taking into consideration any cumulative actuarial gain or loss to the Fund;

(ii) determine the period over which that unfunded liability should be liquidated; and

(iii) determine for the following fiscal year, the total amount, and the monthly amount, of the Department of Defense contributions that must be made to the Fund during that fiscal year in order to fund the unfunded liabilities of the Fund over the applicable amortization periods.

(B) The Board shall carry out its responsibilities for each fiscal year in sufficient time for the amounts referred to in subparagraph (A)(iii) to be included in budget requests for that fiscal year.

(C) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund the amount necessary to liquidate unfunded liabilities of the Fund in accordance with the amortization schedules determined by the Board.

(8) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of each military department.

(9) The investment provisions of section 1467 of this title shall apply to the Voluntary Separation Incentive Fund.

(i) The Secretary of Defense and the Secretary of Homeland Security may issue such regulations as may be necessary to carry out this section.

(j) A member of the armed forces who is provided a voluntary separation incentive under this section shall be eligible for the same benefits and services as are provided under chapter 58 of this title, sections 404 and 406 of title 37, and section 503(c) of the National Defense Authorization Act for Fiscal Year 1991 (104 Stat. 1558; 37 U.S.C. 406 note) for members of the armed forces who are involuntarily separated within the meaning of section 1141 of this title.

(Added Pub. L. 102–190, div. A, title VI, §662(a)(1), Dec. 5, 1991, 105 Stat. 1396; amended Pub. L. 102–484, div. A, title X, §1052(16), div. D, title XLIV, §§4405(b), 4406(a), (b), 4422(b), Oct. 23, 1992, 106 Stat. 2499, 2706, 2707, 2719; Pub. L. 103–160, div. A, title V, §§502, 561(h), Nov. 30, 1993, 107 Stat. 1644, 1668; Pub. L. 103–337, div. A, title V, §542(c), Oct. 5, 1994, 108 Stat. 2769; Pub. L. 105–261, div. A, title V, §§561(b), 563(a), (b), Oct. 17, 1998, 112 Stat. 2025, 2028; Pub. L. 106–398, §1 [[div. A], title V, §§571(b), 572(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134, 1654A–135; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a)(1), (2)(B)(ii), (b), (g), (i). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (d)(3). Pub. L. 106–398, §1 [[div. A], title V, §571(b)], substituted ''December 31, 2001'' for ''September 30, 2001''.

Subsec. (e)(3). Pub. L. 106–398, §1 [[div. A], title V, §572(a)], designated existing provisions as subpar. (A) and added subpar. (B).

1998—Subsec. (a). Pub. L. 105–261, §563(a), designated existing provisions as par. (1), struck out '', for the period of time the member serves in a reserve component'' after ''under subsection (c)'', and added par. (2).

Subsec. (d)(3). Pub. L. 105–261, §561(b), substituted ''September 30, 2001'' for ''September 30, 1999''.

Subsec. (e)(1). Pub. L. 105–261, §563(b), struck out at end ''The annual payment will be made for a period equal to the number of years that is equal to twice the number of years of service of the member.''

1994—Subsecs. (a), (b). Pub. L. 103–337, §542(c)(1), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, §542(c)(2), struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 103–337, §542(c)(3), inserted ''and the Department of Transportation for the Coast Guard'' before period at end.

Subsec. (h)(3). Pub. L. 103–337, §542(c)(4), inserted ''by the Secretary of Defense'' after ''incentive payments made'' and ''to the Secretary'' after ''shall be available''.

Subsec. (i). Pub. L. 103–337, §542(c)(5), inserted ''and the Secretary of Transportation'' after ''Secretary of Defense''.

1993—Subsec. (d)(1). Pub. L. 103–160, §502, struck out ''before December 5, 1991'' after ''active service''.

Subsecs. (d)(3), (h)(6). Pub. L. 103–160, §561(h)(1), substituted ''September 30, 1999'' for ''September 30, 1995'' wherever appearing.

Subsec. (h)(7)(A). Pub. L. 103–160, §561(h)(2), substituted ''fiscal year 1999'' for ''fiscal year 1996''.

1992—Subsec. (a). Pub. L. 102–484, §1052(16)(A), substituted ''reserve component'' for ''Reserve component'' after ''transfer to a''.

Subsec. (b)(1), (2). Pub. L. 102–484, §4422(b)(1), (2), inserted ''or full-time National Guard duty or any combination of active duty and full-time National Guard duty'' after ''active duty''.

Subsec. (b)(3), (4). Pub. L. 102–484, §4424(b)(3), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''if a Reserve, is on the active duty list; and''.

Subsec. (d)(1). Pub. L. 102–484, §1052(16)(B), substituted ''before December 5, 1991'' for ''prior to the time this provision is enacted''.

Subsec. (e)(2). Pub. L. 102–484, §4406(a)(1), substituted ''may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period.'' for ''shall forfeit an amount of voluntary separation incentive payable for the same period that is equal to the total amount of basic pay, or compensation, received.''

Subsec. (e)(3). Pub. L. 102–484, §4406(a)(2), inserted at end ''If the member elected to have a reduction in voluntary separation incentive for any period pursuant to paragraph (2), the deduction required under the preceding sentence shall be reduced accordingly.''

Subsec. (e)(6). Pub. L. 102–484, §4406(b), struck out par. (6) which read as follows: ''Years of service that form the basis of the payment under paragraph (5) may not be counted in computing eligibility for, or the amount of, annuities under title 5 or any other law providing annuities to Federal civilian employees.''

Subsec. (j). Pub. L. 102–484, §4405(b), added subsec. (j).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §572(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, provided that: ''Subparagraph (B) of section 1175(e)(3) of title 10, United States Code, as added by subsection (a), shall apply with respect to decisions by members to terminate voluntary separation incentive payments under section 1175 of title 10, United States Code, to be effective after September 30, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, §563(c), Oct. 17, 1998, 112 Stat. 2028, provided that: ''The amendments made by this section [amending this section] apply with respect to any person provided a voluntary separation incentive under section 1175 of title 10, United States Code (whether before, on, or after the date of the enactment of this Act) [Oct. 17, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable only to members of the Coast Guard who are separated after Sept. 30, 1994, see section 542(e) of Pub. L. 103–337, set out as a note under section 1141 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 4405(b) of Pub. L. 102–484 applicable as if included in this section as enacted Dec. 5,

1991, with any benefits or services payable by reason of applicability of that amendment during the period beginning Dec. 5, 1991, and ending Oct. 23, 1992, to be subject to availability of appropriations, see section 4405(c) of Pub. L. 102–484, set out as a note under section 1174a of this title.

Section 4406(c) of Pub. L. 102–484 provided that: ''The amendments to section 1175 of title 10, United States Code, made by subsections (a) and (b) shall apply as if included in section 1175 of title 10, United States Code, as enacted on December 5, 1991.''

PAYMENT OF INCENTIVES FROM VOLUNTARY SEPARATION INCENTIVE FUND

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8044], Sept. 30, 1996, 110 Stat. 3009–71, 3009–98, provided that: ''During the current fiscal year and hereafter, voluntary separation incentives payable under 10 U.S.C. 1175 may be paid in such amounts as are necessary from the assets of the Voluntary Separation Incentive Fund established by section 1175(h)(1).''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, §8054, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, §8062, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103–139, title VIII, §8073, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, §9106, Oct. 6, 1992, 106 Stat. 1927.

SEPARATION PAYMENTS; REDUCTIONS AND PROHIBITIONS

For provisions reducing, with certain exceptions, amounts received under this section by amounts received as bonus payments under chapter 5 of title 37 in case of members who separate from active duty or full-time National Guard duty in a military department and prohibiting such members from receiving Voluntary Separation Incentive program payments if rehired in DOD civilian position within 180 days of separation, see note set out under section 1174a of this title.

TAX TREATMENT OF INCENTIVE PAYMENT

Section 662(b) of Pub. L. 102–190 provided that: ''Notwithstanding the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] and any other provision of law, any voluntary separation incentive paid to a member of the Armed Forces under section 1175 of title 10, United States Code (as added by subsection (a)), shall be includable in gross income for federal tax purposes only for the taxable year in which such incentive is paid to the participant or beneficiary of the member.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1152, 1153, 1174a of this title; title 29 section 2918; title 38 section 3018B.

§ 1176. Enlisted members: retention after completion of 18 or more, but less than 20, years of service

(a) REGULAR MEMBERS.—A regular enlisted member who is selected to be involuntarily separated, or whose term of enlistment expires and who is denied reenlistment, and who on the date on which the member is to be discharged is within two years of qualifying for retirement under section 3914 or 8914 of this title, or of qualifying for transfer to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, shall be retained on active duty until the member is qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, as the case may be, unless the member is sooner retired or discharged under any other provision of law.

(b) RESERVE MEMBERS IN ACTIVE STATUS.—A reserve enlisted member serving in an active status who is selected to be involuntarily separated (other than for physical disability or for cause), or whose term of enlistment expires and who is denied reenlistment (other than for physical disability or for cause), and who on the date on which the member is to be discharged or transferred from an active status is entitled to be credited with at least 18 but less than 20 years of service computed under section 12732 of this title, may not be discharged, denied reenlistment, or transferred from an active status without the member's consent before the earlier of the following:

(1) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 18, but less than 19, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the third anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(2) If as of the date on which the member is to be discharged or transferred from an active status the member has at least 19, but less than 20, years of service computed under section 12732 of this title—

(A) the date on which the member is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(B) the second anniversary of the date on which the member would otherwise be discharged or transferred from an active status.

(Added Pub. L. 102–484, div. A, title V, §541(a), Oct. 23, 1992, 106 Stat. 2412; amended Pub. L. 103–160, div. A, title V, §562(a), Nov. 30, 1993, 107 Stat. 1669; Pub. L. 104–106, div. A, title XV, §1501(c)(12), Feb. 10, 1996, 110 Stat. 499.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 12732'' for ''section 1332'' wherever appearing.

1993—Subsec. (b). Pub. L. 103–160 added subsec. (b) and struck out heading and text of former subsec. (b) which provided that a reserve enlisted member serving on active duty who was selected to be involuntarily separated, or whose term of enlistment expired and who was denied reenlistment, and who on the date on which the member was to be discharged or released from active duty was entitled to be credited with at least 18 but less than 20 years of service computed under section 1332 of this title, could not be discharged or released from active duty without the member's consent before the earlier of certain dates.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 562(b) of Pub. L. 103–160 provided that: ''Subsection (b) of section 1176 of title 10, United States Code, as added by subsection (a), shall take effect as of October 23, 1992.''

[§1177. Repealed. Pub. L. 104–134, title II, §2707(a)(1), Apr. 26, 1996, 110 Stat. 1321–330]

Section, added Pub. L. 103–337, div. A, title V, §560(a)(1), Oct. 5, 1994, 108 Stat. 2777; amended Pub. L. 104–106, div. A, title V, §567(a)(1), title XV, §1503(a)(12), Feb. 10, 1996, 110 Stat. 328, 511, related to mandatory discharge or retirement of members infected with HIV–1 virus.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 567(b) of Pub. L. 104–106, provided that this section, as amended by section 567(a) of Pub. L. 104–106, was applicable to members of Armed Forces determined to be HIV-positive before, on, or after Feb. 10, 1996, and that in case of member determined to be HIV-positive before Feb. 10, 1996, deadline for separation of member under former subsec. (a) of this section was to be determined from Feb. 10, 1996, rather than from date of such determination, prior to repeal by Pub. L. 104–134, title II, §2707(b), Apr. 26, 1996, 110 Stat. 1321–330.

§1178. System and procedures for tracking separations resulting from refusal to participate in anthrax vaccine immunization program

(a) REQUIREMENT TO ESTABLISH SYSTEM.—The Secretary of each military department shall establish a system for tracking, recording, and reporting separations of members of the armed forces under the Secretary's jurisdiction that result from procedures initiated as a result of a refusal to participate in the anthrax vaccine immunization program.

(b) REPORT.—The Secretary of Defense shall consolidate the information recorded under the system described in subsection (a) and shall submit to the Committees on Armed Services of the Senate and the House of Representatives not later than April 1 of each year a report on such information. Each such report shall include a description of—

(1) the number of members separated, categorized by military department, grade, and active-duty or reserve status; and

(2) any other information determined appropriate by the Secretary.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §751(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–193.)

COMPTROLLER GENERAL REPORT

Pub. L. 106–398, §1 [[div. A], title VII, §751(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194, provided that:

''(1) Not later than April 1, 2002, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the effect of the Department of Defense anthrax vaccine immunization program on the recruitment and retention of active duty and reserve military personnel and civilian personnel of the Department of Defense. The study shall cover the period beginning on the date of the enactment of this Act [Oct. 30, 2000] and ending on December 31, 2001.

''(2) The Comptroller General shall include in the report required by paragraph (1) a description of any personnel actions (including transfer, termination, or reassignment of any personnel) taken as a result of the refusal of any civilian employee of the Department of Defense to participate in the anthrax vaccine immunization program.''

CHAPTER 60—SEPARATION OF REGULAR OFFICERS FOR SUBSTANDARD PERFORMANCE OF DUTY OR FOR CERTAIN OTHER REASONS

Sec.
1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons.
1182. Boards of inquiry.
[1183. Repealed.]
1184. Removal of officer: action by Secretary upon recommendation of board of inquiry.
1185. Rights and procedures.
1186. Officer considered for removal: voluntary retirement or discharge.
1187. Officers eligible to serve on boards.

AMENDMENTS

1998—Pub. L. 105–261, div. A, title V, §503(c)(2), Oct. 17, 1998, 112 Stat. 2004, struck out item 1183 ''Boards of review'' and substituted ''inquiry'' for ''review'' in item 1184.

1984—Pub. L. 98–525, title V, §524(b)(2), Oct. 19, 1984, 98 Stat. 2524, substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in item 1181.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 617 of this title.

§1181. Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain other reasons

(a) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer shall be required, because his performance of duty has fallen below standards prescribed by the Secretary of Defense, to show cause for his retention on active duty.

(b) Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any commissioned officer (other than a commissioned warrant officer or a retired officer) of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps to determine whether such officer should be required, because of misconduct, because of moral or professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active duty.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 98–525, title V, §524(b)(1), Oct. 19, 1984, 98 Stat. 2524.)

AMENDMENTS

1984—Pub. L. 98–525 substituted ''Authority to establish procedures to consider the separation of officers for substandard performance of duty and for certain

other reasons'' for ''Authority to convene boards of officers to consider separation of officers for substandard performance of duty or for certain other reasons'' in section catchline.

Subsecs. (a), (b). Pub. L. 98–525 amended subsecs. (a) and (b) generally, substituting ''Subject to such limitations as the Secretary of Defense may prescribe, the Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record'' for ''Under regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may at any time convene a board of officers to review the record''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(b)(3) of Pub. L. 98–525 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and the analysis to this chapter] shall take effect on the first day of the first month that begins more than 60 days after the date of the enactment of this Act [Oct. 19, 1984], but shall not apply to any case in which, before that date, a board of officers has been ordered to convene under the provisions of section 1181 of title 10, United States Code, as in effect before that date.''

EFFECTIVE DATE

Chapter effective Sept. 15, 1981, but the authority to prescribe regulations under this chapter effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 618, 1182, 1185, 1186 of this title.

§ 1182. Boards of inquiry

(a) The Secretary of the military department concerned shall convene boards of inquiry at such times and places as the Secretary may prescribe to receive evidence and make findings and recommendations as to whether an officer who is required under section 1181 of this title to show cause for retention on active duty should be retained on active duty. Each board of inquiry shall be composed of not less than three officers having the qualifications prescribed by section 1187 of this title.

(b) A board of inquiry shall give a fair and impartial hearing to each officer required under section 1181 of this title to show cause for retention on active duty.

(c)(1) If a board of inquiry determines that the officer has failed to establish that he should be retained on active duty, it shall recommend to the Secretary concerned that the officer not be retained on active duty.

(2) Under regulations prescribed by the Secretary concerned, an officer as to whom a board of inquiry makes a recommendation under paragraph (1) that the officer not be retained on active duty may be required to take leave pending the completion of the officer's case under this chapter. The officer may be required to begin such leave at any time following the officer's receipt of the report of the board of inquiry, including the board's recommendation for removal from active duty, and the expiration of any period allowed for submission by the officer of a rebuttal to that report. The leave may be continued until the date on which action by the Secretary concerned on the officer's case is completed or may be terminated at any earlier time.

(d)(1) If a board of inquiry determines that the officer has established that he should be retained on active duty, the officer's case is closed.

(2) An officer who is required to show cause for retention on active duty under subsection (a) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may not again be required to show cause for retention on active duty under such subsection within the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is determined under paragraph (1) to have established that he should be retained on active duty may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention on active duty under subsection (b) of section 1181 of this title and who is thereafter retained on active duty may not again be required to show cause for retention on active duty under such subsection solely because of conduct which was the subject of the previous proceedings, unless the findings or recommendations of the board of inquiry that considered his case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2872; amended Pub. L. 105–261, div. A, title V, § 503(b)(1), Oct. 17, 1998, 112 Stat. 2003; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292; Pub. L. 107–314, div. A, title V, § 506(a), Dec. 2, 2002, 116 Stat. 2534.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (c). Pub. L. 106–398 made technical correction to directory language of Pub. L. 105–261, § 503(b)(1). See 1998 Amendment note below.

1998—Subsec. (c). Pub. L. 105–261, § 503(b)(1), as amended by Pub. L. 106–398, substituted ''recommend to the Secretary concerned that the officer not be retained on active duty'' for ''send the record of its proceedings to a board of review convened under section 1183 of this title''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, § 1087(d)(2)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 707a, 1184 of this title.

[§1183. Repealed. Pub. L. 105–261, div. A, title V, §503(a), Oct. 17, 1998, 112 Stat. 2003]

Section, added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2873, related to convening and determinations of boards of review.

§1184. Removal of officer: action by Secretary upon recommendation of board of inquiry

The Secretary of the military department concerned may remove an officer from active duty if the removal of such officer from active duty is recommended by a board of inquiry convened under section 1182 of this title.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 105–261, div. A, title V, §503(b)(2), (c)(1), Oct. 17, 1998, 112 Stat. 2003.)

AMENDMENTS

1998—Pub. L. 105–261 substituted ''inquiry'' for ''review'' in section catchline and ''board of inquiry convened under section 1182 of this title'' for ''board of review convened under section 1183 of this title'' in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 707a, 1186 of this title.

§1185. Rights and procedures

(a) Under regulations prescribed by the Secretary of Defense, each officer required under section 1181 of this title to show cause for retention on active duty—

(1) shall be notified in writing, at least 30 days before the hearing of his case by a board of inquiry, of the reasons for which he is being required to show cause for retention on active duty;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare his showing of cause for his retention on active duty;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to his case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874.)

§1186. Officer considered for removal: voluntary retirement or discharge

(a) At any time during proceedings under this chapter with respect to the removal of an officer from active duty, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement; or

(2) for discharge in accordance with subsection (b)(2).

(b) An officer removed from active duty under section 1184 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under such provision; and

(2) if ineligible for voluntary retirement under any provision of law on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 1181 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 1181 of this title.

(c) An officer who is discharged under subsection (b)(2) is entitled, if eligible therefor, to separation pay under section 1174(a)(2) of this title.

(Added Pub. L. 96–513, title I, §110, Dec. 12, 1980, 94 Stat. 2874; amended Pub. L. 101–510, div. A, title V, §501(f)(1), Nov. 5, 1990, 104 Stat. 1550.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 substituted ''section 1174(a)(2)'' for ''section 1174(b)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1174, 1370, 3924, 8924 of this title.

§1187. Officers eligible to serve on boards

(a) ACTIVE DUTY OFFICERS.—Except as provided in subsection (b), each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention on active duty.

(2) Each member of the board shall be on the active-duty list.

(3) Each member of the board shall be in a grade above major or lieutenant commander, except that at least one member of the board shall be in a grade above lieutenant colonel or commander.

(4) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) RETIRED OFFICERS.—If qualified officers on active duty are not available in sufficient numbers to comprise a board convened under this chapter, the Secretary of the military department concerned shall complete the membership of the board by appointing to the board retired officers of the same armed force. A retired officer may be appointed to such a board only if the retired grade of that officer—

(1) is above major or lieutenant commander or, in the case of an officer to be the senior officer of the board, above lieutenant colonel or commander; and

(2) is senior to the grade of any officer to be considered by the board.

(c) INELIGIBILITY BY REASON OF PREVIOUS CONSIDERATION OF SAME OFFICER.—No person may be

a member of more than one board convened under this chapter to consider the same officer.

(d) EXCLUSION FROM STRENGTH LIMITATION.—A retired general or flag officer who is on active duty for the purpose of serving on a board convened under this chapter shall not, while so serving, be counted against any limitation on the number of general and flag officers who may be on active duty.

(Added Pub. L. 96–513, title I, § 110, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 106–65, div. A, title V, § 504(a), Oct. 5, 1999, 113 Stat. 590.)

AMENDMENTS

1999—Pub. L. 106–65 amended text generally. Prior to amendment, text consisted of subsecs. (a) and (b) relating to officers eligible to serve on boards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1182 of this title.

CHAPTER 61—RETIREMENT OR SEPARATION FOR PHYSICAL DISABILITY

Sec.
1201. Regulars and members on active duty for more than 30 days: retirement.
1202. Regulars and members on active duty for more than 30 days: temporary disability retired list.
1203. Regulars and members on active duty for more than 30 days: separation.
1204. Members on active duty for 30 days or less or on inactive-duty training: retirement.
1205. Members on active duty for 30 days or less: temporary disability retired list.
1206. Members on active duty for 30 days or less or on inactive-duty training: separation.
1207. Disability from intentional misconduct or willful neglect: separation.
1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions.
1208. Computation of service.
1209. Transfer to inactive status list instead of separation.
1210. Members on temporary disability retired list: periodic physical examination; final determination of status.
1211. Members on temporary disability retired list: return to active duty; promotion.
1212. Disability severance pay.
1213. Effect of separation on benefits and claims.
1214. Right to full and fair hearing.
1215. Members other than Regulars: applicability of laws.
1216. Secretaries: powers, functions, and duties.
1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to.
1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization.
1219. Statement of origin of disease or injury: limitations.
[1220. Repealed.]
1221. Effective date of retirement or placement of name on temporary disability retired list.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VI, § 653(a)(2), Oct. 5, 1999, 113 Stat. 666, added item 1207a.

1997—Pub. L. 105–85, div. A, title V, § 513(d)(3), Nov. 18, 1997, 111 Stat. 1731, inserted ''or on inactive-duty training'' after ''Members on active duty for 30 days or less'' in items 1204 and 1206.

1986—Pub. L. 99–661, div. A, title VI, § 604(d)(4), Nov. 14, 1986, 100 Stat. 3876, struck out ''; disability from injury'' after ''30 days or less'' in items 1204, 1205, 1206.

1962—Pub. L. 87–651, title I, § 107(e), Sept. 7, 1962, 76 Stat. 509, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in item 1218, and ''Statement of origin of disease or injury: limitations'' for ''Statement against interest void'' in item 1219, and struck out item 1220 ''Location of accredited representatives at military installations''.

1958—Pub. L. 85–861, § 1(28)(C), Sept. 2, 1958, 72 Stat. 1451, added item 1221.

1957—Pub. L. 85–56, title XXII, § 2201(31)(B), June 17, 1957, 71 Stat. 161, eff. Jan. 1, 1958, added items 1218 to 1220.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1142, 1370, 1402, 1402a, 1408, 1409, 1413a, 1414, 1431, 1452, 1471, 1481 of this title; title 14 section 294; title 20 section 6673; title 33 section 3071; title 37 sections 404, 406; title 42 sections 212, 213a.

§ 1201. Regulars and members on active duty for more than 30 days: retirement

(a) RETIREMENT.—Upon a determination by the Secretary concerned that a member described in subsection (c) is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in subsection (c)(3), the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(3) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination; and either—

(i) the member has at least eight years of service computed under section 1208 of this title;

(ii) the disability is the proximate result of performing active duty;

(iii) the disability was incurred in line of duty in time of war or national emergency; or

(iv) the disability was incurred in line of duty after September 14, 1978.

(c) ELIGIBLE MEMBERS.—This section and sections 1202 and 1203 of this title apply to the following members:

(1) A member of a regular component of the armed forces entitled to basic pay.

(2) Any other member of the armed forces entitled to basic pay who has been called or

ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days.

(3) Any other member of the armed forces who is on active duty but is not entitled to basic pay by reason of section 502(b) of title 37 due to authorized absence (A) to participate in an educational program, or (B) for an emergency purpose, as determined by the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 91; Pub. L. 85–861, §1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, §107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95–377, §3(1), Sept. 19, 1978, 92 Stat. 719; Pub. L. 96–343, §10(c)(1), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96–513, title I, §117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 99–145, title V, §513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–337, div. A, title XVI, §1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, §572(a), Sept. 23, 1996, 110 Stat. 2533.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1201	37:272(a) (less clause (5), and less 2d proviso). 37:272(b) (less clause (5), and less 2d and last provisos). 37:272(f) (less applicability to 37:272(c) and (e)).	Oct. 12, 1949, ch. 681, §402(a) (less clause (5), and less 2d proviso), (b) (less clause (5), and less 2d and last provisos), (f) (less applicability to §402(c) and (e)), 63 Stat. 816, 817, 820.

The words ''any other member'' are substituted for the words ''a member of a Reserve component'', in 37:272(a) and (b), since the words ''Reserve component'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component. The words ''active duty (other than for training)'' are substituted for the words ''extended active duty'' for clarity and to reflect the opinion of the Comptroller General in 31 Comp. Gen. 95, 99. The words ''if the Secretary also determines that'' are substituted for the words ''That if condition (5) above is met by a finding that'', in 37:272(a) and (b). The words ''of such member'', ''upon retirement'', and ''to receive'', in 37:272(a), are omitted as surplusage.

In clause (1), the words ''based upon accepted medical principles'' are inserted as a necessary implication of the rule stated in 37:272(a)(5) and (b)(5).

Clause (3)(A) is substituted for 37:272(f) (less applicability to 37:272(c) and (e)). 37:272(f) is omitted as surplusage.

In clause (3)(B), the words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(a) and (b).

Clause (3)(B)(iii) is substituted for 37:272(a) (last proviso).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1201	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1996—Pub. L. 104–201 added subsecs. (a) and (c), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for ''Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the Secretary may retire the member, with retired pay computed under section 1401 of this title, if the Secretary also determines that—''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)'' in introductory provisions.

1989—Par. (3)(B). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

1980—Par. (3)(B)(iv). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect''.

Pub. L. 96–343 added cl. (iv).

1978—Par. (3)(B)(iv). Pub. L. 95–377 added cl. (iv) which provided additional condition, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 572(d) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and sections 1202 and 1203 of this title] shall take effect on the date of the enactment of this Act [Sept. 23, 1996] and shall apply with respect to physical disabilities incurred on or after such date.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95–377 provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a(b) of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

EXECUTIVE ORDER NO. 12239

Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, which related to suspension of certain promotion and disability separation limitations, was revoked by Ex. Ord. No. 12396, Dec. 9, 1982, 47 F.R. 55897, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1203, 1204, 1205, 1206, 1207a, 1210, 1372, 1401, 1402, 1402a, 1406, 1407, 1451 of this title; title 42 section 213a.

§ 1202. Regulars and members on active duty for more than 30 days: temporary disability retired list

Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title would be qualified for retirement under section 1201 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85–861, §1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, §107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 99–145, title V, §513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 103–337, div. A, title XVI, §1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, §572(b), Sept. 23, 1996, 110 Stat. 2533.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	37:272(a) (clause (5)). 37:272(b) (clause (5)).	Oct. 12, 1949, ch. 681, §402(a) (clause (5)), (b) (clause (5)), 63 Stat. 816, 817.

The first 82 words are inserted for clarity and are based on the rule stated in section 1201 of this title, which restates that part of 37:272(a), (b), and (f) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1202	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''a member described in section 1201(c) of this title'' for ''a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days,''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)''.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title''.

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104–201, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1203, 1204, 1205, 1206, 1207a, 1372, 1376, 1401, 1402, 1402a, 1406, 1407 of this title; title 42 section 213a.

§ 1203. Regulars and members on active duty for more than 30 days: separation

(a) SEPARATION.—Upon a determination by the Secretary concerned that a member described in section 1201(c) of this title is unfit to perform the duties of the member's office, grade, rank, or rating because of physical disability incurred while entitled to basic pay or while absent as described in section 1201(c)(3) of this title, the member may be separated from the member's armed force, with severance pay computed under section 1212 of this title, if the Secretary also makes the determinations with respect to the member and that disability specified in subsection (b).

(b) REQUIRED DETERMINATIONS OF DISABILITY.—Determinations referred to in subsection (a) are determinations by the Secretary that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(3) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(4) either—

(A) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the disability was (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national

emergency, or (iii) incurred in line of duty after September 14, 1978;

(B) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and the member has at least eight years of service computed under section 1208 of this title, or

(C) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, the disability was neither (i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty after September 14, 1978, and the member has less than eight years of service computed under section 1208 of this title on the date when he would otherwise be retired under section 1201 of this title or placed on the temporary disability retired list under section 1202 of this title.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 92; Pub. L. 85–861, §1(28)(A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–651, title I, §107(a), Sept. 7, 1962, 76 Stat. 508; Pub. L. 95–377, §3(2), (3), Sept. 19, 1978, 92 Stat. 719, 720; Pub. L. 96–343, §10(c)(2), (3), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 96–513, title I, §117, Dec. 12, 1980, 94 Stat. 2878; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 103–337, div. A, title XVI, §1671(c)(6), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title V, §572(c), Sept. 23, 1996, 110 Stat. 2533.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203	37:272(a) (2d proviso). 37:272(b) (2d and last provisos).	Oct. 12, 1949, ch. 681, §402(a) (2d proviso), (b) (2d and last provisos), 63 Stat. 816, 817.

To state fully in the revised section the rule contained in 37:272(a) (2d proviso) and 272(b) (2d and last provisos), the provisions of 37:272(a) (less clause (5), and less 1st proviso), 272(b) (less clause (5), and less 1st proviso) and 272(f) (less applicability to 37:272(c) and (e)), also contained in section 1201 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability,'' in 37:272(a) (2d proviso) and 37:272(b) (2d proviso).

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1201 or 1202 of this title.

Clause (4)(A) is substituted for 37:272(a) (1st 20 words of 2d proviso).

Clause (4)(B) is substituted for 37:272(b) (lst 20 words of 2d proviso).

Clause (4)(C) is substituted for 37:272(b) (last proviso).

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1203	[No source].	[No source].

The amendment reflects the Act of April 23, 1956, ch. 209 (70 Stat 115). (See opinion of Comp. Gen., B–130269, March 18, 1957.)

1962 ACT

The changes correct typographical errors.

AMENDMENTS

1996—Pub. L. 104–201 added subsec. (a), designated existing provisions as subsec. (b), and substituted introductory provisions of subsec. (b) for ''Upon a determination by the Secretary concerned that a member of a regular component of the armed forces entitled to basic pay, or any other member of the armed forces entitled to basic pay who has been called or ordered to active duty (other than for training under section 10148(a) of this title) for a period of more than 30 days, is unfit to perform the duties of his office, grade, rank, or rating because of physical disability incurred while entitled to basic pay, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—''.

1994—Pub. L. 103–337 substituted ''10148(a)'' for ''270(b)'' in introductory provisions.

1989—Par. (4)(A) to (C). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1980—Par. (4)(A)(iii). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect''.

Pub. L. 96–343, §10(c)(2), added cl. (iii).

Par. (4)(C). Pub. L. 96–513 substituted ''after September 14, 1978'' for ''during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' in cl. (iii).

Pub. L. 96–343, §10(c)(3), substituted ''(i) the proximate result of performing active duty, (ii) incurred in line of duty in time of war or national emergency, nor (iii) incurred in line of duty during the period beginning on September 15, 1978, and ending on September 30, 1982, except that the condition provided for in this item shall not be effective during such period unless the President determines that such condition should be effective during such period and issues an Executive order to that effect'' for ''the proximate result of performing active duty nor incurred in line of duty in time of war or national emergency''.

1978—Par. (4)(A)(iii). Pub. L. 95–377, §3(2), added cl. (iii) which provided additional conditions, effective on Presidential determination, that the disability was incurred in the line of duty during Sept. 15, 1978, through Sept. 30, 1979, and which terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

Par. (4)(C). Pub. L. 95–377, §3(3), designated existing conditions of performing active duty and incurred in line of duty in time of war or national emergency as cls. (i) and (ii) and added cl. (iii) providing additional condition, effective on Presidential determination, that the disability was incurred in line of duty during Sept. 15, 1978, through Sept. 30, 1979, and terminated on Sept. 30, 1979. See Effective and Termination Dates of 1978 Amendment note set out under this section.

1962—Pub. L. 87–651 substituted ''training under section 270(b) of this title)'' for ''training) under section 270(b) of this title.''

1958—Pub. L. 85–861 inserted ''under section 270(b) of this title'' after ''(other than for training)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 23, 1996, and applicable with respect to physical disabilities incurred on or after such date, see section 572(d) of Pub. L. 104–201, set out as a note under section 1201 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1978 AMENDMENT

Section 3 of Pub. L. 95–377 provided that the amendment made by that section is effective only for the period beginning Sept. 15, 1978, and ending Sept. 30, 1979.

SUSPENSION OF CERTAIN PROMOTION AND DISABILITY SEPARATION LIMITATIONS

For provisions relating to the suspension of certain promotion and disability separation limitations, see Ex. Ord. No. 12239, Sept. 21, 1980, 45 F.R. 62967, set out as a note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1204, 1205, 1206, 1207a, 1210, 1212 of this title; title 42 section 213a.

§ 1204. Members on active duty for 30 days or less or on inactive-duty training: retirement

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the Secretary may retire the member with retired pay computed under section 1401 of this title, if the Secretary also determines that—

(1) based upon accepted medical principles, the disability is of a permanent nature and stable;

(2) the disability—

(A) was incurred before September 24, 1996, as the proximate result of—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) an injury, illness, or disease incurred or aggravated while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence;

(B) is a result of an injury, illness, or disease incurred or aggravated in line of duty after September 23, 1996—

(i) while performing active duty or inactive-duty training;

(ii) while traveling directly to or from the place at which such duty is performed; or

(iii) while remaining overnight, immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training; or

(C) is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(i) while the member was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) while the member was traveling to or from the place at which the member was to so serve; or

(iii) while the member remained overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member's residence;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence; and

(4) either—

(A) the member has at least 20 years of service computed under section 1208 of this title; or

(B) the disability is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 93; Pub. L. 99–145, title V, § 513(a)(1)(A), Nov. 8, 1985, 99 Stat. 627; Pub. L. 99–661, div. A, title VI, § 604(d)(1), (2)(A), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102–484, div. A, title V, § 516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 104–201, div. A, title V, § 534, Sept. 23, 1996, 110 Stat. 2521; Pub. L. 105–85, div. A, title V, § 513(c)(1), (d)(1), Nov. 18, 1997, 111 Stat. 1730, 1731; Pub. L. 106–65, div. A, title V, § 578(i)(3), Oct. 5, 1999, 113 Stat. 629; Pub. L. 107–107, div. A, title V, § 513(b), Dec. 28, 2001, 115 Stat. 1093.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1204	37:271(a). 37:272(c) (less clause (5), and less last proviso). 37:272(f) (as applicable to 37:272(c)).	Oct. 12, 1949, ch. 681, §§ 401(a), 402(c) (less clause (5), and less last proviso), 402(f) (as applicable to § 402(c)), 63 Stat. 816, 817, 820.

37:271(a) is omitted as surplusage. As it relates to retirement it is only a statement of the general coverage of the retirement sections of this chapter. As it relates to separation it is only a statement of the general coverage of the separation sections of this chapter. The words ''a member * * * not covered by section 1201, 1202, or 1203 of this title'' are substituted for the words ''a member * * * other than those members covered in subsections (a) and (b) of this section''. The words ''if

the Secretary also determines that'' are substituted for the words ''That if condition (5) above is met by a finding that'', in 37:272(c). The words ''of such member'', ''upon retirement'', and ''to receive'', in 37:272(c), are omitted as surplusage.

In clause (1), the words ''based upon accepted medical principles'' are inserted as a necessary implication of the rule stated in 37:272(c)(5).

In clause (2), the word ''disability'' is substituted for the word ''injury'' to make clear, in view of 37:278, that members on active duty for 30 days or less are on the same footing as those on active duty for a longer period, with respect to the effect of misconduct or neglect.

In clause (3), the words ''and was not incurred during a period of unauthorized absence'' are inserted to conform to other revised sections of this chapter and because of section 1207 of this title. The words ''full-time training duty, other full-time duty'' are omitted as covered by the words ''active duty''.

Clause (4)(A) is substituted for 37:272(f) (as applicable to 37:272(c)). 37:272(f) (proviso) is omitted as surplusage.

In clause (4)(B), the words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(c).

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107–107, struck out '', if the site of the inactive-duty training is outside reasonable commuting distance of the member's residence'' before semicolon.

1999—Par. (2)(C). Pub. L. 106–65 added subpar. (C).

1997—Pub. L. 105–85, § 513(d)(1), amended section catchline generally, inserting ''or on inactive-duty training'' after ''30 days or less''.

Par. (2). Pub. L. 105–85, § 513(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is the proximate result of, or was incurred in line of duty after the date of the enactment of this Act as a result of—

''(A) performing active duty or inactive-duty training;

''(B) traveling directly to or from the place at which such duty is performed; or

''(C) an injury, illness, or disease incurred or aggravated while remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive duty training, if the site is outside reasonable commuting distance of the member's residence;''.

1996—Par. (2). Pub. L. 104–201 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed;''.

1992—Par. (2). Pub. L. 102–484 inserted before semicolon at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4)(B). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

1985—Par. (1). Pub. L. 99–145 inserted ''and stable'' after ''permanent nature''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 516(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section and section 1206 of this title] shall take effect with respect to disabilities incurred on or after November 14, 1986, but any benefits or services payable by reason of the applicability of those amendments during the period beginning on November 14, 1986, and ending on the date of the enactment of this Act [Oct. 23, 1992] shall be subject to the availability of appropriations.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1210, 1372, 1401, 1402, 1402a, 1406, 1407 of this title.

§ 1205. Members on active duty for 30 days or less: temporary disability retired list

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title would be qualified for retirement under section 1204 of this title but for the fact that his disability is not determined to be of a permanent nature and stable, the Secretary shall, if he also determines that accepted medical principles indicate that the disability may be of a permanent nature, place the member's name on the temporary disability retired list, with retired pay computed under section 1401 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99–145, title V, § 513(a)(1)(B), Nov. 8, 1985, 99 Stat. 627; Pub. L. 99–661, div. A, title VI, § 604(d)(2)[(B)], Nov. 14, 1986, 100 Stat. 3876.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1205	37:272(c) (clause (5)).	Oct. 12, 1949, ch. 681, § 402(c) (clause (5)), 63 Stat. 818.

The first 52 words are inserted for clarity and are based on the rule stated in section 1204 of this title, which restates that part of 37:272(c) relating to retirement for physical disability. The revised section incorporates by reference those provisions which are identical for retirement and for placement on the temporary disability retired list. This is possible, since 37:272(f) applies to placement on the temporary disability retired list as well as to retirement (see opinion of the Judge Advocate General of the Army (JAGA 1953/1900, 9 Mar. 1953)).

AMENDMENTS

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline.

1985—Pub. L. 99–145 inserted ''and stable'' after ''determined to be of a permanent nature''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1372, 1376, 1401, 1402, 1402a, 1406, 1407 of this title.

§ 1206. Members on active duty for 30 days or less or on inactive-duty training: separation

Upon a determination by the Secretary concerned that a member of the armed forces not covered by section 1201, 1202, or 1203 of this title is unfit to perform the duties of his office, grade, rank, or rating because of physical disability, the member may be separated from his armed force, with severance pay computed under section 1212 of this title, if the Secretary also determines that—

(1) the member has less than 20 years of service computed under section 1208 of this title;

(2) the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty—

(A) while—

(i) performing active duty or inactive-duty training;

(ii) traveling directly to or from the place at which such duty is performed; or

(iii) remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence; or

(B) while the member—

(i) was serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) was traveling to or from the place at which the member was to so serve; or

(iii) remained overnight at or in the vicinity of that place immediately before so serving;

(3) the disability is not the result of the member's intentional misconduct or willful neglect, and was not incurred during a period of unauthorized absence;

(4) based upon accepted medical principles, the disability is or may be of a permanent nature; and

(5) the disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and, in the case of a disability incurred before October 5, 1999, was the proximate result of performing active duty or inactive-duty training or of traveling directly to or from the place at which such duty is performed.

However, if the member is eligible for transfer to the inactive status list under section 1209 of this title, and so elects, he shall be transferred to that list instead of being separated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 99–661, div. A, title VI, §604(d)(1), (3), Nov. 14, 1986, 100 Stat. 3876; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 102–484, div. A, title V, §516(a), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 105–85, div. A, title V, §513(c)(2), (d)(2), Nov. 18, 1997, 111 Stat. 1731; Pub. L. 106–65, div. A, title V, §578(i)(4), title VI, §653(c), Oct. 5, 1999, 113 Stat. 629, 667; Pub. L. 107–107, div. A, title V, §513(b), title X, §1048(c)(6), Dec. 28, 2001, 115 Stat. 1093, 1226.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1206	37:272(c) (last proviso).	Oct. 12, 1949, ch. 681, §402(c) (last proviso), 63 Stat. 818.

To state fully in the revised section the rule contained in 37:272(c) (last proviso), the provisions of 37:272(c) (less clause (5), and less 1st proviso), and 272(f) (as applicable to 272(c)), also contained in section 1204 of this title, are repeated. The words ''the member may be separated'' are substituted for the words ''the member concerned shall not be eligible for any disability retirement provided in this section, but may be separated for physical disability''.

Clause (1) is inserted for clarity, since a member who had over 20 years of service would qualify under section 1204 or 1205 of this title.

The last sentence of the revised section, relating to transfer to the inactive status list, is inserted for clarity because of section 1209 of this title.

AMENDMENTS

2001—Par. (2)(B)(iii). Pub. L. 107–107, §513(b), struck out '', if the place is outside reasonable commuting distance from the member's residence'' before semicolon at end.

Par. (5). Pub. L. 107–107, §1048(c)(6), substituted ''October 5, 1999,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,''.

1999—Par. (2). Pub. L. 106–65, §578(i)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the disability is a result of an injury, illness, or disease incurred or aggravated in line of duty while—

''(A) performing active duty or inactive-duty training;

''(B) traveling directly to or from the place at which such duty is performed; or

''(C) while remaining overnight immediately before the commencement of inactive-duty training, or while remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site is outside reasonable commuting distance of the member's residence;''.

Par. (5). Pub. L. 106–65, §653(c), inserted '', in the case of a disability incurred before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2000,'' after ''determination, and''.

1997—Pub. L. 105–85, §513(d)(2), amended section catchline generally, inserting ''or on inactive-duty training'' after ''30 days or less''.

Pars. (2) to (5). Pub. L. 105–85, §513(c)(2), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

1992—Par. (4). Pub. L. 102–484 inserted before period at end ''or of traveling directly to or from the place at which such duty is performed''.

1989—Par. (4). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 struck out ''; disability from injury'' after ''30 days or less'' in section catchline and ''resulting from an injury'' after ''because of physical disability'' in provisions preceding par. (1).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective with respect to disabilities incurred on or after Nov. 14, 1986, with any benefits or services payable by reason of applicability of that amendment during period beginning Nov. 14, 1986, and ending Oct. 23, 1992, subject to availability of appropriations, see section 516(b) of Pub. L. 102–484, set out as a note under section 1204 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1210, 1212 of this title.

§ 1207. Disability from intentional misconduct or willful neglect: separation

Each member of the armed forces who incurs a physical disability that, in the determination

of the Secretary concerned, makes him unfit to perform the duties of his office, grade, rank, or rating, and that resulted from his intentional misconduct or willful neglect or was incurred during a period of unauthorized absence, shall be separated from his armed force without entitlement to any benefits under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1207	37:278.	Oct. 12, 1949, ch. 681, §408, 63 Stat. 823.

The words ''Each member * * * who'' are substituted for the words ''When a member * * * such member''. The words ''is determined to have'' are omitted as surplusage.

§1207a. Members with over eight years of active service: eligibility for disability retirement for pre-existing conditions

(a) In the case of a member described in subsection (b) who would be covered by section 1201, 1202, or 1203 of this title but for the fact that the member's disability is determined to have been incurred before the member became entitled to basic pay in the member's current period of active duty, the disability shall be deemed to have been incurred while the member was entitled to basic pay and shall be so considered for purposes of determining whether the disability was incurred in the line of duty.

(b) A member described in subsection (a) is a member with at least eight years of active service.

(Added Pub. L. 106–65, div. A, title VI, §653(a)(1), Oct. 5, 1999, 113 Stat. 666.)

§1208. Computation of service

(a) For the purposes of this chapter, a member of a regular component shall be credited with the service described in paragraph (1) or that described in paragraph (2), whichever is greater:

(1) The service that he is considered to have for the purpose of separation, discharge, or retirement for length of service.

(2) The sum of—

(A) his active service as a member of the armed forces, a nurse, a reserve nurse, a contract surgeon, a contract dental surgeon, or an acting dental surgeon;

(B) his active service as a member of the National Oceanic and Atmospheric Administration or the Public Health Service; and

(C) his service while participating in exercises or performing duties under sections 502, 503, 504, and 505 of title 32.

For the purpose of paragraph (2), active service as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and of the Coast and Geodetic Survey.

(b) A member of the armed forces who is not a member of a regular component shall be credited, for the purposes of this chapter, with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 94; Pub. L. 89–718, §8, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §§501(16), 511(42), Dec. 12, 1980, 94 Stat. 2908, 2923; Pub. L. 99–661, div. A, title XIII, §1343(a)(6), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–26, §7(j)(3), Apr. 21, 1987, 101 Stat. 283; Pub. L. 104–106, div. A, title XV, §1501(c)(13), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1208(a)	37:282 (less clauses (2) and (3), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	Oct. 12, 1949, ch. 681, §412 (less clause (3), less applicability to persons referred to in §411, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps), 63 Stat. 824.
1208(b)	37:282 (clause (2), less applicability to persons referred to in 37:281, and less applicability to service as a cadet before August 24, 1912, as a midshipman before March 4, 1913, as an Army field clerk, or as a field clerk, Army Quartermaster Corps).	

In subsection (a), the words ''shall be credited with the service described in clause (1) or that described in clause (2), whichever is greater'' are substituted for the words ''shall be interpreted to mean''.

In subsection (a)(1), the words ''he is considered to have'' are substituted for the words ''such member, former member, or person has or is deemed to have pursuant to law''.

In subsection (a)(2)(A), the words ''his active service'' are substituted for the words ''while on the active list or on active duty or while participating in full-time training or other full-time duty provided for or authorized in the National Defense Act, as amended, the Naval Reserve Act of 1938, as amended, or in—other provisions of law'' because of the definitions of ''active service'' and ''active duty'' in sections 101(24) and 101(22) of this title.

In subsection (a)(2)(C), the references to 10:22–23, 24–26, and 30–36 are omitted as repealed by section 401 of the Army Organization Act of 1950, 64 Stat. 271. The reference to 32:70 is omitted as repealed by section 16 of the act of June 15, 1933, ch. 87, 48 Stat. 159. The reference to 10:23a is omitted as executed. The references to 10:38 and 32:66 and 172–175 are omitted as covered by the words ''active service''. The references to 32:144–147, 171, and 176 are omitted, since they deal with pay and do not authorize duty or training. The reference to section 502 of title 32, not contained in 37:282, is inserted, since section 92 of the National Defense Act, as amended (32:62) is referred to in section 412 of the Career Compensation Act of 1949 (37:282).

In subsection (b), the words ''any other member'' are substituted for the words ''members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)) to include members appointed, enlisted, or inducted without component.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 12733'' for ''section 1333''.

1987—Subsec. (a). Pub. L. 100–26 substituted ''paragraph (1)'' and ''paragraph (2)'' for ''clause (1)'' and ''clause (2)'', respectively, in introductory provisions, and ''paragraph (2)'' for ''clause 2(B) of this subsection'' in second sentence.

1986—Subsec. (a)(2)(A). Pub. L. 99–661 struck out ''after February 2, 1901'' after ''a reserve nurse''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''separation, discharge, or retirement for length of service'' for ''separation or mandatory elimination from the active list'' in par. (1), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration'' in par. (2)(B), and, in provisions following par. (2)(C), substituted ''as a member of the National Oceanic and Atmospheric Administration includes active service as a member of the Environmental Science Services Administration and'' for ''as a member of the Environmental Science Services Administration includes service as a member''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey'' in clause (2)(B) and inserted provision that, for purposes of clause (2)(B) of subsec. (a), active service as a member of the Environmental Science Services Administration includes active service as a member of the Coast and Geodetic Survey.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 501(16) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 511(42) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

ADDITIONAL SERVICE CREDITABLE TO CERTAIN REGULARS

Section 39 of act Aug. 10, 1956, provided that: ''In addition to service with which he may be credited under section 1208(a)(2) of title 10, United States Code [subsec. (a)(2) of this section], a member of a regular component of the armed forces shall be credited, for the purposes of chapter 61 of title 10, United States Code [this chapter], with all service as—

''(1) a cadet at the United States Military Academy, if appointed before August 24, 1912;

''(2) a midshipman at the United States Naval Academy, if appointed before March 4, 1913;

''(3) an Army field clerk; and

''(4) a field clerk, Army Quartermaster Corps.''

OFFICERS OF THE PUBLIC HEALTH SERVICE

Applicability of subsec. (a)(2) of this section to officers of the Reserve Corps and to officers of the Regular Corps of the Public Health Service, see section 212 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1201, 1203, 1204, 1206, 1210, 1212, 1401, 1402, 1402a of this title; title 42 section 212.

§ 1209. Transfer to inactive status list instead of separation

Any member of the armed forces who has at least 20 years of service computed under section 12732 of this title, and who would be qualified for retirement under this chapter but for the fact that his disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, may elect, instead of being separated under this chapter, to be transferred to the inactive status list under section 12735 of this title and, if otherwise eligible, to receive retired pay under section 12739 of this title upon becoming 60 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, §1501(c)(14), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1209	37:272(g).	Oct. 12, 1949, ch. 681, §402(g), 63 Stat. 820.

The words ''Notwithstanding the foregoing provisions of this section'', ''satisfactory Federal'', and ''and receiving disability severance pay'' are omitted as surplusage. The words ''at the time of the determination'' are substituted for the word ''current''. The word ''otherwise'' is substituted for the words ''in all other respects''.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''section 12732'' for ''section 1332'', ''section 12735'' for ''section 1335'', and ''section 12739'' for ''chapter 71''.

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1206 of this title.

§ 1210. Members on temporary disability retired list: periodic physical examination; final determination of status

(a) A physical examination shall be given at least once every 18 months to each member of the armed forces whose name is on the temporary disability retired list to determine whether there has been a change in the disability for which he was temporarily retired. He may be required to submit to those examinations while his name is carried on that list. If a member fails to report for an examination under this subsection, after receipt of proper notification, his disability retired pay may be terminated. However, payments to him shall be resumed if there was just cause for his failure to report. If payments are so resumed, they may be made retroactive for not more than one year.

(b) The Secretary concerned shall make a final determination of the case of each member whose name is on the temporary disability retired list upon the expiration of five years after the date when the member's name was placed on that list. If, at the time of that determination, the physical disability for which the member's name

was carried on the temporary disability retired list still exists, it shall be considered to be of a permanent nature and stable.

(c) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is at least 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies.

(d) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is of a permanent nature and stable and is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has at least 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he shall be retired under section 1201 or 1204 of this title, whichever applies, with retired pay computed under section 1401 of this title.

(e) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member's physical disability is less than 30 percent under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and if he has less than 20 years of service computed under section 1208 of this title, his name shall be removed from the temporary disability retired list and he may be separated under section 1203 or 1206 of this title, whichever applies.

(f)(1) If, as a result of a periodic examination under subsection (a), or upon a final determination under subsection (b), it is determined that the member is physically fit to perform the duties of his office, grade, rank, or rating, the Secretary shall—

(A) treat the member as provided in section 1211 of this title; or

(B) discharge the member, retire the member, or transfer the member to the Fleet Reserve, Fleet Marine Corps Reserve, or inactive Reserve under any other law if, under that law, the member—

(i) applies for and qualifies for that retirement or transfer; or

(ii) is required to be discharged, retired, or eliminated from an active status.

(2)(A) For the purpose of paragraph (1)(B), a member shall be considered qualified for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve or is required to be discharged, retired, or eliminated from an active status if, were the member reappointed or reenlisted under section 1211 of this title, the member would in all other respects be qualified for or would be required to be retired, transferred to the Fleet Reserve or Fleet Marine Corps Reserve, discharged, or eliminated from an active status under any other provision of law.

(B) The grade of a member retired, transferred, discharged, or eliminated from an active status pursuant to paragraph (1)(B) shall be determined under the provisions of law under which the member is retired, transferred, discharged, or eliminated. The member's retired, retainer, severance, readjustment, or separation pay shall be computed as if the member had been reappointed or reenlisted upon removal from the temporary disability retired list and before the retirement, transfer, discharge, or elimination. Notwithstanding section 8301 of title 5, a member who is retired shall be entitled to retired pay effective on the day after the last day on which the member is entitled to disability retired pay.

(g) Any member of the armed forces whose name is on the temporary disability retired list, and who is required to travel to submit to a physical examination under subsection (a), is entitled to the travel and transportation allowances authorized for members in his retired grade traveling in connection with temporary duty while on active duty.

(h) If his name is not sooner removed, the disability retired pay of a member whose name is on the temporary disability retired list terminates upon the expiration of five years after the date when his name was placed on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 95; Pub. L. 99–145, title V, §513(a)(2), Nov. 8, 1985, 99 Stat. 627; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1210(a)	37:272(e) (less last sentence). 37:274(a). 37:274(b) (less 1st sentence).	Oct. 12, 1949, ch. 681, §§402(d) (30th through 55th words), (e) (less 1st proviso of last sentence), (f) (as applicable to §402(e)), 404, 63 Stat. 818–821.
1210(b)	37:272(e) (1st 37 words of last proviso of last sentence).	
1210(c)	37:272(e) (last sentence, less provisos and less clause (2)). 37:272(e) (38th through 45th words of last proviso of last sentence).	
1210(d)	37:272(f) (as applicable to 37:272(e)).	
1210(e)	37:272(e) (clause (2) of last sentence). 37:272(e) (46th word of last proviso of last sentence).	
1210(f)	37:272(e) (47th through 56th words of last proviso of last sentence).	
1210(g)	37:274(b) (1st sentence).	
1210(h)	37:272(d) (30th through 55th words).	

In subsection (a), the second sentence is substituted for 37:274(a). The word ''resumed'' is substituted for the words ''reinstated at a later date'', in 37:274(b).

In subsection (b), the last sentence is inserted for clarity to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/8438, 30 Dec. 1953) and an opinion of the Judge Advocate General of the Navy (JAG: III: 7: WBM: bg. 7 Jan. 1954).

In subsection (c), the words ''or upon a final determination under subsection (b)'' are substituted for the words ''or upon the determination of a period of five years from the date of temporary disability retirement'', in 37:272(e). The words ''at the time of the determination'' are substituted for the word ''current'', in 37:272(e). The words ''and he shall be entitled to receive disability retirement pay as prescribed in subsection (d) of this section'' are omitted as covered by sections

1201 and 1204 of this title. Reference to specific sections on permanent retirement are substituted for the word ''permanently'', before the word ''retired'', in 37:272(e).

In subsection (d), 37:272(f) (proviso) is omitted as surplusage.

In subsection (e), the words ''and if he has less than 20 years of service computed under section 1208 of this title'' are inserted to distinguish the separation requirement under this section from retirement requirements under subsection (d). 37:272(e) (last 19 words of clause (2) of last sentence) is omitted as covered by sections 1203 and 1206 of this title. The words ''at the time of determination'' are substituted for the word ''current''.

In subsection (f), the first 39 words are inserted for clarity.

In subsection (g), the words ''members in his retired grade traveling in connection with temporary duty'' are substituted for the words ''the rank, grade, or rating in which retired for temporary duty travel performed''. The words ''for travel performed'' are omitted as surplusage.

AMENDMENTS

1989—Subsecs. (c) to (e). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' wherever appearing.

1985—Subsecs. (b) to (d). Pub. L. 99–145, § 513(a)(2)(A), inserted ''and stable'' after ''permanent nature''.

Subsec. (f). Pub. L. 99–145, § 513(a)(2)(B), designated existing provisions as par. (1), substituted ''or rating, the Secretary shall—'' for ''and rating, the Secretary shall treat him as provided in section 1211 of this title'', added subpars. (A) and (B), and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1211 of this title.

§ 1211. Members on temporary disability retired list: return to active duty; promotion

(a) With his consent, any member of the Army or the Air Force whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, or rank under section 1210(f) of this title, shall—

(1) if a commissioned officer of a regular component, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to the active-duty list in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular grade;

(2) if a warrant officer of a regular component, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in the regular grade held by him when his name was placed on the temporary disability retired list, or in the next higher regular warrant grade;

(3) if an enlisted member of a regular component, be reenlisted in the regular grade held by him when his name was placed on the temporary disability retired list or in the next higher regular enlisted grade;

(4) if a commissioned, warrant, or enlisted Reserve, be reappointed or reenlisted as a Reserve for service in his reserve component in the reserve grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be;

(5) if a commissioned, warrant, or enlisted member of the Army National Guard of the United States or the Air National Guard of the United States when the disability was incurred, and if he cannot be reappointed or reenlisted as a Reserve for service therein, be appointed or enlisted as a Reserve for service in the Army Reserve or the Air Force Reserve, as the case may be, in a grade corresponding to the reserve grade held by him when his name was placed on the temporary disability retired list, or in the next higher reserve commissioned, warrant, or enlisted grade, as the case may be; and

(6) if a member of the Army, or the Air Force, who has no regular or reserve grade, be reappointed or reenlisted in the Army, or the Air Force, as the case may be, in the temporary grade held by him when his name was placed on the temporary disability retired list, or appointed or enlisted in the next higher temporary grade.

(b) With his consent, any member of the naval service or of the Coast Guard whose name is on the temporary disability retired list, and who is found to be physically fit to perform the duties of his office, grade, rank, or rating under section 1210(f) of this title, shall—

(1) if he held an appointment in a commissioned grade in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, may be reappointed by the President, by and with the advice and consent of the Senate, to his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher grade;

(2) if he held an appointment in the grade of warrant officer, W–1, in a regular component when his name was placed on the temporary disability retired list, be recalled to active duty and, as soon as practicable, be reappointed by the Secretary concerned in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or may be appointed by the President, by and with the advice and consent of the Senate, to the grade of chief warrant officer, W–2;

(3) if he held a permanent enlisted grade in a regular component when his name was placed on the temporary disability retired list, be reenlisted in his regular component in the grade permanently held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade;

(4) if he was a member of the Fleet Reserve or the Fleet Marine Corps Reserve when his name was placed on the temporary disability retired list, resume his status in the Fleet Reserve or the Fleet Marine Corps Reserve in the grade held by him when his name was placed on the temporary disability retired list, or in the next higher enlisted grade; and

(5) if a member of a reserve component be reappointed or reenlisted in his reserve component in the grade permanently held by him when his name was placed on the temporary disability retired list or, if that permanent grade is not chief petty officer or master ser-

geant, in the next higher grade in that reserve component.

(c) If a member is appointed, reappointed, enlisted, or reenlisted, or resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve, under subsection (a) or (b), his status on the temporary disability retired list terminates on the date of his appointment, reappointment, enlistment, reenlistment, or resumption, as the case may be. However, if such a member does not consent to the action proposed under subsection (a) or (b), and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title, his status on the temporary disability retired list and his disability retired pay shall be terminated as soon as practicable and the member shall be discharged.

(d) Disability retired pay of a member covered by this section terminates—

(1) on the date when he is recalled to active duty under subsection (a)(1) or (2) or subsection (b)(1) or (2), for an officer of a regular component;

(2) on the date when he resumes his status in the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)(4), for a member of the Fleet Reserve or the Fleet Marine Corps Reserve; and

(3) on the date when he is appointed, reappointed, enlisted, or reenlisted, for any other member of the armed forces.

(e) Whenever seniority in grade or years of service is a factor in determining the qualifications of a member of the armed forces for promotion, each member who has been appointed, reappointed, enlisted, or reenlisted, under subsection (a) or (b), shall, when his name is placed on a lineal list, a promotion list, an approved all-fully-qualified-officers list, or any similar list, have the seniority in grade and be credited with the years of service authorized by the Secretary concerned. The authorized strength in any regular grade is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under this section. An authorized strength so increased is increased for no other purpose, and while he holds that grade the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under this section, may be made in that grade.

(f) Action under this section shall be taken on a fair and equitable basis, with regard being given to the probable opportunities for advancement and promotion that the member might reasonably have had if his name had not been placed on the temporary disability retired list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 96; Pub. L. 87–651, title I, § 107(b), Sept. 7, 1962, 76 Stat. 508; Pub. L. 96–513, title V, § 501(17), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 99–145, title V, § 513(a)(3), Nov. 8, 1985, 99 Stat. 627; Pub. L. 107–107, div. A, title V, § 505(c)(4), Dec. 28, 2001, 115 Stat. 1088.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1211(a)	37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)–(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a).	Oct. 12, 1949, ch. 681, §§ 405, 406, 407, 63 Stat. 821.
1211(b)	37:275(a). 37:275(b). 37:275(c) (1st sentence). 37:276(a) (less clauses (1)–(3)). 37:276(a)(1) (1st 7 words). 37:276(a)(2) (1st 10 words). 37:276(a)(3) (1st 8 words). 37:277(a).	
1211(c)	37:276(a)(1) (less 1st 22 words). 37:276(a)(2) (11th through 18th words). 37:276(a)(3) (9th and 10th words). 37:276(b).	
1211(d)	37:276(a)(1) (8th through 22d words). 37:276(a)(2) (less 1st 18 words). 37:276(a)(3) (less 1st 10 words).	
1211(e)	37:275(c) (2d sentence). 37:277 (less (a)).	
1211(f)	37:275(c) (last sentence).	

In subsections (a) and (b), the words ''under section 1210(f) of this title'' are substituted for the words ''If, as a result of a periodic physical examination'', in 37:275(a) and (b), and 276(a), and the words ''and who are subsequently found to be physically fit'', in 37:277(a). The words ''subject to the provisions of section 277 of this title'', in 37:275(a), are omitted as surplusage.

In subsections (a)(2)–(6) and (b)(2)–(6), the appointment or enlistment is restricted to those already in an enlisted, warrant, or commissioned status, as the case may be, held by the member before placement of his name on the temporary disability retired list, since 37:277 (last sentence) indicates that appointment in the next higher grade for regular warrant officer is restricted to those warrant grades to which the President alone may appoint him. Similarly 37:275 (last 10 words) indicates that an enlisted member may only be reenlisted.

In subsection (a)(2) reference to the President, in 37:277(a), is omitted as inapplicable to the appointment of warrant officers of the Army and the Air Force.

Subsection (a)(5) is substituted for 37:275(b) (proviso) (as applicable to Army and Air Force).

Subsection (a)(6) is inserted, since the words ''reserve component'' are defined by section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (b)(2), the words ''by and with the advice and consent of the Senate'' are added to make it clear that all appointments to the grade of commissioned warrant officer in the Navy, Marine Corps, and Coast Guard require Senate confirmation. Although these words do not appear in section 405 of the Career Compensation Act of 1949, there is no indication that an exception to the basic law relating to appointments in commissioned grades was intended.

Subsection (d)(3) is made applicable to members without component status, since the words ''reserve component'' are defined in section 102(k) of the source statute to include members of the Army and the Air Force who have no component status.

In subsection (e), the words ''rank'' and ''rating'' are omitted as surplusage.

1962 ACT

The changes correct typographical errors.

AMENDMENTS

2001—Subsec. (e). Pub. L. 107–107 inserted ''an approved all-fully-qualified-officers list,'' after ''a promotion list,''.

1985—Subsec. (c). Pub. L. 99–145 inserted ''and if the member is not discharged, retired, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve or inactive Reserve under section 1210 of this title,'' after ''proposed under subsection (a) or (b),'' and inserted ''and the member shall be discharged'' after ''as soon as practicable''.

1980—Subsec. (a)(1). Pub. L. 96–513 substituted ''active-duty list'' for ''active list of his regular component''.

1962—Subsec. (d). Pub. L. 87–651 substituted ''subsection (b)(1) or (2)'' for ''subsection (b)(1), (2), or (3)'' in cl. (1), and ''subsection (b)(4)'' for ''subsection (b)(5)'' in cl. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1210, 12009 of this title.

§ 1212. Disability severance pay

(a) Upon separation from his armed force under section 1203 or 1206 of this title, a member is entitled to disability severance pay computed by multiplying (1) his years of service, but not more than 12, computed under section 1208 of this title, by (2) the highest of the following amounts:

(A) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when he is separated and (ii) in the grade and rank in which he was serving on the date when his name was placed on the temporary disability retired list, or if his name was not carried on that list, on the date when he is separated.

(B) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in any temporary grade or rank higher than that described in clause (A), in which he served satisfactorily as determined by the Secretary of the military department or the Secretary of Homeland Security, as the case may be, having jurisdiction over the armed force from which he is separated.

(C) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination.

(D) Twice the amount of monthly basic pay to which he would be entitled if serving (i) on active duty on the date when his name was placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is separated, and (ii) in the temporary grade or rank to which he would have been promoted had it not been for the physical disability for which he is separated and which was found to exist as a result of a physical examination, if his eligibility for promotion was required to be based on cumulative years of service or years in grade.

(b) For the purposes of subsection (a), a part of a year of active service that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(c) The amount of disability severance pay received under this section shall be deducted from any compensation for the same disability to which the former member of the armed forces or his dependents become entitled under any law administered by the Department of Veterans Affairs. However, no deduction may be made from any death compensation to which his dependents become entitled after his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 98; Pub. L. 96–513, title V, § 511(43), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 107–107, div. A, title V, § 593(a), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1212(a)	37:273 (less 1st and last provisos).	Oct. 12, 1949, ch. 681, § 403, 63 Stat. 820.
1212(b)	37:273 (1st proviso).	
1212(c)	37:273 (last proviso).	

In subsection (a), the words ''Upon separation'' are inserted for clarity. The words ''his years of service * * * computed under section 1208 of this title'' are substituted for the words ''a number of years equal to the number of years of active service to which such member is entitled under the provisions of section 282 of this title''. The words ''but not more than 12'' are substituted for the words ''but not to exceed a total of two years' basic pay'', to simplify the necessary calculation. The substituted words produce the same result. The word ''rating'' is omitted as covered by the words ''grade'' and ''rank''.

In clause (2)(A)–(D), the words ''Twice the amount of monthly'' are substituted for the words ''An amount equal to two months' ''. The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier'', since the member might be separated without ever being carried on the list. The word ''rating'' is omitted as surplusage.

In clause (2)(B), the words ''the Secretary of the military department, or the Secretary of the Treasury, as the case may be, having jurisdiction over the armed force from which he is separated'' are substituted for the words ''the Secretary concerned'' for clarity.

In clause (2)(C), the words ''regular or reserve'' are inserted, since they are the only ''permanent'' grades.

Clause (2)(D) is based on that part of the third proviso of 37:273 relating to promotions other than regular or reserve.

In subsection (b), the words ''and a part of a year that is less than six months is disregarded'' are inserted to reflect the legislative history of the rule (see Senate Hearings on H.R. 5007, 81st Cong., page 313). The words ''for himself or his dependents'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (a)(2)(B). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

2001—Subsec. (a)(2)(C), (D). Pub. L. 107–107 struck out ''for promotion'' after ''physical examination''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 593(b), Dec. 28, 2001, 115 Stat. 1126, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to members separated under section 1203 or 1206 of title 10, United States Code, on or after date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1203, 1206 of this title; title 38 section 1161.

§ 1213. Effect of separation on benefits and claims

Unless a person who has received disability severance pay again becomes a member of an armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service, he is not entitled to any payment from the armed force from which he was separated for, or arising out of, his service before separation, under any law administered by one of those services or for it by another of those services. However, this section does not prohibit the payment of money to a person who has received disability severance pay, if the money was due him on the date of his separation or if a claim by him is allowed under any law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 99; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 511(44), Dec. 12, 1980, 94 Stat. 2924.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1213	37:280.	Oct. 12, 1949, ch. 681, § 410, 63 Stat. 823.

The words ''a person who has received disability severance pay'' are substituted for the words ''Any former member who has been separated for physical disability from any of the uniformed services and paid disability severance pay''. The words ''any payment * * * for'' are substituted for the words ''for any monetary obligation provided under any provision * * * on account of''. The words ''this section does not prohibit'' are substituted for the words ''shall not operate to bar''. The words ''the payment of money to * * * if the money was due him'' are substituted for the words ''from receiving or the service concerned from paying any moneys due and payable''. The words ''valid'', ''processed'', and ''pursuant to any provisions of law'' are omitted as surplusage.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

§ 1214. Right to full and fair hearing

No member of the armed forces may be retired or separated for physical disability without a full and fair hearing if he demands it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1214	37:283 (less 1st 17 words).	Oct. 12, 1949, ch. 681, § 413 (less 1st 17 words), 63 Stat. 825.

The words ''including regulations'' are omitted as covered by section 1216(a) of this title.

§ 1215. Members other than Regulars: applicability of laws

The laws and regulations that entitle any retired member of a regular component of the armed forces to pay, rights, benefits, or privileges extend the same pay, rights, benefits, or privileges to any other member of the armed forces who is not a member of a regular component and who is retired, or to whom retired pay is granted, because of physical disability.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1215	37:272(i).	Oct. 12, 1949, ch. 681, § 402(i), 63 Stat. 820.

The words ''is retired, or to whom retired pay is granted'' are substituted for the words ''heretofore or hereafter retired or granted retirement pay''. The

words ''any other member of the armed forces'' are substituted for the words ''all members of the reserve components'', since the words ''reserve components'' are defined by section 102(k) of the Career Compensation Act of 1949, 63 Stat. 805 (37 U.S.C. 231(k)), to include members appointed, enlisted, or inducted without component.

§ 1216. Secretaries: powers, functions, and duties

(a) The Secretary concerned shall prescribe regulations to carry out this chapter within his department.

(b) Except as provided in subsection (d), the Secretary concerned has all powers, functions, and duties incident to the determination under this chapter of—

(1) the fitness for active duty of any member of an armed force under his jurisdiction;

(2) the percentage of disability of any such member at the time of his separation from active duty;

(3) the suitability of any member for reappointment, reenlistment, or reentry upon active duty in an armed force under his jurisdiction; and

(4) the entitlement to, and payment of, disability severance pay to any member of an armed force under his jurisdiction.

(c) The Secretary concerned or the Secretary of Veterans Affairs, as prescribed by the President, has the powers, functions, and duties under this chapter incident to hospitalization, reexaminations, and the payment of disability retired pay within his department or agency.

(d) The Secretary concerned may not, with respect to any member who is a general officer or flag officer or is a medical officer being processed for retirement under any provisions of this title by reason of age or length of service—

(1) retire such member under section 1201 of this title;

(2) place such member on the temporary disability retired list pursuant to section 1202 of this title; or

(3) separate such member from an armed force pursuant to section 1203 of this title

by reason of unfitness to perform the duties of his office, grade, rank, or rating unless the determination of the Secretary concerned with respect to unfitness is first approved by the Secretary of Defense on the recommendation of the Assistant Secretary of Defense for Health Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 94–225, §2(a), Mar. 4, 1976, 90 Stat. 202; Pub. L. 96–513, title V, §511(45), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–525, title XIV, §1405(25), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–661, div. A, title XIII, §1343(a)(7), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 101–189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 104–106, div. A, title IX, §903(f)(2), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1216(a)	37:283 (1st 17 words).	Oct. 12, 1949, ch. 681, §§413 (1st 17 words), 414, 63 Stat. 824, 825.
1216(b)	37:284(a).	
1216(c)	37:284 (less (a)).	

In subsection (b), the words ''of any member for reappointment, reenlistment'' are inserted for clarity, since they are implied in the words ''reentry into active service''.

In subsections (b) and (c), the words ''under this chapter'' are inserted for clarity.

In subsection (c), the words ''as prescribed by the President'' are substituted for the words ''under regulations promulgated by the President''.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106, §903(a), (f)(2), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for health affairs'' for ''Assistant Secretary of Defense for Health Affairs'', was repealed by Pub. L. 104–201.

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1986—Subsec. (d). Pub. L. 99–661 substituted ''who is a general officer or flag officer or is a medical officer'' for ''who is in pay grade O–7 or higher or is a Medical Corps officer or medical officer of the Air Force'' in provisions preceding par. (1).

1984—Subsec. (b). Pub. L. 98–525 struck out ''of this section'' after ''subsection (d)'' in provisions preceding par. (1).

1980—Subsec. (d). Pub. L. 96–513 substituted ''Affairs'' for ''and Environment''.

1976—Subsec. (b). Pub. L. 94–225, §2(a)(1), substituted ''Except as provided in subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsec. (d). Pub. L. 94–225, §2(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(b) of Pub. L. 94–225 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply with respect to unfitness determinations made on or after the date of the enactment of this Act [Mar. 4, 1976] by the Secretaries of the military departments concerned for purposes of sections 1201, 1202, and 1203 of title 10, United States Code.''

EX. ORD. NO. 10122. REGULATIONS GOVERNING DISABILITY PAY, HOSPITALIZATION AND REEXAMINATION

Ex. Ord. No. 10122, Apr. 14, 1950, 15 F.R. 2173, as amended by Ex. Ord. 10400, Sept. 27, 1952, 17 F.R. 8648; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Ex. Ord. No. 11733, July 30, 1973, 38 F.R. 20431 provided:

By virtue of and pursuant to the authority vested in me by section 414(b) of the Career Compensation Act of 1949, approved October 12, 1949 (Public Law 351, 81st Congress [former section 284(b) of Title 37, now covered by subsecs. (b) and (c) of this section], and as President of the United States and Commander in Chief of the armed forces of the United States, I hereby prescribe the following regulations governing payment of disability retirement pay, hospitalization, and re-examination of members and former members of the uniformed services:

SECTION 1. The terms ''uniformed services'' and ''Secretary'' as used in these regulations shall have the meaning prescribed therefor by subsections (a) and (f), respectively, of section 102 of the Career Compensation Act of 1949 [section 101(3) and (5) of Title 37, Pay and Allowances of the Uniformed Services].

SEC. 2. (a) Effective as of October 1, 1949, all duties, powers, and functions incident to the payment of disability retirement pay of members or former members of the uniformed services retired for physical disability or receiving disability retirement pay shall, except as

provided in subsection (b) of this section, be vested in the Secretary concerned.

(b) Effective July 1, 1950, all duties, powers, and functions exercised by the Veterans' Administration pursuant to Executive Order No. 8099 of April 28, 1939, as amended by Executive Order No. 8461 of June 28, 1940, relative to the administration of the retirement-pay provisions of section 1 of the act of August 30, 1935, as amended by section 5 of the act of April 3, 1939, 53 Stat. 557 [former section 369a of this title], and amendments thereof, shall, as to cases within their respective jurisdictions, be vested in the Secretary of the Army and the Secretary of the Air Force, and thereafter the Veterans' Administration shall not be charged in any case with any further responsibility in the administration of the said retirement-pay provisions. The said Executive Order No. 8099 as amended by the said Executive Order No. 8461 is hereby amended accordingly.

SEC. 3. All duties, powers, and functions incident to the hospitalization, except as provided in section 5 of this order, and re-examination of members of the uniformed services placed on the temporary disability retired list under the provisions of the Career Compensation Act of 1949 shall be vested in the Secretary concerned.

SEC. 4. Effective May 1, 1950, all duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services permanently retired for physical disability or receiving disability retirement pay shall, except as provided in section 5 of this order, be vested in the Secretary concerned: *Provided*, that all the duties, powers, and functions incident to hospitalization which such members or former members are entitled to and elect to receive in facilities of the Veterans' Administration, other than hospitals under the jurisdiction of the uniformed services, shall be vested in the Administrator of Veterans' Affairs.

SEC. 5. All duties, powers, and functions incident to the hospitalization of members or former members of the uniformed services placed on the temporary disability retired list or permanently retired for physical disability or receiving disability retirement pay who require hospitalization for chronic diseases shall be vested in the Administrator of Veterans' Affairs: *Provided*, that all the duties, powers, and functions incident to hospitalization for such members or former members who elect to receive hospitalization in uniformed services facilities shall, subject to the availability of space and facilities and the capabilities of the medical and dental staff, be vested in the Secretary concerned: *And provided further*, that for the purpose of this order, the term ''chronic disease'' shall be construed to include arthritis, malignancy, psychiatric or neuropsychiatric disorder, neurological disabilities, poliomyelitis with disability residuals and degenerative diseases of the nervous system, severe injuries to the nervous system including quadriplegics, hemiplegics, and paraplegics, tuberculosis, blindness and deafness requiring definitive rehabilitation, major amputees, and such other diseases as may be so defined jointly by the Secretary of Defense, the Administrator of Veterans' Affairs, and the Federal Security Administrator and so described in appropriate regulations of the respective departments and agencies concerned. Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to the medical care of certain personnel of the Coast Guard, National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey), Public Health Service, and the former Lighthouse Service, is hereby amended to the extent necessary to conform to the provisions of this section.

SEC. 6. Except as provided in section 5 hereof with respect to hospitalization for chronic diseases, nothing in this order shall be construed to affect the duties, powers, and functions of the Public Health Service with respect to hospitalization and medical examination of members and former members of the Coast Guard and the National Oceanic and Atmospheric Administration (formerly Coast and Geodetic Survey) under the Public Health Service Act, approved July 1, 1944 (58 Stat. 682), as amended [section 201 et seq. of Title 42, The Public Health and Welfare], and the regulations prescribed by the said Executive Order No. 9703 of March 12, 1946.

SEC. 7. Nothing in this order shall be construed to affect the duties, powers, and functions vested in the Administrator of Veterans' Affairs pursuant to the provisions of the act of May 24, 1928, entitled ''An Act making eligible for retirement, under certain conditions, officers and former officers of the Army, Navy, and Marine Corps of the United States, other than officers of the Regular Army, Navy, or Marine Corps, who incurred physical disability in line of duty while in the service of the United States during the World War'' (45 Stat. 735, as amended) [section 581 of former Title 38], or by or pursuant to the act of September 26, 1941, entitled ''An Act to provide retirement pay and hospital benefits to certain Reserve officers, Army of the United States, disabled while on active duty'' (55 Stat. 733) [former section 456a of this title].

§ 1217. Cadets, midshipmen, and aviation cadets: chapter does not apply to

This chapter does not apply to cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, or to midshipmen of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 100; Pub. L. 85–861, § 33(a)(7), Sept. 2, 1958, 72 Stat. 1564.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1217	[No source].	[No source].

The revised section is inserted to reflect the limited definition of the word ''member'' in section 102(b) of the Career Compensation Act of 1949 (37 U.S.C. 231(b)).

1958 ACT

Aviation cadets were omitted from chapter 61 because Title IV of the Career Compensation Act of 1949 (formerly 37 U.S.C. 271 et seq.), which was the source law for this chapter, covered only members entitled to basic pay and it was believed that aviation cadets were not so entitled. However, the Comptroller General has ruled that aviation cadets are entitled to basic pay (30 Comp. Gen. 431). Accordingly, aviation cadets were covered by Title IV and should not be excepted from chapter 61.

AMENDMENTS

1958—Pub. L. 85–861 struck out provisions which made chapter inapplicable to aviation cadets.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1218. Discharge or release from active duty: claims for compensation, pension, or hospitalization

(a) A member of an armed force may not be discharged or released from active duty because of physical disability until he—

(1) has made a claim for compensation, pension, or hospitalization, to be filed with the Department of Veterans Affairs, or has refused to make such a claim; or

(2) has signed a statement that his right to make such a claim has been explained to him, or has refused to sign such a statement.

(b) A right that a member may assert after failing or refusing to sign a claim, as provided in subsection (a), is not affected by that failure or refusal.

(c) This section does not prevent the immediate transfer of a member to a facility of the Department of Veterans Affairs for necessary hospital care.

(Added Pub. L. 85–56, title XXII, §2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, §107(c), Sept. 7, 1962, 76 Stat. 508; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (4), Nov. 29, 1989, 103 Stat. 1602, 1603.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (c). Pub. L. 101–189, §1621(a)(4), substituted ''facility of the Department of Veterans Affairs'' for ''Veterans' Administration facility''.

1962—Pub. L. 87–651 amended section generally, and among other changes, substituted ''Discharge or release from active duty: claims for compensation, pension, or hospitalization'' for ''Explanation of rights before discharge'' in section catchline, and struck out provisions which prohibited a person from being discharged or released from active duty until his certificate of discharge or release from active duty and his final pay (or a substantial portion of his final pay) are ready for delivery to him or to his next of kin or legal representative.

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

§ 1219. Statement of origin of disease or injury: limitations

A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid.

(Added Pub. L. 85–56, title XXII, §2201(31)(A), June 17, 1957, 71 Stat. 160; amended Pub. L. 87–651, title I, §107(c), Sept. 7, 1962, 76 Stat. 509.)

HISTORICAL AND REVISION NOTES

1962 ACT

Sections 1218 and 1219 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1962—Pub. L. 87–651 substituted ''Statement of origin of disease or injury: limitation'' for ''Statement against interest void'' in section catchline, and ''A member of an armed force may not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he has. Any such statement against his interests, signed by a member, is invalid'' for ''No person in the Armed Forces may be required to sign a statement of any nature relating to the origin, incurrence, or aggravation of any disease or injury he may have. Any such statement against his own interest, whenever signed, is of no force and effect.''

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56, 71 Stat. 172.

[§ 1220. Repealed. Pub. L. 87–651, title I, § 107(d), Sept. 7, 1962, 76 Stat. 509]

Section, added Pub. L. 85–56, title XXII, §2201(31)(A), June 17, 1957, 71 Stat. 161, related to location of accredited representatives at military installations. See section 2679 of this title.

§ 1221. Effective date of retirement or placement of name on temporary disability retired list

Notwithstanding section 8301 of title 5, the Secretary concerned may specify an effective date for the retirement of any member of the armed forces under this chapter, or for the placement of his name on the temporary disability retired list, that is earlier than the date provided for in that section.

(Added Pub. L. 85–861, §1(28)(B), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1221	5:47a(b).	Aug. 2, 1956, ch. 876, 70 Stat. 933.

Clause (2)(A) is omitted as unnecessary since the revised section applies to the armed forces, and the revised section is made applicable to the other uniformed services by sections 3 and 4 of the act enacting this revised section. Clause (2)(B) is omitted as covered by section 101(8) of this title and sections 3 and 4 of the act enacting this revised section.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a''.

CHAPTER 63—RETIREMENT FOR AGE

Sec.
1251. Age 62: regular commissioned officers; exceptions.
[1255. Repealed.]
1263. Age 62: warrant officers.
1275. Computation of retired pay: law applicable.

AMENDMENTS

1980—Pub. L. 96–513, title V, §501(18), Dec. 12, 1980, 94 Stat. 2908, added item 1251.

1967—Pub. L. 90–130, §1(6), Nov. 8, 1967, 81 Stat. 374, struck out item 1255 ''Age 55: female regular warrant officers''.

§ 1251. Age 62: regular commissioned officers; exceptions

(a) Unless retired or separated earlier, each regular commissioned officer of the Army, Navy,

Air Force, or Marine Corps (other than an officer who is a permanent professor, director of admissions, or registrar of the United States Military Academy or United States Air Force Academy or a commissioned warrant officer) shall be retired on the first day of the month following the month in which he becomes 62 years of age. An officer who is a permanent professor at the United States Military Academy or United States Air Force Academy, the director of admissions at the United States Military Academy, or the registrar of the United States Air Force Academy shall be retired on the first day of the month following the month in which he becomes 64 years of age.

(b) Notwithstanding subsection (a), the President may defer the retirement of an officer serving in a position that carries a grade above major general or rear admiral, but such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 64 years of age. Not more than ten deferments of retirement under this subsection may be in effect at any one time.

(c)(1) The Secretary concerned may defer the retirement under subsection (a) of a health professions officer if during the period of the deferment the officer will be performing duties consisting primarily of providing patient care or performing other clinical duties.

(2) The Secretary concerned may defer the retirement under subsection (a) of an officer who is appointed or designated as a chaplain if the Secretary determines that such deferral is in the best interest of the military department concerned.

(3)(A) Except as provided in subparagraph (B), a deferment under this subsection may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(B) The Secretary concerned may extend a deferment under this subsection beyond the day referred to in subparagraph (A) if the Secretary determines that extension of the deferment is necessary for the needs of the military department concerned. Such an extension shall be made on a case-by-case basis and shall be for such period as the Secretary considers appropriate.

(4) For purposes of this subsection, a health professions officer is—

(A) a medical officer;

(B) a dental officer; or

(C) an officer in the Army Nurse Corps, an officer in the Navy Nurse Corps, or an officer in the Air Force designated as a nurse.

(d) The Secretary concerned may defer the retirement under subsection (a) of an officer who is the Chief of Chaplains or Deputy Chief of Chaplains of that officer's armed force. Such a deferment may not extend beyond the first day of the month following the month in which the officer becomes 68 years of age.

(Added Pub. L. 96–513, title I, § 111, Dec. 12, 1980, 94 Stat. 2875; amended Pub. L. 100–180, div. A, title VII, § 719, Dec. 4, 1987, 101 Stat. 1115; Pub. L. 101–189, div. A, title VII, § 709, Nov. 29, 1989, 103 Stat. 1476; Pub. L. 105–85, div. A, title V, § 504(a), (b), Nov. 18, 1997, 111 Stat. 1725.)

AMENDMENTS

1997—Subsec. (c)(2) to (4). Pub. L. 105–85, § 504(a), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d). Pub. L. 105–85, § 504(b), added subsec. (d).

1989—Subsec. (c)(2). Pub. L. 101–189 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), a deferment'' for ''A deferment'' and ''68 years of age'' for ''67 years of age'', and added subpar. (B).

1987—Subsec. (c). Pub. L. 100–180 added subsec. (c).

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

DEFERRAL OF RETIREMENT DATE FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF

Pub. L. 100–456, div. A, title VII, § 704, Sept. 29, 1988, 102 Stat. 1996, provided that: ''Notwithstanding the limitation contained in the first sentence of subsection (b) of section 1251 of title 10, United States Code, the President may defer until October 1, 1989, the retirement of the officer serving as Chairman of the Joint Chiefs of Staff for the term which began on October 1, 1987.''

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provision that this section not apply to any officer who on the effective date of this Act [Sept. 15, 1981] was on active duty in a grade above general, see section 632 of Pub. L. 96–615, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1406 of this title.

[§ 1255. Repealed. Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 100; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, covered the retirement of female permanent regular warrant officers with 20 years of active service upon attaining age 55.

§ 1263. Age 62: warrant officers

(a) Unless retired under section 1305 of this title, a permanent regular warrant officer who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 580 note), and who is at least 62 years of age, shall be retired 60 days after he becomes that age, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(Aug. 10, 1956 ch. 1041, 70A Stat. 101; Pub. L. 89–718, § 3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, § 1(6), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V, § 511(46), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 102–484, div. A, title X, § 1052(17), Oct. 23, 1992, 106 Stat. 2500.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1263(a)	10:600(d) (as applicable to 10:600*l*(b) (less (1)–(3))). 10:600*l*(b) (less (1)–(3)). 10:600r(c) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:135(d) (as applicable to 34:430(b) (less (1)–(3))). 34:430(b) (less (1)–(3)). 34:430c (as applicable to 34:430(b) (less (1)–(3))).	May 29, 1954, ch. 249, §§2(d) (as applicable to §14(b) (less (1)–(3))), 14(b) (less (1)–(3)), 14(e) (as applicable to (b) (less (1)–(3))), 21(c) (as applicable to 14(b) (less (1)–(3))), 68 Stat. 157, 162, 163, 168.
1263(b)	10:600*l*(e) (as applicable to 10:600*l*(b) (less (1)–(3))). 34:430(e) (as applicable to 34:430(b) (less (1)–(3))).	

In subsection (a), the words ''has at least'' are substituted for the words ''has attained''. The words ''has at least'' are substituted for the words ''having completed not less than''. The words ''on that date which'' are omitted as surplusage. 10:600*l*(b) (15 words before (1)) and 34:430(b) (15 words before (1)) are omitted as covered by section 1275 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484 substituted ''580 note'' for ''564 note''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''511 of the Career Compensation Act of 1949, as amended (70 Stat. 114; 10 U.S.C. 564 note)'' for ''311 of title 37''.

1967—Subsec. (a). Pub. L. 90–130 struck out reference to section 1255 of this title.

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1406 of this title; title 14 section 334.

§ 1275. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1275	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 65—RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE

Sec.
1293. Twenty years or more: warrant officers.
1305. Thirty years or more: regular warrant officers.
1315. Computation of retired pay: law applicable.

AMENDMENTS

1980—Pub. L. 96–513, title V, §501(19), Dec. 12, 1980, 94 Stat. 2908, substituted ''RETIREMENT OF WARRANT OFFICERS FOR LENGTH OF SERVICE'' for ''RETIREMENT FOR LENGTH OF SERVICE'' as chapter heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 12741 of this title.

§ 1293. Twenty years or more: warrant officers

The Secretary concerned may, upon the warrant officer's request, retire a warrant officer of any armed force under his jurisdiction who has at least 20 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114).

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Pub. L. 87–649, §6(f)(3), Sept. 7, 1962, 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1293	10:600(d) (as applicable to 10:600*l*(a)). 10:600*l*(a). 34:135(d) (as applicable to 34:430(a)). 34:430(a).	May 29, 1954, ch. 249, §§2(d) (as applicable to §14(a)), 14(a), 68 Stat. 157, 162.

The words, ''The Secretary concerned may * * * retire'' are substituted for the words ''may * * * and in the discretion of the Secretary, be retired''. 10:600*l*(a) (last 14 words) and 34:430(a) (last 14 words) are omitted as covered by section 1315 of this title.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in text, is set out as a note under section 580 of this title.

AMENDMENTS

1962—Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TEMPORARY EARLY RETIREMENT AUTHORITY

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8053], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99, provided that: ''During the current fiscal year and hereafter, appropriations available for the pay and allowances of active duty members of the Armed Forces shall be available to pay the retired pay which is payable pursuant to section 4403 of Public Law 102–484 (10 U.S.C. 1293 note) under the terms and conditions provided in section 4403.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, §8066, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, §8077, Sept. 30, 1994, 108 Stat. 2636.

Pub. L. 103–139, title VIII, §8095, Nov. 11, 1993, 107 Stat. 1461.

Pub. L. 104–106, div. A, title V, § 566(c), Feb. 10, 1996, 110 Stat. 328, as amended by Pub. L. 107–372, title II, § 272(b), Dec. 19, 2002, 116 Stat. 3094, provided that: ''Section 4403 (other than subsection (f)) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the commissioned officer corps of the National Oceanic and Atmospheric Administration in the same manner and to the same extent as that section applies to the Department of Defense. The Secretary of Commerce shall implement the provisions of that section with respect to such commissioned officer corps and shall apply the provisions of that section to the provisions of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 [33 U.S.C. 3001 et seq.] relating to the retirement of members of such commissioned officer corps.''

[Pub. L. 104–106, div. A, title V, § 566(d), Feb. 10, 1996, 110 Stat. 328, provided that: ''This section [amending former section 857a of Title 33, Navigation and Navigable Waters, and enacting provisions set out as a note above] shall apply only to members of the commissioned officer corps of the National Oceanic and Atmospheric Administration who are separated after September 30, 1995.'']

Pub. L. 103–337, div. A, title V, § 542(d), Oct. 5, 1994, 108 Stat. 2769, as amended by Pub. L. 107–296, title XVII, § 1704(e)(5), Nov. 25, 2002, 116 Stat. 2315, provided that: ''Section 4403 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2702; 10 U.S.C. 1293 note) shall apply to the Coast Guard in the same manner and to the same extent as that provision applies to the Department of Defense. The Secretary of Homeland Security shall implement the provisions of that section with respect to the Coast Guard and apply the applicable provisions of title 14, United States Code, relating to retirement of Coast Guard personnel.''

Pub. L. 102–484, div. D, title XLIV, § 4403, Oct. 23, 1992, 106 Stat. 2702, as amended by Pub. L. 103–160, div. A, title V, § 561(a), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 104–106, div. A, title XV, § 1504(c)(3), Feb. 10, 1996, 110 Stat. 514; Pub. L. 105–261, div. A, title V, § 561(a), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–314, div. A, title V, § 554, Dec. 2, 2002, 116 Stat. 2553, provided that:

''(a) PURPOSE.—The purpose of this section is to provide the Secretary of Defense a temporary additional force management tool with which to effect the drawdown of military forces during the active force drawdown period.

''(b) RETIREMENT FOR 15 TO 20 YEARS OF SERVICE.—(1) During the active force drawdown period, the Secretary of the Army may—

''(A) apply the provisions of section 3911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 3914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(2) During the active force drawdown period, the Secretary of the Navy may—

''(A) apply the provisions of section 6323 of title 10, United States Code, to an officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section;

''(B) apply the provisions of section 6330 of such title to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting '15 or more years' for '20 or more years' in the first sentence of subsection (a)[(b)], in the case of an enlisted member of the Navy, and in the second sentence of subsection (b), in the case of an enlisted member of the Marine Corps; and

''(C) apply the provisions of section 1293 of such title to a warrant officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years'.

''(3) During the active force drawdown period, the Secretary of the Air Force may—

''(A) apply the provisions of section 8911 of title 10, United States Code, to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting 'at least 15 years' for 'at least 20 years' in subsection (a) of that section; and

''(B) apply the provisions of section 8914 of such title to an enlisted member with at least 15 but less than 20 years of service by substituting 'at least 15' for 'at least 20'.

''(c) ADDITIONAL ELIGIBILITY REQUIREMENT.—In order to be eligible for retirement by reason of the authority provided in subsection (b), a member of the Armed Forces shall—

''(1) register on the registry maintained under section 1143a(b) of title 10, United States Code (as added by section 4462(a)); and

''(2) receive information regarding public and community service job opportunities from the Secretary of Defense or another source approved by the Secretary and be afforded, on request, counseling on such job opportunities.

''(d) REGULATIONS.—The Secretary of each military department may prescribe regulations and policies regarding the criteria for eligibility for early retirement by reason of eligibility pursuant to this section and for the approval of applications for such retirement. Such criteria may include factors such as grade, years of service, and skill.

''(e) COMPUTATION OF RETIRED PAY.—Retired or retainer pay of a member retired (or transferred to the Fleet Reserve or Fleet Marine Corps Reserve) under a provision of title 10, United States Code, by reason of eligibility pursuant to subsection (b) shall be reduced by ½th of 1 percent for each full month by which the number of months of active service of the member are less than 240 as of the date of the member's retirement (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve).

''(f) FUNDING.—(1) Notwithstanding section 1463 of title 10, United States Code, and subject to the availability of appropriations for this purpose, the Secretary of each military department shall provide in accordance with this section for the payment of retired pay payable during the fiscal years covered by the other provisions of this subsection to members of the Armed Forces under the jurisdiction of that Secretary who are being retired under the authority of this section.

''(2) In each fiscal year in which the Secretary of a military department retires a member of the Armed Forces under the authority of this section, the Secretary shall credit to a subaccount (which the Secretary shall establish) within the appropriation account for that fiscal year for pay and allowances of active duty members of the Armed Forces under the jurisdiction of that Secretary such amount as is necessary to pay the retired pay payable to such member for the entire initial period (determined under paragraph (3)) of the entitlement of that member to receive retired pay.

''(3) The initial period applicable under paragraph (2) in the case of a retired member referred to in that paragraph is the number of years (and any fraction of a year) that is equal to the difference between 20 years and the number of years (and any fraction of a year) of service that were completed by the member (as computed under the provision of law used for determining the member's years of service for eligibility to retirement) before being retired under the authority of this section.

''(4) The Secretary shall pay the member's retired pay for such initial period out of amounts credited to

the subaccount under paragraph (2). The amounts so credited with respect to that member shall remain available for payment for that period.

''(5) For purposes of this subsection—

''(A) the transfer of an enlisted member of the Navy or Marine Corps to the Fleet Reserve or Fleet Marine Corps Reserve shall be treated as a retirement; and

''(B) the term 'retired pay' shall be treated as including retainer pay.

''(g) COORDINATION WITH OTHER SEPARATION PROVISIONS.—(1) A member of the Armed Forces retired under the authority of this section is not entitled to benefits under section 1174, 1174a, or 1175 of title 10, United States Code.

''(2) [Amended section 638a(b)(4)(C) of this title.]

''(h) MEMBERS RECEIVING SSB OR VSI.—The Secretary of a military department may retire (or transfer to the Fleet Reserve or Fleet Marine Corps Reserve) pursuant to the authority provided by this section a member of a reserve component who before the date of the enactment of this Act [Oct. 23, 1992] was separated from active duty pursuant to an agreement entered into under section 1174a or 1175 of title 10, United States Code. The retired or retainer pay of any such member so retired (or transferred) by reason of the authority provided in this section shall be reduced by the amount of any payment to such member before the date of such retirement under the provisions of such agreement under section 1174a or 1175 of title 10, United States Code.

''(i) ACTIVE FORCE DRAWDOWN PERIOD.—For purposes of this section, the active force drawdown period is the period beginning on the date of the enactment of this Act and ending on September 1, 2002.''

[Pub. L. 107–314, div. A, title V, §554, Dec. 2, 2002, 116 Stat. 2553, provided that the amendment made by that section to section 4403 of Pub. L. 102–484, set out above, is effective Jan. 1, 2002.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 688, 1401, 1406 of this title; title 14 section 334.

§ 1305. Thirty years or more: regular warrant officers

(a)(1) Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5) who has at least 30 years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114) shall be retired 60 days after he completes that service, except as provided by section 8301 of title 5.

(2)(A) A regular Army warrant officer in the grade of chief warrant officer, W–5, who has at least 30 years of active service as a warrant officer that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114), shall be retired 60 days after the date on which he completes that service, except as provided by section 8301 of title 5.

(B) A regular Army warrant officer in a warrant officer grade below the grade of chief warrant officer, W–5, who completes 24 years of active service as a warrant officer before he is required to be retired under paragraph (1) shall be retired 60 days after the date on which he completes 24 years of active service as a warrant officer, except as provided by section 8301 of title 5.

(b) The Secretary concerned may defer, for not more than four months, the retirement under subsection (a) of any warrant officer if, because of unavoidable circumstances, evaluation of his physical condition and determination of his entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed before the date when he would otherwise be required to retire under this section.

(c) Under such regulations as he may prescribe, the Secretary concerned may defer the retirement under subsection (a) of any warrant officer upon the recommendation of a board of officers and with the consent of the warrant officer, but not later than 60 days after he becomes 62 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101; Pub. L. 87–649, §6(f)(3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 102–190, div. A, title XI, §1116, Dec. 5, 1991, 105 Stat. 1503.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1305(a)	10:600(d) (as applicable to 10:600*l*(b)(2)). 10:600*l*(b)(2) (last sentence). 10:600r(c) (as applicable to 10:600*l*(b)(2)). 34:135(d) (as applicable to 34:430(b)(2)). 34:430(b)(2) (last sentence). 34:430c (as applicable to 34:430(b)(2)).	May 29, 1954, ch. 249, §§2(d) (as applicable to §14(b)(2)), 14(b)(2), (e) (as applicable to (b)(2)), 21(c) (as applicable to §14(b)(2)), 68 Stat. 157, 163, 168.
1305(b)	10:600*l*(e) (as applicable to 10:600*l*(b)(2)). 34:430(e) (as applicable to 34:430(b)(2)).	
1305(c)	10:600*l*(b)(2) (less last sentence). 34:430(b)(2) (less last sentence).	

In subsection (a), the words ''has at least'' are substituted for the words ''has completed''. The words ''and is not so continued on active service'' and ''on that date which'' are omitted as surplusage. 10:600*l*(b)(2) (last 16 words of last sentence) and 34:430(b)(2) (last 16 words of last sentence) are omitted as covered by section 1315 of this title.

In subsection (b), the words ''The Secretary concerned may defer'' are substituted for the words ''may, in the discretion of the Secretary, be deferred''. The words ''determination of his'' are inserted for clarity. The words ''not more than'' are substituted for the words ''a period not to exceed''. The words ''he would otherwise be required to retire under this section'' are substituted for the words ''retirement * * * would otherwise be required''. The words ''which is required'', ''possible'', ''proper'', and ''a period of'' are omitted as surplusage.

In subsection (c), the words ''the Secretary concerned may defer the retirement'' are substituted for the words ''in the discretion of the Secretary * * * be continued on active service''. The words ''but not later than'' are substituted for the words ''but not beyond that date which is''.

REFERENCES IN TEXT

Section 511 of the Career Compensation Act of 1949, referred to in subsec. (a), is set out as a note under section 580 of this title.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), a regular warrant officer (other than a regular Army warrant officer in the grade of chief warrant officer, W–5)'' for ''A permanent regular warrant officer'', and added par. (2).

1966—Subsec. (a). Pub. L. 89–718 substituted ''8301'' for ''47a''.

1962—Subsec. (a). Pub. L. 87–649 substituted ''section 511 of the Career Compensation Act of 1949, as amended (70 Stat. 114)'' for ''section 311 of title 37.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1263, 1401, 1406 of this title; title 14 section 334.

§ 1315. Computation of retired pay: law applicable

A member of the armed forces retired under this chapter is entitled to retired pay computed under chapter 71 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 101.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1315	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 67—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
1331. Reference to chapter 1223.

PRIOR PROVISIONS

A prior chapter 67 was transferred to part II of subtitle E of this title and renumbered chapter 1223.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1503(a)(13), Feb. 10, 1996, 110 Stat. 511, substituted ''NON-REGULAR'' for ''NONREGULAR'' in chapter heading.

§ 1331. Reference to chapter 1223

Provisions of law relating to retired pay for nonregular service are set forth in chapter 1223 of this title (beginning with section 12731).

(Added Pub. L. 103–337, div. A, title XVI, § 1662(j)(7), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Prior sections 1331 to 1338 were renumbered sections 12731 to 12738 of this title, respectively.

CHAPTER 69—RETIRED GRADE

Sec.
1370. Commissioned officers: general rule; exceptions.
1371. Warrant officers: general rule.
1372. Grade on retirement for physical disability: members of armed forces.
1373. Higher grade for later physical disability: retired officers recalled to active duty.
[1374. Repealed.]
1375. Entitlement to commission: commissioned officers advanced on retired list.
1376. Temporary disability retired lists.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1671(b)(11), Oct. 5, 1994, 108 Stat. 3013, struck out item 1374 ''Reserve commissioned officers: grade on retirement or transfer to Retired Reserve'' and substituted ''Temporary disability retired lists'' for ''Retired lists'' in item 1376.

1980—Pub. L. 96–513, title V, § 501(20), Dec. 12, 1980, 94 Stat. 2908, added item 1370.

1958—Pub. L. 85–861, § 1(30), Sept. 2, 1958, 72 Stat. 1451, added item 1374.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 33 section 857a; title 42 section 213a.

§ 1370. Commissioned officers: general rule; exceptions

(a) RULE FOR RETIREMENT IN HIGHEST GRADE HELD SATISFACTORILY.—(1) Unless entitled to a higher retired grade under some other provision of law, a commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps who retires under any provision of law other than chapter 61 or chapter 1223 of this title shall, except as provided in paragraph (2), be retired in the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(2)(A) In order to be eligible for voluntary retirement under any provision of this title in a grade above major or lieutenant commander, a commissioned officer of the Army, Navy, Air Force, or Marine Corps must have served on active duty in that grade for not less than three years, except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the period beginning on October 1, 2002, and ending on December 31, 2003.

(B) In the case of an officer to be retired in a general or flag officer grade, authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that officer only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(D) The President may waive subparagraph (A) in individual cases involving extreme hardship or exceptional or unusual circumstances. The authority of the President under the preceding sentence may not be delegated.

(E) In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade for whom a reduction is made during any fiscal year in the period of service-in-grade

otherwise required under this paragraph may not exceed the number equal to two percent of the authorized active-duty strength for that fiscal year for officers of that armed force in that grade.

(3) A reserve or temporary officer who is notified that he will be released from active duty without his consent and thereafter requests retirement under section 3911, 6323, or 8911 of this title and is retired pursuant to that request is considered for purposes of this section, to have been retired involuntarily. An officer retired pursuant to section 1186(b)(1) of this title is considered for purposes of this section to have been retired voluntarily.

(b) RETIREMENT IN NEXT LOWER GRADE.—An officer whose length of service in the highest grade he held while on active duty does not meet the service in grade requirements specified in subsection (a) shall be retired in the next lower grade in which he served on active duty satisfactorily, as determined by the Secretary of the military department concerned, for not less than six months.

(c) OFFICERS IN O–9 AND O–10 GRADES.—(1) An officer who is serving in or has served in the grade of general or admiral or lieutenant general or vice admiral may be retired in that grade under subsection (a) only after the Secretary of Defense certifies in writing to the President and Congress that the officer served on active duty satisfactorily in that grade.

(2) In the case of an officer covered by paragraph (1), the three-year service-in-grade requirement in paragraph (2)(A) of subsection (a) may not be reduced or waived under that subsection—

(A) while the officer is under investigation for alleged misconduct; or

(B) while there is pending the disposition of an adverse personnel action against the officer for alleged misconduct.

(3)(A) The Secretary of Defense may delegate authority to make a certification with respect to an officer under paragraph (1) only to the Under Secretary of Defense for Personnel and Readiness or the Deputy Under Secretary of Defense for Personnel and Readiness.

(B) If authority is delegated under subparagraph (A) and, in the course of consideration of an officer for a certification under paragraph (1), the Under Secretary or (if such authority is delegated to both the Under and Deputy Under Secretary) the Deputy Under Secretary makes a determination described in subparagraph (C) with respect to that officer, the Under Secretary or Deputy Under Secretary, as the case may be, may not exercise the delegated authority in that case, but shall refer the matter to the Secretary of Defense, who shall personally determine whether to issue a certification under paragraph (1) with respect to that officer.

(C) A determination referred to in subparagraph (B) is a determination that there is potentially adverse information concerning an officer and that such information has not previously been submitted to the Senate in connection with the consideration by the Senate of a nomination of that officer for an appointment for which the advice and consent of the Senate is required.

(d) RESERVE OFFICERS.—(1) Unless entitled to a higher grade, or to credit for satisfactory service in a higher grade, under some other provision of law, a person who is entitled to retired pay under chapter 1223 of this title shall, upon application under section 12731 of this title, be credited with satisfactory service in the highest grade in which that person served satisfactorily at any time in the armed forces, as determined by the Secretary concerned in accordance with this subsection.

(2) In order to be credited with satisfactory service in an officer grade (other than a warrant officer grade) below the grade of lieutenant colonel or commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than six months.

(3)(A) In order to be credited with satisfactory service in an officer grade above major or lieutenant commander, a person covered by paragraph (1) must have served satisfactorily in that grade (as determined by the Secretary of the military department concerned) as a reserve commissioned officer in an active status, or in a retired status on active duty, for not less than three years.

(B) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade may be credited with satisfactory service in the grade in which serving at the time of transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade, if that person is transferred from an active status or discharged as a reserve commissioned officer—

(i) solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service; or

(ii) because the person no longer meets the qualifications for membership in the Ready Reserve solely because of a physical disability, as determined, at a minimum, by a medical evaluation board and at the time of such transfer or discharge such person (pursuant to section 12731b of this title or otherwise) meets the service requirements established by section 12731(a) of this title for eligibility for retired pay under chapter 1223 of this title, unless the disability is described in section 12731b of this title.

(C) If a person covered by subparagraph (A) has completed at least six months of satisfactory service in grade, the person was serving in that grade while serving in a position of adjutant general required under section 314 of title 32 or while serving in a position of assistant adjutant general subordinate to such a position of adjutant general, and the person has failed to complete three years of service in that grade solely because the person's appointment to such position has been terminated or vacated as described in section 324(b) of such title, then such person may be credited with satisfactory service in that grade, notwithstanding the failure to complete three years of service in that grade.

(D) To the extent authorized by the Secretary of the military department concerned, a person who, after having been recommended for pro-

motion in a report of a promotion board but before being promoted to the recommended grade, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while in the next lower grade. The period credited may not include any period before the date on which the Senate provides advice and consent for the appointment of that person in the recommended grade.

(E) To the extent authorized by the Secretary of the military department concerned, a person who, after having been found qualified for Federal recognition in a higher grade by a board under section 307 of title 32, serves in a position for which that grade is the minimum authorized grade and is appointed as a reserve officer in that grade may be credited for the purposes of subparagraph (A) as having served in that grade. The period of the service for which credit is afforded under the preceding sentence may only be the period for which the person served in the position after the Senate provides advice and consent for the appointment.

(F) A person covered by subparagraph (A) who has completed at least six months of satisfactory service in a grade above colonel or (in the case of the Navy) captain and, while serving in an active status in such grade, is involuntarily transferred (other than for cause) from active status may be credited with satisfactory service in the grade in which serving at the time of such transfer, notwithstanding failure of the person to complete three years of service in that grade.

(4) A person whose length of service in the highest grade held does not meet the service in grade requirements specified in this subsection shall be credited with satisfactory service in the next lower grade in which that person served satisfactorily (as determined by the Secretary of the military department concerned) for not less than six months.

(5)(A) The Secretary of Defense may authorize the Secretary of a military department to reduce the 3-year period required by paragraph (3)(A) to a period not less than 2 years in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003.

(B) In the case of a person who, upon transfer to the Retired Reserve or discharge, is to be credited with satisfactory service in a general or flag officer grade under paragraph (1), authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be exercised with respect to that person only if approved by the Secretary of Defense or another civilian official in the Office of the Secretary of Defense appointed by the President, by and with the advice and consent of the Senate.

(C) Authority provided by the Secretary of Defense to the Secretary of a military department under subparagraph (A) may be delegated within that military department only to a civilian official of that military department appointed by the President, by and with the advice and consent of the Senate.

(6) The number of reserve commissioned officers of an armed force in the same grade for whom a reduction is made during any fiscal year in the period of service-in-grade otherwise required under paragraph (5) may not exceed the number equal to 2 percent of the strength authorized for that fiscal year for reserve commissioned officers of that armed force in an active status in that grade.

(e) ADVANCE NOTICE TO CONGRESSIONAL COMMITTEES.—(1) In the case of an officer to be retired in a grade that is a general or flag officer grade who is eligible to retire in that grade only by reason of an exercise of authority under paragraph (2) of subsection (a) to reduce the three-year service-in-grade requirement otherwise applicable under that paragraph, the Secretary of Defense, before the officer is retired in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under that paragraph with respect to that officer.

(2) In the case of a person to be credited under subsection (d) with satisfactory service in a grade that is a general or flag officer grade who is eligible to be credited with such service in that grade only by reason of an exercise of authority under paragraph (5) of that subsection to reduce the three-year service-in-grade requirement otherwise applicable under paragraph (3)(A) of that subsection, the Secretary of Defense, before the person is credited with such satisfactory service in that grade, shall notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the exercise of authority under paragraph (5) of that subsection with respect to that officer.

(3) In the case of an officer to whom subsection (c) applies, the requirement for notification under paragraph (1) is satisfied if the notification is included in the certification submitted with respect to that officer under paragraph (1) of such subsection.

(Added Pub. L. 96–513, title I, §112, Dec. 12, 1980, 94 Stat. 2876; amended Pub. L. 101–510, div. A, title V, §522, Nov. 5, 1990, 104 Stat. 1561; Pub. L. 103–160, div. A, title V, §561(d), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103–337, div. A, title XVI, §§1641, 1671(c)(7)(B), Oct. 5, 1994, 108 Stat. 2968, 3014; Pub. L. 104–106, div. A, title V, §502(a), (b), (f), (g), Feb. 10, 1996, 110 Stat. 292, 293; Pub. L. 104–201, div. A, title V, §544(a), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 105–261, div. A, title V, §§512(a), 513(a), 561(d), (*o*), Oct. 17, 1998, 112 Stat. 2007, 2025, 2026; Pub. L. 106–65, div. A, title X, §1066(a)(9), (b)(3), Oct. 5, 1999, 113 Stat. 770, 772; Pub. L. 106–398, §1 [[div. A], title V, §571(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134; Pub. L. 107–107, div. A, title V, §§502, 514, Dec. 28, 2001, 115 Stat. 1080, 1093; Pub. L. 107–314, div. A, title V, §505, Dec. 2, 2002, 116 Stat. 2533.)

AMENDMENTS

2002—Subsec. (a)(2)(A). Pub. L. 107–314, §505(a)(1), substituted ''during the period beginning on October 1, 2002, and ending on December 31, 2003'' for ''during the period beginning on October 1, 1990, and ending on December 31, 2001''.

Subsec. (a)(2)(B) to (E). Pub. L. 107–314, §505(a)(2), (3), added subpars. (B) and (C) and redesignated former subpars. (B) and (C) as (D) and (E), respectively.

Subsec. (d)(5), (6). Pub. L. 107–314, § 505(b), designated first sentence as subpar. (A), substituted ''in the case of transfers to the Retired Reserve and discharges of retirement-qualified officers effective during the period beginning on October 1, 2002, and ending on December 31, 2003'' for ''in the case of retirements effective during the period beginning on October 17, 1998, and ending on December 31, 2001'', and added subpars. (B) and (C), and designated second sentence as (6) and substituted ''paragraph (5)'' for ''this paragraph''.

Subsec. (e). Pub. L. 107–314, § 505(c), added subsec. (e).

2001—Subsec. (c)(3). Pub. L. 107–107, § 502, added par. (3).

Subsec. (d)(3)(B). Pub. L. 107–107, § 514, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A person covered by subparagraph (A) who has completed at least six months of satisfactory service in grade and is transferred from an active status or discharged as a reserve commissioned officer solely due to the requirements of a nondiscretionary provision of law requiring that transfer or discharge due to the person's age or years of service may be credited with satisfactory service in the grade in which serving at the time of such transfer or discharge, notwithstanding failure of the person to complete three years of service in that grade.''

2000—Subsecs. (a)(2)(A), (d)(5). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1999—Subsec. (d)(1). Pub. L. 106–65, § 1066(a)(9)(A), substituted ''chapter 1223'' for ''chapter 1225''.

Subsec. (d)(3)(F). Pub. L. 106–65, § 1066(b)(3), made technical amendment to Pub. L. 105–261, § 513(a). See 1998 Amendment note below.

Subsec. (d)(5). Pub. L. 106–65, § 1066(a)(9)(B), substituted ''October 17, 1998,'' for ''the date of the enactment of this paragraph''.

1998—Subsec. (a)(2)(A). Pub. L. 105–261, § 561(d), substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

Subsec. (d)(3)(E). Pub. L. 105–261, § 512(a), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''To the extent authorized by the Secretary of the military department concerned, a person who, after having been extended temporary Federal recognition as a reserve officer of the Army National Guard in a particular grade under section 308 of title 32 or temporary Federal recognition as a reserve officer of the Air National Guard in a particular grade under such section, served in a position for which that grade is the minimum authorized grade may be credited for purposes of subparagraph (A) as having served in that grade for the period for which the person served in that position while extended the temporary Federal recognition, but only if the person was subsequently extended permanent Federal recognition as a reserve officer in that grade and also served in that position after being extended the permanent Federal recognition.''

Subsec. (d)(3)(F). Pub. L. 105–261, § 513(a), as amended by Pub. L. 106–65, § 1066(b)(3), added subpar. (F).

Subsec. (d)(5). Pub. L. 105–261, § 561(*a*), added par. (5).

1996—Subsec. (a). Pub. L. 104–106, § 502(g)(1), inserted heading.

Subsec. (a)(2)(A). Pub. L. 104–106, § 502(a)(1), struck out ''and below lieutenant general or vice admiral'' after ''commander''.

Subsec. (a)(2)(C). Pub. L. 104–106, § 502(f), substituted ''In the case of a grade below the grade of lieutenant general or vice admiral, the number of members of one of the armed forces in that grade'' for ''The number of officers in an armed force in a grade''.

Subsec. (b). Pub. L. 104–106, § 502(g)(2), inserted heading.

Subsec. (c). Pub. L. 104–106, § 502(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Upon retirement an officer of the Army, Navy, Air Force, or Marine Corps who is serving in or has served in a position of importance and responsibility designated by the President to carry the grade of general or admiral or lieutenant general or vice admiral under section 601 of this title may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him while serving on active duty.''

Subsec. (d). Pub. L. 104–106, § 502(g)(3), inserted heading.

Subsec. (d)(2). Pub. L. 104–201, § 544(a)(2), redesignated subpar. (A) as entire par. (2). Former subpar. (B) redesignated subsec. (d)(3).

Subsec. (d)(2)(B). Pub. L. 104–106, § 502(a)(2), struck out ''and below lieutenant general or vice admiral'' after ''commander'' in first sentence.

Subsec. (d)(3). Pub. L. 104–201, § 544(a)(3), (4), redesignated subsec. (d)(2)(B) as par. (3), designated first and second sentences as subpars. (A) and (B), respectively, in subpar. (B), substituted ''subparagraph (A)'' for ''the preceding sentence'', and added subpars. (C) to (E). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 104–201, § 544(a)(1), redesignated par. (3) as (4).

1994—Subsec. (a)(1). Pub. L. 103–337, § 1671(c)(7)(B), substituted ''chapter 1223'' for ''chapter 67''.

Subsec. (d). Pub. L. 103–337, § 1641, added subsec. (d).

1993—Subsec. (a)(2)(A). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1990—Subsec. (a)(2). Pub. L. 101–510 inserted ''(A)'' after ''(2)'', inserted before period at end of first sentence '', except that the Secretary of Defense may authorize the Secretary of a military department to reduce such period to a period not less than two years in the case of retirements effective during the five-year period beginning on October 1, 1990'', designated second and third sentences as subpar. (B), substituted ''subparagraph (A)'' for ''the preceding sentence'', and added subpar. (C).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title X, § 1066(b), Oct. 5, 1999, 113 Stat. 772, provided that the amendment made by section 1066(b) is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title V, § 512(b), Oct. 17, 1998, 112 Stat. 2007, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and shall apply with respect to appointments to higher grades that take effect after that date.''

Pub. L. 105–261, div. A, title V, § 513(b), Oct. 17, 1998, 112 Stat. 2008, provided that: ''Subparagraph (F) of such section [subsec. (d)(3)(F) of this section], as added by subsection (a), shall take effect on the date of the enactment of this Act [Oct. 17, 1998] and shall apply with respect to transfers referred to in such subparagraph that are made on or after that date.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 502(e) of Pub. L. 104–106 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall take effect on October 1, 1996, immediately after subsection (d) of section 1370 of title 10, United States Code, takes effect under section 1691(b)(1) of the Reserve Officer Personnel Management Act (108 Stat. 3026) [Pub. L. 103–337, set out as a note under section 10001 of this title].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(c)(7)(B) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1641 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on

Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to the time-in-grade requirement for voluntary retirement of officers not subsequently promoted, see section 629 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 1407, 3961, 6151, 6323, 6325, 6383, 8961, 12771 of this title; title 33 section 3071; title 42 section 213a.

§ 1371. Warrant officers: general rule

Unless entitled to a higher retired grade under some other provision of law, a warrant officer retires, as determined by the Secretary concerned, in the permanent regular or reserve warrant officer grade, if any, that he held on the day before the date of his retirement, or in any higher warrant officer grade in which he served on active duty satisfactorily, as determined by the Secretary, for a period of more than 30 days.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1371	10:600*l*(d) (1st sentence). 10:600*l*(f) (1st sentence, as applicable to retired grade). 34:430(d) (1st sentence). 34:430(f) (1st sentence, as applicable to retired grade).	May 29, 1954, ch. 249, §14(d) (1st sentence), (f) (1st sentence, as applicable to retired grade), 68 Stat. 163, 164.

The first 13 words are substituted for 10:600*l*(f) (1st sentence, as applicable to retired grade) and 34:430 (1st sentence, as applicable to retired grade). The words ''for a period of more than 30 days'' are substituted for the words ''under * * * orders specifying that the period of such duty shall be for a period in excess of thirty days or for an indefinite period'', to conform to the definition of those words in section 101(23) of this title. The words ''any full time duty'' are omitted, since the duty specified would necessarily be full time duty. The words ''under this section'' and ''competent'' are omitted as surplusage.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

§ 1372. Grade on retirement for physical disability: members of armed forces

Unless entitled to a higher retired grade under some other provision of law, any member of an armed force who is retired for physical disability under section 1201 or 1204 of this title, or whose name is placed on the temporary disability retired list under section 1202 or 1205 of this title, is entitled to the grade equivalent to the highest of the following:

(1) The grade or rank in which he is serving on the date when his name is placed on the temporary disability retired list or, if his name was not carried on that list, on the date when he is retired.

(2) The highest temporary grade or rank in which he served satisfactorily, as determined by the Secretary of the armed force from which he is retired.

(3) The permanent regular or reserve grade to which he would have been promoted had it not been for the physical disability for which he is retired and which was found to exist as a result of a physical examination.

(4) The temporary grade to which he would have been promoted had it not been for the physical disability for which he is retired, if eligibility for that promotion was required to be based on cumulative years of service or years of service in grade and the disability was discovered as a result of a physical examination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 104–201, div. A, title V, §577, Sept. 23, 1996, 110 Stat. 2536.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1372	37:272(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos). 37:279 (less applicability to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§402(d) (104th through 128th words, as applicable to retired grade; and 2d and 5th provisos), 409 (less applicability to §402(d) (last proviso)), 63 Stat. 818, 823.

Clause (1) is substituted for 37:272(d) (104th through 128th words, as applicable to retired grade). The words ''if his name was not carried on that list'' are substituted for the words ''whichever is earlier''.

AMENDMENTS

1996—Pars. (3), (4). Pub. L. 104–201 substituted ''a physical examination'' for ''his physical examination for promotion''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 1373. Higher grade for later physical disability: retired officers recalled to active duty

Unless entitled to a higher retired grade under some other provision of law, a member of an armed force whose retired pay is computed under section 1402(d) or 1402a(d) of this title is entitled, upon his release from active duty, to the grade equivalent to the grade or rank upon which his retired pay is based under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 96–342, title VIII, §813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1373	37:272(d) (last proviso, as applicable to retired grade). 37:279 (as applicable to 37:272(d) (last proviso)).	Oct. 12, 1949, ch. 681, §§402(d) (last proviso, as applicable to retired grade), 409 (as applicable to §402(d) (last proviso)), 63 Stat. 819, 823.

The applicability of the rule stated in 37:279 to all members whose retired pay is computed under 37:272(d) (last proviso) is based on an opinion of the Judge Advocate General of the Army (JAGA 1953/3305, 24 Apr. 1953).

AMENDMENTS

1980—Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

[§ 1374. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

Section, added Pub. L. 85–861, §1(29), Sept. 2, 1958, 72 Stat. 1451; amended Pub. L. 86–559, §1(4), June 30, 1960, 74 Stat. 265; Pub. L. 99–661, div. A, title V, §508(d)(2), Nov. 14, 1986, 100 Stat. 3867, related to reserve commissioned officers' grade on retirement or transfer to Retired Reserve. See sections 12771 to 12773 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 1375. Entitlement to commission: commissioned officers advanced on retired list

A commissioned officer of the Army, Navy, Air Force, or Marine Corps who is advanced on a retired list is entitled to a commission in the grade to which he is advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1375	10:1014. 34:394.	Mar. 4, 1911, ch. 266, 36 Stat. 1354.

The words ''has been or shall hereafter'', ''by operation of or in accordance with law'', and ''and shall receive'' are omitted as surplusage. The words ''in the grade to which he is advanced'' are substituted for the words ''in accordance with such advanced rank''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071; title 42 section 213a.

§ 1376. Temporary disability retired lists

The Secretary concerned shall maintain a temporary disability retired list containing the names of members of the armed forces under his jurisdiction placed thereon under sections 1202 and 1205 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 105; Pub. L. 85–861, §1(31), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 103–337, div. A, title XVI, §1662(k)(3), Oct. 5, 1994, 108 Stat. 3006.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376(a) ..... 1376(b)	50:927(a) (less 1st 11 words). 50:927(b) (less last 7 words of 1st sentence). 37:271 (less (a)).	Oct. 12, 1949, ch. 681, §401 (less (a)), 63 Stat. 816. July 9, 1952, ch. 608, §207(a) (less 1st 11 words), (b) (less last 7 words of 1st sentence), 66 Stat. 483.

In subsection (a), the word ''maintained'' is substituted for the word ''established'', and in subsection (b), the word ''maintain'' is substituted for the word ''established'', since the lists have been established and are published annually.

In subsection (a), the words ''who are in the Retired Reserve'' are substituted for 50:927(a) (last 11 words), since section 271 of this title prescribes the conditions for being placed in the Retired Reserve. 50:927(b) (last sentence) is omitted, since the revised section provides that both lists be maintained.

In subsection (b), the words ''containing the names placed thereon under section 1202 or 1205 of this title'' are substituted for the words ''upon which shall be placed the names of all members of his service entitled to such placement pursuant to the provisions of this subchapter''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1376	[Uncodified].	July 24, 1956, ch. 677, §2 (less clauses (a)–(i), as applicable to 10:1376), 70 Stat. 623.

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Temporary disability retired lists'' for ''Retired lists'' as section catchline, struck out ''(b)'' before ''The Secretary concerned'', and struck out subsec. (a) which read as follows: ''Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under his jurisdiction who are in the Retired Reserve.'' See section 12774 of this title.

1958—Subsec. (b). Pub. L. 85–861 struck out provisions requiring publication of the temporary disability retired list annually in the official register or other official publication of the armed force concerned.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071; title 42 section 213a.

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.
1401. Computation of retired pay.
1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index.
1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980.
1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980.
1403. Disability retired pay: treatment under Internal Revenue Code of 1986.

Sec.
1404. Applicability of section 8301 of title 5.
1405. Years of service.
1406. Retired pay base for members who first became members before September 8, 1980: final basic pay.
1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average.
1408. Payment of retired or retainer pay in compliance with court orders.
1409. Retired pay multiplier.
1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986.
1411. Rules of construction.
1412. Rounding to next lower dollar.
1413. Special compensation for certain severely disabled uniformed services retirees.
1413a. Special compensation for certain combat-related disabled uniformed services retirees.
1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation; contingent authority.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title VI, §636(a)(3), Dec. 2, 2002, 116 Stat. 2576, added item 1413a.

2001—Pub. L. 107–107, div. A, title VI, §641(c), Dec. 28, 2001, 115 Stat. 1150, added item 1414.

1999—Pub. L. 106–65, div. A, title VI, §§643(b)(3)(B), 658(a)(2), Oct. 5, 1999, 113 Stat. 664, 669, inserted ''certain'' before ''members'' in item 1410 and added item 1413.

1987—Pub. L. 100–26, §7(h)(2)(B), Apr. 21, 1987, 101 Stat. 282, substituted colon for semicolon and ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in item 1403.

1986—Pub. L. 99–348, title III, §304(b)(2), July 1, 1986, 100 Stat. 703, inserted ''of members who first became members before September 8, 1980'' in item 1402, substituted ''Retired pay base for members who first became members before September 8, 1980: final basic pay'' for ''Limitations on revocation of retired pay'' in item 1406 and ''Retired pay base for members who first became members after September 7, 1980: high-36 month average'' for ''Retired pay base'' in item 1407, and added items 1409 to 1412.

1982—Pub. L. 97–252, title X, §1002(b), Sept. 8, 1982, 96 Stat. 735, added item 1408.

1980—Pub. L. 96–513, title V, §511(51)(C), (52)(C), Dec. 12, 1980, 94 Stat. 2924, 2925, substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in item 1402a, and substituted ''Internal Revenue Code of 1954'' for ''title 26'' in item 1403.

Pub. L. 96–342, title VIII, §813(a)(2), (b)(3)(B), 94 Stat. 1101, 1104, added items 1402a and 1407.

1966—Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115, substituted ''8301'' for ''47a'' in item 1404.

Pub. L. 89–652, §2(2), Oct. 14, 1966, 80 Stat. 902, added item 1406.

1963—Pub. L. 88–132, §5(g)(2), Oct. 2, 1963, 77 Stat. 214, added item 1401a.

1958—Pub. L. 85–422, §11(a)(1)(B), May 20, 1958, 72 Stat. 131, added item 1405.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 642, 1275, 1315 of this title; title 4 section 114; title 33 section 3071; title 42 section 213a.

§1401. Computation of retired pay

(a) DISABILITY, NON-REGULAR SERVICE, WARRANT OFFICER, AND DOPMA RETIREMENT.—The monthly retired pay of a person entitled thereto under this subtitle is computed according to the following table. For each case covered by a section of this title named in the column headed ''For sections'', retired pay is computed by taking, in order, the steps prescribed opposite it in columns 1, 2, 3, and 4, as modified by the applicable footnotes.

Formula No.	For sections	Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
1	1201 1204	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability on date when retired.		Excess over 75% of retired pay base upon which computation is based.
2	1202 1205	Retired pay base as computed under section 1406(b) or 1407.	As member elects— (1) 2½% of years of service credited to him under section 1208;[1] or (2) the percentage of disability on date when his name was placed on temporary disability retired list.	Amount necessary to increase product of columns 1 and 2 to 50% of retired pay base upon which computation is based.	Excess over 75% of retired pay base upon which computation is based.
4	580 1263 1293 1305	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.		
5	633 634 635 636 1251	Retired pay base as computed under section 1406(b) or 1407.	The retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405.		

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(b) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula of the table in subsection (a) or of any other provision of law, the person is entitled to be paid under the applicable formula that is most favorable to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 106; Pub. L. 85–422, §§6(7), 11(a)(2), May 20, 1958, 72 Stat. 129, 131; Pub. L. 88–132, §5(h)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 89–132, §6, Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, §3(1), Dec. 16, 1967, 81 Stat. 653; Pub. L. 92–455, §1, Oct. 2, 1972, 86 Stat. 761; Pub. L. 96–342, title VIII, §813(b)(1), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96–513, title I, §113(a), title V,

§ 511(49), Dec. 12, 1980, 94 Stat. 2876, 2924; Pub. L. 98–94, title IX, §§ 922(a)(1), 923(a)(1), (2)(A), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 98–557, § 35(b), Oct. 30, 1984, 98 Stat. 2877; Pub. L. 99–348, title II, § 201(a), July 1, 1986, 100 Stat. 691; Pub. L. 102–484, div. A, title X, § 1052(18), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title XVI, § 1662(j)(2), Oct. 5, 1994, 108 Stat. 3004.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1401 Introductory clause.	10:600*l*(f) (1st sentence, less applicability to retired grade). 34:430(f) (1st sentence, less applicability to retired grade).	June 29, 1948, ch. 708, § 303 (1st 91 words and 1st proviso), 62 Stat. 1088. Oct. 12, 1949, ch. 681, §§ 402(d) (less 30th through 55th words; less 104th through 128th words, as applicable to retired grade; and less 2d, 5th, and last provisos), 402(e) (1st proviso of last sentence), 63 Stat. 818, 819.
1401(1)	37:272(d) (less 1st 55 words; less 104th through 128th words, as applicable to retired grade; and less 1st, 2d, 4th, 5th, and last provisos). 37:272(e) (1st proviso of last sentence).	
1401(2)	37:272(d) (1st 29, and 51st through 55th, words, and 4th proviso).	May 29, 1954, ch. 249, § 14(d) (less 1st sentence), (f) (1st sentence, less applicability to retired grade; and last sentence), 68 Stat. 163, 164.
1401(3)	10:1036b (1st 91 words and 1st proviso). 34:440j (1st 91 words and 1st proviso).	
1401(4)	10:600*l*(d) (2d sentence). 10:600*l*(f) (last sentence). 34:430(d) (2d sentence). 34:430(f) (last sentence).	
1401, footnote 1.	[No source].	
1401, footnote 2.	[No source].	
1401, footnote 3.	37:272(d) (1st proviso); 10:600*l*(d) (less 1st and 2d sentences). 34:430(d) (less 1st and 2d sentences).	

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula No. 1, the words ''whichever is earlier'', in 37:272(d) (clause (2)), are omitted, since they are contrary to the rule stated in 37:272(e) (1st proviso of last sentence).

In formula No. 3, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words ''basic pay'' are substituted for the words ''base and longevity pay'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words ''which he would receive if serving, at the time granted such pay, on active duty'' are omitted as surplusage and to conform to the other formulas of the revised section, since the effect of these words is covered by footnote 1. The words ''at any time'' are substituted for the words ''during his entire period of service''.

Footnotes 1 and 2 reflect the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. The pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were enacted after the provisions authorizing higher retired grade. The words ''at rates applicable on date of retirement * * * and adjust to reflect later changes in permanent rates'', in footnote 1; and all of footnote 2; are based on the source statutes incorporated in the formulas to which footnotes 1 and 2 apply, as interpreted in an opinion of the Judge Advocate General of the Army (1953/4120, 14 May 1953).

In footnote 3, the words ''and disregard a part of a year that is less than six months'' are made applicable to formulas Nos. 1 and 2. The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, First Session, page 313, July 6, 1949) indicates that the provisions, upon which formulas Nos. 1 and 2 are based, should be construed to require that a fraction of less than one-half of a year be disregarded. It also indicates that other retirement laws that are also silent on this point should be similarly construed.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 in table struck out formula number 3 which provided formula for computing retired pay under former section 1331 of this title.

1992—Subsec. (a). Pub. L. 102–484 substituted ''580'' for ''564'' in column in table under heading ''For sections''.

1986—Subsec. (a). Pub. L. 99–348, § 201(a)(1), (2), designated existing provision as subsec. (a), added heading, and struck out third, fourth, and fifth sentences which read as follows: ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1. However, if a person would otherwise be entitled to retired pay computed under more than one pay formula of this table or of any other provision of law, he is entitled to be paid under the applicable formula that is most favorable to him. Section references below are to sections of this title.''

Pub. L. 99–348, § 201(a)(3), amended column 1 of table generally by substituting provisions that retired pay be computed by taking the retired pay base as computed under section 1406(b) or 1407 of this title for provisions that retired pay be computed for a person who first became a member of a uniformed service, as defined in section 1407(a)(2) of this title, after Sept. 7, 1980, by taking the monthly retired pay base as computed under section 1407(b) of this title, and for all others, by taking the monthly basic pay to which the member was entitled under various circumstances.

Pub. L. 99–348, § 201(a)(4), substituted in column 2 of table a multiplier of the retired pay multiplier prescribed in section 1409(a) for the years of service credited to him under section 1405 for a multiplier of 2½% of years of service credited under section 1405 for formulas 4 and 5 and struck out ''Excess over 75% of pay upon which computation is based.'' in column 4 of table for formulas 4 and 5.

Pub. L. 99–348, § 201(a)(5), in columns 3 and 4 substituted ''retired pay base'' for ''pay'' wherever appearing.

Pub. L. 99–348, § 201(a)(6), redesignated footnote 3 as 1, and struck out former footnote 1 which provided computation at rates applicable on date of retirement or date when the member's name was placed on temporary disability retired list, as the case may be, footnote 2 which provided computation at rates applicable on the date when retired pay is granted, footnote 4 which provided computation at the highest rates of basic pay applicable to an officer who served as Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, while so serving in that office and computation at the highest rate of basic pay applicable to an enlisted person who has served as sergeant major of the Army, master chief petty officer of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, while he served if that rate is higher than the rate authorized by the table, and footnote 5 which provided for purposes of this section that an officer's retired grade be determined as if sections 3962(b) and 8962(b) did not apply.

Pub. L. 99–348, § 201(a)(7), in column 2 of table substituted footnote 1 designation for footnote 3 designation wherever appearing.

Subsec. (b). Pub. L. 99–348, § 201(a)(8), added subsec. (b).

1984—Pub. L. 98–557 inserted reference to Commandant of the Coast Guard in footnote 4 of table.

1983—Pub. L. 98–94, §922(a)(1), inserted ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Pub. L. 98–94, §923(a)(1), (2)(A), in footnote 3 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, §113(a), inserted formula 5 in table of formulae set out in the section and added footnote 5.

Pub. L. 96–513, §511(49), in formula 4 table of sections struck out reference to section 1255, in heading for Column 1 substituted reference to Sept. 7, 1980, for reference to date of enactment of Department of Defense Authorization Act, 1981, and in footnote 4 substituted reference to master chief petty officer of the Navy, for reference to senior enlisted advisor of the Navy.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

1972—Pub. L. 92–455 substituted in second sentence of footnote 4 of table ''chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard,'' for ''chief master sergeant of the Air Force, or sergeant major of the Marine Corps,''.

1967—Pub. L. 90–207 inserted sentence to footnote 4 of table requiring the computation of retired pay for an enlisted person who has served as senior noncommissioned officer of his service at the highest rate of basic pay applicable to him while he so served, if that rate is higher than the rate authorized by the table.

1965—Pub. L. 89–132 struck out ''increased, for members credited with two or less years of service for basic pay purposes, by 6%'' from column 1 of formula 1 and column 1 of formula 2.

1963—Pub. L. 88–132 struck out from footnote 1 of table '', and adjust to reflect later changes in applicable permanent rates'' after ''as the case may be.''

1958—Pub. L. 85–422, §6(7)(A), inserted provisions in Column 1 of formulas 1 and 2 permitting the taking of the monthly basic pay to which a member was entitled on the day before retirement or placement on temporary disability retired list, increased, for members credited with two or less years of service for basic pay purposes, by 6 percent.

Pub. L. 85–422, §11(a)(2), substituted ''under section 1405 of this title'' for ''in computing basic pay'' in column 2 of formula 4.

Pub. L. 85–422, §6(7)(B), added footnote 4.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 35(c) of Pub. L. 98–557 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1009 of Title 37, Pay and Allowances of the Uniformed Services] shall become effective on October 1, 1984''.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 922(e) of Pub. L. 98–94 provided that: ''The amendments made by this section [enacting section 6333 of this title and amending this section, sections 1401a, 1402, 1402a, 1437, 1451, 3991, 3992, 6151, 6383, 8991, and 8992 of this title, section 423 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, section 212 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1983.''

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 113(a) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 511(49) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

SHORT TITLE OF 1986 AMENDMENT

Section 1(a) of Pub. L. 99–348 provided that: ''This Act [enacting sections 134a, 1406, 1407, and 1409 to 1412 of this title, redesignating former section 1406 of this title as section 1338 [now 12738] of this title, amending this section, sections 101, 135, 136a, 716, 1040, 1338 [now 12738], 1401a, 1402, 1402a, 1405, 1447, 1451, 1452, 2830, 3925, 3991, 3992, 5083, 5201, 6151, 6322, 6323, 6325, 6326, 6330, 6333, 6383, 8925, 8991, and 8992 of this title, sections 5313 and 5314 of Title 5, Government Organization and Employees, sections 46, 47, 51, 288, 291 to 293, 327, 334, 353 to 355, 357, 362, and 421 to 424 of Title 14, Coast Guard, section 853*o* of Title 33, Navigation and Navigable Waters, and sections 211 and 212 of Title 42, The Public Health and Welfare, repealing former section 1407 and section 6328 of this title, enacting provisions set out as notes under this section and sections 135 and 12731 of this title, and repealing provisions set out as notes under this section and section 6330 of this title] may be cited as the 'Military Retirement Reform Act of 1986'.''

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–252, title X, §1001, Sept. 8, 1982, 96 Stat. 730, provided that: ''This title [enacting section 1408 of this title, amending sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title, and enacting provisions set out as notes under sections 1408 and 2208 of this title] may be cited as the 'Uniformed Services Former Spouses' Protection Act'.''

RECOMPUTATION OF RETIRED PAY FOR CERTAIN RECENTLY RETIRED OFFICERS

Pub. L. 106–65, div. A, title VI, §601(e), Oct. 5, 1999, 113 Stat. 648, provided that: ''In the case of a commissioned officer of the uniformed services who retired during the period beginning on April 30, 1999, through December 31, 1999, and who, at the time of retirement, was in pay grade O–7, O–8, O–9, or O–10, the retired pay of that officer shall be recomputed, effective as of January 1, 2000, using the rate of basic pay that would have been applicable to the computation of that officer's retired pay if

the provisions of paragraph (2) of section 203(a) of title 37, United States Code, as added by subsection (d), had taken effect on April 30, 1999.''

SIX-MONTH ROUNDING RULE

Section 305(b) of Pub. L. 99–348 provided that:

''(1) GENERAL RULE.—Retired pay or retainer pay may not be paid to a covered member of the Armed Forces (as defined in paragraph (3)) for any month in an amount that is greater than the amount otherwise determined to be payable after such reductions as may be necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for a part of a year of service to permit credit for a part of a year of service only for such month or months actually served.

''(2) EXCEPTIONS.—The limitation in paragraph (1) does not apply to a member who before January 1, 1982—

''(A) applied for retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve;

''(B) was being processed for retirement under the provisions of chapter 61 of title 10, United States Code, or who was on the temporary disability retired list and thereafter retired under the provisions of section 1210(c) or 1210(d) of such title; or

''(C) was retired or in an inactive status and would have been eligible for retired pay under the provisions of chapter 67 [now 1223] of such title, but for the fact that the person was under 60 years of age.

''(3) DEFINITION OF COVERED MEMBER.—For the purposes of this subsection, the term 'covered member of the Armed Forces' means a member of the Armed Forces who became entitled to retired or retainer pay during the period beginning on January 1, 1982, and ending on September 30, 1983.

''(4) REPEAL OF SOURCE LAW.—Section 8054 of the Department of Defense Appropriations Act, 1985 (as contained in section 101(h) of Public Law 98–473) [formerly set out as a note below], is repealed.

''(5) CROSS REFERENCE.—For the effective date of October 1, 1983, for provisions making permanent programmatic changes in law to accomplish the policy provided in such section 8054 (and prior provisions of law), see section 923(h) of the Department of Defense Authorization Act, 1984 (Public Law 98–94) [probably means section 923(g) of Pub. L. 98–94, set out as an Effective Date of 1983 Amendment note under section 1174 of this title].''

LIMITATION ON PAYMENT OF RETIRED OR RETAINER PAY TO REFLECT FRACTIONAL YEAR ADJUSTMENTS

Pub. L. 98–473, title I, §101(h) [title VIII, §8054], Oct. 12, 1984, 98 Stat. 1904, 1933, prohibited, with certain exceptions, payment of retired pay or retainer pay of a member of the Armed Forces for any month who, on or after January 1, 1982, became entitled to retired or retainer pay, in an amount greater than the amount otherwise determined payable after reductions necessary to reflect adjusting the computation of retired pay or retainer pay that includes credit for part of a year of service to permit credit for a part of a year of service only for such month or months actually served, prior to repeal by Pub. L. 99–348, title III, §305(b)(4), July 1, 1986, 100 Stat. 705.

INCREASE IN PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 5 of Pub. L. 90–207 provided that: ''Notwithstanding any other provision of law, a member of an armed force who is entitled to pay and allowances under any of the following provisions of law on September 30, 1967, shall continue to receive the pay and allowances to which he was entitled on that day plus an increase of 4.5 per centum in the total of his pay and allowances:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED OR RETAINER PAY OF MEMBERS ENTITLED THERETO ON OR AFTER OCTOBER 1, 1967

Section 6 of Pub. L. 90–207 provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on or after October 1, 1967, shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this Act [amending section 203(a) of Title 37].''

INCREASES IN RETIRED OR RETAINER PAY

Pub. L. 89–501, title III, §303, July 13, 1966, 80 Stat. 278, provided that: ''Notwithstanding any other provision of law, a member or former member of a uniformed service who initially becomes entitled to retired pay or retainer pay on the effective date of this title shall be entitled to have that pay computed using the rates of basic pay prescribed by the first section of this title [amending section 203(a) of Title 37].''

Effective date of section 303 of Pub. L. 89–501 as the first day of the first pay period which begins on or after July 1, 1966, see section 304 of Pub. L. 89–501, set out as Effective Date of 1966 Amendments note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

Section 5(a) of Pub. L. 89–132 provided that: ''The retired pay or retainer pay of a member or former member of a uniformed service who is entitled to that pay computed under rates of basic pay in effect before the effective date of this Act [Sept. 1, 1965] shall be increased, effective that date, by the per centum (adjusted to the nearest one-tenth of 1 per centum) that the Consumer Price Index (all items—United States city average), published by the Bureau of Labor Statistics, for the calendar month immediately preceding the effective date of this Act has increased over the average monthly index for calendar year 1962.''

CONTINUATION OF PAY AND ALLOWANCES OF CERTAIN PERSONS WHO SERVED AS GENERALS OF THE ARMY, FLEET ADMIRALS OF THE NAVY, GENERAL OF THE MARINE CORPS, OR ADMIRAL IN THE COAST GUARD

Section 7 of Pub. L. 89–132 provided that: ''Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Sept. 1, 1965] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

INCREASE IN RETIRED PAY TO PERSONS RETIRED BEFORE JUNE 1, 1958

Section 4 of Pub. L. 85–422, as amended by Pub. L. 85–855, §1(a), Aug. 28, 1958, 72 Stat. 1104, provided that:

''(a) Except for members covered by section 7 of this Act, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act [June 1, 1958], shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

''(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act [June 1, 1958] shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set

forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

''(c) Section 5 of the Career Incentive Act of 1955 (69 Stat. 22) does not apply to any person who is retired, or to whom retired pay, retirement pay, retainer pay, or equivalent pay (including temporary disability retired pay) is granted, on or after the effective date of this Act [June 1, 1958]''.

Section 1(b) of Pub. L. 85–855 provided that the amendment of section 4(a) of Pub. L. 85–422, which eliminated the words ''and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list'' preceding ''members and former members'' should be effective June 1, 1958.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 580, 1201, 1202, 1204, 1205, 1210, 1403, 3991, 8991 of this title; title 5 section 5532; title 42 section 213a.

§1401a. Adjustment of retired pay and retainer pay to reflect changes in Consumer Price Index

(a) PROHIBITION ON RECOMPUTATION TO REFLECT INCREASES IN BASIC PAY.—Unless otherwise specifically provided by law, the retired pay of a member or former member of an armed force may not be recomputed to reflect any increase in the rates of basic pay for members of the armed forces.

(b) COST-OF-LIVING ADJUSTMENTS BASED ON CPI INCREASES.—

(1) INCREASE REQUIRED.—Effective on December 1 of each year, the Secretary of Defense shall increase the retired pay of members and former members entitled to that pay in accordance with paragraphs (2) and (3).

(2) PERCENTAGE INCREASE.—Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the base index.

(3) REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS.—If the percent determined under paragraph (2) is greater than 1 percent, the Secretary shall increase the retired pay of each member and former member who first became a member on or after August 1, 1986, and has elected to receive a bonus under section 322 of title 37, by the difference between—

(A) the percent determined under paragraph (2); and

(B) 1 percent.

(4) SPECIAL RULE FOR PARAGRAPH (3).—If in any case in which an increase in retired pay that would otherwise be made under paragraph (3) is not made by reason of law (other than any provision of this section), then (unless otherwise provided by law) when the next increase in retired pay is made under this subsection, the increase under paragraph (3) shall be carried out so as to achieve the same net increase in retired pay under that paragraph that would have been the case if that law had not been enacted.

(5) REGULATIONS.—Any increase in retired pay under this subsection shall be made in accordance with regulations prescribed by the Secretary of Defense.

(c) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING FINAL BASIC PAY.—

(1) FIRST ADJUSTMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b) but subject to subsection (f)(2), if a person described in paragraph (3) becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(2) FIRST ADJUSTMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a person described in paragraph (3) becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased (subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section), effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

(A) the base index, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.

(3) MEMBERS COVERED.—Paragraphs (1) and (2) apply to a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, and

whose retired pay base is determined under section 1406 of this title.

(d) FIRST COLA ADJUSTMENT FOR MEMBERS WITH RETIRED PAY COMPUTED USING HIGH-THREE.—Notwithstanding subsection (b) but subject to subsection (f)(2), the retired pay of a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 of title 37 and whose retired pay base is determined under section 1407 of this title shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between the percent by which—

(1) the price index for the base quarter of that year, exceeds

(2) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay.

(e) PRO RATING OF INITIAL ADJUSTMENT.—Notwithstanding subsection (b) but subject to subsection (f)(2), the retired pay of a member or former member of an armed force who first became a member of a uniformed service on or after August 1, 1986, and elected to receive a bonus under section 322 of title 37 shall be increased on the effective date of the first adjustment of retired pay under subsection (b) after the member or former member becomes entitled to retired pay by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

(1) the percent by which—

(A) the price index for the base quarter of that year, exceeds

(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.

(f) PREVENTION OF PAY INVERSIONS

(1) PREVENTION OF RETIRED PAY INVERSIONS.—Notwithstanding any other provision of law, the monthly retired pay of a member or a former member of an armed force who initially became entitled to that pay on or after January 1, 1971, may not be less than the monthly retired pay to which he would be entitled if he had become entitled to retired pay at an earlier date based on the grade in which the member is retired, adjusted to reflect any applicable increases in such pay under this section. In computing the amount of retired pay to which such a member or former member would have been entitled on that earlier date, the computation shall be based on his grade, length of service, and the rate of basic pay applicable to him at that time, except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired. This subsection does not authorize any increase in the monthly retired pay to which a member was entitled for any period before October 7, 1975.

(2) PREVENTION OF COLA INVERSIONS.—The percentage of the first adjustment under this section in the retired pay of any person, as determined under subsection (c)(1), (c)(2), (d), or (e), may not exceed the percentage increase in retired pay determined under subsection (b)(2) that is effective on the same date as the effective date of such first adjustment.

(g) DEFINITIONS.—In this section:

(1) The term ''price index'' means the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

(2) The term ''base quarter'' means the calendar quarter ending on September 30 of each year.

(3) The term ''base index'' means the price index for the base quarter for the most recent adjustment under subsection (b).

(4) The term ''retired pay'' includes retainer pay.

(h) PRICE INDEX FOR A QUARTER.—For purposes of this section, the price index for a calendar quarter is the arithmetical mean of the price index for the three months comprising that quarter.

(Added Pub. L. 88–132, §5(g)(1), Oct. 2, 1963, 77 Stat. 213; amended Pub. L. 89–132, §5(b), Aug. 21, 1965, 79 Stat. 547; Pub. L. 90–207, §2(a)(1), Dec. 16, 1967, 81 Stat. 652; Pub. L. 91–179, §1, Dec. 30, 1969, 83 Stat. 837; Pub. L. 94–106, title VIII, §806, Oct. 7, 1975, 89 Stat. 538; Pub. L. 94–361, title VIII, §801(a), July 14, 1976, 90 Stat. 929; Pub. L. 94–440, title XIII, §1306(d)(1), Oct. 1, 1976, 90 Stat. 1462; Pub. L. 96–342, title VIII, §812(b)(1), Sept. 8, 1980, 94 Stat. 1098; Pub. L. 98–94, title IX, §§921(a)(1), (b), 922(a)(2), Sept. 24, 1983, 97 Stat. 640, 641; Pub. L. 98–525, title XIV, §1405(26), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–348, title I, §102, July 1, 1986, 100 Stat. 683; Pub. L. 100–180, div. A, title XII, §1231(21), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–224, §1, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 100–456, div. A, title VI, §622(a), Sept. 29, 1988, 102 Stat. 1983; Pub. L. 101–189, div. A, title VI, §651(b)(1), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–66, title II, §2001, Aug. 10, 1993, 107 Stat. 335; Pub. L. 103–160, div. A, title XI, §1182(e), Nov. 30, 1993, 107 Stat. 1773; Pub. L. 103–335, title VIII, §8114A(b)(1), Sept. 30, 1994, 108 Stat. 2648; Pub. L. 103–337, div. A, title VI, §633(a), Oct. 5, 1994, 108 Stat. 2787; Pub. L. 104–106, div. A, title VI, §631(a), (c), Feb. 10, 1996, 110 Stat. 364, 365; Pub. L. 104–201, div. A, title VI, §§631(a), 632(a), Sept. 23, 1996, 110 Stat. 2549; Pub. L. 106–65, div. A, title VI, §§641(b), 643(b)(1), title X, §1066(a)(10), Oct. 5, 1999, 113 Stat. 662, 663, 771; Pub. L. 107–314, div. A, title VI, §633, Dec. 2, 2002, 116 Stat. 2572.)

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–314, §633(a)(1), inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 107–314, §633(a)(2), inserted ''(subject to subsection (f)(2) as applied to other members whose retired pay is computed on the current rates of basic pay in the most recent adjustment under this section)'' after ''shall be increased'' in introductory provisions.

Subsec. (d). Pub. L. 107–314, §633(a)(1), (b)(1), in introductory provisions, inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' and ''or on or after August 1, 1986, if the member or former member did not elect to receive a bonus under section 322 of title 37'' after ''August 1, 1986,''.

Subsec. (e). Pub. L. 107–314, §633(a)(1), (b)(2), in introductory provisions, inserted ''but subject to subsection (f)(2)'' after ''Notwithstanding subsection (b)'' and ''and elected to receive a bonus under section 322 of title 37'' after ''August 1, 1986,''.

Subsec. (f). Pub. L. 107–314, §633(a)(3), designated existing provisions as par. (1), inserted par. heading, realigned margins, and added par. (2).

1999—Subsec. (b)(1). Pub. L. 106–65, §643(b)(1)(A), substituted ''INCREASE REQUIRED'' for ''IN GENERAL'' in heading.

Subsec. (b)(2). Pub. L. 106–65, §1066(a)(10), struck out subpar. (A) designation and heading ''GENERAL RULE'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and realigned their margins, and struck out former subpars. (B) and (C) which read as follows:

''(B) SPECIAL RULE FOR FISCAL YEAR 1996.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1995, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1996.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraph (B) does not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 106–65, §643(b)(1)(B), substituted ''PERCENTAGE INCREASE'' for ''PRE-AUGUST 1, 1986 MEMBERS'' in heading.

Pub. L. 106–65, §641(b)(1), substituted ''Except as otherwise provided in this subsection, the Secretary shall increase the retired pay of each member and former member'' for ''The Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986,''.

Subsec. (b)(3). Pub. L. 106–65, §643(b)(1)(C), substituted ''REDUCED PERCENTAGE FOR CERTAIN POST-AUGUST 1, 1986 MEMBERS'' for ''POST-AUGUST 1, 1986 MEMBERS'' in heading.

Pub. L. 106–65, §641(b)(2), inserted ''and has elected to receive a bonus under section 322 of title 37,'' after ''August 1, 1986,''.

1996—Subsec. (b)(2)(B). Pub. L. 104–201, §631(a), substituted ''SPECIAL RULE FOR FISCAL YEAR 1996'' for ''SPECIAL RULES FOR FISCAL YEARS 1996 AND 1998'' as subpar. heading, struck out cl. (i) designation and heading ''FISCAL YEAR 1996'' before ''In the case of'', and struck out cl. (ii) which read as follows: ''FISCAL YEAR 1998.—In the case of the increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September 1998.''

Pub. L. 104–106, §631(c), repealed Pub. L. 103–335, §8114A(b)(1). See 1994 Amendment note below.

Pub. L. 104–106, §631(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''SPECIAL RULES FOR FISCAL YEARS 1994 THROUGH 1998.—

''(i) FISCAL YEAR 1994.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(ii) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.''

Subsec. (c). Pub. L. 104–201, §632(a), added subsec. (c) and struck out former subsec. (c) which read as follows: ''RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH INTERVENING INCREASE IN BASIC PAY.—Notwithstanding subsection (b), if a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay based on rates of monthly basic pay that became effective after the last day of the calendar quarter of the base index, the retired pay of the member or former member shall be increased on the effective date of the next adjustment of retired pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.''

Subsec. (d). Pub. L. 104–201, §632(a), added subsec. (d) and struck out former subsec. (d) which read as follows: ''RULE FOR FIRST ADJUSTMENT AFTER RETIREMENT WITH NO INTERVENING INCREASE IN BASIC PAY.—If a member or former member of an armed force who first became a member of a uniformed service before August 1, 1986, becomes entitled to retired pay on or after the effective date of an adjustment in retired pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay, the retired pay of the member or former member shall be increased, effective on the date the member becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the base index, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the rates of monthly basic pay on which the retired pay is based became effective.''

1994—Subsec. (b)(2)(B). Pub. L. 103–335, §8114A(b)(1), which directed substituting, in heading, ''through 1996'' for ''through 1998'' and substituting, in cl. (ii), ''and 1996'' for ''through 1998'', ''of 1994 or 1995'' for ''of 1994, 1995, 1996, or 1997'', and ''March'' for ''September'', was repealed by Pub. L. 104–106, §631(c).

Subsec. (f). Pub. L. 103–337 inserted ''based on the grade in which the member is retired'' after ''at an earlier date'' in first sentence and '', except that such computation may not be based on a rate of basic pay for a grade higher than the grade in which the member is retired'' before period at end of second sentence and struck out after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1993—Subsec. (b)(2). Pub. L. 103–160, §1182(e)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Except as provided in paragraph (6), the Secretary shall increase the retired pay of each member and former member who first became a member of a uniformed service before August 1, 1986, by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the base index.''

Pub. L. 103–66, §2001(1), substituted ''Except as provided in paragraph (6), the Secretary'' for ''The Secretary''.

Subsec. (b)(6). Pub. L. 103–160, §1182(e)(2), struck out par. (6) which read as follows: ''SPECIAL RULES FOR PARAGRAPH (2) FOR FISCAL YEARS 1994 THROUGH 1998.—

''(A) FISCAL YEAR 1994.—In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial

month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

''(B) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

''(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.''

Pub. L. 103–66, § 2001(2), added par. (6).

1989—Subsec. (b)(3). Pub. L. 101–189, § 651(b)(1)(A), inserted ''and former member'' after first reference to ''member''.

Subsec. (e). Pub. L. 101–189, § 651(b)(1)(B), inserted ''or former member'' after first and third reference to ''member''.

Subsec. (f). Pub. L. 101–189, § 651(b)(1)(C), inserted ''or former member'' after ''member'' in second sentence.

1988—Subsec. (f). Pub. L. 100–456 inserted after second sentence ''However, in the case of a member who, after initially becoming eligible for retired pay, is reduced in grade pursuant to a sentence of a court-martial, such computation may not be based on a grade higher than the grade in which the member is retired.''

1987—Subsec. (a). Pub. L. 100–180 struck out ''pay'' after ''the retired pay''.

Subsec. (b)(4), (5). Pub. L. 100–224, § 1(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (e). Pub. L. 100–224, § 1(b), substituted ''by the percent (adjusted to the nearest one-tenth of 1 percent) equal to the difference between—

''(1) the percent by which—

''(A) the price index for the base quarter of that year, exceeds

''(B) the price index for the calendar quarter immediately before the calendar quarter during which the member became entitled to retired pay; and

''(2) one-fourth of 1 percent for each calendar quarter from the quarter described in paragraph (1)(B) to the quarter described in paragraph (1)(A).

If in any case the percent described in paragraph (2) exceeds the percent determined under paragraph (1), such an increase shall not be made.'' for ''only by the percent (adjusted to the nearest one-tenth of 1 percent) by which—

''(1) the price index for the base quarter of that year, exceeds

''(2) the price index for the calendar quarter immediately before the calendar quarter in which the member became entitled to retired pay.''

1986—Subsec. (a). Pub. L. 99–348, § 102(b)(1), (c)(1), inserted heading, struck out ''or retainer'' after ''retired pay'', and struck out sentence defining ''Index'' in this section as meaning the Consumer Price Index (all items, United States city average) published by the Bureau of Labor Statistics.

Subsecs. (b) to (d). Pub. L. 99–348, § 102(a), added subsecs. (b) to (d) and struck out former subsecs. (b) to (d) which read as follows:

''(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.

''(c) Notwithstanding subsection (b), if a member or former member of an armed force becomes entitled to retired pay or retainer pay based on rates of monthly basic pay prescribed by section 203 of title 37 that became effective after the last day of the month of the base index, his retired pay or retainer pay shall be increased on the effective date of the next adjustment of retired pay and retainer pay under subsection (b) only by the percent (adjusted to the nearest one-tenth of 1 percent) that the new base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.

''(d) If a member or former member of an armed force becomes entitled to retired pay or retainer pay on or after the effective date of an adjustment of retired pay and retainer pay under subsection (b) but before the effective date of the next increase in the rates of monthly basic pay prescribed by section 203 of title 37, his retired pay or retainer pay shall be increased, effective on the date he becomes entitled to that pay, by the percent (adjusted to the nearest one-tenth of 1 percent) that the base index exceeds the index for the calendar month immediately before that in which the rates of monthly basic pay on which his retired pay or retainer pay is based became effective.''

Subsec. (e). Pub. L. 99–348, § 102(a), added subsec. (e).

Subsec. (f). Pub. L. 99–348, § 102(c)(2), inserted heading and struck out ''or retainer'' after ''retired'' wherever appearing.

Subsecs. (g), (h). Pub. L. 99–348, § 102(b)(2), added subsecs. (g) and (h) and struck out former subsec. (g) which provided that the retired or retainer pay of a member or former member of an armed force as adjusted under this section, if not a multiple of $1, would be rounded to the next lower multiple of $1.

1984—Subsec. (f). Pub. L. 98–525 substituted ''before October 7, 1975'' for ''prior to the effective date of this subsection''.

1983—Subsec. (e). Pub. L. 98–94, § 921(a)(1), struck out subsec. (e) which provided that: ''Notwithstanding subsections (c) and (d), the adjusted retired pay or retainer pay of a member or former member of an armed force retired on or after October 1, 1967, may not be less than it would have been had he become entitled to retired pay or retainer pay based on the same pay grade, years of service for pay, years of service for retired or retainer pay purposes, and percent of disability, if any, on the day before the effective date of the rates of monthly basic pay on which his retired pay or retainer pay is based.''

Subsec. (f). Pub. L. 98–94, § 921(b), struck out '', subject to subsection (e) of this section,'' after ''the computation shall''.

Subsec. (g). Pub. L. 98–94, § 922(a)(2), added subsec. (g).

1980—Subsec. (b). Pub. L. 96–342 substituted provisions directing the Secretary of Defense to increase the retired and retainer pay of members and former members of the armed forces each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of title 5, with such increase to be by the same percent as the percentage by which the annuities are increased for provisions under which the Secretary of Defense had been authorized and directed to increase the retired pay and retainer pay of members and former members of the armed forces on March 1 and September 1 depending upon determinations which the Secretary was directed to make on January 1 and July 1 of each year with regards to the percentage change in the index published for June or December of the previous year.

1976—Subsec. (b). Pub. L. 94–440 substituted provisions that Secretary of Defense shall determine the percent change in the index on Jan. 1 and July 1 of each year and effective Mar. 1 and Sept. 1, retired and retainer pay shall be increased by the computed percent change adjusted to the nearest ⅒ of 1 percent, for provisions that the Secretary of Defense shall determine on a monthly basis the percent by which the index has increased over that used as a basis for the most recent adjustment of retired and retainer pay and if Secretary determines for 3 consecutive months that the amount of increase is at least 3 percent over the base index, retired and retainer pay shall be increased by adding 1 percent and the highest percent increase in the index during those months adjusted to the nearest ⅒ of 1 percent.

Pub. L. 94–361 struck out ''the per centum obtained by adding 1 per centum and'' before ''the highest per centum of increase in the index''.

1975—Subsec. (f). Pub. L. 94–106 added subsec. (f).

1969—Subsec. (b). Pub. L. 91–179 provided for a 1 percent addition in computing increases in retired and retainer pay of present and former members of the armed forces, whenever the Secretary made such adjustments to effect increases in the consumer index over the base index.

1967—Subsec. (a). Pub. L. 90–207 substituted ''may not be recomputed'' for ''shall not be recomputed'', struck out ''if that increase becomes effective after the effective date of this section'' after ''armed forces'' and inserted sentence defining ''Index''.

Subsec. (b). Pub. L. 90–207 revised subsec. (b) generally and, among other changes, substituted provisions requiring the Secretary of Defense to determine monthly the percent by which the index has increased over that used as the basis for the most recent adjustment of retired and retainer pay under this subsection for provisions which required the Secretary of Defense to determine the per centum that the index for each calendar month after the calendar month immediately preceding the effective date of Pub. L. 89–132 has increased over the base index (that for the calendar month immediately preceding the effective date of Pub. L. 89–132 or, if later, that used as the basis for the most recent adjustment of retired and retainer pay under this subsection).

Subsecs. (c) to (e). Pub. L. 90–207 added subsecs. (c) to (e).

1965—Subsec. (b). Pub. L. 89–132 substituted provisions requiring the Secretary of Defense to determine the per centum for each calendar month that the Consumer Price Index has increased over the base Consumer Price Index, and if the index has shown an increase of at least 3 per centum over the base index for three consecutive calendar months to increase the retired or retainer pay by the highest per centum of increase in the index, for provisions which required a determination of the increase over the preceding calendar year and permitted an increase in the retired or retainer pay if the index advanced 3 per centum or more for a full calendar year.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title VI, §644, Oct. 5, 1999, 113 Stat. 664, provided that: ''The amendments made by sections 641, 642, and 643 [enacting section 322 of Title 37, Pay and Allowances of the Uniformed Services, and amending this section and sections 1409, 1410, 1451, and 1452 of this title] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 632(b) of Pub. L. 104–201 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to adjustments of retired and retainer pay effective after the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 633(b) of Pub. L. 103–337 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of the retired pay of a member of the Armed Forces who retires on or after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 622(b) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins after the date of the enactment of this Act [Sept. 29, 1988] and shall apply to the computation of the retired or retainer pay of members who initially become entitled to such pay on or after such effective date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 921(a)(2) of Pub. L. 98–94 provided that:

''(A) Notwithstanding the repeal of such subsection [subsec. (e) of this section], the provisions of such subsection shall apply in the case of any member or former member of the Armed Forces eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] for a period of three years after such date in the same manner such provisions would have applied had they not been repealed.

''(B) The amount of retired or retainer pay of any member or former member of the Armed Forces who was eligible to retire on the date of the enactment of this Act [Sept. 24, 1983] and who becomes entitled to such pay at any time after the end of the three-year period beginning on the date of the enactment of this Act may not be less than it would have been had he become entitled to retired or retainer pay on the day before the end of such three-year period.''

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 812(b)(1) of Pub. L. 96–342, set out below, provided that the amendment made by that section is effective Aug. 31, 1981, but subject to certain conditions.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1306(d)(2) of Pub. L. 94–440 provided that: ''The amendment made by subsection (1) [amending this section] shall apply to any increase in retired pay or retainer pay after the date of enactment of this Act [Oct. 1, 1976], except that with respect to the first date after the date of enactment of this Act on which the Secretary of Defense is to determine a percent change, such percent change shall be determined by computing the change in the index published for the month immediately preceding such first date over the index for the last month preceding the date of enactment of this Act used as the basis for the most recent adjustment of retired pay and retainer pay under section 1401a(b) of title 10, United States Code [subsec. (b) of this section], as in effect immediately prior to the date of enactment of this Act [Oct. 1, 1976].''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 2 of Pub. L. 91–179 provided that: ''The provisions of this Act [amending this section] become effective on October 31, 1969.''

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–132 effective Sept. 1, 1965, see section 10 of Pub. L. 89–132, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date of 1963 Amendment note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

CONTINGENT ALTERNATIVE DATE FOR FISCAL YEAR 1998

Section 631(b) of Pub. L. 104–106 provided that if a civil service retiree COLA that becomes effective during fiscal year 1998 becomes effective on a date other than the date on which a military retiree COLA during that fiscal year is specified to become effective under subsec. (b)(2)(B) of this section, then the increase in military retired and retainer pay would become payable as part of such retired and retainer pay effective on the same date on which such civil service retiree COLA was to become effective, prior to repeal by Pub.

L. 104–201, div. A, title VI, § 631(b), Sept. 23, 1996, 110 Stat. 2549.

ELIMINATION OF DISPARITY BETWEEN EFFECTIVE DATES FOR MILITARY AND CIVILIAN RETIREE COST-OF-LIVING ADJUSTMENTS FOR FISCAL YEAR 1995

Section 631 of Pub. L. 103–337 provided that:

''(a) IN GENERAL.—The fiscal year 1995 increase in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(b) DEFINITIONS.—For the purposes of subsection (a):

''(1) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(2) The term 'retired pay' includes retainer pay.

''(c) LIMITATION.—Subsection (a) shall be effective only if there is appropriated to the Department of Defense Military Retirement Fund (in an Act making appropriations for the Department of Defense for fiscal year 1995 that is enacted before March 1, 1995) such amount as is necessary to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).

''(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 1995 to the Department of Defense Military Retirement Fund the sum of $376,000,000 to offset increased outlays to be made from that fund during fiscal year 1995 by reason of the provisions of subsection (a).''

SENSE OF CONGRESS ON EQUAL TREATMENT OF EFFECTIVE DATES FOR FUTURE COST-OF-LIVING ADJUSTMENTS FOR MILITARY AND CIVILIAN RETIREES

Section 632 of Pub. L. 103–337 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) Congress, in the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103–66, see Tables for classification], changed the effective dates for future cost-of-living adjustments for military retired pay and for Federal civilian retirement annuities, which (before that Act) were provided by law to be made effective on December 1 each year.

''(2) The timing, and the percentage of increase, of military and Federal civilian retirees' cost-of-living adjustments have been linked for decades.

''(3) The effect of the enactment of the Omnibus Budget Reconciliation Act of 1993 was to abandon the longstanding congressional practice of treating military and Federal civilian retirees identically in matters related to cost-of-living adjustments.

''(b) SENSE OF CONGRESS.—In light of the findings in subsection (a), it is the sense of Congress that—

''(1) as a matter of simple equity and fairness, it is imperative that cost-of-living adjustments in retirement benefits for military and Federal civilian retirees be returned to an identical schedule as soon as possible, but not later than January 1, 1999;

''(2) if after October 1, 1998, there is, by law, a difference between the date on which a cost-of-living adjustment for Federal civilian retirees takes effect and the date on which a cost-of-living adjustment for military retirees takes effect, then the difference in those effective dates should be eliminated by requiring that cost-of-living adjustments for both classes of retirees become effective on the earlier of the two dates; and

''(3) if after October 1, 1998, there is, by law, a difference between the first month for which a cost-of-living adjustment for civilian retirees is payable and the first month for which a cost-of-living adjustment for military retirees is payable, then the difference in the months for which those adjustments are first payable should be eliminated by requiring that the cost-of-living adjustments for both classes of retirees first become payable for the earlier of the two months.''

WAIVER OF ADMINISTRATIVE TIME-IN-GRADE REQUIREMENTS TO PREVENT PAY INVERSIONS IN RETIRED PAY OF CERTAIN MILITARY RETIREES

Section 634 of Pub. L. 103–337 provided that:

''(a) AUTHORITY.—The Secretary concerned may, for purposes of the computation under section 1401a(f) of title 10, United States Code, of the retired pay of military retirees described in subsection (b), waive any administrative time-in-grade regulation (as described in subsection (d)) that would otherwise apply to such computation. Any such waiver may be made retroactive, in the case of any such retiree, to the date on which that retiree initially became entitled to retired pay.

''(b) COVERED RETIREES.—This section applies to any military retiree—

''(1) who initially became entitled to retired pay on or after January 1, 1971, and before the date of the enactment of this Act [Oct. 5, 1994];

''(2) whose retired pay, by reason of the provisions of section 1401a(f) of title 10, United States Code (the so-called 'Tower amendment'), was initially computed as an amount greater than would have been the case but for that section; and

''(3) who, as of the earlier computation date applicable to that retiree—

''(A) in the case of an individual retired in an enlisted grade, had served in the grade in which the retiree retired for a period that was less than the period prescribed by the applicable administrative time-in-grade requirement described in subsection (d); and

''(B) in the case of an individual retired in an officer grade—

''(i) was subject to an administrative time-in-grade requirement described in subsection (d) that established a time-in-grade requirement that was longer than the statutory time-in-grade requirement applicable to that member; and

''(ii) had served in the grade in which the retiree retired for a period that was less than the period prescribed by such administrative time-in-grade requirement but not less than the statutory time-in-grade requirement applicable to that member.

''(c) EARLIER COMPUTATION DATE.—For purposes of subsection (b)(3), the earlier computation date applicable to a military retiree is the date that (under such section 1401a(f) as in effect on the date of the member's retirement) was the 'earlier date' that was used as the basis for the computation of the retiree's retired pay.

''(d) REGULATIONS SUBJECT TO WAIVER.—A regulation that may be waived under subsection (a) is any regulation (not required by law) that establishes a minimum period of time that a member of the Armed Forces must have served in a grade on active duty in order to be eligible to retire in that grade.

''(e) SCOPE OF WAIVER AUTHORITY.—The Secretary concerned may exercise the authority provided in subsection (a) in the case of an individual military retiree or for any group of military retirees.

''(f) MILITARY RETIREE DEFINED.—For purposes of this section, the term 'military retiree' means a member or former member of the Armed Forces who is entitled to retired pay.

''(g) SECRETARY CONCERNED.—For purposes of this section, the term 'Secretary concerned' has the meaning given such term in section 101 of title 10, United States Code.''

FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENTS FOR MILITARY RETIREES

Pub. L. 103–335, title VIII, § 8114A, Sept. 30, 1994, 108 Stat. 2648, as amended by Pub. L. 104–106, div. A, title VI, § 631(c), Feb. 10, 1996, 110 Stat. 365, provided that:

''(a) FISCAL YEAR 1995 COST-OF-LIVING ADJUSTMENT FOR MILITARY RETIREES.—(1) The fiscal year 1995 in-

crease in military retired pay shall (notwithstanding subparagraph (B) of section 1401a(b)(2) of title 10, United States Code) first be payable as part of such retired pay for the month of March 1995.

''(2) For the purposes of subsection (a):

''(A) The term 'fiscal year 1995 increase in military retired pay' means the increase in retired pay that, pursuant to paragraph (1) of section 1401a(b) of title 10, United States Code, becomes effective on December 1, 1994.

''(B) The term 'retired pay' includes retainer pay.

''(b) [Repealed. Pub. L. 104–106, div. A, title VI, §631(c), Feb. 10, 1996, 110 Stat. 365.]''

CONTINGENT ONCE-A-YEAR ADJUSTMENT OF RETIRED AND RETAINER PAY

Pub. L. 96–342, title VIII, §812, Sept. 8, 1980, 94 Stat. 1098, as amended by Pub. L. 97–35, title II, §211(b), Aug. 13, 1981, 95 Stat. 383, provided that:

''(a)(1) The increase in the retired and retainer pay of members and former members of the uniformed services which but for this section would be made effective September 1, 1980, under the provisions of paragraph (2)(B) of section 1401a(b) of title 10, United States Code, shall not be made.

''(2)(A) In making the determination required by the provisions of paragraph (1)(A) of section 1401a(b) of title 10, United States Code, to be made on January 1, 1981, or within a reasonable time thereafter, the Secretary of Defense shall determine the percent change in the index (as such term is defined in section 1401a(a) of title 10, United States Code) published for December 1980 over the index published for December 1979 (rather than over the index published for June 1980).

''(B) The increase in the retired and retainer pay of members and former members of the uniformed services to be made effective March 1, 1981, under the provisions of paragraph (2)(A) of such section shall, in lieu of the increase prescribed by such paragraph, be the percent change computed under subparagraph (A), adjusted to the nearest ⅒ of one percent.

''(3) The President shall by Executive order provide for only one cost-of-living adjustment in the annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) during the period beginning on September 1, 1980, and ending on August 31, 1981. Such adjustment shall be effective March 1, 1981, and shall be made in the same manner and percentage as the adjustment provided for in paragraphs (1) and (2) for the retired and retainer pay of members and former members of the uniformed services.

''(4) Paragraphs (1), (2), and (3) shall not take effect unless similar legislation is enacted which provides for only one cost-of-living increase in annuities paid under subchapter III of chapter 83 of title 5, United States Code, during the period beginning on September 1, 1980, and ending on August 31, 1981.

''(b)(1) Effective August 31, 1981, but subject to paragraph (2), section 1401a(b), of title 10, United States Code, relating to adjustment of retired pay and retainer pay to reflect changes in the Consumer Price Index, is amended to read as follows:

'(b) Each time that an increase is made under section 8340(b) of title 5 in annuities paid under subchapter III of chapter 83 of such title, the Secretary of Defense shall at the same time increase the retired and retainer pay of members and former members of the armed forces by the same percent as the percentage by which annuities are increased under such section.'.

''(2) The amendment made by paragraph (1) shall not take effect unless legislation is enacted which provides for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis. In the event such legislation is enacted, such amendment shall become effective with respect to adjustments in the retired pay and retainer pay of members and former members of the uniformed services at the same time that the legislation providing for such a once-a-year adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, becomes effective.

''(3) If legislation described in paragraph (2) is enacted to provide for the adjustment of annuities paid under subchapter III of chapter 83 of title 5, United States Code, on a once-a-year basis, the President shall exercise the authority vested in him under section 292 of the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) to provide for cost-of-living adjustments in the annuities paid under such Act on an identical basis.

''(4) If at the time the first adjustment in retired and retainer pay is made under section 1401a(b) of title 10, United States Code, as amended by paragraph (1) of this subsection, the period upon which the most recent adjustment in such retired and retainer pay was computed is not identical to the period upon which the most recent adjustment in annuities under subchapter III of chapter 83 of title 5, United States Code, was computed, then the percentage increase to be made under such section 1401a(b) at the time of the first such adjustment shall be computed in the same manner as the percentage increase made at the same time in annuities under subchapter III of chapter 83 of title 5, United States Code, is computed, but shall be based on the period beginning on the last day of the period upon which the most recent adjustment in such retired and retainer pay was computed and ending on the last day of the period upon which the adjustment being made at the same time in annuities under such subchapter III is computed. The President shall by Executive order provide for a similar computation of the adjustment in annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees (50 U.S.C. 403 note) which is made at the same time as the increase in retired and retainer pay to which the preceeding [preceding] sentence is applicable.

''(c) For the purposes of this section, the term 'uniformed services' means—

''(1) the Armed Forces; and

''(2) the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service.''

COMPUTATION OF RETIRED PAY OF SERGEANT MAJORS OF MARINE CORPS WHO COMPLETED SERVICE PRIOR TO DECEMBER 16, 1967

Pub. L. 95–581, Nov. 2, 1978, 92 Stat. 2478, provided: ''That (a) the retired pay of any individual who served as sergeant major of the Marine Corps and who completed such service before December 16, 1967, shall be computed based upon a rate of basic pay of the sum of (1) the highest rate of basic pay to which such individual was entitled while so serving, and (2) $150.

''(b) For the purpose of computing any adjustment under section 1401a of title 10, United States Code, in the retired pay of any individual whose retired pay is affected by subsection (a), the rate of basic pay provided under such subsection for the purpose of computing the retired pay of such individual shall be considered to have been the rate of basic pay applicable to such individual at the time of his retirement, and any adjustment under such section 1401a in the retired pay of such individual before September 30, 1978, shall be readjusted to reflect such rate of basic pay.

''SEC. 2. (a) Any change in the retired pay of any individual by reason of the enactment of this Act shall be effective for months beginning after September 30, 1978.

''(b) The enactment of this Act shall not reduce the retired pay of any individual.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 96–342, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, §802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement

Act and is classified generally to chapter 38 (§ 2001 et seq.) of Title 50, War and National Defense.]

COST-OF-LIVING ADJUSTMENT OF RETIRED PAY OR RETAINER PAY OF MEMBERS AND FORMER MEMBERS OF ARMED FORCES AND COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AND PUBLIC HEALTH SERVICE; EFFECTIVE DATE OF 1976 AMENDMENT

Section 801(c) of Pub. L. 94–361 provided that:

''(1) The amendments made by subsections (a) [to subsec. (b) of this section] and (b) [to provisions formerly set out as a note under section 403 of title 50] shall not become effective unless legislation is enacted repealing the so-called 1 per centum add-on provision applicable to the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code. In the event such legislation is enacted, such amendments shall become effective with respect to the cost-of-living adjustment of the retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees at the same time the repeal of such 1 per centum add-on provision becomes effective with respect to such cost-of-living adjustment of annuities paid under such chapter 83.

''(2) If any change other than the repeal of the so-called 1 per centum add-on provision referred to in paragraph (1) is made in the method of computing the cost-of-living adjustment of annuities paid under chapter 83 of title 5, United States Code, the President shall make the same change in the cost-of-living adjustment of retired pay and retainer pay of members and former members of the Armed Forces and the cost-of-living adjustment of annuities paid under the Central Intelligence Agency [Retirement] Act of 1964 for Certain Employees. Any change made under this paragraph shall have the same effective date as the effective date applicable to such change made in annuities under chapter 83 of title 5, United States Code.

''(3) The provisions of paragraphs (1) and (2) relating to any change in the method of computing the cost-of-living adjustment of the retired pay or retainer pay of members and former members of the Armed Forces shall be applicable to the computation of cost-of-living adjustments of the retired pay of commissioned officers of the National Oceanic and Atmospheric Administration and the retired pay of commissioned officers of the Public Health Service.''

[The Central Intelligence Agency Retirement Act of 1964 for Certain Employees, referred to in Pub. L. 94–361, set out above, is Pub. L. 88–643, Oct. 13, 1964, 78 Stat. 1043, which was revised generally by Pub. L. 102–496, title VIII, § 802, Oct. 24, 1992, 106 Stat. 3196, is known as the Central Intelligence Agency Retirement Act and is classified generally to chapter 38 (§ 2001 et seq.) of Title 50, War and National Defense.]

INCREASE IN CERTAIN ARMED FORCE MEMBERS' PAY AND ALLOWANCES NOT OTHERWISE TIED TO CONSUMER PRICE INDEX

Pub. L. 93–210, § 2, Dec. 28, 1973, 87 Stat. 908, provided that:

''(a) Notwithstanding any other provision of law, effective on the date of enactment of this Act [Dec. 28, 1973], the pay and allowances of members of the Armed Forces to whom this Act applies shall be increased to amounts equal to the amounts such pay and allowances would have been increased if the pay and allowances of such members had been increased, under section 1401a(b) of title 10, United States Code, by the same percentage rates, consecutively compounded, that the retired pay or retainer pay of members and former members of the Armed Forces entitled to retired pay or retainer pay since October 1, 1967, has been increased, and such member shall, on and after the date of enactment of this Act [Dec. 28, 1973], have his pay and allowances increased effective the same day and by the same percentage rate that the retired pay or retainer pay of members and former members of the Armed Forces is increased under such section 1401a(b).

''(b) This section applies to members of the Armed Forces entitled to pay and allowances under either of the following provisions of law:

''(1) The Act of June 26, 1948, chapter 677 (62 Stat. 1052) [which authorized the appointment of one officer in the Regular Army in the permanent grade of general, one officer in the Regular Air Force in the permanent grade of general, and one officer in the Regular Navy in the permanent grade of admiral].

''(2) The Act of September 18, 1950, chapter 952 (64 Stat. A224) [which authorized the appointment of Omar N. Bradley to the permanent grade of General of the Army].

''(c) No amounts shall be paid, as the result of the enactment of this section, for any period prior to the date of enactment of this section [Dec. 28, 1973].''

RETROACTIVE ADJUSTMENT OF RETIRED OR RETAINER PAY OF PERSONS ENTITLED THERETO AFTER NOVEMBER 30, 1966, BUT PRIOR TO EFFECTIVE DATE OF NEXT INCREASE AFTER JULY 1, 1966

Section 2(b) of Pub. L. 90–207 provided that: ''Notwithstanding section 1401a(d) of title 10, United States Code, a person who is a member or former member of an armed force on the date of enactment of this Act [Dec. 16, 1967] and who initially became, or hereafter initially becomes, entitled to retired pay or retainer pay after November 30, 1966, but before the effective date of the next increase after July 1, 1966, in the rates of monthly basic pay prescribed by section 203 of title 37, United States Code, is entitled to have his retired pay or retainer pay increased by 3.7 percent, effective as of the date of his entitlement to that pay.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1402, 1402a, 1408, 1410, 1434, 1451, 1452 of this title; title 24 section 414; title 37 section 322.

§ 1402. Recomputation of retired or retainer pay to reflect later active duty of members who first became members before September 8, 1980

(a) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Subtract
Monthly basic pay[1] of the grade in which he would be eligible— (1) to retire if he were retiring upon that release from active duty; or (2) to transfer to the Fleet Reserve or Fleet Marine Corps Reserve if he were transferring to either upon that release from active duty.	2½ percent of the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.[2]	Excess over 75 percent of pay upon which computation is based.

[1] For a member who has been entitled, for continuous period of at least two years, to basic pay under the rates of basic pay in effect upon that release from active duty, compute under those rates. For a member who has been entitled to basic pay for a continuous period of at least two years upon that release from active duty, but who is not covered by the preceding sentence, compute under the rates of basic pay replaced by those in effect upon that release from active duty. For any other member, compute under the rates of basic pay under which the member's retired pay or retainer pay was computed when he entered on that active duty.

[2] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

However, an officer who was ordered to active duty (other than for training) in the grade that he holds on the retired list under former section 6150 of this title, or under any other law that authorized advancement on the retired list based upon a special commendation for the performance of duty in actual combat, may have his retired pay recomputed under this subsection on the basis of the rate of basic pay applicable to that grade upon his release from that active duty only if he has been entitled, for a continuous period of at least three years, to basic pay at that rate. If, upon his release from that active duty, he has been entitled to the basic pay of that grade for a continuous period of at least three years, but he does not qualify under the preceding sentence, he may have his retired pay recomputed under this subsection on the basis of the rate of basic pay prescribed for that grade by the rates of basic pay replaced by those in effect upon his release from that duty.

(b) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who has been retired other than for physical disability, and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) A member of an armed force who first became a member of a uniformed service before September 8, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on that list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on the temporary disability retired list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
Highest monthly basic pay that member received while on active duty after retirement or after date when his name was placed on temporary disability retired list, as the case may be.	As member elects— (1) 2½% of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.[1]	Add amount necessary to increase product of columns 1 and 2 to 50% of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75% of pay upon which computation is based.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

If, while on active duty after retirement or after his name was placed on the temporary disability retired list, a member covered by this subsection was promoted to a higher grade in which he served satisfactorily, as determined by the Secretary concerned, he is entitled to retired pay based on the monthly basic pay to which he would be entitled if he were on active duty in that higher grade.

(e) Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the rate of basic pay under which his retired pay or retainer pay was computed when he entered on active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f)(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the monthly rate of basic pay upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 107; Pub. L. 86–559, §1(5), June 30, 1960, 74 Stat. 265; Pub. L. 88–132, §5(*l*)(1), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90–207, §2(a)(2), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96–342, title VIII, §813(b)(2), Sept. 8, 1980, 94 Stat. 1102; Pub. L. 96–513, title V, §511(50), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§922(a)(3), (4), 923(a)(1), (2)(B), (C), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, §201(b)(3), title III, §304(a)(3), (b)(3), July 1, 1986, 100 Stat. 694, 703; Pub. L. 102–484, div. A, title VI, §642(a), Oct. 23, 1992, 106 Stat. 2424.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1402(a)	37:316.	Oct. 12, 1949, ch. 681, §§402(d) (last proviso, less applicability to retired grade), 516, 63 Stat. 819, 832.
1402(b), (c).	37:272(d) (1st 128 words of last proviso, less applicability to retired grade).	
1402(d)	37:272(d) (last proviso, less 1st 128 words, and less applicability to retired grade).	

In subsection (a), columns 1 and 2 of the table are based on 37:316 (1st proviso). Column 4 is based on 37:316 (last proviso). Footnote 1 is based on 37:316 (2d proviso). 37:316 (3d proviso) is omitted as operationally obsolete.

In subsections (a) and (d), the words ''and disregard a part of a year that is less than six months'' are added to footnote 1 to conform to footnote 3 of section 1401 of this title.

In subsection (b), the words ''for which he would otherwise be eligible for retired pay under chapter 61 of this title'' are substituted for the words ''in accordance with the standard schedule of rating disabilities in current use by the Veterans' Administration'' and ''if qualified''.

In subsection (c), the requirement that the physical disability incurred be 30 percent or more is omitted as surplusage, since it is also required that the member be qualified for physical disability retirement under section 1201 or 1204 of this title.

In subsection (d), the rules stated in 37:316 (2d and last provisos) are repeated in column 4 of the table and the footnote to the table, since they apply to all cases of increased pay for active duty performed after retirement.

CODIFICATION

Another section 304(b)(3) of Pub. L. 99–348 amended the table of sections at the beginning of chapter 571 of this title.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Pub. L. 99–348, §304(b)(3), inserted ''of members who first became members before September 8, 1980'' in section catchline.

Subsec. (a). Pub. L. 99–348, §§201(b)(3), 304(a)(3), struck out ''(as defined in section 1407(a)(2) of this title)'' after ''uniformed service'' and struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

Subsecs. (b), (c). Pub. L. 99–348, §304(a)(3), struck out ''(as defined in section 1407(a)(2) of this title)'' after ''uniformed service''.

Subsec. (d). Pub. L. 99–348, §201(b)(3), struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1. See section 1412 of this title.

1983—Subsec. (a). Pub. L. 98–94, §922(a)(3), substituted ''according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, §923(a)(1), (2)(B), in footnote 2 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Subsec. (d). Pub. L. 98–94, §922(a)(4), substituted ''according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, §923(a)(1), (2)(C), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Subsecs. (a) to (c). Pub. L. 96–513 substituted ''a uniformed service (as defined in section 1407(a)(2) of this title) before September 8, 1980'' for ''the armed forces before the date of the enactment of the Department of Defense Appropriation Act, 1981'' wherever appearing.

Pub. L. 96–342 inserted ''who first became a member of the armed forces before the date of the enactment of the Department of Defense Authorization Act, 1981, and'' after ''of an armed force'' wherever appearing.

1967—Subsec. (d). Pub. L. 90–207, §2(a)(2)(A), inserted ''increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay'' after ''retired,''.

Subsec. (e). Pub. L. 90–207, §2(a)(2)(B), added subsec. (e).

1963—Subsec. (a). Pub. L. 88–132 substituted in introductory clause ''who has become entitled to retired pay or retainer pay'' for ''who has been retired or has become entitled to retainer pay'' and ''to recompute his retired pay or retainer pay upon his release from that duty'' for '', upon release from that duty, to recompute his retired or retainer pay'' and inserted in such clause ''(other than for training)'' after ''active duty''; substituted in column 1 of table ''Monthly basic pay'' for ''Monthly basic pay or base and longevity pay, as the case may be,'', designated existing provisions as (1) and added (2); substituted in (1) of column 2 of the table ''retired pay or retainer pay'' for ''retired or retainer pay'' and in (2) of such column 2 ''after becoming entitled to retired pay or retainer pay'' for ''after retirement or becoming entitled to retainer pay'', struck out column 3 relating to addition and redesignated column 4 as 3; added footnote 1 to the table and redesignated former footnote 1 as 2; and inserted provisions for recomputation of retired pay upon release from active duty of officers ordered to active duty in a higher grade based upon special commendation for performance of duty in actual combat.

1960—Subsec. (a). Pub. L. 86–559 prohibited recomputation of retired pay under subsec. (a) on the basis of any period of active duty that was of less than six consecutive months' duration or on the basis of any active duty for training for a reserve officer who is or has been retired under section 3911, 6323, or 8911 of this title or under section 232 of title 14.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

Section 642(c) of Pub. L. 102–484 provided that: ''No benefits shall accrue for months beginning before the date of the enactment of this Act [Oct. 23, 1992] by reason of the amendments made by this section [amending this section and section 1402a of this title].''

RECOMPUTATION OF RETIRED PAY OF CERTAIN RECALLED RETIREES

Pub. L. 98–525, title VI, §655, Oct. 19, 1984, 98 Stat. 2552, provided that:

''(a) Notwithstanding the second sentence of footnote 1 of the table contained in section 1402(a) of title 10, United States Code (relating to recomputation of retired pay to reflect later active duty), in the case of a member of the Armed Forces who—

''(1) was voluntarily called or ordered to active duty during the period beginning on October 1, 1963, and ending on September 30, 1971;

''(2) was at the time of such call or order entitled to retired pay or retainer pay;

''(3) served on such active duty under such call or order for a continuous period of at least two years; and

''(4) was released from such active duty before October 1, 1973,

the retired or retainer pay of such member shall be recomputed, as provided in subsection (b), under the rates of basic pay in effect at the time of that release from active duty.

''(b) The retired or retainer pay of a member of the Armed Forces described in subsection (a) shall be the amount determined under section 1402(a) of title 10, United States Code (as modified with respect to such member by subsection (a)), and increased by the amount by which the member's retired or retainer pay would have been increased during the period beginning on the date of the member's release from active duty referred to in subsection (a)(4) and ending on the day before the day on which this section becomes effective had subsection (a) applied in the case of the member at the time of that release from active duty.

''(c) This section shall apply only with respect to retired pay and retainer pay payable for months beginning after September 30, 1984, or on or after the date of the enactment of this Act [Oct. 19, 1984], whichever is later.''

RETIRED PAY AND RETAINER PAY; PROHIBITION AGAINST RECOMPUTATION UNDER 1963 PAY RATES; EXCEPTIONS; INCREMENTS BASED ON THE GREATER OF A 5 PERCENT INCREASE OR RECOMPUTATION UNDER 1958 PAY RATES FOR MEMBERS RETIRED PRIOR TO OCTOBER 1949 FOR REASONS OTHER THAN PHYSICAL DISABILITY, MEMBERS RECEIVING RETIRED PAY UNDER CAREER COMPENSATION ACT OF 1949 AND FORMER CHIEFS OF STAFF; ADDITIONAL 5 PERCENT INCREASE FOR OTHER RETIRED MEMBERS; EXCLUSION FROM INCREASE OF OFFICERS RETIRED UNDER CERTAIN PROVISIONS

Section 5(a)–(f) of Pub. L. 88–132 provided that:

''(a) Except as provided in section 1402 of title 10, United States Code, the changes made by this Act [see Short Title note under section 201 of Title 37] in the rates of basic pay of members of the uniformed services do not increase the retired pay or retainer pay to which a member or former member of the uniformed services was entitled on the day before the effective date of this Act [Oct. 1, 1963]. However, except for a member covered by section 6331 of title 10, United States Code who became entitled to retainer pay before April 1, 1963, and subject to subsection (j) of this section [set out as a note below], a member or former member of a uniformed service who became entitled to retired pay or retainer pay after March 31, 1963, but before the effective date of this Act [Oct. 1, 1963], is entitled—

''(1) to have the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963] recomputed under the rates of basic pay prescribed by section 2 of this Act [amending section 203 of Title 37]; or

''(2) to continue to have that pay computed under the rates of basic pay that were in effect under section 203 of title 37, United States Code, on the day before the effective date of this Act [Oct. 1, 1963], plus the percentage increase provided by subsection (e) of this section;

whichever pay is the greater. For the purposes of the preceding sentence, a member or former member who became entitled to retired pay on April 1, 1963, by virtue of section 1 of the Act of April 23, 1930, ch. 209, as amended (5 U.S.C. 47a) [section 8301 of Title 5], shall be considered as having become entitled to that pay before April 1, 1963.

''(b) A member or former member of a uniformed service who was retired other than for physical disability and who, in accordance with section 511 of the Career Compensation Act of 1949 (63 Stat. 829) [10 U.S.C. 580 note], is entitled to retired pay or retainer pay computed by 'method' (a) of that section using rates of basic pay that were in effect before October 1, 1949, is entitled—

''(1) to have pay recomputed by 'method' (b) of that section using the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(c) A member or former member of a uniformed service who is entitled to retired pay or retainer pay computed under the rates of basic pay that were in effect under the Career Compensation Act of 1949 before June 1, 1958, including a member or former member who is entitled to retired pay under section 7 (b) or (c) of the Act of May 20, 1958, Public Law 85–422 (72 Stat. 130), is entitled—

''(1) to have that pay recomputed under the rates of basic pay that were in effect under that Act on the day before the effective date of this Act [Oct. 1, 1963]; or

''(2) to an increase of 5 percent in the retired pay or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(d) A member or former member of a uniformed service who was entitled to retired pay on the day before the effective date of this Act [Oct. 1, 1963] and who served as Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, or Commandant of the Marine Corps is entitled—

''(1) to have his retired pay recomputed under the formula for computing retired pay applicable to him—

''(A) when he retired; or

''(B) if he served on active duty after he retired and his retired pay was recomputed by reason of that service, when his retired pay was so recomputed;

using as his rate of basic pay the rate of basic pay prescribed for officers serving on active duty in those positions on June 1, 1958, by footnote 1 to table for commissioned officers in section 201(a) of the Career Compensation Act of 1949, as amended (72 Stat. 122) [see section 203 of Title 37]; or

''(2) to an increase of 5 percent in the retired pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963];

whichever pay is the greater.

''(e) A member or former member of a uniformed service who was entitled to retired pay or retainer pay on the day before the effective date of this Act [Oct. 1, 1963], other than a member or former member who is covered by subsection (b), (c), or (d) of this section, is entitled to an increase of 5 percent in the retired or retainer pay to which he was entitled on the day before the effective date of this Act [Oct. 1, 1963].

''(f) Notwithstanding any other provision of law, a member of an armed force who was entitled to pay and allowances under any of the following provisions of law on the day before the effective date of this Act [Oct. 1, 1963] shall continue to receive the pay and allowances to which he was entitled on that day:

''(1) The Act of March 23, 1946, chapter 112 (60 Stat. 59).

''(2) The Act of June 26, 1948, chapter 677 (62 Stat. 1052).

''(3) The Act of September 18, 1950, chapter 952 (64 Stat. A224).''

RETIRED PAY AND RETAINER PAY; RETROACTIVE EFFECT

Section 5(j) of Pub. L. 88–132 provided that: ''A member or former member of a uniformed service is not entitled to an increase in his retired pay or retainer pay because of the enactment of this Act [see Short Title note set out under section 201 of Title 37] for any period before the effective date of this Act [Oct. 1, 1963].''

SAVINGS PROVISION

Section 5(*l*)(2) of Pub. L. 88–132 provided that: ''Notwithstanding paragraph (1) of this subsection [amending this section], and unless otherwise entitled to higher retired pay or retainer pay, a member of a uniformed service who is on active duty (other than for training) on the effective date of this Act [Oct. 1, 1963], who was entitled to retired pay or retainer pay before he entered on that duty, and who is released from that duty on or after the effective date of this Act after having served on that duty for a continuous period of at least one year shall, upon that release from active duty, be entitled to recompute his retired pay or retainer pay under the table in section 1402 of title 10, United States Code [this section], subject to section 6483(c) of title 10, as that table and that section were in effect on the day before the effective date of this Act, using rates of basic pay prescribed by this Act [section 203 of Title 37].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1373, 1403, 1406, 6330 of this title; title 37 section 205.

§ 1402a. Recomputation of retired or retainer pay to reflect later active duty of members who first became members after September 7, 1980

(a) IN GENERAL.—A member of an armed force—

(1) who first became a member of a uniformed service after September 7, 1980;

(2) who has become entitled to retired pay or retainer pay; and

(3) who thereafter serves on active duty (other than for training),

is entitled to recompute his retired pay or retainer pay upon release from that duty according to the following table.

Column 1 Take	Column 2 Multiply by
Retired pay base or retainer pay base under section 1407 which he would be entitled to use if— (1) he were retiring upon release from that active duty; or (2) he were transferring to the Fleet Reserve or Fleet Marine Corps Reserve upon that release from active duty.	The retired pay multiplier or retainer pay multiplier prescribed in section 1409 for the sum of— (1) the years of service that may be credited to him in computing retired pay or retainer pay; and (2) his years of active service after becoming entitled to retired pay or retainer pay.

(b) NEW DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, who has been retired other than for physical disability and who while on active duty incurs a physical disability of at least 30 percent for which he would otherwise be eligible for retired pay under chapter 61 of this title, is entitled, upon his release from active duty, to retired pay under subsection (d).

(c) ADDITIONAL OR AGGRAVATED DISABILITY INCURRED DURING LATER ACTIVE DUTY.—A member of an armed force who first became a member of a uniformed service after September 7, 1980, and who—

(1) was retired for physical disability under section 1201 or 1204 of this title or any other law or whose name is on the temporary disability retired list;

(2) incurs, while on active duty after retirement or after his name was placed on the temporary disability retired list, a physical disability that is in addition to or that aggravates the physical disability for which he was retired or for which his name was placed on that list; and

(3) is qualified under section 1201, 1202, 1204, or 1205 of this title;

is entitled, upon his release from active duty, to retired pay under subsection (d).

(d) COMPUTATION FOR LATER DISABILITY.—A member of an armed force covered by subsection (b) or (c) may elect to receive either (1) the retired pay to which he became entitled when he retired, increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay, or (2) retired pay computed according to the following table.

Column 1 Take	Column 2 Multiply by	Column 3 Add	Column 4 Subtract
The retired pay base computed under section 1407(b) of this title.	As member elects— (1) 2½ percent of years of service credited under section 1208 of this title;[1] or (2) the highest percentage of disability attained while on active duty after retirement or after the date when his name was placed on temporary disability retired list, as the case may be.	Amount necessary to increase product of columns 1 and 2 to 50 percent of pay upon which computation is based, if member is on temporary disability retired list.	Excess over 75 percent of retired or retainer pay base upon which computation is based.

[1] Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month.

(e) ALTERNATIVE RECOMPUTATION TO SUBSECTION (a) FORMULA.—Notwithstanding subsection (a), a member covered by that subsection may elect, upon his release from that active duty, to have his retired pay or retainer pay—

(1) computed according to the formula set forth in subsection (a) but using the monthly retired pay base under which his retired pay or retainer pay was computed when he entered on that active duty; and

(2) increased by any applicable adjustments in that pay under section 1401a of this title after he initially became entitled to that pay.

(f) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—(1) In the case of a member who is entitled to recompute retired pay under this section upon release from active duty served after retiring under section 3914 or 8914 of this title, the member's retired pay as recomputed under another provision of this section shall be increased by 10 percent of the amount so recomputed if the member has been credited by the Secretary concerned with extraordinary heroism in the line of duty during any period of active duty service in the armed forces.

(2) The amount of the retired pay as recomputed under another provision of this section and as increased under paragraph (1) may not exceed the amount equal to 75 percent of the retired pay base upon which the recomputation of such retired pay is based.

(3) The determination of the Secretary concerned as to extraordinary heroism is conclusive for all purposes.

(Added Pub. L. 96–342, title VIII, §813(b)(3)(A), Sept. 8, 1980, 94 Stat. 1102; amended Pub. L. 96–513, title V, §511(51)(A), (B), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §§922(a)(5), (6), 923(a)(1), (2)(D), (E), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, §201(b)(1), (2), July 1, 1986, 100 Stat. 693; Pub. L. 102–484, div. A, title VI, §642(b), Oct. 23, 1992, 106 Stat. 2425.)

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–348, §201(b)(1), amended subsec. (a) generally. Prior to the amendment, subsec. (a) read as follows: ''A member of an armed force who first became a member of a uniformed service (as defined in section 1407(a)(2) of this title) after September 7, 1980, who has become entitled to retired pay or retainer pay, and who thereafter serves on active duty (other than for training), is entitled to recompute his retired pay or retainer pay upon his release from that duty according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Subsec. (b). Pub. L. 99–348, §201(b)(2)(A), inserted heading.

Subsec. (c). Pub. L. 99–348, §201(b)(2)(B), inserted heading.

Subsec. (d). Pub. L. 99–348, §201(b)(2)(C), inserted heading, struck out provision that if the amount recomputed is not a multiple of $1, it be rounded to the next lower multiple of $1, and in column 1 of table struck out ''monthly'' before ''retired pay'' and in column 4 of table struck out ''monthly'' before ''retired or''.

Subsec. (e). Pub. L. 99–348, §201(b)(2)(D), inserted heading.

1983—Subsec. (a). Pub. L. 98–94, §922(a)(5), substituted ''according to the following table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, §923(a)(1), (2)(D), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Subsec. (d). Pub. L. 98–94, §922(a)(6), substituted ''according to the following table. The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.'' for ''as follows:''.

Pub. L. 98–94, §923(a)(1), (2)(E), in footnote 1 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, §511(51)(B), substituted ''of members who first became members after September 7, 1980'' for ''in case of members who first became members after the enactment of the Department of Defense Authorization Act, 1981'' in section catchline.

Subsecs. (a) to (c). Pub. L. 96–513, §511(51)(A), substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ACCRUAL OF BENEFITS; PROSPECTIVE APPLICABILITY

No benefits to accrue for months beginning before Oct. 23, 1992, by reason of the amendment by Pub. L. 102–484, see section 642(c) of Pub. L. 102–484, set out as a note under section 1402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1373, 1403, 6330 of this title; title 37 section 205.

§ 1403. Disability retired pay: treatment under Internal Revenue Code of 1986

That part of the retired pay of a member of an armed force, computed under formula No. 1 or 2 of section 1401, or under section 1402(d) or 1402a(d) of this title on the basis of years of service, which exceeds the retired pay that he would receive if it were computed on the basis of percentage of disability is not considered as a pension, annuity, or similar allowance for personal injury, or sickness, resulting from active service in the armed forces, under section 104(a) of the Internal Revenue Code of 1986.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 96–342, title VIII, §813(b)(3)(C), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, §511(52)(A), (B), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 100–26, §7(h)(1), (2)(A), Apr. 21, 1987, 101 Stat. 282.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1403	37:272(h).	Oct. 12, 1949, ch. 681, §402(h), 63 Stat. 820.

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is set out in Title 26, Internal Revenue Code.

AMENDMENTS

1987—Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in section catchline and text.

1980—Pub. L. 96–513 substituted ''the Internal Revenue Code of 1954'' for ''title 26'' in section catchline and text.

Pub. L. 96–342 inserted reference to section 1402a(d) of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 104.

§ 1404. Applicability of section 8301 of title 5

The retirement provisions of this title are subject to section 8301 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 89–718, §3, Nov. 2, 1966, 80 Stat. 1115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1404	[No source].	[No source].

The effect of the act of April 23, 1930 (5 U.S.C. 47a), in temporarily deferring retirement dates otherwise specifically fixed by law is reflected in the sections of the proposed text that name those dates. This section is inserted to make clear that under that act such deferments have no effect on the applicability of the specific rates that are to be used in computing retired pay.

AMENDMENTS

1966—Pub. L. 89–718 substituted ''8301'' for ''47a'' in section catchline and text.

§ 1405. Years of service

(a) IN GENERAL.—For the purposes of the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member are computed by adding—

(1) his years of active service;

(2) the years of service, not included in clause (1), with which he was entitled to be credited on May 31, 1958, in computing his basic pay; and

(3) the years of service, not included in clause (1) or (2), with which he would be entitled to be credited under section 12733 of this title if he were entitled to retired pay under section 12731 of this title.

(b) FRACTIONAL YEARS OF SERVICE.—In determining a member's years of service under subsection (a)—

(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

(2) any remaining fractional part of a month shall be disregarded.

(c) EXCLUSION OF TIME REQUIRED TO BE MADE UP OR EXCLUDED.—(1) Time required to be made up by an enlisted member of the Army or Air Force under section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after October 5, 1994, may not be counted in determining years of service under subsection (a).

(2) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Added Pub. L. 85–422, §11(a)(1)(A), May 20, 1958, 72 Stat. 130; amended Pub. L. 85–861, §1(31A), Sept. 2, 1958, 72 Stat. 1451; Pub. L. 87–649, §6(f)(4), Sept. 7, 1962, 76 Stat. 494; Pub. L. 87–651, title I, §109, Sept. 7, 1962, 76 Stat. 509; Pub. L. 90–130, §1(7), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title I, §113(b), Dec. 12, 1980, 94 Stat. 2877; Pub. L. 97–295, §1(17), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–348, title I, §106, July 1, 1986, 100 Stat. 691; Pub. L. 103–337, div. A, title VI, §635(d), title XVI, §1662(j)(3), Oct. 5, 1994, 108 Stat. 2789, 3004; Pub. L. 104–106, div. A, title V, §561(d)(1), Feb. 10, 1996, 110 Stat. 322; Pub. L. 104–201, div. A, title X, §1074(b)(1), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 107–107, div. A, title X, §1048(c)(7), Dec. 28, 2001, 115 Stat. 1226.)

HISTORICAL AND REVISION NOTES
1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1405	[No source].	[No source].

The amendment reflects section 11 of the Act of May 20, 1958, Pub. L. 85–422 (72 Stat. 130).

1962 ACT

The change corrects a typographical error.

1982 ACT

This amends 10:1405 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. Under provisions of law first enacted in 1948 through the codification of title 10 in 1956 and until 1965, warrant officers advanced on the retired list received credit for inactive service in the computation of retirement pay. The Comptroller General in 1965 (B–156576) held in effect that computation of such retirement pay was governed by the wording of new title 10 that based the computation on years of active service only even though this had the result of making a substantive change. The Armed Services Committee of the House of Representatives concurs that an error was made in the codification of title 10 and has indicated that corrective legislative action is properly a responsibility of the House Judiciary Committee. See, also, the amendments to 10:3992 and 8992 made by sections 1(40) and 1(52), respectively.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''October 5, 1994,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,''.

1996—Subsec. (c). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted ''Made Up or Excluded'' for ''Made Up'' in heading, designated existing provisions as par. (1), substituted ''section 972(a) of this title, or required to be made up by an enlisted member of the Navy, Marine Corps, or Coast Guard under that section with respect to a period of time after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1995,'' for ''section 972 of this title'', and added par. (2).

1994—Subsec. (a)(3). Pub. L. 103–337, § 1662(j)(3), substituted ''12733'' for ''1333'' and ''12731'' for ''1331''.

Subsec. (c). Pub. L. 103–337, § 635(d), added subsec. (c).

1986—Pub. L. 99–348 designated existing provision as subsec. (a), inserted heading, and in provision preceding par. (1) substituted ''the computation of the years of service of a member of the armed forces under a provision of this title providing for such computation to be made under this section, the years of service of the member'' for ''section 1401 (formulas 4 and 5), 3991 (formula A), 3992 (formula B), 6151(b), 6323(e), 6325(a)(2) and (b)(2), 6383(c)(2), 8991 (formula A), or 8992 (formula B) of this title, the years of service of a member of the armed forces'', and added subsec. (b).

1982—Pub. L. 97–295, § 1(17), substituted ''3991 (formula A), 3992 (formula B)'' for ''3991 (formula B)'', struck out ''or'' first time appearing, and substituted ''8991 (formula A), or 8992 (formula B)'' for ''8991 (formula B)''.

1980—Pub. L. 96–513 struck out provisions that permitted the crediting of certain periods of constructive service in computing the retired pay of medical and dental officers and provided that members would compute their years of service for retirement pay by adding (1) years of active service, (2) years of service not otherwise counted with which the member was entitled to be credited on May 31, 1958, and (3) years of service not otherwise counted with which he would be credited under section 1333 if he were entitled to retired pay under section 1331.

1967—Pub. L. 90–130 struck out references to section 6399(c)(2) of this title.

1962—Pub. L. 87–651 struck out references to sections 6391(h) and 6394(g)(2) of this title and inserted a reference to section 6394(h) of this title.

Pub. L. 87–649 substituted ''section 205(a)(7) and (8) of title 37'' for ''section 233(a)(7) of title 37'' in cl. (2).

1958—Pub. L. 85–861 inserted references to sections 6323(e) and 6391(h) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 635(e) of Pub. L. 103–337 provided that: ''This section [amending this section and sections 3925, 3991, 3992, 6333, 8925, 8991, and 8992 of this title] shall apply to—

''(1) the computation of the retired pay of any enlisted member who retires on or after the date of the enactment of this Act [Oct. 5, 1994];

''(2) the computation of the retainer pay of any enlisted member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve on or after the date of the enactment of this Act; and

''(3) the recomputation of the retired pay of any enlisted member who is advanced on the retired list on or after the date of the enactment of this Act.''

Amendment by section 1662(j)(3) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective June 1, 1958, see section 9 of Pub. L. 85–422.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1175, 1401, 1414, 3991, 3992, 6151, 6333, 6334 of this title; title 14 section 423; title 33 section 3045; title 37 section 322.

§ 1406. Retired pay base for members who first became members before September 8, 1980: final basic pay

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—

(1) GENERAL RULE.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service before September 8, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(2) EXCEPTION FOR RECOMPUTATION.—Recomputation of retired or retainer pay to reflect later active duty is provided for under section 1402 of this title without reference to a retired pay base or retainer pay base.

(b) RETIREMENT UNDER SUBTITLE A OR E.—

(1) DISABILITY, WARRANT OFFICER, AND DOPMA RETIREMENT.—In the case of a person whose retired pay is computed under this subtitle, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
1201 1202 1204 1205	Monthly basic pay[1] of grade to which member is entitled under section 1372 or to which he was entitled on day before retirement or placement on temporary disability retired list, whichever is higher.
580 1263 1293 1305	Monthly basic pay to which member would have been entitled if he had served on active duty in his retired grade on day before retirement, or if the pay of that grade is less than the pay of any warrant grade satisfactorily held by him on active duty, the monthly basic pay of that warrant officer grade.
633 634 635 636 1251	Monthly basic pay[2] of member's retired grade.[3]

[1] Compute at rates applicable on date of retirement or date when member's name was placed on temporary disability retired list, as the case may be.
[2] Compute at rates applicable on date of retirement.
[3] For the purposes of this subsection, determine member's retired grade as if sections 3962 and 8962 did not apply.

(2) NON-REGULAR SERVICE RETIREMENT.—In the case of a person who is entitled to retired pay under section 12731 of this title, the retired pay base is the monthly basic pay, determined at the rates applicable on the date when retired pay is granted, of the highest grade held satisfactorily by the person at any time in the armed forces. For purposes of the preceding sentence, the highest grade in which a person served satisfactorily as an officer shall be determined in accordance with section 1370(d) of this title.

(c) VOLUNTARY RETIREMENT FOR MEMBERS OF THE ARMY.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 3991 of this title or who is entitled to retired pay computed under section 3992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
3911 3918 3920 3924	Monthly basic pay of member's retired grade.[1]
3914 3917	Monthly basic pay to which member was entitled on day before he retired.
3992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 3962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(d) RETIREMENT FOR MEMBERS OF THE NAVY AND MARINE CORPS.—In the case of a member whose retired pay is computed under section 6333 of this title, who is advanced on the retired list under section 6151 or 6334 of this title, or who is entitled to retainer pay under section 6330 of this title, the retired pay base or retainer pay base is determined in accordance with the following table.

For a member entitled to retired or retainer pay under section:	The retired pay base or retainer pay base is:
6323 6325(a) 6383	Basic pay of the grade in which the member retired.[1]
6325(b)	Basic pay of the grade the officer would hold if he had not received an appointment described in section 6325(b).
6326	Basic pay of the pay grade in which the member was serving on the day before retirement.
6330	Basic pay that the member received at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve.
6151	Basic pay of the grade to which the member is advanced under section 6151.
6334	Basic pay of the grade to which the member is advanced under section 6334.

[1] If the rate specified is less than the pay of any warrant officer grade satisfactorily held by the member on active duty, use the monthly basic pay of that warrant officer grade.

(e) VOLUNTARY RETIREMENT FOR MEMBERS OF THE AIR FORCE.—

(1) IN GENERAL.—In the case of a member whose retired pay is computed under section 8991 of this title or who is entitled to retired pay computed under section 8992 of this title, the retired pay base is determined in accordance with the following table.

For a member entitled to retired pay under section:	The retired pay base is:
8911 8918 8920 8924	Monthly basic pay of member's retired grade.[1]

For a member entitled to retired pay under section:	The retired pay base is:
8914 8917	Monthly basic pay to which member was entitled on day before he retired.
8992	Monthly basic pay of grade to which member is advanced on retired list.

[1] For the purposes of this subsection, determine member's retired grade as if section 8962 did not apply.

(2) RATE OF BASIC PAY TO BE USED.—The rate of basic pay to be used under paragraph (1) is the rate applicable on the date of the member's retirement.

(f) COAST GUARD.—In the case of a member who is retired under any section of title 14, the member's retired pay is computed under section 423(a) of title 14 in the manner provided in that section.

(g) COMMISSIONED CORPS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—In the case of an officer whose retired pay is computed under section 305[1] of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002, the retired pay base is the basic pay of the rank with which the officer retired.

(h) COMMISSIONED CORPS OF PUBLIC HEALTH SERVICE.—In the case of an officer who is retired under section 210(g) or 211(a) of the Public Health Service Act (42 U.S.C. 211(g), 212(a)), the retired pay base is determined as follows:

(1) MANDATORY RETIREMENT.—If the officer is retired under section 210(g) of such Act, the retired pay base is the basic pay of the permanent grade held by the officer at the time of retirement.

(2) VOLUNTARY RETIREMENT.—If the officer is retired under section 211(a) of such Act, the retired pay base is the basic pay of the highest grade held by the officer and in which, in the case of a temporary promotion to such grade, the officer has performed active duty for not less than six months.

(i) SPECIAL RULE FOR FORMER CHAIRMEN AND VICE CHAIRMEN OF THE JCS, CHIEFS OF SERVICE, AND SENIOR ENLISTED MEMBERS.—

(1) IN GENERAL.—For the purposes of subsections (b) through (e), in determining the rate of basic pay to apply in the determination of the retired pay base of a member who has served as Chairman or Vice Chairman of the Joint Chiefs of Staff, as a Chief of Service, or as the senior enlisted member of an armed force, the highest rate of basic pay applicable to the member while serving in that position shall be used, if that rate is higher than the rate otherwise authorized by this section.

(2) EXCEPTION FOR MEMBERS REDUCED IN GRADE OR WHO DO NOT SERVE SATISFACTORILY.—Paragraph (1) does not apply in the case of a member who, while or after serving in a position specified in that paragraph and by reason of conduct occurring after October 16, 1998—

(A) in the case of an enlisted member, is reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or other administrative process; or

(B) in the case an officer, is not certified by the Secretary of Defense under section 1370(c) of this title as having served on active duty satisfactorily in the grade of general or admiral, as the case may be, while serving in that position.

(3) DEFINITIONS.—In this subsection:

(A) The term ''Chief of Service'' means any of the following:

(i) Chief of Staff of the Army.
(ii) Chief of Naval Operations.
(iii) Chief of Staff of the Air Force.
(iv) Commandant of the Marine Corps.
(v) Commandant of the Coast Guard.

(B) The term ''senior enlisted member'' means any of the following:

(i) Sergeant Major of the Army.
(ii) Master Chief Petty Officer of the Navy.
(iii) Chief Master Sergeant of the Air Force.
(iv) Sergeant Major of the Marine Corps.
(v) Master Chief Petty Officer of the Coast Guard.

(Added Pub. L. 99–348, title I, §104(b), July 1, 1986, 100 Stat. 686; amended Pub. L. 100–180, div. A, title V, §512(d)(2), title XIII, §1314(b)(6), Dec. 4, 1987, 101 Stat. 1090, 1175; Pub. L. 100–456, div. A, title XII, §1233(c), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 102–190, div. A, title XI, §1131(7), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–337, div. A, title XVI, §1662(j)(4), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 105–85, div. A, title X, §1073(a)(23), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, §646, Oct. 17, 1998, 112 Stat. 2050; Pub. L. 106–65, div. A, title X, §1066(a)(11), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–372, title II, §272(a), Dec. 19, 2002, 116 Stat. 3094.)

REFERENCES IN TEXT

Section 305 of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002, referred to in subsec. (g), probably means section 245 of title II of Pub. L. 107–372, known as the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002, which is classified to section 3045 of Title 33, Navigation and Navigable Waters. That Act does not contain a section 305, and section 245 relates to computation of retired pay.

PRIOR PROVISIONS

A prior section 1406 was renumbered section 12738 of this title.

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–372 substituted ''section 305 of the National Oceanic and Atmospheric Administration Commissioned Officers Act of 2002'' for ''section 16 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 (33 U.S.C. 853*o*)''

1999—Subsec. (i)(2). Pub. L. 106–65 substituted ''after October 16, 1998'' for ''on or after the date of the enactment of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999'' in introductory provisions.

1998—Subsec. (i)(2), (3). Pub. L. 105–261 added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (b)(1). Pub. L. 105–85 substituted ''3962 and 8962'' for ''3962(b) and 8962(b)'' in footnote 3 in table.

Subsec. (c)(1). Pub. L. 105–85, §1073(a)(23)(A), substituted ''3962'' for ''3962(b)'' in footnote 1 in table.

Subsec. (e)(1). Pub. L. 105–85, §1073(a)(23)(B), substituted ''8962'' for ''8962(b)'' in footnote 1 in table.

[1] See References in Text note below.

1994—Subsec. (b). Pub. L. 103–337 substituted ''Subtitle A or E'' for ''Subtitle A'' in subsec. heading, designated existing provisions as par. (1), inserted par. (1) heading, in table struck out item for section 1331 which related to monthly basic pay of highest grade held satisfactorily by person at any time in armed forces, renumbered footnotes 3 and 4 as 2 and 3, respectively, and struck out former footnote 2 which provided for computations at rates applicable on date when retired pay is granted, and added par. (2).

1991—Subsec. (b). Pub. L. 102–190 substituted ''580'' for ''564'' in table.

1988—Subsec. (b). Pub. L. 100–456 substituted ''satisfactorily by person'' for ''satisfactory by person'' in item relating to section 1331 in table.

1987—Subsec. (d). Pub. L. 100–180, § 512(d)(2), inserted ''or 6334'' after ''6151'' in text, and inserted item relating to section 6334 at end of table.

Subsec. (i). Pub. L. 100–180, § 1314(b)(6), inserted ''and Vice Chairmen'' after ''Chairmen'' in heading and inserted ''or Vice Chairman'' after ''Chairman'' in par. (1).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

GRADE ON TRANSFER TO RETIRED RESERVE

Section 1688 of title XVI of Pub. L. 103–337 provided that: ''In determining the highest grade held satisfactorily by a person at any time in the Armed Forces for the purposes of paragraph (2) of section 1406(b) of title 10, United States Code, as added by this title, the requirement for satisfactory service on the reserve active-status list contained in section 1370(d) of title 10, United States Code, as added by this title, shall apply only to reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion under chapter 36 of that title or under chapter 1405 of that title, as added by this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code, after the effective date of this title [see Effective Date note set out under section 10001 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1401a, 1407, 3991, 3992, 6151, 6333, 6334, 8991, 8992, 12739 of this title; title 33 section 3045; title 42 section 211.

§ 1407. Retired pay base for members who first became members after September 7, 1980: high-36 month average

(a) USE OF RETIRED PAY BASE IN COMPUTING RETIRED PAY.—The retired pay or retainer pay of any person entitled to that pay who first became a member of a uniformed service after September 7, 1980, is computed using the retired pay base or retainer pay base determined under this section.

(b) HIGH-THREE AVERAGE.—Except as provided in subsection (f), the retired pay base or retainer pay base of a person under this section is the person's high-three average determined under subsection (c) or (d).

(c) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS ENTITLED TO RETIRED OR RETAINER PAY FOR REGULAR SERVICE.—

(1) GENERAL RULE.—The high-three average of a member entitled to retired or retainer pay under any provision of law other than section 1204 or 1205 or section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled for the 36 months (whether or not consecutive) out of all the months of active service of the member for which the monthly basic pay to which the member was entitled was the highest, divided by

(B) 36.

(2) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1201 or 1202 of this title and who has completed less than 36 months of active service, the member's high-three average (notwithstanding paragraph (1)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the period of the member's active service, divided by

(B) the number of months (including any fraction thereof) of the member's active service.

(d) COMPUTATION OF HIGH-THREE AVERAGE FOR MEMBERS AND FORMER MEMBERS ENTITLED TO RETIRED PAY FOR NONREGULAR SERVICE.—

(1) RETIRED PAY UNDER CHAPTER 1223.—The high-three average of a member or former member entitled to retired pay under section 12731 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member or former member was entitled during the member or former member's high-36 months (or to which the member or former member would have been entitled if the member or former member had served on active duty during the entire period of the member or former member's high-36 months), divided by

(B) 36.

(2) NONREGULAR SERVICE DISABILITY RETIRED PAY.—The high-three average of a member entitled to retired pay under section 1204 or 1205 of this title is the amount equal to—

(A) the total amount of monthly basic pay to which the member was entitled during the member's high-36 months (or to which the member would have been entitled if the member had served on active duty during the entire period of the member's high-36 months), divided by

(B) 36.

(3) SPECIAL RULE FOR SHORT-TERM DISABILITY RETIREES.—In the case of a member who is entitled to retired pay under section 1204 or 1205 of this title and who was a member for less than 36 months before being retired under that section, the member's high-three average (not-

withstanding paragraph (2)) is the amount equal to—

(A) the total amount of basic pay to which the member was entitled during the entire period the member was a member of a uniformed service before being so retired (or to which the member would have been entitled if the member had served on active duty during the entire period the member was a member of a uniformed service before being so retired), divided by

(B) the number of months (including any fraction thereof) which the member was a member before being so retired.

(4) HIGH-36 MONTHS.—The high-36 months of a member or former member whose retired pay is covered by paragraph (1) or (2) are the 36 months (whether or not consecutive) out of all the months before the member or former member became entitled to retired pay for which the monthly basic pay to which the member or former member was entitled (or would have been entitled if serving on active duty during those months) was the highest. In the case of a former member, only months during which the former member was a member of a uniformed service may be used for purposes of the preceding sentence.

(e) LIMITATION FOR ENLISTED MEMBERS RETIRING WITH LESS THAN 30 YEARS' SERVICE.—In the case of a member who is retired under section 3914 or 8914 of this title or who is transferred to the Fleet Reserve or Fleet Marine Corps Reserve under section 6330 of this title, the member's high-36 average shall be computed using only rates of basic pay applicable to months of active duty of the member as an enlisted member.

(f) EXCEPTION FOR ENLISTED MEMBERS REDUCED IN GRADE AND OFFICERS WHO DO NOT SERVE SATISFACTORILY IN HIGHEST GRADE HELD.—

(1) COMPUTATION BASED ON PRE-HIGH-THREE RULES.—In the case of a member or former member described in paragraph (2), the retired pay base or retainer pay base is determined under section 1406 of this title in the same manner as if the member or former member first became a member of a uniformed service before September 8, 1980.

(2) AFFECTED MEMBERS.—A member or former member referred to in paragraph (1) is a member or former member who by reason of conduct occurring after October 30, 2000—

(A) in the case of a member retired in an enlisted grade or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, was at any time reduced in grade as the result of a court-martial sentence, nonjudicial punishment, or an administrative action, unless the member was subsequently promoted to a higher enlisted grade or appointed to a commissioned or warrant grade; and

(B) in the case of an officer, is retired in a grade lower than the highest grade in which served by reason of denial of a determination or certification under section 1370 of this title that the officer served on active duty satisfactorily in that grade.

(3) SPECIAL RULE FOR ENLISTED MEMBERS.—In the case of a member who retires within three years after having been reduced in grade as described in paragraph (2)(A), who retires in an enlisted grade that is lower than the grade from which reduced, and who would be subject to paragraph (1) but for a subsequent promotion to a higher enlisted grade or a subsequent appointment to a warrant or commissioned grade, the rates of basic pay used in the computation of the member's high-36 average for the period of the member's service in a grade higher than the grade in which retired shall be the rates of pay that would apply if the member had been serving for that period in the grade in which retired.

(Added Pub. L. 99–348, title I, §104(b), July 1, 1986, 100 Stat. 689; amended Pub. L. 101–189, div. A, title VI, §651(a), (b)(2), Nov. 29, 1989, 103 Stat. 1459, 1460; Pub. L. 103–337, div. A, title XVI, §1662(j)(5), Oct. 5, 1994, 108 Stat. 3004; Pub. L. 104–106, div. A, title XV, §1501(c)(15), Feb. 10, 1996, 110 Stat. 499; Pub. L. 106–398, §1 [[div. A], title VI, §651], Oct. 30, 2000, 114 Stat. 1654, 1654A–163; Pub. L. 107–107, div. A, title X, §1048(c)(8), Dec. 28, 2001, 115 Stat. 1226.)

PRIOR PROVISIONS

A prior section 1407, added Pub. L. 96–342, title VIII, §813(a)(1), Sept. 8, 1980, 94 Stat. 1100; amended Pub. L. 96–513, title I, §113(c), title V, §§501(21), 511(53), Dec. 12, 1980, 94 Stat. 2877, 2908, 2925, related to determination of retired base pay, prior to repeal by Pub. L. 99–348, §104(b).

AMENDMENTS

2001—Subsec. (f)(2). Pub. L. 107–107 substituted ''October 30, 2000—'' for ''the date of the enactment of this subsection—'' in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title VI, §651(1)], substituted ''Except as provided in subsection (f), the retired pay base'' for ''The retired pay base''.

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title VI, §651(2)], added subsec. (f).

1996—Subsec. (c)(1). Pub. L. 104–106, §1501(c)(15)(A), substituted ''section 12731'' for ''section 1331''.

Subsec. (d)(1). Pub. L. 104–106 substituted in heading ''CHAPTER 1223'' for ''CHAPTER 67'' and in text ''section 12731'' for ''section 1331''.

1994—Subsec. (c)(2)(B). Pub. L. 103–337, §1662(j)(5)(A), which directed substitution of ''chapter 1223'' for ''chapter 67'', could not be executed because the words ''chapter 67'' did not appear subsequent to amendment by Pub. L. 101–189, §651(a)(2), (4). See 1989 Amendment note below.

Subsec. (f)(2). Pub. L. 103–337, §1662(j)(5)(B), which directed amendment of subsec. (f)(2) by substituting ''Chapter 1223'' for ''Chapter 67'' in heading and ''section 12731'' for ''section 1331'' in text, could not be executed because of previous repeal of subsec. (f) by Pub. L. 101–189, §651(a)(2). See 1989 Amendment note below.

1989—Subsec. (b). Pub. L. 101–189, §651(a)(1), (b)(2), substituted ''person'' for ''member'', ''person's'' for ''member's'', and ''subsection (c) or (d)'' for ''subsection (c)''.

Subsec. (c). Pub. L. 101–189, §651(a)(2), (4), added subsec. (c) and struck out former subsec. (c) which related to computation of high-three average.

Subsec. (d). Pub. L. 101–189, §651(a)(4), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101–189, §651(a)(2), (3), redesignated subsec. (d) as (e) and struck out former subsec. (e) which related to special rules for short-term disability retirees.

Subsecs. (f), (g). Pub. L. 101–189, §651(a)(2), struck out subsec. (f) which related to special rule for members retiring with non-regular service, and subsec. (g) which defined the term ''years of creditable service''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1401a, 1402a, 3991, 3992, 6151, 6333, 6334, 8991, 8992, 12739 of this title; title 14 sections 357, 423, 424; title 33 section 3045; title 42 sections 211, 212.

§ 1408. Payment of retired or retainer pay in compliance with court orders

(a) DEFINITIONS.—In this section:

(1) The term ''court'' means—

(A) any court of competent jurisdiction of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) any court of the United States (as defined in section 451 of title 28) having competent jurisdiction;

(C) any court of competent jurisdiction of a foreign country with which the United States has an agreement requiring the United States to honor any court order of such country; and

(D) any administrative or judicial tribunal of a State competent to enter orders for support or maintenance (including a State agency administering a program under a State plan approved under part D of title IV of the Social Security Act), and, for purposes of this subparagraph, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) The term ''court order'' means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree), or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)), which—

(A) is issued in accordance with the laws of the jurisdiction of that court;

(B) provides for—

(i) payment of child support (as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)));

(ii) payment of alimony (as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3))); or

(iii) division of property (including a division of community property); and

(C) in the case of a division of property, specifically provides for the payment of an amount, expressed in dollars or as a percentage of disposable retired pay, from the disposable retired pay of a member to the spouse or former spouse of that member.

(3) The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for taking such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(4) The term ''disposable retired pay'' means the total monthly retired pay to which a member is entitled less amounts which—

(A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;

(B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;

(C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or

(D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

(5) The term ''member'' includes a former member entitled to retired pay under section 12731 of this title.

(6) The term ''spouse or former spouse'' means the husband or wife, or former husband or wife, respectively, of a member who, on or before the date of a court order, was married to that member.

(7) The term ''retired pay'' includes retainer pay.

(b) EFFECTIVE SERVICE OF PROCESS.—For the purposes of this section—

(1) service of a court order is effective if—

(A) an appropriate agent of the Secretary concerned designated for receipt of service of court orders under regulations prescribed pursuant to subsection (i) or, if no agent has been so designated, the Secretary concerned, is personally served or is served by facsimile or electronic transmission or by mail;

(B) the court order is regular on its face;

(C) the court order or other documents served with the court order identify the member concerned and include, if possible, the social security number of such member; and

(D) the court order or other documents served with the court order certify that the

rights of the member under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were observed; and

(2) a court order is regular on its face if the order—

(A) is issued by a court of competent jurisdiction;

(B) is legal in form; and

(C) includes nothing on its face that provides reasonable notice that it is issued without authority of law.

(c) AUTHORITY FOR COURT TO TREAT RETIRED PAY AS PROPERTY OF THE MEMBER AND SPOUSE.—(1) Subject to the limitations of this section, a court may treat disposable retired pay payable to a member for pay periods beginning after June 25, 1981, either as property solely of the member or as property of the member and his spouse in accordance with the law of the jurisdiction of such court. A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.

(2) Notwithstanding any other provision of law, this section does not create any right, title, or interest which can be sold, assigned, transferred, or otherwise disposed of (including by inheritance) by a spouse or former spouse. Payments by the Secretary concerned under subsection (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.

(3) This section does not authorize any court to order a member to apply for retirement or retire at a particular time in order to effectuate any payment under this section.

(4) A court may not treat the disposable retired pay of a member in the manner described in paragraph (1) unless the court has jurisdiction over the member by reason of (A) his residence, other than because of military assignment, in the territorial jurisdiction of the court, (B) his domicile in the territorial jurisdiction of the court, or (C) his consent to the jurisdiction of the court.

(d) PAYMENTS BY SECRETARY CONCERNED TO (OR FOR BENEFIT OF) SPOUSE OR FORMER SPOUSE.—(1) After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse (or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D) in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired pay specifically provided for in the court order. In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights. In the case of a member entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date of effective service. In the case of a member not entitled to receive retired pay on the date of the effective service of the court order, such payments shall begin not later than 90 days after the date on which the member first becomes entitled to receive retired pay.

(2) If the spouse or former spouse to whom payments are to be made under this section was not married to the member for a period of 10 years or more during which the member performed at least 10 years of service creditable in determining the member's eligibility for retired pay, payments may not be made under this section to the extent that they include an amount resulting from the treatment by the court under subsection (c) of disposable retired pay of the member as property of the member or property of the member and his spouse.

(3) Payments under this section shall not be made more frequently than once each month, and the Secretary concerned shall not be required to vary normal pay and disbursement cycles for retired pay in order to comply with a court order.

(4) Payments from the disposable retired pay of a member pursuant to this section shall terminate in accordance with the terms of the applicable court order, but not later than the date of the death of the member or the date of the death of the spouse or former spouse to whom payments are being made, whichever occurs first.

(5) If a court order described in paragraph (1) provides for a division of property (including a division of community property) in addition to an amount of child support or alimony or the payment of an amount of disposable retired pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired pay of the member to the spouse or former spouse of the member, any part of the amount payable to the spouse or former spouse under the division of property upon effective service of a final court order of garnishment of such amount from such retired pay.

(6) In the case of a court order for which effective service is made on the Secretary concerned on or after August 22, 1996, and which provides for payments from the disposable retired pay of a member to satisfy the amount of child support set forth in the order, the authority provided in paragraph (1) to make payments from the disposable retired pay of a member to satisfy the amount of child support set forth in a court order shall apply to payment of any amount of child support arrearages set forth in that order as well as to amounts of child support that currently become due.

(7)(A) The Secretary concerned may not accept service of a court order that is an out-of-State modification, or comply with the provisions of such a court order, unless the court issuing that order has jurisdiction in the manner specified in subsection (c)(4) over both the member and the spouse or former spouse involved.

(B) A court order shall be considered to be an out-of-State modification for purposes of this paragraph if the order—

(i) modifies a previous court order under this section upon which payments under this subsection are based; and

(ii) is issued by a court of a State other than the State of the court that issued the previous court order.

(e) LIMITATIONS.—(1) The total amount of the disposable retired pay of a member payable under all court orders pursuant to subsection (c) may not exceed 50 percent of such disposable retired pay.

(2) In the event of effective service of more than one court order which provide for payment to a spouse and one or more former spouses or to more than one former spouse, the disposable retired pay of the member shall be used to satisfy (subject to the limitations of paragraph (1)) such court orders on a first-come, first-served basis. Such court orders shall be satisfied (subject to the limitations of paragraph (1)) out of that amount of disposable retired pay which remains after the satisfaction of all court orders which have been previously served.

(3)(A) In the event of effective service of conflicting court orders under this section which assert to direct that different amounts be paid during a month to the same spouse or former spouse of the same member, the Secretary concerned shall—

(i) pay to that spouse from the member's disposable retired pay the least amount directed to be paid during that month by any such conflicting court order, but not more than the amount of disposable retired pay which remains available for payment of such court orders based on when such court orders were effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4);

(ii) retain an amount of disposable retired pay that is equal to the lesser of—

(I) the difference between the largest amount required by any conflicting court order to be paid to the spouse or former spouse and the amount payable to the spouse or former spouse under clause (i); and

(II) the amount of disposable retired pay which remains available for payment of any conflicting court order based on when such court order was effectively served and the limitations of paragraph (1) and subparagraph (B) of paragraph (4); and

(iii) pay to that member the amount which is equal to the amount of that member's disposable retired pay (less any amount paid during such month pursuant to legal process served under section 459 of the Social Security Act (42 U.S.C. 659) and any amount paid during such month pursuant to court orders effectively served under this section, other than such conflicting court orders) minus—

(I) the amount of disposable retired pay paid under clause (i); and

(II) the amount of disposable retired pay retained under clause (ii).

(B) The Secretary concerned shall hold the amount retained under clause (ii) of subparagraph (A) until such time as that Secretary is provided with a court order which has been certified by the member and the spouse or former spouse to be valid and applicable to the retained amount. Upon being provided with such an order, the Secretary shall pay the retained amount in accordance with the order.

(4)(A) In the event of effective service of a court order under this section and the service of legal process pursuant to section 459 of the Social Security Act (42 U.S.C. 659), both of which provide for payments during a month from the same member, satisfaction of such court orders and legal process from the retired pay of the member shall be on a first-come, first-served basis. Such court orders and legal process shall be satisfied out of moneys which are subject to such orders and legal process and which remain available in accordance with the limitations of paragraph (1) and subparagraph (B) of this paragraph during such month after the satisfaction of all court orders or legal process which have been previously served.

(B) Notwithstanding any other provision of law, the total amount of the disposable retired pay of a member payable by the Secretary concerned under all court orders pursuant to this section and all legal processes pursuant to section 459 of the Social Security Act (42 U.S.C. 659) with respect to a member may not exceed 65 percent of the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States.

(5) A court order which itself or because of previously served court orders provides for the payment of an amount which exceeds the amount of disposable retired pay available for payment because of the limit set forth in paragraph (1), or which, because of previously served court orders or legal process previously served under section 459 of the Social Security Act (42 U.S.C. 659), provides for payment of an amount that exceeds the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4), shall not be considered to be irregular on its face solely for that reason. However, such order shall be considered to be fully satisfied for purposes of this section by the payment to the spouse or former spouse of the maximum

amount of disposable retired pay permitted under paragraph (1) and subparagraph (B) of paragraph (4).

(6) Nothing in this section shall be construed to relieve a member of liability for the payment of alimony, child support, or other payments required by a court order on the grounds that payments made out of disposable retired pay under this section have been made in the maximum amount permitted under paragraph (1) or subparagraph (B) of paragraph (4). Any such unsatisfied obligation of a member may be enforced by any means available under law other than the means provided under this section in any case in which the maximum amount permitted under paragraph (1) has been paid and under section 459 of the Social Security Act (42 U.S.C. 659) in any case in which the maximum amount permitted under subparagraph (B) of paragraph (4) has been paid.

(f) IMMUNITY OF OFFICERS AND EMPLOYEES OF UNITED STATES.—(1) The United States and any officer or employee of the United States shall not be liable with respect to any payment made from retired pay to any member, spouse, or former spouse pursuant to a court order that is regular on its face if such payment is made in accordance with this section and the regulations prescribed pursuant to subsection (i).

(2) An officer or employee of the United States who, under regulations prescribed pursuant to subsection (i), has the duty to respond to interrogatories shall not be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or because of, any disclosure of information made by him in carrying out any of his duties which directly or indirectly pertain to answering such interrogatories.

(g) NOTICE TO MEMBER OF SERVICE OF COURT ORDER ON SECRETARY CONCERNED.—A person receiving effective service of a court order under this section shall, as soon as possible, but not later than 30 days after the date on which effective service is made, send a written notice of such court order (together with a copy of such order) to the member affected by the court order at his last known address.

(h) BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE BY MEMBERS LOSING RIGHT TO RETIRED PAY.—(1) If, in the case of a member or former member of the armed forces referred to in paragraph (2)(A), a court order provides (in the manner applicable to a division of property) for the payment of an amount from the disposable retired pay of that member or former member (as certified under paragraph (4)) to an eligible spouse or former spouse of that member or former member, the Secretary concerned, beginning upon effective service of such court order, shall pay that amount in accordance with this subsection to such spouse or former spouse.

(2) A spouse or former spouse of a member or former member of the armed forces is eligible to receive payment under this subsection if—

(A) the member or former member, while a member of the armed forces and after becoming eligible to be retired from the armed forces on the basis of years of service, has eligibility to receive retired pay terminated as a result of misconduct while a member involving abuse of a spouse or dependent child (as defined in regulations prescribed by the Secretary of Defense or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Homeland Security); and

(B) the spouse or former spouse—

(i) was the victim of the abuse and was married to the member or former member at the time of that abuse; or

(ii) is a natural or adopted parent of a dependent child of the member or former member who was the victim of the abuse.

(3) The amount certified by the Secretary concerned under paragraph (4) with respect to a member or former member of the armed forces referred to in paragraph (2)(A) shall be deemed to be the disposable retired pay of that member or former member for the purposes of this subsection.

(4) Upon the request of a court or an eligible spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A) in connection with a civil action for the issuance of a court order in the case of that member or former member, the Secretary concerned shall determine and certify the amount of the monthly retired pay that the member or former member would have been entitled to receive as of the date of the certification—

(A) if the member or former member's eligibility for retired pay had not been terminated as described in paragraph (2)(A); and

(B) if, in the case of a member or former member not in receipt of retired pay immediately before that termination of eligibility for retired pay, the member or former member had retired on the effective date of that termination of eligibility.

(5) A court order under this subsection may provide that whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount payable under the court order to the spouse or former spouse of a member or former member described in paragraph (2)(A) shall be increased at the same time by the percent by which the retired pay of the member or former member would have been increased if the member or former member were receiving retired pay.

(6) Notwithstanding any other provision of law, a member or former member of the armed forces referred to in paragraph (2)(A) shall have no ownership interest in, or claim against, any amount payable under this section to a spouse or former spouse of the member or former member.

(7)(A) If a former spouse receiving payments under this subsection with respect to a member or former member referred to in paragraph (2)(A) marries again after such payments begin, the eligibility of the former spouse to receive further payments under this subsection shall terminate on the date of such marriage.

(B) A person's eligibility to receive payments under this subsection that is terminated under subparagraph (A) by reason of remarriage shall be resumed in the event of the termination of that marriage by the death of that person's spouse or by annulment or divorce. The resumption of payments shall begin as of the first day of the month in which that marriage is so termi-

nated. The monthly amount of the payments shall be the amount that would have been paid if the continuity of the payments had not been interrupted by the marriage.

(8) Payments in accordance with this subsection shall be made out of funds in the Department of Defense Military Retirement Fund established by section 1461 of this title or, in the case of the Coast Guard, out of funds appropriated to the Department of Homeland Security for payment of retired pay for the Coast Guard.

(9)(A) A spouse or former spouse of a member or former member of the armed forces referred to in paragraph (2)(A), while receiving payments in accordance with this subsection, shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to receive any other benefit that a spouse or a former spouse of a retired member of the armed forces is entitled to receive on the basis of being a spouse or former spouse, as the case may be, of a retired member of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(B) A dependent child of a member or former member referred to in paragraph (2)(A) who was a member of the household of the member or former member at the time of the misconduct described in paragraph (2)(A) shall be entitled to receive medical and dental care, to use commissary and exchange stores, and to have other benefits provided to dependents of retired members of the armed forces in the same manner as if the member or former member referred to in paragraph (2)(A) was entitled to retired pay.

(C) If a spouse or former spouse or a dependent child eligible or entitled to receive a particular benefit under this paragraph is eligible or entitled to receive that benefit under another provision of law, the eligibility or entitlement of that spouse or former spouse or dependent child to such benefit shall be determined under such other provision of law instead of this paragraph.

(10)(A) For purposes of this subsection, in the case of a member of the armed forces who has been sentenced by a court-martial to receive a punishment that will terminate the eligibility of that member to receive retired pay if executed, the eligibility of that member to receive retired pay may, as determined by the Secretary concerned, be considered terminated effective upon the approval of that sentence by the person acting under section 860(c) of this title (article 60(c) of the Uniform Code of Military Justice).

(B) If each form of the punishment that would result in the termination of eligibility to receive retired pay is later remitted, set aside, or mitigated to a punishment that does not result in the termination of that eligibility, a payment of benefits to the eligible recipient under this subsection that is based on the punishment so vacated, set aside, or mitigated shall cease. The cessation of payments shall be effective as of the first day of the first month following the month in which the Secretary concerned notifies the recipient of such benefits in writing that payment of the benefits will cease. The recipient may not be required to repay the benefits received before that effective date (except to the extent necessary to recoup any amount that was erroneous when paid).

(11) In this subsection, the term ''dependent child'', with respect to a member or former member of the armed forces referred to in paragraph (2)(A), means an unmarried legitimate child, including an adopted child or a stepchild of the member or former member, who—

(A) is under 18 years of age;

(B) is incapable of self-support because of a mental or physical incapacity that existed before becoming 18 years of age and is dependent on the member or former member for over one-half of the child's support; or

(C) if enrolled in a full-time course of study in an institution of higher education recognized by the Secretary of Defense for the purposes of this subparagraph, is under 23 years of age and is dependent on the member or former member for over one-half of the child's support.

(i) CERTIFICATION DATE.—It is not necessary that the date of a certification of the authenticity or completeness of a copy of a court order for child support received by the Secretary concerned for the purposes of this section be recent in relation to the date of receipt by the Secretary.

(j) REGULATIONS.—The Secretaries concerned shall prescribe uniform regulations for the administration of this section.

(k) RELATIONSHIP TO OTHER LAWS.—In any case involving an order providing for payment of child support (as defined in section 459(i)(2) of the Social Security Act) by a member who has never been married to the other parent of the child, the provisions of this section shall not apply, and the case shall be subject to the provisions of section 459 of such Act.

(Added Pub. L. 97–252, title X, §1002(a), Sept. 8, 1982, 96 Stat. 730; amended Pub. L. 98–525, title VI, §643(a)–(d), Oct. 19, 1984, 98 Stat. 2547; Pub. L. 99–661, div. A, title VI, §644(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §§3(3), 7(h)(1), Apr. 21, 1987, 101 Stat. 273, 282; Pub. L. 101–189, div. A, title VI, §653(a)(5), title XVI, §1622(e)(6), Nov. 29, 1989, 103 Stat. 1462, 1605; Pub. L. 101–510, div. A, title V, §555(a)–(d), (f), (g), Nov. 5, 1990, 104 Stat. 1569, 1570; Pub. L. 102–190, div. A, title X, §1061(a)(7), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title VI, §653(a), Oct. 23, 1992, 106 Stat. 2426; Pub. L. 103–160, div. A, title V, §555(a), (b), title XI, §1182(a)(2), Nov. 30, 1993, 107 Stat. 1666, 1771; Pub. L. 104–106, div. A, title XV, §1501(c)(16), Feb. 10, 1996, 110 Stat. 499; Pub. L. 104–193, title III, §§362(c), 363(c)(1)–(3), Aug. 22, 1996, 110 Stat. 2246, 2249; Pub. L. 104–201, div. A, title VI, §636, Sept. 23, 1996, 110 Stat. 2579; Pub. L. 105–85, div. A, title X, §1073(a)(24), (25), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 107–107, div. A, title X, §1048(c)(9), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1)(D) and (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part D of title IV of the Act is classified generally to part D (§651 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Section 454B of the Act is classified to section 654b of

Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Soldiers' and Sailors' Civil Relief Act, referred to in subsec. (b)(1)(D), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see section 501 of the Appendix to Title 50 and Tables.

AMENDMENTS

2002—Subsec. (h)(2)(A), (8). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (d)(6). Pub. L. 107–107 substituted ''August 22, 1996,'' for ''the date of the enactment of this paragraph''.

1997—Subsec. (d). Pub. L. 105–85, §1073(a)(24)(A), substituted ''to'' for ''To'' in heading.

Subsec. (d)(6). Pub. L. 105–85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7). Pub. L. 105–85, §1073(a)(24)(B), redesignated par. (6), relating to court order which is out-of-State modification, as (7).

Subsec. (d)(7)(A). Pub. L. 105–85, §1073(a)(24)(C), substituted ''out-of-State'' for ''out-of State''.

Subsec. (g). Pub. L. 105–85, §1073(a)(25), in heading, substituted ''to'' for ''To'' and ''on'' for ''On''.

1996—Subsec. (a)(1)(D). Pub. L. 104–193, §362(c)(1), added subpar. (D).

Subsec. (a)(2). Pub. L. 104–193, §362(c)(2)(A), inserted ''or a support order, as defined in section 453(p) of the Social Security Act (42 U.S.C. 653(p)),'' before ''which—''.

Subsec. (a)(2)(B)(i). Pub. L. 104–193, §362(c)(2)(B), substituted ''(as defined in section 459(i)(2) of the Social Security Act (42 U.S.C. 659(i)(2)))'' for ''(as defined in section 462(b) of the Social Security Act (42 U.S.C. 662(b)))''.

Subsec. (a)(2)(B)(ii). Pub. L. 104–193, §362(c)(2)(C), substituted ''(as defined in section 459(i)(3) of the Social Security Act (42 U.S.C. 659(i)(3)))'' for ''(as defined in section 462(c) of the Social Security Act (42 U.S.C. 662(c)))''.

Subsec. (a)(5). Pub. L. 104–106 substituted ''section 12731'' for ''section 1331''.

Subsec. (b)(1)(A). Pub. L. 104–201, §636(a), substituted ''facsimile or electronic transmission or by mail'' for ''certified or registered mail, return receipt requested''.

Subsec. (d). Pub. L. 104–193, §362(c)(3)(A), inserted ''(or for benefit of)'' before ''Spouse or'' in heading.

Subsec. (d)(1). Pub. L. 104–193, §363(c)(2), inserted after first sentence ''In the case of a spouse or former spouse who, pursuant to section 408(a)(3) of the Social Security Act (42 U.S.C. 608(a)(4)), assigns to a State the rights of the spouse or former spouse to receive support, the Secretary concerned may make the child support payments referred to in the preceding sentence to that State in amounts consistent with that assignment of rights.''

Pub. L. 104–193, §362(c)(3)(B), in first sentence, inserted ''(or for the benefit of such spouse or former spouse to a State disbursement unit established pursuant to section 454B of the Social Security Act or other public payee designated by a State, in accordance with part D of title IV of the Social Security Act, as directed by court order, or as otherwise directed in accordance with such part D)'' before ''in an amount sufficient''.

Subsec. (d)(6). Pub. L. 104–201, §636(b), added par. (6) relating to court order which is out-of-State modification.

Pub. L. 104–193, §363(c)(3), added par. (6) relating to use of disposable retired pay of member to satisfy amount of child support set forth in court order.

Subsec. (i). Pub. L. 104–193, §363(c)(1), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 104–193, §363(c)(1), redesignated subsec. (j) as (k).

Pub. L. 104–193, §362(c)(4), added subsec. (j).

Subsec. (k). Pub. L. 104–193, §363(c)(1), redesignated subsec. (j) as (k).

1993—Subsecs. (b)(1)(A), (f)(1), (2). Pub. L. 103–160, §1182(a)(2)(A), substituted ''subsection (i)'' for ''subsection (h)''.

Subsec. (h)(2)(A). Pub. L. 103–160, §555(b)(1), inserted ''or, for the Coast Guard when it is not operating as a service in the Navy, by the Secretary of Transportation'' after ''Secretary of Defense''.

Subsec. (h)(4)(B). Pub. L. 103–160, §1182(a)(2)(B), inserted ''of'' after ''of that termination''.

Subsec. (h)(8). Pub. L. 103–160, §555(b)(2), inserted before period at end ''or, in the case of the Coast Guard, out of funds appropriated to the Department of Transportation for payment of retired pay for the Coast Guard''.

Subsec. (h)(10), (11). Pub. L. 103–160, §555(a), added par. (10) and redesignated former par. (10) as (11).

1992—Subsecs. (h), (i). Pub. L. 102–484 added subsec. (h) and redesignated former subsec. (h) as (i).

1991—Pub. L. 102–190 inserted ''or retainer'' after ''retired'' in section catchline.

1990—Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' in section catchline.

Subsec. (a). Pub. L. 101–510, §555(g)(1), inserted heading.

Subsec. (a)(2)(C). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (a)(4). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing in introductory provisions and in subpar. (D).

Subsec. (a)(4)(A). Pub. L. 101–510, §555(b)(1), inserted before semicolon at end ''for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay''.

Subsec. (a)(4)(B). Pub. L. 101–510, §555(b)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''are required by law to be and are deducted from the retired or retainer pay of such member, including fines and forfeitures ordered by courts-martial, Federal employment taxes, and amounts waived in order to receive compensation under title 5 or title 38;''.

Subsec. (a)(4)(C) to (F). Pub. L. 101–510, §555(b)(3), (4), redesignated subpars. (E) and (F) as (C) and (D), respectively, and struck out former subpars. (C) and (D) which read as follows:

''(C) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and to the extent such amounts withheld are not greater than would be authorized if such member claimed all dependents to which he was entitled;

''(D) are withheld under section 3402(i) of the Internal Revenue Code of 1986 if such member presents evidence of a tax obligation which supports such withholding;''.

Subsec. (a)(7). Pub. L. 101–510, §555(f)(1), added par. (7).

Subsec. (b). Pub. L. 101–510, §555(g)(2), inserted heading.

Subsec. (c). Pub. L. 101–510, §555(g)(3), inserted heading.

Subsec. (c)(1). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 101–510, §555(a), inserted at end ''A court may not treat retired pay as property in any proceeding to divide or partition any amount of retired pay of a member as the property of the member and the member's spouse or former spouse if a final decree of divorce, dissolution, annulment, or legal separation (including a court ordered, ratified, or approved property settlement incident to such decree) affecting the member and the member's spouse or former spouse (A) was issued before June 25, 1981, and (B) did not treat (or reserve jurisdiction to treat) any amount of retired pay of the member as property of the member and the member's spouse or former spouse.''

Subsec. (c)(2). Pub. L. 101–510, §555(c), inserted at end ''Payments by the Secretary concerned under sub-

section (d) to a spouse or former spouse with respect to a division of retired pay as the property of a member and the member's spouse under this subsection may not be treated as amounts received as retired pay for service in the uniformed services.''

Subsec. (c)(4). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (d). Pub. L. 101–510, §555(g)(4), inserted heading.

Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (e). Pub. L. 101–510, §555(g)(5), inserted heading.

Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–510, §555(d)(1), substituted ''payable under all court orders pursuant to subsection (c)'' for ''payable under subsection (d)''.

Subsec. (e)(4)(B). Pub. L. 101–510, §555(d)(2), substituted ''the amount of the retired pay payable to such member that is considered under section 462 of the Social Security Act (42 U.S.C. 662) to be remuneration for employment that is payable by the United States'' for ''the disposable retired or retainer pay payable to such member''.

Subsec. (f). Pub. L. 101–510, §555(g)(6), inserted heading.

Subsec. (f)(1). Pub. L. 101–510, §555(f)(2), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (g). Pub. L. 101–510, §555(g)(7), inserted heading.

Subsec. (h). Pub. L. 101–510, §555(g)(8), inserted heading.

1989—Subsec. (a)(1), (2). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'court'' for '' 'Court'' in introductory provisions.

Subsec. (a)(3). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'final'' for '' 'Final''.

Subsec. (a)(4). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'disposable'' for '' 'Disposable'' in introductory provisions.

Subsec. (a)(4)(D). Pub. L. 101–189, §653(a)(5)(A), struck out ''(26 U.S.C. 3402(i))'' after ''Code of 1986''.

Subsec. (a)(5). Pub. L. 101–189, §§653(a)(5)(B), 1622(e)(6), substituted ''The term 'member'' for '' 'Member'' and inserted ''entitled to retired pay under section 1331 of this title'' after ''a former member''.

Subsec. (a)(6). Pub. L. 101–189, §1622(e)(6), substituted ''The term 'spouse'' for '' 'Spouse''.

1987—Subsec. (a)(4). Pub. L. 100–26, §3(3), made technical amendment to directory language of Pub. L. 99–661, §644(a). See 1986 Amendment note below.

Subsec. (a)(4)(D). Pub. L. 100–26, §7(h)(1), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1986—Subsec. (a)(4). Pub. L. 99–661, §644(a), as amended by Pub. L. 100–26, §3(3), struck out ''(other than the retired pay of a member retired for disability under chapter 61 of this title)'' before ''less amounts'' in introductory text, added subpar. (E), and struck out former subpar. (E) which read as follows: ''are deducted as Government life insurance premiums (not including amounts deducted for supplemental coverage); or''.

1984—Subsec. (a)(2)(C). Pub. L. 98–525, §643(a), inserted ''in the case of a division of property,''.

Subsec. (b)(1)(C). Pub. L. 98–525, §643(b), inserted '', if possible,''.

Subsec. (d)(1). Pub. L. 98–525, §643(c)(1), substituted ''After effective service on the Secretary concerned of a court order providing for the payment of child support or alimony or, with respect to a division of property, specifically providing for the payment of an amount of the disposable retired or retainer pay from a member to the spouse or a former spouse of the member, the Secretary shall make payments (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse in an amount sufficient to satisfy the amount of child support and alimony set forth in the court order and, with respect to a division of property, in the amount of disposable retired or retainer pay specifically provided for in the court order'' for ''After effective service on the Secretary concerned of a court order with respect to the payment of a portion of the retired or retainer pay of a member to the spouse or a former spouse of the member, the Secretary shall, subject to the limitations of this section, make payments to the spouse or former spouse in the amount of the disposable retired or retainer pay of the member specifically provided for in the court order''.

Subsec. (d)(5). Pub. L. 98–525, §643(c)(2), substituted ''child support or alimony or the payment of an amount of disposable retired or retainer pay as the result of the court's treatment of such pay under subsection (c) as property of the member and his spouse, the Secretary concerned shall pay (subject to the limitations of this section) from the disposable retired or retainer pay of the member to the spouse or former spouse of the member, any part'' for ''disposable retired or retainer pay, the Secretary concerned shall, subject to the limitations of this section, pay to the spouse or former spouse of the member, from the disposable retired or retainer pay of the member, any part''.

Subsec. (e)(2). Pub. L. 98–525, §643(d)(1), substituted '', the disposable retired or retainer pay of the member'' for ''from the disposable retired or retainer pay of a member, such pay'' before ''shall be used to satisfy''.

Subsec. (e)(3)(A). Pub. L. 98–525, §643(d)(2)(A), struck out ''from the disposable retired or retainer pay'' before ''of the same member''.

Subsec. (e)(3)(A)(i). Pub. L. 98–525, §643(d)(2)(B), substituted ''from the member's disposable retired or retainer pay the least amount'' for ''the least amount of disposable retired or retainer pay'' before ''directed to be paid''.

Subsec. (e)(2)(A)(ii)(I). Pub. L. 98–525, §643(d)(2)(C), struck out ''of retired or retainer pay'' before ''required by any conflicting''.

Subsec. (e)(4)(A). Pub. L. 98–525, §643(d)(3), struck out ''the retired or retainer pay of'' before ''the same member'' and substituted ''satisfaction of such court orders and legal process from the retired or retainer pay of the members shall be'' for ''such court orders and legal process shall be satisfied''.

Subsec. (e)(5). Pub. L. 98–525, §643(d)(4), struck out ''of disposable retired or retainer pay'' after ''payment of an amount'' in two places and substituted ''disposable retired or retainer pay'' for ''such pay'' before ''available for payment''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by section 362(c) of Pub. L. 104–193 effective six months after Aug. 22, 1996, see section 362(d) of Pub. L. 104–193, set out as a note under section 659 of Title 42, The Public Health and Welfare.

For effective date of amendment by section 363(c)(1)–(3) of Pub. L. 104–193, see section 395(a)–(c) of Pub. L. 104–193, set out as a note under section 654 of Title 42.

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 555(c) of Pub. L. 103–160 provided that: ''The amendments made by this section [amending this section] shall take effect as of October 23, 1992, and shall apply as if the provisions of the paragraph (10) of section 1408(h) of title 10, United States Code, added by such subsection were included in the amendment made by section 653(a)(2) of Public Law 102–484 (106 Stat. 2426) [amending this section].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 555(e) of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title X, §1062(a)(1), Dec. 5, 1991, 105 Stat. 1475, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to judgments issued before, on, or after the date of the enactment of this Act [Nov. 5, 1990]. In the case of a judgment issued before the date of the enactment of this Act, such amendment shall not relieve any obligation, otherwise valid, to make a payment that is due to be made before the end of the two-year period beginning on the date of the enactment of this Act.

''(2) The amendments made by subsections (b), (c), and (d) [amending this section] apply with only respect to divorces, dissolutions of marriage, annulments, and legal separations that become effective after the end of the 90-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(3) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 644(b) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to court orders issued after the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 643(e) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section] shall apply with respect to court orders for which effective service (as described in section 1408(b)(1) of title 10, United States Code, as amended by subsection (b) of this section) is made on or after the date of the enactment of this Act [Oct. 19, 1984].''

EFFECTIVE DATE; TRANSITION PROVISIONS

Section 1006 of title X of Pub. L. 97–252, as amended by Pub. L. 98–94, title IX, §941(c)(4), Sept. 24, 1983, 97 Stat. 654; Pub. L. 98–525, title VI, §645(b), Oct. 19, 1984, 98 Stat. 2549, provided that:

''(a) The amendments made by this title [amending this section and sections 1072, 1076, 1086, 1447, 1448, and 1450 of this title and enacting provisions set out as notes under this section and section 1401 of this title] shall take effect on the first day of the first month [February 1983] which begins more than one hundred and twenty days after the date of the enactment of this title [Sept. 8, 1982].

''(b) Subsection (d) of section 1408 of title 10, United States Code, as added by section 1002(a), shall apply only with respect to payments of retired or retainer pay for periods beginning on or after the effective date of this title [Feb. 1, 1983, provided in subsec. (a)], but without regard to the date of any court order. However, in the case of a court order that became final before June 26, 1981, payments under such subsection may only be made in accordance with such order as in effect on such date and without regard to any subsequent modifications.

''(c) The amendments made by section 1003 of this title [amending sections 1447, 1448, and 1450 of this title] shall apply to persons who become eligible to participate in the Survivor Benefit Plan provided for in subchapter II of chapter 73 of title 10, United States Code [section 1447 et seq. of this title], before, on, or after the effective date of such amendments.

''(d) The amendments made by section 1004 of this title [amending sections 1072, 1076, and 1086 of this title] and the provisions of section 1005 of this title [formerly set out as a note under this section] shall apply in the case of any former spouse of a member or former member of the uniformed services whether the final decree of divorce, dissolution, or annulment of the marriage of the former spouse and such member or former member is dated before, on, or after February 1, 1983.

''(e) For the purposes of this section—

''(1) the term 'court order' has the same meaning as provided in section 1408(a)(2) of title 10, United States Code (as added by section 1002 of this title);

''(2) the term 'former spouse' has the same meaning as provided in section 1408(a)(6) of such title (as added by section 1002 of this title); and

''(3) the term 'uniformed services' has the same meaning as provided in section 1072 of title 10, United States Code.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REVIEW OF FEDERAL FORMER SPOUSE PROTECTION LAWS

Section 643 of Pub. L. 105–85 provided that:

''(a) REVIEW REQUIRED.—The Secretary of Defense shall carry out a comprehensive review (including a comparison) of—

''(1) the protections, benefits, and treatment afforded under Federal law to members and former members of the uniformed services and former spouses of such persons; and

''(2) the protections, benefits, and treatment afforded under Federal law to employees and former employees of the Government and former spouses of such persons.

''(b) MILITARY PERSONNEL MATTERS TO BE REVIEWED.—In the case of members and former members of the uniformed services and former spouses of such persons, the review under subsection (a) shall include the following:

''(1) All provisions of law (principally those originally enacted in the Uniformed Services Former Spouses' Protection Act (title X of Public Law 97–252) [see Short Title of 1982 Amendment note set out under section 1401 of this title]) that—

''(A) establish, provide for the enforcement of, or otherwise protect interests of members and former members of the uniformed services and former spouses of such persons in retired or retainer pay of members and former members; or

''(B) provide other benefits for members and former members of the uniformed services and former spouses of such persons.

''(2) The experience of the uniformed services in administering those provisions of law, including the adequacy and effectiveness of the legal assistance provided by the Department of Defense in matters related to the Uniformed Services Former Spouses' Protection Act.

''(3) The experience of members and former members of the uniformed services and former spouses of such persons in the administration of those provisions of law.

''(4) The experience of members and former members of the uniformed services and former spouses of such persons in the application of those provisions of law by State courts.

''(5) The history of State statutes and State court interpretations of the Uniformed Services Former Spouses' Protection Act and other provisions of Federal law described in paragraph (1)(A) and the extent to which those interpretations follow those laws.

''(c) CIVILIAN PERSONNEL MATTERS TO BE REVIEWED.—In the case of former spouses of employees and former employees of the Government, the review under subsection (a) shall include the following:

''(1) All provisions of law that—

''(A) establish, provide for the enforcement of, or otherwise protect interests of employees and

former employees of the Government and former spouses of such persons in annuities of employees and former employees under Federal employees' retirement systems; or

''(B) provide other benefits for employees and former employees of the Government and former spouses of such persons.

''(2) The experience of the Office of Personnel Management and other agencies of the Government in administering those provisions of law.

''(3) The experience of employees and former employees of the Government and former spouses of such persons in the administration of those provisions of law.

''(4) The experience of employees and former employees of the Government and former spouses of such persons in the application of those provisions of law by State courts.

''(d) SAMPLING AUTHORIZED.—The Secretary may use sampling in carrying out the review under this section.

''(e) REPORT.—Not later than September 30, 1999, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report on the results of the review under subsection (a). The report shall include any recommendations for legislation that the Secretary considers appropriate.''

PAYROLL DEDUCTIONS FOR ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

Section 363(c)(4) of Pub. L. 104–193 provided that: ''The Secretary of Defense shall begin payroll deductions within 30 days after receiving notice of withholding, or for the first pay period that begins after such 30-day period.''

ACCRUAL OF PAYMENTS; PROSPECTIVE APPLICABILITY

Section 653(c) of Pub. L. 102–484 provided that: ''No payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), shall accrue for periods before the date of the enactment of this Act [Oct. 23, 1992].''

STUDY CONCERNING BENEFITS FOR DEPENDENTS WHO ARE VICTIMS OF ABUSE

Section 653(e) of Pub. L. 102–484 provided that:

''(1) The Secretary of Defense shall conduct a study in order to estimate—

''(A) the number of persons who will become eligible to receive payments under subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a)), during each of fiscal years 1993 through 2000; and

''(B) for each of fiscal years 1993 through 2000, the number of members of the Armed Forces who, after having completed at least one, and less than 20, years of service in that fiscal year, will be approved in that fiscal year for separation from the Armed Forces as a result of having abused a spouse or dependent child.

''(2) The study shall include a thorough analysis of—

''(A) the effects, if any, of appeals and requests for clemency in the case of court-martial convictions on the entitlement to payments in accordance with subsection (h) of section 1408 of title 10, United States Code (as added by subsection (a));

''(B) the socio-economic effects on the dependents of members of the Armed Forces described in subsection (h)(2) of such section that result from terminations of the eligibility of such members to receive retired or retainer pay; and

''(C) the effects of separations of such members from the Armed Forces on the mission readiness of the units of assignment of such members when separated and on the Armed Forces in general.

''(3) Not later than one year after the date of the enactment of this Act [Oct. 23, 1992], the Secretary shall submit to Congress a report on the results of the study.''

COMMISSARY AND EXCHANGE PRIVILEGES

Section 1005 of Pub. L. 97–252, which directed Secretary of Defense to prescribe regulations to provide that an unremarried former spouse described in 10 U.S.C. 1072(2)(F)(i) is entitled to commissary and post exchange privileges to the same extent and on the same basis as the surviving spouse of a retired member of the uniformed services, was repealed and restated in section 1062 of this title by Pub. L. 100–370, §1(c)(1), (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1059, 1078a, 1447, 1461, 1463 of this title; title 5 sections 8332, 8411.

§ 1409. Retired pay multiplier

(a) RETIRED PAY MULTIPLIER FOR REGULAR-SERVICE NONDISABILITY RETIREMENT.—In computing—

(1) the retired pay of a member of a uniformed service who is entitled to that pay under any provision of law other than—

(A) chapter 61 of this title (relating to retirement or separation for physical disability); or

(B) chapter 1223 of this title (relating to retirement for non-regular service); or

(2) the retainer pay of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title,

the retired pay multiplier (or retainer pay multiplier) is the percentage determined under subsection (b).

(b) PERCENTAGE.—

(1) GENERAL RULE.—Subject to paragraphs (2) and (3), the percentage to be used under subsection (a) is the product (stated as a percentage) of—

(A) 2½, and

(B) the member's years of creditable service (as defined in subsection (c)).

(2) REDUCTION APPLICABLE TO CERTAIN NEW-RETIREMENT MEMBERS WITH LESS THAN 30 YEARS OF SERVICE.—In the case of a member who first became a member of a uniformed service after July 31, 1986, has elected to receive a bonus under section 322 of title 37, has less than 30 years of creditable service, and is under the age of 62 at the time of retirement, the percentage determined under paragraph (1) shall be reduced by—

(A) 1 percentage point for each full year that the member's years of creditable service are less than 30; and

(B) 1/12 of 1 percentage point for each month by which the member's years of creditable service (after counting all full years of such service) are less than a full year.

(3) 75 PERCENT LIMIT.—In the case of a member with more than 30 years of creditable service, the percentage to be used under subsection (a) is 75 percent.

(c) YEARS OF CREDITABLE SERVICE DEFINED.—In this section, the term ''years of creditable service'' means the number of years of service creditable to a member in computing the member's retired or retainer pay (including 1/12 of a year for each full month of service that is in addition to the number of full years of service of the member).

(Added Pub. L. 99–348, title I, § 101, July 1, 1986, 100 Stat. 683; amended Pub. L. 101–189, div. A, title VI, § 651(b)(3), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 103–337, div. A, title XVI, § 1662(j)(6), Oct. 5, 1994, 108 Stat. 3005; Pub. L. 106–65, div. A, title VI, §§ 641(a), 643(b)(2), Oct. 5, 1999, 113 Stat. 662, 664.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65 inserted ''certain'' after ''Reduction applicable to'' in heading and ''has elected to receive a bonus under section 322 of title 37,'' after ''July 31, 1986,'' in introductory provisions.

1994—Subsec. (a)(1)(B). Pub. L. 103–337 substituted ''chapter 1223'' for ''chapter 67''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''who is entitled to that pay'' for ''who is retired'' in introductory provisions.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1401, 1402a, 1410, 1447, 1451, 1452, 3991, 3992, 6151, 6333, 6334, 8991, 8992, 14519 of this title; title 14 section 423; title 33 section 3045; title 37 section 322; title 42 sections 211, 212.

§ 1410. Restoral of full retirement amount at age 62 for certain members entering on or after August 1, 1986

In the case of a member or former member who first became a member of a uniformed service on or after August 1, 1986, who has elected to receive a bonus under section 322 of title 37, and who becomes entitled to retired pay before the age of 62, the retired pay of such member or former member shall be recomputed, effective on the first day of the first month beginning after the member or former member attains 62 years of age, so as to be the amount equal to the amount of retired pay to which the member or former member would be entitled on that date if—

(1) increases in the retired pay of the member or former member under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and

(2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section.

(Added Pub. L. 99–348, title I, § 103, July 1, 1986, 100 Stat. 685; amended Pub. L. 100–224, § 2, Dec. 30, 1987, 101 Stat. 1536; Pub. L. 101–189, div. A, title VI, § 651(b)(4), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 106–65, div. A, title VI, §§ 641(c), 643(b)(3)(A), Oct. 5, 1999, 113 Stat. 662, 664.)

AMENDMENTS

1999—Pub. L. 106–65 inserted ''certain'' before ''members'' in section catchline and ''who has elected to receive a bonus under section 322 of title 37,'' after ''August 1, 1986,'' in introductory provisions.

1989—Pub. L. 101–189, § 651(b)(4), in introductory provisions, inserted ''or former member'' after ''In the case of a member'', ''the retired pay of such member'', ''after the member'', and ''to which the member'', and in par. (1), substituted ''retired pay of the member or former member'' for ''member's retired pay''.

1987—Pub. L. 100–224 struck out heading ''(a) General rule'', substituted provisions that the amount equal to the amount of retired pay to which the member would be entitled on that date if (1) increases in the member's retired pay under section 1401a(b) of this title had been computed as provided in paragraph (2) of that section (rather than under paragraph (3) of that section); and (2) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, no reduction in the member's retired pay had been made under that section, for provisions that the amount equal to (1) the amount of the member's initial unreduced retired pay, increased by (2) the percent (adjusted to the nearest one-tenth of 1 percent) by which (A) the price index for the most recent base quarter ending more than 31 days before the date the member attains 62 years of age, exceeds (B) the price index for the calendar quarter immediately before the date the member first became entitled to retired pay, and struck out subsec. (b) which had directed that, in this section, the term ''initial unreduced retired pay'' meant the amount of retired pay (A) to which the member was entitled when the member first became entitled to retired pay; or (B) in the case of a member whose retired pay was subject to section 1409(b)(2) of this title, to which the member would have been entitled on the date of the member's retirement without regard to that section, and that the definitions in subsection (g), and the provisions of subsection (h), of section 1401a of this title applied to this section.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1451, 1452 of this title; title 37 section 322.

§ 1411. Rules of construction

(a) CONSTRUCTION OF ''FIRST BECAME A MEMBER''.—For purposes of this chapter and other provisions of law providing for computation of retired or retainer pay of members of the uniformed services, a person shall be considered to first become a member of a uniformed service on the date the person is first enlisted, inducted, or appointed in a uniformed service.

(b) REFERENCES IN TABLES.—Section references in tables in this chapter are to sections of this title.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691.)

§ 1412. Rounding to next lower dollar

Amounts computed under this chapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Added Pub. L. 99–348, title I, § 105, July 1, 1986, 100 Stat. 691.)

§ 1413. Special compensation for certain severely disabled uniformed services retirees

(a) AUTHORITY.—The Secretary concerned shall pay to each eligible disabled uniformed services retiree a monthly amount determined under subsection (b). If the provisions of sub-

section (a) of section 1414 of this title become effective in accordance with subsection (f) of that section, payments under this section shall be terminated effective as of the month beginning on the effective date specified in subsection (e) of that section.

(b) AMOUNT.—The amount to be paid to an eligible disabled uniformed services retiree in accordance with subsection (a) is the following:

(1) For payments for months beginning with February 2002 and ending with December 2002, the following:

(A) For any month for which the retiree has a qualifying service-connected disability rated as total, $300.

(B) For any month for which the retiree has a qualifying service-connected disability rated as 90 percent, $200.

(C) For any month for which the retiree has a qualifying service-connected disability rated as 80 percent or 70 percent, $100.

(D) For any month for which the retiree has a qualifying service-connected disability rated as 60 percent, $50.

(2) For payments for months beginning with January 2003 and ending with September 2004, the following:

(A) For any month for which the retiree has a qualifying service-connected disability rated as total, $325.

(B) For any month for which the retiree has a qualifying service-connected disability rated as 90 percent, $225.

(C) For any month for which the retiree has a qualifying service-connected disability rated as 80 percent, $125.

(D) For any month for which the retiree has a qualifying service-connected disability rated as 70 percent, $100.

(E) For any month for which the retiree has a qualifying service-connected disability rated as 60 percent, $50.

(3) For payments for months after September 2004, the following:

(A) For any month for which the retiree has a qualifying service-connected disability rated as total, $350.

(B) For any month for which the retiree has a qualifying service-connected disability rated as 90 percent, $250.

(C) For any month for which the retiree has a qualifying service-connected disability rated as 80 percent, $150.

(D) For any month for which the retiree has a qualifying service-connected disability rated as 70 percent, $125.

(E) For any month for which the retiree has a qualifying service-connected disability rated as 60 percent, $50.

(c) ELIGIBLE MEMBERS.—An eligible disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services in a retired status who—

(1) completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled; and

(2) has a qualifying service-connected disability.

(d) QUALIFYING SERVICE-CONNECTED DISABILITY DEFINED.—In this section, the term ''qualifying service-connected disability'' means a service-connected disability that—

(1) was incurred or aggravated in the performance of duty as a member of a uniformed service, as determined by the Secretary concerned; and

(2) is rated as not less than 60 percent disabling—

(A) by the Secretary concerned as of the date on which the member is retired from the uniformed services; or

(B) by the Secretary of Veterans Affairs within four years following the date on which the member is retired from the uniformed services.

(e) CONSTRUCTION WITH SPECIAL COMPENSATION FOR COMBAT-DISABLED UNIFORMED SERVICES RETIREES.—(1) An individual who is paid special compensation under this section may not receive special compensation under section 1413a of this title.

(2) An individual who is eligible for special compensation under this section and special compensation under section 1413a of this title shall elect which special compensation to receive.

(3) The Secretary of Defense shall prescribe in regulations the manner and form of an election under this subsection.

(f) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(g) SOURCE OF FUNDS.—Payments under this section for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(h) OTHER DEFINITIONS.—In this section:

(1) The term ''service-connected'' has the meaning given that term in section 101 of title 38.

(2) The term ''disability rated as total'' means—

(A) a disability that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

(B) a disability for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the disabled person concerned to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

(3) The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(Added Pub. L. 106–65, div. A, title VI, § 658(a)(1), Oct. 5, 1999, 113 Stat. 668; amended Pub. L. 106–398, § 1 [[div. A], title VI, § 657(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166; Pub. L. 107–107, div. A, title VI, § 641(b), (e)(1), (2), Dec. 28, 2001, 115 Stat. 1150, 1151; Pub. L. 107–314, div. A, title VI, § 636(b), Dec. 2, 2002, 116 Stat. 2576.)

AMENDMENTS

2002—Subsec. (e) to (h). Pub. L. 107–314 added subsec. (e) and redesignated former subsecs. (e) to (g) as (f) to (h), respectively.

2001—Subsec. (a). Pub. L. 107–107, § 641(b), inserted at end ''If the provisions of subsection (a) of section 1414 of this title become effective in accordance with sub-

section (f) of that section, payments under this section shall be terminated effective as of the month beginning on the effective date specified in subsection (e) of that section.''

Subsec. (b)(1) to (3). Pub. L. 107–107, § 641(e)(1), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

''(1) For any month for which the retiree has a qualifying service-connected disability rated as total, $300.

''(2) For any month for which the retiree has a qualifying service-connected disability rated as 90 percent, $200.

''(3) For any month for which the retiree has a qualifying service-connected disability rated as 80 percent or 70 percent, $100.''

Subsec. (d)(2). Pub. L. 107–107, § 641(e)(2), substituted ''60 percent'' for ''70 percent'' in introductory provisions.

2000—Subsec. (c). Pub. L. 106–398 struck out ''(other than a member who is retired under chapter 61 of this title)'' after ''retired status'' in introductory provisions.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VI, § 641(e)(3), Dec. 28, 2001, 115 Stat. 1151, provided that: ''The amendments made by this subsection [amending this section] shall take effect on February 1, 2002.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VI, § 657(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2001, and shall apply to months that begin on or after that date. No benefit may be paid under section 1413 of title 10, United States Code, to any person by reason of the amendment made by subsection (a) for any period before that date.''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VI, § 658(b), Oct. 5, 1999, 113 Stat. 669, provided that: ''Section 1413 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1999, and shall apply to months that begin on or after that date. No benefit may be paid to any person by reason of that section for any period before that date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1413a of this title.

§ 1413a. Special compensation for certain combat-related disabled uniformed services retirees

(a) AUTHORITY.—The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(b) AMOUNT.—

(1) DETERMINATION OF MONTHLY AMOUNT.—Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree for a combat-related disability under subsection (a) is the monthly amount of compensation to which the retiree would be entitled solely for the combat-related disability consistent with chapter 11 of title 38.

(2) MAXIMUM AMOUNT.—The amount paid to an eligible combat-related disabled uniformed services retiree for any month under paragraph (1) may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of title 38.

(3) SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.—In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title, the amount of the payment under paragraph (1) for any month shall be reduced by the amount (if any) by which the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(c) ELIGIBLE RETIREES.—For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services entitled to retired pay who—

(1) has completed at least 20 years of service in the uniformed services that are creditable for purposes of computing the amount of retired pay to which the member is entitled; and

(2) has a qualifying combat-related disability.

(d) PROCEDURES.—The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense.

(e) QUALIFYING COMBAT-RELATED DISABILITY.—In this section, the term ''qualifying combat-related disability'' means either of the following:

(1) A disability that—

(A) is attributable to an injury for which the member was awarded the Purple Heart; and

(B) is rated as not less than 10 percent disabling—

(i) by the Secretary concerned, as of the date on which the member is retired from the uniformed services, under criteria prescribed by the Secretary of Defense; or

(ii) by the Secretary of Veterans Affairs.

(2) A service-connected disability that—

(A) was incurred (as determined under criteria prescribed by the Secretary of Defense)—

(i) as a direct result of armed conflict;

(ii) while engaged in hazardous service;

(iii) in the performance of duty under conditions simulating war; or

(iv) through an instrumentality of war; and

(B) is rated as not less than 60 percent disabling—

(i) by the Secretary concerned, as of the date on which the member is retired from the uniformed services, under criteria prescribed by the Secretary of Defense; or

(ii) by the Secretary of Veterans Affairs.

(f) CONSTRUCTION WITH SPECIAL COMPENSATION FOR SEVERELY DISABLED UNIFORMED SERVICES RETIREES.—

(1) SINGLE SOURCE OF COMPENSATION.—An individual who is paid special compensation under this section may not receive special compensation under section 1413 of this title.

(2) ELECTION OF SOURCE.—An individual who is eligible for special compensation under this section and special compensation under section 1413 of this title shall elect which special compensation to receive.

(3) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the manner and form of an election under this subsection.

(g) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(h) SOURCE OF PAYMENTS.—Payments under this section for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(i) OTHER DEFINITIONS.—In this section:

(1) The term ''service-connected'' has the meaning given such term in section 101 of title 38.

(2) The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(Added Pub. L. 107–314, div. A, title VI, § 636(a)(1), Dec. 2, 2002, 116 Stat. 2574.)

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, § 636(a)(2), Dec. 2, 2002, 116 Stat. 2576, provided that: ''Section 1413a of title 10, United States Code, as added by paragraph (1), shall take effect not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1413 of this title.

§ 1414. Members eligible for retired pay who have service-connected disabilities: payment of retired pay and veterans' disability compensation; contingent authority

(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—Subject to subsection (b), a member or former member of the uniformed services who is entitled to retired pay (other than as specified in subsection (c)) and who is also entitled to veterans' disability compensation is entitled to be paid both without regard to sections 5304 and 5305 of title 38, subject to the enactment of qualifying offsetting legislation as specified in subsection (f).

(b) SPECIAL RULE FOR CHAPTER 61 CAREER RETIREES.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title at the time of the member's retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member's retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.

(c) EXCEPTION.—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member's retirement.

(d) DEFINITIONS.—In this section:

(1) The term ''retired pay'' includes retainer pay, emergency officers' retirement pay, and naval pension.

(2) The term ''veterans' disability compensation'' has the meaning given the term ''compensation'' in section 101(12) of title 38.

(e) EFFECTIVE DATE.—If qualifying offsetting legislation (as defined in subsection (f)) is enacted, the provisions of subsection (a) shall take effect on—

(1) the first day of the first month beginning after the date of the enactment of such qualifying offsetting legislation; or

(2) the first day of the fiscal year that begins in the calendar year in which such legislation is enacted, if that date is later than the date specified in paragraph (1).

(f) EFFECTIVENESS CONTINGENT ON ENACTMENT OF OFFSETTING LEGISLATION.—(1) The provisions of subsection (a) shall be effective only if—

(A) the President, in the budget for any fiscal year, proposes the enactment of legislation that, if enacted, would be qualifying offsetting legislation; and

(B) after that budget is submitted to Congress, there is enacted qualifying offsetting legislation.

(2) In this subsection:

(A) The term ''qualifying offsetting legislation'' means legislation (other than an appropriations Act) that includes provisions that—

(i) offset fully the increased outlays to be made by reason of the provisions of subsection (a) for each of the first 10 fiscal years beginning after the date of the enactment of such legislation;

(ii) expressly state that they are enacted for the purpose of the offset described in clause (i); and

(iii) are included in full on the PayGo scorecard.

(B) The term ''PayGo scorecard'' means the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(d)) with respect to the ten fiscal years following the date of the enactment of the legislation that is qualifying offsetting legislation for purposes of this section.

(Added Pub. L. 107–107, div. A, title VI, § 641(a), Dec. 28, 2001, 115 Stat. 1149.)

PROHIBITION OF RETROACTIVE BENEFITS

Pub. L. 107–107, div. A, title VI, § 641(d), Dec. 28, 2001, 115 Stat. 1150, provided that: ''If the provisions of subsection (a) of section 1414 of title 10, United States Code, becomes [sic] effective in accordance with subsection (f) of that section, no benefit may be paid to any person by reason of those provisions for any period before the effective date specified in subsection (e) of that section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1413 of this title.

CHAPTER 73—ANNUITIES BASED ON RETIRED OR RETAINER PAY

Subchapter		Sec.
I.	Retired Serviceman's Family Protection Plan	1431
II.	Survivor Benefit Plan	1447
III.	Supplemental Survivor Benefit Plan	1456

AMENDMENTS

1990—Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, amended Pub. L. 101–189, § 1404(a)(2), see 1989 Amendment note below.

1989—Pub. L. 101–189, div. A, title XIV, § 1404(a)(2), Nov. 29, 1989, 103 Stat. 1586, as amended by Pub. L. 101–510, div. A, title VI, § 631(1), title XIV, § 1484(*l*)(4)(A), Nov. 5, 1990, 104 Stat. 1580, 1719, added item for subchapter III, effective Apr. 1, 1992.

1980—Pub. L. 96–513, title V, § 511(54)(A), Dec. 12, 1980, 94 Stat. 2925, amended chapter heading to read: ''ANNUITIES BASED ON RETIRED OR RETAINER PAY''.

1972—Pub. L. 92–425, § 1(1), Sept. 21, 1972, 86 Stat. 706, added subchapter analysis and amended chapter heading by inserting ''; SURVIVOR BENEFIT PLAN'' after ''PAY'' which could not be executed as directed in view of amendment by Pub. L. 87–381.

1961—Pub. L. 87–381, § 1(1), Oct. 4, 1961, 75 Stat. 810, substituted ''RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN'' for ''ANNUITIES BASED ON RETIRED OR RETAINER PAY'' in chapter heading.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1408, 1461, 1463 of this title; title 5 sections 5531, 8311, 8317; title 26 sections 72, 122, 6334; title 33 section 3071; title 38 section 5301; title 42 section 213a.

SUBCHAPTER I—RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Sec.	
1431.	Election of annuity: members of armed forces.
1432.	Election of annuity: former members of armed forces.
1433.	Mental incompetency of member.
1434.	Kinds of annuities that may be elected.
1435.	Eligible beneficiaries.
1436.	Computation of reduction in retired pay; withdrawal for severe financial hardship.
1436a.	Coverage paid up at 30 years and age 70.
1437.	Payment of annuity.
1438.	Deposits for amounts not deducted.
1439.	Refund of amounts deducted from retired pay.
1440.	Annuities not subject to legal process.
1441.	Annuities in addition to other payments.
1442.	Recovery of annuity erroneously paid.
[1443.	Repealed.]
1444.	Regulations; determinations.
1444a.	Regulations regarding payment of annuity to a representative payee.
1445.	Correction of administrative deficiencies.
1446.	Restriction on participation.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VI, § 655(b), Oct. 5, 1999, 113 Stat. 667, added item 1436a.

1991—Pub. L. 102–190, div. A, title VI, § 654(b)(2), Dec. 5, 1991, 105 Stat. 1390, added item 1444a.

1972—Pub. L. 92–425, § 1(2)(B), (C), Sept. 21, 1972, 86 Stat. 706, struck out item 1443 ''Board of Actuaries'', and struck out ''reports to Congress'' from item 1444.

1961—Pub. L. 87–381, § 6(2), (3), Oct. 4, 1961, 75 Stat. 812, inserted ''; withdrawal for severe financial hardship'' in item 1436, and added items 1445 and 1446.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 38 section 1315.

§ 1431. Election of annuity: members of armed forces

(a) This section applies to all members of the armed forces except—

(1) members whose names are on a retired list other than a list maintained under section 12774(a) of this title;

(2) cadets at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy; and

(3) midshipmen.

(b) To provide an annuity under section 1434 of this title, a person covered by subsection (a) may elect to receive a reduced amount of the retired pay or retainer pay to which he may become entitled as a result of service in his armed force. Except as otherwise provided in this section, unless it is made before he completes nineteen years of service for which he is entitled to credit in the computation of his basic pay, the election must be made at least two years before the first day for which retired pay or retainer pay is granted. However, if, because of military operations, a member is assigned to an isolated station or is missing, interned in a neutral country, captured by a hostile force, or beleaguered or besieged, and for that reason is unable to make an election before completing nineteen years of that service, he may make the election, to become effective immediately, within one year after he ceases to be assigned to that station or returns to the jurisdiction of his armed force, as the case may be. A member to whom retired pay or retainer pay is granted retroactively, and who is otherwise eligible to make an election, may make the election within ninety days after receiving notice that such pay has been granted to him. An election made after August 13, 1968, is not effective if—

(1) the elector dies during the first thirty-day period he is entitled to retired pay as a result of a physical condition which led to his being granted retired pay under chapter 61 of title 10 with a disability of 100 per centum under the standard schedule of rating disabilities in use by the Department of Veterans Affairs at the time of the determination of the per centum of his disability;

(2) the disability was not the result of injury or disease received in line of duty as a direct result of armed conflict; and

(3) his surviving spouse or children are entitled to dependency and indemnity compensation under chapter 13 of title 38 based upon his death.

(c) An election may be changed or revoked by the elector before the first day for which retired or retainer pay is granted. Unless it is made on the basis of restored mental competency under section 1433 of this title, or unless it is made before the elector completes nineteen years of service for which he is entitled to credit in the computation of his basic pay (in which case only the latest change or revocation shall be effective), the change or revocation is not effective if it is made less than two years before the first day for which retired or retainer pay is granted. The elector may, however, before the first day for which retired or retainer pay is granted, change or revoke his election (provided the

change does not increase the amount of the annuity elected) to reflect a change in the marital or dependency status of the member or his family that is caused by death, divorce, annulment, remarriage, or acquisition of a child, if such change or revocation of election is made within two years of such change in marital or dependency status.

(d) If an election made under this section is found to be void for any reason except fraud or willful intent of the member making the election, he may make a corrected election at any time within 90 days after he is notified in writing that the election is void. A corrected election made under this subsection is effective as of the date of the voided election it replaces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 108; Pub. L. 85–861, §33(a)(11), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–381, §2, Oct. 4, 1961, 75 Stat. 810; Pub. L. 90–485, §1(1), (2), Aug. 13, 1968, 82 Stat. 751; Pub. L. 96–513, title V, §511(55), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–145, title XIII, §1301(a)(2), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title XV, §1501(c)(17), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1431(a)	37:371 (less (e) and (f)). 37:372(a) (2d sentence).	Aug. 8, 1953, ch. 393, §§2 (less (e) and (f)), 3(a) (less 5th sentence), (b), 67 Stat. 501, 502; Apr. 29, 1954, ch. 176, 68 Stat. 64.
1431(b)	37:372(a) (less 2d, 5th, 6th, and last sentences). 37:372(b) (less last sentence).	
1431(c)	37:372(a) (6th and last sentences).	
1431(d)	37:372(b) (last sentence).	

In subsection (a), the language of the revised subsection is substituted for 37:371(b) and (c), to make clear that the section was intended to include enlisted members and members of the Army, or the Air Force, without component. The words ''the United States Air Force Academy'' are inserted to reflect its establishment by the Air Force Academy Act (68 Stat. 47). The words ''retirement pay'' are omitted as covered by the words ''retired pay''. The words ''equivalent pay'' are omitted as surplusage. 37:371(c) (less 1st 21 words) is omitted as executed, since the persons described must have completed 18 years of the required service on the effective date of the source statute and exercised the option by 180 days after that date. 37:371(a) is omitted, since the revised chapter applies only to the armed forces. 37:371(d) is omitted, since the words ''person entitled to retired or retainer pay'', or their equivalent, are used throughout the revised chapter. 37:371(g) is omitted, since the words ''retired or retainer pay'' are used throughout the revised chapter. 37:371(h) is omitted as unnecessary in view of the definitions contained in section 101(5), (7), and (8). 37:372(a) (2d sentence) is omitted as surplusage.

In subsection (b), 37:372(a) (last 28 words of 1st sentence) is omitted as covered by section 1434 of this title. The words ''or naval'' are omitted as covered by the word ''military''. The last sentence is substituted for 37:372(a) (4th sentence, less 61st through 81st words). 37:372(a) (3d sentence, and 61st through 85th words of 4th sentence) and 37:372(b) (less last sentence) are omitted as executed.

In subsection (c), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''his retirement'' and ''he retires'' since, under sections 1331–1333 of this title, a person may be granted retired pay without having been retired. The last eight words are substituted for 37:372(a) (7th through 17th words of last sentence). 37:372(a) (last sentence, less 1st 17 words) is omitted as surplusage.

1958 ACT

The change makes clear that section 1431 applies to a person who, because of military operations, is missing under any circumstances.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''section 12774(a)'' for ''section 1376(a)''.

1989—Subsec. (b)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1985—Subsec. (b)(3). Pub. L. 99–145 substituted ''surviving spouse'' for ''widow''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''August 13, 1968,'' for ''the date of enactment of this amendment''.

1968—Subsec. (b). Pub. L. 90–485, §1(1), increased from eighteen to nineteen the number of years of service the annuitant must complete, decreased from three to two years before eligibility the time required to make an election, and inserted provisions that an election made after Aug. 13, 1968 will not be effective if the conditions of cls. (1) to (3) are satisfied.

Subsec. (c). Pub. L. 90–485, §1(2), decreased from three to two years before the first day for which retired or retainer pay is granted the time required to change or revoke an election when the ground of restored mental competency is not present, inserted provision that any change or revocation in an election after the completion of 19 years of service is effective if made before the first day for which retired or retainer pay is granted, and provided for a change or revocation in an election before the first day for which retired or retainer pay is granted when there is a change in marital or dependency status, if such change or revocation of election is made within two years of such change in marital or dependency status.

1961—Subsec. (a). Pub. L. 87–381 substituted ''other than a list maintained under section 1376(a) of this title'' for ''or who are in the Retired Reserve'', redesignated pars. (4) and (5) as (2) and (3), and struck out former pars. (2) and (3) which related to reserves on an inactive status list, and members assigned to the inactive National Guard, respectively.

Subsec. (b). Pub. L. 87–381 required that unless the election is made before 18 years of service, it must be made at least three years before the first day for which retired or retainer pay is granted, inserted assignment to an isolated station among the reasons permitting a delayed election, changed the period within which to make such delayed election from within six months after return to the jurisdiction of his armed force, to within one year after he ceases to be assigned to the isolated station or his return to the jurisdiction of his armed force, and if the member is retroactively granted retired or retainer pay, and is eligible for an election, he may elect within 90 days after notice of such grant.

Subsec. (c). Pub. L. 87–381 substituted ''the first day for which retired or retainer pay is granted'' for ''his retirement or before he becomes entitled to retired or retainer pay'', the requirement that the change or revocation is not effective if made less than 3 years before the first day for which retired or retainer pay is granted, for a required period of five years after change or revocation before retirement or becoming entitled to retired or retainer pay, and deleted ''If he revokes the election, he may not change or withdraw the revocation.''

Subsec. (d). Pub. L. 87–381 substituted permission to make a corrected election within 90 days after notice that the election is void for any reason, except fraud or willful intent of the member making election, with such election effective as of the date of the election it replaces, for provisions which denied the ability to revoke any election by a person retired or granted retired

or retainer pay before Nov. 1, 1953, and who elected within 180 days after that date to receive reduced pay to provide for an annuity.

1958—Subsec. (b). Pub. L. 85–861 struck out ''in action'' after ''he is missing''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of Pub. L. 90–485 provided in part that: ''Clause (1) and clause (6) of section 1 [amending this section and section 1436 of this title], and sections 2, 3, and 4 of this Act [amending section 1331 [now 12731] of this title and enacting material set out as notes under this section] are effective on the date of enactment [Aug. 13, 1968]. Remaining provisions of this Act [amending this section and sections 1434, 1435, 1437, and 1446 of this title, and enacting provisions set out as a note under this section] are effective on the first day of the third calendar month following the date of enactment.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95–397, Sept. 30, 1978, 92 Stat. 843, provided: ''That this Act [amending sections 1076, 1331 [now 12731], 1434, and 1447 to 1452 of this title and enacting provisions set out as notes under sections 1076, 1434, 1447, and 1448 of this title] may be cited as the 'Uniformed Services Survivors' Benefits Amendments of 1978'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Section 3 of Pub. L. 90–485 provided that: ''For members to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968], the provisions of section 1434(c) of that title, as amended by this Act [section 1(3) of Pub. L. 90–485] are effective immediately and automatically''.

ELECTION OF ANNUITY MADE PRIOR TO AUGUST 13, 1968

Section 4 of Pub. L. 90–485 provided that: ''A retired member who elected an annuity under chapter 73 of title 10, United States Code [this chapter], before the date of enactment of this Act [Aug. 13, 1968], but did not make the election that was then provided by section 1434(c) of that title, may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, make that election. That election becomes effective on the first day of the month following the month in which the election is made. Under regulations prescribed under section 1444(a) of this title, on or before the effective date the retired member must pay the total additional amount that would otherwise have been deducted from his retired or retainer pay to reflect such an election, had it been effective when he retired, plus the interest which would have accrued on that additional amount up to the effective date, except that if an undue hardship or financial burden would otherwise result payment may be made in from two to twelve monthly installments when the monthly amounts involved are $25, or less, or in from two to thirty-six monthly installments when the monthly amounts involved exceed $25. No amounts by which a member's retired or retainer pay was reduced may be refunded to, or credited on behalf of, the retired member by virtue of an application made by him under this section. A retired member described in the first sentence of this section, who does not make the election provided under this section, will not be allowed under section 1436(b) of title 10, to reduce an annuity or withdraw from participation in an annuity program under that title.''

ELECTIONS SUBJECT TO COST TABLES APPLICABLE ON DATE OF RETIREMENT; ANNUITIES PAYABLE TO BENEFICIARIES ELIGIBLE UNDER LAW IN EFFECT THE DAY PRIOR TO AUGUST 13, 1968

Section 5 of Pub. L. 90–485 provided, effective on the first day of the third calendar month following Aug. 13, 1968, that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], elections in effect on the date of enactment [Aug. 13, 1968] will remain under the cost tables applicable on the date of retirement, and the annuities provided thereunder shall be payable to those eligible beneficiaries prescribed under the law in effect on the day prior to the date of enactment of this Act.''

APPLICABILITY OF PROVISIONS IN EFFECT ON THE DAY PRIOR TO AUGUST 13, 1968

Section 6 of Pub. L. 90–485 provided in part that: ''Notwithstanding any other provision of this Act [see Effective Date of 1968 Amendment note set out above], any member to whom section 1431 of title 10, United States Code [this section], applies on the date of enactment of this Act [Aug. 13, 1968] may, before the first day of the thirteenth calendar month beginning after the date of enactment of this Act, submit a written application to the Secretary concerned requesting that an election or a change or revocation of election made by such member prior to the date of enactment of this Act shall continue to be governed by the provisions of section 1431(b) or (c) of title 10, United States Code [subsec. (b) or (c) of this section] as in effect on the day before the date of enactment of this Act.''

INTERIM AUTHORITY FOR SELECTION OF COMMANDERS AND CAPTAINS FOR CONTINUATION ON ACTIVE DUTY

Section 3(q) of Pub. L. 88–130 rendered election, change, or revocation of election under this section effective if made prior to the convening date of the board which considers Coast Guard commanders and captains for continuation.

CHANGE OR REVOCATION OF AN ELECTION FILED PRIOR TO OCTOBER 4, 1961

Section 7 of Pub. L. 87–381 provided that: ''Any person who, before the date of enactment of this Act [Oct. 4, 1961], has filed a change or revocation, subject to section 1431(c) of title 10, United States Code [subsec. (c) of this section], of an election made under section 1431(b) of that title [subsec. (b) of this section], which change or revocation would be ineffective if the first day for which retired or retainer pay is granted were to be the date of enactment of this Act [Oct. 4, 1961], shall have that change or revocation become effective on that date, or three years after the date upon which it was filed, whichever is later.''

PROVISIONS APPLICABLE TO CERTAIN PERSONS RETIRING AFTER OCTOBER 4, 1961, FOR DISABILITY

Section 8 of Pub. L. 87–381 provided that: ''Any person who—

''(1) made an election before the date of enactment of this Act [Oct. 4, 1961], which would be effective if he retired on the day before such date; and

''(2) hereafter retires for physical disability before completing 18 years of service for which he is entitled to credit in the computation of his basic pay—

shall be considered as having applicable to him all of the provisions of chapter 73 of title 10, United States Code [this chapter], existing on the date preceding the date of enactment of this Act [Oct. 4, 1961], except that any revocation or change of an election is not effective until three years after the date of filing such revocation or change, or the date of enactment of this Act [Oct. 4, 1961], whichever is later.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN COLONELS AND LIEUTENANT COLONELS

Pub. L. 86–616, §11, July 12, 1960, 74 Stat. 396, provided that: ''Notwithstanding section 1431 of title 10, United States Code [this section], a change or revocation of an election made under that section by an officer who is retired under section 10 of this Act [set out as a note under section 3297 of this title] is effective if made at such a time that it would have been effective had he been retired on the earliest date prescribed for an officer of his kind by section 3916, 3921, 8916, or 8921 of title 10, as appropriate.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS OF REGULAR NAVY AND REGULAR MARINE CORPS

Pub. L. 86–616, §13, July 12, 1960, 74 Stat. 396, provided that: ''An officer who has been considered but not recommended for continuation on the active list under section 1 of the Act of August 11, 1959. Public Law 86–155 (73 Stat. 333) [set out as a note under section 5701 of this title], and who retired or retires voluntarily before the second day of the month following the month in which this Act is enacted [July 1960], may, within six months following the enactment of this Act [July 12, 1960], affirm a change or revocation of an election made under section 1431 of title 10, United States Code [this section], before his retirement, if the change or revocation would have been effective under section 3 of the Act of August 11, 1959, Public Law 86–155, as amended by this Act [set out as a note under section 5701 of this title], but for his voluntary retirement. If an officer takes no action under this section, his currently valid election under section 1431 of title 10, United States Code [this section], shall remain unchanged. The computation of the revised reduction in retired pay in the case of an officer who affirms a change of election under this section shall be in accordance with section 1436 of title 10, United States Code, and according to the conditions that existed on the day the officer became eligible for retired pay. An affirmation or revocation made under this section is effective on the first day of the month in which made. No refund may be made and no additional payment may be required with respect to any period before that date.''

ELECTION OF ANNUITY BY CERTAIN PERSONNEL

Pub. L. 86–197, §4, Aug. 25, 1959, 73 Stat. 426, provided that: ''Any person who, on the effective date of this Act [August 25, 1959], would not have completed 18 years of service for which he is entitled to credit in the computation of his basic pay under the laws in effect prior to the effective date of this Act, and who, as a result of the enactment of this Act [amending sections 1332 [now 12732], 3683, 3926, 6324, 8683 and 8926 of this title, and enacting provisions set out as notes under sections 3441 and 12732 of this title], is credited with more than 17 years of such service, shall be allowed twelve months from the effective date of this Act to make the election provided by section 1431(b) of title 10, United States Code [subsection (b) of this section], notwithstanding the requirement of the second sentence of that section.''

CHANGE OR REVOCATION OF ELECTION BY CERTAIN OFFICERS

Effective date of change or revocation of election by certain officers, see section 3 of Pub. L. 86–155, Aug. 11, 1959, 73 Stat. 336, set out as a note under section 5701 of this title.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1432, 1433, 1434 of this title.

§ 1432. Election of annuity: former members of armed forces

A person who was a former member of an armed force on November 1, 1953, and who is granted retired or retainer pay after that date, may, at the time he is granted that pay, make an election as provided in section 1431 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1432	37:372(a) (5th sentence).	Aug. 8, 1953, ch. 393, §3(a) (5th sentence), 67 Stat. 502.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434 of this title.

§ 1433. Mental incompetency of member

If a person who would be entitled to make an election under section 1431 or 1432 of this title is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, and for that reason cannot make the election within the prescribed time, the Secretary concerned may make an election for that person upon the request of his spouse or, if there is no spouse, of his children who would be eligible to be made beneficiaries under section 1435 of this title. If the person for whom the Secretary has made an election is later determined to be mentally competent by medical officers of the Department of Veterans Affairs or by a court of competent jurisdiction, he may, within 180 days after that determination, change or revoke that election. However, deductions made from his retired or

retainer pay before that date may not be refunded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1433	37:372 (less (a) and (b)).	Aug. 8, 1953, ch. 393, § 3 (less (a) and (b)), 67 Stat. 502.

The first 19 words are substituted for 37:372(c) (1st 9 words). The words ''who would be eligible to be made beneficiaries under section 1435 of this title'' are inserted to reflect the limitations in 37:371(f). The words ''for that reason cannot'' are substituted for the words ''because of such mental incompetency is incapable of''. The words ''or is adjudged mentally incompetent'', ''provided for in this section'', and ''where appropriate is subsequently adjudged mentally competent'' are omitted as surplusage. The last sentence is substituted for 37:372(c) (last sentence).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1431 of this title.

§ 1434. Kinds of annuities that may be elected

(a) The annuity that a person is entitled to elect under section 1431 or 1432 of this title shall, in conformance with actuarial tables selected by the Board of Actuaries under section 1436(a) of this title, be the amount specified by the elector at the time of the election, but not more than 50 percent nor less than 12½ percent of his retired or retainer pay, in no case less than $25. He may make the annuity payable—

(1) to, or on behalf of, the surviving spouse, ending when the spouse dies or, if the spouse remarries before age 60, when the spouse remarries;

(2) in equal shares to, or on behalf of, the surviving children eligible for the annuity at the time each payment is due, ending when there is no surviving eligible child; or

(3) to, or on behalf of, the surviving spouse, and after the death of that spouse or the remarriage of that spouse before age 60, in equal shares to, or on behalf of, the surviving eligible children, ending when there is no surviving eligible child.

(b) A person may elect to provide both the annuity provided in clause (1) of subsection (a) and that provided in clause (2) of subsection (a), but the combined amount of the annuities may not be more than 50 percent nor less than 12½ percent of his retired or retainer pay but in no case less than $25.

(c) An election of any annuity under clause (1) or (2) of subsection (a), or any combination of annuities under subsection (b), shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died. For the purposes of the preceding sentence, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age, and who is not pursuing a course of study or training defined in section 1435 of this title, shall be considered an eligible beneficiary unless the Secretary concerned approves an application submitted by the member under section 1436(b)(4) of this title. An election of an annuity under clause (3) of subsection (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no eligible spouse because of death or divorce.

(d) Under regulations prescribed under section 1444(a) of this title, a person may, before or after the first day for which retired or retainer pay is granted, provided for allocating, during the period of the surviving spouse's eligibility, a part of the annuity under subsection (a)(3) for payment to those of his surviving children who are not children of that spouse.

(e) Whenever there is an increase in retired and retainer pay under section 1401a of this title, each annuity that is payable under this subchapter on the day before the effective date of that increase to a spouse or child of a member who died on or before March 20, 1974, shall be increased by the same percentage as the percentage of that increase, effective on the effective date of that increase.

(Aug. 10, 1956, ch. 1041, 70A Stat. 109; Pub. L. 87–381, § 3, Oct. 4, 1961, 75 Stat. 811; Pub. L. 90–485, § 1(3), Aug. 13, 1968, 82 Stat. 751; Pub. L. 95–397, title I, § 101(a), Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–513, title V, § 511(56), Dec. 12, 1980, 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1434(a)	37:373(a) (less 4th par.).	Aug. 8, 1953, ch. 393, § 4 (less (c) and (d)), 67 Stat. 502.
1434(b)	37:373(b).	
1434(c)	37:373(a)(4th par.).	

In subsection (a), the first 17 words are substituted for 37:373(a) (1st 26 words of 1st sentence). The words ''may be 50, 25, or 12½ percent'' are substituted for the words ''in such amount, expressed as a percentage of the reduced amount of his retired pay * * * in amounts equal to one-half, one-quarter or one-eighth''. 37:373(a) (last 53 words of 1st sentence of 2d par., and last 53 words of 1st sentence of 3d par.) is omitted as covered by section 1435(2) of this title. Clause (1) is substituted for 37:373(a)(1). Clause (2) is substituted for 37:373(a)(2) (less last 53 words of 1st sentence). Clause (3) is substituted for 37:373(a)(3) (less last 53 words of 1st sentence). The word ''eligible'' is inserted in clauses (2) and (3) to reflect the limitations in 37:371(f).

In subsection (c), the first 11 words are substituted for 37:373(a)(4) (1st 24 words). The words ''the annuity'' are substituted for the words ''an annuity payable under the election made by him''.

AMENDMENTS

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''percent'' for ''per centum'' wherever appearing.

1978—Subsec. (a)(1). Pub. L. 95–397, § 101(a)(1), substituted ''or, if the spouse remarries before age 60, when the spouse remarries'' for ''or remarries''.

Subsec. (a)(3). Pub. L. 95–397, § 101(a)(2), substituted ''of that spouse or the remarriage of that spouse before age 60'' for ''or remarriage of that spouse''.

Subsec. (e). Pub. L. 95–397, §101(a)(3), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–485 substituted provisions allowing election of an annuity amount, in conformance with the selected actuarial tables, of not more than 50 percent nor less than 12½ percent of retired or retired or retainer pay, but in no case less than $25, for provisions allowing election of an annuity amount of 50, 25, or 12½ percent of reduced retired or retainer pay.

Subsec. (b). Pub. L. 90–485 substituted provisions that the combined amount of annuities may not be more than 50 percent nor less than 12½ percent of retired or retainer pay, but in no case less than $25, for provisions that the combined amount of annuities may be only 25 or 12½ percent of reduced retired or retainer pay and provisions that the reduction in retired or retainer pay on account of each annuity, and the amount of each annuity, be determined in the same manner that it would be determined if the other annuity had not been elected.

Subsec. (c). Pub. L. 90–485 made mandatory the provisions that an election of any annuity under cls. (1) or (2) of subsec. (a), or any combination of annuities under subsec. (b), and the provision that an election of an annuity under cl. (3) of subsec. (a) shall provide that no deduction may be made from the elector's retired or retainer pay after the last day of the month in which there is no beneficiary who would be eligible for the annuity if the elector died or there is no eligible spouse because of death or divorce, respectively, and inserted provision determining what constitutes an eligible beneficiary.

Subsec. (d). Pub. L. 90–485 reenacted subsec. (d) without change.

1961—Subsec. (b). Pub. L. 87–381, §3(1), substituted permission to elect only 25 or 12½ percent of the member's reduced retired or retainer pay for each annuity for provisions limiting the combined amount of the annuities to not more than 50 percent or the reduced pay, and added that the reduction in pay on account of each annuity, and the amount of each annuity, shall be determined as if the other annuity had not been elected.

Subsec. (d). Pub. L. 87–381, §3(2), added subsec. (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(b) of Pub. L. 95–397 provided that: ''No benefits shall accrue to any person by virtue of the amendments made by subsection (a) [amending this section] for any period prior to the first day of the first calendar month following the month in which this Act is enacted [Sept. 1978] or October 1, 1978, whichever is later.''

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

INCREASE IN AMOUNT OF ANNUITY PAYABLE UNDER RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 102 of Pub. L. 95–397 provided that: ''Each annuity that is payable under subchapter I of chapter 73 of title 10, United States Code, on the day before the date of the enactment of this Act [Sept. 30, 1978] to a spouse or child of a member of the uniformed services who died on or before March 20, 1974, shall be increased effective as of the first day of the first calendar month following the month in which this Act [See Short Title note set out under section 1431 of this title] is enacted [September 1978], or as of October 1, 1978, whichever is later, by the percentage increase in retired and retainer pay under section 1401a of that title since September 21, 1972.''

PROVISIONS EFFECTIVE FOR CERTAIN MEMBERS ON AUGUST 13, 1968

Provisions of this section as amended by Pub. L. 90–485 effective immediately and automatically for members to whom section 1431 of this title applies on Aug. 13, 1968, see section 3 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 1436 of this title.

§ 1435. Eligible beneficiaries

Only the following persons are eligible to be made the beneficiaries of, or to receive payments under, an annuity elected under this subchapter by a member of the armed forces:

(1) The spouse of the member on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, the spouse on that date.

(2) The children of the member who are—

(A) unmarried;

(B) under eighteen years of age, or incapable of supporting themselves because of a mental defect or physical incapacity existing before their eighteenth birthday, or at least eighteen, but under twenty-three, years of age and pursuing a full-time course of study or training in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution;

(C) legitimate or adopted children of, or stepchildren in fact dependent for their support upon, the member;

(D) living on the date when the member is retired or becomes entitled to retired or retainer pay or, if the member was already retired or entitled to retired or retainer pay on November 1, 1953, living on that date; and

(E) born on or before the date prescribed in clause (D).

For the purposes of clause (2)(B), a child is considered to be pursuing a full-time course of study or training during an interval between school years that does not exceed one hundred and fifty days if he has demonstrated to the satisfaction of the Secretary concerned that he has a bonafide intention of commencing, resuming, or continuing to pursue a full-time course of study or training in a recognized educational institution immediately after that interval.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90–485, §1(4), (5), Aug. 13, 1968, 82 Stat. 752; Pub. L. 92–425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1435(1)	37:371(e).	Aug. 8, 1953, ch. 393, §2(e), (f), 67 Stat. 501.
1435(2)	37:371(f).	

In clauses (1) and (2), the words ''is retired or becomes entitled to retired or retainer pay'' are substituted for the words ''retired member'', since the words ''retired member'', as defined in the source statute, included former members who have been awarded that pay.

In clause (1), the words '' 'widow' includes a widower'' are omitted as covered by the definition of ''spouse'' in section 101(32) of this title.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 inserted provisions in cl. (2)(B) concerning children of the member who are at least 18, but under 23 and pursuing a full-time course of study or training and inserted text following cl. (2)(E) relating to children considered to be pursuing a full-time course of study or training.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1433, 1434, 1437 of this title.

§ 1436. Computation of reduction in retired pay; withdrawal for severe financial hardship

(a) The reduction in the retired or retainer pay of any person who elects an annuity under this subchapter shall be computed by the armed force concerned as of the date when the person becomes eligible for that pay but without regard to any increase in that pay to reflect changes in the Consumer Price Index. It shall be computed under an actuarial equivalent method based on (1) appropriate actuarial tables selected by the Board of Actuaries, and (2) an interest rate of 3 percent a year, or such other rate as the Secretary of the Treasury, after considering the average yield on outstanding marketable long-term obligations of the United States during the preceding six months, may specify by August 1 of any year for the following year. The method and tables shall be those in effect on the date as of which the computation is made.

(b) Under regulations prescribed under section 1444(a) of this title, the Secretary concerned may, upon application by the retired member, allow the member—

(1) to reduce the amount of the annuity specified by him under section 1434(a) and 1434(b) of this title but to not less than the prescribed minimum; or

(2) to withdraw from participation in an annuity program under this title; or

(3) to elect the annuity provided under clause (1) of section 1434(a) of this title in place of the annuity provided under clause (3) of such section, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (3) of such section, and he does not have a child beneficiary who would be eligible for the annuity provided under clause (3) of such section. For this purpose, a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered an eligible beneficiary; or

(4) to elect that a child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) who is at least eighteen, but under twenty-three years of age shall not be considered eligible for the annuity provided under clause (2) of section 1434(a) of this title, or for an annuity provided under section 1434(b) of this title, if on the first day for which retired or retainer pay is granted the member had in effect a valid election under clause (2) of section 1434(a) of this title, or under section 1434(b) of this title.

A retired member may not reduce an annuity under clause (1) of this subsection, or withdraw under clause (2) of this subsection, earlier than the first day of the seventh calendar month beginning after he applies for reduction or withdrawal. A change of election under clause (3) of this subsection shall be effective on the first day of the month following the month in which application is made. An election under clause (4) of this subsection shall be effective on the first day of the month following the month in which application is made and, if on the effective date there is no surviving child who would be eligible for an annuity provided under clause (2) of section 1434(a), or under section 1434(b), of this title if the elector died, no deduction shall be made for such an annuity to, or on behalf of, a child from the elector's retired or retainer pay for that month or any subsequent month. No amounts by which a member's retired or retainer pay is reduced prior to the effective date of a reduction of annuity, withdrawal, change of election, or election under this subsection may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 87–381, § 4, Oct. 4, 1961, 75 Stat. 811; Pub. L. 90–207, § 2(a)(3), Dec. 16, 1967, 81 Stat. 653; Pub. L. 90–485, § 1(6), Aug. 13, 1968, 82 Stat. 753; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 104–106, div. A, title XV, § 1505(c), Feb. 10, 1996, 110 Stat. 514.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1436	37:373(c).	Aug. 8, 1953, ch. 393, § 4(c), 67 Stat. 503.

The words ''of any person who elects an annuity'' are substituted for the words ''of an active or retired member who has made an election''. The words ''in each individual case'' and ''designated in section 8'' are omitted as surplusage. The words ''and as of the date of election in the case of a retired member'' are omitted as executed. 37:373(c) (1st 23 words of last sentence) is omitted as otherwise covered by the language of the revised section.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 made technical correction to directory language of Pub. L. 90–485, § 1(6). See 1968 Amendment note below.

1972—Subsec. (a). Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Subsec. (b). Pub. L. 90–485, as amended by Pub. L. 104–106, substituted provisions authorizing the Secretary to allow the member to reduce the amount of the annuity, allow the member to withdraw from participation in an annuity program, allow the member to elect the annuity provided in section 1434(a)(1) in place of the annuity provided in section 1434(a)(3) under the specified conditions, and allow the member to elect that a child at least 18, but under 23, not be eligible for the specified annuities, setting forth the times when

such reduction, withdrawal, or change of election may take place, and disallowing the refunding or crediting of any amount previously withheld, for provisions authorizing the Secretary to allow the member to withdraw from participation in an annuity program whenever the Secretary considers it necessary because of the member's severe financial hardship, the absence of an eligible beneficiary not of itself to be a basis for such action.

1967—Subsec. (a). Pub. L. 90–207 inserted ''but without regard to any increase in that pay to reflect changes in the Consumer Price Index'' after ''that pay''.

1961—Pub. L. 87–381 designated existing provisions as subsec. (a), added subsec. (b), and inserted ''; withdrawal for severe financial hardship'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1505(c) of Pub. L. 104–106 provided that the amendment made by that section is effective Aug. 13, 1968, and as if included in Pub. L. 90–485 as originally enacted.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1434 of this title.

§ 1436a. Coverage paid up at 30 years and age 70

Effective October 1, 2008, a reduction under this subchapter in the retired or retainer pay of a person electing an annuity under this subchapter may not be made for any month after the later of—

(1) the month that is the 360th month for which that person's retired or retainer pay is reduced pursuant to such an election; and

(2) the month during which that person attains 70 years of age.

(Added Pub. L. 106–65, div. A, title VI, § 655(a), Oct. 5, 1999, 113 Stat. 667.)

§ 1437. Payment of annuity

(a) Except as provided in subsections (b) and (c), each annuity payable under this subchapter accrues as of the first day of the month in which the person upon whose pay the annuity is based dies. Payments shall be made in equal installments and not later than the fifteenth day of each month following that month. However, no annuity accrues for the month in which entitlement thereto ends. The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Each annuity payable to or on behalf of an eligible child (other than a child who is incapable of supporting himself because of a mental defect or physical incapacity existing before his eighteenth birthday) as defined in section 1435(2)(B) of this title who is at least eighteen years of age and pursuing a full-time course of study or training at a recognized educational institution, accrues—

(1) as of the first day of the month in which the member upon whose pay the annuity is based dies, if the eligible child's eighteenth birthday occurs in the same or a preceding month.

(2) as of the first day of the month in which the eighteenth birthday of an eligible child occurs, if the member upon whose pay the annuity is based died in a preceding month.

(3) as of the first day of the month in which a child first becomes or again becomes eligible, if that eligible child's eighteenth birthday and the death of the member upon whose pay the annuity is based both occurred in a preceding month or months.

However, no such annuity is payable or accrues for any month before November 1, 1968.

(c)(1) Upon application of the beneficiary of a member entitled to retired or retainer pay whose retired or retainer pay has been suspended because the member has been determined to be missing, the Secretary concerned may determine for purposes of this subchapter that the member is presumed dead. Any such determination shall be made in accordance with regulations prescribed under section 1444(a) of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a member is presumed dead unless he finds—

(A) that the member has been missing for at least 30 days; and

(B) that the circumstances under which the member is missing would lead a reasonably prudent person to conclude that the member is dead.

(2) Upon a determination under paragraph (1) with respect to a member, an annuity otherwise payable under this subchapter shall be paid as if the member died on the date as of which the retired or retainer pay of the member was suspended.

(3)(A) If, after a determination under paragraph (1), the Secretary concerned determines that the member is alive, any annuity being paid under this subchapter by reason of this subsection shall be promptly terminated and the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States which may be collected or offset—

(i) from any retired or retainer pay otherwise payable to the member;

(ii) if the member is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the member is entitled to any other payment from the United States, from that payment.

(B) If the member dies before the full recovery of the amount of annuity payments described in subparagraph (A) has been made by the United States, the remaining amount of such annuity payments may be collected from the member's beneficiary under this subchapter if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 90–485, § 1(7), Aug. 13, 1968, 82 Stat. 753; Pub. L.

92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96–513, title V, § 511(57), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98–94, title IX, § 922(a)(14)(A), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, § 642(a)(1), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title XIII, § 1303(a)(9), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1437	37:379.	Aug. 8, 1953, ch. 393, § 10, 67 Stat. 504.

The words ''the person upon whose reduced pay the annuity is based'' are substituted for the words ''the retired member'' since persons other than retired members may elect an annuity. The words ''due and'' and ''or be paid'' are omitted as surplusage.

AMENDMENTS

1985—Subsec. (c)(3)(A). Pub. L. 99–145 struck out ''(notwithstanding section 144 of this title)'' after ''which''.

1984—Subsec. (a). Pub. L. 98–525, § 642(a)(1)(A), substituted ''subsections (b) and (c),'' for ''subsection (b)''.

Subsec. (c). Pub. L. 98–525, § 642(a)(1)(B), added subsec. (c).

1983—Subsec. (a). Pub. L. 98–94 inserted ''The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

1980—Subsec. (b). Pub. L. 96–513 substituted ''before November 1, 1968'' for ''prior to the effective date of this subsection''.

1972—Subsec. (a). Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1968—Pub. L. 90–485 designated existing provisions as subsec. (a), inserted ''Except as provided in subsection (b)'', substituted ''whose pay'' for ''whose reduced pay'', and added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

For effective date of amendment by Pub. L. 90–485, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1440 of this title.

§ 1438. Deposits for amounts not deducted

If, for any period, a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this subchapter, is not entitled to retired or retainer pay, he must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period to provide the annuity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 110; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1438	37:374.	Aug. 8, 1953, ch. 393, § 5, 67 Stat. 504.

The words ''a person who has been retired or has become entitled to retired or retainer pay, and who has elected an annuity under this chapter'' are substituted for the words ''a retired member of a uniformed service who has made the election specified in section 372 of this title'', since the revised chapter applies to persons who are receiving retired pay as well as retired members. The word ''otherwise'' is substituted for the words ''had he been receiving that pay''. The words ''to provide the annuity'' are inserted for clarity.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 8311, 8316; title 26 section 122.

§ 1439. Refund of amounts deducted from retired pay

If a person whose name is on the temporary disability retired list of an armed force, and who has elected an annuity under this subchapter, has his name removed from that list for any reason other than retirement or grant of retired pay, he is entitled to a refund of the difference between the amount by which his retired pay was reduced to provide the annuity and the cost of an amount of term insurance equal to the protection provided for his dependents during the period that he was on that list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1439	37:373(d).	Aug. 8, 1953, ch. 393, § 4(d), 67 Stat. 503.

The words ''person whose name is on'' are substituted for the words ''Any active member or former member on the''. The words ''is entitled to a refund'' are substituted for the words ''shall have refunded to him''. The words ''permanent'', ''a sum which represents'', and ''in accordance with his election under section 372 of this title'' are omitted as surplusage. The words ''retirement or grant of retired pay'' are substituted for the words ''permanent retirement'', since under chapter 67 of this title a member of the Army or Air Force may be granted retired pay without being retired.

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1440. Annuities not subject to legal process

Except as provided in section 1437(c)(3)(B) of this title, no annuity payable under this subchapter is assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 98–525, title VI, § 642(a)(2), Oct. 19, 1984, 98 Stat. 2546; Pub. L. 99–145, title XIII, § 1303(a)(10), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1440	37:378.	Aug. 8, 1953, ch. 393, §9, 67 Stat. 504.

The words ''either in law or equity'' are omitted as surplusage.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''1437(c)(3)(B)'' for ''1437(c)(3)''.

1984—Pub. L. 98–525 substituted ''Except as provided in section 1437(c)(3) of this title, no'' for ''No''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1441. Annuities in addition to other payments

An annuity under this subchapter is in addition to any pension or other payment to which the beneficiary is entitled under any other provision of law, and may not be considered as income under any law administered by the Department of Veterans Affairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 85–857, §13(v)(1), Sept. 2, 1958, 72 Stat. 1266; Pub. L. 85–861, §1(31B), Sept. 2, 1958, 72 Stat. 1452; Pub. L. 86–211, §8(a), Aug. 29, 1959, 73 Stat. 436; Pub. L. 91–588, §8(b), Dec. 24, 1970, 84 Stat. 1584; Pub. L. 92–425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1441	37:380.	Aug. 8, 1953, ch. 393, §11, 67 Stat. 504.

The word ''is'' is substituted for the words ''may now or hereafter be''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1441	37:380.	Aug. 1, 1956, ch. 837, §501(1), 70 Stat. 884.

The change is made to reflect the amendment made by section 501(1) of the Servicemen's and Veterans' Survivor Benefits Act (70 Stat. 884) to section 11 of the Uniform Services Contingency Option Act of 1953 (restated in section 1441 of title 10).

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

1970—Pub. L. 91–588 struck out ''except section 415(g) and chapter 15 of title 38'' after ''Veterans' Administration''.

1959—Pub. L. 86–211 inserted reference to chapter 15 of title 38.

1958—Pub. L. 85–861 inserted ''except section 1115 of title 38'' after ''Administration''.

Pub. L. 85–857 substituted ''section 415(g) of title 38'' for ''section 1115 of title 38''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–588 effective Jan. 1, 1971, see section 10 of Pub. L. 91–588, set out as a note under section 1521 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–211 effective July 1, 1960, see section 10 of Pub. L. 86–211, set out as a note under section 1506 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1446 of this title.

§ 1442. Recovery of annuity erroneously paid

In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery, by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 92–425, §1(2)(A), Sept. 21, 1972, 86 Stat. 706; Pub. L. 104–316, title I, §105(a), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1442	37:376.	Aug. 8, 1953, ch. 393, §7, 67 Stat. 504.

The words ''In addition to other methods of recovery provided by law, the Secretary concerned may'' are substituted for 37:376(a) (1st 15 words of 1st sentence). The words ''from later payments to an annuitant'' are substituted for 37:376(a) (2d sentence).

AMENDMENTS

1996—Pub. L. 104–316 struck out ''and the Comptroller General'' after ''judgment of the Secretary concerned''.

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

[§ 1443. Repealed. Pub. L. 92–425, §1(2)(B), Sept. 21, 1972, 86 Stat. 706]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 111, related to Board of Actuaries, composed of Government Actuary, Chief Actuary of Social Security Administration, and an actuary who was a member of Society of Actuaries.

§ 1444. Regulations; determinations

(a) The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service.

(b) Determinations and certifications of eligibility for, and payments of, annuities and other payments or refunds under this subchapter shall be made by the department concerned. However, in the case of a department other than a military department, payments shall be made through the disbursing facilities of the Department of the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 111; Pub. L. 87–381, §5, Oct. 4, 1961, 75 Stat. 811; Pub. L. 89–718,

§ 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 92–425, § 1(2)(A), (C), Sept. 21, 1972, 86 Stat. 706; Pub. L. 96–513, title V, § 511(58), Dec. 12, 1980, 94 Stat. 2925.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1444(a)	37:377 (1st sentence).	Aug. 8, 1953, ch. 393, §§ 6, 8 (1st and 2d sentences), 67 Stat. 504.
1444(b)	37:377 (2d sentence).	
1444(c)	37:375.	

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513, § 511(58)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsecs. (b), (c). Pub. L. 96–513, § 511(58)(B), redesignated subsec. (c) as (b).

1972—Pub. L. 92–425, § 1(2)(C), struck out ''reports to Congress'' in section catchline.

Subsec. (a). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

Subsec. (b). Pub. L. 92–425, § 1(2)(C), struck out subsec. (b) which required President to submit annual reports to Congress on administration of this chapter.

Subsec. (c). Pub. L. 92–425, § 1(2)(A), substituted ''subchapter'' for ''chapter''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1961—Subsec. (b). Pub. L. 87–381 required report to contain a detailed account, including an actuarial analysis, of cases in which relief is granted under sections 1436(b) and 1552 of this title, or any other statutory or administrative procedure.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1436, 1437, 1444a, 1445 of this title.

§ 1444a. Regulations regarding payment of annuity to a representative payee

(a) The regulations prescribed pursuant to section 1444(a) of this title shall provide procedures for the payment of an annuity under this subchapter in the case of—

(1) a person for whom a guardian or other fiduciary has been appointed; and

(2) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(b) Those regulations may include the provisions set out in section 1455(d)(2) of this title.

(c) An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to subsection (a) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 102–190, div. A, title VI, § 654(b)(1), Dec. 5, 1991, 105 Stat. 1390; amended Pub. L. 105–85, div. A, title X, § 1073(a)(26), Nov. 18, 1997, 111 Stat. 1901.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''section 1455(d)(2)'' for ''section 1455(c)''.

§ 1445. Correction of administrative deficiencies

Whenever he considers it necessary, the Secretary concerned may, under regulations prescribed under section 1444(a) of this title, correct any election, or any change or revocation of an election, under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter''.

§ 1446. Restriction on participation

(a) Notwithstanding section 1441 of this title, if a person—

(1) has made an election under this subchapter; and

(2) is retired for physical disability before he completes 19 years of service for which he is entitled to credit in the computation of his basic pay;

and thereafter dies, his beneficiaries are not entitled to the annuities provided under this subchapter until they give proof to the department concerned that they are not eligible for benefits under chapter 11 or 13 of title 38. If the beneficiaries are not eligible for benefits under chapter 11 or 13 of title 38, the annuity shall begin on the first day of the month in which the death occurs.

(b) Whenever the beneficiaries on whose behalf the election was made are restricted, under subsection (a), from participating in the annuities provided under this subchapter, the amount withheld from the elector's retired or retainer pay as a result of an election under this subchapter shall be refunded to the beneficiaries, less the amount of any annuities paid under this subchapter, and in either case without interest.

(Added Pub. L. 87–381, § 6(1), Oct. 4, 1961, 75 Stat. 811; amended Pub. L. 90–485, § 1(8), Aug. 13, 1968, 82 Stat. 754; Pub. L. 92–425, § 1(2)(A), Sept. 21, 1972, 86 Stat. 706.)

AMENDMENTS

1972—Pub. L. 92–425 substituted ''subchapter'' for ''chapter'' wherever appearing.

1968—Subsec. (a)(2). Pub. L. 90–485 substituted ''19'' for ''18''.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective on first day of third calendar month following Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

SUBCHAPTER II—SURVIVOR BENEFIT PLAN

Sec.
1447. Definitions.
1448. Application of Plan.
1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay.
1449. Mental incompetency of member.
1450. Payment of annuity: beneficiaries.
1451. Amount of annuity.
1452. Reduction in retired pay.
1453. Recovery of amounts erroneously paid.
1454. Correction of administrative errors.
1455. Regulations.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title VI, §641(a)(2), Nov. 18, 1997, 111 Stat. 1798, added item 1448a.

1996—Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2551, amended analysis generally, reenacting items 1447 to 1452, 1454, and 1455 without change and substituting ''Recovery of amounts'' for ''Recovery of annuity'' in item 1453.

1989—Pub. L. 101–189, div. A, title XIV, §1407(a)(10)(B), Nov. 29, 1989, 103 Stat. 1589, substituted ''errors'' for ''deficiencies'' in item 1454.

1985—Pub. L. 99–145, title VII, §719(8)(B), Nov. 8, 1985, 99 Stat. 676, struck out ''or retainer'' after ''retired'' in item 1452.

1972—Pub. L. 92–424, §1(3), Sept. 21, 1972, 86 Stat. 706, added subchapter II heading and items 1447 to 1455.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1460a, 12731 of this title.

§ 1447. Definitions

In this subchapter:

(1) PLAN.—The term ''Plan'' means the Survivor Benefit Plan established by this subchapter.

(2) STANDARD ANNUITY.—The term ''standard annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(A) of this title.

(3) RESERVE-COMPONENT ANNUITY.—The term ''reserve-component annuity'' means an annuity provided by virtue of eligibility under section 1448(a)(1)(B) of this title.

(4) RETIRED PAY.—The term ''retired pay'' includes retainer pay paid under section 6330 of this title.

(5) RESERVE-COMPONENT RETIRED PAY.—The term ''reserve-component retired pay'' means retired pay under chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act).

(6) BASE AMOUNT.—The term ''base amount'' means the following:

(A) FULL AMOUNT UNDER STANDARD ANNUITY.—In the case of a person who dies after becoming entitled to retired pay, such term means the amount of monthly retired pay (determined without regard to any reduction under section 1409(b)(2) of this title) to which the person—

(i) was entitled when he became eligible for that pay; or

(ii) later became entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list.

(B) FULL AMOUNT UNDER RESERVE-COMPONENT ANNUITY.—In the case of a person who would have become eligible for reserve-component retired pay but for the fact that he died before becoming 60 years of age, such term means the amount of monthly retired pay for which the person would have been eligible—

(i) if he had been 60 years of age on the date of his death, for purposes of an annuity to become effective on the day after his death in accordance with a designation made under section 1448(e) of this title; or

(ii) upon becoming 60 years of age (if he had lived to that age), for purposes of an annuity to become effective on the 60th anniversary of his birth in accordance with a designation made under section 1448(e) of this title.

(C) REDUCED AMOUNT.—Such term means any amount less than the amount otherwise applicable under subparagraph (A) or (B) with respect to an annuity provided under the Plan but which is not less than $300 and which is designated by the person (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) providing the annuity on or before—

(i) the first day for which he becomes eligible for retired pay, in the case of a person providing a standard annuity, or

(ii) the end of the 90-day period beginning on the date on which he receives the notification required by section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, in the case of a person providing a reserve-component annuity.

(7) WIDOW.—The term ''widow'' means the surviving wife of a person who, if not married to the person at the time he became eligible for retired pay—

(A) was married to him for at least one year immediately before his death; or

(B) is the mother of issue by that marriage.

(8) WIDOWER.—The term ''widower'' means the surviving husband of a person who, if not married to the person at the time she became eligible for retired pay—

(A) was married to her for at least one year immediately before her death; or

(B) is the father of issue by that marriage.

(9) SURVIVING SPOUSE.—The term ''surviving spouse'' means a widow or widower.

(10) FORMER SPOUSE.—The term ''former spouse'' means the surviving former husband or wife of a person who is eligible to participate in the Plan.

(11) DEPENDENT CHILD.—

(A) IN GENERAL.—The term ''dependent child'' means a person who—

(i) is unmarried;

(ii) is (I) under 18 years of age, (II) at least 18, but under 22, years of age and pursuing a full-time course of study or train-

ing in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution, or (III) incapable of self support because of a mental or physical incapacity existing before the person's eighteenth birthday or incurred on or after that birthday, but before the person's twenty-second birthday, while pursuing such a full-time course of study or training; and

(iii) is the child of a person to whom the Plan applies, including (I) an adopted child, and (II) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship.

(B) SPECIAL RULES FOR COLLEGE STUDENTS.—For the purpose of subparagraph (A), a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while regularly pursuing such a course of study or training, is considered to have become 22 years of age on the first day of July after that birthday. A child who is a student is considered not to have ceased to be a student during an interim between school years if the interim is not more than 150 days and if the child shows to the satisfaction of the Secretary of Defense that the child has a bona fide intention of continuing to pursue a course of study or training in the same or a different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(C) FOSTER CHILDREN.—A foster child, to qualify under this paragraph as the dependent child of a person to whom the Plan applies, must, at the time of the death of that person, also reside with, and receive over one-half of his support from, that person, and not be cared for under a social agency contract. The temporary absence of a foster child from the residence of that person, while a student as described in this paragraph, shall not be considered to affect the residence of such a foster child.

(12) COURT.—The term ''court'' has the meaning given that term by section 1408(a)(1) of this title.

(13) COURT ORDER.—

(A) IN GENERAL.—The term ''court order'' means a court's final decree of divorce, dissolution, or annulment or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or of a court ordered, ratified, or approved property settlement agreement incident to such previously issued decree).

(B) FINAL DECREE.—The term ''final decree'' means a decree from which no appeal may be taken or from which no appeal has been taken within the time allowed for the taking of such appeals under the laws applicable to such appeals, or a decree from which timely appeal has been taken and such appeal has been finally decided under the laws applicable to such appeals.

(C) REGULAR ON ITS FACE.—The term ''regular on its face'', when used in connection with a court order, means a court order that meets the conditions prescribed in section 1408(b)(2) of this title.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 706; amended Pub. L. 94–496, §1(1), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §201, Sept. 30, 1978, 92 Stat. 843; Pub. L. 96–402, §2, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–252, title X, §1003(a), Sept. 8, 1982, 96 Stat. 735; Pub. L. 98–94, title IX, §941(c)(1), Sept. 24, 1983, 97 Stat. 653; Pub. L. 99–145, title VII, §§719(1), (2), 721(b), Nov. 8, 1985, 99 Stat. 675, 676; Pub. L. 99–348, title III, §301(a)(1), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, §1343(a)(8)(A), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–189, div. A, title XIV, §1407(a)(1)–(3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C)(i), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title XVI, §1671(d), Oct. 5, 1994, 108 Stat. 3014; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2551.)

REFERENCES IN TEXT

Chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act, referred to in par. (5), means chapter 67 (§1331 et seq.) of this title prior to its transfer to part II of subtitle E of this title, its renumbering as chapter 1223, and its general revision by section 1662(j)(1) of Pub. L. 103–337. A new chapter 67 (§1331) of this title was added by section 1662(j)(7) of Pub. L. 103–337. For effective date of the Reserve Officer Personnel Management Act (Pub. L. 103–337, title XVI), see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

AMENDMENTS

1996—Pub. L. 104–201 amended section generally, making changes in the order, style, and substance of definitions of terms used in this subchapter and adding definition of ''surviving spouse''.

1994—Par. (2)(C). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Par. (14). Pub. L. 103–337, §1671(d)(1), substituted ''chapter 1223 of this title (or under chapter 67 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''chapter 67 of this title''.

1990—Par. (5). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, §1407(a)(1)(A), see 1989 Amendment note below.

1989—Par. (2)(B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Par. (2)(C)(i). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (2)(C)(ii). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Pars. (3), (4). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''eligible for retired''.

Par. (5). Pub. L. 101–189, §1407(a)(1)(A), as amended by Pub. L. 101–510, substituted ''this paragraph'' for ''this clause'' in three places in concluding provisions.

Par. (11). Pub. L. 101–189, §1407(a)(1)(B), inserted ''paid under section 6330 of this title'' after ''retainer pay''.

Par. (14). Pub. L. 101–189, §1407(a)(1)(C), added par. (14).

1987—Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in pars. (2) to (13) to make initial letter of such word lowercase.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''retired pay'' for ''retired or retainer pay'' in two places in provisions preceding cl. (i).

Pub. L. 99–348 inserted ''(determined without regard to any reduction under section 1409(b)(2) of this title)''.

1985—Par. (2)(C). Pub. L. 99–145, §721(b), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''designated by the person''.

Par. (2)(C)(i). Pub. L. 99–145, §719(2)(A), substituted ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''.

Par. (2)(C)(ii). Pub. L. 99–145, §719(2)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pars. (11) to (13). Pub. L. 99–145, §719(1), added pars. (11) to (13).

1983—Par. (8). Pub. L. 98–94 substituted ''or annulment'' for ''annulment, or legal separation,'' in two places.

1982—Pars. (6) to (10). Pub. L. 97–252 added pars. (6) to (10).

1980—Par. (2). Pub. L. 96–402 inserted in subpar. (C) ''but which is not less than $300'' after ''under the Plan'', substituted a period at end of subpar. (C) for '', but not less than $300;'', and struck out following subpar. (C) ''as increased from time to time under section 1401a of this title.''

1978—Par. (2). Pub. L. 95–397 inserted ''in the case of a person who dies after becoming entitled to retired or retainer pay'' before ''the amount'' and substituted ''pay to which the person'' for ''pay to which a person'' in subpar. (A), substituted ''in the case of a person who would have become eligible for retired pay under chapter 67 of this title but for the fact that he died before becoming 60 years of age, the amount of monthly retired pay for which the person would have been eligible—'' for ''any amount less than that described by clause (A) designated by that person on or before the first day for which he became eligible for retired or retainer pay, but not less than $300'' in subpar. (B), and added subpars. (B)(i), (ii) and (C).

1976—Pars. (3)(A), (4)(A). Pub. L. 94–496 substituted ''one year'' for ''two years''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(*l*)(4)(C) of Pub. L. 101–510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 731 of title VII of Pub. L. 99–145 provided that:

''(a) EFFECTIVE DATE.—Except as otherwise provided in this title, the amendments made by this title [see Short Title of 1985 Amendment note below] shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act [Nov. 8, 1985].

''(b) PROSPECTIVE BENEFITS ONLY.—No benefit shall accrue to any person by reason of the enactment of this title for any period before the effective date under subsection (a).''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 7 of Pub. L. 96–402 provided that: ''The amendments made by sections 2, 3, and 4 of this Act [amending this section and sections 1451 and 1452 of this title] and the provisions of section 5 of this Act [set out as a note under section 1448 of this title] shall be effective on the first day of the second calendar month following the month in which this Act is enacted [October 1980] and shall apply to annuities payable by virtue of such amendments and provisions for months beginning on or after such date. No benefits shall accrue to any person by virtue of the enactment of this Act [Pub. L. 96–402] for any period before the date of the enactment of this Act [Oct. 9, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210 of title II of Pub. L. 95–397 provided that:

''(a) Except as provided in subsection (b), the provisions of this title [amending this section and sections 1331 [now 12731] and 1448 to 1452 of this title and enacting provisions set out as notes under this section and section 1448 of this title] and the amendments made by this title shall take effect on October 1, 1978, or on the date of the enactment of this Act [Sept. 30, 1978], whichever is later, and shall apply to annuities payable by virtue of such amendments for months beginning on or after such date.

''(b) The amendment made by section 206 [amending section 1331 [now 12731] of this title] shall apply to notifications under section 1331(d) [now 12731(d)] of title 10, United States Code, after the date of the enactment of this Act [Sept. 30, 1978].''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 3 of Pub. L. 94–496 provided that: ''This Act [amending this section and sections 1448, 1450, 1451, and 1452 of this title, and amending provisions set out as a note under section 1448 of this title] shall be effective as of September 21, 1972. No pay shall accrue to any person by virtue of the enactment of this Act for any period prior to October 1, 1976.''

SHORT TITLE OF 1989 AMENDMENT

Section 1401 of title XIV of Pub. L. 101–189 provided that: ''This title [enacting subchapter III of this chapter, amending this section and sections 1331 [now 12731], 1448 to 1452, and 1454 of this title and section 3101 [now 5301] of Title 38, Veterans' Benefits, and enacting provisions set out as notes under sections 1448, 1451, 1452, 1456, and 12731 of this title] may be cited as the 'Military Survivor Benefits Improvement Act of 1989'.''

SHORT TITLE OF 1985 AMENDMENT

Section 701 of title VII of Pub. L. 99–145 provided that: ''This title [amending this section and sections 1448, 1450 to 1452, and 1455 of this title, enacting provisions set out as notes under this section and sections 1448 and 1452 of this title, and repealing a provision set out as a note under section 1451 of this title] may be cited as the 'Survivor Benefit Plan Amendments of 1985'.''

SHORT TITLE OF 1980 AMENDMENT

Section 1 of Pub. L. 96–402 provided: ''That this Act [amending this section and sections 1451 and 1452 of this title, enacting provisions set out as notes under this section and section 1448 of this title, and amending provisions set out as a note under section 1448 of this title] may be cited as the 'Uniformed Services Survivor Benefits Amendments of 1980'.''

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

Section 208 of Pub. L. 95–397, as amended by Pub. L. 96–107, title VIII, §816, Nov. 9, 1979, 93 Stat. 818, provided that the 90-day period referred to in former sections 1447(2)(C) and 1448(a)(2) and (4)(B) of this title was to be considered to end on Mar. 31, 1980, for an individual who would have been eligible for retired pay under former chapter 67 of this title on the effective date of title II of Pub. L. 95–397 (see Effective Date of 1978 Amendment note above), but for the fact such individual was under

60 years of age, or for an individual who received before Jan. 1, 1980, a notification that such individual had completed the years of service required for eligibility for such retired pay.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078a, 1456 of this title.

§1448. Application of Plan

(a) GENERAL RULES FOR PARTICIPATION IN THE PLAN.—

(1) NAME OF PLAN; ELIGIBLE PARTICIPANTS.—The program established by this subchapter shall be known as the Survivor Benefit Plan. The following persons are eligible to participate in the Plan:

(A) Persons entitled to retired pay.

(B) Persons who would be eligible for reserve-component retired pay but for the fact that they are under 60 years of age.

(2) PARTICIPANTS IN THE PLAN.—The Plan applies to the following persons, who shall be participants in the Plan:

(A) STANDARD ANNUITY PARTICIPANTS.—A person who is eligible to participate in the Plan under paragraph (1)(A) and who is married or has a dependent child when he becomes entitled to retired pay, unless he elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the first day for which he is eligible for that pay.

(B) RESERVE-COMPONENT ANNUITY PARTICIPANTS.—A person who (i) is eligible to participate in the Plan under paragraph (1)(B), and (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, unless the person elects (with his spouse's concurrence, if required under paragraph (3)) not to participate in the Plan before the end of the 90-day period beginning on the date on which he receives that notification.

A person who elects under subparagraph (B) not to participate in the Plan remains eligible, upon reaching 60 years of age and otherwise becoming entitled to retired pay, to participate in the Plan in accordance with eligibility under paragraph (1)(A).

(3) ELECTIONS.—

(A) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING STANDARD ANNUITY.—A married person who is eligible to provide a standard annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse.

(B) SPOUSAL CONSENT FOR CERTAIN ELECTIONS RESPECTING RESERVE-COMPONENT ANNUITY.—A married person who is eligible to provide a reserve-component annuity may not without the concurrence of the person's spouse elect—

(i) not to participate in the Plan;

(ii) to designate under subsection (e)(2) the effective date for commencement of annuity payments under the Plan in the event that the member dies before becoming 60 years of age to be the 60th anniversary of the member's birth (rather than the day after the date of the member's death);

(iii) to provide an annuity for the person's spouse at less than the maximum level; or

(iv) to provide an annuity for a dependent child but not for the person's spouse.

(C) EXCEPTION WHEN SPOUSE UNAVAILABLE.—A person may make an election described in subparagraph (A) or (B) without the concurrence of the person's spouse if the person establishes to the satisfaction of the Secretary concerned—

(i) that the spouse's whereabouts cannot be determined; or

(ii) that, due to exceptional circumstances, requiring the person to seek the spouse's consent would otherwise be inappropriate.

(D) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2).

(E) NOTICE TO SPOUSE OF ELECTION TO PROVIDE FORMER SPOUSE ANNUITY.—If a married person who is eligible to provide a standard annuity elects to provide an annuity for a former spouse (or for a former spouse and dependent child) under subsection (b)(2), that person's spouse shall be notified of that election.

(4) IRREVOCABILITY OF ELECTIONS.—

(A) STANDARD ANNUITY.—An election under paragraph (2)(A) is irrevocable if not revoked before the date on which the person first becomes entitled to retired pay.

(B) RESERVE-COMPONENT ANNUITY.—An election under paragraph (2)(B) is irrevocable if not revoked before the end of the 90-day period referred to in that paragraph.

(5) PARTICIPATION BY PERSON MARRYING AFTER RETIREMENT, ETC.—

(A) ELECTION TO PARTICIPATE IN PLAN.—A person who is not married and has no dependent child upon becoming eligible to participate in the Plan but who later marries or acquires a dependent child may elect to participate in the Plan.

(B) MANNER AND TIME OF ELECTION.—Such an election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date on which that person marries or acquires that dependent child.

(C) LIMITATION ON REVOCATION OF ELECTION.—Such an election may not be revoked except in accordance with subsection (b)(3).

(D) EFFECTIVE DATE OF ELECTION.—The election is effective as of the first day of the first calendar month following the month in

which the election is received by the Secretary concerned.

(E) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(6) ELECTION OUT OF PLAN BY PERSON WITH SPOUSE COVERAGE WHO REMARRIES.—

(A) GENERAL RULE.—A person—

(i) who is a participant in the Plan and is providing coverage under the Plan for a spouse (or a spouse and child);

(ii) who does not have an eligible spouse beneficiary under the Plan; and

(iii) who remarries,

may elect not to provide coverage under the Plan for the person's spouse.

(B) EFFECT OF ELECTION ON RETIRED PAY.—If such an election is made, reductions in the retired pay of that person under section 1452 of this title shall not be made.

(C) TERMS AND CONDITIONS OF ELECTION.—An election under this paragraph—

(i) is irrevocable;

(ii) shall be made within one year after the person's remarriage; and

(iii) shall be made in such form and manner as may be prescribed in regulations under section 1455 of this title.

(D) NOTICE TO SPOUSE.—If a person makes an election under this paragraph—

(i) not to participate in the Plan;

(ii) to provide an annuity for the person's spouse at less than the maximum level; or

(iii) to provide an annuity for a dependent child but not for the person's spouse,

the person's spouse shall be notified of that election.

(E) CONSTRUCTION WITH FORMER SPOUSE ELECTION PROVISIONS.—This paragraph does not affect any right or obligation to elect to provide an annuity to a former spouse under subsection (b).

(b) INSURABLE INTEREST AND FORMER SPOUSE COVERAGE.—

(1) COVERAGE FOR PERSON WITH INSURABLE INTEREST.—

(A) GENERAL RULE.—A person who is not married and does not have a dependent child upon becoming eligible to participate in the Plan may elect to provide an annuity under the Plan to a natural person with an insurable interest in that person. In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(B) TERMINATION OF COVERAGE.—An election under subparagraph (A) for a beneficiary who is not the former spouse of the person providing the annuity may be terminated. Any such termination shall be made by a participant by the submission to the Secretary concerned of a request to discontinue participation in the Plan, and such participation in the Plan shall be discontinued effective on the first day of the first month following the month in which the request is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR DISCONTINUATION.—A request under subparagraph (B) to discontinue participation in the Plan shall be in such form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(D) WITHDRAWAL OF REQUEST FOR DISCONTINUATION.—The Secretary concerned shall furnish promptly to each person who submits a request under subparagraph (B) to discontinue participation in the Plan a written statement of the advantages and disadvantages of participating in the Plan and the possible disadvantages of discontinuing participation. A person may withdraw the request to discontinue participation if withdrawn within 30 days after having been submitted to the Secretary concerned.

(E) CONSEQUENCES OF DISCONTINUATION.—Once participation is discontinued, benefits may not be paid in conjunction with the earlier participation in the Plan and premiums paid may not be refunded. Participation in the Plan may not later be resumed except through a qualified election under paragraph (5) of subsection (a).

(2) FORMER SPOUSE COVERAGE UPON BECOMING A PARTICIPANT IN THE PLAN.—

(A) GENERAL RULE.—A person who has a former spouse upon becoming eligible to participate in the Plan may elect to provide an annuity to that former spouse.

(B) EFFECT OF FORMER SPOUSE ELECTION ON SPOUSE OR DEPENDENT CHILD.—In the case of a person with a spouse or a dependent child, such an election prevents payment of an annuity to that spouse or child (other than a child who is a beneficiary under an election under paragraph (4)), including payment under subsection (d).

(C) DESIGNATION IF MORE THAN ONE FORMER SPOUSE.—If there is more than one former spouse, the person shall designate which former spouse is to be provided the annuity.

(D) DESIGNATION IF RCSBP ELECTION.—In the case of a person providing a reserve-component annuity, such an election shall include a designation under subsection (e).

(3) FORMER SPOUSE COVERAGE BY PERSONS ALREADY PARTICIPATING IN PLAN.—

(A) ELECTION OF COVERAGE.—

(i) AUTHORITY FOR ELECTION.—A person—

(I) who is a participant in the Plan and is providing coverage for a spouse or a spouse and child (even though there is no beneficiary currently eligible for such coverage), and

(II) who has a former spouse who was not that person's former spouse when that person became eligible to participate in the Plan,

may (subject to subparagraph (B)) elect to provide an annuity to that former spouse.

(ii) TERMINATION OF PREVIOUS COVERAGE.—Any such election terminates any previous coverage under the Plan.

(iii) MANNER AND TIME OF ELECTION.—Any such election must be written, signed by the person making the election, and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(B) LIMITATION ON ELECTION.—A person may not make an election under subparagraph (A) to provide an annuity to a former spouse who that person married after becoming eligible for retired pay unless—

(i) the person was married to that former spouse for at least one year, or

(ii) that former spouse is the parent of issue by that marriage.

(C) IRREVOCABILITY, ETC.—An election under this paragraph may not be revoked except in accordance with section 1450(f) of this title. This paragraph does not provide the authority to change a designation previously made under subsection (e).

(D) NOTICE TO SPOUSE.—If a person who is married makes an election to provide an annuity to a former spouse under this paragraph, that person's spouse shall be notified of the election.

(E) EFFECTIVE DATE OF ELECTION.—An election under this paragraph is effective as of—

(i) the first day of the first month following the month in which the election is received by the Secretary concerned; or

(ii) in the case of a person required (as described in section 1450(f)(3)(B) of this title) to make the election by reason of a court order or filing the date of which is after October 16, 1998, the first day of the first month which begins after the date of that court order or filing.

(4) FORMER SPOUSE AND CHILD COVERAGE.—A person who elects to provide an annuity for a former spouse under paragraph (2) or (3) may, at the time of the election, elect to provide coverage under that annuity for both the former spouse and a dependent child, if the child resulted from the person's marriage to that former spouse.

(5) DISCLOSURE OF WHETHER ELECTION OF FORMER SPOUSE COVERAGE IS REQUIRED.—A person who elects to provide an annuity to a former spouse under paragraph (2) or (3) shall, at the time of making the election, provide the Secretary concerned with a written statement (in a form to be prescribed by that Secretary and signed by such person and the former spouse) setting forth—

(A) whether the election is being made pursuant to the requirements of a court order; or

(B) whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of, or incident to, a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(c) PERSONS ON TEMPORARY DISABILITY RETIRED LIST.—The application of the Plan to a person whose name is on the temporary disability retired list terminates when his name is removed from that list and he is no longer entitled to disability retired pay.

(d) COVERAGE FOR SURVIVORS OF MEMBERS WHO DIE ON ACTIVE DUTY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of—

(A) a member who dies while on active duty after—

(i) becoming eligible to receive retired pay;

(ii) qualifying for retired pay except that the member has not applied for or been granted that pay; or

(iii) completing 20 years of active service but before the member is eligible to retire as a commissioned officer because the member has not completed 10 years of active commissioned service; or

(B) a member not described in subparagraph (A) who dies in line of duty while on active duty.

(2) DEPENDENT CHILD ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a member described in paragraph (1) if there is no surviving spouse or if the member's surviving spouse subsequently dies.

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a member described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the member had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) PRIORITY.—An annuity that may be provided under this subsection shall be provided in preference to an annuity that may be provided under any other provision of this subchapter on account of service of the same member.

(5) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(e) DESIGNATION FOR COMMENCEMENT OF RESERVE-COMPONENT ANNUITY.—In any case in which a person is required to make a designation under this subsection, the person shall designate whether, in the event he dies before becoming 60 years of age, the annuity provided shall become effective on—

(1) the day after the date of his death; or
(2) the 60th anniversary of his birth.

(f) COVERAGE OF SURVIVORS OF PERSONS DYING WHEN ELIGIBLE TO ELECT RESERVE-COMPONENT ANNUITY.—

(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a person who is eligible to provide a reserve-component annuity and who dies—

(A) before being notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay; or

(B) during the 90-day period beginning on the date he receives notification under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay if he had not made an election under subsection (a)(2)(B) to participate in the Plan.

(2) DEPENDENT CHILD ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the dependent child of a person described in paragraph (1) if there is no surviving spouse or if the person's surviving spouse subsequently dies.

(3) MANDATORY FORMER SPOUSE ANNUITY.—If a person described in paragraph (1) is required under a court order or spousal agreement to provide an annuity to a former spouse upon becoming eligible to be a participant in the Plan or has made an election under subsection (b) to provide an annuity to a former spouse, the Secretary—

(A) may not pay an annuity under paragraph (1) or (2); but

(B) shall pay an annuity to that former spouse as if the person had been a participant in the Plan and had made an election under subsection (b) to provide an annuity to the former spouse, or in accordance with that election, as the case may be, if the Secretary receives a written request from the former spouse concerned that the election be deemed to have been made in the same manner as provided in section 1450(f)(3) of this title.

(4) COMPUTATION.—The amount of an annuity under this subsection is computed under section 1451(c) of this title.

(g) ELECTION TO INCREASE COVERAGE UPON REMARRIAGE.—

(1) ELECTION.—A person—

(A) who is a participant in the Plan and is providing coverage under subsection (a) for a spouse or a spouse and child, but at less than the maximum level; and

(B) who remarries,

may elect, within one year of such remarriage, to increase the level of coverage provided under the Plan to a level not in excess of the current retired pay of that person.

(2) PAYMENT REQUIRED.—Such an election shall be contingent on the person paying to the United States the amount determined under paragraph (3) plus interest on such amount at a rate determined under regulations prescribed by the Secretary of Defense.

(3) AMOUNT TO BE PAID.—The amount referred to in paragraph (2) is the amount equal to the difference between—

(A) the amount that would have been withheld from such person's retired pay under section 1452 of this title if the higher level of coverage had been in effect from the time the person became a participant in the Plan; and

(B) the amount of such person's retired pay actually withheld.

(4) MANNER OF MAKING ELECTION.—An election under paragraph (1) shall be made in such manner as the Secretary shall prescribe and shall become effective upon receipt of the payment required by paragraph (2).

(5) DISPOSITION OF PAYMENTS.—A payment received under this subsection by the Secretary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other payment received under this subsection shall be deposited in the Treasury as miscellaneous receipts.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 707; amended Pub. L. 94–496, §1(2), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §202, Sept. 30, 1978, 92 Stat. 844; Pub. L. 97–252, title X, §1003(b), Sept. 8, 1982, 96 Stat. 735; Pub. L. 97–295, §1(18), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title IX, §941(a)(1), (2), (c)(2), Sept. 24, 1983, 97 Stat. 652, 653; Pub. L. 99–145, title V, §513(b), title VII, §§712(a), 713(a), 715, 716(a), 719(3), (8)(A), 721(a), Nov. 8, 1985, 99 Stat. 628, 670, 671, 673–676; Pub. L. 99–661, div. A, title VI, §§641(b)(1), 642(a), title XIII, §1343(a)(8)(B), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 101–189, div. A, title XIV, §1407(a)(2), (3), Nov. 29, 1989, 103 Stat. 1588; Pub. L. 103–337, div. A, title VI, §638, title XVI, §1671(d)(2), Oct. 5, 1994, 108 Stat. 2791, 3015; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2553; Pub. L. 105–85, div. A, title X, §1073(a)(27), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, §643(a), Oct. 17, 1998, 112 Stat. 2047; Pub. L. 106–65, div. A, title X, §1066(a)(12), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106–398, §1 [[div. A], title VI, §655(a)–(c)(3), title X, §1087(a)(10)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, 1654A–166, 1654A–290; Pub. L. 107–107, div. A, title VI, §642(a), (c)(1), Dec. 28, 2001, 115 Stat. 1151, 1152.)

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–107 struck out ''Retirement-Eligible'' before ''Members'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) SURVIVING SPOUSE ANNUITY.—The Secretary concerned shall pay an annuity under this subchapter to the surviving spouse of a member who dies on active duty after—

''(A) becoming eligible to receive retired pay;

''(B) qualifying for retired pay except that he has not applied for or been granted that pay; or

''(C) completing 20 years of active service but before he is eligible to retire as a commissioned officer because he has not completed 10 years of active commissioned service.''

2000—Subsec. (a)(2). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(1)], substituted ''who elects under subparagraph (B) not to participate in the Plan'' for ''described in clauses (i) and (ii) of subparagraph (B) who does not elect to participate in the Plan before the end of the 90-

day period referred to in that clause'' in concluding provisions.

Subsec. (a)(2)(B). Pub. L. 106–398, §1 [[div. A], title VI, §655(a)], amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''A person who (i) is eligible to participate in the Plan under paragraph (1)(B), (ii) is married or has a dependent child when he is notified under section 12731(d) of this title that he has completed the years of service required for eligibility for reserve-component retired pay, and (iii) elects to participate in the Plan (and makes a designation under subsection (e)) before the end of the 90-day period beginning on the date he receives such notification.''

Subsec. (a)(3)(B). Pub. L. 106–398, §1 [[div. A], title VI, §655(b)], substituted ''who is eligible to provide'' for ''who elects to provide'' in introductory provisions, added cls. (i) and (ii), and redesignated former cls. (i) and (ii) as (iii) and (iv), respectively.

Subsec. (a)(4)(A). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(2)(A)], struck out ''not to participate in the Plan'' after ''election under paragraph (2)(A)''.

Subsec. (a)(4)(B). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(2)(B)], struck out ''to participate in the Plan'' after ''under paragraph (2)(B)''.

Subsec. (b)(3)(E)(ii). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(10)], struck out second comma after ''October 16, 1998''.

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(3)], substituted ''a person is required to make a designation under this subsection, the person'' for ''a person electing to participate in the Plan is required to make a designation under this subsection, the person making such election'' in introductory provisions.

1999—Subsec. (b)(3)(E)(ii). Pub. L. 106–65 substituted ''after October 16, 1998,'' for ''on or after the date of the enactment of the subparagraph''.

1998—Subsec. (b)(3)(C). Pub. L. 105–261, §643(a)(1), struck out ''EFFECTIVE DATE,'' after ''IRREVOCABILITY,'' in heading and ''Such an election is effective as of the first day of the first calendar month following the month in which it is received by the Secretary concerned.'' after ''section 1450(f) of this title.'' in text.

Subsec. (b)(3)(E). Pub. L. 105–261, §643(a)(2), added subpar. (E).

1997—Pub. L. 105–85 substituted ''Plan'' for ''plan'' in section catchline.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to application of the Plan and inserting subsec., par., and subpar. headings.

1994—Subsec. (a)(2)(B). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)''.

Subsec. (b)(1). Pub. L. 103–337, §638, designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (f)(1). Pub. L. 103–337, §1671(d)(2), substituted ''12731(d)'' for ''1331(d)'' in subpars. (A) and (B).

1989—Subsec. (a)(1)(B), (2)(B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (a)(4)(A). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''entitled to retired''.

Subsec. (f)(1)(A), (B). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

1986—Subsec. (a)(5). Pub. L. 99–661, §1343(a)(8)(B), substituted ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under paragraph (1)(B)''.

Subsec. (b)(5). Pub. L. 99–661, §641(b)(1), inserted ''(A) whether the election is being made pursuant to the requirements of a court order, or (B)''.

Subsec. (d)(2). Pub. L. 99–661, §642(a)(1), substituted ''if there is no surviving spouse or if the member's surviving spouse subsequently dies'' for ''if the member and the member's spouse die as a result of a common accident''.

Subsec. (f)(2). Pub. L. 99–661, §642(a)(2), substituted ''if there is no surviving spouse or if the person's surviving spouse subsequently dies'' for ''if the person and the person's spouse die as a result of a common accident''.

1985—Subsec. (a)(1)(A). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(2)(A). Pub. L. 99–145, §721(a)(1), inserted ''(with his spouse's concurrence, if required under paragraph (3))'' after ''unless he elects''.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(3). Pub. L. 99–145, §721(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) If a person who is eligible under paragraph (1)(A) to participate in the Plan and who is married elects not to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that election.

''(B) If a person who is eligible under paragraph (1)(B) to participate in the Plan and who is married does not elect to participate in the Plan at the maximum level, or elects to provide an annuity for a dependent child but not for his spouse, or elects to provide an annuity for a former spouse under subsection (b)(2), that person's spouse shall be notified of that action.''

Subsec. (a)(6). Pub. L. 99–149, §715(a), added par. (6).

Subsec. (b)(1). Pub. L. 99–145, §719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Subsec. (b)(2). Pub. L. 99–145, §719(3), substituted ''a reserve-component annuity'' for ''an annuity under this paragraph by virtue of eligibility under subsection (a)(1)(B)''.

Pub. L. 99–145, §716(a)(1), inserted ''(other than a child who is a beneficiary under an election under paragraph (4))'' after ''that spouse or child'' in second sentence.

Subsec. (b)(3)(B). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (b)(4), (5). Pub. L. 99–145, §716(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 99–145, §513(b), inserted ''disability'' before ''retired pay''.

Subsec. (d). Pub. L. 99–145, §712(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''If a member of an armed force dies on active duty after he has become entitled to retired or retainer pay, or after he has qualified for that pay except that he has not applied for or been granted that pay, and his spouse is eligible for dependency and indemnity compensation under section 411(a) of title 38 in an amount that is less than the annuity the spouse would have received under this subchapter if it had applied to the member when he died, the Secretary concerned shall pay to the spouse an annuity equal to the difference between that amount of compensation and 55 percent of the retired or retainer pay to which the otherwise eligible spouse described in section 1450(a)(1) of this title would have been entitled if the member had been entitled to that pay based upon his years of active service when he died.''

Subsec. (f). Pub. L. 99–145, §713(a), added subsec. (f).

Subsec. (g). Pub. L. 99–145, §715(b), added subsec. (g).

1983—Subsec. (a)(3). Pub. L. 98–94, §941(c)(2), substituted ''provide an annuity for a former spouse under subsection (b)(2),'' for ''provide an annuity under subsection (b)(2) of this section,'' in subpars. (A) and (B).

Subsec. (a)(5). Pub. L. 98–94, §941(a)(1), inserted ''except in accordance with subsection (b)(3)''.

Subsec. (b). Pub. L. 98–94, §941(a)(2), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows:

''(1) A person who is not married and does not have a dependent child when he becomes eligible to participate in the Plan may elect to provide an annuity to a natural person with an insurable interest in that person or to provide an annuity to a former spouse.

''(2) A person who is married, or has a dependent child may elect to provide an annuity to a former spouse instead of providing an annuity to a spouse or dependent child if the election is made in order to

carry out the terms of a written agreement entered into voluntarily with the former spouse (without regard to whether such agreement is included in or approved by a court order).

''(3) In the case of a person electing to provide an annuity under paragraph (1) or (2) of this subsection by virtue of eligibility under subsection (a)(1)(B), the election shall include a designation under subsection (e).

''(4) Any person who elects under paragraph (1) or (2) to provide an annuity to a former spouse shall, at the time of making such election, provide the Secretary concerned with a written statement, in a form to be prescribed by that Secretary, signed by such person and the former spouse setting forth whether the election is being made pursuant to a voluntary written agreement previously entered into by such person as a part of or incident to a proceeding of divorce, dissolution, annulment, or legal separation, and if so, whether such voluntary written agreement has been incorporated in or ratified or approved by a court order.''

1982—Pub. L. 97–295, §1(18), substituted ''Plan'' for ''plan'' in section catchline.

Subsec. (a)(3). Pub. L. 97–252, §1003(b)(1), inserted in subpars. (A) and (B) identical text ''or elects to provide an annuity under subsection (b)(2) of this section,'' after ''for his spouse,''.

Subsec. (b). Pub. L. 97–252, §1003(b)(2), designated existing first sentence as par. (1), authorized an election to provide an annuity to a former spouse, added pars. (2) and (4), designated existing second sentence as par. (3), and substituted ''person electing to provide an annuity under paragraph (1) or (2) of this subsection'' for ''person providing an annuity under this subsection'' and ''the election'' for ''such an election''.

1978—Subsec. (a). Pub. L. 95–397, §202(a), amended subsec. (a) generally, primarily inserting provision that this subchapter shall be known as the Survivor Benefit Plan and provisions of pars. (1)(B), (2)(B) and concluding sentence, (3)(B), (4)(B), and last sentence of (5).

Subsec. (b). Pub. L. 95–397, §202(b), substituted ''entitled to retired or retainer pay'' for ''eligible to participate in the Plan'' and inserted provisions relating to the inclusion in an election a designation under subsection (e) by persons providing an annuity under this subsection by virtue of eligibility under subsection (a)(1)(B).

Subsec. (e). Pub. L. 95–397, §202(c), added subsec. (e).

1976—Subsec. (a). Pub. L. 94–496 inserted ''or elects to provide an annuity for a dependent child but not for his spouse'' after ''maximum level''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VI, §642(d), Dec. 28, 2001, 115 Stat. 1152, provided that: ''The amendments made by this section [amending this section and section 1451 of this title] shall take effect as of September 10, 2001, and shall apply with respect to deaths of members of the Armed Forces occurring on or after that date.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VI, §655(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166, provided that: ''The amendments made by this section [amending this section and section 1450 of this title] apply only with respect to a notification under section 12731(d) of title 10, United States Code, made after January 1, 2001, that a member of a reserve component has completed the years of service required for eligibility for reserve-component retired pay.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1671(d)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 641 of Pub. L. 99–661 applicable to court orders issued on or after Nov. 14, 1986, see section 641(c) of Pub. L. 99–661, set out as a note under section 1450 of this title.

Section 642(c) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to claims arising on or after March 1, 1986. The amendments made by subsection (b) [amending section 1451 of this title] shall apply to payments for periods after February 28, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 941(b) of Pub. L. 98–94 provided that: ''In the case of a person who on the date of the enactment of this Act [Sept. 24, 1983] is a person described in subparagraph (A) of subsection (b)(3) of section 1448 of title 10, United States Code (as amended by subsection (a)(2)), such subsection shall apply to that person as if the one-year period provided for in subparagraph (A) of such subsection began on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1997 AMENDMENTS BY SECTION 645 OF PUB. L. 105–85

Section 645(c) of Pub. L. 105–85 provided that: ''The amendments made by this section [amending section 4(e)(1) of Pub. L. 92–425 and section 653(d) of Pub. L. 100–456, set out below] take effect on the first day of the first month beginning after the date of the enactment of this Act [Nov. 18, 1997] and shall apply with respect to payments of benefits for months beginning on or after that date, except that the Secretary of Veterans Affairs may provide, if necessary for administrative implementation, that such amendments shall apply beginning with a later month, not later than the first month beginning more than 180 days after the date of the enactment of this Act.''

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING MARCH 1, 1999

Pub. L. 105–261, div. A, title VI, §642, Oct. 17, 1998, 112 Stat. 2045, as amended by Pub. L. 106–65, div. A, title VI, §654, Oct. 5, 1999, 113 Stat. 667, provided that:

''(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

''(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (d).

''(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who

elects under paragraph (1) to participate in the Survivor Benefit Plan may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

''(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

''(A) is entitled to retired pay; or

''(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code (or chapter 67 [now 1223] of such title as in effect before October 5, 1994), but for the fact that such member or former member is under 60 years of age.

''(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

''(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

''(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

''(b) MANNER OF MAKING ELECTIONS.—

''(1) IN GENERAL.—An election under this section must be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Except as provided in paragraph (2), any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

''(2) ELECTION MUST BE VOLUNTARY.—An election under this section is not effective unless the person making the election declares the election to be voluntary. An election to participate in the Survivor Benefit Plan under this section may not be required by any court. An election to participate or not to participate in the Survivor Benefit Plan is not subject to the concurrence of a spouse or former spouse of the person.

''(c) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

''(d) OPEN ENROLLMENT PERIOD DEFINED.—The open enrollment period is the 1-year period beginning on March 1, 1999.

''(e) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the 2-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such 2-year period.

''(f) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

''(g) PREMIUMS FOR OPEN ENROLLMENT ELECTION.—

''(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be paid by a person under the regulations shall be equal to the sum of—

''(A) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

''(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

''(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

''(2) PREMIUMS TO BE CREDITED TO RETIREMENT FUND.—Premiums paid under the regulations shall be credited to the Department of Defense Military Retirement Fund.

''(h) CREDIT TOWARD PAID-UP COVERAGE.—Upon payment of the total amount of the premiums charged a person under subsection (g), the retired pay of a person participating in the Survivor Benefit Plan pursuant to an election under this section shall be treated, for the purposes of subsection (j) of section 1452 of title 10, United States Code, as having been reduced under such section 1452 for the months in the period for which the person's retired pay would have been reduced if the person had elected to participate in the Survivor Benefit Plan at the first opportunity that was afforded the person to participate.

''(i) DEFINITIONS.—In this section:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'Supplemental Survivor Benefit Plan' means the program established under subchapter III of chapter 73 of title 10, United States Code.

''(3) The term 'retired pay' includes retainer pay paid under section 6330 of title 10, United States Code.

''(4) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(5) The term 'Department of Defense Military Retirement Fund' means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.''

ANNUITIES FOR CERTAIN MILITARY SURVIVING SPOUSES

Pub. L. 105–85, div. A, title VI, §644, Nov. 18, 1997, 111 Stat. 1800, as amended by Pub. L. 106–65, div. A, title VI, §656(a), (b), title X, §1066(c)(3), Oct. 5, 1999, 113 Stat. 668, 773; Pub. L. 107–314, div. A, title VI, §634, Dec. 2, 202, 116 Stat. 2573, provided that:

''(a) SURVIVOR ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) became entitled to retired or retainer pay before September 21, 1972, died before March 21, 1974, and was entitled to retired or retainer pay on the date of death; or

''(B) died before October 1, 1978, and at the time of his death would have been entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code (as in effect before December 1, 1994), but for the fact that he was under 60 years of age.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried.

''(b) AMOUNT OF ANNUITY.—(1) An annuity under this section shall be paid at the rate of $185.58 per month, as adjusted from time to time under paragraph (3).

''(2) The amount of an annuity to which a surviving spouse is entitled under this section for any period shall be reduced (but not below zero) by any amount paid to that surviving spouse for the same period under any of the following provisions of law:

''(A) Section 1311(a) of title 38, United States Code (relating to dependency and indemnity compensation payable by the Secretary of Veterans Affairs).

''(B) Chapter 73 of title 10, United States Code.

''(C) Section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(3) Whenever after May 1, 2002, retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent.

''(c) APPLICATION REQUIRED.—No benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person.

''(d) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given such terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given such term in paragraph (9) of section 1447 of title 10, United States Code.

''(e) PROSPECTIVE APPLICABILITY.—(1) Annuities under this section shall be paid for months beginning after November 1997.

''(2) No benefit shall accrue to any person by reason of the enactment of this section for any period before December 1997.''

[Pub. L. 106–65, div. A, title VI, §656(c), Oct. 5, 1999, 113 Stat. 668, provided that: ''The amendment made by subsection (a) [amending section 644 of Pub. L. 105–85, set out above] shall apply with respect to annuities payable for months beginning after September 30, 1999.'']

AUTHORITY FOR RELIEF FROM PREVIOUS OVERPAYMENTS UNDER MINIMUM INCOME WIDOWS PROGRAM

Pub. L. 104–106, div. A, title VI, §635, Feb. 10, 1996, 110 Stat. 366, provided that:

''(a) AUTHORITY.—The Secretary of Defense may waive recovery by the United States of any overpayment by the United States described in subsection (b). In the case of any such waiver, any debt to the United States arising from such overpayment is forgiven.

''(b) COVERED OVERPAYMENTS.—Subsection (a) applies in the case of an overpayment by the United States that—

''(1) was made before the date of the enactment of this Act [Feb. 10, 1996] under section 4 of Public Law 92–425 (10 U.S.C. 1448 note); and

''(2) is attributable to failure by the Department of Defense to apply the eligibility provisions of subsection (a) of such section in the case of the person to whom the overpayment was made.''

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING APRIL 1, 1992

Section 1405 of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VI, §631(2), title XIV, §1484(*l*)(4)(B), Nov. 5, 1990, 104 Stat. 1580, 1720; Pub. L. 102–190, div. A, title VI, §653(a)(1), (c)(2), Dec. 5, 1991, 105 Stat. 1388, 1389; Pub. L. 102–484, div. A, title VI, §643, Oct. 23, 1992, 106 Stat. 2425, provided that:

''(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

''(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

''(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code, as added by section 1404.

''(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

''(A) is entitled to retired pay; or

''(B) would be entitled to retired pay under chapter 67 [now 1223] of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

''(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

''(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

''(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

''(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period elect to—

''(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

''(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

''(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

''(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan established under subchapter III of chapter 73 of title 10, United States Code, as added by section 1404.

''(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

''(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan will be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section. Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

''(d) MANNER OF MAKING ELECTIONS.—An election under this section must be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the

case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

''(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

''(f) OPEN ENROLLMENT PERIOD DEFINED.—The open enrollment period is the one-year period beginning on April 1, 1992.

''(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—(1) If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

''(2) Paragraph (1) does not apply in the case of the death of a person making an election under subsection (a) if the beneficiary of that person under the election is the person's spouse and that spouse was entitled, before November 1, 1990, to receive dependency and indemnity compensation benefits from the Department of Veterans Affairs based on a previous marriage to another member or former member of the uniformed services.

''(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

''(i) REPORT CONCERNING OPEN SEASON.—Not later than June 1, 1990, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the open season authorized by this section for the Survivor Benefit Plan. The report shall include—

''(1) a description of the Secretary's plans for implementation of the open season;

''(2) the Secretary's estimates of the costs associated with the open season, including any anticipated effect of the open season on the actuarial status of the Department of Defense Military Retirement Fund; and

''(3) any recommendation by the Secretary for further legislative action.

''(j) ADDITIONAL PREMIUM.—The Secretary of Defense may require that the SBP premium for a person making an election under subsection (a)(1) or (b) include, in addition to the amount required under section 1452(a) of title 10, United States Code, an amount determined under regulations prescribed by the Secretary of Defense for the purposes of this subsection. Any such amount shall be stated as a percentage of the base amount of the person making the election and shall reflect the number of years that have elapsed since the person retired, but may not exceed 4.5 percent of that person's base amount.''

DEFINITIONS FOR 1989 AMENDMENTS

Section 1406 of title XIV of div. A of Pub. L. 101–189, as amended by Pub. L. 102–190, div. A, title VI, §653(a)(2), Dec. 5, 1991, 105 Stat. 1388, provided that: ''For the purpose of this title [see Short Title of 1989 Amendment note set out under section 1447 of this title]:

''(1) The term 'Survivor Benefit Plan' means the program established under subchapter II of chapter 73 of title 10, United States Code.

''(2) The term 'retired pay' includes retainer pay paid under section 6330 of title 10, United States Code.

''(3) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(4) The term 'SBP premium' means the reduction in retired pay required as a condition of providing an annuity under the Survivor Benefit Plan.

''(5) The term 'base amount' has the meaning given that term in section 1447(2) [see 1447(6)] of title 10, United States Code.''

ANNUITY FOR SURVIVING SPOUSES OF MEMBERS WHO DIED BEFORE NOVEMBER 1, 1953, AND WHO WERE ENTITLED TO RETIRED OR RETAINER PAY ON DATE OF DEATH

Pub. L. 100–456, div. A, title VI, §653, Sept. 29, 1988, 102 Stat. 1991, as amended by Pub. L. 103–337, div. A, title X, §1070(d)(3), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 105–85, div. A, title VI, §645(a), Nov. 18, 1997, 111 Stat. 1801, provided that:

''(a) ANNUITY.—(1) The Secretary concerned shall pay an annuity to the qualified surviving spouse of each member of the uniformed services who—

''(A) died before November 1, 1953; and

''(B) was entitled to retired or retainer pay on the date of death.

''(2) A qualified surviving spouse for purposes of this section is a surviving spouse who has not remarried and who is eligible for an annuity under section 4 of Public Law 92–425 (10 U.S.C. 1448 note).

''(b) AMOUNT OF ANNUITY.—(1) An annuity payable under this section shall be paid at the rate of $165 per month, as adjusted from time to time under subsection (c).

''(2) An annuity paid to a surviving spouse under this section shall be reduced by the amount of dependency and indemnity compensation (DIC) to which the surviving spouse is entitled under section 1311(a) of title 38, United States Code.

''(c) COST-OF-LIVING INCREASES.—Whenever retired or retainer pay is increased under section 1401a(b)(2) of title 10, United States Code, each annuity that is payable under this section shall be increased at the same time and by the same total percent. The amount of the increase shall be based on the monthly annuity payable before any reduction under this section.

''(d) RELATIONSHIP TO OTHER PROGRAMS.—(1) An annuity paid to a surviving spouse under this section is in addition to any pension to which the surviving spouse is entitled under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 (38 U.S.C. 1521 note), and any payment made under the provisions of section 4 of Public Law 92–425. An annuity paid under this section shall not be considered as income for the purposes of eligibility for any such pension.

''(2) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine the payment under this section with the payment of any amount due the same person under section 4 of Public Law 92–425 (10 U.S.C. 1448 note), as provided in subsection (e)(1) of that section. The Secretary concerned shall transfer amounts for payments under this section to the Secretary of Veterans Affairs in the same manner as is provided under subsection (e)(2) of section 4 of Public Law 92–425 for payments under that section.

''(e) DEFINITIONS.—For purposes of this section:

''(1) The terms 'uniformed services' and 'Secretary concerned' have the meanings given those terms in section 101 of title 37, United States Code.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in paragraphs (3) and (4), respectively, of section 1447 [see 1447(7), (8)] of title 10, United States Code.

''(f) EFFECTIVE DATE.—Annuities under this section shall be paid for months beginning after the month in which this Act is enacted [September 1988]. No benefit shall accrue to any person by reason of the enactment of this section for any period before the first month referred to in the preceding sentence. No benefit shall be paid to any person under this section unless an applica-

tion for such benefit has been filed with the Secretary concerned by or on behalf of such person.''

AUTHORITY FOR CERTAIN REMARRIED SURVIVOR BENEFIT PLAN PARTICIPANTS TO WITHDRAW FROM PLAN

Pub. L. 100–180, div. A, title VI, §631, Dec. 4, 1987, 101 Stat. 1104, provided that:

''(a) AUTHORITY TO WITHDRAW.—(1) An individual who is a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of title 10, United States Code, and is described in paragraph (2) may, with the consent of such individual's spouse, withdraw from participation in the Plan.

''(2) An individual referred to in paragraph (1) is an individual who—

''(A) is providing coverage for a spouse or for a spouse and child under the Plan; and

''(B) remarried before March 1, 1986, and at a time when such individual was a participant in the Plan but did not have an eligible spouse beneficiary under the Plan.

''(b) APPLICABLE PROVISIONS.—An election under subsection (a) shall be subject to subparagraphs (B) and (D) [see (E)] of section 1448(a)(6) of title 10, United States Code, except that in applying such subparagraph (B) to subsection (a), the one-year period referred to in clause (ii) of such subparagraph shall extend until the end of the one-year period beginning 90 days after the date of the enactment of this Act [Dec. 4, 1987].

''(c) TREATMENT OF PRIOR CONTRIBUTIONS.—No refund of amounts by which the retired pay of a participant in the Survivor Benefit Plan has been reduced by reason of section 1452 of title 10, United States Code, may be made to an individual who withdraws from the Survivor Benefit Plan under subsection (a).''

OPTION FOR CERTAIN PARTICIPANTS TO WITHDRAW FROM SURVIVOR BENEFIT PLAN

Section 711(c) of Pub. L. 99–145 provided that person who during period Oct. 19, 1984, to Nov. 8, 1985, became participant in Survivor Benefit Plan under this subchapter could withdraw from Plan before end of one-year period beginning on Nov. 8, 1985, and receive refund of contributions plus interest.

PERSONS COVERED UNDER SUBSECTIONS (d) AND (f)

Section 712(b) of Pub. L. 99–145 provided that:

''(1) Section 1448(d) of title 10, United States Code, as amended by subsection (a), applies to the surviving spouse and dependent children of a person who dies on active duty after September 20, 1972, and the former spouse of a person who dies after September 7, 1982.

''(2) In the case of the surviving spouse and children of a person who dies during the period beginning on September 21, 1972, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(d) of title 10, United States Code, as amended by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.''

Section 713(c) of Pub. L. 99–145 provided that:

''(1) Section 1448(f) of title 10, United States Code, as added by subsection (a), shall apply to the surviving spouse and dependent children of any person who dies after September 30, 1978, and the former spouse of a person who dies after September 7, 1982.

''(2) In the case of the surviving spouse and dependents of a person who dies during the period beginning on September 30, 1978, and ending on October 1, 1985, the Secretary concerned shall take appropriate steps to locate persons eligible for an annuity under section 1448(f) of title 10, United States Code, as added by subsection (a). Any such person must submit an application to the Secretary for such an annuity before October 1, 1988, to be eligible to receive such annuity. Any such annuity shall be effective only for months after the month in which the Secretary receives such application.''

REVISION FOR FORMER SPOUSE COVERAGE ALREADY IN EFFECT

Section 716(b) of Pub. L. 99–145, as amended by Pub. L. 99–661, div. A, title VI, §645, Nov. 14, 1986, 100 Stat. 3887, provided that person who before Mar. 1, 1986, made election under subsec. (b) of this section to provide annuity for former spouse could change that election to provide annuity for former spouse and dependent children, even though former spouse had died, but such election had to be made not later than Mar. 1, 1987, in case of person who made election before Nov. 8, 1985, and not later than end of one-year period beginning on Nov. 14, 1986, in case of person who made election during period of Nov. 8, 1985, to Feb. 28, 1986.

ONE-YEAR OPEN PERIOD TO SWITCH COMPUTATION OF SBP ANNUITY

Section 723(c) of Pub. L. 99–145 provided that person who, before effective date of title VII of Pub. L. 99–145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) participated in Survivor Benefit Plan under this subchapter, and had elected to provide annuity to former spouse could, with concurrence of such former spouse, elect to terminate such annuity and provide annuity to such former spouse under section 1450(a)(1) of this title, and any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

ONE-YEAR OPEN PERIOD FOR NEW FORMER SPOUSE COVERAGE

Section 723(d) of Pub. L. 99–145 provided that person who before effective date of part B of title VII of Pub. L. 99–145 (see Effective Date of 1985 Amendment note set out under section 1447 of this title) was participant in Survivor Benefit Plan and did not elect to provide annuity to former spouse could elect to provide annuity to former spouse under Plan, and that any such election was to be made before end of 12-month period beginning on Nov. 8, 1985.

OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN

Pub. L. 97–35, title II, §212, Aug. 13, 1981, 95 Stat. 383, as amended by Pub. L. 97–252, title XI, §1119, Sept. 8, 1982, 96 Stat. 753, provided that certain members or former members of the uniformed services who, on Aug. 13, 1981, were not participants in the Survivor Benefit Plan established under this subchapter or were not participants in the Plan at the maximum level, could elect to participate in the Plan or to participate in the Plan at a higher level, during an open enrollment period beginning Oct. 1, 1981, and ending Sept. 30, 1982, for members and former members entitled to retired or retainer pay on Aug. 13, 1981, or beginning on Oct. 1, 1982, and ending on Sept. 30, 1983, for members or former members who on Aug. 13, 1981, would have been entitled to retired pay, but for the fact they were under 60 years of age on that date.

SURVIVING SPOUSE; ANNUITY PAYMENT AND REDUCTION PROVISIONS; ELECTION OF ANNUITY; DEFINITIONS; EFFECTIVE DATE

Pub. L. 96–402, §5, Oct. 9, 1980, 94 Stat. 1707, provided that:

''(a)(1) The Secretary concerned shall pay an annuity to any individual who is the surviving spouse of a member of the uniformed services who—

''(A) died before September 21, 1972;

''(B) was serving on active duty in the uniformed services at the time of his death and had served on active duty for a period of not less than 20 years; and

''(C) was at the time of his death entitled to retired or retainer pay or would have been entitled to that pay except that he had not applied for or been granted that pay.

''(2) An annuity under paragraph (1) shall be paid under the provisions of subchapter II of chapter 73 of title 10, United States Code, in the same manner as if such member had died on or after September 21, 1972.

''(b)(1) The amount of retired or retainer pay to be used as the basis for the computation of an annuity under subsection (a) is the amount of the retired or retainer pay to which the member would have been entitled if the member had been entitled to that pay based upon his years of active service when he died, adjusted by the overall percentage increase in retired and retainer pay under section 1401a of title 10, United States Code (or any prior comparable provision of law), during the period beginning on the date of the member's death and ending on the day before the effective date of this section.

''(2) In addition to any reduction required under the provisions of subchapter II of chapter 73 of title 10, United States Code, the annuity paid to any surviving spouse under this section shall be reduced by any amount such surviving spouse is entitled to receive as an annuity under subchapter I of such chapter.

''(c) If an individual entitled to an annuity under this section is also entitled to an annuity under subchapter II of chapter 73 of title 10, United States Code, based upon a subsequent marriage, the individual may not receive both annuities but must elect which to receive.

''(d) As used in this section:

''(1) The term 'uniformed services' means the Armed Forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration.

''(2) The term 'surviving spouse' has the meaning given the terms 'widow' and 'widower' in section 1447 of title 10, United States Code.

''(3) The term 'Secretary concerned' has the meaning given such term in section 101(8) of title 10, United States Code, and includes the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration, and the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service.''

Provision effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

ELECTION TO PARTICIPATE IN THE SURVIVOR BENEFIT PLAN AND WITHDRAW FROM THE RETIRED SERVICEMAN'S FAMILY PROTECTION PLAN

Section 3 of Pub. L. 92–425, as amended by Pub. L. 93–155, title VIII, §804, Nov. 16, 1973, 87 Stat. 615, provided that:

''(a) The Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] applies to any person who initially becomes entitled to retired or retainer pay on or after the effective date of this Act [Sept. 21, 1972]. An election made before that date by such a person under section 1431 of title 10, United States Code, is canceled. However, a person who initially becomes entitled to retired or retainer pay within 180 days after the effective date of this Act [Sept. 21, 1972] may, within 180 days after becoming so entitled, elect—

''(1) not to participate in such Survivor Benefit Plan if he is married or has a dependent child; or

''(2) to participate in that Plan, if he is a person covered by section 1448(b) of title 10, United States Code.

''(b) Any person who is entitled to retired or retainer pay on the effective date of this Act [Sept. 21, 1972] may elect to participate in the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter] at any time within eighteen months after such date. However, such a person who is receiving retired or retainer pay reduced under section 1436(a) of title 10, United States Code, or who is depositing amounts under section 1438 of that title, may elect at any time within eighteen months after the effective date of this Act [Sept. 21, 1972]—

''(1) to participate in the Plan and continue his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972], except that the total of the annuities elected may not exceed 100 percent of his retired or retainer pay; or

''(2) to participate in the Plan and, notwithstanding section 1436(b) of that title, terminate his participation under chapter 73 of that title [this chapter] as in effect on the day before the effective date of this Act [Sept. 21, 1972].

A person who elects under clause (2) of this subsection is not entitled to a refund of amounts previously deducted from his retired or retainer pay under chapter 73 of title 10, United States Code [this chapter], as in effect on the day before the effective date of this Act [Sept. 21, 1972], or any payments made thereunder on his behalf. A person who is not married or does not have a dependent child on the first anniversary of the effective date of this Act [Sept. 21, 1972], but who later marries or acquires a dependent child, may elect to participate in the Plan under the fourth sentence of section 1448(a) of that title [former subsec. (a) of this section].

''(c) Notwithstanding the provisions of the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter], and except as otherwise provided in this section, subchapter I of chapter 73 of title 10, United States Code [subchapter I of this chapter] (other than the last two sentences of section 1436(a), section 1443, and section 1444(b)), as in effect on the day before the effective date of this Act [Sept. 21, 1972], shall continue to apply in the case of persons, and their beneficiaries, who have elected annuities under section 1431 or 1432 of that title and who have not elected under subsection (b)(2) of this section to participate in that Plan.

''(d) In this section, 'base amount' means—

''(1) the monthly retired or retainer pay to which a person—

''(A) is entitled on the effective date of this Act [Sept. 21, 1972]; or

''(B) later becomes entitled by being advanced on the retired list, performing active duty, or being transferred from the temporary disability retired list to the permanent disability retired list; or

''(2) any amount less than that described in clause (1) designated by that person at the time he makes an election under subsection (a)(2) or (b) of this section, but not less than $300;

as increased from time to time under section 1401a of title 10, United States Code.

''(e) An election made under subsection (a) or (b) of this section is effective on the date it is received by the Secretary concerned, as defined in section 101(5) of title 37, United States Code.

''(f) Sections 1449, 1453, and 1454 of title 10, United States Code, as added by clause (3) of the first section of this Act [as part of this subchapter], are applicable to persons covered by this section.''

INCOME SUPPLEMENT FOR CERTAIN WIDOWS OF RETIRED MEMBERS OF THE UNIFORMED FORCES; SPECIAL ANNUITY FOR WIDOWS OF COMMISSIONED PERSONNEL OF THE PUBLIC HEALTH SERVICE AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION IN LIEU OF VA PENSION

Section 4 of Pub. L. 92–425, as amended by Pub. L. 94–496, §2, Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §209, Sept. 30, 1978, 92 Stat. 848; Pub. L. 96–402, §6, Oct. 9, 1980, 94 Stat. 1708; Pub. L. 98–94, title IX, §942(a), Sept. 24, 1983, 97 Stat. 654; Pub. L. 102–40, title IV, §402(d)(2), May 7, 1991, 105 Stat. 239; Pub. L. 103–337, div. A, title X, §1070(d)(4), Oct. 5, 1994, 108 Stat. 2858; Pub. L. 104–201, div. A, title VI, §638(a)–(c), Sept. 23, 1996, 110 Stat. 2581; Pub. L. 105–85, div. A, title VI, §645(b), Nov. 18, 1997, 111 Stat. 1801, provided that:

''(a) A person—

''(1) who, on September 21, 1972, was, or during the period beginning on September 22, 1972, and ending on March 20, 1974, became, a widow of a person who was entitled to retired or retainer pay when he died;

''(2) who is eligible for a pension under subchapter III of chapter 15 of title 38, United States Code, or section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [set out as note under section 1521 of Title 38]; and

''(3) whose annual income, as determined in establishing that eligibility, is less than the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code;

shall be paid an annuity by the Secretary concerned unless she is eligible to receive an annuity under the Survivor Benefit Plan established pursuant to clause (3) of the first section of this Act [this subchapter]. However, such a person who is the widow of a retired officer of the Public Health Service or the National Oceanic and Atmospheric Administration, and who would otherwise be eligible for an annuity under this section except that she does not qualify for the pension described in clause (2) of this subsection because the service of her deceased spouse is not considered active duty under section 101(21) of title 38, United States Code, is entitled to an annuity under this section.

''(b) The annuity under subsection (a) of this section shall be in an amount which when added to the widow's income determined under subsection (a)(3) of this section, plus the amount of any annuity being received under sections 1431–1436 of title 10, United States Code, but exclusive of a pension described in subsection (a)(2) of this section, equals the maximum annual rate of pension in effect under section 1541(b) of title 38, United States Code. In addition, the Secretary concerned shall pay to the widow, described in the last sentence of subsection (a) of this section, an amount equal to the pension she would otherwise have been eligible to receive under subchapter III of chapter 15 of title 38, United States Code, if the service of her deceased spouse was considered active duty under section 101(21) of that title.

''(c) The amount of an annuity payable under this section, although counted as income in determining the amount of any pension described in subsection (a)(2) of this section, shall not be considered to affect the eligiblity of the recipient of such annuity for such pension, even though, as a result of including the amount of the annuity as income, no amount of such pension is due.

''(d) Subsection 1450(i) and section 1453 as added to title 10, United States Code, by clause 3 of the first section of this Act, are applicable to persons covered by this section.

''(e)(1) Payment of annuities under this section shall be made by the Secretary of Veterans Affairs. In making such payments, the Secretary shall combine with the payment under this section payment of any amount due the same person under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989 [Pub. L. 100–456] (10 U.S.C. 1448 note). If appropriate for administrative convenience (or otherwise determined appropriate by the Secretary of Veterans Affairs), that Secretary may combine a payment to any person for any month under this section (and, if applicable, under section 653(d) of the National Defense Authorization Act, Fiscal Year 1989) with any other payment for that month under laws administered by the Secretary so as to provide that person with a single payment for that month.

''(2) The Secretary concerned shall annually transfer to the Secretary of Veterans Affairs such amounts as may be necessary for payments by the Secretary of Veterans Affairs under this section and for costs of the Secretary of Veterans Affairs in administering this section. Such transfers shall be made from amounts that would otherwise be used for payment of annuities by the Secretary concerned under this section. The authority to make such a transfer is in addition to any other authority of the Secretary concerned to transfer funds for a purpose other than the purpose for which the funds were originally made available. In the case of a transfer by the Secretary of a military department, the provisions of section 2215 of title 10, United States Code, do not apply.

''(3) The Secretary concerned shall promptly notify the Secretary of Veterans Affairs of any change in beneficiaries under this section.''

[Section 638(d) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending section 4 of Pub. L. 92–425, set out above] take effect on July 1, 1997, and apply with respect to payments of benefits for any month after June 1997.'']

[Section 942(b) of Pub. L. 98–94 provided that: ''Any annuity payable by reason of subsection (a) [amending section 4(a)(1) of Pub. L. 92–425, set out above] shall be payable only for months after September 1983.'']

END OF 90-DAY PERIOD WITH RESPECT TO CERTAIN INDIVIDUALS

The 90-day period, referred to in subsec. (a)(2), (4)(B), with respect to certain individuals shall be considered to end on Mar. 31, 1980, see section 208 of Pub. L. 95–397, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1076c, 1447, 1448a, 1449, 1450, 1451, 1452, 1455, 1458 of this title; title 38 section 1318.

§ 1448a. Election to discontinue participation: one-year opportunity after second anniversary of commencement of payment of retired pay

(a) AUTHORITY.—A participant in the Plan may, subject to the provisions of this section, elect to discontinue participation in the Plan at any time during the one-year period beginning on the second anniversary of the date on which payment of retired pay to the participant commences.

(b) CONCURRENCE OF SPOUSE.—

(1) CONCURRENCE REQUIRED.—A married participant may not (except as provided in paragraph (2)) make an election under subsection (a) without the concurrence of the participant's spouse.

(2) EXCEPTIONS.—A participant may make such an election without the concurrence of the participant's spouse by establishing to the satisfaction of the Secretary concerned that one of the conditions specified in section 1448(a)(3)(C) of this title exists.

(3) FORM OF CONCURRENCE.—The concurrence of a spouse under paragraph (1) shall be made in such written form and shall contain such information as may be required under regulations prescribed by the Secretary of Defense.

(c) LIMITATION ON ELECTION WHEN FORMER SPOUSE COVERAGE IN EFFECT.—The limitation set forth in section 1450(f)(2) of this title applies to an election to discontinue participation in the Plan under subsection (a).

(d) WITHDRAWAL OF ELECTION TO DISCONTINUE.—Section 1448(b)(1)(D) of this title applies to an election under subsection (a).

(e) CONSEQUENCES OF DISCONTINUATION.—Section 1448(b)(1)(E) of this title applies to an election under subsection (a).

(f) NOTICE TO AFFECTED BENEFICIARIES.—The Secretary concerned shall notify any former spouse or other natural person previously designated under section 1448(b) of this title of an

election to discontinue participation under subsection (a).

(g) EFFECTIVE DATE OF ELECTION.—An election under subsection (a) is effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(h) INAPPLICABILITY OF IRREVOCABILITY PROVISIONS.—Paragraphs (4)(B) and (5)(C) of section 1448(a) of this title do not apply to prevent an election under subsection (a).

(Added Pub. L. 105–85, div. A, title VI, § 641(a)(1), Nov. 18, 1997, 111 Stat. 1797.)

EFFECTIVE DATE

Section 641(c) of Pub. L. 105–85 provided that: ''Section 1448a of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].''

TRANSITION PROVISION FOR CURRENT PARTICIPANTS

Section 641(b) of Pub. L. 105–85 provided that: ''Notwithstanding the limitation on the time for making an election under section 1448a of title 10, United States Code (as added by subsection (a)), that is specified in subsection (a) of such section, a participant in the Survivor Benefit Plan under subchapter II of chapter 73 of such title may make an election in accordance with that section within one year after the effective date of that section under subsection (c) [set out as an Effective Date note above] if the second anniversary of the commencement of payment of retired pay to the participant precedes that effective date.''

§ 1449. Mental incompetency of member

(a) ELECTION BY SECRETARY CONCERNED ON BEHALF OF MENTALLY INCOMPETENT MEMBER.—If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, an election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned.

(b) REVOCATION OF ELECTION BY MEMBER.—

(1) AUTHORITY UPON SUBSEQUENT DETERMINATION OF MENTAL COMPETENCE.—If a person for whom the Secretary has made an election under subsection (a) is later determined to be mentally competent by an authority named in that subsection, that person may, within 180 days after that determination, revoke that election.

(2) DEDUCTIONS FROM RETIRED PAY NOT TO BE REFUNDED.—Any deduction made from retired pay by reason of such an election may not be refunded.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 95–397, title II, § 207(a), Sept. 30, 1978, 92 Stat. 848; Pub. L. 101–189, div. A, title XIV, § 1407(a)(3), title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2560.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''If a person to whom section 1448 of this title applies is determined to be mentally incompetent by medical officers of the armed force concerned or of the Department of Veterans Affairs, or by a court of competent jurisdiction, any election described in subsection (a)(2) or (b) of section 1448 of this title may be made on behalf of that person by the Secretary concerned. If the person for whom the Secretary has made an election is later determined to be mentally competent by an authority named in the first sentence, he may, within 180 days after that determination revoke that election. Any deductions made from retired pay by reason of such an election will not be refunded.''

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' and struck out ''or retainer'' after ''made from retired''.

1978—Pub. L. 95–397 substituted ''subsection (a)(2) or (b)'' for ''the first sentence of subsection (a), or subsection (b)''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1450, 1460a of this title.

§ 1450. Payment of annuity: beneficiaries

(a) IN GENERAL.—Effective as of the first day after the death of a person to whom section 1448 of this title applies (or on such other day as that person may provide under subsection (j)), a monthly annuity under section 1451 of this title shall be paid to the person's beneficiaries under the Plan, as follows:

(1) SURVIVING SPOUSE OR FORMER SPOUSE.—The eligible surviving spouse or the eligible former spouse.

(2) SURVIVING CHILDREN.—The surviving dependent children in equal shares, if the eligible surviving spouse or the eligible former spouse is dead, dies, or otherwise becomes ineligible under this section.

(3) DEPENDENT CHILDREN.—The dependent children in equal shares if the person to whom section 1448 of this title applies (with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title) elected to provide an annuity for dependent children but not for the spouse or former spouse.

(4) NATURAL PERSON DESIGNATED UNDER ''INSURABLE INTEREST'' COVERAGE.—The natural person designated under section 1448(b)(1) of this title, unless the election to provide an annuity to the natural person has been changed as provided in subsection (f).

(b) TERMINATION OF ANNUITY FOR DEATH, REMARRIAGE BEFORE AGE 55, ETC.—

(1) GENERAL RULE.—An annuity payable to the beneficiary terminates effective as of the first day of the month in which eligibility is lost.

(2) TERMINATION OF SPOUSE ANNUITY UPON DEATH OR REMARRIAGE BEFORE AGE 55.—An annuity for a surviving spouse or former spouse shall be paid to the surviving spouse or former spouse while the surviving spouse or former spouse is living or, if the surviving spouse or former spouse remarries before reaching age 55, until the surviving spouse or former spouse remarries.

(3) EFFECT OF TERMINATION OF SUBSEQUENT MARRIAGE BEFORE AGE 55.—If the surviving

spouse or former spouse remarries before reaching age 55 and that marriage is terminated by death, annulment, or divorce, payment of the annuity shall be resumed effective as of the first day of the month in which the marriage is so terminated. However, if the surviving spouse or former spouse is also entitled to an annuity under the Plan based upon the marriage so terminated, the surviving spouse or former spouse may not receive both annuities but must elect which to receive.

(c) OFFSET FOR AMOUNT OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) REQUIRED OFFSET.—If, upon the death of a person to whom section 1448 of this title applies, the surviving spouse or former spouse of that person is also entitled to dependency and indemnity compensation under section 1311(a) of title 38, the surviving spouse or former spouse may be paid an annuity under this section, but only in the amount that the annuity otherwise payable under this section would exceed that compensation.

(2) EFFECTIVE DATE OF OFFSET.—A reduction in an annuity under this section required by paragraph (1) shall be effective on the date of the commencement of the period of payment of such dependency and indemnity compensation under title 38.

(d) LIMITATION ON PAYMENT OF ANNUITIES WHEN COVERAGE UNDER CIVIL SERVICE RETIREMENT ELECTED.—If, upon the death of a person to whom section 1448 of this title applies, that person had in effect a waiver of that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, an annuity under this section shall not be payable unless, in accordance with section 8339(j) of title 5, that person notified the Office of Personnel Management that he did not desire any spouse surviving him to receive an annuity under section 8341(b) of that title.

(e) REFUND OF AMOUNTS DEDUCTED FROM RETIRED PAY WHEN DIC OFFSET IS APPLICABLE.—

(1) FULL REFUND WHEN DIC GREATER THAN SBP ANNUITY.—If an annuity under this section is not payable because of subsection (c), any amount deducted from the retired pay of the deceased under section 1452 of this title shall be refunded to the surviving spouse or former spouse.

(2) PARTIAL REFUND WHEN SBP ANNUITY REDUCED BY DIC.—If, because of subsection (c), the annuity payable is less than the amount established under section 1451 of this title, the annuity payable shall be recalculated under that section. The amount of the reduction in the retired pay required to provide that recalculated annuity shall be computed under section 1452 of this title, and the difference between the amount deducted before the computation of that recalculated annuity and the amount that would have been deducted on the basis of that recalculated annuity shall be refunded to the surviving spouse or former spouse.

(f) CHANGE IN ELECTION OF INSURABLE INTEREST OR FORMER SPOUSE BENEFICIARY.—

(1) AUTHORIZED CHANGES.—

(A) ELECTION IN FAVOR OF SPOUSE OR CHILD.—A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2), change that election and provide an annuity to his spouse or dependent child.

(B) NOTICE.—The Secretary concerned shall notify the former spouse or other natural person previously designated under section 1448(b) of this title of any change of election under subparagraph (A).

(C) PROCEDURES, EFFECTIVE DATE, ETC.—Any such change of election is subject to the same rules with respect to execution, revocation, and effectiveness as are set forth in section 1448(a)(5) of this title (without regard to the eligibility of the person making the change of election to make such an election under that section). Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.

(2) LIMITATION ON CHANGE IN BENEFICIARY WHEN FORMER SPOUSE COVERAGE IN EFFECT.—A person who, incident to a proceeding of divorce, dissolution, or annulment, is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement, may not change that election under paragraph (1) unless, of the following requirements, whichever are applicable in a particular case are satisfied:

(A) In a case in which the election is required by a court order, or in which an agreement to make the election has been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a certified copy of a court order which is regular on its face and which modifies the provisions of all previous court orders relating to such election, or the agreement to make such election, so as to permit the person to change the election; and

(ii) certifies to the Secretary concerned that the court order is valid and in effect.

(B) In a case of a written agreement that has not been incorporated in or ratified or approved by a court order, the person—

(i) furnishes to the Secretary concerned a statement, in such form as the Secretary concerned may prescribe, signed by the former spouse and evidencing the former spouse's agreement to a change in the election under paragraph (1); and

(ii) certifies to the Secretary concerned that the statement is current and in effect.

(3) REQUIRED FORMER SPOUSE ELECTION TO BE DEEMED TO HAVE BEEN MADE.—

(A) DEEMED ELECTION UPON REQUEST BY FORMER SPOUSE.—If a person described in paragraph (2) or (3) of section 1448(b) of this

title is required (as described in subparagraph (B)) to elect under section 1448(b) of this title to provide an annuity to a former spouse and such person then fails or refuses to make such an election, such person shall be deemed to have made such an election if the Secretary concerned receives the following:

(i) REQUEST FROM FORMER SPOUSE.—A written request, in such manner as the Secretary shall prescribe, from the former spouse concerned requesting that such an election be deemed to have been made.

(ii) COPY OF COURT ORDER OR OTHER OFFICIAL STATEMENT.—Either—

(I) a copy of the court order, regular on its face, which requires such election or incorporates, ratifies, or approves the written agreement of such person; or

(II) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(B) PERSONS REQUIRED TO MAKE ELECTION.—A person shall be considered for purposes of subparagraph (A) to be required to elect under section 1448(b) of this title to provide an annuity to a former spouse if—

(i) the person enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to make such an election and the agreement (I) has been incorporated in or ratified or approved by a court order, or (II) has been filed with the court of appropriate jurisdiction in accordance with applicable State law; or

(ii) the person is required by a court order to make such an election.

(C) TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—An election may not be deemed to have been made under subparagraph (A) in the case of any person unless the Secretary concerned receives a request from the former spouse of the person within one year of the date of the court order or filing involved.

(D) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under subparagraph (A) shall become effective on the day referred to in section 1448(b)(3)(E)(ii) of this title.

(4) FORMER SPOUSE COVERAGE MAY BE REQUIRED BY COURT ORDER.—A court order may require a person to elect (or to enter into an agreement to elect) under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child).

(g) LIMITATION ON CHANGING OR REVOKING ELECTIONS.—

(1) IN GENERAL.—An election under this section may not be changed or revoked.

(2) EXCEPTIONS.—Paragraph (1) does not apply to—

(A) a revocation of an election under section 1449(b) of this title; or

(B) a change in an election under subsection (f).

(h) TREATMENT OF ANNUITIES UNDER OTHER LAWS.—Except as provided in section 1451 of this title, an annuity under this section is in addition to any other payment to which a person is entitled under any other provision of law. Such annuity shall be considered as income under laws administered by the Secretary of Veterans Affairs.

(i) ANNUITIES EXEMPT FROM CERTAIN LEGAL PROCESS.—Except as provided in subsection (*l*)(3)(B), an annuity under this section is not assignable or subject to execution, levy, attachment, garnishment, or other legal process.

(j) EFFECTIVE DATE OF RESERVE-COMPONENT ANNUITIES.—

(1) PERSONS MAKING SECTION 1448(e) DESIGNATION.—A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.

(2) PERSONS DYING BEFORE MAKING SECTION 1448(e) DESIGNATION.—An annuity payable under section 1448(f) of this title shall be effective on the day after the date of the death of the person upon whose service the right to the annuity is based.

(k) ADJUSTMENT OF SPOUSE OR FORMER SPOUSE ANNUITY UPON LOSS OF DEPENDENCY AND INDEMNITY COMPENSATION.—

(1) READJUSTMENT IF BENEFICIARY 55 YEARS OF AGE OR MORE.—If a surviving spouse or former spouse whose annuity has been adjusted under subsection (c) subsequently loses entitlement to dependency and indemnity compensation under section 1311(a) of title 38 because of the remarriage of the surviving spouse, or former spouse, and if at the time of such remarriage the surviving spouse or former spouse is 55 years of age or more, the amount of the annuity of the surviving spouse or former spouse shall be readjusted, effective on the effective date of such loss of dependency and indemnity compensation, to the amount of the annuity which would be in effect with respect to the surviving spouse or former spouse if the adjustment under subsection (c) had never been made.

(2) REPAYMENT OF AMOUNTS PREVIOUSLY REFUNDED.—

(A) GENERAL RULE.—A surviving spouse or former spouse whose annuity is readjusted under paragraph (1) shall repay any amount refunded under subsection (e) by reason of the adjustment under subsection (c).

(B) INTEREST REQUIRED IF REPAYMENT NOT A LUMP SUM.—If the repayment is not made in a lump sum, the surviving spouse or former spouse shall pay interest on the amount to be repaid. Such interest shall commence on the date on which the first such payment is due and shall be applied over the period during which any part of the repayment remains to be paid.

(C) MANNER OF REPAYMENT; RATE OF INTEREST.—The manner in which such repayment shall be made, and the rate of any such interest, shall be prescribed in regulations under section 1455 of this title.

(D) DEPOSIT OF AMOUNTS REPAID.—An amount repaid under this paragraph (including any such interest) received by the Sec-

retary of Defense shall be deposited into the Department of Defense Military Retirement Fund. Any other amount repaid under this paragraph shall be deposited into the Treasury as miscellaneous receipts.

(*l*) PARTICIPANTS IN THE PLAN WHO ARE MISSING.—

(1) AUTHORITY TO PRESUME DEATH OF MISSING PARTICIPANT.—

(A) IN GENERAL.—Upon application of the beneficiary of a participant in the Plan who is missing, the Secretary concerned may determine for purposes of this subchapter that the participant is presumed dead.

(B) PARTICIPANT WHO IS MISSING.—A participant in the Plan is considered to be missing for purposes of this subsection if—

(i) the retired pay of the participant has been suspended on the basis that the participant is missing; or

(ii) in the case of a participant in the Plan who would be eligible for reserve-component retired pay but for the fact that he is under 60 years of age, his retired pay, if he were entitled to retired pay, would be suspended on the basis that he is missing.

(C) REQUIREMENTS APPLICABLE TO PRESUMPTION OF DEATH.—Any such determination shall be made in accordance with regulations prescribed under section 1455 of this title. The Secretary concerned may not make a determination for purposes of this subchapter that a participant who is missing is presumed dead unless the Secretary finds that—

(i) the participant has been missing for at least 30 days; and

(ii) the circumstances under which the participant is missing would lead a reasonably prudent person to conclude that the participant is dead.

(2) COMMENCEMENT OF ANNUITY.—Upon a determination under paragraph (1) with respect to a participant in the Plan, an annuity otherwise payable under this subchapter shall be paid as if the participant died on the date as of which the retired pay of the participant was suspended.

(3) EFFECT OF PERSON NOT BEING DEAD.—

(A) TERMINATION OF ANNUITY.—If, after a determination under paragraph (1), the Secretary concerned determines that the participant is alive—

(i) any annuity being paid under this subchapter by reason of this subsection shall be terminated; and

(ii) the total amount of any annuity payments made by reason of this subsection shall constitute a debt to the United States.

(B) COLLECTION FROM PARTICIPANT OF ANNUITY AMOUNTS ERRONEOUSLY PAID.—A debt under subparagraph (A)(ii) may be collected or offset—

(i) from any retired pay otherwise payable to the participant;

(ii) if the participant is entitled to compensation under chapter 11 of title 38, from that compensation; or

(iii) if the participant is entitled to any other payment from the United States, from that payment.

(C) COLLECTION FROM BENEFICIARY.—If the participant dies before the full recovery of the amount of annuity payments described in subparagraph (A)(ii) has been made by the United States, the remaining amount of such annuity payments may be collected from the participant's beneficiary under the Plan if that beneficiary was the recipient of the annuity payments made by reason of this subsection.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 708; amended Pub. L. 94–496, §1(3), (4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §§203, 207(b), (c), Sept. 30, 1978, 92 Stat. 845, 848; Pub. L. 97–22, §11(a)(3), July 10, 1981, 95 Stat. 137; Pub. L. 97–252, title X, §1003(c), (d), Sept. 8, 1982, 96 Stat. 736; Pub. L. 98–94, title IX, §941(a)(3), (c)(3), Sept. 24, 1983, 97 Stat. 653; Pub. L. 98–525, title VI, §§642(b), 644, Oct. 19, 1984, 98 Stat. 2546, 2548; Pub. L. 99–145, title VII, §§713(b), 717, 718, 719(4)–(6), (8)(A), 722, 723(a), (b)(1), title XIII, §1303(a)(11), Nov. 8, 1985, 99 Stat. 672, 674–677, 739; Pub. L. 99–661, div. A, title VI, §§641(a), (b)(2), (3), 643(a), title XIII, §1343(a)(8)(C), Nov. 14, 1986, 100 Stat. 3885, 3886, 3992; Pub. L. 100–26, §3(3), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VI, §636(a), Dec. 4, 1987, 101 Stat. 1106; Pub. L. 100–224, §5(b)(1), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 101–189, div. A, title XIV, §1407(a)(2)–(4), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1588, 1602; Pub. L. 103–337, div. A, title X, §1070(e)(3), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2561; Pub. L. 105–85, div. A, title VI, §642(a), Nov. 18, 1997, 111 Stat. 1799; Pub. L. 105–261, div. A, title VI, §643(b), Oct. 17, 1998, 112 Stat. 2048; Pub. L. 106–398, §1 [[div. A], title VI, §655(c)(4)], Oct. 30, 2000, 114 Stat. 1654, 1654A–166.)

AMENDMENTS

2000—Subsec. (j)(1). Pub. L. 106–398 substituted ''A reserve-component annuity shall be effective in accordance with the designation made under section 1448(e) of this title by the person providing the annuity.'' for ''An annuity elected by a person providing a reserve-component annuity shall be effective in accordance with the designation made by such person under section 1448(e) of this title.''

1998—Subsec. (f)(3)(D). Pub. L. 105–261 substituted ''the day referred to in section 1448(b)(3)(E)(ii) of this title'' for ''the first day of the first month which begins after the date of the court order or filing involved''.

1997—Subsec. (f)(1)(C). Pub. L. 105–85 inserted at end ''Notwithstanding the preceding sentence, a change of election under this subsection to provide an annuity to a spouse instead of a former spouse may (subject to paragraph (2)) be made at any time after the person providing the annuity remarries without regard to the time limitation in section 1448(a)(5)(B) of this title.''

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to payment of annuities and beneficiaries and inserting subsec., par., and subpar. headings.

1994—Subsecs. (c), (k)(1). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (f)(3)(B). Pub. L. 101–189, §1407(a)(4), substituted ''within one year of the date of the court order or filing involved'' for ''before October 1, 1985, or within one year of the date of the court order or filing involved, whichever is later''.

Subsec. (h). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (*l*)(1). Pub. L. 101–189, §1407(a)(2), substituted ''reserve-component retired pay'' for ''retired pay under chapter 67 of this title''.

Subsec. (*l*)(2). Pub. L. 101–189, §1407(a)(3), struck out ''or retainer'' after ''of which the retired''.

1987—Subsec. (b). Pub. L. 100–26, §3(3), made technical amendment to directory language of Pub. L. 99–661, §643(a). See 1986 Amendment note below.

Subsec. (f)(3)(A). Pub. L. 100–224 struck out second of two commas after ''required by a court order to make such an election''.

Subsec. (k)(1). Pub. L. 100–180 substituted ''55 years of age'' for ''60 years of age''.

1986—Subsec. (b). Pub. L. 99–661, §643(a), as amended by Pub. L. 100–26, §3(3), substituted ''age 55'' for ''age 60'' in two places.

Subsec. (c). Pub. L. 99–661, §1343(a)(8)(C), substituted ''entitled to dependency and indemnity compensation'' for ''entitled to compensation''.

Subsec. (f)(2). Pub. L. 99–661, §641(b)(2)(A), substituted ''is required by a court order to elect under section 1448(b) of this title to provide an annuity to a former spouse (or to both a former spouse and child), or who enters into a written agreement (whether voluntary or required by a court order) to make such an election, and who makes an election pursuant to such order or agreement,'' for ''enters into a voluntary written agreement to elect under section 1448(b) of this title to provide an annuity to a former spouse and who makes an election pursuant to such agreement''.

Subsec. (f)(2)(A). Pub. L. 99–661, §641(b)(2)(B), substituted ''in a case in which the election is required by a court order, or in which an agreement to make the election'' for ''in a case in which such agreement''.

Subsec. (f)(2)(A)(i). Pub. L. 99–661, §641(b)(2)(C), substituted ''relating to such election, or the agreement to make such election,'' for ''relating to the agreement to make such election''.

Subsec. (f)(2)(B). Pub. L. 99–661, §641(b)(2)(D), substituted ''of a written agreement that'' for ''in which such agreement''.

Subsec. (f)(3)(A). Pub. L. 99–661, §641(b)(3), struck out ''voluntary'' before ''written agreement'' in two places, inserted ''or if such person is required by a court order to make such an election,'' after ''applicable'' and inserted ''requires such election or'' after ''on its face, which''.

Subsec. (f)(4). Pub. L. 99–661, §641(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Nothing in this chapter authorizes any court to order any person to elect under section 1448(b) of this title to provide an annuity to a former spouse unless such person has voluntarily agreed in writing to make such election.''

1985—Subsec. (a)(1), (2). Pub. L. 99–145, §723(a)(1), inserted ''or the eligible former spouse'' after ''widow or widower''.

Subsec. (a)(3). Pub. L. 99–145, §723(a)(2), inserted ''(with the concurrence of the person's spouse, if required under section 1448(a)(3) of this title)'' after ''title applies'', and ''or former spouse'' after ''the spouse''.

Subsec. (a)(4). Pub. L. 99–145, §723(a)(3), struck out ''former spouse or other'' before ''natural person'' in two places.

Subsec. (b). Pub. L. 99–145, §723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in eight places.

Pub. L. 99–145, §719(4), substituted ''under the Plan'' for ''under this section''.

Subsec. (c). Pub. L. 99–145, §723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Pub. L. 99–145, §718, inserted provision respecting the effective date of the dependency and indemnity compensation offset.

Subsec. (d). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (e). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in two places.

Pub. L. 99–145, §723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' in two places.

Subsec. (f)(3)(A). Pub. L. 99–145, §722(1), inserted ''or has been filed with the court of appropriate jurisdiction in accordance with applicable State law'' after ''by a court order'' and ''or receives a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law'' after ''voluntary written agreement of such person''.

Subsec. (f)(3)(B), (C). Pub. L. 99–145, §722(2), inserted ''or filing'' after ''court order''.

Subsec. (i). Pub. L. 99–145, §1303(a)(11)(A), substituted ''subsection (*l*)(3)(B)'' for ''subsection (*l*)''.

Subsec. (j). Pub. L. 99–145, §719(5), substituted ''a person providing a reserve-component annuity'' for ''any person providing an annuity by virtue of eligibility under section 1448(a)(1)(B) of this title''.

Pub. L. 99–145, §713(b), inserted provision respecting the effective date of an annuity payable under section 1448(f) of this title.

Subsec. (k). Pub. L. 99–145, §723(b)(1), substituted ''widow, widower, or former spouse'' for ''widow or widower'' wherever appearing.

Subsec. (k)(1). Pub. L. 99–145, §717(1), (2), designated existing provisions as par. (1) and substituted ''had never been made.'' for ''had never been made, but such readjustment may not be made until the widow or widower repays any amount refunded under subsection (e) by reason of the adjustment under subsection (c).''

Subsec. (k)(2). Pub. L. 99–145, §717(3), added par. (2).

Subsec. (*l*)(1). Pub. L. 99–145, §719(6)(A), (8)(A), substituted in first sentence ''the Plan'' for ''the plan'' in two places, and substituted ''retired pay'' for ''retired or retainer pay'' before ''has been suspended''.

Subsec. (*l*)(2). Pub. L. 99–145, §719(6)(B), struck out ''the provision of'' before ''this subchapter''.

Subsec. (*l*)(3)(A). Pub. L. 99–145, §1303(a)(11)(B), struck out ''(notwithstanding subsection (h))'' before ''may be collected''.

Subsec. (*l*)(3)(A)(i). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retried or retainer pay''.

1984—Subsec. (f)(3), (4). Pub. L. 98–525, §644, added par. (3) and redesignated former par. (3) as (4).

Subsec. (i). Pub. L. 98–525, §642(b)(1), substituted ''Except as provided in subsection (*l*), an'' for ''An''.

Subsec. (*l*). Pub. L. 98–525, §642(b)(2), added subsec. (*l*).

1983—Subsec. (a)(4). Pub. L. 98–94, §941(a)(3)(A), struck out ''at the time the person to whom section 1448 applies became entitled to retired or retainer pay'' after ''section 1448(b) of this title''.

Subsec. (f)(1). Pub. L. 98–94, §941(a)(3)(B), inserted ''(without regard to the eligibility of the person making the change of election to make an election under such section)'' after ''section 1448(a)(5) of this title''.

Pub. L. 98–94, §941(c)(3)(A), struck out ''of this subsection'' after ''subject to paragraph (2)''.

Subsec. (f)(2). Pub. L. 98–94, §941(c)(3)(B), substituted ''or annulment,'' for ''annulment, or legal separation,''.

1982—Subsec. (a)(4). Pub. L. 97–252, §1003(c), substituted ''former spouse or other natural person'' for ''natural person'' and ''unless the election to provide an annuity to the former spouse or other natural person has been changed as provided in subsection (f)'' for ''if there is no eligible beneficiary under clause (1) or clause (2)''.

Subsec. (f). Pub. L. 97–252, §1003(d), designated existing provisions as par. (1), substituted ''A person who elects to provide an annuity to a person designated by him under section 1448(b) of this title may, subject to paragraph (2) of this subsection,'' for ''An unmarried person who elects to provide an annuity to a person designated by him under subsection (a)(4), but who later marries or acquires a dependent child,'', inserted provision that the Secretary concerned notify the former spouse or such other natural person previously designated under section 1448(b) of any such change in election, and added pars. (2) and (3).

1981—Subsec. (d). Pub. L. 97–22 substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

1978—Subsec. (a). Pub. L. 95–397, §203(1), inserted ''(or on such other day as he may provide under subsection (j))'' after ''death of a person to whom section 1448 of this title applies''.

Subsec. (d). Pub. L. 95–397, §207(b), substituted ''section 8339(j)'' for ''section 8339(i)''.

Subsec. (f). Pub. L. 95–397, §207(c), substituted ''section 1448(a)(5)'' for ''the last three sentences of section 1448(a)''.

Subsecs. (j), (k). Pub. L. 95–397, §203(2), added subsecs. (j) and (k).

1976—Subsec. (a)(3), (4). Pub. L. 94–496, §1(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f). Pub. L. 94–496, §1(4), substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 642(b) of Pub. L. 105–85 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to marriages occurring before, on, or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 636(b) of Pub. L. 100–180 provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the amendments made by section 643(a) of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3886) [amending this section].''

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 641(c) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section and section 1448 of this title] apply to court orders issued on or after the date of the enactment of this Act [Nov. 14, 1986].''

Section 643(b) of Pub. L. 99–661 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to remarriages that occur on or after the date of the enactment of this Act [Nov. 14, 1986], but only with respect to payments for periods after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITION PROVISIONS

Amendment by Pub. L. 97–252 effective Feb. 1, 1983, and applicable to persons becoming eligible to participate in Survivor Benefit Plan provided for in this subchapter before, on, or after Feb. 1, 1983, see section 1006 of Pub. L. 97–252, set out as an Effective Date; Transition Provisions note under section 1408 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 21, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

EFFECTUATION OF INTENDED SBP ANNUITY FOR FORMER SPOUSE WHEN NOT ELECTED BY REASON OF UNTIMELY DEATH OF RETIREE

Pub. L. 106–65, div. A, title VI, §657, Oct. 5, 1999, 113 Stat. 668, as amended by Pub. L. 106–398, §1 [[div. A], title X, §1087(c)(1)(D)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that:

''(a) CASES NOT COVERED BY EXISTING AUTHORITY.—Paragraph (3) of section 1450(f) of title 10, United States Code, as in effect on the date of the enactment of this Act [Oct. 5, 1999], shall apply in the case of a former spouse of any person referred to in that paragraph who—

''(1) incident to a proceeding of divorce, dissolution, or annulment—

''(A) entered into a written agreement on or after August 19, 1983, to make an election under section 1448(b) of such title to provide an annuity to the former spouse (the agreement thereafter having been incorporated in or ratified or approved by a court order or filed with the court of appropriate jurisdiction in accordance with applicable State law); or

''(B) was required by a court order dated on or after such date to make such an election for the former spouse; and

''(2) before making the election, died within 21 days after the date of the agreement referred to in paragraph (1)(A) or the court order referred to in paragraph (1)(B), as the case may be.

''(b) ADJUSTED TIME LIMIT FOR REQUEST BY FORMER SPOUSE.—For the purposes of paragraph (3)(C) of section 1450(f) of title 10, United States Code, a court order or filing referred to in subsection (a)(1) of this section that is dated before October 19, 1984, shall be deemed to be dated on the date of the enactment of this Act [Oct. 5, 1999].''

[Pub. L. 106–398, §1 [[div. A], title X, §1087(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that: ''In the case of any former spouse to whom paragraph (3) of section 1450(f) of title 10, United States Code, applies by reason of the amendment made by paragraph (1)(D) [amending section 657 of Pub. L. 106–65, set out above], the provisions of subsection (b) of section 657 of the National Defense Authorization Act for Fiscal Year 2000 [Pub. L. 106–65, set out above] shall be applied by using the date of the enactment of this Act [Oct. 30, 2000], rather than the date of the enactment of that Act [Oct. 5, 1999].'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1448a, 1451, 1452, 1455, 1457, 1458, 1460a of this title; title 38 section 1318.

§ 1451. Amount of annuity

(a) COMPUTATION OF ANNUITY FOR A SPOUSE, FORMER SPOUSE, OR CHILD.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 55 percent of the base amount.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to 35 percent of the base amount.

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a) of this title (other than under section 1450(a)(4)), the monthly annuity payable to the beneficiary shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age or is a dependent child when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the beneficiary (other than a dependent child) is 62 years of age or older when becoming entitled to the annuity, the monthly annuity shall be the amount equal to a percentage of the base amount that—

(I) is less than 35 percent; and

(II) is determined under subsection (f).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(b) INSURABLE INTEREST BENEFICIARY.—

(1) STANDARD ANNUITY.—In the case of a standard annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to 55 percent of the retired pay of the person who elected to provide the annuity after the reduction in that pay in accordance with section 1452(c) of this title.

(2) RESERVE-COMPONENT ANNUITY.—In the case of a reserve-component annuity provided to a beneficiary under section 1450(a)(4) of this title, the monthly annuity payable to the beneficiary shall be the amount equal to a percentage of the retired pay of the person who elected to provide the annuity after the reduction in such pay in accordance with section 1452(c) of this title that—

(A) is less than 55 percent; and

(B) is determined under subsection (f).

(3) COMPUTATION OF RESERVE-COMPONENT ANNUITY WHEN PARTICIPANT DIES BEFORE AGE 60.—For the purposes of paragraph (2), a person—

(A) who provides an annuity that is determined in accordance with that paragraph;

(B) who dies before becoming 60 years of age; and

(C) who at the time of death is otherwise entitled to retired pay,

shall be considered to have been entitled to retired pay at the time of death. The retired pay of such person for the purposes of such paragraph shall be computed on the basis of the rates of basic pay in effect on the date on which the annuity provided by such person is to become effective in accordance with the designation of such person under section 1448(e) of this title.

(c) ANNUITIES FOR SURVIVORS OF CERTAIN PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—

(1) IN GENERAL.—In the case of an annuity provided under section 1448(d) or 1448(f) of this title, the amount of the annuity shall be determined as follows:

(A) BENEFICIARY UNDER 62 YEARS OF AGE.—If the person receiving the annuity is under 62 years of age or is a dependent child when the member or former member dies, the monthly annuity shall be the amount equal to 55 percent of the retired pay to which the member or former member would have been entitled if the member or former member had been entitled to that pay when he died determined as follows:

(i) In the case of an annuity provided under section 1448(d) of this title (other than in a case covered by clause (ii)), such retired pay shall be computed as if the member had been retired under section 1201 of this title on the date of the member's death with a disability rated as total.

(ii) In the case of an annuity provided under section 1448(d)(1)(A) of this title by reason of the death of a member not in line of duty, such retired pay shall be computed based upon the member's years of active service when he died.

(iii) In the case of an annuity provided under section 1448(f) of this title, such retired pay shall be computed based upon the member or former member's years of active service when he died computed under section 12733 of this title.

(B) BENEFICIARY 62 YEARS OF AGE OR OLDER.—

(i) GENERAL RULE.—If the person receiving the annuity (other than a dependent child) is 62 years of age or older when the member or former member dies, the monthly annuity shall be the amount equal to 35 percent of the retired pay to which the member or former member would have been entitled as determined under subparagraph (A).

(ii) RULE IF BENEFICIARY ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—If the beneficiary is eligible to have the annuity computed under subsection (e) and if, at the time the beneficiary becomes entitled to the annuity, computation of the annuity under that subsection is more favorable to the beneficiary than computation under clause (i), the annuity shall be computed under that subsection rather than under clause (i).

(2) DIC OFFSET.—An annuity computed under paragraph (1) that is paid to a surviving spouse shall be reduced by the amount of dependency and indemnity compensation to which the surviving spouse is entitled under section 1311(a) of title 38. Any such reduction shall be effective on the date of the commencement of the period of payment of such compensation under title 38.

(3) SERVICEMEMBERS NOT YET GRANTED RETIRED PAY.—In the case of an annuity provided by reason of the service of a member described in clause (ii) or (iii) of section 1448(d)(1)(A) of this title who first became a member of a uniformed service before September 8, 1980, the retired pay to which the member would have been entitled when he died shall be determined for purposes of paragraph (1) based upon the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death, unless (as determined by the Secretary concerned) the member would have been entitled to be retired in a higher grade.

(4) RATE OF PAY TO BE USED IN COMPUTING ANNUITY.—In the case of an annuity paid under section 1448(f) of this title by reason of the service of a person who first became a member of a uniformed service before September 8, 1980, the retired pay of the person providing the annuity shall for the purposes of paragraph (1) be computed on the basis of the rates of basic pay in effect on the effective date of the annuity.

(d) REDUCTION OF ANNUITIES AT AGE 62.—

(1) REDUCTION REQUIRED.—The annuity of a person whose annuity is computed under subparagraph (A) of subsection (a)(1), (a)(2), or (c)(1) shall be reduced on the first day of the month after the month in which the person becomes 62 years of age.

(2) AMOUNT OF ANNUITY AS REDUCED.—

(A) 35 PERCENT ANNUITY.—Except as provided in subparagraph (B), the reduced amount of the annuity shall be the amount of the annuity that the person would be receiving on that date if the annuity had initially been computed under subparagraph (B) of that subsection.

(B) SAVINGS PROVISION FOR BENEFICIARIES ELIGIBLE FOR SOCIAL SECURITY OFFSET COMPUTATION.—In the case of a person eligible to have an annuity computed under subsection (e) and for whom, at the time the person becomes 62 years of age, the annuity computed with a reduction under subsection (e)(3) is more favorable than the annuity with a reduction described in subparagraph (A), the reduction in the annuity shall be computed in the same manner as a reduction under subsection (e)(3).

(e) SAVINGS PROVISION FOR CERTAIN BENEFICIARIES.—

(1) PERSONS COVERED.—The following beneficiaries under the Plan are eligible to have an annuity under the Plan computed under this subsection:

(A) A beneficiary receiving an annuity under the Plan on October 1, 1985, as the surviving spouse or former spouse of the person providing the annuity.

(B) A spouse or former spouse beneficiary of a person who on October 1, 1985—

(i) was a participant in the Plan;

(ii) was entitled to retired pay or was qualified for that pay except that he had not applied for and been granted that pay; or

(iii) would have been eligible for reserve-component retired pay but for the fact that he was under 60 years of age.

(2) AMOUNT OF ANNUITY.—Subject to paragraph (3), an annuity computed under this subsection is determined as follows:

(A) STANDARD ANNUITY.—In the case of the beneficiary of a standard annuity, the annuity shall be the amount equal to 55 percent of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—In the case of the beneficiary of a reserve-component annuity, the annuity shall be the percentage of the base amount that—

(i) is less than 55 percent; and

(ii) is determined under subsection (f).

(C) BENEFICIARIES OF PERSONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY FOR SBP.—In the case of the beneficiary of an annuity under section 1448(d) or 1448(f) of this title, the annuity shall be the amount equal to 55 percent of the retired pay of the person providing the annuity (as that pay is determined under subsection (c)).

(3) SOCIAL SECURITY OFFSET.—An annuity computed under this subsection shall be reduced by the lesser of the following:

(A) SOCIAL SECURITY COMPUTATION.—The amount of the survivor benefit, if any, to which the surviving spouse (or the former spouse, in the case of a former spouse beneficiary who became a former spouse under a divorce that became final after November 29, 1989) would be entitled under title II of the Social Security Act (42 U.S.C. 401 et seq.) based solely upon service by the person concerned as described in section 210(*l*)(1) of such Act (42 U.S.C. 410(*l*)(1)) and calculated assuming that the person concerned lives to age 65.

(B) MAXIMUM AMOUNT OF REDUCTION.—40 percent of the amount of the monthly annuity as determined under paragraph (2).

(4) SPECIAL RULES FOR SOCIAL SECURITY OFFSET COMPUTATION.—

(A) TREATMENT OF DEDUCTIONS MADE ON ACCOUNT OF WORK.—For the purpose of paragraph (3), a surviving spouse (or a former spouse, in the case of a person who becomes a former spouse under a divorce that be-

comes final after November 29, 1989) shall not be considered as entitled to a benefit under title II of the Social Security Act (42 U.S.C. 401 et seq.) to the extent that such benefit has been offset by deductions under section 203 of such Act (42 U.S.C. 403) on account of work.

(B) TREATMENT OF CERTAIN PERIODS FOR WHICH SOCIAL SECURITY REFUNDS ARE MADE.—In the computation of any reduction made under paragraph (3), there shall be excluded any period of service described in section 210(*l*)(1) of the Social Security Act (42 U.S.C. 410(*l*)(1))—

(i) which was performed after December 1, 1980; and

(ii) which involved periods of service of less than 30 continuous days for which the person concerned is entitled to receive a refund under section 6413(c) of the Internal Revenue Code of 1986 of the social security tax which the person had paid.

(f) DETERMINATION OF PERCENTAGES APPLICABLE TO COMPUTATION OF RESERVE-COMPONENT ANNUITIES.—The percentage to be applied in determining the amount of an annuity computed under subsection (a)(2), (b)(2), or (e)(2)(B) shall be determined under regulations prescribed by the Secretary of Defense. Such regulations shall be prescribed taking into consideration the following:

(1) The age of the person electing to provide the annuity at the time of such election.

(2) The difference in age between such person and the beneficiary of the annuity.

(3) Whether such person provided for the annuity to become effective (in the event he died before becoming 60 years of age) on the day after his death or on the 60th anniversary of his birth.

(4) Appropriate group annuity tables.

(5) Such other factors as the Secretary considers relevant.

(g) ADJUSTMENTS TO ANNUITIES.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN ANNUITIES WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), each annuity that is payable under the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive (and otherwise entitled to such pay).

(C) CERTAIN REDUCTIONS TO BE DISREGARDED.—The amount of the increase shall be based on the monthly annuity payable before any reduction under section 1450(c) of this title or under subsection (c)(2).

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(h) ADJUSTMENTS TO BASE AMOUNT.—

(1) PERIODIC ADJUSTMENTS FOR COST-OF-LIVING.—

(A) INCREASES IN BASE AMOUNT WHEN RETIRED PAY INCREASED.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the base amount applicable to each participant in the Plan shall be increased at the same time.

(B) PERCENTAGE OF INCREASE.—The increase shall be by the same percent as the percent by which the retired pay of the participant is so increased.

(2) RECOMPUTATION AT AGE 62.—When the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the base amount applicable to that person shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of the base amount that would be in effect on that date if increases in such base amount under paragraph (1) had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(3) DISREGARDING OF RETIRED PAY REDUCTIONS FOR RETIREMENT OF CERTAIN MEMBERS BEFORE 30 YEARS OF SERVICE.—Computation of a member's retired pay for purposes of this section shall be made without regard to any reduction under section 1409(b)(2) of this title.

(i) RECOMPUTATION OF ANNUITY FOR CERTAIN BENEFICIARIES.—In the case of an annuity under the Plan which is computed on the basis of the retired pay of a person who would have been entitled to have that retired pay recomputed under section 1410 of this title upon attaining 62 years of age, but who dies before attaining that age, the annuity shall be recomputed, effective on the first day of the first month beginning after the date on which the member or former member would have attained 62 years of age, so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 709; amended Pub. L. 94–496, §1(4), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §204, Sept. 30, 1978, 92 Stat. 846; Pub. L. 96–402, §3, Oct. 9, 1980, 94 Stat. 1705; Pub. L. 97–22, §11(a)(4), July 10, 1981, 95 Stat. 137; Pub. L. 98–94, title IX, §922(a)(14)(B), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title VI, §641(a), Oct. 19, 1984, 98 Stat. 2545; Pub. L. 99–145, title VII, §711(a), (b), Nov. 8, 1985, 99 Stat. 666, 670; Pub. L. 99–348, title III, §301(a)(2), (b), (c), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title VI, §642(b), title XIII, §1343(a)(8)(D), Nov. 14, 1986, 100 Stat. 3886, 3992; Pub. L. 100–26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–224, §3(a), (c), Dec. 30, 1987, 101

Stat. 1537; Pub. L. 100–456, div. A, title VI, §652(a), Sept. 29, 1988, 102 Stat. 1991; Pub. L. 101–189, div. A, title XIV, §§1403(a), 1407(a)(5)–(8), (b)(1), Nov. 29, 1989, 103 Stat. 1579, 1588, 1589; Pub. L. 103–337, div. A, title X, §1070(e)(4), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2566; Pub. L. 105–85, div. A, title X, §1073(a)(28), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106–65, div. A, title VI, §643(a)(1), Oct. 5, 1999, 113 Stat. 663; Pub. L. 107–107, div. A, title VI, §642(b), (c)(2), Dec. 28, 2001, 115 Stat. 1152; Pub. L. 107–314, div. A, title X, §1062(a)(6), Dec. 2, 2002, 116 Stat. 2650.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(A), (4)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 6413(c) of the Internal Revenue Code of 1986, referred to in subsec. (e)(4)(B)(ii), is classified to section 6413(c) of Title 26, Internal Revenue Code.

AMENDMENTS

2002—Subsec. (c)(3). Pub. L. 107–314 struck out ''section'' before ''clause (ii)''.

2001—Subsec. (c)(1)(A). Pub. L. 107–107, §642(b)(1), substituted ''when he died determined as follows:'' and cls. (i) to (iii) for ''based upon his years of active service when he died.''

Subsec. (c)(1)(B)(i). Pub. L. 107–107, §642(b)(2), substituted ''as determined under subparagraph (A)'' for ''if the member or former member had been entitled to that pay based upon his years of active service when he died''.

Subsec. (c)(3). Pub. L. 107–107, §642(c)(2), substituted ''clause (ii) or (iii) of section 1448(d)(1)(A)'' for ''1448(d)(1)(B) or 1448(d)(1)(C)''.

1999—Subsec. (h)(3). Pub. L. 106–65 inserted ''OF CERTAIN MEMBERS'' after ''RETIREMENT'' in heading.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''ANNUITY.—'' for ''ANNUITY—'' in heading.

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to amounts of annuities and inserting subsec., par., and subpar. headings.

1994—Subsec. (c)(2). Pub. L. 103–337 substituted ''section 1311(a) of title 38'' for ''section 411(a) of title 38''.

1989—Subsec. (c)(3). Pub. L. 101–189, §1403(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an annuity provided by a member described in section 1448(d)(1)(C) of this title, the retired pay to which the member would have been entitled when he died shall be determined based upon the rate of basic pay in effect at the time of death for the highest grade other than a commissioned officer grade in which the member served on active duty satisfactorily, as determined by the Secretary concerned.''

Subsec. (c)(4). Pub. L. 101–189, §1407(a)(5), inserted ''by reason of the service of a person who first became a member of a uniformed service before September 8, 1980''.

Subsec. (e)(1). Pub. L. 101–189, §1407(a)(6), substituted ''beneficiaries under the Plan'' for ''beneficiaries under the plan'' in introductory provisions.

Subsec. (e)(1)(B). Pub. L. 101–189, §1407(a)(7), in cl. (i), substituted ''was'' for ''is'', in cl. (ii), substituted ''was'' for ''is'' in two places and ''had'' for ''has'', and in cl. (iii), substituted ''would have been'' for ''would be'' and ''was'' for ''is''.

Subsec. (e)(2)(A), (B). Pub. L. 101–189, §1407(a)(8), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(3)(A), (4)(A). Pub. L. 101–189, §1407(b)(1), inserted ''or former spouse'' after ''widow or widower''.

1988—Subsec. (e)(1). Pub. L. 100–456 substituted ''widow, widower, or former spouse'' for ''widow or widower'' in subpar. (A), and inserted ''or former spouse'' after ''A spouse'' in subpar. (B).

1987—Subsec. (a)(1)(A), (B), (2)(A), (B). Pub. L. 100–224, §3(a)(2), struck out ''(as the base amount is adjusted from time to time under section 1401a of this title)'' after ''base amount''.

Subsec. (e)(4)(B)(ii). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (h). Pub. L. 100–224, §3(a)(1), designated existing provisions of subsec. (h) as par. (3) and added pars. (1) and (2).

Subsec. (i). Pub. L. 100–224, §3(c), substituted ''so as to be the amount equal to the amount of the annuity that would be in effect on that date if increases under subsection (h)(1) in the base amount applicable to that annuity to the time of the death of the member or former member, and increases in such annuity under subsection (g)(1), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section)'' for ''on the basis of the amount of retired pay to which the member or former member would have been entitled upon recomputation of such pay effective on such date under section 1410 of this title, had the member or former member attained such age''.

1986—Subsec. (a)(1)(A). Pub. L. 99–661, §1343(a)(8)(D), substituted ''section'' for ''subsection'' before ''1401a of this title''.

Pub. L. 99–661, §642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(1)(B). Pub. L. 99–661, §642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (a)(2)(A). Pub. L. 99–661, §642(b)(1)(A), inserted ''or is a dependent child''.

Subsec. (a)(2)(B). Pub. L. 99–661, §642(b)(1)(B), inserted ''(other than a dependent child)''.

Subsec. (c)(1)(A). Pub. L. 99–661, §642(b)(2)(A), inserted ''or is a dependent child''.

Subsec. (c)(1)(B). Pub. L. 99–661, §642(b)(2)(B), inserted ''(other than a dependent child)''.

Subsec. (g)(1). Pub. L. 99–348, §301(b), struck out ''by the same total percent'' after ''same time'' in first sentence, and inserted provision that the increase, in the case of any annuity, be by the same percent as the percent by which the retired pay of the person providing the annuity would have been increased at such time if the person were alive, and otherwise entitled to such pay.

Subsecs. (h), (i). Pub. L. 99–348, §301(a)(2), (c), added subsecs. (h) and (i).

1985—Pub. L. 99–145, §711(a), amended section generally, eliminating the social security offset to the Plan and establishing a two-tier system under which the beneficiary would receive 55 percent of retired pay before age 62 and 35 percent thereafter in recognition of the entitlement to social security based on military service, and providing benefits to certain beneficiaries under either the old social security offset system or the new two-tier system, whichever is higher.

Subsec. (a)(3). Pub. L. 99–145, §711(b), repealed Pub. L. 98–525, §641(a), effective Sept. 1, 1985. See 1984 Amendment note below.

1984—Subsec. (a)(3). Pub. L. 98–525, §641(a), which substituted ''is entitled'' for ''would be entitled'' after ''widow or widower'' in first sentence and inserted ''or to the extent that the benefit to which the beneficiary is entitled is based on the beneficiary's own earnings or self-employment'' at end of second sentence, was repealed effective Sept. 1, 1985, by Pub. L. 99–145, §711(b). See Effective Date of 1984 Amendment note below.

1983—Subsec. (e). Pub. L. 98–94 added subsec. (e).

1981—Subsec. (a)(4). Pub. L. 97–22 substituted ''December 1, 1980'' for ''the effective date of the Uniformed Services Survivor Benefits Amendments of 1980''.

1980—Subsec. (a). Pub. L. 96–402, §3(a), in revising subsec. (a), designated as par. (1)(A) and (B) existing first sentence containing cls. (1) and (2) and provided in sub-

par. (A) for adjustment of the annuity from time to time under section 1401a of this title and in subpar. (B) for a similar adjustment after the date the person becomes entitled to retired pay under chapter 67 of this title; designated as par. (2) existing second sentence but provided for reduction of the annuity by the lesser of amounts indicated in subpar. (A) or (B), previously limited to reduction by amount prescribed in predecessor of subpar. (A) provision; designated existing third and fourth sentences as par. (3) and inserted annuity reduction provision described for par. (2); and added par. (4).

Subsec. (c). Pub. L. 96–402, §3(b), substituted in first sentence ''this section or under section 1448(d) of this title'' for ''this section, or section 1448(d) of this title, on the day before the effective day of that increase'' and in second sentence ''title or under'' for ''title, or'' before ''subsection (a)''.

Subsec. (d). Pub. L. 96–402, §3(c), substituted reference to ''subsection (a)(1)(B)'' for ''subsection (a)(2)''.

1978—Subsec. (a). Pub. L. 95–397, §204(a), (b), substituted ''The monthly annuity payable to a widow, widower, or dependent child who is entitled under section 1450(a) of this title to an annuity shall be—'' for ''If the widow or widower is under age 62 or there is a dependent child, the monthly annuity payable to the widow, widower, or dependent child, under section 1450 of this title shall be equal to 55 percent of the base amount.'', and added pars. (1) and (2), and substituted ''For the purpose of the preceding sentence, a widow or widower shall not be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 to the extent that such benefit has been offset by deductions under section 403 of title 42 on account of work'' for ''For the purpose of the preceding sentence, a widow or widower shall be considered as entitled to a benefit under subchapter II of chapter 7 of title 42 even though that benefit has been offset by deductions under section 403 of title 42 on account of work''.

Subsec. (b). Pub. L. 95–397, §204(c), substituted ''The monthly annuity payable under section 1450(a)(4) of this title shall be—'' for ''The monthly annuity payable under section 1450(a)(4) of this title shall be 55 percent of the retired or retainer pay of the person who elected to provide that annuity after the reduction in that retired or retainer pay in accordance with section 1452(c) of this title.'', added pars. (1) and (2) and provision following par. (2) relating to the entitlement to retirement pay, and computation thereof, by a person who provided an annuity and who dies before becoming 60 years of age.

Subsec. (d). Pub. L. 95–397, §204(d), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–496 substituted ''(a)(4)'' for ''(a)(3)''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective Sept. 10, 2001, and applicable with respect to deaths of members of the Armed Forces occurring on or after that date, see section 642(d) of Pub. L. 107–107, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1407(b)(2) of Pub. L. 101–189 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply only with respect to the computation of an annuity for a person who becomes a former spouse under a divorce that becomes final after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 652(b) of Pub. L. 100–456 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments under the Survivor Benefit Plan established under subchapter II of chapter 73 of title 10, United States Code, for periods after February 28, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 642(b) of Pub. L. 99–661 applicable to payments for periods after Feb. 28, 1986, see section 642(c) of Pub. L. 99–661, set out as a note under section 1448 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 711(a) of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

Section 711(b) of Pub. L. 99–145 provided that the repeal of section 641 of Pub. L. 98–525 [amending this section and enacting provision set out below] is effective Sept. 1, 1985.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 641(b) of Pub. L. 98–525, which provided that the amendments made by subsection (a), amending this section, was applicable only in the case of payments of annuities payable for periods that began on or after Sept. 30, 1985, was repealed effective Sept. 1, 1985, by section 711(b) of Pub. L. 99–145.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

ADJUSTMENT OF ANNUITIES FOR SURVIVORS OF CERTAIN MEMBERS WHO DIED WHILE ON ACTIVE DUTY BETWEEN SEPTEMBER 21, 1972 AND NOVEMBER 29, 1990

Section 1403(b)–(d) of Pub. L. 101–189 provided that:

''(b) ADJUSTMENT OF ANNUITIES ALREADY IN EFFECT.—

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the annuity of any person who on the effective date specified in subsection (d) is entitled to an annuity under the Survivor Benefit Plan by reason of eligibility described in section 1448(d)(1)(B) or 1448(d)(1)(C) of title 10, United States Code, and who is further described in subsection (c).

''(2) AMOUNT OF RECOMPUTED ANNUITIES.—The amount of the annuity as so recomputed shall be the amount that would be in effect for that annuity on the effective date specified in subsection (d) if the annuity had originally been computed subject to the provisions of paragraph (3) of section 1451(c) of title 10, United States Code, as amended by subsection (a).

''(c) PERSONS ELIGIBLE FOR RECOMPUTATION.—A person is eligible to have an annuity under the Survivor Benefit Plan recomputed under subsection (b) if—

''(1) the annuity is based upon the service of a member of the uniformed services who died on active duty

during the period beginning on September 21, 1972, and ending on the effective date specified in subsection (d); and

''(2) the retired pay of that member for the purposes of determining the amount of the annuity under the Survivor Benefit Plan was computed using a rate of basic pay lower than the rate of basic pay in effect at the time of death for the grade in which the member was serving at the time of death.

''(d) EFFECTIVE DATE.—An annuity recomputed under subsection (b) shall take effect as so recomputed on March 1, 1990.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450, 1452, 1457, 1458 of this title.

§ 1452. Reduction in retired pay

(a) SPOUSE AND FORMER SPOUSE ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—Except as provided in subsection (b), the retired pay of a participant in the Plan who is providing spouse coverage (as described in paragraph (5)) shall be reduced as follows:

(A) STANDARD ANNUITY.—If the annuity coverage being provided is a standard annuity, the reduction shall be as follows:

(i) DISABILITY AND NONREGULAR SERVICE RETIREES.—In the case of a person who is entitled to retired pay under chapter 61 or chapter 1223 of this title, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(ii) MEMBERS AS OF ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first became a member of a uniformed service before March 1, 1990, the reduction shall be in whichever of the alternative reduction amounts is more favorable to that person.

(iii) NEW ENTRANTS AFTER ENACTMENT OF FLAT-RATE REDUCTION.—In the case of a person who first becomes a member of a uniformed service on or after March 1, 1990, and who is entitled to retired pay under a provision of law other than chapter 61 or chapter 1223 of this title, the reduction shall be in an amount equal to 6½ percent of the base amount.

(iv) ALTERNATIVE REDUCTION AMOUNTS.—For purposes of clauses (i) and (ii), the alternative reduction amounts are the following:

(I) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount.

(II) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount.

(B) RESERVE-COMPONENT ANNUITY.—If the annuity coverage being provided is a reserve-component annuity, the reduction shall be in whichever of the following amounts is more favorable to that person:

(i) FLAT-RATE REDUCTION.—An amount equal to 6½ percent of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(ii) AMOUNT UNDER PRE-FLAT-RATE REDUCTION.—An amount equal to 2½ percent of the first $337 (as adjusted after November 1, 1989, under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount plus an amount determined in accordance with regulations prescribed by the Secretary of Defense as a premium for the additional coverage provided through reserve-component annuity coverage under the Plan.

(2) ADDITIONAL REDUCTION FOR CHILD COVERAGE.—If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1) shall be increased by an amount prescribed under regulations of the Secretary of Defense.

(3) NO REDUCTION WHEN NO BENEFICIARY.—The reduction in retired pay prescribed by paragraph (1) shall not be applicable during any month in which there is no eligible spouse or former spouse beneficiary.

(4) PERIODIC ADJUSTMENTS.—

(A) ADJUSTMENTS FOR INCREASES IN RATES OF BASIC PAY.—Whenever there is an increase in the rates of basic pay of members of the uniformed services effective on or after October 1, 1985, the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be increased by the overall percentage of such increase in the rates of basic pay. The increase under the preceding sentence shall apply only with respect to persons whose retired pay is computed based on the rates of basic pay in effect on or after the date of such increase in rates of basic pay.

(B) ADJUSTMENTS FOR RETIRED PAY COLAS.—In addition to the increase under subparagraph (A), the amounts under paragraph (1) with respect to which the percentage factor of 2½ is applied shall be further increased at the same time and by the same percentage as an increase in retired pay under section 1401a of this title effective on or after October 1, 1985. Such increase under the preceding sentence shall apply only with respect to a person who initially participates in the Plan on a date which is after both the effective date of such increase under section 1401a and the effective date of the rates of basic pay upon which that person's retired pay is computed.

(5) SPOUSE COVERAGE DESCRIBED.—For the purposes of paragraph (1), a participant in the Plan who is providing spouse coverage is a participant who—

(A) has (i) a spouse or former spouse, or (ii) a spouse or former spouse and a dependent child; and

(B) has not elected to provide an annuity to a person designated by him under section 1448(b)(1) of this title or, having made such an election, has changed his election in favor of his spouse under section 1450(f) of this title.

(b) CHILD-ONLY ANNUITIES.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a participant in the Plan who is providing child-only coverage (as described in paragraph (4)) shall be reduced by an amount prescribed under regulations by the Secretary of Defense.

(2) NO REDUCTION WHEN NO CHILD.—There shall be no reduction in retired pay under paragraph (1) for any month during which the participant has no eligible dependent child.

(3) SPECIAL RULE FOR CERTAIN RCSBP PARTICIPANTS.—In the case of a participant in the Plan who is participating in the Plan under an election under section 1448(a)(2)(B) of this title and who provided child-only coverage during a period before the participant becomes entitled to receive retired pay, the retired pay of the participant shall be reduced by an amount prescribed under regulations by the Secretary of Defense to reflect the coverage provided under the Plan during the period before the participant became entitled to receive retired pay. A reduction under this paragraph is in addition to any reduction under paragraph (1) and is made without regard to whether there is an eligible dependent child during a month for which the reduction is made.

(4) CHILD-ONLY COVERAGE DEFINED.—For the purposes of this subsection, a participant in the Plan who is providing child-only coverage is a participant who has a dependent child and who—

(A) does not have an eligible spouse or former spouse; or

(B) has a spouse or former spouse but has elected to provide an annuity for dependent children only.

(c) REDUCTION FOR INSURABLE INTEREST COVERAGE.—

(1) REQUIRED REDUCTION IN RETIRED PAY.—The retired pay of a person who has elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title shall be reduced as follows:

(A) STANDARD ANNUITY.—In the case of a person providing a standard annuity, the reduction shall be by 10 percent plus 5 percent for each full five years the individual designated is younger than that person.

(B) RESERVE COMPONENT ANNUITY.—In the case of a person providing a reserve-component annuity, the reduction shall be by an amount prescribed under regulations of the Secretary of Defense.

(2) LIMITATION ON TOTAL REDUCTION.—The total reduction under paragraph (1) may not exceed 40 percent.

(3) DURATION OF REDUCTION.—The reduction in retired pay prescribed by this subsection shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person receiving retired pay changes his election under section 1450(f) of this title.

(4) RULE FOR COMPUTATION.—Computation of a member's retired pay for purposes of this subsection shall be made without regard to any reduction under section 1409(b)(2) of this title.

(d) DEPOSITS TO COVER PERIODS WHEN RETIRED PAY NOT PAID.—

(1) REQUIRED DEPOSITS.—If a person who has elected to participate in the Plan has been awarded retired pay and is not entitled to that pay for any period, that person must deposit in the Treasury the amount that would otherwise have been deducted from his pay for that period.

(2) DEPOSITS NOT REQUIRED WHEN PARTICIPANT ON ACTIVE DUTY.—Paragraph (1) does not apply to a person with respect to any period when that person is on active duty under a call or order to active duty for a period of more than 30 days.

(e) DEPOSITS NOT REQUIRED FOR CERTAIN PARTICIPANTS IN CSRS.—When a person who has elected to participate in the Plan waives that person's retired pay for the purposes of subchapter III of chapter 83 of title 5, that person shall not be required to make the deposit otherwise required by subsection (d) as long as that waiver is in effect unless, in accordance with section 8339(j) of title 5, that person has notified the Office of Personnel Management that he does not desire a spouse surviving him to receive an annuity under section 8341(b) of title 5.

(f) REFUNDS OF DEDUCTIONS NOT ALLOWED.—

(1) GENERAL RULE.—A person is not entitled to refund of any amount deducted from retired pay under this section.

(2) EXCEPTIONS.—Paragraph (1) does not apply—

(A) in the case of a refund authorized by section 1450(e) of this title; or

(B) in case of a deduction made through administrative error.

(g) DISCONTINUATION OF PARTICIPATION BY PARTICIPANTS WHOSE SURVIVING SPOUSES WILL BE ENTITLED TO DIC.—

(1) DISCONTINUATION.—

(A) CONDITIONS.—Notwithstanding any other provision of this subchapter but subject to paragraphs (2) and (3), a person who has elected to participate in the Plan and who is suffering from a service-connected disability rated by the Secretary of Veterans Affairs as totally disabling and has suffered from such disability while so rated for a continuous period of 10 or more years (or, if so rated for a lesser period, has suffered from such disability while so rated for a continuous period of not less than 5 years from the date of such person's last discharge or release from active duty) may discontinue participation in the Plan by submitting to the Secretary concerned a request to discontinue participation in the Plan.

(B) EFFECTIVE DATE.—Participation in the Plan of a person who submits a request under subparagraph (A) shall be discontinued effective on the first day of the first month following the month in which the request under subparagraph (A) is received by the Secretary concerned. Effective on such date, the Secretary concerned shall discontinue the reduction being made in such person's retired pay on account of participation in the Plan or, in the case of a person who has been required to make deposits in the Treasury on account of participation in the Plan, such person may discontinue making such deposits effective on such date.

(C) FORM FOR REQUEST FOR DISCONTINUATION.—Any request under this paragraph to discontinue participation in the Plan shall be in such form and shall contain such information as the Secretary concerned may require by regulation.

(2) CONSENT OF BENEFICIARIES REQUIRED.—A person described in paragraph (1) may not discontinue participation in the Plan under such paragraph without the written consent of the beneficiary or beneficiaries of such person under the Plan.

(3) INFORMATION ON PLAN TO BE PROVIDED BY SECRETARY CONCERNED.—

(A) INFORMATION TO BE PROVIDED PROMPTLY TO PARTICIPANT.—The Secretary concerned shall furnish promptly to each person who files a request under paragraph (1) to discontinue participation in the Plan a written statement of the advantages of participating in the Plan and the possible disadvantages of discontinuing participation.

(B) RIGHT TO WITHDRAW DISCONTINUATION REQUEST.—A person may withdraw a request made under paragraph (1) if it is withdrawn within 30 days after having been submitted to the Secretary concerned.

(4) REFUND OF DEDUCTIONS FROM RETIRED PAY.—Upon the death of a person described in paragraph (1) who discontinued participation in the Plan in accordance with this subsection, any amount deducted from the retired pay of that person under this section shall be refunded to the person's surviving spouse.

(5) RESUMPTION OF PARTICIPATION IN PLAN.—

(A) CONDITIONS FOR RESUMPTION.—A person described in paragraph (1) who discontinued participation in the Plan may elect to participate again in the Plan if—

(i) after having discontinued participation in the Plan the Secretary of Veterans Affairs reduces that person's service-connected disability rating to a rating of less than total; and

(ii) that person applies to the Secretary concerned, within such period of time after the reduction in such person's service-connected disability rating has been made as the Secretary concerned may prescribe, to again participate in the Plan and includes in such application such information as the Secretary concerned may require.

(B) EFFECTIVE DATE OF RESUMED COVERAGE.—Such person's participation in the Plan under this paragraph is effective beginning on the first day of the month after the month in which the Secretary concerned receives the application for resumption of participation in the Plan.

(C) RESUMPTION OF CONTRIBUTIONS.—When a person elects to participate in the Plan under this paragraph, the Secretary concerned shall begin making reductions in that person's retired pay, or require such person to make deposits in the Treasury under subsection (d), as appropriate, effective on the effective date of such participation under subparagraph (B).

(h) INCREASES IN REDUCTION WITH INCREASES IN RETIRED PAY.—

(1) GENERAL RULE.—Whenever retired pay is increased under section 1401a of this title (or any other provision of law), the amount of the reduction to be made under subsection (a) or (b) in the retired pay of any person shall be increased at the same time and by the same percentage as such retired pay is so increased.

(2) COORDINATION WHEN PAYMENT OF INCREASE IN RETIRED PAY IS DELAYED BY LAW.—

(A) IN GENERAL.—Notwithstanding paragraph (1), when the initial payment of an increase in retired pay under section 1401a of this title (or any other provision of law) to a person is for a month that begins later than the effective date of that increase by reason of the application of subsection (b)(2)(B) of such section (or section 631(b) of Public Law 104–106 (110 Stat. 364)), then the amount of the reduction in the person's retired pay shall be effective on the date of that initial payment of the increase in retired pay rather than the effective date of the increase in retired pay.

(B) DELAY NOT TO AFFECT COMPUTATION OF ANNUITY.—Subparagraph (A) may not be construed as delaying, for purposes of determining the amount of a monthly annuity under section 1451 of this title, the effective date of an increase in a base amount under subsection (h) of such section from the effective date of an increase in retired pay under section 1401a of this title to the date on which the initial payment of that increase in retired pay is made in accordance with subsection (b)(2)(B) of such section.

(i) RECOMPUTATION OF REDUCTION UPON RECOMPUTATION OF RETIRED PAY.—Whenever the retired pay of a person who first became a member of a uniformed service on or after August 1, 1986, and who is a participant in the Plan is recomputed under section 1410 of this title upon the person's becoming 62 years of age, the amount of the reduction in such retired pay under this section shall be recomputed (effective on the effective date of the recomputation of such retired pay under section 1410 of this title) so as to be the amount equal to the amount of such reduction that would be in effect on that date if increases in such retired pay under section 1401a(b) of this title, and increases in reductions in such retired pay under subsection (h), had been computed as provided in paragraph (2) of section 1401a(b) of this title (rather than under paragraph (3) of that section).

(j) COVERAGE PAID UP AT 30 YEARS AND AGE 70.—Effective October 1, 2008, no reduction may be made under this section in the retired pay of a participant in the Plan for any month after the later of—

(1) the 360th month for which the participant's retired pay is reduced under this section; and

(2) the month during which the participant attains 70 years of age.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 94–496, §1(4), (5), Oct. 14, 1976, 90 Stat. 2375; Pub. L. 95–397, title II, §205, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96–402, §4, Oct. 9, 1980, 94 Stat. 1706; Pub. L. 97–22, §11(a)(3), (5), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title

VII, §§714(a), 719(7), (8), 723(b)(2), Nov. 8, 1985, 99 Stat. 672, 675–677; Pub. L. 99–348, title III, §301(a)(3), July 1, 1986, 100 Stat. 702; Pub. L. 99–661, div. A, title XIII, §1343(a)(8)(E), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–224, §3(b), Dec. 30, 1987, 101 Stat. 1537; Pub. L. 101–189, div. A, title XIV, §§1402(a)–(c), 1407(a)(9), title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1577, 1578, 1589, 1602; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(4)(C)(ii), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–337, div. A, title VI, §637(a), Oct. 5, 1994, 108 Stat. 2790; Pub. L. 104–201, div. A, title VI, §§634, 635(a), Sept. 23, 1996, 110 Stat. 2572, 2579; Pub. L. 105–85, div. A, title X, §1073(a)(29), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 105–261, div. A, title VI, §641, Oct. 17, 1998, 112 Stat. 2045; Pub. L. 106–65, div. A, title VI, §643(a)(2), Oct. 5, 1999, 113 Stat. 663.)

REFERENCES IN TEXT

Section 631(b) of Public Law 104–106 (110 Stat. 364), referred to in subsec. (h)(2)(A), was set out as a note under section 1401a of this title prior to repeal by Pub. L. 104–201, div. A, title VI, §631(b), Sept. 23, 1996, 110 Stat. 2549.

AMENDMENTS

1999—Subsec. (i). Pub. L. 106–65 substituted ''Whenever the retired pay'' for ''When the retired pay''.

1998—Subsec. (j). Pub. L. 105–261 added subsec. (j).

1997—Subsec. (a)(1)(A). Pub. L. 105–85, §1073(a)(29)(A), substituted ''provided'' for ''providing'' in introductory provisions.

Subsec. (e). Pub. L. 105–85, §1073(a)(29)(B), substituted ''section 8339(j)'' for ''section 8339(i)'' and ''section 8341(b)'' for ''section 8331(b)''.

1996—Pub. L. 104–201, §634, amended section generally, revising and restating provisions relating to reductions in retired pay.

Subsec. (h)(2). Pub. L. 104–201, §635(a), added par. (2).

1994—Subsec. (b). Pub. L. 103–337 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The retired pay of a person to whom section 1448 of this title applies who has a dependent child but does not have an eligible spouse or former spouse, or who has a spouse or former spouse but has elected to provide an annuity for dependent children only, shall, as long as he has an eligible dependent child, be reduced by an amount prescribed under regulations of the Secretary of Defense.''

1990—Subsec. (h). Pub. L. 101–510 made clarifying amendment to directory language of Pub. L. 101–189, §1407(a)(9), see 1989 Amendment note below.

1989—Subsec. (a). Pub. L. 101–189, §1402(a), inserted heading.

Subsec. (a)(1). Pub. L. 101–189, §1402(a), added par. (1) and struck out former par. (1) which read as follows: ''Except as provided in subsection (b), the retired pay of a person to whom section 1448 of this title applies who has a spouse or former spouse, or who has a spouse or former spouse and a dependent child, and who has not elected to provide an annuity to a person designated by him under section 1450(a)(4) of this title, or who had elected to provide such an annuity to such a person but has changed his election in favor of his spouse under section 1450(f) of this title, shall be reduced each month—

''(A) by an amount equal to 2½ percent of the first $300 (as adjusted from time to time under paragraph (4)) of the base amount plus 10 percent of the remainder of the base amount, if the person is providing a standard annuity; or

''(B) by an amount prescribed under regulations of the Secretary of Defense, if the person is providing a reserve-component annuity.''

Subsec. (a)(4)(A), (B). Pub. L. 101–189, §1402(c), substituted ''amounts under paragraph (1)'' for ''amount under paragraph (1)(A)''.

Subsec. (a)(5). Pub. L. 101–189, §1402(b), added par. (5).

Subsec. (g)(1), (5). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (h). Pub. L. 101–189, §1407(a)(9), as amended by Pub. L. 101–510, inserted ''(or any other provision of law)'' after ''Whenever retired pay is increased under section 1401a of this title'' and substituted ''such retired pay is so increased'' for ''such retired pay is increased under section 1401a of this title''.

1987—Subsec. (i). Pub. L. 100–224 added subsec. (i).

1986—Subsec. (c). Pub. L. 99–348 inserted provision that computation of a member's retired pay for purposes of this subsection be made without regard to any reduction under section 1409(b)(2) of this title.

Subsec. (h). Pub. L. 99–661 struck out ''and retainer'' after ''Whenever retired''.

1985—Pub. L. 99–145, §719(8)(B), struck out ''or retainer'' after ''retired'' in section catchline.

Subsec. (a)(1). Pub. L. 99–145, §714(a)(1), (2), designated existing first sentence of subsec. (a) as par. (1); redesignated cl. (1) as (A), inserting ''(as adjusted from time to time under paragraph (4))'' after ''$300'' and substituting ''a standard annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(A) of this title''; and redesignated cl. (2) as (B), substituting ''a reserve-component annuity'' for ''an annuity by virtue of eligibility under section 1448(a)(1)(B)''.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Pub. L. 99–145, §723(b)(2)(1), inserted ''or former spouse'' after first two references to ''spouse''.

Subsec. (a)(2). Pub. L. 99–145, §714(a)(3), designated existing second sentence of subsec. (a) as par. (2), and substituted ''If there is a dependent child as well as a spouse or former spouse, the amount prescribed under paragraph (1)'' for ''As long as there is an eligible spouse and a dependent child, that amount''.

Subsec. (a)(3). Pub. L. 99–145, §714(a)(4), designated existing third sentence of subsec. (a) as par. (3), substituted ''paragraph (1)'' for ''the first sentence of this subsection'', and inserted ''or former spouse'' after ''eligible spouse''.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (a)(4). Pub. L. 99–145, §714(a)(5), added par. (4).

Subsec. (b). Pub. L. 99–145, §723(b)(2)(2), inserted ''or former spouse'' after ''spouse'' in two places.

Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay''.

Subsec. (c). Pub. L. 99–145, §719(7), (8)(A), substituted ''retired pay'' for ''retired or retainer pay'' in three places, and substituted ''a standard annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(A) of this title'' in cl. (1), ''a reserve-component annuity'' for ''the annuity by virtue of eligibility under section 1448(a)(1)(B) of this title'' in cl. (2), and ''this subsection'' for ''this section'' in third sentence.

Subsecs. (d) to (h). Pub. L. 99–145, §719(8)(A), substituted ''retired pay'' for ''retired or retainer pay'' wherever appearing.

1981—Subsec. (e). Pub. L. 97–22, §11(a)(3), substituted ''Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (g)(4). Pub. L. 97–22, §11(a)(5), substituted ''this section'' for ''section 1452 of this title''.

1980—Subsecs. (g), (h). Pub. L. 96–402, added subsecs. (g) and (h).

1978—Subsec. (a). Pub. L. 95–397, §205(a), substituted pars. (1) and (2) for ''by an amount equal to 2½ percent of the first $300 of the base amount plus 10 percent of the remainder of the base amount'' after ''shall be reduced each month''.

Subsec. (c). Pub. L. 95–397, §205(b), substituted pars. (1) and (2) for ''by 10 percent plus 5 percent for each full 5 years the individual designated is younger than that person. However, the total reduction may not exceed 40 percent. The reduction in retired or retainer pay prescribed by this subsection shall continue during the lifetime of the person designated under section

1450(a)(4) of this title or until the person receiving retired or retainer pay changes his election under section 1450(f)'', and inserted provision following par. (2) that the total reduction under clause (1) may not exceed 40 percent, and that the reduction in retired or retainer pay shall continue during the lifetime of the person designated under section 1450(a)(4) of this title or until the person changes his election under section 1450(f) of this title.

1976—Subsec. (a). Pub. L. 94–496, §1(4), (5)(A), substituted ''Except as provided in subsection (b), the retired or retainer pay'' for ''The retired or retainer pay'', ''(a)(4)'' for ''(a)(3)'', and inserted provision prohibiting a reduction in retired or retainer pay during any month in which there is no eligible spouse beneficiary.

Subsec. (b). Pub. L. 94–496, §1(5)(B), inserted ''or who has a spouse but has elected to provide an annuity for dependent children only,'' after ''spouse,''.

Subsec. (c). Pub. L. 94–496, §1(4), (5)(C), substituted ''(a)(4)'' for ''(a)(3)'', and inserted provision directing that reduction in retired or retainer pay continue during the lifetime of a beneficiary designated under section 1450(a)(4) of this title or until such person change his election pursuant to section 1450(f) of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 effective Oct. 1, 1999, see section 644 of Pub. L. 106–65, set out as a note under section 1401a of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 635(b) of Pub. L. 104–201 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning on or after the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 637(b) of Pub. L. 103–337 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] applies to any election for child-only coverage under a reserve-component annuity under the Survivor Benefit Plan, whether made before, on, or after the date of the enactment of this Act [Oct. 5, 1994].

''(2) Paragraph (1) does not apply in a case of an election referred to in that paragraph that was made before the date of the enactment of this Act if the participant was informed, in writing, before the date of the enactment of this Act that no reduction in the participant's retired pay for child-only coverage would be made during a period when there was no eligible dependent child.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1484(*l*)(4)(C) of Pub. L. 101–510 provided that the amendment made by that section is effective Nov. 29, 1989.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 714(b) of title VII of Pub. L. 99–145 provided that: ''The amendments made by clause (5) of subsection (a) [amending this section] shall apply only with respect to persons who first participate in the Plan on or after the effective date of this title [see note below].''

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, except as otherwise provided, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–402 effective Dec. 1, 1980, applicable to annuities payable for months beginning on or after such date, and prohibiting accrual of benefits for any period before Oct. 9, 1980, see section 7 of Pub. L. 96–402, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 effective Oct. 1, 1978, and applicable to annuities payable by virtue of amendment for months beginning on or after such date, see section 210 of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–496 effective Sept. 11, 1972, see section 3 of Pub. L. 94–496, set out as a note under section 1447 of this title.

RECOMPUTATION OF SBP PREMIUM FOR CURRENT PARTICIPANTS

Section 1402(d) of Pub. L. 101–189 provided that:

''(1) RECOMPUTATION.—The Secretary concerned shall recompute the SBP premium of persons described in paragraph (2). Any such recomputation shall take effect on March 1, 1990.

''(2) PERSONS COVERED.—A person referred to in paragraph (1) as described in this paragraph is a person who on March 1, 1990—

''(A) is entitled to retired pay;

''(B) is providing spouse coverage (as described in paragraph (5) of section 1452[(a)] of title 10, United States Code, as added by subsection (b)); and

''(C) is subject to an SBP premium in excess of 6½ percent of the base amount of that person under the Survivor Benefit Plan.

''(3) AMOUNT OF RECOMPUTED PREMIUM.—The amount of an SBP premium recomputed under this subsection shall be 6½ percent of the base amount under the Survivor Benefit Plan of the person whose premium is recomputed.

''(4) SBP PREMIUM DEFINED.—For purposes of this subsection, the term 'SBP premium' means a reduction in retired pay under section 1452 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1448, 1450, 1451, 1455, 1460, 1460a of this title; title 26 section 122.

§ 1453. Recovery of amounts erroneously paid

(a) RECOVERY.—In addition to any other method of recovery provided by law, the Secretary concerned may authorize the recovery of any amount erroneously paid to a person under this subchapter by deduction from later payments to that person.

(b) AUTHORITY TO WAIVE RECOVERY.—Recovery of an amount erroneously paid to a person under this subchapter is not required if, in the judgment of the Secretary concerned—

(1) there has been no fault by the person to whom the amount was erroneously paid; and

(2) recovery of such amount would be contrary to the purposes of this subchapter or against equity and good conscience.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 710; amended Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577; Pub. L. 104–316, title I, §105(a), Oct. 19, 1996, 110 Stat. 3830.)

AMENDMENTS

1996—Pub. L. 104–201 substituted ''amounts'' for ''annuity'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''In addition to other methods of recovery provided by law, the Secretary concerned may authorize the recovery,

by deduction from later payments to a person, of any amount erroneously paid to him under this subchapter. However, recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and recovery would be contrary to the purposes of this subchapter or against equity and good conscience.''

Subsec. (b). Pub. L. 104–316 struck out ''and the Comptroller General'' after ''judgment of the Secretary concerned'' in introductory provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1460a of this title.

§ 1454. Correction of administrative errors

(a) AUTHORITY.—The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when the Secretary considers it necessary to correct an administrative error.

(b) FINALITY.—Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.

(Added Pub. L. 92–425, § 1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 101–189, div. A, title XIV, § 1407(a)(10)(A), Nov. 29, 1989, 103 Stat. 1589; Pub. L. 104–201, div. A, title VI, § 634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally. Prior to amendment, section read as follows: ''The Secretary concerned may, under regulations prescribed under section 1455 of this title, correct or revoke any election under this subchapter when he considers it necessary to correct an administrative error. Except when procured by fraud, a correction or revocation under this section is final and conclusive on all officers of the United States.''

1989—Pub. L. 101–189 substituted ''errors'' for ''deficiencies'' in section catchline.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1460a of this title.

§ 1455. Regulations

(a) IN GENERAL.—The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services.

(b) NOTICE OF ELECTIONS.—Regulations prescribed under this section shall provide that before the date on which a member becomes entitled to retired pay—

(1) if the member is married, the member and the member's spouse shall be informed of the elections available under section 1448(a) of this title and the effects of such elections; and

(2) if the notification referred to in section 1448(a)(3)(E) of this title is required, any former spouse of the member shall be informed of the elections available and the effects of such elections.

(c) PROCEDURE FOR DEPOSITING CERTAIN RECEIPTS.—Regulations prescribed under this section shall establish procedures for depositing the amounts referred to in sections 1448(g), 1450(k)(2), and 1452(d) of this title.

(d) PAYMENTS TO GUARDIANS AND FIDUCIARIES.—

(1) IN GENERAL.—Regulations prescribed under this section shall provide procedures for the payment of an annuity under this subchapter in the case of—

(A) a person for whom a guardian or other fiduciary has been appointed; and

(B) a minor, mentally incompetent, or otherwise legally disabled person for whom a guardian or other fiduciary has not been appointed.

(2) AUTHORIZED PROCEDURES.—The regulations under paragraph (1) may include provisions for the following:

(A) In the case of an annuitant referred to in paragraph (1)(A), payment of the annuity to the appointed guardian or other fiduciary.

(B) In the case of an annuitant referred to in paragraph (1)(B), payment of the annuity to any person who, in the judgment of the Secretary concerned, is responsible for the care of the annuitant.

(C) Subject to subparagraphs (D) and (E), a requirement for the payee of an annuity to spend or invest the amounts paid on behalf of the annuitant solely for benefit of the annuitant.

(D) Authority for the Secretary concerned to permit the payee to withhold from the annuity payment such amount, not in excess of 4 percent of the annuity, as the Secretary concerned considers a reasonable fee for the fiduciary services of the payee when a court appointment order provides for payment of such a fee to the payee for such services or the Secretary concerned determines that payment of a fee to such payee is necessary in order to obtain the fiduciary services of the payee.

(E) Authority for the Secretary concerned to require the payee to provide a surety bond in an amount sufficient to protect the interests of the annuitant and to pay for such bond out of the annuity.

(F) A requirement for the payee of an annuity to maintain and, upon request, to provide to the Secretary concerned an accounting of expenditures and investments of amounts paid to the payee.

(G) In the case of an annuitant referred to in paragraph (1)(B)—

(i) procedures for determining incompetency and for selecting a payee to represent the annuitant for the purposes of this section, including provisions for notifying the annuitant of the actions being taken to make such a determination and to select a representative payee, an opportunity for the annuitant to review the evidence being considered, and an opportunity for the annuitant to submit additional evidence before the determination is made; and

(ii) standards for determining incompetency, including standards for determining the sufficiency of medical evidence and other evidence.

(H) Provisions for any other matter that the President considers appropriate in con-

nection with the payment of an annuity in the case of a person referred to in paragraph (1).

(3) LEGAL EFFECT OF PAYMENT TO GUARDIAN OR FIDUCIARY.—An annuity paid to a person on behalf of an annuitant in accordance with the regulations prescribed pursuant to paragraph (1) discharges the obligation of the United States for payment to the annuitant of the amount of the annuity so paid.

(Added Pub. L. 92–425, §1(3), Sept. 21, 1972, 86 Stat. 711; amended Pub. L. 99–145, title VII, §724, Nov. 8, 1985, 99 Stat. 678; Pub. L. 102–190, div. A, title VI, §654(a), Dec. 5, 1991, 105 Stat. 1389; Pub. L. 104–201, div. A, title VI, §634, Sept. 23, 1996, 110 Stat. 2577.)

AMENDMENTS

1996—Pub. L. 104–201 amended section generally, revising and restating provisions relating to regulations to carry out this subchapter.

1991—Subsecs. (a) to (d). Pub. L. 102–190 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1985—Pars. (1), (2). Pub. L. 99–145 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) provide that, when the notification referred to in section 1448(a) of this title is required, the member and his spouse shall, before the date the member becomes entitled to retired or retainer pay, be informed of the elections available and the effects of such elections; and

''(2) establish procedures for depositing the amounts referred to in section 1452(d) of this title.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by title VII of Pub. L. 99–145 effective Mar. 1, 1986, with prohibition against accrual of benefits to any person by reason of the enactment of such title VII for any period before Mar. 1, 1986, see section 731 of Pub. L. 99–145, set out as a note under section 1447 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1444a, 1448, 1450, 1454, 1460b of this title.

SUBCHAPTER III—SUPPLEMENTAL SURVIVOR BENEFIT PLAN

Sec.
1456. Supplemental spouse coverage: establishment of plan; definitions.
1457. Supplemental spouse coverage: payment of annuity; amount.
1458. Supplemental spouse coverage: eligible participants; elections of coverage.
1459. Former spouse coverage: special rules.
1460. Supplemental spouse coverage: reductions in retired pay.
1460a. Incorporation of certain administrative provisions.
1460b. Regulations.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 12731 of this title.

§ 1456. Supplemental spouse coverage: establishment of plan; definitions

(a) ESTABLISHMENT OF SUPPLEMENTAL SURVIVOR BENEFIT PLAN.—

(1) PLAN.—The Secretary of Defense shall carry out a program in accordance with this subchapter to enable participants in the Survivor Benefit Plan who are providing coverage for a spouse or former spouse beneficiary under that Plan to also provide a supplemental annuity for that spouse or former spouse beginning when the participant dies or when the spouse or former spouse becomes 62 years of age, whichever is later, in order to offset the effects of the two-tier annuity computation under the Survivor Benefit Plan.

(2) NAME OF PLAN.—The program under this subchapter shall be known as the Supplemental Survivor Benefit Plan.

(b) DEFINITIONS.—

(1) INCORPORATION OF DEFINITIONS APPLICABLE TO SURVIVOR BENEFIT PLAN.—The definitions in section 1447 of this title apply in this subchapter.

(2) SUPPLEMENTAL SPOUSE ANNUITY DEFINED.—In this subchapter, the term ''supplemental spouse annuity'' means an annuity provided to a spouse or former spouse under this subchapter.

(Added Pub. L. 101–189, div. A, title XIV, §1404(a)(1), Nov. 29, 1989, 103 Stat. 1580.)

EFFECTIVE DATE

Section 1404(a)(1) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VI, §631(1), Nov. 5, 1990, 104 Stat. 1580, provided that this subchapter is effective Apr. 1, 1992.

§ 1457. Supplemental spouse coverage: payment of annuity; amount

(a) COMMENCEMENT OF ANNUITY.—A supplemental spouse annuity commences on the later of—

(1) the day on which an annuity under the Survivor Benefit Plan becomes payable to the beneficiary; or

(2) the first day of the first month after the month in which the beneficiary becomes 62 years of age.

(b) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING STANDARD ANNUITY UNDER SBP.—In the case of a person providing a standard annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to the beneficiary under this subchapter shall be the amount equal to 5, 10, 15, or 20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity. The annuity shall be computed as of the date of the death of the person providing the annuity, notwithstanding that the annuity is not payable at that time by reason of subsection (a).

(c) AMOUNT OF ANNUITY FOR BENEFICIARY OF PERSON PROVIDING RESERVE-COMPONENT ANNUITY UNDER SBP.—In the case of a person providing a reserve-component annuity for a spouse or former spouse beneficiary under the Survivor Benefit Plan and providing a supplemental spouse annuity for that beneficiary under this subchapter, the monthly annuity payable to that beneficiary under this subchapter shall be determined as follows:

(1) BENEFICIARY INITIALLY 62 YEARS OF AGE OR OLDER.—If the beneficiary is 62 years of age or older when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity is the difference between—

(A) the amount of the reserve-component annuity under the Survivor Benefit Plan to which the beneficiary would be entitled if that beneficiary were under 62 years of age (as computed under section 1451(a)(2)(A) of this title); and

(B) the amount of the reserve-component annuity to which the beneficiary is entitled (as computed under section 1451(a)(2)(B) of this title).

(2) BENEFICIARY INITIALLY UNDER 62 YEARS OF AGE.—If the beneficiary is under 62 years of age when the beneficiary becomes entitled to the reserve-component annuity under the Survivor Benefit Plan, the monthly amount of the supplemental spouse annuity of that beneficiary (commencing on the date specified in subsection (a)(2)) is the amount by which the beneficiary's annuity under the Survivor Benefit Plan is reduced (on the same day) under section 1451(d) of this title.

(3) EXCLUSION OF DIC OFFSET.—Computations under paragraphs (1) and (2) shall be made without regard to any reduction required under section 1450(c) of this title (or any other provision of law) with respect to the receipt of dependency and indemnity compensation under section 1311 of title 38.

(d) ADJUSTMENTS IN ANNUITIES.—

(1) PERIODIC ADJUSTMENTS (COLAS).—Whenever annuities under the Survivor Benefit Plan are increased under section 1451(g)(1) of this title (or any other provision of law) or recomputed under section 1451(i) of this title, each annuity under this subchapter shall be increased or recomputed at the same time. The increase shall, in the case of any such annuity, be by the same percent as the percent by which the annuity of that beneficiary is increased or recomputed under the Survivor Benefit Plan.

(2) ROUNDING DOWN.—The monthly amount of an annuity payable under this subchapter, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(e) TERMINATION OF ANNUITY.—A supplemental spouse annuity terminates effective as of the first day of the month in which the beneficiary dies or otherwise becomes ineligible to continue to receive an annuity under the Survivor Benefit Plan.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1580; amended Pub. L. 102–190, div. A, title VI, § 653(b)(1), Dec. 5, 1991, 105 Stat. 1388; Pub. L. 103–337, div. A, title X, § 1070(e)(5), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Subsec. (c)(3). Pub. L. 103–337 substituted ''section 1311 of title 38'' for ''section 411 of title 38''.

1991—Subsec. (b). Pub. L. 102–190 substituted ''5, 10, 15, or 20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity, as specified by that person when electing to provide the annuity'' for ''20 percent of the base amount under the Survivor Benefit Plan of the person providing the annuity''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 653(b)(3) of Pub. L. 102–190 provided that: ''The amendments made by this subsection [amending this section and section 1460 of this title] shall take effect on April 1, 1992.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1460 of this title.

§ 1458. Supplemental spouse coverage: eligible participants; elections of coverage

(a) COVERAGE.—

(1) IN GENERAL.—A person who provides an annuity for a spouse or former spouse under the Survivor Benefit Plan at the maximum level may elect in accordance with this section to provide a supplemental spouse annuity for that spouse or former spouse.

(2) COVERAGE CONTINGENT ON CONCURRENT SBP COVERAGE.—When a person providing a supplemental spouse annuity under this subchapter ceases to be a participant under the Survivor Benefit Plan, that person's coverage under this subchapter automatically terminates.

(3) ELECTIONS TO BE VOLUNTARY.—A person may not be ordered or required to elect (or to enter into an agreement to elect) to provide a spouse or former spouse with a supplemental spouse annuity under this subchapter. Except as provided in section 1459(b) of this title, in no case shall a person be deemed to have made an election to provide a supplemental annuity for a spouse or former spouse of such person.

(b) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under this section if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan will be computed under section 1451(e) of this title. However, such a person may waive the right to have that annuity computed under section 1451(e) of this title. Any such election is irrevocable. A person making such a waiver may make an election under this section as in the case of any other participant in the Survivor Benefit Plan.

(c) ELECTION OF SUPPLEMENTAL SPOUSE ANNUITY BEFORE BECOMING A PARTICIPANT IN SBP.—

(1) IN GENERAL.—A person anticipating becoming a participant in the Survivor Benefit Plan who has a spouse or former spouse may elect to provide a supplemental spouse annuity under this subchapter for that spouse or former spouse.

(2) CONDITIONS ON ELECTION.—An election under paragraph (1)—

(A) must be made before the day on which the person making the election first becomes a participant in the Survivor Benefit Plan; and

(B) shall be made in the same manner as an election under section 1448 of this title that is available to that person at the same time.

(3) REQUIREMENT OF SPOUSE ANNUITY UNDER SBP.—If upon becoming a participant in the Survivor Benefit Plan under section 1448 of this title the person is not providing an annuity for the person's spouse or former spouse, an election under this section to provide a supplemental spouse annuity shall be void.

(4) SPECIAL RULE FOR RCSBP PARTICIPANTS.—For the purposes of this subsection, a person providing a reserve-component annuity under the Survivor Benefit Plan shall not be considered to have become a participant in that Plan until the end of the 90-day period referred to in clause (iii) of section 1448(a)(2)(B) of this title.

(d) ELECTION OF FORMER SPOUSE AFTER BECOMING ELIGIBLE FOR SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF COVERAGE.—A person who elects under section 1448(b)(3) of this title to provide coverage under the Survivor Benefit Plan for a former spouse may elect to provide a supplemental spouse annuity for that former spouse. Any such election must be signed by the person and received by the Secretary concerned within one year after the date of the decree of divorce, dissolution, or annulment.

(2) EFFECTIVE DATE OF ELECTION.—An election under paragraph (1) is effective as of the same day as the election under section 1448(b)(3) of this title.

(e) NOTICE TO SPOUSE OF FORMER SPOUSE COVERAGE.—If a married person who is eligible to provide an annuity under the Survivor Benefit Plan elects to provide an annuity under that Plan for a former spouse (or for a former spouse and dependent child) and elects under this section to provide a supplemental spouse annuity for that former spouse, the notification to the person's spouse under section 1448(a)(3)(E) or 1448(b)(3)(D) of this title shall include notice of the election under this section.

(f) IRREVOCABILITY OF ELECTIONS.—

(1) STANDARD ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a standard annuity under the Survivor Benefit Plan is irrevocable if not revoked on the day before the date on which the person first becomes a participant in that Plan.

(2) RESERVE-COMPONENT ANNUITY.—An election under subsection (c) to provide a supplemental spouse annuity by a person providing a reserve-component annuity under the Survivor Benefit Plan is irrevocable if not revoked before the end of the 90-day period with respect to that person referred to in clause (iii) of section 1448(a)(2)(B) of this title.

(3) FORMER SPOUSE ELECTIONS.—An election under subsection (d) may not be revoked except in accordance with subsection (h).

(g) REMARRIAGE AFTER RETIREMENT.—

(1) ELECTION UPON REMARRIAGE.—A person—

(A) who is a participant in the Survivor Benefit Plan and is providing coverage under that Plan for a spouse (or a spouse and child) but is not a participant in the Supplemental Survivor Benefit Plan;

(B) who does not have an eligible spouse beneficiary under that Plan; and

(C) who remarries,

may (subject to paragraph (2)) elect to provide a supplemental spouse annuity under this subchapter for the person's spouse.

(2) LIMITATIONS ON ELECTION.—A person may not make an election under paragraph (1) if the person elects under section 1448(a)(6)(A) of this title not to provide coverage under the Survivor Benefit Plan for the person's spouse.

(3) CONDITIONS ON ELECTION.—An election under paragraph (1)—

(A) is irrevocable;

(B) shall be made within one year after the remarriage; and

(C) shall be made in such form and manner as may be prescribed in regulations under section 1460b of this title.

(h) CHANGE OF FORMER SPOUSE BENEFICIARY TO SPOUSE OR CHILD BENEFICIARY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter elects under section 1450(f)(1) of this title to change the beneficiary of the annuity under the Survivor Benefit Plan in order to provide an annuity under that Plan to that person's spouse or to a dependent child—

(1) the beneficiary under the supplemental spouse annuity shall be deemed to be changed to that spouse also, if the change under section 1450(f)(1) was to provide the annuity for the person's spouse; and

(2) participation in the supplemental spouse annuity program shall be terminated, if the change under section 1450(f)(1) of this title was to provide the annuity for a dependent child.

(i) REINSTATEMENT OF DISCONTINUED ANNUITY UPON REINSTATEMENT OF SBP ANNUITY.—If a person who is providing an annuity for a former spouse under the Survivor Benefit Plan and a supplemental spouse annuity for that former spouse under this subchapter discontinues participation in the Survivor Benefit Plan under any provision of law and subsequently resumes participation in that Plan under any provision of law, the participation of that person in the Supplemental Survivor Benefit Plan under this chapter shall be reinstated effective on the day on which participation in the Survivor Benefit Plan resumes.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1581; amended Pub. L. 102–190, div. A, title VI, § 653(c)(1), Dec. 5, 1991, 105 Stat. 1388.)

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–190 inserted ''at the maximum level'' after ''Survivor Benefit Plan''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1459 of this title.

§ 1459. Former spouse coverage: special rules

(a) DISCLOSURE OF VOLUNTARY WRITTEN AGREEMENT WITH FORMER SPOUSE.—A person who elects under section 1458 of this title to provide a supplemental spouse annuity for a former spouse shall, at the time of making the election, provide the Secretary concerned with a written

statement (in a form to be prescribed by that Secretary and signed by such person and former spouse) setting forth whether the election is being made pursuant to a written agreement previously entered into voluntarily by such person as a part of or incident to a proceeding of divorce, dissolution, or annulment and (if so) whether such voluntary written agreement has been incorporated in, or ratified or approved by, a court order.

(b) ENFORCEMENT OF VOLUNTARY WRITTEN AGREEMENTS INCIDENT TO DIVORCE, ETC.—

(1) ELECTIONS DEEMED TO HAVE BEEN MADE.—If a person who is eligible to elect under section 1458 of this title to provide a supplemental spouse annuity for a former spouse voluntarily enters, incident to a proceeding of divorce, dissolution, or annulment, into a written agreement to elect to provide a supplemental annuity for a former spouse and that agreement is incorporated in or ratified or approved by a court order or is filed with the court of appropriate jurisdiction in accordance with applicable State law, and such person then fails or refuses to make the election as set forth in the voluntary agreement, such person shall be deemed to have made the election if the Secretary concerned—

(A) receives from the former spouse concerned a written request, in such manner as the Secretary shall prescribe, requesting that the election be deemed to have been made; and

(B) receives (i) a copy of the court order, regular on its face, which incorporates, ratifies, or approves the written agreement of such person, or (ii) a statement from the clerk of the court (or other appropriate official) that such agreement has been filed with the court in accordance with applicable State law.

(2) TIME LIMIT FOR REQUEST TO SECRETARY CONCERNED.—An election may not be deemed to have been made under paragraph (1) in the case of any person unless the Secretary concerned receives a request from the former spouse within one year after the date of the court order or filing involved.

(3) EFFECTIVE DATE OF DEEMED ELECTION.—An election deemed to have been made under paragraph (1) shall become effective on the first day of the first month which begins after the date of the court order or filing involved.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1584.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1458 of this title.

§ 1460. Supplemental spouse coverage: reductions in retired pay

(a) REDUCTION REQUIRED.—The retired pay of a person who elects to provide a supplemental spouse annuity shall be reduced each month as required under regulations prescribed under subsection (b).

(b) REGULATIONS DETERMINING AMOUNT OF REDUCTION.—Regulations for the purposes of subsection (a) shall be prescribed by the Secretary of Defense. Those regulations shall be based upon assumptions used by the Department of Defense Retirement Board of Actuaries in the valuation of military retirement and survivor benefit programs under chapter 74 of this title (including assumptions relating to mortality, interest rates, and inflation) and shall ensure the following:

(1) That reductions in retired pay under this section are made in amounts sufficient to provide that the Supplemental Survivor Benefit Plan operates on an actuarially neutral basis.

(2) That such reductions are stated, with respect to the base amount (under the Survivor Benefit Plan) of any person, as a constant percentage of that base amount and, in the case of a person providing a supplemental spouse annuity computed under section 1457(b) of this title, a constant percentage of such person's base amount for each 5 percent increment specified in accordance with that section.

(3) That the amounts of such reductions in retired pay of persons participating in the Supplemental Survivor Benefit Plan (stated as a percentage of base amount)—

(A) are based on the age of the participant at the time participation in that Plan is first effective under this subchapter; and

(B) are not determined by any other demographic differentiation among participants in the Plan.

(4) That such reductions are otherwise determined in accordance with generally accepted actuarial principles and practices.

(c) SUSPENSION OF REDUCTION WHEN THERE IS NO SPOUSE BENEFICIARY.—A reduction in retired pay under this section shall not be made in the case of any person during any month in which there is no eligible spouse or former spouse beneficiary.

(d) ADJUSTMENTS IN AMOUNT OF REDUCTION.—Whenever the amount of the reduction in retired pay of a participant in the Survivor Benefit Plan is increased under section 1452(h) of this title or recomputed under section 1452(i) of this title, the amount of the reduction in that retired pay under this section shall be increased or recomputed, as the case may be, at the same time and in the same manner as that increase or recomputation.

(e) ADMINISTRATIVE PROVISIONS.—The provisions of subsections (d) and (f) of section 1452 of this title apply with respect to the participation of a person in the Supplemental Survivor Benefit Plan in the same manner that those provisions apply under the Survivor Benefit Plan.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1584; amended Pub. L. 102–190, div. A, title VI, § 653(b)(2), Dec. 5, 1991, 105 Stat. 1388.)

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102–190 inserted before period ''and, in the case of a person providing a supplemental spouse annuity computed under section 1457(b) of this title, a constant percentage of such person's base amount for each 5 percent increment specified in accordance with that section''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Apr. 1, 1992, see section 653(b)(3) of Pub. L. 102–190, set out as a note under section 1457 of this title.

§ 1460a. Incorporation of certain administrative provisions

(a) APPLICABILITY OF CERTAIN PROVISIONS OF SBP LAW.—The provisions of sections 1449, 1452(g), 1453, and 1454 of this title are applicable to a person eligible to make an election, and to an election, under this subchapter in the same manner as if made under subchapter II.

(b) OTHER APPLICABLE PROVISIONS.—Except to the extent otherwise provided in regulations prescribed under section 1460b of this title, the provisions of subsections (h), (i), and (*l*) of section 1450 of this title apply to supplemental spouse annuities in the same manner that those provisions apply to annuities under the Survivor Benefit Plan.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585; amended Pub. L. 101–510, div. A, title XIV, § 1484(k)(5), Nov. 5, 1990, 104 Stat. 1719.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510 substituted ''sections'' for ''section''.

§ 1460b. Regulations

The President shall prescribe regulations to carry out this subchapter. Those regulations shall, so far as practicable, be uniform for the uniformed services and shall, so far as practicable, incorporate provisions of the regulations in effect under section 1455 of this title.

(Added Pub. L. 101–189, div. A, title XIV, § 1404(a)(1), Nov. 29, 1989, 103 Stat. 1585.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1458, 1460a of this title.

CHAPTER 74—DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND

Sec.
1461. Establishment and purpose of Fund; definition.
1462. Assets of Fund.
1463. Payments from the Fund.
1464. Board of Actuaries.
1465. Determination of contributions to the Fund.
1466. Payments into the Fund.
1467. Investment of assets of Fund.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1460 of this title; title 38 section 5301.

§ 1461. Establishment and purpose of Fund; definition

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Military Retirement Fund (hereinafter in this chapter referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance on an actuarially sound basis liabilities of the Department of Defense under military retirement and survivor benefit programs.

(b) In this chapter, the term ''military retirement and survivor benefit programs'' means—

(1) the provisions of this title creating entitlement to, or determining the amount of, retired or retainer pay;

(2) the programs under the jurisdiction of the Department of Defense providing annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(3) the authority provided in section 1408(h) of this title.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 644; amended Pub. L. 101–189, div. A, title XVI, § 1622(e)(7), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 102–484, div. A, title VI, § 653(b)(1), Oct. 23, 1992, 106 Stat. 2428.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (b)(2), is set out as a note under section 1448 of this title.

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102–484 added par. (3).

1989—Subsec. (b). Pub. L. 101–189 inserted ''the term'' after ''In this chapter,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1408 of this title; title 37 section 203.

§ 1462. Assets of Fund

There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund under section 1466 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645.)

TRANSFER OF APPROPRIATIONS

Section 925(b)(3) of Pub. L. 98–94 provided that: ''There shall be transferred into the Fund on October 1, 1984, any unobligated balances of appropriations made to the Department of Defense that are currently available for retired pay, and amounts so transferred shall be part of the assets of the Fund.''

§ 1463. Payments from the Fund

(a) There shall be paid from the Fund—

(1) retired pay payable to members on the retired lists of the Army, Navy, Air Force, and Marine Corps;

(2) retired pay payable under chapter 1223 of this title to former members of the armed forces (other than retired pay payable by the Secretary of Homeland Security);

(3) retainer pay payable to members of the Fleet Reserve and Fleet Marine Corps Reserve;

(4) benefits payable under programs under the jurisdiction of the Department of Defense that provide annuities for survivors of members and former members of the armed forces, including chapter 73 of this title, section 4 of Public Law 92–425, and section 5 of Public Law 96–402; and

(5) amounts payable under section 1408(h) of this title.

(b) The assets of the Fund are hereby made available for payments under subsection (a).

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 101–189, div. A, title VI, § 651(c), Nov. 29, 1989, 103 Stat. 1460; Pub. L. 102–484, div. A, title VI, § 653(b)(2), Oct. 23, 1992, 106 Stat. 2428; Pub. L. 103–35, title II, § 202(a)(4), May 31, 1993, 107 Stat. 101; Pub. L. 104–106, div. A, title XV, § 1501(c)(18), Feb. 10, 1996, 110 Stat. 499; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

Section 4 of Public Law 92–425, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

Section 5 of Public Law 96–402, referred to in subsec. (a)(4), is set out as a note under section 1448 of this title.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (a)(2). Pub. L. 104–106 substituted ''chapter 1223'' for ''chapter 67''.

1993—Subsec. (a)(5). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 653(b)(2). See 1992 Amendment note below.

1992—Subsec. (a). Pub. L. 102–484, as amended by Pub. L. 103–35, added par. (5).

1989—Subsec. (a). Pub. L. 101–189 substituted ''members'' for ''persons'' in par. (1), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE

Section 925(b)(2) of Pub. L. 98–94 provided that: ''Sections 1463 (relating to payments from the Fund) and 1466 (relating to payments to the Fund) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984.''

§ 1464. Board of Actuaries

(a)(1) There is established in the Department of Defense a Department of Defense Retirement Board of Actuaries (hereinafter in this chapter referred to as the ''Board''). The Board shall consist of three members, who shall be appointed by the President from among qualified professional actuaries who are members of the Society of Actuaries.

(2)(A) Except as provided in subparagraph (B), the members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the President for misconduct or failure to perform functions vested in the Board, and for no other reason.

(B) Of the members of the Board who are first appointed under this subsection, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the President at the time of appointment.

(3) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(b) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(c) The Board shall review valuations of the Fund under section 1465(c) of this title and under chapter 95 of title 31 and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(Added Pub. L. 98–94, title IX, § 925(a)(1), Sept. 24, 1983, 97 Stat. 645; amended Pub. L. 98–525, title XIV, § 1405(27), Oct. 19, 1984, 98 Stat. 2623.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–525 substituted section ''1465(c)'' for ''1466''.

EFFECTIVE DATE

Section 925(b)(1) of Pub. L. 98–94 provided that: ''Section 1464 (relating to the Board of Actuaries) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 1465. Determination of contributions to the Fund

(a) Not later than six months after the Board of Actuaries is first appointed, the Board shall determine the amount that is the present value (as of October 1, 1984) of future benefits payable from the Fund that are attributable to service in the armed forces performed before October 1, 1984. That amount is the original unfunded li-

ability of the Fund. The Board shall determine the period of time over which the original unfunded liability should be liquidated and shall determine an amortization schedule for the liquidation of such liability over that period. Contributions to the Fund for the liquidation of the original unfunded liability in accordance with such schedule shall be made as provided in section 1466(b) of this title.

(b)(1) The Secretary of Defense shall determine each year, in sufficient time for inclusion in budget requests for the following fiscal year, the total amount of Department of Defense contributions to be made to the Fund during that fiscal year under section 1466(a) of this title. That amount shall be the sum of the following:

(A) The product of—

(i) the current estimate of the value of the single level percentage of basic pay to be determined under subsection (c)(1)(A) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).

(B) The product of—

(i) the current estimate of the value of the single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) to be determined under subsection (c)(1)(B) at the time of the next actuarial valuation under subsection (c); and

(ii) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) expected to be paid during that fiscal year to members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in subparagraph (A)(ii).

(2) The amount determined under paragraph (1) for any fiscal year is the amount needed to be appropriated to the Department of Defense for that fiscal year for payments to be made to the Fund during that year under section 1466(a) of this title. The President shall include not less than the full amount so determined in the budget transmitted to Congress for that fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(c)(1) Not less often than every four years, the Secretary of Defense shall carry out an actuarial valuation of Department of Defense military retirement and survivor benefit programs. Each actuarial valuation of such programs shall include—

(A) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay for members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only); and

(B) a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) for members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described by subparagraph (A).

Such single level percentages shall be used for the purposes of subsection (b) and section 1466(a) of this title.

(2) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) there has been a change in benefits under a military retirement or survivor benefit program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the amortization of the cumulative unfunded liability (or actuarial gain to the Fund) created by such change and any previous such changes so that the present value of the sum of the amortization payments (or reductions in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such amounts.

(3) If at the time of any such valuation (or any valuation carried out in order to comply with chapter 95 of title 31) the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the amortization of the cumulative gain or loss to the Fund created by such change in assumptions and any previous such changes in assumptions through an increase or decrease in the payments that would otherwise be made to the Fund.

(4) Contributions to the Fund in accordance with amortization schedules under paragraphs (2) and (3) shall be made as provided in section 1466(b) of this title.

(d) All determinations under this section shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(e) The Secretary of Defense shall provide for the keeping of such records as are necessary for determining the actuarial status of the Fund.

(Added Pub. L. 98–94, title IX, §925(a)(1), Sept. 24, 1983, 97 Stat. 646; amended Pub. L. 98–525, title XIV, §1405(28), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 99–500, §101(c) [title IX, §9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–128, and Pub. L. 99–591, §101(c) [title IX, §9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–128; Pub. L. 99–661, div. A, title VI, §661(a), Nov. 14, 1986, 100 Stat. 3891.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Amendment of section by Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

1985—Subsec. (b)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a), amended par. (1) identically, inserting second sentence and striking out the existing second sentence which read as follows: ''That amount shall be determined as the product of—

''(A) the current estimate of the value of the single level percentage of basic pay to be determined at the time of the next actuarial valuation under subsection (c); and

''(B) the total amount of basic pay expected to be paid during that fiscal year to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.''

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, Pub. L. 99–661, § 661(a)(2), amended par. (1) identically, inserting second and third sentences and striking out existing second sentence which read as follows: ''Each actuarial valuation of such programs shall include a determination (using the aggregate entry-age normal cost method) of a single level percentage of basic pay to be used for the purposes of subsection (b) and section 1466(a) of this title.''

1984—Subsec. (c)(1). Pub. L. 98–525 struck out ''(A)'' after ''(c)(1)''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 642(c) of S. 2638, as passed by the Senate on Aug. 9, 1986, and as enacted into law by section 101(c) [title IX, § 9131] of Pub. L. 99–500 and Pub. L. 99–591, and section 661(d) of Pub. L. 99–661, provided respectively that: ''The amendments made by this section [amending this section and section 1466 of this title] shall take effect on October 1, 1986, or the date of the enactment of this Act [Oct. 18, 1986], whichever is later, and shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by this section, for months beginning on or after that effective date.'' and ''The amendments made by subsections (a) and (b) [amending this section and section 1466 of this title] shall apply to payments required to be made under section 1466(a) of title 10, United States Code, as amended by subsection (b), for months beginning on or after the date of the enactment of this Act [Nov. 14, 1986].''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1464, 1466 of this title.

§ 1466. Payments into the Fund

(a) The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the sum of the following:

(1) The product of—

(A) the level percentage of basic pay determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(A) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay accrued for that month by members of the armed forces (other than the Coast Guard) on active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only).

(2) The product of—

(A) the level percentage of basic pay and of compensation (paid pursuant to section 206 of title 37) determined using all the methods and assumptions approved for the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c)(1)(B) of this title (except that any statutory change in the military retirement and survivor benefit systems that is effective after the date of that valuation and on or before the first day of the current fiscal year shall be used in such determination); and

(B) the total amount of basic pay and of compensation (paid pursuant to section 206 of title 37) accrued for that month by members of the Ready Reserve of the armed forces (other than the Coast Guard and other than members on full-time National Guard duty other than for training) who are not otherwise described in paragraph (1)(B).

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(b)(1) At the beginning of each fiscal year the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury the amount certified to the Secretary by the Secretary of Defense under paragraph (3). Such payment shall be the contribution to the Fund for that fiscal year required by sections 1465(a) and 1465(c) of this title.

(2) At the beginning of each fiscal year the Secretary of Defense shall determine the sum of the following:

(A) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1465(a) of this title for the amortization of the original unfunded liability of the Fund.

(B) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

(C) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1465(c)(3) of this title for the amortization of any cumulative actuarial gain or loss to the Fund.

(3) The Secretary of Defense shall promptly certify the amount determined under paragraph (2) each year to the Secretary of the Treasury.

(c)(1) The Secretary of Defense shall pay into the Fund at the beginning of each fiscal year

such amount as may be necessary to pay the cost to the Fund for that fiscal year resulting from the repeal, as of October 1, 1999, of section 5532 of title 5, including any actuarial loss to the Fund resulting from increased benefits paid from the Fund that are not fully covered by the payments made to the Fund for that fiscal year under subsections (a) and (b).

(2) Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.

(3) The Department of Defense Retirement Board of Actuaries shall determine, for each armed force, the amount required under paragraph (1) to be deposited in the Fund each fiscal year.

(Added Pub. L. 98–94, title IX, §925(a)(1), Sept. 24, 1983, 97 Stat. 647; amended Pub. L. 99–500, §101(c) [title IX, §§9103(3), 9131], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, 1783–128, and Pub. L. 99–591, §101(c) [title IX, §§9103(3), 9131], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, 3341–128; Pub. L. 99–661, div. A, title VI, §661(b), Nov. 14, 1986, 100 Stat. 3892; Pub. L. 100–26, §§4(a)(1), 7(a)(3), Apr. 21, 1987, 101 Stat. 274, 275; Pub. L. 106–65, div. A, title VI, §651(b), Oct. 5, 1999, 113 Stat. 664.)

REFERENCES IN TEXT

Section 5532 of title 5, referred to in subsec. (c)(1), was repealed by Pub. L. 106–65, div. A, title VI, §651(a)(1), Oct. 5, 1999, 113 Stat. 664.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Amendment of section by section 9131 of Pub. L. 99–500 and Pub. L. 99–591 is based on section 642 of S. 2638, Ninety-ninth Congress, as passed by the Senate on Aug. 9, 1986, which was enacted into permanent law by section 9131 of Pub. L. 99–500 and Pub. L. 99–591. S. 2638 was subsequently enacted as Pub. L. 99–661.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

1987—Subsec. (a). Pub. L. 100–26, §7(a)(3), inserted at end ''Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(1)(B), (2)(B). Pub. L. 100–26, §4(a)(1), amended Pub. L. 99–500 and 99–591, title I, §101(c) [title IX, §9103(3)]. See 1986 Amendment note below.

1986—Subsec. (a). Pub. L. 99–661 amended first sentence of subsec. (a), which after amendment by Pub. L. 99–500 and Pub. L. 99–591 was the only sentence of subsec. (a), by substituting language which was substantially identical to that substituted by Pub. L. 99–500 and Pub. L. 99–591.

Pub. L. 99–500 and Pub. L. 99–591, title I, §101(c) [§9131], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of Defense shall pay into the Fund at the end of each month as the Department of Defense contribution to the Fund for that month the amount that is the product of—

''(1) the level percentage of basic pay determined under the most recent (as of the first day of the current fiscal year) actuarial valuation under section 1465(c) of this title; and

''(2) the total amount of basic pay paid that month to members of the armed forces (other than the Coast Guard) on active duty or in the Selected Reserve.

Amounts paid into the Fund under this subsection shall be paid from funds available for the pay of members of the armed forces under the jurisdiction of the Secretary of a military department.''

Subsec. (a)(1)(B), (2)(B). Pub. L. 99–500 and Pub. L. 99–591, title I, §101(c) [title IX, §9103(3)], as amended by Pub. L. 100–26, §4(a)(1), substituted ''accrued for that month by'' for ''paid that month to'' in pars. (1)(B) and (2)(B) as amended by section 661(b) of Pub. L. 99–661, see above.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title VI, §651(c), Oct. 5, 1999, 113 Stat. 664, provided that: ''The amendments made by this section [amending this section and repealing section 5532 of Title 5, Government Organization and Employees] shall take effect on October 1, 1999.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(b) of Pub. L. 100–26 provided that: ''The amendments made by section 4 [amending this section and provisions set out as a note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in Public Laws 99–500 and 99–591 when enacted on October 18, 1986, and October 30, 1986, respectively.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–661 applicable to payments required to be made under subsec. (a) of this section for months beginning on or after Nov. 14, 1986, see section 661(d) of Pub. L. 99–661, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, §9131] of Pub. L. 99–500 and Pub. L. 99–591 effective Oct. 18, 1986, and applicable to payments required to be made under subsec. (a) of this section for months beginning on or after that date, see section 642(c) of S. 2638, as enacted into law, set out as a note under section 1465 of this title.

Amendment by section 101(c) [title IX, §9103(3)] of Pub. L. 99–500 and Pub. L. 99–591 effective Sept. 1, 1987, see section 101(c) [title IX, §9103(4)] of Pub. L. 99–500 and Pub. L. 99–591, as amended, set out as an Effective Date note under section 1014 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective Oct. 1, 1984, see section 925(b)(2) of Pub. L. 98–94, set out as a note under section 1463 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1462, 1465 of this title.

§ 1467. Investment of assets of Fund

The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–94, title IX, §925(a)(1), Sept. 24, 1983, 97 Stat. 648.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1175 of this title.

CHAPTER 75—DECEASED PERSONNEL

Subchapter		Sec.
I.	Death Investigations	1471
II.	Death Benefits	1475

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, §721(a), Oct. 5, 1999, 113 Stat. 692, substituted ''DECEASED PERSONNEL'' for ''DEATH BENEFITS'' as chapter heading and added subchapter analysis.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 213a.

SUBCHAPTER I—DEATH INVESTIGATIONS

Sec.
1471. Forensic pathology investigations.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, §721(a), Oct. 5, 1999, 113 Stat. 692, added subchapter I heading and item 1471.

§1471. Forensic pathology investigations

(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Armed Forces Medical Examiner may conduct a forensic pathology investigation to determine the cause or manner of death of a deceased person if such an investigation is determined to be justified under circumstances described in subsection (b). The investigation may include an autopsy of the decedent's remains.

(b) BASIS FOR INVESTIGATION.—(1) A forensic pathology investigation of a death under this section is justified if at least one of the circumstances in paragraph (2) and one of the circumstances in paragraph (3) exist.

(2) A circumstance under this paragraph is a circumstance under which—

(A) it appears that the decedent was killed or that, whatever the cause of the decedent's death, the cause was unnatural;

(B) the cause or manner of death is unknown;

(C) there is reasonable suspicion that the death was by unlawful means;

(D) it appears that the death resulted from an infectious disease or from the effects of a hazardous material that may have an adverse effect on the military installation or community involved; or

(E) the identity of the decedent is unknown.

(3) A circumstance under this paragraph is a circumstance under which—

(A) the decedent—

(i) was found dead or died at an installation garrisoned by units of the armed forces that is under the exclusive jurisdiction of the United States;

(ii) was a member of the armed forces on active duty or inactive duty for training;

(iii) was recently retired under chapter 61 of this title as a result of an injury or illness incurred while a member on active duty or inactive duty for training; or

(iv) was a civilian dependent of a member of the armed forces and was found dead or died outside the United States;

(B) in any other authorized Department of Defense investigation of matters which involves the death, a factual determination of the cause or manner of the death is necessary; or

(C) in any other authorized investigation being conducted by the Federal Bureau of Investigation, the National Transportation Safety Board, or any other Federal agency, an authorized official of such agency with authority to direct a forensic pathology investigation requests that the Armed Forces Medical Examiner conduct such an investigation.

(c) DETERMINATION OF JUSTIFICATION.—(1) Subject to paragraph (2), the determination that a circumstance exists under paragraph (2) of subsection (b) shall be made by the Armed Forces Medical Examiner.

(2) A commander may make the determination that a circumstance exists under paragraph (2) of subsection (b) and require a forensic pathology investigation under this section without regard to a determination made by the Armed Forces Medical Examiner if—

(A) in a case involving circumstances described in paragraph (3)(A)(i) of that subsection, the commander is the commander of the installation where the decedent was found dead or died; or

(B) in a case involving circumstances described in paragraph (3)(A)(ii) of that subsection, the commander is the commander of the decedent's unit at a level in the chain of command designated for such purpose in the regulations prescribed by the Secretary of Defense.

(d) LIMITATION IN CONCURRENT JURISDICTION CASES.—(1) The exercise of authority under this section is subject to the exercise of primary jurisdiction for the investigation of a death—

(A) in the case of a death in a State, by the State or a local government of the State; or

(B) in the case of a death in a foreign country, by that foreign country under any applicable treaty, status of forces agreement, or other international agreement between the United States and that foreign country.

(2) Paragraph (1) does not limit the authority of the Armed Forces Medical Examiner to conduct a forensic pathology investigation of a death that is subject to the exercise of primary jurisdiction by another sovereign if the investigation by the other sovereign is concluded without a forensic pathology investigation that the Armed Forces Medical Examiner considers complete. For the purposes of the preceding sentence a forensic pathology investigation is incomplete if the investigation does not include an autopsy of the decedent.

(e) PROCEDURES.—For a forensic pathology investigation under this section, the Armed Forces Medical Examiner shall—

(1) designate one or more qualified pathologists to conduct the investigation;

(2) to the extent practicable and consistent with responsibilities under this section, give due regard to any applicable law protecting religious beliefs;

(3) as soon as practicable, notify the decedent's family, if known, that the forensic pathology investigation is being conducted;

(4) as soon as practicable after the completion of the investigation, authorize release of

the decedent's remains to the family, if known; and

(5) promptly report the results of the forensic pathology investigation to the official responsible for the overall investigation of the death.

(f) DEFINITION OF STATE.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and Guam.

(Added Pub. L. 106–65, div. A, title VII, §721(a), Oct. 5, 1999, 113 Stat. 692.)

SUBCHAPTER II—DEATH BENEFITS

Sec.
1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons.
1476. Death gratuity: death after discharge or release from duty or training.
1477. Death gratuity: eligible survivors.
1478. Death gratuity: amount.
1479. Death gratuity: delegation of determinations, payments.
1480. Death gratuity: miscellaneous provisions.
1481. Recovery, care, and disposition of remains: decedents covered.
1482. Expenses incident to death.
1482a. Expenses incident to death: civilian employees serving with an armed force.
1483. Prisoners of war and interned enemy aliens.
1484. Pensioners, indigent patients, and persons who die on military reservations.
1485. Dependents of members of armed forces.
1486. Other citizens of United States.
1487. Temporary interment.
1488. Removal of remains.
1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties.
1490. Transportation of remains: certain retired members and dependents who die in military medical facilities.
1491. Funeral honors functions at funerals for veterans.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, §1048(a)(14), Dec. 28, 2001, 115 Stat. 1223, transferred subchapter II heading so as to appear before the table of sections for that subchapter.

1999—Pub. L. 106–65, div. A, title VII, §721(c)(1), Oct. 5, 1999, 113 Stat. 694, inserted ''SUBCHAPTER II—DEATH BENEFITS'' before section 1475 of this title.

Pub. L. 106–65, div. A, title V, §578(k)(2)(A), Oct. 5, 1999, 113 Stat. 631, substituted ''Funeral honors functions at funerals for veterans'' for ''Honor guard details at funerals of veterans'' in item 1491.

1998—Pub. L. 105–261, div. A, title V, §567(b)(2), Oct. 17, 1998, 112 Stat. 2031, added item 1491.

1994—Pub. L. 103–337, div. A, title X, §1070(a)(8)(B), Oct. 5, 1994, 108 Stat. 2855, substituted ''civilian'' for ''Civilian'' in item 1482a.

1993—Pub. L. 103–160, div. A, title III, §368(b), Nov. 30, 1993, 107 Stat. 1634, added item 1482a.

1991—Pub. L. 102–190, div. A, title VI, §626(b)(2), Dec. 5, 1991, 105 Stat. 1380, substituted ''Transportation of remains: certain retired members and dependents who die in military medical facilities'' for ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility'' in item 1490.

1983—Pub. L. 98–94, title X, §1032(a)(2), Sept. 24, 1983, 97 Stat. 672, added item 1490.

1980—Pub. L. 96–450, title IV, §403(b)(2), Oct. 14, 1980, 94 Stat. 1979, added item 1489.

1965—Pub. L. 89–150, §1(2), Aug. 28, 1965, 79 Stat. 585, struck out ''; death while outside United States'' from item 1485.

1958—Pub. L. 85–861, §1(32)(B), (C), Sept. 2, 1958, 72 Stat. 1455, struck out ''CARE OF THE DEAD'' from chapter heading, and added items 1475 to 1480.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 33 section 3071.

§ 1475. Death gratuity: death of members on active duty or inactive duty training and of certain other persons

(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title, immediately upon receiving official notification of the death of—

(1) a member of an armed force under his jurisdiction who dies while on active duty or while performing authorized travel to or from active duty;

(2) a Reserve of an armed force who dies while on inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

(3) any Reserve of an armed force who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform active duty for training, or inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution, under the sponsorship of an armed force or the Public Health Service), and who dies while traveling directly to or from that active duty for training or inactive duty training;

(4) any member of a reserve officers' training corps who dies while performing annual training duty under orders for a period of more than 13 days, or while performing authorized travel to or from that annual training duty; or any applicant for membership in a reserve officers' training corps who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title or while performing authorized travel to or from the place where the training or cruise is conducted; or

(5) a person who dies while traveling to or from or while at a place for final acceptance, or for entry upon active duty (other than for training), in an armed force, who has been ordered or directed to go to that place, and who—

(A) has been provisionally accepted for that duty; or

(B) has been selected, under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), for service in that armed force.

(b) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 88–647, title III, §301(1), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 96–513, title V, §511(59), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 99–661, div. A, title VI, §604(e)(1), Nov. 14, 1986, 100 Stat. 3877.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1475(a)	38:1101(2) (less last sentence, as applicable to death gratuity). 38:1101(4) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(5) (as applicable to death gratuity, less (D) (as applicable to 38:1133(a))). 38:1101(6)(A) (less clause (3) of 2d sentence, as applicable to death gratuity). 38:1001(6)(B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii)) (as applicable to 38: 1133 (a))). 38:1101(11)(E) (less last 27 words, as applicable to death gratuity). 38:1131(a).	Aug. 1, 1956, ch. 837, §§102(2) (less last sentence, as applicable to death gratuity), 102(2) (last sentence, as applicable to death gratuity), (4) (as applicable to death gratuity, less (D) (as applicable to §303(a))), (5) (as applicable to death gratuity, less (D) (as applicable to §303(a))), (6)(A) (as applicable to death gratuity), (B) (1st sentence, less last 32 words, as applicable to death gratuity, and less (ii) (as applicable to §303(a))), (11)(E) (less last 27 words, as applicable to death gratuity), 301(a), 70 Stat. 858–861, 868.
1475(b)	38:1101(2) (last sentence, as applicable to death gratuity under 38: 1131(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1131 (a)).	

In subsection (a), the word ''receiving'' is inserted for clarity. Clause (1) is substituted for 38:1101(2) (1st sentence, and clauses (A)–(C) of 2d sentence); 38:1101(4)(A), (C), and (D); and 38:1101(5)(A), (C), and (D). Clause (2) is based on the words ''inactive duty training'', in 38:1131(a). Clause (3) (less words in parentheses) is substituted for 38:1101(6)(B) (1st sentence, less last 32 words). 38:1101(6)(A) (1st sentence) is omitted as covered by section 101(31) of this title. The words in parentheses in clause (3) are substituted for 38:1101(6)(A) (2d sentence, less clause (3)). Clause (4) is substituted for 38:1101(2) (clause (D) of 2d sentence) and (5)(C). Clause (5) is substituted for 38:1101(2)(E), (11)(E) (less last 27 words). The words ''active duty for training'', in 38:1131(a), are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1986—Subsec. (a)(3). Pub. L. 99–661 struck out ''from an injury incurred by him after December 31, 1956,'' before ''while traveling directly to or from''.

1980—Subsec. (a)(5)(B). Pub. L. 96–513 substituted ''Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''Universal Military Training and Service Act (50 App. U.S.C. 451 et seq.)''.

1964—Subsec. (a)(4). Pub. L. 88–647 inserted provisions covering applicants for membership in a reserve officers' training corps while attending, or in travel to or from field training or a practice cruise.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or Secretary's designee, see section 3071 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1478, 1479, 1480 of this title.

§ 1476. Death gratuity: death after discharge or release from duty or training

(a)(1) Except as provided in section 1480 of this title, the Secretary concerned shall pay a death gratuity to or for the survivors prescribed in section 1477 of this title of each person who dies within 120 days after discharge or release from—

(A) active duty; or

(B) inactive-duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service).

(2) A death gratuity may be paid under paragraph (1) only if the Secretary of Veterans Affairs determines that the death resulted from an injury or disease incurred or aggravated during—

(A) the active duty or inactive-duty training described in paragraph (1); or

(B) travel directly to or from such duty.

(b) For the purpose of this section, the standards and procedures for determining the incurrence or aggravation of a disease or injury are those applicable under the laws relating to disability compensation administered by the Department of Veterans Affairs, except that there is no requirement under this section that any incurrence or aggravation have been in line of duty.

(c) This section does not apply to the survivors of persons who were temporary members of the Coast Guard Reserve at the time of their death.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1452; amended Pub. L. 99–661, div. A, title VI, §604(e)(2), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (2), Nov. 29, 1989, 103 Stat. 1602, 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1476(a)	38:1133(a).	Aug. 1, 1956, ch. 837, §§102(2) (last sentence, as applicable to death gratuity under §303(a)), 102(4)(D) (as applicable to §303(a)), 102(5)(D) (as applicable to §303(a)), 102(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under §303(a)), 102(6)(B)(ii) (as applicable to §303(a)), 303(a), (c), 70 Stat. 858, 859, 868, 869.
1476(b)	38:1101(4)(D) (as applicable to 38:1133(a)). 38:1101(5)(D) (as applicable to 38:1133(a)). 38:1101(6)(B)(ii) (as applicable to 38:1133(a)).	
1476(c)	38:1133(c).	
1476(d)	38:1101(2) (last sentence, as applicable to death gratuity under 38:1133(a)). 38:1101(6)(A) (clause (3) of 2d sentence, as applicable to death gratuity under 38:1133(a)).	

In subsection (a), the words ''Except as provided in section 1480 of this title'' are inserted to reflect 38:1134(a). The words ''to the survivor prescribed by section 1477 of this title'' are inserted for clarity. The words ''on or after January 1, 1957'' are omitted as executed. The words in parentheses in clause (2) are inserted to reflect 38:1101(6)(A) (2d sentence). The words ''active duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title.

In subsection (c), the word ''criteria'' is omitted as covered by the word ''standards''.

AMENDMENTS

1989—Subsec. (a)(2). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (b). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1986—Pub. L. 99–661 added subsec. (a), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsecs. (a) and (b) which read as follows:

''(a) Except as provided in section 1480 of this title, the Secretary concerned shall have a death gratuity paid to or for the survivor prescribed by section 1477 of this title of each person who dies within 120 days after his discharge or release from—

''(1) active duty; or

''(2) inactive duty training (other than work or study in connection with a correspondence course of an armed force or attendance, in an inactive status, at an educational institution under the sponsorship of an armed force or the Public Health Service);

if the Administrator of Veterans' Affairs determines that the death resulted from (A) disease or injury incurred or aggravated while performing duty under clause (1) or the travel described in subsection (b), or (B) injury incurred or aggravated while performing training under clause (2) or the travel described in subsection (b)(2).

''(b) The travel covered by subsection (a) is—

''(1) authorized travel to or from the duty described in subsection (a)(1); or

''(2) travel directly to or from the duty or training described in subsection (a)(1) or (2) that is performed by a Reserve who, when authorized or required by an authority designated by the Secretary, assumed an obligation to perform that duty or training and whose injury was incurred or aggravated after December 31, 1956.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1476, 1478, 1480 of this title; title 38 section 1323.

§ 1477. Death gratuity: eligible survivors

(a) A death gratuity payable upon the death of a person covered by section 1475 or 1476 of this title shall be paid to or for the living survivor highest on the following list:

(1) His surviving spouse.

(2) His children, as prescribed by subsection (b), in equal shares.

(3) If designated by him, any one or more of the following persons:

(A) His parents or persons in loco parentis, as prescribed by subsection (c).

(B) His brothers.

(C) His sisters.

(4) His parents or persons in loco parentis, as prescribed by subsection (c), in equal shares.

(5) His brothers and sisters in equal shares.

Clauses (3) and (5) of this subsection include brothers and sisters of the half blood and those through adoption.

(b) Subsection (a)(2) applies, without regard to age or marital status, to—

(1) legitimate children;

(2) adopted children;

(3) stepchildren who were a part of the decedent's household at the time of his death;

(4) illegitimate children of a female decedent; and

(5) illegitimate children of a male decedent—

(A) who have been acknowledged in writing signed by the decedent;

(B) who have been judicially determined, before the decedent's death, to be his children;

(C) who have been otherwise proved, by evidence satisfactory to the Secretary of Veterans Affairs, to be children of the decedent; or

(D) to whose support the decedent had been judicially ordered to contribute.

(c) Clauses (3) and (4) of subsection (a), so far as they apply to parents and persons in loco parentis, include fathers and mothers through adoption, and persons who stood in loco parentis to the decedent for a period of not less than one year at any time before he acquired a status described in section 1475 or 1476 of this title. However, only one father and one mother, or their counterparts in loco parentis, may be recognized in any case, and preference shall be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent entered that status.

(d) If an eligible survivor dies before he receives the death gratuity, it shall be paid to the living survivor next in the order prescribed by subsection (a).

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1453; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1477(a)	38:1131(c) (less words in parentheses in clause (2)). 38:1134(d).	Aug. 1, 1956, ch. 837, §§102(7) (as applicable to death gratuity), 301(c), (d), 304(d), 70 Stat. 860, 868, 869.
1477(b)	38:1101(7) (as applicable to children and as applicable to death gratuity). 38:1131(c) (words in parentheses in clause (2)).	
1477(c)	38:1101(7) (less applicability to children, as applicable to death gratuity).	
1477(d)	38:1131(d).	

In subsection (a), the words ''highest on the following list'' are substituted for the words ''first listed below'', in 38:1131(c). The words ''as prescribed by subsection (b)'' are inserted in clause (2) to reflect that subsection. The words ''or persons in loco parentis, as prescribed by subsection (c)'' are inserted in clauses (3) (A) and (4) to reflect the fact that certain persons who are not parents in the normal sense are included as eligible survivors.

In subsection (d), the words ''the death gratuity'' are substituted for the words ''the amount to which he is entitled under this subchapter''. The words ''next in the order prescribed'' are substituted for the words ''first listed under''.

AMENDMENTS

1989—Subsec. (b)(5)(C). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1476, 1478, 1480 of this title.

§ 1478. Death gratuity: amount

(a) The death gratuity payable under sections 1475 through 1477 of this title shall be $6,000. For this purpose:

(1) A person covered by subsection (a)(1) of section 1475 of this title who died while traveling to or from active duty (other than for training) is considered to have been on active duty on the date of his death.

(2) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from active duty for training is considered to have been on active duty for training on the date of his death.

(3) A person covered by subsection (a)(3) of section 1475 of this title who died while traveling directly to or from inactive duty training is considered to have been on inactive duty training on the date of his death.

(4) A person covered by subsection (a)(4) of section 1475 of this title who died while performing annual training duty or while traveling directly to or from that duty is considered to have been entitled, on the date of his death, to the pay prescribed by the first sentence of section 209(c) of title 37. A person covered by section 1475(a)(4) of this title who dies while attending field training or a practice cruise under section 2104(b)(6)(B) of this title, or while traveling directly to or from the place where the training or cruise is conducted, is considered to have been entitled, on the date of his death, to the pay prescribed by the second sentence of section 209(c) of title 37.

(5) A person covered by subsection (a)(5) of section 1475 of this title is considered to have been on active duty, on the date of his death, in the grade that he would have held on final acceptance, or entry on active duty.

(6) A person covered by section 1476 of this title is considered to have been entitled, on the date of his death, to pay at the rate to which he was entitled on the last day on which he performed duty or training.

(7) A person covered by section 1475 or 1476 of this title who performed active duty, or inactive duty training, without pay is considered to have been entitled to basic pay while performing that duty or training.

(8) A person covered by section 1475 or 1476 of this title who incurred a disability while on active duty or inactive duty training and who became entitled to basic pay while receiving hospital or medical care, including out-patient care, for that disability, is considered to have been on active duty or inactive duty training, as the case may be, for as long as he is entitled to that pay.

(b) A person who is discharged, or released from active duty (other than for training), is considered to continue on that duty during the period following the date of his discharge or release that, as determined by the Secretary concerned, is necessary for that person to go to his home by the most direct route. That period may not end before midnight of the day on which the member is discharged or released.

(Added Pub. L. 85–861, § 1(32)(A), Sept. 2, 1958, 72 Stat. 1454; amended Pub. L. 88–647, title III, § 301(2), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 89–718, § 11, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 102–190, div. A, title VI, § 652(a), Dec. 5, 1991, 105 Stat. 1387.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1478(a)	38:1101(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity). 38:1101(10)(B) (as applicable to death gratuity). 38:1101(11)(E) (last 27 words, as applicable to death gratuity). 38:1131(b). 38:1133(d). 38:1134(c).	Aug. 1, 1956, ch. 837, §§102(6)(B) (last 32 words of 1st sentence, as applicable to death gratuity), (10)(B) (as applicable to death gratuity), (11)(E) (last 27 words, as applicable to death gratuity), (12) (as applicable to death gratuity), 301(b), 303(d), 304(c), 70 Stat. 859—861, 868, 869.
1478(b)	38:1101(12) (as applicable to death gratuity).	

In subsection (a), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those types of pay. Clause (1) is inserted to reflect section 1475(a)(1) of this title. Clauses (2) and (3) are substituted for 38:1101(6)(B) (last 32 words of 1st sentence). Clause 4 is substituted for 38:1101(10)(B). The words ''to the pay prescribed by section 4385(c) or 9385(c) of this title'' are inserted to reflect those sections, which prescribe the training pay of members of reserve officers' training corps units. Clause (5) is substituted for 38:1101(11)(E) (last 27 words). Clause (6) is substituted for 38:1133(d). In clause (6), the word ''pay'' is substituted for the words ''basic pay (plus special and incentive pays)'', since the word ''pay'', as defined in section 101(27) of this title, includes those kinds of pay. Clauses (7) and (8) are substituted for 38:1134(c). In those clauses, the words ''ac-

tive duty for training'' are omitted as covered by the definition of ''active duty'' in section 101(22) of this title. In clause (8), the words ''and who became entitled to basic pay'' are substituted for the words ''and is placed in a pay status'' and the words ''is entitled to that pay'' are substituted for the words ''remains in a pay status''.

In subsection (b), the words ''on or after January 1, 1957'' are omitted as executed. The words ''(other than for training)'' are inserted, since the words ''active duty'' in the source statute did not include active duty for training. The words ''is considered to continue on that duty'' are substituted for the words ''shall be deemed to continue on active duty''. The last sentence is substituted for 38:1101(12) (last 14 words).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190, in first sentence, substituted ''1475 through 1477'' for ''1475–1477'' and ''$6,000'' for ''equal to six months' pay at the rate to which the decedent was entitled on the date of his death, except that the gratuity may not be less than $800 of more than $3,000.''

1966—Subsec. (a)(4). Pub. L. 89–718 struck out '', United States Code'' after ''title 37'' in two places.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted ''the first sentence of section 209(c) of title 37, United States Code'' for ''section 4385(c) or 9385(c) of this title'', and provided that a person covered by section 1475(a)(4) of this title who dies in field training or on a practice cruise, or in travel to or from such training or cruise, is considered entitled on the day of his death to the pay prescribed by the second sentence of section 209(c) of Title 37.

EFFECTIVE DATE OF 1991 AMENDMENT; TRANSITION PROVISION

Section 652(b) of Pub. L. 102–190 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect as of August 2, 1990.

''(2) In the case of the payment of a death gratuity under sections 1475 through 1477 of title 10, United States Code, with respect to a person who died during the period beginning on August 2, 1990, and ending on the date of the enactment of this Act [Dec. 5, 1991], the amount of the death gratuity under section 1478(a) of such title (as amended by subsection (a)) shall be reduced by the amount of any such gratuity paid with respect to such person under this section (as in effect on August 1, 1990).''

TEMPORARY INCREASE IN AMOUNT OF DEATH GRATUITY; PERSIAN GULF CONFLICT

Pub. L. 102–25, title III, §307, Apr. 6, 1991, 105 Stat. 82, provided that: ''In lieu of the amount of the death gratuity specified in section 1478(a) of title 10, United States Code, the amount of the death gratuity payable under that section shall be $6,000 for a death resulting from any injury or illness incurred during the Persian Gulf conflict or during the 180-day period beginning at the end of the Persian Gulf conflict.''

DEATH GRATUITY FOR CERTAIN PARTICIPANTS WHO DIED BETWEEN AUGUST 1, 1990, AND APRIL 6, 1991

Pub. L. 102–25, title III, §308, Apr. 6, 1991, 105 Stat. 83, required Secretary of Defense to pay death gratuity to each SGLI beneficiary of each deceased member of uniformed services who died after Aug. 1, 1990, and before Apr. 6, 1991, and whose death was in conjunction with or in support of Operation Desert Storm, or attributable to hostile action in regions other than Persian Gulf, as prescribed in regulations set forth by Secretary of Defense.

§ 1479. Death gratuity: delegation of determinations, payments

For the purpose of making immediate payments under section 1475 of this title, the Secretary concerned shall—

(1) authorize the commanding officer of a territorial command, installation, or district in which a survivor of a person covered by that section is residing to determine the beneficiary eligible for the death gratuity; and

(2) authorize a disbursing or certifying official of each of those commands, installations, or districts to make the payments to the beneficiary, or certify the payments due them, as the case may be.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 97–258, §2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1479	38:1132.	Aug. 1, 1956, ch. 837, §302, 70 Stat. 868.

The word ''territorial'' is substituted for the words ''military or naval'', since the subsection could only apply to that type of command, installation, or district. Clause (2) is substituted for 38:1132(2).

AMENDMENTS

1982—Par. (2). Pub. L. 97–258 substituted ''official'' for ''officer''.

§ 1480. Death gratuity: miscellaneous provisions

(a) A payment may not be made under sections 1475–1477 of this title if the decedent was put to death as lawful punishment for a crime or a military offense, unless he was put to death by a hostile force with which the armed forces of the United States were engaged in armed conflict.

(b) A payment may not be made under section 1476 unless the Secretary of Veterans Affairs determines that the decedent was discharged or released, as the case may be, under conditions other than dishonorable from the last period of the duty or training that he performed.

(c) For the purposes of section 1475(a)(3) of this title, the Secretary concerned shall determine whether the decedent was authorized or required to perform the duty or training and whether or not he died from injury so incurred. For the purposes of section 1476 of this title, the Secretary of Veterans Affairs shall make those determinations. In making those determinations, the Secretary concerned or the Secretary of Veterans Affairs, as the case may be, shall consider—

(1) the hour on which the Reserve began to travel directly to or from the duty or training;

(2) the hour at which he was scheduled to arrive for, or at which he ceased performing, that duty or training;

(3) the method of travel used;

(4) the itinerary;

(5) the manner in which the travel was performed; and

(6) the immediate cause of death.

In cases covered by this subsection, the burden of proof is on the claimant.

(d) Payments under sections 1475–1477 of this title shall be made from appropriations available for the payment of members of the armed force concerned.

(Added Pub. L. 85–861, §1(32)(A), Sept. 2, 1958, 72 Stat. 1455; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(2), (5), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1480(a)	38:1134(a).	Aug. 1, 1956, ch. 837, §§102(6)(B) (less 1st sentence, as applicable to death gratuity) 303(e), 304(a), (b), 70 Stat. 859, 869.
1480(b)	38:1133(e).	
1480(c)	38:1101(6)(B) (less 1st sentence, as applicable to death gratuity).	
1480(d)	38:1134(b).	

In subsection (a), the words ''was put to death'' are substituted for the words ''suffered death''. The words ''or naval'' are omitted as covered by the word ''military''.

In subsection (b), the words ''last period * * * that he performed'' are substituted for the words ''such period''.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c). Pub. L. 101–189, §1621(a)(2), (5), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' after ''section 1476 of this title, the'' and ''the Secretary concerned or the Secretary of Veterans Affairs'' for ''the Secretary or the Administrator''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1476 of this title.

§1481. Recovery, care, and disposition of remains: decedents covered

(a) The Secretary concerned may provide for the recovery, care, and disposition of the remains of the following persons:

(1) Any Regular of an armed force under his jurisdiction who dies while on active duty.

(2) A member of a reserve component of an armed force who dies while—

(A) on active duty;

(B) performing inactive-duty training;

(C) performing authorized travel directly to or from active duty or inactive-duty training;

(D) remaining overnight immediately before the commencement of inactive-duty training, or remaining overnight, between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training;

(E) hospitalized or undergoing treatment for an injury, illness, or disease incurred or aggravated while on active duty or performing inactive-duty training; or

(F) either—

(i) serving on funeral honors duty under section 12503 of this title or section 115 of title 32;

(ii) traveling directly to or from the place at which the member is to so serve; or

(iii) remaining overnight at or in the vicinity of that place before so serving, if the place is outside reasonable commuting distance from the member's residence.

[(3) Repealed. Pub. L. 99–661, div. A, title VI, §604(e)(3)(B), Nov. 14, 1986, 100 Stat. 3877.]

(4) Any member of, or applicant for membership in, a reserve officers' training corps who dies while (A) attending a training camp, (B) on an authorized practice cruise, (C) performing authorized travel to or from such a camp or cruise, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while attending such a camp, while on such a cruise, or while performing that travel.

(5) Any accepted applicant for enlistment in an armed force under his jurisdiction.

(6) Any person who has been discharged from an enlistment in an armed force under his jurisdiction while a patient in a United States hospital, and who continues to be such a patient until the date of his death.

(7) A person who—

(A) dies as a retired member of an armed force under the Secretary's jurisdiction during a continuous hospitalization of the member as a patient in a United States hospital that began while the member was on active duty for a period of more than 30 days; or

(B) is not covered by subparagraph (A) and, while in a retired status by reason of eligibility to retire under chapter 61 of this title, dies during a continuous hospitalization of the person that began while the person was on active duty as a Regular of an armed force under the Secretary's jurisdiction.

(8) Any military prisoner who dies while in his custody.

(9) To the extent authorized under section 1482(f) of this title, any retired member of an armed force who dies while outside the United States or any individual who dies outside the United States while a dependent of such a member.

(b) This section applies to each person covered by subsection (a)(1)–(7) even though he may have been temporarily absent from active duty, with or without leave, at the time of his death, unless he had been dropped from the rolls of his organization before his death.

(c) In this section, the term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 112; Pub. L. 88–647, title III, §301(3), Oct. 13, 1964, 78 Stat. 1071; Pub. L. 99–661, div. A, title VI, §604(e)(3), Nov. 14, 1986, 100 Stat. 3877; Pub. L. 103–337, div. A, title VI, §652(a)(1), Oct. 5, 1994, 108 Stat. 2793; Pub. L. 104–106, div. A, title VII, §702(b), Feb. 10, 1996, 110 Stat. 371; Pub. L. 105–85, div. A, title V, §513(e), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 105–261, div. A, title VI, §645(a), (b), Oct. 17, 1998, 112 Stat. 2049, 2050; Pub. L. 106–65, div. A, title V, §578(i)(5), Oct. 5, 1999, 113 Stat. 630; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 107–107, div. A, title V, §513(c), title VI, §638(b)(2), Dec. 28, 2001, 115 Stat. 1093, 1147.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1481(a)	5:2151 (as applicable to armed forces).	July 15, 1954, ch. 507, §§1, 2 (1st 25 words, as applicable to armed forces), 3 (less 1st 16 words, as applicable to armed forces), 4 (as applicable to armed forces), 68 Stat. 478.
	5:2152 (1st 27 words, as applicable to armed forces).	
	5:2153 (less 1st 18 words, as applicable to armed forces).	
1481(b)	5:2154 (as applicable to armed forces).	

In subsection (a), 5:2151 is omitted as covered by the revised sections of this chapter. In clauses (1), (2), (5)–(7), the words ''under his jurisdiction'' are inserted for clarity. In clause (1) the words ''regular member of an armed force, or member of an armed force without component'' are substituted for the words ''military personnel'', since all other members of the military services are covered by more specific rules set forth in clauses (2) and (7). In clauses (2) and (3), the words ''active duty for training'' are omitted as covered by the words ''active duty''. The words ''injury incurred, or disease contracted'' are substituted for the words ''injuries, illness, or disease contracted or incurred''. The words ''by law'', ''authorized'', ''proper authority'', and ''as authorized by law'' are omitted as surplusage. In clause (3), the words ''while entitled to'' are substituted for the words ''in respect of duty for which they are entitled by law to receive''. In clause (4), the words ''injury incurred, or disease contracted'' are substituted for the words ''injury, disease or illness contracted or incurred''. The words ''as authorized by law'' are omitted as surplusage. In clause (6), the word ''person'' is substituted for the words ''former enlisted members''. In clause (7), the words ''active duty for a period of more than 30 days'' are substituted for the words ''extended active duty''.

In subsection (b), the words ''This section applies to each person * * * even though'' are substituted for the words ''The benefits of this Act shall not be denied in respect of a person * * * on the ground''.

AMENDMENTS

2001—Subsec. (a)(2)(D). Pub. L. 107–107, §513(c), struck out '', if the site is outside reasonable commuting distance from the member's residence'' before semicolon at end.

Subsec. (a)(9). Pub. L. 107–107, §638(b)(2), substituted ''section 1482(f)'' for ''section 1482(g)''.

2000—Subsec. (a)(1). Pub. L. 106–398 amended directory language of Pub. L. 105–261, §645(b). See 1998 Amendment note below.

1999—Subsec. (a)(2)(F). Pub. L. 106–65 added subpar. (F).

1998—Subsec. (a)(1). Pub. L. 105–261, §645(b), as amended by Pub. L. 106–398, struck out '', or member of an armed force without component,'' after ''Regular of an armed force''.

Subsec. (a)(7). Pub. L. 105–261, §645(a), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Any retired member of an armed force under his jurisdiction who becomes a patient in a United States hospital while he is on active duty for a period of more than 30 days, and who continues to be such a patient until the date of his death.''

1997—Subsec. (a)(2)(D). Pub. L. 105–85 inserted ''remaining overnight immediately before the commencement of inactive-duty training, or'' after ''(D)''.

1996—Subsec. (a)(2)(C) to (E). Pub. L. 104–106 struck out ''or'' at end of subpar. (C), added subpar. (D), and redesignated former subpar. (D) as (E).

1994—Subsec. (a). Pub. L. 103–337, §652(a)(1)(A), substituted ''the remains of the following persons:'' for ''the remains of—'', capitalized the first letter of the first word in pars. (1) to (8), substituted a period for the last semicolon in pars. (1) to (6), substituted a period for ''; and'' in par. (7), and added par. (9).

Subsec. (c). Pub. L. 103–337, §652(a)(1)(B), added subsec. (c).

1986—Subsec. (a)(2), (3). Pub. L. 99–661 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) any Reserve of an armed force under his jurisdiction who dies while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;

''(3) any member of the Army National Guard or Air National Guard who dies while entitled to pay from the United States and while (A) on active duty, (B) performing authorized travel to or from that duty, (C) on authorized inactive-duty training, or (D) hospitalized or undergoing treatment at the expense of the United States for injury incurred, or disease contracted, while on that duty or training or while performing that travel;''.

1964—Subsec. (a)(4). Pub. L. 88–647 substituted '', or applicant for membership in, a reserve officers' training corps'' for ''the Army Reserve Officers' Training Corps, Naval Reserve Officers' Training Corps, or Air Force Reserve Officers' Training Corps''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(3)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VI, §645(c), Oct. 17, 1998, 112 Stat. 2050, provided that: ''The amendment made by subsection (a) [amending this section] applies with respect to deaths occurring on or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 652(a)(3) of Pub. L. 103–337 provided that: ''The amendments made by this subsection [amending this section and section 1482 of this title] shall apply with respect to the remains of, and incidental expenses incident to the recovery, care, and disposition of, an individual who dies after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1482, 1490 of this title.

§ 1482. Expenses incident to death

(a) Incident to the recovery, care, and disposition of the remains of any decedent covered by section 1481 of this title, the Secretary concerned may pay the necessary expenses of the following:

(1) Recovery and identification of the remains.

(2) Notification to the next of kin or other appropriate person.

(3) Preparation of the remains for burial, including cremation if requested by the person designated to direct disposition of the remains.

(4) Furnishing of a uniform or other clothing.

(5) Furnishing of a casket or urn, or both, with outside box.

(6) Hearse service.

(7) Funeral director's services.

(8) Transportation of the remains, and roundtrip transportation and prescribed allowances for an escort of one person, to the place selected by the person designated to direct disposition of the remains or, if such a selection is not made, to a national or other cemetery which is selected by the Secretary and in which burial of the decedent is authorized.

(9) Interment of the remains.

(10) Presentation of a flag of the United States to the person designated to direct disposition of the remains, except in the case of a military prisoner who dies while in the custody of the Secretary and while under a sentence that includes a discharge.

(11) Presentation of a flag of equal size to the flag presented under paragraph (10) to the parents or parent, if the person to be presented a flag under paragraph (10) is other than the parent of the decedent. For the purpose of this paragraph, the term ''parent'' includes a natural parent, a stepparent, a parent by adoption or a person who for a period of not less than one year before the death of the decedent stood in loco parentis to him, and preference under this paragraph shall be given to the persons who exercised a parental relationship at the time of, or most nearly before, the death of the decedent.

(b) If an individual pays any expense payable by the United States under this section, the Secretary concerned shall reimburse him or his representative in an amount not larger than that normally incurred by the Secretary in furnishing the supply or service concerned. If reimbursement by the United States is also authorized under another provision of law or regulation, the individual may elect under which provision to be reimbursed.

(c) Only the following persons may be designated to direct disposition of the remains of a decedent covered by this chapter:

(1) The surviving spouse of the decedent.

(2) Blood relatives of the decedent.

(3) Adoptive relatives of the decedent.

(4) If no person covered by clauses (1)–(3) can be found, a person standing in loco parentis to the decedent.

(d) When the remains of a decedent covered by section 1481 of this title, whose death occurs after January 1, 1961, are determined to be nonrecoverable, the person who would have been designated under subsection (c) to direct disposition of the remains if they had been recovered may be—

(1) presented with a flag of the United States; however, if the person designated by subsection (c) is other than a parent of the deceased member, a flag of equal size may also be presented to the parents, and

(2) reimbursed by the Secretary concerned for the necessary expenses of a memorial service.

However, the amount of the reimbursement shall be determined in the manner prescribed in subsection (b) for an interment, but may not be larger than that authorized when the United States provides the grave site. A claim for reimbursement under this subsection may be allowed only if it is presented within two years after the date of death or the date the person who would have been designated under subsection (c) to direct disposition of the remains, if they had been recovered, receives notification that the member has been reported or determined to be dead under authority of chapter 10 of title 37, whichever is later.

(e) The Secretary concerned may pay the necessary expenses for the presentation of a flag to the person designated to direct the disposition of the remains of a member of the Reserve of an armed force under his jurisdiction who dies under honorable circumstances as determined by the Secretary and who is not covered by section 1481 of this title if, at the time of such member's death, he—

(1) was a member of the Ready Reserve; or

(2) had performed at least twenty years of service as computed under section 12732 of this title and was not entitled to retired pay under section 12731 of this title.

(f) The payment of expenses incident to the recovery, care, and disposition of a decedent covered by section 1481(a)(9) of this title is limited to the payment of expenses described in paragraphs (1) through (5) of subsection (a) and air transportation of the remains from a location outside the United States to a point of entry in the United States. Such air transportation may be provided without reimbursement on a space-available basis in military or military-chartered aircraft. The Secretary concerned shall pay all other expenses authorized to be paid under this subsection only on a reimbursable basis. Amounts reimbursed to the Secretary concerned under this subsection shall be credited to appropriations available, at the time of reimbursement, for the payment of such expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113; Pub. L. 85–716, Aug. 21, 1958, 72 Stat. 708; Pub. L. 91–397, Sept. 1, 1970, 84 Stat. 837; Pub. L. 91–487, Oct. 22, 1970, 84 Stat. 1086; Pub. L. 93–292, May 28, 1974, 88 Stat. 176; Pub. L. 93–649, Jan. 8, 1975, 88 Stat. 2361; Pub. L. 101–189, div. A, title VI, §§652(a)(3), 653(a)(6), title XVI, §1622(c)(4), Nov. 29, 1989, 103 Stat. 1461, 1462, 1604; Pub. L. 103–337, div. A, title VI, §652(a)(2), title XVI, §1671(c)(8), Oct. 5, 1994, 108 Stat. 2793, 3014; Pub. L. 104–106, div. A, title XV, §1501(c)(19), Feb. 10, 1996, 110 Stat. 499; Pub. L. 107–107, div. A, title VI, §638(b)(1), Dec. 28, 2001, 115 Stat. 1147.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1482(a)	5:2152 (less 1st 27 words, as applicable to armed forces). 5:2153 (1st 18 words, as applicable to armed forces).	July 15, 1954, ch. 507, §§2 (less 1st 25 words, as applicable to armed forces), 3 (1st 16 words, as applicable to armed forces), 11 (as applicable to armed forces), 12 (as applicable to armed forces), 68 Stat. 478, 480, 481.
1482(b)	5:2161 (as applicable to armed forces).	
1482(c)	5:2162 (as applicable to armed forces).	

In subsection (a), the list of payable expenses has been rearranged to produce a generally chronological result. The words ''person designated'' are substituted for the words ''person recognized as the person.''

In subsection (a)(4), the words ''articles of'' are omitted as surplusage.

In subsection (a)(8), the word ''place'' is substituted for the words ''town or city''.

In subsection (a)(10), the words ''other than honorable'' are omitted, since a person cannot be sentenced to an honorable discharge.

In subsection (b), the words ''If an individual pays'' are substituted for the words ''In any case where expenses * * * are borne by individuals''. The second sentence of 5:2161 is omitted as executed. The last sentence is substituted for the last sentence of 5:2161.

In subsection (c), 5:2162 (1st sentence) is omitted since the Secretary has inherent authority to issue regula-

tions appropriate to exercising his statutory functions. The introductory language is substituted for 5:2162 (1st 22 words of 2d sentence). The words ''ascertained and'' are omitted as surplusage.

AMENDMENTS

2001—Subsecs. (d) to (g). Pub. L. 107–107 redesignated subsecs. (e) to (g) as (d) to (f), respectively, and struck out former subsec. (d) which read as follows: ''When, as a result of a disaster involving the multiple deaths of persons covered by section 1481 of this title, the Secretary concerned has possession of commingled remains that cannot be individually identified, and burial of those remains in a common grave in a national cemetery is considered necessary, he may, for the interment services of each known decedent, pay the expenses of round-trip transportation to the cemetery of (1) the person who would have been designated under subsection (c) to direct disposition of the remains if individual identification had been made, and (2) two additional persons selected by that person who are closely related to the decedent. The transportation expenses authorized to be paid under this subsection may not exceed the transportation allowances authorized for members of the armed forces for travel on official business, but no per diem allowance may be paid.''

1996—Subsec. (f)(2). Pub. L. 104–106 inserted ''section'' before ''12731''.

1994—Subsec. (f)(2). Pub. L. 103–337, §1671(c)(8), substituted ''section 12732'' for ''section 1332'' and ''12731'' for ''section 1331''.

Subsec. (g). Pub. L. 103–337, §652(a)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–189, §653(a)(6)(A), substituted ''expenses of the following:'' for ''expenses of—'' in introductory provisions.

Subsec. (a)(1) to (9). Pub. L. 101–189, §653(a)(6)(B), (C), in each of pars. (1) to (9), capitalized first letter of first word and substituted period for semicolon at the end.

Subsec. (a)(10). Pub. L. 101–189, §653(a)(6)(B), (D), capitalized first letter of first word and substituted period for ''; and''.

Subsec. (a)(11). Pub. L. 101–189, §653(a)(6)(B), (E), capitalized first letter of first word, substituted ''paragraph'' for ''clause'' in four places, and substituted ''decedent. For the'' for ''decedent; for the''.

Subsec. (e). Pub. L. 101–189, §§652(a)(3), 1622(c)(4), substituted ''the date of death'' for ''the effective date of this subsection, or the date of death,'' and ''chapter 10 of title 37'' for ''chapter 10, title 37'' in last sentence.

1975—Subsec. (e). Pub. L. 93–649 inserted provision relating to date of notification of death under authority of chapter 10, title 37, to that person who would have been designated under subsection (c) to direct disposition of the remains, had they been recovered.

1974—Subsec. (f). Pub. L. 93–292 added subsec. (f).

1970—Subsec. (a)(11). Pub. L. 91–397 added cl. (11).

Subsec. (e). Pub. L. 91–487 added subsec. (e).

1958—Subsec. (d). Pub. L. 85–716 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 652(a)(2) of Pub. L. 103–337 applicable with respect to remains of, and incidental expenses incident to recovery, care, and disposition of, an individual who dies after Oct. 5, 1994, see section 652(a)(3) of Pub. L. 103–337, set out as a note under section 1481 of this title.

Amendment by section 1671(c)(8) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1481, 1482a, 1490, 1513 of this title; title 37 section 411f; title 38 section 2301.

§ 1482a. Expenses incident to death: civilian employees serving with an armed force

(a) PAYMENT OF EXPENSES.—The Secretary concerned may pay the expenses incident to the death of a civilian employee who dies of injuries incurred in connection with the employee's service with an armed force in a contingency operation, or who dies of injuries incurred in connection with a terrorist incident occurring during the employee's service with an armed force, as follows:

(1) Round-trip transportation and prescribed allowances for one person to escort the remains of the employee to the place authorized under section 5742(b)(1) of title 5.

(2) Presentation of a flag of the United States to the next of kin of the employee.

(3) Presentation of a flag of equal size to the flag presented under paragraph (2) to the parents or parent of the employee, if the person to be presented a flag under paragraph (2) is other than the parent of the employee.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section. The Secretary of Homeland Security shall prescribe regulations to implement this section with regard to civilian employees of the Department of Homeland Security. Regulations under this subsection shall be uniform to the extent possible and shall provide for the Secretary's consideration of the conditions and circumstances surrounding the death of an employee and the nature of the employee's service with the armed force.

(c) DEFINITIONS.—In this section:

(1) The term ''civilian employee'' means a person employed by the Federal Government, including a person entitled to basic pay in accordance with the General Schedule provided in section 5332 of title 5 or a similar basic pay schedule of the Federal Government.

(2) The term ''contingency operation'' includes humanitarian operations, peacekeeping operations, and similar operations.

(3) The term ''parent'' has the meaning given such term in section 1482(a)(11) of this title.

(4) The term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(Added Pub. L. 103–160, div. A, title III, §368(a), Nov. 30, 1993, 107 Stat. 1633; amended Pub. L. 103–337, div. A, title X, §1070(a)(8)(A), Oct. 5, 1994, 108 Stat. 2855; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in two places.

1994—Pub. L. 103–337 substituted ''civilian'' for ''Civilian'' in section catchline.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 368(c) of Pub. L. 103–160 provided that: ''The amendments made by this section [enacting this section] shall apply with respect to the payment of incidental expenses for civilian employees who die while serving in a contingency operation that occurs after the date of the enactment of this Act [Nov. 30, 1993].''

§ 1483. Prisoners of war and interned enemy aliens

The Secretary concerned may provide for the care and disposition of the remains of prisoners of war and interned enemy aliens who die while in his custody and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to the cemetery or other place selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 113.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1483	5:2155 (as applicable to armed forces).	July 15, 1954, ch. 507, § 5 (as applicable to armed forces), 68 Stat. 479.

The list of payable expenses has been rearranged to produce a generally chronological result. The words ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. In clause (5), the words ''cemetery or other place'' are substituted for the words ''town, city, or cemetery''.

§ 1484. Pensioners, indigent patients, and persons who die on military reservations

If proper disposition of the remains cannot otherwise be made, the Secretary concerned may provide for the care and disposition of the remains of pensioners and indigent patients who die in hospitals operated by his department and of persons who die on the military reservations of that department and, incident thereto, pay the necessary expenses of—

(1) notification to the next of kin or other appropriate person;

(2) preparation of the remains for burial, including cremation;

(3) furnishing of clothing;

(4) furnishing of a casket or urn, or both, with outside box;

(5) transportation of the remains to a cemetery selected by the Secretary; and

(6) interment of the remains.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1484	5:2156 (as applicable to armed forces).	July 15, 1954, ch. 507, § 6 (as applicable to armed forces), 68 Stat. 479.

The words ''If proper disposition of the remains cannot otherwise be made'' are substituted for 5:2156 (last sentence). The words ''maintained and'' and ''incurred for'', and the words ''articles of'' in clause (3), are omitted as surplusage. The words ''of that department'' are inserted for clarity.

§ 1485. Dependents of members of armed forces

(a) The Secretary concerned may, if a dependent of a member of an armed force dies while the member is on active duty (other than for training), provide for, and pay the necessary expenses of, transporting the remains of the deceased dependent to the home of the decedent or to any other place that the Secretary determines to be the appropriate place of interment.

(b) The Secretary may furnish mortuary services and supplies, on a reimbursable basis, for persons covered by subsection (a), if (1) that action is practicable, and (2) local commercial mortuary services and supplies are not available or the Secretary believes that their cost is prohibitive.

(c) Reimbursement for mortuary services and supplies furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services and supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114; Pub. L. 89–150, § 1(1), Aug. 28, 1965, 79 Stat. 585.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1485(a)	5:2157 (1st sentence, as applicable to armed forces).	July 15, 1954, ch. 507, § 7(a) (as applicable to armed forces), 68 Stat. 479.
1485(b)	5:2157 (2d sentence, as applicable to armed forces).	
1485(c)	5:2157 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the words ''a member of an armed force'' are substituted for the words ''military personnel''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by the definition of ''United States'' in section 101(1) of this title. The words ''while traveling'' are substituted for the words ''while in transit''.

In subsection (b), the word ''services'' is substituted for the word ''facilities''.

In subsection (c), the words ''the authority of'' and ''the payments of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

AMENDMENTS

1965—Pub. L. 89–150 struck out ''; death while outside United States'' in section catchline.

Subsec. (a). Pub. L. 89–150 substituted provision for payment of transportation expenses of remains of deceased dependent of a member of an armed force while the member is on active duty (other than for training), for former provision for payment of the expenses where the member of the armed force is on active duty at a place outside the United States and the dependent dies while residing with that member or while traveling to or from that place.

§ 1486. Other citizens of United States

(a) If local commercial mortuary services and supplies are not available, or if he believes that their cost is prohibitive, the Secretary concerned may furnish those services and supplies

on a reimbursable basis in the case of any of the following citizens of the United States who die outside the United States:

(1) Any employee of a humanitarian agency accredited to the armed forces, such as the American Red Cross and the United Services Organization.

(2) Any civilian performing a service directly for the Secretary because of employment by an agency under a contract with the Secretary.

(3) Any officer or member of a crew of a merchant vessel operated by or for the United States through the Secretary.

(4) Any person who is on duty with an armed force under the jurisdiction of the Secretary and who is paid from non-appropriated funds.

(5) Upon the specific request of the Department of State, any person not otherwise covered by this section.

(6) Any dependent of a person who is covered by this section, if the dependent is living outside the United States with that person at the time of death.

(b) The Secretary may furnish transportation of the remains of persons covered by this section, on a reimbursable basis, to a port of entry in the United States.

(c) Reimbursement for services, supplies, and transportation furnished under this section shall be collected and credited to appropriations available, at the time of reimbursement, for those services, supplies, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 114.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1486(a)	5:2158 (1st sentence as applicable to armed forces).	July 15, 1954, ch. 507, §8 (as applicable to armed forces), 68 Stat. 480.
1486(b)	5:2158 (2d sentence, as applicable to armed forces).	
1486(c)	5:2158 (less 1st and 2d sentences, as applicable to armed forces).	

In subsection (a), the word ''services'' is substituted for the word ''facilities''. The words ''the continental limits * * * or in Alaska'' are omitted as covered by definition of ''United States'' in section 101(1) of this title. In clause (3), the word ''masters'' is omitted as covered by the word ''officer''. In clause (4), the words ''under the jurisdiction of the Secretary'' are inserted for clarity. In clause (5), the words ''otherwise covered'' are substituted for the words ''specifically enumerated''. In clause (6), the words ''who is covered'' are substituted for the words ''within the classes enumerated''. The words ''outside the United States'' are substituted for the word ''abroad''. The words ''that person'' are substituted for the words ''the supporting citizen concerned''.

In subsection (b), the word ''Government'' is omitted as surplusage.

In subsection (c), the words ''the authority of'' are omitted as surplusage. The words ''at the time of reimbursement'' are substituted for the word ''current''.

§ 1487. Temporary interment

Whenever necessary for the temporary interment of remains pending transportation under this chapter to a designated cemetery, the Secretary concerned may acquire, and provide for the maintenance of, grave sites in commercial cemeteries, or he may acquire the right to use such grave sites for burial purposes. If the death occurs outside the United States and a temporary commercial grave site is not available on a reasonable basis, the Secretary may acquire land, or the right to use land, necessary for the temporary interment of the remains under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1487	5:2159 (as applicable to armed forces).	July 15, 1954, ch. 507, §9 (as applicable to armed forces), 68 Stat. 480.

The words ''as authorized by this chapter, section 103a(c) of this Title, and section 224 of Title 42'', ''by purchase or otherwise'', ''care and'', and ''single or multiple'' are omitted as surplusage. The word ''continental'' is omitted as covered by the definition of ''United States'' in section 101(1) of this title.

§ 1488. Removal of remains

If a cemetery on a military reservation, including an installation cemetery, has been or is to be discontinued, the Secretary concerned may provide for the removal of remains from that cemetery to any other cemetery. With respect to any deceased member of an armed force under his jurisdiction whose last service terminated honorably by death or otherwise, the Secretary may also provide for the removal of the remains from a place of temporary interment, or from an abandoned grave or cemetery, to a national cemetery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1488	5:2160 (as applicable to armed forces).	July 15, 1954, ch. 507, §10 (as applicable to armed forces), 68 Stat. 480.

The words ''national cemeteries, other installation cemeteries, or'' are omitted as surplusage.

§ 1489. Death gratuity: members and employees dying outside the United States while assigned to intelligence duties

(a) The Secretary of Defense may pay a gratuity to the surviving dependents of any member of the armed forces or of any employee of the Department of Defense—

(1) who—

(A) is assigned to duty with an intelligence component of the Department of Defense and whose identity as such a member or employee is disguised or concealed; or

(B) is within a category of individuals determined by the Secretary of Defense to be engaged in clandestine intelligence activities; and

(2) who after October 14, 1980 dies as a result of injuries (excluding disease) sustained outside the United States and whose death—

(A) resulted from hostile or terrorist activities; or

(B) occurred in connection with an intelligence activity having a substantial element of risk.

(b) Any payment under subsection (a)—

(1) shall be in an amount equal to the amount of the annual basic pay or salary of the member or employee concerned at the time of death;

(2) shall be considered a gift and shall be in lieu of payment of any lesser death gratuity authorized by this chapter or any other Federal law; and

(3) shall be made under the same conditions as apply to payments authorized by section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973).

(Added Pub. L. 96–450, title IV, §403(b)(1), Oct. 14, 1980, 94 Stat. 1979; amended Pub. L. 97–22, §11(a)(6), July 10, 1981, 95 Stat. 138; Pub. L. 98–94, title XII, §1268(9), Sept. 24, 1983, 97 Stat. 706; Pub. L. 99–145, title XIII, §1303(a)(12), Nov. 8, 1985, 99 Stat. 739.)

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted ''armed forces'' for ''Armed Forces''.

1983—Subsec. (a)(2). Pub. L. 98–94 substituted ''October 14, 1980'' for ''the date of the enactment of this section''.

1981—Subsec. (b)(3). Pub. L. 97–22 substituted ''section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973)'' for ''section 14 of the Act of August 1, 1956 (22 U.S.C. 2679a)''.

§1490. Transportation of remains: certain retired members and dependents who die in military medical facilities

(a) Subject to subsection (b), when a member entitled to retired or retainer pay or equivalent pay, or a dependent of such a member, dies while properly admitted under chapter 55 of this title to a medical facility of the armed forces located in the United States, the Secretary concerned may transport the remains, or pay the cost of transporting the remains, of the decedent to the place of burial of the decedent.

(b)(1) Transportation provided under this section may not be to a place outside the United States or to a place further from the place of death than the decedent's last place of permanent residence, and any amount paid under this section may not exceed the cost of transportation from the place of death to the decedent's last place of permanent residence.

(2) Transportation of the remains of a decedent may not be provided under this section if such transportation is authorized by sections 1481 and 1482 of this title or by chapter 23 of title 38.

(c) In this section:

(1) The term ''United States'' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.

(2) The term ''dependent'' has the meaning given such term in section 1072(2) of this title.

(Added Pub. L. 98–94, title X, §1032(a)(1), Sept. 24, 1983, 97 Stat. 671; amended Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. A, title VI, §626(a), (b)(1), Dec. 5, 1991, 105 Stat. 1379, 1380.)

AMENDMENTS

1991—Pub. L. 102–190, §626(b)(1), amended section catchline generally. Prior to amendment, section catchline read as follows: ''Transportation of remains of members entitled to retired or retainer pay who die in a military medical facility''.

Subsec. (a). Pub. L. 102–190, §626(a)(1), inserted '', or a dependent of such a member,'' after ''equivalent pay''.

Subsec. (c). Pub. L. 102–190, §626(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''In this section, the term 'United States' includes the Commonwealth of Puerto Rico and the territories and possessions of the United States.''

1987—Subsec. (c). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE

Section 1032(b) of Pub. L. 98–94 provided that: ''Section 1490 of title 10, United States Code, as added by subsection (a), shall apply with respect to the transportation of the remains of persons dying after September 30, 1983.''

§1491. Funeral honors functions at funerals for veterans

(a) AVAILABILITY OF FUNERAL HONORS DETAIL ENSURED.—The Secretary of Defense shall ensure that, upon request, a funeral honors detail is provided for the funeral of any veteran.

(b) COMPOSITION OF FUNERAL HONORS DETAILS.—(1) The Secretary of each military department shall ensure that a funeral honors detail for the funeral of a veteran consists of two or more persons.

(2) At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces (other than members in a retired status), at least one of whom shall be a member of the armed force of which the veteran was a member. The remainder of the detail may consist of members of the armed forces (including members in a retired status), or members of veterans organizations or other organizations approved for purposes of this section under regulations prescribed by the Secretary of Defense. Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.

(c) CEREMONY.—A funeral honors detail shall, at a minimum, perform at the funeral a ceremony that includes the folding of a United States flag and presentation of the flag to the veteran's family and the playing of Taps. Unless a bugler is a member of the detail, the funeral honors detail shall play a recorded version of Taps using audio equipment which the detail shall provide if adequate audio equipment is not otherwise available for use at the funeral.

(d) SUPPORT.—(1) To support a funeral honors detail under this section, the Secretary of a military department may provide the following:

(A) For a person who participates in a funeral honors detail (other than a person who is a member of the armed forces not in a retired status or an employee of the United States), either transportation (or reimbursement for transportation) and expenses or the daily stipend prescribed under paragraph (2).

(B) For members of a veterans organization or other organization referred to in subsection (b)(2) and for members of the armed forces in a retired status, materiel, equipment, and training.

(C) For members of a veterans organization or other organization referred to in subsection (b)(2), articles of clothing that, as determined

by the Secretary concerned, are appropriate as a civilian uniform for persons participating in a funeral honors detail.

(2) The Secretary of Defense shall prescribe annually a flat rate daily stipend for purposes of paragraph (1)(A). Such stipend shall be set at a rate so as to encompass typical costs for transportation and other miscellaneous expenses for persons participating in funeral honors details who are members of the armed forces in a retired status and other persons who are not members of the armed forces or employees of the United States.

(3) A stipend paid under this subsection to a member of the armed forces in a retired status is in addition to any compensation to which the member is entitled under section 435(a)(2) of title 37 and any other compensation to which the member may be entitled.

(e) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive any requirement provided in or pursuant to this section when the Secretary considers it necessary to do so to meet the requirements of war, national emergency, or a contingency operation or other military requirements. The authority to make such a waiver may not be delegated to an official of a military department other than the Secretary of the military department and may not be delegated within the Office of the Secretary of Defense to an official at a level below Under Secretary of Defense.

(2) Before or promptly after granting a waiver under paragraph (1), the Secretary shall transmit a notification of the waiver to the Committees on Armed Services of the Senate and House of Representatives.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. Those regulations shall include the following:

(1) A system for selection of units of the armed forces and other organizations to provide funeral honors details.

(2) Procedures for responding and coordinating responses to requests for funeral honors details.

(3) Procedures for establishing standards and protocol.

(4) Procedures for providing training and ensuring quality of performance.

(g) ANNUAL REPORT.—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than January 31 of each year beginning with 2001 and ending with 2005 on the experience of the Department of Defense under this section. Each such report shall provide data on the number of funerals supported under this section, the cost for that support, shown by manpower and other cost factors, and the number and costs of funerals supported by each participating organization. The data in the report shall be presented in a standard format, regardless of military department or other organization.

(h) VETERAN DEFINED.—In this section, the term ''veteran'' means a decedent who—

(1) served in the active military, naval, or air service (as defined in section 101(24) of title 38) and who was discharged or released therefrom under conditions other than dishonorable; or

(2) was a member or former member of the Selected Reserve described in section 2301(f) of title 38.

(Added Pub. L. 105–261, div. A, title V, §567(b)(1), Oct. 17, 1998, 112 Stat. 2030; amended Pub. L. 106–65, div. A, title V, §578(a)(1), (b)–(e), (k)(1), title X, §1067(1), Oct. 5, 1999, 113 Stat. 625–627, 630, 774; Pub. L. 107–107, div. A, title V, §§561(a), 564, Dec. 28, 2001, 115 Stat. 1119, 1120; Pub. L. 107–314, div. A, title V, §571, Dec. 2, 2002, 116 Stat. 2556.)

AMENDMENTS

2002—Subsec. (d)(1). Pub. L. 107–314, §571(1), designated existing provisions as par. (1) and substituted '' To support a'' for ''To provide a''. Former par. (1) redesignated (1)(A).

Subsec. (d)(1)(A). Pub. L. 107–314, §571(2), redesignated par. (1) as subpar. (A) of par. (1) and amended it generally. Prior to amendment, text read as follows: ''Transportation, or reimbursement for transportation, and expenses for a person who participates in the funeral honors detail and is not a member of the armed forces or an employee of the United States.''

Subsec. (d)(1)(B). Pub. L. 107–314, §571(3), redesignated par. (2) as subpar. (B) of par. (1), substituted ''For'' for ''Materiel, equipment, and training for'', and inserted ''and for members of the armed forces in a retired status, materiel, equipment, and training'' before period at end.

Subsec. (d)(1)(C). Pub. L. 107–314, §571(4), redesignated par. (3) as subpar. (C) of par. (1), substituted ''For'' for ''Articles of clothing for'', and inserted '', articles of clothing'' after ''subsection (b)(2)''.

Subsec. (d)(2), (3). Pub. L. 107–314, §571(5), added pars. (2) and (3). Former pars. (2) and (3) redesignated subpars. (B) and (C), respectively, of par. (1).

2001—Subsec. (b)(2). Pub. L. 107–107, §561(a), inserted ''(other than members in a retired status)'' after ''members of the armed forces'' in first sentence and inserted ''(including members in a retired status),'' after ''members of the armed forces'' in second sentence.

Subsec. (d)(3). Pub. L. 107–107, §564, added par. (3).

1999—Pub. L. 106–65, §578(k)(1), substituted ''Funeral honors functions at funerals for veterans'' for ''Honor guard details at funerals of veterans'' as section catchline.

Subsec. (a). Pub. L. 106–65, §578(a)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''The Secretary of a military department shall, upon request, provide an honor guard detail (or ensure that an honor guard detail is provided) for the funeral of any veteran that occurs after December 31, 1999.''

Subsec. (b). Pub. L. 106–65, §578(b), substituted ''Funeral Honors Details'' for ''Honor Guard Details'' in subsec. (b) heading, designated existing provisions as par. (1), substituted ''a funeral honors detail'' for ''an honor guard detail'' and ''two or more persons.'' for ''not less than three persons and (unless a bugler is part of the detail) has the capability to play a recorded version of Taps.'', redesignated subsec. (c) as subsec. (b)(2), struck out former subsec. (c) heading ''Persons Forming Honor Guards'', and substituted ''At least two members of the funeral honors detail for a veteran's funeral shall be members of the armed forces, at least one of whom shall be a member of the armed force of which the veteran was a member. The remainder of the detail'' for ''An honor guard detail'' and ''Each member of the armed forces in the detail shall wear the uniform of the member's armed force while serving in the detail.'' for ''The Secretary of a military department may provide transportation, or reimbursement for transportation, and expenses for a person who participates in an

honor guard detail under this section and is not a member of the armed forces or an employee of the United States.''

Subsec. (c). Pub. L. 106–65, §578(c)(2), added subsec. (c). Former subsec. (c) redesignated subsec. (b)(2).

Subsecs. (d), (e). Pub. L. 106–65, §578(c)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 106–65, §578(d), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall by regulation establish a system for selection of units of the armed forces and other organizations to provide honor guard details. The system shall place an emphasis on balancing the funeral detail workload among the units and organizations providing honor guard details in an equitable manner as they are able to respond to requests for such details in terms of geographic proximity and available resources. The Secretary shall provide in such regulations that the armed force in which a veteran served shall not be considered to be a factor when selecting the military unit or other organization to provide an honor guard detail for the funeral of the veteran.''

Pub. L. 106–65, §578(c)(1), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Pub. L. 106–65, §578(c)(1), redesignated subsec. (e) as (g).

Subsec. (h). Pub. L. 106–65, §578(e), amended heading and text of subsec. (h) generally. Prior to amendment, text read as follows: ''In this section, the term 'veteran' has the meaning given that term in section 101(2) of title 38.''

Pub. L. 106–65, §578(c)(1), redesignated subsec. (f) as (h).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §578(a)(2), Oct. 5, 1999, 113 Stat. 625, provided that: ''Section 1491(a) of title 10, United States Code, as amended by paragraph (1), shall apply with respect to funerals that occur after December 31, 1999.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 115, 1588, 12503, 12552 of this title; title 32 section 115; title 37 section 435.

CHAPTER 76—MISSING PERSONS

Sec.
1501. System for accounting for missing persons.
1502. Missing persons: initial report.
1503. Actions of Secretary concerned; initial board inquiry.
1504. Subsequent board of inquiry.
1505. Further review.
1506. Personnel files.
1507. Recommendation of status of death.
1508. Judicial review.
1509. Preenactment cases.
1510. Applicability to Coast Guard.
1511. Return alive of person declared missing or dead.
1512. Effect on State law.
1513. Definitions.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title V, §578(f)(2)(B), Sept. 23, 1996, 110 Stat. 2537, struck out '', special interest'' after ''Preenactment'' in item 1509.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 655 of this title; title 37 sections 552, 553.

§1501. System for accounting for missing persons

(a) OFFICE FOR MISSING PERSONNEL.—(1) The Secretary of Defense shall establish within the Office of the Secretary of Defense an office to have responsibility for Department of Defense policy relating to missing persons. Such office shall be known as the Defense Prisoner of War/Missing Personnel Office. Subject to the authority, direction, and control of the Secretary of Defense, the responsibilities of the office shall include—

(A) policy, control, and oversight within the Department of Defense of the entire process for investigation and recovery related to missing persons (including matters related to search, rescue, escape, and evasion); and

(B) coordination for the Department of Defense with other departments and agencies of the United States on all matters concerning missing persons.

(2) In carrying out the responsibilities of the office established under this subsection, the head of the office shall be responsible for the coordination for such purposes within the Department of Defense among the military departments, the Joint Staff, and the commanders of the combatant commands.

(3) The office shall establish policies, which shall apply uniformly throughout the Department of Defense, for personnel recovery (including search, rescue, escape, and evasion).

(4) The office shall establish procedures to be followed by Department of Defense boards of inquiry, and by officials reviewing the reports of such boards, under this chapter.

(5)(A) The Secretary of Defense shall ensure that the office is provided sufficient military and civilian personnel, and sufficient funding, to enable the office to fully perform the complete range of missions of the office. The Secretary shall ensure that Department of Defense programming, planning, and budgeting procedures are structured so as to ensure compliance with the preceding sentence for each fiscal year.

(B) For any fiscal year, the number of military and civilian personnel assigned or detailed to the office may not be less than the number requested in the President's budget for fiscal year 2003, unless a level below such number is expressly required by law.

(C) For any fiscal year, the level of funding allocated to the office within the Department of Defense may not be below the level requested for such purposes in the President's budget for fiscal year 2003, unless such a level of funding is expressly required by law.

(b) UNIFORM DOD PROCEDURES.—(1) The Secretary of Defense shall prescribe procedures, to apply uniformly throughout the Department of Defense, for—

(A) the determination of the status of persons described in subsection (c); and

(B) for the systematic, comprehensive, and timely collection, analysis, review, dissemination, and periodic update of information related to such persons.

(2) Such procedures may provide for the delegation by the Secretary of Defense of any responsibility of the Secretary under this chapter to the Secretary of a military department.

(3) Such procedures shall be prescribed in a single directive applicable to all elements of the Department of Defense.

(4) As part of such procedures, the Secretary may provide for the extension, on a case-by-case basis, of any time limit specified in section 1502, 1503, or 1504 of this title. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. Subsequent extensions may be provided on the same basis.

(c) COVERED PERSONS.—(1) Section 1502 of this title applies in the case of any member of the armed forces on active duty—

(A) who becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(2) Section 1502 of this title applies in the case of any other person who is a citizen of the United States and a civilian officer or employee of the Department of Defense or (subject to paragraph (3)) an employee of a contractor of the Department of Defense—

(A) who serves in direct support of, or accompanies, the armed forces in the field under orders and becomes involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action; and

(B) whose status is undetermined or who is unaccounted for.

(3) The Secretary of Defense shall determine, with regard to a pending or ongoing military operation, the specific employees, or groups of employees, of contractors of the Department of Defense to be considered to be covered by this subsection.

(d) PRIMARY NEXT OF KIN.—The individual who is primary next of kin of any person described in subsection (c) may for purposes of this chapter designate another individual to act on behalf of that individual as primary next of kin. The Secretary concerned shall treat an individual so designated as if the individual designated were the primary next of kin for purposes of this chapter. A designation under this subsection may be revoked at any time by the person who made the designation.

(e) TERMINATION OF APPLICABILITY OF PROCEDURES WHEN MISSING PERSON IS ACCOUNTED FOR.—The provisions of this chapter relating to boards of inquiry and to the actions by the Secretary concerned on the reports of those boards shall cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

(f) SECRETARY CONCERNED.—In this chapter, the term ''Secretary concerned'' includes, in the case of a civilian officer or employee of the Department of Defense or an employee of a contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the officer or employee or contracting with the contractor, as the case may be.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 336; amended Pub. L. 104–201, div. A, title V, §578(a)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, §599(a)(1), Nov. 18, 1997, 111 Stat. 1766; Pub. L. 106–65, div. A, title X, §1066(a)(13), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title V, §551, Dec. 2, 2002, 116 Stat. 2551.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–314, §551(b), inserted ''Such office shall be known as the Defense Prisoner of War/Missing Personnel Office.'' after first sentence.

Subsec. (a)(5). Pub. L. 107–314, §551(a), added par. (5).

1999—Subsec. (d). Pub. L. 106–65 substituted ''described'' for ''prescribed'' in first sentence.

1997—Subsec. (c). Pub. L. 105–85, §599(a)(1)(A), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) COVERED PERSONS.—Section 1502 of this title applies in the case of any member of the armed forces on active duty who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.''

Subsec. (f). Pub. L. 105–85, §599(a)(1)(B), added subsec. (f).

1996—Subsec. (c). Pub. L. 104–201, §578(a)(1)(A), substituted ''applies in the case of'' for ''applies in the case of the following persons:'' and ''any member'' for ''(1) Any member'' and struck out par. (2) which read as follows: ''Any civilian employee of the Department of Defense, and any employee of a contractor of the Department of Defense, who serves with or accompanies the armed forces in the field under orders who becomes involuntarily absent as a result of a hostile action, or under circumstances suggesting that the involuntary absence is a result of a hostile action, and whose status is undetermined or who is unaccounted for.''

Subsec. (f). Pub. L. 104–201, §578(a)(1)(B), struck out subsec. (f) which read as follows:

''(f) SECRETARY CONCERNED.—In this chapter, the term 'Secretary concerned' includes, in the case of a civilian employee of the Department of Defense or contractor of the Department of Defense, the Secretary of the military department or head of the element of the Department of Defense employing the employee or contracting with the contractor, as the case may be.''

RECOVERY AND IDENTIFICATION OF REMAINS OF CERTAIN WORLD WAR II SERVICEMEN LOST IN PACIFIC THEATER OF OPERATIONS

Pub. L. 106–65, div. A, title V, §576, Oct. 5, 1999, 113 Stat. 624, as amended by Pub. L. 107–107, div. A, title X, §1048(g)(3), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(a) RECOVERY OF REMAINS.—(1) The Secretary of Defense shall make every reasonable effort to search for, recover, and identify the remains of United States servicemen lost in the Pacific theater of operations during World War II (including in New Guinea) while engaged in flight operations.

''(2) In order to provide high priority to carrying out paragraph (1), the Secretary of Defense shall consider increasing the number of personnel assigned to the Central Identification Laboratory, Hawaii.

''(3) Not later than September 30, 2000, the Secretary shall submit to Congress a report setting forth the efforts made to accomplish the objectives specified in paragraph (1). The Secretary shall include in the report a statement of the backlog of cases at the Central Identification Laboratory, Hawaii, shown by conflict, and the status of the joint manning plan required by section 566(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2029).

''(b) DIPLOMATIC INTERVENTION IF REQUIRED.—The Secretary of State, upon request by the Secretary of Defense, shall work with officials of governments of nations in the area that was covered by the Pacific theater of operations of World War II to seek to overcome any diplomatic obstacles that may impede the Secretary of Defense from carrying out the objectives specified in subsection (a)(1).''

POW/MIA INTELLIGENCE ANALYSIS

Pub. L. 105–85, div. A, title IX, § 934, Nov. 18, 1997, 111 Stat. 1866, as amended by Pub. L. 106–65, div. A, title X, § 1066(c)(4), Oct. 5, 1999, 113 Stat. 773, provided that:

''(a) INTELLIGENCE ANALYSIS.—The Director of Central Intelligence, in consultation with the Secretary of Defense, shall provide intelligence analysis on matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) to all departments and agencies of the Federal Government involved in such matters.

''(b) USE OF INTELLIGENCE IN ANALYSIS OF POW/MIA CASES IN DEPARTMENT OF DEFENSE.—The Secretary of Defense shall ensure that the Defense Prisoner of War/Missing Personnel Office of the Department of Defense takes into full account all intelligence regarding matters concerning prisoners of war and missing persons (as defined in chapter 76 of title 10, United States Code) in analyzing cases involving such persons.''

CONGRESSIONAL STATEMENT OF PURPOSE

Section 569(a) of Pub. L. 104–106 provided that: ''The purpose of this section [enacting this chapter and section 655 of this title, amending sections 552, 553, 555, and 556 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 5561 of Title 5, Government Organization and Employees] is to ensure that any member of the Armed Forces (and any Department of Defense civilian employee or contractor employee who serves with or accompanies the Armed Forces in the field under orders) who becomes missing or unaccounted for is ultimately accounted for by the United States and, as a general rule, is not declared dead solely because of the passage of time.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1505, 1510 of this title.

§ 1502. Missing persons: initial report

(a) PRELIMINARY ASSESSMENT AND RECOMMENDATION BY COMMANDER.—After receiving information that the whereabouts and status of a person described in section 1501(c) of this title is uncertain and that the absence of the person may be involuntary, the commander of the unit, facility, or area to or in which the person is assigned shall make a preliminary assessment of the circumstances. If, as a result of that assessment, the commander concludes that the person is missing, the commander shall—

(1) recommend that the person be placed in a missing status; and

(2) not later than 10 days after receiving such information, transmit a report containing that recommendation to the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title.

(b) TRANSMISSION OF ADVISORY COPY TO THEATER COMPONENT COMMANDER.—When transmitting a report under subsection (a)(2) recommending that a person be placed in a missing status, the commander transmitting that report shall transmit an advisory copy of the report to the theater component commander with jurisdiction over the missing person.

(c) SAFEGUARDING AND FORWARDING OF RECORDS.—A commander making a preliminary assessment under subsection (a) with respect to a missing person shall (in accordance with procedures prescribed under section 1501 of this title) safeguard and forward for official use any information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104–201, div. A, title V, § 578(b)(1), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(b)(1), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsecs. (b), (c). Pub. L. 105–85 added subsec. (b) and redesignated former subsec. (b) as (c).

1996—Subsec. (a)(2). Pub. L. 104–201, § 578(b)(1)(A), substituted ''10 days'' for ''48 hours'' and ''Secretary concerned'' for ''theater component commander with jurisdiction over the missing person''.

Subsec. (b). Pub. L. 104–201, § 578(b)(1)(D), struck out at end ''The theater component commander through whom the report with respect to the missing person is transmitted under subsection (b) shall ensure that all pertinent information relating to the whereabouts and status of the missing person that results from the preliminary assessment or from actions taken to locate the person is properly safeguarded to avoid loss, damage, or modification.''

Pub. L. 104–201, § 578(b)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''TRANSMISSION THROUGH THEATER COMPONENT COMMANDER.—Upon reviewing a report under subsection (a) recommending that a person be placed in a missing status, the theater component commander shall ensure that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person. Not later than 14 days after receiving the report, the theater component commander shall forward the report to the Secretary of Defense or the Secretary concerned in accordance with procedures prescribed under section 1501(b) of this title. The theater component commander shall include with such report a certification that all necessary actions are being taken, and all appropriate assets are being used, to resolve the status of the missing person.''

Subsec. (c). Pub. L. 104–201, § 578(b)(1)(C), redesignated subsec. (c) as (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1501, 1503, 1504 of this title; title 37 section 555.

§ 1503. Actions of Secretary concerned; initial board inquiry

(a) DETERMINATION BY SECRETARY.—Upon receiving a recommendation under section 1502(a) of this title that a person be placed in a missing status, the Secretary receiving the recommendation shall review the recommendation and, not later than 10 days after receiving such recommendation, shall appoint a board under this section to conduct an inquiry into the whereabouts and status of the person.

(b) INQUIRIES INVOLVING MORE THAN ONE MISSING PERSON.—If it appears to the Secretary who appoints a board under this section that the absence or missing status of two or more persons is factually related, the Secretary may appoint a single board under this section to conduct the inquiry into the whereabouts and status of all such persons.

(c) COMPOSITION.—(1) A board appointed under this section to inquire into the whereabouts and status of a person shall consist of at least one individual described in paragraph (2) who has experience with and understanding of military operations or activities similar to the operation or activity in which the person disappeared.

(2) An individual referred to in paragraph (1) is the following:

(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.

(3) An individual may be appointed as a member of a board under this section only if the individual has a security clearance that affords the individual access to all information relating to the whereabouts and status of the missing persons covered by the inquiry.

(4) A Secretary appointing a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, who has expertise in the law relating to missing persons, the determination of death of such persons, and the rights of family members and dependents of such persons.

(d) DUTIES OF BOARD.—A board appointed to conduct an inquiry into the whereabouts and status of a missing person under this section shall—

(1) collect, develop, and investigate all facts and evidence relating to the disappearance or whereabouts and status of the person;

(2) collect appropriate documentation of the facts and evidence covered by the board's investigation;

(3) analyze the facts and evidence, make findings based on that analysis, and draw conclusions as to the current whereabouts and status of the person; and

(4) with respect to each person covered by the inquiry, recommend to the Secretary who appointed the board that—

(A) the person be placed in a missing status; or

(B) the person be declared to have deserted, to be absent without leave, or (subject to the requirements of section 1507 of this title) to be dead.

(e) BOARD PROCEEDINGS.—During the proceedings of an inquiry under this section, a board shall—

(1) collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (whether classified or unclassified) relating to the whereabouts and status of each person covered by the inquiry;

(2) gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions; and

(3) maintain a record of its proceedings.

(f) COUNSEL FOR MISSING PERSON.—(1) The Secretary appointing a board to conduct an inquiry under this section shall appoint counsel to represent each person covered by the inquiry or, in a case covered by subsection (b), one counsel to represent all persons covered by the inquiry. Counsel appointed under this paragraph may be referred to as ''missing person's counsel'' and represents the interests of the person covered by the inquiry (and not any member of the person's family or other interested parties). The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) To be appointed as a missing person's counsel, a person must—

(A) have the qualifications specified in section 827(b) of this title (article 27(b) of the Uniform Code of Military Justice) for trial counsel or defense counsel detailed for a general court-martial;

(B) have a security clearance that affords the counsel access to all information relating to the whereabouts and status of the person or persons covered by the inquiry; and

(C) have expertise in the law relating to missing persons, the determination of the death of such persons, and the rights of family members and dependents of such persons.

(3) A missing person's counsel—

(A) shall have access to all facts and evidence considered by the board during the proceedings under the inquiry for which the counsel is appointed;

(B) shall observe all official activities of the board during such proceedings;

(C) may question witnesses before the board; and

(D) shall monitor the deliberations of the board.

(4) A missing person's counsel shall assist the board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded. The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

(5) A missing person's counsel shall review the report of the board under subsection (h) and submit to the Secretary concerned who appointed the board an independent review of that report. That review shall be made an official part of the record of the board.

(g) ACCESS TO PROCEEDINGS.—The proceedings of a board during an inquiry under this section shall be closed to the public (including, with respect to the person covered by the inquiry, the primary next of kin, other members of the immediate family, and any other previously designated person of the person).

(h) REPORT.—(1) A board appointed under this section shall submit to the Secretary who appointed the board a report on the inquiry carried out by the board. The report shall include—

(A) a discussion of the facts and evidence considered by the board in the inquiry;

(B) the recommendation of the board under subsection (d) with respect to each person covered by the report; and

(C) disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations under subparagraph (B).

(2) A board shall submit a report under this subsection with respect to the inquiry carried

out by the board not later than 30 days after the date of the appointment of the board to carry out the inquiry. The report may include a classified annex.

(3) The Secretary of Defense shall prescribe procedures for the release of a report submitted under this subsection with respect to a missing person. Such procedures shall provide that the report may not be made public (except as provided for in subsection (j)) until one year after the date on which the report is submitted.

(i) DETERMINATION BY SECRETARY.—(1) Not later than 30 days after receiving a report from a board under subsection (h), the Secretary receiving the report shall review the report.

(2) In reviewing a report under paragraph (1), the Secretary shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report, including whether the person shall—

(A) be declared to be missing;

(B) be declared to have deserted;

(C) be declared to be absent without leave; or

(D) be declared to be dead.

(j) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 30 days after the date on which the Secretary concerned makes a determination of the status of a person under subsection (i), the Secretary shall take reasonable actions to—

(1) provide to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person—

(A) an unclassified summary of the unit commander's report with respect to the person under section 1502(a) of this title; and

(B) the report of the board (including the names of the members of the board) under subsection (h); and

(2) inform each individual referred to in paragraph (1) that the United States will conduct a subsequent inquiry into the whereabouts and status of the person on or about one year after the date of the first official notice of the disappearance of the person, unless information becomes available sooner that may result in a change in status of the person.

(k) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (i) shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 338; amended Pub. L. 104–201, div. A, title V, §578(a)(2), (b)(2), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, §599(a)(2), (d), Nov. 18, 1997, 111 Stat. 1767, 1769.)

AMENDMENTS

1997—Subsec. (c)(1). Pub. L. 105–85, §599(a)(2)(A), substituted ''one individual described in paragraph (2)'' for ''one military officer''.

Subsec. (c)(2) to (4). Pub. L. 105–85, §599(a)(2)(B), (C), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (f)(1). Pub. L. 105–85, §599(d)(1), inserted at end ''The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.''

Subsec. (f)(4). Pub. L. 105–85, §599(d)(2), inserted at end ''The primary next of kin of a missing person and any other previously designated person of the missing person shall have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.''

1996—Subsec. (a). Pub. L. 104–201, §578(b)(2), substituted ''section 1502(a)'' for ''section 1502(b)''.

Subsec. (c)(1). Pub. L. 104–201, §578(a)(2)(A), substituted ''one military officer'' for ''one individual described in paragraph (2)''.

Subsec. (c)(2) to (4). Pub. L. 104–201, §578(a)(2)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''An individual referred to in paragraph (1) is the following:

''(A) A military officer, in the case of an inquiry with respect to a member of the armed forces.

''(B) A civilian, in the case of an inquiry with respect to a civilian employee of the Department of Defense or of a contractor of the Department of Defense.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1501, 1504, 1507 of this title.

§1504. Subsequent board of inquiry

(a) ADDITIONAL BOARD.—If information that may result in a change of status of a person covered by a determination under section 1503(i) of this title becomes available within one year after the date of the transmission of a report with respect to the person under section 1502(a)(2) of this title, the Secretary concerned shall appoint a board under this section to conduct an inquiry into the information.

(b) DATE OF APPOINTMENT.—The Secretary concerned shall appoint a board under this section to conduct an inquiry into the whereabouts and status of a missing person on or about one year after the date of the transmission of a report concerning the person under section 1502(a)(2) of this title.

(c) COMBINED INQUIRIES.—If it appears to the Secretary concerned that the absence or status of two or more persons is factually related, the Secretary may appoint one board under this section to conduct the inquiry into the whereabouts and status of such persons.

(d) COMPOSITION.—(1) A board appointed under this section shall be composed of at least three members as follows:

(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

(B) In the case of a board that will inquire into the whereabouts and status of one or

more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

(ii) such members of the armed forces as the Secretary considers advisable.

(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.

(2) The Secretary concerned shall designate one member of a board appointed under this section as president of the board. The president of the board shall have a security clearance that affords the president access to all information relating to the whereabouts and status of each person covered by the inquiry.

(3) One member of each board appointed under this subsection shall be an individual who—

(A) has an occupational specialty similar to that of one or more of the persons covered by the inquiry; and

(B) has an understanding of and expertise in the type of official activities that one or more such persons were engaged in at the time such person or persons disappeared.

(4) The Secretary who appoints a board under this subsection shall, for purposes of providing legal counsel to the board, assign to the board a judge advocate, or appoint to the board an attorney, with the same qualifications as specified in section 1503(c)(4) of this title.

(e) DUTIES OF BOARD.—A board appointed under this section to conduct an inquiry into the whereabouts and status of a person shall—

(1) review the reports with respect to the person transmitted under section 1502(a)(2) of this title and submitted under section 1503(h) of this title;

(2) collect and evaluate any document, fact, or other evidence with respect to the whereabouts and status of the person that has become available since the determination of the status of the person under section 1503 of this title;

(3) draw conclusions as to the whereabouts and status of the person;

(4) determine on the basis of the activities under paragraphs (1) and (2) whether the status of the person should be continued or changed; and

(5) submit to the Secretary concerned a report describing the findings and conclusions of the board, together with a recommendation for a determination by the Secretary concerning the whereabouts and status of the person.

(f) COUNSEL FOR MISSING PERSONS.—(1) When the Secretary concerned appoints a board to conduct an inquiry under this section, the Secretary shall appoint counsel to represent each person covered by the inquiry. The identity of counsel appointed under this paragraph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.

(2) A person appointed as counsel under this subsection shall meet the qualifications and have the duties set forth in section 1503(f) of this title for a missing person's counsel appointed under that section.

(3) The review of the report of a board on an inquiry that is submitted by such counsel shall be made an official part of the record of the board with respect to the inquiry.

(g) ATTENDANCE OF FAMILY MEMBERS AND CERTAIN OTHER INTERESTED PERSONS AT PROCEEDINGS.—(1) With respect to any person covered by an inquiry under this section, the primary next of kin, other members of the immediate family, and any other previously designated person of the person may attend the proceedings of the board during the inquiry.

(2) The Secretary concerned shall take reasonable actions to notify each individual referred to in paragraph (1) of the opportunity to attend the proceedings of a board. Such notice shall be provided not less than 60 days before the first meeting of the board.

(3) An individual who receives notice under paragraph (2) shall notify the Secretary of the intent, if any, of that individual to attend the proceedings of the board not later than 21 days after the date on which the individual receives the notice.

(4) Each individual who notifies the Secretary under paragraph (3) of the individual's intent to attend the proceedings of the board—

(A) in the case of an individual who is the primary next of kin or the previously designated person, may attend the proceedings of the board with private counsel;

(B) shall have access to the personnel file of the missing person, to unclassified reports, if any, of the board appointed under section 1503 of this title to conduct the inquiry into the whereabouts and status of the person, and to any other unclassified information or documents relating to the whereabouts and status of the person;

(C) shall be afforded the opportunity to present information at the proceedings of the board that such individual considers to be relevant to those proceedings; and

(D) subject to paragraph (5), shall be given the opportunity to submit in writing an objection to any recommendation of the board under subsection (i) as to the status of the missing person.

(5)(A) Individuals who wish to file objections under paragraph (4)(D) to any recommendation of the board shall—

(i) submit a letter of intent to the president of the board not later than 15 days after the

date on which the recommendations are made; and

(ii) submit to the president of the board the objections in writing not later than 30 days after the date on which the recommendations are made.

(B) The president of a board shall include any objections to a recommendation of the board that are submitted to the president of the board under subparagraph (A) in the report of the board containing the recommendation under subsection (i).

(6) An individual referred to in paragraph (1) who attends the proceedings of a board under this subsection shall not be entitled to reimbursement by the United States for any costs (including travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) incurred by that individual in attending such proceedings.

(h) AVAILABILITY OF INFORMATION TO BOARDS.—(1) In conducting proceedings in an inquiry under this section, a board may secure directly from any department or agency of the United States any information that the board considers necessary in order to conduct the proceedings.

(2) Upon written request from the president of a board, the head of a department or agency of the United States shall release information covered by the request to the board. In releasing such information, the head of the department or agency shall—

(A) declassify to an appropriate degree classified information; or

(B) release the information in a manner not requiring the removal of markings indicating the classified nature of the information.

(3)(A) If a request for information under paragraph (2) covers classified information that cannot be declassified, or if the classification markings cannot be removed before release from the information covered by the request, or if the material cannot be summarized in a manner that prevents the release of classified information, the classified information shall be made available only to the president of the board making the request and the counsel for the missing person appointed under subsection (f).

(B) The president of a board shall close to persons who do not have appropriate security clearances the proceeding of the board at which classified information is discussed. Participants at a proceeding of a board at which classified information is discussed shall comply with all applicable laws and regulations relating to the disclosure of classified information. The Secretary concerned shall assist the president of a board in ensuring that classified information is not compromised through board proceedings.

(i) RECOMMENDATION ON STATUS.—(1) Upon completion of an inquiry under this section, a board shall make a recommendation as to the current whereabouts and status of each missing person covered by the inquiry.

(2) A board may not recommend under paragraph (1) that a person be declared dead unless in making the recommendation the board complies with section 1507 of this title.

(j) REPORT.—A board appointed under this section shall submit to the Secretary concerned a report on the inquiry carried out by the board, together with the evidence considered by the board during the inquiry. The report may include a classified annex.

(k) ACTIONS BY SECRETARY CONCERNED.—(1) Not later than 30 days after the receipt of a report from a board under subsection (j), the Secretary shall review—

(A) the report;

(B) the review of the report submitted to the Secretary under subsection (f)(3) by the counsel for each person covered by the report; and

(C) the objections, if any, to the report submitted to the president of the board under subsection (g)(5).

(2) In reviewing a report under paragraph (1) (including the objections described in subparagraph (C) of that paragraph), the Secretary concerned shall determine whether or not the report is complete and free of administrative error. If the Secretary determines that the report is incomplete, or that the report is not free of administrative error, the Secretary may return the report to the board for further action on the report by the board.

(3) Upon a determination by the Secretary that a report reviewed under this subsection is complete and free of administrative error, the Secretary shall make a determination concerning the status of each person covered by the report.

(*l*) REPORT TO FAMILY MEMBERS AND OTHER INTERESTED PERSONS.—Not later than 60 days after the date on which the Secretary concerned makes a determination with respect to a missing person under subsection (k), the Secretary shall—

(1) provide the report reviewed by the Secretary in making the determination to the primary next of kin, the other members of the immediate family, and any other previously designated person of the person; and

(2) in the case of a person who continues to be in a missing status, inform each individual referred to in paragraph (1) that the United States will conduct a further investigation into the whereabouts and status of the person as specified in section 1505 of this title.

(m) TREATMENT OF DETERMINATION.—Any determination of the status of a missing person under subsection (k) shall supersede the determination of the status of the person under section 1503 of this title and shall be treated as the determination of the status of the person by all departments and agencies of the United States.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 341; amended Pub. L. 104–201, div. A, title V, §578(a)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, §599(a)(3), (d)(1), title X, §1073(a)(30), Nov. 18, 1997, 111 Stat. 1767, 1769, 1902.)

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–85, §599(a)(3)(A), substituted ''as follows:'' and subpars. (A) to (C) for ''who are officers having the grade of major or lieutenant commander or above.''

Subsec. (d)(4). Pub. L. 105–85, §599(a)(3)(B), substituted ''section 1503(c)(4)'' for ''section 1503(c)(3)''.

Subsec. (f)(1). Pub. L. 105–85, §599(d)(1), inserted at end ''The identity of counsel appointed under this para-

graph for a missing person shall be made known to the missing person's primary next of kin and any other previously designated person of the person.''

Subsec. (i)(1). Pub. L. 105–85, §1073(a)(30), substituted ''this section'' for ''this subsection''.

1996—Subsec. (d)(1). Pub. L. 104–201, §578(a)(3)(A), added text of par. (1) and struck out former text of par. (1) which read as follows: ''A board appointed under this section shall be composed of at least three members as follows:

''(A) In the case of a board that will inquire into the whereabouts and status of one or more members of the armed forces (and no civilians described in subparagraph (B)), the board shall be composed of officers having the grade of major or lieutenant commander or above.

''(B) In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the Department of Defense or contractors of the Department of Defense (and no members of the armed forces), the board shall be composed of—

''(i) not less than three employees of the Department of Defense whose rate of annual pay is equal to or greater than the rate of annual pay payable for grade GS–13 of the General Schedule under section 5332 of title 5; and

''(ii) such members of the armed forces as the Secretary considers advisable.

''(C) In the case of a board that will inquire into the whereabouts and status of both one or more members of the armed forces and one or more civilians described in subparagraph (B)—

''(i) the board shall include at least one officer described in subparagraph (A) and at least one employee of the Department of Defense described in subparagraph (B)(i); and

''(ii) the ratio of such officers to such employees on the board shall be roughly proportional to the ratio of the number of members of the armed forces who are subjects of the board's inquiry to the number of civilians who are subjects of the board's inquiry.''

Subsec. (d)(4). Pub. L. 104–201, §578(a)(3)(B), substituted ''section 1503(c)(3)'' for ''section 1503(c)(4)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1501, 1505, 1507, 1508, 1509 of this title.

§ 1505. Further review

(a) SUBSEQUENT REVIEW.—The Secretary concerned shall conduct subsequent inquiries into the whereabouts and status of any person determined by the Secretary under section 1504 of this title to be in a missing status.

(b) FREQUENCY OF SUBSEQUENT REVIEWS.—The Secretary concerned shall conduct inquiries into the whereabouts and status of a person under subsection (a) upon receipt of information that may result in a change of status of the person. The Secretary concerned shall appoint a board to conduct such inquiries.

(c) ACTION UPON DISCOVERY OR RECEIPT OF INFORMATION.—(1) Whenever any United States intelligence agency or other element of the Government finds or receives information that may be related to a missing person, the information shall promptly be forwarded to the office established under section 1501 of this title.

(2) Upon receipt of information under paragraph (1), the head of the office established under section 1501 of this title shall as expeditiously as possible ensure that the information is added to the appropriate case file for that missing person and notify (A) the designated missing person's counsel for that person, and (B) the primary next of kin and any previously designated person for the missing person of the existence of that information.

(3) The head of the office established under section 1501 of this title, with the advice of the missing person's counsel notified under paragraph (2), shall determine whether the information is significant enough to require a board review under this section.

(d) CONDUCT OF PROCEEDINGS.—If it is determined that such a board should be appointed, the appointment of, and activities before, a board appointed under this section shall be governed by the provisions of section 1504 of this title with respect to a board appointed under that section.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 345; amended Pub. L. 104–201, div. A, title V, §578(c), Sept. 23, 1996, 110 Stat. 2536.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

''(1) In the case of a missing person who was last known to be alive or who was last suspected of being alive, the Secretary shall appoint a board to conduct an inquiry with respect to a person under this subsection—

''(A) on or about three years after the date of the initial report of the disappearance of the person under section 1502(a) of this title; and

''(B) not later than every three years thereafter.

''(2) In addition to appointment of boards under paragraph (1), the Secretary shall appoint a board to conduct an inquiry with respect to a missing person under this subsection upon receipt of information that could result in a change of status of the missing person. When the Secretary appoints a board under this paragraph, the time for subsequent appointments of a board under paragraph (1)(B) shall be determined from the date of the receipt of such information.

''(3) The Secretary is not required to appoint a board under paragraph (1) with respect to the disappearance of any person—

''(A) more than 30 years after the initial report of the disappearance of the missing person required by section 1502 of this title; or

''(B) if, before the end of such 30-year period, the missing person is accounted for.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1504, 1507, 1508, 1509 of this title.

§ 1506. Personnel files

(a) INFORMATION IN FILES.—Except as provided in subsections (b), (c), and (d), the Secretary concerned shall, to the maximum extent practicable, ensure that the personnel file of a missing person contains all information in the possession of the United States relating to the disappearance and whereabouts and status of the person.

(b) CLASSIFIED INFORMATION.—(1) The Secretary concerned may withhold classified information from a personnel file under this section. If the Secretary concerned withholds classified information from a personnel file, the Secretary shall ensure that the file contains the following:

(A) A notice that the withheld information exists.

(B) A notice of the date of the most recent review of the classification of the withheld information.

(2)(A) If classified information withheld under this subsection refers to one or more unnamed missing persons, the Secretary shall ensure that notice of that withheld information, and notice of the date of the most recent review of the classification of that withheld information, is made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person of all missing persons from the conflict or period of war to which the classified information pertains.

(B) For purposes of subparagraph (A), information shall be considered to be made reasonably accessible if placed in a separate and distinct file that is available for review by persons specified in subparagraph (A) upon the request of any such person either to review the separate file or to review the personnel file of the missing person concerned.

(c) PROTECTION OF PRIVACY.—The Secretary concerned shall maintain personnel files under this section, and shall permit disclosure of or access to such files, in accordance with the provisions of section 552a of title 5 and with other applicable laws and regulations pertaining to the privacy of the persons covered by the files.

(d) PRIVILEGED INFORMATION.—(1) The Secretary concerned shall withhold from personnel files under this section, as privileged information, debriefing reports provided by missing persons returned to United States control which are obtained under a promise of confidentiality made for the purpose of ensuring the fullest possible disclosure of information.

(2) If a debriefing report contains non-derogatory information about the status and whereabouts of a missing person other than the source of the debriefing report or about unnamed missing persons, the Secretary concerned shall prepare an extract of the non-derogatory information. That extract, following a review by the source of the debriefing report, shall be placed in the personnel file of each missing person named in the debriefing report in such a manner as to protect the identity of the source providing the information. Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.

(3) Whenever the Secretary concerned withholds a debriefing report, or part of a debriefing report, from a personnel file under this subsection, the Secretary shall ensure that the file contains a notice that withheld information exists.

(e) AVAILABILITY OF INFORMATION.—The Secretary concerned shall, upon request, make available the contents of the personnel file of a missing person to the primary next of kin, the other members of the immediate family, or any other previously designated person of the person.

(f) NONDISCLOSURE OF CERTAIN INFORMATION.—A record of the content of a debriefing of a missing person returned to United States control during the period beginning on July 8, 1959, and ending on February 10, 1996, that was conducted by an official of the United States authorized to conduct the debriefing is privileged information and, notwithstanding sections 552 and 552a of title 5, may not be disclosed, in whole or in part, under either such section. However, this subsection does not limit the responsibility of the Secretary concerned under paragraphs (2) and (3) of subsection (d) to place extracts of non-derogatory information, or a notice of the existence of such information, in the personnel file of a missing person.

(Added Pub. L. 104–106, div. A, title V, §569(b)(1), Feb. 10, 1996, 110 Stat. 346; amended Pub. L. 104–201, div. A, title V, §578(d), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, §599(f), (g), Nov. 18, 1997, 111 Stat. 1770; Pub. L. 106–65, div. A, title V, §575, Oct. 5, 1999, 113 Stat. 624; Pub. L. 107–107, div. A, title V, §573, Dec. 28, 2001, 115 Stat. 1122.)

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107 designated existing provisions as subpar. (A), inserted ''of all missing persons from the conflict or period of war to which the classified information pertains'' before period at end, and added subpar. (B).

1999—Subsec. (f). Pub. L. 106–65 added subsec. (f).

1997—Subsec. (b). Pub. L. 105–85, §599(f), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (d)(2). Pub. L. 105–85, §599(g)(1), inserted ''or about unnamed missing persons'' after ''the debriefing report'' in first sentence, substituted ''each missing person named in the debriefing report'' for ''the missing person'' in second sentence, and inserted at end ''Any information contained in the extract of the debriefing report that pertains to unnamed missing persons shall be made reasonably accessible to the primary next of kin, members of the immediate family, and the previously designated person.''

Subsec. (d)(3). Pub. L. 105–85, §599(g)(2), inserted '', or part of a debriefing report,'' after ''a debriefing report''.

1996—Subsecs. (e), (f). Pub. L. 104–201 redesignated subsec. (f) as (e) and struck out former subsec. (e) which read as follows: ''WRONGFUL WITHHOLDING.—Except as provided in subsections (a) through (d), any person who knowingly and willfully withholds from the personnel file of a missing person any information relating to the disappearance or whereabouts and status of a missing person shall be fined as provided in title 18 or imprisoned not more than one year, or both.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1509 of this title.

§1507. Recommendation of status of death

(a) REQUIREMENTS RELATING TO RECOMMENDATION.—A board appointed under section 1503, 1504, or 1505 of this title may not recommend that a person be declared dead unless—

(1) credible evidence exists to suggest that the person is dead;

(2) the United States possesses no credible evidence that suggests that the person is alive; and

(3) representatives of the United States—

(A) have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and

(B) have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain

access to such records, such representatives are not granted such access).

(b) SUBMITTAL OF INFORMATION ON DEATH.—If a board appointed under section 1503, 1504, or 1505 of this title makes a recommendation that a missing person be declared dead, the board shall include in the report of the board with respect to the person under that section the following:

(1) A detailed description of the location where the death occurred.

(2) A statement of the date on which the death occurred.

(3) A description of the location of the body, if recovered.

(4) If the body has been recovered and is not identifiable through visual means, a certification by a forensic pathologist that the body recovered is that of the missing person. In determining whether to make such a certification, the forensic pathologist shall consider, as determined necessary by the Secretary of the military department concerned, additional evidence and information provided by appropriate specialists in forensic medicine or other appropriate medical sciences.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 347; amended Pub. L. 104–201, div. A, title V, § 578(e), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(c), Nov. 18, 1997, 111 Stat. 1768.)

AMENDMENTS

1997—Subsec. (b)(3), (4). Pub. L. 105–85 added pars. (3) and (4).

1996—Subsec. (b)(3), (4). Pub. L. 104–201 struck out pars. (3) and (4) which read as follows:

''(3) A description of the location of the body, if recovered.

''(4) If the body has been recovered and is not identifiable through visual means, a certification by a practitioner of an appropriate forensic science that the body recovered is that of the missing person.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1504 of this title.

§ 1508. Judicial review

(a) RIGHT OF REVIEW.—A person who is the primary next of kin (or the previously designated person) of a person who is the subject of a finding described in subsection (b) may obtain judicial review in a United States district court of that finding, but only on the basis of a claim that there is information that could affect the status of the missing person's case that was not adequately considered during the administrative review process under this chapter. Any such review shall be as provided in section 706 of title 5.

(b) FINDINGS FOR WHICH JUDICIAL REVIEW MAY BE SOUGHT.—Subsection (a) applies to the following findings:

(1) A finding by a board appointed under section 1504 or 1505 of this title that a missing person is dead.

(2) A finding by a board appointed under section 1509 of this title that confirms that a missing person formerly declared dead is in fact dead.

(c) SUBSEQUENT REVIEW.—Appeals from a decision of the district court shall be taken to the appropriate United States court of appeals and to the Supreme Court as provided by law.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348.)

§ 1509. Preenactment cases

(a) REVIEW OF STATUS.—(1) If new information (as defined in paragraph (2)) is found or received that may be related to one or more unaccounted for persons described in subsection (b) (whether or not such information specifically relates (or may specifically relate) to any particular such unaccounted for person), that information shall be provided to the Secretary of Defense. Upon receipt of such information, the Secretary shall ensure that the information is treated under paragraphs (2) and (3) of section 1505(c) of this title and under section 1505(d) of this title in the same manner as information received under paragraph (1) of section 1505(c) of this title. For purposes of the applicability of other provisions of this chapter in such a case, each such unaccounted for person to whom the new information may be related shall be considered to be a missing person.

(2) For purposes of this subsection, new information is information that is credible and that—

(A) is found or received after November 18, 1997, by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title; or

(B) is identified after November 18, 1997, in records of the United States as information that could be relevant to the case of one or more unaccounted for persons described in subsection (b).

(b) CASES ELIGIBLE FOR REVIEW.—The cases eligible for review under this section are the following:

(1) With respect to the Korean conflict, any unaccounted for person who was classified as a prisoner of war or as missing in action during that conflict and who (A) was known to be or suspected to be alive at the end of that conflict, or (B) was classified as missing in action and whose capture was possible.

(2) With respect to the Cold War, any unaccounted for person who was engaged in intelligence operations (such as aerial ''ferret'' reconnaissance missions over and around the Soviet Union and China) during the Cold War.

(3) With respect to the Indochina war era, any unaccounted for person who was classified as a prisoner of war or as missing in action during the Indochina conflict.

(c) DEFINITIONS.—In this section:

(1) The term ''Korean conflict'' means the period beginning on June 27, 1950, and ending on January 31, 1955.

(2) The term ''Cold War'' means the period beginning on September 2, 1945, and ending on August 21, 1991.

(3) The term ''Indochina war era'' means the period beginning on July 8, 1959, and ending on May 15, 1975.

(d) ESTABLISHMENT OF PERSONNEL FILES FOR KOREAN CONFLICT CASES.—The Secretary of De-

fense shall ensure that a personnel file is established for each unaccounted for person who is described in subsection (b)(1) if the Secretary possesses information relevant to that person's status. In the case of a person described in subsection (b)(1) for whom a personnel file does not exist, the Secretary shall create a personnel file for such person upon receipt of new information as provided in subsection (a). Each such file shall be handled in accordance with, and subject to the provisions of, section 1506 of this title in the same manner as applies to the file of a missing person.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 348; amended Pub. L. 104–201, div. A, title V, § 578(f)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2537; Pub. L. 105–85, div. A, title V, § 599(e), Nov. 18, 1997, 111 Stat. 1769; Pub. L. 106–65, div. A, title X, § 1066(a)(14), Oct. 5, 1999, 113 Stat. 771.)

AMENDMENTS

1999—Subsec. (a)(2)(A), (B). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998''.

1997—Subsec. (a). Pub. L. 105–85, § 599(e)(1), added subsec. (a) and struck out former subsec. (a) which read as follows:

''(a) REVIEW OF STATUS.—In the case of an unaccounted for person covered by section 1501(c) of this title who is described in subsection (b), if new information that could change the status of that person is found or received by a United States intelligence agency, by a Department of Defense agency, or by a person specified in section 1504(g) of this title, that information shall be provided to the Secretary of Defense with a request that the Secretary evaluate the information in accordance with sections 1505(c) and 1505(d) of this title.''

Subsec. (d). Pub. L. 105–85, § 599(e)(2), added subsec. (d).

1996—Pub. L. 104–201, § 578(f)(2)(A), struck out '', special interest'' after ''Preenactment'' in section catchline.

Subsecs. (c), (d). Pub. L. 104–201, § 578(f)(1), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows:

''(c) SPECIAL RULE FOR PERSONS CLASSIFIED AS 'KIA/BNR'.—In the case of a person described in subsection (b) who was classified as 'killed in action/body not recovered', the case of that person may be reviewed under this section only if the new information referred to in subsection (a) is compelling.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1508, 1513 of this title.

§ 1510. Applicability to Coast Guard

(a) DESIGNATED OFFICER TO HAVE RESPONSIBILITY.—The Secretary of Homeland Security shall designate an officer of the Department of Homeland Security to have responsibility within the Department of Homeland Security for matters relating to missing persons who are members of the Coast Guard.

(b) PROCEDURES.—The Secretary of Homeland Security shall prescribe procedures for the determination of the status of persons described in section 1501(c) of this title who are members of the Coast Guard and for the collection, analysis, review, and update of information on such persons. To the maximum extent practicable, the procedures prescribed under this section shall be similar to the procedures prescribed by the Secretary of Defense under section 1501(b) of this title.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 1511. Return alive of person declared missing or dead

(a) PAY AND ALLOWANCES.—Any person (except for a person subsequently determined to have been absent without leave or a deserter) in a missing status or declared dead under subchapter VII of chapter 55 of title 5 or chapter 10 of title 37 or by a board appointed under this chapter who is found alive and returned to the control of the United States shall be paid for the full time of the absence of the person while given that status or declared dead under the law and regulations relating to the pay and allowances of persons returning from a missing status.

(b) EFFECT ON GRATUITIES PAID AS A RESULT OF STATUS.—Subsection (a) shall not be interpreted to invalidate or otherwise affect the receipt by any person of a death gratuity or other payment from the United States on behalf of a person referred to in subsection (a) before February 10, 1996.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349; amended Pub. L. 107–107, div. A, title X, § 1048(c)(10), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''February 10, 1996'' for ''the date of the enactment of this chapter''.

§ 1512. Effect on State law

(a) NONPREEMPTION OF STATE AUTHORITY.—Nothing in this chapter shall be construed to invalidate or limit the power of any State court or administrative entity, or the power of any court or administrative entity of any political subdivision thereof, to find or declare a person dead for purposes of such State or political subdivision.

(b) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 349.)

§ 1513. Definitions

In this chapter:

(1) The term ''missing person'' means—

(A) a member of the armed forces on active duty who is in a missing status; or

(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves in direct support of, or accompanies, the armed forces in the field under orders and who is in a missing status.

Such term includes an unaccounted for person described in section 1509(b) of this title who is required by section 1509(a)(1) of this title to be considered a missing person.

(2) The term ''missing status'' means the status of a missing person who is determined to be absent in a category of any of the following:

(A) Missing.

(B) Missing in action.

(C) Interned in a foreign country.

(D) Captured.

(E) Beleaguered.

(F) Besieged.

(G) Detained in a foreign country against that person's will.

(3) The term ''accounted for'', with respect to a person in a missing status, means that—

(A) the person is returned to United States control alive;

(B) the remains of the person are recovered and, if not identifiable through visual means as those of the missing person, are identified as those of the missing person by a practitioner of an appropriate forensic science; or

(C) credible evidence exists to support another determination of the person's status.

(4) The term ''primary next of kin'', in the case of a missing person, means the individual authorized to direct disposition of the remains of the person under section 1482(c) of this title.

(5) The term ''member of the immediate family'', in the case of a missing person, means the following:

(A) The spouse of the person.

(B) A natural child, adopted child, stepchild, or illegitimate child (if acknowledged by the person or parenthood has been established by a court of competent jurisdiction) of the person, except that if such child has not attained the age of 18 years, the term means a surviving parent or legal guardian of such child.

(C) A biological parent of the person, unless legal custody of the person by the parent has been previously terminated by reason of a court decree or otherwise under law and not restored.

(D) A brother or sister of the person, if such brother or sister has attained the age of 18 years.

(E) Any other blood relative or adoptive relative of the person, if such relative was given sole legal custody of the person by a court decree or otherwise under law before the person attained the age of 18 years and such custody was not subsequently terminated before that time.

(6) The term ''previously designated person'', in the case of a missing person, means an individual designated by the person under section 655 of this title for purposes of this chapter.

(7) The term ''classified information'' means any information the unauthorized disclosure of which (as determined under applicable law and regulations) could reasonably be expected to damage the national security.

(8) The term ''theater component commander'' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.

(Added Pub. L. 104–106, div. A, title V, § 569(b)(1), Feb. 10, 1996, 110 Stat. 350; amended Pub. L. 104–201, div. A, title V, § 578(a)(4), (b)(3), Sept. 23, 1996, 110 Stat. 2536; Pub. L. 105–85, div. A, title V, § 599(a)(4), (b)(2), Nov. 18, 1997, 111 Stat. 1768; Pub. L. 106–65, div. A, title X, § 1066(a)(15), Oct. 5, 1999, 113 Stat. 771.)

AMENDMENTS

1999—Par. (1). Pub. L. 106–65 substituted ''who is required by section 1509(a)(1) of this title to be considered a missing person'' for '', under the circumstances specified in the last sentence of section 1509(a) of this title'' in concluding provisions.

1997—Par. (1). Pub. L. 105–85, § 599(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'missing person' means a member of the armed forces on active duty who is in a missing status.''

Par. (8). Pub. L. 105–85, § 599(b)(2), added par. (8).

1996—Par. (1). Pub. L. 104–201, § 578(a)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'missing person' means—

''(A) a member of the Armed Forces on active duty who is in a missing status; or

''(B) a civilian employee of the Department of Defense or an employee of a contractor of the Department of Defense who serves with or accompanies the Armed Forces in the field under orders and who is in a missing status.''

Par. (8). Pub. L. 104–201, § 578(b)(3), struck out par. (8) which read as follows: ''The term 'theater component commander' means, with respect to any of the combatant commands, an officer of any of the armed forces who (A) is commander of all forces of that armed force assigned to that combatant command, and (B) is directly subordinate to the commander of the combatant command.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 404*l*.

CHAPTER 77—POSTHUMOUS COMMISSIONS AND WARRANTS

Sec.
1521. Posthumous commissions.
1522. Posthumous warrants.
1523. Posthumous commissions and warrants: effect on pay and allowances.
1524. Posthumous commissions and warrants: determination of date of death.

AMENDMENTS

1966—Pub. L. 89–718, § 12(a)(2), Nov. 2, 1966, 80 Stat. 1117, added item 1524.

§ 1521. Posthumous commissions

(a) The President may issue, or have issued, an appropriate commission in the name of a member of the armed forces who, after September 8, 1939—

(1) was appointed to a commissioned grade but was unable to accept the appointment because of death in line of duty;

(2) successfully completed the course at an officers' training school and was recommended for appointment to a commissioned grade by the commanding officer or officer in charge of the school but was unable to accept the appointment because of death in line of duty; or

(3) was officially recommended for appointment or promotion to a commissioned grade but was unable to accept the promotion or appointment because of death in line of duty.

(b) A commission issued under subsection (a) shall issue as of the date of the appointment, recommendation, or official recommendation, as the case may be, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade, and branch if any, in which posthumously commissioned, from the date of the appointment, recommendation, or official recommendation to the date of his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 115; Pub. L. 106–398, §1 [[div. A], title V, §505], Oct. 30, 2000, 114 Stat. 1654, 1654A–102.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1521(a)	10:491a (words before semicolon). 10:491b (words before semicolon). 10:491c (words before semicolon). 34:285b (words before semicolon). 34:285c (words before semicolon). 34:285d (words before semicolon).	July 28, 1942, ch. 528, §§1–3, 56 Stat. 722, 723; July 17, 1953, ch. 220, §1(a)–(c), 67 Stat. 176.
1521(b)	10:491a (words after semicolon). 10:491b (words after semicolon). 10:491c (words after semicolon). 34:285b (words after semicolon). 34:285c (words after semicolon). 34:285d (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:491a, 491b, 491c, and 34:285b, 285c, and 285d. The words ''armed forces'' are substituted for the words ''military service of the United States'', in 10:491a, 491b, and 491c; and the words ''naval service of the United States'', in 34:285b, 285c, and 285d (which did not appear in the source statute for the revised section, as amended by the Act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words ''to such grade'', in 10:491a and 34:285b, ''receive or'', in 10:491c and 34:285d, are omitted as surplusage.

In subsection (b), the words ''if any'' are substituted for words ''of the service''. The words ''appointment and'', in 10:491b and 34:285c, and ''appointment or promotion and'', in 10:491c and 34:285d, are omitted as surplusage.

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title V, §505(a)], struck out ''and the recommendation for whose appointment or promotion was approved by the Secretary concerned'' after ''commissioned grade''.

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title V, §505(b)], substituted ''official recommendation'' for ''approval'' in two places.

DETERMINATION OF DATE OF DEATH UNDER MISSING PERSONS ACT

Section 5 of act July 28, 1942, ch. 528, as added July 17, 1953, ch. 220, §1(e), 67 Stat. 177, provided that for purposes of this chapter, in any case where the date of death is established under the Missing Persons Act, as amended, the date of death is the date of receipt by the head of the department concerned of evidence that the person is dead, or the date the finding of death is made under section 5 of that Act, prior to repeal by Pub. L. 89–718, §12(b), Nov. 2, 1966, 80 Stat. 1117. See section 1524 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1524 of this title.

§ 1522. Posthumous warrants

(a) The Secretary concerned may issue, or have issued, an appropriate warrant in the name of a member of the armed forces who, after September 8, 1939, was officially recommended for appointment or promotion to a grade other than a commissioned grade but was unable to accept the appointment or promotion because of death in line of duty.

(b) A warrant issued under subsection (a) shall issue as of the date of the recommendation, and the member's name shall be carried on the records of the military or executive department concerned as if he had served in the grade to which posthumously appointed or promoted from the date of the recommendation to the date of his death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1522(a)	10:612 (words before semicolon). 34:285e (words before semicolon).	July 28, 1942, ch. 528, §4, 56 Stat. 723; July 17, 1953, ch. 220, §1 (a)–(d), 67 Stat. 176.
1522(b)	10:612 (words after semicolon). 34:285e (words after semicolon).	

In subsection (a), the words ''a member of'' are substituted for the words ''any person who, while in'', in 10:612 and 34:285e. The words ''armed forces'' are substituted for the words ''the military service of the United States'', in 10:612; and ''the naval service of the United States'', in 34:285e (which did not appear in the source statute for the revised section, as amended by the act of July 17, 1953, ch. 220, §1(b), 67 Stat. 177). The words ''other than a commissioned grade'' are substituted for the words ''noncommissioned grade'' to make it clear that the revised section covers warrant officers. The words ''receive or'' are omitted as surplusage.

In subsection (b), the words ''appointment or promotion'', ''and branch of the service'', ''official'', and ''by such warrant'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1524 of this title.

§ 1523. Posthumous commissions and warrants: effect on pay and allowances

No person is entitled to any bonus, gratuity, pay, or allowance because of a posthumous commission or warrant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1523	10:491d. 34:285f.	July 28, 1942, ch. 528, §6, 56 Stat. 723; July 17, 1953, ch. 220, §1(e) (1st 7 words), 67 Stat. 177.

The word ''receive'' is omitted as surplusage. The words ''because of a posthumous commission or warrant'' are substituted for the words ''by virtue of any provision of sections 491a–491d [285b–285d] and 612 [285e] of this title'', in 10:491d and 34:285f.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 552.

§ 1524. Posthumous commissions and warrants: determination of date of death

For the purposes of sections 1521 and 1522 of this title, in any case where the date of death is established or determined under section 551–558 of title 37, the date of death is the date the Secretary concerned receives evidence that the person is dead, or the date the finding of death is made under section 555 of title 37.

(Added Pub. L. 89–718, §12(a)(1), Nov. 2, 1966, 80 Stat. 1117.)

CHAPTER 79—CORRECTION OF MILITARY RECORDS

Sec.
1551. Correction of name after separation from service under an assumed name.
1552. Correction of military records: claims incident thereto.
1553. Review of discharge or dismissal.
1554. Review of retirement or separation without pay for physical disability.
1555. Professional staff.
1556. Ex parte communications prohibited.
1557. Timeliness standards for disposition of applications before Corrections Boards.
1558. Review of actions of selection boards: correction of military records by special boards; judicial review.
1559. Personnel limitation.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §552(b), Dec. 2, 2002, 116 Stat. 2552, added item 1559.

2001—Pub. L. 107–107, div. A, title V, §503(a)(2), Dec. 28, 2001, 115 Stat. 1083, added item 1558.

1998—Pub. L. 105–261, div. A, title V, §§542(a)(2), 543(a)(2), 544(b), Oct. 17, 1998, 112 Stat. 2020–2022, added items 1555 to 1557.

1962—Pub. L. 87–651, title I, §110(b), Sept. 7, 1962, 76 Stat. 510, substituted ''discharge or dismissal'' for ''discharges or dismissals'' in item 1553, and ''retirement or separation without pay for physical disability'' for ''decisions of retiring boards and similar boards'' in item 1554.

1958—Pub. L. 85–857, §13(v)(3), Sept. 2, 1958, 72 Stat. 1268, added items 1553 and 1554.

§ 1551. Correction of name after separation from service under an assumed name

The Secretary of the military department concerned shall issue a certificate of discharge or an order of acceptance of resignation in the true name of any person who was separated from the Army, Navy, Air Force, or Marine Corps honorably or under honorable conditions after serving under an assumed name during a war with another nation or people, upon application by, or on behalf of, that person, and upon proof of his identity. However, a certificate or order may not be issued under this section if the name was assumed to conceal a crime or to avoid its consequences.

(Aug. 10, 1956, ch. 1041, 70A Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1551	5:200. 34:597.	Apr. 14, 1890, ch. 80; restated June 25, 1910, ch. 393, 36 Stat. 824. Aug. 22, 1912, ch. 329, 37 Stat. 324.

The word ''shall'' is substituted for the words ''is authorized and required''. The word ''separated'' is substituted for the word ''discharged'', since the revised section covers acceptances of resignations as well as certificates of discharge. The words ''enlisted or'' and ''while minors or otherwise'' are omitted as surplusage. The words ''the War of the Rebellion'' are omitted as obsolete. The word ''with'' is substituted for the words ''between the United States and''. The words ''honorably or under honorable conditions'' are substituted for the word ''honorably''.

PERSONNEL FREEZE FOR SERVICE REVIEW AGENCIES

Pub. L. 105–261, div. A, title V, §541, Oct. 17, 1998, 112 Stat. 2019, provided that:

''(a) LIMITATION.—During fiscal years 1999, 2000, and 2001, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

''(1) the Secretary submits to Congress a report that describes the reduction proposed to be made, provides the Secretary's rationale for that reduction, and specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

''(2) a period of 90 days has elapsed after the date on which such report is submitted.

''(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

''(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of October 1, 1997; and

''(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

''(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term 'service review agency' means—

''(1) with respect to the Department of the Army, the Army Review Boards Agency;

''(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

''(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.''

§ 1552. Correction of military records: claims incident thereto

(a)(1) The Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except as provided in paragraph (2), such corrections shall be made by the Secretary acting through boards of civilians of the executive part of that military department. The Secretary of Homeland Security may in the same

manner correct any military record of the Coast Guard.

(2) The Secretary concerned is not required to act through a board in the case of the correction of a military record announcing a decision that a person is not eligible to enlist (or reenlist) or is not accepted for enlistment (or reenlistment) or announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade. Such a correction may be made only if the correction is favorable to the person concerned.

(3) Corrections under this section shall be made under procedures established by the Secretary concerned. In the case of the Secretary of a military department, those procedures must be approved by the Secretary of Defense.

(4) Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a)(1) unless the claimant or his heir or legal representative files a request for the correction within three years after he discovers the error or injustice. However, a board established under subsection (a)(1) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Secretary of Veterans Affairs.

(f) With respect to records of courts-martial and related administrative records pertaining to court-martial cases tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under subsection (a) may extend only to—

(1) correction of a record to reflect actions taken by reviewing authorities under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)); or

(2) action on the sentence of a court-martial for purposes of clemency.

(g) In this section, the term ''military record'' means a document or other record that pertains to (1) an individual member or former member of the armed forces, or (2) at the discretion of the Secretary of the military department concerned, any other military matter affecting a member or former member of the armed forces, an employee or former employee of that military department, or a dependent or current or former spouse of any such person. Such term does not include records pertaining to civilian employment matters (such as matters covered by title 5 and chapters 81, 83, 87, 108, 373, 605, 607, 643, and 873 of this title).

(Aug. 10, 1956, ch. 1041, 70A Stat. 116; Pub. L. 86–533, §1(4), June 29, 1960, 74 Stat. 246; Pub. L. 96–513, title V, §511(60), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 98–209, §11(a), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 100–456, div. A, title XII, §1233(a), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title V, §514, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1441, 1603; Pub. L. 102–484, div. A, title X, §1052(19), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 105–261, div. A, title V, §545(a), (b), Oct. 17, 1998, 112 Stat. 2022; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1552(a)	5:191a(a) (less 2d and last provisos). 5:275(a) (less 2d and last provisos).	Aug. 2, 1946, ch. 753, §207; restated Oct. 25, 1951, ch. 588, 65 Stat. 655.
1552(b)	5:191a(a) (2d and last provisos). 5:275(a) (2d and last provisos).	
1552(c)	5:191a(b), (c). 5:275(b), (c).	
1552(d)	5:191a(d). 5:275(d).	
1552(e)	5:191a(f). 5:275(f).	
1552(f)	5:191a(e). 5:275(e).	

In subsection (a), the words ''and approved by the Secretary of Defense'' are substituted for 5:191a(a) (1st proviso). The words ''when he considers it'' are substituted for the words ''where in their judgment such action is'', in 5:191a and 275. The words ''officers or employees'' and ''means of'', in 5:191a and 275, are omitted as surplusage. The word ''naval'', in 5:191a and 275, is omitted as covered by the word ''military''.

In subsection (b), the words ''before October 26, 1961'' are substituted for the words ''or within ten years after

the date of enactment of this section'', in 5:191a and 275. The last sentence of the revised subsection is substituted for 5:191a(a) (last proviso) and 275(a) (last proviso).

In subsection (c), the words ''if, as a result of correcting a record under this section * * * the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be'' are substituted for the words ''which are found to be due on account of military or naval service as a result of the action * * * hereafter taken pursuant to subsection (a) of this section'', in 5:191a and 275. The words ''heretofore taken pursuant to this section'', in 5:191a and 275, are omitted as executed. The words ''of any persons, their heirs at law or legal representative as hereinafter provided'', ''(including retired or retirement pay)'', ''as the case may be'', ''duly appointed'', ''otherwise due hereunder'', ''decedent's'', ''precedence or succession'', and ''of precedence'', in 5:191a and 275, are omitted as surplusage. The last sentence is substituted for 5:191a(c) and 275(c).

In subsection (d), the word ''but'' is substituted for the words ''That, continuing payments are authorized to be made to such personnel'', in 5:191a and 275. The words ''if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate'' are substituted for the words ''without the necessity for reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached'', in 5:191a and 275. The words ''or one year following the date of enactment of this section'', in 5:191a and 275, are omitted as executed. The words ''for payment of such sums as may be due for'', in 5:191a and 275, are omitted as surplusage. The words ''(including retired or retirement pay)'', in 5:191a and 275, are omitted as covered by the definition of ''pay'' in section 101(27) of this title.

In subsection (e), the words ''No payment may be made under this section'' are substituted for the words ''Nothing in this section shall be construed to authorize the payment of any amount as compensation'', in 5:191a and 275.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (f), is act May 5, 1950, ch. 169, §1, 64 Stat. 107, which was classified to chapter 22 (§551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1998—Subsec. (c). Pub. L. 105–261, §545(a), inserted '', or on account of his or another's service as a civilian employee'' before period at end of first sentence.

Subsec. (g). Pub. L. 105–261, §545(b), added subsec. (g).

1992—Subsec. (a)(2). Pub. L. 102–484 substituted ''announcing the promotion and appointment of an enlisted member to an initial or higher grade or the decision not to promote an enlisted member to a higher grade'' for ''announcing a decision not to promote an enlisted member to a higher grade''.

1989—Subsec. (a). Pub. L. 101–189, §514(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of Transportation may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.''

Subsec. (b). Pub. L. 101–189, §514(b), substituted ''subsection (a)(1)'' for ''subsection (a)'' in two places.

Subsec. (e). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1988—Subsec. (b). Pub. L. 100–456, §1233(a)(1), substituted ''for the correction within three years after he discovers the error or injustice'' for ''therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later''.

Subsec. (c). Pub. L. 100–456, §1233(a)(2), substituted ''The Secretary concerned'' for ''The department concerned''.

1983—Subsec. (f). Pub. L. 98–209 added subsec. (f).

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1960—Subsec. (f). Pub. L. 86–533 repealed subsec. (f) which required reports to the Congress every six months with respect to claims paid under this section.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

BOARD FOR CORRECTION OF MILITARY RECORDS

Pub. L. 101–225, title II, §212, Dec. 12, 1989, 103 Stat. 1914, provided that: ''Not later than 6 months after the date of the enactment of this Act [Dec. 12, 1989], the Secretary of Transportation shall—

''(1) amend part 52 of title 33, Code of Federal Regulations, governing the proceedings of the board established by the Secretary under section 1552 of title 10, United States Code, to ensure that a complete application for correction of military records is processed expeditiously and that final action on the application is taken within 10 months of its receipt; and

''(2) appoint and maintain a permanent staff, and a panel of civilian officers or employees to serve as members of the board, which are adequate to ensure compliance with paragraph (1) of this subsection.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 628, 1034, 1558, 14502 of this title; title 14 section 425; title 38 sections 3462, 5110; title 42 section 213a.

§ 1553. Review of discharge or dismissal

(a) The Secretary concerned shall, after consulting the Secretary of Veterans Affairs, establish a board of review, consisting of five members, to review the discharge or dismissal (other than a discharge or dismissal by sentence of a general court-martial) of any former member of an armed force under the jurisdiction of his department upon its own motion or upon the request of the former member or, if he is dead, his surviving spouse, next of kin, or legal representative. A motion or request for review must be made within 15 years after the date of the discharge or dismissal. With respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice

(Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

(b) A board established under this section may, subject to review by the Secretary concerned, change a discharge or dismissal, or issue a new discharge, to reflect its findings.

(c) A review by a board established under this section shall be based on the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85–857, §13(v)(2), Sept. 2, 1958, 72 Stat. 1266; amended Pub. L. 87–651, title I, §110(a), Sept. 7, 1962, 76 Stat. 509; Pub. L. 98–209, §11(b), Dec. 6, 1983, 97 Stat. 1407; Pub. L. 101–189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

REFERENCES IN TEXT

The Uniform Code of Military Justice (Public Law 506 of the 81st Congress), referred to in subsec. (a), is act May 5, 1950, ch. 169, §1, 64 Stat. 107, which was classified to chapter 22 (§551 et seq.) of Title 50, War and National Defense, and was repealed and reenacted as chapter 47 (§801 et seq.) of this title by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641, the first section of which enacted this title.

AMENDMENTS

1989—Subsecs. (a), (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1983—Subsec. (a). Pub. L. 98–209 inserted provision that with respect to a discharge or dismissal adjudged by a court-martial case tried or reviewed under chapter 47 of this title (or under the Uniform Code of Military Justice (Public Law 506 of the 81st Congress)), action under this subsection may extend only to a change in the discharge or dismissal or issuance of a new discharge for purposes of clemency.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1034 of this title; title 38 sections 3462, 5110, 5303; title 42 section 213a.

§ 1554. Review of retirement or separation without pay for physical disability

(a) The Secretary concerned shall from time to time establish boards of review, each consisting of five commissioned officers, two of whom shall be selected from officers of the Army Medical Corps, officers of the Navy Medical Corps, Air Force officers designated as medical officers, or officers of the Public Health Service, as the case may be, to review, upon the request of an officer retired or released from active duty without pay for physical disability, the findings and decisions of the retiring board, board of medical survey, or disposition board in his case. A request for review must be made within 15 years after the date of the retirement or separation.

(b) A board established under this section has the same powers as the board whose findings and decision are being reviewed. The findings of the board shall be sent to the Secretary concerned, who shall submit them to the President for approval.

(c) A review by a board established under this section shall be based upon the records of the armed forces concerned and such other evidence as may be presented to the board. A witness may present evidence to the board in person or by affidavit. A person who requests a review under this section may appear before the board in person or by counsel or an accredited representative of an organization recognized by the Secretary of Veterans Affairs under chapter 59 of title 38.

(Added Pub. L. 85–857, §13(v)(2), Sept. 2, 1958, 72 Stat. 1267; amended Pub. L. 87–651, title I, §110(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 101–189, div. A, title XVI, §1621(a)(2), Nov. 29, 1989, 103 Stat. 1603.)

HISTORICAL AND REVISION NOTES

Sections 1553 and 1554 are restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 1555. Professional staff

(a) The Secretary of each military department shall assign to the staff of the service review agency of that military department at least one attorney and at least one physician. Such assignments shall be made on a permanent, full-time basis and may be made from members of the armed forces or civilian employees.

(b) Personnel assigned pursuant to subsection (a)—

(1) shall work under the supervision of the director or executive director (as the case may be) of the service review agency; and

(2) shall be assigned duties as advisers to the director or executive director or other staff members on legal and medical matters, re-

spectively, that are being considered by the agency.

(c) In this section, the term ''service review agency'' means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Navy Council of Personnel Boards and the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 105–261, div. A, title V, § 542(a)(1), Oct. 17, 1998, 112 Stat. 2020; amended Pub. L. 106–65, div. A, title V, § 582, Oct. 5, 1999, 113 Stat. 634.)

AMENDMENTS

1999—Subsec. (c)(2). Pub. L. 106–65 inserted ''the Navy Council of Personnel Boards and'' after ''Department of the Navy,''.

EFFECTIVE DATE

Pub. L. 105–261, div. A, title V, § 542(b), Oct. 17, 1998, 112 Stat. 2020, provided that: ''Section 1555 of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 17, 1998].''

§ 1556. Ex parte communications prohibited

(a) IN GENERAL.—The Secretary of each military department shall ensure that an applicant seeking corrective action by the Army Review Boards Agency, the Air Force Review Boards Agency, or the Board for Correction of Naval Records, as the case may be, is provided a copy of all correspondence and communications (including summaries of verbal communications) to or from the agency or board, or a member of the staff of the agency or board, with an entity or person outside the agency or board that pertain directly to the applicant's case or have a material effect on the applicant's case.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) Classified information.

(2) Information the release of which is otherwise prohibited by law or regulation.

(3) Any record previously provided to the applicant or known to be possessed by the applicant.

(4) Any correspondence that is purely administrative in nature.

(5) Any military record that is (or may be) provided to the applicant by the Secretary of the military department or other source.

(Added Pub. L. 105–261, div. A, title V, § 543(a)(1), Oct. 17, 1998, 112 Stat. 2020.)

EFFECTIVE DATE

Pub. L. 105–261, div. A, title V, § 543(b), Oct. 17, 1998, 112 Stat. 2021, provided that: ''Section 1556 of title 10, United States Code, as added by subsection (a), shall apply with respect to correspondence and communications made 60 days or more after the date of the enactment of this Act [Oct. 17, 1998].''

§ 1557. Timeliness standards for disposition of applications before Corrections Boards

(a) TEN-MONTH CLEARANCE PERCENTAGE.—Of the applications received by a Corrections Board during a period specified in the following table, the percentage on which final action by the Corrections Board must be completed within 10 months of receipt (other than for those applications considered suitable for administrative correction) is as follows:

For applications received during—	The percentage on which final Correction Board action must be completed within 10 months of receipt is—
the period of fiscal years 2001 and 2002	50
the period of fiscal years 2003 and 2004	60
the period of fiscal years 2005, 2006, and 2007	70
the period of fiscal years 2008, 2009, and 2010	80
the period of any fiscal year after fiscal year 2010	90.

(b) CLEARANCE DEADLINE FOR ALL APPLICATIONS.—Effective October 1, 2002, final action by a Corrections Board on all applications received by the Corrections Board (other than those applications considered suitable for administrative correction) shall be completed within 18 months of receipt.

(c) WAIVER AUTHORITY.—The Secretary of the military department concerned may exclude an individual application from the timeliness standards prescribed in subsections (a) and (b) if the Secretary determines that the application warrants a longer period of consideration. The authority of the Secretary of a military department under this subsection may not be delegated.

(d) FAILURE TO MEET TIMELINESS STANDARDS NOT TO AFFECT ANY INDIVIDUAL APPLICATION.—Failure of a Corrections Board to meet the applicable timeliness standard for any period of time under subsection (a) or (b) does not confer any presumption or advantage with respect to consideration by the board of any application.

(e) REPORTS ON FAILURE TO MEET TIMELINESS STANDARDS.—The Secretary of the military department concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report not later than June 1 following any fiscal year during which the Corrections Board of that Secretary's military department was unable to meet the applicable timeliness standard for that fiscal year under subsections (a) and (b). The report shall specify the reasons why the standard could not be met and the corrective actions initiated to ensure compliance in the future. The report shall also specify the number of waivers granted under subsection (c) during that fiscal year.

(f) CORRECTIONS BOARD DEFINED.—In this section, the term ''Corrections Board'' means—

(1) with respect to the Department of the Army, the Army Board for Correction of Military Records;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Board for Correction of Military Records.

(Added Pub. L. 105–261, div. A, title V, § 544(a), Oct. 17, 1998, 112 Stat. 2021; amended Pub. L.

106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (e). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

§ 1558. Review of actions of selection boards: correction of military records by special boards; judicial review

(a) CORRECTION OF MILITARY RECORDS.—The Secretary of a military department may correct a person's military records in accordance with a recommendation made by a special board. Any such correction may be made effective as of the effective date of the action taken on a report of a previous selection board that resulted in the action corrected in the person's military records.

(b) DEFINITIONS.—In this section:

(1) SPECIAL BOARD.—(A) The term ''special board'' means a board that the Secretary of a military department convenes under any authority to consider whether to recommend a person for appointment, enlistment, reenlistment, assignment, promotion, retention, separation, retirement, or transfer to inactive status in a reserve component instead of referring the records of that person for consideration by a previously convened selection board which considered or should have considered that person.

(B) Such term includes a board for the correction of military records convened under section 1552 of this title, if designated as a special board by the Secretary concerned.

(C) Such term does not include a promotion special selection board convened under section 628 or 14502 of this title.

(2) SELECTION BOARD.—(A) The term ''selection board'' means a selection board convened under section 573(c), 580, 580a, 581, 611(b), 637, 638, 638a, 14101(b), 14701, 14704, or 14705 of this title, and any other board convened by the Secretary of a military department under any authority to recommend persons for appointment, enlistment, reenlistment, assignment, promotion, or retention in the armed forces or for separation, retirement, or transfer to inactive status in a reserve component for the purpose of reducing the number of persons serving in the armed forces.

(B) Such term does not include any of the following:

(i) A promotion board convened under section 573(a), 611(a), or 14101(a) of this title.

(ii) A special board.

(iii) A special selection board convened under section 628 of this title.

(iv) A board for the correction of military records convened under section 1552 of this title.

(3) INVOLUNTARILY BOARD-SEPARATED.—The term ''involuntarily board-separated'' means separated or retired from an armed force, or transferred to the Retired Reserve or to inactive status in a reserve component, as a result of a recommendation of a selection board.

(c) RELIEF ASSOCIATED WITH CORRECTION OF CERTAIN ACTIONS.—(1) The Secretary of the military department concerned shall ensure that an involuntarily board-separated person receives relief under paragraph (2) or under paragraph (3) if the person, as a result of a correction of the person's military records under subsection (a), becomes entitled to retention on or restoration to active duty or to active status in a reserve component.

(2)(A) A person referred to in paragraph (1) shall, with that person's consent, be restored to the same status, rights, and entitlements (less appropriate offsets against back pay and allowances) in that person's armed force as the person would have had if the person had not been selected to be involuntarily board-separated as a result of an action the record of which is corrected under subsection (a). An action under this subparagraph is subject to subparagraph (B).

(B) Nothing in subparagraph (A) may be construed to permit a person to be on active duty or in an active status in a reserve component after the date on which the person would have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component if the person had not been selected to be involuntarily board-separated in an action of a selection board the record of which is corrected under subsection (a).

(3) If an involuntarily board-separated person referred to in paragraph (1) does not consent to a restoration of status, rights, and entitlements under paragraph (2), the Secretary concerned shall pay that person back pay and allowances (less appropriate offsets), and shall provide that person service credit, for the period—

(A) beginning on the date of the person's separation, retirement, or transfer to the Retired Reserve or to inactive status in a reserve component, as the case may be; and

(B) ending on the earlier of—

(i) the date on which the person would have been so restored under paragraph (2), as determined by the Secretary concerned; or

(ii) the date on which the person would otherwise have been separated, retired, or transferred to the Retired Reserve or to inactive status in a reserve component, as the case may be.

(d) FINALITY OF UNFAVORABLE ACTION.—If a special board makes a recommendation not to correct the military records of a person regarding action taken in the case of that person on the basis of a previous report of a selection board, the action previously taken on that report shall be considered as final as of the date of the action taken on that report.

(e) REGULATIONS.—(1) The Secretary of each military department shall prescribe regulations to carry out this section. Regulations under this subsection may not apply to subsection (f), other than to paragraph (4)(C) of that subsection.

(2) The Secretary may prescribe in the regulations under paragraph (1) the circumstances under which consideration by a special board may be provided for under this section, including the following:

(A) The circumstances under which consideration of a person's case by a special board is contingent upon application by or for that person.

(B) Any time limits applicable to the filing of an application for such consideration.

(3) Regulations prescribed by the Secretary of a military department under this subsection may not take effect until approved by the Secretary of Defense.

(f) JUDICIAL REVIEW.—(1) A person seeking to challenge an action or recommendation of a selection board, or an action taken by the Secretary of the military department concerned on the report of a selection board, is not entitled to relief in any judicial proceeding unless the action or recommendation has first been considered by a special board under this section or the Secretary concerned has denied the convening of such a board for such consideration.

(2)(A) A court of the United States may review a determination by the Secretary of a military department not to convene a special board in the case of any person. In any such case, the court may set aside the Secretary's determination only if the court finds the determination to be—

(i) arbitrary or capricious;

(ii) not based on substantial evidence;

(iii) a result of material error of fact or material administrative error; or

(iv) otherwise contrary to law.

(B) If a court sets aside a determination by the Secretary of a military department not to convene a special board, it shall remand the case to the Secretary concerned, who shall provide for consideration by a special board.

(3) A court of the United States may review a recommendation of a special board or an action of the Secretary of the military department concerned on the report of a special board. In any such case, a court may set aside the action only if the court finds that the recommendation or action was—

(A) arbitrary or capricious;

(B) not based on substantial evidence;

(C) a result of material error of fact or material administrative error; or

(D) otherwise contrary to law.

(4)(A) If, six months after receiving a complete application for consideration by a special board in any case, the Secretary concerned has not convened a special board and has not denied consideration by a special board in that case, the Secretary shall be deemed for the purposes of this subsection to have denied consideration of the case by a special board.

(B) If, six months after the convening of a special board in any case, the Secretary concerned has not taken final action on the report of the special board, the Secretary shall be deemed for the purposes of this subsection to have denied relief in such case.

(C) Under regulations prescribed under subsection (e), the Secretary of a military department may waive the applicability of subparagraph (A) or (B) in a case if the Secretary determines that a longer period for consideration of the case is warranted. Such a waiver may be for an additional period of not more than six months. The Secretary concerned may not delegate authority to make a determination under this subparagraph.

(g) EXISTING JURISDICTION.—Nothing in this section limits—

(1) the jurisdiction of any court of the United States under any provision of law to determine the validity of any law, regulation, or policy relating to selection boards; or

(2) the authority of the Secretary of a military department to correct a military record under section 1552 of this title.

(Added Pub. L. 107–107, div. A, title V, § 503(a)(1), Dec. 28, 2001, 115 Stat. 1080.)

EFFECTIVE DATE

Section applicable with respect to any proceeding pending on or after Dec. 28, 2001, without regard to whether a challenge to an action of a selection board of any of the Armed Forces being considered in the proceeding was initiated before, on, or after that date, but not applicable with respect to any action commenced in a court of the United States before Dec. 28, 2001, see section 503(c) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 628 of this title.

§ 1559. Personnel limitation

(a) LIMITATION.—During fiscal years 2003, 2004, and 2005, the Secretary of a military department may not carry out any reduction in the number of military and civilian personnel assigned to duty with the service review agency for that military department below the baseline number for that agency until—

(1) the Secretary submits to Congress a report that—

(A) describes the reduction proposed to be made;

(B) provides the Secretary's rationale for that reduction; and

(C) specifies the number of such personnel that would be assigned to duty with that agency after the reduction; and

(2) a period of 90 days has elapsed after the date on which the report is submitted.

(b) BASELINE NUMBER.—The baseline number for a service review agency under this section is—

(1) for purposes of the first report with respect to a service review agency under this section, the number of military and civilian personnel assigned to duty with that agency as of January 1, 2002; and

(2) for purposes of any subsequent report with respect to a service review agency under this section, the number of such personnel specified in the most recent report with respect to that agency under this section.

(c) SERVICE REVIEW AGENCY DEFINED.—In this section, the term ''service review agency'' means—

(1) with respect to the Department of the Army, the Army Review Boards Agency;

(2) with respect to the Department of the Navy, the Board for Correction of Naval Records; and

(3) with respect to the Department of the Air Force, the Air Force Review Boards Agency.

(Added Pub. L. 107–314, div. A, title V, § 552(a), Dec. 2, 2002, 116 Stat. 2552.)

CHAPTER 80—MISCELLANEOUS INVESTIGATION REQUIREMENTS AND OTHER DUTIES

Sec.
1561. Complaints of sexual harassment: investigation by commanding officers.

Sec.
1561a. Civilian orders of protection: force and effect on military installations.
1562. Database on domestic violence incidents.
1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review and recommendation.
1564. Security clearance investigations.
1565. DNA identification information: collection from certain offenders; use.
1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes.
1566. Voting assistance: compliance assessments; assistance.

PRIOR PROVISIONS

A prior chapter 80, comprised of sections 1571 to 1577, relating to Exemplary Rehabilitation Certificates, was repealed by Pub. L. 90–83, §3(2), Sept. 11, 1967, 81 Stat. 220.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1063(b), Dec. 2, 2002, 116 Stat. 2653, added item 1565a.

Pub. L. 107–311, §2(b), Dec. 2, 2002, 116 Stat. 2455, added item 1561a.

2001—Pub. L. 107–107, div. A, title XVI, §1602(a)(2), Dec. 28, 2001, 115 Stat. 1276, added item 1566.

2000—Pub. L. 106–546, §5(a)(2), Dec. 19, 2000, 114 Stat. 2732, added item 1565.

Pub. L. 106–398, §1 [[div. A], title V, §542(b), title X, §1072(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–115, 1654A–277, added items 1563 and 1564.

1999—Pub. L. 106–65, div. A, title V, §594(b), Oct. 5, 1999, 113 Stat. 644, added item 1562.

§1561. Complaints of sexual harassment: investigation by commanding officers

(a) ACTION ON COMPLAINTS ALLEGING SEXUAL HARASSMENT.—A commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, or Marine Corps who receives from a member of the command or a civilian employee under the supervision of the officer a complaint alleging sexual harassment by a member of the armed forces or a civilian employee of the Department of Defense shall carry out an investigation of the matter in accordance with this section.

(b) COMMENCEMENT OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall, within 72 hours after receipt of the complaint—

(1) forward the complaint or a detailed description of the allegation to the next superior officer in the chain of command who is authorized to convene a general court-martial;

(2) commence, or cause the commencement of, an investigation of the complaint; and

(3) advise the complainant of the commencement of the investigation.

(c) DURATION OF INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall ensure that the investigation of the complaint is completed not later than 14 days after the date on which the investigation is commenced.

(d) REPORT ON INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge receiving such a complaint shall—

(1) submit a final report on the results of the investigation, including any action taken as a result of the investigation, to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced; or

(2) submit a report on the progress made in completing the investigation to the next superior officer referred to in subsection (b)(1) within 20 days after the date on which the investigation is commenced and every 14 days thereafter until the investigation is completed and, upon completion of the investigation, then submit a final report on the results of the investigation, including any action taken as a result of the investigation, to that next superior officer.

(e) SEXUAL HARASSMENT DEFINED.—In this section, the term ''sexual harassment'' means any of the following:

(1) Conduct (constituting a form of sex discrimination) that—

(A) involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when—

(i) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment; and

(B) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the Department of Defense.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature in the workplace by any member of the armed forces or civilian employee of the Department of Defense.

(Added Pub. L. 105–85, div. A, title V, §591(a)(1), Nov. 18, 1997, 111 Stat. 1760.)

PRIOR PROVISIONS

Prior sections 1571 to 1577, Pub. L. 89–690, §1, Oct. 15, 1966, 80 Stat. 1016, related to creation of Exemplary Rehabilitation Certificates to be issued by the Secretary of Labor to persons discharged or dismissed from the Armed Forces under conditions other than honorable or to persons who had received a general discharge but who had established that they had rehabilitated themselves and established the administrative and other authority in connection therewith, prior to repeal by Pub. L. 90–83, §3(2), Sept. 11, 1967, 81 Stat. 220.

SHORT TITLE

Pub. L. 107–311, §1, Dec. 2, 2002, 116 Stat. 2455, provided that: ''This Act [enacting section 1561a of this title] may be cited as the 'Armed Forces Domestic Security Act'.''

REPORTS

Section 591(b) of Pub. L. 105–85 provided that:

''(1) Not later than January 1 of each of 1998 and 1999, each officer receiving a complaint forwarded in accordance with section 1561(b) of title 10, United States Code, as added by subsection (a), during the preceding year shall submit to the Secretary of the military department concerned a report on all such complaints and the investigations of such complaints (including the results of the investigations, in cases of investigations completed during such preceding year).

''(2)(A) Not later than March 1 of each of 1998 and 1999, each Secretary receiving a report under paragraph (1) for a year shall submit to the Secretary of Defense a report on all such reports so received.

''(B) Not later than April 1 following receipt of a report for a year under subparagraph (A), the Secretary of Defense shall transmit to Congress all such reports received for the year under subparagraph (A) together with the Secretary's assessment of each such report.''

§ 1561a. Civilian orders of protection: force and effect on military installations

(a) FORCE AND EFFECT.—A civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.

(b) CIVILIAN ORDER OF PROTECTION DEFINED.—In this section, the term ''civilian order of protection'' has the meaning given the term ''protection order'' in section 2266(5) of title 18.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section. The regulations shall be designed to further good order and discipline by members of the armed forces and civilians present on military installations.

(Added Pub. L. 107–311, §2(a), Dec. 2, 2002, 116 Stat. 2455.)

§ 1562. Database on domestic violence incidents

(a) DATABASE ON DOMESTIC VIOLENCE INCIDENT.—The Secretary of Defense shall establish a central database of information on the incidents of domestic violence involving members of the armed forces.

(b) REPORTING OF INFORMATION FOR THE DATABASE.—The Secretary shall require that the Secretaries of the military departments maintain and report annually to the administrator of the database established under subsection (a) any information received on the following matters:

(1) Each domestic violence incident reported to a commander, a law enforcement authority of the armed forces, or a family advocacy program of the Department of Defense.

(2) The number of those incidents that involve evidence determined sufficient for supporting disciplinary action and, for each such incident, a description of the substantiated allegation and the action taken by command authorities in the incident.

(3) The number of those incidents that involve evidence determined insufficient for supporting disciplinary action and for each such case, a description of the allegation.

(Added Pub. L. 106–65, div. A, title V, §594(a), Oct. 5, 1999, 113 Stat. 643.)

DEFENSE TASK FORCE ON DOMESTIC VIOLENCE

Pub. L. 106–65, div. A, title V, §591, Oct. 5, 1999, 113 Stat. 639, as amended by Pub. L. 107–107, div. A, title V, §575, Dec. 28, 2001, 115 Stat. 1123, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Department of Defense task force to be known as the Defense Task Force on Domestic Violence.

''(b) STRATEGIC PLAN.—Not later than 12 months after the date on which all members of the task force have been appointed, the task force shall submit to the Secretary of Defense a long-term plan (referred to as a 'strategic plan') for means by which the Department of Defense may address matters relating to domestic violence within the military more effectively. The plan shall include an assessment of, and recommendations for measures to improve, the following:

''(1) Ongoing victims' safety programs.

''(2) Offender accountability.

''(3) The climate for effective prevention of domestic violence.

''(4) Coordination and collaboration among all military organizations with responsibility or jurisdiction with respect to domestic violence.

''(5) Coordination between military and civilian communities with respect to domestic violence.

''(6) Research priorities.

''(7) Data collection and case management and tracking.

''(8) Curricula and training for military commanders.

''(9) Prevention and responses to domestic violence at overseas military installations.

''(10) Other issues identified by the task force relating to domestic violence within the military.

''(c) REVIEW OF VICTIMS' SAFETY PROGRAM.—The task force shall review the efforts of the Secretary of Defense to establish a program for improving responses to domestic violence under section 592 [set out as a note below] and shall include in its report under subsection (e) a description of that program, including best practices identified on installations, lessons learned, and resulting policy recommendations.

''(d) OTHER TASK FORCE REVIEWS.—The task force shall review and make recommendations regarding the following:

''(1) Standard guidelines to be used by the Secretaries of the military departments in negotiating agreements with civilian law enforcement authorities relating to acts of domestic violence involving members of the Armed Forces.

''(2) A requirement (A) that when a commanding officer issues to a member of the Armed Forces under that officer's command an order that the member not have contact with a specified person that a written copy of that order be provided within 24 hours after the issuance of the order to the person with whom the member is ordered not to have contact, and (B) that there be a system of recording and tracking such orders.

''(3) Standard guidelines on the factors for commanders to consider when seeking to substantiate allegations of domestic violence by a person subject to the Uniform Code of Military Justice and when determining appropriate action for such allegations that are so substantiated.

''(4) A standard training program for all commanding officers in the Armed Forces, including a standard curriculum, on the handling of domestic violence cases.

''(e) ANNUAL REPORT.—(1) The task force shall submit to the Secretary an annual report on its activities and on the activities of the military departments to respond to domestic violence in the military.

''(2) The first such report shall be submitted not later than the date specified in subsection (b) and shall be submitted with the strategic plan submitted under that subsection. The task force shall include in that report the following:

''(A) Analysis and oversight of the efforts of the military departments to respond to domestic violence in the military and a description of barriers to implementation of improvements in those efforts.

''(B) A description of the activities and achievements of the task force.

''(C) A description of successful and unsuccessful programs.

''(D) A description of pending, completed, and recommended Department of Defense research relating to domestic violence.

''(E) Such recommendations for policy and statutory changes as the task force considers appropriate.

''(3) Each subsequent annual report shall include the following:

''(A) A detailed discussion of the achievements in responses to domestic violence in the Armed Forces.

''(B) Pending research on domestic violence.

''(C) Any recommendations for actions to improve the responses of the Armed Forces to domestic violence in the Armed Forces that the task force considers appropriate.

''(4) Within 90 days of receipt of a report under paragraph (2) or (3), the Secretary shall submit the report and the Secretary's evaluation of the report to the Committees on Armed Services of the Senate and House of Representatives. The Secretary shall include with the report the information collected pursuant to section 1562(b) of title 10, United States Code, as added by section 594.

''(f) MEMBERSHIP.—(1) The task force shall consist of not more than 24 members, to be appointed by the Secretary of Defense. Members shall be appointed from each of the Army, Navy, Air Force, and Marine Corps and shall include an equal number of Department of Defense personnel (military or civilian) and persons from outside the Department of Defense. Members appointed from outside the Department of Defense may be appointed from other Federal departments and agencies, from State and local agencies, or from the private sector.

''(2) The Secretary shall ensure that the membership of the task force includes a judge advocate representative from each of the Army, Navy, Air Force, and Marine Corps.

''(3)(A) In consultation with the Attorney General, the Secretary shall appoint to the task force a representative or representatives from the Office of Justice Programs of the Department of Justice.

''(B) In consultation with the Secretary of Health and Human Services, the Secretary shall appoint to the task force a representative from the Family Violence Prevention and Services office of the Department of Health and Human Services.

''(4) Each member of the task force appointed from outside the Department of Defense shall be an individual who has demonstrated expertise in the area of domestic violence or shall be appointed from one of the following:

''(A) A national domestic violence resource center established under section 308 of the Family Violence Prevention and Services Act (42 U.S.C. 10407).

''(B) A national sexual assault and domestic violence policy and advocacy organization.

''(C) A State domestic violence and sexual assault coalition.

''(D) A civilian law enforcement agency.

''(E) A national judicial policy organization.

''(F) A State judicial authority.

''(G) A national crime victim policy organization.

''(5) The members of the task force shall be appointed not later than 90 days after the date of the enactment of this Act [Oct. 5, 1999].

''(g) CO-CHAIRS OF THE TASK FORCE.—There shall be two co-chairs of the task force. One of the co-chairs shall be designated by the Secretary of Defense at the time of appointment from among the Department of Defense personnel on the task force. The other co-chair shall be selected from among the members appointed from outside the Department of Defense by those members.

''(h) ADMINISTRATIVE SUPPORT.—(1) Each member of the task force who is a member of the Armed Forces or civilian officer or employee of the United States shall serve without compensation (other than the compensation to which entitled as a member of the Armed Forces or an officer or employee of the United States, as the case may be). Other members of the task force shall be appointed in accordance with, and subject to, section 3161 of title 5, United States Code.

''(2) The Assistant Secretary of Defense for Force Management Policy, under the direction of the Under Secretary of Defense for Personnel and Readiness, shall provide oversight of the task force. The Washington Headquarters Service shall provide the task force with the personnel, facilities, and other administrative support that is necessary for the performance of the task force's duties.

''(3) The Assistant Secretary shall coordinate with the Secretaries of the military departments to provide visits of the task force to military installations.

''(i) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App) shall not apply to the task force.

''(j) TERMINATION.—The task force shall terminate on April 24, 2003.''

INCENTIVE PROGRAM FOR IMPROVING RESPONSES TO DOMESTIC VIOLENCE INVOLVING MEMBERS OF THE ARMED FORCES AND MILITARY FAMILY MEMBERS

Pub. L. 106–65, div. A, title V, § 592, Oct. 5, 1999, 113 Stat. 642, provided that:

''(a) PURPOSE.—The purpose of this section is to provide a program for the establishment on military installations of collaborative projects involving appropriate elements of the Armed Forces and the civilian community to improve, strengthen, or coordinate prevention and response efforts to domestic violence involving members of the Armed Forces, military family members, and others.

''(b) PROGRAM.—The Secretary of Defense shall establish a program to provide funds and other incentives to commanders of military installations for the following purposes:

''(1) To improve coordination between military and civilian law enforcement authorities in policies, training, and responses to, and tracking of, cases involving military domestic violence.

''(2) To develop, implement, and coordinate with appropriate civilian authorities tracking systems (A) for protective orders issued to or on behalf of members of the Armed Forces by civilian courts, and (B) for orders issued by military commanders to members of the Armed Forces ordering them not to have contact with a dependent.

''(3) To strengthen the capacity of attorneys and other legal advocates to respond appropriately to victims of military domestic violence.

''(4) To assist in educating judges, prosecutors, and legal offices in improved handling of military domestic violence cases.

''(5) To develop and implement more effective policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to domestic violence.

''(6) To develop, enlarge, or strengthen victims' services programs, including sexual assault and domestic violence programs, developing or improving delivery of victims' services, and providing confidential access to specialized victims' advocates.

''(7) To develop and implement primary prevention programs.

''(8) To improve the response of health care providers to incidents of domestic violence, including the development and implementation of screening protocols.

''(c) PRIORITY.—The Secretary shall give priority in providing funds and other incentives under the program to installations at which the local program will emphasize building or strengthening partnerships and collaboration among military organizations such as family advocacy program, military police or provost marshal organizations, judge advocate organizations, legal offices, health affairs offices, and other installation-level military commands between those organizations and appropriate civilian organizations, including civilian law en-

forcement, domestic violence advocacy organizations, and domestic violence shelters.

''(d) APPLICATIONS.—The Secretary shall establish guidelines for applications for an award of funds under the program to carry out the program at an installation.

''(e) AWARDS.—The Secretary shall determine the award of funds and incentives under this section. In making a determination of the installations to which funds or other incentives are to be provided under the program, the Secretary shall consult with an award review committee consisting of representatives from the Armed Forces, the Department of Justice, the Department of Health and Human Services, and organizations with a demonstrated expertise in the areas of domestic violence and victims' safety.''

UNIFORM DEPARTMENT OF DEFENSE POLICIES FOR RESPONSES TO DOMESTIC VIOLENCE

Pub. L. 106–65, div. A, title V, § 593, Oct. 5, 1999, 113 Stat. 643, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall prescribe the following:

''(1) Standard guidelines to be used by the Secretaries of the military departments for negotiating agreements with civilian law enforcement authorities relating to acts of domestic violence involving members of the Armed Forces.

''(2) A requirement (A) that when a commanding officer issues to a member of the Armed Forces under that officer's command an order that the member not have contact with a specified person that a written copy of that order be provided within 24 hours after the issuance of the order to the person with whom the member is ordered not to have contact, and (B) that there be a system of recording and tracking such orders.

''(3) Standard guidelines on the factors for commanders to consider when seeking to substantiate allegations of domestic violence by a person subject to the Uniform Code of Military Justice and when determining appropriate action for such allegations that are so substantiated.

''(4) A standard training program for all commanding officers in the Armed Forces, including a standard curriculum, on the handling of domestic violence cases.

''(b) DEADLINE.—The Secretary of Defense shall carry out subsection (a) not later than six months after the date on which the Secretary receives the first report of the Defense Task Force on Domestic Violence under section 591(e) [set out as a note above].''

§ 1563. Consideration of proposals for posthumous and honorary promotions and appointments: procedures for review and recommendation

(a) REVIEW BY SECRETARY CONCERNED.—Upon request of a Member of Congress, the Secretary concerned shall review a proposal for the posthumous or honorary promotion or appointment of a member or former member of the armed forces, or any other person considered qualified, that is not otherwise authorized by law. Based upon such review, the Secretary shall make a determination as to the merits of approving the posthumous or honorary promotion or appointment and the other determinations necessary to comply with subsection (b).

(b) NOTICE OF RESULTS OF REVIEW.—Upon making a determination under subsection (a) as to the merits of approving the posthumous or honorary promotion or appointment, the Secretary concerned shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives and to the requesting Member of Congress notice in writing of one of the following:

(1) The posthumous or honorary promotion or appointment does not warrant approval on the merits.

(2) The posthumous or honorary promotion or appointment warrants approval and authorization by law for the promotion or appointment is recommended.

(3) The posthumous or honorary promotion or appointment warrants approval on the merits and has been recommended to the President as an exception to policy.

(4) The posthumous or honorary promotion or appointment warrants approval on the merits and authorization by law for the promotion or appointment is required but is not recommended.

A notice under paragraph (1) or (4) shall be accompanied by a statement of the reasons for the decision of the Secretary.

(c) DEFINITION.—In this section, the term ''Member of Congress'' means—

(1) a Senator; or

(2) a Representative in, or a Delegate or Resident Commissioner to, Congress.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 542(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–114.)

§ 1564. Security clearance investigations

(a) EXPEDITED PROCESS.—The Secretary of Defense shall prescribe a process for expediting the completion of the background investigations necessary for granting security clearances for Department of Defense personnel and Department of Defense contractor personnel who are engaged in sensitive duties that are critical to the national security.

(b) REQUIRED FEATURES.—The process developed under subsection (a) shall provide for the following:

(1) Quantification of the requirements for background investigations necessary for grants of security clearances for Department of Defense personnel and Department of Defense contractor personnel.

(2) Categorization of personnel on the basis of the degree of sensitivity of their duties and the extent to which those duties are critical to the national security.

(3) Prioritization of the processing of background investigations on the basis of the categories of personnel determined under paragraph (2).

(c) ANNUAL REVIEW.—The Secretary shall conduct an annual review of the process prescribed under subsection (a) and shall revise that process as determined necessary in relation to ongoing Department of Defense missions.

(d) CONSULTATION REQUIREMENT.—The Secretary shall consult with the Secretaries of the military departments and the heads of Defense Agencies in carrying out this section.

(e) SENSITIVE DUTIES.—For the purposes of this section, it is not necessary for the performance of duties to involve classified activities or classified matters in order for the duties to be considered sensitive and critical to the national security.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1072(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–276.)

DEADLINE FOR PRESCRIBING PROCESS FOR PRIORITIZING BACKGROUND INVESTIGATIONS FOR SECURITY CLEARANCES

Pub. L. 106–398, §1 [[div. A], title X, §1072(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–277, provided that: ''The process required by section 1564(a) of title 10, United States Code, as added by subsection (a), for expediting the completion of the background investigations necessary for granting security clearances for certain persons shall be prescribed not later than January 1, 2001.''

§1565. DNA identification information: collection from certain offenders; use

(a) COLLECTION OF DNA SAMPLES.—(1) The Secretary concerned shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense (as determined under subsection (d)).

(2) For each member described in paragraph (1), if the Combined DNA Index System (in this section referred to as ''CODIS'') of the Federal Bureau of Investigation contains a DNA analysis with respect to that member, or if a DNA sample has been or is to be collected from that member under section 3(a) of the DNA Analysis Backlog Elimination Act of 2000, the Secretary concerned may (but need not) collect a DNA sample from that member.

(3) The Secretary concerned may enter into agreements with other Federal agencies, units of State or local government, or private entities to provide for the collection of samples described in paragraph (1).

(b) ANALYSIS AND USE OF SAMPLES.—The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Defense. The Secretary of Defense shall—

(1) carry out a DNA analysis on each such DNA sample in a manner that complies with the requirements for inclusion of that analysis in CODIS; and

(2) furnish the results of each such analysis to the Director of the Federal Bureau of Investigation for inclusion in CODIS.

(c) DEFINITIONS.—In this section:

(1) The term ''DNA sample'' means a tissue, fluid, or other bodily sample of an individual on which a DNA analysis can be carried out.

(2) The term ''DNA analysis'' means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample.

(d) QUALIFYING MILITARY OFFENSES.—(1) Subject to paragraph (2), the Secretary of Defense, in consultation with the Attorney General, shall determine those felony or sexual offenses under the Uniform Code of Military Justice that shall be treated for purposes of this section as qualifying military offenses.

(2) An offense under the Uniform Code of Military Justice that is comparable to a qualifying Federal offense (as determined under section 3(d) of the DNA Analysis Backlog Elimination Act of 2000), as determined by the Secretary in consultation with the Attorney General, shall be treated for purposes of this section as a qualifying military offense.

(e) EXPUNGEMENT.—(1) The Secretary of Defense shall promptly expunge, from the index described in subsection (a) of section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, the DNA analysis of a person included in the index on the basis of a qualifying military offense if the Secretary receives, for each conviction of the person of a qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned.

(2) For purposes of paragraph (1), the term ''qualifying offense'' means any of the following offenses:

(A) A qualifying Federal offense, as determined under section 3 of the DNA Analysis Backlog Elimination Act of 2000.

(B) A qualifying District of Columbia offense, as determined under section 4 of the DNA Analysis Backlog Elimination Act of 2000.

(C) A qualifying military offense.

(3) For purposes of paragraph (1), a court order is not ''final'' if time remains for an appeal or application for discretionary review with respect to the order.

(f) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Attorney General. Those regulations shall apply, to the extent practicable, uniformly throughout the armed forces.

(Added Pub. L. 106–546, §5(a)(1), Dec. 19, 2000, 114 Stat. 2731; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

Sections 3 and 4 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsecs. (a)(2), (d)(2), and (e)(2), are classified to sections 14135a and 14135b, respectively, of Title 42, The Public Health and Welfare.

The Uniform Code of Military Justice, referred to in subsec. (d), is classified to chapter 47 (§801 et seq.) of this title.

Section 210304 of the Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(1), is classified to section 14132 of Title 42.

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

INITIAL DETERMINATION OF QUALIFYING MILITARY OFFENSES

Pub. L. 106–546, §5(b), Dec. 19, 2000, 114 Stat. 2733, provided that: ''The initial determination of qualifying military offenses under section 1565(d) of title 10, United States Code, as added by subsection (a)(1), shall be made not later than 120 days after the date of the enactment of this Act [Dec. 19, 2000].''

COMMENCEMENT OF COLLECTION

Pub. L. 106–546, §5(c), Dec. 19, 2000, 114 Stat. 2733, provided that: ''Collection of DNA samples under section 1565(a) of such title, as added by subsection (a)(1), shall, subject to the availability of appropriations, commence not later than the date that is 60 days after the date of

the initial determination referred to in subsection (b) [set out above].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1565a of this title; title 18 section 4209; title 42 sections 14132, 14135a, 14135c.

§ 1565a. DNA samples maintained for identification of human remains: use for law enforcement purposes

(a) COMPLIANCE WITH COURT ORDER.—(1) Subject to paragraph (2), if a valid order of a Federal court (or military judge) so requires, an element of the Department of Defense that maintains a repository of DNA samples for the purpose of identification of human remains shall make available, for the purpose specified in subsection (b), such DNA samples on such terms and conditions as such court (or military judge) directs.

(2) A DNA sample with respect to an individual shall be provided under paragraph (1) in a manner that does not compromise the ability of the Department of Defense to maintain a sample with respect to that individual for the purpose of identification of human remains.

(b) COVERED PURPOSE.—The purpose referred to in subsection (a) is the purpose of an investigation or prosecution of a felony, or any sexual offense, for which no other source of DNA information is reasonably available.

(c) DEFINITION.—In this section, the term ''DNA sample'' has the meaning given such term in section 1565(c) of this title.

(Added Pub. L. 107–314, div. A, title X, § 1063(a), Dec. 2, 2002, 116 Stat. 2653.)

§ 1566. Voting assistance: compliance assessments; assistance

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations to require that the Army, Navy, Air Force, and Marine Corps ensure their compliance with any directives issued by the Secretary of Defense in implementing any voting assistance program.

(b) VOTING ASSISTANCE PROGRAMS DEFINED.—In this section, the term ''voting assistance programs'' means—

(1) the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.); and

(2) any similar program.

(c) ANNUAL EFFECTIVENESS AND COMPLIANCE REVIEWS.—(1) The Inspector General of each of the Army, Navy, Air Force, and Marine Corps shall conduct—

(A) an annual review of the effectiveness of voting assistance programs; and

(B) an annual review of the compliance with voting assistance programs of that armed force.

(2) Upon the completion of each annual review under paragraph (1), each Inspector General specified in that paragraph shall submit to the Inspector General of the Department of Defense a report on the results of each such review. Such report shall be submitted in time each year to be reflected in the report of the Inspector General of the Department of Defense under paragraph (3).

(3) Not later than March 31 each year, the Inspector General of the Department of Defense shall submit to Congress a report on—

(A) the effectiveness during the preceding calendar year of voting assistance programs; and

(B) the level of compliance during the preceding calendar year with voting assistance programs of each of the Army, Navy, Air Force, and Marine Corps.

(d) INSPECTOR GENERAL ASSESSMENTS.—(1) The Inspector General of the Department of Defense shall periodically conduct at Department of Defense installations unannounced assessments of the compliance at those installations with—

(A) the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.);

(B) Department of Defense regulations regarding that Act and the Federal Voting Assistance Program carried out under that Act; and

(C) other requirements of law regarding voting by members of the armed forces.

(2) The Inspector General shall conduct an assessment under paragraph (1) at not less than 10 Department of Defense installations each calendar year.

(3) Each assessment under paragraph (1) shall include a review of such compliance—

(A) within units to which are assigned, in the aggregate, not less than 20 percent of the personnel assigned to duty at that installation;

(B) within a representative survey of members of the armed forces assigned to that installation and their dependents; and

(C) within unit voting assistance officers to measure program effectiveness.

(e) REGULAR MILITARY DEPARTMENT ASSESSMENTS.—The Secretary of each military department shall include in the set of issues and programs to be reviewed during any management effectiveness review or inspection at the installation level an assessment of compliance with the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and with Department of Defense regulations regarding the Federal Voting Assistance Program.

(f) VOTING ASSISTANCE OFFICERS.—(1) Voting assistance officers shall be appointed or assigned under Department of Defense regulations. Commanders at all levels are responsible for ensuring that unit voting officers are trained and equipped to provide information and assistance to members of the armed forces on voting matters. Performance evaluation reports pertaining to a member who has been assigned to serve as a voting assistance officer shall comment on the performance of the member as a voting assistance officer.

(2) Under regulations and procedures (including directives) prescribed by the Secretary, a member of the armed forces appointed or assigned to duty as a voting assistance officer shall, to the maximum extent practicable, be given the time and resources needed to perform the member's duties as a voting assistance offi-

cer during the period in advance of a general election when members and their dependents are preparing and submitting absentee ballots.

(g) DELIVERY OF MAIL FROM OVERSEAS PRECEDING FEDERAL ELECTIONS.—(1) During the four months preceding a general Federal election month, the Secretary of Defense shall periodically conduct surveys of all overseas locations and vessels at sea with military units responsible for collecting mail for return shipment to the United States and all port facilities in the United States and overseas where military-related mail is collected for shipment to overseas locations or to the United States. The purpose of each survey shall be to determine if voting materials are awaiting shipment at any such location and, if so, the length of time that such materials have been held at that location. During the fourth and third months before a general Federal election month, such surveys shall be conducted biweekly. During the second and first months before a general Federal election month, such surveys shall be conducted weekly.

(2) The Secretary shall ensure that voting materials are transmitted expeditiously by military postal authorities at all times. The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.

(3) In this section, the term ''general Federal election month'' means November in an even-numbered year.

(h) NOTICE OF DEADLINES AND REQUIREMENTS.—The Secretary of each military department, utilizing the voting assistance officer network established for each military installation, shall, to the maximum extent practicable, provide notice to members of the Armed Forces stationed at that installation of the last date before a general Federal election for which absentee ballots mailed from a postal facility located at that installation can reasonably be expected to be timely delivered to the appropriate State and local election officials.

(i) REGISTRATION AND VOTING INFORMATION FOR MEMBERS AND DEPENDENTS.—(1) The Secretary of each military department, using a variety of means including both print and electronic media, shall, to the maximum extent practicable, ensure that members of the Armed Forces and their dependents who are qualified to vote have ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements.

(2) The Secretary of each military department shall make the national voter registration form prepared for purposes of the Uniformed and Overseas Citizens Absentee Voting Act by the Federal Election Commission available so that each person who enlists shall receive such form at the time of the enlistment, or as soon thereafter as practicable.

(3) Where practicable, a special day or days shall be designated at each military installation for the purpose of informing members of the Armed Forces and their dependents of election timing, registration requirements, and voting procedures.

(Added Pub. L. 107–107, div. A, title XVI, §1602(a)(1), Dec. 28, 2001, 115 Stat. 1274; amended Pub. L. 107–252, title VII, §701, Oct. 29, 2002, 116 Stat. 1722.)

REFERENCES IN TEXT

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsecs. (b)(1), (d)(1)(A), (B), (e), and (i)(2), is Pub. L. 99–410, Aug. 28, 1986, 100 Stat. 924, as amended, which is classified principally to subchapter I–G (§1973ff et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 1971 of Title 42 and Tables.

The date of the enactment of the Help America Vote Act of 2002, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 107–252, which was approved Oct. 29, 2002.

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–252, §701(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(2). Pub. L. 107–252, §701(b), inserted at end ''The Secretary shall, to the maximum extent practicable, implement measures to ensure that a postmark or other official proof of mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea whenever the Department of Defense is responsible for collecting mail for return shipment to the United States. The Secretary shall ensure that the measures implemented under the preceding sentence do not result in the delivery of absentee ballots to the final destination of such ballots after the date on which the election for Federal office is held. Not later than the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002, the Secretary shall submit to Congress a report describing the measures to be implemented to ensure the timely transmittal and postmarking of voting materials and identifying the persons responsible for implementing such measures.''

Subsec. (h). Pub. L. 107–252, §701(c), added subsec. (h).

Subsec. (i). Pub. L. 107–252, §701(d), added subsec. (i).

INITIAL REPORT

Pub. L. 107–107, div. A, title XVI, §1602(b), Dec. 28, 2001, 115 Stat. 1276, provided that: ''The first report under section 1566(c)(3) of title 10, United States Code, as added by subsection (a), shall be submitted not later than March 31, 2003.''

CHAPTER 81—CIVILIAN EMPLOYEES

Sec.
1580. Emergency essential employees: designation.
1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program.

Sec.
1581. Foreign National Employees Separation Pay Account.
1582. Assistive technology, assistive technology devices, and assistive technology services.
1583. Employment of certain persons without pay.
1584. Employment of non-citizens.
1585. Carrying of firearms.
1585a. Special agents of the Defense Criminal Investigative Service: authority to execute warrants and make arrests.
1586. Rotation of career-conditional and career employees assigned to duty outside the United States.
1587. Employees of nonappropriated fund instrumentalities: reprisals.
1588. Authority to accept certain voluntary services.
1589. Participation in management of specified non-Federal entities: authorized activities.
[1590. Repealed.]
1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress.
1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.
1593. Uniform allowance: civilian employees.
1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay.
1595. Civilian faculty members at certain Department of Defense schools: employment and compensation.
1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests.
1596a. Foreign language proficiency: special pay for proficiency beneficial for other national security interests.
1596b. Foreign language proficiency: National Foreign Language Skills Registry.
1597. Civilian positions: guidelines for reductions.
1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides.
[1599. Renumbered.]
1599a. Financial assistance to certain employees in acquisition of critical skills.
1599b. Employees abroad: travel expenses; health care.
1599c. Appointment in excepted service of certain health care professionals.
1599d. Professional accounting positions: authority to prescribe certification and credential standards.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1064(a)(2), title XI, §1104(a)(2), Dec. 2, 2002, 116 Stat. 2654, 2661, added items 1596b and 1599d.

2001—Pub. L. 107–107, div. A, title XI, §1104(b), Dec. 28, 2001, 115 Stat. 1238, added item 1599c.

2000—Pub. L. 106–398, §1 [[div. A], title VII, §751(c)(2), title XI, §§1102(b), 1131(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194, 1654A–311, 1654A–317, added items 1580a, 1582, 1596, and 1596a and struck out former item 1596 ''Foreign language proficiency: special pay''.

1999—Pub. L. 106–65, div. A, title XI, §1103(b)(2), Oct. 5, 1999, 113 Stat. 777, added item 1580.

1998—Pub. L. 105–339, §6(c)(1)(B), Oct. 31, 1998, 112 Stat. 3188, struck out item 1599c ''Veterans' preference requirements: Department of Defense failure to comply treated as a prohibited personnel practice''.

1997—Pub. L. 105–85, div. A, title V, §593(b)(2), title X, §1071(b), Nov. 18, 1997, 111 Stat. 1764, 1898, added items 1585a and 1589.

1996—Pub. L. 104–201, div. A, title X, §1074(a)(7), title XVI, §§1604(b), 1614(b)(2), 1615(a)(2), 1633(c)(2), Sept. 23, 1996, 110 Stat. 2659, 2736, 2739, 2741, 2751, struck out items 1589 ''Prohibition on payment of lodging expenses when adequate Government quarters are available'', 1590 ''Management of civilian intelligence personnel of the military departments'', and 1599 ''Postemployment assistance: certain terminated intelligence employees'', struck out ''Sec.'' at beginning of item 1599a, and added items 1599b and 1599c.

Pub. L. 104–106, div. A, title X, §1040(d)(2), Feb. 10, 1996, 110 Stat. 433, inserted '': reprisals'' after ''instrumentalities'' in item 1587.

Pub. L. 104–93, title V, §505(b), Jan. 6, 1996, 109 Stat. 974, added item 1599a.

1994—Pub. L. 103–359, title VIII, §806(a)(2), Oct. 14, 1994, 108 Stat. 3442, added item 1599.

1993—Pub. L. 103–160, div. A, title IX, §923(a)(2), Nov. 30, 1993, 107 Stat. 1731, substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University; Foreign Language Center of the Defense Language Institute: civilian faculty members'' in item 1595.

1992—Pub. L. 102–484, div. A, title III, §371(b), title IX, §923(a)(2)(B), div. D, title XLIV, §4442(b), Oct. 23, 1992, 106 Stat. 2384, 2474, 2732, substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in item 1595, substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' in item 1597, and added item 1598.

1991—Pub. L. 102–190, div. A, title X, §1003(a)(2), Dec. 5, 1991, 105 Stat. 1456, added item 1581.

Pub. L. 102–25, title VII, §701(e)(4), (8)(B), Apr. 6, 1991, 105 Stat. 114, 115, substituted ''Employment of non-citizens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in item 1584 and struck out ''mandatory'' after ''error in'' in item 1594.

1990—Pub. L. 101–510, div. A, title III, §322(a)(2), title XIV, §1484(a), Nov. 5, 1990, 104 Stat. 1529, 1715, redesignated item 1592 ''Foreign language proficiency: special pay'' as item 1596 and added item 1597.

1989—Pub. L. 101–193, title V, §501(a)(2), Nov. 30, 1989, 103 Stat. 1708, added item 1592 ''Foreign language proficiency: special pay''.

Pub. L. 101–189, div. A, title III, §§311(b)(2), 336(a)(2), title VI, §664(b)(2), title XI, §1124(a)(2), Nov. 29, 1989, 103 Stat. 1412, 1419, 1467, 1558, added item 1592 ''Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures.'', and items 1593 to 1595.

1987—Pub. L. 100–180, div. A, title VI, §617(b)(2), Dec. 4, 1987, 101 Stat. 1097, added item 1591.

1986—Pub. L. 99–569, title V, §504(b), Oct. 27, 1986, 100 Stat. 3199, added item 1590.

1984—Pub. L. 98–525, title XIV, §1401(f)(2), Oct. 19, 1984, 98 Stat. 2618, added item 1589.

1983—Pub. L. 98–94, title XII, §§1253(a)(2), 1266(b), Sept. 24, 1983, 97 Stat. 700, 705, added items 1587 and 1588.

1982—Pub. L. 97–295, §1(19)(B), (20)(C), Oct. 12, 1982, 96 Stat. 1290, struck out items 1581 ''Appointment: professional and scientific services'' and 1582 ''Professional and scientific services: reports to Congress on appointments'', and substituted ''pay'' for ''compensation'' in item 1583.

1966—Pub. L. 89–718, §13, Nov. 2, 1966, 80 Stat. 1117, struck out item 1580 ''Appointment generally''.

1962—Pub. L. 87–651, title II, §206(b), Sept. 7, 1962, 76 Stat. 520, added item 1580.

1960—Pub. L. 86–585, §2, July 5, 1960, 74 Stat. 327, added item 1586.

1958—Pub. L. 85–577, §1(2), July 31, 1958, 72 Stat. 456, added item 1585.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

§ 1580. Emergency essential employees: designation

(a) CRITERIA FOR DESIGNATION.—The Secretary of Defense or the Secretary of the military de-

partment concerned may designate as an emergency essential employee any employee of the Department of Defense, whether permanent or temporary, the duties of whose position meet all of the following criteria:

(1) It is the duty of the employee to provide immediate and continuing support for combat operations or to support maintenance and repair of combat essential systems of the armed forces.

(2) It is necessary for the employee to perform that duty in a combat zone after the evacuation of nonessential personnel, including any dependents of members of the armed forces, from the zone in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone.

(3) It is impracticable to convert the employee's position to a position authorized to be filled by a member of the armed forces because of a necessity for that duty to be performed without interruption.

(b) ELIGIBILITY OF EMPLOYEES OF NONAPPROPRIATED FUND INSTRUMENTALITIES.—A nonappropriated fund instrumentality employee is eligible for designation as an emergency essential employee under subsection (a).

(c) DEFINITIONS.—In this section:

(1) The term ''combat zone'' has the meaning given that term in section 112(c)(2) of the Internal Revenue Code of 1986.

(2) The term ''nonappropriated fund instrumentality employee'' has the meaning given that term in section 1587(a)(1) of this title.

(Added Pub. L. 106–65, div. A, title XI, §1103(b)(1), Oct. 5, 1999, 113 Stat. 776.)

REFERENCES IN TEXT

Section 112(c)(2) of the Internal Revenue Code of 1986, referred to in subsec. (c)(1), is classified to section 112(c)(2) of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1580, added Pub. L. 87–651, title II, §206(a), Sept. 7, 1962, 76 Stat. 519, related to appointment of civilian employees by the Secretary of Defense, prior to repeal by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 663.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 sections 6304, 8702.

§1580a. Emergency essential employees: notification of required participation in anthrax vaccine immunization program

The Secretary of Defense shall—

(1) prescribe regulations for the purpose of ensuring that any civilian employee of the Department of Defense who is determined to be an emergency essential employee and who is required to participate in the anthrax vaccine immunization program is notified of the requirement to participate in the program and the consequences of a decision not to participate; and

(2) ensure that any individual who is being considered for a position as such an employee is notified of the obligation to participate in the program before being offered employment in such position.

(Added Pub. L. 106–398, §1 [[div. A], title VII, §751(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–194.)

§1581. Foreign National Employees Separation Pay Account

(a) ESTABLISHMENT AND PURPOSE.—There is established on the books of the Treasury an account to be known as the ''Foreign National Employees Separation Pay Account, Defense''. The account shall be used for the accumulation of funds to finance obligations of the United States for separation pay for foreign nationals referred to in subsection (e).

(b) DEPOSITS INTO ACCOUNT.—The Secretary of Defense shall deposit into the account from applicable appropriations all amounts obligated for separation pay for foreign nationals referred to in subsection (e).

(c) PAYMENTS FROM ACCOUNT.—Amounts in the account shall remain available for expenditure in accordance with the purpose for which obligated until expended.

(d) DEOBLIGATED FUNDS.—Any amount in the account that is deobligated shall be available for a period of two years from the date of deobligation for recording, adjusting, and liquidating amounts properly chargeable to the liability of the United States for which the obligation was made. Any such deobligated amount remaining at the end of such two-year period shall be canceled.

(e) EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense, and foreign nationals employed by a foreign government for the benefit of the Department of Defense, under any of the following agreements that provide for payment of separation pay:

(1) A contract.

(2) A treaty.

(3) A memorandum of understanding with a foreign nation.

(Added Pub. L. 102–190, div. A, title X, §1003(a)(1), Dec. 5, 1991, 105 Stat. 1456; amended Pub. L. 102–484, div. A, title X, §1052(20), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–337, div. A, title III, §346, Oct. 5, 1994, 108 Stat. 2724; Pub. L. 107–107, div. A, title X, §1048(e)(2), Dec. 28, 2001, 115 Stat. 1227.)

PRIOR PROVISIONS

A prior section 1581, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, §1(34), 72 Stat. 1456; May 29, 1959, Pub. L. 86–36, §3, 73 Stat. 63; Sept. 23, 1959, Pub. L. 86–377, §2, 73 Stat. 701; Oct. 4, 1961, Pub. L. 87–367, title II, §203, 75 Stat. 790; Oct. 11, 1962, Pub. L. 87–793, §1001(b), 76 Stat. 863, provided for appointment of a limited number of civilian research and development personnel and prescribed their relationship to civil service provisions, prior to repeal by Pub. L. 97–295, §1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 struck out par. (2) designation and ''on or after December 5, 1991,'' after ''all amounts obligated'' and struck out par. (1) which read as follows: ''The Secretary of the Treasury shall deposit into the account all amounts that were obligated by the Secretary of Defense before December 5, 1991, and that remain unexpended for separation pay for foreign nationals referred to in subsection (e).''

1994—Subsecs. (a), (b). Pub. L. 103–337, §346(1), substituted ''foreign nationals referred to in subsection (e)'' for ''foreign national employees of the Department of Defense'' wherever appearing.

Subsec. (e). Pub. L. 103–337, §346(2), added subsec. (e) and struck out former subsec. (e) which read as follows: ''EMPLOYEES COVERED.—This section applies only with respect to separation pay of foreign nationals employed by the Department of Defense under any of the following agreements that provide for payment of separation pay:

''(1) A contract.

''(2) A treaty.

''(3) A memorandum of understanding with a foreign nation.''

1992—Subsec. (b)(1), (2). Pub. L. 102–484 substituted ''December 5, 1991,'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1592 of this title.

§ 1582. Assistive technology, assistive technology devices, and assistive technology services

(a) AUTHORITY.—The Secretary of Defense may provide assistive technology, assistive technology devices, and assistive technology services to the following:

(1) Department of Defense employees with disabilities.

(2) Organizations within the Department that have requirements to make programs or facilities accessible to, and usable by, persons with disabilities.

(3) Any other department or agency of the Federal Government, upon the request of the head of that department or agency, for its employees with disabilities or for satisfying a requirement to make its programs or facilities accessible to, and usable by, persons with disabilities.

(b) DEFINITIONS.—In this section, the terms ''assistive technology'', ''assistive technology device'', ''assistive technology service'', and ''disability'' have the meanings given those terms in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(Added Pub. L. 106–398, §1 [[div. A], title XI, §1102(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–311.)

PRIOR PROVISIONS

A prior section 1582, acts Aug. 10, 1956, ch. 1041, 70A Stat. 118; Sept. 2, 1958, Pub. L. 85–861, §1(35), 72 Stat. 1456; Sept. 23, 1959, Pub. L. 86–377, §3, 73 Stat. 701, directed Secretary of Defense to report annually to Congress on civilian research and development personnel employed by Department of Defense under former section 1581 of this title, prior to repeal by Pub. L. 97–295, §1(19)(A), Oct. 12, 1982, 96 Stat. 1290.

§ 1583. Employment of certain persons without pay

The Secretary of Defense may employ, without pay, not more than 10 persons of outstanding experience and ability. However, a person so employed may be allowed transportation, and not more than $15 a day instead of subsistence, while away from his home or regular place of business pursuant to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Pub. L. 89–718, §14, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 97–295, §1(20)(A), (B), Oct. 12, 1982, 96 Stat. 1290.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1583(a)	5:171v (less words of 1st sentence after semicolon).	Jan. 6, 1951, ch. 1213, subch. VII, §704, 64 Stat. 1235.
1583(b)	5:171v (words of 1st sentence after semicolon).	

AMENDMENTS

1982—Pub. L. 97–295 substituted ''pay'' for ''compensation'' in section catchline and text.

1966—Pub. L. 89–718 struck out designation ''(a)'' at beginning of section and repealed subsec. (b) which authorized the Secretary, by regulation, to exempt persons employed under provisions formerly designated subsec. (a) from former sections 281, 283, 284, 434, and 1914 of title 18 and former section 99 of title 5.

§ 1584. Employment of non-citizens

Laws prohibiting the employment of, or payment of pay or expenses to, a person who is not a citizen of the United States do not apply to personnel of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 118; Pub. L. 97–295, §1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 101–510, div. A, title XIV, §§1481(d)(1), (2), 1482(b), Nov. 5, 1990, 104 Stat. 1706, 1709; Pub. L. 104–106, div. A, title X, §1062(b), Feb. 10, 1996, 110 Stat. 444.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1584	5:235c. 5:475h. 5:628c.	July 16, 1952, ch. 882, §2, 66 Stat. 725.

The words ''appointment or'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–106 struck out subsec. (a) heading ''Waiver of employment restrictions for certain personnel'', designated subsec. (a) as entire section, and struck out subsec. (b) which read as follows: ''NOTICE TO CONGRESS OF CERTAIN SALARY INCREASES.—The Secretary of Defense shall notify the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives when any salary increase granted to direct and indirect hire foreign national employees of the Department of Defense overseas, stated as a percentage, is greater than the higher of the following percentages:

''(1) The percentage pay increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5.

''(2) The percentage increase provided to national government employees of the host nation.''

1990—Pub. L. 101–510, §1482(b), substituted ''personnel of the Department of Defense'' for ''any expert, scientist, technician, or professional person whose employment in connection with the research and development activities of a military department is determined to be necessary by the Secretary of that department'' in subsec. (a).

Pub. L. 101–510, §1481(d)(1), (2), substituted ''Employment of non-citizens'' for ''Laws relating to employment of non-citizens: not applicable to research and development activities'' in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

1982—Pub. L. 97–295 substituted ''pay'' for ''compensation''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 1482(b) of Pub. L. 101–510 effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as a note under section 119 of this title.

CITIZENSHIP REQUIREMENT NOT APPLICABLE

Pub. L. 107–248, title VIII, §8002, Oct. 23, 2002, 116 Stat. 1536, provided that: ''During the current fiscal year, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States shall not apply to personnel of the Department of Defense: *Provided*, That salary increases granted to direct and indirect hire foreign national employees of the Department of Defense funded by this Act [see Tables for classification] shall not be at a rate in excess of the percentage increase authorized by law for civilian employees of the Department of Defense whose pay is computed under the provisions of section 5332 of title 5, United States Code, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher: *Provided further*, That this section shall not apply to Department of Defense foreign service national employees serving at United States diplomatic missions whose pay is set by the Department of State under the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.]: *Provided further*, That the limitations of this provision shall not apply to foreign national employees of the Department of Defense in the Republic of Turkey.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8002, Jan. 10, 2002, 115 Stat. 2247.

Pub. L. 106–259, title VIII, §8002, Aug. 9, 2000, 114 Stat. 674.

Pub. L. 106–79, title VIII, §8002, Oct. 25, 1999, 113 Stat. 1230.

Pub. L. 105–262, title VIII, §8002, Oct. 17, 1998, 112 Stat. 2296.

Pub. L. 105–56, title VIII, §8002, Oct. 8, 1997, 111 Stat. 1219.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8002], Sept. 30, 1996, 110 Stat. 3009–71, 3009–87.

Pub. L. 104–61, title VIII, §8002, Dec. 1, 1995, 109 Stat. 651.

Pub. L. 103–335, title VIII, §8002, Sept. 30, 1994, 108 Stat. 2616.

Pub. L. 103–139, title VIII, §8002, Nov. 11, 1993, 107 Stat. 1437.

Pub. L. 102–396, title IX, §9002, Oct. 6, 1992, 106 Stat. 1900.

Pub. L. 102–172, title VIII, §8002, Nov. 26, 1991, 105 Stat. 1170.

Pub. L. 101–511, title VIII, §8002, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 101–165, title IX, §9003, Nov. 21, 1989, 103 Stat. 1129.

Pub. L. 100–463, title VIII, §8003, Oct. 1, 1988, 102 Stat. 2270–17.

Pub. L. 100–202, §101(b) [title VIII, §8004], Dec. 22, 1987, 101 Stat. 1329–43, 1329–62.

Pub. L. 99–500, §101(c) [title IX, §9004], Oct. 18, 1986, 100 Stat. 1783–82, 1783–101, and Pub. L. 99–591, §101(c) [title IX, §9004], Oct. 30, 1986, 100 Stat. 3341–82, 3341–101.

Pub. L. 99–190, §101(b) [title VIII, §8004], Dec. 19, 1985, 99 Stat. 1185, 1202.

Pub. L. 98–473, title I, §101(h) [title VIII, §8004], Oct. 12, 1984, 98 Stat. 1904, 1922.

Pub. L. 98–212, title VII, §704, Dec. 8, 1983, 97 Stat. 1437.

Pub. L. 97–377, title I, §101(c) [title VII, §704], Dec. 21, 1982, 96 Stat. 1833, 1349.

Pub. L. 97–114, title VII, §704, Dec. 29, 1981, 95 Stat. 1578.

Pub. L. 96–527, title VII, §704, Dec. 15, 1980, 94 Stat. 3080.

Pub. L. 96–154, title VII, §704, Dec. 21, 1979, 93 Stat. 1152.

Pub. L. 95–457, title VIII, §804, Oct. 13, 1978, 92 Stat. 1243.

Pub. L. 95–111, title VIII, §803, Sept. 21, 1977, 91 Stat. 899.

Pub. L. 94–419, title VII, §703, Sept. 22, 1976, 90 Stat. 1290.

Pub. L. 94–212, title VII, §703, Feb. 9, 1976, 90 Stat. 168.

Pub. L. 93–437, title VIII, §803, Oct. 8, 1974, 88 Stat. 1224.

Pub. L. 93–238, title VII, §703, Jan. 2, 1974, 87 Stat. 1038.

Pub. L. 92–570, title VII, §703, Oct. 26, 1972, 86 Stat. 1196.

Pub. L. 92–204, title VII, §703, Dec. 18, 1971, 85 Stat. 726.

Pub. L. 91–668, title VIII, §803, Jan. 11, 1971, 84 Stat. 2029.

Pub. L. 91–171, title VI, §603, Dec. 29, 1969, 83 Stat. 479.

Pub. L. 90–580, title V, §502, Oct. 17, 1968, 82 Stat. 1129.

Pub. L. 90–96, title VI, §602, Sept. 29, 1967, 81 Stat. 241.

Pub. L. 89–687, title VI, §602, Oct. 15, 1966, 80 Stat. 990.

Pub. L. 89–213, title VI, §602, Sept. 29, 1965, 79 Stat. 873.

Pub. L. 88–446, title V, §502, Aug. 19, 1964, 78 Stat. 474.

Pub. L. 88–149, title V, §502, Oct. 17, 1963, 77 Stat. 263.

Pub. L. 87–577, title V, §502, Aug. 9, 1962, 76 Stat. 327.

Pub. L. 87–144, title VI, §602, Aug. 17, 1961, 75 Stat. 375.

Pub. L. 86–601, title V, §502, July 7, 1960, 74 Stat. 349.

Pub. L. 86–166, title V, §602, Aug. 18, 1959, 73 Stat. 378.

Pub. L. 85–724, title VI, §602, Aug. 22, 1958, 72 Stat. 723.

Pub. L. 85–117, title VI, §602, Aug. 2, 1957, 71 Stat. 323.

July 2, 1956, ch. 488, title VI, §602, 70 Stat. 467.

July 13, 1955, ch. 358, title VI, §603, 69 Stat. 314.

June 30, 1954, ch. 432, title VII, §703, 68 Stat. 349.

Aug. 1, 1953, ch. 305, title VI, §603, 67 Stat. 349.

July 10, 1952, ch. 630, title VI, §603, 66 Stat. 531.

Oct. 18, 1951, ch. 512, title VI, §603, 65 Stat. 444.

Sept. 6, 1950, ch. 896, Ch. X, title VI, §603, 64 Stat. 752.

Oct. 29, 1949, ch. 787, title VI, §603, 63 Stat. 1017.

June 24, 1948, ch. 632, 62 Stat. 651.

July 30, 1947, ch. 357, title I, §1, 61 Stat. 553.

July 16, 1946, ch. 583, §1, 60 Stat. 543.

July 28, 1945, ch. 265, §1, 59 Stat. 386.

June 28, 1944, ch. 303, §1, 58 Stat. 575.

July 1, 1943, ch. 185, §1, 57 Stat. 349.

July 2, 1942, ch. 477, §1, 56 Stat. 613.

SALARY INCREASES TO FOREIGN NATIONAL EMPLOYEES; NOTICE TO CONGRESS

Pub. L. 100–463, title VIII, §8114, Oct. 1, 1988, 102 Stat. 2270–38, which directed Secretary of Defense to notify House and Senate Committees on Appropriations when salary increases granted to foreign national employees were at a rate in excess of the percentage pay increase authorized by law for civilian employees of Department of Defense whose pay was computed under section 5332 of title 5 or at a rate in excess of the percentage increase provided to National Government employees of the host nation, whichever was higher, was repealed and restated in subsec. (b) of this section by Pub. L. 101–510, §1481(d)(1)(B), (4)(A).

§1585. Carrying of firearms

Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.

(Added Pub. L. 85–577, §1(1), July 31, 1958, 72 Stat. 455.)

§1585a. Special agents of the Defense Criminal Investigative Service: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of Defense may authorize any DCIS special agent described in subsection (b)—

(1) to execute and serve any warrant or other process issued under the authority of the United States; and

(2) to make arrests without a warrant—

(A) for any offense against the United States committed in the presence of that agent; and

(B) for any felony cognizable under the laws of the United States if the agent has probable cause to believe that the person to be arrested has committed or is committing the felony.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any DCIS special agent whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of Defense.

(c) GUIDELINES ON EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Inspector General of the Department of Defense and approved by the Attorney General and any other applicable guidelines prescribed by the Secretary of Defense or the Attorney General.

(d) DCIS SPECIAL AGENT DEFINED.—In this section, the term ''DCIS special agent'' means an employee of the Department of Defense who is a special agent of the Defense Criminal Investigative Service (or any successor to that service).

(Added Pub. L. 105–85, div. A, title X, § 1071(a), Nov. 18, 1997, 111 Stat. 1897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4027, 7480, 9027 of this title.

§ 1586. Rotation of career-conditional and career employees assigned to duty outside the United States

(a) In order to advance the programs and activities of the Defense Establishment, it is hereby declared to be the policy of the Congress to facilitate the interchange of civilian employees of the Defense Establishment between posts of duty in the United States and posts of duty outside the United States through the establishment and operation of programs for the rotation, to the extent consistent with the missions of the Defense Establishment and sound principles of administration, of such employees who are assigned to duty outside the United States.

(b) Notwithstanding any other provision of law, the Secretary of Defense with respect to civilian employees of the Department of Defense other than employees of a military department, and the Secretary of each military department with respect to civilian employees of such military department, may, under such regulations as each such Secretary may prescribe with respect to the employees concerned and in accordance with the policy and other provisions of this section, establish and operate programs of rotation which provide for the granting of the right to return to a position in the United States to each civilian employee in the department concerned—

(1) who, while serving under a career-conditional or career appointment in the competitive civil service, is assigned at the request of the department concerned to duty outside the United States,

(2) who satisfactorily completes such duty, and

(3) who applies, not later than 30 days after his completion of such duty, for the right to return to a position in the United States as provided by subsection (c).

The Secretary of the department concerned may provide by regulation for the waiver of the provisions of paragraphs (2) and (3), or of either of such paragraphs, in those cases in which the application of such paragraphs, or either of them, would be against equity and good conscience or against the public interest.

(c) The right to return to a position in the United States granted under this section shall be without reduction in the seniority, status, and tenure held by the employee immediately before his assignment to duty outside the United States and the employee shall be placed, not later than 30 days after the date on which he is determined to be immediately available to exercise such right in accordance with the following provisions:

(1) The employee shall be placed in the position which he held immediately before his assignment to duty outside the United States, if such position exists.

(2) If such position does not exist, or with his consent, the employee shall be placed in a vacant existing position, or in a new continuing position, for which he is qualified, available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States.

(3) If the positions described in paragraph (1) and paragraph (2) do not exist, the employee shall be placed in an additional position which shall be established by the department concerned for a period not in excess of 90 days in order to carry out the purposes of this section. Such additional position shall be in the same geographical area as, with rights and benefits not less than the rights and benefits of, and in a grade not lower than the grade of, the position held by the employee immediately before his assignment to duty outside the United States.

(4) If, within 90 days after his placement in a position under paragraph (3) a vacant existing position or new continuing position, for which the employee is qualified, is available for the purposes of this section in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, and in a grade equal to the grade of, the position which he held immediately before his assignment to duty outside the United States, the employee shall be placed in such vacant existing position or new continuing position.

(5) If, within the 90-day period referred to in paragraphs (3) and (4), the employee cannot be placed in a position under paragraph (4), he shall be reassigned or separated under the reg-

ulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(6) If there is a termination of or material change in the activity in which the former position of the employee (referred to in paragraph (1)) was located, he shall be placed, in the manner provided by paragraphs (2), (3), and (4), as applicable, in a position in the department concerned in a geographical area other than the geographical area in which such former position was located.

(d) Each employee who is placed in a position under paragraph (1), (2), (3), (4), or (6) of subsection (c) shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States.

(e)(1) Each employee who is displaced from a position by reason of the exercise of a return right under subsection (c)(1) shall be placed, as of the date of such displacement, without reduction in seniority, status, and tenure, in a vacant existing position or new continuing position, for which he is qualified, available in the department concerned, in the same geographical area as, with rights and benefits equal to the rights and benefits of, in a grade equal to the grade of, and at a rate of basic pay not less than the last rate of basic pay which is not less than the last rate of basic pay to which he was entitled while in, the position from which he is displaced.

(2) If the employee cannot be placed in a position under paragraph (1), he shall be reassigned to a position other than the position from which he is displaced, or separated, under the regulations prescribed by the Office of Personnel Management to carry out sections 3501–3503 of title 5.

(f) The President may, upon his determination that such action is necessary in the national interest, declare that, for such period as he may specify, an assignment of an employee to duty in Alaska or Hawaii shall be held and considered, for the purposes of this section, to be an assignment to duty outside the United States.

(g) In this section:

(1) The term ''rotation'' means the assignment of civilian employees referred to in subsection (b) to duty outside the United States and the return of such employees to duty within the United States.

(2) The term ''grade'' means, as applicable, a grade of the General Schedule as prescribed in section 5104 of title 5 or a grade or level of the appropriate prevailing rate schedule.

(h) The Secretary of Defense may, under such regulations as he may prescribe, make the provisions of subsections (a) through (g) applicable to civilian employees of the Department of Defense who are residents of Guam, the Virgin Islands, or the Commonwealth of Puerto Rico at the time of their employment by the Department of Defense in the same manner as if the references in such subsections to the United States (when used in a geographical sense) were references to Guam, the Virgin Islands, or the Commonwealth of Puerto Rico, as the case may be.

(Added Pub. L. 86–585, §1, July 5, 1960, 74 Stat. 325; amended Pub. L. 89–718, §15, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, §3(3), Sept. 11, 1967, 81 Stat. 220; Pub. L. 96–513, title V, §511(61), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 96–600, §1, Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–295, §1(20)(A), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–525, title XIV, §1405(29), Oct. 19, 1984, 98 Stat. 2623; Pub. L. 101–189, div. A, title XVI, §1622(e)(4), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsec. (g). Pub. L. 101–189, in introductory provisions, substituted ''In this section:'' for ''For the purposes of this section—'', in par. (1), inserted ''The term'' before '' 'rotation' '' and substituted the period for ''; and'', and in par. (2), inserted ''The term'' before '' 'grade' ''.

1984—Subsec. (b). Pub. L. 98–525, §1405(29)(A)(iii), in provisions following par. (3) struck out ''of this subsection'' after ''paragraphs (2) and (3)''.

Subsec. (b)(3). Pub. L. 98–525, §1405(29)(A)(i), (ii), substituted ''30'' for ''thirty'' and struck out ''of this section'' after ''subsection (c)''.

Subsec. (c). Pub. L. 98–525, §1405(29)(B)(i), in provisions preceding par. (1) substituted ''30'' for ''thirty''.

Subsec. (c)(3). Pub. L. 98–525, §1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (2)''.

Subsec. (c)(4). Pub. L. 98–525, §1405(29)(B)(ii), (iv), substituted ''90 days'' for ''ninety days'' and struck out ''of this subsection'' after ''paragraph (3)''.

Subsec. (c)(5). Pub. L. 98–525, §1405(29)(B)(iii)–(v), substituted ''90-day'' for ''ninety-day'', struck out ''of this subsection'' after ''paragraphs (3) and (4)'', and struck out ''such'' before ''paragraph (4)''.

Subsec. (c)(6). Pub. L. 98–525, §1405(29)(B)(vi), struck out ''of this subsection'' after ''paragraph (1)'' and ''of this subsection,'' after ''as applicable,''.

Subsec. (d). Pub. L. 98–525, §1405(29)(C), struck out ''of this section'' after ''subsection (c)''.

Subsec. (e)(1). Pub. L. 98–525, §1405(29)(C), struck out ''of this section'' after ''subsection (c)(1)''.

Subsec. (e)(2). Pub. L. 98–525, §1405(29)(D), struck out ''of this subsection'' after ''paragraph (1)''.

Subsec. (g)(1). Pub. L. 98–525, §1405(29)(C), struck out ''of this section'' after ''subsection (b)''.

1982—Subsecs. (d), (e)(1). Pub. L. 97–295 substituted ''pay'' for ''compensation'' wherever appearing.

1980—Subsecs. (c)(5), (e)(2). Pub. L. 96–513 substituted ''Office of Personnel Management'' for ''United States Civil Service Commission''.

Subsec. (h). Pub. L. 96–600 added subsec. (h).

1967—Subsec. (g)(2). Pub. L. 90–83 substituted ''General Schedule as prescribed in section 5104 of title 5'' for ''compensation schedule for the General Schedule of the Classification Act of 1949, as amended,''.

1966—Pub. L. 89–718 substituted ''sections 3501–3503 of title 5'' for ''section 12 of the Act of June 27, 1944 (5 U.S.C. 861)'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EX. ORD. NO. 10895. DUTY IN ALASKA OR HAWAII

Ex. Ord. No. 10895, Nov. 25, 1960, 25 F.R. 12165, provided:

By virtue of the authority vested in me by section 1586(f) of title 10 of the United States Code, and as President of the United States, and having determined that such action is necessary in the national interest, it is ordered as follows:

SECTION 1. Assignment of an employee to duty in the State of Alaska or Hawaii under regulations prescribed pursuant to section 1586 of title 10 of the United States Code shall be held and considered for the purposes of that section, to be an assignment to duty outside the United States.

SEC. 2. The Secretary of Defense shall from time to time, and at least annually, consider the need for continuing this order in effect, and he shall recommend the revocation thereof at such time as he may deem such action advisable.

DWIGHT D. EISENHOWER.

§ 1587. Employees of nonappropriated fund instrumentalities: reprisals

(a) In this section:

(1) The term ''nonappropriated fund instrumentality employee'' means a civilian employee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the armed forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces. Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.

(2) The term ''civilian employee'' has the meaning given the term ''employee'' by section 2105(a) of title 5.

(3) The term ''personnel action'', with respect to a nonappropriated fund instrumentality employee (or an applicant for a position as such an employee), means—

(A) an appointment;

(B) a promotion;

(C) a disciplinary or corrective action;

(D) a detail, transfer, or reassignment;

(E) a reinstatement, restoration, or reemployment;

(F) a decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this paragraph; and

(G) any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

(b) Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee (or any applicant for a position as such an employee) as a reprisal for—

(1) a disclosure of information by such an employee or applicant which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(2) a disclosure by such an employee or applicant to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive disclosures described in clause (1), of information which the employee or applicant reasonably believes evidences—

(A) a violation of any law, rule, or regulation; or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) This section does not apply to an employee in a position excluded from the coverage of this section by the President based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

(d) The Secretary of Defense shall be responsible for the prevention of actions prohibited by subsection (b) and for the correction of any such actions that are taken. The authority of the Secretary to correct such actions may not be delegated to the Secretary of a military department or to the Assistant Secretary of Defense for Manpower and Logistics.

(e) The Secretary of Defense, after consultation with the Director of the Office of Personnel Management and the Special Counsel of the Merit Systems Protection Board, shall prescribe regulations to carry out this section. Such regulations shall include provisions to protect the confidentiality of employees and applicants making disclosures described in clauses (1) and (2) of subsection (b) and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense.

(Added Pub. L. 98–94, title XII, §1253(a)(1), Sept. 24, 1983, 97 Stat. 699; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 104–106, div. A, title IX, §903(f)(3), title X, §1040(a)–(d)(1), Feb. 10, 1996, 110 Stat. 402, 433; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.)

AMENDMENTS

1996—Pub. L. 104–106, §1040(d)(1), inserted '': reprisals'' after ''instrumentalities'' in section catchline.

Subsec. (a)(1). Pub. L. 104–106, §1040(c), substituted ''Navy Exchange Service Command'' for ''Navy Resale and Services Support Office''.

Pub. L. 104–106, §1040(a), inserted at end ''Such term includes a civilian employee of a support organization within the Department of Defense or a military department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.''

Subsec. (d). Pub. L. 104–106, §903(a), (f)(3), which directed amendment of subsec. (d), eff. Jan. 31, 1997, by substituting ''official in the Department of Defense with principal responsibility for personnel and readiness'' for ''Assistant Secretary of Defense for Manpower and Logistics'', was repealed by Pub. L. 104–201.

Subsec. (e). Pub. L. 104–106, §1040(b), inserted before period at end of second sentence ''and to permit the reporting of alleged violations of subsection (b) directly to the Inspector General of the Department of Defense''.

1987—Subsec. (a). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase

letter of first word after first quotation marks in each par. and substituted lowercase letter.

EFFECTIVE DATE

Section 1253(b) of Pub. L. 98–94 provided that: ''Section 1587 of such title [this section], as added by subsection (a), shall apply with respect to any conduct prohibited by subsection (b) of such section which occurs after the date of the enactment of this Act [Sept. 24, 1983].''

LIMITATION ON PROVISION OF OVERSEAS LIVING QUARTERS ALLOWANCES FOR NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES

Section 1042 of Pub. L. 104–106 provided that:

''(a) CONFORMING ALLOWANCE TO ALLOWANCES FOR OTHER CIVILIAN EMPLOYEES.—Subject to subsection (b), an overseas living quarters allowance paid from nonappropriated funds and provided to a nonappropriated fund instrumentality employee after the date of the enactment of this Act [Feb. 10, 1996] may not exceed the amount of a quarters allowance provided under subchapter III of chapter 59 of title 5 to a similarly situated civilian employee of the Department of Defense paid from appropriated funds.

''(b) APPLICATION TO CERTAIN CURRENT EMPLOYEES.—In the case of a nonappropriated fund instrumentality employee who, as of the date of the enactment of this Act [Feb. 10, 1996], receives an overseas living quarters allowance under any other authority, subsection (a) shall apply to such employee only after the earlier of—

''(1) September 30, 1997; or

''(2) the date on which the employee otherwise ceases to be eligible for such an allowance under such other authority.

''(c) NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEE DEFINED.—For purposes of this section, the term 'nonappropriated fund instrumentality employee' has the meaning given such term in section 1587(a)(1) of title 10, United States Code.''

UNIFORM HEALTH BENEFITS PROGRAM FOR EMPLOYEES OF DEPARTMENT OF DEFENSE ASSIGNED TO NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 103–337, div. A, title III, § 349, Oct. 5, 1994, 108 Stat. 2727, provided that:

''(a) IN GENERAL.—Not later than October 1, 1995, the Secretary of Defense shall take such steps as may be necessary to provide a uniform health benefits program for employees of the Department of Defense assigned to a nonappropriated fund instrumentality of the Department.

''(b) PROGRESS REPORT.—Not later than March 15, 1995, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress made by the Secretary in implementing subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1580 of this title.

§ 1588. Authority to accept certain voluntary services

(a) AUTHORITY TO ACCEPT SERVICES.—Subject to subsection (b) and notwithstanding section 1342 of title 31, the Secretary concerned may accept from any person the following services:

(1) Voluntary medical services, dental services, nursing services, or other health-care related services.

(2) Voluntary services to be provided for a museum or a natural resources program.

(3) Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:

(A) Family support programs.

(B) Child development and youth services programs.

(C) Library and education programs.

(D) Religious programs.

(E) Housing referral programs.

(F) Programs providing employment assistance to spouses of such members.

(G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.

(4) Voluntary services as a member of a funeral honors detail under section 1491 of this title.

(5) Legal services voluntarily provided as legal assistance under section 1044 of this title.

(6) Voluntary services as a proctor for administration to secondary school students of the test known as the ''Armed Services Vocational Aptitude Battery''.

(7) Voluntary translation or interpretation services offered with respect to a foreign language by a person (A) who is registered for such foreign language on the National Foreign Language Skills Registry under section 1596b of this title, or (B) who otherwise is approved to provide voluntary translation or interpretation services for national security purposes, as determined by the Secretary of Defense.

(b) REQUIREMENTS AND LIMITATIONS.—(1) The Secretary concerned shall notify the person of the scope of the services accepted.

(2) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned shall—

(A) supervise the person to the same extent as the Secretary would supervise a compensated employee providing similar services; and

(B) ensure that the person is licensed, privileged, has appropriate credentials, or is otherwise qualified under applicable law or regulations to provide such services.

(3) With respect to a person providing voluntary services accepted under subsection (a), the Secretary concerned may not—

(A) place the person in a policy-making position; or

(B) except as provided in subsection (e), compensate the person for the provision of such services.

(c) AUTHORITY TO RECRUIT AND TRAIN PERSONS PROVIDING SERVICES.—The Secretary concerned may recruit and train persons to provide voluntary services accepted under subsection (a).

(d) STATUS OF PERSONS PROVIDING SERVICES.—(1) Subject to paragraph (3), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), a person, other than a person referred to in paragraph (2), shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

(A) Subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(C) Section 552a of title 5 (relating to maintenance of records on individuals).

(D) Chapter 11 of title 18 (relating to conflicts of interest).

(E) Section 1054 of this title (relating to legal malpractice), for a person voluntarily providing legal services accepted under subsection (a)(5), as if the person were providing the services as an attorney of a legal staff within the Department of Defense.

(2) Subject to paragraph (3), while providing a nonappropriated fund instrumentality of the United States with voluntary services accepted under subsection (a), or receiving training under subsection (c) to provide such an instrumentality with services accepted under subsection (a), a person shall be considered an employee of that instrumentality only for the following purposes:

(A) Subchapter II of chapter 81 of title 5 (relating to compensation of nonappropriated fund employees for work-related injuries).

(B) Section 2733 of this title and chapter 171 of title 28 (relating to claims for damages or loss).

(3) A person providing voluntary services accepted under subsection (a) shall be considered to be an employee of the Federal Government under paragraph (1) or (2) only with respect to services that are within the scope of the services so accepted.

(4) For purposes of determining the compensation for work-related injuries payable under chapter 81 of title 5 (pursuant to this subsection) to a person providing voluntary services accepted under subsection (a), the monthly pay of the person for such services shall be deemed to be the amount determined by multiplying—

(A) the average monthly number of hours that the person provided the services, by

(B) the minimum wage determined in accordance with section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—The Secretary concerned may provide for reimbursement of a person for incidental expenses incurred by the person in providing voluntary services accepted under subsection (a). The Secretary shall determine which expenses are eligible for reimbursement under this subsection. Any such reimbursement may be made from appropriated or nonappropriated funds.

(f) AUTHORITY TO INSTALL EQUIPMENT.—(1) The Secretary concerned may install telephone lines and any necessary telecommunication equipment in the private residences of persons, designated in accordance with the regulations prescribed under paragraph (4), who provide voluntary services accepted under subsection (a)(3).

(2) In the case of equipment installed under the authority of paragraph (1), the Secretary concerned may pay the charges incurred for the use of the equipment for authorized purposes.

(3) To carry out this subsection, the Secretary concerned may use appropriated funds (notwithstanding section 1348 of title 31) or nonappropriated funds of the military department under the jurisdiction of the Secretary or, with respect to the Coast Guard, the department in which the Coast Guard is operating.

(4) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security shall prescribe regulations to carry out this subsection.

(Added Pub. L. 98–94, title XII, §1266(a), Sept. 24, 1983, 97 Stat. 704; amended Pub. L. 99–145, title XVI, §1624(a), Nov. 8, 1985, 99 Stat. 778; Pub. L. 99–661, div. A, title XIII, §1355, Nov. 14, 1986, 100 Stat. 3996; Pub. L. 100–26, §3(9), Apr. 21, 1987, 101 Stat. 274; Pub. L. 101–189, div. A, title XVI, §1634, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 102–190, div. A, title III, §345, Dec. 5, 1991, 105 Stat. 1346; Pub. L. 103–337, div. A, title X, §1061(a), Oct. 5, 1994, 108 Stat. 2845; Pub. L. 104–201, div. A, title X, §1074(a)(8), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–65, div. A, title III, §371(a), title V, §578(f), Oct. 5, 1999, 113 Stat. 579, 627; Pub. L. 107–107, div. A, title V, §583, Dec. 28, 2001, 115 Stat. 1125; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, §553, title X, §1064(b), Dec. 2, 2002, 116 Stat. 2552, 2654.)

AMENDMENTS

2002—Subsec. (a)(6). Pub. L. 107–314, §553, added par. (6).

Subsec. (a)(7). Pub. L. 107–314, §1064(b), added par. (7).

Subsec. (f)(4). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Subsec. (a)(5). Pub. L. 107–107, §583(a), added par. (5).

Subsec. (d)(1)(E). Pub. L. 107–107, §583(b), added subpar. (E).

1999—Subsec. (a)(4). Pub. L. 106–65, §578(f), added par. (4).

Subsec. (f). Pub. L. 106–65, §371(a), added subsec. (f).

1996—Subsec. (d)(1)(C). Pub. L. 104–201 substituted ''Section 552a'' for ''Section 522a''.

1994—Pub. L. 103–337 amended section generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c) which related to acceptance by Secretary concerned of voluntary services, status of persons providing voluntary services, and reimbursement of expenses incurred by such persons.

1991—Subsec. (c). Pub. L. 102–190 substituted ''may be made from appropriated or nonappropriated funds'' for ''may only be made from nonappropriated funds''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''a museum, a natural resources program, or'' for ''a museum or''.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–661, as amended by Pub. L. 100–26, added subsec. (c).

1985—Subsec. (a). Pub. L. 99–145 substituted ''Secretary concerned'' and ''operated by the military department concerned or the Coast Guard, as appropriate'' for ''Secretary of a military department'' and ''operated by that military department'', respectively.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1624(b) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1985.''

REPORT ON IMPLEMENTATION OF AUTHORITY TO INSTALL TELECOMMUNICATIONS EQUIPMENT FOR PERSONS PERFORMING VOLUNTARY SERVICES

Pub. L. 106–65, div. A, title III, §371(b), Oct. 5, 1999, 113 Stat. 579, provided that: ''Not later than two years after final regulations prescribed under subsection (f)(4) of section 1588 of title 10, United States Code, as added by subsection (a), take effect, the Comptroller General shall review the exercise of authority under such subsection (f) and submit to Congress a report on the findings resulting from the review.''

ACCEPTANCE OF VOLUNTARY SERVICES PILOT PROGRAM

Section 1061(b) of Pub. L. 103–337 provided that:

''(1) The Secretary of Defense shall conduct a pilot program, for not less than six months, to accept voluntary services under the authority provided in section 1588 of title 10, United States Code, as amended by subsection (a). The purpose of the pilot program shall be to evaluate the policies and procedures of the Department of Defense for the acceptance of voluntary services under such section. The pilot program shall involve a variety of services, programs, and locations.

''(2) The Secretary may not accept voluntary services under section 1588 of title 10, United States Code (other than services that may have been accepted under such section before the date of the enactment of this Act [Oct. 5, 1994]), and may not issue regulations to implement the amendment to such section made by subsection (a), until after the termination of the pilot program.

''(3) Not later than 60 days after the termination of the pilot program, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the pilot program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8171.

§1589. Participation in management of specified non-Federal entities: authorized activities

(a) AUTHORIZATION.—(1) The Secretary concerned may authorize an employee described in paragraph (2) to serve without compensation as a director, officer, or trustee, or to otherwise participate, in the management of an entity designated under subsection (b). Any such authorization shall be made on a case-by-case basis, for a particular employee to participate in a specific capacity with a specific designated entity. Such authorization may be made only for the purpose of providing oversight and advice to, and coordination with, the designated entity, and participation of the employee in the activities of the designated entity may not extend to participation in the day-to-day operations of the entity.

(2) Paragraph (1) applies to any employee of the Department of Defense or, in the case of the Coast Guard when not operating as a service in the Navy, of the Department of Homeland Security. For purposes of this section, the term ''employee'' includes a civilian officer.

(b) DESIGNATED ENTITIES.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall designate those entities for which authorization under subsection (a) may be provided. The list of entities so designated may not be revised more frequently than semiannually. In making such designations, the Secretary shall designate each military welfare society named in paragraph (2) of section 1033(b) of this title and may designate any other entity described in paragraph (3) of such section. No other entities may be designated.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of an employee to participate in the management of such an entity, shall be published in the Federal Register.

(d) CIVILIANS OUTSIDE THE MILITARY DEPARTMENTS.—In this section, the term ''Secretary concerned'' includes the Secretary of Defense with respect to employees of the Department of Defense who are not employees of a military department.

(e) REGULATIONS.—The Secretary of Defense, and the Secretary of Homeland Security in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added Pub. L. 105–85, div. A, title V, §593(b)(1), Nov. 18, 1997, 111 Stat. 1763; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 1589, added Pub. L. 98–525, title XIV, §1401(f)(1), Oct. 19, 1984, 98 Stat. 2618, provided, with exceptions, for prohibition on payment of lodging expenses when adequate Government quarters were available, prior to repeal by Pub. L. 104–201, div. A, title XVI, §1614(b)(1), Sept. 23, 1996, 110 Stat. 2739.

AMENDMENTS

2002—Subsecs. (a)(2), (b), (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

[§1590. Repealed. Pub. L. 104–201, div. A, title XVI, §1633(a), Sept. 23, 1996, 110 Stat. 2751]

Section, added Pub. L. 99–569, title V, §504(a), Oct. 27, 1986, 100 Stat. 3198; amended Pub. L. 100–178, title VI, §602(b), Dec. 2, 1987, 101 Stat. 1016; Pub. L. 101–193, title V, §503(a), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, §402(a), Oct. 24, 1992, 106 Stat. 3184; Pub. L. 103–35, title II, §201(g)(2), May 31, 1993, 107 Stat. 100, related to management of civilian intelligence personnel of the military departments. See sections 1601 to 1603, 1606, and 1609 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§1591. Reimbursement for travel and transportation expenses when accompanying Members of Congress

(a) Subject to subsection (b), the Secretary concerned may authorize reimbursement to a civilian employee who is accompanying a Member

of Congress or a congressional employee on official travel for actual travel and transportation expenses incurred for such travel.

(b) The allowance provided in subsection (a) may be paid—

(1) at a rate that does not exceed the rate approved for official congressional travel; and

(2) only when the travel of the member is directed or approved by the Secretary concerned.

(c) In this section:

(1) The term ''Member of Congress'' means a member of the Senate or the House of Representatives, a Delegate to the House of Representatives, and the Resident Commissioner from Puerto Rico.

(2) The term ''congressional employee'' means an employee of a Member of Congress or an employee of Congress.

(3) The term ''Secretary concerned'' includes the Secretary of Defense with respect to civilian employees of the Department of Defense other than a military department.

(Added Pub. L. 100–180, div. A, title VI, §617(b)(1), Dec. 4, 1987, 101 Stat. 1097.)

EFFECTIVE DATE

Section 617(c) of Pub. L. 100–180 provided that: ''Subsection (h) of section 404 of title 37, United States Code (as added by subsection (a)), and section 1591 of title 10, United States Code (as added by subsection (b)), shall apply with respect to travel performed after the date of the enactment of this Act [Dec. 4, 1987].''

§ 1592. Prohibition on payment of severance pay to foreign nationals in the event of certain overseas base closures

Funds available to the Department of Defense (including funds in the Foreign National Employees Separation Pay Account, Defense, established under section 1581 of this title) may not be used to pay severance pay to a foreign national employed by the Department of Defense under a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(Added Pub. L. 101–189, div. A, title III, §311(b)(1), Nov. 29, 1989, 103 Stat. 1411; amended Pub. L. 102–190, div. A, title X, §1003(b), Dec. 5, 1991, 105 Stat. 1456; Pub. L. 102–484, div. A, title X, §1052(21), Oct. 23, 1992, 106 Stat. 2500.)

CODIFICATION

Another section 1592 was renumbered section 1596 of this title.

AMENDMENTS

1992—Pub. L. 102–484 inserted ''section'' after ''established under''.

1991—Pub. L. 102–190 inserted ''(including funds in the Foreign National Employees Separation Pay Account, Defense, established under 1581 of this title)'' and substituted ''a contract, a treaty, or a memorandum of understanding with a foreign nation that provides for payment of separation pay'' for ''a contract performed in a foreign country''.

EFFECTIVE DATE

Section 311(b)(3) of Pub. L. 101–189, as amended by Pub. L. 102–484, div. A, title XIII, §1352(a), Oct. 23, 1992, 106 Stat. 2558, provided that:

''(A) Section 1592 of title 10, United States Code, as added by paragraph (1), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].

''[(B) Repealed. Pub. L. 102–484, div. A, title XIII, §1352(a), Oct. 23, 1992, 106 Stat. 2558.]''

PROHIBITION ON PAYMENT OF SEVERANCE PAY TO CERTAIN FOREIGN NATIONALS IN THE PHILIPPINES

Section 1351 of Pub. L. 102–484 provided that:

''(a) PROHIBITION.—Funds available to the Department of Defense may not be used to pay severance pay to a foreign national employed by the Department of Defense in the Republic of the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines.

''(b) PROHIBITION ON ALLOWANCE OF CERTAIN SEVERANCE PAY AS CONTRACT COSTS.—Funds available to the Department of Defense may not be used to pay the costs of severance pay paid by a contractor to a foreign national employed by the contractor under a defense service contract in the Philippines if the discontinuation of the employment of the foreign national is the result of the termination of basing rights of the United States military in the Philippines.''

§ 1593. Uniform allowance: civilian employees

(a) ALLOWANCE AUTHORIZED.—(1) The Secretary of Defense may pay an allowance to each civilian employee of the Department of Defense who is required by law or regulation to wear a prescribed uniform in the performance of official duties.

(2) In lieu of providing an allowance under paragraph (1), the Secretary may provide a uniform to a civilian employee referred to in such paragraph.

(3) This subsection shall not apply with respect to a civilian employee of the Defense Intelligence Agency who is entitled to an allowance under section 1622 of this title.

(b) AMOUNT OF ALLOWANCE.—Notwithstanding section 5901(a) of title 5, the amount of an allowance paid, and the cost of uniforms provided, under subsection (a) to a civilian employee may not exceed $400 per year.

(c) TREATMENT OF ALLOWANCE.—An allowance paid, or uniform provided, under subsection (a) shall be treated in the same manner as is provided in section 5901(c) of title 5 for an allowance paid under that section.

(d) USE OF APPROPRIATED FUNDS FOR ALLOWANCE.—Amounts appropriated annually to the Department of Defense for the pay of civilian employees may be used for uniforms, or for allowance for uniforms, as authorized by this section and section 5901 of title 5.

(Added Pub. L. 101–189, div. A, title III, §336(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XIV, §1481(d)(3), Nov. 5, 1990, 104 Stat. 1706; Pub. L. 104–201, div. A, title XVI, §1633(e)(1), Sept. 23, 1996, 110 Stat. 2752.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (d) of this section were contained in Pub. L. 101–165, title IX, §9010, Nov. 21, 1989, 103 Stat. 1131, which was set out as a note below, prior to repeal by Pub. L. 101–510, §1481(d)(4)(B).

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–201 substituted ''section 1622'' for ''section 1606''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1635 of Pub. L. 104–201 provided that: ''This subtitle [subtitle B (§§1631–1635) of title XVI of div. A of Pub. L. 104–201, enacting sections 1601 to 1603, 1606 to 1610, and 1612 to 1614 of this title, amending this section, sections 1596, 1605, 1611, and 1621 of this title, and sections 7103 and 7511 of Title 5, Government Organization and Employees, renumbering sections 1599, 1602, 1606, and 1608 of this title as sections 1611, 1621, 1622, and 1623 of this title, respectively, repealing sections 1590, 1601, 1603, and 1604 of this title and section 833 of Title 50, War and National Defense, enacting provisions set out as a note under section 1601 of this title, and repealing provisions set out as a note under section 402 of Title 50] and the amendments made by this subtitle shall take effect on October 1, 1996.''

EFFECTIVE DATE

Section 336(c) of Pub. L. 101–189 provided that: ''The amendments made by this section [enacting this section and amending section 1606 of this title] shall take effect on January 1, 1990.''

AVAILABILITY OF FUNDS FOR PAY OF CIVILIAN EMPLOYEES FOR UNIFORMS

Pub. L. 101–165, title IX, §9010, Nov. 21, 1989, 103 Stat. 1131, which made appropriations available to Department of Defense for pay of civilian employees for uniforms, or allowances therefor, as authorized by section 5901 of title 5, was repealed and restated in subsec. (d) of this section by Pub. L. 101–510, §1481(d)(3), (4)(B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1622 of this title; title 37 sections 417, 418.

§ 1594. Reimbursement for financial institution charges incurred because of Government error in direct deposit of pay

(a)(1) A civilian officer or employee of the Department of Defense who, in accordance with law or regulation, participates in a program for the automatic deposit of pay to a financial institution may be reimbursed for a covered late-deposit charge.

(2) A covered late-deposit charge for purposes of paragraph (1) is a charge (including an overdraft charge or a minimum balance charge) that is levied by a financial institution and that results from an administrative or mechanical error on the part of the Government that causes the pay of the officer or employee concerned to be deposited late or in an incorrect manner or amount.

(b) Reimbursements under this section shall be made from appropriations available for the pay of the officer or employee concerned.

(c) The Secretaries concerned shall prescribe regulations to carry out this section, including regulations for the manner in which reimbursement under this section is to be made.

(d) In this section:

(1) The term ''financial institution'' means a bank, savings and loan association, or similar institution or a credit union chartered by the United States or a State.

(2) The term ''pay'' includes allowances.

(Added Pub. L. 101–189, div. A, title VI, §664(b)(1), Nov. 29, 1989, 103 Stat. 1466; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(6), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–25, title VII, §701(e)(8)(A), Apr. 6, 1991, 105 Stat. 115; Pub. L. 105–261, div. A, title V, §564(b), Oct. 17, 1998, 112 Stat. 2029.)

AMENDMENTS

1998—Subsec. (d)(1). Pub. L. 105–261 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'financial institution' has the meaning given the term 'financial organization' in section 3332(a) of title 31.''

1991—Pub. L. 102–25 struck out ''mandatory'' after ''error in'' in section catchline.

1990—Subsec. (d). Pub. L. 101–510 substituted ''In this section'' for ''in this section''.

EFFECTIVE DATE

Section applicable with respect to pay and allowances deposited (or scheduled to be deposited) on or after first day of first month beginning after Nov. 29, 1989, see section 664(c) of Pub. L. 101–189, set out as an Effective Date of 1989 Amendment note under section 1053 of this title.

§ 1595. Civilian faculty members at certain Department of Defense schools: employment and compensation

(a) AUTHORITY OF SECRETARY.—The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers at the institutions specified in subsection (c) as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) COVERED INSTITUTIONS.—This section applies with respect to the following institutions of the Department of Defense:

(1) The National Defense University.

(2) The Foreign Language Center of the Defense Language Institute.

(3) The George C. Marshall European Center for Security Studies.

(4) The English Language Center of the Defense Language Institute.

(5) The Asia-Pacific Center for Security Studies.

(d) APPLICATION TO FACULTY MEMBERS AT NDU.—In the case of the National Defense University, this section applies with respect to persons selected by the Secretary for employment as professors, instructors, and lecturers at the National Defense University after February 27, 1990.

(e) APPLICABILITY TO DIRECTOR AND DEPUTY DIRECTOR AT CERTAIN INSTITUTIONS.—In addition to the persons specified in subsection (a), this section also applies with respect to the Director and the Deputy Director of the following:

(1) The George C. Marshall European Center for Security Studies.

(2) The Asia-Pacific Center for Security Studies.

(3) The Center for Hemispheric Defense Studies.

(Added Pub. L. 101–189, div. A, title XI, §1124(a)(1), Nov. 29, 1989, 103 Stat. 1558; amended Pub. L. 102–25, title VII, §701(h)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title IX, §911, Dec. 5, 1991, 105 Stat. 1452; Pub. L. 102–484,

div. A, title IX, §923(a)(1), (2)(A), Oct. 23, 1992, 106 Stat. 2474; Pub. L. 103–160, div. A, title IX, §923(a)(1), Nov. 30, 1993, 107 Stat. 1731; Pub. L. 104–201, div. A, title XVI, §1607, Sept. 23, 1996, 110 Stat. 2737; Pub. L. 105–85, div. A, title IX, §§921(c), 922(b), Nov. 18, 1997, 111 Stat. 1863.)

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–85, §921(c), struck out ''(1)'' before ''In the case of'' and struck out par. (2) which read as follows: ''For purposes of this section, the National Defense University includes the National War College, the Armed Forces Staff College, the Institute for National Strategic Study, and the Industrial College of the Armed Forces.''

Subsecs. (e), (f). Pub. L. 105–85, §922(b), added subsec. (e) and struck out former subsecs. (e) and (f) which read as follows:

''(e) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT GEORGE C. MARSHALL CENTER.—In the case of the George C. Marshall European Center for Security Studies, this section also applies with respect to the Director and the Deputy Director.

''(f) APPLICATION TO DIRECTOR AND DEPUTY DIRECTOR AT ASIA-PACIFIC CENTER FOR SECURITY STUDIES.—In the case of the Asia-Pacific Center for Security Studies, this section also applies with respect to the Director and the Deputy Director.''

1996—Subsec. (c)(4), (5). Pub. L. 104–201, §1607(a), added pars. (4) and (5).

Subsec. (f). Pub. L. 104–201, §1607(b), added subsec. (f).

1993—Pub. L. 103–160 substituted ''Civilian faculty members at certain Department of Defense schools: employment and compensation'' for ''National Defense University: Foreign Language Center of the Defense Language Institute: civilian faculty members'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (d) relating to similar subject matter but not including coverage of the George C. Marshall European Center for Security Studies.

1992—Pub. L. 102–484, §923(a)(2)(A), substituted ''University; Foreign Language Center of the Defense Language Institute'' for ''University:'' in section catchline.

Subsec. (a). Pub. L. 102–484, §923(a)(1)(A), inserted ''and the Foreign Language Center of the Defense Language Institute'' after ''National Defense University''.

Subsec. (c). Pub. L. 102–484, §923(a)(1)(B), substituted ''In the case of the National Defense University, this section'' for ''This section''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''after February 27, 1990'' for ''after the end of the 90-day period beginning on the date of the enactment of this section''.

Subsec. (d). Pub. L. 102–190 inserted ''the Institute for National Strategic Study,'' after ''Staff College,''.

EFFECT OF 1992 AMENDMENTS ON CURRENT EMPLOYEES

Section 923(b) of Pub. L. 102–484 provided that: ''In the case of a person who, on the day before the date of the enactment of this Act [Oct. 23, 1992], is employed as a professor, instructor, or lecturer at the Foreign Language Center of the Defense Language Institute, the Secretary of Defense shall afford the person an opportunity to elect to be paid under the compensation plan authorized by section 1595(b) of title 10, United States Code, or to continue to be paid under the General Schedule (with no reduction in pay) under section 5332 of title 5, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 1596. Foreign language proficiency: special pay for proficiency beneficial for intelligence interests

(a) The Secretary of Defense may pay special pay under this section to a civilian officer or employee of the Department of Defense who—

(1) has been certified as being proficient in a foreign language identified by the Secretary of Defense as being a language in which proficiency by civilian personnel of the Department is important for the effective collection, production, or dissemination of foreign intelligence information; and

(2) is serving in a position, or is subject to assignment to a position, in which proficiency in that language facilitates performance of officially assigned intelligence or intelligence-related duties.

(b) The annual rate of special pay under subsection (a) shall be determined by the Secretary of Defense.

(c) Special pay under this section may be paid in addition to any compensation authorized under section 1602 of this title for which an officer or employee is eligible.

(Added Pub. L. 101–193, title V, §501(a)(1), Nov. 30, 1989, 103 Stat. 1707, §1592; renumbered §1596, Pub. L. 101–510, div. A, title XIV, §1484(a), Nov. 5, 1990, 104 Stat. 1715; amended Pub. L. 104–201, div. A, title XVI, §1633(e)(2), Sept. 23, 1996, 110 Stat. 2752; Pub. L. 106–398, §1 [[div. A], title XI, §1131(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

AMENDMENTS

2000—Pub. L. 106–398 substituted ''Foreign language proficiency: special pay for proficiency beneficial for intelligence interests'' for ''Foreign language proficiency: special pay'' as section catchline.

1996—Subsec. (c). Pub. L. 104–201 substituted ''section 1602'' for ''section 1604(b)''.

1990—Pub. L. 101–510 renumbered the second section 1592 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE

Section 501(b) of Pub. L. 101–193 provided that: ''Section 1592 [now 1596] of title 10, United States Code, as added by subsection (a), shall take effect on the first day of the first pay period beginning on or after the later of—

''(1) October 1, 1989, or

''(2) the date of the enactment of this Act [Nov. 30, 1989].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1596a of this title.

§ 1596a. Foreign language proficiency: special pay for proficiency beneficial for other national security interests

(a) AUTHORITY.—The Secretary of Defense may pay special pay under this section to an employee of the Department of Defense who—

(1) has been certified by the Secretary to be proficient in a foreign language identified by the Secretary as being a language in which proficiency by civilian personnel of the Department is necessary because of national security interests;

(2) is assigned duties requiring proficiency in that foreign language during a contingency operation supported by the armed forces; and

(3) is not receiving special pay under section 1596 of this title.

(b) RATE.—The rate of special pay for an employee under this section shall be prescribed by the Secretary, but may not exceed five percent of the employee's rate of basic pay.

(c) RELATIONSHIP TO OTHER PAY AND ALLOWANCES.—Special pay under this section is in addition to any other pay or allowances to which the employee is entitled.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 106–398, §1 [[div. A], title XI, §1131(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

§ 1596b. Foreign language proficiency: National Foreign Language Skills Registry

(a) ESTABLISHMENT.—(1) The Secretary of Defense may establish and maintain a registry of persons who—

(A) have proficiency in one or more critical foreign languages;

(B) are willing to provide linguistic services to the United States in the interests of national security during war or a national emergency; and

(C) meet the eligibility requirements of subsection (b).

(2) The registry shall be known as the ''National Foreign Language Skills Registry'' (in this section referred to as the ''Registry'').

(b) ELIGIBLE PERSONS.—To be eligible for listing on the Registry, a person—

(1) must be—

(A) a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))); or

(B) an alien lawfully admitted for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)));

(2) shall express willingness, in a form and manner prescribed by the Secretary—

(A) to provide linguistic services for a foreign language as described in subsection (a); and

(B) to be listed on the Registry; and

(3) shall meet such language proficiency and other selection criteria as may be prescribed by the Secretary.

(c) REGISTERED INFORMATION.—The Registry shall consist of the following:

(1) The names of eligible persons selected by the Secretary for listing on the Registry.

(2) Such other information on such persons as the Secretary determines pertinent to the use of such persons to provide linguistic services as described in subsection (a).

(d) PROTECTION OF PRIVACY.—The Secretary may withhold from public disclosure the information maintained in the Registry in accordance with section 552a of title 5.

(e) DESIGNATION OF CRITICAL FOREIGN LANGUAGES.—The Secretary shall designate those languages that are critical foreign languages for the purposes of this section. The Secretary shall make such a designation for any foreign language for which there is a shortage of experts in translation or interpretation available to meet requirements of the Secretary or of the head of any other department or agency of the United States for translation or interpretation in the national security interests of the United States.

(f) LINGUISTIC SERVICES DEFINED.—In this section, the term ''linguistic services'' means translation or interpretation of communication in a foreign language.

(Added Pub. L. 107–314, div. A, title X, §1064(a)(1), Dec. 2, 2002, 116 Stat. 2653.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1588 of this title.

§ 1597. Civilian positions: guidelines for reductions

(a) REQUIREMENT OF GUIDELINES FOR REDUCTIONS IN CIVILIAN POSITIONS.—Reductions in the number of civilian positions of the Department of Defense during a fiscal year, if any, shall be carried out in accordance with the guidelines established pursuant to subsection (b).

(b) GUIDELINES.—The Secretary of Defense shall establish guidelines for the manner in which reductions in the number of civilian positions of the Department of Defense are made. The guidelines shall include procedures for reviewing civilian positions for reductions according to the following order:

(1) Positions filled by foreign national employees overseas.

(2) All other positions filled by civilian employees overseas.

(3) Overhead, indirect, and administrative positions in headquarters or field operating agencies in the United States.

(4) Direct operating or production positions in the United States.

(c) MASTER PLAN.—(1) The Secretary of Defense shall include in the materials submitted to Congress in support of the budget request for the Department of Defense for each fiscal year a civilian positions master plan described in paragraph (2) for the Department of Defense as a whole and for each military department, Defense Agency, and other principal component of the Department of Defense.

(2) The master plan referred to in paragraph (1) shall include the information described in paragraph (3). Such information shall include information for each of the two fiscal years immediately preceding such fiscal year and projected information for such fiscal year and each of the two fiscal years immediately following such fiscal year.

(3) The information referred to in paragraph (2) is the following:

(A) A profile of the levels of civilian positions sufficient to establish and maintain a baseline for tracking annual accessions and losses of civilian positions and to provide for the analysis of trends in the levels of civilian positions within the Department of Defense as a whole and for each military department, major subordinate command of each military department, Defense Agency, and other principal component of the Department of Defense. The profile shall include information on the following:

(i) The total number of civilian employees.

(ii) Of the total number of civilian employees, the number of civilian employees in the United States, the number of civilian employees overseas, and the number of foreign national employees overseas.

(iii) Of the total number of civilian employees at the end of each fiscal year covered by the master plan, the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(iv) Accessions and losses of civilian positions, shown in the aggregate and by the number of full-time employees, the number of part-time employees, and the number of temporary and on-call employees.

(v) The number of losses of civilian positions, by appropriation account, due to reductions in force, furloughs, or functional transfers or other significant transfers of work away from the military department, Defense Agency, or other component.

(vi) The extent to which accessions and losses of civilian positions are due to functional transfers or competitive actions that are related to the Department of Defense management review initiatives of the Secretary of Defense.

(vii) The total number of individuals employed by contractors and subcontractors of the Department of Defense under a contract or subcontract entered into pursuant to Office of Management and Budget Circular A–76 to perform commercial activities for the Department of Defense, a military department, a defense agency, or other component.

(B) For industrial-type and commercial-type activities funded through the Defense Business Operations Fund, the following information:

(i) Annual trends in the amount of funded workload for each activity, based upon the average number of months of accumulated, funded workload to be performed, or projected to be performed, by the activity.

(ii) The extent to which such workload is funded by funds that are appropriated from appropriation accounts and managed through the Defense Business Operations Fund.

(C) Information that indicates trends in the extent to which the military department, Defense Agency, or other component enters into contracts with persons outside of the Department of Defense, rather than uses civilian positions, to perform work for the military department, Defense Agency, or other component.

(D) Information that indicates the extent to which the Department of Defense management review initiatives of the Secretary of Defense and other productivity enhancement programs of the Department of Defense significantly affect the number of losses of civilian positions, particularly administrative and management positions.

(4) The Secretary of Defense shall include in the materials referred to in paragraph (1) a report on the implementation of the master plan for the fiscal year immediately preceding the fiscal year for which such materials are submitted.

(d) EXCEPTIONS.—The Secretary of Defense may permit a variation from the guidelines established under subsection (b) or a master plan prepared under subsection (c) if the Secretary determines that such variation is critical to the national security. The Secretary shall immediately notify the Congress of any such variation and the reasons for such variation.

(e) INVOLUNTARY REDUCTIONS OF CIVILIAN POSITIONS.—The Secretary of Defense may not implement any involuntary reduction or furlough of civilian positions in a military department, Defense Agency, or other component of the Department of Defense until the expiration of the 45-day period beginning on the date on which the Secretary submits to Congress a report setting forth the reasons why such reductions or furloughs are required and a description of any change in workload or positions requirements that will result from such reductions or furloughs.

(Added Pub. L. 101–510, div. A, title III, §322(a)(1), Nov. 5, 1990, 104 Stat. 1528; amended Pub. L. 102–484, div. A, title III, §371(a), Oct. 23, 1992, 106 Stat. 2382; Pub. L. 103–35, title II, §201(d)(1), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title III, §363, Nov. 30, 1993, 107 Stat. 1628.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–160, §363(a)(1), substituted ''during a fiscal year'' for ''during fiscal year 1993''.

Subsec. (b). Pub. L. 103–160, §363(a)(2), struck out ''for fiscal year 1993'' after ''establish guidelines'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–160, §363(b)(1), substituted ''for each fiscal year'' for ''for fiscal year 1994''.

Subsec. (c)(3)(A)(v). Pub. L. 103–35, §201(d)(1)(A)(i), substituted ''Defense Agency'' for ''defense agency''.

Subsec. (c)(3)(A)(vii). Pub. L. 103–160, §363(b)(2), added cl. (vii).

Subsec. (c)(3)(C). Pub. L. 103–35, §201(d)(1)(A)(ii), substituted ''Defense Agency'' for ''defense agency'' after ''to which the military department,'' and ''Defense Agency,'' for ''defense agency'' after ''for the military department,''.

Subsec. (c)(4). Pub. L. 103–160, §363(b)(3), added par. (4).

Subsec. (e). Pub. L. 103–35, §201(d)(1)(B), substituted ''on the date'' for ''of the date''.

1992—Pub. L. 102–484 substituted ''Civilian positions: guidelines for reductions'' for ''Employees of industrial-type or commercial-type activities: guidelines for future reductions'' as section catchline and amended text generally, substituting subsecs. (a) to (e) for former subsecs. (a) to (c).

PILOT PROGRAM FOR PAYMENT OF RETRAINING EXPENSES

Pub. L. 107–107, div. A, title XI, §1102, Dec. 28, 2001, 115 Stat. 1235, provided that:

''(a) AUTHORITY TO CARRY OUT PILOT PROGRAM.—(1) The Secretary of Defense may establish a pilot program to facilitate the reemployment of eligible employees of the Department of Defense who are involuntarily separated due to a reduction in force, relocation as a result of a transfer of function, realignment, or change of duty station. Under the pilot program, the Secretary may pay retraining incentives to encourage non-Federal employers to hire and retain such eligible employees.

''(2) Under the pilot program, the Secretary may enter into an agreement with a non-Federal employer under which the employer agrees—

''(A) to employ an eligible employee for at least 12 months at a salary that is mutually agreeable to the employer and the eligible employee; and

''(B) to certify to the Secretary the amount of costs incurred by the employer for any necessary training (as defined by the Secretary) provided to such eligible employee in connection with the employment.

''(3) The Secretary may pay a retraining incentive to the non-Federal employer upon the employee's completion of 12 months of continuous employment with that employer. The Secretary shall determine the amount of the incentive, except that in no event may such amount exceed the lesser of the amount certified with respect to such eligible employee under paragraph (2)(B), or $10,000.

''(4) In a case in which an eligible employee does not remain employed by the non-Federal employer for at least 12 months, the Secretary may pay to the employer a prorated amount of what would have been the full retraining incentive if the eligible employee had remained employed for such 12-month period.

''(b) ELIGIBLE EMPLOYEES.—For purposes of this section, an eligible employee is an employee of the Department of Defense, serving under an appointment without time limitation, who has been employed by the Department for a continuous period of at least 12 months and who has been given notice of separation pursuant to a reduction in force, relocation as a result of a transfer of function, realignment, or change of duty station, except that such term does not include—

''(1) a reemployed annuitant under the retirement systems described in subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title, or another retirement system for employees of the Federal Government;

''(2) an employee who, upon separation from Federal service, is eligible for an immediate annuity under subchapter III of chapter 83 of such title, or subchapter II of chapter 84 of such title; or

''(3) an employee who is eligible for disability retirement under any of the retirement systems referred to in paragraph (1).

''(c) DURATION.—No incentive may be paid under the pilot program for training commenced after September 30, 2005.

''(d) DEFINITIONS.—In this section:

''(1) The term 'non-Federal employer' means an employer that is not an Executive agency, as defined in section 105 of title 5, United States Code, or an entity in the legislative or judicial branch of the Federal Government.

''(2) The term 'reduction in force' has the meaning of that term as used in chapter 35 of such title 5.

''(3) The term 'realignment' has the meaning given that term in section 2910 of the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

NON-FEDERAL EMPLOYMENT INCENTIVE PILOT PROGRAM

Pub. L. 103–337, div. A, title III, § 348, Oct. 5, 1994, 108 Stat. 2725, provided that:

''(a) AUTHORITY.—The Secretary of Defense may establish a pilot program for the payment of incentives in accordance with this section to facilitate the reemployment of eligible employees of the Department of Defense whose employment with the Department is being terminated by reason of the closure or realignment of the military installations where such persons are employed. Under the pilot program, the Secretary may pay retraining and relocation incentives to encourage non-Federal employers to hire and retain such employees.

''(b) ELIGIBLE EMPLOYEES.—For purposes of this section, an eligible employee is an employee of the Department of Defense, serving under an appointment without time limitation, who has been employed by the Department of Defense for a continuous period of at least 12 months and who has been given notice of separation pursuant to a reduction in force, except that such term does not include—

''(1) a reemployed annuitant under subchapter III of chapter 83 of title 5, United States Code, chapter 84 of such title, or another retirement system for employees of the Government;

''(2) an employee who, upon separation from Federal service, is eligible for an immediate annuity under subchapter III of chapter 83 of title 5, United States Code, or subchapter II of chapter 84 of such title; or

''(3) an employee who is eligible for disability retirement under any of the retirement systems referred to in paragraph (1).

''(c) RETRAINING INCENTIVE.—(1) Under the pilot program, the Secretary may enter into an agreement with a non-Federal employer under which the non-Federal employer agrees—

''(A) to employ a person referred to in subsection (a) for at least 12 months for a salary which is mutually agreeable to the employer and such person; and

''(B) to certify to the Secretary the cost incurred by the employer for any necessary training provided to such person in connection with the employment by that employer.

''(2) The Secretary shall pay a retraining incentive to the non-Federal employer upon the employee's completion of 12 months of continuous employment by that employer. Subject to subsection (f), the Secretary shall prescribe the amount of the incentive.

''(3) The Secretary shall pay a prorated amount of the full retraining incentive to the non-Federal employer for an employee who does not remain employed by the non-Federal employer for at least 12 months.

''(4) In no event may the amount of the retraining incentive paid for the training of any one person under the pilot program exceed the amount certified for that person under paragraph (1).

''(d) RELOCATION INCENTIVE.—The Secretary may pay a relocation incentive to an eligible employee if it is necessary for the employee to relocate in order to commence employment with a non-Federal employer under the pilot program. Subject to subsection (f), the amount of the incentive shall be equal to the total amount authorized to be paid for travel, transportation, and subsistence expenses under subchapter II of chapter 57 of title 5, United States Code, including the reimbursements authorized under section 5724b of such title, to a Federal employee being transferred between the same locations as the person paid the incentive.

''(e) APPROVAL OF SECRETARY OF DEFENSE.—The Secretary of a military department or the head of a Defense Agency may offer an incentive under the pilot program with the prior approval of the Secretary of Defense or pursuant to a delegation of authority by the Secretary of Defense.

''(f) LIMITATION.—The total amount of incentives paid in the case of a person under the pilot program may not exceed $10,000.

''(g) DURATION.—No incentive may be paid under the pilot program for training or relocations commenced after September 30, 1999.

''(h) DEFINITIONS.—In this section:

''(1) The term 'non-Federal employer' means an employer that is not an Executive agency, as defined in section 105 of title 5, United States Code, or the legislative or judicial branch of the Federal Government.

''(2) The term 'Defense Agency' has the meaning given such term in section 101(a)(11) of title 10, United States Code.''

SKILL TRAINING PROGRAMS IN DEPARTMENT OF DEFENSE

Section 4435 of Pub. L. 102–484 provided that:

''(a) AUTHORITY.—(1) Under regulations prescribed by the Secretary of Defense, the Secretaries of the military departments, and the Secretary of Defense with respect to employees of the Department of Defense other than employees of the military departments, may provide not more than one year of training in training facilities of the Department to civilian employees of the Department of Defense who are separated from em-

ployment as a result of a reduction in force or a closure or realignment of a military installation.

''(2) Training may be provided under this subsection during the period beginning on October 1, 1992, and ending on September 30, 1995.

''(b) REGISTER OF TRAINING PROGRAMS.—Not later than February 1, 1993, the Secretary of Defense, in consultation with the Secretary of Labor and the Director of the Office of Personnel Management, shall publish a register of the skill training programs carried out by the Department of Defense. The register shall—

''(1) include a list of the skill training programs;

''(2) provide information on the location of such programs, the training provided under such programs, and the number of persons who may receive training under such programs; and

''(3) identify the programs that provide training in skills that are useful to employees in the civilian work force.''

INVOLUNTARY REDUCTIONS OF CIVILIAN PERSONNEL IN FISCAL YEAR 1991

Section 322(b) of Pub. L. 101–510 provided that: ''After the date of the enactment of this Act [Nov. 5, 1990], an agency or component of the Department of Defense may not implement any involuntary reductions or furloughs of civilian personnel in industrial-type or commercial-type activities in fiscal year 1991 until 45 days after the date on which the agency or component submits a report to Congress outlining the reasons why such reductions or furloughs are required and including a description of any changes in workload and manpower requirements that will result from those reductions or furloughs.''

§ 1598. Assistance to terminated employees to obtain certification and employment as teachers or employment as teachers' aides

(a) PLACEMENT PROGRAM.—The Secretary of Defense may establish a program—

(1) to assist eligible civilian employees of the Department of Defense and the Department of Energy after the termination of their employment to obtain—

(A) certification or licensure as elementary or secondary school teachers; or

(B) the credentials necessary to serve as teachers' aides; and

(2) to facilitate the employment of such employees by local educational agencies that—

(A) are receiving grants under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within their jurisdictions concentrations of children from low-income families; and

(B) are also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE EMPLOYEES.—(1) A civilian employee of the Department of Defense or the Department of Energy shall be eligible for selection by the Secretary of Defense to participate in the placement program authorized by subsection (a) if the employee—

(A) during the five-year period beginning October 1, 1992, is terminated from such employment as a result of reductions in defense spending or the closure or realignment of a military installation, as determined by the Secretary of Defense or the Secretary of Energy, as the case may be;

(B) has received—

(i) in the case of an employee applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(ii) in the case of an employee applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(C) satisfies such other criteria for selection as the Secretary of Defense may prescribe.

(2) The Secretary of Defense may accept an application from a civilian employee referred to in paragraph (1) who was terminated during the period beginning on October 1, 1990, and ending on October 1, 1992, if the employee otherwise satisfies the eligibility criteria specified in that paragraph.

(c) SELECTION OF PARTICIPANTS.—(1) Selection of civilian employees to participate in the placement program shall be made on the basis of applications submitted to the Secretary of Defense after the employees receive a notice of termination. An application shall be filed within such time, in such form, and contain such information as the Secretary of Defense may require.

(2) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary of Defense shall give priority to civilian employees who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(3) The Secretary of Defense may not select a civilian employee to participate in the program unless the Secretary has sufficient appropriations for the placement program available at the time of the selection to satisfy the obligations to be incurred by the United States under the program with respect to that member.

(d) AGREEMENT.—A civilian employee selected to participate in the placement program shall be required to enter into an agreement with the Secretary of Defense in which the employee agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an employee selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2)[1] of this title, as in effect on Octo-

[1] See References in Text note below.

ber 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an employee selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary school for not less than two school years with a local educational agency identified under section 1151(b)(3)[1] of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(e) STIPEND FOR PARTICIPANTS.—(1) Except as provided in paragraph (2), the Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A civilian employee selected to participate in the placement program who receives separation pay under section 5597 of title 5 shall not be paid a stipend under paragraph (1).

(3) A stipend paid under paragraph (1) shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(f) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151[1] of this title, as in effect on October 4, 1999, shall apply with respect to the placement program authorized by this section.

(Added Pub. L. 102–484, div. D, title XLIV, §4442(a), Oct. 23, 1992, 106 Stat. 2730; amended Pub. L. 103–35, title II, §201(h)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §1331(c)(2), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, §391(b)(3), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, §1503(a)(14), Feb. 10, 1996, 110 Stat. 511; Pub. L. 104–201, div. A, title V, §576(b), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(11)], Oct. 30, 2000, 114 Stat. 1654, 1654A–290.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (d)(2)(A), (B) and (f), was repealed by Pub. L. 106–65, div. A, title XVII, §1707(a)(1), Oct. 5, 1999, 113 Stat. 823.

The Higher Education Act of 1965, referred to in subsec. (e)(3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) of chapter 28 of Title 20, and part C (§2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (d)(2). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(11)(A)], inserted ''as in effect on October 4, 1999,'' after ''of this title,'' in subpars. (A) and (B).

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(11)(B)], inserted '', as in effect on October 4, 1999,'' after ''of this title''.

1996—Subsec. (a)(2)(A). Pub. L. 104–106 substituted ''6301'' for ''2701''.

Subsec. (d)(2)(A), (B). Pub. L. 104–201 substituted ''two school years'' for ''five school years''.

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grants under''.

1993—Subsec. (d)(2)(A), (B). Pub. L. 103–160 substituted ''five school years'' for ''two school years''.

Subsec. (e)(4). Pub. L. 103–35 struck out par. (4) which read as follows: ''A person who receives a stipend under section 4436 of this title shall not be paid a stipend pursuant to paragraph (1).''

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103–160, div. A, title XIII, §1331(h), Nov. 30, 1993, 107 Stat. 1793, provided that: ''The amendments made by subsections (c) and (d) [amending this section and sections 1151 and 2410j of this title] shall not apply with respect to—

''(1) persons selected by the Secretary of Defense before the date of the enactment of this Act [Nov. 30, 1993] to participate in the teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of title 10, United States Code; or

''(2) agreements entered into by the Secretary before such date with local educational agencies under such sections.''

SAVINGS PROVISION

Pub. L. 104–201, div. A, title V, §576(d), Sept. 23, 1996, 110 Stat. 2535, provided that: ''The amendments made by this section [amending this section and sections 1151 and 2410j of this title] do not affect obligations under agreements entered into in accordance with section 1151, 1598, or 2410j of title 10, United States Code, before the date of the enactment of this Act [Sept. 23, 1996].''

[§1599. Renumbered §1611]

§1599a. Financial assistance to certain employees in acquisition of critical skills

(a) TRAINING PROGRAM.—The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees in the Military Department Civilian Intelligence Personnel Management System that is similar in purpose, conditions, content, and administration to the program established by the Secretary of Defense under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) USE OF FUNDS FOR TRAINING PROGRAM.—Any payment made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 104–93, title V, §505(a), Jan. 6, 1996, 109 Stat. 973.)

REFERENCES IN TEXT

Section 16 of the National Security Act of 1959, referred to in subsec. (a), probably means section 16 of

the National Security Agency Act of 1959, Pub. L. 86–36, as amended, which is set out as a note under section 402 of Title 50, War and National Defense.

§ 1599b. Employees abroad: travel expenses; health care

(a) IN GENERAL.—The Secretary of Defense may provide civilian employees, and members of their families, abroad with benefits that are comparable to certain benefits that are provided by the Secretary of State to members of the Foreign Service and their families abroad as described in subsections (b) and (c). The Secretary may designate the employees and members of families who are eligible to receive the benefits.

(b) TRAVEL AND RELATED EXPENSES.—The Secretary of Defense may pay travel expenses and related expenses for purposes and in amounts that are comparable to the purposes for which, and the amounts in which, travel and related expenses are paid by the Secretary of State under section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081).

(c) HEALTH CARE PROGRAM.—The Secretary of Defense may establish a health care program that is comparable to the health care program established by the Secretary of State under section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4084).

(d) ASSISTANCE.—The Secretary of Defense may enter into agreements with the heads of other departments and agencies of the Government in order to facilitate the payment of expenses authorized by subsection (b) and to carry out a health care program authorized by subsection (c).

(e) ABROAD DEFINED.—In this section, the term ''abroad'' means outside—

(1) the United States; and

(2) the territories and possessions of the United States.

(Added Pub. L. 104–201, div. A, title XVI, § 1604(a), Sept. 23, 1996, 110 Stat. 2735.)

§ 1599c. Appointment in excepted service of certain health care professionals

(a) AUTHORITY.—The Secretary of Defense may appoint in the excepted service without regard to the provisions of subchapter I of chapter 33 of title 5 (except as provided in section 3328 of such title and in subsection (c) of this section) an individual who has—

(1) a recognized degree or certificate from an accredited institution in a covered health care profession or occupation; and

(2) successfully completed a clinical education program affiliated with the Department of Defense or the Department of Veterans Affairs.

(b) COVERED HEALTH CARE PROFESSION OR OCCUPATION.—For purposes of subsection (a), a covered health care profession or occupation is any of the following:

(1) Physician.
(2) Dentist.
(3) Podiatrist.
(4) Optometrist.
(5) Nurse.
(6) Physician assistant.
(7) Expanded-function dental auxiliary.

(c) PREFERENCES IN HIRING.—In using the authority provided by this section, the Secretary shall apply the principles of preference for the hiring of veterans and other individuals established in subchapter I of chapter 33 of title 5.

(d) PROBATIONARY PERIOD.—There shall be an initial probationary period of two years for appointments made under the authority of this section.

(e) PROMOTIONS AND ADVANCEMENT.—(1) Promotions of individuals appointed under the authority of this section shall be made only after an examination performed in accordance with regulations prescribed by the Secretary.

(2) Advancement of such individuals within a pay grade may be made in increments of the minimum rate of basic pay of the grade in accordance with regulations prescribed by the Secretary.

(f) REVIEW OF RECORDS BY BOARD.—The record of each individual appointed under the authority of this section in the medical, dental, and nursing services shall be reviewed periodically by a board, which shall be appointed in accordance with regulations prescribed by the Secretary. If such board finds that such individual is not fully qualified and satisfactory, such individual shall be separated from service.

(g) ADJUSTMENT OF PAY.—In accordance with regulations prescribed by the Secretary, the grade and annual rate of basic pay of an individual appointed under this section whose level of assignment is changed from a level of assignment in which the grade level is based on both the nature of the assignment and qualifications may be adjusted to the grade and annual rate of basic pay otherwise appropriate.

(h) APPOINTMENT TO ADDITIONAL POSITIONS.—(1) The Secretary may use the authority of this subsection (subject to paragraph (2)) to establish the qualifications for, and appoint and advance an individual in the Department of Defense as—

(A) a clinical or counseling psychologist (if such psychologist holds a diploma as a diplomate in psychology from an accrediting authority approved by the Secretary);

(B) a certified or registered respiratory therapist;

(C) a licensed physical therapist;

(D) a licensed practical or vocational nurse;

(E) a pharmacist; or

(F) an occupational therapist.

(2) Notwithstanding any other provision of this title or any other law, all matters relating to adverse actions, disciplinary actions, and grievance procedures involving an individual appointed to a position described in paragraph (1) (including such actions and procedures involving an employee in a probationary status) shall be resolved under the provisions of title 5 as though such individual had been appointed under such title.

(i) REINSTATEMENT.—In determining eligibility for reinstatement in the civil service of individuals appointed to positions in the Department of Defense under this section who at the time of appointment have a civil service status and whose employment in the Department of Defense is terminated, the period of service performed in the Department shall be included in computing the period of service under applicable civil service regulations.

(Added Pub. L. 107–107, div. A, title XI, §1104(a), Dec. 28, 2001, 115 Stat. 1236.)

PRIOR PROVISIONS

A prior section 1599c, added Pub. L. 104–201, div. A, title XVI, §1615(a)(1), Sept. 23, 1996, 110 Stat. 2740; amended Pub. L. 105–85, div. A, title X, §1073(a)(31), Nov. 18, 1997, 111 Stat. 1902, related to treatment of a Department of Defense violation of veterans' preference requirements as a prohibited personnel practice, prior to repeal by Pub. L. 105–339, §6(c)(1)(A), Oct. 31, 1998, 112 Stat. 3188.

§1599d. Professional accounting positions: authority to prescribe certification and credential standards

(a) AUTHORITY TO PRESCRIBE PROFESSIONAL CERTIFICATION STANDARDS.—The Secretary of Defense may prescribe professional certification and credential standards for professional accounting positions within the Department of Defense. Any such standard shall be prescribed as a Department of Defense regulation.

(b) WAIVER AUTHORITY.—The Secretary may waive any standard prescribed under subsection (a) whenever the Secretary determines such a waiver to be appropriate.

(c) APPLICABILITY.—A standard prescribed under subsection (a) shall not apply to any person employed by the Department of Defense before the standard is prescribed.

(d) REPORT.—The Secretary of Defense shall submit to Congress a report on the Secretary's plans to provide training to appropriate Department of Defense personnel to meet any new professional and credential standards prescribed under subsection (a). Such report shall be prepared in conjunction with the Director of the Office of Personnel Management. Such a report shall be submitted not later than one year after the effective date of any regulations, or any revision to regulations, prescribed pursuant to subsection (a).

(e) DEFINITION.—In this section, the term ''professional accounting position'' means a position or group of positions in the GS–510, GS–511, and GS–505 series that involves professional accounting work.

(Added Pub. L. 107–314, div. A, title XI, §1104(a)(1), Dec. 2, 2002, 116 Stat. 2661.)

EFFECTIVE DATE

Pub. L. 107–314, div. A, title XI, §1104(b), Dec. 2, 2002, 116 Stat. 2661, provided that: ''Standards established pursuant to section 1599d of title 10, United States Code, as added by subsection (a), may take effect no sooner than 120 days after the date of the enactment of this Act [Dec. 2, 2002].''

CHAPTER 83—CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES

Subchapter		Sec.
I.	Defense-Wide Intelligence Personnel Policy	1601
II.	Defense Intelligence Agency Personnel	1621

PRIOR PROVISIONS

A prior chapter 85 of this title was repealed by Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993. Previously, the individual sections of that chapter, sections 1621 to 1624, were repealed by Pub. L. 101–510, div. A, title XII, §1207(c)(1), (3), (4), Nov. 5, 1990, 104 Stat. 1665.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, substituted ''CIVILIAN DEFENSE INTELLIGENCE EMPLOYEES'' for ''DEFENSE INTELLIGENCE AGENCY AND CENTRAL IMAGERY OFFICE CIVILIAN PERSONNEL'' as chapter heading and added subchapter analysis.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

SUBCHAPTER I—DEFENSE-WIDE INTELLIGENCE PERSONNEL POLICY

Sec.	
1601.	Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay.
1602.	Basic pay.
1603.	Additional compensation, incentives, and allowances.
[1604.	Repealed.]
1605.	Benefits for certain employees assigned outside the United States.
1606.	Defense Intelligence Senior Executive Service.
1607.	Intelligence Senior Level positions.
1608.	Time-limited appointments.
1609.	Termination of defense intelligence employees.
1610.	Reductions and other adjustments in force.
1611.	Postemployment assistance: certain terminated intelligence employees.
1612.	Merit system principles and civil service protections: applicability.
1613.	Miscellaneous provisions.
1614.	Definitions.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745, added table of sections for subchapter and struck out former table of sections consisting of items 1601 ''Defense Intelligence Senior Executive Service'', 1602 ''Defense Intelligence Agency merit pay system'', 1603 ''Limit on pay'', 1604 ''Civilian personnel management'', 1605 ''Benefits for certain employees of the Defense Intelligence Agency'', 1606 ''Uniform allowance: civilian employees'', and 1608 ''Financial assistance to certain employees in acquisition of critical skills''.

1994—Pub. L. 103–359, title V, §501(b)(1)(A), Oct. 14, 1994, 108 Stat. 3428, amended chapter heading generally, inserting ''AND CENTRAL IMAGERY OFFICE''.

1989—Pub. L. 101–193, title V, §507(a)(2), Nov. 30, 1989, 103 Stat. 1710, added item 1608.

1987—Pub. L. 100–178, title VI, §601(b), Dec. 2, 1987, 101 Stat. 1015, added item 1606.

1985—Pub. L. 99–145, title XIII, §1302(a)(2), Nov. 8, 1985, 99 Stat. 737, redesignated item 192 of chapter 8 of this title as item 1605 and transferred it to this chapter.

1984—Pub. L. 98–618, title V, §501(b), Nov. 8, 1984, 98 Stat. 3302, added item 1604.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 5 section 7511.

§1601. Civilian intelligence personnel: general authority to establish excepted positions, appoint personnel, and fix rates of pay

(a) GENERAL AUTHORITY.—The Secretary of Defense may—

(1) establish, as positions in the excepted service, such defense intelligence positions in the Department of Defense as the Secretary determines necessary to carry out the intelligence functions of the Department, including—

(A) Intelligence Senior Level positions designated under section 1607 of this title; and

(B) positions in the Defense Intelligence Senior Executive Service;

(2) appoint individuals to those positions (after taking into consideration the availability of preference eligibles for appointment to those positions); and

(3) fix the compensation of such individuals for service in those positions.

(b) CONSTRUCTION WITH OTHER LAWS.—The authority of the Secretary of Defense under subsection (a) applies without regard to the provisions of any other law relating to the appointment, number, classification, or compensation of employees.

(Added Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2746; amended Pub. L. 106–398, §1 [[div. A], title XI, §1141(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318.)

PRIOR PROVISIONS

A prior section 1601, added Pub. L. 97–89, title VII, §701(a)(1), Dec. 4, 1981, 95 Stat. 1159; amended Pub. L. 101–194, title V, §506(c)(3), Nov. 30, 1989, 103 Stat. 1759; Pub. L. 101–280, §6(d)(4), May 4, 1990, 104 Stat. 161; Pub. L. 101–510, div. A, title XIV, §1484(*l*)(5), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 103–359, title V, §501(b)(1)(B), Oct. 14, 1994, 108 Stat. 3428, related to the Defense Intelligence Senior Executive Service, prior to repeal by Pub. L. 104–201, div. A, title XVI, §§1632(a)(3), 1635, Sept. 23, 1996, 110 Stat. 2745, 2752, effective Oct. 1, 1996. See section 1606 of this title.

Provisions similar to those in this section were contained in sections 1590(a) and 1604(a) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398, in introductory provisions, substituted ''in the Department of Defense'' for ''in the intelligence components of the Department of Defense and the military departments'' and ''of the Department'' for ''of those components and departments''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SHORT TITLE OF 1996 AMENDMENT

Section 1631 of Pub. L. 104–201 provided that: ''This subtitle [subtitle B (§§1631–1635) of title XVI of div. A of Pub. L. 104–201, enacting this section and sections 1602, 1603, 1606 to 1610, and 1612 to 1614 of this title, amending sections 1593, 1596, 1605, 1611, and 1621 of this title and sections 7103 and 7511 of Title 5, Government Organization and Employees, renumbering sections 1599, 1602, 1606, and 1608 of this title as sections 1611, 1621, 1622, and 1623 of this title, respectively, repealing sections 1590, 1601, 1603, and 1604 of this title and section 833 of Title 50, War and National Defense, enacting provisions set out as a note under section 1593 of this title, and repealing provisions set out as a note under section 402 of Title 50] may be cited as the 'Department of Defense Civilian Intelligence Personnel Policy Act of 1996'.''

DELEGATION OF AUTHORITY

Section 701(b) of Pub. L. 97–89 provided that: ''The authority of the Secretary of Defense under chapter 83 of title 10, United States Code, as added by subsection (a), may be delegated in accordance with section 133(d) [now 113(d)] of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1602, 1606, 1612, 1613 of this title.

§ 1602. Basic pay

(a) AUTHORITY TO FIX RATES OF BASIC PAY.—The Secretary of Defense (subject to the provisions of this section) shall fix the rates of basic pay for positions established under section 1601 of this title in relation to the rates of basic pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities.

(b) MAXIMUM RATES.—A rate of basic pay fixed under subsection (a) for a position established under section 1601 of this title may not (except as otherwise provided by law) exceed—

(1) in the case of a Defense Intelligence Senior Executive Service position, the maximum rate provided in section 5382 of title 5;

(2) in the case of an Intelligence Senior Level position, the maximum rate provided in section 5382 of title 5; and

(3) in the case of any other position, the maximum rate provided in section 5306(e) of title 5.

(c) PREVAILING RATE SYSTEMS.—The Secretary of Defense may, consistent with section 5341 of title 5, adopt such provisions of that title as provide for prevailing rate systems of basic pay and may apply those provisions to positions for civilian employees in or under which the Department of Defense may employ individuals described by section 5342(a)(2)(A) of that title.

(Added Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2746.)

PRIOR PROVISIONS

A prior section 1602 was renumbered section 1621 of this title.

Provisions similar to those in this section were contained in sections 1590(b) and (c) and 1604(b)(1) and (c) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1596, 1613 of this title.

§ 1603. Additional compensation, incentives, and allowances

(a) ADDITIONAL COMPENSATION BASED ON TITLE 5 AUTHORITIES.—The Secretary of Defense may provide employees in defense intelligence positions compensation (in addition to basic pay), including benefits, incentives, and allowances, consistent with, and not in excess of the level authorized for, comparable positions authorized by title 5.

(b) ALLOWANCES BASED ON LIVING COSTS AND ENVIRONMENT.—(1) In addition to basic pay, employees in defense intelligence positions who are citizens or nationals of the United States and are stationed outside the continental United States or in Alaska may be paid an allowance, in accordance with regulations prescribed by the Secretary of Defense, while they are so stationed.

(2) An allowance under this subsection shall be based on—

(A) living costs substantially higher than in the District of Columbia;

(B) conditions of environment which (i) differ substantially from conditions of environment in the continental United States, and (ii) warrant an allowance as a recruitment incentive; or

(C) both of the factors specified in subparagraphs (A) and (B).

(3) An allowance under this subsection may not exceed the allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute.

(Added Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2746.)

PRIOR PROVISIONS

A prior section 1603, added Pub. L. 97–89, title VII, §701(a)(1), Dec. 4, 1981, 95 Stat. 1160; amended Pub. L. 99–145, title XIII, §1302(a)(3), Nov. 8, 1985, 99 Stat. 738; Pub. L. 99–661, div. A, title XIII, §1343(a)(9), Nov. 14, 1986, 100 Stat. 3992, related to limits on pay to members of the Defense Intelligence Senior Executive Service, prior to repeal by Pub. L. 104–201, div. A, title XVI, §§1632(a)(3), 1635, Sept. 23, 1996, 110 Stat. 2745, 2752, effective Oct. 1, 1996.

Provisions similar to those in this section were contained in sections 1590(d) and 1604(b)(2), (d) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1613 of this title.

[§1604. Repealed. Pub. L. 104–201, div. A, title XVI, §1632(a)(3), Sept. 23, 1996, 110 Stat. 2745]

Section, added Pub. L. 98–618, title V, §501(a), Nov. 8, 1984, 98 Stat. 3301; amended Pub. L. 99–569, title V, §502, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 100–178, title VI, §602(a), Dec. 2, 1987, 101 Stat. 1015; Pub. L. 101–193, title V, §503(b), Nov. 30, 1989, 103 Stat. 1708; Pub. L. 102–496, title IV, §401(a), Oct. 24, 1992, 106 Stat. 3183; Pub. L. 103–359, title V, §501(b)(1)(D), title VIII, §806(b)(1), Oct. 14, 1994, 108 Stat. 3428, 3442; Pub. L. 104–93, title V, §501, Jan. 6, 1996, 109 Stat. 970, related to civilian personnel management. See sections 1601 to 1603, 1607, and 1609 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§1605. Benefits for certain employees assigned outside the United States

(a)(1) The Secretary of Defense may provide to civilian personnel described in subsection (d) allowances and benefits comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under paragraphs (2), (3), (4), (5), (6), (7), (8), and (13) of section 901 and sections 705 and 903 of the Foreign Service Act of 1980 (22 U.S.C. 4081(2), (3), (4), (5), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.

(2) The Secretary may also provide to any such civilian personnel special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2153) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).

(b) The authority of the Secretary of Defense to make payments under subsection (a) is effective for any fiscal year only to the extent that appropriated funds are available for such purpose.

(c) Regulations prescribed under subsection (a) may not take effect until the Secretary of Defense has submitted such regulations to—

(1) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(2) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) Subsection (a) applies to civilian personnel of the Department of Defense who—

(1) are United States nationals;

(2) in the case of employees of the Defense Intelligence Agency, are assigned to duty outside the United States and, in the case of other employees, are assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States; and

(3) are designated by the Secretary of Defense for the purposes of subsection (a).

(Added Pub. L. 98–215, title V, §501(a), Dec. 9, 1983, 97 Stat. 1478, §192; renumbered §1605 and amended Pub. L. 99–145, title XIII, §1302(a)(1), Nov. 8, 1985, 99 Stat. 737; Pub. L. 99–335, title V, §507(b), June 6, 1986, 100 Stat. 628; Pub. L. 99–569, title V, §501, Oct. 27, 1986, 100 Stat. 3198; Pub. L. 101–193, title V, §505(a), Nov. 30, 1989, 103 Stat. 1709; Pub. L. 102–496, title VIII, §803(d), Oct. 24, 1992, 106 Stat. 3253; Pub. L. 103–160, div. A, title XI, §1182(a)(3), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 104–93, title V, §502(a), Jan. 6, 1996, 109 Stat. 972; Pub. L. 104–201, div. A, title XVI, §1633(c)(1), Sept. 23, 1996, 110 Stat. 2751; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201 substituted ''assigned outside the United States'' for ''of the Defense Intelligence Agency'' in section catchline.

Subsec. (a). Pub. L. 104–93, §502(a)(1), designated first sentence of existing text as par. (1) and substituted ''described in subsection (d)'' for ''of the Department of Defense who are United States nationals, who are assigned to Defense Attaché Offices and Defense Intelligence Agency Liaison Offices outside the United States, and who are designated by the Secretary of Defense for the purposes of this subsection,'', and designated second sentence of existing text as par. (2).

Subsec. (c). Pub. L. 104–93, §502(a)(2), added subsec. (c) and struck out former subsec. (c) which read as follows: ''Regulations issued pursuant to subsection (a) shall be submitted to the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives and the Committee on Armed Services and the Select Committee on Intelligence of the Senate before such regulations take effect.''

Subsec. (d). Pub. L. 104–93, §502(a)(3), added subsec. (d).

1993—Subsec. (a). Pub. L. 103–160 substituted ''(50 U.S.C. 2153)'' for ''(50 U.S.C. 403 note)''.

1992—Subsec. (a). Pub. L. 102–496 substituted ''the Central Intelligence Agency Retirement Act'' for ''the Central Intelligence Agency Retirement Act of 1964 for Certain Employees'' and inserted ''(50 U.S.C. 403r)'' after ''the Central Intelligence Agency Act of 1949''.

1989—Subsec. (a). Pub. L. 101–193 struck out ''who are subject to chapter 84 of title 5,'' after ''such civilian personnel'' in last sentence and inserted reference to section 18 of the Central Intelligence Agency Act of 1949.

1986—Subsec. (a). Pub. L. 99–569 inserted reference to par. (5) of section 901 of the Foreign Service Act of 1980 (22 U.S.C. 4081(5)).

Pub. L. 99–335 inserted provision authorizing the Secretary to provide to any civilian personnel subject to chapter 84 of title 5 special retirement accrual benefits in the same manner provided for certain officers and employees of the Central Intelligence Agency in section 303 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees.

1985—Subsec. (a). Pub. L. 99–145, §1302(a)(1)(A), (B), struck out references to Director of the Defense Intelligence Agency and to military personnel, substituted ''sections 705 and 903'' for ''under sections 903, 705, and 2308'', and substituted ''(22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13), 4025, 4083) and under section 5924(4) of title 5.'' for ''(22 U.S.C. 4025; 22 U.S.C. 4081(2), (3), (4), (6), (7), (8), and (13); 22 U.S.C. 4083; 5 U.S.C. 5924(4)).''

Subsec. (b). Pub. L. 99–145, §1302(a)(1)(A), struck out reference to Director of the Defense Intelligence Agency.

Subsecs. (c), (d). Pub. L. 99–145, §1302(a)(1)(C), struck out subsec. (c) which read as follows: ''Members of the Armed Forces may not receive benefits under both subsection (a) and title 37, United States Code, for the same purpose. The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this subsection.'', and redesignated former subsec. (d) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–496 effective on first day of fourth month beginning after Oct. 24, 1992, see section 805 of Pub. L. 102–496, set out as a note under section 2001 of Title 50, War and National Defense.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–335 effective Jan. 1, 1987, see section 702(a) of Pub. L. 99–335, set out as an Effective Date note under section 8401 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1612, 1613 of this title.

§ 1606. Defense Intelligence Senior Executive Service

(a) ESTABLISHMENT.—The Secretary of Defense may establish a Defense Intelligence Senior Executive Service for defense intelligence positions established pursuant to section 1601(a) of this title that are equivalent to Senior Executive Service positions. The number of positions in the Defense Intelligence Senior Executive Service may not exceed 544.

(b) REGULATIONS CONSISTENT WITH TITLE 5 PROVISIONS.—The Secretary of Defense shall prescribe regulations for the Defense Intelligence Senior Executive Service which are consistent with the requirements set forth in sections 3131, 3132(a)(2), 3396(c), 3592, 3595(a), 5384, and 6304 of title 5, subsections (a), (b), and (c) of section 7543 of such title (except that any hearing or appeal to which a member of the Defense Intelligence Senior Executive Service is entitled shall be held or decided pursuant to those regulations), and subchapter II of chapter 43 of such title. To the extent that the Secretary determines it practicable to apply to members of, or applicants for, the Defense Intelligence Senior Executive Service other provisions of title 5 that apply to members of, or applicants for, the Senior Executive Service, the Secretary shall also prescribe regulations to implement those provisions with respect to the Defense Intelligence Senior Executive Service.

(c) AWARD OF RANK TO MEMBERS OF THE DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507 of title 5 to members of the Defense Intelligence Senior Executive Service. The award of such rank shall be made in a manner consistent with the provisions of that section.

(Added Pub. L. 104–201, div. A, title XVI, §1632(b), Sept. 23, 1996, 110 Stat. 2747; amended Pub. L. 106–398, §1 [[div. A], title XI, §1142], Oct. 30, 2000, 114 Stat. 1654, 1654A–319; Pub. L. 107–107, div. A, title XI, §1121, Dec. 28, 2001, 115 Stat. 1242.)

PRIOR PROVISIONS

A prior section 1606 was renumbered section 1622 of this title.

Provisions similar to those in this section were contained in sections 1590(f), (g) and 1601(a)–(c) of this title prior to repeal by Pub. L. 104–201, §§1632(a)(3), 1633(a).

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''544'' for ''517''.

2000—Subsec. (a). Pub. L. 106–398 substituted ''517'' for ''492''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1613 of this title.

§ 1607. Intelligence Senior Level positions

(a) DESIGNATION OF POSITIONS.—The Secretary of Defense may designate as an Intelligence Senior Level position any defense intelligence position that, as determined by the Secretary—

(1) is classifiable above grade GS–15 of the General Schedule;

(2) does not satisfy functional or program management criteria for being designated a Defense Intelligence Senior Executive Service position; and

(3) has no more than minimal supervisory responsibilities.

(b) REGULATIONS.—Subsection (a) shall be carried out in accordance with regulations prescribed by the Secretary of Defense.

(c) AWARD OF RANK TO EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS.—The President, based on the recommendations of the Sec-

retary of Defense, may award a rank referred to in section 4507a of title 5 to employees in Intelligence Senior Level positions designated under subsection (a). The award of such rank shall be made in a manner consistent with the provisions of that section.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2747; amended Pub. L. 107–306, title V, § 503, Nov. 27, 2002, 116 Stat. 2407.)

REFERENCES IN TEXT

Grade GS–15 of the General Schedule, referred to in subsec. (a)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1607 was renumbered section 424 of this title.

Provisions similar to those in this section were contained in section 1604(f)(1), (3) of this title prior to repeal by Pub. L. 104–201, § 1632(a)(3).

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–306 added subsec. (c).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1601, 1613 of this title.

§ 1608. Time-limited appointments

(a) AUTHORITY FOR TIME-LIMITED APPOINTMENTS.—The Secretary of Defense may by regulation authorize appointing officials to make time-limited appointments to defense intelligence positions specified in the regulations.

(b) REVIEW OF USE OF AUTHORITY.—The Secretary of Defense shall review each time-limited appointment in a defense intelligence position at the end of the first year of the period of the appointment and determine whether the appointment should be continued for the remainder of the period. The continuation of a time-limited appointment after the first year shall be subject to the approval of the Secretary.

(c) CONDITION ON PERMANENT APPOINTMENT TO DEFENSE INTELLIGENCE SENIOR EXECUTIVE SERVICE.—An employee serving in a defense intelligence position pursuant to a time-limited appointment is not eligible for a permanent appointment to a Defense Intelligence Senior Executive Service position (including a position in which the employee is serving) unless the employee is selected for the permanent appointment on a competitive basis.

(d) TIME-LIMITED APPOINTMENT DEFINED.—In this section, the term ''time-limited appointment'' means an appointment (subject to the condition in subsection (b)) for a period not to exceed two years.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

A prior section 1608 was renumbered section 1623 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1613 of this title.

§ 1609. Termination of defense intelligence employees

(a) TERMINATION AUTHORITY.—Notwithstanding any other provision of law, the Secretary of Defense may terminate the employment of any employee in a defense intelligence position if the Secretary—

(1) considers that action to be in the interests of the United States; and

(2) determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such employee cannot be invoked in a manner consistent with the national security.

(b) FINALITY.—A decision by the Secretary of Defense to terminate the employment of an employee under this section is final and may not be appealed or reviewed outside the Department of Defense.

(c) NOTIFICATION TO CONGRESSIONAL COMMITTEES.—Whenever the Secretary of Defense terminates the employment of an employee under the authority of this section, the Secretary shall promptly notify the congressional oversight committees of such termination.

(d) PRESERVATION OF RIGHT TO SEEK OTHER EMPLOYMENT.—Any termination of employment under this section does not affect the right of the employee involved to seek or accept employment with any other department or agency of the United States if that employee is declared eligible for such employment by the Director of the Office of Personnel Management.

(e) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense under this section may be delegated only to the Deputy Secretary of Defense, the head of an intelligence component of the Department of Defense (with respect to employees of that component), or the Secretary of a military department (with respect to employees of that department). An action to terminate employment of such an employee by any such official may be appealed to the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(b), Sept. 23, 1996, 110 Stat. 2748.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1590(e) and 1604(e) of this title prior to repeal by Pub. L. 104–201, §§ 1632(a)(3), 1633(a).

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1613 of this title.

§ 1610. Reductions and other adjustments in force

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations for the separation of

employees in defense intelligence positions, including members of the Defense Intelligence Senior Executive Service and employees in Intelligence Senior Level positions, during a reduction in force or other adjustment in force. The regulations shall apply to such a reduction in force or other adjustment in force notwithstanding sections 3501(b) and 3502 of title 5.

(b) MATTERS TO BE GIVEN EFFECT.—The regulations shall give effect to the following:

(1) Tenure of employment.

(2) Military preference, subject to sections 3501(a)(3) and 3502(b) of title 5.

(3) The veteran's preference under section 3502(b) of title 5.

(4) Performance.

(5) Length of service computed in accordance with the second sentence of section 3502(a) of title 5.

(c) REGULATIONS RELATING TO DEFENSE INTELLIGENCE SES.—The regulations relating to removal from the Defense Intelligence Senior Executive Service in a reduction in force or other adjustment in force shall be consistent with section 3595(a) of title 5.

(d) RIGHT OF APPEAL.—(1) The regulations shall provide a right of appeal regarding a personnel action under the regulations. The appeal shall be determined within the Department of Defense. An appeal determined at the highest level provided in the regulations shall be final and not subject to review outside the Department of Defense. A personnel action covered by the regulations is not subject to any other provision of law that provides appellate rights or procedures.

(2) Notwithstanding paragraph (1), a preference eligible referred to in section 7511(a)(1)(B) of title 5 may elect to have an appeal of a personnel action taken against the preference eligible under the regulation determined by the Merit Systems Protection Board instead of having the appeal determined within the Department of Defense. Section 7701 of title 5 shall apply to any such appeal to the Merit Systems Protection Board.

(e) CONSULTATION WITH OPM.—Regulations under this section shall be prescribed in consultation with the Director of the Office of Personnel Management.

(Added Pub. L. 104–201, div. A, title XVI, §1632(b), Sept. 23, 1996, 110 Stat. 2749.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1613 of this title.

§ 1611. Postemployment assistance: certain terminated intelligence employees

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may, in the case of any individual who is a qualified former intelligence employee, use appropriated funds—

(1) to assist that individual in finding and qualifying for employment other than in a defense intelligence position;

(2) to assist that individual in meeting the expenses of treatment of medical or psychological disabilities of that individual; and

(3) to provide financial support to that individual during periods of unemployment.

(b) QUALIFIED FORMER INTELLIGENCE EMPLOYEES.—For purposes of this section, a qualified former intelligence employee is an individual who was employed as a civilian employee of the Department of Defense in a sensitive defense intelligence position—

(1) who has been found to be ineligible for continued access to information designated as ''Sensitive Compartmented Information'' and employment in a defense intelligence position; or

(2) whose employment in a defense intelligence position has been terminated.

(c) CONDITIONS.—Assistance may be provided to a qualified former intelligence employee under subsection (a) only if the Secretary determines that such assistance is essential to—

(1) maintain the judgment and emotional stability of the qualified former intelligence employee; and

(2) avoid circumstances that might lead to the unlawful disclosure of classified information to which the qualified former intelligence employee had access.

(d) DURATION OF ASSISTANCE.—Assistance may not be provided under this section in the case of any individual after the end of the five-year period beginning on the date of the termination of the employment of the individual in a defense intelligence position.

(e) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (3) an annual report with respect to any expenditure made under this section.

(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947.

(3) The committees referred to in paragraph (1) are the following:

(A) The Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate.

(Added Pub. L. 103–359, title VIII, §806(a)(1), Oct. 14, 1994, 108 Stat. 3441, §1599; amended Pub. L. 104–106, div. A, title XV, §1502(a)(11), Feb. 10, 1996, 110 Stat. 503; renumbered §1611 and amended Pub. L. 104–201, div. A, title XVI, §1632(c), Sept. 23, 1996, 110 Stat. 2749; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title XI, §1141(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–318; Pub. L. 107–107, div. A, title X, §1048(a)(15), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–306, title VIII, §811(b)(4)(B), Nov. 27, 2002, 116 Stat. 2423.)

REFERENCES IN TEXT

Section 507 of the National Security Act of 1947, referred to in subsec. (e)(2), is classified to section 415b of Title 50, War and National Defense.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1604(e)(4) of this title and in section 17 of Pub. L. 86–36 as added by Pub. L. 102–88, title V, § 503, Aug. 14, 1991, 105 Stat. 436, set out as a note under section 402 of Title 50, War and National Defense, prior to repeal by Pub. L. 103–359, § 806(b).

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–306, § 811(b)(4)(B)(i), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (e)(2), (3). Pub. L. 107–306, § 811(b)(4)(B)(ii), (iii), added par. (2) and redesignated former par. (2) as (3).

2001—Subsec. (d). Pub. L. 107–107 struck out ''with'' before ''in a defense intelligence position''.

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(1)], substituted ''a defense intelligence position'' for ''an intelligence component of the Department of Defense''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(2)], substituted ''sensitive defense intelligence position'' for ''sensitive position in an intelligence component of the Department of Defense'' in introductory provisions and ''in a defense intelligence position'' for ''with the intelligence component'' in pars. (1) and (2).

Subsec. (d). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(3)], substituted ''in a defense intelligence position'' for ''an intelligence component of the Department of Defense''.

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title XI, § 1141(b)(4)], struck out heading and text of subsec. (f). Text read as follows: ''In this section, the term 'intelligence component of the Department of Defense' includes the National Reconnaissance Office and any intelligence component of a military department.''

1999—Subsec. (e)(2)(A). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201 renumbered section 1599 of this title as this section.

Subsec. (e)(2)(A). Pub. L. 104–106, § 1502(a)(11)(A), substituted ''The Committee on National Security, the Committee on Appropriations,'' for ''The Committees on Armed Services and Appropriations''.

Subsec. (e)(2)(B). Pub. L. 104–106, § 1502(a)(11)(B), substituted ''The Committee on Armed Services, the Committee on Appropriations,'' for ''The Committees on Armed Services and Appropriations''.

Subsec. (f). Pub. L. 104–201 substituted ''includes the National Reconnaissance Office and any intelligence component of a military department.'' for ''means any of the following:

''(1) The National Security Agency.

''(2) The Defense Intelligence Agency.

''(3) The National Reconnaissance Office.

''(4) The Central Imagery Office.

''(5) The intelligence components of any of the military departments.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1612, 1613 of this title; title 50 section 415b.

§ 1612. Merit system principles and civil service protections: applicability

(a) APPLICABILITY OF MERIT SYSTEM PRINCIPLES.—Section 2301 of title 5 shall apply to the exercise of authority under this subchapter (other than sections 1605 and 1611).

(b) CIVIL SERVICE PROTECTIONS.—(1) If, in the case of a position established under authority other than section 1601(a)(1) of this title that is reestablished as an excepted service position under that section, the provisions of law referred to in paragraph (2) applied to the person serving in that position immediately before the position is so reestablished and such provisions of law would not otherwise apply to the person while serving in the position as so reestablished, then such provisions of law shall, subject to paragraph (3), continue to apply to the person with respect to service in that position for as long as the person continues to serve in the position without a break in service.

(2) The provisions of law referred to in paragraph (1) are the following provisions of title 5:

(A) Section 2302, relating to prohibited personnel practices.

(B) Chapter 75, relating to adverse actions.

(3)(A) Notwithstanding any provision of chapter 75 of title 5, an appeal of an adverse action by an individual employee covered by paragraph (1) shall be determined within the Department of Defense if the employee so elects.

(B) The Secretary of Defense shall prescribe the procedures for initiating and determining appeals of adverse actions pursuant to elections made under subparagraph (A).

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750.)

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1613. Miscellaneous provisions

(a) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in sections 1601 through 1603 and 1606 through 1610 may be construed to impair the continued effectiveness of a collective bargaining agreement with respect to an agency or office that is a successor to an agency or office covered by the agreement before the succession.

(b) NOTICE TO CONGRESS OF REGULATIONS.—The Secretary of Defense shall notify Congress of any regulations prescribed to carry out this subchapter (other than sections 1605 and 1611). Such notice shall be provided by submitting a copy of the regulations to the congressional oversight committees not less than 60 days before such regulations take effect.

(Added Pub. L. 104–201, div. A, title XVI, § 1632(d), Sept. 23, 1996, 110 Stat. 2750; amended Pub. L. 105–85, div. A, title X, § 1073(a)(32), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''1603'' for ''1604''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

§ 1614. Definitions

In this subchapter:

(1) The term ''defense intelligence position'' means a civilian position as an intelligence officer or intelligence employee of the Department of Defense.

(2) The term ''intelligence component of the Department of Defense'' means any of the following:

(A) The National Security Agency.

(B) The Defense Intelligence Agency.

(C) The National Imagery and Mapping Agency.

(D) Any other component of the Department of Defense that performs intelligence functions and is designated by the Secretary of Defense as an intelligence component of the Department of Defense.

(E) Any successor to a component specified in, or designated pursuant to, this paragraph.

(3) The term ''congressional oversight committees'' means—

(A) the Committee on Armed Services and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(4) The term ''excepted service'' has the meaning given such term in section 2103 of title 5.

(5) The term ''preference eligible'' has the meaning given such term in section 2108(3) of title 5.

(6) The term ''Senior Executive Service position'' has the meaning given such term in section 3132(a)(2) of title 5.

(7) The term ''collective bargaining agreement'' has the meaning given such term in section 7103(8) of title 5.

(Added Pub. L. 104–201, div. A, title XVI, §1632(d), Sept. 23, 1996, 110 Stat. 2750; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title XI, §1141(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–319.)

AMENDMENTS

2000—Par. (1). Pub. L. 106–398 substituted ''of the Department of Defense'' for ''of an intelligence component of the Department of Defense or of a military department''.

1999—Par. (3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 7511.

SUBCHAPTER II—DEFENSE INTELLIGENCE AGENCY PERSONNEL

Sec.

1621. Defense Intelligence Agency merit pay system.
1622. Uniform allowance: civilian employees.
1623. Financial assistance to certain employees in acquisition of critical skills.

§1621. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section 5401 of title 5, as in effect on October 31, 1993.

(Added Pub. L. 97–89, title VII, §701(a)(1), Dec. 4, 1981, 95 Stat. 1160, §1602; amended Pub. L. 98–615, title II, §204(b), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 103–89, §3(b)(3)(A), Sept. 30, 1993, 107 Stat. 982; Pub. L. 103–359, title V, §501(b)(1)(C), Oct. 14, 1994, 108 Stat. 3428; renumbered §1621 and amended Pub. L. 104–201, div. A, title XVI, §§1632(a)(1), 1633(d), Sept. 23, 1996, 110 Stat. 2745, 2752.)

REFERENCES IN TEXT

Section 5401 of title 5, referred to in text, was repealed by Pub. L. 103–89, §3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, eff. Nov. 1, 1993.

PRIOR PROVISIONS

A prior section 1621, added Pub. L. 99–145, title IX, §924(a)(1), Nov. 8, 1985, 99 Stat. 697; amended Pub. L. 99–433, title I, §110(g)(2), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, §7(c)(2), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–189, div. A, title VIII, §853(c)(1), Nov. 29, 1989, 103 Stat. 1518, defined ''program manager'', ''procurement command'', and ''major defense acquisition program'', prior to repeal by Pub. L. 101–510, div. A, title XII, §1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, §1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1602 of this title as this section and struck out ''and Central Imagery Office'' after ''Intelligence Agency''.

1994—Pub. L. 103–359 inserted ''and Central Imagery Office'' after ''Defense Intelligence Agency''.

1993—Pub. L. 103–89 inserted '', as in effect on October 31, 1993''.

1984—Pub. L. 98–615 substituted ''section 5401 of title 5'' for ''section 5401(a) of title 5''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1635 of Pub. L. 104–201, set out as a note under section 1593 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 205 of Pub. L. 98–615 provided that amendment by Pub. L. 98–615 was effective Oct. 1, 1984, and applicable with respect to pay periods commencing on or after that date, with certain exceptions and qualifications.

EFFECTIVE DATE

Section 806 of Pub. L. 97–89 provided that: ''The amendments made by titles V, VI, and VII and by this title [enacting this chapter and section 403m of Title 50, War and National Defense, amending sections 2108, 6304, and 8336 of Title 5, Government Organization and Employees, and sections 403e, 403f, and 405 of Title 50, enacting provisions set out as notes under this section and section 402 of Title 50, and amending provisions set out as notes under section 402 of Title 50] shall take effect as of October 1, 1981.''

§ 1622. Uniform allowance: civilian employees

(a) The Secretary of Defense may pay an allowance under this section to any civilian employee of the Defense Intelligence Agency who—

(1) is assigned to a Defense Attaché Office outside the United States; and

(2) is required by regulation to wear a prescribed uniform in performance of official duties.

(b) Notwithstanding section 5901(a) of title 5, the amount of any such allowance shall be the greater of the following:

(1) The amount provided for employees of the Department of State assigned to positions outside the United States and required by regulation to wear a prescribed uniform in performance of official duties.

(2) The maximum allowance provided under section 1593(b) of this title.

(c) An allowance paid under this section shall be treated in the same manner as is provided in subsection (c) of section 5901 of title 5 for an allowance paid under that section.

(Added Pub. L. 100–178, title VI, § 601(a), Dec. 2, 1987, 101 Stat. 1015, § 1606; amended Pub. L. 101–189, div. A, title III, § 336(b), Nov. 29, 1989, 103 Stat. 1419; renumbered § 1622, Pub. L. 104–201, div. A, title XVI, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

PRIOR PROVISIONS

A prior section 1622, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–500, § 101(c) [title X, § 933], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161; Pub. L. 99–591, § 101(c) [title X, § 933], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, § 933, Nov. 14, 1986, 100 Stat. 3940, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, § 853(c)(2), Nov. 29, 1989, 103 Stat. 1518, related to education, training, and experience requirements for persons assigned as program managers of major defense acquisition programs, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(1), Nov. 5, 1990, 104 Stat. 1665, effective Oct. 1, 1991.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1606 of this title as this section.

1989—Subsec. (b)(2). Pub. L. 101–189 substituted ''The maximum allowance provided under section 1593(b) of this title'' for ''$360 per year''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–189 effective Jan. 1, 1990, see section 336(c) of Pub. L. 101–189, set out as an Effective Date note under section 1593 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1593 of this title.

§ 1623. Financial assistance to certain employees in acquisition of critical skills

(a) The Secretary of Defense shall establish an undergraduate training program with respect to civilian employees of the Defense Intelligence Agency that is similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Agency Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

(b) Any payments made by the Secretary to carry out the program required to be established by subsection (a) may be made in any fiscal year only to the extent that appropriated funds are available for that purpose.

(Added Pub. L. 101–193, title V, § 507(a)(1), Nov. 30, 1989, 103 Stat. 1709, § 1608; renumbered § 1623, Pub. L. 104–201, div. A, title XVI, § 1632(a)(2), Sept. 23, 1996, 110 Stat. 2745.)

PRIOR PROVISIONS

A prior section 1623, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698; amended Pub. L. 99–661, div. A, title XIII, § 1343(a)(10), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, § 7(j)(4), Apr. 21, 1987, 101 Stat. 283; Pub. L. 101–189, div. A, title VIII, § 853(c)(3), Nov. 29, 1989, 103 Stat. 1519, related to education, training, and experience requirements for general and flag officers assigned to a procurement command, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(3), Nov. 5, 1990, 104 Stat. 1665, effective Oct. 1, 1992.

A prior section 1624, added Pub. L. 99–145, title IX, § 924(a)(1), Nov. 8, 1985, 99 Stat. 698, required a training program for quality assurance personnel, prior to repeal by Pub. L. 101–510, div. A, title XII, § 1207(c)(4), Nov. 5, 1990, 104 Stat. 1665; Pub. L. 102–190, div. A, title X, § 1061(a)(26)(C)(i), Dec. 5, 1991, 105 Stat. 1474, effective Oct. 1, 1993.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 1608 of this title as this section.

EFFECTIVE DATE

Section 507(b) of Pub. L. 101–193 provided that: ''Section 1608 [now 1623] of title 10, United States Code, as added by subsection (a), shall take effect on the date of enactment of this Act [Nov. 30, 1989].''

CHAPTER 87—DEFENSE ACQUISITION WORKFORCE

Subchapter		Sec.
I.	General Authorities and Responsibilities	1701
II.	Defense Acquisition Positions	1721
III.	Acquisition Corps	1731
IV.	Education and Training	1741
V.	General Management Provisions	1761

AMENDMENTS

1991—Pub. L. 102–25, title VII, § 704(b)(1), Apr. 6, 1991, 105 Stat. 119, made technical amendment to directory language of Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1638, which enacted this chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title; title 41 section 433.

SUBCHAPTER I—GENERAL AUTHORITIES AND RESPONSIBILITIES

Sec.
1701. Management policies.
1702. Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities.
1703. Director of Acquisition Education, Training, and Career Development.
1704. Service acquisition executives: authorities and responsibilities.
1705. Directors of Acquisition Career Management in the military departments.
1706. Acquisition career program boards.

Sec.
1707. Personnel in the Office of the Secretary of Defense and in the Defense Agencies.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, §1048(b)(3)(B), Dec. 28, 2001, 115 Stat. 1225, substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities'' for ''Under Secretary of Defense for Acquisition and Technology: authorities and responsibilities'' in item 1702.

1993—Pub. L. 103–160, div. A, title IX, §904(d)(2), Nov. 30, 1993, 107 Stat. 1728, inserted ''and Technology'' after ''Acquisition'' in item 1702.

§ 1701. Management policies

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the effective management (including accession, education, training, and career development) of persons serving in acquisition positions in the Department of Defense.

(b) UNIFORM IMPLEMENTATION.—The Secretary shall ensure that, to the maximum extent practicable, acquisition workforce policies and procedures established in accordance with this chapter are uniform in their implementation throughout the Department of Defense.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638.)

EFFECTIVE DATE

Section 1211 of title XII of Pub. L. 101–510 provided that: ''Except as otherwise provided in this title [see Short Title note below], this title and the amendments made by this title, including chapter 87 of title 10, United States Code (as added by section 1202), shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

SHORT TITLE

Section 1201 of title XII of Pub. L. 101–510 provided that: ''This title [enacting this chapter, sections 5379 and 5380 of Title 5, Government Organization and Employees, and section 317 of Title 37, Pay and Allowances of the Uniformed Services, amending sections 101 and 2435 of this title and sections 4107, 4301, 5102, 5532, 5724, 5742, 5924, 5942, 8344, and 8468 of Title 5, repealing sections 1621 to 1624 of this title, enacting provisions set out as notes under this section and sections 1621 to 1623, 1705, 1721, 1722, 1724, 1733, 1734, 1746, 1761, 1762, and 2435 of this title, sections 3326, 5380, and 5532 of Title 5, and section 317 of Title 37, and repealing provisions set out as a note under section 2304 of this title] may be cited as the 'Defense Acquisition Workforce Improvement Act'.''

REGULATIONS

Section 1210(a) of title XII of Pub. L. 101–510 provided that: ''Unless otherwise provided in this title [see Short Title note above] and in subsection (b) [set out below], the Secretary of Defense shall promulgate regulations to implement this title and the amendments made by this title not later than one year after the date of the enactment of this Act [Nov. 5, 1990].''

DEMONSTRATION PROJECT RELATING TO CERTAIN PERSONNEL MANAGEMENT POLICIES AND PROCEDURES

Pub. L. 104–106, div. D, title XLIII, §4308, Feb. 10, 1996, 110 Stat. 669, as amended by Pub. L. 105–85, div. A, title VIII, §845, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 107–314, div. A, title VIII, §813(b), Dec. 2, 2002, 116 Stat. 2609, provided that:

''(a) COMMENCEMENT.—The Secretary of Defense is encouraged to take such steps as may be necessary to provide for the commencement of a demonstration project, the purpose of which would be to determine the feasibility or desirability of one or more proposals for improving the personnel management policies or procedures that apply with respect to the acquisition workforce of the Department of Defense and supporting personnel assigned to work directly with the acquisition workforce.

''(b) TERMS AND CONDITIONS.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, any demonstration project described in subsection (a) shall be subject to section 4703 of title 5, United States Code, and all other provisions of such title that apply with respect to any demonstration project under such section.

''(2) EXCEPTIONS.—Subject to paragraph (3), in applying section 4703 of title 5, United States Code, with respect to a demonstration project described in subsection (a)—

''(A) '180 days' in subsection (b)(4) of such section shall be deemed to read '120 days';

''(B) '90 days' in subsection (b)(6) of such section shall be deemed to read '30 days'; and

''(C) subsection (d)(1) of such section shall be disregarded.

''(3) CONDITION.—Paragraph (2) shall not apply with respect to a demonstration project unless it—

''(A) involves only the acquisition workforce of the Department of Defense (or any part thereof) or involves a team of personnel more than half of which consists of members of the acquisition workforce and the remainder of which consists of supporting personnel assigned to work directly with the acquisition workforce; and

''(B) commences before October 1, 2007.

''(c) DEFINITION.—For purposes of this section, the term 'acquisition workforce' refers to the persons serving in acquisition positions within the Department of Defense, as designated pursuant to section 1721(a) of title 10, United States Code.

''(d) LIMITATION ON NUMBER OF PARTICIPANTS.—The total number of persons who may participate in the demonstration project under this section may not exceed 95,000.

''(e) TERMINATION OF AUTHORITY.—The authority to conduct a demonstration program under this section shall terminate on September 30, 2012.''

EVALUATION BY COMPTROLLER GENERAL

Section 1208 of title XII of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(b)(2), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–484, div. A, title VIII, §812(g), Oct. 23, 1992, 106 Stat. 2452; Pub. L. 104–106, div. A, title XV, §1502(c)(4)(A), Feb. 10, 1996, 110 Stat. 507, provided for evaluation by Comptroller General of actions taken by Secretary of Defense to carry out requirements of Defense Acquisition Workforce Improvement Act and submission of annual reports to Congress, prior to repeal by Pub. L. 104–66, title I, §1031(b)(1), Dec. 21, 1995, 109 Stat. 714.

DEADLINES FOR QUALIFICATION REQUIREMENTS

Section 1210(b) of Pub. L. 101–510 provided that: ''Not later than October 1, 1992, the Secretary of Defense shall prescribe regulations to implement sections 1723, 1724, and 1732 of title 10, United States Code (as added by section 1202).''

§ 1702. Under Secretary of Defense for Acquisition, Technology, and Logistics: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall carry out all powers, functions, and duties of the Secretary of Defense with respect to the acquisition workforce in the Department of Defense. The Under Secretary shall ensure that the policies of the Secretary of

Defense established in accordance with this chapter are implemented throughout the Department of Defense. The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1638; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–261, div. A, title VIII, §815, Oct. 17, 1998, 112 Stat. 2088; Pub. L. 107–107, div. A, title X, §1048(b)(2), (3)(A), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in section catchline and in text.

1998—Pub. L. 105–261 inserted at end ''The Under Secretary shall prescribe policies and requirements for the educational programs of the defense acquisition university structure established under section 1746 of this title.''

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition'' in section catchline and in text.

QUICK-REACTION SPECIAL PROJECTS ACQUISITION TEAM

Pub. L. 107–314, div. A, title VIII, §807, Dec. 2, 2002, 116 Stat. 2608, provided that:

''(a) ESTABLISHMENT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall establish a team of highly qualified acquisition professionals who shall be available to advise the Under Secretary on actions that can be taken to expedite the acquisition of urgently needed systems.

''(b) DUTIES.—The issues on which the team may provide advice shall include the following:

''(1) Industrial base issues, including the limited availability of suppliers.

''(2) Technology development and technology transition issues.

''(3) Issues of acquisition policy, including the length of the acquisition cycle.

''(4) Issues of testing policy and ensuring that weapon systems perform properly in combat situations.

''(5) Issues of procurement policy, including the impact of socio-economic requirements.

''(6) Issues relating to compliance with environmental requirements.''

§1703. Director of Acquisition Education, Training, and Career Development

The Under Secretary of Defense for Acquisition, Technology, and Logistics shall appoint a Director of Acquisition Education, Training, and Career Development within the office of the Under Secretary to assist the Under Secretary in the performance of his duties under this chapter.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1707 of this title.

§1704. Service acquisition executives: authorities and responsibilities

Subject to the authority, direction, and control of the Secretary of the military department concerned, the service acquisition executive for each military department shall carry out all powers, functions, and duties of the Secretary concerned with respect to the acquisition workforce within the military department concerned and shall ensure that the policies of the Secretary of Defense established in accordance with this chapter are implemented in that department.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§1705. Directors of Acquisition Career Management in the military departments

There shall be a Director of Acquisition Career Management for each military department within the office of the service acquisition executive to assist the executive in the performance of his duties under this chapter. The Secretary of the Navy, acting through the service acquisition executive, may appoint separate directors for the Navy and the Marine Corps.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639.)

LEVEL OF DIRECTOR OF ACQUISITION CAREER MANAGEMENT BEFORE NOVEMBER 6, 1993

Section 1209(a) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(b)(3)(A), Apr. 6, 1991, 105 Stat. 119, provided that: ''Before November 6, 1993, the position of Director of Acquisition Career Management (as established by section 1705 of title 10, United States Code, as added by section 1202) may be held only by—

''(1) a civilian employee in a position in the Civil Service the rate of pay for which is equal to or greater than the rate of basic pay payable for positions in level V of the Executive Schedule under section 5316 of title 5, United States Code; or

''(2) a commissioned officer serving in the grade of major general or rear admiral or a higher grade.''

§1706. Acquisition career program boards

(a) ESTABLISHMENT.—The Secretary of each military department, acting through the service acquisition executive, shall establish an acquisition career program board to advise the service acquisition executive in managing the accession, training, education, and career development of military and civilian personnel in the acquisition workforce and in selecting individuals for an Acquisition Corps under section 1731 of this title.

(b) COMPOSITION OF BOARD.—Each acquisition career program board shall include the Director of Acquisition Career Management (or his representative), the Assistant Secretary with responsibility for manpower (or his representative), and the military and civilian senior officials with responsibility for personnel development in the various acquisition career fields.

The service acquisition executive (or his representative) shall be the head of the board.

(c) SUBORDINATE BOARDS.—The Secretary of a military department may establish a subordinate board structure in the department to which functions of the acquisition career program board may be delegated.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639.)

§ 1707. Personnel in the Office of the Secretary of Defense and in the Defense Agencies

(a) POLICIES.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish and implement, in such manner as the Secretary considers appropriate, policies and procedures for the effective management, including accession, education, training, and career development, of persons serving in acquisition positions in the Office of the Secretary of Defense and the Defense Agencies. Such policies and procedures shall include (1) the establishment of one or more Acquisition Corps with respect to such persons, and (2) the establishment of an acquisition career program board (and any appropriate subordinate board structure) with respect to such persons. The Secretary shall ensure that, to the maximum extent practicable, such policies and procedures are as uniform as practicable with the policies established under this chapter for the military departments.

(b) MANAGEMENT.—The Director of Acquisition Education, Training, and Career Development appointed under section 1703 of this title shall serve as the Director of Acquisition Career Management for the Office of the Secretary of Defense and for the Defense Agencies.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1639; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (a). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

SUBCHAPTER II—DEFENSE ACQUISITION POSITIONS

Sec.
1721. Designation of acquisition positions.
1722. Career development.
1723. General education, training, and experience requirements.
1724. Contracting positions: qualification requirements.
1725. Office of Personnel Management approval.

§ 1721. Designation of acquisition positions

(a) DESIGNATION.—The Secretary of Defense shall designate in regulations those positions in the Department of Defense that are acquisition positions for purposes of this chapter.

(b) REQUIRED POSITIONS.—In designating the positions under subsection (a), the Secretary shall include, at a minimum, all acquisition-related positions in the following areas:

(1) Program management.

(2) Systems planning, research, development, engineering, and testing.

(3) Procurement, including contracting.

(4) Industrial property management.

(5) Logistics.

(6) Quality control and assurance.

(7) Manufacturing and production.

(8) Business, cost estimating, financial management, and auditing.

(9) Education, training, and career development.

(10) Construction.

(11) Joint development and production with other government agencies and foreign countries.

(c) MANAGEMENT HEADQUARTERS ACTIVITIES.—The Secretary also shall designate as acquisition positions under subsection (a) those acquisition-related positions which are in management headquarters activities and in management headquarters support activities. For purposes of this subsection, the terms ''management headquarters activities'' and ''management headquarters support activities'' have the meanings given those terms in Department of Defense Directive 5100.73, entitled ''Department of Defense Management Headquarters and Headquarters Support Activities'', dated November 12, 1996.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1640; amended Pub. L. 102–25, title VII, §701(j)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 105–85, div. A, title IX, §912(f), Nov. 18, 1997, 111 Stat. 1862.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''November 12, 1996'' for ''November 25, 1988''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''Activities', dated'' for ''Activities,' dated'' in last sentence.

TWENTY PERCENT REDUCTION IN DEFENSE ACQUISITION WORKFORCE

Section 905 of Pub. L. 101–510, required Secretary of Defense to reduce number of employees in Department of Defense acquisition workforce on last day of each of fiscal years 1991 through 1995 below number of employees in such workforce on last day of preceding fiscal year by not less than number equal to 4 percent of number of employees in such workforce on Sept. 30, 1990, and which defined ''Department of Defense acquisition workforce'', prior to repeal by Pub. L. 102–190, div. A, title IX, §904, Dec. 5, 1991, 105 Stat. 1451.

DEADLINE FOR DESIGNATION OF ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, §1209(b), Nov. 5, 1990, 104 Stat. 1666, as amended by Pub. L. 102–25, title VII, §704(b)(3)(B), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that the designation of acquisition positions required by this section was to be made by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, not later than Oct. 1, 1991.

§ 1722. Career development

(a) CAREER PATHS.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall

ensure that appropriate career paths for civilian and military personnel who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of civilians and members of the armed forces to the most senior acquisition positions. The Secretary shall make available published information on such career paths.

(b) LIMITATION ON PREFERENCE FOR MILITARY PERSONNEL.—(1) The Secretary of Defense shall ensure that no requirement or preference for a member of the armed forces is used in the consideration of persons for acquisition positions, except as provided in the policy established under paragraph (2).

(2)(A) The Secretary shall establish a policy permitting a particular acquisition position to be specified as available only to members of the armed forces if a determination is made, under criteria specified in the policy, that a member of the armed forces is required for that position by law, is essential for performance of the duties of the position, or is necessary for another compelling reason.

(B) Not later than December 15 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Secretary a report that lists each acquisition position that is restricted to members of the armed forces under such policy and the recommendation of the Under Secretary as to whether such position should remain so restricted.

(c) OPPORTUNITIES FOR CIVILIANS TO QUALIFY.—The Secretary of Defense shall ensure that civilian personnel are provided the opportunity to acquire the education, training, and experience necessary to qualify for senior acquisition positions.

(d) BEST QUALIFIED.—The Secretary of Defense shall ensure that the policies established under this chapter are designed to provide for the selection of the best qualified individual for a position, consistent with other applicable law.

[(e) Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(3), Dec. 28, 2001, 115 Stat. 1227.]

(f) ASSIGNMENTS POLICY.—(1) The Secretary of Defense shall establish a policy on assigning military personnel to acquisition positions that provides for a balance between (A) the need for personnel to serve in career broadening positions, and (B) the need for requiring service in each such position for sufficient time to provide the stability necessary to effectively carry out the duties of the position and to allow for the establishment of responsibility and accountability for actions taken in the position.

(2) In implementing the policy established under paragraph (1), the Secretaries of the military departments shall provide, as appropriate, for longer lengths of assignments to acquisition positions than assignments to other positions.

(g) PERFORMANCE APPRAISALS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall provide an opportunity for review and inclusion of any comments on any appraisal of the performance of a person serving in an acquisition position by a person serving in an acquisition position in the same acquisition career field.

(h) BALANCED WORKFORCE POLICY.—In the development of defense acquisition workforce policies under this chapter with respect to any civilian employees or applicants for employment, the Secretary of Defense or the Secretary of a military department (as applicable) shall, consistent with the merit system principles set out in paragraphs (1) and (2) of section 2301(b) of title 5, take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1641; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), (e)(3), Dec. 28, 2001, 115 Stat. 1225, 1227.)

AMENDMENTS

2001—Subsecs. (a), (b)(2)(B). Pub. L. 107–107, § 1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e). Pub. L. 107–107, § 1048(e)(3), struck out heading and text of subsec. (e). Text read as follows: ''The Secretary of Defense shall ensure that the acquisition workforce is managed such that, for each fiscal year from October 1, 1991, through September 30, 1996, there is a substantial increase in the proportion of civilians (as compared to armed forces personnel) serving in critical acquisition positions in general, in program manager positions, and in division head positions over the proportion of civilians (as compared to armed forces personnel) in such positions on October 1, 1990.''

1993—Subsecs. (a), (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

MILITARY POSITIONS AND ASSIGNMENTS POLICY DEADLINES

Section 1209(c), (d) of Pub. L. 101–510 provided that:

''(c) MILITARY POSITIONS POLICY DEADLINES.—(1) The policy required by paragraph (2) of section 1722(b) of title 10, United States Code (as added by section 1202), shall be established by the Secretary of Defense not later than October 1, 1991.

''(2) The first report required by section 1722(b)(2)(B) of title 10, United States Code (as added by section 1202), shall be submitted to the Secretary of Defense not later than September 30, 1993.

''(d) ASSIGNMENTS POLICY DEADLINE.—Not later than October 1, 1991, the Secretary of Defense shall establish, and require commencement of implementation of, an assignments policy pursuant to section 1722(f) of title 10, United States Code (as added by section 1202).''

§ 1723. General education, training, and experience requirements

(a) QUALIFICATION REQUIREMENTS.—The Secretary of Defense shall establish education, training, and experience requirements for each acquisition position, based on the level of complexity of duties carried out in the position. In establishing such requirements for positions other than critical acquisition positions designated pursuant to section 1733 of this title, the Secretary may state the requirements by categories of positions.

(b) LIMITATION ON CREDIT FOR TRAINING OR EDUCATION.—Not more than one year of a period of time spent pursuing a program of academic

training or education in acquisition may be counted toward fulfilling any requirement established under this chapter for a certain period of experience.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 104–201, div. A, title X, §1074(a)(9)(A), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 struck out ''Unless otherwise provided in this chapter, such requirements shall take effect not later than October 1, 1993.'' after first sentence.

GUIDANCE AND STANDARDS FOR DEFENSE ACQUISITION WORKFORCE TRAINING REQUIREMENTS

Pub. L. 105–85, div. A, title VIII, §853, Nov. 18, 1997, 111 Stat. 1851, provided that: ''The Secretary of Defense shall develop appropriate guidance and standards to ensure that the Department of Defense will continue, where appropriate and cost-effective, to enter into contracts for the training requirements of sections 1723, 1724, and 1735 of title 10, United States Code, while maintaining appropriate control over the content and quality of such training.''

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

Pub. L. 102–484, div. A, title VIII, §812(c), Oct. 23, 1992, 106 Stat. 2451, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(2)(A), Nov. 18, 1997, 111 Stat. 1905, provided that the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, was to develop, not later than 90 days after Oct. 23, 1992, fulfillment standards, and implement a program, for purposes of the training requirements of sections 1723, 1724, and 1735 of this title, and that the standards were to take effect as of Nov. 5, 1990, and cease to be in effect on Oct. 1, 1997.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1725, 1735 of this title.

§ 1724. Contracting positions: qualification requirements

(a) CONTRACTING OFFICERS.—The Secretary of Defense shall require that, in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, an employee of the Department of Defense or member of the armed forces (other than the Coast Guard) must, except as provided in subsections (c) and (d)—

(1) have completed all contracting courses required for a contracting officer (A) in the case of an employee, serving in the position within the grade of the General Schedule in which the employee is serving, and (B) in the case of a member of the armed forces, in the member's grade;

(2) have at least two years of experience in a contracting position;

(3)(A) have received a baccalaureate degree from an accredited educational institution authorized to grant baccalaureate degrees, and (B) have completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the following disciplines: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; and

(4) meet such additional requirements, based on the dollar value and complexity of the contracts awarded or administered in the position, as may be established by the Secretary of Defense for the position.

(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—(1) The Secretary of Defense shall require that in order to qualify to serve in a position in the Department of Defense that is in the GS–1102 occupational series an employee or potential employee of the Department of Defense meet the requirements set forth in paragraph (3) of subsection (a). The Secretary may not require that in order to serve in such a position an employee or potential employee meet any of the requirements of paragraphs (1) and (2) of that subsection.

(2) The Secretary of Defense shall require that in order for a member of the armed forces to be selected for an occupational specialty within the armed forces that (as determined by the Secretary) is similar to the GS–1102 occupational series a member of the armed forces meet the requirements set forth in paragraph (3) of subsection (a). The Secretary may not require that in order to be selected for such an occupational specialty a member meet any of the requirements of paragraphs (1) and (2) of that subsection.

(c) EXCEPTIONS.—The qualification requirements imposed by the Secretary of Defense pursuant to subsections (a) and (b) shall not apply to an employee of the Department of Defense or member of the armed forces who—

(1) served as a contracting officer with authority to award or administer contracts in excess of the simplified acquisition threshold on or before September 30, 2000;

(2) served, on or before September 30, 2000, in a position either as an employee in the GS–1102 series or as a member of the armed forces in a similar occupational specialty;

(3) is in the contingency contracting force; or

(4) is described in subsection (e)(1)(B).

(d) WAIVER.—The acquisition career program board concerned may waive any or all of the requirements of subsections (a) and (b) with respect to an employee of the Department of Defense or member of the armed forces if the board certifies that the individual possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated job performance and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. Such document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(e) DEVELOPMENTAL OPPORTUNITIES.—(1) The Secretary of Defense may—

(A) establish or continue one or more programs for the purpose of recruiting, selecting, appointing, educating, qualifying, and developing the careers of individuals to meet the

requirements in subparagraphs (A) and (B) of subsection (a)(3);

(B) appoint individuals to developmental positions in those programs; and

(C) separate from the civil service after a three-year probationary period any individual appointed under this subsection who fails to meet the requirements described in subsection (a)(3).

(2) To qualify for any developmental program described in paragraph (1)(B), an individual shall have—

(A) been awarded a baccalaureate degree, with a grade point average of at least 3.0 (or the equivalent), from an accredited institution of higher education authorized to grant baccalaureate degrees; or

(B) completed at least 24 semester credit hours or the equivalent of study from an accredited institution of higher education in any of the disciplines of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management.

(f) CONTINGENCY CONTRACTING FORCE.—The Secretary shall establish qualification requirements for the contingency contracting force consisting of members of the armed forces whose mission is to deploy in support of contingency operations and other operations of the Department of Defense, including—

(1) completion of at least 24 semester credit hours or the equivalent of study from an accredited institution of higher education or similar educational institution in any of the disciplines of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, or organization and management; or

(2) passing an examination that demonstrates skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours or the equivalent of study in any of the disciplines described in paragraph (1).

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1642; amended Pub. L. 103–35, title I, §101, May 31, 1993, 107 Stat. 97; Pub. L. 104–201, div. A, title X, §1074(a)(9)(B), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–398, §1 [[div. A], title VIII, §808(a)–(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, §824(a), Dec. 28, 2001, 115 Stat. 1183.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(1)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §824(a)(1)(A), reenacted heading without change and substituted introductory provisions for provisions which read ''The Secretary of Defense shall require that in order to qualify to serve in an acquisition position as a contracting officer with authority to award or administer contracts for amounts above the simplified acquisition threshold referred to in section 2304(g) of this title, a person must—''.

Subsec. (a)(1). Pub. L. 107–107, §824(a)(1)(B), struck out ''mandatory'' before ''contracting courses'' and substituted cls. (A) and (B) for ''at the grade level, or in the position within the grade of the General Schedule (in the case of an employee), that the person is serving in;''.

Subsec. (a)(3). Pub. L. 107–107, §824(a)(1)(C), which directed the amendment of par. (3)(A) by inserting a comma after ''business'', was executed by inserting comma after ''business'' in par. (3)(B) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 107–107, §824(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(b) GS–1102 SERIES POSITIONS AND SIMILAR MILITARY POSITIONS.—The Secretary of Defense shall require that a person meet the requirements set forth in paragraph (3) of subsection (a), but not the other requirements set forth in that subsection, in order to qualify to serve in a position in the Department of Defense in—

''(1) the GS–1102 occupational series; or

''(2) a similar occupational specialty if the position is to be filled by a member of the armed forces.''

Subsecs. (c) to (f). Pub. L. 107–107, §824(a)(3), added subsecs. (c) to (f) and struck out former subsecs. (c) and (d) which related to exception to requirements of subsecs. (a) and (b) and waiver of such requirements, respectively.

2000—Subsec. (a). Pub. L. 106–398, §1 [[div. A], title VIII, §808(d)], struck out ''(except as provided in subsections (c) and (d))'' after ''a person must'' in introductory provisions.

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title VIII, §808(b)(1)], inserted ''and'' before ''(B) have completed'' and struck out '', or (C) have passed an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education in any of the disciplines listed in subparagraph (B)'' after ''organization and management''.

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title VIII, §808(b)(2)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall require that a person may not be employed by the Department of Defense in the GS–1102 occupational series unless the person (except as provided in subsections (c) and (d)) meets the requirements set forth in subsection (a)(3).''

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title VIII, §808(c)], amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows:

''(1) The requirements set forth in subsections (a)(3) and (b) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions, in comparable positions in other government agencies or the private sector, or in similar positions in which an individual obtains experience directly relevant to the field of contracting.

''(2) The requirements of subsections (a) and (b) shall not apply to any employee for purposes of qualifying to serve in the position in which the employee is serving on October 1, 1993, or any other position in the same or lower grade and involving the same or lower level of responsibilities as the position in which the employee is serving on such date.''

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title VIII, §808(a)], in first sentence, substituted ''employee or member of'' for ''employee of'' and ''employee or member possesses'' for ''employee possesses''.

1996—Subsec. (a). Pub. L. 104–201, in introductory provisions, struck out '', beginning on October 1, 1993,'' after ''require that'' and substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Subsec. (b). Pub. L. 104–201, §1074(a)(9)(B)(ii), struck out '', beginning on October 1, 1993,'' after ''require that''.

1993—Subsec. (c)(2). Pub. L. 103–35 inserted ''or lower'' before ''grade'' and before ''level''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title VIII, §808(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–208, provided that: ''This

section [amending this section], and the amendments made by this section, shall take effect on October 1, 2000, and shall apply to appointments and assignments to contracting positions made on or after that date.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

CREDIT FOR EXPERIENCE IN CERTAIN POSITIONS

Section 1209(i) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(b)(3)(D), Apr. 6, 1991, 105 Stat. 119, provided that: ''For purposes of meeting any requirement under chapter 87 of title 10, United States Code (as added by section 1202), for a period of experience (such as requirements for experience in acquisition positions or in critical acquisition positions) and for purposes of coverage under the exceptions established by section 1724(c)(1) and section 1732(c)(1) of such title, any period of time spent serving in a position later designated as an acquisition position or a critical acquisition position under such chapter may be counted as experience in such a position for such purposes.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1725 of this title.

§ 1725. Office of Personnel Management approval

(a) QUALIFICATION REQUIREMENTS.—The Secretary of Defense shall submit any requirement with respect to civilian employees that is established under section 1723 or under section 1724(a)(4) of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(b) EXAMINATIONS.—The Secretary of Defense shall submit examinations to be given to civilian employees under subsection (a)(3) or (b) of section 1724 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1643.)

SUBCHAPTER III—ACQUISITION CORPS

Sec.
1731. Acquisition Corps: in general.
1732. Selection criteria and procedures.
1733. Critical acquisition positions.
1734. Career development.
1735. Education, training, and experience requirements for critical acquisition positions.
[1736. Repealed.]
1737. Definitions and general provisions.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, §1048(e)(6)(B), Dec. 28, 2001, 115 Stat. 1227, struck out item 1736 ''Applicability''.

§ 1731. Acquisition Corps: in general

(a) ACQUISITION CORPS.—The Secretary of Defense shall ensure that an Acquisition Corps is established for each of the military departments and one or more Corps, as he considers appropriate, for the other components of the Department of Defense. A separate Acquisition Corps may be established for each of the Navy and the Marine Corps.

(b) PROMOTION RATE FOR OFFICERS IN ACQUISITION CORPS.—The Secretary of Defense shall ensure that the qualifications of commissioned officers selected for an Acquisition Corps are such that those officers are expected, as a group, to be promoted at a rate not less than the rate for all line (or the equivalent) officers of the same armed force (both in the zone and below the zone) in the same grade.

(c) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees established under section 1732 of this title to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1644.)

PROMOTION RATE FOR OFFICERS IN AN ACQUISITION CORPS

Pub. L. 105–85, div. A, title VIII, §849, Nov. 18, 1997, 111 Stat. 1846, as amended by Pub. L. 106–65, div. A, title IX, §911(a)(1), title X, §1067(4), Oct. 5, 1999, 113 Stat. 717, 774, provided that:

''(a) REVIEW OF ACQUISITION CORPS PROMOTION SELECTIONS.—Upon the approval of the President or his designee of the report of a selection board convened under section 611(a) of title 10, United States Code, which considered members of an Acquisition Corps of a military department for promotion to a grade above O–4, the Secretary of the military department shall submit a copy of the report to the Under Secretary of Defense for Acquisition, Technology, and Logistics for review.

''(b) REPORTING REQUIREMENT.—Not later than January 31 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the Under Secretary's assessment of the extent to which each military department is complying with the requirement set forth in section 1731(b) of title 10, United States Code.

''(c) TERMINATION OF REQUIREMENTS.—This section shall cease to be effective on October 1, 2000.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1706 of this title.

§ 1732. Selection criteria and procedures

(a) SELECTION CRITERIA AND PROCEDURES.—Selection for membership in an Acquisition Corps shall be made in accordance with criteria and procedures established by the Secretary of Defense.

(b) ELIGIBILITY CRITERIA.—Except as provided in subsections (c) and (d), only persons who meet

all of the following requirements may be considered for service in the Corps:

(1)(A) In the case of an employee, the person must be currently serving in a position within grade GS–13 or above of the General Schedule.

(B) In the case of a member of the armed forces, the person must be currently serving in the grade of major or, in the case of the Navy, lieutenant commander, or a higher grade.

(C) In the case of an applicant for employment, the person must have experience in government or industry equivalent to the experience of a person in a position described in subparagraph (A) or (B), as validated by the appropriate career program management board.

(2) The person must meet the educational requirements prescribed by the Secretary of Defense. Such requirements, at a minimum, shall include both of the following:

(A) A requirement that the person—

(i) has received a baccalaureate degree at an accredited educational institution authorized to grant baccalaureate degrees, or

(ii) has been certified by the acquisition career program board of the employing military department as possessing significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience.

(B) A requirement that the person has completed—

(i) at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management; or

(ii) at least 24 semester credit hours (or the equivalent) from an accredited institution of higher education in the person's career field and 12 semester credit hours (or the equivalent) from such an institution from among the disciplines listed in clause (i) or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i).

(3) The person must meet experience requirements prescribed by the Secretary of Defense. Such requirements shall, at a minimum, include a requirement for at least four years of experience in an acquisition position in the Department of Defense or in a comparable position in industry or government.

(4) The person must meet such other requirements as the Secretary of Defense or the Secretary of the military department concerned prescribes by regulation.

(c) EXCEPTIONS.—(1) The requirements of subsections (b)(2)(A) and (b)(2)(B) shall not apply to any employee who, on October 1, 1991, has at least 10 years of experience in acquisition positions or in comparable positions in other government agencies or the private sector.

(2) The requirements of subsections (b)(2)(A) and (b)(2)(B) shall not apply to any employee who is serving in an acquisition position on October 1, 1991, and who does not have 10 years of experience as described in paragraph (1) if the employee passes an examination considered by the Secretary of Defense to demonstrate skills, knowledge, or abilities comparable to that of an individual who has completed at least 24 semester credit hours (or the equivalent) of study from an accredited institution of higher education from among the following disciplines: accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization and management. The Secretary of Defense shall submit examinations to be given to civilian employees under this paragraph to the Director of the Office of Personnel Management for approval. If the Director does not disapprove an examination within 30 days after the date on which the Director receives the examination, the examination is deemed to be approved by the Director.

(3) Paragraph (1) of subsection (b) shall not apply to an employee who—

(A) having previously served in a position within a grade referred to in subparagraph (A) of that paragraph, is currently serving in the same position within a grade below GS–13 of the General Schedule, or in another position within that grade, by reason of a reduction in force or the closure or realignment of a military installation, or for any other reason other than by reason of an adverse personnel action for cause; and

(B) except as provided in paragraphs (1) and (2), satisfies the educational, experience, and other requirements prescribed under paragraphs (2), (3), and (4) of that subsection.

(d) WAIVER.—(1) Except as provided in paragraph (2), the acquisition career program board of a military department may waive any or all of the requirements of subsection (b) with respect to an employee of that military department if the board certifies that the employee possesses significant potential for advancement to levels of greater responsibility and authority, based on demonstrated analytical and decision-making capabilities, job performance, and qualifying experience. With respect to each waiver granted under this subsection, the board shall set forth in a written document the rationale for its decision to waive such requirements. The document shall be submitted to and retained by the Director of Acquisition Education, Training, and Career Development.

(2) The acquisition career program board of a military department may not waive the requirements of subsection (b)(2)(A)(ii).

(e) MOBILITY STATEMENTS.—(1) The Secretary of Defense is authorized to require civilians in an Acquisition Corps to sign mobility statements.

(2) The Secretary of Defense shall identify which categories of civilians in an Acquisition Corps, as a condition of serving in the Corps, shall be required to sign mobility statements. The Secretary shall make available published information on such identification of categories.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1644; amended Pub. L. 102–484, div. A, title VIII, §812(e)(1), Oct. 23, 1992,

106 Stat. 2451; Pub. L. 103–89, §3(b)(3)(B), Sept. 30, 1993, 107 Stat. 982; Pub. L. 105–261, div. A, title VIII, §811, Oct. 17, 1998, 112 Stat. 2086; Pub. L. 107–107, div. A, title VIII, §824(b), title X, §1048(e)(4), Dec. 28, 2001, 115 Stat. 1185, 1227.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (b)(1)(A) and (c)(3)(A), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §1048(e)(4), struck out at end ''Such criteria and procedures shall be in effect on and after October 1, 1993.''

Subsec. (c)(2). Pub. L. 107–107, §824(b), inserted a comma after ''business''.

1998—Subsec. (c)(3). Pub. L. 105–261 added par. (3).

1993—Subsec. (b)(1)(A). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including any employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(2)(B)(ii). Pub. L. 102–484 inserted before period at end ''or equivalent training as prescribed by the Secretary to ensure proficiency in the disciplines listed in clause (i)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EQUIVALENT TRAINING UNDER SUBSECTION (b)(2)(B)(ii)

Section 812(e)(2) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall prescribe equivalent training for purposes of clause (ii) of section 1732(b)(2)(B) of title 10, United States Code (as amended by paragraph (1)), not later than 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1731 of this title.

§ 1733. Critical acquisition positions

(a) REQUIREMENT FOR CORPS MEMBER.—A critical acquisition position may be filled only by a member of an Acquisition Corps.

(b) DESIGNATION OF CRITICAL ACQUISITION POSITIONS.—(1) The Secretary of Defense shall designate the acquisition positions in the Department of Defense that are critical acquisition positions. Such positions shall include the following:

(A) Any acquisition position which—

(i) in the case of employees, is required to be filled by an employee in a position within grade GS–14 or above of the General Schedule, or in the Senior Executive Service; or

(ii) in the case of members of the armed forces, is required to be filled by a commissioned officer of the Army, Navy, Air Force, or Marine Corps who is serving in the grade of lieutenant colonel, or, in the case of the Navy, commander, or a higher grade.

(B) Other selected acquisition positions not covered by subparagraph (A), including the following:

(i) Program executive officer.

(ii) Program manager of a major defense acquisition program (as defined in section 2430 of this title) or of a significant nonmajor defense acquisition program (as defined in section 1737(a)(3) of this title).

(iii) Deputy program manager of a major defense acquisition program.

(C) Any other acquisition position of significant responsibility in which the primary duties are supervisory or management duties.

(2) The Secretary shall periodically publish a list of the positions designated under this subsection.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L. 102–484, div. A, title X, §1052(22), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–89, §3(b)(3)(C), Sept. 30, 1993, 107 Stat. 983; Pub. L. 104–201, div. A, title X, §1074(a)(9)(C), Sept. 23, 1996, 110 Stat. 2659.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b)(1)(A)(i), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 substituted ''A critical'' for ''On and after October 1, 1993, a critical''.

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–89 substituted ''Schedule'' for ''Schedule (including an employee covered by chapter 54 of title 5)''.

1992—Subsec. (b)(1)(B)(ii). Pub. L. 102–484 substituted ''1737(a)(3)'' for ''1736(a)(3)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–89 effective Nov. 1, 1993, see section 3(c) of Pub. L. 103–89, set out as a note under section 3372 of Title 5, Government Organization and Employees.

EFFECTIVE DATE FOR REQUIREMENT FOR CORPS MEMBERS TO FILL CRITICAL ACQUISITION POSITIONS

Pub. L. 101–510, div. A, title XII, §1209(f), Nov. 5, 1990, 104 Stat. 1666, as amended by Pub. L. 102–25, title VII, §704(b)(3)(C), Apr. 6, 1991, 105 Stat. 119; Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that the Secretaries of the military departments were to make every effort to fill critical acquisition positions by Acquisition Corps members as soon as possible after Nov. 5, 1990, and that for each of the first three years after Nov. 5, 1990, the report of the Under Secretary of Defense for Acquisition and Technology to the Secretary of Defense under section 1762 of this title was to include the number of critical acquisition positions filled by Acquisition Corps members.

PUBLICATION OF LIST OF CRITICAL ACQUISITION POSITIONS

Section 1209(g) of Pub. L. 101–510 provided that: ''The Secretary of Defense shall publish the first list of positions designated as critical acquisition positions under section 1733(b)(2) of title 10, United States Code (as added by section 1202), not later than October 1, 1992.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1723 of this title; title 37 section 317.

§ 1734. Career development

(a) THREE-YEAR ASSIGNMENT PERIOD.—(1) Except as provided under subsection (b) and paragraph (3), the Secretary of each military department, acting through the service acquisition executive for that department, shall provide that any person who is assigned to a critical acquisition position shall be assigned to the position for not fewer than three years. Except as provided in subsection (d), the Secretary concerned

may not reassign a person from such an assignment before the end of the three-year period.

(2) A person may not be assigned to a critical acquisition position unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position for at least three years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (b).

(3) The assignment period requirement of the first sentence of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(b) ASSIGNMENT PERIOD FOR PROGRAM MANAGERS.—(1) The Secretary of Defense shall prescribe in regulations—

(A) a requirement that a program manager and a deputy program manager (except as provided in paragraph (3)) of a major defense acquisition program be assigned to the position at least until completion of the major milestone that occurs closest in time to the date on which the person has served in the position for four years; and

(B) a requirement that, to the maximum extent practicable, a program manager who is the replacement for a reassigned program manager arrive at the assignment location before the reassigned program manager leaves.

Except as provided in subsection (d), the Secretary concerned may not reassign a program manager or deputy program manager from such an assignment until after such major milestone has occurred.

(2) A person may not be assigned to a critical acquisition position as a program manager or deputy program manager of a major defense acquisition program unless the person executes a written agreement to remain on active duty (in the case of a member of the armed forces) or to remain in Federal service (in the case of an employee) in that position at least until completion of the first major milestone that occurs closest in time to the date on which the person has served in the position for four years. The service obligation contained in such a written agreement shall remain in effect unless and until waived by the Secretary concerned under subsection (d).

(3) The assignment period requirement under subparagraph (A) of paragraph (1) is waived for any individual serving as a deputy program manager if the individual is assigned to a critical acquisition position upon completion of the individual's assignment as a deputy program manager.

(c) MAJOR MILESTONE REGULATIONS.—(1) The Secretary of Defense shall issue regulations defining what constitutes major milestones for purposes of this section. The service acquisition executive of each military department shall establish major milestones at the beginning of a major defense acquisition program consistent with such regulations and shall use such milestones to determine the assignment period for program managers and deputy program managers under subsection (b).

(2) The regulations shall require that major milestones be clearly definable and measurable events that mark the completion of a significant phase in a major defense acquisition program and that such milestones be the same as the milestones contained in the baseline description established for the program pursuant to section 2435(a) of this title. The Secretary shall require that the major milestones as defined in the regulations be included in the Selected Acquisition Report required for such program under section 2432 of this title.

(d) WAIVER OF ASSIGNMENT PERIOD.—(1) With respect to a person assigned to a critical acquisition position, the Secretary concerned may waive the prohibition on reassignment of that person (in subsection (a)(1) or (b)(1)) and the service obligation in an agreement executed by that person (under subsection (a)(2) or (b)(2)), but only in exceptional circumstances in which a waiver is necessary for reasons permitted in regulations prescribed by the Secretary of Defense.

(2) The authority to grant such waivers may be delegated by the service acquisition executive of a military department only to the Director of Acquisition Career Management for the military department.

(3) With respect to each waiver granted under this subsection, the service acquisition executive (or his delegate) shall set forth in a written document the rationale for the decision to grant the waiver. The document shall be submitted to the Director of Acquisition Education, Training, and Career Development.

(e) ROTATION POLICY.—(1) The Secretary of Defense shall establish a policy encouraging the rotation of members of an Acquisition Corps serving in critical acquisition positions to new assignments after completion of five years of service in such positions, or, in the case of a program manager, after completion of a major program milestone, whichever is longer. Such rotation policy shall be designed to ensure opportunities for career broadening assignments and an infusion of new ideas into critical acquisition positions.

(2) The Secretary of Defense shall establish a procedure under which the assignment of each person assigned to a critical acquisition position shall be reviewed on a case-by-case basis, by the acquisition career program board of the department concerned, for the purpose of determining whether the Government and such person would be better served by a reassignment to a different position. Such a review shall be carried out with respect to each such person not later than five years after that person is assigned to a critical position.

(f) CENTRALIZED JOB REFERRAL SYSTEM.—The Secretary of Defense shall prescribe regulations providing for the use of centralized lists to ensure that persons are selected for critical positions without regard to geographic location of applicants for such positions.

(g) EXCHANGE PROGRAM.—(1) The Secretary of Defense shall establish, for purposes of broadening the experience of members of each Acquisition Corps, a test program in which members of a Corps serving in a military department or Defense Agency are assigned or detailed to an ac-

quisition position in another department or agency. Under the test program, the Secretary of Defense shall ensure that, to the maximum extent practicable, at least 5 percent of the members of the Acquisition Corps shall serve in such exchange assignments each year. The test program shall operate for not less than a period of three years.

(2) The Secretary of Defense shall submit the portion of the test program applicable to civilian employees to the Director of the Office of Personnel Management for approval. If the Director does not disapprove that portion of the test program within 30 days after the date on which the Director receives it, that portion of the test program is deemed to be approved by the Director.

(h) RESPONSIBILITY FOR ASSIGNMENTS.—The Secretary of each military department, acting through the service acquisition executive for that department, is responsible for making assignments of civilian and military members of the Acquisition Corps of that military department to critical acquisition positions.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1646; amended Pub. L. 102–484, div. A, title VIII, §812(a), (b), Oct. 23, 1992, 106 Stat. 2450; Pub. L. 104–201, div. A, title X, §1074(a)(9)(D), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 107–107, div. A, title X, §1048(e)(5), Dec. 28, 2001, 115 Stat. 1227.)

AMENDMENTS

2001—Subsec. (b)(1)(B). Pub. L. 107–107, §1048(e)(5)(A), struck out ''on and after October 1, 1991,'' before ''to the maximum extent practicable''.

Subsec. (e)(2). Pub. L. 107–107, §1048(e)(5)(B), struck out at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

1996—Subsec. (a)(1). Pub. L. 104–201, §1074(a)(9)(D)(i), struck out '', on and after October 1, 1993,'' after ''provide that''.

Subsec. (b)(1)(A). Pub. L. 104–201, §1074(a)(9)(D)(ii), struck out '', on and after October 1, 1991,'' after ''requirement that''.

1992—Subsec. (a)(1). Pub. L. 102–484, §812(b)(1)(A), inserted before first comma ''and paragraph (3)''.

Subsec. (a)(3). Pub. L. 102–484, §812(b)(1)(B), added par. (3).

Subsec. (b)(1)(A). Pub. L. 102–484, §812(b)(2)(A), inserted ''(except as provided in paragraph (3))'' after ''deputy program manager''.

Subsec. (b)(3). Pub. L. 102–484, §812(b)(2)(B), added par. (3).

Subsec. (e)(2). Pub. L. 102–484, §812(a), inserted at end ''Reviews under this subsection shall be carried out after October 1, 1995, but may be carried out before that date.''

JOB REFERRAL SYSTEM DEADLINE

Section 1209(e) of Pub. L. 101–510 provided that: ''Not later than October 1, 1991, the Secretary of Defense shall prescribe regulations required under section 1734(f) of title 10, United States Code (as added by section 1202).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1735 of this title; title 37 section 317.

§ 1735. Education, training, and experience requirements for critical acquisition positions

(a) QUALIFICATION REQUIREMENTS.—In establishing the education, training, and experience requirements under section 1723 of this title for critical acquisition positions, the Secretary of Defense shall, at a minimum, include the requirements set forth in subsections (b) through (e).

(b) PROGRAM MANAGERS AND DEPUTY PROGRAM MANAGERS.—Before being assigned to a position as a program manager or deputy program manager of a major defense acquisition program or a significant nonmajor defense acquisition program, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution determined to be comparable by the Secretary of Defense;

(2) must have executed a written agreement as required in section 1734(b)(2); and

(3) in the case of—

(A) a program manager of a major defense acquisition program, must have at least eight years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization;

(B) a program manager of a significant nonmajor defense acquisition program, must have at least six years of experience in acquisition;

(C) a deputy program manager of a major defense acquisition program, must have at least six years of experience in acquisition, at least two years of which were performed in a systems program office or similar organization; and

(D) a deputy program manager of a significant nonmajor defense acquisition program, must have at least four years of experience in acquisition.

(c) PROGRAM EXECUTIVE OFFICERS.—Before being assigned to a position as a program executive officer, a person—

(1) must have completed the program management course at the Defense Systems Management College or a management program at an accredited educational institution in the private sector determined to be comparable by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics;

(2) must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position; and

(3) must have held a position as a program manager or a deputy program manager.

(d) GENERAL AND FLAG OFFICERS AND CIVILIANS IN EQUIVALENT POSITIONS.—Before a general or flag officer, or a civilian serving in a position equivalent in grade to the grade of such an officer, may be assigned to a critical acquisition position, the person must have at least 10 years experience in an acquisition position, at least four years of which were performed while assigned to a critical acquisition position.

(e) SENIOR CONTRACTING OFFICIALS.—Before a person may be assigned to a critical acquisition position as a senior contracting official, the person must have at least four years experience in contracting.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1648; amended Pub. L. 102–484, div. A, title VIII, §812(d), Oct. 23, 1992, 106 Stat. 2451; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (c)(1). Pub. L. 106–65 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (c)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(3). Pub. L. 102–484 struck out ''or deputy program manager'' after ''program manager'' in subpars. (A) and (B), struck out ''and'' at end of subpar. (A), substituted semicolon for period at end of subpar. (B), and added subpars. (C) and (D).

FULFILLMENT STANDARDS FOR MANDATORY TRAINING

For provisions relating to development of fulfillment standards for purposes of the training requirements of this section, see section 812(c) of Pub. L. 102–484, set out as a note under section 1723 of this title.

[§1736. Repealed. Pub. L. 107–107, div. A, title X, §1048(e)(6)(A), Dec. 28, 2001, 115 Stat. 1227]

Section, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1649, related to applicability of the qualification requirements.

§1737. Definitions and general provisions

(a) DEFINITIONS.—In this subchapter:

(1) The term ''program manager'' means, with respect to a defense acquisition program, the member of an Acquisition Corps responsible for managing the program, regardless of the title given the member.

(2) The term ''deputy program manager'' means the person who has authority to act on behalf of the program manager in the absence of the program manager.

(3) The term ''significant nonmajor defense acquisition program'' means a Department of Defense acquisition program that is not a major defense acquisition program (as defined in section 2430 of this title) and that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system or an eventual total expenditure for procurement of more than the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system.

(4) The term ''program executive officer'' has the meaning given such term in regulations prescribed by the Secretary of Defense.

(5) The term ''senior contracting official'' means a director of contracting, or a principal deputy to a director of contracting, serving in the office of the Secretary of a military department, the headquarters of a military department, the head of a Defense Agency, a subordinate command headquarters, or in a major systems or logistics contracting activity in the Department of Defense.

(b) LIMITATION.—Any civilian or military member of the Corps who does not meet the education, training, and experience requirements for a critical acquisition position established under this subchapter may not carry out the duties or exercise the authorities of that position, except for a period not to exceed six months, unless a waiver of the requirements is granted under subsection (c).

(c) WAIVER.—(1) The Secretary of each military department (acting through the service acquisition executive for that department) or the Secretary of Defense (acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics) for Defense Agencies and other components of the Department of Defense may waive, on a case-by-case basis, the requirements established under this subchapter with respect to the assignment of an individual to a particular critical acquisition position. Such a waiver may be granted only if unusual circumstances justify the waiver or if the Secretary concerned (or official to whom the waiver authority is delegated) determines that the individual's qualifications obviate the need for meeting the education, training, and experience requirements established under this subchapter.

(2) The authority to grant such waivers may be delegated—

(A) in the case of the service acquisition executives of the military departments, only to the Director of Acquisition Career Management for the military department concerned; and

(B) in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, only to the Director of Acquisition Education, Training, and Career Development.

(d) OPM APPROVAL.—The Secretary of Defense shall submit any requirement with respect to civilian employees established under this subchapter to the Director of the Office of Personnel Management for approval. If the Director does not disapprove the requirement within 30 days after the date on which the Director receives the requirement, the requirement is deemed to be approved by the Director.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1650; amended Pub. L. 102–190, div. A, title X, §1061(a)(8), (c), Dec. 5, 1991, 105 Stat. 1472, 1475; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (c)(1), (2)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (c)(1), (2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1991—Subsec. (a)(3). Pub. L. 102–190, §1061(c), substituted ''the dollar threshold set forth in section 2302(5)(A) of this title for such purposes for a major system'' for ''$50,000,000 (based on fiscal year 1980 constant

dollars)'' and ''the dollar threshold set forth in section 2302(5)(A) of this title for such purpose for a major system'' for ''$250,000,000 (based on fiscal year 1980 constant dollars)''.

Subsec. (c)(2)(B). Pub. L. 102–190, § 1061(a)(8), struck out comma after ''Director of Acquisition''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1733 of this title.

SUBCHAPTER IV—EDUCATION AND TRAINING

Sec.
1741. Policies and programs: establishment and implementation.
1742. Intern program.
1743. Cooperative education program.
1744. Scholarship program.
1745. Additional education and training programs available to acquisition personnel.
1746. Defense acquisition university structure.
1747. Acquisition fellowship program.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, § 1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2650, transferred former item 2410h from chapter 141 to this subchapter and redesignated it as item 1747.

§ 1741. Policies and programs: establishment and implementation

(a) POLICIES AND PROCEDURES.—The Secretary of Defense shall establish policies and procedures for the establishment and implementation of the education and training programs authorized by this subchapter.

(b) FUNDING LEVELS.—The Under Secretary of Defense for Acquisition, Technology, and Logistics each year shall recommend to the Secretary of Defense the funding levels to be requested in the defense budget to implement the education and training programs under this subchapter. The Secretary of Defense shall set forth separately the funding levels requested for such programs in the Department of Defense budget justification documents submitted in support of the President's budget submitted to Congress under section 1105 of title 31.

(c) PROGRAMS.—The Secretary of each military department, acting through the service acquisition executive for that department, shall establish and implement the education and training programs authorized by this subchapter. In carrying out such requirement, the Secretary concerned shall ensure that such programs are established and implemented throughout the military department concerned and, to the maximum extent practicable, uniformly with the programs of the other military departments.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (b). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

§ 1742. Intern program

The Secretary of Defense shall require that each military department conduct an intern program for purposes of providing highly qualified and talented individuals an opportunity for accelerated promotions, career broadening assignments, and specified training to prepare them for entry into the Acquisition Corps.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651.)

§ 1743. Cooperative education program

The Secretary of Defense shall require that the Secretary of each military department conduct a department-wide cooperative education credit program under which students are employed by the Department of Defense in acquisition positions. Under the program, the Secretary shall enter into cooperative arrangements with one or more accredited institutions of higher education which provide for such institutions to grant undergraduate credit for work performed in such a position.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1651.)

§ 1744. Scholarship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a scholarship program for the purpose of qualifying personnel for acquisition positions in the Department of Defense.

(b) ELIGIBILITY.—To be eligible to participate in the scholarship program, an individual must—

(1) be accepted for enrollment or be currently enrolled as a full-time student at an accredited educational institution authorized to grant baccalaureate or graduate degrees (as appropriate);

(2) be pursuing a course of education that leads toward completion of a bachelor's, master's, or doctor's degree (as appropriate) in a qualifying field of study, as determined by the Secretary of Defense;

(3) sign an agreement described in subsection (c) under which the participant agrees to serve a period of obligated service in the Department of Defense in an acquisition position in return for payment of educational assistance as provided in the agreement; and

(4) meet such other requirements as the Secretary prescribes.

(c) AGREEMENT.—An agreement between the Secretary of Defense and a participant in the scholarship program established under this section shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Secretary's agreement to provide the participant with educational assistance for a specified number (from one to four) of school years during which the participant is pursuing a course of education in a qualifying field of study. The assistance may include payment of tuition, fees, books, laboratory expenses, and a stipend.

(2) The participant's agreement (A) to accept such educational assistance, (B) to maintain

enrollment and attendance in the course of education until completed, and (C) while enrolled in such course, to maintain an acceptable level of academic standing (as prescribed by the Secretary).

(3) The participant's agreement that, after successfully completing the course of education, the participant—

(A) shall accept, if offered within such time as shall be specified in the agreement, an appointment to a full-time acquisition position in the Department of Defense that is commensurate with the participant's academic degree and experience, and that is—

(i) in the excepted service, if the participant has not previously acquired competitive status, with the right, after successful completion of 2 years of service and such other requirements as the Office of Personnel Management may prescribe, to be appointed to a position in the competitive service, notwithstanding subchapter I of chapter 33 of title 5; or

(ii) in the competitive service, if the participant has previously acquired competitive status; and

(B) if appointed under subparagraph (A), shall serve for 1 calendar year for each school year or part thereof for which the participant was provided a scholarship under the scholarship program.

(d) REPAYMENT.—(1) Any person participating in a program established under this section shall agree to pay to the United States the total amount of educational assistance provided to the person under the program if the person is voluntarily separated from service or involuntarily separated for cause from the Department of Defense before the end of the period for which the person has agreed to continue in the service of the Department of Defense in an acquisition position.

(2) If an employee fails to fulfill his agreement to pay to the Government the total amount of educational assistance provided to the person under the program, a sum equal to the amount of the educational assistance is recoverable by the Government from the employee or his estate by—

(A) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(B) such other method as is provided by law for the recovery of amounts owing to the Government.

(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to require that a position be offered to a person after such person successfully completes the course of education agreed to. However, if no position described in subsection (c)(3)(A) is offered within the time specified in the agreement, the agreement shall be considered terminated.

(f) DEFINITIONS.—In this section, the terms ''competitive service'' and ''excepted service'' have the meanings provided those terms by sections 2102 and 2103, respectively, of title 5.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1652; amended Pub. L. 102–484, div. A, title VIII, §812(f), Oct. 23, 1992, 106 Stat. 2451.)

AMENDMENTS

1992—Subsec. (c)(2). Pub. L. 102–484, §812(f)(1), inserted ''and'' before ''(C)'' and substituted ''Secretary).'' for ''Secretary), and (D) after completion of the course of education, to serve as a full-time employee in an acquisition position in the Department of Defense for a period of time of one calendar year for each school year or part thereof for which the participant was provided a scholarship under the scholarship program.''

Subsec. (c)(3). Pub. L. 102–484, §812(f)(2), added par. (3).

Subsecs. (e), (f). Pub. L. 102–484, §812(f)(3), added subsecs. (e) and (f).

§1745. Additional education and training programs available to acquisition personnel

(a) TUITION REIMBURSEMENT AND TRAINING.—(1) The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) for acquisition personnel in the Department of Defense.

(2) For civilian personnel, the reimbursement and training shall be provided under section 4107(b) of title 5 for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2010, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.

(3) In the case of members of the armed forces, the limitation in section 2007(a) of this title shall not apply to tuition reimbursement and training provided for under this subsection.

(b) REPAYMENT OF STUDENT LOANS.—The Secretary of Defense may repay all or part of a student loan under section 5379 of title 5 for an employee of the Department of Defense appointed to an acquisition position.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 104–106, div. A, title XV, §1503(a)(15), Feb. 10, 1996, 110 Stat. 511; Pub. L. 106–65, div. A, title IX, §925(a), Oct. 5, 1999, 113 Stat. 726; Pub. L. 106–398, §1 [[div. A], title XI, §1123], Oct. 30, 2000, 114 Stat. 1654, 1654A–317.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''September 30, 2010'' for ''September 30, 2001''.

1999—Subsec. (a). Pub. L. 106–65 amended heading and text of subsec. (a) generally. Text read as follows: ''The Secretary of Defense shall provide for tuition reimbursement and training (including a full-time course of study leading to a degree) under section 4107(b) of title 5 for acquisition personnel in the Department of Defense for the purposes described in that section. For purposes of such section 4107(b), there is deemed to be, until September 30, 2001, a shortage of qualified personnel to serve in acquisition positions in the Department of Defense.''

1996—Subsec. (a). Pub. L. 104–106 substituted ''section 4107(b)'' for ''section 4107(d)'' in two places.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title IX, §925(b), Oct. 5, 1999, 113 Stat. 726, provided that: ''The amendment made by sub-

section (a) [amending this section] shall apply with respect to charges for tuition or expenses incurred after the date of the enactment of this Act [Oct. 5, 1999].''

§ 1746. Defense acquisition university structure

(a) DEFENSE ACQUISITION UNIVERSITY STRUCTURE.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall establish and maintain a defense acquisition university structure to provide for—

(1) the professional educational development and training of the acquisition workforce; and

(2) research and analysis of defense acquisition policy issues from an academic perspective.

(b) CIVILIAN FACULTY MEMBERS.—(1) The Secretary of Defense may employ as many civilians as professors, instructors, and lecturers in the defense acquisition university structure as the Secretary considers necessary.

(2) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

(3) In this subsection, the term ''defense acquisition university'' includes the Defense Systems Management College.

(Added Pub. L. 101–510, div. A, title XII, § 1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 104–106, div. A, title XV, § 1503(a)(16), Feb. 10, 1996, 110 Stat. 512; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–106 struck out ''(1)'' before ''The Secretary of Defense'' and redesignated subpars. (A) and (B) as pars. (1) and (2), respectively.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

EFFECTIVE DATE

Section 1209(h)(1) of Pub. L. 101–510 provided that: ''Subsection (b) of section 1746 of title 10, United States Code (as added by section 1202), shall take effect with respect to the Defense Systems Management College on the date of the enactment of this Act [Nov. 5, 1990].''

ESTABLISHMENT OF INITIAL DEFENSE ACQUISITION UNIVERSITY STRUCTURE

Pub. L. 101–510, div. A, title XII, § 1205, Nov. 5, 1990, 104 Stat. 1658, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(4)(A), Nov. 18, 1997, 111 Stat. 1905, provided that, not later than Oct. 1, 1991, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, was to prescribe regulations for the initial structure for a defense acquisition university under this section and to prescribe and submit to the Committees on Armed Services of the Senate and House of Representatives an implementation plan, including a charter, for the university structure, and not later than Aug. 1, 1992, the Secretary was to carry out the implementation plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1702 of this title; title 5 section 5102.

§ 1747. Acquisition fellowship program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish and carry out an acquisition fellowship program in accordance with this section in order to enhance the ability of the Department of Defense to recruit employees who are highly qualified in fields of acquisition.

(b) NUMBER OF FELLOWSHIPS.—The Secretary of Defense may designate up to 25 prospective employees of the Department of Defense as acquisition fellows.

(c) ELIGIBILITY.—In order to be eligible for designation as an acquisition fellow, an employee—

(1) must complete at least 2 years of Federal Government service as an employee in an acquisition position in the Department of Defense; and

(2) must be serving in an acquisition position in the Department of Defense that involves the performance of duties likely to result in significant restrictions under law on the employment activities of that employee after leaving Government service.

(d) TWO-YEAR PERIOD OF RESEARCH AND TEACHING.—Under the fellowship program, the Secretary of Defense shall pay designated acquisition fellows to engage in research or teaching for a 2-year period in a field related to Federal Government acquisition policy. Such research or teaching may be conducted in the defense acquisition university structure of the Department of Defense, any other institution of professional education of the Federal Government, or a nonprofit institution of higher education. Each fellow shall be paid at a rate equal to the rate of pay payable for the level of the position in which the fellow served in the Department of Defense before undertaking such research or teaching.

(Added Pub. L. 102–484, div. A, title VIII, § 841(a), Oct. 23, 1992, 106 Stat. 2468, § 2410h; renumbered § 1747, Pub. L. 107–314, div. A, title X, § 1062(a)(10)(A), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Pub. L. 107–314 renumbered section 2410h of this title as this section.

SUBCHAPTER V—GENERAL MANAGEMENT PROVISIONS

Sec.
1761. Management information system.
[1762. Repealed.]
1763. Reassignment of authority.
[1764. Repealed.]

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, § 1048(e)(7)(B), Dec. 28, 2001, 115 Stat. 1228, struck out items 1762 ''Report to Secretary of Defense'' and 1764 ''Authority to establish different minimum experience requirements''.

§ 1761. Management information system

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure that the military departments and Defense Agencies establish a management information system capable of providing standardized information to the Secretary on persons serving in acquisition positions.

(b) MINIMUM INFORMATION.—The management information system shall, at a minimum, provide for—

(1) the collection and retention of information concerning the qualifications, assignments, and tenure of persons in the acquisition workforce;

(2) any exceptions and waivers granted with respect to the application of qualification, assignment, and tenure policies, procedures, and practices to such persons;

(3) relative promotion rates for military personnel in the acquisition workforce; and

(4) collection of the information necessary for the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of Defense to comply with the requirements of section 1762[1] for the years in which that section is in effect.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1653; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

REFERENCES IN TEXT

Section 1762, referred to in subsec. (b)(4), was repealed by Pub. L. 107–107, div. A, title X, §1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227.

AMENDMENTS

2001—Subsec. (b)(4). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1993—Subsec. (b)(4). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

ESTABLISHMENT OF MANAGEMENT INFORMATION SYSTEM

Section 1209(k) of Pub. L. 101–510 provided that:

''(1) Not later than October 1, 1991, the Secretary of Defense shall prescribe in regulations the requirements under section 1761 of title 10, United States Code (as added by section 1202), including data elements, for the uniform management information system.

''(2) The Secretary of Defense shall ensure that the requirements prescribed pursuant to paragraph (1) are implemented not later than October 1, 1992.''

[§1762. Repealed. Pub. L. 107–107, div. A, title X, §1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227]

Section, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1654; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, related to report by the Under Secretary of Defense for Acquisition, Technology, and Logistics to the Secretary of Defense on the status of the defense acquisition workforce.

§1763. Reassignment of authority

The Secretary of Defense may assign the responsibilities under this chapter of the Under Secretary of Defense for Acquisition, Technology, and Logistics to any other civilian official in the Office of the Secretary of Defense who is appointed by the President by and with the advice and consent of the Senate. If the Secretary takes action under the preceding sentence, he may authorize the Secretaries of the military departments to assign the responsibilities of a senior acquisition executive under this chapter to any other civilian official in the military department who is appointed by the President by and with the advice and consent of the Senate.

(Added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1656; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 105–85, div. A, title X, §1073(a)(33), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1997—Pub. L. 105–85 substituted ''The Secretary of Defense'' for ''On and after October 1, 1993, the Secretary of Defense'' and ''Secretaries'' for ''secretaries''.

1993—Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

[§1764. Repealed. Pub. L. 107–107, div. A, title X, §1048(e)(7)(A), Dec. 28, 2001, 115 Stat. 1227]

Section, added Pub. L. 101–510, div. A, title XII, §1202(a), Nov. 5, 1990, 104 Stat. 1656, related to authority to establish different minimum experience requirements.

CHAPTER 88—MILITARY FAMILY PROGRAMS AND MILITARY CHILD CARE

Subchapter		Sec.
I.	Military Family Programs	1781
II.	Military Child Care	1791

SUBCHAPTER I—MILITARY FAMILY PROGRAMS

Sec.
1781. Office of Family Policy.
1782. Surveys of military families.
1783. Family members serving on advisory committees.
1784. Employment opportunities for military spouses.
1785. Youth sponsorship program.
1786. Dependent student travel within the United States.
1787. Reporting of child abuse.
1788. Additional family assistance.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title VI, §652(a)(2), Dec. 2, 2002, 116 Stat. 2581, added item 1788.

§1781. Office of Family Policy

(a) ESTABLISHMENT.—There is in the Office of the Secretary of Defense an Office of Family Policy (hereinafter in this section referred to as the ''Office''). The Office shall be under the Assistant Secretary of Defense for Force Management and Personnel.

(b) DUTIES.—The Office—

(1) shall coordinate programs and activities of the military departments to the extent that they relate to military families; and

(2) shall make recommendations to the Secretaries of the military departments with re-

[1] See References in Text note below.

spect to programs and policies regarding military families.

(c) STAFF.—The Office shall have not less than five professional staff members.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in Pub. L. 99–145, title VIII, Nov. 8, 1985, 99 Stat. 678, as amended, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 104–106, § 568(e)(1).

§ 1782. Surveys of military families

(a) AUTHORITY.—The Secretary of Defense, in order to determine the effectiveness of Federal programs relating to military families and the need for new programs, may conduct surveys of—

(1) members of the armed forces who are on active duty, in an active status, or retired;

(2) family members of such members; and

(3) survivors of deceased retired members and of members who died while on active duty.

(b) RESPONSES TO BE VOLUNTARY.—Responses to surveys conducted under this section shall be voluntary.

(c) FEDERAL RECORDKEEPING REQUIREMENTS.—With respect to a survey authorized under subsection (a) that includes a person referred to in that subsection who is not an employee of the United States or is not otherwise considered an employee of the United States for the purposes of section 3502(3)(A)(i) of title 44, the person shall be considered as being an employee of the United States for the purposes of that section.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 107–107, div. A, title V, § 572, Dec. 28, 2001, 115 Stat. 1122.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, § 572(a), reenacted heading without change and amended text generally. Text read as follows: ''The Secretary of Defense may conduct surveys of members of the armed forces on active duty or in an active status, members of the families of such members, and retired members of the armed forces to determine the effectiveness of Federal programs relating to military families and the need for new programs.''

Subsec. (c). Pub. L. 107–107, § 572(b), reenacted heading without change and amended text generally. Text read as follows: ''With respect to such surveys, family members of members of the armed forces and reserve and retired members of the armed forces shall be considered to be employees of the United States for purposes of section 3502(3)(A)(i) of title 44.''

§ 1783. Family members serving on advisory committees

A committee within the Department of Defense which advises or assists the Department in the performance of any function which affects members of military families and which includes members of military families in its membership shall not be considered an advisory committee under section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) solely because of such membership.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330.)

REFERENCES IN TEXT

Section 3(2) of the Federal Advisory Committee Act, referred to in text, is section 3(2) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1784. Employment opportunities for military spouses

(a) AUTHORITY.—The President shall order such measures as the President considers necessary to increase employment opportunities for spouses of members of the armed forces. Such measures may include—

(1) excepting, pursuant to section 3302 of title 5, from the competitive service positions in the Department of Defense located outside of the United States to provide employment opportunities for qualified spouses of members of the armed forces in the same geographical area as the permanent duty station of the members; and

(2) providing preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the armed forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations—

(1) to implement such measures as the President orders under subsection (a);

(2) to provide preference to qualified spouses of members of the armed forces in hiring for any civilian position in the Department of Defense if the spouse is among persons determined to be best qualified for the position and if the position is located in the same geographical area as the permanent duty station of the member;

(3) to ensure that notice of any vacant position in the Department of Defense is provided in a manner reasonably designed to reach spouses of members of the armed forces whose permanent duty stations are in the same geographic area as the area in which the position is located; and

(4) to ensure that the spouse of a member of the armed forces who applies for a vacant position in the Department of Defense shall, to the extent practicable, be considered for any such position located in the same geographic area as the permanent duty station of the member.

(c) STATUS OF PREFERENCE ELIGIBLES.—Nothing in this section shall be construed to provide a spouse of a member of the armed forces with preference in hiring over an individual who is a preference eligible.

(d) SPACE-AVAILABLE USE OF FACILITIES FOR SPOUSE TRAINING PURPOSES.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may make available to a non-Department of Defense entity space in non-excess facilities controlled by that Secretary for the purpose of the non-Department of Defense entity providing employment-related training for military spouses.

(e) EMPLOYMENT BY OTHER FEDERAL AGENCIES.—The Secretary of Defense shall work with the Director of the Office of Personnel Management and the heads of other Federal departments and agencies to expand and facilitate the use of existing Federal programs and resources in support of military spouse employment.

(f) PRIVATE-SECTOR EMPLOYMENT.—The Secretary of Defense—

(1) shall seek to develop partnerships with firms in the private sector to enhance employment opportunities for spouses of members of the armed forces and to provide for improved job portability for such spouses, especially in the case of the spouse of a member of the armed forces accompanying the member to a new geographical area because of a change of permanent duty station of the member; and

(2) shall work with the United States Chamber of Commerce and other appropriate private-sector entities to facilitate the formation of such partnerships.

(g) EMPLOYMENT WITH DOD CONTRACTORS.—The Secretary of Defense shall examine and seek ways for incorporating hiring preferences for qualified spouses of members of the armed forces into contracts between the Department of Defense and private-sector entities.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 330; amended Pub. L. 107–107, div. A, title V, § 571(c), Dec. 28, 2001, 115 Stat. 1121.)

AMENDMENTS

2001—Subsecs. (d) to (g). Pub. L. 107–107 added subsecs. (d) to (g).

CONTINUATION OF DELEGATION OF AUTHORITY WITH RESPECT TO HIRING PREFERENCE FOR QUALIFIED MILITARY SPOUSES

Section 568(d) of Pub. L. 104–106 provided that: ''The provisions of Executive Order No. 12568, issued October 2, 1986 (10 U.S.C. 113 note) [set out below], shall apply as if the reference in that Executive order to section 806(a)(2) of the Department of Defense Authorization Act of 1986 refers to section 1784 of title 10, United States Code, as added by subsection (a).''

EX. ORD. NO. 12568. EMPLOYMENT OPPORTUNITIES FOR MILITARY SPOUSES AT NONAPPROPRIATED FUND ACTIVITIES

Ex. Ord. No. 12568, Oct. 2, 1986, 51 F.R. 35497, provided: By the authority vested in me as President by the laws of the United States of America, including section 301 of Title 3 of the United States Code, it is ordered that the Secretary of Defense and, as designated by him for this purpose, any of the Secretaries, Under Secretaries, and Assistant Secretaries of the Military Departments, are hereby empowered to exercise the discretionary authority granted to the President by subsection 806(a)(2) of the Department of Defense Authorization Act of 1986, Public Law No. 99–145 [formerly set out as a note under section 113 of this title, now deemed to refer to this section, see above], to give preference in hiring for positions in nonappropriated fund activities to qualified spouses of members of the Armed Forces stationed in the same geographical area as the nonappropriated fund activity for positions in wage grade UA–8 and below and equivalent positions and for positions paid at hourly rates.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1143 of this title; title 5 section 2302.

§ 1785. Youth sponsorship program

(a) REQUIREMENT.—The Secretary of Defense shall require that there be at each military installation a youth sponsorship program to facilitate the integration of dependent children of members of the armed forces into new surroundings when moving to that military installation as a result of a parent's permanent change of station.

(b) DESCRIPTION OF PROGRAMS.—The program at each installation shall provide for involvement of dependent children of members presently stationed at the military installation and shall be directed primarily toward children in their preteen and teenage years.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1786. Dependent student travel within the United States

Funds available to the Department of Defense for the travel and transportation of dependent students of members of the armed forces stationed overseas may be obligated for transportation allowances for travel within or between the contiguous States.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

§ 1787. Reporting of child abuse

(a) IN GENERAL.—The Secretary of Defense shall request each State to provide for the reporting to the Secretary of any report the State receives of known or suspected instances of child abuse and neglect in which the person having care of the child is a member of the armed forces (or the spouse of the member).

(b) DEFINITION.—In this section, the term ''child abuse and neglect'' has the meaning provided in section 3(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5102).[1]

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 331.)

REFERENCES IN TEXT

Section 3(1) of the Child Abuse Prevention and Treatment Act, referred to in subsec. (b), is section 3(1) of Pub. L. 93–247, which was amended generally by Pub. L. 100–294 and renumbered section 102 by Pub. L. 101–126. As so amended and renumbered, section 102 of Pub. L. 93–247 no longer defines ''child abuse and neglect''. However, such term is defined in section 111 of Pub. L. 93–247, which is classified to section 5106g of Title 42, The Public Health and Welfare.

PLAN FOR IMPLEMENTATION OF ACCREDITATION REQUIREMENT

Section 568(c) of Pub. L. 104–106 directed Secretary of Defense to submit to Congress, not later than Apr. 1, 1997, a plan for carrying out the requirements of this section.

§ 1788. Additional family assistance

(a) AUTHORITY.—The Secretary of Defense may provide for the families of members of the armed forces serving on active duty, in addition to any other assistance available for such families, any assistance that the Secretary considers

[1] See References in Text note below.

appropriate to ensure that the children of such members obtain needed child care, education, and other youth services.

(b) PRIMARY PURPOSE OF ASSISTANCE.—The assistance authorized by this section should be directed primarily toward providing needed family support, including child care, education, and other youth services, for children of members of the Armed Forces who are deployed, assigned to duty, or ordered to active duty in connection with a contingency operation.

(Added Pub. L. 107–314, div. A, title VI, § 652(a)(1), Dec. 2, 2002, 116 Stat. 2581.)

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, § 652(b), Dec. 2, 2002, 116 Stat. 2581, provided that: ''Section 1788 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2002.''

SUBCHAPTER II—MILITARY CHILD CARE

Sec.
1791. Funding for military child care.
1792. Child care employees.
1793. Parent fees.
1794. Child abuse prevention and safety at facilities.
1795. Parent partnerships with child development centers.
1796. Subsidies for family home day care.
1797. Early childhood education program.
1798. Child care services and youth program services for dependents: financial assistance for providers.
1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible.
1800. Definitions.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 584(a)(2), Oct. 5, 1999, 113 Stat. 636, added items 1798, 1799, and 1800 and struck out former item 1798 ''Definitions''.

§ 1791. Funding for military child care

It is the policy of Congress that the amount of appropriated funds available during a fiscal year for operating expenses for military child development centers and programs shall be not less than the amount of child care fee receipts that are estimated to be received by the Department of Defense during that fiscal year.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332.)

PRIOR PROVISIONS

Provisions similar to those in this subchapter were contained in Pub. L. 101–189, div. A, title XV, Nov. 29, 1989, 103 Stat. 1589, which was set out as a note under section 113 of this title, prior to repeal by Pub. L. 104–106, § 568(e)(2).

§ 1792. Child care employees

(a) REQUIRED TRAINING.—(1) The Secretary of Defense shall prescribe regulations implementing a training program for child care employees. Those regulations shall apply uniformly among the military departments. Subject to paragraph (2), satisfactory completion of the training program shall be a condition of employment of any person as a child care employee.

(2) Under those regulations, the Secretary shall require that each child care employee complete the training program not later than six months after the date on which the employee is employed as a child care employee.

(3) The training program established under this subsection shall cover, at a minimum, training in the following:

(A) Early childhood development.

(B) Activities and disciplinary techniques appropriate to children of different ages.

(C) Child abuse prevention and detection.

(D) Cardiopulmonary resuscitation and other emergency medical procedures.

(b) TRAINING AND CURRICULUM SPECIALISTS.—(1) The Secretary of Defense shall require that at least one employee at each military child development center be a specialist in training and curriculum development. The Secretary shall ensure that such employees have appropriate credentials and experience.

(2) The duties of such employees shall include the following:

(A) Special teaching activities at the center.

(B) Daily oversight and instruction of other child care employees at the center.

(C) Daily assistance in the preparation of lesson plans.

(D) Assistance in the center's child abuse prevention and detection program.

(E) Advising the director of the center on the performance of other child care employees.

(3) Each employee referred to in paragraph (1) shall be an employee in a competitive service position.

(c) COMPETITIVE RATES OF PAY.—For the purpose of providing military child development centers with a qualified and stable civilian workforce, employees at a military installation who are directly involved in providing child care and are paid from nonappropriated funds—

(1) in the case of entry-level employees, shall be paid at rates of pay competitive with the rates of pay paid to other entry-level employees at that installation who are drawn from the same labor pool; and

(2) in the case of other employees, shall be paid at rates of pay substantially equivalent to the rates of pay paid to other employees at that installation with similar training, seniority, and experience.

(d) COMPETITIVE SERVICE POSITION DEFINED.—In this section, the term ''competitive service position'' means a position in the competitive service, as defined in section 2102(a)(1) of title 5.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 332; amended Pub. L. 105–85, div. A, title X, § 1073(a)(34), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title XI, § 1106, Oct. 17, 1998, 112 Stat. 2142.)

AMENDMENTS

1998—Subsecs. (d), (e). Pub. L. 105–261 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(d) EMPLOYMENT PREFERENCE PROGRAM FOR MILITARY SPOUSES.—(1) The Secretary of Defense shall conduct a program under which qualified spouses of members of the armed forces shall be given a preference in hiring for the position of child care employee in a position paid from nonappropriated funds if the spouse is among persons determined to be best qualified for the position.

''(2) A spouse who is provided a preference under this subsection at a military child development center may not be precluded from obtaining another preference, in accordance with section 1784 of this title, in the same geographic area as the military child development center.''

1997—Subsec. (a)(1). Pub. L. 105–85, §1073(a)(34)(A), struck out comma after ''implementing''.

Subsec. (d)(2). Pub. L. 105–85, §1073(a)(34)(B), substituted ''section 1784'' for ''section 1794''.

§ 1793. Parent fees

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations establishing fees to be charged parents for the attendance of children at military child development centers. Those regulations shall be uniform for the military departments and shall require that, in the case of children who attend the centers on a regular basis, the fees shall be based on family income.

(b) LOCAL WAIVER AUTHORITY.—The Secretary of Defense may provide authority to installation commanders, on a case-by-case basis, to establish fees for attendance of children at child development centers at rates lower than those prescribed under subsection (a) if the rates prescribed under subsection (a) are not competitive with rates at local non-military child development centers.

(Added Pub. L. 104–106, div. A, title V, §568(a)(1), Feb. 10, 1996, 110 Stat. 333.)

§ 1794. Child abuse prevention and safety at facilities

(a) CHILD ABUSE TASK FORCE.—The Secretary of Defense shall maintain a special task force to respond to allegations of widespread child abuse at a military installation. The task force shall be composed of personnel from appropriate disciplines, including, where appropriate, medicine, psychology, and childhood development. In the case of such allegations, the task force shall provide assistance to the commander of the installation, and to parents at the installation, in helping them to deal with such allegations.

(b) NATIONAL HOTLINE.—(1) The Secretary of Defense shall maintain a national telephone number for persons to use to report suspected child abuse or safety violations at a military child development center or family home day care site. The Secretary shall ensure that such reports may be made anonymously if so desired by the person making the report. The Secretary shall establish procedures for following up on complaints and information received over that number.

(2) The Secretary shall publicize the existence of the number.

(c) ASSISTANCE FROM LOCAL AUTHORITIES.—The Secretary of Defense shall prescribe regulations requiring that, in a case of allegations of child abuse at a military child development center or family home day care site, the commander of the military installation or the head of the task force established under subsection (a) shall seek the assistance of local child protective authorities if such assistance is available.

(d) SAFETY REGULATIONS.—The Secretary of Defense shall prescribe regulations on safety and operating procedures at military child development centers. Those regulations shall apply uniformly among the military departments.

(e) INSPECTIONS.—The Secretary of Defense shall require that each military child development center be inspected not less often than four times a year. Each such inspection shall be unannounced. At least one inspection a year shall be carried out by a representative of the installation served by the center, and one inspection a year shall be carried out by a representative of the major command under which that installation operates.

(f) REMEDIES FOR VIOLATIONS.—(1) Except as provided in paragraph (2), any violation of a safety, health, or child welfare law or regulation (discovered at an inspection or otherwise) at a military child development center shall be remedied immediately.

(2) In the case of a violation that is not life threatening, the commander of the major command under which the installation concerned operates may waive the requirement that the violation be remedied immediately for a period of up to 90 days beginning on the date of the discovery of the violation. If the violation is not remedied as of the end of that 90-day period, the military child development center shall be closed until the violation is remedied. The Secretary of the military department concerned may waive the preceding sentence and authorize the center to remain open in a case in which the violation cannot reasonably be remedied within that 90-day period or in which major facility reconstruction is required.

(Added Pub. L. 104–106, div. A, title V, §568(a)(1), Feb. 10, 1996, 110 Stat. 333.)

§ 1795. Parent partnerships with child development centers

(a) PARENT BOARDS.—The Secretary of Defense shall require that there be established at each military child development center a board of parents, to be composed of parents of children attending the center. The board shall meet periodically with staff of the center and the commander of the installation served by the center for the purpose of discussing problems and concerns. The board, together with the staff of the center, shall be responsible for coordinating the parent participation program described in subsection (b).

(b) PARENT PARTICIPATION PROGRAMS.—The Secretary of Defense shall require the establishment of a parent participation program at each military child development center. As part of such program, the Secretary of Defense may establish fees for attendance of children at such a center, in the case of parents who participate in the parent participation program at that center, at rates lower than the rates that otherwise apply.

(Added Pub. L. 104–106, div. A, title V, §568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1796. Subsidies for family home day care

The Secretary of Defense may use appropriated funds available for military child care

purposes to provide assistance to family home day care providers so that family home day care services can be provided to members of the armed forces at a cost comparable to the cost of services provided by military child development centers. The Secretary shall prescribe regulations for the provision of such assistance.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 334.)

§ 1797. Early childhood education program

The Secretary of Defense shall require that all military child development centers meet standards of operation necessary for accreditation by an appropriate national early childhood programs accrediting body.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335.)

§ 1798. Child care services and youth program services for dependents: financial assistance for providers

(a) AUTHORITY.—The Secretary of Defense may provide financial assistance to an eligible civilian provider of child care services or youth program services that furnishes such services for members of the armed forces and employees of the United States if the Secretary determines that providing such financial assistance—

(1) is in the best interest of the Department of Defense;

(2) enables supplementation or expansion of furnishing of child care services or youth program services for military installations, while not supplanting or replacing such services; and

(3) ensures that the eligible provider is able to comply, and does comply, with the regulations, policies, and standards of the Department of Defense that are applicable to the furnishing of such services.

(b) ELIGIBLE PROVIDERS.—A provider of child care services or youth program services is eligible for financial assistance under this section if the provider—

(1) is licensed to provide those services under applicable State and local law;

(2) has previously provided such services for members of the armed forces or employees of the United States; and

(3) either—

(A) is a family home day care provider; or

(B) is a provider of family child care services that—

(i) otherwise provides federally funded or sponsored child development services;

(ii) provides the services in a child development center owned and operated by a private, not-for-profit organization;

(iii) provides before-school or after-school child care program in a public school facility;

(iv) conducts an otherwise federally funded or federally sponsored school age child care or youth services program;

(v) conducts a school age child care or youth services program that is owned and operated by a not-for-profit organization; or

(vi) is a provider of another category of child care services or youth services determined by the Secretary of Defense as appropriate for meeting the needs of members of the armed forces or employees of the Department of Defense.

(c) FUNDING.—To provide financial assistance under this subsection, the Secretary of Defense may use any funds appropriated to the Department of Defense for operation and maintenance.

(Added Pub. L. 106–65, div. A, title V, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634; amended Pub. L. 107–314, div. A, title X, § 1041(a)(6), Dec. 2, 2002, 116 Stat. 2645.)

PRIOR PROVISIONS

A prior section 1798 was renumbered section 1800 of this title.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows:

''(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for meeting the needs of members of the armed forces or employees of the Department of Defense for child care services and youth program services. The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to meet those needs.

''(2) A biennial report under this subsection may be combined with the biennial report under section 1799(d) of this title into a single report for submission to Congress.''

FIRST BIENNIAL REPORTS

Pub. L. 106–65, div. A, title V, § 584(b), Oct. 5, 1999, 113 Stat. 636, provided that the first biennial reports under former sections 1798(d) and 1799(d) of this title were to be submitted not later than Mar. 31, 2002, and were to cover fiscal years 2000 and 2001.

§ 1799. Child care services and youth program services for dependents: participation by children and youth otherwise ineligible

(a) AUTHORITY.—The Secretary of Defense may authorize participation in child care or youth programs of the Department of Defense, to the extent of the availability of space and services, by children and youth under the age of 19 who are not dependents of members of the armed forces or of employees of the Department of Defense and are not otherwise eligible for participation in those programs.

(b) LIMITATION.—Authorization of participation in a program under subsection (a) shall be limited to situations in which that participation promotes the attainment of the objectives set forth in subsection (c), as determined by the Secretary.

(c) OBJECTIVES.—The objectives for authorizing participation in a program under subsection (a) are as follows:

(1) To support the integration of children and youth of military families into civilian communities.

(2) To make more efficient use of Department of Defense facilities and resources.

(3) To establish or support a partnership or consortium arrangement with schools and

other youth services organizations serving children of members of the armed forces.

(Added Pub. L. 106–65, div. A, title V, § 584(a)(1)(B), Oct. 5, 1999, 113 Stat. 634; amended Pub. L. 107–314, div. A, title X, § 1041(a)(7), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows:

''(1) Every two years the Secretary of Defense shall submit to Congress a report on the exercise of authority under this section. The report shall include an evaluation of the effectiveness of that authority for achieving the objectives set out under subsection (c). The report may include any recommendations for legislation that the Secretary considers appropriate to enhance the capability of the Department of Defense to attain those objectives.

''(2) A biennial report under this subsection may be combined with the biennial report under section 1798(d) of this title into a single report for submission to Congress.''

§ 1800. Definitions

In this subchapter:

(1) The term ''military child development center'' means a facility on a military installation (or on property under the jurisdiction of the commander of a military installation) at which child care services are provided for members of the armed forces or any other facility at which such child care services are provided that is operated by the Secretary of a military department.

(2) The term ''family home day care'' means home-based child care services that are provided for members of the armed forces by an individual who (A) is certified by the Secretary of the military department concerned as qualified to provide those services, and (B) provides those services on a regular basis for compensation.

(3) The term ''child care employee'' means a civilian employee of the Department of Defense who is employed to work in a military child development center (regardless of whether the employee is paid from appropriated funds or nonappropriated funds).

(4) The term ''child care fee receipts'' means those nonappropriated funds that are derived from fees paid by members of the armed forces for child care services provided at military child development centers.

(Added Pub. L. 104–106, div. A, title V, § 568(a)(1), Feb. 10, 1996, 110 Stat. 335, § 1798; renumbered § 1800, Pub. L. 106–65, div. A, title V, § 584(a)(1)(A), Oct. 5, 1999, 113 Stat. 634.)

AMENDMENTS

1999—Pub. L. 106–65 renumbered section 1798 of this title as this section.

[CHAPTER 89—REPEALED]

[§§ 1801 to 1805. Repealed. Pub. L. 104–106, div. A, title X, § 1061(a)(1), Feb. 10, 1996, 110 Stat. 442]

Section 1801, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551, related to volunteer program to assist independent states of former Soviet Union.

Section 1802, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2551; amended Pub. L. 103–35, title II, § 201(f)(3), (g)(3), May 31, 1993, 107 Stat. 99, 100, set out criteria to be used in selecting volunteers.

Section 1803, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2552, related to determining needs for volunteers and role of Secretary of State.

Section 1804, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2553; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(4), Nov. 30, 1993, 107 Stat. 1771, related to the compensation and benefits of volunteers.

Section 1805, added Pub. L. 102–484, div. A, title XIII, § 1322(a)(1), Oct. 23, 1992, 106 Stat. 2553, provided that selection of volunteers to participate in program under this chapter terminate Sept. 30, 1995.

PART III—TRAINING AND EDUCATION

Chap.		Sec.
101.	Training Generally	2001
102.	Junior Reserve Officers' Training Corps	2031
103.	Senior Reserve Officers' Training Corps	2101
104.	Uniformed Services University of the Health Sciences	2112
105.	Armed Forces Health Professions Financial Assistance Programs	2120
106.	Educational Assistance for Members of the Selected Reserve	2131
107.	Educational Assistance for Persons Enlisting for Active Duty	2141
108.	Department of Defense Schools	2161
109.	Educational Loan Repayment Programs	2171
110.	Educational Assistance for Members Held as Captives and Their Dependents	2181
111.	Support of Science, Mathematics, and Engineering Education	2191
112.	Information Security Scholarship Program	2200

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236, added item for chapter 112.

1991—Pub. L. 102–25, title VII, § 701(e)(2), Apr. 6, 1991, 105 Stat. 114, inserted ''2161'' in item for chapter 108.

1990—Pub. L. 101–510, div. A, title II, § 247(a)(2)(B), title IX, § 911(b)(3), Nov. 5, 1990, 104 Stat. 1523, 1626, substituted ''Department of Defense Schools'' for ''Granting of Advanced Degrees at Department of Defense Schools'' in item for chapter 108 and ''Support of Science, Mathematics, and Engineering Education'' for ''National Defense Science and Engineering Graduate Fellowships'' in item for chapter 111.

1989—Pub. L. 101–189, div. A, title VIII, § 843(d)(2), title XVI, § 1622(d)(1), Nov. 29, 1989, 103 Stat. 1517, 1604, substituted ''TRAINING AND EDUCATION'' for ''TRAINING'' in heading for part III and added item for chapter 111.

1987—Pub. L. 100–180, div. A, title VII, § 711(b), Dec. 4, 1987, 101 Stat. 1111, substituted ''Financial Assistance Programs'' for ''Scholarship Program'' in item for chapter 105.

1986—Pub. L. 99–399, title VIII, § 806(d)(2), Aug. 27, 1986, 100 Stat. 888, added item for chapter 110.

1985—Pub. L. 99–145, title VI, § 671(a)(2), Nov. 8, 1985, 99 Stat. 663, added item for chapter 109.

1984—Pub. L. 98–525, title VII, § 705(a)(2), Oct. 19, 1984, 98 Stat. 2567, substituted ''Members of the Selected Reserve'' for ''Enlisted Members of the Selected Reserve of the Ready Reserve'' in item for chapter 106.

1980—Pub. L. 96–513, title V, § 511(99), Dec. 12, 1980, 94 Stat. 2929, capitalized ''Assistance'', ''Persons'', ''Enlisting'', ''Active'', and ''Duty'' in item for chapter 107.

Pub. L. 96–450, title IV, § 406(b), Oct. 14, 1980, 94 Stat. 1981, added item for chapter 108.

Pub. L. 96–342, title IX, §901(b), Sept. 8, 1980, 94 Stat. 1114, added item for chapter 107.

1977—Pub. L. 95–79, title IV, §402(b), July 30, 1977, 91 Stat. 330, added item for chapter 106.

1972—Pub. L. 92–426, §2(b), Sept. 21, 1972, 86 Stat. 719, added items for chapters 104 and 105.

1964—Pub. L. 88–647, title I, §101(2), title II, §201(2), Oct. 13, 1964, 78 Stat. 1064, 1069, added items for chapters 102 and 103.

CHAPTER 101—TRAINING GENERALLY

Sec.
[2001. Repealed.]
2002. Dependents of members of armed forces: language training.
2003. Aeronautical rating as pilot: qualifications.
2004. Detail of commissioned officers as students at law schools.
2005. Advanced education assistance: active duty agreement; reimbursement requirements.
2006. Department of Defense Education Benefits Fund.
2007. Payment of tuition for off-duty training or education.
2008. Authority to use funds for certain educational purposes.
2009. Military colleges: female students.
2010. Participation of developing countries in combined exercises: payment of incremental expenses.
2011. Special operations forces: training with friendly foreign forces.
2012. Support and services for eligible organizations and activities outside Department of Defense.
2013. Training at non-Government facilities.
2014. Administrative actions adversely affecting military training or other readiness activities.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title III, §325(b), Nov. 18, 1997, 111 Stat. 1679, added item 2014.

1996—Pub. L. 104–201, div. A, title III, §362(a)(2), Sept. 23, 1996, 110 Stat. 2493, added item 2013.

Pub. L. 104–106, div. A, title V, §572(b), Feb. 10, 1996, 110 Stat. 355, added item 2012.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(12), Oct. 5, 1994, 108 Stat. 3014, struck out item 2001 ''Reserve components''.

1991—Pub. L. 102–190, div. A, title X, §1052(a)(2), Dec. 5, 1991, 105 Stat. 1471, added item 2011.

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(3)(B), (4)(B), Nov. 5, 1990, 104 Stat. 1718, struck out ''of the military departments'' after ''officers'' in item 2004 and substituted ''Payment'' for ''Limitation on payment'' in item 2007.

1986—Pub. L. 99–661, div. A, title XIII, §1321(a)(2), Nov. 14, 1986, 100 Stat. 3988, added item 2010.

1984—Pub. L. 98–525, title VII, §706(a)(2), title XIV, §§1401(g)(2), 1405(31), Oct. 19, 1984, 98 Stat. 2570, 2619, 2624, substituted a colon for a semicolon in item 2003 and added items 2006 to 2009.

1980—Pub. L. 96–357, §2(b), Sept. 24, 1980, 94 Stat. 1182, added item 2005.

1973—Pub. L. 93–155, title VIII, §817(b), Nov. 16, 1973, 87 Stat. 622, added item 2004.

1971—Pub. L. 92–168, §4(2), Nov. 24, 1971, 85 Stat. 489, added item 2003.

1970—Pub. L. 91–278, §2(3), June 12, 1970, 84 Stat. 306, substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' in item 2002.

1965—Pub. L. 89–160, §1(2), Sept. 1, 1965, 79 Stat. 615, added item 2002.

[§ 2001. Repealed. Pub. L. 103–337, div. A, title XVI, §1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, related to division of reserve components into training categories. See section 10141(c) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 2002. Dependents of members of armed forces: language training

(a) Notwithstanding section 701(b) of the Foreign Service Act of 1980 (22 U.S.C. 4021(b)) or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Homeland Security, language training may be provided in—

(1) a facility of the Department of Defense;

(2) a facility of the George P. Shultz National Foreign Affairs Training Center established under section 701(a) of the Foreign Service Act of 1980 (22 U.S.C. 4021(a)); or

(3) a civilian educational institution;

to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.

(b) In this section, the term ''dependent'' has the same meaning that it has under section 401 of title 37.

(Added Pub. L. 89–160, §1(1), Sept. 1, 1965, 79 Stat. 615; amended Pub. L. 91–278, §2(1), (2), June 12, 1970, 84 Stat. 306; Pub. L. 96–465, title II, §2206(c)(1), Oct. 17, 1980, 94 Stat. 2162; Pub. L. 97–22, §11(a)(7), July 10, 1981, 95 Stat. 138; Pub. L. 98–525, title XIV, §1405(30), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 100–180, div. A, title XII, §1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 107–132, §1(b), Jan. 16, 2002, 115 Stat. 2412; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

Subsec. (a)(2). Pub. L. 107–132 substituted ''George P. Shultz National Foreign Affairs Training Center'' for ''Foreign Service Institute''.

1987—Subsec. (b). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''In this section,'' for ''For the purposes of this section, the word''.

1981—Subsec. (a). Pub. L. 97–22 inserted ''(22 U.S.C. 4021(b))'' after ''section 701(b) of the Foreign Service Act of 1980'' in provisions preceding par. (1) and, in par. (2), inserted ''(22 U.S.C. 4021(a))'' after ''section 701(a) of the Foreign Service Act of 1980''.

1980—Subsec. (a). Pub. L. 96–465, in provisions preceding par. (1) substituted ''section 701(b) of the Foreign Service Act of 1980'' for ''section 1041 of title 22'' and in par. (2) substituted ''section 701(a) of the Foreign Service Act of 1980'' for ''section 1041 of title 22''.

1970—Pub. L. 91–278, §2(1), substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps'' in section catchline.

Subsec. (a). Pub. L. 91–278, §2(2)(A), authorized Secretary of Transportation to prescribe regulations for Coast Guard when not operating as a service in the Navy.

Subsec. (a)(3). Pub. L. 91–278, §2(2)(B), substituted ''armed forces'' for ''Army, Navy, Air Force, or Marine Corps''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

§ 2003. Aeronautical rating as pilot: qualifications

To be eligible to receive an aeronautical rating as a pilot in the Army or Air Force or be designated as a naval aviator, a member of an armed force must successfully complete an undergraduate pilot course of instruction prescribed or approved by the Secretary of his military department.

(Added Pub. L. 92–168, § 4(1), Nov. 24, 1971, 85 Stat. 489.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6913 of this title; title 14 section 373.

§ 2004. Detail of commissioned officers as students at law schools

(a) The Secretary of each military department may, under regulations prescribed by the Secretary of Defense, detail commissioned officers of the armed forces as students at accredited law schools, located in the United States, for a period of training leading to the degree of bachelor of laws or juris doctor. No more than twenty-five officers from each military department may commence such training in any single fiscal year.

(b) To be eligible for detail under subsection (a), an officer must be a citizen of the United States and must—

(1) have served on active duty for a period of not less than two years nor more than six years and be in the pay grade O–3 or below as of the time the training is to begin; and

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational course of legal training;

(B) accept transfer or detail as a judge advocate or law specialist within the department concerned when his legal training is completed; and

(C) agree to serve on active duty following completion or other termination of training for a period of two years for each year or part thereof of his legal training under subsection (a).

(c) Officers detailed for legal training under subsection (a) shall be selected on a competitive basis by the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense. Any service obligation incurred by an officer under an agreement entered into under subsection (b) shall be in addition to any service obligation incurred by any such officer under any other provision of law or agreement.

(d) Expenses incident to the detail of officers under this section shall be paid from any funds appropriated for the military department concerned.

(e) An officer who, under regulations prescribed by the Secretary of Defense, is dropped from the program of legal training authorized by subsection (a) for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by regulations issued by the Secretary of Defense, except that in no case shall any such member be required to serve on active duty for any period in excess of one year for each year or part thereof he participated in the program.

(f) No agreement detailing any officer of the armed forces to an accredited law school may be entered into during any period that the President is authorized by law to induct persons into the armed forces involuntarily. Nothing in this subsection shall affect any agreement entered into during any period when the President is not authorized by law to so induct persons into the armed forces.

(Added Pub. L. 93–155, title VIII, § 817(a), Nov. 16, 1973, 87 Stat. 621; amended Pub. L. 101–510, div. A, title XIV, § 1484(i)(3)(A), Nov. 5, 1990, 104 Stat. 1718.)

AMENDMENTS

1990—Pub. L. 101–510 struck out ''of the military departments'' after ''officers'' in section catchline.

SELECTION OF OFFICERS IN MISSING STATUS FOR LEGAL TRAINING ON A NONCOMPETITIVE BASIS; EXEMPTION FROM NUMERICAL LIMITATIONS

Pub. L. 94–106, title VIII, § 821, Oct. 7, 1975, 89 Stat. 545, provided that: ''Notwithstanding any provision of section 2004 of title 10 United States Code, an officer in any pay grade who was in a missing status (as defined in section 551(2) of title 37, United States Code) after August 4, 1964, and before May 8, 1975, may be selected for detail for legal training under that section 2004 on other than a competitive basis and, if selected for that training, is not counted in computing, for the purpose of subsection (a) of that section 2004, the number of officers who may commence that training in any single fiscal year. For the purposes of determining eligibility under that section 2004, the period of time during which an officer was in that missing status may be disregarded in computing the period he has served on active duty.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 321.

§ 2005. Advanced education assistance: active duty agreement; reimbursement requirements

(a) The Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree—

(1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement;

(2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement;

(3) that if such person, voluntarily or because of misconduct, fails to complete the pe-

riod of active duty specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4), such person will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided such person as the unserved portion of active duty bears to the total period of active duty such person agreed to serve; and

(4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

(b) The Secretary concerned shall determine the period of active duty to be served by any person for advanced education assistance to be provided such person by an armed force, except that if the period of active duty required to be served is specified under another provision of law with respect to the advanced education assistance to be provided, the period specified in the agreement referred to in subsection (a) shall be the same as the period specified in such other provision of law.

(c) Subject to the provisions of subsection (d), the obligation to reimburse the United States under an agreement described in subsection (a) is, for all purposes, a debt owing the United States.

(d) A discharge in bankruptcy under title 11 shall not release a person from an obligation to reimburse the United States required under the terms of an agreement described in subsection (a) if the final decree of the discharge in bankruptcy was issued within a period of five years after the last day of a period which such person had agreed to serve on active duty. This subsection applies to a discharge in bankruptcy in any proceeding which begins after September 30, 1978.

(e) In this section:

(1) The term ''advanced education'' means education or training above the secondary school level but does not include technical training provided to a member of the armed forces to qualify such member to perform a specified military function, to workshops, or to short-term training programs.

(2) The term ''assistance'' means the direct provision of any course of advanced education by the Secretary concerned, reimbursement by the Secretary concerned for any course of advanced education provided by another department or agency of the Federal Government, or the payment, in whole or in part, by the Secretary concerned for any course of advanced education provided by any public or private educational institution or other entity, but such term does not include the payment for any course of advanced education which is paid for under chapter 106 or 107 of this title.

(3) The term ''cost of advanced education'' means those costs which are, under regulations prescribed by the Secretary concerned, directly attributable to the education of the person to whom a course of advanced education is provided, including the cost of tuition and other fees (or, if none is charged, an amount determined by the Secretary concerned to be a reasonable charge for the education provided), the cost of books, supplies, transportation, and miscellaneous expenses, and the cost of room and board, but such term does not include pay or allowances under title 37 or a stipend under section 2121 of this title.

(f) The Secretary concerned shall require, as a condition to the Secretary providing financial assistance under section 2107 or 2107a of this title to any person, that such person enter into an agreement described in subsection (a). In addition to the requirements of clauses (1) through (4) of such subsection, any agreement required by this subsection shall provide—

(1) that if such person fails to complete the education requirements specified in the agreement, or fails to fulfill any term or condition prescribed pursuant to clause (4) of such subsection, the Secretary will have the option to order such person to reimburse the United States in the manner provided for in clause (3) of such subsection without the Secretary first ordering such person to active duty as provided for under clause (2) of such subsection and sections 2107(f) and 2107a(f) of this title; and

(2) that any amount owed by such person to the United States under such agreement shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the reimbursement is determined to be due for securities having maturities of ninety days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a reimbursement under this section.

(g)(1) In any case in which the Secretary concerned determines that a person who entered into an agreement under this section failed to complete the period of active duty specified in the agreement (or failed to fulfill any other term or condition prescribed in the agreement) and, by reason of the provision of the agreement required under subsection (a)(3), may owe a debt to the United States and in which that person disputes that such a debt is owed, the Secretary shall designate a member of the armed forces or a civilian employee under the jurisdiction of the Secretary to investigate the facts of the case and hear evidence presented by the person who may owe the debt and other parties, as appropriate, in order to determine the validity of the debt. That official shall report the official's findings and recommendations to the Secretary concerned. If the justification for the debt investigated includes an allegation of misconduct, the investigating official shall state in the report the official's assessment as to whether the individual behavior that resulted in the separation of the person who may owe the debt qualifies as misconduct under subsection (a)(3).

(2) The Secretary of each military department shall ensure that a member of the armed forces who may be subject to a reimbursement requirement under this section is advised of such requirement before (1) submitting a request for voluntary separation, or (2) making a decision on a course of action regarding personal involvement in administrative, nonjudicial, and judicial action resulting from alleged misconduct.

(h) The Secretary concerned may, at any time before October 1, 1998, modify an agreement described in subsection (a) to reduce the active

duty service obligation specified in the agreement if the Secretary determines that it is in the best interests of the United States to do so. In such a case, the Secretary shall reduce the amount required to be reimbursed to the United States proportionately with the reduction in the period of obligated active duty service.

(Added Pub. L. 96–357, § 2(a), Sept. 24, 1980, 94 Stat. 1180; amended Pub. L. 98–94, title X, § 1003(b)(1), title XII, § 1268(10), Sept. 24, 1983, 97 Stat. 656, 706; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title V, § 534, Nov. 5, 1990, 104 Stat. 1564; Pub. L. 103–160, div. A, title V, § 573(a), Nov. 30, 1993, 107 Stat. 1673.)

AMENDMENTS

1993—Subsecs. (g), (h). Pub. L. 103–160 added subsecs. (g) and (h).

1990—Subsec. (a)(3). Pub. L. 101–510, § 534(1), inserted ''or fails to fulfill any term or condition prescribed pursuant to clause (4),'' after ''agreement,''.

Subsec. (f)(1). Pub. L. 101–510, § 534(2), inserted ''or fails to fulfill any term or condition prescribed pursuant to clause (4) of such subsection,'' after ''agreement,''.

1987—Subsec. (e). Pub. L. 100–180, § 1231(17), inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1983—Subsec. (c). Pub. L. 98–94, § 1268(10)(A), struck out ''of this section'' after ''subsection (d)'' and ''subsection (a)''.

Subsec. (d). Pub. L. 98–94, § 1268(10)(A), struck out ''of this section'' after ''subsection (a)''.

Subsec. (e). Pub. L. 98–94, § 1268(10)(B), substituted a colon for a dash after ''In this section'' preceding par. (1).

Subsec. (f). Pub. L. 98–94, § 1003(b)(1), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 573(b) of Pub. L. 103–160 provided that:

''(1) Subsection (g) of section 2005 of title 10, United States Code, as added by subsection (a), shall apply with respect to persons separated from the Armed Forces after the end of the six-month period beginning on the date of the enactment of this Act [Nov. 30, 1993].

''(2) Subsection (h) of such section, as added by subsection (a), shall apply with respect to persons separated from the Armed Forces after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1003(b)(2) of Pub. L. 98–94 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to agreements entered into after September 30, 1983.''

§ 2006. Department of Defense Education Benefits Fund

(a) There is established on the books of the Treasury a fund to be known as the Department of Defense Education Benefits Fund (hereinafter in this section referred to as the ''Fund''), which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance armed forces education liabilities on an actuarially sound basis.

(b) In this section:

(1) The term ''armed forces education liabilities'' means liabilities of the armed forces for benefits under chapter 30 of title 38 and for Department of Defense benefits under chapter 1606 of this title.

(2) The term ''normal cost'', with respect to any period of time, means the total of the following:

(A) The present value of the future benefits payable from the Fund for amounts attributable to increased amounts of educational assistance authorized under section 3015(d) of title 38 to persons who were not on active duty on July 1, 1985, and who during such period enter on active duty.

(B) The present value of the future benefits payable from the Fund for amounts attributable to educational assistance authorized under subchapter III of chapter 30 of title 38 to persons who were not on active duty on July 1, 1985, and who during such period—

(i) enter a fourth year of active duty, in the case of persons eligible for basic educational assistance under section 3011 of such title; or

(ii) enter a period of service that will establish entitlement to such educational assistance under section 3021(b) of such title, in the case of persons eligible for basic educational assistance under section 3012 of such title.

(C) The present value of the future Department of Defense benefits payable from the Fund for educational assistance under chapter 1606 of this title to persons who during such period become entitled to such assistance.

(D) The present value of future benefits payable from the Fund for the Department of Defense portion of payments of educational assistance under subchapter II of chapter 30 of title 38 attributable to increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of that title during such period.

(c) There shall be deposited into the Fund the following, which shall constitute the assets of the Fund:

(1) Amounts paid into the Fund by the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating under subsection (g).

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(d) The Secretary of the Treasury shall transfer from the Fund to the Secretary of Veterans Affairs such amounts as may be necessary to enable the Secretary of Veterans Affairs to make required payments of armed forces education liabilities. The Secretary of the Treasury, the Secretary of Defense, the Secretary of the Department in which the Coast Guard is operating, and the Secretary of Veterans Affairs shall enter into an agreement as to how and when, and the amounts in which, such transfers shall be made. Except for investments under subsection (h), amounts in the Fund may not be used for any purpose other than transfers as described in this subsection.

(e)(1)(A) There is established in the Department of Defense a Department of Defense Education Benefits Board of Actuaries (hereinafter

in this section referred to as the ''Board''). The Board shall consist of three members, who shall be appointed by the Secretary of Defense from among qualified professional actuaries who are members of the Society of Actuaries.

(B)(i) Except as provided in clause (ii), the members of the Board shall serve for a term of fifteen years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which his predecessor was appointed shall only serve until the end of such term. A member may serve after the end of his term until his successor has taken office. A member of the Board may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board, and for no other reason.

(ii) Of the members of the Board who are first appointed under this paragraph, one each shall be appointed for terms ending five, ten, and fifteen years, respectively, after the date of appointment, as designated by the Secretary of Defense at the time of appointment.

(C) A member of the Board who is not otherwise an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay then currently being paid under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

(2) The Board shall report to the Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary.

(3) The Board shall review valuations of the Fund under subsection (f) and shall recommend to the President and Congress such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

(4) The Secretary shall keep, or cause to be kept, such records as necessary for determining the actuarial status of the Fund.

(f)(1) The Secretary of Defense shall carry out periodic actuarial valuations of the educational programs described in subsection (b)(1).

(2) Based on the most recent such valuation, the Secretary of Defense shall estimate the normal cost for the next fiscal year.

(3) If at the time of any such valuation there has been a change in benefits under an education program described in subsection (b)(1) that has been made since the last such valuation and that increases or decreases the present value of benefits payable from the Fund, the Secretary of Defense shall determine an amortization methodology and schedule for the liquidation of the unfunded liability (or negative unfunded liability) thus created such that the present value of the sum of the amortization payments equals the increase or decrease in the present value of such benefits.

(4) If at the time of any such valuation the Secretary of Defense determines that, based upon changes in actuarial assumptions since the last valuation, there has been an actuarial gain or loss to the Fund, the Secretary shall determine an amortization methodology and schedule for the liquidation of such gain or loss through an increase or decrease in the payments that would otherwise be made to the Fund.

(5) Based on the determinations under paragraphs (2), (3), and (4) the Secretary of Defense shall determine the amount needed to be appropriated to the Department of Defense and the Department in which the Coast Guard is operating for the next fiscal year for payments to be made to the Fund under subsection (g). The President shall include not less than the full amount so determined in the budget transmitted to Congress for the next fiscal year under section 1105 of title 31. The President may comment and make recommendations concerning any such amount.

(6) All determinations under this subsection shall be made using methods and assumptions approved by the Board of Actuaries (including assumptions of interest rates and inflation) and in accordance with generally accepted actuarial principles and practices.

(g)(1) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall pay into the Fund each month the amount that, based upon the most recent actuarial valuation of the education programs described in subsection (b)(1), is equal to the actual total normal cost for the preceding month.

(2) The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall pay into the Fund at the beginning of each fiscal year (or as soon thereafter as appropriations are available for such purpose) the sum of the following:

(A) The amount of the payment for that year, if any, for the amortization of any liability to the Fund resulting from a change in benefits, as determined by the Secretary of Defense under subsection (f)(3).

(B) The amount of the payment for that year, if any, for the amortization of any actuarial gain or loss to the Fund, as determined by the Secretary of Defense under subsection (f)(4).

(3) Amounts paid into the Fund under this subsection shall be paid from appropriations available for the pay of members of the armed forces under the jurisdiction of the Secretary concerned.

(h) The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to and form a part of the Fund.

(Added Pub. L. 98–525, title VII, §706(a)(1), Oct. 19, 1984, 98 Stat. 2568; amended Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title XVI, §1621(a)(2), (6), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 101–510, div. A, title XIII, §1322(a)(2), title XIV, §1484(j)(2), Nov. 5,

1990, 104 Stat. 1671, 1718; Pub. L. 103–337, div. A, title X, § 1070(e)(6), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title XV, §§ 1501(c)(21), 1503(a)(17), Feb. 10, 1996, 110 Stat. 499, 512; Pub. L. 106–65, div. A, title V, § 550, Oct. 5, 1999, 113 Stat. 611; Pub. L. 107–107, div. A, title VI, § 654(b), Dec. 28, 2001, 115 Stat. 1157.)

AMENDMENTS

2001—Subsec. (b)(2)(D). Pub. L. 107–107 added subpar. (D).

1999—Subsec. (a). Pub. L. 106–65, § 550(1), substituted ''armed forces education liabilities'' for ''Department of Defense education liabilities''.

Subsec. (b)(1). Pub. L. 106–65, § 550(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'Department of Defense education liabilities' means liabilities of the Department of Defense for benefits under chapter 30 of title 38 and for benefits under chapter 1606 of this title.''

Subsec. (b)(2)(C). Pub. L. 106–65, § 550(3), inserted ''Department of Defense'' after ''future'' and substituted ''chapter 1606'' for ''chapter 106''.

Subsec. (c)(1). Pub. L. 106–65, § 550(4), inserted ''and the Secretary of the Department in which the Coast Guard is operating'' after ''Defense''.

Subsec. (d). Pub. L. 106–65, § 550(5), substituted ''armed forces'' for ''Department of Defense'' and inserted ''the Secretary of the Department in which the Coast Guard is operating,'' after ''Secretary of Defense,''.

Subsec. (f)(5). Pub. L. 106–65, § 550(6), inserted ''and the Department in which the Coast Guard is operating'' after ''Department of Defense''.

Subsec. (g). Pub. L. 106–65, § 550(7), inserted ''and the Secretary of the Department in which the Coast Guard is operating'' after ''The Secretary of Defense'' in pars. (1) and (2) and substituted ''concerned'' for ''of a military department'' in par. (3).

1996—Subsec. (b)(1). Pub. L. 104–106, § 1501(c)(21), substituted ''chapter 1606 of this title'' for ''chapter 106 of this title''.

Subsec. (b)(2)(B)(ii). Pub. L. 104–106, § 1503(a)(17), substituted ''section 3012 of such title'' for ''section 1412 of such title''.

1994—Subsec. (b)(2). Pub. L. 103–337 substituted ''section 3015(d)'', ''section 3011'', and ''section 3021(b)'' for ''section 1415(c)'', ''section 1411'', and ''section 1421(b)'', respectively.

1990—Subsec. (d). Pub. L. 101–510, § 1484(j)(2), substituted ''enable the Secretary of Veterans Affairs'' for ''enable the Administrator''.

Subsec. (e)(3). Pub. L. 101–510, § 1322(a)(2), substituted ''and shall recommend to the President and Congress'' for ''and report periodically, not less than once every four years, to the President and Congress on the status of the Fund and shall recommend''.

1989—Subsec. (d). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in first sentence and ''Secretary of Veterans Affairs'' for ''Administrator'' in second sentence.

1987—Subsec. (b). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''normal'' for ''Normal'' in par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

FIRST PAYMENT INTO FUND

Section 706(b) of Pub. L. 98–525 directed that first payment into Department of Defense Education Benefits Fund under this section be made not later than three months after Board of Actuaries determined amounts needed to be paid into Fund for that portion of fiscal year 1985 beginning on July 1, 1985, with first payment in a lump sum equal to total of amounts that would have been paid to Fund each month between July 1, 1985, and time such first payment was made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12521 of this title; title 38 sections 3020, 3035.

§ 2007. Payment of tuition for off-duty training or education

(a) Subject to subsection (b), the Secretary of a military department may pay all or a portion of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such educational institution for education or training during the member's off-duty periods.

(b) In the case of a commissioned officer on active duty, the Secretary of the military department concerned may not pay charges under subsection (a) unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education for which the charges are paid.

(c)(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay not more than 75 percent of the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer in a program leading to a baccalaureate degree.

(2) The Secretary may not pay charges under paragraph (1) for tuition or expenses of an officer unless the officer agrees to remain a member of the Selected Reserve for at least four years after completion of the education or training for which the charges are paid.

(3) The Secretary may not pay charges under paragraph (1)—

(A) for a warrant officer; or

(B) for an officer on active duty or full-time National Guard duty.

(d) Subsection (c)(3) may not be construed to prohibit the Secretary of a military department from exercising any authority that the Secretary may have to pay charges of an educational institution in the case of—

(1) a warrant officer on active duty or full-time National Guard duty;

(2) a commissioned officer on full-time National Guard duty; or

(3) a commissioned officer on active duty who satisfies the condition in subsection (b) relating to an agreement to remain on active duty.

(e)(1) A member of the armed forces who is entitled to basic educational assistance under chapter 30 of title 38 may use such entitlement for purposes of paying any portion of the charges described in subsection (a) or (c) that are not paid for by the Secretary of the military department concerned under such subsection.

(2) The use of entitlement under paragraph (1) shall be governed by the provisions of section 3014(b) of title 38.

(Added Pub. L. 98–525, title XIV, §1401(g)(1), Oct. 19, 1984, 98 Stat. 2618; amended Pub. L. 99–661, div. A, title VI, §651(a), Nov. 14, 1986, 100 Stat. 3887; Pub. L. 100–26, §3(4), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–510, div. A, title XIV, §1484(i)(4)(A), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VI, §632, Nov. 30, 1993, 107 Stat. 1684; Pub. L. 106–65, div. A, title VI, §675, Oct. 5, 1999, 113 Stat. 675; Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–358, 1654A–359.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h) [title VIII, §8017], Oct. 12, 1984, 98 Stat. 1904, 1926.

Pub. L. 98–212, title VII, §720, Dec. 8, 1983, 97 Stat. 1441.

Pub. L. 97–377, title I, §101(c) [title VII, §721], Dec. 21, 1982, 96 Stat. 1833, 1854.

Pub. L. 97–114, title VII, §721, Dec. 29, 1981, 95 Stat. 1582.

Pub. L. 96–527, title VII, §722, Dec. 15, 1980, 94 Stat. 3084.

Pub. L. 96–154, title VII, §722, Dec. 21, 1979, 93 Stat. 1156.

Pub. L. 95–457, title VIII, §822, Oct. 13, 1978, 92 Stat. 1247.

Pub. L. 95–111, title VIII, §821, Sept. 21, 1977, 91 Stat. 903.

Pub. L. 94–419, title VII, §721, Sept. 22, 1976, 90 Stat. 1295.

Pub. L. 94–212, title VII, §721, Feb. 9, 1976, 90 Stat. 172.

Pub. L. 93–437, title VIII, §821, Oct. 8, 1974, 88 Stat. 1228.

Pub. L. 93–238, title VII, §722, Jan. 2, 1974, 87 Stat. 1042.

Pub. L. 92–570, title VII, §722, Oct. 26, 1972, 86 Stat. 1200.

Pub. L. 92–204, title VII, §722, Dec. 18, 1971, 85 Stat. 731.

Pub. L. 91–668, title VIII, §822, Jan. 11, 1971, 84 Stat. 2034.

Pub. L. 91–171, title VI, §622, Dec. 29, 1969, 83 Stat. 483.

Pub. L. 90–580, title V, §521, Oct. 17, 1968, 82 Stat. 1133.

Pub. L. 90–96, title VI, §621, Sept. 29, 1967, 81 Stat. 246.

Pub. L. 89–687, title VI, §621, Oct. 15, 1966, 80 Stat. 995.

Pub. L. 89–213, title VI, §621, Sept. 29, 1965, 79 Stat. 877.

Pub. L. 88–446, title V, §521, Aug. 19, 1964, 78 Stat. 478.

Pub. L. 88–149, title V, §521, Oct. 17, 1963, 77 Stat. 267.

Pub. L. 87–577, title V, §521, Aug. 9, 1962, 76 Stat. 332.

Pub. L. 87–144, title VI, §621, Aug. 17, 1961, 75 Stat. 379.

Pub. L. 86–601, title V, §521, July 7, 1960, 74 Stat. 353.

Pub. L. 86–166, title V, §621, Aug. 18, 1959, 73 Stat. 382.

Pub. L. 85–724, title VI, §623, Aug. 22, 1958, 72 Stat. 727.

Pub. L. 85–117, title VI, §624, Aug. 2, 1957, 71 Stat. 327.

July 2, 1956, ch. 488, title VI, §624, 70 Stat. 471.

July 13, 1955, ch. 358, title VI, §628, 69 Stat. 320.

June 30, 1954, ch. 432, title VII, §730, 68 Stat. 355.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(1)], added subsec. (a) and struck out former subsec. (a) which read as follows: ''The Secretary of a military department may not pay more than 75 percent of the charges of an educational institution for the tuition or expenses of a member of the armed forces enrolled in such institution for education or training during his off-duty periods, except that—

''(1) in the case of an enlisted member in the pay grade of E–5 or higher with less than 14 years' service, not more than 90 percent of the charges may be paid;

''(2) in the case of a member enrolled in a high school completion program, all of the charges may be paid;

''(3) in the case of a commissioned officer on active duty, no part of the charges may be paid unless the officer agrees to remain on active duty for a period of at least two years after the completion of the training or education; and

''(4) in the case of a member serving in a contingency operation or similar operational mission (other than for training) designated by the Secretary concerned, all of the charges may be paid.''

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(1)], added subsec. (b) and struck out former subsec. (b) which read as follows: ''The limitation in subsection (a) does not apply to the Program for Afloat College Education.''

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(2)(A)], struck out ''(within the limits set forth in subsection (a))'' after ''educational institution'' in introductory provisions.

Subsec. (d)(3). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(a)(2)(B)], substituted ''subsection (b)'' for ''subsection (a)(3)''.

Subsec. (e). Pub. L. 106–398, §1 [[div. A], title XVI, §1602(b)(1)], added subsec. (e).

1999—Subsec. (a)(4). Pub. L. 106–65 added par. (4).

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

1990—Pub. L. 101–510 substituted ''Payment'' for ''Limitation on payment'' in section catchline.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661, §651(a)(2). See 1986 Amendment note below.

1986—Subsec. (a)(3). Pub. L. 99–661, §651(a)(1), inserted ''on active duty''.

Subsec. (c). Pub. L. 99–661, §651(a)(2), as amended by Pub. L. 100–26, added subsec. (c).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 651(c) of Pub. L. 99–661 provided that: ''Subsection (c) of section 2007 of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

TUITION PAYMENTS CONTINGENT UPON AGREEMENT BY OFFICER TO REMAIN IN READY RESERVE FOR AT LEAST FOUR YEARS

Pub. L. 104–61, title VIII, §8019, Dec. 1, 1995, 109 Stat. 655, provided that: ''Funds appropriated for the Department of Defense during the current fiscal year and hereafter shall be available for the payment of not more than 75 percent of the charges of a postsecondary educational institution for the tuition or expenses of an officer in the Ready Reserve of the Army National Guard or Army Reserve for education or training dur-

ing his off-duty periods, except that no part of the charges may be paid unless the officer agrees to remain a member of the Ready Reserve for at least four years after completion of such training or education.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, § 8019, Sept. 30, 1994, 108 Stat. 2621.

Pub. L. 103–139, title VIII, § 8021, Nov. 11, 1993, 107 Stat. 1441.

Pub. L. 102–396, title IX, § 9025, Oct. 6, 1992, 106 Stat. 1906.

Pub. L. 102–172, title VIII, § 8025, Nov. 26, 1991, 105 Stat. 1177.

Pub. L. 101–511, title VIII, § 8025, Nov. 5, 1990, 104 Stat. 1880.

Pub. L. 101–165, title IX, § 9035, Nov. 21, 1989, 103 Stat. 1136.

Pub. L. 100–463, title VIII, § 8059, Oct. 1, 1988, 102 Stat. 2270–27.

Pub. L. 100–202, § 101(b) [title VIII, § 8072], Dec. 22, 1987, 101 Stat. 1329–43, 1329–74.

Pub. L. 99–500, § 101(c) [title IX, § 9076], Oct. 18, 1986, 100 Stat. 1783–82, 1783–114, and Pub. L. 99–591, § 101(c) [title IX, § 9076], Oct. 30, 1986, 100 Stat. 3341–82, 3341–114.

Pub. L. 99–190, § 101(b) [title VIII, § 8086], Dec. 19, 1985, 99 Stat. 1185, 1216.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1745 of this title; title 38 section 3014.

§ 2008. Authority to use funds for certain educational purposes

Funds appropriated to the Department of Defense may be used to carry out construction, as defined in section 8013(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)), or to carry out section 8008 of such Act (20 U.S.C. 7708), relating to the provision of assistance to certain school facilities under the impact aid program.

(Added Pub. L. 98–525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2618; amended Pub. L. 104–106, div. B, title XXVIII, § 2891, Feb. 10, 1996, 110 Stat. 590.)

AMENDMENTS

1996—Pub. L. 104–106 substituted ''construction, as defined in section 8013(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(3)), or to carry out section 8008 of such Act (20 U.S.C. 7708), relating to the provision of assistance to certain school facilities under the impact aid program.'' for ''section 10 of the Act of September 23, 1950 (20 U.S.C. 640), relating to impact aid authorization.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2009. Military colleges: female students

(a) Under regulations prescribed by the Secretary of Defense, any college or university designated by the Secretary of Defense as a military college shall, as a condition of maintaining such designation, provide that qualified female undergraduate students enrolled in such college or university be eligible to participate in military training at such college or university.

(b) Regulations prescribed under subsection (a) may not require a college or university, as a condition of maintaining its designation as a military college or for any other purpose, to require female undergraduate students enrolled in such college or university to participate in military training.

(Added Pub. L. 98–525, title XIV, § 1401(g)(1), Oct. 19, 1984, 98 Stat. 2619.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 95–485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, which was set out as a note under section 2102 of this title, prior to repeal by Pub. L. 98–525, §§ 1403(b), 1404.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2010. Participation of developing countries in combined exercises: payment of incremental expenses

(a) The Secretary of Defense, after consultation with the Secretary of State, may pay the incremental expenses of a developing country that are incurred by that country as the direct result of participation in a bilateral or multilateral military exercise if—

(1) the exercise is undertaken primarily to enhance the security interests of the United States; and

(2) the Secretary of Defense determines that the participation by such country is necessary to the achievement of the fundamental objectives of the exercise and that those objectives cannot be achieved unless the United States provides the incremental expenses incurred by such country.

(b) The Secretary of Defense shall submit to Congress a report each year, not later than March 1, containing—

(1) a list of the developing countries for which expenses have been paid by the United States under this section during the preceding year; and

(2) the amounts expended on behalf of each government.

(c) The Secretary of Defense shall establish by regulation such accounting procedures as may be necessary to ensure that funds expended under this section are properly expended.

(d) In this section, the term ''incremental expenses'' means the reasonable and proper cost of the goods and services that are consumed by a developing country as a direct result of that country's participation in a bilateral or multilateral military exercise with the United States, including rations, fuel, training ammunition, and transportation. Such term does not include pay, allowances, and other normal costs of such country's personnel.

(Added Pub. L. 99–661, div. A, title XIII, § 1321(a)(1), Nov. 14, 1986, 100 Stat. 3988; amended Pub. L. 105–85, div. A, title X, § 1073(a)(35), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–85 struck out subsec. (e) which read as follows: ''Not more than $13,400,000 may be obligated or expended for the purposes of this section during fiscal years 1987 through 1991.''

§ 2011. Special operations forces: training with friendly foreign forces

(a) AUTHORITY TO PAY TRAINING EXPENSES.—Under regulations prescribed pursuant to subsection (c), the commander of the special operations command established pursuant to section 167 of this title and the commander of any other unified or specified combatant command may pay, or authorize payment for, any of the following expenses:

(1) Expenses of training special operations forces assigned to that command in conjunction with training, and training with, armed forces and other security forces of a friendly foreign country.

(2) Expenses of deploying such special operations forces for that training.

(3) In the case of training in conjunction with a friendly developing country, the incremental expenses incurred by that country as the direct result of such training.

(b) PURPOSE OF TRAINING.—The primary purpose of the training for which payment may be made under subsection (a) shall be to train the special operations forces of the combatant command.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall require that training activities may be carried out under this section only with the prior approval of the Secretary of Defense. The regulations shall establish accounting procedures to ensure that the expenditures pursuant to this section are appropriate.

(d) DEFINITIONS.—In this section:

(1) The term ''special operations forces'' includes civil affairs forces and psychological operations forces.

(2) The term ''incremental expenses'', with respect to a developing country, means the reasonable and proper cost of rations, fuel, training ammunition, transportation, and other goods and services consumed by such country, except that the term does not include pay, allowances, and other normal costs of such country's personnel.

(e) REPORTS.—Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report regarding training during the preceding fiscal year for which expenses were paid under this section. Each report shall specify the following:

(1) All countries in which that training was conducted.

(2) The type of training conducted, including whether such training was related to counternarcotics or counter-terrorism activities, the duration of that training, the number of members of the armed forces involved, and expenses paid.

(3) The extent of participation by foreign military forces, including the number and service affiliation of foreign military personnel involved and physical and financial contribution of each host nation to the training effort.

(4) The relationship of that training to other overseas training programs conducted by the armed forces, such as military exercise programs sponsored by the Joint Chiefs of Staff, military exercise programs sponsored by a combatant command, and military training activities sponsored by a military department (including deployments for training, short duration exercises, and other similar unit training events).

(5) A summary of the expenditures under this section resulting from the training for which expenses were paid under this section.

(6) A discussion of the unique military training benefit to United States special operations forces derived from the training activities for which expenses were paid under this section.

(Added Pub. L. 102–190, div. A, title X, §1052(a)(1), Dec. 5, 1991, 105 Stat. 1470; amended Pub. L. 104–106, div. A, title XV, §1503(a)(18), Feb. 10, 1996, 110 Stat. 512; Pub. L. 105–261, div. A, title X, §1062, Oct. 17, 1998, 112 Stat. 2129.)

AMENDMENTS

1998—Subsec. (c). Pub. L. 105–261, §1062(a), inserted after first sentence ''The regulations shall require that training activities may be carried out under this section only with the prior approval of the Secretary of Defense.''

Subsec. (e)(5), (6). Pub. L. 105–261, §1062(b), added pars. (5) and (6).

1996—Subsec. (a). Pub. L. 104–106 substituted ''To'' for ''TO'' in heading.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 166 of this title.

§ 2012. Support and services for eligible organizations and activities outside Department of Defense

(a) AUTHORITY TO PROVIDE SERVICES AND SUPPORT.—Under regulations prescribed by the Secretary of Defense, the Secretary of a military department may in accordance with this section authorize units or individual members of the armed forces under that Secretary's jurisdiction to provide support and services to non-Department of Defense organizations and activities specified in subsection (e), but only if—

(1) such assistance is authorized by a provision of law (other than this section); or

(2) the provision of such assistance is incidental to military training.

(b) SCOPE OF COVERED ACTIVITIES SUBJECT TO SECTION.—This section does not—

(1) apply to the provision by the Secretary concerned, under regulations prescribed by the Secretary of Defense, of customary community relations and public affairs activities conducted in accordance with Department of Defense policy; or

(2) prohibit the Secretary concerned from encouraging members of the armed forces under the Secretary's jurisdiction to provide volunteer support for community relations activities under regulations prescribed by the Secretary of Defense.

(c) REQUIREMENT FOR SPECIFIC REQUEST.—Assistance under subsection (a) may only be provided if—

(1) the assistance is requested by a responsible official of the organization to which the assistance is to be provided; and

(2) the assistance is not reasonably available from a commercial entity or (if so available) the official submitting the request for assistance certifies that the commercial entity that would otherwise provide such services has agreed to the provision of such services by the armed forces.

(d) RELATIONSHIP TO MILITARY TRAINING.—(1) Assistance under subsection (a) may only be provided if the following requirements are met:

(A) The provision of such assistance—

(i) in the case of assistance by a unit, will accomplish valid unit training requirements; and

(ii) in the case of assistance by an individual member, will involve tasks directly related to the specific military occupational specialty of the member.

(B) The provision of such assistance will not adversely affect the quality of training or otherwise interfere with the ability of a member or unit of the armed forces to perform the military functions of the member or unit.

(C) The provision of such assistance will not result in a significant increase in the cost of the training.

(2) Subparagraph (A)(i) of paragraph (1) does not apply in a case in which the assistance to be provided consists primarily of military manpower and the total amount of such assistance in the case of a particular project does not exceed 100 man-hours.

(e) ELIGIBLE ENTITIES.—The following organizations and activities are eligible for assistance under this section:

(1) Any Federal, regional, State, or local governmental entity.

(2) Youth and charitable organizations specified in section 508 of title 32.

(3) Any other entity as may be approved by the Secretary of Defense on a case-by-case basis.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the provision of assistance under this section. The regulations shall include the following:

(1) Rules governing the types of assistance that may be provided.

(2) Procedures governing the delivery of assistance that ensure, to the maximum extent practicable, that such assistance is provided in conjunction with, rather than separate from, civilian efforts.

(3) Procedures for appropriate coordination with civilian officials to ensure that the assistance—

(A) meets a valid need; and

(B) does not duplicate other available public services.

(4) Procedures to ensure that Department of Defense resources are not applied exclusively to the program receiving the assistance.

(g) TREATMENT OF MEMBER'S PARTICIPATION IN PROVISION OF SUPPORT OR SERVICES.—(1) The Secretary of a military department may not require or request a member of the armed forces to submit for consideration by a selection board (including a promotion board, command selection board, or any other kind of selection board) evidence of the member's participation in the provision of support and services to non-Department of Defense organizations and activities under this section or the member's involvement in, or support of, other community relations and public affairs activities of the armed forces.

(2) Paragraph (1) does not prevent a selection board from considering material submitted voluntarily by a member of the armed forces which provides evidence of the participation of that member or another member in activities described in that paragraph.

(h) ADVISORY COUNCILS.—(1) The Secretary of Defense shall encourage the establishment of advisory councils at regional, State, and local levels, as appropriate, in order to obtain recommendations and guidance concerning assistance under this section from persons who are knowledgeable about regional, State, and local conditions and needs.

(2) The advisory councils should include officials from relevant military organizations, representatives of appropriate local, State, and Federal agencies, representatives of civic and social service organizations, business representatives, and labor representatives.

(3) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to such councils.

(i) CONSTRUCTION OF PROVISION.—Nothing in this section shall be construed as authorizing—

(1) the use of the armed forces for civilian law enforcement purposes or for response to natural or manmade disasters; or

(2) the use of Department of Defense personnel or resources for any program, project, or activity that is prohibited by law.

(j) OVERSIGHT AND COST ACCOUNTING.—The Secretary of Defense shall establish a program to improve the oversight and cost accounting of training projects conducted in accordance with this section. The program shall include measures to accomplish the following:

(1) Ensure that each project that is proposed to be conducted in accordance with this section (regardless of whether additional funding from the Secretary of Defense is sought) is requested in writing, reviewed for full compliance with this section, and approved in advance of initiation by the Secretary of the military department concerned and, in the case of a project that seeks additional funding from the Secretary of Defense, by the Secretary of Defense.

(2) Ensure that each project that is conducted in accordance with this section is required to provide, within a specified period following completion of the project, an after-action report to the Secretary of Defense.

(3) Require that each application for a project to be conducted in accordance with this section include an analysis and certification that the proposed project would not result in a significant increase in the cost of training (as determined in accordance with procedures prescribed by the Secretary of Defense).

(4) Determine the total program cost for each project, including both those costs that are borne by the military departments from their own accounts and those costs that are borne by defense-wide accounts.

(5) Provide for oversight of project execution to ensure that a training project under this section is carried out in accordance with the proposal for that project as approved.

(Added Pub. L. 104–106, div. A, title V, § 572(a)(1), Feb. 10, 1996, 110 Stat. 353; amended Pub. L. 105–85, div. A, title V, § 594, Nov. 18, 1997, 111 Stat. 1764; Pub. L. 105–261, div. A, title V, § 525(a), Oct. 17, 1998, 112 Stat. 2014.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h)(3), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1998—Subsec. (j). Pub. L. 105–261 added subsec. (j).

1997—Subsecs. (g) to (i). Pub. L. 105–85 added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, § 525(b), Oct. 17, 1998, 112 Stat. 2014, as amended by Pub. L. 106–65, div. A, title X, § 1066(b)(4), Oct. 5, 1999, 113 Stat. 772, provided that: ''The Secretary of Defense may not initiate any project under section 2012 of title 10, United States Code, after October 1, 1998, until the program required by subsection (j) of that section (as added by subsection (a)) has been established.''

TERMINATION OF FUNDING FOR OFFICE OF CIVIL-MILITARY PROGRAMS IN OFFICE OF THE SECRETARY OF DEFENSE

Section 574 of Pub. L. 104–106 provided that: ''No funds may be obligated or expended after the date of the enactment of this Act [Feb. 10, 1996] (1) for the office that as of the date of the enactment of this Act is designated, within the Office of the Assistant Secretary of Defense for Reserve Affairs, as the Office of Civil-Military Programs, or (2) for any other entity within the Office of the Secretary of Defense that has an exclusive or principal mission of providing centralized direction for activities under section 2012 of title 10, United States Code, as added by section 572.''

§ 2013. Training at non-Government facilities

(a) AUTHORITY TO ENTER INTO AGREEMENTS.—(1) The Secretary concerned, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), may make agreements or other arrangements for the training of members of the uniformed services under the jurisdiction of that Secretary by, in, or through non-Government facilities.

(2) In this section, the term ''non-Government facility'' means any of the following:

(A) The government of a State or of a territory or possession of the United States, including the Commonwealth of Puerto Rico, an interstate governmental organization, and a unit, subdivision, or instrumentality of any of the foregoing.

(B) A foreign government or international organization, or instrumentality of either, which is designated by the President as eligible to provide training under this section.

(C) A medical, scientific, technical, educational, research, or professional institution, foundation, or organization.

(D) A business, commercial, or industrial firm, corporation, partnership, proprietorship, or other organization.

(E) Individuals other than civilian or military personnel of the Government.

(F) The services and property of any of the foregoing providing the training.

(b) EXPENSES.—The Secretary concerned, from appropriations or other funds available to the Secretary, may—

(1) pay all or a part of the pay of a member of a uniformed service who is selected and assigned for training under this section, for the period of training; and

(2) pay, or reimburse the member of a uniformed service for, all or a part of the necessary expenses of the training (without regard to subsections (a) and (b) of section 3324 of title 31), including among those expenses the necessary costs of the following:

(A) Travel and per diem instead of subsistence under sections 404 and 405 of title 37 and the Joint Travel Regulations for the Uniformed Services.

(B) Transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under sections 406 and 409 of title 37 and the Joint Travel Regulations for the Uniformed Services when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training.

(C) Tuition and matriculation fees.

(D) Library and laboratory services.

(E) Purchase or rental of books, materials, and supplies.

(F) Other services or facilities directly related to the training of the member.

(c) CERTAIN EXPENSES EXCLUDED.—The expenses of training do not include membership fees except to the extent that the fee is a necessary cost directly related to the training itself or that payment of the fee is a condition precedent to undergoing the training.

(Added Pub. L. 104–201, div. A, title III, § 362(a)(1), Sept. 23, 1996, 110 Stat. 2491.)

EFFECTIVE DATE

Section 362(b) of Pub. L. 104–201 provided that: ''Section 2013 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

§ 2014. Administrative actions adversely affecting military training or other readiness activities

(a) CONGRESSIONAL NOTIFICATION.—Whenever an official of an Executive agency takes or proposes to take an administrative action that, as determined by the Secretary of Defense in consultation with the Chairman of the Joint Chiefs of Staff, affects training or any other readiness activity in a manner that has or would have a significant adverse effect on the military readiness of any of the armed forces or a critical component thereof, the Secretary shall submit a written notification of the action and each significant adverse effect to the head of the Executive agency taking or proposing to take the administrative action. At the same time, the Secretary shall transmit a copy of the notification to the President, the Committee on Armed Services of the Senate, and the Committee on Armed Services of the House of Representatives.

(b) NOTIFICATION TO BE PROMPT.—(1) Subject to paragraph (2), the Secretary shall submit a written notification of an administrative action or proposed administrative action required by subsection (a) as soon as possible after the Secretary becomes aware of the action or proposed action.

(2) The Secretary shall prescribe policies and procedures to ensure that the Secretary receives information on an administrative action or proposed administrative action described in subsection (a) promptly after Department of Defense personnel receive notice of such an action or proposed action.

(c) CONSULTATION BETWEEN SECRETARY AND HEAD OF EXECUTIVE AGENCY.—Upon notification with respect to an administrative action or proposed administrative action under subsection (a), the head of the Executive agency concerned shall—

(1) respond promptly to the Secretary; and

(2) consistent with the urgency of the training or readiness activity involved and the provisions of law under which the administrative action or proposed administrative action is being taken, seek to reach an agreement with the Secretary on immediate actions to attain the objective of the administrative action or proposed administrative action in a manner which eliminates or mitigates the adverse effects of the administrative action or proposed administrative action upon the training or readiness activity.

(d) MORATORIUM.—(1) Subject to paragraph (2), upon notification with respect to an administrative action or proposed administrative action under subsection (a), the administrative action or proposed administrative action shall cease to be effective with respect to the Department of Defense until the earlier of—

(A) the end of the five-day period beginning on the date of the notification; or

(B) the date of an agreement between the head of the Executive agency concerned and the Secretary as a result of the consultations under subsection (c).

(2) Paragraph (1) shall not apply with respect to an administrative action or proposed administrative action if the head of the Executive agency concerned determines that the delay in enforcement of the administrative action or proposed administrative action will pose an actual threat of an imminent and substantial endangerment to public health or the environment.

(e) EFFECT OF LACK OF AGREEMENT.—(1) If the head of an Executive agency and the Secretary do not enter into an agreement under subsection (c)(2), the Secretary shall submit a written notification to the President who shall take final action on the matter.

(2) Not later than 30 days after the date on which the President takes final action on a matter under paragraph (1), the President shall submit to the committees referred to in subsection (a) a notification of the action.

(f) LIMITATION ON DELEGATION OF AUTHORITY.—The head of an Executive agency may not delegate any responsibility under this section.

(g) DEFINITION.—In this section, the term ''Executive agency'' has the meaning given such term in section 105 of title 5, except that the term does not include the General Accounting Office.

(Added Pub. L. 105–85, div. A, title III, § 325(a), Nov. 18, 1997, 111 Stat. 1678; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

CHAPTER 102—JUNIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2031. Junior Reserve Officers' Training Corps.
2032. Responsibility of the Secretaries of the military departments to maximize enrollment and enhance efficiency.
[2033. Repealed.]

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 596(c)(2), Dec. 28, 2001, 115 Stat. 1127, struck out item 2033 ''Contingent funding increase''.

1999—Pub. L. 106–65, div. A, title V, § 547(a)(2), Oct. 5, 1999, 113 Stat. 609, added item 2033.

1997—Pub. L. 105–85, div. A, title V, § 546(b), Nov. 18, 1997, 111 Stat. 1747, added item 2032.

1964—Pub. L. 88–647, title I, § 101(1), Oct. 13, 1964, 78 Stat. 1063, added item 2031 and chapter heading.

§ 2031. Junior Reserve Officers' Training Corps

(a)(1) The Secretary of each military department shall establish and maintain a Junior Reserve Officers' Training Corps, organized into units, at public and private secondary educational institutions which apply for a unit and meet the standards and criteria prescribed pursuant to this section. The President shall promulgate regulations prescribing the standards and criteria to be followed by the military departments in selecting the institutions at which units are to be established and maintained and shall provide for the fair and equitable distribution of such units throughout the Nation, except that more than one such unit may be established and maintained at any military institute.

(2) It is a purpose of the Junior Reserve Officers' Training Corps to instill in students in United States secondary educational institutions the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment.

(b) No unit may be established or maintained at an institution unless—

(1) the number of physically fit students in such unit who are in a grade above the 8th grade and are citizens or nationals of the United States, or aliens lawfully admitted to the United States for permanent residence, is not less than (A) 10 percent of the number of students enrolled in the institution who are in a grade above the 8th grade, or (B) 100, whichever is less;

(2) the institution has adequate facilities for classroom instruction, storage of arms and other equipment which may be furnished in support of the unit, and adequate drill areas at or in the immediate vicinity of the institution, as determined by the Secretary of the military department concerned;

(3) the institution provides a course of military instruction of not less than three academic years' duration, as prescribed by the Secretary of the military department concerned;

(4) the institution agrees to limit membership in the unit to students who maintain acceptable standards of academic achievement and conduct, as prescribed by the Secretary of the military department concerned; and

(5) the unit meets such other requirements as may be established by the Secretary of the military department concerned.

(c) The Secretary of the military department concerned shall, to support the Junior Reserve Officers' Training Corps program—

(1) detail officers and noncommissioned officers of an armed force under his jurisdiction to institutions having units of the Corps as administrators and instructors;

(2) provide necessary text materials, equipment, and uniforms and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program; and

(3) establish minimum acceptable standards for performance and achievement for qualified units.

(d) Instead of, or in addition to, detailing officers and noncommissioned officers on active duty under subsection (c)(1), the Secretary of the military department concerned may authorize qualified institutions to employ, as administrators and instructors in the program, retired officers and noncommissioned officers, and members of the Fleet Reserve and Fleet Marine Corps Reserve, whose qualifications are approved by the Secretary and the institution concerned and who request such employment, subject to the following:

(1) A retired member so employed is entitled to receive the member's retired or retainer pay without reduction by reason of any additional amount paid to the member by the institution concerned. In the case of payment of any such additional amount by the institution concerned, the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount paid to the retired member by the institution for any period, up to a maximum of one-half of the difference between the member's retired or retainer pay for that period and the active duty pay and allowances which the member would have received for that period if on active duty. Notwithstanding the limitation in the preceding sentence, the Secretary concerned may pay to the institution more than one-half of the additional amount paid to the retired member by the institution if (as determined by the Secretary) the institution is in an educationally and economically deprived area and the Secretary determines that such action is in the national interest. Payments by the Secretary concerned under this paragraph shall be made from funds appropriated for that purpose.

(2) Notwithstanding any other provision of law, such a retired member is not, while so employed, considered to be on active duty or inactive duty training for any purpose.

(Added Pub. L. 88–647, title I, §101(1), Oct. 13, 1964, 78 Stat. 1063; amended Pub. L. 89–718, §16, Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–83, §3(4), Sept. 11, 1967, 81 Stat. 220; Pub. L. 93–165, Nov. 29, 1973, 87 Stat. 660; Pub. L. 94–361, title VIII, §807, July 14, 1976, 90 Stat. 933; Pub. L. 95–358, Sept. 8, 1978, 92 Stat. 592; Pub. L. 98–525, title IV, §422, title XIV, §1405(32), Oct. 19, 1984, 98 Stat. 2520, 2624; Pub. L. 100–26, §7(i)(3), Apr. 21, 1987, 101 Stat. 282; Pub. L. 102–484, div. A, title V, §533(a)–(e)(1), Oct. 23, 1992, 106 Stat. 2411, 2412; Pub. L. 103–160, div. A, title XI, §1182(g)(1), Nov. 30, 1993, 107 Stat. 1774; Pub. L. 107–107, div. A, title V, §537, Dec. 28, 2001, 115 Stat. 1107.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107 struck out after first sentence ''The total number of units which may be established and maintained by all of the military departments under authority of this section, including those units already established on October 13, 1964, may not exceed 3,500.''

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''The'' for ''Not more than 200 units may be established by all of the military departments each year, and the'' in second sentence.

1992—Subsec. (a). Pub. L. 102–484, §533(a), (b), designated existing provisions as par. (1), substituted ''3,500'' for ''1,600'', and added par. (2).

Subsec. (b)(1). Pub. L. 102–484, §533(c), substituted ''in a grade above the 8th grade'' for ''at least 14 years of age'' in two places and inserted '', or aliens lawfully admitted to the United States for permanent residence,'' after ''of the United States''.

Subsec. (c)(2). Pub. L. 102–484, §533(d), inserted before semicolon ''and, to the extent considered appropriate by the Secretary concerned, such additional resources (including transportation and billeting) as may be available to support activities of the program''.

Subsec. (d)(1). Pub. L. 102–484, §533(e)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Retired members so employed are entitled to receive their retired or retainer pay and an additional amount of not more than the difference between their retired pay and the active duty pay and allowances which they would receive if ordered to active duty, and one-half of that additional amount shall be paid to the institution concerned by the Secretary of the military department concerned from funds appropriated for that purpose.''

1987—Subsec. (a). Pub. L. 100–26 struck out ''beginning with the calendar year 1966'' after ''each year'' in second sentence.

1984—Subsec. (a). Pub. L. 98–525, §1405(32), substituted ''October 13, 1964'' for ''the date of enactment of this section''.

Subsec. (b)(1). Pub. L. 98–525, §422(1), substituted ''the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the institution who are at least 14 years of age, or (B) 100, whichever is less'' for ''the unit contains at least 100 physically fit students who are at least 14 years of age and are citizens or nationals of the United States''.

Subsec. (b)(5). Pub. L. 98–525, §422(2)–(4), added par. (5).

1978—Subsec. (b)(1). Pub. L. 95–358 inserted ''or nationals'' after ''citizens''.

1976—Subsec. (a). Pub. L. 94–361 increased total number of units authorized to be established to 1,600 from 1,200 and limited the military institutes to establishment and maintenance of only one unit.

1973—Subsec. (b)(1). Pub. L. 93–165 substituted ''physically fit students'' for ''physically fit male students''.

1967—Subsecs. (c), (d). Pub. L. 90–83 substituted ''officers and noncommissioned officers'' for ''noncommissioned and commissioned officers'' wherever appearing.

1966—Subsec. (d). Pub. L. 89–718 capitalized first letter of first word in cls. (1) and (2).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 533(e)(2) of Pub. L. 102–484 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to payments for periods of instructor service performed after September 30, 1992.''

SHORT TITLE

Section 1 of Pub. L. 88–647 provided: ''That the Act [enacting this chapter, and chapter 103 of this title, amending section 802 of former Title 5, sections 1475, 1478, 1481, 3201, 4348, 5404, 5504, 5652b, 6023, 6387, 6959, 8201, and 9348 of this title, and sections 205, 209, 415, 416 and 422 of Title 37, Pay and Allowances of the Uniformed Services, repealing sections 3355, 3540, 4381 to 4387, 6901 to 6906, 6908, 6910, 8355, 8540, and 9381 to 9387 of this title, and enacting provisions set out as notes under this section and section 2107 and former section 9385 of this title, may be cited as the ''Reserve Officers' Training Corps Vitalization Act of 1964.''

ISSUANCE OF REGULATIONS

Section 102 of Pub. L. 88–647 directed that regulations implementing subsec. (a) of this section be issued by President and by Secretary of each military department not later than Jan. 1, 1966.

SAVINGS CLAUSE

Section 402 of Pub. L. 88–647 provided that: ''If a part of this Act [see Short Title note above] is invalid, all valid parts that are severable from the invalid part remains in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.''

REDUCTION IN NUMBER OF STUDENTS REQUIRED TO BE IN JUNIOR RESERVE OFFICERS' TRAINING CORPS UNITS FOR PERIOD OF SEPTEMBER 1, 1980, TO AUGUST 31, 1984

Pub. L. 96–342, title VI, §602, Sept. 8, 1980, 94 Stat. 1087, as amended by Pub. L. 97–86, title VII, §702(a), Dec. 1, 1981, 95 Stat. 1111; Pub. L. 97–252, title VII, §702, Sept. 8, 1982, 96 Stat. 728; Pub. L. 98–94, title VII, §702, Sept. 24, 1983, 97 Stat. 634, provided that: ''Notwithstanding the provisions of section 2031(b) of title 10, United States Code, relating to the establishment and maintenance of units of the Junior Reserve Officers' Training Corps, during the period beginning on September 1, 1980, and ending on August 31, 1984, the Secretary of any military department may maintain a unit of the Junior Reserve Officers' Training Corps at any public or private secondary educational institution if—

''(1) the number of physically fit students in such unit who are at least 14 years of age and are citizens or nationals of the United States is not less than (A) 10 percent of the number of students enrolled in the institution who are at least 14 years of age, or (B) 100, whichever is less; and

''(2) the unit meets such other requirements (in addition to the requirements prescribed by section 2031(b) of title 10, United States Code) as may be established by the Secretary of the military department concerned.''

[Section 702(b) of Pub. L. 97–86 provided that: ''The amendment made by subsection (a) [substituting 1982 for 1981 above] shall take effect as of August 31, 1981.'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2032 of this title.

§ 2032. Responsibility of the Secretaries of the military departments to maximize enrollment and enhance efficiency

(a) COORDINATION.—The Secretary of each military department, in establishing, maintaining, transferring, and terminating Junior Reserve Officers' Training Corps units under section 2031 of this title, shall do so in a coordinated manner that is designed to maximize enrollment in the Corps and to enhance administrative efficiency in the management of the Corps.

(b) CONSIDERATION OF NEW SCHOOL OPENINGS AND CONSOLIDATIONS.—In carrying out subsection (a), the Secretary of a military department shall take into consideration—

(1) openings of new schools;

(2) consolidations of schools; and

(3) the desirability of continuing the opportunity for participation in the Corps by participants whose continued participation would otherwise be adversely affected by new school openings and consolidations of schools.

(Added Pub. L. 105–85, div. A, title V, §546(a), Nov. 18, 1997, 111 Stat. 1746.)

[§ 2033. Repealed. Pub. L. 107–107, div. A, title V, § 596(c)(1), Dec. 28, 2001, 115 Stat. 1127]

Section, added Pub. L. 106–65, div. A, title V, §547(a)(1), Oct. 5, 1999, 113 Stat. 608; amended Pub. L. 106–398, §1 [[div. A], title V, §577(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–140, provided that certain excess amounts appropriated for the National Guard Challenge Program were to be made available for the Junior Reserve Officers' Training Corps program.

EFFECTIVE DATE OF REPEAL

Pub. L. 107–107, div. A, title V, §596(c)(3), Dec. 28, 2001, 115 Stat. 1127, provided that: ''The amendments made by this subsection [repealing this section] shall take effect on October 1, 2002.''

CHAPTER 103—SENIOR RESERVE OFFICERS' TRAINING CORPS

Sec.
2101. Definitions.
2102. Establishment.
2103. Eligibility for membership.
2104. Advanced training; eligibility for.
2105. Advanced training; failure to complete or to accept commission.
2106. Advanced training; commission on completion.
2107. Financial assistance program for specially selected members.
2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard.
2108. Advanced standing; interruption of training; delay in starting obligated service; release from program.
2109. Practical military training.
2110. Logistical support.
2111. Personnel: administrators and instructors.
2111a. Support for senior military colleges.
2111b. Senior military colleges: Department of Defense international student program.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, §541(a)(2), Oct. 5, 1999, 113 Stat. 606, added item 2111b.

1997—Pub. L. 105–85, div. A, title V, §544(f)(2), Nov. 18, 1997, 111 Stat. 1746, substituted ''Support for'' for ''Detail of officers to'' in item 2111a.

1996—Pub. L. 104–106, div. A, title V, § 545(b), Feb. 10, 1996, 110 Stat. 318, added item 2111a.

1991—Pub. L. 102–190, div. A, title V, § 522(b)(2), Dec. 5, 1991, 105 Stat. 1362, substituted ''Army Reserve and Army National Guard'' for ''military junior colleges'' in item 2107a.

1988—Pub. L. 100–456, div. A, title VI, § 633(a)(3)(B), Sept. 29, 1988, 102 Stat. 1986, substituted ''Practical military training'' for ''Field training; practice cruises'' in item 2109.

1980—Pub. L. 96–357, § 1(c)(2), Sept. 24, 1980, 94 Stat. 1180, added item 2107a.

1964—Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1064, added chapter heading and items 2101 to 2111.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4342, 6954, 9342 of this title; title 5 section 8140; title 37 section 209.

§ 2101. Definitions

In this chapter:

(1) The term ''program'' means the Senior Reserve Officers' Training Corps of an armed force.

(2) The term ''member of the program'' means a student who is enrolled in the Senior Reserve Officers' Training Corps of an armed force.

(3) The term ''advanced training'' means the training and instruction offered in the Senior Reserve Officers' Training Corps to students enrolled in an advanced education program beyond the baccalaureate degree level or to students in the third and fourth years of a four-year Senior Reserve Officers' Training Corps course, or the equivalent period of training in an approved two-year Senior Reserve Officers' Training Corps course (except that, in the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, such term includes a fifth academic year or a combination of a part of a fifth academic year and summer sessions).

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1064; amended Pub. L. 98–94, title X, § 1003(a)(1), title XII, § 1268(11), Sept. 24, 1983, 97 Stat. 656, 706; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 104–201, div. A, title V, § 553(b), Sept. 23, 1996, 110 Stat. 2526.)

AMENDMENTS

1996—Par. (3). Pub. L. 104–201 inserted ''students enrolled in an advanced education program beyond the baccalaureate degree level or to'' after ''Training Corps to''.

1987—Pub. L. 100–180, in pars. (1) to (3), inserted ''The term'' after each par. designation, and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1983—Pub. L. 98–94, § 1268(11)(A), substituted a colon for a dash after ''In this chapter'' in provision preceding par. (1).

Par. (1). Pub. L. 98–94, § 1268(11)(B), (C), substituted ''Program'' for ''program'' and a period for a semicolon after ''armed force''.

Par. (2). Pub. L. 98–94, § 1268(11)(D), (E), substituted ''Member'' for ''member'', and a period for ''; and'' after ''armed force''.

Par. (3). Pub. L. 98–94, § 1268(11)(F), substituted ''Advanced'' for ''advanced''.

Pub. L. 98–94, § 1003(a)(1), inserted parenthetical provision relating to a fifth academic year or a combination of a fifth academic year and summer sessions.

§ 2102. Establishment

(a) For the purpose of preparing selected students for commissioned service in the Army, Navy, Air Force, or Marine Corps, the Secretary of each military department, under regulations prescribed by the President, may establish and maintain a Senior Reserve Officers' Training Corps program, organized into one or more units, at any accredited civilian educational institution authorized to grant baccalaureate degrees, and at any school essentially military that does not confer baccalaureate degrees, upon the request of the authorities at that institution.

(b) No unit may be established or maintained at an institution unless—

(1) the senior commissioned officer of the armed force concerned who is assigned to the program at that institution is given the academic rank of professor;

(2) the institution fulfills the terms of its agreement with the Secretary of the military department concerned; and

(3) the institution adopts, as a part of its curriculum, a four-year course of military instruction or a two-year course of advanced training of military instruction, or both, which the Secretary of the military department concerned prescribes and conducts.

(c) At those institutions where a unit of the program is established membership of students in the program shall be elective or compulsory as provided by State law or the authorities of the institution concerned.

(d) The President shall cause to be established and maintained in each State at least one unit of the program if—

(1) a unit is requested by an educational institution in the State;

(2) such request is approved by the Governor of the State in which the institution requesting the unit is located; and

(3) the Secretary of the military department concerned determines that there will be not less than 40 students enrolled in such unit and that the provisions of this section are otherwise satisfied.

(Added Pub. L. 88–647, title II, § 201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 95–79, title VI, § 602, July 30, 1977, 91 Stat. 332.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95–79 added subsec. (d).

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense, see section 1(10) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

MILITARY TRAINING FOR FEMALE UNDERGRADUATES AT MILITARY COLLEGES; REGULATIONS

Pub. L. 95–485, title VIII, § 809, Oct. 20, 1978, 92 Stat. 1623, directed the Secretary of Defense to require that any college or university designated as a military col-

lege provide that qualified female undergraduate students be eligible to participate in military training at such college or university, and prohibited the Secretary from requiring such college or university to require female undergraduate students enrolled in such college or university to participate in military training, prior to repeal by Pub. L. 98–525, title XIV, §§1403(b), 1404, Oct. 19, 1984, 98 Stat. 2621, eff. Oct. 1, 1985. See section 2009 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2130a of this title.

§2103. Eligibility for membership

(a) To be eligible for membership in the program a person must be a student at an institution where a unit of the Senior Reserve Officers' Training Corps is established. However, a student at an institution that does not have a unit of the Corps is eligible, if otherwise qualified, to be a member of a unit at another institution.

(b) Persons from foreign countries may be enrolled as members of the program when their enrollment is approved by the Secretary of the military department concerned under criteria approved by the Secretary of State.

(c) A medical, dental, pharmacy, veterinary, or sciences allied to medicine, student may be admitted to a unit of the program for a course of training consisting of 90 hours of instruction a year for four academic years.

(d) Under such conditions as the Secretary of the military department concerned may prescribe, a medical, dental, pharmacy, veterinary, or sciences allied to medicine, student who is a commissioned officer of a reserve component of an armed force may be admitted to and trained in a unit of the program.

(e) An educational institution at which a unit of the program has been established shall give priority for enrollment in the program to students who are eligible for advanced training under section 2104 of this title.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 104–201, div. A, title V, §551(a)(1), Sept. 23, 1996, 110 Stat. 2525.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2104 of this title.

§2104. Advanced training; eligibility for

(a) Advanced training shall be provided to eligible members of the program and, if the institution concerned so requests, to eligible applicants for membership in the program.

(b) To be eligible for continuation, or initial enrollment, in the program for advanced training, a person must—

(1) be a citizen of the United States;

(2) be selected for advanced training under procedures prescribed by the Secretary of the military department concerned;

(3) enlist in an armed force under the jurisdiction of the Secretary of the military department concerned for the period prescribed by the Secretary;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program;

(5) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that he will serve in the armed forces for the period prescribed by the Secretary;

(6) either—

(A) complete successfully—

(i) the first two years of a four-year Senior Reserve Officers' Training Corps course; or

(ii) field training or a practice cruise of a duration which is prescribed by the Secretary concerned as a preliminary requirement for admission to the advanced course; or

(B) at the discretion of the Secretary concerned, agree in writing to complete field training or a practice cruise, as prescribed by the Secretary concerned, within two years after admission to the advanced course; and

(7) execute a certificate of loyalty in such form as the Secretary of Defense prescribes or take a loyalty oath as prescribed by the Secretary.

(c) A member of the program who is ineligible under subsection (b) for advanced training shall be released from the program.

(d) This section does not apply to cadets and midshipmen appointed under section 2107, or foreign students enrolled under section 2103(b), of this title.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1065; amended Pub. L. 98–94, title X, §1003(a)(2), Sept. 24, 1983, 97 Stat. 656; Pub. L. 98–525, title V, §543(a), title XIV, §1401(h), Oct. 19, 1984, 98 Stat. 2530, 2619; Pub. L. 104–106, div. A, title V, §544, Feb. 10, 1996, 110 Stat. 317; Pub. L. 107–107, div. A, title V, §535(a), Dec. 28, 2001, 115 Stat. 1106.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (b)(7) of this section were contained in the following appropriation acts:

Pub. L. 98–473, title I, §101(h) [title VIII, §8018], Oct. 12, 1984, 98 Stat. 1904, 1926.

Pub. L. 98–212, title VII, §722, Dec. 8, 1983, 97 Stat. 1442.

Pub. L. 97–377, title I, §101(c) [title VII, §722], Dec. 21, 1982, 96 Stat. 1833, 1854.

Pub. L. 97–114, title VII, §722, Dec. 29, 1981, 95 Stat. 1582.

Pub. L. 96–527, title VII, §723, Dec. 15, 1980, 94 Stat. 3085.

Pub. L. 96–154, title VII, §723, Dec. 21, 1979, 93 Stat. 1156.

Pub. L. 95–457, title VIII, §823, Oct. 13, 1978, 92 Stat. 1248.

Pub. L. 95–111, title VIII, §822, Sept. 21, 1977, 91 Stat. 903.

Pub. L. 94–419, title VII, §722, Sept. 22, 1976, 90 Stat. 1295.

Pub. L. 94–212, title VII, §722, Feb. 9, 1976, 90 Stat. 172.

Pub. L. 93–437, title VIII, §822, Oct. 8, 1974, 88 Stat. 1228.

Pub. L. 93–238, title VII, §723, Jan. 2, 1974, 87 Stat. 1042.
Pub. L. 92–570, title VII, §723, Oct. 26, 1972, 86 Stat. 1200.
Pub. L. 92–204, title VII, §723, Dec. 18, 1971, 85 Stat. 731.
Pub. L. 91–668, title VIII, §823, Jan. 11, 1971, 84 Stat. 2034.
Pub. L. 91–171, title VI, §623, Dec. 29, 1969, 83 Stat. 484.
Pub. L. 90–580, title V, §522, Oct. 17, 1968, 82 Stat. 1133.
Pub. L. 90–96, title VI, §622, Sept. 29, 1967, 81 Stat. 246.
Pub. L. 89–687, title VI, §622, Oct. 15, 1966, 80 Stat. 995.
Pub. L. 89–213, title VI, §622, Sept. 29, 1965, 79 Stat. 877.
Pub. L. 88–446, title VI, §522, Aug. 19, 1964, 78 Stat. 478.
Pub. L. 88–149, title V, §522, Oct. 17, 1963, 77 Stat. 267.
Pub. L. 87–577, title V, §522, Aug. 9, 1962, 76 Stat. 332.
Pub. L. 87–144, title VI, §622, Aug. 17, 1961, 75 Stat. 379.
Pub. L. 86–601, title V, §522, July 7, 1960, 74 Stat. 353.
Pub. L. 86–166, title V, §622, Aug. 18, 1959, 73 Stat. 382.
Pub. L. 85–724, title VI, §624, Aug. 22, 1958, 72 Stat. 728.
Pub. L. 85–117, title VI, §625, Aug. 2, 1957, 71 Stat. 327.
July 2, 1956, ch. 488, title VI, §625, 70 Stat. 471.
July 13, 1955, ch. 358, title VI, §629, 69 Stat. 320.
June 30, 1954, ch. 432, title VII, §731, 68 Stat. 356.

AMENDMENTS

2001—Subsec. (b)(3). Pub. L. 107–107 struck out ''a reserve component of'' before ''an armed force''.

1996—Subsec. (b)(6)(A)(ii). Pub. L. 104–106 substituted ''a duration'' for ''not less than six weeks' duration''.

1984—Subsec. (a). Pub. L. 98–525, §543(a)(1), struck out '', who have at least two academic years remaining at such educational institution'' after ''in the program''.

Subsec. (b)(6). Pub. L. 98–525, §543(a)(2), inserted initial word ''either'', redesignated existing subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), and added subpar. (B).

Subsec. (b)(7). Pub. L. 98–525, §1401(h), added par. (7).

1983—Subsec. (a). Pub. L. 98–94 substituted ''who have at least two academic years'' for ''who have two academic years''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 543(b) of Pub. L. 98–525 provided that: ''The amendments made by subsection (a) [amending this section] do not constitute authority for the enactment of new budget authority for a fiscal year beginning before October 1, 1984.''

Amendment by section 1401(h) of Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1478, 2103, 2105, 2106, 2109, 4342, 6954, 9342 of this title; title 37 section 209.

§ 2105. Advanced training; failure to complete or to accept commission

A member of the program who is selected for advanced training under section 2104 of this title, and who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than two years.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1066.)

§ 2106. Advanced training; commission on completion

(a) Upon satisfactorily completing the academic and military requirements of the program of advanced training, a member of the program who was selected for advanced training under section 2104 of this title may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(b) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be, in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(c) In computing length of service for any purpose, an officer appointed under this section may not be credited with enlisted service for the period covered by his advanced training, other than any period of enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 102–484, div. A, title V, §517(a)(1), Oct. 23, 1992, 106 Stat. 2407; Pub. L. 104–201, div. A, title V, §507(a)(1), Sept. 23, 1996, 110 Stat. 2512.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 substituted ''performed on or after August 1, 1979, as a member of the Selected Reserve'' for ''while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve''.

1992—Subsec. (c). Pub. L. 102–484 inserted before period at end '', other than any period of enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve''.

BENEFITS NOT TO ACCRUE FOR PERIODS PRIOR TO SEPTEMBER 23, 1996

Section 507(c) of Pub. L. 104–201 provided that: ''No increase in pay or retired or retainer pay shall accrue for periods before the date of the enactment of this Act [Sept. 23, 1996] by reason of the amendments made by this section [amending this section, sections 2107 and 2107a of this title, and section 205 of Title 37, Pay and Allowances of the Uniformed Services].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 978 of this title; title 37 section 416.

§ 2107. Financial assistance program for specially selected members

(a) The Secretary of the military department concerned may appoint as a cadet or midshipman, as appropriate, in the reserve of an armed force under his jurisdiction any eligible member of the program who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as an ensign in the Navy or as a second lieutenant in the Army, Air Force, or Marine Corps, as the case may be.

(b) To be eligible for appointment as a cadet or midshipman under this section a member must—

(1) be a citizen of the United States;

(2) be specially selected for the financial assistance program under procedures prescribed

by the Secretary of the military department concerned;

(3) enlist in the reserve component of the armed force in which he is appointed as a cadet or midshipmen for the period prescribed by the Secretary of the military department concerned;

(4) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the military department concerned, or his designated representative, to serve for the period required by the program; and

(5) agree in writing that, at the discretion of the Secretary of the military department concerned, he will—

(A)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be, and that, if he is commissioned as a regular officer and his regular commission is terminated before the sixth anniversary of his date of rank, he will accept an appointment, if offered, in the reserve component of that armed force and not resign before that anniversary or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe; and

(ii) serve on active duty for four or more years;

(B)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until the eighth anniversary of the receipt of such appointment, unless otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as shall be prescribed by the Secretary of the military department concerned; or

(C)(i) accept an appointment, if offered, as a commissioned officer in the Army, Navy, Air Force, or Marine Corps, as the case may be; and

(ii) serve in a reserve component of that armed force until at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary of the receipt of such appointment, unless such appointment is otherwise extended by subsection (d) of section 2108 of this title, under such terms and conditions as may be prescribed by the Secretary of the military department concerned.

The performance of service under clause (5)(B) or (5)(C) may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed, except that performance of service under clause (5)(C) shall include not less than two years of active duty.

(c)(1) The Secretary of the military department concerned may provide for the payment of all expenses in his department of administering the financial assistance program under this section, including tuition, fees, books, and laboratory expenses. In the case of a student enrolled in an academic program which has been approved by the Secretary of the military department concerned and which requires more than four academic years for completion of baccalaureate degree requirements, including elective requirements of the Senior Reserve Officers' Training Corps course, financial assistance under this section may also be provided during a fifth academic year or during a combination of a part of a fifth academic year and summer sessions. At least 50 percent of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at that rate.

(2) The Secretary of the military department concerned may provide financial assistance, as described in paragraph (1), to a student enrolled in an advanced education program beyond the baccalaureate degree level if the student also is a cadet or midshipman in an advanced training program. Not more than 15 percent of the total number of scholarships awarded under this section in any year may be awarded under this paragraph.

(d) Upon satisfactorily completing the academic and military requirements of the four-year program, a cadet or midshipman may be appointed as a regular or reserve officer in the appropriate armed force in the grade of second lieutenant or ensign, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets or midshipmen from the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy, as the case may be in that year. The Secretary of the military department concerned shall establish the date of rank of all other officers appointed under this section.

(f) A cadet or midshipman who does not complete the four-year course of instruction, or who completes the course but declines to accept a commission when offered, may be ordered to active duty by the Secretary of the military department concerned to serve in his enlisted grade or rating for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service either as a cadet or midshipman or concurrent enlisted service, other than concurrent enlisted service performed on or after August 1, 1979, as a member of the Selected Reserve.

(h)(1) The Secretary of Defense shall determine the number of cadets and midshipmen appointed under this section who may be in the financial assistance programs at any one time in each military department.

(2) Of the total number of cadets appointed in the financial assistance programs under this section in any year, not less than 100 shall be designated for placement in the program of the Army for service upon commissioning in the Army National Guard, of which one-half shall be for financial assistance awarded for a period of two years and the remainder shall be for financial assistance awarded for a period of four years. A cadet designated under this paragraph

who, having initially contracted for service as provided in subsection (b)(5)(A) and having received financial assistance for two years under an award providing for four years of financial assistance under this section, modifies such contract with the consent of the Secretary of the Army to provide for service as described in subsection (b)(5)(B), may be counted, for the year in which the contract is modified, toward the number of appointments required under the preceding sentence for financial assistance awarded for a period of four years. A cadet who receives financial assistance under this paragraph and is commissioned in the Army National Guard shall perform service as provided in subsection (b)(5)(B) and may not be accepted for service on full-time active duty pursuant to the member's voluntary application until the completion of the period of service prescribed in that subsection. The Secretary of the Army shall prescribe regulations to ensure a geographical distribution of the cadets who receive financial assistance under this paragraph.

(i) The Secretary of each military department shall seek to achieve an increase in the number of agreements entered into under this section so as to achieve an increase, by the 2006–2007 academic year, of not less than 400 in the number of cadets or midshipmen, as the case may be, enrolled under this section, compared to such number enrolled for the 2002–2003 academic year. In the case of the Secretary of the Navy, the Secretary shall seek to ensure that not less than one-third of such increase in agreements under this section are with students enrolled (or seeking to enroll) in programs of study leading to a baccalaureate degree in nuclear engineering or another appropriate technical, scientific, or engineering field of study.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1066; amended Pub. L. 92–166, §1, Nov. 24, 1971, 85 Stat. 487; Pub. L. 96–357, §1(a), (b), Sept. 24, 1980, 94 Stat. 1178; Pub. L. 96–513, title V, §511(62), Dec. 12, 1980, 94 Stat. 2925; Pub. L. 97–60, title II, §201, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 98–94, title X, §1003(a)(3), (c)(1), (2), Sept. 24, 1983, 97 Stat. 656, 657; Pub. L. 98–525, title V, §542(a), title XIV, §1405(33), Oct. 19, 1984, 98 Stat. 2529, 2624; Pub. L. 100–180, div. A, title V, §510, Dec. 4, 1987, 101 Stat. 1087; Pub. L. 102–484, div. A, title V, §§517(a)(2), 532(a), Oct. 23, 1992, 106 Stat. 2407, 2411; Pub. L. 104–106, div. A, title V, §542, Feb. 10, 1996, 110 Stat. 316; Pub. L. 104–201, div. A, title V, §§507(a)(2), 553(a), 555(a), Sept. 23, 1996, 110 Stat. 2512, 2526, 2527; Pub. L. 106–65, div. A, title V, §545, Oct. 5, 1999, 113 Stat. 608; Pub. L. 107–107, div. A, title V, §534(a), Dec. 28, 2001, 115 Stat. 1106; Pub. L. 107–314, div. A, title V, §532(d), (e), Dec. 2, 2002, 116 Stat. 2547.)

AMENDMENTS

2002—Subsec. (h)(1). Pub. L. 107–314, §532(e), struck out first sentence which read as follows: ''Not more than 29,500 cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time.''

Subsec. (i). Pub. L. 107–314, §532(d), added subsec. (i).

2001—Subsec. (a). Pub. L. 107–107 substituted ''31 years of age on December 31'' for ''27 years of age on June 30'' and struck out '', except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 30 years of age on such date'' before period at end.

1999—Subsec. (c)(2). Pub. L. 106–65 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense shall authorize the Secretaries of the military departments to carry out a test program to determine the desirability of enabling graduate students to participate in the financial assistance program under this section. As part of such test program, the Secretary of a military department may provide financial assistance, as described in paragraph (1), to a student enrolled in an advanced education program beyond the baccalaureate degree level if the student also is a cadet or midshipman in an advanced training program. Not more than 15 percent of the total number of scholarships awarded under this section in any year may be awarded under the test program. No scholarship may be awarded under the test program after September 30, 1999.''

1996—Subsec. (a). Pub. L. 104–201, §555(a), substituted ''27 years of age'' for ''25 years of age'' and ''30 years of age'' for ''29 years of age''.

Subsec. (c). Pub. L. 104–201, §553(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 104–201, §507(a)(2), substituted ''performed on or after August 1, 1979, as a member'' for ''while serving on active duty other than for training after July 31, 1990, while a member''.

Subsec. (h)(2). Pub. L. 104–106 inserted ''A cadet designated under this paragraph who, having initially contracted for service as provided in subsection (b)(5)(A) and having received financial assistance for two years under an award providing for four years of financial assistance under this section, modifies such contract with the consent of the Secretary of the Army to provide for service as described in subsection (b)(5)(B), may be counted, for the year in which the contract is modified, toward the number of appointments required under the preceding sentence for financial assistance awarded for a period of four years.'' after first sentence and ''full-time'' after ''for service on'' in penultimate sentence.

1992—Subsec. (g). Pub. L. 102–484, §517(a)(2), inserted before period at end '', other than concurrent enlisted service while serving on active duty other than for training after July 31, 1990, while a member of the Selected Reserve''.

Subsec. (h). Pub. L. 102–484, §532(a), designated existing provisions as par. (1) and added par. (2).

1987—Subsec. (h). Pub. L. 100–180 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Not more than the following numbers of cadets and midshipmen appointed under this section may be in the financial assistance programs at any one time:

''Army program: 12,000.

''Navy program: 8,000.

''Air Force program: 9,500.''

1984—Subsec. (b). Pub. L. 98–525, §1405(33), aligned margin of provision following par. (5)(C)(ii) flush with left margin.

Subsec. (b)(5)(A)(i). Pub. L. 98–525, §542(a)(1), inserted ''or before such other date, not beyond the eighth anniversary of the midshipman's date of rank, that the Secretary of Defense may prescribe''.

Subsec. (b)(5)(C)(ii). Pub. L. 98–525, §542(a)(2), substituted ''at least the sixth anniversary and, at the discretion of the Secretary of Defense, up to the eighth anniversary'' for ''the sixth anniversary''.

1983—Subsec. (b)(5). Pub. L. 98–94, §1003(c)(1), struck out ''either'' after ''he will'' in provisions preceding subpar. (A)(i), and added subpar. (C).

Pub. L. 98–94, §1003(c)(2), inserted in provisions following subpar. (C) ''or (5)(C)'' after ''(5)(B)'' and '', except that performance of service under clause (5)(C) shall include not less than two years of active duty''.

Subsec. (c). Pub. L. 98–94, §1003(a)(3), inserted provision relating to a student enrolled in an approved academic program which requires more than four aca-

demic years for completion of the baccalaureate degree requirements.

1981—Subsec. (h). Pub. L. 97–60 substituted ''8,000'' for ''6,000'' in item covering the Navy program and ''9,500'' for ''6,500'' in item covering the Air Force program.

1980—Subsec. (a). Pub. L. 96–357, §1(a), authorized cadet or midshipmen appointments in the reserve of an armed force for eligible members of the program with active duty service in the armed forces beyond the age limitation equal to period of active duty service not to exceed 29 years of age by June 30 of calendar year of appointment and deleted provision for appointment as cadets or midshipmen from persons in two-year Senior Reserve Officers' Training Corps course up to 20 percent of number of appointees.

Subsec. (b)(5). Pub. L. 96–357, §1(b)(2), provided for exercise of discretion by the Secretary concerned, incorporated existing provisions in subcl. (A)(i), incorporated in subcl. (A)(ii) provision of former cl. (6), added subcl. (B) and defined the performance of service under such subcl. (B).

Subsec. (b)(6). Pub. L. 96–357, §1(b)(2), struck out cl. (6) requiring as condition of appointment a written agreement for active duty service of four or more years. See subcl. (5)(A)(ii).

Subsec. (e). Pub. L. 96–513, §511(62)(A), substituted ''Military'' for ''Miilitary''.

Subsec. (h). Pub. L. 96–513, §511(62)(B), substituted ''this section'' for ''section 2107 of this title''.

Pub. L. 96–357, §1(b)(3), substituted ''Army program: 12,000'' for ''Army program: 6,500''.

1971—Subsec. (a). Pub. L. 92–166, §1(1), substituted ''Not more than 20 percent of the persons appointed as cadets or midshipmen by the Secretary in any year may be appointed from persons in the two-year Senior Reserve Officers' Training Corps course.'', for ''However, a member whose enrollment in the Senior Reserve Officers' Training Corps program contemplates less than four years of participation in the program may not be appointed a cadet or midshipman under this section, or receive any financial assistance authorized by this section.''.

Subsec. (c). Pub. L. 92–166, §1(2), provided that at least 50% of the cadets and midshipmen appointed under this section must qualify for in-State tuition rates at their respective institutions and will receive tuition benefits at the rate.

Subsec. (h). Pub. L. 92–166, §1(4), substituted ''Army program: 6500'' for ''Army program: 5500'', ''Navy program: 6000'' for ''Navy program: 5500'' and ''Air Force program: 6500'' for ''Air Force program: 5500''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 532(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1993.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1003(c)(3) of Pub. L. 98–94 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to agreements entered into under section 2107(b)(5) of title 10, United States Code, after September 30, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by Pub. L. 96–357 effective Oct. 1, 1980, see section 1(e) of Pub. L. 96–357, set out as a note under section 2107a of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–166 provided that: ''This Act [amending this section] is effective July 1, 1971.''

EFFECTIVE DATE

Section 403 of Pub. L. 88–647 provided that: ''Insofar as it relates to the Army program and the Air Force program, section 2107(h) of title 10, United States Code [subsec. (h) of this section], becomes effective on September 1, 1968. Until that date, not more than four thousand cadets may be in either of those programs at any one time. So far as it relates to the Navy program, section 2107(h) of title 10 becomes effective on September 1, 1965.''

REVIEW REGARDING ALLOCATION OF NAVAL RESERVE OFFICERS' TRAINING CORPS SCHOLARSHIPS AMONG PARTICIPATING COLLEGES AND UNIVERSITIES

Pub. L. 105–261, div. A, title V, §507, Oct. 17, 1998, 112 Stat. 2004, provided that:

''(a) REVIEW.—The Secretary of the Navy should review the process and criteria used to determine the number of Naval Reserve Officer Training Corps (NROTC) scholarship recipients who attend each college and university participating in the NROTC program and how those scholarships are allocated to those schools.

''(b) PURPOSE OF REVIEW.—The review should seek to determine—

''(1) whether the method used by the Navy to allocate NROTC scholarships could be changed so as to increase the likelihood that scholarship awardees attend the school of their choice while maintaining the Navy's capability to attain the objectives of the Naval ROTC program to meet the annual requirement for newly commissioned Navy ensigns and Marine Corps second lieutenants, as well as the overall needs of the officer corps of the Department of the Navy; and

''(2) within the determination under paragraph (1), whether the likelihood of a scholarship awardee who wants to attend a school of choice in the student's State of residence can be increased.

''(c) MATTERS REVIEWED.—The matters reviewed should include the following:

''(1) The factors and criteria considered in the process of determining the allocation of NROTC scholarships to host colleges and universities.

''(2) Historical data indicating the extent to which NROTC scholarship recipients attend colleges and universities they have indicated a preference to attend, as opposed to attending solely or mainly in order to receive an NROTC scholarship.

''(3) The extent to which the process used by the Navy to allocate NROTC scholarships to participating colleges and universities contributes to optimizing resources available for the operation of the NROTC program and improving the professional education of NROTC midshipmen.

''(4) The effects that eliminating the controlled allocation of scholarships to host colleges and universities, entirely or by State, would have on the NROTC program.

''(d) CONSULTATION REQUIREMENT.—In carrying out a review under subsection (a), the Secretary should consult with officials of interested associations and of colleges and universities which host ROTC units and such other officials as the Secretary considers appropriate.''

BENEFITS NOT TO ACCRUE FOR PERIODS PRIOR TO SEPTEMBER 23, 1996

No increase in pay or retired or retainer pay to accrue for periods before Sept. 23, 1996, by reason of amendments made by section 507 of Pub. L. 104–201, see section 507(c) of Pub. L. 104–201, set out as a note under section 2106 of this title.

REPORT TO CONGRESS ON TEST PROGRAM FOR GRADUATE STUDENT PARTICIPATION IN FINANCIAL ASSISTANCE PROGRAM

Section 553(c) of Pub. L. 104–201 provided that: ''Not later than December 31, 1998, the Secretary of Defense shall submit to Congress a report on the experience to that date under the test program authorized under the amendment made by subsection (a)(2) [amending this section]. The report shall include the Secretary's as-

sessment of the effect of the test program on the Senior ROTC program and the Secretary's recommendation as to whether the authority under the test program should be made permanent.''

APPLICATION OF ROTC VITALIZATION ACT OF 1964 TO APPOINTEES IN NAVAL RESERVE BEFORE OCTOBER 13, 1964

Section 1 of Pub. L. 89–51, June 28, 1965, 79 Stat. 173, provided: ''That all provisions of law except sections 2107(b)(3) and (f) of title 10, United States Code [subsecs. (b)(3) and (f) of this section], that apply to midshipmen appointed under Public Law 88–647 [see Short Title note set out under section 2031 of this title], apply to midshipmen appointed in the Naval Reserve before October 13, 1964.'' Section 4 of Pub. L. 89–51, set out as Effective Date of 1965 Amendment note under section 2109 of this title, provided that section 1 of Pub. L. 89–51 was effective Oct. 13, 1964.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2104, 2106, 2107a, 4342, 6954, 9342, 16134, 16203 of this title; title 37 sections 209, 416, 422; title 38 sections 3011, 3012.

§ 2107a. Financial assistance program for specially selected members: Army Reserve and Army National Guard

(a)(1) The Secretary of the Army may appoint as a cadet in the Army Reserve or Army National Guard of the United States any eligible member of the program who is enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution and who will be under 31 years of age on December 31 of the calendar year in which he is eligible under this section for appointment as a second lieutenant in the Army Reserve or Army National Guard.

(2) To be considered a military college or military junior college for the purposes of this section, a school must be a civilian postsecondary educational institution essentially military in nature and meet such other requirements as the Secretary of the Army may prescribe. For purposes of this section, a military junior college does not confer a baccalaureate degree.

(b)(1) To be eligible for appointment as a cadet under this section, a member of the program must—

(A) be a citizen of the United States;

(B) be specially selected for the financial assistance program under this section under procedures prescribed by the Secretary of the Army;

(C) enlist in a reserve component of the Army for the period prescribed by the Secretary of the Army;

(D) contract, with the consent of his parent or guardian if he is a minor, with the Secretary of the Army to serve for the period required by the program;

(E) agree in writing that he will accept an appointment, if offered, as a commissioned officer in the Army Reserve or the Army National Guard of the United States; and

(F) agree in writing that he will serve in a troop program unit of the Army Reserve or Army National Guard for not less than eight years.

(2) Performance of duty under an agreement under this subsection shall be under such terms and conditions as the Secretary of the Army may prescribe and may include periods of active duty, active duty for training, and other service in an active or inactive status in the reserve component in which appointed.

(3) In the case of a cadet under this section at a military junior college, the Secretary may, at any time and with the consent of the cadet concerned, modify an agreement described in paragraph (1)(F) submitted by the cadet to reduce or eliminate the troop program unit service obligation specified in the agreement and to establish, in lieu of that obligation, an active duty service obligation. Such a modification may be made only if the Secretary determines that it is in the best interests of the United States to do so.

(c) The Secretary of the Army shall provide for the payment of all expenses of the Department of the Army in administering the financial assistance program under this section, including the cost of tuition, fees, books, and laboratory expenses which are incurred by members of the program appointed as cadets under this section while such members are students at a military junior college.

(d) Upon satisfactorily completing the academic and military requirements of the program, a cadet may be appointed as a reserve officer in the Army in the grade of second lieutenant, even though he is under 21 years of age.

(e) The date of rank of officers appointed under this section in May or June of any year is the date of graduation of cadets from the United States Military Academy in that year. The Secretary of the Army shall establish the date of rank of all other officers appointed under this section.

(f) A cadet who does not complete the course of instruction, or who completes the course but declines to accept a commission when offered, or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section, may be ordered to active duty by the Secretary of the Army to serve in his enlisted grade for such period of time as the Secretary prescribes but not for more than four years.

(g) In computing length of service for any purpose, an officer appointed under this section may not be credited with service as a cadet or with concurrent enlisted service, other than enlisted service performed after August 1, 1979, as a member of the Selected Reserve.

(h) The Secretary of the Army shall appoint not more than 208 cadets each year under this section, to include not less than 10 cadets at each military junior college at which there are not less than 10 members of the program eligible under subsection (b) for such an appointment. At any military junior college at which in any year there are fewer than 10 such members, the Secretary shall appoint each such member as a cadet under this section.

(i) Cadets appointed under this section are in addition to the number appointed under section 2107 of this title.

(Added Pub. L. 96–357, §1(c)(1), Sept. 24, 1980, 94 Stat. 1179; amended Pub. L. 102–190, div. A, title V, §522(a), (b)(1), Dec. 5, 1991, 105 Stat. 1362; Pub. L. 104–201, div. A, title V, §§507(a)(3), 555(a), Sept. 23, 1996, 110 Stat. 2512, 2527; Pub. L. 105–85, div. A,

title X, § 1073(a)(36), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–107, div. A, title V, §§ 534(b), 536(a), (c), Dec. 28, 2001, 115 Stat. 1106, 1107.)

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107, § 534(b), substituted ''31 years of age on December 31'' for ''27 years of age on June 30'' and struck out '', except that the age of any such member who has served on active duty in the armed forces may exceed such age limitation on such date by a period equal to the period such member served on active duty, but only if such member will be under 30 years of age on such date'' before period at end.

Subsec. (b). Pub. L. 107–107, § 536(a), designated introductory provisions of subsec. (b) as introductory provisions of par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), redesignated former concluding provisions as par. (2), and added par. (3).

Subsec. (h). Pub. L. 107–107, § 536(c), substituted ''At any military junior college'' for ''At any military college'' in second sentence.

1997—Subsec. (g). Pub. L. 105–85 inserted ''the'' after ''August 1, 1979, as a member of''.

1996—Subsec. (a)(1). Pub. L. 104–201, § 555(a), substituted ''27 years of age'' for ''25 years of age'' and ''30 years of age'' for ''29 years of age''.

Subsec. (g). Pub. L. 104–201, § 507(a)(3), inserted '', other than enlisted service performed after August 1, 1979, as a member of Selected Reserve'' before period at end.

1991—Pub. L. 102–190, § 522(b)(1), substituted ''Army Reserve and Army National Guard'' for ''military junior colleges'' in section catchline.

Subsec. (a)(1). Pub. L. 102–190, § 522(a)(1), substituted ''enrolled in the Advanced Course of the Army Reserve Officers' Training Corps at a military college, military junior college, or civilian institution'' for ''a student at a military junior college'' and inserted ''Reserve or Army National Guard'' after ''second lieutenant in the Army''.

Subsec. (a)(2). Pub. L. 102–190, § 522(a)(2), inserted ''military college or'' after ''To be considered a'', substituted ''and meet'' for ''that does not confer baccalaureate degrees and that meets'', and inserted at end ''For purposes of this section, a military junior college does not confer a baccalaureate degree.''

Subsec. (b)(6). Pub. L. 102–190, § 522(a)(3), substituted ''a troop program unit of the Army Reserve or Army National Guard'' for ''such reserve component''.

Subsec. (f). Pub. L. 102–190, § 522(a)(4), inserted ''or who does not complete a baccalaureate degree within five years after appointment as a cadet under this section,'' after ''when offered,''.

Subsec. (h). Pub. L. 102–190, § 522(a)(5), struck out par. (1) designation, substituted ''not more than 208 cadets each year under this section, to include not less than 10 cadets'' for ''not less than 10 cadets under this section each year'', and struck out par. (2) which read as follows: ''If the level of participation in the program at any military junior college meets criteria for such participation established by the Secretary of the Army by regulation, the Secretary shall appoint additional cadets under this section from among members of the program at such military junior college who are eligible under subsection (b) for such an appointment.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 536(b), Dec. 28, 2001, 115 Stat. 1107, provided that: ''The authority of the Secretary of Defense under paragraph (3) of section 2107a(b) of title 10, United States Code, as added by subsection (a), may be exercised with regard to any agreement described in paragraph (1)(F) of such section (including agreements related to participation in the Advanced Course of the Army Reserve Officers' Training Corps at a military college or civilian institution) that was entered into during the period beginning on January 1, 1991, and ending on July 12, 2000 (in addition to any agreement described in that paragraph that is entered into on or after the date of the enactment of this Act [Dec. 28, 2001]).''

EFFECTIVE DATE

Section 1(e) of Pub. L. 96–357 provided that: ''The amendments made by this section [enacting this section and amending sections 2107 and 2108 of this title] shall take effect on October 1, 1980.''

BENEFITS NOT TO ACCRUE FOR PERIODS PRIOR TO SEPTEMBER 23, 1996

No increase in pay or retired or retainer pay to accrue for periods before Sept. 23, 1996, by reason of amendments made by section 507 of Pub. L. 104–201, see section 507(c) of Pub. L. 104–201, set out as a note under section 2106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2108, 2111b of this title.

§ 2108. Advanced standing; interruption of training; delay in starting obligated service; release from program

(a) The Secretary of the military department concerned may give to any enlisted member of an armed force under his jurisdiction, or any person who has served on active duty in any armed force, such advanced standing in the program as may be justified by his education and training.

(b) In determining a member's eligibility for advanced training, the Secretary of the military department concerned may credit him with any military training that is substantially equivalent in kind to that prescribed for admission to advanced training and was received while he was taking a course of instruction in a program under the jurisdiction of another armed force or while he was on active duty in the armed forces.

(c) The Secretary of the military department concerned may excuse from a portion of the prescribed course of military instruction, including field training and practice cruises, any person found qualified on the basis of his previous education, military experience, or both.

(d) A person may become, remain, or be readmitted as, a member of the advanced training program after receiving a baccalaureate degree or completing pre-professional studies if he has not completed the course of military instruction or all field training or practice cruises prescribed by the Secretary of the military department concerned. If a member of the program has been accepted for resident graduate or professional study, the Secretary of the military department concerned may delay the commencement of that member's obligated period of active duty, and any obligated period of active duty for training or other service in an active or inactive status in a reserve component, until the member has completed that study. If a cadet appointed under section 2107a of this title has been accepted for a course of study at an accredited civilian educational institution authorized to grant baccalaureate degrees, the Secretary of the Army may delay the beginning of that member's obligated period of service in a reserve component until the member has completed such course of study.

(e) The Secretary of the military department concerned may, when he determines that the interest of the service so requires, release any person from the program and discharge him from his armed force.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1068; amended Pub. L. 96–357, §1(d), Sept. 24, 1980, 94 Stat. 1180.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–357 authorized delay in starting obligated period of active duty for training or other service in an active or inactive status in a reserved component until completion of resident graduate or professional study or military junior college studies.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–357 effective Oct. 1, 1980, see section 1(e) of Pub. L. 96–357, set out as a note under section 2107a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2107 of this title.

§ 2109. Practical military training

(a) For the further practical instruction of members of, and designated applicants for membership in, the program, the Secretary of the military department concerned may prescribe and conduct practical military training, in addition to field training and practice cruises prescribed under section 2104(b)(6) of this title. The Secretary concerned may require that some or all of the training prescribed under this subsection must be completed by a member before the member is commissioned.

(b) The Secretary of the military department concerned, with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title, may—

(1) transport members of, and designated applicants for membership in, the program to and from the places designated for such training or practice cruises and furnish them subsistence while traveling to and from those places, or, instead of furnishing them transportation and subsistence, pay them a travel allowance at the rate prescribed for cadets and midshipmen at the United States Military, Naval, and Air Force Academies for travel by the shortest usually traveled route from the places from which they are authorized to proceed to the place designated for the training or cruise and return, and pay the allowance for the return trip in advance;

(2) furnish medical attendance and supplies to members of, and designated applicants for membership in, the program while attending such training and practice cruises, and admit them to military hospitals;

(3) furnish subsistence, uniform clothing, and equipment to members of, and designated applicants for membership in, the program while attending such training or practice cruises or, instead of furnishing uniform clothing, pay them allowances at such rates as he may prescribe; and

(4) use any member of, and designated applicants for membership in, an armed force, or any employee of the department, under his jurisdiction, and such property of the United States as he considers necessary, for the training and administration of members of, and designated applicants for membership in, the program at the places designated for training or practice cruises.

(c)(1) A person who is not qualified for, and (as determined by the Secretary concerned) will not be able to become qualified for, advanced training by reason of one or more of the requirements prescribed in paragraphs (1) through (3) of section 2104(b) of this title shall not be permitted to participate in—

(A) field training or a practice cruise under section 2104(b)(6) of this title; or

(B) practical military training under subsection (a).

(2) The Secretary of the military department concerned may waive the limitation in paragraph (1) under procedures prescribed by the Secretary. Such procedures shall ensure uniform application of limitations and restrictions without regard to the reason for disqualification for advanced training.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1068; amended Pub. L. 89–51, §2, June 28, 1965, 79 Stat. 173; Pub. L. 89–718, §17, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 100–456, div. A, title VI, §633(a)(1)–(3)(A), Sept. 29, 1988, 102 Stat. 1986; Pub. L. 104–201, div. A, title V, §551(a)(2), Sept. 23, 1996, 110 Stat. 2525; Pub. L. 105–85, div. A, title X, §1073(a)(37), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (c)(1)(A). Pub. L. 105–85 substituted ''section 2104(b)(6)'' for ''section 2106(b)(6)''.

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

1988—Pub. L. 100–456, §633(a)(3)(A), substituted ''Practical military training'' for ''Field training; practice cruises'' in section catchline.

Subsec. (a). Pub. L. 100–456, §633(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For the further practical instruction of members of the program, the Secretary of the military department concerned may prescribe and conduct field training and practice cruises (other than field training and practice cruises prescribed under section 2104(b)(6)(B) of this title) which members must complete before they are commissioned.''

Subsec. (b). Pub. L. 100–456, §633(a)(2), inserted '', with respect to practical military training prescribed under this section and field training and practice cruises prescribed under section 2104(b)(6) of this title,'' before ''may'' in introductory provisions, and substituted ''such training'' for ''field training'' in pars. (1) to (3).

1966—Subsec. (b). Pub. L. 89–718 inserted ''and'' at end of par. (3).

1965—Subsec. (b). Pub. L. 89–51 inserted '', and designated applicants for membership in,'' after ''members of'' in pars. (1) to (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 633(e) of Pub. L. 100–456 provided that: ''The amendments made by this section [amending this section, section 8140 of Title 5, Government Organization and Employees, section 209 of Title 37, Pay and Allowances of the Uniformed Services, and section 101 of Title 38, Veterans' Benefits] shall apply only with respect to training performed after September 30, 1988.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 4 of Pub. L. 89–51 provided that: ''The effective date of this Act [amending this section and section

209 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 2107 of this title] is October 13, 1964.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 209, 1006.

§2110. Logistical support

(a) The Secretary of the military department concerned may issue to institutions having units of the program, or to the officers of the armed force concerned who are designated as accountable or responsible for such property—

(1) supplies, means of transportation including aircraft, arms and ammunition, and military textbooks and educational materials; and

(2) uniform clothing, except that he may pay monetary allowances for uniform clothing at such rate as he may prescribe.

(b) The Secretary of the military department concerned may provide, or contract with civilian flying or aviation schools or educational institutions to provide, the personnel, aircraft, supplies, facilities, services, and instruction necessary for flight instruction and orientation for properly designated members of the program.

(c) The Secretary of the military department concerned may transport members of, and designated applicants for membership in, the program to and from installations when it is necessary for them to undergo medical or other examinations or for the purposes of making visits of observation. He may also furnish them subsistence, quarters, and necessary medical care, including hospitalization, while they are at, or traveling to or from, such an installation.

(d) The Secretary of the military department concerned may authorize members of, and designated applicants for membership in, the program to participate in aerial flights in military aircraft and in indoctrination cruises in naval vessels.

(e) The Secretary of the military department concerned may authorize such expenditures as he considers necessary for the efficient maintenance of the program.

(f) The Secretary of the military department concerned shall require, from each institution to which property is issued under subsection (a), a bond or other indemnity in such amount as he considers adequate, but not less than $5,000, for the care and safekeeping of all property so issued except uniforms, expendable articles, and supplies expended in operation, maintenance, and instruction. The Secretary may accept a bond without surety if the institution to which the property is issued furnishes to him satisfactory evidence of its financial responsibility.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1069; amended Pub. L. 89–718, §18, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 94–273, §11(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 97–375, title I, §104(c), Dec. 21, 1982, 96 Stat. 1819.)

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–375 struck out requirement that the Secretary of each military department report annually to Congress in April on the progress of the flight instruction program.

1976—Subsec. (b). Pub. L. 94–273 substituted ''April'' for ''January''.

1966—Subsec. (a)(1). Pub. L. 89–718 substituted ''educational'' for ''education''.

§2111. Personnel: administrators and instructors

The Secretary of the military department concerned may detail regular or reserve members of an armed force under his jurisdiction (including retired members and members of the Fleet Reserve and Fleet Marine Corps Reserve recalled to active duty with their consent) for instructional and administrative duties at educational institutions where units of the program are maintained.

(Added Pub. L. 88–647, title II, §201(1), Oct. 13, 1964, 78 Stat. 1069.)

DEMONSTRATION PROJECT FOR INSTRUCTION AND SUPPORT OF ARMY ROTC UNITS BY ARMY RESERVE AND NATIONAL GUARD

Pub. L. 104–201, div. A, title V, §554, Sept. 23, 1996, 110 Stat. 2527, provided that:

''(a) DEMONSTRATION PROJECT REQUIRED.—The Secretary of the Army shall carry out a demonstration project in order to assess the feasibility and advisability of providing instruction and similar support to units of the Senior Reserve Officers' Training Corps of the Army through members of the Army Reserve (including members of the Individual Ready Reserve) and members of the Army National Guard.

''(b) PROJECT REQUIREMENTS.—(1) The Secretary shall carry out the demonstration project at at least one institution of higher education.

''(2) In order to enhance the value of the project, the Secretary may take actions to ensure that members of the Army Reserve and the Army National Guard provide instruction and support under the project in a variety of innovative ways.

''(c) INAPPLICABILITY OF LIMITATION ON RESERVES IN SUPPORT OF ROTC.—The assignment of a member of the Army Reserve or the Army National Guard to provide instruction or support under the demonstration project shall not be treated as an assignment of the member to duty with a unit of a Reserve Officer Training Corps program for purposes of section 12321 of title 10, United States Code.

''(d) REPORTS TO CONGRESS.—Not later than February 1 in each of 1998 and 1999, the Secretary shall submit to Congress a report assessing the activities under the demonstration project during the preceding year. The report submitted in 1999 shall include the Secretary's recommendation as to the advisability of continuing or expanding the authority for the project.

''(e) TERMINATION.—The authority of the Secretary to carry out the demonstration project shall expire three years after the date of the enactment of this Act [Sept. 23, 1996].''

§2111a. Support for senior military colleges

(a) DETAIL OF OFFICERS TO SERVE AS COMMANDANT OR ASSISTANT COMMANDANT OF CADETS.—(1) Upon the request of a senior military college, the Secretary of Defense may detail an officer on the active-duty list to serve as Commandant of Cadets at that college or (in the case of a college with an Assistant Commandant of Cadets) detail an officer on the active-duty list to serve as Assistant Commandant of Cadets at that college (but not both).

(2) In the case of an officer detailed as Commandant of Cadets, the officer may, upon the request of the college, be assigned from among the Professor of Military Science, the Professor of Naval Science (if any), and the Professor of Aerospace Science (if any) at that college or

may be in addition to any other officer detailed to that college in support of the program.

(3) In the case of an officer detailed as Assistant Commandant of Cadets, the officer may, upon the request of the college, be assigned from among officers otherwise detailed to duty at that college in support of the program or may be in addition to any other officer detailed to that college in support of the program.

(b) DESIGNATION OF OFFICERS AS TACTICAL OFFICERS.—Upon the request of a senior military college, the Secretary of Defense may authorize officers (other than officers covered by subsection (a)) who are detailed to duty as instructors at that college to act simultaneously as tactical officers (with or without compensation) for the Corps of Cadets at that college.

(c) DETAIL OF OFFICERS.—The Secretary of a military department shall designate officers for detail to the program at a senior military college in accordance with criteria provided by the college. An officer may not be detailed to a senior military college without the approval of that college.

(d) TERMINATION OR REDUCTION OF PROGRAM PROHIBITED.—The Secretary of Defense and the Secretaries of the military departments may not take or authorize any action to terminate or reduce a unit of the Senior Reserve Officers' Training Corps at a senior military college unless the termination or reduction is specifically requested by the college.

(e) ASSIGNMENT TO ACTIVE DUTY.—(1) The Secretary of the Army shall ensure that a graduate of a senior military college who desires to serve as a commissioned officer on active duty upon graduation from the college, who is medically and physically qualified for active duty, and who is recommended for such duty by the professor of military science at the college, shall be assigned to active duty.

(2) Nothing in this section shall be construed to prohibit the Secretary of the Army from requiring a member of the program who graduates from a senior military college to serve on active duty.

(f) SENIOR MILITARY COLLEGES.—The senior military colleges are the following:

(1) Texas A&M University.

(2) Norwich University.

(3) The Virginia Military Institute.

(4) The Citadel.

(5) Virginia Polytechnic Institute and State University.

(6) North Georgia College and State University.

(Added Pub. L. 104–106, div. A, title V, § 545(a), Feb. 10, 1996, 110 Stat. 317; amended Pub. L. 105–85, div. A, title V, § 544(d)–(f)(1), Nov. 18, 1997, 111 Stat. 1745, 1746; Pub. L. 106–65, div. A, title V, § 541(c), Oct. 5, 1999, 113 Stat. 607.)

AMENDMENTS

1999—Subsec. (e)(1). Pub. L. 106–65 struck out at end ''This paragraph shall apply to a member of the program at a senior military college who graduates from the college after March 31, 1997.''

1997—Pub. L. 105–85, § 544(f)(1), substituted ''Support for'' for ''Detail of officers to'' in section catchline.

Subsecs. (d), (e). Pub. L. 105–85, § 544(d)(2), added subsecs. (d) and (e). Former subsec. (d) redesignated (f).

Subsec. (f). Pub. L. 105–85, § 544(e), substituted ''University'' for ''College'' in par. (2) and inserted ''and State University'' before period at end of par. (6).

Pub. L. 105–85, § 544(d)(1), redesignated subsec. (d) as (f).

CONTINUATION OF SUPPORT TO SENIOR MILITARY COLLEGES

Section 544(a)–(c) of Pub. L. 105–85 provided that:

''(a) DEFINITION OF SENIOR MILITARY COLLEGES.—For purposes of this section, the term 'senior military colleges' means the following:

''(1) Texas A&M University.

''(2) Norwich University.

''(3) The Virginia Military Institute.

''(4) The Citadel.

''(5) Virginia Polytechnic Institute and State University.

''(6) North Georgia College and State University.

''(b) FINDINGS.—Congress finds the following:

''(1) The senior military colleges consistently have provided substantial numbers of highly qualified, long-serving leaders to the Armed Forces.

''(2) The quality of the military leaders produced by the senior military colleges is, in part, the result of the rigorous military environment imposed on students attending the senior military colleges by the colleges, as well as the result of the long-standing close support relationship between the Corps of Cadets at each college and the Reserve Officer Training Corps personnel at the colleges who serve as effective leadership role models and mentors.

''(3) In recognition of the quality of the young leaders produced by the senior military colleges, the Department of Defense and the military services have traditionally maintained special relationships with the colleges, including the policy to grant active duty service in the Army to graduates of the colleges who desire such service and who are recommended for such service by their ROTC professors of military science.

''(4) Each of the senior military colleges has demonstrated an ability to adapt its systems and operations to changing conditions in, and requirements of, the Armed Forces without compromising the quality of leaders produced and without interruption of the close relationship between the colleges and the Department of Defense.

''(c) SENSE OF CONGRESS.—In light of the findings in subsection (b), it is the sense of Congress that—

''(1) the proposed initiative of the Secretary of the Army to end the commitment to active duty service for all graduates of senior military colleges who desire such service and who are recommended for such service by their ROTC professors of military science is short-sighted and contrary to the long-term interests of the Army;

''(2) as they have in the past, the senior military colleges can and will continue to accommodate to changing military requirements to ensure that future graduates entering military service continue to be officers of superb quality who are quickly assimilated by the Armed Forces and fully prepared to make significant contributions to the Armed Forces through extended military careers; and

''(3) decisions of the Secretary of Defense or the Secretary of a military department that fundamentally and unilaterally change the long-standing relationship of the Armed Forces with the senior military colleges are not in the best interests of the Department of Defense or the Armed Forces and are patently unfair to students who made decisions to enroll in the senior military colleges on the basis of existing Department and Armed Forces policy.''

§ 2111b. Senior military colleges: Department of Defense international student program

(a) PROGRAM REQUIREMENT.—The Secretary of Defense shall establish a program to facilitate

the enrollment and instruction of persons from foreign countries as international students at the senior military colleges.

(b) PURPOSES.—The purposes of the program shall be—

(1) to provide a high-quality, cost-effective military-based educational experience for international students in furtherance of the military-to-military program objectives of the Department of Defense; and

(2) to enhance the educational experience and preparation of future United States military leaders through increased, extended interaction with highly qualified potential foreign military leaders.

(c) COORDINATION WITH THE SENIOR MILITARY COLLEGES.—Guidelines for implementation of the program shall be developed in coordination with the senior military colleges.

(d) RECOMMENDATIONS FOR ADMISSION OF STUDENTS UNDER THE PROGRAM.—The Secretary of Defense shall annually identify to the senior military colleges the international students who, based on criteria established by the Secretary, the Secretary recommends be considered for admission under the program. The Secretary shall identify the recommended international students to the senior military colleges as early as possible each year to enable those colleges to consider them in a timely manner in their respective admissions processes.

(e) DOD FINANCIAL SUPPORT.—An international student who is admitted to a senior military college under the program under this section is responsible for the cost of instruction at that college. The Secretary of Defense may, from funds available to the Department of Defense other than funds available for financial assistance under section 2107a of this title, provide some or all of the costs of instruction for any such student.

(Added Pub. L. 106–65, div. A, title V, §541(a)(1), Oct. 5, 1999, 113 Stat. 606.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, §541(b), Oct. 5, 1999, 113 Stat. 607, provided that: ''The Secretary of Defense shall implement the program under section 2111b of title 10, United States Code, as added by subsection (a), with students entering the senior military colleges after May 1, 2000.''

CHAPTER 104—UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sec.
2112. Establishment.
2112a. Continued operation of University.
2113. Administration of University.
2114. Students: selection; status; obligation.
2115. Graduates: limitation on number permitted to perform civilian Federal service.
2116. Military nursing research.
[2117. Repealed.]

AMENDMENTS

1996—Pub. L. 104–201, div. A, title IX, §907(a)(2), Sept. 23, 1996, 110 Stat. 2620, added item 2112a.

Pub. L. 104–106, div. A, title VII, §741(b), title X, §1072(c)(2), Feb. 10, 1996, 110 Stat. 385, 446, substituted ''Administration of University'' for ''Board of Regents'' in item 2113 and added item 2116.

1990—Pub. L. 101–510, div. A, title XIV, §1484(b)(2)(B), Nov. 5, 1990, 104 Stat. 1716, struck out item 2117 ''Authorization for appropriations''.

1983—Pub. L. 98–94, title XII, §1268(12)(B), Sept. 24, 1983, 97 Stat. 706, struck out item 2116 ''Reports to Congress''.

1979—Pub. L. 96–107, title VIII, §803(c)(3), Nov. 9, 1979, 93 Stat. 812, substituted ''permitted'' for ''electing'' and ''service'' for ''duty'' in item 2115.

§2112. Establishment

(a) There is hereby authorized to be established within 25 miles of the District of Columbia a Uniformed Services University of the Health Sciences (hereinafter in this chapter referred to as the ''University''), at a site or sites to be selected by the Secretary of Defense, with authority to grant appropriate advanced degrees. It shall be so organized as to graduate not less than 100 medical students annually.

(b) Except as provided in subsection (a), the numbers of persons to be graduated from the University shall be prescribed by the Secretary of Defense. In so prescribing the number of persons to be graduated from the University, the Secretary of Defense shall institute actions necessary to ensure the maximum number of first-year enrollments in the University consistent with the academic capacity of the University and the needs of the uniformed services for medical personnel.

(c) The development of the University may be by such phases as the Secretary of Defense may prescribe subject to the requirements of subsection (a).

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 713; amended Pub. L. 96–107, title VIII, §803(a), Nov. 9, 1979, 93 Stat. 811; Pub. L. 96–513, title V, §511(63), (64), Dec. 12, 1980, 94 Stat. 2925, 2926; Pub. L. 104–106, div. A, title X, §1072(b)(1), Feb. 10, 1996, 110 Stat. 446; Pub. L. 107–107, div. A, title X, §1048(e)(8), Dec. 28, 2001, 115 Stat. 1228.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 struck out '', with the first class graduating not later than September 21, 1982'' before period at end.

1996—Subsec. (b). Pub. L. 104–106 struck out '', upon recommendation of the Board of Regents,'' before ''institute actions necessary''.

1980—Subsec. (a). Pub. L. 96–513 inserted ''in this chapter'' after ''hereinafter'', and substituted ''September 21, 1982'' for ''10 years after the date of the enactment of this chapter''.

1979—Subsec. (b). Pub. L. 96–107 inserted provisions respecting the maximum number of first-year enrollments in the University.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SHORT TITLE

Section 1 of Pub. L. 92–426 provided: ''That this Act [enacting this chapter and chapter 105 of this title] may be cited as the 'Uniformed Services Health Professions Revitalization Act of 1972'.''

TRANSFER OF FUNCTIONS

For transfer of authority of Board of Regents of Uniformed Services University of the Health Sciences to Secretary of Defense, see section 8091 of Pub. L. 101–511, set out as a note under section 2113 of this title.

CONTINUATION OF UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Section 1071 of Pub. L. 104–106, as amended by Pub. L. 104–201, div. A, title IX, §907(b)(2), Sept. 23, 1996, 110 Stat. 2620, provided that:

''(a) POLICY.—Congress reaffirms—

''(1) the prohibition set forth in subsection (a) of section 922 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2829; 10 U.S.C. 2112 note) regarding closure of the Uniformed Services University of the Health Sciences; and

''(2) the expression of the sense of Congress set forth in subsection (b) of such section regarding the budgetary commitment to continuation of the University.

''[(b) Repealed. Pub. L. 104–201, div. A, title IX, §907(b)(2), Sept. 23, 1996, 110 Stat. 2620. See section 2112a(b) of this title.]

''(c) BUDGETARY COMMITMENT TO CONTINUATION.—It is the sense of Congress that the Secretary of Defense should budget for the operation of the Uniformed Services University of the Health Sciences during fiscal year 1997 at a level at least equal to the level of operations conducted at the University during fiscal year 1995.''

Pub. L. 103–337, div. A, title IX, §922, Oct. 5, 1994, 108 Stat. 2829, as amended by Pub. L. 104–201, div. A, title IX, §907(b)(1), Sept. 23, 1996, 110 Stat. 2620, provided that:

[(a) Repealed. Pub. L. 104–201, div. A, title IX, §907(b)(1), Sept. 23, 1996, 110 Stat. 2620. See section 2112a(a) of this title.]

''(b) BUDGETARY COMMITMENT TO CONTINUATION.—It is the sense of Congress that the Secretary of Defense should budget for the ongoing operation of the Uniformed Services University of the Health Sciences as an institution of professional education that is vital to the education and training each year of significant numbers of personnel of the uniformed services for careers as uniformed services health care providers.

''(c) GAO EVALUATION.—Not later than June 1, 1995, the Comptroller General of the United States shall submit to Congress a detailed report on the Uniformed Services University of the Health Sciences. The report shall include the following:

''(1) A comparison of the cost of obtaining physicians for the Armed Forces from the University with the cost of obtaining physicians from other sources.

''(2) An assessment of the retention rate needs of the Armed Forces for physicians in relation to the respective retention rates of physicians obtained from the University and physicians obtained from other sources and the factors that contribute to retention rates among military physicians obtained from all sources.

''(3) A review of the quality of the medical education provided at the University with the quality of medical education provided by other sources of military physicians.

''(4) A review of the overall issue of the special needs of military medicine and how those special needs are being met by physicians obtained from University and physicians obtained from other sources.

''(5) An assessment of the extent to which the University has responded to the 1990 report of the Inspector General of the Department of Defense, including recommendations as to resolution of any continuing issues relating to management and internal fiscal controls of the University, including issues relating to the Henry M. Jackson Foundation for the Advancement of Military Medicine identified in the 1990 report.

''(6) Such other recommendations as the Comptroller General considers appropriate.''

F. EDWARD HÉBERT SCHOOL OF MEDICINE

Pub. L. 98–94, title XII, §1265, Sept. 24, 1983, 97 Stat. 704, provided that: ''The School of Medicine of the Uniformed Services University of the Health Sciences shall after the date of the enactment of this Act [Sept. 24, 1983] be known and designated as the 'F. Edward Hébert School of Medicine'. Any reference to such school of medicine in any law, regulation, map, document, or other record of the United States shall after such date be deemed to be a reference to such school of medicine as the F. Edward Hébert School of Medicine.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2173 of this title.

§ 2112a. Continued operation of University

(a) CLOSURE PROHIBITED.—The University may not be closed.

(b) PERSONNEL STRENGTH.—During the five-year period beginning on October 1, 1996, the personnel staffing levels for the University may not be reduced below the personnel staffing levels for the University as of October 1, 1993.

(Added Pub. L. 104–201, div. A, title IX, §907(a)(1), Sept. 23, 1996, 110 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in Pub. L. 103–337, div. A, title IX, §922(a), Oct. 5, 1994, 108 Stat. 2829, which was set out as a note under section 2112 of this title prior to repeal by Pub. L. 104–201, §907(b)(1).

Provisions similar to those in subsec. (b) of this section were contained in Pub. L. 104–106, div. A, title X, §1071(b), Feb. 10, 1996, 110 Stat. 445, which was set out as a note under section 2112 of this title prior to repeal by Pub. L. 104–201, §907(b)(2).

§ 2113. Administration of University

(a) The business of the University shall be conducted by the Secretary of Defense with funds appropriated for and provided by the Department of Defense. To assist the Secretary in an advisory capacity, there is a Board of Regents for the University. The Board shall consist of—

(1) nine persons outstanding in the fields of health and health education who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate;

(2) the Secretary of Defense, or his designee, who shall be an ex officio member;

(3) the surgeons general of the uniformed services, who shall be ex officio members; and

(4) the person referred to in subsection (d).

(b) The term of office of each member of the Board (other than ex officio members) shall be six years except that—

(1) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term;

(2) the terms of office of the members first taking office shall expire, as designated by the President at the time of the appointment, three at the end of two years, three at the end of four years, and three at the end of six years; and

(3) any member whose term of office has expired shall continue to serve until his successor is appointed.

(c) One of the members of the Board (other than an ex officio member) shall be designated by the President as Chairman. He shall be the presiding officer of the Board.

(d) The Secretary shall appoint a Dean of the University (hereinafter in this chapter referred to as the ''Dean'') who shall also serve as a nonvoting ex officio member of the Board.

(e) Members of the Board (other than ex officio members) while attending conferences or meetings or while otherwise performing their duties as members shall be entitled to receive compensation at a rate to be fixed by the Secretary, but not exceeding $100 per diem and shall also be entitled to receive an allowance for necessary travel expenses while so serving away from their place of residence.

(f)(1) The Secretary, after considering the recommendations of the Dean, shall obtain the services of such military and civilian professors, instructors, and administrative and other employees as may be necessary to operate the University. Civilian members of the faculty and staff shall be employed under salary schedules and granted retirement and other related benefits prescribed by the Secretary so as to place the employees of the University on a comparable basis with the employees of fully accredited schools of the health professions within the vicinity of the District of Columbia.

(2) The Secretary may confer academic titles, as appropriate, upon military and civilian members of the faculty.

(3) The military members of the faculty shall include a professor of military, naval, or air science as the Secretary may determine.

(4) The limitations in section 5373 of title 5 do not apply to the authority of the Secretary under paragraph (1) to prescribe salary schedules and other related benefits.

(g) The Secretary may negotiate agreements with agencies of the Federal Government to utilize on a reimbursable basis appropriate existing Federal medical resources located in or near the District of Columbia. Under such agreements the facilities concerned will retain their identities and basic missions. The Secretary may negotiate affiliation agreements with an accredited university or universities in or near the District of Columbia. Such agreements may include provisions for payments for educational services provided students participating in Department of Defense educational programs. The Secretary may enter into an agreement under which the University would become part of a national university of health sciences should such an institution be established in the vicinity of the District of Columbia.

(h) The Secretary of Defense may establish the following educational programs at the University:

(1) Postdoctoral, postgraduate, and technological institutes.

(2) A graduate school of nursing.

(3) Other schools or programs that the Secretary determines necessary in order to operate the University in a cost-effective manner.

(i) The Secretary shall also establish programs in continuing medical education for military members of the health professions to the end that high standards of health care may be maintained within the military medical services.

(j)(1) The Secretary also is authorized—

(A) to enter into contracts with, accept grants from, and make grants to the Henry M. Jackson Foundation for the Advancement of Military Medicine established under section 178 of this title, or any other nonprofit entity, for the purpose of carrying out cooperative enterprises in medical research, medical consultation, and medical education;

(B) to make available to the Henry M. Jackson Foundation for the Advancement of Military Medicine, on such terms and conditions as the Secretary determines appropriate, such space, facilities, equipment, and support services within the University as the Secretary considers necessary to accomplish cooperative enterprises undertaken by such Foundation and the University;

(C) to enter into contracts with the Henry M. Jackson Foundation for the Advancement of Military Medicine under which the Secretary may furnish the services of such professional, technical, or clerical personnel as may be necessary to fulfill cooperative enterprises undertaken by such foundation and the University;

(D) to accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property made to the University, including any gift, devise, or bequest for the support of an academic chair, teaching, research, or demonstration project;

(E) to enter into agreements with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other nonprofit entity, under which scientists or other personnel of the Foundation or other entity may be utilized by the University for the purpose of enhancing the activities of the University in education, research, and technological applications of knowledge; and

(F) to accept the voluntary services of guest scholars and other persons.

(2) The Secretary may not enter into any contract with the Henry M. Jackson Foundation for the Advancement of Military Medicine, or with any other entity, if the contract would obligate the University to make outlays in advance of the enactment of budget authority for such outlays.

(3) Scientists or other medical personnel utilized by the University under an agreement described in clause (E) of paragraph (1) may be appointed to any position within the University and may be permitted to perform such duties within the University as the Secretary may approve.

(4) A person who provides voluntary services under the authority of clause (F) of paragraph (1) shall be considered to be an employee of the Federal Government for the purposes of chapter 81 of title 5, relating to compensation for work-related injuries, and to be an employee of the Federal Government for the purposes of chapter 171 of title 28, relating to tort claims. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purpose by reason of the provision of such services.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 714; amended Pub. L. 95–589, Nov. 4, 1978, 92 Stat. 2512; Pub. L. 96–513, title V, §511(64), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–36, §3, May 27,

1983, 97 Stat. 201; Pub. L. 98–132, § 2(b), Oct. 17, 1983, 97 Stat. 849; Pub. L. 99–661, div. A, title V, § 505, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 101–189, div. A, title VII, § 726(a), (b)(1), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 101–510, div. A, title XIII, § 1322(a)(3), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 104–106, div. A, title X, § 1072(a), (b)(2), (c)(1), Feb. 10, 1996, 110 Stat. 446; Pub. L. 106–65, div. A, title XI, § 1108, Oct. 5, 1999, 113 Stat. 778; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(12)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

AMENDMENTS

2000—Subsec. (f). Pub. L. 106–398 designated penultimate sentence and last sentence of par. (1) as pars. (2) and (3), respectively, redesignated former par. (3) as (4), and struck out former par. (2) which read as follows: ''The Secretary may exempt, at any time, a physician who is a member of the faculty from the restrictions in subsections (a), (b), and (c) of section 5532 of title 5, if the Secretary determines that such exemption is necessary to recruit or retain well-qualified physicians for the faculty of the University. An exemption granted under this paragraph shall terminate upon any break in employment with the University by a physician of three days or more. An exemption granted under this paragraph to a person shall apply to the retired pay of such person beginning with the first month after the month in which the exemption is granted. Not more than five exemptions may be in effect under this paragraph at any time.''

1999—Subsec. (f)(3). Pub. L. 106–65 added par. (3).

1996—Pub. L. 104–106, § 1072(c)(1), substituted ''Administration of University'' for ''Board of Regents'' as section catchline.

Subsec. (a). Pub. L. 104–106, § 1072(b)(2)(A), substituted ''conducted by the Secretary of Defense'' for ''conducted by a Board of Regents (hereinafter in this chapter referred to as the 'Board')'' and inserted after first sentence ''To assist the Secretary in an advisory capacity, there is a Board of Regents for the University.''

Subsec. (d). Pub. L. 104–106, § 1072(b)(2)(B), substituted ''The Secretary shall appoint'' for ''The Board shall appoint''.

Subsec. (e). Pub. L. 104–106, § 1072(b)(2)(C), struck out ''of Defense'' after ''Secretary''.

Subsec. (f). Pub. L. 104–106, § 1072(b)(2)(D), (F), in par. (1), substituted ''Secretary, after'' for ''Board, after'', ''Secretary so'' for ''Secretary of Defense so'', and ''Secretary may'' for ''Board may'' in two places, and in par. (2), substituted ''Secretary'' for ''Board'' in two places.

Subsec. (g). Pub. L. 104–106, § 1072(b)(2)(E), substituted ''Secretary may negotiate agreements'' for ''Board is authorized to negotiate agreements'', ''Secretary may negotiate affiliation'' for ''Board is also authorized to negotiate affiliation'', and ''Secretary may enter'' for ''Board may also, subject to the approval of the Secretary of Defense, enter''.

Subsec. (h). Pub. L. 104–106, § 1072(a), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''The Board may establish postdoctoral, postgraduate, and technological institutes.''

Subsecs. (i), (j). Pub. L. 104–106, § 1072(b)(2)(F), substituted ''Secretary'' for ''Board'' wherever appearing.

1990—Subsec. (j)(1). Pub. L. 101–510, § 1322(a)(3)(A), struck out ''subject to paragraph (2),'' before ''to make'' in subpar. (B) and before ''to enter'' in subpars. (C) and (E).

Subsec. (j)(2) to (5). Pub. L. 101–510, § 1322(a)(3)(B), (C), redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''The authority of the Board under clauses (B), (C), and (E) of paragraph (1) may be exercised only if—

''(A) before the Board enters into any arrangement under which any space, facility, equipment, or support service is made available under clause (B) of such paragraph, before the Board enters into any contract under clause (C) of such paragraph, or before the Board enters into any agreement under clause (E) of such paragraph, it notifies the Committees on Armed Services of the Senate and the House of Representatives in writing of the proposed arrangement, contract, or agreement, as the case may be, the terms and conditions thereof, and, in the case of a proposed agreement under clause (E) of paragraph (1), any appointments proposed to be made under the authority of paragraph (4) in connection with the agreement, and

''(B) a period of fifteen days has elapsed following the date on which the notice is received by such committees.''

1989—Subsec. (f)(2). Pub. L. 101–189, § 726(a), substituted ''five exemptions'' for ''two exemptions''.

Subsec. (j)(1)(A). Pub. L. 101–189, § 726(b)(1), inserted '', accept grants from, and make grants to'' after ''contracts with'' and substituted ''or any other'' for ''or with any other''.

1986—Subsec. (f). Pub. L. 99–661 designated existing provisions as par. (1) and added par. (2).

1983—Subsec. (j). Pub. L. 98–132 inserted ''Henry M. Jackson'' before ''Foundation for the Advancement of Military Medicine'' wherever appearing.

Pub. L. 98–36 added subsec. (j).

1980—Subsecs. (a) and (d). Pub. L. 96–513 inserted ''in this chapter'' after ''hereinafter''.

1978—Subsec. (b)(3). Pub. L. 95–589 added par. (3).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

Section 8091 of Pub. L. 101–511 provided that: ''Notwithstanding any other provision of law, all authority of the Board of Regents of the Uniformed Services University of the Health Sciences is hereby transferred to the Secretary of Defense, and the Board hereafter shall be an advisory board to the Secretary of Defense.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2114 of this title.

§ 2114. Students: selection; status; obligation

(a) Medical students at the University shall be selected under procedures prescribed by the Secretary of Defense. In so prescribing, the Secretary shall consider the recommendations of the Board. However, selection procedures prescribed by the Secretary of Defense shall emphasize the basic requirement that students demonstrate sincere motivation and dedication to a career in the uniformed services (as defined in section 1072(1) of this title).

(b) Medical students shall be commissioned officers of a uniformed service as determined under regulations prescribed by the Secretary of Defense after consulting with the Secretary of Health and Human Services. Notwithstanding any other provision of law, they shall serve on active duty in pay grade O–1 with full pay and allowances of that grade. Upon graduation they shall be appointed in a regular component, if qualified, unless they are covered by section 2115 of this title. Medical students who graduate shall be required, except as provided in section 2115 of this title, to serve thereafter on active duty under such regulations as the Secretary of Defense or the Secretary of Health and Human Services, as appropriate, may prescribe for not less than seven years, unless sooner released. Upon completion of, or release from, the active-

duty service obligation, a member of the program who served on active-duty for less than 10 years shall serve in the Ready Reserve for the period specified in the following table:

Period of Service on Active Duty	Ready Reserve Obligation
Less than 8 years	6 years
8 years or more, but less than 9	4 years
9 years or more, but less than 10	2 years

The service credit exclusions specified in section 2126 of this title shall apply to students covered by this section.

(c) A period of time spent in military intern or residency training shall not be creditable in satisfying a commissioned service obligation imposed by this section.

(d) A medical student who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section. In no case shall any such student be required to serve on active duty for any period in excess of a period equal to the period he participated in the program, except that in no case may any such student be required to serve on active duty less than one year.

(e)(1) The Secretary of Defense may enter into agreements with foreign military medical schools for reciprocal education programs under which students at the University receive specialized military medical instruction at the foreign military medical school and military medical personnel of the country of such medical school receive specialized military medical instruction at the University. Any such agreement may be made on a reimbursable basis or a nonreimbursable basis.

(2) Not more than 40 persons at any one time may receive instruction at the University under this subsection. Attendance of such persons at the University may not result in a decrease in the number of students enrolled in the University. Subsection (b) does not apply to students receiving instruction under this subsection.

(3) The Dean of the University, with the approval of the Secretary of Defense, shall determine the countries from which persons may be selected to receive instruction under this subsection and the number of persons that may be selected from each country. The Dean may establish qualifications and methods of selection and shall select those persons who will be permitted to receive instruction at the University. The qualifications established shall be comparable to those required of United States citizens.

(4) Each foreign country from which a student is permitted to receive instruction at the University under this subsection shall reimburse the United States for the cost of providing such instruction, unless such reimbursement is waived by the Secretary of Defense. The Secretary of Defense shall prescribe the rates for reimbursement under this paragraph.

(5) Except as the Dean determines, a person receiving instruction at the University under this subsection is subject to the same regulations governing attendance, discipline, discharge, and dismissal as a student enrolled in the University. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this subsection that differ from the regulations that apply to a student enrolled in the University.

(f) In this section, the term ''commissioned service obligation'' means, with respect to an officer who is a graduate of the University, the period beginning on the date of the appointment of the officer in a regular component after graduation and ending on the tenth anniversary of that appointment.

(g) The Secretary of Defense shall establish such selection procedures, service obligations, and other requirements as the Secretary considers appropriate for graduate students (other than medical students) in a postdoctoral, postgraduate, or technological institute established pursuant to section 2113(h) of this title.

(h) A graduate of the University who is relieved of the graduate's active-duty service obligation under subsection (b) before the completion of that active-duty service obligation may be given, with or without the consent of the graduate, an alternative obligation in the same manner as provided in subparagraphs (A) and (B) of paragraph (1) of section 2123(e) of this title or paragraph (2) of such section for members of the Armed Forces Health Professions Scholarship and Financial Assistance program.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 715; amended Pub. L. 96–107, title VIII, §803(b), Nov. 9, 1979, 93 Stat. 812; Pub. L. 96–513, title I, §114, title V, §511(65), Dec. 12, 1980, 94 Stat. 2877, 2926; Pub. L. 98–525, title XV, §1535, Oct. 19, 1984, 98 Stat. 2633; Pub. L. 101–189, div. A, title V, §511(a), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 101–510, div. A, title V, §533(a), (b), Nov. 5, 1990, 104 Stat. 1564; Pub. L. 103–160, div. A, title VII, §732(a), Nov. 30, 1993, 107 Stat. 1696; Pub. L. 104–106, div. A, title X, §1072(b)(3), Feb. 10, 1996, 110 Stat. 446; Pub. L. 104–201, div. A, title VII, §741(b), Sept. 23, 1996, 110 Stat. 2599; Pub. L. 105–85, div. A, title X, §1073(a)(38), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (h). Pub. L. 105–85 substituted ''section 2123(e)'' for ''section 2123(e)(1)''.

1996—Subsec. (e)(1). Pub. L. 104–106 substituted ''The Secretary of Defense'' for ''The Board, upon approval of the Secretary of Defense,''.

Subsec. (h). Pub. L. 104–201 added subsec. (h).

1993—Subsec. (a). Pub. L. 103–160, §732(a)(1), substituted ''Medical students'' for ''Students'' in first sentence.

Subsec. (b). Pub. L. 103–160, §732(a)(2), substituted ''Medical students'' for ''Students'' in two places.

Subsec. (d). Pub. L. 103–160, §732(a)(3), substituted ''medical student'' for ''member of the program'' in first sentence and ''any such student'' for ''any such member'' in two places in second sentence.

Subsec. (g). Pub. L. 103–160, §732(a)(4), added subsec. (g).

1990—Subsec. (b). Pub. L. 101–510, §533(b)(1), after fourth sentence inserted provisions relating to the time obligation to be served in the Ready Reserve upon completion of, or release from, the active-duty service obligation for members of the program who served on active duty for less than 10 years.

Pub. L. 101–510, §533(a), substituted ''seven years'' for ''10 years'' in fourth sentence.

Subsec. (c). Pub. L. 101–510, § 533(b)(2), substituted ''a commissioned service obligation'' for ''an active duty obligation''.

Subsec. (f). Pub. L. 101–510, § 533(b)(3), added subsec. (f).

1989—Subsec. (b). Pub. L. 101–189 substituted ''10 years'' for ''seven years'' in fourth sentence.

1984—Subsec. (e). Pub. L. 98–525 added subsec. (e).

1980—Subsec. (b). Pub. L. 96–513, § 511(65), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

Pub. L. 96–513, § 114, struck out provision under which officers attending the Uniformed Services University of Health Sciences were not counted against authorized military strengths.

1979—Subsec. (b). Pub. L. 96–107 substituted ''uniformed'' for ''uniform''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 741(c) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and section 2123 of this title] shall apply with respect to individuals who first become members of the Armed Forces Health Professions Scholarship and Financial Assistance program or students of the Uniformed Services University of the Health Sciences on or after October 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 732(b) of Pub. L. 103–160 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to students attending the Uniformed Services University of the Health Sciences on or after the date of the enactment of this Act [Nov. 30, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 533(d) of Pub. L. 101–510 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on December 31, 1991, and shall apply to persons who are first admitted to the Uniformed Services University of the Health Sciences after that date.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 511(e) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title V, § 533(c), Nov. 5, 1990, 104 Stat. 1564, provided that: ''The amendments made by this section [amending this section and sections 4348, 6959, and 9348 of this title] shall apply to persons who are first admitted to one of the military service academies after December 31, 1991.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 114 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 511(65) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

TRANSFER OF FUNCTIONS

For transfer of authority of Board of Regents of Uniformed Services University of the Health Sciences to Secretary of Defense, see section 8091 of Pub. L. 101–511, set out as a note under section 2113 of this title.

TRANSITION PROVISIONS

Section 741(d)(2) of Pub. L. 104–201 provided that: ''In the case of any person who, as of October 1, 1996, is serving an active-duty service obligation as a graduate of the Uniformed Services University of the Health Sciences or is incurring an active-duty service obligation as a student of the University, and who is subsequently relieved of the active-duty service obligation before the completion of the obligation, the alternative obligations authorized by the amendment made by subsection (b) [amending this section] may be implemented by the Secretary of Defense with the agreement of the person.''

§ 2115. Graduates: limitation on number permitted to perform civilian Federal service

The Secretary of Defense may allow not more than 20 percent of the graduates of each class at the University to perform civilian Federal service for not less than seven years following the completion of their professional education in lieu of active duty in a uniformed service if the needs of the uniformed services do not require that such graduates perform active duty in a uniformed service and as long as the Secretary of Defense does not recall such persons to active duty in the uniformed services. Such persons who execute an agreement in writing to perform such civilian Federal service may be released from active duty following the completion of their professional education. The location and type of their duty shall be determined by the Secretary of Defense after consultation with the heads of Federal agencies concerned.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 716; amended Pub. L. 96–107, title VIII, § 803(c)(1), (2), Nov. 9, 1979, 93 Stat. 812.)

AMENDMENTS

1979—Pub. L. 96–107, § 803(c)(2), substituted ''permitted'' for ''electing'' and ''service'' for ''duty'' in section catchline.

Pub. L. 96–107, § 803(c)(1), substituted provisions respecting authority of the Secretary of Defense to allow graduates to perform civilian Federal service and the execution of agreements for such service as prerequisites for release from active duty following completion of education, for provisions relating to limitations on the number of graduates electing to perform civilian Federal duty, agreements respecting such service, and release from active duty upon completion of their education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2114 of this title.

§ 2116. Military nursing research

(a) DEFINITIONS.—In this section:

(1) The term ''military nursing research'' means research on the furnishing of care and services by nurses in the armed forces.

(2) The term ''TriService Nursing Research Program'' means the program of military nursing research authorized under this section.

(b) PROGRAM AUTHORIZED.—The Secretary of Defense may establish at the University a program of military nursing research.

(c) TRISERVICE RESEARCH GROUP.—The TriService Nursing Research Program shall be administered by a TriService Nursing Research Group composed of Army, Navy, and Air Force nurses who are involved in military nursing research and are designated by the Secretary concerned to serve as members of the group.

(d) DUTIES OF GROUP.—The TriService Nursing Research Group shall—

(1) develop for the Department of Defense recommended guidelines for requesting, reviewing, and funding proposed military nursing research projects; and

(2) make available to Army, Navy, and Air Force nurses and Department of Defense officials concerned with military nursing research—

(A) information about nursing research projects that are being developed or carried out in the Army, Navy, and Air Force; and

(B) expertise and information beneficial to the encouragement of meaningful nursing research.

(e) RESEARCH TOPICS.—For purposes of this section, military nursing research includes research on the following issues:

(1) Issues regarding how to improve the results of nursing care and services provided in the armed forces in time of peace.

(2) Issues regarding how to improve the results of nursing care and services provided in the armed forces in time of war.

(3) Issues regarding how to prevent complications associated with battle injuries.

(4) Issues regarding how to prevent complications associated with the transporting of patients in the military medical evacuation system.

(5) Issues regarding how to improve methods of training nursing personnel.

(6) Clinical nursing issues, including such issues as prevention and treatment of child abuse and spouse abuse.

(7) Women's health issues.

(8) Wellness issues.

(9) Preventive medicine issues.

(10) Home care management issues.

(11) Case management issues.

(Added Pub. L. 104–106, div. A, title VII, §741(a), Feb. 10, 1996, 110 Stat. 384.)

PRIOR PROVISIONS

A prior section 2116, added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 716, directed Secretary of Defense to report periodically to Committees on Armed Services of the Senate and House of Representatives on feasibility of establishing educational institutions similar or identical to University at any other locations he deemed appropriate, with last such report to be submitted by June 30, 1976, prior to repeal by Pub. L. 98–94, title XII, §1268(12)(A), Sept. 24, 1983, 97 Stat. 706.

[§ 2117. Repealed. Pub. L. 101–510, div. A, title XIV, § 1484(b)(2)(A), Nov. 5, 1990, 104 Stat. 1716]

Section, added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 716, authorized appropriations for the Uniformed Services University of the Health Sciences.

CHAPTER 105—ARMED FORCES HEALTH PROFESSIONS FINANCIAL ASSISTANCE PROGRAMS

Subchapter		Sec.
I.	Health Professions Scholarship and Financial Assistance Program for Active Service	2120
II.	Nurse Officer Candidate Accession Program	2130a

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1663(c)(7)(A), Oct. 5, 1994, 108 Stat. 3008, redesignated item for subchapter III as item for subchapter II and struck out former item for subchapter II ''Health Professions Stipend Program for Reserve Service''.

1989—Pub. L. 101–189, div. A, title VII, §§707(b), 725(h)(3), Nov. 29, 1989, 103 Stat. 1475, 1480, substituted ''and Financial Assistance Program'' for ''Program'' in item for subchapter I and added item for subchapter III.

1987—Pub. L. 100–180, div. A, title VII, §711(a)(1), Dec. 4, 1987, 101 Stat. 1108, substituted ''FINANCIAL ASSISTANCE PROGRAMS'' for ''SCHOLARSHIP PROGRAM'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

SUBCHAPTER I—HEALTH PROFESSIONS SCHOLARSHIP AND FINANCIAL ASSISTANCE PROGRAM FOR ACTIVE SERVICE

Sec.
2120. Definitions.
2121. Establishment.
2122. Eligibility for participation.
2123. Members of the program: active duty obligation; failure to complete training; release from program.
2124. Members of the program: numbers appointed.
2125. Members of the program: exclusion from authorized strengths.
2126. Members of the program: service credit.
2127. Scholarships and financial assistance: payments.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title VII, §725(d)(3), (h)(2), Nov. 29, 1989, 103 Stat. 1479, 1480, substituted ''AND FINANCIAL ASSISTANCE PROGRAM'' for ''PROGRAM'' in subchapter heading and ''Scholarships and financial assistance'' for ''Contracts for scholarships'' in item 2127.

1987—Pub. L. 100–180, div. A, title VII, §711(a)(1), Dec. 4, 1987, 101 Stat. 1108, added subchapter heading.

1980—Pub. L. 96–513, title V, §511(66), Dec. 12, 1980, 94 Stat. 2926, substituted in item 2123 ''program:'' for ''program;'', and in items 2124 to 2127 '':'' for '';'' wherever appearing.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 26 section 117.

§ 2120. Definitions

In this subchapter:

(1) The term ''program'' means the Armed Forces Health Professions Scholarship and Financial Assistance program provided for in this subchapter.

(2) The term ''member of the program'' means a person appointed a commissioned officer in a reserve component of the armed forces who is enrolled in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(3) The term ''course of study'' means education received at an accredited college, university, or institution in medicine, dentistry, or other health profession, leading, respectively, to a degree related to the health professions as determined under regulations prescribed by the Secretary of Defense.

(4) The term ''specialized training'' means advanced training in a health professions specialty received in an accredited program that is beyond the basic education required for appointment as a commissioned officer with a designation as a health professional.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 98–94, title XII, §1268(13), Sept. 24, 1983, 97 Stat. 706; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VII, §711(a)(2), Dec. 4,

1987, 101 Stat. 1108; Pub. L. 101–189, div. A, title VII, §725(a), (h)(1), Nov. 29, 1989, 103 Stat. 1478, 1480.)

AMENDMENTS

1989—Pars. (1), (2). Pub. L. 101–189, §725(h)(1), substituted ''Scholarship and Financial Assistance program'' for ''Scholarship program''.

Par. (4). Pub. L. 101–189, §725(a), added par. (4).

1987—Pub. L. 100–180 substituted ''subchapter'' for ''chapter'' in introductory text and in par. (1).

Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1983—Pub. L. 98–94 substituted a colon for a dash after ''In this chapter'' in text preceding par. (1).

§ 2121. Establishment

(a) For the purpose of obtaining adequate numbers of commissioned officers on active duty who are qualified in the various health professions, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, may establish and maintain a health professions scholarship and financial assistance program for his department.

(b) The program shall consist of courses of study and specialized training in designated health professions, with obligatory periods of military training.

(c) Persons participating in the program shall be commissioned officers in reserve components of the armed forces. Members pursuing a course of study shall serve on active duty in pay grade O–1 with full pay and allowances of that grade for a period of 45 days during each year of participation in the program. Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under section 12207 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program. They shall be detailed as students at accredited civilian institutions, located in the United States or Puerto Rico, for the purpose of acquiring knowledge or training in a designated health profession. In addition, members of the program shall, under regulations prescribed by the Secretary of Defense, receive military and professional training and instruction.

(d) Except when serving on active duty pursuant to subsection (c), a member of the program shall be entitled to a stipend at the rate of $579 per month. That rate shall be increased annually by the Secretary of Defense effective on July 1 of each year by an amount (rounded to the next highest multiple of $1) equal to—

(1) the amount of such stipend (as previously adjusted (if at all)), multiplied by

(2) the overall percentage of the adjustment (if such adjustment is an increase) in the rates of basic pay for members of the uniformed services made effective for the fiscal year in which the school year ends.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 96–107, title VIII, §804(a), Nov. 9, 1979, 93 Stat. 812; Pub. L. 98–94, title IX, §935(a), Sept. 24, 1983, 97 Stat. 652; Pub. L. 101–189, div. A, title VII, §725(b), Nov. 29, 1989, 103 Stat. 1479; Pub. L. 101–510, div. A, title XIV, §1484(k)(7), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–106, div. A, title XV, §1501(c)(22), Feb. 10, 1996, 110 Stat. 499.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106 substituted ''section 12207'' for ''section 3353, 5600, or 8353''.

1990—Subsec. (c). Pub. L. 101–510 substituted ''section'' for ''sections'' in third sentence.

1989—Subsec. (a). Pub. L. 101–189, §725(b)(1), substituted ''scholarship and financial assistance program'' for ''scholarship program''.

Subsec. (b). Pub. L. 101–189, §725(b)(2), substituted ''study and specialized training'' for ''study''.

Subsec. (c). Pub. L. 101–189, §725(b)(3), substituted ''pursuing a course of study'' for ''of the program'' and inserted after second sentence ''Members pursuing specialized training shall serve on active duty in a pay grade commensurate with their educational level, as determined by appointment under sections 3353, 5600, or 8353 of this title, with full pay and allowances of that grade for a period of 14 days during each year of participation in the program.''

1983—Subsec. (d). Pub. L. 98–94 amended subsec. (d) generally, substituting ''a stipend at the rate of $579 per month'' for ''a stipend at the rate in effect under paragraph (1)(B) of section 751(g) of the Public Health Service Act (42 U.S.C. 294t(g)) for students in the National Health Service Corps Scholarship program'' and inserting provision relating to an annual increase in the rate by the Secretary of Defense effective on July 1 of each year.

1979—Subsec. (d). Pub. L. 96–107 substituted provisions relating to entitlement to a stipend at the rate in effect for students in the National Health Services Corps Scholarship program, for provisions authorizing a stipend at the rate of $400 per month.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c)(22) of Pub. L. 104–106 provided that the amendment made by that section is effective on the effective date specified in section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 935(b) of Pub. L. 98–94 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1983.''

EFFECTIVE DATE OF 1979 AMENDMENT

Section 804(c) of Pub. L. 96–107 provided that: ''The amendments made by this section [amending this section and section 313 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979.''

MEMBERS OF RESERVE COMPONENTS; SPECIALIZED TRAINING ASSISTANCE IN THE HEALTH PROFESSIONS

Pub. L. 99–145, title VI, §672(a)–(h), (j), Nov. 8, 1985, 99 Stat. 663, 664, effective Oct. 1, 1985, related to establishment and maintenance of program to provide financial assistance to persons engaged in specialized training in health professions who agree to incur Selective Reserve obligation of 3 years for each year for which financial assistance is provided, prior to repeal by Pub. L. 100–180, div. A, title VII, §711(c)(1), (e)(1), Dec. 4, 1987, 101 Stat. 1111, effective Dec. 4, 1987, subject to a savings provision, see below.

Pub. L. 100–180, div. A, title VII, §711(c)(2), Dec. 4, 1987, 101 Stat. 1111, provided that: ''The repeal of section 672 of the Department of Defense Authorization Act, 1986 [section 672 of Pub. L. 99–145, see above], by paragraph (1) does not affect an agreement entered into under that section before such repeal, and the provisions of such section as in effect before such repeal shall continue to apply with respect to such agreement.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2005, 2127, 2173, 16201 of this title; title 37 sections 415, 1006.

§ 2122. Eligibility for participation

(a) To be eligible for participation as a member of the program, a person must be a citizen of the United States and must—

(1) be accepted for admission to, or enrolled in, an institution in a course of study or selected to receive specialized training;

(2) sign an agreement that unless sooner separated he will—

(A) complete the educational phase of the program;

(B) accept an appropriate reappointment or designation within his military service, if tendered, based upon his health profession, following satisfactory completion of the program;

(C) participate in the intern program of his service if selected for such participation;

(D) participate in the residency program of his service, if selected, or be released from active duty for the period required to undergo civilian residency if selected for such training; and

(E) because of his sincere motivation and dedication to a career in the uniformed services, participate in military training while he is in the program, under regulations prescribed by the Secretary of Defense; and

(3) meet the requirements for appointment as a commissioned officer.

(b) The Secretary of Defense may require, as part of the agreement under subsection (a)(2), that a person must agree to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 717; amended Pub. L. 100–180, div. A, title VII, § 712(a), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 101–189, div. A, title VII, § 725(c), Nov. 29, 1989, 103 Stat. 1479.)

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''study or selected to receive specialized training'' for ''study, as that term is defined in section 2120(3) of this title''.

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2123. Members of the program: active duty obligation; failure to complete training; release from program

(a) A member of the program incurs an active duty obligation. The amount of his obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each year of participation in the program.

(b) A period of time spent in military intern or residency training shall not be creditable in satisfying an active duty obligation imposed by this section.

(c) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in conduct or studies, or for other reasons, may be required to perform active duty in an appropriate military capacity in accordance with the active duty obligation imposed by this section.

(d) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member of the program who is dropped from the program from an active duty obligation imposed by this section, but such relief shall not relieve him from any military obligation imposed by any other law.

(e)(1) A member of the program who is relieved of the member's active duty obligation under this subchapter before the completion of that active duty obligation may be given, with or without the consent of the member, any of the following alternative obligations, as determined by the Secretary of the military department concerned:

(A) A service obligation in another armed force for a period of time not less than the member's remaining active duty service obligation.

(B) A service obligation in a component of the Selected Reserve for a period not less than twice as long as the member's remaining active duty service obligation.

(C) Repayment to the Secretary of Defense of a percentage of the total cost incurred by the Secretary under this subchapter on behalf of the member equal to the percentage of the member's total active duty service obligation being relieved, plus interest.

(2) In addition to the alternative obligations specified in paragraph (1), if the member is relieved of an active duty obligation by reason of the separation of the member because of a physical disability, the Secretary of the military department concerned may give the member a service obligation as a civilian employee employed as a health care professional in a facility of the uniformed services for a period of time equal to the member's remaining active duty service obligation.

(3) The Secretary of Defense shall prescribe regulations describing the manner in which an alternative obligation may be given under this subsection.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 511(67), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–597, title IV, § 401(b), Nov. 16, 1990, 104 Stat. 3035; Pub. L. 104–201, div. A, title VII, § 741(a), Sept. 23, 1996, 110 Stat. 2599.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Any member of the program relieved of his active duty obligation under this subchapter before the completion of such obligation may, under regulations prescribed by the Secretary of Defense, be assigned to a health professional shortage area designated by the Secretary of Health and Human Services for a period equal to the period of obligation from which he was relieved.''

1990—Subsec. (e). Pub. L. 101–597 substituted ''a health professional shortage area'' for ''an area of health manpower shortage''.

1987—Subsec. (e). Pub. L. 100–180 substituted ''subchapter'' for ''chapter''.

1980—Subsec. (e). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 applicable with respect to individuals who first become members of Armed Forces Health Professions Scholarship and Financial Assistance program or students of Uniformed Services University of the Health Sciences on or after Oct. 1, 1996, see section 741(c) of Pub. L. 104–201, set out as a note under section 2114 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION PROVISIONS

Section 741(d)(1) of Pub. L. 104–201 provided that: ''In the case of any member of the Armed Forces Health Professions Scholarship and Financial Assistance program who, as of October 1, 1996, is serving an active duty obligation under the program or is incurring an active duty obligation as a participant in the program, and who is subsequently relieved of the active duty obligation before the completion of the obligation, the alternative obligations authorized by the amendment made by subsection (a) [amending this section] may be used by the Secretary of the military department concerned with the agreement of the member.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2114, 2126, 2173 of this title.

§ 2124. Members of the program: numbers appointed

The number of persons who may be designated as members of the program for training in each health profession shall be as prescribed by the Secretary of Defense, except that the total number of persons so designated may not, at any time, exceed 6,000.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 99–145, title VI, §672(i), Nov. 8, 1985, 99 Stat. 664; Pub. L. 100–180, div. A, title VII, §§711(a)(2), 712(b)(1), Dec. 4, 1987, 101 Stat. 1108, 1112; Pub. L. 101–189, div. A, title VII, §725(g), Nov. 29, 1989, 103 Stat. 1480; Pub. L. 102–190, div. A, title VII, §717, Dec. 5, 1991, 105 Stat. 1404.)

AMENDMENTS

1991—Pub. L. 102–190 substituted ''except that the total number of persons so designated may not, at any time, exceed 6,000.'' for ''except that—

''(1) the total number of persons so designated in all of the programs authorized by this subchapter shall not, at any time, exceed 6,000; and

''(2) after September 30, 1991, of the total number of persons so designated, at least 2,500 shall be persons—

''(A) who are in the final two years of their course of study; and

''(B) who have agreed to accept, if offered, residency training in a health profession skill which has been designated by the Secretary as a critically needed wartime skill.''

1989—Par. (2). Pub. L. 101–189 inserted ''after September 30, 1991,'' after ''(2)''.

1987—Pub. L. 100–180, §712(b)(1), substituted ''except that—'' and pars. (1) and (2) for ''except that the total number of persons so designated in all of the programs authorized by this subchapter shall not, at any time, exceed 6,000.''

Pub. L. 100–180, §711(a)(2), substituted ''subchapter'' for ''chapter''.

1985—Pub. L. 99–145 substituted ''6,000'' for ''5,000''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 712(b)(2) provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1989.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 672(j) of Pub. L. 99–145, which provided that amendment made by that section was to take effect on Oct. 1, 1985, was repealed by Pub. L. 100–180, §711(c)(1), (e)(1), eff. Dec. 4, 1987.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 99–145, title VI, §672(i), Nov. 8, 1985, 99 Stat. 664, cited as a credit to this section, was repealed by Pub. L. 100–180, §711(c)(1), (e)(1), eff. Dec. 4, 1987.

§ 2125. Members of the program: exclusion from authorized strengths

Notwithstanding any other provision of law, members of the program shall not be counted against any prescribed military strengths.

(Added Pub. L. 92–426, §2(a), Sept. 21, 1972, 86 Stat. 718.)

§ 2126. Members of the program: service credit

(a) SERVICE NOT CREDITABLE.—Except as provided in subsection (b), service performed while a member of the program shall not be counted—

(1) in determining eligibility for retirement other than by reason of a physical disability incurred while on active duty as a member of the program; or

(2) in computing years of service creditable under section 205 of title 37.

(b) SERVICE CREDITABLE FOR CERTAIN PURPOSES.—(1) The Secretary concerned may authorize service performed by a member of the program in pursuit of a course of study under this subchapter to be counted in accordance with this subsection if the member—

(A) completes the course of study;

(B) completes the active duty obligation imposed under section 2123(a) of this title; and

(C) possesses a specialty designated by the Secretary concerned as critically needed in wartime.

(2) Service credited under paragraph (1) counts only for the award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

(3) The number of points credited to a member under paragraph (1) for a year of participation in a course of study is 50. The points shall be credited to the member for one of the years of that participation at the end of each year after the completion of the course of study that the member serves in the Selected Reserve and is credited under section 12732(a)(2) of this title with at least 50 points. The points credited for the participation shall be recorded in the member's records as having been earned in the year of the participation in the course of study.

(4) Service may not be counted under paragraph (1) for more than four years of participation in a course of study as a member of the program.

(5) A member of the Selected Reserve may be considered to be in an active status while pursuing a course of study under this subchapter only for purposes of sections 12732(a) and 12733(3) of this title.

(6) A member is not entitled to any retroactive award of, or increase in, pay or allowances under title 37 by reason of an award of service credit under paragraph (1).

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 501(22), Dec. 12, 1980, 94 Stat. 2908; Pub. L. 104–201, div. A, title V, § 543(a), Sept. 23, 1996, 110 Stat. 2521; Pub. L. 106–65, div. A, title V, § 544, Oct. 5, 1999, 113 Stat. 608.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65, § 544(1), added par. (2) and struck out former par. (2) which read as follows: ''Service credited under paragraph (1) counts only for the following purposes:

''(A) Award of retirement points for computation of years of service under section 12732 of this title and for computation of retired pay under section 12733 of this title.

''(B) Computation of years of service creditable under section 205 of title 37.''

Subsec. (b)(3). Pub. L. 106–65, § 544(1), added par. (3) and struck out former par. (3) which read as follows: ''For purposes of paragraph (2)(A), a member may be credited in accordance with paragraph (1) with not more than 50 points for each year of participation in a course of study that the member satisfactorily completes as a member of the program.''

Subsec. (b)(5), (6). Pub. L. 106–65, § 544(2), (3), added par. (5) and redesignated former par. (5) as (6).

1996—Pub. L. 104–201 designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b), service performed'' for ''Service performed'', and added subsec. (b).

1980—Cl. (2). Pub. L. 96–513 struck out '', other than subsection (a)(7) and (8),'' after ''section 205''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2114, 12732 of this title.

§ 2127. Scholarships and financial assistance: payments

(a) The Secretary of Defense may provide for the payment of all educational expenses incurred by a member of the program, including tuition, fees, books, and laboratory expenses. Such payments, however, shall be limited to those educational expenses normally incurred by students at the institution and in the health profession concerned who are not members of the program.

(b) The Secretary of Defense may contract with an accredited civilian educational institution for the payment of tuition and other educational expenses of members of the program authorized by this subchapter. Payment to such institutions may be made without regard to subsections (a) and (b) of section 3324 of title 31.

(c) Payments made under subsection (b) shall not cover any expenses other than those covered by subsection (a).

(d) When the Secretary of Defense determines, under regulations prescribed by the Secretary of Health and Human Services, that an accredited civilian educational institution has increased its total enrollment for the sole purpose of accepting members of the program covered by this subchapter, he may provide under a contract with such an institution for additional payments to cover the portion of the increased costs of the additional enrollment which are not covered by the institution's normal tuition and fees.

(e) A person participating as a member of the program in specialized training shall be paid an annual grant of $15,000 in addition to the stipend under section 2121(d) of this title. The amount of the grant shall be increased annually by the Secretary of Defense, effective July 1 of each year, in the same manner as provided for stipends.

(Added Pub. L. 92–426, § 2(a), Sept. 21, 1972, 86 Stat. 718; amended Pub. L. 96–513, title V, § 511(67), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(3), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 100–180, div. A, title VII, § 711(a)(2), Dec. 4, 1987, 101 Stat. 1108; Pub. L. 101–189, div. A, title VII, § 725(d)(1), (2), Nov. 29, 1989, 103 Stat. 1479.)

PRIOR PROVISIONS

Prior sections 2128 to 2130 were renumbered sections 16201 to 16203 of this title, respectively.

AMENDMENTS

1989—Pub. L. 101–189, § 725(d)(2), substituted ''Scholarships and financial assistance'' for ''Contracts for scholarships'' in section catchline.

Subsec. (e). Pub. L. 101–189, § 725(d)(1), added subsec. (e).

1987—Subsecs. (b), (d). Pub. L. 100–180 substituted ''subchapter'' for ''chapter''.

1984—Subsec. (b). Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPORTS ON IMPLEMENTATION AND ON SUCCESS OF FINANCIAL ASSISTANCE PROGRAM

Section 725(e) of Pub. L. 101–189 directed Secretary of Defense, not later than Mar. 1, 1990, to submit to Congress a report describing the manner in which the new authority provided by such section 725 (amending 10 U.S.C. 2120 to 2122, 2124, and 2127) was implemented.

Section 725(f) of Pub. L. 101–189 directed Secretary of Defense, not later than Mar. 1, 1991, to submit to Congress a report evaluating the success of the financial assistance program established by such section 725 and describing the number of participants in the program receiving specialized training payments under 10 U.S.C. 2127(e) and the projected number of officers to be gained, by specialty, as a result of the program for each military department.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2173 of this title.

SUBCHAPTER II—NURSE OFFICER CANDIDATE ACCESSION PROGRAM

Sec.
2130a. Financial assistance: nurse officer candidates.

PRIOR PROVISIONS

A prior subchapter II heading and analysis consisting of items 2128 to 2130 was repealed and sections 2128 to 2130 of this title were renumbered sections 16201 to 16203 of this title, respectively, by Pub. L. 103–337, div. A, title XVI, §1663(c)(2)–(4)(A), (7)(B), Oct. 5, 1994, 108 Stat. 3007, 3008.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1663(c)(7)(C), Oct. 5, 1994, 108 Stat. 3008, redesignated subchapter III of this chapter as this subchapter.

1991—Pub. L. 101–189, div. A, title VII, §707(a), Nov. 29, 1989, 103 Stat. 1474, added subchapter heading and item 2130a.

§ 2130a. Financial assistance: nurse officer candidates

(a) BONUS AUTHORIZED.—(1) A person described in subsection (b) who, during the period beginning on November 29, 1989, and ending on December 31, 2003, executes a written agreement in accordance with subsection (c) to accept an appointment as a nurse officer may, upon the acceptance of the agreement by the Secretary concerned, be paid an accession bonus of not more than $10,000. The bonus shall be paid in periodic installments, as determined by the Secretary concerned at the time the agreement is accepted, except that the first installment may not exceed $5,000.

(2) In addition to the accession bonus payable under paragraph (1), a person selected under such paragraph shall be entitled to a monthly stipend of not more than $1,000 for each month the individual is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution by the Secretary selecting the person. The continuation bonus may be paid for not more than 24 months.

(b) ELIGIBLE STUDENTS.—A person eligible to enter into an agreement under subsection (a) is a person who—

(1) is enrolled as a full-time student in an accredited baccalaureate degree program in nursing at a civilian educational institution that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title by the Secretary selecting the person or that has a Senior Reserve Officers' Training Program for which the student is ineligible;

(2) has completed the second year of an accredited baccalaureate degree program in nursing and has more than 6 months of academic work remaining before graduation; and

(3) meets the qualifications for appointment as an officer of a reserve component of the Army, Navy, or Air Force as set forth in section 12201 of this title or, in the case of the Public Health Service, section 207 of the Public Health Service Act (42 U.S.C. 209) and the regulations of the Secretary concerned.

(c) REQUIRED AGREEMENT.—The agreement referred to in subsection (a) shall provide that the person executing the agreement agrees to the following:

(1) That the person will complete the nursing degree program described in subsection (b)(1).

(2) That, upon acceptance of the agreement by the Secretary concerned, the person will enlist in a reserve component of an armed force.

(3) That the person will accept an appointment as an officer in the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer in the Air Force or commissioned corps of the Public Health Service, as the case may be, upon graduation from the nursing degree program.

(4) That the person will serve on active duty as such an officer—

(A) for a period of 4 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's fourth year of the nursing degree program; or

(B) for a period of 5 years in the case of a person whose agreement was accepted by the Secretary concerned during that person's third year of the nursing degree program.

(d) REFUND OF PAYMENTS.—(1) A person shall refund any bonus or stipend paid under subsection (a) if the person—

(A) fails to complete a nursing degree program in which the person is enrolled in accordance with the agreement entered into under such subsection;

(B) having completed the nursing degree program, fails to accept an appointment, if tendered, as an officer of the Nurse Corps of the Army or the Navy or as an officer designated as a nurse officer of the Air Force or commissioned corps of the Public Health Service; or

(C) fails to complete the period of obligated active service required under the agreement.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or this subsection. This paragraph applies to any case commenced under title 11 after November 29, 1989.

(e) REGULATIONS.—The Secretaries concerned shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title VII, §707(a), Nov. 29, 1989, 103 Stat. 1474; amended Pub. L. 101–510, div. A, title VI, §613(c), title XIV, §1484(d)(1), Nov. 5, 1990, 104 Stat. 1577, 1716; Pub. L. 102–190, div. A, title VI, §612(c)(1), Dec. 5, 1991, 105 Stat. 1376; Pub. L. 102–484, div. A, title VI, §612(h), Oct. 23, 1992, 106 Stat. 2421; Pub. L. 103–160, div. A, title VI, §611(a), Nov. 30, 1993, 107 Stat. 1679; Pub. L. 103–337, div. A, title VI, §612(a), Oct. 5, 1994, 108 Stat. 2783; Pub. L. 104–106, div. A, title VI, §612(a), title XV, §1501(c)(23), Feb. 10, 1996, 110 Stat. 359, 499; Pub. L. 104–201, div. A, title VI, §612(a), Sept. 23, 1996, 110 Stat. 2543; Pub. L. 105–85, div. A, title VI,

§612(a), Nov. 18, 1997, 111 Stat. 1786; Pub. L. 105–261, div. A, title VI, §612(a), Oct. 17, 1998, 112 Stat. 2039; Pub. L. 106–65, div. A, title VI, §612(a), Oct. 5, 1999, 113 Stat. 650; Pub. L. 106–398, §1 [[div. A], title VI, §622(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151; Pub. L. 107–107, div. A, title V, §538, title VI, §612(a), Dec. 28, 2001, 115 Stat. 1107, 1135; Pub. L. 107–314, div. A, title VI, §§612(a), 615(h), Dec. 2, 2002, 116 Stat. 2567, 2569.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–314 substituted ''December 31, 2003'' for ''December 31, 2002'' and ''$10,000'' for ''$5,000'' in first sentence and ''$5,000'' for ''$2,500'' in second sentence.

Subsec. (a)(2). Pub. L. 107–314, §615(h)(2), substituted ''$1,000'' for ''$500''.

2001—Subsec. (a)(1). Pub. L. 107–107, §612(a), substituted ''December 31, 2002'' for ''December 31, 2001''.

Subsec. (a)(2). Pub. L. 107–107, §538(1), struck out ''that does not have a Senior Reserve Officers' Training Program established under section 2102 of this title'' after ''civilian educational institution''.

Subsec. (b)(1). Pub. L. 107–107, §538(2), inserted ''or that has a Senior Reserve Officers' Training Program for which the student is ineligible'' before semicolon at end.

2000—Subsec. (a)(1). Pub. L. 106–398 substituted ''December 31, 2001'' for ''December 31, 2000''.

1999—Subsec. (a)(1). Pub. L. 106–65 substituted ''December 31, 2000'' for ''December 31, 1999''.

1998—Subsec. (a)(1). Pub. L. 105–261 substituted ''December 31, 1999'' for ''September 30, 1999''.

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''September 30, 1999'' for ''September 30, 1998''.

1996—Subsec. (a)(1). Pub. L. 104–201 substituted ''September 30, 1998'' for ''September 30, 1997''.

Pub. L. 104–106, §612(a), substituted ''September 30, 1997'' for ''September 30, 1996''.

Subsec. (b)(3). Pub. L. 104–106, §1501(c)(23), substituted ''section 12201'' for ''section 591''.

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''September 30, 1996'' for ''September 30, 1995''.

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''September 30, 1995'' for ''September 30, 1993''.

1992—Subsec. (a)(1). Pub. L. 102–484 substituted ''September 30, 1993'' for ''September 30, 1992''.

1991—Subsec. (a)(1). Pub. L. 102–190 made amendment identical to that made by Pub. L. 101–510, §613(c)(1). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–510, §1484(d)(1)(A), substituted ''November 29, 1989,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991''.

Pub. L. 101–510, §613(c)(1), substituted ''September 30, 1992,'' for ''September 30, 1991,''.

Subsecs. (a)(2), (b)(1). Pub. L. 101–510, §613(c)(2), inserted ''by the Secretary selecting the person'' after ''section 2102 of this title''.

Subsec. (d)(3). Pub. L. 101–510, §1484(d)(1)(B), substituted ''November 29, 1989'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1990 and 1991''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

APPLICATION OF INCREASE

In case of amendment by section 615(h) of Pub. L. 107–314 to increase maximum amount of special pay or bonus that may be paid during any 12-month period, amended limitation is applicable to 12-month periods beginning after Sept. 30, 2002, see section 615(i) of Pub. L. 107–314, set out as a note under section 301d of this Title 37, Pay and Allowances of the Uniformed Services.

COVERAGE OF PERIOD OF LAPSED AUTHORITY

Section 611(d) of Pub. L. 103–160 provided that:

''(1) In the case of a person described in paragraph (2) who executes an agreement described in paragraph (3) during the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993], the Secretary concerned may treat the agreement for purposes of the accession bonus, monthly stipend, or special pay authorized under the agreement as having been executed and accepted on the first date on which the person would have qualified for such an agreement had the amendments made by this section [amending this section and sections 302d and 302e of Title 37, Pay and Allowances of the Uniformed Services] taken effect on October 1, 1993.

''(2) A person referred to in paragraph (1) is a person described in section 2130a(b) of title 10, United States Code, or section 302d(a)(1) or 302e(b) of title 37, United States Code, who, during the period beginning on October 1, 1993, and ending on the date of the enactment of this Act, would have qualified for an agreement described in paragraph (3) had the amendments made by this section taken effect on October 1, 1993.

''(3) An agreement referred to in this subsection is an agreement with the Secretary concerned that is a condition for the payment of an accession bonus and monthly stipend under section 2130a of title 10, United States Code, an accession bonus under section 302d of title 37, United States Code, or incentive special pay under section 302e of title 37, United States Code.

''(4) For purposes of this subsection, the term 'Secretary concerned' has the meaning given that term in section 101(5) of title 37, United States Code.''

[For provisions relating to coverage of period of lapsed authority from Oct. 1, 1992, to Oct. 23, 1992, for payment of bonuses or other special pay under this section, see section 612(j)(2) of Pub. L. 102–484, set out as a note under section 301b of Title 37, Pay and Allowances of the Uniformed Services.]

ACCESSION BONUSES FOR CANDIDATES EXECUTING AGREEMENTS DURING 90-DAY PERIOD BEGINNING DECEMBER 5, 1991

Section 612(c)(2) of Pub. L. 102–190 provided that:

''(A) In the case of a person described in subparagraph (B) who executes an agreement under section 2130a of such title [10 U.S.C. 2130a] during the 90-day period beginning on the date of the enactment of this Act [Dec. 5, 1991], the Secretary concerned may treat such agreement as having been executed and accepted for purposes of such section on the first date on which the person would have qualified for such an agreement had the amendment made by paragraph (1) [amending this section] taken effect on October 1, 1991.

''(B) A person referred to in subparagraph (A) is a person who, during the period beginning on October 1, 1991, and ending on the date of the enactment of this Act, would have qualified for an agreement under such section had the amendment made by paragraph (1) taken effect on October 1, 1991.

''(C) For purposes of this paragraph, the term 'Secretary concerned' has the meaning given that term in section 101(8) of such title [10 U.S.C. 101(8)].''

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
2131. Reference to chapter 1606.
[2132 to 2137. Renumbered.]
2138. Savings provision.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1663(b)(7), Oct. 5, 1994, 108 Stat. 3007, added items 2131 and 2138 and struck out former items 2131 to 2138.

1984—Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2564, substituted ''MEMBERS OF THE SELECTED RESERVE'' for ''ENLISTED MEMBERS OF THE SELECTED RESERVE OF THE READY RESERVE'' in chapter heading, ''Time limitation for use of entitlement'' for ''Termination of assistance; refund by member'' in item 2133, ''Termination of assistance'' for ''Reports to Congress'' in item 2134, ''Failure to participate satisfactorily; penalties'' for ''Termination of program'' in item 2135, and added items 2136 to 2138.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2005 of this title; title 20 section 1087vv; title 38 sections 3033, 3221, 3674, 3680A, 3681, 3684A, 3688, 3692, 3697, 3697A, 4213, 5113, 7652, 7653.

§ 2131. Reference to chapter 1606

Provisions of law relating to educational assistance for members of the Selected Reserve under the Montgomery GI Bill program are set forth in chapter 1606 of this title (beginning with section 16131).

(Added Pub. L. 103–337, div. A, title XVI, § 1663(b)(7), Oct. 5, 1994, 108 Stat. 3007.)

PRIOR PROVISIONS

Prior section 2131 was renumbered section 16131 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

[§ 2132. Renumbered § 16132]

[§ 2133. Renumbered § 16133]

[§ 2134. Renumbered § 16134]

[§ 2135. Renumbered § 16135]

[§ 2136. Renumbered § 16136]

[§ 2137. Renumbered § 16137]

§ 2138. Savings provision

A member who entered into an agreement under this chapter before July 1, 1985, shall continue to be eligible for educational assistance in accordance with the terms of such agreement and of this chapter as in effect before such date.

(Added Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567.)

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

CHAPTER 107—EDUCATIONAL ASSISTANCE FOR PERSONS ENLISTING FOR ACTIVE DUTY

Sec.
2141. Educational assistance program: establishment.
2142. Educational assistance program: eligibility.
2143. Educational assistance: amount.
2144. Subsistence allowance.
2145. Adjustments of amount of educational assistance and of subsistence allowance.
2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance.
2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children.
2148. Duration of entitlement.
2149. Applications for educational assistance.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2005 of this title; title 20 section 1087vv; title 38 sections 3033, 3222, 3681, 3695, 3697A.

§ 2141. Educational assistance program: establishment

(a) To encourage enlistments and reenlistments for service on active duty in the armed forces, the Secretary of each military department may establish a program in accordance with this chapter to provide educational assistance to persons enlisting or reenlisting in an armed force under his jurisdiction. The costs of any such program shall be borne by the Department of Defense, and a person participating in any such program may not be required to make any contribution to the program.

(b) The Secretary of Defense shall prescribe regulations for the administration of this chapter. Such regulations shall take account of the differences among the several armed forces.

(c) In this chapter, the term ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1111; amended Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, § 1233(k)(1), Sept. 29, 1988, 102 Stat. 2058.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 inserted ''the term'' after ''In this chapter,''.

1987—Pub. L. 100–180, which directed that subsec. (c) be amended by inserting ''the term'' after ''In this section,'', could not be executed because that phrase did not appear. See 1988 Amendment note above.

REPAYMENT OF LOANS FOR SERVICE IN THE ARMED FORCES; AUTHORIZATION, CRITERIA, ETC.

Section 902 of Pub. L. 96–342, as amended by Pub. L. 97–86, title IV, § 406, Dec. 1, 1981, 95 Stat. 1106; Pub. L. 98–94, title X, § 1034, Sept. 24, 1983, 97 Stat. 672; Pub. L. 98–525, title VII, § 709, Oct. 19, 1984, 98 Stat. 2572, provided that the Secretary of Defense could repay any loan made, insured, or guaranteed under part B of the Higher Education Act of 1965, or any loan made under part E of that Act, after Oct. 1, 1975, and further provided for the administration and criteria for such repayment, prior to repeal by Pub. L. 99–145, title VI, § 671(a)(3), Nov. 8, 1985, 99 Stat. 663. See section 2171 et seq. of this title.

EDUCATIONAL ASSISTANCE PILOT PROGRAM; PAYMENT OF MONTHLY CONTRIBUTION BY SECRETARY; MANNER, SCOPE, ETC., OF PAYMENTS

Section 903 of Pub. L. 96–342 provided that:

''(a)(1) As a means of encouraging enlistments and reenlistments in the Armed Forces, the Secretary of Defense, on behalf of any person who enlists or reenlists in the Armed Forces after September 30, 1980, and before October 1, 1981, and who elects or has elected to participate in the Post-Vietnam Era Veterans' Educational Assistance Program provided for under chapter 32 of title 38, United States Code, may pay the

monthly contribution otherwise deducted from the military pay of such person. No deduction may be made under section 1622 [now 3222] of title 38, United States Code, from the military pay of any person for any month to the extent that the contribution otherwise required to be made by such person under such section for such month is paid by the Secretary of Defense.

''(2) No payment may be made under this section on behalf of any person for any month before the month in which such person enlisted or reenlisted in the Armed Forces or for any month before October 1980.

''(b) The amount paid by the Secretary of Defense under this section on behalf of any person shall be deposited to the credit of such person in the Post-Vietnam Era Veterans Education Account established under section 1622(a) [now 3222(a)] of title 38, United States Code.

''(c)(1) Except as provided in paragraph (2), the provisions of chapter 32 of title 38, United States Code, shall be applicable to payments made by the Secretary of Defense under this section.

''(2) Notwithstanding the provisions of section 1631(a)(4) [now 3231(a)(4)] of title 38, United States Code, the Secretary of Defense, in the case of any person who enlists or reenlists in the Armed Forces or any officer who is ordered to active duty with the Armed Forces after September 30, 1980, and before October 1, 1981, or whose active duty obligation with the Armed Forces is extended after September 30, 1980, and before October 1, 1981, and who is a participant in the educational assistance program described in subsection (a), may make monthly payments out of the Post-Vietnam Era Veterans Education Account to the spouse or child of such person to assist such spouse or child in the pursuit of a program of education. Payments under this subsection may be made to the spouse or child of a person participating in such educational assistance program only upon the request of such person and only for such period of time as may be specified by such person. The total amount paid under this subsection in the case of any spouse or child may not exceed the amount credited to such person in the Post-Vietnam Era Veterans Education Account.

''(d)(1) The authority conferred on the Secretary of Defense under this section shall be used by the Secretary only for the purpose of encouraging persons who possess critical military specialties (as determined by the Secretary of Defense) to enter or to remain in the Armed Forces.

''(2) Except as otherwise provided in this section, the Secretary of Defense may offer the benefits of this section to persons eligible therefor for such period as the Secretary determines necessary or appropriate to achieve the purpose of this section.

''(f) As used in this section:

''(1) The term 'program of education' shall have the same meaning as provided in chapter 32 of title 38, United States Code.

''(2) The term 'child' shall have the same meaning as provided in section 101(4) of title 38, United States Code.

''(3) The term 'Armed Forces' means the Army, Navy, Air Force, and Marine Corps.''

AUTHORIZATION OF APPROPRIATIONS; ALLOCATION OF AMOUNTS

Section 904 of Pub. L. 96–342 provided that:

''(a) There is hereby authorized to be appropriated to carry out chapter 107 of title 10, United States Code (as added by section 901), and sections 902 and 903 [set out above] a total of $75,000,000.

''(b) The Secretary of Defense shall equitably allocate the amount appropriated under this section among the educational assistance program provided for under chapter 107 of title 10, United States Code (as added by section 901), the repayment as authorized by section 902 [set out above] of loans made, insured, or guaranteed under part B of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.] and of loans made under part E of such Act [20 U.S.C. 1087aa et seq.], and the educational assistance program provided for under section 903 [set out above].''

REPORTS ON EDUCATIONAL ASSISTANCE PROGRAMS; SUBMISSION, CONTENTS, ETC.

Section 905 of Pub. L. 96–342 directed Secretary of Defense to submit to Congress, quarterly for fiscal year 1981, a report on the implementation and operation of the educational assistance program provided for under chapter 107 of this title and of the programs provided for under sections 902 and 903 of Pub. L. 96–342, set out above, and to also submit, not later than Dec. 31, 1981, a report on the extent to which the educational assistance program provided for under chapter 107 of this title, the Post-Vietnam Era Veterans' Educational Assistance Program provided for under chapter 32 of title 38, and the program established under section 902 of Pub. L. 96–342 have encouraged persons to enter or remain in the Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2143 of this title.

§ 2142. Educational assistance program: eligibility

(a)(1) A program of educational assistance established under this chapter shall provide that any person enlisting or reenlisting in an armed force under the jurisdiction of the Secretary of the military department concerned who meets the eligibility requirements established by the Secretary in accordance with subsection (b) shall, subject to paragraph (3), become entitled to educational assistance under section 2143 of this title at the time of such enlistment.

(2) The period of educational assistance to which such a person becomes entitled is one standard academic year (or the equivalent) for each year of the enlistment of such person, up to a maximum of four years. However, if the person is discharged or otherwise released from active duty after completing two years of the term of such enlistment but before completing the full term of such enlistment (or before completing four years of such term, in the case of an enlistment of more than four years), then the period of educational assistance to which the person is entitled is one standard academic year (or the equivalent) for each year of active service of such person during such term. For the purposes of the preceding sentence, a portion of a year of active service shall be rounded to the nearest month and shall be prorated to a standard academic year.

(3)(A) A member who is discharged or otherwise released from active duty before completing two years of active service of an enlistment which is the basis for entitlement to educational assistance under this chapter or who is discharged or otherwise released from active duty under other than honorable conditions is not entitled to educational assistance under this chapter.

(B) Entitlement to educational assistance under this chapter may not be used until a member has completed two years of active service of the enlistment which is the basis for entitlement to such educational assistance.

(b) In establishing requirements for eligibility for an educational assistance program under this chapter, the Secretary concerned shall limit eligibility to persons who—

(1) enlist or reenlist for service on active duty as a member of the Army, Navy, Air

Force, or Marine Corps after September 30, 1980, and before October 1, 1981;

(2) are graduates from a secondary school; and

(3) meet such other requirements as the Secretary may consider appropriate for the purposes of this chapter and the needs of the armed forces.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1111.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2143, 2147, 2149 of this title.

§ 2143. Educational assistance: amount

(a) Subject to subsection (b), an educational assistance program established under section 2141 of this title shall provide for payment by the Secretary concerned of educational expenses incurred for instruction at an accredited institution by a person entitled to such assistance under this chapter. Expenses for which payment may be made under this section include tuition, fees, books, laboratory fees, and shop fees for consumable materials used as part of classroom or laboratory instruction. Payments under this section shall be limited to those educational expenses normally incurred by students at the institution involved.

(b)(1) The Secretary concerned shall establish the amount of educational assistance for a standard academic year (or the equivalent) to which a person becomes entitled under this chapter at the time of an enlistment described in section 2142 of this title. Depending on the needs of the service, different amounts may be established for different categories of persons or enlistments. The amount of educational assistance to which any person is entitled shall be adjusted in accordance with section 2145 of this title.

(2) The amount of educational assistance which may be provided to any person for a standard academic year (or the equivalent) may not exceed $1,200, adjusted in accordance with section 2145 of this title.

(c) In this section, the term ''accredited institution'' means a civilian college or university or a trade, technical, or vocational school in the United States (including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands) that provides education at the postsecondary level and that is accredited by a nationally recognized accrediting agency or association or by an accrediting agency or association recognized by the Secretary of Education.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1112; amended Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2142, 2145, 2146 of this title.

§ 2144. Subsistence allowance

(a) Subject to subsection (b), a person entitled to educational assistance under this chapter is entitled to receive a monthly subsistence allowance during any period for which educational assistance is provided such person. The amount of a subsistence allowance under this section is $300 per month, adjusted in accordance with section 2145 of this title, in the case of a person pursuing a course of instruction on a full-time basis and is one-half of such amount (as so adjusted) in the case of a person pursuing a course of instruction on less than a full-time basis.

(b) The number of months for which a subsistence allowance may be provided to any person under this section is computed on the basis of nine months for each standard academic year of educational assistance to which such person is entitled.

(c) For purposes of subsection (a), a person shall be considered to be pursuing a course of instruction on a full-time basis if the person is enrolled in twelve or more semester hours of instruction (or the equivalent, as determined by Secretary concerned).

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1112.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2145, 2146, 2147 of this title.

§ 2145. Adjustments of amount of educational assistance and of subsistence allowance

(a) Once each year, the Secretary of Defense shall adjust the amount of educational assistance which may be provided to any person in any standard academic year under section 2143 of this title, and the amount of the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis, in a manner consistent with the change over the preceding twelve-month period in the average actual cost of attendance at public institutions of higher education.

(b) In this section, the term ''actual cost of attendance'' has the meaning given the term ''cost of attendance'' by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended Pub. L. 100–180, div. A, title XII, § 1231(18)(A), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 103–35, title II, § 201(c)(2), May 31, 1993, 107 Stat. 98.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–35 substituted ''has the meaning given the term 'cost of attendance' by section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*)'' for ''means the actual cost of attendance as determined by the Secretary of Education pursuant to section 411(a)(2)(B)(iv) of the Higher Education Act of 1965 (20 U.S.C. 1070a(a)(2)(B)(iv))''.

1987—Subsec. (b). Pub. L. 100–180 inserted ''the term'' after ''In this section,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2143, 2144 of this title.

§ 2146. Right of member upon subsequent reenlistment to lump-sum payment in lieu of educational assistance

(a) A member who is entitled to educational assistance under this chapter and who reenlists at the end of the enlistment which established such entitlement may, at the time of such reenlistment, elect to receive a lump-sum payment computed under subsection (b) in lieu of receiving such educational assistance. An election to receive such a lump-sum payment is irrevocable.

(b) The amount of a lump-sum payment under subsection (a) is 60 percent of the sum of—

(1) the product of (A) the rate for educational assistance under section 2143(b) of this title applicable to such member which is in effect at the time of such reenlistment, and (B) the number of standard academic years of entitlement of such member to such assistance; and

(2) the product of (A) the rate for the subsistence allowance authorized under section 2144 of this title for pursuit of a course of instruction on a full-time basis at the time of such reenlistment, and (B) the number of months of entitlement of such member to such allowance.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113.)

§ 2147. Right of member after reenlisting to transfer entitlement to spouse or dependent children

(a)(1)(A) A person who is entitled to educational assistance under section 2142 of this title and who reenlisted in an armed force at any time after the end of the enlistment which established such entitlement may at any time after such reenlistment elect to transfer all or any part of such entitlement to the spouse or dependent child of such person.

(B) The Secretary of the Navy may authorize a member of the Navy or Marine Corps who is entitled to educational assistance under section 2142 of this title and whose enlistment that established such entitlement was the member's second reenlistment as a member of the armed forces to transfer all or part of such entitlement to the spouse or dependent child of such member after the completion of four years of active service of that second reenlistment if that reenlistment was for a period of at least six years.

(C) A transfer under this paragraph may be revoked at any time by the person making the transfer.

(2) If a person described in paragraph (1) dies before making an election authorized by such paragraph but has never made an election not to transfer such entitlement, any unused entitlement of such person shall be automatically transferred to such person's surviving spouse or (if there is no eligible surviving spouse) to such person's dependent children. A surviving spouse to whom entitlement to educational assistance is transferred under this paragraph may elect to transfer such entitlement to the dependent children of the person whose service established such entitlement.

(3) Any transfer of entitlement under this subsection shall be made in accordance with regulations prescribed by the Secretary of the military department concerned.

(b) A spouse or surviving spouse or a dependent child to whom entitlement is transferred under subsection (a) is entitled to educational assistance under this chapter in the same manner and at the same rate as the person from whom the entitlement was transferred.

(c) The total amount of educational assistance available to a person entitled to educational assistance under section 2142 of this title and to the person's spouse, surviving spouse, and dependent children is the amount of educational assistance to which the person is entitled. If more than one person is being provided educational assistance for the same period by virtue of the entitlement of the same person, the subsistence allowance authorized by section 2144 of this title shall be divided in such manner as the person may specify or (if the person fails to specify) as the Secretary concerned may prescribe.

(d) In this section:

(1) The term ''dependent child'' has the meaning given the term ''dependent'' in section 1072(2)(D) of this title.

(2) The term ''surviving spouse'' means a widow or widower who is not remarried.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1113; amended Pub. L. 97–22, § 10(b)(3), July 10, 1981, 95 Stat. 137; Pub. L. 99–145, title VI, § 673, Nov. 8, 1985, 99 Stat. 664; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161.)

AMENDMENTS

1987—Subsec. (d)(1), (2). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Subsec. (a)(1). Pub. L. 99–145 designated existing first sentence as subpar. (A), added subpar. (B), and incorporated existing second sentence as subpar. (C).

1981—Subsec. (d)(1). Pub. L. 97–22 substituted ''section 1072(2)(D) of this title'' for ''section 1072(2)(E) of this title''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2149 of this title.

§ 2148. Duration of entitlement

The entitlement of any person to educational assistance under this chapter expires at the end of the ten-year period beginning on the date of the retirement or discharge or other separation from active duty of the person upon whose service such entitlement is based. In the case of a member entitled to educational assistance under this chapter who dies while on active duty and whose entitlement is transferred to a spouse or dependent child, such entitlement expires at the end of the ten-year period beginning on the date of such member's death.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

§ 2149. Applications for educational assistance

To receive educational assistance benefits under this chapter, a person entitled to such assistance under section 2142 or 2147 of this title shall submit an application for such assistance to the Secretary concerned in such form and manner as the Secretary concerned may prescribe.

(Added Pub. L. 96–342, title IX, § 901(a), Sept. 8, 1980, 94 Stat. 1114.)

CHAPTER 108—DEPARTMENT OF DEFENSE SCHOOLS

Sec.

2161. Joint Military Intelligence College: academic degrees.
2162. Preparation of budget requests for operation of professional military education schools.
2163. National Defense University: masters of science in national security strategy and in national resource strategy.
2164. Department of Defense domestic dependent elementary and secondary schools.
2165. National Defense University: component institutions.
2166. Western Hemisphere Institute for Security Cooperation.
2167. National Defense University: admission of private sector civilians to professional military education program.
2168. Defense Language Institute Foreign Language Center: degree of Associate of Arts in foreign language.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, §§ 528(a)(2), 531(b), Dec. 28, 2001, 115 Stat. 1103, 1104, added items 2167 and 2168.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 911(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–228, added item 2166.

1997—Pub. L. 105–107, title V, § 501(b), Nov. 20, 1997, 111 Stat. 2262, substituted ''Joint Military Intelligence College: academic degrees'' for ''Defense Intelligence School; master of science of strategic intelligence'' in item 2261.

Pub. L. 105–85, div. A, title IX, § 921(a)(2), Nov. 18, 1997, 111 Stat. 1862, added item 2165.

1994—Pub. L. 103–337, div. A, title III, § 351(b), Oct. 5, 1994, 108 Stat. 2730, added item 2164.

1993—Pub. L. 103–160, div. A, title IX, § 922(b), Nov. 30, 1993, 107 Stat. 1731, added item 2163.

1990—Pub. L. 101–510, div. A, title IX, § 911(b)(1), (2), Nov. 5, 1990, 104 Stat. 1626, substituted ''DEPARTMENT OF DEFENSE SCHOOLS'' for ''GRANTING OF ADVANCED DEGREES AT DEPARTMENT OF DEFENSE SCHOOLS'' as chapter heading and added item 2162.

ASIA-PACIFIC CENTER FOR SECURITY STUDIES: REIMBURSEMENT WAIVER FOR PERSONNEL OF FOREIGN NATIONS

Pub. L. 107–248, title VIII, § 8073, Oct. 23, 2002, 116 Stat. 1553, provided that: ''During the current fiscal year and hereafter, the Secretary of Defense may waive reimbursement of the cost of conferences, seminars, courses of instruction, or similar educational activities of the Asia-Pacific Center for Security Studies for military officers and civilian officials of foreign nations if the Secretary determines that attendance by such personnel, without reimbursement, is in the national security interest of the United States: *Provided*, That costs for which reimbursement is waived pursuant to this section shall be paid from appropriations available for the Asia-Pacific Center.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, § 8081, Jan. 10, 2002, 115 Stat. 2265.

Pub. L. 106–259, title VIII, § 8080, Aug. 9, 2000, 114 Stat. 692.

Pub. L. 106–79, title VIII, § 8085, Oct. 25, 1999, 113 Stat. 1251.

Pub. L. 105–262, title VIII, § 8086, Oct. 17, 1998, 112 Stat. 2318.

Pub. L. 105–56, title VIII, § 8094, Oct. 8, 1997, 111 Stat. 1242.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8121], Sept. 30, 1996, 110 Stat. 3009–71, 3009–115.

REGIONAL DEFENSE COUNTER-TERRORISM FELLOWSHIP PROGRAM

Pub. L. 107–117, div. A, title VIII, § 8125, Jan. 10, 2002, 115 Stat. 2275, provided that: ''In addition to amounts provided elsewhere in this Act [see Tables for classification], $17,900,000 is hereby appropriated for the Secretary of Defense, to remain available until expended, to establish a Regional Defense Counter-terrorism Fellowship Program: *Provided*, That funding provided herein may be used by the Secretary to fund foreign military officers to attend U.S. military educational institutions and selected regional centers for non-lethal training: *Provided further*, That United States Regional Commanders in Chief will be the nominative authority for candidates and schools for attendance with joint staff review and approval by the Secretary of Defense: *Provided further*, That the Secretary of Defense shall establish rules to govern the administration of this program.''

ATTENDANCE AT PROFESSIONAL MILITARY EDUCATION SCHOOLS BY MILITARY PERSONNEL OF THE NEW MEMBER NATIONS OF NATO

Pub. L. 106–65, div. A, title XII, § 1223, Oct. 5, 1999, 113 Stat. 787, provided that:

''(a) FINDING.—Congress finds that it is in the national interest of the United States to fully integrate Poland, Hungary, and the Czech Republic (the new member nations of the North Atlantic Treaty Organization) into the NATO alliance as quickly as possible.

''(b) MILITARY EDUCATION AND TRAINING PROGRAMS.—The Secretary of each military department shall give due consideration to according a high priority to the attendance of military personnel of Poland, Hungary, and the Czech Republic at professional military education schools and training programs in the United States, including the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, the National Defense University, the war colleges of the Armed Forces, the command and general staff officer courses of the Armed Forces, and other schools and training programs of the Armed Forces that admit personnel of foreign armed forces.''

SENSE OF CONGRESS ON GRADE OF HEADS OF SENIOR PROFESSIONAL MILITARY EDUCATION SCHOOLS

Pub. L. 103–337, div. A, title IX, § 914, Oct. 5, 1994, 108 Stat. 2829, provided that: ''It is the sense of Congress that an officer serving in a position as the head of one of the senior professional military education schools of the Department of Defense (or of the separate military departments) should, while so serving, hold a grade not less than the grade (or its equivalent) held by the officer serving in that position on the date of the enactment of this Act [Oct. 5, 1994].''

MILITARY DEPARTMENT AFFILIATION OF WAR COLLEGE STUDENTS

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8069], Sept. 30, 1996, 110 Stat. 3009–71, 3009–102, which provided that, for resident classes entering war colleges after Sept. 30, 1997, Department of Defense was to require that not less than 20 percent of total of United States military students at each war college was to be from military departments other than hosting military department and provided that each military department was to recognize attendance at sister military department war college as equivalent of attendance at its

own war college for promotion and advancement of personnel, was from the Department of Defense Appropriations Act, 1997, and was not repeated in subsequent appropriations acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, § 8084, Dec. 1, 1995, 109 Stat. 667.

Pub. L. 103–335, title VIII, § 8108A, Sept. 30, 1994, 108 Stat. 2646.

AUTHORITY FOR MILITARY SCHOOL FACULTY MEMBERS AND STUDENTS TO ACCEPT HONORARIA FOR CERTAIN SCHOLARLY AND ACADEMIC ACTIVITIES

Pub. L. 102–484, div. A, title V, § 542, Oct. 23, 1992, 106 Stat. 2413, related to conditions for and exceptions to authority of Department of Defense school faculty and students to accept honoraria for appearance, speech, or article published in bona fide publication, prior to repeal by Pub. L. 107–314, div. A, title VI, § 653(a), Dec. 2, 2002, 116 Stat. 2581.

[Pub. L. 107–314, div. A, title VI, § 653(b), Dec. 2, 2002, 116 Stat. 2581, provided that: ''The repeal made by subsection (a) [repealing section 542 of Pub. L. 102–484, formerly set out above] shall apply with respect to appearances made, speeches presented, and articles published on or after October 1, 2002.'']

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

§ 2161. Joint Military Intelligence College: academic degrees

Under regulations prescribed by the Secretary of Defense, the president of the Joint Military Intelligence College may, upon recommendation by the faculty of the college, confer upon a graduate of the college who has fulfilled the requirements for the degree the following:

(1) The degree of Master of Science of Strategic Intelligence (MSSI).

(2) The degree of Bachelor of Science in Intelligence (BSI).

(Added Pub. L. 96–450, title IV, § 406(a), Oct. 14, 1980, 94 Stat. 1980; amended Pub. L. 105–107, title V, § 501(a), Nov. 20, 1997, 111 Stat. 2261.)

AMENDMENTS

1997—Pub. L. 105–107 substituted ''Joint Military Intelligence College: academic degrees'' for ''Defense Intelligence School: master of science of strategic intelligence'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary of Defense, the Commandant of the Defense Intelligence School may, upon recommendation by the faculty of such school, confer the degree of master of science of strategic intelligence upon graduates of the school who have fulfilled the requirements for that degree.''

§ 2162. Preparation of budget requests for operation of professional military education schools

(a) UNIFORM COST ACCOUNTING.—The Secretary of Defense, with the advice and assistance of the Chairman of the Joint Chiefs of Staff, shall promulgate a uniform cost accounting system for use by the Secretaries of the military departments in preparing budget requests for the operation of professional military education schools.

(b) PREPARATION OF BUDGET REQUESTS.—(1) Amounts requested for a fiscal year for the operation of each professional military education school shall be set forth as a separate budget request in the materials submitted by the Secretary of Defense to Congress in support of the budget request for the Department of Defense.

(2) As executive agent for funding professional development education at the National Defense University, including the Joint Forces Staff College, the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, shall prepare the annual budget for professional development education operations at the National Defense University and set forth that request as a separate budget request in the materials submitted to Congress in support of the budget request for the Department of Defense. Nothing in the preceding sentence affects policies in effect on December 28, 2001, with respect to budgeting for the funding of logistical and base operations support for components of the National Defense University through the military departments.

(3) The Secretary of a military department preparing a budget request for a professional military education school shall carefully consider the views of the Chairman of the Joint Chiefs of Staff, particularly with respect to the amount of the request for the operation of the schools of the National Defense University and the joint professional military education curricula of the other professional military education schools.

(c) COMPARISON OF BUDGET REQUESTS.—Materials prepared in support of the budget request for a professional military education school shall describe whether the amount requested for that school is comparable to the amounts requested for other professional military education schools, taking into consideration the size and activities of the schools.

(d) PROFESSIONAL MILITARY EDUCATION SCHOOLS.—This section applies to each of the following professional military education schools:

(1) The National Defense University.

(2) The Army War College.

(3) The College of Naval Warfare.

(4) The Air War College.

(5) The United States Army Command and General Staff College.

(6) The College of Naval Command and Staff.

(7) The Air Command and Staff College.

(8) The Marine Corps University.

(Added Pub. L. 101–510, div. A, title IX, § 911(a), Nov. 5, 1990, 104 Stat. 1625; amended Pub. L. 105–85, div. A, title IX, § 921(b), Nov. 18, 1997, 111 Stat. 1862; Pub. L. 107–107, div. A, title V, § 527(b), Dec. 28, 2001, 115 Stat. 1102; Pub. L. 107–314, div. A, title X, § 1062(a)(7), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–314 substituted ''December 28, 2001,'' for ''the date of the enactment of this paragraph''.

2001—Subsec. (b)(2), (3). Pub. L. 107–107 added par. (2) and redesignated former par. (2) as (3).

1997—Subsec. (d). Pub. L. 105–85 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) DEFINITIONS.—In this section:

''(1) The term 'professional military education school' means—

''(A) the National Defense University;

''(B) the Army War College;

''(C) the College of Naval Warfare;

''(D) the Air War College;

''(E) the United States Army Command and General Staff College;

''(F) the College of Naval Command and Staff;

''(G) the Air Command and Staff College; or

''(H) the Marine Corps Command and Staff College.

''(2) The term 'National Defense University' means the National War College, the Armed Forces Staff College, and the Industrial College of the Armed Forces.''

EFFECTIVE DATE

Section 911(b)[(c)] of Pub. L. 101–510 provided that: ''Section 2162 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 1991.''

EXECUTIVE AGENT FOR FUNDING PROFESSIONAL DEVELOPMENT EDUCATION

Pub. L. 107–107, div. A, title V, § 527(a), Dec. 28, 2001, 115 Stat. 1101, provided that:

''(1) Effective beginning with fiscal year 2003, the Secretary of Defense shall be the executive agent for funding professional development education operations of all components of the National Defense University, including the Joint Forces Staff College. The Secretary may not delegate the Secretary's functions and responsibilities under the preceding sentence to the Secretary of a military department.

''(2) Nothing in this subsection affects policies in effect on the date of the enactment of this Act [Dec. 28, 2001] with respect to—

''(A) the reporting of the President of the National Defense University to the Chairman of the Joint Chiefs of Staff; or

''(B) provision of logistical and base operations support for components of the National Defense University by the military departments.''

§ 2163. National Defense University: masters of science in national security strategy and in national resource strategy

(a) NATIONAL WAR COLLEGE DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the National War College, may confer the degree of master of science of national security strategy upon graduates of the National War College who fulfill the requirements for the degree.

(b) ICAF DEGREE.—The President of the National Defense University, upon the recommendation of the faculty and commandant of the Industrial College of the Armed Forces, may confer the degree of master of science of national resource strategy upon graduates of the Industrial College of the Armed Forces who fulfill the requirements for the degree.

(c) REGULATIONS.—The authority provided by subsections (a) and (b) shall be exercised under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 103–160, div. A, title IX, § 922(a), Nov. 30, 1993, 107 Stat. 1730.)

§ 2164. Department of Defense domestic dependent elementary and secondary schools

(a) AUTHORITY OF SECRETARY.—(1) If the Secretary of Defense makes a determination that appropriate educational programs are not available through a local educational agency for dependents of members of the armed forces and dependents of civilian employees of the Federal Government residing on a military installation in the United States (including territories, commonwealths, and possessions of the United States), the Secretary may enter into arrangements to provide for the elementary or secondary education of the dependents of such members of the armed forces and, to the extent authorized in subsection (c), the dependents of such civilian employees.

(2) The Secretary may, at the discretion of the Secretary, permit dependents of members of the armed forces and, to the extent provided in subsection (c), dependents of civilian employees of the Federal Government residing in a territory, commonwealth, or possession of the United States but not on a military installation, to enroll in an educational program provided by the Secretary pursuant to this subsection. If a member of the armed forces is assigned to a remote location or is assigned to an unaccompanied tour of duty, a dependent of the member who resides, on or off a military installation, in a territory, commonwealth, or possession of the United States, as authorized by the member's orders, may be enrolled in an educational program provided by the Secretary under this subsection.

(b) FACTORS FOR SECRETARY TO CONSIDER.—(1) Factors to be considered by the Secretary of Defense in making a determination under subsection (a) shall include the following:

(A) The extent to which such dependents are eligible for free public education in the local area adjacent to the military installation.

(B) The extent to which the local educational agency is able to provide an appropriate educational program for such dependents.

(2) For purposes of paragraph (1)(B), an appropriate educational program is a program that, as determined by the Secretary, is comparable to a program of free public education provided for children by the following local educational agencies:

(A) In the case of a military installation located in a State (other than an installation referred to in subparagraph (B)), local educational agencies in the State that are similar to the local educational agency referred to in paragraph (1)(B).

(B) In the case of a military installation with boundaries contiguous to two or more States, local educational agencies in the contiguous States that are similar to the local educational agency referred to in paragraph (1)(B).

(C) In the case of a military installation located in a territory, commonwealth, or possession, the District of Columbia public schools, except that an educational program determined comparable under this subparagraph may be considered appropriate for the purposes of paragraph (1)(B) only if the program is conducted in the English language.

(c) ELIGIBILITY OF DEPENDENTS OF FEDERAL EMPLOYEES.—(1)(A) A dependent of a Federal employee residing in permanent living quarters on a military installation at any time during the school year may enroll in an educational program provided by the Secretary of Defense

pursuant to subsection (a) for dependents residing on such installation.

(B) A dependent of a United States Customs Service employee who resides in Puerto Rico, but not on a military installation, may enroll in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico in accordance with the same rules as apply to a dependent of a Federal employee residing in permanent living quarters on a military installation.

(2)(A) Except as provided in subparagraphs (B) and (C), a dependent of a Federal employee who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) and who is not residing on a military installation may be enrolled in the program for not more than five consecutive school years.

(B) At the discretion of the Secretary, a dependent referred to in subparagraph (A) may be enrolled in the program for more than five consecutive school years if the dependent is otherwise qualified for enrollment, space is available in the program, and the Secretary will be reimbursed for the educational services provided. Any such extension shall cover only one school year at a time.

(C) Subparagraph (A) shall not apply to an individual who is a dependent of a Federal employee in the excepted service (as defined in section 2103 of title 5) and who is enrolled in an educational program provided by the Secretary pursuant to subsection (a) in Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

(D) Subparagraph (A) shall not apply to a dependent covered by paragraph (1)(B). No requirement under this paragraph for reimbursement for educational services provided for the dependent shall apply with respect to the dependent, except that the Secretary may require the United States Customs Service to reimburse the Secretary for the cost of the educational services provided for the dependent.

(d) SCHOOL BOARDS.—(1) The Secretary of Defense shall provide for the establishment of a school board for Department of Defense elementary and secondary schools established at each military installation under this section. The Secretary may provide for the establishment of one school board for all such schools in the Commonwealth of Puerto Rico and one school board for all such schools in Guam instead of one school board for each military installation in those locations.

(2) The school board shall be composed of the number of members, not fewer than three, prescribed by the Secretary.

(3) The parents of the students attending the school shall elect the school board in accordance with procedures which the Secretary shall prescribe.

(4)(A) A school board elected for a school under this subsection may participate in the development and oversight of fiscal, personnel, and educational policies, procedures, and programs for the school, except that the Secretary may issue any directive that the Secretary considers necessary for the effective operation of the school or the entire school system.

(B) A directive referred to in subparagraph (A) shall, to the maximum extent practicable, be issued only after the Secretary consults with the appropriate school boards elected under this subsection. The Secretary shall establish a process by which a school board or school administrative officials may formally appeal the directive to the Secretary of Defense.

(5) Meetings conducted by the school board shall be open to the public, except as provided in paragraph (6).

(6) A school board need not comply with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), but may close meetings in accordance with such Act.

(7) The Secretary may provide for reimbursement of a school board member for expenses incurred by the member for travel, transportation, lodging, meals, program fees, activity fees, and other appropriate expenses that the Secretary determines are reasonable and necessary for the performance of school board duties by the member.

(e) ADMINISTRATION AND STAFF.—(1) The Secretary of Defense may enter into such arrangements as may be necessary to provide educational programs at the school.

(2) The Secretary may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

(A) establish positions for civilian employees in schools established under this section;

(B) appoint individuals to such positions; and

(C) fix the compensation of such individuals for service in such positions.

(3)(A) Except as provided in subparagraph (B), in fixing the compensation of employees appointed for a school pursuant to paragraph (2), the Secretary shall consider—

(i) the compensation of comparable employees of the local educational agency in the capital of the State where the military installation is located;

(ii) the compensation of comparable employees in the local educational agency that provides public education to students who reside adjacent to the military installation; and

(iii) the average compensation for similar positions in not more than three other local educational agencies in the State in which the military installation is located.

(B) In fixing the compensation of employees in schools established in the territories, commonwealths, and possessions pursuant to the authority of this section, the Secretary shall determine the level of compensation required to attract qualified employees. For employees in such schools, the Secretary, without regard to the provisions of title 5, may provide for the tenure, leave, hours of work, and other incidents of employment to be similar to that provided for comparable positions in the public schools of the District of Columbia. For purposes of the first sentence, a school established before the effective date of this section pursuant to authority similar to the authority in this section shall be considered to have been established pursuant to the authority of this section.

(4)(A) The Secretary may, without regard to the provisions of any law relating to the num-

ber, classification, or compensation of employees—

(i) transfer employees from schools established under this section to schools in the defense dependents' education system in order to provide the services referred to in subparagraph (B) to such system; and

(ii) transfer employees from such system to schools established under this section in order to provide such services to those schools.

(B) The services referred to in subparagraph (A) are the following:

(i) Administrative services.

(ii) Logistical services.

(iii) Personnel services.

(iv) Such other services as the Secretary considers appropriate.

(C) Transfers under this paragraph shall extend for such periods as the Secretary considers appropriate. The Secretary shall provide appropriate compensation for employees so transferred.

(D) The Secretary may provide that the transfer of an employee under this paragraph occur without reimbursement of the school or system concerned.

(E) In this paragraph, the term ''defense dependents' education system'' means the program established and operated under section 1402(a) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 921(a)).

(f) SUBSTANTIVE AND PROCEDURAL RIGHTS AND PROTECTIONS FOR CHILDREN.—(1) The Secretary shall provide the following substantive rights, protections, and procedural safeguards (including due process procedures) in the educational programs provided for under this section:

(A) In the case of children with disabilities aged 3 to 5, inclusive, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with disabilities aged 3 to 5, inclusive, under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.).

(B) In the case of infants and toddlers with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to infants and toddlers with disabilities under part H[1] of such Act (20 U.S.C. 1471 et seq.).

(C) In the case of all other children with disabilities, all substantive rights, protections, and procedural safeguards (including due process procedures) available to children with disabilities who are 3 to 5 years old under part B of such Act.

(2) Paragraph (1) may not be construed as diminishing for children with disabilities enrolled in day educational programs provided for under this section the extent of substantive rights, protections, and procedural safeguards that were available under section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)) to children with disabilities as of October 7, 1991.

(3) In this subsection:

(A) The term ''children with disabilities'' has the meaning given the term in section 602(a)(1)[1] of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)).

(B) The term ''children with disabilities aged 3 to 5, inclusive'' means such term as used in such Act (20 U.S.C. 1400 et seq.).

(C) The term ''infants and toddlers with disabilities'' has the meaning given the term in section 672(1)[1] of such Act (20 U.S.C. 1472(1)).

(g) REIMBURSEMENT.—When the Secretary of Defense provides educational services under this section to an individual who is a dependent of an employee of a Federal agency outside the Department of Defense, the head of the other Federal agency shall, upon request of the Secretary of Defense, reimburse the Secretary for those services at rates routinely prescribed by the Secretary for those services. Any payments received by the Secretary under this subsection shall be credited to the account designated by the Secretary for the operation of educational programs under this section.

(h) CONTINUATION OF ENROLLMENT DESPITE CHANGE IN STATUS.—(1) The Secretary of Defense shall permit a dependent of a member of the armed forces or a dependent of a Federal employee to continue enrollment in an educational program provided by the Secretary pursuant to subsection (a) for the remainder of a school year notwithstanding a change during such school year in the status of the member or Federal employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program.

(2) The Secretary may, for good cause, authorize a dependent of a member of the armed forces or a dependent of a Federal employee to continue enrollment in an educational program provided by the Secretary pursuant to subsection (a) notwithstanding a change in the status of the member or employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program. The enrollment may continue for as long as the Secretary considers appropriate.

(3) Paragraphs (1) and (2) do not limit the authority of the Secretary to remove a dependent from enrollment in an educational program provided by the Secretary pursuant to subsection (a) at any time for good cause determined by the Secretary.

(i) AMERICAN RED CROSS EMPLOYEE DEPENDENTS IN PUERTO RICO.—(1) The Secretary may authorize the dependent of an American Red Cross employee described in paragraph (2) to enroll in an education program provided by the Secretary pursuant to subsection (a) in Puerto Rico if the American Red Cross agrees to reimburse the Secretary for the educational services so provided.

(2) An employee referred to in paragraph (1) is an American Red Cross employee who—

(A) resides in Puerto Rico; and

(B) performs, on a full-time basis, emergency services on behalf of members of the armed forces.

(3) In determining the dependency status of any person for the purposes of paragraph (1), the Secretary shall apply the same definitions as apply to the determination of such status with respect to Federal employees in the administration of this section.

(4) Subsection (g) shall apply with respect to determining the reimbursement rates for edu-

[1] See References in Text note below.

cational services provided pursuant to this subsection. Amounts received as reimbursement for such educational services shall be treated in the same manner as amounts received under subsection (g).

(Added Pub. L. 103–337, div. A, title III, §351(a), Oct. 5, 1994, 108 Stat. 2727; amended Pub. L. 104–106, div. A, title X, §1075, Feb. 10, 1996, 110 Stat. 450; Pub. L. 104–201, div. A, title XVI, §1608, Sept. 23, 1996, 110 Stat. 2737; Pub. L. 105–261, div. A, title III, §371(a)–(c)(2), Oct. 17, 1998, 112 Stat. 1988, 1989; Pub. L. 106–65, div. A, title III, §§352, 353, Oct. 5, 1999, 113 Stat. 572; Pub. L. 106–398, §1 [[div. A], title III, §361], Oct. 30, 2000, 114 Stat. 1654, 1654A–76.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(6), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The effective date of this section, referred to in subsec. (e)(3)(B), is the date of enactment of Pub. L. 103–337 which was approved Oct. 5, 1994.

The Individuals with Disabilities Education Act, referred to in subsec. (f)(1), (3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§1400 et seq.) of Title 20, Education. Part B of the Act is classified generally to subchapter II (§1411 et seq.) of chapter 33 of Title 20. Section 602 of the Act was classified to section 1401 of Title 20, and was omitted in the general amendment of subchapter I of chapter 33 of Title 20 by Pub. L. 105–17, title I, §101, June 4, 1997, 111 Stat. 37. Pub. L. 105–17 enacted a new section 602, which is classified to section 1401 of Title 20, and contains provisions defining ''child with a disability'' and ''infant or toddler with a disability''. Part H of the Act was classified generally to subchapter VIII (§1471 et seq.) of chapter 33 of Title 20 prior to repeal by Pub. L. 105–17, title II, §203(b), June 4, 1997, 111 Stat. 157, eff. July 1, 1998. Section 672 of the Act was classified to section 1472 of Title 20 prior to repeal by Pub. L. 105–17, title II, §203(b), June 4, 1997, 111 Stat. 157. Pub. L. 105–17 enacted a new section 672, which is classified to section 1472 of Title 20, and which no longer contains definitions. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Section 6(a) of Public Law 81–874 (20 U.S.C. 241(a)), referred to in subsec. (f)(2), was repealed by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965.

AMENDMENTS

2000—Subsec. (i). Pub. L. 106–398 added subsec. (i).

1999—Subsec. (c)(3). Pub. L. 106–65, §353(1), struck out par. (3) which read as follows: ''A dependent of a Federal employee may continue enrollment in a program under this subsection for the remainder of a school year notwithstanding a change during such school year in the status of the Federal employee that, except for this paragraph, would otherwise terminate the eligibility of the dependent to be enrolled in the program. The preceding sentence does not limit the authority of the Secretary to remove the dependent from enrollment in the program at any time for good cause determined by the Secretary.''

Subsec. (d)(1). Pub. L. 106–65, §352, inserted at end ''The Secretary may provide for the establishment of one school board for all such schools in the Commonwealth of Puerto Rico and one school board for all such schools in Guam instead of one school board for each military installation in those locations.''

Subsec. (h). Pub. L. 106–65, §353(2), added subsec. (h).

1998—Subsec. (a). Pub. L. 105–261, §371(a)(1), (2), designated first sentence as par. (1) and second sentence as par. (2).

Subsec. (a)(2). Pub. L. 105–261, §371(a)(3), inserted at end ''If a member of the armed forces is assigned to a remote location or is assigned to an unaccompanied tour of duty, a dependent of the member who resides, on or off a military installation, in a territory, commonwealth, or possession of the United States, as authorized by the member's orders, may be enrolled in an educational program provided by the Secretary under this subsection.''

Subsec. (c)(1). Pub. L. 105–261, §371(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(2)(B). Pub. L. 105–261, §371(b), added subpar. (B) and struck out former subpar. (B) which read as follows: ''A dependent referred to in subparagraph (A) may be enrolled in the program for more than five consecutive school years if the Secretary determines that, in the interest of the dependent's educational well-being, there is good cause to extend the enrollment for more than the five-year period described in such subparagraph. Any such extension may be made for only one school year at a time.''

Subsec. (c)(2)(D). Pub. L. 105–261, §371(c)(2), added subpar. (D).

1996—Subsec. (d)(7). Pub. L. 104–201 added par. (7).

Subsec. (e)(4). Pub. L. 104–106 added par. (4).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, §371(c)(3), Oct. 17, 1998, 112 Stat. 1989, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to academic years beginning on or after the date of the enactment of this Act [Oct. 17, 1998].''

SAVINGS PROVISION

Section 351(c) of Pub. L. 103–337 provided that: ''Nothing in section 2164 of title 10, United States Code, as added by subsection (a), shall be construed as affecting the rights in existence on the date of the enactment of this Act [Oct. 5, 1994] of an employee of any school established under such section (or any other provision of law enacted before the date of the enactment of this Act that established a similar school) to negotiate or bargain collectively with the Secretary with respect to wages, hours, and other terms and conditions of employment.''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2605 of this title.

§2165. National Defense University: component institutions

(a) IN GENERAL.—There is a National Defense University in the Department of Defense.

(b) COMPONENT INSTITUTIONS.—The National Defense University consists of the following institutions:

(1) The National War College.

(2) The Industrial College of the Armed Forces.

(3) The Joint Forces Staff College.

(4) The Institute for National Strategic Studies.

(5) The Information Resources Management College.

(6) The Center for Hemispheric Defense Studies.

(7) Any other educational institution of the Department of Defense that the Secretary considers appropriate and designates as an institution of the university.

(c) SOURCE OF FUNDS FOR CENTER FOR HEMISPHERIC DEFENSE STUDIES.—Funds available for the payment of personnel expenses under the Latin American cooperation authority set forth in section 1050 of this title are also available for the costs of the operation of the Center for Hemispheric Defense Studies.

(d) SOURCE OF FUNDS FOR PROFESSIONAL DEVELOPMENT EDUCATION OPERATIONS.—Funding for the professional development education operations of the National Defense University shall be provided from funds made available to the Secretary of Defense from the annual appropriation ''Operation and Maintenance, Defense-wide''.

(Added and amended Pub. L. 105–85, div. A, title IX, §§ 921(a)(1), 922(a), Nov. 18, 1997, 111 Stat. 1862, 1863; Pub. L. 105–261, div. A, title IX, §§ 904, 905(a), Oct. 17, 1998, 112 Stat. 2093; Pub. L. 106–398, § 1 [[div. A], title IX, § 913(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230; Pub. L. 107–107, div. A, title V, § 527(c)(1), Dec. 28, 2001, 115 Stat. 1102.)

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

2000—Subsec. (b)(3). Pub. L. 106–398 substituted ''Joint Forces Staff College'' for ''Armed Forces Staff College''.

1998—Subsec. (b)(7). Pub. L. 105–261, § 904, added par. (7).

Subsec. (c). Pub. L. 105–261, § 905(a), added subsec. (c).

1997—Subsec. (b)(6). Pub. L. 105–85, § 922(a), added par. (6).

CHANGE OF NAME

Pub. L. 106–398, § 1 [[div. A], title IX, § 913(a), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that:

''(a) CHANGE IN NAME.—The Armed Forces Staff College of the Department of Defense is hereby renamed the 'Joint Forces Staff College'.

''(c) REFERENCES.—Any reference to the Armed Forces Staff College in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Joint Forces Staff College.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 527(c)(2), Dec. 28, 2001, 115 Stat. 1102, provided that: ''Subsection (d) of section 2165 of title 10, United States Code, as added by paragraph (1), shall become effective beginning with fiscal year 2003.''

CENTER FOR THE STUDY OF CHINESE MILITARY AFFAIRS

Pub. L. 106–65, div. A, title IX, § 914, Oct. 5, 1999, 113 Stat. 721, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Center for the Study of Chinese Military Affairs as part of the National Defense University. The Center shall be organized under the Institute for National Strategic Studies of the University.

''(b) QUALIFICATIONS OF DIRECTOR.—The Director of the Center shall be an individual who is a distinguished scholar of proven academic, management, and leadership credentials with a superior record of achievement and publication regarding Chinese political, strategic, and military affairs.

''(c) MISSION.—The mission of the Center is to study and inform policymakers in the Department of Defense, Congress, and throughout the Government regarding the national goals and strategic posture of the People's Republic of China and the ability of that nation to develop, field, and deploy an effective military instrument in support of its national strategic objectives. The Center shall accomplish that mission by a variety of means intended to widely disseminate the research findings of the Center.

''(d) STARTUP OF CENTER.—The Secretary of Defense shall establish the Center for the Study of Chinese Military Affairs not later than March 1, 2000. The first Director of the Center shall be appointed not later than June 1, 2000. The Center should be fully operational not later than June 1, 2001.

''(e) IMPLEMENTATION REPORT.—(1) Not later than January 1, 2001, the President of the National Defense University shall submit to the Secretary of Defense a report setting forth the President's organizational plan for the Center for the Study of Chinese Military Affairs, the proposed budget for the Center, and the timetable for initial and full operations of the Center. The President of the National Defense University shall prepare that report in consultation with the Director of the Center and the Director of the Institute for National Strategic Studies of the University.

''(2) The Secretary of Defense shall transmit the report under paragraph (1), together with whatever comments the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than February 1, 2001.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2167, 2612 of this title.

§ 2166. Western Hemisphere Institute for Security Cooperation

(a) ESTABLISHMENT AND ADMINISTRATION.—(1) The Secretary of Defense may operate an education and training facility for the purpose set forth in subsection (b). The facility shall be known as the ''Western Hemisphere Institute for Security Cooperation''.

(2) The Secretary may designate the Secretary of a military department as the Department of Defense executive agent for carrying out the responsibilities of the Secretary of Defense under this section.

(b) PURPOSE.—The purpose of the Institute is to provide professional education and training to eligible personnel of nations of the Western Hemisphere within the context of the democratic principles set forth in the Charter of the Organization of American States (such charter being a treaty to which the United States is a party), while fostering mutual knowledge, transparency, confidence, and cooperation among the participating nations and promoting democratic values, respect for human rights, and knowledge and understanding of United States customs and traditions.

(c) ELIGIBLE PERSONNEL.—(1) Subject to paragraph (2), personnel of nations of the Western Hemisphere are eligible for education and training at the Institute as follows:

(A) Military personnel.

(B) Law enforcement personnel.

(C) Civilian personnel.

(2) The Secretary of State shall be consulted in the selection of foreign personnel for education or training at the Institute.

(d) CURRICULUM.—(1) The curriculum of the Institute shall include mandatory instruction for each student, for at least 8 hours, on human rights, the rule of law, due process, civilian con-

trol of the military, and the role of the military in a democratic society.

(2) The curriculum may include instruction and other educational and training activities on the following:

(A) Leadership development.

(B) Counterdrug operations.

(C) Peace support operations.

(D) Disaster relief.

(E) Any other matter that the Secretary determines appropriate.

(e) BOARD OF VISITORS.—(1) There shall be a Board of Visitors for the Institute. The Board shall be composed of the following:

(A) The chairman and ranking minority member of the Committee on Armed Services of the Senate, or a designee of either of them.

(B) The chairman and ranking minority member of the Committee on Armed Services of the House of Representatives, or a designee of either of them.

(C) Six persons designated by the Secretary of Defense including, to the extent practicable, persons from academia and the religious and human rights communities.

(D) One person designated by the Secretary of State.

(E) The senior military officer responsible for training and doctrine for the Army or, if the Secretary of the Navy or the Secretary of the Air Force is designated as the executive agent of the Secretary of Defense under subsection (a)(2), the senior military officer responsible for training and doctrine for the Navy or Marine Corps or for the Air Force, respectively, or a designee of the senior military officer concerned.

(F) The commander of the unified combatant command having geographic responsibility for Latin America, or a designee of that officer.

(2) A vacancy in a position on the Board shall be filled in the same manner as the position was originally filled.

(3) The Board shall meet at least once each year.

(4)(A) The Board shall inquire into the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Institute, other matters relating to the Institute that the Board decides to consider, and any other matter that the Secretary of Defense determines appropriate.

(B) The Board shall review the curriculum of the Institute to determine whether—

(i) the curriculum complies with applicable United States laws and regulations;

(ii) the curriculum is consistent with United States policy goals toward Latin America and the Caribbean;

(iii) the curriculum adheres to current United States doctrine; and

(iv) the instruction under the curriculum appropriately emphasizes the matters specified in subsection (d)(1).

(5) Not later than 60 days after its annual meeting, the Board shall submit to the Secretary of Defense a written report of its activities and of its views and recommendations pertaining to the Institute.

(6) Members of the Board shall not be compensated by reason of service on the Board.

(7) With the approval of the Secretary of Defense, the Board may accept and use the services of voluntary and uncompensated advisers appropriate to the duties of the Board without regard to section 1342 of title 31.

(8) Members of the Board and advisers whose services are accepted under paragraph (7) shall be allowed travel and transportation expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of services for the Board. Allowances under this paragraph shall be computed—

(A) in the case of members of the Board who are officers or employees of the United States, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5; and

(B) in the case of other members of the Board and advisers, as authorized under section 5703 of title 5 for employees serving without pay.

(9) The Federal Advisory Committee Act (5 U.S.C. App.), other than section 14 (relating to termination after two years), shall apply to the Board.

(f) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) The Secretary of Defense may, on behalf of the Institute, accept foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Institute.

(2) Funds received by the Secretary under paragraph (1) shall be credited to appropriations available for the Department of Defense for the Institute. Funds so credited shall be merged with the appropriations to which credited and shall be available for the Institute for the same purposes and same period as the appropriations with which merged.

(3) The Secretary of Defense shall notify Congress if the total amount of money accepted under paragraph (1) exceeds $1,000,000 in any fiscal year. Any such notice shall list each of the contributors of such money and the amount of each contribution in such fiscal year.

(4) For the purposes of this subsection, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.

(g) FIXED COSTS.—The fixed costs of operating and maintaining the Institute for a fiscal year may be paid from—

(1) any funds available for that fiscal year for operation and maintenance for the executive agent designated under subsection (a)(2); or

(2) if no executive agent is designated under subsection (a)(2), any funds available for that fiscal year for the Department of Defense for operation and maintenance for Defense-wide activities.

(h) TUITION.—Tuition fees charged for persons who attend the Institute may not include the fixed costs of operating and maintaining the Institute.

(i) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall sub-

mit to Congress a detailed report on the activities of the Institute during the preceding year. The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report. The report shall be prepared in consultation with the Secretary of State.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §911(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–226; amended Pub. L. 107–107, div. A, title X, §1048(a)(16), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–314, div. A, title IX, §932, Dec. 2, 2002, 116 Stat. 2625.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (e)(9), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsecs. (f) to (h). Pub. L. 107–314, §932(a), added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Subsec. (i). Pub. L. 107–314, §932(a)(1), (b), redesignated subsec. (h) as (i) and inserted after first sentence ''The report shall include a copy of the latest report of the Board of Visitors received by the Secretary under subsection (e)(5), together with any comments of the Secretary on the Board's report.''

2001—Subsec. (e)(9). Pub. L. 107–107 substituted ''(5 U.S.C. App.)'' for ''(5 U.S.C. App. 2)''.

§ 2167. National Defense University: admission of private sector civilians to professional military education program

(a) AUTHORITY FOR ADMISSION.—The Secretary of Defense may permit eligible private sector employees who work in organizations relevant to national security to receive instruction at the National Defense University in accordance with this section. No more than the equivalent of 10 full-time student positions may be filled at any one time by private sector employees enrolled under this section. Upon successful completion of the course of instruction in which enrolled, any such private sector employee may be awarded an appropriate diploma or degree under section 2165 of this title.

(b) ELIGIBLE PRIVATE SECTOR EMPLOYEES.—For purposes of this section, an eligible private sector employee is an individual employed by a private firm that is engaged in providing to the Department of Defense or other Government departments or agencies significant and substantial defense-related systems, products, or services or whose work product is relevant to national security policy or strategy. A private sector employee admitted for instruction at the National Defense University remains eligible for such instruction only so long as that person remains employed by the same firm.

(c) ANNUAL CERTIFICATION BY SECRETARY OF DEFENSE.—Private sector employees may receive instruction at the National Defense University during any academic year only if, before the start of that academic year, the Secretary of Defense determines, and certifies to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, that providing instruction to private sector employees under this section during that year will further national security interests of the United States.

(d) PROGRAM REQUIREMENTS.—The Secretary of Defense shall ensure that—

(1) the curriculum for the professional military education program in which private sector employees may be enrolled under this section is not readily available through other schools and concentrates on national security relevant issues; and

(2) the course offerings at the National Defense University continue to be determined solely by the needs of the Department of Defense.

(e) TUITION.—The President of the National Defense University shall charge students enrolled under this section a rate—

(1) that is at least the rate charged for employees of the United States outside the Department of Defense, less infrastructure costs, and

(2) that considers the value to the school and course of the private sector student.

(f) STANDARDS OF CONDUCT.—While receiving instruction at the National Defense University, students enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the university.

(g) USE OF FUNDS.—Amounts received by the National Defense University for instruction of students enrolled under this section shall be retained by the university to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the university.

(Added Pub. L. 107–107, div. A, title V, §528(a)(1), Dec. 28, 2001, 115 Stat. 1102.)

EFFECTIVE DATE

Pub. L. 107–107, div. A, title V, §528(b), Dec. 28, 2001, 115 Stat. 1103, provided that: ''Section 2167 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 2002.''

§ 2168. Defense Language Institute Foreign Language Center: degree of Associate of Arts in foreign language

(a) Subject to subsection (b), the Commandant of the Defense Language Institute may confer an Associate of Arts degree in a foreign language upon any graduate of the Foreign Language Center of the Institute who fulfills the requirements for that degree.

(b) A degree may be conferred upon a student under this section only if the Provost of the Center certifies to the Commandant that the student has satisfied all the requirements prescribed for the degree.

(c) The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 107–107, div. A, title V, §531(a), Dec. 28, 2001, 115 Stat. 1104.)

CHAPTER 109—EDUCATIONAL LOAN REPAYMENT PROGRAMS

Sec.
2171. Education loan repayment program: enlisted members on active duty in specified military specialties.
[2172. Renumbered.]
2173. Education loan repayment program: commissioned officers in specified health professions.
2174. Interest payment program: members on active duty.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title VI, §651(a)(2), Dec. 2, 2002, 116 Stat. 2579, added item 2174.

1997—Pub. L. 105–85, div. A, title VI, §651(b), Nov. 18, 1997, 111 Stat. 1803, added item 2173.

1994—Pub. L. 103–337, div. A, title XVI, §1671(b)(13), Oct. 5, 1994, 108 Stat. 3014, added item 2171 and struck out former items 2171 ''General educational loan repayment program'' and 2172 ''Education loans for certain health professionals who serve in the Selected Reserve''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 section 3033.

§2171. Education loan repayment program: enlisted members on active duty in specified military specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed on active duty as an enlisted member in a military specialty specified by the Secretary.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 33⅓ percent or $1,500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of such loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giving appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 16301 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 16301(a) of this title.

(Added Pub. L. 99–145, title VI, §671(a)(1), Nov. 8, 1985, 99 Stat. 661; amended Pub. L. 103–337, div. A, title XVI, §1663(e), Oct. 5, 1994, 108 Stat. 3009; Pub. L. 104–106, div. A, title X, §1079(a), Feb. 10, 1996, 110 Stat. 451.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B, D, and E of title IV of the Higher Education Act of 1965 are classified to parts B (§1071 et seq.), C (§1087a et seq.), and D (§1087aa et seq.) of subchapter IV of chapter 28 of Title 20, Education, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 struck out ''or'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

1994—Pub. L. 103–337, §1663(e)(6), substituted ''Education loan repayment program: enlisted members on active duty in specified military specialties'' for ''General educational loan repayment program'' as section catchline.

Subsec. (a)(1)(B). Pub. L. 103–337, §1663(e)(1), struck out ''or'' after ''(B)''.

Subsec. (a)(2). Pub. L. 103–337, §1663(e)(2), substituted ''case of any person for—

''(A) service performed—

''(i) as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force; and

''(ii) in a reserve component and military specialty specified by the Secretary of Defense; or

''(B) service performed''

and struck out at end ''In the case of service described in clause (A) of the first sentence of this paragraph, the Secretary may repay a loan described in paragraph (1) only if the person to whom the loan was made performed such service after the loan was made.''

Subsec. (b). Pub. L. 103–337, §1663(e)(3), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The portion or amount of a loan that may be repaid under subsection (a) is—

''(1) 15 percent or $500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(A); or

''(2) 33⅓ percent or $1,500, whichever is greater, for each year of service, in the case of service described in subsection (a)(2)(B).''

Subsec. (e). Pub. L. 103–337, §1663(e)(4), substituted ''A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 16301 of this title (as described in subsection (a)(2) of that section)'' for ''Any individual who transfers from service described in clause (A) or (B) of subsection (a)(2) to service described in the other clause of such subsection''.

Subsec. (f). Pub. L. 103–337, §1663(e)(5), inserted ''and section 16301 of this title'' after ''this section'' and ''and section 16301(a) of this title'' after ''subsection (a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section 671(b)(1) of Pub. L. 99–145 provided that: ''The authority provided under section 2171 of title 10, United States Code, as added by subsection (a), shall apply only—

''(A) in the case of persons who enlist or reenlist in the Selected Reserve of the Ready Reserve of an Armed Force or enlist or reenlist for service on active duty after September 30, 1980;

''(B) with respect to service performed after that date; and

''(C) with respect to loans made after October 1, 1975.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16301 of this title.

[§ 2172. Renumbered § 16302]

§ 2173. Education loan repayment program: commissioned officers in specified health professions

(a) AUTHORITY TO REPAY EDUCATION LOANS.—For the purpose of maintaining adequate numbers of commissioned officers of the armed forces on active duty who are qualified in the various health professions, the Secretary of a military department may repay, in the case of a person described in subsection (b), a loan that—

(1) was used by the person to finance education regarding a health profession; and

(2) was obtained from a governmental entity, private financial institution, school, or other authorized entity.

(b) ELIGIBLE PERSONS.—To be eligible to obtain a loan repayment under this section, a person must—

(1) satisfy one of the requirements specified in subsection (c);

(2) be fully qualified for, or hold, an appointment as a commissioned officer in one of the health professions; and

(3) sign a written agreement to serve on active duty, or, if on active duty, to remain on active duty for a period in addition to any other incurred active duty obligation.

(c) ACADEMIC AND PROFESSIONAL REQUIREMENTS.—One of the following academic requirements must be satisfied for purposes of determining the eligibility of a person for a loan repayment under this section:

(1) The person is fully qualified in a health care profession that the Secretary of the military department concerned has determined to be necessary to meet identified skill shortages.

(2) The person is enrolled as a full-time student in the final year of a course of study at an accredited educational institution leading to a degree in a health profession other than medicine or osteopathic medicine.

(3) The person is enrolled in the final year of an approved graduate program leading to specialty qualification in medicine, dentistry, osteopathic medicine, or other health profession.

(d) CERTAIN PERSONS INELIGIBLE.—Students of the Uniformed Services University of the Health Sciences established under section 2112 of this title are not eligible for the repayment of an education loan under this section.

(e) LOAN REPAYMENTS.—(1) Subject to the limits established by paragraph (2), a loan repayment under this section may consist of payment of the principal, interest, and related expenses of a loan obtained by a person described in subsection (b) for—

(A) all educational expenses, comparable to all educational expenses recognized under section 2127(a) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program; and

(B) reasonable living expenses, not to exceed expenses comparable to the stipend paid under section 2121(d) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(2) For each year of obligated service that a person agrees to serve in an agreement described in subsection (b)(3), the Secretary of the military department concerned may pay not more than $22,000 on behalf of the person. This maximum amount shall be increased annually by the Secretary of Defense effective October 1 of each year by the percentage equal to the percent increase in the average annual cost of educational expenses and stipend costs of a single scholarship under the Armed Forces Health Professions Scholarship and Financial Assistance program.

(f) ACTIVE DUTY SERVICE OBLIGATION.—(1) A person entering into an agreement described in subsection (b)(3) incurs an active duty service obligation. The length of this obligation shall be determined under regulations prescribed by the Secretary of Defense, but those regulations may not provide for a period of obligation of less than one year for each maximum annual amount, or portion thereof, paid on behalf of the person for qualified loans.

(2) For persons on active duty before entering into the agreement, the active duty service obligation shall be served consecutively to any other obligation incurred under the agreement.

(g) EFFECT OF FAILURE TO COMPLETE OBLIGATION.—A commissioned officer who is relieved of the officer's active duty obligation under this section before the completion of that obligation may be given, with or without the consent of the officer, any alternative obligation comparable to any of the alternative obligations authorized by section 2123(e) of this title for participants in the Armed Forces Health Professions Scholarship and Financial Assistance program.

(h) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section, including standards for qualified loans and authorized payees and other terms and conditions for the making of loan repayments.

(Added Pub. L. 105–85, div. A, title VI, § 651(a), Nov. 18, 1997, 111 Stat. 1802; amended Pub. L. 107–314, div. A, title V, § 573, Dec. 2, 2002, 116 Stat. 2558.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314, § 573(a), substituted ''Students'' for ''Participants of the Armed Forces Health Professions Scholarship and Financial Assistance program under subchapter I of chapter 105 of this title and students''.

Subsec. (e)(2). Pub. L. 107–314, § 573(b), struck out at end ''The total amount that may be repaid on behalf of any person may not exceed an amount determined on the basis of a four-year active duty service obligation.''

§2174. Interest payment program: members on active duty

(a) AUTHORITY.—(1) The Secretary concerned may pay in accordance with this section the interest and any special allowances that accrue on one or more student loans of an eligible member of the armed forces.

(2) The Secretary of a military department may exercise the authority under paragraph (1) only if approved by the Secretary of Defense and subject to such requirements, conditions, and restrictions as the Secretary of Defense may prescribe.

(b) ELIGIBLE MEMBERS.—A member of the armed forces is eligible for the benefit under subsection (a) while the member—

(1) is serving on active duty in fulfillment of the member's first enlistment in the armed forces or, in the case of an officer, is serving on active duty and has not completed more than three years of service on active duty;

(2) is the debtor on one or more unpaid loans described in subsection (c); and

(3) is not in default on any such loan.

(c) STUDENT LOANS.—The authority to make payments under subsection (a) may be exercised with respect to the following loans:

(1) A loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.).

(2) A loan made under part D of such title (20 U.S.C. 1087a et seq.).

(3) A loan made under part E of such title (20 U.S.C. 1087aa et seq.).

(d) MAXIMUM BENEFIT.—The months for which interest and any special allowance may be paid on behalf of a member of the armed forces under this section are any 36 consecutive months during which the member is eligible under subsection (b).

(e) FUNDS FOR PAYMENTS.—Appropriations available for the pay and allowances of military personnel shall be available for payments under this section.

(f) COORDINATION.—(1) The Secretary of Defense and, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of the Department in which the Coast Guard is operating shall consult with the Secretary of Education regarding the administration of the authority under this section.

(2) The Secretary concerned shall transfer to the Secretary of Education the funds necessary—

(A) to pay interest and special allowances on student loans under this section (in accordance with sections 428(*o*), 455(*l*), and 464(j) of the Higher Education Act of 1965 (20 U.S.C. 1078(*o*), 1087e(*l*), and 1087dd(j)); and

(B) to reimburse the Secretary of Education for any reasonable administrative costs incurred by the Secretary in coordinating the program under this section with the administration of the student loan programs under parts B, D, and E of title IV of the Higher Education Act of 1965.

(g) SPECIAL ALLOWANCE DEFINED.—In this section, the term ''special allowance'' means a special allowance that is payable under section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087–1).

(Added Pub. L. 107–314, div. A, title VI, §651(a)(1), Dec. 2, 2002, 116 Stat. 2578.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (c) and (f)(2)(B), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B, D, and E of title IV of the Act are classified to parts B (§1071 et seq.), C (§1087a et seq.), and D (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title VI, §651(e), Dec. 2, 2002, 116 Stat. 2581, provided that: ''The amendments made by this section [enacting this section and amending sections 1078, 1087e, and 1087dd of Title 20, Education] shall apply with respect to interest, and any special allowance under section 438 of the Higher Education Act of 1965 [20 U.S.C. 1087–1], that accrue for months beginning on or after October 1, 2003, on student loans described in subsection (c) of section 2174 of title 10, United States Code (as added by subsection (a)), that were made before, on, or after such date to members of the Armed Forces who are on active duty (as defined in section 101(d) of title 10, United States Code) on or after that date.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 sections 1078, 1087e, 1087dd.

CHAPTER 110—EDUCATIONAL ASSISTANCE FOR MEMBERS HELD AS CAPTIVES AND THEIR DEPENDENTS

Sec.
2181. Definitions.
2182. Educational assistance: dependents of captives.
2183. Educational assistance: former captives.
2184. Termination of assistance.
2185. Programs to be consistent with programs administered by the Department of Veterans Affairs.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, §1484(i)(5), Nov. 5, 1990, 104 Stat. 1718, inserted ''administered by'' after ''programs'' in item 2185.

1989—Pub. L. 101–189, div. A, title XVI, §1621(a)(7)(B), Nov. 29, 1989, 103 Stat. 1603, substituted ''programs the Department of Veterans Affairs'' for ''programs administered by the Veterans' Administration'' in item 2185.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 37 section 1013.

§2181. Definitions

In this chapter:

(1) The terms ''captive status'' and ''former captive'' have the meanings given those terms in section 559 of title 37.

(2) The term ''dependent'' has the meaning given that term in section 551 of that title.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887, and Pub. L. 100–26, § 7(k)(6), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Pub. L. 100–26, substituted ''The terms 'captive'' for '' 'Captive' '' in par. (1) and ''The term 'dependent'' for '' 'Dependent' '' in par. (2).

EFFECTIVE DATE

Section 806(d)(3) of Pub. L. 99–399 provided that: ''Chapter 110 of title 10, United States Code, as added by paragraph (1), shall apply with respect to persons whose captive status begins after January 21, 1981.''

§ 2182. Educational assistance: dependents of captives

(a) Under regulations prescribed by the President, the Secretary concerned shall pay (by advancement or reimbursement) a dependent of a person who is in a captive status for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;
(2) tuition;
(3) fees;
(4) supplies;
(5) books;
(6) equipment; and
(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a dependent of a person who is in a captive status for education or training that occurs—

(1) after that person is in a captive status for not less than 90 days; and
(2) on or before—
(A) the end of any semester or quarter (as appropriate) that begins before the date on which the captive status of that person terminates;
(B) the earlier of the end of any course that began before such date or the end of the 16-week period following that date if the educational or training institution is not operated on a semester or quarter system; or
(C) a date specified by the Secretary concerned in order to respond to special circumstances.

(c) If a person in a captive status or a former captive dies and the death is incident to the captivity, payments shall be available under this section for a dependent of that person for education or training that occurs after the date of the death of that person.

(d) The provisions of this section shall not apply to any dependent who is eligible for assistance under chapter 35 of title 38 or similar assistance under any other provision of law.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 887.)

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 3 of Ex. Ord. No. 12598, June 17, 1987, 52 F.R. 23421, set out as a note under section 5569 of Title 5, Government Organization and Employees.

§ 2183. Educational assistance: former captives

(a) In order to respond to special circumstances, the Secretary concerned may pay (by advancement or reimbursement) a person who is a former captive for expenses incurred, while attending an educational or training institution, for—

(1) subsistence;
(2) tuition;
(3) fees;
(4) supplies;
(5) books;
(6) equipment; and
(7) other educational expenses.

(b) Except as provided in section 2184 of this title, payments shall be available under this section for a person who is a former captive for education or training that occurs—

(1) after the termination of the status of that person as a captive; and
(2) on or before—
(A) the end of any semester or quarter (as appropriate) that begins before the end of the 10-year period beginning on the date on which the status of that person as a captive terminates; or
(B) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course that began before such date or the end of the 16-week period following that date.

(c) Payments shall be available under this section only to the extent that such payments are not otherwise authorized by law.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888.)

§ 2184. Termination of assistance

Assistance under this chapter—

(1) shall be discontinued for any person whose conduct or progress is unsatisfactory under standards consistent with those established under section 3524 of title 38; and
(2) may not be provided for any person for more than 45 months (or the equivalent in other than full-time education or training).

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended Pub. L. 103–337, div. A, title X, § 1070(e)(7), Oct. 5, 1994, 108 Stat. 2859.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–337 substituted ''3524'' for ''1724''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2182, 2183 of this title.

§ 2185. Programs to be consistent with programs administered by the Department of Veterans Affairs

Regulations prescribed to carry out this chapter shall provide that the programs under this chapter shall be consistent with the educational assistance programs under chapters 35 and 36 of title 38.

(Added Pub. L. 99–399, title VIII, § 806(d)(1), Aug. 27, 1986, 100 Stat. 888; amended Pub. L. 101–189,

div. A, title XVI, § 1621(a)(7)(A), Nov. 29, 1989, 103 Stat. 1603.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''the Department of Veterans Affairs'' for ''the Veterans' Administration'' in section catchline.

CHAPTER 111—SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Sec.
2191. Graduate fellowships.
2192. Improvement of education in technical fields: general authority regarding education in science, mathematics, and engineering.
2193. Improvement of education in technical fields: grants for higher education in science and mathematics.
2193a. Improvement of education in technical fields: general authority for support of elementary and secondary education in science and mathematics.
2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, mathematics, and technology.
2194. Education partnerships.
2195. Department of Defense cooperative education programs.
2196. Manufacturing engineering education: grant program.
2197. Manufacturing experts in the classroom.
2198. Management training program in Japanese language and culture.
2199. Definitions.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 580(d)(3), Oct. 5, 1999, 113 Stat. 633, added items 2192, 2193, 2193a, and 2193b and struck out former items 2192 ''Science, mathematics, and engineering education'' and 2193 ''Science and mathematics education improvement program''.

1992—Pub. L. 102–484, div. D, title XLII, § 4238(b)(2), Oct. 23, 1992, 106 Stat. 2694, substituted ''experts'' for ''managers'' in item 2197.

1991—Pub. L. 102–190, div. A, title VIII, §§ 825(a)(2), 828(b), Dec. 5, 1991, 105 Stat. 1442, 1444, struck out item 2196 ''Definition'' and added items 2196 to 2199.

1990—Pub. L. 101–510, div. A, title II, § 247(a)(2)(A), (C), Nov. 5, 1990, 104 Stat. 1523, substituted ''SUPPORT OF SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION'' for ''NATIONAL DEFENSE SCIENCE AND ENGINEERING GRADUATE FELLOWSHIPS'' in chapter heading and added items 2192 to 2196.

§ 2191. Graduate fellowships

(a) The Secretary of Defense shall prescribe regulations providing for the award of fellowships to citizens and nationals of the United States who agree to pursue graduate degrees in science, engineering, or other fields of study designated by the Secretary to be of priority interest to the Department of Defense.

(b) A fellowship awarded pursuant to regulations prescribed under subsection (a) shall be known as a ''National Defense Science and Engineering Graduate Fellowship''.

(c) National Defense Science and Engineering Graduate Fellowships shall be awarded solely on the basis of academic ability. The Secretary shall take all appropriate actions to encourage applications for such fellowships of persons who are members of groups (including minority groups, women, and disabled persons) which historically have been underrepresented in science and technology fields. Recipients shall be selected on the basis of a nationwide competition. The award of a fellowship under this section may not be predicated on the geographic region in which the recipient lives or the geographic region in which the recipient will pursue an advanced degree.

(d) The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the maximum amount that may be awarded to an individual during an academic year.

(Added Pub. L. 101–189, div. A, title VIII, § 843(d)(1), Nov. 29, 1989, 103 Stat. 1516.)

§ 2192. Improvement of education in technical fields: general authority regarding education in science, mathematics, and engineering

(a) The Secretary of Defense, in consultation with the Secretary of Education, shall, on a continuing basis—

(1) identify actions which the Department of Defense may take to improve education in the scientific, mathematics, and engineering skills necessary to meet the long-term national defense needs of the United States for personnel proficient in such skills; and

(2) establish and conduct programs to carry out such actions.

(b) The Secretary shall designate an individual within the Office of the Secretary of Defense to advise and assist the Secretary regarding matters relating to science, mathematics, and engineering education and training.

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521; amended Pub. L. 106–65, div. A, title V, § 580(d)(1), Oct. 5, 1999, 113 Stat. 633.)

AMENDMENTS

1999—Pub. L. 106–65 amended section catchline generally. Prior to amendment, catchline read as follows: ''Science, mathematics, and engineering education''.

DEPARTMENT OF DEFENSE SUPPORT FOR SCIENCE, MATHEMATICS, AND ENGINEERING EDUCATION

Pub. L. 102–190, div. A, title VIII, § 829, Dec. 5, 1991, 105 Stat. 1444, directed Secretary of Defense to develop and submit to Congress a master plan for activities by Department of Defense during each of fiscal years 1993 through 1997 to support education in science, mathematics, and engineering at all levels of education in the United States, with each such plan to be developed in consultation with Secretary of Education, prior to repeal by Pub. L. 104–106, div. A, title X, § 1063(c), Feb. 10, 1996, 110 Stat. 444.

§ 2193. Improvement of education in technical fields: grants for higher education in science and mathematics

(a)(1) The Secretary of Defense may, in accordance with the provisions of this subsection, carry out a program for awarding grants to students who have been accepted for enrollment in, or who are enrolled in, an institution of higher education as undergraduate or graduate stu-

dents in scientific and engineering disciplines critical to the national security functions of the Department of Defense.

(2) Grant proceeds shall be disbursed on behalf of students awarded grants under this subsection to the institutions of higher education at which the students are enrolled. No grant proceeds shall be disbursed on behalf of a student until the student is enrolled at an institution of higher education.

(3) The amount of a grant awarded a student under this subsection may not exceed the student's cost of attendance.

(4) The amount of a grant awarded a student under this subsection shall not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but shall be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(5) The Secretary shall give priority to awarding grants under this subsection in a manner likely to stimulate the interest of women and members of minority groups in pursuing scientific and engineering careers. The Secretary may consider the financial need of applicants in making awards in accordance with such priority.

(b) In this section:

(1) The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965.

(2) The term ''cost of attendance'' has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521; amended Pub. L. 105–244, title I, § 102(a)(2)(A), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 106–65, div. A, title V, § 580(c)(2), (3), (d)(2), Oct. 5, 1999, 113 Stat. 633.)

REFERENCES IN TEXT

Section 101 of the Higher Education Act of 1965, referred to in subsec. (b)(1), is classified to section 1001 of Title 20, Education.

AMENDMENTS

1999—Pub. L. 106–65, § 580(d)(2), amended section catchline generally. Prior to amendment, catchline read as follows: ''Science and mathematics education improvement program''.

Subsec. (b). Pub. L. 106–65, § 580(c)(3), redesignated subsec. (c) as (b).

Pub. L. 106–65, § 580(c)(2), redesignated subsec. (b) as section 2193a of this title.

Subsec. (c). Pub. L. 106–65, § 580(c)(3), redesignated subsec. (c) as (b).

1998—Subsec. (c)(1). Pub. L. 105–244 substituted ''section 101 of the Higher Education Act of 1965'' for ''section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

§ 2193a. Improvement of education in technical fields: general authority for support of elementary and secondary education in science and mathematics

The Secretary of Defense, in coordination with the Secretary of Education, may establish programs for the purpose of improving the mathematics and scientific knowledge and skills of elementary and secondary school students and faculty members.

(Added and amended Pub. L. 106–65, div. A, title V, § 580(c)(1), (2), Oct. 5, 1999, 113 Stat. 632, 633.)

CODIFICATION

The text of section 2193(b) of this title, which was transferred to, and redesignated as text of, this section, was based on Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1521.

AMENDMENTS

1999—Pub. L. 106–65, § 580(c)(2), renumbered section 2193(b) of this title as text of this section. See Codification note above.

§ 2193b. Improvement of education in technical fields: program for support of elementary and secondary education in science, mathematics, and technology

(a) AUTHORITY FOR PROGRAM.—The Secretary of Defense may conduct a science, mathematics, and technology education improvement program known as the ''Department of Defense STARBASE Program''. The Secretary shall carry out the program in coordination with the Secretaries of the military departments.

(b) PURPOSE.—The purpose of the program is to improve knowledge and skills of students in kindergarten through twelfth grade in mathematics, science, and technology.

(c) STARBASE ACADEMIES.—(1) The Secretary shall provide for the establishment of at least 25 academies under the program.

(2) The Secretary of Defense shall establish guidelines, criteria, and a process for the establishment of STARBASE programs in addition to those in operation on the date of the enactment of this section.

(3) The Secretary may support the establishment and operation of any academy in excess of two academies in a State only if the Secretary has first authorized in writing the establishment of the academy and the costs of the establishment and operation of the academy are paid out of funds provided by sources other than the Department of Defense. Any such costs that are paid out of appropriated funds shall be considered as paid out of funds provided by such other sources if such sources fully reimburse the United States for the costs.

(d) PERSONS ELIGIBLE TO PARTICIPATE IN PROGRAM.—The Secretary shall prescribe standards and procedures for selection of persons for participation in the program.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the conduct of the program.

(f) AUTHORITY TO ACCEPT FINANCIAL AND OTHER SUPPORT.—(1) The Secretary of Defense and the Secretaries of the military departments may accept financial and other support for the program from other departments and agencies of the Federal Government, State governments, local governments, and not-for-profit and other organizations in the private sector.

(2) The Secretary of Defense shall remain the executive agent to carry out the program regardless of the source of funds for the program

or any transfer of jurisdiction over the program within the executive branch.

(g) ANNUAL REPORT.—Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the program under this section. The report shall contain a discussion of the design and conduct of the program and an evaluation of the effectiveness of the program.

(h) STATE DEFINED.—In this section, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(Added Pub. L. 106–65, div. A, title V, §580(a), Oct. 5, 1999, 113 Stat. 631; amended Pub. L. 107–107, div. A, title V, §596(b), Dec. 28, 2001, 115 Stat. 1127.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 106–65, which was approved Oct. 5, 1999.

AMENDMENTS

2001—Subsec. (f). Pub. L. 107–107 designated existing provisions as par. (1) and added par. (2).

EXISTING STARBASE ACADEMIES

Pub. L. 106–65, div. A, title V, §580(b), Oct. 5, 1999, 113 Stat. 632, provided that: ''While continuing in operation, the academies existing on the date of the enactment of this Act [Oct. 5, 1999] under the Department of Defense STARBASE Program, as such program is in effect on such date, shall be counted for the purpose of meeting the requirement under section 2193b(c)(1) of title 10, United States Code (as added by subsection (a)), relating to the minimum number of STARBASE academies.''

§2194. Education partnerships

(a) The Secretary of Defense shall authorize the director of each defense laboratory to enter into one or more education partnership agreements with educational institutions in the United States for the purpose of encouraging and enhancing study in scientific disciplines at all levels of education. The educational institutions referred to in the preceding sentence are local educational agency, colleges, universities, and any other nonprofit institutions that are dedicated to improving science, mathematics, and engineering education.

(b) Under a partnership agreement entered into with an educational institution under this section, the director of a defense laboratory may provide, and is encouraged to provide, assistance to the educational institution by—

(1) loaning defense laboratory equipment to the institution for any purpose and duration in support of such agreement that the director considers appropriate;

(2) notwithstanding the provisions of the Federal Property and Administrative Services Act of 1949[1] (40 U.S.C. 471 et seq.) or any provision of law or regulation relating to transfers of surplus property, transferring to the institution any computer equipment, or other scientific equipment, that is—

(A) commonly used by educational institutions;

(B) surplus to the needs of the defense laboratory; and

(C) determined by the director to be appropriate for support of such agreement;

(3) making laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution;

(4) involving faculty and students of the institution in defense laboratory research projects;

(5) cooperating with the institution in developing a program under which students may be given academic credit for work on defense laboratory research projects; and

(6) providing academic and career advice and assistance to students of the institution.

(c) The Secretary of Defense shall ensure that the director of each defense laboratory shall give a priority under this section to entering into an education partnership agreement with one or more historically Black colleges and universities and other minority institutions referred to in paragraphs (3), (4), and (5) of section 312(b)[1] of the Higher Education Act of 1965 (20 U.S.C. 1058(b)).

(d) The Secretary of Defense shall ensure that, in entering into education partnership agreements under this section, the director of a defense laboratory gives a priority to providing assistance to educational institutions serving women, members of minority groups, and other groups of individuals who traditionally are involved in the engineering and science professions in disproportionately low numbers.

(e) In this section:

(1) The term ''defense laboratory'' means any laboratory, product center, test center, depot, training and educational organization, or operational command under the jurisdiction of the Department of Defense.

(2) The term ''local educational agency'' has the meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965.

(Added Pub. L. 101–510, div. A, title II, §247(a)(1), Nov. 5, 1990, 104 Stat. 1522; amended Pub. L. 103–382, title III, §391(b)(4), Oct. 20, 1994, 108 Stat. 4021; Pub. L. 104–106, div. A, title XV, §1503(a)(19), Feb. 10, 1996, 110 Stat. 512; Pub. L. 106–398, §1 [[div. A], title II, §253], Oct. 30, 2000, 114 Stat. 1654, 1654A–49; Pub. L. 107–110, title X, §1076(e), Jan. 8, 2002, 115 Stat. 2091.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(2), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Except for title III of the Act, which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts, the Act was repealed and reenacted by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapters 1 to 11 of Title 40, Public Buildings, Property, and Works.

Paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)), referred to in subsec. (c), were repealed by Pub. L. 102–325, title III, §302(a)(3), July 23, 1992, 106 Stat. 472.

Section 9101 of the Elementary and Secondary Education Act of 1965, referred to in subsec. (e)(2), is classified to section 7801 of Title 20, Education.

[1] See References in Text note below.

AMENDMENTS

2002—Subsec. (e)(2). Pub. L. 107–110 substituted ''section 9101 of the Elementary and Secondary Education Act of 1965'' for ''section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)''.

2000—Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title II, § 253(a)(1)], inserted '', and is encouraged to provide,'' after ''may provide'' in introductory provisions.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title II, § 253(a)(2)], inserted before semicolon ''for any purpose and duration in support of such agreement that the director considers appropriate''.

Subsec. (b)(2). Pub. L. 106–398, § 1 [[div. A], title II, § 253(a)(3)], added par. (2) and struck out former par. (2) which read as follows: ''transferring to the institution defense laboratory equipment determined by the director to be surplus;''.

Subsec. (e). Pub. L. 106–398, § 1 [[div. A], title II, § 253(b)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''In this section, the term 'local educational agency' has the meaning given such term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).''

1996—Subsec. (e). Pub. L. 104–106 substituted ''(20 U.S.C. 8801)'' for ''(20 U.S.C. 2891(12))''.

1994—Subsec. (a). Pub. L. 103–382, § 391(b)(4)(A), substituted ''educational agency'' for ''education agencies''.

Subsec. (e). Pub. L. 103–382, § 394(b)(4)(B)(iii), which directed amendment of subsec. (e) by striking out ''(20 U.S.C. 1058(b)'' could not be executed because ''(20 U.S.C. 1058(b)'' does not appear in subsec. (e).

Pub. L. 103–382, § 391(b)(4)(B)(i), (ii), substituted ''educational agency'' for ''education agency'' and ''section 14101'' for ''section 1471(12)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 3715.

§ 2195. Department of Defense cooperative education programs

(a) The Secretary of Defense shall ensure that the director of each defense laboratory establishes, in association with one or more public or private colleges or universities in the United States or one or more consortia of colleges or universities in the United States, cooperative work-education programs for undergraduate and graduate students.

(b) Under a cooperative work-education program established under subsection (a), a director referred to in that subsection may, without regard to any applicable non-statutory limitation on the number of authorized personnel or on the aggregate amount of any personnel cost—

(1) make an offer for participation in the cooperative work-education program directly to a student and appoint such student to an entry-level position of employment in the laboratory of such director;

(2) pay such person a rate of basic pay, not to exceed the maximum rate of pay provided for grade GS–9 under the General Schedule under section 5332 of title 5, that is competitive with compensation levels provided for entry-level positions in similar industry-sponsored cooperative work-education programs;

(3) pay all travel expenses between the college or university in which the student is enrolled and the laboratory concerned for not more than six round trips per year; and

(4) pay all or part of such fees, charges, and costs related to the participation of such student in the cooperative work-education program as tuition, matriculation fees, charges for library and laboratory services, materials, and supplies, and the purchase or rental price of books.

(c) A director of a defense laboratory may—

(1) require a student, as a condition for receiving payments referred to in subsection (b)(4), to enter into a written agreement to continue employment in such defense laboratory for a period of service specified in the agreement; or

(2) make such payments without requiring such an agreement.

(Added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1522.)

§ 2196. Manufacturing engineering education: grant program

(a) ESTABLISHMENT OF GRANT PROGRAM.—(1) The Secretary of Defense shall establish a program under which the Secretary makes grants to support—

(A) the enhancement of existing programs in manufacturing engineering education; or

(B) the establishment of new programs in manufacturing engineering education that meet such requirements.

(2) Grants under this section may be made to institutions of higher education or to consortia of such institutions.

(3) The Secretary shall establish the program in consultation with the Secretary of Education, the Director of the National Science Foundation, and the Director of the Office of Science and Technology Policy.

(b) NEW PROGRAMS IN MANUFACTURING ENGINEERING EDUCATION.—A program in manufacturing engineering education to be established at an institution of higher education may be considered to be a new program for the purpose of subsection (a)(1)(B) regardless of whether the program is to be conducted—

(1) within an existing department in a school of engineering of the institution;

(2) within a manufacturing engineering department to be established separately from the existing departments within such school of engineering; or

(3) within a manufacturing engineering school or center to be established separately from an existing school of engineering of such institution.

(c) MINIMUM NUMBER OF GRANTS FOR NEW PROGRAMS.—Of the total number of grants awarded pursuant to this section, at least one-third shall be awarded for the purpose stated in subsection (a)(1)(B).

(d) GEOGRAPHICAL DISTRIBUTION OF GRANTS.—In awarding grants under this subsection, the Secretary shall, to the maximum extent practicable, avoid geographical concentration of grant awards.

(e) COORDINATION OF GRANT PROGRAM WITH THE NATIONAL SCIENCE FOUNDATION.—The Secretary

of Defense and the Director of the National Science Foundation shall enter into an agreement for carrying out the grant program established pursuant to this section. The agreement shall include procedures to ensure that the grant program is fully coordinated with similar existing programs of the National Science Foundation.

(f) COVERED PROGRAMS.—(1) A program of engineering education supported with a grant awarded pursuant to this section shall meet the requirements of this section.

(2) Such a grant may be made for a program of education to be conducted at the undergraduate level, at the graduate level, or at both the undergraduate and graduate levels.

(g) COMPONENTS OF PROGRAM.—The program of education for which such a grant is made shall be a consolidated and integrated multidisciplinary program of education having each of the following components:

(1) Multidisciplinary instruction that encompasses the total manufacturing engineering enterprise and that may include—

(A) manufacturing engineering education and training through classroom activities, laboratory activities, thesis projects, individual or team projects, and visits to industrial facilities, consortia, or centers of excellence in the United States and foreign countries;

(B) faculty development programs;

(C) recruitment of educators highly qualified in manufacturing engineering;

(D) presentation of seminars, workshops, and training for the development of specific research or education skills; and

(E) activities involving interaction between the institution of higher education conducting the program and industry, including programs for visiting scholars or industry executives.

(2) Opportunities for students to obtain work experience in manufacturing through such activities as internships, summer job placements, or cooperative work-study programs.

(3) Faculty and student research that is directly related to, and supportive of, the education of undergraduate or graduate students in advanced manufacturing science and technology because of—

(A) the increased understanding of advanced manufacturing science and technology that is derived from such research; and

(B) the enhanced quality and effectiveness of the instruction that result from that increased understanding.

(h) GRANT PROPOSALS.—The Secretary of Defense, in coordination with the Director of the National Science Foundation, shall solicit from institutions of higher education in the United States (and from consortia of such institutions) proposals for grants to be made pursuant to this section for the support of programs of manufacturing engineering education that are consistent with the purposes of this section.

(i) MERIT COMPETITION.—Applications for grants shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary in consultation with the Director of the National Science Foundation.

(j) SELECTION CRITERIA.—The Secretary may select a proposal for the award of a grant pursuant to this section if the proposal, at a minimum, does each of the following:

(1) Contains innovative approaches for improving engineering education in manufacturing technology.

(2) Demonstrates a strong commitment by the proponents to apply the resources necessary to achieve the objectives for which the grant is to be made.

(3) Provides for the conduct of research that supports the instruction to be provided in the proposed program and is likely to improve manufacturing engineering and technology.

(4) Demonstrates a significant level of involvement of United States industry in the proposed instructional and research activities.

(5) Is likely to attract superior students.

(6) Proposes to involve fully qualified faculty personnel who are experienced in research and education in areas associated with manufacturing engineering and technology.

(7) Proposes a program that, within three years after the grant is made, is likely to attract from sources other than the Federal Government the financial and other support necessary to sustain such program.

(8) Proposes to achieve a significant level of participation by women, members of minority groups, and individuals with disabilities through active recruitment of students from among such persons.

(k) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided.

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1438.)

PRIOR PROVISIONS

A prior section 2196, added Pub. L. 101–510, div. A, title II, § 247(a)(1), Nov. 5, 1990, 104 Stat. 1523; amended Pub. L. 102–25, title VII, § 701(i)(2), Apr. 6, 1991, 105 Stat. 116, defined ''defense laboratory'', prior to repeal by Pub. L. 102–190, § 825(a)(1). See section 2199 of this title.

IMPLEMENTATION OF GRANT PROGRAM; PRIORITY IN FUNDING

Section 825(b) of Pub. L. 102–190 provided that: ''Within one year after the date of the enactment of this Act [Dec. 5, 1991], the Secretary of Defense, in consultation with the Director of the National Science Foundation, shall award grants under section 2196 of title 10, United States Code (as added by subsection (a)), to institutions of higher education throughout the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2197 of this title.

§ 2197. Manufacturing experts in the classroom

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense, in consultation with the Secretary of Education and the Secretary of Commerce, shall conduct a program to support the following activities of one or more manufacturing experts at institutions of higher education:

(1) Identifying the education and training requirements of United States manufacturing firms located in the same geographic region as an institution participating in the program.

(2) Assisting in the development of teaching curricula for classroom and in-factory education and training classes at such an institution.

(3) Teaching such classes and overseeing the teaching of such classes by others.

(4) Improving the knowledge and expertise of permanent faculty and staff of such an institution.

(5) Marketing the programs and facilities of such an institution to firms referred to in paragraph (1).

(6) Coordinating the activities described in the other provisions of this subsection with other programs conducted by the Federal Government, any State, any local government, or any private, nonprofit organization to modernize United States manufacturing firms, especially the regional centers for the transfer of manufacturing technology and programs receiving financial assistance under section 2196 of this title.

(b) MERIT COMPETITION.—Applications for assistance under this section shall be evaluated on the basis of merit pursuant to competitive procedures prescribed by the Secretary.

(c) SELECTION CRITERIA.—The Secretary shall select institutions for the award of financial assistance under this section from among institutions submitting applications for such assistance that—

(1) demonstrate that the proposed activities are of an appropriate scale and a sufficient quality to ensure long term improvement in the applicant's capability to serve the education and training needs of United States manufacturing firms in the same region as the applicant;

(2) demonstrate a significant level of industry involvement and support;

(3) demonstrate attention to the needs of any United States industries that supply manufactured products to the Department of Defense or to a contractor of the Department of Defense; and

(4) meet such other criteria as the Secretary may prescribe.

(d) FEDERAL SUPPORT.—The amount of financial assistance furnished to an institution under this section may not exceed 50 percent of the estimated cost of carrying out the activities proposed to be supported in part with such financial assistance for the period for which the assistance is to be provided. In no event may the amount of the financial assistance provided to an institution exceed $250,000 per year. The period for which financial assistance is provided an institution under this section shall be at least two years unless such assistance is earlier terminated for cause determined by the Secretary.

(e) MANUFACTURING EXPERT DEFINED.—In this section, the term ''manufacturing expert'' means manufacturing managers and workers having experience in the organization of production and education and training needs and other experts in manufacturing.

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1440; amended Pub. L. 102–484, div. D, title XLII, § 4238(a), (b)(1), Oct. 23, 1992, 106 Stat. 2694.)

AMENDMENTS

1992—Pub. L. 102–484, § 4238(b)(1), substituted ''experts'' for ''managers'' in section catchline.

Subsec. (a). Pub. L. 102–484, § 4238(a)(1), struck out ''managers and'' after ''manufacturing'' in introductory provisions.

Subsec. (e). Pub. L. 102–484, § 4238(a)(2), added subsec. (e).

§ 2198. Management training program in Japanese language and culture

(a) The Secretary of Defense, in coordination with the National Science Foundation, shall establish a program for the making of grants on a competitive basis to United States institutions of higher education and other United States not-for-profit organizations for the conduct of programs for scientists, engineers, and managers to learn Japanese language and culture.

(b) The Secretary of Defense shall prescribe in regulations the criteria for awarding a grant under the program for activities of an institution or organization referred to in subsection (a), including the following:

(1) Whether scientists, engineers, and managers of defense laboratories and Department of Energy laboratories are permitted a level of participation in such activities that is beneficial to the development and application of defense critical technologies by such laboratories.

(2) Whether such activities include the placement of United States scientists, engineers, and managers in Japanese government and industry laboratories—

(A) to improve the knowledge of such scientists, engineers, and managers in (i) Japanese language and culture, and (ii) the research and development and management practices of such laboratories; and

(B) to provide opportunities for the encouragement of technology transfer from Japan to the United States.

(3) Whether an appropriate share of the costs of such activities will be paid out of funds derived from non-Federal Government sources.

(c) In this section, the term ''defense critical technology'' means a technology that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.

(Added Pub. L. 102–190, div. A, title VIII, § 828(a), Dec. 5, 1991, 105 Stat. 1444; amended Pub. L. 103–35, title II, § 201(c)(3), May 31, 1993, 107 Stat. 98; Pub. L. 105–85, div. A, title X, § 1073(a)(39), Nov. 18, 1997, 111 Stat. 1902.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.'' for ''identified in a defense critical technologies plan submitted to the Congress under section 2506 of this title.''

1993—Subsec. (c). Pub. L. 103–35 substituted ''a defense'' for ''an annual defense'' and ''section 2506'' for ''section 2522''.

§ 2199. Definitions

In this chapter:

(1) The term ''defense laboratory'' means a laboratory operated by the Department of Defense or owned by the Department of Defense and operated by a contractor or a facility of a Defense Agency at which research and development activities are conducted.

(2) The term ''institution of higher education'' has the meaning given such term in section 101 of the Higher Education Act of 1965.

(3) The term ''regional center for the transfer of manufacturing technology'' means a regional center for the transfer of manufacturing technology referred to in section 25(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278k).

(Added Pub. L. 102–190, div. A, title VIII, § 825(a)(1), Dec. 5, 1991, 105 Stat. 1441; amended Pub. L. 105–244, title I, § 102(a)(2)(B), Oct. 7, 1998, 112 Stat. 1617.)

REFERENCES IN TEXT

Section 101 of the Higher Education Act of 1965, referred to in par. (2), is classified to section 1001 of Title 20, Education.

AMENDMENTS

1998—Par. (2). Pub. L. 105–244 substituted ''section 101 of the Higher Education Act of 1965'' for ''section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a))''.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

CHAPTER 112—INFORMATION SECURITY SCHOLARSHIP PROGRAM

Sec.
2200. Programs; purpose.
2200a. Scholarship program.
2200b. Grant program.
2200c. Centers of Academic Excellence in Information Assurance Education.
2200d. Regulations.
2200e. Definitions.
2200f. Inapplicability to Coast Guard.

§ 2200. Programs; purpose

(a) IN GENERAL.—To encourage the recruitment and retention of Department of Defense personnel who have the computer and network security skills necessary to meet Department of Defense information assurance requirements, the Secretary of Defense may carry out programs in accordance with this chapter to provide financial support for education in disciplines relevant to those requirements at institutions of higher education.

(b) TYPES OF PROGRAMS.—The programs authorized under this chapter are as follows:

(1) Scholarships for pursuit of programs of education in information assurance at institutions of higher education.

(2) Grants to institutions of higher education.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–233.)

REPORT

Pub. L. 106–398, § 1 [[div. A], title IX, § 922(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236, provided that: ''Not later than April 1, 2001, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a plan for implementing the programs under chapter 112 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2200a, 2200b of this title.

§ 2200a. Scholarship program

(a) AUTHORITY.—The Secretary of Defense may, subject to subsection (g), provide financial assistance in accordance with this section to a person—

(1) who is pursuing an associate, baccalaureate, or advanced degree, or a certification, in an information assurance discipline referred to in section 2200(a) of this title at an institution of higher education; and

(2) who enters into an agreement with the Secretary as described in subsection (b).

(b) SERVICE AGREEMENT FOR SCHOLARSHIP RECIPIENTS.—(1) To receive financial assistance under this section—

(A) a member of the armed forces shall enter into an agreement to serve on active duty in the member's armed force for the period of obligated service determined under paragraph (2);

(B) an employee of the Department of Defense shall enter into an agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(C) a person not referred to in subparagraph (A) or (B) shall enter into an agreement—

(i) to enlist or accept a commission in one of the armed forces and to serve on active duty in that armed force for the period of obligated service determined under paragraph (2); or

(ii) to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of financial assistance under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for the financial assistance and otherwise to achieve the goals set forth in section 2200(a) of this title. In no event may the period of service required of a recipient be less than the period equal to three-fourths of the total period of pursuit of a degree for which the Secretary agrees to provide the recipient with financial assistance under this section. The period of obligated service is in addition to any other period for which the recipient is obligated to serve on active duty or in the civil service, as the case may be.

(3) An agreement entered into under this section by a person pursuing an academic degree shall include terms that provide the following:

(A) That the period of obligated service begins on a date after the award of the degree

that is determined under the regulations prescribed under section 2200d of this title.

(B) That the person will maintain satisfactory academic progress, as determined in accordance with those regulations, and that failure to maintain such progress constitutes grounds for termination of the financial assistance for the person under this section.

(C) Any other terms and conditions that the Secretary of Defense determines appropriate for carrying out this section.

(c) AMOUNT OF ASSISTANCE.—The amount of the financial assistance provided for a person under this section shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, and expenses of room and board. The expenses paid, however, shall be limited to those educational expenses normally incurred by students at the institution of higher education involved.

(d) USE OF ASSISTANCE FOR SUPPORT OF INTERNSHIPS.—The financial assistance for a person under this section may also be provided to support internship activities of the person at the Department of Defense in periods between the academic years leading to the degree for which assistance is provided the person under this section.

(e) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1) A person who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (b) shall refund to the United States an amount determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for financial assistance and otherwise to achieve the goals set forth in section 2200(a) of this title.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(f) EFFECT OF DISCHARGE IN BANKRUPTCY.—A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under subsection (e).

(g) ALLOCATION OF FUNDING.—Not less than 50 percent of the amount available for financial assistance under this section for a fiscal year shall be available only for providing financial assistance for the pursuit of degrees referred to in subsection (a) at institutions of higher education that have established, improved, or are administering programs of education in information assurance under the grant program established in section 2200b of this title, as determined by the Secretary of Defense.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–234.)

§ 2200b. Grant program

(a) AUTHORITY.—The Secretary of Defense may provide grants of financial assistance to institutions of higher education to support the establishment, improvement, or administration of programs of education in information assurance disciplines referred to in section 2200(a) of this title.

(b) PURPOSES.—The proceeds of grants under this section may be used by an institution of higher education for the following purposes:

(1) Faculty development.

(2) Curriculum development.

(3) Laboratory improvements.

(4) Faculty research in information security.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–235.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2200a of this title.

§ 2200c. Centers of Academic Excellence in Information Assurance Education

In the selection of a recipient for the award of a scholarship or grant under this chapter, consideration shall be given to whether—

(1) in the case of a scholarship, the institution at which the recipient pursues a degree is a Center of Academic Excellence in Information Assurance Education; and

(2) in the case of a grant, the recipient is a Center of Academic Excellence in Information Assurance Education.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

§ 2200d. Regulations

The Secretary of Defense shall prescribe regulations for the administration of this chapter.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2200a of this title.

§ 2200e. Definitions

In this chapter:

(1) The term ''information assurance'' includes the following:

(A) Computer security.

(B) Network security.

(C) Any other information technology that the Secretary of Defense considers related to information assurance.

(2) The term ''institution of higher education'' has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) The term ''Center of Academic Excellence in Information Assurance Education'' means an institution of higher education that is designated by the Director of the National Security Agency as a Center of Academic Excellence in Information Assurance Education.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

§ 2200f. Inapplicability to Coast Guard

This chapter does not apply to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 106–398, § 1 [[div. A], title IX, § 922(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–236.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
131.	Planning and Coordination	2201
133.	Facilities for Reserve Components	2231
134.	Miscellaneous Administrative Provisions	2241
135.	Space Programs	2271
136.	Provisions Relating to Specific Programs	2281
137.	Procurement Generally	2301
138.	Cooperative Agreements with NATO Allies and Other Countries	2341
139.	Research and Development	2351
140.	Procurement of Commercial Items	2375
141.	Miscellaneous Procurement Provisions	2381
142.	Procurement Technical Assistance Cooperative Agreement Program	2411
143.	Production by Military Agencies	2421
144.	Major Defense Acquisition Programs	2430
145.	Cataloging and Standardization	2451
146.	Contracting for Performance of Civilian Commercial or Industrial Type Functions	2460
147.	Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities	2481
148.	National Defense Technology and Industrial Base, Defense Reinvestment, and Defense Conversion	2500
[149.	Repealed.]	
[150.	Repealed.]	
152.	Issue of Supplies, Services, and Facilities	2541
153.	Exchange of Material and Disposal of Obsolete, Surplus, or Unclaimed Property	2571
155.	Acceptance of Gifts and Services	2601
157.	Transportation	2631
159.	Real Property; Related Personal Property; and Lease of Non-Excess Property	2661
160.	Environmental Restoration	2701
161.	Property Records and Report of Theft or Loss of Certain Property	2721
163.	Military Claims	2731
165.	Accountability and Responsibility	2771
[167.	Repealed.]	
169.	Military Construction and Military Family Housing	2801
[171.	Repealed.]	
172.	Strategic Environmental Research and Development Program	2901

AMENDMENTS

2001—Pub. L. 107–107, div. A, title IX, § 911(b), Dec. 28, 2001, 115 Stat. 1196, added item for chapter 135.

1997—Pub. L. 105–85, div. A, title III, §§ 355(c)(2), 371(a)(2), (c)(5), title X, §§ 1073(a)(2), 1074(d)(2), Nov. 18, 1997, 111 Stat. 1694, 1705, 1900, 1910, added item for chapter 136 and substituted ''2460'' for ''2461'' in item for chapter 146, ''Commissaries and Exchanges and Other Morale, Welfare, and Recreation Activities'' for ''Utilities and Services'' in item for chapter 147, ''2500'' for ''2491'' in item for chapter 148, and ''2541'' for ''2540'' in item for chapter 152.

1996—Pub. L. 104–201, div. A, title XI, § 1123(a)(3), Sept. 23, 1996, 110 Stat. 2688, struck out item for chapter 167 ''Defense Mapping Agency''.

Pub. L. 104–106, div. A, title X, § 1061(b)(2), Feb. 10, 1996, 110 Stat. 442, struck out item for chapter 171 ''Security and Control of Supplies''.

1994—Pub. L. 103–355, title VIII, § 8101(b), Oct. 13, 1994, 108 Stat. 3389, added item for chapter 140.

1993—Pub. L. 103–160, div. A, title VIII, § 828(b)(1), Nov. 30, 1993, 107 Stat. 1713, struck out item for chapter 135 ''Encouragement of Aviation''.

1992—Pub. L. 102–484, div. D, title XLII, § 4271(b)(1), Oct. 23, 1992, 106 Stat. 2695, added item for chapter 148 and struck out former items for chapters 148 ''Defense Industrial Base'', 149 ''Manufacturing Technology'', and 150 ''Development of Dual-Use Critical Technologies''.

1991—Pub. L. 102–190, div. A, title VIII, § 821(f), title X, § 1061(a)(27)(A), Dec. 5, 1991, 105 Stat. 1432, 1474, substituted ''Manufacturing'' for ''Maufacturing'' in item for chapter 149, substituted ''Development of Dual-Use Critical Technologies'' for ''Issue to Armed Forces'' in item for chapter 150, struck out item for chapter 151 ''Issue of Serviceable Material Other Than to Armed Forces'', and added item for chapter 152.

1990—Pub. L. 101–510, div. A, title VIII, § 823(b)(1), title XVIII, § 1801(a)(2), Nov. 5, 1990, 104 Stat. 1602, 1757, added item for chapter 149, redesignated former item for chapter 149 as item for chapter 150, and added item for chapter 172.

1989—Pub. L. 101–189, div. A, title IX, § 931(e)(2), Nov. 29, 1989, 103 Stat. 1535, substituted ''Cooperative Agreements'' for ''Acquisition and Cross-Servicing Agreements'' in item for chapter 138.

1988—Pub. L. 100–456, div. A, title III, §§ 342(a)(2), 344(b)(2), title VIII, § 821(b)(2), Sept. 29, 1988, 102 Stat. 1961, 1962, 2016, substituted ''Defense Industrial Base'' for ''Buy American Requirements'' in item for chapter 148, substituted ''Property Records and Report of Theft or Loss of Certain Property'' for ''Property Records'' in item for chapter 161, and added item for chapter 171.

Pub. L. 100–370, §§ 1(e)(2), 2(a)(2), 3(a)(2), July 19, 1988, 102 Stat. 845, 854, 855, added items for chapters 134, 146, and 148.

1987—Pub. L. 100–26, § 7(c)(1), Apr. 21, 1987, 101 Stat. 280, substituted ''Acquisition and Cross-Servicing Agreements with NATO Allies and Other Countries'' for ''North Atlantic Treaty Organization Acquisition and Cross-Servicing Agreements'' in item for chapter 138, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' and ''2430'' for ''2431'' in item for chapter 144, and substituted ''2721'' for ''2701'' in item for chapter 161.

1986—Pub. L. 99–661, div. A, title XIII, § 1343(a)(22), Nov. 14, 1986, 100 Stat. 3994, substituted ''2341'' for ''2321'' in item for chapter 138.

Pub. L. 99–499, title II, § 211(a)(2), Oct. 17, 1986, 100 Stat. 1725, added item for chapter 160.

Pub. L. 99–433, title VI, § 605(b), Oct. 1, 1986, 100 Stat. 1075a, added item for chapter 144.

1984—Pub. L. 98–525, title XII, § 1241(a)(2), Oct. 19, 1984, 98 Stat. 2606, added item for chapter 142.

1982—Pub. L. 97–295, § 1(50)(E), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 167.

Pub. L. 97–214, § 2(b), July 12, 1982, 96 Stat. 169, added item for chapter 169.

1980—Pub. L. 96–323, § 2(b), Aug. 4, 1980, 94 Stat. 1019, added item for chapter 138.

CHAPTER 131—PLANNING AND COORDINATION

Sec.	
2201.	Apportionment of funds: authority for exemption; excepted expenses.

Sec.
2202. Regulations on procurement, production, warehousing, and supply distribution functions.
2203. Budget estimates.
2204. Obligation of appropriations.
2205. Reimbursements.
2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense.
2207. Expenditure of appropriations: limitation.
2208. Working-capital funds.
2209. Management funds.
2210. Proceeds of sales of supplies: credit to appropriations.
2211. Reimbursement for equipment, material, or services furnished members of the United Nations.
2212. Obligations for contract services: reporting in budget object classes.
2213. Limitation on acquisition of excess supplies.
2214. Transfer of funds: procedure and limitations.
2215. Transfer of funds to other departments and agencies: limitation.
2216. Defense Modernization Account.
[2216a. Repealed.]
2217. Comparable budgeting for common procurement weapon systems.
2218. National Defense Sealift Fund.
2219. Retention of morale, welfare, and recreation funds by military installations: limitation.
2220. Performance based management: acquisition programs.
[2221, 2222. Repealed.]
2223. Information technology: additional responsibilities of Chief Information Officers.
2224. Defense Information Assurance Program.
2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense.
2225. Information technology purchases: tracking and management.
2226. Contracted property and services: prompt payment of vouchers.
2227. Electronic submission and processing of claims for contract payments.
2228. Military equipment and infrastructure: prevention and mitigation of corrosion.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §§1004(h)(1), 1052(b)(2), 1067(a)(2), Dec. 2, 2002, 116 Stat. 2631, 2649, 2658, struck out item 2222 ''Annual financial management improvement plan'' and added items 2224a and 2228.

2001—Pub. L. 107–107, div. A, title X, §1009(b)(3)(B), Dec. 28, 2001, 115 Stat. 1209, substituted ''Annual'' for ''Biennial'' in item 2222.

2000—Pub. L. 106–398, §1 [[div. A], title VIII, §812(a)(2), title X, §§1006(a)(2), 1008(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, 1654A–247, 1654A–250, added items 2225, 2226, and 2227.

1999—Pub. L. 106–65, div. A, title X, §1043(b), Oct. 5, 1999, 113 Stat. 761, added item 2224.

1998—Pub. L. 105–261, div. A, title III, §331(a)(2), title IX, §§906(f)(1), 911(a)(2), title X, §1008(b), Oct. 17, 1998, 112 Stat. 1968, 2096, 2099, 2117, added item 2212, struck out items 2216a ''Defense Business Operations Fund'' and 2221 ''Fisher House trust funds'', and added item 2223.

1997—Pub. L. 105–85, div. A, title X, §1008(a)(2), Nov. 18, 1997, 111 Stat. 1871, added item 2222.

1996—Pub. L. 104–201, div. A, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2659, redesignated item 2216 ''Defense Business Operations Fund'' as 2216a.

Pub. L. 104–106, div. A, title III, §371(a)(2), title IX, §§912(a)(2), 914(a)(2), Feb. 10, 1996, 110 Stat. 279, 410, 412, added two items 2216 and item 2221.

1994—Pub. L. 103–355, title II, §2454(c)(3)(A), title III, §3061(b), title V, §5001(a)(2), Oct. 13, 1994, 108 Stat. 3326, 3336, 3350, substituted ''Regulations on procurement, production, warehousing, and supply distribution functions'' for ''Obligation of funds: limitation'' in item 2202, struck out item 2212 ''Contracted advisory and assistance services: accounting procedures'', and added item 2220.

Pub. L. 103–337, div. A, title III, §373(b), div. B, title XXVIII, §2804(b)(2), Oct. 5, 1994, 108 Stat. 2736, 3053, substituted ''Reimbursements'' for ''Availability of reimbursements'' in item 2205 and added item 2219.

1993—Pub. L. 103–160, div. A, title XI, §1106(a)(2), Nov. 30, 1993, 107 Stat. 1750, added item 2215.

1992—Pub. L. 102–484, div. A, title X, §1024(a)(2), Oct. 23, 1992, 106 Stat. 2488, added item 2218.

1991—Pub. L. 102–190, div. A, title III, §317(b), Dec. 5, 1991, 105 Stat. 1338, added item 2213.

1990—Pub. L. 101–510, div. A, title XIII, §1331(2), title XIV, §§1482(c)(2), 1484(i)(6), Nov. 5, 1990, 104 Stat. 1673, 1710, 1718, struck out item 2213 ''Cooperative military airlift agreements'', added item 2214, and struck out items 2215 ''Reports on unobligated balances'' and 2216 ''Annual report on budgeting for inflation''.

1988—Pub. L. 100–370, §1(d)(4), July 19, 1988, 102 Stat. 843, added items 2201, 2212, and 2217.

1986—Pub. L. 99–661, div. A, title XIII, §1307(a)(2), Nov. 14, 1986, 100 Stat. 3981, added items 2215 and 2216.

1982—Pub. L. 97–252, title XI, §1125(b), Sept. 8, 1982, 96 Stat. 758, added item 2213.

Pub. L. 97–214, §10(a)(1), July 12, 1982, 96 Stat. 174, struck out item 2212 ''Transmission of annual military construction authorization request''.

1978—Pub. L. 95–356, title VIII, §802(a)(2), Sept. 8, 1978, 92 Stat. 585, added item 2212.

1962—Pub. L. 87–651, title II, §207(b), Sept. 7, 1962, 76 Stat. 523, added items 2203 to 2211.

1958—Pub. L. 85–599, §3(c), Aug. 6, 1958, 72 Stat. 516, struck out item 2201 ''General functions of Secretary of Defense''.

§ 2201. Apportionment of funds: authority for exemption; excepted expenses

(a) EXEMPTION FROM APPORTIONMENT REQUIREMENT.—If the President determines such action to be necessary in the interest of national defense, the President may exempt from the provisions of section 1512 of title 31 appropriations, funds, and contract authorizations available for military functions of the Department of Defense.

(b) AIRBORNE ALERTS.—Upon a determination by the President that such action is necessary, the Secretary of Defense may provide for the cost of an airborne alert as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(c) MEMBERS ON ACTIVE DUTY.—Upon a determination by the President that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty beyond the number for which funds are provided in appropriation Acts for the Department of Defense, the Secretary of Defense may provide for the cost of such additional members as an excepted expense under section 3732(a) of the Revised Statutes (41 U.S.C. 11(a)).

(d) NOTIFICATION TO CONGRESS.—The Secretary of Defense shall immediately notify Congress of the use of any authority under this section.

(Added Pub. L. 100–370, §1(d)(1)(A), July 19, 1988, 102 Stat. 841; amended Pub. L. 106–65, div. A, title X, §1032(a)(1), Oct. 5, 1999, 113 Stat. 751.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8009], Dec. 19, 1985, 99 Stat. 1185, 1204.

In two instances, the source law to be codified by the bill includes provisions that on their face require that the Department of Defense notify Congress of certain actions. These notification requirements were terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433), which terminated all recurring reporting requirements applicable to the Department of Defense except for those requirements that were specifically exempted in that section. The source law sections are sections 8009(c) and 8005(j) (proviso) of the FY86 defense appropriations Act (Public Law 99–190), enacted December 19, 1985, which would be codified as section 2201 of title 10 (by section 1(d) of the bill) and section 7313(a) of title 10 (by section 1(n) of the bill). In codifying the authorities provided the Department of Defense by these two provisions of law, the committee believes that it is appropriate to reinstate the congressional notification requirements that go with those authorities. These sections were recurring annual appropriation provisions for many years and were made permanent only months before the enactment of the 1986 Reorganization Act. It is the committee's belief that the failure to exempt these provisions from the general reports termination provision was inadvertent and notes that the notification provisions had in fact previously applied to the Department of Defense for many years. The action of the committee restores the status quo as it existed before the Reorganization Act.

PRIOR PROVISIONS

A prior section 2201, act Aug. 10, 1956, ch. 1041, 70A Stat. 119, prescribed the general functions of the Secretary of Defense, prior to repeal by Pub. L. 85–599, § 3(c), Aug. 6, 1958, 72 Stat. 516. See section 113 of this title.

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–65 substituted ''Defense'' for ''Defense—'', struck out par. (1) designation, substituted ''this section.'' for ''this section; and'', and struck out par. (2) which read as follows: ''shall submit monthly reports to Congress on the estimated obligations incurred pursuant to subsections (b) and (c).''

§ 2202. Regulations on procurement, production, warehousing, and supply distribution functions

The Secretary of Defense shall prescribe regulations governing the performance within the Department of Defense of the procurement, production, warehousing, and supply distribution functions, and related functions, of the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120; Pub. L. 100–180, div. A, title XII, § 1202, Dec. 4, 1987, 101 Stat. 1153; Pub. L. 103–355, title III, § 3061(a), Oct. 13, 1994, 108 Stat. 3336.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2202	41:162.	July 10, 1952, ch. 630, § 638, 66 Stat. 537.

The words ''an officer or agency * * * may * * * only'' are substituted for the words ''no officer or agency * * * shall * * * except''. The word ''of'', before the words ''the Department'', is substituted for the words ''in or under''. The words ''under regulations prescribed'' are substituted for the words ''in accordance with regulations issued''. The words ''after the effective date of this section'' and 41:162(b) are omitted as executed. The words ''or equipment'' are omitted as covered by the definition of ''supplies'' in section 101(26) of this title.

AMENDMENTS

1994—Pub. L. 103–355 amended heading and text generally. Prior to amendment, text read as follows:

''(a) Notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supplies, or for related functions of supply management, only under regulations prescribed by the Secretary of Defense. The purpose of this section is to achieve the efficient, economical, and practical operation of an integrated supply system to meet the needs of the military departments without duplicate or overlapping operations or functions.

''(b) Except as otherwise provided by law, the availability for obligation of funds appropriated for any program, project, or activity of the Department of Defense expires at the end of the three-year period beginning on the date that such funds initially become available for obligation unless before the end of such period the Secretary of Defense enters into a contract for such program, project, or activity.''

1987—Pub. L. 100–180 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

§ 2203. Budget estimates

To account for, and report, the cost of performance of readily identifiable functional programs and activities, with segregation of operating and capital programs, budget estimates of the Department of Defense shall be prepared, presented, and justified, where practicable, and authorized programs shall be administered, in such form and manner as the Secretary of Defense, subject to the authority and direction of the President, may prescribe. As far as practicable, budget estimates and authorized programs of the military departments shall be uniform and in readily comparable form. The budget for the Department of Defense submitted to Congress for each fiscal year shall include data projecting the effect of the appropriations requested for materiel readiness requirements. The Secretary of Defense shall provide that the budget justification documents for such budget include information on the number of employees of contractors estimated to be working on contracts of the Department of Defense during the fiscal year for which the budget is submitted. Such information shall be set forth in terms of employee-years or such other measure as will be uniform and readily comparable with civilian personnel of the Department of Defense.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–295, § 1(21), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 99–661, div. A, title III, § 311, Nov. 14, 1986, 100 Stat. 3851.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2203	5:172b.	July 26, 1947, ch. 343, § 403; added Aug. 10, 1949, ch. 412, § 11 (5th and 6th pars.), 63 Stat. 586.

The word ''prescribe'' is substituted for the word ''determine''. 5 U.S.C. 172b(b) is omitted as executed.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2203 (last sentence).	10:2203 (note).	July 30, 1977, Pub. L. 95–79, § 812 (last sentence), 91 Stat. 336.

The words ''for fiscal year 1979'' are omitted as executed. The words ''for each fiscal year'' are substituted for ''subsequent fiscal years'' for consistency.

AMENDMENTS

1986—Pub. L. 99–661 inserted provisions that budget justification documents include information on number of employees estimated to be working during the fiscal year, such information to be set forth in terms of employee-years or other measure as is uniform and comparable with civilian personnel of the Department of Defense.

1982—Pub. L. 97–295 inserted provision requiring that the budget for the Department of Defense submitted annually to Congress include data projecting the effect of the appropriations requested for materiel readiness requirements.

PRESIDENTIAL RECOMMENDATIONS RESPECTING MODIFICATIONS IN CRUISE MISSILE PROGRAM

Pub. L. 95–184, title II, § 203, Nov. 15, 1977, 91 Stat. 1382, provided that in authorizing funds under that Act [Pub. L. 95–184], Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in the United States cruise missile programs as the President might recommend to facilitate either negotiation or agreement in arms limitation or reduction talks.

REPORT TO CONGRESSIONAL COMMITTEES ON MATERIAL READINESS REQUIREMENTS FOR ARMED FORCES

Pub. L. 95–79, title VIII, § 812, July 30, 1977, 91 Stat. 336, as amended by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314, directed Secretary of Defense to submit to Congress, not later than February 15, 1978, a report setting forth quantifiable and measurable material readiness requirements for the Armed Forces, including the Reserve components thereof, monthly readiness status of the Armed Forces, including the reserve components thereof, during fiscal year 1977, and any changes in such requirements and status projected for fiscal years 1978 and 1979 and in the five-year defense program, and to inform Congress of any subsequent changes in the aforementioned materiel readiness requirements and the reasons for such changes.

MODIFICATIONS IN UNITED STATES STRATEGIC ARMS PROGRAMS ON RECOMMENDATION OF PRESIDENT

Pub. L. 95–79, title VIII, § 813, July 30, 1977, 91 Stat. 337, provided that in authorizing procurement under section 101 of that Act and research and development under section 201 of that Act, Congress was asserting its readiness to consider, in accordance with the processes set forth in the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 621 et seq.] and the Budget and Accounting Act, 1921 [31 U.S.C. 1101 et seq.], such modifications in United States strategic arms programs as the President might recommend to facilitate either negotiation or agreement in the Strategic Arms Limitation Talks.

§ 2204. Obligation of appropriations

To prevent overdrafts and deficiencies in the fiscal year for which appropriations are made, appropriations made to the Department of Defense or to a military department, and reimbursements thereto, are available for obligation and expenditure only under scheduled rates of obligation, or changes thereto, that have been approved by the Secretary of Defense. This section does not prohibit the Department of Defense from incurring a deficiency that it has been authorized by law to incur.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2204	5:172c.	July 26, 1947, ch. 343, § 404; added Aug. 10, 1949, ch. 412, § 11 (7th par.), 63 Stat. 587.

The words ''on and after the beginning of the next fiscal year following August 10, 1949,'' are omitted as executed. The last sentence is substituted for the proviso in 5 U.S.C. 172c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2384a of this title.

§ 2205. Reimbursements

(a) AVAILABILITY OF REIMBURSEMENTS.—Reimbursements made to appropriations of the Department of Defense or a department or agency thereof under sections 1535 and 1536 of title 31, or other amounts paid by or on behalf of a department or agency of the Department of Defense to another department or agency of the Department of Defense, or by or on behalf of personnel of any department or organization, for services rendered or supplies furnished, may be credited to authorized accounts. Funds so credited are available for obligation for the same period as the funds in the account so credited. Such an account shall be accounted for as one fund on the books of the Department of the Treasury.

(b) FIXED RATE FOR REIMBURSEMENT FOR CERTAIN SERVICES.—The Secretary of Defense and the Secretaries of the military departments may charge a fixed rate for reimbursement of the costs of providing planning, supervision, administrative, or overhead services incident to any construction, maintenance, or repair project to real property or for providing facility services, irrespective of the appropriation financing the project or facility services.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 96–513, title V, § 511(71), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–258, § 3(b)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 103–337, div. B, title XXVIII, § 2804(a), (b)(1), Oct. 5, 1994, 108 Stat. 3053.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2205	5:172g.	July 26, 1947, ch. 343, § 408; added Aug. 10, 1949, ch. 412, § 11 (23d par.), 63 Stat. 590.

5 U.S.C. 172g is restated to reflect more clearly its purpose to authorize the Department of Defense to operate as an integrated department by permitting supplies to be furnished and services to be rendered within and among agencies of the Department of Defense and provide that reimbursements therefor be credited to

authorized accounts and be available for the same purpose and period as the accounts so credited. (See Senate Report No. 366, 81st Congress, pp. 23, 24.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''Reimbursements'' for ''Availability of reimbursements'' as section catchline, designated existing provisions as subsec. (a) and inserted subsec. heading, and added subsec. (b).

1982—Pub. L. 97–258 substituted ''sections 1535 and 1536 of title 31'' for ''the Act of March 4, 1915 (31 U.S.C. 686)''.

1980—Pub. L. 96–513 substituted ''the Act of March 4, 1915 (31 U.S.C. 686)'' for ''section 686 of title 31''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense

As far as authorized by the Secretary of Defense, a disbursing official of a military department may, out of available advances, make disbursements to cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing official.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2206	5:172h. 5:171n(a) (as applicable to 5:172h).	July 26, 1947, ch. 343, § 409; added Aug. 10, 1949, ch. 412, § 11 (24th par.), 63 Stat. 590. July 26, 1947, ch. 343, § 308(a) (as applicable to § 409), 61 Stat. 509.

The word ''agency'' is substituted for the word ''organization''. The last sentence is substituted for the proviso in 5 U.S.C. 172h.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''official'' for ''officer'' wherever appearing.

§ 2207. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 104–106, div. A, title VIII, § 801, Feb. 10, 1996, 110 Stat. 389.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2207	5:174d.	June 30, 1954, ch. 432, § 719, 68 Stat. 353.

The following substitutions are made: ''spent'' for ''expended''; ''United States'' for ''Government''; ''if a contract is terminated under clause (1)'' for ''that in the event any such contract is so terminated''; and ''has . . . that it would have had if'' for ''shall be entitled . . . to pursue . . . as it could pursue in the event of''. The word ''official'' is inserted for clarity. The words ''entered into after June 30, 1954'' are omitted as executed.

AMENDMENTS

1996—Pub. L. 104–106 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2208. Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used; and

(2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations

or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing inventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, see section 4543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded industrial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than $100,000:

(A) An unspecified minor military construction project under section 2805(c)(1) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(*l*)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)—

(A) during a period of war or national emergency; or

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed $1,000,000,000.

(4) In this subsection:

(A) The term ''advance billing'', with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term ''customer'' means a requisitioning component or agency.

(m) CAPITAL ASSET SUBACCOUNTS.—Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) SEPARATE ACCOUNTING, REPORTING, AND AUDITING OF FUNDS AND ACTIVITIES.—The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(*o*) CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH THE FUND.—(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c)(1) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) PROCEDURES FOR ACCUMULATION OF FUNDS.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) ANNUAL REPORTS AND BUDGET.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97–295, § 1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title XII, § 1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title III, § 305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100–26, § 7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101–510, div. A, title VIII, § 801, title XIII, § 1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102–172, title VIII, § 8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102–484, div. A, title III, § 374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–160, div. A, title I, § 158(b), Nov. 30, 1993, 107 Stat. 1582; Pub. L. 105–85, div. A, title X, § 1011(a), (b), Nov. 18, 1997, 111 Stat. 1873; Pub. L. 105–261, div. A, title X, §§ 1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115; Pub. L. 105–262, title VIII, § 8146(d)(1), Oct. 17, 1998, 112 Stat. 2340; Pub. L. 106–65, div. A, title III, §§ 331(a)(1), 332, title X, § 1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; Pub. L. 106–398, § 1 [[div. A], title III, § 341(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(a)	5:172d(a).	July 26, 1947, ch. 343, § 405; added Aug. 10, 1949, ch. 412, § 11 (8th through 15th pars.), 63 Stat. 587.
2208(b)	5:172d(b).	
2208(c)	5:172d(c) (less 2d sentence).	
2208(d)	5:172d(d).	
2208(e)	5:172d(e)	
2208(f)	5:172d(f).	
2208(g)	5:172d(h).	
2208(h)	5:172d(g).	
2208(i)	5:172d(c) (2d sentence).	

In subsection (a)(1), (c)(1), (f), (g), and (h), the words ''stores, . . . materials, and equipment'' are omitted as covered by the word ''supplies'', as defined in section 101(26) of title 10.

In subsection (c), the word ''used'' is substituted for the word ''consumed''. The words ''and costs of using equipment'' are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: ''prescribe'' for ''issue''; and ''persons'' for ''purchasers or users''. The word ''shall'' is substituted for

the words ''is authorized to'' in the first sentence and for the word ''may'' in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2208(h) (3d sentence).	10:2208 (note).	Dec. 21, 1979, Pub. L. 96–154, § 767, 93 Stat. 1163.

The word ''hereafter'' is omitted as executed.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (m) to (q) of this section were contained in section 2216a of this title prior to repeal by Pub. L. 105–261, § 1008(b).

AMENDMENTS

2000—Subsec. (j)(1). Pub. L. 106–398 substituted ''contract, and the solicitation'' for ''contract; and'' at end of subpar. (A) and all that follows through ''(B) the solicitation'', substituted ''; or'' for period after ''private firms'', and added a new subpar. (B).

1999—Subsec. (j). Pub. L. 106–65, §§ 331(a)(1), 332, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted '', remanufacturing, and engineering'' for ''or remanufacturing'' in introductory provisions, inserted ''or a subcontract under a Department of Defense contract'' before the semicolon in subpar. (A), substituted ''solicitation for the contract or subcontract'' for ''Department of Defense solicitation for such contract'' in subpar. (B), and added par. (2).

Subsec. (*l*)(2)(A). Pub. L. 106–65, § 1066(a)(16), inserted ''of'' after ''during a period''.

1998—Subsec. (*l*)(3), (4). Pub. L. 105–261, § 1007(e)(1), and Pub. L. 105–262 amended subsec. (*l*) identically, adding par. (3) and redesignating former par. (3) as (4).

Subsecs. (m) to (q). Pub. L. 105–261, § 1008(a), added subsecs. (m) to (q).

1997—Subsec. (k). Pub. L. 105–85, § 1011(a), added subsec. (k) and struck out former subsec. (k) which read as follows: ''The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.''

Subsec. (*l*). Pub. L. 105–85, § 1011(b), added subsec. (*l*).

1993—Subsec. (i). Pub. L. 103–160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases.

1992—Subsec. (j). Pub. L. 102–484 substituted ''The Secretary of a military department may authorize a working capital funded industrial facility of that department'' for ''The Secretary of the Army may authorize a working capital funded Army industrial facility''.

1991—Subsecs. (j), (k). Pub. L. 102–172 added subsec. (j) and redesignated former subsec. (j) as (k).

1990—Subsec. (i)(1). Pub. L. 101–510, § 801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows:

''(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

''(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

''(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

''(C) the article is not readily available from a commercial source in the United States; and

''(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

''(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.''

Subsec. (k). Pub. L. 101–510, § 1301(6), struck out subsec. (k) which read as follows: ''Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.''

1987—Subsec. (i)(3). Pub. L. 100–26 inserted ''(22 U.S.C. 2778)'' after ''Arms Export Control Act''.

1984—Subsecs. (i) to (k). Pub. L. 98–525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98–94 substituted ''In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law'' for ''If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose''.

1982—Subsec. (h). Pub. L. 97–295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title X, § 1007(e)(2), Oct. 17, 1998, 112 Stat. 2115, and Pub. L. 105–262, title VIII, § 8146(d)(2), Oct. 17, 1998, 112 Stat. 2340, provided that: ''Section 2208(*l*)(3) of such title, as added by paragraph (1), applies to fiscal years after fiscal year 1999.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1204(b) of Pub. L. 98–94 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984.''

OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–337, div. A, title III, § 311(b)–(e), Oct. 5, 1994, 108 Stat. 2708, which related to purchase from other sources, limitation on inclusion of certain costs in DBOF charges, procedures for accumulation of funds, and annual reports and budget, was repealed and restated in section 2216a(d)(2)(B), (f) to (h)(3) of this title by Pub. L. 104–106, div. A, title III, § 371(a)(1), (b)(1), Feb. 10, 1996, 110 Stat. 277–279.

Pub. L. 103–337, div. A, title III, § 311(f), (g), Oct. 5, 1994, 108 Stat. 2709, required Secretary of Defense to submit to congressional defense committees, not later than Feb. 1, 1995, a report on progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993, and required Comptroller General to monitor and evaluate the Department of Defense implementation of the Plan and to report to congressional defense committees not later than Mar. 1, 1995.

CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Section 333(a), (b) of Pub. L. 103–160, which provided that charges for goods and services provided through Defense Business Operations Fund were to include amounts necessary to recover full costs of develop-

ment, implementation, operation, and maintenance of systems supporting wholesale supply and maintenance activities of Department of Defense and use of military personnel in provision of goods and services, and were not to include amounts necessary to recover costs of military construction project other than minor construction project financed by Defense Business Operations Fund pursuant to section 2805(c)(1) of this title, and which required full cost of operation of Defense Finance Accounting Service to be financed within Defense Business Operations Fund through charges for goods and services provided through Fund, was repealed and restated in section 2216a(d)(1)(A), (C), (2)(A) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(2), Feb. 10, 1996, 110 Stat. 277–279.

CAPITAL ASSET SUBACCOUNT

Section 342 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title III, §333(c), Nov. 30, 1993, 107 Stat. 1622, which provided that charges for goods and services provided through the Defense Business Operations Fund include amounts for depreciation of capital assets which were to be credited to a separate capital asset subaccount in the Fund, authorized Secretary of Defense to award contracts for capital assets of the Fund in advance of availability of funds in the subaccount, required Secretary to submit annual reports to congressional defense committees, authorized appropriations to the Fund for fiscal years 1993 and 1994, and defined terms, was repealed and restated in section 2216a(d)(1)(B), (e), (h)(4), and (i) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(3), Feb. 10, 1996, 110 Stat. 277–279.

LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102–190, div. A, title III, §316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102–484, div. A, title III, §341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103–160, div. A, title III, §§331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103–337, div. A, title III, §311(a), Oct. 5, 1994, 108 Stat. 2708, which authorized Secretary of Defense to manage performance of certain working-capital funds established under this section, the Defense Finance and Accounting Service, the Defense Industrial Plan Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, the Defense Reutilization and Marketing Service, and certain activities funded through use of working-capital fund established under this section, directed Secretary to maintain separate accounting, reporting, and auditing of such funds and activities, required Secretary to submit to congressional defense committees, by not later than 30 days after Nov. 30, 1993, a comprehensive management plan and, by not later than Feb. 1, 1994, a progress report on plan's implementation, and directed Comptroller General to monitor and evaluate the plan and submit to congressional defense committees, not later than Mar. 1, 1994, a report, was repealed and restated in section 2216a(a)–(c) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(4), Feb. 10, 1996, 110 Stat. 277, 279.

DEFENSE BUSINESS OPERATIONS FUND

Section 8121 of Pub. L. 102–172, which established on the books of the Treasury a fund entitled the ''Defense Business Operations Fund'' to be operated as a working capital fund under the provisions of this section and to include certain existing organizations including the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center, the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Service, directed transfer of assets and balances of those organizations to the Fund, provided for budgeting and accounting of charges for supplies and services provided by the Fund, and directed that capital asset charges collected be credited to a subaccount of the Fund, was repealed by Pub. L. 104–106, div. A, title III, §371(b)(5), Feb. 10, 1996, 110 Stat. 280.

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96–154, title VII, §767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and restated in subsec. (h) of this section by Pub. L. 97–295, §§1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 129, 2210, 2350c, 4543, 4621, 7227, 7300, 7606, 9621 of this title; title 40 section 549.

§ 2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of $1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced.

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2209(a)	5:172e(a), (b).	July 3, 1942, ch. 484; restated Aug. 10, 1949, ch. 412, §11 (16th through 19th pars.), 63 Stat. 588.
2209(b)	5:172e(c) (last sentence).	
2209(c)	5:172e(c) (less last sentence).	
	5:172e(d).	

In subsection (a), the second sentence is substituted for the second sentence of 5 U.S.C. 172e(a) and the first sentence (less last 21 words) of 5 U.S.C. 172e(b) which are omitted as unnecessary.

In subsection (c), the 13th through 33d words of 5 U.S.C. 172e(d) are omitted as surplusage.

§ 2210. Proceeds of sales of supplies: credit to appropriations

(a)(1) A working-capital fund established pursuant to section 2208 of this title may retain so much of the proceeds of disposals of property referred to in paragraph (2) as is necessary to recover the expenses incurred by the fund in disposing of such property. Proceeds from the sale or disposal of such property in excess of amounts necessary to recover the expenses may be credited to current applicable appropriations of the Department of Defense.

(2) Paragraph (1) applies to disposals of supplies, material, equipment, and other personal property that were not financed by stock funds established under section 2208 of this title.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursements to stock funds in such amounts and for such period as the Secretary of Defense, with the approval of the President, may determine to be necessary to maintain stock levels consistently with planned operations for the next fiscal year.

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(72), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 105–261, div. A, title X, § 1009, Oct. 17, 1998, 112 Stat. 2117.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2210(a)	5:172d–1 (less proviso).	Aug. 1, 1953, ch. 305, § 645, 67 Stat. 357.
2210(b)	5:172d–1 (proviso).	

In section (a), the words ''proceeds of the disposal'' are substituted for the words ''moneys arising from the disposition''.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–261 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Current applicable appropriations of the Department of Defense may be credited with proceeds of the disposals of supplies that are not financed by stock funds established under section 2208 of this title.''

1980—Subsec. (b). Pub. L. 96–513 substituted ''President'' for ''Director of the Bureau of the Budget''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2211. Reimbursement for equipment, material, or services furnished members of the United Nations

Amounts paid by members of the United Nations for equipment or materials furnished, or services performed, in joint military operations shall be credited to appropriate appropriations of the Department of Defense in the manner authorized by section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d)).

(Added Pub. L. 87–651, title II, § 207(a), Sept. 7, 1962, 76 Stat. 522; amended Pub. L. 96–513, title V, § 511(73), Dec. 12, 1980, 94 Stat. 2926.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2211	5:171m–1.	Jan. 6, 1951, ch. 1213, § 703, 64 Stat. 1235.

The reference to section 2392(d) of title 22 is substituted for the reference to section 1574(b) of that title to reflect section 542(b) of the Act of August 26, 1954, ch. 937 (68 Stat. 861) and section 642(a)(2) and (b) of the Act of September 4, 1961, Pub. L. 87–195 (75 Stat. 460).

AMENDMENTS

1980—Pub. L. 96–513 substituted ''section 632(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2392(d))'' for ''section 2392(d) of title 22''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2212. Obligations for contract services: reporting in budget object classes

(a) LIMITATION ON REPORTING IN MISCELLANEOUS SERVICES OBJECT CLASS.—The Secretary of Defense shall ensure that, in reporting to the Office of Management and Budget (pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates)) obligations of the Department of Defense for any period of time for contract services, no more than 15 percent of the total amount of obligations so reported is reported in the miscellaneous services object class.

(b) DEFINITION OF REPORTING CATEGORIES FOR ADVISORY AND ASSISTANCE SERVICES.—In carrying out section 1105(g) of title 31 for the Department of Defense (and in determining what services are to be reported to the Office of Management and Budget in the advisory and assistance services object class), the Secretary of Defense shall apply to the terms used for the definition of ''advisory and assistance services'' in paragraph (2)(A) of that section the following meanings (subject to the authorized exemptions):

(1) MANAGEMENT AND PROFESSIONAL SUPPORT SERVICES.—The term ''management and professional support services'' (used in clause (i) of section 1105(g)(2)(A) of title 31) means services that provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of organizations, activities, or systems. Those services—

(A) are closely related to the basic responsibilities and mission of the using organization; and

(B) include efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative or technical support for conferences and training programs.

(2) STUDIES, ANALYSES, AND EVALUATIONS.—The term ''studies, analyses, and evaluations'' (used in clause (ii) of section 1105(g)(2)(A) of title 31) means services that provide organized, analytic assessments to understand or evaluate complex issues to improve policy de-

velopment, decisionmaking, management, or administration and that result in documents containing data or leading to conclusions or recommendations. Those services may include databases, models, methodologies, and related software created in support of a study, analysis, or evaluation.

(3) ENGINEERING AND TECHNICAL SERVICES.—The term ''engineering and technical services'' (used in clause (iii) of section 1105(g)(2)(A) of title 31) means services that take the form of advice, assistance, training, or hands-on training necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness.

(c) PROPER CLASSIFICATION OF ADVISORY AND ASSISTANCE SERVICES.—Before the submission to the Office of Management and Budget of the proposed Department of Defense budget for inclusion in the President's budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall conduct a review of Department of Defense services expected to be performed as contract services during the fiscal year for which that budget is to be submitted in order to ensure that those services that are advisory and assistance services (as defined in accordance with subsection (b)) are in fact properly classified, in accordance with that subsection, in the advisory and assistance services object class.

(d) REPORT TO CONGRESS.—The Secretary shall submit to Congress each year, not later than 30 days after the date on which the budget for the next fiscal year is submitted pursuant to section 1105 of title 31, a report containing the information derived from the review under subsection (c).

(e) ASSESSMENT BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the report of the Secretary of Defense under subsection (d) each year and shall—

(A) assess the methodology used by the Secretary in obtaining the information submitted to Congress in that report; and

(B) assess the information submitted to Congress in that report.

(2) Not later than 120 days after the date on which the Secretary submits to Congress the report required under subsection (d) for any year, the Comptroller General shall submit to Congress the Comptroller General's report containing the results of the review for that year under paragraph (1).

(f) DEFINITIONS.—In this section:

(1) The term ''contract services'' means all services that are reported to the Office of Management and Budget pursuant to OMB Circular A–11 (relating to preparation and submission of budget estimates) in budget object classes that are designated in the Object Class 25 series.

(2) The term ''advisory and assistance services object class'' means those contract services constituting the budget object class that is denominated ''Advisory and Assistance Service'' and designated (as of October 17, 1998) as Object Class 25.1 (or any similar object class established after October 17, 1998, for the reporting of obligations for advisory and assistance contract services).

(3) The term ''miscellaneous services object class'' means those contract services constituting the budget object class that is denominated ''Other Services (services not otherwise specified in the 25 series)'' and designated (as of October 17, 1998) as Object Class 25.2 (or any similar object class established after October 17, 1998, for the reporting of obligations for miscellaneous or unspecified contract services).

(4) The term ''authorized exemptions'' means those exemptions authorized (as of October 17, 1998) under Department of Defense Directive 4205.2, captioned ''Acquiring and Managing Contracted Advisory and Assistance Services (CAAS)'' and issued by the Under Secretary of Defense for Acquisition and Technology on February 10, 1992, such exemptions being set forth in Enclosure 3 to that directive (captioned ''CAAS Exemptions'').

(Added Pub. L. 105–261, div. A, title IX, § 911(a)(1), Oct. 17, 1998, 112 Stat. 2097; amended Pub. L. 106–65, div. A, title X, § 1066(a)(17), Oct. 5, 1999, 113 Stat. 771.)

PRIOR PROVISIONS

A prior section 2212, added Pub. L. 100–370, § 1(d)(2)(A), July 19, 1988, 102 Stat. 842, directed Secretary of Defense to maintain within each military department an accounting procedure to aid in identification and control of expenditures for contracted advisory and assistance services, prior to repeal by Pub. L. 103–355, title II, § 2454(c)(1), Oct. 13, 1994, 108 Stat. 3326.

Another prior section 2212, added Pub. L. 95–356, title VIII, § 802(a)(1), Sept. 8, 1978, 92 Stat. 585; amended Pub. L. 97–258, § 3(b)(5), Sept. 18, 1982, 96 Stat. 1063, related to transmission of annual military construction authorization request, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2859 of this title.

AMENDMENTS

1999—Subsec. (f)(2), (3). Pub. L. 106–65 substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section'' and ''after October 17, 1998,'' for ''after the date of the enactment of this section''.

Subsec. (f)(4). Pub. L. 106–65, § 1066(a)(17)(B), substituted ''as of October 17, 1998'' for ''as of the date of the enactment of this section''.

CHANGE OF NAME

Reference to Under Secretary of Defense for Acquisition and Technology deemed to refer to Under Secretary of Defense for Acquisition, Technology, and Logistics, pursuant to section 911(a)(1) of Pub. L. 106–65, set out as a note under section 133 of this title.

TRANSITION

Pub. L. 105–261, div. A, title IX, § 911(b), Oct. 17, 1998, 112 Stat. 2099, provided that: ''For the budget for fiscal year 2000, and the reporting of information to the Office of Management and Budget in connection with the preparation of that budget, section 2212 of title 10, United States Code, as added by subsection (a), shall be applied by substituting '30 percent' in subsection (a) for '15 percent'.''

§ 2213. Limitation on acquisition of excess supplies

(a) TWO-YEAR SUPPLY.—The Secretary of Defense may not incur any obligation against a stock fund of the Department of Defense for the acquisition of any item of supply if that acquisition is likely to result in an on-hand inventory (excluding war reserves) of that item of supply in excess of two years of operating stocks.

(b) EXCEPTIONS.—The head of a procuring activity may authorize the acquisition of an item of supply in excess of the limitation contained in subsection (a) if that activity head determines in writing—

(1) that the acquisition is necessary to achieve an economical order quantity and will not result in an on-hand inventory (excluding war reserves) in excess of three years of operating stocks and that the need for the item is unlikely to decline during the period for which the acquisition is made; or

(2) that the acquisition is necessary for purposes of maintaining the industrial base or for other reasons of national security.

(Added Pub. L. 102–190, div. A, title III, §317(a), Dec. 5, 1991, 105 Stat. 1338.)

PRIOR PROVISIONS

A prior section 2213 was renumbered section 2350c of this title.

§ 2214. Transfer of funds: procedure and limitations

(a) PROCEDURE FOR TRANSFER OF FUNDS.—Whenever authority is provided in an appropriation Act to transfer amounts in working capital funds or to transfer amounts provided in appropriation Acts for military functions of the Department of Defense (other than military construction) between such funds or appropriations (or any subdivision thereof), amounts transferred under such authority shall be merged with and be available for the same purposes and for the same time period as the fund or appropriations to which transferred.

(b) LIMITATIONS ON PROGRAMS FOR WHICH AUTHORITY MAY BE USED.—Such authority to transfer amounts—

(1) may not be used except to provide funds for a higher priority item, based on unforeseen military requirements, than the items for which the funds were originally appropriated; and

(2) may not be used if the item to which the funds would be transferred is an item for which Congress has denied funds.

(c) NOTICE TO CONGRESS.—The Secretary of Defense shall promptly notify the Congress of each transfer made under such authority to transfer amounts.

(d) LIMITATIONS ON REQUESTS TO CONGRESS FOR REPROGRAMMINGS.—Neither the Secretary of Defense nor the Secretary of a military department may prepare or present to the Congress, or to any committee of either House of the Congress, a request with respect to a reprogramming of funds—

(1) unless the funds to be transferred are to be used for a higher priority item, based on unforeseen military requirements, than the item for which the funds were originally appropriated; or

(2) if the request would be for authority to reprogram amounts to an item for which the Congress has denied funds.

(Added Pub. L. 101–510, div. A, title XIV, §1482(c)(1), Nov. 5, 1990, 104 Stat. 1709.)

EFFECTIVE DATE

Section effective Oct. 1, 1991, see section 1482(d) of Pub. L. 101–510, set out as an Effective Date of 1990 Amendment note under section 119 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2645, 9514 of this title.

§ 2215. Transfer of funds to other departments and agencies: limitation

(a) CERTIFICATION REQUIRED.—Funds available for military functions of the Department of Defense may not be made available to any other department or agency of the Federal Government pursuant to a provision of law enacted after November 29, 1989, unless, not less than 30 days before such funds are made available to such other department or agency, the Secretary of Defense submits to the congressional committees specified in subsection (b) a certification that making those funds available to such other department or agency is in the national security interest of the United States.

(b) CONGRESSIONAL COMMITTEES.—The committees referred to in subsection (a) are—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 103–160, div. A, title XI, §1106(a)(1), Nov. 30, 1993, 107 Stat. 1750; amended Pub. L. 104–106, div. A, title XV, §1502(a)(14), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

PRIOR PROVISIONS

A prior section 2215, added Pub. L. 99–661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to reports on unobligated balances, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1301(7), Nov. 5, 1990, 104 Stat. 1668.

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title XVI, §1604, Nov. 29, 1989, 103 Stat. 1598, which was set out as a note under section 1531 of Title 31, Money and Finance, prior to repeal by Pub. L. 103–160, §1106(b).

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–106 designated existing provisions as subsec. (a), inserted heading, substituted ''to the congressional committees specified in subsection (b)'' for ''to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives'', and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2645, 9514 of this title.

§ 2216. Defense Modernization Account

(a) ESTABLISHMENT.—There is established in the Treasury an account to be known as the ''Defense Modernization Account''.

(b) TRANSFERS TO ACCOUNT.—(1)(A) Upon a determination by the Secretary of a military department or the Secretary of Defense with respect to Defense-wide appropriations accounts of the availability and source of funds described in subparagraph (B), that Secretary may transfer to the Defense Modernization Account during any fiscal year any amount of funds available to the Secretary described in that subparagraph. Such funds may be transferred to that account only after the Secretary concerned notifies the congressional defense committees in writing of the amount and source of the proposed transfer.

(B) This subsection applies to the following funds available to the Secretary concerned:

(i) Unexpired funds in appropriations accounts that are available for procurement and that, as a result of economies, efficiencies, and other savings achieved in carrying out a particular procurement, are excess to the requirements of that procurement.

(ii) Unexpired funds that are available during the final 30 days of a fiscal year for support of installations and facilities and that, as a result of economies, efficiencies, and other savings, are excess to the requirements for support of installations and facilities.

(C) Any transfer under subparagraph (A) shall be made under regulations prescribed by the Secretary of Defense.

(2) Funds referred to in paragraph (1) may not be transferred to the Defense Modernization Account if—

(A) the funds are necessary for programs, projects, and activities that, as determined by the Secretary, have a higher priority than the purposes for which the funds would be available if transferred to that account; or

(B) the balance of funds in the account, after transfer of funds to the account, would exceed $1,000,000,000.

(3) Amounts credited to the Defense Modernization Account shall remain available for transfer until the end of the third fiscal year that follows the fiscal year in which the amounts are credited to the account.

(4) The period of availability of funds for expenditure provided for in sections 1551 and 1552 of title 31 may not be extended by transfer into the Defense Modernization Account.

(c) SCOPE OF USE OF FUNDS.—Funds transferred to the Defense Modernization Account from funds appropriated for a military department, Defense Agency, or other element of the Department of Defense shall be available in accordance with subsections (f) and (g) only for transfer to funds available for that military department, Defense Agency, or other element.

(d) AUTHORIZED USE OF FUNDS.—Funds available from the Defense Modernization Account pursuant to subsection (f) or (g) may be used for the following purposes:

(1) For increasing, subject to subsection (e), the quantity of items and services procured under a procurement program in order to achieve a more efficient production or delivery rate.

(2) For research, development, test, and evaluation and for procurement necessary for modernization of an existing system or of a system being procured under an ongoing procurement program.

(e) LIMITATIONS.—(1) Funds in the Defense Modernization Account may not be used to increase the quantity of an item or services procured under a particular procurement program to the extent that doing so would—

(A) result in procurement of a total quantity of items or services in excess of—

(i) a specific limitation provided by law on the quantity of the items or services that may be procured; or

(ii) the requirement for the items or services as approved by the Joint Requirements Oversight Council and reported to Congress by the Secretary of Defense; or

(B) result in an obligation or expenditure of funds in excess of a specific limitation provided by law on the amount that may be obligated or expended, respectively, for that procurement program.

(2) Funds in the Defense Modernization Account may not be used for a purpose or program for which Congress has not authorized appropriations.

(3) Funds may not be transferred from the Defense Modernization Account in any year for the purpose of—

(A) making an expenditure for which there is no corresponding obligation; or

(B) making an expenditure that would satisfy an unliquidated or unrecorded obligation arising in a prior fiscal year.

(f) TRANSFER OF FUNDS.—(1) The Secretary of Defense may transfer funds in the Defense Modernization Account to appropriations available for purposes set forth in subsection (d).

(2) Funds in the Defense Modernization Account may not be transferred under paragraph (1) until 30 days after the date on which the Secretary concerned notifies the congressional defense committees in writing of the amount and purpose of the proposed transfer.

(3) The total amount of transfers from the Defense Modernization Account during any fiscal year under this subsection may not exceed $500,000,000.

(g) AVAILABILITY OF FUNDS BY APPROPRIATION.—In addition to transfers under subsection (f), funds in the Defense Modernization Account may be made available for purposes set forth in subsection (d) in accordance with the provisions of appropriations Acts, but only to the extent authorized in an Act other than an appropriations Act.

(h) SECRETARY TO ACT THROUGH COMPTROLLER.—The Secretary of Defense shall carry out this section through the Under Secretary of Defense (Comptroller), who shall be authorized to implement this section through the issuance of any necessary regulations, policies, and procedures after consultation with the General Counsel and Inspector General of the Department of Defense.

(i) QUARTERLY REPORTS.—(1) Not later than 15 days after the end of each calendar quarter, the

Secretary of Defense shall submit to the congressional committees specified in paragraph (2) a report on the Defense Modernization Account. Each such report shall set forth the following:

(A) The amount and source of each credit to the account during that quarter.

(B) The amount and purpose of each transfer from the account during that quarter.

(C) The balance in the account at the end of the quarter and, of such balance, the amount attributable to transfers to the account from each Secretary concerned.

(2) The committees referred to in paragraph (1) are the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives.

(j) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' includes the Secretary of Defense with respect to Defense-wide appropriations accounts.

(2) The term ''unexpired funds'' means funds appropriated for a definite period that remain available for obligation.

(3) The term ''congressional defense committees'' means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 104–106, div. A, title IX, §912(a)(1), Feb. 10, 1996, 110 Stat. 407; amended Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

CODIFICATION

Another section 2216 was renumbered section 2216a of this title and subsequently repealed.

PRIOR PROVISIONS

A prior section 2216, added Pub. L. 99–661, div. A, title XIII, §1307(a)(1), Nov. 14, 1986, 100 Stat. 3980, related to annual reports on budgeting for inflation, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1301(8), Nov. 5, 1990, 104 Stat. 1668.

AMENDMENTS

1999—Subsec. (j)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

CHANGE OF NAME

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

EFFECTIVE DATE

Section 912(b) of Pub. L. 104–106 provided that: ''Section 2216 of title 10, United States Code (as added by subsection (a)), shall apply only to funds appropriated for fiscal years after fiscal year 1995.''

EXPIRATION OF AUTHORITY AND ACCOUNT

Pub. L. 104–106, div. A, title IX, §912(c), Feb. 10, 1996, 110 Stat. 410, as amended by Pub. L. 107–314, div. A, title VIII, §825(a)(1), Dec. 2, 2002, 116 Stat. 2615, provided that:

''(1) The authority under section 2216(b) of title 10, United States Code (as added by subsection (a)), to transfer funds into the Defense Modernization Account terminates at the close of September 30, 2002.

''(2) Three years after the termination date specified in paragraph (1), the Defense Modernization Account shall be closed and any remaining balance in the account shall be canceled and thereafter shall not be available for any purpose.''

GAO REVIEWS

Pub. L. 104–106, div. A, title IX, §912(d), Feb. 10, 1996, 110 Stat. 410, required Comptroller General of the United States to conduct two reviews of the administration of the Defense Modernization Account, prior to repeal by Pub. L. 107–314, div. A, title VIII, §825(a)(2), Dec. 2, 2002, 116 Stat. 2615.

[§ 2216a. Repealed. Pub. L. 105–261, div. A, title X, § 1008(b), Oct. 17, 1998, 112 Stat. 2117]

Section, added Pub. L. 104–106, div. A, title III, §371(a)(1), Feb. 10, 1996, 110 Stat. 277, §2216; renumbered §2216a and amended Pub. L. 104–201, div. A, title III, §§363(c), 364, title X, §1074(a)(10), Sept. 23, 1996, 110 Stat. 2493, 2494, 2659, related to Defense Business Operations Fund.

§ 2217. Comparable budgeting for common procurement weapon systems

(a) MATTERS TO BE INCLUDED IN ANNUAL DEFENSE BUDGETS.—In preparing the defense budget for any fiscal year, the Secretary of Defense shall—

(1) specifically identify each common procurement weapon system included in the budget;

(2) take all feasible steps to minimize variations in procurement unit costs for any such system as shown in the budget requests of the different armed forces requesting procurement funds for the system; and

(3) identify and justify in the budget all such variations in procurement unit costs for common procurement weapon systems.

(b) COMPTROLLER.—The Secretary shall carry out this section through the Under Secretary of Defense (Comptroller).

(c) DEFINITIONS.—In this section:

(1) The term ''defense budget'' means the budget of the Department of Defense included in the President's budget submitted to Congress under section 1105 of title 31 for a fiscal year.

(2) The term ''common procurement weapon system'' means a weapon system for which two or more of the Army, Navy, Air Force, and Marine Corps request procurement funds in a defense budget.

(Added Pub. L. 100–370, §1(d)(3)(A), July 19, 1988, 102 Stat. 843; amended Pub. L. 104–106, div. A, title XV, §1503(a)(20), Feb. 10, 1996, 110 Stat. 512.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–500, §101(c) [title X, §955], Oct. 18, 1986, 100 Stat. 1783–82, 1783–173, and Pub. L. 99–591, §101(c) [title X, §955], Oct. 30, 1986, 100 Stat. 3341–82, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §955, Nov. 14, 1986, 100 Stat. 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

§ 2218. National Defense Sealift Fund

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''National Defense Sealift Fund''.

(b) ADMINISTRATION OF FUND.—The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) FUND PURPOSES.—(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) DEPOSITS.—There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).

(e) ACCEPTANCE OF SUPPORT.—(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) LIMITATIONS.—(1) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101–510 (104 Stat. 1683).

(g) EXPIRATION OF FUNDS AFTER 5 YEARS.—No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

(h) BUDGET REQUESTS.—Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) TITLE OR MANAGEMENT OF VESSELS.—Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) AUTHORITY FOR CERTAIN USE OF FUNDS.—Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1)(A), (B), (C), and (D) for any purpose under subsection (c)(1).

(k) CONTRACTS FOR INCORPORATION OF DEFENSE FEATURES IN COMMERCIAL VESSELS.—(1) The

head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer. As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual payments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as ''ROS–4 status'' in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall—

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(*l*) DEFINITIONS.—In this section:

(1) The term ''Fund'' means the National Defense Sealift Fund established by subsection (a).

(2) The term ''Department of Defense sealift vessel'' means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following:

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101–510 (104 Stat. 1683).

(B) A maritime prepositioning ship.

(C) An afloat prepositioning ship.

(D) An aviation maintenance support ship.

(E) A hospital ship.

(F) A strategic sealift ship.

(G) A combat logistics force ship.

(H) A maritime prepositioned ship.

(I) Any other auxiliary support vessel.

(3) The term ''national defense sealift vessel'' means—

(A) a Department of Defense sealift vessel; and

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term ''congressional defense committees'' means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(5) The term ''head of an agency'' has the meaning given that term in section 2302(1) of this title.

(Added Pub. L. 102–484, div. A, title X, §1024(a)(1), Oct. 23, 1992, 106 Stat. 2486; amended Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896; Pub. L. 104–106, div. A, title X, §1014(a), title XV, §1502(a)(15), Feb. 10, 1996, 110 Stat. 423, 503; Pub. L. 106–65, div. A, title X, §§1014(b), 1015, 1067(1), Oct. 5, 1999, 113 Stat. 742, 743, 774; Pub. L. 106–398, §1 [[div. A], title X, §1011], Oct. 30, 2000, 114 Stat. 1654, 1654A–251; Pub. L. 107–107, div. A, title X, §1048(e)(9), Dec. 28, 2001, 115 Stat. 1228.)

REFERENCES IN TEXT

Section 1424 of Public Law 101–510, referred to in subsecs. (d)(3), (f)(2), and (*l*)(2)(A), is section 1424 of the National Defense Authorization Act for Fiscal Year 1991 which is set out as a note under section 7291 of this title.

CODIFICATION

Pub. L. 102–396, title V, Oct. 6, 1992, 106 Stat. 1896, provided that section 1024 of the National Defense Author-

ization Act for Fiscal Year 1993 [H.R. 5006, Pub. L. 102–484], as it passed the Senate on Oct. 3, 1992, shall be amended in subsection 2218(c)(2) proposed for inclusion in this chapter by deleting all after ''expended only'' down to and including ''appropriations Act'' and inserting in lieu thereof ''in amounts authorized by law''. It further provided that for purposes of that amendment, Pub. L. 102–396 shall be treated as having been enacted after Pub. L. 102–484, regardless of the actual dates of enactment. The date of Oct. 3, 1992, referred to as the date the Senate passed the National Defense Authorization Act for Fiscal Year 1993, apparently is based on an order adopted by the Senate on Oct. 3, 1992 [Cong. Rec., vol. 138, p. 30919] providing that when the conference report on the National Defense Authorization Act for Fiscal Year 1993 was received by the Senate from the House of Representatives it would be deemed to have been agreed to. On Oct. 5, 1992, the Senate received the conference report from the House, and it was considered adopted pursuant to that order [Cong. Rec., vol. 138, p. 31565].

AMENDMENTS

2001—Subsec. (d)(1). Pub. L. 107–107 struck out ''for fiscal years after fiscal year 1993'' after ''Department of Defense'' in introductory provisions.

2000—Subsec. (k)(1). Pub. L. 106–398, §1 [[div. A], title X, §1011(1)], inserted at end ''As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.''

Subsec. (k)(2)(E). Pub. L. 106–398, §1 [[div. A], title X, §1011(2)], added subpar. (E).

Subsec. (k)(6). Pub. L. 106–398, §1 [[div. A], title X, §1011(3)], added par. (6).

1999—Subsec. (k). Pub. L. 106–65, §1015(a)(2), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(2). Pub. L. 106–65, §1014(b), substituted ''that is any of the following:'' for ''that is—'' in introductory provisions, substituted ''A'' for ''a'' and a period for the semicolon in subpars. (A) and (B), ''An'' for ''an'' and a period for the semicolon in subpar. (C), ''An'' for ''an'' and a period for ''; or'' in subpar. (D), and ''A'' for ''a'' in subpar. (E), and added subpars. (F) to (I).

Subsec. (*l*). Pub. L. 106–65, §1015(a)(1), redesignated subsec. (k) as (*l*).

Subsec. (*l*)(4)(B). Pub. L. 106–65, §1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

Subsec. (*l*)(5). Pub. L. 106–65, §1015(b), added par. (5).

1996—Subsec. (c)(1). Pub. L. 104–106, §1014(a)(1)(A), substituted ''only for the following purposes:'' for ''only for—''.

Subsec. (c)(1)(A). Pub. L. 104–106, §1014(a)(1)(B), (C), substituted ''Construction'' for ''construction'' and ''vessels.'' for ''vessels;''.

Subsec. (c)(1)(B). Pub. L. 104–106, §1014(a)(1)(B), (C), substituted ''Operation'' for ''operation'' and ''purposes.'' for ''purposes;''.

Subsec. (c)(1)(C). Pub. L. 104–106, §1014(a)(1)(B), (D), substituted ''Installation'' for ''installation'' and ''States.'' for ''States; and''.

Subsec. (c)(1)(D). Pub. L. 104–106, §1014(a)(1)(B), substituted ''Research'' for ''research''.

Subsec. (c)(1)(E). Pub. L. 104–106, §1014(a)(1)(E), added subpar. (E).

Subsec. (i). Pub. L. 104–106, §1014(a)(2), inserted ''(other than subsection (c)(1)(E))'' after ''Nothing in this section''.

Subsec. (j). Pub. L. 104–106, §1502(a)(15)(A), substituted ''the congressional defense committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives''.

Subsec. (k)(4). Pub. L. 104–106, §1502(a)(15)(B), added par. (4).

1992—Subsec. (c)(2). Pub. L. 102–396 substituted ''in amounts authorized by law'' for ''for programs, projects, and activities and only in amounts authorized in, or otherwise permitted under, an Act other than an appropriations Act''. See Codification note above.

§ 2219. Retention of morale, welfare, and recreation funds by military installations: limitation

Amounts may not be retained in a nonappropriated morale, welfare, and recreation account of a military installation of an armed force in excess of the amount necessary to meet cash requirements of that installation. Amounts in excess of that amount shall be transferred to a single nonappropriated morale, welfare, and recreation account for that armed force. This section does not apply to the Coast Guard.

(Added Pub. L. 103–337, div. A, title III, §373(a), Oct. 5, 1994, 108 Stat. 2736; amended Pub. L. 104–106, div. A, title III, §341, Feb. 10, 1996, 110 Stat. 265.)

AMENDMENTS

1996—Pub. L. 104–106, in first sentence, substituted ''an armed force'' for ''a military department'', in second sentence, substituted ''a single, nonappropriated morale, welfare, and recreation account for that armed force'' for ''a single, department-wide nonappropriated morale, welfare, and recreation account of the military department'', and inserted after second sentence ''This section does not apply to the Coast Guard.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2220. Performance based management: acquisition programs

(a) ESTABLISHMENT OF GOALS.—The Secretary of Defense shall approve or define the cost, performance, and schedule goals for major defense acquisition programs of the Department of Defense and for each phase of the acquisition cycle of such programs.

(b) EVALUATION OF COST GOALS.—The Under Secretary of Defense (Comptroller) shall evaluate the cost goals proposed for each major defense acquisition program of the Department.

(Added Pub. L. 103–355, title V, §5001(a)(1), Oct. 13, 1994, 108 Stat. 3349; amended Pub. L. 104–106, div. A, title XV, §1503(a)(20), div. D, title XLIII, §4321(b)(1), Feb. 10, 1996, 110 Stat. 512, 671; Pub. L. 105–85, div. A, title VIII, §841(a), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 107–314, div. A, title X, §1041(a)(8), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, §1041(a)(8)(B), (C), struck out par. (1) designation and redesignated par. (2) as subsec. (b).

Subsec. (b). Pub. L. 107–314, §1041(a)(8)(A), (C), redesignated subsec. (a)(2) as (b) and struck out heading and text of former subsec. (b). Text read as follows: ''The Secretary of Defense shall include in the annual report submitted to Congress pursuant to section 113(c) of this

title an assessment of whether major acquisition programs of the Department of Defense are achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a) and whether the average period for converting emerging technology into operational capability has decreased by 50 percent or more from the average period required for such conversion as of October 13, 1994. The Secretary shall use data from existing management systems in making the assessment.''

Subsec. (c). Pub. L. 107–314, §1041(a)(8)(A), struck out heading and text of subsec. (c). Text read as follows: ''Whenever the Secretary of Defense, in the assessment required by subsection (b), determines that major defense acquisition programs of the Department of Defense are not achieving, on average, 90 percent of cost, performance, and schedule goals established pursuant to subsection (a), the Secretary shall ensure that there is a timely review of major defense acquisition programs and other programs as appropriate. In conducting the review, the Secretary shall—

''(1) determine whether there is a continuing need for programs that are significantly behind schedule, over budget, or not in compliance with performance or capability requirements; and

''(2) identify suitable actions to be taken, including termination, with respect to such programs.''

1997—Subsec. (b). Pub. L. 105–85 substituted ''whether major acquisition programs'' for ''whether major and nonmajor acquisition programs''.

1996—Subsec. (a)(2). Pub. L. 104–106, §1503(a)(20), substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

Subsec. (b). Pub. L. 104–106, §4321(b)(1), substituted ''October 13, 1994'' for ''the date of the enactment of the Federal Acquisition Streamlining Act of 1994''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(1) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

PILOT PROGRAMS FOR TESTING PROGRAM MANAGER PERFORMANCE OF PRODUCT SUPPORT OVERSIGHT RESPONSIBILITIES FOR LIFE CYCLE OF ACQUISITION PROGRAMS

Pub. L. 105–261, div. A, title VIII, §816, Oct. 17, 1998, 112 Stat. 2088, provided that:

''(a) DESIGNATION OF PILOT PROGRAMS.—The Secretary of Defense, acting through the Secretaries of the military departments, shall designate 10 acquisition programs of the military departments as pilot programs on program manager responsibility for product support.

''(b) RESPONSIBILITIES OF PROGRAM MANAGERS.—The program manager for each acquisition program designated as a pilot program under this section shall have the responsibility for ensuring that the product support functions for the program are properly carried out over the entire life cycle of the program.

''(c) REPORT.—Not later than February 1, 1999, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the pilot programs. The report shall contain the following:

''(1) A description of the acquisition programs designated as pilot programs under subsection (a).

''(2) For each such acquisition program, the specific management actions taken to ensure that the program manager has the responsibility for oversight of the performance of the product support functions.

''(3) Any proposed change to law, policy, regulation, or organization that the Secretary considers desirable, and determines feasible to implement, for ensuring that the program managers are fully responsible under the pilot programs for the performance of all such responsibilities.''

ENHANCED SYSTEM OF PERFORMANCE INCENTIVES

Section 5001(b) of Pub. L. 103–355 provided that: ''Within one year after the date of the enactment of this Act [Oct. 13, 1994], the Secretary of Defense shall review the incentives and personnel actions available to the Secretary of Defense for encouraging excellence in the management of defense acquisition programs and provide an enhanced system of incentives to facilitate the achievement of goals approved or defined pursuant to section 2220(a) of title 10, United States Code. The enhanced system of incentives shall, to the maximum extent consistent with applicable law—

''(1) relate pay to performance (including the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, as added by subsection (a)); and

''(2) provide for consideration, in personnel evaluations and promotion decisions, of the extent to which the performance of personnel in such programs contributes to achieving the cost goals, performance goals, and schedule goals established for acquisition programs of the Department of Defense pursuant to section 2220(a) of title 10, United States Code, as added by subsection (a).''

RECOMMENDED LEGISLATION

Section 5001(c) of Pub. L. 103–355 provided that: ''Not later than one year after the date of the enactment of this Act [Oct 13, 1994], the Secretary of Defense shall submit to Congress any recommended legislation that the Secretary considers necessary to carry out section 2220 of title 10, United States Code, as added by subsection (a), and otherwise to facilitate and enhance management of Department of Defense acquisition programs on the basis of performance.''

[§ 2221. Repealed. Pub. L. 105–261, div. A, title IX, § 906(f)(1), Oct. 17, 1998, 112 Stat. 2096]

Section, added Pub. L. 104–106, div. A, title IX, §914(a)(1), Feb. 10, 1996, 110 Stat. 412; amended Pub. L. 104–201, div. A, title X, §1008(a), Sept. 23, 1996, 110 Stat. 2633; Pub. L. 105–85, div. A, title X, §1006(a), Nov. 18, 1997, 111 Stat. 1869; Pub. L. 105–261, div. A, title X, §1069(b)(2), Oct. 17, 1998, 112 Stat. 2136, related to Fisher House trust funds. See section 2493 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Oct. 17, 1998, see section 906(f)(3) of Pub. L. 105–261, set out as an Effective Date of 1998 Amendment note under section 1321 of Title 31, Money and Finance.

[§ 2222. Repealed. Pub. L. 107–314, div. A, title X, § 1004(h)(1), Dec. 2, 2002, 116 Stat. 2631]

Section, added Pub. L. 105–85, div. A, title X, §1008(a)(1), Nov. 18, 1997, 111 Stat. 1870; amended Pub. L. 107–107, div. A, title X, §1009(b)(1)–(3)(A), Dec. 28, 2001, 115 Stat. 1208, 1209, required Secretary of Defense to submit to Congress an annual strategic plan for improvement of financial management within Department of Defense and specified statements and matters to be included in the plan.

§ 2223. Information technology: additional responsibilities of Chief Information Officers

(a) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF DEPARTMENT OF DEFENSE.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of the Department of Defense shall—

(1) review and provide recommendations to the Secretary of Defense on Department of De-

fense budget requests for information technology and national security systems;

(2) ensure the interoperability of information technology and national security systems throughout the Department of Defense;

(3) ensure that information technology and national security systems standards that will apply throughout the Department of Defense are prescribed;

(4) provide for the elimination of duplicate information technology and national security systems within and between the military departments and Defense Agencies; and

(5) maintain a consolidated inventory of Department of Defense mission critical and mission essential information systems, identify interfaces between those systems and other information systems, and develop and maintain contingency plans for responding to a disruption in the operation of any of those information systems.

(b) ADDITIONAL RESPONSIBILITIES OF CHIEF INFORMATION OFFICER OF MILITARY DEPARTMENTS.—In addition to the responsibilities provided for in chapter 35 of title 44 and in section 11315 of title 40, the Chief Information Officer of a military department, with respect to the military department concerned, shall—

(1) review budget requests for all information technology and national security systems;

(2) ensure that information technology and national security systems are in compliance with standards of the Government and the Department of Defense;

(3) ensure that information technology and national security systems are interoperable with other relevant information technology and national security systems of the Government and the Department of Defense; and

(4) coordinate with the Joint Staff with respect to information technology and national security systems.

(c) DEFINITIONS.—In this section:

(1) The term ''Chief Information Officer'' means the senior official designated by the Secretary of Defense or a Secretary of a military department pursuant to section 3506 of title 44.

(2) The term ''information technology'' has the meaning given that term by section 11101 of title 40.

(3) The term ''national security system'' has the meaning given that term by section 11103 of title 40.

(Added Pub. L. 105–261, div. A, title III, § 331(a)(1), Oct. 17, 1998, 112 Stat. 1967; amended Pub. L. 106–398, § 1 [[div. A], title VIII, § 811(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210; Pub. L. 107–217, § 3(b)(1), Aug. 21, 2002, 116 Stat. 1295.)

AMENDMENTS

2002—Subsecs. (a), (b). Pub. L. 107–217, § 3(b)(1)(A), (B), substituted ''section 11315 of title 40'' for ''section 5125 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 107–217, § 3(b)(1)(C), substituted ''section 11101 of title 40'' for ''section 5002 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401)''.

Subsec. (c)(3). Pub. L. 107–217, § 3(b)(1)(D), substituted ''section 11103 of title 40'' for ''section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452)''.

2000—Subsec. (a)(5). Pub. L. 106–398 added par. (5).

EFFECTIVE DATE

Pub. L. 105–261, div. A, title III, § 331(b), Oct. 17, 1998, 112 Stat. 1968, provided that: ''Section 2223 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1998.''

§ 2224. Defense Information Assurance Program

(a) DEFENSE INFORMATION ASSURANCE PROGRAM.—The Secretary of Defense shall carry out a program, to be known as the ''Defense Information Assurance Program'', to protect and defend Department of Defense information, information systems, and information networks that are critical to the Department and the armed forces during day-to-day operations and operations in times of crisis.

(b) OBJECTIVES OF THE PROGRAM.—The objectives of the program shall be to provide continuously for the availability, integrity, authentication, confidentiality, nonrepudiation, and rapid restitution of information and information systems that are essential elements of the Defense Information Infrastructure.

(c) PROGRAM STRATEGY.—In carrying out the program, the Secretary shall develop a program strategy that encompasses those actions necessary to assure the readiness, reliability, continuity, and integrity of Defense information systems, networks, and infrastructure, including through compliance with subchapter III of chapter 35 of title 44. The program strategy shall include the following:

(1) A vulnerability and threat assessment of elements of the defense and supporting nondefense information infrastructures that are essential to the operations of the Department and the armed forces.

(2) Development of essential information assurances technologies and programs.

(3) Organization of the Department, the armed forces, and supporting activities to defend against information warfare.

(4) Joint activities of the Department with other departments and agencies of the Government, State and local agencies, and elements of the national information infrastructure.

(5) The conduct of exercises, war games, simulations, experiments, and other activities designed to prepare the Department to respond to information warfare threats.

(6) Development of proposed legislation that the Secretary considers necessary for implementing the program or for otherwise responding to the information warfare threat.

(d) COORDINATION.—In carrying out the program, the Secretary shall coordinate, as appropriate, with the head of any relevant Federal agency and with representatives of those national critical information infrastructure systems that are essential to the operations of the Department and the armed forces on information assurance measures necessary to the protection of these systems.

(e) ANNUAL REPORT.—Each year, at or about the time the President submits the annual budget for the next fiscal year pursuant to section 1105 of title 31, the Secretary shall submit to Congress a report on the Defense Information Assurance Program. Each report shall include the following:

(1) Progress in achieving the objectives of the program.

(2) A summary of the program strategy and any changes in that strategy.

(3) A description of the information assurance activities of the Office of the Secretary of Defense, Joint Staff, unified and specified commands, Defense Agencies, military departments, and other supporting activities of the Department of Defense.

(4) Program and budget requirements for the program for the past fiscal year, current fiscal year, budget year, and each succeeding fiscal year in the remainder of the current future-years defense program.

(5) An identification of critical deficiencies and shortfalls in the program.

(6) Legislative proposals that would enhance the capability of the Department to execute the program.

(7) A summary of the actions taken in the administration of sections 3534 and 3535 of title 44 within the Department of Defense.

(f) INFORMATION ASSURANCE TEST BED.—The Secretary shall develop an information assurance test bed within the Department of Defense to provide—

(1) an integrated organization structure to plan and facilitate the conduct of simulations, war games, exercises, experiments, and other activities to prepare and inform the Department regarding information warfare threats; and

(2) organization and planning means for the conduct by the Department of the integrated or joint exercises and experiments with elements of the national information systems infrastructure and other non-Department of Defense organizations that are responsible for the oversight and management of critical information systems and infrastructures on which the Department, the armed forces, and supporting activities depend for the conduct of daily operations and operations during crisis.

(Added Pub. L. 106–65, div. A, title X, §1043(a), Oct. 5, 1999, 113 Stat. 760; amended Pub. L. 106–398, §1 [[div. A], title X, §1063], Oct. 30, 2000, 114 Stat. 1654, 1654A–274; Pub. L. 107–296, title X, §1001(c)(1)(B), Nov. 25, 2002, 116 Stat. 2267; Pub. L. 107–347, title III, §301(c)(1)(B), Dec. 17, 2002, 116 Stat. 2955.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–347, §301(c)(1)(B)(i), substituted ''Objectives of the Program'' for ''Objectives and Minimum Requirements'' in heading and struck out par. (1) designation.

Pub. L. 107–296, §1001(c)(1)(B)(i), which directed substituting ''Objectives of the Program'' for ''Objectives and Minimum Requirements'' in heading and striking out par. (1) designation, could not be executed. See above par.

Subsec. (b)(2). Pub. L. 107–347, §301(c)(1)(B)(ii), struck out par. (2) which read as follows: ''The program shall at a minimum meet the requirements of sections 3534 and 3535 of title 44.''

Pub. L. 107–296, §1101(c)(1)(B)(ii), which directed the striking out of ''(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code.'' could not be executed. See above par.

Subsec. (c). Pub. L. 107–347, §301(c)(1)(B)(iii), inserted '', including through compliance with subchapter III of chapter 35 of title 44'' after ''infrastructure'' in introductory provisions.

Pub. L. 107–296, §1101(c)(1)(B)(iii), which directed the insertion of '', including through compliance with subtitle II of chapter 35 of title 44'' after ''infrastructure'' in subsec. (c), was not executed, to reflect the probable intent of Congress and the amendment by Pub. L. 107–347. See above par.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title X, §1063(a)], substituted ''OBJECTIVES AND MINIMUM REQUIREMENTS'' for ''OBJECTIVES OF THE PROGRAM'' in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (e)(7). Pub. L. 106–398, §1 [[div. A], title X, §1063(b)], added par. (7).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–398 effective 30 days after Oct. 30, 2000, see section 1 [[div. A], title X, §1065] of Pub. L. 106–398, set out as an Effective Date note under section 3531 of Title 44, Public Printing and Documents.

INSTITUTE FOR DEFENSE COMPUTER SECURITY AND INFORMATION PROTECTION

Pub. L. 106–398, §1 [[div. A], title IX, §921], Oct. 30, 2000, 114 Stat. 1654, 1654A–233, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish an Institute for Defense Computer Security and Information Protection.

''(b) MISSION.—The Secretary shall require the institute—

''(1) to conduct research and technology development that is relevant to foreseeable computer and network security requirements and information assurance requirements of the Department of Defense with a principal focus on areas not being carried out by other organizations in the private or public sector; and

''(2) to facilitate the exchange of information regarding cyberthreats, technology, tools, and other relevant issues.

''(c) CONTRACTOR OPERATION.—The Secretary shall enter into a contract with a not-for-profit entity, or a consortium of not-for-profit entities, to organize and operate the institute. The Secretary shall use competitive procedures for the selection of the contractor to the extent determined necessary by the Secretary.

''(d) FUNDING.—Of the amount authorized to be appropriated by section 301(5) [114 Stat. 1654A–52], $5,000,000 shall be available for the Institute for Defense Computer Security and Information Protection.

''(e) REPORT.—Not later than April 1, 2001, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the Secretary's plan for implementing this section.''

§ 2224a. Information security: continued applicability of expiring Governmentwide requirements to the Department of Defense

(a) IN GENERAL.—The provisions of subchapter II of chapter 35 of title 44 shall continue to apply through September 30, 2004, with respect to the Department of Defense, notwithstanding the expiration of authority under section 3536[1] of such title.

(b) RESPONSIBILITIES.—In administering the provisions of subchapter II of chapter 35 of title

[1] See References in Text note below.

44 with respect to the Department of Defense after the expiration of authority under section 3536[1] of such title, the Secretary of Defense shall perform the duties set forth in that subchapter for the Director of the Office of Management and Budget.

(Added Pub. L. 107–314, div. A, title X, § 1052(b)(1), Dec. 2, 2002, 116 Stat. 2648.)

REFERENCES IN TEXT

Provisions relating to the expiration of authority of subchapter II of chapter 35 of title 44, referred to in text, did not appear in section 3536 of title 44 subsequent to the general revision of subchapter II by Pub. L. 107–296, title X, § 1001(b)(1), Nov. 25, 2002, 116 Stat. 2259.

§ 2225. Information technology purchases: tracking and management

(a) COLLECTION OF DATA REQUIRED.—To improve tracking and management of information technology products and services by the Department of Defense, the Secretary of Defense shall provide for the collection of the data described in subsection (b) for each purchase of such products or services made by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The products or services purchased.

(2) Whether the products or services are categorized as commercially available off-the-shelf items, other commercial items, nondevelopmental items other than commercial items, other noncommercial items, or services.

(3) The total dollar amount of the purchase.

(4) The form of contracting action used to make the purchase.

(5) In the case of a purchase made through an agency other than the Department of Defense—

(A) the agency through which the purchase is made; and

(B) the reasons for making the purchase through that agency.

(6) The type of pricing used to make the purchase (whether fixed price or another type of pricing).

(7) The extent of competition provided in making the purchase.

(8) A statement regarding whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(9) A statement regarding whether the purchase was made in compliance with the planning requirements under sections 5122 and 5123 of the Clinger-Cohen Act of 1996[1] (40 U.S.C. 1422, 1423).

(c) RESPONSIBILITY TO ENSURE FAIRNESS OF CERTAIN PRICES.—The head of each contracting activity in the Department of Defense shall have responsibility for ensuring the fairness and reasonableness of unit prices paid by the contracting activity for information technology products and services that are frequently purchased commercially available off-the-shelf items.

(d) LIMITATION ON CERTAIN PURCHASES.—No purchase of information technology products or services in excess of the simplified acquisition threshold shall be made for the Department of Defense from a Federal agency outside the Department of Defense unless—

(1) the purchase data is collected in accordance with subsection (a); or

(2)(A) in the case of a purchase by a Defense Agency, the purchase is approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics; or

(B) in the case of a purchase by a military department, the purchase is approved by the senior procurement executive of the military department.

(e) ANNUAL REPORT.—Not later than March 15 of each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a summary of the data collected in accordance with subsection (a).

(f) DEFINITIONS.—In this section:

(1) The term ''senior procurement executive'', with respect to a military department, means the official designated as the senior procurement executive for the military department for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(2) The term ''simplified acquisition threshold'' has the meaning given the term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(3) The term ''small business concern'' means a business concern that meets the applicable size standards prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(4) The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' has the meaning given that term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

(5) The term ''small business concern owned and controlled by women'' has the meaning given that term in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D)).

(Added Pub. L. 106–398, § 1 [[div. A], title VIII, § 812(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–212.)

REFERENCES IN TEXT

Sections 5122 and 5123 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1422, 1423), referred to in subsec. (b)(9), are sections 5122 and 5123 of Pub. L. 104–106, which were classified to sections 1422 and 1423 of former Title 40, Public Buildings, Property, and Works, and were repealed and reenacted as sections 11312 and 11313 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

TIME FOR IMPLEMENTATION; APPLICABILITY

Pub. L. 106–398, § 1 [[div. A], title VIII, § 812(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, provided that:

[1] See References in Text note below.

''(1) The Secretary of Defense shall collect data as required under section 2225 of title 10, United States Code (as added by subsection (a)) for all contractual actions covered by such section entered into on or after the date that is one year after the date of the enactment of this Act [Oct. 30, 2000].

''(2) Subsection (d) of such section shall apply with respect to purchases described in that subsection for which solicitations of offers are issued on or after the date that is one year after the date of the enactment of this Act.''

GAO REPORT

Pub. L. 106–398, §1 [[div. A], title VIII, §812(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–214, provided that: ''Not later than 15 months after the date of the enactment of this Act [Oct. 30, 2000], the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the collection of data under such section 2225. The report shall include the Comptroller General's assessment of the extent to which the collection of data meets the requirements of that section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2330a of this title.

§ 2226. Contracted property and services: prompt payment of vouchers

(a) REQUIREMENT.—Of the contract vouchers that are received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system, the number of such vouchers that remain unpaid for more than 30 days as of the last day of each month may not exceed 5 percent of the total number of the contract vouchers so received that remain unpaid on that day.

(b) CONTRACT VOUCHER DEFINED.—In this section, the term ''contract voucher'' means a voucher or invoice for the payment to a contractor for services, commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))), or other deliverable items provided by the contractor under a contract funded by the Department of Defense.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1006(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–247.)

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title X, §1006(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–248, provided that: ''Section 2226 of title 10, United States Code (as added by subsection (a)), shall take effect on December 1, 2000.''

CONDITIONAL REQUIREMENT FOR REPORT

Pub. L. 106–398, §1 [[div. A], title X, §1006(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–248, provided that:

''(1) If for any month of the noncompliance reporting period the requirement in section 2226 of title 10, United States Code (as added by subsection (a)), is not met, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the magnitude of the unpaid contract vouchers. The report for a month shall be submitted not later than 30 days after the end of that month.

''(2) A report for a month under paragraph (1) shall include information current as of the last day of the month as follows:

''(A) The number of the vouchers received by the Defense Finance and Accounting Service by means of the mechanization of contract administration services system during each month.

''(B) The number of the vouchers so received, whenever received by the Defense Finance and Accounting Service, that remain unpaid for each of the following periods:

''(i) Over 30 days and not more than 60 days.

''(ii) Over 60 days and not more than 90 days.

''(iii) More than 90 days.

''(C) The number of the vouchers so received that remain unpaid for the major categories of procurements, as defined by the Secretary of Defense.

''(D) The corrective actions that are necessary, and those that are being taken, to ensure compliance with the requirement in subsection (a).

''(3) For purposes of this subsection:

''(A) The term 'noncompliance reporting period' means the period beginning on December 1, 2000, and ending on November 30, 2004.

''(B) The term 'contract voucher' has the meaning given that term in section 2226(b) of title 10, United States Code (as added by subsection (a)).''

§ 2227. Electronic submission and processing of claims for contract payments

(a) SUBMISSION OF CLAIMS.—The Secretary of Defense shall require that any claim for payment under a Department of Defense contract shall be submitted to the Department of Defense in electronic form.

(b) PROCESSING.—A contracting officer, contract administrator, certifying official, or other officer or employee of the Department of Defense who receives a claim for payment in electronic form in accordance with subsection (a) and is required to transmit the claim to any other officer or employee of the Department of Defense for processing under procedures of the department shall transmit the claim and any additional documentation necessary to support the determination and payment of the claim to such other officer or employee electronically.

(c) WAIVER AUTHORITY.—If the Secretary of Defense determines that the requirement for using electronic means for submitting claims under subsection (a), or for transmitting claims and supporting documentation under subsection (b), is unduly burdensome in any category of cases, the Secretary may exempt the cases in that category from the application of the requirement.

(d) IMPLEMENTATION OF REQUIREMENTS.—In implementing subsections (a) and (b), the Secretary of Defense shall provide for the following:

(1) Policies, requirements, and procedures for using electronic means for the submission of claims for payment to the Department of Defense and for the transmission, between Department of Defense officials, of claims for payment received in electronic form, together with supporting documentation (such as receiving reports, contracts and contract modifications, and required certifications).

(2) The format in which information can be accepted by the corporate database of the Defense Finance and Accounting Service.

(3) The requirements to be included in contracts regarding the electronic submission of claims for payment by contractors.

(e) CLAIM FOR PAYMENT DEFINED.—In this section, the term ''claim for payment'' means an invoice or any other demand or request for payment.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1008(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–249.)

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title X, §1008(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250, provided that:

''(1) Subject to paragraph (2), the Secretary of Defense shall apply section 2227 of title 10, United States Code (as added by subsection (a)), with respect to contracts for which solicitations of offers are issued after June 30, 2001.

''(2)(A) The Secretary may delay the implementation of section 2227 to a date after June 30, 2001, upon a finding that it is impracticable to implement that section until that later date. In no event, however, may the implementation be delayed to a date after October 1, 2002.

''(B) Upon determining to delay the implementation of such section 2227 to a later date under subparagraph (A), the Secretary shall promptly publish a notice of the delay in the Federal Register. The notice shall include a specification of the later date on which the implementation of that section is to begin. Not later than 30 days before the later implementation date, the Secretary shall publish in the Federal Register another notice that such section is being implemented beginning on that date.''

[Notice by Department of Defense of delay in the implementation of this section from June 30, 2001, until Oct. 1, 2002, was published on Aug. 21, 2001, at 66 F.R. 43841.]

IMPLEMENTATION PLAN

Pub. L. 106–398, §1 [[div. A], title X, §1008(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250, provided that: ''Not later than March 30, 2001, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan for the implementation of the requirements imposed under section 2227 of title 10, United States Code (as added by subsection (a)). The plan shall provide for each of the matters specified in subsection (d) of that section.''

§ 2228. Military equipment and infrastructure: prevention and mitigation of corrosion

(a) DESIGNATION OF RESPONSIBLE OFFICIAL OR ORGANIZATION.—The Secretary of Defense shall designate an officer or employee of the Department of Defense, or a standing board or committee of the Department of Defense, as the senior official or organization responsible in the Department to the Secretary of Defense (after the Under Secretary of Defense for Acquisition, Technology, and Logistics) for the prevention and mitigation of corrosion of the military equipment and infrastructure of the Department.

(b) DUTIES.—(1) The official or organization designated under subsection (a) shall oversee and coordinate efforts throughout the Department of Defense to prevent and mitigate corrosion of the military equipment and infrastructure of the Department. The duties under this paragraph shall include the duties specified in paragraphs (2) through (5).

(2) The designated official or organization shall develop and recommend any policy guidance on the prevention and mitigation of corrosion to be issued by the Secretary of Defense.

(3) The designated official or organization shall review the programs and funding levels proposed by the Secretary of each military department during the annual internal Department of Defense budget review process as those programs and funding proposals relate to programs and funding for the prevention and mitigation of corrosion and shall submit to the Secretary of Defense recommendations regarding those programs and proposed funding levels.

(4) The designated official or organization shall provide oversight and coordination of the efforts within the Department of Defense to prevent or mitigate corrosion during—

(A) the design, acquisition, and maintenance of military equipment; and

(B) the design, construction, and maintenance of infrastructure.

(5) The designated official or organization shall monitor acquisition practices within the Department of Defense—

(A) to ensure that the use of corrosion prevention technologies and the application of corrosion prevention treatments are fully considered during research and development in the acquisition process; and

(B) to ensure that, to the extent determined appropriate for each acquisition program, such technologies and treatments are incorporated into that program, particularly during the engineering and design phases of the acquisition process.

(c) LONG-TERM STRATEGY.—(1) The Secretary of Defense shall develop and implement a long-term strategy to reduce corrosion and the effects of corrosion on the military equipment and infrastructure of the Department of Defense.

(2) The strategy under paragraph (1) shall include the following:

(A) Expansion of the emphasis on corrosion prevention and mitigation within the Department of Defense to include coverage of infrastructure.

(B) Application uniformly throughout the Department of Defense of requirements and criteria for the testing and certification of new corrosion-prevention technologies for equipment and infrastructure with similar characteristics, similar missions, or similar operating environments.

(C) Implementation of programs, including supporting databases, to ensure that a focused and coordinated approach is taken throughout the Department of Defense to collect, review, validate, and distribute information on proven methods and products that are relevant to the prevention of corrosion of military equipment and infrastructure.

(D) Establishment of a coordinated research and development program for the prevention and mitigation of corrosion for new and existing military equipment and infrastructure that includes a plan to transition new corrosion prevention technologies into operational systems.

(3) The strategy shall include, for the matters specified in paragraph (2), the following:

(A) Policy guidance.

(B) Performance measures and milestones.

(C) An assessment of the necessary personnel and funding necessary to accomplish the long-term strategy.

(d) DEFINITIONS.—In this section:

(1) The term ''corrosion'' means the deterioration of a material or its properties due to a

reaction of that material with its chemical environment.

(2) The term ''military equipment'' includes all weapon systems, weapon platforms, vehicles, and munitions of the Department of Defense, and the components of such items.

(3) The term ''infrastructure'' includes all buildings, structures, airfields, port facilities, surface and subterranean utility systems, heating and cooling systems, fuel tanks, pavements, and bridges.

(Added Pub. L. 107–314, div. A, title X, §1067(a)(1), Dec. 2, 2002, 116 Stat. 2657.)

DEADLINE FOR DESIGNATION OF RESPONSIBLE OFFICIAL OR ORGANIZATION; INTERIM REPORT; DEADLINE FOR LONG-TERM STRATEGY; GAO REVIEW

Pub. L. 107–314, div. A, title X, §1067(b)–(e), Dec. 2, 2002, 116 Stat. 2658, 2659, provided that:

''(b) DEADLINE FOR DESIGNATION OF RESPONSIBLE OFFICIAL OR ORGANIZATION.—The Secretary of Defense shall designate an officer, employee, or standing board or committee of the Department of Defense under subsection (a) of section 2228 of title 10, United States Code, as added by subsection (a), not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002].

''(c) INTERIM REPORT.—When the President submits the budget for fiscal year 2004 to Congress pursuant to section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to Congress a report regarding the actions taken to that date under section 2228 of title 10, United States Code, as added by subsection (a). That report shall include the following:

''(1) A description of the organizational structure for the personnel carrying out the responsibilities of the official or organization designated under subsection (a) of that section with respect to the prevention and mitigation of corrosion.

''(2) An outline for the long-term strategy for prevention and mitigation of corrosion required by subsection (c) of that section and milestones for development of that strategy.

''(d) DEADLINE FOR LONG-TERM STRATEGY.—The Secretary of Defense shall submit to Congress a report setting forth the long-term strategy required under subsection (c) of section 2228 of title 10, United States Code, as added by subsection (a), not later than one year after the date of the enactment of this Act.

''(e) GAO REVIEW.—The Comptroller General shall monitor the implementation of the long-term strategy required under subsection (c) of section 2228 of title 10, United States Code, as added by subsection (a), and, not later than 18 months after the date of the enactment of this Act, shall submit to Congress an assessment of the extent to which that strategy has been implemented.''

CHAPTER 133—FACILITIES FOR RESERVE COMPONENTS

Sec.
2231. Reference to chapter 1803.

PRIOR PROVISIONS

A prior chapter 133 was transferred to end of part V of subtitle E of this title and renumbered chapter 1803.

§ 2231. Reference to chapter 1803

Provisions of law relating to facilities for reserve components are set forth in chapter 1803 of this title (beginning with section 18231).

(Added Pub. L. 103–337, div. A, title XVI, §1664(b)(11), Oct. 5, 1994, 108 Stat. 3011.)

PRIOR PROVISIONS

Prior sections 2231 to 2239 were renumbered sections 18231 to 18239 of this title, respectively.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 134—MISCELLANEOUS ADMINISTRATIVE PROVISIONS

Subchap. Sec.
I. Miscellaneous Authorities, Prohibitions, and Limitations on the Use of Appropriated Funds 2241
II. Miscellaneous Administrative Authority 2251

SUBCHAPTER I—MISCELLANEOUS AUTHORITIES, PROHIBITIONS, AND LIMITATIONS ON THE USE OF APPROPRIATED FUNDS

Sec.
2241. Availability of appropriations for certain purposes.
2242. Authority to use appropriated funds for certain investigations and security services.
2243. Authority to use appropriated funds to support student meal programs in overseas dependents' schools.
2244. Security investigations.
2245. Use of aircraft for proficiency flying: limitation.
2246. Department of Defense golf courses: limitation on use of appropriated funds.
2247. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
2248. Purchase of surety bonds: prohibition.
2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.
2249a. Prohibition on providing financial assistance to terrorist countries.
2249b. Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title X, §1071(b), Sept. 23, 1996, 110 Stat. 2657, added item 2249b.

Pub. L. 104–106, div. A, title XIII, §1341(b), div. D, title XLIII, §4321(b)(2)(B), Feb. 10, 1996, 110 Stat. 485, 672, redesignated item 2247, relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs, as 2249 and added item 2249a.

1994—Pub. L. 103–355, title VII, §7202(a)(2), Oct. 13, 1994, 108 Stat. 3379, added item 2247 relating to prohibition on use of funds for documenting economic or employment impact of certain acquisition programs.

Pub. L. 103–337, div. A, title III, §372(b), title X, §1063(b), Oct. 5, 1994, 108 Stat. 2736, 2848, added item 2247 relating to use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation and item 2248.

1993—Pub. L. 103–160, div. A, title III, §312(b), Nov. 30, 1993, 107 Stat. 1618, added item 2246.

1991—Pub. L. 102–190, div. A, title X, §1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, made technical correction to directory language of Pub. L. 101–510, div. A, title XIV, §1481(e)(2), Nov. 5, 1990, 104 Stat. 1706. See 1990 amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, §1481(e)(2), Nov. 5, 1990, 104 Stat. 1706, as amended by Pub. L. 102–190, div. A, title X, §1062(a)(3), Dec. 5, 1991, 105 Stat. 1475, added item 2245.

Pub. L. 101–510, div. A, title IX, §904(b), Nov. 5, 1990, 104 Stat. 1621, added item 2244.

1989—Pub. L. 101–189, div. A, title III, §326(b), Nov. 29, 1989, 103 Stat. 1416, added item 2243.

§ 2241. Availability of appropriations for certain purposes

(a) OPERATION AND MAINTENANCE APPROPRIATIONS.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the following purposes:

(1) Morale, welfare, and recreation.

(2) Modification of personal property.

(3) Design of vessels.

(4) Industrial mobilization.

(5) Military communications facilities on merchant vessels.

(6) Acquisition of services, special clothing, supplies, and equipment.

(7) Expenses for the Reserve Officers' Training Corps and other units at educational institutions.

(b) NECESSARY EXPENSES.—Amounts appropriated to the Department of Defense may be used for all necessary expenses, at the seat of the Government or elsewhere, in connection with communication and other services and supplies that may be necessary for the national defense.

(Added Pub. L. 100–370, § 1(e)(1), July 19, 1988, 102 Stat. 844.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2253(b) and 2661(a) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

Subsection (b) of this section and sections 2242(1), (4) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, § 705, Dec. 8, 1983, 97 Stat. 1437.

Section 705 of Public Law 98–212, to be codified as 10 U.S.C. 2241(b), provides that defense appropriations may be used in connection with certain services and supplies ''as may be necessary to carry out the purposes of this Act''. The reference to ''this Act'' means Public Law 98–212, the FY84 Defense Appropriations Act. Language similar to section 705 had been enacted as part of the annual defense appropriation Act for many years. In the FY84 Act, section 705 was enacted as a permanent provision. The quoted phrase above was not, however, revised from the traditional annual wording as the provision had appeared in annual appropriations Acts in order to give it effect beyond the fiscal year concerned. Since the general purpose of a defense appropriations Act is to provide funds for national defense purposes, the committee, in codifying this provision, revised the quoted phrase so as to read ''that may be necessary for the national defense''. No change in meaning is intended.

FUNDS PROHIBITED FOR CONTRACTS WITH PERSONS CONVICTED OF UNLAWFUL MANUFACTURE OR SALE OF CONGRESSIONAL MEDALS OF HONOR

Pub. L. 105–262, title VIII, § 8118, Oct. 17, 1998, 112 Stat. 2331, provided that: ''During the current fiscal year and hereafter, no funds appropriated or otherwise available to the Department of Defense may be used to award a contract to, extend a contract with, or approve the award of a subcontract to any person who within the preceding 15 years has been convicted under section 704 of title 18, United States Code, of the unlawful manufacture or sale of the Congressional Medal of Honor.''

USE OF FUNDS FOR MODIFICATION OF RETIRED AIRCRAFT, WEAPON, SHIP OR OTHER ITEM OF EQUIPMENT

Pub. L. 105–56, title VIII, § 8053, Oct. 8, 1997, 111 Stat. 1232, provided that: ''None of the funds provided in this Act [see Tables for classification] and hereafter shall be available for use by a military department to modify an aircraft, weapon, ship or other item of equipment, that the military department concerned plans to retire or otherwise dispose of within 5 years after completion of the modification: *Provided*, That this prohibition shall not apply to safety modifications: *Provided further*, That this prohibition may be waived by the Secretary of a military department if the Secretary determines it is in the best national security interest of the United States to provide such waiver and so notifies the congressional defense committees in writing.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8055], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99.

Pub. L. 104–61, title VIII, § 8068, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, § 8079, Sept. 30, 1994, 108 Stat. 2636.

Pub. L. 103–139, title VIII, § 8098, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, § 9034, Oct. 6, 1992, 106 Stat. 1908.

Pub. L. 102–172, title VIII, § 8034, Nov. 26, 1991, 105 Stat. 1178.

Pub. L. 101–511, title VIII, § 8035, Nov. 5, 1990, 104 Stat. 1882.

DEMONSTRATION PROJECT FOR UNIFORM FUNDING OF MORALE, WELFARE, AND RECREATION ACTIVITIES AT CERTAIN MILITARY INSTALLATIONS

Pub. L. 104–106, div. A, title III, § 335, Feb. 10, 1996, 110 Stat. 262, provided that:

''(a) DEMONSTRATION PROJECT REQUIRED.—(1) The Secretary of Defense shall conduct a demonstration project to evaluate the feasibility of using only nonappropriated funds to support morale, welfare, and recreation programs at military installations in order to facilitate the procurement of property and services for those programs and the management of employees used to carry out those programs.

''(2) Under the demonstration project—

''(A) procurements of property and services for programs referred to in paragraph (1) may be carried out in accordance with laws and regulations applicable to procurements paid for with nonappropriated funds; and

''(B) appropriated funds available for such programs may be expended in accordance with laws applicable to expenditures of nonappropriated funds as if the appropriated funds were nonappropriated funds.

''(3) The Secretary shall prescribe regulations to carry out paragraph (2). The regulations shall provide for financial management and accounting of appropriated funds expended in accordance with subparagraph (B) of such paragraph.

''(b) COVERED MILITARY INSTALLATIONS.—The Secretary shall select not less than three and not more than six military installations to participate in the demonstration project.

''(c) PERIOD OF DEMONSTRATION PROJECT.—The demonstration project shall terminate not later than September 30, 1998.

''(d) EFFECT ON EMPLOYEES.—For the purpose of testing fiscal accounting procedures, the Secretary may convert, for the duration of the demonstration project, the status of an employee who carries out a program referred to in subsection (a)(1) from the status of an employee paid by appropriated funds to the status of a

nonappropriated fund instrumentality employee, except that such conversion may occur only—

''(1) if the employee whose status is to be converted—

''(A) is fully informed of the effects of such conversion on the terms and conditions of the employment of that employee for purposes of title 5, United States Code, and on the benefits provided to that employee under such title; and

''(B) consents to such conversion; or

''(2) in a manner which does not affect such terms and conditions of employment or such benefits.

''(e) REPORTS.—(1) Not later than six months after the date of the enactment of this Act [Feb. 10, 1996], the Secretary shall submit to Congress an interim report on the implementation of this section.

''(2) Not later than December 31, 1998, the Secretary shall submit to Congress a final report on the results of the demonstration project. The report shall include a comparison of—

''(A) the cost incurred under the demonstration project in using employees paid by appropriated funds together with nonappropriated fund instrumentality employees to carry out the programs referred to in subsection (a)(1); and

''(B) an estimate of the cost that would have been incurred if only nonappropriated fund instrumentality employees had been used to carry out such programs.''

INTERAGENCY COURIER SERVICE

Pub. L. 103–335, title VIII, §8119, Sept. 30, 1994, 108 Stat. 2649, provided that: ''During the current fiscal year and hereafter, the Department of State and the Department of Defense are authorized to provide interagency courier service on a non-reimbursable basis.''

RESTRICTIONS ON PROCUREMENTS FROM OUTSIDE OF UNITED STATES

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8109], Sept. 30, 1996, 110 Stat. 3009–71, 3009–111, provided for application of section 9005 of Public Law 102–396 (formerly set out below), prior to repeal by Pub. L. 107–107, div. A, title VIII, §832(b)(2), Dec. 28, 2001, 115 Stat. 1190.

Pub. L. 102–396, title IX, §9005, Oct. 6, 1992, 106 Stat. 1900, as amended by Pub. L. 103–139, title VIII, §8005, Nov. 11, 1993, 107 Stat. 1438; Pub. L. 103–355, title IV, §4401(e), Oct. 13, 1994, 108 Stat. 3348, provided for restrictions on procurements from outside of the United States, prior to repeal by Pub. L. 107–107, div. A, title VIII, §832(b)(1), Dec. 28, 2001, 115 Stat. 1190.

PROHIBITION ON USE OF FUNDS TO PURCHASE DOGS OR CATS FOR MEDICAL TRAINING

Pub. L. 101–511, title VIII, §8019, Nov. 5, 1990, 104 Stat. 1879, provided that: ''None of the funds appropriated by this Act [see Tables for classification] or hereafter shall be used to purchase dogs or cats or otherwise fund the use of dogs or cats for the purpose of training Department of Defense students or other personnel in surgical or other medical treatment of wounds produced by any type of weapon: *Provided*, That the standards of such training with respect to the treatment of animals shall adhere to the Federal Animal Welfare Law and to those prevailing in the civilian medical community.''

RESTORATION, CANCELLATION, OR CLOSURE OF CERTAIN DEPARTMENT OF DEFENSE APPROPRIATION ACCOUNT BALANCES

Pub. L. 101–511, title VIII, §8080, Nov. 5, 1990, 104 Stat. 1893, provided that:

''(a) Upon the date of enactment of this Act [Nov. 5, 1990], the balances of any unobligated amount of an appropriation of the Department of Defense which has been withdrawn under the provisions of section 1552(a)(2) of title 31, United States Code, the obligated balance of which has not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code, shall be restored to that appropriation. Thirty days following enactment of this Act all balances of unobligated funds withdrawn from any account of the Department of Defense under the provisions of section 1552(a)(2) of title 31, United States Code, prior to the enactment of this Act, (other than those restored pursuant to the provisions of this subsection) are cancelled.

''(b) During the current fiscal year and thereafter—

''(1) on the 3rd September 30th after enactment of this section [Nov. 5, 1990], all obligated balances transferred under section 1552(a)(1) of title 31, United States Code;

''(2) on September 30th of the 5th fiscal year after the period of availability of an appropriation account of the Department of Defense available for obligation for a definite period ends or has ended, with respect to those accounts which, upon the date of enactment of this section have expired for obligation but whose obligated balances have not been transferred pursuant to the provisions of section 1552(a)(1) of title 31, United States Code; and

''(3) with respect to any appropriation account made available to the Department of Defense for an indefinite period against which no obligations have been made for two consecutive years and upon a determination by the Secretary of Defense or the President that the purposes of such indefinite appropriation have been carried out,

any remaining obligated or unobligated balance of such accounts are closed and thereafter shall not be available for obligation or expenditure for any purpose: *Provided*, That collections authorized to be credited to an account which were not credited to the account before it was closed shall be deposited in the Treasury as miscellaneous receipts: *Provided further*, That, without prior action by the Comptroller General but without relieving the Comptroller General of the duty to make decisions under any law or to settle claims and accounts, when an account is closed (including accounts covered by subsection (a) of this section) and currently applicable appropriations of the Department of Defense are not chargeable, obligations and adjustments to obligations that would have been chargeable to an account prior to closing, may be chargeable to currently applicable appropriations of the Department of Defense available for the same purpose in amounts equal to one percent of the total appropriation for the current account or the amount of the original appropriation, whichever is less: *Provided further*, That after the end of the period of availability of an appropriation account available for a definite period and before closing of that account under this section such account shall be available for recording, adjusting, and liquidating obligations properly chargeable to such account in amounts not to exceed the unobligated expired balances of such appropriation: *Provided further*, That with respect to a change to a contract under which the contractor is required to perform additional work, other than adjustments to pay claims or increases under an escalation clause (hereinafter referred to as a contract change), if such a charge for such a contract change with respect to a program, project or activity would cause the total amount of such obligations to exceed $4,000,000 in any single fiscal year for a program, project, or activity, the obligation may only be made if the obligation is approved by the Secretary of Defense or, if such a change would cause the total amount of such obligations to exceed $25,000,000 in any single fiscal year for a program, project or activity, the obligation may be made only after 30 days have elapsed after the Secretary of Defense submits to the Committees on Appropriations and Armed Services of the Senate and the House of Representatives a notice of the intention to obligate such funds, together with the legal basis and the policy reasons for making such an obligation.

''(c) The provisions of this section shall apply to any appropriation account now or hereafter made unless the appropriation Act for that account specifically provides for an extension of the availability of such ac-

count and provides an exception to the five year period of availability for recording, adjusting and liquidating obligations properly chargeable to that account.''

AVAILABILITY OF APPROPRIATIONS

The following general provisions, that had been repeated as fiscal year provisions in prior appropriation acts, were enacted as permanent law in the Department of Defense Appropriations Act, 1990, Pub. L. 101–165, title IX, §§9002, 9006, 9020, 9025, 9030, 9079, Nov. 21, 1989, 103 Stat. 1129, 1130, 1133–1135, 1147:

''SEC. 9002. [Authorized Secretaries of Defense, Army, Navy, and Air Force to procure services in accordance with section 3109 of Title 5, Government Organization and Employees, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals while traveling from their homes or places of business to official duty stations and return; and was repealed and restated in section 129b of this title by Pub. L. 101–510, div. A, title XIV, §1481(b)(1), (3), Nov. 5, 1990, 104 Stat. 1704, 1705.]

''SEC. 9006. [Provided that no appropriations available to the Department of Defense could be used for operating aircraft under the jurisdiction of the armed forces for the purpose of proficiency flying, as defined in Department of Defense Directive 1340.4, except in accordance with regulations prescribed by the Secretary of Defense; and was repealed and restated in section 2245 of this title by Pub. L. 101–510, div. A, title XIV, §1481(e)(1), (3), Nov. 5, 1990, 104 Stat. 1706.]

''SEC. 9020. [Provided that no funds available to the Department of Defense could be used to provide medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents unless the Department is reimbursed for the costs of providing such care; and was repealed and restated in section 2549 of this title by Pub. L. 101–510, div. A, title XIV, §1481(f)(1), (3), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9025. [Provided that no funds available to the Department of Defense could be used to lease to non-Federal agencies in the United States aircraft or vehicles owned or operated by the Department when suitable aircraft or vehicles are commercially available in the private sector; and was repealed and restated in section 2550 of this title by Pub. L. 101–510, div. A, title XIV, §1481(g)(1), (4), Nov. 5, 1990, 104 Stat. 1707.]

''SEC. 9030. [Provided that funds available to the Department of Defense could be used by the Department for helicopters and motorized equipment at Defense installations for removal of feral burros and horses; and was repealed and restated in section 2678 of this title by Pub. L. 101–510, div. A, title XIV, §1481(h)(1), (3), Nov. 5, 1990, 104 Stat. 1708.]

''SEC. 9079. None of the funds appropriated by this Act or hereafter shall be obligated for the second career training program authorized by Public Law 96–347 [amending sections 2109, 3307, 3381 to 3385, and 8335 of Title 5, Government Organization and Employees].''

The following general provision, that had been repeated as fiscal year provision in prior appropriation acts, was enacted as permanent law in the Department of Defense Appropriations Act, 1989, Pub. L. 100–463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270–35, which provided that appropriations available to the Department of Defense for operation and maintenance could be used to pay claims authorized by law to be paid by the Department (except for civil functions), was repealed and restated in section 2732 of this title by Pub. L. 101–510, div. A, title XIV, §1481(j)(1), (3), Nov. 5, 1990, 104 Stat. 1708, 1709.

§ 2242. Authority to use appropriated funds for certain investigations and security services

The Secretary of Defense and the Secretary of each military department may—

(1) pay in advance for the expenses of conducting investigations in foreign countries incident to matters relating to the Department of Defense, to the extent such expenses are determined by the investigating officer to be necessary and in accord with local custom;

(2) pay expenses incurred in connection with the administration of occupied areas;

(3) pay expenses of military courts, boards, and commissions; and

(4) reimburse the Administrator of General Services for security guard services furnished by the Administrator to the Department of Defense for the protection of confidential files.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 844.)

HISTORICAL AND REVISION NOTES

Paragraphs (1) and (4) of this section and sections 2241(b) and 2253(a)(1) of this title are based on Pub. L. 98–212, title VII, §705, Dec. 8, 1983, 97 Stat. 1437.

Paragraphs (2) and (3) are based on Pub. L. 99–190, §101(b) [title VIII, §§8005(a), 8006(a)], Dec. 19, 1985, 99 Stat. 1185, 1202, 1203.

§ 2243. Authority to use appropriated funds to support student meal programs in overseas dependents' schools

(a) AUTHORITY.—Subject to subsection (b), amounts appropriated to the Department of Defense for the operation of the defense dependents' education system may be used by the Secretary of Defense to enable an overseas meal program to provide students enrolled in that system with meals at a price equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(b) LIMITATION.—The authority provided by subsection (a) may be used only if the Secretary of Defense determines that Federal payments and commodities provided under section 20 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769b) and section 20 of the Child Nutrition Act of 1966 (42 U.S.C. 1789) to support an overseas meal program are insufficient to provide meals under that program at a price for students equal to the average price paid by students for equivalent meals under a comparable public school meal program in the United States.

(c) DETERMINING AVERAGE PRICE.—In determining the average price paid by students in the United States for meals under a school meal program, the Secretary of Defense shall exclude free and reduced price meals provided pursuant to income guidelines.

(d) OVERSEAS MEAL PROGRAM DEFINED.—In this section, the term ''overseas meal program'' means a program administered by the Secretary of Defense to provide breakfasts or lunches to students attending Department of Defense dependents' schools which are located outside the United States.

(Added Pub. L. 101–189, div. A, title III, §326(a), Nov. 29, 1989, 103 Stat. 1415; amended Pub. L. 106–78, title VII, §752(b)(7), Oct. 22, 1999, 113 Stat. 1169.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–78 substituted ''Richard B. Russell National School Lunch Act'' for ''National School Lunch Act''.

§ 2244. Security investigations

(a) Funds appropriated to the Department of Defense may not be used for the conduct of an investigation by the Department of Defense, or by any other Federal department or agency, for purposes of determining whether to grant a security clearance to an individual or a facility unless the Secretary of Defense determines both of the following:

(1) That a current, complete investigation file is not available from any other department or agency of the Federal Government with respect to that individual or facility.

(2) That no other department or agency of the Federal Government is conducting an investigation with respect to that individual or facility that could be used as the basis for determining whether to grant the security clearance.

(b) For purposes of subsection (a)(1), a current investigation file is a file on an investigation that has been conducted within the past five years.

(Added Pub. L. 101–510, div. A, title IX, § 904(a), Nov. 5, 1990, 104 Stat. 1621; amended Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473.)

AMENDMENTS

1991—Subsec. (a)(1), (2). Pub. L. 102–190 substituted ''Government'' for ''government''.

§ 2245. Use of aircraft for proficiency flying: limitation

(a) An aircraft under the jurisdiction of a military department may not be used by a member of the armed forces for the purpose of proficiency flying except in accordance with regulations prescribed by the Secretary of Defense.

(b) Such regulations—

(1) may not require proficiency flying by a member except to the extent required for the member to maintain flying proficiency in anticipation of the member's assignment to combat operations; and

(2) may not permit proficiency flying in the case of a member who is assigned to a course of instruction of 90 days or more.

(c) In this section, the term ''proficiency flying'' has the meaning given that term in Department of Defense Directive 1340.4.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(e)(1), Nov. 5, 1990, 104 Stat. 1706.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9006, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(e)(3).

§ 2246. Department of Defense golf courses: limitation on use of appropriated funds

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to equip, operate, or maintain a golf course at a facility or installation of the Department of Defense.

(b) EXCEPTIONS.—(1) Subsection (a) does not apply to a golf course at a facility or installation outside the United States or at a facility or installation inside the United States at a location designated by the Secretary of Defense as a remote and isolated location.

(2) The Secretary of Defense shall prescribe regulations governing the use of appropriated funds under this subsection.

(Added Pub. L. 103–160, div. A, title III, § 312(a), Nov. 30, 1993, 107 Stat. 1618.)

§ 2247. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation

(a) LIMITATION.—Except as provided in subsection (b), funds appropriated to the Department of Defense may not be used to operate the Armed Forces Recreation Center, Europe.

(b) EXCEPTION.—Subsection (a) does not apply to the use of funds for the payment of utilities, the maintenance, repair, or renovation of real property, and the transportation of products made in the United States.

(Added Pub. L. 103–337, div. A, title III, § 372(a), Oct. 5, 1994, 108 Stat. 2735; amended Pub. L. 105–85, div. A, title III, § 375, Nov. 18, 1997, 111 Stat. 1708.)

CODIFICATION

Another section 2247 was renumbered section 2249 of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''the maintenance, repair, or renovation of real property, and the transportation'' for ''real property maintenance, and transportation''.

§ 2248. Purchase of surety bonds: prohibition

Funds appropriated or otherwise made available to the Department of Defense for fiscal years 1995 through 1999 may not be obligated or expended for the purchase of surety bonds or other guarantees of financial responsibility in order to guarantee the performance of any direct function of the Department of Defense.

(Added Pub. L. 103–337, div. A, title X, § 1063(a), Oct. 5, 1994, 108 Stat. 2848.)

§ 2249. Prohibition on use of funds for documenting economic or employment impact of certain acquisition programs

No funds appropriated by the Congress may be obligated or expended to assist any contractor of the Department of Defense in preparing any material, report, lists, or analysis with respect to the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed.

(Added Pub. L. 103–355, title VII, § 7202(a)(1), Oct. 13, 1994, 108 Stat. 3379, § 2247; renumbered § 2249, Pub. L. 104–106, div. D, title XLIII, § 4321(b)(2)(A), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Pub. L. 104–106 renumbered section 2247 of this title as this section.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355 set out as an Effective

Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2249a. Prohibition on providing financial assistance to terrorist countries

(a) PROHIBITION.—Funds available to the Department of Defense may not be obligated or expended to provide financial assistance to—

(1) any country with respect to which the Secretary of State has made a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A));

(2) any country identified in the latest report submitted to Congress under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), as providing significant support for international terrorism; or

(3) any other country that, as determined by the President—

(A) grants sanctuary from prosecution to any individual or group that has committed an act of international terrorism; or

(B) otherwise supports international terrorism.

(b) WAIVER.—(1) The President may waive the application of subsection (a) to a country if the President determines—

(A) that it is in the national security interests of the United States to do so; or

(B) that the waiver should be granted for humanitarian reasons.

(2) The President shall—

(A) notify the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives at least 15 days before the waiver takes effect; and

(B) publish a notice of the waiver in the Federal Register.

(c) DEFINITION.—In this section, the term ''international terrorism'' has the meaning given that term in section 140(d) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(d)).

(Added Pub. L. 104–106, div. A, title XIII, §1341(a), Feb. 10, 1996, 110 Stat. 485; amended Pub. L. 105–85, div. A, title X, §1073(a)(40), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b)(2)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a)(1). Pub. L. 105–85 substituted ''50 U.S.C. App. 2405(j)(1)(A)'' for ''50 App. 2405(j)''.

§ 2249b. Display of State flags: prohibition on use of funds to arbitrarily exclude flag; position and manner of display

(a) PROHIBITION ON USE OF FUNDS.—Funds available to the Department of Defense may not be used to prescribe or enforce any rule that arbitrarily excludes the official flag of any State, territory, or possession of the United States from any display of the flags of the States, territories, and possessions of the United States at an official ceremony of the Department of Defense.

(b) POSITION AND MANNER OF DISPLAY.—The display of an official flag of a State, territory, or possession of the United States at an installation or other facility of the Department shall be governed by section 7 of title 4 and any modification of section 7 under section 10 of title 4.

(Added Pub. L. 104–201, div. A, title X, §1071(a), Sept. 23, 1996, 110 Stat. 2656; amended Pub. L. 105–225, §4(a)(1), Aug. 12, 1998, 112 Stat. 1498.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–225 substituted ''section 7 of title 4 and any modification of section 7 under section 10 of title 4'' for ''the provisions of section 3 of the Joint Resolution of June 22, 1942 (56 Stat. 378, chapter 435; 36 U.S.C. 175), and any modification of such provisions under section 8 of that Joint Resolution (36 U.S.C. 178)''.

SUBCHAPTER II—MISCELLANEOUS ADMINISTRATIVE AUTHORITY

Sec.
2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii.
2252. Rewards: missing property.
2253. Motor vehicles.
2254. Treatment of reports of aircraft accident investigations.
2255. Aircraft accident investigation boards: composition requirements.
2257. Use of recruiting materials for public relations.
2259. Transit pass program: personnel in poor air quality areas.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1082(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285, added item 2259.

1999—Pub. L. 106–65, div. A, title V, §574(b), Oct. 5, 1999, 113 Stat. 624, added item 2257.

1996—Pub. L. 104–201, div. A, title IX, §911(a)(2), Sept. 23, 1996, 110 Stat. 2622, added item 2255.

1992—Pub. L. 102–484, div. A, title X, §1071(a)(2), Oct. 23, 1992, 106 Stat. 2508, added item 2254.

§ 2251. Household furnishings and other property: personnel outside the United States or in Alaska or Hawaii

(a) IN GENERAL.—Subject to subsection (b), the Secretary of the military department concerned may—

(1) purchase household furnishings and automobiles from members of the armed forces and civilian employees of the Department of Defense on duty outside the United States or in Hawaii for resale at cost to incoming personnel; and

(2) provide household furnishings, without charge, in other than public quarters occupied by members of the armed forces or civilian employees of the Department of Defense who are on duty outside the United States or in Alaska or Hawaii.

(b) REQUIRED DETERMINATION.—The authority provided in subsection (a) may be used only when it is determined, under regulations approved by the Secretary of Defense, that the use of that authority would be advantageous to the United States.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–212, title VII, §723, Dec. 8, 1983, 97 Stat. 1443.

§ 2252. Rewards: missing property

The Secretary of Defense and the Secretary of each military department may pay a reward of not more than $500 in any case for information leading to the discovery of missing property under the jurisdiction of that Secretary or leading to the recovery of such property.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 845.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8005(b)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7209 of this title prior to repeal by Pub. L. 100–370, §1(e)(3)(A).

§ 2253. Motor vehicles

(a) GENERAL AUTHORITIES.—The Secretary of Defense and the Secretary of each military department may—

(1) provide for insurance of official motor vehicles in a foreign country when the laws of such country require such insurance; and

(2) purchase right-hand drive vehicles at a cost of not more than $30,000 each.

(b) HIRE OF PASSENGER VEHICLES.—Amounts appropriated to the Department of Defense for operation and maintenance of the active forces may be used for the hire of passenger motor vehicles.

(Added Pub. L. 100–370, §1(e)(1), July 19, 1988, 102 Stat. 845; amended Pub. L. 105–85, div. A, title VIII, §805, Nov. 18, 1997, 111 Stat. 1834.)

HISTORICAL AND REVISION NOTES

Subsection (a)(1) of this section and sections 2241(b) and 2242(1), (4) of this title are based on Pub. L. 98–212, title VII, §705, Dec. 8, 1983, 97 Stat. 1437.

Subsection (a)(2) is based on Pub. L. 99–190, §101(b) [title VIII, §8005(i)], Dec. 19, 1985, 99 Stat. 1185, 1202.

Subsection (b) of this section and sections 2241(a) and 2661(a) of this title are based on Pub. L. 98–212, title VII, §735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

AMENDMENTS

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''$30,000'' for ''$12,000''.

§ 2254. Treatment of reports of aircraft accident investigations

(a) IN GENERAL.—(1) Whenever the Secretary of a military department conducts an accident investigation of an accident involving an aircraft under the jurisdiction of the Secretary, the records and report of the investigations shall be treated in accordance with this section.

(2) For purposes of this section, an accident investigation is any form of investigation of an aircraft accident other than an investigation (known as a ''safety investigation'') that is conducted solely to determine the cause of the accident and to obtain information that may prevent the occurrence of similar accidents.

(b) PUBLIC DISCLOSURE OF CERTAIN ACCIDENT INVESTIGATION INFORMATION.—(1) The Secretary concerned, upon request, shall publicly disclose unclassified tapes, scientific reports, and other factual information pertinent to an aircraft accident investigation, before the release of the final accident investigation report relating to the accident, if the Secretary concerned determines—

(A) that such tapes, reports, or other information would be included within and releasable with the final accident investigation report; and

(B) that release of such tapes, reports, or other information—

(i) would not undermine the ability of accident or safety investigators to continue to conduct the investigation; and

(ii) would not compromise national security.

(2) A disclosure under paragraph (1) may not be made by or through officials with responsibility for, or who are conducting, a safety investigation with respect to the accident.

(c) OPINIONS REGARDING CAUSATION OF ACCIDENT.—Following a military aircraft accident—

(1) if the evidence surrounding the accident is sufficient for the investigators who conduct the accident investigation to come to an opinion (or opinions) as to the cause or causes of the accident, the final report of the accident investigation shall set forth the opinion (or opinions) of the investigators as to the cause or causes of the accident; and

(2) if the evidence surrounding the accident is not sufficient for those investigators to come to an opinion as to the cause or causes of the accident, the final report of the accident investigation shall include a description of those factors, if any, that, in the opinion of the investigators, substantially contributed to or caused the accident.

(d) USE OF INFORMATION IN CIVIL PROCEEDINGS.—For purposes of any civil or criminal proceeding arising from an aircraft accident, any opinion of the accident investigators as to the cause of, or the factors contributing to, the accident set forth in the accident investigation report may not be considered as evidence in such proceeding, nor may such information be considered an admission of liability by the United States or by any person referred to in those conclusions or statements.

(e) REGULATIONS.—The Secretary of each military department shall prescribe regulations to carry out this section.

(Added Pub. L. 102–484, div. A, title X, §1071(a)(1), Oct. 23, 1992, 106 Stat. 2507.)

EFFECTIVE DATE

Section 1071(c) of Pub. L. 102–484 provided that: ''Section 2254 of title 10, United States Code, as added by subsection (a), shall apply with respect to accidents occurring on or after the date on which regulations are first prescribed under that section.''

REGULATIONS

Pub. L. 105–261, div. A, title X, § 1065(c), Oct. 17, 1998, 112 Stat. 2134, provided that: ''The Secretary of Defense shall prescribe regulations, which shall be applied uniformly across the Department of Defense, establishing procedures by which the military departments shall provide to the family members of any person involved in a military aviation accident periodic update reports on the conduct and progress of investigations into the accident.''

Section 1071(b) of Pub. L. 102–484 provided that: ''Regulations under section 2254 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2255 of this title.

§ 2255. Aircraft accident investigation boards: composition requirements

(a) REQUIRED MEMBERSHIP OF BOARDS.—Whenever the Secretary of a military department convenes an aircraft accident investigation board to conduct an accident investigation (as described in section 2254(a)(2) of this title) with respect to a Class A accident involving an aircraft under the jurisdiction of the Secretary, the Secretary shall select the membership of the board so that—

(1) a majority of the members (or in the case of a board consisting of a single member, the member) is selected from units other than the mishap unit or a unit subordinate to the mishap unit; and

(2) in the case of a board consisting of more than one member, at least one member of the board is a member of the armed forces or an officer or an employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft accident investigations.

(b) EXCEPTION.—(1) The Secretary of the military department concerned may waive the requirement of subsection (a)(1) in the case of an aircraft accident if the Secretary determines that—

(A) it is not practicable to meet the requirement because of—

(i) the remote location of the aircraft accident;

(ii) an urgent need to promptly begin the investigation; or

(iii) a lack of available persons outside of the mishap unit who have adequate knowledge and expertise regarding the type of aircraft involved in the accident; and

(B) the objectivity and independence of the aircraft accident investigation board will not be compromised.

(2) The Secretary shall notify Congress of a waiver exercised under this subsection and the reasons therefor.

(c) CONSULTATION REQUIREMENT.—In the case of an aircraft accident investigation board consisting of a single member, the member shall consult with a member of the armed forces or an officer or an employee of the Department of Defense who possesses knowledge and expertise relevant to aircraft accident investigations.

(d) DESIGNATION OF CLASS A ACCIDENTS.—Not later than 60 days after an aircraft accident involving an aircraft under the jurisdiction of the Secretary of a military department, the Secretary shall determine whether the aircraft accident should be designated as a Class A accident for purposes of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Class A accident'' means an accident involving an aircraft that results in—

(A) the loss of life or permanent disability;

(B) damages to the aircraft, other property, or a combination of both, in an amount in excess of the amount specified by the Secretary of Defense for purposes of determining Class A accidents; or

(C) the destruction of the aircraft.

(2) The term ''mishap unit'', with respect to an aircraft accident investigation, means the unit of the armed forces (at the squadron or battalion level or equivalent) to which was assigned the flight crew of the aircraft that sustained the accident that is the subject of the investigation.

(Added Pub. L. 104–201, div. A, title IX, § 911(a)(1), Sept. 23, 1996, 110 Stat. 2621.)

EFFECTIVE DATE

Section 911(b) of Pub. L. 104–201 provided that: ''Section 2255 of title 10, United States Code, as added by subsection (a), shall apply with respect to any aircraft accident investigation board convened by the Secretary of a military department after the end of the six-month period beginning on the date of the enactment of this Act [Sept. 23, 1996].''

§ 2257. Use of recruiting materials for public relations

The Secretary of Defense may use for public relations purposes of the Department of Defense any advertising materials developed for use for recruitment and retention of personnel for the armed forces. Any such use shall be under such conditions and subject to such restrictions as the Secretary of Defense shall prescribe.

(Added Pub. L. 106–65, div. A, title V, § 574(a), Oct. 5, 1999, 113 Stat. 624.)

§ 2259. Transit pass program: personnel in poor air quality areas

(a) ESTABLISHMENT OF PROGRAM.—To encourage Department of Defense personnel assigned to duty, or employed, in poor air quality areas to use means other than single-occupancy motor vehicles to commute to or from the location of their duty assignments, the Secretary of Defense shall exercise the authority provided in section 7905 of title 5 to establish a program to provide a transit pass benefit under subsection (b)(2)(A) of that section for members of the Army, Navy, Air Force, and Marine Corps who are assigned to duty, and to Department of Defense civilian officers and employees who are employed, in a poor air quality area.

(b) POOR AIR QUALITY AREAS.—In this section, the term ''poor air quality area'' means an area—

(1) that is subject to the national ambient air quality standards promulgated by the Administrator of the Environmental Protection Agency under section 109 of the Clean Air Act (42 U.S.C. 7409); and

(2) that, as determined by the Administrator of the Environmental Protection Agency, is a nonattainment area with respect to any of those standards.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1082(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285.)

TIME FOR IMPLEMENTATION

Pub. L. 106–398, §1 [[div. A], title X, §1082(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–285, provided that: ''The Secretary of Defense shall prescribe the effective date for the transit pass program required under section 2259 of title 10, United States Code, as added by subsection (a). The effective date so prescribed may not be later than the first day of the first month that begins on or after the date that is 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

CHAPTER 135—SPACE PROGRAMS

Sec.
2271. Management of space programs: joint program offices and officer management programs.

§ 2271. Management of space programs: joint program offices and officer management programs

(a) JOINT PROGRAM OFFICES.—The Secretary of Defense shall take appropriate actions to ensure, to the maximum extent practicable, that space development and acquisition programs of the Department of Defense are carried out through joint program offices.

(b) OFFICER MANAGEMENT PROGRAMS.—(1) The Secretary of Defense shall take appropriate actions to ensure, to the maximum extent practicable, that—

(A) Army, Navy, and Marine Corps officers, as well as Air Force officers, are assigned to the space development and acquisition programs of the Department of Defense; and

(B) Army, Navy, and Marine Corps officers, as well as Air Force officers, are eligible, on the basis of qualification, to hold leadership positions within the joint program offices referred to in subsection (a).

(2) The Secretary of Defense shall designate those positions in the Office of the National Security Space Architect of the Department of Defense (or any successor office) that qualify as joint duty assignment positions for purposes of chapter 38 of this title.

(Added Pub. L. 107–107, div. A, title IX, §911(a), Dec. 28, 2001, 115 Stat. 1195.)

PRIOR PROVISIONS

Prior sections 2271 to 2279 were repealed by Pub. L. 103–160, div. A, title VIII, §821(a)(1), Nov. 30, 1993, 107 Stat. 1704.

Section 2271, act Aug. 10, 1956, ch. 1041, 70A Stat. 123, related to competitions for designs of aircraft, aircraft parts, and aeronautical accessories.

Section 2272, act Aug. 10, 1956, ch. 1041, 70A Stat. 124, related to contracts to obtain designs submitted in design competitions.

Section 2273, acts Aug. 10, 1956, ch. 1041, 70A Stat. 125; Apr. 2, 1982, Pub. L. 97–164, title I, §160(a)(4), 96 Stat. 48; Oct. 29, 1992, Pub. L. 102–572, title IX, §902(b)(1), 106 Stat. 4516, related to right of United States to designs, rights of designers to patents, and rights to sue United States.

Section 2274, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, related to procurement for experimental purposes.

Section 2275, act Aug. 10, 1956, ch. 1041, 70A Stat. 126, related to award of contracts and review of decisions.

Section 2276, acts Aug. 10, 1956, ch. 1041, 70A Stat. 126; Sept. 7, 1962, Pub. L. 87–651, title I, §131, 76 Stat. 514, related to inspection and audit of plants and books of contractors and provided criminal penalties for violations.

Section 2277, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to availability of appropriations.

Section 2278, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to purchases of sample aircraft.

Section 2279, act Aug. 10, 1956, ch. 1041, 70A Stat. 127, related to restrictions on alien employees of contractors as to access to plans and specifications.

COMPTROLLER GENERAL ASSESSMENT OF IMPLEMENTATION OF RECOMMENDATIONS OF SPACE COMMISSION

Pub. L. 107–107, div. A, title IX, §914, Dec. 28, 2001, 115 Stat. 1197, provided that:

''(a) ASSESSMENT.—(1) The Comptroller General shall carry out an assessment through February 15, 2003, of the actions taken by the Secretary of Defense in implementing the recommendations in the report of the Space Commission that are applicable to the Department of Defense.

''(2) For purposes of paragraph (1), the term 'report of the Space Commission' means the report of the Commission To Assess United States National Security Space Management and Organization, dated January 11, 2001, and submitted to Congress under section 1623 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 815 [10 U.S.C. 111 note]).

''(b) REPORTS.—Not later than February 15 of each of 2002 and 2003, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the assessment carried out under subsection (a). Each report shall set forth the results of the assessment as of the date of such report.''

CHAPTER 136—PROVISIONS RELATING TO SPECIFIC PROGRAMS

Sec.
2281. Global Positioning System.
2282. B–2 bomber: annual report.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title I, §131(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–29, added item 2282.

§ 2281. Global Positioning System

(a) SUSTAINMENT AND OPERATION FOR MILITARY PURPOSES.—The Secretary of Defense shall provide for the sustainment of the capabilities of the Global Positioning System (hereinafter in this section referred to as the ''GPS''), and the operation of basic GPS services, that are beneficial for the national security interests of the United States. In doing so, the Secretary shall—

(1) develop appropriate measures for preventing hostile use of the GPS so as to make it unnecessary for the Secretary to use the selective availability feature of the system continuously while not hindering the use of the GPS by the United States and its allies for military purposes; and

(2) ensure that United States armed forces have the capability to use the GPS effectively despite hostile attempts to prevent the use of the system by such forces.

(b) SUSTAINMENT AND OPERATION FOR CIVILIAN PURPOSES.—The Secretary of Defense shall pro-

vide for the sustainment and operation of the GPS Standard Positioning Service for peaceful civil, commercial, and scientific uses on a continuous worldwide basis free of direct user fees. In doing so, the Secretary—

(1) shall provide for the sustainment and operation of the GPS Standard Positioning Service in order to meet the performance requirements of the Federal Radionavigation Plan prepared jointly by the Secretary of Defense and the Secretary of Transportation pursuant to subsection (c);

(2) shall coordinate with the Secretary of Transportation regarding the development and implementation by the Government of augmentations to the basic GPS that achieve or enhance uses of the system in support of transportation;

(3) shall coordinate with the Secretary of Commerce, the United States Trade Representative, and other appropriate officials to facilitate the development of new and expanded civil and commercial uses for the GPS;

(4) shall develop measures for preventing hostile use of the GPS in a particular area without hindering peaceful civil use of the system elsewhere; and

(5) may not agree to any restriction on the Global Positioning System proposed by the head of a department or agency of the United States outside the Department of Defense in the exercise of that official's regulatory authority that would adversely affect the military potential of the Global Positioning System.

(c) FEDERAL RADIONAVIGATION PLAN.—The Secretary of Defense and the Secretary of Transportation shall jointly prepare the Federal Radionavigation Plan. The plan shall be revised and updated not less often than every two years. The plan shall be prepared in accordance with the requirements applicable to such plan as first prepared pursuant to section 507 of the International Maritime Satellite Telecommunications Act[1] (47 U.S.C. 756). The plan, and any amendment to the plan, shall be published in the Federal Register.

(d) BIENNIAL REPORT.—(1) Not later than 30 days after the end of each even-numbered fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Global Positioning System. The report shall include a discussion of the following matters:

(A) The operational status of the system.

(B) The capability of the system to satisfy effectively (i) the military requirements for the system that are current as of the date of the report, and (ii) the performance requirements of the Federal Radionavigation Plan.

(C) The most recent determination by the President regarding continued use of the selective availability feature of the system and the expected date of any change or elimination of the use of that feature.

(D) The status of cooperative activities undertaken by the United States with the governments of other countries concerning the capability of the system or any augmentation of the system to satisfy civil, commercial, scientific, and military requirements, including a discussion of the status and results of activities undertaken under any regional international agreement.

(E) Any progress made toward establishing GPS as an international standard for consistency of navigational service.

(F) Any progress made toward protecting GPS from disruption and interference.

(G) The effects of use of the system on national security, regional security, and the economic competitiveness of United States industry, including the Global Positioning System equipment and service industry and user industries.

(2) In preparing the parts of each such report required under subparagraphs (D), (E), (F), and (G) of paragraph (1), the Secretary of Defense shall consult with the Secretary of State, the Secretary of Commerce, and the Secretary of Transportation.

(e) DEFINITIONS.—In this section:

(1) The term ''basic GPS services'' means the following components of the Global Positioning System that are operated and maintained by the Department of Defense:

(A) The constellation of satellites.

(B) The navigation payloads that produce the Global Positioning System signals.

(C) The ground stations, data links, and associated command and control facilities.

(2) The term ''GPS Standard Positioning Service'' means the civil and commercial service provided by the basic Global Positioning System as defined in the 1996 Federal Radionavigation Plan (published jointly by the Secretary of Defense and the Secretary of Transportation in July 1997).

(Added Pub. L. 105–85, div. A, title X, § 1074(d)(1), Nov. 18, 1997, 111 Stat. 1909; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

REFERENCES IN TEXT

Section 507 of the International Maritime Satellite Telecommunications Act, referred to in subsec. (c), is section 507 of Pub. L. 87–624 which was classified to section 756 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, prior to repeal by Pub. L. 103–414, title III, § 304(b)(5), Oct. 25, 1994, 108 Stat. 4298.

AMENDMENTS

1999—Subsec. (d)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

AUTHORIZATION OF INTERAGENCY SUPPORT FOR GLOBAL POSITIONING SYSTEM

Pub. L. 106–405, § 8, Nov. 1, 2000, 114 Stat. 1753, provided that: ''The use of interagency funding and other forms of support is hereby authorized by Congress for the functions and activities of the Interagency Global Positioning System Executive Board, including an Executive Secretariat to be housed at the Department of Commerce.''

ENHANCED GLOBAL POSITIONING SYSTEM PROGRAM

Pub. L. 105–261, div. A, title II, § 218, Oct. 17, 1998, 112 Stat. 1951, provided that:

[1] See References in Text note below.

''(a) POLICY ON PRIORITY FOR DEVELOPMENT OF ENHANCED GPS SYSTEM.—The development of an enhanced Global Positioning System is an urgent national security priority.

''(b) DEVELOPMENT REQUIRED.—To fulfill the requirements described in section 279(b) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 110 Stat. 243) [set out as a note below] and section 2281 of title 10, United States Code, the Secretary of Defense shall develop an enhanced Global Positioning System in accordance with the priority declared in subsection (a). The enhanced Global Positioning System shall include the following elements:

''(1) An evolved satellite system that includes increased signal power and other improvements such as regional-level directional signal enhancements.

''(2) Enhanced receivers and user equipment that are capable of providing military users with direct access to encrypted Global Positioning System signals.

''(3) To the extent funded by the Secretary of Transportation, additional civil frequencies and other enhancements for civil users.

''(c) SENSE OF CONGRESS REGARDING FUNDING.—It is the sense of Congress that—

''(1) the Secretary of Defense should ensure that the future-years defense program provides for sufficient funding to develop and deploy an enhanced Global Positioning System in accordance with the priority declared in subsection (a); and

''(2) the Secretary of Transportation should provide sufficient funding to support additional civil frequencies for the Global Positioning System and other enhancements of the system for civil users.

''(d) PLAN FOR DEVELOPMENT OF ENHANCED GLOBAL POSITIONING SYSTEM.—Not later than April 15, 1999, the Secretary of Defense shall submit to Congress a plan for carrying out the requirements of subsection (b).

''(e) DELAYED EFFECTIVE DATE FOR LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED.—[Amended section 152(b) of Pub. L. 103–160, set out as a note below.]

''(f) FUNDING FROM AUTHORIZED APPROPRIATIONS FOR FISCAL YEAR 1999.—Of the amounts authorized to be appropriated under section 201(3) [112 Stat. 1946], $44,000,000 shall be available to establish and carry out an enhanced Global Positioning System program.''

SUSTAINMENT AND OPERATION OF GLOBAL POSITIONING SYSTEM

Section 1074(a), (b) of Pub. L. 105–85 provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Global Positioning System (consisting of a constellation of satellites and associated facilities capable of providing users on earth with a highly precise statement of their location on earth) makes significant contributions to the attainment of the national security and foreign policy goals of the United States, the safety and efficiency of international transportation, and the economic growth, trade, and productivity of the United States.

''(2) The infrastructure for the Global Positioning System (including both space and ground segments of the infrastructure) is vital to the effectiveness of United States and allied military forces and to the protection of the national security interests of the United States.

''(3) In addition to having military uses, the Global Positioning System has essential civil, commercial, and scientific uses.

''(4) As a result of the increasing demand of civil, commercial, and scientific users of the Global Positioning System—

''(A) there has emerged in the United States a new commercial industry to provide Global Positioning System equipment and related services to the many and varied users of the system; and

''(B) there have been rapid technical advancements in Global Positioning System equipment and services that have contributed significantly to reductions in the cost of the Global Positioning System and increases in the technical capabilities and availability of the system for military uses.

''(5) It is in the national interest of the United States for the United States—

''(A) to support continuation of the multiple-use character of the Global Positioning System;

''(B) to promote broader acceptance and use of the Global Positioning System and the technological standards that facilitate expanded use of the system for civil purposes;

''(C) to coordinate with other countries to ensure (i) efficient management of the electromagnetic spectrum used by the Global Positioning System, and (ii) protection of that spectrum in order to prevent disruption of signals from the system and interference with that portion of the electromagnetic spectrum used by the system; and

''(D) to encourage open access in all international markets to the Global Positioning System and supporting equipment, services, and techniques.

''(b) INTERNATIONAL COOPERATION.—Congress urges the President to promote the security of the United States and its allies, the public safety, and commercial interests by taking the following steps:

''(1) Undertaking a coordinated effort within the executive branch to seek to establish the Global Positioning System, and augmentations to the system, as a worldwide resource.

''(2) Seeking to enter into international agreements to establish signal and service standards that protect the Global Positioning System from disruption and interference.

''(3) Undertaking efforts to eliminate any barriers to, and other restrictions of foreign governments on, peaceful uses of the Global Positioning System.

''(4) Requiring that any proposed international agreement involving nonmilitary use of the Global Positioning System or any augmentation to the system not be agreed to by the United States unless the proposed agreement has been reviewed by the Secretary of State, the Secretary of Defense, the Secretary of Transportation, and the Secretary of Commerce (acting as the Interagency Global Positioning System Executive Board established by Presidential Decision Directive NSTC–6, dated March 28, 1996).''

ACCESS TO GLOBAL POSITIONING SYSTEM

Pub. L. 104–106, div. A, title II, §279, Feb. 10, 1996, 110 Stat. 243, provided that:

''(a) CONDITIONAL PROHIBITION ON USE OF SELECTIVE AVAILABILITY FEATURE.—Except as provided in subsection (b), after May 1, 1996, the Secretary of Defense may not (through use of the feature known as 'selective availability') deny access of non-Department of Defense users to the full capabilities of the Global Positioning System.

''(b) PLAN.—Subsection (a) shall cease to apply upon submission by the Secretary of Defense to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of a plan for enhancement of the Global Positioning System that provides for—

''(1) development and acquisition of effective capabilities to deny hostile military forces the ability to use the Global Positioning System without hindering the ability of United States military forces and civil users to have access to and use of the system, together with a specific date by which those capabilities could be operational; and

''(2) development and acquisition of receivers for the Global Positioning System and other techniques for weapons and weapon systems that provide substantially improved resistance to jamming and other forms of electronic interference or disruption, together with a specific date by which those receivers and other techniques could be operational with United States military forces.''

LIMITATION ON PROCUREMENT OF SYSTEMS NOT GPS-EQUIPPED

Pub. L. 103–160, div. A, title I, §152(b), Nov. 30, 1993, 107 Stat. 1578, as amended by Pub. L. 105–261, div. A, title II, §218(e), Oct. 17, 1998, 112 Stat. 1952, provided that: ''After September 30, 2005, funds may not be obligated to modify or procure any Department of Defense aircraft, ship, armored vehicle, or indirect-fire weapon system that is not equipped with a Global Positioning System receiver.''

§ 2282. B–2 bomber: annual report

Not later than March 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the B–2 bomber aircraft. Each such report shall include the following:

(1) Identification of the average full-mission capable rate of B–2 aircraft for the preceding fiscal year and the Secretary's overall assessment of the implications of that full-mission capable rate on mission accomplishment for the B–2 aircraft, together with the Secretary's determination as to whether that rate is adequate for the accomplishment of each of the missions assigned to the B–2 aircraft as of the date of the assessment.

(2) An assessment of the technical capabilities of the B–2 aircraft and whether these capabilities are adequate to accomplish each of the missions assigned to that aircraft as of the date of the assessment.

(3) Identification of all ongoing and planned development of technologies to enhance the capabilities of that aircraft.

(4) Identification and assessment of additional technologies that would make that aircraft more capable or survivable against known and evolving threats.

(5) A fiscally phased program for each technology identified in paragraphs (3) and (4) for the budget year and the future-years defense program, based on the following three funding situations:

(A) The President's current budget.

(B) The President's current budget and the current Department of Defense unfunded priority list.

(C) The maximum executable funding for the B–2 aircraft given the requirement to maintain enough operationally ready aircraft to accomplish missions assigned to the B–2 aircraft.

(Added Pub. L. 106–398, §1 [[div. A], title I, §131(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–28.)

CHAPTER 137—PROCUREMENT GENERALLY

Sec.
[2301. Repealed.]
2302. Definitions.
2302a. Simplified acquisition threshold.
2302b. Implementation of simplified acquisition procedures.
2302c. Implementation of electronic commerce capability.
2302d. Major system: definitional threshold amounts.
2303. Applicability of chapter.
[2303a. Repealed.]
2304. Contracts: competition requirements.
2304a. Task and delivery order contracts: general authority.
2304b. Task order contracts: advisory and assistance services.
2304c. Task and delivery order contracts: orders.
2304d. Task and delivery order contracts: definitions.
2304e. Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities.
2305. Contracts: planning, solicitation, evaluation, and award procedures.
2305a. Design-build selection procedures.
2306. Kinds of contracts.
2306a. Cost or pricing data: truth in negotiations.
2306b. Multiyear contracts: acquisition of property.
2306c. Multiyear contracts: acquisition of services.
2307. Contract financing.
2308. Buy-to-budget acquisition: end items.
2309. Allocation of appropriations.
2310. Determinations and decisions.
2311. Assignment and delegation of procurement functions and responsibilities.
2312. Remission of liquidated damages.
2313. Examination of records of contractor.
2314. Laws inapplicable to agencies named in section 2303 of this title.
2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes.
2316. Disclosure of identity of contractor.
[2317. Repealed.]
2318. Advocates for competition.
2319. Encouragement of new competitors.
2320. Rights in technical data.
2321. Validation of proprietary data restrictions.
[2322. Repealed.]
2323. Contract goal for small disadvantaged businesses and certain institutions of higher education.
2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education.
2324. Allowable costs under defense contracts.
2325. Restructuring costs.
2326. Undefinitized contractual actions: restrictions.
2327. Contracts: consideration of national security objectives.
2328. Release of technical data under Freedom of Information Act: recovery of costs.
[2329. Repealed.]
2330. Procurement of services: management structure.
2330a. Procurement of services: tracking of purchases.
2331. Procurement of services: contracts for professional and technical services.
2332. Share-in-savings contracts.

AMENDMENTS

2002—Pub. L. 107–347, title II, §210(a)(2), Dec. 17, 2002, 116 Stat. 2934, added item 2332.

Pub. L. 107–314, div. A, title VIII, §801(a)(2), Dec. 2, 2002, 116 Stat. 2602, added item 2308.

2001—Pub. L. 107–107, div. A, title VIII, §801(g)(2), Dec. 28, 2001, 115 Stat. 1178, added items 2330, 2330a, and 2331 and struck out former item 2331 ''Contracts for professional and technical services''.

2000—Pub. L. 106–398, §1 [[div. A], title VIII, §802(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, added item 2306c.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(3), Oct. 17, 1998, 112 Stat. 2135, substituted ''electronic commerce capability'' for ''FACNET capability'' in item 2302c.

1997—Pub. L. 105–85, div. A, title VIII, §804(a)(2), title X, §1073(a)(48)(B), Nov. 18, 1997, 111 Stat. 1833, 1903, substituted ''contracts: acquisition of property'' for ''contracts'' in item 2306b and added item 2325.

1996—Pub. L. 104–201, div. A, title VIII, §805(b), Sept. 23, 1996, 110 Stat. 2606, added item 2302d.

Pub. L. 104–106, div. D, title XLI, §4105(a)(2), title XLIII, §4321(b)(6)(B), Feb. 10, 1996, 110 Stat. 647, 672, redesignated item 2304a, relating to contracts: prohibition on competition between Department of Defense and small businesses and certain other entities, as 2304e and added item 2305a.

1994—Pub. L. 103–355, title I, §§1004(a)(2), 1022(a)(2), 1501(b), 1503(a)(2), (b)(2), 1506(b), title II, §§2001(i), 2201(a)(2), title IV, §§4002(b), 4203(a)(2), title VIII, §8104(b)(2), title IX, §9002(b), Oct. 13, 1994, 108 Stat. 3253, 3260, 3296–3298, 3303, 3318, 3338, 3346, 3391, 3402, struck out items 2301 ''Congressional defense procurement policy'', 2308 ''Assignment and delegation of procurement functions and responsibilities'', 2325 ''Preference for nondevelopmental items'', and 2329 ''Production special tooling and production special test equipment: contract terms and conditions'', added items 2302a to 2302c, 2304a relating to task and delivery order contracts: general authority, 2304b to 2304d, and 2306b, and substituted ''Contract financing'' for ''Advance payments'' in item 2307, ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' in item 2311, and ''Examination of records of contractor'' for ''Examination of books and records of contractor'' in item 2313.

1993—Pub. L. 103–160, div. A, title VIII, §§828(a)(1), 848(a)(2), Nov. 30, 1993, 107 Stat. 1713, 1725, added item 2304a and struck out item 2317 ''Encouragement of competition and cost savings''.

1992—Pub. L. 102–484, div. A, title VIII, §801(a)(2), (g)(2), title X, §1052(25)(B), div. D, title XLII, §4271(b)(2), Oct. 23, 1992, 106 Stat. 2442, 2445, 2500, 2695, struck out items 2322 ''Limitation on small business set-asides'' and 2330 ''Integrated financing policy'' and added items 2323 and 2323a.

1990—Pub. L. 101–510, div. A, title VIII, §§804(b), 834(a)(2), Nov. 5, 1990, 104 Stat. 1591, 1614, struck out item 2323 ''Commercial pricing for spare or repair parts'' and added item 2331.

1988—Pub. L. 100–456, div. A, title VIII, §801(a)(2), Sept. 29, 1988, 102 Stat. 2007, added item 2330.

1987—Pub. L. 100–180, div. A, title VIII, §810(a)(2), Dec. 4, 1987, 101 Stat. 1132, added item 2329.

Pub. L. 100–26, §7(a)(7)(B)(ii), (b)(9)(B), Apr. 21, 1987, 101 Stat. 278, 280, transferred item 2305a ''Major programs: competitive alternative sources'', to chapter 144 as item 2438 and substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in item 2328.

Pub. L. 100–26, §5(4), (6), made technical amendments to directory language of sections 926(a)(2) and 954(a)(2), respectively, of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(12), Nov. 14, 1986, 100 Stat. 3993, substituted ''competitors'' for ''competition'' in item 2319.

Pub. L. 99–500, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–138, 1783–141, 1783–155, 1783–165, 1783–169, 1783–173, and Pub. L. 99–591, §101(c) [title X, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–138, 3341–141, 3341–155, 3341–165, 3341–169, 3341–173; Pub. L. 99–661, div. A, title IX, formerly title IV, §§907(a)(2), 908(d)(1)(B), 926(a)(2), 951(a)(2), 952(c)(2), 954(a)(2), Nov. 14, 1986, 100 Stat. 3917, 3921, 3935, 3945, 3949, 3953, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, §5(4), (6), Apr. 21, 1987, 101 Stat. 274, amended chapter analysis identically striking out '': cost or pricing data: truth in negotiations'' after ''contracts'' in item 2306, substituting ''spare or repair parts'' for ''supplies'' in item 2323, and adding items 2306a and 2325 to 2328.

1985—Pub. L. 99–145, title IX, §§911(a)(2), 912(a)(2), Nov. 8, 1985, 99 Stat. 685, 686, added items 2305a and 2324.

1984—Pub. L. 98–577, title III, §302(c)(2), Oct. 30, 1984, 98 Stat. 3077, struck out item 2303a ''Publication of proposed regulations''.

Pub. L. 98–525, title XII, §1217, Oct. 19, 1984, 98 Stat. 2599, added items 2303a and 2317 to 2323.

Pub. L. 98–369, div. B, title VII, §2727(a), July 18, 1984, 98 Stat. 1194, substituted ''Congressional defense procurement policy'' for ''Declaration of policy'' in item 2301, ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in item 2304, ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' in item 2305, and ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in item 2306.

1982—Pub. L. 97–295, §1(26)(B), Oct. 12, 1982, 96 Stat. 1291, added item 2316.

1981—Pub. L. 97–86, title IX, §908(a)(2), Dec. 1, 1981, 95 Stat. 1118, added item 2315.

1980—Pub. L. 96–513, title V, §511(75), Dec. 12, 1980, 94 Stat. 2926, inserted ''formal'' before ''advertising'' in item 2304.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 167, 1060a, 2350b, 2350d, 2373, 2809, 2835, 2836, 2837 of this title; title 6 section 426; title 15 sections 205*l*, 637; title 22 section 2761; title 40 section 113; title 41 section 421; title 42 sections 13556, 14713, 14715, 14732.

[§ 2301. Repealed. Pub. L. 103–355, title I, § 1501(a), Oct. 13, 1994, 108 Stat. 3296]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 127; Dec. 1, 1981, Pub. L. 97–86, title IX, §909(a), 95 Stat. 1118; July 18, 1984, Pub. L. 98–369, div. B, title VII, §2721, 98 Stat. 1185; Oct. 18, 1986, Pub. L. 99–500, §101(c) [title X, §925(a)], 100 Stat. 1783–82, 1783–153, and Oct. 30, 1986, Pub. L. 99–591, §101(c) [title X, §925(a)], 100 Stat. 3341–82, 3341–153; Nov. 14, 1986, Pub. L. 99–661, div. A, title IX, formerly title IV, §925(a), 100 Stat. 3933, renumbered title IX, Apr. 21, 1987, Pub. L. 100–26, §3(5), 101 Stat. 273; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, §808(a), 106 Stat. 2449, related to Congressional defense procurement policy.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2302. Definitions

In this chapter:

(1) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(2) The term ''competitive procedures'' means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes—

(A) procurement of architectural or engineering services conducted in accordance with chapter 11 of title 40;

(B) the competitive selection for award of basic research proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals;

(C) the procedures established by the Administrator of General Services for the multiple award schedule program of the General Services Administration if—

(i) participation in the program has been open to all responsible sources; and

(ii) orders and contracts under such program result in the lowest overall cost alternative to meet the needs of the United States;

(D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; and

(E) a competitive selection of research proposals resulting from a general solicitation and peer review or scientific review (as appropriate) solicited pursuant to section 9 of the Small Business Act (15 U.S.C. 638).

(3) The following terms have the meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403):

(A) The term ''procurement''.
(B) The term ''procurement system''.
(C) The term ''standards''.
(D) The term ''full and open competition''.
(E) The term ''responsible source''.
(F) The term ''item''.
(G) The term ''item of supply''.
(H) The term ''supplies''.
(I) The term ''commercial item''.
(J) The term ''nondevelopmental item''.
(K) The term ''commercial component''.
(L) The term ''component''.

(4) The term ''technical data'' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies procured by an agency. Such term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration.

(5) The term ''major system'' means a combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a ''major system'' by the head of the agency responsible for the system.

(6) The term ''Federal Acquisition Regulation'' means the Federal Acquisition Regulation issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)).

(7) The term ''simplified acquisition threshold'' has the meaning provided that term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation or a humanitarian or peacekeeping operation, the term means an amount equal to two times the amount specified for that term in section 4 of such Act.

(8) The term ''humanitarian or peacekeeping operation'' means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 127; Pub. L. 85–568, title III, § 301(b), July 29, 1958, 72 Stat. 432; Pub. L. 85–861, § 1(43A), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 96–513, title V, § 511(74), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–369, div. B, title VII, § 2722(a), July 18, 1984, 98 Stat. 1186; Pub. L. 98–525, title XII, § 1211, Oct. 19, 1984, 98 Stat. 2589; Pub. L. 98–577, title V, § 504(b)(3), Oct. 30, 1984, 98 Stat. 3087; Pub. L. 99–661, div. A, title XIII, § 1343(a)(13), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title VIII, § 853(b)(1), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 102–25, title VII, § 701(d)(1), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 805, Dec. 5, 1991, 105 Stat. 1417; Pub. L. 103–355, title I, § 1502, Oct. 13, 1994, 108 Stat. 3296; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(3), Feb. 10, 1996, 110 Stat. 672; Pub. L. 104–201, div. A, title VIII, §§ 805(a)(1), 807(a), Sept. 23, 1996, 110 Stat. 2605, 2606; Pub. L. 105–85, div. A, title VIII, § 803(b), Nov. 18, 1997, 111 Stat. 1832; Pub. L. 107–217, § 3(b)(2), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302	41:158 (less clause (b)).	Feb. 19, 1948, ch. 65, § 9 (less clause (b)), 62 Stat. 24.

In clause (1), the words ''(if any)'' are omitted as surplusage. The words ''Secretary of the Treasury'' are substituted for the words ''Commandant, United States Coast Guard, Treasury Department'', since the functions of the Coast Guard and its officers, while operating under the Department of the Treasury, were vested in the Secretary of the Treasury by 1950 Reorganization Plan No. 26, effective July 31, 1950, 64 Stat. 1280. Under that plan the Secretary of the Treasury was authorized to delegate any of those functions to the agencies and employees of the Department of the Treasury.

Clauses (2) and (3) are inserted for clarity, and are based on the usage of those terms throughout the revised chapter.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2302(3)	[No source].	[No source].

The amendments reflect section 1(44) of the bill [amending section 2305 of Title 10].

AMENDMENTS

2002—Par. (1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Par. (2)(A). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1997—Pars. (7), (8). Pub. L. 105–85 struck out ''(A)'' before ''The term 'simplified'' in par. (7), redesignated par. (7)(B) as par. (8), and substituted ''The'' for ''In subparagraph (A), the'' in that par.

1996—Par. (3)(K). Pub. L. 104–106 inserted period at end.

Par. (5). Pub. L. 104–201, § 805(a)(1), substituted ''A system shall be considered a major system if (A) the conditions of section 2302d of this title are satisfied, or (B) the system is designated a 'major system' by the head of the agency responsible for the system.'' for ''A system shall be considered a major system if (A) the Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement of more than $300,000,000 (based on fiscal year 1980 constant dollars); (B) a civilian agency is responsible for the system and total expenditures for the system are estimated to exceed $750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a 'major system' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled 'Major Systems Acquisitions', whichever is greater; or (C) the system is designated a 'major system' by the head of the agency responsible for the system.''

Par. (7). Pub. L. 104–201, § 807(a), designated existing provisions as subpar. (A), inserted ''or a humanitarian or peacekeeping operation'' after ''contingency operation'', and added subpar. (B).

1994—Par. (3). Pub. L. 103–355, § 1502(1), added par. (3) and struck out former par. (3) which read as follows: ''The terms 'full and open competition' and 'responsible source' have the same meanings provided such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).''

Par. (7). Pub. L. 103–355, § 1502(2), added par. (7) and struck out former par. (7) which read as follows: ''The term 'small purchase threshold' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000.''

1991—Par. (7). Pub. L. 102–190 inserted before period '', except that, in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation, the term means $100,000''.

Pub. L. 102–25 added par. (7).

1989—Par. (6). Pub. L. 101–189 added par. (6).

1987—Pub. L. 100–26, § 7(k)(2)(A), inserted ''The term'' after each par. designation except par. (3) and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

1986—Par. (2)(A). Pub. L. 99–661 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''.

1984—Pub. L. 98–369 amended section generally, substituting in cl. (1) ''the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force'' for ''the Secretary, the Under Secretary, or any Assistant Secretary, of the Army, Navy, or Air Force'', in cl. (2) definition of ''competitive procedures'' for a definition of ''negotiate'', and in cl. (3) definition of the terms ''full and open competition'' and ''responsible source'' for a definition of ''formal advertising''.

Cl. (2)(D), (E). Pub. L. 98–577 added subpars. (D) and (E).

Cls. (4), (5). Pub. L. 98–525 added cls. (4) and (5).

1980—Cl. (1). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1958—Cl. (1). Pub. L. 85–568 substituted ''Administrator of the National Aeronautics and Space Administration'' for ''Executive Secretary of the National Advisory Committee for Aeronautics'', in cl. (1).

Cl. (3). Pub. L. 85–861 substituted ''section 2305 of this title'' for ''section 2305(a) and (b) of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 301(e) of Pub. L. 85–568 provided that: ''This section [amending this section, section 2303 of this title, section 22–1 of former Title 5, and sections 511 to 513 and 515 of Title 50, War and National Defense, and enacting provisions set out as a note under section 2472 of Title 42, The Public Health and Welfare] shall take effect ninety days after the date of the enactment of this Act [July 29, 1958], or on any earlier date on which the Administrator [of the National Aeronautics and Space Administration] shall determine, and announce by proclamation published in the Federal Register, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it by this Act.''

SHORT TITLE OF 1986 AMENDMENT

Section 101(c) [title X, § 900] of Pub. L. 99–500 and Pub. L. 99–591, and section 900 of title IX of division A of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''This title [enacting sections 133a, 2306a, 2325–2328, 2365–2367, 2397b, 2397c, 2408, 2409, 2416, and 2435–2437 of this title, amending sections 133, 134, 135, 138, 171, 1622, 2301, 2304, 2305, 2306, 2320, 2321, 2323, 2384, 2406, 2411, 2413, 2432, and 2433 of this title, sections 5314 and 5315 of Title 5, Government Organization and Employees, sections 632, 637, and 644 of Title 15, Commerce and Trade, and section 416 of Title 41, Public Contracts, renumbering section 2416 as 2417 of this title, enacting provisions set out as notes under sections 113, 1621, 2304, 2305, 2306a, 2320, 2323, 2325–2328, 2365–2367, 2384, 2397b, 2406, 2408, 2409, 2416, 2432, 2435–2437 of this title and section 632 of Title 15, amending provisions set out as a note under this section, and repealing provisions set out as notes under section 2304 and 2397a of this title] may be cited as the 'Defense Acquisition Improvement Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENT

Pub. L. 99–145, title IX, § 901, Nov. 8, 1985, 99 Stat. 682, provided that: ''This title [enacting sections 1621 to 1624, 2305a, 2324, 2397a, and 2406 of this title, amending sections 2304, 2313, 2320, 2323, 2397, and 2411 to 2415 of this title, section 759 of former Title 40, Public Buildings, Property, and Works, sections 253 and 418a of Title 41, Public Contracts, and section 2168 of Title 50, Appendix, War and National Defense, enacting provisions set out as notes under this section and sections 139, 139c, 1622 to 1624, 2304, 2305a, 2307, 2324, 2397a, and 2411 of this title, section 287 of Title 18, Crimes and Criminal Procedure, section 3729 of Title 31, Money and Finance,

and section 2168 of Title 50, Appendix, and amending provisions set out as a note under section 418a of Title 41] may be cited as the 'Defense Procurement Improvement Act of 1985'.''

SHORT TITLE OF 1984 AMENDMENT

Section 1201 of title XII of Pub. L. 98–525 provided that: ''This title [enacting sections 2303a, 2317 to 2323, 2384a, 2402 to 2405, and 2411 to 2416 of this title, amending sections 139a, 139b, 2302, 2305, 2311, 2384, and 2401 of this title, enacting provisions set out as notes under this section and sections 139, 139a, 2303a, 2305, 2318, 2319, 2322, 2323, 2384, 2384a, 2392, and 2402 of this title, amending provisions set out as notes under sections 2392, 2401, and 2452 of this title, and repealing provisions set out as notes under section 2304 of this title] may be cited as the 'Defense Procurement Reform Act of 1984'.''

ENCOURAGEMENT OF SMALL BUSINESSES AND NONTRADITIONAL DEFENSE CONTRACTORS TO SUBMIT PROPOSALS POTENTIALLY BENEFICIAL FOR COMBATING TERRORISM

Pub. L. 107–314, div. A, title II, § 244, Dec. 2, 2002, 116 Stat. 2498, provided that:

''(a) ESTABLISHMENT OF OUTREACH PROGRAM.—During fiscal years 2003, 2004, and 2005, the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out a program of outreach to small businesses and nontraditional defense contractors for the purpose set forth in subsection (b).

''(b) PURPOSE.—The purpose of the outreach program is to provide a process for reviewing and evaluating research activities of, and new technologies being developed by, small businesses and nontraditional defense contractors that have the potential for meeting a defense requirement or technology development goal of the Department of Defense that relates to the mission of the Department of Defense to combat terrorism.

''(c) GOALS.—The goals of the outreach program are as follows:

''(1) To increase efforts within the Department of Defense to survey and identify research activities and new technologies described in subsection (b).

''(2) To provide the Under Secretary of Defense for Acquisition, Technology, and Logistics with a source of expert advice on new technologies for combating terrorism.

''(3) To increase efforts to educate nontraditional defense contractors on Department of Defense acquisition processes, including regulations, procedures, funding opportunities, military needs and requirements, and technology transfer so as to encourage such contractors to submit proposals regarding research activities and new technologies described in subsection (b).

''(4) To increase efforts to provide timely response by the Department of Defense to acquisition proposals (including unsolicited proposals) submitted to the Department by small businesses and by nontraditional defense contractors regarding research activities and new technologies described in subsection (b), including through the use of electronic transactions to facilitate the processing of such proposals.

''(d) REVIEW PANEL.—(1) The Secretary shall appoint, under the outreach program, a panel for the review and evaluation of acquisition proposals described in subsection (c)(4).

''(2) The panel shall be composed of qualified personnel from the military departments, relevant Defense Agencies, industry, academia, and other private sector organizations.

''(3) Under procedures prescribed by the Under Secretary of Defense for Acquisition, Technology, and Logistics, a small business or nontraditional defense contractor may submit acquisition proposals for consideration under the program through the unsolicited proposal process or in response to a broad agency announcement. The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting parties to submit proposals.

''(4) Under procedures prescribed by the Under Secretary, the panel shall review and evaluate acquisition proposals selected by the panel. An acquisition proposal shall be selected for review and evaluation if the panel determines that the acquisition proposal may present a unique and valuable approach for meeting a defense requirement or technology development goal of the Department of Defense that relates to the mission of the Department of Defense to combat terrorism. In carrying out its duties under this paragraph, the panel may act through representatives designated by the panel.

''(5) The panel shall—

''(A) not later than 60 days after the date on which the panel receives an acquisition proposal described in subsection (c)(4), transmit to the small business or nontraditional defense contractor that submitted the proposal a notification regarding whether the acquisition proposal has been selected under paragraph (4) for review and evaluation;

''(B) to the maximum extent practicable, complete the review and evaluation of each selected acquisition proposal not later than 120 days after the date on which such proposal is selected under paragraph (4); and

''(C) after completing the review and evaluation of an acquisition proposal, transmit the results of that review and evaluation to the small business or nontraditional defense contractor that submitted the proposal.

''(6) The Secretary shall ensure that the panel, in reviewing and evaluating acquisition proposals under this subsection, has the authority to obtain assistance, to a reasonable extent, from the appropriate technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department of Defense.

''(7) If, after completing review and evaluation of an acquisition proposal, the panel determines that such proposal represents a unique and valuable approach for meeting a defense requirement or technology development goal of the Department of Defense that relates to the mission of the Department of Defense to combat terrorism, the panel shall submit that determination to the Under Secretary of Defense for Acquisition, Technology, and Logistics, together with any recommendations that the panel considers appropriate regarding such proposal.

''(8) The Under Secretary of Defense for Acquisition, Technology, and Logistics may provide funding for acquisition proposals with respect to which the panel has submitted a determination under paragraph (7) through appropriate accounts of the military departments, Defense Agencies, the Small Business Innovative Research program, or any other acquisition program.

''(9) The Secretary of Defense shall ensure that a member of the panel has no conflict of interest with respect to the review and evaluation of an acquisition proposal by the panel.

''(e) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED.—In this section, the term 'nontraditional defense contractor' means an entity that has not, for at least one year prior to the date of the enactment of this Act [Dec. 2, 2002], entered into, or performed with respect to, any contract described in paragraph (1) or (2) of section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2371 note).''

PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PROCUREMENT ITEMS

Pub. L. 107–314, div. A, title III, § 314, Dec. 2, 2002, 116 Stat. 2508, provided that:

''(a) TRACKING SYSTEM.—The Secretary of Defense shall develop and implement an effective and efficient tracking system to identify the extent to which the Defense Logistics Agency procures environmentally preferable procurement items or procurement items made with recovered material. The system shall provide for

the separate tracking, to the maximum extent practicable, of the procurement of each category of procurement items that, as of the date of the enactment of this Act [Dec. 2, 2002], has been determined to be environmentally preferable or made with recovered material.

''(b) ASSESSMENT OF TRAINING AND EDUCATION.—The Secretary of Defense shall assess the need to establish a program, or enhance existing programs, for training and educating Department of Defense procurement officials to ensure that they are aware of any Department requirements, preferences, or goals for the procurement of environmentally preferable procurement items or procurement items made with recovered material.

''(c) REPORTING REQUIREMENT.—Not later than March 1, 2004, and each March 1 thereafter through 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report detailing the results obtained from the tracking system developed under subsection (a).

''(d) RELATION TO OTHER LAWS.—Nothing in this section shall be construed to alter the requirements of the Solid Waste Disposal Act (40 U.S.C. 6901 et seq.) [42 U.S.C. 6901 et seq.].

''(e) DEFINITIONS.—In this section:

''(1) The term 'environmentally preferable', in the case of a procurement item, means that the item has a lesser or reduced effect on human health and the environment when compared with competing products that serve the same purpose. The comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.

''(2) The terms 'procurement item' and 'recovered material' have the meanings given such terms in section 1004 of the Solid Waste Disposal Act (40 U.S.C. 6903) [42 U.S.C. 6903].''

POLICY REGARDING ACQUISITION OF INFORMATION ASSURANCE AND INFORMATION ASSURANCE-ENABLED INFORMATION TECHNOLOGY PRODUCTS

Pub. L. 107–314, div. A, title III, §352, Dec. 2, 2002, 116 Stat. 2518, provided that:

''(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish a policy to limit the acquisition of information assurance and information assurance-enabled information technology products to those products that have been evaluated and validated in accordance with appropriate criteria, schemes, or programs.

''(b) WAIVER.—As part of the policy, the Secretary of Defense shall authorize specified officials of the Department of Defense to waive the limitations of the policy upon a determination in writing that application of the limitations to the acquisition of a particular information assurance or information assurance-enabled information technology product would not be in the national security interest of the United States.

''(c) IMPLEMENTATION.—The Secretary of Defense shall ensure that the policy is uniformly implemented throughout the Department of Defense.''

LOGISTICS SUPPORT AND SERVICES FOR WEAPON SYSTEMS CONTRACTORS

Pub. L. 107–314, div. A, title III, §365, Dec. 2, 2002, 116 Stat. 2520, provided that:

''(a) AUTHORITY.—The Secretary of Defense may make available logistics support and logistics services to a contractor in support of the performance by the contractor of a contract for the construction, modification, or maintenance of a weapon system that is entered into by an official of the Department of Defense.

''(b) SUPPORT CONTRACTS.—Any logistics support and logistics services to be provided under this section to a contractor in support of the performance of a contract described in subsection (a) shall be provided under a separate contract that is entered into by the Director of the Defense Logistics Agency with that contractor. The requirements of section 2208(h) of title 10, United States Code, and the regulations prescribed pursuant to such section shall apply to the contract between the Director of the Defense Logistics Agency and the contractor.

''(c) SCOPE OF SUPPORT AND SERVICES.—The logistics support and logistics services that may be provided under this section in support of the performance of a contract described in subsection (a) are the distribution, disposal, and cataloging of materiel and repair parts necessary for the performance of that contract.

''(d) LIMITATIONS.—(1) The number of contracts described in subsection (a) for which the Secretary of Defense makes logistics support and logistics services available under the authority of this section may not exceed five contracts. The total amount of the estimated costs of all such contracts for which logistics support and logistics services are made available under this section may not exceed $100,000,000.

''(2) No contract entered into by the Director of the Defense Logistics Agency under subsection (b) may be for a period in excess of five years, including periods for which the contract is extended under options to extend the contract.

''(e) REGULATIONS.—Before exercising the authority under this section, the Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions as the Secretary determines appropriate to ensure that logistics support and logistics services are provided under this section only when it is in the best interests of the United States to do so. The regulations shall include, at a minimum, the following:

''(1) A requirement for the authority under this section to be used only for providing logistics support and logistics services in support of the performance of a contract that is entered into using competitive procedures (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)).

''(2) A requirement for the solicitation of offers for a contract described in subsection (a), for which logistics support and logistics services are to be made available under this section, to include—

''(A) a statement that the logistics support and logistics services are to be made available under the authority of this section to any contractor awarded the contract, but only on a basis that does not require acceptance of the support and services; and

''(B) a description of the range of the logistics support and logistics services that are to be made available to the contractor.

''(3) A requirement for the rates charged a contractor for logistics support and logistics services provided to a contractor under this section to reflect the full cost to the United States of the resources used in providing the support and services, including the costs of resources used, but not paid for, by the Department of Defense.

''(4) With respect to a contract described in subsection (a) that is being performed for a department or agency outside the Department of Defense, a prohibition, in accordance with applicable contracting procedures, on the imposition of any charge on that department or agency for any effort of Department of Defense personnel or the contractor to correct deficiencies in the performance of such contract.

''(5) A prohibition on the imposition of any charge on a contractor for any effort of the contractor to correct a deficiency in the performance of logistics support and logistics services provided to the contractor under this section.

''(f) RELATIONSHIP TO TREATY OBLIGATIONS.—The Secretary shall ensure that the exercise of authority under this section does not conflict with any obligation of the United States under any treaty or other international agreement.

''(g) TERMINATION OF AUTHORITY.—(1) The authority provided in this section shall expire on September 30, 2007.

''(2) The expiration of the authority under this section does not terminate—

''(A) any contract that was entered into by the Director of the Defense Logistics Agency under subsection (b) before the date specified in paragraph (1) or any obligation to provide logistics support and logistics services under that contract; or

''(B) any authority to enter into a contract described in subsection (a) for which a solicitation of offers was issued in accordance with the regulations prescribed pursuant to subsection (e)(2) before the date specified in paragraph (1) or to provide logistics support and logistics services to the contractor with respect to that contract in accordance with this section.''

IMPROVEMENT OF SOFTWARE ACQUISITION PROCESSES

Pub. L. 107–314, div. A, title VIII, § 804, Dec. 2, 2002, 116 Stat. 2604, provided that:

''(a) ESTABLISHMENT OF PROGRAMS.—(1) The Secretary of each military department shall establish a program to improve the software acquisition processes of that military department.

''(2) The head of each Defense Agency that manages a major defense acquisition program with a substantial software component shall establish a program to improve the software acquisition processes of that Defense Agency.

''(3) The programs required by this subsection shall be established not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].

''(b) PROGRAM REQUIREMENTS.—A program to improve software acquisition processes under this section shall, at a minimum, include the following:

''(1) A documented process for software acquisition planning, requirements development and management, project management and oversight, and risk management.

''(2) Efforts to develop appropriate metrics for performance measurement and continual process improvement.

''(3) A process to ensure that key program personnel have an appropriate level of experience or training in software acquisition.

''(4) A process to ensure that each military department and Defense Agency implements and adheres to established processes and requirements relating to the acquisition of software.

''(c) DEPARTMENT OF DEFENSE GUIDANCE.—The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(1) prescribe uniformly applicable guidance for the administration of all of the programs established under subsection (a) and take such actions as are necessary to ensure that the military departments and Defense Agencies comply with the guidance; and

''(2) assist the Secretaries of the military departments and the heads of the Defense Agencies to carry out such programs effectively by—

''(A) ensuring that the criteria applicable to the selection of sources provides added emphasis on past performance of potential sources, as well as on the maturity of the software products offered by the potential sources; and

''(B) identifying, and serving as a clearinghouse for information regarding, best practices in software development and acquisition in both the public and private sectors.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.

''(2) The term 'major defense acquisition program' has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.''

RAPID ACQUISITION AND DEPLOYMENT PROCEDURES

Pub. L. 107–314, div. A, title VIII, § 806, Dec. 2, 2002, 116 Stat. 2607, provided that:

''(a) REQUIREMENT TO ESTABLISH PROCEDURES.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall prescribe procedures for the rapid acquisition and deployment of items that are—

''(1) currently under development by the Department of Defense or available from the commercial sector; and

''(2) urgently needed to react to an enemy threat or to respond to significant and urgent safety situations.

''(b) ISSUES TO BE ADDRESSED.—The procedures prescribed under subsection (a) shall include the following:

''(1) A process for streamlined communications between the Chairman of the Joint Chiefs of Staff, the acquisition community, and the research and development community, including—

''(A) a process for the commanders of the combatant commands and the Joint Chiefs of Staff to communicate their needs to the acquisition community and the research and development community; and

''(B) a process for the acquisition community and the research and development community to propose items that meet the needs communicated by the combatant commands and the Joint Chiefs of Staff.

''(2) Procedures for demonstrating, rapidly acquiring, and deploying items proposed pursuant to paragraph (1)(B), including—

''(A) a process for demonstrating performance and evaluating for current operational purposes the existing capability of an item;

''(B) a process for developing an acquisition and funding strategy for the deployment of an item; and

''(C) a process for making deployment determinations based on information obtained pursuant to subparagraphs (A) and (B).

''(c) TESTING REQUIREMENT.—(1) The process for demonstrating performance and evaluating for current operational purposes the existing capability of an item prescribed under subsection (b)(2)(A) shall include—

''(A) an operational assessment in accordance with procedures prescribed by the Director of Operational Test and Evaluation; and

''(B) a requirement to provide information about any deficiency of the item in meeting the original requirements for the item (as stated in an operational requirements document or similar document) to the deployment decisionmaking authority.

''(2) The process may not include a requirement for any deficiency of an item to be the determining factor in deciding whether to deploy the item.

''(d) LIMITATION.—The quantity of items of a system procured using the procedures prescribed pursuant to this section may not exceed the number established for low-rate initial production for the system. Any such items shall be counted for purposes of the number of items of the system that may be procured through low-rate initial production.''

PROCUREMENT OF ALTERNATIVE FUELED AND HYBRID LIGHT DUTY TRUCKS

Pub. L. 107–107, div. A, title III, § 318, Dec. 28, 2001, 115 Stat. 1055, provided that:

''(a) DEFENSE FLEETS NOT COVERED BY REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that only hybrid vehicles are procured by the Administrator for the Department of Defense fleet of light duty trucks that is not in a fleet of vehicles to which section 303 of the Energy Policy Act of 1992 (42 U.S.C. 13212) applies.

''(2) The Secretary, in consultation with the Administrator, may waive the policy regarding the procurement of hybrid vehicles in paragraph (1) to the extent that the Secretary determines necessary—

''(A) in the case of trucks that are exempt from the requirements of section 303 of the Energy Policy Act of 1992 for national security reasons under subsection (b)(3)(E) of such section, to meet specific require-

ments of the Department of Defense for capabilities of light duty trucks;

''(B) to procure vehicles consistent with the standards applicable to the procurement of fleet vehicles for the Federal Government; or

''(C) to adjust to limitations on the commercial availability of light duty trucks that are hybrid vehicles.

''(3) This subsection applies with respect to procurements of light duty trucks in fiscal year 2005 and subsequent fiscal years.

''(b) REQUIREMENT TO EXCEED REQUIREMENT IN ENERGY POLICY ACT OF 1992.—(1) The Secretary of Defense shall coordinate with the Administrator of General Services to ensure that, of the light duty trucks procured in fiscal years after fiscal year 2004 for the fleets of light duty vehicles of the Department of Defense to which section 303 of the Energy Policy Act of 1992 [42 U.S.C. 13212] applies—

''(A) five percent of the total number of such trucks that are procured in each of fiscal years 2005 and 2006 are alternative fueled vehicles or hybrid vehicles; and

''(B) ten percent of the total number of such trucks that are procured in each fiscal year after fiscal year 2006 are alternative fueled vehicles or hybrid vehicles.

''(2) Light duty trucks acquired for the Department of Defense that are counted to comply with section 303 of the Energy Policy Act of 1992 for a fiscal year shall be counted to determine the total number of light duty trucks procured for the Department of Defense for that fiscal year for the purposes of paragraph (1), but shall not be counted to satisfy the requirement in that paragraph.

''(c) REPORT ON PLANS FOR IMPLEMENTATION.—At the same time that the President submits the budget for fiscal year 2003 to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to Congress a report summarizing the plans for carrying out subsections (a) and (b).

''(d) DEFINITIONS.—In this section:

''(1) The term 'hybrid vehicle' means a motor vehicle that draws propulsion energy from onboard sources of stored energy that are both—

''(A) an internal combustion or heat engine using combustible fuel; and

''(B) a rechargeable energy storage system.

''(2) The term 'alternative fueled vehicle' has the meaning given that term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).''

TEMPORARY EMERGENCY PROCUREMENT AUTHORITY TO FACILITATE THE DEFENSE AGAINST TERRORISM OR BIOLOGICAL OR CHEMICAL ATTACK

Pub. L. 107–107, div. A, title VIII, §836, Dec. 28, 2001, 115 Stat. 1192, provided that:

''(a) INCREASED FLEXIBILITY FOR USE OF STREAMLINED PROCEDURES.—The following special authorities apply to procurements of property and services by or for the Department of Defense for which funds are obligated during fiscal year 2002 and 2003:

''(1) Micropurchase and simplified acquisition thresholds.—For any procurement of property or services for use (as determined by the Secretary of Defense) to facilitate the defense against terrorism or biological or chemical attack against the United States—

''(A) the amount specified in subsections (c), (d), and (f) of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) shall be deemed to be $15,000 in the administration of that section with respect to such procurement; and

''(B) the term 'simplified acquisition threshold' means, in the case of any contract to be awarded and performed, or purchase to be made—

''(i) inside the United States in support of a contingency operation, $250,000; or

''(ii) outside the United States in support of a contingency operation, $500,000.

''(2) COMMERCIAL ITEM TREATMENT FOR PROCUREMENTS OF BIOTECHNOLOGY.—For any procurement of biotechnology property or biotechnology services for use (as determined by the Secretary of Defense) to facilitate the defense against terrorism or biological attack against the United States, the procurement shall be treated as being a procurement of commercial items.

''(b) RECOMMENDATIONS FOR ADDITIONAL EMERGENCY PROCUREMENT AUTHORITY TO SUPPORT ANTI-TERRORISM OPERATIONS.—Not later than March 1, 2002, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing the Secretary's recommendations for additional emergency procurement authority that the Secretary (subject to the direction of the President) determines necessary to support operations carried out to combat terrorism.

''(c) TERMINATION OF AUTHORITY.—No contract may be entered into pursuant to the authority provided in subsection (a) after September 30, 2003.''

IMPROVEMENTS IN PROCUREMENTS OF SERVICES

Pub. L. 106–398, §1 [[div. A], title VIII, §821], Oct. 30, 2000, 114 Stat. 1654, 1654A–217, provided that:

''(a) PREFERENCE FOR PERFORMANCE-BASED SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 405 and 421) shall be revised to establish a preference for use of contracts and task orders for the purchase of services in the following order of precedence:

''(1) A performance-based contract or performance-based task order that contains firm fixed prices for the specific tasks to be performed.

''(2) Any other performance-based contract or performance-based task order.

''(3) Any contract or task order that is not a performance-based contract or a performance-based task order.

''(b) INCENTIVE FOR USE OF PERFORMANCE-BASED SERVICE CONTRACTS.—(1) A Department of Defense performance-based service contract or performance-based task order may be treated as a contract for the procurement of commercial items if—

''(A) the contract or task order is valued at $5,000,000 or less;

''(B) the contract or task order sets forth specifically each task to be performed and, for each task—

''(i) defines the task in measurable, mission-related terms;

''(ii) identifies the specific end products or output to be achieved; and

''(iii) contains a firm fixed price; and

''(C) the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

''(2) The special simplified procedures provided in the Federal Acquisition Regulation pursuant to section 2304(g)(1)(B) of title 10, United States Code, shall not apply to a performance-based service contract or performance-based task order that is treated as a contract for the procurement of commercial items under paragraph (1).

''(3) Not later than 2 years after the date of the enactment of this Act [Oct. 30, 2000], the Comptroller General shall submit a report on the implementation of this subsection to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives].

''(4) The authority under this subsection shall not apply to contracts entered into or task orders issued more than 3 years after the date of the enactment of this Act.

''(c) CENTERS OF EXCELLENCE IN SERVICE CONTRACTING.—Not later than 180 days after the date of the enactment of this Act [Oct. 30, 2000], the Secretary of each military department shall establish at least one center of excellence in contracting for services. Each

center of excellence shall assist the acquisition community by identifying, and serving as a clearinghouse for, best practices in contracting for services in the public and private sectors.

''(d) ENHANCED TRAINING IN SERVICE CONTRACTING.—(1) The Secretary of Defense shall ensure that classes focusing specifically on contracting for services are offered by the Defense Acquisition University and the Defense Systems Management College and are otherwise available to contracting personnel throughout the Department of Defense.

''(2) The Secretary of each military department and the head of each Defense Agency shall ensure that the personnel of the department or agency, as the case may be, who are responsible for the awarding and management of contracts for services receive appropriate training that is focused specifically on contracting for services.

''(e) DEFINITIONS.—In this section:

''(1) The term 'performance-based', with respect to a contract, a task order, or contracting, means that the contract, task order, or contracting, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

''(2) The term 'commercial item' has the meaning given the term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

''(3) The term 'Defense Agency' has the meaning given the term in section 101(a)(11) of title 10, United States Code.''

PROGRAM TO INCREASE BUSINESS INNOVATION IN DEFENSE ACQUISITION PROGRAMS

Pub. L. 106–65, div. A, title VIII, § 812(a)–(c), (e), Oct. 5, 1999, 113 Stat. 709, 710, provided that:

''(a) REQUIREMENT TO DEVELOP PLAN.—Not later than March 1, 2000, the Secretary of Defense shall publish in the Federal Register for public comment a plan to provide for increased innovative technology for acquisition programs of the Department of Defense from commercial private sector entities, including small-business concerns.

''(b) IMPLEMENTATION OF PLAN.—Not later than March 1, 2001, the Secretary of Defense shall implement the plan required by subsection (a), subject to any modifications the Secretary may choose to make in response to comments received.

''(c) ELEMENTS OF PLAN.—The plan required by subsection (a) shall include, at a minimum, the following elements:

''(1) Procedures through which commercial private sector entities, including small-business concerns, may submit proposals recommending cost-saving and innovative ideas to acquisition program managers.

''(2) A review process designed to make recommendations on the merit and viability of the proposals submitted under paragraph (1) at appropriate times during the acquisition cycle.

''(3) Measures to limit potential disruptions to existing contracts and programs from proposals accepted and incorporated into acquisition programs of the Department of Defense.

''(4) Measures to ensure that research and development efforts of small-business concerns are considered as early as possible in a program's acquisition planning process to accommodate potential technology insertion without disruption to existing contracts and programs.

''(e) SMALL-BUSINESS CONCERN DEFINED.—In this section, the term 'small-business concern' has the same meaning as the meaning of such term as used in the Small Business Act (15 U.S.C. 631 et seq.).''

YEAR 2000 SOFTWARE CONVERSION

Section 831 of Pub. L. 104–201 provided that:

''(a) YEAR 2000 SOFTWARE CONVERSION.—The Secretary of Defense shall ensure that, as soon as practicable, all information technology acquired by the Department of Defense pursuant to contracts entered into after September 30, 1996, has the capabilities to process date and date-related data in 2000.

''(b) ASSESSMENT.—The Secretary, acting through the chief information officers within the department (as designated pursuant to section 3506 of title 44, United States Code), shall assess all information technology within the Department of Defense to determine the extent to which such technology has the capabilities to operate effectively.

''(c) PLAN.—Not later than January 1, 1997, the Secretary shall submit to Congress a detailed plan for eliminating any deficiencies identified pursuant to subsection (b). The plan shall include—

''(1) a list of affected major systems;

''(2) a description of how the deficiencies could affect the national security of the United States; and

''(3) an estimate and prioritization of the resources that are necessary to eliminate the deficiencies.''

DEFENSE FACILITY-WIDE PILOT PROGRAM

Section 822 of Pub. L. 104–106, as amended by Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) AUTHORITY TO CONDUCT DEFENSE FACILITY-WIDE PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program, to be known as the 'defense facility-wide pilot program', for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in facilities by using commercial practices on a facility-wide basis.

''(b) DESIGNATION OF PARTICIPATING FACILITIES.—(1) Subject to paragraph (2), the Secretary may designate up to two facilities as participants in the defense facility-wide pilot program.

''(2) The Secretary may designate for participation in the pilot program only those facilities that are authorized to be so designated in a law authorizing appropriations for national defense programs that is enacted after the date of the enactment of this Act [Feb. 10, 1996].

''(c) SCOPE OF PROGRAM.—At a facility designated as a participant in the pilot program, the pilot program shall consist of the following:

''(1) All contracts and subcontracts for defense supplies and services that are performed at the facility.

''(2) All Department of Defense contracts and all subcontracts under Department of Defense contracts performed elsewhere that the Secretary determines are directly and substantially related to the production of defense supplies and services at the facility and are necessary for the pilot program.

''(d) CRITERIA FOR DESIGNATION OF PARTICIPATING FACILITIES.—The Secretary shall establish criteria for selecting a facility for designation as a participant in the pilot program. In developing such criteria, the Secretary shall consider the following:

''(1) The number of existing and anticipated contracts and subcontracts performed at the facility—

''(A) for which contractors are required to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(B) which are administered with the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)).

''(2) The relationship of the facility to other organizations and facilities performing under contracts with the Department of Defense and subcontracts under such contracts.

''(3) The impact that the participation of the facility under the pilot program would have on competing domestic manufacturers.

''(4) Such other factors as the Secretary considers appropriate.

''(e) NOTIFICATION.—(1) The Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each facility proposed to be designated by the Secretary for participation in the pilot program.

''(2) The Secretary shall include in the notification regarding a facility designated for participation in the program a management plan addressing the following:

''(A) The proposed treatment of research and development contracts or subcontracts to be performed at the facility during the pilot program.

''(B) The proposed treatment of the cost impact of the use of commercial practices on the award and administration of contracts and subcontracts performed at the facility.

''(C) The proposed method for reimbursing the contractor for existing and new contracts.

''(D) The proposed method for measuring the performance of the facility for meeting the management goals of the Secretary.

''(E) Estimates of the annual amount and the total amount of the contracts and subcontracts covered under the pilot program.

''(3)(A) The Secretary shall ensure that the management plan for a facility provides for attainment of the following objectives:

''(i) A significant reduction of the cost to the Government for programs carried out at the facility.

''(ii) A reduction of the schedule associated with programs carried out at the facility.

''(iii) An increased use of commercial practices and procedures for programs carried out at the facility.

''(iv) Protection of a domestic manufacturer competing for contracts at such facility from being placed at a significant competitive disadvantage by the participation of the facility in the pilot program.

''(B) The management plan for a facility shall also require that all or substantially all of the contracts to be awarded and performed at the facility after the designation of that facility under subsection (b), and all or substantially all of the subcontracts to be awarded under those contracts and performed at the facility after the designation, be—

''(i) for the production of supplies or services on a firm-fixed price basis;

''(ii) awarded without requiring the contractors or subcontractors to provide certified cost or pricing data pursuant to section 2306a of title 10, United States Code; and

''(iii) awarded and administered without the application of cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)).

''(f) EXEMPTION FROM CERTAIN REQUIREMENTS.—In the case of a contract or subcontract that is to be performed at a facility designated for participation in the defense facility-wide pilot program and that is subject to section 2306a of title 10, United States Code, or section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 422(f)), the Secretary of Defense may exempt such contract or subcontract from the requirement to obtain certified cost or pricing data under such section 2306a or the requirement to apply mandatory cost accounting standards under such section 26(f) if the Secretary determines that the contract or subcontract—

''(1) is within the scope of the pilot program (as described in subsection (c)); and

''(2) is fairly and reasonably priced based on information other than certified cost and pricing data.

''(g) SPECIAL AUTHORITY.—The authority provided under subsection (a) includes authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot program before the effective date of such amendment or repeal; and

''(2) to apply to a procurement of items other than commercial items under such program—

''(A) the authority provided in section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430) to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act or the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [see Tables for classification] (or an amendment made by a provision of either Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(h) APPLICABILITY.—(1) Subsections (f) and (g) apply to the following contracts, if such contracts are within the scope of the pilot program at a facility designated for the pilot program under subsection (b):

''(A) A contract that is awarded or modified during the period described in paragraph (2).

''(B) A contract that is awarded before the beginning of such period, that is to be performed (or may be performed), in whole or in part, during such period, and that may be modified as appropriate at no cost to the Government.

''(2) The period referred to in paragraph (1), with respect to a facility designated under subsection (b), is the period that—

''(A) begins 45 days after the date of the enactment of the Act authorizing the designation of that facility in accordance with paragraph (2) of such subsection; and

''(B) ends on September 30, 2000.

''(i) COMMERCIAL PRACTICES ENCOURAGED.—With respect to contracts and subcontracts within the scope of the defense facility-wide pilot program, the Secretary of Defense may, to the extent the Secretary determines appropriate and in accordance with applicable law, adopt commercial practices in the administration of contracts and subcontracts. Such commercial practices may include the following:

''(1) Substitution of commercial oversight and inspection procedures for Government audit and access to records.

''(2) Incorporation of commercial oversight, inspection, and acceptance procedures.

''(3) Use of alternative dispute resolution techniques (including arbitration).

''(4) Elimination of contract provisions authorizing the Government to make unilateral changes to contracts.''

ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES IN CERTAIN MILITARY PROCUREMENT CONTRACTS

Section 326 of Pub. L. 102–484, as amended by Pub. L. 104–106, div. A, title XV, §§1502(c)(2)(A), 1504(c)(1), Feb. 10, 1996, 110 Stat. 506, 514; Pub. L. 106–65, div. A, title X, §1067(8), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) ELIMINATION OF USE OF CLASS I OZONE-DEPLETING SUBSTANCES.—(1) No Department of Defense contract awarded after June 1, 1993, may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard in the contract is approved by the senior acquisition official for the procurement covered by the contract. The senior acquisition official may grant the approval only if the senior acquisition official determines (based upon the certification of an appropriate technical representative of the official) that a suitable substitute for the class I ozone-depleting substance is not currently available.

''(2)(A)(i) Not later than 60 days after the completion of the first modification, amendment, or extension after June 1, 1993, of a contract referred to in clause (ii), the senior acquisition official (or the designee of that official) shall carry out an evaluation of the contract in order to determine—

''(I) whether the contract includes a specification or standard that requires the use of a class I ozone-depleting substance or can be met only through the use of such a substance; and

''(II) in the event of a determination that the contract includes such a specification or standard, whether the contract can be carried out through the

use of an economically feasible substitute for the ozone-depleting substance or through the use of an economically feasible alternative technology for a technology involving the use of the ozone-depleting substance.

''(ii) A contract referred to in clause (i) is any contract in an amount in excess of $10,000,000 that—

''(I) was awarded before June 1, 1993; and

''(II) as a result of the modification, amendment, or extension described in clause (i), will expire more than 1 year after the effective date of the modification, amendment, or extension.

''(iii) A contract under evaluation under clause (i) may not be further modified, amended, or extended until the evaluation described in that clause is complete.

''(B) If the acquisition official (or designee) determines that an economically feasible substitute substance or alternative technology is available for use in a contract under evaluation, the appropriate contracting officer shall enter into negotiations to modify the contract to require the use of the substitute substance or alternative technology.

''(C) A determination that a substitute substance or technology is not available for use in a contract under evaluation shall be made in writing by the senior acquisition official (or designee).

''(D) The Secretary of Defense may, consistent with the Federal Acquisition Regulation, adjust the price of a contract modified under subparagraph (B) to take into account the use by the contractor of a substitute substance or alternative technology in the modified contract.

''(3) The senior acquisition official authorized to grant an approval under paragraph (1) and the senior acquisition official and designees authorized to carry out an evaluation and make a determination under paragraph (2) shall be determined under regulations prescribed by the Secretary of Defense. A senior acquisition official may not delegate the authority provided in paragraph (1).

''(4) Each official who grants an approval authorized under paragraph (1) or makes a determination under paragraph (2)(B) shall submit to the Secretary of Defense a report on that approval or determination, as the case may be, as follows:

''(A) Beginning on October 1, 1993, and continuing for 8 calendar quarters thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding quarter not later than 30 days after the end of such quarter.

''(B) Beginning on January 1, 1997, and continuing for 4 years thereafter, by submitting a report on the approvals granted or determinations made under such authority during the preceding year not later than 30 days after the end of such year.

''(5) The Secretary shall promptly transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives each report submitted to the Secretary under paragraph (4). The Secretary shall transmit the report in classified and unclassified forms.

''(b) COST RECOVERY.—In any case in which a Department of Defense contract is modified or a specification or standard for such a contract is waived at the request of a contractor in order to permit the contractor to use in the performance of the contract a substitute for a class I ozone-depleting substance or an alternative technology for a technology involving the use of a class I ozone-depleting substance, the Secretary of Defense may adjust the price of the contract in a manner consistent with the Federal Acquisition Regulation.

''(c) DEFINITIONS.—In this section:

''(1) The term 'class I ozone-depleting substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'Federal Acquisition Regulation' means the single Government-wide procurement regulation issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)).''

PAYMENT PROTECTIONS FOR SUBCONTRACTORS AND SUPPLIERS

Pub. L. 102–190, div. A, title VIII, § 806, Dec. 5, 1991, 105 Stat. 1417, as amended by Pub. L. 102–484, div. A, title X, § 1053(5), Oct. 23, 1992, 106 Stat. 2502; Pub. L. 103–355, title II, § 2091, title VIII, § 8105(k), Oct. 13, 1994, 108 Stat. 3306, 3393, provided that:

''(a) REGULATIONS.—The Secretary of Defense shall prescribe in regulations the following requirements:

''(1) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT.—(A) Subject to section 552(b)(1) of title 5, United States Code, upon the request of a subcontractor or supplier of a contractor performing a Department of Defense contract, the Department of Defense shall promptly make available to such subcontractor or supplier the following information:

''(i) Whether requests for progress payments or other payments have been submitted by the contractor to the Department of Defense in connection with that contract.

''(ii) Whether final payment to the contractor has been made by the Department of Defense in connection with that contract.

''(B) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(2) INFORMATION PROVIDED BY DEPARTMENT OF DEFENSE RELATING TO PAYMENT BONDS.—(A) Upon the request of a subcontractor or supplier described in subparagraph (B), the Department of Defense shall promptly make available to such subcontractor or supplier any of the following:

''(i) The name and address of the surety or sureties on the payment bond.

''(ii) The penal amount of the payment bond.

''(iii) A copy of the payment bond.

''(B) Subparagraph (A) applies to—

''(i) a subcontractor or supplier having a subcontract, purchase order, or other agreement to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act; and

''(ii) a prospective subcontractor or supplier offering to furnish labor or material for the performance of such a Department of Defense contract.

''(C) With respect to the information referred to in subparagraphs (A)(i) and (A)(ii), the regulations shall include authority for such information to be provided verbally to the subcontractor or supplier.

''(D) With respect to the information referred to in subparagraph (A)(iii), the regulations may impose reasonable fees to cover the cost of copying and providing requested bonds.

''(E) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act that is in effect on the date which is 270 days after the date of enactment of this Act [Dec. 5, 1991] or that is awarded after such date.

''(3) INFORMATION PROVIDED BY CONTRACTORS RELATING TO PAYMENT BONDS.—(A) Upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a Department of Defense contract with respect to which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly make available to such prospective subcontractor or supplier a copy of the payment bond.

''(B) This paragraph shall apply with respect to any Department of Defense contract covered by the Miller Act for which a solicitation is issued after the expiration of the 60-day period beginning on the effective date of the regulations promulgated under this subsection.

''(4) PROCEDURES RELATING TO COMPLIANCE WITH PAYMENT TERMS.—(A) Under procedures established in the

regulations, upon the assertion by a subcontractor or supplier of a contractor performing a Department of Defense contract that the subcontractor or supplier has not been paid by the prime contractor in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine the following:

''(i) With respect to a construction contract, whether the contractor has made progress payments to the subcontractor or supplier in compliance with chapter 39 of title 31, United States Code.

''(ii) With respect to a contract other than a construction contract, whether the contractor has made progress or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iii) With respect to either a construction contract or a contract other than a construction contract, whether the contractor has made final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor.

''(iv) With respect to either a construction contract or a contract other than a construction contract, whether any certification of payment of the subcontractor or supplier accompanying the contractor's payment request to the Government is accurate.

''(B) If the contracting officer determines that the prime contractor is not in compliance with any matter referred to in clause (i), (ii), or (iii) of subparagraph (A), the contracting officer may, under procedures established in the regulations—

''(i) encourage the prime contractor to make timely payment to the subcontractor or supplier; or

''(ii) reduce or suspend progress payments with respect to amounts due to the prime contractor.

''(C) If the contracting officer determines that a certification referred to in clause (iv) of subparagraph (A) is inaccurate in any material respect, the contracting officer shall, under procedures established in the regulations, initiate appropriate administrative or other remedial action.

''(D) This paragraph shall apply with respect to any Department of Defense contract that is in effect on the date of promulgation of the regulations under this subsection or that is awarded after such date.

''(b) INAPPLICABILITY TO CERTAIN CONTRACTS.—Regulations prescribed under this section shall not apply to a contract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act [41 U.S.C. 403(12)]).

''(c) GOVERNMENT-WIDE APPLICABILITY.—The Federal Acquisition Regulatory Council (established by section 25(a) of the Office of Federal Procurement Policy Act) shall modify the Federal Acquisition Regulation (issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) to apply Government-wide the requirements that the Secretary is required under subsection (a) to prescribe in regulations applicable with respect to the Department of Defense contracts.

''(d) ASSISTANCE TO SMALL BUSINESS CONCERNS.—[Amended section 15(k)(5) of the Small Business Act (15 U.S.C. 644(k)(5)).]

''(e) GAO REPORT.—(1) The Comptroller General of the United States shall conduct an assessment of the matters described in paragraph (2) and submit a report pursuant to paragraph (3).

''(2) In addition to such other related matters as the Comptroller General considers appropriate, the matters to be assessed pursuant to paragraph (1) are the following:

''(A) Timely payment of progress or other periodic payments to subcontractors and suppliers by prime contractors on Federal contracts by—

''(i) identifying all existing statutory and regulatory provisions, categorized by types of contracts covered by such provisions;

''(ii) evaluating the feasibility and desirability of requiring that a prime contractor (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) be required to—

''(I) include in its subcontracts a payment term requiring payment within 7 days (or some other fixed term) after receiving payment from the Government; and

''(II) submit with its payment request to the Government a certification that it has timely paid its subcontractors in accordance with their subcontracts from funds previously received as progress payments and will timely make required payments to such subcontractors from the proceeds of the progress payment covered by the certification;

''(iii) evaluating the feasibility and desirability of requiring that all prime contractors (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) furnish with its payment request to the Government proof of payment of the amounts included in such payment request for payments made to subcontractors and suppliers;

''(iv) evaluating the feasibility and desirability of requiring a prime contractor to establish an escrow account at a federally insured financial institution and requiring direct disbursements to subcontractors and suppliers of amounts certified by the prime contractor in its payment request to the Government as being payable to such subcontractors and suppliers in accordance with their subcontracts; and

''(v) evaluating the feasibility and desirability of requiring direct disbursement of amounts certified by a prime contractor as being payable to its subcontractors and suppliers in accordance with their subcontracts (using techniques such as joint payee checks, escrow accounts, or direct payment by the Government), if the contracting officer has determined that the prime contractor is failing to make timely payments to its subcontractors and suppliers.

''(B) Payment protection of subcontractors and suppliers through the use of payment bonds or alternatives methods by—

''(i) evaluating the effectiveness of the modifications to part 28.2 of the Federal Acquisition Regulation Part 28.2 (48 C.F.R. 28.200) relating to the use of individual sureties, which became effective February 26, 1990;

''(ii) evaluating the effectiveness of requiring payment bonds pursuant to the Miller Act as a means of affording protection to construction subcontractors and suppliers relating to receiving—

''(I) timely payment of progress payments due in accordance with their subcontracts; and

''(II) ultimate payment of such amounts due;

''(iii) evaluating the feasibility and desirability of increasing the payment bond amounts required under the Miller Act from the current maximum amounts to an amount equal to 100 percent of the amount of the contract;

''(iv) evaluating the feasibility and desirability of requiring payment bonds for supply and services contracts (other than construction), and, if feasible and desirable, the amounts of such bonds; and

''(v) evaluating the feasibility and desirability of using letters of credit issued by federally insured financial institutions (or other alternatives) as substitutes for payment bonds in providing payment protection to subcontractors and suppliers on construction contracts (and other contracts).

''(C) Any evaluation of feasibility and desirability carried out pursuant to subparagraph (A) or (B) shall include the appropriateness of—

''(i) any differential treatment of, or impact on, small business concerns as opposed to concerns other than small business concerns;

''(ii) any differential treatment of subcontracts relating to commercial products entered into by the contractor in furtherance of its non-Government business, especially those subcontracts entered into prior to the award of a contract by the Government; and

''(iii) extending the protections regarding payment to all tiers of subcontractors or restricting them to first-tier subcontractors and direct suppliers.

''(3) The report required by paragraph (1) shall include a description of the results of the assessment carried out pursuant to paragraph (2) and may include recommendations pertaining to any of the following:

''(A) Statutory and regulatory changes providing payment protections for subcontractors and suppliers (other than a construction prime contractor subject to the provisions of sections 3903(b) and 3905 of title 31, United States Code) that the Comptroller General believes to be desirable and feasible.

''(B) Proposals to assess the desirability and utility of a specific payment protection on a test basis.

''(C) Such other recommendations as the Comptroller General considers appropriate in light of the matters assessed pursuant to paragraph (2).

''(4) The report required by paragraph (1) shall be submitted not later than by February 1, 1993, to the Committees on Armed Services and on Small Business of the Senate and House of Representatives.

''(f) INSPECTOR GENERAL REPORT.—(1) The Inspector General of the Department of Defense shall submit to the Secretary of Defense a report on payment protections for subcontractors and suppliers under contracts entered into with the Department of Defense. The report shall include an assessment of the extent to which available judicial and administrative remedies, as well as suspension and debarment procedures, have been used (or recommended for use) by officials of the Department to deter false statements relating to (A) payment bonds provided by individuals pursuant to the Miller Act, and (B) certifications pertaining to payment requests by construction contractors pursuant to section 3903(b) of title 31, United States Code. The assessment shall cover actions taken during the period beginning on October 1, 1989, and ending on September 30, 1992.

''(2) The report required by paragraph (1) shall be submitted to the Secretary of Defense not later than March 1, 1993. The report may include recommendations by the Inspector General on ways to improve the effectiveness of existing methods of preventing false statements.

''(g) MILLER ACT DEFINED.—For purposes of this section, the term 'Miller Act' means the Act of August 24, 1935 (40 U.S.C. 270a–270d) [now 40 U.S.C. 3131, 3133].''

ADVISORY PANEL ON STREAMLINING AND CODIFYING ACQUISITION LAWS

Pub. L. 101–510, div. A, title VIII, § 800, Nov. 5, 1990, 104 Stat. 1587, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Under Secretary of Defense for Acquisition and Technology, not later than Jan. 15, 1991, to establish under sponsorship of Defense Systems Management College an advisory panel on streamlining and codifying acquisition laws, to review the acquisition laws applicable to Department of Defense with a view toward streamlining the defense acquisition process, to make any recommendations for repeal or amendment of such laws that the panel considers necessary, as a result of such review, and to prepare a proposed code of relevant acquisition laws, directed the advisory panel, not later than Dec. 15, 1992, to transmit a final report on the actions of the panel to the Under Secretary of Defense for Acquisition and Technology, and directed the Secretary of Defense, not later than Jan. 15, 1993, to transmit the final report, together with such comments as he deems appropriate, to Congress.

MENTOR-PROTEGE PILOT PROGRAM

Pub. L. 106–65, div. A, title VIII, § 811(d)(2), (3), Oct. 5, 1999, 113 Stat. 708, 709, as amended by Pub. L. 107–107, div. A, title X, § 1048(g)(5), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(2)(A) The Secretary of Defense shall conduct a review of the Mentor-Protege Program established in section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) to assess the feasibility of transitioning such program to operation without a specific appropriation or authority to provide reimbursement to a mentor firm as provided in subsection (g) of such section (as amended by subsection (b)).

''(B) In conducting the review under subparagraph (A), the Secretary shall assess possible additional incentives that may be extended to mentor firms to ensure adequate support and participation in the Mentor-Protege Program, including increasing the level of credit in lieu of subcontract awards presently extended to mentor firms for purposes of determining whether mentor firms attain subcontracting participation goals applicable under Department of Defense contracts.

''(C) Not later than September 30, 2000, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

''(i) a report on the results of the review conducted under this paragraph; and

''(ii) any recommendations of the Secretary for legislative action.

''(3)(A) The Comptroller General shall conduct a study on the implementation of the Mentor-Protege Program established in section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) and the extent to which the program is achieving the purposes established in that section in a cost-effective manner.

''(B) The study shall include the following:

''(i) A review of the manner in which funds for the Mentor-Protege Program have been obligated.

''(ii) An identification and assessment of the average amount spent by the Department of Defense on individual mentor-protege agreements, and the correlation between levels of funding and business development of protege firms.

''(iii) An evaluation of the effectiveness of the incentives provided to mentor firms to participate in the Mentor-Protege Program and whether reimbursements remain a cost-effective and viable incentive.

''(iv) An assessment of the success of the Mentor-Protege Program in enhancing the business competitiveness and financial independence of protege firms.

''(v) A review of the relationship between the results of the Mentor-Protege Program and the objectives established in section 2323 of title 10, United States Code.

''(C) Not later than January 1, 2002, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the study.''

Section 807(a) of Pub. L. 102–484 provided that: ''Within 15 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall publish in the Department of Defense Supplement to the Federal Acquisition Regulation the Department of Defense policy for the pilot Mentor-Protege Program and the regulations, directives, and administrative guidance pertaining to such program as such policy, regulations, directives, and administrative guidance existed on December 6, 1991. Proposed modifications to that policy and any amendments of the matters published pursuant to the preceding sentence that are proposed in order to implement any of the amendments made by this section shall be published for public comment within 60 days after the date of the enactment of this Act and shall be published in final form within 120 days after such date.''

Pub. L. 101–510, div. A, title VIII, § 831, Nov. 5, 1990, 104 Stat. 1607, as amended by Pub. L. 102–25, title VII, § 704(c), Apr. 6, 1991, 105 Stat. 119; Pub. L. 102–172, title VIII, § 8064A, Nov. 26, 1991, 105 Stat. 1186; Pub. L. 102–190, div. A, title VIII, § 814(b), Dec. 5, 1991, 105 Stat. 1425;

Pub. L. 102–484, div. A, title VIII, §§801(h)(4), 807(b)(1), title X, §1054(d), Oct. 23, 1992, 106 Stat. 2445, 2448, 2503; Pub. L. 103–160, div. A, title VIII, §813(b)(1), (c), Nov. 30, 1993, 107 Stat. 1703; Pub. L. 104–106, div. A, title VIII, §824, Feb. 10, 1996, 110 Stat. 399; Pub. L. 104–201, div. A, title VIII, §802, Sept. 23, 1996, 110 Stat. 2604; Pub. L. 105–85, div. A, title VIII, §821(a), title X, §1073(c)(6), Nov. 18, 1997, 111 Stat. 1840, 1904; Pub. L. 106–65, div. A, title VIII, §811(a)–(d)(1), (e), Oct. 5, 1999, 113 Stat. 706, 707, 709; Pub. L. 106–398, §1 [[div. A], title VIII, §807], Oct. 30, 2000, 114 Stat. 1654, 1654A–208; Pub. L. 107–107, div. A, title VIII, §812, Dec. 28, 2001, 115 Stat. 1181, provided that:

''(a) ESTABLISHMENT OF PILOT PROGRAM.—The Secretary of Defense shall establish a pilot program to be known as the 'Mentor-Protege Program'.

''(b) PURPOSE.—The purpose of the program is to provide incentives for major Department of Defense contractors to furnish disadvantaged small business concerns with assistance designed to enhance the capabilities of disadvantaged small business concerns to perform as subcontractors and suppliers under Department of Defense contracts and other contracts and subcontracts in order to increase the participation of such business concerns as subcontractors and suppliers under Department of Defense contracts, other Federal Government contracts, and commercial contracts.

''(c) PROGRAM PARTICIPANTS.—(1) A business concern meeting the eligibility requirements set out in subsection (d) may enter into agreements under subsection (e) and furnish assistance to disadvantaged small business concerns upon making application to the Secretary of Defense and being approved for participation in the pilot program by the Secretary. A business concern participating in the pilot program pursuant to such an approval shall be known, for the purposes of the program, as a 'mentor firm'.

''(2) A disadvantaged small business concern eligible for the award of Federal contracts may obtain assistance from a mentor firm upon entering into an agreement with the mentor firm as provided in subsection (e). A disadvantaged small business concern may not be a party to more than one agreement to receive such assistance at any time. A disadvantaged small business concern receiving such assistance shall be known, for the purposes of the program, as a 'protege firm'.

''(3) In entering into an agreement pursuant to subsection (e), a mentor firm may rely in good faith on a written representation of a business concern that such business concern is a disadvantaged small business concern. The Small Business Administration shall determine the status of such business concern as a disadvantaged small business concern in the event of a protest regarding the status of such business concern. If at any time the business concern is determined by the Small Business Administration not to be a disadvantaged small business concern, assistance furnished such business concern by the mentor firm after the date of the determination may not be considered assistance furnished under the program.

''(d) MENTOR FIRM ELIGIBILITY.—Subject to subsection (c)(1), a mentor firm eligible for award of Federal contracts may enter into an agreement with one or more protege firms under subsection (e) and provide assistance under the program pursuant to that agreement if—

''(1) during the fiscal year preceding the fiscal year in which the mentor firm enters into the agreement, the total amount of the Department of Defense contracts awarded such mentor firm and the subcontracts awarded such mentor firm under Department of Defense contracts was equal to or greater than $100,000,000; or

''(2) the mentor firm demonstrates the capability to assist in the development of protege firms, and is approved by the Secretary of Defense pursuant to criteria specified in the regulations prescribed pursuant to subsection (k).

''(e) MENTOR-PROTEGE AGREEMENT.—Before providing assistance to a protege firm under the program, a mentor firm shall enter into a mentor-protege agreement with the protege firm regarding the assistance to be provided by the mentor firm. The agreement shall include the following:

''(1) A developmental program for the protege firm, in such detail as may be reasonable, including (A) factors to assess the protege firm's developmental progress under the program, and (B) the anticipated number and type of subcontracts to be awarded the protege firm.

''(2) A program participation term for any period of not more than three years, except that the term may be a period of up to five years if the Secretary of Defense determines in writing that unusual circumstances justify a program participation term in excess of three years.

''(3) Procedures for the protege firm to terminate the agreement voluntarily and for the mentor firm to terminate the agreement for cause.

''(f) FORMS OF ASSISTANCE.—A mentor firm may provide a protege firm the following:

''(1) Assistance, by using mentor firm personnel, in—

''(A) general business management, including organizational management, financial management, and personnel management, marketing, business development, and overall business planning;

''(B) engineering and technical matters such as production, inventory control, and quality assurance; and

''(C) any other assistance designed to develop the capabilities of the protege firm under the developmental program referred to in subsection (e).

''(2) Award of subcontracts on a noncompetitive basis to the protege firm under the Department of Defense or other contracts.

''(3) Payment of progress payments for performance of the protege firm under such a subcontract in amounts as provided for in the subcontract, but in no event may any such progress payment exceed 100 percent of the costs incurred by the protege firm for the performance.

''(4) Advance payments under such subcontracts.

''(5) Loans.

''(6) Cash in exchange for an ownership interest in the protege firm, not to exceed 10 percent of the total ownership interest.

''(7) Assistance obtained by the mentor firm for the protege firm from one or more of the following—

''(A) small business development centers established pursuant to section 21 of the Small Business Act (15 U.S.C. 648);

''(B) entities providing procurement technical assistance pursuant to chapter 142 of title 10, United States Code; or

''(C) a historically Black college or university or a minority institution of higher education.

''(g) INCENTIVES FOR MENTOR FIRMS.—(1) The Secretary of Defense may provide to a mentor firm reimbursement for the total amount of any progress payment or advance payment made under the program by the mentor firm to a protege firm in connection with a Department of Defense contract awarded the mentor firm.

''(2)(A) The Secretary of Defense may provide to a mentor firm reimbursement for the costs of the assistance furnished to a protege firm pursuant to paragraphs (1) and (7) of subsection (f) as provided for in a line item in a Department of Defense contract under which the mentor firm is furnishing products or services to the Department, subject to a maximum amount of reimbursement specified in such contract, except that this sentence does not apply in a case in which the Secretary of Defense determines in writing that unusual circumstances justify reimbursement using a separate contract.

''(B) The determinations made in annual performance reviews of a mentor firm's mentor-protege agreement under subsection (*l*)(2) shall be a major factor in the determinations of amounts of reimbursement, if any, that

the mentor firm is eligible to receive in the remaining years of the program participation term under the agreement.

''(C) The total amount reimbursed under this paragraph to a mentor firm for costs of assistance furnished in a fiscal year to a protege firm may not exceed $1,000,000, except in a case in which the Secretary of Defense determines in writing that unusual circumstances justify a reimbursement of a higher amount.

''(3)(A) Costs incurred by a mentor firm in providing assistance to a protege firm that are not reimbursed pursuant to paragraph (2) shall be recognized as credit in lieu of subcontract awards for purposes of determining whether the mentor firm attains a subcontracting participation goal applicable to such mentor firm under a Department of Defense contract, under a contract with another executive agency, or under a divisional or company-wide subcontracting plan negotiated with the Department of Defense or another executive agency.

''(B) The amount of the credit given a mentor firm for any such unreimbursed costs shall be equal to—

''(i) four times the total amount of such costs attributable to assistance provided by entities described in subsection (f)(7);

''(ii) three times the total amount of such costs attributable to assistance furnished by the mentor firm's employees; and

''(iii) two times the total amount of any other such costs.

''(C) Under regulations prescribed pursuant to subsection (k), the Secretary of Defense shall adjust the amount of credit given a mentor firm pursuant to subparagraphs (A) and (B) if the Secretary determines that the firm's performance regarding the award of subcontracts to disadvantaged small business concerns has declined without justifiable cause.

''(4) A mentor firm shall receive credit toward the attainment of a subcontracting participation goal applicable to such mentor firm for each subcontract for a product or service awarded under such contract by a mentor firm to a business concern that, except for its size, would be a small business concern owned and controlled by socially and economically disadvantaged individuals, but only if—

''(A) the size of such business concern is not more than two times the maximum size specified by the Administrator of the Small Business Administration for purposes of determining whether a business concern furnishing such product or service is a small business concern; and

''(B) the business concern formerly had a mentor-protege agreement with such mentor firm that was not terminated for cause.

''(h) RELATIONSHIP TO SMALL BUSINESS ACT.—(1) For purposes of the Small Business Act [15 U.S.C. 631 et seq.], no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f).

''(2) Notwithstanding section 8 of the Small Business Act (15 U.S.C. 637), the Small Business Administration may not determine a disadvantaged small business concern to be ineligible to receive any assistance authorized under the Small Business Act on the basis that such business concern has participated in the Mentor-Protege Program or has received assistance pursuant to any developmental assistance agreement authorized under such program.

''(3) The Small Business Administration may not require a firm that is entering into, or has entered into, an agreement under subsection (e) as a protege firm to submit the agreement, or any other document required by the Secretary of Defense in the administration of the Mentor-Protege Program, to the Small Business Administration for review, approval, or any other purpose.

''(i) PARTICIPATION IN MENTOR-PROTEGE PROGRAM NOT TO BE A CONDITION FOR AWARD OF A CONTRACT OR SUBCONTRACT.—A mentor firm may not require a business concern to enter into an agreement with the mentor firm pursuant to subsection (e) as a condition for being awarded a contract by the mentor firm, including a subcontract under a contract awarded to the mentor firm.

''(j) EXPIRATION OF AUTHORITY.—(1) No mentor-protege agreement may be entered into under subsection (e) after September 30, 2005.

''(2) No reimbursement may be paid, and no credit toward the attainment of a subcontracting goal may be granted, under subsection (g) for any cost incurred after September 30, 2008.

''(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out the pilot Mentor-Protege Program. Such regulations shall include the requirements set forth in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and shall prescribe procedures by which mentor firms may terminate participation in the program. The Secretary shall publish the proposed regulations not later than the date 180 days after the date of the enactment of this Act [Nov. 5, 1990]. The Secretary shall promulgate the final regulations not later than the date 270 days after the date of the enactment of this Act. The Department of Defense policy regarding the pilot Mentor-Protege Program shall be published and maintained as an appendix to the Department of Defense Supplement to the Federal Acquisition Regulation.

''(*l*) REPORTS AND REVIEWS.—(1) The mentor firm and protege firm under a mentor-protege agreement shall submit to the Secretary of Defense an annual report on the progress made by the protege firm in employment, revenues, and participation in Department of Defense contracts during the fiscal year covered by the report. The requirement for submission of an annual report applies with respect to each fiscal year covered by the program participation term under the agreement and each of the two fiscal years following the expiration of the program participation term. The Secretary shall prescribe the timing and form of the annual report.

''(2)(A) The Secretary shall conduct an annual performance review of each mentor-protege agreement that provides for reimbursement of costs. The Secretary shall determine on the basis of the review whether—

''(i) all costs reimbursed to the mentor firm under the agreement were reasonably incurred to furnish assistance to the protege firm in accordance with the requirements of this section and applicable regulations; and

''(ii) the mentor firm and protege firm accurately reported progress made by the protege firm in employment, revenues, and participation in Department of Defense contracts during the program participation term covered by the mentor-protege agreement and the two fiscal years following the expiration of the program participation term.

''(B) The Secretary shall act through the Commander of the Defense Contract Management Command in carrying out the reviews and making the determinations under subparagraph (A).

''(3) Not later than 6 months after the end of each of fiscal years 2000 through 2007, the Secretary of Defense shall submit to Congress an annual report on the Mentor-Protege Program for that fiscal year.

''(4) The annual report for a fiscal year shall include, at a minimum, the following:

''(A) The number of mentor-protege agreements that were entered into during the fiscal year.

''(B) The number of mentor-protege agreements that were in effect during the fiscal year.

''(C) The total amount reimbursed to mentor firms pursuant to subsection (g) during the fiscal year.

''(D) Each mentor-protege agreement, if any, that was approved during the fiscal year in accordance with subsection (e)(2) to provide a program participation term in excess of 3 years, together with the justification for the approval.

''(E) Each reimbursement of a mentor firm in excess of the limitation in subsection (g)(2)(C) that was

made during the fiscal year pursuant to an approval granted in accordance with that subsection, together with the justification for the approval.

''(F) Trends in the progress made in employment, revenues, and participation in Department of Defense contracts by the protege firms participating in the program during the fiscal year and the protege firms that completed or otherwise terminated participation in the program during the preceding two fiscal years.

''(m) DEFINITIONS.—In this section:

''(1) The term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant thereto.

''(2) The term 'disadvantaged small business concern' means:

''(A) a small business concern owned and controlled by socially and economically disadvantaged individuals;

''(B) a business entity owned and controlled by an Indian tribe as defined by section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13));

''(C) a business entity owned and controlled by a Native Hawaiian Organization as defined by section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15));

''(D) a qualified organization employing the severely disabled; or

''(E) a small business concern owned and controlled by women, as defined in section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D)).

''(3) The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' has the meaning given such term in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).

''(4) The term 'historically Black college and university' means any of the historically Black colleges and universities referred to in section 2323 of title 10, United States Code.

''(5) The term 'minority institution of higher education' means an institution of higher education with a student body that reflects the composition specified in section 312(b)(3), (4), and (5) of the Higher Education Act of 1965 (20 U.S.C. 1058(b)(3), (4), and (5)).

''(6) The term 'subcontracting participation goal', with respect to a Department of Defense contract, means a goal for the extent of the participation by disadvantaged small business concerns in the subcontracts awarded under such contract, as established pursuant to section 2323 of title 10, United States Code, and section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

''(7) The term 'qualified organization employing the severely disabled' means a business entity operated on a for-profit or nonprofit basis that—

''(A) uses rehabilitative engineering to provide employment opportunities for severely disabled individuals and integrates severely disabled individuals into its workforce;

''(B) employs severely disabled individuals at a rate that averages not less than 20 percent of its total workforce;

''(C) employs each severely disabled individual in its workforce generally on the basis of 40 hours per week; and

''(D) pays not less than the minimum wage prescribed pursuant to section 6 of the Fair Labor Standards Act (29 U.S.C. 206) to those employees who are severely disabled individuals.

''(8) The term 'severely disabled individual' means an individual who has a physical or mental disability which constitutes a substantial handicap to employment and which, in accordance with criteria prescribed by the Committee for the Purchase From the Blind and Other Severely Handicapped established by the first section of the Act of June 25, 1938 (41 U.S.C. 46; popularly known as the 'Wagner-O'Day Act') [now known as the ''Javits-Wagner-O'Day Act''], is of such a nature that the individual is otherwise prevented from engaging in normal competitive employment.''

[Pub. L. 106–65, div. A, title VIII, §811(f), Oct. 5, 1999, 113 Stat. 709, provided that:

[''(1) The amendments made by this section [amending section 831 of Pub. L. 101–510, set out above] shall take effect on October 1, 1999, and shall apply with respect to mentor-protege agreements that are entered into under section 831(e) of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510, set out above] on or after that date.

[''(2) Section 831 of the National Defense Authorization Act for Fiscal Year 1991, as in effect on September 30, 1999, shall continue to apply with respect to mentor-protege agreements entered into before October 1, 1999.'']

[Section 807(b)(2) of Pub. L. 102–484 provided that: ''The amendment made by this subsection [amending section 831 of Pub. L. 101–510, set out above] shall take effect as of November 5, 1990.'']

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

Pub. L. 101–189, div. A, title VIII, §832, Nov. 29, 1989, 103 Stat. 1508, which provided credit for Indian contracting in meeting certain minority contracting goals, was repealed and restated in section 2323a of this title by Pub. L. 102–484, §801(g)(1)(B), (h)(5).

EQUITABLE PARTICIPATION OF AMERICAN SMALL AND MINORITY-OWNED BUSINESS IN FURNISHING OF COMMODITIES AND SERVICES

Pub. L. 101–165, title IX, §9004, Nov. 21, 1989, 103 Stat. 1129, provided that: ''During the current fiscal year and hereafter, the Secretary of Defense and each purchasing and contracting agency of the Department of Defense shall assist American small and minority-owned business to participate equitably in the furnishing of commodities and services financed with funds appropriated under this Act [see Tables for classification] by increasing, to an optimum level, the resources and number of personnel jointly assigned to promoting both small and minority business involvement in purchases financed with funds appropriated herein, and by making available or causing to be made available to such businesses, information, as far in advance as possible, with respect to purchases proposed to be financed with funds appropriated under this Act, and by assisting small and minority business concerns to participate equitably as subcontractors on contracts financed with funds appropriated herein, and by otherwise advocating and providing small and minority business opportunities to participate in the furnishing of commodities and services financed with funds appropriated by this Act.''

REQUIREMENT FOR SUBSTANTIAL PROGRESS ON MINORITY AND SMALL BUSINESS CONTRACT AWARDS

Pub. L. 100–180, div. A, title VIII, §806(a)–(c), Dec. 4, 1987, 101 Stat. 1126, 1127, directed Secretary of Defense to issue regulations to ensure that substantial progress was made in increasing awards of Department of Defense contracts to small business concerns, historically Black colleges and universities, and minority institutions described in section 1207(a) of Pub. L. 99–661 [formerly set out below], prior to repeal by Pub. L. 102–484, div. A, title VIII, §801(h)(7), Oct. 23, 1992, 106 Stat. 2446.

DEFINITIONS; RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

Pub. L. 100–26, §§2, 6, Apr. 21, 1987, 101 Stat. 273, 274, provided that:

''SEC. 2. REFERENCES TO 99TH CONGRESS LAWS

''For purposes of this Act [Pub. L. 100–26, see Short Title of 1987 Amendment note set out under section 101 of this title]:

''(1) The term 'Defense Authorization Act' means the Department of Defense Authorization Act, 1987 (division A of Public Law 99–661; 100 Stat. 3816 et seq.).

''(2) The term 'Defense Appropriations Act' means the Department of Defense Appropriations Act, 1987 (as contained in identical form in section 101(c) of Public Law 99–500 (100 Stat. 1783–82 et seq.) and section 101(c) of Public Law 99–591 (100 Stat. 3341–82 et seq.)).

''(3) The term 'Defense Acquisition Improvement Act' means title X of the Defense Appropriations Act [100 Stat. 1783–130, 3341–130] and title IX of the Defense Authorization Act [100 Stat. 3910] (as designated by the amendment made by section 3(5) [section 3(5) of Pub. L. 100–26]). Any reference in this Act to the Defense Acquisition Improvement Act shall be considered to be a reference to each such title.''

''SEC. 6. CONSTRUCTION OF DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS

''(a) RULE FOR CONSTRUCTION OF DUPLICATE PROVISIONS.—(1) In applying the provisions of Public Laws 99–500, 99–591, and 99–661 described in paragraph (2)—

''(A) the identical provisions of those public laws referred to in such paragraph shall be treated as having been enacted only once, and

''(B) in executing to the United States Code and other statutes of the United States the amendments made by such identical provisions, such amendments shall be executed so as to appear only once in the law as amended.

''(2) Paragraph (1) applies with respect to the provisions of the Defense Appropriations Act and the Defense Authorization Act (as amended by sections 3, 4, 5, and 10(a)) referred to across from each other in the following table:

''Section 101(c) of Public Law 99–500	Section 101(c) of Public Law 99–591	Division A of Public Law 99–661
''Title X	Title X	Title IX
''Sec. 9122	Sec. 9122	Sec. 522
''Sec. 9036(b)	Sec. 9036(b)	Sec. 1203
''Sec. 9115	Sec. 9115	Sec. 1311

''(b) RULE FOR DATE OF ENACTMENT.—(1) The date of the enactment of the provisions of law listed in the middle column, and in the right-hand column, of the table in subsection (a)(2) shall be deemed to be October 18, 1986 (the date of the enactment of Public Law 99–500).

''(2) Any reference in a provision of law referred to in paragraph (1) to 'the date of the enactment of this Act' shall be treated as a reference to October 18, 1986.''

[For classification of provisions listed in the table, see Tables.]

CONTRACT GOAL FOR MINORITIES

Section 1207 of Pub. L. 99–661, as amended by Pub. L. 100–180, div. A, title VIII, § 806(d), 101 Stat. 1127; Pub. L. 100–456, div. A, title VIII, § 844, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 101–189, div. A, title VIII, § 831, Nov. 29, 1989, 103 Stat. 1507; Pub. L. 101–510, div. A, title VIII, §§ 811, 832, title XIII, §§ 1302(d), 1312(b), Nov. 5, 1990, 104 Stat. 1596, 1612, 1669, 1670; Pub. L. 102–25, title VII, §§ 704(a)(6), 705(e), Apr. 6, 1991, 105 Stat. 118, 120, which set contract goals for small disadvantaged businesses and certain institutions of higher education, was repealed and restated in section 2323 of this title by Pub. L. 102–484, § 801(a)(1)(B), (h)(1).

MINIMUM PERCENTAGE OF COMPETITIVE PROCUREMENTS

Pub. L. 99–145, title IX, § 913, Nov. 8, 1985, 99 Stat. 687, as amended by Pub. L. 101–510, div. A, title XIII, § 1322(d)(1), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) ANNUAL GOAL.—The Secretary of Defense shall establish for each fiscal year a goal for the percentage of defense procurements to be made during that year (expressed in total dollar value of contracts entered into) that are to be competitive procurements.

''(b) DEFINITION.—For the purposes of this section, the term 'competitive procurements' means procurements made by the Department of Defense through the use of competitive procedures, as defined in section 2304 of title 10, United States Code.''

DEFENSE PROCUREMENT REFORM: CONGRESSIONAL FINDINGS AND POLICY

Section 1202 of Pub. L. 98–525, as amended by Pub. L. 99–500, § 101(c) [title X, § 953(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 953(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 953(c), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to the elimination of excessive pricing of replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

''(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

''(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

''(3) direct that replenishment parts be acquired in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

''(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

''(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.''

MODIFICATION OF REGULATIONS AND DIRECTIVES TO ACCOMMODATE A POLICY OF MULTIYEAR PROCUREMENT

Section 909(d) of Pub. L. 97–86 directed Secretary of Defense, not later than the end of the 90-day period beginning Dec. 1, 1981, to issue such modifications to existing regulations governing defense acquisitions as might be necessary to implement the amendments made by subsections (a), (b), and (c) [amending sections 139, 2301, and 2306 of this title] and directed Director of the Office of Management and Budget to issue such modifications to existing Office of Management and Budget directives as might be necessary to take into account the amendments made by subsections (a) and (b) [amending sections 2301 and 2306 of this title].

PROCUREMENT REQUIREMENTS FOR GOODS WHICH ARE NOT AMERICAN GOODS

Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406, which prohibited contracts by the Department of Defense for other than American goods after Aug. 5, 1974, unless adequate consideration was first given to bids of firms in labor surplus areas of the United States, of small business firms, and of all other United States firms which had offered to furnish American goods, balance of payments, cost of shipping other than American goods, and any duty, tariff, or surcharge on such goods, was repealed and restated in section 2501 of this title by Pub. L. 100–370, § 3(a), (c). Section 2501 of this title was renumbered section 2506 by Pub. L. 100–456, § 821(b)(1)(A). Section 2506 of this title was renumbered section 2533 by Pub. L. 102–484, § 4202(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1737, 2218, 2302d, 2304, 2366, 2367, 2399, 2409, 2410n, 2646 of this title; title 6 section 423; title 50 App. section 2171.

§ 2302a. Simplified acquisition threshold

(a) SIMPLIFIED ACQUISITION THRESHOLD.—For purposes of acquisitions by agencies named in section 2303 of this title, the simplified acquisi-

tion threshold is as specified in section 4(11) of the Office of Federal Procurement Policy Act.

(b) INAPPLICABLE LAWS.—No law properly listed in the Federal Acquisition Regulation pursuant to section 33 of the Office of Federal Procurement Policy Act shall apply to or with respect to a contract or subcontract that is not greater than the simplified acquisition threshold.

(Added and amended Pub. L. 103–355, title IV, §§ 4002(a), 4102(a), Oct. 13, 1994, 108 Stat. 3338, 3340.)

REFERENCES IN TEXT

Sections 4(11) and 33 of the Office of Federal Procurement Policy Act, referred to in subsecs. (a) and (b), respectively, are classified to sections 403(11) and 429, respectively, of Title 41, Public Contracts.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–355, § 4102(a), added subsec. (b).

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2302b. Implementation of simplified acquisition procedures

The simplified acquisition procedures contained in the Federal Acquisition Regulation pursuant to section 31 of the Office of Federal Procurement Policy Act shall apply as provided in such section to the agencies named in section 2303(a) of this title.

(Added Pub. L. 103–355, title IV, § 4203(a)(1), Oct. 13, 1994, 108 Stat. 3345.)

REFERENCES IN TEXT

Section 31 of the Office of Federal Procurement Policy Act, referred to in text, is classified to section 427 of Title 41, Public Contracts.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2302c. Implementation of electronic commerce capability

(a) IMPLEMENTATION OF ELECTRONIC COMMERCE CAPABILITY.—(1) The head of each agency named in paragraphs (1), (5), and (6) of section 2303(a) of this title shall implement the electronic commerce capability required by section 30 of the Office of Federal Procurement Policy Act (41 U.S.C. 426).

(2) The Secretary of Defense shall act through the Under Secretary of Defense for Acquisition, Technology, and Logistics to implement the capability within the Department of Defense.

(3) In implementing the electronic commerce capability pursuant to paragraph (1), the head of an agency referred to in paragraph (1) shall consult with the Administrator for Federal Procurement Policy.

(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303(a) of this title shall designate a program manager to implement the electronic commerce capability for that agency. The program manager shall report directly to an official at a level not lower than the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(Added Pub. L. 103–355, title IX, § 9002(a), Oct. 13, 1994, 108 Stat. 3402; amended Pub. L. 105–85, div. A, title VIII, § 850(f)(3)(A), Nov. 18, 1997, 111 Stat. 1850; Pub. L. 105–129, § 1(a)(1), Dec. 1, 1997, 111 Stat. 2551; Pub. L. 106–65, div. A, title X, § 1066(a)(18), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (b). Pub. L. 106–65 substituted ''section 2303(a)'' for ''section 2303''.

1997—Pub. L. 105–85 substituted ''electronic commerce'' for ''FACNET'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) IMPLEMENTATION OF FACNET CAPABILITY.—(1) The head of each agency named in section 2303 of this title shall implement the Federal acquisition computer network ('FACNET') capability required by section 30 of the Office of Federal Procurement Policy Act. In the case of the Department of Defense, the implementation shall be by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, for the Department of Defense as a whole. For purposes of this section, the term 'head of an agency' does not include the Secretaries of the military departments.

''(2) In implementing the FACNET capability pursuant to paragraph (1), the head of an agency shall consult with the Administrator for Federal Procurement Policy.

''(b) DESIGNATION OF AGENCY OFFICIAL.—The head of each agency named in paragraph (5) or (6) of section 2303 of this title shall designate a program manager to have responsibility for implementation of FACNET capability for that agency and otherwise to implement this section. Such program manager shall report directly to the senior procurement executive designated for the agency under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).''

Subsec. (a)(1). Pub. L. 105–129 inserted ''of section 2303(a) of this title'' after ''paragraphs (1), (5), and (6)''.

EFFECTIVE DATE OF 1997 AMENDMENTS

Section 1(a)(2) of Pub. L. 105–129 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment to section 2302c of title 10, United States Code, made by section 850(f)(3)(A) of the National Defense Authorization Act for Fiscal Year 1998 [Pub. L. 105–85] to which the amendment made by paragraph (1) relates.''

Section 850(g) of Pub. L. 105–85 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section, section 2304 of this title, section 637 of Title 15, Commerce and Trade, section 1501 of former Title 40, Public Buildings, Property, and Works, and sections 252c, 253, 416, 426, and 427 of Title 41, Public Contracts, repealing section 426a of Title 41, amending provisions set out as a note under section 413 of Title 41, and repealing provisions set out as a note under section 426a of Title 41] shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1997].

''(2) The repeal made by subsection (c) of this section [repealing provisions set out as a note under section

426a of Title 41] shall take effect on the date of the enactment of this Act.''

EFFECTIVE DATE

Section 9002(c) of Pub. L. 103–355 provided that: ''A FACNET capability may be implemented and used in an agency before the promulgation of regulations implementing this section (as provided in section 10002) [set out as a Regulations note under section 251 of Title 41, Public Contracts]. If such implementation and use occurs, the period for submission of bids or proposals under section 18(a)(3)(B) of the Office of Federal Procurement Policy Act [41 U.S.C. 416(a)(3)(B)], in the case of a solicitation through FACNET, may be less than the period otherwise applicable under that section, but shall be at least 10 days. The preceding sentence shall not be in effect after September 30, 1995.''

§ 2302d. Major system: definitional threshold amounts

(a) DEPARTMENT OF DEFENSE SYSTEMS.—For purposes of section 2302(5) of this title, a system for which the Department of Defense is responsible shall be considered a major system if—

(1) the total expenditures for research, development, test, and evaluation for the system are estimated to be more than $115,000,000 (based on fiscal year 1990 constant dollars); or

(2) the eventual total expenditure for procurement for the system is estimated to be more than $540,000,000 (based on fiscal year 1990 constant dollars).

(b) CIVILIAN AGENCY SYSTEMS.—For purposes of section 2302(5) of this title, a system for which a civilian agency is responsible shall be considered a major system if total expenditures for the system are estimated to exceed the greater of—

(1) $750,000 (based on fiscal year 1980 constant dollars); or

(2) the dollar threshold for a ''major system'' established by the agency pursuant to Office of Management and Budget (OMB) Circular A–109, entitled ''Major Systems Acquisitions''.

(c) ADJUSTMENT AUTHORITY.—(1) The Secretary of Defense may adjust the amounts and the base fiscal year provided in subsection (a) on the basis of Department of Defense escalation rates.

(2) An amount, as adjusted under paragraph (1), that is not evenly divisible by $5,000,000 shall be rounded to the nearest multiple of $5,000,000. In the case of an amount that is evenly divisible by $2,500,000 but not evenly divisible by $5,000,000, the amount shall be rounded to the next higher multiple of $5,000,000.

(3) An adjustment under this subsection shall be effective after the Secretary transmits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the adjustment.

(Added Pub. L. 104–201, div. A, title VIII, § 805(a)(2), Sept. 23, 1996, 110 Stat. 2605; amended Pub. L. 105–85, div. A, title X, § 1073(a)(41), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(3). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a)(2). Pub. L. 105–85 substituted ''procurement for the system is estimated to be'' for ''procurement of''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2302 of this title.

§ 2303. Applicability of chapter

(a) This chapter applies to the procurement by any of the following agencies, for its use or otherwise, of all property (other than land) and all services for which payment is to be made from appropriated funds:

(1) The Department of Defense.
(2) The Department of the Army.
(3) The Department of the Navy.
(4) The Department of the Air Force.
(5) The Coast Guard.
(6) The National Aeronautics and Space Administration.

(b) The provisions of this chapter that apply to the procurement of property apply also to contracts for its installation or alteration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–568, title III, § 301(b), July 29, 1958, 72 Stat. 432; Pub. L. 98–369, div. B, title VII, § 2722(b), July 18, 1984, 98 Stat. 1187.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2303(a)	41:151(a).	Feb. 19, 1948, ch. 65, §§2(a), 9 (clause (b)), 62 Stat. 21, 24.
2303(b)	41:158 (clause (b), less last 5 words).	
2303(c)	41:158 (last 5 words of clause (b)).	

In subsection (a), the words ''all property named in subsection (b), and all services'' are substituted for the words ''for supplies or services''. The words ''(each being hereinafter called the agency)'', are omitted, since the revised sections of this chapter make specific reference to the agencies named in this revised section. The words ''United States'' before the words ''Coast Guard'' are omitted, since they are not a part of the official name of the Coast Guard under section 1 of title 14.

In subsection (b), the introductory clause is substituted for the word ''supplies''. Throughout the revised chapter reference is made to ''property or services covered by this chapter'', instead of ''supplies'', since the word ''supplies'' is defined in section 101(26) of this title in its usual and narrower sense, rather than the sense of the source statute for this revised chapter. It is desirable to avoid a usage which conflicts with the definition in section 101(26) of this title. The word ''ships'' and the words ''of every character, type, and description'', after the word ''vessels'', are omitted as covered by the definition of ''vessel'' in section 1 of title 1.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369, § 2722(b)(1)(A), (B), substituted in provisions preceding cl. (1) ''procurement'' for ''purchase, and contract to purchase,'' and ''(other than land) and all services'' for ''named in subsection (b), and all services,''.

Subsec. (a)(1) to (6). Pub. L. 98–369, § 2722(b)(1)(C), (D), added cl. (1) and redesignated existing cls. (1) to (5) as (2) to (6), respectively.

Subsecs. (b), (c). Pub. L. 98–369, § 2722(b)(2), (3), redesignated subsec. (c) as (b). Former subsec. (b), which had provided that this chapter did not cover land but did cover public works, buildings, facilities, vessels, floating equipment, aircraft, parts, accessories, equipment, and machine tools, was struck out.

1958—Subsec. (a)(5). Pub. L. 85–568 substituted ''The National Aeronautics and Space Administration'' for ''The National Advisory Committee for Aeronautics''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90–500, title IV, § 404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302a, 2302b, 2302c, 2304, 2305, 2307, 2309, 2311, 2314, 2318, 2320, 2374, 2384a, 2409, 2410 of this title.

[§ 2303a. Repealed. Pub. L. 98–577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98–525, title XII, § 1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations. See section 418b of Title 41, Public Contracts.

Section, pursuant to section 1212(b) of Pub. L. 98–525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98–525. Pub. L. 98–525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98–577.

§ 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible

source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or to procure the services of an expert or neutral for use in any part of an alternative dispute resolution or negotiated rulemaking process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (k), a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d)(1) For the purposes of applying subsection (c)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding $500,000 (but equal to or less than $10,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii) or (iii);

(ii) in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $50,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A)); or

(iii) in the case of a contract for an amount exceeding $50,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation) or in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B); and

(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval required by paragraph (1) may be made after the

contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7);

(D) in the case of a procurement conducted under (i) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.), or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(E) in the case of a procurement permitted by subsection (c)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(4) The justification required by paragraph (1)(A) and any related information, and any document prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.

(5) In no case may the head of an agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(6)(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

(B) The authority of the Under Secretary of Defense for Acquisition, Technology, and Logistics under paragraph (1)(B)(iii) may be delegated only to—

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(A) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(B) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than $5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

(3) In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(4) The head of an agency shall comply with the Federal Acquisition Regulation provisions referred to in section 31(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 427).

(h) For the purposes of the following, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) The Walsh-Healey Act (41 U.S.C. 35 et seq.).

(2) Sections 3141–3144, 3146, and 3147 of title 40.

(i)(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 2302(2) of this title.

(2) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(j) The Federal Acquisition Regulation shall ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government's requirements.

(k)(1) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Pub. L. 85–800, § 8, Aug. 28, 1958, 72 Stat. 967; Pub. L. 85–861, § 33(a)(12), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–653, § 1(a)–(c), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90–268, § 5, Mar. 16, 1968, 82 Stat. 50; Pub. L. 90–500, title IV, § 405, Sept. 20, 1968, 82 Stat. 851; Pub. L. 93–356, § 4, July 25, 1974, 88 Stat. 390; Pub. L. 96–513, title V, § 511(76), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–86, title IX, § 907(a), Dec. 1, 1981, 95 Stat. 1117; Pub. L. 97–295, § 1(24), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 97–375, title I, § 114, Dec. 21, 1982, 96 Stat. 1821; Pub. L. 98–369, div. B, title VII, §§ 2723(a), 2727(b), July 18, 1984, 98 Stat. 1187, 1194; Pub. L. 98–577, title V, § 504(b)(1), (2), Oct. 30, 1984, 98 Stat. 3086; Pub. L. 99–145, title IX, § 961(a)(1), title XIII, § 1303(a)(13), Nov. 8, 1985, 99 Stat. 703, 739; Pub. L. 99–500, § 101(c) [title X, §§ 923(a)–(c), 927(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–152, 1783–155, and Pub. L. 99–591, § 101(c) [title X, §§ 923(a)–(c), 927(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–152, 3341–155; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 923(a)–(c), 927(a), title XIII, § 1343(a)(14), Nov. 14, 1986, 100 Stat. 3932, 3935, 3993, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(d)(3), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–456, div. A, title VIII, § 803, Sept. 29, 1988, 102 Stat. 2008; Pub. L. 101–189, div. A, title VIII, §§ 812, 817, 818, 853(d), Nov. 29, 1989, 103 Stat. 1493, 1501, 1502, 1519; Pub. L. 101–510, div. A, title VIII, § 806(b), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102–25, title VII, § 701(d)(2), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title VIII, §§ 801(h)(2), 816, title X, § 1052(23), Oct. 23, 1992, 106 Stat. 2445, 2454, 2500; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title I, §§ 1001–1003, 1004(b), 1005, title IV, § 4401(a), title VII, § 7203(a)(1), Oct. 13, 1994, 108 Stat. 3249, 3253, 3254, 3347, 3379; Pub. L. 104–106, div. D, title XLI, §§ 4101(a), 4102(a), title XLII, § 4202(a)(1), title XLIII, § 4321(b)(4), (5), Feb. 10, 1996, 110 Stat. 642, 643, 652, 672; Pub. L. 104–320, §§ 7(a)(1), 11(c)(1), Oct. 19, 1996, 110 Stat. 3871, 3873; Pub. L. 105–85, div. A, title VIII, §§ 841(b), 850(f)(3)(B), title X, § 1073(a)(42), (43), Nov. 18, 1997, 111 Stat. 1843, 1850, 1902; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–217, § 3(b)(3), Aug. 21, 2002, 116 Stat. 1295.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2304(a)	41:151(c) (less proviso of clause (11) and proviso of clause (16)).	Feb. 19, 1948, ch. 65, §§ 2(b) (less 1st sentence), (c), (e), 7(d), 8, 62 Stat. 21, 22, 24.
2304(b)	41:156(d).	
2304(c)	41:151(e).	
2304(d)	41:151(b) (less 1st sentence).	
2304(e)	41:151(c) (proviso of clause (11) and proviso of clause (16)).	
2304(f)	41:157.	

In subsection (a)(1), the words ''the period of'' are omitted as surplusage.

In subsections (a)(4)–(10), and (12)–(15), the words ''the purchase or contract is'' are inserted for clarity.

In subsection (a)(5), the words ''to be rendered'' are omitted as surplusage.

In subsection (a)(6), the words ''its Territories'' are inserted for clarity. The words ''the limits of'' are omitted as surplusage.

In subsection (a)(14), the words ''and for which'' are substituted for the word ''when''.

In subsection (a)(15), the words ''and for which'' are substituted for 41:151(c)(15) (1st 22 words of proviso).

In subsection (a)(16), the words ''to have'' are substituted for the words ''be made or kept''.

In subsection (a)(17), the first 7 words are inserted for clarity.

In subsection (b), the words ''shall be kept'' are substituted for the words ''shall be preserved in the files''. The words ''six years after the date'' are substituted for the words ''a period of six years following''.

In subsection (c), the words ''but such authorization shall be required in the same manner as heretofore'' and ''continental'', in 41:151(e), are omitted as surplusage.

In subsection (d), the words ''before making'' are substituted for the words ''Whenever it is proposed to make''.

In subsection (e), the words ''beginning six months after the effective date of this chapter'' are omitted as executed. The words ''on May 19 and November 19 of each year'' are substituted for the words ''and at the

end of each six-month period thereafter'', since the effective date of the source statute was May 19, 1948, and the first report was made on November 19, 1948. The words ''property and services covered by each contract'' are substituted for the words ''work required to be performed thereunder''.

1958 ACT

The change is necessary to reflect the present Commonwealth status of Puerto Rico.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2304(a) (1st sentence).	10:2304 (note).	Mar. 16, 1967, Pub. L. 90–5, §304, 81 Stat. 6.
2304(f)(1)	10:2304(f)(1).	
2304(i)	10:2304 (note).	Sept. 21, 1977, Pub. L. 95–111, §836, 91 Stat. 906.

In subsection (a), the words ''The Secretary of Defense is hereby directed that insofar as practicable all contracts shall be formally advertised'' are omitted as unnecessary because of 10:2304(a) (1st sentence).

Subsection (f)(1) is amended to correct a mistake in spelling.

In subsection (i)(1)(B), the words ''or States'' are omitted because of 1:1.

REFERENCES IN TEXT

The Javits-Wagner-O'Day Act, referred to in subsec. (f)(2)(D), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The Walsh-Healey Act, referred to in subsec. (h)(1), is act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, which is classified generally to sections 35 et seq. of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2002—Subsec. (h). Pub. L. 107–217, §3(b)(3)(A), struck out ''laws'' after ''following'' in introductory provisions.

Subsec. (h)(2). Pub. L. 107–217, §3(b)(3)(B), substituted ''Sections 3141–3144, 3146, and 3147 of title 40'' for ''The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5)''.

2001—Subsec. (f)(1)(B)(iii), (6)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1997—Subsec. (c)(5). Pub. L. 105–85, §1073(a)(42), substituted ''subsection (k)'' for ''subsection (j)''.

Subsec. (f)(1)(B)(iii). Pub. L. 105–85, §1073(a)(43)(A), substituted ''(6)(B)'' for ''(6)(C)''.

Subsec. (f)(2)(E). Pub. L. 105–85, §841(b), struck out ''and such document is approved by the competition advocate for the procuring activity'' after ''requiring the use of procedures other than competitive procedures''.

Subsec. (f)(6)(B), (C). Pub. L. 105–85, §1073(a)(43)(B), redesignated subpar. (C) as (B), substituted ''paragraph (1)(B)(iii)'' for ''paragraph (1)(B)(iv)'' in introductory provisions, and struck out former subpar. (B), which read as follows: ''The authority of the senior procurement executive under paragraph (1)(B)(iii) may be delegated only to an officer or employee within the senior procurement executive's organization who—

''(i) if a member of the armed forces, is a general or flag officer; or

''(ii) if a civilian, is serving in a position in grade GS–16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees).''

Subsec. (g)(4). Pub. L. 105–85, §850(f)(3)(B), substituted ''31(f)'' for ''31(g)''.

1996—Subsec. (c)(3)(C). Pub. L. 104–320 substituted ''agency, or to procure the services of an expert or neutral for use'' for ''agency, or'' and inserted ''or negotiated rulemaking'' after ''alternative dispute resolution''.

Subsec. (f)(1)(B)(i). Pub. L. 104–106, §4102(a)(1), substituted ''$500,000 (but equal to or less than $10,000,000)'' for ''$100,000 (but equal to or less than $1,000,000)'' and ''(ii) or (iii)'' for ''(ii), (iii), or (iv)''.

Subsec. (f)(1)(B)(ii). Pub. L. 104–106, §4102(a)(2), substituted ''$10,000,000 (but equal to or less than $50,000,000)'' for ''$1,000,000 (but equal to or less than $10,000,000)'' and inserted ''or'' at end.

Subsec. (f)(1)(B)(iii), (iv). Pub. L. 104–106, §4102(a)(3), (4), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''in the case of a contract for an amount exceeding $10,000,000 (but equal to or less than $50,000,000), by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) or the senior procurement executive's delegate designated pursuant to paragraph (6)(B), or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); or''.

Subsec. (f)(2)(D). Pub. L. 104–106, §4321(b)(4), substituted ''the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.),'' for ''the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act,''.

Subsec. (g)(1). Pub. L. 104–106, §4202(a)(1)(A), substituted ''shall provide for—'' and subpars. (A) and (B) for ''shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.''

Subsec. (g)(4). Pub. L. 104–106, §4202(a)(1)(B), added par. (4).

Subsec. (h)(1). Pub. L. 104–106, §4321(b)(5), added par. (1) and struck out former par. (1) which read as follows: ''The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healey Act') (41 U.S.C. 35–45).''

Subsecs. (j), (k). Pub. L. 104–106, §4101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1994—Subsec. (a)(1)(A). Pub. L. 103–355, §1001(1), substituted ''Federal Acquisition Regulation'' for ''modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)''.

Subsec. (b)(1)(D) to (F). Pub. L. 103–355, §1002(a), added subpars. (D) to (F).

Subsec. (b)(4). Pub. L. 103–355, §1002(b), added par. (4).

Subsec. (c)(3)(C). Pub. L. 103–355, §1005, added subpar. (C).

Subsec. (c)(5). Pub. L. 103–355, §7203(a)(1)(A), inserted ''subject to subsection (j),'' after ''(5)''.

Subsec. (f)(1)(B)(i). Pub. L. 103–355, §1003, inserted before semicolon at end ''or by an official referred to in clause (ii), (iii), or (iv)''.

Subsec. (g)(1). Pub. L. 103–355, §§1001(2), 4401(a)(1), substituted ''Federal Acquisition Regulation'' for ''regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)'' and ''purchases of property and services for amounts not greater than the simplified acquisition threshold'' for ''small purchases of property and services''.

Subsec. (g)(2). Pub. L. 103–355, §4401(a)(4), substituted ''simplified acquisition threshold'' for ''small purchase

threshold'' and ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''For the purposes of this subsection, a small purchase is a purchase or contract for an amount which does not exceed the small purchase threshold.''

Subsec. (g)(3). Pub. L. 103–355, §4401(a)(5), substituted ''simplified procedures'' for ''small purchase procedures''.

Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 103–355, §4401(a)(3), redesignated par. (4) as (3).

Subsec. (j). Pub. L. 103–355, §7203(a)(1)(B), added subsec. (j).

Pub. L. 103–355, §1004(b), struck out subsec. (j) which related to authority of Secretary of Defense to enter into master agreements for advisory and assistance services.

1993—Subsec. (f)(1)(B)(iii), (iv), (6)(C). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (b)(2). Pub. L. 102–484, §801(h)(2), substituted ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (j)(3)(A). Pub. L. 102–484, §1052(23), substituted ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' for ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))''.

Subsec. (j)(5). Pub. L. 102–484, §816, substituted ''on September 30, 1994.'' for ''at the end of the three-year period beginning on the date on which final regulations prescribed to carry out this subsection take effect.''

1991—Subsec. (g)(2). Pub. L. 102–25, §701(d)(2)(A)(i), substituted ''subsection'' for ''chapter''.

Subsec. (g)(5). Pub. L. 102–25, §701(d)(2)(A)(ii), struck out par. (5) which provided that in this subsection, the term ''small purchase threshold'' has the meaning given such term in section 403(11) of title 41. See section 2302(7) of this title.

Subsec. (j)(3)(A). Pub. L. 102–25, §701(d)(2)(B), substituted ''the small purchase threshold'' for ''$25,000''.

1990—Subsec. (g). Pub. L. 101–510 substituted ''the small purchase threshold'' for ''$25,000'' in pars. (2) and (3) and added par. (5).

1989—Subsec. (b)(2). Pub. L. 101–189, §853(d), substituted ''The head of an agency'' for ''An executive agency'' and ''concerns other than'' for ''other than'' and inserted before period at end ''and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (f)(1)(B)(iii). Pub. L. 101–189, §818(a)(1), (3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (f)(1)(B)(iv). Pub. L. 101–189, §818(a)(2), (c)(1), redesignated cl. (iii) as (iv) and substituted ''$50,000,000'' for ''$10,000,000'' and ''paragraph (6)(C)'' for ''paragraph (6)(B)''.

Subsec. (f)(2)(E). Pub. L. 101–189, §817(a), added subpar. (E).

Subsec. (f)(4). Pub. L. 101–189, §817(b), inserted '', and any document prepared pursuant to paragraph (2)(E),'' after ''any related information''.

Subsec. (f)(6)(B). Pub. L. 101–189, §818(b)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (f)(6)(C). Pub. L. 101–189, §818(b)(1), (c)(2), redesignated subpar. (B) as (C) and substituted ''paragraph (1)(B)(iv)'' for ''paragraph (1)(B)(iii)''.

Subsec. (j). Pub. L. 101–189, §812, added subsec. (j).

1988—Subsec. (f)(1)(B)(ii). Pub. L. 100–456, §803(1), substituted ''(or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A));'' for ''or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule);''.

Subsec. (f)(1)(B)(iii). Pub. L. 100–456, §803(2), inserted ''or in the case of the Under Secretary of Defense for Acquisition, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B)'' before semicolon at end.

Subsec. (f)(6). Pub. L. 100–456, §803(3), added par. (6).

1987—Subsec. (a)(1)(A). Pub. L. 100–26, §7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Competition in Contracting Act of 1984''.

Subsec. (f)(1)(C). Pub. L. 100–26, §7(d)(3)(B), inserted ''(41 U.S.C. 416)'' after ''Policy Act''.

Subsec. (g)(1). Pub. L. 100–26, §7(d)(3)(A), inserted ''(41 U.S.C. 403 note)'' after ''Act of 1984''.

1986—Subsec. (b)(2). Pub. L. 99–661, §1343(a)(14), substituted ''15 U.S.C. 638,'' for ''15 U.S.C. 639;''.

Subsec. (c)(1). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(a)], Pub. L. 99–661, §923(a), amended par. (1) identically, inserting ''or only from a limited number of responsible sources''.

Subsec. (d)(1)(A). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(b)], Pub. L. 99–661, §923(b), amended subpar. (A) identically, substituting ''a concept—'' for ''a unique and innovative concept'', adding cl. (i), and designating provision relating to nonavailability to the United States and nonresemblance to a pending competitive procurement as cl. (ii).

Subsec. (d)(1)(B). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§923(c)], Pub. L. 99–661, §923(c), amended subpar. (B) identically, inserting '', or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''highly specialized equipment'', inserted a one-em dash after ''would result in'', paragraphed cls. (i) and (ii), in cl. (i) substituted ''competition;'' for ''competition,'', and in cl. (ii) struck out '', such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures'' after ''agency's needs''.

Subsec. (i). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§927(a)], Pub. L. 99–661, §927(a), amended section identically, adding subsec. (i).

1985—Subsec. (a)(1)(B). Pub. L. 99–145, §1303(a)(13), substituted ''procedures'' for ''krocedures''.

Subsec. (f)(2). Pub. L. 99–145, §961(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

''(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

''(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637).''

1984—Pub. L. 98–369, §2723(a), substituted ''Contracts: competition requirements'' for ''Purchases and contracts: formal advertising; exceptions'' in section catchline and struck out subsecs. (a) to (e) and (g) to (i), redesignated subsec. (f) as (h), and added new subsecs. (a) through (g), thereby removing the prior statutory preference for formal advertising and installing instead more competitive procurement procedures, including dual sourcing, but with provision for the use of other than competitive procedures in specified situations.

Subsec. (b)(2). Pub. L. 98–577, §504(b)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only small business concerns to compete.

Subsec. (b)(3). Pub. L. 98–577, §504(b)(1), added par. (3).

Subsec. (f)(2). Pub. L. 98–577, §504(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 98–369, § 2727(b), substituted ''contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed bid procedures'' for ''contracts negotiated under this section shall be treated as if they were made with formal advertising''.

Pub. L. 98–369, § 2723(a)(1)(B), redesignated subsec. (f) as (h).

1982—Subsec. (a). Pub. L. 97–295, § 1(24)(A), inserted '', and shall be awarded on a competitive bid basis to the lowest responsible bidder,'' after ''formal advertising''.

Subsec. (e). Pub. L. 97–375 repealed subsec. (e) which directed that a report be made on May and November 19 of each year of purchases and contracts under cls. (11) and (16) of subsec. (a) since the last report, and that the report name each contractor, state the amount of each contract, and describe, with consideration of the national security, the property and services covered by each contract.

Subsec. (f)(1). Pub. L. 97–295, § 1(24)(B), substituted ''Healey'' for ''Healy'' after ''Walsh–''.

Subsec. (i). Pub. L. 97–295, § 1(24)(C), added subsec. (i).

1981—Subsecs. (a)(3), (g). Pub. L. 97–86 substituted ''$25,000'' for ''$10,000''.

1980—Subsec. (f). Pub. L. 96–513 substituted ''(1) The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healy Act') (41 U.S.C. 35–45).'', for ''(1) Sections 35–45 of title 41.'', and ''(2) The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a—276a–5).'' for ''(2) Sections 276a—276a–5 of title 40.'', and struck out ''(3) Sections 324 and 325a of title 40''.

1974—Subsec. (a)(3). Pub. L. 93–356, § 4(a), substituted ''$10,000'' for ''$2,500''.

Subsec. (g). Pub. L. 93–356, § 4(b), substituted ''$10,000'' for ''$2,500''.

1968—Subsec. (g). Pub. L. 90–500 required that the proposals solicited from the maximum number of qualified sources, consistent with the nature and requirements of the supplies or services to be procured, include price.

Subsec. (h). Pub. L. 90–268 added subsec. (h).

1962—Subsec. (a). Pub. L. 87–653, § 1(a), (b), provided that formal advertising be used where feasible and practicable under existing conditions and circumstances, subjected the agency head to the requirements of section 2310 of this title before negotiating a contract where formal advertising is not feasible and practicable and, in par. (14), substituted ''would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;'' for ''and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or''.

Subsec. (g). Pub. L. 87–653, § 1(c), added subsec. (g).

1958—Subsec. (a). Pub. L. 85–861 included Commonwealths in cl. (6).

Pub. L. 85–800 substituted ''$2,500'' for ''$1,000'' in cl. (3) and inserted ''or nonperishable'' in cl. (9).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 850(f)(3)(B) of Pub. L. 105–85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105–85, set out as a note under section 2302c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendments by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 923(d)] of Pub. L. 99–500 and Pub. L. 99–591, and section 923(d) of title IX, formerly title IV of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to contracts for which solicitations are issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) The amendment made by subsection (b) [amending this section] shall apply with respect to contracts awarded on the basis of unsolicited research proposals after the end of the 180-day period beginning on the date of the enactment of this Act.

''(3) The amendments made by subsection (c) [amending this section] shall apply with respect to follow-on contracts awarded after the end of the 180-day period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 961(e) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) [amending this section and section 253 of Title 41, Public Contracts], (b) [amending section 2323 (now section 2343) of this title], and (c) [amending section 759 of former Title 40, Public Buildings, Property, and Works] shall take effect as if included in the enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369) [see Effective Date of 1985 Amendment note set out under section 251 of Title 41].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(h) of Pub. L. 87–653 provided that: ''The amendments made by this Act [amending this section and sections 2306, 2310, and 2311 of this title] shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act [Sept. 10, 1962].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

CONSTRUCTION OF 1994 AMENDMENT

Repeal of prior subsec. (j) of this section by section 1004(b) of Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former section 759 or former subchapter VI (§ 541 et seq.) of chapter 10 of Title 40 [now chapter 11 of Title 40, Public Buildings, Property, and Works], see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

CONSTRUCTION OF 1984 AMENDMENT

Section 2723(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this sec-

tion and section 2305 of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).''

COMPETITION REQUIREMENT FOR PURCHASE OF SERVICES PURSUANT TO MULTIPLE AWARD CONTRACTS

Pub. L. 107–107, div. A, title VIII, § 803, Dec. 28, 2001, 115 Stat. 1178, provided that:

''(a) REGULATIONS REQUIRED.—Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of Defense shall promulgate in the Department of Defense Supplement to the Federal Acquisition Regulation regulations requiring competition in the purchase of services by the Department of Defense pursuant to multiple award contracts.

''(b) CONTENT OF REGULATIONS.—(1) The regulations required by subsection (a) shall provide, at a minimum, that each individual purchase of services in excess of $100,000 that is made under a multiple award contract shall be made on a competitive basis unless a contracting officer of the Department of Defense—

''(A) waives the requirement on the basis of a determination that—

''(i) one of the circumstances described in paragraphs (1) through (4) of section 2304c(b) of title 10, United States Code, applies to such individual purchase; or

''(ii) a statute expressly authorizes or requires that the purchase be made from a specified source; and

''(B) justifies the determination in writing.

''(2) For purposes of this subsection, an individual purchase of services is made on a competitive basis only if it is made pursuant to procedures that—

''(A) require fair notice of the intent to make that purchase (including a description of the work to be performed and the basis on which the selection will be made) to be provided to all contractors offering such services under the multiple award contract; and

''(B) afford all contractors responding to the notice a fair opportunity to make an offer and have that offer fairly considered by the official making the purchase.

''(3) Notwithstanding paragraph (2), notice may be provided to fewer than all contractors offering such services under a multiple award contract described in subsection (c)(2)(A) if notice is provided to as many contractors as practicable.

''(4) A purchase may not be made pursuant to a notice that is provided to fewer than all contractors under paragraph (3) unless—

''(A) offers were received from at least three qualified contractors; or

''(B) a contracting officer of the Department of Defense determines in writing that no additional qualified contractors were able to be identified despite reasonable efforts to do so.

''(c) DEFINITIONS.—In this section:

''(1) The term 'individual purchase' means a task order, delivery order, or other purchase.

''(2) The term 'multiple award contract' means—

''(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(2)(C) of title 10, United States Code;

''(B) a multiple award task order contract that is entered into under the authority of sections 2304a through 2304d of title 10, United States Code, or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253h through 253k); and

''(C) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with two or more sources pursuant to the same solicitation.

''(3) The term 'Defense Agency' has the meaning given that term in section 101(a)(11) of title 10, United States Code.

''(d) APPLICABILITY.—The regulations promulgated by the Secretary pursuant to subsection (a) shall take effect not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001] and shall apply to all individual purchases of services that are made under multiple award contracts on or after the effective date, without regard to whether the multiple award contracts were entered into before, on, or after such effective date.''

REQUIREMENT TO DISREGARD CERTAIN AGREEMENTS IN AWARDING CONTRACTS FOR PURCHASE OF FIREARMS OR AMMUNITION

Pub. L. 106–398, § 1 [[div. A], title VIII, § 826], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''In accordance with the requirements contained in the amendments enacted in the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98–369; 98 Stat. 1175) [see Short Title of 1984 Amendments note set out under section 251 of Title 41, Public Contracts], the Secretary of Defense may not, in awarding a contract for the purchase of firearms or ammunition, take into account whether a manufacturer or vendor of firearms or ammunition is a party to an agreement under which the manufacturer or vendor agrees to adopt limitations with respect to importing, manufacturing, or dealing in firearms or ammunition in the commercial market.''

GAO REPORT

Pub. L. 106–65, div. A, title VIII, § 806(b), Oct. 5, 1999, 113 Stat. 705, provided that: ''Not later than March 1, 2001, the Comptroller General shall submit to Congress an evaluation of the test program authorized by the provisions in section 4202 of the Clinger-Cohen Act of 1996 [Pub. L. 104–106, amending this section, section 2305 of this title, and sections 253, 253a, 416, and 427 of Title 41, Public Contracts, and enacting provisions set out as a note below], together with any recommendations that the Comptroller General considers appropriate regarding the test program or the use of special simplified procedures for purchases of commercial items in excess of the simplified acquisition threshold.''

PROCUREMENT OF CONVENTIONAL AMMUNITION

Pub. L. 105–261, div. A, title VIII, § 806, Oct. 17, 1998, 112 Stat. 2084, provided that:

''(a) AUTHORITY.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department shall have the authority to restrict the procurement of conventional ammunition to sources within the national technology and industrial base in accordance with the authority in section 2304(c) of title 10, United States Code.

''(b) REQUIREMENT.—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department of Defense shall limit a specific procurement of ammunition to sources within the national technology and industrial base in accordance with section 2304(c)(3) of title 10, United States Code, in any case in which that manager determines that such limitation is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

''(c) CONVENTIONAL AMMUNITION DEFINED.—For purposes of this section, the term 'conventional ammunition' has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995.''

WARRANTY CLAIMS RECOVERY PILOT PROGRAM

Pub. L. 105–85, div. A, title III, § 391, Nov. 18, 1997, 111 Stat. 1716, as amended by Pub. L. 106–65, div. A, title III, § 382, Oct. 5, 1999, 113 Stat. 583; Pub. L. 107–107, div. A, title III, § 364, Dec. 28, 2001, 115 Stat. 1068; Pub. L. 107–314, div. A, title III, § 368, Dec. 2, 2002, 116 Stat. 2524, provided that:

''(a) PILOT PROGRAM REQUIRED.—The Secretary of Defense may carry out a pilot program to use commercial sources of services to improve the collection of Department of Defense claims under aircraft engine warranties.

''(b) CONTRACTS.—Exercising the authority provided in section 3718 of title 31, United States Code, the Secretary of Defense may enter into contracts under the pilot program to provide for the following services:

''(1) Collection services.

''(2) Determination of amounts owed the Department of Defense for repair of aircraft engines for conditions covered by warranties.

''(3) Identification and location of the sources of information that are relevant to collection of Department of Defense claims under aircraft engine warranties, including electronic data bases and document filing systems maintained by the Department of Defense or by the manufacturers and suppliers of the aircraft engines.

''(4) Services to define the elements necessary for an effective training program to enhance and improve the performance of Department of Defense personnel in collecting and organizing documents and other information that are necessary for efficient filing, processing, and collection of Department of Defense claims under aircraft engine warranties.

''(c) CONTRACTOR FEE.—Under the authority provided in section 3718(d) of title 31, United States Code, a contract entered into under the pilot program shall provide for the contractor to be paid, out of the amount recovered by the contractor under the program, such percentages of the amount recovered as the Secretary of Defense determines appropriate.

''(d) RETENTION OF RECOVERED FUNDS.—Subject to any obligation to pay a fee under subsection (c), any amount collected for the Department of Defense under the pilot program for a repair of an aircraft engine for a condition covered by a warranty shall be credited to an appropriation available for repair of aircraft engines for the fiscal year in which collected and shall be available for the same purposes and same period as the appropriation to which credited.

''(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

''(f) TERMINATION OF AUTHORITY.—The pilot program shall terminate on September 30, 2004, and contracts entered into under this section shall terminate not later than that date.''

REQUIREMENTS RELATING TO MICRO-PURCHASES

Section 848 of Pub. L. 105–85 provided that:

''(a) REQUIREMENT.—(1) Not later than October 1, 1998, at least 60 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(2) Not later than October 1, 2000, at least 90 percent of all eligible purchases made by the Department of Defense for an amount less than the micro-purchase threshold shall be made through streamlined micro-purchase procedures.

''(b) ELIGIBLE PURCHASES.—The Secretary of Defense shall establish which purchases are eligible for purposes of subsection (a). In establishing which purchases are eligible, the Secretary may exclude those categories of purchases determined not to be appropriate or practicable for streamlined micro-purchase procedures.

''(c) PLAN.—Not later than March 1, 1998, the Secretary of Defense shall provide to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a plan to implement this section.

''(d) REPORT.—Not later than March 1 in each of the years 1999, 2000, and 2001, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the implementation of this section. Each report shall include—

''(A) the total dollar amount of all Department of Defense purchases for an amount less than the micro-purchase threshold in the fiscal year preceding the year in which the report is submitted;

''(B) the total dollar amount of such purchases that were considered to be eligible purchases;

''(C) the total amount of such eligible purchases that were made through a streamlined micro-purchase method; and

''(D) a description of the categories of purchases excluded from the definition of eligible purchases established under subsection (b).

''(e) DEFINITIONS.—In this section:

''(1) The term 'micro-purchase threshold' has the meaning provided in section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428).

''(2) The term 'streamlined micro-purchase procedures' means procedures providing for the use of the Government-wide commercial purchase card or any other method for carrying out micro-purchases that the Secretary of Defense prescribes in the regulations implementing this subsection.''

TERMINATION OF AUTHORITY TO ISSUE SOLICITATIONS FOR PURCHASES OF COMMERCIAL ITEMS IN EXCESS OF SIMPLIFIED ACQUISITION THRESHOLD

Pub. L. 104–106, div. D, title XLII, §4202(e), Feb. 10, 1996, 110 Stat. 654, as amended by Pub. L. 106–65, div. A, title VIII, §806(a), Oct. 5, 1999, 113 Stat. 705; Pub. L. 107–107, div. A, title VIII, §823, Dec. 28, 2001, 115 Stat. 1183; Pub. L. 107–314, div. A, title VIII, §812(a), Dec. 2, 2002, 116 Stat. 2609, provided that: ''The authority to issue solicitations for purchases of commercial items in excess of the simplified acquisition threshold pursuant to the special simplified procedures authorized by section 2304(g)(1) of title 10, United States Code, section 303(g)(1) of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 253(g)(1)], and section 31(a) of the Office of Federal Procurement Policy Act [41 U.S.C. 427(a)], as amended by this section, shall expire January 1, 2004. Contracts may be awarded pursuant to solicitations that have been issued before such authority expires, notwithstanding the expiration of such authority.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

AUTHORITY OF BASE COMMANDERS OVER CONTRACTING FOR COMMERCIAL ACTIVITIES

Pub. L. 100–180, div. A, title XI, §1111, Dec. 4, 1987, 101 Stat. 1146, provided that:

''(a) AUTHORITY.—The Secretary of Defense shall direct that the commander of each military installation (under regulations prescribed by the Secretary of Defense and subject to the authority, direction, and control of the Secretary) shall have the authority and the responsibility to carry out the following:

''(1) Prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation.

''(2) Decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy).

''(3) Conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the Circular A–76 process.

''(4) To the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

''(b) DEADLINE FOR REGULATIONS.—The Secretary shall prescribe the regulations required by subsection

(a) no later than 60 days after the date of the enactment of this Act [Dec. 4, 1987].

''(c) DEFINITION.—In this section, the term 'military installation' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

''(d) TERMINATION OF AUTHORITY.—The authority provided for commanders of military installations by subsection (a) shall terminate on October 1, 1989.''

EVALUATION OF CONTRACTS FOR PROFESSIONAL AND TECHNICAL SERVICES

Section 804 of Pub. L. 100–456, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, directed Secretary of Defense, within 120 days after Sept. 29, 1988, to establish criteria to ensure that proposals for contracts for professional and technical services be evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees and, within 30 days after Sept. 29, 1988, to establish an advisory committee to make recommendations on the criteria.

REGULATIONS ON USE OF FIXED-PRICE DEVELOPMENT CONTRACTS

Pub. L. 100–456, div. A, title VIII, § 807, Sept. 29, 1988, 102 Stat. 2011, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729, provided that not later than 120 days after Sept. 29, 1988, the Secretary of Defense was to make certain revisions to the Department of Defense regulations that provide for the use of fixed-price type contracts in a development program.

PROHIBITION OF PURCHASE OF ANGOLAN PETROLEUM PRODUCTS FROM COMPANIES PRODUCING OIL IN ANGOLA

Section 842 of Pub. L. 102–484 provided that: ''The prohibition in section 316 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99–661] (100 Stat. 3855; 10 U.S.C. 2304 note) shall cease to be effective on the date on which the President certifies to Congress that free, fair, and democratic elections have taken place in Angola.''

Determination of President of the United States, No. 93–32, July 19, 1993, 58 F.R. 40309, provided:

Pursuant to the authority vested in me by Public Law 102–484, section 842 [set out as a note above], I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

WILLIAM J. CLINTON.

Section 316 of Pub. L. 99–661 provided that:

''(a) GENERAL RULE.—The Secretary of Defense may not enter into a contract with a company for the purchase of petroleum products which originated in Angola if the company (or a subsidiary or partnership of the company) is engaged in the production of petroleum products in Angola.

''(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) if the Secretary determines that such action is in the best interest of the United States.

''(c) PETROLEUM PRODUCT DEFINED.—For purposes of this section, the term 'petroleum product' means—

''(1) natural or synthetic crude;

''(2) blends of natural or synthetic crude; and

''(3) products refined or derived from natural or synthetic crude or from such blends.

''(d) EFFECTIVE DATE.—This section shall take effect six months after the date of the enactment of this Act [Nov. 14, 1986].''

DEADLINE FOR PRESCRIBING REGULATIONS

Section 101(c) [title X, § 927(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 927(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The Secretary of Defense shall prescribe the regulations required by section 2304(i) of such title (as added by subsection (a)) not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].''

ONE-YEAR SECURITY-GUARD PROHIBITION

Section 1222(b) of Pub. L. 99–661 provided that:

''(1) Except as provided in paragraph (2), funds appropriated to the Department of Defense may not be obligated or expended before October 1, 1987, for the purpose of entering into a contract for the performance of security-guard functions at any military installation or facility.

''(2) The prohibition in paragraph (1) does not apply—

''(A) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which military personnel would have to be used for the performance of the function described in paragraph (1) at the expense of unit readiness;

''(B) to a contract to be carried out on a Government-owned but privately operated installation;

''(C) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983; or

''(D) to a contract for the performance of security-guard functions if (i) the requirement for the functions arises after the date of the enactment of this Act [Nov. 14, 1986], and (ii) the Secretary of Defense determines the functions can be performed by contractor personnel without adversely affecting installation security, safety, or readiness.''

CONTRACTING OUT PERFORMANCE OF DEPARTMENT OF DEFENSE SUPPLY AND SERVICE FUNCTIONS

Section 1223 of Pub. L. 99–661, which required Secretary to contract for Department of Defense supplies and services from private sector after a cost comparison demonstrates lower cost than Department of Defense can provide, and to ensure that overhead costs considered are realistic and fair, was repealed and restated in section 2462 of this title by Pub. L. 100–370, § 2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

REPORTS ON SAVINGS OR COSTS FROM INCREASED USE OF CIVILIAN PERSONNEL

Section 1224 of Pub. L. 99–661, which required Secretary to maintain cost comparison data on performance of a commercial or industrial type activity taken over by Department of Defense comparing performance by employees of private contractor to that of civilian employees of Department of Defense, and to submit semi-annual report on savings or loss to United States, was repealed and restated in section 2463 of this title by Pub. L. 100–370, § 2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

LIMITATIONS ON CONTRACTING PERFORMED BY COAST GUARD

Pub. L. 101–225, title II, § 205, Dec. 12, 1989, 103 Stat. 1912, provided that: ''Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

''(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A–76 with respect to that procurement;

''(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

''(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries [now Com-

mittee on Transportation and Infrastructure] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.''

Pub. L. 100–448, §5, Sept. 28, 1988, 102 Stat. 1837, as amended by Pub. L. 104–66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724, provided that:

''(a) MAINTENANCE OF LOGISTICS CAPABILITY.—

''(1) STATEMENT OF NATIONAL INTEREST.—It is in the national interest for the Coast Guard to maintain a logistics capability (including personnel, equipment, and facilities) to provide a ready and controlled source of technical competence and resources necessary to ensure the effective and timely performance of Coast Guard missions in behalf of the security, safety, and economic and environmental well-being of the United States.

''[(2) Repealed. Pub. L. 104–66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724.]

''[(b) Repealed. Pub. L. 104–66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724.]

''(c) SUBMISISON [sic] OF LIST OF ACTIVITIES CONTRACTED FOR PERFORMANCE.—At least 30 days before the beginning of each fiscal year, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a list of activities that will be contracted for performance by non-Government personnel under the procedures of Office of Management and Budget Circular A–76 during that fiscal year.

''(d) EMPLOYMENT OF LOCAL RESIDENTS TO PERFORM CONTRACTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each contract awarded by the Coast Guard in fiscal years 1988 and 1989 for construction or services to be performed in whole or in part in a State which has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of the department in which the Coast Guard is operating may waive this subsection in the interest of national security or economic efficiency.

''(2) LOCAL RESIDENT DEFINED.—As used in this subsection, the term 'local resident' means a resident of a State described in paragraph (1), and any individual who commutes daily to a State described in paragraph (1).''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

Similar provisions were contained in the following prior authorization act:

Pub. L. 99–640, §5, Nov. 10, 1986, 100 Stat. 3546.

CONTRACTED ADVISORY AND ASSISTANCE SERVICES

Section 918 of Pub. L. 99–145, which provided that Secretary of Defense require each military department to establish accounting procedure to aid in control of expenditures for contracted advisory and assistance services, prescribe regulations to identify such services and which services are in direct support of a weapons system, consider specific list of factors in prescribing regulations, and identify total amount requested and separate category amount requested in budget documents for Department of Defense presented to Congress, was repealed and restated in section 2212 of this title by Pub. L. 100–370, §1(d)(2), July 19, 1988, 102 Stat. 842.

ASSIGNMENT OF PRINCIPAL CONTRACTING OFFICERS

Section 925 of Pub. L. 99–145 required Secretary of Defense to develop a policy regarding mobility and regular rotation of principal administrative and corporate administrative contracting officers in Department of Defense and to report to Committees on Armed Services of Senate and House of Representatives not later than January 1, 1986, on such policy, prior to repeal by Pub. L. 101–510, div. A, title XII, §1207(a), Nov. 5, 1990, 104 Stat. 1665.

PROHIBITION ON FELONS CONVICTED OF DEFENSE-CONTRACT-RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS

Pub. L. 99–145, title IX, §932, Nov. 8, 1985, 99 Stat. 699, prohibited certain felons from working on defense contracts and penalized employment of such persons by defense contractors, prior to repeal by Pub. L. 99–500, §101(c) [title X, §941(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, §101(c) [title X, §941(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, §941(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.

REIMBURSEMENT, INTEREST CHARGES, AND PENALTIES FOR OVERPAYMENTS DUE TO COST AND PRICING DATA

Pub. L. 99–145, title IX, §934(a), Nov. 8, 1985, 99 Stat. 700, which provided for interest payments and penalties for overpayments due to faulty cost and pricing data, was repealed by Pub. L. 99–500, §101(c) [title X, §952(b)(2), (d)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §952(b)(2), (d)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(b)(2), (d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, effective with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on Oct. 18, 1986.

PERSONNEL FOR PERFORMANCE OF SERVICES AND ACTIVITIES

Pub. L. 99–145, title XII, §1233, Nov. 8, 1985, 99 Stat. 734, related to services and activities to be performed by non-Government personnel, prior to repeal by Pub. L. 99–661, div. A, title XII, §1222(c), Nov. 14, 1986, 100 Stat. 3977.

LIMITATION ON CONTRACTING-OUT CORE LOGISTICS FUNCTIONS

Section 1231(a)–(e) of Pub. L. 99–145 declared that certain specifically described functions of the Department of Defense shall be deemed logistics activities necessary to maintain the logistics capability described in section 307(a)(1) of Pub. L. 98–525, formerly set out below; contained a description of the functions, i.e., depot-level maintenance of mission-essential materiel at specifically located activities of the Army, the Navy, the Marine Corps, the Air Force, the Defense Logistics Agency, and the Defense Mapping Agency; included certain matters within the specified functions and excluded certain functions; and defined ''mission-essential materiel'' as related to such functions.

Section 307 of Pub. L. 98–525, as amended by Pub. L. 99–145, title XII, §1231(f), Nov. 8, 1985, 99 Stat. 733, which prohibited contracting to non-Government personnel of logistics activities necessary for effective response to national emergencies unless Secretary waives such prohibition after a determination that Government performance of such activity is no longer required for national defense reasons, and reports to Congress on waiver, was repealed and restated in section 2464 of this title by Pub. L. 100–370, §2(a)(1), (c)(2), July 19, 1988, 102 Stat. 853, 854.

SHIPBUILDING CLAIMS FOR CONTRACT PRICE ADJUSTMENTS

Pub. L. 98–473, title I, §101(h)[title VIII, §8078], Oct. 12, 1984, 98 Stat. 1904, 1938, prohibited expenditure of

funds to adjust any contract price in any shipbuilding claim, request for equitable adjustment, or demand for payment incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after Oct. 12, 1984, arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand, prior to repeal by Pub. L. 100–370, §1(p)(2), July 19, 1988, 102 Stat. 851.

Pub. L. 98–212, title VII, §787, Dec. 8, 1983, 97 Stat. 1453, which contained similar provisions relating to shipbuilding claims for contract price adjustments, was repealed and restated in section 2405 of this title by Pub. L. 98–525, title XII, §1234(a), (b)(2), Oct. 19, 1984, 98 Stat. 2604, effective Oct. 19, 1984.

WEAPON SYSTEM GUARANTEES; GOVERNMENT-AS-SOURCE EXCEPTION; WAIVER

Pub. L. 98–212, title VII, §794, Dec. 8, 1983, 97 Stat. 1454, provided for weapon system guarantees, Government-as-Source exception, and waiver, prior to repeal by Pub. L. 98–525, title XII, §1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, effective Jan. 1, 1985.

FIGHTER AIRCRAFT ENGINE WARRANTY

Pub. L. 97–377, title I, §101(c) [title VII, §797], Dec. 21, 1982, 96 Stat. 1865, provided that: ''None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to achieve the required performance at no cost to the Government.''

INSURANCE TO PROTECT GOVERNMENT CONTRACTORS AGAINST COST OF CORRECTING CONTRACTOR'S OWN DEFECTS; REIMBURSEMENT PROHIBITED

Pub. L. 97–12, title I, §100, June 5, 1981, 95 Stat. 29, and Pub. L. 97–114, title VII, §770, Dec. 29, 1981, 95 Stat. 1590, which provided that no funds authorized for the Department of Defense in fiscal year 1981 and thereafter would be available to reimburse a contractor for the cost of commercial insurance, except for that normally maintained in the conduct of his business, that would protect against the cost for correction for the contractor's own defects in materials or workmanship such as were not a fortuitous casualty or loss, were repealed and restated in section 2399 of this title by Pub. L. 97–295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

RESTRICTIONS ON CONVERSION OF PERFORMANCE OF COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS FROM DEPARTMENT OF DEFENSE PERSONNEL TO PRIVATE CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 96–342, title V, §502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title XI, §1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, §1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, §1221, Nov. 14, 1986, 100 Stat. 3976, which provided that no commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees could be converted to performance by a private contractor to circumvent any civilian personnel ceiling unless Secretary of Defense submitted favorable cost comparisons and certifications, and reported annually to Congress with regard to such conversions, was repealed and restated in section 2461 of this title by Pub. L. 100–370, §2(a)(1), (c)(1), July 19, 1988, 102 Stat. 851, 854.

Similar provisions for fiscal year 1980 were contained in Pub. L. 96–107, title VIII, §806, Nov. 9, 1979, 93 Stat. 813.

CONTRACT CLAIMS; REQUEST FOR EQUITABLE ADJUSTMENT; REQUEST FOR RELIEF; CERTIFICATION

Pub. L. 95–485, title VIII, §813, Oct. 20, 1978, 92 Stat. 1624, which prohibited payment of a contract claim, request for equitable adjustment, or request for relief which exceeded $100,000 unless a senior company official certified that request was made in good faith and that supporting data was accurate and complete, was repealed and restated in section 2410 of this title by Pub. L. 100–370, §1(h)(2), (p)(4), July 19, 1988, 102 Stat. 847, 851.

REPORT TO CONGRESS BY SECRETARY OF DEFENSE; CHANGES IN POLICY OR REGULATIONS CONCERNING USE OF PRIVATE CONTRACTORS FOR COMMERCIAL OR INDUSTRIAL TYPE FUNCTION AT DEPARTMENT OF DEFENSE INSTALLATIONS; RESTRICTIONS

Pub. L. 95–485, title VIII, §814, Oct. 20, 1978, 92 Stat. 1625, directed the Secretary of Defense to report to the House and Senate Committees on Armed Services any proposed change in policy or regulations from those in effect before June 30, 1976, as to whether commercial or industrial functions at Defense Department installations in the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period Oct. 1, 1978 to Sept. 30, 1979; prohibited such functions to be performed privately unless such contractor performance began before Oct. 20, 1978 or performance would have been allowed by policy and regulations in effect before June 30, 1976; and provided that such prohibition would apply until the end of the 60 day period beginning on the date the report by the Secretary of Defense is received by the House and Senate Committees.

REPORTING REQUIREMENTS FOR SECRETARY OF DEFENSE AND PRIME CONTRACTORS CONCERNING PAYMENTS BY PRIME CONTRACTORS FOR WORK PERFORMED BY SUBCONTRACTORS

Pub. L. 95–111, title VIII, §836, Sept. 21, 1977, 91 Stat. 906, which directed the Secretary of Defense to require all prime contractors with more than $500,000 of defense contract awards to report in dollars at the end of each year the amount of work done in that year and the State where performed, and requiring the Secretary of Defense to report annually to Congress the amount of funds spent for such work in each State, was repealed and restated in subsec. (i) of this section by Pub. L. 97–295, §§1(24)(C), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1315.

PERFORMANCE REVIEW OF DEPARTMENT OF DEFENSE COMMERCIAL OR INDUSTRIAL FUNCTIONS

Pub. L. 95–79, title VIII, §809, July 30, 1977, 91 Stat. 334, directed the Secretary of Defense and the Director of the Office of Management and Budget to review criteria used in determining whether commercial or industrial type functions at Department of Defense installations within the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors and to report to the House and Senate Armed Services Committees before Jan. 1, 1978, the results of the review; prohibited commercial or industrial type functions being performed on July 30, 1977 by Department of Defense personnel from being converted to performance by private contractors before the earlier of Mar. 15, 1978 or the end of the 90-day period beginning on the date the report is received by the House and Senate Committees; exempted from such prohibition the conversion to performance by private contractors of industrial or commercial type functions if the conversion would have been made under policies and regulations in effect before June 30, 1976; and required the Secretary of Defense to report to the House and Senate Committees on Armed Services before Jan. 1, 1978, detailing the Department's rationale for establishing goals for the percentage of work at defense research installations to be performed by private contractors and for any direction in effect on July 30, 1977 establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors or di-

recting a change in any such allocation in effect on July 30, 1977.

DISCRIMINATION IN PETROLEUM SUPPLIES TO ARMED FORCES PROHIBITED; ENFORCEMENT PROCEDURE; PENALTIES; EXPIRATION

Pub. L. 94–106, title VIII, §816, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 98–620, title IV, §402(8), Nov. 8, 1984, 98 Stat. 3357, provided a remedy for discrimination by citizens of nationals of the United States or corporations organized or operating within the United States, and by organizations controlled by them, against the Department of Defense in the supply of petroleum products for two years after Oct. 7, 1975.

ANNOUNCEMENTS OF AWARD OF CONTRACTS BY DEPARTMENT OF DEFENSE; DISCLOSURE OF IDENTITY OF CONTRACTOR PRIOR TO ANNOUNCEMENT PROHIBITED

Pub. L. 91–441, title V, §507, Oct. 7, 1970, 84 Stat. 913, which had provided that the identity or location of a recipient of a contract from the Department of Defense may not be revealed prior to the public announcement of such identity by the Secretary of Defense, was repealed and restated in section 2316 of this title by Pub. L. 97–295, §§1(26)(A), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1314.

AWARD OF CONTRACTS THROUGH FORMAL ADVERTISING AND COMPETITIVE BIDDING WHERE PRACTICABLE

Pub. L. 90–5, title III, §304, Mar. 16, 1967, 81 Stat. 6, which had provided that the Secretary of Defense was directed, insofar as practicable, that all contracts be formally advertised and awarded on a competitive bid basis to the lowest responsible bidder, was repealed and restated in subsec. (a) of this section by Pub. L. 97–295, §§1(24)(A), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1314.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

Provisions of the National Emergencies Act not applicable to the powers and authorities conferred by subsec. (a)(1) of this section and actions taken hereunder, see section 1651(a)(5) of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1091, 1724, 2304a, 2304b, 2304c, 2308, 2343, 2350b, 2361, 2486, 2533a, 2688, 4554 of this title; title 6 sections 425, 426; title 15 section 637; title 41 sections 416, 417, 427; title 50 sections 403c, 1432, 1651; title 50 App. section 2077.

§ 2304a. Task and delivery order contracts: general authority

(a) AUTHORITY TO AWARD.—Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 2304d of this title) for procurement of services or property.

(b) SOLICITATION.—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

(d) SINGLE AND MULTIPLE CONTRACT AWARDS.—(1) The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for the same or similar services or property to two or more sources.

(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3) The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) CONTRACT MODIFICATIONS.—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(g) RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

CODIFICATION

Another section 2304a was renumbered section 2304e of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Section 1004(d) of Pub. L. 103–355 provided that: ''Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b)

and (c) [amending sections 2304 and 2331 of this title], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

''(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759)); and

''(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)) [now chapter 11 of Title 40, Public Buildings, Property, and Works].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304b, 2304c, 2304d, 2306c of this title.

§ 2304b. Task order contracts: advisory and assistance services

(a) AUTHORITY TO AWARD.—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task order contract (as defined in section 2304d of this title) for procurement of advisory and assistance services.

(2) The head of an agency may enter into a task order contract for procurement of advisory and assistance services only under the authority of this section.

(b) LIMITATION ON CONTRACT PERIOD.—The period of a task order contract entered into under this section, including all periods of extensions of the contract under options, modifications, or otherwise, may not exceed five years unless a longer period is specifically authorized in a law that is applicable to such contract.

(c) CONTENT OF NOTICE.—The notice required by section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)) shall reasonably and fairly describe the general scope, magnitude, and duration of the proposed task order contract in a manner that would reasonably enable a potential offeror to decide whether to request the solicitation and consider submitting an offer.

(d) REQUIRED CONTENT OF SOLICITATION AND CONTRACT.—(1) The solicitation for the proposed task order contract shall include the information (regarding services) described in section 2304a(b) of this title.

(2) A task order contract entered into under this section shall contain the same information that is required by paragraph (1) to be included in the solicitation of offers for that contract.

(e) MULTIPLE AWARDS.—(1) The head of an agency may, on the basis of one solicitation, award separate task order contracts under this section for the same or similar services to two or more sources if the solicitation states that the head of the agency has the option to do so.

(2) If, in the case of a task order contract for advisory and assistance services to be entered into under this section, the contract period is to exceed three years and the contract amount is estimated to exceed $10,000,000 (including all options), the solicitation shall—

(A) provide for a multiple award authorized under paragraph (1); and

(B) include a statement that the head of the agency may also elect to award only one task order contract if the head of the agency determines in writing that only one of the offerers is capable of providing the services required at the level of quality required.

(3) Paragraph (2) does not apply in the case of a solicitation for which the head of the agency concerned determines in writing that, because the services required under the task order contract are unique or highly specialized, it is not practicable to award more than one contract.

(f) CONTRACT MODIFICATIONS.—(1) A task order may not increase the scope, period, or maximum value of the task order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(2) Unless use of procedures other than competitive procedures is authorized by an exception in subsection (c) of section 2304 of this title and approved in accordance with subsection (f) of such section, competitive procedures shall be used for making such a modification.

(3) Notice regarding the modification shall be provided in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(g) CONTRACT EXTENSIONS.—(1) Notwithstanding the limitation on the contract period set forth in subsection (b) or in a solicitation or contract pursuant to subsection (e), a task order contract entered into by the head of an agency under this section may be extended on a sole-source basis for a period not exceeding six months if the head of such agency determines that—

(A) the award of a follow-on contract has been delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(B) the extension is necessary in order to ensure continuity of the receipt of services pending the award of, and commencement of performance under, the follow-on contract.

(2) A task order contract may be extended under the authority of paragraph (1) only once and only in accordance with the limitations and requirements of this subsection.

(h) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to a contract for the acquisition of property or services that includes acquisition of advisory and assistance services if the head of an agency entering into such contract determines that, under the contract, advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

(i) ADVISORY AND ASSISTANCE SERVICES DEFINED.—In this section, the term ''advisory and assistance services'' has the meaning given such term in section 1105(g) of title 31.

(Added Pub. L. 103–355, title I, § 1004(a)(1), Oct. 13, 1994, 108 Stat. 3251.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authori-

ties or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304a, 2304c, 2304d, 2306c of this title.

§ 2304c. Task and delivery order contracts: orders

(a) ISSUANCE OF ORDERS.—The following actions are not required for issuance of a task or delivery order under a task or delivery order contract:

(1) A separate notice for such order under section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) or section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

(2) Except as provided in subsection (b), a competition (or a waiver of competition approved in accordance with section 2304(f) of this title) that is separate from that used for entering into the contract.

(b) MULTIPLE AWARD CONTRACTS.—When multiple task or delivery order contracts are awarded under section 2304a(d)(1)(B) or 2304b(e) of this title, all contractors awarded such contracts shall be provided a fair opportunity to be considered, pursuant to procedures set forth in the contracts, for each task or delivery order in excess of $2,500 that is to be issued under any of the contracts unless—

(1) the agency's need for the services or property ordered is of such unusual urgency that providing such opportunity to all such contractors would result in unacceptable delays in fulfilling that need;

(2) only one such contractor is capable of providing the services or property required at the level of quality required because the services or property ordered are unique or highly specialized;

(3) the task or delivery order should be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to a task or delivery order already issued on a competitive basis; or

(4) it is necessary to place the order with a particular contractor in order to satisfy a minimum guarantee.

(c) STATEMENT OF WORK.—A task or delivery order shall include a statement of work that clearly specifies all tasks to be performed or property to be delivered under the order.

(d) PROTESTS.—A protest is not authorized in connection with the issuance or proposed issuance of a task or delivery order except for a protest on the ground that the order increases the scope, period, or maximum value of the contract under which the order is issued.

(e) TASK AND DELIVERY ORDER OMBUDSMAN.—Each head of an agency who awards multiple task or delivery order contracts pursuant to section 2304a(d)(1)(B) or 2304b(e) of this title shall appoint or designate a task and delivery order ombudsman who shall be responsible for reviewing complaints from the contractors on such contracts and ensuring that all of the contractors are afforded a fair opportunity to be considered for task or delivery orders when required under subsection (b). The task and delivery order ombudsman shall be a senior agency official who is independent of the contracting officer for the contracts and may be the agency's competition advocate.

(f) APPLICABILITY.—This section applies to task and delivery order contracts entered into under sections 2304a and 2304b of this title.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3252.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304a, 2304b, 2304d, 2306c of this title; title 6 section 426.

§ 2304d. Task and delivery order contracts: definitions

In sections 2304a, 2304b, and 2304c of this title:

(1) The term ''task order contract'' means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

(2) The term ''delivery order contract'' means a contract for property that does not procure or specify a firm quantity of property (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of property during the period of the contract.

(Added Pub. L. 103–355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3253.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

This section not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304a, 2304b of this title.

§ 2304e. Contracts: prohibition on competition between Department of Defense and small businesses and certain other entities

(a) EXCLUSION.—In any case in which the Secretary of Defense plans to use competitive pro-

cedures for a procurement, if the procurement is to be conducted as described in subsection (b), then the Secretary shall exclude the Department of Defense from competing in the procurement.

(b) PROCUREMENT DESCRIPTION.—The requirement to exclude the Department of Defense under subsection (a) applies in the case of a procurement to be conducted by excluding from competition entities in the private sector other than—

(1) small business concerns in furtherance of section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644); or

(2) entities described in subsection (a)(1) of section 2323 of this title in furtherance of the goal specified in that subsection.

(Added Pub. L. 103–160, div. A, title VIII, § 848(a)(1), Nov. 30, 1993, 107 Stat. 1724, § 2304a; renumbered § 2304e, Pub. L. 104–106, div. D, title XLIII, § 4321(b)(6)(A), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Pub. L. 104–106 renumbered section 2304a of this title as this section.

EFFECTIVE DATE

Section 848(b) of Pub. L. 103–160 provided that: ''Section 2304a [now 2304e] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 30, 1993].''

§ 2305. Contracts: planning, solicitation, evaluation, and award procedures

(a)(1)(A) In preparing for the procurement of property or services, the head of an agency shall—

(i) specify the agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition for the procurement;

(ii) use advance procurement planning and market research; and

(iii) develop specifications in such manner as is necessary to obtain full and open competition with due regard to the nature of the property or services to be acquired.

(B) Each solicitation under this chapter shall include specifications which—

(i) consistent with the provisions of this chapter, permit full and open competition; and

(ii) include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency or as authorized by law.

(C) For the purposes of subparagraphs (A) and (B), the type of specification included in a solicitation shall depend on the nature of the needs of the agency and the market available to satisfy such needs. Subject to such needs, specifications may be stated in terms of—

(i) function, so that a variety of products or services may qualify;

(ii) performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) design requirements.

(2) In addition to the specifications described in paragraph (1), a solicitation for sealed bids or competitive proposals (other than for a procurement for commercial items using special simplified procedures or a purchase for an amount not greater than the simplified acquisition threshold) shall at a minimum include—

(A) a statement of—

(i) all significant factors and significant subfactors which the head of the agency reasonably expects to consider in evaluating sealed bids (including price) or competitive proposals (including cost or price, cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors); and

(ii) the relative importance assigned to each of those factors and subfactors; and

(B)(i) in the case of sealed bids—

(I) a statement that sealed bids will be evaluated without discussions with the bidders; and

(II) the time and place for the opening of the sealed bids; or

(ii) in the case of competitive proposals—

(I) either a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) unless discussions are determined to be necessary; and

(II) the time and place for submission of proposals.

(3)(A) In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency—

(i) shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, prior experience, and past performance of the offeror);

(ii) shall include cost or price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals; and

(iii) shall disclose to offerors whether all evaluation factors other than cost or price, when combined, are—

(I) significantly more important than cost or price;

(II) approximately equal in importance to cost or price; or

(III) significantly less important than cost or price.

(B) The regulations implementing clause (iii) of subparagraph (A) may not define the terms ''significantly more important'' and ''significantly less important'' as specific numeric weights that would be applied uniformly to all solicitations or a class of solicitations.

(4) Nothing in this subsection prohibits an agency from—

(A) providing additional information in a solicitation, including numeric weights for all evaluation factors and subfactors on a case-by-case basis; or

(B) stating in a solicitation that award will be made to the offeror that meets the solicita-

tion's mandatory requirements at the lowest cost or price.

(5) The head of an agency, in issuing a solicitation for a contract to be awarded using sealed bid procedures, may not include in such solicitation a clause providing for the evaluation of prices for options to purchase additional property or services under the contract unless the head of the agency has determined that there is a reasonable likelihood that the options will be exercised.

(b)(1) The head of an agency shall evaluate sealed bids and competitive proposals and make an award based solely on the factors specified in the solicitation.

(2) All sealed bids or competitive proposals received in response to a solicitation may be rejected if the head of the agency determines that such action is in the public interest.

(3) Sealed bids shall be opened publicly at the time and place stated in the solicitation. The head of the agency shall evaluate the bids in accordance with paragraph (1) without discussions with the bidders and, except as provided in paragraph (2), shall award a contract with reasonable promptness to the responsible bidder whose bid conforms to the solicitation and is most advantageous to the United States, considering only price and the other price-related factors included in the solicitation. The award of a contract shall be made by transmitting, in writing or by electronic means, notice of the award to the successful bidder. Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.

(4)(A) The head of an agency shall evaluate competitive proposals in accordance with paragraph (1) and may award a contract—

(i) after discussions with the offerors, provided that written or oral discussions have been conducted with all responsible offerors who submit proposals within the competitive range; or

(ii) based on the proposals received, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) provided that the solicitation included a statement that proposals are intended to be evaluated, and award made, without discussions, unless discussions are determined to be necessary.

(B) If the contracting officer determines that the number of offerors that would otherwise be included in the competitive range under subparagraph (A)(i) exceeds the number at which an efficient competition can be conducted, the contracting officer may limit the number of proposals in the competitive range, in accordance with the criteria specified in the solicitation, to the greatest number that will permit an efficient competition among the offerors rated most highly in accordance with such criteria.

(C) Except as provided in paragraph (2), the head of the agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States, considering only cost or price and the other factors included in the solicitation. The head of the agency shall award the contract by transmitting, in writing or by electronic means, notice of the award to such source and, within three days after the date of contract award, shall notify, in writing or by electronic means, all other offerors of the rejection of their proposals. This subparagraph does not apply with respect to the award of a contract for the acquisition of perishable subsistence items.

(5)(A) When a contract is awarded by the head of an agency on the basis of competitive proposals, an unsuccessful offeror, upon written request received by the agency within 3 days after the date on which the unsuccessful offeror receives the notification of the contract award, shall be debriefed and furnished the basis for the selection decision and contract award. The head of the agency shall debrief the offeror within, to the maximum extent practicable, five days after receipt of the request by the agency.

(B) The debriefing shall include, at a minimum—

(i) the agency's evaluation of the significant weak or deficient factors in the offeror's offer;

(ii) the overall evaluated cost and technical rating of the offer of the contractor awarded the contract and the overall evaluated cost and technical rating of the offer of the debriefed offeror;

(iii) the overall ranking of all offers;

(iv) a summary of the rationale for the award;

(v) in the case of a proposal that includes a commercial item that is an end item under the contract, the make and model of the item being provided in accordance with the offer of the contractor awarded the contract; and

(vi) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(C) The debriefing may not include point-by-point comparisons of the debriefed offeror's offer with other offers and may not disclose any information that is exempt from disclosure under section 552(b) of title 5.

(D) Each solicitation for competitive proposals shall include a statement that information described in subparagraph (B) may be disclosed in post-award debriefings.

(E) If, within one year after the date of the contract award and as a result of a successful procurement protest, the agency seeks to fulfill the requirement under the protested contract either on the basis of a new solicitation of offers or on the basis of new best and final offers requested for that contract, the agency shall make available to all offerors—

(i) the information provided in debriefings under this paragraph regarding the offer of the contractor awarded the contract; and

(ii) the same information that would have been provided to the original offerors.

(6)(A) When the contracting officer excludes an offeror submitting a competitive proposal from the competitive range (or otherwise excludes such an offeror from further consideration prior to the final source selection deci-

sion), the excluded offeror may request in writing, within three days after the date on which the excluded offeror receives notice of its exclusion, a debriefing prior to award. The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable but may refuse the request for a debriefing if it is not in the best interests of the Government to conduct a debriefing at that time.

(B) The contracting officer is required to debrief an excluded offeror in accordance with paragraph (5) only if that offeror requested and was refused a preaward debriefing under subparagraph (A).

(C) The debriefing conducted under subparagraph (A) shall include—

(i) the executive agency's evaluation of the significant elements in the offeror's offer;

(ii) a summary of the rationale for the offeror's exclusion; and

(iii) reasonable responses to relevant questions posed by the debriefed offeror as to whether source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the executive agency.

(D) The debriefing conducted under subparagraph (A) may not disclose the number or identity of other offerors and shall not disclose information about the content, ranking, or evaluation of other offerors' proposals.

(7) The contracting officer shall include a summary of any debriefing conducted under paragraph (5) or (6) in the contract file.

(8) The Federal Acquisition Regulation shall include a provision encouraging the use of alternative dispute resolution techniques to provide informal, expeditious, and inexpensive procedures for an offeror to consider using before filing a protest, prior to the award of a contract, of the exclusion of the offeror from the competitive range (or otherwise from further consideration) for that contract.

(9) If the head of an agency considers that a bid or proposal evidences a violation of the antitrust laws, he shall refer the bid or proposal to the Attorney General for appropriate action.

(c) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

(1) when the appropriate officials of the Department are making an assessment of the most advantageous source for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

(A) through the supply system of the Department of Defense; and

(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

(d)(1)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a development contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are the following:

(i) Proposals to incorporate in the design of the major system items which are currently available within the supply system of the Federal agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source.

(ii) With respect to items that are likely to be required in substantial quantities during the system's service life, proposals to incorporate in the design of the major system items which the United States will be able to acquire competitively in the future.

(2)(A) The Secretary of Defense shall ensure that, in preparing a solicitation for the award of a production contract for a major system, the head of an agency consider requiring in the solicitation that an offeror include in its offer proposals described in subparagraph (B). In determining whether to require such proposals, the head of the agency shall give due consideration to the purposes for which the system is being procured and the technology necessary to meet the system's required capabilities. If such proposals are required, the head of the agency shall consider them in evaluating the offeror's price.

(B) Proposals referred to in the first sentence of subparagraph (A) are proposals identifying opportunities to ensure that the United States will be able to obtain on a competitive basis items procured in connection with the system that are likely to be reprocured in substantial quantities during the service life of the system. Proposals submitted in response to such requirement may include the following:

(i) Proposals to provide to the United States the right to use technical data to be provided under the contract for competitive reprocurement of the item, together with the cost to the United States, if any, of acquiring such technical data and the right to use such data.

(ii) Proposals for the qualification or development of multiple sources of supply for the item.

(3) If the head of an agency is making a noncompetitive award of a development contract or a production contract for a major system, the factors specified in paragraphs (1) and (2) to be considered in evaluating an offer for a contract may be considered as objectives in negotiating the contract to be awarded. Such objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

(4)(A) Whenever the head of an agency requires that proposals described in paragraph (1)(B) or

(2)(B) be submitted by an offeror in its offer, the offeror shall not be required to provide a proposal that enables the United States to acquire competitively in the future an identical item if the item was developed exclusively at private expense unless the head of the agency determines that—

(i) the original supplier of such item will be unable to satisfy program schedule or delivery requirements; or

(ii) proposals by the original supplier of such item to meet the mobilization requirements are insufficient to meet the agency's mobilization needs.

(B) In considering offers in response to a solicitation requiring proposals described in paragraph (1)(B) or (2)(B), the head of an agency shall base any evaluation of items developed exclusively at private expense on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

(e) PROTEST FILE.—(1) If, in the case of a solicitation for a contract issued by, or an award or proposed award of a contract by, the head of an agency, a protest is filed pursuant to the procedures in subchapter V of chapter 35 of title 31 and an actual or prospective offeror so requests, a file of the protest shall be established by the procuring activity and reasonable access shall be provided to actual or prospective offerors.

(2) Information exempt from disclosure under section 552 of title 5 may be redacted in a file established pursuant to paragraph (1) unless an applicable protective order provides otherwise.

(f) AGENCY ACTIONS ON PROTESTS.—If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency—

(1) may take any action set out in subparagraphs (A) through (F) of subsection (b)(1) of section 3554 of title 31; and

(2) may pay costs described in paragraph (1) of section 3554(c) of title 31 within the limits referred to in paragraph (2) of such section.

(g) PROHIBITION ON RELEASE OF CONTRACTOR PROPOSALS.—(1) Except as provided in paragraph (2), a proposal in the possession or control of an agency named in section 2303 of this title may not be made available to any person under section 552 of title 5.

(2) Paragraph (1) does not apply to any proposal that is set forth or incorporated by reference in a contract entered into between the Department and the contractor that submitted the proposal.

(3) In this subsection, the term ''proposal'' means any proposal, including a technical, management, or cost proposal, submitted by a contractor in response to the requirements of a solicitation for a competitive proposal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 85–861, §1(44), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 90–268, §3, Mar. 16, 1968, 82 Stat. 49; Pub. L. 98–369, div. B, title VII, §2723(b), July 18, 1984, 98 Stat. 1191; Pub. L. 98–525, title XII, §1213(a), Oct. 19, 1984, 98 Stat. 2591; Pub. L. 99–145, title XIII, §1303(a)(14), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–500, §101(c) [title X, §924(a), (b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, §101(c) [title X, §924(a), (b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title III, §313(b), title IX, formerly title IV, §924(a), (b), Nov. 14, 1986, 100 Stat. 3853, 3932, 3933, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–456, div. A, title VIII, §806, Sept. 29, 1988, 102 Stat. 2010; Pub. L. 101–189, div. A, title VIII, §853(f), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 101–510, div. A, title VIII, §802(a)–(d), Nov. 5, 1990, 104 Stat. 1588, 1589; Pub. L. 103–160, div. A, title XI, §1182(a)(5), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 103–355, title I, §§1011–1016, title IV, §4401(b), Oct. 13, 1994, 108 Stat. 3254–3257, 3347; Pub. L. 104–106, div. D, title XLI, §§4103(a), 4104(a), title XLII, §4202(a)(2), div. E, title LVI, §5601(a), Feb. 10, 1996, 110 Stat. 643, 644, 653, 699; Pub. L. 104–201, div. A, title VIII, §821(a), title X, §1074(a)(11), (b)(4)(A), Sept. 23, 1996, 110 Stat. 2609, 2659, 2660; Pub. L. 106–65, div. A, title VIII, §821, Oct. 5, 1999, 113 Stat. 714.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2305(a)	41:152 (less clause (b)).	Feb. 19, 1948, ch. 65, §§2(d), 3, 62 Stat. 22.
2305(b)	41:152 (clause (b)).	
2305(c)	41:151(d).	

In subsection (a), the word ''needed'' is substituted for the words ''necessary to meet the requirements''.

In subsection (b), the words ''United States'' are substituted for the word ''Government''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2305	41:152(c).	Aug. 9, 1955, ch. 628, §15, 69 Stat. 551.

Reference to bids is omitted as surplusage (see opinion of the Judge Advocate General of the Army (JAGT 1956/9122, 21 Dec. 1956)). The word ''attachments'' is substituted for the words ''material required''. The words ''the specifications in'' are inserted in the second sentence for clarity. The word ''available'' is omitted as covered by the word ''accessible.'' The words ''no award may be made'' are substituted for the words ''and any award or awards made to any bidder in such case shall be invalidated and rejected''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1999—Subsec. (g)(1). Pub. L. 106–65 substituted ''an agency named in section 2303 of this title'' for ''the Department of Defense''.

1996—Subsec. (a)(2). Pub. L. 104–106, §4202(a)(2), inserted ''a procurement for commercial items using special simplified procedures or'' after ''(other than for''.

Subsec. (b)(4)(B). Pub. L. 104–106, §4103(a)(3), added subpar. (B). Former subpar. (B) redesignated (C).

Pub. L. 104–106, §4103(a)(1), transferred text of subpar. (C) to end of subpar. (B) and substituted ''This subparagraph'' for ''Subparagraph (B)'' at beginning of that text.

Subsec. (b)(4)(C). Pub. L. 104–106, §4103(a)(2), redesignated subpar. (B) as (C).

Pub. L. 104–106, §4103(a)(1), struck out ''(C)'' before ''Subparagraph (B)'' and transferred text of subpar. (C) to end of subpar. (B).

Subsec. (b)(5)(F). Pub. L. 104–106, §4104(a)(1), struck out subpar. (F) which read as follows: ''The contracting officer shall include a summary of the debriefing in the contract file.''

Subsec. (b)(6). Pub. L. 104–106, § 4104(a)(3), added par. (6). Former par. (6) redesignated (9).

Subsec. (b)(6)(B). Pub. L. 104–201, § 1074(a)(11)(A), struck out ''of this section'' after ''paragraph (5)'' and ''of this paragraph'' after ''subparagraph (A)''.

Subsec. (b)(6)(C). Pub. L. 104–201, § 1074(a)(11)(B), substituted ''subparagraph (A)'' for ''this subsection'' in introductory provisions.

Subsec. (b)(6)(D). Pub. L. 104–201, § 1074(a)(11)(C), substituted ''under subparagraph (A)'' for ''pursuant to this subsection''.

Subsec. (b)(7), (8). Pub. L. 104–106, § 4104(a)(3), added pars. (7) and (8).

Subsec. (b)(9). Pub. L. 104–106, § 4104(a)(2), redesignated par. (6) as (9).

Subsec. (e)(3). Pub. L. 104–106, § 5601(a), as amended by Pub. L. 104–201, § 1074(b)(4)(A), struck out par. (3) which read as follows: ''Regulations implementing this subsection shall be consistent with the regulations regarding the preparation and submission of an agency's protest file (the so-called 'rule 4 file') for protests to the General Services Board of Contract Appeals under section 111 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 759).''

Subsec. (g). Pub. L. 104–201, § 821(a), added subsec. (g).

1994—Subsec. (a)(2). Pub. L. 103–355, § 4401(b), substituted ''a purchase for an amount not greater than the simplified acquisition threshold)'' for ''small purchases)'' in introductory provisions.

Subsec. (a)(2)(A)(i). Pub. L. 103–355, § 1011(a)(1), substituted ''and significant subfactors'' for ''(and significant subfactors)'' and ''cost-related or price-related factors and subfactors, and noncost-related or nonprice-related factors and subfactors'' for ''cost- or price-related factors, and noncost- or nonprice-related factors''.

Subsec. (a)(2)(A)(ii). Pub. L. 103–355, § 1011(a)(2), substituted ''and subfactors'' for ''(and subfactors)''.

Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–355, § 1011(a)(3), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and award made after, discussions with the offerors, or a statement that the proposals are intended to be evaluated, and award made, without discussions with the offerors (other than discussions conducted for the purpose of minor clarification), unless discussions are determined to be necessary; and''.

Subsec. (a)(3). Pub. L. 103–355, § 1011(b), added par. (3) and struck out former par. (3), which read as follows: ''In prescribing the evaluation factors to be included in each solicitation for competitive proposals, the head of an agency shall clearly establish the relative importance assigned to the evaluation factors and subfactors, including the quality of the product or services to be provided (including technical capability, management capability, and prior experience of the offeror).''

Subsec. (a)(4). Pub. L. 103–355, § 1011(b), added par. (4).

Subsec. (a)(5). Pub. L. 103–355, § 1012, added par. (5).

Subsec. (b)(3). Pub. L. 103–355, § 1013(a), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and inserted at end ''Within three days after the date of contract award, the head of the agency shall notify, in writing or by electronic means, each bidder not awarded the contract that the contract has been awarded.''

Subsec. (b)(4)(B). Pub. L. 103–355, § 1013(b), substituted ''transmitting, in writing or by electronic means, notice'' for ''transmitting written notice'' and '', within three days after the date of contract award, shall notify, in writing or by electronic means,'' for ''shall promptly notify''.

Subsec. (b)(5), (6). Pub. L. 103–355, § 1014, added par. (5) and redesignated former par. (5) as (6).

Subsec. (e). Pub. L. 103–355, § 1015, added subsec. (e).

Subsec. (f). Pub. L. 103–355, § 1016, added subsec. (f).

1993—Subsec. (b)(4)(A). Pub. L. 103–160 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A)(i). Pub. L. 101–510, § 802(a)(1), inserted ''(and significant subfactors)'' after ''significant factors'' and substituted ''(including cost or price, cost- or price-related factors, and noncost- or nonprice-related factors)'' for ''(including cost or price)''.

Subsec. (a)(2)(A)(ii). Pub. L. 101–510, § 802(a)(2), inserted ''(and subfactors)'' after ''those factors''.

Subsec. (a)(2(B)(ii)(I). Pub. L. 101–510, § 802(b), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''a statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and''.

Subsec. (a)(3). Pub. L. 101–510, § 802(c), substituted ''the evaluation factors and subfactors, including the quality of the product or services'' for ''the quality of the services''.

Subsec. (b)(1). Pub. L. 101–510, § 802(d)(1), inserted ''and make an award'' after ''competitive proposals''.

Subsec. (b)(3). Pub. L. 101–510, § 802(d)(2), inserted ''in accordance with paragraph (1)'' after ''shall evaluate the bids''.

Subsec. (b)(4)(A). Pub. L. 101–510, § 802(d)(3)(A), substituted ''competitive proposals in accordance with paragraph (1)'' for ''competitive proposals'' in introductory provisions, added cls. (i) and (ii), and struck out former cls. (i) and (ii) which read as follows:

''(i) after discussions conducted with the offerors at any time after receipt of the proposals and before the award of the contract; or

''(ii) without discussions with the offerors (other than discussions conducted for the purpose of minor clarification) when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the United States.''

Subsec. (b)(4)(B) to (E). Pub. L. 101–510, § 802(d)(3)(B)–(D), redesignated subpars. (D) and (E) as (B) and (C), respectively, substituted ''Subparagraph (B)'' for ''Subparagraph (D)'' in subpar. (C), and struck out former subpars. (B) and (C) which read as follows:

''(B) In the case of award of a contract under subparagraph (A)(i), the head of the agency shall conduct, before such award, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only cost or price and the other factors included in the solicitation.

''(C) In the case of award of a contract under subparagraph (A)(ii), the head of the agency shall award the contract based on the proposals received (and as clarified, if necessary, in discussions conducted for the purpose of minor clarification).''

1989—Subsec. (b)(4)(D). Pub. L. 101–189 inserted ''cost or'' after ''considering only''.

1988—Subsec. (d)(1)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a development contract are''.

Subsec. (d)(2)(B). Pub. L. 100–456, § 806(b), substituted ''Proposals referred to in the first sentence of subparagraph (A) are'' for ''The proposals that the head of an agency is to consider requiring in a solicitation for the award of a production contract are''.

Subsec. (d)(3). Pub. L. 100–456, § 806(a)(2), inserted provision that objectives may not impair the rights of prospective contractors or subcontractors otherwise provided by law.

Subsec. (d)(4). Pub. L. 100–456, § 806(a)(1), added par. (4).

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(a)], Pub. L. 99–661, § 924(a), amended subsec. (a) identically, in par. (2)(A)(i) striking out ''(including price)'' after ''factors'' and inserting ''(including price)'' and ''(including cost and price)'' and adding par. (3).

Subsec. (b)(4)(B). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 924(b)], Pub. L. 99–661, § 924(b), amended subpar. (B) identically, inserting ''cost or''.

Subsec. (b)(4)(E). Pub. L. 99–661, § 313(b), added subpar. (E).

1985—Subsec. (b)(5). Pub. L. 99–145 aligned the margin of par. (5).

1984—Subsecs. (c), (d). Pub. L. 98–525 added subsecs. (c) and (d).

Catchline, subsecs. (a) to (d). Pub. L. 98–369 substituted ''Contracts: planning, solicitation, evaluation, and award procedures'' for ''Formal advertisements for bids; time; opening; award; rejection'' and completely revised the text to substitute a program using solicitation requirements covering military procurement for former provisions which had used the approach of utilizing formal advertisements, struck out former provisions which had directed that, except in cases where the Secretary of Defense had determined that military requirements necessitated the specification of container size, no advertisement or invitation to bid for the carriage of government property in other than government-owned cargo containers could specify carriage of such property in cargo containers of any stated length, height, or width, and carried forward into new subsecs. (a)(1)(A)(iii), (B)(i), and (b)(2) and (5) the content of former section.

1968—Subsec. (a). Pub. L. 90–268 inserted provision that, except in cases where the Secretary of Defense determines that military requirements necessitate such specification, no advertisement or invitation to bid for the carriage of Government property in other than Government-owned cargo containers shall specify carriage of such property in cargo containers of any stated length, height, or width.

1958—Subsecs. (b) to (d). Pub. L. 85–861 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4103(a), 4104(a), and 4202(a)(2) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

Amendment by section 5601(a) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 802(e) of Pub. L. 101–510 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act [Nov. 5, 1990].

''(2) The Secretary of Defense may require the amendments made by this section to apply with respect to solicitations issued before the end of the period referred to in paragraph (1). The Secretary of Defense shall publish in the Federal Register notice of any such earlier effective date.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, §924(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 924(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [amending this section] shall apply with respect to solicitations for sealed bids or competitive proposals issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1213(b) of Pub. L. 98–525 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

CERTIFICATE OF COMPETENCY REQUIREMENTS

Pub. L. 102–484, div. A, title VIII, §804, Oct. 23, 1992, 106 Stat. 2447, provided that, in case of contract to be entered into pursuant to this chapter, other than pursuant to simplified procedures under section 2304(g) of this title, solicitation was to contain notice of right of bidding small business concern, in case of determination by contracting officer that concern was nonresponsible, to request Small Business Administration to make determination of responsibility under section 637(b)(7) of Title 15, Commerce and Trade, that if contracting officer determined that concern was nonresponsible, such officer was to notify concern in writing, of such determination, that concern had right to request Small Business Administration to make determination, and that, if concern desired to request such determination, concern was to inform officer in writing, within 14 days after receipt of notice, of such desire, and that, after being so informed, officer was to transmit request to Administration, or, if note so informed, officer was to proceed with award of contract, and contained provisions relating to effective and termination dates and report to be submitted to Congress, prior to repeal by Pub. L. 103–355, title VII, §7101(b), Oct. 13, 1994, 108 Stat. 3367.

CONSTRUCTION OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 as not superseding or affecting the provisions of section 637(a) of Title 15, Commerce and Trade, see section 2723(c) of Pub. L. 98–369, set out as a note under section 2304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2305a, 2320 of this title; title 41 section 431; title 42 section 1594; title 50 section 403c.

§ 2305a. Design-build selection procedures

(a) AUTHORIZATION.—Unless the traditional acquisition approach of design-bid-build established under chapter 11 of title 40 is used or another acquisition procedure authorized by law is used, the head of an agency shall use the two-phase selection procedures authorized in this section for entering into a contract for the design and construction of a public building, facility, or work when a determination is made under subsection (b) that the procedures are appropriate for use.

(b) CRITERIA FOR USE.—A contracting officer shall make a determination whether two-phase selection procedures are appropriate for use for entering into a contract for the design and construction of a public building, facility, or work when the contracting officer anticipates that three or more offers will be received for such contract, design work must be performed before an offeror can develop a price or cost proposal for such contract, the offeror will incur a substantial amount of expense in preparing the offer, and the contracting officer has considered information such as the following:

(1) The extent to which the project requirements have been adequately defined.

(2) The time constraints for delivery of the project.

(3) The capability and experience of potential contractors.

(4) The suitability of the project for use of the two-phase selection procedures.

(5) The capability of the agency to manage the two-phase selection process.

(6) Other criteria established by the agency.

(c) PROCEDURES DESCRIBED.—Two-phase selection procedures consist of the following:

(1) The agency develops, either in-house or by contract, a scope of work statement for inclusion in the solicitation that defines the project and provides prospective offerors with sufficient information regarding the Government's requirements (which may include criteria and preliminary design, budget parameters, and schedule or delivery requirements) to enable the offerors to submit proposals which meet the Government's needs. If the agency contracts for development of the scope of work statement, the agency shall contract for architectural and engineering services as defined by and in accordance with the Brooks Architect-Engineers Act[1] (40 U.S.C. 541 et seq.).

(2) The contracting officer solicits phase-one proposals that—

(A) include information on the offeror's—

(i) technical approach; and

(ii) technical qualifications; and

(B) do not include—

(i) detailed design information; or

(ii) cost or price information.

(3) The evaluation factors to be used in evaluating phase-one proposals are stated in the solicitation and include specialized experience and technical competence, capability to perform, past performance of the offeror's team (including the architect-engineer and construction members of the team) and other appropriate factors, except that cost-related or price-related evaluation factors are not permitted. Each solicitation establishes the relative importance assigned to the evaluation factors and subfactors that must be considered in the evaluation of phase-one proposals. The agency evaluates phase-one proposals on the basis of the phase-one evaluation factors set forth in the solicitation.

(4) The contracting officer selects as the most highly qualified the number of offerors specified in the solicitation to provide the property or services under the contract and requests the selected offerors to submit phase-two competitive proposals that include technical proposals and cost or price information. Each solicitation establishes with respect to phase two—

(A) the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work (or both), and

(B) the evaluation factors and subfactors, including cost or price, that must be considered in the evaluations of proposals in accordance with paragraphs (2), (3), and (4) of section 2305(a) of this title.

The contracting officer separately evaluates the submissions described in subparagraphs (A) and (B).

(5) The agency awards the contract in accordance with section 2305(b)(4) of this title.

(d) SOLICITATION TO STATE NUMBER OF OFFERORS TO BE SELECTED FOR PHASE TWO REQUESTS FOR COMPETITIVE PROPOSALS.—A solicitation issued pursuant to the procedures described in subsection (c) shall state the maximum number of offerors that are to be selected to submit competitive proposals pursuant to subsection (c)(4). The maximum number specified in the solicitation shall not exceed 5 unless the agency determines with respect to an individual solicitation that a specified number greater than 5 is in the Government's interest and is consistent with the purposes and objectives of the two-phase selection process.

(e) REQUIREMENT FOR GUIDANCE AND REGULATIONS.—The Federal Acquisition Regulation shall include guidance—

(1) regarding the factors that may be considered in determining whether the two-phase contracting procedures authorized by subsection (a) are appropriate for use in individual contracting situations;

(2) regarding the factors that may be used in selecting contractors; and

(3) providing for a uniform approach to be used Government-wide.

(Added Pub. L. 104–106, div. D, title XLI, § 4105(a)(1), Feb. 10, 1996, 110 Stat. 645; amended Pub. L. 105–85, div. A, title X, § 1073(a)(44), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 107–217, § 3(b)(4), Aug. 21, 2002, 116 Stat. 1295.)

REFERENCES IN TEXT

The Brooks Architect-Engineers Act, referred to in subsec. (c)(1), is title IX of act June 30, 1949, ch. 288, as added by act Oct. 27, 1972, Pub. L. 92–582, 86 Stat. 1278, as amended, which was classified generally to subchapter VI (§ 541 et seq.) of chapter 10 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted by Pub. L. 107–217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304, as chapter 11 of Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

A prior section 2305a was renumbered section 2438 of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''the Brooks Architect-Engineers Act (40 U.S.C. 541 et seq.)''.

1997—Subsec. (a). Pub. L. 105–85 substituted ''(40 U.S.C.'' for ''(41 U.S.C.''

EFFECTIVE DATE

For effective date and applicability of section, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 2306. Kinds of contracts

(a) The cost-plus-a-percentage-of-cost system of contracting may not be used. Subject to the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into any kind of contract that he considers will promote the best interests of the United States.

[1] See References in Text note below.

(b) Each contract awarded under this chapter after using procedures other than sealed-bid procedures shall contain a warranty, determined to be suitable by the head of the agency, that the contractor has employed or retained no person or selling agency to solicit or obtain the contract under an understanding or agreement for a commission, percentage, brokerage, or contingent fee, except a bona fide employee or established commercial or selling agency maintained by him to obtain business. If a contractor breaks such a warranty the United States may annul the contract without liability or may deduct the commission, percentage, brokerage, or contingent fee from the contract price or consideration. This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.

[(c) Repealed. Pub. L. 103–355, title I, §1021, Oct. 13, 1994, 108 Stat. 3257.]

(d) The fee for performing a cost-plus-a-fixed-fee contract for experimental, developmental, or research work may not be more than 15 percent of the estimated cost of the contract, not including the fee. The fee for performing a cost-plus-a-fixed-fee contract for architectural or engineering services for a public work or utility plus the cost of those services to the contractor may not be more than 6 percent of the estimated cost of that work or project, not including fees. The fee for performing any other cost-plus-a-fixed-fee contract may not be more than 10 percent of the estimated cost of the contract, not including the fee. Determinations under this subsection of the estimated costs of a contract or project shall be made by the head of the agency at the time the contract is made.

(e) Each cost contract and each cost-plus-a-fixed-fee contract shall provide for notice to the agency by the contractor before the making, under the prime contract, of—

(1) a cost-plus-a-fixed-fee subcontract; or

(2) a fixed-price subcontract or purchase order involving more than the greater of (A) the simplified acquisition threshold, or (B) 5 percent of the estimated cost of the prime contract.

(f) So-called ''truth-in-negotiations'' provisions relating to cost or pricing data to be submitted by certain contractors and subcontractors are provided in section 2306a of this title.

(g) Multiyear contracting authority for the acquisition of services is provided in section 2306c of this title.

(h) Multiyear contracting authority for the purchase of property is provided in section 2306b of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 130; Pub. L. 87–653, §1(d), (e), Sept. 10, 1962, 76 Stat. 528; Pub. L. 90–378, §1, July 5, 1968, 82 Stat. 289; Pub. L. 90–512, Sept. 25, 1968, 82 Stat. 863; Pub. L. 96–513, title V, §511(77), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 97–86, title IX, §§907(b), 909(b), Dec. 1, 1981, 95 Stat. 1117, 1118; Pub. L. 98–369, div. B, title VII, §2724, July 18, 1984, 98 Stat. 1192; Pub. L. 99–145, title XIII, §1303(a)(15), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–500, §101(c) [title X, §952(b)(1), (c)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §952(b)(1), (c)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(b)(1), (c)(1), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 101–189, div. A, title VIII, §805(a), Nov. 29, 1989, 103 Stat. 1488; Pub. L. 101–510, div. A, title VIII, §808, Nov. 5, 1990, 104 Stat. 1593; Pub. L. 102–25, title VII, §701(d)(3), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, §§1021, 1022(b), title IV, §§4102(b), 4401(c), title VIII, §8105(a), Oct. 13, 1994, 108 Stat. 3257, 3260, 3340, 3348, 3392; Pub. L. 105–85, div. A, title X, §1073(a)(45), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 106–398, §1 [[div. A], title VIII, §802(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2306(a)	41:153(a) (1st sentence). 41:153(b) (1st 14 words of 1st sentence).	Feb. 19, 1948, ch. 65, §4 (less words after semicolon of last sentence of (b), and less (c)), 62 Stat. 23.
2306(b)	41:153(a) (less 1st sentence).	
2306(c)	41:153(b) (2d sentence).	
2306(d)	41:153(b) (1st sentence, less 1st 14 words).	
2306(e)	41:153(b) (less 1st and 2d sentences; and less words after semicolon of last sentence).	

In subsection (a), the words ''subject to subsections (b)–(e)'' are substituted for the words ''Except as provided in subsection (b) of this section''. The words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''under section 2304 of this title'' are substituted for the words ''pursuant to section 151(c) of this title''. The words ''full amount of such'' and ''violation'' are omitted as surplusage.

In subsection (c), the words ''under section 2304 of this title'' are inserted for clarity.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Provisions similar to those in subsec. (h)(11) of this section were contained in Pub. L. 100–526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which was set out below, prior to repeal by Pub. L. 101–189, §805(b).

AMENDMENTS

2000—Subsec. (g). Pub. L. 106–398 amended subsec. (g) generally. Prior to amendment, subsec. (g) consisted of pars. (1) to (3) authorizing the head of an agency to enter into contracts for periods of not more than five years for certain types of services.

1997—Subsec. (h). Pub. L. 105–85 inserted ''for the purchase of property'' after ''Multiyear contracting authority''.

1994—Subsec. (b). Pub. L. 103–355, §§4102(b), 8105(a), inserted at end ''This subsection does not apply to a contract that is for an amount not greater than the simplified acquisition threshold or to a contract for the acquisition of commercial items.''

Subsec. (c). Pub. L. 103–355, §1021, struck out subsec. (c) which read as follows: ''No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made under this chapter unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract.''

Subsec. (e)(2)(A). Pub. L. 103–355, §4401(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Subsec. (h). Pub. L. 103–355, §1022(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) related to requirements for multiyear contracts for purchase of property, including weapon systems and items and services associated with weapons systems.

1991—Subsec. (e)(2)(A). Pub. L. 102–25 substituted ''the small purchase threshold'' for ''the small purchase amount under section 2304(g) of this title''.

1990—Subsec. (h)(1). Pub. L. 101–510, §808(a), struck out ''(other than contracts described in paragraph (6))'' after ''multiyear contracts'' in introductory provisions and substituted ''substantial savings of the total anticipated costs of carrying out the program through annual contracts'' for ''reduced total costs under the contract'' in subpar. (A).

Subsec. (h)(6). Pub. L. 101–510, §808(b), struck out ''contracts for the construction, alteration, or major repair of improvements to real property or'' after ''not apply to''.

Subsec. (h)(9). Pub. L. 101–510, §808(c)(1), inserted ''for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority'' after ''under this subsection'' in introductory provisions.

Subsec. (h)(9)(C). Pub. L. 101–510, §808(c)(2), struck out subpar. (C) which read as follows: ''The proposed multiyear contract—

''(i) achieves a 10 percent savings as compared to the cost of current negotiated contracts, adjusted for changes in quantity and for inflation; or

''(ii) achieves a 10 percent savings as compared to annual contracts if no recent contract experience exists.''

1989—Subsec. (h)(9) to (11). Pub. L. 101–189 added pars. (9) to (11).

1986—Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§952(c)(1)], Pub. L. 99–661, §952(c)(1), amended section identically, striking out '': cost or pricing data: truth in negotiation'' after ''contracts'' in section catchline.

Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§952(b)(1)], Pub. L. 99–661, §952(b)(1), amended generally subsec. (f) identically, substituting provision that ''truth-in-negotiations'' provisions relating to cost and pricing data for contractors and subcontractors are provided in section 2306a of this title for provision relating to certification by contractors and subcontractors on cost and pricing data, circumstances under which such certification will be required, circumstances under which such certification, although not required, may be requested, and evaluation of the accuracy of the data submitted.

1985—Subsec. (a). Pub. L. 99–145, §1303(a)(15)(A), inserted a period at end.

Subsec. (b). Pub. L. 99–145, §1303(a)(15)(B), struck out ''of this title'' before ''shall contain''.

1984—Pub. L. 98–369, §2724(f), substituted ''Kinds of contracts; cost or pricing data: truth in negotiation'' for ''Kinds of contracts'' in section catchline.

Subsec. (a). Pub. L. 98–369, §2724(a), substituted ''the limitation in the preceding sentence, the other provisions of this section, and other applicable provisions of law, the head of an agency, in awarding contracts under this chapter after using procedures other than sealed-bid procedures, may enter into'' for ''this limitation and subject to subsections (b)–(f), the head of any agency may, in negotiating contracts under section 2304 of this title, make''.

Subsec. (b). Pub. L. 98–369, §2724(b), substituted ''awarded under this chapter after using procedures other than sealed-bid procedures'' for ''negotiated under section 2304''.

Subsec. (c). Pub. L. 98–369, §2724(c), substituted ''this chapter'' for ''section 2304 of this title,''.

Subsec. (e)(2). Pub. L. 98–369, §2724(d), substituted ''the greater of (A) the small purchase amount under section 2304(g) of this title, or (B)'' for ''$25,000 or''.

Subsec. (f)(1). Pub. L. 98–369, §2724(e)(A)(i), (ii), substituted ''such contractor's or subcontractor's'' for ''his'' and struck out ''he'' before ''submitted was accurate'' in provisions preceding subpar. (A).

Subsec. (f)(1)(A). Pub. L. 98–369, §2724(3)(A)(iii), (vi), (vii), substituted ''prime contract under this chapter entered into after using procedures other than sealed-bid procedures, if'' for ''negotiated prime contract under this title where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(B). Pub. L. 98–369, §2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(C). Pub. L. 98–369, §2724(e)(A)(v)–(vii), substituted ''when'' for ''where'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(1)(D). Pub. L. 98–369, §2724(e)(A)(iv), (vi), (vii), substituted ''if'' for ''for which'', ''$100,000'' for ''$500,000'', and ''before'' for ''prior to''.

Subsec. (f)(2). Pub. L. 98–369, §2724(e)(B), (D), (E), struck out ''negotiated'' before ''price as is practicable'' and before ''is based on adequate price competition'', redesignated as par. (3) the proviso formerly set out in this par., and as part of the redesignation substituted a period for '': *Provided*, That'' after ''or noncurrent''.

Subsec. (f)(3). Pub. L. 98–369, §2724(e)(E), designated as par. (3) the proviso formerly set out in par. (2). Former par. (3) redesignated (5).

Subsec. (f)(4). Pub. L. 98–369, §2724(e)(F), added par. (4).

Subsec. (f)(5). Pub. L. 98–369, §2724(e)(C), redesignated former par. (3) as (5) and substituted ''proposal for the contract, the discussions conducted on the proposal'' for ''negotiation''.

1981—Subsec. (f)(1). Pub. L. 97–86, §907(b), substituted ''$500,000'' for ''$100,000'' in subpars. (A) to (D).

Subsec. (g)(1). Pub. L 97–86, §909(b)(1), struck out ''to be performed outside the forty-eight contiguous States and the District of Columbia'' after ''(and items of supply related to such services)'' in provisions preceding subpar. (A).

Subsec. (h). Pub. L. 97–86, §909(b)(2), added subsec. (h).

1980—Subsec. (f). Pub. L. 96–513, §511(77)(A), designated existing provisions as pars. (1) to (3) and in par. (1), as so designated, substituted ''(A)'' to ''(D)'' for ''(1)'' to ''(4)'', respectively, ''prior'' for ''Prior'' wherever appearing, and ''clause (C)'' for ''(3) above''.

Subsec. (g). Pub. L. 96–513, §511(77)(B), in par. (1) substituted ''that—'' for ''that:'', in par. (2) substituted ''(A) The'' for ''(A) the'', ''(B) Consideration'' for ''(B) consideration'', and ''(C) Consideration'' for ''(C) consideration'', and in par. (3) substituted ''from—'' for ''from:''.

1968—Subsec. (f). Pub. L. 90–512 inserted last par.

Subsec. (g). Pub. L. 90–378 added subsec. (g).

1962—Subsec. (a). Pub. L. 87–653, §1(d), substituted ''subsections (b)–(f)'' for ''subsections (b)–(e)''.

Subsec. (f). Pub. L. 87–653, §1(e), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, §952(b)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 952(b)(1) of Pub. L. 99–661 applicable with respect to contracts or modifications on contracts entered into after end of 120-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 952(d) of Pub. L. 99–661, set out as a note under section 2306a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653 see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

TRANSITION PROVISION

Section 805(c) of Pub. L. 101–189 provided that: ''Subparagraph (C) of paragraph (9) of section 2306(h) of title 10, United States Code, as added by subsection (a), does not apply to programs that are under a multiyear contract on the date of the enactment of this Act [Nov. 29, 1989].''

MULTIYEAR PROCUREMENT AUTHORITY; REQUESTS FOR RELIEF

Pub. L. 100–526, title I, §104(a), Oct. 24, 1988, 102 Stat. 2624, which provided that if for any fiscal year a multiyear contract was to be entered into under 10 U.S.C. 2306(h) was authorized by law for a particular procurement program and that authorization was subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appeared (after negotiations with contractors) that such savings could not be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President was to submit to Congress a request for relief from the specified cost savings that was to be achieved through multiyear contracting for that program and that any such request by the President was to include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions, was repealed and restated as subsec. (h)(11) of this section by Pub. L. 101–189, §805(b), (c).

TECHNICAL DATA AND COMPUTER SOFTWARE PACKAGES; PROCUREMENT; CONTRACTING PERIOD; DEFERRED ORDERING CLAUSE; EXEMPTIONS; REPORT TO CONGRESSIONAL COMMITTEES; DEFINITIONS

Pub. L. 94–361, title VIII, §805, July 14, 1976, 90 Stat. 932, required that military contracts entered into during Oct. 1, 1976 to Sept. 30, 1978 for development or procurement of a major system include a deferred ordering clause with an option to purchase from the contractor technical data and computer software packages relating to the system, directed that such clause require such packages to be sufficiently detailed so as to enable procurement of such system or subsystem from another contractor, authorized that a particular contract may be exempted from the deferred ordering clause if the procuring authority reports to the House and Senate Committees on Armed Services his intent to so contract with an explanation for the exemption, and set out definitions for ''major system'', ''deferred ordering'', and ''technical data''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2343 of this title; title 50 section 403c.

§ 2306a. Cost or pricing data: truth in negotiations

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after December 5, 1990, the price of the contract to the United States is expected to exceed $500,000; and

(ii) in the case of a prime contract entered into on or before December 5, 1990, the price of the contract to the United States is expected to exceed $100,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i), the price adjustment is expected to exceed $500,000;

(ii) in the case of a change or modification made after December 5, 1991, to a prime contract that was entered into on or before December 5, 1990, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $500,000; and

(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $100,000.

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and—

(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i), the price of the subcontract is expected to exceed $500,000;

(ii) in the case of a subcontract entered into after December 5, 1991, under a prime contract that was entered into on or before December 5, 1990, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $500,000; and

(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $100,000.

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if—

(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii), the price adjustment is expected to exceed $500,000; and

(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $100,000.

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before December 5, 1990, the head of the agency that entered into such contract shall modify the contract to reflect subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted to the amount that is equal to the fiscal year 1994 constant dollar value of the amount set forth. Any amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(b) EXCEPTIONS.—

(1) IN GENERAL.—Submission of certified cost or pricing data shall not be required under subsection (a) in the case of a contract, a subcontract, or modification of a contract or subcontract—

(A) for which the price agreed upon is based on—

(i) adequate price competition; or

(ii) prices set by law or regulation;

(B) for the acquisition of a commercial item; or

(C) in an exceptional case when the head of the procuring activity, without delegation, determines that the requirements of this section may be waived and justifies in writing the reasons for such determination.

(2) MODIFICATIONS OF CONTRACTS AND SUBCONTRACTS FOR COMMERCIAL ITEMS.—In the case of a modification of a contract or subcontract for a commercial item that is not covered by the exception to the submission of certified cost or pricing data in paragraph (1)(A) or (1)(B), submission of certified cost or pricing data shall not be required under subsection (a) if—

(A) the contract or subcontract being modified is a contract or subcontract for which submission of certified cost or pricing data may not be required by reason of paragraph (1)(A) or (1)(B); and

(B) the modification would not change the contract or subcontract, as the case may be, from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(c) COST OR PRICING DATA ON BELOW-THRESHOLD CONTRACTS.—

(1) AUTHORITY TO REQUIRE SUBMISSION.—Subject to paragraph (2), when certified cost or pricing data are not required to be submitted by subsection (a) for a contract, subcontract, or modification of a contract or subcontract, such data may nevertheless be required to be submitted by the head of the procuring activity, but only if the head of the procuring activity determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract, subcontract, or modification of a contract or subcontract. In any case in which the head of the procuring activity requires such data to be submitted under this subsection, the head of the procuring activity shall justify in writing the reason for such requirement.

(2) EXCEPTION.—The head of the procuring activity may not require certified cost or pricing data to be submitted under this paragraph for any contract or subcontract, or modification of a contract or subcontract, covered by the exceptions in subparagraph (A) or (B) of subsection (b)(1).

(3) DELEGATION OF AUTHORITY PROHIBITED.—The head of a procuring activity may not delegate functions under this paragraph.

(d) SUBMISSION OF OTHER INFORMATION.—

(1) AUTHORITY TO REQUIRE SUBMISSION.—When certified cost or pricing data are not required to be submitted under this section for a contract, subcontract, or modification of a contract or subcontract, the contracting officer shall require submission of data other than certified cost or pricing data to the extent necessary to determine the reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract. Except in the case of a contract or subcontract covered by the exceptions in subsection (b)(1)(A), the contracting officer shall require that the data submitted include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for the procurement.

(2) LIMITATIONS ON AUTHORITY.—The Federal Acquisition Regulation shall include the following provisions regarding the types of information that contracting officers may require under paragraph (1):

(A) Reasonable limitations on requests for sales data relating to commercial items.

(B) A requirement that a contracting officer limit, to the maximum extent practicable, the scope of any request for information relating to commercial items from an offeror to only that information that is in the form regularly maintained by the offeror in commercial operations.

(C) A statement that any information received relating to commercial items that is exempt from disclosure under section 552(b) of title 5 shall not be disclosed by the Federal Government.

(e) PRICE REDUCTIONS FOR DEFECTIVE COST OR PRICING DATA.—(1)(A) A prime contract (or change or modification to a prime contract) under which a certificate under subsection (a)(2) is required shall contain a provision that the price of the contract to the United States, including profit or fee, shall be adjusted to exclude any significant amount by which it may be determined by the head of the agency that such price was increased because the contractor (or any subcontractor required to make available such a certificate) submitted defective cost or pricing data.

(B) For the purposes of this section, defective cost or pricing data are cost or pricing data which, as of the date of agreement on the price of the contract (or another date agreed upon between the parties), were inaccurate, incomplete, or noncurrent. If for purposes of the preceding sentence the parties agree upon a date other than the date of agreement on the price of the contract, the date agreed upon by the parties shall be as close to the date of agreement on the price of the contract as is practicable.

(2) In determining for purposes of a contract price adjustment under a contract provision required by paragraph (1) whether, and to what extent, a contract price was increased because the contractor (or a subcontractor) submitted defective cost or pricing data, it shall be a defense that the United States did not rely on the defective data submitted by the contractor or subcontractor.

(3) It is not a defense to an adjustment of the price of a contract under a contract provision required by paragraph (1) that—

(A) the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted by the contractor or subcontractor because the contractor or subcontractor—

(i) was the sole source of the property or services procured; or

(ii) otherwise was in a superior bargaining position with respect to the property or services procured;

(B) the contracting officer should have known that the cost and pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(C) the contract was based on an agreement between the contractor and the United States about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(D) the prime contractor or subcontractor did not submit a certification of cost and pricing data relating to the contract as required under subsection (a)(2).

(4)(A) A contractor shall be allowed to offset an amount against the amount of a contract price adjustment under a contract provision required by paragraph (1) if—

(i) the contractor certifies to the contracting officer (or to a designated representative of the contracting officer) that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset; and

(ii) the contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, and that the data were not submitted as specified in subsection (a)(3) before such date.

(B) A contractor shall not be allowed to offset an amount otherwise authorized to be offset under subparagraph (A) if—

(i) the certification under subsection (a)(2) with respect to the cost or pricing data involved was known to be false when signed; or

(ii) the United States proves that, had the cost or pricing data referred to in subparagraph (A)(ii) been submitted to the United States before the date of agreement on the price of the contract (or price of the modification) or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties, the submission of such cost or pricing data would not have resulted in an increase in that price in the amount to be offset.

(f) INTEREST AND PENALTIES FOR CERTAIN OVERPAYMENTS.—(1) If the United States makes an overpayment to a contractor under a contract subject to this section and the overpayment was due to the submission by the contractor of defective cost or pricing data, the contractor shall be liable to the United States—

(A) for interest on the amount of such overpayment, to be computed—

(i) for the period beginning on the date the overpayment was made to the contractor and ending on the date the contractor repays the amount of such overpayment to the United States; and

(ii) at the current rate prescribed by the Secretary of the Treasury under section 6621 of the Internal Revenue Code of 1986; and

(B) if the submission of such defective data was a knowing submission, for an additional amount equal to the amount of the overpayment.

(2) Any liability under this subsection of a contractor that submits cost or pricing data but refuses to submit the certification required by subsection (a)(2) with respect to the cost or pricing data shall not be affected by the refusal to submit such certification.

(g) RIGHT OF UNITED STATES TO EXAMINE CONTRACTOR RECORDS.—For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section, the head of an agency shall have the authority provided by section 2313(a)(2) of this title.

(h) DEFINITIONS.—In this section:

(1) COST OR PRICING DATA.—The term ''cost or pricing data'' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), or, if applicable consistent with subsection (e)(1)(B), another date agreed upon between the parties, a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.

(2) SUBCONTRACT.—The term ''subcontract'' includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

(3) COMMERCIAL ITEM.—The term ''commercial item'' has the meaning provided such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(Added Pub. L. 99–500, §101(c) [title X, §952(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–166, and Pub. L. 99–591, §101(c) [title X, §952(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–166; Pub. L. 99–661, div. A, title IX, formerly title IV, §952(a), Nov. 14, 1986, 100 Stat. 3945, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, §804(a), (b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 101–510, div. A, title VIII, §803(a)(1), (d), Nov. 5, 1990, 104 Stat. 1589, 1590; Pub. L. 102–25, title VII, §701(b), (f)(8), Apr. 6, 1991, 105 Stat. 113, 115; Pub. L. 102–190, div. A, title VIII, §804(a)–(c)(1), title X, §1061(a)(9), Dec. 5, 1991, 105 Stat. 1415, 1416, 1472; Pub. L. 103–355, title I, §§1201–1209, Oct. 13, 1994, 108 Stat. 3273–3277; Pub. L. 104–106, div. D, title XLII, §4201(a), title XLIII, §4321(a)(2), (b)(7), Feb. 10, 1996, 110 Stat. 649, 671, 672; Pub. L. 104–201, div. A, title X, §1074(a)(12), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 105–85, div. A, title X, §1073(a)(46), Nov. 18, 1997, 111 Stat. 1902; Pub. L. 105–261, div. A, title VIII, §§805(a), 808(a), Oct. 17, 1998, 112 Stat. 2083, 2085.)

REFERENCES IN TEXT

Section 6621 of the Internal Revenue Code of 1986, referred to in subsec. (f)(1)(A)(ii), is classified to section 6621 of Title 26, Internal Revenue Code.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1998—Subsec. (a)(5). Pub. L. 105–261, §805(a), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''For purposes of paragraph (1)(C), a contractor or subcontractor granted a waiver under subsection (b)(1)(C) shall be considered as having been required to make available cost or pricing data under this section.''

Subsec. (d)(1). Pub. L. 105–261, §808(a), substituted ''the contracting officer shall require that the data submitted'' for ''the data submitted shall''.

1997—Subsec. (a)(5). Pub. L. 105–85 substituted ''subsection (b)(1)(C)'' for ''subsection (b)(1)(B)''.

1996—Subsec. (b). Pub. L. 104–106, §4321(a)(2), made technical correction to directory language of Pub. L. 103–355, §1202(a). See 1994 Amendment note below.

Pub. L. 104–106, §4201(a)(1), amended subsec. (b) generally, revising and restating as pars. (1) and (2) the provisions of former pars. (1) and (2) and striking out par. (3).

Subsec. (c). Pub. L. 104–106, §4201(a)(1), amended subsec. (c) generally, revising and restating as subsec. (c) the provisions of former subsec. (c)(1).

Subsec. (d). Pub. L. 104–106, §4321(b)(7)(A), which directed amendment of subsec. (d)(2)(A)(ii), by inserting ''to'' after ''The information referred'', could not be executed because subsec. (d)(2)(A) did not contain a cl. (ii) or the language ''The information referred'' subsequent to amendment by Pub. L. 104–106, §4201(a)(1). See below.

Pub. L. 104–106, §4201(a)(1), amended subsec. (d) generally, revising and restating as pars. (1) and (2) provisions of former subsecs. (c)(2) and (d)(2), (4) and striking out provisions of former subsec. (d)(1), (3) relating to procurements based on adequate price competition and authority to audit.

Subsec. (e)(4)(B)(ii). Pub. L. 104–106, §4321(b)(7)(B), struck out second comma after ''parties''.

Subsec. (h). Pub. L. 104–106, §4201(a)(2), redesignated subsec. (i) as (h) and struck out former subsec. (h) which read as follows: ''REQUIRED REGULATIONS.—The Federal Acquisition Regulation shall contain provisions concerning the types of information that offerors must submit for a contracting officer to consider in determining whether the price of a procurement to the Government is fair and reasonable when certified cost or pricing data are not required to be submitted under this section because the price of the procurement to the United States is not expected to exceed the applicable threshold amount set forth in subsection (a) (as adjusted pursuant to paragraph (7) of such subsection). Such information, at a minimum, shall include appropriate information on the prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the proposed contract or subcontract for the procurement.''

Subsec. (h)(3). Pub. L. 104–201 inserted ''(41 U.S.C. 403(12))'' before period at end.

Subsec. (i). Pub. L. 104–106, §4201(a)(2)(B), redesignated subsec. (i) as (h).

Subsec. (i)(3). Pub. L. 104–106, §4321(b)(7)(C), which directed amendment of subsec. (i)(3) by inserting ''(41 U.S.C. 403(12))'' before period at end, could not be executed because section did not contain a subsec. (i) subsequent to the amendment by Pub. L. 104–106, §4201(a)(2)(B), redesignating subsec. (i) as (h). See above.

1994—Subsec. (a)(1)(A)(i). Pub. L. 103–355, §1201(a)(1), struck out ''and before January 1, 1996,'' after ''December 5, 1990,''.

Subsec. (a)(1)(A)(ii). Pub. L. 103–355, §1201(a)(2), struck out ''or after December 31, 1995,'' after ''December 5, 1990,''.

Subsec. (a)(5). Pub. L. 103–355, §1202(b), substituted ''subsection (b)(1)(B)'' for ''subsection (b)(2)''.

Subsec. (a)(6). Pub. L. 103–355, §1201(c), struck out subpar. (A) designation and subpar. (B) which read as follows: ''The head of an agency is not required to modify a contract under subparagraph (A) if that head of an agency determines that the submission of cost or pricing data with respect to that contract should be required under subsection (c).''

Subsec. (a)(7). Pub. L. 103–355, §1201(b), added par. (7).

Subsec. (b). Pub. L. 103–355, §1202(a), as amended by Pub. L. 104–106, §4321(a)(2), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''This section need not be applied to a contract or subcontract—

''(1) for which the price agreed upon is based on—

''(A) adequate price competition;

''(B) established catalog or market prices of commercial items sold in substantial quantities to the general public; or

''(C) prices set by law or regulation; or

''(2) in an exceptional case when the head of the agency determines that the requirements of this section may be waived and states in writing his reasons for such determination.''

Subsec. (c). Pub. L. 103–355, §1203, amended heading and text of subsec. (c) generally. Prior to amendment,

text read as follows: ''When cost or pricing data are not required to be submitted by subsection (a), such data may nevertheless be required to be submitted by the head of the agency if the head of the agency determines that such data are necessary for the evaluation by the agency of the reasonableness of the price of the contract or subcontract. In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

Subsec. (d). Pub. L. 103–355, §1204, added subsec. (d) and redesignated former subsec. (d) as (e).

Subsec. (e). Pub. L. 103–355, §1204(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(4)(A)(ii), (B)(ii). Pub. L. 103–355, §1207, inserted ''or, if applicable consistent with paragraph (1)(B), another date agreed upon between the parties,'' after ''(or price of the modification)''.

Subsec. (f). Pub. L. 103–355, §1204(1), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(1). Pub. L. 103–355, §1209, struck out ''with the Department of Defense'' before ''subject to this section'' in introductory provisions.

Subsec. (g). Pub. L. 103–355, §1205, added subsec. (g) and struck out heading and text of former subsec. (g). Text read as follows:

''(1) For the purpose of evaluating the accuracy, completeness, and currency of cost or pricing data required to be submitted by this section with respect to a contract or subcontract, the head of the agency, acting through any authorized representative of the head of the agency who is an employee of the United States or a member of the armed forces, shall have the right to examine all records of the contractor or subcontractor related to—

''(A) the proposal for the contract or subcontract;

''(B) the discussions conducted on the proposal;

''(C) pricing of the contract or subcontract; or

''(D) performance of the contract or subcontract.

''(2) The right of the head of an agency under paragraph (1) shall expire three years after final payment under the contract or subcontract.

''(3) In this subsection, the term 'records' includes books, documents, and other data.''

Pub. L. 103–355, §1204(1), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (i).

Subsec. (h). Pub. L. 103–355, §1206, added subsec. (h).

Subsec. (i). Pub. L. 103–355, §1208, amended heading and text of subsec. (i) generally. Prior to amendment, text read as follows: ''In this section, the term 'cost or pricing data' means all facts that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

Pub. L. 103–355, §1204(1), redesignated subsec. (g) as (i).

1991—Subsec. (a)(1)(A). Pub. L. 102–190, §804(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures shall be required to submit cost or pricing data before the award of the contract if the price of the contract to the United States is expected to exceed $500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000.''

Subsec. (a)(1)(B). Pub. L. 102–190, §804(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The contractor for a contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to that contract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, §701(b)(1), substituted ''the dollar amount applicable under subparagraph (A) to that contract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000''.

Subsec. (a)(1)(C). Pub. L. 102–190, §804(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if—

''(i) the price of the subcontract is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract; and

''(ii) the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section.''

Subsec. (a)(1)(C)(i). Pub. L. 102–25, §701(b)(2), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000''.

Subsec. (a)(1)(D). Pub. L. 102–190, §804(a), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if the price adjustment is expected to exceed the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract (or such lesser amount as may be prescribed by the head of the agency).''

Pub. L. 102–25, §701(b)(3), substituted ''the dollar amount applicable under subparagraph (A) to the prime contract of that subcontract'' for ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000''.

Subsec. (a)(5). Pub. L. 102–190, §804(c)(1), substituted ''paragraph (1)(C)'' for ''paragraph (1)(C)(ii)''.

Subsec. (a)(6). Pub. L. 102–190, §804(b), added par. (6).

Subsec. (e)(1)(A)(i). Pub. L. 102–25, §701(f)(8), which directed the substitution of ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', could not be executed because ''Internal Revenue Code of 1954'' does not appear.

Subsec. (e)(1)(A)(ii). Pub. L. 102–190, §1061(a)(9), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1990—Subsec. (a)(1)(A). Pub. L. 101–510, §803(a)(1)(A), substituted ''$500,000 or, in the case of a contract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(B). Pub. L. 101–510, §803(a)(1)(B), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to a contract to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(C)(i). Pub. L. 101–510, §803(a)(1)(C), substituted ''$500,000 or, in the case of a subcontract to be awarded after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (a)(1)(D). Pub. L. 101–510, §803(a)(1)(D), substituted ''$500,000 (or such lesser amount as may be prescribed by the head of the agency) or, in the case of a change or modification to be made after December 31, 1995, $100,000'' for ''$100,000''.

Subsec. (c). Pub. L. 101–510, §803(d), inserted at end ''In any case in which the head of the agency requires such data to be submitted under this subsection, the head of the agency shall document in writing the reasons for such requirement.''

1987—Subsec. (a)(5). Pub. L. 100–180, §804(b)(1), substituted ''a waiver under subsection (b)(2)'' for ''such a waiver'', and struck out first sentence authorizing head of an agency to waive requirement under this subsection for contractor, subcontractor, or offeror to submit cost or pricing data.

Subsec. (e)(2). Pub. L. 100–180, §804(b)(2), amended par. (2) generally. Prior to amendment, par. (2) read as fol-

lows: ''Except as provided under subsection (d), the liability of a contractor under this subsection shall not be affected by the contractor's refusal to submit a certification under subsection (a)(2) with respect to the cost or pricing data involved.''

Subsec. (g). Pub. L. 100–180, § 804(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''In this section, the term 'cost or pricing data' means all information that is verifiable and that, as of the date of agreement on the price of a contract (or the price of a contract modification), a prudent buyer or seller would reasonably expect to affect price negotiations significantly. Such term does not include information that is judgmental, but does include the factual information from which a judgment was derived.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by sections 4201(a) and 4321(b)(7) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

Section 4321(a) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 803(a)(2) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, § 704(a)(4), Apr. 6, 1991, 105 Stat. 118, provided that the amendments to this section by Pub. L. 101–510 would apply to contracts entered into after Dec. 5, 1990, subcontracts under such contracts, and modifications or changes to such contracts and subcontracts, prior to repeal by Pub. L. 102–190, div. A, title VIII, § 804(c)(2), Dec. 5, 1991, 105 Stat. 1416.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 804(c) of Pub. L. 100–180 provided that:

''(1) Subsection (a) [amending this section] shall apply to any contract, or modification of a contract, entered into after the end of the 30-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to contracts, or modifications of contracts, entered into after the end of the 120-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 952(d)] of Pub. L. 99–500 and Pub. L. 99–591, and section 952(d) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that:

''(1) Except as provided in paragraph (2), section 2306a of title 10, United States Code (as added by subsection (a)), and the amendment and repeal made by subsection (b) [amending section 2306 of this title and repealing a provision set out as a note under section 2304 of this title], shall apply with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].

''(2) Subsection (e) of such section shall apply with respect to contracts or modifications on contracts entered into after November 7, 1985.''

REGULATIONS

Section 803(c) of Pub. L. 101–510, directed Secretary of Defense to prescribe regulations identifying type of procurements for which contracting officers should consider requiring submission of certified cost or pricing data under subsec. (c) of this section, and also directed Secretary to prescribe regulations concerning types of information that offerors had to submit for contracting officer to consider in determining whether price of procurement to Government was fair and reasonable when certified cost or pricing data were not required to be submitted under this section because price of procurement to the United States was not expected to exceed $500,000, such information, at minimum, to include appropriate information on prices at which such offeror had previously sold same or similar products, with such regulations to be prescribed not later than six months after Nov. 5, 1990, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

GRANTS OF EXCEPTIONS TO COST OR PRICING DATA CERTIFICATION REQUIREMENTS AND WAIVERS OF COST ACCOUNTING STANDARDS

Pub. L. 107–314, div. A, title VIII, § 817, Dec. 2, 2002, 116 Stat. 2610, provided that:

''(a) GUIDANCE FOR EXCEPTIONS IN EXCEPTIONAL CIRCUMSTANCES.—Not later than 60 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall issue guidance on the circumstances under which it is appropriate to grant an exceptional case exception or waiver with respect to certified cost and pricing data and cost accounting standards.

''(b) DETERMINATION REQUIRED FOR EXCEPTIONAL CASE EXCEPTION OR WAIVER.—The guidance shall, at a minimum, include a limitation that a grant of an exceptional case exception or waiver is appropriate with respect to a contract, subcontract, or (in the case of submission of certified cost and pricing data) modification only upon a determination that—

''(1) the property or services cannot reasonably be obtained under the contract, subcontract, or modification, as the case may be, without the grant of the exception or waiver;

''(2) the price can be determined to be fair and reasonable without the submission of certified cost and pricing data or the application of cost accounting standards, as the case may be; and

''(3) there are demonstrated benefits to granting the exception or waiver.

''(c) APPLICABILITY OF NEW GUIDANCE.—The guidance issued under subsection (a) shall apply to each exceptional case exception or waiver that is granted on or after the date on which the guidance is issued.

''(d) ANNUAL REPORT ON BOTH COMMERCIAL ITEM AND EXCEPTIONAL CASE EXCEPTIONS AND WAIVERS WITH PRICE OR VALUE GREATER THAN $15,000,000.—(1) The Secretary of Defense shall transmit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] promptly after the end of each fiscal year a report on commercial item exceptions, and exceptional case exceptions and waivers, described in paragraph (2) that were granted during that fiscal year.

''(2) The report for a fiscal year shall include—

''(A) with respect to any commercial item exception granted in the case of a contract, subcontract, or contract or subcontract modification that is expected to have a price of $15,000,000 or more, an explanation of the basis for the determination that the products or services to be purchased are commercial items, including an identification of the specific steps taken to ensure price reasonableness; and

''(B) with respect to any exceptional case exception or waiver granted in the case of a contract or subcontract that is expected to have a value of $15,000,000 or more, an explanation of the basis for the determination described in subsection (b), including an identification of the specific steps taken to ensure that the price was fair and reasonable.

''(e) DEFINITIONS.—In this section:

''(1) The term 'exceptional case exception or waiver' means either of the following:

''(A) An exception pursuant to section 2306a(b)(1)(C) of title 10, United States Code, relating to submission of certified cost and pricing data.

''(B) A waiver pursuant to section 26(f)(5)(B) of the Office of Federal Procurement Policy Act (41

U.S.C. 422(f)(5)(B)), relating to the applicability of cost accounting standards to contracts and subcontracts.

''(2) The term 'commercial item exception' means an exception pursuant to section 2306a(b)(1)(B) of title 10, United States Code, relating to submission of certified cost and pricing data.''

DEFENSE COMMERCIAL PRICING MANAGEMENT IMPROVEMENT

Pub. L. 105–261, div. A, title VIII, § 803, Oct. 17, 1998, 112 Stat. 2081, as amended by Pub. L. 106–65, div. A, title X, § 1067(3), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title VIII, § 823, Dec. 2, 2002, 116 Stat. 2615, provided that:

''(a) MODIFICATION OF PRICING REGULATIONS FOR CERTAIN COMMERCIAL ITEMS EXEMPT FROM COST OR PRICING DATA CERTIFICATION REQUIREMENTS.—(1) The Federal Acquisition Regulation issued in accordance with sections 6 and 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 405, 421) shall be revised to clarify the procedures and methods to be used for determining the reasonableness of prices of exempt commercial items (as defined in subsection (d)).

''(2) The regulations shall, at a minimum, provide specific guidance on—

''(A) the appropriate application and precedence of such price analysis tools as catalog-based pricing, market-based pricing, historical pricing, parametric pricing, and value analysis;

''(B) the circumstances under which contracting officers should require offerors of exempt commercial items to provide—

''(i) information on prices at which the offeror has previously sold the same or similar items; or

''(ii) other information other than certified cost or pricing data;

''(C) the role and responsibility of Department of Defense support organizations in procedures for determining price reasonableness; and

''(D) the meaning and appropriate application of the term 'purposes other than governmental purposes' in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

''(3) This subsection shall cease to be effective 1 year after the date on which final regulations prescribed pursuant to paragraph (1) take effect.

''(b) UNIFIED MANAGEMENT OF PROCUREMENT OF EXEMPT COMMERCIAL ITEMS.—The Secretary of Defense shall develop and implement procedures to ensure that, whenever appropriate, a single item manager or contracting officer is responsible for negotiating and entering into all contracts from a single contractor for the procurement of exempt commercial items or for the procurement of items in a category of exempt commercial items.

''(c) COMMERCIAL PRICE TREND ANALYSIS.—(1) The Secretary of Defense shall develop and implement procedures that, to the maximum extent that is practicable and consistent with the efficient operation of the Department of Defense, provide for the collection and analysis of information on price trends for categories of exempt commercial items described in paragraph (2).

''(2) A category of exempt commercial items referred to in paragraph (1) consists of exempt commercial items—

''(A) that are in a single Federal Supply Group or Federal Supply Class, are provided by a single contractor, or are otherwise logically grouped for the purpose of analyzing information on price trends; and

''(B) for which there is a potential for the price paid to be significantly higher (on a percentage basis) than the prices previously paid in procurements of the same or similar items for the Department of Defense, as determined by the head of the procuring Department of Defense agency or the Secretary of the procuring military department on the basis of criteria prescribed by the Secretary of Defense.

''(3) The head of a Department of Defense agency or the Secretary of a military department shall take appropriate action to address any unreasonable escalation in prices being paid for items procured by that agency or military department as identified in an analysis conducted pursuant to paragraph (1).

''(4) Not later than April 1 of each of fiscal years 2000 through 2006, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the analyses of price trends that were conducted by the Secretary of each military department and the Director of the Defense Logistics Agency for categories of exempt commercial items during the preceding fiscal year under the procedures prescribed pursuant to paragraph (1). The report shall include a description of the actions taken by each Secretary and the Director to identify and address any unreasonable price escalation for the categories of items.

''(d) EXEMPT COMMERCIAL ITEMS DEFINED.—For the purposes of this section, the term 'exempt commercial item' means a commercial item that is exempt under subsection (b)(1)(B) of section 2306a of title 10, United States Code, or subsection (b)(1)(B) of section 304A of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b), from the requirements for submission of certified cost or pricing data under that section.''

REVIEW BY INSPECTOR GENERAL

Section 803(b) of Pub. L. 101–510 provided that (1) after increase in threshold for submission of cost or pricing data under subsec. (a) of this section, as amended by section 803(a) of Pub. L. 101–510, had been in effect for three years, Inspector General of Department of Defense was to conduct review of effects of increase in threshold, (2) that such review was to address whether increasing threshold improved acquisition process in terms of reduced paperwork, financial or other savings to government, an increase in number of contractors participating in defense contracting process, and adequacy of information available to contracting officers in cases in which certified cost or pricing data were not required under this section, (3) that Inspector General was to submit to Secretary of Defense a report on review conducted under paragraph (1), with Secretary of Defense required to submit such report to Congress, along with appropriate comments, upon completion of report (and comments) but not later than date on which President submitted budget to Congress pursuant to section 1105 of Title 31, Money and Finance, for fiscal year 1996, prior to repeal by Pub. L. 103–355, title I, § 1210, Oct. 13, 1994, 108 Stat. 3277.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306, 2313, 2343, 2375, 2473 of this title; title 15 section 4602; title 41 section 423.

§ 2306b. Multiyear contracts: acquisition of property

(a) IN GENERAL.—To the extent that funds are otherwise available for obligation, the head of an agency may enter into multiyear contracts for the purchase of property whenever the head of that agency finds each of the following:

(1) That the use of such a contract will result in substantial savings of the total anticipated costs of carrying out the program through annual contracts.

(2) That the minimum need for the property to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities.

(3) That there is a reasonable expectation that throughout the contemplated contract period the head of the agency will request

funding for the contract at the level required to avoid contract cancellation.

(4) That there is a stable design for the property to be acquired and that the technical risks associated with such property are not excessive.

(5) That the estimates of both the cost of the contract and the anticipated cost avoidance through the use of a multiyear contract are realistic.

(6) In the case of a purchase by the Department of Defense, that the use of such a contract will promote the national security of the United States.

(b) REGULATIONS.—(1) Each official named in paragraph (2) shall prescribe acquisition regulations for the agency or agencies under the jurisdiction of such official to promote the use of multiyear contracting as authorized by subsection (a) in a manner that will allow the most efficient use of multiyear contracting.

(2)(A) The Secretary of Defense shall prescribe the regulations applicable to the Department of Defense.

(B) The Secretary of Homeland Security shall prescribe the regulations applicable to the Coast Guard, except that the regulations prescribed by the Secretary of Defense shall apply to the Coast Guard when it is operating as a service in the Navy.

(C) The Administrator of the National Aeronautics and Space Administration shall prescribe the regulations applicable to the National Aeronautics and Space Administration.

(c) CONTRACT CANCELLATIONS.—The regulations may provide for cancellation provisions in multiyear contracts to the extent that such provisions are necessary and in the best interests of the United States. The cancellation provisions may include consideration of both recurring and nonrecurring costs of the contractor associated with the production of the items to be delivered under the contract.

(d) PARTICIPATION BY SUBCONTRACTORS, VENDORS, AND SUPPLIERS.—In order to broaden the defense industrial base, the regulations shall provide that, to the extent practicable—

(1) multiyear contracting under subsection (a) shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, vendors, or suppliers; and

(2) upon accrual of any payment or other benefit under such a multiyear contract to any subcontractor, vendor, or supplier company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(e) PROTECTION OF EXISTING AUTHORITY.—The regulations shall provide that, to the extent practicable, the administration of this section, and of the regulations prescribed under this section, shall not be carried out in a manner to preclude or curtail the existing ability of an agency—

(1) to provide for competition in the production of items to be delivered under such a contract; or

(2) to provide for termination of a prime contract the performance of which is deficient with respect to cost, quality, or schedule.

(f) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING.—In the event funds are not made available for the continuation of a contract made under this section into a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of property concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(g) CONTRACT CANCELLATION CEILINGS EXCEEDING $100,000,000.—Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives, and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(h) DEFENSE ACQUISITIONS OF WEAPON SYSTEMS.—In the case of the Department of Defense, the authority under subsection (a) includes authority to enter into the following multiyear contracts in accordance with this section:

(1) A multiyear contract for the purchase of a weapon system, items and services associated with a weapon system, and logistics support for a weapon system.

(2) A multiyear contract for advance procurement of components, parts, and materials necessary to the manufacture of a weapon system, including a multiyear contract for such advance procurement that is entered into in order to achieve economic-lot purchases and more efficient production rates.

(i) DEFENSE ACQUISITIONS SPECIFICALLY AUTHORIZED BY LAW.—(1) A multiyear contract may not be entered into for any fiscal year under this section for a defense acquisition program that has been specifically authorized by law to be carried out using multiyear contract authority unless each of the following conditions is satisfied:

(A) The Secretary of Defense certifies to Congress that the current future-years defense program fully funds the support costs associated with the multiyear program.

(B) The proposed multiyear contract provides for production at not less than minimum economic rates given the existing tooling and facilities.

(2) If for any fiscal year a multiyear contract to be entered into under this section is authorized by law for a particular procurement program and that authorization is subject to certain conditions established by law (including a condition as to cost savings to be achieved under the multiyear contract in comparison to specified other contracts) and if it appears (after negotiations with contractors) that such savings

cannot be achieved, but that substantial savings could nevertheless be achieved through the use of a multiyear contract rather than specified other contracts, the President may submit to Congress a request for relief from the specified cost savings that must be achieved through multiyear contracting for that program. Any such request by the President shall include details about the request for a multiyear contract, including details about the negotiated contract terms and conditions.

(3) In the case of the Department of Defense, a multiyear contract in an amount equal to or greater than $500,000,000 may not be entered into for any fiscal year under this section unless the contract is specifically authorized by law in an Act other than an appropriations Act.

(4)(A) The Secretary of Defense may obligate funds for procurement of an end item under a multiyear contract for the purchase of property only for procurement of a complete and usable end item.

(B) The Secretary of Defense may obligate funds appropriated for any fiscal year for advance procurement under a contract for the purchase of property only for the procurement of those long-lead items necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

(j) DEFENSE CONTRACT OPTIONS FOR VARYING QUANTITIES.—The Secretary of Defense may instruct the Secretary of the military department concerned to incorporate into a proposed multiyear contract negotiated priced options for varying the quantities of end items to be procured over the period of the contract.

(k) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of property for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(*l*) VARIOUS ADDITIONAL REQUIREMENTS WITH RESPECT TO MULTIYEAR DEFENSE CONTRACTS.—(1)(A) The head of an agency may not initiate a contract described in subparagraph (B) unless the congressional defense committees are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(B) Subparagraph (A) applies to the following contracts:

(i) A multiyear contract—

(I) that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract; or

(II) that includes an unfunded contingent liability in excess of $20,000,000.

(ii) Any contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year.

(2) The head of an agency may not initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(3) The head of an agency may not initiate a multiyear procurement contract for any system (or component thereof) if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided in an appropriations Act.

(4) Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year, shown for each year in the current future-years defense program and in the aggregate over the period of the current future-years defense program:

(A) The amount of total obligational authority under the contract (or contract extension) and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(B) The amount of total obligational authority under all multiyear procurements of the agency concerned (determined without regard to the amount of the multiyear contract (or contract extension)) under multiyear contracts in effect at the time the report is submitted and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(C) The amount equal to the sum of the amounts under subparagraphs (A) and (B), and the percentage that such amount represents of—

(i) the applicable procurement account; and

(ii) the agency procurement total.

(D) The amount of total obligational authority under all Department of Defense multiyear procurements (determined without regard to the amount of the multiyear contract (or contract extension)), including any multiyear contract (or contract extension) that has been authorized by the Congress but not yet entered into, and the percentage that such amount represents of the procurement accounts of the Department of Defense treated in the aggregate.

(5) The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract), the value of which would exceed $500,000,000 (when entered into or when extended, as the case may be), until the Secretary of Defense submits to the congressional defense committees a report containing the information described in paragraph (4) with respect to the contract (or contract extension).

(6) The head of an agency may not terminate a multiyear procurement contract until 10 days

after the date on which notice of the proposed termination is provided to the congressional defense committees.

(7) The execution of multiyear contracting authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

(8) This subsection does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

(9) In this subsection, the term ''congressional defense committees'' means the following:

(A) The Committee on Armed Services of the Senate and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

(B) The Committee on Armed Services of the House of Representatives and the Subcommittee on National Security of the Committee on Appropriations of the House of Representatives.

(10) In this subsection:

(A) The term ''applicable procurement account'' means, with respect to a multiyear procurement contract (or contract extension), the appropriation account from which payments to execute the contract will be made.

(B) The term ''agency procurement total'' means the procurement accounts of the agency entering into a multiyear procurement contract (or contract extension) treated in the aggregate.

(Added Pub. L. 103–355, title I, §1022(a)(1), Oct. 13, 1994, 108 Stat. 3257; amended Pub. L. 104–106, div. A, title XV, §1502(a)(10), div. E, title LVI, §5601(b), Feb. 10, 1996, 110 Stat. 503, 699; Pub. L. 105–85, div. A, title VIII, §806(a)(1), (b)(1), (c), title X, §1073(a)(47), (48)(A), Nov. 18, 1997, 111 Stat. 1834, 1835, 1903; Pub. L. 106–65, div. A, title VIII, §809, title X, §1067(1), Oct. 5, 1999, 113 Stat. 705, 774; Pub. L. 106–398, §1 [[div. A], title VIII, §§802(c), 806], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–207; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, §820(a), Dec. 2, 2002, 116 Stat. 2613.)

AMENDMENTS

2002—Subsec. (b)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (i)(4). Pub. L. 107–314 added par. (4).

2000—Subsec. (k). Pub. L. 106–398, §1 [[div. A], title VIII, §802(c)], struck out ''or services'' after ''purchase of property''.

Subsec. (*l*)(4). Pub. L. 106–398, §1 [[div. A], title VIII, §806(1)(A)], in introductory provisions, substituted ''Not later than the date of the submission of the President's budget request under section 1105 of title 31, the Secretary of Defense shall submit a report to the congressional defense committees each year, providing the following information with respect to each multiyear contract (and each extension of an existing multiyear contract) entered into, or planned to be entered into, by the head of an agency during the current or preceding year'' for ''The head of an agency may not enter into a multiyear contract (or extend an existing multiyear contract) until the Secretary of Defense submits to the congressional defense committees a report with respect to that contract (or contract extension) that provides the following information''.

Subsec. (*l*)(4)(B). Pub. L. 106–398, §1 [[div. A], title VIII, §806(1)(B)], substituted ''in effect at the time the report is submitted'' for ''in effect immediately before the contract (or contract extension) is entered into'' in introductory provisions.

Subsec. (*l*)(5) to (10). Pub. L. 106–398, §1 [[div. A], title VIII, §806(2), (3)], added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1999—Subsec. (g). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (*l*)(4) to (7). Pub. L. 106–65, §809(1), (2), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively. Former par. (7) redesignated (8).

Subsec. (*l*)(8). Pub. L. 106–65, §809(1), redesignated par. (7) as (8).

Subsec. (*l*)(8)(B). Pub. L. 106–65, §1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

Subsec. (*l*)(9). Pub. L. 106–65, §809(3), added par. (9).

1997—Pub. L. 105–85, §1073(a)(48)(A), inserted '': acquisition of property'' in section catchline.

Subsec. (a). Pub. L. 105–85, §806(c)(1), substituted ''finds each of the following:'' for ''finds—'' in introductory provisions, capitalized first letter of first word in pars. (1) to (6), and substituted a period for semicolon at end of pars. (1) to (4) and for ''; and'' at end of par. (5).

Subsec. (d)(1). Pub. L. 105–85, §806(c)(2), substituted ''subsection (a)'' for ''paragraph (1)''.

Subsec. (i)(1)(A). Pub. L. 105–85, §806(c)(3), substituted ''future-years'' for ''five-year''.

Subsec. (i)(3). Pub. L. 105–85, §806(a)(1), added par. (3).

Subsec. (k). Pub. L. 105–85, §1073(a)(47), substituted ''this section'' for ''this subsection''.

Subsec. (*l*). Pub. L. 105–85, §806(b)(1), added subsec. (*l*).

1996—Subsec. (g). Pub. L. 104–106, §1502(a)(10), substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsecs. (k), (*l*). Pub. L. 104–106, §5601(b), redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which read as follows: ''INAPPLICABILITY TO AUTOMATIC DATA PROCESSING CONTRACTS.—This section does not apply to contracts for the purchase of property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.''

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title VIII, §820(b), Dec. 2, 2002, 116 Stat. 2614, provided that:

''(1) Paragraph (4) of section 2306b(i) of title 10, United States Code, as added by subsection (a), shall not apply with respect to any contract awarded before the date of the enactment of this Act [Dec. 2, 2002].

''(2) Nothing in this section [amending this section] shall be construed to authorize the expenditure of funds under any contract awarded before the date of the enactment of this Act for any purpose other than the purpose for which such funds have been authorized and appropriated.''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 806(a)(2) of Pub. L. 105–85 provided that: ''Paragraph (3) of section 2306b(i) of title 10, United States Code, as added by paragraph (1), shall not apply with respect to a contract authorized by law before the date of the enactment of this Act [Nov. 18, 1997].''

Section 806(b)(2) of Pub. L. 105–85 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1998.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 5601(b) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

MULTIYEAR PROCUREMENT CONTRACTS

Pub. L. 105–56, title VIII, §8008, Oct. 8, 1997, 111 Stat. 1221, provided that:

''(a) None of the funds provided in this Act [see Tables for classification] shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year of the contract or that includes an unfunded contingent liability in excess of $20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20,000,000 in any one year, unless the congressional defense committees have been notified at least 30 days in advance of the proposed contract award: *Provided*, That no part of any appropriation contained in this Act shall be available to initiate a multiyear contract for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability: *Provided further*, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed $500,000,000 unless specifically provided in this Act: *Provided further*, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees [Committee on Armed Services and Subcommittee on National Security of the Committee on Appropriations of the House of Representatives and Committee on Armed Services and Subcommittee on Defense of the Committee on Appropriations of the Senate]: *Provided further*, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement.

''Funds appropriated in title III of this Act [111 Stat. 1211] may be used for multiyear procurement contracts as follows:

''Apache Longbow radar;

''AV–8B aircraft; and

''Family of Medium Tactical Vehicles.

''(b) None of the funds provided in this Act and hereafter may be used to submit to Congress (or to any committee of Congress) a request for authority to enter into a contract covered by those provisions of subsection (a) that precede the first proviso of that subsection unless—

''(1) such request is made as part of the submission of the President's Budget for the United States Government for any fiscal year and is set forth in the Appendix to that budget as part of proposed legislative language for appropriations bills for the next fiscal year; or

''(2) such request is formally submitted by the President as a budget amendment; or

''(3) the Secretary of Defense makes such request in writing to the congressional defense committees.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 107–248, title VIII, §8008, Oct. 23, 2002, 116 Stat. 1537.

Pub. L. 107–117, div. A, title VIII, §8008, Jan. 10, 2002, 115 Stat. 2248.

Pub. L. 106–259, title VIII, §8008, Aug. 9, 2000, 114 Stat. 675.

Pub. L. 106–79, title VIII, §8008, Oct. 25, 1999, 113 Stat. 1232.

Pub. L. 105–262, title VIII, §8008, Oct. 17, 1998, 112 Stat. 2298.

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8009], Sept. 30, 1996, 110 Stat. 3009–71, 3009–89.

Pub. L. 104–61, title VIII, §8010, Dec. 1, 1995, 109 Stat. 653.

Pub. L. 103–335, title VIII, §8010, Sept. 30, 1994, 108 Stat. 2618.

Pub. L. 103–139, title VIII, §8011, Nov. 11, 1993, 107 Stat. 1439.

Pub. L. 102–396, title IX, §9013, Oct. 6, 1992, 106 Stat. 1903.

Pub. L. 102–172, title VIII, §8013, Nov. 26, 1991, 105 Stat. 1173.

Pub. L. 101–511, title VIII, §8014, Nov. 5, 1990, 104 Stat. 1877.

Pub. L. 101–165, title IX, §9021, Nov. 21, 1989, 103 Stat. 1133.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2306 of this title.

§ 2306c. Multiyear contracts: acquisition of services

(a) AUTHORITY.—Subject to subsections (d) and (e), the head of an agency may enter into contracts for periods of not more than five years for services described in subsection (b), and for items of supply related to such services, for which funds would otherwise be available for obligation only within the fiscal year for which appropriated whenever the head of the agency finds that—

(1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period;

(2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and

(3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(b) COVERED SERVICES.—The authority under subsection (a) applies to the following types of services:

(1) Operation, maintenance, and support of facilities and installations.

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment.

(3) Specialized training necessitating high quality instructor skills (for example, pilot and air crew members; foreign language training).

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

(5) Environmental remediation services for—

(A) an active military installation;

(B) a military installation being closed or realigned under a base closure law; or

(C) a site formerly used by the Department of Defense.

(c) APPLICABLE PRINCIPLES.—In entering into multiyear contracts for services under the authority of this section, the head of the agency shall be guided by the following principles:

(1) The portion of the cost of any plant or equipment amortized as a cost of contract performance should not exceed the ratio between the period of contract performance and the anticipated useful commercial life of such plant or equipment. Useful commercial life, for this

purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(2) Consideration shall be given to the desirability of obtaining an option to renew the contract for a reasonable period not to exceed three years, at prices not to include charges for plant, equipment and other nonrecurring costs, already amortized.

(3) Consideration shall be given to the desirability of reserving in the agency the right, upon payment of the unamortized portion of the cost of the plant or equipment, to take title thereto under appropriate circumstances.

(d) RESTRICTIONS APPLICABLE GENERALLY.—(1) The head of an agency may not initiate under this section a contract for services that includes an unfunded contingent liability in excess of $20,000,000 unless the committees of Congress named in paragraph (5) are notified of the proposed contract at least 30 days in advance of the award of the proposed contract.

(2) The head of an agency may not initiate a multiyear contract for services under this section if the value of the multiyear contract would exceed $500,000,000 unless authority for the contract is specifically provided by law.

(3) The head of an agency may not terminate a multiyear procurement contract for services until 10 days after the date on which notice of the proposed termination is provided to the committees of Congress named in paragraph (5).

(4) Before any contract described in subsection (a) that contains a clause setting forth a cancellation ceiling in excess of $100,000,000 may be awarded, the head of the agency concerned shall give written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees of Congress named in paragraph (5), and such contract may not then be awarded until the end of a period of 30 days beginning on the date of such notification.

(5) The committees of Congress referred to in paragraphs (1), (3), and (4) are as follows:

(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

(B) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(e) CANCELLATION OR TERMINATION FOR INSUFFICIENT FUNDING AFTER FIRST YEAR.—In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(1) appropriations originally available for the performance of the contract concerned;

(2) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(3) funds appropriated for those payments.

(f) MULTIYEAR CONTRACT DEFINED.—For the purposes of this section, a multiyear contract is a contract for the purchase of services for more than one, but not more than five, program years. Such a contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds and (if it does so provide) may provide for a cancellation payment to be made to the contractor if such appropriations are not made.

(g) LIMITATION PERIOD FOR TASK AND DELIVERY ORDER CONTRACTS.—(1) The authority and restrictions of this section, including the authority to enter into contracts for periods of not more than five years, shall apply with respect to task order and delivery order contracts entered into under the authority of section 2304a, 2304b, or 2304c of this title.

(2) The regulations implementing this subsection shall establish a preference that, to the maximum extent practicable, multi-year requirements for task order and delivery order contracts be met with separate awards to two or more sources under the authority of section 2304a(d)(1)(B) of this title.

(h) ADDITIONAL DEFINITIONS.—In this section:

(1) The term ''base closure law'' has the meaning given such term in section 2667(h)(2) of this title.

(2) The term ''military installation'' has the meaning given such term in section 2801(c)(2) of this title.

(Added Pub. L. 106–398, §1 [[div. A], title VIII, §802(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–203; amended Pub. L. 107–314, div. A, title VIII, §§811(a), 827, Dec. 2, 2002, 116 Stat. 2608, 2617.)

AMENDMENTS

2002—Subsec. (b)(5). Pub. L. 107–314, §827(a), added par. (5).

Subsec. (g). Pub. L. 107–314, §811(a), added subsec. (g).

Subsec. (h). Pub. L. 107–314, §827(b), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, §811(b), Dec. 2, 2002, 116 Stat. 2608, provided that: ''Subsection (g) of section 2306c of title 10, United States Code, as added by subsection (a), shall apply to all task order and delivery order contracts entered into on or after the date of the enactment of this Act [Dec. 2, 2002].''

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VIII, §802(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, provided that: ''Section 2306c of title 10, United States Code (as added by subsection (a)), shall apply with respect to contracts for which solicitations of offers are issued after the date of the enactment of this Act [Oct. 30, 2000].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2306 of this title.

§ 2307. Contract financing

(a) PAYMENT AUTHORITY.—The head of any agency may—

(1) make advance, partial, progress, or other payments under contracts for property or services made by the agency; and

(2) insert in solicitations for procurement of property or services a provision limiting to small business concerns advance or progress payments.

(b) PERFORMANCE-BASED PAYMENTS.—Whenever practicable, payments under subsection (a) shall be made on any of the following bases:

(1) Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement, or statistical process controls.

(2) Accomplishment of events defined in the program management plan.

(3) Other quantifiable measures of results.

(c) PAYMENT AMOUNT.—Payments made under subsection (a) may not exceed the unpaid contract price.

(d) SECURITY FOR ADVANCE PAYMENTS.—Advance payments made under subsection (a) may be made only if the contractor gives adequate security and after a determination by the head of the agency that to do so would be in the public interest. Such security may be in the form of a lien in favor of the United States on the property contracted for, on the balance in an account in which such payments are deposited, and on such of the property acquired for performance of the contract as the parties may agree. This lien is paramount to any other liens and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States.

(e) CONDITIONS FOR PROGRESS PAYMENTS.—(1) The Secretary of Defense shall ensure that any payment for work in progress (including materials, labor, and other items) under a defense contract that provides for such payments is commensurate with the work accomplished that meets standards established under the contract. The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.

(2) The Secretary shall ensure that progress payments referred to in paragraph (1) are not made for more than 80 percent of the work accomplished under a defense contract so long as the Secretary has not made the contractual terms, specifications, and price definite.

(3) This subsection applies to any contract in an amount greater than $25,000.

(f) CONDITIONS FOR PAYMENTS FOR COMMERCIAL ITEMS.—(1) Payments under subsection (a) for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interests of the United States. The head of the agency shall obtain adequate security for such payments. If the security is in the form of a lien in favor of the United States, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) Advance payments made under subsection (a) for commercial items may include payments, in a total amount of not more than 15 percent of the contract price, in advance of any performance of work under the contract.

(3) The conditions of subsections (d) and (e) need not be applied if they would be inconsistent, as determined by the head of the agency, with commercial terms and conditions pursuant to paragraphs (1) and (2).

(g) CERTAIN NAVY CONTRACTS.—(1) The Secretary of the Navy shall provide that the rate for progress payments on any contract awarded by the Secretary for repair, maintenance, or overhaul of a naval vessel shall be not less than—

(A) 95 percent, in the case of a firm considered to be a small business; and

(B) 90 percent, in the case of any other firm.

(2) The Secretary of the Navy may advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations. Advances under this paragraph shall be made on terms that the Secretary considers adequate for the protection of the United States.

(3) The Secretary of the Navy shall provide, in each contract for construction or conversion of a naval vessel, that, when partial, progress, or other payments are made under such contract, the United States is secured by a lien upon work in progress and on property acquired for performance of the contract on account of all payments so made. The lien is paramount to all other liens.

(h) VESTING OF TITLE IN THE UNITED STATES.—If a contract paid by a method authorized under subsection (a)(1) provides for title to property to vest in the United States, the title to the property shall vest in accordance with the terms of the contract, regardless of any security interest in the property that is asserted before or after the contract is entered into.

(i) ACTION IN CASE OF FRAUD.—(1) In any case in which the remedy coordination official of an agency finds that there is substantial evidence that the request of a contractor for advance, partial, or progress payment under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the head of the agency reduce or suspend further payments to such contractor.

(2) The head of an agency receiving a recommendation under paragraph (1) in the case of a contractor's request for payment under a contract shall determine whether there is substantial evidence that the request is based on fraud. Upon making such a determination, the agency head may reduce or suspend further payments to the contractor under such contract.

(3) The extent of any reduction or suspension of payments by the head of an agency under paragraph (2) on the basis of fraud shall be reasonably commensurate with the anticipated loss to the United States resulting from the fraud.

(4) A written justification for each decision of the head of an agency whether to reduce or suspend payments under paragraph (2) and for each recommendation received by such agency head in connection with such decision shall be prepared and be retained in the files of such agency.

(5) The head of an agency shall prescribe procedures to ensure that, before such agency head decides to reduce or suspend payments in the case of a contractor under paragraph (2), the contractor is afforded notice of the proposed reduction or suspension and an opportunity to submit matters to the head of the agency in response to such proposed reduction or suspension.

(6) Not later than 180 days after the date on which the head of an agency reduces or suspends payments to a contractor under paragraph (2), the remedy coordination official of such agency shall—

(A) review the determination of fraud on which the reduction or suspension is based; and

(B) transmit a recommendation to the head of such agency whether the suspension or reduction should continue.

(7) The head of an agency shall prepare for each year a report containing the recommendations made by the remedy coordination official of that agency to reduce or suspend payments under paragraph (2), the actions taken on the recommendations and the reasons for such actions, and an assessment of the effects of such actions on the Federal Government. The Secretary of each military department shall transmit the annual report of such department to the Secretary of Defense. Each such report shall be available to any member of Congress upon request.

(8) This subsection applies to the agencies named in paragraphs (1), (2), (3), (4), and (6) of section 2303(a) of this title.

(9) The head of an agency may not delegate responsibilities under this subsection to any person in a position below level IV of the Executive Schedule.

(10) In this subsection, the term ''remedy coordination official'', with respect to an agency, means the person or entity in that agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 131; Pub. L. 85–800, § 9, Aug. 28, 1958, 72 Stat. 967; Pub. L. 93–155, title VIII, § 807(c), Nov. 16, 1973, 87 Stat. 616; Pub. L. 100–370, § 1(f)(1)(A), July 19, 1988, 102 Stat. 846; Pub. L. 101–510, div. A, title VIII, § 836(a), (b), title XIII, § 1322(a)(4), Nov. 5, 1990, 104 Stat. 1615, 1616, 1671; Pub. L. 102–25, title VII, § 701(d)(4), (j)(2)(A), Apr. 6, 1991, 105 Stat. 114, 116; Pub. L. 102–190, div. A, title X, § 1061(a)(10), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title X, § 1052(24), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title II, § 2001(a)–(g), Oct. 13, 1994, 108 Stat. 3301, 3302; Pub. L. 105–85, div. A, title VIII, § 802, Nov. 18, 1997, 111 Stat. 1831; Pub. L. 106–391, title III, § 306, Oct. 30, 2000, 114 Stat. 1592.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2307(a)	41:154(a).	Feb. 19, 1948, ch. 65, § 5, 62 Stat. 23.
2307(b)	41:154 (less (a)).	

In subsection (a), the words ''and appropriate'' are omitted as surplusage. The words ''whether or not the contract previously provided for such payments'' are substituted for the words ''heretofore or hereafter executed''.

In subsection (b), the words ''under subsection (a)'' are inserted for clarity. The words ''provide for'' are substituted for the words ''include as security provision for''. The words ''United States'' are substituted for the word ''Government''.

1988 ACT

Subsection (e) is based on Pub. L. 99–145, title IX, § 916, Nov. 8, 1985, 99 Stat. 688.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (i)(9), is set out in section 5315 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in subsec. (g) of this section were contained in sections 7312, 7364, and 7521 of this title prior to repeal by Pub. L. 103–355, § 2001(j)(1).

AMENDMENTS

2000—Subsec. (i)(8). Pub. L. 106–391 substituted ''(4), and (6)'' for ''and (4)''.

1997—Subsecs. (h), (i). Pub. L. 105–85 added subsec. (h) and redesignated former subsec. (h) as (i).

1994—Pub. L. 103–355, § 2001(a)(1), substituted ''Contract financing'' for ''Advance payments'' in section catchline.

Subsec. (a). Pub. L. 103–355, § 2001(a)(2), inserted heading.

Subsec. (a)(2). Pub. L. 103–355, § 2001(c), struck out ''bid'' before ''solicitations''.

Subsec. (b). Pub. L. 103–355, § 2001(a)(7), (b), added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 103–355, § 2001(a)(3), inserted heading.

Subsec. (c). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 103–355, § 2001(a)(4), inserted heading.

Subsec. (d). Pub. L. 103–355, § 2001(d), inserted before period at end ''and is effective immediately upon the first advancement of funds without filing, notice, or any other action by the United States''.

Pub. L. 103–355, § 2001(a)(7), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 103–355, § 2001(a)(5), inserted heading.

Subsec. (e). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (h).

Pub. L. 103–355, § 2001(a)(6), inserted heading.

Subsec. (e)(1). Pub. L. 103–355, § 2001(e)(1), substituted ''work accomplished that meets standards established under the contract'' for ''work, which meets standards of quality established under the contract, that has been accomplished''.

Subsec. (e)(3). Pub. L. 103–355, § 2001(e)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''This subsection does not apply to any contract for an amount not in excess of the amount of the small purchase threshold.''

Subsecs. (f), (g). Pub. L. 103–355, § 2001(f), (g), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 103–355, § 2001(a)(7), redesignated subsec. (e) as (h).

1992—Subsec. (e)(1). Pub. L. 102–484 substituted ''(1)'' for ''(*l*)'' as par. designation after ''(e)''.

1991—Subsec. (d)(3). Pub. L. 102–25, § 701(d)(4), substituted ''any contract for an amount not in excess of the amount of the small purchase threshold'' for ''contracts for amounts less than the maximum amount for small purchases specified in section 2304(g)(2) of this title''.

Subsec. (e). Pub. L. 102–25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

Subsec. (f). Pub. L. 102–190, which directed the substitution of ''(1)'' for ''(*l*)'' as par. designation after ''(f)'', could not be executed because ''(*l*)'' did not appear after ''(f)''.

Pub. L. 102–25, § 701(j)(2)(A), redesignated subsec. (f) as (e).

1990—Subsec. (d). Pub. L. 101–510, § 1322(a)(4), redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Payments under subsection (a) in the case of any contract, other than partial, progress, or other payments specifically provided for in such contract at the time such contract was initially entered into, may not exceed $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on

which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.''

Subsec. (e). Pub. L. 101–510, §1322(a)(4)(B), redesignated subsec. (e) as (d).

Pub. L. 101–510, §836(b), inserted at end of par. (1) ''The contractor shall provide such information and evidence as the Secretary of Defense determines necessary to permit the Secretary to carry out the preceding sentence.''

Subsec. (f). Pub. L. 101–510, §836(a), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–370 added subsec. (e).

1973—Subsec. (d). Pub. L. 93–155 added subsec. (d).

1958—Pub. L. 85–800 authorized advance or other payments under contracts for property or services by agency, authorized insertion in bid solicitations of provision limiting advance or progress payments to small business concerns, restricted payments under subsec. (a) to unpaid contract price, and reworded generally conditions for making advance payments.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 836(c) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §701(j)(2)(B), Apr. 6, 1991, 105 Stat. 116, provided that: ''The provisions of section 2307 of title 10, United States Code, that are added by the amendments made by subsections (a) and (b) shall apply with respect to contracts entered into on or after May 6, 1991.''

RELATIONSHIP OF 1994 AMENDMENT TO PROMPT PAYMENT REQUIREMENTS

Section 2001(h) of Pub. L. 103–355 provided that: ''The amendments made by this section [amending this section and section 7522 of this title and repealing sections 7312, 7364, and 7521 of this title] are not intended to impair or modify procedures required by the provisions of chapter 39 of title 31, United States Code, and the regulations issued pursuant to such provisions of law (as such procedures are in effect on the date of the enactment of this Act [Oct. 13, 1994]), except that the Government may accept payment terms offered by a contractor offering a commercial item.''

LIMITATIONS ON PROGRESS PAYMENTS

Pub. L. 99–145, title IX, §916, Nov. 8, 1985, 99 Stat. 688, which required Secretary of Defense to ensure that any progress payment under a defense contract be commensurate with work accomplished at standard of quality in contract, that such payments be limited to 80 percent of work accomplished so long as contract terms are indefinite, that this provision be waived for small purchases, and that this provision apply only to contracts for which solicitations were issued on or after 150 days after Nov. 8, 1985, was repealed and restated in subsec. (e) of this section by Pub. L. 100–370, §1(f)(1), July 19, 1988, 102 Stat. 846.

OBLIGATIONS ENTERED INTO BEFORE NOVEMBER 16, 1973

Section 807(e) of Pub. L. 93–155 provided that: ''The amendments made by this section [amending this section, section 1431 of Title 50, War and National Defense, and sections 468 and 2092 of Appendix to Title 50] shall not affect the carrying out of any contract, loan, guarantee, commitment, or other obligation entered into prior to the date of enactment of this section [Nov. 16, 1973].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2310, 2323, 7362 of this title; title 50 section 403c.

§ 2308. Buy-to-budget acquisition: end items

(a) AUTHORITY TO ACQUIRE ADDITIONAL END ITEMS.—Using funds available to the Department of Defense for the acquisition of an end item, the head of an agency making the acquisition may acquire a higher quantity of the end item than the quantity specified for the end item in a law providing for the funding of that acquisition if that head of an agency makes each of the following findings:

(1) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition.

(2) It is possible to acquire the higher quantity of the end item without additional funding because of production efficiencies or other cost reductions.

(3) The amount of the funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item.

(4) The amount so provided is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section. The regulations shall include, at a minimum, the following:

(1) The level of approval within the Department of Defense that is required for a decision to acquire a higher quantity of an end item under subsection (a).

(2) Authority (subject to subsection (a)) to acquire up to 10 percent more than the quantity of an end item approved in a justification and approval of the use of procedures other than competitive procedures for the acquisition of the end item under section 2304 of this title.

(c) NOTIFICATION OF CONGRESS.—The head of an agency is not required to notify Congress in advance regarding a decision under the authority of this section to acquire a higher quantity of an end item than is specified in a law described in subsection (a), but shall notify the congressional defense committees of the decision not later than 30 days after the date of the decision.

(d) WAIVER BY OTHER LAW.—A provision of law may not be construed as prohibiting the acquisition of a higher quantity of an end item under this section unless that provision of law—

(1) specifically refers to this section; and

(2) specifically states that the acquisition of the higher quantity of the end item is prohibited notwithstanding the authority provided in this section.

(e) DEFINITIONS.—(1) For the purposes of this section, a quantity of an end item shall be considered specified in a law if the quantity is specified either in a provision of that law or in any related representation that is set forth separately in a table, chart, or explanatory text in-

cluded in a joint explanatory statement or governing committee report accompanying the law.

(2) In this section:

(A) The term ''congressional defense committees'' means—

(i) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(ii) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) The term ''end item'' means a production product assembled, completed, and ready for issue or deployment.

(C) The term ''head of an agency'' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force.

(Added Pub. L. 107–314, div. A, title VIII, § 801(a)(1), Dec. 2, 2002, 116 Stat. 2600.)

PRIOR PROVISIONS

A prior section 2308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 131; Oct. 23, 1992, Pub. L. 102–484, div. A, title VIII, § 820(a), 106 Stat. 2458; May 31, 1993, Pub. L. 103–35, title II, § 201(e)(2), 107 Stat. 99; Nov. 30, 1993, Pub. L. 103–160, div. A, title IX, § 904(d)(1), 107 Stat. 1728, related to assignment and delegation of procurement functions and responsibilities, prior to repeal by Pub. L. 103–355, title I, § 1503(b)(1), title X, § 10001, Oct. 13, 1994, 108 Stat. 3297, 3404, effective Oct. 13, 1994, except as otherwise provided.

TIME FOR ISSUANCE OF FINAL REGULATIONS

Pub. L. 107–314, div. A, title VIII, § 801(b), Dec. 2, 2002, 116 Stat. 2602, provided that: ''The Secretary of Defense shall issue the final regulations under section 2308(b) of title 10, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002].''

§ 2309. Allocation of appropriations

(a) Appropriations available for procurement by an agency named in section 2303 of this title may, through administrative allotment, be made available for obligation for procurement by any other agency in amounts authorized by the head of the allotting agency and without transfer of funds on the books of the Department of the Treasury.

(b) A disbursing official of the allotting agency may make any disbursement chargeable to an allotment under subsection (a) upon a voucher certified by an officer or civilian employee of the procuring agency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 97–258, § 2(b)(1)(B), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2309(a)	41:159 (2d sentence).	Feb. 19, 1948, ch. 65, § 10 (less 1st sentence), 62 Stat. 25.
2309(b)	41:159 (less 1st and 2d sentences).	

In subsection (a), the words ''an agency named in section 2303 of this title'' are substituted for the words ''any such agency''.

In subsection (b), the words ''an allotment under subsection (a)'' are substituted for the words ''such allotments''.

AMENDMENTS

1982—Subsec. (b). Pub. L. 97–258 substituted ''disbursing official'' for ''disbursing officer''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2310. Determinations and decisions

(a) INDIVIDUAL OR CLASS DETERMINATIONS AND DECISIONS AUTHORIZED.—Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except to the extent expressly prohibited by another provision of law, for a class of purchases or contracts. Such determinations and decisions are final.

(b) WRITTEN FINDINGS REQUIRED.—(1) Each determination or decision under section 2306(g)(1), 2307(d), or 2313(c)(2)(B) of this title shall be based on a written finding by the person making the determination or decision. The finding shall set out facts and circumstances that support the determination or decision.

(2) Each finding referred to in paragraph (1) is final. The head of the agency making such finding shall maintain a copy of the finding for not less than 6 years after the date of the determination or decision.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 85–800, § 10, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, § 1(f), Sept. 10, 1962, 76 Stat. 529; Pub. L. 89–607, § 1(1), Sept. 27, 1966, 80 Stat. 850; Pub. L. 90–378, § 2, July 5, 1968, 82 Stat. 290; Pub. L. 98–369, div. B, title VII, § 2725, July 18, 1984, 98 Stat. 1193; Pub. L. 99–145, title XIII, § 1303(a)(16), Nov. 8, 1985, 99 Stat. 739; Pub. L. 103–355, title I, § 1504, Oct. 13, 1994, 108 Stat. 3297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2310(a)	41:156(a) (1st sentence).	Feb. 19, 1948, ch. 65, § 7(a) (1st sentence), (c), 62 Stat. 24.
2310(b)	41:156(c).	

In subsection (a), the words ''required * * * under'' are substituted for the words ''provided in''.

In subsection (b), the word ''person'' is substituted for the word ''official''. The words ''to which it applies'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section read as follows:

''(a) Determinations and decisions required to be made under this chapter by the head of an agency may be made for an individual purchase or contract or, except for determinations and decisions under section 2304 or 2305 of this title, for a class of purchases or contracts. Such a determination or decision, including a determination or decision under section 2304 or 2305 of this title, is final.

''(b) Each determination or decision under section 2306(c), 2306(g)(1), 2307(c), or 2313(c) of this title shall be based on a written finding by the person making the determination or decision, which finding shall set out facts and circumstances that—

''(1) clearly indicate why the type of contract selected under section 2306(c) of this title is likely to be less costly than any other type or that it is impracticable to obtain property or services of the kind or quality required except under such a contract;

''(2) support the findings required by section 2306(g)(1) of this title;

''(3) clearly indicate why advance payments under section 2307(c) of this title would be in the public interest; or

''(4) clearly indicate why the application of section 2313(b) of this title to a contract or subcontract with

a foreign contractor or foreign subcontractor would not be in the public interest.

Such a finding is final and shall be kept available in the agency for at least six years after the date of the determination or decision. A copy of the finding shall be submitted to the General Accounting Office with each contract to which it applies.''

1985—Subsec. (a). Pub. L. 99–145 inserted ''this'' after ''2305 of''.

1984—Subsec. (a). Pub. L. 98–369, §2725(1), inserted '', except for determinations and decisions under section 2304 or 2305 of title,'' and '', including a determination or decision under section 2304 or 2305 of this title,''.

Subsec. (b). Pub. L. 98–369, §2725(2), amended subsec. (b) generally, striking out requirement that determinations to negotiate contracts be based on written findings by the contracting officers making the determinations.

1968—Subsec. (b). Pub. L. 90–378 inserted ''section 2306(g)(1),'' after ''clauses (11)–(16) of section 2304(a), section 2306(c),'', and ''(3) support the findings required by section 2306(g)(1),'' after ''kind or quality required except under such a contract,'', and redesignated former cls. (3) to (5) as (4) to (6), respectively.

1966—Subsec. (b). Pub. L. 89–607 inserted reference to section 2313(c), added cl. (4), and redesignated former cl. (4) as (5).

1962—Subsec. (b). Pub. L. 87–653 substituted ''section 2306(c)'' for ''section 2306'', required decisions to negotiate contracts under section 2304(a)(2), (7), (8), (10) to (12) of this title to be based on a written finding by the person making the decision, which findings shall set out facts and circumstances illustrative of conditions described in section 2304(a)(11) to (16), indicate why the type of contract selected under section 2306(c) is likely to be less costly than any other or that its impracticable to obtain the required property or services except under such contract, indicate why advance payments under section 2307(c) would be in the public interest, or establish with respect to section 2304(a), (2), (7), (8), (10) to (12) that formal advertising would not have been feasible and practicable.

1958—Subsec. (b). Pub. L. 85–800 substituted ''2307(c)'' for ''2307(a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§ 2311. Assignment and delegation of procurement functions and responsibilities

(a) IN GENERAL.—Except to the extent expressly prohibited by another provision of law, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.

(b) PROCUREMENTS FOR OR WITH OTHER AGENCIES.—Subject to subsection (a), to facilitate the procurement of property and services covered by this chapter by each agency named in section 2303 of this title for any other agency, and to facilitate joint procurement by those agencies—

(1) the head of an agency may delegate functions and assign responsibilities relating to procurement to any officer or employee within such agency;

(2) the heads of two or more agencies may by agreement delegate procurement functions and assign procurement responsibilities from one agency to another of those agencies or to an officer or civilian employee of another of those agencies; and

(3) the heads of two or more agencies may create joint or combined offices to exercise procurement functions and responsibilities.

(c) APPROVAL OF TERMINATIONS AND REDUCTIONS OF JOINT ACQUISITION PROGRAMS.—(1) The Secretary of Defense shall prescribe regulations that prohibit each military department participating in a joint acquisition program approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics from terminating or substantially reducing its participation in such program without the approval of the Under Secretary.

(2) The regulations shall include the following provisions:

(A) A requirement that, before any such termination or substantial reduction in participation is approved, the proposed termination or reduction be reviewed by the Joint Requirements Oversight Council of the Department of Defense.

(B) A provision that authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to require a military department whose participation in a joint acquisition program has been approved for termination or substantial reduction to continue to provide some or all of the funding necessary for the acquisition program to be continued in an efficient manner.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 85–800, §11, Aug. 28, 1958, 72 Stat. 967; Pub. L. 87–653, §1(g), Sept. 10, 1962, 76 Stat. 529; Pub. L. 90–378, §3, July 5, 1968, 82 Stat. 290; Pub. L. 97–86, title IX, §§907(c), 909(f), Dec. 1, 1981, 95 Stat. 1117, 1120; Pub. L. 98–369, div. B, title VII, §2726, July 18, 1984, 98 Stat. 1194; Pub. L. 98–525, title XII, §1214, Oct. 19, 1984, 98 Stat. 2592; Pub. L. 98–577, title V, §505, Oct. 30, 1984, 98 Stat. 3087; Pub. L. 103–355, title I, §1503(a)(1), Oct. 13, 1994, 108 Stat. 3296; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2311	41:156(a) (less 1st sentence). 41:156(b).	Feb. 19, 1948, ch. 65, §7(a) (less 1st sentence), (b), 62 Stat. 24.

The words ''in his discretion and'' and ''including the making of such determinations and decisions'' are omitted as surplusage. The words ''except the power to make determinations and decisions'' are substituted for the words ''Except as provided in subsection (b) of this section'' and ''The power of the agency head to make the determinations or decisions specified in paragraphs (12)–(16) of section 151(c) of this title and in section 154(a) of this title shall not be delegable''.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2308 of this title prior to repeal by Pub. L. 103–355, § 1503(b)(1).

AMENDMENTS

2001—Subsec. (c)(1), (2)(B). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1994—Pub. L. 103–355 substituted ''Assignment and delegation of procurement functions and responsibilities'' for ''Delegation'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''Except as provided in section 2304(d)(2) of this title, the head of an agency may delegate, subject to his direction, to any other officer or official of that agency, any power under this chapter.''

1984—Pub. L. 98–577 struck out ''(a)'' before ''Except as provided in'' and struck out subsec. (b) which related to delegation of authority by heads of procuring activities of agencies of certain functions.

Pub. L. 98–525 designated existing provisions as subsec. (a) and added subsec. (b).

Pub. L. 98–369 inserted provision relating to the exception provided in section 2304(d)(2) of this title and struck out provision that the power to make determinations and decisions under cls. (11)–(16) of section 2304(a) of this title could not be delegated, but that the power to make a determination or decision under section 2304(a)(11) of this title could be delegated to any other officer of official of that agency who was responsible for procurement, and only for contracts requiring the expenditure of not more than $5,000,000.

1981—Pub. L. 97–86 struck out in first sentence cl. (1) designation and cl. (2) relating to authorizing of contracts in excess of three years under section 2306(g) of this title, and in second sentence substituted ''$5,000,000'' for ''$100,000''.

1968—Pub. L. 90–378 designated provisions after ''the power to make determinations and decisions'' as cl. (1) and added cl. (2).

1962—Pub. L. 87–653 substituted ''delegated to any other officer'' for ''delegated only to a chief officer'' and ''$100,000'' for ''$25,000''.

1958—Pub. L. 85–800 struck out '', or section 2307(a)'' after ''of section 2304(a)'' in first sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1962 AMENDMENT

For effective date of amendment by Pub. L. 87–653, see section 1(h) of Pub. L. 87–653, set out as a note under section 2304 of this title.

§ 2312. Remission of liquidated damages

Upon the recommendation of the head of an agency, the Secretary of the Treasury may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract, made by that agency, that provides for such damages.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 104–316, title II, § 202(c), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2312	41:155.	Feb. 19, 1948, ch. 65, § 6, 62 Stat. 24.

The words ''a contract, made by that agency, that provides for'' are substituted for the words ''any contract made on behalf of the Government by the agency head or by officers authorized by him so to do includes a provision''.

AMENDMENTS

1996—Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 403c.

§ 2313. Examination of records of contractor

(a) AGENCY AUTHORITY.—(1) The head of an agency, acting through an authorized representative, is authorized to inspect the plant and audit the records of—

(A) a contractor performing a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of such contracts, made by that agency under this chapter; and

(B) a subcontractor performing any cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable subcontract or any combination of such subcontracts under a contract referred to in subparagraph (A).

(2) The head of an agency, acting through an authorized representative, is authorized, for the purpose of evaluating the accuracy, completeness, and currency of certified cost or pricing data required to be submitted pursuant to section 2306a of this title with respect to a contract or subcontract, to examine all records of the contractor or subcontractor related to—

(A) the proposal for the contract or subcontract;

(B) the discussions conducted on the proposal;

(C) pricing of the contract or subcontract; or

(D) performance of the contract or subcontract.

(b) DCAA SUBPOENA AUTHORITY.—(1) The Director of the Defense Contract Audit Agency (or any successor agency) may require by subpoena the production of any records of a contractor that the Secretary of Defense is authorized to audit or examine under subsection (a).

(2) Any such subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of an appropriate United States district court.

(3) The authority provided by paragraph (1) may not be redelegated.

(c) COMPTROLLER GENERAL AUTHORITY.—(1) Except as provided in paragraph (2), each contract awarded after using procedures other than sealed bid procedures shall provide that the Comptroller General and his representatives are authorized to examine any records of the contractor, or any of its subcontractors, that directly pertain to, and involve transactions relating to, the contract or subcontract.

(2) Paragraph (1) does not apply to a contract or subcontract with a foreign contractor or foreign subcontractor if the head of the agency concerned determines, with the concurrence of the Comptroller General or his designee, that the application of that paragraph to the contract or subcontract would not be in the public interest. However, the concurrence of the Comptroller General or his designee is not required—

(A) where the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination; and

(B) where the head of the agency determines, after taking into account the price and availability of the property and services from United States sources, that the public interest would be best served by not applying paragraph (1).

(3) Paragraph (1) may not be construed to require a contractor or subcontractor to create or maintain any record that the contractor or subcontractor does not maintain in the ordinary course of business or pursuant to another provision of law.

(d) LIMITATION ON AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform an audit of indirect costs under a contract, subcontract, or modification before or after entering into the contract, subcontract, or modification in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.

(e) LIMITATION.—The authority of the head of an agency under subsection (a), and the authority of the Comptroller General under subsection (c), with respect to a contract or subcontract shall expire three years after final payment under such contract or subcontract.

(f) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section does not apply to the following contracts:

(1) Contracts for utility services at rates not exceeding those established to apply uniformly to the public, plus any applicable reasonable connection charge.

(2) A contract or subcontract that is for an amount not greater than the simplified acquisition threshold.

(g) FORMS OF ORIGINAL RECORD STORAGE.—Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form.

(h) USE OF IMAGES OF ORIGINAL RECORDS.—The head of an agency shall not require a contractor or subcontractor to provide original records in an audit carried out pursuant to this section if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves the integrity, reliability, and security of the original records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(i) RECORDS DEFINED.—In this section, the term ''records'' includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(Aug. 10, 1956, ch. 1041, 70A Stat. 132; Pub. L. 89–607, §1(2), Sept. 27, 1966, 80 Stat. 850; Pub. L. 98–369, div. B, title VII, §2727(c), July 18, 1984, 98 Stat. 1195; Pub. L. 99–145, title IX, §935, Nov. 8, 1985, 99 Stat. 700; Pub. L. 100–26, §7(g)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 101–510, div. A, title XIII, §1301(9), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–355, title II, §2201(a)(1), title IV, §4102(c), Oct. 13, 1994, 108 Stat. 3316, 3340; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title VIII, §808(a), Sept. 23, 1996, 110 Stat. 2607; Pub. L. 106–65, div. A, title X, §1032(a)(2), Oct. 5, 1999, 113 Stat. 751.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2313(a)	41:153(b) (words after semicolon of last sentence).	Feb. 19, 1948, ch. 65, §4(b) (words after semicolon of last sentence), 62 Stat. 23.
2313(b)	41:153(c).	Feb. 19, 1948, ch. 65, §4(c); added Oct. 31, 1951, ch. 652 (as applicable to §4(c); of the Act of Feb. 19, 1948, ch. 65), 65 Stat. 700.

In subsection (a), the words ''An agency named in section 2303 of this title'' are substituted for the words ''a procuring agency''. The words ''made by that agency under this chapter'' are inserted for clarity.

In subsection (b), the word ''under'' is substituted for the words ''pursuant to authority contained in''. The word ''provide'' is substituted for the words ''include a clause to the effect''. The words ''are entitled'' are substituted for the words ''shall * * * have * * * the right''. The words ''of the United States'', ''duly authorized'', ''have access to and'', and ''engaged in the performance of'' are omitted as surplusage.

AMENDMENTS

1999—Subsec. (b)(4). Pub. L. 106–65 struck out par. (4) which read as follows: ''The Director (or any successor official) shall submit an annual report to the Secretary of Defense on the exercise of such authority during the preceding year and the reasons why such authority was exercised in any instance. The Secretary shall forward a copy of each such report to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives.''

1996—Subsec. (b)(4). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d). Pub. L. 104–201 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''LIMITATION ON PREAWARD AUDITS RELATING TO INDIRECT COSTS.—The head of an agency may not perform a preaward audit to evaluate proposed indirect costs under any contract, subcontract, or modification to be entered into in accordance with this chapter in any case in which the contracting officer determines that the objectives of the audit can reasonably be met by ac-

cepting the results of an audit conducted by any other department or agency of the Federal Government within one year preceding the date of the contracting officer's determination.''

1994—Pub. L. 103–355, §2201(a)(1), amended section generally, striking out ''of books'' before ''and records'' in section catchline, and substituting subsecs. (a) to (i) for former subsecs. (a) to (d).

Subsec. (f)(2). Pub. L. 103–355, §4102(c), added par. (2).

1990—Subsec. (c). Pub. L. 101–510 struck out after cl. (2) ''If subsection (b) is not applied to a contract or subcontract based on a determination under clause (2), a written report shall be furnished to the Congress.''

1987—Subsec. (d)(1). Pub. L. 100–26 substituted ''section 2306a'' for ''section 2306(f)''.

1985—Subsec. (d). Pub. L. 99–145 added subsec. (d).

1984—Subsec. (b). Pub. L. 98–369 substituted ''awarded after using procedures other than sealed bid procedures'' for ''negotiated under this chapter''.

1966—Subsec. (b). Pub. L. 89–607, §1(2)(A), substituted ''Except as provided in subsection (c), each'' for ''Each''.

Subsec. (c). Pub. L. 89–607, §1(2)(B), added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98–369, set out as a note under section 251 of Title 41, Public Contracts.

EXEMPTION OF FUNCTIONS

Functions with respect to purchases authorized to be made outside limits of United States or District of Columbia under Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

FOREIGN CONTRACTORS

Secretaries of Defense, Army, Navy, or Air Force, or their designees, to determine, prior to exercising authority provided in amendment of this section by Pub. L. 89–607 to exempt certain contracts with foreign contractors from requirement of an examination-of-records clause, that all reasonable efforts have been made to include such examination-of-records clause, as required by par. (11) of Part I of Ex. Ord. No. 10789, and that alternate sources of supply are not reasonably available, see par. (11) of Part I of Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended, set out as a note under section 1431 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306a, 2310, 2343 of this title; title 50 section 403c.

§ 2314. Laws inapplicable to agencies named in section 2303 of this title

Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13) do not apply to the procurement or sale of property or services by the agencies named in section 2303 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 133; Pub. L. 96–513, title V, §511(78), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 103–160, div. A, title VIII, §822(b)(2), Nov. 30, 1993, 107 Stat. 1706.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2314	41:160.	Feb. 19, 1948, ch. 65, §11(b), 62 Stat. 25.

AMENDMENTS

1993—Pub. L. 103–160 inserted ''or sale'' after ''procurement''.

1980—Pub. L. 96–513 substituted ''Sections 3709 and 3735 of the Revised Statutes (41 U.S.C. 5 and 13)'' for ''Sections 5, 6, 6a, and 13 of title 41''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2315. Law inapplicable to the procurement of automatic data processing equipment and services for certain defense purposes

(a) For the purposes of subtitle III of title 40, the term ''national security systems'' means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which—

(1) involves intelligence activities;

(2) involves cryptologic activities related to national security;

(3) involves the command and control of military forces;

(4) involves equipment that is an integral part of a weapon or weapons system; or

(5) subject to subsection (b), is critical to the direct fulfillment of military or intelligence missions.

(b) Subsection (a)(5) does not include procurement of automatic data processing equipment or services to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(Added Pub. L. 97–86, title IX, §908(a)(1), Dec. 1, 1981, 95 Stat. 1117; amended Pub. L. 97–295, §1(25), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 104–106, div. E, title LVI, §5601(c), Feb. 10, 1996, 110 Stat. 699; Pub. L. 104–201, div. A, title X, §1074(b)(4)(B), Sept. 23, 1996, 110 Stat. 2660; Pub. L. 105–85, div. A, title X, §1073(a)(49), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–217, §3(b)(5), Aug. 21, 2002, 116 Stat. 1295.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217 substituted ''subtitle III of title 40'' for ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–85 substituted ''division E of the Clinger-Cohen Act of 1996 (40 U.S.C. 1401 et seq.)'' for ''the Information Technology Management Reform Act of 1996''.

1996—Subsec. (a). Pub. L. 104–106, as amended by Pub. L. 104–201, substituted ''For the purposes of the Information Technology Management Reform Act of 1996, the term 'national security systems' means those telecommunications and information systems operated by the Department of Defense, the functions, operation or use of which'' for ''Section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) is not applicable to the procurement by the Department of Defense of automatic data processing equipment or services if the function, operation, or use of the equipment or services''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''(40 U.S.C. 759)'' for ''(40 U.S.C. 795)''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, Feb. 10, 1996, 110 Stat. 702.

EFFECTIVE DATE

Section 908(b) of Pub. L. 97–86 provided that: ''Section 2315 of title 10, United States Code, as added by subsection (a), does not apply to a contract made before the date of the enactment of this Act [Dec. 1, 1981].''

LIMITATION REGARDING TELECOMMUNICATIONS REQUIREMENTS

Pub. L. 103–337, div. A, title X, §1075, Oct. 5, 1994, 108 Stat. 2861, provided that:

''(a) LIMITATION.—No funds available to the Department of Defense or any other Executive agency may be expended to provide for meeting Department of Defense telecommunications requirements through the telecommunications procurement known as 'FTS–2000' or through any other Government-wide telecommunications procurement until—

''(1) the Secretary of Defense submits to the Congress a report containing—

''(A) a certification by the Secretary that the FTS–2000 procurement or the other telecommunications procurement will provide assured, secure telecommunications support (including associated telecommunications services) for Department of Defense activities; and

''(B) a description of how the procurement will be implemented and managed to meet defense information infrastructure requirements, including requirements to support deployed forces and intelligence activities; and

''(2) 30 days elapse after the date on which such report is received by the committees.

''(b) DEFINITIONS.—In this section:

''(1) The term 'defense telecommunications requirements' means requirements for telecommunications equipment and services that, if procured by the Department of Defense, would be exempt from the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759) pursuant to section 2315 of title 10, United States Code.

''(2) The term 'Executive agency' has the meaning given such term in section 105 of title 5, United States Code.

''(3) The term 'procurement' has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

''(c) EFFECT ON OTHER LAW.—Nothing in this section may be construed as modifying or superseding, or as intended to impair or restrict authorities or responsibilities under—

''(1) section 111 of the Federal Property and Administrative Services Act of 1949 ([former] 40 U.S.C. 759); or

''(2) section 620 of Public Law 103–123 [107 Stat. 1264].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 5527.

§ 2316. Disclosure of identity of contractor

The Secretary of Defense may disclose the identity or location of a person awarded a contract by the Department of Defense to any individual, including a Member of Congress, only after the Secretary makes a public announcement identifying the contractor. When the identity of a contractor is to be made public, the Secretary shall announce publicly that the contract has been awarded and the identity of the contractor.

(Added Pub. L. 97–295, §1(26)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2316	10:2304 (note).	Oct. 7, 1970, Pub. L. 91–441, §507, 84 Stat. 913.

The words ''company, or corporation'' are omitted as included in ''person'' because of section 1:1. The words ''On and after the date of enactment of this Act'' are omitted as executed. The word ''contractor'' is substituted for ''person, company, or corporation to whom such contract has been awarded'' and ''person, company, or corporation to whom any defense contract has been awarded'' to eliminate unnecessary words. The words ''and the identity of the contractor'' are substituted for ''and to whom it was awarded'' for clarity.

[§ 2317. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(2), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 98–525, title XII, §1215, Oct. 19, 1984, 98 Stat. 2592, related to encouragement of competition and cost savings.

§ 2318. Advocates for competition

(a)(1) In addition to the advocates for competition established or designated pursuant to section 20(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a)), the Secretary of Defense shall designate an officer or employee of the Defense Logistics Agency to serve as the advocate for competition of the agency.

(2) The advocate for competition of the Defense Logistics Agency shall carry out the responsibilities and functions provided for in sections 20(b) and 20(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(b), (c)).

(b) Each advocate for competition of an agency named in section 2303(a) of this title shall be a general or flag officer if a member of the armed forces or a grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule), if a civilian employee and shall be designated to serve for a minimum of two years.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, §7(d)(4), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–25, title VII, §701(f)(1), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–355, title I, §1031, Oct. 13, 1994, 108 Stat. 3260.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–355 struck out subsec. (c) which read as follows: ''Each advocate for competition of an agency of the Department of Defense shall transmit to the Secretary of Defense a report describing his activities during the preceding year. The report of each advocate for competition shall be included in the annual report of the Secretary of Defense required by section 23 of the Office of Federal Procurement Policy Act (41 U.S.C. 419), in the form in which it was submitted to the Secretary.''

1991—Subsec. (c). Pub. L. 102–25 substituted ''section 23'' for ''section 21''.

1987—Subsec. (a)(1). Pub. L. 100–26, §7(d)(4)(A), inserted ''(41 U.S.C. 418(a))'' after ''Policy Act''.

Subsec. (a)(2). Pub. L. 100–26, §7(d)(4)(B), inserted ''(41 U.S.C. 418(b), (c))'' after ''Policy Act''.

Subsec. (c). Pub. L. 100–26, § 7(d)(4)(C), inserted ''(41 U.S.C. 419)'' after ''Policy Act''.

EFFECTIVE DATE

Section 1216(c)(1) of Pub. L. 98–525 provided that: ''Section 2318 of title 10, United States Code (as added by subsection (a)), shall take effect on April 1, 1985.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 2319. Encouragement of new competitors

(a) In this section, the term ''qualification requirement'' means a requirement for testing or other quality assurance demonstration that must be completed by an offeror before award of a contract.

(b) Except as provided in subsection (c), the head of the agency shall, before establishing a qualification requirement—

(1) prepare a written justification stating the necessity for establishing the qualification requirement and specify why the qualification requirement must be demonstrated before contract award;

(2) specify in writing and make available to a potential offeror upon request all requirements which a prospective offeror, or its product, must satisfy in order to become qualified, such requirements to be limited to those least restrictive to meet the purposes necessitating the establishment of the qualification requirement;

(3) specify an estimate of the costs of testing and evaluation likely to be incurred by a potential offeror in order to become qualified;

(4) ensure that a potential offeror is provided, upon request and on a reimbursable basis, a prompt opportunity to demonstrate its ability to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned or of another agency obtained through interagency agreement, or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency);

(5) if testing and evaluation services are provided under contract to the agency for the purposes of clause (4), provide to the extent possible that such services be provided by a contractor who is not expected to benefit from an absence of additional qualified sources and who shall be required in such contract to adhere to any restriction on technical data asserted by the potential offeror seeking qualification; and

(6) ensure that a potential offeror seeking qualification is promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.

(c)(1) Subsection (b) of this section does not apply with respect to a qualification requirement established by statute or administrative action before October 19, 1984, unless such requirement is a qualified products list.

(2)(A) Except as provided in subparagraph (B), if it is unreasonable to specify the standards for qualification which a prospective offeror or its product must satisfy, a determination to that effect shall be submitted to the advocate for competition of the procuring activity responsible for the purchase of the item subject to the qualification requirement. After considering any comments of the advocate for competition reviewing such determination, the head of the purchasing office may waive the requirements of clauses (2) through (6) of subsection (b) for up to two years with respect to the item subject to the qualification requirement.

(B) The waiver authority provided in this paragraph does not apply with respect to a qualified products list.

(3) A potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror (A) is not on a qualified bidders list, qualified manufacturers list, or qualified products list, or (B) has not been identified as meeting a qualification requirement established after October 19, 1984, if the potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror or its product meets the standards established for qualification or can meet such standards before the date specified for award of the contract.

(4) Nothing contained in this subsection requires the referral of an offer to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) if the basis for the referral is a challenge by the offeror to either the validity of the qualification requirement or the offeror's compliance with such requirement.

(5) The head of an agency need not delay a proposed procurement in order to comply with subsection (b) or in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification.

(6) The requirements of subsection (b) also apply before enforcement of any qualified products list, qualified manufacturers list, or qualified bidders list.

(d)(1) If the number of qualified sources or qualified products available to compete actively for an anticipated future requirement is fewer than two actual manufacturers or the products of two actual manufacturers, respectively, the head of the agency concerned shall—

(A) periodically publish notice in the Commerce Business Daily soliciting additional sources or products to seek qualification, unless the contracting officer determines that such publication would compromise national security; and

(B) bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which

could reasonably be expected to compete for a contract for that requirement, but such costs may be borne only if the head of the agency determines that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time considering the duration and dollar value of anticipated future requirements.

(2) The head of an agency shall require a prospective contractor requesting the United States to bear testing and evaluation costs under paragraph (1)(B) to certify as to its status as a small business concern under section 3 of the Small Business Act (15 U.S.C. 632).

(e) Within seven years after the establishment of a qualification requirement under subsection (b) or within seven years following an agency's enforcement of a qualified products list, qualified manufacturers list, or qualified bidders list, any such qualification requirement shall be examined and revalidated in accordance with the requirements of subsection (b). The preceding sentence does not apply in the case of a qualification requirement for which a waiver is in effect under subsection (c)(2).

(f) Except in an emergency as determined by the head of the agency, whenever the head of the agency determines not to enforce a qualification requirement for a solicitation, the agency may not thereafter enforce that qualification requirement unless the agency complies with the requirements of subsection (b).

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2593; amended Pub. L. 100–26, §7(d)(5), (i)(4), (k)(3), Apr. 21, 1987, 101 Stat. 281, 282, 284.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–26, §7(k)(3), inserted ''the term'' after ''In this section,''.

Subsec. (c)(1), (3). Pub. L. 100–26, §7(i)(4), substituted ''October 19, 1984,'' for ''the date of the enactment of the Defense Procurement Reform Act of 1984''.

Subsec. (c)(4). Pub. L. 100–26, §7(d)(5)(A), inserted ''(15 U.S.C. 637(b)(7))'' after ''Small Business Act''.

Subsec. (d)(2). Pub. L. 100–26, §7(d)(5)(B), inserted ''(15 U.S.C. 632)'' after ''Small Business Act''.

EFFECTIVE DATE

Section 1216(c)(2) of Pub. L. 98–525 provided that: ''Sections 2319, 2320, and 2321 of title 10, United States Code (as added by subsection (a)), shall apply with respect to solicitations issued after the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2320. Rights in technical data

(a)(1) The Secretary of Defense shall prescribe regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data pertaining to an item or process. Such regulations shall be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation. Such regulations may not impair any right of the United States or of any contractor or subcontractor with respect to patents or copyrights or any other right in technical data otherwise established by law. Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(2) Such regulations shall include the following provisions:

(A) In the case of an item or process that is developed by a contractor or subcontractor exclusively with Federal funds (other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply), the United States shall have the unlimited right to—

(i) use technical data pertaining to the item or process; or

(ii) release or disclose the technical data to persons outside the government or permit the use of the technical data by such persons.

(B) Except as provided in subparagraphs (C) and (D), in the case of an item or process that is developed by a contractor or subcontractor exclusively at private expense, the contractor or subcontractor may restrict the right of the United States to release or disclose technical data pertaining to the item or process to persons outside the government or permit the use of the technical data by such persons.

(C) Subparagraph (B) does not apply to technical data that—

(i) constitutes a correction or change to data furnished by the United States;

(ii) relates to form, fit, or function;

(iii) is necessary for operation, maintenance, installation, or training (other than detailed manufacturing or process data); or

(iv) is otherwise publicly available or has been released or disclosed by the contractor or subcontractor without restriction on further release or disclosure.

(D) Notwithstanding subparagraph (B), the United States may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(i) such release, disclosure, or use—

(I) is necessary for emergency repair and overhaul; or

(II) is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the United States and is required for evaluational or informational purposes;

(ii) such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(iii) the contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

(E) In the case of an item or process that is developed in part with Federal funds and in part at private expense, the respective rights

of the United States and of the contractor or subcontractor in technical data pertaining to such item or process shall be established as early in the acquisition process as practicable (preferably during contract negotiations) and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall be based upon consideration of all of the following factors:

(i) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631).

(ii) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

(iii) The interest of the United States in encouraging contractors to develop at private expense items for use by the Government.

(iv) Such other factors as the Secretary of Defense may prescribe.

(F) A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract—

(i) to sell or otherwise relinquish to the United States any rights in technical data except—

(I) rights in technical data described in subparagraph (C); or

(II) under the conditions described in subparagraph (D); or

(ii) to refrain from offering to use, or from using, an item or process to which the contractor is entitled to restrict rights in data under subparagraph (B).

(G) The Secretary of Defense may—

(i) negotiate and enter into a contract with a contractor or subcontractor for the acquisition of rights in technical data not otherwise provided under subparagraph (C) or (D), if necessary to develop alternative sources of supply and manufacture;

(ii) agree to restrict rights in technical data otherwise accorded to the United States under this section if the United States receives a royalty-free license to use, release, or disclose the data for purposes of the United States (including purposes of competitive procurement); or

(iii) permit a contractor or subcontractor to license directly to a third party the use of technical data which the contractor is otherwise allowed to restrict, if necessary to develop alternative sources of supply and manufacture.

(3) The Secretary of Defense shall define the terms ''developed'', ''exclusively with Federal funds'', and ''exclusively at private expense'' in regulations prescribed under paragraph (1). In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of definitions under this paragraph.

(b) Regulations prescribed under subsection (a) shall require that, whenever practicable, a contract for supplies or services entered into by an agency named in section 2303 of this title contain appropriate provisions relating to technical data, including provisions—

(1) defining the respective rights of the United States and the contractor or subcontractor (at any tier) regarding any technical data to be delivered under the contract and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f);

(2) specifying the technical data, if any, to be delivered under the contract and delivery schedules for such delivery;

(3) establishing or referencing procedures for determining the acceptability of technical data to be delivered under the contract;

(4) establishing separate contract line items for the technical data, if any, to be delivered under the contract;

(5) to the maximum practicable extent, identifying, in advance of delivery, technical data which is to be delivered with restrictions on the right of the United States to use such data;

(6) requiring the contractor to revise any technical data delivered under the contract to reflect engineering design changes made during the performance of the contract and affecting the form, fit, and function of the items specified in the contract and to deliver such revised technical data to an agency within a time specified in the contract;

(7) requiring the contractor to furnish written assurance at the time the technical data is delivered or is made available that the technical data is complete and accurate and satisfies the requirements of the contract concerning technical data;

(8) establishing remedies to be available to the United States when technical data required to be delivered or made available under the contract is found to be incomplete or inadequate or to not satisfy the requirements of the contract concerning technical data; and

(9) authorizing the head of the agency to withhold payments under the contract (or exercise such other remedies as the head of the agency considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.

(c) Nothing in this section or in section 2305(d) of this title prohibits the Secretary of Defense from—

(1) prescribing standards for determining whether a contract entered into by the Department of Defense shall provide for a time to be specified in the contract after which the

United States shall have the right to use (or have used) for any purpose of the United States all technical data required to be delivered to the United States under the contract or providing for such a period of time (not to exceed 7 years) as a negotiation objective; or

(2) prescribing reasonable and flexible guidelines, including negotiation objectives, for the conduct of negotiations regarding the respective rights in technical data of the United States and the contractor.

(d) The Secretary of Defense shall by regulation establish programs which provide domestic business concerns an opportunity to purchase or borrow replenishment parts from the United States for the purpose of design replication or modification, to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States. Nothing in this subsection limits the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restriction otherwise required by law.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2595; amended Pub. L. 98–577, title III, §301(b), Oct. 30, 1984, 98 Stat. 3076; Pub. L. 99–145, title IX, §961(d)(1), Nov. 8, 1985, 99 Stat. 703; Pub. L. 99–500, §101(c) [title X, §953(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–169, and Pub. L. 99–591, §101(c) [title X, §953(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–169; Pub. L. 99–661, div. A, title IX, formerly title IV, §953(a), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §7(a)(4), Apr. 21, 1987, 101 Stat. 275; Pub. L. 100–180, div. A, title VIII, §808(a), (b), Dec. 4, 1987, 101 Stat. 1128, 1130; Pub. L. 101–189, div. A, title VIII, §853(b)(2), Nov. 29, 1989, 103 Stat. 1518; Pub. L. 103–355, title VIII, §8106(a), Oct. 13, 1994, 108 Stat. 3393.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–355 inserted before semicolon at end ''and providing that, in the case of a contract for a commercial item, the item shall be presumed to be developed at private expense unless shown otherwise in accordance with section 2321(f)''.

1989—Subsec. (a)(4). Pub. L. 101–189 struck out par. (4) which provided that for purposes of this subsection, the term ''Federal Acquisition Regulation'' means the single system of Government-wide procurement regulations as defined in section 4(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)).

1987—Subsec. (a)(1). Pub. L. 100–180, §808(a)(1), inserted at end ''Such regulations also may not impair the right of a contractor or subcontractor to receive from a third party a fee or royalty for the use of technical data pertaining to an item or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.''

Subsec. (a)(2)(A). Pub. L. 100–26, §7(a)(4)(A), inserted ''(other than an item or process developed under a contract or subcontract to which regulations under section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2)) apply)'' after ''Federal funds''.

Subsec. (a)(2)(E). Pub. L. 100–180, §808(a)(2), in introductory provisions, substituted ''established'' for ''agreed upon'', struck out comma after ''negotiations)'' and inserted in lieu ''and shall be based upon negotiations between the United States and the contractor, except in any case in which the Secretary of Defense determines, on the basis of criteria established in the regulations, that negotiations would not be practicable. The establishment of such rights shall be'', and added cl. (iv).

Subsec. (a)(2)(F). Pub. L. 100–180, §808(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''A contractor or subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract, to sell or otherwise relinquish to the United States any rights in technical data except—

''(i) rights in technical data described in subparagraph (C); or

''(ii) under the conditions described in subparagraph (D).''

Subsec. (a)(2)(G)(i). Pub. L. 100–180, §808(a)(4)(A), substituted ''not otherwise provided under subparagraph (C) or (D),'' for ''pertaining to an item or process developed by such contractor or subcontractor exclusively at private expense'' and struck out ''or'' at end.

Subsec. (a)(2)(G)(ii). Pub. L. 100–180, §808(a)(4)(B), substituted ''this section'' for ''such regulations'' and ''; or'' for period at end.

Pub. L. 100–26, §7(a)(4)(B), substituted ''in technical data otherwise accorded to the United States under such regulations'' for ''of the United States in technical data pertaining to an item or process developed entirely or in part with Federal funds''.

Subsec. (a)(2)(G)(iii). Pub. L. 100–180, §808(a)(4)(C), added cl. (iii).

Subsec. (a)(3). Pub. L. 100–180, §808(a)(5), substituted '', 'exclusively with Federal funds', and 'exclusively at private expense' '' for ''and 'private expense' '' and inserted at end ''In defining such terms, the Secretary shall specify the manner in which indirect costs shall be treated and shall specify that amounts spent for independent research and development and bid and proposal costs shall not be considered to be Federal funds for the purposes of definitions under this paragraph.''

Subsec. (c). Pub. L. 100–180, §808(b), substituted ''from—'' for ''from'', designated existing provisions beginning with ''prescribing standards'' as par. (1), and added par. (2).

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsec. (a) identically, substituting provision that regulations to define the legitimate interest of the United States and of a contractor or subcontractor in technical data be included in regulations of the Department of Defense prescribed as part of the Federal Acquisition Regulation for provision that such regulations define the legitimate proprietary interest of the United States and a contractor and be part of the single system of Government-wide procurement regulations, detailed what such regulations must contain if the item or process is developed exclusively with Federal funds, exclusively with private funds, or partly with Federal funds and partly with private funds, inserted provision relating to relinquishment of rights in data to the United States, directed the Secretary of Defense to define ''developed'' and ''private expense'', and defined ''Federal Acquisition Regulation''.

1985—Subsec. (a)(1). Pub. L. 99–145 substituted ''the item or process to which the technical data pertains'' for ''the technical data''.

1984—Subsec. (a). Pub. L. 98–577 substituted ''in regulations of the Department of Defense prescribed as part'' for ''in regulations prescribed as part'' in text preceding par. (1).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 808(c) of Pub. L. 100–180 provided that: ''The amendments made by this section [amending this section] shall take effect on the earlier of—

''(1) the last day of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987]; or

''(2) the date on which regulations are prescribed and made effective to implement such amendments.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 953(e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 953(e) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2321 of this title] shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

GOVERNMENT-INDUSTRY COMMITTEE ON RIGHTS IN TECHNICAL DATA

Pub. L. 102–190, div. A, title VIII, § 807, Dec. 5, 1991, 105 Stat. 1421, as amended by Pub. L. 102–484, div. A, title VIII, § 814, Oct. 23, 1992, 106 Stat. 2454; Pub. L. 105–85, div. A, title X, § 1073(d)(3), Nov. 18, 1997, 111 Stat. 1905, provided that not later than Sept. 15, 1992, the Secretary of Defense was to prescribe final regulations required by subsec. (a) of this section that supersede the interim regulations prescribed before Dec. 5, 1991, for the purposes of this section and contained various provisions relating to a government-industry advisory committee, reports to Congress, publication of the regulations, and application of the regulations.

CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT

Pub. L. 102–190, div. A, title VIII, § 808, Dec. 5, 1991, 105 Stat. 1423, required Secretary of Defense to prescribe regulations ensuring that any Department of Defense employee or member of the armed forces with an appropriate security clearance who is engaged in oversight of an acquisition program maintains control of the employee's or member's work product, provided that procedures for protecting unauthorized disclosure of classified information by contractors do not require such an employee or member to relinquish control of his or her work product to any such contractor, required implementing regulations not later than 120 days after Dec. 5, 1991, and provided that this section would cease to be effective on Sept. 30, 1992.

DEADLINE FOR REVISION OF REGULATIONS

Section 101(c) [title X, § 953(d)] of Pub. L. 99–500 and Pub. L. 99–591, and section 953(d) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, required that proposed regulations under subsec. (a)(1) of this section be published in Federal Register for comment not later than 90 days after Oct. 18, 1986, and that proposed final regulations be published in Federal Register not later than 180 days after Oct. 18, 1986.

§ 2321. Validation of proprietary data restrictions

(a) CONTRACTS COVERED BY SECTION.—This section applies to any contract for supplies or services entered into by the Department of Defense that includes provisions for the delivery of technical data.

(b) CONTRACTOR JUSTIFICATION FOR RESTRICTIONS.—A contract subject to this section shall provide that a contractor under the contract and any subcontractor under the contract at any tier shall be prepared to furnish to the contracting officer a written justification for any use or release restriction (as defined in subsection (i)) asserted by the contractor or subcontractor.

(c) REVIEW OF RESTRICTIONS.—(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section.

(2) The review of an asserted use or release restriction under paragraph (1) shall be conducted before the end of the three-year period beginning on the later of—

(A) the date on which final payment is made on the contract under which the technical data is required to be delivered; or

(B) the date on which the technical data is delivered under the contract.

(d) CHALLENGES TO RESTRICTIONS.—(1) The Secretary of Defense may challenge a use or release restriction asserted with respect to technical data by a contractor or subcontractor at any tier under a contract subject to this section if the Secretary finds that—

(A) reasonable grounds exist to question the current validity of the asserted restriction; and

(B) the continued adherence by the United States to the asserted restriction would make it impracticable to procure the item to which the technical data pertain competitively at a later time.

(2)(A) A challenge to an asserted use or release restriction may not be made under paragraph (1) after the end of the three-year period described in subparagraph (B) unless the technical data involved—

(i) are publicly available;

(ii) have been furnished to the United States without restriction; or

(iii) have been otherwise made available without restriction.

(B) The three-year period referred to in subparagraph (A) is the three-year period beginning on the later of—

(i) the date on which final payment is made on the contract under which the technical data are required to be delivered; or

(ii) the date on which the technical data are delivered under the contract.

(3) If the Secretary challenges an asserted use or release restriction under paragraph (1), the Secretary shall provide written notice of the challenge to the contractor or subcontractor asserting the restriction. Any such notice shall—

(A) state the specific grounds for challenging the asserted restriction;

(B) require a response within 60 days justifying the current validity of the asserted restriction; and

(C) state that evidence of a justification described in paragraph (4) may be submitted.

(4) It is a justification of an asserted use or release restriction challenged under paragraph (1) that, within the three-year period preceding the

challenge to the restriction, the Department of Defense validated a restriction identical to the asserted restriction if—

(A) such validation occurred after a challenge to the validated restriction under this subsection; and

(B) the validated restriction was asserted by the same contractor or subcontractor (or a licensee of such contractor or subcontractor).

(e) TIME FOR CONTRACTORS TO SUBMIT JUSTIFICATIONS.—If a contractor or subcontractor asserting a use or release restriction submits to the contracting officer a written request, showing the need for additional time to comply with the requirement to justify the current validity of the asserted restriction, additional time to adequately permit the submission of such justification shall be provided by the contracting officer as appropriate. If a party asserting a restriction receives notices of challenges to restrictions on technical data from more than one contracting officer, and notifies each contracting officer of the existence of more than one challenge, the contracting officer initiating the first in time challenge, after consultation with the party asserting the restriction and the other contracting officers, shall formulate a schedule of responses to each of the challenges that will afford the party asserting the restriction with an equitable opportunity to respond to each such challenge.

(f) PRESUMPTION OF DEVELOPMENT EXCLUSIVELY AT PRIVATE EXPENSE FOR COMMERCIAL ITEMS CONTRACTS.—In the case of a challenge to a use or release restriction that is asserted with respect to technical data of a contractor or subcontractor under a contract for commercial items, the contracting officer shall presume that the contractor or subcontractor has justified the restriction on the basis that the item was developed exclusively at private expense, whether or not the contractor or subcontractor submits a justification in response to the notice provided pursuant to subsection (d)(3). In such a case, the challenge to the use or release restriction may be sustained only if information provided by the Department of Defense demonstrates that the item was not developed exclusively at private expense.

(g) DECISION BY CONTRACTING OFFICER.—(1) Upon a failure by the contractor or subcontractor to submit any response under subsection (d)(3), the contracting officer shall issue a decision pertaining to the validity of the asserted restriction.

(2) After review of any justification submitted in response to the notice provided pursuant to subsection (d)(3), the contracting officer shall, within 60 days of receipt of any justification submitted, issue a decision or notify the party asserting the restriction of the time within which a decision will be issued.

(h) CLAIMS.—If a claim pertaining to the validity of the asserted restriction is submitted in writing to a contracting officer by a contractor or subcontractor at any tier, such claim shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(i) RIGHTS AND LIABILITY UPON FINAL DISPOSITION.—(1) If, upon final disposition, the contracting officer's challenge to the use or release restriction is sustained—

(A) the restriction shall be cancelled; and

(B) if the asserted restriction is found not to be substantially justified, the contractor or subcontractor asserting the restriction shall be liable to the United States for payment of the cost to the United States of reviewing the asserted restriction and the fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the United States in challenging the asserted restriction, unless special circumstances would make such payment unjust.

(2) If, upon final disposition, the contracting officer's challenge to the use or release restriction is not sustained—

(A) the United States shall continue to be bound by the restriction; and

(B) the United States shall be liable for payment to the party asserting the restriction for fees and other expenses (as defined in section 2412(d)(2)(A) of title 28) incurred by the party asserting the restriction in defending the asserted restriction if the challenge by the United States is found not to be made in good faith.

(j) USE OR RELEASE RESTRICTION DEFINED.—In this section, the term ''use or release restriction'', with respect to technical data delivered to the United States under a contract subject to this section, means a restriction by the contractor or subcontractor on the right of the United States—

(1) to use such technical data; or

(2) to release or disclose such technical data to persons outside the Government or permit the use of such technical data by persons outside the Government.

(Added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2597; amended Pub. L. 99–500 §101(c) [title X, §953(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–171, and Pub. L. 99–591, §101(c) [title X, §953(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–171; Pub. L. 99–661, div. A, title IX, formerly title IV, §953(b), Nov. 14, 1986, 100 Stat. 3951, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, Pub. L. 100–26, §7(a)(5), Apr. 21, 1987, 101 Stat. 276; Pub. L. 100–180, div. A, title XII, §1231(6), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 103–35, title II, §201(g)(4), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title VIII, §8106(b), Oct. 13, 1994, 108 Stat. 3393.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (h), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Another section 2321 of this title was contained in chapter 138 and was renumbered section 2341 of this title.

AMENDMENTS

1994—Subsecs. (f) to (j). Pub. L. 103–355 added subsec. (f) and redesignated former subsecs. (f) to (i) as (g) to (j), respectively.

1993—Subsec. (d)(1)(B). Pub. L. 103–35 substituted ''adherence'' for ''adherance''.

1987—Subsec. (a). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (a) and struck out former subsec. (a) which read as follows: ''A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data.''

Subsec. (b). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (b) and struck out former subsec. (b) which read as follows:

''(1) The Secretary of Defense shall ensure that there is a thorough review of the appropriateness of any restriction on the right of the United States to release or disclose technical data delivered under a contract to persons outside the Government, or to permit the use of such technical data by such persons. Such review shall be conducted before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later.

''(2)(A) If the Secretary determines, at any time before the end of the three-year period beginning on the date on which final payment is made on a contract under which technical data is required to be delivered, or the date on which the technical data is delivered under such contract, whichever is later, that a challenge to a restriction is warranted, the Secretary shall provide written notice to the contractor or subcontractor asserting the restriction. Such a determination shall be based on a finding by the Secretary that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time. Such notice shall—

''(i) state the specific grounds for challenging the asserted restriction;

''(ii) require a response within 60 days justifying the current validity of the asserted restriction; and

''(iii) state that evidence of a validation by the Department of Defense of a restriction identical to the asserted restriction within the three-year period preceding the challenge shall serve as justification for the asserted restriction if—

''(I) the validation occurred after a review of the validated restriction under this subsection; and

''(II) the validated restriction was asserted by the same contractor or subcontractor (or any licensee of such contractor or subcontractor) to which such notice is being provided.

''(B) Notwithstanding subparagraph (A), the United States may challenge a restriction on the release, disclosure, or use of technical data delivered under a contract at any time if such technical data—

''(i) is publicly available;

''(ii) has been furnished to the United States without restriction; or

''(iii) has been otherwise made available without restriction.''

Subsec. (c). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 100–26, §7(a)(5)(A)(ii), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (d)(4)(A). Pub. L. 99–180, §1231(6)(A), substituted ''subsection'' for ''paragraph''.

Subsec. (e). Pub. L. 100–26, §7(a)(5)(A)(i), (B), redesignated former subsec. (c) as (e), inserted heading, and substituted ''If a contractor or subcontractor asserting a use or release restriction'' for ''If a contractor or subcontractor asserting a restriction subject to this section''. Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 100–26, §7(a)(5)(A)(i), (C), redesignated former subsec. (d) as (f), inserted heading, and substituted ''subsection (d)(3)'' for ''subsection (b)'' in two places. Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 100–26, §7(a)(5)(A)(i), (D), redesignated former subsec. (e) as (g) and inserted heading.

Subsec. (h). Pub. L. 100–26, §7(a)(5)(A)(i), (E)(i), redesignated former subsec. (f) as (h) and inserted heading.

Subsec. (h)(1). Pub. L. 100–26, §7(a)(5)(E)(ii)–(iv), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions, struck out ''on the right of the United States to use the technical data'' after ''the restriction'' in subpar. (A), and substituted ''asserting the restriction'' for '', as appropriate,'' in subpar. (B).

Subsec. (h)(2). Pub. L. 100–26, §7(a)(5)(E)(v), substituted ''the use or release restriction'' for ''the restriction on the right of the United States to use such technical data'' in introductory provisions.

Subsec. (i). Pub. L. 100–180, §1231(6)(B), inserted ''or subcontractor'' in introductory provisions.

Pub. L. 100–26, §7(a)(5)(F), added subsec. (i).

1986—Subsecs. (a), (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended generally subsecs. (a) and (b) identically. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) A contract for supplies or services entered into by the Department of Defense which provides for the delivery of technical data shall provide that—

''(1) a contractor or subcontractor at any tier shall be prepared to furnish to the contracting officer a written justification for any restriction asserted by the contractor or subcontractor on the right of the United States to use such technical data; and

''(2) the contracting officer may review the validity of any restriction asserted by the contractor or by a subcontractor under the contract on the right of the United States to use technical data furnished to the United States under the contract if the contracting officer determines that reasonable grounds exist to question the current validity of the asserted restriction and that the continued adherence to the asserted restriction by the United States would make it impracticable to procure the item competitively at a later time.

''(b) If after such review the contracting officer determines that a challenge to the asserted restriction is warranted, the contracting officer shall provide written notice to the contractor or subcontractor asserting the restriction. Such notice shall—

''(1) state the grounds for challenging the asserted restriction; and

''(2) require a response within 60 days justifying the current validity of the asserted restriction.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(d)(1) of Pub. L. 100–26 provided that: ''The amendments to section 2321 of title 10, United States Code, made by section 7(a)(5) shall apply to contracts for which solicitations are issued after the end of the 210-day period beginning on October 18, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 applicable to contracts for which solicitations are issued after end of 210-day period beginning Oct. 18, 1986, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 953(e) of Pub. L. 99–661, set out as a note under section 2320 of this title.

EFFECTIVE DATE

Section applicable with respect to solicitations issued after the end of the one-year period beginning Oct. 19, 1984, see section 1216(c)(2) of Pub. L. 98–525, set out as a note under section 2319 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2320 of this title.

[§ 2322. Repealed. Pub. L. 102–484, div. A, title X, § 1052(25)(A), Oct. 23, 1992, 106 Stat. 2500]

Section, added Pub. L. 98–525, title XII, § 1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 100–26, § 7(a)(6), Apr. 21, 1987, 101 Stat. 278; Pub. L. 100–180, div. A, title XII, § 1231(7), Dec. 4, 1987, 101 Stat. 1160, limited small business set-asides under the Foreign Military Sales Program and provided that the section expired Jan. 17, 1987.

Another section 2322 of this title was contained in chapter 138 and was renumbered section 2342 of this title.

§ 2323. Contract goal for small disadvantaged businesses and certain institutions of higher education

(a) GOAL.—(1) Except as provided in subsection (d), a goal of 5 percent of the amount described in subsection (b) shall be the objective of the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration in each fiscal year for the total combined amount obligated for contracts and subcontracts entered into with—

(A) small business concerns, including mass media and advertising firms, owned and controlled by socially and economically disadvantaged individuals (as such term is used in section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section), the majority of the earnings of which directly accrue to such individuals, and qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act);

(B) historically Black colleges and universities, including any nonprofit research institution that was an integral part of such a college or university before November 14, 1986; and

(C) minority institutions (as defined in section 365(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k)).

(2) The head of the agency shall establish a specific goal within the overall 5 percent goal for the award of prime contracts and subcontracts to historically Black colleges and universities and minority institutions in order to increase the participation of such colleges and universities in the program provided for by this section.

(3) The Federal Acquisition Regulation shall provide procedures or guidelines for contracting officers to set goals which agency prime contractors that are required to submit subcontracting plans under section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B)) in furtherance of the agency's program to meet the 5 percent goal specified in paragraph (1) should meet in awarding subcontracts, including subcontracts to minority-owned media, to entities described in that paragraph.

(b) AMOUNT.—(1) With respect to the Department of Defense, the requirements of subsection (a) for any fiscal year apply to the combined total of the following amounts:

(A) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for procurement.

(B) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for research, development, test, and evaluation.

(C) Funds obligated for contracts entered into with the Department of Defense for such fiscal year for military construction.

(D) Funds obligated for contracts entered into with the Department of Defense for operation and maintenance.

(2) With respect to the Coast Guard, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the Coast Guard for such fiscal year.

(3) With respect to the National Aeronautics and Space Administration, the requirements of subsection (a) for any fiscal year apply to the total value of all prime contract and subcontract awards entered into by the National Aeronautics and Space Administration for such fiscal year.

(c) TYPES OF ASSISTANCE.—(1) To attain the goal specified in subsection (a)(1), the head of an agency shall provide technical assistance to the entities referred to in that subsection and, in the case of historically Black colleges and universities and minority institutions, shall also provide infrastructure assistance.

(2) Technical assistance provided under this section shall include information about the program, advice about agency procurement procedures, instruction in preparation of proposals, and other such assistance as the head of the agency considers appropriate. If the resources of the agency are inadequate to provide such assistance, the head of the agency may enter into contracts with minority private sector entities with experience and expertise in the design, development, and delivery of technical assistance services to eligible individuals, business firms and institutions, acquisition agencies, and prime contractors. Agency contracts with such entities shall be awarded annually, based upon, among other things, the number of minority small business concerns, historically Black colleges and universities, and minority institutions that each such entity brings into the program.

(3) Infrastructure assistance provided by the Department of Defense under this section to historically Black colleges and universities and to minority institutions may include programs to do the following:

(A) Establish and enhance undergraduate, graduate, and doctoral programs in scientific disciplines critical to the national security functions of the Department of Defense.

(B) Make Department of Defense personnel available to advise and assist faculty at such colleges and universities in the performance of defense research and in scientific disciplines critical to the national security functions of the Department of Defense.

(C) Establish partnerships between defense laboratories and historically Black colleges and universities and minority institutions for the purpose of training students in scientific disciplines critical to the national security functions of the Department of Defense.

(D) Award scholarships, fellowships, and the establishment of cooperative work-education

programs in scientific disciplines critical to the national security functions of the Department of Defense.

(E) Attract and retain faculty involved in scientific disciplines critical to the national security functions of the Department of Defense.

(F) Equip and renovate laboratories for the performance of defense research.

(G) Expand and equip Reserve Officer Training Corps activities devoted to scientific disciplines critical to the national security functions of the Department of Defense.

(H) Provide other assistance as the Secretary determines appropriate to strengthen scientific disciplines critical to the national security functions of the Department of Defense or the college infrastructure to support the performance of defense research.

(4) The head of the agency shall, to the maximum extent practical, carry out programs under this section at colleges, universities, and institutions that agree to bear a substantial portion of the cost associated with the programs.

(d) APPLICABILITY.—Subsection (a) does not apply to the Department of Defense—

(1) to the extent to which the Secretary of Defense determines that compelling national security considerations require otherwise; and

(2) if the Secretary notifies Congress of such determination and the reasons for such determination.

(e) COMPETITIVE PROCEDURES AND ADVANCE PAYMENTS.—To attain the goal of subsection (a):

(1)(A) The head of the agency shall—

(i) ensure that substantial progress is made in increasing awards of agency contracts to entities described in subsection (a)(1);

(ii) exercise his utmost authority, resourcefulness, and diligence;

(iii) in the case of the Department of Defense, actively monitor and assess the progress of the military departments, Defense Agencies, and prime contractors of the Department of Defense in attaining such goal; and

(iv) in the case of the Coast Guard and the National Aeronautics and Space Administration, actively monitor and assess the progress of the prime contractors of the agency in attaining such goal.

(B) In making the assessment under clauses (iii) and (iv) of subparagraph (A), the head of the agency shall evaluate the extent to which use of the authority provided in paragraphs (2) and (3) and compliance with the requirement in paragraph (4) is effective for facilitating the attainment of the goal.

(2) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency shall make advance payments under section 2307 of this title to contractors described in subsection (a). The Federal Acquisition Regulation shall provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.

(3)(A) To the extent practicable and when necessary to facilitate achievement of the 5 percent goal described in subsection (a), the head of an agency may, except as provided in subparagraph (B), enter into contracts using less than full and open competitive procedures (including awards under section 8(a) of the Small Business Act) and partial set asides for entities described in subsection (a)(1), but shall pay a price not exceeding fair market cost by more than 10 percent in payment per contract to contractors or subcontractors described in subsection (a). The head of an agency shall adjust the percentage specified in the preceding sentence for any industry category if available information clearly indicates that nondisadvantaged small business concerns in such industry category are generally being denied a reasonable opportunity to compete for contracts because of the use of that percentage in the application of this paragraph.

(B)(i) The Secretary of Defense may not exercise the authority under subparagraph (A) to enter into a contract for a price exceeding fair market cost if the regulations implementing that authority are suspended under clause (ii) with respect to that contract.

(ii) At the beginning of each fiscal year, the Secretary shall determine, on the basis of the most recent data, whether the Department of Defense achieved the 5 percent goal described in subsection (a) during the fiscal year to which the data relates. Upon determining that the Department achieved the goal for the fiscal year to which the data relates, the Secretary shall issue a suspension, in writing, of the regulations that implement the authority under subparagraph (A). Such a suspension shall be in effect for the one-year period beginning 30 days after the date on which the suspension is issued and shall apply with respect to contracts awarded pursuant to solicitations issued during that period.

(iii) For purposes of clause (ii), the term ''most recent data'' means data relating to the most recent fiscal year for which data are available.

(4) To the extent practicable, the head of an agency shall maximize the number of minority small business concerns, historically Black colleges and universities, and minority institutions participating in the program.

(5) Each head of an agency shall prescribe regulations which provide for the following:

(A) Procedures or guidance for contracting officers to provide incentives for prime contractors referred to in subsection (a)(3) to increase subcontractor awards to entities described in subsection (a)(1).

(B) A requirement that contracting officers emphasize the award of contracts to entities described in subsection (a)(1) in all industry categories, including those categories in which such entities have not traditionally dominated.

(C) Guidance to agency personnel on the relationship among the following programs:

(i) The program implementing this section.

(ii) The program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(iii) The small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)).

(D) With respect to an agency procurement which is reasonably likely to be set aside for entities described in subsection (a)(1), a requirement that (to the maximum extent practicable) the procurement be designated as such a set-aside before the solicitation for the procurement is issued.

(E) Policies and procedures which, to the maximum extent practicable, will ensure that current levels in the number or dollar value of contracts awarded under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a)) are maintained and that every effort is made to provide new opportunities for contract awards to eligible entities, in order to meet the goal of subsection (a).

(F) Implementation of this section in a manner which will not alter the procurement process under the program established under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(G) A requirement that one factor used in evaluating the performance of a contracting officer be the ability of the officer to increase contract awards to entities described in subsection (a)(1).

(H) Increased technical assistance to entities described in subsection (a)(1).

(f) PENALTIES AND REGULATIONS RELATING TO STATUS.—(1) Whoever for the purpose of securing a contract or subcontract under subsection (a) misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)) or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act), shall be punished by imprisonment for not more than one year, or a fine under title 18, or both.

(2) The Federal Acquisition Regulation shall prohibit awarding a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(*o*)(1) of the Small Business Act (15 U.S.C. 644(*o*)(1)).

(g) INDUSTRY CATEGORIES.—(1) To the maximum extent practicable, the head of the agency shall—

(A) ensure that no particular industry category bears a disproportionate share of the contracts awarded to attain the goal established by subsection (a); and

(B) ensure that contracts awarded to attain the goal established by subsection (a) are made across the broadest possible range of industry categories.

(2) Under procedures prescribed by the head of the agency, a person may request the Secretary to determine whether the use of small disadvantaged business set asides by a contracting activity of the agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity for the purposes of this section. Upon making a determination that a particular industry category is bearing a disproportionate share, the head of the agency shall take appropriate actions to limit the contracting activity's use of set asides in awarding contracts in that particular industry category.

(h) COMPLIANCE WITH SUBCONTRACTING PLAN REQUIREMENTS.—(1) The Federal Acquisition Regulation shall contain regulations to ensure that potential contractors submitting sealed bids or competitive proposals to the agency for procurement contracts to be awarded under the program provided for by this section are complying with applicable subcontracting plan requirements of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

(2) The regulations required by paragraph (1) shall ensure that, with respect to a sealed bid or competitive proposal for which the bidder or offeror is required to negotiate or submit a subcontracting plan under section 8(d) of the Small Business Act (15 U.S.C. 637(d)), the subcontracting plan shall be a factor in evaluating the bid or proposal.

(i) ANNUAL REPORT.—(1) Not later than December 15 of each year, the head of the agency shall submit to Congress a report on the progress of the agency toward attaining the goal of subsection (a) during the preceding fiscal year.

(2) The report required under paragraph (1) shall include the following:

(A) A full explanation of any progress toward attaining the goal of subsection (a).

(B) A plan to achieve the goal, if necessary.

(3) The report required under paragraph (1) shall also include the following:

(A) The aggregate differential between the fair market price of all contracts awarded pursuant to subsection (e)(3) and the estimated fair market price of all such contracts had such contracts been entered into using full and open competitive procedures.

(B) An analysis of the impact that subsection (a) shall have on the ability of small business concerns not owned and controlled by socially and economically disadvantaged individuals to compete for contracts with the agency.

(C) A description of the percentage of contracts (actions), the total dollar amount (size of action), and the number of different entities relative to the attainment of the goal of subsection (a), separately for Black Americans, Native Americans, Hispanic Americans, Asian Pacific Americans, and other minorities.

(D) A detailed description of the infrastructure assistance provided under subsection (c) during the preceding fiscal year and of the plans for providing such assistance during the fiscal year in which the report is submitted.

(j) DEFINITIONS.—In this section:

(1) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(k) EFFECTIVE DATE.—(1) This section applies in the Department of Defense to each of fiscal years 1987 through 2006.

(2) This section applies in the Coast Guard and the National Aeronautics and Space Administration in each of fiscal years 1995 through 2006.

(Added and amended Pub. L. 102–484, div. A, title VIII, §§801(a)(1), (b)–(f), 802, Oct. 23, 1992, 106 Stat. 2442–2444, 2446; Pub. L. 103–35, title II, §202(a)(6), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title VIII, §811(a)–(c), (e), Nov. 30, 1993, 107 Stat. 1702; Pub. L. 103–355, title VII, §7105, Oct. 13, 1994, 108 Stat. 3369; Pub. L. 104–106, div. D, title XLIII, §4321(b)(8), Feb. 10, 1996, 110 Stat. 672; Pub. L. 105–135, title VI, §604(a), Dec. 2, 1997, 111 Stat. 2632; Pub. L. 105–261, div. A, title VIII, §801, Oct. 17, 1998, 112 Stat. 2080; Pub. L. 106–65, div. A, title VIII, §808, Oct. 5, 1999, 113 Stat. 705; Pub. L. 107–107, div. A, title X, §1048(a)(17), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VIII, §816, Dec. 2, 2002, 116 Stat. 2610.)

REFERENCES IN TEXT

Section 3(p) of the Small Business Act, referred to in subsecs. (a)(1)(A) and (f)(1), is classified to section 632(p) of Title 15, Commerce and Trade.

Section 8(a) of the Small Business Act, referred to in subsec. (e)(3)(A), is classified to section 637(a) of Title 15, Commerce and Trade.

CODIFICATION

Section, as added by Pub. L. 102–484, §801(a)(1), consists of text of Pub. L. 99–661, div. A, title XII, §1207, Nov. 14, 1986, 100 Stat. 3973, revised by Pub. L. 102–484 by substituting ''each of fiscal years 1987 through 2000'' for ''each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993'' in subsec. (a)(1), ''of this title'' for ''of title 10, United States Code,'' in subsec. (e)(2), and ''each of fiscal years 1987 through 2000'' for ''each of fiscal years 1987, 1988, 1989, 1990, 1991, 1992, and 1993'' in subsec. (h). Section 1207 of Pub. L. 99–661, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, §801(h)(1), Oct. 23, 1992, 106 Stat. 2445.

PRIOR PROVISIONS

A prior section 2323, added Pub. L. 98–525, title XII, §1216(a), Oct. 19, 1984, 98 Stat. 2598; amended Pub. L. 99–500, §101(c) [title X, §926(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–153, and Pub. L. 99–591, §101(c) [title X, §926(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–153; Pub. L. 99–661, div. A, title IX, formerly title IV, §926(a)(1), Nov. 14, 1986, 100 Stat. 3933, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, related to commercial pricing for spare or repair parts, prior to repeal by Pub. L. 101–510, div. A, title VIII, §804(a), Nov. 5, 1990, 104 Stat. 1591.

AMENDMENTS

2002—Subsec. (j)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (k). Pub. L. 107–314 substituted ''2006'' for ''2003'' in pars. (1) and (2).

2001—Subsec. (a)(1)(C). Pub. L. 107–107 substituted ''section 365(3)'' for ''section 1046(3)'' and ''20 U.S.C. 1067k'' for ''20 U.S.C. 1135d–5(3)'' and struck out before period at end '', which, for the purposes of this section, shall include Hispanic-serving institutions (as defined in section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)))''.

1999—Subsec. (k). Pub. L. 106–65 substituted ''2003'' for ''2000'' in pars. (1) and (2).

1998—Subsec. (e)(3). Pub. L. 105–261 designated existing provisions as subpar. (A), inserted '', except as provided in subparagraph (B),'' after ''the head of an agency may'' in first sentence, and added subpar. (B).

1997—Subsec. (a)(1)(A). Pub. L. 105–135, §604(a)(1), inserted before semicolon at end '', and qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act)''.

Subsec. (f)(1). Pub. L. 105–135, §604(a)(2), inserted ''or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act)'' after ''(as described in subsection (a))''.

1996—Subsec. (a)(1)(C). Pub. L. 104–106, §4321(b)(8)(A), inserted closing parenthesis after ''1135d–5(3))'' and ''1059c(b)(1))''.

Subsec. (a)(3). Pub. L. 104–106, §4321(b)(8)(B), struck out ''(issued under section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c))'' after ''Acquisition Regulation''.

Subsec. (b). Pub. L. 104–106, §4321(b)(8)(C), inserted ''(1)'' after ''Amount.—''.

Subsec. (i)(3)(D). Pub. L. 104–106, §4321(b)(8)(D), added subpar. (D).

1994—Pub. L. 103–355 amended section generally to extend defense contract goal for small disadvantaged businesses and certain institutions of higher education to Coast Guard and National Aeronautics and Space Administration.

1993—Subsec. (a)(1)(B). Pub. L. 103–160, §811(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''historically Black colleges and universities; and''.

Subsec. (a)(1)(C). Pub. L. 103–160, §811(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''minority institutions (as defined in paragraphs (3), (4), and (5) of section 312(b) of the Higher Education Act of 1965 (20 U.S.C. 1058)), including any nonprofit research institution that was an integral part of a historically Black college or university before November 14, 1986.''

Subsec. (f)(2). Pub. L. 103–160, §811(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense shall prescribe regulations which provide for the following:

''(A) A requirement that a business which represents itself as an entity described in subsection (a)(1) and is seeking a Department of Defense contract maintain its status as an entity at the time of contract award.

''(B) A prohibition on the award of a contract under this section to an entity described in subsection (a)(1) unless the entity agrees to comply with the requirements of section 15(*o*)(1) of the Small Business Act (15 U.S.C. 644(*o*)(1)).''

Subsec. (i). Pub. L. 103–35 amended and made technical amendment to directory language of Pub. L. 102–484, §801(f). See 1992 Amendment note for subsec. (h) below.

Subsec. (i)(3)(D). Pub. L. 103–160, §811(e), added subpar. (D).

1992—Subsec. (a)(3). Pub. L. 102–484, §801(b), added par. (3).

Subsec. (e). Pub. L. 102–484, §801(c)(1), substituted ''subsection (a):'' for ''subsection (a)—'' in introductory provisions.

Subsec. (e)(1). Pub. L. 102–484, §801(c)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Secretary of Defense shall exercise his utmost authority, resourcefulness, and diligence.''

Subsec. (e)(2). Pub. L. 102–484, §801(c)(3), inserted at end ''The Secretary shall prescribe regulations that provide guidance to contracting officers for making advance payments to entities described in subsection (a)(1) under such section.''

Subsec. (e)(3). Pub. L. 102–484, §801(c)(4), inserted ''and partial set asides for entities described in subsection (a)(1)'' after ''Act''.

Subsec. (e)(5). Pub. L. 102–484, §801(c)(5), added par. (5).

Subsec. (f). Pub. L. 102–484, §801(d), substituted ''Penalties and Regulations Relating to Status'' for ''Penalties for Misrepresentation'' in heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (g). Pub. L. 102–484, §801(e)(2), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102–484, §802(2), added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 102–484, §801(f), as amended by Pub. L. 103–35, substituted ''Report'' for ''Reports'' in heading, struck out ''July 15 of each year, the Secretary of Defense shall submit to Congress a report on the progress toward meeting the goal of subsection (a) during the current fiscal year. (2) Not later than'' after ''(1) Not later than'', struck out ''final'' after ''Congress a'', and substituted ''Secretary toward attaining'' for ''Secretary with'' in former par. (2), redesignated par. (3) as (2) and substituted ''report required under paragraph (1) shall'' for ''reports described in paragraphs (1) and (2) shall each'', redesignated par. (4) as (3) and substituted ''report required under paragraph (1)'' for ''reports required under paragraph (2)'', and struck out par. (5) which read as follows: ''The first report required by this subsection shall be submitted between May 1 and May 30, 1987.''

Pub. L. 102–484, §801(e)(1), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 102–484, §802(1), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 102–484, §801(e)(1), redesignated subsec. (h) as (i).

Subsec. (j). Pub. L. 102–484, §802(1), redesignated subsec. (i) as (j).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135 set out as a note under section 631 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 801(f) of Pub. L. 102–484 provided that the amendment made by that section is effective Oct. 1, 1993.

REGULATIONS

Section 811(d) of Pub. L. 103–160 provided that:

''(1) The Secretary of Defense shall propose amendments to the Department of Defense Supplement to the Federal Acquisition Regulation that address the matters described in subsection (g) and subsection (h)(2) of section 2323 of title 10, United States Code.

''(2) Not later than 15 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall publish such proposed amendments in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b). The Secretary shall provide a period of at least 60 days for public comment on the proposed amendments.

''(3) The Secretary shall publish the final regulations not later than 120 days after the date of the enactment of this Act.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304, 2304e, 2323a of this title; title 15 section 644; title 20 section 1067k; title 41 section 428.

§ 2323a. Credit for Indian contracting in meeting certain subcontracting goals for small disadvantaged businesses and certain institutions of higher education

(a) REGULATIONS.—Subject to subsections (b) and (c), in any case in which a subcontracting goal is specified in a Department of Defense contract in the implementation of section 2323 of this title and section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for—

(1) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if such work is performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) work performed in connection with that Department of Defense contract, and work performed in connection with any subcontract awarded under that Department of Defense contract, if the performance of such contract or subcontract is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE WORK.—(1) Work performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the work are Indians; or

(B) the contractor or subcontractor has an agreement with the tribal government having jurisdiction over such Indian lands that provides goals for training and development of the Indian workforce and Indian management.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—The amount of the credit given toward the attainment of any subcontracting goal under subsection (a) shall be—

(1) in the case of work performed as described in subsection (a)(1), the value of the work performed; and

(2) in the case of a contract or subcontract undertaken to be performed by a joint venture as described in subsection (a)(2), an amount equal to the amount of the contract or subcontract multiplied by the percentage of the tribe's or tribally owned corporation's ownership interest in the joint venture.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the implementation of this section.

(e) DEFINITIONS.—In this section:

(1) The term ''Indian lands'' has the meaning given that term by section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4)).

(2) The term ''Indian'' has the meaning given that term by section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(3) The term ''Indian tribe'' has the meaning given that term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(4) The term ''tribally owned corporation'' means a corporation owned entirely by an Indian tribe.

(Added Pub. L. 102–484, div. A, title VIII, § 801(g)(1), Oct. 23, 1992, 106 Stat. 2445; amended Pub. L. 104–201, div. A, title X, § 1074(a)(13), Sept. 23, 1996, 110 Stat. 2659.)

CODIFICATION

Section, as added by Pub. L. 102–484, consists of text of Pub. L. 101–189, div. A, title VIII, § 832, Nov. 29, 1989, 103 Stat. 1508, revised by Pub. L. 102–484 by substituting ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'' in subsec. (a). Section 832 of Pub. L. 101–189, which was formerly set out as a note under section 2301 of this title, was repealed by Pub. L. 102–484, div. A, title VIII, § 801(h)(5), Oct. 23, 1992, 106 Stat. 2445.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201, which directed amendment of subsec. (a) by substituting ''section 2323 of this title'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'', could not be executed because the language ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)'' did not appear. See Codification note above.

§ 2324. Allowable costs under defense contracts

(a) INDIRECT COST THAT VIOLATES A FAR COST PRINCIPLE.—The head of an agency shall require that a covered contract provide that if the contractor submits to the agency a proposal for settlement of indirect costs incurred by the contractor for any period after such costs have been accrued and if that proposal includes the submission of a cost which is unallowable because the cost violates a cost principle in the Federal Acquisition Regulation or applicable agency supplement to the Federal Acquisition Regulation, the cost shall be disallowed.

(b) PENALTY FOR VIOLATION OF COST PRINCIPLE.—(1) If the head of the agency determines that a cost submitted by a contractor in its proposal for settlement is expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs, the head of the agency shall assess a penalty against the contractor in an amount equal to—

(A) the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted; plus

(B) interest (to be computed based on provisions in the Federal Acquisition Regulation) to compensate the United States for the use of any funds which a contractor has been paid in excess of the amount to which the contractor was entitled.

(2) If the head of the agency determines that a proposal for settlement of indirect costs submitted by a contractor includes a cost determined to be unallowable in the case of such contractor before the submission of such proposal, the head of the agency shall assess a penalty against the contractor in an amount equal to two times the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted.

(c) WAIVER OF PENALTY.—The Federal Acquisition Regulation shall provide for a penalty under subsection (b) to be waived in the case of a contractor's proposal for settlement of indirect costs when—

(1) the contractor withdraws the proposal before the formal initiation of an audit of the proposal by the Federal Government and resubmits a revised proposal;

(2) the amount of unallowable costs subject to the penalty is insignificant; or

(3) the contractor demonstrates, to the contracting officer's satisfaction, that—

(A) it has established appropriate policies and personnel training and an internal control and review system that provide assurances that unallowable costs subject to penalties are precluded from being included in the contractor's proposal for settlement of indirect costs; and

(B) the unallowable costs subject to the penalty were inadvertently incorporated into the proposal.

(d) APPLICABILITY OF CONTRACT DISPUTES PROCEDURE TO DISALLOWANCE OF COST AND ASSESSMENT OF PENALTY.—An action of the head of an agency under subsection (a) or (b)—

(1) shall be considered a final decision for the purposes of section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605); and

(2) is appealable in the manner provided in section 7 of such Act (41 U.S.C. 606).

(e) SPECIFIC COSTS NOT ALLOWABLE.—(1) The following costs are not allowable under a covered contract:

(A) Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(B) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(C) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(D) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable provisions of the Federal Acquisition Regulation.

(E) Costs of membership in any social, dining, or country club or organization.

(F) Costs of alcoholic beverages.

(G) Contributions or donations, regardless of the recipient.

(H) Costs of advertising designed to promote the contractor or its products.

(I) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(J) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(K) Costs incurred in making any payment (commonly known as a ''golden parachute payment'') which is—

(i) in an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(L) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(M) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined under the Federal Acquisition Regulation.

(N) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States military facility in that country at the request of the government of that country.

(O) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State, to the extent provided in subsection (k).

(P) Costs of compensation of senior executives of contractors for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds the benchmark compensation amount determined applicable for the fiscal year by the Administrator for Federal Procurement Policy under section 39 of the Office of Federal Procurement Policy Act (41 U.S.C. 435).

(2)(A) The Secretary of Defense may provide in a military banking contract that the provisions of paragraphs (1)(M) and (1)(N) shall not apply to costs incurred under the contract by the contractor for payment of mandated foreign national severance pay. The Secretary may include such a provision in a military banking contract only if the Secretary determines, with respect to that contract, that the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals.

(B) In subparagraph (A):

(i) The term ''military banking contract'' means a contract between the Secretary and a financial institution under which the financial institution operates a military banking facility outside the United States for use by members of the armed forces stationed or deployed outside the United States and other authorized personnel.

(ii) The term ''mandated foreign national severance pay'' means severance pay paid by a contractor to a foreign national employee the payment of which by the contractor is required in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract.

(C) Subparagraph (A) does not apply to a contract with a financial institution that is owned or controlled by citizens or nationals of a foreign country, as determined by the Secretary of Defense. Such a determination shall be made in accordance with the criteria set out in paragraph (1) of section 4(g) of the Buy American Act[1] (41 U.S.C. 10b–1) and the policy guidance referred to in paragraph (2)(A) of that section.

(3)(A) Pursuant to the Federal Acquisition Regulation and subject to the availability of appropriations, the head of an agency awarding a covered contract (other than a contract to which paragraph (2) applies) may waive the application of the provisions of paragraphs (1)(M) and (1)(N) to that contract if the head of the agency determines that—

(i) the application of such provisions to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for mem-

[1] See References in Text note below.

bers of the armed forces stationed or deployed outside the United States;

(ii) the contractor has taken (or has established plans to take) appropriate actions within the contractor's control to minimize the amount and number of incidents of the payment of severance pay by the contractor to employees under the contract who are foreign nationals; and

(iii) the payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract or is necessary to comply with a collective bargaining agreement.

(B) The head of an agency shall include in the solicitation for a covered contract a statement indicating—

(i) that a waiver has been granted under subparagraph (A) for the contract; or

(ii) whether the head of the agency will consider granting such a waiver, and, if the agency head will consider granting a waiver, the criteria to be used in granting the waiver.

(C) The head of an agency shall make the final determination regarding whether to grant a waiver under subparagraph (A) with respect to a covered contract before award of the contract.

(4) The provisions of the Federal Acquisition Regulation implementing this section may establish appropriate definitions, exclusions, limitations, and qualifications.

(f) REQUIRED REGULATIONS.—(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions shall define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. The regulations shall, at a minimum, clarify the cost principles applicable to contractor costs of the following:

(A) Air shows.

(B) Membership in civic, community, and professional organizations.

(C) Recruitment.

(D) Employee morale and welfare.

(E) Actions to influence (directly or indirectly) executive branch action on regulatory and contract matters (other than costs incurred in regard to contract proposals pursuant to solicited or unsolicited bids).

(F) Community relations.

(G) Dining facilities.

(H) Professional and consulting services, including legal services.

(I) Compensation.

(J) Selling and marketing.

(K) Travel.

(L) Public relations.

(M) Hotel and meal expenses.

(N) Expense of corporate aircraft.

(O) Company-furnished automobiles.

(P) Advertising.

(Q) Conventions.

(2) The Federal Acquisition Regulation shall require that a contracting officer not resolve any questioned costs until he has obtained—

(A) adequate documentation with respect to such costs; and

(B) the opinion of the contract auditor on the allowability of such costs.

(3) The Federal Acquisition Regulation shall provide that, to the maximum extent practicable, the contract auditor be present at any negotiation or meeting with the contractor regarding a determination of the allowability of indirect costs of the contractor.

(4) The Federal Acquisition Regulation shall require that all categories of costs designated in the report of the contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are paid will be reflected in the settlement.

(g) APPLICABILITY OF REGULATIONS TO SUBCONTRACTORS.—The regulations referred to in subsections (e) and (f)(1) shall require prime contractors of a covered contract, to the maximum extent practicable, to apply the provisions of such regulations to all subcontractors of the covered contract.

(h) CONTRACTOR CERTIFICATION REQUIRED.—(1) A proposal for settlement of indirect costs applicable to a covered contract shall include a certification by an official of the contractor that, to the best of the certifying official's knowledge and belief, all indirect costs included in the proposal are allowable. Any such certification shall be in a form prescribed in the Federal Acquisition Regulation.

(2) The head of the agency or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (1) in the case of any contract if the head of the agency or the Secretary—

(A) determines in such case that it would be in the interest of the United States to waive such certification; and

(B) states in writing the reasons for that determination and makes such determination available to the public.

(i) PENALTIES FOR SUBMISSION OF COST KNOWN AS NOT ALLOWABLE.—The submission to an agency of a proposal for settlement of costs for any period after such costs have been accrued that includes a cost that is expressly specified by statute or regulation as being unallowable, with the knowledge that such cost is unallowable, shall be subject to the provisions of section 287 of title 18 and section 3729 of title 31.

(j) CONTRACTOR TO HAVE BURDEN OF PROOF.—In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable.

(k) PROCEEDING COSTS NOT ALLOWABLE.—(1) Except as otherwise provided in this subsection, costs incurred by a contractor in connection with any criminal, civil, or administrative proceeding commenced by the United States or a State are not allowable as reimbursable costs under a covered contract if the proceeding (A) relates to a violation of, or failure to comply with, a Federal or State statute or regulation,

and (B) results in a disposition described in paragraph (2).

(2) A disposition referred to in paragraph (1)(B) is any of the following:

(A) In the case of a criminal proceeding, a conviction (including a conviction pursuant to a plea of nolo contendere) by reason of the violation or failure referred to in paragraph (1).

(B) In the case of a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability on the basis of the violation or failure referred to in paragraph (1).

(C) In the case of any civil or administrative proceeding, the imposition of a monetary penalty by reason of the violation or failure referred to in paragraph (1).

(D) A final decision—

(i) to debar or suspend the contractor;

(ii) to rescind or void the contract; or

(iii) to terminate the contract for default;

by reason of the violation or failure referred to in paragraph (1).

(E) A disposition of the proceeding by consent or compromise if such action could have resulted in a disposition described in subparagraph (A), (B), (C), or (D).

(3) In the case of a proceeding referred to in paragraph (1) that is commenced by the United States and is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the costs incurred by the contractor in connection with such proceeding that are otherwise not allowable as reimbursable costs under such paragraph may be allowed to the extent specifically provided in such agreement.

(4) In the case of a proceeding referred to in paragraph (1) that is commenced by a State, the head of the agency or Secretary of the military department concerned that awarded the covered contract involved in the proceeding may allow the costs incurred by the contractor in connection with such proceeding as reimbursable costs if the agency head or Secretary determines, in accordance with the Federal Acquisition Regulation, that the costs were incurred as a result of (A) a specific term or condition of the contract, or (B) specific written instructions of the agency or military department.

(5)(A) Except as provided in subparagraph (C), costs incurred by a contractor in connection with a criminal, civil, or administrative proceeding commenced by the United States or a State in connection with a covered contract may be allowed as reimbursable costs under the contract if such costs are not disallowable under paragraph (1), but only to the extent provided in subparagraph (B).

(B)(i) The amount of the costs allowable under subparagraph (A) in any case may not exceed the amount equal to 80 percent of the amount of the costs incurred, to the extent that such costs are determined to be otherwise allowable and allocable under the Federal Acquisition Regulation.

(ii) Regulations issued for the purpose of clause (i) shall provide for appropriate consideration of the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate.

(C) In the case of a proceeding referred to in subparagraph (A), contractor costs otherwise allowable as reimbursable costs under this paragraph are not allowable if (i) such proceeding involves the same contractor misconduct alleged as the basis of another criminal, civil, or administrative proceeding, and (ii) the costs of such other proceeding are not allowable under paragraph (1).

(6) In this subsection:

(A) The term ''proceeding'' includes an investigation.

(B) The term ''costs'', with respect to a proceeding—

(i) means all costs incurred by a contractor, whether before or after the commencement of any such proceeding; and

(ii) includes—

(I) administrative and clerical expenses;

(II) the cost of legal services, including legal services performed by an employee of the contractor;

(III) the cost of the services of accountants and consultants retained by the contractor; and

(IV) the pay of directors, officers, and employees of the contractor for time devoted by such directors, officers, and employees to such proceeding.

(C) The term ''penalty'' does not include restitution, reimbursement, or compensatory damages.

(*l*) DEFINITIONS.—In this section:

(1)(A) The term ''covered contract'' means a contract for an amount in excess of $500,000 that is entered into by the head of an agency, except that such term does not include a fixed-price contract without cost incentives or any firm fixed-price contract for the purchase of commercial items.

(B) Effective on October 1 of each year that is divisible by five, the amount set forth in subparagraph (A) shall be adjusted to the equivalent amount in constant fiscal year 1994 dollars. An amount, as so adjusted, that is not evenly divisible by $50,000 shall be rounded to the nearest multiple of $50,000. In the case of an amount that is evenly divisible by $25,000 but is not evenly divisible by $50,000, the amount shall be rounded to the next higher multiple of $50,000.

(2) The term ''head of the agency'' or ''agency head'' does not include the Secretary of a military department.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(4) The term ''compensation'', for a year, means the total amount of wages, salary, bonuses and deferred compensation for the year, whether paid, earned, or otherwise accruing, as recorded in an employer's cost accounting records for the year.

(5) The term ''senior executives'', with respect to a contractor, means the five most highly compensated employees in management positions at each home office and each segment of the contractor.

(6) The term ''fiscal year'' means a fiscal year established by a contractor for accounting purposes.

(Added Pub. L. 99–145, title IX, § 911(a)(1), Nov. 8, 1985, 99 Stat. 682; amended Pub. L. 99–190, § 101(b) [title VIII, § 8112(a)], Dec. 19, 1985, 99 Stat. 1185, 1223; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VIII, § 805(a), Dec. 4, 1987, 101 Stat. 1126; Pub. L. 100–370, § 1(f)(2)(A), (3)(A), July 19, 1988, 102 Stat. 846; Pub. L. 100–456, div. A, title III, § 322(a), title VIII, §§ 826(a), 832(a), Sept. 29, 1988, 102 Stat. 1952, 2022, 2023; Pub. L. 100–463, title VIII, § 8105(a), Oct. 1, 1988, 102 Stat. 2270–36; Pub. L. 100–526, title I, § 106(a)(2), Oct. 24, 1988, 102 Stat. 2625; Pub. L. 100–700 § 8(b), Nov. 19, 1988, 102 Stat. 4636; Pub. L. 101–189, div. A, title III, § 311(a)(1), title VIII, § 853(a)(1), (b)(3), Nov. 29, 1989, 103 Stat. 1411, 1518; Pub. L. 101–510, div. A, title XIII, § 1301(10), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. A, title III, § 346(a), Dec. 5, 1991, 105 Stat. 1346; Pub. L. 102–484, div. A, title VIII, § 818(a), title X, § 1052(26), title XIII, § 1352(b), Oct. 23, 1992, 106 Stat. 2457, 2500, 2559; Pub. L. 103–355, title II, § 2101(a)–(d), Oct. 13, 1994, 108 Stat. 3306–3308; Pub. L. 104–106, div. D, title XLIII, § 4321(a)(5), (b)(9), Feb. 10, 1996, 110 Stat. 671, 672; Pub. L. 105–85, div. A, title VIII, § 808(a), Nov. 18, 1997, 111 Stat. 1836; Pub. L. 105–261, div. A, title VIII, § 804(a), Oct. 17, 1998, 112 Stat. 2083.)

Historical and Revision Notes

Subsection (e)(1)(L) is based on section 2399 of this title as enacted by Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293.

Section 1(f)(2) of the bill would transfer the provisions of existing 10 U.S.C. 2399 to a new subparagraph (L) of 10 U.S.C. 2324(e)(1). The existing section 2399 prohibits the use of appropriated funds to reimburse a defense contractor for insurance against the contractor's costs of correcting defects in the contractor's materials or workmanship. The transfer would add the provision to the list of contractor costs which are not allowable as expenses which may be paid by the Department of Defense under a contract. This allowable cost limitation applies only to contracts for more than $100,000 other than fixed price contracts without cost incentives (see 10 US.C. 2324(k)). The committee determined that it is appropriate to treat the subject matter of section 2399 in the same manner as other provisions relating to allowable costs of defense contractors and notes that section 2324, providing a more comprehensive treatment of allowable costs, was enacted after section 2399. The committee recognizes that contracts for amounts less than $100,000 and fixed price contracts without cost incentives are covered by the existing section 2399 and would not be covered by the provision as transferred. The committee determined that in practice the existing section 2399 would not have significant applicability to such contracts and that the transfer is appropriate as part of this bill.

Subsection (j) is based on Pub. L. 99–145, title IX, § 933, Nov. 8, 1985, 99 Stat. 700.

References in Text

Section 4 of the Buy American Act (41 U.S.C. 10b–1), referred to in subsec. (e)(2)(C), was omitted from the Code in view of section 7004 of Pub. L. 100–418 which provided that the amendment by Pub. L. 100–418 which enacted section 10b–1 of Title 41, Public Contracts, ceased to be effective on Apr. 30, 1996. Another section 4 of the Buy American Act is classified as an Effective Date note under section 10c of Title 41.

Codification

Another section 2324 of this title was contained in chapter 138 and was renumbered section 2344 of this title.

Amendments

1998—Subsec. (*l*)(5). Pub. L. 105–261 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'senior executive', with respect to a contractor, means—

''(A) the chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

''(B) the four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

''(C) in the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such component.''

1997—Subsec. (e)(1)(P). Pub. L. 105–85, § 808(a)(1), added subpar. (P).

Subsec. (*l*)(4) to (6). Pub. L. 105–85, § 808(a)(2), added pars. (4) to (6).

1996—Subsec. (e)(2)(C). Pub. L. 104–106, § 4321(b)(9)(A), struck out ''awarding the contract'' after ''Secretary of Defense'' and substituted ''the Buy American Act (41 U.S.C. 10b–1)'' for ''title III of the Act of March 3, 1933 (41 U.S.C. 10b–1) (commonly referred to as the Buy American Act)''.

Subsec. (f)(2) to (4). Pub. L. 104–106, § 4321(a)(5), made technical correction to directory language of Pub. L. 103–355, § 2101(a)(6)(B)(ii). See 1994 Amendment notes below.

Subsec. (h)(2). Pub. L. 104–106, § 4321(b)(9)(B), inserted ''the head of the agency or'' after ''in the case of any contract if''.

1994—Subsec. (a). Pub. L. 103–355, § 2101(a), inserted heading and substituted ''head of an agency'' for ''Secretary of Defense'', ''agency'' for ''Department of Defense'', and ''applicable agency supplement'' for ''the Department of Defense Supplement''.

Subsec. (b). Pub. L. 103–355, § 2101(a)(2)(A), inserted heading.

Subsec. (b)(1). Pub. L. 103–355, § 2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 103–355, § 2101(a)(2)(B), substituted ''provisions in the Federal Acquisition Regulation'' for ''regulations issued by the Secretary''.

Subsec. (b)(2). Pub. L. 103–355, § 2101(a)(2)(C), substituted ''head of the agency'' for ''Secretary'' in two places.

Subsec. (c). Pub. L. 103–355, § 2101(a)(3), inserted heading and substituted ''The Federal Acquisition Regulation shall provide'' for ''The Secretary shall prescribe regulations providing''.

Subsec. (d). Pub. L. 103–355, § 2101(a)(4), inserted heading and substituted ''the head of an agency'' for ''the Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 103–355, § 2101(a)(5)(A), inserted heading.

Subsec. (e)(1)(B). Pub. L. 103–355, § 2101(b), substituted '', a State legislature, or a legislative body of a political subdivision of a State'' for ''or a State legislature''.

Subsec. (e)(1)(D). Pub. L. 103–355, § 2101(a)(5)(B), substituted ''provisions of the Federal Acquisition Regulation'' for ''regulations of the Secretary of Defense''.

Subsec. (e)(1)(M). Pub. L. 103–355, § 2101(a)(5)(C), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary of Defense''.

Subsec. (e)(2)(A). Pub. L. 103–355, § 2101(a)(5)(D), substituted ''the Secretary of Defense may provide'' for ''the Secretary may provide''.

Subsec. (e)(2)(C). Pub. L. 103–355, § 2101(a)(5)(E), substituted ''Secretary of Defense'' for ''head of the agency''.

Subsec. (e)(3)(A). Pub. L. 103–355, § 2101(a)(5)(F), substituted ''the Federal Acquisition Regulation'' for ''regulations prescribed by the Secretary''.

Subsec. (e)(4). Pub. L. 103–355, §2101(a)(5)(G), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Secretary shall prescribe regulations to implement this section. Such regulations may establish appropriate definitions, exclusions, limitations, and qualifications.''

Subsec. (f)(1). Pub. L. 103–355, §2101(a)(6)(A), inserted heading and substituted ''(1) The Federal Acquisition Regulation shall contain provisions on the allowability of contractor costs. Such provisions'' for ''(1) The Secretary shall prescribe proposed regulations to amend those provisions of the Department of Defense Supplement to the Federal Acquisition Regulation dealing with the allowability of contractor costs. The amendments'' and ''The regulations'' for ''These regulations''.

Subsec. (f)(1)(Q). Pub. L. 103–355, §2101(c), added subpar. (Q).

Subsec. (f)(2). Pub. L. 103–355, §2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, §4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Subsec. (f)(2)(B). Pub. L. 103–355, §2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(3). Pub. L. 103–355, §2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, §4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Pub. L. 103–355, §2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (f)(4). Pub. L. 103–355, §2101(a)(6)(B)(ii), as amended by Pub. L. 104–106, §4321(a)(5), substituted ''Federal Acquisition Regulation'' for ''regulations''.

Pub. L. 103–355, §2101(a)(6)(B)(i), struck out ''defense'' before ''contract auditor''.

Subsec. (g). Pub. L. 103–355, §2101(a)(7), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The regulations of the Secretary required to be prescribed under subsections (e) and (f)(1) shall require, to the maximum extent practicable, that such regulations apply to all subcontractors of a covered contract.''

Subsec. (h). Pub. L. 103–355, §2101(a)(8), inserted heading and substituted ''in the Federal Acquisition Regulation'' for ''by the Secretary'' in par. (1) and ''head of the agency'' for ''Secretary of Defense'' in introductory provisions of par. (2).

Subsec. (i). Pub. L. 103–355, §2101(a)(9), inserted heading and substituted ''The submission to an agency'' for ''The submission to the Department of Defense''.

Subsec. (j). Pub. L. 103–355, §2101(a)(10), inserted heading and substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (k). Pub. L. 103–355, §2101(a)(11)(A), inserted heading.

Subsec. (k)(2)(D). Pub. L. 103–355, §2101(a)(11)(B), struck out ''by the Department of Defense'' after ''decision'' in introductory provisions.

Subsec. (k)(4). Pub. L. 103–355, §2101(a)(11)(C), inserted ''or Secretary of the military department concerned'' after ''head of the agency'', ''or Secretary'' after ''agency head'', and ''or military department'' before period at end and substituted ''in accordance with the Federal Acquisition Regulation'' for ''under regulations prescribed by such agency head''.

Subsec. (*l*). Pub. L. 103–355, §2101(d), added subsec. (*l*) and struck out former subsec. (*l*) which related to periodic evaluation by Comptroller General of implementation of this section by Secretary of Defense.

Subsec. (m). Pub. L. 103–355, §2101(d), struck out subsec. (m) which read as follows: ''In this section, the term 'covered contract' means a contract for an amount more than $100,000 entered into by the Department of Defense other than a fixed-price contract without cost incentives.''

1992—Subsec. (a). Pub. L. 102–484, §818(a)(1)(A), redesignated subsec. (a)(1) as entire subsection. Former subsec. (a)(2) redesignated subsec. (b)(1).

Subsec. (b)(1). Pub. L. 102–484, §818(a)(1)(B), redesignated subsec. (a)(2) as subsec. (b)(1), in introductory provisions struck out ''by clear and convincing evidence'' after ''Secretary determines'' and substituted ''expressly unallowable under a cost principle referred to in subsection (a) that defines the allowability of specific selected costs'' for ''unallowable under paragraph (1)'', and in subpar. (A), substituted ''cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''costs''. Former subsec. (b) redesignated subsec. (b)(2).

Subsec. (b)(2). Pub. L. 102–484, §818(a)(2), redesignated subsec. (b) as subsec. (b)(2), struck out '', in addition to the penalty assessed under subsection (a),'' after ''against the contractor'', and substituted ''the amount of the disallowed cost allocated to covered contracts for which a proposal for settlement of indirect costs has been submitted'' for ''the amount of such cost''.

Subsec. (c). Pub. L. 102–484, §818(a)(5), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–484, §818(a)(3), (4), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows: ''If any penalty is assessed under subsection (a) or (b) with respect to a proposal for settlement of indirect costs, the Secretary may assess an additional penalty of not more than $10,000 per proposal.''

Subsec. (e)(3), (4). Pub. L. 102–484, §1352(b), added par. (3) and redesignated former par. (3) as (4).

Subsec. (f)(5). Pub. L. 102–484, §1052(26)(A), struck out par. (5) which read as follows: ''The regulations shall provide that costs to promote the export of products of the United States defense industry, including costs of exhibiting or demonstrating products, shall be allowable to the extent that such costs—

''(A) are allocable, reasonable, and not otherwise unallowable;

''(B) with respect to the activities of the business segment to which such costs are being allocated, are determined by the Secretary of Defense to be likely to result in future cost advantages to the United States; and

''(C) with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, are not in excess of the amount equal to 110 percent of such costs incurred by such business segment in the previous fiscal year.''

Subsec. (*l*)(2). Pub. L. 102–484, §1052(26)(B)(i), substituted ''paragraph (3)'' for ''subsection (e)(2)(C)''.

Subsec. (*l*)(3). Pub. L. 102–484, §1052(26)(B)(ii), added par. (3).

1991—Subsec. (e)(2), (3). Pub. L. 102–190 added par. (2) and redesignated former par. (2) as (3).

1990—Subsec. (e)(2). Pub. L. 101–510 struck out ''(A)'' before ''The Secretary'' and struck out subpars. (B) and (C) which read as follows:

''(B) The Secretary shall submit to the committees named in subparagraph (C) any proposed regulations that would make substantive changes to regulations prescribed under the second sentence of subparagraph (A) before the publication of such proposed regulations in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

''(C) The committees named in this subparagraph are—

''(i) the Committees on Armed Services and on Government Operations of the House of Representatives; and

''(ii) the Committees on Armed Services and on Governmental Affairs of the Senate.''

1989—Subsec. (e)(1)(N), (O). Pub. L. 101–189, §311(a)(1), added subpar. (N) and redesignated former subpar. (N) as (O).

Subsec. (k)(5)(B)(i). Pub. L. 101–189, §853(b)(3), substituted ''the Federal Acquisition Regulation'' for ''the single Government-wide procurement regulation issued pursuant to section 4(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(4)(A))''.

Subsec. (k)(6). Pub. L. 101–189, §853(a)(1)(A), designated par. (2) of subsec. (*l*), set out first, as subsec. (k)(6) and substituted ''In this subsection:'' for ''In subsection (k):'' in introductory provisions.

Subsec. (*l*). Pub. L. 101–189, §853(a)(1)(A), (C), restored the text of subsec. (k) as in effect prior to being struck

out by Pub. L. 100–700, §8(b)(2) (see 1988 Amendment note below), designated such text as subsec. (*l*), and struck out former subsec. (*l*)(1), set out first, which defined ''covered contract''. Former subsec. (*l*)(2), set out first, was redesignated subsec. (k)(6). Former subsec. (*l*), set out second, was redesignated (m).

Subsec. (m). Pub. L. 101–189, §853(a)(1)(B), redesignated subsec. (*l*), set out second, as (m).

1988—Subsec. (e)(1)(L). Pub. L. 100–370, §1(f)(2)(A), added subpar. (L).

Subsec. (e)(1)(M). Pub. L. 100–456, §322(a), added subpar. (M).

Subsec. (e)(1)(N). Pub. L. 100–700, §8(b)(1)(A), which directed amendment of subsec. (e) by striking out subpar. (N) and inserting in lieu thereof a new subpar. (N), was executed to subsec. (e)(1)(N) of this section as the probable intent of Congress. Former subpar. (N) read as follows: ''Except as provided in paragraph (2), costs incurred in connection with any civil, criminal, or administrative action brought by the United States that results in a determination that a contractor has violated or failed to comply with any Federal law or regulation if the action results in any of the following:

''(i) In the case of a criminal action, a conviction (including a conviction pursuant to a plea of nolo contendere).

''(ii) In the case of a civil or administrative action, (I) a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful, and (II) the imposition of a monetary penalty.

''(iii) A final decision by an appropriate official of the Department of Defense to debar or suspend the contractor or to rescind, void, or terminate a contract awarded to such contractor if such decision is based on a determination by the Secretary of Defense that the violation or failure to comply was knowing or willful.''

Pub. L. 100–456, §832(a)(1), added subpar. (N).

Subsec. (e)(2), (3). Pub. L. 100–700, §8(b)(1)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If a civil, criminal, or administrative action referred to in paragraph (1)(N) is resolved by consent or compromise pursuant to an agreement entered into by a contractor and the United States, the contractor's costs that are otherwise not allowable under paragraph (1)(N) may be allowed to the extent provided in such agreement.''

Pub. L. 100–456, §832(a)(2), (3), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(5). Pub. L. 100–463, §8105(a), and Pub. L. 100–456, §826(a), amended section identically, temporarily adding par. (5). Pub. L. 100–526 provided that Pub. L. 100–463, §8105, and amendment made by that section shall cease to be effective. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (j). Pub. L. 100–370, §1(f)(3)(A)(ii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 100–700, §8(b)(2), added subsec. (k), and struck out former subsec. (k), the text of which was restored and redesignated subsec. (*l*) by Pub. L. 101–189, §853(a)(1)(C). See 1989 Amendment note above.

Pub. L. 100–370, §1(f)(3)(A)(i), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 100–700, §8(b)(2), added subsec. (*l*) defining terms ''covered contract'', ''proceeding'', ''costs'', and ''penalty''.

Pub. L. 100–370, §1(f)(3)(A)(i), redesignated subsec. (k) as (*l*).

1987—Subsec. (e)(1)(K). Pub. L. 100–180 added subpar. (K).

Subsec. (k). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1985—Subsec. (e)(2). Pub. L. 99–190, §101(b) [§8112(a)(1)], designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (h)(2). Pub. L. 99–190, §101(b) [§8112(a)(2)], inserted '', in an exceptional case,'' in provisions preceding subpar. (A).

Subsecs. (j), (k). Pub. L. 99–190, §101(b) [§8112(a)(3)], added subsec. (j) and redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VIII, §804(d), Oct. 17, 1998, 112 Stat. 2083, provided that: ''The amendments made by this section [amending this section, sections 256 and 435 of Title 41, Public Contracts, and provisions set out as a note under section 435 of Title 41] shall apply with respect to costs of compensation of senior executives incurred after January 1, 1999, under covered contracts (as defined in section 2324(*l*) of title 10, United States Code, and section 306(*l*) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C.256(*l*)) entered into before, on, or after the date of the enactment of this Act [Oct. 17, 1998].''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective on date that is 90 days after Nov. 18, 1997, and applicable with respect to costs of compensation incurred after Jan. 1, 1998, under covered contracts entered into before, on, or after Nov. 18, 1997, see section 808(e) of Pub. L. 105–85, set out as an Effective Date note under section 435 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

For effective date and applicability of amendment by section 4321(b)(9) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Section 818(b) of Pub. L. 102–484 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 23, 1992] and shall apply, as provided in regulations prescribed by the Secretary of Defense, with respect to proposals for settlement of indirect costs for which the Federal Government has not formally initiated an audit before that date.''

Section 1352(c) of Pub. L. 102–484 provided that: ''The amendments made by subsection (b) [amending this section] apply to covered contracts (as defined in section 2324 of title 10, United States Code) that are in effect or are entered into on or after October 1, 1991, for costs incurred on or after October 1, 1991.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 346(b) of Pub. L. 102–190 provided that: ''The amendments made by subsection (a) [amending this section] shall not apply with respect to a foreign national whose employment under a military banking contract (defined in section 2324(e)(2)(B) of title 10, United States Code, as added by subsection (a)) was terminated before the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 311(a)(2) of Pub. L. 101–189 provided that: ''Subparagraph (N) of such subsection [10 U.S.C. 2324(e)(1)(N)], as added by paragraph (1), shall not apply with respect to the termination of the employment of a foreign national employed under any covered contract (as defined in subsection (*l*) of such section [10 U.S.C. 2324(*l*)]) if such termination is the result of the closing of, or the curtailment of activities at, a United States military facility in a foreign country pursuant

to an agreement entered into with the government of that country before the date of the enactment of this Act [Nov. 29, 1989].''

Section 853(a)(3) of Pub. L. 101–189 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as of November 19, 1988.''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Section 8(e) of Pub. L. 100–700 provided that: ''The amendments made by subsections (a) and (b) [enacting section 256 of Title 41, Public Contracts, and amending this section] shall take effect with respect to contracts awarded after the date of the enactment of this Act [Nov. 19, 1988].''

Section 8105(d) of Pub. L. 100–463 provided that subsec. (f)(5) of this section, as enacted by section 8105(a) of Pub. L. 100–463, would cease to be effective three years after Oct. 1, 1988. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Section 322(b) of Pub. L. 100–456 provided that: ''Subparagraph (M) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply with respect to any contract entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Sept. 29, 1988].''

Section 826(d) of Pub. L. 100–456, as amended by Pub. L. 100–526, title I, §106(a)(1)(B), Oct. 24, 1988, 102 Stat. 2625, provided that: ''Section 2324(f)(5) of title 10, United States Code (as added by subsection (a)), shall cease to be effective on September 30, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 805(b) of Pub. L. 100–180 provided that: ''Subparagraph (K) of section 2324(e)(1) of title 10, United States Code, as added by subsection (a), shall apply to any contract entered into after the end of the 120-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE

Section 911(c) of Pub. L. 99–145 provided that: ''Section 2324 of title 10, United States Code, as added by subsection (a), shall apply only to contracts for which solicitations are issued on or after the date on which such regulations are prescribed.''

REGULATIONS

Section 2101(e) of Pub. L. 103–355 provided that: ''The regulations of the Secretary of Defense implementing section 2324 of title 10, United States Code, shall remain in effect until the Federal Acquisition Regulation is revised to implement the amendments made by this section [amending this section].''

Section 8(d) of Pub. L. 100–700 provided that: ''The regulations necessary for the implementation of section 306(e) of the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 256(e)] (as added by subsection (a)) and section 2324(k)(5) of title 10, United States Code (as added by subsection (b))—

''(1) shall be prescribed not later than 120 days after the date of the enactment of this Act [Nov. 19, 1988]; and

''(2) shall apply to contracts entered into more than 30 days after the date on which such regulations are issued.''

Section 8105(b), (c) of Pub. L. 100–463 provided for the promulgation of regulations and the preparation of a report in connection with the operation of subsec. (f)(5), as enacted by section 8105(a) of Pub. L. 100–463. Section 106(a)(2) of Pub. L. 100–526 provided that section 8105 of Pub. L. 100–463 ''and the amendment made by that section shall cease to be effective''.

Section 826(b) of Pub. L. 100–456 provided that: ''The Secretary of Defense shall prescribe final regulations under paragraph (5) of section 2324(f) of title 10, United States Code (as added by subsection (a)), not later than 90 days after the date of the enactment of this Act [Sept. 29, 1988]. Such regulations shall apply with respect to costs referred to in such paragraph that are incurred by a Department of Defense contractor (or a subcontractor of such a contractor) on or after the first day of the contractor's (or subcontractor's) first fiscal year that begins on or after the date on which such final regulations are prescribed.''

Section 832(b) of Pub. L. 100–456 related to regulations for the implementation of subsec. (e)(1)(N) of this section, prior to repeal by Pub. L. 100–700, §8(c), Nov. 19, 1988, 102 Stat. 4638.

Section 101(b) [title VIII, §8112(b), (c)] of Pub. L. 99–190 required the regulations required under section 911(b) of Pub. L. 99–145, set out below, to be submitted to Congress before the publication of such regulations in accordance with 41 U.S.C. 418b and directed the Comptroller General, within 180 days of publication of the regulations, to submit to Congress a report on the Comptroller General's initial evaluation under subsection (j)(1) of this section.

Section 911(b) of Pub. L. 99–145 provided that:

''(1) Not later than 150 days after the date of the enactment of this Act [Nov. 8, 1985], the Secretary of Defense shall prescribe the regulations required by subsections (e) and (f) of section 2324 of title 10, United States Code, as added by subsection (a). Such regulations shall be published in accordance with section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

''(2) The Secretary shall review such regulations at least once every five years. The results of each such review shall be made public.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PAYMENT OF RESTRUCTURING COSTS UNDER DEFENSE CONTRACTS

Pub. L. 103–337, div. A, title VIII, §818, Oct. 5, 1994, 108 Stat. 2821, as amended by Pub. L. 105–85, div. A, title VIII, §804(d), Nov. 18, 1997, 111 Stat. 1834, provided that:

''[(a) Repealed. Pub. L. 105–85, div. A, title VIII, §804(d), Nov. 18, 1997, 111 Stat. 1834.]

''(b) REQUIREMENT FOR REGULATIONS.—Not later than January 1, 1995, the Secretary of Defense shall prescribe regulations on the allowability of restructuring costs associated with business combinations under defense contracts.

''(c) MATTERS TO BE INCLUDED.—At a minimum, the regulations shall—

''(1) include a definition of the term 'restructuring costs'; and

''(2) address the issue of contract novations under such contracts.

''(d) CONSULTATION.—In developing the regulations, the Secretary of Defense shall consult with the Administrator for Federal Procurement Policy.

''(e) REPORT.—Not later than November 13 in each of the years 1995, 1996, and 1997, the Secretary of Defense shall submit to Congress a report on the following:

''(1) A description of the procedures being followed within the Department of Defense for evaluating projected costs and savings under a defense contract resulting from a restructuring of a defense contractor associated with a business combination.

''(2) A list of all defense contractors for which restructuring costs have been allowed by the Department, along with the identities of the firms which those contractors have acquired or with which those

contractors have combined since July 21, 1993, that qualify the contractors for such restructuring reimbursement.

''(3) The Department's experience with business combinations for which the Department has agreed to allow restructuring costs since July 21, 1993, including the following:

''(A) The estimated amount of costs associated with each restructuring that have been or will be treated as allowable costs under defense contracts, including the type and amounts of costs that would not have arisen absent the business combination.

''(B) The estimated amount of savings associated with each restructuring that are expected to be achieved on defense contracts.

''(C) The types of documentation relied on to establish that savings associated with each restructuring will exceed costs associated with the restructuring.

''(D) Actual experience on whether savings associated with each restructuring are exceeding costs associated with the restructuring.

''(E) Identification of any programmatic or budgetary disruption in the Department of Defense resulting from contractor restructuring.

''(f) DEFINITION.—In this section, the term 'business combination' includes a merger or acquisition.

''(g) COMPTROLLER GENERAL REPORTS.—(1) Not later than March 1, 1995, the Comptroller General shall submit to Congress a report on the adequacy of the regulations prescribed under subsection (b) with respect to—

''(A) whether such regulations are consistent with the purposes of this section, other applicable law, and the Federal Acquisition Regulation; and

''(B) whether such regulations establish policies, procedures, and standards to ensure that restructuring costs are paid only when in the best interests of the United States.

''(2) The Comptroller General shall report periodically to Congress on the implementation of the policy of the Department of Defense regarding defense industry restructuring.''

REIMBURSEMENT OF INDIRECT COSTS OF INSTITUTIONS OF HIGHER EDUCATION UNDER DEPARTMENT OF DEFENSE CONTRACTS

Pub. L. 103–160, div. A, title VIII, §841, Nov. 30, 1993, 107 Stat. 1719, as amended by Pub. L. 105–244, title I, §102(a)(2)(C), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) PROHIBITION.—The Secretary of Defense may not by regulation place a limitation on the amount that the Department of Defense may reimburse an institution of higher education for allowable indirect costs incurred by the institution for work performed for the Department of Defense under a Department of Defense contract unless that same limitation is applied uniformly to all other organizations performing similar work for the Department of Defense under Department of Defense contracts.

''(b) WAIVER.—The Secretary of Defense may waive the application of the prohibition in subsection (a) in the case of a particular institution of higher education if the governing body of the institution requests the waiver in order to simplify the overall management by that institution of cost reimbursements by the Department of Defense for contracts awarded by the Department to the institution.

''(c) DEFINITIONS.—In this section:

''(1) The term 'allowable indirect costs' means costs that are generally considered allowable as indirect costs under regulations that establish the cost reimbursement principles applicable to an institution of higher education for purposes of Department of Defense contracts.

''(2) The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].''

ASSESSMENT OF REGULATIONS RELATING TO ALLOWABILITY OF COSTS TO PROMOTE EXPORT OF DEFENSE PRODUCTS; REPORT TO CONGRESS

Section 826(c) of Pub. L. 100–456, as amended by Pub. L. 100–526, title I, §106(a)(1)(A), Oct. 24, 1988, 102 Stat. 2625, directed Comptroller General of United States and Inspector General of Department of Defense, not later than 2 years after Sept. 29, 1988, to submit to Congress a report including an assessment of whether the regulations required by subsec. (f)(5) of this section provide the appropriate incentives to stimulate exports by the United States defense industry and provide cost savings to the United States and whether such regulations provide appropriate criteria to ensure that costs allowed are reasonably likely to provide future cost savings to the United States.

AIR TRAVEL EXPENSES OF DEFENSE CONTRACTOR PERSONNEL

Section 833 of Pub. L. 100–456, as amended by Pub. L. 101–189, div. A, title VIII, §853(a)(2), Nov. 29, 1989, 103 Stat. 1518, provided that:

''(a) AIR FARE DISCOUNT AGREEMENTS.—The Administrator of General Services shall enter into negotiations with commercial air carriers with a view to achieving agreements that permit personnel of contractors who are traveling solely in the performance of covered contracts to be transported by such carriers at the same discount air passenger transportation rates as such carriers charge for travel by Federal Government employees traveling at Government expense.

''(b) ALLOWABLE COSTS.—Not later than 120 days after the first agreement goes into effect between the Administrator of General Services and a commercial air carrier under subsection (a), the Secretary of Defense shall prescribe regulations that provide that costs for travel by commercial air carrier by an employee of a defense contractor that exceed the air passenger transportation rates established under the agreement are not allowable costs under section 2324 of title 10, United States Code, under a covered contract if—

''(1) the rate was available; and

''(2) travel could have reasonably been performed under the conditions required by the air carrier to qualify for such rate.

''(c) COVERED CONTRACT.—In this section, the term 'covered contract' has the meaning given such term by section 2324(m) of title 10, United States Code.

''(d) EXPIRATION.—This section shall cease to be effective three years after the date of the enactment of this Act [Sept. 29, 1988].''

BURDEN OF PROOF IN GOVERNMENT CONTRACT DISPUTE RESOLUTION

Section 933 of Pub. L. 99–145, which provided that in proceeding before the Armed Services Board of Contract Appeals, United States Claims Court, or any other Federal court in which reasonableness of indirect costs for which a contractor seeks reimbursement from Department of Defense is in issue, the burden of proof is upon the contractor to establish that such costs are reasonable, was repealed and restated in subsec. (j) of this section by Pub. L. 100–370, §1(f)(3)(A)(ii), (B), July 19, 1988, 102 Stat. 846.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2325, 2372 of this title; title 41 section 435.

§ 2325. Restructuring costs

(a) LIMITATION ON PAYMENT OF RESTRUCTURING COSTS.—(1) The Secretary of Defense may not pay, under section 2324 of this title, a defense contractor for restructuring costs associated

with a business combination of the contractor that occurs after November 18, 1997, unless the Secretary determines in writing either—

(A) that the amount of projected savings for the Department of Defense associated with the restructuring will be at least twice the amount of the costs allowed; or

(B) that the amount of projected savings for the Department of Defense associated with the restructuring will exceed the amount of the costs allowed and that the business combination will result in the preservation of a critical capability that otherwise might be lost to the Department.

(2) The Secretary may not delegate the authority to make a determination under paragraph (1) to an official of the Department of Defense below the level of an Assistant Secretary of Defense.

(b) REPORT.—Not later than March 1 in each of 1998, 1999, 2000, 2001, and 2002, the Secretary of Defense shall submit to Congress a report that contains, with respect to business combinations occurring on or after August 15, 1994, the following:

(1) For each defense contractor to which the Secretary has paid, under section 2324 of this title, restructuring costs associated with a business combination, a summary of the following:

(A) An estimate of the amount of savings for the Department of Defense associated with the restructuring that has been realized as of the end of the preceding calendar year.

(B) An estimate of the amount of savings for the Department of Defense associated with the restructuring that is expected to be achieved on defense contracts.

(2) An identification of any business combination for which the Secretary has paid restructuring costs under section 2324 of this title during the preceding calendar year and, for each such business combination—

(A) the supporting rationale for allowing such costs;

(B) factual information associated with the determination made under subsection (a) with respect to such costs; and

(C) a discussion of whether the business combination would have proceeded without the payment of restructuring costs by the Secretary.

(3) For business combinations of major defense contractors that took place during the year preceding the year of the report—

(A) an assessment of any potentially adverse effects that the business combinations could have on competition for Department of Defense contracts (including potential horizontal effects, vertical effects, and organizational conflicts of interest), the national technology and industrial base, or innovation in the defense industry; and

(B) the actions taken to mitigate the potentially adverse effects.

(c) DEFINITION.—In this section, the term ''business combination'' includes a merger or acquisition.

(Added Pub. L. 105–85, div. A, title VIII, §804(a)(1), Nov. 18, 1997, 111 Stat. 1832; amended Pub. L. 106–65, div. A, title X, §1066(a)(19), Oct. 5, 1999, 113 Stat. 771.)

PRIOR PROVISIONS

A prior section 2325, added Pub. L. 99–500, §101(c) [title X, §907(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–137, and Pub. L. 99–591, §101(c) [title X, §907(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, §907(a)(1), Nov. 14, 1986, 100 Stat. 3917, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, §1622(c)(5), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title VIII, §810, Nov. 5, 1990, 104 Stat. 1595; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, directed Secretary of Defense to ensure that requirements of Department of Defense with respect to procurement of supplies be stated in terms of functions to be performed, performance required, or essential physical characteristics, and related to preference for nondevelopmental items in procurement of supplies, prior to repeal by Pub. L. 103–355, title VIII, §8104(b)(1), Oct. 13, 1994, 108 Stat. 3391. See sections 2376 and 2377 of this title.

Another prior section 2325 was renumbered section 2345 of this title.

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–65 inserted ''that occurs after November 18, 1997,'' after ''of the contractor'' in introductory provisions.

EFFECTIVE DATE

Section 804(c) of Pub. L. 105–85 provided that: ''Section 2325(a) of title 10, United States Code, as added by subsection (a), shall apply with respect to business combinations that occur after the date of the enactment of this Act [Nov. 18, 1997].''

GAO REPORTS

Section 804(b) of Pub. L. 105–85 provided that:

''(1) Not later than April 1, 1998, the Comptroller General shall—

''(A) in consultation with appropriate officials in the Department of Defense—

''(i) identify major market areas affected by business combinations of defense contractors since January 1, 1990; and

''(ii) develop a methodology for determining the savings from business combinations of defense contractors on the prices paid on particular defense contracts; and

''(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report describing, for each major market area identified pursuant to subparagraph (A)(i), the changes in numbers of businesses competing for major defense contracts since January 1, 1990.

''(2) Not later than December 1, 1998, the Comptroller General shall submit to the congressional defense committees a report containing the following:

''(A) Updated information on—

''(i) restructuring costs of business combinations paid by the Department of Defense pursuant to certifications under section 818 of the National Defense Authorization Act for Fiscal Year 1995 [Pub. L. 103–337, set out as a note under section 2324 of this title], and

''(ii) savings realized by the Department of Defense as a result of the business combinations for which the payment of restructuring costs was so certified.

''(B) An assessment of the savings from business combinations of defense contractors on the prices paid on a meaningful sample of defense contracts, determined in accordance with the methodology developed pursuant to paragraph (1)(A)(ii), as well as a description of the methodology.

''(C) Any recommendations that the Comptroller General considers appropriate.

''(3) In this subsection, the term 'business combination' has the meaning given that term in section 2325(c) of title 10, United States Code, as added by subsection (a).''

§ 2326. Undefinitized contractual actions: restrictions

(a) IN GENERAL.—The head of an agency may not enter into an undefinitized contractual action unless the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department concerned if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

(b) LIMITATIONS ON OBLIGATION OF FUNDS.—(1) A contracting officer of the Department of Defense may not enter into an undefinitized contractual action unless the contractual action provides for agreement upon contractual terms, specifications, and price by the earlier of—

(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

(2) Except as provided in paragraph (3), the contracting officer for an undefinitized contractual action may not obligate with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(3) If a contractor submits a qualifying proposal (as defined in subsection (g)) to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

(4) The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if that head of an agency determines that the waiver is necessary in order to support any of the following operations:

(A) A contingency operation.

(B) A humanitarian or peacekeeping operation.

(5) This subsection does not apply to an undefinitized contractual action for the purchase of initial spares.

(c) INCLUSION OF NON-URGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

(1) good business practice; and

(2) in the best interests of the United States.

(d) MODIFICATION OF SCOPE.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

(1) good business practice; and

(2) in the best interests of the United States.

(e) ALLOWABLE PROFIT.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

(f) APPLICABILITY.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) DEFINITIONS.—In this section:

(1) The term ''undefinitized contractual action'' means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action. Such term does not include contractual actions with respect to the following:

(A) Foreign military sales.

(B) Purchases in an amount not in excess of the amount of the simplified acquisition threshold.

(C) Special access programs.

(D) Congressionally mandated long-lead procurement contracts.

(2) The term ''qualifying proposal'' means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

(Added Pub. L. 99–500, § 101(c) [title X, § 908(d)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–140, and Pub. L. 99–591, § 101(c) [title X, § 908(d)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–140; Pub. L. 99–661, div. A, title IX, formerly title IV, § 908(d)(1)(A), Nov. 14, 1986, 100 Stat. 3920, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(6), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–25, title VII, § 701(d)(5), Apr. 6, 1991, 105 Stat. 114; Pub. L. 103–355, title I, § 1505, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 105–85, div. A, title VIII, § 803(a), Nov. 18, 1997, 111 Stat. 1831.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2326 was renumbered section 2346 of this title.

AMENDMENTS

1997—Subsec. (b)(4). Pub. L. 105–85 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The head of an agency may waive the provisions of this subsection with respect to a contract of that agency if such head of an agency determines that the waiver is necessary in order to support a contingency operation.''

1994—Subsec. (b). Pub. L. 103–355, §1505(a)(1), struck out ''and expenditure'' after ''obligation'' in heading.

Subsec. (b)(1)(B). Pub. L. 103–355, §1505(a)(2), struck out ''or expended'' after ''obligated''.

Subsec. (b)(2). Pub. L. 103–355, §1505(a)(3), substituted ''obligate'' for ''expend''.

Subsec. (b)(3). Pub. L. 103–355, §1505(a)(4), substituted ''obligated'' for ''expended'' and ''obligate'' for ''expend''.

Subsec. (b)(4), (5). Pub. L. 103–355, §1505(b), added par. (4) and redesignated former par. (4) as (5).

Subsec. (g)(1)(B). Pub. L. 103–355, §1505(c), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

1991—Subsec. (g)(1)(B). Pub. L. 102–25 substituted ''in an amount not in excess of the amount of the small purchase threshold'' for ''of less than $25,000''.

1989—Subsec. (g)(1)(D). Pub. L. 101–189 substituted ''Congressionally mandated'' for ''Congressionally-mandated''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 101(c) [title X, §908(d)(2)] of Pub. L. 99–500 and Pub. L. 99–591, and section 908(d)(2) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2326 of title 10, United States Code (as added by subsection (d)(1)), applies to undefinitized contractual actions that are entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS; OVERSIGHT BY INSPECTOR GENERAL; WAIVER AUTHORITY

Section 101(c) [title X, §908(a)–(c), (e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 908(a)–(c), (e) of title IX, formerly title IV, of Pub. L. 99–661; renumbered title IX and amended by Pub. L. 100–26, §§3(5), 5(2), Apr. 21, 1987, 101 Stat. 273, 274; Pub. L. 104–106, div. D, title XLIII, §4322(b)(2), Feb. 10, 1996, 110 Stat. 677, provided that:

''(a) LIMITATION ON USE OF FUNDS FOR UNDEFINITIZED CONTRACTUAL ACTIONS.—(1) On the last day of each six-month period described in paragraph (4), the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretary of each military department shall determine—

''(A) the total amount of funds obligated for contractual actions during the six-month period;

''(B) the total amount of funds obligated during the six-month period for undefinitized contractual actions; and

''(C) the total amount of funds obligated during the six-month period for undefinitized contractual actions that are not definitized on or before the last day of such period.

''(2) On the last day of each six-month period described in paragraph (4), the amount of funds obligated for undefinitized contractual actions entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the six-month period that are not definitized on or before such day may not exceed 10 percent of the amount of funds obligated for all contractual actions entered into by the Secretary during the six-month period.

''(3) If on the last day of a six-month period described in paragraph (4) the total amount of funds obligated for undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the six-month period exceeds the limit established in paragraph (2), the Secretary—

''(A) shall, not later than the end of the 45-day period beginning on the first day following the six-month period, submit to the defense committees an unclassified report concerning—

''(i) the amount of funds obligated for contractual actions under the jurisdiction of the Secretary that were entered into during the six-month period with respect to which the report is submitted; and

''(ii) the amount of such funds obligated for undefinitized contractual actions; and

''(B) except with respect to the six-month period described in paragraph (4)(A), may not enter into any additional undefinitized contractual actions until the date on which the Secretary certifies to Congress that such limit is not exceeded by the cumulative amount of funds obligated for undefinitized contractual actions under the jurisdiction of the Secretary that are not definitized on or before such date and were entered into—

''(i) during the six-month period for which such limit was exceeded; or

''(ii) after the end of such six-month period.

''(4) This subsection applies to the following six-month periods:

''(A) The period beginning on October 1, 1986, and ending on March 31, 1987.

''(B) The period beginning on April 1, 1987, and ending on September 30, 1987.

''(C) The period beginning on October 1, 1987, and ending on March 31, 1988.

''(D) The period beginning on April 1, 1988, and ending on September 30, 1988.

''(E) The period beginning on October 1, 1988, and ending on March 31, 1989.

''(b) OVERSIGHT BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall—

''(1) periodically conduct an audit of contractual actions under the jurisdiction of the Secretary of Defense (with respect to the Defense Logistics Agency) and the Secretaries of the military departments; and

''(2) after each audit, submit to Congress a report on the management of undefinitized contractual actions by each Secretary, including the amount of contractual actions under the jurisdiction of each Secretary that is represented by undefinitized contractual actions.

''(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the application of subsections (a) and (b) for urgent and compelling considerations relating to national security or public safety if the Secretary notifies the Committees on Armed Services of the Senate and House of Representatives of such waiver before the end of the 30-day period beginning on the date that the waiver is made.

''(e) DEFINITION.—For purposes of this section, the term 'undefinitized contractual action' has the meaning given such term in section 2326(g) of title 10, United States Code (as added by subsection (d)(1)).''

§ 2327. Contracts: consideration of national security objectives

(a) DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT.—The head of an agency shall require a firm or a subsidiary of a firm that submits a bid or proposal in response to a solicitation issued by the Department of Defense to disclose in that bid or proposal any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) that is owned or controlled (whether directly or indirectly) by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(b) PROHIBITION ON ENTERING INTO CONTRACTS AGAINST THE INTERESTS OF THE UNITED STATES.—Except as provided in subsection (c), the head of an agency may not enter into a contract with a firm or a subsidiary of a firm if—

(1) a foreign government owns or controls (whether directly or indirectly) a significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary); and

(2) such foreign government is the government of a country that the Secretary of State determines under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) has repeatedly provided support for acts of international terrorism.

(c) WAIVER.—(1)(A) If the Secretary of Defense determines under paragraph (2) that entering into a contract with a firm or a subsidiary of a firm described in subsection (b) is not inconsistent with the national security objectives of the United States, the head of an agency may enter into a contract with such firm or subsidiary after the date on which such head of an agency submits to Congress a report on the contract.

(B) A report under subparagraph (A) shall include the following:

(i) The identity of the foreign government concerned.

(ii) The nature of the contract.

(iii) The extent of ownership or control of the firm or subsidiary concerned (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government concerned or the agency or instrumentality of such foreign government.

(iv) The reasons for entering into the contract.

(C) After the head of an agency submits a report to Congress under subparagraph (A) with respect to a firm or a subsidiary, such head of an agency is not required to submit a report before entering into any subsequent contract with such firm or subsidiary unless the information required to be included in such report under subparagraph (B) has materially changed since the submission of the previous report.

(2) Upon the request of the head of an agency, the Secretary of Defense shall determine whether entering into a contract with a firm or subsidiary described in subsection (b) is inconsistent with the national security objectives of the United States. In making such a determination, the Secretary of Defense shall consider the following:

(A) The relationship of the United States with the foreign government concerned.

(B) The obligations of the United States under international agreements.

(C) The extent of the ownership or control of the firm or subsidiary (or, if appropriate in the case of a subsidiary, of the firm that owns the subsidiary) by the foreign government or an agent or instrumentality of the foreign government.

(D) Whether payments made, or information made available, to the firm or subsidiary under the contract could be used for purposes hostile to the interests of the United States.

(d) LIST OF FIRMS SUBJECT TO PROHIBITION.—(1) The Secretary of Defense shall develop and maintain a list of all firms and subsidiaries of firms that the Secretary has identified as being subject to the prohibition in subsection (b).

(2)(A) A person may request the Secretary to include on the list maintained under paragraph (1) any firm or subsidiary of a firm that the person believes to be owned or controlled by a foreign government described in subsection (b)(2). Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do exist, the Secretary shall include the firm or subsidiary on the list.

(B) A firm or subsidiary of a firm included on the list may request the Secretary to remove such firm or subsidiary from the list on the basis that it has been erroneously included on the list or its ownership circumstances have significantly changed. Upon receipt of such a request, the Secretary shall determine whether the conditions in paragraphs (1) and (2) of subsection (b) exist in the case of that firm or subsidiary. If the Secretary determines that such conditions do not exist, the Secretary shall remove the firm or subsidiary from the list.

(C) The Secretary shall establish procedures to carry out this paragraph.

(3) The head of an agency shall prohibit each firm or subsidiary of a firm awarded a contract by the agency from entering into a subcontract under that contract in an amount in excess of $25,000 with a firm or subsidiary included on the list maintained under paragraph (1) unless there is a compelling reason to do so. In the case of any subcontract requiring consent by the head of an agency, the head of the agency shall not consent to the award of the subcontract to a firm or subsidiary included on such list unless there is a compelling reason for such approval.

(e) DISTRIBUTION OF LIST.—The Administrator of General Services shall ensure that the list developed and maintained under subsection (d) is made available to Federal agencies and the public in the same manner and to the same extent as the list of suspended and debarred contrac-

tors compiled pursuant to subpart 9.4 of the Federal Acquisition Regulation.

(f) APPLICABILITY.—(1) This section does not apply to a contract for an amount less than $100,000.

(2) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

(g) REGULATIONS.—The Secretary of Defense, after consultation with the Secretary of State, shall prescribe regulations to carry out this section. Such regulations shall include a definition of the term ''significant interest''.

(Added Pub. L. 99–500, § 101(c) [title X, § 951(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–164, and Pub. L. 99–591, § 101(c) [title X, § 951(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, § 951(a)(1), Nov. 14, 1986, 100 Stat. 3944, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title XII, § 1231(8), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 100–224, § 5(b)(2), Dec. 30, 1987, 101 Stat. 1538; Pub. L. 105–85, div. A, title VIII, § 843, Nov. 18, 1997, 111 Stat. 1844.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2327 was renumbered section 2347 of this title.

AMENDMENTS

1997—Subsecs. (d) to (g). Pub. L. 105–85 added subsecs. (d) and (e) and redesignated former subsecs. (d) and (e) as (f) and (g), respectively.

1987—Subsecs. (a), (b)(2). Pub. L. 100–224 substituted ''50 U.S.C. App.'' for ''50 U.S.C.'' in parenthetical after ''Export Administration Act of 1979''.

Subsec. (d)(1). Pub. L. 100–180 inserted par. (1) designation.

EFFECTIVE DATE

Section 101(c) [title X, § 951(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 951(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2327 of title 10, United States Code (as added by subsection (a)(1)), shall apply to contracts entered into by the Secretary of Defense after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORTS BY DEFENSE CONTRACTORS OF DEALINGS WITH TERRORIST COUNTRIES

Pub. L. 103–160, div. A, title VIII, § 843, Nov. 30, 1993, 107 Stat. 1720, as amended by Pub. L. 103–355, title VIII, § 8105(j), Oct. 13, 1994, 108 Stat. 3393, provided that:

''(a) REPORT REQUIREMENT.—(1) Whenever the Secretary of Defense proposes to enter into a contract with any person for an amount in excess of $5,000,000 for the provision of goods or services to the Department of Defense, the Secretary shall require that person—

''(A) before entering into the contract, to report to the Secretary each commercial transaction which that person has conducted with the government of any terrorist country during the preceding three years or the period since the effective date of this section, whichever is shorter; and

''(B) to report to the Secretary each such commercial transaction which that person conducts during the course of the contract (but not after the date specified in subsection (h)) with the government of any terrorist country.

''(2) The requirement contained in paragraph (1)(B) shall be included in the contract with the Department of Defense.

''(3) This section does not apply with respect to a contract for the procurement of a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

''(b) REGULATIONS.—The Secretary of Defense shall prescribe such regulations as may be necessary to carry out this section.

''(c) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense shall submit to the Congress each year by December 1 a report setting forth those persons conducting commercial transactions with terrorist countries that are included in the reports made pursuant to subsection (a) during the preceding fiscal year, the terrorist countries with which those transactions were conducted, and the nature of those transactions. The version of the report made available for public release shall exclude information exempt from public disclosure under section 552 of title 5, United States Code (commonly known as the Freedom of Information Act).

''(d) LIABILITY.—This section shall not be interpreted as imposing any liability on a person for failure to comply with the reporting requirement of subsection (a) if the failure to comply is caused solely by an act or omission of a third party.

''(e) PERSON DEFINED.—For purposes of this section, the term 'person' means a corporate or other business entity proposing to enter or entering into a contract covered by this section. The term does not include an affiliate or subsidiary of the entity.

''(f) TERRORIST COUNTRY DEFINED.—A country shall be considered to be a terrorist country for purposes of a contract covered by this section if the Secretary of State has determined pursuant to law, as of the date that is 60 days before the date on which the contract is signed, that the government of that country is a government that has repeatedly provided support for acts of international terrorism.

''(g) EFFECTIVE DATE.—This section shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Nov. 30, 1993], or after the expiration of the 30-day period beginning on the date of publication in the Federal Register of the final regulations referred to in subsection (b), whichever is earlier.

''(h) TERMINATION.—This section expires on September 30, 1996.''

§ 2328. Release of technical data under Freedom of Information Act: recovery of costs

(a) IN GENERAL.—(1) The Secretary of Defense shall, if required to release technical data under section 552 of title 5 (relating to the Freedom of Information Act), release such technical data to the person requesting the release if the person pays all reasonable costs attributable to search, duplication, and review.

(2) The Secretary of Defense shall prescribe regulations, pursuant to notice and receipt of public comment, specifying a uniform schedule of fees under this section.

(b) CREDITING OF RECEIPTS.—An amount received under this section—

(1) shall be retained by the Department of Defense or the element of the Department of Defense receiving the amount; and

(2) shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs incurred in complying with requests for technical data were paid.

(c) WAIVER.—The Secretary of Defense shall waive the payment of costs required by subsection (a) which are in an amount greater than the costs that would be required for such a release of information under section 552 of title 5 if—

(1) the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable such citizen or corporation to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States (except that the Secretary may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, to be refunded upon submission of an offer by the citizen or corporation);

(2) the release of technical data is requested in order to comply with the terms of an international agreement; or

(3) the Secretary determines, in accordance with section 552(a)(4)(A)(iii) of title 5, that such a waiver is in the interests of the United States.

(Added Pub. L. 99–500, § 101(c) [title X, § 954(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–172, and Pub. L. 99–591, § 101(c) [title X, § 954(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–172; Pub. L. 99–661, div. A, title IX, formerly title IV, § 954(a)(1), Nov. 14, 1986, 100 Stat. 3952, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(a)(7)(A), (B)(i), Apr. 21, 1987, 101 Stat. 278.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2328 was renumbered section 2348 of this title.

AMENDMENTS

1987—Pub. L. 100–26, § 7(a)(7)(B)(i), substituted ''Release of technical data under Freedom of Information Act: recovery of costs'' for ''Release of technical data'' in section catchline.

Subsec. (a)(1). Pub. L. 100–26, § 7(a)(7)(A)(i)(I), substituted ''such technical data to the person requesting the'' for ''technical data to a person requesting such a''.

Pub. L. 100–26, § 7(a)(7)(A)(i)(II), substituted ''search, duplication, and review'' for ''search and duplication''.

Subsec. (b). Pub. L. 100–26, § 7(a)(7)(A)(ii), substituted ''Crediting of receipts'' for ''Disposition of costs'' in heading.

Subsec. (c)(3). Pub. L. 100–26, § 7(a)(7)(A)(iii), substituted ''section 552(a)(4)(A)(iii)'' for ''section 552(a)(4)(A)''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(d)(2) of Pub. L. 100–26 provided that: ''The amendment to section 2328 of such title made by section 7(a)(7)(A)(i)(II) shall take effect on the same date and in the same manner as provided in section 1804(b) of Public Law 99–570 [set out as an Effective Date of 1986 Amendment note under section 552 of Title 5, Government Organization and Employees] for the amendment made by section 1803 of that Public Law to section 552a of title 5, United States Code [probably means amendment by section 1803 of Pub. L. 99–570 to section 552(a) of Title 5].''

EFFECTIVE DATE

Section 101(c) [title X, § 954(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 954(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX by Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by this section [enacting this section] shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

[§ 2329. Repealed. Pub. L. 103–355, title I, § 1506(a), Oct. 13, 1994, 108 Stat. 3298]

Section, added Pub. L. 100–180, div. A, title VIII, § 810(a)(1), Dec. 4, 1987, 101 Stat. 1130; amended Pub. L. 100–456, div. A, title XII, § 1233(j), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to contract terms and conditions for production special tooling and production special test equipment.

§ 2330. Procurement of services: management structure

(a) REQUIREMENT FOR MANAGEMENT STRUCTURE.—(1) The Secretary of Defense shall establish and implement a management structure for the procurement of services for the Department of Defense. The management structure shall be comparable to the management structure that applies to the procurement of products by the Department.

(2) The management structure required by paragraph (1) shall—

(A) provide for a designated official in each military department to exercise responsibility for the management of the procurement of services for such department;

(B) provide for a designated official for Defense Agencies and other defense components outside the military departments to exercise responsibility for the management of the procurement of services for such Defense Agencies and components;

(C) include a means by which employees of the departments, Defense Agencies, and components are accountable to such designated officials for carrying out the requirements of subsection (b); and

(D) establish specific dollar thresholds and other criteria for advance approvals of purchases under subsection (b)(1)(C) and delegations of activity under subsection (b)(2).

(b) CONTRACTING RESPONSIBILITIES OF DESIGNATED OFFICIALS.—(1) The responsibilities of an official designated under subsection (a) shall include, with respect to the procurement of services for the military department or Defense Agencies and components by that official, the following:

(A) Ensuring that the services are procured by means of contracts or task orders that are in the best interests of the Department of Defense and are entered into or issued and man-

aged in compliance with applicable statutes, regulations, directives, and other requirements, regardless of whether the services are procured through a contract or task order of the Department of Defense or through a contract entered into or task order issued by an official of the United States outside the Department of Defense.

(B) Analyzing data collected under section 2330a of this title on contracts that are entered into for the procurement of services.

(C) Approving, in advance, any procurement of services above the thresholds established pursuant to subsection (a)(2)(D) that is to be made through the use of—

(i) a contract or task order that is not a performance-based contract or task order; or

(ii) a contract entered into, or a task order issued, by an official of the United States outside the Department of Defense.

(2) The responsibilities of a designated official may be delegated to other employees of the Department of Defense in accordance with the criteria established by the Secretary of Defense.

(c) DEFINITION.—In this section, the term ''performance-based'', with respect to a contract or a task order, means that the contract or task order, respectively, includes the use of performance work statements that set forth requirements in clear, specific, and objective terms with measurable outcomes.

(Added Pub. L. 107–107, div. A, title VIII, §801(b)(1), Dec. 28, 2001, 115 Stat. 1174; amended Pub. L. 107–314, div. A, title X, §1062(a)(8), Dec. 2, 2002, 116 Stat. 2650.)

PRIOR PROVISIONS

A prior section 2330, added Pub. L. 100–456, div. A, title VIII, §801(a)(1), Sept. 29, 1988, 102 Stat. 2007; amended Pub. L. 101–510, div. A, title XIV, §1484(h)(2), Nov. 5, 1990, 104 Stat. 1717; Pub. L. 102–190, div. A, title VIII, §802(d), Dec. 5, 1991, 105 Stat. 1414, related to integrated financing policy, prior to repeal by Pub. L. 102–484, div. D, title XLII, §4271(a)(1), Oct. 23, 1992, 106 Stat. 2695.

Another prior section 2330 was renumbered section 2349 of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 inserted comma after ''a task order''.

ESTABLISHMENT AND IMPLEMENTATION OF MANAGEMENT STRUCTURE

Pub. L. 107–107, div. A, title VIII, §801(b)(2), Dec. 28, 2001, 115 Stat. 1176, provided that: ''Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001]—

''(A) the Secretary of Defense shall establish and implement the management structure required under section 2330 of title 10, United States Code (as added by paragraph (1)); and

''(B) the Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue guidance for officials in the management structure established under such section 2330 regarding how to carry out their responsibilities under that section.''

PROCUREMENT PROGRAM REVIEW STRUCTURE; COMPTROLLER GENERAL REVIEW

Pub. L. 107–107, div. A, title VIII, §801(d)–(f), Dec. 28, 2001, 115 Stat. 1177, provided that:

''(d) REQUIREMENT FOR PROGRAM REVIEW STRUCTURE.—(1) Not later than 180 days after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of Defense shall issue and implement a policy that applies to the procurement of services by the Department of Defense a program review structure that is similar to the one developed for and applied to the procurement of weapon systems by the Department of Defense.

''(2) The program review structure for the procurement of services shall, at a minimum, include the following:

''(A) Standards for determining which procurements should be subject to review by either the senior procurement executive of a military department or the senior procurement executive of the Department of Defense under such section, including criteria based on dollar thresholds, program criticality, or other appropriate measures.

''(B) Appropriate key decision points at which those reviews should take place.

''(C) A description of the specific matters that should be reviewed.

''(e) COMPTROLLER GENERAL REVIEW.—Not later than 90 days after the date on which the Secretary issues the policy required by subsection (d) and the Under Secretary of Defense for Acquisition, Technology, and Logistics issues the guidance required by subsection (b)(2) [set out as a note above], the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives an assessment of the compliance with the requirements of this section [enacting this section and section 2330a of this title, amending sections 133 and 2331 of this title, and enacting provisions set out as a note under this section] and the amendments made by this section.

''(f) DEFINITIONS.—In this section:

''(1) The term 'senior procurement executive' means the official designated as the senior procurement executive under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

''(2) The term 'performance-based', with respect to a contract or a task order means that the contract or task order, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.''

PERFORMANCE GOALS FOR PROCUREMENTS OF SERVICES

Pub. L. 107–107, div. A, title VIII, §802, Dec. 28, 2001, 115 Stat. 1178, as amended by Pub. L. 107–314, div. A, title VIII, §805, Dec. 2, 2002, 116 Stat. 2605, provided that:

''(a) GOALS.—(1) It shall be an objective of the Department of Defense to achieve efficiencies in procurements of services pursuant to multiple award contracts through the use of—

''(A) performance-based services contracting;

''(B) appropriate competition for task orders under services contracts;

''(C) program review, spending analyses, and improved management of services contracts.

''(2) In furtherance of such objective, the Department of Defense shall have the following goals:

''(A) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the volume of the individual purchases of services that are made on a competitive basis and involve receipt of more than one offer from qualified contractors to a percentage as follows:

''(i) For fiscal year 2003, a percentage not less than 40 percent.

''(ii) For fiscal year 2004, a percentage not less than 50 percent.

''(iii) For fiscal year 2011, a percentage not less than 75 percent.

''(B) To increase, as a percentage of all of the individual purchases of services made by or for the Department of Defense under multiple award contracts for a fiscal year (calculated on the basis of dollar value), the use of performance-based purchasing

specifying firm fixed prices for the specific tasks to be performed to a percentage as follows:

''(i) For fiscal year 2003, a percentage not less than 25 percent.

''(ii) For fiscal year 2004, a percentage not less than 35 percent.

''(iii) For fiscal year 2005, a percentage not less than 50 percent.

''(iv) For fiscal year 2011, a percentage not less than 70 percent.

''(3) The Secretary of Defense may adjust any percentage goal established in paragraph (2) if the Secretary determines in writing that such a goal is too high and cannot reasonably be achieved. In the event that the Secretary chooses to adjust such a goal, the Secretary shall—

''(A) establish a percentage goal that the Secretary determines would create an appropriate incentive for Department of Defense components to use competitive procedures or performance-based services contracting, as the case may be; and

''(B) submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing an explanation of the reasons for the Secretary's determination and a statement of the new goal that the Secretary has established.

''(b) ANNUAL REPORT.—Not later than March 1, 2002, and annually thereafter through March 1, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the progress made toward meeting the objective and goals established in subsection (a). Each report shall include, at a minimum, the following information:

''(1) A summary of the steps taken or planned to be taken in the fiscal year of the report to improve the management of procurements of services.

''(2) A summary of the steps planned to be taken in the following fiscal year to improve the management of procurements of services.

''(3) An estimate of the amount that will be expended by the Department of Defense for procurements of services in the fiscal year of the report.

''(4) An estimate of the amount that will be expended by the Department of Defense for procurements of services in the following fiscal year.

''(5) Regarding the individual purchases of services that were made by or for the Department of Defense under multiple award contracts in the fiscal year preceding the fiscal year in which the report is required to be submitted, information (determined using the data collection system established under section 2330a of title 10, United States Code) as follows:

''(A) The percentage (calculated on the basis of dollar value) of such purchases that are purchases that were made on a competitive basis and involved receipt of more than one offer from qualified contractors.

''(B) The percentage (calculated on the basis of dollar value) of such purchases that are performance-based purchases specifying firm fixed prices for the specific tasks to be performed.

''(c) DEFINITIONS.—(1) In this section, the terms 'individual purchase' and 'multiple award contract' have the meanings given such terms in section 803(c) of this Act [10 U.S.C. 2304 note].

''(2) For the purposes of this section, an individual purchase of services is made on a competitive basis only if it is made pursuant to procedures described in paragraphs (2), (3), and (4) of section 803(b) of this Act [10 U.S.C. 2304 note].''

§ 2330a. Procurement of services: tracking of purchases

(a) DATA COLLECTION REQUIRED.—The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

(b) DATA TO BE COLLECTED.—The data required to be collected under subsection (a) includes the following:

(1) The services purchased.

(2) The total dollar amount of the purchase.

(3) The form of contracting action used to make the purchase.

(4) Whether the purchase was made through—

(A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;

(B) any other performance-based contract, performance-based task order, or performance-based arrangement; or

(C) any contract, task order, or other arrangement that is not performance based.

(5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.

(6) The extent of competition provided in making the purchase and whether there was more than one offer.

(7) Whether the purchase was made from—

(A) a small business concern;

(B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or

(C) a small business concern owned and controlled by women.

(c) COMPATIBILITY WITH DATA COLLECTION SYSTEM FOR INFORMATION TECHNOLOGY PURCHASES.—To the maximum extent practicable, a single data collection system shall be used to collect data under this section and information under section 2225 of this title.

(d) DEFINITIONS.—In this section:

(1) The term ''performance-based'', with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.

(2) The definitions set forth in section 2225(f) of this title for the terms ''simplified acquisition threshold'', ''small business concern'', ''small business concern owned and controlled by socially and economically disadvantaged individuals'', and ''small business concern owned and controlled by women'' shall apply.

(Added Pub. L. 107–107, div. A, title VIII, § 801(c), Dec. 28, 2001, 115 Stat. 1176.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2330 of this title.

§ 2331. Procurement of services: contracts for professional and technical services

(a) IN GENERAL.—The Secretary of Defense shall prescribe regulations to ensure, to the

maximum extent practicable, that professional and technical services are acquired on the basis of the task to be performed rather than on the basis of the number of hours of services provided.

(b) CONTENT OF REGULATIONS.—With respect to contracts to acquire services on the basis of the number of hours of services provided, the regulations described in subsection (a) shall—

(1) include standards and approval procedures to minimize the use of such contracts;

(2) establish criteria to ensure that proposals for contracts for technical and professional services are evaluated on a basis which does not encourage contractors to propose uncompensated overtime;

(3) ensure appropriate emphasis on technical and quality factors in the source selection process;

(4) require identification of any hours in excess of 40-hour weeks included in a proposal;

(5) ensure that offerors are notified that proposals which include unrealistically low labor rates or which do not otherwise demonstrate cost realism will be considered in a risk assessment and evaluated appropriately; and

(6) provide guidance to contracting officers to ensure that any use of uncompensated overtime will not degrade the level of technical expertise required to perform the contract.

(Added Pub. L. 101–510, div. A, title VIII, § 834(a)(1), Nov. 5, 1990, 104 Stat. 1613; amended Pub. L. 102–25, title VII, § 701(a), Apr. 6, 1991, 105 Stat. 113; Pub. L. 103–355, title I, § 1004(c), Oct. 13, 1994, 108 Stat. 3253; Pub. L. 107–107, div. A, title VIII, § 801(g)(1), Dec. 28, 2001, 115 Stat. 1177.)

PRIOR PROVISIONS

A prior section 2331 was renumbered section 2350 of this title.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Procurement of services: contracts'' for ''Contracts'' in section catchline.

1994—Subsec. (c). Pub. L. 103–355 struck out text and heading of subsec. (c). Text read as follows:

''(1) The Secretary of Defense may waive the limitation in section 2304(j)(4) of this title on the total value of task orders for specific contracting activities to the extent the Secretary considers the use of master agreements necessary in order to further the policy set forth in subsection (a).

''(2) During any fiscal year, such a waiver may not increase the total value of task orders under master agreements of a contracting activity by more than 20 percent of the value of all contracts for advisory and assistance services awarded by that contracting activity during fiscal year 1989.

''(3) Such a waiver shall not become effective until 60 days after the Secretary of Defense has published notice thereof in the Federal Register.''

1991—Subsec. (c)(1). Pub. L. 102–25 struck out ''on a case-by-case basis'' after ''value of task orders'', substituted ''considers the use of master agreements necessary'' for ''considers necessary the use of master agreements'', and struck out ''of this section'' before period at end.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

REGULATIONS

Section 834(b) of Pub. L. 101–510 provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall publish for public comment new regulations to carry out the requirements in this section [enacting this section]. The Secretary shall promulgate final regulations to carry out such requirements not later than 270 days after the date of the enactment of this Act.''

PROVISIONS NOT AFFECTED BY PUB. L. 103–355

Repeal of subsec. (c) of this section by Pub. L. 103–355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under former 40 U.S.C. 759 or chapter 11 of Title 40, Public Buildings, Property, and Works, see section 1004(d) of Pub. L. 103–355, set out as a note under section 2304a of this title.

§ 2332. Share-in-savings contracts

(a) AUTHORITY TO ENTER INTO SHARE-IN-SAVINGS CONTRACTS.—(1) The head of an agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent practicable, be performance-based contracts that identify objective outcomes and contain performance standards that will be used to measure achievement and milestones that must be met before payment is made.

(4) Contracts awarded pursuant to the authority of this section shall include a provision containing a quantifiable baseline that is to be the basis upon which a savings share ratio is established that governs the amount of payment a contractor is to receive under the contract. Before commencement of performance of such a contract, the senior procurement executive of the agency shall determine in writing that the terms of the provision are quantifiable and will likely yield value to the Government.

(5)(A) The head of the agency may retain savings realized through the use of a share-in-savings contract under this section that are in excess of the total amount of savings paid to the contractor under the contract, but may not re-

tain any portion of such savings that is attributable to a decrease in the number of civilian employees of the Federal Government performing the function. Except as provided in subparagraph (B), savings shall be credited to the appropriation or fund against which charges were made to carry out the contract and shall be used for information technology.

(B) Amounts retained by the agency under this subsection shall—

(i) without further appropriation, remain available until expended; and

(ii) be applied first to fund any contingent liabilities associated with share-in-savings procurements that are not fully funded.

(b) CANCELLATION AND TERMINATION.—(1) If funds are not made available for the continuation of a share-in-savings contract entered into under this section in a subsequent fiscal year, the contract shall be canceled or terminated. The costs of cancellation or termination may be paid out of—

(A) appropriations available for the performance of the contract;

(B) appropriations available for acquisition of the information technology procured under the contract, and not otherwise obligated; or

(C) funds subsequently appropriated for payments of costs of cancellation or termination, subject to the limitations in paragraph (3).

(2) The amount payable in the event of cancellation or termination of a share-in-savings contract shall be negotiated with the contractor at the time the contract is entered into.

(3)(A) Subject to subparagraph (B), the head of an agency may enter into share-in-savings contracts under this section in any given fiscal year even if funds are not made specifically available for the full costs of cancellation or termination of the contract if funds are available and sufficient to make payments with respect to the first fiscal year of the contract and the following conditions are met regarding the funding of cancellation and termination liability:

(i) The amount of unfunded contingent liability for the contract does not exceed the lesser of—

(I) 25 percent of the estimated costs of a cancellation or termination; or

(II) $5,000,000.

(ii) Unfunded contingent liability in excess of $1,000,000 has been approved by the Director of the Office of Management and Budget or the Director's designee.

(B) The aggregate number of share-in-savings contracts that may be entered into under subparagraph (A) by all agencies to which this chapter applies in a fiscal year may not exceed 5 in each of fiscal years 2003, 2004, and 2005.

(c) DEFINITIONS.—In this section:

(1) The term ''contractor'' means a private entity that enters into a contract with an agency.

(2) The term ''savings'' means—

(A) monetary savings to an agency; or

(B) savings in time or other benefits realized by the agency, including enhanced revenues (other than enhanced revenues from the collection of fees, taxes, debts, claims, or other amounts owed the Federal Government).

(3) The term ''share-in-savings contract'' means a contract under which—

(A) a contractor provides solutions for—

(i) improving the agency's mission-related or administrative processes; or

(ii) accelerating the achievement of agency missions; and

(B) the head of the agency pays the contractor an amount equal to a portion of the savings derived by the agency from—

(i) any improvements in mission-related or administrative processes that result from implementation of the solution; or

(ii) acceleration of achievement of agency missions.

(d) TERMINATION.—No share-in-savings contracts may be entered into under this section after September 30, 2005.

(Added Pub. L. 107–347, title II, § 210(a)(1), Dec. 17, 2002, 116 Stat. 2932.)

EFFECTIVE DATE

Section effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107–347, set out as a note under section 3601 of Title 44, Public Printing and Documents.

CHAPTER 138—COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES

Subchapter		Sec.
I.	Acquisition and Cross-Servicing Agreements	2341
II.	Other Cooperative Agreements	2350a

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XIV, § 1484(i)(7), Nov. 5, 1990, 104 Stat. 1718, inserted ''Sec.'' above ''2341''.

1989—Pub. L. 101–189, div. A, title IX, § 931(a)(1), Nov. 29, 1989, 103 Stat. 1531, substituted ''COOPERATIVE AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' in chapter heading, and added subchapter analysis, consisting of subchapters I and II.

1987—Pub. L. 100–26, § 7(a)(8), Apr. 21, 1987, 101 Stat. 278, substituted ''ACQUISITION AND CROSS-SERVICING AGREEMENTS WITH NATO ALLIES AND OTHER COUNTRIES'' for ''NORTH ATLANTIC TREATY ORGANIZATION ACQUISITION AND CROSS-SERVICING AGREEMENTS'' in chapter heading.

PRIOR PROVISIONS

Chapter 138 was originally comprised of sections 2321 to 2331. Sections 2321 to 2328, 2330, and 2331, were renumbered sections 2341 to 2348, 2349, and 2350, respectively, of this title, by Pub. L. 99–145, title XIII, § 1304(a)(1), (3), Nov. 8, 1985, 99 Stat. 741.

Section 2329, added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, required the Secretary of Defense to prescribe regulations to implement this chapter, prior to repeal by Pub. L. 99–145, title XIII, § 1304(a)(2), Nov. 8, 1985, 99 Stat. 741.

SUBCHAPTER I—ACQUISITION AND CROSS-SERVICING AGREEMENTS

Sec.	
2341.	Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States.
2342.	Cross-servicing agreements.
2343.	Waiver of applicability of certain laws.

Sec.
2344. Methods of payment for acquisitions and transfers by the United States.
2345. Liquidation of accrued credits and liabilities.
2346. Crediting of receipts.
2347. Limitation on amounts that may be obligated or accrued by the United States.
2348. Inventories of supplies not to be increased.
2349. Overseas Workload Program.
2349a. Annual report on non-NATO agreements.
2350. Definitions.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XIII, §1317(c)(2)(B), (i)(2), Oct. 5, 1994, 108 Stat. 2900, 2902, substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' in item 2343 and added item 2349a.

1993—Pub. L. 103–160, div. A, title XIV, §1431(a)(2), Nov. 30, 1993, 107 Stat. 1833, added item 2349.

1990—Pub. L. 101–510, div. A, title XIII, §1331(3), Nov. 5, 1990, 104 Stat. 1673, struck out item 2349 ''Annual reports''.

1989—Pub. L. 101–189, div. A, title IX, §931(a)(1), Nov. 29, 1989, 103 Stat. 1531, added subchapter heading.

1986—Pub. L. 99–661, div. A, title XI, §1104(g), Nov. 14, 1986, 100 Stat. 3965, substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in item 2341.

1985—Pub. L. 99–145, title XIII, §1304(a)(6), Nov. 8, 1985, 99 Stat. 742, renumbered items 2321 to 2328 as 2341 to 2348, respectively, and items 2330 and 2331 as 2349 and 2350, respectively, and struck out item 2329 ''Regulations''.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2350d of this title.

§ 2341. Authority to acquire logistic support, supplies, and services for elements of the armed forces deployed outside the United States

Subject to section 2343 of this title and subject to the availability of appropriations, the Secretary of Defense may—

(1) acquire from the Governments of North Atlantic Treaty Organization countries, from North Atlantic Treaty Organization subsidiary bodies, and from the United Nations Organization or any regional international organization of which the United States is a member logistic support, supplies, and services for elements of the armed forces deployed outside the United States; and

(2) acquire from any government not a member of the North Atlantic Treaty Organization logistic support, supplies, and services for elements of the armed forces deployed (or to be deployed) outside the United States if that country—

(A) has a defense alliance with the United States;

(B) permits the stationing of members of the armed forces in such country or the homeporting of naval vessels of the United States in such country;

(C) has agreed to preposition materiel of the United States in such country; or

(D) serves as the host country to military exercises which include elements of the armed forces or permits other military operations by the armed forces in such country.

(Added Pub. L. 96–323, §2(a), Aug. 4, 1980, 94 Stat. 1016, §2321; renumbered §2341 and amended Pub. L. 99–145, title XIII, §1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, §1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 102–484, div. A, title XIII, §1312(a), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–337, div. A, title XIII, §1317(a), Oct. 5, 1994, 108 Stat. 2899.)

AMENDMENTS

1994—Par. (1). Pub. L. 103–337 substituted a comma for ''and'' after ''countries'' and inserted '', and from the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1992—Par. (1). Pub. L. 102–484, §1312(a)(1), substituted ''outside the United States'' for ''in Europe and adjacent waters''.

Par. (2). Pub. L. 102–484, §1312(a)(2), in introductory provisions, struck out ''in which elements of the armed forces are deployed (or are to be deployed)'' after ''North Atlantic Treaty Organization'' and substituted ''outside the United States'' for ''in such country or in the military region in which such country is located''.

1986—Pub. L. 99–661 substituted ''elements of the armed forces deployed outside the United States'' for ''United States armed forces in Europe'' in section catchline.

Pub. L. 99–661 amended section generally, restating existing provisions into introductory text and par. (1) and adding par. (2).

1985—Pub. L. 99–145 renumbered section 2321 of this title as this section and substituted ''section 2343'' for ''section 2323''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1317(j) of Pub. L. 103–337 provided that: ''The amendments made by this section [enacting section 2349a of this title and amending this section and sections 2342 to 2347 and 2350 of this title] shall apply with regard to any acquisition or transfer of logistic support, supplies, and services under the authority of subchapter I of chapter 138 of title 10, United States Code, that is initiated after the date of the enactment of this Act [Oct. 5, 1994].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1312(c) of Pub. L. 102–484 provided that: ''The amendments made by this section [amending this section and section 2347 of this title] shall take effect on the date of enactment of this Act [Oct. 23, 1992] and shall apply to acquisitions of logistics support, supplies, and services under chapter 138 of title 10, United States Code, that are initiated on or after the date of enactment of this Act.''

SHORT TITLE

Section 1 of Pub. L. 96–323 provided: ''That this Act [enacting this chapter] may be cited as the 'North Atlantic Treaty Organization Mutual Support Act of 1979'.''

ACCEPTANCE OF REAL PROPERTY, SERVICES, AND COMMODITIES FROM FOREIGN COUNTRIES BY AGENCIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–165, title IX, §9008, Nov. 21, 1989, 103 Stat. 1130, which authorized agencies of Department of Defense to accept use of real property from foreign countries for United States in accordance with mutual defense agreements or occupational arrangements and to accept services furnished by foreign countries as reciprocal international courtesies or as services customarily made available without charge and to use same for support of United States forces in such areas without specific appropriation therefor, was repealed and restated in section 2350g of this title by Pub. L. 101–510, div. A, title XIV, §1451(b)(1), (c), Nov. 5, 1990, 104 Stat. 1692, 1693.

OVERSEAS WORKLOAD PROGRAM

Pub. L. 101–510, div. A, title XIV, §1465, Nov. 5, 1990, 104 Stat. 1700, as amended by Pub. L. 102–190, div. A,

title X, § 1085, Dec. 5, 1991, 105 Stat. 1483; Pub. L. 102–484, div. A, title XIII, § 1353, Oct. 23, 1992, 106 Stat. 2559, which related to eligibility of a firm of any member nation of North Atlantic Treaty Organization (NATO) or of any major non-NATO ally to bid on any contract for maintenance, repair, or overhaul of equipment of the Department of Defense to be awarded under competitive procedures as part of the Overseas Workload Program, was repealed and restated in section 2349 of this title by Pub. L. 103–160, div. A, title XIV, § 1431(a)(1), (b)(1), Nov. 30, 1993, 107 Stat. 1832, 1833. Similar provisions were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, § 9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, § 1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, § 8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, § 8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, § 1021, Dec. 4, 1987, 101 Stat. 1143.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2342. Cross-servicing agreements

(a)(1) Subject to section 2343 of this title and to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into an agreement described in paragraph (2) with any of the following:

(A) The government of a North Atlantic Treaty Organization country.

(B) A subsidiary body of the North Atlantic Treaty Organization.

(C) The United Nations Organization or any regional international organization of which the United States is a member.

(D) The government of a country not a member of the North Atlantic Treaty Organization but which is designated by the Secretary of Defense, subject to the limitations prescribed in subsection (b), as a government with which the Secretary may enter into agreements under this section.

(2) An agreement referred to in paragraph (1) is an agreement under which the United States agrees to provide logistic support, supplies, and services to military forces of a country or organization referred to in paragraph (1) in return for the reciprocal provisions of logistic support, supplies, and services by such government or organization to elements of the armed forces.

(b) The Secretary of Defense may not designate a country for an agreement under this section unless—

(1) the Secretary, after consultation with the Secretary of State, determines that the designation of such country for such purpose is in the interest of the national security of the United States; and

(2) in the case of a country which is not a member of the North Atlantic Treaty Organization, the Secretary submits to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives notice of the intended designation at least 30 days before the date on which such country is designated by the Secretary under subsection (a).

(c) The Secretary of Defense may not use the authority of this subchapter to procure from any foreign government or international organization any goods or services reasonably available from United States commercial sources.

(d) The Secretary shall prescribe regulations to ensure that contracts entered into under this subchapter are free from self-dealing, bribery, and conflict of interests.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1016, § 2322; renumbered § 2342 and amended Pub. L. 99–145, title XIII, § 1304(a)(1), (4), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(a), Nov. 14, 1986, 100 Stat. 3963; Pub. L. 100–180, div. A, title XII, § 1231(9), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 101–510, div. A, title XIV, § 1451(a), Nov. 5, 1990, 104 Stat. 1692; Pub. L. 103–337, div. A, title XIII, § 1317(b), Oct. 5, 1994, 108 Stat. 2900; Pub. L. 104–106, div. A, title XV, § 1502(a)(16), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 inserted ''unless'' after ''section'' in introductory provisions, struck out ''unless'' after ''(1)'' in par. (1), and substituted ''the Secretary submits to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives notice of the intended designation'' for ''notifies the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives'' in par. (2).

1994—Subsec. (a)(1). Pub. L. 103–337, § 1317(b)(1), substituted ''with any of the following:'' for ''with—'' in introductory provisions, substituted ''The government'' for ''the government'' and a period for the semicolon in subpar. (A), substituted ''A subsidiary'' for ''a subsidiary'' and ''Organization.'' for ''Organization; or'' in subpar. (B), added subpar. (C), redesignated former subpar. (C) as (D) and substituted ''The government'' for ''the government''.

Subsec. (a)(2). Pub. L. 103–337, § 1317(b)(2), substituted ''organization'' for ''subsidiary body'' in two places.

Subsec. (c). Pub. L. 103–337, § 1317(b)(3), substituted ''or international organization'' for ''as a routine or normal source''.

1990—Subsec. (a). Pub. L. 101–510 amended subsec. (a) generally, revising and restating former pars. (1) to (3) relating to reciprocal logistical support agreements as pars. (1) and (2).

1989—Subsecs. (c), (d). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1987—Pub. L. 100–180 substituted ''Cross-servicing'' for ''Cross servicing'' in section catchline.

1986—Pub. L. 99–661 amended section generally, restating existing provisions in introductory text and par. (1) of subsec. (a), adding pars. (2) and (3) of subsec. (a), and adding subsecs. (b) to (d).

1985—Pub. L. 99–145 renumbered section 2322 of this title as this section and substituted ''section 2343'' for ''section 2323''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2343 of this title.

§ 2343. Waiver of applicability of certain laws

Sections 2207, 2304(a), 2306(a), 2306(b), 2306(e), 2306a, and 2313 of this title and section 3741 of the Revised Statutes (41 U.S.C. 22) shall not apply to acquisitions made under the authority of section 2341 of this title or to agreements entered into under section 2342 of this title.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2323; renumbered § 2343 and amended Pub. L. 99–145, title IX, § 961(b), title XIII, § 1304(a)(1), (5), Nov. 8, 1985, 99 Stat. 703, 741; Pub. L. 100–26, § 7(g)(2), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–456, div. A, title XII, § 1233(d), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–190, div. A, title X, § 1061(a)(12), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–337, div. A, title XIII, § 1317(c)(1), (2)(A), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Pub. L. 103–337, § 1317(c)(2)(A), substituted ''Waiver of applicability of certain laws'' for ''Law applicable to acquisition and cross-servicing agreements'' as section catchline.

Pub. L. 103–337, § 1317(c)(1), designated subsec. (b) as entire section and struck out former subsec. (a) which read as follows: ''Except as provided in subsection (b), acquisition of logistic support, supplies, and services under section 2341 of this title and agreements entered into under section 2342 of this title shall be made in accordance with chapter 137 of this title and the provisions of this subchapter.''

1991—Subsec. (b). Pub. L. 102–190 substituted ''this title and'' for ''this title,'' and struck out '', and section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)'' before ''shall not apply''.

1989—Subsec. (a). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1988—Subsec. (b). Pub. L. 100–456 struck out ''section'' before ''2306a''.

1987—Subsec. (b). Pub. L. 100–26 substituted ''section 2306a,'' for ''2306(f),''.

1985—Pub. L. 99–145, § 1304(a)(1), renumbered section 2323 of this title as this section.

Subsec. (a). Pub. L. 99–145, § 1304(a)(5), substituted ''section 2341'' for ''section 2321'' and ''section 2342'' for ''section 2322''.

Subsec. (b). Pub. L. 99–145, § 1304(a)(5), substituted ''section 2341'' for ''section 2321'' and ''section 2342'' for ''section 2322''.

Pub. L. 99–145, § 961(b), substituted ''section 2304(a)'' for ''section 2304(g)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by section 961(b) of Pub. L. 99–145 effective as if included in enactment of Competition in Contracting Act of 1984, Pub. L. 98–369, div. B, title VII, making amendment applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 961(e) of Pub. L. 99–145, set out as a note under section 2304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2341, 2342 of this title.

§ 2344. Methods of payment for acquisitions and transfers by the United States

(a) Logistics support, supplies, and services may be acquired or transferred by the United States under the authority of this subchapter on a reimbursement basis or by replacement-in-kind or exchange of supplies or services of an equal value.

(b)(1) In entering into agreements with the Government of another North Atlantic Treaty Organization country or other foreign country for the acquisition or transfer of logistic support, supplies, and services on a reimbursement basis, the Secretary of Defense shall negotiate for adoption of the following pricing principles for reciprocal application:

(A) The price charged by a supplying country for logistics support, supplies, and services specifically procured by the supplying country from its contractors for a recipient country shall be no less favorable than the price for identical items or services charged by such contractors to the armed forces of the supplying country, taking into account price differentials due to delivery schedules, points of delivery, and other similar considerations.

(B) The price charged a recipient country for supplies furnished by a supplying country from its inventory, and the price charged a recipient country for logistics support and services furnished by the officers, employees, or governmental agencies of a supplying country, shall be the same as the price charged for identical supplies, support, or services acquired by an armed force of the supplying country from such governmental sources.

(2) To the extent that the Secretary of Defense is unable to obtain mutual acceptance by the other country involved of the reciprocal pricing principles for reimbursable transactions set forth in paragraph (1)—

(A) the United States may not acquire from such country any logistic support, supply, or service not governed by such reciprocal pricing principles unless the United States forces commander acquiring such support, supply, or service determines (after price analysis) that the price thereof is fair and reasonable; and

(B) transfers by the United States to such country under this subchapter of any logistic support, supply, or service that is not governed by such reciprocal pricing principles shall be subject to the pricing provisions of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(3) To the extent that indirect costs (including charges for plant and production equipment), administrative surcharges, and contract administration costs with respect to any North Atlantic Treaty Organization country or other foreign country are not waived by operation of the reciprocal pricing principles of paragraph (1), the Secretary of Defense may, on a reciprocal basis, agree to waive such costs.

(4) The pricing principles set forth in paragraph (2) and the waiver authority provided in paragraph (3) shall also apply to agreements with North Atlantic Treaty Organization subsidiary bodies and the United Nations Organization or any regional international organization

of which the United States is a member under this subchapter.

(c) In acquiring or transferring logistics support, supplies, or services under the authority of this subchapter by exchange of supplies or services, the Secretary of Defense may not agree to or carry out the following:

(1) Transfers in exchange for property the acquisition of which by the Department of Defense is prohibited by law.

(2) Transfers of source, byproduct, or special nuclear materials or any other material, article, data, or thing of value the transfer of which is subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(3) Transfers of chemical munitions.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1017, § 2324; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2344, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(b), Nov. 14, 1986, 100 Stat. 3964; Pub. L. 101–189, div. A, title IX, §§ 931(e)(1), 938(a), (b), Nov. 29, 1989, 103 Stat. 1535, 1539; Pub. L. 102–25, title VII, § 701(f)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–337, div. A, title XIII, § 1317(d), Oct. 5, 1994, 108 Stat. 2900.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (b)(2)(B), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Atomic Energy Act of 1954, referred to in subsec. (c)(2), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

AMENDMENTS

1994—Subsec. (b)(4). Pub. L. 103–337 inserted ''and the United Nations Organization or any regional international organization of which the United States is a member'' after ''subsidiary bodies''.

1991—Subsec. (c). Pub. L. 102–25 substituted ''subchapter'' for ''chapter'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–189, §§ 931(e)(1), 938(a), substituted ''equal value'' for ''identical or substantially identical nature'' and ''this subchapter'' for ''this chapter''.

Subsec. (b)(2)(B), (4). Pub. L. 101–189, § 931(e)(1), substituted ''this subchapter'' for ''this chapter''.

Subsec. (c). Pub. L. 101–189, § 938(b), added subsec. (c).

1986—Subsec. (b)(1), (3). Pub. L. 99–661 inserted ''or other foreign country'' after ''country''.

1985—Pub. L. 99–145 renumbered section 2324 of this title as this section.

1981—Subsec. (b)(2)(B). Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2345. Liquidation of accrued credits and liabilities

(a) Credits and liabilities of the United States accrued as a result of acquisitions and transfers of logistic support, supplies, and services under the authority of this subchapter shall be liquidated not less often than once every 12 months by direct payment to the entity supplying such support, supplies, or services by the entity receiving such support, supplies, or services.

(b) Payment-in-kind or exchange entitlements accrued as a result of acquisitions and transfers of logistic support, supplies, and services under authority of this subchapter shall be satisfied within 12 months after the date of the delivery of the logistic support, supplies, or services.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2325; renumbered § 2345, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(c), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(e), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''12 months'' for ''three months''.

1989—Subsecs. (a), (b). Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 designated existing provisions as subsec. (a) and added subsec. (b).

1985—Pub. L. 99–145 renumbered section 2325 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2346. Crediting of receipts

Any receipt of the United States as a result of an agreement entered into under this subchapter shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2326; renumbered § 2346, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(f), Oct. 5, 1994, 108 Stat. 2900.)

AMENDMENTS

1994—Pub. L. 103–337 substituted ''shall be credited, at the option of the Secretary of Defense, to (1) the appropriation, fund, or account used in incurring the obligation, or (2) an appropriate appropriation, fund, or account currently available for the purposes for which the expenditures were made'' for ''shall be credited to applicable appropriations, accounts, and funds of the Department of Defense''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1985—Pub. L. 99–145 renumbered section 2326 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, sup-

plies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

§ 2347. Limitation on amounts that may be obligated or accrued by the United States

(a)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $200,000,000 in any fiscal year, and of such amount not more than $50,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants).

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements, may not exceed $60,000,000 in any fiscal year, and of such amount not more than $20,000,000 in liabilities may be accrued for the acquisition of supplies (other than petroleum, oils, and lubricants). The $60,000,000 limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(b)(1) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with other member countries of the North Atlantic Treaty Organization, subsidiary bodies of the North Atlantic Treaty Organization, or from the United Nations Organization or any regional international organization of which the United States is a member may not exceed $150,000,000 in any fiscal year.

(2) Except during a period of active hostilities involving the armed forces, the total amount of reimbursable credits that the United States may accrue under this subchapter (before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements may not exceed $75,000,000 in any fiscal year. Such limitation specified in this paragraph is in addition to the limitation specified in paragraph (1).

(c) When the armed forces are involved in a contingency operation or in a non-combat operation (including an operation in support of the provision of humanitarian or foreign disaster assistance or in support of peacekeeping operations under chapter VI or VII of the Charter of the United Nations), the restrictions in subsections (a) and (b) are waived for the purposes and duration of that operation.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2327; renumbered § 2347, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(d), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–456, div. A, title X, § 1001, Sept. 29, 1988, 102 Stat. 2037; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 102–484, div. A, title XIII, § 1312(b), Oct. 23, 1992, 106 Stat. 2547; Pub. L. 103–35, title II, § 202(a)(10), May 31, 1993, 107 Stat. 101; Pub. L. 103–337, div. A, title XIII, § 1317(g), Oct. 5, 1994, 108 Stat. 2901.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–337, § 1317(g)(1), substituted ''Organization, subsidiary'' for ''Organization and subsidiary'', inserted '', or from the United Nations Organization or any regional international organization of which the United States is a member'' after ''Treaty Organization'', and substituted ''$200,000,000'' for ''$150,000,000'' and ''$50,000,000'' for ''$25,000,000''.

Subsec. (a)(2). Pub. L. 103–337, § 1317(g)(2), substituted ''$60,000,000'' for ''$10,000,000'' in two places and ''$20,000,000'' for ''$2,500,000''.

Subsec. (b)(1). Pub. L. 103–337, § 1317(g)(3), substituted ''Organization, subsidiary'' for ''Organization and subsidiary'', inserted '', or from the United Nations Organization or any regional international organization of which the United States is a member'' after ''Treaty Organization'', and substituted ''$150,000,000'' for ''$100,000,000''.

Subsec. (b)(2). Pub. L. 103–337, § 1317(g)(4), substituted ''$75,000,000'' for ''$10,000,000''.

Subsec. (c). Pub. L. 103–337, § 1317(g)(5), added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 1312(b)(4)(B). See 1992 Amendment note below.

1992—Subsec. (a)(1). Pub. L. 102–484, § 1312(b)(1), substituted ''armed forces'' for ''North Atlantic Treaty Organization'' and inserted ''with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization'' after ''(before the computation of offsetting balances)''.

Subsec. (a)(2). Pub. L. 102–484, § 1312(b)(2), substituted ''involving the armed forces, the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with'' for ''in the military region affecting'' and struck out ''the total amount of reimbursable liabilities that the United States may accrue under this subchapter (before the computation of offsetting balances) with such country'' after ''cross-servicing agreements,''.

Subsec. (b)(1). Pub. L. 102–484, § 1312(b)(3), substituted ''armed forces'' for ''North Atlantic Treaty Organization'' and inserted ''with other member countries of the North Atlantic Treaty Organization and subsidiary bodies of the North Atlantic Treaty Organization'' after ''(before the computation of offsetting balances)''.

Subsec. (b)(2). Pub. L. 102–484, § 1312(b)(4)(A), substituted ''involving the armed forces'' for ''in the military region affecting a country referred to in paragraph (1)''.

Pub. L. 102–484, § 1312(b)(4)(B), as amended by Pub. L. 103–35, substituted ''(before the computation of offsetting balances) with a country which is not a member of the North Atlantic Treaty Organization, but with which the United States has one or more acquisition or cross-servicing agreements'' for ''from such country (before computation of offsetting balances)''.

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' wherever appearing.

1988—Subsec. (a)(1). Pub. L. 100–456 substituted ''$150,000,000'' for ''$100,000,000''.

1986—Subsec. (a). Pub. L. 99–661, § 1104(d)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 99–661, § 1104(d)(2), designated existing provisions as par. (1) and added par. (2).

1985—Pub. L. 99–145 renumbered section 2327 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable to acquisitions of logistics support, supplies, and services under this chapter that are initiated on or after Oct. 23, 1992, see section 1312(c) of Pub. L. 102–484, set out as a note under section 2341 of this title.

§ 2348. Inventories of supplies not to be increased

Inventories of supplies for elements of the armed forces may not be increased for the purpose of transferring supplies under the authority of this subchapter.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2328; amended Pub. L. 97–22, § 11(a)(8), July 10, 1981, 95 Stat. 138; renumbered § 2348, Pub. L. 99–145, title XIII, § 1304(a)(1), Nov. 8, 1985, 99 Stat. 741; Pub. L. 99–661, div. A, title XI, § 1104(e), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535.)

AMENDMENTS

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter''.

1986—Pub. L. 99–661 struck out ''to military forces of any North Atlantic Treaty Organization country or any North Atlantic Treaty Organization subsidiary body'' after ''chapter''.

1985—Pub. L. 99–145 renumbered section 2328 of this title as this section.

1981—Pub. L. 97–22 substituted ''this chapter'' for ''this Act''.

§ 2349. Overseas Workload Program

(a) IN GENERAL.—A firm of any member nation of the North Atlantic Treaty Organization or of any major non-NATO ally shall be eligible to bid on any contract for the maintenance, repair, or overhaul of equipment of the Department of Defense located outside the United States to be awarded under competitive procedures as part of the program of the Department of Defense known as the Overseas Workload Program.

(b) SITE OF PERFORMANCE.—A contract awarded to a firm described in subsection (a) may be performed in the theater in which the equipment is normally located or in the country in which the firm is located.

(c) EXCEPTIONS.—The Secretary of a military department may restrict the geographic region in which a contract referred to in subsection (a) may be performed if the Secretary determines that performance of the contract outside that specific region—

(1) could adversely affect the military preparedness of the armed forces; or

(2) would violate the terms of an international agreement to which the United States is a party.

(d) DEFINITION.—In this section, the term ''major non-NATO ally'' has the meaning given that term in section 2350a(i)(3)[1] of this title.

(Added Pub. L. 103–160, div. A, title XIV, § 1431(a)(1), Nov. 30, 1993, 107 Stat. 1832.)

REFERENCES IN TEXT

Section 2350a of this title, referred to in subsec. (d), was subsequently amended, and section 2350a(i)(3) no longer defines the term ''major non-NATO ally''. However, such term is defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 2349, added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1018, § 2330; renumbered § 2349, Pub. L. 99–145, title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535, directed Secretary of Defense to submit a report to Congress annually relating to agreements under this chapter, prior to repeal by Pub. L. 101–510, § 1301(11).

Provisions similar to those in this section were contained in Pub. L. 101–510, div. A, title XIV, § 1465, Nov. 5, 1990, 104 Stat. 1700, as amended, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 103–160, § 1431(b)(1). Other prior similar provisions, formerly set out under section 2341 of this title, were contained in the following authorization or appropriation acts:

Pub. L. 102–396, title IX, § 9130, Oct. 6, 1992, 106 Stat. 1935, as amended by Pub. L. 103–160, div. A, title XIV, § 1431(b)(2), Nov. 30, 1993, 107 Stat. 1833.

Pub. L. 102–172, title VIII, § 8122, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–511, title VIII, § 8003, Nov. 5, 1990, 104 Stat. 1873.

Pub. L. 100–180, div. A, title X, § 1021, Dec. 4, 1987, 101 Stat. 1143.

§ 2349a. Annual report on non-NATO agreements

(a) REPORT.—The Secretary of Defense shall submit to Congress, not later than January 15 of each of 1996, 1997, 1998, 1999, and 2000, a report covering non-NATO cross-servicing and acquisition actions in effect during the preceding fiscal year.

(b) MATTERS TO BE INCLUDED.—Each such report shall set forth in detail the following with respect to the preceding fiscal year:

(1) The total dollar amounts involved.

(2) A description of any services and equipment provided or received through those actions.

(3) A description of any equipment provided through those actions that is not returned.

(4) The volume of credits and liabilities accrued and liquidated.

(c) NON-NATO AGREEMENTS.—For purposes of this section, a non-NATO cross-servicing and acquisition agreement is a cross-servicing and acquisition agreement under this subchapter that involves countries or organizations other than North Atlantic Treaty Organization countries or subsidiary bodies.

(Added Pub. L. 103–337, div. A, title XIII, § 1317(i)(1), Oct. 5, 1994, 108 Stat. 2902.)

EFFECTIVE DATE

Section applicable with regard to any acquisition or transfer of logistic support, supplies, and services under

[1] See References in Text note below.

authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as an Effective Date of 1994 Amendment note under section 2341 of this title.

§ 2350. Definitions

In this subchapter:

(1) The term ''logistic support, supplies, and services'' means food, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. Such term includes temporary use of general purpose vehicles and other nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated pursuant to section 38(a)(1) of the Arms Export Control Act.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' means—

(A) any organization within the meaning of the term ''subsidiary bodies'' in article I of the multilateral treaty on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff, signed at Ottawa on September 20, 1951 (TIAS 2992; 5 UST 1087); and

(B) any international military headquarters or organization to which the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, signed at Paris on August 28, 1952 (TIAS 2978; 5 UST 870), applies.

(3) The term ''military region'' means the geographical area of responsibility assigned to the commander of a unified combatant command (excluding Europe and adjacent waters).

(4) The term ''transfer'' means selling (whether for payment in currency, replacement-in-kind, or exchange of supplies or services of equal value), leasing, loaning, or otherwise temporarily providing logistic support, supplies, and services under the terms of a cross-servicing agreement.

(Added Pub. L. 96–323, § 2(a), Aug. 4, 1980, 94 Stat. 1019, § 2331; renumbered § 2350, Pub. L. 99–145, title XIII, § 1304(a)(3), Nov. 8, 1985, 99 Stat. 741; amended Pub. L. 99–661, div. A, title XI, § 1104(f), Nov. 14, 1986, 100 Stat. 3965; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–189, div. A, title IX, § 931(e)(1), Nov. 29, 1989, 103 Stat. 1535; Pub. L. 103–337, div. A, title XIII, § 1317(h), Oct. 5, 1994, 108 Stat. 2901; Pub. L. 105–85, div. A, title XII, § 1222, Nov. 18, 1997, 111 Stat. 1937.)

REFERENCES IN TEXT

Section 38(a)(1) of the Arms Export Control Act, referred to in par. (1), is classified to section 2778(a)(1) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1997—Par. (1). Pub. L. 105–85, in second sentence, substituted ''other nonlethal items of military equipment which are not designated as significant military equipment on the United States Munitions List promulgated'' for ''other items of military equipment not designated as part of the United States Munitions List''.

1994—Par. (1). Pub. L. 103–337, § 1317(h)(1), inserted ''(including airlift)'' after ''transportation'', ''calibration services,'' after ''maintenance services,'', and ''Such term includes temporary use of general purpose vehicles and other items of military equipment not designated as part of the United States Munitions List pursuant to section 38(a)(1) of the Arms Export Control Act.'' at end.

Par. (4). Pub. L. 103–337, § 1317(h)(2), added par. (4).

1989—Pub. L. 101–189 substituted ''this subchapter'' for ''this chapter'' in introductory provisions.

1987—Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1) and (3) and substituted lowercase letter.

1986—Par. (3). Pub. L. 99–661 added par. (3).

1985—Pub. L. 99–145 renumbered section 2331 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable with regard to any acquisition or transfer of logistic support, supplies, and services under authority of this subchapter that is initiated after Oct. 5, 1994, see section 1317(j) of Pub. L. 103–337, set out as a note under section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2350a, 2350c of this title.

SUBCHAPTER II—OTHER COOPERATIVE AGREEMENTS

Sec.

2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries.

2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment.

2350c. Cooperative military airlift agreements: allied countries.

2350d. Cooperative logistic support agreements: NATO countries.

2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense.

2350f. Procurement of communications support and related supplies and services.

2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements.

2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories.

2350i. Foreign contributions for cooperative projects.

2350j. Burden sharing contributions by designated countries and regional organizations.

2350k. Relocation within host nation of elements of armed forces overseas.

2350*l*. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title XII, §§ 1212(e)(2), 1213(b), Dec. 28, 2001, 115 Stat. 1250, 1251, substituted ''Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries'' for ''Cooperative research and development projects: allied countries'' in item 2350a and added item 2350*l*.

1996—Pub. L. 104–106, div. A, title XIII, § 1332(a)(2), Feb. 10, 1996, 110 Stat. 484, added item 2350k.

1993—Pub. L. 103–160, div. A, title XIV, § 1402(b), Nov. 30, 1993, 107 Stat. 1826, added item 2350j.

1991—Pub. L. 102–190, div. A, title X, §1047(b), Dec. 5, 1991, 105 Stat. 1468, added item 2350i.

Pub. L. 102–25, title VII, §704(a)(9), Apr. 6, 1991, 105 Stat. 119, made clarifying amendment to directory language of Pub. L. 101–510, div. A, title XIV, §1451(b)(2), Nov. 5, 1990, 104 Stat. 1693. See 1990 Amendment note below.

1990—Pub. L. 101–510, div. A, title XIV, §1452(a)(2), Nov. 5, 1990, 104 Stat. 1694, added item 2350h.

Pub. L. 101–510, div. A, title XIV, §1451(b)(2), Nov. 5, 1990, 104 Stat. 1693, as amended by Pub. L. 102–25, title VII, §704(a)(9), Apr. 6, 1991, 105 Stat. 119, added item 2350g.

§2350a. Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries

(a) AUTHORITY TO ENGAGE IN COOPERATIVE R&D PROJECTS.—(1) The Secretary of Defense may enter into a memorandum of understanding (or other formal agreement) with one or more countries or organizations referred to in paragraph (2) for the purpose of conducting cooperative research and development projects on defense equipment and munitions.

(2) The countries and organizations with which the Secretary may enter into a memorandum of agreement (or other formal agreement) under paragraph (1) are as follows:

(A) The North Atlantic Treaty Organization.

(B) A NATO organization.

(C) A member nation of the North Atlantic Treaty Organization.

(D) A major non-NATO ally.

(E) Any other friendly foreign country.

(3) If such a memorandum of understanding (or other formal agreement) is with a country referred to in subparagraph (E) of paragraph (2), such memorandum (or agreement) may go into effect only after the Secretary submits to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report with respect to the proposed memorandum (or agreement) and a period of 30 days has passed after the report has been submitted.

(b) REQUIREMENT THAT PROJECTS IMPROVE CONVENTIONAL DEFENSE CAPABILITIES.—(1) The Secretary of Defense may not enter into a memorandum of understanding (or other formal agreement) to conduct a cooperative research and development project under this section unless the Secretary determines that the proposed project will improve, through the application of emerging technology, the conventional defense capabilities of the North Atlantic Treaty Organization or the common conventional defense capabilities of the United States and a country or organization referred to in subsection (a)(2).

(2) The authority of the Secretary to make a determination under paragraph (1) may only be delegated to the Deputy Secretary of Defense and to one other official of the Department of Defense.

(c) COST SHARING.—Each cooperative research and development project entered into under this section shall require sharing of the costs of the project (including the costs of claims) between the participants on an equitable basis.

(d) RESTRICTIONS ON PROCUREMENT OF EQUIPMENT AND SERVICES.—(1) In order to assure substantial participation on the part of countries and organizations referred to in subsection (a)(2) in cooperative research and development projects, funds made available for such projects may not be used to procure equipment or services from any foreign government, foreign research organization, or other foreign entity.

(2) A country or organization referred to in subsection (a)(2) may not use any military or economic assistance grant, loan, or other funds provided by the United States for the purpose of making the contribution of that country or organization to a cooperative research and development program entered into with the United States under this section.

(e) COOPERATIVE OPPORTUNITIES DOCUMENT.—(1)(A) In order to ensure that opportunities to conduct cooperative research and development projects are considered at an early point during the formal development review process of the Department of Defense in connection with any planned project of the Department, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall prepare an arms cooperation opportunities document with respect to that project for review by the Defense Acquisition Board at formal meetings of the Board.

(B) The Under Secretary shall also prepare an arms cooperation opportunities document for review of each new project for which a document known as a Mission Need Statement is prepared.

(2) An arms cooperation opportunities document referred to in paragraph (1) shall include the following:

(A) A statement indicating whether or not a project similar to the one under consideration by the Department of Defense is in development or production by any country or organization referred to in subsection (a)(2) or NATO organizations.

(B) If a project similar to the one under consideration by the Department of Defense is in development or production by one or more countries and organizations referred to in subsection (a)(2), an assessment by the Under Secretary of Defense for Acquisition, Technology, and Logistics as to whether that project could satisfy, or could be modified in scope so as to satisfy, the military requirements of the project of the United States under consideration by the Department of Defense.

(C) An assessment of the advantages and disadvantages with regard to program timing, developmental and life cycle costs, technology sharing, and Rationalization, Standardization, and Interoperability (RSI) of seeking to structure a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

(D) The recommendation of the Under Secretary as to whether the Department of Defense should explore the feasibility and desirability of a cooperative development program with one or more countries and organizations referred to in subsection (a)(2) or NATO organizations.

(f) REPORTS TO CONGRESS.—(1) Not later than March 1 of each year, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the Speaker of the House of Rep-

resentatives and the Committees on Armed Services and Appropriations of the Senate a report on cooperative research and development projects under this section. Each such report shall include—

(A) a description of the status, funding, and schedule of existing projects carried out under this section for which memoranda of understanding (or other formal agreements) have been entered into; and

(B) a description of the purpose, funding, and schedule of any new projects proposed to be carried out under this section (including those projects for which memoranda of understanding (or other formal agreements) have not yet been entered into) for which funds have been included in the budget submitted to Congress pursuant to section 1105 of title 31 for the fiscal year following the fiscal year in which the report is submitted.

(2) Not later than January 1 of each year, the Secretary of Defense shall submit to the Committees on Armed Services and on Foreign Relations of the Senate and to the Committees on Armed Services and on International Relations of the House of Representatives a report specifying—

(A) the countries that are eligible to participate in a cooperative project agreement under this section; and

(B) the criteria used to determine the eligibility of such countries.

(g) SIDE-BY-SIDE TESTING.—(1) It is the sense of Congress—

(A) that the Secretary of Defense should test conventional defense equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2) to determine the ability of such equipment, munitions, and technologies to satisfy United States military requirements or to correct operational deficiencies; and

(B) that while the testing of nondevelopmental items and items in the late state of the development process are preferred, the testing of equipment, munitions, and technologies may be conducted to determine procurement alternatives.

(2) The Secretary of Defense may acquire equipment, munitions, and technologies of the type described in paragraph (1) for the purpose of conducting the testing described in that paragraph.

(3) The Deputy Director, Defense Research and Engineering (Test and Evaluation) shall notify the Speaker of the House of Representatives and the Committees on Armed Services and on Appropriations of the Senate of the Deputy Director's intent to obligate funds made available to carry out this subsection not less than 30 days before such funds are obligated.

(h) SECRETARY TO ENCOURAGE SIMILAR PROGRAMS.—The Secretary of Defense shall encourage member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries to establish programs similar to the one provided for in this section.

(i) DEFINITIONS.—In this section:

(1) The term ''cooperative research and development project'' means a project involving joint participation by the United States and one or more countries and organizations referred to in subsection (a)(2) under a memorandum of understanding (or other formal agreement) to carry out a joint research and development program—

(A) to develop new conventional defense equipment and munitions; or

(B) to modify existing military equipment to meet United States military requirements.

(2) The term ''major non-NATO ally'' means a country (other than a member nation of the North Atlantic Treaty Organization) that is designated as a major non-NATO ally for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(3) The term ''NATO organization'' means any North Atlantic Treaty Organization subsidiary body referred to in section 2350(2) of this title and any other organization of the North Atlantic Treaty Organization.

(Added Pub. L. 101–189, div. A, title IX, §931(a)(2), Nov. 29, 1989, 103 Stat. 1531; amended Pub. L. 101–510, div. A, title XIII, §1331(4), Nov. 5, 1990, 104 Stat. 1673; Pub. L. 102–190, div. A, title X, §1053, Dec. 5, 1991, 105 Stat. 1471; Pub. L. 102–484, div. A, title VIII, §843(b)(1), Oct. 23, 1992, 106 Stat. 2469; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title XIII, §1301, Oct. 5, 1994, 108 Stat. 2888; Pub. L. 104–106, div. A, title XV, §1502(a)(17), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title IX, §911(a)(1), title X, §1067(1), Oct. 5, 1999, 113 Stat. 717, 774; Pub. L. 107–107, div. A, title X, §1048(b)(2), title XII, §1212(a)–(e)(1), Dec. 28, 2001, 115 Stat. 1225, 1248–1250; Pub. L. 107–314, div. A, title X, §§1041(a)(9), 1062(f)(2), Dec. 2, 2002, 116 Stat. 2645, 2651.)

PRIOR PROVISIONS

Provisions relating to NATO countries were contained in Pub. L. 99–145, title XI, §1103, Nov. 8, 1985, 99 Stat. 712, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, §931(d)(1).

Provisions relating to major non-NATO allies were contained in section 2767a of Title 22, Foreign Relations and Intercourse, prior to repeal by Pub. L. 101–189, §931(d)(2).

AMENDMENTS

2002—Subsec. (g)(1)(A). Pub. L. 107–314, §1062(f)(2), amended directory language of Pub. L. 107–107, §1212(a)(5). See 2001 Amendment note below.

Subsec. (g)(4). Pub. L. 107–314, §1041(a)(9), struck out par. (4) which read as follows: ''The Secretary of Defense shall submit to Congress each year, not later than March 1, a report containing information on—

''(A) the equipment, munitions, and technologies manufactured and developed by countries referred to in subsection (a)(2) that were evaluated under this subsection during the previous fiscal year;

''(B) the obligation of any funds under this subsection during the previous fiscal year; and

''(C) the equipment, munitions, and technologies that were tested under this subsection and procured during the previous fiscal year.''

Subsec. (g)(4)(A). Pub. L. 107–314, §1062(f)(2), amended directory language of Pub. L. 107–107, §1212(a)(5). See 2001 Amendment note below.

2001—Pub. L. 107–107, §1212(e)(1), substituted ''Cooperative research and development agreements: NATO organizations; allied and friendly foreign countries'' for ''Cooperative research and development projects: allied countries'' in section catchline.

Subsec. (a)(1). Pub. L. 107–107, §1212(a)(1)(A), (B), designated existing provisions of subsec. (a) as par. (1) and substituted ''countries or organizations referred to in paragraph (2)'' for ''major allies of the United States or NATO organizations''.

Subsec. (a)(2). Pub. L. 107–107, §1212(a)(1)(C), added par. (2).

Subsec. (a)(3). Pub. L. 107–107, §1212(b), added par. (3).

Subsec. (b)(1). Pub. L. 107–107, §1212(a)(2), struck out ''(NATO)'' after ''North Atlantic Treaty Organization'' and substituted ''a country or organization referred to in subsection (a)(2)'' for ''its major non-NATO allies''.

Subsec. (b)(2). Pub. L. 107–107, §1212(c), substituted ''Deputy Secretary of Defense and to one other official of the Department of Defense'' for ''Deputy Secretary of Defense or the Under Secretary of Defense for Acquisition, Technology, and Logistics''.

Subsec. (d)(1). Pub. L. 107–107, §1212(a)(3)(A), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''the major allies of the United States''.

Subsec. (d)(2). Pub. L. 107–107, §1212(a)(3)(B), substituted ''country or organization referred to in subsection (a)(2)'' for ''major ally of the United States'' and ''the contribution of that country or organization'' for ''that ally's contribution''.

Subsec. (e)(1)(A). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e)(2)(A). Pub. L. 107–107, §1212(a)(4)(A), substituted ''any country or organization referred to in subsection (a)(2)'' for ''one or more of the major allies of the United States''.

Subsec. (e)(2)(B). Pub. L. 107–107, §§1048(b)(2), 1212(a)(4)(B), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States or NATO organizations'' and ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (e)(2)(C). Pub. L. 107–107, §1212(a)(4)(C), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States''.

Subsec. (e)(2)(D). Pub. L. 107–107, §1212(a)(4)(D), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States''.

Subsec. (f)(1). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f)(2). Pub. L. 107–107, §1212(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary of Defense and the Secretary of State, whenever they consider such action to be warranted, shall jointly submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report—

''(A) enumerating those countries to be added to or deleted from the existing designation of countries designated as major non-NATO allies for purposes of this section; and

''(B) specifying the criteria used in determining the eligibility of a country to be designated as a major non-NATO ally for purposes of this section.''

Subsec. (g)(1)(A), (4)(A). Pub. L. 107–107, §1212(a)(5), as amended by Pub. L. 107–314, §1062(f)(2), substituted ''countries referred to in subsection (a)(2)'' for ''major allies of the United States and other friendly foreign countries''.

Subsec. (h). Pub. L. 107–107, §1212(a)(6), substituted ''member nations of the North Atlantic Treaty Organization, major non-NATO allies, and other friendly foreign countries'' for ''major allies of the United States''.

Subsec. (i)(1). Pub. L. 107–107, §1212(a)(7)(A), substituted ''countries and organizations referred to in subsection (a)(2)'' for ''major allies of the United States or NATO organizations''.

Subsec. (i)(2) to (4). Pub. L. 107–107, §1212(a)(7)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The term 'major ally of the United States' means—

''(A) a member nation of the North Atlantic Treaty Organization (other than the United States); or

''(B) a major non-NATO ally.''

1999—Subsec. (b)(2). Pub. L. 106–65, §911(a)(1), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (f)(2). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (f)(2). Pub. L. 104–106 substituted ''submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on National Security and the Committee on International Relations of the House of Representatives'' for ''submit to the Committees on Armed Services and Foreign Relations of the Senate and to the Committees on Armed Services and Foreign Affairs of the House of Representatives''.

1994—Subsecs. (a), (e)(2)(A) to (D), (i)(1). Pub. L. 103–337, §1301(a), inserted ''or NATO organizations'' after ''major allies of the United States''.

Subsec. (i)(4). Pub. L. 103–337, §1301(b), added par. (4).

1993—Subsecs. (b)(2), (e)(1)(A), (2)(B), (f)(1). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (c). Pub. L. 102–484 inserted ''(including the costs of claims)'' after ''the project''.

1991—Subsec. (g)(1)(A), (4)(A). Pub. L. 102–190 inserted ''and other friendly foreign countries'' after ''major allies of the United States''.

1990—Subsec. (g)(4). Pub. L. 101–510 amended introductory provisions generally, substituting ''submit to Congress each year, not later than March 1, a report containing'' for ''include in the annual report to Congress required by section 2457(d) of this title''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title X, §1062(f), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(f)(2) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.

TERMINATION DATE OF 1992 AMENDMENT

Section 843(c) of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, §202(a)(7), May 31, 1993, 107 Stat. 101, provided that, effective Oct. 23, 1994, subsections (a) and (b) of section 843 of Pub. L. 102–484 (amending sections 2350a and 2350d of this title and section 2767 of Title 22, Foreign Relations and Intercourse) were to cease to be in effect, and section 27(c) of the Arms Export Control Act (22 U.S.C. 2767(c)) and sections 2350a(c) and 2350d(c) of this title were to read as if such subsections had not been enacted, prior to repeal by Pub. L. 103–337, div. A, title XIII, §1318, Oct. 5, 1994, 108 Stat. 2902.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2349, 2540 of this title; title 22 section 2349aa–10.

§ 2350b. Cooperative projects under Arms Export Control Act: acquisition of defense equipment

(a)(1) If the President delegates to the Secretary of Defense the authority to carry out section 27(d) of the Arms Export Control Act (22 U.S.C. 2767(d)), relating to cooperative projects

(as defined in such section), the Secretary may utilize his authority under this title in carrying out contracts or obligations incurred under such section.

(2) Except as provided in subsection (c), chapter 137 of this title shall apply to such contracts (referred to in paragraph (1)) entered into by the Secretary of Defense. Except to the extent waived under subsection (c) or some other provision of law, all other provisions of law relating to procurement, if otherwise applicable, shall apply to such contracts entered into by the Secretary of Defense.

(b) When contracting or incurring obligations under section 27(d) of the Arms Export Control Act for cooperative projects, the Secretary of Defense may require subcontracts to be awarded to particular subcontractors in furtherance of the cooperative project.

(c)(1) Subject to paragraph (2), when entering into contracts or incurring obligations under section 27(d) of the Arms Export Control Act outside the United States, the Secretary of Defense may waive with respect to any such contract or subcontract the application of any provision of law, other than a provision of the Arms Export Control Act or section 2304 of this title, that specifically prescribes—

(A) procedures to be followed in the formation of contracts;

(B) terms and conditions to be included in contracts;

(C) requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(D) requirements regulating the performance of contracts.

(2) A waiver may not be made under paragraph (1) unless the Secretary determines that the waiver is necessary to ensure that the cooperative project will significantly further standardization, rationalization, and interoperability.

(3) The authority of the Secretary to make waivers under this subsection may be delegated only to the Deputy Secretary of Defense or the Acquisition Executive designated for the Office of the Secretary of Defense.

(d)(1) The Secretary of Defense shall notify the Congress each time he requires that a prime contract be awarded to a particular prime contractor or that a subcontract be awarded to a particular subcontractor to comply with a cooperative agreement. The Secretary shall include in each such notice the reason for exercising his authority to designate a particular contractor or subcontractor, as the case may be.

(2) The Secretary shall also notify the Congress each time he exercises a waiver under subsection (c) and shall include in such notice the particular provision or provisions of law that were waived.

(3) A report under this subsection shall be required only to the extent that the information required by this subsection has not been provided in a report made by the President under section 27(e) of the Arms Export Control Act (22 U.S.C. 2767(e)).

(e)(1) In carrying out a cooperative project under section 27 of the Arms Export Control Act, the Secretary of Defense may agree that a participant (other than the United States) or a NATO organization may make a contract for requirements of the United States under the project if the Secretary determines that such a contract will significantly further standardization, rationalization, and interoperability. Except to the extent waived under this section or under any other provision of law, the Secretary shall ensure that such contract will be made on a competitive basis and that United States sources will not be precluded from competing under the contract.

(2) If a participant (other than the United States) in such a cooperative project or a NATO organization makes a contract on behalf of such project to meet the requirements of the United States, the contract may permit the contracting party to follow its own procedures relating to contracting.

(f) In carrying out a cooperative project, the Secretary of Defense may also agree to the disposal of property that is jointly acquired by the members of the project without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement.

(g) Nothing in this section shall be construed as authorizing—

(1) the Secretary of Defense to waive any of the financial management responsibilities administered by the Secretary of the Treasury; or

(2) to waive the cargo preference laws of the United States, including section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)).

(Added Pub. L. 99–145, title XI, §1102(b)(1), Nov. 8, 1985, 99 Stat. 710, §2407; amended Pub. L. 99–661, div. A, title XI, §1103(b)(1), (2)(A), title XIII, §1343(a)(15), Nov. 14, 1986, 100 Stat. 3963, 3993; renumbered §2350b and amended Pub. L. 101–189, div. A, title IX, §931(b)(1), (e)(3), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 104–106, div. A, title XIII, §1335, div. D, title XLIII, §4321(b)(10), Feb. 10, 1996, 110 Stat. 484, 672.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c)(1), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1996—Subsec. (c)(1). Pub. L. 104–106, §4321(b)(10)(A), inserted ''prescribes'' after ''specifically'' in introductory provisions and struck out ''prescribe'' before ''procedures'' in subpar. (A), before ''terms'' in subpar. (B), and before ''requirements'' in subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 104–106, §4321(b)(10)(B), struck out ''to'' after ''subcontract''.

Subsec. (e)(1). Pub. L. 104–106, §1335(1), inserted ''or a NATO organization'' after ''United States)''.

Subsec. (e)(2). Pub. L. 104–106, § 1335(2), substituted ''such a cooperative project or a NATO organization'' for ''a cooperative project''.

1989—Pub. L. 101–189 renumbered section 2407 of this title as this section and substituted ''Cooperative projects under Arms Export Control Act: acquisition of defense equipment'' for ''Acquisition of defense equipment under cooperative projects'' as section catchline.

1986—Pub. L. 99–661, § 1103(b)(2)(A), struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in section catchline.

Subsec. (a)(1). Pub. L. 99–661, § 1103(b)(1)(A), struck out ''North Atlantic Treaty Organization (NATO)'' before ''cooperative projects''.

Subsec. (c)(2). Pub. L. 99–661, § 1103(b)(1)(B), struck out ''NATO'' after ''will significantly further''.

Subsec. (e). Pub. L. 99–661, § 1103(b)(1)(C), struck out ''NATO'' after ''will significantly further'' in par. (1) and after ''United States) in a'' in par. (2).

Subsec. (g)(2). Pub. L. 99–661, § 1343(a)(15), substituted ''section 2631 of this title and section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b))'' for ''the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b))''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(10) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

§ 2350c. Cooperative military airlift agreements: allied countries

(a) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into cooperative military airlift agreements with the government of any allied country for the transportation of the personnel and cargo of the military forces of that country on aircraft operated by or for the military forces of the United States in return for the reciprocal transportation of the personnel and cargo of the military forces of the United States on aircraft operated by or for the military forces of that allied country. Any such agreement shall include the following terms:

(1) The rate of reimbursement for transportation provided shall be the same for each party and shall be not less than the rate charged to military forces of the United States, as determined by the Secretary of Defense under section 2208(h) of this title.

(2) Credits and liabilities accrued as a result of providing or receiving transportation shall be liquidated as agreed upon by the parties. Liquidation shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.

(3) During peacetime, the only military airlift capacity that may be used to provide transportation is that capacity that (A) is not needed to meet the transportation requirements of the military forces of the country providing the transportation, and (B) was not created solely to accommodate the requirements of the military forces of the country receiving the transportation.

(4) Defense articles purchased by an allied country from the United States under the Arms Export Control Act (22 U.S.C. 2751 et seq.) or from a commercial source under the export controls of the Arms Export Control Act may not be transported (for the purpose of delivery incident to the purchase of the defense articles) to the purchasing allied country on aircraft operated by or for the military forces of the United States except at a rate of reimbursement that is equal to the full cost of transportation of the defense articles, as required by section 21(a)(3) of the Arms Export Control Act (22 U.S.C. 2761(a)(3)).

(b) Subject to the availability of appropriations, and after consultation with the Secretary of State, the Secretary of Defense may enter into nonreciprocal military airlift agreements with North Atlantic Treaty Organization subsidiary bodies for the transportation of the personnel and cargo of such subsidiary bodies on aircraft operated by or for the military forces of the United States. Any such agreement shall be subject to such terms as the Secretary of Defense considers appropriate.

(c) Any amount received by the United States as a result of an agreement entered into under this section shall be credited to applicable appropriations, accounts, and funds of the Department of Defense.

(d) In this section:

(1) The term ''allied country'' means any of the following:

(A) A country that is a member of the North Atlantic Treaty Organization.

(B) Australia, New Zealand, Japan, and the Republic of Korea.

(C) Any other country designated as an allied country for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''North Atlantic Treaty Organization subsidiary bodies'' has the meaning given to it by section 2350 of this title.

(Added Pub. L. 97–252, title XI, § 1125(a), Sept. 8, 1982, 96 Stat. 757, § 2213; amended Pub. L. 99–145, title XIII, § 1304(b), Nov. 8, 1985, 99 Stat. 742; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350c and amended Pub. L. 101–189, div. A, title IX, § 931(b)(2), (e)(4), Nov. 29, 1989, 103 Stat. 1534, 1535; Pub. L. 102–484, div. A, title XIII, § 1311, Oct. 23, 1992, 106 Stat. 2547; Pub. L. 106–398, § 1 [[div. A], title XII, § 1222], Oct. 30, 2000, 114 Stat. 1654, 1654A–328.)

REFERENCES IN TEXT

The Arms Export Control Act (22 U.S.C. 2751 et seq.), referred to in subsec. (a)(4), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

2000—Subsecs. (d), (e). Pub. L. 106–398 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows: ''Notwithstanding subchapter I, the Secretary of Defense may enter into military airlift agreements with allied countries only under the authority of this section.''

1992—Subsec. (a)(2). Pub. L. 102–484, § 1311(a), substituted ''as agreed upon by the parties. Liquidation

shall be either by direct payment to the country that has provided the greater amount of transportation or by the providing of in-kind transportation services to that country. The liquidation shall occur on a regular basis, but not less often than once every 12 months.'' for ''not less often than once every 3 months by direct payment to the country that has provided the greater amount of transportation.''

Subsec. (e)(1)(B). Pub. L. 102–484, §1311(b), substituted '', New Zealand, Japan, and the Republic of Korea'' for ''or New Zealand''.

1989—Pub. L. 101–189 renumbered section 2213 of this title as this section and inserted '': allied countries'' after ''airlift agreements'' in section catchline.

Subsec. (d). Pub. L. 101–189, §931(b)(2), substituted ''subchapter I'' for ''chapter 138 of this title''.

1987—Subsec. (e). Pub. L. 100–26 inserted ''The term'' after each par. designation and substituted ''allied'' for ''Allied'' in par. (1).

1985—Subsec. (e)(2). Pub. L. 99–145 substituted ''section 2350'' for ''section 2331''.

§ 2350d. Cooperative logistic support agreements: NATO countries

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may enter into bilateral or multilateral agreements known as Weapon System Partnership Agreements with one or more governments of other member countries of the North Atlantic Treaty Organization (NATO) participating in the operation of the NATO Maintenance and Supply Organization. Any such agreement shall be for the purpose of providing cooperative logistics support for the armed forces of the countries which are parties to the agreement. Any such agreement—

(A) shall be entered into pursuant to the terms of the charter of the NATO Maintenance and Supply Organization; and

(B) shall provide for the common logistic support of a specific weapon system common to the participating countries.

(2) Such an agreement may provide for—

(A) the transfer of logistics support, supplies, and services by the United States to the NATO Maintenance and Supply Organization; and

(B) the acquisition of logistics support, supplies, and services by the United States from that Organization.

(b) AUTHORITY OF SECRETARY.—Under the terms of a Weapon System Partnership Agreement, the Secretary of Defense—

(1) may agree that the NATO Maintenance and Supply Organization may enter into contracts for supply and acquisition of logistics support in Europe for requirements of the United States, to the extent the Secretary determines that the procedures of such Organization governing such supply and acquisition are appropriate; and

(2) may share the costs of set-up charges of facilities for use by the NATO Maintenance and Supply Organization to provide cooperative logistics support and in the costs of establishing a revolving fund for initial acquisition and replenishment of supply stocks to be used by the NATO Maintenance and Supply Organization to provide cooperative logistics support.

(c) SHARING OF ADMINISTRATIVE EXPENSES.—Each Weapon System Partnership Agreement shall provide for joint management by the participating countries and for the equitable sharing of the administrative costs and costs of claims incident to the agreement.

(d) APPLICATION OF CHAPTER 137.—Except as otherwise provided in this section, the provisions of chapter 137 of this title apply to a contract entered into by the Secretary of Defense for the acquisition of logistics support under a Weapon System Partnership Agreement.

(e) APPLICATION OF ARMS EXPORT CONTROL ACT.—Any transfer of defense articles or defense services to a member country of the North Atlantic Treaty Organization or to the NATO Maintenance and Supply Organization for the purposes of a Weapon System Partnership Agreement shall be carried out in accordance with this chapter and the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(f) SUPPLEMENTAL AUTHORITY.—The authority of the Secretary of Defense under this section is in addition to the authority of the Secretary under subchapter I and any other provision of law.

(Added and amended Pub. L. 101–189, div. A, title IX, §§931(c), 938(c), Nov. 29, 1989, 103 Stat. 1534, 1539; Pub. L. 102–484, div. A, title VIII, §843(b)(2), Oct. 23, 1992, 106 Stat. 2469.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (e), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 99–661, div. A, title XI, §1102, Nov. 14, 1986, 100 Stat. 3961, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, §931(d)(2).

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–484 inserted ''and costs of claims'' after ''administrative costs''.

1989—Subsec. (e). Pub. L. 101–189, §938(c), inserted ''this chapter and'' after ''in accordance with''.

§ 2350e. NATO Airborne Warning and Control System (AWACS) program: authority of Secretary of Defense

(a) AUTHORITY UNDER AWACS PROGRAM.—The Secretary of Defense, in carrying out an AWACS memorandum of understanding, may do the following:

(1) Waive reimbursement for the cost of the following functions performed by personnel other than personnel employed in the United States Air Force Airborne Warning and Control System (AWACS) program office:

(A) Auditing.

(B) Quality assurance.

(C) Codification.

(D) Inspection.

(E) Contract administration.

(F) Acceptance testing.

(G) Certification services.

(H) Planning, programming, and management services.

(2) Waive any surcharge for administrative services otherwise chargeable.

(3) In connection with that Program, assume contingent liability for—

(A) program losses resulting from the gross negligence of any contracting officer of the United States;

(B) identifiable taxes, customs duties, and other charges levied within the United States on the program; and

(C) the United States share of the unfunded termination liability.

(b) CONTRACT AUTHORITY LIMITATION.—Authority under this section to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(c) DEFINITION.—In this section, the term ''AWACS memorandum of understanding'' means—

(1) the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme, signed by the Secretary of Defense on December 6, 1978;

(2) the Memorandum of Understanding for Operations and Support of the NATO Airborne Early Warning and Control Force, signed by the United States Ambassador to NATO on September 26, 1984;

(3) the Addendum to the Multilateral Memorandum of Understanding Between the North Atlantic Treaty Organization (NATO) Ministers of Defence on the NATO E–3A Cooperative Programme (dated December 6, 1978) relating to the modernization of the NATO Airborne Early Warning and Control (NAEW&C) System, dated December 7, 1990; and

(4) any other follow-on support agreement for the NATO E–3A Cooperative Programme.

(Added Pub. L. 101–189, div. A, title IX, § 932(a)(1), Nov. 29, 1989, 103 Stat. 1536; amended Pub. L. 102–190, div. A, title X, § 1051, Dec. 5, 1991, 105 Stat. 1470; Pub. L. 103–160, div. A, title XIV, § 1413, Nov. 30, 1993, 107 Stat. 1829.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended, which was set out as a note under section 2407 of this title, prior to repeal by Pub. L. 101–189, § 932(b).

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–160 struck out subsec. (d) which read as follows: ''EXPIRATION.—The authority provided by this section expires on September 30, 1993.''

1991—Subsec. (c)(3), (4). Pub. L. 102–190, § 1051(1), added par. (3) and redesignated former par. (3) as (4).

Subsec. (d). Pub. L. 102–190, § 1051(2), substituted ''1993'' for ''1991''.

§ 2350f. Procurement of communications support and related supplies and services

(a) As an alternative means of obtaining communications support and related supplies and services, the Secretary of Defense, subject to the approval of the Secretary of State, may enter into a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations, under which, in return for being provided communications support and related supplies and services, the United States would agree to provide to the allied country or countries or allied international organization or allied international organizations, as the case may be, an equivalent value of communications support and related supplies and services. The term of an arrangement entered into under this subsection may not exceed five years.

(b)(1) Any arrangement entered into under this section shall require that any accrued credits and liabilities resulting from an unequal exchange of communications support and related supplies and services during the term of such arrangement would be liquidated by direct payment to the party having provided the greater amount of communications support and related supplies and services. Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.

(2) Parties to an arrangement entered into under this section shall annually reconcile accrued credits and liabilities accruing under such agreement. Any liability of the United States resulting from a reconciliation shall be charged against the applicable appropriation available to the Department of Defense (at the time of the reconciliation) for obligation for communications support and related supplies and services.

(3) Payments received by the United States shall be credited to the appropriation from which such communications support and related supplies and services have been provided.

[(c) Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(10), Dec. 2, 2002, 116 Stat. 2645.]

(d) In this section:

(1) The term ''allied country'' means—

(A) a country that is a member of the North Atlantic Treaty Organization;

(B) Australia, New Zealand, Japan, or the Republic of Korea; or

(C) any other country designated as an allied country for purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(2) The term ''allied international organization'' means the North Atlantic Treaty Organization (NATO) or any other international organization designated as an allied international organization for the purposes of this section by the Secretary of Defense with the concurrence of the Secretary of State.

(Added Pub. L. 98–525, title X, § 1005(a), Oct. 19, 1984, 98 Stat. 2578, § 2401a; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2350f and amended Pub. L. 101–189, div. A, title IX, § 933(a)–(d), Nov. 29, 1989, 103 Stat. 1537; Pub. L. 101–510, div. A, title XIV, § 1484(k)(8), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(a)(10), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 struck out subsec. (c) which read as follows: ''The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of all documents evidencing an arrangement entered into under subsection (a) not later than 45 days after entering into such an arrangement.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1990—Subsec. (d)(1)(A). Pub. L. 101–510 substituted a semicolon for '', or'' at end.

1989—Pub. L. 101–189, §933(a), renumbered section 2401a of this title as this section.

Subsec. (a). Pub. L. 101–189, §933(b), substituted ''a bilateral arrangement with any allied country or allied international organization or may enter into a multilateral arrangement with allied countries and allied international organizations'' for ''an arrangement with the Minister of Defense or other appropriate official of any allied country or with the North Atlantic Treaty Organization (NATO),'' and ''the allied country or countries or allied international organization or allied international organizations, as the case may be,'' for ''such country or NATO'' and inserted ''The term of an arrangement entered into under this subsection may not exceed five years.''

Subsec. (b). Pub. L. 101–189, §933(c), designated first sentence as par. (1), inserted ''Liquidations may be made at such times as the parties in an arrangement may agree upon, but in no case may final liquidation in the case of an arrangement be made later than 30 days after the end of the term for which the arrangement was entered into.'' after ''supplies and services.'', added par. (2), and designated second sentence as par. (3).

Subsec. (d). Pub. L. 101–189, §933(d)(1), (2), substituted ''In this section:'' and par. (1) for ''In this section, the term 'allied country' means—'' and redesignated former cls. (1) and (2) as cls. (A) and (B).

Subsec. (d)(1)(A). Pub. L. 101–189, §933(d)(3), which directed amendment of cl. (A) by substituting a semicolon for ''; or'' at end, could not be executed because ''; or'' did not appear.

Subsec. (d)(1)(B). Pub. L. 101–189, §933(d)(4), substituted ''; or'' for period at end.

Subsec. (d)(1)(C), (2). Pub. L. 101–189, §933(d)(5), added cl. (C) and par. (2).

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2350g. Authority to accept use of real property, services, and supplies from foreign countries in connection with mutual defense agreements and occupational arrangements

(a) AUTHORITY TO ACCEPT.—The Secretary of Defense may accept from a foreign country, for the support of any element of the armed forces in an area of that country—

(1) real property or the use of real property and services and supplies for the United States or for the use of the United States in accordance with a mutual defense agreement or occupational arrangement; and

(2) services furnished as reciprocal international courtesies or as services customarily made available without charge.

(b) AUTHORITY TO USE PROPERTY, SERVICES, AND SUPPLIES.—Property, services, or supplies referred to in subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property, services, and supplies may not be used in connection with any program, project, or activity if the use of such property, services, or supplies would result in the violation of any prohibition or limitation otherwise applicable to that program, project, or activity.

(c) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(Added Pub. L. 101–510, div. A, title XIV, §1451(b)(1), Nov. 5, 1990, 104 Stat. 1692; amended Pub. L. 103–160, div. A, title XI, §1105(a), Nov. 30, 1993, 107 Stat. 1749; Pub. L. 106–65, div. A, title X, §1032(a)(3), Oct. 5, 1999, 113 Stat. 751.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, §9008, Nov. 21, 1989, 103 Stat. 1130, which was set out as a note under section 2341 of this title, prior to repeal by Pub. L. 101–510, §1451(c).

AMENDMENTS

1999—Subsecs. (b) to (d). Pub. L. 106–65 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out heading and text of former subsec. (b). Text read as follows:

''(1) Not later than 30 days after the end of each quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on property, services, and supplies accepted by the Secretary under this section during the preceding quarter. The Secretary shall include in each such report a description of all property, services, and supplies having a value of more than $1,000,000.

''(2) In computing the value of any property, services, and supplies referred to in paragraph (1), the Secretary shall aggregate the value of—

''(A) similar items of property, services, and supplies accepted by the Secretary during the quarter concerned; and

''(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.''

1993—Subsec. (d). Pub. L. 103–160 substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of property, services, and supplies accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

§ 2350h. Memorandums of agreement: Department of Defense ombudsman for foreign signatories

The Secretary of Defense shall designate an official to act as ombudsman within the Department of Defense on behalf of foreign governments who are parties to memorandums of agreement with the United States concerning acquisition matters under the jurisdiction of the Secretary of Defense. The official so designated shall assist officials of those foreign governments in understanding and complying with procedures and requirements of the Department of Defense (and, as appropriate, other departments

and agencies of the United States) insofar as they relate to any such memorandum of agreement.

(Added Pub. L. 101–510, div. A, title XIV, § 1452(a)(1), Nov. 5, 1990, 104 Stat. 1693.)

DEADLINE FOR DESIGNATION OF OMBUDSMAN

Section 1452(b) of Pub. L. 101–510 provided that: ''The official required to be designated under section 2350h of title 10, United States Code, as added by subsection (a), shall be designated by the Secretary of Defense not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

§ 2350i. Foreign contributions for cooperative projects

(a) CREDITING OF CONTRIBUTIONS.—Whenever the United States participates in a cooperative project with a friendly foreign country or the North Atlantic Treaty Organization (NATO) on a cost-sharing basis, any contribution received by the United States from that foreign country or NATO to meet its share of the costs of the project may be credited to appropriations available to an appropriate military department or another appropriate organization within the Department of Defense, as determined by the Secretary of Defense.

(b) USE OF AMOUNTS CREDITED.—The amount of a contribution credited pursuant to subsection (a) to an appropriation account in connection with a cooperative project referred to in that subsection shall be available only for payment of the share of the project expenses allocated to the foreign country or NATO making the contribution. Payments for which such amount is available include the following:

(1) Payments to contractors and other suppliers (including the Department of Defense and other participants acting as suppliers) for necessary articles and services.

(2) Payments for any damages and costs resulting from the performance or cancellation of any contract or other obligation.

(3) Payments or reimbursements of other program expenses, including program office overhead and administrative costs.

(4) Refunds to other participants.

(c) DEFINITIONS.—In this section:

(1) The term ''cooperative project'' means a jointly managed arrangement, described in a written cooperative agreement entered into by the participants, that—

(A) is undertaken by the participants in order to improve the conventional defense capabilities of the participants; and

(B) provides for—

(i) one or more participants (other than the United States) to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of defense articles;

(ii) the United States and another participant concurrently to produce in the United States and the country of such other participant a defense article jointly developed in a cooperative project described in clause (i); or

(iii) the United States to procure a defense article or a defense service from another participant in the cooperative project.

(2) The term ''defense article'' has the meaning given such term in section 47(3) of the Arms Export Control Act (22 U.S.C. 2794(3)).

(3) The term ''defense service'' has the meaning given such term in section 47(4) of the Arms Export Control Act (22 U.S.C. 2794(4)).

(Added Pub. L. 102–190, div. A, title X, § 1047(a), Dec. 5, 1991, 105 Stat. 1467.)

§ 2350j. Burden sharing contributions by designated countries and regional organizations

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense, after consultation with the Secretary of State, may accept cash contributions from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State, for the purposes specified in subsection (c).

(b) ACCOUNTING.—Contributions accepted under subsection (a) which are not related to security assistance may be accepted, managed, and expended in dollars or in the currency of the host nation (or, in the case of a contribution from a regional organization, in the currency in which the contribution was provided). Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (c). The Secretary of Defense shall establish a separate account for such purpose for each country or regional organization from which such contributions are accepted under subsection (a).

(c) AVAILABILITY OF CONTRIBUTIONS.—Contributions accepted under subsection (a) shall be available only for the payment of the following costs:

(1) Compensation for local national employees of the Department of Defense.

(2) Military construction projects of the Department of Defense.

(3) Supplies and services of the Department of Defense.

(d) AUTHORIZATION OF MILITARY CONSTRUCTION.—Contributions placed in an account established under subsection (b) may be used—

(1) by the Secretary of Defense to carry out a military construction project that is consistent with the purposes for which the contributions were made and is not otherwise authorized by law; or

(2) by the Secretary of a military department, with the approval of the Secretary of Defense, to carry out such a project.

(e) NOTICE AND WAIT REQUIREMENTS.—(1) When a decision is made to carry out a military construction project under subsection (d), the Secretary of Defense shall submit to the congressional committees specified in subsection (g) a report containing—

(A) an explanation of the need for the project;

(B) the then current estimate of the cost of the project; and

(C) a justification for carrying out the project under that subsection.

(2) The Secretary of Defense or the Secretary of a military department may not commence a military construction project under subsection (d) until the end of the 21-day period beginning on the date on which the Secretary of Defense submits the report under paragraph (1) regarding the project.

(3)(A) A military construction project under subsection (d) may be carried out without regard to the requirement in paragraph (1) and the limitation in paragraph (2) if the project is necessary to support the armed forces in the country or region in which the project is carried out by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.), that is in force at the time of the commencement of the project.

(B) When a decision is made to carry out a military construction project under subparagraph (A), the Secretary of Defense shall submit to the congressional committees specified in subsection (g)—

(i) a notice of the decision; and

(ii) a statement of the current estimated cost of the project, including the cost of any real property transaction in connection with the project.

(f) REPORTS.—Not later than 30 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report specifying separately for each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)—

(1) the amount of the contributions accepted by the Secretary during the preceding fiscal year under subsection (a) and the purposes for which the contributions were made; and

(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.

(g) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (e) are—

(1) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(2) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 103–160, div. A, title XIV, §1402(a), Nov. 30, 1993, 107 Stat. 1825; amended Pub. L. 103–337, div. A, title X, §1070(a)(10), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XIII, §1331, Feb. 10, 1996, 110 Stat. 482; Pub. L. 106–65, div. A, title X, §1067(1), div. B, title XXVIII, §2801, Oct. 5, 1999, 113 Stat. 774, 845.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (e)(3), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

CODIFICATION

Section, as added by Pub. L. 103–160, consists of text of Pub. L. 102–190, div. A, title X, §1045, Dec. 5, 1991, 105 Stat. 1465, as amended by Pub. L. 102–484, div. A, title XIII, §1305(a), (b), Oct. 23, 1992, 106 Stat. 2546, and revised by Pub. L. 103–160, in subsec. (a), by substituting ''The Secretary'' for ''During fiscal years 1992 and 1993, the Secretary'', inserting '', after consultation with the Secretary of State,'' after ''Secretary of Defense'', and substituting ''from any country or regional organization designated for purposes of this section by the Secretary of Defense, in consultation with the Secretary of State'' for ''from Japan, Kuwait, and the Republic of Korea'', and in subsec. (f), by substituting ''each fiscal year'' for ''each quarter of fiscal years 1992 and 1993'', ''Congress'' for ''congressional defense committees'', ''each country and regional organization from which contributions have been accepted by the Secretary under subsection (a)'' for ''Japan, Kuwait, and the Republic of Korea'', and ''the preceding fiscal year'' for ''the preceding quarter'' in pars. (1) and (2).

AMENDMENTS

1999—Subsec. (e)(3). Pub. L. 106–65, §2801(a), added par. (3).

Subsec. (g). Pub. L. 106–65, §2801(b), substituted ''subsection (e)'' for ''subsection (e)(1)'' in introductory provisions.

Subsec. (g)(2). Pub. L. 106–65, §1067(1), substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106, §1331(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''CREDIT TO APPROPRIATIONS.—Contributions accepted in a fiscal year under subsection (a) shall be credited to appropriations of the Department of Defense that are available for that fiscal year for the purposes for which the contributions are made. The contributions so credited shall be—

''(1) merged with the appropriations to which they are credited; and

''(2) available for the same time period as those appropriations.''

Subsec. (d). Pub. L. 104–106, §1331(b), substituted ''placed in an account established under subsection (b)'' for ''credited under subsection (b) to an appropriation account of the Department of Defense''.

Subsec. (e)(1). Pub. L. 104–106, §1331(c)(1), substituted ''to the congressional committees specified in subsection (g) a report'' for ''a report to the congressional defense committees''.

Subsec. (g). Pub. L. 104–106, §1331(c)(2), added subsec. (g).

1994—Subsec. (a). Pub. L. 103–337, §1070(a)(10)(A), inserted a comma after second reference to ''Secretary of State''.

Subsec. (f). Pub. L. 103–337, §1070(a)(10)(B), struck out ''the'' before ''Congress'' in introductory provisions.

§ 2350k. Relocation within host nation of elements of armed forces overseas

(a) AUTHORITY TO ACCEPT CONTRIBUTIONS.—The Secretary of Defense may accept contributions from any nation because of or in support of the relocation of elements of the armed forces from or to any location within that nation. Such contributions may be accepted in dollars or in the currency of the host nation. Any such contribution shall be placed in an account established for such purpose and shall remain available until expended for the purposes specified in subsection (b). The Secretary shall establish a separate account for such purpose for each country from which such contributions are accepted.

(b) USE OF CONTRIBUTIONS.—The Secretary may use a contribution accepted under subsection (a) only for payment of costs incurred in connection with the relocation concerning which the contribution was made. Those costs include the following:

(1) Design and construction services, including development and review of statements of work, master plans and designs, acquisition of construction, and supervision and administration of contracts relating thereto.

(2) Transportation and movement services, including packing, unpacking, storage, and transportation.

(3) Communications services, including installation and deinstallation of communications equipment, transmission of messages and data, and rental of transmission capability.

(4) Supply and administration, including acquisition of expendable office supplies, rental of office space, budgeting and accounting services, auditing services, secretarial services, and translation services.

(5) Personnel costs, including salary, allowances and overhead of employees whether full-time or part-time, temporary or permanent (except for military personnel), and travel and temporary duty costs.

(6) All other clearly identifiable expenses directly related to relocation.

(c) METHOD OF CONTRIBUTION.—Contributions may be accepted in any of the following forms:

(1) Irrevocable letter of credit issued by a financial institution acceptable to the Treasurer of the United States.

(2) Drawing rights on a commercial bank account established and funded by the host nation, which account is blocked such that funds deposited cannot be withdrawn except by or with the approval of the United States.

(3) Cash, which shall be deposited in a separate trust fund in the United States Treasury pending expenditure and which shall accrue interest in accordance with section 9702 of title 31.

(Added Pub. L. 104–106, div. A, title XIII, §1332(a)(1), Feb. 10, 1996, 110 Stat. 482; amended Pub. L. 107–314, div. A, title X, §1041(a)(11), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 struck out heading and text of subsec. (d). Text read as follows: ''Not later than 30 days after the end of each fiscal year, the Secretary shall submit to Congress a report specifying—

''(1) the amount of the contributions accepted by the Secretary during the preceding fiscal year under subsection (a) and the purposes for which the contributions were made; and

''(2) the amount of the contributions expended by the Secretary during the preceding fiscal year and the purposes for which the contributions were expended.''

EFFECTIVE DATE

Section 1332(b) of Pub. L. 104–106 provided that: ''Section 2350k of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to contributions for relocation of elements of the Armed Forces in or to any nation received on or after such date.''

§ 2350*l*. Cooperative agreements for reciprocal use of test facilities: foreign countries and international organizations

(a) AUTHORITY.—The Secretary of Defense, with the concurrence of the Secretary of State, may enter into a memorandum of understanding (or other formal agreement) with a foreign country or international organization to provide for the testing, on a reciprocal basis, of defense equipment (1) by the United States using test facilities of that country or organization, and (2) by that country or organization using test facilities of the United States.

(b) PAYMENT OF COSTS.—A memorandum or other agreement under subsection (a) shall provide that, when a party to the agreement uses a test facility of another party to the agreement, the party using the test facility is charged by the party providing the test facility in accordance with the following principles:

(1) The user party shall be charged the amount equal to the direct costs incurred by the provider party in furnishing test and evaluation services by the providing party's officers, employees, or governmental agencies.

(2) The user party may also be charged indirect costs relating to the use of the test facility, but only to the extent specified in the memorandum or other agreement.

(c) DETERMINATION OF INDIRECT COSTS; DELEGATION OF AUTHORITY.—(1) The Secretary of Defense shall determine the appropriateness of the amount of indirect costs charged by the United States pursuant to subsection (b)(2).

(2) The Secretary may delegate the authority under paragraph (1) only to the Deputy Secretary of Defense and to one other official of the Department of Defense.

(d) RETENTION OF FUNDS COLLECTED BY THE UNITED STATES.—Amounts collected by the United States from a party using a test facility of the United States pursuant to a memorandum or other agreement under this section shall be credited to the appropriation accounts from which the costs incurred by the United States in providing such test facility were paid.

(e) DEFINITIONS.—In this section:

(1) The term ''direct cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is easily and readily identified to a specific unit of work or output within the test facility where the use occurred, that would not have been incurred if such use had not occurred; and

(B) may include costs of labor, materials, facilities, utilities, equipment, supplies, and any other resources of the test facility that are consumed or damaged in connection with—

(i) the use; or

(ii) the maintenance of the test facility for purposes of the use.

(2) The term ''indirect cost'', with respect to the use of a test facility pursuant to a memorandum or other agreement under subsection (a)—

(A) means any item of cost that is not easily and readily identified to a specific unit of work or output within the test facility where the use occurred; and

(B) may include general and administrative expenses for such activities as support-

ing base operations, manufacturing, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.

(3) The term ''test facility'' means a range or other facility at which testing of defense equipment may be carried out.

(Added Pub. L. 107–107, div. A, title XII, §1213(a), Dec. 28, 2001, 115 Stat. 1250.)

CHAPTER 139—RESEARCH AND DEVELOPMENT

Sec.
2351. Availability of appropriations.
[2352. Repealed.]
2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment.
2354. Contracts: indemnification provisions.
[2355 to 2357. Repealed.]
2358. Research and development projects.
2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation.
2359a. Technology Transition Initiative.
2359b. Defense Acquisition Challenge Program.
2360. Research and development laboratories: contracts for services of university students.
2361. Award of grants and contracts to colleges and universities: requirement of competition.
[2362, 2363. Repealed.]
2364. Coordination and communication of defense research activities.
[2365. Repealed.]
2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production.
2367. Use of federally funded research and development centers.
[2368 to 2370. Repealed.]
2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats.
2371. Research projects: transactions other than contracts and grants.
2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980.
2372. Independent research and development and bid and proposal costs: payments to contractors.
2373. Procurement for experimental purposes.
2374. Merit-based award of grants for research and development.
2374a. Prizes for advanced technology achievements.
2374b. Prizes for achievements in promoting science, mathematics, engineering, or technology education.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title II, §§242(a)(2), 243(b), 248(c)(2), Dec. 2, 2002, 116 Stat. 2495, 2498, 2503, added items 2359a, 2359b, and 2374b.

2000—Pub. L. 106–398, §1 [[div. A], title IX, §904(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225, added item 2359.

1999—Pub. L. 106–65, div. A, title II, §244(b), Oct. 5, 1999, 113 Stat. 552, added item 2374a.

1996—Pub. L. 104–201, div. A, title II, §267(c)(1)(C), Sept. 23, 1996, 110 Stat. 2468, added item 2371a.

Pub. L. 104–106, div. A, title VIII, §802(b), title X, §§1061(j)(2), 1062(c)(2), Feb. 10, 1996, 110 Stat. 390, 443, 444, struck out items 2352 ''Contracts: notice to Congress required for contracts performed over period exceeding 10 years'', 2356 ''Contracts: delegations'', and 2370 ''Biological Defense Research Program''.

1994—Pub. L. 103–355, title I, §1301(c), title II, §2002(b), title III, §3062(b), title VII, §7203(a)(3), Oct. 13, 1994, 108 Stat. 3287, 3303, 3337, 3380, added item 2374, substituted in item 2358 ''Research and development projects'' for ''Research projects'' and in item 2371 ''Research projects: transactions other than contracts and grants'' for ''Advanced research projects: cooperative agreements and other transactions'', and struck out item 2355 ''Contracts: vouchering procedures'' and item 2369 ''Product evaluation activity''.

1993—Pub. L. 103–160, div. A, title II, §214(b), title VIII, §828(a)(2), (c)(2), Nov. 30, 1993, 107 Stat. 1586, 1713, 1714, struck out item 2362 ''Testing requirements: wheeled or tracked armored vehicles'' and added items 2370a and 2373.

1992—Pub. L. 102–484, div. A, title VIII, §821(c)(2), div. D, title XLII, §4271(b)(3), Oct. 23, 1992, 106 Stat. 2460, 2696, struck out items 2363 ''Encouragement of technology transfer'' and 2365 ''Competitive prototype strategy requirement: major defense acquisition programs''.

1991—Pub. L. 102–190, div. A, title VIII, §§802(a)(2), 803(a)(2), 821(c)(2), Dec. 5, 1991, 105 Stat. 1414, 1415, 1431, substituted item 2352 for former item 2352 ''Contracts: limited to five-year terms'', struck out item 2368 ''Critical technologies research'', and substituted item 2372 for former item 2372 ''Independent research and development''.

Pub. L. 102–25, title VII, §701(e)(5), Apr. 6, 1991, 105 Stat. 114, inserted period at end of item 2366.

1990—Pub. L. 101–510, div. A, title II, §241(b), title VIII, §824(a)(2), title XIII, §1331(5), Nov. 5, 1990, 104 Stat. 1517, 1604, 1673, struck out items 2357 ''Contracts: reports to Congress'' and 2359 ''Salaries of officers of Federal contract research centers: reports to Congress'' and added items 2370 and 2372.

1989—Pub. L. 101–189, div. A, title II, §251(a)(2), title VIII, §§802(c)(4)(B), 841(c)(2), Nov. 29, 1989, 103 Stat. 1404, 1486, 1514, substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in item 2366, substituted ''research'' for ''plan'' in item 2368, and added item 2371.

1988—Pub. L. 100–456, div. A, title II, §220(b), title VIII, §§823(a)(2), 842(b), Sept. 29, 1988, 102 Stat. 1941, 2018, 2026, added items 2361, 2368, and 2369.

Pub. L. 100–370, §1(g)(4), July 19, 1988, 102 Stat. 847, added item 2351, and struck out item 2361 ''Availability of appropriations''.

1987—Pub. L. 100–180, div. A, title XII, §1231(10)(C), (12), Dec. 4, 1987, 101 Stat. 1160, substituted ''defense'' for ''Defense'' in item 2364 and ''federally'' for ''Federally'' in item 2367.

Pub. L. 100–26, §5(3)(B), Apr. 21, 1987, 101 Stat. 274, made technical amendment to directory language of section 909(a)(2) of Pub. L. 99–500, Pub. L. 99–591, and 99–661. See 1986 Amendment note below.

Pub. L. 100–26, §3(1)(B), Apr. 21, 1987, 101 Stat. 273, made technical amendment to directory language of section 234(c)(2) of Pub. L. 99–661. See 1986 Amendment note below.

1986—Pub. L. 99–661, div. A, title II, §234(c)(2), Nov. 14, 1986, 100 Stat. 3849, as amended by Pub. L. 100–26, §3(1)(B), Apr. 21, 1987, 101 Stat. 273, added item 2364.

Pub. L. 99–500, §101(c) [title X, §§909(a)(2), 910(a)(2), 912(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, 1783–144, 1783–146, and Pub. L. 99–591, §101(c) [title X, §§909(a)(2), 910(a)(2), 912(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143, 3341–144, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §§909(a)(2), 910(a)(2), 912(a)(2), Nov. 14, 1986, 100 Stat. 3849, 3922, 3924, 3926, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; as amended by Pub. L. 100–26, §5(3)(B), Apr. 21, 1987, 101 Stat. 274, amended analysis identically, adding items 2365, 2366, and 2367.

1985—Pub. L. 99–145, title I, §123(a)(2), title XIV, §1457(b), Nov. 8, 1985, 99 Stat. 601, 763, added items 2362 and 2363.

1982—Pub. L. 97–258, §2(b)(3)(A), Sept. 13, 1982, 96 Stat. 1052, added item 2361.

1981—Pub. L. 97–86, title VI, §603(b), Dec. 1, 1981, 95 Stat. 1110, added item 2360.

1979—Pub. L. 96–107, title VIII, 819(a)(2), Nov. 9, 1979, 93 Stat. 819, added item 2359.

1962—Pub. L. 87–651, title II, § 208(b), Sept. 7, 1962, 76 Stat. 523, added item 2358.

1958—Pub. L. 85–599, § 3(d), Aug. 6, 1958, 72 Stat. 516, struck out item 2351 ''Policy, plans, and coordination''.

§ 2351. Availability of appropriations

(a) Funds appropriated to the Department of Defense for research and development remain available for obligation for a period of two consecutive years.

(b) Funds appropriated to the Department of Defense for research and development may be used—

(1) for the purposes of section 2353 of this title; and

(2) for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Department of Defense.

(Added Pub. L. 97–258, § 2(b)(3)(B), Sept. 13, 1982, 96 Stat. 1052, § 2361; renumbered § 2351 and amended Pub. L. 100–370, § 1(g)(1), July 19, 1988, 102 Stat. 846.)

HISTORICAL AND REVISION NOTES

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2361	31:649c(2).	Aug. 10, 1956, ch. 1041, § 40(2), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, § 201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10.

1988 ACT

Subsection (a) is based on section 2361 of this title.

Subsection (b) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205.

PRIOR PROVISIONS

A prior section 2351, act Aug. 10, 1956, ch. 1041, 70A Stat. 133, related to policy, plans, and coordination relative to research and development on scientific problems relating to the national security, prior to repeal by Pub. L. 85–599, § 3(d).

AMENDMENTS

1988—Pub. L. 100–370 renumbered section 2361 of this title as this section, designated such provisions as subsec. (a), and added subsec. (b).

[§ 2352. Repealed. Pub. L. 104–106, div. A, title X, § 1062(c)(1), Feb. 10, 1996, 110 Stat. 444]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 133; Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 803(a)(1), 105 Stat. 1414; Pub. L. 102–484, div. A, title X, § 1053(4), Oct. 23, 1992, 106 Stat. 2501, required Secretary of military department to give notice to Congress of contracts performed over a period exceeding 10 years.

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2353(a)	5:235e (1st sentence; and 2d sentence, less 2d and last provisos). 5:475j (1st sentence; and 2d sentence, less 2d and last provisos). 5:628e (1st sentence; and 2d sentence, less 2d and last provisos).	July 16, 1952, ch. 882, § 4 (less 3d and last sentences), 66 Stat. 725.
2353(b)	5:235e (2d proviso of 2d sentence). 5:475j (2d proviso of 2d sentence). 5:628e (2d proviso of 2d sentence).	
2353(c)	5:235e (last proviso of 2d sentence). 5:475j (last proviso of 2d sentence). 5:628e (last proviso of 2d sentence).	

In subsection (a), the words ''furnished to'' and ''for the use thereof'' are omitted as surplusage.

In subsections (a) and (b), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the introductory clause is substituted for 5:235e (words of 2d proviso before clause (1)), 475j, and 628e. The words ''that * * * considers'' are substituted for the words ''as will in the opinion''. The words ''an alternative'' are substituted for the words ''such other''.

In subsection (c), the words ''Proceeds of'' are substituted for the words ''That all moneys arising from''.

USE OF RESEARCH AND DEVELOPMENT FUNDS FOR TEST FACILITIES AND EQUIPMENT

Pub. L. 99–190, § 101(b) [title VIII, § 8015], Dec. 19, 1985, 99 Stat. 1185, 1205, which provided that appropriations available to the Department of Defense for research and development could be used for 10 U.S.C. 2353 and for purposes related to research and development for which expenditures are specifically authorized in other appropriations of the Service concerned, was repealed and restated in section 2351(b) of this title by Pub. L. 100–370, § 1(g)(1)(B), (2), July 19, 1988, 102 Stat. 846.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 2351 of this title; title 42 sections 241, 6981, 7404.

§ 2354. Contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 134.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2354(a)	5:235f (1st sentence, less provisos). 5:475k (1st sentence, less provisos). 5:628f (1st sentence, less provisos).	July 16, 1952, ch. 882, §5, 66 Stat. 726.
2354(b)	5:235f (1st proviso of 1st sentence). 5:475k (1st proviso of 1st sentence). 5:628f (1st proviso of 1st sentence).	
2354(c)	5:235f (last proviso of 1st sentence). 5:475k (last proviso of 1st sentence). 5:628f (last proviso of 1st sentence).	
2354(d)	5:235f (less 1st sentence). 5:475k (less 1st sentence). 5:628f (less 1st sentence).	

In subsection (a), the words ''Liability on account of'', and ''of such claims'' are omitted as surplusage. In clauses (1) and (2), the word ''from'' is substituted for the words ''arising as a result of''.

In subsections (a) and (b), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''made under subsection (a), that provides for indemnification'' are substituted for the words ''so providing * * * with respect to any alleged liability for such death''. The words ''appropriate'' and ''or actions filed * * * or made'' are omitted as surplusage.

In subsection (c), the words ''by the Government'', ''authority of'', and ''for such purpose'' are omitted as surplusage.

In subsection (d), the words ''by the Congress'' and ''the making of'' are omitted as surplusage. The words ''or both'' are inserted to conform to subsection (a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284, 1887 of this title; title 42 sections 241, 284, 1870, 1887.

[§ 2355. Repealed. Pub. L. 103–355, title II, § 2002(a), Oct. 13, 1994, 108 Stat. 3303]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, authorized Secretary of each military department to prescribe by regulation the extent of itemization, substantiation, or certification of vouchers for funds spent under research or development contracts prior to payment.

[§ 2356. Repealed. Pub. L. 104–106, div. A, title VIII, § 802(a), Feb. 10, 1996, 110 Stat. 390]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 135; Sept. 2, 1958, Pub. L. 85–861, §1(43A), 72 Stat. 1457; July 18, 1984, Pub. L. 98–369, div. B, title VII, §2727(d), 98 Stat. 1195; Dec. 4, 1987, Pub. L. 100–180, div. A, title XII, §1231(18)(B), 101 Stat. 1161, related to delegations of authority under sections 1584, 2353, 2354, and 2355 of this title.

[§ 2357. Repealed. Pub. L. 101–510, div. A, title XIII, § 1301(11), Nov. 5, 1990, 104 Stat. 1668]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 135, required Secretary of each military department to report to Congress on contracts for research and development.

§ 2358. Research and development projects

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may engage in basic research, applied research, advanced research, and development projects that—

(1) are necessary to the responsibilities of such Secretary's department in the field of research and development; and

(2) either—

(A) relate to weapon systems and other military needs; or

(B) are of potential interest to the Department of Defense.

(b) AUTHORIZED MEANS.—The Secretary of Defense or the Secretary of a military department may perform research and development projects—

(1) by contract, cooperative agreement, or grant, in accordance with chapter 63 of title 31;

(2) through one or more military departments;

(3) by using employees and consultants of the Department of Defense; or

(4) by mutual agreement with the head of any other department or agency of the Federal Government.

(c) REQUIREMENT OF POTENTIAL DEPARTMENT OF DEFENSE INTEREST.—Funds appropriated to the Department of Defense or to a military department may not be used to finance any research project or study unless the project or study is, in the opinion of the Secretary of Defense or the Secretary of that military department, respectively, of potential interest to the Department of Defense or to such military department, respectively.

(d) ADDITIONAL PROVISIONS APPLICABLE TO COOPERATIVE AGREEMENTS.—Additional authorities, conditions, and requirements relating to certain cooperative agreements authorized by this section are provided in sections 2371 and 2371a of this title.

(Added Pub. L. 87–651, title II, § 208(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 97–86, title IX, § 910, Dec. 1, 1981, 95 Stat. 1120; Pub. L. 100–370, § 1(g)(3), July 19, 1988, 102 Stat. 846; Pub. L. 103–160, div. A, title VIII, § 827(a), Nov. 30, 1993, 107 Stat. 1712; Pub. L. 103–355, title I, § 1301(a), Oct. 13, 1994, 108 Stat. 3284; Pub. L. 104–201, div. A, title II, § 267(c)(2), Sept. 23, 1996, 110 Stat. 2468.)

HISTORICAL AND REVISION NOTES

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2358	5:171c(b)(2), (3).	July 26, 1947, ch. 343, § 203(b)(2), (3); added Aug. 6, 1958, Pub. L. 85–599, § 9(a) (3d and 4th pars.), 72 Stat. 520.

5 U.S.C. 171c(b)(3) is omitted as unnecessary since the authorization for appropriations is implied in 5 U.S.C. 171c(b)(2).

1988 ACT

In the existing text of 10 U.S.C. 2358, the bill would in two instances strike the phrase ''or his designee'' appearing after ''Secretary of Defense'' (section 1(g)(3)). The change is made for consistency in the Code, and no substantive change is intended. The committee notes that the Secretary of Defense has general authority to delegate functions under 10 U.S.C. 113(d).

Subsection (b) is based on Pub. L. 91–441, title II, § 204, Oct. 7, 1970, 84 Stat. 908.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–201 substituted ''sections 2371 and 2371a'' for ''section 2371''.

1994—Pub. L. 103–355 amended section generally, inserting reference to development projects in section catchline, and in text specifying that relevant Secretary may perform research and development projects in accordance with chapter 63 of title 31, and adding subsec. (d) relating to additional provisions applicable to cooperative agreements.

1993—Pub. L. 103–160 amended section generally. Prior to amendment, section read as follows:

''(a) IN GENERAL.—Subject to approval by the President, the Secretary of Defense may engage in basic and applied research projects that are necessary to the responsibilities of the Department of Defense in the field of basic and applied research and development and that relate to weapons systems and other military needs. Subject to approval by the President, the Secretary may perform assigned research and development projects—

''(1) by contract with, or by grant to, educational or research institutions, private businesses, or other agencies of the United States;

''(2) through one or more of the military departments; or

''(3) by using employees and consultants of the Department of Defense.

''(b) REQUIREMENT OF POTENTIAL MILITARY RELATIONSHIP.—Funds appropriated to the Department of Defense may not be used to finance any research project or study unless the project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation.''

1988—Pub. L. 100–370 designated existing provisions as subsec. (a), inserted heading, struck out ''or his designee'' after ''Secretary of Defense'' and ''President, the Secretary'', and added subsec. (b).

1981—Par. (1). Pub. L. 97–86 substituted ''by contract with, or by grant to,'' for ''by contract with''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

VEHICLE FUEL CELL PROGRAM

Pub. L. 107–314, div. A, title II, § 245, Dec. 2, 2002, 116 Stat. 2500, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program for the development of vehicle fuel cell technology.

''(b) GOALS AND OBJECTIVES.—The goals and objectives of the program shall be as follows:

''(1) To identify and support technological advances that are necessary for the development of fuel cell technology for use in vehicles of types to be used by the Department of Defense.

''(2) To ensure that critical technology advances are shared among the various fuel cell technology programs within the Federal Government.

''(3) To maximize the leverage of Federal funds that are used for the development of fuel cell technology.

''(c) CONTENT OF PROGRAM.—The program shall include—

''(1) development of vehicle propulsion technologies and fuel cell auxiliary power units, together with pilot projects for the demonstration of such technologies, as appropriate; and

''(2) development of technologies necessary to address critical issues with respect to vehicle fuel cells, such as issues relating to hydrogen storage and hydrogen fuel infrastructure.

''(d) COOPERATION WITH INDUSTRY.—(1) The Secretary shall carry out the program in cooperation with companies selected by the Secretary. The Secretary shall select such companies from among—

''(A) companies in the automobile and truck manufacturing industry;

''(B) companies in the business of supplying systems and components to that industry; and

''(C) companies in any other industries that the Secretary considers appropriate.

''(2) The Secretary may enter into a cooperative agreement with one or more companies selected under paragraph (1) to establish an entity for carrying out activities required by subsection (c).

''(3) The Secretary shall ensure that companies referred to in paragraph (1) collectively contribute, in cash or in kind, not less than one-half of the total cost of carrying out the program under this section.

''(e) COORDINATION WITH OTHER FEDERAL AGENCIES.—The Secretary shall carry out the program using a coordinating mechanism for sharing information and resources with the Department of Energy and other Federal agencies.

''(f) INTIAL [SIC] FUNDING.—Of the funds authorized to be appropriated by section 201(4) [116 Stat. 2479], $10,000,000 shall be available for the program required by this section.''

DEFENSE NANOTECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM

Pub. L. 107–314, div. A, title II, § 246, Dec. 2, 2002, 116 Stat. 2500, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall carry out a defense nanotechnology research and development program.

''(b) PURPOSES.—The purposes of the program are as follows:

''(1) To ensure United States global superiority in nanotechnology necessary for meeting national security requirements.

''(2) To coordinate all nanoscale research and development within the Department of Defense, and to provide for interagency cooperation and collaboration on nanoscale research and development between the Department of Defense and other departments and agencies of the United States that are involved in nanoscale research and development.

''(3) To develop and manage a portfolio of fundamental and applied nanoscience and engineering research initiatives that is stable, consistent, and balanced across scientific disciplines.

''(4) To accelerate the transition and deployment of technologies and concepts derived from nanoscale research and development into the Armed Forces, and to establish policies, procedures, and standards for measuring the success of such efforts.

''(5) To collect, synthesize, and disseminate critical information on nanoscale research and development.

''(c) ADMINISTRATION.—In carrying out the program, the Secretary shall act through the Director of Defense Research and Engineering, who shall supervise the planning, management, and coordination of the program. The Director, in consultation with the Secretaries of the military departments and the heads of participating Defense Agencies and other departments and agencies of the United States, shall—

''(1) prescribe a set of long-term challenges and a set of specific technical goals for the program;

''(2) develop a coordinated and integrated research and investment plan for meeting the long-term challenges and achieving the specific technical goals that builds upon the Department's increased investment in nanotechnology research and development and the National Nanotechnology Initiative; and

''(3) develop memoranda of agreement, joint funding agreements, and other cooperative arrangements necessary for meeting the long-term challenges and achieving the specific technical goals.

''(d) ANNUAL REPORT.—Not later than March 1 of each of 2004, 2005, 2006, and 2007, the Director of Defense Research and Engineering shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the program. The report shall contain the following matters:

''(1) A review of—

''(A) the long-term challenges and specific technical goals of the program; and

''(B) the progress made toward meeting those challenges and achieving those goals.

''(2) An assessment of current and proposed funding levels, including the adequacy of such funding levels to support program activities.

''(3) A review of the coordination of activities within the Department of Defense, with other departments and agencies, and with the National Nanotechnology Initiative.

''(4) An assessment of the extent to which effective technology transition paths have been established as a result of activities under the program.

''(5) Recommendations for additional program activities to meet emerging national security requirements.''

ANNUAL REPORT ON WEAPONS TO DEFEAT HARDENED AND DEEPLY BURIED TARGETS

Pub. L. 107–314, div. A, title X, §1032, Dec. 2, 2002, 116 Stat. 2643, provided that:

''(a) ANNUAL REPORT.—Not later than April 1 of each year, the Secretary of Defense, the Secretary of Energy, and the Director of Central Intelligence shall jointly submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives], the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on the research and development, procurement, and other activities undertaken during the preceding fiscal year by the Department of Defense, the Department of Energy, and the intelligence community to develop weapons to defeat hardened and deeply buried targets.

''(b) REPORT ELEMENTS.—The report for a fiscal year under subsection (a) shall—

''(1) include a discussion of the integration and interoperability of the activities referred to in that subsection that were undertaken during that fiscal year, including a discussion of the relevance of such activities to applicable recommendations by the Chairman of the Joint Chiefs of Staff, assisted under section 181(b) of title 10, United States Code, by the Joint Requirements Oversight Council; and

''(2) set forth separately a description of the activities referred to in that subsection, if any, that were undertaken during such fiscal year by each element of—

''(A) the Department of Defense;

''(B) the Department of Energy; and

''(C) the intelligence community.

''(c) DEFINITION.—In this section, the term 'intelligence community' has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''(d) TERMINATION.—No report is required under this section after the submission of the report that is due on April 1, 2007.''

PILOT PROGRAMS FOR REVITALIZING LABORATORIES AND TEST AND EVALUATION CENTERS OF DEPARTMENT OF DEFENSE

Pub. L. 107–314, div. A, title II, §241, Dec. 2, 2002, 116 Stat. 2492, provided that:

''(a) ADDITIONAL PILOT PROGRAM.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense.

''(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

''(A) To use innovative methods of personnel management appropriate for ensuring that the selected laboratories can—

''(i) employ and retain a workforce appropriately balanced between permanent and temporary personnel and among workers with appropriate levels of skills and experience; and

''(ii) effectively shape workforces to ensure that the workforces have the necessary sets of skills and experience to fulfill their organizational missions.

''(B) To develop or expand innovative methods of entering into and expanding cooperative relationships and arrangements with private sector organizations, educational institutions (including primary and secondary schools), and State and local governments to facilitate the training of a future scientific and technical workforce that will contribute significantly to the accomplishment of organizational missions.

''(C) To develop or expand innovative methods of establishing cooperative relationships and arrangements with private sector organizations and educational institutions to promote the establishment of the technological industrial base in areas critical for Department of Defense technological requirements.

''(D) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A), (B), and (C).

''(3) The Secretary may carry out the pilot program under this subsection at each selected laboratory for a

period of three years beginning not later than March 1, 2003.

''(b) RELATIONSHIP TO FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS.—The pilot program under this section is in addition to, but may be carried out in conjunction with, the fiscal years 1999 and 2000 revitalization pilot programs.

''(c) REPORTS.—(1) Not later than January 1, 2003, the Secretary shall submit to Congress a report on the experience under the fiscal years 1999 and 2000 revitalization pilot programs in exercising the authorities provided for the administration of those programs. The report shall include a description of—

''(A) barriers to the exercise of the authorities that have been encountered;

''(B) the proposed solutions for overcoming the barriers; and

''(C) the progress made in overcoming the barriers.

''(2) Not later than September 1, 2003, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program under subsection (a) and the fiscal years 1999 and 2000 revitalization pilot programs. The report shall include, for each such pilot program, the following:

''(A) Each laboratory selected for the pilot program.

''(B) To the extent practicable, a description of the innovative methods that are to be tested at each laboratory.

''(C) The criteria to be used for measuring the success of each method to be tested.

''(3) Not later than 90 days after the expiration of the period for the participation of a laboratory in a pilot program referred to in paragraph (2), the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

''(A) A description of the methods tested.

''(B) The results of the testing.

''(C) The lessons learned.

''(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.

''(d) EXTENSION OF AUTHORITY FOR OTHER REVITALIZATION PILOT PROGRAMS.—(1) [Amended section 246(a)(4) of Pub. L. 105–261, set out as a note below.]

''(2) [Amended section 245(a)(4) of Pub. L. 106–65, set out as a note below.]

''(e) PARTNERSHIPS UNDER PILOT PROGRAM.—(1) The Secretary of Defense may authorize one or more laboratories and test centers participating in the pilot program under subsection (a) or in one of the fiscal years 1999 and 2000 revitalization pilot programs to enter into a cooperative arrangement (in this subsection referred to as a 'public-private partnership') with entities in the private sector and institutions of higher education for the performance of work.

''(2) A competitive process shall be used for the selection of entities outside the Government to participate in a public-private partnership.

''(3)(A) Not more than one public-private partnership may be established as a limited liability company.

''(B) An entity participating in a limited liability company as a party to a public-private partnership under the pilot program may contribute funds to the company, accept contributions of funds for the company, and provide materials, services, and use of facilities for research, technology, and infrastructure of the company, if it is determined under regulations prescribed by the Secretary of Defense that doing so will improve the efficiency of the performance of research, test, and evaluation functions of the Department of Defense.

''(f) FISCAL YEARS 1999 AND 2000 REVITALIZATION PILOT PROGRAMS DEFINED.—In this section, the term 'fiscal years 1999 and 2000 revitalization pilot programs' means—

''(1) the pilot programs authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1955; 10 U.S.C. 2358 note); and

''(2) the pilot programs authorized by section 245 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 552; 10 U.S.C. 2358 note).''

Pub. L. 106–65, div. A, title II, § 245, Oct. 5, 1999, 113 Stat. 552, as amended by Pub. L. 107–314, div. A, title II, § 241(d)(2), Dec. 2, 2002, 116 Stat. 2493, provided that:

''(a) AUTHORITY.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved efficiency in the performance of research, development, test, and evaluation functions of the Department of Defense. The pilot program under this section is in addition to, but may be carried out in conjunction with, the pilot program authorized by section 246 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1955; 10 U.S.C. 2358 note).

''(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and technology laboratory, and the director of one test and evaluation laboratory, of each military department with authority for the following:

''(A) To ensure that the laboratories selected can attract a workforce appropriately balanced between permanent and temporary personnel and among workers with an appropriate level of skills and experience and that those laboratories can effectively compete in hiring to obtain the finest scientific talent.

''(B) To develop or expand innovative methods of operation that provide more defense research for each dollar of cost, including carrying out initiatives such as focusing on the performance of core functions and adopting more business-like practices.

''(C) To waive any restrictions not required by law that apply to the demonstration and implementation of methods for achieving the objectives set forth in subparagraphs (A) and (B).

''(3) In selecting the laboratories for participation in the pilot program, the Secretary shall consider laboratories where innovative management techniques have been demonstrated, particularly as documented under sections 1115 through 1119 of title 31, United States Code, relating to Government agency performance and results.

''(4) The Secretary may carry out the pilot program at each selected laboratory for up to five years beginning not later than March 1, 2000.

''(b) REPORTS.—(1) Not later than March 1, 2000, the Secretary of Defense shall submit to Congress a report on the implementation of the pilot program. The report shall include the following:

''(A) Each laboratory selected for the pilot program.

''(B) To the extent possible, a description of the innovative concepts that are to be tested at each laboratory.

''(C) The criteria to be used for measuring the success of each concept to be tested.

''(2) Promptly after the expiration of the period for participation of a laboratory in the pilot program, the Secretary of Defense shall submit to Congress a final report on the participation of that laboratory in the pilot program. The report shall include the following:

''(A) A description of the concepts tested.

''(B) The results of the testing.

''(C) The lessons learned.

''(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at that laboratory under the pilot program.''

Pub. L. 105–261, div. A, title II, § 246, Oct. 17, 1998, 112 Stat. 1955, as amended by Pub. L. 107–314, div. A, title II, § 241(d)(1), Dec. 2, 2002, 116 Stat. 2493, provided that:

''(a) PILOT PROGRAM.—(1) The Secretary of Defense may carry out a pilot program to demonstrate improved cooperative relationships with universities and other private sector entities for the performance of research and development functions.

''(2) Under the pilot program, the Secretary of Defense shall provide the director of one science and tech-

nology laboratory, and the director of one test and evaluation center, of each military department with authority for the following:

''(A) To explore innovative methods for quickly, efficiently, and fairly entering into cooperative relationships with universities and other private sector entities with respect to the performance of research and development functions.

''(B) To waive any restrictions on the demonstration and implementation of such methods that are not required by law.

''(C) To develop or expand innovative methods of operation that provide more defense research for each dollar of cost, including to carry out such initiatives as focusing on the performance of core functions and adopting more business-like practices.

''(3) In selecting the laboratories and centers for participation in the pilot program, the Secretary shall consider laboratories and centers where innovative management techniques have been demonstrated, particularly as documented under sections 1115 through 1119 of title 31, United States Code, relating to Government agency performance and results.

''(4) The Secretary may carry out the pilot program at each selected laboratory and center for up to six years beginning not later than March 1, 1999.

''(b) REPORTS.—(1) Not later than March 1, 1999, the Secretary of Defense shall submit a report on the implementation of the pilot program to Congress. The report shall include the following:

''(A) Each laboratory and center selected for the pilot program.

''(B) To the extent possible, a description of the innovative concepts that are to be tested at each laboratory or center.

''(C) The criteria to be used for measuring the success of each concept to be tested.

''(2) Promptly after the expiration of the period for participation of a laboratory or center in the pilot program, the Secretary of Defense shall submit to Congress a final report on the participation of the laboratory or center in the pilot program. The report shall contain the following:

''(A) A description of the concepts tested.

''(B) The results of the testing.

''(C) The lessons learned.

''(D) Any proposal for legislation that the Secretary recommends on the basis of the experience at the laboratory or center under the pilot program.

''(c) COMMENDATION.—Congress commends the Secretary of Defense for the progress made by the science and technology laboratories and test and evaluation centers of the Department of Defense and encourages the Secretary to take the actions necessary to ensure continued progress for the laboratories and test and evaluation centers in developing cooperative relationships with universities and other private sector entities for the performance of research and development functions.''

DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESEARCH

Pub. L. 105–18, title I, §307, June 12, 1997, 111 Stat. 169, provided that: ''For the purposes of implementing the 1997 Defense Experimental Program to Stimulate Competitive Research (DEPSCoR), the term 'State' means a State of the United States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands of the United States, American Samoa and the Commonwealth of the Northern Mariana Islands.''

Pub. L. 103–337, div. A, title II, §257, Oct. 5, 1994, 108 Stat. 2705, as amended by Pub. L. 104–106, div. A, title II, §273, Feb. 10, 1996, 110 Stat. 239; Pub. L. 104–201, div. A, title II, §264, Sept. 23, 1996, 110 Stat. 2465; Pub. L. 105–85, div. A, title II, §243, Nov. 18, 1997, 111 Stat. 1667; Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107–314, div. A, title II, §247, Dec. 2, 2002, 116 Stat. 2502, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of Defense, acting through the Director of Defense Research and Engineering, shall carry out a Defense Experimental Program to Stimulate Competitive Research (DEPSCoR) as part of the university research programs of the Department of Defense.

''(b) PROGRAM OBJECTIVES.—The objectives of the program are as follows:

''(1) To enhance the capabilities of institutions of higher education in eligible States to develop, plan, and execute science and engineering research that is competitive under the peer-review systems used for awarding Federal research assistance.

''(2) To increase the probability of long-term growth in the competitively awarded financial assistance that institutions of higher education in eligible States receive from the Federal Government for science and engineering research.

''(c) PROGRAM ACTIVITIES.—In order to achieve the program objectives, the following activities are authorized under the program:

''(1) Competitive award of grants for research and instrumentation to support such research.

''(2) Competitive award of financial assistance for graduate students.

''(3) Any other activities that are determined necessary to further the achievement of the objectives of the program.

''(d) ELIGIBLE STATES.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate which States are eligible States for the purposes of this section.

''(2) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall designate a State as an eligible State if, as determined by the Under Secretary—

''(A) the average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the State for the three fiscal years preceding the fiscal year for which the designation is effective or for the last three fiscal years for which statistics are available is less than the amount determined by multiplying 60 percent times the amount equal to 1/50 of the total average annual amount of all Department of Defense obligations for science and engineering research and development that were in effect with institutions of higher education in the United States for such three preceding or last fiscal years, as the case may be; and

''(B) the State has demonstrated a commitment to developing research bases in the State and to improving science and engineering research and education programs at institutions of higher education in the State.

''(e) COORDINATION WITH SIMILAR FEDERAL PROGRAMS.—(1) The Secretary shall consult with the Director of the National Science Foundation and the Director of the Office of Science and Technology Policy in the planning, development, and execution of the program and shall coordinate the program with the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation and with similar programs sponsored by other departments and agencies of the Federal Government.

''(2) All solicitations under the Defense Experimental Program to Stimulate Competitive Research shall be made to, and all awards shall be made through, the State committees established for purposes of the Experimental Program to Stimulate Competitive Research conducted by the National Science Foundation.

''(3) A State committee referred to in paragraph (2) shall ensure that activities carried out in the State of that committee under the Defense Experimental Program to Stimulate Competitive Research are coordinated with the activities carried out in the State under other similar initiatives of the Federal Government to stimulate competitive research.

''(f) STATE DEFINED.—In this section, the term 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.''

DEFENSE LABORATORIES PERSONNEL DEMONSTRATION PROJECTS

Pub. L. 103–337, div. A, title III, §342(b), Oct. 5, 1994, 108 Stat. 2721, as amended by Pub. L. 106–65, div. A, title XI, §1109, Oct. 5, 1999, 113 Stat. 779; Pub. L. 106–398, §1 [[div. A], title XI, §1114], Oct. 30, 2000, 114 Stat. 1654, 1654A–315, provided that:

''(1) The Secretary of Defense may carry out personnel demonstration projects at Department of Defense laboratories designated by the Secretary as Department of Defense science and technology reinvention laboratories.

''(2)(A) Each personnel demonstration project carried out under the authority of paragraph (1) shall be generally similar in nature to the China Lake demonstration project.

''(B) For purposes of subparagraph (A), the China Lake demonstration project is the demonstration project that is authorized by section 6 of the Civil Service Miscellaneous Amendments Act of 1983 [Pub. L. 98–224, 98 Stat. 49] to be continued at the Naval Weapons Center, China Lake, California, and at the Naval Ocean Systems Center, San Diego, California.

''(3) If the Secretary carries out a demonstration project at a laboratory pursuant to paragraph (1), section 4703 of title 5, United States Code, shall apply to the demonstration project, except that—

''(A) subsection (d) of such section 4703 shall not apply to the demonstration project;

''(B) the authority of the Secretary to carry out the demonstration project is that which is provided in paragraph (1) rather than the authority which is provided in such section 4703; and

''(C) the Secretary shall exercise the authorities granted to the Office of Personnel Management under such section 4703.

''(4) The employees of a laboratory covered by a personnel demonstration project carried out under this section [enacting this note] shall be exempt from, and may not be counted for the purposes of, any constraint or limitation in a statute or regulation in terms of supervisory ratios or maximum number of employees in any specific category or categories of employment that may otherwise be applicable to the employees. The employees shall be managed by the director of the laboratory subject to the supervision of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(5) The limitations in section 5373 of title 5, United States Code, do not apply to the authority of the Secretary under this section to prescribe salary schedules and other related benefits.''

INCLUSION OF WOMEN AND MINORITIES IN CLINICAL RESEARCH PROJECTS

Section 252 of Pub. L. 103–160 provided that:

''(a) GENERAL RULE.—In conducting or supporting clinical research, the Secretary of Defense shall ensure that—

''(1) women who are members of the Armed Forces are included as subjects in each project of such research; and

''(2) members of minority groups who are members of the Armed Forces are included as subjects of such research.

''(b) WAIVER AUTHORITY.—The requirement in subsection (a) regarding women and members of minority groups who are members of the Armed Forces may be waived by the Secretary of Defense with respect to a project of clinical research if the Secretary determines that the inclusion, as subjects in the project, of women and members of minority groups, respectively—

''(1) is inappropriate with respect to the health of the subjects;

''(2) is inappropriate with respect to the purpose of the research; or

''(3) is inappropriate under such other circumstances as the Secretary of Defense may designate.

''(c) REQUIREMENT FOR ANALYSIS OF RESEARCH.—In the case of a project of clinical research in which women or members of minority groups will under subsection (a) be included as subjects of the research, the Secretary of Defense shall ensure that the project is designed and carried out so as to provide for a valid analysis of whether the variables being tested in the research affect women or members of minority groups, as the case may be, differently than other persons who are subjects of the research.''

UNIVERSITY RESEARCH INITIATIVE SUPPORT PROGRAM

Section 802 of Pub. L. 103–160, as amended by Pub. L. 104–106, div. A, title II, §275, Feb. 10, 1996, 110 Stat. 241; Pub. L. 104–201, div. A, title II, §263, Sept. 23, 1996, 110 Stat. 2465, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense, through the Director of Defense Research and Engineering, may establish a University Research Initiative Support Program.

''(b) PURPOSE.—Under the program, the Director may award grants and contracts to eligible institutions of higher education to support the conduct of research and development relevant to requirements of the Department of Defense.

''(c) ELIGIBILITY.—An institution of higher education is eligible for a grant or contract under the program if the institution has received less than a total of $2,000,000 in grants and contracts from the Department of Defense in the two most recent fiscal years for which complete statistics are available when proposals are requested for such grant or contract.

''(d) COMPETITION REQUIRED.—The Director shall use competitive procedures in awarding grants and contracts under the program.

''(e) SELECTION PROCESS.—In awarding grants and contracts under the program, the Director shall use a merit-based selection process that is consistent with the provisions of section 2361(a) of title 10, United States Code.

''(f) REGULATIONS.—Not later than 90 days after the date of the enactment of this Act [Nov. 30, 1993], the Director shall prescribe regulations for carrying out the program.

''(g) FUNDING.—Of the amounts authorized to be appropriated under section 201 [107 Stat. 1583], $20,000,000 shall be available for the University Research Initiative Support Program.''

INDEPENDENT RESEARCH AND DEVELOPMENT; BID AND PROPOSAL COSTS; NEGOTIATION OF ADVANCE AGREEMENTS WITH CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 91–441, title II, §203, Oct. 7, 1970, 84 Stat. 906, as amended by Pub. L. 96–342, title II, §208, Sept. 8, 1980, 94 Stat. 1081, provided that no funds authorized to be appropriated to Department of Defense by this or any other Act were to be used to finance independent research and development or bid and proposal costs unless such work had, in opinion of Secretary of Defense, potential relationship to military functions or operations, and advance agreements regarding payment for such work had been negotiated, prior to repeal by Pub. L. 101–510, div. A, title VIII, §824(b), Nov. 5, 1990, 104 Stat. 1604. See section 2372 of this title.

RELATIONSHIP OF RESEARCH PROJECTS OR STUDIES TO MILITARY FUNCTION OR OPERATION

Pub. L. 91–441, title II, §204, Oct. 7, 1970, 84 Stat. 908, which provided that no funds authorized to be appropriated to the Department of Defense by this or any other Act may be used to finance any research project or study unless such project or study has, in the opinion of the Secretary of Defense, a potential relationship to a military function or operation, was repealed

and restated in subsec. (b) of this section by Pub. L. 100–370, §1(g)(3)(C), (5), July 19, 1988, 102 Stat. 847.

HERBICIDES AND DEFOLIATION PROGRAM; COMPREHENSIVE STUDY AND INVESTIGATION; REPORT BY JANUARY 31, 1972; TRANSMITTAL TO PRESIDENT AND CONGRESS BY MARCH 1, 1972

Pub. L. 91–441, title V, §506(c), Oct. 7, 1970, 84 Stat. 913, directed Secretary of Defense to enter into appropriate arrangements with National Academy of Sciences to conduct a comprehensive study and investigation to determine (A) ecological and physiological dangers inherent in use of herbicides, and (B) ecological and physiological effects of defoliation program carried out by Department of Defense in South Vietnam, with a report on the study to be transmitted to President and Congress by Mar. 1, 1972.

CAMPUSES BARRING MILITARY RECRUITERS; CESSATION OF PAYMENTS; NOTIFICATION OF SECRETARY OF DEFENSE

Pub. L. 92–436, title VI, §606, Sept. 29, 1972, 86 Stat. 740, provided that:

''(a) No part of the funds appropriated pursuant to this or any other Act for the Department of Defense or any of the Armed Forces may be used at any institution of higher learning if the Secretary of Defense or his designee determines that recruiting personnel of any of the Armed Forces of the United States are being barred by the policy of such institution from the premises of the institution: except in a case where the Secretary of the service concerned certifies to the Congress in writing that a specific course of instruction is not available at any other institution of higher learning and furnishes to the Congress the reasons why such course of instruction is of vital importance to the security of the United States.

''(b) The prohibition made by subsection (a) of this section as it applies to research and development funds shall not apply if the Secretary of Defense or his designee determines that the expenditure is a continuation or a renewal of a previous program with such institution which is likely to make a significant contribution to the defense effort.

''(c) The Secretaries of the military departments shall furnish to the Secretary of Defense or his designee within 60 days after the date of enactment of this Act [Sept. 29, 1972] and each January 31 and June 30 thereafter the names of any institution of higher learning which the Secretaries determine on such dates are affected by the prohibitions contained in this section.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 92–156, title V, §502, Nov. 17, 1971, 85 Stat. 427.
Pub. L. 91–441, title V, §510, Oct. 7, 1970, 84 Stat. 914.

FEDERAL CONTRACT RESEARCH CENTERS; OFFICERS' COMPENSATION; NOTIFICATION TO CONGRESS

Pub. L. 91–121, title IV, §407, Nov. 19, 1969, 83 Stat. 208, related to restrictions on use of appropriations for compensation of officers and employees of Federal contract research centers, and notice requirements respecting such payments, prior to repeal by Pub. L. 96–107, title VIII, §819(c), Nov. 9, 1979, 93 Stat. 819. See section 2359 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2371 of this title.

§ 2359. Science and technology programs to be conducted so as to foster the transition of science and technology to higher levels of research, development, test, and evaluation

(a) POLICY.—Each official specified in subsection (b) shall ensure that the management and conduct of the science and technology programs under the authority of that official are carried out in a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(b) COVERED OFFICIALS.—Subsection (a) applies to the following officials of the Department of Defense:

(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(2) The Secretary of each military department.

(3) The Director of the Defense Advanced Research Projects Agency.

(4) The directors and heads of other offices and agencies of the Department of Defense with assigned research, development, test, and evaluation responsibilities.

(Added Pub. L. 106–398, §1 [[div. A], title IX, §904(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225.)

PRIOR PROVISIONS

A prior section 2359, added Pub. L. 96–107, title VIII, §819(a)(1), Nov. 9, 1979, 93 Stat. 818, related to reports on salaries of officers of Federal contract research centers, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1322(a)(5), Nov. 5, 1990, 104 Stat. 1671.

§ 2359a. Technology Transition Initiative

(a) INITIATIVE REQUIRED.—The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out an initiative, to be known as the Technology Transition Initiative (hereinafter in this section referred to as the ''Initiative''), to facilitate the rapid transition of new technologies from science and technology programs of the Department of Defense into acquisition programs of the Department for the production of such technologies.

(b) OBJECTIVES.—The objectives of the Initiative are as follows:

(1) To accelerate the introduction of new technologies into operational capabilities for the armed forces.

(2) To successfully demonstrate new technologies in relevant environments.

(c) MANAGEMENT OF INITIATIVE.—(1) The Under Secretary shall designate a senior official of the Department of Defense (hereinafter in this section referred to as the ''Manager'') to manage the Initiative.

(2) In managing the Initiative, the Manager shall—

(A) report directly to the Under Secretary; and

(B) obtain advice and other assistance from the Technology Transition Council established under subsection (g).

(3) The Manager shall—

(A) in consultation with the Technology Transition Council established under subsection (g), identify promising technology transition projects that can contribute to meeting Department of Defense technology goals and requirements;

(B) identify potential sponsors in the Department of Defense to manage such projects; and

(C) provide funds under subsection (f) for those projects that are selected under subsection (d)(2).

(d) SELECTION OF PROJECTS.—(1) The science and technology and acquisition executives of each military department and each appropriate Defense Agency and the commanders of the unified and specified combatant commands may nominate technology transition projects for implementation under subsection (e) and shall submit a list of the projects so nominated to the Manager.

(2) The Manager, in consultation with the Technology Transition Council established under subsection (g), shall select projects for implementation under subsection (e) from among the projects on the lists submitted under paragraph (1).

(e) IMPLEMENTATION OF PROJECTS.—For each project selected under subsection (d)(2), the Manager shall designate a military department or Defense Agency to implement the project.

(f) FUNDING OF PROJECTS.—(1) From funds made available to the Manager for the Initiative, the Manager shall, subject to paragraphs (2) and (3), provide funds for each project selected under subsection (d)(2) in an amount determined by mutual agreement between the Manager and the acquisition executive of the military department or Defense Agency concerned.

(2) The amount of funds provided to a project under paragraph (1) shall be not less than the amount equal to 50 percent of the total cost of the project.

(3) A project shall not be provided funds under this subsection for more than four fiscal years.

(g) TECHNOLOGY TRANSITION COUNCIL.—(1) There is a Technology Transition Council in the Department of Defense. The Council is composed of the following members:

(A) The science and technology executive of each military department and each Defense Agency.

(B) The acquisition executive of each military department.

(C) The members of the Joint Requirements Oversight Council.

(2) The duty of the Council shall be to provide advice and assistance to the Manager under this section.

(3) The Council shall meet not less often than semiannually to carry out its duty under paragraph (2).

(h) REPORT.—Not later than March 31 of each year, the Under Secretary shall submit to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report on the activities carried out by the Initiative during the preceding fiscal year.

(i) DEFINITION.—In this section, the term ''acquisition executive'', with respect to a military department or Defense Agency, means the official designated as the senior procurement executive for that military department or Defense Agency for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)).

(Added Pub. L. 107–314, div. A, title II, § 242(a)(1), Dec. 2, 2002, 116 Stat. 2494.)

§ 2359b. Defense Acquisition Challenge Program

(a) PROGRAM REQUIRED.—(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall carry out a program to provide opportunities for the increased introduction of innovative and cost-saving technology in acquisition programs of the Department of Defense.

(2) The program, to be known as the Defense Acquisition Challenge Program (hereinafter in this section referred to as the ''Challenge Program''), shall provide any person or activity within or outside the Department of Defense with the opportunity to propose alternatives, to be known as challenge proposals, at the component, subsystem, or system level of an existing Department of Defense acquisition program that would result in improvements in performance, affordability, manufacturability, or operational capability of that acquisition program.

(b) PANELS.—The Under Secretary shall establish one or more panels of highly qualified scientists and engineers (hereinafter in this section referred to as ''Panels'') to provide preliminary evaluations of challenge proposals under subsection (c).

(c) PRELIMINARY EVALUATION BY PANELS.—(1) Under procedures prescribed by the Under Secretary, a person or activity within or outside the Department of Defense may submit challenge proposals to a Panel, through the unsolicited proposal process or in response to a broad agency announcement.

(2) The Under Secretary shall establish procedures pursuant to which appropriate officials of the Department of Defense may identify proposals submitted through the unsolicited proposal process as challenge proposals. The procedures shall provide for the expeditious referral of such proposals to a Panel for preliminary evaluation under this subsection.

(3) The Under Secretary shall issue on an annual basis not less than one such broad agency announcement inviting interested parties to submit challenge proposals. Such announcements may also identify particular technology areas and acquisition programs that will be given priority in the evaluation of challenge proposals.

(4) Under procedures established by the Under Secretary, a Panel shall carry out a preliminary evaluation of each challenge proposal submitted in response to a broad agency announcement, or submitted through the unsolicited proposal process and identified as a challenge proposal in accordance with paragraph (2), to determine each of the following:

(A) Whether the challenge proposal has merit.

(B) Whether the challenge proposal is likely to result in improvements in performance, affordability, manufacturability, or operational capability at the component, subsystem, or system level of an acquisition program.

(C) Whether the challenge proposal could be implemented in the acquisition program rapidly, at an acceptable cost, and without unacceptable disruption to the acquisition program.

(5) The Under Secretary may establish procedures to ensure that the Challenge Program

does not become an avenue for the repetitive submission of proposals that have been previously reviewed and found not to have merit.

(6) If a Panel determines that a challenge proposal satisfies each of the criteria specified in paragraph (4), the person or activity submitting that challenge proposal shall be provided an opportunity to submit such challenge proposal for a full review and evaluation under subsection (d).

(d) FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, for each challenge proposal submitted for a full review and evaluation as provided in subsection (c)(6), the office carrying out the acquisition program to which the proposal relates shall, in consultation with the prime system contractor carrying out such program, conduct a full review and evaluation of the proposal.

(2) The full review and evaluation shall, independent of the determination of a Panel under subsection (c)(4), determine each of the matters specified in subparagraphs (A), (B), and (C) of such subsection. The full review and evaluation shall also include—

(A) an assessment of the cost of adopting the challenge proposal and implementing it in the acquisition program; and

(B) consideration of any intellectual property issues associated with the challenge proposal.

(e) ACTION UPON FAVORABLE FULL REVIEW AND EVALUATION.—(1) Under procedures prescribed by the Under Secretary, each challenge proposal determined under a full review and evaluation to satisfy each of the criteria specified in subsection (c)(4) with respect to an acquisition program shall be considered by the office carrying out the applicable acquisition program and the prime system contractor for incorporation into the acquisition program as a new technology insertion at the component, subsystem, or system level.

(2) The Under Secretary shall encourage the adoption of each challenge proposal referred to in paragraph (1) by providing suitable incentives to the office carrying out the acquisition program and the prime system contractor carrying out such program.

(f) ACCESS TO TECHNICAL RESOURCES.—(1) Under procedures established by the Under Secretary, the technical resources of the laboratories, research, development, and engineering centers, test and evaluation activities, and other elements of the Department may be called upon to support the activities of the Challenge Program.

(2) Funds available to carry out this program may be used to compensate such laboratories, centers, activities, and elements for technical assistance provided to a Panel pursuant to paragraph (1).

(g) ELIMINATION OF CONFLICTS OF INTEREST.—In carrying out each preliminary evaluation under subsection (c) and full review under subsection (d), the Under Secretary shall ensure the elimination of conflicts of interest.

(h) LIMITATION ON USE OF FUNDS.—Funds made available for the Challenge Program may be used only for activities authorized by this section, and not for implementation of challenge proposals.

(i) ANNUAL REPORT.—The Under Secretary shall submit an annual report on the Challenge Program to Congress. The report shall be submitted at the same time as the President submits the budget for a fiscal year to Congress under section 1105(a) of title 31, and shall cover the conduct of the Challenge Program for the preceding fiscal year. The report shall include the number and scope of challenge proposals submitted, preliminarily evaluated, subjected to full review and evaluation, and adopted. No report is required for a fiscal year in which the Challenge Program is not carried out.

(j) TERMINATION OF AUTHORITY.—The Secretary may not carry out the Challenge Program under this section after September 30, 2007.

(Added Pub. L. 107–314, div. A, title II, § 243(a), Dec. 2, 2002, 116 Stat. 2495.)

§ 2360. Research and development laboratories: contracts for services of university students

(a) Subject to the availability of appropriations for such purpose, the Secretary of Defense may procure by contract under the authority of this section the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories. Such contracts may be made directly with such students or with nonprofit organizations employing such students.

(b) Students providing services pursuant to a contract made under subsection (a) shall be considered to be employees for the purposes of chapter 81 of title 5, relating to compensation for work injuries, and to be employees of the government for the purposes of chapter 171 of title 28, relating to tort claims. Such students who are not otherwise employed by the Federal Government shall not be considered to be Federal employees for any other purpose.

(c) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall include definitions for the purposes of this section of the terms ''student'', ''institution of higher learning'', and ''nonprofit organization''.

(Added Pub. L. 97–86, title VI, § 603(a), Dec. 1, 1981, 95 Stat. 1110.)

§ 2361. Award of grants and contracts to colleges and universities: requirement of competition

(a) The Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless—

(1) in the case of a grant, the grant is made using competitive procedures; and

(2) in the case of a contract, the contract is awarded in accordance with section 2304 of this title (other than pursuant to subsection (c)(5) of that section).

(b)(1) A provision of law may not be construed as modifying or superseding the provisions of subsection (a), or as requiring funds to be made available by the Secretary of Defense to a particular college or university by grant or contract, unless that provision of law—

(A) specifically refers to this section;

(B) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(C) specifically identifies the particular college or university involved and states that the grant to be made or the contract to be awarded, as the case may be, pursuant to such provision of law is being made or awarded in contravention of subsection (a).

(2) A grant may not be made, or a contract awarded, pursuant to a provision of law that authorizes or requires the making of the grant, or the awarding of the contract, in a manner that is inconsistent with subsection (a) until—

(A) the Secretary of Defense submits to Congress a notice in writing of the intent to make the grant or award the contract; and

(B) a period of 180 days has elapsed after the date on which the notice is received by Congress.

(Added Pub. L. 100–456, div. A, title II, §220(a), Sept. 29, 1988, 102 Stat. 1940; amended Pub. L. 101–189, div. A, title II, §252(a), (b)(1), (c)(1), Nov. 29, 1989, 103 Stat. 1404, 1405; Pub. L. 101–510, div. A, title XIII, §1311(4), Nov. 5, 1990, 104 Stat. 1669; Pub. L. 103–35, title II, §201(g)(5), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title VIII, §821(b), Nov. 30, 1993, 107 Stat. 1704; Pub. L. 103–337, div. A, title VIII, §813, Oct. 5, 1994, 108 Stat. 2816; Pub. L. 104–106, div. A, title II, §264, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 237, 502; Pub. L. 104–201, div. A, title II, §265, Sept. 23, 1996, 110 Stat. 2466.)

PRIOR PROVISIONS

A prior section 2361 was renumbered section 2351 of this title.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 struck out subsec. (c) which read as follows:

''(1) The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

''(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

''(B) the cumulative amount of such contracts received during that period by each such college and university.

''(2) Each report under paragraph (1) shall cover the preceding fiscal year and shall be submitted not later than February 1 of the fiscal year after the fiscal year covered by the report.''

Subsec. (c)(1). Pub. L. 104–106, §1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (c)(2). Pub. L. 104–106, §264, substituted ''preceding fiscal year'' for ''preceding calendar year'' and ''the fiscal year after the fiscal year'' for ''the year after the year''.

1994—Subsec. (c). Pub. L. 103–337 added subsec. (c).

1993—Subsec. (b)(2). Pub. L. 103–35 substituted ''inconsistent'' for ''inconsisent''.

Subsec. (c). Pub. L. 103–160 struck out subsec. (c) which read as follows:

''(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on the use of competitive procedures for the award of research and development contracts, and the award of construction contracts, to colleges and universities. Each such report shall include—

''(A) a list of each college and university that, during the period covered by the report, received more than $1,000,000 in such contracts through the use of procedures other than competitive procedures; and

''(B) the cumulative amount of such contracts received during that period by each such college and university.

''(2) The reports under paragraph (1) shall cover the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report.

''(3) A report is not required under paragraph (1) for any period beginning after December 31, 1993.''

1990—Subsec. (c)(1). Pub. L. 101–510, §1311(4)(A), substituted ''an annual report'' for ''a semiannual report'' in introductory provisions.

Subsec. (c)(2). Pub. L. 101–510, §1311(4)(B), substituted ''the preceding calendar year and shall be submitted not later than February 1 of the year after the year covered by the report'' for ''the six-month periods ending on June 30 and December 31 of each year. Each such report shall be submitted within 30 days after the end of the period covered by the report''.

1989—Subsec. (a). Pub. L. 101–189, §252(a), substituted ''unless—'' for ''unless'' and pars. (1) and (2) for ''the grant or contract is made or awarded using competitive procedures.''

Subsec. (b). Pub. L. 101–189, §252(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A provision of law enacted after the date of the enactment of this section may not be construed as modifying or superseding the provisions of subsection (a) unless that provision of law specifically refers to this section and specifically states that such provision of law modifies or supersedes the provisions of this section.''

Subsec. (c). Pub. L. 101–189, §252(c)(1), added subsec. (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 821(b) of Pub. L. 103–160 provided that the amendment made by that section is effective Feb. 1, 1994.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 252(b)(2) of Pub. L. 101–189 provided that: ''Subsection (b) of section 2361 of title 10, United States Code, as amended by paragraph (1), applies with respect to any provision of law enacted after September 30, 1989.''

EFFECTIVE DATE

Section 220(c) of Pub. L. 100–456 provided that: ''The limitation specified in section 2361(a) of title 10, United States Code (as added by subsection (a)), on the authority of the Secretary of Defense to make grants and award contracts shall take effect on October 1, 1989.''

INITIAL REPORT ON USE OF COMPETITIVE PROCEDURES IN AWARDING CONTRACTS

Section 252(c)(2) of Pub. L. 101–189 required that first report under subsec. (c) of this section cover last six months of 1989 and be submitted not later than Feb. 1, 1990.

[§ 2362. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(3), Nov. 30, 1993, 107 Stat. 1704]

Section, added Pub. L. 99–145, title I, §123(a)(1), Nov. 8, 1985, 99 Stat. 599; amended Pub. L. 99–433, title I, §110(g)(4), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284, related to testing requirements for wheeled or tracked armored vehicles.

[§ 2363. Repealed. Pub. L. 102–484, div. D, title XLII, §§ 4224(c), 4271(a)(2), Oct. 23, 1992, 106 Stat. 2683, 2695]

Section, added Pub. L. 99–145, title XIV, § 1457(a), Nov. 8, 1985, 99 Stat. 762, related to encouragement of technology transfer. See section 2514 of this title.

§ 2364. Coordination and communication of defense research activities

(a) COORDINATION OF DEPARTMENT OF DEFENSE TECHNOLOGICAL DATA.—The Secretary of Defense shall promote, monitor, and evaluate programs for the communication and exchange of technological data—

(1) among the Defense research facilities, combatant commands, and other organizations that are involved in developing for the Department of Defense the technological requirements for new items for use by combat forces; and

(2) among Defense research facilities and other offices, agencies, and bureaus in the Department that are engaged in related technological matters.

(b) FUNCTIONS OF DEFENSE RESEARCH FACILITIES.—The Secretary of Defense shall ensure, to the maximum extent practicable—

(1) that Defense research facilities are assigned broad mission requirements rather than specific hardware needs;

(2) that appropriate personnel of such facilities are assigned to serve as consultants on component and support system standardization;

(3) that the managers of such facilities have broad latitude to choose research and development projects;

(4) that technology position papers prepared by Defense research facilities are readily available to all combatant commands and to contractors who submit bids or proposals for Department of Defense contracts; and

(5) that, in order to promote increased consideration of technological issues early in the development process, any position paper prepared by a Defense research facility on a technological issue relating to a major weapon system, and any technological assessment made by such facility in the case of such component, is made a part of the records considered for the purpose of making acquisition program decisions.

(c) DEFINITIONS.—In this section:

(1) The term ''Defense research facility'' means a Department of Defense facility which performs or contracts for the performance of—

(A) basic research; or

(B) applied research known as exploratory development.

(2) The term ''acquisition program decision'' has the meaning prescribed by the Secretary of Defense in regulations.''

(Added Pub. L. 99–661, div. A, title II, § 234(c)(1), Nov. 14, 1986, 100 Stat. 3848; amended Pub. L. 100–26, §§ 3(1)(A), 7(a)(9), Apr. 21, 1987, 101 Stat. 273, 278; Pub. L. 100–180, div. A, title XII, § 1231(10)(A), (B), Dec. 4, 1987, 101 Stat. 1160; Pub. L. 104–106, div. A, title VIII, § 805, Feb. 10, 1996, 110 Stat. 390.)

AMENDMENTS

1996—Subsec. (b)(5). Pub. L. 104–106, § 805(1), substituted ''acquisition program'' for ''milestone O, milestone I, and milestone II''.

Subsec. (c)(2) to (4). Pub. L. 104–106, § 805(2), added par. (2) and struck out former pars. (2) to (4) which read as follows:

''(2) The term 'milestone O decision' means the decision made within the Department of Defense that there is a mission need for a new major weapon system and that research and development is to begin to meet such need.

''(3) The term 'milestone I decision' means the decision by an appropriate official of the Department of Defense selecting a new major weapon system concept and a program for demonstration and validation of such concept.

''(4) The term 'milestone II decision' means the decision by an appropriate official of the Department of Defense approving the full-scale development of a new major weapon system.''

1987—Pub. L. 100–26, § 3(1)(A), made technical amendment to directory language of section 234(c)(1) of Pub. L. 99–661, which enacted this section.

Pub. L. 100–180, § 1231(10)(B), substituted ''defense'' for ''Defense'' in section catchline.

Subsec. (b)(5). Pub. L. 100–180, § 1231(10)(A), substituted ''milestone O, milestone I, and milestone II decisions'' for ''milestone O, I, and II decisions''.

Subsec. (c)(2). Pub. L. 100–26, § 7(a)(9)(A), substituted ''the decision'' for ''a decision''.

Subsec. (c)(3). Pub. L. 100–26, § 7(a)(9)(B), substituted ''the decision by an appropriate official of the Department of Defense selecting'' for ''[a]/[the] selection by an appropriate official of the Department of Defense of''.

Subsec. (c)(4). Pub. L. 100–26, § 7(a)(9)(C), substituted ''the decision by an appropriate official of the Department of Defense approving'' for ''approval by an appropriate official of the Department of Defense for''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 3(1)(A) of Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

PERFORMANCE REVIEW PROCESS

Pub. L. 106–65, div. A, title IX, § 913(b), Oct. 5, 1999, 113 Stat. 720, provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary of Defense shall develop an appropriate performance review process for rating the quality and relevance of work performed by the Department of Defense laboratories. The process shall include customer evaluation and peer review by Department of Defense personnel and appropriate experts from outside the Department of Defense. The process shall provide for rating all laboratories of the Army, Navy, and Air Force on a consistent basis.''

COORDINATION OF HIGH-TEMPERATURE SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Section 218(b)(2) of Pub. L. 100–180, as amended by Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that: ''The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall—

''(A) coordinate the research and development activities of the Department of Defense relating to high-temperature superconductivity; and

''(B) ensure that such research and development—

''(i) is carried out in coordination with the high-temperature superconductivity research and development activities of the Department of Energy (including the national laboratories of the Depart-

ment of Energy), the National Science Foundation, the National Institute of Standards and Technology, and the National Aeronautics and Space Administration; and

''(ii) complements rather than duplicates such activities.''

COORDINATION OF RESEARCH ACTIVITIES OF DEPARTMENT OF DEFENSE

Section 234(a), (b) of Pub. L. 99–661 provided that:

''(a) PURPOSE.—The purpose of this section is to strengthen coordination among Department of Defense research facilities and other organizations in the Department of Defense.

''(b) FINDINGS.—The Congress finds that centralized coordination of the collection and dissemination of technological data among research facilities and other organizations within the Department of Defense is necessary—

''(1) to ensure that personnel of the Department are currently informed about emerging technology for defense systems; and

''(2) to avoid unnecessary and costly duplication of research staffs and projects.''

[§ 2365. Repealed. Pub. L. 102–484, div. A, title VIII, § 821(c)(1), Oct. 23, 1992, 106 Stat. 2460]

Section, added Pub. L. 99–500, § 101(c) [title X, § 909(a)(1), formerly § 909(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–142, and Pub. L. 99–591, § 101(c) [title X, § 909(a)(1), formerly § 909(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–142, redesignated § 909(a)(1), Pub. L. 100–26, § 4(b), Apr. 21, 1987, 101 Stat. 274; Pub. L. 99–661, div. A, title IX, formerly title IV, § 909(a)(1), Nov. 14, 1986, 100 Stat. 3921, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 5(3)(A), Apr. 21, 1987, 101 Stat. 274; Pub. L. 100–456, div. A, title VIII, § 802, Sept. 29, 1988, 102 Stat. 2008, required use of competitive prototype program strategy in development of major weapons systems.

§ 2366. Major systems and munitions programs: survivability testing and lethality testing required before full-scale production

(a) REQUIREMENTS.—(1) The Secretary of Defense shall provide that—

(A) a covered system may not proceed beyond low-rate initial production until realistic survivability testing of the system is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and

(B) a major munition program or a missile program may not proceed beyond low-rate initial production until realistic lethality testing of the program is completed in accordance with this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.

(2) The Secretary of Defense shall provide that a covered product improvement program may not proceed beyond low-rate initial production until—

(A) in the case of a product improvement to a covered system, realistic survivability testing is completed in accordance with this section; and

(B) in the case of a product improvement to a major munitions program or a missile program, realistic lethality testing is completed in accordance with this section.

(b) TEST GUIDELINES.—(1) Survivability and lethality tests required under subsection (a) shall be carried out sufficiently early in the development phase of the system or program (including a covered product improvement program) to allow any design deficiency demonstrated by the testing to be corrected in the design of the system, munition, or missile (or in the product modification or upgrade to the system, munition, or missile) before proceeding beyond low-rate initial production.

(2) The costs of all tests required under that subsection shall be paid from funds available for the system being tested.

(c) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary determines that live-fire testing of such system or program would be unreasonably expensive and impractical and submits a certification of that determination to Congress—

(A) before Milestone B approval for the system or program; or

(B) in the case of a system or program initiated at—

(i) Milestone B, as soon as is practicable after the Milestone B approval; or

(ii) Milestone C, as soon as is practicable after the Milestone C approval.

(2) In the case of a covered system (or covered product improvement program for a covered system), the Secretary may waive the application of the survivability and lethality tests of this section to such system or program and instead allow testing of the system or program in combat by firing munitions likely to be encountered in combat at components, subsystems, and subassemblies, together with performing design analyses, modeling and simulation, and analysis of combat data. Such alternative testing may not be carried out in the case of any covered system (or covered product improvement program for a covered system) unless the Secretary certifies to Congress, before the system or program enters system development and demonstration, that the survivability and lethality testing of such system or program otherwise required by this section would be unreasonably expensive and impracticable.

(3) The Secretary shall include with any certification under paragraph (1) or (2) a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.

(4) In time of war or mobilization, the President may suspend the operation of any provision of this section.

(d) REPORTING TO CONGRESS.—At the conclusion of survivability or lethality testing under subsection (a), the Secretary of Defense shall submit a report on the testing to the congressional defense committees. Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.

(e) DEFINITIONS.—In this section:

(1) The term ''covered system'' means a vehicle, weapon platform, or conventional weapon system—

(A) that includes features designed to provide some degree of protection to users in combat; and

(B) that is a major system within the meaning of that term in section 2302(5) of this title.

(2) The term ''major munitions program'' means—

(A) a munition program for which more than 1,000,000 rounds are planned to be acquired; or

(B) a conventional munitions program that is a major system within the meaning of that term in section 2302(5) of this title.

(3) The term ''realistic survivability testing'' means, in the case of a covered system (or a covered product improvement program for a covered system), testing for vulnerability of the system in combat by firing munitions likely to be encountered in combat (or munitions with a capability similar to such munitions) at the system configured for combat, with the primary emphasis on testing vulnerability with respect to potential user casualties and taking into equal consideration the susceptibility to attack and combat performance of the system.

(4) The term ''realistic lethality testing'' means, in the case of a major munitions program or a missile program (or a covered product improvement program for such a program), testing for lethality by firing the munition or missile concerned at appropriate targets configured for combat.

(5) The term ''configured for combat'', with respect to a weapon system, platform, or vehicle, means loaded or equipped with all dangerous materials (including all flammables and explosives) that would normally be on board in combat.

(6) The term ''covered product improvement program'' means a program under which—

(A) a modification or upgrade will be made to a covered system which (as determined by the Secretary of Defense) is likely to affect significantly the survivability of such system; or

(B) a modification or upgrade will be made to a major munitions program or a missile program which (as determined by the Secretary of Defense) is likely to affect significantly the lethality of the munition or missile produced under the program.

(7) The term ''congressional defense committees'' means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(8) The term ''Milestone B approval'' means a decision to enter into system development and demonstration pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(9) The term ''Milestone C approval'' means a decision to enter into production and deployment pursuant to guidance prescribed by the Secretary of Defense for the management of Department of Defense acquisition programs.

(Added Pub. L. 99–500, §101(c) [title X, §910(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–143, and Pub. L. 99–591, §101(c) [title X, §910(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–143; Pub. L. 99–661, div. A, title IX, formerly title IV, §910(a)(1), Nov. 14, 1986, 100 Stat. 3923, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, §802, title XII, §1231(11), Dec. 4, 1987, 101 Stat. 1123, 1160; Pub. L. 100–456, div. A, title XII, §1233(*l*)(3), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §§802(c)(1)–(4)(A), 804, Nov. 29, 1989, 103 Stat. 1486, 1488; Pub. L. 101–510, div. A, title XIV, §1484(h)(7), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 103–160, div. A, title VIII, §828(d)(2), Nov. 30, 1993, 107 Stat. 1715; Pub. L. 103–355, title III, §3014, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title XV, §1502(a)(18), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, §821(a), Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, §818, Dec. 2, 2002, 116 Stat. 2611.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–314, §818(a), amended par. (1) generally. Prior to amendment par. (1) read as follows: ''The Secretary of Defense may waive the application of the survivability and lethality tests of this section to a covered system, munitions program, missile program, or covered product improvement program if the Secretary, before the system or program enters system development and demonstration, certifies to Congress that live-fire testing of such system or program would be unreasonably expensive and impractical.''

Subsec. (e)(8), (9). Pub. L. 107–314, §818(b), added pars. (8) and (9).

2001—Subsec. (c)(1), (2). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development''.

1999—Subsec. (e)(7)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106, §1502(a)(18)(A), substituted ''the congressional defense committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and House of Representatives''.

Subsec. (e)(7). Pub. L. 104–106, §1502(a)(18)(B), added par. (7).

1994—Subsec. (c)(1). Pub. L. 103–355, §3014(a)(2), (b), substituted ''engineering and manufacturing development'' for ''full-scale entgineering development'' in first sentence and redesignated second sentence as par. (3).

Subsec. (c)(2). Pub. L. 103–355, §3014(a)(1), (3), added par. (2) and redesignated former par. (2) as (4).

Subsec. (c)(3). Pub. L. 103–355, §3014(a)(2), redesignated second sentence of par. (1) as par. (3) and substituted ''certification under paragraph (1) or (2)'' for ''such certification''.

Subsec. (c)(4). Pub. L. 103–355, §3014(a)(1), redesignated par. (2) as (4).

1993—Subsec. (d). Pub. L. 103–160 substituted ''to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives'' for ''to the defense committees of Congress (as defined in section 2362(e)(3) of this title)''.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–510 made technical correction to directory language of Pub. L. 101–189, § 804(a), see 1989 Amendment note below.

1989—Pub. L. 101–189, § 802(c)(4)(A), substituted ''testing and lethality testing required before full-scale production'' for ''and lethality testing; operational testing'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–189, §§ 802(c)(1)(A), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection; and'' for ''this section;''.

Subsec. (a)(1)(B). Pub. L. 101–189, §§ 802(c)(1)(B), 804(a), as amended by Pub. L. 101–510, substituted ''this section and the report required by subsection (d) with respect to that testing is submitted in accordance with that subsection.'' for ''this section; and''.

Subsec. (a)(1)(C). Pub. L. 101–189, § 802(c)(1)(C), struck out subpar. (C) which read as follows: ''a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed in accordance with this section.''

Subsec. (b)(2), (3). Pub. L. 101–189, § 802(c)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a major defense acquisition program, no person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (d). Pub. L. 101–189, § 804(b), inserted at end ''Each such report shall describe the results of the survivability or lethality testing and shall give the Secretary's overall assessment of the testing.''

Subsec. (e)(3) to (8). Pub. L. 101–189, § 802(c)(3), redesignated pars. (4), (5), (6), and (8) as (3), (4), (5), and (6), respectively, and struck out former par. (3) which defined ''major defense acquisition program'' and former par. (7) which defined ''operational test and evaluation''.

1988—Subsec. (a)(2). Pub. L. 100–456 made technical correction to directory language of Pub. L. 100–180, § 802(a)(1)(C). See 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–180, § 802(a)(1), as amended by Pub. L. 100–456, designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), and added par. (2).

Subsec. (b)(1). Pub. L. 100–180, § 802(a)(2), inserted ''(including a covered product improvement program)'' after ''system or program'' and ''(or in the product modification or upgrade to the system, munition, or missile)'' after ''or missile''.

Subsec. (b)(2). Pub. L. 100–180, § 802(b), inserted at end ''The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.''

Subsec. (c). Pub. L. 100–180, § 802(a)(3), (c), (d)(1), designated existing provisions as par. (1), substituted ''missile program, or covered product improvement program'' for ''or missile program'', and inserted at end ''The Secretary shall include with any such certification a report explaining how the Secretary plans to evaluate the survivability or the lethality of the system or program and assessing possible alternatives to realistic survivability testing of the system or program.''

Pub. L. 100–180, § 802(d)(2), designated existing provisions of former subsec. (d) as par. (2) of subsec. (c) and struck out heading of former subsec. (d) ''Waiver in time of war or mobilization''.

Subsec. (d). Pub. L. 100–180, § 802(d)(3), added subsec. (d). Former subsec. (d) redesignated subsec. (c)(2).

Subsec. (e)(1)(B). Pub. L. 100–180, § 1231(11), substituted ''section 2302(5)'' for ''section 2303(5)''.

Subsec. (e)(4). Pub. L. 100–180, § 802(a)(4)(A), (e), inserted ''(or a covered product improvement program for a covered system)'' after ''covered system'', struck out ''and survivability'' after ''for vulnerability'', and substituted ''susceptibility to attack'' for ''operational requirements''.

Subsec. (e)(5). Pub. L. 100–180, § 802(a)(4)(B), inserted ''(or a covered product improvement program for such a program)'' after ''missile program''.

Subsec. (e)(8). Pub. L. 100–180, § 802(a)(4)(C), added par. (8).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1233(*l*)(5) of Pub. L. 100–456 provided that: ''The amendments made by this subsection [amending this section and sections 2435 and 8855 of this title and section 301c of Title 37, Pay and Allowances of the Uniformed Services] shall apply as if included in the enactment of Public Law 100–180.''

EFFECTIVE DATE

Section 101(c) [title X, § 910(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 910(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2366 of title 10, United States Code (as added by subsection (a)), shall apply with respect to any decision to proceed with a program beyond low-rate initial production that is made—

''(1) after May 31, 1987, in the case of a decision referred to in subsection (a)(1) or (a)(2) of such section; or

''(2) after the date of the enactment of this Act [Oct. 18, 1986], in the case of a decision referred to in subsection (a)(3) of such section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 139 of this title.

§ 2367. Use of federally funded research and development centers

(a) LIMITATION ON USE OF CENTERS.—Except as provided in subsection (b), the Secretary of Defense may not place work with a federally funded research and development center unless such work is within the purpose, mission, and general scope of effort of such center as established in the sponsoring agreement of the Department of Defense with such center.

(b) EXCEPTION FOR APPLIED SCIENTIFIC RESEARCH.—This section does not apply to a federally funded research and development center that performs applied scientific research under laboratory conditions.

(c) LIMITATION ON CREATION OF NEW CENTERS.—(1) The head of an agency may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating a federally funded research center that was not in existence before June 2, 1986, until—

(A) the head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(B) a period of 60 days beginning on the date such report is received by Congress has elapsed.

(2) In this subsection, the term ''head of an agency'' has the meaning given such term in section 2302(1) of this title.

(d) IDENTIFICATION TO CONGRESS OF FFRDC WORKLOADEFFORT.—After the close of a fiscal year, and not later than January 1 of the next year, the Secretary shall submit to the Commit-

tee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives a report setting forth the actual obligations and the actual man-years of effort expended at each federally funded research and development center during that fiscal year.

(Added Pub. L. 99–500, §101(c) [title X, §912(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–146, and Pub. L. 99–591, §101(c) [title X, §912(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–146; Pub. L. 99–661, div. A, title IX, formerly title IV, §912(a)(1), Nov. 14, 1986, 100 Stat. 3925, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–190, div. A, title II, §256(a)(1), Dec. 5, 1991, 105 Stat. 1330; Pub. L. 104–106, div. A, title XV, §1502(a)(9), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(a)(12), Dec. 2, 2002, 116 Stat. 2645.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314, §1041(a)(12), struck out designations for pars. (1) and (2) and text of par. (1). Prior to amendment par. (1) read as follows: ''In the documents provided to Congress by the Secretary of Defense in support of the budget submitted by the President under section 1105 of title 31 for any fiscal year, the Secretary shall set forth the proposed amount of the man-years of effort to be funded by the Department of Defense for each federally funded research and development center for the fiscal year covered by that budget.''

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (d)(2). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and the Committees on Appropriations of the Senate and''.

1991—Subsec. (d). Pub. L. 102–190 added subsec. (d).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 256(a)(2) of Pub. L. 102–190 provided that:

''(A) Paragraph (1) of subsection (d) of section 2367 of title 10, United States Code, as added by paragraph (1), shall take effect with respect to the budget submitted for fiscal year 1994.

''(B) Paragraph (2) of such subsection shall take effect with respect to fiscal year 1992.''

GAO STUDY; REPORT

Section 101(c) [title X, §912(b), (c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 912(b), (c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, directed Comptroller General to conduct a study of national defense role of federally funded research and development centers and submit a report to Congress not later than one year after Oct. 18, 1986.

[§ 2368. Repealed. Pub. L. 102–190, div. A, title VIII, § 821(c)(1), Dec. 5, 1991, 105 Stat. 1431]

Section, added Pub. L. 100–456, div. A, title VIII, §823(a)(1), Sept. 29, 1988, 102 Stat. 2018; amended Pub. L. 101–189, div. A, title VIII, §841(c)(1), Nov. 29, 1989, 103 Stat. 1514; Pub. L. 102–25, title VII, §701(g)(1), Apr. 6, 1991, 105 Stat. 115, authorized studies in fields of research and development essential to development of critical technologies.

[§ 2369. Repealed. Pub. L. 103–355, title III, § 3062(a), Oct. 13, 1994, 108 Stat. 3336]

Section, added Pub. L. 100–456, div. A, title VIII, §842(a), Sept. 29, 1988, 102 Stat. 2026; amended Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728, related to program for supervision and coordination of product evaluation activities within the Department of Defense.

[§ 2370. Repealed. Pub. L. 104–106, div. A, title X, § 1061(j)(1), Feb. 10, 1996, 110 Stat. 443]

Section, added Pub. L. 101–510, div. A, title II, §241(a), Nov. 5, 1990, 104 Stat. 1516, required annual report to Congress on Biological Defense Research Program.

§ 2370a. Medical countermeasures against biowarfare threats: allocation of funding between near-term and other threats

(a) ALLOCATION BETWEEN NEAR-TERM AND OTHER THREATS.—Of the funds appropriated or otherwise made available for any fiscal year for the medical component of the Biological Defense Research Program (BDRP) of the Department of Defense—

(1) not more than 80 percent may be obligated and expended for product development, or for research, development, test, or evaluation, of medical countermeasures against near-term validated biowarfare threat agents; and

(2) not more than 20 percent may be obligated or expended for product development, or for research, development, test, or evaluation, of medical countermeasures against mid-term or far-term validated biowarfare threat agents.

(b) DEFINITIONS.—In this section:

(1) The term ''validated biowarfare threat agent'' means a biological agent that—

(A) is named in the biological warfare threat list published by the Defense Intelligence Agency; and

(B) is identified as a biowarfare threat by the Deputy Chief of Staff of the Army for Intelligence in accordance with Army regulations applicable to intelligence support for the medical component of the Biological Defense Research Program.

(2) The term ''near-term validated biowarfare threat agent'' means a validated biowarfare threat agent that has been, or is being, developed or produced for weaponization within 5 years, as assessed and determined by the Defense Intelligence Agency.

(3) The term ''mid-term validated biowarfare threat agent'' means a validated biowarfare threat agent that is an emerging biowarfare threat, is the object of research by a foreign threat country, and will be ready for weaponization in more than 5 years and less than 10 years, as assessed and determined by the Defense Intelligence Agency.

(4) The term ''far-term validated biowarfare threat agent'' means a validated biowarfare threat agent that is a future biowarfare

threat, is the object of research by a foreign threat country, and could be ready for weaponization in more than 10 years and less than 20 years, as assessed and determined by the Defense Intelligence Agency.

(5) The term ''weaponization'' means incorporation into usable ordnance or other militarily useful means of delivery.

(Added Pub. L. 103–160, div. A, title II, § 214(a), Nov. 30, 1993, 107 Stat. 1586.)

ACCELERATION OF RESEARCH, DEVELOPMENT, AND PRODUCTION OF MEDICAL COUNTERMEASURES FOR DEFENSE AGAINST BIOLOGICAL WARFARE AGENTS

Pub. L. 107–107, div. A, title X, § 1044(a), Dec. 28, 2001, 115 Stat. 1219, provided that:

''(1) The Secretary of Defense shall carry out a program to aggressively accelerate the research, development, testing, and licensure of new medical countermeasures for defense against the biological warfare agents that are the highest threat.

''(2) The program shall include the following activities:

''(A) As the program's first priority, investment in multiple new technologies for medical countermeasures for defense against the biological warfare agents that are the highest threat, including for the prevention and treatment of anthrax.

''(B) Leveraging of ideas and technologies from the biological technology industry.''

§ 2371. Research projects: transactions other than contracts and grants

(a) ADDITIONAL FORMS OF TRANSACTIONS AUTHORIZED.—The Secretary of Defense and the Secretary of each military department may enter into transactions (other than contracts, cooperative agreements, and grants) under the authority of this subsection in carrying out basic, applied, and advanced research projects. The authority under this subsection is in addition to the authority provided in section 2358 of this title to use contracts, cooperative agreements, and grants in carrying out such projects.

(b) EXERCISE OF AUTHORITY BY SECRETARY OF DEFENSE.—In any exercise of the authority in subsection (a), the Secretary of Defense shall act through the Defense Advanced Research Projects Agency or any other element of the Department of Defense that the Secretary may designate.

(c) ADVANCE PAYMENTS.—The authority provided under subsection (a) may be exercised without regard to section 3324 of title 31.

(d) RECOVERY OF FUNDS.—(1) A cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title and a transaction authorized by subsection (a) may include a clause that requires a person or other entity to make payments to the Department of Defense or any other department or agency of the Federal Government as a condition for receiving support under the agreement or other transaction.

(2) The amount of any payment received by the Federal Government pursuant to a requirement imposed under paragraph (1) may be credited, to the extent authorized by the Secretary of Defense, to the appropriate account established under subsection (f). Amounts so credited shall be merged with other funds in the account and shall be available for the same purposes and the same period for which other funds in such account are available.

(e) CONDITIONS.—(1) The Secretary of Defense shall ensure that—

(A) to the maximum extent practicable, no cooperative agreement containing a clause under subsection (d) and no transaction entered into under subsection (a) provides for research that duplicates research being conducted under existing programs carried out by the Department of Defense; and

(B) to the extent that the Secretary determines practicable, the funds provided by the Government under a cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) do not exceed the total amount provided by other parties to the cooperative agreement or other transaction.

(2) A cooperative agreement containing a clause under subsection (d) or a transaction authorized by subsection (a) may be used for a research project when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.

(f) SUPPORT ACCOUNTS.—There is hereby established on the books of the Treasury separate accounts for each of the military departments and the Defense Advanced Research Projects Agency for support of research projects and development projects provided for in cooperative agreements containing a clause under subsection (d) and research projects provided for in transactions entered into under subsection (a). Funds in those accounts shall be available for the payment of such support.

(g) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(h) ANNUAL REPORT.—(1) Not later than 90 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the use by the Department of Defense during such fiscal year of—

(A) cooperative agreements authorized under section 2358 of this title that contain a clause under subsection (d); and

(B) transactions authorized by subsection (a).

(2) The report shall include, with respect to the cooperative agreements and other transactions covered by the report, the following:

(A) The technology areas in which research projects were conducted under such agreements or other transactions.

(B) The extent of the cost-sharing among Federal Government and non-Federal sources.

(C) The extent to which the use of the cooperative agreements and other transactions—

(i) has contributed to a broadening of the technology and industrial base available for meeting Department of Defense needs; and

(ii) has fostered within the technology and industrial base new relationships and practices that support the national security of the United States.

(D) The total amount of payments, if any, that were received by the Federal Government

during the fiscal year covered by the report pursuant to a clause described in subsection (d) that was included in the cooperative agreements and other transactions, and the amount of such payments, if any, that were credited to each account established under subsection (f).

(i) PROTECTION OF CERTAIN INFORMATION FROM DISCLOSURE.—(1) Disclosure of information described in paragraph (2) is not required, and may not be compelled, under section 552 of title 5 for five years after the date on which the information is received by the Department of Defense.

(2)(A) Paragraph (1) applies to information described in subparagraph (B) that is in the records of the Department of Defense if the information was submitted to the Department in a competitive or noncompetitive process having the potential for resulting in an award, to the party submitting the information, of a cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title or another transaction authorized by subsection (a).

(B) The information referred to in subparagraph (A) is the following:

(i) A proposal, proposal abstract, and supporting documents.

(ii) A business plan submitted on a confidential basis.

(iii) Technical information submitted on a confidential basis.

(Added Pub. L. 101–189, div. A, title II, §251(a)(1), Nov. 29, 1989, 103 Stat. 1403; amended Pub. L. 101–510, div. A, title XIV, §1484(k)(9), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–190, div. A, title VIII, §826, Dec. 5, 1991, 105 Stat. 1442; Pub. L. 102–484, div. A, title II, §217, Oct. 23, 1992, 106 Stat. 2352; Pub. L. 103–35, title II, §201(c)(4), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title VIII, §827(b), title XI, §1182(a)(6), Nov. 30, 1993, 107 Stat. 1712, 1771; Pub. L. 103–355, title I, §1301(b), Oct. 13, 1994, 108 Stat. 3285; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title II, §267(a)–(c)(1)(A), title X, §1073(e)(1)(B), Sept. 23, 1996, 110 Stat. 2467, 2468, 2658; Pub. L. 105–85, div. A, title VIII, §832, Nov. 18, 1997, 111 Stat. 1842; Pub. L. 105–261, div. A, title VIII, §817, Oct. 17, 1998, 112 Stat. 2089; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (h)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (i)(2)(A). Pub. L. 105–261 substituted ''cooperative agreement for performance of basic, applied, or advanced research authorized by section 2358 of this title'' for ''cooperative agreement that includes a clause described in subsection (d)''.

1997—Subsec. (i). Pub. L. 105–85 added subsec. (i).

1996—Subsec. (b). Pub. L. 104–201, §1073(e)(1)(B), inserted ''Defense'' before ''Advanced Research Projects Agency''.

Subsec. (e). Pub. L. 104–201, §267(a), inserted ''(1)'' before ''The Secretary of Defense'', redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, inserted ''and'' after semicolon at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), added par. (2), and struck out par. (3) which read as follows: ''a cooperative agreement containing a clause under subsection (d) or a transaction authorized under subsection (a) is used for a research project only when the use of a standard contract, grant, or cooperative agreement for such project is not feasible or appropriate.''

Subsec. (f). Pub. L. 104–201, §1073(e)(1)(B), inserted ''Defense'' before ''Advanced Research Projects Agency''.

Subsec. (h). Pub. L. 104–201, §267(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on all cooperative agreements entered into under section 2358 of this title during such fiscal year that contain a clause authorized by subsection (d) and on all transactions entered into under subsection (a) during such fiscal year. The report shall contain, with respect to each such cooperative agreement and transaction, the following:

''(1) A general description of the cooperative agreement or other transaction (as the case may be), including the technologies for which research is provided for under such agreement or transaction.

''(2) The potential military and, if any, commercial utility of such technologies.

''(3) The reasons for not using a contract or grant to provide support for such research.

''(4) The amount of the payments, if any, that were received by the Federal Government during the fiscal year covered by the report pursuant to a clause included in such cooperative agreement or other transaction pursuant to subsection (d).

''(5) The amount of the payments reported under paragraph (4), if any, that were credited to each account established under subsection (f).''

Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (i). Pub. L. 104–201, §1073(e)(1)(B), which directed amendment of subsec. (i) by inserting ''Defense'' before ''Advanced Research Projects Agency'', could not be executed because of the renumbering of subsec. (i) as section 2371a of this title by Pub. L. 104–201, §267(c)(1)(A). See below.

Pub. L. 104–201, §267(c)(1)(A), renumbered subsec. (i) of this section as section 2371a of this title.

1994—Pub. L. 103–355 amended section generally. Prior to amendment section related to cooperative agreements and other transactions for advanced research projects.

1993—Subsec. (a). Pub. L. 103–160, §827(b)(1)(C), substituted ''section 2358 of this title'' for ''subsection (a)'' in par. (1) and ''subsection (d)'' for ''subsection (e)'' in par. (2).

Pub. L. 103–160, §827(b)(1)(A), (B), redesignated subsec. (b) as (a) and struck out former subsec. (a), as amended by Pub. L. 103–160, §1182(a)(6), (h), which read as follows: ''The Secretary of Defense, in carrying out advanced research projects through the Advanced Research Projects Agency, and the Secretary of each military department, in carrying out advanced research projects, may enter into cooperative agreements and other transactions with any person, any agency or instrumentality of the United States, any unit of State or local government, any educational institution, and any other entity.''

Pub. L. 103–160, §1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (b). Pub. L. 103–160, §827(b)(1)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 103–160, §827(b)(1)(B), (2)(A), redesignated subsec. (d) as (c) and inserted ''and development'' after ''research'' in two places in par. (1). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 103–160, § 827(b)(1)(B), (D), (2)(B), redesignated subsec. (e), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (d) and substituted ''section 2358 of this title'' for ''subsection (a)'' and ''research and development'' for ''advanced research''. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 103–160, § 827(b)(1)(B), (E), (2)(B), (C), redesignated subsec. (f) as (e), in par. (1) substituted ''research and development are'' for ''advanced research is'', in par. (3) substituted ''research and development'' for ''advanced research'', in par. (4) substituted ''subsection (a)'' for ''subsection (b)'', and in par. (5) substituted ''subsection (d)'' for ''subsection (e)''. Former subsec. (e) redesignated (d).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Subsec. (f). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f). Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 103–160, § 827(b)(1)(B), redesignated subsec. (g), as amended by Pub. L. 103–160, § 1182(a)(6), (h), as (f).

Pub. L. 103–160, § 1182(a)(6), substituted ''Advanced Research Projects Agency'' for ''Defense Advanced Research Projects Agency''.

Pub. L. 103–35 substituted ''granted by section 12'' for ''granted by section 11'' and ''provisions of sections 11 and 12'' for ''provisions of sections 10 and 11''.

1992—Subsec. (g). Pub. L. 102–484 added subsec. (g).

1991—Subsec. (a). Pub. L. 102–190, § 826(a), inserted ''and the Secretary of each military department, in carrying out advanced research projects,''.

Subsec. (b)(1). Pub. L. 102–190, § 826(b)(1)(A), struck out ''by the Secretary'' after ''transactions entered into''.

Subsec. (b)(2). Pub. L. 102–190, § 826(b)(1)(B), substituted ''to the appropriate account'' for ''to the account''.

Subsec. (d). Pub. L. 102–190, § 826(b)(2), substituted ''The Secretary of Defense'' for ''The Secretary'' in introductory provisions.

Subsec. (e). Pub. L. 102–190, § 826(b)(3), substituted ''separate accounts for each of the military departments and the Defense Advanced Research Projects Agency'' for ''an account'' and ''those accounts'' for ''such account''.

Subsec. (f)(5). Pub. L. 102–190, § 826(b)(4), substituted ''each account'' for ''the account''.

Subsec. (g). Pub. L. 102–190, § 826(c), struck out subsec. (g) which read as follows: ''The authority of the Secretary to enter into cooperative agreements and other transactions under this section expires at the close of September 30, 1991.''

1990—Subsec. (f). Pub. L. 101–510 substituted ''Committees on'' for ''Committees of'' in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

AUTHORITY OF DEFENSE ADVANCED RESEARCH PROJECTS AGENCY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS

Pub. L. 103–160, div. A, title VIII, § 845, Nov. 30, 1993, 107 Stat. 1721, as amended by Pub. L. 104–201, div. A, title VIII, § 804, title X, § 1073(e)(1)(D), (2)(A), Sept. 23, 1996, 110 Stat. 2605, 2658; Pub. L. 105–261, div. A, title II, § 241, Oct. 17, 1998, 112 Stat. 1954; Pub. L. 106–65, div. A, title VIII, § 801, title X, § 1066(d)(6), Oct. 5, 1999, 113 Stat. 700, 773; Pub. L. 106–398, § 1 [[div. A], title VIII, §§ 803, 804(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–205, 1654A–206; Pub. L. 107–107, div. A, title VIII, § 822, title X, § 1048(i)(2), Dec. 28, 2001, 115 Stat. 1182, 1229, provided that:

''(a) AUTHORITY.—The Director of the Defense Advanced Research Projects Agency, the Secretary of a military department, or any other official designated by the Secretary of Defense may, under the authority of section 2371 of title 10, United States Code, carry out prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

''(b) EXERCISE OF AUTHORITY.—(1) Subsections (e)(1)(B) and (e)(2) of such section 2371 shall not apply to projects carried out under subsection (a).

''(2) To the maximum extent practicable, competitive procedures shall be used when entering into agreements to carry out projects under subsection (a).

''(c) COMPTROLLER GENERAL REVIEW.—(1) Each agreement entered into by an official referred to in subsection (a) to carry out a project under that subsection that provides for payments in a total amount in excess of $5,000,000 shall include a clause that provides for the Comptroller General, in the discretion of the Comptroller General, to examine the records of any party to the agreement or any entity that participates in the performance of the agreement.

''(2) The requirement in paragraph (1) shall not apply with respect to a party or entity, or a subordinate element of a party or entity, that has not entered into any other agreement that provides for audit access by a Government entity in the year prior to the date of the agreement.

''(3)(A) The right provided to the Comptroller General in a clause of an agreement under paragraph (1) is limited as provided in subparagraph (B) in the case of a party to the agreement, an entity that participates in the performance of the agreement, or a subordinate element of that party or entity if the only agreements or other transactions that the party, entity, or subordinate element entered into with Government entities in the year prior to the date of that agreement are cooperative agreements or transactions that were entered into under this section or section 2371 of title 10, United States Code.

''(B) The only records of a party, other entity, or subordinate element referred to in subparagraph (A) that the Comptroller General may examine in the exercise of the right referred to in that subparagraph are records of the same type as the records that the Government has had the right to examine under the audit access clauses of the previous agreements or transactions referred to in such subparagraph that were entered into by that particular party, entity, or subordinate element.

''(4) The head of the contracting activity that is carrying out the agreement may waive the applicability of the requirement in paragraph (1) to the agreement if the head of the contracting activity determines that it would not be in the public interest to apply the requirement to the agreement. The waiver shall be effective with respect to the agreement only if the head of the contracting activity transmits a notification of the waiver to Congress and the Comptroller General before entering into the agreement. The notification shall include the rationale for the determination.

''(5) The Comptroller General may not examine records pursuant to a clause included in an agreement under paragraph (1) more than three years after the final payment is made by the United States under the agreement.

''(d) APPROPRIATE USE OF AUTHORITY.—(1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless—

''(A) there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or

''(B) no nontraditional defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

''(i) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

''(ii) The senior procurement executive for the agency (as designated for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))) determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract.

''(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

''(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that—

''(i) the party incurred the costs in anticipation of entering into the transaction; and

''(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

''(e) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED.—In this section, the term 'nontraditional defense contractor' means an entity that has not, for a period of at least one year prior to the date that a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section is entered into, entered into or performed with respect to—

''(1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

''(2) any other contract in excess of $500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

''(f) FOLLOW-ON PRODUCTION CONTRACTS.—(1) A transaction entered into under this section for a prototype project that satisfies the conditions set forth in subsection (d)(1)(B)(i) may provide for the award of a follow-on production contract to the participants in the transaction for a specific number of units at specific target prices. The number of units specified in the transaction shall be determined on the basis of a balancing of the level of the investment made in the project by the participants other than the Federal Government with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

''(2) A follow-on production contract provided for in a transaction under paragraph (1) may be awarded to the participants in the transaction without the use of competitive procedures, notwithstanding the requirements of section 2304 of title 10, United States Code, if—

''(A) competitive procedures were used for the selection of parties for participation in the transaction;

''(B) the participants in the transaction successfully completed the prototype project provided for in the transaction;

''(C) the number of units provided for in the follow-on production contract does not exceed the number of units specified in the transaction for such a follow-on production contract; and

''(D) the prices established in the follow-on production contract do not exceed the target prices specified in the transaction for such a follow-on production contract.

''(g) PERIOD OF AUTHORITY.—The authority to carry out projects under subsection (a) shall terminate at the end of September 30, 2004.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2358, 2511, 2519 of this title; title 6 section 391; title 49 section 5506.

§ 2371a. Cooperative research and development agreements under Stevenson-Wydler Technology Innovation Act of 1980

The Secretary of Defense, in carrying out research projects through the Defense Advanced Research Projects Agency, and the Secretary of each military department, in carrying out research projects, may permit the director of any federally funded research and development center to enter into cooperative research and development agreements with any person, any agency or instrumentality of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of such Act (15 U.S.C. 3710, 3710a).

(Added and amended Pub. L. 104–201, div. A, title II, § 267(c)(1)(A), (B), Sept. 23, 1996, 110 Stat. 2468; Pub. L. 105–85, div. A, title X, § 1073(a)(50), Nov. 18, 1997, 111 Stat. 1903.)

CODIFICATION

The text of section 2371(i) of this title, which was transferred to this section, redesignated as text of section, and amended by Pub. L. 104–201, § 267(c)(1)(A), (B), was based on Pub. L. 103–355, title I, § 1301(b), Oct. 13, 1994, 108 Stat. 3286.

AMENDMENTS

1997—Pub. L. 105–85 inserted ''Defense'' before ''Advanced Research Projects Agency''.

1996—Pub. L. 104–201 transferred section 2371(i) of this title to this section, added section catchline, and struck out subsec. (i) designation and heading which read as follows: ''Cooperative Research and Development Agreements Under Stevenson-Wydler Technology Innovation Act of 1980''. See Codification note above.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2358 of this title.

§ 2372. Independent research and development and bid and proposal costs: payments to contractors

(a) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs.

(b) COSTS ALLOWABLE AS INDIRECT EXPENSES.—The regulations prescribed pursuant to subsection (a) shall provide that independent research and development and bid and proposal costs shall be allowable as indirect expenses on covered contracts to the extent that those costs are allocable, reasonable, and not otherwise unallowable by law or under the Federal Acquisition Regulation.

(c) ADDITIONAL CONTROLS.—Subject to subsection (f), the regulations prescribed pursuant

to subsection (a) may include the following provisions:

(1) A limitation on the allowability of independent research and development and bid and proposal costs to work which the Secretary of Defense determines is of potential interest to the Department of Defense.

(2) For each of fiscal years 1993 through 1995, a limitation in the case of major contractors that the total amount of the independent research and development and bid and proposal costs that are allowable as expenses of the contractor's covered segments may not exceed the contractor's adjusted maximum reimbursement amount.

(3) Implementation of regular methods for transmission—

(A) from the Department of Defense to contractors, in a reasonable manner, of timely and comprehensive information regarding planned or expected Department of Defense future needs; and

(B) from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor's independent research and development programs.

(d) ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—For purposes of subsection (c)(2), the adjusted maximum reimbursement amount for a major contractor for a fiscal year is the sum of—

(1) the total amount of the allowable independent research and development and bid and proposal costs incurred by the contractor during the preceding fiscal year;

(2) 5 percent of the amount referred to in paragraph (1); and

(3) if the projected total amount of the independent research and development and bid and proposal costs incurred by the contractor for such fiscal year is greater than the total amount of the independent research and development and bid and proposal costs incurred by the contractor for the preceding fiscal year, the amount that is determined by multiplying the amount referred to in paragraph (1) by the lesser of—

(A) the percentage by which the projected total amount of such incurred costs for such fiscal year exceeds the total amount of the incurred costs of the contractor for the preceding fiscal year; or

(B) the estimated percentage rate of inflation from the end of the preceding fiscal year to the end of the fiscal year for which the amount of the limitation is being computed.

(e) WAIVER OF ADJUSTED MAXIMUM REIMBURSEMENT AMOUNT.—The Secretary of Defense may waive the applicability of any limitation prescribed under subsection (c)(2) to any contractor for a fiscal year to the extent that the Secretary determines that allowing the contractor to exceed the contractor's adjusted maximum reimbursement amount for such year—

(1) is necessary to reimburse such contractor at least to the extent that would have been allowed under regulations as in effect on December 4, 1991; or

(2) is otherwise in the best interest of the Government.

(f) LIMITATIONS ON REGULATIONS.—Regulations prescribed pursuant to subsection (c) may not include provisions that would infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development program.

(g) ENCOURAGEMENT OF CERTAIN CONTRACTOR ACTIVITIES.—The regulations under subsection (a) shall encourage contractors to engage in research and development activities of potential interest to the Department of Defense, including activities intended to accomplish any of the following:

(1) Enabling superior performance of future United States weapon systems and components.

(2) Reducing acquisition costs and life-cycle costs of military systems.

(3) Strengthening the defense industrial base and the technology base of the United States.

(4) Enhancing the industrial competitiveness of the United States.

(5) Promoting the development of technologies identified as critical under section 2506 of this title.

(6) Increasing the development and promotion of efficient and effective applications of dual-use technologies.

(7) Providing efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(h) MAJOR CONTRACTORS.—A contractor shall be considered to be a major contractor for the purposes of subsection (c) for any fiscal year if for the preceding fiscal year the contractor's covered segments allocated to Department of Defense contracts a total of more than $10,000,000 in independent research and development and bid and proposal costs.

(i) DEFINITIONS.—In this section:

(1) COVERED CONTRACT.—The term ''covered contract'' has the meaning given that term in section 2324(*l*) of this title.

(2) COVERED SEGMENT.—The term ''covered segment'', with respect to a contractor, means a product division of the contractor that allocated more than $1,000,000 in independent research and development and bid and proposal costs to Department of Defense contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, such term means the contractor as a whole.

(Added Pub. L. 101–510, div. A, title VIII, § 824(a)(1), Nov. 5, 1990, 104 Stat. 1603; amended Pub. L. 102–25, title VII, § 701(c), Apr. 6, 1991, 105 Stat. 113; Pub. L. 102–190, div. A, title VIII, § 802(a)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 102–484, div. A, title X, § 1052(27), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–35, title II, § 201(c)(5), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(11), Feb. 10, 1996, 110 Stat. 672.)

AMENDMENTS

1996—Subsec. (i)(1). Pub. L. 104–106 substituted ''2324(*l*)'' for ''2324(m)''.

1993—Subsec. (g)(5). Pub. L. 103–35 substituted ''section 2506'' for ''section 2522''.

1992—Subsec. (e)(1). Pub. L. 102–484 substituted ''on December 4, 1991'' for ''on the day before the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993''.

1991—Pub. L. 102–190 substituted section catchline for one which read ''Independent research and development'' and amended text generally, substituting present provisions for provisions authorizing payment of independent research and development or bid and proposal costs, encouraging contractors to engage in research and development activities, and authorizing advance agreements regarding the manner and extent in which the Department of Defense may pay independent research and development costs or bid and proposal costs.

Subsec. (d)(2)(B). Pub. L. 102–25 substituted ''subsection (b), including'' for ''subsection (b) or''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 802(e) of Pub. L. 102–190 provided that: ''The amendments made by this section [amending this section and section 2330 of this title] shall take effect on October 1, 1992, and shall apply to independent research and development and bid and proposal costs incurred by a contractor during fiscal years of that contractor that begin on or after that date.''

REGULATIONS

Section 802(b) of Pub. L. 102–190 provided that: ''The Secretary of Defense shall prescribe proposed regulations to implement the amendment made by subsection (a)(1) [amending this section] not later than April 1, 1992, and shall prescribe final regulations for that purpose not later than June 1, 1992.''

STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT

Section 802(c) of Pub. L. 102–190 directed Director of the Office of Technology Assessment to conduct a study to determine effect of regulations prescribed under this section on the achievement of policy stated in subsec. (g) of this section and submit a report containing results of such study to Committees on Armed Services of Senate and House of Representatives not later than Dec. 1, 1995, prior to repeal by Pub. L. 103–160, div. A, title II, §266, Nov. 30, 1993, 107 Stat. 1611.

§ 2373. Procurement for experimental purposes

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments may each buy ordnance, signal, chemical activity, and aeronautical supplies, including parts and accessories, and designs thereof, that the Secretary of Defense or the Secretary concerned considers necessary for experimental or test purposes in the development of the best supplies that are needed for the national defense.

(b) PROCEDURES.—Purchases under this section may be made inside or outside the United States and by contract or otherwise. Chapter 137 of this title applies only when such purchases are made in quantity.

(Added Pub. L. 103–160, div. A, title VIII, §822(c)(1), Nov. 30, 1993, 107 Stat. 1706; amended Pub. L. 103–337, div. A, title X, §1070(g), Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title VIII, §812, Feb. 10, 1996, 110 Stat. 395.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4504 and 9504 of this title, prior to repeal by Pub. L. 103–160, §822(c)(2).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 inserted ''only'' after ''applies'' in second sentence.

1994—Subsec. (a). Pub. L. 103–337 substituted ''chemical activity, and aeronautical supplies,'' for ''and chemical activity supplies,''.

§ 2374. Merit-based award of grants for research and development

(a) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

(b) A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a).

(c) For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

(d) This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Added Pub. L. 103–355, title VII, §7203(a)(2), Oct. 13, 1994, 108 Stat. 3380.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2521 of this title.

§ 2374a. Prizes for advanced technology achievements

(a) AUTHORITY.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, may carry out a program to award cash prizes in recognition of outstanding achievements in basic, advanced, and applied research, technology development, and prototype development that have the potential for application to the performance of the military missions of the Department of Defense.

(b) COMPETITION REQUIREMENTS.—The program under subsection (a) shall use a competitive

process for the selection of recipients of cash prizes. The process shall include the widely-advertised solicitation of submissions of research results, technology developments, and prototypes.

(c) LIMITATIONS.—(1) The total amount made available for award of cash prizes in a fiscal year may not exceed $10,000,000.

(2) No prize competition may result in the award of more than $1,000,000 in cash prizes without the approval of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(d) RELATIONSHIP TO OTHER AUTHORITY.—The program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority of the Director to acquire, support, or stimulate basic, advanced and applied research, technology development, or prototype projects.

(e) ANNUAL REPORT.—Promptly after the end of each fiscal year, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of the program for that fiscal year. The report shall include the following:

(1) The military applications of the research, technology, or prototypes for which prizes were awarded.

(2) The total amount of the prizes awarded.

(3) The methods used for solicitation and evaluation of submissions, together with an assessment of the effectiveness of those methods.

(f) PERIOD OF AUTHORITY.—The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2007.

(Added Pub. L. 106–65, div. A, title II, § 244(a), Oct. 5, 1999, 113 Stat. 552; amended Pub. L. 107–314, div. A, title II, § 248(a), Dec. 2, 2002, 116 Stat. 2502.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–314 substituted ''September 30, 2007'' for ''September 30, 2003''.

§ 2374b. Prizes for achievements in promoting science, mathematics, engineering, or technology education

(a) AUTHORITY.—The Secretaries of the military departments and the heads of defense agencies may each carry out a program to award cash prizes in recognition of outstanding achievements that are designed to promote science, mathematics, engineering, or technology education in support of the missions of the Department of Defense.

(b) COMPETITION REQUIREMENTS.—Each program under subsection (a) shall use a competitive process for the selection of recipients of cash prizes.

(c) LIMITATION.—For any single program under subsection (a), the total amount made available for award of cash prizes in a fiscal year may not exceed $1,000,000.

(d) RELATIONSHIP TO OTHER AUTHORITY.—The program under subsection (a) may be carried out in conjunction with or in addition to the exercise of any other authority to acquire, support, or stimulate basic and applied research, advanced technology development, or prototype development projects.

(e) ANNUAL REPORT.—Promptly after the end of each fiscal year, each Secretary of a military department and each head of a defense agency carrying out a program under subsection (a) shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the administration of that program for that fiscal year.

(f) PERIOD OF AUTHORITY.—The authority to award prizes under subsection (a) shall terminate at the end of September 30, 2006.

(Added Pub. L. 107–314, div. A, title II, § 248(c)(1), Dec. 2, 2002, 116 Stat. 2502.)

CHAPTER 140—PROCUREMENT OF COMMERCIAL ITEMS

Sec.
2375. Relationship of commercial item provisions to other provisions of law.
2376. Definitions.
2377. Preference for acquisition of commercial items.
2378. Procurement of copier paper containing specified percentages of post-consumer recycled content.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title III, § 350(b), Nov. 18, 1997, 111 Stat. 1692, added item 2378.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 14713, 14715, 14732.

§ 2375. Relationship of commercial item provisions to other provisions of law

(a) APPLICABILITY OF TITLE.—Unless otherwise specifically provided, nothing in this chapter shall be construed as providing that any other provision of this title relating to procurement is inapplicable to the procurement of commercial items.

(b) LIST OF LAWS INAPPLICABLE TO CONTRACTS FOR THE ACQUISITION OF COMMERCIAL ITEMS.—No contract for the procurement of a commercial item entered into by the head of an agency shall be subject to any law properly listed in the Federal Acquisition Regulation (pursuant to section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430)).

(c) CROSS REFERENCE TO EXCEPTION TO COST OR PRICING DATA REQUIREMENTS FOR COMMERCIAL ITEMS.—For a provision relating to an exception for requirements for cost or pricing data for contracts for the procurement of commercial items, see section 2306a(b) of this title.

(Added Pub. L. 103–355, title VIII, § 8102, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 105–85, div. A, title X, § 1073(a)(51), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 107–107, div. A, title X, § 1048(a)(18), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 inserted ''(41 U.S.C. 430)'' after ''section 34 of the Office of Federal Procurement Policy Act''.

1997—Subsec. (c). Pub. L. 105–85 substituted ''a provision relating to an exception'' for ''provisions relating

to exceptions'' and ''section 2306a(b)'' for ''section 2306a(d)''.

EFFECTIVE DATE

For effective date and applicability of chapter, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2376. Definitions

In this chapter:

(1) The terms ''commercial item'', ''nondevelopmental item'', ''component'', and ''commercial component'' have the meanings provided in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(2) The term ''head of an agency'' means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration.

(3) The term ''agency'' means the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

(Added Pub. L. 103–355, title VIII, §8103, Oct. 13, 1994, 108 Stat. 3390; amended Pub. L. 107–107, div. A, title X, §1048(a)(19), Dec. 28, 2001, 115 Stat. 1223; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Par. (2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2001—Par. (1). Pub. L. 107–107 inserted ''(41 U.S.C. 403)'' after ''section 4 of the Office of Federal Procurement Policy Act''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2377. Preference for acquisition of commercial items

(a) PREFERENCE.—The head of an agency shall ensure that, to the maximum extent practicable—

(1) requirements of the agency with respect to a procurement of supplies or services are stated in terms of—

(A) functions to be performed;

(B) performance required; or

(C) essential physical characteristics;

(2) such requirements are defined so that commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items, may be procured to fulfill such requirements; and

(3) offerors of commercial items and nondevelopmental items other than commercial items are provided an opportunity to compete in any procurement to fill such requirements.

(b) IMPLEMENTATION.—The head of an agency shall ensure that procurement officials in that agency, to the maximum extent practicable—

(1) acquire commercial items or nondevelopmental items other than commercial items to meet the needs of the agency;

(2) require prime contractors and subcontractors at all levels under the agency contracts to incorporate commercial items or nondevelopmental items other than commercial items as components of items supplied to the agency;

(3) modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items;

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items in response to the agency solicitations;

(5) revise the agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

(c) PRELIMINARY MARKET RESEARCH.—(1) The head of an agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) The head of an agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items other than commercial items available that—

(A) meet the agency's requirements;

(B) could be modified to meet the agency's requirements; or

(C) could meet the agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(Added Pub. L. 103–355, title VIII, §8104(a), Oct. 13, 1994, 108 Stat. 3390.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 205*l*.

§ 2378. Procurement of copier paper containing specified percentages of post-consumer recycled content

(a) PROCUREMENT REQUIREMENT.—(1) Except as provided in subsections (b) and (c), a department or agency of the Department of Defense may not procure copying machine paper after the applicable date specified in paragraph (2) unless the percentage of post-consumer recycled content of the paper meets the percentage then in effect under such paragraph.

(2) The percentage of post-consumer recycled content of paper required under paragraph (1) is as follows:

(A) 20 percent as of January 1, 1998.
(B) 30 percent as of January 1, 1999.
(C) 50 percent as of January 1, 2004.

(b) EXCEPTIONS.—A department or agency of the Department of Defense is not required to procure copying machine paper containing a percentage of post-consumer recycled content that meets the applicable requirement in subsection (a) if the Secretary concerned determines that one or more of the following circumstances apply with respect to that procurement:

(1) The cost of procuring copying machine paper satisfying the applicable requirement significantly exceeds the cost of procuring copying machine paper containing a percentage of post-consumer recycled content that does not meet such requirement. The Secretary concerned shall establish the cost differential to be applied under this paragraph.

(2) Copying machine paper containing a percentage of post-consumer recycled content meeting such requirement is not reasonably available within a reasonable period of time.

(3) Copying machine paper containing a percentage of post-consumer recycled content meeting such requirement does not meet performance standards of the department or agency for copying machine paper.

(c) EFFECT OF INABILITY TO MEET GOAL IN 2004.—(1) In the case of the requirement that will take effect on January 1, 2004, pursuant to subsection (a)(2)(C), the requirement shall not take effect with respect to a military department or Defense Agency if the Secretary of Defense determines that the department or agency will be unable to meet such requirement by that date.

(2) The Secretary shall submit to Congress written notice of any determination made under paragraph (1) and the reasons for the determination. The Secretary shall submit such notice, if at all, not later than January 1, 2003.

(d) SECRETARY CONCERNED DEFINED.—In this section, the term ''Secretary concerned'' means the Secretary of each military department and the Secretary of Defense with respect to the Defense Agencies.

(Added Pub. L. 105–85, div. A, title III, § 350(a), Nov. 18, 1997, 111 Stat. 1691.)

CHAPTER 141—MISCELLANEOUS PROCUREMENT PROVISIONS

Sec.
2381. Contracts: regulations for bids.
[2382, 2383. Repealed.]
2384. Supplies: identification of supplier and sources.
2384a. Supplies: economic order quantities.
2385. Arms and ammunition: immunity from taxation.
2386. Copyrights, patents, designs, etc.; acquisition.
2387. Procurement of table and kitchen equipment for officers' quarters: limitation on.
2388. Liquid fuels and natural gas: contracts for storage, handling, or distribution.
2389. Ensuring safety regarding insensitive munitions.
2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense.
2391. Military base reuse studies and community planning assistance.
2392. Prohibition on use of funds to relieve economic dislocations.
2393. Prohibition against doing business with certain offerors or contractors.
2394. Contracts for energy or fuel for military installations.
2394a. Procurement of energy systems using renewable forms of energy.
2395. Availability of appropriations for procurement of technical military equipment and supplies.
2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries.
[2397 to 2397c. Repealed.]
2398. Procurement of gasohol as motor vehicle fuel.
2399. Operational test and evaluation of defense acquisition programs.
2400. Low-rate initial production of new systems.
2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft.
2401a. Lease of vehicles, equipment, vessels, and aircraft.
2402. Prohibition of contractors limiting subcontractor sales directly to the United States.
[2403. Repealed.]
2404. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority.
[2405 to 2407. Repealed or Renumbered.]
2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors.
2409. Contractor employees: protection from reprisal for disclosure of certain information.
[2409a. Repealed.]
2410. Requests for equitable adjustment or other relief: certification.
2410a. Severable service contracts for periods crossing fiscal years.
2410b. Contractor inventory accounting systems: standards.
2410c. Preference for energy efficient electric equipment.
2410d. Subcontracting plans: credit for certain purchases.
[2410e. Repealed.]
2410f. Debarment of persons convicted of fraudulent use of ''Made in America'' labels.
2410g. Advance notification of contract performance outside the United States.
[2410h. Renumbered.]
2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel.
2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides.
2410k. Defense contractors: listing of suitable employment openings with local employment service office.
2410*l*. Contracts for advisory and assistance services: cost comparison studies.
2410m. Retention of amounts collected from contractor during the pendency of contract dispute.
2410n. Products of Federal Prison Industries: procedural requirements.
2410*o*. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title VIII, § 826(b), title X, § 1062(a)(10)(B), Dec. 2, 2002, 116 Stat. 2617, 2650, trans-

ferred item 2410h ''Acquisition fellowship program'' to subchapter IV of chapter 87 as item 1747 and added item 2410*o*.

2001—Pub. L. 107–107, div. A, title VIII, §§811(a)(2), 834(a)(2), Dec. 28, 2001, 115 Stat. 1181, 1191, added items 2389 and 2410n.

1999—Pub. L. 106–65, div. A, title VIII, §803(b)(2), Oct. 5, 1999, 113 Stat. 704, substituted ''Acquisition of certain fuel sources'' for ''Acquisition of petroleum and natural gas'' in item 2404.

1997—Pub. L. 105–85, div. A, title VIII, §§801(b), 810(a)(2), 831(b), 847(b)(1), title X, §1014(b)(2), Nov. 18, 1997, 111 Stat. 1831, 1839, 1842, 1845, 1875, inserted ''public utility services,'' after ''tuition,'' in item 2396, struck out items 2403 ''Major weapon systems: contractor guarantees'' and 2405 ''Limitation on adjustment of shipbuilding contracts'', substituted ''Severable service contracts for periods crossing fiscal years'' for ''Appropriated funds: availability for certain contracts for 12 months'' in item 2410a, and added item 2410m.

1996—Pub. L. 104–106, div. A, title VIII, §§803(b), 807(a)(2), div. D, title XLIII, §4304(c)(1), Feb. 10, 1996, 110 Stat. 390, 392, 664, struck out items 2383 ''Procurement of critical aircraft and ship spare parts: quality control'', 2397 ''Employees or former employees of defense contractors: reports'', 2397a ''Requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors'', 2397b ''Certain former Department of Defense procurement officials: limitations on employment by contractors'', and 2397c ''Defense contractors: requirements concerning former Department of Defense officials'' and substituted ''Lease of vehicles, equipment, vessels, and aircraft'' for ''Lease of vessels, aircraft, and vehicles'' in item 2401a.

1994—Pub. L. 103–355, title II, §§2102(b), 2201(b)(2), 2301(c), title III, §3065(a)(2), title VI, §6005(b)(2), Oct. 13, 1994, 108 Stat. 3309, 3318, 3321, 3337, 3365, added item 2401a, struck out items 2382 ''Contract profit controls during emergency periods'', 2406 ''Availability of cost and pricing records'', 2409a ''Communicating with Government officials: defense contractor requirement to prohibit retaliatory personnel actions'', and 2410e ''Contract claims: certification regulations'', and substituted in item 2410 ''Requests for equitable adjustment or other relief: certification'' for ''Contract claims: certification''.

Pub. L. 103–337, div. A, title III, §363(a)(2), Oct. 5, 1994, 108 Stat. 2734, added item 2410*l*.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(3), (c)(3), (4), Nov. 30, 1993, 107 Stat. 1713, 1714, substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' in item 2388, struck out item 2389 ''Contracts for the procurement of milk: price adjustments; purchases from the Commodity Credit Corporation'', and inserted ''and natural gas'' and ''; acquisition by exchange; sales authority'' in item 2404.

Pub. L. 103–35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, made technical amendment to directory language of Pub. L. 102–484, §4470(a)(2). See 1992 Amendment note below.

Pub. L. 103–35, title II, §201(b)(1)(B), May 31, 1993, 107 Stat. 97, renumbered item 2410c relating to displaced contractor employees as item 2410j and item 2410d relating to defense contractors as item 2410k.

1992—Pub. L. 102–484, div. D, title XLIV, §4470(a)(2), Oct. 23, 1992, 106 Stat. 2753, as amended by Pub. L. 103–35, title II, §202(a)(18)(B), May 31, 1993, 107 Stat. 102, added item 2410d relating to defense contractors.

Pub. L. 102–484, div. D, title XLIV, §4443(b), Oct. 23, 1992, 106 Stat. 2735, 2753, added item 2410c relating to displaced contractor employees.

Pub. L. 102–484, div. A, title III, §384(a)(1)(B), title VIII, §§808(b)(2), 813(a)(2), 834(a)(2), 840(a)(2), 841(b), title XIII, §1332(b), Oct. 23, 1992, 106 Stat. 2393, 2450, 2453, 2461, 2467, 2468, 2555, added items 2410c to 2410i.

1990—Pub. L. 101–510, div. A, title VIII, §837(a)(2), title XIV, §1484(i)(8), Nov. 5, 1990, 104 Stat. 1619, 1718, struck out item 2407 ''Acquisition of defense equipment under cooperative projects'' and added item 2409a.

1989—Pub. L. 101–189, div. A, title VIII, §§802(a)(2), 803(b), title IX, §933(e), title XVI, §1622(b)(2), Nov. 29, 1989, 103 Stat. 1486, 1488, 1538, 1604, added items 2390, 2399, and 2400 and struck out item 2401a ''Procurement of communications support and related supplies and services''.

1988—Pub. L. 100–456, div. A, title VIII, §§805(a)(2), 834(a)(2), Sept. 29, 1988, 102 Stat. 2010, 2025, added items 2383 and 2410b.

Pub. L. 100–370, §§1(h)(3), 3(b)(2), July 19, 1988, 102 Stat. 848, 855, in item 2389 substituted ''milk: price adjustments; purchases from the Commodity Credit Corporation'' for ''milk; price adjustment'', struck out items 2399 ''Limitation on availability of appropriations to reimburse a contractor for cost of commercial insurance'', and 2400 ''Miscellaneous procurement limitations'', and added items 2410 and 2410a.

1987—Pub. L. 100–180, div. A, title I, §124(b)(2), Dec. 4, 1987, 101 Stat. 1043, substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in item 2400.

1986—Pub. L. 99–661, div. A, title XI, §1103(b)(2)(B), Nov. 14, 1986, 100 Stat. 3963, struck out ''North Atlantic Treaty Organization'' before ''cooperative projects'' in item 2407.

Pub. L. 99–500, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–160, 1783–162, 1783–164, and Pub. L. 99–591, §101(c) [title X, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–160, 3341–162, 3341–164; Pub. L. 99–661, div. A, title IX, formerly title IV, §§931(a)(2), 941(a)(2), 942(a)(2), 943(a)(2), Nov. 14, 1986, 100 Stat. 3939, 3941–3943, 3963, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically, substituting ''Availability of cost and pricing records'' for ''Cost and price management'' in item 2406 and adding items 2397b, 2397c, 2408, and 2409.

1985—Pub. L. 99–145, title IX, §§917(b), 923(a)(2), title XI, §1102(b)(2), Nov. 8, 1985, 99 Stat. 690, 697, 712, added items 2397a, 2406, and 2407.

1984—Pub. L. 98–525, title X, §1005(b), title XII, §1235(1), (2), Oct. 19, 1984, 98 Stat. 2579, 2604, substituted in item 2384 ''identification of supplier and sources'' for ''marking with name of contractor'' and added items 2401a, 2384a, and 2402 to 2405.

1983—Pub. L. 98–94, title XII, §§1202(a)(2), 1259(b), Sept. 24, 1983, 97 Stat. 681, 703, struck out item 2390 ''Suggestions for improving procurement policies'', and added item 2401.

1982—Pub. L. 97–321, title VIII, §801(a)(2), Oct. 15, 1982, 96 Stat. 1570, added item 2394a.

Pub. L. 97–295, §1(29)(B), Oct. 12, 1982, 96 Stat. 1294, struck out item 2394 ''Availability of appropriations for procurement of technical military equipment and supplies and the construction of military public works'', added item 2395 ''Availability of appropriations for procurement of technical military equipment and supplies'', redesignated former item 2395 as 2396, and added items 2397, 2398, 2399, and 2400.

Pub. L. 97–258, §2(b)(4)(A), Sept. 13, 1982, 96 Stat. 1052, added items 2394 and 2395.

Pub. L. 97–214, §6(a)(2), July 12, 1982, 96 Stat. 172, added item 2394.

1981—Pub. L. 97–86, title IX, §§911(a)(2), 912(a)(2), 913(a)(2), 914(b), Dec. 1, 1981, 95 Stat. 1122, 1123, 1125, substituted ''Contract profit controls during emergency periods'' for ''Aircraft: contract requirements'' in item 2382 and added items 2391, 2392, and 2393.

1980—Pub. L. 96–513, title V, §511(79), Dec. 12, 1980, 94 Stat. 2927, struck out item 2383 ''Emergency purchases: war material abroad''.

1977—Pub. L. 95–79, title VIII, §815(b), July 30, 1977, 91 Stat. 338, added item 2390.

1966—Pub. L. 89–696, §1(2), Oct. 19, 1966, 80 Stat. 1057, added item 2389.

1958—Pub. L. 85–861, §1(47), Sept. 2, 1958, 72 Stat. 1458, added items 2387 and 2388.

§ 2381. Contracts: regulations for bids

(a) The Secretary of Defense may—

(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and

(2) require that a bid be accompanied by a written guaranty, signed by one or more responsible persons, undertaking that the bidder, if his bid is accepted, will, within the time prescribed by the Secretary or other officer authorized to make the contract, make a contract and furnish a bond with good and sufficient sureties for the performance of the contract.

(b) If a bidder, after being notified of the acceptance of his bid, fails within the time prescribed under subsection (a)(2) to enter into a contract and furnish the prescribed bond, the Secretary concerned or other authorized officer shall—

(1) contract with another person; and

(2) charge against the defaulting bidder and his guarantors the difference between the amount specified by the bidder in his bid and the amount for which a contract is made with the other person, this difference being immediately recoverable by the United States for the use of the military department concerned in an action against the bidder and his guarantors, jointly or severally.

(c) Proceedings under this section are subject to regulations under section 121 of title 40, unless exempted therefrom under section 501(a)(2) of title 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 136; Pub. L. 98–525, title XIV, § 1405(35), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 103–355, title I, § 1507, Oct. 13, 1994, 108 Stat. 3298; Pub. L. 107–217, § 3(b)(6), Aug. 21, 2002, 116 Stat. 1295.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2381(a)	5:218 (1st sentence, less 1st 16 words; and 2d sentence).	Apr. 10, 1878, ch. 58, 20 Stat. 36; Mar. 3, 1883, ch. 120, 22 Stat. 487; Oct. 31, 1951, ch. 654, § 2(4), 65 Stat. 706.
2381(b)	5:218 (less 1st and 2d sentences).	
2381(c)	5:218 (1st 16 words of 1st sentence) [applicability of 5:218 extended to Navy by 5:412b and 41:161 (1st sentence)].	Feb. 19, 1948, ch. 65, § 12 (1st sentence), 62 Stat. 26.

In subsection (a)(1), the word ''may'' is substituted for the words ''is authorized to''. The words ''rules and * * * to be observed'' are omitted as surplusage.

In subsection (a)(2), the word ''undertaking'' is substituted for the words ''to the effect that he or they undertake''. The words ''make a contract'' are inserted for clarity. The words ''in the premises'' are omitted as surplusage. The words ''for the performance of the contract'' are substituted for the words ''to furnish the supplies proposed or to perform the service required''.

In subsection (b), the word ''duly'' is omitted as surplusage. The words ''with good and sufficient security for the proper fulfillment of its terms'' are omitted as covered by subsection (a)(2). The words ''the prescribed'' are inserted before the word ''bond''.

Subsection (b)(1) is substituted for the words ''proceed to contract with some other person to furnish the supplies or perform the services required''.

In subsection (b)(2) the word ''charge'' is substituted for the words ''forthwith cause * * * to be charged''. The words ''a contract is made with the other person'' are substituted for the words ''he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal''. The words ''guarantor or'' are omitted as surplusage. The words ''this difference being'' are substituted for the words ''and the sum may be''. The words ''of debt'' are omitted, since that action no longer exists. The words ''the bidder and his guarantors, jointly or severally'' are substituted for the words ''either or all of such persons''.

In subsection (c), the words ''Proceedings under this section are'' are inserted for clarity. The words ''unless exempted therefrom under section 481(a) of that title'' are inserted to preserve the possibility of exemption of proceedings under the revised section from the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' and ''section 501(a)(2) of title 40'' for ''section 201(a) of that Act (40 U.S.C. 481(a))''.

1994—Subsec. (a). Pub. L. 103–355 substituted ''The Secretary of Defense may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts; and''

for ''The Secretary of a military department may—

''(1) prescribe regulations for the preparation, submission, and opening of bids for contracts with that department; and''.

1984—Subsec. (c). Pub. L. 98–525 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40'' and ''section 201(a) of that Act (40 U.S.C. 481(a))'' for ''section 481(a) of this title''.

[§ 2382. Repealed. Pub. L. 103–355, title II, § 2102(a), Oct. 13, 1994, 108 Stat. 3309]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 136; Dec. 1, 1981, Pub. L. 97–86, title IX, § 911(a)(1), 95 Stat. 1120; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, § 1484(b)(3), (f)(2), (g)(2), (h)(3), 104 Stat. 1716, 1717; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516, authorized the President, upon declaration of war by Congress or declaration of national emergency by the President or by Congress, to prescribe regulations to control excessive profits on defense contracts during period of such war or national emergency.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

[§ 2383. Repealed. Pub. L. 104–106, div. A, title VIII, § 803(a), Feb. 10, 1996, 110 Stat. 390]

Section, added Pub. L. 100–456, div. A, title VIII, § 805(a)(1), Sept. 29, 1988, 102 Stat. 2010; amended Pub. L. 102–190, div. A, title X, § 1061(a)(13), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title II, § 2401, Oct. 13, 1994, 108 Stat. 3324, related to quality control in procurement of critical aircraft and ship spare or repair parts.

§ 2384. Supplies: identification of supplier and sources

(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished (if there is such a number), and the contractor's identification number for the supplies.

(b)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever prac-

ticable, each contract requiring the delivery of supplies (other than a contract described in paragraph (2)) shall require that the contractor identify—

(A) the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

(B) the national stock number of the item (if there is such a number) and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(C) the source of any technical data delivered under the contract.

(2) The regulations prescribed pursuant to paragraph (1) do not apply to a contract that requires the delivery of supplies that are commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(3) The regulations prescribed pursuant to paragraph (1) do not apply to a contract for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 98–525, title XII, §1231(a), Oct. 19, 1984, 98 Stat. 2599; Pub. L. 99–500, §101(c) [title X, §928(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, §101(c) [title X, §928(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, §928(a), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 103–355, title IV, §4102(d), title VIII, §8105(b), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 104–106, div. D, title XLIII, §4321(b)(12), Feb. 10, 1996, 110 Stat. 672.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2384	10:1207. 34:583.	R.S. 3731.

The words ''Each contractor'' are substituted for the words ''Every person''. The word ''his'' is substituted for the words ''the name of the contractor furnishing such supplies''. The words ''of any kind'' and ''and distinguish [distinguished]'' are omitted as surplusage. The word ''may'' is substituted for the word ''shall''.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–106, §4321(b)(12)(A), substituted ''items (as'' for ''items, as'' and inserted a closing parenthesis after ''403(12))''.

Subsec. (b)(3). Pub. L. 104–106, §4321(b)(12)(B), inserted a closing parenthesis after ''403(11))''.

1994—Subsec. (b)(2). Pub. L. 103–355, §8105(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to a contract that requires the delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

''(A) provides for the acquisition of such supplies by the Department of Defense at established catalog or market prices; or

''(B) is awarded through the use of competitive procedures.''

Subsec. (b)(3). Pub. L. 103–355, §4102(d), added par. (3).

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, amended subsec. (b) identically, designating existing provision as par. (1), redesignating former pars. (1) to (3) as subpars. (A) to (C), respectively, and inserting in provision preceding subpar. (A) ''(other than a contract described in paragraph (2))'', and adding par. (2).

1984—Pub. L. 98–525 amended section generally, substituting ''identification of supplier and sources'' for ''marking with name of contractor'' in section catchline, and, in text, substituting provisions designated subsec. (a) and relating to the marking of supplies, providing the national stock number for the supplies furnished, and the contractor's identification number for requirement that each contractor furnishing supplies to a military department mark the supplies with his name in the manner directed by the Secretary of the Department and prohibition of receipt of supplies unless so marked and adding subsecs. (b) and (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, §928(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 928(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to contracts entered into after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1231(b) of Pub. L. 98–525 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect at the end of the one-year period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2384a. Supplies: economic order quantities

(a)(1) An agency referred to in section 2303(a) of this title shall procure supplies in such quantity as (A) will result in the total cost and unit cost most advantageous to the United States, where practicable, and (B) does not exceed the quantity reasonably expected to be required by the agency.

(2) The Secretary of Defense shall take paragraph (1) into account in approving rates of obligation of appropriations under section 2204 of this title.

(b) Each solicitation for a contract for supplies shall, if practicable, include a provision inviting each offeror responding to the solicitation to state an opinion on whether the quantity of the supplies proposed to be procured is economically advantageous to the United States and, if applicable, to recommend a quantity or quantities which would be more economically advantageous to the United States. Each such

recommendation shall include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

(Added Pub. L. 98–525, title XII, § 1233(a), Oct. 19, 1984, 98 Stat. 2600.)

EFFECTIVE DATE

Section 1233(b) of Pub. L. 98–525 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

§ 2385. Arms and ammunition: immunity from taxation

No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for a military department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2385	5:171w.	Jan. 6, 1951, ch. 1213, subch. VII, § 706, 64 Stat. 1236.

The words ''No * * * may be'' are substituted for the words ''None * * * shall be subject to any''. The words ''by any Act'' are omitted as surplusage.

§ 2386. Copyrights, patents, designs, etc.; acquisition

Funds appropriated for a military department available for making or procuring supplies may be used to acquire any of the following if the acquisition relates to supplies or processes produced or used by or for, or useful to, that department:

(1) Copyrights, patents, and applications for patents.

(2) Licenses under copyrights, patents, and applications for patents.

(3) Design and process data, technical data, and computer software.

(4) Releases for past infringement of patents or copyrights or for unauthorized use of technical data or computer software.

(Aug. 10, 1956, ch. 1041, 70A Stat. 137; Pub. L. 86–726, § 3, Sept. 8, 1960, 74 Stat. 855; Pub. L. 103–355, title III, § 3063, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. A, title VIII, § 813, Feb. 10, 1996, 110 Stat. 395.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2386	31:649b.	Aug. 1, 1953, ch. 305, § 609, 67 Stat. 350.

The words ''equipment, and materials'' are omitted as covered by the word ''supplies''. The word ''hereafter'' is omitted as executed. The words ''may be used'' are substituted for the words ''shall * * * be available''. The words ''if the acquisition relates to'' are substituted for 31:649b (1st 8 words of last sentence). In clauses (1), (2), and (4), the word ''patents'' is substituted for the words ''letters patent''.

AMENDMENTS

1996—Par. (3). Pub. L. 104–106 amended par. (3) generally, substituting ''Design and process data, technical data, and computer software'' for ''Technical data and computer software''.

1994—Pars. (3), (4). Pub. L. 103–355 added pars. (3) and (4) and struck out former pars. (3) and (4) which read as follows:

''(3) Designs, processes, and manufacturing data.

''(4) Releases, before suit is brought, for past infringement of patents or copyrights.''

1960—Pub. L. 86–726 inserted ''or copyrights'' after ''patents'' in cl. (4).

§ 2387. Procurement of table and kitchen equipment for officers' quarters: limitation on

(a) Except under regulations approved by the Secretary of Defense and providing for uniform practices among the armed forces under his jurisdiction, no part of any appropriation of the Department of Defense may be used to supply or replace table linen, dishes, glassware, silver, and kitchen utensils for use in the residences on shore, or quarters on shore, of officers of those armed forces.

(b) This section does not apply to—

(1) field messes;

(2) messes temporarily set up on shore for bachelor officers and officers attached to seagoing or district defense vessels;

(3) aviation units based on seagoing vessels;

(4) fleet air bases;

(5) submarine bases; and

(6) landing forces and expeditions.

(Added Pub. L. 85–861, § 1(45), Sept. 2, 1958, 72 Stat. 1458.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2387(a)	5:174e (less words within parentheses).	July 13, 1955, ch. 358, § 614, 69 Stat. 317.
2387(b)	5:174e (words within parentheses).	

In subsection (a), the words ''may be used'' are substituted for the words ''shall be available''. The words ''on account of'' are omitted as surplusage. The words ''under his jurisdiction'' are inserted for clarity, since the Secretary of Defense has no jurisdiction over the Coast Guard when it is not operating as a service in the Navy.

§ 2388. Liquid fuels and natural gas: contracts for storage, handling, or distribution

(a) AUTHORITY TO CONTRACT.—The Secretary of Defense and the Secretary of a military department may each contract for storage facilities for, or the storage, handling, or distribution of, liquid fuels or natural gas.

(b) PERIOD OF CONTRACT.—The period of a contract entered into under subsection (a) may not exceed 5 years. However, the contract may provide options for the Secretary to renew the contract for additional periods of not more than 5 years each, but not for more than a total of 20 years.

(c) OPTION TO PURCHASE FACILITY.—A contract under this section may contain an option for the purchase by the United States of the facility covered by the contract at the expiration or termination of the contract, without regard to subsections (a) and (b) of section 3324 of title 31, and before approval of title to the underlying land by the Attorney General.

(Added Pub. L. 85–861, § 1(46), Sept. 2, 1958, 72 Stat. 1457; amended Pub. L. 97–214, § 10(a)(3), July

12, 1982, 96 Stat. 175; Pub. L. 97–258, § 3(b)(6), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 97–295, § 1(27), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 101–510, div. A, title XIII, § 1322(a)(6), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, § 825, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 103–355, title III, § 3064, Oct. 13, 1994, 108 Stat. 3337.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2388(a)	50:98i (1st sentence).	Aug. 3, 1956, ch. 939, § 416, 70 Stat. 1018.
2388(b)	50:98i (2d sentence).	
2388(c)	50:98i (less 1st and 2d sentences and proviso of last sentence).	
2388(d)	50:98i (proviso of last sentence).	

In subsection (b), the words ''section applies only'' are substituted for the words ''authority is limited''. The word ''standards'' is substituted for the word ''criteria''.

In subsection (c), the words ''A contract under this section'' are substituted for the words ''Such contracts''. The last 33 words are substituted for 50:98i (28 words before proviso of last sentence).

1982 ACT

In 10:2388(c), the title 31 citation is substituted on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–355 substituted ''liquid fuels or natural gas'' for ''liquid fuels and natural gas''.

1993—Pub. L. 103–160, § 825(b), substituted ''Liquid fuels and natural gas: contracts for storage, handling, or distribution'' for ''Liquid fuels: contracts for storage, handling, and distribution'' as section catchline.

Subsecs. (a), (b). Pub. L. 103–160, § 825(a)(1), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) The Secretary of a military department may contract for the storage, handling, and distribution of liquid fuels for periods of not more than five years, with options to renew for additional periods of not more than five years each, but not for more than a total of 20 years.

''(b) This section applies only to facilities that conform to standards prescribed by the Secretary of Defense for protection, including dispersal, and that are in a program approved by the Secretary of Defense for the protection of petroleum facilities.''

Subsec. (c). Pub. L. 103–160, § 825(a)(2), inserted heading.

1990—Subsec. (d). Pub. L. 101–510 struck out subsec. (d) which read as follows: ''The Secretary concerned shall report to the Committees on Armed Services of the Senate and the House of Representatives the terms of the contracts made under this section and the names of the contractors. The reports shall be made at such times and in such form as may be agreed upon by the Secretary and those Committees.''

1984—Subsec. (c). Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (c). Pub. L. 97–295, § 1(27), substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'', clarifying the ambiguity created by previous amendments by Pub. L. 97–214 and Pub. L. 97–258.

Pub. L. 97–258, § 3(b)(6), directed the substitution of ''section 3324(a) and (b) of title 31'' for ''section 529 of title 31'', which could not be executed in view of prior substitution of language by Pub. L. 97–214.

Pub. L. 97–214, § 10(a)(3), substituted ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' for ''section 4774(d) or 9774(d) of this title, section 529 of title 31, or section 259 or 267 of title 40,''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

PURCHASES OF GASOHOL AS FUEL FOR MOTOR VEHICLES

Pub. L. 96–107, title VIII, § 815, Nov. 9, 1979, 93 Stat. 817, which had authorized the Secretary of Defense to buy domestically produced alcohol and gasohol for use as fuel in Department of Defense motor vehicles, was repealed and reenacted as section 2398 of this title by Pub. L. 97–295, §§ 1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

§ 2389. Ensuring safety regarding insensitive munitions

The Secretary of Defense shall ensure, to the extent practicable, that insensitive munitions under development or procurement are safe throughout development and fielding when subject to unplanned stimuli.

(Added Pub. L. 107–107, div. A, title VIII, § 834(a)(1), Dec. 28, 2001, 115 Stat. 1191.)

PRIOR PROVISIONS

A prior section 2389, added Pub. L. 89–696, § 1(1), Oct. 19, 1966, 80 Stat. 1056; amended Pub. L. 100–370, § 1(h)(1), July 19, 1988, 102 Stat. 847, related to purchases from Commodity Credit Corporation and price adjustments for contracts for procurement of milk, prior to repeal by Pub. L. 103–160, div. A, title VIII, § 821(a)(4), Nov. 30, 1993, 107 Stat. 1704.

REPORT REQUIREMENT

Pub. L. 107–107, div. A, title VIII, § 834(b), Dec. 28, 2001, 115 Stat. 1191, provided that: ''At the same time that the budgets for fiscal years 2003 through 2005 are submitted to Congress under section 1105(a) of title 31, United States Code, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on insensitive munitions. The reports shall include the following:

''(1) The number of waivers granted pursuant to Department of Defense Regulation 5000.2–R (June 2001) during the preceding fiscal year, together with a discussion of the justifications for the waivers.

''(2) Identification of the funding proposed for insensitive munitions in the budget with which the report is submitted, together with an explanation of the proposed funding.''

§ 2390. Prohibition on the sale of certain defense articles from the stocks of the Department of Defense

(a)(1) Except as provided in subsections (b) and (c), the sale outside the Department of Defense of any defense article designated or otherwise classified as Prepositioned Material Configured to Unit Sets, as decrement stock, or as Prepositioned War Reserve Stocks for United States Forces is prohibited.

(2) In this section, the term ''decrement stock'' means such stock as is needed to bring the armed forces from a peacetime level of readiness to a combat level of readiness.

(b) The President may authorize the sale outside the Department of Defense of a defense article described in subsection (a) if—

(1) he determines that there is an international crisis affecting the national security of the United States and the sale of such article is in the best interests of the United States; and

(2) he reports to the Congress not later than 60 days after the transfer of such article a plan for the prompt replenishment of the stocks of such article and the planned budget request to begin implementation of that plan.

(c)(1) Nothing in this section shall preclude the sale of stocks which have been designated for replacement, substitution, or elimination or which have been designated for sale to provide funds to procure higher priority stocks.

(2) Nothing in this section shall preclude the transfer or sale of equipment to other members of the North Atlantic Treaty Organization.

(Added Pub. L. 95–485, title VIII, § 815(a), Oct. 20, 1978, 92 Stat. 1625, § 975; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; renumbered § 2390, Pub. L. 101–189, div. A, title XVI, § 1622(b)(1), Nov. 29, 1989, 103 Stat. 1604.)

PRIOR PROVISIONS

A prior section 2390, added Pub. L. 95–79, title VIII, § 815(a), July 30, 1977, 91 Stat. 337; amended Pub. L. 96–470, title I, § 104(a), Oct. 19, 1980, 94 Stat. 2238; Pub. L. 96–513, title V, § 511(80), Dec. 12, 1980, 94 Stat. 2927, directed Secretary of Defense to request each commissioned officer, and each civilian employee above grade GS–12, who was scheduled for retirement and who was or had been at any time within one year prior to such scheduled retirement, assigned to, or employed in, military procurement to submit suggestions for methods to improve procurement policies, prior to repeal by Pub. L. 98–94, title XII, § 1259(a), Sept. 24, 1983, 97 Stat. 703.

AMENDMENTS

1989—Pub. L. 101–189 renumbered section 975 of this title as this section.

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

§ 2391. Military base reuse studies and community planning assistance

(a) REUSE STUDIES.—Whenever the Secretary of Defense or the Secretary of the military department concerned publicly announces that a military installation is a candidate for closure or that a final decision has been made to close a military installation and the Secretary of Defense determines, because of the location, facilities, or other particular characteristics of the installation, that the installation may be suitable for some specific Federal, State, or local use potentially beneficial to the Nation, the Secretary of Defense may conduct such studies, including the preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), in connection with such installation and such potential use as may be necessary to provide information sufficient to make sound conclusions and recommendations regarding the possible use of the installation.

(b) ADJUSTMENT AND DIVERSIFICATION ASSISTANCE.—(1) The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments in planning community adjustments and economic diversification required (A) by the proposed or actual establishment, realignment, or closure of a military installation, (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, (C) by a publicly announced planned major reduction in Department of Defense spending that would directly and adversely affect a community, (D) by the encroachment of a civilian community on a military installation, or (E) by the closure or the significantly reduced operations of a defense facility as the result of the merger, acquisition, or consolidation of the defense contractor operating the defense facility, if the Secretary determines that an action described in clause (A), (B), (C), or (E) is likely to have a direct and significantly adverse consequence on the affected community or, in the case of an action described in clause (D), if the Secretary determines that the encroachment of the civilian community is likely to impair the continued operational utility of the military installation.

(2) In the case of the establishment or expansion of a military installation, assistance may be made under paragraph (1) only if (A) community impact assistance or special impact assistance is not otherwise available, and (B) the establishment or expansion involves the assignment to the installation of (i) more than 2,000 military, civilian, and contractor Department of Defense personnel, or (ii) more military, civilian, and contractor Department of Defense personnel than the number equal to 10 percent of the number of persons employed in counties or independent municipalities within fifteen miles of the installation, whichever is lesser.

(3) In the case of a publicly announced planned reduction in Department of Defense spending, the closure or significantly reduced operations of a defense facility, the cancellation or termination of a Department of Defense contract, or the failure to proceed with a previously approved major defense acquisition program, assistance may be made under paragraph (1) only if the reduction, cancellation, termination, or failure will have a direct and significant adverse impact on a community and will result in the loss of—

(A) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

(B) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

(C) one percent of the total number of civilian jobs in that area.

(4)(A) In the case of a State or local government eligible for assistance under paragraph (1), the Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist the State or local government to carry out a community adjustment and economic diversification program (including State industrial extension or modernization efforts to facilitate the economic diversification of defense contractors and sub-

contractors) in addition to planning such a program.

(B) The Secretary shall establish criteria for the selection of community adjustment and economic diversification programs to receive assistance under subparagraph (A). Such criteria shall include a requirement that the State or local government agree—

(i) to provide not less than 10 percent of the funding for the program from non-Federal sources;

(ii) to provide business planning and market exploration services under the program to defense contractors and subcontractors that seek modernization or diversification assistance; and

(iii) to provide training, counseling, and placement services for members of the armed forces and dislocated defense workers.

(C) The Secretary shall carry out this paragraph in coordination with the Secretary of Commerce.

(5)(A) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in planning community adjustments and economic diversification even though the State or local government is not currently eligible for assistance under paragraph (1) if the Secretary determines that a substantial portion of the economic activity or population of the geographic area to be subject to the advance planning is dependent on defense expenditures.

(B) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State in enhancing its capacities—

(i) to assist communities, businesses, and workers adversely affected by an action described in paragraph (1);

(ii) to support local adjustment and diversification initiatives; and

(iii) to stimulate cooperation between statewide and local adjustment and diversification efforts.

(C) The Secretary of Defense may also make grants, conclude cooperative agreements, and supplement other Federal funds in order to assist a State or local government in enhancing the capabilities of the government to support efforts of the Department of Defense to privatize, contract for, or diversify the performance of military family support services in cases in which the capability of the Department to provide such services is adversely affected by an action described in paragraph (1).

(6) Funds provided to State and local governments and regional organizations under this section may be used as part or all of any required non-Federal contribution to a Federal grant-in-aid program for the purposes stated in paragraph (1).

(7) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

(A) Before the end of the 7-day period beginning on the date on which the Secretary receives the application, in the case of an application for a planning grant.

(B) Before the end of the 30-day period beginning on such date, in the case of an application for assistance to carry out a community adjustments and economic diversifications program.

(8)(A) In attempting to complete consideration of applications within the time period specified in paragraph (7), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (f)(1).

(B) If an application under paragraph (7) is rejected by the Secretary, the Secretary shall promptly inform the State or local government of the reasons for the rejection of the application.

[(c) Repealed. Pub. L. 107–314, div. A, title X, §1041(a)(13), Dec. 2, 2002, 116 Stat. 2645.]

(d) DEFINITIONS.—In this section:

(1) The term ''military installation'' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

(2) The term ''defense facility'' means any private facility producing goods or services pursuant to a defense contract.

(3) The terms ''community adjustment'' and ''economic diversification'' include the development of feasibility studies and business plans for market diversification within a community adversely affected by an action described in clause (A), (B), (C), or (E) of subsection (b)(1) by adversely affected businesses and labor organizations located in the community.

(e) ASSISTANCE SUBJECT TO APPROPRIATIONS.—The authority of the Secretary of Defense to make grants under this section in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 97–86, title IX, §912(a)(1), Dec. 1, 1981, 95 Stat. 1122; amended Pub. L. 98–115, title VIII, §808, Oct. 11, 1983, 97 Stat. 789; Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–456, div. B, title XXVIII, §2805, Sept. 29, 1988, 102 Stat. 2116; Pub. L. 101–510, div. D, title XLI, §4102(b), Nov. 5, 1990, 104 Stat. 1851; Pub. L. 102–25, title VII, §701(j)(3), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(28), div. D, title XLIII, §4301(a)–(c), Oct. 23, 1992, 106 Stat. 2500, 2696, 2697; Pub. L. 103–35, title II, §202(a)(15), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. B, title XXIX, §2913, Nov. 30, 1993, 107 Stat. 1925; Pub. L. 103–337, div. A, title XI, §§1122(a), 1123(a), (b), Oct. 5, 1994, 108 Stat. 2870, 2871; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. B, title XXVIII, §2814, Sept. 23, 1996, 110 Stat. 2790; Pub. L. 105–85, div. B, title XXVIII, §2822, Nov. 18, 1997, 111 Stat. 1997; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, §1041(a)(13), Dec. 2, 2002, 116 Stat. 2645.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83

Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 struck out heading and text of subsec. (c). Text read as follows: ''The Secretary of Defense shall submit a report not later than December 1 of each year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives concerning the operation of this section during the preceding fiscal year. Each such report shall identify each State, unit of local government, and regional organization that received a grant under this section during such fiscal year and the total amount granted under this section during such year to each such State, unit of local government, and regional organization.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (b)(5)(C). Pub. L. 105–85 added subpar. (C).

1996—Subsec. (b)(5). Pub. L. 104–201 designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(5) to (7). Pub. L. 103–337, § 1123(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively. Former par. (7) redesignated (8).

Subsec. (b)(8). Pub. L. 103–337, § 1123(a)(1), (b), redesignated par. (7) as (8) and substituted ''paragraph (7)'' for ''paragraph (6)'' in subpars. (A) and (B).

Subsec. (d)(3). Pub. L. 103–337, § 1122(a), added par. (3).

1993—Subsec. (b)(1). Pub. L. 103–35 made technical amendment to directory language of Pub. L. 102–484, § 4301(b)(1)(C). See 1992 Amendment note below.

Subsec. (b)(6), (7). Pub. L. 103–160 added pars. (6) and (7).

1992—Subsec. (a). Pub. L. 102–484, § 4301(c)(1), inserted heading.

Subsec. (b). Pub. L. 102–484, § 4301(c)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102–484, § 4301(b)(1), as amended by Pub. L. 103–35, substituted '', (D)'' for '', or (D)'', substituted ''(C), or (E)'' for ''or (C)'', and inserted cl. (E) before first reference to ''if the Secretary''.

Pub. L. 102–484, § 1052(28), substituted ''publicly announced'' for ''publicly-announced''.

Subsec. (b)(3). Pub. L. 102–484, § 4301(b)(2), inserted ''the closure or significantly reduced operations of a defense facility,'' after ''Defense spending,'' in introductory provisions.

Subsec. (b)(4), (5). Pub. L. 102–484, § 4301(a)(1), (2), added par. (4) and redesignated former par. (4) as (5).

Subsec. (c). Pub. L. 102–484, § 4301(c)(3), inserted heading.

Subsec. (d). Pub. L. 102–484, § 4301(b)(3), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In this section, the term 'military installation' means any camp, post, station, base, yard, or other installation under the jurisdiction of a military department that is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.''

Subsec. (e). Pub. L. 102–484, § 4301(c)(4), inserted heading.

1991—Subsec. (b)(3). Pub. L. 102–25 substituted ''publicly announced'' for ''publicly-announced'' and inserted a comma after ''only if the reduction''.

1990—Subsec. (b)(3) to (6). Pub. L. 101–510 added par. (3), redesignated par. (5) as (4), and struck out former pars. (3), (4), and (6), which read as follows:

''(3) In the case of the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, assistance may be made under paragraph (1) only if the cancellation, termination, or failure to proceed involves the loss of 2,500 or more full-time Department of Defense and contractor employee positions in the locality of the affected community.

''(4) In the case of a publicly-announced planned major reduction in Department of Defense spending that will directly and adversely affect a community, assistance may be made under paragraph (1) only if the publicly-announced planned major reduction will result in the loss of 1,000 or more full-time Department of Defense and contractor employee positions over a five-year period in the locality of the affected community.

''(6) Not more than $2,000,000 in assistance may be provided under this subsection in any fiscal year.''

1988—Subsec. (b)(1). Pub. L. 100–456, § 2805(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary of Defense may make grants, conclude cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than the Department of Defense in order to assist State and local governments, and regional organizations composed of State and local governments, in planning community adjustments required (A) by the proposed or actual establishment, realignment, or closure of a military installation, or (B) by the cancellation or termination of a Department of Defense contract or the failure to proceed with an approved major weapon system program, if the Secretary of Defense determines that the action is likely to impose a significant impact on the affected community.''

Subsec. (b)(4) to (6). Pub. L. 100–456, § 2805(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

1987—Subsec. (d). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

1983—Subsec. (b)(2). Pub. L. 98–115 substituted ''2,000'' for ''2,500''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2702 of title XXVII of div. B of Pub. L. 100–456 provided that: ''Except as otherwise specifically provided, this division [amending this section and sections 2662, 2672, 2809, and 2828 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1988, or the date of enactment of this Act [Sept. 29, 1988], whichever is later.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 808 of Pub. L. 98–115 provided that the amendment made by that section is effective Oct. 1, 1983.

ADVANCE ADJUSTMENT PLANNING

Section 4301(d) of Pub. L. 102–484 authorized Secretary of Defense, during fiscal year 1993, to make grants and other assistance available under 10 U.S.C. 2391(b) to assist a State or local government in planning community adjustments and economic diversification even though the State or local government currently failed to meet the criteria for assistance under such section if the Secretary determined that a substantial portion of the economic activity or population of the geographic area to be subjected to the adjustment or diversification planning was dependent on Department of Defense expenditures.

EFFECT OF 1992 AMENDMENTS ON EFFORTS OF ECONOMIC DEVELOPMENT ADMINISTRATION

Section 4301(f) of Pub. L. 102–484 provided that: ''Nothing in this section [amending this section and enacting provisions set out as a note above] is intended to replace the efforts of the economic development pro-

gram administered by the Economic Development Administration of the Department of Commerce.''

PILOT PROJECT TO IMPROVE ECONOMIC ADJUSTMENT PLANNING

Section 4302 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title XIII, §1323(a), Nov. 30, 1993, 107 Stat. 1790, authorized Secretary of Defense, during fiscal years 1993 and 1994, to conduct a pilot project to examine methods to improve the provision of economic adjustment and diversification assistance under 10 U.S.C. 2391(b)(1) to State and local governments adversely affected by the closure of military installations, the cancellation or completion of defense contracts, or reductions in defense spending.

DONATION OF REAL PROPERTY TO NONPROFIT ENTITIES PROVIDING SUPPORT TO CHILDREN WITH LIFE-THREATENING DISEASES

Pub. L. 102–172, title VIII, §8149, Nov. 26, 1991, 105 Stat. 1214, provided that:

''(a) The Secretary of Defense, during the current fiscal year or at any time thereafter, may make a donation to an entity described in subsection (b) of a parcel of real property (including structures on such property) under the jurisdiction of the Secretary that is not currently required for the needs of the Department and that the Secretary determines is needed and appropriate for the activities of that entity.

''(b) A donation under subsection (a) may be made to a nonprofit entity which provides medical, educational, and emotional support in a recreational setting to children with life-threatening diseases and their families.''

DEFENSE ECONOMIC ADJUSTMENT, DIVERSIFICATION, CONVERSION, AND STABILIZATION

Pub. L. 101–510, div. D, Nov. 5, 1990, 104 Stat. 1848, as amended by Pub. L. 102–190, div. A, title X, §1062(c), Dec. 5, 1991, 105 Stat. 1475; Pub. L. 102–484, div. D, title XLII, §4212(b), Oct. 23, 1992, 106 Stat. 2664; Pub. L. 104–201, div. A, title VIII, §825, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(6)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, provided that:

''SEC. 4001. SHORT TITLE

''This division may be cited as the 'Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990'.

''SEC. 4002. FINDINGS AND POLICY

''(a) FINDINGS.—Congress makes the following findings:

''(1) There are likely to be significant reductions in the programs, projects, and activities of the Department of Defense during the first several fiscal years following fiscal year 1990.

''(2) Such reductions will adversely affect the economies of many communities in the United States and small businesses and civilian workers throughout the United States.

''(b) POLICY.—In view of the findings expressed in subsection (a), it is the policy of the United States that—

''(1) assistance be provided under existing planning assistance programs and economic adjustment assistance programs of the Federal Government to substantially and seriously affected communities, businesses, and workers to the extent necessary to facilitate an orderly transition for such communities, small businesses, and workers from economic reliance on Department of Defense spending to economic reliance on other sources of business, employment, and revenue; and

''(2) funding for such programs be increased by amounts necessary to meet the needs of such communities, small businesses, and workers without reducing the funding that would otherwise be available under those programs by reason of causes unrelated to the reductions referred to in subsection (a)(1).

''SEC. 4003. DEFINITIONS

''For purposes of this division:

''(1) The term 'major defense contract or subcontract' means—

''(A) any defense contract in an amount not less than $5,000,000 (without regard to the date on which the contract was awarded); and

''(B) any subcontract which—

''(i) is entered into in connection with a contract (without regard to the effective date of the subcontract); and

''(ii) involves not less than $500,000.

''(2) The term 'Economic Adjustment Committee' or 'Committee' means the Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note).

''(3) The term 'defense facility' means any private or government facility producing goods or services pursuant to a defense contract.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, or homeport facility for any ship in the United States, or any other facility under the jurisdiction of a military department located in the United States.

''(5) The term 'substantially and seriously affected' means—

''(A) when such term is used in conjunction with the term 'community', a community—

''(i) which has within its administrative and political jurisdiction one or more military installations or defense facilities or which is economically affected by proximity to a military installation or defense facility;

''(ii) in which the actual or threatened curtailment, completion, elimination, or realignment of a defense contract results in a workforce reduction of—

''(I) 2,500 or more employee positions, in the case of a Metropolitan Statistical Area or similar area (as defined by the Director of the Office of Management and Budget);

''(II) 1,000 or more employee positions, in the case of a labor market area outside of a Metropolitan Statistical Area; or

''(III) one percent of the total number of civilian jobs in that area; and

''(iii) which establishes, by evidence, that any workforce reduction referred to in clause (ii) occurred as a direct result of changes in Department of Defense requirements or programs;

''(B) when such term is used in conjunction with the term 'businesses' any business which—

''(i) holds a major defense contract or subcontract (or held such contract or subcontract before a reduction in the defense budget);

''(ii) experiences a reduction, or the threat of a reduction, of—

''(I) 25 percent or more in sales or production; or

''(II) 80 percent or more of the workforce of such business in any division of such business or at any plant or other facility of such business; and

''(iii) establishes, by evidence, that the reductions referred to in clause (ii) occurred as a direct result of a reduction in the defense budget; and

''(C) when such term is used in conjunction with the term 'group of workers', any group of 100 or more workers at a defense facility who are (or who are threatened to be), eligible to participate in the defense conversion adjustment program under section 325 of the Job Training Partnership Act [29 U.S.C. 1662d] (as added by section 4202 of this division), as in effect on the day before the date of enactment of the Workforce Investment Act of 1998 [Aug. 7, 1998].

''SEC. 4004. CONTINUATION OF ECONOMIC ADJUSTMENT COMMITTEE

''(a) TERMINATION OR ALTERATION PROHIBITED.—The Economic Adjustment Committee established in Executive Order 12049 (10 U.S.C. 111 note) may not be termi-

nated and the duties of the Committee may not be significantly altered unless specifically authorized by a law.

''(b) CHAIRMAN.—Until October 1, 1997, the Secretary of Defense shall be the chairman of the Committee. After that, the chairmanship shall rotate annually among the Secretary of Defense, Secretary of Labor, and the Secretary of Commerce.

''(c) EXECUTIVE COUNCIL.—Until October 1, 1997, the National Defense Technology and Industrial Base Council shall function as an Executive Council of the Committee. Under the direction of the chairman of the Committee, the Executive Council shall develop policies and procedures to ensure that communities, businesses, and workers substantially and seriously affected by reductions in defense expenditures are advised of the assistance available to such communities, businesses, and workers under programs administered by the departments and agency comprising the Council.

''(d) DUTIES OF COMMITTEE.—The Economic Adjustment Committee shall—

''(1) coordinate and facilitate cooperative efforts among Federal agencies represented on the Committee to implement defense economic adjustment programs;

''(2) serve as an information clearinghouse for and between Federal, State, and local entities regarding their defense economic adjustment efforts; and

''(3) submit to the President and Congress, not later than December 1, 1991, and each December 1 thereafter, a report that—

''(A) describes Federal economic adjustment programs available to communities, businesses, and groups of workers;

''(B) describes the implementation of defense economic adjustment assistance during the preceding fiscal year; and

''(C) specifies the number of communities, businesses, and workers affected by defense budget reductions during the preceding fiscal year and such number assisted by Federal economic adjustment programs during that fiscal year.

''TITLE XLI—ECONOMIC ADJUSTMENT PLANNING

''[SEC. 4101. Repealed. Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

''SEC. 4102. ECONOMIC ADJUSTMENT PLANNING ASSISTANCE THROUGH THE DEPARTMENT OF DEFENSE

''(a) IN GENERAL.—Any substantially and seriously affected community shall be eligible for economic adjustment planning assistance through the Office of Economic Adjustment in the Department of Defense under subsection (b) of section 2391 of title 10, United States Code, subject to subsection (e) of such section. Such assistance shall be provided in accordance with the standards, procedures, and priorities established by the Committee under this division.

''(b) [Amended section 2391(b) of this title.]

''SEC. 4103. COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE THROUGH THE ECONOMIC DEVELOPMENT ADMINISTRATION

''(a) IN GENERAL.—A community that has been determined by the Economic Development Administration of the Department of Commerce or the Office of Economic Adjustment of the Department of Defense, in accordance with the standards and procedures established by the Economic Adjustment Committee, to be a substantially and seriously affected community shall be eligible for economic adjustment assistance authorized under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], subject to the availability of appropriations for such purpose and subject to meeting the eligibility requirements of such title.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for fiscal year 1991 $50,000,000 for purposes of carrying out subsection (a). Any amount appropriated pursuant to this subsection shall remain available until expended.

''TITLE XLII—ADJUSTMENT ASSISTANCE FOR EMPLOYEES

''[SEC. 4201. Repealed. Pub. L. 104–201, div. A, title VIII, § 825, Sept. 23, 1996, 110 Stat. 2611.]

''SEC. 4202. DEFENSE CONVERSION ADJUSTMENT PROGRAM

''[Enacted section 1662d of Title 29, Labor.]

''SEC. 4203. AUTHORIZATION OF APPROPRIATIONS

''(a) AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Defense $150,000,000 for fiscal year 1991 to carry out section 4201 and the amendment made by section 4202. Amounts appropriated pursuant to this subsection shall remain available until expended.

''(b) ADMINISTRATIVE EXPENSES.—Of amounts appropriated pursuant to this section, not more than five percent may be retained by the Secretary of Labor for the administration of the activities authorized by the amendment made by section 4202.

''TITLE XLIII—EXPANSION OF BUSINESS CAPITAL ASSISTANCE PROGRAMS

''SEC. 4301. EXPANSION OF SMALL BUSINESS LOAN PROGRAM

''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the President, acting with the assistance of the Committee and after consulting experts in government and the private sector, shall transmit to the Congress recommendations regarding ways that assistance provided pursuant to the business loan program under section 7(a) of the Small Business Act of 1958 [15 U.S.C. 636(a)] may be used to respond to the consequences of defense budget reductions.

''SEC. 4302. ECONOMIC PLANNING ASSISTANCE FOR EXCEPTIONAL PROJECTS

''(a) ASSISTANCE AUTHORIZED.—The Economic Development Administration, in the case of assistance under title IX of the Public Works and Economic Development Act of 1965 [42 U.S.C. 3241 et seq.], and the Office of Economic Adjustment, in the case of planning assistance under section 2391(b) of title 10, United States Code, may award planning assistance under those programs to any substantially and seriously affected community, on behalf of a business, group of businesses, or group of workers, if such planning funds are determined by the agency concerned to be necessary and appropriate as a catalyst for projects which the agency determines, on a case-by-case basis, have exceptional promise for achieving the objectives of this division.

''(b) CONDITIONS ON ASSISTANCE.—Awards under this section shall be subject to the availability of appropriations for such purpose and shall be made in accordance with any other applicable provisions of law.

''SEC. 4303. EXPANSION OF EXPORT FINANCING FOR GOODS AND SERVICES PRODUCED BY FIRMS AND EMPLOYEES FORMERLY ENGAGED IN DEFENSE PRODUCTION

''(a) EXPORT-IMPORT BANK.—

''(1) SENSE OF CONGRESS ON PLAN FOR EXPANSION.—It is the sense of Congress that the United States businesses undergoing transition from defense production to nondefense production will need assistance in seizing export markets overseas. Therefore, in order to provide financial support for such businesses, as well as meeting other normal demands on its resources, the annual direct lending authority of the Export-Import Bank of the United States should be increased by at least 150 percent from the fiscal year 1990 level over the five-year period beginning October 1, 1990.

''(2) REPORT OF FEASIBILITY.—Before September 30, 1990, the President, acting with the assistance of the Committee and after consulting the Board of Directors of the Export-Import Bank of the United States

and other experts in government and the private sector, shall transmit to the Congress a report assessing the feasibility and desirability of a program for increasing the amount of direct loan authority in the manner described in paragraph (1) and the factors considered in making such assessment.

''(3) TRANSITION TO NONDEFENSE PRODUCTION REQUIRED TO BE CONSIDERED.—In determining whether to provide financial support for an export transaction, the Export-Import Bank of the United States shall take into account, to the extent feasible and in accordance with applicable standards and procedures established by the bank in consultation with the Committee, the fact that the product or service is produced or provided by any business or group of workers which—

''(A) was substantially and seriously affected by defense budget reductions; and

''(B) is in transition from defense to nondefense production.

''(b) SBA USE OF AUTHORITY FOR EXPORT FINANCING ASSISTANCE.—In determining whether to provide financial or other assistance under the Small Business Act [15 U.S.C. 631 et seq.], title VIII of the Omnibus Trade and Competitiveness Act of 1988 [Pub. L. 100–418, see Short Title of 1988 Amendments note set out under section 631 of Title 15, Commerce and Trade], or any program referred to in section 4301 to any small business involved in, or attempting to become involved in, the export of any product or service, the Administrator of the Small Business Administration shall take into account the fact that such product or service is produced or provided by any business or group of workers which—

''(1) has been substantially and seriously affected by defense budget reductions; and

''(2) is in transition from defense to nondefense production.

''(c) COORDINATION AND INTEGRATION OF ACTIVITIES AND ASSISTANCE WITH OTHER AGENCIES.—In providing additional financial assistance pursuant to any increase in loan authority under this division—

''(1) Federal agencies concerned with international trade shall participate in the process of coordination conducted by the Committee pursuant to section 4004(c)(1); and

''(2) such Federal agencies shall attempt, to the maximum extent practicable, to coordinate and integrate the activities and assistance of the agencies in support of exports, including financial assistance in the form of direct loans, loan guarantees, and insurance, general trade promotion, marketing assistance, and marketing and commercial information, in a manner consistent with the purposes of this division (and the amendments made by this division to other provisions of law).

''(d) REPORTING.—The annual reports made by the Export-Import Bank of the United States and the Administrator of the Small Business Administration and the annual economic stabilization and adjustment report under section 4004(c)(3) of this division shall include a description of the extent to which the bank and the Administrator are—

''(1) providing financing described in subsections (a)(2) and (b), respectively, to businesses or groups of workers which were substantially and seriously affected by defense budget reductions; and

''(2) coordinating and integrating export support and financing activities with other Federal agencies.

''SEC. 4304. BENEFIT INFORMATION FOR BUSINESSES

''(a) INFORMATION REQUIRED TO BE PROVIDED.—The Secretary of Commerce and the Administrator of the Small Business Administration shall provide any business affected by defense budget reductions with a complete description of available programs which provide any business, whether on an industrywide or an individual basis, with any planning assistance, financial, technical, or managerial assistance, worker retraining assistance, or other assistance authorized under this division.

''(b) EFFECTIVE NOTIFICATION SYSTEM.—The Secretary of Commerce and the Administrator of the Small Business Administration shall take such action as may be appropriate to ensure, to the maximum extent practicable, that each business affected by defense budget reductions receives the information required to be provided under subsection (a) on a timely basis.''

COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Section 2819 of Pub. L. 100–456, as amended by Pub. L. 101–510, div. B, title XXIX, §2922(a), Nov. 5, 1990, 104 Stat. 1820, established Commission on Alternative Utilization of Military Facilities and required Commission to submit reports to President and Congress not later than Sept. 1 of every second year through fiscal year 1996, prior to repeal by Pub. L. 105–261, div. A, title X, §1031(b), Oct. 17, 1998, 112 Stat. 2123.

SUBMISSION DATE FOR FIRST REPORT

Section 912(c) of Pub. L. 97–86 required the first report under subsec. (c) of this section to be submitted not later than Dec. 1, 1982.

EX. ORD. NO. 12682. COMMISSION ON ALTERNATIVE UTILIZATION OF MILITARY FACILITIES

Ex. Ord. No. 12682, July 7, 1989, 54 F.R. 29315, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 2819 of the Military Construction Authorization Act, 1989 (Public Law 100–456) [10 U.S.C. 2391 note], it is hereby ordered as follows:

SECTION 1. (a) I hereby establish the Commission on Alternative Utilization of Military Facilities (''Commission'').

(b) The Commission shall consist of a representative of the Department of Defense designated by the Secretary of Defense, a representative of the Federal Bureau of Prisons designated by the Attorney General, a representative of the National Institute on Drug Abuse designated by the Secretary of Health and Human Services, a representative of the General Services Administration designated by the Administrator of General Services, a representative of the Department of Housing and Urban Development designated by the Secretary of Housing and Urban Development, and a representative of the Office of National Drug Control Policy designated by the Director of the Office of National Drug Control Policy. The representative of the Department of Defense shall chair the Commission.

(c) The Secretary of Defense shall provide such personnel and support to the Commission as the Secretary determines is necessary to accomplish its mission.

SEC. 2. (a) Subject to subsection (b), the Secretary of Defense shall prepare and submit to the Commission reports listing active and nonactive military facilities that are underutilized in whole or in part or otherwise excess to the needs of the Department of Defense.

(b) The first such report shall be prepared and submitted as soon as possible for inclusion in the first report of the Commission. The second report shall be prepared and submitted on January 30, 1990, and succeeding reports shall be prepared and submitted every other year commencing on January 30, 1992, and continuing until January 30, 1996.

SEC. 3. (a) Subject to subsection (b), the Commission shall submit a report to the President and then to the Congress that identifies those facilities, or parts of facilities, from the list submitted by the Secretary of Defense under Section 2 that could be effectively utilized or renovated to serve as:

(1) minimum security facilities for nonviolent prisoners,

(2) drug treatment facilities for nonviolent drug abusers, and

(3) facilities to assist the homeless.

(b) The first report of the Commission shall be submitted to the President and then to the Congress by

September 1, 1989. The second, and succeeding reports of the Commission, shall be submitted to the President and then to the Congress no later than September 1, 1990, and every second year through September 1, 1996.

GEORGE BUSH.

EX. ORD. NO. 12788. DEFENSE ECONOMIC ADJUSTMENT PROGRAM

Ex. Ord. No. 12788, Jan. 15, 1992, 57 F.R. 2213, as amended by Ex. Ord. No. 13286, § 33, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 10 U.S.C. 2391 and the Defense Economic Adjustment, Diversification, Conversion, and Stabilization Act of 1990, enacted as Division D, section 4001 *et seq.*, of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510 [set out above], and to provide coordinated Federal economic adjustment assistance necessitated by changes in Department of Defense activities, it is hereby ordered as follows:

SECTION 1. *Function of the Secretary of Defense.* The Secretary of Defense shall, through the Economic Adjustment Committee, design and establish a Defense Economic Adjustment Program.

SEC. 2. *Purpose of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall assist in the alleviation of serious community socioeconomic effects that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations.

SEC. 3. *Functions of the Defense Economic Adjustment Program.* The Defense Economic Adjustment Program shall:

(a) Identify problems of States, regions, metropolitan areas, or communities that result from major Defense base closures, realignments, and Defense contract-related adjustments, and the encroachment of the civilian community on the mission of military installations and that require Federal assistance;

(b) Use and maintain a uniform socioeconomic impact analysis to justify the use of Federal economic adjustment resources, prior to particular realignments;

(c) Apply consistent policies, practices, and procedures in the administration of Federal programs that are used to assist Defense-affected States, regions, metropolitan areas, and communities;

(d) Identify and strengthen existing agency mechanisms to coordinate employment opportunities for displaced agency personnel;

(e) Identify and strengthen existing agency mechanisms to improve reemployment opportunities for dislocated Defense industry personnel;

(f) Assure timely consultation and cooperation with Federal, State, regional, metropolitan, and community officials concerning Defense-related impacts on Defense-affected communities' problems;

(g) Assure coordinated interagency and intergovernmental adjustment assistance concerning Defense impact problems;

(h) Prepare, facilitate, and implement cost-effective strategies and action plans to coordinate interagency and intergovernmental economic adjustment efforts;

(i) Encourage effective Federal, State, regional, metropolitan, and community cooperation and concerted involvement of public interest groups and private sector organizations in Defense economic adjustment activities;

(j) Serve as a clearinghouse to exchange information among Federal, State, regional, metropolitan, and community officials involved in the resolution of community economic adjustment problems. Such information may include, for example, previous studies, technical information, and sources of public and private financing;

(k) Assist in the diversification of local economies to lessen dependence on Defense activities;

(*l*) Encourage and facilitate private sector interim use of lands and buildings to generate jobs as military activities diminish; and,

(m) Develop ways to streamline property disposal procedures to enable Defense-impacted communities to acquire base property to generate jobs as military activities diminish.

SEC. 4. *Economic Adjustment Committee.*

(a) *Membership.* The Economic Adjustment Committee (''Committee'') shall be composed of the following individuals, or a designated principal deputy of these individuals, and such other individuals from the executive branch as the President may designate. Such individuals shall include the:

(1) Secretary of Agriculture;
(2) Attorney General;
(3) Secretary of Commerce;
(4) Secretary of Defense;
(5) Secretary of Education;
(6) Secretary of Energy;
(7) Secretary of Health and Human Services;
(8) Secretary of Housing and Urban Development;
(9) Secretary of the Interior;
(10) Secretary of Labor;
(11) Secretary of State;
(12) Secretary of Transportation;
(13) Secretary of the Treasury;
(14) Secretary of Veterans Affairs;
(15) Secretary of Homeland Security;
(16) Chairman, Council of Economic Advisers;
(17) Director of the Office of Management and Budget;
(18) Director of the Office of Personnel Management;
(19) Director of the United States Arms Control and Disarmament Agency;
(20) Administrator of the Environmental Protection Agency;
(21) Director of the Federal Emergency Management Agency;
(22) Administrator of General Services;
(23) Administrator of the Small Business Administration; and,
(24) Postmaster General.

(b) *Chairman.* The Secretaries of Defense, Commerce, and Labor shall rotate, on a yearly basis, as chairman of the Committee.

(c) *Vice Chairman.* The Assistant Secretary of Defense who oversees the Department of Defense's Office of Economic Adjustment shall serve as vice chairman of the Committee. The vice chairman shall chair the Committee in the absence of both the chairman and the chairman's designee and may also preside over meetings of designated representatives of the concerned executive agencies.

(d) *Executive Director.* The head of the Department of Defense's Office of Economic Adjustment shall provide all necessary policy and administrative support for the Committee and shall be responsible for coordinating the application of the Defense Economic Adjustment Program to Department of Defense activities.

(e) *Duties.* The Committee shall:

(1) Advise, assist, and support the Defense Economic Adjustment Program;

(2) Develop procedures for ensuring that State, regional, and community officials and representatives of organized labor in those States, municipalities, localities, or labor organizations that are substantially and seriously affected by changes in Defense expenditures, realignments or closures, or cancellation or curtailment of major Defense contracts, are notified of available Federal economic adjustment programs; and,

(3) Report annually to the President and then to the Congress on the work of the Economic Adjustment Committee during the preceding fiscal year.

SEC. 5. *Responsibilities of Executive Agencies.*

(a) The head of each agency represented on the Committee shall designate an agency representative to:

(1) Serve as a liaison with the Secretary of Defense's economic adjustment staff;

(2) Coordinate agency support and participation in economic adjustment assistance projects; and,

(3) Assist in resolving Defense-related impacts on Defense-affected communities.

(b) All executive agencies shall:

(1) Support, to the extent permitted by law, the economic adjustment assistance activities of the Secretary of Defense. Such support may include the use and application of personnel, technical expertise, legal authorities, and available financial resources. This support may be used, to the extent permitted by law, to provide a coordinated Federal response to the needs of individual States, regions, municipalities, and communities adversely affected by necessary Defense changes;

(2) Afford priority consideration to requests from Defense-affected communities for Federal technical assistance, financial resources, excess or surplus property, or other requirements, that are part of a comprehensive plan used by the Committee.

SEC. 6. *Judicial Review*. This order shall not be interpreted to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, its agents, or any person.

SEC. 7. *Construction*. (a) Nothing in this order shall be construed as subjecting any function vested by law in, or assigned pursuant to law to, any agency or head thereof to the authority of any other agency or officer or as abrogating or restricting any such function in any manner.

(b) This order shall be effective immediately and shall supersede Executive Order No. 12049.

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

§ 2392. Prohibition on use of funds to relieve economic dislocations

(a) In order to help avoid the uneconomic use of Department of Defense funds in the procurement of goods and services, the Congress finds that it is necessary to prohibit the use of such funds for certain purposes.

(b) No funds appropriated to or for the use of the Department of Defense may be used to pay, in connection with any contract awarded by the Department of Defense, a price differential for the purpose of relieving economic dislocations.

(Added Pub. L. 97–86, title IX, §913(a)(1), Dec. 1, 1981, 95 Stat. 1123.)

CONTRACTS MADE BY DEFENSE LOGISTICS AGENCY; PAYMENTS OF PRICE DIFFERENTIALS TO RELIEVE ECONOMIC DISLOCATIONS; TEST PROGRAM; INTERIM REPORTS

Pub. L. 97–252, title XI, §1109, Sept. 8, 1982, 96 Stat. 746, as amended by Pub. L. 98–94, title XII, §1205, Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title XII, §1254, Oct. 19, 1984, 98 Stat. 2611, provided that:

''(a) The Secretary of Defense should conduct a test program during fiscal years 1983, 1984, and 1985 in accordance with this subsection to test the effect of exempting certain contracts of the Department of Defense from the provisions of section 2392 of title 10, United States Code, and paying a price differential under such contracts for the purpose of relieving economic dislocations. Under such test program, the Secretary of Defense may exempt from the provisions of such section any contract (other than a contract for the purchase of fuel) made by the Defense Logistics Agency during fiscal years 1983, 1984, and 1985 if the contract is to be awarded to an individual or firm located in a Labor Surplus Area (as defined and identified by the Department of Labor) and if the Secretary determines—

''(1) that the awarding of such contract will not adversely affect the national security of the United States;

''(2) that there is a reasonable expectation that bids will be received from a sufficient number of responsible bidders so that the award of such contract will be made at reasonable cost to the United States;

''(3) that the price differential to be paid under such contract will not exceed 2.2 percent; and

''(4) the value of such contract, when added to the cumulative value of all other contracts awarded under the test program authorized by this section, will not exceed $4,000,000,000.

''(b) Not later than April 15, 1983, April 15, 1984, and April 15, 1985 the President shall submit a report to Congress on the implementation and results to that date of the test program authorized by subsection (a). The report shall include an assessment of the costs and benefits of the test program.''

[Amendment of subsecs. (a) and (b) by Pub. L. 98–525, §1254(a), was made effective Oct. 1, 1984; and amendment of subsec. (a) by Pub. L. 98–525, §1254(b), was made effective as of Oct. 1, 1982.]

Similar provisions were contained in the following prior authorization act:

1982—Dec. 1, 1981, Pub. L. 97–86, title IX, §913(b), (c), 95 Stat. 1124.

§ 2393. Prohibition against doing business with certain offerors or contractors

(a)(1) Except as provided in paragraph (2), the Secretary of a military department may not solicit an offer from, award a contract to, extend an existing contract with, or, when approval by the Secretary of the award of a subcontract is required, approve the award of a subcontract to, an offeror or contractor which to the Secretary's knowledge has been debarred or suspended by another Federal agency unless—

(A) in the case of debarment, the debarment of the offeror or contractor by all other agencies has been terminated or the period of time specified for such debarment has expired; and

(B) in the case of a suspension, the period of time specified by all other agencies for the suspension of the offeror or contractor has expired.

(2) Paragraph (1) does not apply in any case in which the Secretary concerned determines that there is a compelling reason to solicit an offer from, award a contract to, extend a contract with, or approve a subcontract with such offeror or contractor.

(b) Whenever the Secretary concerned makes a determination described in subsection (a)(2), he shall, at the time of the determination, transmit a notice to the Administrator of General Services describing the determination. The Administrator of General Services shall maintain each such notice in a file available for public inspection.

(c) In this section:

(1) The term ''debar'' means to exclude, pursuant to established administrative procedures, from Government contracting and subcontracting for a specified period of time commensurate with the seriousness of the failure or offense or the inadequacy of performance.

(2) The term ''suspend'' means to disqualify, pursuant to established administrative procedures, from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected of engaging in criminal, fraudulent, or seriously improper conduct.

(d) The Secretary of Defense shall prescribe in regulations a requirement that each contractor

under contract with the Department of Defense shall require each contractor to whom it awards a contract (in this section referred to as a subcontractor) to disclose to the contractor whether the subcontractor is or is not, as of the time of the award of the subcontract, debarred or suspended by the Federal Government from Government contracting or subcontracting. The requirement shall apply to any subcontractor whose subcontract is in an amount greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))). The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(Added Pub. L. 97–86, title IX, § 914(a), Dec. 1, 1981, 95 Stat. 1124; amended Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 101–510, div. A, title VIII, § 813, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–190, div. A, title X, § 1061(a)(11), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 103–355, title IV, § 4102(e), title VIII, § 8105(c), Oct. 13, 1994, 108 Stat. 3340, 3392.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–355 substituted ''greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).'' for ''above the small purchase amount established in section 2304(g) of this title.'' in second sentence and inserted at end ''The requirement shall not apply in the case of a subcontract for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).''

1991—Subsec. (d). Pub. L. 102–190 substituted ''Federal Government'' for ''Federal government''.

1990—Subsec. (d). Pub. L. 101–510 added subsec. (d).

1987—Subsec. (c). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2410f of this title; title 33 section 569f; title 42 section 5206.

§ 2394. Contracts for energy or fuel for military installations

(a) Subject to subsection (b), the Secretary of a military department may enter into contracts for periods of up to 30 years—

(1) under section 2689 of this title; and

(2) for the provision and operation of energy production facilities on real property under the Secretary's jurisdiction or on private property and the purchase of energy produced from such facilities.

(b) A contract may be made under subsection (a) only after the approval of the proposed contract by the Secretary of Defense.

(c) The costs of contracts under this section for any year may be paid from annual appropriations for that year.

(Added Pub. L. 97–214, § 6(a)(1), July 12, 1982, 96 Stat. 171; amended Pub. L. 97–321, title VIII, § 805(b)(3), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1301(12), Nov. 5, 1990, 104 Stat. 1668.)

CODIFICATION

Another section 2394 was renumbered section 2395 of this title.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–510 substituted ''only after the approval of the proposed contract by the Secretary of Defense'' for ''only—

''(1) after the approval of the proposed contract by the Secretary of Defense; and

''(2) after the Committees on Armed Services and on Appropriations of the Senate and House of Representatives have been notified of the terms of the proposed contract, including the dollar amount of the contract and the amount of energy or fuel to be delivered to the Government under the contract''.

1987—Subsec. (c). Pub. L. 100–26, which directed that ''The term'' be inserted in each paragraph after the paragraph designation and the first word after the first quotation marks in each paragraph be revised so that the initial letter of such word is lowercase, could not be executed because subsec. (c) contained no paragraphs and no quoted words. The probable intent of Congress was to amend section 2393(c) of this title.

1982—Subsec. (a). Pub. L. 97–321, § 805(b)(3)(A), substituted ''subsection (b)'' for ''subsection (c)''.

Subsecs. (c), (d). Pub. L. 97–321, § 805(b)(3)(B), redesignated subsec. (d) as (c).

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 591.

§ 2394a. Procurement of energy systems using renewable forms of energy

(a) In procuring energy systems the Secretary of a military department shall procure systems that use solar energy or other renewable forms of energy whenever the Secretary determines that such procurement is possible and will be cost effective, reliable, and otherwise suited to supplying the energy needs of the military department under his jurisdiction.

(b) The Secretary of Defense shall from time to time study uses for solar energy and other renewable forms of energy to determine what uses of such forms of energy may be cost effective and reliable in supplying the energy needs of the Department of Defense. The Secretary of Defense, based upon the results of such studies, shall from time to time issue policy guidelines to be followed by the Secretaries of the military departments in carrying out subsection (a) and section 2857 of this title.

(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system using such a form of energy, and (B) the original investment cost of the energy system not using

such a form of energy can be recovered over the expected life of the system.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a system shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(Added Pub. L. 97–321, title VIII, §801(a)(1), Oct. 15, 1982, 96 Stat. 1569; amended Pub. L. 98–525, title XIV, §1405(36), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, §1322(a)(7), div. B, title XXVIII, §2852(a), Nov. 5, 1990, 104 Stat. 1671, 1804; Pub. L. 102–25, title VII, §701(g)(2), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (b). Pub. L. 101–510, §1322(a)(7), struck out ''(1)'' after ''(b)'' and struck out par. (2) which read as follows: ''The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives not less often than every two years a report on the studies conducted pursuant to paragraph (1). Each such report shall include any findings of the Secretary with respect to the use of solar energy and other renewable forms of energy in supplying the energy needs of the Department of Defense and any recommendations of the Secretary for changes in law that may be appropriate in light of such studies.''

Subsec. (c)(2), (3). Pub. L. 101–510, §2852(a), added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a system shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system using solar energy or other renewable forms of energy, and not using such a form of energy, over the expected life of the system or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1984—Pub. L. 98–525 substituted ''using'' for ''powered by'' in section catchline.

SUBMISSION DATE FOR FIRST REPORT

Section 801(a)(3) of Pub. L. 97–321 required the first report under subsec. (b)(2) of this section to be submitted not later than two years after Oct. 15, 1982.

§ 2395. Availability of appropriations for procurement of technical military equipment and supplies

Funds appropriated to the Department of Defense for the procurement of technical military equipment and supplies remain available until spent.

(Added Pub. L. 97–258, §2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1052, §2394; renumbered §2395 and amended Pub. L. 97–295, §1(28)(A), Oct. 12, 1982, 96 Stat. 1291.)

HISTORICAL AND REVISION NOTES
1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2394	31:649c(1).	Aug. 10, 1956, ch. 1041, §40(1), 70A Stat. 636; Nov. 17, 1971, Pub. L. 92–156, §201(b), 85 Stat. 424.

The words ''Unless otherwise provided in the appropriation Act concerned'' are omitted as unnecessary and for consistency. The word ''Funds'' is substituted for ''moneys'' for consistency in title 10. The word ''military'' is added before ''public'' for clarity. The words ''including moneys appropriated to the Department of the Navy for the procurement and construction of guided missiles'' are omitted as included in ''technical military equipment''.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395	10:2394.	Sept. 13, 1982, Pub. L. 97–258, §2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2394 (enacted by Pub. L. 97–258) as 10:2395 because of the enactment of another 10:2394 by Pub. L. 97–214, §6(a)(1), July 12, 1982, 96 Stat. 171, and amends the section generally to eliminate the words ''and the construction of military public works'' because of section 10(b)(5) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 176) which struck corresponding words from the source statute for 10:2394 subsequent to Apr. 15, 1982, the cutoff date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(4)(B) of which enacted 10:2394.

CODIFICATION

Another section 2395 was renumbered section 2396 of this title.

AMENDMENTS

1982—Pub. L. 97–295 struck out ''and the construction of military public works'' after ''supplies''.

§ 2396. Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries

(a) An advance under an appropriation to the Department of Defense may be made to pay for—

(1) compliance with laws and ministerial regulations of a foreign country;

(2) rent in a foreign country for periods of time determined by local custom;

(3) tuition; and

(4) public service utilities.

(b)(1) Under regulations prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service of the Navy, an officer of an armed force of the United States accountable for public money may advance amounts to a disbursing official of a friendly foreign country or members of an armed force of a friendly foreign country for—

(A) pay and allowances to members of the armed force of that country; and

(B) necessary supplies and services.

(2) An advance may be made under this subsection only if the President has made an agreement with the foreign country—

(A) requiring reimbursement to the United States for amounts advanced;

(B) requiring the appropriate authority of the country to advance amounts reciprocally to members of the armed forces of the United States; and

(C) containing any other provision the President considers necessary to carry out this subsection and to safeguard the interests of the United States.

(Added Pub. L. 97–258, § 2(b)(4)(B), Sept. 13, 1982, 96 Stat. 1053, § 2395; renumbered § 2396 and amended Pub. L. 97–295, § 1(28)(B), Oct. 12, 1982, 96 Stat. 1291; Pub. L. 105–85, div. A, title X, § 1014(a), (b)(1), Nov. 18, 1997, 111 Stat. 1875; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1982 ACT (PUB. L. 97–258)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2395(a)	31:529i.	July 13, 1955, ch. 358, § 602, 69 Stat. 314.
2395(b)	31:529j.	Oct. 19, 1965, Pub. L. 89–265, 79 Stat. 989.

In subsection (a), the words ''On and after July 13, 1955'' are omitted as executed. The words ''An advance'' are substituted for ''section 529 of this title shall not apply in the case of payments'' because of the restatement.

In subsection (b), the words ''armed force of the United States'' are substituted for ''Army, Navy, Air Force, Marine Corps, or Coast Guard'' because of 10:101(4) and to avoid confusion with the phrase ''armed force of a friendly foreign country''.

In subsection (b)(1), before clause (A), the words ''the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy'' are substituted for ''the Secretary of the Treasury in their respective areas of responsibility'' because of 14:3 and 49:1655(b)(1) and (2). The words ''disbursing official'' are substituted for ''cashiers, disbursing officers'' for consistency with other titles of the United States Code and to eliminate unnecessary words.

1982 ACT (PUB. L. 97–295)

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2396	10:2395.	Sept. 13, 1982, Pub. L. 97–258, § 2(b)(4)(B), 96 Stat. 1053.

This redesignates 10:2395 as 10:2396 because of the redesignation of 10:2394 (enacted by Pub. L. 97–258) as 10:2395, and substitutes ''any other'' for ''another'' in subsec. (b)(2)(C).

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

1997—Pub. L. 105–85, § 1014(b)(1), inserted ''public utility services,'' after ''tuition,'' in section catchline.

Subsec. (a)(4). Pub. L. 105–85, § 1014(a), added par. (4).

1982—Subsec. (b)(2)(C). Pub. L. 97–295 substituted ''any other'' for ''another''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

[§§ 2397 to 2397c. Repealed. Pub. L. 104–106, div. D, title XLIII, § 4304(b)(1), Feb. 10, 1996, 110 Stat. 664]

Section 2397, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1291; amended Pub. L. 99–145, title IX, § 922, Nov. 8, 1985, 99 Stat. 693; Pub. L. 100–26, § 7(j)(5), (k)(2), Apr. 21, 1987, 101 Stat. 283, 284; Pub. L. 102–25, title VII, § 701(d)(6), Apr. 6, 1991, 105 Stat. 114; Pub. L. 102–484, div. A, title X, § 1052(29), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title IV, § 4401(d), title VIII, § 8105(d), Oct. 13, 1994, 108 Stat. 3348, 3392, related to filing of certain reports by employees or former employees of defense contractors.

Section 2397a, added Pub. L. 99–145, title IX, § 923(a)(1), Nov. 8, 1985, 99 Stat. 695; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–280, § 10(b), May 4, 1990, 104 Stat. 162, related to requirements relating to private employment contacts between certain Department of Defense procurement officials and defense contractors.

Section 2397b, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–156, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–156; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3936, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–180, div. A, title VIII, § 821, Dec. 4, 1987, 101 Stat. 1132; Pub. L. 103–355, title VIII, § 8105(e), Oct. 13, 1994, 108 Stat. 3392, related to limitations on employment by contractors of certain former Department of Defense procurement officials.

Section 2397c, added Pub. L. 99–500, § 101(c) [title X, § 931(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–159, and Pub. L. 99–591, § 101(c) [title X, § 931(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–159; Pub. L. 99–661, div. A, title IX, formerly title IV, § 931(a)(1), Nov. 14, 1986, 100 Stat. 3938, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 103–355, title VIII, § 8105(f), Oct. 13, 1994, 108 Stat. 3392, related to requirements for defense contractors concerning former Department of Defense officials.

The subject matter of former sections 2397 to 2397c of this title is now covered in section 423 of Title 41, Public Contracts.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 4401 of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 251 of Title 41, Public Contracts.

§ 2398. Procurement of gasohol as motor vehicle fuel

(a) OTHER FEDERAL FUEL PROCUREMENTS.—Consistent with the vehicle management practices prescribed by the heads of affected departments and agencies of the Federal Government and consistent with Executive Order Number 12261, whenever the Secretary of Defense enters into a contract for the procurement of unleaded gasoline that is subject to tax under section 4081 of the Internal Revenue Code of 1986 for motor vehicles of a department or agency of the Federal Government other than the Department of Defense, the Secretary shall buy alcohol-gasoline blends containing at least 10 percent domestically produced alcohol in any case in which the price of such fuel is the same as, or lower than, the price of unleaded gasoline.

(b) SOLICITATIONS.—Whenever the Secretary issues a solicitation for bids to procure unleaded gasoline under subsection (a), the Secretary shall expressly include in such solicitation a request for bids on alcohol-gasoline blends containing at least 10 percent domestically produced alcohol.

(Added Pub. L. 97–295, §1(29)(A), Oct. 12, 1982, 96 Stat. 1293; amended Pub. L. 102–190, div. A, title VIII, §841(a), Dec. 5, 1991, 105 Stat. 1448; Pub. L. 104–106, div. A, title X, §1061(h), Feb. 10, 1996, 110 Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2398	10:2388 (note).	Nov. 9, 1979, Pub. L. 96–107, §815, 93 Stat. 817.

The word ''prescribed'' is substituted for ''determined'' because it is more appropriate. The word ''Secretary'' is substituted for ''Department of Defense'' because the responsibility is in the head of the agency. The word ''shall'' is substituted for ''is authorized and directed'' for clarity.

REFERENCES IN TEXT

Executive Order Number 12661, referred to in subsec. (a), is set out under section 8871 of Title 42, The Public Health and Welfare.

Section 4081 of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 4081 of Title 26, Internal Revenue Code.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, §1061(h)(1), (2)(A), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ''DOD MOTOR VEHICLES.—To the maximum extent feasible and consistent with overall defense needs and vehicle management practices prescribed by the Secretary of Defense, the Secretary shall make contracts, by competitive bid and subject to appropriations, to purchase domestically produced alcohol or alcohol-gasoline blends containing at least 10 percent domestically produced alcohol for use in motor vehicles owned or operated by the Department of Defense.''

Subsec. (b). Pub. L. 104–106, §1061(h)(2), redesignated subsec. (c) as (b) and substituted ''subsection (a)'' for ''subsection (b)''. Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 104–106, §1061(h)(2)(A), redesignated subsec. (c) as (b).

1991—Pub. L. 102–190 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1991 AMENDMENT

Section 841(b) of Pub. L. 102–190 provided that: ''Section 2398(b) [now 2398(a)] of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded pursuant to solicitations issued after the expiration of the 180-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

REPORT ON EXEMPTIONS AND SENSE OF CONGRESS REGARDING PURCHASE OF DOMESTIC GASOHOL

For requirement that Secretary of Defense review all exemptions granted for Department of Defense to requirements of this section, terminate any exemption determined to be no longer appropriate, and submit to Congress report on results of review not later than 90 days after Dec. 5, 1991, with justification for exemptions that remain in effect, and for sense of Congress that Department of Defense vehicles be refueled with alcohol-gasoline blend containing at least 10 percent domestically produced alcohol if available along normal travel route of vehicle at same or lower price than unleaded gasoline, see section 841(c) and (d) of Pub. L. 102–190, set out as a note under section 8871 of Title 42, The Public Health and Welfare.

§ 2399. Operational test and evaluation of defense acquisition programs

(a) CONDITION FOR PROCEEDING BEYOND LOW-RATE INITIAL PRODUCTION.—(1) The Secretary of Defense shall provide that a major defense acquisition program may not proceed beyond low-rate initial production until initial operational test and evaluation of the program is completed.

(2) In this subsection, the term ''major defense acquisition program'' means a conventional weapons system that—

(A) is a major system within the meaning of that term in section 2302(5) of this title; and

(B) is designed for use in combat.

(b) OPERATIONAL TEST AND EVALUATION.—(1) Operational testing of a major defense acquisition program may not be conducted until the Director of Operational Test and Evaluation of the Department of Defense approves (in writing) the adequacy of the plans (including the projected level of funding) for operational test and evaluation to be conducted in connection with that program.

(2) The Director shall analyze the results of the operational test and evaluation conducted for each major defense acquisition program. At the conclusion of such testing, the Director shall prepare a report stating the opinion of the Director as to—

(A) whether the test and evaluation performed were adequate; and

(B) whether the results of such test and evaluation confirm that the items or components actually tested are effective and suitable for combat.

(3) The Director shall submit each report under paragraph (2) to the Secretary of Defense, the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the congressional defense committees. Each such report shall be submitted to those committees in precisely the same form and with precisely the same content as the report originally was submitted to the Secretary and Under Secretary and shall be accompanied by such comments as the Secretary may wish to make on the report.

(4) A final decision within the Department of Defense to proceed with a major defense acquisition program beyond low-rate initial production may not be made until the Director has submitted to the Secretary of Defense the report with respect to that program under paragraph (2) and the congressional defense committees have received that report.

(5) In this subsection, the term ''major defense acquisition program'' has the meaning given that term in section 139(a)(2)(B) of this title.

(c) DETERMINATION OF QUANTITY OF ARTICLES REQUIRED FOR OPERATIONAL TESTING.—The quantity of articles of a new system that are to be procured for operational testing shall be determined by—

(1) the Director of Operational Test and Evaluation of the Department of Defense, in the case of a new system that is a major defense acquisition program (as defined in section 139(a)(2)(B) of this title); or

(2) the operational test and evaluation agency of the military department concerned, in the case of a new system that is not a major defense acquisition program.

(d) IMPARTIALITY OF CONTRACTOR TESTING PERSONNEL.—In the case of a major defense acquisition program (as defined in subsection (a)(2)), no

person employed by the contractor for the system being tested may be involved in the conduct of the operational test and evaluation required under subsection (a). The limitation in the preceding sentence does not apply to the extent that the Secretary of Defense plans for persons employed by that contractor to be involved in the operation, maintenance, and support of the system being tested when the system is deployed in combat.

(e) IMPARTIAL CONTRACTED ADVISORY AND ASSISTANCE SERVICES.—(1) The Director may not contract with any person for advisory and assistance services with regard to the test and evaluation of a system if that person participated in (or is participating in) the development, production, or testing of such system for a military department or Defense Agency (or for another contractor of the Department of Defense).

(2) The Director may waive the limitation under paragraph (1) in any case if the Director determines in writing that sufficient steps have been taken to ensure the impartiality of the contractor in providing the services. The Inspector General of the Department of Defense shall review each such waiver and shall include in the Inspector General's semi-annual report an assessment of those waivers made since the last such report.

(3)(A) A contractor that has participated in (or is participating in) the development, production, or testing of a system for a military department or Defense Agency (or for another contractor of the Department of Defense) may not be involved (in any way) in the establishment of criteria for data collection, performance assessment, or evaluation activities for the operational test and evaluation.

(B) The limitation in subparagraph (A) does not apply to a contractor that has participated in such development, production, or testing solely in testing for the Federal Government.

(f) SOURCE OF FUNDS FOR TESTING.—The costs for all tests required under subsection (a) shall be paid from funds available for the system being tested.

(g) DIRECTOR'S ANNUAL REPORT.—As part of the annual report of the Director under section 139 of this title, the Director shall describe for each program covered in the report the status of test and evaluation activities in comparison with the test and evaluation master plan for that program, as approved by the Director. The Director shall include in such annual report a description of each waiver granted under subsection (e)(2) since the last such report.

(h) DEFINITIONS.—In this section:

(1) The term ''operational test and evaluation'' has the meaning given that term in section 139(a)(2)(A) of this title. For purposes of subsection (a), that term does not include an operational assessment based exclusively on—

(A) computer modeling;

(B) simulation; or

(C) an analysis of system requirements, engineering proposals, design specifications, or any other information contained in program documents.

(2) The term ''congressional defense committees'' means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 101–189, div. A, title VIII, § 802(a)(1), Nov. 29, 1989, 103 Stat. 1484; amended Pub. L. 102–484, div. A, title VIII, § 819, Oct. 23, 1992, 106 Stat. 2458; Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title X, § 1070(a)(11), (f), Oct. 5, 1994, 108 Stat. 2856, 2859; Pub. L. 104–106, div. A, title XV, § 1502(a)(19), Feb. 10, 1996, 110 Stat. 504; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title X, § 1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title X, § 1062(a)(9), Dec. 2, 2002, 116 Stat. 2650.)

PRIOR PROVISIONS

A prior section 2399, added Pub. L. 97–295, § 1(29)(A), Oct. 12, 1982, 96 Stat. 1293, which related to limitation on availability of appropriations to reimburse a contractor for the cost of commercial insurance, was repealed by Pub. L. 100–370, § 1(f)(2)(B), July 19, 1988, 102 Stat. 846, and was restated in section 2324(e)(1)(L) of this title by section 1(f)(2)(A) of Pub. L. 100–370.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–314 substituted ''means a conventional weapons system that'' for ''means'' in introductory provisions and struck out ''a conventional weapons system that'' before ''is a major system'' in subpar. (A).

2001—Subsec. (b)(3). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1999—Subsec. (h)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (h)(2). Pub. L. 104–106 substituted ''means—'' and subpars. (A) and (B) for ''means the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives.''

1994—Subsecs. (b)(5), (c)(1). Pub. L. 103–337, § 1070(a)(11)(A), substituted ''139(a)(2)(B)'' for ''138(a)(2)(B)''.

Subsec. (e)(3)(B). Pub. L. 103–337, § 1070(f), substituted ''solely in testing for'' for ''solely as a representative of''.

Subsec. (g). Pub. L. 103–337, § 1070(a)(11)(B), substituted ''139'' for ''138''.

Subsec. (h)(1). Pub. L. 103–337, § 1070(a)(11)(C), substituted ''139(a)(2)(A)'' for ''138(a)(2)(A)''.

1993—Subsec. (b)(3). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Subsec. (e)(3). Pub. L. 102–484 designated existing provisions as subpar. (A) and added subpar. (B).

ASSESSMENT OF RISK IN CONCURRENT DEVELOPMENT OF MAJOR DEFENSE ACQUISITION SYSTEMS

Section 801 of Pub. L. 101–189 provided that:

''(a) ESTABLISHMENT OF POLICY.—The Secretary of Defense shall establish guidelines for—

''(1) determining the degree of concurrency that is appropriate for the development of major defense acquisition systems; and

''(2) assessing the degree of risk associated with various degrees of concurrency.

''(b) REPORT ON GUIDELINES.—The Secretary shall submit to Congress a report that describes the guide-

lines established under subsection (a) and the method used for assessing risk associated with concurrency.

''(c) REPORT ON CONCURRENCY IN MAJOR ACQUISITION PROGRAMS.—(1) The Secretary shall also submit to Congress a report outlining the risk associated with concurrency for each major defense acquisition program that is in either full-scale development or low-rate initial production as of January 1, 1990.

''(2) The report shall include consideration of the following matters with respect to each such program:

''(A) The degree of confidence in the enemy threat assessment for establishing the system's requirements.

''(B) The type of contract involved.

''(C) The degree of stability in program funding.

''(D) The level of maturity of technology involved in the system.

''(E) The availability of adequate test assets, including facilities and ranges.

''(F) The plans for transition from development to production.

''(d) SUBMISSION OF REPORTS.—The reports under subsections (b) and (c) shall be submitted to Congress not later than March 1, 1990.

''(e) DEFINITION.—For purposes of this section, the term 'concurrency' means the degree of overlap between the development and production processes of an acquisition program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2400 of this title.

§ 2400. Low-rate initial production of new systems

(a) DETERMINATION OF QUANTITIES TO BE PROCURED FOR LOW-RATE INITIAL PRODUCTION.—(1) In the course of the development of a major system, the determination of what quantity of articles of that system should be procured for low-rate initial production (including the quantity to be procured for preproduction verification articles) shall be made—

(A) when the milestone B decision with respect to that system is made; and

(B) by the official of the Department of Defense who makes that decision.

(2) In this section, the term ''milestone B decision'' means the decision to approve the system development and demonstration of a major system by the official of the Department of Defense designated to have the authority to make that decision.

(3) Any increase from a quantity determined under paragraph (1) may only be made with the approval of the official making the determination.

(4) The quantity of articles of a major system that may be procured for low-rate initial production may not be less than one operationally configured production unit unless another quantity is established at the milestone B decision.

(5) The Secretary of Defense shall include a statement of the quantity determined under paragraph (1) in the first SAR submitted with respect to the program concerned after that quantity is determined. If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone B decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity. For purposes of this paragraph, the term ''SAR'' means a Selected Acquisition Report submitted under section 2432 of this title.

(b) LOW-RATE INITIAL PRODUCTION OF WEAPON SYSTEMS.—Except as provided in subsection (c), low-rate initial production with respect to a new system is production of the system in the minimum quantity necessary—

(1) to provide production-configured or representative articles for operational tests pursuant to section 2399 of this title;

(2) to establish an initial production base for the system; and

(3) to permit an orderly increase in the production rate for the system sufficient to lead to full-rate production upon the successful completion of operational testing.

(c) LOW-RATE INITIAL PRODUCTION OF NAVAL VESSEL AND SATELLITE PROGRAMS.—With respect to naval vessel programs and military satellite programs, low-rate initial production is production of items at the minimum quantity and rate that (1) preserves the mobilization production base for that system, and (2) is feasible, as determined pursuant to regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–189, div. A, title VIII, § 803(a), Nov. 29, 1989, 103 Stat. 1487; amended Pub. L. 103–355, title III, § 3015, Oct. 13, 1994, 108 Stat. 3332; Pub. L. 104–106, div. A, title X, § 1062(d), div. D, title XLIII, § 4321(b)(13), Feb. 10, 1996, 110 Stat. 444, 673; Pub. L. 107–107, div. A, title VIII, § 821(c), Dec. 28, 2001, 115 Stat. 1182.)

PRIOR PROVISIONS

A prior section 2400 was renumbered section 2534 of this title.

AMENDMENTS

2001—Subsec. (a)(1)(A). Pub. L. 107–107, § 821(c)(1), substituted ''milestone B'' for ''milestone II''.

Subsec. (a)(2). Pub. L. 107–107 substituted ''milestone B'' for ''milestone II'' and ''system development and demonstration'' for ''engineering and manufacturing development''.

Subsec. (a)(4), (5). Pub. L. 107–107, § 821(c)(1), substituted ''milestone B'' for ''milestone II''.

1996—Subsec. (a)(5). Pub. L. 104–106, § 4321(b)(13), substituted ''this paragraph'' for ''the preceding sentence''.

Subsec. (c). Pub. L. 104–106, § 1062(d), struck out ''(1)'' before ''With respect to'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and struck out former par. (2) which read as follows: ''For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

''(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

''(B) a test and evaluation master plan for that program; and

''(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.''

1994—Subsec. (a)(2). Pub. L. 103–355, § 3015(1), substituted ''this section'' for ''paragraph (1)'' and ''engineering and manufacturing development'' for ''full-scale engineering development''.

Subsec. (a)(4). Pub. L. 103–355, § 3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103–355, § 3015(2), redesignated par. (4) as (5) and inserted after first sentence ''If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(13) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

§ 2401. Requirement for authorization by law of certain contracts relating to vessels and aircraft

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel or aircraft or for the provision of a service through use by a contractor of a vessel or aircraft only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the Secretary's intention to issue such a solicitation; and

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel or aircraft to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft or naval vessel; or

(B) for the lease or charter of any aircraft or naval vessel the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(B) to pay any attorneys' fees in connection with such contract.

(d)(1)(A) In this section, the term ''long-term lease or charter'' (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel or aircraft; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term ''long-term lease or charter'' means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel or aircraft under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel or aircraft involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft or naval vessels or for the authorization of a lease or charter of aircraft or naval vessels which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft or naval vessels by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft or naval vessels authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft and naval vessels rather than directly procuring such aircraft and vessels.

(Added Pub. L. 98–94, title XII, §1202(a)(1), Sept. 24, 1983, 97 Stat. 679; amended Pub. L. 98–525, title XII, §1232(a), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 100–26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 103–35, title II, §201(c)(6), May 31, 1993, 107 Stat. 98; Pub. L. 104–106, div. A, title XV, §§1502(a)(20), 1503(a)(21), Feb. 10, 1996, 110 Stat. 504, 512; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(13)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(A), (d)(1)(B), is classified generally to Title 26, Internal Revenue Code. Section 168 of the Internal Revenue Code of 1986 is classified to section 168 of Title 26.

AMENDMENTS

2000—Subsec. (b)(1)(B). Pub. L. 106–398 substituted ''Committee on Appropriations of the House'' for ''Committees on Appropriations of the House''.

1999—Subsec. (b)(1)(B). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(1)(B). Pub. L. 104–106, §1502(a)(20)(A), substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committees on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsec. (b)(1)(C). Pub. L. 104–106, §1502(a)(20)(B), substituted ''those committees'' for ''the Committees on Armed Services and on Appropriations of the Senate and House of Representatives''.

Subsec. (c)(2). Pub. L. 104–106, §1503(a)(21), struck out ''pursuant to an authorization contained in the Department of Defense Authorization Act, 1984 (Public Law 98–94), or in any other law enacted after September 24, 1983,'' before ''may not be used''.

1993—Subsec. (c)(2)(A). Pub. L. 103–35 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1987—Subsec. (d)(1)(B). Pub. L. 100–26 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (c). Pub. L. 98–525, §1232(a)(1), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), respectively, and added par. (2).

Subsec. (f). Pub. L. 98–525, §1232(a)(2), struck out at end ''Such guidelines shall be issued not later than 90 days after the date of enactment of this section [Sept. 24, 1983].''

EFFECTIVE DATE

Section 1202(a)(3) of Pub. L. 98–94 provided that: ''Section 2401 of title 10, United States Code, as added by paragraph (1), shall not apply in the case of any lease or charter agreement entered into by the Department of Defense before December 1, 1983.''

LONG-TERM LEASE OR CHARTER AUTHORITY FOR CERTAIN DOUBLE-HULL TANKERS AND OCEANOGRAPHIC VESSELS

Pub. L. 103–160, div. A, title I, §126, Nov. 30, 1993, 107 Stat. 1567, as amended by Pub. L. 104–106, div. D, title XLIII, §4321(i)(1)(A), Feb. 10, 1996, 110 Stat. 676, provided that:

''(a) AUTHORITY.—The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act [Nov. 30, 1993] using assistance provided under the National Shipbuilding Initiative.

''(b) CONDITIONS ON OBLIGATION OF FUNDS.—Unless budget authority is specifically provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a), the Secretary may not enter into a contract for a lease or charter pursuant to that subsection unless the contract includes the following provisions:

''(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that lease or charter or that kind of vessel lease or charter.

''(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that lease or charter, or that kind of lease or charter, for that fiscal year.

''(3) A statement that such a commitment given under paragraph (2) does not constitute an obligation of the United States.

''(c) INAPPLICABILITY OF CERTAIN LAWS.—A long-term lease or charter authorized by subsection (a) may be entered into without regard to the provisions of section 2401 or 2401a of title 10, United States Code.

''(d) DEFINITION.—For purposes of subsection (a), the term 'long-term lease or charter' has the meaning given that term in subparagraph (A) of section 2401(d)(1) of title 10, United States Code.''

LIMITATION ON USE OF FUNDS FOR CONTRACTS FOR LEASE OR CHARTER OF ANY VESSEL, AIRCRAFT, OR VEHICLES

Pub. L. 101–165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, directed that no funds available to Department of Defense could be used to enter into any contract with term of eighteen months or more or to extend or renew any contract for term of eighteen months or more, for any vessel, aircraft, or vehicle, through lease, charter, or similar agreement without previously having been submitted to Committees on Appropriations, with further requirement with respect to contractual agreements which imposed certain termination liability on Government, prior to repeal by Pub. L. 103–355, title III, §3065(b), Oct. 13, 1994, 108 Stat. 3337. See section 2401a of this title.

ISSUANCE OF GUIDELINES

Section 1232(a)(2) of Pub. L. 98–525 provided in part that guidelines required to be issued under subsec. (f) of this section shall be issued not later than Oct. 31, 1984.

LIMITATION ON FUNDS AVAILABLE TO DEPARTMENT OF DEFENSE TO ENTER INTO CONTRACTS DURING FISCAL YEAR 1984

Section 1202(d) of Pub. L. 98–94 provided that: ''Funds available to the Department of Defense may not be used to enter into any contract during fiscal year 1984 under section 2401 of title 10, United States Code, as added by subsection (a), the term of which is for 3 years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft, or vehicles, through a lease, charter, or similar agreement, that imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the United States exceeding 50 percent of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided budget authority for the obligation of 10 percent of such termination liability.''

LIMITATION ON USE OF FUNDS APPROPRIATED PURSUANT TO AUTHORIZATIONS CONTAINED IN DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984

Section 1202(b) of Pub. L. 98–94, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Funds appropriated pursuant to an authorization contained in this Act may not be used to indemnify any person under the terms of a contract entered into with the United States under section 2401 of title 10, United States Code (as added by subsection (a))—

''(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986 [Title 26, Internal Revenue Code]; or

''(2) to pay any attorneys' fees in connection with such contract.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7233 of this title.

§2401a. Lease of vehicles, equipment, vessels, and aircraft

(a) LEASING OF COMMERCIAL VEHICLES AND EQUIPMENT.—The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.

(b) LIMITATION ON CONTRACTS WITH TERMS OF 18 MONTHS OR MORE.—The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added Pub. L. 103–355, title III, §3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; amended Pub. L. 104–106, div. A, title VIII, §807(a)(1), Feb. 10, 1996, 110 Stat. 391; Pub. L. 105–85, div. A, title X, §1073(a)(52), Nov. 18, 1997, 111 Stat. 1903.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) were contained in Pub. L. 101–165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103–355, §3065(b).

A prior section 2401a was renumbered section 2350f of this title.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''such leasing'' for ''leasing of such vehicles''.

1996—Pub. L. 104–106 substituted ''Lease of vehicles, equipment, vessels, and aircraft'' for ''Lease of vessels, aircraft, and vehicles'' as section catchline, designated existing text as subsec. (b), inserted subsec. (b) heading, and added subsec. (a).

LEASES FOR TANKER AIRCRAFT UNDER MULTIYEAR AIRCRAFT-LEASE PILOT PROGRAM

Pub. L. 107–314, div. A, title I, §133, Dec. 2, 2002, 116 Stat. 2477, provided that: ''The Secretary of the Air Force may not enter into a lease for the acquisition of tanker aircraft for the Air Force under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284; 10 U.S.C. 2401a note) until—

''(1) the Secretary submits the report specified in subsection (c)(6) of such section; and

''(2) either—

''(A) authorization and appropriation of funds necessary to enter into such lease are provided by law; or

''(B) a new start reprogramming notification for the funds necessary to enter into such lease has been submitted in accordance with established procedures.''

MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM

Pub. L. 107–206, title I, §308, Aug. 2, 2002, 116 Stat. 841, provided that: ''During the current fiscal year and hereafter, section 2533a of title 10, United States Code, shall not apply to any transaction entered into to acquire or sustain aircraft under the authority of section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107–117; 115 Stat. 2284) [set out below].''

Pub. L. 107–117, div. A, title VIII, §8159, Jan. 10, 2002, 115 Stat. 2284, as amended by Pub. L. 107–248, title VIII, §8117, Oct. 23, 2002, 116 Stat. 1564, provided that:

''(a) The Secretary of the Air Force may, from funds provided in this Act [see Tables for classification] or any future appropriations Act, establish and make payments on a multi-year pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

''(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

''(c) Under the aircraft lease Pilot Program authorized by this section:

''(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein. Notwithstanding the provisions of Section 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to one year in advance.

''(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

''(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year's lease payment under the lease.

''(4) Subchapter IV of chapter 15 of title 31, United States Code shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

''(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A–11, as in effect at the time of the lease.

''(6) Lease arrangements authorized by this section may not commence until:

''(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the Committees on Appropriations of the Senate and House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

''(B) A period of not less than 30 calendar days has elapsed after submitting the report.

''(7) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

''(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

''(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

''(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

''(d) No lease entered into under this authority shall provide for—

''(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

''(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

''(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

''(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

''(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments.''

Pub. L. 106–79, title VIII, § 8133, Oct. 25, 1999, 113 Stat. 1267, provided that:

''(a) The Secretary of the Air Force may establish a multi-year pilot program for leasing aircraft for operational support purposes, including transportation for the combatant Commanders in Chief, on such terms and conditions as the Secretary may deem appropriate, consistent with this section.

''(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

''(c) Under the aircraft lease Pilot Program authorized by this section:

''(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee.

''(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years.

''(3) The Secretary may provide for special payments to a lessor if either the Secretary terminates or cancels the lease prior to the expiration of its term or aircraft are damaged or destroyed prior to the expiration of the term of the lease. Such special payments shall not exceed an amount equal to the value of one year's lease payment under the lease. The amount of special payments shall be subject to negotiation between the Air Force and lessors.

''(4) Notwithstanding any other provision of law, any payments required under a lease under this section, and any payments made pursuant to subsection (3) above may be made from:

''(A) appropriations available for the performance of the lease at the time the lease takes effect;

''(B) appropriations for the operation and maintenance available at the time which the payment is due; and

''(C) funds appropriated for those payments.

''(5) The Secretary may lease aircraft, on such terms and conditions as the Secretary may deem appropriate, consistent with this section, through an operating lease consistent with OMB Circular A–11.

''(6) The Secretary may exchange or sell existing aircraft and apply the exchange allowance or sale proceeds in whole or in part toward the cost of leasing replacement aircraft under this section.

''(7) Lease arrangements authorized by this section may not commence until:

''(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and the savings in operations and support costs expected to be derived from retiring older aircraft as compared to the expected cost of leasing newer replacement aircraft.

''(B) A period of not less than 30 calendar days has elapsed after submitting the report.

''(8) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

''(9) No lease of operational support aircraft may be entered into under this section after September 30, 2004.

''(d) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

''(e) The authority provided under this section may be used to lease not more than a total of six aircraft for the purposes of providing operational support.''

LEASE OF FIREFIGHTING, CRASH RESCUE, AND SNOW REMOVAL EQUIPMENT

Pub. L. 105–262, title VIII, § 8126, Oct. 17, 1998, 112 Stat. 2333, provided that:

''(a) The Secretary of the Army and the Secretary of the Air Force may each enter into one or more multiyear leases of nontactical firefighting equipment, nontactical crash rescue equipment, or nontactical snow removal equipment. The period of a lease entered into under this section shall be for any period not in excess of 10 years. Any such lease shall provide that performance under the lease during the second and subsequent years of the contract is contingent upon the appropriation of funds and shall provide for a cancellation payment to be made to the lessor if such appropriations are not made.

''(b) Lease payments made under subsection (a) shall be made from amounts provided in this or future appropriations Acts.

''(c) This section is effective for all fiscal years beginning after September 30, 1998.''

PILOT PROGRAM FOR LEASING COMMERCIAL UTILITY CARGO VEHICLES

Section 807(c) of Pub. L. 104–106, as amended by Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, provided that:

''(1) The Secretary of the Army may conduct a pilot program for leasing commercial utility cargo vehicles in accordance with this subsection.

''(2) Under the pilot program—

''(A) the Secretary may trade existing commercial utility cargo vehicles of the Army for credit against the costs of leasing new replacement commercial utility cargo vehicles for the Army;

''(B) the quantities and trade-in value of commercial utility cargo vehicles to be traded in shall be subject to negotiation between the Secretary and the lessors of the new replacement commercial utility cargo vehicles;

''(C) the lease agreement for a new commercial utility cargo vehicle may be executed with or without an option to purchase at the end of the lease period;

''(D) the lease period for a new commercial utility cargo vehicle may not exceed the warranty period for the vehicle; and

''(E) up to 40 percent of the validated requirement for commercial utility cargo vehicles may be satisfied by leasing such vehicles, except that one or more options for satisfying the remainder of the validated requirement may be provided for and exercised (subject to the requirements of paragraph (6)).

''(3) In awarding contracts under the pilot program, the Secretary shall comply with section 2304 of title 10, United States Code.

''(4) The pilot program may not be commenced until—

''(A) the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that contains the plans of the Secretary for implementing the program and that sets forth in detail the savings in operating and support costs expected to be derived from retiring older commercial utility cargo vehicles, as compared to the expected costs of leasing newer commercial utility cargo vehicles; and

''(B) a period of 30 calendar days has elapsed after submission of such report.

''(5) Not later than one year after the date on which the first lease under the pilot program is entered into, the Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the status of the pilot program. Such report shall be based on at least six months of experience in operating the pilot program.

''(6) The Secretary may exercise an option provided for under paragraph (2) only after a period of 60 days has elapsed after the submission of the report.

''(7) No lease of commercial utility cargo vehicles may be entered into under the pilot program after September 30, 2000.''

§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

(2) In paragraph (1), the term ''commercial item'' has the meaning given such term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 103–355, title IV, § 4102(f), title VIII, § 8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392.)

AMENDMENTS

1994—Subsecs. (c), (d). Pub. L. 103–355 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 1234(c) of Pub. L. 98–525 provided that: ''Section 2402 of title 10, United States Code (as added by subsection (a)), shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 19, 1984].''

[§ 2403. Repealed. Pub. L. 105–85, div. A, title VIII, § 847(a), Nov. 18, 1997, 111 Stat. 1845]

Section, added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 99–433, title I, § 110(g)(5), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–355, title II, § 2402, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104–106, div. A, title XV, § 1502(a)(21), Feb. 10, 1996, 110 Stat. 505, related to major weapon systems and contractor guarantees.

§ 2404. Acquisition of certain fuel sources: authority to waive contract procedures; acquisition by exchange; sales authority

(a) WAIVER AUTHORITY.—The Secretary of Defense may, for any purchase of a defined fuel source, waive the application of any provision of law prescribing procedures to be followed in the formation of contracts, prescribing terms and conditions to be included in contracts, or regulating the performance of contracts if the Secretary determines—

(1) that market conditions for the defined fuel source have adversely affected (or will in the near future adversely affect) the acquisition of that defined fuel source by the Department of Defense; and

(2) the waiver will expedite or facilitate the acquisition of that defined fuel source for Government needs.

(b) SCOPE OF WAIVER.—A waiver under subsection (a) may be made with respect to a particular contract or with respect to classes of contracts. Such a waiver that is applicable to a contract for the purchase of a defined fuel source may also be made applicable to a subcontract under that contract.

(c) EXCHANGE AUTHORITY.—The Secretary of Defense may acquire a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.

(d) AUTHORITY TO SELL.—The Secretary of Defense may sell a defined fuel source of the Department of Defense if the Secretary determines that the sale would be in the public interest. The proceeds of such a sale shall be credited to appropriations of the Department of Defense for the acquisition of a defined fuel source or services related to a defined fuel source. Amounts so credited shall be available for obligation for the same period as the appropriations to which the amounts are credited.

(e) PETROLEUM DEFINED.—In this section, the term ''petroleum'' means natural or synthetic crude, blends of natural or synthetic crude, and products refined or derived from natural or synthetic crude or from such blends.

(f) DEFINED FUEL SOURCES.—In this section, the term ''defined fuel source'' means any of the following:

(1) Petroleum.
(2) Natural gas.
(3) Coal.
(4) Coke.

(Added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1322(a)(8), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 103–160, div. A, title VIII, § 826, Nov. 30, 1993, 107 Stat. 1711; Pub. L. 106–65, div. A, title VIII, § 803(a), (b)(1), Oct. 5, 1999, 113 Stat. 703.)

AMENDMENTS

1999—Pub. L. 106–65, § 803(b)(1), substituted ''Acquisition of certain fuel sources'' for ''Acquisition of petroleum and natural gas'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 803(a)(1), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in introductory provisions, ''market conditions for the defined fuel source'' for ''petroleum market conditions or natural gas market conditions, as the case may be,'' and ''acquisition of that defined fuel source'' for ''acquisition of petroleum or acquisition of natural gas, respectively,'' in par. (1), and ''that defined fuel source'' for ''petroleum or natural gas, as the case may be,'' in par. (2).

Subsec. (b). Pub. L. 106–65, § 803(a)(2), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in second sentence.

Subsec. (c). Pub. L. 106–65, § 803(a)(3), which directed the substitution of ''a defined fuel source or services related to a defined fuel source by exchange of a defined fuel source or services related to a defined fuel source.'' for '' 'petroleum' and all that follows through the period'', was executed by substituting the material for ''petroleum, petroleum-related services, natural gas, or natural gas-related services by exchange of petroleum, petroleum-related services, natural gas, or natural gas-related services.'' to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 106–65, § 803(a)(4), substituted ''a defined fuel source'' for ''petroleum or natural gas'' in first sentence and ''a defined fuel source or services related to a defined fuel source.'' for ''petroleum, petroleum-related services, natural gas, or natural gas-related services.'' in second sentence.

Subsec. (f). Pub. L. 106–65, § 803(a)(5), added subsec. (f).

1993—Pub. L. 103–160, § 826(d)(2), substituted ''petroleum and natural gas: authority to waive contract procedures; acquisition by exchange; sales authority'' for ''petroleum: authority to waive contract procedures'' as section catchline.

Subsec. (a). Pub. L. 103–160, § 826(a)(1), (d)(1)(A), inserted heading, inserted ''or natural gas'' after ''petroleum'' in introductory provisions, inserted ''or natural gas market conditions, as the case may be,'' after ''petroleum market conditions'' and ''or acquisition of natural gas, respectively,'' after ''acquisition of petroleum'' in par. (1), and inserted ''or natural gas, as the case may be,'' after ''petroleum'' in par. (2).

Subsec. (b). Pub. L. 103–160, § 826(a)(2), (d)(1)(B), inserted heading and inserted ''or natural gas'' after ''petroleum'' in second sentence.

Subsec. (c). Pub. L. 103–160, § 826(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense may acquire petroleum by exchange of petroleum or petroleum derivatives.''

Subsec. (d). Pub. L. 103–160, § 826(c)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–160, § 826(c)(1), (d)(1)(C), redesignated subsec. (d) as (e) and inserted heading.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d)

which read as follows: ''The Secretary of Defense shall notify the Congress within 10 days of the date on which any waiver is made under this section and of the reasons for the necessity of exercising such waiver.''

1987—Subsec. (e). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

[§ 2405. Repealed. Pub. L. 105–85, div. A, title VIII, § 810(a)(1), Nov. 18, 1997, 111 Stat. 1839]

Section, added Pub. L. 98–525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2604; amended Pub. L. 102–484, div. A, title VIII, § 813(c), Oct. 23, 1992, 106 Stat. 2453; Pub. L. 103–355, title II, § 2302(a), (b), Oct. 13, 1994, 108 Stat. 3321; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(14), Feb. 10, 1996, 110 Stat. 673, related to limitation on adjustment of shipbuilding contracts.

EFFECTIVE DATE OF REPEAL

Section 810(b) of Pub. L. 105–85 provided that:

''(1) Except as provided in paragraph (2), the repeal made by subsection (a) [repealing this section] shall be effective with respect to claims, requests for equitable adjustment, and demands for payment under shipbuilding contracts that have been or are submitted before, on, or after the date of the enactment of this Act [Nov. 18, 1997].

''(2) Section 2405 of title 10, United States Code, as in effect immediately before the date of the enactment of this Act, shall continue to apply to a contractor's claim, request for equitable adjustment, or demand for payment under a shipbuilding contract that was submitted before such date if—

''(A) a contracting officer denied the claim, request, or demand, and the period for appealing the decision to a court or board under the Contract Disputes Act of 1978 [41 U.S.C. 601 et seq.] expired before such date;

''(B) a court or board of contract appeals considering the claim, request, or demand (including any appeal of a decision of a contracting officer to deny the claim, request, or demand) denied or dismissed the claim, request, or demand (or the appeal), and the action of the court or board became final and unappealable before such date; or

''(C) the contractor released or releases the claim, request, or demand.''

[§ 2406. Repealed. Pub. L. 103–355, title II, § 2201(b)(1), Oct. 13, 1994, 108 Stat. 3318]

Section, added Pub. L. 99–145, title IX, § 917(a), Nov. 8, 1985, 99 Stat. 689; amended Pub. L. 99–500, § 101(c) [title X, § 943(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 943(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 943(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title XII, § 1231(13), Dec. 4, 1987, 101 Stat. 1160, required contractor under covered contract with an agency to make cost and pricing data available to agency in timely manner.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

[§ 2407. Renumbered § 2350b]

NATO COOPERATIVE LOGISTIC SUPPORT AGREEMENTS

Section 1102 of Pub. L. 99–661, div. A, title XI, § 1102, Nov. 14, 1986, 100 Stat. 3961, which authorized Secretary of Defense to enter Weapon System Partnership Agreements with one or more governments of other member countries of NATO, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(2), Nov. 29, 1989, 103 Stat. 1535. See section 2350d of this title.

NATO COOPERATIVE RESEARCH AND DEVELOPMENT

Section 1103 of Pub. L. 99–145, title XI, § 1103, Nov. 8, 1985, 99 Stat. 712, which urged and requested member nations of NATO to cooperate in research and development of defense equipment and munitions and in the production of defense equipment, was repealed by Pub. L. 101–189, div. A, title IX, § 931(d)(1), Nov. 29, 1989, 103 Stat. 1535. See section 2350a of this title.

AUTHORITY OF SECRETARY OF DEFENSE IN CONNECTION WITH NATO AWACS PROGRAM

Pub. L. 97–86, title I, § 103, Dec. 1, 1981, 95 Stat. 1100, as amended by Pub. L. 97–252, title I, § 106, Sept. 8, 1982, 96 Stat. 720; Pub. L. 98–94, title I, § 105, Sept. 24, 1983, 97 Stat. 620; Pub. L. 98–525, title I, § 106, Oct. 19, 1984, 98 Stat. 2503; Pub. L. 99–145, title I, § 106(b), Nov. 8, 1985, 99 Stat. 596; Pub. L. 99–661, title I, § 106, Nov. 14, 1986, 100 Stat. 3827; Pub. L. 100–180, title I, § 109, Dec. 4, 1987, 101 Stat. 1036, which set forth authority of Secretary of Defense in connection with NATO AWACS Program, was repealed by Pub. L. 101–189, div. A, title IX, § 932(b), Nov. 29, 1989, 103 Stat. 1537. See section 2350e of this title. Similar provisions were contained in the following prior authorization acts:

Pub. L. 96–342, title I, § 103, Sept. 8, 1980, 94 Stat. 1078.
Pub. L. 96–107, title I, § 104, Nov. 9, 1979, 93 Stat. 804.

§ 2408. Prohibition on persons convicted of defense-contract related felonies and related criminal penalty on defense contractors

(a) PROHIBITION.—(1) An individual who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from each of the following:

(A) Working in a management or supervisory capacity on any defense contract or any first tier subcontract of a defense contract.

(B) Serving on the board of directors of any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(C) Serving as a consultant to any defense contractor or any subcontractor awarded a contract directly by a defense contractor.

(D) Being involved in any other way, as determined under regulations prescribed by the Secretary of Defense, with a defense contract or first tier subcontract of a defense contract.

(2) Except as provided in paragraph (3), the prohibition in paragraph (1) shall apply for a period, as determined by the Secretary of Defense, of not less than five years after the date of the conviction.

(3) The prohibition in paragraph (1) may apply with respect to an individual for a period of less than five years if the Secretary determines that the five-year period should be waived in the interests of national security.

(4) The prohibition in paragraph (1) does not apply with respect to the following:

(A) A contract referred to in subparagraph (A), (B), (C), or (D) of such paragraph that is not greater than the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))).

(B) A contract referred to in such subparagraph that is for the acquisition of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(C) A subcontract referred to in such subparagraph that is under a contract described in subparagraph (A) or (B).

(b) CRIMINAL PENALTY.—A defense contractor or subcontractor shall be subject to a criminal penalty of not more than $500,000 if such contractor or subcontractor is convicted of knowingly—

(1) employing a person under a prohibition under subsection (a); or

(2) allowing such a person to serve on the board of directors of such contractor or subcontractor.

(c) SINGLE POINT OF CONTACT FOR INFORMATION.—(1) The Attorney General shall ensure that a single point of contact is established to enable a defense contractor or subcontractor to promptly obtain information regarding whether a person that the contractor or subcontractor proposes to use for an activity covered by paragraph (1) of subsection (a) is under a prohibition under that subsection.

(2) The procedure for obtaining such information shall be specified in regulations prescribed by the Secretary of Defense under subsection (a).

(Added Pub. L. 99–500, §101(c) [title X, §941(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–161, and Pub. L. 99–591, §101(c) [title X, §941(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–161; Pub. L. 99–661, div. A, title IX, formerly title IV, §941(a)(1), Nov. 14, 1986, 100 Stat. 3941, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–456, div. A, title VIII, §831(a), Sept. 29, 1988, 102 Stat. 2023; Pub. L. 101–510, div. A, title VIII, §812, Nov. 5, 1990, 104 Stat. 1596; Pub. L. 102–484, div. A, title VIII, §815(a), Oct. 23, 1992, 106 Stat. 2454; Pub. L. 103–355, title IV, §4102(g), title VIII, §8105(h), Oct. 13, 1994, 108 Stat. 3340, 3393; Pub. L. 104–106, div. A, title X, §1062(e), Feb. 10, 1996, 110 Stat. 444.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104–106 struck out at end ''If the five-year period is waived, the Secretary shall submit to Congress a report stating the reasons for the waiver.''

1994—Subsec. (a)(4). Pub. L. 103–355, §4102(g), added introductory provisions and subpar. (A).

Subsec. (a)(4)(B). Pub. L. 103–355, §8105(h)(1), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 103–355, §8105(h)(2), inserted ''or (B)'' before period at end.

Pub. L. 103–355, §4102(g), added subpar. (C).

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

1990—Subsec. (a)(1)(A). Pub. L. 101–510, §812(a)(1), inserted before period at end ''or any first tier subcontract of a defense contract''.

Subsec. (a)(1)(B). Pub. L. 101–510, §812(a)(2), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(C). Pub. L. 101–510, §812(a)(3), inserted before period at end ''or any subcontractor awarded a contract directly by a defense contractor''.

Subsec. (a)(1)(D). Pub. L. 101–510, §812(a)(4), inserted before period at end ''or first tier subcontract of a defense contract''.

Subsec. (b). Pub. L. 101–510, §812(b), inserted ''or subcontractor'' after ''contractor'' wherever appearing.

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''A person who is convicted of fraud or any other felony arising out of a contract with the Department of Defense shall be prohibited from working in a management or supervisory capacity on any defense contract, or serving on the board of directors of any defense contractor, for a period, as determined by the Secretary of Defense, of not less than one year from the date of the conviction.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 831(b) of Pub. L. 100–456 provided that: ''Section 2408(a) of title 10, United States Code, as amended by subsection (a), shall apply with respect to individuals convicted after the date of the enactment of this Act [Sept. 29, 1988].''

EFFECTIVE DATE

Section 101(c) [title X, §941(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 941(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2408 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to employment or service on a board of directors after the date of the enactment of this Act [Oct. 18, 1986].''

DEADLINE FOR SINGLE POINT OF CONTACT

Section 815(b) of Pub. L. 102–484 provided that: ''The single point of contact required by section 2408(c) of title 10, United States Code, as added by subsection (a), shall be established not later than 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2409. Contractor employees: protection from reprisal for disclosure of certain information

(a) PROHIBITION OF REPRISALS.—An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

(b) INVESTIGATION OF COMPLAINTS.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of an agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—(1) If the head of the agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a), the head of the agency may take one or more of the following actions:

(A) Order the contractor to take affirmative action to abate the reprisal.

(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency.

(2) Whenever a person fails to comply with an order issued under paragraph (1), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5.

(d) CONSTRUCTION.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(e) DEFINITIONS.—In this section:

(1) The term ''agency'' means an agency named in section 2303 of this title.

(2) The term ''head of an agency'' has the meaning provided by section 2302(1) of this title.

(3) The term ''contract'' means a contract awarded by the head of an agency.

(4) The term ''contractor'' means a person awarded a contract with an agency.

(5) The term ''Inspector General'' means an Inspector General appointed under the Inspector General Act of 1978.

(Added Pub. L. 99–500, § 101(c) [title X, § 942(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–162, and Pub. L. 99–591, § 101(c) [title X, § 942(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–162; Pub. L. 99–661, div. A, title IX, formerly title IV, § 942(a)(1), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 102–25, title VII, § 701(k)(1), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, § 1052(30)(A), Oct. 23, 1992, 106 Stat. 2500; Pub. L. 103–355, title VI, § 6005(a), Oct. 13, 1994, 108 Stat. 3364; Pub. L. 104–106, div. D, title XLIII, § 4321(a)(10), Feb. 10, 1996, 110 Stat. 671.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (e)(5), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1996—Pub. L. 104–106 made technical correction to Pub. L. 103–355, § 6005(a). See 1994 Amendment note below.

1994—Pub. L. 103–355, § 6005(a), as amended by Pub. L. 104–106, amended section generally. Prior to amendment, subsec. (a) related to prohibition of reprisals, subsec. (b) to investigation of complaints, subsec. (c) to construction of section, and subsec. (d) to coordination of section with former section 2409a of this title.

1992—Subsec. (d). Pub. L. 102–484 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''EFFECTIVE DATE.—This section shall not be in effect during the period when section 2409a of this title is in effect.''

1991—Subsec. (d). Pub. L. 102–25 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1052(30)(B) of Pub. L. 102–484 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if enacted immediately following the enactment of Public Law 102–25 (105 Stat. 75).''

EFFECTIVE DATE

Section 101(c) [title X, § 942(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 942(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2409 of title 10, United States Code (as added by subsection (a)(1)), shall apply with respect to any reprisal action taken on or after the date of the enactment of this Act [Oct. 18, 1986].''

[§ 2409a. Repealed. Pub. L. 103–355, title VI, § 6005(b)(1), Oct. 13, 1994, 108 Stat. 3365]

Section, added Pub. L. 101–510, div. A, title VIII, § 837(a)(1), Nov. 5, 1990, 104 Stat. 1616; amended Pub. L. 102–25, title VII, § 701(j)(4), (k)(2), Apr. 6, 1991, 105 Stat. 116, 117, required promulgation of regulations prohibiting defense contractor from discharging or discriminating against employee for disclosing to Government official information concerning contract between contractor and Department of Defense evidencing violation of Federal law or regulation and providing certain complaint and investigation provisions and provided procedures for review and enforcement.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2410. Requests for equitable adjustment or other relief: certification

(a) CERTIFICATION REQUIREMENT.—A request for equitable adjustment to contract terms or request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) that exceeds the simplified acquisition threshold may not be paid unless a person authorized to certify the request on behalf of the contractor certifies, at the time the request is submitted, that—

(1) the request is made in good faith, and

(2) the supporting data are accurate and complete to the best of that person's knowledge and belief.

(b) RESTRICTION ON LEGISLATIVE PAYMENT OF CLAIMS.—In the case of a contract of an agency named in section 2303(a) of this title, no provision of a law enacted after September 30, 1994, that directs the payment of a particular claim under such contract, a particular request for equitable adjustment to any term of such contract, or a particular request for relief under Public Law 85–804 (50 U.S.C. 1431 et seq.) regarding such contract may be implemented unless such provision of law—

(1) specifically refers to this subsection; and

(2) specifically states that this subsection does not apply with respect to the payment directed by that provision of law.

(c) DEFINITION.—In this section, the term ''simplified acquisition threshold'' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act.

(Added Pub. L. 103–355, title II, §2301(a), Oct. 13, 1994, 108 Stat. 3320.)

REFERENCES IN TEXT

Public Law 85–804, referred to in subsecs. (a) and (b), is Pub. L. 85–804, Aug. 28, 1958, 72 Stat. 972, as amended, which is classified generally to chapter 29 (§1431 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

Section 4(11) of the Office of Federal Procurement Policy Act, referred to in subsec. (c), is classified to section 403(11) of Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section, added Pub. L. 100–370, §1(h)(2), July 19, 1988, 102 Stat. 847, provided that contract claims, requests for equitable adjustments, requests for relief under section 1431 et seq. of Title 50, War and National Defense, and other similar requests by contractors exceeding $100,000 were not to be paid unless senior official of contractor certified that claim or request was made in good faith and that data submitted was accurate and complete to the best of such official's knowledge and belief, prior to repeal by Pub. L. 102–484, div. A, title VIII, §813(b), Oct. 23, 1992, 106 Stat. 2453, effective upon promulgation of regulations pursuant to former section 2410e of this title [Interim rules, effective Apr. 30, 1993, were promulgated and published in the Federal Register, 58 F.R. 28458, May 13, 1993, and final rules, effective May 27, 1994, were promulgated and published in the Federal Register, 59 F.R. 27662, May 27, 1994].

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2410a. Severable service contracts for periods crossing fiscal years

(a) AUTHORITY.—The Secretary of Defense, the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a).

(Added Pub. L. 100–370, §1(h)(2), July 19, 1988, 102 Stat. 847; amended Pub. L. 102–190, div. A, title III, §342, Dec. 5, 1991, 105 Stat. 1343; Pub. L. 104–324, title II, §214(b), Oct. 19, 1996, 110 Stat. 3915; Pub. L. 105–85, div. A, title VIII, §801(a), Nov. 18, 1997, 111 Stat. 1831; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8005(e), (h), (*l*)], Dec. 19, 1985, 99 Stat. 1185, 1202.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Pub. L. 105–85 amended section generally. Prior to amendment, section related to availability of appropriated funds for payments under contracts for various types of maintenance, leases, and operations and authorized Secretary of Transportation to enter into contracts for procurement of severable services.

1996—Pub. L. 104–324 designated existing provisions as subsec. (a) and added subsec. (b).

1991—Par. (1). Pub. L. 102–190, §342(1), inserted '', equipment,'' after ''tools''.

Par. (4). Pub. L. 102–190, §342(2), added par. (4).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2410b. Contractor inventory accounting systems: standards

(a) The Secretary of Defense shall prescribe in regulations—

(1) standards for inventory accounting systems used by contractors under contract with the Department of Defense; and

(2) appropriate enforcement requirements with respect to such standards.

(b) The regulations prescribed pursuant to subsection (a) shall not apply to a contract that is for an amount not greater than the simplified acquisition threshold.

(c) The regulations prescribed pursuant to subsection (a) shall not apply to a contract for the purchase of commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(Added Pub. L. 100–456, div. A, title VIII, §834(a)(1), Sept. 29, 1988, 102 Stat. 2024; amended Pub. L. 103–355, title IV, §4102(h), title VIII, §8105(i), Oct. 13, 1994, 108 Stat. 3341, 3393; Pub. L. 104–106, div. D, title XLIII, §4301(a)(1), Feb. 10, 1996, 110 Stat. 656; Pub. L. 104–201, div. A, title X, §1074(b)(3), Sept. 23, 1996, 110 Stat. 2660.)

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–106, as amended by Pub. L. 104–201, struck out ''certification and'' after ''appropriate''.

1994—Subsecs. (a), (b). Pub. L. 103–355, §4102(h), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (c). Pub. L. 103–355, §8105(i), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set

out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

REGULATIONS

Section 834(b) of Pub. L. 100–456 provided that:

''(1) The Secretary of Defense shall prescribe the regulations required by paragraph (1) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 30 days after the date of the enactment of this Act [Sept. 29, 1988].

''(2) The Secretary of Defense shall prescribe the regulations required by paragraph (2) of section 2410b of title 10, United States Code, as added by subsection (a), not later than 180 days after the date of the enactment of this Act.''

§ 2410c. Preference for energy efficient electric equipment

(a) When cost effective, in establishing a new requirement for electric equipment referred to in subsection (b) and in procuring electric equipment referred to in that subsection, the Secretary of a military department or the head of a Defense Agency, as the case may be, shall provide a preference for the procurement of the most energy efficient electric equipment available that meets the requirement or the need for the procurement, as the case may be.

(b) Subsection (a) applies to the following electric equipment:

(1) Electric lamps.

(2) Electric ballasts.

(3) Electric motors.

(4) Electric refrigeration equipment.

(Added Pub. L. 102–484, div. A, title III, § 384(a)(1)(A), Oct. 23, 1992, 106 Stat. 2392.)

CODIFICATION

Another section 2410c was renumbered section 2410j of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 384(a)(2) of Pub. L. 102–484 provided that: ''The amendments made by paragraph (1) [enacting this section] shall apply to procurements for which solicitations are issued on or after the date that is 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

ELECTRIC LIGHTING AND REFRIGERATION EQUIPMENT DEMONSTRATION PROGRAMS

Section 384(b)–(d) of Pub. L. 102–484 provided that:

''(b) ELECTRIC LIGHTING DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient electric lighting equipment.

''(2) The Secretary shall designate 50 facilities owned or leased by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the electric lighting equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of electric lighting at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of electric lighting equipment at the facility that is more energy efficient than the existing electric lighting equipment to the extent that the conversion is cost effective.

''(5) Energy efficient electric lighting equipment used under the demonstration program may include compact fluorescent lamps, energy efficient electric ballasts and fixtures, and other energy efficient electric lighting equipment.

''(c) REFRIGERATION EQUIPMENT DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall conduct a demonstration program for using energy efficient refrigeration equipment.

''(2) The Secretary shall designate 50 facilities owned or operated by the Department of Defense for participation in the demonstration program under this subsection.

''(3) The head of each facility designated pursuant to paragraph (2) and the Director of the Defense Logistics Agency shall jointly audit the refrigeration equipment at the facility in order—

''(A) to identify any potential improvements that would increase the energy efficiency of the refrigeration equipment at that facility; and

''(B) to determine the costs of, and the savings that would result from, such improvements.

''(4) Except as provided in subsection (d)(4), on the basis of the results of the audit the head of the facility shall promptly convert to the use of refrigeration equipment at the facility that is more energy efficient than the existing refrigeration equipment to the extent that the conversion is cost effective.

''(d) GENERAL PROVISIONS FOR DEMONSTRATION PROGRAMS.—(1) The Secretary of Defense shall make the designations under subsections (b)(2) and (c)(2) not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].

''(2) The Secretary of Defense may designate a facility described in subsections (b)(2) and (c)(2) for participation in the demonstration program under subsection (b) and the demonstration program under subsection (c).

''(3) The audits required by subsections (b)(3) and (c)(3) shall be completed not later than January 1, 1994.

''(4) The head of a facility may not carry out a conversion described in subsection (b)(4) or (c)(4) if the conversion prevents the head of the facility from carrying out other improvements relating to energy efficiency that are more cost effective than that conversion.''

§ 2410d. Subcontracting plans: credit for certain purchases

(a) PURCHASES BENEFITING SEVERELY HANDICAPPED PERSONS.—In the case of a business concern that has negotiated a small business subcontracting plan with a military department or a Defense Agency, purchases made by that business concern from qualified nonprofit agencies for the blind or other severely handicapped shall count toward meeting the subcontracting goal provided in that plan.

(b) DEFINITIONS.—In this section:

(1) The term ''small business subcontracting plan'' means a plan negotiated pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) that establishes a goal for the participation of small business concerns as subcontractors under a contract.

(2) The term ''qualified nonprofit agency for the blind or other severely handicapped'' means—

(A) a qualified nonprofit agency for the blind, as defined in section 5(3) of the Javits-Wagner-O'Day Act (41 U.S.C. 48b(3));

(B) a qualified nonprofit agency for other severely handicapped, as defined in section 5(4) of such Act (41 U.S.C. 48b(4)); and

(C) a central nonprofit agency designated by the Committee for Purchase from People Who Are Blind or Severely Disabled under section 2(c) of such Act (41 U.S.C. 47(c)).

(Added Pub. L. 102–484, div. A, title VIII, §808(b)(1), Oct. 23, 1992, 106 Stat. 2449; amended Pub. L. 103–337, div. A, title VIII, §804, Oct. 5, 1994, 108 Stat. 2815; Pub. L. 104–106, div. D, title XLIII, §4321(b)(15), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title VIII, §835, Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title VIII, §807, Oct. 5, 1999, 113 Stat. 705.)

CODIFICATION

Another section 2410d was renumbered section 2410k of this title.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 struck out heading and text of subsec. (c). Text read as follows: ''Subsection (a) shall cease to be effective at the end of September 30, 1999.''

1997—Subsec. (c). Pub. L. 105–85 substituted ''September 30, 1999'' for ''September 30, 1997''.

1996—Subsec. (b)(3). Pub. L. 104–106 struck out par. (3) which read as follows: ''The term 'Javits-Wagner-O'Day Act' means the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46–48c), commonly referred to as the Wagner-O'Day Act, that was revised and reenacted in the Act of June 23, 1971 (85 Stat. 77), commonly referred to as the Javits-Wagner-O'Day Act.''

1994—Subsec. (b)(2)(C). Pub. L. 103–337, §804(1)(A), added subpar. (C).

Subsec. (b)(3), (4). Pub. L. 103–337, §804(1)(B), (C), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The terms 'approved commodity' and 'approved service' mean a commodity and a service, respectively, that has been determined by the Committee for Purchase from the Blind and Other Severely Handicapped under section 2 of such Act (41 U.S.C. 47) to be suitable for procurement by the Federal Government.''

Subsec. (c). Pub. L. 103–337, §804(2), substituted ''September 30, 1997'' for ''September 30, 1994''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 835 of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 30, 1997.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE

Section 808(c) of Pub. L. 102–484 provided that: ''Sections 2301(d) and 2410d of title 10, United States Code (as added by subsections (a) and (b), respectively), shall take effect on October 1, 1993.''

[§ 2410e. Repealed. Pub. L. 103–355, title II, § 2301(b), Oct. 13, 1994, 108 Stat. 3321]

Section, added Pub. L. 102–484, div. A, title VIII, §813(a)(1), Oct. 23, 1992, 106 Stat. 2452, directed Secretary of Defense to propose, for inclusion in Federal Acquisition Regulation, regulations relating to certification of contract claims, requests for equitable adjustment to contract terms, and requests for relief under section 1431 et seq. of Title 50, War and National Defense, that exceeded $100,000.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 2410f. Debarment of persons convicted of fraudulent use of "Made in America" labels

(a) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a ''Made in America'' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting with the Department of Defense.

(b) In this section, the term ''debar'' has the meaning given that term by section 2393(c) of this title.

(Added Pub. L. 102–484, div. A, title VIII, §834(a)(1), Oct. 23, 1992, 106 Stat. 2461; amended Pub. L. 104–106, div. A, title X, §1062(f), title XV, §1503(a)(22), Feb. 10, 1996, 110 Stat. 444, 512; Pub. L. 107–107, div. A, title X, §1048(a)(20), Dec. 28, 2001, 115 Stat. 1223.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted '', or another inscription with the same meaning,'' after ''inscription''.

1996—Subsec. (a). Pub. L. 104–106, §1062(f), struck out at end ''If the Secretary determines that the person should not be debarred, the Secretary shall submit to Congress a report on such determination not later than 30 days after the determination is made.''

Subsec. (b). Pub. L. 104–106, §1503(a)(22), substituted ''In'' for ''For purposes of''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 834(b) of Pub. L. 102–484 provided that: ''Section 2410f of title 10, United States Code, as added by subsection (a), shall take effect 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

PROHIBITION OF CONTRACTS

Pub. L. 106–398, §1 [[div. A], title VIII, §825(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–220, provided that: ''If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a 'Made in America' inscription, or another inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 106–65, div. A, title VIII, §816(b), Oct. 5, 1999, 113 Stat. 712.

Pub. L. 103–160, div. A, title VIII, §849(b), Nov. 30, 1993, 107 Stat. 1725.

§ 2410g. Advance notification of contract performance outside the United States

(a) NOTIFICATION.—(1) A firm that is performing a Department of Defense contract for an amount exceeding $10,000,000, or is submitting a

bid or proposal for such a contract, shall notify the Department of Defense in advance of any intention of the firm or any first-tier subcontractor of the firm to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada.

(2) If a firm submitting a bid or proposal for a Department of Defense contract is required to submit a notification under this subsection, and the firm is aware, at the time it submits its bid or proposal, that the firm intends to perform outside the United States and Canada any part of the contract that exceeds $500,000 in value and could be performed inside the United States or Canada, the firm shall include the notification in its bid or proposal.

(3) The notification by a firm under paragraph (1) with respect to a first-tier subcontractor shall be made, to the maximum extent practicable, at least 30 days before award of the subcontract.

(b) RECIPIENT OF NOTIFICATION.—The firm shall transmit the notification—

(1) in the case of a contract of a military department, to such officer or employee of that military department as the Secretary of the military department may direct; and

(2) in the case of any other Department of Defense contract, to such officer or employee of the Department of Defense as the Secretary of Defense may direct.

(c) AVAILABILITY OF NOTIFICATIONS.—The Secretary of Defense shall ensure that the notifications (or copies) are maintained in compiled form for a period of 5 years after the date of submission and are available for use in the preparation of the national defense technology and industrial base assessment carried out under section 2505 of this title.

(d) INAPPLICABILITY TO CERTAIN CONTRACTS.—This section shall not apply to contracts for any of the following:

(1) Commercial items (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12))).

(2) Military construction.

(3) Ores.

(4) Natural gas.

(5) Utilities.

(6) Petroleum products and crudes.

(7) Timber.

(8) Subsistence.

(Added Pub. L. 102–484, div. A, title VIII, § 840(a)(1), Oct. 23, 1992, 106 Stat. 2466; amended Pub. L. 104–106, div. D, title XLIII, § 4321(b)(16), Feb. 10, 1996, 110 Stat. 673.)

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–106 inserted ''(as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)))'' before period at end.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 840(b) of Pub. L. 102–484 provided that: ''Section 2410g of title 10, United States Code (as added by subsection (a)), shall take effect 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

[§ 2410h. Renumbered § 1747]

§ 2410i. Prohibition on contracting with entities that comply with the secondary Arab boycott of Israel

(a) POLICY.—Under section 3(5)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2402(5)(A)), it is the policy of the United States to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any other United States person.

(b) PROHIBITION.—(1) Consistent with the policy referred to in subsection (a), the Department of Defense may not award a contract for an amount in excess of the small purchase threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))) to a foreign entity unless that entity certifies to the Secretary of Defense that it does not comply with the secondary Arab boycott of Israel.

(2) In paragraph (1), the term ''foreign entity'' means a foreign person, a foreign company, or any other foreign entity.

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the prohibition in subsection (b) in specific instances when the Secretary determines that the waiver is necessary in the national security interests of the United States. Within 15 days after the end of each fiscal year, the Secretary shall submit to Congress a report identifying each contract for which a waiver was granted under this subsection during that fiscal year.

(d) EXCEPTIONS.—Subsection (b) does not apply—

(1) to contracts for consumable supplies, provisions, or services that are intended to be used for the support of United States forces or of allied forces in a foreign country; or

(2) to contracts pertaining to the use of any equipment, technology, data, or services for intelligence or classified purposes by the United States Government in the interests of national security or to the acquisition or lease of any such equipment, technology, data, or services by the United States Government in the interests of national security.

(Added Pub. L. 102–484, div. A, title XIII, § 1332(a), Oct. 23, 1992, 106 Stat. 2555.)

§ 2410j. Displaced contractor employees: assistance to obtain certification and employment as teachers or employment as teachers' aides

(a) ASSISTANCE PROGRAM.—The Secretary of Defense may enter into a cooperative agreement with a defense contractor in order—

(1) to assist an eligible scientist or engineer employed by the contractor whose employment is terminated to obtain—

(A) certification or licensure as an elementary or secondary school teacher; or

(B) the credentials necessary to serve as a teacher's aide; and

(2) to facilitate the employment of the scientist or engineer by a local educational agency that—

(A) is receiving a grant under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as a result of having within its jurisdiction concentrations of children from low-income families; and

(B) is also experiencing a shortage of teachers or teachers' aides.

(b) ELIGIBLE DEFENSE CONTRACTORS.—(1) The Secretary of Defense shall establish an application and selection process for the participation of defense contractors in a cooperative agreement authorized under subsection (a).

(2) The Secretary shall determine which defense contractors are eligible to participate in the placement program on the basis of applications submitted under subsection (c). The Secretary shall limit participation to those defense contractors or subcontractors that—

(A) produce goods or services for the Department of Defense pursuant to a defense contract or operate nuclear weapons manufacturing facilities for the Department of Energy; and

(B) have recently reduced operations, or are likely to reduce operations, due to the completion or termination of a defense contract or program or by reductions in defense spending.

(3) The Secretary shall give special consideration to defense contractors who are located in areas that have been hit particularly hard by reductions in defense spending.

(c) DEFENSE CONTRACTOR APPLICATIONS.—(1) A defense contractor desiring to enter into a cooperative agreement with the Secretary of Defense under subsection (a) shall submit an application to the Secretary containing the following:

(A) Evidence that the contractor has been, or is expected to be, adversely affected by the completion or termination of a defense contract or program or by reductions in defense spending.

(B) An explanation that scientists and engineers employed by the contractor have been terminated, laid off, or retired, or are likely to be terminated, laid off, or retired, as a result of the completion or termination of a defense contract or program or reductions in defense spending.

(C) A description of programs implemented or proposed by the contractor to assist these scientists and engineers.

(D) A commitment to help fund the costs associated with the placement program by paying 50 percent of the stipend provided under subsection (g) to an employee or former employee of the contractor selected to receive assistance under this section.

(2) Once a cooperative agreement is entered into under subsection (a) between the Secretary and the defense contractor, the contractor shall publicize the program and distribute applications to prospective participants, and assist the prospective participants with the State screening process.

(d) ELIGIBLE SCIENTISTS AND ENGINEERS.—An individual shall be eligible for selection by the Secretary of Defense to receive assistance under this section if the individual—

(1) is employed or has been employed for not less than five years as a scientist or engineer with a private defense contractor that has entered into an agreement under subsection (a);

(2) has received—

(A) in the case of an individual applying for assistance for placement as an elementary or secondary school teacher, a baccalaureate or advanced degree from an accredited institution of higher education; or

(B) in the case of an individual applying for assistance for placement as a teacher's aide in an elementary or secondary school, an associate, baccalaureate, or advanced degree from an accredited institution of higher education or a junior or community college; and

(3) has been terminated or laid off (or received notice of termination or lay off) as a result of the completion or termination of a defense contract or program or reductions in defense spending; and

(4) satisfies such other criteria for selection as the Secretary may prescribe.

(e) SELECTION OF PARTICIPANTS.—(1) In selecting participants to receive assistance for placement as elementary or secondary school teachers, the Secretary shall give priority to individuals who—

(A) have educational, military, or employment experience in science, mathematics, or engineering and agree to seek employment as science, mathematics, or engineering teachers in elementary or secondary schools; or

(B) have educational, military, or employment experience in another subject area identified by the Secretary, in consultation with the Secretary of Education, as important for national educational objectives and agree to seek employment in that subject area in elementary or secondary schools.

(2) The Secretary may not select an individual under this section unless the Secretary has sufficient appropriations to carry out this section available at the time of the selection to satisfy the obligations to be incurred by the United States under this section with respect to that individual.

(f) AGREEMENT.—An individual selected under this section shall be required to enter into an agreement with the Secretary in which the participant agrees—

(1) to obtain, within such time as the Secretary may require, certification or licensure as an elementary or secondary school teacher or the necessary credentials to serve as a teacher's aide in an elementary or secondary school; and

(2) to accept—

(A) in the case of an individual selected for assistance for placement as a teacher, an offer of full-time employment as an elementary or secondary school teacher for not less than two school years with a local educational agency identified under section 1151(b)(2) of this title, as in effect on October 4, 1999, to begin the school year after obtaining that certification or licensure; or

(B) in the case of an individual selected for assistance for placement as a teacher's aide, an offer of full-time employment as a teacher's aide in an elementary or secondary

school for not less than two school years with a local educational agency identified under section 1151(b)(3) of this title, as in effect on October 4, 1999, to begin the school year after obtaining the necessary credentials.

(g) STIPEND FOR PARTICIPANTS.—(1) The Secretary of Defense shall pay to each participant in the placement program a stipend in an amount equal to the lesser of—

(A) $5,000; or

(B) the total costs of the type described in paragraphs (1), (2), (3), (8), and (9) of section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*) incurred by the participant while obtaining teacher certification or licensure or the necessary credentials to serve as a teacher's aide and employment as an elementary or secondary school teacher or teacher aide.

(2) A stipend provided under this section shall be taken into account in determining the eligibility of the participant for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(h) PLACEMENT OF PARTICIPANTS AS TEACHERS AND TEACHERS' AIDES.—Subsections (h) through (k) of section 1151 of this title, as in effect on October 4, 1999, shall apply with respect to the placement as teachers and teachers' aides of individuals selected under this section.

(Added Pub. L. 102–484, div. D, title XLIV, § 4443(a), Oct. 23, 1992, 106 Stat. 2732, § 2410c; renumbered § 2410j and amended Pub. L. 103–35, title II, § 201(b)(1)(A), (g)(6), May 31, 1993, 107 Stat. 97, 100; Pub. L. 103–160, div. A, title XIII, § 1331(c)(3), Nov. 30, 1993, 107 Stat. 1792; Pub. L. 103–382, title III, § 391(b)(5), Oct. 20, 1994, 108 Stat. 4022; Pub. L. 104–106, div. A, title XV, § 1503(a)(23), Feb. 10, 1996, 110 Stat. 512; Pub. L. 104–201, div. A, title V, § 576(c), Sept. 23, 1996, 110 Stat. 2535; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(2)(A), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Section 1151 of this title, referred to in subsecs. (f)(2)(A), (B) and (h), was repealed by Pub. L. 106–65, div. A, title XVII, § 1707(a)(1), Oct. 5, 1999, 113 Stat. 823.

The Higher Education Act of 1965, referred to in subsec. (g)(2), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Act is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of Title 20 and part C (§ 2751 et seq.) of subchapter I of chapter 34 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2000—Subsec. (f)(2). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)(A)], inserted ''as in effect on October 4, 1999,'' after ''of this title,'' in subpars. (A) and (B).

Subsec. (h). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(14)(B)], inserted '', as in effect on October 4, 1999,'' after ''of this title''.

1996—Subsec. (a)(2)(A). Pub. L. 104–106 substituted ''6301'' for ''2701''.

Subsec. (f)(2)(A), (B). Pub. L. 104–201 substituted ''two school years'' for ''five school years''.

1994—Subsec. (a)(2)(A). Pub. L. 103–382 struck out ''chapter 1 of'' after ''grant under''.

1993—Pub. L. 103–35, § 201(b)(1)(A), renumbered section 2410c of this title as this section.

Subsec. (f)(2)(A), (B). Pub. L. 103–160 substituted ''five school years'' for ''two school years''.

Subsec. (f)(2)(B). Pub. L. 103–35, § 201(g)(6), substituted ''aide'' for ''aid'' after ''for placement as a teacher's''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–160 not applicable with respect to persons selected by Secretary of Defense before Nov. 30, 1993, to participate in teacher and teacher's aide placement programs established pursuant to sections 1151, 1598, and 2410j of this title or agreements entered into by Secretary before such date with local educational agencies under such sections, see section 1331(h) of Pub. L. 103–160, set out as a note under section 1598 of this title.

SAVINGS PROVISION

Amendments by section 576 of Pub. L. 104–201 not to affect obligations under agreements entered into in accordance with section 1151, 1598, or 2410j of this title before Sept. 23, 1996, see section 576(d) of Pub. L. 104–201, set out as a note under section 1598 of this title.

§ 2410k. Defense contractors: listing of suitable employment openings with local employment service office

(a) REGULATIONS.—The Secretary of Defense shall promulgate regulations containing the requirement described in subsection (b) and such other provisions as the Secretary considers necessary to administer such requirement. Such regulations shall require that each contract described in subsection (c) shall contain a clause requiring the contractor to comply with such regulations.

(b) REQUIREMENT.—The regulations promulgated under this section shall require each contractor carrying out a contract described in subsection (c) to list immediately with the appropriate local employment service office, and where appropriate the Interstate Job Bank (established by the United States Employment Service), all of its suitable employment openings under such contract.

(c) COVERED CONTRACTS.—The regulations promulgated under this section shall apply to any contract entered into with the Department of Defense in an amount of $500,000 or more.

(Added Pub. L. 102–484, div. D, title XLIV, § 4470(a)(1), Oct. 23, 1992, 106 Stat. 2753, § 2410d; renumbered § 2410k and amended Pub. L. 103–35, title II, §§ 201(b)(1)(A), 202(a)(18)(A), May 31, 1993, 107 Stat. 97, 102.)

AMENDMENTS

1993—Pub. L. 103–35, § 201(b)(1)(A), renumbered section 2410d of this title as this section.

Pub. L. 103–35, § 202(a)(18)(A), made technical amendment to directory language of Pub. L. 102–484, which enacted this section.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 202(a)(18)(A) of Pub. L. 103–35 applicable as if included in the enactment of Pub. L. 102–484, see section 202(b) of Pub. L. 103–35, set out as a note under section 155 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 4470(b) of Pub. L. 102–484 provided that: ''Section 2410d of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into beginning 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

§ 2410*l*. Contracts for advisory and assistance services: cost comparison studies

(a) REQUIREMENT.—(1)(A) Before the Secretary of Defense enters into a contract described in subparagraph (B), the Secretary shall determine whether Department of Defense personnel have the capability to perform the services proposed to be covered by the contract.

(B) Subparagraph (A) applies to any contract of the Department of Defense for advisory and assistance services that is expected to have a value in excess of $100,000.

(2) If the Secretary determines that Department of Defense personnel have the capability to perform the services to be covered by the contract, the Secretary shall conduct a study comparing the cost of performing the services with Department of Defense personnel and the cost of performing the services with contractor personnel.

(b) WAIVER.—The Secretary of Defense may, pursuant to guidelines prescribed by the Secretary, waive the requirement to perform a cost comparison study under subsection (a)(2) based on factors that are not related to cost.

(Added Pub. L. 103–337, div. A, title III, § 363(a)(1), Oct. 5, 1994, 108 Stat. 2733.)

EFFECTIVE DATE

Section 363(c) of Pub. L. 103–337 provided that: ''Section 2410*l* of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 5, 1994].''

PROCEDURES FOR CONDUCT OF STUDIES

Section 363(b) of Pub. L. 103–337 provided that: ''The Secretary of Defense shall prescribe the following procedures:

''(1) Procedures for carrying out a cost comparison study under subsection (a)(2) of section 2410*l* of title 10, United States Code, as added by subsection (a), which may contain a requirement that the cost comparison study include consideration of factors that are not related to cost, including the quality of the service required to be performed, the availability of Department of Defense personnel, the duration and recurring nature of the services to be performed, and the consistency of the workload.

''(2) Procedures for reviewing contracts entered into after a waiver under subsection (b) of such section to determine whether the contract is justified and sufficiently documented.''

§ 2410m. Retention of amounts collected from contractor during the pendency of contract dispute

(a) RETENTION OF FUNDS.—Notwithstanding sections 1552(a) and 3302(b) of title 31, any amount, including interest, collected from a contractor as a result of a claim made by a military department or Defense Agency under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.), shall remain available in accordance with this section to pay—

(1) any settlement of the claim by the parties;

(2) any judgment rendered in the contractor's favor on an appeal of the decision on that claim to the Armed Services Board of Contract Appeals under section 7 of such Act (41 U.S.C. 606); or

(3) any judgment rendered in the contractor's favor in an action on that claim in a court of the United States.

(b) PERIOD OF AVAILABILITY.—(1) The period of availability of an amount under subsection (a), in connection with a claim—

(A) expires 180 days after the expiration of the period for bringing an action on that claim in the United States Court of Federal Claims under section 10(a) of the Contract Disputes Act of 1978 (41 U.S.C. 609(a)) if, within that 180-day period—

(i) no appeal on the claim is commenced at the Armed Services Board of Contract Appeals under section 7 of such Act; and

(ii) no action on the claim is commenced in a court of the United States; or

(B) if not expiring under subparagraph (A), expires—

(i) in the case of a settlement of the claim, 180 days after the date of the settlement; or

(ii) in the case of a judgment rendered on the claim in an appeal to the Armed Services Board of Contract Appeals under section 7 of the Contract Disputes Act of 1978 or an action in a court of the United States, 180 days after the date on which the judgment becomes final and not appealable.

(2) While available under this section, an amount may be obligated or expended only for a purpose described in subsection (a).

(3) Upon the expiration of the period of availability of an amount under paragraph (1), the amount shall be covered into the Treasury as miscellaneous receipts.

(c) REPORTING REQUIREMENT.—Each year, the Under Secretary of Defense (Comptroller) shall submit to Congress a report on the amounts, if any, that are available for obligation pursuant to this section. The report shall include, at a minimum, the following:

(1) The total amount available for obligation.

(2) The total amount collected from contractors during the year preceding the year in which the report is submitted.

(3) The total amount disbursed in such preceding year and a description of the purpose for each disbursement.

(4) The total amount returned to the Treasury in such preceding year.

(Added Pub. L. 105–85, div. A, title VIII, § 831(a), Nov. 18, 1997, 111 Stat. 1841.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (a), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code see Short Title note set out under section 601 of Title 41 and Tables.

§ 2410n. Products of Federal Prison Industries: procedural requirements

(a) MARKET RESEARCH.—Before purchasing a product listed in the latest edition of the Fed-

eral Prison Industries catalog under section 4124(d) of title 18, the Secretary of Defense shall conduct market research to determine whether the Federal Prison Industries product is comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery.

(b) COMPETITION REQUIREMENT.—If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, or time of delivery to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery, the Secretary shall use competitive procedures for the procurement of the product or shall make an individual purchase under a multiple award contract. In conducting such a compeititon[1] or making such a purchase, the Secretary shall consider a timely offer from Federal Prison Industries.

(c) IMPLEMENTATION BY SECRETARY OF DEFENSE.—The Secretary of Defense shall ensure that—

(1) the Department of Defense does not purchase a Federal Prison Industries product or service unless a contracting officer of the Department determines that the product or service is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery; and

(2) Federal Prison Industries performs its contractual obligations to the same extent as any other contractor for the Department of Defense.

(d) MARKET RESEARCH DETERMINATION NOT SUBJECT TO REVIEW.—A determination by a contracting officer regarding whether a product or service offered by Federal Prison Industries is comparable to products or services available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery shall not be subject to review pursuant to section 4124(b) of title 18.

(e) PERFORMANCE AS A SUBCONTRACTOR.—(1) A contractor or potential contractor of the Department of Defense may not be required to use Federal Prison Industries as a subcontractor or supplier of products or provider of services for the performance of a Department of Defense contract by any means, including means such as—

(A) a contract solicitation provision requiring a contractor to offer to make use of products or services of Federal Prison Industries in the performance of the contract;

(B) a contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by Federal Prison Industries in the performance of the contract; or

(C) any contract modification directing the use of products or services of Federal Prison Industries in the performance of the contract.

(2) In this subsection, the term ''contractor'', with respect to a contract, includes a subcontractor at any tier under the contract.

(f) PROTECTION OF CLASSIFIED AND SENSITIVE INFORMATION.—The Secretary of Defense may not enter into any contract with Federal Prison Industries under which an inmate worker would have access to—

(1) any data that is classified;

(2) any geographic data regarding the location of—

(A) surface and subsurface infrastructure providing communications or water or electrical power distribution;

(B) pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(C) other utilities; or

(3) any personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

(g) DEFINITIONS.—In this section:

(1) The term ''competitive procedures'' has the meaning given such term in section 2302(2) of this title.

(2) The term ''market research'' means obtaining specific information about the price, quality, and time of delivery of products available in the private sector through a variety of means, which may include—

(A) contacting knowledgeable individuals in government and industry;

(B) interactive communication among industry, acquisition personnel, and customers; and

(C) interchange meetings or pre-solicitation conferences with potential offerors.

(Added Pub. L. 107–107, div. A, title VIII, § 811(a)(1), Dec. 28, 2001, 115 Stat. 1180; amended Pub. L. 107–314, div. A, title VIII, § 819(a)(1), Dec. 2, 2002, 116 Stat. 2612.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, § 819(a)(1)(A), substituted ''Market Research'' for ''Market Research Before Purchase'' in heading and ''comparable to products available from the private sector that best meet the Department's needs in terms of price, quality, and time of delivery'' for ''comparable in price, quality, and time of delivery to products available from the private sector''.

Subsec. (b). Pub. L. 107–314, § 819(a)(1)(B), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''If the Secretary determines that a Federal Prison Industries product is not comparable in price, quality, and time of delivery to products available from the private sector, the Secretary shall use competitive procedures for the procurement of the product. In conducting such a competition, the Secretary shall consider a timely offer from Federal Prison Industries for award in accordance with the specifications and evaluation factors specified in the solicitation.''

Subsec. (c) to (g). Pub. L. 107–314, § 819(a)(1)(C), added subsecs. (c) to (g).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VIII, § 819(a)(2), Dec. 2, 2002, 116 Stat. 2613, provided that: ''Paragraph (1) [amending this section] and the amendments made by such paragraph shall take effect as of October 1, 2001.''

EFFECTIVE DATE

Pub. L. 107–107, div. A, title VIII, § 811(b), Dec. 28, 2001, 115 Stat. 1181, provided that: ''Section 2410n of title 10, United States Code (as added by subsection (a)), shall

[1] So in original. Probably should be ''competition''.

apply to purchases initiated on or after October 1, 2001.''

REGULATORY IMPLEMENTATION

Pub. L. 107–314, div. A, title VIII, §819(b), Dec. 2, 2002, 116 Stat. 2613, provided that:

''(1) Proposed revisions to the Department of Defense Supplement to the Federal Acquisition Regulation to implement this section shall be published not later than 90 days after the date of the enactment of this Act [Dec. 2, 2002], and not less than 60 days shall be provided for public comment on the proposed revisions.

''(2) Final regulations shall be published not later than 180 days after the date of the enactment of this Act and shall be effective on the date that is 30 days after the date of the publication.''

§ 2410*o*. Multiyear procurement authority: purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products

(a) TEN-YEAR CONTRACT PERIOD.—The Secretary of Defense may enter into a contract for a period of up to 10 years for the purchase of dinitrogen tetroxide, hydrazine, and hydrazine-related products for the support of a United States national security program or a United States space program.

(b) EXTENSIONS.—A contract entered into for more than one year under the authority of subsection (a) may be extended for a total of not more than 10 years pursuant to any option or options set forth in the contract.

(Added Pub. L. 107–314, div. A, title VIII, §826(a), Dec. 2, 2002, 116 Stat. 2617.)

CHAPTER 142—PROCUREMENT TECHNICAL ASSISTANCE COOPERATIVE AGREEMENT PROGRAM

Sec.
2411. Definitions.
2412. Purposes.
2413. Cooperative agreements.
2414. Limitation.
2415. Distribution.
2416. Subcontractor information.
2417. Administrative costs.
2418. Authority to provide certain types of technical assistance.
2419. Regulations.

AMENDMENTS

1993—Pub. L. 103–35, title II, §201(d)(2), May 31, 1993, 107 Stat. 99, made technical amendment to items 2418 and 2419.

1992—Pub. L. 102–484, div. D, title XLII, §4236(a)(2), Oct. 23, 1992, 106 Stat. 2691, added item 2418 and redesignated former item 2418 as 2419.

1990—Pub. L. 101–510, div. A, title VIII, §814(a)(2), Nov. 5, 1990, 104 Stat. 1597, added item 2417 and redesignated former item 2417 as 2418.

1986—Pub. L. 99–500, §101(c) [title X, §957(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, §101(c) [title X, §957(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(2), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, amended analysis identically adding item 2416 and redesignating former item 2416 as 2417.

§ 2411. Definitions

In this chapter:

(1) The term ''eligible entity'' means any of the following:

(A) A State.

(B) A local government.

(C) A private, nonprofit organization.

(D) A tribal organization, as defined in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638; 25 U.S.C. 450b(*l*)), or an economic enterprise, as defined in section 3(e) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(e)), whether or not such economic enterprise is organized for profit purposes or nonprofit purposes.

(2) The term ''distressed area'' means—

(A) the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government) that—

(i) has a per capita income of 80 percent or less of the State average; or

(ii) has an unemployment rate that is one percent greater than the national average for the most recent 24-month period for which statistics are available; or

(B) a reservation, as defined in section 3(d) of the Indian Financing Act of 1974 (Public Law 93–262; 25 U.S.C. 1452(d)).

(3) The term ''Secretary'' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.

(4) The terms ''State'' and ''local government'' have the meaning given those terms in section 6302 of title 31.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 691; Pub. L. 99–500, §101(c) [title X, §956(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §956(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §956(a), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–180, div. A, title VIII, §807(b), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 100–456, div. A, title VIII, §841(b)(2), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, §853(e), Nov. 29, 1989, 103 Stat. 1519; Pub. L. 102–25, title VII, §701(j)(5), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. A, title X, §1052(31), Oct. 23, 1992, 106 Stat. 2501.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Par. (1)(D). Pub. L. 102–484 substituted ''organized for profit purposes or nonprofit purposes'' for ''organized for-profit, or nonprofit purposes''.

1991—Par. (1)(D). Pub. L. 102–25, which directed the substitution of ''for profit purposes or nonprofit'' for ''for-profit and nonprofit'', could not be executed because the words ''for-profit and nonprofit'' did not appear.

1989—Par. (1)(D). Pub. L. 101–189 substituted ''section 4(*l*)'' for ''section 4(c)'' and ''25 U.S.C. 450b(*l*)'' for ''25 U.S.C. 450(c)''.

1988—Par. (1)(D). Pub. L. 100–456 inserted '', whether or not such economic enterprise is organized for-profit, or nonprofit purposes'' before period at end.

1987—Par. (1)(D). Pub. L. 100–180, §807(b)(1), added subpar. (D).

Par. (2). Pub. L. 100–180, §807(b)(2), substituted ''means—'' for ''means'', designated existing text begin-

ning with ''the area of a unit'' as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, substituted ''are available; or'' for ''are available.'', and added subpar. (B).

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended section generally identically, striking out in par. (1) reference to section 6302(5) and 6302(2) of title 31, in par. (2) substituting ''The term 'distressed area' means the area of a unit of local government (or such area excluding the area of any defined political jurisdiction within the area of such unit of local government)'' for '''Distressed entity' means an eligible entity (within the meaning of paragraph (1)(B))'', and adding par. (4).

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows: ''In this chapter:

''(1) 'Eligible entity' means a State (as defined in section 6302(5) of title 31), a local government (as defined in section 6302(2) of that title), or a private, nonprofit organization that enters into a cooperative agreement with the Secretary under this chapter to furnish procurement technical assistance to business entities and to defray at least one-half of the costs of furnishing such assistance.

''(2) 'Secretary' means the Secretary of Defense acting through the Director of the Defense Logistics Agency.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 919(d) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 2412 to 2415 of this title] shall take effect on October 1, 1985.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2414 of this title.

§ 2412. Purposes

The purposes of the program authorized by this chapter are—

(1) to increase assistance by the Department of Defense to eligible entities furnishing procurement technical assistance to business entities; and

(2) to assist eligible entities in the payment of the costs of establishing and carrying out new procurement technical assistance programs and maintaining existing procurement technical assistance programs.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692.)

AMENDMENTS

1985—Pub. L. 99–145 amended section generally, substituting ''assistance by the Department of Defense to eligible entities'' for ''Department of Defense assistance for eligible entities'' in par. (1).

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2413. Cooperative agreements

(a) The Secretary, in accordance with the provisions of this chapter, may enter into cooperative agreements with eligible entities to carry out the purposes of this chapter.

(b) Under any such cooperative agreement, the eligible entity shall agree to sponsor programs to furnish procurement technical assistance to business entities and the Secretary shall agree to defray not more than one-half of the eligible entity's cost of furnishing such assistance under such programs, except that in the case of a program sponsored by such an entity that provides services solely in a distressed area, the Secretary may agree to furnish more than one-half, but not more than three-fourths, of such cost with respect to such program.

(c) In entering into cooperative agreements under subsection (a), the Secretary shall assure that at least one procurement technical assistance program is carried out in each Department of Defense contract administration services district during each fiscal year.

(d) In conducting a competition for the award of a cooperative agreement under subsection (a), and in determining the level of funding to provide under an agreement under subsection (b), the Secretary shall give significant weight to successful past performance of eligible entities under a cooperative agreement under this section.

(Added Pub. L. 98–525, title XII, § 1241(a)(1), Oct. 19, 1984, 98 Stat. 2605; amended Pub. L. 99–145, title IX, § 919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 99–500, § 101(c) [title X, § 956(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, § 101(c) [title X, § 956(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, § 956(b), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, and amended Pub. L. 100–180, div. A, title XII, § 1233(b), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 105–261, div. A, title VIII, § 802(a)(1), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 107–314, div. A, title VIII, § 814, Dec. 2, 2002, 116 Stat. 2610.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 added subsec. (d).

1998—Subsec. (c). Pub. L. 105–261 substituted ''district'' for ''region''.

1987—Subsec. (b). Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

1986—Subsec. (b). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, as amended by Pub. L. 100–180, amended subsec. (b) identically, inserting ''sponsor programs to'' after first reference to ''agree to'', ''under such programs'' after ''such assistance'', and ''with respect to such program'' after ''such cost'' and substituting ''a program sponsored by such an entity that provides services solely in a distressed area'' for ''an eligible entity that is a distressed entity''.

1985—Pub. L. 99–145 amended section generally, substituting '', in accordance with the provisions of this chapter, may enter'' for ''may, in accordance with the provisions of this chapter, enter'' in subsec. (a), adding subsec. (b), and redesignating former subsec. (b) as (c).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 1233(c)(2) of Pub. L. 100–180 provided that: ''The amendment made by subsection (b) [amending Public Laws 99–500, 99–591, and 99–661 which amended this section] shall apply as if included in the enactment of Public Laws 99–500, 99–591, and 99–661.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2414. Limitation

(a) IN GENERAL.—The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed—

(1) in the case of a program operating on a Statewide basis, other than a program referred to in clause (3) or (4), $600,000;

(2) in the case of a program operating on less than a Statewide basis, other than a program referred to in clause (3) or (4), $150,000;

(3) in the case of a program operated wholly within one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $150,000; or

(4) in the case of a program operated wholly within more than one service area of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title, $600,000.

(b) DETERMINATIONS ON SCOPE OF OPERATIONS.—A determination of whether a procurement technical assistance program is operating on a Statewide basis or on less than a Statewide basis or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(1)(D) of this title shall be made in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, §919(a), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–456, div. A, title VIII, §841(a), Sept. 29, 1988, 102 Stat. 2025; Pub. L. 101–189, div. A, title VIII, §819(c), Nov. 29, 1989, 103 Stat. 1503; Pub. L. 102–25, title VII, §701(f)(7), Apr. 6, 1991, 105 Stat. 115; Pub. L. 107–107, div. A, title VIII, §813, Dec. 28, 2001, 115 Stat. 1181; Pub. L. 107–314, div. A, title VIII, §815, Dec. 2, 2002, 116 Stat. 2610.)

AMENDMENTS

2002—Subsec. (a)(4). Pub. L. 107–314 substituted ''$600,000'' for ''$300,000''.

2001—Subsec. (a)(1). Pub. L. 107–107 substituted ''$600,000'' for ''$300,000''.

1991—Subsec. (b). Pub. L. 102–25 substituted ''section 2411(1)(D)'' for ''section 2411(a)(1)(D)''.

1989—Subsec. (a). Pub. L. 101–189, §819(c)(1), added pars. (1) to (4) and struck out former pars. (1) and (2) which read as follows:

''(1) in the case of a program operating on a Statewide basis, $300,000; or

''(2) in the case of a program operating on less than a Statewide basis, $150,000.''

Subsec. (b). Pub. L. 101–189, §819(c)(2), inserted ''or is operated wholly within one or more service areas of the Bureau of Indian Affairs by an eligible entity referred to in section 2411(a)(1)(D) of this title'' after ''or on less than a Statewide basis''.

1988—Pub. L. 100–456 amended section generally. Prior to amendment, section read as follows: ''The value of the assistance furnished by the Secretary to any eligible entity to carry out a procurement technical assistance program under a cooperative agreement under this chapter during any fiscal year may not exceed $150,000.''

1985—Pub. L. 99–145 amended section generally, substituting ''Secretary'' for ''Department of Defense'' and ''program under'' for ''program pursuant to''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2415. Distribution

The Secretary shall allocate funds available for assistance under this chapter equally to each Department of Defense contract administrative services district. If in any such fiscal year there is an insufficient number of satisfactory proposals in a district for cooperative agreements to allow effective use of the funds allocated to that district, the funds remaining with respect to that district shall be reallocated among the remaining districts.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2606; amended Pub. L. 99–145, title IX, §919(b), Nov. 8, 1985, 99 Stat. 692; Pub. L. 100–180, div. A, title VIII, §807(c), Dec. 4, 1987, 101 Stat. 1128; Pub. L. 105–261, div. A, title VIII, §802(a)(2), (b), Oct. 17, 1998, 112 Stat. 2081; Pub. L. 106–398, §1 [[div. A], title X, §1087(d)(5)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293.)

AMENDMENTS

2000—Pub. L. 106–398 made technical amendment to directory language of Pub. L. 105–261, §802(b). See 1998 Amendment note below.

1998—Pub. L. 105–261, §802(a)(2), substituted ''district'' for ''region'' wherever appearing and ''districts'' for ''regions''.

Pub. L. 105–261, §802(b), as amended by Pub. L. 106–398, substituted ''Department of Defense contract administrative services'' for ''Defense Contract Administration Services''.

1987—Pub. L. 100–180, §807(c), struck out subsecs. (a) and (b) relating to requirement by Secretary of Defense to reserve 75% of first $3,000,000 appropriated to carry out this chapter for purpose of assisting cooperative agreements entered into under section 2413 of this title for fiscal years 1986 and 1987, and for fiscal years after 1987 the authority of Secretary to allocate funds in accordance with such cooperative agreements, and substituted ''The'' for ''(c) For any amount appropriated to carry out this chapter for fiscal year 1986 or 1987 in excess of $3,000,000, the''.

1985—Subsec. (a)(2). Pub. L. 99–145, §919(b)(1)(A), substituted ''fiscal years 1986 and 1987'' for ''fiscal year 1985 is 50 percent and during fiscal year 1986''.

Subsec. (a)(3). Pub. L. 99–145, §919(b)(1)(B), added par. (3).

Subsec. (b). Pub. L. 99–145, §919(b)(2), substituted ''1987'' for ''1986''.

Subsec. (c). Pub. L. 99–145, §919(b)(3), added subsec. (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1087(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–292, provided that the amendment made by section 1 [[div. A], title X, §1087(d)(5)] is effective Oct. 17, 1998, and as if included in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 105–261, as enacted.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 919(d) of Pub. L. 99–145, set out as a note under section 2411 of this title.

§ 2416. Subcontractor information

(a) The Secretary of Defense shall require that any defense contractor in any year shall provide to an eligible entity with which the Secretary

has entered into a cooperative agreement under this chapter, on the request of such entity, the information specified in subsection (b).

(b) Information to be provided under subsection (a) is a listing of the name of each appropriate employee of the contractor who has responsibilities with respect to entering into contracts on behalf of such contractor that constitute subcontracts of contracts being performed by such contractor, together with the business address and telephone number and area of responsibility of each such employee.

(c) A defense contractor need not provide information under this section to a particular eligible entity more frequently than once a year.

(d) In this section, the term ''defense contractor'', for any year, means a person awarded a contract with the Department of Defense in that year for an amount in excess of $500,000.

(Added Pub. L. 99–500, §101(c) [title X, §957(a)(1)(B)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §957(a)(1)(B)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174; Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(1)(B), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

PRIOR PROVISIONS

A prior section 2416 was renumbered section 2419 of this title.

EFFECTIVE DATE

Section 101(c) [title X, §957(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 957(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2416 of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1987.''

§ 2417. Administrative costs

The Director of the Defense Logistics Agency may use, out of the amount appropriated for a fiscal year for operation and maintenance for the procurement technical assistance program authorized by this chapter, an amount not exceeding three percent of such amount to defray the expenses of administering the provisions of this chapter during such fiscal year.

(Added Pub. L. 101–510, div. A, title VIII, §814(a)(1)(B), Nov. 5, 1990, 104 Stat. 1596.)

PRIOR PROVISIONS

A prior section 2417 was renumbered section 2419 of this title.

EFFECTIVE DATE

Section 814(b) of Pub. L. 101–510 provided that: ''Section 2417 of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal year 1991 and each fiscal year thereafter.''

§ 2418. Authority to provide certain types of technical assistance

(a) The procurement technical assistance furnished by eligible entities assisted by the Department of Defense under this chapter may include technical assistance relating to contracts entered into with (1) Federal departments and agencies other than the Department of Defense, and (2) State and local governments.

(b) An eligible entity assisted by the Department of Defense under this chapter also may furnish information relating to assistance and other programs available pursuant to the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992.

(Added Pub. L. 102–484, div. D, title XLII, §4236(a)(1)(B), Oct. 23, 1992, 106 Stat. 2691.)

REFERENCES IN TEXT

The Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (b), is division D of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2658. For complete classification of division D to the Code, see Short Title note set out under section 2500 of this title and Tables.

PRIOR PROVISIONS

A prior section 2418 was renumbered section 2419 of this title.

§ 2419. Regulations

The Secretary of Defense shall prescribe regulations to carry out this chapter.

(Added Pub. L. 98–525, title XII, §1241(a)(1), Oct. 19, 1984, 98 Stat. 2606, §2416; renumbered §2417, Pub. L. 99–500, §101(c) [title X, §957(a)(1)(A)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–174, and Pub. L. 99–591, §101(c) [title X, §957(a)(1)(A)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–174, and Pub. L. 99–661, div. A, title IX, formerly title IV, §957(a)(1)(A), Nov. 14, 1986, 100 Stat. 3954, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; renumbered §2418, Pub. L. 101–510, div. A, title VIII, §814(a)(1)(A), Nov. 5, 1990, 104 Stat. 1596; renumbered §2419, Pub. L. 102–484, div. D, title XLII, §4236(a)(1)(A), Oct. 23, 1992, 106 Stat. 2691.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2418 of this title as this section.

1990—Pub. L. 101–510 renumbered section 2417 of this title as this section.

1986—Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661, renumbered section 2416 of this title as this section.

CHAPTER 143—PRODUCTION BY MILITARY AGENCIES

Sec.
2421. Plantations and farms: operation, maintenance, and improvement.
2422. Bakery and dairy products: procurement outside the United States.
2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office.
2424. Procurement of supplies and services from exchange stores outside the United States.

AMENDMENTS

1989—Pub. L. 101–189, div. A, title III, §§323(b), 324(b), Nov. 29, 1989, 103 Stat. 1414, 1415, added items 2423 and 2424.

1986—Pub. L. 99–661, div. A, title III, § 312(b), Nov. 14, 1986, 100 Stat. 3852, added item 2422.

§ 2421. Plantations and farms: operation, maintenance, and improvement

(a) Appropriations for the subsistence of members of the Army, Navy, Air Force, or Marine Corps are available for expenditures necessary in the operation, maintenance, and improvement of any plantation or farm, outside the United States and under the jurisdiction of the Army, Navy, Air Force, or Marine Corps, as the case may be, for furnishing fresh fruits and vegetables to the armed forces. However, no land may be acquired under this subsection.

(b) Fruits and vegetables produced under subsection (a) that are over the amount furnished or sold to the armed forces or to civilians serving with the armed forces may be sold only outside the United States.

(c) Of the persons employed by the United States under subsection (a), only nationals of the United States are entitled to the benefits provided by laws relating to the employment, work, compensation, or other benefits of civilian employees of the United States.

(d) A plantation or farm covered by subsection (a) shall be operated, maintained, and improved by a private contractor or lessee, so far as practicable. Before using members of the Army, Navy, Air Force, or Marine Corps, as the case may be, the Secretary concerned must make a reasonable effort to make a contract or lease with a person in civil life for his services for that operation, maintenance, or improvement, on terms advantageous to the United States. A determination by the Secretary as to the reasonableness of effort to make a contract or lease, and as to the advantageous nature of its terms, is final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2421(a)	10:1213 (less 1st and 2d provisos). 34:555a (less 1st and 2d provisos).	June 28, 1944, ch. 306; restated July 1, 1947, ch. 188, 61 Stat. 234; Oct. 31, 1951, ch. 654, § 3(2), 65 Stat. 708.
2421(b)	10:1213 (2d proviso). 34:555a (2d proviso).	
2421(c)	10:1213 (1st proviso). 34:555a (1st proviso).	
2421(d)	10:1214. 34:555b.	

In subsection (a), the word ''management'', in 10:1213 and 34:555a, is omitted as covered by the word ''operation''. The word ''members'' is substituted for the word ''personnel''. The word ''may'' is substituted for the word ''shall''. The words ''any and all'' and ''the purpose of'' are omitted as surplusage.

In subsections (a) and (b), the word ''continental'' is omitted, since section 101(1) of this title defines the United States to include the States and the District of Columbia.

In subsection (b), the words ''of the United States'' are omitted as surplusage. The words ''Fruits and vegetables produced under subsection (a)'' are substituted for the words ''That surplus production''.

In subsection (c), the words ''nationals of the United States'' are substituted for the words ''American nationals''. The words ''civil-service laws and other * * * of the United States'' and ''rights * * * or obligations'' are omitted as surplusage.

In subsection (d), the words ''after the termination of the present war'' are omitted as executed. The word ''by'' is substituted for the words ''through the instrumentality of''. The words ''partnership, association'' are omitted as covered by the definition of ''person'' in section 1 of title 1. The words ''United States'' are substituted for the word ''Government''. The words ''management'', ''for that purpose'', and ''or agreement'' are omitted as surplusage.

§ 2422. Bakery and dairy products: procurement outside the United States

(a) The Secretary of Defense may authorize any element of the Department of Defense that procures bakery and dairy products for use by the armed forces outside the United States to procure any products described in subsection (b) through the use of procedures other than competitive procedures.

(b) The products referred to in subsection (a) are bakery or dairy products produced by the Army and Air Force Exchange Service in a facility outside the United States that began operating before July 1, 1986.

(Added Pub. L. 99–661, div. A, title III, § 312(a), Nov. 14, 1986, 100 Stat. 3851.)

§ 2423. Laundry and dry cleaning services: procurement from facilities operated by the Navy Resale and Services Support Office

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with a laundry and dry cleaning facility operated by the Navy Resale and Services Support Office to procure laundry and dry cleaning services for the armed forces outside the United States.

(b) APPLICATION.—Subsection (a) shall apply only with respect to a laundry and dry cleaning facility of the Navy Resale and Services Support Office that began operating before October 1, 1989.

(Added Pub. L. 101–189, div. A, title III, § 323(a), Nov. 29, 1989, 103 Stat. 1414.)

§ 2424. Procurement of supplies and services from exchange stores outside the United States

(a) AUTHORITY.—The Secretary of Defense may authorize an element of the Department of Defense to enter into a contract (through the use of procedures other than competitive procedures) with an exchange store operated under the jurisdiction of the Secretary of a military department outside the United States to procure supplies or services for use by the armed forces outside the United States.

(b) LIMITATIONS.—(1) A contract may not be entered into under subsection (a) in an amount in excess of $50,000.

(2) Supplies provided under a contract entered into under subsection (a) shall be provided from the stocks of the exchange store on hand as of the date the contract is entered into with that exchange store.

(3) A contract entered into with an exchange store under subsection (a) may not provide for the procurement of services not regularly provided by that exchange store.

(c) EXCEPTION.—Paragraphs (1) and (2) of subsection (b) do not apply to contracts for the pro-

curement of soft drinks that are manufactured in the United States. The Secretary of Defense shall prescribe in regulations the standards and procedures for determining whether a particular beverage is a soft drink and whether the beverage was manufactured in the United States.

(Added Pub. L. 101–189, div. A, title III, § 324(a), Nov. 29, 1989, 103 Stat. 1414; amended Pub. L. 103–355, title III, § 3066, Oct. 13, 1994, 108 Stat. 3337; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(17), Feb. 10, 1996, 110 Stat. 673.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106 inserted heading and substituted ''particular beverage'' for ''particular drink'' and ''beverage was'' for ''drink was''.

1994—Subsec. (c). Pub. L. 103–355 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

OPERATION OF STARS AND STRIPES BOOKSTORES OVERSEAS BY MILITARY EXCHANGES

Section 353 of Pub. L. 103–160 provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall provide for the commencement, not later than October 1, 1994, of the operation of Stars and Stripes bookstores outside of the United States by the military exchanges.

''(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (a).''

CHAPTER 144—MAJOR DEFENSE ACQUISITION PROGRAMS

Sec.
2430. Major defense acquisition program defined.
2431. Weapons development and procurement schedules.
2432. Selected Acquisition Reports.
2433. Unit cost reports.
2434. Independent cost estimates; operational manpower requirements.
2435. Baseline description.
[2436 to 2439. Repealed.]
2440. Technology and industrial base plans.

AMENDMENTS

1994—Pub. L. 103–355, title III, §§ 3005(b), 3006(b), 3007(b), Oct. 13, 1994, 108 Stat. 3331, substituted ''Baseline description'' for ''Enhanced program stability'' in item 2435 and struck out items 2438 ''Major programs: competitive phototyping'' and 2439 ''Major programs: competitive alternative sources''.

1993—Pub. L. 103–160, div. A, title VIII, § 828(a)(4), Nov. 30, 1993, 107 Stat. 1713, struck out items 2436 ''Defense enterprise programs'' and 2437 ''Defense enterprise programs: milestone authorization''.

1992—Pub. L. 102–484, div. A, title VIII, § 821(a)(2), div. D, title XLII, § 4216(b)(2), Oct. 23, 1992, 106 Stat. 2460, 2670, added items 2438 and 2440 and redesignated former item 2438 as 2439.

1987—Pub. L. 100–26, § 7(b)(1), (2)(B), (9)(B), Apr. 21, 1987, 100 Stat. 279, 280, substituted ''Major Defense Acquisition Programs'' for ''Oversight of Cost Growth in Major Programs'' in chapter heading, added item 2430, and transferred former item 2305a from chapter 137 and redesignated it as item 2438.

1986—Pub. L. 99–661, div. A, title XII, § 1208(c)(2), Nov. 14, 1986, 100 Stat. 3976, inserted ''; operational manpower requirements'' in item 2434.

Pub. L. 99–500, § 101(c) [title X, §§ 904(a)(2), 905(a)(2), 906(a)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, 1783–135, 1783–137, and Pub. L. 99–591, § 101(c) [title X, §§ 904(a)(2), 905(a)(2), 906(a)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134, 3341–135, 3341–137; Pub. L. 99–661, div. A, title IX, formerly title IV, §§ 904(a)(2), 905(a)(2), 906(a)(2), Nov. 14, 1986, 100 Stat. 3914–3916, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, added items 2435 to 2437.

Pub. L. 99–433, title I, § 101(a)(4), Oct. 1, 1986, 100 Stat. 994, added chapter heading and analysis of sections for chapter 144, consisting of sections 2431 to 2434.

§ 2430. Major defense acquisition program defined

(a) In this chapter, the term ''major defense acquisition program'' means a Department of Defense acquisition program that is not a highly sensitive classified program (as determined by the Secretary of Defense) and—

(1) that is designated by the Secretary of Defense as a major defense acquisition program; or

(2) that is estimated by the Secretary of Defense to require an eventual total expenditure for research, development, test, and evaluation of more than $300,000,000 (based on fiscal year 1990 constant dollars) or an eventual total expenditure for procurement of more than $1,800,000,000 (based on fiscal year 1990 constant dollars).

(b) The Secretary of Defense may adjust the amounts (and the base fiscal year) provided in subsection (a)(2) on the basis of Department of Defense escalation rates. An adjustment under this subsection shall be effective after the Secretary transmits a written notification of the adjustment to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(Added Pub. L. 100–26, § 7(b)(2)(A), Apr. 21, 1987, 101 Stat. 279; amended Pub. L. 102–484, div. A, title VIII, § 817(b), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), in par. (2) substituted ''$300,000,000'' for ''$200,000,000'', ''1990'' for ''1980'' in two places, and ''$1,800,000,000'' for ''$1,000,000,000'', and added subsec. (b).

SPIRAL DEVELOPMENT UNDER MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 107–314, div. A, title VIII, § 803, Dec. 2, 2002, 116 Stat. 2603, provided that:

''(a) AUTHORITY.—The Secretary of Defense is authorized to conduct major defense acquisition programs as spiral development programs.

''(b) LIMITATION ON SPIRAL DEVELOPMENT PROGRAMS.—A research and development program for a major defense acquisition program of a military department or Defense Agency may not be conducted as a spiral development program unless the Secretary of Defense approves the spiral development plan for that research and development program in accordance with subsection (c). The Secretary of Defense may delegate authority to approve the plan to the Under Secretary

of Defense for Acquisition, Technology, and Logistics, or to the senior acquisition executive of the military department or Defense Agency concerned, but such authority may not be further delegated.

''(c) SPIRAL DEVELOPMENT PLANS.—A spiral development plan for a research and development program for a major defense acquisition program shall, at a minimum, include the following matters:

''(1) A rationale for dividing the research and development program into separate spirals, together with a preliminary identification of the spirals to be included.

''(2) A program strategy, including overall cost, schedule, and performance goals for the total research and development program.

''(3) Specific cost, schedule, and performance parameters, including measurable exit criteria, for the first spiral to be conducted.

''(4) A testing plan to ensure that performance goals, parameters, and exit criteria are met.

''(5) An appropriate limitation on the number of prototype units that may be produced under the research and development program.

''(6) Specific performance parameters, including measurable exit criteria, that must be met before the major defense acquisition program proceeds into production of units in excess of the limitation on the number of prototype units.

''(d) GUIDANCE.—Not later than 120 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary of Defense shall issue guidance for the implementation of spiral development programs authorized by this section. The guidance shall include appropriate processes for ensuring the independent validation of exit criteria being met, the operational assessment of fieldable prototypes, and the management of spiral development programs.

''(e) REPORTING REQUIREMENT.—The Secretary shall submit to Congress by September 30 of each of 2003 through 2008 a status report on each research and development program that is a spiral development program. The report shall contain information on unit costs that is similar to the information on unit costs under major defense acquisition programs that is required to be provided to Congress under chapter 144 of title 10, United States Code, except that the information on unit costs shall address projected prototype costs instead of production costs.

''(f) APPLICABILITY OF EXISTING LAW.—Nothing in this section shall be construed to exempt any program of the Department of Defense from the application of any provision of chapter 144 of title 10, United States Code, section 139, 181, 2366, 2399, or 2400 of such title, or any requirement under Department of Defense Directive 5000.1, Department of Defense Instruction 5000.2, or Chairman of the Joint Chiefs of Staff Instruction 3170.01B in accordance with the terms of such provision or requirement.

''(g) DEFINITIONS.—In this section:

''(1) The term 'spiral development program', with respect to a research and development program, means a program that—

''(A) is conducted in discrete phases or blocks, each of which will result in the development of fieldable prototypes; and

''(B) will not proceed into acquisition until specific performance parameters, including measurable exit criteria, have been met.

''(2) The term 'spiral' means one of the discrete phases or blocks of a spiral development program.

''(3) The term 'major defense acquisition program' has the meaning given such term in section 139(a)(2)(B) of title 10, United States Code.''

ENVIRONMENTAL CONSEQUENCE ANALYSIS OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 103–337, div. A, title VIII, § 815, Oct. 5, 1994, 108 Stat. 2819, provided that:

''(a) GUIDANCE.—Before April 1, 1995, the Secretary of Defense shall issue guidance, to apply uniformly throughout the Department of Defense, regarding—

''(1) how to achieve the purposes and intent of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) by ensuring timely compliance for major defense acquisition programs (as defined in section 2430 of title 10, United States Code) through (A) initiation of compliance efforts before development begins, (B) appropriate environmental impact analysis in support of each milestone decision, and (C) accounting for all direct, indirect, and cumulative environmental effects before proceeding toward production; and

''(2) how to analyze, as early in the process as feasible, the life-cycle environmental costs for such major defense acquisition programs, including the materials to be used, the mode of operations and maintenance, requirements for demilitarization, and methods of disposal, after consideration of all pollution prevention opportunities and in light of all environmental mitigation measures to which the department expressly commits.

''(b) ANALYSIS.—Beginning not later than March 31, 1995, the Secretary of Defense shall analyze the environmental costs of a major defense acquisition process as an integral part of the life-cycle cost analysis of the program pursuant to the guidance issued under subsection (a).

''(c) DATA BASE FOR NEPA DOCUMENTATION.—The Secretary of Defense shall establish and maintain a data base for documents prepared by the Department of Defense in complying with the National Environmental Policy Act of 1969 with respect to major defense acquisition programs. Any such document relating to a major defense acquisition program shall be maintained in the data base for 5 years after commencement of low-rate initial production of the program.''

EFFICIENT CONTRACTING PROCESSES

Pub. L. 103–160, div. A, title VIII, § 837, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, § 5064(b)(2), Oct. 13, 1994, 108 Stat. 3360, provided that: ''The Secretary of Defense shall take any additional actions that the Secretary considers necessary to waive regulations not required by statute that affect the efficiency of the contracting process within the Department of Defense. Such actions shall include, in the Secretary's discretion, developing methods to streamline the procurement process, streamlining the period for entering into contracts, and defining alternative techniques to reduce reliance on military specifications and standards, in contracts for the defense acquisition programs participating in the Defense Acquisition Pilot Program.''

CONTRACT ADMINISTRATION: PERFORMANCE BASED CONTRACT MANAGEMENT

Pub. L. 103–160, div. A, title VIII, § 838, Nov. 30, 1993, 107 Stat. 1718, as amended by Pub. L. 103–355, title V, § 5064(b)(3), Oct. 13, 1994, 108 Stat. 3360, provided that: ''For at least one participating defense acquisition program for which a determination is made to make payments for work in progress under the authority of section 2307 of title 10, United States Code, the Secretary of Defense should define payment milestones on the basis of quantitative measures of results.''

DEFENSE ACQUISITION PILOT PROGRAM

Pub. L. 104–201, div. A, title VIII, § 803, Sept. 23, 1996, 110 Stat. 2604, as amended by Pub. L. 105–85, div. A, title VIII, § 847(b)(2), Nov. 18, 1997, 111 Stat. 1845, provided that:

''(a) AUTHORITY.—The Secretary of Defense may waive sections 2399, 2432, and 2433 of title 10, United States Code, in accordance with this section for any defense acquisition program designated by the Secretary of Defense for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2430 note).

''(b) OPERATIONAL TEST AND EVALUATION.—The Secretary of Defense may waive the requirements for oper-

ational test and evaluation for such a defense acquisition program as set forth in section 2399 of title 10, United States Code, if the Secretary—

''(1) determines (without delegation) that such test would be unreasonably expensive or impractical;

''(2) develops a suitable alternate operational test program for the system concerned;

''(3) describes in the test and evaluation master plan, as approved by the Director of Operational Test and Evaluation, the method of evaluation that will be used to evaluate whether the system will be effective and suitable for combat; and

''(4) submits to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] a report containing the determination that was made under paragraph (1), a justification for that determination, and a copy of the plan required by paragraph (3).

''(c) SELECTED ACQUISITION REPORTS.—The Secretary of Defense may waive the requirements of sections 2432 and 2433 of title 10, United States Code, for such a defense acquisition program if the Secretary provides a single annual report to Congress at the end of each fiscal year that describes the status of the program in relation to the baseline description for the program established under section 2435 of such title.''

Pub. L. 103–355, title V, §5064, Oct. 13, 1994, 108 Stat. 3359, as amended by Pub. L. 106–398, §1 [[div. A], title VIII, §801(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–202, 1654A–203, provided that:

''(a) IN GENERAL.—The Secretary of Defense is authorized to designate the following defense acquisition programs for participation in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

''(1) FIRE SUPPORT COMBINED ARMS TACTICAL TRAINER (FSCATT).—The Fire Support Combined Arms Tactical Trainer program with respect to all contracts directly related to the procurement of a training simulation system (including related hardware, software, and subsystems) to perform collective training of field artillery gunnery team components, with development of software as required to generate the training exercises and component interfaces.

''(2) JOINT DIRECT ATTACK MUNITION (JDAM I).—The Joint Direct Attack Munition program with respect to all contracts directly related to the development and procurement of a strap-on guidance kit, using an inertially guided, Global Positioning System updated guidance kit to enhance the delivery accuracy of 500-pound, 1000-pound, and 2000-pound bombs in inventory.

''(3) JOINT PRIMARY AIRCRAFT TRAINING SYSTEM (JPATS).—The Joint Primary Aircraft Training System (JPATS) with respect to all contracts directly related to the acquisition of a new primary trainer aircraft to fulfill Air Force and Navy joint undergraduate aviation training requirements, and an associated ground-based training system consisting of air crew training devices (simulators), courseware, a Training Management System, and contractor support for the life of the system.

''(4) COMMERCIAL-DERIVATIVE AIRCRAFT (CDA).—

''(A) All contracts directly related to the acquisition or upgrading of commercial-derivative aircraft for use in meeting airlift and tanker requirements and the air vehicle component for airborne warning and control systems.

''(B) For purposes of this paragraph, the term 'commercial-derivative aircraft' means any of the following:

''(i) Any aircraft (including spare parts, support services, support equipment, technical manuals, and data related thereto) that is or was of a type customarily used in the course of normal business operations for other than Federal Government purposes, that has been issued a type certificate by the Administrator of the Federal Aviation Administration, and that has been sold or leased for use in the commercial marketplace or that has been offered for sale or lease for use in the commercial marketplace.

''(ii) Any aircraft that, but for modifications of a type customarily available in the commercial marketplace, or minor modifications made to meet Federal Government requirements, would satisfy or would have satisfied the criteria in subclause (I).

''(iii) For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft, other than the C–17 or any aircraft derived from the C–17, shall be considered a commercial-derivative aircraft.

''(5) COMMERCIAL-DERIVATIVE ENGINE (CDE).—The commercial derivative engine program with respect to all contracts directly related to the acquisition of (A) commercial derivative engines (including spare engines and upgrades), logistics support equipment, technical orders, management data, and spare parts, and (B) commercially derived engines for use in supporting the purchase of commercial-derivative aircraft for use in airlift and tanker requirements (including engine replacement and upgrades) and the air vehicle component for airborne warning and control systems. For purposes of a potential complement or alternative to the C–17 program, any nondevelopmental airlift aircraft engine shall be considered a commercial-derivative engine.

''(b) PILOT PROGRAM IMPLEMENTATION.—(1) [Amended section 833 of Pub. L. 103–160, set out below.]

''(2) [Amended section 837 of Pub. L. 103–160, set out above.]

''(3) [Amended section 838 of Pub. L. 103–160, set out above.]

''(4) Not later than 45 days after the date of the enactment of the Federal Acquisition Streamlining Act of 1994 [Oct. 13, 1994], the Secretary of Defense shall identify for each defense acquisition program participating in the pilot program quantitative measures and goals for reducing acquisition management costs.

''(5) For each defense acquisition program participating in the pilot program, the Secretary of Defense shall establish a review process that provides senior acquisition officials with reports on the minimum necessary data items required to ensure the appropriate expenditure of funds appropriated for the program and that—

''(A) contain essential information on program results at appropriate intervals, including the criteria to be used in measuring the success of the program; and

''(B) reduce data requirements from the current program review reporting requirements.

''(c) SPECIAL AUTHORITY.—The authority delegated under subsection (a) may include authority for the Secretary of Defense—

''(1) to apply any amendment or repeal of a provision of law made in this Act [see Tables for classification] to the pilot programs before the effective date of such amendment or repeal [see Effective Date of 1994 Amendment note set out under section 251 of Title 41, Public Contracts]; and

''(2) to apply to a procurement of items other than commercial items under such programs—

''(A) any authority provided in this Act (or in an amendment made by a provision of this Act) to waive a provision of law in the case of commercial items, and

''(B) any exception applicable under this Act (or an amendment made by a provision of this Act) in the case of commercial items,

before the effective date of such provision (or amendment) to the extent that the Secretary determines necessary to test the application of such waiver or exception to procurements of items other than commercial items.

''(d) APPLICABILITY.—(1) Subsection (c) applies with respect to—

''(A) a contract that is awarded or modified during the period described in paragraph (2); and

''(B) a contract that is awarded before the beginning of such period and is to be performed (or may be performed), in whole or in part, during such period.

''(2) The period referred to in paragraph (1) is the period that begins on October 13, 1994, and ends on October 1, 2007.

''(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as authorizing the appropriation or obligation of funds for the programs designated for participation in the defense acquisition pilot program under the authority of subsection (a).''

Pub. L. 103–337, div. A, title VIII, §819, Oct. 5, 1994, 108 Stat. 2822, provided that: ''The Secretary of Defense is authorized to designate the following defense acquisition programs for participation, to the extent provided in the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Tables for classification], in the defense acquisition pilot program authorized by section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note):

''(1) The Fire Support Combined Arms Tactical Trainer program.

''(2) The Joint Direct Attack Munition program.

''(3) The Joint Primary Aircraft Training System.

''(4) Commercial-derivative aircraft.

''(5) Commercial-derivative engine.''

Pub. L. 103–160, div. A, title VIII, §833, Nov. 30, 1993, 107 Stat. 1716, as amended by Pub. L. 103–355, title V, §5064(b)(1), Oct. 13, 1994, 108 Stat. 3360, provided that:

''(a) MISSION-ORIENTED PROGRAM MANAGEMENT.—In the exercise of the authority provided in section 809 of the National Defense Authorization Act for Fiscal Year 1991 [Pub. L. 101–510] (10 U.S.C. 2430 note), the Secretary of Defense should propose for one or more of the defense acquisition programs covered by the Defense Acquisition Pilot Program to utilize the concept of mission-oriented program management.

''(b) POLICIES AND PROCEDURES.—In the case of each defense acquisition program covered by the Defense Acquisition Pilot Program, the Secretary of Defense should prescribe policies and procedures for the interaction of the program manager and the commander of the operational command (or a representative) responsible for the requirement for the equipment acquired, and for the interaction with the commanders of the unified and specified combatant commands. Such policies and procedures should include provisions for enabling the user commands to participate in acceptance testing.''

Pub. L. 103–160, div. A, title VIII, §835(b), Nov. 30, 1993, 107 Stat. 1717, related to funding for Defense Acquisition Pilot Program, and authorized the Secretary of Defense to expend appropriated sums as necessary to carry out next phase of acquisition program cycle after Secretary determined that objective quantifiable performance expectations relating to execution of that phase had been identified, prior to repeal by Pub. L. 103–355, title V, §5002(b), Oct. 13, 1994, 108 Stat. 3350.

Pub. L. 103–160, div. A, title VIII, §839, Nov. 30, 1993, 107 Stat. 1718, provided that:

''(a) COLLECTION AND ANALYSIS OF PERFORMANCE INFORMATION.—The Secretary of Defense shall collect and analyze information on contractor performance under the Defense Acquisition Pilot Program.

''(b) INFORMATION TO BE INCLUDED.—Information collected under subsection (a) shall include the history of the performance of each contractor under the Defense Acquisition Pilot Program contracts and, for each such contract performed by the contractor, a technical evaluation of the contractor's performance prepared by the program manager responsible for the contract.''

Pub. L. 101–510, div. A, title VIII, §809, Nov. 5, 1990, 104 Stat. 1593, as amended by Pub. L. 102–484, div. A, title VIII, §811, Oct. 23, 1992, 106 Stat. 2450; Pub. L. 103–160, div. A, title VIII, §832, Nov. 30, 1993, 107 Stat. 1715, provided that:

''(a) AUTHORITY TO CONDUCT PILOT PROGRAM.—The Secretary of Defense may conduct a pilot program for the purpose of determining the potential for increasing the efficiency and effectiveness of the acquisition process in defense acquisition programs.

''(b) DESIGNATION OF PARTICIPATING PROGRAMS.—(1) Subject to paragraph (2), the Secretary may designate defense acquisition programs for participation in the pilot program.

''(2) The Secretary may designate for participation in the pilot program only those defense acquisition programs specifically authorized to be so designated in a law authorizing appropriations for such program enacted after the date of the enactment of this Act [Nov. 5, 1990].

''(c) CONDUCT OF PILOT PROGRAM.—(1) In the case of each defense acquisition program designated for participation in the pilot program, the Secretary—

''(A) shall conduct the program in accordance with standard commercial, industrial practices; and

''(B) may waive or limit the applicability of any provision of law that is specifically authorized to be waived in the law authorizing appropriations referred to in subsection (b)(2) and that prescribes—

''(i) procedures for the procurement of supplies or services;

''(ii) a preference or requirement for acquisition from any source or class of sources;

''(iii) any requirement related to contractor performance;

''(iv) any cost allowability, cost accounting, or auditing requirements; or

''(v) any requirement for the management of, testing to be performed under, evaluation of, or reporting on a defense acquisition program.

''(2) The waiver authority provided in paragraph (1)(B) does not apply to a provision of law if, as determined by the Secretary—

''(A) a purpose of the provision is to ensure the financial integrity of the conduct of a Federal Government program; or

''(B) the provision relates to the authority of the Inspector General of the Department of Defense.

''(d) PUBLICATION OF POLICIES AND GUIDELINES.—The Secretary shall publish in the Federal Register a proposed memorandum setting forth policies and guidelines for implementation of the pilot program under this section and provide an opportunity for public comment on the proposed memorandum for a period of 60 days after the date of publication. The Secretary shall publish in the Federal Register any subsequent proposed change to the memorandum and provide an opportunity for public comment on each such proposed change for a period of 60 days after the date of publication.

''(e) NOTIFICATION AND IMPLEMENTATION.—(1) The Secretary shall transmit to the congressional defense committees a written notification of each defense acquisition program proposed to be designated by the Secretary for participation in the pilot program.

''(2) If the Secretary proposes to waive or limit the applicability of any provision of law to a defense acquisition program under the pilot program in accordance with this section, the Secretary shall include in the notification regarding that acquisition program—

''(A) the provision of law proposed to be waived or limited;

''(B) the effects of such provision of law on the acquisition, including specific examples;

''(C) the actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

''(D) a discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

''(f) LIMITATION ON WAIVER AUTHORITY.—The applicability of the following requirements of law may not be waived or limited under subsection (c)(1)(B) with respect to a defense acquisition program:

''(1) The requirements of this section.

''(2) The requirements contained in any law enacted on or after the date of the enactment of this Act [Nov. 5, 1990] if that law designates such defense acquisition program as a participant in the pilot program, except to the extent that a waiver of such re-

quirement is specifically authorized for such defense acquisition program in a law enacted on or after such date.

''(g) TERMINATION OF AUTHORITY.—The authority to waive or limit the applicability of any law under this section may not be exercised after September 30, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 139, 1621, 1733, 1737, 2433 of this title; title 50 section 1521a.

§2431. Weapons development and procurement schedules

(a) The Secretary of Defense shall submit to Congress each calendar year, not later than 45 days after the President submits the budget to Congress under section 1105 of title 31, budget justification documents regarding development and procurement schedules for each weapon system for which fund authorization is required by section 114(a) of this title, and for which any funds for procurement are requested in that budget. The documents shall include data on operational testing and evaluation for each weapon system for which funds for procurement are requested (other than funds requested only for the procurement of units for operational testing and evaluation, or long lead-time items, or both). A weapon system shall also be included in the annual documents required under this subsection in each year thereafter until procurement of that system has been completed or terminated, or the Secretary of Defense certifies, in writing, that such inclusion would not serve any useful purpose and gives his reasons therefor.

(b) Any documents required to be submitted under subsection (a) shall include detailed and summarized information with respect to each weapon system covered and shall specifically include each of the following:

(1) The development schedule, including estimated annual costs until development is completed.

(2) The planned procurement schedule, including the best estimate of the Secretary of Defense of the annual costs and units to be procured until procurement is completed.

(3) To the extent required by the second sentence of subsection (a), the result of all operational testing and evaluation up to the time of the submission of the documents, or, if operational testing and evaluation has not been conducted, a statement of the reasons therefor and the results of such other testing and evaluation as has been conducted.

(4)(A) The most efficient production rate, the most efficient acquisition rate, and the minimum sustaining rate, consistent with the program priority established for such weapon system by the Secretary concerned.

(B) In this paragraph:

(i) The term ''most efficient production rate'' means the maximum rate for each budget year at which the weapon system can be produced with existing or planned plant capacity and tooling, with one shift a day running for eight hours a day and five days a week.

(ii) The term ''minimum sustaining rate'' means the production rate for each budget year that is necessary to keep production lines open while maintaining a base of responsive vendors and suppliers.

(c) In the case of any weapon system for which procurement funds have not been previously requested and for which funds are first requested by the President in any fiscal year after the Budget for that fiscal year has been submitted to Congress, the same documentation requirements shall be applicable to that system in the same manner and to the same extent as if funds had been requested for that system in that budget.

(Added Pub. L. 93–155, title VIII, §803(a), Nov. 16, 1973, 87 Stat. 614, §139; amended Pub. L. 94–106, title VIII, §805, Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, §511(5), Dec. 12, 1980, 94 Stat. 2920; Pub. L. 97–86, title IX, §909(c), Dec. 1, 1981, 95 Stat. 1120; Pub. L. 97–258, §3(b)(1), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, §1405(3), Oct. 19, 1984, 98 Stat. 2621; renumbered §2431 and amended Pub. L. 99–433, title I, §§101(a)(5), 110(d)(12), (g)(6), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 100–180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–510, div. A, title XIII, §1301(13), title XIV, §1484(f)(3), Nov. 5, 1990, 104 Stat. 1668, 1717; Pub. L. 103–355, title III, §3001, Oct. 13, 1994, 108 Stat. 3327; Pub. L. 104–106, div. D, title XLIII, §4321(b)(18), Feb. 10, 1996, 110 Stat. 673.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 92–156, title V, §506, Nov. 17, 1971, 85 Stat. 429, prior to repeal by Pub. L. 93–155, §803(b)(2).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, §4321(b)(18)(A)(i), substituted ''Any documents'' for ''Any report'' in first sentence.

Subsec. (b)(3). Pub. L. 104–106, §4321(b)(18)(A)(ii), substituted ''the documents'' for ''the report''.

Subsec. (c). Pub. L. 104–106, §4321(b)(18)(B), substituted ''documentation'' for ''reporting''.

1994—Subsec. (a). Pub. L. 103–355, §3001(a), substituted ''not later than 45 days after'' for ''at the same time'' and ''budget justification documents'' for ''a written report'' in first sentence and ''documents'' for ''report'' in second and third sentences.

Subsec. (b). Pub. L. 103–355, §3001(b)(1), substituted ''include each of the following:'' for ''include—'' in introductory provisions.

Subsec. (b)(1) to (3). Pub. L. 103–355, §3001(b)(2)–(4), capitalized first letter of first word in pars. (1) to (3) and substituted period for semicolon at end of pars. (1) and (2) and period for ''; and'' at end of par. (3).

Subsec. (b)(4). Pub. L. 103–355, §3001(b)(5) amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''the most efficient production rate and the most efficient acquisition rate consistent with the program priority established for such weapon system by the Secretary concerned.''

1990—Subsec. (b). Pub. L. 101–510, §1484(f)(3), substituted ''covered and shall specifically include'' for ''covered, and specifically include, but not be limited to'' in introductory provisions.

Pub. L. 101–510, §1301(13), redesignated subsec. (c) as (b), struck out ''or (b)'' after ''under subsection (a)'', and struck out former subsec. (b) which read as follows: ''The Secretary of Defense shall submit a supplemental report to Congress not less than 30, or more than 90, days before the award of any contract, or the exercise of any option in a contract, for the procurement of any such weapon system (other than procurement of units for operational testing and evaluation, or long lead-time items, or both), unless—

''(1) the contractor or contractors for that system have not yet been selected and the Secretary of Defense determines that the submission of that report would adversely affect the source selection process and notifies Congress in writing, prior to such award, of that determination, stating his reasons therefor; or

''(2) the Secretary of Defense determines that the submission of that report would otherwise adversely affect the vital security interests of the United States and notifies Congress in writing of that determination at least 30 days prior to the award, stating his reasons therefor.''

Subsecs. (c), (d). Pub. L. 101–510, §1301(13)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, §101(a)(5). See 1986 Amendment note below.

1986—Pub. L. 99–433, §101(a)(5), as amended by Pub. L. 100–180, §1314(a)(1), renumbered section 139 of this title as this section.

Pub. L. 99–433, §110(d)(12), substituted ''Weapons development and procurement schedules'' for ''Secretary of Defense: weapons development and procurement schedules for armed forces; reports; supplemental reports'' in section catchline.

Subsec. (a). Pub. L. 99–433, §110(g)(6), substituted ''section 114(a)'' for ''section 138(a)''.

1984—Subsec. (b). Pub. L. 98–525, §1405(3)(B), substituted ''30'' for ''thirty'' and ''90'' for ''ninety'' in introductory text.

Subsec. (b)(2). Pub. L. 98–525, §1405(3)(A), substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

1981—Subsec. (c)(4). Pub. L. 97–86 added par. (4).

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)'' for ''section 11 of title 31''.

1975—Subsec. (b). Pub. L. 94–106 substituted ''or more than ninety, days before'' for ''or more than sixty, days before''.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPORT REQUIREMENTS RELATING TO BALLISTIC MISSILE DEFENSE PROGRAMS

Pub. L. 107–314, div. A, title II, §221, Dec. 2, 2002, 116 Stat. 2484, provided that:

''(a) ANNUAL SUBMISSION OF CURRENT PERFORMANCE GOALS AND DEVELOPMENT BASELINES.—(1) The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] each year the performance goals and development baselines—

''(A) for those ballistic missile defense systems under development by the Missile Defense Agency that could be fielded; and

''(B) for any other ballistic missile defense program or project that has been designated by Congress as a special interest item.

''(2) Such performance goals and development baselines shall be provided for each block of each such system.

''(3) The performance goals and development baselines under paragraph (1) shall be included annually with the defense budget justification materials submitted in support of the President's budget submitted to Congress under section 1105 of title 31, United States Code.

''(b) RDT&E BUDGET JUSTIFICATION MATERIALS.—The budget justification materials submitted to Congress for any fiscal year in support of a request for the authorization and appropriation of funds for research, development, test, and evaluation for ballistic missile defense systems shall include a funding profile for each block of each such system that could be fielded that reflects the development baseline submitted pursuant to subsection (a) for that fiscal year.

''(c) REVIEW OF MDA CRITERIA IN RELATION TO MILITARY REQUIREMENTS.—(1) The Joint Requirements Oversight Council established under section 181 of title 10, United States Code, shall review cost, schedule, and performance criteria for missile defense programs of the Missile Defense Agency in order to assess the validity of those criteria in relation to military requirements.

''(2) The Secretary shall include the results of such review with the first annual statement of program goals submitted to the congressional defense committees under section 232(c) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 10 U.S.C. 2431 note) after the date of the enactment of this Act [Dec. 2, 2002].''

PROVISION OF INFORMATION ON FLIGHT TESTING OF GROUND-BASED MIDCOURSE NATIONAL MISSILE DEFENSE SYSTEM

Pub. L. 107–314, div. A, title II, §224, Dec. 2, 2002, 116 Stat. 2485, provided that:

''(a) INFORMATION TO BE FURNISHED TO CONGRESSIONAL COMMITTEES.—The Director of the Missile Defense Agency shall provide to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] information on the results of each flight test of the Ground-based Midcourse national missile defense system.

''(b) CONTENT.—Information provided under subsection (a) on the results of a flight test shall include the following matters:

''(1) A thorough discussion of the content and objectives of the test.

''(2) For each such test objective, a statement regarding whether or not the objective was achieved.

''(3) For any such test objective not achieved—

''(A) a thorough discussion describing the reasons that the objective was not achieved; and

''(B) a discussion of any plans for future tests to achieve that objective.''

MISSILE DEFENSE AGENCY TEST PROGRAM

Pub. L. 107–107, div. A, title II, §232(c)–(h), Dec. 28, 2001, 115 Stat. 1037–1039, as amended by Pub. L. 107–314, div. A, title II, §225(b)(2)(A), Dec. 2, 2002, 116 Stat. 2486, provided that:

''(c) REQUIREMENT FOR ANNUAL PROGRAM GOALS.—(1) The Secretary of Defense shall each year establish cost, schedule, testing, and performance goals for the ballistic missile defense programs of the Department of Defense for the period covered by the future-years defense program that is submitted to Congress that year under section 221 of title 10, United States Code. Not later than February 1 each year, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a statement of the goals so established.

''(2) The statement of goals submitted under paragraph (1) for any year after 2002 shall be an update of

the statement submitted under that paragraph for the preceding year.

''(3) Each statement of goals submitted under paragraph (1) shall set forth cost, schedule, testing, and performance goals that pertain to each functional area program element identified in subsection (a), and each program element identified in subsection (b), of section 223 of title 10, United States Code.

''(d) ANNUAL PROGRAM PLAN.—(1) With the submission of the statement of goals under subsection (c) for any year, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a program of activities planned to be carried out for each missile defense program that enters engineering and manufacturing development (as defined in section 223(b)(2) of title 10, United States Code, as added by subsection (b)).

''(2) Each program plan under paragraph (1) shall include the following:

''(A) A funding profile that includes an estimate of—

''(i) the total expenditures to be made in the fiscal year in which the plan is submitted and the following fiscal year, together with the estimated total life-cycle costs of the program; and

''(ii) a display of such expenditures (shown for significant procurement, construction, and research and development) for the fiscal year in which the plan is submitted and the following fiscal year.

''(B) A program schedule for the fiscal year in which the plan is submitted and the following fiscal year for each of the following:

''(i) Significant procurement.

''(ii) Construction.

''(iii) Research and development.

''(iv) Flight tests.

''(v) Other significant testing activities.

''(3) Information specified in paragraph (2) need not be included in the plan for any year under paragraph (1) to the extent such information has already been provided, or will be provided in the current fiscal year, in annual budget justification documents of the Department of Defense submitted to Congress or in other required reports to Congress.

''(e) INTERNAL DOD REVIEWS.—(1) The officials and elements of the Department of Defense specified in paragraph (2) shall on an ongoing basis—

''(A) review the development of goals under subsection (c) and the annual program plan under subsection (d); and

''(B) provide to the Secretary of Defense and the Director of the Missile Defense Agency any comments on such matters as considered appropriate.

''(2) Paragraph (1) applies with respect to the following:

''(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(B) The Director of Operational Test and Evaluation.

''(C) The Director of Program Analysis and Evaluation.

''(D) The Joint Requirements Oversight Council.

''(E) The Cost Analysis and Improvement Group.

''(f) DEMONSTRATION OF CRITICAL TECHNOLOGIES.—(1) The Director of the Missile Defense Agency shall develop a plan for ensuring that each critical technology for a missile defense program is successfully demonstrated in an appropriate environment before that technology enters into operational service as part of a missile defense program.

''(2) The Director of Operational Test and Evaluation of the Department of Defense shall monitor the development of the plan under paragraph (1) and shall submit to the Director of the Missile Defense Agency any comments regarding that plan that the Director of Operational Test and Evaluation considers appropriate.

''(g) COMPTROLLER GENERAL ASSESSMENT.—(1) At the conclusion of each of fiscal years 2002 and 2003, the Comptroller General of the United States shall assess the extent to which the Missile Defense Agency achieved the goals established under subsection (c) for such fiscal year.

''(2) Not later than February 15, 2003, and February 15, 2004, the Comptroller General shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the Comptroller General's assessment under paragraph (1) with respect to the preceding fiscal year.

''(h) ANNUAL OT&E ASSESSMENT OF TEST PROGRAM.—(1) The Director of Operational Test and Evaluation shall each year assess the adequacy and sufficiency of the Missile Defense Agency test program during the preceding fiscal year.

''(2) Not later than February 15 each year the Director shall submit to the congressional defense committees a report on the assessment under paragraph (1) with respect to the preceding fiscal year.''

MISSILE DEFENSE TESTING INITIATIVE

Pub. L. 107–107, div. A, title II, § 234, Dec. 28, 2001, 115 Stat. 1039, provided that:

''(a) TESTING INFRASTRUCTURE.—(1) The Secretary of Defense shall ensure that each annual budget request of the Department of Defense—

''(A) is designed to provide for comprehensive testing of ballistic missile defense programs during early stages of development; and

''(B) includes necessary funding to support and improve test infrastructure and provide adequate test assets for the testing of such programs.

''(2) The Secretary shall ensure that ballistic missile defense programs incorporate, to the greatest possible extent, operationally realistic test configurations (referred to as 'test bed' configurations) to demonstrate system performance across a broad range of capability and, during final stages of operational testing, to demonstrate reliable performance.

''(3) The Secretary shall ensure that the test infrastructure for ballistic missile defense programs is capable of supporting continued testing of ballistic missile defense systems after deployment.

''(b) REQUIREMENTS FOR EARLY STAGES OF SYSTEM DEVELOPMENT.—In order to demonstrate acceptable risk and developmental stability, the Secretary of Defense shall ensure that any ballistic missile defense program incorporates, to the maximum extent practicable, the following elements during the early stages of system development:

''(1) Pursuit of parallel conceptual approaches and technological paths for all critical problematic components until effective and reliable solutions can be demonstrated.

''(2) Comprehensive ground testing in conjunction with flight-testing for key elements of the proposed system that are considered to present high risk, with such ground testing to make use of existing facilities and combinations of facilities that support testing at the highest possible levels of integration.

''(3) Where appropriate, expenditures to enhance the capabilities of existing test facilities, or to construct new test facilities, to support alternative complementary test methodologies.

''(4) Sufficient funding of test instrumentation to ensure accurate measurement of all critical test events.

''(5) Incorporation into the program of sufficient schedule flexibility and expendable test assets, including missile interceptors and targets, to ensure that failed or aborted tests can be repeated in a prudent, but expeditious manner.

''(6) Incorporation into flight-test planning for the program, where possible, of—

''(A) methods that make the most cost-effective use of test opportunities;

''(B) events to demonstrate engagement of multiple targets, 'shoot-look-shoot', and other planned operational concepts; and

''(C) exploitation of opportunities to facilitate early development and demonstration of 'family of systems' concepts.

''(c) SPECIFIC REQUIREMENTS FOR GROUND-BASED MID-COURSE INTERCEPTOR SYSTEMS.—For ground-based mid-course interceptor systems, the Secretary of Defense shall initiate steps during fiscal year 2002 to establish a flight-test capability of launching not less than three missile defense interceptors and not less than two ballistic missile targets to provide a realistic test infrastructure.''

NATIONAL MISSILE DEFENSE POLICY

Pub. L. 106–38, § 2, July 22, 1999, 113 Stat. 205, provided that: ''It is the policy of the United States to deploy as soon as is technologically possible an effective National Missile Defense system capable of defending the territory of the United States against limited ballistic missile attack (whether accidental, unauthorized, or deliberate) with funding subject to the annual authorization of appropriations and the annual appropriation of funds for National Missile Defense.''

NATIONAL MISSILE DEFENSE PROGRAM

Pub. L. 105–85, div. A, title II, § 231, Nov. 18, 1997, 111 Stat. 1661, provided that:

''(a) PROGRAM STRUCTURE.—To preserve the option of achieving an initial operational capability in fiscal year 2003, the Secretary of Defense shall ensure that the National Missile Defense Program is structured and programmed for funding so as to support a test, in fiscal year 1999, of an integrated national missile defense system that is representative of the national missile defense system architecture that could achieve initial operational capability in fiscal year 2003.

''(b) ELEMENTS OF NMD SYSTEM.—The national missile defense system architecture specified in subsection (a) shall consist of the following elements:

''(1) An interceptor system that optimizes defensive coverage of the continental United States, Alaska, and Hawaii against limited ballistic missile attack (whether accidental, unauthorized, or deliberate).

''(2) Ground-based radars.

''(3) Space-based sensors.

''(4) Battle management, command, control, and communications (BM/C^3).

''(c) PLAN FOR NMD SYSTEM DEVELOPMENT AND DEPLOYMENT.—Not later than February 15, 1998, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a plan for the development and deployment of a national missile defense system that could achieve initial operational capability in fiscal year 2003. The plan shall include the following matters:

''(1) A detailed description of the system architecture selected for development.

''(2) A discussion of the justification for the selection of that particular architecture.

''(3) The Secretary's estimate of the amounts of the appropriations that would be necessary for research, development, test, evaluation, and for procurement for each of fiscal years 1999 through 2003 in order to achieve an initial operational capability of the system architecture in fiscal year 2003.

''(4) For each activity necessary for the development and deployment of the national missile defense system architecture selected by the Secretary that would at some point conflict with the terms of the ABM Treaty, if any—

''(A) a description of the activity;

''(B) a description of the point at which the activity would conflict with the terms of the ABM Treaty;

''(C) the legal analysis justifying the Secretary's determination regarding the point at which the activity would conflict with the terms of the ABM Treaty; and

''(D) an estimate of the time at which such point would be reached in order to achieve a test of an integrated missile defense system in fiscal year 1999 and initial operational capability of such a system in fiscal year 2003.

''(d) FUNDING FOR FISCAL YEAR 1998.—Of the funds authorized to be appropriated under section 201(4) [111 Stat. 1655], $978,091,000 shall be available for the National Missile Defense Program.

''(e) ABM TREATY DEFINED.—In this section, the term 'ABM Treaty' means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, signed at Moscow on May 26, 1972, and includes the Protocol to that treaty, signed at Moscow on July 3, 1974.''

ENHANCED COOPERATION BETWEEN NATIONAL NUCLEAR SECURITY ADMINISTRATION AND MISSILE DEFENSE AGENCY

Pub. L. 106–398, § 1 [div. C, title XXXI, § 3132], Oct. 30, 2000, 114 Stat. 1654, 1654A–455, as amended by Pub. L. 107–314, div. A, title II, § 225(b)(3), Dec. 2, 2002, 116 Stat. 2486, provided that:

''(a) JOINTLY FUNDED PROJECTS.—The Secretary of Energy and the Secretary of Defense shall modify the memorandum of understanding for the use of the national laboratories for ballistic missile defense programs, entered into under section 3131 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 2034; 10 U.S.C. 2431 note), to provide for jointly funded projects.

''(b) REQUIREMENTS FOR PROJECTS.—The projects referred to in subsection (a) shall—

''(1) be carried out by the National Nuclear Security Administration and the Missile Defense Agency; and

''(2) contribute to sustaining—

''(A) the expertise necessary for the viability of such laboratories; and

''(B) the capabilities required to sustain the nuclear stockpile.

''(c) PARTICIPATION BY NNSA IN CERTAIN MDA ACTIVITIES.—The Administrator for Nuclear Security and the Director of the Missile Defense Agency shall implement mechanisms that increase the cooperative relationship between those organizations. Those mechanisms may include participation by personnel of the National Nuclear Security Administration in the following activities of the Missile Defense Agency:

''(1) Peer reviews of technical efforts.

''(2) Activities of so-called 'red teams'.''

Pub. L. 105–85, div. C, title XXXI, § 3131, Nov. 18, 1997, 111 Stat. 2034, provided that:

''(a) MEMORANDUM OF UNDERSTANDING.—The Secretary of Energy and the Secretary of Defense shall enter into a memorandum of understanding for the purpose of improving and facilitating the use by the Secretary of Defense of the expertise of the national laboratories for the ballistic missile defense programs of the Department of Defense.

''(b) ASSISTANCE.—The memorandum of understanding shall provide that the Secretary of Defense shall request such assistance with respect to the ballistic missile defense programs of the Department of Defense as the Secretary of Defense and the Secretary of Energy determine can be provided through the technical skills and experience of the national laboratories, using such financial arrangements as the Secretaries determine are appropriate.

''(c) ACTIVITIES.—The memorandum of understanding shall provide that the national laboratories shall carry out those activities necessary to respond to requests for assistance from the Secretary of Defense referred to in subsection (b). Such activities may include the identification of technical modifications and test techniques, the analysis of physics problems, the consolidation of range and test activities, and the analysis and simulation of theater missile defense deployment problems.

''(d) NATIONAL LABORATORIES.—For purposes of this section, the national laboratories are—

''(1) the Lawrence Livermore National Laboratory, Livermore, California;

''(2) the Los Alamos National Laboratory, Los Alamos, New Mexico; and

''(3) the Sandia National Laboratories, Albuquerque, New Mexico.''

BALLISTIC MISSILE DEFENSE PROGRAM

Subtitle C of title II of div. A of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title II, § 236, Nov. 18, 1997, 111 Stat. 1665; Pub. L. 106–65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–314, div. A, title X, § 1041(c), Dec. 2, 2002, 116 Stat. 2646, provided that:

''SEC. 231. SHORT TITLE.

''This subtitle may be cited as the 'Ballistic Missile Defense Act of 1995'.

''SEC. 232. FINDINGS.

''Congress makes the following findings:

''(1) The emerging threat that is posed to the national security interests of the United States by the proliferation of ballistic missiles is significant and growing, both in terms of numbers of missiles and in terms of the technical capabilities of those missiles.

''(2) The deployment of ballistic missile defenses is a necessary, but not sufficient, element of a broader strategy to discourage both the proliferation of weapons of mass destruction and the proliferation of the means of their delivery and to defend against the consequences of such proliferation.

''(3) The deployment of effective Theater Missile Defense systems can deter potential adversaries of the United States from escalating a conflict by threatening or attacking United States forces or the forces or territory of coalition partners or allies of the United States with ballistic missiles armed with weapons of mass destruction to offset the operational and technical advantages of the United States and its coalition partners and allies.

''(4) United States intelligence officials have provided intelligence estimates to congressional committees that (A) the trend in missile proliferation is toward longer range and more sophisticated ballistic missiles, (B) North Korea may deploy an intercontinental ballistic missile capable of reaching Alaska or beyond within five years, and (C) although a new, indigenously developed ballistic missile threat to the continental United States is not foreseen within the next ten years, determined countries can acquire intercontinental ballistic missiles in the near future and with little warning by means other than indigenous development.

''(5) The development and deployment by the United States and its allies of effective defenses against ballistic missiles of all ranges will reduce the incentives for countries to acquire such missiles or to augment existing missile capabilities.

''(6) The concept of mutual assured destruction (based upon an offense-only form of deterrence), which is the major philosophical rationale underlying the ABM Treaty, is now questionable as a basis for stability in a multipolar world in which the United States and the states of the former Soviet Union are seeking to normalize relations and eliminate Cold War attitudes and arrangements.

''(7) The development and deployment of a National Missile Defense system against the threat of limited ballistic missile attacks—

''(A) would strengthen deterrence at the levels of forces agreed to by the United States and Russia under the Strategic Arms Reduction Talks Treaty (START–I); and

''(B) would further strengthen deterrence if reductions below the levels permitted under START–I should be agreed to and implemented in the future.

''(8) The distinction made during the Cold War, based upon the technology of the time, between strategic ballistic missiles and nonstrategic ballistic missiles, which resulted in the distinction made in the ABM Treaty between strategic defense and nonstrategic defense, has become obsolete because of technological advancement (including the development by North Korea of long-range Taepo-Dong I and Taepo-Dong II missiles) and, therefore, that distinction in the ABM Treaty should be reviewed.

''SEC. 233. BALLISTIC MISSILE DEFENSE POLICY.

''It is the policy of the United States—

''(1) to deploy affordable and operationally effective theater missile defenses to protect forward-deployed and expeditionary elements of the Armed Forces of the United States and to complement the missile defense capabilities of forces of coalition partners and of allies of the United States; and

''(2) to seek a cooperative, negotiated transition to a regime that does not feature an offense-only form of deterrence as the basis for strategic stability.

''SEC. 234. THEATER MISSILE DEFENSE ARCHITECTURE.

''(a) ESTABLISHMENT OF CORE PROGRAM.—To implement the policy established in paragraph (1) of section 233, the Secretary of Defense shall restructure the core theater missile defense program to consist of the following systems:

''(1) The Patriot PAC–3 system.

''(2) The Navy Area Defense system.

''(3) The Theater High-Altitude Area Defense (THAAD) system.

''(4) The Navy Theater Wide system.

''(b) USE OF STREAMLINED ACQUISITION PROCEDURES.—The Secretary of Defense shall prescribe and use streamlined acquisition policies and procedures to reduce the cost and increase the efficiency of developing and deploying the theater missile defense systems specified in subsection (a).

''(c) INTEROPERABILITY AND SUPPORT OF CORE SYSTEMS.—To maximize effectiveness and flexibility of the systems comprising the core theater missile defense program, the Secretary of Defense shall ensure that those systems are integrated and complementary and are fully capable of exploiting external sensor and battle management support from systems such as—

''(A) the Cooperative Engagement Capability (CEC) system of the Navy;

''(B) airborne sensors; and

''(C) space-based sensors (including, in particular, the Space and Missile Tracking System).

''(d) FOLLOW-ON SYSTEMS.—(1) The Secretary of Defense shall prepare an affordable development plan for theater missile defense systems to be developed as follow-on systems to the core systems specified in subsection (a). The Secretary shall make the selection of a system for inclusion in the plan based on the capability of the system to satisfy military requirements not met by the systems in the core program and on the capability of the system to use prior investments in technologies, infrastructure, and battle-management capabilities that are incorporated in, or associated with, the systems in the core program.

''(2) The Secretary may not proceed with the development of a follow-on theater missile defense system beyond the Demonstration/Validation stage of development unless the Secretary designates that system as a part of the core program under this section and submits to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] notice of that designation. The Secretary shall include with any such notification a report describing—

''(A) the requirements for the system and the specific threats that such system is designed to counter;

''(B) how the system will relate to, support, and build upon existing core systems;

''(C) the planned acquisition strategy for the system; and

''(D) a preliminary estimate of total program cost for that system and the effect of development and acquisition of such system on Department of Defense budget projections.

''(e) PROGRAM ACCOUNTABILITY REPORT.—(1) As part of the annual report of the Ballistic Missile Defense Organization [now Missile Defense Agency] required by sec-

tion 224 of Public Law 101–189 (10 U.S.C. 2431 note), the Secretary of Defense shall describe the technical milestones, the schedule, and the cost of each phase of development and acquisition (together with total estimated program costs) for each core and follow-on theater missile defense program.

''(2) As part of such report, the Secretary shall describe, with respect to each program covered in the report, any variance in the technical milestones, program schedule milestones, and costs for the program compared with the information relating to that program in the report submitted in the previous year and in the report submitted in the first year in which that program was covered.

''SEC. 235. PROHIBITION ON USE OF FUNDS TO IMPLEMENT AN INTERNATIONAL AGREEMENT CONCERNING THEATER MISSILE DEFENSE SYSTEMS.

''(a) FINDINGS.—(1) Congress hereby reaffirms—

''(A) the finding in [former] section 234(a)(7) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1595; 10 U.S.C. 2431 note) that the ABM Treaty was not intended to, and does not, apply to or limit research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles, regardless of the capabilities of such missiles, unless those systems, system upgrades, or system components are tested against or have demonstrated capabilities to counter modern strategic ballistic missiles; and

''(B) the statement in section 232 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2700) that the United States shall not be bound by any international agreement entered into by the President that would substantively modify the ABM Treaty unless the agreement is entered into pursuant to the treaty making power of the President under the Constitution.

''(2) Congress also finds that the demarcation standard described in subsection (b)(1) for compliance of a missile defense system, system upgrade, or system component with the ABM Treaty is based upon current technology.

''(b) SENSE OF CONGRESS CONCERNING COMPLIANCE POLICY.—It is the sense of Congress that—

''(1) unless a missile defense system, system upgrade, or system component (including one that exploits data from space-based or other external sensors) is flight tested in an ABM-qualifying flight test (as defined in subsection (e)), that system, system upgrade, or system component has not, for purposes of the ABM Treaty, been tested in an ABM mode nor been given capabilities to counter strategic ballistic missiles and, therefore, is not subject to any application, limitation, or obligation under the ABM Treaty; and

''(2) any international agreement that would limit the research, development, testing, or deployment of missile defense systems, system upgrades, or system components that are designed to counter modern theater ballistic missiles in a manner that would be more restrictive than the compliance criteria specified in paragraph (1) should be entered into only pursuant to the treaty making powers of the President under the Constitution.

''(c) PROHIBITION ON FUNDING.—Funds appropriated or otherwise made available to the Department of Defense for fiscal year 1996 may not be obligated or expended to implement an agreement, or any understanding with respect to interpretation of the ABM Treaty, between the United States and any of the independent states of the former Soviet Union entered into after January 1, 1995, that—

''(1) would establish a demarcation between theater missile defense systems and anti-ballistic missile systems for purposes of the ABM Treaty; or

''(2) would restrict the performance, operation, or deployment of United States theater missile defense systems.

''(d) EXCEPTIONS.—Subsection (c) does not apply—

''(1) to the extent provided by law in an Act enacted after this Act [Pub. L. 104–106, enacted Feb. 10, 1996];

''(2) to expenditures to implement that portion of any such agreement or understanding that implements the policy set forth in subsection (b)(1); or

''(3) to expenditures to implement any such agreement or understanding that is approved as a treaty or by law.

''(e) ABM-QUALIFYING FLIGHT TEST DEFINED.—For purposes of this section, an ABM-qualifying flight test is a flight test against a ballistic missile which, in that flight test, exceeds (1) a range of 3,500 kilometers, or (2) a velocity of 5 kilometers per second.

''SEC. 236. BALLISTIC MISSILE DEFENSE COOPERATION WITH ALLIES.

''It is in the interest of the United States to develop its own missile defense capabilities in a manner that will permit the United States to complement the missile defense capabilities developed and deployed by its allies and possible coalition partners. Therefore, the Congress urges the President—

''(1) to pursue high-level discussions with allies of the United States and selected other states on the means and methods by which the parties on a bilateral basis can cooperate in the development, deployment, and operation of ballistic missile defenses;

''(2) to take the initiative within the North Atlantic Treaty Organization to develop consensus in the Alliance for a timely deployment of effective ballistic missile defenses by the Alliance; and

''(3) in the interim, to seek agreement with allies of the United States and selected other states on steps the parties should take, consistent with their national interests, to reduce the risks posed by the threat of limited ballistic missile attacks, such steps to include—

''(A) the sharing of early warning information derived from sensors deployed by the United States and other states;

''(B) the exchange on a reciprocal basis of technical data and technology to support both joint development programs and the sale and purchase of missile defense systems and components; and

''(C) operational level planning to exploit current missile defense capabilities and to help define future requirements.

''SEC. 237. ABM TREATY DEFINED.

''For purposes of this subtitle, the term 'ABM Treaty' means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, and signed at Moscow on May 26, 1972, and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974.

''SEC. 238. REPEAL OF MISSILE DEFENSE ACT OF 1991.

''The Missile Defense Act of 1991 [Pub. L. 102–190, div. A, title II, part C] (10 U.S.C. 2431 note) is repealed.''

COMPLIANCE OF BALLISTIC MISSILE DEFENSE SYSTEMS AND COMPONENTS WITH ABM TREATY

Pub. L. 103–337, div. A, title II, §231, Oct. 5, 1994, 108 Stat. 2699, provided that:

''(a) GENERAL LIMITATION.—Funds appropriated to the Department of Defense for fiscal year 1995, or otherwise made available to the Department of Defense from any funds appropriated for fiscal year 1995 or for any fiscal year before 1995, may not be obligated or expended—

''(1) for any development or testing of anti-ballistic missile systems or components except for development and testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter; or

''(2) for the acquisition of any material or equipment (including long lead materials, components, piece parts, or test equipment, or any modified space launch vehicle) required or to be used for the development or testing of anti-ballistic missile systems or

components, except for material or equipment required for development or testing consistent with the interpretation of the ABM Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(b) LIMITATION RELATING TO BRILLIANT EYES.—Of the funds appropriated pursuant to the authorizations of appropriations in section 201 [108 Stat. 2690] that are made available for the space-based, midcourse missile tracking system known as the Brilliant Eyes program, not more than $80,000,000 may be obligated until the Secretary of Defense submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review conducted pursuant to subsection (c).

''(c) COMPLIANCE REVIEW FOR BRILLIANT EYES.—The Secretary of Defense shall review the Brilliant Eyes program to determine whether, and under what conditions, the development, testing, and deployment of the Brilliant Eyes missile tracking system in conjunction with a theater ballistic missile defense system, with a limited national missile defense system, and with both such systems, would be in compliance with the ABM Treaty, including the interpretation of that treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(d) COMPLIANCE REVIEW FOR NAVY UPPER TIER SYSTEM.—(1) The Secretary of Defense shall review the theater ballistic missile program known as the Navy Upper Tier program to determine whether the development, testing, and deployment of the system being developed under that program would be in compliance with the ABM Treaty, including the interpretation of the Treaty set forth in the enclosure to the July 13, 1993, ACDA letter.

''(2) Of the funds made available to the Department of Defense for fiscal year 1995, not more than $40,000,000 may be obligated for the Navy Upper Tier program before the date on which the Secretary submits to the appropriate congressional committees a report on the compliance of that program with the ABM Treaty, as determined under the compliance review under paragraph (1).

''(e) DEFINITIONS.—In this section:

''(1) The term 'July 13, 1993, ACDA letter' means the letter dated July 13, 1993, from the Acting Director of the Arms Control and Disarmament Agency to the chairman of the Committee on Foreign Relations of the Senate relating to the correct interpretation of the ABM Treaty and accompanied by an enclosure setting forth such interpretation.

''(2) The term 'ABM Treaty' means the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missiles, signed in Moscow on May 26, 1972.

''(3) The term 'appropriate congressional committees' means—

''(A) the Committee on Armed Services, the Committee on Foreign Affairs [now Committee on International Relations], and the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate.''

Pub. L. 103–160, div. A, title II, § 234, Nov. 30, 1993, 107 Stat. 1595, contained findings of Congress, required compliance review, and limited funding pending submission of report, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(6), Feb. 10, 1996, 110 Stat. 235.

THEATER MISSILE DEFENSE MASTER PLAN

Pub. L. 103–160, div. A, title II, § 235, Nov. 30, 1993, 107 Stat. 1598, provided that:

''(a) INTEGRATION AND COMPATIBILITY.—In carrying out the Theater Missile Defense Initiative, the Secretary of Defense shall—

''(1) seek to maximize the use of existing systems and technologies; and

''(2) seek to promote joint use by the military departments of existing and future ballistic missile defense equipment (rather than each military department developing its own systems that would largely overlap in their capabilities).

The Secretaries of the military departments shall seek the maximum integration and compatibility of their ballistic missile defense systems as well as of the respective roles and missions of those systems.

''(b) TMD MASTER PLAN.—The Secretary of Defense shall submit to Congress a report (which shall constitute the TMD master plan) containing a thorough and complete analysis of the future of theater missile defense programs. The report shall include the following:

''(1) A description of the mission and scope of Theater Missile Defense.

''(2) A description of the role of each of the Armed Forces in Theater Missile Defense.

''(3) A description of how those roles interact and complement each other.

''(4) An evaluation of the cost and relative effectiveness of each interceptor and sensor under development as part of a Theater Missile Defense system by the Ballistic Missile Defense Organization [now Missile Defense Agency].

''(5) A detailed acquisition strategy which includes an analysis and comparison of the projected acquisition and life-cycle costs of each Theater Missile Defense system intended for production (shown separately for research, development, test, and evaluation, for procurement, for operation and maintenance, and for personnel costs for each system).

''(6) Specification of the baseline production rate for each year of the program through completion of procurement.

''(7) An estimate of the unit cost and capabilities of each system.

''(8) A description of plans for theater and tactical missile defense doctrine, training, tactics, and force structure.

''(c) DESCRIPTION OF TESTING PROGRAM.—The Secretary of Defense shall include in the report under subsection (b)—

''(1) a description of the current and projected testing program for Theater Missile Defense systems and major components; and

''(2) an evaluation of the adequacy of the testing program to simulate conditions similar to those the systems and components would actually be expected to encounter if and when deployed (such as the ability to track and engage multiple targets with multiple interceptors, to discriminate targets from decoys and other incoming objects, and to be employed in a shoot-look-shoot firing mode).

''(d) RELATIONSHIP TO ARMS CONTROL TREATIES.—The Secretary shall include in the report under subsection (b) a statement of how production and deployment of any projected Theater Missile Defense program will conform to all relevant arms control agreements. The report shall describe any potential noncompliance with any such agreement, when such noncompliance is expected to occur, and whether provisions need to be renegotiated within that agreement to address future contingencies.

''(e) SUBMISSION OF REPORT.—The report required by subsection (b) shall be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).

''(f) OBJECTIVES OF PLAN.—In preparing the master plan, the Secretary shall—

''(1) seek to maximize the use of existing technologies (such as SM–2, AEGIS, Patriot, and THAAD) rather than develop new systems;

''(2) seek to maximize integration and compatibility among the systems, roles, and missions of the military departments; and

''(3) seek to promote cross-service use of existing equipment (such as development of Army equipment for the Marine Corps or ground utilization of an air or sea system).

''(g) REVIEW AND REPORT ON DEPLOYMENT OF BALLISTIC MISSILE DEFENSES.—(1) The Secretary of Defense

shall conduct an intensive and extensive review of opportunities to streamline the weapon systems acquisition process applicable to the development, testing, and deployment of theater ballistic missile defenses with the objective of reducing the cost of deployment and accelerating the schedule for deployment without significantly increasing programmatic risk or concurrency.

''(2) In conducting the review, the Secretary shall obtain recommendations and advice from—

''(A) the Defense Science Board;

''(B) the faculty of the Industrial College of the Armed Forces; and

''(C) federally funded research and development centers supporting the Office of the Secretary of Defense.

''(3) Not later than May 1, 1994, the Secretary shall submit to the congressional defense committees a report on the Secretary's findings resulting from the review under paragraph (1), together with any recommendations of the Secretary for legislation. The Secretary shall submit the report in unclassified form, but may submit a classified version of the report if necessary to clarify any of the information in the findings or recommendations or any related information. The report may be submitted as part of the next annual report of the Secretary submitted to Congress under section 224 of Public Law 101–189 (10 U.S.C. 2431 note).''

COOPERATION OF UNITED STATES ALLIES ON DEVELOPMENT OF TACTICAL AND THEATER MISSILE DEFENSES

Pub. L. 103–160, div. A, title II, §242(a)–(e), Nov. 30, 1993, 107 Stat. 1603–1605, stated congressional findings, required Secretary of Defense to develop plan to coordinate development and implementation of Theater Missile Defense programs of United States with theater missile defense programs of allies of United States, specified contents of such plan, required Secretary to submit to Congress report on such plan in both classified and unclassified versions, required Secretary to include in each annual Theater Missile Defense Initiative report to Congress report on actions taken to implement such plan, specified contents of such report, related to restriction on funds, stated sense of Congress that whenever United States deployed theater ballistic missile defenses to protect country that had not provided support for development of such defenses United States was to consider seeking reimbursement from such country to cover at least incremental cost of such deployment, and related to congressional encouragement of allies of United States to participate in cooperative Theater Missile Defense programs of United States and encouragement of participation by United States in cooperative theater missile defense efforts of allied nations, prior to repeal by Pub. L. 104–106, div. A, title II, §253(7), Feb. 10, 1996, 110 Stat. 235.

TRANSFER OF FOLLOW-ON TECHNOLOGY PROGRAMS

Pub. L. 103–160, div. A, title II, §243, Nov. 30, 1993, 107 Stat. 1605, as amended by Pub. L. 104–201, div. A, title X, §1073(e)(1)(E), Sept. 23, 1996, 110 Stat. 2658; Pub. L. 107–314, div. A, title II, §225(b)(4)(B), Dec. 2, 2002, 116 Stat. 2486, provided that:

''(a) MANAGEMENT RESPONSIBILITY.—Except as provided in subsection (b), the Secretary of Defense shall provide that management and budget responsibility for research and development of any program, project, or activity to develop far-term follow-on technology relating to ballistic missile defense shall be provided through the Defense Advanced Research Projects Agency or the appropriate military department.

''(b) WAIVER AUTHORITY.—The Secretary may waive the provisions of subsection (a) in the case of a particular program, project, or activity if the Secretary certifies to the congressional defense committees that it is in the national security interest of the United States to provide management and budget responsibility for that program, project, or activity through the Missile Defense Agency.

''(c) REPORT REQUIRED.—As a part of the report required by section 231(e) [107 Stat. 1593], the Secretary shall submit to the congressional defense committees a report identifying—

''(1) each program, project, and activity with respect to which the Secretary has transferred management and budget responsibility from the Missile Defense Agency in accordance with subsection (a);

''(2) the agency or military department to which each such transfer was made; and

''(3) the date on which each such transfer was made.

''(d) DEFINITION.—For the purposes of this section, the term 'far-term follow-on technology' means a technology that is not incorporated into a ballistic missile defense architecture and is not likely to be incorporated within 15 years into a weapon system for ballistic missile defense.

''(e) CONFORMING AMENDMENT.—Section 234 of the Missile Defense Act of 1991 [Pub. L. 102–190; 10 U.S.C. 2431 note] is repealed.''

THEATER MISSILE DEFENSE INITIATIVE

Pub. L. 102–484, div. A, title II, §231, Oct. 23, 1992, 106 Stat. 2354, provided that:

''(a) ESTABLISHMENT OF THEATER MISSILE DEFENSE INITIATIVE.—The Secretary of Defense shall establish a Theater Missile Defense Initiative office within the Department of Defense. All theater and tactical missile defense activities of the Department of Defense (including all programs, projects, and activities formerly associated with the Theater Missile Defense program element of the Strategic Defense Initiative) shall be carried out under the Theater Missile Defense Initiative.

''(b) FUNDING FOR FISCAL YEAR 1993.—Of the amounts appropriated pursuant to section 201 [106 Stat. 2349] or otherwise made available to the Department of Defense for research, development, test, and evaluation for fiscal year 1993, not more than $935,000,000 may be obligated for activities of the Theater Missile Defense Initiative, of which not less than $90,000,000 shall be made available for exploration of promising concepts for naval theater missile defense.

''(c) REPORT.—When the President's budget for fiscal year 1994 is submitted to Congress pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to the congressional defense committees a report—

''(1) setting forth the proposed allocation by the Secretary of funds for the Theater Missile Defense Initiative for fiscal year 1994, shown for each program, project, and activity;

''(2) describing an updated master plan for the Theater Missile Defense Initiative that includes (A) a detailed consideration of plans for theater and tactical missile defense doctrine, training, tactics, and force structure, and (B) a detailed acquisition strategy which includes a consideration of acquisition and life-cycle costs through the year 2005 for the programs, projects, and activities associated with the Theater Missile Defense Initiative;

''(3) assessing the possible near-term contribution and cost-effectiveness for theater missile defense of exoatmospheric capabilities, to include at a minimum a consideration of—

''(A) the use of the Navy's Standard missile combined with a kick stage rocket motor and lightweight exoatmospheric projectile (LEAP); and

''(B) the use of the Patriot missile combined with a kick stage rocket motor and LEAP.

''(d) EFFECTIVE DATE.—The provisions of subsections (a), (b), and (c) shall be implemented not later than 90 days after the date of the enactment of this Act [Oct. 23, 1992].''

MISSILE DEFENSE PROGRAM

Pub. L. 102–190, div. A, title II, part C, Dec. 5, 1991, 105 Stat. 1321, as amended by Pub. L. 102–484, div. A, title II, §234(a)–(d)(1), (e), (f), title X, §1053(1), (2), Oct. 23, 1992, 106 Stat. 2356, 2357, 2501; Pub. L. 103–35, title II,

§§ 202(a)(2), 203(b)(1), May 31, 1993, 107 Stat. 101, 102; Pub. L. 103–160, div. A, title II, §§ 232, 243(e), Nov. 30, 1993, 107 Stat. 1593, 1606; Pub. L. 103–337, div. A, title II, § 233, Oct. 5, 1994, 108 Stat. 2700, specified that such provisions could be cited as the ''Missile Defense Act of 1991'', and related to missile defense goal of United States, implementation of goal, review of follow-on deployment options, definition of term ''ABM Treaty'', and interpretation of such provisions, prior to repeal by Pub. L. 104–106, div. A, title II, § 238, Feb. 10, 1996, 110 Stat. 233.

Similar provisions were contained in the following prior authorization act:

Pub. L. 101–510, div. A, title II, § 221, Nov. 5, 1990, 104 Stat. 1511.

STRETCHOUT OF MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 100–456, div. A, title I, § 117, 102 Stat. 1933, as amended by Pub. L. 104–106, div. D, title XLIII, § 4321(i)(3), Feb. 10, 1996, 110 Stat. 676, required Secretary of Defense to submit a stretchout impact statement for certain major defense acquisition programs at same time the budget for any fiscal year is submitted to Congress and to submit to Committees on Armed Services of Senate and House of Representatives, no later than Mar. 15, 1989, a report on feasibility and effect of establishing maximum production rates by December 1990 for certain major defense acquisition programs, prior to repeal by Pub. L. 105–85, div. A, title X, § 1041(c), Nov. 18, 1997, 111 Stat. 1885.

PROHIBITION OF CERTAIN CONTRACTS WITH FOREIGN ENTITIES

Section 222 of Pub. L. 100–180 provided that:

''(a) SDI CONTRACTS WITH FOREIGN ENTITIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the purpose of entering into or carrying out any contract with a foreign government or a foreign firm if the contract provides for the conduct of research, development, test, or evaluation in connection with the Strategic Defense Initiative program.

''(b) TEMPORARY SUSPENSION OF PROHIBITION UPON CERTIFICATION OF THE SECRETARY OF DEFENSE.—The prohibition in subsection (a) shall not apply to a contract in any fiscal year if the Secretary of Defense certifies to Congress in writing at any time during such fiscal year that the research, development, testing, or evaluation to be performed under such contract cannot be competently performed by a United States firm at a price equal to or less than the price at which the research, development, testing, or evaluation would be performed by a foreign firm.

''(c) EXCEPTIONS FOR CERTAIN CONTRACTS.—The prohibition in subsection (a) shall not apply to a contract awarded to a foreign government or foreign firm if—

''(1) the contract is to be performed within the United States;

''(2) the contract is exclusively for research, development, test, or evaluation in connection with antitactical ballistic missile systems; or

''(3) that foreign government or foreign firm agrees to share a substantial portion of the total contract cost.

''(d) DEFINITIONS.—In this section:

''(1) The term 'foreign firm' means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

''(2) The term 'United States firm' means a business entity other than a foreign firm.

''(e) TRANSITION.—The prohibition in subsection (a) shall not apply to a contract entered into before the date of the enactment of this Act [Dec. 4, 1987].''

LIMITATION ON TRANSFER OF CERTAIN MILITARY TECHNOLOGY TO INDEPENDENT STATES OF FORMER SOVIET UNION

Section 223 of Pub. L. 100–180, as amended by Pub. L. 103–199, title II, § 203(a)(1), Dec. 17, 1993, 107 Stat. 2321, provided that: ''Military technology developed with funds appropriated or otherwise made available for the Ballistic Missile Defense Program may not be transferred (or made available for transfer) to Russia or any other independent state of the former Soviet Union by the United States (or with the consent of the United States) unless the President determines, and certifies to the Congress at least 15 days prior to any such transfer, that such transfer is in the national interest of the United States and is to be made for the purpose of maintaining peace.''

SDI ARCHITECTURE TO REQUIRE HUMAN DECISION MAKING

Section 224 of Pub. L. 100–180 provided that: ''No agency of the Federal Government may plan for, fund, or otherwise support the development of command and control systems for strategic defense in the boost or post-boost phase against ballistic missile threats that would permit such strategic defenses to initiate the directing of damaging or lethal fire except by affirmative human decision at an appropriate level of authority.''

PROHIBITION ON DEPLOYMENT OF ANTI-BALLISTIC MISSILE SYSTEM UNLESS AUTHORIZED BY LAW

Section 226 of Pub. L. 100–180 prohibited Secretary of Defense from deploying anti-ballistic missile system unless such deployment was specifically authorized by law after Dec. 4, 1987, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(3), Feb. 10, 1996, 110 Stat. 234.

ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER TO SUPPORT SDI PROGRAM

Section 227 of Pub. L. 100–180 provided that:

''(a) FINDINGS.—The Congress makes the following findings:

''(1) The Department of Defense requires technical support for issues of system integration related to the Strategic Defense Initiative program.

''(2) The Strategic Defense Initiative Organization, after assessing alternative types of organizations for the provision of such technical support to the Strategic Defense Initiative program (including Government organizations, profit and nonprofit entities (including existing federally funded research and development centers), a new division within an existing federally funded research and development center, a new federally funded research and development center, colleges and universities, and private nonprofit laboratories), determined that a new federally funded research and development center (hereinafter in this section referred to as an 'FFRDC') would be the type of organization most appropriate for the provision of such technical support to the Strategic Defense Initiative program.

''(3) In providing such technical support to the SDI program, the new FFRDC should provide critical evaluation and rigorous and objective analysis of technologies, systems, and architectures that are candidates for use in the SDI program.

''(4) Competitive selection of a contractor to establish and operate such an FFRDC to support the Strategic Defense Initiative program is one way to enhance the prospects for independent and objective evaluation of system integration issues within the Strategic Defense Initiative program.

''(b) AUTHORITY TO CONTRACT FOR FFRDC.—The Secretary of Defense, using funds appropriated to the Department of Defense for the Strategic Defense Initiative program, may enter into a contract to provide for the establishment and operation of a federally funded research and development center to provide independent and objective technical support to the Strategic Defense Initiative program. Such a contract may not be awarded before October 1, 1989.

''(c) CONTRACT AWARD REQUIREMENTS.—(1) A contract under subsection (b) shall be awarded using competitive procedures which emphasize cost considerations.

''(2) The Secretary of Defense shall solicit proposals for such contract from existing federally funded re-

search and development centers, from universities, from commercial entities, and from appropriate new organizations and shall make maximum efforts to obtain more than one proposal for such contract.

''(3) The Secretary shall submit the three best contract proposals (as determined by the Secretary), together with a copy of the proposed sponsoring agreement for the new FFRDC, for review by three persons designated by the Defense Science Board from a list of six or more persons submitted by the National Academy of Sciences. The persons performing the review—

''(A) shall evaluate the extent to which each proposal and the proposed sponsoring agreement would foster competent and objective technical advice for the Strategic Defense Initiative Program; and

''(B) shall report their evaluation of each such proposal and of the proposed sponsoring agreement to the Secretary.

''(4) Before awarding a contract under subsection (b), and not sooner than March 30, 1989, the Secretary shall submit to Congress—

''(A) a copy of the proposed final contract; and

''(B) a copy of the proposed final sponsoring agreement relating to the operation of the new FFRDC.

''(5)(A) The Secretary shall then withhold the award of such contract and the approval of such sponsoring agreement for a period of at least 30 days of continuous session of Congress beginning on the day after the date on which Congress receives the copies referred to in paragraph (4).

''(B) For purposes of subparagraph (A), the continuity of a session of Congress is broken only by an adjournment sine die at the end of the second regular session of that Congress. In computing the 30-day period for such purposes, days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded.

''(d) REQUIREMENTS APPLICABLE TO FFRDC.—The Secretary of Defense shall—

''(1) require that the contract referred to in subsection (b) include a provision stating that no officer or employee of the Department of Defense shall have the authority to veto the employment of any person selected to serve as an officer or employee of the new FFRDC;

''(2) require that at least 5 percent of the total amount of funds available for the new FFRDC shall be set aside for independent research to be performed by the staff of the new FFRDC under the direction of the chief executive officer of the new FFRDC;

''(3) impose a limitation on the compensation payable to each senior executive of the new FFRDC for services performed for the new FFRDC so that such compensation shall be comparable to the amount of compensation payable to senior executives of comparable federally funded research and development centers for similar services;

''(4) require that the new FFRDC publicly disclose the salary of its chief executive officer;

''(5) prohibit current or former members of the Strategic Defense Initiative Advisory Committee from serving as members of the Board of Trustees of the FFRDC if such members constitute 10 or more percent of the Board of Trustees or from serving as officers of the new FFRDC;

''(6) require that the contract referred to in subsection (b) include a provision prohibiting members of such Board of Trustees from serving as officers of the new FFRDC, except that a Board member may serve as the President of the new FFRDC if the Board is comprised of 10 or more members;

''(7) require that the contract referred to in subsection (b) include a provision prohibiting the new FFRDC from employing any person who, as a Federal employee or member of the Armed Forces, served in the Strategic Defense Initiative Organization within two years before the date on which such person is to be employed by the new FFRDC; and

''(8) require that any contract referred to in subsection (b) require that the Board of Trustees of the new FFRDC be comprised of individuals who represent a reasonable cross-section of views on the engineering and scientific issues associated with the Strategic Defense Initiative Program.

''(e) FUNDING.—The Secretary of Defense shall provide that all funds for the new FFRDC within the Department of Defense budget for any fiscal year shall be separately identified and set forth in the budget presentation materials submitted to Congress for that fiscal year.

''(f) SUNSET PROVISION.—No Federal funds may be provided to the new FFRDC after the end of the five-year period beginning on the date of the award of the first contract awarded to the FFRDC under this section.''

LIMITATION ON ESTABLISHMENT OF FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER FOR STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 99–661, div. A, title II, § 213, Nov. 14, 1986, 100 Stat. 3841, provided that:

''(a) LIMITATION.—The Secretary of Defense may not obligate or expend any funds for the purpose of operating a Federally funded research and development center that is established for the support of the Strategic Defense Initiative Program after the date of the enactment of this Act [Nov. 14, 1986] unless—

''(1) the Secretary submits to the Committees on Armed Services of the Senate and House of Representatives a report with respect to such proposed center that provides the information described in subsection (b); and

''(2) funds are specifically authorized to be appropriated for such purpose after the date of the enactment of this Act in an Act other than—

''(A) an appropriations Act; or

''(B) a continuing resolution.

''(b) CONTENT OF REPORT.—A report submitted under subsection (a)(1) with respect to a proposed center shall include a discussion of—

''(1) the ability of existing Federally funded research and development centers, Federal research laboratories, and private contractors to perform the objectives of technological integration and evaluation required by the Strategic Defense Initiative Organization;

''(2) the comparative cost of having the proposed work performed by—

''(A) the Strategic Defense Initiative Organization;

''(B) Federally funded research and development centers in existence on the date of the enactment of this Act [Nov. 14, 1986];

''(C) by Federal research laboratories;

''(D) by private contractors; or

''(E) by such center;

''(3) whether such center is intended to be—

''(A) primarily a study and analysis center; or

''(B) primarily a system engineering/system integration center;

''(4) whether such center will be required or authorized to enter into contracts under which research projects would be performed by other Federally funded research and development centers, Federal research laboratories, or private contractors;

''(5) whether the contract to operate such center will be awarded on a competitive basis;

''(6) whether proposals with respect to the operation of such center—

''(A) will be considered by the appropriate Defense Agency; and

''(B) will be subjected to review by persons to be elected by the National Academy of Sciences;

''(7) whether such center will be designed to prevent even the possibility of an appearance of a conflict of interest—

''(A) by prohibiting any officer, employee, or member of the governing body of such center from holding any position with—

''(i) the Strategic Defense Initiative Organization; or

''(ii) a private contractor that has a substantial interest in the development of the Strategic Defense Initiative; and

''(B) by prohibiting more than one-half of the members of the governing body of the proposed Federally Funded Research Center from simultaneously holding any position with the Strategic Defense Initiative Advisory Committee or any similar body which provides technological, scientific, or strategic advice to the Department of Defense about the Strategic Defense Initiative;

''(8) whether other actions will be taken to avoid possible conflict of interest situations within such center;

''(9) the role of the Department of Defense in—

''(A) the selection of the staff of such center; and

''(B) the internal organization of such center; and

''(10) whether a prescribed minimum percentage of the annual budget of such center will be set aside for research to be conducted independently of the Department of Defense.

''(c) COMPTROLLER GENERAL REPORT.—The Comptroller General of the United States shall also submit a report to Congress providing an analysis of the items in subsection (b) as appropriate.''

SHOULD-COST ANALYSES

Pub. L. 99–145, title IX, § 915, Nov. 8, 1985, 99 Stat. 688, as amended by Pub. L. 100–26, § 11(a)(2), Apr. 21, 1987, 101 Stat. 288, required Secretary of Defense to submit to Congress an annual report setting forth Secretary's plan for performance during next fiscal year of cost analyses for major defense acquisition programs for purpose of determining how much production of covered systems under such programs should cost, prior to repeal by Pub. L. 101–510, div. A, title XIII, § 1322(d)(2), Nov. 5, 1990, 104 Stat. 1672.

REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR DEPLOYMENT OF STRATEGIC DEFENSE INITIATIVE SYSTEM

Pub. L. 99–145, title II, § 222, Nov. 8, 1985, 99 Stat. 613, provided that strategic defense system developed as consequence of research, development, test, and evaluation conducted on Strategic Defense Initiative program could not be deployed in whole or in part unless President made a certain determination and certification to Congress and funding for deployment of such system was specifically authorized by legislation enacted after date of certification, prior to repeal by Pub. L. 104–106, div. A, title II, § 253(1), Feb. 10, 1996, 110 Stat. 234.

ANNUAL REPORT ON BALLISTIC MISSILE DEFENSE PROGRAM

Pub. L. 101–189, div. A, title II, § 224, Nov. 29, 1989, 103 Stat. 1398, as amended by Pub. L. 103–160, div. A, title II, § 240, Nov. 30, 1993, 107 Stat. 1603; Pub. L. 104–201, div. A, title II, § 244, Sept. 23, 1996, 110 Stat. 2463, provided that not later than March 15 of each year, the Secretary of Defense was to transmit to Congress a report on the programs and projects that constitute the Ballistic Missile Defense program and on any other program or project relating to defense against ballistic missiles, prior to repeal by Pub. L. 106–65, div. A, title X, § 1032(b)(1), Oct. 5, 1999, 113 Stat. 751.

Pub. L. 100–180, div. A, title II, § 231(a), Dec. 4, 1987, 101 Stat. 1059, provided that not later than Mar. 15, 1988 and Mar. 15, 1989, the Secretary of Defense was to transmit to Congress a report on the programs that constitute the Strategic Defense Initiative and on any other program relating to defense against ballistic missiles.

Pub. L. 98–525, title XI, § 1102, Oct. 19, 1984, 98 Stat. 2580, required Secretary of Defense, at time of his annual budget presentation to Congress beginning with fiscal year 1986 and ending with fiscal year 1990, to transmit to Committees on Armed Services and Foreign Affairs of House of Representatives and Committees on Armed Services and Foreign Relations of Senate, a detailed report on programs that constitute SDI, prior to repeal by Pub. L. 100–180, div. A, title II, § 231(b), Dec. 4, 1987, 101 Stat. 1060.

PLANS FOR MANAGEMENT OF TECHNICAL DATA AND COMPUTER CAPABILITY IMPROVEMENTS

Section 1252 of Pub. L. 98–525 directed Secretary of Defense, not later than one year after Oct. 19, 1984, to develop a plan for an improved system for the management of technical data relating to any major system of the Department of Defense and, not later than 5 years after Oct. 19, 1984, to complete implementation of the management plan, directed Comptroller General, not later than 18 months after Oct. 19, 1984, to transmit to Congress a report evaluating the plan developed, and directed Secretary of Defense, not later than 180 days after Oct. 19, 1984, to transmit to Congress a plan to improve substantially the computer capability of each of the military departments and of the Defense Logistics Agency to store and access rapidly data that is needed for the efficient procurement of supplies.

CONSULTATION WITH ALLIES ON STRATEGIC DEFENSE INITIATIVE PROGRAM

Pub. L. 98–473, title I, § 101(h) [title VIII, § 8104], Oct. 12, 1984, 98 Stat. 1904, 1942, provided that: ''It is the sense of the Congress that—(a) the President shall inform and make every effort to consult with other member nations of the North Atlantic Treaty Organization, Japan, and other appropriate allies concerning the research being conducted in the Strategic Defense Initiative program. (b) The Secretary of Defense, in coordination with the Secretary of State and the Director of the Arms Control and Disarmament Agency, shall at the time of the submission of the annual budget presentation materials for each fiscal year beginning after September 30, 1984, report to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and Foreign Affairs [now International Relations] of the House of Representatives on the status of the consultations referred to under subsection (a).''

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

ANTISATELLITE WEAPONS TEST

Pub. L. 100–180, div. A, title II, § 208, Dec. 4, 1986, 101 Stat. 1048, provided that:

''(a) TESTING MORATORIUM.—The Secretary of Defense may not carry out a test of the Space Defense System (antisatellite weapon) involving the F–15 launched miniature homing vehicle against an object in space until the President certifies to Congress that the Soviet Union has conducted, after the date of the enactment of this Act [Dec. 4, 1987], a test against an object in space of a dedicated antisatellite weapon.

''(b) EXPIRATION.—The prohibition in subsection (a) expires on October 1, 1988.''

Pub. L. 99–661, div. A, title II, § 231, Nov. 14, 1986, 100 Stat. 3847, provided that:

''(a) ASAT TESTING MORATORIUM.—The Secretary of Defense may not carry out a test of the Space Defense System (anti-satellite weapon) against an object in space until the President certifies to Congress that the Soviet Union has conducted, after the date of the enactment of this Act [Nov. 14, 1986], a test against an object in space of a dedicated anti-satellite weapon.

''(b) EXPIRATION.—The prohibition in subsection (a) expires on October 1, 1987.''

Similar provisions were contained in the following prior acts:

Pub. L. 99–500, § 101(c) [title XI, § 1101], Oct. 18, 1986, 100 Stat. 1783–82, 1783–177, and Pub. L. 99–591, § 101(c) [title XI, § 1101], Oct. 30, 1986, 100 Stat. 3341–82, 3341–177.

Pub. L. 99–190, § 101(b) [title VIII, § 8097], Dec. 19, 1985, 99 Stat. 1185, 1219.

Pub. L. 99–145, title II, § 208(a), (b), Nov. 8, 1985, 99 Stat. 610, provided that:

''(a) REQUIREMENT REGARDING THE USE OF FUNDS.—None of the funds appropriated pursuant to an authorization in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President has made a determination and a certification to the Congress as provided in section 8100 of the Department of Defense Appropriations Act, 1985 [set out as a note below] (as contained in section 101(h) of Public Law 98–473 (98 Stat. 1941)).

''(b) LIMITATION ON NUMBER OF TESTS.—Not more than three tests described in subsection (a) may be conducted before October 1, 1986.''

Pub. L. 98–473, title I, §101(h)[title VIII, §8100], Oct. 12, 1984, 98 Stat. 1904, 1941, provided that:

''(a) Notwithstanding any other provision of law, none of the funds appropriated or made available in this or any other Act may be obligated or expended to test against an object in space the miniature homing vehicle (MHV) anti-satellite warhead launched from an F–15 aircraft unless the President determines and certifies to Congress—

''(1) that the United States is endeavoring, in good faith, to negotiate with the Soviet Union a mutual and verifiable agreement with the strictest possible limitations on anti-satellite weapons consistent with the national security interests of the United States;

''(2) that, pending agreement on such strict limitations, testing against objects in space of the F–15 launched miniature homing vehicle anti-satellite warhead by the United States is necessary to avert clear and irrevocable harm to the national security;

''(3) that such testing would not constitute an irreversible step that would gravely impair prospects for negotiations on anti-satellite weapons; and

''(4) that such testing is fully consistent with the rights and obligations of the United States under the Anti-Ballistic Missile Treaty of 1972 as those rights and obligations exist at the time of such testing.

''(b) During fiscal year 1985, funds appropriated for the purpose of testing the F–15 launched miniature homing vehicle anti-satellite warhead may not be used to conduct more than three tests of that warhead against objects in space.

''(c) The limitation on the expenditure of funds provided by subsection (a) of this section shall cease to apply fifteen calendar days after the date of the receipt by Congress of the certification referred to in subsection (a) or March 1, 1985, whichever occurs later.''

Similar provisions were contained in the following prior authorization act:

Pub. L. 98–94, title XI, §1235, Sept. 24, 1983, 97 Stat. 695; as amended by Pub. L. 98–525, title II, §205, Oct. 19, 1984, 98 Stat. 2509.

EAST COAST TRIDENT BASE AND MX MISSILE SYSTEM SITES; USE OF FUNDS APPROPRIATED TO DEPARTMENT OF DEFENSE; ASSISTANCE TO NEARBY COMMUNITIES TO HELP MEET COSTS OF INCREASED MUNICIPAL SERVICES

Pub. L. 96–418, title VIII, §802, Oct. 10, 1980, 94 Stat. 1775, as amended by Pub. L. 97–99, title IX, §904(b), Dec. 23, 1981, 95 Stat. 1382; Pub. L. 98–115, title VIII, §805, Oct. 11, 1983, 97 Stat. 785; Pub. L. 101–510, div. A, title XIII, §1322(f), Nov. 5, 1990, 104 Stat. 1672, provided that:

''(a) The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may assist communities located near MX Missile System sites and communities located near the East Coast Trident Base, and the States in which such communities are located, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, or operation of the MX Missile System or the East Coast Trident Base, as the case may be, and that an unfair and excessive financial burden will be incurred by such communities, or the States in which such communities are located, as a result of such increased need for such services and facilities.

''(b)(1) Whenever possible, the Secretary shall carry out the program of assistance authorized under this section through existing Federal programs. In carrying out such program of assistance, the Secretary may—

''(A) supplement funds made available under existing Federal programs through a direct transfer of funds from the Secretary to the department or agency concerned in such amounts as the Secretary considers necessary;

''(B) provide financial assistance to communities described in subsection (a) to help such communities pay their share of the costs under such programs;

''(C) guarantee State or municipal indebtedness, and make interest payments, in whole or in part, for State or municipal indebtedness, for improved public facilities related to the MX Missile System site or the East Coast Trident Base, as the case may be; and

''(D) make direct grants to or on behalf of communities described in subsection (a) in cases in which Federal programs (or funds for such programs) do not exist or are not sufficient to meet the costs of providing increased municipal services and facilities to the residents of such communities.

''(2) The head of each department and agency shall cooperate fully with the Secretary in carrying out the provisions of this section on a priority basis.

''(3) Notwithstanding any other provision of law, the Secretary, in cooperation with the heads of other departments and agencies of the Federal Government, may provide assistance under this section in anticipation of the work to be carried out in connection with the MX Missile System sites or the East Coast Trident Base, as the case may be.

''(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary shall consult with the head of the department or agency concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration—

''(1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population;

''(2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community;

''(3) the initial capitalization required for municipal sewer and water systems;

''(4) the initial operating cost for upgrading municipal services; and

''(5) such other pertinent factors as the Secretary considers appropriate.

''(d) Funds appropriated to the Department of Defense for carrying out the MX Missile System deployment program and the East Coast Trident Base may, to the extent specifically authorized in Military Construction Authorization Acts, be used by the Secretary to provide assistance under this section.''

MX MISSILE AND BASING MODE

Pub. L. 96–342, title II, §202, Sept. 8, 1980, 94 Stat. 1079, provided that:

''(a) The Congress finds that a survivable land-based intercontinental ballistic missile (ICBM) system is vital to the security of the United States and to a stable strategic balance between the United States and the Soviet Union and that timely deployment of a new basing mode is essential to the survivability of this Nation's land-based intercontinental ballistic missiles. It is, therefore, the purpose of this section to commit the Congress to the development and deployment of the MX missile system, consisting of 200 missiles and 4,600 hardened shelters, and to insure that deployment of the entire MX system is carried out as soon as practicable.

''(b) The Secretary of Defense shall proceed immediately with the full-scale engineering development of

the MX missile and a Multiple Protective Structure (MPS) basing mode and shall continue such development in a manner that will achieve an Initial Operational Capability of such missile and basing mode not later than December 31, 1986.

''(c) Notwithstanding any other provision of law, the initial phase of construction shall be limited to 2,300 protective shelters for the MX missile in the initial deployment area.

''(d) In accordance with the finding of the Congress expressed in subsection (a), a full system of at least 4,600 protective shelters may be deployed in the initial deployment area if, after completion of a study to be conducted by the Secretary of Defense of an alternate site for a portion of the system, it is determined by the Congress that adverse cost, military considerations, or other reasons preclude split basing.''

DEVELOPMENT OF MX MISSILE SYSTEM

Pub. L. 96–29, title II, § 202, June 27, 1979, 93 Stat. 79, provided that:

''(a) It is the sense of the Congress that maintaining a survivable land-based intercontinental ballistic missile system is vital to the security of the United States and that development of a new basing mode for land-based intercontinental ballistic missiles is necessary to assure the survivability of the land-based system. To this end, the development of the MX missile, together with a new basing mode for such missile, should proceed so as to achieve Initial Operational Capability (IOC) for both such missile and such basing mode at the earliest practicable date.

''(b) In addition, it is the sense of the Congress that the basing mode for the MX missile should be restricted to location on the least productive land available that is suitable for such purpose.

''(c) In accordance with the sense of Congress expressed in subsection (a), the Secretary of Defense shall proceed immediately with full scale engineering development of the missile basing mode known as the Multiple Protective Structure (MPS) system concurrently with full scale engineering development of the MX missile, unless and until the Secretary of Defense certifies to the Congress that an alternative basing mode is militarily or technologically superior to, and is more cost effective than, the MPS system or the President informs the Congress that in his view the MPS system is not consistent with United States national security interests.

''(d) Nothing in this section shall be construed to prohibit or restrict the study of alternative basing modes for land-based intercontinental ballistic missiles.''

REPORTS TO CONGRESS OF ACQUISITIONS FOR MAJOR DEFENSE SYSTEMS

Section 811 of Pub. L. 94–106, as amended by Pub. L. 96–107, title VIII, § 809, Nov. 9, 1979, 93 Stat. 815; Pub. L. 97–86, title IX, § 917(e), Dec. 1, 1981, 95 Stat. 1131, which required reports to Congress respecting acquisitions of major defense systems, including total program acquisition unit costs, was repealed by Pub. L. 97–252, title XI, § 1107(b), Sept. 8, 1982, 96 Stat. 746, effective Jan. 1, 1983, as provided in section 1107(c) of Pub. L. 97–252, set out as an Effective Date note under section 2432 of this title. See sections 2432 and 2433 of this title.

TRIDENT SUPPORT SITE, BANGOR, WASHINGTON; FINANCIAL AID TO LOCAL COMMUNITIES; REPORTS

Section 608 of Pub. L. 93–552, title VI, Dec. 27, 1974, 88 Stat. 1763, provided:

''(a) The Secretary of Defense is authorized to assist communities located near the TRIDENT Support Site Bangor, Washington, in meeting the costs of providing increased municipal services and facilities to the residents of such communities, if the Secretary determines that there is an immediate and substantial increase in the need for such services and facilities in such communities as a direct result of work being carried out in connection with the construction, installation, testing, and operation of the TRIDENT Weapon System and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities.

''(b) The Secretary of Defense shall carry out the provisions of this section through existing Federal programs. The Secretary is authorized to supplement funds made available under such Federal programs to the extent necessary to carry out the provisions of this section, and is authorized to provide financial assistance to communities described in subsection (a) of this section to help such communities pay their share of the costs under such programs. The heads of all departments and agencies concerned shall cooperate fully with the Secretary of Defense in carrying out the provisions of this section on a priority basis.

''(c) In determining the amount of financial assistance to be made available under this section to any local community for any community service or facility, the Secretary of Defense shall consult with the head of the department or agency of the Federal Government concerned with the type of service or facility for which financial assistance is being made available and shall take into consideration (1) the time lag between the initial impact of increased population in any such community and any increase in the local tax base which will result from such increased population, (2) the possible temporary nature of the increased population and the long-range cost impact on the permanent residents of any such community, and (3) such other pertinent factors as the Secretary of Defense deems appropriate.

''(d) Any funds appropriated to the Department of Defense for the fiscal year beginning July 1, 1974, for carrying out the TRIDENT Weapon System shall be utilized by the Secretary of Defense in carrying out the provisions of this section to the extent that funds are unavailable under other Federal programs. Funds appropriated to the Department of Defense for any fiscal year beginning after June 30, 1975, for carrying out the TRIDENT Weapon System may, to the extent specifically authorized in an annual Military Construction Authorization Act, be utilized by the Secretary of Defense in carrying out the provision of this section to the extent that funds are unavailable under other Federal programs.

''(e) The Secretary shall transmit to the Committees on Armed Services of the Senate and the House of Representatives semiannual reports indicating the total amount expended in the case of each local community which was provided assistance under the authority of this section during the preceding six-month period, the specific projects for which assistance was provided during such period, and the total amount provided for each such project during such period.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2432 of this title.

§ 2432. Selected Acquisition Reports

(a) In this section:

(1) The term ''program acquisition unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total cost for development and procurement of, and system-specific military construction for, the acquisition program, divided by (B) the number of fully-configured end items to be produced for the acquisition program.

(2) The term ''procurement unit cost'', with respect to a major defense acquisition program, means the amount equal to (A) the total of all funds programmed to be available for obligation for procurement for the program, divided by (B) the number of fully-configured end items to be procured.

(3) The term ''major contract'', with respect to a major defense acquisition program, means each of the six largest prime, associate, or Government-furnished equipment contracts under the program that is in excess of $40,000,000 and that is not a firm, fixed price contract.

(4) The term ''full life-cycle cost'', with respect to a major defense acquisition program, means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.

(b)(1) The Secretary of Defense shall submit to Congress at the end of each fiscal-year quarter a report on current major defense acquisition programs. Except as provided in paragraphs (2) and (3), each such report shall include a status report on each defense acquisition program that at the end of such quarter is a major defense acquisition program. Reports under this section shall be known as Selected Acquisition Reports.

(2) A status report on a major defense acquisition program need not be included in the Selected Acquisition Report for the second, third, or fourth quarter of a fiscal year if such a report was included in a previous Selected Acquisition Report for that fiscal year and during the period since that report there has been—

(A) less than a 15 percent increase in program acquisition unit cost and current procurement unit cost; and

(B) less than a six-month delay in any program schedule milestone shown in the Selected Acquisition Report.

(3)(A) The Secretary of Defense may waive the requirement for submission of Selected Acquisition Reports for a program for a fiscal year if—

(i) the program has not entered system development and demonstration;

(ii) a reasonable cost estimate has not been established for such program; and

(iii) the system configuration for such program is not well defined.

(B) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of each waiver under subparagraph (A) for a program for a fiscal year not later than 60 days before the President submits the budget to Congress pursuant to section 1105 of title 31 in that fiscal year.

(c)(1) Each Selected Acquisition Report for the first quarter for a fiscal year shall include—

(A) the same information, in detailed and summarized form, as is provided in reports submitted under section 2431 of this title;

(B) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted;

(C) the current procurement unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted; and

(D) such other information as the Secretary of Defense considers appropriate.

(2) Each Selected Acquisition Report for the first quarter of a fiscal year shall be designed to provide to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the information such Committees need to perform their oversight functions. Whenever the Secretary of Defense proposes to make changes in the content of a Selected Acquisition Report, the Secretary shall submit a notice of the proposed changes to such committees. The changes shall be considered approved by the Secretary, and may be incorporated into the report, only after the end of the 60-day period beginning on the date on which the notice is received by those committees.

(3) In addition to the material required by paragraphs (1) and (2), each Selected Acquisition Report for the first quarter of a fiscal year shall include the following:

(A) A full life-cycle cost analysis for each major defense acquisition program included in the report that is in the system development and demonstration stage or has completed that stage. The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.

(B) If the system that is included in that major defense acquisition program has an antecedent system, a full life-cycle cost analysis for that system.

(4) Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.

(d)(1) Each Selected Acquisition Report for the second, third, and fourth quarters of a fiscal year shall include—

(A) with respect to each major defense acquisition program that was included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (e); and

(B) with respect to each major defense acquisition program that was not included in the most recent comprehensive annual Selected Acquisition Report, the information described in subsection (c).

(2) Selected Acquisition Reports for the second, third, and fourth quarters of a fiscal year shall be known as Quarterly Selected Acquisition Reports.

(e) Information to be included under this subsection in a Quarterly Selected Acquisition Report with respect to a major defense acquisition program is as follows:

(1) The quantity of items to be purchased under the program.

(2) The program acquisition cost.

(3) The program acquisition unit cost.

(4) The current procurement cost for the program.

(5) The current procurement unit cost for the program.

(6) The reasons for any change in program acquisition cost, program acquisition unit cost, procurement cost, or procurement unit cost or in program schedule from the previous Selected Acquisition Report.

(7) The major contracts under the program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(8) Program highlights since the last Selected Acquisition Report.

(f) Each comprehensive annual Selected Acquisition Report shall be submitted within 60 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each Quarterly Selected Acquisition Report shall be submitted within 45 days after the end of the fiscal-year quarter.

(g) The requirements of this section with respect to a major defense acquisition program shall cease to apply after 90 percent of the items to be delivered to the United States under the program (shown as the total quantity of items to be purchased under the program in the most recent Selected Acquisition Report) have been delivered or 90 percent of planned expenditures under the program have been made.

(h)(1) Total program reporting under this section shall apply to a major defense acquisition program when funds have been appropriated for such and the Secretary of Defense has decided to proceed to system development and demonstration of such program. Reporting may be limited to the development program as provided in paragraph (2) before a decision is made by the Secretary of Defense to proceed to system development and demonstration if the Secretary notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of the intention to submit a limited report under this subsection not less than 15 days before a report is due under this section.

(2) A limited report under this subsection shall include the following:

(A) The same information, in detail and summarized form, as is provided in reports submitted under subsections (b)(1) and (b)(3) of section 2431 of this title.

(B) Reasons for any change in the development cost and schedule.

(C) The major contracts under the development program and the reasons for any cost or schedule variances under those contracts since the last Selected Acquisition Report.

(D) Program highlights since the last Selected Acquisition Report.

(E) Other information as the Secretary of Defense considers appropriate.

(3) The submission requirements for a limited report under this subsection shall be the same as for quarterly Selected Acquisition Reports for total program reporting.

(Added Pub. L. 97–252, title XI, § 1107(a)(1), Sept. 8, 1982, 96 Stat. 739, § 139a; amended Pub. L. 98–525, title XII, § 1242(a), Oct. 19, 1984, 98 Stat. 2606; Pub. L. 99–145, title XII, § 1201, Nov. 8, 1985, 99 Stat. 715; renumbered § 2432 and amended Pub. L. 99–433, title I, §§ 101(a)(5), 110(d)(13), (g)(7), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, § 101(c) [title X, § 961(a)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–175, and Pub. L. 99–591, § 101(c) [title X, § 961(a)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–175; Pub. L. 99–661, div. A, title IX, formerly title IV, § 961(a), Nov. 14, 1986, 100 Stat. 3955, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 7(b)(3), (k)(2), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XII, § 1233(a)(1), title XIII, § 1314(a)(1), Dec. 4, 1987, 101 Stat. 1161, 1175; Pub. L. 101–189, div. A, title VIII, § 811(c), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XIV, §§ 1407(a)–(c), 1484(f)(4), Nov. 5, 1990, 104 Stat. 1681, 1717; Pub. L. 102–25, title VII, § 701(f)(3), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–190, div. A, title VIII, § 801(b)(2), title X, § 1061(a)(14), Dec. 5, 1991, 105 Stat. 1412, 1473; Pub. L. 102–484, div. A, title VIII, § 817(c), Oct. 23, 1992, 106 Stat. 2455; Pub. L. 103–355, title III, § 3002(a)(1), (b)–(h), Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 104–201, div. A, title VIII, § 806, Sept. 23, 1996, 110 Stat. 2606; Pub. L. 105–85, div. A, title VIII, § 841(c), Nov. 18, 1997, 111 Stat. 1843; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

2001—Subsecs. (b)(3)(A)(i), (c)(3)(A), (h)(1). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development'' wherever appearing.

1999—Subsecs. (b)(3)(B), (c)(2), (h)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (h)(2)(D) to (F). Pub. L. 105–85 redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: ''The completion status of the development program expressed—

''(i) as the percentage that the number of years for which funds have been appropriated for the development program is of the number of years for which it is planned that funds will be appropriated for the program; and

''(ii) as the percentage that the amount of funds that have been appropriated for the development program is of the total amount of funds which it is planned will be appropriated for the program.''

1996—Subsec. (b)(3)(B). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (c)(1). Pub. L. 104–201, § 806(1), struck out ''and'' at end of subpar. (B), added subpar. (C), and redesignated former subpar. (C) as (D).

Subsec. (c)(2). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (e)(8), (9). Pub. L. 104–201, § 806(2), redesignated par. (9) as (8) and struck out former par. (8) which read as follows: ''The completion status of the program (A) expressed as the percentage that the number of years for which funds have been appropriated for the program is of the number of years for which it is planned that funds will be appropriated for the program, and (B) expressed as the percentage that the amount of funds that have been appropriated for the program is of the total amount of funds which it is planned will be appropriated for the program.''

Subsec. (h)(1). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (a)(2). Pub. L. 103–355, §3002(a)(1), struck out ''for a fiscal year, reduced by the amount of funds programmed to be available for obligation for such fiscal year for advanced procurement for such program in any subsequent year and increased by any amount appropriated in years before such fiscal year for advanced procurement for such program in such fiscal year'' after ''procurement for the program'' in cl. (A), ''with such funds during such fiscal year'' after ''procured'' in cl. (B), and last sentence which read as follows: ''If for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.''

Subsec. (a)(3). Pub. L. 103–355, §3002(b), inserted before period at end ''and that is not a firm, fixed price contract''.

Subsec. (a)(4). Pub. L. 103–355, §3002(c), substituted ''means all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control.'' for ''has the meaning given the term 'cost of the program' in section 2434(b)(2) of this title.''

Subsec. (b)(3)(A)(i). Pub. L. 103–355, §3002(h)(1), struck out ''full scale development or'' before ''engineering''.

Subsec. (c)(2). Pub. L. 103–355, §3002(d), substituted second sentence for former second sentence which read as follows: ''The Secretary of Defense may approve changes in the content of the Selected Acquisition Report if the Secretary provides such Committees with written notification of such changes at least 60 days before the date of the report that incorporates the changes.''

Subsec. (c)(3)(A). Pub. L. 103–355, §3002(f)(2), (h)(2), substituted ''engineering and manufacturing'' for ''full-scale engineering'' and inserted at end ''The Secretary of Defense shall ensure that this subparagraph is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (c)(3)(C). Pub. L. 103–355, §3002(e), struck out subpar. (C) which required production information for each major defense acquisition program included in report that is produced at rate of six units or more per year.

Subsec. (c)(5). Pub. L. 103–355, §3002(f)(1), struck out par. (5) which read as follows: ''The Secretary of Defense shall ensure that paragraph (4) of subsection (a) is implemented in a uniform manner, to the extent practicable, throughout the Department of Defense.''

Subsec. (f). Pub. L. 103–355, §3002(g), struck out last sentence which read as follows: ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress.''

Subsec. (h)(1). Pub. L. 103–355, §3002(h)(3), substituted ''engineering and manufacturing'' for ''full-scale engineering'' in two places.

1992—Subsec. (a)(3). Pub. L. 102–484, §817(c)(1), added par. (3) and struck out former par. (3) which read as follows: ''The term 'major contract', with respect to a major defense acquisition program, means (A) each prime contract under the program, and (B) each associate or Government-furnished equipment contract under the program that is one of the six largest contracts under the program in dollar amount and that is in excess of $40,000,000.''

Subsec. (b)(3). Pub. L. 102–484, §817(c)(2), added par. (3) and struck out former par. (3) which read as follows: ''A status report on a particular major defense acquisition program need not be included in any Selected Acquisition Report with the approval of the Committees on Armed Services of the Senate and House of Representatives.''

Subsec. (c)(2). Pub. L. 102–484, §817(c)(3), added sentence at end and struck out former last sentence which read as follows: ''A change in the content of the Selected Acquisition Report for the first quarter of a fiscal year from the content as reported for the first quarter of the previous fiscal year may not be made until appropriate officials of the Department of Defense consult with such Committees regarding the proposed changes.''

Subsec. (c)(3)(C)(i) to (vii). Pub. L. 102–484, §817(c)(4), added cls. (i) to (vii) and struck out former cls. (i) to (vii) which contained similar specification and estimation requirements.

1991—Subsec. (a)(4). Pub. L. 102–190, §801(b)(2), substituted ''2434(b)(2)'' for ''2434(c)(2)''.

Subsec. (c)(5). Pub. L. 102–25 substituted ''subsection (a)'' for ''section 2432(a) of title 10, United States Code, as added by subsection (a)(2),''.

Subsec. (h)(2)(A). Pub. L. 102–190, §1061(a)(14), substituted ''(b)(1) and (b)(3)'' for ''(c)(1) and (c)(3)''.

1990—Subsec. (a)(4). Pub. L. 101–510, §1407(b), added par. (4).

Subsec. (c)(3). Pub. L. 101–510, §1484(f)(4)(A), substituted ''include the following:'' for ''include—'' in introductory provisions.

Subsec. (c)(3)(A). Pub. L. 101–510, §1407(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a full life-cycle cost analysis for each major defense acquisition program included in the report that—

''(i) is in the full-scale engineering development stage or has completed that stage; and

''(ii) was first included in a Selected Acquisition Report for a quarter after the first quarter of fiscal year 1985;''.

Subsec. (c)(3)(B). Pub. L. 101–510, §1484(f)(4)(B), (C), substituted ''If'' for ''if'' and a period for ''; and''.

Subsec. (c)(3)(C). Pub. L. 101–510, §1484(f)(4)(B), (D), substituted ''Production'' for ''production'' and ''program) the following:'' for ''program)—'' in introductory provisions, ''Specification'' for ''specification'' in cls. (i) to (iv), ''Estimation'' for ''estimation'' in cls. (v) to (vii), a period for a semicolon in cls. (i) to (v), and a period for ''; and'' in cl. (vi).

Subsec. (c)(5). Pub. L. 101–510, §1407(c), added par. (5).

1989—Subsec. (b)(2)(A). Pub. L. 101–189 substituted ''15 percent increase in program acquisition unit cost and current procurement unit cost'' for ''5 percent change in total program cost''.

1987—Pub. L. 100–180, §1314(a)(1), made technical amendment to directory language of Pub. L. 99–433, §101(a)(5). See 1986 Amendment note below.

Subsec. (a). Pub. L. 100–26, §7(b)(3)(A), as amended by Pub. L. 100–180, §1233(a)(1), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

Pub. L. 100–26, §7(k)(2)(A), inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

Subsec. (a)(2). Pub. L. 100–26, §7(b)(3)(B), substituted ''programmed'' for ''programed'' wherever appearing.

1986—Pub. L. 99–433, §101(a)(5), as amended by Pub. L. 100–180, §1314(a)(1), renumbered section 139a of this title as this section.

Pub. L. 99–433, §110(d)(13), struck out ''Oversight of cost growth in major programs:'' before ''Selected Acquisition Reports'' in section catchline.

Subsec. (a)(3). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(1)], Pub. L. 99–661, §961(a)(1), amended par. (3) identically, inserting provision that if for any fiscal year the funds appropriated, or the number of fully-configured end items to be purchased, differ from those programmed, the procurement unit cost shall be revised to reflect the appropriated amounts and quantities.

Subsec. (a)(4). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(2)], Pub. L. 99–661, §961(a)(2), amended par. (4) identically, substituting ''$40,000,000'' for ''$2,000,000''.

Subsec. (b)(2)(B). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(3)], Pub. L. 99–661, §961(a)(3), amended subpar. (B) identically, substituting ''six-month'' for ''three-month''.

Subsec. (c)(1). Pub. L. 99–433, §110(g)(7), substituted ''section 2431'' for ''section 139''.

Subsec. (c)(2). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(4)], Pub. L. 99–661, §961(a)(4), amended subsec. (c) identically, enacting a new par. (2) and striking out former par. (2) which read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall be prepared and submitted with the same content as was used for the Selected Acquisition Report for the first quarter of fiscal year 1984.''

Subsec. (c)(3)(C). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(5)], Pub. L. 99–661, §961(a)(5), amended subpar. (C) identically, inserting in provision preceding cl. (i) ''that is produced at a rate of six units or more per year'' after ''report''.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(a)(6)], Pub. L. 99–661, §961(a)(6), amended section identically, adding subsec. (h).

1985—Subsec. (c). Pub. L. 99–145 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Each Selected Acquisition Report for the first quarter of a fiscal year shall include (1) the same information, in detailed and summarized form, as is provided in reports submitted under section 139 of this title, (2) the current program acquisition unit cost for each major defense acquisition program included in the report and the history of that cost from the date the program was first included in a Selected Acquisition Report to the end of the quarter for which the current report is submitted, and (3) such other information as the Secretary of Defense considers appropriate. Selected Acquisition Reports for the first quarter of a fiscal year shall be known as comprehensive annual Selected Acquisition Reports.''

1984—Subsec. (a)(3). Pub. L. 98–525, §1242(a)(1), substituted ''funds programed to be available for obligation for procurement'' for ''procurement funds appropriated'' and ''of funds programed to be available for obligation'' for ''of funds appropriated''.

Subsec. (a)(4). Pub. L. 98–525, §1242(a)(2), inserted ''and that is in excess of $2,000,000''.

Subsec. (b)(2). Pub. L. 98–525, §1242(a)(3), substituted ''during the period since that report there has been—(A) less than a 5 percent change in total program cost; and (B) less than a three-month delay in any program schedule milestone shown in the Selected Acquisition Report'' for ''there has been no change in program cost, performance, or schedule since the most recent such report''.

Subsec. (f). Pub. L. 98–525, §1242(a)(4), substituted: ''60'' for ''30'', ''45'' for ''30, and ''A preliminary report shall be submitted for each annual Selected Acquisition Report within 30 days of the date on which the President submits the Budget to Congress'' for ''If a preliminary report is submitted for the comprehensive annual Selected Acquisition Report in any year, the final report shall be submitted within 15 days after the submission of the preliminary report''.

Subsec. (g). Pub. L. 98–525, §1242(a)(5), added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1407(d) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(a)(8), Apr. 6, 1991, 105 Stat. 119, provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to Selected Acquisition Reports submitted under section 2432 of title 10, United States Code, after December 31, 1991.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 1233(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Defense Technical Corrections Act of 1987, Pub. L. 100–26, see section 1233(c) of Pub. L. 100–180, set out as a note under section 101 of this title.

Amendment by section 1314(a)(1) of Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title IX, §961(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 961(c) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 2433 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE

Section 1107(c) of Pub. L. 97–252 provided that: ''Sections 139a and 139b [now 2432 and 2433] of title 10, United States Code, as added by subsection (a), shall take effect on January 1, 1983, and shall apply beginning with respect to reports for the first quarter of fiscal year 1983. The repeal made by subsection (b) [repealing Pub. L. 94–106, as amended, set out as Reports to Congress of Acquisitions for Major Defense Systems note under section 2431 of this title] shall take effect on January 1, 1983.''

SELECTED ACQUISITION REPORTS FOR CERTAIN PROGRAMS

Section 127 of Pub. L. 100–180, as amended by Pub. L. 102–484, div. A, title VIII, §817(a), Oct. 23, 1992, 106 Stat. 2454, provided that:

''(a) SAR COVERAGE FOR ATB, ACM, AND ATA PROGRAMS.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives, in accordance with the provisions of subsection (b) of section 2432 of title 10, United States Code, a Selected Acquisition Report with respect to each program referred to in subsection (b), notwithstanding that such a report would not otherwise be required under section 2432 of title 10, United States Code.

''(b) COVERED PROGRAMS.—Subsection (a) applies to the Advanced Technology Bomber program, the Advanced Cruise Missile program, and the Advanced Tactical Aircraft program.

''(c) SELECTED ACQUISITION REPORT DEFINED.—As used in subsection (a), the term 'Selected Acquisition Report' means a report containing the information referred to in section 2432 of title 10, United States Code.''

SENSE OF CONGRESS ON PREPARATION OF CERTAIN ECONOMIC IMPACT AND EMPLOYMENT INFORMATION CONCERNING NEW ACQUISITION PROGRAMS

Section 825 of Pub. L. 100–180 related to the sense of Congress on preparation of certain economic impact and employment information concerning new acquisition programs, prior to repeal by Pub. L. 104–106, div. D, title XLIII, §4321(i)(4), Feb. 10, 1996, 110 Stat. 676.

DURATION OF ASSIGNMENT OF PROGRAM MANAGERS FOR MAJOR PROGRAMS

Section 1243 of Pub. L. 98–525, as amended by Pub. L. 100–26, §11(a)(1), Apr. 21, 1987, 101 Stat. 288, which related to waivable minimum four-year tour of duty of program managers for major defense acquisition programs, was repealed and restated in section 2435(c) of this title by Pub. L. 100–370, §1(i), July 19, 1988, 102 Stat. 848.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1734, 2400, 2433 of this title.

§ 2433. Unit cost reports

(a) In this section:

(1) The terms ''program acquisition unit cost'', ''procurement unit cost'', and ''major contract'' have the same meanings as provided in section 2432(a) of this title.

(2) The term ''Baseline Estimate'', with respect to a unit cost report that is submitted under this section to the service acquisition

executive designated by the Secretary concerned on a major defense acquisition program, means the cost estimate included in the baseline description for the program under section 2435 of this title.

(3) The term ''procurement program'' means a program for which funds for procurement are authorized to be appropriated in a fiscal year.

(b) The program manager for a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, on a quarterly basis, submit to the service acquisition executive designated by the Secretary concerned a written report on the unit costs of the program. Each report shall be submitted not more than 30 calendar days after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):

(1) The program acquisition unit cost.

(2) In the case of a procurement program, the procurement unit cost.

(3) Any cost variance or schedule variance in a major contract under the program since the contract was entered into.

(4) Any changes from program schedule milestones or program performances reflected in the baseline description established under section 2435 of this title that are known, expected, or anticipated by the program manager.

(c) If the program manager of a major defense acquisition program for which a unit cost report has previously been submitted under subsection (b) determines at any time during a quarter that there is reasonable cause to believe—

(1) that the program acquisition unit cost for the program has increased by at least 15 percent over the program acquisition unit cost for the program as shown in the Baseline Estimate; or

(2) in the case of a major defense acquisition program that is a procurement program, that the procurement unit cost for the program has increased by at least 15 percent over the procurement unit cost for the program as reflected in the Baseline Estimate;

and if a unit cost report indicating an increase of such percentage or more has not previously been submitted to the service acquisition executive designated by the Secretary concerned, then the program manager shall immediately submit to such service acquisition executive a unit cost report containing the information, determined as of the date of the report, required under subsection (b).

(d)(1) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program, the service acquisition executive shall determine whether the current program acquisition unit cost for the program has increased by at least 15 percent, or by at least 25 percent, over the program acquisition unit cost for the program as shown in the Baseline Estimate.

(2) When a unit cost report is submitted to the service acquisition executive designated by the Secretary concerned under this section with respect to a major defense acquisition program that is a procurement program, the service acquisition executive, in addition to the determination under paragraph (1), shall determine whether the procurement unit cost for the program has increased by at least 15 percent, or by at least 25 percent, over the procurement unit cost for the program as reflected in the Baseline Estimate.

(3) If, based upon the service acquisition executive's determination, the Secretary concerned determines that the current program acquisition unit cost has increased by at least 15 percent, or by at least 25 percent, as determined under paragraph (1) or that the procurement unit cost has increased by at least 15 percent, or by at least 25 percent, as determined under paragraph (2), the Secretary shall notify Congress in writing of such determination and of the increase with respect to such program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.

(e)(1)(A) Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the program acquisition unit cost or the procurement unit cost of a major defense acquisition program has increased by at least 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination or for the fiscal-year quarter which immediately precedes the first fiscal-year quarter ending on or after that date. The report shall include the information described in section 2432(e) of this title and shall be submitted in accordance with section 2432(f) of this title.

(B) Whenever the Secretary makes a determination referred to in subparagraph (A) in the case of a major defense acquisition program during the second quarter of a fiscal year and before the date on which the President transmits the budget for the following fiscal year to Congress pursuant to section 1105 of title 31, the Secretary is not required to file a Selected Acquisition Report under subparagraph (A) but shall include the information described in subsection (g) regarding that program in the comprehensive annual Selected Acquisition Report submitted in that quarter.

(2) If the percentage increase in the program acquisition unit cost or procurement unit cost of a major defense acquisition program (as determined by the Secretary under subsection (d)) exceeds 25 percent, the Secretary of Defense shall submit to Congress, before the end of the 30-day period beginning on the day the Selected Acquisition Report containing the information described in subsection (g) is required to be submitted under section 2432(f) of this title—

(A) a written certification, stating that—

(i) such acquisition program is essential to the national security;

(ii) there are no alternatives to such acquisition program which will provide equal or greater military capability at less cost;

(iii) the new estimates of the program acquisition unit cost or procurement unit cost are reasonable; and

(iv) the management structure for the acquisition program is adequate to manage and control program acquisition unit cost or procurement unit cost; and

(B) if a report under paragraph (1) has been previously submitted to Congress with respect to such program for the current fiscal year but was based upon a different unit cost report from the program manager to the service acquisition executive designated by the Secretary concerned, a further report containing the information described in subsection (g), determined from the time of the previous report to the time of the current report.

(3) If a determination of an increase of at least 15 percent is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of an increase of at least 25 percent is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program. The prohibition on the obligation of funds for a major defense acquisition program shall cease to apply at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

(A) on which Congress receives the Selected Acquisition Report under paragraph (1) or (2)(B) with respect to that program, in the case of a determination of an increase of at least 15 percent (as determined in subsection (d)); or

(B) on which Congress has received both the Selected Acquisition Report under paragraph (1) or (2)(B) and the certification of the Secretary of Defense under paragraph (2)(A) with respect to that program, in the case of an increase of at least 25 percent (as determined under subsection (d)).

(f) Any determination of a percentage increase under this section shall be stated in terms of constant base year dollars (as described in section 2430 of this title).

(g)(1) Except as provided in paragraph (2), each report under subsection (e) with respect to a major defense acquisition program shall include the following:

(A) The name of the major defense acquisition program.

(B) The date of the preparation of the report.

(C) The program phase as of the date of the preparation of the report.

(D) The estimate of the program acquisition cost for the program as shown in the Selected Acquisition Report in which the program was first included, expressed in constant base-year dollars and in current dollars.

(E) The current program acquisition cost in constant base-year dollars and in current dollars.

(F) A statement of the reasons for any increase in program acquisition unit cost or procurement unit cost.

(G) The completion status of the program (i) expressed as the percentage that the number of years for which funds have been appropriated for the program is of the number of years for which it is planned that funds will be appropriated for the program, and (ii) expressed as the percentage that the amount of funds that have been appropriated for the program is of the total amount of funds which it is planned will be appropriated for the program.

(H) The fiscal year in which information on the program was first included in a Selected Acquisition Report (referred to in this paragraph as the ''base year'') and the date of that Selected Acquisition Report in which information on the program was first included.

(I) The type of the Baseline Estimate that was included in the baseline description under section 2435 of this title and the date of the Baseline Estimate.

(J) The current change and the total change, in dollars and expressed as a percentage, in the program acquisition unit cost, stated both in constant base-year dollars and in current dollars.

(K) The current change and the total change, in dollars and expressed as a percentage, in the procurement unit cost, stated both in constant base-year dollars and in current dollars and the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

(L) The quantity of end items to be acquired under the program and the current change and total change, if any, in that quantity.

(M) The identities of the military and civilian officers responsible for program management and cost control of the program.

(N) The action taken and proposed to be taken to control future cost growth of the program.

(O) Any changes made in the performance or schedule milestones of the program and the extent to which such changes have contributed to the increase in program acquisition unit cost or procurement unit cost.

(P) The following contract performance assessment information with respect to each major contract under the program:

(i) The name of the contractor.

(ii) The phase that the contract is in at the time of the preparation of the report.

(iii) The percentage of work under the contract that has been completed.

(iv) Any current change and the total change, in dollars and expressed as a percentage, in the contract cost.

(v) The percentage by which the contract is currently ahead of or behind schedule.

(vi) A narrative providing a summary explanation of the most significant occurrences, including cost and schedule vari-

ances under major contracts of the program, contributing to the changes identified and a discussion of the effect these occurrences will have on future program costs and the program schedule.

(2) If a program acquisition unit cost increase or a procurement unit cost increase for a major defense acquisition program that results in a report under this subsection is due to termination or cancellation of the entire program, only the information specified in clauses (A) through (F) of paragraph (1) and the percentage change in program acquisition unit cost or procurement unit cost that resulted in the report need be included in the report. The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.

(h) Reporting under this section shall not apply if a program has received a limited reporting waiver under section 2432(h) of this title.

(Added Pub. L. 97–252, title XI, §1107(a)(1), Sept. 8, 1982, 96 Stat. 741, §139b; amended Pub. L. 98–94, title XII, §1268(1), Sept. 24, 1983, 97 Stat. 705; Pub. L. 98–525, title XII, §1242(b), Oct. 19, 1984, 98 Stat. 2607; Pub. L. 99–145, title XIII, §1303(a)(2), Nov. 8, 1985, 99 Stat. 738; renumbered §2433 and amended Pub. L. 99–433, title I, §§101(a)(5), 110(d)(14), (g)(8), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–500, §101(c) [title X, §961(b)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–176, and Pub. L. 99–591, §101(c) [title X, §961(b)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–176; Pub. L. 99–661, div. A, title IX, formerly title IV, §961(b), Nov. 14, 1986, 100 Stat. 3956, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §7(b)(4), (k)(7), Apr. 21, 1987, 101 Stat. 279, 284; Pub. L. 100–180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 101–189, div. A, title VIII, §811(a), Nov. 29, 1989, 103 Stat. 1490; Pub. L. 101–510, div. A, title XIV, §1484(k)(10), Nov. 5, 1990, 104 Stat. 1719; Pub. L. 102–484, div. A, title VIII, §817(d), Oct. 23, 1992, 106 Stat. 2456; Pub. L. 103–35, title II, §201(i)(2), May 31, 1993, 107 Stat. 100; Pub. L. 103–355, title III, §§3002(a)(2), 3003, Oct. 13, 1994, 108 Stat. 3328, 3329; Pub. L. 105–85, div. A, title VIII, §833, Nov. 18, 1997, 111 Stat. 1842.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85, §833(a), in concluding provisions, struck out ''during the current fiscal year (other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' after ''designated by the Secretary concerned''.

Subsec. (c)(1) to (3). Pub. L. 105–85, §833(b), inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3), which read as follows: ''that cost variances or schedule variances of a major contract under the program have resulted in an increase in the cost of the contract of at least 15 percent over the cost of the contract as of the time the contract was made;''.

Subsec. (d)(3). Pub. L. 105–85, §833(c), struck out ''(for the first time since the beginning of the current fiscal year)'' after ''the Secretary concerned determines''.

1994—Subsec. (a)(2). Pub. L. 103–355, §3003(a)(1)(A), substituted ''Baseline Estimate'' for ''Baseline Selected Acquisition Report'' and ''cost estimate included in the baseline description for the program under section 2435 of this title.'' for ''Selected Acquisition Report in which information on the program is first included or the comprehensive annual Selected Acquisition Report for the fiscal year immediately before the fiscal year containing the quarter with respect to which the unit cost report is submitted, whichever is later.''

Subsec. (a)(4). Pub. L. 103–355, §3003(a)(1)(B), struck out par. (4) which defined ''Baseline Report''.

Subsec. (b)(3). Pub. L. 103–355, §3003(b), substituted ''contract was entered into'' for ''Baseline Report was submitted''.

Subsec. (c). Pub. L. 103–355, §§3002(a)(2)(A), 3003(a)(2)(A), (c), struck out par. (1) designation and par. (2), redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, substituted ''Baseline Estimate'' for ''Baseline Report'' in pars. (1) and (2), and struck out ''current'' before ''procurement unit cost'' in par. (2). Prior to amendment, former par. (2) related to submission of unit cost reports by major defense acquisition program manager to service acquisition executive designated by Secretary of Defense in certain circumstances.

Subsec. (d)(1). Pub. L. 103–355, §3003(a)(2)(B), substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(2). Pub. L. 103–355, §§3002(a)(2)(B), 3003(a)(2)(B), struck out ''current'' before ''procurement unit cost'' and substituted ''Baseline Estimate'' for ''Baseline Report''.

Subsec. (d)(3). Pub. L. 103–355, §3002(a)(2)(B), struck out ''current'' before ''procurement unit cost''.

Subsec. (e)(1)(A), (2). Pub. L. 103–355, §3002(a)(2)(C), struck out ''current'' before ''procurement unit cost''.

Subsec. (f). Pub. L. 103–355, §3003(d), substituted ''be stated in terms of constant base year dollars (as described in section 2430 of this title)'' for ''include expected inflation''.

Subsec. (g)(1)(I). Pub. L. 103–355, §3003(e), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report.''

1993—Subsec. (e)(3). Pub. L. 103–35 substituted ''an increase of at least 15 percent'' for ''a at least 15 percent increase'' in introductory provisions and in subpar. (A), and substituted ''an increase of at least 25 percent'' for ''a at least 25 percent increase'' in introductory provisions and in subpar. (B).

1992—Subsec. (a)(4)(C). Pub. L. 102–484, §817(d)(1), substituted ''(e)(2)(B)'' for ''(e)(2)(B)(ii)''.

Subsec. (b). Pub. L. 102–484, §817(d)(2), substituted ''30 calendar days'' for ''7 days (excluding Saturdays, Sundays, and legal public holidays)'' in second sentence.

Subsec. (c)(1)(A), (B), (2)(A), (B). Pub. L. 102–484, §817(d)(3), substituted ''at least'' for ''more than''.

Subsec. (d)(1), (2). Pub. L. 102–484, §817(d)(4)(A), substituted ''at least'' for ''more than'' wherever appearing.

Subsec. (d)(3). Pub. L. 102–484, §817(d)(4)(B), substituted ''at least'' for ''more than'' wherever appearing and ''program. In the case of a determination based on a quarterly report submitted in accordance with subsection (b), the Secretary shall submit the notification to Congress within 45 days after the end of the quarter. In the case of a determination based on a report submitted in accordance with subsection (c), the Secretary shall submit the notification to Congress within 45 days after the date of that report. The Secretary shall include in the notification the date on which the determination was made.'' for ''program within 30 days after the date on which the service acquisition executive reports his determination of such increase in such unit cost to the Secretary and shall include in such notification the date on which the determination was made.''

Subsec. (e)(1)(A). Pub. L. 102–484, §817(d)(5)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''Except as provided in subparagraph (B), whenever the Secretary concerned determines under subsection (d) that the current program acquisition cost of a major defense acquisition program has in-

creased by more than 15 percent, a Selected Acquisition Report shall be submitted to Congress for the first fiscal-year quarter ending on or after the date of the determination and such report shall include the information described in section 2432(e) of this title. The report shall be submitted within 45 days after the end of that quarter.''

Subsec. (e)(2). Pub. L. 102–484, §817(d)(5)(B), substituted ''program acquisition unit cost or current procurement unit cost'' for ''current program acquisition cost''.

Subsec. (e)(3). Pub. L. 102–484, §817(d)(5)(C), substituted ''at least'' for ''more than'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510 struck out ''the'' before ''such service acquisition executive'' wherever appearing.

1989—Subsec. (a)(2). Pub. L. 101–189, §811(a)(1)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned''.

Subsec. (a)(4). Pub. L. 101–189, §811(a)(1)(B)(i), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 101–189, §811(a)(1)(B)(ii), substituted ''Selected Acquisition Report submitted under subsection (e)(2)(B) that includes information on'' for ''unit cost report submitted under subsection (e)(2)(B)(ii) with respect to''.

Subsec. (a)(4)(B). Pub. L. 101–189, §811(a)(1)(B)(iii), substituted ''subsection (e)(2)(B) with respect to the program during that three-quarter period, the most recent Selected Acquisition Report submitted under subsection (e)(1) that includes information on the program'' for ''subsection (e)(2)(B)(ii) with respect to the program during that three-quarter period, the most recent unit cost report submitted under subsection (e)(1) with respect to the program''.

Subsec. (b). Pub. L. 101–189, §811(a)(2)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The program manager for a defense acquisition program that as of the end of a fiscal-year quarter is a major defense acquisition program (other than a program not required to be included in the Selected Acquisition Report for that quarter under section 2432(b)(3) of this title) shall, after the end of that quarter, submit to the Secretary concerned a written report on the unit costs of the program. Each report for the first quarter of a fiscal year shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days (excluding Saturdays, Sundays, and legal public holidays) after the end of that quarter. The program manager shall include in each such unit cost report the following information with respect to the program (as of the last day of the quarter for which the report is made):''.

Subsec. (b)(4). Pub. L. 101–189, §811(a)(2)(B), substituted ''description established under section 2435 of this title'' for ''Selected Acquisition Report''.

Subsec. (c)(1). Pub. L. 101–189, §811(a)(3)(A), in introductory provisions, struck out ''fiscal-year'' after ''time during a'', and in concluding provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned during'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'' and ''such service acquisition executive a unit'' for ''Secretary concerned a unit''.

Subsec. (c)(2). Pub. L. 101–189, §811(a)(3)(B), in introductory provisions, inserted ''the service acquisition executive designated by'' before ''the Secretary concerned a unit'' and substituted ''(other than the last quarterly unit cost report under subsection (b) for the preceding fiscal year)'' for ''(other than the unit cost report under subsection (b) for the last quarter of the preceding fiscal year)'', and in cls. (A), (B), and (C), and concluding provisions, substituted ''such service acquisition executive'' for ''Secretary concerned''.

Subsec. (d)(1). Pub. L. 101–189, §811(a)(4)(A), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned'' and substituted ''service acquisition executive shall determine'' for ''Secretary shall determine''.

Subsec. (d)(2). Pub. L. 101–189, §811(a)(4)(B), inserted ''the service acquisition executive designated by'' before ''the Secretary concerned under'' and substituted ''service acquisition executive, in addition to the determination under paragraph (1), shall determine'' for ''Secretary concerned shall, in addition to the determination under paragraph (1), determine''.

Subsec. (d)(3). Pub. L. 101–189, §811(a)(4)(C), substituted par. (3) consisting of a single par., for former par. (3) consisting of subpars. (A) and (B).

Subsec. (e)(1), (2). Pub. L. 101–189, §811(a)(5)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which contained exceptions to the prohibitions in subsec. (d)(3)(B)(i) and (ii).

Subsec. (e)(3). Pub. L. 101–189, §811(a)(5)(B), in introductory provisions, inserted ''If a determination of a more than 15 percent increase is made by the Secretary under subsection (d) and a Selected Acquisition Report containing the information described in subsection (g) is not submitted to Congress under paragraph (1), or if a determination of a more than 25 percent increase is made by the Secretary under subsection (d) and the certification of the Secretary of Defense is not submitted to Congress under paragraph (2), funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program.'' and struck out ''in subsection (d)(3)(B)'' after ''prohibition'', in subpar. (A), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'' and ''(2)(B)'' for ''(2)(B)(ii)'', and in subpar. (B), substituted ''Selected Acquisition Report'' for ''report of the Secretary concerned'', ''(2)(B)'' for ''(2)(B)(ii)'', and ''(2)(A)'' for ''(2)(B)(i)''.

Subsec. (g)(2). Pub. L. 101–189, §811(a)(6), inserted at end ''The certification of the Secretary of Defense under subsection (e) is not required to be submitted for termination or cancellation of a program.''

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, §101(a)(5). See 1986 Amendment note below.

Subsec. (a)(1). Pub. L. 100–26, §7(b)(4), substituted ''(1) The terms 'program' '' for ''(1) 'Major defense acquisition program', 'program' ''.

Subsec. (a)(2). Pub. L. 100–26, §7(k)(7)(A), inserted ''The term'' after par. designation.

Subsec. (a)(3). Pub. L. 100–26, §7(k)(7)(B), substituted ''The term 'procurement' '' for '' 'Procurement' ''.

Subsec. (a)(4). Pub. L. 100–26, §7(k)(7)(A), inserted ''The term'' after par. designation.

1986—Pub. L. 99–433, §101(a)(5), as amended by Pub. L. 100–180, §1314(a)(1), renumbered section 139b of this title as this section.

Pub. L. 99–433, §110(d)(14), substituted ''Unit cost reports'' for ''Oversight of cost growth of major programs: unit cost reports'' in section catchline.

Subsec. (a)(1). Pub. L. 99–433, §110(g)(8)(A), substituted ''section 2432(a)'' for ''section 139a(a)''.

Subsec. (b). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(b)(1)], Pub. L. 99–661, §961(b)(1), amended subsec. (b) identically, inserting ''(excluding Saturdays, Sundays, and legal public holidays)'' in two places in second sentence.

Pub. L. 99–433, §110(g)(8)(B), substituted ''section 2432(b)(3)'' for ''section 139a(b)(3)'' in first sentence.

Subsec. (h). Pub. L. 99–500 and Pub. L. 99–591, §101(c) [§961(b)(2)], Pub. L. 99–661, §961(b)(2), amended section identically, adding subsec. (h).

1985—Subsec. (d)(3)(B)(i). Pub. L. 99–145 inserted ''percent'' after ''15''.

1984—Subsec. (a)(4). Pub. L. 98–525, §1242(b)(1), added par. (4).

Subsec. (b). Pub. L. 98–525, §1242(b)(2)(A), (B), struck out ''not more than 7 days'' before ''after the end of that quarter'' and inserted ''Each report for the first quarter of a fiscal year shall be submitted not more than 7 days after the date on which the President transmits the Budget to Congress for the following fiscal year, and each report for other quarters shall be submitted not more than 7 days after the end of that quarter.''

Subsec. (b)(3). Pub. L. 98–525, §1242(b)(2)(C), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (c)(1)(A), (B). Pub. L. 98–525, §1242(b)(3), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(1), (2). Pub. L. 98–525, §1242(b)(4)(A), substituted ''Baseline Report'' for ''baseline Selected Acquisition Report''.

Subsec. (d)(3)(B). Pub. L. 98–525, §1242(b)(4)(B)(i), substituted ''funds appropriated for military construction, for research, development, test, and evaluation, and for procurement may not be obligated for a major contract under the program'' for ''additional funds may not be obligated in connection with such program''.

Subsec. (d)(3)(B)(i). Pub. L. 98–525, §1242(b)(4)(B)(ii), struck out ''but less than 25 percent'' after ''more than 15''.

Subsec. (e)(1). Pub. L. 98–525, §1242(b)(5)(A), substituted ''subsection (d)(3)(B)(i)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''15 percent''.

Subsec. (e)(2). Pub. L. 98–525, §1242(b)(5)(B), substituted ''subsection (d)(3)(B)(ii)'' for ''subsection (d)(3)(B)'' and inserted ''more than'' before ''25 percent''.

Subsec. (e)(2)(A). Pub. L. 98–525, §1242(b)(5)(B)(iii), inserted ''and the Secretary concerned submits to Congress, before the end of the 30-day period referred to in subsection (d)(3)(B)(i), a report containing the information described in subsection (g)''.

Subsec. (e)(2)(B). Pub. L. 98–525, §1242(b)(5)(B)(iv), substituted ''subsection (d)(3)(B)(ii)'' for ''such subsection''.

Subsec. (e)(3). Pub. L. 98–525, §1242(b)(5)(C), substituted ''at the end of a period of 30 days of continuous session of Congress (as determined under section 7307(b)(2) of this title) beginning on the date—

''(A) on which Congress receives the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) with respect to that program, in the case of a determination of a more than 15 percent increase (as determined in subsection (d)); or

''(B) on which Congress has received both the report of the Secretary concerned under paragraph (1) or (2)(B)(ii) and the certification of the Secretary of Defense under paragraph (2)(B)(i) with respect to that program, in the case of a more than 25 percent increase (as determined under subsection (d)).'',

for ''in the case of a program to which it would otherwise apply if, after such prohibition has taken effect, the Committees on Armed Services of the Senate and House of Representatives waive the prohibition with respect to such program.''

Subsec. (g)(1)(I). Pub. L. 98–525, §1242(b)(6)(A), substituted ''The type of the Baseline Report (under subsection (a)(4)) and the date of the Baseline Report'' for ''The date of the baseline Selected Acquisition Report''.

Subsec. (g)(1)(K). Pub. L. 98–525, §1242(b)(6)(B), required the report to include the procurement unit cost for the succeeding fiscal year expressed in constant base-year dollars and in current year dollars.

1983—Subsec. (g)(2). Pub. L. 98–94 substituted ''procurement'' for ''procurment''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 effective Jan. 1, 1987, see section 101(c) [§961(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 961(c) of Pub. L. 99–661, set out as a note under section 2432 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1983, and applicable beginning with respect to reports for first quarter of fiscal year 1983, see section 1107(c) of Pub. L. 97–252, set out as a note under section 2432 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2435 of this title.

§ 2434. Independent cost estimates; operational manpower requirements

(a) REQUIREMENT FOR APPROVAL.—The Secretary of Defense may not approve the system development and demonstration, or the production and deployment, of a major defense acquisition program unless an independent estimate of the full life-cycle cost of the program and a manpower estimate for the program have been considered by the Secretary.

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the content and submission of the estimates required by subsection (a). The regulations shall require—

(1) that the independent estimate of the full life-cycle cost of a program—

(A) be prepared—

(i) by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; or

(ii) if the decision authority for the program has been delegated to an official of a military department, Defense Agency, or other component of the Department of Defense, by an office or other entity that is not directly responsible for carrying out the development or acquisition of the program; and

(B) include all costs of development, procurement, military construction, and operations and support, without regard to funding source or management control; and

(2) that the manpower estimate include an estimate of the total number of personnel required—

(A) to operate, maintain, and support the program upon full operational deployment; and

(B) to train personnel to carry out the activities referred to in subparagraph (A).

(Added Pub. L. 98–94, title XII, §1203(a)(1), Sept. 24, 1983, 97 Stat. 682, §139c; renumbered §2434 and amended Pub. L. 99–433, title I, §§101(a)(5), 110(d)(15), (g)(9), Oct. 1, 1986, 100 Stat. 995, 1003, 1004; Pub. L. 99–661, div. A, title XII, §1208(a)–(c)(1), Nov. 14, 1986, 100 Stat. 3975; Pub. L. 100–26, §7(b)(5), Apr. 21, 1987, 101 Stat. 279; Pub. L. 100–180, div. A, title XIII, §1314(a)(1), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A,

title V, § 525, Sept. 29, 1988, 102 Stat. 1975; Pub. L. 102–190, div. A, title VIII, § 801(a), (b)(1), Dec. 5, 1991, 105 Stat. 1412; Pub. L. 103–355, title III, § 3004, Oct. 13, 1994, 108 Stat. 3330; Pub. L. 104–106, div. A, title VIII, § 814, Feb. 10, 1996, 110 Stat. 395; Pub. L. 107–107, div. A, title VIII, § 821(a), Dec. 28, 2001, 115 Stat. 1181.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''system development and demonstration'' for ''engineering and manufacturing development''.

1996—Subsec. (b)(1)(A). Pub. L. 104–106 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''be prepared by an office or other entity that is not under the supervision, direction, or control of the military department, Defense Agency, or other component of the Department of Defense that is directly responsible for carrying out the development or acquisition of the program; and''.

1994—Subsec. (a). Pub. L. 103–355, § 3004(b), substituted ''engineering and manufacturing development'' for ''full-scale engineering development'' and ''full life-cycle cost of the program and a manpower estimate for the program have'' for ''cost of the program, together with a manpower estimate, has''.

Subsec. (b). Pub. L. 103–355, § 3004(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) defined ''independent estimate'', ''cost of the program'', and ''manpower estimate''.

1991—Subsec. (a). Pub. L. 102–190, § 801(a), substituted ''unless an independent estimate of the cost of the program, together with a manpower estimate, has been considered by the Secretary.'' for ''unless—

''(1) an independent estimate of the cost of the program is first submitted to (and considered by) the Secretary; and

''(2) the Secretary submits a manpower estimate of the program to the Committees on Armed Services of the Senate and the House of Representatives at least 30 days in advance of such approval.''

Subsecs. (b), (c). Pub. L. 102–190, § 801(b)(1), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows:

''(b) EXCEPTIONS.—(1) Subsection (a)(2) shall not apply during time of war or during a national emergency declared by Congress or the President.

''(2) The 30-day period specified in subsection (a)(2) shall be reduced to 10 days in the case of a major defense acquisition program if the manpower estimate submitted by the Secretary of Defense under subsection (a)(2) with respect to that program indicates that no increase in military or civilian personnel end strengths described in subsection (c)(3)(B) will be required.''

1988—Subsec. (a)(2). Pub. L. 100–456, § 525(1), substituted ''30 days'' for ''90 days''.

Subsec. (b). Pub. L. 100–456, § 525(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 100–456, § 525(2), redesignated subsec. (b) as (c), and in par. (3)(A), substituted ''in total personnel or in'' for ''both in total personnel and''.

1987—Pub. L. 100–180 made technical amendment to directory language of Pub. L. 99–433, § 101(a)(5). See 1986 Amendment note below.

Subsec. (b). Pub. L. 100–26 redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which defined ''major defense acquisition program''.

1986—Pub. L. 99–433, § 101(a)(5), as amended by Pub. L. 100–180, § 1314(a)(1), renumbered section 139c of this title as this section.

Pub. L. 99–661, § 1208(c)(1), substituted ''Independent cost estimates; operational manpower requirements'' for ''Independent cost estimates'' in section catchline.

Pub. L. 99–433, § 110(d)(15), substituted ''Independent cost estimates'' for ''Major defense acquisition programs: independent cost estimates'' in section catchline.

Subsec. (a). Pub. L. 99–661, § 1208(a), inserted heading, designated existing provisions as par. (1), and added par. (2).

Subsec. (b). Pub. L. 99–661, § 1208(b)(1), inserted heading.

Subsec. (b)(1). Pub. L. 99–661, § 1208(b)(2), substituted ''The term 'Major'' for '' 'Major''.

Pub. L. 99–433, § 110(g)(9), substituted ''section 2432(a)(1)'' for ''section 139a(a)(1)''.

Subsec. (b)(2). Pub. L. 99–661, § 1208(b)(3), substituted ''The term 'independent'' for '' 'Independent''.

Subsec. (b)(3). Pub. L. 99–661, § 1208(b)(4), substituted ''The term 'cost'' for '' 'Cost''.

Subsec. (b)(4). Pub. L. 99–661, § 1208(b)(5), added par. (4).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable as if included in enactment of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. 99–433, see section 1314(e) of Pub. L. 100–180, set out as a note under section 743 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1208(d) of Pub. L. 99–661 provided that: ''The amendments made by this section [amending this section] shall apply to approvals of full-scale engineering development and to approvals of production and deployment of major defense acquisition programs made after December 31, 1986.''

EFFECTIVE DATE

Section 1203(b) of Pub. L. 98–94 provided that: ''Section 139c [now 2434] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

REPORT TO CONGRESS ON USE OF INDEPENDENT COST ESTIMATES IN PLANNING, PROGRAMING, BUDGETING, AND SELECTION FOR MAJOR DEFENSE ACQUISITION PROGRAMS

Pub. L. 99–145, title IX, § 952, Nov. 8, 1985, 99 Stat. 701, directed Secretary of Defense, not later than Apr. 1, 1986, to submit to Congress a report on the continued use of independent cost estimates in the planning, programing, budgeting, and selection process for major defense acquisition programs of the Department.

Section 1203(c) of Pub. L. 98–94 directed Secretary of Defense, not later than May 1, 1984, to submit a written report to Congress on use of independent cost estimates in planning, programing, budgeting, and selection process for major defense acquisition programs in Department, such report to include an overall assessment of extent to which such estimates were adopted by Department in making decisions on the FY 1985 budget and a general explanation of why such estimates might have been modified or rejected, and a discussion of current and future initiatives to make greater or more productive use of independent cost estimates in the Department.

ALLOCATION OF ADEQUATE PERSONNEL AND FINANCIAL RESOURCES IN DEVELOPING OR ASSESSING INDEPENDENT ESTIMATES OF COSTS

Section 1203(d) of Pub. L. 98–94 provided that: ''It is the sense of the Congress that the Secretary of Defense should ensure that adequate personnel and financial resources are allocated at all levels of the Department of Defense to those organizations or offices charged with developing or assessing independent estimates of the costs of major defense acquisition programs.''

§ 2435. Baseline description

(a) BASELINE DESCRIPTION REQUIREMENT.—(1) The Secretary of a military department shall establish a baseline description for each major defense acquisition program under the jurisdiction of such Secretary.

(2) The baseline shall include sufficient parameters to describe the cost estimate (referred to

as the ''Baseline Estimate'' in section 2433 of this title), schedule, performance, supportability, and any other factor of such major defense acquisition program.

(b) FUNDING LIMIT.—No amount appropriated or otherwise made available to the Department of Defense for carrying out a major defense acquisition program may be obligated after the program enters system development and demonstration without an approved baseline description unless such obligation is specifically approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(c) SCHEDULE.—A baseline description for a major defense acquisition program shall be prepared under this section—

(1) before the program enters system development and demonstration;

(2) before the program enters production and deployment; and

(3) before the program enters full rate production.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations governing the following:

(1) The content of baseline descriptions under this section.

(2) The submission to the Secretary of the military department concerned and the Under Secretary of Defense for Acquisition, Technology, and Logistics by the program manager for a program for which there is an approved baseline description under this section of reports of deviations from the baseline of the cost, schedule, performance, supportability, or any other factor of the program.

(3) Procedures for review of such deviation reports within the Department of Defense.

(4) Procedures for submission to, and approval by, the Secretary of Defense of revised baseline descriptions.

(Added Pub. L. 99–500, §101(c) [title X, §904(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–133, and Pub. L. 99–591, §101(c) [title X, §904(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–133; Pub. L. 99–661, div. A, title IX, formerly title IV, §904(a)(1), Nov. 14, 1986, 100 Stat. 3912, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, §7(b)(6), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, §803(a), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–370, §1(i)(1), July 19, 1988, 102 Stat. 848; Pub. L. 100–456, div. A, title XII, §1233(*l*)(4), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VIII, §811(b), Nov. 29, 1989, 103 Stat. 1493; Pub. L. 101–510, div. A, title XII, §1207(b), title XIV, §1484(k)(11), Nov. 5, 1990, 104 Stat. 1665, 1719; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–355, title III, §3005(a), Oct. 13, 1994, 108 Stat. 3330; Pub. L. 107–107, div. A, title VIII, §821(d), title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1182, 1225.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (c) is based on Pub. L. 98–525, title XII, §1243, Oct. 19, 1984, 98 Stat. 2609, as amended by Pub. L. 100–26, §110(a)(1), Apr. 21, 1987, 101 Stat. 288.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107, §§821(d)(1), 1048(b)(2), substituted ''system development and demonstration'' for ''engineering and manufacturing development'' and ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (c)(1). Pub. L. 107–107, §821(d)(2)(A), substituted ''system development and demonstration'' for ''demonstration and validation''.

Subsec. (c)(2). Pub. L. 107–107, §821(d)(2)(B), substituted ''production and deployment'' for ''engineering and manufacturing development''.

Subsec. (c)(3). Pub. L. 107–107, §821(d)(2)(C), substituted ''full rate production'' for ''production and deployment''.

Subsec. (d)(2). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

1994—Pub. L. 103–355 amended section generally. Prior to amendment, section related to enhanced program stability.

1993—Subsec. (b)(2)(B). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1990—Subsec. (b)(1). Pub. L. 101–510, §1484(k)(11), struck out closing parenthesis after ''such Secretary'' in introductory provisions.

Subsec. (c). Pub. L. 101–510, §1207(b), struck out subsec. (c) which read as follows: ''STABILITY OF PROGRAM MANAGERS.—(1) The tour of duty of an officer of the armed forces as a program manager of a major defense acquisition program shall be (A) not less than four years, or (B) until completion of a major program milestone (as defined in regulations prescribed by the Secretary of Defense).

''(2) The Secretary of the military department concerned may waive the length of the tour of duty prescribed in paragraph (1). The authority under the preceding sentence may not be delegated.''

1989—Subsec. (a)(2)(B)(iv). Pub. L. 101–189, §811(b)(1), substituted ''production'' for ''development''.

Subsec. (b)(1). Pub. L. 101–189, §811(b)(2)(A), substituted ''service acquisition executive designated by such Secretary'' for ''senior procurement executive of such military department (designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3))''.

Subsec. (b)(2). Pub. L. 101–189, §811(b)(2)(B), substituted ''180 days'' for ''90 days'' in introductory provisions.

1988—Subsec. (b)(2). Pub. L. 100–456 clarified amendment by Pub. L. 100–180, §803(a). See 1987 Amendment note below.

Subsec. (c). Pub. L. 100–370 added subsec. (c).

1987—Subsec. (b)(2). Pub. L. 100–180, as amended by Pub. L. 100–456, substituted ''under paragraph (1), and for which the total cost of completion of the stage will exceed by 15 percent or more, in the case of a development stage, or by 5 percent or more, in the case of a production stage, the amount specified in the baseline description established under subsection (a) for such stage; or any milestone specified in such baseline description will be missed by more than 90 days'' for first reference to ''under paragraph (1)''.

Subsec. (c). Pub. L. 100–26, §7(b)(6), struck out subsec. (c) which defined ''major defense acquisition program''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1207(b) of Pub. L. 101–510 provided that the amendment made by that section is effective Oct. 1, 1991.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable as if included in the enactment of Pub. L. 100–180, see section

1233(*l*)(5) of Pub. L. 100–456 set out as a note under section 2366 of this title.

EFFECTIVE DATE

Section 101(c) [title IX, § 904(b)] of Pub. L. 99–500 and Pub. L. 99–591, and section 904(b) of title IX, formerly title IV, of Pub. L. 99–661, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: ''Section 2435 of title 10, United States Code (as added by subsection (a)(1)), shall apply to major defense acquisition programs that enter full-scale engineering development or full-rate production after the date of the enactment of this Act [Oct. 18, 1986].''

REVIEW OF ACQUISITION PROGRAM CYCLE

Section 5002(a) of Pub. L. 103–355 provided that: ''The Secretary of Defense shall review the regulations of the Department of Defense to ensure that acquisition program cycle procedures are focused on achieving the goals that are consistent with the program baseline description established pursuant to section 2435 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1734, 2433 of this title.

[§§ 2436, 2437. Repealed. Pub. L. 103–160, div. A, title VIII, § 821(a)(5), Nov. 30, 1993, 107 Stat. 1704]

Section 2436, added Pub. L. 99–500, § 101(c) [title X, § 905(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–134, and Pub. L. 99–591, § 101(c) [title X, § 905(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–134; Pub. L. 99–661, div. A, title IX, formerly title IV, § 905(a)(1), Nov. 14, 1986, 100 Stat. 3914; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(7), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(c), title XII, § 1231(14), Dec. 4, 1987, 101 Stat. 1125, 1160; Pub. L. 101–510, div. A, title XIV, § 1484(h)(4), Nov. 5, 1990, 104 Stat. 1718, related to establishment and conduct of the defense enterprise program.

Section 2437, added Pub. L. 99–500, § 101(c) [title X, § 906(a)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–135, and Pub. L. 99–591, § 101(c) [title X, § 906(a)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–135; Pub. L. 99–661, div. A, title IX, formerly title IV, § 906(a)(1), Nov. 14, 1986, 100 Stat. 3915; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; amended Pub. L. 100–26, § 7(b)(8), Apr. 21, 1987, 101 Stat. 280; Pub. L. 100–180, div. A, title VIII, § 803(b), Dec. 4, 1987, 101 Stat. 1125; Pub. L. 100–224, § 5(a)(3), Dec. 30, 1987, 101 Stat. 1538, related to designation of defense enterprise programs for milestone authorization.

[§§ 2438, 2439. Repealed. Pub. L. 103–355, title III, §§ 3006(a), 3007(a), Oct. 13, 1994, 108 Stat. 3331]

Section 2438, added Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(B), Oct. 23, 1992, 106 Stat. 2459; amended Pub. L. 103–160, div. A, title IX, § 904(d)(1), Nov. 30, 1993, 107 Stat. 1728, required competitive prototyping of major weapon systems and subsystems prior to development under major defense acquisition program.

Provisions similar to those in section 2438 were contained in section 2365 of this title, prior to repeal by Pub. L. 102–484, § 821(c)(1).

A prior section 2438 was renumbered section 2439 of this title.

Section 2439, added Pub. L. 99–145, title IX, § 912(a)(1), Nov. 8, 1985, 99 Stat. 685, § 2305a; amended Pub. L. 99–433, title I, § 110(g)(3), Oct. 1, 1986, 100 Stat. 1004; renumbered § 2438 and amended Pub. L. 100–26, § 7(b)(9)(A), (k)(2), Apr. 21, 1987, 101 Stat. 280, 284; Pub. L. 101–510, div. A, title VIII, § 805, Nov. 5, 1990, 104 Stat. 1591; renumbered § 2439, Pub. L. 102–484, div. A, title VIII, § 821(a)(1)(A), Oct. 23, 1992, 106 Stat. 2459, directed Secretary of Defense, before full-scale development under major program began, to prepare acquisition strategy which ensured that contracts for each major program, including each major subsystem under program, were awarded in accordance with acquisition strategy, and granted Secretary option of using competitive alternative sources for major programs and major subsystems throughout period.

§ 2440. Technology and Industrial Base Plans

The Secretary of Defense shall prescribe regulations requiring consideration of the national technology and industrial base in the development and implementation of acquisition plans for each major defense acquisition program.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(b)(1), Oct. 23, 1992, 106 Stat. 2669.)

CHAPTER 145—CATALOGING AND STANDARDIZATION

Sec.
2451. Defense supply management.
2452. Duties of Secretary of Defense.
2453. Supply catalog: distribution and use.
2454. Supply catalog: new or obsolete items.
[2455. Repealed.]
2456. Coordination with General Services Administration.
2457. Standardization of equipment with North Atlantic Treaty Organization members.
2458. Inventory management policies.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title III, § 323(a)(2), title XIII, § 1331(6), Nov. 5, 1990, 104 Stat. 1530, 1673, struck out item 2455 ''Reports to Congress'' and added item 2458.

1982—Pub. L. 97–295, § 1(30)(B), Oct. 12, 1982, 96 Stat. 1296, added item 2457.

§ 2451. Defense supply management

(a) The Secretary of Defense shall develop a single catalog system and related program of standardizing supplies for the Department of Defense.

(b) In cataloging, the Secretary shall name, describe, classify, and number each item recurrently used, bought, stocked, or distributed by the Department of Defense, so that only one distinctive combination of letters or numerals, or both, identifies the same item throughout the Department of Defense. Only one identification may be used for each item for all supply functions from purchase to final disposal in the field or other area. The catalog may consist of a number of volumes, sections, or supplements. It shall include all items of supply and, for each item, information needed for supply operations, such as descriptive and performance data, size, weight, cubage, packaging and packing data, a standard quantitative unit of measurement, and other related data that the Secretary determines to be desirable.

(c) In standardizing supplies the Secretary shall, to the highest degree practicable—

(1) standardize items used throughout the Department of Defense by developing and using single specifications, eliminating overlapping and duplicate specifications, and reducing the number of sizes and kinds of items that are generally similar;

(2) standardize the methods of packing, packaging, and preserving such items; and

(3) make efficient use of the services and facilities for inspecting, testing, and accepting such items.

(Aug. 10, 1956, ch. 1041, 70A Stat. 138; Pub. L. 85–861, § 33(a)(13), Sept. 2, 1958, 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2451(a)	5:173.	July 1, 1952, ch. 539, §§ 2, 4, 66 Stat. 318, 319; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2451(b)	5:173b(a).	
2451(c)	5:173b(b).	

In subsection (a), the words ''for the Department of Defense'' are inserted for clarity. 5:173 (1st sentence) is omitted as impliedly repealed by section 2 of 1953 Reorganization Plan No. 6, effective June 30, 1953, 67 Stat. 638.

In subsection (b), the words ''or any of the departments thereof'', ''in such manner'', ''original'', and ''necessary or'' are omitted as surplusage. The words ''throughout the Department of Defense'' are substituted for the words ''either within a bureau or service, between bureaus or services, or between the departments''. The word ''recurrently'' is substituted for the word ''repetitively''. The words ''Only one identification may'' are substituted for the words ''The single item identification shall''.

In subsection (c), the words ''the most'' are omitted as surplusage. The words ''to the highest degree practicable'' are substituted for the words ''achieve the highest practicable degree possible'' and ''The greatest practicable degree of standardization * * * shall be achieved''.

1958 ACT

The change makes clear that clauses (2) and (3) apply to all items, whether or not standardized, used throughout the Department of Defense.

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–861 substituted ''such'' for ''standardized'' in cl. (2), and ''such'' for ''those'' in cl. (3).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

DEFENSE-WIDE ELECTRONIC MALL SYSTEM FOR SUPPLY PURCHASES

Pub. L. 105–261, div. A, title III, § 332, Oct. 17, 1998, 112 Stat. 1968, provided that:

''(a) ELECTRONIC MALL SYSTEM DEFINED.—In this section, the term 'electronic mall system' means an electronic system for displaying, ordering, and purchasing supplies and materiel available from sources within the Department of Defense and from the private sector.

''(b) DEVELOPMENT AND MANAGEMENT.—(1) Using systems and technology available in the Department of Defense as of the date of the enactment of this Act [Oct. 17, 1998], the Joint Electronic Commerce Program Office of the Department of Defense shall develop a single, defense-wide electronic mall system, which shall provide a single, defense-wide electronic point of entry and a single view, access, and ordering capability for all Department of Defense electronic catalogs. The Secretary of each military department and the head of each Defense Agency shall provide to the Joint Electronic Commerce Program Office the necessary and requested data to ensure compliance with this paragraph.

''(2) The Defense Logistics Agency, under the direction of the Joint Electronic Commerce Program Office, shall be responsible for maintaining the defense-wide electronic mall system developed under paragraph (1).

''(c) ROLE OF CHIEF INFORMATION OFFICER.—The Chief Information Officer of the Department of Defense shall be responsible for—

''(1) overseeing the elimination of duplication and overlap among Department of Defense electronic catalogs; and

''(2) ensuring that such catalogs utilize technologies and formats compliant with the requirements of subsection (b).

''(d) IMPLEMENTATION.—Within 180 days after the date of the enactment of this Act, the Chief Information Officer shall develop and provide to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives]—

''(1) an inventory of all existing and planned electronic mall systems in the Department of Defense; and

''(2) a schedule for ensuring that each such system is compliant with the requirements of subsection (b).''

STANDARDIZATION AND INTEROPERABILITY OF NATO WEAPONS

Pub. L. 94–361, title VIII, § 803, July 14, 1976, 90 Stat. 930, which expressed the sense of Congress that the weapons systems of the NATO Allies be standardized and interoperable, that this goal would be facilitated by inter-allied procurement of arms and closer intra-European collaboration in arms procurement, and directed the Secretary of Defense to negotiate with the Allies toward these ends and to report to Congress on actions and programs undertaken to achieve them, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 94–106, title VIII, § 814(a), (b), Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 94–361, title VIII, § 802, July 14, 1976, 90 Stat. 930, which had provided that it was the policy of the United States that the equipment of our armed forces in Europe be standardized or at least interoperable with that of our NATO Allies, directed the Secretary of Defense to carry out procurement policies toward this end and to report to Congress on any agreements with the Allies involving exchange of equipment manufactured in the United States for equipment manufactured outside it, authorized the Secretary to find such agreements contrary to the public interest and required him to report on the procurement of any major weapons system not in accord with these policies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

Pub. L. 93–365, title III, § 302(c), Aug. 5, 1974, 88 Stat. 402, as amended by Pub. L. 94–106, title VIII, § 814(c), Oct. 7, 1975, 89 Stat. 540; Pub. L. 97–252, title XI, § 1121, Sept. 8, 1982, 96 Stat. 754, which had directed the Secretary of Defense to assess the costs and possible loss of effectiveness from the failure of the NATO Allies to standardize equipment, to suggest standardization actions, and to report these matters to the Allies and Congress and to Congress annually on them and results obtained with the Allies, was repealed and restated in section 2457 of this title by Pub. L. 97–295, §§ 1(30)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2452, 2453, 2454 of this title.

§ 2452. Duties of Secretary of Defense

The Secretary of Defense shall—

(1) develop and maintain the supply catalog, and the standardization program, described in section 2451 of this title;

(2) direct and coordinate progressive use of the supply catalog in all supply functions

within the Department of Defense from the determination of requirements through final disposal;

(3) direct, review, and approve—

(A) the naming, description, and pattern of description of all items;

(B) the screening, consolidation, classification, and numbering of descriptions of all items; and

(C) the publication and distribution of the supply catalog;

(4) maintain liaison with industry advisory groups to coordinate the development of the supply catalog and the standardization program with the best practices of industry and to obtain the fullest practicable cooperation and participation of industry in developing the supply catalog and the standardization program;

(5) establish, publish, review, and revise, within the Department of Defense, military specifications, standards, and lists of qualified products, and resolve differences between the military departments, bureaus, and services with respect to them;

(6) assign responsibility for parts of the cataloging and the standardization programs to the military departments, bureaus, and services within the Department of Defense, when practical and consistent with their capacity and interest in those supplies;

(7) establish time schedules for assignments made under clause (6); and

(8) make final decisions in all matters concerned with the cataloging and standardization programs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2452	5:173c.	July 1, 1952, ch. 539, §5, 66 Stat. 319; 1953 Reorg. Plan No. 6, §1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

In clause (1), the word ''establish'' is omitted as surplusage.

In clause (2), the words ''provided for herein'' and ''its departments, bureaus, and services'' are omitted as surplusage.

In clauses (2) and (3), the words ''provide for'' are omitted as surplusage.

In clause (4), the words ''establish and'' and ''established by sections 173–173i of this title'' are omitted as surplusage.

In clause (5), the words ''amend'' and ''promulgate'' are omitted as surplusage.

In clause (6), the words ''established by sections 173–173i of this title'' are omitted as surplusage.

Clause (7) is substituted for 5:173c(f) (last 11 words).

In clause (8), the word ''programs'' is substituted for the words ''authority established in sections 173–173i of this title''. The words ''subject to review and modification by the Secretary of Defense'' are omitted as surplusage.

REGULATIONS RELATING TO INCREASES IN PRICES FOR SPARE PARTS AND REPLACEMENT EQUIPMENT

Pub. L. 98–94, title XII, §1215, Sept. 24, 1983, 97 Stat. 688, as amended by Pub. L. 98–525, title XII, §1244, Oct. 19, 1984, 98 Stat. 2609; Pub. L. 103–35, title II, §204(b), May 31, 1993, 107 Stat. 102, provided that:

''(a) Not later than 120 days after the date of the enactment of this Act [Sept. 24, 1983], the Secretary of Defense shall issue regulations which—

''(1) except as provided in clause (2), prohibit the purchase of any spare part or replacement equipment when the price of such part or equipment, since a time in the past specified by the Secretary (in terms of days or months) or since the most recent purchase of such part or equipment by the Department of Defense, has increased in price by a percentage in excess of a percentage threshold specified by the Secretary in such regulations, and

''(2) permit the purchase of such spare part or equipment (notwithstanding the prohibition contained in clause (1)) if the contracting officer for such part or equipment certifies in writing to the head of the procuring activity before the purchase is made that—

''(A) such officer has evaluated the price of such part or equipment and concluded that the increase in the price of such part or equipment is fair and reasonable, or

''(B) the national security interests of the United States require that such part or equipment be purchased despite the increase in price of such part or equipment.

''(b)(1) The Secretary shall publish the regulations issued under this section in the Federal Register.

''(2) The Secretary may provide in such regulations for the waiver of the prohibition in subsection (a)(1) and compliance with the requirements of subsection (a)(2) in the case of a purchase of any spare part or replacement equipment made or to be made through competitive procedures.

''(c) Not less than 30 days before the Secretary publishes such regulations in accordance with subsection (b), the Secretary shall submit the text of the proposed regulations to the Committees on Armed Services of the Senate and House of Representatives.''

REPORT ON MANAGEMENT OF ACQUISITION OF SPARE PARTS

Pub. L. 98–94, title XII, §1216, Sept. 24, 1983, 97 Stat. 688, directed Secretary of Defense to submit to Congress, by June 1, 1984, a comprehensive report on management by Department of Defense of acquisition of initial and replenishment spare parts and on status of efforts within Department (including particularly the Defense Logistics Agency and the military departments) to correct problems associated with increased costs of such parts, directed Secretary, not later than Dec. 1, 1983, to submit to Congress an interim report stating briefly the actions being taken by the Department to improve acquisition and management of spare parts, and directed Secretary to put into effect at the earliest practicable date policies and procedures to achieve a long-term solution to problems relating to excessive costs of, and long lead times in the acquisition of, initial and replenishment spare parts.

§ 2453. Supply catalog: distribution and use

The Secretary of Defense shall distribute the parts of the supply catalog described in section 2451 of this title as they are completed. Existing catalogs shall be replaced according to schedules established by the Secretary. After replacement no other supply catalog may be used within the Department of Defense with respect to the kinds of items covered by that part. All property reports and records shall use the nomenclature, item numbers, and descriptive data of the supply catalog.

(Aug. 10, 1956, ch. 1041, 70A Stat. 139.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2453	5:173d.	July 1, 1952, ch. 539, § 6, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.

The words ''and ready for use'' and ''all departments, bureaus, and services'' are omitted as surplusage. The words ''After replacement'' are substituted for the word ''Thereafter''. The words ''with respect to the kinds of items covered by that part'' are inserted for clarity.

§ 2454. Supply catalog: new or obsolete items

(a) After any part of the supply catalog described in section 2451 of this title is distributed, and with respect to the kinds of items covered by that part, only the items listed in it may be procured for recurrent use in the Department of Defense. However, a military department may acquire any new item that is necessary to carry out its mission. As soon as such an item is acquired, it shall be submitted to the Secretary for inclusion in the catalog and the standardization program.

(b) Obsolete items may be deleted from the catalog at any time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2454(a)	5:173e (less last 5 words of 1st proviso).	July 1, 1952, ch. 539, § 7, 66 Stat. 320; 1953 Reorg. Plan No. 6, § 1(a) (as applicable to Defense Supply Management Agency), eff. June 30, 1953, 67 Stat. 638.
2454(b)	5:173e (last 5 words of 1st proviso).	

In subsection (a), the words ''After any part * * * is distributed'' are substituted for the words ''Following the publication and promulgation * * * or portions thereof''. The words ''and with respect to the kinds of items covered by that part'' are inserted for clarity. The word ''recurrent'' is substituted for the word ''repetitive''. The words ''the departments, bureaus, and services of'' are omitted as surplusage. The second sentence of the revised subsection is substituted for 5:173e (1st proviso, less last 5 words; and 2d proviso).

In subsection (b), the words ''at any time'' are inserted for clarity.

[§ 2455. Repealed. Pub. L. 101–510, div. A, title XIII, § 1322(a)(9), Nov. 5, 1990, 104 Stat. 1671]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 140; Jan. 2, 1975, Pub. L. 93–608, § 2(2), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97–375, title II, § 203(c), 96 Stat. 1823, related to reports on cataloging supplies for Department of Defense.

§ 2456. Coordination with General Services Administration

To avoid unnecessary duplication, the Administrator of General Services and the Secretary of Defense shall coordinate the cataloging and standardization activities of the General Services Administration and the Department of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 140.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2456	5:173i.	July 1, 1952, ch. 539, § 11, 66 Stat. 320.

§ 2457. Standardization of equipment with North Atlantic Treaty Organization members

(a) It is the policy of the United States to standardize equipment, including weapons systems, ammunition, and fuel, procured for the use of the armed forces of the United States stationed in Europe under the North Atlantic Treaty or at least to make that equipment interoperable with equipment of other members of the North Atlantic Treaty Organization. To carry out this policy, the Secretary of Defense shall—

(1) assess the costs and possible loss of nonnuclear combat effectiveness of the military forces of the members of the Organization caused by the failure of the members to standardize equipment;

(2) maintain a list of actions to be taken, including an evaluation of the priority and effect of the action, to standardize equipment that may improve the overall nonnuclear defense capability of the Organization or save resources for the Organization; and

(3) initiate and carry out, to the maximum extent feasible, procurement procedures to acquire standardized or interoperable equipment, considering the cost, function, quality, and availability of the equipment.

(b) Progress in realizing the objectives of standardization and interoperability would be enhanced by expanded inter-Allied procurement of arms and equipment within the North Atlantic Treaty Organization. Expanded inter-Allied procurement would be made easier by greater reliance on licensing and coproduction cooperative agreements among the signatories of the North Atlantic Treaty. If constructed to preserve the efficiencies associated with economies of scale, the agreements could minimize potential economic hardship to parties to the agreements and increase the survivability, in time of war, of the North Atlantic Alliance's armaments production base by dispersing manufacturing facilities. In conjunction with other members of the Organization and to the maximum extent feasible, the Secretary shall—

(1) identify areas in which those cooperative agreements may be made with members of the Alliance; and

(2) negotiate those agreements.

(c)(1) It is the sense of Congress that weapons systems being developed wholly or primarily for employment in the North Atlantic Treaty Organization theater should conform to a common Organization requirement in order to proceed toward joint doctrine and planning and to facilitate maximum feasible standardization and interoperability of equipment, and that a common Organization requirement should be understood to include a common definition of the military threat to the members of the Organization.

(2) It is further the sense of Congress that standardization of weapons and equipment with-

in the Organization on the basis of a ''two-way street'' concept of cooperation in defense procurement between Europe and North America can only work in a realistic sense if the European nations operate on a united and collective basis. Therefore, the governments of Europe are encouraged to accelerate their present efforts to achieve European armaments collaboration among all European members of the Organization.

(d) Before February 1, 1989, and biennially thereafter, the Secretary shall submit a report to Congress that includes—

(1) each specific assessment and evaluation made and the results of each assessment and evaluation, and the results achieved with the members of the North Atlantic Treaty Organization, under subsections (a)(1) and (2) and (b);

(2) procurement action initiated on each new major system not complying with the policy of subsection (a);

(3) procurement action initiated on each new major system that is not standardized or interoperable with equipment of other members of the Organization, including a description of the system chosen and the reason for choosing that system;

(4) the identity of—

(A) each program of research and development for the armed forces of the United States stationed in Europe that supports, conforms, or both, to common Organization requirements of developing weapon systems for use by the Organization, including a common definition of the military threat to the Organization; and

(B) the common requirements of the Organization to which those programs conform or which they support;

(5) action of the Alliance toward common Organization requirements if none exist;

(6) efforts to establish a regular procedure and mechanism in the Organization to determine common military requirements;

(7) a description of each existing and planned program of the Department of Defense that supports the development or procurement of a weapon system or other military equipment originally developed or procured by members of the Organization other than the United States and for which funds have been authorized to be appropriated for the fiscal year in which the report is submitted, including a summary listing of the amount of funds—

(A) appropriated for those programs for the fiscal year in which the report is submitted; and

(B) requested, or proposed to be requested, for those programs for each of the 2 fiscal years following the fiscal year for which the report is submitted; and

(8) a description of each weapon system or other military equipment originally developed or procured in the United States and that is being developed or procured by members of the Organization other than the United States during the fiscal year for which the report is submitted.

(e) If the Secretary decides that procurement of equipment manufactured outside the United States is necessary to carry out the policy of subsection (a), the Secretary may determine under section 2 of the Buy American Act (41 U.S.C. 10a) that acquiring that equipment manufactured in the United States is inconsistent with the public interest.

(f) The Secretary shall submit the results of each assessment and evaluation made under subsection (a)(1) and (2) to the appropriate North Atlantic Treaty Organization body to become an integral part of the overall Organization review of force goals and development of force plans.

(Added Pub. L. 97–295, §1(30)(A), Oct. 12, 1982, 96 Stat. 1294; amended Pub. L. 101–510, div. A, title XIII, §1311(5), Nov. 5, 1990, 104 Stat. 1670; Pub. L. 104–106, div. A, title XV, §1503(a)(24), Feb. 10, 1996, 110 Stat. 512.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2457(a)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, §302(c) (1st–3d sentences), 88 Stat. 402. Oct. 7, 1975, Pub. L. 94–106, §814(a)(1), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, §802, 90 Stat. 930.
2457(b)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, §803(b) (1st–4th sentences), 90 Stat. 931.
2457(c)	10:2451 (note).	July 14, 1976, Pub. L. 94–361, §803(a) (1st, 2d sentences), (c), 90 Stat. 930, 931.
2457(d) (words before (1)), (1) (related to (a)(1) and (2)).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, §302(c) (5th sentence), 88 Stat. 402; Oct. 7, 1975, Pub. L. 94–106, §814(c), 89 Stat. 540.
2457(d)(1) (related to (a)(3)).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, §803(b) (last sentence), 90 Stat. 931.
2457(d)(2)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, §814(b), 89 Stat. 540.
2457(d)(3)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, §814(a)(3), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, §802, 90 Stat. 930.
2457(d) (4)–(6).	10:2451 (note).	July 14, 1976, Pub. L. 94–361, §803(a) (3d–last sentences), 90 Stat. 930.
2457(d)(7), (8).	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, 88 Stat. 399, §302(c) (6th, last sentences); added Sept. 8, 1982, Pub. L. 97–252, §1121, 96 Stat. 754.
2457(e)	10:2451 (note).	Oct. 7, 1975, Pub. L. 94–106, §814(a)(2), 89 Stat. 540; restated July 14, 1976, Pub. L. 94–361, §802, 90 Stat. 930.
2457(f)	10:2451 (note).	Aug. 5, 1974, Pub. L. 93–365, §302(c) (4th sentence), 88 Stat. 402.

In the introductory matter of subsection (a), before clause (1), the word ''equipment'' is substituted for ''impedimenta'' in section 302(c) of the Department of Defense Appropriation Authorization Act, 1975 (Pub. L. 93–365, Aug. 5, 1974, 88 Stat. 402), for clarity and for consistency with section 814(a)(1) of the Department of Defense Appropriation Authorization Act, 1976 (Pub. L. 94–106, Oct. 7, 1975, 89 Stat. 540), which is restated as part of this subsection.

In subsection (a)(1), the word ''undertake'' is omitted as surplus. The word ''members'' is substituted for ''countries'' for consistency. The words ''including the United States'' are omitted as unnecessary.

In subsection (a)(2), the words ''The Secretary of Defense shall also'' are omitted as unnecessary. The word

''maintain'' is substituted for ''develop'' because it is more appropriate.

In subsection (a)(3), the words ''of other members of the North Atlantic Treaty Organization whenever such equipment is to be used by personnel of the Armed Forces of the United States stationed in Europe under the terms of the North Atlantic Treaty'' are omitted as unnecessary because of the restatement. The words ''Such procedures shall also take into . . . to be procured'' are omitted as unnecessary. The text of section 814(a)(1) (4th, last sentences) is omitted as executed.

In subsection (b), the words ''It is the sense of the Congress'', ''It is further the sense of Congress'', ''It is the Congress' considered judgment'', ''properly'', ''Accordingly'', and ''pursuant to these ends'' are omitted as unnecessary.

In subsection (c)(1), the word ''should'' is substituted for ''shall'' for clarity.

In subsection (d)(1), the word ''members'' is substituted for ''allies'' for consistency. The words ''The Secretary of Defense shall include in the report to the Congress required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(2), the words ''The report required under section 302(c) of Public Law 93–365 shall include'' are omitted as unnecessary because of the restatement.

In subsection (d)(3), the words ''he shall report that fact to the Congress in the annual report required under section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(4), the words ''The Secretary of Defense shall, in the reports required by section 302(c) of Public Law 93–365, as amended'' are omitted as unnecessary because of the restatement.

In subsection (d)(5), the words ''if none exist'' are substituted for ''In the absence of such common requirements'' to eliminate unnecessary words. The words ''the Secretary shall include a discussion of the'' are omitted as unnecessary because of the restatement.

In subsection (d)(6), the words ''The Secretary of Defense shall also report on'' are omitted as unnecessary because of the restatement.

In subsection (d)(7), the words ''those programs'' are substituted for ''all such existing and planned programs'' and ''all such programs'' to eliminate unnecessary words.

In subsection (f), the words ''The Secretary shall submit the results of these . . . to Congress'' are omitted as unnecessary because of the source provisions restated in subsection (d)(1). The word ''submit'' is substituted for ''cause to be brought'' to eliminate unnecessary words. The words ''in order that the suggested actions and recommendations can'' are omitted as unnecessary because of the restatement.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–106 substituted ''the Buy American Act (41 U.S.C. 10a)'' for ''title III of the Act of March 3, 1933 (41 U.S.C. 10a),''.

1990—Subsec. (d). Pub. L. 101–510 substituted ''Before February 1, 1989, and biennially thereafter'' for ''Before February 1 of each year''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2350a, 2533a of this title.

§ 2458. Inventory management policies

(a) POLICY REQUIRED.—The Secretary of Defense shall issue a single, uniform policy on the management of inventory items of the Department of Defense. Such policy shall—

(1) establish maximum levels for inventory items sufficient to achieve and maintain only those levels for inventory items necessary for the national defense;

(2) provide guidance to item managers and other appropriate officials on how effectively to eliminate wasteful practices in the acquisition and management of inventory items; and

(3) set forth a uniform system for the valuation of inventory items by the military departments and Defense Agencies.

(b) PERSONNEL EVALUATIONS.—The Secretary of Defense shall establish procedures to ensure that, with regard to item managers and other personnel responsible for the acquisition and management of inventory items of the Department of Defense, personnel appraisal systems for such personnel give appropriate consideration to efforts made by such personnel to eliminate wasteful practices and achieve cost savings in the acquisition and management of inventory items.

(Added Pub. L. 101–510, div. A, title III, § 323(a)(1), Nov. 5, 1990, 104 Stat. 1530; amended Pub. L. 102–190, div. A, title III, § 347(a), Dec. 5, 1991, 105 Stat. 1347.)

AMENDMENTS

1991—Subsec. (a)(3). Pub. L. 102–190 added par. (3).

IMPLEMENTATION OF 1991 AMENDMENT

Secretary of Defense to establish uniform system of valuation described in subsec. (a)(3) of this section not later than 180 days after Dec. 5, 1991, see section 347(c) of Pub. L. 102–190, set out as a note under section 2721 of this title.

REPORT ON INVENTORY AND CONTROL OF MILITARY EQUIPMENT

Pub. L. 106–65, div. A, title III, § 363, Oct. 5, 1999, 113 Stat. 576, provided that:

''(a) REPORT REQUIRED.—Not later than August 31, 2000, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the inventory and control of the military equipment of the Department of Defense as of the end of fiscal year 1999. The report shall address the inventories of each of the Army, Navy, Air Force, and Marine Corps separately.

''(b) CONTENT.—The report shall include the following:

''(1) For each item of military equipment in the inventory, stated by item nomenclature—

''(A) the quantity of the item in the inventory as of the beginning of the fiscal year;

''(B) the quantity of acquisitions of the item during the fiscal year;

''(C) the quantity of disposals of the item during the fiscal year;

''(D) the quantity of losses of the item during the performance of military missions during the fiscal year; and

''(E) the quantity of the item in the inventory as of the end of the fiscal year.

''(2) A reconciliation of the quantity of each item in the inventory as of the beginning of the fiscal year with the quantity of the item in the inventory as of the end of the fiscal year.

''(3) For each item of military equipment that cannot be reconciled—

''(A) an explanation of why the quantities cannot be reconciled; and

''(B) a discussion of the remedial actions planned to be taken, including target dates for accomplishing the remedial actions.

''(4) Supporting schedules identifying the location of each item that are available to Congress or auditors of the Comptroller General upon request.

''(c) MILITARY EQUIPMENT DEFINED.—For the purposes of this section, the term 'military equipment' means all equipment that is used in support of military missions and is maintained on the visibility systems of the Army, Navy, Air Force, or Marine Corps.

''(d) INSPECTOR GENERAL REVIEW.—Not later than November 30, 2000, the Inspector General of the Department of Defense shall review the report submitted to the committees under subsection (a) and shall submit to the committees any comments that the Inspector General considers appropriate.''

BEST COMMERCIAL INVENTORY PRACTICES FOR MANAGEMENT OF SECONDARY SUPPLY ITEMS

Pub. L. 105–261, div. A, title III, § 347, Oct. 17, 1998, 112 Stat. 1980, provided that:

''(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall submit to Congress a schedule for implementing within the military department, for secondary supply items managed by that military department, inventory practices identified by the Secretary as being the best commercial inventory practices for the acquisition and distribution of such supply items consistent with military requirements. The schedule shall provide for the implementation of such practices to be completed not later than five years after the date of the enactment of this Act.

''(b) DEFINITION.—For purposes of this section, the term 'best commercial inventory practice' includes cellular repair processes, use of third-party logistics providers, and any other practice that the Secretary of the military department determines will enable the military department to reduce inventory levels while improving the responsiveness of the supply system to user needs.

''(c) GAO REPORTS ON MILITARY DEPARTMENT AND DEFENSE LOGISTICS AGENCY SCHEDULES.—(1) Not later than 240 days after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report evaluating the extent to which the Secretary of each military department has complied with the requirements of this section.

''(2) Not later than 18 months after the date on which the Director of the Defense Logistics Agency submits to Congress a schedule for implementing best commercial inventory practices under section 395 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1718; 10 U.S.C. 2458 note), the Comptroller General shall submit to Congress an evaluation of the extent to which best commercial inventory practices are being implemented in the Defense Logistics Agency in accordance with that schedule.''

INVENTORY MANAGEMENT OF IN-TRANSIT ITEMS

Pub. L. 105–261, div. A, title III, § 349, Oct. 17, 1998, 112 Stat. 1981, as amended by Pub. L. 106–398, § 1 [[div. A], title III, § 386], Oct. 30, 2000, 114 Stat. 1654, 1654A–88, provided that:

''(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall prescribe and carry out a comprehensive plan to ensure visibility over all in-transit end items and secondary items.

''(b) END ITEMS.—The plan required by subsection (a) shall address the specific mechanisms to be used to enable the Department of Defense to identify at any time the quantity and location of all end items.

''(c) SECONDARY ITEMS.—The plan required by subsection (a) shall address the following problems with Department of Defense management of inventories of in-transit secondary items:

''(1) The vulnerability of in-transit secondary items to loss through fraud, waste, and abuse.

''(2) Loss of oversight of in-transit secondary items, including any loss of oversight when items are being transported by commercial carriers.

''(3) Loss of accountability for in-transit secondary items due to either a delay of delivery of the items or a lack of notification of a delivery of the items.

''(d) CONTENT OF PLAN.—The plan shall include for subsection (b) and for each of the problems described in subsection (c) the following information:

''(1) The actions to be taken by the Department, including specific actions to address underlying weaknesses in the controls over items being shipped.

''(2) Statements of objectives.

''(3) Performance measures and schedules.

''(4) An identification of any resources necessary for implementing the required actions, together with an estimate of the annual costs.

''(5) The key management elements for monitoring, and for measuring the progress achieved in, the implementation of the plan, including—

''(A) the assignment of oversight responsibility for each action identified pursuant to paragraph (1);

''(B) a description of the resources required for oversight; and

''(C) an estimate of the annual cost of oversight.

''(e) GAO REVIEWS.—(1) Not later than 60 days after the date on which the Secretary of Defense submits the initial plan to Congress, the Comptroller General shall review the plan and submit to Congress any comments that the Comptroller General considers appropriate regarding the plan.

''(2) The Comptroller General shall monitor any implementation of the plan and, not later than 1 year after the date referred to in paragraph (1), submit to Congress an assessment of the extent to which the plan has been implemented.

''(f) SUBMISSIONS TO CONGRESS.—The Secretary shall submit to Congress any revisions made to the plan that are required by any law enacted after October 17, 1998. The revisions so made shall be submitted not later than 180 days after the date of the enactment of the law requiring the revisions.''

INVENTORY MANAGEMENT

Pub. L. 105–85, div. A, title III, § 395, Nov. 18, 1997, 111 Stat. 1718, provided that:

''(a) DEVELOPMENT AND SUBMISSION OF SCHEDULE.—Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Director of the Defense Logistics Agency shall develop and submit to Congress a schedule for implementing within the agency, for the supplies and equipment described in subsection (b), inventory practices identified by the Director as being the best commercial inventory practices for the acquisition and distribution of such supplies and equipment consistent with military requirements. The schedule shall provide for the implementation of such practices to be completed not later than three years after the date of the enactment of this Act.

''(b) COVERED SUPPLIES AND EQUIPMENT.—Subsection (a) shall apply to the following types of supplies and equipment for the Department of Defense:

''(1) Medical and pharmaceutical.

''(2) Subsistence.

''(3) Clothing and textiles.

''(4) Commercially available electronics.

''(5) Construction.

''(6) Industrial.

''(7) Automotive.

''(8) Fuel.

''(9) Facilities maintenance.

''(c) DEFINITION.—For purposes of this section, the term 'best commercial inventory practice' includes a so-called prime vendor arrangement and any other practice that the Director determines will enable the Defense Logistics Agency to reduce inventory levels and holding costs while improving the responsiveness of the supply system to user needs.

''(d) REPORT ON EXPANSION OF COVERED SUPPLIES AND EQUIPMENT.—Not later than March 1, 1998, the Comptroller General shall submit to Congress a report evaluating the feasibility of expanding the list of covered supplies and equipment under subsection (b) to include repairable items.''

DIRECT VENDOR DELIVERY SYSTEM FOR CONSUMABLE INVENTORY ITEMS OF DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, § 352, Feb. 10, 1996, 110 Stat. 266, provided that:

''(a) IMPLEMENTATION OF DIRECT VENDOR DELIVERY SYSTEM.—Not later than September 30, 1997, the Sec-

retary of Defense shall, to the maximum extent practicable, implement a system under which consumable inventory items referred to in subsection (b) are delivered to military installations throughout the United States directly by the vendors of those items. The purpose for implementing the system is to reduce the expense and necessity of maintaining extensive warehouses for those items within the Department of Defense.

''(b) COVERED ITEMS.—The items referred to in subsection (a) are the following:

''(1) Food and clothing.

''(2) Medical and pharmaceutical supplies.

''(3) Automotive, electrical, fuel, and construction supplies.

''(4) Other consumable inventory items the Secretary considers appropriate.''

DATE OF ISSUANCE OF POLICY

Section 323(b) of Pub. L. 101–510 provided that: ''The policy required by section 2458(a) of title 10, United States Code (as added by subsection (a)), shall be issued not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990].''

CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS

Sec.
2460. Definition of depot-level maintenance and repair.
2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance.
2461a. Development of system for monitoring cost savings resulting from workforce reductions.
2462. Contracting for certain supplies and services required when cost is lower.
2463. Collection and retention of cost information data on converted services and functions.
2464. Core logistics capabilities.
2465. Prohibition on contracts for performance of firefighting or security-guard functions.
2466. Limitations on the performance of depot-level maintenance of materiel.
2467. Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison.
[2468. Repealed.]
2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition.
[2469a. Repealed.]
2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies.
[2471. Repealed.]
2472. Management of depot employees.
2473. Procurements from the small arms production industrial base.
2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships.
2475. Consolidation, restructuring, or reengineering of organizations, functions, or activities: notification requirements.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title III, §333(b), Dec. 2, 2002, 116 Stat. 2514, struck out item 2469a ''Use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at certain military installations''.

2001—Pub. L. 107–107, div. A, title X, §1048(e)(10)(B), Dec. 28, 2001, 115 Stat. 1228, struck out item 2468 ''Military installations: authority of base commanders over contracting for commercial activities''.

2000—Pub. L. 106–398, §1 [[div. A], title III, §§341(g)(2), 353(b), 354(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64, 1654A–73, 1654A–75, added items 2461a and 2475 and struck out item 2471 ''Persons outside the Department of Defense: lease of excess depot-level equipment and facilities by''.

1999—Pub. L. 106–65, div. A, title III, §342(b)(2), Oct. 5, 1999, 113 Stat. 569, added item 2467 and struck former item 2467 ''Cost comparisons: requirements with respect to retirement costs and consultation with employees''.

1997—Pub. L. 105–85, div. A, title III, §§355(c)(1), 356(b), 359(a)(2), 361(a)(2), 385(b), Nov. 18, 1997, 111 Stat. 1694, 1695, 1699, 1701, 1712, added item 2460, substituted ''Collection and retention of cost information data on converted services and functions'' for ''Reports on savings or costs from increased use of DOD civilian personnel'' in item 2463 and ''capabilities'' for ''functions'' in item 2464, and added items 2469a and 2474.

1996—Pub. L. 104–201, div. A, title VIII, §832(b), Sept. 23, 1996, 110 Stat. 2616, added item 2473.

Pub. L. 104–106, div. A, title III, §312(d), Feb. 10, 1996, 110 Stat. 251, added item 2472.

Pub. L. 104–106, div. A, title III, §311(f)(2), Feb. 10, 1996, 110 Stat. 248, which directed striking out items 2466 and 2469, was repealed by Pub. L. 105–85, div. A, title III, §363, Nov. 18, 1997, 111 Stat. 1702.

1994—Pub. L. 103–337, div. A, title III, §§335(b), 336(b), Oct. 5, 1994, 108 Stat. 2717, added items 2470 and 2471.

1992—Pub. L. 102–484, div. A, title III, §353(b), Oct. 23, 1992, 106 Stat. 2379, added item 2469.

1991—Pub. L. 102–190, div. A, title III, §314(a)(2), Dec. 5, 1991, 105 Stat. 1337, substituted ''Limitations on the performance of depot-level maintenance of materiel'' for ''Prohibition on certain depot maintenance workload competitions'' in item 2466.

1989—Pub. L. 101–189, div. A, title XI, §1131(a)(2), Nov. 29, 1989, 103 Stat. 1561, added item 2468.

1988—Pub. L. 100–456, div. A, title III, §§326(b), 331(b), Sept. 29, 1988, 102 Stat. 1956, 1958, added items 2466 and 2467.

§ 2460. Definition of depot-level maintenance and repair

(a) IN GENERAL.—In this chapter, the term ''depot-level maintenance and repair'' means (except as provided in subsection (b)) material maintenance or repair requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed. The term includes (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim contractor support or contractor logistics support (or any similar contractor support), to the extent that such support is for the performance of services described in the preceding sentence.

(b) EXCEPTIONS.—(1) The term does not include the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance or the nuclear refueling of an aircraft carrier. A major upgrade program covered by this exception could continue to be performed by private or public sector activities.

(2) The term also does not include the procurement of parts for safety modifications. However, the term does include the installation of parts for that purpose.

(Added Pub. L. 105–85, div. A, title III, §355(a), Nov. 18, 1997, 111 Stat. 1693; amended Pub. L. 105–261, div. A, title III, §341, Oct. 17, 1998, 112 Stat. 1973.)

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–261 inserted ''or the location at which the maintenance or repair is performed'' before period at end of first sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2581 of this title.

§2461. Commercial or industrial type functions: required studies and reports before conversion to contractor performance

(a) REPORTING AND ANALYSIS REQUIREMENTS AS PRECONDITION TO CHANGE IN PERFORMANCE.—A commercial or industrial type function of the Department of Defense that, as of October 1, 1980, was being performed by Department of Defense civilian employees may not be changed to performance by the private sector until the Secretary of Defense fully complies with the reporting and analysis requirements specified in subsections (b) and (c).

(b) NOTIFICATION AND ELEMENTS OF ANALYSIS.—(1) Before commencing to analyze a commercial or industrial type function described in subsection (a) for possible change to performance by the private sector, the Secretary of Defense shall submit to Congress a report containing the following:

(A) The function to be analyzed for possible change.

(B) The location at which the function is performed by Department of Defense civilian employees.

(C) The number of civilian employee positions potentially affected.

(D) The anticipated length and cost of the analysis, and a specific identification of the budgetary line item from which funds will be used to cover the cost of the analysis.

(E) A certification that a proposed performance of the commercial or industrial type function by persons who are not civilian employees of the Department of Defense is not a result of a decision by an official of a military department or Defense Agency to impose predetermined constraints or limitations on such employees in terms of man years, end strengths, full-time equivalent positions, or maximum number of employees.

(2) The duty to prepare a report under paragraph (1) may be delegated. A report prepared below the major command or claimant level of a military department, or below the equivalent level in a Defense Agency, pursuant to any such delegation shall be reviewed at the major command, claimant level, or equivalent level, as the case may be, before submission to Congress.

(3) An analysis of a commercial or industrial type function for possible change to performance by the private sector shall include the following:

(A) An examination of the cost of performance of the function by Department of Defense civilian employees and by one or more private contractors to demonstrate whether change to performance by the private sector will result in savings to the Government over the life of the contract, including in the examination the following:

(i) The cost to the Government, estimated by the Secretary of Defense (based on offers received), for performance of the function by the private sector.

(ii) The estimated cost to the Government of Department of Defense civilian employees performing the function.

(iii) In addition to the costs referred to in clause (i), an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract.

(B) An examination of the potential economic effect of performance of the function by the private sector on the following:

(i) Employees of the Department of Defense who would be affected by such a change in performance.

(ii) The local community and the Government, if more than 50 employees of the Department of Defense perform the function.

(C) An examination of the effect of performance of the function by the private sector on the military mission associated with the performance of the function.

(4)(A) A representative individual or entity at a facility where a commercial or industrial type function is analyzed for possible change in performance may submit to the Secretary of Defense an objection to the analysis on the grounds that the report required by paragraph (1) has not been submitted or that the certification required by paragraph (1)(E) is not included in the report submitted as a condition for the analysis. The objection shall be in writing and shall be submitted within 90 days after the following date:

(i) In the case of a failure to submit the report when required, the date on which the representative individual or an official of the representative entity authorized to pose the objection first knew or should have known of that failure.

(ii) In the case of a failure to include the certification in a submitted report, the date on which the report was submitted to Congress.

(B) If the Secretary determines that the report required by paragraph (1) was not submitted or that the required certification was not included in the submitted report, the commercial or industrial type function covered by the analysis to which objected may not be the subject of a solicitation of offers for, or award of, a contract until, respectively, the report is submitted or a report containing the certification in full compliance with the certification requirement is submitted.

(c) SUBMISSION OF ANALYSIS RESULTS.—(1) Upon the completion of an analysis of a commercial or industrial type function described in subsection (a) for possible change to performance by the private sector, the Secretary of Defense shall submit to Congress a report containing the results of the analysis, including the results of the examinations required by subsection (b)(3).

(2) The report shall also contain the following:

(A) The date when the analysis of the function was commenced.

(B) The Secretary's certification that the Government calculation of the cost of performance of the function by Department of Defense civilian employees is based on an estimate of the most cost effective manner for performance of the function by Department of Defense civilian employees.

(C) The number of Department of Defense civilian employees who were performing the function when the analysis was commenced and the number of such employees whose employment was or will be terminated or otherwise affected by changing to performance of the function by the private sector or by implementation of the most efficient organization of the function.

(D) The Secretary's certification that the factors considered in the examinations performed under subsection (b)(3), and in the making of the decision regarding changing to performance of the function by the private sector or retaining performance in the most efficient organization of the function, did not include any predetermined personnel constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees.

(E) A statement of the potential economic effect of implementing the decision regarding changing to performance of the function by the private sector or retaining performance in the most efficient organization of the function on each affected local community, as determined in the examination under subsection (b)(3)(B)(ii).

(F) A schedule for completing the change to performance of the function by the private sector or implementing the most efficient organization of the function.

(G) In the case of a commercial or industrial type function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, a description of the effect that the manner of performance of the function, and administration of the resulting contract if any, will have on the overhead costs of the center or ammunition plant, as the case may be.

(H) The Secretary's certification that the entire analysis is available for examination.

(3)(A) If a decision is made to change the commercial or industrial type function that was the subject of the analysis to performance by the private sector, the change of the function to contractor performance may not begin until after the submission of the report required by paragraph (1).

(B) Notwithstanding subparagraph (A), in the case of a commercial or industrial type function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, the change of the function to contractor performance may not begin until at least 60 days after the submission of the report.

(d) WAIVER FOR SMALL FUNCTIONS.—Subsections (a) through (c) and subsection (g) shall not apply to a commercial or industrial type function of the Department of Defense that is being performed by 50 or fewer Department of Defense civilian employees.

(e) WAIVER FOR THE PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED PERSONS.—Subsections (a) through (c) and subsection (g) shall not apply to a commercial or industrial type function of the Department of Defense that—

(1) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47); or

(2) is planned to be changed to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped persons in accordance with that Act.

(f) ADDITIONAL LIMITATIONS.—(1) A commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees may not be changed to performance by a private contractor to circumvent a civilian personnel ceiling.

(2) In no case may a commercial or industrial type function being performed by Department of Defense personnel be modified, reorganized, divided, or in any way changed for the purpose of exempting from the requirements of subsection (a) the change of all or any part of such function to performance by a private contractor.

(g) ANNUAL REPORTS.—Not later than June 30 of each fiscal year, the Secretary of Defense shall submit to Congress a written report describing the extent to which commercial and industrial type functions were performed by Department of Defense contractors during the preceding fiscal year. The Secretary shall include in each such report an estimate of the percentage of commercial and industrial type functions of the Department of Defense that will be performed by Department of Defense civilian employees, and the percentage of such functions that will be performed by private contractors, during the fiscal year during which the report is submitted.

(h) INAPPLICABILITY DURING WAR OR EMERGENCY.—The provisions of this section shall not apply during war or during a period of national emergency declared by the President or Congress.

(Added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 851; amended Pub. L. 101–189, div. A, title XI, §1132, Nov. 29, 1989, 103 Stat. 1561; Pub. L. 104–106, div. D, title XLIII, §4321(b)(19), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title III, §384, Nov. 18, 1997, 111 Stat. 1711; Pub. L. 105–261, div. A, title III, §342(a)–(c), Oct. 17, 1998, 112 Stat. 1974–1976; Pub. L. 106–65, div. A, title III, §341, Oct. 5, 1999, 113 Stat. 568; Pub. L. 106–398, §1 [[div. A], title III, §§351, 352], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, 1654A–72; Pub. L. 107–107, div. A, title III, §344, Dec. 28, 2001, 115 Stat. 1061; Pub. L. 107–314, div. A, title III, §331, Dec. 2, 2002, 116 Stat. 2512.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 96–342, title V, §502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97–252, title

XI, §1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99–145, title XII, §1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99–661, div. A, title XII, §1221, Nov. 14, 1986, 100 Stat. 3976.

REFERENCES IN TEXT

The Javits-Wagner-O'Day Act, referred to in subsec. (e), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 46 of Title 41 and Tables.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 amended heading and text of subsec. (c) generally. Prior to amendment, text related to the report to Congress by the Secretary of Defense upon a decision to change the commercial or industrial type function that was the subject of the analysis to performance by the private sector, with requirements for contents of the report and submission of the report prior to the change of the function to contractor performance.

2001—Subsec. (g). Pub. L. 107–107 substituted ''June 30'' for ''February 1''.

2000—Subsec. (b)(1)(D). Pub. L. 106–398, §1 [[div. A], title III, §351(a)], inserted before period '', and a specific identification of the budgetary line item from which funds will be used to cover the cost of the analysis''.

Subsec. (c)(1). Pub. L. 106–398, §1 [[div. A], title III, §351(b)], added subpars. (A), (D), (E), and (G) and redesignated former subpars. (A), (B), (C), (D), and (E) as (B), (C), (F), (H), and (I), respectively.

Subsec. (c)(2), (3). Pub. L. 106–398, §1 [[div. A], title III, §352], added par. (2) and redesignated former par. (2) as (3).

1999—Subsec. (b)(3)(B)(ii). Pub. L. 106–65 substituted ''50 employees'' for ''75 employees''.

1998—Subsec. (a). Pub. L. 105–261, §342(a)(2), added subsec. (a) and struck out former subsec. (a) which provided that commercial or industrial type functions of the Department of Defense that on Oct. 1, 1980, were being performed by Department of Defense civilian employees could not be converted to performance by private contractors unless the Secretary of Defense provided certain notices, information, certifications, and reports to Congress.

Subsec. (b). Pub. L. 105–261, §342(a)(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: ''If, after completion of the studies required for completion of the certification and report required by paragraphs (3) and (4) of subsection (a), a decision is made to convert the function to contractor performance, the Secretary of Defense shall notify Congress of such decision. The notification shall include the timetable for completing conversion of the function to contractor performance.''

Subsec. (c). Pub. L. 105–261, §342(a)(2), added subsec. (c). Former subsec. (c) redesignated (g).

Subsec. (d). Pub. L. 105–261, §342(b), (c)(1), substituted ''50'' for ''20'' and inserted ''and subsection (g)'' after ''Subsections (a) through (c)''.

Subsec. (e). Pub. L. 105–261, §342(c)(1), (2), inserted ''and subsection (g)'' after ''Subsections (a) through (c)'' in introductory provisions and substituted ''changed'' for ''converted'' in par. (2).

Subsec. (f). Pub. L. 105–261, §342(c)(2), (3), substituted ''changed'' for ''converted'' in par. (1) and ''change'' for ''conversion'' in par. (2).

Subsecs. (g), (h). Pub. L. 105–261, §342(a)(1), redesignated subsecs. (c) and (g) as (g) and (h), respectively.

1997—Subsec. (a)(1). Pub. L. 105–85, §384(a), inserted ''and the anticipated length and cost of the study'' before semicolon at end.

Subsec. (b). Pub. L. 105–85, §384(b), inserted at end ''The notification shall include the timetable for completing conversion of the function to contractor performance.''

Subsec. (d). Pub. L. 105–85, §384(c), substituted ''20 or fewer'' for ''45 or fewer''.

1996—Subsec. (e)(1). Pub. L. 104–106 substituted ''the Javits-Wagner-O'Day Act (41 U.S.C. 47)'' for ''the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Wagner-O'Day Act''.

1989—Subsecs. (e) to (g). Pub. L. 101–189 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, §342(d), Oct. 17, 1998, 112 Stat. 1976, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 1998], but the amendments shall not apply with respect to a conversion of a function of the Department of Defense to performance by a private contractor concerning which the Secretary of Defense provided to Congress, before the date of the enactment of this Act, a notification under paragraph (1) of section 2461(a) of title 10, United States Code, as in effect on the day before the date of the enactment of this Act.''

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

PILOT MANPOWER REPORTING SYSTEM IN DEPARTMENT OF THE ARMY

Pub. L. 107–107, div. A, title III, §345(a)–(c), Dec. 28, 2001, 115 Stat. 1061, 1062, provided that:

''(a) ANNUAL REPORTING REQUIREMENT.—Not later than March 1 of each of the fiscal years 2002 through 2004, the Secretary of the Army shall submit to Congress a report describing the use during the previous fiscal year of non-Federal entities to provide services to the Department of the Army.

''(b) CONTENT OF REPORT.—Using information available from existing data collection and reporting systems available to the Department of the Army and the non-Federal entities referred to in subsection (a), the report shall—

''(1) specify the number of work year equivalents performed by individuals employed by non-Federal entities in providing services to the Department;

''(2) categorize the information by Federal supply class or service code; and

''(3) indicate the appropriation from which the services were funded and the major organizational element of the Department procuring the services.

''(c) LIMITATION ON REQUIREMENT FOR NON-FEDERAL ENTITIES TO PROVIDE INFORMATION.—For the purposes of meeting the requirements set forth in subsection (b), the Secretary of the Army may not require the provision of information beyond the information that is currently provided to the Department of the Army by the non-Federal entities referred to in subsection (a), except for the number of work year equivalents associated with Department of the Army contracts, identified by contract number, to the extent this information is available to the contractor from existing data collection systems.''

PILOT PROGRAM FOR COMMERCIAL SERVICES

Pub. L. 106–65, div. A, title VIII, §814, Oct. 5, 1999, 113 Stat. 711, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a pilot program to treat procurements of commercial services as procurements of commercial items.

''(b) DESIGNATION OF PILOT PROGRAM CATEGORIES.—The Secretary of Defense may designate the following categories of services as commercial services covered by the pilot program:

''(1) Utilities and housekeeping services.

''(2) Education and training services.

''(3) Medical services.

''(c) TREATMENT AS COMMERCIAL ITEMS.—A Department of Defense contract for the procurement of commercial services designated by the Secretary for the pilot program shall be treated as a contract for the procurement of commercial items, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)), if the source of the services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government.

''(d) GUIDANCE.—Not later than 90 days after the date of the enactment of this Act [Oct. 5, 1999], the Secretary shall issue guidance to procurement officials on contracting for commercial services under the pilot program. The guidance shall place particular emphasis on ensuring that negotiated prices for designated services, including prices negotiated without competition, are fair and reasonable.

''(e) UNIFIED MANAGEMENT OF PROCUREMENTS.—The Secretary of Defense shall develop and implement procedures to ensure that, whenever appropriate, a single item manager or contracting officer is responsible for entering into all contracts from a single contractor for commercial services under the pilot program.

''(f) DURATION OF PILOT PROGRAM.—(1) The pilot program shall begin on the date that the Secretary issues the guidance required by subsection (d) and may continue for a period, not in excess of five years, that the Secretary shall establish.

''(2) The pilot program shall cover Department of Defense contracts for the procurement of commercial services designated by the Secretary under subsection (b) that are awarded or modified during the period of the pilot program, regardless of whether the contracts are performed during the period.

''(g) REPORT TO CONGRESS.—(1) The Secretary shall submit to Congress a report on the impact of the pilot program on—

''(A) prices paid by the Federal Government under contracts for commercial services covered by the pilot program;

''(B) the quality and timeliness of the services provided under such contracts; and

''(C) the extent of competition for such contracts.

''(2) The Secretary shall submit the report—

''(A) not later than 90 days after the end of the third full fiscal year for which the pilot program is in effect; or

''(B) if the period established for the pilot program under subsection (f)(1) does not cover three full fiscal years, not later than 90 days after the end of the designated period.

''(h) PRICE TREND ANALYSIS.—The Secretary of Defense shall apply the procedures developed pursuant to section 803(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2081; 10 U.S.C. 2306a note) to collect and analyze information on price trends for all services covered by the pilot program and for the services in such categories of services not covered by the pilot program to which the Secretary considers it appropriate to apply those procedures.''

PUBLIC AVAILABILITY OF OPERATING AGREEMENTS BETWEEN MILITARY INSTALLATIONS AND FINANCIAL INSTITUTIONS

Pub. L. 105–261, div. A, title III, § 379, Oct. 17, 1998, 112 Stat. 1995, provided that: ''With respect to an agreement between the commander of a military installation in the United States (or the designee of such an installation commander) and a financial institution that permits, allows, or otherwise authorizes the provision of financial services by the financial institution on the military installation, nothing in the terms or nature of such an agreement shall be construed to exempt the agreement from the provisions of sections 552 and 552a of title 5, United States Code.''

DEVELOPMENT OF STANDARD FORMS REGARDING PERFORMANCE WORK STATEMENT AND REQUEST FOR PROPOSAL FOR CONVERSION OF CERTAIN OPERATIONAL FUNCTIONS OF MILITARY INSTALLATIONS

Section 389 of Pub. L. 105–85, as amended by Pub. L. 105–261, div. A, title X, § 1069(b)(1), Oct. 17, 1998, 112 Stat. 2136, provided that:

''(a) STANDARDIZATION OF REQUIREMENTS.—The Secretary of Defense is authorized and encouraged to develop standard forms (to be known as a 'standard performance work statement' and a 'standard request for proposal') for use in the consideration for conversion to contractor performance of commercial services and functions at military installations. A separate standard form shall be developed for each service and function.

''(b) RELATIONSHIP TO OMB REQUIREMENTS.—A standard performance work statement or a standard request for proposal developed under subsection (a) must fulfill the basic requirements of the performance work statement or request for proposal otherwise required under the procedures and requirements of Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) in effect at the time the standard form will be used.

''(c) PRIORITY DEVELOPMENT OF CERTAIN FORMS.—In developing standard performance work statements and standard requests for proposal, the Secretary shall give first priority to those commercial services and functions that the Secretary determines have been successfully converted to contractor performance on a repeated basis.

''(d) INCENTIVE FOR USE.—Beginning not later than October 1, 1998, if a standard performance work statement or a standard request for proposal is developed under subsection (a) for a particular service and function, the standard form may be used in lieu of the performance work statement or request for proposal otherwise required under the procedures and requirements of Office of Management and Budget Circular A–76 in connection with the consideration for conversion to contractor performance of that service or function at a military installation.

''(e) EXCLUSION OF MULTIFUNCTION CONVERSION.—If a commercial service or function for which a standard form is developed under subsection (a) is combined with another service or function (for which such a form has not yet been developed) for purposes of considering the services and functions at the military installation for conversion to contractor performance, a standard performance work statement or a standard request for a proposal developed under subsection (a) may not be used in the conversion process in lieu of the procedures and requirements of Office of Management and Budget Circular A–76.

''(f) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed to supersede any other requirements or limitations, specifically contained in chapter 146 of title 10, United States Code, on the conversion to contractor performance of activities performed by civilian employees of the Department of Defense.

''(g) GAO REPORT.—Not later than June 1, 1999, the Comptroller General shall submit to Congress a report reviewing the implementation of this section.

''(h) MILITARY INSTALLATION DEFINED.—For purposes of this section, the term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility.''

[Pub. L. 105–261, div. A, title X, § 1069(b), Oct. 17, 1998, 112 Stat. 2136, provided that the amendment made by that section to section 389 of Pub. L. 105–85, set out above, is effective as of Nov. 18, 1997, and as if included

in the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, as enacted.]

PRIVATE-SECTOR OPERATION OF CERTAIN PAYROLL, FINANCE, AND ACCOUNTING FUNCTIONS OF DEPARTMENT OF DEFENSE; PLAN; REPORT

Section 353(a) of Pub. L. 104–106 provided that:

''(1) Not later than October 1, 1996, the Secretary of Defense shall submit to Congress a plan for the performance by private-sector sources of payroll functions for civilian employees of the Department of Defense other than employees paid from nonappropriated funds.

''(2)(A) The Secretary shall implement the plan referred to in paragraph (1) if the Secretary determines that the cost of performance by private-sector sources of the functions referred to in that paragraph does not exceed the cost of performance of those functions by employees of the Federal Government.

''(B) In computing the total cost of performance of such functions by employees of the Federal Government, the Secretary shall include the following:

''(i) Managerial and administrative costs.

''(ii) Personnel costs, including the cost of providing retirement benefits for such personnel.

''(iii) Costs associated with the provision of facilities and other support by Federal agencies.

''(C) The Defense Contract Audit Agency shall verify the costs computed for the Secretary under this paragraph by others.

''(3) At the same time the Secretary submits the plan required by paragraph (1), the Secretary shall submit to Congress a report on other accounting and finance functions of the Department that are appropriate for performance by private-sector sources.''

PILOT PROGRAM FOR PRIVATE-SECTOR OPERATION OF NAFI FUNCTIONS

Section 353(b) of Pub. L. 104–106 provided that:

''(1) The Secretary shall carry out a pilot program to test the performance by private-sector sources of payroll and other accounting and finance functions of nonappropriated fund instrumentalities and to evaluate the extent to which cost savings and efficiencies would result from the performance of such functions by those sources.

''(2) The payroll and other accounting and finance functions designated by the Secretary for performance by private-sector sources under the pilot program shall include at least one major payroll, accounting, or finance function.

''(3) To carry out the pilot program, the Secretary shall enter into discussions with private-sector sources for the purpose of developing a request for proposals to be issued for performance by those sources of functions designated by the Secretary under paragraph (2). The discussions shall be conducted on a schedule that accommodates issuance of a request for proposals within 60 days after the date of the enactment of this Act [Feb. 10, 1996].

''(4) A goal of the pilot program is to reduce by at least 25 percent the total costs incurred by the Department annually for the performance of a function referred to in paragraph (2) through the performance of that function by a private-sector source.

''(5) Before conducting the pilot program, the Secretary shall develop a plan for the program that addresses the following:

''(A) The purposes of the program.

''(B) The methodology, duration, and anticipated costs of the program, including the cost of an arrangement pursuant to which a private-sector source would receive an agreed-upon payment plus an additional negotiated amount not to exceed 50 percent of the dollar savings achieved in excess of the goal specified in paragraph (4).

''(C) A specific citation to any provisions of law, rule, or regulation that, if not waived, would prohibit the conduct of the program or any part of the program.

''(D) A mechanism to evaluate the program.

''(E) A provision for all payroll, accounting, and finance functions of nonappropriated fund instrumentalities of the Department of Defense to be performed by private-sector sources, if determined advisable on the basis of a final assessment of the results of the program.

''(6) The Secretary shall act through the Under Secretary of Defense (Comptroller) in the performance of the Secretary's responsibilities under this subsection.''

DEMONSTRATION PROGRAM TO IDENTIFY OVERPAYMENTS MADE TO VENDORS

Section 388(c) of Pub. L. 105–85 provided that: ''Not later than December 31, 1998, the Comptroller General shall submit to Congress a report containing the results of a review by the Comptroller General of the demonstration program conducted under section 354 of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2461 note). In the review, the Comptroller General shall—

''(1) assess the success of the methods used in the demonstration program to identify overpayments made to vendors;

''(2) consider the types of overpayments identified and the feasibility of avoiding such overpayments through contract adjustments;

''(3) determine the total amount of overpayments recovered under the demonstration program; and

''(4) develop recommendations for improving the process by which overpayments are recovered by the Department of Defense.''

Section 354 of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title III, §388(a), (b), Nov. 18, 1997, 111 Stat. 1713, 1714, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall conduct a demonstration program to evaluate the feasibility of using private contractors to audit accounting and procurement records of the Department of Defense in order to identify overpayments made to vendors by the Department.

''(b) PROGRAM REQUIREMENTS.—(1) Under the demonstration program, the Secretary shall, by contract, provide for one or more persons to audit the accounting and procurement records relating to fiscal years after fiscal year 1993 of the working-capital funds and industrial, commercial, and support type activities managed through the Defense Business Operations Fund, except the Defense Logistics Agency to the extent such records have already been audited. The Secretary may enter into more than one contract under the program.

''(2) A contract under the demonstration program shall require the contractor to use data processing techniques that are generally used in audits of private-sector records similar to the records audited under the contract.

''(c) AUDIT REQUIREMENTS.—In conducting an audit under the demonstration program, a contractor shall compare Department of Defense purchase agreements (and related documents) with invoices submitted by vendors under the purchase agreements. A purpose of the comparison is to identify, in the case of each audited purchase agreement, the following:

''(1) Any payments to the vendor for costs that are not allowable under the terms of the purchase agreement or by law.

''(2) Any amounts not deducted from the total amount paid to the vendor under the purchase agreement that should have been deducted from that amount on account of goods and services provided to the vendor by the Department.

''(3) Duplicate payments.

''(4) Unauthorized charges.

''(5) Other discrepancies between the amount paid to the vendor and the amount actually due the vendor under the purchase agreement.

''(d) COLLECTION METHOD.—(1) In the case of an overpayment to a vendor identified under the demonstration program, the Secretary shall consider the use of the procedures specified in section 32.611 of the Federal

Acquisition Regulation, regarding a setoff against existing invoices for payment to the vendor, as the first method by which the Department seeks to recover the amount of the overpayment (and any applicable interest and penalties) from the vendor.

''(2) The Secretary of Defense shall be solely responsible for notifying a vendor of an overpayment made to the vendor and identified under the demonstration program and for recovering the amount of the overpayment (and any applicable interest and penalties) from the vendor.

''(e) FEES FOR CONTRACTOR.—The Secretary shall pay to the contractor under the contract entered into under the demonstration program an amount not to exceed 25 percent of the total amount recovered by the Department (through the collection of overpayments and the use of setoffs) solely on the basis of information obtained as a result of the audits performed by the contractor under the program. When an overpayment is recovered through the use of a setoff, amounts for the required payment to the contractor shall be derived from funds available to the working-capital fund or industrial, commercial, or support type activity for which the overpayment is recovered.''

PROGRAM FOR IMPROVED TRAVEL PROCESS FOR DEPARTMENT OF DEFENSE

Section 356 of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(1)(B), Nov. 18, 1997, 111 Stat. 1905, provided that:

''(a) IN GENERAL.—(1) The Secretary of Defense shall conduct a program to evaluate options to improve the Department of Defense travel process. To carry out the program, the Secretary shall compare the results of the tests conducted under subsection (b) to determine which travel process tested under such subsection is the better option to effectively manage travel of Department personnel.

''(2) The program shall be conducted at not less than three and not more than six military installations, except that an installation may be the subject of only one test conducted under the program.

''(3) The Secretary shall act through the Under Secretary of Defense (Comptroller) in the performance of the Secretary's responsibilities under this section.

''(b) CONDUCT OF TESTS.—(1) The Secretary shall conduct a test at an installation referred to in subsection (a)(2) under which the Secretary—

''(A) implements the changes proposed to be made with respect to the Department of Defense travel process by the task force on travel management that was established by the Secretary in July 1994;

''(B) manages and uniformly applies that travel process (including the implemented changes) throughout the Department; and

''(C) provides opportunities for private-sector sources to provide travel reservation services and credit card services to facilitate that travel process.

''(2) The Secretary shall conduct a test at an installation referred to in subsection (a)(2) under which the Secretary—

''(A) enters into one or more contracts with a private-sector source pursuant to which the private-sector source manages the Department of Defense travel process (except for functions referred to in subparagraph (B)), provides for responsive, reasonably priced services as part of the travel process, and uniformly applies the travel process throughout the Department; and

''(B) provides for the performance by employees of the Department of only those travel functions, such as travel authorization, that the Secretary considers to be necessary to be performed by such employees.

''(3) Each test required by this subsection shall begin not later than 60 days after the date of the enactment of this Act [Feb. 10, 1996] and end two years after the date on which it began. Each such test shall also be conducted in accordance with the guidelines for travel management issued for the Department by the Under Secretary of Defense (Comptroller).

''(c) EVALUATION CRITERIA.—The Secretary shall establish criteria to evaluate the travel processes tested under subsection (b). The criteria shall, at a minimum, include the extent to which a travel process provides for the following:

''(1) The coordination, at the time of a travel reservation, of travel policy and cost estimates with the mission which necessitates the travel.

''(2) The use of fully integrated travel solutions envisioned by the travel reengineering report of the Department of Defense dated January 1995.

''(3) The coordination of credit card data and travel reservation data with cost estimate data.

''(4) The elimination of the need for multiple travel approvals through the coordination of such data with proposed travel plans.

''(5) A responsive and flexible management information system that enables the Under Secretary of Defense (Comptroller) to monitor travel expenses throughout the year, accurately plan travel budgets for future years, and assess, in the case of travel of an employee on temporary duty, the relationship between the cost of the travel and the value of the travel to the accomplishment of the mission which necessitates the travel.

''(d) PLAN FOR PROGRAM.—Before conducting the program, the Secretary shall develop a plan for the program that addresses the following:

''(1) The purposes of the program, including the achievement of an objective of reducing by at least 50 percent the total cost incurred by the Department annually to manage the Department of Defense travel process.

''(2) The methodology and anticipated cost of the program, including the cost of an arrangement pursuant to which a private-sector source would receive an agreed-upon payment plus an additional negotiated amount that does not exceed 50 percent of the total amount saved in excess of the objective specified in paragraph (1).

''(3) A specific citation to any provision of law, rule, or regulation that, if not waived, would prohibit the conduct of the program or any part of the program.

''(4) The evaluation criteria established pursuant to subsection (c).

''(5) A provision for implementing throughout the Department the travel process determined to be the better option to effectively manage travel of Department personnel on the basis of a final assessment of the results of the program.

''(e) REPORT.—After the first full year of the conduct of the tests required by subsection (b), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report on the implementation of the program. The report shall include an analysis of the evaluation criteria established pursuant to subsection (c).''

INCREASED RELIANCE ON PRIVATE-SECTOR SOURCES FOR COMMERCIAL PRODUCTS AND SERVICES

Section 357 of Pub. L. 104–106 provided that:

''(a) IN GENERAL.—The Secretary of Defense shall endeavor to carry out through a private-sector source any activity to provide a commercial product or service for the Department of Defense if—

''(1) the product or service can be provided adequately through such a source; and

''(2) an adequate competitive environment exists to provide for economical performance of the activity by such a source.

''(b) APPLICABILITY.—(1) Subsection (a) shall not apply to any commercial product or service with respect to which the Secretary determines that production, manufacture, or provision of that product or service by the Government is necessary for reasons of national security.

''(2) A determination under paragraph (1) shall be made in accordance with regulations prescribed under subsection (c).

''(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. Such regulations shall be prescribed in consultation with the Director of the Office of Management and Budget.

''(d) REPORT.—(1) The Secretary shall identify activities of the Department (other than activities specified by the Secretary pursuant to subsection (b)) that are carried out by employees of the Department to provide commercial-type products or services for the Department.

''(2) Not later than April 15, 1996, the Secretary shall transmit to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and Committees on National Security and Appropriations of the House of Representatives] a report on opportunities for increased use of private-sector sources to provide commercial products and services for the Department.

''(3) The report required by paragraph (2) shall include the following:

''(A) A list of activities identified under paragraph (1) indicating, for each activity, whether the Secretary proposes to convert the performance of that activity to performance by private-sector sources and, if not, the reasons why.

''(B) An assessment of the advantages and disadvantages of using private-sector sources, rather than employees of the Department, to provide commercial products and services for the Department that are not essential to the warfighting mission of the Armed Forces.

''(C) A specification of all legislative and regulatory impediments to converting the performance of activities identified under paragraph (1) to performance by private-sector sources.

''(D) The views of the Secretary on the desirability of terminating the applicability of OMB Circular A–76 to the Department.

''(4) The Secretary shall carry out paragraph (1) in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States. In carrying out that paragraph, the Secretary shall consult with, and seek the views of, representatives of the private sector, including organizations representing small businesses.''

§ 2461a. Development of system for monitoring cost savings resulting from workforce reductions

(a) WORKFORCE REVIEW DEFINED.—In this section, the term ''workforce review'', with respect to a function of the Department of Defense performed by Department of Defense civilian employees, means a review conducted under Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy), the Strategic Sourcing Program Plan of Action (or any successor Department of Defense guidance or directive), or any other authority to determine whether the function—

(1) should be performed by a workforce composed of Department of Defense civilian employees or by a private sector workforce; or

(2) should be reorganized or otherwise reengineered to improve the efficiency or effectiveness of the performance of the function, with a resulting decrease in the number of Department of Defense civilian employees performing the function.

(b) SYSTEM FOR MONITORING PERFORMANCE.—(1) The Secretary of Defense shall establish a system for monitoring the performance, including the cost of performance, of each function of the Department of Defense that, after October 30, 2000, is the subject of a workforce review.

(2) The monitoring system shall be designed to compare the following:

(A) The costs to perform a function before the workforce review to the costs actually incurred to perform the function after implementing the conversion, reorganization, or reengineering actions recommended by the workforce review.

(B) The anticipated savings to the actual savings, if any, resulting from conversion, reorganization, or reengineering actions undertaken in response to the workforce review.

(3) The monitoring of a function shall continue under this section for at least five years after the conversion, reorganization, or reengineering of the function.

(c) WAIVER FOR CERTAIN WORKFORCE REVIEWS.—Subsection (b) shall not apply to a workforce review that would result in a manpower reduction affecting fewer than 50 Department of Defense civilian employees.

(d) ANNUAL REPORT.—Not later than February 1 of each fiscal year, the Secretary of Defense shall submit to Congress a report on the results of the monitoring performed under the system established under subsection (b). For each function subject to monitoring during the previous fiscal year, the report shall indicate the following:

(1) The cost of the workforce review.

(2) The cost of performing the function before the workforce review compared to the costs incurred after implementing the conversion, reorganization, or reengineering actions recommended by the workforce review.

(3) The actual savings derived from the implementation of the recommendations of the workforce review, if any, compared to the anticipated savings that were to result from the conversion, reorganization, or reengineering actions.

(e) CONSIDERATION IN PREPARATION OF FUTURE-YEARS DEFENSE PROGRAM.—In preparing the future-years defense program under section 221 of this title, the Secretary of Defense shall, for the fiscal years covered by the program, estimate and take into account the costs to be incurred and the savings to be derived from the performance of functions by workforces selected in workforce reviews. The Secretary shall consider the results of the monitoring under this section in making the estimates.

(Added Pub. L. 106–398, § 1 [[div. A], title III, § 354(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–73; amended Pub. L. 107–107, div. A, title X, § 1048(a)(21), (c)(11), Dec. 28, 2001, 115 Stat. 1224, 1226.)

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–107, § 1048(a)(21), substituted ''efficiency'' for ''effeciency''.

Subsec. (b)(1). Pub. L. 107–107, § 1048(c)(11), substituted ''October 30, 2000,'' for ''the date of the enactment of this section,''.

§ 2462. Contracting for certain supplies and services required when cost is lower

(a) IN GENERAL.—Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or bene-

ficial to the accomplishment of the authorized functions of the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or Government personnel) from a source in the private sector if such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, Executive order, or regulation) than the cost at which the Department can provide the same supply or service.

(b) REALISTIC AND FAIR COST COMPARISONS.—For the purpose of determining whether to contract with a source in the private sector for the performance of a Department of Defense function on the basis of a comparison of the costs of procuring supplies or services from such a source with the costs of providing the same supplies or services by the Department of Defense, the Secretary of Defense shall ensure that all costs considered (including the costs of quality assurance, technical monitoring of the performance of such function, liability insurance, employee retirement and disability benefits, and all other overhead costs) are realistic and fair.

(Added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–661, div. A, title XII, § 1223, Nov. 14, 1986, 100 Stat. 3977.

§ 2463. Collection and retention of cost information data on converted services and functions

(a) REQUIREMENTS IN CONNECTION WITH CONVERSION TO CONTRACTOR PERFORMANCE.—With respect to each contract converting the performance of a service or function of the Department of Defense to contractor performance (and any extension of such a contract), the Secretary of Defense shall collect, during the term of the contract or extension, but not to exceed five years, cost information data regarding performance of the service or function by private contractor employees.

(b) REQUIREMENTS IN CONNECTION WITH RETURN TO EMPLOYEE PERFORMANCE.—Whenever the performance of a commercial or industrial type activity of the Department of Defense that is being performed by 50 or more employees of a private contractor is changed to performance by civilian employees of the Department of Defense, the Secretary of Defense shall collect, for a five-year period, cost information data comparing—

(1) the estimated costs of continued performance of such activity by private contractor employees; and

(2) the costs of performance of such activity by civilian employees of the Department of Defense.

(c) RETENTION OF INFORMATION.—With regard to the conversion to or from contractor performance of a particular service or function of the Department of Defense, the Secretary of Defense shall provide for the retention of information collected under this section for at least a 10-year period beginning at the end of the final year in which the information is collected.

(Added Pub. L. 100–370, § 2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, § 1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101–510, div. A, title XIII, § 1301(14), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 105–85, div. A, title III, § 385(a), Nov. 18, 1997, 111 Stat. 1712.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–661, div. A, title XII, § 1224, Nov. 14, 1986, 100 Stat. 3977.

AMENDMENTS

1997—Pub. L. 105–85 amended section generally, substituting provisions relating to collection and retention of cost information data on converted services and functions for provisions relating to reports on savings or costs from increased use of DOD civilian personnel.

1990—Subsecs. (b), (c). Pub. L. 101–510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''SEMIANNUAL REPORT ON COSTS AND SAVINGS.—As soon as practicable after the end of the first six months, and after the end of the second six months, of a fiscal year to which this section applies, the Secretary of Defense shall submit to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives a report showing the estimated savings or loss to the United States, during the preceding six-month period, that is reflected in the data maintained under subsection (a).''

1989—Subsec. (b). Pub. L. 101–189 substituted ''Committees on Appropriations'' for ''Committee on Appropriations''.

§ 2464. Core logistics capabilities

(a) NECESSITY FOR CORE LOGISTICS CAPABILITIES.—(1) It is essential for the national defense that the Department of Defense maintain a core logistics capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government-operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities.

(3) The core logistics capabilities identified under paragraphs (1) and (2) shall include those capabilities that are necessary to maintain and repair the weapon systems and other military equipment (including mission-essential weapon systems or materiel not later than four years after achieving initial operational capability, but excluding systems and equipment under special access programs, nuclear aircraft carriers, and commercial items described in paragraph (5)) that are identified by the Secretary, in consultation with the Chairman of the Joint Chiefs of Staff, as necessary to enable the armed forces to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff under section 153(a) of this title.

(4) The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified under paragraphs (1), (2), and (3) at Government-owned, Government-operated facilities of the Department of Defense (including

Government-owned, Government-operated facilities of a military department) and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities necessary to support fully the strategic and contingency plans referred to in paragraph (3).

(5) The commercial items covered by paragraph (3) are commercial items that have been sold or leased in substantial quantities to the general public and are purchased without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

(b) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of workload needed to maintain a logistics capability identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures and requirements of Office of Management and Budget Circular A–76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A–76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A–76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.

(3)(A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) NOTIFICATION OF DETERMINATIONS REGARDING CERTAIN COMMERCIAL ITEMS.—The first time that a weapon system or other item of military equipment described in subsection (a)(3) is determined to be a commercial item for the purposes of the exception contained in that subsection, the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

(1) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the Government's version of the item.

(2) The value of any unique support and test equipment and tools that are necessary to support the military requirements if the item were maintained by the Government.

(3) A comparison of the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the Government.

(Added Pub. L. 100–370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101–189, div. A, title XVI, §1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 104–106, div. A, title III, §314, Feb. 10, 1996, 110 Stat. 251; Pub. L. 105–85, div. A, title III, §356(a), Nov. 18, 1997, 111 Stat. 1694; Pub. L. 105–261, div. A, title III, §343(a), Oct. 17, 1998, 112 Stat. 1976; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–525, title III, §307, Oct. 19, 1984, 98 Stat. 2514, as amended by Pub. L. 99–145, title XII, §1231(f), Nov. 8, 1985, 99 Stat. 733.

AMENDMENTS

1999—Subsec. (b)(3)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1998—Subsec. (c). Pub. L. 105–261 added subsec. (c).

1997—Pub. L. 105–85 substituted ''capabilities'' for ''functions'' in section catchline and amended text generally. Prior to amendment, text related to necessity for core logistics capabilities and restricted contracting out of certain logistics activities and functions of the Department of Defense to non-Government personnel.

1996—Subsec. (b)(3), (4). Pub. L. 104–106 added par. (3) and struck out former pars. (3) and (4) which read as follows:

''(3) A waiver under paragraph (2) may not take effect until—

''(A) the Secretary submits a report on the waiver to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives; and

''(B) a period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

''(4) For purposes of paragraph (3)(B), the continuity of a session of Congress is broken only by an adjournment sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of such 20-day period.''

1989—Subsec. (b)(3)(A). Pub. L. 101–189 substituted ''Committees on Appropriations'' for ''Committee on Appropriations''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, §343(b), Oct. 17, 1998, 112 Stat. 1976, provided that: ''Subsection (c) of section 2464 of title 10, United States Code (as added by subsection (a)), shall apply with respect to determinations made after the date of the enactment of this Act [Oct. 17, 1998].''

CONDITIONS ON EXPANSION OF FUNCTIONS PERFORMED UNDER PRIME VENDOR CONTRACTS FOR DEPOT-LEVEL MAINTENANCE AND REPAIR

Pub. L. 105–261, div. A, title III, §346, Oct. 17, 1998, 112 Stat. 1979, as amended by Pub. L. 106–65, div. A, title III, §336, Oct. 5, 1999, 113 Stat. 568, provided that:

''(a) CONDITIONS ON EXPANDED USE.—The Secretary of Defense or the Secretary of a military department, as the case may be, may not enter into a prime vendor contract for depot-level maintenance and repair of a weapon system or other military equipment described in section 2464(a)(3) of title 10, United States Code, before the end of the 30-day period beginning on the date on which the Secretary submits to Congress a report, specific to the proposed contract, that—

''(1) describes the competitive procedures to be used to award the prime vendor contract;

''(2) contains an analysis of costs and benefits that demonstrates that use of the prime vendor contract will result in savings to the Government over the life of the contract;

''(3) contains an analysis of the extent to which the contract conforms to the requirements of section 2466 of title 10, United States Code; and

''(4) describes the measures taken to ensure that the contract does not violate the core logistics policies, requirements, and restrictions set forth in section 2464 of that title.

''(b) DEFINITIONS.—In this section:

''(1) The term 'prime vendor contract' means an innovative contract that gives a defense contractor the responsibility to manage, store, and distribute inventory, manage and provide services, or manage and perform research, on behalf of the Department of Defense on a frequent, regular basis, for users within the Department on request. The term includes contracts commonly referred to as prime vendor support contracts, flexible sustainment contracts, and direct vendor delivery contracts.

''(2) The term 'depot-level maintenance and repair' has the meaning given such term in section 2460 of title 10, United States Code.

''(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to exempt a prime vendor contract from the requirements of section 2461 of title 10, United States Code, or any other provision of chapter 146 of such title.''

POLICY REGARDING PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR FOR DEPARTMENT OF DEFENSE

Section 311 of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title III, § 363, Nov. 18, 1997, 111 Stat. 1702, provided that:

''(a) FINDINGS.—Congress makes the following findings:

''(1) The Department of Defense does not have a comprehensive policy regarding the performance of depot-level maintenance and repair of military equipment.

''(2) The absence of such a policy has caused the Congress to establish guidelines for the performance of such functions.

''(3) It is essential to the national security of the United States that the Department of Defense maintain an organic capability within the department, including skilled personnel, technical competencies, equipment, and facilities, to perform depot-level maintenance and repair of military equipment in order to ensure that the Armed Forces of the United States are able to meet training, operational, mobilization, and emergency requirements without impediment.

''(4) The organic capability of the Department of Defense to perform depot-level maintenance and repair of military equipment must satisfy known and anticipated core maintenance and repair requirements across the full range of peacetime and wartime scenarios.

''(5) Although it is possible that savings can be achieved by contracting with private-sector sources for the performance of some work currently performed by Department of Defense depots, the Department of Defense has not determined the type or amount of work that should be performed under contract with private-sector sources nor the relative costs and benefits of contracting for the performance of such work by those sources.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that there is a compelling need for the Department of Defense to articulate known and anticipated core maintenance and repair requirements, to organize the resources of the Department of Defense to meet those requirements economically and efficiently, and to determine what work should be performed by the private sector and how such work should be managed.

''(c) REQUIREMENT FOR POLICY.—Not later than March 31, 1996, the Secretary of Defense shall develop and report to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a comprehensive policy on the performance of depot-level maintenance and repair for the Department of Defense that maintains the capability described in section 2464 of title 10, United States Code.

''(d) CONTENT OF POLICY.—In developing the policy, the Secretary of Defense shall do each of the following:

''(1) Identify for each military department, with the concurrence of the Secretary of that military department, those depot-level maintenance and repair activities that are necessary to ensure the depot-level maintenance and repair capability as required by section 2464 of title 10, United States Code.

''(2) Provide for performance of core depot-level maintenance and repair capabilities in facilities owned and operated by the United States.

''(3) Provide for the core capabilities to include sufficient skilled personnel, equipment, and facilities that—

''(A) is of the proper size (i) to ensure a ready and controlled source of technical competence and repair and maintenance capability necessary to meet the requirements of the National Military Strategy and other requirements for responding to mobilizations and military contingencies, and (ii) to provide for rapid augmentation in time of emergency; and

''(B) is assigned sufficient workload to ensure cost efficiency and technical proficiency in time of peace.

''(4) Address environmental liability.

''(5) In the case of depot-level maintenance and repair workloads in excess of the workload required to be performed by Department of Defense depots, provide for competition for those workloads between public and private entities when there is sufficient potential for realizing cost savings based on adequate private-sector competition and technical capabilities.

''(6) Address issues concerning exchange of technical data between the Federal Government and the private sector.

''(7) Provide for, in the Secretary's discretion and after consultation with the Secretaries of the military departments, the transfer from one military department to another, in accordance with merit-based selection processes, workload that supports the core depot-level maintenance and repair capabilities in facilities owned and operated by the United States.

''(8) Require that, in any competition for a workload (whether among private-sector sources or between depot-level activities of the Department of Defense and private-sector sources), bids are evaluated under a methodology that ensures that appropriate costs to the Government and the private sector are identified.

''(9) Provide for the performance of maintenance and repair for any new weapons systems defined as core, under section 2464 of title 10, United States Code, in facilities owned and operated by the United States.

''(e) CONSIDERATIONS.—In developing the policy, the Secretary shall take into consideration the following matters:

''(1) The national security interests of the United States.

''(2) The capabilities of the public depots and the capabilities of businesses in the private sector to per-

form the maintenance and repair work required by the Department of Defense.

''(3) Any applicable recommendations of the Defense Base Closure and Realignment Commission that are required to be implemented under the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out as a note under section 2687 of this title].

''(4) The extent to which the readiness of the Armed Forces would be affected by a necessity to construct new facilities to accommodate any redistribution of depot-level maintenance and repair workloads that is made in accordance with the recommendation of the Defense Base Closure and Realignment Commission, under the Defense Base Closure and Realignment Act of 1990, that such workloads be consolidated at Department of Defense depots or private-sector facilities.

''(5) Analyses of costs and benefits of alternatives, including a comparative analysis of—

''(A) the costs and benefits, including any readiness implications, of any proposed policy to convert to contractor performance of depot-level maintenance and repair workloads where the workload is being performed by Department of Defense personnel; and

''(B) the costs and benefits, including any readiness implications, of a policy to transfer depot-level maintenance and repair workloads among depots.

''[(f), (g) Repealed. Pub. L. 105–85, div. A, title III, § 363, Nov. 18, 1997, 111 Stat. 1702.]

''(h) REVIEW BY GENERAL ACCOUNTING OFFICE.—(1) The Secretary shall make available to the Comptroller General of the United States all information used by the Department of Defense in developing the policy under subsections (c) through (e) of this section.

''(2) Not later than 45 days after the date on which the Secretary submits to Congress the report required by subsection (c), the Comptroller General shall transmit to Congress a report containing a detailed analysis of the Secretary's proposed policy as reported under such subsection.

''(i) REPORT ON DEPOT-LEVEL MAINTENANCE AND REPAIR WORKLOAD.—Not later than March 31, 1996, the Secretary of Defense shall submit to Congress a report on the depot-level maintenance and repair workload of the Department of Defense. The report shall, to the maximum extent practicable, include the following:

''(1) An analysis of the need for and effect of the requirement under section 2466 of title 10, United States Code, that no more than 40 percent of the depot-level maintenance and repair work of the Department of Defense be contracted for performance by non-Government personnel, including a description of the effect on military readiness and the national security resulting from that requirement and a description of any specific difficulties experienced by the Department of Defense as a result of that requirement.

''(2) An analysis of the distribution during the five fiscal years ending with fiscal year 1995 of the depot-level maintenance and repair workload of the Department of Defense between depot-level activities of the Department of Defense and non-Government personnel, measured by direct labor hours and by amounts expended, and displayed, for that five-year period and for each year of that period, so as to show (for each military department (and separately for the Navy and Marine Corps)) such distribution.

''(3) A projection of the distribution during the five fiscal years beginning with fiscal year 1997 of the depot-level maintenance and repair workload of the Department of Defense between depot-level activities of the Department of Defense and non-Government personnel, measured by direct labor hours and by amounts expended, and displayed, for that five-year period and for each year of that period, so as to show (for each military department (and separately for the Navy and Marine Corps)) such distribution that would be accomplished under a new policy as required under subsection (c).

''(j) OTHER REVIEW BY GENERAL ACCOUNTING OFFICE.—(1) The Comptroller General of the United States shall conduct an independent audit of the findings of the Secretary of Defense in the report under subsection (i). The Secretary of Defense shall provide to the Comptroller General for such purpose all information used by the Secretary in preparing such report.

''(2) Not later than 45 days after the date on which the Secretary of Defense submits to Congress the report required under subsection (i), the Comptroller General shall transmit to Congress a report containing a detailed analysis of the report submitted under that subsection.''

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply—

(1) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness;

(2) to a contract to be carried out on a Government-owned but privately operated installation; or

(3) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(Added Pub. L. 99–661, div. A, title XII, § 1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, § 2693; amended Pub. L. 100–180, div. A, title XI, § 1112(a)–(b)(2), Dec. 4, 1987, 101 Stat. 1147; renumbered § 2465, Pub. L. 100–370, § 2(b)(1), July 19, 1988, 102 Stat. 854; Pub. L. 104–106, div. A, title XV, § 1503(a)(25), Feb. 10, 1996, 110 Stat. 512.)

AMENDMENTS

1996—Subsec. (b)(3). Pub. L. 104–106 substituted ''under contract on September 24, 1983'' for ''under contract or September 24, 1983''.

1988—Pub. L. 100–370 renumbered section 2693 of this title as this section.

1987—Pub. L. 100–180 inserted ''or security-guard'' before ''functions'' in section catchline and subsec. (a), and substituted ''a function'' for ''the function'' in subsec. (b)(1).

TEMPORARY AUTHORITY TO CONTRACT WITH LOCAL AND STATE GOVERNMENTS FOR PERFORMANCE OF SECURITY FUNCTIONS AT UNITED STATES MILITARY INSTALLATIONS

Pub. L. 107–56, title X, § 1010, Oct. 26, 2001, 115 Stat. 395, provided that:

''(a) IN GENERAL.—Notwithstanding section 2465 of title 10, United States Code, during the period of time that United States armed forces are engaged in Operation Enduring Freedom, and for the period of 180 days thereafter, funds appropriated to the Department of Defense may be obligated and expended for the purpose of entering into contracts or other agreements for the performance of security functions at any military installation or facility in the United States with a proximately located local or State government, or combination of such governments, whether or not any such gov-

ernment is obligated to provide such services to the general public without compensation.

''(b) TRAINING.—Any contract or agreement entered into under this section shall prescribe standards for the training and other qualifications of local government law enforcement personnel who perform security functions under this section in accordance with criteria established by the Secretary of the service concerned.

''(c) REPORT.—One year after the date of enactment of this section [Oct. 26, 2001], the Secretary of Defense shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives describing the use of the authority granted under this section and the use by the Department of Defense of other means to improve the performance of security functions on military installations and facilities located within the United States.''

PERFORMANCE OF EMERGENCY RESPONSE FUNCTIONS AT CHEMICAL WEAPONS STORAGE INSTALLATIONS

Pub. L. 106–398, §1 [[div. A], title III, §355], Oct. 30, 2000, 114 Stat. 1654, 1654A–75, provided that:

''(a) RESTRICTION ON CONVERSION.—The Secretary of the Army may not convert to contractor performance the emergency response functions of any chemical weapons storage installation that, as of the date of the enactment of this Act [Oct. 30, 2000], are performed for that installation by employees of the United States until the certification required by subsection (c) has been submitted in accordance with that subsection.

''(b) COVERED INSTALLATIONS.—For the purposes of this section, a chemical weapons storage installation is any installation of the Department of Defense on which lethal chemical agents or munitions are stored.

''(c) CERTIFICATION REQUIREMENT.—The Secretary of the Army shall certify in writing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that, to ensure that there will be no lapse of capability to perform the chemical weapon emergency response mission at a chemical weapons storage installation during any transition to contractor performance of those functions at the installation, the plan for conversion of the performance of those functions—

''(1) is consistent with the recommendation contained in General Accounting Office Report NSIAD–00–88, entitled 'DoD Competitive Sourcing', dated March 2000;

''(2) provides for a transition to contractor performance of emergency response functions which ensures an adequate transfer of the relevant knowledge and expertise regarding chemical weapon emergency response to the contractor personnel; and

''(3) complies with section 2465 of title 10, United States Code.''

§ 2466. Limitations on the performance of depot-level maintenance of materiel

(a) PERCENTAGE LIMITATION.—Not more than 50 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Any such funds that are not used for such a contract shall be used for the performance of depot-level maintenance and repair workload by employees of the Department of Defense.

(b) WAIVER OF LIMITATION.—The Secretary of Defense may waive the limitation in subsection (a) for a fiscal year if—

(1) the Secretary determines that the waiver is necessary for reasons of national security; and

(2) the Secretary submits to Congress a notification of the waiver together with the reasons for the waiver.

(c) PROHIBITION ON DELEGATION OF WAIVER AUTHORITY.—The authority to grant a waiver under subsection (b) may not be delegated.

(d) EXCEPTION.—Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.

(e) ANNUAL REPORTS.—(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding two fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

(2) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that are projected to be expended during each of the next five fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

(3) Not later than 60 days after the date on which the Secretary submits a report under this subsection, the Comptroller General shall submit to Congress the Comptroller General's views on whether—

(A) in the case of a report under paragraph (1), the Department of Defense has complied with the requirements of subsection (a) for the fiscal years covered by the report; and

(B) in the case of a report under paragraph (2), the expenditure projections for future fiscal years are reasonable.

(Added Pub. L. 100–456, div. A, title III, §326(a), Sept. 29, 1988, 102 Stat. 1955; amended Pub. L. 101–189, div. A, title III, §313, Nov. 29, 1989, 103 Stat. 1412; Pub. L. 102–190, div. A, title III, §314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 102–484, div. A, title III, §352(a)–(c), Oct. 23, 1992, 106 Stat. 2378; Pub. L. 103–337, div. A, title III, §332, Oct. 5, 1994, 108 Stat. 2715; Pub. L. 104–106, div. A, title III, §§311(f)(1), 312(b), Feb. 10, 1996, 110 Stat. 248, 250; Pub. L. 105–85, div. A, title III, §§357, 358, 363, Nov. 18, 1997, 111 Stat. 1695, 1702; Pub. L. 106–65, div. A, title III, §333, Oct. 5, 1999, 113 Stat. 567; Pub. L. 107–107, div. A, title III, §341, Dec. 28, 2001, 115 Stat. 1060.)

AMENDMENTS

2001—Subsecs. (b), (c). Pub. L. 107–107 added subsecs. (b) and (c) and struck out heading and text of former subsec. (c). Text read as follows: ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.''

1999—Subsec. (e). Pub. L. 106–65 amended heading and text of subsec. (e) generally. Text read as follows:

''(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense

Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding fiscal year for performance of depot-level maintenance and repair workloads by the public and private sectors as required by section 2466 of this title.

''(2) Not later than 90 days after the date on which the Secretary submits the annual report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether the Department of Defense has complied with the requirements of subsection (a) for the fiscal year covered by the report.''

1997—Pub. L. 105–85, § 363, repealed Pub. L. 104–106, § 311(f)(1). See 1996 Amendment note below.

Subsec. (a). Pub. L. 105–85, § 357, substituted ''50 percent'' for ''40 percent''.

Subsec. (e). Pub. L. 105–85, § 358, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Not later than January 15, 1995, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of funds referred to in subsection (a) that was used during fiscal year 1994 to contract for the performance by non-Federal Government personnel of depot-level maintenance and repair workload.''

1996—Pub. L. 104–106, § 311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105–85, § 363.

Subsec. (b). Pub. L. 104–106, § 312(b), redesignated subsec. (b) as section 2472(a) of this title.

1994—Subsec. (a). Pub. L. 103–337, § 332(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

''(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

''(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

''(A) For fiscal year 1993, 50 percent.

''(B) For fiscal year 1994, 55 percent.

''(C) For fiscal year 1995, 60 percent.''

Subsec. (b). Pub. L. 103–337, § 332(b), inserted ''and repair'' after ''maintenance'' in two places.

Subsec. (e). Pub. L. 103–337, § 332(c), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

''(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

''(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).''

1992—Subsec. (a). Pub. L. 102–484, § 352(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''PERCENTAGE LIMITATION.—Not less than 60 percent of the funds available for each fiscal year for depot-level maintenance of materiel managed for the Department of the Army and the Department of the Air Force shall be used for the performance of such depot-level maintenance by employees of the Department of Defense.''

Subsec. (c). Pub. L. 102–484, § 352(b), substituted ''The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense'' for ''The Secretary of the Army, with respect to the Department of the Army, and the Secretary of the Air Force, with respect to the Department of the Air Force,''.

Subsec. (e). Pub. L. 102–484, § 352(c), designated existing provisions as par. (1) and added par. (2).

1991—Pub. L. 102–190 substituted section catchline for one which read ''Prohibition on certain depot maintenance workload competitions'' and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, from carrying out a competition for such selection—

''(1) between or among maintenance activities of the Department of the Army and the Department of the Air Force; or

''(2) between a maintenance activity of either such department and a private contractor.''

1989—Pub. L. 101–189, in introductory provisions, substituted ''shall prohibit'' for ''may not require'', ''Army and'' for ''Army or'', and ''from carrying out'' for ''to carry out''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CONGRESSIONAL FINDINGS

Section 331 of Pub. L. 103–337 provided that: ''Congress makes the following findings:

''(1) By providing the Armed Forces with a critical capacity to respond to the needs of the Armed Forces for depot-level maintenance and repair of weapon systems and equipment, the depot-level maintenance and repair activities of the Department of Defense play an essential role in maintaining the readiness of the Armed Forces.

''(2) It is appropriate for the capability of the depot-level maintenance and repair activities of the Department of Defense to perform maintenance and repair of weapon systems and equipment to be based on policies that take into consideration the readiness, mobilization, and deployment requirements of the military departments.

''(3) It is appropriate for the management of employees of the depot-level maintenance and repair activities of the Department of Defense to be based on the amount of workload necessary to be performed by such activities to maintain the readiness of the weapon systems and equipment of the military departments and on the funds made available for the performance of such workload.''

REUTILIZATION INITIATIVE FOR DEPOT-LEVEL ACTIVITIES

Section 337 of Pub. L. 103–337 provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall conduct activities to encourage commercial firms to enter into partnerships with depot-level activities of the military departments for the purposes of—

''(1) demonstrating commercial uses of the depot-level activities that are related to the principal mission of the depot-level activities;

''(2) preserving employment and skills of employees currently employed by the depot-level activities or providing for the reemployment and retraining of employees who, as the result of the closure, realignment, or reduced in-house workload of such activities, may become unemployed; and

''(3) supporting the goals of other defense conversion, reinvestment, and transition assistance programs while also allowing the depot-level activities to remain in operation to continue to perform their defense readiness mission.

''(b) CONDITIONS.—The Secretary shall ensure that activities conducted under this section—

''(1) do not interfere with the closure or realignment of a depot-level activity of the military departments under a base closure law; and

''(2) do not adversely affect the readiness or primary mission of a participating depot-level activity.''

CONTINUATION OF PERCENTAGE LIMITATIONS ON PERFORMANCE OF DEPOT-LEVEL MAINTENANCE

Pub. L. 103–160, div. A, title III, § 343, Nov. 30, 1993, 107 Stat. 1624, provided that: ''The Secretary of Defense shall ensure that the percentage limitations applicable to the depot-level maintenance workload performed by non-Federal Government personnel set forth in section 2466 of title 10, United States Code, are adhered to.''

EFFECT OF 1992 AMENDMENTS ON EXISTING CONTRACTS

Section 352(d) of Pub. L. 102–484 provided that: ''The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code, as amended by subsection (a).''

PROHIBITION ON CANCELLATION OF CONTRACTS IN EFFECT ON DECEMBER 5, 1991

Section 314(a)(3) of Pub. L. 102–190 provided that: ''The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a).''

COMPETITION PILOT PROGRAM; REVIEW AND REPORT

Section 314(b)–(d) of Pub. L. 102–190, as amended by Pub. L. 102–484, div. A, title III, § 354, Oct. 23, 1992, 106 Stat. 2379, provided that:

''[(b) Repealed. Pub. L. 102–484, div. A, title III, § 354, Oct. 23, 1992, 106 Stat. 2379.]

''(c) REVIEW BY COMPTROLLER GENERAL.—Not later than February 1, 1994, the Comptroller General shall submit to Congress an evaluation of all depot maintenance workloads of the Department of Defense, including Navy depot maintenance workloads, that are performed by an entity selected pursuant to competitive procedures.

''(d) REPORT BY SECRETARY OF DEFENSE.—Not later than December 1, 1993, the Secretary of Defense shall submit to Congress a report—

''(1) containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads; and

''(2) describing the cost savings anticipated through the use of those procedures.''

PILOT PROGRAM FOR DEPOT MAINTENANCE WORKLOAD COMPETITION

Pub. L. 101–510, div. A, title IX, § 922, Nov. 5, 1990, 104 Stat. 1627, authorized a depot maintenance workload competition pilot program during fiscal year 1991, outlined elements of the program, and provided for a report not later than Mar. 31, 1992, to congressional defense committees, prior to repeal by Pub. L. 102–190, div. A, title III, § 314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2474 of this title.

§ 2467. Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison

(a) REQUIREMENT TO INCLUDE RETIREMENT COSTS.—(1) In any comparison conducted by the Department of Defense under Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) of the cost of performing commercial activities by Department of Defense personnel and the cost of performing such activities by contractor personnel, the Secretary of Defense shall include retirement system costs (as described in paragraphs (2) and (3)) of both the Department of Defense and the contractor.

(2) The retirement system costs of the Department of Defense shall include (to the extent applicable) the following:

(A) The cost of the Federal Employees' Retirement System, valued by using the normal-cost percentage (as defined by section 8401(23) of title 5.

(B) The cost of the Civil Service Retirement System under subchapter III of chapter 83 of title 5.

(C) The cost of the thrift savings plan under subchapter III of chapter 84 of title 5.

(D) The cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986.

(3) The retirement system costs of the contractor shall include the cost of the old age, survivors, and disability insurance taxes imposed under section 3111(a) of the Internal Revenue Code of 1986, the cost of thrift or other retirement savings plans, and other relevant retirement costs.

(b) REQUIREMENT TO CONSULT DOD EMPLOYEES.—(1) Each officer or employee of the Department of Defense responsible for determining under Office of Management and Budget Circular A–76 whether to convert to contractor performance any commercial activity of the Department—

(A) shall, at least monthly during the development and preparation of the performance work statement and the management efficiency study used in making that determination, consult with civilian employees who will be affected by that determination and consider the views of such employees on the development and preparation of that statement and that study; and

(B) may consult with such employees on other matters relating to that determination.

(2)(A) In the case of employees represented by a labor organization accorded exclusive recognition under section 7111 of title 5, consultation with representatives of that labor organization shall satisfy the consultation requirement in paragraph (1).

(B) In the case of employees other than employees referred to in subparagraph (A), consultation with appropriate representatives of those employees shall satisfy the consultation requirement in paragraph (1).

(3) The Secretary of Defense shall prescribe regulations to carry out this subsection. The regulations shall include provisions for the selection or designation of appropriate representatives of employees referred to in paragraph (2)(B) for purposes of consultation required by paragraph (1).

(c) CONGRESSIONAL NOTIFICATION OF COST COMPARISON WAIVER.—(1) Not later than 10 days

after a decision is made to waive the cost comparison study otherwise required under Office of Management and Budget Circular A–76 as part of the process to convert to contractor performance any commercial activity of the Department of Defense, the Secretary of Defense shall submit to Congress a report describing the commercial activity subject to the waiver and the rationale for the waiver.

(2) The report shall also include the following:

(A) The total number of civilian employees or military personnel currently performing the function to be converted to contractor performance.

(B) A description of the competitive procedure used to award a contract for contractor performance of the commercial activity.

(C) The anticipated savings to result from the waiver and resulting conversion to contractor performance.

(Added Pub. L. 100–456, div. A, title III, § 331(a), Sept. 29, 1988, 102 Stat. 1957; amended Pub. L. 106–65, div. A, title III, § 342(a), (b)(1), Oct. 5, 1999, 113 Stat. 569; Pub. L. 107–107, div. A, title X, § 1048(a)(22), Dec. 28, 2001, 115 Stat. 1224.)

REFERENCES IN TEXT

Section 3111(a) of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(D), (3), is classified to section 3111(a) of Title 26, Internal Revenue Code.

AMENDMENTS

2001—Subsec. (a)(2)(A). Pub. L. 107–107, § 1048(a)(22)(A)(i), struck out '', United States Code'' after ''title 5''.

Subsec. (a)(2)(B), (C). Pub. L. 107–107, § 1048(a)(22)(A)(ii), struck out ''such'' before ''title 5''.

Subsec. (b)(2)(A). Pub. L. 107–107, § 1048(a)(22)(B), struck out ''United States Code,'' after ''title 5,''.

1999—Pub. L. 106–65, § 342(b)(1), substituted ''Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison'' for ''Cost comparisons: requirements with respect to retirement costs and consultation with employees'' in section catchline.

Subsec. (c). Pub. L. 106–65, § 342(a), added subsec. (c).

[§ 2468. Repealed. Pub. L. 107–107, div. A, title X, § 1048(e)(10)(A), Dec. 28, 2001, 115 Stat. 1228]

Section, added Pub. L. 101–189, div. A, title XI, § 1131(a)(1), Nov. 29, 1989, 103 Stat. 1560; amended Pub. L. 101–510, div. A, title IX, § 921, Nov. 5, 1990, 104 Stat. 1627; Pub. L. 102–190, div. A, title III, § 315(a), Dec. 5, 1991, 105 Stat. 1337; Pub. L. 103–160, div. A, title III, § 370(c), Nov. 30, 1993, 107 Stat. 1634; Pub. L. 103–337, div. A, title III, § 386(c), Oct. 5, 1994, 108 Stat. 2742, related to authority of military base commanders over contracting for commercial activities.

§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition

(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense shall ensure that the performance of a depot-level maintenance and repair workload described in subsection (b) is not changed to performance by a contractor or by another depot-level activity of the Department of Defense unless the change is made using—

(1) merit-based selection procedures for competitions among all depot-level activities of the Department of Defense; or

(2) competitive procedures for competitions among private and public sector entities.

(b) SCOPE.—Subsection (a) applies to any depot-level maintenance and repair workload that has a value of not less than $3,000,000 (including the cost of labor and materials) and is being performed by a depot-level activity of the Department of Defense.

(c) INAPPLICABILITY OF OMB CIRCULAR A–76.—Office of Management and Budget Circular A–76 (or any successor administrative regulation or policy) does not apply to a performance change to which subsection (a) applies.

(Added Pub. L. 102–484, div. A, title III, § 353(a), Oct. 23, 1992, 106 Stat. 2378; amended Pub. L. 103–160, div. A, title III, § 346, title XI, § 1182(a)(7), Nov. 30, 1993, 107 Stat. 1625, 1771; Pub. L. 103–337, div. A, title III, § 338, Oct. 5, 1994, 108 Stat. 2718; Pub. L. 104–106, div. A, title III, § 311(f)(1), Feb. 10, 1996, 110 Stat. 248; Pub. L. 105–85, div. A, title III, §§ 355(b), 363, Nov. 18, 1997, 111 Stat. 1694, 1702; Pub. L. 106–65, div. A, title III, § 334, Oct. 5, 1999, 113 Stat. 568.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 inserted ''(including the cost of labor and materials)'' after ''$3,000,000''.

1997—Pub. L. 105–85, § 363, repealed Pub. L. 104–106, § 311(f)(1). See 1996 Amendment note below.

Subsecs. (a), (b). Pub. L. 105–85, § 355(b), substituted ''maintenance and repair'' for ''maintenance or repair''.

1996—Pub. L. 104–106, § 311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105–85, § 363.

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section read as follows:

''(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a value of not less than $3,000,000 and is being performed by a depot-level activity of the Department of Defense to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload.

''(b) INAPPLICABILITY OF OMB CIRCULAR A–76.—The use of Office of Management and Budget Circular A–76 shall not apply to a performance change under subsection (a).''

1993—Pub. L. 103–160, § 346, amended section, as amended by Pub. L. 103–160, § 1182(a)(7), (h), by designating existing provisions as subsec. (a), inserting heading, striking out ''threshold'' before ''value'', substituting ''to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload'' for ''unless the Secretary uses competitive procedures to make the change'', and adding subsec. (b).

Pub. L. 103–160, § 1182(a)(7), struck out '', prior to any such change,'' after ''Department of Defense unless''.

[§ 2469a. Repealed. Pub. L. 107–314, div. A, title III, § 333(a), Dec. 2, 2002, 116 Stat. 2514]

Section, added Pub. L. 105–85, div. A, title III, § 359(a)(1), Nov. 18, 1997, 111 Stat. 1696; amended Pub. L. 106–65, div. A, title III, § 335, title X, § 1066(a)(20), Oct. 5, 1999, 113 Stat. 568, 771, related to use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at closed or realigned military installations.

§ 2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies

A depot-level activity of the Department of Defense shall be eligible to compete for the per-

formance of any depot-level maintenance and repair workload of a Federal agency for which competitive procedures are used to select the entity to perform the workload.

(Added Pub. L. 103–337, div. A, title III, §335(a), Oct. 5, 1994, 108 Stat. 2716.)

[§ 2471.Repealed. Pub. L. 106–398, § 1 [[div. A], title III, § 341(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64]

Section, added Pub. L. 103–337, div. A, title III, §336(a), Oct. 5, 1994, 108 Stat. 2717; amended Pub. L. 104–106, div. A, title XV, §1503(a)(26), Feb. 10, 1996, 110 Stat. 512; Pub. L. 105–85, div. A, title III, §361(b)(1), Nov. 18, 1997, 111 Stat. 1701, related to lease of excess depot-level equipment and facilities by persons outside the Department of Defense.

§ 2472. Management of depot employees

(a) PROHIBITION ON MANAGEMENT BY END STRENGTH.—The civilian employees of the Department of Defense, including the civilian employees of the military departments and the Defense Agencies, who perform, or are involved in the performance of, depot-level maintenance and repair workloads may not be managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. Such employees shall be managed solely on the basis of the available workload and the funds made available for such depot-level maintenance and repair.

(b) ANNUAL REPORT.—Not later than December 1 of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the number of employees employed and expected to be employed by the Department of Defense during that fiscal year to perform depot-level maintenance and repair of materiel. The report shall indicate whether that number is sufficient to perform the depot-level maintenance and repair functions for which funds are expected to be provided for that fiscal year for performance by Department of Defense employees.

(Added and amended Pub. L. 104–106, div. A, title III, §312(a), (b), Feb. 10, 1996, 110 Stat. 250; Pub. L. 105–85, div. A, title III, §360, Nov. 18, 1997, 111 Stat. 1700; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

CODIFICATION

The text of section 2466(b) of this title, which was transferred to this section and redesignated subsec. (a) by Pub. L. 104–106, §312(b), was based on Pub. L. 102–190, div. A, title III, §314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 103–337, div. A, title III, §332(b), Oct. 5, 1994, 108 Stat. 2715.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1997—Subsec. (a). Pub. L. 105–85 inserted first sentence and struck out former first sentence which read as follows: ''The civilian employees of the Department of Defense involved in the depot-level maintenance and repair of materiel may not be managed on the basis of any end-strength constraint or limitation on the number of such employees who may be employed on the last day of a fiscal year.''

1996—Subsec. (a). Pub. L. 104–106, §312(b), renumbered section 2466(b) of this title as subsec. (a) of this section.

SUBMISSION OF INITIAL REPORT

Section 312(c) of Pub. L. 104–106 provided that: ''The report under subsection (b) of section 2472 of title 10, United States Code, as added by subsection (a), for fiscal year 1996 shall be submitted not later than March 15, 1996 (notwithstanding the date specified in such subsection).''

§ 2473. Procurements from the small arms production industrial base

(a) REQUIREMENT TO LIMIT PROCUREMENTS TO CERTAIN SOURCES.—In order to preserve the small arms production industrial base, the Secretary of Defense shall require that any procurement of property or services described in subsection (b) for the Department of Defense be made only from a firm in the small arms production industrial base, unless the Secretary determines, with regard to a particular procurement, that such requirement is not necessary to preserve the small arms production industrial base.

(b) COVERED PROPERTY AND SERVICES.—Subject to subsection (d), subsection (a) applies to the following:

(1) Critical repair parts for small arms, consisting only of barrels, receivers, and bolts.

(2) Modifications of such parts to improve small arms used by the armed forces.

(c) SMALL ARMS PRODUCTION INDUSTRIAL BASE.—In this section, the term ''small arms production industrial base'' means the firms comprising the small arms production industrial base, as described in the plan entitled ''Preservation of Critical Elements of the Small Arms Industrial Base'', dated January 8, 1994, that was prepared by an independent assessment panel of the Army Science Board.

(d) APPLICABILITY.—This section applies only to procurements of covered property and services involving the following small arms:

(1) M16 series rifle.
(2) MK19 grenade machine gun.
(3) M4 series carbine.
(4) M240 series machine gun.
(5) M249 squad automatic weapon.

(e) SUBMISSION OF CERTIFIED COST OR PRICING DATA.—If a procurement under subsection (a) is a procurement of a commercial item, the Secretary may, notwithstanding section 2306a(b)(1)(B) of this title, require the submission of certified cost or pricing data under section 2306a(a) of this title.

(Added Pub. L. 104–201, div. A, title VIII, §832(a), Sept. 23, 1996, 110 Stat. 2616; amended Pub. L. 105–261, div. A, title VIII, §809(a)–(d), Oct. 17, 1998, 112 Stat. 2085, 2086; Pub. L. 106–65, div. A, title VIII, §815(b), Oct. 5, 1999, 113 Stat. 712.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–65, §815(b)(1), substituted ''Critical repair'' for ''Repair'', struck out ''including repair parts'' after ''small arms,'', and inserted ''only'' after ''consisting''.

Subsec. (b)(2). Pub. L. 106–65, §815(b)(2), inserted ''such'' after ''Modifications of''.

1998—Subsec. (a). Pub. L. 105–261, §809(a), substituted ''Requirement'' for ''Authority'' in heading and ''In

order to preserve the small arms production industrial base, the Secretary of Defense shall'' for ''To the extent that the Secretary of Defense determines necessary to preserve the small arms production industrial base, the Secretary may'' in text, and inserted before period at end '', unless the Secretary determines, with regard to a particular procurement, that such requirement is not necessary to preserve the small arms production industrial base''.

Subsec. (b). Pub. L. 105–261, § 809(b), (c)(1), substituted ''Subject to subsection (d), subsection'' for ''Subsection'' in introductory provisions and inserted '', including repair parts consisting of barrels, receivers, and bolts'' before period in par. (1).

Subsec. (d). Pub. L. 105–261, § 809(c)(2), added subsec. (d).

Subsec. (e). Pub. L. 105–261, § 809(d), added subsec. (e).

EXTENSION OF REQUIREMENTS OF SECTION 2473 TO SMALL ARMS

Pub. L. 106–65, div. A, title VIII, § 815(a), Oct. 5, 1999, 113 Stat. 712, provided that: ''In fulfilling the requirement under subsection (e) of section 809 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2086; 10 U.S.C. 2473 note), if the Secretary of the Army determines that it is necessary to protect the small arms production industrial base, the Secretary shall exercise the authority under subsection (f) of such section [set out as a note below] with regard to M–2 and M–60 machine guns.''

Pub. L. 105–261, div. A, title VIII, § 809(e), (f), Oct. 17, 1998, 112 Stat. 2086, provided that:

''(e) STUDY.—Not later than 60 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of the Army shall conduct a study, to be carried out by the Army Science Board, to examine whether the requirements of section 2473 of title 10, United States Code, should be extended to small arms (as specified in subsection (d) of such section) and the parts manufactured under a contract with the Department of Defense to produce such small arms.

''(f) AUTHORITY TO EXTEND REQUIREMENTS OF SECTION 2473.—Based upon recommendations of the Army Science Board resulting from the study conducted under subsection (e), the Secretary of the Army may apply the requirements of section 2473 of title 10, United States Code, to the small arms and parts referred to in subsection (e).''

§ 2474. Centers of Industrial and Technical Excellence: designation; public-private partnerships

(a) DESIGNATION.—(1) The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, shall designate each depot-level activity of the military departments and the Defense Agencies (other than facilities approved for closure or major realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note)) as a Center of Industrial and Technical Excellence in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department and the head of each Defense Agency to reengineer industrial processes and adopt best-business practices at their Centers of Industrial and Technical Excellence in connection with their core competency requirements, so as to serve as recognized leaders in their core competencies throughout the Department of Defense and in the national technology and industrial base (as defined in section 2500(1) of this title).

(3) The Secretary of a military department may conduct a pilot program, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Secretary determines could improve the efficiency and effectiveness of operations at Centers of Industrial and Technical Excellence, improve the support provided by the Centers for the armed forces user of the services of the Centers, and enhance readiness by reducing the time that it takes to repair equipment.

(b) PUBLIC-PRIVATE PARTNERSHIPS.—(1) To achieve one or more objectives set forth in paragraph (2), the Secretary designating a Center of Industrial and Technical Excellence under subsection (a) may authorize and encourage the head of the Center to enter into public-private cooperative arrangements (in this section referred to as a ''public-private partnership'') to provide for any of the following:

(A) For employees of the Center, private industry, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the core competencies of the Center, including any depot-level maintenance and repair work that involves one or more core competencies of the Center.

(B) For private industry or other entities outside the Department of Defense to use, for any period of time determined to be consistent with the needs of the Department of Defense, any facilities or equipment of the Center that are not fully utilized for a military department's own production or maintenance requirements.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the utilization of the capacity of a Center of Industrial and Technical Excellence.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense in such areas of responsibility as operations and maintenance and environmental remediation.

(C) To reduce the cost of products of the Department of Defense produced or maintained at a Center.

(D) To leverage private sector investment in—

(i) such efforts as plant and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures at a Center.

(E) To foster cooperation between the armed forces and private industry.

(3) If the Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, authorizes the use of public-private partnerships under this subsection, the Secretary shall submit to Congress a report evaluating the need for loan guarantee authority, similar to the ARMS Initiative loan guarantee program under section 4555 of this title, to facilitate the establishment of public-private partnerships and the achievement of the objectives set forth in paragraph (2).

(c) PRIVATE SECTOR USE OF EXCESS CAPACITY.—Any facilities or equipment of a Center of

Industrial and Technical Excellence made available to private industry may be used to perform maintenance or to produce goods in order to make more efficient and economical use of Government-owned industrial plants and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary manufacturing and maintenance skills to meet the needs of the armed forces.

(d) CREDITING OF AMOUNTS FOR PERFORMANCE.—Amounts received by a Center for work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund, that incurs the cost of performing the work. Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(d) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

(e) AVAILABILITY OF EXCESS EQUIPMENT TO PRIVATE-SECTOR PARTNERS.—Equipment or facilities of a Center of Industrial and Technical Excellence may be made available for use by a private-sector entity under this section only if—

(1) the use of the equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned or, in the case of a Center in a Defense Agency, by the Secretary of Defense; and

(2) the private-sector entity agrees—

(A) to reimburse the Department of Defense for the direct and indirect costs (including any rental costs) that are attributable to the entity's use of the equipment or facilities, as determined by that Secretary; and

(B) to hold harmless and indemnify the United States from—

(i) any claim for damages or injury to any person or property arising out of the use of the equipment or facilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned or the Secretary of Defense to suspend or terminate that use of equipment or facilities during a war or national emergency.

(f) EXCLUSION OF CERTAIN EXPENDITURES FROM PERCENTAGE LIMITATION.—(1) Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract entered into during fiscal years 2003 through 2006 shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

(2) All funds covered by paragraph (1) shall be included as a separate item in the reports required under paragraphs (1), (2), and (3) of section 2466(e) of this title.

(g) CONSTRUCTION OF PROVISION.—Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center of Industrial and Technical Excellence by Department of Defense personnel to performance by a contractor.

(Added Pub. L. 105–85, div. A, title III, §361(a)(1), Nov. 18, 1997, 111 Stat. 1700; amended Pub. L. 106–398, §1 [[div. A], title III, §341(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–61 to 1654A–63; Pub. L. 107–107, div. A, title III, §§342, 343(b), Dec. 28, 2001, 115 Stat. 1060, 1061; Pub. L. 107–314, div. A, title III, §334, Dec. 2, 2002, 116 Stat. 2514.)

AMENDMENTS

2002—Subsec. (f)(1). Pub. L. 107–314, §334(1), substituted ''Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract entered into during fiscal years 2003 through 2006'' for ''Amounts expended out of funds described in paragraph (2) for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence''.

Subsec. (f)(2), (3). Pub. L. 107–314, §334(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The funds referred to in paragraph (1) are funds available to the military departments and Defense Agencies for depot-level maintenance and repair workloads for fiscal years 2002 through 2005.''

2001—Subsec. (e)(2)(B)(i). Pub. L. 107–107, §343(b), substituted ''under the circumstances described in section 2563(c)(3) of this title'' for ''in a case of willful conduct or gross negligence''.

Subsecs. (f), (g). Pub. L. 107–107, §342, added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (a)(1). Pub. L. 106–398, §1 [[div. A], title III, §341(a)(1)], substituted ''The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency,'' for ''The Secretary of Defense'' and ''of the designee'' for ''of the activity''.

Subsec. (a)(2). Pub. L. 106–398, §1 [[div. A], title III, §341(a)(2)], inserted ''of Defense'' after ''The Secretary'' and substituted ''Centers of Industrial and Technical Excellence'' for ''depot-level activities''.

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title III, §341(a)(3)], substituted ''operations at Centers of Industrial and Technical Excellence'' for ''depot-level operations'', ''by the Centers'' for ''by depot-level activities'', and ''of the Centers'' for ''of such activities''.

Subsec. (b). Pub. L. 106–398, §1 [[div. A], title III, §341(b)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall enable Centers of Industrial and Technical Excellence to enter into public-private cooperative arrangements for the performance of depot-level maintenance and repair at such Centers and shall encourage the use of such arrangements to maximize the utilization of the capacity at such Centers. A public-private cooperative arrangement under this subsection shall be known as a 'public-private partnership'.''

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title III, §341(c)(3)], added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title III, §341(d)], inserted at end ''Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(d) of this title, revenues generated pursuant to this section shall be available for facility operations, mainte-

nance, and environmental restoration at the Center where the leased property is located.''

Pub. L. 106–398, §1 [[div. A], title III, §341(c)(1), (2)], redesignated subsec. (c) as (d) and struck out heading and text of former subsec. (d). Text read as follows: ''The policy required under subsection (a) shall include measures to enable a private sector entity that enters into a partnership arrangement under subsection (b) or leases excess equipment and facilities at a Center of Industrial and Technical Excellence pursuant to section 2471 of this title to perform additional work at the Center, subject to the limitations outlined in subsection (b) of such section, outside of the types of work normally assigned to the Center.''

Subsecs. (e), (f). Pub. L. 106–398, §1 [[div. A], title III, §341(e)], added subsecs. (e) and (f).

REPORTING REQUIREMENT

Section 361(c) of Pub. L. 105–85 provided that: ''Not later than March 1, 1999, the Secretary of Defense shall submit to Congress a report on the policies established by the Secretary pursuant to section 2474 of title 10, United States Code, to implement the requirements of such section. The report shall include—

''(1) the details of any public-private partnerships entered into as of that date under subsection (b) of such section;

''(2) the details of any leases entered into as of that date under section 2471 of such title with authorized entities for dual-use (military and nonmilitary) purposes; and

''(3) the effect that the partnerships and leases had on capacity utilization, depot rate structures, and readiness.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2208, 2461 of this title.

§ 2475. Consolidation, restructuring, or reengineering of organizations, functions, or activities: notification requirements

(a) REQUIREMENT TO SUBMIT PLAN ANNUALLY.—Concurrently with the submission of the President's annual budget request under section 1105 of title 31, the Secretary of Defense shall submit to Congress each Strategic Sourcing Plan of Action for the Department of Defense (as identified in the Department of Defense Interim Guidance dated February 29, 2000, or any successor Department of Defense guidance or directive), for the following year.

(b) NOTIFICATION OF DECISION TO EXECUTE PLAN.—If a decision is made to consolidate, restructure, or reengineer an organization, function, or activity of the Department of Defense pursuant to a Strategic Sourcing Plan of Action described in subsection (a), and such consolidation, restructuring, or reengineering would result in a manpower reduction affecting 50 or more personnel of the Department of Defense (including military and civilian personnel)—

(1) the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report describing that decision, including—

(A) a projection of the savings that will be realized as a result of the consolidation, restructuring, or reengineering, compared with the cost incurred by the Department of Defense to perform the function or to operate the organization or activity prior to such proposed consolidation, restructuring, or reengineering;

(B) a description of all missions, duties, or military requirements that will be affected as a result of the decision to consolidate, restructure, or reengineer the organization, function, or activity that was analyzed;

(C) the Secretary's certification that the consolidation, restructuring, or reengineering will not result in any diminution of military readiness;

(D) a schedule for performing the consolidation, restructuring, or reengineering; and

(E) the Secretary's certification that the entire analysis for the consolidation, restructuring, or reengineering is available for examination; and

(2) the head of the Defense Agency or the Secretary of the military department concerned may not implement the plan until 30 days after the date that the agency head or Secretary submits notification to the Committees on Armed Services of the Senate and House of Representatives of the intent to carry out such plan.

(Added Pub. L. 106–398, §1 [[div. A], title III, §353(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–72.)

CHAPTER 147—COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES

Sec.
[2481. Renumbered.]
2482. Commissary stores: operation.
2482a. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.
2483. Commissary stores: reimbursement for use of commissary facilities by military departments.
2484. Commissary stores: use of appropriated funds to cover operating expenses.
2485. Donation of unusable food: commissary stores and other activities.
2486. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.
2487. Commissary stores: release of certain commercially valuable information to the public.
2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
2489. Overseas package stores: treatment of United States wines.
2489a. Sale or rental of sexually explicit material prohibited.
[2490. Renumbered.]
2490a. Combined exchange and commissary stores.
[2491. Renumbered.]
2492. Overseas commissary and exchange stores: access and purchase restrictions.
2493. Fisher Houses: administration as nonappropriated fund instrumentality.
2494. Uniform funding and management of morale, welfare, and recreation programs.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title III, §323(b), Dec. 2, 2002, 116 Stat. 2511, added item 2494.

2001—Pub. L. 107–107, div. A, title III, §§332(b), 333(b), Dec. 28, 2001, 115 Stat. 1058, 1059, added item 2483 and substituted ''Commissary stores: release of certain commercially valuable information to the public'' for ''Commissary stores: limitations on release of sales information'' in item 2487.

2000—Pub. L. 106–398, §1 [[div. A], title III, §331(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, added item 2484

and struck out former item 2484 ''Commissary stores: expenses''.

1998—Pub. L. 105–261, div. A, title III, §365(b), title IX, §906(a)(2), Oct. 17, 1998, 112 Stat. 1987, 2095, added items 2492 and 2493.

1997—Pub. L. 105–85, div. A, title III, §371(a)(1), (c)(1), Nov. 18, 1997, 111 Stat. 1705, substituted ''COMMISSARIES AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES'' for ''UTILITIES AND SERVICES'' as chapter heading and struck out items 2481 ''Utilities and services: sale; expansion and extension of systems and facilities'', 2483 ''Sale of electricity from alternate energy and cogeneration production facilities'', and 2490 ''Utility services: furnishing for certain buildings''.

1996—Pub. L. 104–201, div. A, title III, §§341(a)(2), 343(a)(2), Sept. 23, 1996, 110 Stat. 2489, 2490, added items 2482a and 2489a.

Pub. L. 104–106, div. A, title III, §§331(b), 336(a)(2), Feb. 10, 1996, 110 Stat. 260, 264, substituted ''Commissary stores: operation'' for ''Commissary stores: private operation'' in item 2482 and added item 2490a.

1993—Pub. L. 103–160, div. A, title XI, §1182(a)(8)(B), Nov. 30, 1993, 107 Stat. 1771, struck out item 2490a ''Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds''.

1992—Pub. L. 102–484, div. A, title III, §§362(b), 364(b)(1), Oct. 23, 1992, 106 Stat. 2380, 2382, substituted ''limitations'' for ''limitation'' in item 2487 and added item 2490a.

1990—Pub. L. 101–510, div. A, title III, §324(b)(2), Nov. 5, 1990, 104 Stat. 1531, amended item 2485 generally, substituting ''Donation of unusable food: commissary stores and other activities'' for ''Commissary stores: donation of unmarketable food''.

1988—Pub. L. 100–370, §1(j)(2), July 19, 1988, 102 Stat. 848, added item 2490.

1987—Pub. L. 100–180, div. A, title III, §§311(a)(2), 313(a)(3), Dec. 4, 1987, 101 Stat. 1073, 1074, inserted ''and pricing'' in item 2486 and added item 2489.

1986—Pub. L. 99–661, div. A, title III, §313(c), Nov. 14, 1986, 100 Stat. 3853, added items 2486, 2487, and 2488.

1985—Pub. L. 99–145, title XIV, §1460(b), Nov. 8, 1985, 99 Stat. 765, added item 2485.

1984—Pub. L. 98–525, title XIV, §1401(i)(2), Oct. 19, 1984, 98 Stat. 2620, added item 2484.

Pub. L. 98–407, title VIII, §810(b), Aug. 28, 1984, 98 Stat. 1523, added item 2483.

[§ 2481. Renumbered § 2686]

§ 2482. Commissary stores: operation

(a) PRIVATE OPERATION.—Private persons may operate commissary stores under such regulations as the Secretary of Defense may approve. A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.

(b) CONTRACTS WITH OTHER AGENCIES AND INSTRUMENTALITIES.—(1) The Defense Commissary Agency, and any other agency of the Department of Defense that supports the operation of the commissary system, may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services beneficial to the efficient management and operation of the commissary system. However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).

(2) A commissary store operated by a nonappropriated fund instrumentality of the Department of Defense shall be operated in accordance with section 2484 of this title. Subject to such section, the Secretary of Defense may authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency or any other agency of the Department of Defense that supports the operation of the commissary system to a nonappropriated fund instrumentality for the operation of a commissary store.

(c) GOVERNING BOARD.—(1) Notwithstanding section 192(d) of this title, the Secretary of Defense shall establish a governing board for the commissary system to provide advice to the Secretary regarding the prudent operation of the commissary system and to assist in the overall supervision of the Defense Commissary Agency. The Secretary may authorize the board to have such supervisory authority as the Secretary considers appropriate to permit the board to carry out its responsibilities.

(2) The Secretary of Defense shall determine the membership of the governing board, which shall include, at a minimum, appropriate representatives from each military department.

(3) The governing board shall be accountable only to the Secretary of Defense and to the civilian officer of the Department of Defense who is assigned the responsibility for the overall supervision of the Defense Commissary Agency pursuant to section 192(a) of this title. The Director of the Defense Commissary Agency shall be accountable to and report to the board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 141; Pub. L. 100–456, div. A, title III, §321, Sept. 29, 1988, 102 Stat. 1952; Pub. L. 104–106, div. A, title III, §331(a), Feb. 10, 1996, 110 Stat. 260; Pub. L. 104–201, div. A, title III, §341(b), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105–261, div. A, title III, §§361(b), 363(a), Oct. 17, 1998, 112 Stat. 1984, 1985.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2482	[Uncodified].	Aug. 1, 1953, ch. 305, §624 (last proviso), 67 Stat. 353.

This section is codified as permanent law on the basis of an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, dated September 28, 1954. The words ''and privately owned organizations'' are omitted as surplusage since under 1 U.S.C. 1 ''person'' includes such an organization.

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–261, §363(a), inserted at end ''However, the Defense Commissary Agency may not pay for any such service provided by the United States Transportation Command any amount that exceeds the price at which the service could be procured through full and open competition, as such term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)).''

Subsec. (c). Pub. L. 105–261, § 361(b), added subsec. (c).

1996—Pub. L. 104–106 struck out ''private'' after ''stores:'' in section catchline, designated existing text as subsec. (a), inserted heading, and added subsec. (b).

Subsec. (b)(1). Pub. L. 104–201 substituted ''another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain services'' for ''another department, agency, or instrumentality of the Department of Defense or another Federal agency to provide services''.

1988—Pub. L. 100–456 inserted at end ''A contract with a private person for the operation of any commissary store may not require or permit the contractor to carry out functions for the procurement of products to be sold in the store or to engage in functions relating to the overall management of a commissary system or the management of any such store. Such functions shall be carried out by personnel of the Department of Defense under regulations approved by the Secretary of Defense.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, § 363(b), Oct. 17, 1998, 112 Stat. 1986, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services provided or obtained on or after the date of the enactment of this Act [Oct. 17, 1998].''

PROHIBITION ON CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEPARTMENT OF DEFENSE RETAIL SYSTEMS

Pub. L. 105–261, div. A, title III, § 367, Oct. 17, 1998, 112 Stat. 1987, provided that:

''(a) DEFENSE RETAIL SYSTEMS DEFINED.—For purposes of this section, the term 'defense retail systems' means the defense commissary system and exchange stores and other revenue-generating facilities operated by nonappropriated fund activities of the Department of Defense for the morale, welfare, and recreation of members of the Armed Forces.

''(b) PROHIBITION.—The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by a law enacted after the date of the enactment of this Act [Oct. 17, 1998].

''(c) EFFECT ON EXISTING STUDY.—Nothing in this section shall be construed to prohibit the study of defense retail systems, known as the 'Joint Exchange Due Diligence Study', which is underway on the date of the enactment of this Act pursuant to a contract awarded by the Department of the Navy on April 21, 1998, except that any recommendation contained in the completed study regarding the operation or administration of the defense retail systems may not be implemented unless implementation of the recommendation is specifically authorized by a law enacted after the date of the enactment of this Act.''

DEMONSTRATION PROGRAM FOR OPERATION OF CERTAIN COMMISSARY STORES BY NONAPPROPRIATED FUND INSTRUMENTALITIES

Pub. L. 102–484, div. A, title III, § 363, Oct. 23, 1992, 106 Stat. 2380, provided that:

''(a) ESTABLISHMENT OF DEMONSTRATION PROGRAM.—(1) The Secretary of Defense shall establish a demonstration program to determine the feasibility of having nonappropriated fund instrumentalities operate commissary stores at military installations.

''(2) Under the program referred to in paragraph (1), the Secretary of Defense shall select nonappropriated fund instrumentalities to operate commissary stores located at military installations selected by the Secretary under subsection (b).

''(b) SELECTION OF MILITARY INSTALLATIONS.—For participation in such program, the Secretary shall select not less than one nor more than three military installations in the United States, including at least one installation where National Guard personnel, other reserve component personnel, and their dependents comprise the predominant number of the users of the facilities and services of the installation.

''(c) PROGRAM REQUIREMENT AND LIMITATION.—(1) Except as provided in paragraph (3), commissary stores operated under such program shall be operated in accordance with section 2484 of title 10, United States Code, relating to the payment of costs by the Department of Defense in connection with the operation of commissary stores.

''(2) Except as provided in paragraph (3), the Secretary of Defense may, subject to such section, authorize a transfer of goods, supplies, and facilities of, and funds appropriated for, the Defense Commissary Agency to the nonappropriated fund instrumentalities selected under subsection (a)(2) for the purpose of operating combined exchange and commissary stores under such program.

''(3) Appropriated funds may not be used pursuant to such section to pay costs associated with the direct support and operation of combined exchange and commissary stores under such program.

''(d) PERIOD OF DEMONSTRATION PROGRAM.—A nonappropriated fund instrumentality selected under subsection (a)(2) shall operate commissary store facilities under such program for the period beginning on the date of the selection of the nonappropriated fund instrumentality and ending on the date of the expiration of the period referred to in subsection (e).

''(e) REPORT.—Not later than the expiration of the one-year period beginning on the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall submit to the Congress a report on the implementation of such program. The report shall include the findings, conclusions, and recommendations of the Secretary, including a recommendation with respect to whether similar programs should be carried out at other military installations.

''(f) DEFINITION.—In this section, the term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Department of the Army or the Department of the Air Force (including the Army and Air Force Exchange Service) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.''

§ 2482a. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services

An agency or instrumentality of the Department of Defense that supports the operation of the exchange system, or the operation of a morale, welfare, and recreation system, of the Department of Defense may enter into a contract or other agreement with another element of the Department of Defense or with another Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the efficient management and operation of the exchange system or that morale, welfare, and recreation system.

(Added Pub. L. 104–201, div. A, title III, § 341(a)(1), Sept. 23, 1996, 110 Stat. 2488.)

§ 2483. Commissary stores: reimbursement for use of commissary facilities by military departments

(a) PAYMENT REQUIRED.—The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under subsection (b) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.

(b) AMOUNT.—The amount payable under subsection (a) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.

(c) COVERED FACILITIES.—This section applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of an adjustment or surcharge applied under section 2486(c) of this title.

(d) CREDITING OF PAYMENTS.—The Director of the Defense Commissary Agency shall credit amounts paid under this section for use of a facility to an appropriate account to which proceeds of an adjustment or surcharge referred to in subsection (c) are credited.

(Added Pub. L. 107–107, div. A, title III, § 332(a), Dec. 28, 2001, 115 Stat. 1058.)

PRIOR PROVISIONS

A prior section 2483 was renumbered section 2867 of this title.

§ 2484. Commissary stores: use of appropriated funds to cover operating expenses

(a) OPERATION OF AGENCY AND SYSTEM.—Except as otherwise provided in this title, the operation of the Defense Commissary Agency and the defense commissary system may be funded using such amounts as are appropriated for such purpose.

(b) OPERATING EXPENSES OF COMMISSARY STORES.—Appropriated funds may be used to cover the expenses of operating commissary stores and central product processing facilities of the defense commissary system. For purposes of this subsection, operating expenses include the following:

(1) Salaries and wages of employees of the United States, host nations, and contractors supporting commissary store operations.

(2) Utilities.

(3) Communications.

(4) Operating supplies and services.

(5) Second destination transportation costs within or outside the United States.

(6) Any cost associated with above-store-level management or other indirect support of a commissary store or a central product processing facility, including equipment maintenance and information technology costs.

(Added Pub. L. 98–525, title XIV, § 1401(i)(1), Oct. 19, 1984, 98 Stat. 2619; amended Pub. L. 106–398, § 1 [[div. A], title III, § 331(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8010], 98 Stat. 1904, 1924.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 713, 97 Stat. 1440.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 714], 96 Stat. 1833, 1852.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 714, 95 Stat. 1580.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 715, 94 Stat. 3083.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 715, 93 Stat. 1155.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 815, 92 Stat. 1246.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 814, 91 Stat. 902.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 714, 90 Stat. 1293.

Feb. 9, 1976, Pub. L. 94–212, title VII, § 714, 90 Stat. 171.

Oct. 8, 1974, Pub. L. 93–437, title VIII, § 814, 88 Stat. 1227.

Jan. 2, 1974, Pub. L. 93–238, title VII, § 714, 87 Stat. 1040.

Oct. 26, 1972, Pub. L. 92–570, title VII, § 714, 86 Stat. 1198.

Dec. 18, 1971, Pub. L. 92–204, title VII, § 714, 85 Stat. 729.

Jan. 11, 1971, Pub. L. 91–668, title VIII, § 814, 84 Stat. 2032.

Dec. 29, 1969, Pub. L. 91–171, title VI, § 614, 83 Stat. 482.

Oct. 17, 1968, Pub. L. 90–580, title V, § 513, 82 Stat. 1132.

Sept. 29, 1967, Pub. L. 90–96, title VI, § 613, 81 Stat. 244.

Oct. 15, 1966, Pub. L. 89–687, title VI, § 613, 80 Stat. 993.

Sept. 29, 1965, Pub. L. 89–213, title VI, § 613, 79 Stat. 875.

Aug. 19, 1964, Pub. L. 88–446, title V, § 513, 78 Stat. 477.

Oct. 17, 1963, Pub. L. 88–149, title V, § 513, 77 Stat. 266.

Aug. 9, 1962, Pub. L. 87–577, title V, § 513, 76 Stat. 330.

Aug. 17, 1961, Pub. L. 87–144, title VI, § 613, 75 Stat. 377.

July 7, 1960, Pub. L. 86–601, title V, § 513, 74 Stat. 351.

Aug. 18, 1959, Pub. L. 86–166, title V, § 613, 73 Stat. 380.

Aug. 22, 1958, Pub. L. 85–724, title VI, § 613, 72 Stat. 725.

Aug. 2, 1957, Pub. L. 85–117, title VI, § 614, 71 Stat. 325.

July 2, 1956, ch. 488, title VI, § 614, 70 Stat. 469.

July 13, 1955, ch. 358, title VI, § 617, 69 Stat. 317.

June 30, 1954, ch. 432, title VII, § 717, 68 Stat. 353.

Aug. 1, 1953, ch. 305, title VI, § 624, 67 Stat. 353.

July 10, 1952, ch. 630, title VI, § 627, 66 Stat. 535.

Oct. 18, 1951, ch. 512, title VI, § 628, 65 Stat. 449.

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing that funds available to the Department of Defense could be used to pay for certain costs in connection with the operation of commissary stores only on a reimbursable basis and allowed transportation and utilities to be furnished for the operation of those stores outside of the United States or in Alaska and Hawaii.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title III, § 331(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2001.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2482 of this title.

§ 2485. Donation of unusable food: commissary stores and other activities

(a) The Secretary of Defense may donate food described in subsection (b) to entities specified under subsection (d).

(b) Food that may be donated under this section is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

(1) is certified as edible by appropriate food inspection technicians;

(2) would otherwise be destroyed as unusable; and

(3) in the case of commissary store food, is unmarketable and unsaleable.

(c) In the case of commissary store food, a donation under this section shall take place at the site of the commissary that is donating the food.

(d) A donation under this section may only be made to an entity that is one of the following:

(1) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(2) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

(3) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(4) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

(e) This section does not authorize any service (including transportation) to be provided in connection with a donation under this section.

(Added Pub. L. 99–145, title XIV, § 1460(a), Nov. 8, 1985, 99 Stat. 764; amended Pub. L. 101–510, div. A, title III, § 324(a), (b)(1), Nov. 5, 1990, 104 Stat. 1530; Pub. L. 104–201, div. A, title III, § 365, Sept. 23, 1996, 110 Stat. 2494.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201, § 365(a), (b)(1), substituted ''Secretary of Defense'' for ''Secretary of a military department'' and ''entities specified under subsection (d)'' for ''authorized charitable nonprofit food banks''.

Subsec. (b). Pub. L. 104–201, § 365(a), (c), inserted ''rations known as humanitarian daily rations (HDRs),'' after ''(MREs),'' and substituted ''Secretary of Defense'' for ''Secretary of a military department''.

Subsec. (d). Pub. L. 104–201, § 365(b)(2), substituted ''may only be made to an entity that is one of the following:'' for ''may only be made to an entity that is authorized by the Secretary of Defense or the Secretary of Health and Human Services to receive donations under this section.'' and added pars. (1) to (4).

1990—Pub. L. 101–510, § 324(b)(1), substituted ''Donation of unusable food: commissary stores and other activities'' for ''Commissary stores: donation of unmarketable food'' in section catchline.

Subsec. (a). Pub. L. 101–510, § 324(a)(1), struck out ''commissary store'' after ''donate''.

Subsec. (b). Pub. L. 101–510, § 324(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: ''Food that may be donated under this section is food of a commissary store—

''(1) that is—

''(A) unmarketable;

''(B) unsaleable; and

''(C) certified as edible by appropriate food inspection technicians; and

''(2) that would otherwise be destroyed as unusable.''

Subsec. (c). Pub. L. 101–510, § 324(a)(3), substituted ''In the case of commissary store food, a donation'' for ''A donation''.

§ 2486. Commissary stores: merchandise that may be sold; uniform surcharges and pricing

(a) IN GENERAL.—Commissary stores are similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items only in the following categories:

(1) Health and beauty aids.
(2) Meat and poultry.
(3) Fish and seafood.
(4) Produce.
(5) Food and non-food grocery items.
(6) Bakery goods.
(7) Dairy products.
(8) Tobacco products.
(9) Delicatessen items.
(10) Frozen foods.
(11) Magazines and other periodicals.
(12) Such other merchandise categories as the Secretary of Defense may prescribe, except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.

(c) UNIFORM SALES PRICE SURCHARGE OR ADJUSTMENT.—An adjustment of or surcharge on sales prices in commissary stores under subsection (d) or section 2685(a) of this title or for any other purpose shall be applied as a uniform percentage of the sales price of all merchandise sold in, at, or by commissary stores. Effective on November 18, 1997, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.

(d) SALES PRICE ESTABLISHMENT.—(1) The Secretary of Defense shall establish the sales price of each item of merchandise sold in, at, or by commissary stores at the level that will recoup the actual product cost of the item (consistent with this section and section 2685 of this title).

(2) Any change in the pricing policies for merchandise sold in, at, or by commissary stores shall not take effect until the Secretary of Defense submits written notice of the proposed change to Congress and a period of 90 days of continuous session of Congress expires following the date on which notice was received. For purposes of this paragraph, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment or recess of more than three days to a day certain are excluded in a computation of such 90-day period.

(3) The sales price of merchandise and services sold in, at, or by commissary stores shall be adjusted to cover the following:

(A) The cost of first destination commercial transportation of the merchandise in the United States to the place of sale.

(B) The actual or estimated cost of shrinkage, spoilage, and pilferage of merchandise under the control of commissary stores.

(e) SPECIAL RULE FOR BRAND-NAME COMMERCIAL ITEMS.—The Secretary of Defense may not use the exception provided in section 2304(c)(5) of this title regarding the procurement of a brand-name commercial item for resale in, at, or

by commissary stores unless the commercial item is regularly sold outside of commissary stores under the same brand name as the name by which the commercial item will be sold in, at, or by commissary stores. In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.

(f) SPECIAL RULES FOR CERTAIN MERCHANDISE.—Notwithstanding the general requirement that merchandise sold in, at, or by commissary stores be commissary store inventory, the Secretary of Defense may authorize the sale of tobacco products as noncommissary store inventory. Subsections (c) and (d) shall not apply to the pricing of such merchandise items.

(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

(i) The person who presented the check.

(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

(5) In this subsection, the term ''commissary trust revolving fund'' means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

(Added Pub. L. 99–661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 100–180, div. A, title III, §313(a)(1), (2), Dec. 4, 1987, 101 Stat. 1073, 1074; Pub. L. 104–201, div. A, title III, §342(a), Sept. 23, 1996, 110 Stat. 2489; Pub. L. 105–85, div. A, title III, §§372(a)–(e), 373, Nov. 18, 1997, 111 Stat. 1706, 1707; Pub. L. 105–261, div. A, title III, §364, Oct. 17, 1998, 112 Stat. 1986; Pub. L. 106–65, div. A, title X, §1066(a)(21), Oct. 5, 1999, 113 Stat. 771; Pub. L. 106–398, §1 [[div. A], title III, §§332(a), 334], Oct. 30, 2000, 114 Stat. 1654, 1654A–59, 1654A–60; Pub. L. 107–314, div. A, title X, §1041(a)(14), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (b)(12). Pub. L. 107–314 substituted '', except that the Secretary shall notify Congress of any addition of, or change in, a merchandise category under this paragraph.'' for '', except that the Secretary shall submit to Congress, not later than March 1 of each year, a report describing—

''(A) any addition of, or change in, a merchandise category proposed to be made under this paragraph during the one-year period beginning on that date; and

''(B) those additions and changes in merchandise categories actually made during the preceding one-year period.''

2000—Subsec. (b)(11), (12). Pub. L. 106–398, §1 [[div. A], title III, §334(a)], added par. (11) and redesignated former par. (11) as (12).

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title III, §332(a)(1)], substituted ''subsection (d) or section'' for ''section 2484(b) or''.

Subsec. (d)(1). Pub. L. 106–398, §1 [[div. A], title III, §332(a)(2)(A)], substituted ''section 2685'' for ''sections 2484 and 2685''.

Subsec. (d)(3). Pub. L. 106–398, §1 [[div. A], title III, §332(a)(2)(B)], added par. (3).

Subsec. (f). Pub. L. 106–398, §1 [[div. A], title III, §334(b)], struck out ''(1)'' before ''Notwithstanding'', substituted ''tobacco products'' for ''items in the merchandise categories specified in paragraph (2)'', and struck out par. (2) which read as follows: ''The merchandise categories referred to in paragraph (1) are as follows:

''(A) Magazines and other periodicals.

''(B) Tobacco products.''

1999—Subsec. (c). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998,'' in second sentence.

1998—Subsec. (g). Pub. L. 105–261 added subsec. (g).

1997—Subsec. (a). Pub. L. 105–85, §372(e)(1), inserted heading.

Subsec. (b). Pub. L. 105–85, §372(a)(1), inserted heading and substituted ''Merchandise sold in, at, or by commissary stores may include items only in the following categories:'' for ''Merchandise sold in commissary stores may include items in the following categories:'' in introductory provisions.

Subsec. (b)(11). Pub. L. 105–85, §372(a)(2), amended par. (11) generally. Prior to amendment, par. (11) read as follows: ''Other categories designated in regulations prescribed by the Secretary of a military department and approved by the Secretary of Defense.''

Subsec. (c). Pub. L. 105–85, §372(b), inserted heading, substituted ''in, at, or by commissary stores.'' for ''in commissary stores.'', and inserted at end ''Effective on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998, the uniform percentage shall be equal to five percent and may not be changed except by a law enacted after such date.''

Subsec. (d). Pub. L. 105–85, §372(c), inserted heading and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall prescribe regulations establishing uniform pricing policies for merchandise authorized for sale by this section. The policies in the regulations shall—

''(1) require the establishment of a sales price of each item of merchandise at a level which will recoup the actual product cost of the item (consistent with this section and sections 2484 and 2685 of this title); and

''(2) promote the lowest practical price of merchandise sold at commissary stores.''

Subsec. (e). Pub. L. 105–85, §373, inserted at end ''In determining whether a brand name commercial item is regularly sold outside of commissary stores, the Secretary shall consider only sales of the item on a regional or national basis by commercial grocery or other retail operations consisting of multiple stores.''

Pub. L. 105–85, §372(e)(2), inserted heading and substituted ''in, at, or by commissary stores'' for ''in commissary stores'' in two places.

Subsec. (f). Pub. L. 105–85, § 372(d), added subsec. (f).

1996—Subsec. (e). Pub. L. 104–201 added subsec. (e).

1987—Pub. L. 100–180, § 313(a)(2), inserted ''and pricing'' in section catchline.

Subsec. (d). Pub. L. 100–180, § 313(a)(1), added subsec. (d).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title III, § 332(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60, provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 2001.''

REGULATIONS

Section 313(b) of Pub. L. 100–180 required Secretary of Defense to prescribe regulations required by subsec. (d) of this section not later than 90 days after Dec. 4, 1987.

SAVINGS PROVISION

Section 342(b) of Pub. L. 104–201 provided that: ''Section 2486(e) of title 10, United States Code, as added by subsection (a), shall not affect the terms, conditions, or duration of any contract or other agreement entered into by the Secretary of Defense before the date of the enactment of this Act [Sept. 23, 1996] for the procurement of commercial items for resale in commissary stores.''

REPORT ON MERCHANDISE CATEGORIES

Section 372(f) of Pub. L. 105–85 provided that: ''Not later than 30 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a report specifying the merchandise categories authorized for sale sold in, at, or by commissary stores pursuant to regulations prescribed under subsection (b)(11) of section 2486 of title 10, United States Code, as in effect before such date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2483, 2487 of this title.

§ 2487. Commissary stores: release of certain commercially valuable information to the public

(a) AUTHORITY TO LIMIT RELEASE.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with subsection (b).

(2) Paragraph (1) applies to the following:

(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

(i) Data relating to sales of goods or services.

(ii) Demographic information on customers.

(iii) Any other information pertaining to commissary transactions and operations.

(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

(b) RELEASE AUTHORITY.—(1) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in subsection (a)(2).

(2) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

(3) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in subsection (a)(2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

(4) Each contract entered into under this subsection shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

(c) FORM OF RELEASE.—Information described in subsection (a)(2) may not be released, under subsection (b) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

(d) RECEIPTS.—Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.

(e) DEFINITION.—In this section, the term ''commissary surcharge'' means any adjustment or surcharge applied under section 2486(c) of this title.

(Added Pub. L. 99–661, div. A, title III, § 313(a), Nov. 14, 1986, 100 Stat. 3852; amended Pub. L. 102–484, div. A, title III, § 364(a), (b)(2), Oct. 23, 1992, 106 Stat. 2381, 2382; Pub. L. 104–106, div. A, title III, § 332, Feb. 10, 1996, 110 Stat. 260; Pub. L. 107–107, div. A, title III, § 333(a), Dec. 28, 2001, 115 Stat. 1058.)

AMENDMENTS

2001—Pub. L. 107–107 amended section catchline and text generally, substituting provisions relating to release to the public of certain commercially valuable information generated by commissaries for provisions relating to limitations on release of sales information generated by commissaries.

1996—Subsec. (b). Pub. L. 104–106 inserted ''unless the agreement is between the Defense Commissary Agency and a manufacturer, distributor, or other vendor doing business with the Agency and is restricted to information directly related to merchandise provided by that manufacturer, distributor, or vendor'' before period at end of second sentence.

1992—Subsecs. (a) and (b). Pub. L. 102–484, § 364(a), added subsecs. (a) and (b) and struck out former subsecs. (a) and (b) which read as follows:

''(a) In order to protect commercially valuable information, the Secretary of a military department, except as provided in subsection (b), may not release to the public those portions of computer data generated by electronic scanners used in military commissaries, and those portions of reports generated by such scanners, that contain the following information:

''(1) The unit prices of items sold.

''(2) The number of units of items sold.

''(b) Information subject to subsection (a) may be released under a written agreement. Any such agreement shall require payment for such information and shall specify the amount of such payment.''

Subsec. (c). Pub. L. 102–484, § 364(b)(2), inserted heading.

§ 2488. Nonappropriated fund instrumentalities: purchase of alcoholic beverages

(a) The Secretary of Defense shall provide that—

(1) covered alcoholic beverage purchases made for resale on a military installation located in the United States shall be made from the most competitive source and distributed in the most economical manner, price and other factors considered, except that

(2) in the case of malt beverages and wine, such purchases shall be made from, and delivery shall be accepted from, a source within the State in which the military installation concerned is located.

(b) If a military installation located in the contiguous States is located in more than one State, a source of supply in any State in which the installation is located shall be considered for the purposes of subsection (a)(2) to be a source within the State in which the installation is located.

(c)(1) In the case of covered alcoholic beverage purchases of distilled spirits, to determine whether a nonappropriated fund instrumentality of the Department of Defense provides the most economical method of distribution to package stores, the Secretary of Defense shall consider all components of the distribution costs incurred by the nonappropriated fund instrumentality, such as overhead costs (including costs associated with management, logistics, administration, depreciation, and utilities), the costs of carrying inventory, and handling and distribution costs.

(2) The Secretary shall use the agencies performing audit functions on behalf of the armed forces and the Inspector General of the Department of Defense to make determinations under this subsection.

(d) In this section:

(1) The term ''covered alcoholic beverage purchases'' means purchases of alcoholic beverages by a nonappropriated fund instrumentality of the Department of Defense with nonappropriated funds.

(2) The term ''State'' includes the District of Columbia.

(Added Pub. L. 99–661, div. A, title III, §313(a), Nov. 14, 1986, 100 Stat. 3853; amended Pub. L. 100–180, div. A, title III, §312(a), Dec. 4, 1987, 101 Stat. 1073; Pub. L. 104–106, div. A, title III, §333, Feb. 10, 1996, 110 Stat. 261; Pub. L. 106–398, §1 [[div. A], title III, §335], Oct. 30, 2000, 114 Stat. 1654, 1654A–61.)

AMENDMENTS

2000—Subsec. (c)(2), (3). Pub. L. 106–398 redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''If the use of a private distributor would subject covered alcoholic beverage purchases of distilled spirits to direct or indirect State taxation, a nonappropriated fund instrumentality shall be considered to be the most economical method of distribution regardless of the results of the determination under paragraph (1).''

1996—Subsec. (a)(1). Pub. L. 104–106, §333(a), inserted ''and distributed in the most economical manner'' after ''most competitive source''.

Subsecs. (c), (d). Pub. L. 104–106, §333(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1987—Subsec. (a)(2). Pub. L. 100–180 struck out ''purchased for resale on a military installation located in the contiguous States'' after ''malt beverages and wines''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 312(b) of Pub. L. 100–180 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to purchases of malt beverages and wine after the end of the 60-day period beginning on the date of the enactment of this Act [Dec. 4, 1987].''

PROCUREMENT OF MALT BEVERAGES AND WINE BY NONAPPROPRIATED FUND ACTIVITY

Pub. L. 107–248, title VIII, §8092, Oct. 23, 2002, 116 Stat. 1558, provided that: ''None of the funds appropriated by this Act [see Tables for classification] shall be used for the support of any nonappropriated funds activity of the Department of Defense that procures malt beverages and wine with nonappropriated funds for resale (including such alcoholic beverages sold by the drink) on a military installation located in the United States unless such malt beverages and wine are procured within that State, or in the case of the District of Columbia, within the District of Columbia, in which the military installation is located: *Provided*, That in a case in which the military installation is located in more than one State, purchases may be made in any State in which the installation is located: *Provided further*, That such local procurement requirements for malt beverages and wine shall apply to all alcoholic beverages only for military installations in States which are not contiguous with another State: *Provided further*, That alcoholic beverages other than wine and malt beverages, in contiguous States and the District of Columbia shall be procured from the most competitive source, price and other factors considered.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–117, div. A, title VIII, §8108, Jan. 10, 2002, 115 Stat. 2271.

Pub. L. 106–259, title VIII, §8108, Aug. 9, 2000, 114 Stat. 698.

Pub. L. 106–79, title VIII, §8132, Oct. 25, 1999, 113 Stat. 1266.

Pub. L. 104–61, title VIII, §8055, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, §8058A, Sept. 30, 1994, 108 Stat. 2632.

Pub. L. 103–139, title VIII, §8099A, Nov. 11, 1993, 107 Stat. 1462.

Pub. L. 102–396, title IX, §9114, Oct. 6, 1992, 106 Stat. 1929.

Pub. L. 102–172, title VIII, §8111A, Nov. 26, 1991, 105 Stat. 1200.

Pub. L. 101–511, title VIII, §8068, Nov. 5, 1990, 104 Stat. 1889.

Pub. L. 101–165, title IX, §9093, Nov. 21, 1989, 103 Stat. 1149.

Pub. L. 100–463, title VIII, §8122, Oct. 1, 1988, 102 Stat. 2270–40.

Pub. L. 100–202, §101(b) [title VIII, §8081], Dec. 22, 1987, 101 Stat. 1329–43, 1329–76.

Pub. L. 99–500, §101(c) [title IX, §9090], Oct. 18, 1986, 100 Stat. 1783–82, 1783–116, and Pub. L. 99–591, §101(c) [title IX, §9090], Oct. 30, 1986, 100 Stat. 3341–82, 3341–116.

Pub. L. 99–190, §101(b) [title VIII, §8099], Dec. 19, 1985, 99 Stat. 1185, 1219.

§ 2489. Overseas package stores: treatment of United States wines

The Secretary of Defense shall ensure that each nonappropriated-fund activity engaged principally in selling alcoholic beverage products in a packaged form (commonly referred to as a ''package store'') that is located at a military installation outside the United States shall

give appropriate treatment with respect to wines produced in the United States to ensure that such wines are given, in general, an equitable distribution, selection, and price when compared with wines produced by the host nation.

(Added Pub. L. 100–180, div. A, title III, § 311(a)(1), Dec. 4, 1987, 101 Stat. 1073.)

REGULATIONS DEADLINE

Section 311(b) of Pub. L. 100–180 directed Secretary of Defense to prescribe regulations to implement this section not later than 90 days after Dec. 4, 1987.

§ 2489a. Sale or rental of sexually explicit material prohibited

(a) PROHIBITION OF SALE OR RENTAL.—The Secretary of Defense may not permit the sale or rental of sexually explicit material on property under the jurisdiction of the Department of Defense.

(b) PROHIBITION OF OFFICIALLY PROVIDED SEXUALLY EXPLICIT MATERIAL.—A member of the armed forces or a civilian officer or employee of the Department of Defense acting in an official capacity may not provide for sale, remuneration, or rental sexually explicit material to another person.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to implement this section.

(d) DEFINITIONS.—In this section:

(1) The term ''sexually explicit material'' means an audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium, the dominant theme of which depicts or describes nudity, including sexual or excretory activities or organs, in a lascivious way.

(2) The term ''property under the jurisdiction of the Department of Defense'' includes commissaries, all facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps exchanges, and ships' stores.

(Added Pub. L. 104–201, div. A, title III, § 343(a)(1), Sept. 23, 1996, 110 Stat. 2489.)

EFFECTIVE DATE

Section 343(b) of Pub. L. 104–201 provided that: ''Subsection (a) of section 2489a of title 10, United States Code, as added by subsection (a) of this section, shall take effect 90 days after the date of the enactment of this Act [Sept. 23, 1996].''

[§ 2490. Renumbered § 2868]

§ 2490a. Combined exchange and commissary stores

(a) AUTHORITY.—The Secretary of Defense may authorize a nonappropriated fund instrumentality to operate a military exchange and a commissary store as a combined exchange and commissary store on a military installation.

(b) LIMITATIONS.—(1) Not more than ten combined exchange and commissary stores may be operated pursuant to this section.

(2) The Secretary may select a military installation for the operation of a combined exchange and commissary store under this section only if—

(A) the installation is to be closed, or has been or is to be realigned, under a base closure law; or

(B) a military exchange and a commissary store are operated at the installation by separate entities at the time of, or immediately before, such selection and it is not economically feasible to continue that separate operation.

(c) OPERATION AT CARSWELL FIELD.—Combined exchange and commissary stores operated under this section shall include the combined exchange and commissary store that is operated at the Naval Air Station Fort Worth, Joint Reserve Center, Carswell Field, Texas, under the authority provided in section 375 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2736).

(d) ADJUSTMENTS AND SURCHARGES.—Adjustments to, and surcharges on, the sales price of a grocery food item sold in a combined exchange and commissary store under this section shall be provided for in accordance with the same laws that govern such adjustments and surcharges for items sold in a commissary store of the Defense Commissary Agency.

(e) USE OF APPROPRIATED FUNDS.—(1) If a nonappropriated fund instrumentality incurs a loss in operating a combined exchange and commissary store at a military installation under this section as a result of the requirement set forth in subsection (d), the Secretary may authorize a transfer of funds available for the Defense Commissary Agency to the nonappropriated fund instrumentality to offset the loss.

(2) The total amount of appropriated funds transferred during a fiscal year to support the operation of a combined exchange and commissary store at a military installation under this section may not exceed an amount that is equal to 25 percent of the amount of appropriated funds that was provided for the operation of the commissary store of the Defense Commissary Agency on that installation during the last full fiscal year of operation of that commissary store.

(f) DEFINITIONS.—In this section:

(1) The term ''nonappropriated fund instrumentality'' means the Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(2) The term ''base closure law'' has the meaning given such term by section 2667(h) of this title.

(Added Pub. L. 104–106, div. A, title III, § 336(a)(1), Feb. 10, 1996, 110 Stat. 263; amended Pub. L. 105–85, div. A, title X, § 1061(d), Nov. 18, 1997, 111 Stat. 1891.)

REFERENCES IN TEXT

Section 375 of the National Defense Authorization Act for Fiscal Year 1995, referred to in subsec. (c), is section 375 of Pub. L. 103–337, div. A, title III, Oct. 5, 1994, 108 Stat. 2736, as amended, which is not classified to the Code.

AMENDMENTS

1997—Subsec. (f)(2). Pub. L. 105–85 substituted ''section 2667(h)'' for ''section 2667(g)''.

PRIOR PROVISIONS

A prior section 2490a was renumbered section 2783 of this title.

[§ 2491. Renumbered § 2500]

§ 2492. Overseas commissary and exchange stores: access and purchase restrictions

(a) GENERAL AUTHORITY.—(1) The Secretary of Defense may establish restrictions on the ability of eligible patrons of commissary and exchange stores located outside of the United States to purchase certain merchandise items (or the quantity of certain merchandise items) otherwise included within an authorized merchandise category if the Secretary determines that such restrictions are necessary to prevent the resale of such merchandise in violation of treaty obligations of the United States or host nation laws (to the extent such laws are not inconsistent with United States laws).

(2) In establishing a quantity or other restriction, the Secretary—

(A) may not discriminate among the various categories of eligible patrons of the commissary and exchange system; and

(B) shall ensure that the restriction is consistent with the purpose of the overseas commissary and exchange system to provide reasonable access for eligible patrons to purchase merchandise items made in the United States.

(b) CONTROLLED ITEM LISTS.—For each location outside the United States that is served by the commissary system or the exchange system, the Secretary of Defense may maintain a list of controlled merchandise items, except that, after October 17, 1998, the Secretary may not change the list to add a merchandise item unless, before making the change, the Secretary submits to Congress a notice of the proposed addition and the reasons for the addition of the item.

(c) NOTIFICATION OF CONDITIONS NECESSITATING RESTRICTIONS.—The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.

(Added Pub. L. 105–261, div. A, title III, § 365(a), Oct. 17, 1998, 112 Stat. 1986; amended Pub. L. 106–65, div. A, title X, § 1066(a)(22), Oct. 5, 1999, 113 Stat. 771; Pub. L. 107–314, div. A, title X, § 1041(a)(15), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''The Secretary of Defense shall notify Congress of any change proposed or made to any of the host nation laws or any of the treaty obligations of the United States, and any changed conditions within host nations, if the change would necessitate the use of quantity or other restrictions on purchases in commissary and exchange stores located outside the United States.''

1999—Subsec. (b). Pub. L. 106–65 substituted ''October 17, 1998'' for ''the date of the enactment of this section''.

§ 2493. Fisher Houses: administration as nonappropriated fund instrumentality

(a) FISHER HOUSES AND SUITES DEFINED.—In this section:

(1) The term ''Fisher House'' means a housing facility that—

(A) is located in proximity to a health care facility of the Army, the Air Force, or the Navy;

(B) is available for residential use on a temporary basis by patients of that health care facility, members of the families of such patients, and others providing the equivalent of familial support for such patients; and

(C) is constructed and donated by—

(i) the Zachary and Elizabeth M. Fisher Armed Services Foundation; or

(ii) another source, if the Secretary of the military department concerned designates the housing facility as a Fisher House.

(2) The term ''Fisher Suite'' means one or more rooms that—

(A) meet the requirements of subparagraphs (A) and (B) of paragraph (1);

(B) are constructed, altered, or repaired and donated by a source described in subparagraph (C) of that paragraph; and

(C) are designated by the Secretary of the military department concerned as a Fisher Suite.

(b) NONAPPROPRIATED FUND INSTRUMENTALITY.—The Secretary of each military department shall administer all Fisher Houses and Fisher Suites associated with health care facilities of that military department as a nonappropriated fund instrumentality of the United States.

(c) GOVERNANCE.—The Secretary of each military department shall establish a system for the governance of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(d) CENTRAL FUND.—The Secretary of each military department shall establish a single fund as the source of funding for the operation, maintenance, and improvement of all Fisher Houses and Fisher Suites of the nonappropriated fund instrumentality required by subsection (b) for that military department.

(e) ACCEPTANCE OF CONTRIBUTIONS; IMPOSITION OF FEES.—(1) The Secretary of a military department may—

(A) accept money, property, and services donated for the support of a Fisher House or Fisher Suite associated with health care facilities of that military department; and

(B) may impose fees relating to the use of such Fisher Houses and Fisher Suites.

(2) All monetary donations, and the proceeds of the disposal of any other donated property, accepted by the Secretary of a military department under this subsection shall be credited to the fund established under subsection (d) for the Fisher Houses and Fisher Suites associated with

health care facilities of that military department and shall be available to that Secretary to support all such Fisher Houses and Fisher Suites.

(f) BASE OPERATING SUPPORT.—The Secretary of a military department may provide base operating support for Fisher Houses associated with health care facilities of that military department.

(g) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary of each military department shall submit to Congress a report describing the operation of Fisher Houses and Fisher Suites associated with health care facilities of that military department. The report shall include, at a minimum, the following:

(1) The amount in the fund established by that Secretary under subsection (d) as of October 1 of the previous year.

(2) The operation of the fund during the preceding fiscal year, including—

(A) all gifts, fees, and interest credited to the fund; and

(B) all disbursements from the fund.

(3) The budget for the operation of the Fisher Houses and Fisher Suites for the fiscal year in which the report is submitted.

(Added Pub. L. 105–261, div. A, title IX, § 906(a)(1), Oct. 17, 1998, 112 Stat. 2093; amended Pub. L. 106–398, § 1 [[div. A], title IX, § 914(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230; Pub. L. 107–314, div. A, title III, § 321, Dec. 2, 2002, 116 Stat. 2510.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–314 amended heading and text of subsec. (f) generally. Prior to amendment text read as follows: ''The Secretary of the Navy shall provide base operating support for Fisher Houses associated with health care facilities of the Navy. The level of the support shall be equivalent to the base operating support that the Secretary provides for morale, welfare, and recreation category B community activities (as defined in regulations, prescribed by the Secretary, that govern morale, welfare, and recreation activities associated with Navy installations).''

2000—Subsecs. (f), (g). Pub. L. 106–398 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IX, § 914(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as of October 17, 1998, as if included in section 2493 of title 10, United States Code, as enacted by section 906(a) of Public Law 105–261.''

SAVINGS PROVISIONS FOR CERTAIN NAVY EMPLOYEES

Pub. L. 106–398, § 1 [[div. A], title IX, § 914(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that:

''(1) The Secretary of the Navy may continue to employ, and pay out of appropriated funds, any employee of the Navy in the competitive service who, as of October 17, 1998, was employed by the Navy in a position at a Fisher House administered by the Navy, but only for so long as the employee is continuously employed in that position.

''(2) After a person vacates a position in which the person was continued to be employed under the authority of paragraph (1), a person employed in that position shall be employed as an employee of a nonappropriated fund instrumentality of the United States and may not be paid for services in that position out of appropriated funds.

''(3) In this subsection:

''(A) The term 'Fisher House' has the meaning given the term in section 2493(a)(1) of title 10, United States Code.

''(B) The term 'competitive service' has the meaning given the term in section 2102 of title 5, United States Code.''

[Pub. L. 106–398, § 1 [[div. A], title IX, § 914(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–230, provided that: ''Subsection (b) [set out above] applies with respect to the pay period that includes October 17, 1998, and subsequent pay periods.'']

ESTABLISHMENT OF FUNDS AND FUNDING TRANSITION

Pub. L. 105–261, div. A, title IX, § 906(b)–(e), Oct. 17, 1998, 112 Stat. 2095, provided that:

''(b) ESTABLISHMENT OF FUNDS.—Not later than 90 days after the date of the enactment of this Act [Oct. 17, 1998], the Secretary of each military department shall—

''(1) establish the fund required under section 2493(d) of title 10, United States Code (as added by subsection (a)); and

''(2) close the Fisher House Trust Fund established for that department under section 2221 of such title and transfer the amounts in the closed fund to the newly established fund.

''(c) FUNDING TRANSITION.—(1) Of the amount authorized to be appropriated pursuant to section 301(2) [112 Stat. 1960] for operation and maintenance for the Navy, the Secretary of the Navy shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Navy.

''(2) Of the amount authorized to be appropriated pursuant to section 301(4) for operation and maintenance for the Air Force, the Secretary of the Air Force shall transfer to the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)), such amount as that Secretary considers appropriate for establishing in the fund a corpus sufficient for operating Fisher Houses and Fisher Suites associated with health care facilities of the Department of the Air Force.

''(d) REPORTING REQUIREMENTS.—The Secretary of each military department, upon completing the actions required of the Secretary under subsections (b) and (c), shall submit to Congress a report containing—

''(1) the certification of that Secretary that those actions have been completed; and

''(2) a statement of the amount deposited in the fund established by that Secretary under section 2493(d) of title 10, United States Code (as added by subsection (a)).

''(e) AVAILABILITY OF TRANSFERRED AMOUNTS.—Amounts transferred under subsection (b) or (c) to a fund established under section 2493(d) of title 10, United States Code (as added by subsection (a)), shall be available without fiscal year limitation for the purposes for which the fund is established and shall be administered as nonappropriated funds.''

§ 2494. Uniform funding and management of morale, welfare, and recreation programs

(a) AUTHORITY FOR UNIFORM FUNDING AND MANAGEMENT.—Under regulations prescribed by the Secretary of Defense, funds appropriated to the Department of Defense and available for morale, welfare, and recreation programs may be treated as nonappropriated funds and expended in accordance with laws applicable to the expenditures of nonappropriated funds. When made available for morale, welfare, and recreation programs under such regulations, appropriated funds shall be considered to be nonappropriated

funds for all purposes and shall remain available until expended.

(b) CONDITIONS ON AVAILABILITY.—Funds appropriated to the Department of Defense may be made available to support a morale, welfare, or recreation program only if the program is authorized to receive appropriated fund support and only in the amounts the program is authorized to receive.

(c) CONVERSION OF EMPLOYMENT POSITIONS.—(1) The Secretary of Defense may identify positions of employees in morale, welfare, and recreation programs within the Department of Defense who are paid with appropriated funds whose status may be converted from the status of an employee paid with appropriated funds to the status of an employee of a nonappropriated fund instrumentality.

(2) The status of an employee in a position identified by the Secretary under paragraph (1) may, with the consent of the employee, be converted to the status of an employee of a nonappropriated fund instrumentality. An employee who does not consent to the conversion may not be removed from the position because of the failure to provide such consent.

(3) The conversion of an employee from the status of an employee paid by appropriated funds to the status of an employee of a nonappropriated fund instrumentality shall be without a break in service for the concerned employee. The conversion shall not entitle an employee to severance pay, back pay or separation pay under subchapter IX of chapter 55 of title 5, or be considered an involuntary separation or other adverse personnel action entitling an employee to any right or benefit under such title or any other provision of law or regulation.

(4) In this subsection, the term ''an employee of a nonappropriated fund instrumentality'' means an employee described in section 2105(c) of title 5.

(Added Pub. L. 107–314, div. A, title III, §323(a), Dec. 2, 2002, 116 Stat. 2510.)

CHAPTER 148—NATIONAL DEFENSE TECHNOLOGY AND INDUSTRIAL BASE, DEFENSE REINVESTMENT, AND DEFENSE CONVERSION

Subchapter		Sec.
I.	Definitions	2500
II.	Policies and Planning	2501
III.	Programs for Development, Application, and Support of Dual-Use Technologies	2511
IV.	Manufacturing Technology	2521
V.	Miscellaneous Technology Base Policies and Programs	2531
VI.	Defense Export Loan Guarantees	2540
VII.	Critical Infrastructure Protection Loan Guarantees	2541

PRIOR PROVISIONS

A prior chapter 148, comprised of section 2501 et seq., relating to defense industrial base, was repealed, except for sections 2504 to 2507, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2504 to 2507 of that chapter were renumbered sections 2531 to 2534, respectively, of this chapter by Pub. L. 102–484, §4202(a).

A prior chapter 149, comprised of sections 2511 to 2518, relating to manufacturing technology, was repealed, except for sections 2517 and 2518, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2517 and 2518 of that chapter were renumbered sections 2523 and 2522, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§4232(a), 4233(a), Oct. 23, 1992, 106 Stat. 2687, and were subsequently repealed.

Another prior chapter 149, comprised of section 2511, was successively renumbered chapter 150 of this title, comprised of section 2521, then chapter 152 of this title, comprised of section 2540 et seq.

A prior chapter 150, comprised of sections 2521 to 2526, relating to development of dual-use critical technologies, was repealed, except for sections 2524 to 2526, by Pub. L. 102–484, div. D, title XLII, §4202(a), Oct. 23, 1992, 106 Stat. 2659. Sections 2524, 2525, and 2526 of that chapter were renumbered sections 2513, 2517, and 2518, respectively, of this chapter by Pub. L. 102–484, div. D, title XLII, §§4223(a), 4227(a), 4228, Oct. 23, 1992, 106 Stat. 2681, 2685. Section 2513 of this chapter was subsequently repealed.

Another prior chapter 150, comprised of section 2521, was renumbered chapter 152 of this title, comprised of section 2540 et seq.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, added item for subchapter VII.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(4), Oct. 17, 1998, 112 Stat. 2136, substituted ''2500'' for ''2491'' in item for subchapter I and struck out ''and Dual-Use Assistance Extension Programs'' after ''Technology'' in item for subchapter IV.

1996—Pub. L. 104–106, div. A, title XIII, §1321(a)(2), Feb. 10, 1996, 110 Stat. 477, added item for subchapter VI.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 50 App. section 2171.

SUBCHAPTER I—DEFINITIONS

Sec.
2500. Definitions.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title III, §371(c)(4), Nov. 18, 1997, 111 Stat. 1705, renumbered item 2491 as 2500.

§ 2500. Definitions

In this chapter:

(1) The term ''national technology and industrial base'' means the persons and organizations that are engaged in research, development, production, or maintenance activities conducted within the United States and Canada.

(2) The term ''dual-use'' with respect to products, services, standards, processes, or acquisition practices, means products, services, standards, processes, or acquisition practices, respectively, that are capable of meeting requirements for military and nonmilitary applications.

(3) The term ''dual-use critical technology'' means a critical technology that has military applications and nonmilitary applications.

(4) The term ''technology and industrial base sector'' means a group of public or private persons and organizations that engage in, or are capable of engaging in, similar research, development, or production activities.

(5) The terms ''Federal laboratory'' and ''laboratory'' have the meaning given the term ''laboratory'' in section 12(d)(2) of the Steven-

son-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d)(2)), except that such terms include a federally funded research and development center sponsored by a Federal agency.

(6) The term ''critical technology'' means a technology that is—

(A) a national critical technology; or

(B) a defense critical technology.

(7) The term ''national critical technology'' means a technology that appears on the list of national critical technologies contained in the most recent biennial report on national critical technologies submitted to Congress by the President pursuant to section 603(d)[1] of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683(d)).

(8) The term ''defense critical technology'' means a technology that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.

(9) The term ''eligible firm'' means a company or other business entity that, as determined by the Secretary of Commerce—

(A) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States; and

(B) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(i) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(ii) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States.

Such term includes a consortium of such companies or other business entities, as determined by the Secretary of Commerce.

(10) The term ''manufacturing technology'' means techniques and processes designed to improve manufacturing quality, productivity, and practices, including quality control, shop floor management, inventory management, and worker training, as well as manufacturing equipment and software.

(11) The term ''Small Business Innovation Research Program'' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) through (*l*).

(12) The term ''Small Business Technology Transfer Program'' means the program established under the following provisions of such section:

(A) Paragraphs (4) through (7) of subsection (b).

(B) Subsections (e) and (n) through (p).

(13) The term ''significant equity percentage'' means—

(A) a level of contribution and participation sufficient, when compared to the other non-Federal participants in the partnership or other cooperative arrangement involved, to demonstrate a comparable long-term financial commitment to the product or process development involved; and

(B) any other criteria the Secretary may consider necessary to ensure an appropriate equity mix among the participants.

(14) The term ''person of a foreign country'' has the meaning given such term in section 3502(d) of the Primary Dealers Act of 1988 (22 U.S.C. 5342(d)).

(Added Pub. L. 102–484, div. D, title XLII, § 4203(a), Oct. 23, 1992, 106 Stat. 2661, § 2491; amended Pub. L. 103–160, div. A, title XI, § 1182(a)(9), title XIII, § 1315(f), Nov. 30, 1993, 107 Stat. 1771, 1788; Pub. L. 103–337, div. A, title XI, §§ 1113(d), 1115(e), Oct. 5, 1994, 108 Stat. 2866, 2869; Pub. L. 104–106, div. A, title X, § 1081(h), Feb. 10, 1996, 110 Stat. 455; renumbered § 2500 and amended Pub. L. 105–85, div. A, title III, § 371(b)(3), title X, § 1073(a)(53), Nov. 18, 1997, 111 Stat. 1705, 1903.)

REFERENCES IN TEXT

Section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, referred to in par. (7), was classified to section 6683 of Title 42, The Public Health and Welfare, and was omitted from the Code.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in former sections 2511 and 2521 of this title prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1997—Pub. L. 105–85, § 371(b)(3), renumbered section 2491 of this title as this section.

Par. (8). Pub. L. 105–85, § 1073(a)(53), substituted ''that is identified under section 2505 of this title as critical for attaining the national security objectives set forth in section 2501(a) of this title.'' for ''that appears on the list of critical technologies contained, pursuant to subsection (b)(4) of section 2505 of this title, in the most recent national technology and industrial base assessment submitted to Congress by the Secretary of Defense pursuant to section 2506(e) of this title.''

1996—Pars. (11) to (16). Pub. L. 104–106 redesignated pars. (13) to (16) as (11) to (14), respectively, and struck out former pars. (11) and (12) which read as follows:

''(11) The term 'manufacturing extension program' means a public or private, nonprofit program for the improvement of the quality, productivity, and performance of United States-based small manufacturing firms in the United States.

''(12) The term 'United States-based small manufacturing firm' means a company or other business entity that, as determined by the Secretary of Commerce—

''(A) engages in manufacturing;

''(B) has less than 500 employees; and

''(C) is an eligible firm.''

1994—Par. (5). Pub. L. 103–337, § 1113(d), inserted before period at end '', except that such terms include a federally funded research and development center sponsored by a Federal agency''.

Par. (16). Pub. L. 103–337, § 1115(e), added par. (16).

1993—Par. (2). Pub. L. 103–160, § 1182(a)(9)(A), substituted ''nonmilitary applications'' for ''nonmilitary application''.

[1] See References in Text note below.

Par. (8). Pub. L. 103–160, §1182(a)(9)(B), substituted ''subsection (b)(4)'' for ''subsection (f)''.

Pars. (13) to (15). Pub. L. 103–160, §1315(f), added pars. (13) to (15).

SHORT TITLE OF 1994 AMENDMENT

Section 1101 of title XI of div. A of Pub. L. 103–337 provided that: ''This title [enacting sections 2519 and 2520 of this title, amending this section, sections 1151, 1152, 2391, 2511 to 2513, and 2524 of this title, and sections 1662d and 1662d–1 of Title 29, Labor, and enacting and amending provisions set out as notes under section 2501 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Section 1301 of title XIII of div. A of Pub. L. 103–160 provided that: ''This title [enacting sections 1152 and 1153 of this title and sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending this section, sections 1142, 1151, 1598, 2410j, 2501, 2502, 2511 to 2513, 2523, and 2524 of this title, sections 1551 and 1662d–1 of Title 29, Labor, section 31326 of Title 46, and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, repealing section 2504 of this title, enacting provisions set out as notes under sections 1143, 1151, 2501, 2511, 2701, and 5013 of this title, section 1662d–1 of Title 29, and sections 1279b and 1279d of the Appendix to Title 46, amending provisions set out as notes under sections 1143, 2391, and 2501 of this title, and repealing provisions set out as a note under section 2701 of this title] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993'.''

SHORT TITLE

Section 4001 of Pub. L. 102–484 provided that: ''This division [div. D (§§4001–4501) of Pub. L. 102–484, see Tables for classification] may be cited as the 'Defense Conversion, Reinvestment, and Transition Assistance Act of 1992'.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Amendment by section 1315(f) of Pub. L. 103–160 not to alter financial commitment requirements in effect on the day before Nov. 30, 1993, for non-Federal Government participants in a project funded under section 2511, 2512, 2513, 2523, or 2524 of this title, using funds appropriated for a fiscal year beginning before Oct. 1, 1993, see section 1315(g) of Pub. L. 103–160, set out as a note under section 2511 of this title.

CONGRESSIONAL FINDINGS

Section 4101 of Pub. L. 102–484 provided that: ''Congress makes the following findings:

''(1) The collapse of communism in Eastern Europe and the dissolution of the Soviet Union have fundamentally changed the military threat that formed the basis for the national security policy of the United States since the end of World War II.

''(2) The change in the military threat presents a unique opportunity to restructure and reduce the military requirements of the United States.

''(3) As the United States proceeds with the post-Cold War defense build down, the Nation must recognize and address the impact of reduced defense spending on the military personnel, civilian employees, and defense industry workers who have been the foundation of the national defense policies of the United States.

''(4) The defense build down will have a significant impact on communities as procurements are reduced and military installations are closed and realigned.

''(5) Despite the changes in the military threat, the United States must maintain the capability to respond to regional conflicts that threaten the national interests of the United States, and to reconstitute forces in the event of an extended conflict.

''(6) The skills and capabilities of military personnel, civilian employees of the Department of Defense, defense industry workers, and defense industries represent an invaluable national resource that can contribute to the economic growth of the United States and to the long-term vitality of the national technology and industrial base.

''(7) Prompt and vigorous implementation of defense conversion, reinvestment, and transition assistance programs is essential to ensure that the defense build down is structured in a manner that—

''(A) enhances the long-term ability of the United States to maintain a strong and vibrant national technology and industrial base; and

''(B) promotes economic growth.''

PURPOSES OF TITLE XLII OF PUB. L. 102–484

Section 4201 of title XLII of div. D of Pub. L. 102–484 provided that: ''The purposes of this title [see Tables for classification] are to consolidate, revise, clarify, and reenact policies and requirements, and to enact additional policies and requirements, relating to the national technology and industrial base, defense reinvestment, and defense conversion programs that further national security objectives.''

TRANSITION PROVISION; ''DEFENSE CRITICAL TECHNOLOGY'' DEFINED

Section 4203(b) of Pub. L. 102–484 provided that until first national technology and industrial base assessment was submitted to Congress by Secretary of Defense pursuant to former section 2506(e) of this title, the term ''defense critical technology'' for purposes of this chapter, would have meaning given such term in section 2521 of this title, as in effect on day before Oct. 23, 1992.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2474, 2534 of this title.

SUBCHAPTER II—POLICIES AND PLANNING

Sec.
2501. National security objectives concerning national technology and industrial base.
2502. National Defense Technology and Industrial Base Council.
2503. National defense program for analysis of the technology and industrial base.
2504. Annual report to Congress.
2505. National technology and industrial base: periodic defense capability assessments.
2506. Department of Defense technology and industrial base policy guidance.
2507. Data collection authority of President.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title VIII, §829(g), Sept. 23, 1996, 110 Stat. 2614, added item 2504 and substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in item 2506.

Pub. L. 104–106, div. A, title X, §1081(i)(1), Feb. 10, 1996, 110 Stat. 455, substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' in item 2501.

1993—Pub. L. 103–160, div. A, title XIII, §1312(a)(2), Nov. 30, 1993, 107 Stat. 1786, struck out item 2504 ''Center for the Study of Defense Economic Adjustment''.

§ 2501. National security objectives concerning national technology and industrial base

(a) NATIONAL SECURITY OBJECTIVES FOR NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—It is

the policy of Congress that the national technology and industrial base be capable of meeting the following national security objectives:

(1) Supplying and equipping the force structure of the armed forces that is necessary to achieve—

(A) the objectives set forth in the national security strategy report submitted to Congress by the President pursuant to section 108 of the National Security Act of 1947 (50 U.S.C. 404a);

(B) the policy guidance of the Secretary of Defense provided pursuant to section 113(g) of this title; and

(C) the future-years defense program submitted to Congress by the Secretary of Defense pursuant to section 221 of this title.

(2) Sustaining production, maintenance, repair, and logistics for military operations of various durations and intensity.

(3) Maintaining advanced research and development activities to provide the armed forces with systems capable of ensuring technological superiority over potential adversaries.

(4) Reconstituting within a reasonable period the capability to develop and produce supplies and equipment, including technologically advanced systems, in sufficient quantities to prepare fully for a war, national emergency, or mobilization of the armed forces before the commencement of that war, national emergency, or mobilization.

(5) Providing for the development, manufacture, and supply of items and technologies critical to the production and sustainment of advanced military weapon systems within the national technology and industrial base.

(b) CIVIL-MILITARY INTEGRATION POLICY.—It is the policy of Congress that the United States attain the national technology and industrial base objectives set forth in subsection (a) through acquisition policy reforms that have the following objectives:

(1) Relying, to the maximum extent practicable, upon the commercial national technology and industrial base that is required to meet the national security needs of the United States.

(2) Reducing the reliance of the Department of Defense on technology and industrial base sectors that are economically dependent on Department of Defense business.

(3) Reducing Federal Government barriers to the use of commercial products, processes, and standards.

(Added Pub. L. 102–484, div. D, title XLII, § 4211, Oct. 23, 1992, 106 Stat. 2662; amended Pub. L. 103–35, title II, § 201(c)(7), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title XI, § 1182(a)(10), title XIII, § 1313, Nov. 30, 1993, 107 Stat. 1771, 1786; Pub. L. 104–106, div. A, title X, § 1081(a), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(a), Sept. 23, 1996, 110 Stat. 2612.)

PRIOR PROVISIONS

A prior section 2501, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2014, related to centralized guidance, analysis, and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2501 was renumbered section 2533 of this title.

AMENDMENTS

1996—Pub. L. 104–106, § 1081(a)(2), substituted ''National security objectives concerning national technology and industrial base'' for ''Congressional defense policy concerning national technology and industrial base, reinvestment, and conversion'' as section catchline.

Subsec. (a). Pub. L. 104–106, § 1081(a)(1)(A)(i), substituted ''National Security'' for ''Defense Policy'' in heading.

Subsec. (a)(5). Pub. L. 104–201 added par. (5).

Pub. L. 104–106, § 1081(a)(1)(A)(ii), struck out par. (5) which read as follows: ''Furthering the missions of the Department of Defense through the support of policy objectives and programs relating to the defense reinvestment, diversification, and conversion objectives specified in subsection (b).''

Subsecs. (b), (c). Pub. L. 104–106, § 1081(a)(1)(B), (C), redesignated subsec. (c) as (b) and struck out former subsec. (b) which stated policy objectives of Congress relating to defense reinvestment, diversification, and conversion.

1993—Subsec. (a)(1)(A). Pub. L. 103–35 substituted ''section 108'' for ''section 104''.

Subsec. (a)(5). Pub. L. 103–160, § 1313, added par. (5).

Subsec. (b)(2). Pub. L. 103–160, § 1182(a)(10), substituted ''that, by reducing the public sector demand for capital, increases the amount of capital available'' for ''and thereby free up capital''.

AIR FORCE SCIENCE AND TECHNOLOGY PLANNING

Pub. L. 107–107, div. A, title II, subtitle D, Dec. 28, 2001, 115 Stat. 1041, provided that:

''SEC. 251. SHORT TITLE.

''This subtitle may be cited as the 'Air Force Science and Technology for the 21st Century Act'.

''SEC. 252. SCIENCE AND TECHNOLOGY INVESTMENT AND DEVELOPMENT PLANNING.

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Air Force should carry out each of the following:

''(1) Continue and improve efforts to ensure that—

''(A) the Air Force science and technology community is represented, and the recommendations of that community are considered, at all levels of program planning and budgetary decisionmaking within the Air Force;

''(B) advocacy for science and technology development is institutionalized across all levels of Air Force management in a manner that is not dependent on individuals; and

''(C) the value of Air Force science and technology development is made increasingly apparent to the warfighters, by linking the needs of those warfighters with decisions on science and technology development.

''(2) Complete and adopt a policy directive that provides for changes in how the Air Force makes budgetary and nonbudgetary decisions with respect to its science and technology development programs and how it carries out those programs.

''(3) At least once every five years, conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs that is consistent with the review specified in section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]).

''(4) Ensure that development and science and technology planning and investment activities are carried out for future space warfighting systems and for future nonspace warfighting systems in an integrated manner.

''(5) Elevate the position within the Office of the Secretary of the Air Force that has primary responsibility for budget and policy decisions for science and technology programs.

''(b) REINSTATEMENT OF DEVELOPMENT PLANNING.—(1) The Secretary of the Air Force shall reinstate and implement a revised development planning process that provides for each of the following:

''(A) Coordinating the needs of Air Force warfighters with decisions on science and technology development.

''(B) Giving input into the establishment of priorities among science and technology programs.

''(C) Analyzing Air Force capability options for the allocation of Air Force resources.

''(D) Developing concepts for technology, warfighting systems, and operations with which the Air Force can achieve its critical future goals.

''(E) Evaluating concepts for systems and operations that leverage technology across Air Force organizational boundaries.

''(F) Ensuring that a 'system-of-systems' approach is used in carrying out the various Air Force capability planning exercises.

''(G) Utilizing existing analysis capabilities within the Air Force product centers in a collaborative and integrated manner.

''(2) Not later than one year after the date of the enactment of this Act [Dec. 28, 2001], the Secretary of the Air Force shall submit to Congress a report on the implementation of the planning process required by paragraph (1). The report shall include the annual amount that the Secretary considers necessary to carry out paragraph (1).

''SEC. 253. STUDY AND REPORT ON EFFECTIVENESS OF AIR FORCE SCIENCE AND TECHNOLOGY PROGRAM CHANGES.

''(a) REQUIREMENT.—The Secretary of the Air Force, in cooperation with the National Research Council of the National Academy of Sciences, shall carry out a study to determine how the changes to the Air Force science and technology program implemented during the past two years affect the future capabilities of the Air Force.

''(b) MATTERS STUDIED.—(1) The study shall review and assess whether such changes as a whole are sufficient to ensure the following:

''(A) That the concerns about the management of the science and technology program that have been raised by Congress, the Defense Science Board, the Air Force Science Advisory Board, and the Air Force Association have been adequately addressed.

''(B) That appropriate and sufficient technology is available to ensure the military superiority of the United States and counter future high-risk threats.

''(C) That the science and technology investments are balanced to meet the near-, mid-, and long-term needs of the Air Force.

''(D) That technologies are made available that can be used to respond flexibly and quickly to a wide range of future threats.

''(E) That the Air Force organizational structure provides for a sufficiently senior level advocate of science and technology to ensure an ongoing, effective presence of the science and technology community during the budget and planning process.

''(2) In addition, the study shall assess the specific changes to the Air Force science and technology program as follows:

''(A) Whether the biannual science and technology summits provide sufficient visibility into, and understanding and appreciation of, the value of the science and technology program to the senior level of Air Force budget and policy decisionmakers.

''(B) Whether the applied technology councils are effective in contributing the input of all levels beneath the senior leadership into the coordination, focus, and content of the science and technology program.

''(C) Whether the designation of the commander of the Air Force Materiel Command as the science and technology budget advocate is effective to ensure that an adequate Air Force science and technology budget is requested.

''(D) Whether the revised development planning process is effective to aid in the coordination of the needs of the Air Force warfighters with decisions on science and technology investments and the establishment of priorities among different science and technology programs.

''(E) Whether the implementation of section 252 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–46 [set out as a note below]) is effective to identify the basis for the appropriate science and technology program funding level and investment portfolio.

''(c) REPORT.—Not later than May 1, 2003, the Secretary of the Air Force shall submit to Congress the results of the study.''

Pub. L. 106–398, §1 [[div. A], title II, §252], Oct. 30, 2000, 114 Stat. 1654, 1654A–46, provided that:

''(a) REQUIREMENT FOR REVIEW.—The Secretary of the Air Force shall conduct a review of the long-term challenges and short-term objectives of the Air Force science and technology programs. The Secretary shall complete the review not later than one year after the date of the enactment of this Act [Oct. 30, 2000].

''(b) MATTERS TO BE REVIEWED.—The review shall include the following:

''(1) An assessment of the budgetary resources that are being used for fiscal year 2001 for addressing the long-term challenges and the short-term objectives of the Air Force science and technology programs.

''(2) The budgetary resources that are necessary to address those challenges and objectives adequately.

''(3) A course of action for each projected or ongoing Air Force science and technology program that does not address either the long-term challenges or the short-term objectives.

''(4) The matters required under subsection (c)(5) and (d)(6).

''(c) LONG-TERM CHALLENGES.—(1) The Secretary of the Air Force shall establish an integrated product team to identify high-risk, high-payoff challenges that will provide a long-term focus and motivation for the Air Force science and technology programs over the next 20 to 50 years following the enactment of this Act [Oct. 30, 2000]. The integrated product team shall include representatives of the Office of Scientific Research and personnel from the Air Force Research Laboratory.

''(2) The team shall solicit views from the entire Air Force science and technology community on the matters under consideration by the team.

''(3) The team—

''(A) shall select for consideration science and technology challenges that involve—

''(i) compelling requirements of the Air Force;

''(ii) high-risk, high-payoff areas of exploration; and

''(iii) very difficult, but probably achievable, results; and

''(B) should not select a linear extension of any ongoing Air Force science and technology program for consideration as a science and technology challenge under subparagraph (A).

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall designate a technical coordinator and a management coordinator for each science and technology challenge identified pursuant to this subsection. Each technical coordinator shall have sufficient expertise in fields related to the challenge to be able to identify other experts in such fields and to affirm the credibility of the challenge. The coordinator for a science and technology challenge shall conduct workshops within the relevant scientific and technological community to obtain suggestions for possible approaches to addressing the challenge and to identify ongoing work that addresses the challenge, deficiencies in current work relating to the challenge, and promising areas of research.

''(5) In carrying out subsection (a), the Secretary of the Air Force shall review the science and technology

challenges identified pursuant to this subsection and, for each such challenge, at a minimum—

''(A) consider the results of the workshops conducted pursuant to paragraph (4); and

''(B) identify any work not currently funded by the Air Force that should be performed to meet the challenge.

''(d) SHORT-TERM OBJECTIVES.—(1) The Secretary of the Air Force shall establish a task force to identify short-term technological objectives of the Air Force science and technology programs. The task force shall be chaired by the Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering and shall include representatives of the Chief of Staff of the Air Force and the specified combatant commands of the Air Force.

''(2) The task force shall solicit views from the entire Air Force requirements community, user community, and acquisition community.

''(3) The task force shall select for consideration short-term objectives that involve—

''(A) compelling requirements of the Air Force;

''(B) support in the user community; and

''(C) likely attainment of the desired benefits within a five-year period.

''(4) The Deputy Assistant Secretary of the Air Force for Science, Technology, and Engineering shall establish an integrated product team for each short-term objective identified pursuant to this subsection. Each integrated product team shall include representatives of the requirements community, the user community, and the science and technology community with relevant expertise.

''(5) The integrated product team for a short-term objective shall be responsible for—

''(A) identifying, defining, and prioritizing the enabling capabilities that are necessary for achieving the objective;

''(B) identifying deficiencies in the enabling capabilities that must be addressed if the short-term objective is to be achieved; and

''(C) working with the Air Force science and technology community to identify science and technology projects and programs that should be undertaken to eliminate each deficiency in an enabling capability.

''(6) In carrying out subsection (a), the Secretary of the Air Force shall review the short-term science and technology objectives identified pursuant to this subsection and, for each such objective, at a minimum—

''(A) consider the work of the integrated product team conducted pursuant to paragraph (5); and

''(B) identify the science and technology work of the Air Force that should be undertaken to eliminate each deficiency in enabling capabilities that is identified by the integrated product team pursuant to subparagraph (B) of that paragraph.

''(e) COMPTROLLER GENERAL REVIEW.—(1) Not later than 90 days after the Secretary of the Air Force completes the review required by subsection (a), the Comptroller General shall submit to Congress a report on the results of the review. The report shall include the Comptroller General's assessment regarding the extent to which the review was conducted in compliance with the requirements of this section.

''(2) Immediately upon completing the review required by subsection (a), the Secretary of Defense shall notify the Comptroller General of the completion of the review. For the purposes of paragraph (1), the date of the notification shall be considered the date of the completion of the review.''

REPORT BY UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS

Pub. L. 106–65, div. A, title II, § 243, Oct. 5, 1999, 113 Stat. 551, provided that:

''(a) REQUIREMENT.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the actions that are necessary to promote the research base and technological development that will be needed for ensuring that the Armed Forces have the military capabilities that are necessary for meeting national security requirements over the next two to three decades.

''(b) CONTENT.—The report shall include the actions that have been taken or are planned to be taken within the Department of Defense to ensure that—

''(1) the Department of Defense laboratories place an appropriate emphasis on revolutionary changes in military operations and the new technologies that will be necessary to support those operations;

''(2) the Department helps sustain a high-quality national research base that includes organizations attuned to the needs of the Department, the fostering and creation of revolutionary technologies useful to the Department, and the capability to identify opportunities for new military capabilities in emerging scientific knowledge;

''(3) the Department can identify, provide appropriate funding for, and ensure the coordinated development of joint technologies that will serve the needs of more than one of the Armed Forces;

''(4) the Department can identify militarily relevant technologies that are developed in the private sector, rapidly incorporate those technologies into defense systems, and effectively utilize technology transfer processes;

''(5) the Department can effectively and efficiently manage the transition of new technologies from the applied research and advanced technological development stage through the product development stage in a manner that ensures that maximum advantage is obtained from advances in technology; and

''(6) the Department's educational institutions for the officers of the uniformed services incorporate into their officer education and training programs, as appropriate, materials necessary to ensure that the officers have the familiarity with the processes, advances, and opportunities in technology development that is necessary for making decisions that ensure the superiority of United States defense technology in the future.''

SENSE OF CONGRESS ON DEFENSE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 106–65, div. A, title II, § 212, Oct. 5, 1999, 113 Stat. 542, provided that:

''(a) FAILURE TO COMPLY WITH FUNDING OBJECTIVE.—It is the sense of Congress that the Secretary of Defense has failed to comply with the funding objective for the Defense Science and Technology Program, especially the Air Force Science and Technology Program, as stated in section 214(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1948) [set out as a note below], thus jeopardizing the stability of the defense technology base and increasing the risk of failure to maintain technological superiority in future weapon systems.

''(b) FUNDING OBJECTIVE.—It is further the sense of Congress that, for each of the fiscal years 2001 through 2009, it should be an objective of the Secretary of Defense to increase the budget for the Defense Science and Technology Program, including the science and technology program within each military department, for the fiscal year over the budget for that program for the preceding fiscal year by a percent that is at least two percent above the rate of inflation as determined by the Office of Management and Budget.

''(c) CERTIFICATION.—If the proposed budget for a fiscal year covered by subsection (b) fails to comply with the objective set forth in that subsection—

''(1) the Secretary of Defense shall submit to Congress—

''(A) the certification of the Secretary that the budget does not jeopardize the stability of the defense technology base or increase the risk of failure to maintain technological superiority in future weapon systems; or

''(B) a statement of the Secretary explaining why the Secretary is unable to submit such certification; and

''(2) the Defense Science Board shall, not more than 60 days after the date on which the Secretary submits the certification or statement under paragraph (1), submit to the Secretary and Congress a report assessing the effect such failure to comply is likely to have on defense technology and the national defense.''

Pub. L. 105–261, div. A, title II, §214, Oct. 17, 1998, 112 Stat. 1948, provided that:

''(a) FUNDING REQUIREMENTS FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM BUDGET.—It is the sense of Congress that, for each of the fiscal years 2000 through 2008, it should be an objective of the Secretary of Defense to increase the budget for the Defense Science and Technology Program for the fiscal year over the budget for that program for the preceding fiscal year by a percent that is at least two percent above the rate of inflation as determined by the Office of Management and Budget.

''(b) GUIDELINES FOR THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM.—

''(1) RELATIONSHIP OF DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO UNIVERSITY RESEARCH.—It is the sense of Congress that the following should be key objectives of the Defense Science and Technology Program:

''(A) The sustainment of research capabilities in scientific and engineering disciplines critical to the Department of Defense.

''(B) The education and training of the next generation of scientists and engineers in disciplines that are relevant to future defense systems, particularly through the conduct of basic research.

''(C) The continued support of the Defense Experimental Program to Stimulate Competitive Research and research programs at historically black colleges and universities and minority institutions.

''(2) RELATIONSHIP OF THE DEFENSE SCIENCE AND TECHNOLOGY PROGRAM TO COMMERCIAL RESEARCH AND TECHNOLOGY.—(A) It is the sense of Congress that, in supporting projects within the Defense Science and Technology Program, the Secretary of Defense should attempt to leverage commercial research, technology, products, and processes for the benefit of the Department of Defense.

''(B) It is the sense of Congress that funds made available for projects and programs of the Defense Science and Technology Program should be used only for the benefit of the Department of Defense, which includes—

''(i) the development of technology that has only military applications;

''(ii) the development of militarily useful, commercially viable technology; and

''(iii) the adaptation of commercial technology, products, or processes for military purposes.

''(3) SYNERGISTIC MANAGEMENT OF RESEARCH AND DEVELOPMENT.—It is the sense of Congress that the Secretary of Defense should have the flexibility to allocate a combination of funds available for the Department of Defense for basic and applied research and for advanced development to support any individual project or program within the Defense Science and Technology Program, but such flexibility should not change the allocation of funds in any fiscal year among basic and applied research and advanced development.

''(4) MANAGEMENT OF SCIENCE AND TECHNOLOGY.—It is the sense of Congress that—

''(A) management and funding for the Defense Science and Technology Program for each military department should receive a level of priority and leadership attention equal to the level received by program acquisition, and the Secretary of each military department should ensure that a senior official in the department holds the appropriate title and responsibility to ensure effective oversight and emphasis on science and technology;

''(B) to ensure an appropriate long-term focus for investments, a sufficient percentage of science and technology funds should be directed toward new technology areas, and annual reviews should be conducted for ongoing research areas to ensure that those funded initiatives are either integrated into acquisition programs or discontinued when appropriate;

''(C) the Secretary of each military department should take appropriate steps to ensure that sufficient numbers of officers and civilian employees in the department hold advanced degrees in technical fields; and

''(D) of particular concern, the Secretary of the Air Force should take appropriate measures to ensure that sufficient numbers of scientists and engineers are maintained to address the technological challenges faced in the areas of air, space, and information technology.

''(c) STUDY.—

''(1) REQUIREMENT.—The Secretary of Defense, in cooperation with the National Research Council of the National Academy of Sciences, shall conduct a study on the technology base of the Department of Defense.

''(2) MATTERS COVERED.—The study shall—

''(A) result in recommendations on the minimum requirements for maintaining a technology base that is sufficient, based on both historical developments and future projections, to project superiority in air and space weapons systems and in information technology;

''(B) address the effects on national defense and civilian aerospace industries and information technology of reducing funding below the goal described in subsection (a); and

''(C) result in recommendations on the appropriate levels of staff with baccalaureate, masters, and doctorate degrees, and the optimal ratio of civilian and military staff holding such degrees, to ensure that science and technology functions of the Department of Defense remain vital.

''(3) REPORT.—Not later than 120 days after the date on which the study required under paragraph (1) is completed, the Secretary shall submit to Congress a report on the results of the study.

''(d) DEFINITIONS.—In this section:

''(1) The term 'Defense Science and Technology Program' means basic and applied research and advanced development.

''(2) The term 'basic and applied research' means work funded in program elements for defense research and development under Department of Defense category 6.1 or 6.2.

''(3) The term 'advanced development' means work funded in program elements for defense research and development under Department of Defense category 6.3.''

ANNUAL JOINT WARFIGHTING SCIENCE AND TECHNOLOGY PLAN

Section 270 of Pub. L. 104–201, as amended by Pub. L. 106–65, div. A, title II, §242, title X, §1067(5), Oct. 5, 1999, 113 Stat. 551, 774, provided that:

''(a) ANNUAL PLAN REQUIRED.—On March 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan for ensuring that the science and technology program of the Department of Defense supports the development of the future joint warfighting capabilities identified as priority requirements for the Armed Forces.

''(b) TECHNOLOGY AREA REVIEW AND ASSESSMENT.—With the submission of the plan under subsection (a) each year, the Secretary shall also submit to the committees referred to in that subsection a summary of

each technology area review and assessment conducted by the Department of Defense in support of that plan.''

COST REIMBURSEMENT RULES FOR INDIRECT COSTS ATTRIBUTABLE TO PRIVATE SECTOR WORK OF DEFENSE CONTRACTORS

Section 808 of Pub. L. 104–106 authorized Secretary of Defense to enter into agreements with defense contractors under which certain cost reimbursement rules would be applied and required submission of report to congressional defense committees not later than one year after Feb. 10, 1996, prior to repeal by Pub. L. 105–85, div. A, title X, §1027(d), Nov. 18, 1997, 111 Stat. 1880. See section 7315 of this title.

DOCUMENTATION FOR AWARDS FOR COOPERATIVE AGREEMENTS OR OTHER TRANSACTIONS UNDER DEFENSE TECHNOLOGY REINVESTMENT PROGRAMS

Pub. L. 103–337, div. A, title XI, §1118, Oct. 5, 1994, 108 Stat. 2870, provided that: ''At the time of the award for a cooperative agreement or other transaction under a program carried out under chapter 148 of title 10, United States Code, the head of the agency concerned shall include in the file pertaining to such agreement or transaction a brief explanation of the manner in which the award advances and enhances a particular national security objective set forth in section 2501(a) of such title or a particular policy objective set forth in [former] section 2501(b) of such title.''

REPORTS ON DEFENSE CONVERSION, REINVESTMENT, AND TRANSITION ASSISTANCE PROGRAMS

Section 1303 of Pub. L. 103–160 provided that:

''(a) REPORT REQUIRED.—During each of the fiscal years 1994, 1995, and 1996, the Secretary of Defense shall prepare a report that assesses the effectiveness of all defense conversion, reinvestment, and transition assistance programs (as defined in section 1302 [107 Stat. 1783]) during the preceding fiscal year.

''(b) CONTENTS OF REPORT.—To the maximum extent practicable, each report required under subsection (a) shall include an assessment of each of the following:

''(1) The status of the obligation of appropriated funds for each defense conversion, reinvestment, and transition assistance program.

''(2) With respect to each component of the dual-use partnership program element specified in paragraphs (1) through (10) of section 1311(b) [107 Stat. 1785]—

''(A) the extent to which the component meets the objectives set forth in section 2501 of title 10, United States Code;

''(B) the technology benefits of the component to the national technology and industrial base;

''(C) any evidence of commercialization of technologies developed under the component;

''(D) the extent to which the investments under the component have affected levels of employment;

''(E) the number of defense firms participating in cooperative agreements or other arrangements under the component;

''(F) the extent to which matching fund requirements of the component were met by cash contributions by the non-Federal Government participants;

''(G) the extent to which defense technology reinvestment projects under the component have met milestones and financial and technical requirements;

''(H) the extent to which the component is integrated with technology programs conducted by other Federal agencies; and

''(I) the number of proposals under the component that were received from small business concerns and the number of awards made to small business concerns.

''(3) With respect to each personnel assistance program conducted under subtitle C of this title [subtitle C, §§1331–1339 of title XIII of div. A of Pub. L. 103–160, enacting sections 1152 and 1153 of this title, amending sections 1142, 1151, 1598, and 2410j of this title and sections 1551 and 1662d–1 of Title 29, Labor, enacting provisions set out as notes under sections 1143, 1151, and 2701 of this title, repealing provisions set out as a note under section 2701 of this title, and amending provisions set out as a note under section 1143 of this title], title XLIV of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2701) [see Tables for classification], and the amendments made by that subtitle or title—

''(A) the extent to which the program meets the objectives set forth in section 2501(b) of title 10, United States Code;

''(B) the number of individuals eligible for transition assistance under the program;

''(C) the number of individuals directly receiving transition assistance under the program and the projected number of individuals who will directly receive transition assistance;

''(D) in the case of a job training program, an estimate of the number of individuals who have secured permanent employment as a result of participation in the program; and

''(E) the extent to which the transition assistance activities under the program duplicated other transition assistance provided or administered outside the Department of Defense.

''(c) SUBMISSION OF REPORT.—The report required under subsection (a) for a particular fiscal year shall be submitted to Congress at the same time that the Secretary of Defense submits the annual report required under section 113(c) of title 10, United States Code, for that fiscal year.''

NATIONAL SHIPBUILDING INITIATIVE

Sections 1351 to 1354 of Pub. L. 103–160, as amended by Pub. L. 104–201, div. A, title X, §1073(e)(1)(F), (2)(B), (3), Sept. 23, 1996, 110 Stat. 2658, provided that:

''SEC. 1351. SHORT TITLE.

''This subtitle [subtitle D, §§1351–1363 of title XIII of div. A of Pub. L. 103–160, enacting sections 1279d, 1279e, and 1280a of the Appendix to Title 46, Shipping, amending section 31326 of Title 46 and sections 1271, 1273, 1274, and 1274a of the Appendix to Title 46, and enacting provisions set out as notes under sections 1279b and 1279d of the Appendix to Title 46] may be cited as the 'National Shipbuilding and Shipyard Conversion Act of 1993'.

''SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.

''(a) ESTABLISHMENT OF PROGRAM.—There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

''(b) ADMINISTERING DEPARTMENTS.—The program shall be carried out—

''(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

''(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

''(c) PROGRAM ELEMENTS.—The National Shipbuilding Initiative shall consist of the following program elements:

''(1) FINANCIAL INCENTIVES PROGRAM.—A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

''(2) TECHNOLOGY DEVELOPMENT PROGRAM.—A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for inno-

vative commercial ship design and production processes and technologies.

''(3) NAVY'S AFFORDABILITY THROUGH COMMONALITY PROGRAM.—Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

''(4) NAVY'S MANUFACTURING TECHNOLOGY AND TECHNOLOGY BASE PROGRAMS.—Enhanced support by the Secretary of Defense for, and strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

''SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.

''The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

''SEC. 1354. DEFENSE ADVANCED RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.

''(a) DARPA FUNCTIONS.—The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

''(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

''(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

''(B) assessments of potential markets for maritime products; and

''(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short- and long-term manufacturing technology investment strategies.

''(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

''(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

''(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Defense Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

''(b) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—

''(1) MAXIMUM DEPARTMENT OF DEFENSE SHARE.—The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

''(2) REGULATIONS.—The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

ARMAMENT RETOOLING AND MANUFACTURING SUPPORT INITIATIVE

Subtitle H of title I of div. A of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, §202(a)(1), May 31, 1993, 107 Stat. 100; Pub. L. 103–337, div. A, title XI, §1141(a), (b), Oct. 5, 1994, 108 Stat. 2879; Pub. L. 104–201, div. A, title I, §143, Sept. 23, 1996, 110 Stat. 2449; Pub. L. 105–261, div. A, title I, §115, Oct. 17, 1998, 112 Stat. 1939; Pub. L. 106–65, div. A, title I, §116, Oct. 5, 1999, 113 Stat. 533, known as the ''Armament Retooling and Manufacturing Support Act of 1992'', authorized the Secretary of the Army, during fiscal years 1993 through 2001, to carry out the Armament Retooling and Manufacturing Support Initiative, prior to repeal by Pub. L. 106–398, §1 [[div. A], title III, §344(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.

IMPLEMENTATION OF REQUIREMENTS FOR ASSESSMENT, PLANNING, AND ANALYSIS

Section 4218 of Pub. L. 102–484 related to collection of information, completion of assessments, and issuance of plans required by this subchapter, prior to repeal by Pub. L. 104–201, div. A, title VIII, §829(h), Sept. 23, 1996, 110 Stat. 2614.

INDUSTRIAL DIVERSIFICATION PLANNING FOR DEFENSE CONTRACTORS

Section 4239 of Pub. L. 102–484 provided that: ''Not later than 120 days after the date of enactment of this Act [Oct. 23, 1992], the Secretary of Defense shall prescribe regulations to encourage defense contractors to engage in industrial diversification planning.''

NOTICE TO CONTRACTORS AND EMPLOYEES UPON PROPOSED AND ACTUAL TERMINATION OR SUBSTANTIAL REDUCTION IN MAJOR DEFENSE PROGRAMS

Section 4471 of Pub. L. 102–484, as amended by Pub. L. 103–160, div. A, title XIII, §1372, Nov. 20, 1993, 107 Stat. 1817; Pub. L. 103–337, div. A, title XI, §1142, Oct. 5, 1994, 108 Stat. 2881; Pub. L. 104–201, div. A, title VIII, §824, Sept. 23, 1996, 110 Stat. 2610; Pub. L. 105–85, div. A, title X, §1073(d)(2)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(7)(C), (f)(6)(C)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–419, 2681–430, provided that:

''(a) NOTICE REQUIREMENT AFTER ENACTMENT OF APPROPRIATIONS ACT.—Each year, not later than 60 days after the date of the enactment of an Act appropriating funds for the military functions of the Department of Defense, the Secretary of Defense, in accordance with regulations prescribed by the Secretary—

''(1) shall identify each contract (if any) under major defense programs of the Department of Defense that will be terminated or substantially reduced as a result of the funding levels provided in that Act; and

''(2) shall ensure that notice of the termination of, or substantial reduction in, the funding of the contract is provided—

''(A) directly to the prime contractor under the contract; and

''(B) directly to the Secretary of Labor.

''(b) NOTICE TO SUBCONTRACTORS.—Not later than 60 days after the date on which the prime contractor for a contract under a major defense program receives notice under subsection (a), the prime contractor shall—

''(1) provide notice of that termination or substantial reduction to each person that is a first-tier subcontractor under that prime contract for subcontracts in an amount not less than $500,000; and

''(2) require that each such subcontractor—

''(A) provide such notice to each of its subcontractors for subcontracts in an amount in excess of $100,000; and

''(B) impose a similar notice and pass through requirement to subcontractors in an amount in excess of $100,000 at all tiers.

''(c) CONTRACTOR NOTICE TO EMPLOYEES AND STATE DISLOCATED WORKER UNIT.—Not later than two weeks after a defense contractor receives notice under subsection (a), the contractor shall provide notice of such termination or substantial reduction to—

''(1)(A) each representative of employees whose work is directly related to the defense contract under such program and who are employed by the defense contractor; or

''(B) if there is no such representative at that time, each such employee; and

''(2) the State or entity designated by the State to carry out rapid response activities under section 134(a)(2)(A) of the Workforce Investment Act of 1998 [29 U.S.C. 2864(a)(2)(A)], and the chief elected official of the unit of general local government within which the adverse effect may occur.

''(d) CONSTRUCTIVE NOTICE.—The notice of termination of, or substantial reduction in, a defense contract provided under subsection (c)(1) to an employee of a contractor shall have the same effect as a notice of termination to such employee for the purposes of determining whether such employee is eligible to participate in employment and training activities carried out under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], except in a case in which the employer has specified that the termination of, or substantial reduction in, the contract is not likely to result in plant closure or mass layoff.

''(e) LOSS OF ELIGIBILITY.—An employee who receives a notice of withdrawal or cancellation of the termination of, or substantial reduction in, contract funding shall not be eligible, on the basis of any related reduction in funding under the contract, to participate in employment and training activities under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], beginning on the date on which the employee receives the notice.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'major defense program' means a program that is carried out to produce or acquire a major system (as defined in section 2302(5) of title 10, United States Code).

''(2) The terms 'substantial reduction' and 'substantially reduced', with respect to a defense contract under a major defense program, mean a reduction of 25 percent or more in the total dollar value of the funds obligated by the contract.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2198, 2500, 2502, 2505, 2506, 2511, 2514, 2515, 2519, 2521, 2540, 2541, 2709, 7315 of this title.

§ 2502. National Defense Technology and Industrial Base Council

(a) ESTABLISHMENT.—There is a National Defense Technology and Industrial Base Council.

(b) COMPOSITION.—The Council is composed of the following members:

(1) The Secretary of Defense, who shall serve as chairman.

(2) The Secretary of Energy.

(3) The Secretary of Commerce.

(4) The Secretary of Labor.

(5) Such other officials as may be determined by the President.

(c) RESPONSIBILITIES.—The Council shall have the responsibility to ensure effective cooperation among departments and agencies of the Federal Government, and to provide advice and recommendations to the President, the Secretary of Defense, the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor, concerning—

(1) the capabilities of the national technology and industrial base to meet the national security objectives set forth in section 2501(a) of this title;

(2) programs for achieving such national security objectives; and

(3) changes in acquisition policy that strengthen the national technology and industrial base.

(d) ALTERNATIVE PERFORMANCE OF RESPONSIBILITIES.—Notwithstanding subsection (c), the President may assign the responsibilities of the Council to another interagency organization of the executive branch that includes among its members the officials specified in paragraphs (1) through (4) of subsection (b).

(Added Pub. L. 102–484, div. D, title XLII, § 4212(a), Oct. 23, 1992, 106 Stat. 2664; amended Pub. L. 103–160, div. A, title XIII, § 1312(b), Nov. 30, 1993, 107 Stat. 1786; Pub. L. 103–337, div. A, title X, § 1070(a)(12), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title X, § 1081(b), Feb. 10, 1996, 110 Stat. 452; Pub. L. 104–201, div. A, title VIII, § 829(c)(2), formerly § 829(c)(2), (3), Sept. 23, 1996, 110 Stat. 2613, renumbered Pub. L. 105–85, div. A, title X, § 1073(c)(7)(B), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 105–85, div. A, title X, § 1073(c)(7)(A), Nov. 18, 1997, 111 Stat. 1904.)

PRIOR PROVISIONS

A prior section 2502, added Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2015, related to defense industrial base policies, prior to repeal by Pub. L. 102–484, § 4202(a).

Another prior section 2502 was renumbered section 2534 of this title.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85, § 1073(c)(7)(A), made technical correction to directory language of Pub. L. 104–201, § 829(c)(2). See 1996 Amendment note below.

1996—Subsec. (c). Pub. L. 104–201, § 829(c)(2), formerly § 829(c)(2), (3), as renumbered and amended by Pub. L. 105–85, substituted ''the responsibility to ensure effective cooperation'' for ''the following responsibilities:'', struck out ''(1) To ensure the effective cooperation'' before ''among departments'', struck out par. (2), redesignated subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and adjusted margins of such pars. Prior to repeal, par. (2) read as follows: ''To prepare the peri-

odic assessment and the periodic plan required by sections 2505 and 2506 of this title, respectively.''

Subsec. (c)(1)(B). Pub. L. 104–106, §1081(b)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''programs for achieving, during a period of reduction in defense expenditures, the defense reinvestment, diversification, and conversion objectives set forth in section 2501(b) of this title; and''.

Subsec. (c)(2), (3). Pub. L. 104–106, §1081(b)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''To provide overall policy guidance to ensure effective implementation by agencies of the Federal Government of defense reinvestment and conversion activities during a period of reduction in defense expenditures.''

1994—Subsec. (d). Pub. L. 103–337 substituted ''executive'' for ''Executive''.

1993—Subsec. (d). Pub. L. 103–160 added subsec. (d).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

§ 2503. National defense program for analysis of the technology and industrial base

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a program for analysis of the national technology and industrial base.

(b) SUPERVISION OF PROGRAM.—The Secretary of Defense shall carry out the program through the Under Secretary of Defense for Acquisition, Technology, and Logistics. In carrying out the program, the Under Secretary shall consult with the Secretary of Energy, the Secretary of Commerce, and the Secretary of Labor.

(c) FUNCTIONS.—The functions of the program shall include, with respect to the national technology and industrial base, the following:

(1) The assembly of timely and authoritative information.

(2) Initiation of studies and analyses.

(3) Provision of technical support and assistance to—

(A) the Secretary of Defense for the preparation of the periodic assessments required by section 2505 of this title;

(B) the defense acquisition university structure and its elements; and

(C) other departments and agencies of the Federal Government in accordance with guidance established by the Council.

(4) Dissemination, through the National Technical Information Service of the Department of Commerce, of unclassified information and assessments for further dissemination within the Federal Government and to the private sector.

(Added Pub. L. 102–484, div. D, title XLII, §4213(a), Oct. 23, 1992, 106 Stat. 2665; amended Pub. L. 104–201, div. A, title VIII, §829(b), Sept. 23, 1996, 110 Stat. 2612; Pub. L. 107–107, div. A, title X, §1048(b)(4), Dec. 28, 2001, 115 Stat. 1225.)

PRIOR PROVISIONS

A prior section 2503, added Pub. L. 100–456, div. A, title VIII, §821(b)(1)(B), Sept. 29, 1988, 102 Stat. 2016; amended Pub. L. 101–189, div. A, title VIII, §842(a), (b), Nov. 29, 1989, 103 Stat. 1514, 1515; Pub. L. 102–25, title VII, §701(f)(4), Apr. 6, 1991, 105 Stat. 115; Pub. L. 102–484, div. A, title X, §1052(32), Oct. 23, 1992, 106 Stat. 2501, established defense industrial base office, prior to repeal by Pub. L. 102–484, §4202(a).

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition''.

1996—Subsec. (a). Pub. L. 104–201, §829(b)(1), substituted ''The Secretary of Defense'' for ''(1) The Secretary of Defense, in consultation with the National Defense Technology and Industrial Base Council,'' and struck out pars. (2) to (4) which read as follows:

''(2) As determined by the Secretary of Defense, the program shall be administered by one of the following:

''(A) An existing federally funded research and development center.

''(B) A consortium of existing federally funded research and development centers and other nonprofit entities.

''(C) A private sector entity (other than a federally funded research and development center).

''(D) The National Defense University.

''(3) A contract may be awarded under subparagraph (A), (B), or (C) of paragraph (2) only through the use of competitive procedures.

''(4) The Secretary of Defense shall ensure that there is appropriate coordination between the program and the Critical Technologies Institute.''

Subsec. (c)(3)(A). Pub. L. 104–201, §829(b)(2), substituted ''the Secretary of Defense for'' for ''the National Defense Technology and Industrial Base Council in'' and struck out ''and the periodic plans required by section 2506 of this title'' after ''section 2505 of this title''.

DEADLINE FOR ESTABLISHING PROGRAM

Section 4213(b) of Pub. L. 102–484 provided that: ''The Secretary of Defense shall establish the program required by section 2503 of title 10, United States Code, as added by subsection (a), not later than six months after the date of the enactment of this Act [Oct. 23, 1992]. The Secretary of Defense shall ensure that a contract solicitation is issued and a contract is awarded in a timely manner to facilitate the establishment of that program within the period set forth in the preceding sentence. The preceding sentence shall not apply if the Secretary determines that the program shall be administered by the National Defense University.''

§ 2504. Annual report to Congress

The Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives by March 1 of each year a report which shall include the following information:

(1) A description of the departmental guidance prepared pursuant to section 2506 of this title.

(2) A description of the methods and analyses being undertaken by the Department of Defense alone or in cooperation with other Federal agencies, to identify and address concerns regarding technological and industrial capabilities of the national technology and industrial base.

(3) A description of the assessments prepared pursuant to section 2505 of this title and other analyses used in developing the budget submission of the Department of Defense for the next fiscal year.

(4) Identification of each program designed to sustain specific essential technological and industrial capabilities and processes of the national technology and industrial base.

(Added Pub. L. 104–201, div. A, title VIII, § 829(e), Sept. 23, 1996, 110 Stat. 2614; amended Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

PRIOR PROVISIONS

A prior section 2504, added Pub. L. 102–484, div. D, title XLII, § 4214(a), Oct. 23, 1992, 106 Stat. 2666, established Center for Study of Defense Economic Adjustment, prior to repeal by Pub. L. 103–160, div. A, title XIII, § 1312(a)(1), Nov. 30, 1993, 107 Stat. 1786.

Another prior section 2504 was renumbered section 2531 of this title.

AMENDMENTS

1999—Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2506 of this title.

§ 2505. National technology and industrial base: periodic defense capability assessments

(a) PERIODIC ASSESSMENT.—Each fiscal year, the Secretary of Defense shall prepare selected assessments of the capability of the national technology and industrial base to attain the national security objectives set forth in section 2501(a) of this title. The Secretary of Defense shall prepare such assessments in consultation with the Secretary of Commerce and the Secretary of Energy.

(b) ASSESSMENT PROCESS.—The Secretary of Defense shall ensure that technology and industrial capability assessments—

(1) describe sectors or capabilities, their underlying infrastructure and processes;

(2) analyze present and projected financial performance of industries supporting the sectors or capabilities in the assessment; and

(3) identify technological and industrial capabilities and processes for which there is potential for the national industrial and technology base not to be able to support the achievement of national security objectives.

(c) ASSESSMENT OF EXTENT OF DEPENDENCY ON FOREIGN SOURCE ITEMS.—Each assessment under subsection (a) shall include a separate discussion and presentation regarding the extent to which the national technology and industrial base is dependent on items for which the source of supply, manufacture, or technology is outside of the United States and Canada and for which there is no immediately available source in the United States or Canada. The discussion and presentation regarding foreign dependency shall—

(1) identify cases that pose an unacceptable risk of foreign dependency, as determined by the Secretary; and

(2) present actions being taken or proposed to be taken to remedy the risk posed by the cases identified under paragraph (1), including efforts to develop a domestic source for the item in question.

(d) INTEGRATED PROCESS.—The Secretary of Defense shall ensure that consideration of the technology and industrial base assessments is integrated into the overall budget, acquisition, and logistics support decision processes of the Department of Defense.

(Added Pub. L. 102–484, div. D, title XLII, § 4215, Oct. 23, 1992, 106 Stat. 2667; amended Pub. L. 103–35, title II, § 201(g)(7), May 31, 1993, 107 Stat. 100; Pub. L. 104–201, div. A, title VIII, § 829(c)(1), Sept. 23, 1996, 110 Stat. 2612.)

PRIOR PROVISIONS

A prior section 2505 was renumbered section 2532 of this title.

AMENDMENTS

1996—Pub. L. 104–201 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (d) providing for National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a comprehensive assessment of capability of the national technology and industrial base to attain national security objectives.

1993—Pub. L. 103–35 substituted ''capability'' for ''capabilty'' in section catchline.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC ASSESSMENT

Section 4219 of Pub. L. 102–484, as amended by Pub. L. 103–35, title II, § 202(a)(14), May 31, 1993, 107 Stat. 101, set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2198, 2410g, 2500, 2503, 2504 of this title; title 22 section 3142.

§ 2506. Department of Defense technology and industrial base policy guidance

(a) DEPARTMENTAL GUIDANCE.—The Secretary of Defense shall prescribe departmental guidance for the attainment of each of the national security objectives set forth in section 2501(a) of this title. Such guidance shall provide for technological and industrial capability considerations to be integrated into the budget allocation, weapons acquisition, and logistics support decision processes.

(b) REPORT TO CONGRESS.—The Secretary of Defense shall report on the implementation of the departmental guidance in the annual report to Congress submitted pursuant to section 2504 of this title.

(Added Pub. L. 102–484, div. D, title XLII, § 4216(a), Oct. 23, 1992, 106 Stat. 2668; amended Pub. L. 104–201, div. A, title VIII, § 829(d), Sept. 23, 1996, 110 Stat. 2613.)

PRIOR PROVISIONS

A prior section 2506 was renumbered section 2533 of this title.

AMENDMENTS

1996—Pub. L. 104–201 substituted ''Department of Defense technology and industrial base policy guidance'' for ''National technology and industrial base: periodic defense capability plan'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (e) providing for the National Defense Technology and Industrial Base Council to prepare, at least annually through fiscal year 1997 and biennially thereafter, a multiyear plan for ensuring that the policies and programs of the Department of Defense, the Department of Energy, and other Federal de-

partments and agencies were planned, coordinated, funded, and implemented in a manner designed to attain national security objectives.

IMPLEMENTING REGULATIONS CONCERNING NATIONAL TECHNOLOGY AND INDUSTRIAL BASE PERIODIC PLAN

Section 4220 of Pub. L. 102–484 set forth requirements for the initial regulations prescribed to implement this section, prior to repeal by Pub. L. 104–201, div. A, title VIII, § 829(h), Sept. 23, 1996, 110 Stat. 2614.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2372, 2504 of this title; title 42 section 2123.

§ 2507. Data collection authority of President

(a) AUTHORITY.—The President shall be entitled, by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in the President's discretion, to the enforcement or the administration of this chapter and the regulations issued under this chapter.

(b) CONDITION FOR USE OF AUTHORITY.—The President shall issue regulations insuring that the authority of this section will be used only after the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency.

(c) PENALTY FOR NONCOMPLIANCE.—Any person who willfully performs any act prohibited or willfully fails to perform any act required by the provisions of subsection (a), or any rule, regulation, or order thereunder, shall be fined under title 18 or imprisoned not more than one year, or both.

(d) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Information obtained under section (a) which the President deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information shall not be published or disclosed unless the President determines that the withholding thereof is contrary to the interest of the national defense. Any person who willfully violates this subsection shall be fined under title 18 or imprisoned not more than one year, or both.

(e) REGULATIONS.—The President may make such rules, regulations, and orders as he considers necessary or appropriate to carry out the provisions of this section. Any regulation or order under this section may be established in such form and manner, may contain such classification and differentiations, and may provide for such adjustments and reasonable exceptions as in the judgment of the President are necessary or proper to effectuate the purposes of this section, or to prevent circumvention or evasion, or to facilitate enforcement of this section, or any rule, regulation, or order issued under this section.

(f) DEFINITIONS.—In this section:

(1) The term ''person'' includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing, except that no punishment provided by this section shall apply to the United States, or to any such government, political subdivision, or government agency.

(2) The term ''national defense'' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, space, and directly related activity.

(Added Pub. L. 102–484, div. D, title XLII, § 4217, Oct. 23, 1992, 106 Stat. 2670; amended Pub. L. 103–160, div. A, title XI, § 1182(b)(1), Nov. 30, 1993, 107 Stat. 1772.)

PRIOR PROVISIONS

A prior section 2507 was renumbered section 2534 of this title.

A prior section 2508 was renumbered section 2522 of this title and subsequently repealed.

A prior section 2509, added Pub. L. 101–510, div. A, title VIII, § 825(a), Nov. 5, 1990, 104 Stat. 1604; amended Pub. L. 102–484, div. A, title X, § 1052(34), Oct. 23, 1992, 106 Stat. 2501, required submission of defense industrial base annual reports, prior to repeal by Pub. L. 102–484, § 4202(a).

A prior section 2510, added Pub. L. 101–510, div. A, title VIII, § 826(a)(1), Nov. 5, 1990, 104 Stat. 1605, related to defense industrial base for textile and apparel products, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1993—Pub. L. 103–160 inserted headings in subsecs. (a) to (f).

SUBCHAPTER III—PROGRAMS FOR DEVELOPMENT, APPLICATION, AND SUPPORT OF DUAL-USE TECHNOLOGIES

Sec.
2511. Defense dual-use critical technology program.
[2512, 2513. Repealed.]
2514. Encouragement of technology transfer.
2515. Office of Technology Transition.
[2516. Repealed.]
2517. Office for Foreign Defense Critical Technology Monitoring and Assessment.
2518. Overseas foreign critical technology monitoring and assessment financial assistance program.
2519. Federal Defense Laboratory Diversification Program.
[2520. Repealed.]

AMENDMENTS

1996—Pub. L. 104–106, div. A, title X, § 1081(i)(2), Feb. 10, 1996, 110 Stat. 455, substituted ''program'' for ''partnerships'' in item 2511 and struck out items 2512 ''Commercial-military integration partnerships'', 2513 ''Regional technology alliances assistance program'', 2516 ''Military-Civilian Integration and Technology Transfer Advisory Board'', and 2520 ''Navy Reinvestment Program''.

1994—Pub. L. 103–337, div. A, title XI, § 1113(c), Oct. 5, 1994, 108 Stat. 2866, added items 2519 and 2520.

§ 2511. Defense dual-use critical technology program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program to further the national security objectives set

forth in section 2501(a) of this title by encouraging and providing for research, development, and application of dual-use critical technologies. The Secretary may make grants, enter into contracts, or enter into cooperative agreements and other transactions pursuant to section 2371 of this title in furtherance of the program. The Secretary shall identify projects to be conducted as part of the program.

(b) ASSISTANCE AUTHORIZED.—The Secretary of Defense may provide technical and other assistance to facilitate the achievement of the purposes of projects conducted under the program. In providing such assistance, the Secretary shall make available, as appropriate for the work to be performed, equipment and facilities of Department of Defense laboratories (including the scientists and engineers at those laboratories) for purposes of projects selected by the Secretary.

(c) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The total amount of funds provided by the Federal Government for a project conducted under the program may not exceed 50 percent of the total cost of the project. However, the Secretary of Defense may agree to a project in which the total amount of funds provided by the Federal Government exceeds 50 percent if the Secretary determines the project is particularly meritorious, but the project would not otherwise have sufficient non-Federal funding or in-kind contributions.

(2) The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a project conducted under the program for the purpose of calculating the share of the project costs that has been or is being undertaken by such participants. In such regulations, the Secretary may authorize a participant that is a small business concern to use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of project activities. Any such funds so used may be considered in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity percentage contribution in the project from non-Federal sources.

(3) The Secretary shall consider a project proposal submitted by a small business concern without regard to the ability of the small business concern to immediately meet its share of the anticipated project costs. Upon the selection of a project proposal submitted by a small business concern, the small business concern shall have a period of not less than 120 days in which to arrange to meet its financial commitment requirements under the project from sources other than a person of a foreign country. If the Secretary determines upon the expiration of that period that the small business concern will be unable to meet its share of the anticipated project costs, the Secretary shall revoke the selection of the project proposal submitted by the small business concern.

(d) SELECTION PROCESS.—Competitive procedures shall be used in the conduct of the program.

(e) SELECTION CRITERIA.—The criteria for the selection of projects under the program shall include the following:

(1) The extent to which the proposed project advances and enhances the national security objectives set forth in section 2501(a) of this title.

(2) The technical excellence of the proposed project.

(3) The qualifications of the personnel proposed to participate in the research activities of the proposed project.

(4) An assessment of timely private sector investment in activities to achieve the goals and objectives of the proposed project other than through the project.

(5) The potential effectiveness of the project in the further development and application of each technology proposed to be developed by the project for the national technology and industrial base.

(6) The extent of the financial commitment of eligible firms to the proposed project.

(7) The extent to which the project does not unnecessarily duplicate projects undertaken by other agencies.

(f) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the purposes of this section.

(Added Pub. L. 102–484, div. D, title XLII, § 4221(a), Oct. 23, 1992, 106 Stat. 2677; amended Pub. L. 103–160, div. A, title XIII, §§ 1315(a), 1317(c), Nov. 30, 1993, 107 Stat. 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(a), Oct. 5, 1994, 108 Stat. 2868; Pub. L. 104–106, div. A, title X, § 1081(c), Feb. 10, 1996, 110 Stat. 452.)

PRIOR PROVISIONS

A prior section 2511, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600; amended Pub. L. 102–190, div. A, title VIII, § 824(b), Dec. 5, 1991, 105 Stat. 1438, defined ''manufacturing technology'', ''manufacturing extension program'', and ''United States-based small manufacturing firm'' for purposes of former chapter 149 of this title, prior to repeal and restatement in section 2491 of this title by Pub. L. 102–484, §§ 4202(a), 4203(a).

Another prior section 2511 was renumbered section 2540 of this title and subsequently repealed.

Provisions similar to those in this section were contained in section 2523 of this title, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''program'' for ''partnerships'' in section catchline and amended text generally. Prior to amendment, text related to program for establishment of cooperative arrangements between Department of Defense and eligible entities.

1994—Subsec. (c)(3). Pub. L. 103–337 added par. (3).

1993—Subsec. (c). Pub. L. 103–160, § 1315(a), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Secretary of Defense shall ensure that, to the maximum extent he determines to be practicable, the amount of the funds provided by the Federal Government under a partnership does not exceed the total amount provided by non-Federal Government participants in that partnership.''

Subsec. (e). Pub. L. 103–160, § 1317(c), struck out '', except that procedures other than competitive pro-

cedures may be used in any case in which an exception set out in section 2304(c) of this title applies'' after ''partnerships''.

DUAL-USE SCIENCE AND TECHNOLOGY PROGRAM

Pub. L. 105–85, div. A, title II, §203, Nov. 18, 1997, 111 Stat. 1655, as amended by Pub. L. 106–65, div. A, title IX, §911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(a) FUNDING 1998.—Of the amounts authorized to be appropriated by section 201 [111 Stat. 1655], $75,000,000 is authorized for dual-use projects.

''(b) GOALS.—(1) Subject to paragraph (3), it shall be the objective of the Secretary of each military department to obligate for dual-use projects in each fiscal year referred to in paragraph (2), out of the total amount authorized to be appropriated for such fiscal year for the applied research programs of the military department, the percent of such amount that is specified for that fiscal year in paragraph (2).

''(2) The objectives for fiscal years under paragraph (1) are as follows:

''(A) For fiscal year 1998, 5 percent.

''(B) For fiscal year 1999, 7 percent.

''(C) For fiscal year 2000, 10 percent.

''(D) For fiscal year 2001, 15 percent.

''(3) The Secretary of Defense may establish for a military department for a fiscal year an objective different from the objective set forth in paragraph (2) if the Secretary—

''(A) determines that compelling national security considerations require the establishment of the different objective; and

''(B) notifies Congress of the determination and the reasons for the determination.

''(c) DESIGNATION OF OFFICIAL FOR DUAL-USE PROGRAMS.—(1) The Secretary of Defense shall designate a senior official in the Office of the Secretary of Defense to carry out responsibilities for dual-use projects under this subsection. The designated official shall report directly to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(2) The primary responsibilities of the designated official shall include developing policy and overseeing the establishment of, and adherence to, procedures for ensuring that dual-use projects are initiated and administered effectively and that applicable commercial technologies are integrated into current and future military systems.

''(3) In carrying out the responsibilities, the designated official shall ensure that—

''(A) dual-use projects are consistent with the joint warfighting science and technology plan referred to in section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 10 U.S.C. 2501 note); and

''(B) the dual-use projects of the military departments and defense agencies of the Department of Defense are coordinated and avoid unnecessary duplication.

''(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—The total amount of funds provided by a military department for a dual-use project entered into by the Secretary of that department shall not exceed 50 percent of the total cost of the project. In the case of a dual-use project initiated after the date of the enactment of this Act [Nov. 18, 1997], the Secretary may consider in-kind contributions by non-Federal participants only to the extent such contributions constitute 50 percent or less of the share of the project costs by such participants.

''(e) USE OF COMPETITIVE PROCEDURES.—Funds obligated for a dual-use project may be counted toward meeting an objective under subsection (a) only if the funds are obligated for a contract, grant, cooperative agreement, or other transaction that was entered into through the use of competitive procedures.

''(f) REPORT.—(1) Not later than March 1 of each of 1998, 1999, and 2000, the Secretary of Defense shall submit a report to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] on the progress made by the Department of Defense in meeting the objectives set forth in subsection (b) during the preceding fiscal year.

''(2) The report for a fiscal year shall contain, at a minimum, the following:

''(A) The aggregate value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research programs in the Department of Defense for that fiscal year.

''(B) For each military department, the value of all contracts, grants, cooperative agreements, or other transactions entered into during the fiscal year for which funding is counted toward meeting an objective under this section, expressed in relationship to the total amount appropriated for the applied research program of the military department for that fiscal year.

''(C) A summary of the cost-sharing arrangements in dual-use projects that were initiated during the fiscal year and are counted toward reaching an objective under this section.

''(D) A description of the regulations, directives, or other procedures that have been issued by the Secretary of Defense or the Secretary of a military department to increase the percentage of the total value of the dual-use projects undertaken to meet or exceed an objective under this section.

''(E) Any recommended legislation to facilitate achievement of objectives under this section.

''(g) COMMERCIAL OPERATIONS AND SUPPORT SAVINGS INITIATIVE.—(1) The Secretary of Defense shall establish a Commercial Operations and Support Savings Initiative (in this subsection referred to as the 'Initiative') to develop commercial products and processes that the military departments can incorporate into operational military systems to reduce costs of operations and support.

''(2) Of the amounts authorized to be appropriated by section 201, $50,000,000 is authorized for the Initiative.

''(3) Projects and participants in the Initiative shall be selected through the use of competitive procedures.

''(4) The budget submitted to Congress by the President for fiscal year 1999 and each fiscal year thereafter pursuant to section 1105(a) of title 31, United States Code, shall set forth separately the funding request for the Initiative.

''(h) REPEAL OF SUPERSEDED AUTHORITY.—[Repealed section 203 of Pub. L. 104–201, 110 Stat. 2451.]

''(i) DEFINITIONS.—In this section:

''(1) The term 'applied research program' means a program of a military department which is funded under the 6.2 Research, Development, Test and Evaluation account of that department.

''(2) The term 'dual-use project' means a project under a program of a military department or a defense agency under which research or development of a dual-use technology is carried out and the costs of which are shared by the Department of Defense and non-Government entities.''

APPLICATION OF 1993 AMENDMENTS TO EXISTING TECHNOLOGY REINVESTMENT PROJECTS

Section 1315(g) of Pub. L. 103–160 provided that in the case of projects funded under section 2511, 2512, 2513, 2523, or 2524 of this title with funds appropriated for a fiscal year beginning before Oct. 1, 1993, the amendments made by section 1315 of Pub. L. 103–160 would not alter the financial commitment requirements in effect on Nov. 30, 1993, for the non-Federal Government participants in the project.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2519 of this title.

[§§ 2512, 2513. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2512, added Pub. L. 102–484, div. D, title XLII, § 4222(a), Oct. 23, 1992, 106 Stat. 2679; amended Pub. L. 103–160, div. A, title XIII, § 1315(b), Nov. 30, 1993, 107 Stat. 1787; Pub. L. 103–337, div. A, title XI, § 1115(b), Oct. 5, 1994, 108 Stat. 2868, related to commercial-military integration partnerships.

A prior section 2512, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1600, related to responsibility of Secretary of Defense to provide management and planning, prior to repeal by Pub. L. 102–484, § 4202(a).

Section 2513, added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1428, § 2524; renumbered § 2513 and amended Pub. L. 102–484, div. D, title XLII, § 4223(a)–(f), Oct. 23, 1992, 106 Stat. 2681; Pub. L. 103–35, title II, § 201(d)(3), (e)(1), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title XI, § 1182(g)(2), title XIII, §§ 1315(c), 1316, Nov. 30, 1993, 107 Stat. 1774, 1787, 1789; Pub. L. 103–337, div. A, title XI, § 1115(c), Oct. 5, 1994, 108 Stat. 2868, related to regional technology alliances assistance program.

A prior section 2513, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601; amended Pub. L. 102–190, div. A, title II, § 203(c), Dec. 5, 1991, 105 Stat. 1314, required annual National Defense Manufacturing Technology Plan, prior to repeal by Pub. L. 102–484, § 4202(a).

§ 2514. Encouragement of technology transfer

(a) ENCOURAGEMENT OF TRANSFER REQUIRED.—The Secretary of Defense shall encourage, to the extent consistent with national security objectives, the transfer of technology between laboratories and research centers of the Department of Defense and other Federal agencies, State and local governments, colleges and universities, and private persons in cases that are likely to result in accomplishing the objectives set forth in section 2501(a) of this title.

(b) EXAMINATION AND IMPLEMENTATION OF METHODS TO ENCOURAGE TRANSFER.—The Secretary shall examine and implement methods, in addition to the encouragement referred to in subsection (a) and the program described in subsection (c), that are consistent with national security objectives and will enable Department of Defense personnel to promote technology transfer.

(c) PROGRAM TO ENCOURAGE DIVERSIFICATION OF DEFENSE LABORATORIES.—(1) The Secretary of Defense shall establish and implement a program to be known as the Federal Defense Laboratory Diversification Program (hereinafter in this subsection referred to as the ''Program''). The purpose of the Program shall be to encourage greater cooperation in research and production activities carried out by defense laboratories and by private industry of the United States in order to enhance and improve the products of such research and production activities.

(2) Under the Program, the defense laboratories, in coordination with the Office of Technology Transfer in the Office of the Secretary of Defense, shall carry out cooperative activities with private industry in order to promote (by the use or exchange of patents, licenses, cooperative research and development agreements and other cooperative agreements, and the use of symposia, meetings, and other similar mechanisms) the transfer of defense or dual-use technologies from the defense laboratories to private industry, and the development and application of such technologies by the defense laboratories and private industry, for the purpose of the commercial utilization of such technologies by private industry.

(3) The Secretary of Defense shall develop and annually update a plan for each defense laboratory that participates in the Program under which plan the laboratory shall carry out cooperative activities with private industry to promote the transfers described in subsection (b).

(4) In this subsection, the term ''defense laboratory'' means any laboratory owned or operated by the Department of Defense that carries out research in fiscal year 1993 in an amount in excess of $50,000,000.

(Added Pub. L. 102–484, div. D, title XLII, § 4224(a), Oct. 23, 1992, 106 Stat. 2682; amended Pub. L. 104–201, div. A, title VIII, § 829(f), Sept. 23, 1996, 110 Stat. 2614.)

PRIOR PROVISIONS

A prior section 2514, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1601, directed Secretary of Defense to enhance research relating to manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 2363 of this title prior to repeal by Pub. L. 102–484, §§ 4224(c), 4271(a)(2).

AMENDMENTS

1996—Subsec. (c)(5). Pub. L. 104–201 struck out par. (5) which read as follows: ''The Secretary shall coordinate the Program with the National Defense Technology and Industrial Base Council.''

NATIONAL ACTION PLAN ON ADVANCED SUPERCONDUCTIVITY RESEARCH AND DEVELOPMENT

Superconductivity research and development activities by Secretary of Defense and by Defense Advanced Research Projects Agency, see section 5207 of Title 15, Commerce and Trade.

TECHNOLOGY TRANSFER TO PRIVATE SECTOR

Pub. L. 100–180, div. A, title II, § 218(c), Dec. 4, 1987, 101 Stat. 1053, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(1) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall take appropriate action to ensure that high-temperature superconductivity technology resulting from the research activities of the Department of Defense is transferred to the private sector. Such transfer shall be made in accordance with section 10(e) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(e)), other applicable provisions of law, and Executive Order Number 12591, dated April 10, 1987 [set out as a note under 15 U.S.C. 3710].

''(2) The Secretary of Energy, in consultation with the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall ensure that the national laboratories of the Department of Energy participate, to the maximum appropriate extent, in the transfer to the private sector of technology developed under the Department of Defense superconductivity program in the national laboratories.''

§ 2515. Office of Technology Transition

(a) ESTABLISHMENT.—The Secretary of Defense shall establish within the Office of the Secretary of Defense an Office of Technology Transition.

(b) PURPOSE.—The purpose of the office shall be to ensure, to the maximum extent practicable, that technology developed for national security purposes is integrated into the private sector of the United States in order to enhance national technology and industrial base, reinvestment, and conversion activities consistent with the objectives set forth in section 2501(a) of this title.

(c) DUTIES.—The head of the office shall ensure that the office—

(1) monitors all research and development activities that are carried out by or for the military departments and Defense Agencies;

(2) identifies all such research and development activities that use technologies, or result in technological advancements, having potential nondefense commercial applications;

(3) serves as a clearinghouse for, coordinates, and otherwise actively facilitates the transition of such technologies and technological advancements from the Department of Defense to the private sector;

(4) conducts its activities in consultation and coordination with the Department of Energy and the Department of Commerce; and

(5) provides private firms with assistance to resolve problems associated with security clearances, proprietary rights, and other legal considerations involved in such a transition of technology.

(d) ANNUAL REPORT.—(1) The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report on the activities of the Office. The report shall be submitted each year at the same time that the budget is submitted to Congress by the President pursuant to section 1105 of title 31. The report shall contain a discussion of the accomplishments of the Office during the fiscal year preceding the fiscal year in which the report is submitted.

(2) The committees referred to in paragraph (1) are—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(Added Pub. L. 102–484, div. D, title XLII, § 4225(a), Oct. 23, 1992, 106 Stat. 2683; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(22), Feb. 10, 1996, 110 Stat. 505; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

PRIOR PROVISIONS

A prior section 2515, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to computer-integrated manufacturing technology, prior to repeal by Pub. L. 102–484, § 4202(a).

AMENDMENTS

1999—Subsec. (d)(2)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (d). Pub. L. 104–106 substituted ''Annual Report'' for ''Reporting Requirement'' in heading, designated existing provisions as par. (1), substituted ''The Secretary of Defense shall submit to the congressional committees specified in paragraph (2) an annual report on the activities of the Office. The report shall be submitted each year at the same time'' for ''The Secretary of Defense shall submit to the Committees on Armed Services and on Appropriations of the Senate and the House of Representatives an annual report on the activities of the Office at the same time'', and added par. (2).

SCHEDULE FOR ESTABLISHMENT OF OFFICE OF TECHNOLOGY TRANSITION

Section 4225(b) of Pub. L. 102–484 provided that: ''The Office of Technology Transition shall commence operations within 120 days after the date of the enactment of this Act [Oct. 23, 1992].''

SUBMISSION OF ANNUAL REPORT

Section 4225(c)(2) of Pub. L. 102–484 provided that: ''Notwithstanding section 2515(d) of title 10, United States Code (as added by subsection (a))—

''(A) the first report under that section shall be submitted not later than one year after the date of the enactment of this Act [Oct. 23, 1992]; and

''(B) no additional report is necessary under that section in the fiscal year in which such first report is submitted.''

[§ 2516. Repealed. Pub. L. 104–106, div. A, title X, § 1081(g), Feb. 10, 1996, 110 Stat. 455]

Section, added Pub. L. 102–484, div. D, title XLII, § 4226(a), Oct. 23, 1992, 106 Stat. 2684; amended Pub. L. 103–35, title II, § 201(g)(8), May 31, 1993, 107 Stat. 100, related to Military-Civilian Integration and Technology Transfer Advisory Board.

A prior section 2516, added Pub. L. 101–510, div. A, title VIII, § 823(a)(3), Nov. 5, 1990, 104 Stat. 1602, related to enhancement of concurrent engineering practices in design and development of weapon systems, prior to repeal by Pub. L. 102–484, § 4202(a).

§ 2517. Office for Foreign Defense Critical Technology Monitoring and Assessment

(a) IN GENERAL.—The Secretary of Defense shall establish within the Office of the Director of Defense Research and Engineering an office known as the ''Office for Foreign Defense Critical Technology Monitoring and Assessment'' (hereinafter in this section referred to as the ''Office'').

(b) RELATIONSHIP TO DEPARTMENT OF COMMERCE.—The head of the Office shall consult closely with appropriate officials of the Department of Commerce in order—

(1) to minimize the duplication of any effort of the Department of Commerce by the Department of Defense regarding the monitoring of foreign activities related to defense critical technologies that have potential commercial uses; and

(2) to ensure that the Office is effectively utilized to disseminate information to users of such information within the Federal Government.

(c) RESPONSIBILITIES.—The Office shall have the following responsibilities:

(1) To maintain within the Department of Defense a central library for the compilation and appropriate dissemination of unclassified and classified information and assessments regarding significant foreign activities in research, development, and applications of defense critical technologies.

(2) To establish and maintain—

(A) a widely accessible unclassified data base of information and assessments regard-

ing foreign science and technology activities that involve defense critical technologies, including, especially, activities in Europe and in Pacific Rim countries; and

(B) a classified data base of information and assessments regarding such activities.

(3) To perform liaison activities among the military departments, Defense Agencies, and other appropriate elements of the Department of Defense, with appropriate agencies and offices of the Department of Commerce and the Department of State, and with other departments and agencies of the Federal Government in order to ensure that significant activities in research, development, and applications of defense critical technologies are identified, monitored, and assessed by an appropriate department or agency of the Federal Government.

(4) To ensure the maximum practicable public availability of information and assessments contained in the unclassified data bases established pursuant to paragraph (2)—

(A) by limiting, to the maximum practicable extent, restrictive classification of such information and assessments; and

(B) by disseminating to the National Technical Information Service of the Department of Commerce information and assessments regarding defense critical technologies having potential commercial uses.

(5) To disseminate through the National Technical Information Service of the Department of Commerce unclassified information and assessments regarding defense critical technologies having potential commercial uses so that such information and assessments may be further disseminated within the Federal Government and to the private sector.

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1430, § 2525; renumbered § 2517 and amended Pub. L. 102–484, div. D, title XLII, § 4227, Oct. 23, 1992, 106 Stat. 2685.)

PRIOR PROVISIONS

A prior section 2517 was renumbered section 2523 of this title and subsequently repealed.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2525 of this title as this section and inserted ''Critical'' after ''Foreign Defense'' in subsec. (a).

§ 2518. Overseas foreign critical technology monitoring and assessment financial assistance program

(a) ESTABLISHMENT AND PURPOSE OF PROGRAM.—The Secretary of Defense may establish a foreign critical technology monitoring and assessment program. Under the program, the Secretary may enter into cooperative arrangements with one or more eligible not-for-profit organizations in order to provide financial assistance for the establishment of foreign critical technology monitoring and assessment offices in Europe, Pacific Rim countries, and such other countries as the Secretary considers appropriate.

(b) ELIGIBLE ORGANIZATIONS.—Any not-for-profit industrial or professional organization that has economic and scientific interests in research, development, and applications of dual-use critical technologies is eligible to enter into a cooperative arrangement referred to in subsection (a).

(Added Pub. L. 102–190, div. A, title VIII, § 821(a), Dec. 5, 1991, 105 Stat. 1431, § 2526; renumbered § 2518, Pub. L. 102–484, div. D, title XLII, § 4228, Oct. 23, 1992, 106 Stat. 2685.)

PRIOR PROVISIONS

A prior section 2518 was renumbered section 2522 of this title and subsequently repealed.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2526 of this title as this section.

§ 2519. Federal Defense Laboratory Diversification Program

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense shall conduct a program in accordance with this section for the purpose of promoting cooperation between Department of Defense laboratories and industry on research and development of dual-use technologies in order to further the national security objectives set forth in section 2501(a) of this title.

(b) PARTNERSHIPS.—(1) The Secretary shall provide for the establishment under the program of cooperative arrangements (hereinafter in this section referred to as ''partnerships'') between a Department of Defense laboratory and eligible firms and nonprofit research corporations. A partnership may also include one or more additional Federal laboratories, institutions of higher education, agencies of State and local governments, and other entities, as determined appropriate by the Secretary.

(2) For purposes of this section, a federally funded research and development center shall be considered a Department of Defense laboratory if the center is sponsored by the Department of Defense.

(c) ASSISTANCE AUTHORIZED.—(1) The Secretary may make grants, enter into contracts, enter into cooperative agreements and other transactions pursuant to section 2371 of this title, and enter into cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a) in order to establish partnerships.

(2) Subject to subsection (d), the Secretary may provide a partnership with technical and other assistance in order to facilitate the achievement of the purpose of this section.

(d) FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.—(1) The Secretary shall ensure that the non-Federal Government participants in a partnership make a substantial contribution to the total cost of partnership activities. The amount of the contribution shall be commensurate with the risk undertaken by such participants and the potential benefits of the activities for such participants.

(2) The regulations prescribed pursuant to section 2511(c)(2) of this title shall apply to in-kind contributions made by non-Federal Government participants in a partnership.

(e) SELECTION PROCESS.—Competitive procedures shall be used in the establishment of partnerships.

(f) SELECTION CRITERIA.—The criteria for the selection of a proposed partnership for establishment under this section shall include the criteria set forth in section 2511(e) of this title.

(g) REGULATIONS.—The Secretary shall prescribe regulations for the purposes of this section.

(Added Pub. L. 103–337, div. A, title XI, §1113(a), Oct. 5, 1994, 108 Stat. 2864; amended Pub. L. 104–106, div. A, title X, §1081(d), Feb. 10, 1996, 110 Stat. 454.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, §1081(d)(1), struck out ''referred to in section 2511(b) of this title'' after ''corporations''.

Subsec. (f). Pub. L. 104–106, §1081(d)(2), substituted ''section 2511(e)'' for ''section 2511(f)''.

[§ 2520. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section, added Pub. L. 103–337, div. A, title XI, §1113(b), Oct. 5, 1994, 108 Stat. 2865, related to Navy Reinvestment Program.

SUBCHAPTER IV—MANUFACTURING TECHNOLOGY

Sec.
2521. Manufacturing Technology Program.
2522. Armament retooling and manufacturing.
[2523, 2524. Repealed.]
[2525. Renumbered.]

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, redesignated item 2525 as 2521 and added item 2522.

1998—Pub. L. 105–261, div. A, title X, §1069(a)(5), Oct. 17, 1998, 112 Stat. 2136, struck out ''AND DUAL-USE ASSISTANCE EXTENSION PROGRAMS'' after ''TECHNOLOGY'' in subchapter heading.

1996—Pub. L. 104–106, div. A, title II, §276(b), title X, §1081(i)(3), Feb. 10, 1996, 110 Stat. 242, 455, struck out items 2521 ''National Defense Manufacturing Technology Program'', 2522 ''Defense Advanced Manufacturing Technology Partnerships'', 2523 ''Manufacturing extension programs'', and 2524 ''Defense dual-use assistance extension program'' and substituted ''Manufacturing Technology Program'' for ''Manufacturing Science and Technology Program'' in item 2525.

1994—Pub. L. 103–337, div. A, title II, §256(a)(2), Oct. 5, 1994, 108 Stat. 2704, substituted ''Manufacturing Science and'' for ''Industrial Preparedness Manufacturing'' in item 2525.

1993—Pub. L. 103–160, div. A, title VIII, §801(a)(2), Nov. 30, 1993, 107 Stat. 1701, added item 2525.

§ 2521. Manufacturing Technology Program

(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Manufacturing Technology Program to further the national security objectives of section 2501(a) of this title through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems. The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program. The Under Secretary of Defense for Acquisition, Technology, and Logistics shall administer the program.

(b) PURPOSE OF PROGRAM.—The Secretary of Defense shall use the program—

(1) to provide centralized guidance and direction (including goals, milestones, and priorities) to the military departments and the Defense Agencies on all matters relating to manufacturing technology;

(2) to direct the development and implementation of Department of Defense plans, programs, projects, activities, and policies that promote the development and application of advanced technologies to manufacturing processes, tools, and equipment;

(3) to improve the manufacturing quality, productivity, technology, and practices of businesses and workers providing goods and services to the Department of Defense;

(4) to focus Department of Defense support for the development and application of advanced manufacturing technologies and processes for use to meet manufacturing requirements that are essential to the national defense, as well as for repair and remanufacturing in support of the operations of systems commands, depots, air logistics centers, and shipyards;

(5) to disseminate information concerning improved manufacturing improvement concepts, including information on such matters as best manufacturing practices, product data exchange specifications, computer-aided acquisition and logistics support, and rapid acquisition of manufactured parts;

(6) to sustain and enhance the skills and capabilities of the manufacturing work force;

(7) to promote high-performance work systems (with development and dissemination of production technologies that build upon the skills and capabilities of the work force), high levels of worker education and training; and

(8) to ensure appropriate coordination between the manufacturing technology programs and industrial preparedness programs of the Department of Defense and similar programs undertaken by other departments and agencies of the Federal Government or by the private sector.

(c) EXECUTION.—(1) The Secretary may carry out projects under the program through the Secretaries of the military departments and the heads of the Defense Agencies.

(2) In the establishment and review of requirements for an advanced manufacturing technology or process, the Secretary shall ensure the participation of those prospective technology users that are expected to be the users of that technology or process.

(3) The Secretary shall ensure that each project under the program for the development of an advanced manufacturing technology or process includes an implementation plan for the transition of that technology or process to the prospective technology users that will be the users of that technology or process.

(4) In the periodic review of a project under the program, the Secretary shall ensure participation by those prospective technology users that are the expected users for the technology or process being developed under the project.

(5) In order to promote increased dissemination and use of manufacturing technology throughout the national defense technology and industrial base, the Secretary shall seek, to the maximum extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.

(6) In this subsection, the term ''prospective technology users'' means the following officials and elements of the Department of Defense:

(A) Program and project managers for defense weapon systems.

(B) Systems commands.

(C) Depots.

(D) Air logistics centers.

(E) Shipyards.

(d) COMPETITION AND COST SHARING.—(1) In accordance with the policy stated in section 2374 of this title, competitive procedures shall be used for awarding all grants and entering into all contracts, cooperative agreements, and other transactions under the program.

(2) Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project. For a project for which the Government receives an offer from only one offeror, the contracting officer shall negotiate the ratio of contract recipient cost to Government cost that represents the best value to the Government.

(e) FIVE-YEAR PLAN.—(1) The Secretary of Defense shall prepare and maintain a five-year plan for the program.

(2) The plan shall establish the following:

(A) The overall manufacturing technology objectives, milestones, priorities, and investment strategy for the program.

(B) The specific objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.

(C) Plans for the implementation of the advanced manufacturing technologies and processes being developed under the program.

(3) The plan shall be updated biennially and shall be included in the budget justification documents submitted in support of the budget of the Department of Defense for each even-numbered fiscal year (as included in the budget of the President submitted to Congress under section 1105 of title 31).

(Added Pub. L. 103–160, div. A, title VIII, §801(a)(1), Nov. 30, 1993, 107 Stat. 1700, §2525; amended Pub. L. 103–337, div. A, title II, §256(a)(1), Oct. 5, 1994, 108 Stat. 2704; Pub. L. 104–106, div. A, title II, §276(a), title X, §1081(e), title XV, §1503(a)(28), Feb. 10, 1996, 110 Stat. 241, 454, 512; Pub. L. 105–85, div. A, title II, §211(a), (b), Nov. 18, 1997, 111 Stat. 1657; Pub. L. 105–261, div. A, title II, §213, Oct. 17, 1998, 112 Stat. 1947; Pub. L. 106–65, div. A, title II, §216, Oct. 5, 1999, 113 Stat. 543; renumbered §2521, Pub. L. 106–398, §1 [[div. A], title III, §344(c)(1)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71; Pub. L. 107–107, div. A, title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title II, §213, Dec. 2, 2002, 116 Stat. 2481.)

PRIOR PROVISIONS

A prior section 2521, added Pub. L. 102–484, div. D, title XLII, §4231(a), Oct. 23, 1992, 106 Stat. 2686, related to National Defense Manufacturing Technology Program, prior to repeal by Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2521, added Pub. L. 102–190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1426, defined terms for purposes of former chapter 150 of this title, prior to repeal and restatement in section 2491 [now 2500] of this title by Pub. L. 102–484, §§4202(a), 4203(a).

Another prior section 2521 was renumbered section 2540 of this title and subsequently repealed.

AMENDMENTS

2002—Subsec. (e)(1). Pub. L. 107–314, §213(a), substituted ''prepare and maintain a five-year plan for the program.'' for ''prepare a five-year plan for the program which establishes—

''(A) the overall manufacturing technology goals, milestones, priorities, and investment strategy for the program; and

''(B) for each of the five fiscal years covered by the plan, the objectives of, and funding for the program by, each military department and each Defense Agency participating in the program.''

Subsec. (e)(2). Pub. L. 107–314, §213(a), substituted ''establish'' for ''include'' in introductory provisions and amended subpars. (A) and (B) generally. Prior to amendment, text read as follows:

''(A) An assessment of the effectiveness of the program, including a description of all completed projects and status of implementation.

''(B) An assessment of the extent to which the costs of projects are being shared by the following:

''(i) Commercial enterprises in the private sector.

''(ii) Department of Defense program offices, including weapon system program offices.

''(iii) Departments and agencies of the Federal Government outside the Department of Defense.

''(iv) Institutions of higher education.

''(v) Other institutions not operated for profit.

''(vi) Other sources.''

Subsec. (e)(3). Pub. L. 107–314, §213(b), substituted ''biennially'' for ''annually'' and ''for each even-numbered fiscal year'' for ''for a fiscal year''.

2001—Subsec. (a). Pub. L. 107–107 substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

2000—Pub. L. 106–398 renumbered section 2525 of this title as this section.

1999—Subsec. (a). Pub. L. 106–65, §216(a), in first sentence, inserted ''through the development and application of advanced manufacturing technologies and processes that will reduce the acquisition and supportability costs of defense weapon systems and reduce manufacturing and repair cycle times across the life cycles of such systems'' after ''title''.

Subsec. (b)(4). Pub. L. 106–65, §216(b), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''to promote dual-use manufacturing processes;''.

Subsec. (c)(2) to (6). Pub. L. 106–65, §216(c), added pars. (2) to (4), redesignated former par. (2) as (5), and added par. (6).

Subsec. (d). Pub. L. 106–65, §216(d), struck out ''(A)'' before ''In accordance with'' in par. (1), redesignated par. (1)(B) as par. (2), substituted ''Under the competitive procedures used, the factors to be considered in the evaluation of each proposed grant, contract, cooperative agreement, or other transaction for a project under the program shall include the extent to which that proposed transaction provides for the proposed recipient to share in the cost of the project.'' for ''For each grant awarded and each contract, cooperative agreement, or other transaction entered into on a cost-

share basis under the program, the ratio of contract recipient cost to Government cost shall be determined by competitive procedures.'', and struck out former pars. (2) and (3) which required grants, contracts, cooperative agreements, and other transactions to be awarded or entered into on a cost-sharing basis unless the Secretary of Defense made certain determinations and specified as a goal that at least 25 percent of the funds available for the program for each fiscal year be used for grants, contracts, cooperative agreements, and other transactions on a cost-share basis under which the ratio of recipient cost to Government cost was two to one.

Subsec. (e)(2)(A). Pub. L. 106–65, §216(e)(1), inserted '', including a description of all completed projects and status of implementation'' before period at end.

Subsec. (e)(2)(C). Pub. L. 106–65, §216(e)(2), added subpar. (C).

1998—Subsec. (d)(1). Pub. L. 105–261, §213(a), designated existing provisions as subpar. (A), substituted ''In accordance with the policy stated in section 2374 of this title, competitive'' for ''Competitive'', and added subpar. (B).

Subsec. (d)(2). Pub. L. 105–261, §213(b), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (C) as cls. (i) to (iii), respectively, and added subpars. (B) and (C).

Subsec. (d)(3). Pub. L. 105–261, §213(c)(2), substituted ''As a goal, at least'' for ''At least'' and ''should'' for ''shall'' and inserted at end ''The Secretary of Defense, in coordination with the Secretaries of the military departments and upon recommendation of the Under Secretary of Defense for Acquisition and Technology, shall establish annual objectives to meet such goal.''

Subsec. (d)(4). Pub. L. 105–261, §213(c)(1), struck out par. (4) which read as follows: ''If the requirement of paragraph (3) cannot be met by July 15 of a fiscal year, the Under Secretary of Defense for Acquisition and Technology may waive the requirement and obligate the balance of the funds available for the program for that fiscal year on a cost-share basis under which the ratio of recipient cost to Government cost is less than two to one. Before implementing any such waiver, the Under Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives the reasons for the waiver.''

Subsec. (e)(2). Pub. L. 105–261, §213(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The plan shall include an assessment of the effectiveness of the program.''

1997—Subsec. (c)(2). Pub. L. 105–85, §211(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall seek, to the extent practicable, the participation of manufacturers of manufacturing equipment in the projects under the program.''

Subsec. (e). Pub. L. 105–85, §211(b), added subsec. (e).

1996—Pub. L. 104–106, §276(a)(1), amended section catchline, as amended by Pub. L. 104–106, §§1503(a)(28), 1506, by striking out ''Science and'' after ''Manufacturing''.

Pub. L. 104–106, §1503(a)(28), substituted ''Science and Technology Program'' for ''science and technology program'' in section catchline.

Subsec. (a). Pub. L. 104–106, §276(a)(2), struck out ''Science and'' after ''Manufacturing'' and inserted after first sentence ''The Secretary shall use the joint planning process of the directors of the Department of Defense laboratories in establishing the program.''

Subsec. (b). Pub. L. 104–106, §1081(e), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''PURPOSE.—The purpose of the program is to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

Subsec. (c). Pub. L. 104–106, §276(a)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (d)(2)(C). Pub. L. 104–106, §276(a)(4)(A), added subpar. (C).

Subsec. (d)(3), (4). Pub. L. 104–106, §276(a)(4)(B), added pars. (3) and (4).

1994—Pub. L. 103–337 substituted ''Manufacturing science and technology program'' for ''Industrial Preparedness Manufacturing Technology Program'' as section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall establish an Industrial Preparedness Manufacturing Technology program to enhance the capability of industry to meet the manufacturing needs of the Department of Defense.''

§ 2522. Armament retooling and manufacturing

The Secretary of the Army is authorized by chapter 434 of this title to carry out programs for the support of armaments retooling and manufacturing in the national defense industrial and technology base.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(c)(1)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71.)

PRIOR PROVISIONS

A prior section 2522, added Pub. L. 102–190, div. A, title VIII, §823(a)(1), Dec. 5, 1991, 105 Stat. 1435, §2518; renumbered §2522 and amended Pub. L. 102–484, div. D, title XLII, §4232(a), (b), Oct. 23, 1992, 106 Stat. 2687, related to defense advanced manufacturing technology partnerships, prior to repeal by Pub. L. 104–106, div. A, title X, §1081(f), Feb. 10, 1996, 110 Stat. 454.

Another prior section 2522, added Pub. L. 101–189, div. A, title VIII, §841(b)(1), Nov. 29, 1989, 103 Stat. 1512, §2508; amended Pub. L. 101–510, div. A, title VIII, §821(a), Nov. 5, 1990, 104 Stat. 1597; Pub. L. 102–25, title VII, §701(g)(3), Apr. 6, 1991, 105 Stat. 115; renumbered §2522, Pub. L. 102–190, div. A, title VIII, §821(b)(1), Dec. 5, 1991, 105 Stat. 1431, required an annual defense critical technologies plan, prior to repeal by Pub. L. 102–484, §4202(a).

[§§ 2523, 2524. Repealed. Pub. L. 104–106, div. A, title X, § 1081(f), Feb. 10, 1996, 110 Stat. 454]

Section 2523, added Pub. L. 101–510, div. A, title VIII, §823(a)(3), Nov. 5, 1990, 104 Stat. 1602, §2517; amended Pub. L. 102–190, div. A, title VIII, §824(a), Dec. 5, 1991, 105 Stat. 1436; renumbered §2523 and amended Pub. L. 102–484, div. D, title XLII, §4233(a), (b), Oct. 23, 1992, 106 Stat. 2687; Pub. L. 103–160, div. A, title IX, §904(d)(1), title XI, §1182(b)(2), title XIII, §1315(d), Nov. 30, 1993, 107 Stat. 1728, 1772, 1787, related to manufacturing extension programs.

A prior section 2523, added Pub. L. 102–190, div. A, title VIII, §821(a), Dec. 5, 1991, 105 Stat. 1427, related to defense dual-use critical technology partnerships, prior to repeal and restatement in section 2511 of this title by Pub. L. 102–484, §§4202(a), 4221(a).

Section 2524, added Pub. L. 102–484, div. D, title XLII, §4234(a), Oct. 23, 1992, 106 Stat. 2687; amended Pub. L. 103–35, title II, §201(g)(9), May 31, 1993, 107 Stat. 100; Pub. L. 103–160, div. A, title XIII, §§1314, 1315(e), Nov. 30, 1993, 107 Stat. 1786, 1788; Pub. L. 103–337, div. A, title X, §1070(b)(10), title XI, §§1114(b), (c), 1115(d), Oct. 5, 1994, 108 Stat. 2857, 2867–2869; Pub. L. 104–106, div. A, title XV, §1503(a)(27), Feb. 10, 1996, 110 Stat. 512, related to defense dual-use assistance extension program.

A prior section 2524 was renumbered section 2513 of this title.

[§ 2525. Renumbered § 2521]

PRIOR PROVISIONS

A prior section 2525 was renumbered section 2517 of this title.

A prior section 2526 was renumbered section 2518 of this title.

SUBCHAPTER V—MISCELLANEOUS TECHNOLOGY BASE POLICIES AND PROGRAMS

Sec.
2531. Defense memoranda of understanding and related agreements.
2532. Offset policy; notification.
2533. Determinations of public interest under the Buy American Act.
2533a. Requirement to buy certain articles from American sources; exceptions.
2534. Miscellaneous limitations on the procurement of goods other than United States goods.
2535. Defense Industrial Reserve.
2536. Award of certain contracts to entities controlled by a foreign government: prohibition.
2537. Improved national defense control of technology diversions overseas.
2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations.
2539. Industrial mobilization: plants; lists.
2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness.
2539b. Availability of samples, drawings, information, equipment, materials, and certain services.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title VIII, § 832(a)(2), Dec. 28, 2001, 115 Stat. 1190, added item 2533a.

1994—Pub. L. 103–337, div. A, title VIII, § 812(b)(2), title X, § 1070(a)(13)(B), Oct. 5, 1994, 108 Stat. 2816, 2856, substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' in item 2533 and renumbered items 2540 and 2541 as 2539a and 2539b, respectively.

1993—Pub. L. 103–160, div. A, title VIII, §§ 828(c)(5), 842(c)(2), Nov. 30, 1993, 107 Stat. 1714, 1719, substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government'' in item 2536 and added items 2538 to 2541.

1992—Pub. L. 102–484, div. A, title VIII, §§ 836(a)(2), 838(b), Oct. 23, 1992, 106 Stat. 2463, 2466, added items 2536 and 2537.

§ 2531. Defense memoranda of understanding and related agreements

(a) CONSIDERATIONS IN MAKING AND IMPLEMENTING MOUS AND RELATED AGREEMENTS.—In the negotiation, renegotiation, and implementation of any existing or proposed memorandum of understanding, or any existing or proposed agreement related to a memorandum of understanding, between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, or to the reciprocal procurement of defense items, the Secretary of Defense shall—

(1) consider the effects of such existing or proposed memorandum of understanding or related agreement on the defense technology and industrial base of the United States; and

(2) regularly solicit and consider comments and recommendations from the Secretary of Commerce with respect to the commercial implications of such memorandum of understanding or related agreement and the potential effects of such memorandum of understanding or related agreement on the international competitive position of United States industry.

(b) INTER-AGENCY REVIEW OF EFFECTS ON UNITED STATES INDUSTRY.—Whenever the Secretary of Commerce has reason to believe that an existing or proposed memorandum of understanding or related agreement has, or threatens to have, a significant adverse effect on the international competitive position of United States industry, the Secretary may request an inter-agency review of the memorandum of understanding or related agreement. If, as a result of the review, the Secretary determines that the commercial interests of the United States are not being served or would not be served by adhering to the terms of such existing memorandum or related agreement or agreeing to such proposed memorandum or related agreement, as the case may be, the Secretary shall recommend to the President the renegotiation of the existing memorandum or related agreement or any modification to the proposed memorandum of understanding or related agreement that he considers necessary to ensure an appropriate balance of interests.

(c) LIMITATION ON ENTERING INTO MOUS AND RELATED AGREEMENTS.—A memorandum of understanding or related agreement referred to in subsection (a) may not be entered into or implemented if the President, taking into consideration the results of the inter-agency review, determines that such memorandum of understanding or related agreement has or is likely to have a significant adverse effect on United States industry that outweighs the benefits of entering into or implementing such memorandum or agreement.

(Added Pub. L. 100–456, div. A, title VIII, § 824, Sept. 29, 1988, 102 Stat. 2019, § 2504; amended Pub. L. 101–189, div. A, title VIII, § 815(a), Nov. 29, 1989, 103 Stat. 1500; Pub. L. 101–510, div. A, title XIV, § 1453, Nov. 5, 1990, 104 Stat. 1694; renumbered § 2531 and amended Pub. L. 102–484, div. D, title XLII, §§ 4202(a), 4271(c), Oct. 23, 1992, 106 Stat. 2659, 2696.)

AMENDMENTS

1992—Pub. L. 102–484, § 4202(a), renumbered section 2504 of this title as this section.

Subsec. (a)(1). Pub. L. 102–484, § 4271(c), substituted ''defense technology and industrial base'' for ''defense industrial base''.

1990—Subsec. (a). Pub. L. 101–510 inserted ''or to the reciprocal procurement of defense items,'' after ''defense equipment,'' in introductory provisions.

1989—Pub. L. 101–189 inserted ''and related agreements'' after ''understanding'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''In the negotiation and renegotiation of each memorandum of understanding between the Secretary of Defense, acting on behalf of the United States, and one or more foreign countries (or any instrumentality of a foreign country) relating to research, development, or production of defense equipment, the Secretary of Defense shall—

''(1) consider the effect of such proposed memorandum of understanding on the defense industrial base of the United States; and

''(2) regularly solicit and consider information or recommendations from the Secretary of Commerce

with respect to the effect on the United States industrial base of such memorandum of understanding.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2534 of this title.

§ 2532. Offset policy; notification

(a) ESTABLISHMENT OF OFFSET POLICY.—The President shall establish, consistent with the requirements of this section, a comprehensive policy with respect to contractual offset arrangements in connection with the purchase of defense equipment or supplies which addresses the following:

(1) Transfer of technology in connection with offset arrangements.

(2) Application of offset arrangements, including cases in which United States funds are used to finance the purchase by a foreign government.

(3) Effects of offset arrangements on specific subsectors of the industrial base of the United States and for preventing or ameliorating any serious adverse effects on such subsectors.

(b) TECHNOLOGY TRANSFER.—(1) No official of the United States may enter into a memorandum of understanding or other agreement with a foreign government that would require the transfer of United States defense technology to a foreign country or a foreign firm in connection with a contract that is subject to an offset arrangement if the implementation of such memorandum or agreement would significantly and adversely affect the defense industrial base of the United States and would result in a substantial financial loss to a United States firm.

(2) Paragraph (1) shall not apply in the case of a memorandum of understanding or agreement described in paragraph (1) if the Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, determines that a transfer of United States defense technology pursuant to such understanding or agreement will result in strengthening the national security of the United States and so certifies to Congress.

(3) If a United States firm is required under the terms of a memorandum of understanding, or other agreement entered into by the United States with a foreign country, to transfer defense technology to a foreign country, the United States firm may protest the determination to the Secretary of Defense on the grounds that the transfer of such technology would adversely affect the defense industrial base of the United States and would result in substantial financial loss to the protesting firm. The Secretary of Defense, in consultation with the Secretary of Commerce and the Secretary of State, shall make the final determination of the validity of the protesting firm's claim.

(c) NOTIFICATION REGARDING OFFSETS.—If at any time a United States firm enters into a contract for the sale of a weapon system or defense-related item to a foreign country or foreign firm and such contract is subject to an offset arrangement exceeding $50,000,000 in value, such firm shall notify the Secretary of Defense of the proposed sale. Notification shall be made under this subsection in accordance with regulations prescribed by the Secretary of Defense in consultation with the Secretary of Commerce.

(d) DEFINITIONS.—In this section:

(1) The term ''United States firm'' means a business entity that performs substantially all of its manufacturing, production, and research and development activities in the United States.

(2) The term ''foreign firm'' means a business entity other than a United States firm.

(Added Pub. L. 100–456, div. A, title VIII, § 825(b), Sept. 29, 1988, 102 Stat. 2020, § 2505; renumbered § 2532, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659.)

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 2505 of this title as this section.

CONTRACTUAL OFFSET ARRANGEMENTS; CONGRESSIONAL STATEMENT OF FINDINGS

Section 825(a) of Pub. L. 100–456 provided that: ''Congress makes the following findings:

''(1) Many contracts entered into by United States firms for the supply of weapon systems or defense-related items to foreign countries and foreign firms are subject to contractual arrangements under which United States firms must agree—

''(A) to have a specified percentage of work under, or monetary amount of, the contract performed by one or more foreign firms;

''(B) to purchase a specified amount or quantity of unrelated goods or services from domestic sources of such foreign countries; or

''(C) to invest a specified amount in domestic businesses of such foreign countries.

Such contractual arrangements, known as 'offsets', are a component of international trade and could have an impact on United States defense industry opportunities in domestic and foreign markets.

''(2) Some United States contractors and subcontractors may be adversely affected by such contractual arrangements.

''(3) Many contracts which provide for or are subject to offset arrangements require, in connection with such arrangements, the transfer of United States technology to foreign firms.

''(4) The use of such transferred technology by foreign firms in conjunction with foreign trade practices permitted under the trade policies of the countries of such firms can give foreign firms a competitive advantage against United States firms in world markets for products using such technology.

''(5) A purchase of defense equipment pursuant to an offset arrangement may increase the cost of the defense equipment to the purchasing country and may reduce the amount of defense equipment that a country may purchase.

''(6) The exporting of defense equipment produced in the United States is important to maintain the defense industrial base of the United States, lower the unit cost of such equipment to the Department of Defense, and encourage the standardized utilization of United States equipment by the allies of the United States.''

NEGOTIATIONS WITH COUNTRIES REQUIRING OFFSET ARRANGEMENTS

Section 825(c) of Pub. L. 100–456, as amended by Pub. L. 101–189, div. A, title VIII, § 816, Nov. 29, 1989, 103 Stat. 1501, provided that:

''(1) The President shall enter into negotiations with foreign countries that have a policy of requiring an offset arrangement in connection with the purchase of defense equipment or supplies from the United States. The negotiations should be conducted with a view to achieving an agreement with the countries concerned that would limit the adverse effects that such arrangements have on the defense industrial base of each such

country. Every effort shall be made to achieve such agreements within two years after September 29, 1988.

''(2) In the negotiation or renegotiation of any memorandum of understanding between the United States and one or more foreign countries relating to the reciprocal procurement of defense equipment and supplies or research and development, the President shall make every effort to achieve an agreement with the country or countries concerned that would limit the adverse effects that offset arrangements have on the defense industrial base of the United States.''

[For delegation of functions of President under section 825(c) of Pub. L. 100–456 to Secretary of Defense and United States Trade Representative, see section 5–201 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

REPORT TO CONGRESS ON OFFSET ARRANGEMENTS REQUIRED BY FOREIGN COUNTRIES AND FIRMS; DISCUSSION OF POLICY OPTIONS

Section 825(d) of Pub. L. 100–456 provided that:

''(1) Not later than November 15, 1988, the President shall submit to Congress a comprehensive report on contractual offset arrangements required of United States firms for the supply of weapon systems or defense-related items to foreign countries or foreign firms. Such report shall include, at a minimum, the following:

''(A) An analysis of the amount and type of contractual offsets required of United States firms by the governments of foreign countries or by foreign firms.

''(B) An assessment of the benefits for and costs to United States manufacturers of defense products at all tiers that result from requirements of foreign governments for contractual offset arrangements in the case of products procured from United States firms.

''(C) An assessment of the benefits for and the costs to United States manufacturers of defense products at all tiers that would result from restriction of the ability of foreign governments or foreign firms to require contractual offsets in the case of defense products procured from United States firms.

''(D) An assessment of the benefits and costs of a United States policy that requires reciprocal offsets in the procurement of defense products from those countries whose governments have a policy of requiring contractual offsets in the case of defense products procured from United States firms.

''(E) An assessment of the impact that elimination of contractual offset requirements in international sales of defense products would have on the national security of the United States.

''(F) Recommendations for a national policy with respect to contractual offset arrangements.

''(G) A preliminary discussion of the actions referred to in paragraph (2).

''(2) Not later than March 15, 1990, the President shall transmit to Congress a report containing a discussion of appropriate actions to be taken by the United States with respect to purchases from United States firms by a foreign country (or a firm of that country) when that country or firm requires an offset arrangement in connection with the purchase of defense equipment or supplies in favor of such country. The report shall include a discussion of the following possible actions:

''(A) A requirement for an offset in favor of the United States or United States firms in any case in which the Department of Defense or any other department or agency of the United States purchases goods from such foreign country or a firm of such country.

''(B) A demand for offset credits from such foreign country to be used, to the extent practicable, to meet offset obligations of United States firms to such foreign country or to a firm of such country.

''(C) A reduction in assistance furnished such foreign country by the United States.

''(D) A requirement for alternative equivalent advantages in the case of any such foreign country or a firm of such country if the United States does not purchase a sufficient volume of goods from such country or firm for a requirement described in subparagraph (A) to be effective.

''(3) The President shall report to Congress at least once each year, for a period of 4 years, on the progress of the negotiations referred to in subsection (c) [set out above]. The first such report shall be submitted not later than one year after the date of the enactment of this Act [Sept. 29, 1988].

''(4) In this subsection, the terms 'United States firm' and 'foreign firm' have the same meanings as are provided in section 2505(d) [now 2532(d)] of title 10, United States Code, as added by subsection (b).''

[For delegation of functions of President under section 825(d) of Pub. L. 100–456 to Director of Office of Management and Budget, see section 5–202 of Ex. Ord. No. 12661, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2534 of this title.

§ 2533. Determinations of public interest under the Buy American Act

(a) In determining under section 2 of the Buy American Act (41 U.S.C. 10a) whether application of such Act is inconsistent with the public interest, the Secretary of Defense shall consider the following:

(1) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

(2) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

(3) The United States balance of payments.

(4) The cost of shipping goods which are other than American goods.

(5) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.

(6) A need to ensure that the Department of Defense has access to advanced, state-of-the-art commercial technology.

(7) The need to protect the national technology and industrial base, to preserve and enhance the national technology employment base, and to provide for a defense mobilization base.

(8) A need to ensure that application of different rules of origin for United States end items and foreign end items does not result in an award to a firm other than a firm providing a product produced in the United States.

(9) Any need—

(A) to maintain the same source of supply for spare and replacement parts for an end item that qualifies as an American good; or

(B) to maintain the same source of supply for spare and replacement parts in order not to impair integration of the military and commercial industrial base.

(10) The national security interests of the United States.

(b) In this section, the term ''goods which are other than American goods'' means—

(1) an end product that is not mined, produced, or manufactured in the United States; or

(2) an end product that is manufactured in the United States but which includes components mined, produced, or manufactured out-

side the United States the aggregate cost of which exceeds the aggregate cost of the components of such end product that are mined, produced, or manufactured in the United States.

(Added Pub. L. 100–370, § 3(a)(1), July 19, 1988, 102 Stat. 855, § 2501; renumbered § 2506, Pub. L. 100–456, div. A, title VIII, § 821(b)(1)(A), Sept. 29, 1988, 102 Stat. 2014; renumbered § 2533, Pub. L. 102–484, div. D, title XLII, § 4202(a), Oct. 23, 1992, 106 Stat. 2659; amended Pub. L. 103–337, div. A, title VIII, § 812(a), (b)(1), Oct. 5, 1994, 108 Stat. 2815, 2816; Pub. L. 104–106, div. D, title XLIII, § 4321(b)(20), Feb. 10, 1996, 110 Stat. 673; Pub. L. 105–85, div. A, title X, § 1073(a)(54), Nov. 18, 1997, 111 Stat. 1903.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 93–365, title VII, § 707, Aug. 5, 1974, 88 Stat. 406.

REFERENCES IN TEXT

The Buy American Act, referred to in subsec. (a), is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which is classified generally to sections 10a, 10b, and 10c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 10a of Title 41 and Tables.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''(41 U.S.C. 10a)'' for ''(41 U.S.C. 10a))''.

1996—Subsec. (a). Pub. L. 104–106 substituted ''the Buy American Act (41 U.S.C. 10a)) whether application of such Act'' for ''title III of the Act of March 3, 1993 (41 U.S.C. 10a), popularly known as the 'Buy American Act', whether application of title III of such Act''.

1994—Pub. L. 103–337, § 812(b)(1), substituted ''Determinations of public interest under the Buy American Act'' for ''Limitation on use of funds: procurement of goods which are other than American goods'' as section catchline.

Subsec. (a). Pub. L. 103–337, § 812(a)(1), added subsec. (a) and struck out former subsec. (a) which read as follows: ''Funds appropriated to the Department of Defense may not be obligated under a contract for procurement of goods which are other than American goods (as defined in subsection (c)) unless adequate consideration is given to the following:

''(1) The bids or proposals of firms located in labor surplus areas in the United States (as designated by the Department of Labor) which have offered to furnish American goods.

''(2) The bids or proposals of small business firms in the United States which have offered to furnish American goods.

''(3) The bids or proposals of all other firms in the United States which have offered to furnish American goods.

''(4) The United States balance of payments.

''(5) The cost of shipping goods which are other than American goods.

''(6) Any duty, tariff, or surcharge which may enter into the cost of using goods which are other than American goods.''

Subsecs. (b), (c). Pub. L. 103–337, § 812(a), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Consideration of the matters referred to in paragraphs (1) through (6) of subsection (a) shall be given under regulations of the Secretary of Defense and subject to the determinations and exceptions contained in title III of the Act of March 3, 1933 (41 U.S.C. 10a, 10b), popularly known as the 'Buy American Act'.''

1992—Pub. L. 102–484 renumbered section 2506 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

§ 2533a. Requirement to buy certain articles from American sources; exceptions

(a) REQUIREMENT.—Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

(b) COVERED ITEMS.—An item referred to in subsection (a) is any of the following:

(1) An article or item of—

(A) food;

(B) clothing;

(C) tents, tarpaulins, or covers;

(D) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

(E) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

(2) Specialty metals, including stainless steel flatware.

(3) Hand or measuring tools.

(c) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the Secretary of Defense or the Secretary of the military department concerned determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(1) or specialty metals (including stainless steel flatware) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed at United States market prices.

(d) EXCEPTION FOR CERTAIN PROCUREMENTS OUTSIDE THE UNITED STATES.—Subsection (a) does not apply to the following:

(1) Procurements outside the United States in support of combat operations.

(2) Procurements by vessels in foreign waters.

(3) Emergency procurements or procurements of perishable foods by an establishment located outside the United States for the personnel attached to such establishment.

(e) EXCEPTION FOR SPECIALTY METALS AND CHEMICAL WARFARE PROTECTIVE CLOTHING.—Subsection (a) does not preclude the procurement of specialty metals or chemical warfare protective clothing produced outside the United States if—

(1) such procurement is necessary—

(A) to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the United States Government or United States firms under approved programs serving defense requirements; or

(B) in furtherance of agreements with foreign governments in which both such governments agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country; and

(2) any such agreement with a foreign government complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with section 2457 of this title.

(f) EXCEPTION FOR CERTAIN FOODS.—Subsection (a) does not preclude the procurement of foods manufactured or processed in the United States.

(g) EXCEPTION FOR COMMISSARIES, EXCHANGES, AND OTHER NONAPPROPRIATED FUND INSTRUMENTALITIES.—Subsection (a) does not apply to items purchased for resale purposes in commissaries, exchanges, or nonappropriated fund instrumentalities operated by the Department of Defense.

(h) EXCEPTION FOR SMALL PURCHASES.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 2304(g) of this title.

(i) APPLICABILITY TO CONTRACTS AND SUBCONTRACTS FOR PROCUREMENT OF COMMERCIAL ITEMS.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).

(j) GEOGRAPHIC COVERAGE.—In this section, the term ''United States'' includes the possessions of the United States.

(Added Pub. L. 107–107, div. A, title VIII, § 832(a)(1), Dec. 28, 2001, 115 Stat. 1189.)

§ 2534. Miscellaneous limitations on the procurement of goods other than United States goods

(a) LIMITATION ON CERTAIN PROCUREMENTS.—The Secretary of Defense may procure any of the following items only if the manufacturer of the item satisfies the requirements of subsection (b):

(1) BUSES.—Multipassenger motor vehicles (buses).

(2) CHEMICAL WEAPONS ANTIDOTE.—Chemical weapons antidote contained in automatic injectors (and components for such injectors).

(3) COMPONENTS FOR NAVAL VESSELS.—(A) The following components:

(i) Air circuit breakers.

(ii) Welded shipboard anchor and mooring chain with a diameter of four inches or less.

(iii) Vessel propellers with a diameter of six feet or more.

(B) The following components of vessels, to the extent they are unique to marine applications: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, and totally enclosed lifeboats.

(4) VALVES AND MACHINE TOOLS.—Items in the following categories:

(A) Powered and non-powered valves in Federal Supply Classes 4810 and 4820 used in piping for naval surface ships and submarines.

(B) Machine tools in the Federal Supply Classes for metal-working machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448, 3449, 3460, and 3461.

(5) BALL BEARINGS AND ROLLER BEARINGS.—Ball bearings and roller bearings, in accordance with subpart 225.71 of part 225 of the Defense Federal Acquisition Regulation Supplement, as in effect on October 23, 1992.

(b) MANUFACTURER IN THE NATIONAL TECHNOLOGY AND INDUSTRIAL BASE.—

(1) GENERAL REQUIREMENT.—A manufacturer meets the requirements of this subsection if the manufacturer is part of the national technology and industrial base.

(2) MANUFACTURERS OF CHEMICAL WEAPONS ANTIDOTE.—In the case of a procurement of chemical weapons antidote referred to in subsection (a)(2), a manufacturer meets the requirements of this subsection only if the manufacturer—

(A) meets the requirement set forth in paragraph (1);

(B) is an existing producer under the industrial preparedness program at the time the contract is awarded;

(C) has received all required regulatory approvals; and

(D) when the contract for the procurement is awarded, has in existence in the national technology and industrial base the plant, equipment, and personnel necessary to perform the contract.

(3) MANUFACTURER OF VESSEL PROPELLERS.—In the case of a procurement of vessel propellers referred to in subsection (a)(3)(A)(iii), the manufacturer of the propellers meets the requirements of this subsection only if—

(A) the manufacturer meets the requirements set forth in paragraph (1); and

(B) all castings incorporated into such propellers are poured and finished in the United States.

(c) APPLICABILITY TO CERTAIN ITEMS.—

(1) COMPONENTS FOR NAVAL VESSELS.—Subsection (a) does not apply to a procurement of spare or repair parts needed to support components for naval vessels produced or manufactured outside the United States.

(2) VALVES AND MACHINE TOOLS.—(A) Contracts to which subsection (a) applies include the following contracts for the procurement of items described in paragraph (4) of such subsection:

(i) A contract for procurement of such an item for use in property under the control of the Department of Defense, including any Government-owned, contractor-operated facility.

(ii) A contract that is entered into by a contractor on behalf of the Department of Defense for the purpose of providing such an item to another contractor as Government-furnished equipment.

(B) In any case in which a contract for items described in subsection (a)(4) includes the pro-

curement of more than one Federal Supply Class of machine tools or machine tools and accessories, each supply class shall be evaluated separately for purposes of determining whether the limitation in subsection (a) applies.

(C) Subsection (a)(4) and this paragraph shall cease to be effective on October 1, 1996.

(3) BALL BEARINGS AND ROLLER BEARINGS.—Subsection (a)(5) and this paragraph shall cease to be effective on October 1, 2005.

(4) VESSEL PROPELLERS.—Subsection (a)(3)(A)(iii) and this paragraph shall cease to be effective on February 10, 1998.

(d) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) with respect to the procurement of an item listed in that subsection if the Secretary determines that any of the following apply:

(1) Application of the limitation would cause unreasonable costs or delays to be incurred.

(2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(3) Application of the limitation would impede cooperative programs entered into between the Department of Defense and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(4) Satisfactory quality items manufactured by an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title) are not available.

(5) Application of the limitation would result in the existence of only one source for the item that is an entity that is part of the national technology and industrial base (as defined in section 2500(1) of this title).

(6) The procurement is for an amount less than the simplified acquisition threshold and simplified purchase procedures are being used.

(7) Application of the limitation is not in the national security interests of the United States.

(8) Application of the limitation would adversely affect a United States company.

(e) SONOBUOYS.—

(1) LIMITATION.—The Secretary of Defense may not procure a sonobuoy manufactured in a foreign country if United States firms that manufacture sonobuoys are not permitted to compete on an equal basis with foreign manufacturing firms for the sale of sonobuoys in that foreign country.

(2) WAIVER AUTHORITY.—The Secretary may waive the limitation in paragraph (1) with respect to a particular procurement of sonobuoys if the Secretary determines that such procurement is in the national security interests of the United States.

(3) DEFINITION.—In this subsection, the term ''United States firm'' has the meaning given such term in section 2532(d)(1) of this title.

(f) PRINCIPLE OF CONSTRUCTION WITH FUTURE LAWS.—A provision of law may not be construed as modifying or superseding the provisions of this section, or as requiring funds to be limited, or made available, by the Secretary of Defense to a particular domestic source by contract, unless that provision of law—

(1) specifically refers to this section;

(2) specifically states that such provision of law modifies or supersedes the provisions of this section; and

(3) specifically identifies the particular domestic source involved and states that the contract to be awarded pursuant to such provision of law is being awarded in contravention of this section.

(g) INAPPLICABILITY TO CONTRACTS UNDER SIMPLIFIED ACQUISITION THRESHOLD.—(1) This section does not apply to a contract or subcontract for an amount that does not exceed the simplified acquisition threshold.

(2) Paragraph (1) does not apply to contracts for items described in subsection (a)(5) (relating to ball bearings and roller bearings), notwithstanding section 33 of the Office of Federal Procurement Policy Act (41 U.S.C. 429).

(h) IMPLEMENTATION OF NAVAL VESSEL COMPONENT LIMITATION.—In implementing subsection (a)(3)(B), the Secretary of Defense—

(1) may not use contract clauses or certifications; and

(2) shall use management and oversight techniques that achieve the objective of the subsection without imposing a significant management burden on the Government or the contractor involved.

(i) IMPLEMENTATION OF CERTAIN WAIVER AUTHORITY.—(1) The Secretary of Defense may exercise the waiver authority described in paragraph (2) only if the waiver is made for a particular item listed in subsection (a) and for a particular foreign country.

(2) This subsection applies to the waiver authority provided by subsection (d) on the basis of the applicability of paragraph (2) or (3) of that subsection.

(3) The waiver authority described in paragraph (2) may not be delegated below the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(4) At least 15 days before the effective date of any waiver made under the waiver authority described in paragraph (2), the Secretary shall publish in the Federal Register and submit to the congressional defense committees a notice of the determination to exercise the waiver authority.

(5) Any waiver made by the Secretary under the waiver authority described in paragraph (2) shall be in effect for a period not greater than one year, as determined by the Secretary.

(j) INAPPLICABILITY TO CERTAIN CONTRACTS TO PURCHASE BALL BEARINGS OR ROLLER BEARINGS.—(1) This section does not apply with respect to a contract or subcontract to purchase

items described in subsection (a)(5) (relating to ball bearings and roller bearings) for which—

(A) the amount of the purchase does not exceed $2,500;

(B) the precision level of the ball or roller bearings to be procured under the contract or subcontract is rated lower than the rating known as Annual Bearing Engineering Committee (ABEC) 5 or Roller Bearing Engineering Committee (RBEC) 5, or an equivalent of such rating;

(C) at least two manufacturers in the national technology and industrial base that are capable of producing the ball or roller bearings have not responded to a request for quotation issued by the contracting activity for that contract or subcontract; and

(D) no bearing to be procured under the contract or subcontract has a basic outside diameter (exclusive of flange diameters) in excess of 30 millimeters.

(2) Paragraph (1) does not apply to a purchase if such purchase would result in the total amount of purchases of ball bearings and roller bearings to satisfy requirements under Department of Defense contracts, using the authority provided in such paragraph, to exceed $200,000 during the fiscal year of such purchase.

(Added Pub. L. 97–295, §1(29)(A), Oct. 12, 1982, 96 Stat. 1294, §2400; amended Pub. L. 100–180, div. A, title I, §124(a), (b)(1), title VIII, §824(a), Dec. 4, 1987, 101 Stat. 1042, 1043, 1134; renumbered §2502 and amended Pub. L. 100–370, §3(b)(1), July 19, 1988, 102 Stat. 855; renumbered §2507 and amended Pub. L. 100–456, div. A, title VIII, §§821(b)(1)(A), 822, Sept. 29, 1988, 102 Stat. 2014, 2017; Pub. L. 101–510, div. A, title VIII, §835(a), title XIV, §1421, Nov. 5, 1990, 104 Stat. 1614, 1682; Pub. L. 102–190, div. A, title VIII, §§834, 835, Dec. 5, 1991, 105 Stat. 1447, 1448; renumbered §2534 and amended Pub. L. 102–484, div. A, title VIII, §§831, 833(a), title X, §1052(33), div. D, title XLII, §§4202(a), 4271(b)(4), Oct. 23, 1992, 106 Stat. 2460, 2461, 2501, 2659, 2696; Pub. L. 103–160, div. A, title IX, §904(d)(1), Nov. 30, 1993, 107 Stat. 1728; Pub. L. 103–337, div. A, title VIII, §814, Oct. 5, 1994, 108 Stat. 2817; Pub. L. 103–355, title IV, §4102(i), Oct. 13, 1994, 108 Stat. 3341; Pub. L. 104–106, div. A, title VIII, §806(a)(1)–(4), (b)–(d), title XV, §1503(a)(30), Feb. 10, 1996, 110 Stat. 390, 391, 512; Pub. L. 104–201, div. A, title VIII, §810, title X, §1074(a)(14), Sept. 23, 1996, 110 Stat. 2608, 2659; Pub. L. 105–85, div. A, title III, §371(d)(1), title VIII, §811(a), title X, §1073(a)(55), Nov. 18, 1997, 111 Stat. 1706, 1839, 1903; Pub. L. 106–398, §1 [[div. A], title VIII, §805], Oct. 30, 2000, 114 Stat. 1654, 1654A–207; Pub. L. 107–107, div. A, title VIII, §835(a), title X, §1048(b)(2), Dec. 28, 2001, 115 Stat. 1191, 1225.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2400	10:2303 (note).	Sept. 20, 1968, Pub. L. 90–500, §404, 82 Stat. 851.

The words ''of the United States under the provisions of this Act or the provisions of any other law'' are omitted as surplus. The word ''acquisition'' is substituted for ''purchase, lease, rental, or other acquisition'' because it is inclusive. The words ''this section'' are substituted for ''this prohibition'' because of the restatement.

AMENDMENTS

2001—Subsec. (i)(3). Pub. L. 107–107, §1048(b)(2), substituted ''Under Secretary of Defense for Acquisition, Technology, and Logistics'' for ''Under Secretary of Defense for Acquisition and Technology''.

Subsec. (j). Pub. L. 107–107, §835(a), added subsec. (j).

2000—Subsec. (c)(3). Pub. L. 106–398 substituted ''October 1, 2005'' for ''October 1, 2000''.

1997—Subsec. (b)(3). Pub. L. 105–85, §1073(a)(55), substituted ''(a)(3)(A)(iii)'' for ''(a)(3)(A)(ii)''.

Subsec. (d)(4), (5). Pub. L. 105–85, §371(d)(1), substituted ''section 2500(1)'' for ''section 2491(1)''.

Subsec. (i). Pub. L. 105–85, §811(a), added subsec. (i).

1996—Subsec. (a)(3). Pub. L. 104–106, §806(a)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''AIR CIRCUIT BREAKERS.—Air circuit breakers for naval vessels.''

Subsec. (b)(3). Pub. L. 104–106, §806(a)(2), added par. (3).

Subsec. (c). Pub. L. 104–106, §1503(a)(30), substituted ''CERTAIN ITEMS'' for ''CERTAIN ITEMS'' in heading.

Subsec. (c)(1). Pub. L. 104–106, §806(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''AIR CIRCUIT BREAKERS.—Subsection (a) does not apply to a procurement of spares or repair parts needed to support air circuit breakers produced or manufactured outside the United States.''

Subsec. (c)(3). Pub. L. 104–106, §806(b), substituted ''October 1, 2000'' for ''October 1, 1995''.

Subsec. (c)(4). Pub. L. 104–201, §1074(a)(14), substituted ''February 10, 1998'' for ''the date occurring two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106, §806(c), added par. (4).

Subsec. (d)(3). Pub. L. 104–201, §810, inserted ''or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items that is entered into under section 2531 of this title,'' after ''a foreign country,''.

Subsec. (g). Pub. L. 104–106, §806(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 104–106, §806(a)(4), added subsec. (h).

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section consisted of subsecs. (a) to (f) relating to acquisition of multipassenger motor vehicles, chemical weapons antidote, valves and machine tools, carbonyl iron powders, air circuit breakers, and sonobuoys.

Subsec. (g). Pub. L. 103–355 added subsec. (g).

1993—Subsec. (b)(2). Pub. L. 103–160 substituted ''Under Secretary of Defense for Acquisition and Technology'' for ''Under Secretary of Defense for Acquisition''.

1992—Pub. L. 102–484, §§4202(a), 4271(b)(4), renumbered section 2507 of this title as this section and substituted ''Miscellaneous limitations on the procurement of goods other than United States goods'' for ''Miscellaneous procurement limitations'' in section catchline.

Subsec. (c). Pub. L. 102–484, §831, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''MANUAL TYPEWRITERS FROM WARSAW PACT COUNTRIES.—Funds appropriated to or for the use of the Department of Defense may not be used for the procurement of manual typewriters which contain one or more components manufactured in a country which is a member of the Warsaw Pact unless the products of that country are accorded nondiscriminatory treatment (most-favored-nation treatment).''

Subsec. (d). Pub. L. 102–484, §831(b), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(3)(A). Pub. L. 102–484, §1052(33), substituted ''Government-owned'' for ''government-owned''.

Subsec. (e). Pub. L. 102–484, §831(b), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 102–484, § 833(a), added subsec. (f). Former subsec. (f) redesignated (e).

1991—Subsec. (d)(1). Pub. L. 102–190, § 834(a), substituted ''Effective through fiscal year 1996'' for ''During fiscal years 1989, 1990, and 1991''.

Subsec. (d)(3) to (5). Pub. L. 102–190, § 834(b), added pars. (3) and (4), redesignated former par. (3) as (5), and struck out former par. (4) which read as follows: ''The provisions of this section may be renewed with respect to any item by the Secretary of Defense at the end of fiscal year 1991 for an additional two fiscal years if the Secretary determines that a continued restriction on that item is in the national security interest.''

Subsec. (e)(1). Pub. L. 102–190, § 835(1), substituted ''Until January 1, 1993, the Secretary'' for ''The Secretary''.

Subsec. (e)(3). Pub. L. 102–190, § 835(2), (4), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''After September 30, 1994, the Secretary may terminate the restriction required under paragraph (1) if the Secretary determines that continuing the restriction is not in the national interest.''

Subsec. (e)(3)(A). Pub. L. 102–190, § 835(3), struck out before period ''by an entity more than 50 percent of which is owned or controlled by citizens of the United States or Canada''.

Subsec. (e)(4). Pub. L. 102–190, § 835(4), redesignated par. (4) as (3).

1990—Subsec. (e). Pub. L. 101–510, § 835(a), added subsec. (e).

Subsec. (f). Pub. L. 101–510, § 1421, added subsec. (f).

1988—Pub. L. 100–370, and Pub. L. 100–456, § 821(b)(1)(A), successively renumbered section 2400 of this title as section 2502 of this title and then as this section.

Subsec. (a). Pub. L. 100–370 substituted ''this subsection'' for ''this section''.

Subsec. (d). Pub. L. 100–456, § 822, added subsec. (d).

1987—Pub. L. 100–180 substituted ''Miscellaneous procurement limitations'' for ''Limitation on procurement of buses'' in section catchline, designated existing provisions as subsec. (a) and added heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title VIII, § 835(b), Dec. 28, 2001, 115 Stat. 1192, provided that: ''Subsection (j) of such section 2534 (as added by subsection (a)) shall apply with respect to a contract or subcontract to purchase ball bearings or roller bearings entered into after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 811(b) of Pub. L. 105–85 provided that: ''Subsection (i) of section 2534 of such title [10 U.S.C. 2534(i)], as added by subsection (a), shall apply with respect to—

''(1) contracts and subcontracts entered into on or after the date of the enactment of this Act [Nov. 18, 1997]; and

''(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (d) of such section 2534, on the basis of the applicability of paragraph (2) or (3) of that subsection.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 806(a)(5) of Pub. L. 104–106 provided that: ''Subsection (a)(3)(B) of section 2534 of title 10, United States Code, as amended by paragraph (1), shall apply only to contracts entered into after March 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 833(b) of Pub. L. 102–484 provided that: ''Subsection (f) of section 2534 of title 10, United States Code, as added by subsection (a), shall apply with respect to solicitations for contracts issued after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 835(b) of Pub. L. 101–510 provided that subsec. (e) of this section, as added by section 835(a) of Pub. L. 101–510, applied with respect to systems or items procured by or provided to Department of Defense after Nov. 5, 1990.

§ 2535. Defense Industrial Reserve

(a) DECLARATION OF PURPOSE AND POLICY.—It is the intent of Congress—

(1) to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and an industrial reserve of machine tools and other industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof;

(2) that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become excess to such requirements shall be disposed of as expeditiously as possible;

(3) that to the maximum extent practicable, reliance will be placed upon private industry for support of defense production; and

(4) that machine tools and other industrial manufacturing equipment may be held in plant equipment packages or in a general reserve to maintain a high state of readiness for production of critical items of defense materiel, to provide production capacity not available in private industry for defense materiel, or to assist private industry in time of national disaster.

(b) POWERS AND DUTIES OF THE SECRETARY OF DEFENSE.—(1) To execute the policy set forth in subsection (a), the Secretary of Defense shall—

(A) determine which industrial plants and installations (including machine tools and other industrial manufacturing equipment) should become a part of the Defense Industrial Reserve;

(B) designate what excess industrial property shall be disposed of;

(C) establish general policies and provide for the transportation, handling, care, storage, protection, maintenance, repair, rebuilding, utilization, recording, leasing and security of such property;

(D) direct the transfer without reimbursement of such property to other Government agencies with the consent of such agencies;

(E) direct the leasing of any of such property to designated lessees;

(F) authorize the disposition in accordance with existing law of any of such property when in the opinion of the Secretary such property is no longer needed by the Department of Defense; and

(G) notwithstanding chapter 5 of title 40 and any other provision of law, authorize the

transfer to a nonprofit educational institution or training school, on a nonreimbursable basis, of any such property already in the possession of such institution or school whenever the program proposed by such institution or school for the use of such property is in the public interest.

(2)(A) The Secretary of a military department to which equipment or other property is transferred from the Defense Industrial Reserve shall reimburse appropriations available for the purposes of the Defense Industrial Reserve for the full cost (including direct and indirect costs) of—

(i) storage of such property;

(ii) repair and maintenance of such property; and

(iii) overhead allocated to such property.

(B) The Secretary of Defense shall prescribe regulations establishing general policies and fee schedules for reimbursements under subparagraph (A).

(c) DEFINITIONS.—In this section:

(1) The term ''Defense Industrial Reserve'' means—

(A) a general reserve of industrial manufacturing equipment, including machine tools, selected by the Secretary of Defense for retention for national defense or for other emergency use;

(B) those industrial plants and installations held by and under the control of the Department of Defense in active or inactive status, including Government-owned/Government-operated plants and installations and Government-owned/contractor-operated plants and installations which are retained for use in their entirety, or in part, for production of military weapons systems, munitions, components, or supplies; and

(C) those industrial plants and installations under the control of the Secretary which are not required for the immediate need of any department or agency of the Government and which should be sold, leased, or otherwise disposed of.

(2) The term ''plant equipment package'' means a complement of active and idle machine tools and other industrial manufacturing equipment held by and under the control of the Department of Defense and approved by the Secretary for retention to produce particular defense materiel or defense supporting items at a specific level of output in the event of emergency.

(Added and amended Pub. L. 102–484, div. D, title XLII, § 4235, Oct. 23, 1992, 106 Stat. 2690; Pub. L. 103–35, title II, § 201(c)(8), May 31, 1993, 107 Stat. 98; Pub. L. 103–337, div. A, title III, § 379(a), Oct. 5, 1994, 108 Stat. 2737; Pub. L. 107–107, div. A, title X, § 1048(a)(23), Dec. 28, 2001, 115 Stat. 1224; Pub. L. 107–217, § 3(b)(7), Aug. 21, 2002, 116 Stat. 1295.)

CODIFICATION

The text of section 451 of Title 50, War and National Defense, which was transferred to this section, designated subsec. (a), and amended by Pub. L. 102–484, § 4235(a)(2), was based on acts July 2, 1948, ch. 811, § 2, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

The text of section 453 of Title 50 which was transferred to this section, designated subsec. (b), and amended by Pub. L. 102–484, § 4235(a)(3), was based on acts July 2, 1948, ch. 811, § 4, 62 Stat. 1226; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, § 1359(a), 100 Stat. 3999. For effective date of 1986 amendment, see section 1359(b) of Pub. L. 99–661.

The text of section 452 of Title 50 which was transferred to this section, designated subsec. (c), and amended by Pub. L. 102–484, § 4235(b), was based on acts July 2, 1948, ch. 811, § 3, 62 Stat. 1225; Nov. 16, 1973, Pub. L. 93–155, title VIII, § 809, 87 Stat. 617.

AMENDMENTS

2002—Subsec. (b)(1)(G). Pub. L. 107–217 substituted ''chapter 5 of title 40'' for ''title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

2001—Subsec. (a). Pub. L. 107–107, § 1048(a)(23)(A)(i), substituted ''intent of Congress—'' for ''intent of Congress'' in introductory provisions.

Subsec. (a)(1). Pub. L. 107–107, § 1048(a)(23)(A)(ii), (iii), substituted ''armed forces'' for ''Armed Forces'' and realigned margins.

Subsec. (a)(2) to (4). Pub. L. 107–107, § 1048(a)(23)(A)(ii), realigned margins.

Subsec. (b)(1). Pub. L. 107–107, § 1048(a)(23)(B)(i), substituted ''in subsection (a), the Secretary of Defense shall—'' for ''in this section, the Secretary is authorized and directed to—'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 107–107, § 1048(a)(23)(B)(ii), substituted ''Defense Industrial Reserve'' for ''defense industrial reserve''.

Subsec. (c). Pub. L. 107–107, § 1048(a)(23)(C), redesignated par. (2) as (1), substituted ''means—'' for ''means'' in introductory provisions, realigned margins of subpars. (A) to (C) of par. (1) and inserted ''and'' after semicolon in subpar. (B), redesignated par. (3) as (2), and struck out former par. (1) which read as follows: ''The term 'Secretary' means Secretary of Defense.''

1994—Subsec. (b)(1)(G). Pub. L. 103–337 amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''authorize and regulate the lending of any such property to any nonprofit educational institution or training school whenever (i) the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (ii) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance and care of such property and for its return, without expense to the Government, upon request of the Secretary.''

1993—Subsec. (b)(2)(B). Pub. L. 103–35 substituted ''subparagraph (A)'' for ''paragraph (1)''.

1992—Pub. L. 102–484, § 4235(a), added section number and catchline.

Subsec. (a). Pub. L. 102–484, § 4235(a)(2), transferred the text of section 451 of Title 50, War and National Defense, to this section, designated it subsec. (a), inserted heading, and substituted ''It'' for ''In enacting this chapter it'' in introductory provisions. See Codification note above.

Subsec. (b). Pub. L. 102–484, § 4235(a)(3), transferred the text of section 453 of Title 50, War and National Defense, to the end of this section and designated it subsec. (b), inserted heading, redesignated former subsec. (a) of section 453 as par. (1), substituted ''in this section'' for ''in this chapter'' in introductory provisions, redesignated former pars. (1) to (7) as subpars. (A) to (G), respectively, in subpar. (G) redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subsec. (b) of section 453 as par. (2), and in par. (2) redesignated former par. (1) as subpar. (A), former subpars. (A) to (C) as cls. (i) to (iii), and former par. (2) as subpar. (B). See Codification note above.

Subsec. (c). Pub. L. 102–484, § 4235(b), transferred the text of section 452 of Title 50, War and National De-

fense, to the end of this section, designated it subsec. (c), inserted heading, and substituted ''In this section:'' for ''As used in this chapter—'' in introductory provisions. See Codification note above.

TREATMENT OF PROPERTY LOANED BEFORE DECEMBER 31, 1993 TO EDUCATIONAL INSTITUTIONS OR TRAINING SCHOOLS

Section 379(b) of Pub. L. 103–337 provided that: ''Except for property determined by the Secretary of Defense to be needed by the Department of Defense, property loaned before December 31, 1993, to an educational institution or training school under section 2535(b) of title 10, United States Code, or section 4(a)(7) of the Defense Industrial Reserve Act (as in effect before October 23, 1992 [former section 453(a)(7) of Title 50, War and National Defense, see Codification and 1992 Amendment notes above]) shall be regarded as surplus property. Upon certification by the Secretary to the Administrator of General Services that the property is being used by the borrowing educational institution or training school for a purpose consistent with that for which the property was loaned, the Administrator may authorize the conveyance of all right, title, and interest of the United States in such property to the borrower if the borrower agrees to accept the property. The Administrator may require any additional terms and conditions in connection with a conveyance so authorized that the Administrator considers appropriate to protect the interests of the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 sections 113, 581.

§ 2536. Award of certain contracts to entities controlled by a foreign government: prohibition

(a) IN GENERAL.—A Department of Defense contract or Department of Energy contract under a national security program may not be awarded to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract.

(b) WAIVER AUTHORITY.—(1) The Secretary concerned may waive the application of subsection (a) to a contract award if—

(A) the Secretary concerned determines that the waiver is essential to the national security interests of the United States; or

(B) in the case of a contract awarded for environmental restoration, remediation, or waste management at a Department of Defense or Department of Energy facility—

(i) the Secretary concerned determines that the waiver will advance the environmental restoration, remediation, or waste management objectives of the department concerned and will not harm the national security interests of the United States; and

(ii) the entity to which the contract is awarded is controlled by a foreign government with which the Secretary concerned is authorized to exchange Restricted Data under section 144 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2164(c)).

(2) The Secretary concerned shall notify Congress of any decision to grant a waiver under paragraph (1)(B) with respect to a contract. The contract may be awarded only after the end of the 45-day period beginning on the date the notification is received by the committees.

(c) DEFINITIONS.—In this section:

(1) The term ''entity controlled by a foreign government'' includes—

(A) any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; and

(B) any individual acting on behalf of a foreign government,

as determined by the Secretary concerned. Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(2) The term ''proscribed category of information'' means a category of information that—

(A) with respect to Department of Defense contracts—

(i) includes special access information;

(ii) is determined by the Secretary of Defense to include information the disclosure of which to an entity controlled by a foreign government is not in the national security interests of the United States; and

(iii) is defined in regulations prescribed by the Secretary of Defense for the purposes of this section; and

(B) with respect to Department of Energy contracts—

(i) is determined by the Secretary of Energy to include information described in subparagraph (A)(ii); and

(ii) is defined in regulations prescribed by the Secretary of Energy for the purposes of this section.

(3) The term ''Secretary concerned'' means—

(A) the Secretary of Defense, with respect to Department of Defense contracts; and

(B) the Secretary of Energy, with respect to Department of Energy contracts.

(Added Pub. L. 102–484, div. A, title VIII, §836(a)(1), Oct. 23, 1992, 106 Stat. 2462; amended Pub. L. 103–35, title II, §201(d)(4), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title VIII, §842(a)–(c)(1), Nov. 30, 1993, 107 Stat. 1719; Pub. L. 104–201, div. A, title VIII, §828, Sept. 23, 1996, 110 Stat. 2611.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–201 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''WAIVER AUTHORITY.—The Secretary concerned may waive the application of subsection (a) to a contract award if the Secretary concerned determines that the waiver is essential to the national security interests of the United States.''

1993—Pub. L. 103–160, §842(c)(1), substituted ''Award of certain contracts to entities controlled by a foreign government: prohibition'' for ''Prohibition on award of certain Department of Defense and Department of Energy contracts to companies owned by an entity controlled by a foreign government.'' as section catchline.

Pub. L. 103–35 struck out period at end of section catchline.

Subsec. (a). Pub. L. 103–160, §842(a), struck out ''a company owned by'' after ''awarded to'' and substituted ''that entity'' for ''that company''.

Subsec. (c)(1). Pub. L. 103–160, §842(b), inserted at end ''Such term does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the

ownership of that organization or corporation by that foreign government was effective before October 23, 1992.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 836(b) of Pub. L. 102–484 provided that: ''Section 2536 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into after the expiration of the 90-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

§ 2537. Improved national defense control of technology diversions overseas

(a) COLLECTION OF INFORMATION ON FOREIGN-CONTROLLED CONTRACTORS.—The Secretary of Defense and the Secretary of Energy shall each collect and maintain a data base containing a list of, and other pertinent information on, all contractors with the Department of Defense and the Department of Energy, respectively, that are controlled by foreign persons. The data base shall contain information on such contractors for 1988 and thereafter in all cases where they are awarded contracts exceeding $10,000,000 in any single year by the Department of Defense or the Department of Energy.

(b) ANNUAL REPORT TO CONGRESS.—The Secretary of Defense, the Secretary of Energy, and the Secretary of Commerce shall submit to the Congress, by March 31 of each year, beginning in 1994, a report containing a summary and analysis of the information collected under subsection (a) for the year covered by the report. The report shall include an analysis of accumulated foreign ownership of United States firms engaged in the development of defense critical technologies.

(c) TECHNOLOGY RISK ASSESSMENT REQUIREMENT.—(1) If the Secretary of Defense is acting as a designee of the President under section 721(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(a)) and if the Secretary determines that a proposed or pending merger, acquisition, or takeover may involve a firm engaged in the development of a defense critical technology or is otherwise important to the defense industrial and technology base, then the Secretary shall require the appropriate entity or entities from the list set forth in paragraph (2) to conduct an assessment of the risk of diversion of defense critical technology posed by such proposed or pending action.

(2) The entities referred to in paragraph (1) are the following:

(A) The Defense Intelligence Agency.

(B) The Army Foreign Technology Science Center.

(C) The Naval Maritime Intelligence Center.

(D) The Air Force Foreign Aerospace Science and Technology Center.

(Added Pub. L. 102–484, div. A, title VIII, § 838(a), Oct. 23, 1992, 106 Stat. 2465; amended Pub. L. 103–35, title II, § 201(d)(5), (h)(2), May 31, 1993, 107 Stat. 99, 100; Pub. L. 107–314, div. A, title X, § 1041(a)(16), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 substituted ''$10,000,000'' for ''$100,000''.

1993—Subsec. (a). Pub. L. 103–35, § 201(d)(5), substituted ''respectively, that'' for ''respectively, which''.

Subsec. (d). Pub. L. 103–35, § 201(h)(2), struck out subsec. (d) which read as follows: ''In this section, the term 'defense critical technology' has the meaning provided that term by section 2491(8) of this title.''

§ 2538. Industrial mobilization: orders; priorities; possession of manufacturing plants; violations

(a) ORDERING AUTHORITY.—In time of war or when war is imminent, the President, through the head of any department, may order from any person or organized manufacturing industry necessary products or materials of the type usually produced or capable of being produced by that person or industry.

(b) COMPLIANCE WITH ORDER REQUIRED.—A person or industry with whom an order is placed under subsection (a), or the responsible head thereof, shall comply with that order and give it precedence over all orders not placed under that subsection.

(c) SEIZURE OF MANUFACTURING PLANTS UPON NONCOMPLIANCE.—In time of war or when war is imminent, the President, through the head of any department, may take immediate possession of any plant that is equipped to manufacture, or that in the opinion of the head of that department is capable of being readily transformed into a plant for manufacturing, arms or ammunition, parts thereof, or necessary supplies for the armed forces if the person or industry owning or operating the plant, or the responsible head thereof, refuses—

(1) to give precedence to the order as prescribed in subsection (b);

(2) to manufacture the kind, quantity, or quality of arms or ammunition, parts thereof, or necessary supplies, as ordered by the head of such department; or

(3) to furnish them at a reasonable price as determined by the head of such department.

(d) USE OF SEIZED PLANT.—The President, through the head of any department, may manufacture products that are needed in time of war or when war is imminent, in any plant that is seized under subsection (c).

(e) COMPENSATION REQUIRED.—Each person or industry from whom products or materials are ordered under subsection (a) is entitled to fair and just compensation. Each person or industry whose plant is seized under subsection (c) is entitled to a fair and just rental.

(f) CRIMINAL PENALTY.—Whoever fails to comply with this section shall be imprisoned for not more than three years and fined under title 18.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1704; amended Pub. L. 103–337, div. A, title VIII, § 811, Oct. 5, 1994, 108 Stat. 2815.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4501 and 9501 of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

Subsec. (c). Pub. L. 103–337, § 811, substituted ''through the head of any department'' for ''through the Secretary of Defense'' and ''opinion of the head of

that department'' for ''opinion of the Secretary of Defense'' in introductory provisions and ''head of such department'' for ''Secretary'' in pars. (2) and (3).

Subsec. (d). Pub. L. 103–337, § 811(1), substituted ''head of any department'' for ''Secretary of Defense''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2539a of this title.

§ 2539. Industrial mobilization: plants; lists

(a) LIST OF PLANTS EQUIPPED TO MANUFACTURE ARMS OR AMMUNITION.—The Secretary of Defense may maintain a list of all privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are equipped to manufacture for the armed forces arms or ammunition, or parts thereof, and may obtain complete information of the kinds of those products manufactured or capable of being manufactured by each of those plants, and of the equipment and capacity of each of those plants.

(b) LIST OF PLANTS CONVERTIBLE INTO AMMUNITION FACTORIES.—The Secretary of Defense may maintain a list of privately owned plants in the United States, and the territories, Commonwealths, and possessions of the United States, that are capable of being readily transformed into factories for the manufacture of ammunition for the armed forces and that have a capacity sufficient to warrant conversion into ammunition plants in time of war or when war is imminent, and may obtain complete information as to the equipment of each of those plants.

(c) CONVERSION PLANS.—The Secretary of Defense may prepare comprehensive plans for converting each plant listed pursuant to subsection (b) into a factory for the manufacture of ammunition or parts thereof.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(a)–(c) and 9502(a)–(c) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2539a of this title.

§ 2539a. Industrial mobilization: Board on Mobilization of Industries Essential for Military Preparedness

The President may appoint a nonpartisan Board on Mobilization of Industries Essential for Military Preparedness, and may provide necessary clerical assistance, to organize and coordinate operations under sections 2538 and 2539 of this title.

(Added Pub. L. 103–160, div. A, title VIII, § 822(a)(1), Nov. 30, 1993, 107 Stat. 1705, § 2540; renumbered § 2539a, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 4502(d) and 9502(d) of this title, prior to repeal by Pub. L. 103–160, § 822(a)(2).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2540 of this title as this section.

§ 2539b. Availability of samples, drawings, information, equipment, materials, and certain services

(a) AUTHORITY.—The Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each—

(1) sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

(2) sell, rent, or lend government equipment or materials to any person or entity—

(A) for use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

(B) for use in demonstrations to a friendly foreign government; and

(3) make available to any person or entity, at an appropriate fee, the services of any government laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items.

(b) CONFIDENTIALITY OF TEST RESULTS.—The results of tests performed with services made available under subsection (a)(3) are confidential and may not be disclosed outside the Federal Government without the consent of the persons for whom the tests are performed.

(c) FEES.—Fees for services made available under subsection (a)(3) shall be established in the regulations prescribed pursuant to subsection (a). Such fees may not exceed the amount necessary to recoup the direct and indirect costs involved, such as direct costs of utilities, contractor support, and salaries of personnel that are incurred by the United States to provide for the testing.

(d) USE OF FEES.—Fees received for services made available under subsection (a)(3) may be credited to the appropriations or other funds of the activity making such services available.

(Added Pub. L. 103–160, div. A, title VIII, § 822(b)(1), Nov. 30, 1993, 107 Stat. 1705, § 2541; renumbered § 2539b, Pub. L. 103–337, div. A, title X, § 1070(a)(13)(A), Oct. 5, 1994, 108 Stat. 2856; amended Pub. L. 103–355, title III, § 3022, Oct. 13, 1994, 108 Stat. 3333; Pub. L. 104–106, div. A, title VIII, § 804, div. D, title XLIII, § 4321(a)(8), Feb. 10, 1996, 110 Stat. 390, 671; Pub. L. 106–65, div. A, title X, § 1066(a)(23), Oct. 5, 1999, 113 Stat. 771.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65 substituted ''Secretaries of the military departments'' for ''secretaries of the military departments''.

1996—Subsec. (a). Pub. L. 104–106, § 4321(a)(8), made technical correction to Pub. L. 103–355, § 3022. See 1994 Amendment note below.

Subsec. (c). Pub. L. 104–106, § 804, inserted ''and indirect'' after ''recoup the direct''.

1994—Pub. L. 103–337 renumbered section 2541 of this title as this section.

Subsec. (a). Pub. L. 103–355, § 3022, as amended by Pub. L. 104–106, § 4321(a)(8), inserted ''rent,'' after ''sell,'' in par. (1) and '', rent,'' after ''sell'' in par. (2).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

SUBCHAPTER VI—DEFENSE EXPORT LOAN GUARANTEES

Sec.
2540. Establishment of loan guarantee program.
2540a. Transferability.
2540b. Limitations.
2540c. Fees charged and collected.
2540d. Definitions.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2541c of this title.

§ 2540. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) COVERED COUNTRIES.—The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3)[1] of this title.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 475.)

REFERENCES IN TEXT

Section 2350a of this title, referred to in subsec. (b)(2), was subsequently amended, and section 2350a(i)(3) no longer defines the term ''major non-NATO ally''. However, such term is defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 2540, acts Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2511; renumbered § 2521, Nov. 5, 1990, Pub. L. 101–510, div. A, title VIII, § 823(a)(2), 104 Stat. 1600; renumbered § 2540, Dec. 5, 1991, Pub. L. 102–190, div. A, title VIII, § 821(e)(3), 105 Stat. 1432, related to availability or issuance to reserve components of supplies, services, and facilities of armed forces, prior to repeal by Pub. L. 103–337, div. A, title XVI, §§ 1664(c)(2), 1691, Oct. 5, 1994, 108 Stat. 3012, 3026, effective Dec. 1, 1994. See section 18502 of this title.

Another prior section 2540 was renumbered section 2539a of this title.

REPORT ON DEFENSE EXPORT LOAN GUARANTEE PROGRAM

Section 1321(b) of Pub. L. 104–106 provided that: ''Not later than two years after the date of the enactment of this Act [Feb. 10, 1996], the President shall submit to Congress a report on the loan guarantee program established pursuant to section 2540 of title 10, United States Code, as added by subsection (a). The report shall include—

''(1) an analysis of the costs and benefits of the loan guarantee program; and

''(2) any recommendations for modification of the program that the President considers appropriate, including—

''(A) any recommended addition to the list of countries for which a guarantee may be issued under the program; and

''(B) any proposed legislation necessary to authorize a recommended modification.''

§ 2540a. Transferability

A guarantee issued under this subchapter shall be fully and freely transferable.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2541c of this title.

§ 2540b. Limitations

(a) TERMS AND CONDITIONS OF LOAN GUARANTEES.—In issuing a guarantee under this subchapter for a medium-term or long-term loan, the Secretary may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) LOSSES ARISING FROM FRAUD OR MISREPRESENTATION.—No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) NO RIGHT OF ACCELERATION.—The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

(Added Pub. L. 104–106, div. A, title XIII, § 1321(a)(1), Feb. 10, 1996, 110 Stat. 476.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2541c of this title.

§ 2540c. Fees charged and collected

(a) EXPOSURE FEES.—The Secretary of Defense shall charge a fee (known as ''exposure fee'') for each guarantee issued under this subchapter.

(b) AMOUNT OF EXPOSURE FEE.—To the extent that the cost of the loan guarantees under this

[1] See References in Text note below.

subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) PAYMENT TERMS.—The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) ADMINISTRATIVE FEES.—(1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 476; amended Pub. L. 106–398, §1 [[div. A], title X, §1081(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284.)

AMENDMENTS

2000—Subsec. (d). Pub. L. 106–398 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title X, §1081(b), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–284, provided that:

''(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000.

''(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

''(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section 2540(b) of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons the Secretary determines to be appropriate.

''(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

''(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

''(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

''(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

''(4) A determination made by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage, and oversee the loan guarantee program to increase sales of United States defense articles, defense services, and design and construction services, such determination to be made based on the information and analysis provided in the report.''

§ 2540d. Definitions

In this subchapter:

(1) The terms ''defense article'', ''defense services'', and ''design and construction services'' have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term ''cost'', with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 661a).

(Added Pub. L. 104–106, div. A, title XIII, §1321(a)(1), Feb. 10, 1996, 110 Stat. 477.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2541c of this title.

SUBCHAPTER VII—CRITICAL INFRASTRUCTURE PROTECTION LOAN GUARANTEES

Sec.
2541. Establishment of loan guarantee program.
2541a. Fees charged and collected.
2541b. Administration.
2541c. Transferability, additional limitations, and definition.
2541d. Reports.

§ 2541. Establishment of loan guarantee program

(a) ESTABLISHMENT.—In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring lenders against losses of principal or interest, or both principal and interest, for loans made to qualified commercial firms to fund, in whole or in part, any of the following activities:

(1) The improvement of the protection of the critical infrastructure of the commercial firms.

(2) The refinancing of improvements previously made to the protection of the critical infrastructure of the commercial firms.

(b) QUALIFIED COMMERCIAL FIRMS.—For purposes of this section, a qualified commercial firm is a company or other business entity (including a consortium of such companies or other business entities, as determined by the Secretary) that the Secretary determines—

(1) conducts a significant level of its research, development, engineering, and manufacturing activities in the United States;

(2) is a company or other business entity the majority ownership or control of which is by United States citizens or is a company or other business of a parent company that is incorporated in a country the government of which—

(A) encourages the participation of firms so owned or controlled in research and development consortia to which the government of that country provides funding directly or provides funding indirectly through international organizations or agreements; and

(B) affords adequate and effective protection for the intellectual property rights of companies incorporated in the United States;

(3) provides technology products or services critical to the operations of the Department of Defense;

(4) meets standards of prevention of cyberterrorism applicable to the Department of Defense; and

(5) agrees to submit the report required under section 2541d of this title.

(c) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed $10,000,000, with respect to all borrowers.

(d) GOALS AND STANDARDS.—The Secretary shall prescribe regulations setting forth goals for the use of the loan guarantees provided under this section and standards for evaluating whether those goals are met by each entity receiving such loan guarantees.

(e) AUTHORITY SUBJECT TO PROVISIONS OF APPROPRIATIONS.—The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–258.)

PRIOR PROVISIONS

A prior section 2541 was renumbered section 2551 of this title.

Another prior section 2541 was renumbered section 2539b of this title.

§ 2541a. Fees charged and collected

(a) FEE REQUIRED.—The Secretary of Defense shall assess a fee for providing a loan guarantee under this subchapter.

(b) AMOUNT OF FEE.—The amount of the fee shall be not less than 75 percent of the amount incurred by the Secretary to provide the loan guarantee.

(c) SPECIAL ACCOUNT.—(1) Such fees shall be credited to a special account in the Treasury.

(2) Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(3)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed $500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2541b of this title.

§ 2541b. Administration

(a) AGREEMENTS REQUIRED.—The Secretary of Defense may enter into one or more agreements, each with an appropriate Federal or private entity, under which such entity may, under this subchapter—

(1) process applications for loan guarantees;

(2) administer repayment of loans; and

(3) provide any other services to the Secretary to administer this subchapter.

(b) TREATMENT OF COSTS.—The costs of such agreements shall be considered, for purposes of the special account established under section 2541a(c), to be costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–259.)

§ 2541c. Transferability, additional limitations, and definition

The following provisions of subchapter VI of this chapter apply to guarantees issued under this subchapter:

(1) Section 2540a, relating to transferability of guarantees.

(2) Subsections (b) and (c) of section 2540b, providing limitations.

(3) Section 2540d(2), providing a definition of the term ''cost''.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; amended Pub. L. 107–107, div. A, title X, §1048(a)(24), Dec. 28, 2001, 115 Stat. 1224.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''subchapter'' for ''subtitle'' in two places in introductory provisions.

§ 2541d. Reports

(a) REPORT BY COMMERCIAL FIRMS TO SECRETARY OF DEFENSE.—The Secretary of Defense shall require each qualified commercial firm for which a loan is guaranteed under this subchapter to submit to the Secretary a report on the improvements financed or refinanced with the loan. The report shall include an assessment of the value of the improvements for the protection of the critical infrastructure of that commercial firm. The Secretary shall prescribe the time for submitting the report.

(b) ANNUAL REPORT BY SECRETARY OF DEFENSE TO CONGRESS.—Not later than March 1 of each year in which guarantees are made under this subchapter, the Secretary of Defense shall submit to Congress a report on the loan guarantee program under this subchapter. The report shall include the following:

(1) The amounts of the loans for which guarantees were issued during the year preceding the year of the report.

(2) The success of the program in improving the protection of the critical infrastructure of the commercial firms covered by the guarantees.

(3) The relationship of the loan guarantee program to the critical infrastructure protection program of the Department of Defense, together with an assessment of the extent to which the loan guarantee program supports the critical infrastructure protection program.

(4) Any other information on the loan guarantee program that the Secretary considers appropriate to include in the report.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1033(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Prior sections 2542 to 2550 were renumbered sections 2552 to 2560 of this title, respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2541 of this title.

CHAPTER 152—ISSUE OF SUPPLIES, SERVICES, AND FACILITIES

Sec.
2551. Equipment and barracks: national veterans' organizations.
2552. Equipment for instruction and practice: American National Red Cross.
2553. Equipment and services: Presidential inaugural ceremonies.
2554. Equipment and other services: Boy Scout Jamborees.
2555. Transportation services: international Girl Scout events.
2556. Shelter for homeless; incidental services.
2557. Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief.
2558. National military associations: assistance at national conventions.
2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services.
2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies.
2561. Humanitarian assistance.
2562. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs.
2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense.
2564. Provision of support for certain sporting events.
2565. Nuclear test monitoring equipment: furnishing to foreign governments.
2566. Space and services: provision to military welfare societies.

PRIOR PROVISIONS

Chapter was comprised of subchapter I, former section 2540, and subchapter II, sections 2541 to 2553, prior to amendment by Pub. L. 104–106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, which struck out headings for subchapters I and II.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1066(b), Dec. 2, 2002, 116 Stat. 2656, added item 2566.

2001—Pub. L. 107–107, div. A, title III, §361(b)(2), title XII, §1201(a)(2), Dec. 28, 2001, 115 Stat. 1065, 1245, substituted ''Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief'' for ''Excess nonlethal supplies: humanitarian relief'' in item 2557 and substituted ''2565.'' for ''2555.'' in item 2565.

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(2), title XII, §1203(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260, 1654A–325, renumbered items 2541 to 2554 as 2551 to 2564, respectively, and added item 2555 ''Nuclear test monitoring equipment: furnishing to foreign governments'' at end.

1997—Pub. L. 105–85, div. A, title X, §1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, amended directory language of Pub. L. 104–201, §367(b). See 1996 Amendment note below.

1996—Pub. L. 104–201, div. A, title III, §367(b), Sept. 23, 1996, 110 Stat. 2497, as amended by Pub. L. 105–85, div. A, title X, §1073(c)(2)(B), Nov. 18, 1997, 111 Stat. 1904, added item 2554.

Pub. L. 104–201, div. A, title III, §366(b), Sept. 23, 1996, 110 Stat. 2496, substituted ''Equipment and services: Presidential inaugural ceremonies'' for ''Equipment: Inaugural Committee'' in item 2543.

Pub. L. 104–106, div. A, title XV, §1503(a)(29), Feb. 10, 1996, 110 Stat. 512, struck out subchapter analysis consisting of items for subchapters I ''Issue to the Armed Forces'' and II ''Issue of Serviceable Material Other Than to the Armed Forces'' and struck out headings for subchapters I ''ISSUE TO THE ARMED FORCES'' and II ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO THE ARMED FORCES''.

1994—Pub. L. 103–337, div. A, title III, §339(a)(2), title XVI, §1671(b)(14), Oct. 5, 1994, 108 Stat. 2720, 3014, struck out item 2540 ''Reserve components: supplies, services, and facilities'' and added item 2553.

1992—Pub. L. 102–484, div. A, title III, §304(c)(2), div. D, title XLIII, §4304(b), Oct. 23, 1992, 106 Stat. 2362, 2700, added items 2551 and 2552.

1991—Pub. L. 102–190, div. A, title VIII, §821(e)(1), (2), Dec. 5, 1991, 105 Stat. 1431, substituted ''152'' for ''150'' as chapter number, ''ISSUE OF SUPPLIES, SERVICES, AND FACILITIES'' for ''ISSUE TO ARMED FORCES'' as chapter heading, added subchapter analysis and subchapter I heading, renumbered item 2521 as 2540, and substituted subchapter II heading for former chapter 151 heading ''ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES''.

1990—Pub. L. 101–510, div. A, title VIII, §823(a)(1), (b)(2), title XIV, §1481(f)(2), (g)(2), Nov. 5, 1990, 104 Stat.

1600, 1602, 1707, substituted ''150'' for ''149'' as chapter number, renumbered item 2511 as 2521, and added items 2549 and 2550.

1989—Pub. L. 101–189, div. A, title III, § 329(a)(2), Nov. 29, 1989, 103 Stat. 1417, added item 2548.

1985—Pub. L. 99–145, title XIV, § 1454(b), Nov. 8, 1985, 99 Stat. 761, added item 2547.

1983—Pub. L. 98–94, title III, § 305(a)(2), Sept. 24, 1983, 97 Stat. 629, added item 2546.

1978—Pub. L. 95–492, § 2, Oct. 20, 1978, 92 Stat. 1642, added item 2545.

1972—Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, added item 2544.

1958—Pub. L. 85–861, § 1(48)(B), Sept. 2, 1958, 72 Stat. 1459, added item 2543.

§ 2551. Equipment and barracks: national veterans' organizations

(a) The Secretary of a military department, under conditions prescribed by him, may lend cots, blankets, pillows, mattresses, bed sacks, and other supplies under the jurisdiction of that department to any recognized national veterans' organization for use at its national or state convention or national youth athletic or recreation tournament. He may, under conditions prescribed by him, also permit the organization to use unoccupied barracks under the jurisdiction of that department for such an occasion.

(b) Property lent under subsection (a) may be delivered on terms and at times agreed upon by the Secretary of the military department concerned and representatives of the veterans' organization. However, the veterans' organization must defray any expense incurred by the United States in the delivery, return, rehabilitation, or replacement of that property, as determined by the Secretary.

(c) The Secretary of the military department concerned shall require a good and sufficient bond for the return in good condition of property lent or used under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 142, § 2541; renumbered § 2551, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2541(a)	5:150m.	Aug. 1, 1949, ch. 372, 63 Stat. 483.
2541(b)	5:150n.	
2541(c)	5:150*o*.	

In subsection (a), the word ''may'' is substituted for the words ''are authorized to * * * at their discretion''. The word ''supplies'' is substituted for the words ''articles or equipment''. The words ''available'' and ''as may be needed'' are omitted as surplusage. The words ''under the jurisdiction of that department'' are substituted for the words ''of the Army, Navy, or Air Force'' and ''under their respective jurisdictions''.

In subsection (b), the words ''prior to any such conventions or national youth athletic or recreation tournaments'' are omitted as surplusage.

In subsection (c), the words ''require of'' are substituted for the words ''take from''.

PRIOR PROVISIONS

A prior section 2551 was renumbered section 2561 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2541 of this title as this section.

§ 2552. Equipment for instruction and practice: American National Red Cross

The Secretary of a military department, under regulations to be prescribed by him, may lend equipment under the jurisdiction of that department that is on hand, and that can be temporarily spared, to any organization formed by the American National Red Cross that needs it for instruction and practice for the purpose of aiding the Army, Navy, or Air Force in time of war. The Secretary shall by regulation require the immediate return, upon request, of equipment lent under this section. The Secretary shall require a bond, in double the value of the property issued under this section, for the care and safekeeping of that property and for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 142, § 2542; renumbered § 2552, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2542	10:1255. 10:1256. 34:549. 34:550.	May 8, 1914, J. Res. 15, 38 Stat. 771.

The word ''may'' is substituted for the words ''is authorized * * * at his discretion'', in 10:1255 and 34:549. The word ''lend'' is substituted for the word ''issue'', in 10:1255 and 34:549. The words ''proper'', ''to be'', ''out of equipment for medical or other establishments'', and ''belonging to the Government'', in 10:1255 and 34:549, are omitted as surplusage. The words ''that needs it'' are substituted for the words ''as may appear to be required''. The words ''under the jurisdiction of that department'' are inserted for clarity. The words ''upon request'' are substituted for the words ''when called for by the authority which issued them''.

PRIOR PROVISIONS

A prior section 2552 was renumbered section 2562 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2542 of this title as this section.

§ 2553. Equipment and services: Presidential inaugural ceremonies

(a) ASSISTANCE AUTHORIZED.—The Secretary of Defense may, with respect to the ceremonies relating to the inauguration of a President, provide the assistance referred to in subsection (b) to—

(1) the Presidential Inaugural Committee; and

(2) the congressional Joint Inaugural Committee.

(b) ASSISTANCE.—Assistance that may be provided under subsection (a) is the following:

(1) Planning and carrying out activities relating to security and safety.

(2) Planning and carrying out ceremonial activities.

(3) Loan of property.

(4) Any other assistance that the Secretary considers appropriate.

(c) REIMBURSEMENT.—(1) The Presidential Inaugural Committee shall reimburse the Sec-

retary for any costs incurred in connection with the provision to the committee of assistance referred to in subsection (b)(4).

(2) Costs reimbursed under paragraph (1) shall be credited to the appropriations from which the costs were paid. The amount credited to an appropriation shall be proportionate to the amount of the costs charged to that appropriation.

(d) LOANED PROPERTY.—With respect to property loaned for a presidential inauguration under subsection (b)(3), the Presidential Inaugural Committee shall—

(1) return that property within nine days after the date of the ceremony inaugurating the President;

(2) give good and sufficient bond for the return in good order and condition of that property;

(3) indemnify the United States for any loss of, or damage to, that property; and

(4) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.

(e) DEFINITIONS.—In this section:

(1) The term ''Presidential Inaugural Committee'' means the committee referred to in section 501 of title 36 that is appointed with respect to the inauguration of a President-elect and Vice President-elect.

(2) The term ''congressional Joint Inaugural Committee'' means the joint committee of the Senate and House of Representatives referred to in section 507 of title 36 that is appointed with respect to the inauguration of a President-elect and Vice President-elect.

(Added Pub. L. 85–861, §1(48)(A), Sept. 2, 1958, 72 Stat. 1458, §2543; amended Pub. L. 96–513, title V, §511(81), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 104–201, div. A, title III, §366(a), Sept. 23, 1996, 110 Stat. 2495; Pub. L. 105–225, §4(a)(2), Aug. 12, 1998, 112 Stat. 1498; renumbered §2553, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2543(a)	36:726 (1st sentence).	Aug. 6, 1956, ch. 974, §§1(b)(1) (as applicable to §6), 6, 70 Stat. 1049, 1050.
2543(b)	36:726 (less 1st and 2d sentences).	
2543(c)	36:721(b)(1) (as applicable to 36:726).	
	36:726 (2d sentence).	

In subsection (a), the words ''under section 721 of title 36'' are inserted for clarity. The words ''ensigns'' and ''Red Cross flags'' are omitted as covered by the word ''flags''.

In subsection (b), the words ''and the whole without expense to the United States'' are omitted as surplusage.

In subsection (c), the words ''nine days after the date of the ceremony inaugurating the President'' are substituted for the words ''five days after the end of the inaugural period'', in 36:726 (2d sentence), and 36:721(b)(1).

PRIOR PROVISIONS

A prior section 2553 was renumbered section 2563 of this title.

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2543 of this title as this section.

1998—Subsec. (e)(1). Pub. L. 105–225, §4(a)(2)(A), substituted ''section 501 of title 36'' for ''subsection (b)(2) of the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)''.

Subsec. (e)(2). Pub. L. 105–225, §4(a)(2)(B), substituted ''section 507 of title 36'' for ''the proviso in section 9 of the Presidential Inaugural Ceremonies Act (36 U.S.C. 729)''.

1996—Pub. L. 104–201 substituted ''Equipment and services: Presidential inaugural ceremonies'' for ''Equipment: Inaugural Committee'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary of Defense, under such conditions as he may prescribe, may lend, to an Inaugural Committee established under the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721), hospital tents, smaller tents, camp appliances, hospital furniture, flags other than battle flags, flagpoles, litters, and ambulances and the services of their drivers, that can be spared without detriment to the public service.

''(b) The Inaugural Committee must give a good and sufficient bond for the return in good order and condition of property lent under subsection (a).

''(c) Property lent under subsection (a) shall be returned within nine days after the date of the ceremony inaugurating the President. The Inaugural Committee shall—

''(1) indemnify the United States for any loss of, or damage to, property lent under subsection (a); and

''(2) defray any expense incurred for the delivery, return, rehabilitation, replacement, or operation of that property.''

1980—Subsec. (a). Pub. L. 96–513 substituted ''the first section of the Presidential Inaugural Ceremonies Act (36 U.S.C. 721)'' for ''section 721 of title 36''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2554. Equipment and other services: Boy Scout Jamborees

(a) The Secretary of Defense is hereby authorized, under such regulations as he may prescribe, to lend to the Boy Scouts of America, for the use and accommodation of Scouts, Scouters, and officials who attend any national or world Boy Scout Jamboree, such cots, blankets, commissary equipment, flags, refrigerators, and other equipment and without reimbursement, furnish services and expendable medical supplies, as may be necessary or useful to the extent that items are in stock and items or services are available.

(b) Such equipment is authorized to be delivered at such time prior to the holding of any national or world Boy Scout Jamboree, and to be returned at such time after the close of any such jamboree, as may be agreed upon by the Secretary of Defense and the Boy Scouts of America. No expense shall be incurred by the United States Government for the delivery, return, rehabilitation, or replacement of such equipment.

(c) The Secretary of Defense, before delivering such property, shall take from the Boy Scouts of America, good and sufficient bond for the safe return of such property in good order and condition, and the whole without expense to the United States.

(d) The Secretary of Defense is hereby authorized under such regulations as he may prescribe, to provide, without expense to the United States

Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for (1) those Boy Scouts, Scouters, and officials certified by the Boy Scouts of America, as representing the Boy Scouts of America at any national or world Boy Scout Jamboree, and (2) the equipment and property of such Boy Scouts, Scouters, and officials and the property loaned to the Boy Scouts of America, by the Secretary of Defense pursuant to this section to the extent that such transportation will not interfere with the requirements of military operations.

(e) Before furnishing any transportation under subsection (d), the Secretary of Defense shall take from the Boy Scouts of America, a good and sufficient bond for the reimbursement to the United States by the Boy Scouts of America, of the actual costs of transportation furnished under this section.

(f) Amounts paid to the United States to reimburse it for expenses incurred under subsection (b) and for the actual costs of transportation furnished under subsection (d) shall be credited to the current applicable appropriations or funds to which such expenses and costs were charged and shall be available for the same purposes as such appropriations or funds.

(g) In the case of a Boy Scout Jamboree held on a military installation, the Secretary of Defense may provide personnel services and logistical support at the military installation in addition to the support authorized under subsections (a) and (d).

(h) Other departments of the Federal Government are authorized, under such regulations as may be prescribed by the Secretary thereof, to provide to the Boy Scouts of America, equipment and other services, under the same conditions and restrictions prescribed in the preceding subsections for the Secretary of Defense.

(Added Pub. L. 92–249, Mar. 10, 1972, 86 Stat. 62, § 2544; amended Pub. L. 104–106, div. A, title III, § 376, Feb. 10, 1996, 110 Stat. 283; renumbered § 2554, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260l; Pub. L. 107–107, div. A, title IX, § 931(a), Dec. 28, 2001, 115 Stat. 1200.)

PRIOR PROVISIONS

A prior section 2554 was renumbered section 2564 of this title.

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–107 substituted ''Air Mobility Command'' for ''Military Airlift Command''.

2000—Pub. L. 106–398 renumbered section 2544 of this title as this section.

1996—Subsecs. (g), (h). Pub. L. 104–106 added subsec. (g) and redesignated former subsec. (g) as (h).

§ 2555. Transportation services: international Girl Scout events

(a) The Secretary of Defense is authorized, under such regulations as he may prescribe, to provide, without expense to the United States Government, transportation from the United States or military commands overseas, and return, on vessels of the Military Sealift Command or aircraft of the Air Mobility Command for (1) those Girl Scouts and officials certified by the Girl Scouts of the United States of America as representing the Girl Scouts of the United States of America at any International World Friendship Event or Troops on Foreign Soil meeting which is endorsed and approved by the National Board of Directors of the Girl Scouts of the United States of America and is conducted outside of the United States, (2) United States citizen delegates coming from outside of the United States to triennial meetings of the National Council of the Girl Scouts of the United States of America, and (3) the equipment and property of such Girl Scouts and officials, to the extent that such transportation will not interfere with the requirements of military operations.

(b) Before furnishing any transportation under subsection (a), the Secretary of Defense shall take from the Girl Scouts of the United States of America a good and sufficient bond for the reimbursement to the United States by the Girl Scouts of the United States of America, of the actual costs of transportation furnished under subsection (a).

(c) Amounts paid to the United States to reimburse it for the actual costs of transportation furnished under subsection (a) shall be credited to the current applicable appropriations or funds to which such costs were charged and shall be available for the same purposes as such appropriations or funds.

(Added Pub. L. 95–492, § 1, Oct. 20, 1978, 92 Stat. 1642, § 2545; renumbered § 2555, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title IX, § 931(a), Dec. 28, 2001, 115 Stat. 1200.)

CODIFICATION

Another section 2555 was renumbered section 2565 of this title.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''Air Mobility Command'' for ''Military Airlift Command''.

2000—Pub. L. 106–398 renumbered section 2545 of this title as this section.

§ 2556. Shelter for homeless; incidental services

(a)(1) The Secretary of a military department may make military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter. The Secretary may, incidental to the furnishing of such shelter, provide services as described in subsection (b). Shelter and incidental services provided under this section may be provided without reimbursement.

(2) The Secretary concerned shall carry out this section in cooperation with appropriate State and local governmental entities and charitable organizations. The Secretary shall, to the maximum extent practicable, use the services and personnel of such entities and organizations in determining to whom and the circumstances under which shelter is furnished under this section.

(b) Services that may be provided incident to the furnishing of shelter under this section are the following:

(1) Utilities.

(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this section.
(7) Property liability insurance.

(c) Shelter and incidental services may only be provided under this section to the extent that the Secretary concerned determines will not interfere with military preparedness or ongoing military functions.

(d) The Secretary concerned may provide bedding for support of shelters for the homeless that are operated by entities other than the Department of Defense. Bedding may be provided under this subsection without reimbursement, but may only be provided to the extent that the Secretary determines that the provision of such bedding will not interfere with military requirements.

(e) The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 98–94, title III, § 305(a)(1), Sept. 24, 1983, 97 Stat. 628, § 2546; amended Pub. L. 99–167, title VIII, § 825, Dec. 3, 1985, 99 Stat. 992; renumbered § 2556, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2546 of this title as this section.

1985—Subsecs. (d), (e). Pub. L. 99–167 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE

Section 305(b) of Pub. L. 98–94 provided that: ''Section 2546 [now 2556] of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1983.''

§ 2557. Excess nonlethal supplies: availability for homeless veteran initiatives and humanitarian relief

(a)(1) The Secretary of Defense may make available for humanitarian relief purposes any nonlethal excess supplies of the Department of Defense.

(2) The Secretary of Defense may make excess clothing, shoes, sleeping bags, and related nonlethal excess supplies available to the Secretary of Veterans Affairs for distribution to homeless veterans and programs assisting homeless veterans. The transfer of nonlethal excess supplies to the Secretary of Veterans Affairs under this paragraph shall be without reimbursement.

(b) Excess supplies made available for humanitarian relief purposes under this section shall be transferred to the Secretary of State, who shall be responsible for the distribution of such supplies.

(c) This section does not constitute authority to conduct any activity which, if carried out as an intelligence activity by the Department of Defense, would require a notice to the intelligence committees under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.).

(d) In this section:

(1) The term ''nonlethal excess supplies'' means property, other than real property, of the Department of Defense—

(A) that is excess property, as defined in regulations of the Department of Defense; and

(B) that is not a weapon, ammunition, or other equipment or material that is designed to inflict serious bodily harm or death.

(2) The term ''intelligence committees'' means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

(Added Pub. L. 99–145, title XIV, § 1454(a), Nov. 8, 1985, 99 Stat. 761, § 2547; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 101–510, div. A, title XIII, § 1322(a)(10), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–88, title VI, § 602(c)(3), Aug. 14, 1991, 105 Stat. 444; renumbered § 2557, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title III, § 361(a), (b)(1), Dec. 28, 2001, 115 Stat. 1064, 1065.)

REFERENCES IN TEXT

The National Security Act of 1947, referred to in subsec. (c), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. Title V of the Act is classified generally to subchapter III (§ 413 et seq.) of chapter 15 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50 and Tables.

AMENDMENTS

2001—Pub. L. 107–107, § 361(b)(1), inserted ''availability for homeless veteran initiatives and'' before ''humanitarian relief'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 361(a), designated existing provisions as par. (1) and added par. (2).

2000—Pub. L. 106–398 renumbered section 2547 of this title as this section.

1991—Subsec. (c). Pub. L. 102–88 struck out par. (1) which read as follows: ''a finding under section 662 of the Foreign Assistance Act of 1961 (22 U.S.C. 2422); or'', struck out par. (2) designation, and substituted ''title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.)'' for ''section 501(a)(1) of the National Security Act of 1947 (50 U.S.C. 413)''.

1990—Subsecs. (d), (e). Pub. L. 101–510 redesignated subsec. (e) as (d) and struck out former subsec. (d) which read as follows:

''(1) The Secretary of State shall submit an annual report on the disposition of all excess supplies transferred by the Secretary of Defense to the Secretary of State under this section during the preceding year.

''(2) Such reports shall be submitted to the Committees on Armed Services and on Foreign Relations of the Senate and the Committees on Armed Services and on Foreign Affairs of the House of Representatives.

''(3) Such reports shall be submitted not later than June 1 of each year.''

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in each par. and substituted lowercase letter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2561, 2562 of this title.

§ 2558. National military associations: assistance at national conventions

(a) AUTHORITY TO PROVIDE SERVICES.—The Secretary of a military department may provide services described in subsection (c) in connection with an annual conference or convention of a national military association.

(b) CONDITIONS FOR PROVIDING SERVICES.—Services may be provided under this section only if—

(1) the provision of the services in any case is approved in advance by the Secretary concerned;

(2) the services can be provided in conjunction with training in appropriate military skills; and

(3) the services can be provided within existing funds otherwise available to the Secretary concerned.

(c) COVERED SERVICES.—Services that may be provided under this section are—

(1) limited air and ground transportation;

(2) communications;

(3) medical assistance;

(4) administrative support; and

(5) security support.

(d) NATIONAL MILITARY ASSOCIATIONS.—The Secretary of Defense shall designate those organizations which are national military associations for purposes of this section.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–189, div. A, title III, § 329(a)(1), Nov. 29, 1989, 103 Stat. 1417, § 2548; renumbered § 2558, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2548 of this title as this section.

EFFECTIVE DATE

Section 329(b) of Pub. L. 101–189 provided that: ''Section 2548 [now 2558] of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this Act [Nov. 29, 1989].''

§ 2559. Provision of medical care to foreign military and diplomatic personnel: reimbursement required; waiver for provision of reciprocal services

(a) REIMBURSEMENT REQUIRED.—Except as provided in subsection (b), whenever the Secretary of Defense provides medical care in the United States on an inpatient basis to foreign military and diplomatic personnel or their dependents, the Secretary shall require that the United States be reimbursed for the costs of providing such care. Payments received as reimbursement for the provision of such care shall be credited to the appropriations against which charges were made for the provision of such care.

(b) WAIVER WHEN RECIPROCAL SERVICES PROVIDED UNITED STATES MILITARY PERSONNEL.—Notwithstanding subsection (a), the Secretary of Defense may provide inpatient medical care in the United States without cost to military personnel and their dependents from a foreign country if comparable care is made available to a comparable number of United States military personnel and their dependents in that foreign country.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(f)(1), Nov. 5, 1990, 104 Stat. 1707, § 2549; renumbered § 2559, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9020, Nov. 21, 1989, 103 Stat. 1133, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(f)(3).

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2549 of this title as this section.

§ 2560. Aircraft and vehicles: limitation on leasing to non-Federal agencies

The Secretary of Defense (or Secretary of a military department) may not lease to a non-Federal agency in the United States any aircraft or vehicle owned or operated by the Department of Defense if suitable aircraft or vehicles are commercially available in the private sector. However, nothing in the preceding sentence shall affect authorized and established procedures for the sale of surplus aircraft or vehicles.

(Added Pub. L. 101–510, div. A, title XIV, § 1481(g)(1), Nov. 5, 1990, 104 Stat. 1707, § 2550; renumbered § 2560, Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, § 9025, Nov. 21, 1989, 103 Stat. 1134, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, § 1481(g)(4).

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2550 of this title as this section.

§ 2561. Humanitarian assistance

(a) AUTHORIZED ASSISTANCE.—To the extent provided in defense authorization Acts, funds authorized to be appropriated to the Department of Defense for a fiscal year for humanitarian assistance shall be used for the purpose of providing transportation of humanitarian relief and for other humanitarian purposes worldwide.

(b) AVAILABILITY OF FUNDS.—To the extent provided in appropriation Acts, funds appropriated for humanitarian assistance for the purposes of this section shall remain available until expended.

(c) STATUS REPORTS.—(1) The Secretary of Defense shall submit to the congressional committees specified in subsection (f) an annual report on the provision of humanitarian assistance pursuant to this section for the prior fiscal year. The report shall be submitted each year at the time of the budget submission by the President for the next fiscal year.

(2) Each report required by paragraph (1) shall cover all provisions of law that authorize appropriations for humanitarian assistance to be available from the Department of Defense for the purposes of this section.

(3) Each report under this subsection shall set forth the following information regarding activities during the previous fiscal year:

(A) The total amount of funds obligated for humanitarian relief under this section.

(B) The number of scheduled and completed transportation missions for purposes of providing humanitarian assistance under this section.

(C) A description of any transfer of excess nonlethal supplies of the Department of Defense made available for humanitarian relief purposes under section 2557 of this title. The description shall include the date of the transfer, the entity to whom the transfer is made, and the quantity of items transferred.

(d) REPORT REGARDING RELIEF FOR UNAUTHORIZED COUNTRIES.—In any case in which the Secretary of Defense provides for the transportation of humanitarian relief to a country to which the transportation of humanitarian relief has not been specifically authorized by law, the Secretary shall notify the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the Secretary's intention to provide such transportation. The notification shall be submitted not less than 15 days before the commencement of such transportation.

(e) DEFINITION.—In this section, the term ''defense authorization Act'' means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including authorizations of appropriations for the activities described in paragraph (7) of section 114(a) of this title.

(f) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsections (c)(1) and (d) are the following:

(1) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(2) The Committee on Armed Services and the Committee on International Relations of the House of Representatives.

(Added Pub. L. 102–484, div. A, title III, §304(c)(1), Oct. 23, 1992, 106 Stat. 2361, §2551; amended Pub. L. 104–106, div. A, title XIII, §1312, Feb. 10, 1996, 110 Stat. 474; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; renumbered §2561 and amended Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1), (c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], renumbered section 2551 of this title as this section.

Subsec. (c)(3)(C). Pub. L. 106–398, §1 [[div. A], title X, §1033(c)(1)], substituted ''section 2557'' for ''section 2547''.

1999—Subsec. (f)(2). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106, §1312(1), (2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which read as follows: ''AUTHORITY TO TRANSFER FUNDS.—To the extent provided in defense authorization Acts for a fiscal year, the Secretary of Defense may transfer to the Secretary of State funds appropriated for the purposes of this section to provide for—

''(1) the payment of administrative costs incurred in providing the transportation described in subsection (a); and

''(2) the purchase or other acquisition of transportation assets for the distribution of humanitarian relief supplies in the country of destination.''

Subsec. (c). Pub. L. 104–106, §1312(1), (3), added subsec. (c) and struck out former subsec. (c) which read as follows:

''(c) TRANSPORTATION OF HUMANITARIAN RELIEF.—(1) Transportation of humanitarian relief provided with funds appropriated for the purposes of this section shall be provided under the direction of the Secretary of State.

''(2) Such transportation shall be provided by the most economical commercial or military means available, unless the Secretary of State determines that it is in the national interest of the United States to provide such transportation other than by the most economical means available. The means used to provide such transportation may include the use of aircraft and personnel of the reserve components of the Armed Forces.

''(3) Nothing in this subsection shall be construed as waiving the requirements of section 2631 of this title and sections 901(b) and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) and 1241f).''

Subsec. (d). Pub. L. 104–106, §1312(4), redesignated subsec. (f) as (d) and substituted ''the congressional committees specified in subsection (f) and the Committees on Appropriations of the Senate and House of Representatives of the'' for ''the Committees on Appropriations and on Armed Services of the Senate and House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs of the House of Representatives of the''. Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 104–106, §1312(3), (5), redesignated subsec. (g) as (e) and struck out former subsec. (e) which required status reports and specified time for submission, coverage, and contents.

Subsec. (f). Pub. L. 104–106, §1312(6), added subsec. (f). Former subsec. (f) redesignated (d).

Subsec. (g). Pub. L. 104–106, §1312(5), redesignated subsec. (g) as (e).

NOTIFICATIONS REGARDING HUMANITARIAN RELIEF

Notification provided to appropriate congressional committees with respect to assistance under this section to include detailed description of items for which transportation is provided that are excess nonlethal supplies of Department of Defense, including quantity, acquisition value, and value at time of transportation of such items, see section 1504(c) of Pub. L. 103–160, set out in a Humanitarian and Civic Assistance note under section 401 of this title.

LAWS COVERED BY INITIAL REPORTS

Pub. L. 102–484, div. A, title III, §304(d), Oct. 28, 1992, 106 Stat. 2362, provided that for purposes of subsec. (e) of this section, section 304 of Pub. L. 102–190 (105 Stat. 1333) and the humanitarian relief laws referred to in section 304(f)(4) of Pub. L. 102–190 (as in effect on the day before Oct. 23, 1992) were to be considered as provisions of law that authorized appropriations for humanitarian assistance to be available for the purposes of this section.

§ 2562. Limitation on use of excess construction or fire equipment from Department of Defense stocks in foreign assistance or military sales programs

(a) LIMITATION.—Excess construction or fire equipment from the stocks of the Department of Defense may be transferred to any foreign country or international organization pursuant to part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2301 et seq.) or section 21 of the Arms Export Control Act (22 U.S.C. 2761) only if—

(1) no department or agency of the Federal Government (other than the Department of Defense), no State, and no other person or entity eligible to receive excess or surplus prop-

erty under subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) submits to the Defense Reutilization and Marketing Service a request for such equipment during the period for which the Defense Reutilization and Marketing Service accepts such a request; or

(2) the President determines that the transfer is necessary in order to respond to an emergency for which the equipment is especially suited.

(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to limit the authority to transfer construction or fire equipment under section 2557 of this title.

(c) DEFINITION.—In this section, the term ''construction or fire equipment'' includes tractors, scrapers, loaders, graders, bulldozers, dump trucks, generators, pumpers, fuel and water tankers, crash trucks, utility vans, rescue trucks, ambulances, hook and ladder units, compressors, and miscellaneous fire fighting equipment.

(Added Pub. L. 102–484, div. D, title XLIII, § 4304(a), Oct. 23, 1992, 106 Stat. 2699, § 2552; renumbered § 2562 and amended Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1), (c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–217, § 3(b)(8), Aug. 21, 2002, 116 Stat. 1295; Pub. L. 107–314, div. A, title X, § 1062(e)(1), Dec. 2, 2002, 116 Stat. 2651.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Part II of the Act is classified generally to subchapter II (§ 2301 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–217, § 3(b)(8)(A), as amended by Pub. L. 107–314, inserted ''subtitle I of title 40 and title III of'' before ''the Federal'' the second place it appeared.

Pub. L. 107–217, § 3(b)(8)(B), substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 472 et seq.)''.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1033(b)(1)], renumbered section 2552 of this title as this section.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title X, § 1033(c)(2)], substituted ''section 2557'' for ''section 2547''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title X, § 1062(e), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(e)(1) is effective as if included in Pub. L. 107–217 as originally enacted.

§ 2563. Articles and services of industrial facilities: sale to persons outside the Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES.—The Secretary may designate facilities referred to in subsection (a) as the facilities from which articles and services manufactured or performed by such facilities may be sold under this section.

(c) CONDITIONS FOR SALES.—(1) A sale of articles or services may be made under this section only if—

(A) the Secretary of Defense determines that the articles or services are not available from a commercial source in the United States;

(B) the purchaser agrees to hold harmless and indemnify the United States, except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(3) Paragraph (1)(B) does not apply in any case of willful misconduct or gross negligence or in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

(d) METHODS OF SALE.—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and

equipment depreciation costs that are associated with the articles or services sold;

(B) enter into a firm, fixed-price contract or, if agreed by the purchaser, a cost reimbursement contract for the sale; and

(C) develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the articles or services sold.

(e) DEPOSIT OF PROCEEDS.—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

(f) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(g) DEFINITIONS.—In this section:

(1) The term ''advance incremental funding'', with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the manufacture of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(2) The term ''not available'', with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(3) The term ''variable costs'', with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103–337, div. A, title III, §339(a)(1), Oct. 5, 1994, 108 Stat. 2718, §2553; amended Pub. L. 106–65, div. A, title III, §331(a)(2), (b), Oct. 5, 1999, 113 Stat. 566, 567; renumbered §2563, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260; Pub. L. 107–107, div. A, title III, §343(a), Dec. 28, 2001, 115 Stat. 1061.)

AMENDMENTS

2001—Subsec. (c)(1)(B). Pub. L. 107–107, §343(a)(1), substituted ''as provided in paragraph (3)'' for ''in any case of willful misconduct or gross negligence''.

Subsec. (c)(3). Pub. L. 107–107, §343(a)(2), added par. (3).

2000—Pub. L. 106–398 renumbered section 2553 of this title as this section.

1999—Subsec. (c). Pub. L. 106–65, §331(a)(2), designated existing provisions as par. (1), redesignated former pars. (1) to (6) as subpars. (A) to (F), respectively, of par. (1), and added par. (2).

Subsec. (g)(2), (3). Pub. L. 106–65, §331(b), added par. (2) and redesignated former par. (2) as (3).

EFFECTIVE DATE

Section 339(b) of Pub. L. 103–337 provided that: ''Section 2553 [now 2563] of title 10, United States Code, as added by subsection (a), shall take effect on April 1, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2474, 7300 of this title.

§ 2564. Provision of support for certain sporting events

(a) SECURITY AND SAFETY ASSISTANCE.—At the request of a Federal, State, or local government agency responsible for providing law enforcement services, security services, or safety services, the Secretary of Defense may authorize the commander of a military installation or other facility of the Department of Defense or the commander of a specified or unified combatant command to provide assistance for the World Cup Soccer Games, the Goodwill Games, the Olympics, and any other civilian sporting event in support of essential security and safety at such event, but only if the Attorney General certifies that such assistance is necessary to meet essential security and safety needs.

(b) OTHER ASSISTANCE.—The Secretary of Defense may authorize a commander referred to in subsection (a) to provide assistance for a sporting event referred to in that subsection in support of other needs relating to such event, but only—

(1) to the extent that such needs cannot reasonably be met by a source other than the Department;

(2) to the extent that the provision of such assistance does not adversely affect the military preparedness of the armed forces; and

(3) if the organization requesting such assistance agrees to reimburse the Department for amounts expended by the Department in providing the assistance in accordance with the provisions of section 377 of this title and other applicable provisions of law.

(c) INAPPLICABILITY TO CERTAIN EVENTS.—Subsections (a) and (b) do not apply to the following sporting events:

(1) Sporting events for which funds have been appropriated before September 23, 1996.

(2) The Special Olympics.

(3) The Paralympics.

(d) TERMS AND CONDITIONS.—The Secretary of Defense may require such terms and conditions in connection with the provision of assistance under this section as the Secretary considers necessary and appropriate to protect the interests of the United States.

(e) REPORT ON ASSISTANCE.—Not later than January 30 of each year following a year in which the Secretary of Defense provides assistance under this section, the Secretary shall submit to Congress a report on the assistance provided. The report shall set forth—

(1) a description of the assistance provided;

(2) the amount expended by the Department in providing the assistance;

(3) if the assistance was provided under subsection (a), the certification of the Attorney General with respect to the assistance under that subsection; and

(4) if the assistance was provided under subsection (b)—

(A) an explanation why the assistance could not reasonably be met by a source other than the Department; and

(B) the amount the Department was reimbursed under that subsection.

(f) RELATIONSHIP TO OTHER LAWS.—Assistance provided under this section shall be subject to the provisions of sections 375 and 376 of this title.

(Added Pub. L. 104–201, div. A, title III, §367(a), Sept. 23, 1996, 110 Stat. 2496, §2554; amended by Pub. L. 105–85, div. A, title X, §1073(a)(56), (c)(2)(A), Nov. 18, 1997, 111 Stat. 1903, 1904; renumbered §2564, Pub. L. 106–398, §1 [[div. A], title X, §1033(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–260.)

AMENDMENTS

2000—Pub. L. 106–398 renumbered section 2554 of this title as this section.

1997—Pub. L. 105–85, §1073(c)(2)(A), made technical amendment to directory language of Pub. L. 104–201, §367(a), which enacted this section.

Subsec. (c)(1). Pub. L. 105–85, §1073(a)(56), substituted ''September 23, 1996'' for ''the date of the enactment of this Act''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

SUPPORT FOR INTERNATIONAL SPORTING COMPETITIONS, DEFENSE, ACCOUNT

Pub. L. 104–208, div. A, title V, §5802, Sept. 30, 1996, 110 Stat. 3009–522, provided that: ''There is hereby established on the books of the Treasury an account, 'Support for International Sporting Competitions, Defense' (hereinafter referred to in this section as the 'Account') to be available until expended for logistical and security support for international sporting competitions (other than pay and non-travel-related allowances of members of the Armed Forces of the United States, except for members of the reserve components thereof called or ordered to active duty in connection with providing such support): *Provided*, That there shall be credited to the Account: (a) unobligated balances of the funds appropriated in Public Laws 103–335 [108 Stat. 2605] and 104–61 [109 Stat. 642] under the headings 'Summer Olympics'; (b) any reimbursements received by the Department of Defense in connection with support to the 1993 World University Games; the 1994 World Cup Games; and the 1996 Games of the XXVI Olympiad held in Atlanta, Georgia; (c) any reimbursements received by the Department of Defense after the date of enactment of this Act [Sept. 30, 1996] for logistical and security support provided to international sporting competitions; and (d) amounts specifically appropriated to the Account, all to remain available until expended: *Provided further*, That none of the funds made available to the Account may be obligated until 45 days after the congressional defense committees have been notified in writing by the Secretary of Defense as to the purpose for which these funds will be obligated.''

§2565. Nuclear test monitoring equipment: furnishing to foreign governments

(a) AUTHORITY TO TRANSFER TITLE TO OR OTHERWISE PROVIDE NUCLEAR TEST MONITORING EQUIPMENT.—Subject to subsection (b), the Secretary of Defense may—

(1) transfer title or otherwise provide to a foreign government (A) equipment for the monitoring of nuclear test explosions, and (B) associated equipment;

(2) as part of any such conveyance or provision of equipment, install such equipment on foreign territory or in international waters; and

(3) inspect, test, maintain, repair, or replace any such equipment.

(b) AGREEMENT REQUIRED.—Nuclear test explosion monitoring equipment may be provided to a foreign government under subsection (a) only pursuant to the terms of an agreement between the United States and the foreign government receiving the equipment in which the recipient foreign government agrees—

(1) to provide the United States with timely access to the data produced, collected, or generated by the equipment; and

(2) to permit the Secretary of Defense to take such measures as the Secretary considers necessary to inspect, test, maintain, repair, or replace that equipment, including access for purposes of such measures.

(c) REPORT.—Promptly after entering into any agreement under subsection (b), the Secretary of Defense shall submit to Congress a report on the agreement. The report shall identify the country with which the agreement was made, the anticipated costs to the United States to be incurred under the agreement, and the national interest of the United States that is furthered by the agreement.

(d) LIMITATION ON DELEGATION.—The Secretary of Defense may delegate the authority of the Secretary to carry out this section only to the Secretary of the Air Force. Such a delegation may be redelegated.

(Added Pub. L. 106–398, §1 [[div. A], title XII, §1203(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–324, §2555; renumbered §2565 and amended Pub. L. 107–107, div. A, title XII, §1201(a)(1), (b), Dec. 28, 2001, 115 Stat. 1245.)

AMENDMENTS

2001—Pub. L. 107–107, §1201(a)(1), renumbered section 2555 of this title as this section.

Subsec. (a). Pub. L. 107–107, §1201(b)(1)(A), substituted ''Transfer Title to or Otherwise'' for ''Convey or'' in heading.

Subsec. (a)(1). Pub. L. 107–107, §1201(b)(1)(B), substituted ''transfer title'' for ''convey'' and struck out ''and'' after semicolon at end.

Subsec. (a)(3). Pub. L. 107–107, §1201(b)(1)(C), (D), added par. (3).

Subsec. (b). Pub. L. 107–107, §1201(b)(2)(A), substituted ''provided to a foreign government'' for ''conveyed or otherwise provided'' in introductory provisions.

Subsec. (b)(1). Pub. L. 107–107, §1201(b)(2)(B), inserted ''and'' after semicolon at end.

Subsec. (b)(2). Pub. L. 107–107, §1201(b)(2)(C), substituted a period for ''; and'' at end.

Subsec. (b)(3). Pub. L. 107–107, §1201(b)(2)(D), struck out par. (3) which read as follows: ''to return such equipment to the United States (or allow the United States to recover such equipment) if either party determines that the agreement no longer serves its interests.''

§ 2566. Space and services: provision to military welfare societies

(a) AUTHORITY TO PROVIDE SPACE AND SERVICES.—The Secretary of a military department may provide, without charge, space and services under the jurisdiction of that Secretary to a military welfare society.

(b) DEFINITIONS.—In this section:

(1) The term ''military welfare society'' means the following:

(A) The Army Emergency Relief Society.

(B) The Navy-Marine Corps Relief Society.

(C) The Air Force Aid Society, Inc.

(2) The term ''services'' includes lighting, heating, cooling, electricity, office furniture, office machines and equipment, telephone and other information technology services (including installation of lines and equipment, connectivity, and other associated services), and security systems (including installation and other associated expenses).

(Added Pub. L. 107–314, div. A, title X, § 1066(a), Dec. 2, 2002, 116 Stat. 2656.)

CHAPTER 153—EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

Sec.
2571. Interchange of property and services.
2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange.
[2573. Repealed.]
2574. Armament: sale of individual pieces.
2575. Disposition of unclaimed property.
2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies.
2576a. Excess personal property: sale or donation for law enforcement activities.
2576b. Excess personal property: sale or donation to assist firefighting agencies.
2577. Disposal of recyclable materials.
2578. Vessels: transfer between departments.
2579. War booty: procedures for handling and retaining battlefield objects.
2580. Donation of excess chapel property.
2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries.
2582. Military equipment identified on United States munitions list: annual report of public sales.
2583. Military working dogs: transfer and adoption at end of useful working life.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title X, § 1048(a)(25), Dec. 28, 2001, 115 Stat. 1224, redesignated item 2582 relating to military working dogs as item 2583.

2000—Pub. L. 106–446, § 1(b), Nov. 6, 2000, 114 Stat. 1933, added item 2582 relating to military working dogs.

Pub. L. 106–398, § 1 [[div. A], title III, § 381(b), title XVII, § 1706(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85, 1654A–367, added items 2576b and 2582 relating to military equipment identified on United States munitions list.

1998—Pub. L. 105–261, div. A, title XII, § 1234(b), Oct. 17, 1998, 112 Stat. 2157, added item 2581.

1997—Pub. L. 105–85, div. A, title X, § 1063(b), Nov. 18, 1997, 111 Stat. 1893, added item 2580.

1996—Pub. L. 104–201, div. A, title X, § 1033(a)(2), Sept. 23, 1996, 110 Stat. 2640, added item 2576a.

1993—Pub. L. 103–160, div. A, title XI, § 1171(a)(2), Nov. 30, 1993, 107 Stat. 1766, added item 2579.

1988—Pub. L. 100–456, div. A, title III, § 324(b), Sept. 29, 1988, 102 Stat. 1954, substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in item 2572.

Pub. L. 100–370, § 1(k)(2), July 19, 1988, 102 Stat. 848, added item 2578.

1982—Pub. L. 97–214, § 6(b)(2), July 12, 1982, 96 Stat. 172, added item 2577.

1980—Pub. L. 96–513, title V, § 511(83)(B), Dec. 12, 1980, 94 Stat. 2927, struck out item 2573 ''Excess property: transfers to Canal Zone Government''.

1968—Pub. L. 90–500, title IV, § 403(b), Sept. 20, 1968, 82 Stat. 851, added item 2576.

1958—Pub. L. 85–861, § 1(50), Sept. 2, 1958, 72 Stat. 1459, substituted ''property'' for ''supplies'' in item 2571.

§ 2571. Interchange of property and services

(a) If either of the Secretaries concerned requests it and the other approves, supplies and real estate may be transferred, without compensation, from one armed force to another.

(b) If its head approves, a department or organization within the Department of Defense may, upon request, perform work and services for, or furnish supplies to, any other of those departments or organizations, without reimbursement or transfer of funds.

(c) If military or civilian personnel of a department or organization within the Department of Defense are assigned or detailed to another of those departments or organizations, and if the head of the department or organization to which they are transferred approves, their pay and allowances and the cost of transporting their dependents and household goods may be charged to an appropriation that is otherwise available for those purposes to that department or organization.

(d) No agency or official of the executive branch of the Federal Government may establish any regulation, program, or policy or take any other action which precludes, directly or indirectly, the Secretaries concerned from exercising the authority provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Pub. L. 85–861, § 1(49), Sept. 2, 1958, 72 Stat. 1459; Pub. L. 99–167, title VIII, § 821, Dec. 3, 1985, 99 Stat. 991.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a) [now (b)].	5:171t (less clause (2)).	Oct. 29, 1949, ch. 787, § 621, 63 Stat. 1020.
2571(b) [now (c)].	5:171t (clause 2)).	

In subsection (a), the words ''After June 30, 1949'' are omitted as executed. The words ''may perform work and services for, or furnish supplies to'' are substituted for the words ''services, work, supplies, materials, and equipment may be rendered or supplied'', since the word ''supplies'', as defined in section 101(26) of this title, includes ''equipment'' and ''material''. The words ''upon request'' are inserted for clarity.

In subsection (b), the words ''on a reimbursable or other basis as authorized by law'', ''to duty'', and ''naval'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2571(a)	14:640.	June 15, 1955, ch. 142, 69 Stat. 134.

In subsection (a), the first 12 words are substituted for 14:640 (last 20 words). The words ''may be transferred'' are substituted for the words ''The interchange . . . is authorized'', since the words ''without compensation'' authorize a simple one-way transfer, while the word ''interchange'' normally means a mutual exchange. The words ''military stores . . . and equipment of every character'' are omitted as covered by the word ''supplies'' as defined in section 101(26) of this title. The words ''armed force'' are substituted for the enumeration of the armed forces.

AMENDMENTS

1985—Subsec. (d). Pub. L. 99–167 added subsec. (d).

1958—Pub. L. 85–861, §1(49)(A), substituted ''property'' for ''supplies'' in section catchline.

Subsecs. (a) to (c). Pub. L. 85–861, §1(49)(B), (C), added subsec. (a) and redesignated former subsecs. (a) and (b) as (b) and (c), respectively.

§ 2572. Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange

(a) The Secretary concerned may lend or give items described in subsection (c) that are not needed by the military department concerned (or by the Coast Guard, in the case of the Secretary of Homeland Security), to any of the following:

(1) A municipal corporation, county, or other political subdivision of a State.

(2) A servicemen's monument association.

(3) A museum, historical society, or historical institution of a State or a foreign nation or a nonprofit military aviation heritage foundation or association incorporated in a State.

(4) An incorporated museum or memorial that is operated and maintained for educational purposes only and the charter of which denies it the right to operate for profit.

(5) A post of the Veterans of Foreign Wars of the United States or of the American Legion or a unit of any other recognized war veterans' association.

(6) A local or national unit of any war veterans' association of a foreign nation which is recognized by the national government of that nation (or by the government of one of the principal political subdivisions of that nation).

(7) A post of the Sons of Veterans Reserve.

(b)(1) Subject to paragraph (2), the Secretary concerned may exchange items described in subsection (c) that are not needed by the armed forces for any of the following items or services if such items or services directly benefit the historical collection of the armed forces:

(A) Similar items held by any individual, organization, institution, agency, or nation.

(B) Conservation supplies, equipment, facilities, or systems.

(C) Search, salvage, or transportation services.

(D) Restoration, conservation, or preservation services.

(E) Educational programs.

(2) The Secretary concerned may not make an exchange under paragraph (1) unless the monetary value of property transferred, or services provided, to the United States under the exchange is not less than the value of the property transferred by the United States. The Secretary concerned may waive the limitation in the preceding sentence in the case of an exchange of property for property in any case in which the Secretary determines that the item to be received by the United States in the exchange will significantly enhance the historical collection of the property administered by the Secretary.

(c) This section applies to the following types of property held by a military department or the Coast Guard: books, manuscripts, works of art, historical artifacts, drawings, plans, models, and condemned or obsolete combat materiel.

(d)(1) A loan or gift made under this section shall be subject to regulations prescribed by the Secretary concerned and to regulations under section 121 of title 40.

(2)(A) Except as provided in subparagraph (B), the United States may not incur any expense in connection with a loan or gift under subsection (a).

(B) The Secretary concerned may, without cost to the recipient, demilitarize, prepare, and transport in the continental United States for donation to a recognized war veterans' association an item authorized to be donated under this section if the Secretary determines the demilitarization, preparation, and transportation can be accomplished as a training mission without additional budgetary requirements for the unit involved.

(Aug. 10, 1956, ch. 1041, 70A Stat. 143; Pub. L. 96–513, title V, §511(82), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 100–456, div. A, title III, §324(a), Sept. 29, 1988, 102 Stat. 1954; Pub. L. 101–510, div. A, title III, §325, Nov. 5, 1990, 104 Stat. 1531; Pub. L. 102–484, div. A, title III, §373, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–337, div. A, title X, §1071, Oct. 5, 1994, 108 Stat. 2859; Pub. L. 104–106, div. A, title III, §372, Feb. 10, 1996, 110 Stat. 280; Pub. L. 107–107, div. A, title X, §1043(d), Dec. 28, 2001, 115 Stat. 1219; Pub. L. 107–217, §3(b)(9), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title III, §369, Dec. 2, 2002, 116 Stat. 2524.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2572	5:150p.	May 22, 1896, ch. 231; restated May 26, 1928, ch. 785; restated Feb. 28, 1933, ch. 137; restated June 19, 1940, ch. 398; July 31, 1947, ch. 421; restated Feb. 27, 1948, ch. 76, §1, 62 Stat. 37; Oct. 31, 1951, ch. 654, §2(2), 65 Stat. 706.

The word ''may'' is substituted for the words ''are each authorized, in their discretion''. The reference to posts of the Grand Army of the Republic is omitted, since that organization disbanded in 1950. The words ''under regulations to be prescribed by him'' are substituted for the words ''subject to rules and regulations covering the same in each department''. The words ''without expense to the United States'' are substituted for the words ''and the Government shall be at no expense in connection with any such loan or gift''. The words ''local unit'' are inserted in clause (7) to conform to clauses (5), (6), and (8).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

Subsec. (a)(3). Pub. L. 107–314 inserted before period at end ''or a nonprofit military aviation heritage foundation or association incorporated in a State''.

Subsec. (d)(1). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

2001—Subsec. (a)(1). Pub. L. 107–107, § 1043(d)(1), inserted '', county, or other political subdivision of a State'' before period at end.

Subsec. (a)(2). Pub. L. 107–107, § 1043(d)(2), substituted ''servicemen's monument'' for ''soldiers' monument''.

Subsec. (a)(4). Pub. L. 107–107, § 1043(d)(3), inserted ''or memorial'' after ''An incorporated museum''.

1996—Subsec. (b)(1). Pub. L. 104–106 substituted ''not needed by the armed forces for any of the following items or services if such items or services directly benefit the historical collection of the armed forces:'' for ''not needed by the armed forces for similar items held by any individual, organization, institution, agency, or nation or for search, salvage, transportation, and restoration services which directly benefit the historical collection of the armed forces.'' and added subpars. (A) to (E).

1994—Subsec. (b)(1). Pub. L. 103–337 inserted ''transportation,'' after ''salvage,''.

1992—Subsec. (d)(2). Pub. L. 102–484 designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), the'' for ''The'', and added subpar. (B).

1990—Subsec. (b)(1). Pub. L. 101–510, § 325(1), inserted before period at end ''or for search, salvage, and restoration services which directly benefit the historical collection of the armed forces''.

Subsec. (b)(2). Pub. L. 101–510, § 325(2), inserted '', or services provided,'' after ''monetary value of property transferred'' in first sentence and ''in the case of an exchange of property for property'' after ''preceding sentence'' in second sentence.

1988—Pub. L. 100–456 substituted ''Documents, historical artifacts, and condemned or obsolete combat materiel: loan, gift, or exchange'' for ''Condemned or obsolete material: loan or gift to certain organizations'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department, or the Secretary of Transportation, under regulations to be prescribed by him, may lend or give, without expense to the United States, books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat material that are not needed by that department to—

''(1) a municipal corporation;

''(2) a soldiers' monument association;

''(3) a State museum;

''(4) an incorporated museum, operated and maintained for educational purposes only, whose charter denies it the right to operate for profit;

''(5) a post of the Veterans of Foreign Wars of the United States;

''(6) a post of the American Legion;

''(7) a local unit of any other recognized war veterans' association; or

''(8) a post of the Sons of Veterans Reserve.''

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of a military department or the Secretary of Transportation'' for ''section 486 of title 40, the Secretary of a military department or the Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

MORATORIUM ON THE RETURN OF VETERANS MEMORIAL OBJECTS TO FOREIGN NATIONS WITHOUT SPECIFIC AUTHORIZATION IN LAW

Pub. L. 106–65, div. A, title X, § 1051, Oct. 5, 1999, 113 Stat. 763, provided that:

''(a) PROHIBITION.—Notwithstanding section 2572 of title 10, United States Code, and any other provision of law, during the moratorium period specified in subsection (c) the President may not transfer a veterans memorial object to a foreign country or an entity controlled by a foreign government, or otherwise transfer or convey such an object to any person or entity for purposes of the ultimate transfer or conveyance of the object to a foreign country or entity controlled by a foreign government, unless such transfer is specifically authorized by law.

''(b) DEFINITIONS.—In this section:

''(1) ENTITY CONTROLLED BY A FOREIGN GOVERNMENT.—The term 'entity controlled by a foreign government' has the meaning given that term in section 2536(c)(1) of title 10, United States Code.

''(2) VETERANS MEMORIAL OBJECT.—The term 'veterans memorial object' means any object, including a physical structure or portion thereof, that—

''(A) is located at a cemetery of the National Cemetery System, war memorial, or military installation in the United States;

''(B) is dedicated to, or otherwise memorializes, the death in combat or combat-related duties of members of the United States Armed Forces; and

''(C) was brought to the United States from abroad as a memorial of combat abroad.

''(c) PERIOD OF MORATORIUM.—The moratorium period for the purposes of this section is the period beginning on the date of the enactment of this Act [Oct. 5, 1999] and ending on September 30, 2001.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7545 of this title.

[§ 2573. Repealed. Pub. L. 96–513, title V, § 511(83)(A), Dec. 12, 1980, 94 Stat. 2927]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 143, related to transfer of excess property to the Canal Zone Government.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 2574. Armament: sale of individual pieces

A piece of armament that can be advantageously replaced, and that is not needed for its historical value, may be sold by the military department having jurisdiction over it for not less than cost, if the Secretary concerned considers that there are adequate sentimental reasons for the sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 144.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2574	10:1262b. 34:545. 50:69.	Mar. 2, 1905, ch. 1307 (last 55 words of last par. under ''Ordnance Department''), 33 Stat. 841.

The words ''by the military department having jurisdiction over it'' are inserted for clarity. The words ''if

the Secretary concerned considers'' are substituted for the words ''when there exist * * * in the judgment of the Secretary''.

§ 2575. Disposition of unclaimed property

(a) The Secretary of any military department, and the Secretary of Homeland Security, under such regulations as they may respectively prescribe, may each by public or private sale or otherwise, dispose of all lost, abandoned, or unclaimed personal property that comes into the custody or control of the Secretary's department, other than property subject to section 4712, 6522, or 9712 of this title or subject to subsection (c). However, property may not be disposed of until diligent effort has been made to find the owner (or the heirs, next of kin, or legal representative of the owner). The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days. If the owner (or the heirs, next of kin, or legal representative of the owner) is determined but not found, the property may not be disposed of until the expiration of 45 days after the date when notice, giving the time and place of the intended sale or other disposition, has been sent by certified or registered mail to that person at his last known address. When diligent effort to determine the owner (or heirs, next of kin, or legal representative of the owner) is unsuccessful, the property may be disposed of without delay, except that if it has a fair market value of more than $300, the Secretary may not dispose of the property until 45 days after the date it is received at a storage point designated by the Secretary.

(b)(1) In the case of lost, abandoned, or unclaimed personal property found on a military installation, the proceeds from the sale of the property under this section shall be credited to the operation and maintenance account of that installation and used—

(A) to reimburse the installation for any costs incurred by the installation to collect, transport, store, protect, or sell the property; and

(B) to the extent that the amount of the proceeds exceeds the amount necessary for reimbursing all such costs, to support morale, welfare, and recreation activities under the jurisdiction of the armed forces that are conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the armed forces at such installation.

(2) The net proceeds from the sale of other property under this section shall be covered into the Treasury as miscellaneous receipts.

(c) No property covered by this section may be delivered to the Armed Forces Retirement Home by the Secretary of a military department, except papers of value, sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes.

(d)(1) The owner (or heirs, next of kin, or legal representative of the owner) of personal property the proceeds of which are credited to a military installation under subsection (b)(1) may file a claim with the Secretary of Defense for the amount equal to the proceeds (less costs referred to in subparagraph (A) of such subsection). Amounts to pay the claim shall be drawn from the morale, welfare, and recreation account for the installation that received the proceeds.

(2) The owner (or heirs, next of kin, or legal representative of the owner) may file a claim with the Secretary of Defense for proceeds covered into the Treasury under subsection (b)(2).

(3) Unless a claim is filed under this subsection within 5 years after the date of the disposal of the property to which the claim relates, the claim may not be considered by a court, the Secretary of Defense (in the case of a claim filed under paragraph (1)), or the Secretary of Defense (in the case of a claim filed under paragraph (2)).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Pub. L. 89–143, Aug. 28, 1965, 79 Stat. 581; Pub. L. 96–513, title V, § 511(84), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 101–189, div. A, title III, § 322(a), (b), title XVI, § 1622(f)(1), Nov. 29, 1989, 103 Stat. 1413, 1605; Pub. L. 101–510, div. A, title XV, § 1533(a)(2), Nov. 5, 1990, 104 Stat. 1733; Pub. L. 104–106, div. A, title III, § 374(a), Feb. 10, 1996, 110 Stat. 281; Pub. L. 104–316, title II, § 202(d), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2575(a)	5:150e. 5:150h. [Uncodified: Apr. 14, 1949, ch. 50, § 6, 63 Stat. 45].	Apr. 14, 1949, ch. 50, 63 Stat. 45.
2575(b)	5:150f. 5:150g.	
2575(c)	5:150i.	

In subsection (a), the words ''under such regulations as they may respectively prescribe'' are substituted for 5:150h. The words ''other than property * * * subject to subsection (c)'' of this section are substituted for the words ''subject to the provisions of section 150i of this title''. The words ''other than property subject to sections 4712, 4713, 6522, 9712, or 9713 of this title'' are inserted, since uncodified section 6 of the source statute provided that the source statute for this revised section did not repeal or amend the source statutes for those revised sections. The words ''that comes into'' are substituted for the words ''which is now or may hereafter come into''. The word ''possession'' is omitted as covered by the words ''custody or control''. The words ''However, property may not be disposed of until'' are inserted for clarity. The word ''find'' is substituted for the words ''determine and locate''. The words ''until the expiration'' are substituted for the words ''prior to the expiration of a period''. The words ''determined but not found'' are substituted for the words ''have or has been determined''. The words ''or owners'', ''or representatives'', and ''sold or otherwise'' are omitted as surplusage.

In subsection (b), the words ''may file * * * within five years'' are substituted for the words ''may be filed * * * at any time prior to the expiration of five years'', in 5:150g, since the claim must be disallowed if not filed within that period. The words ''If not filed within that period'' are substituted for the words ''If claims are not filed prior to the expiration of five years from the date of the disposal of the property'', in 5:150g. The words ''such a claim may not be considered'' are substituted for the words ''they shall be barred from being acted on'', in 5:150g.

In subsection (c), the words ''No property * * * may * * * except'' are substituted for the words ''Any prop-

erty * * * shall be limited''. The last sentence is substituted for 5:150i (proviso).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (b). Pub. L. 104–106, §374(a)(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The net proceeds from the sale of property under this section shall be covered into the Treasury as miscellaneous receipts. The owner (or the heirs, next of kin, or legal representative of the owner) may file a claim for those proceeds with the General Accounting Office within five years after the date of the disposal of the property. If not filed within that period, such a claim may not be considered by a court or the General Accounting Office.''

Subsec. (d). Pub. L. 104–106, §374(a)(2), added subsec. (d).

Subsec. (d)(2), (3). Pub. L. 104–316 substituted ''Secretary of Defense'' for ''Comptroller General of the United States''.

1990—Subsec. (a). Pub. L. 101–510, §1533(a)(2)(A), substituted ''section 4712, 6522, or 9712'' for ''section 4712, 4713, 6522, 9712, or 9713''.

Subsec. (c). Pub. L. 101–510, §1533(a)(2)(B), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home'' and ''Secretary of a military department'' for ''Secretary of the Army or the Secretary of the Air Force'' and struck out at end ''The Home shall deliver the property to the owner (or the heirs, next of kin, or legal representative of the owner), if that person establishes a right to it within two years after its receipt by the Home.''

1989—Subsec. (a). Pub. L. 101–189, §1622(f)(1), struck out ''of this section'' after ''subsection (c)''.

Pub. L. 101–189, §322(b)(2)(A), substituted ''the Secretary's department'' for ''his department''.

Pub. L. 101–189, §322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'' in two places.

Pub. L. 101–189, §322(a)(3), inserted after second sentence: ''The diligent effort to find the owner (or the heirs, next of kin, or legal representative of the owner) shall begin, to the maximum extent practicable, not later than seven days after the date on which the property comes into the custody or control of the Secretary. The period for which that effort is continued may not exceed 45 days.''

Pub. L. 101–189, §322(a)(1), substituted ''45 days'' for ''120 days''.

Pub. L. 101–189, §322(b)(2)(B), substituted ''owner (or heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representatives'' after ''When diligent effort to determine the''.

Pub. L. 101–189, §322(a)(2), substituted ''more than $300, the Secretary may not dispose of the property until 45 days'' for ''$25 or more the property may not be disposed of until three months''.

Subsec. (b). Pub. L. 101–189, §322(b)(1), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative''.

Subsec. (c). Pub. L. 101–189, §322(b)(1), (3), substituted ''owner (or the heirs, next of kin, or legal representative of the owner)'' for ''owner, his heirs or next of kin, or his legal representative'', and ''that person'' for ''he'' before ''establishes a right''.

1980—Subsec. (a). Pub. L. 96–513, §511(84)(A), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Subsec. (c). Pub. L. 96–513, §511(84)(B), substituted ''United States Soldiers' and Airmen's Home'' for ''Soldiers' Home''.

1965—Subsec. (a). Pub. L. 89–143 provided for notice by certified mail and substituted provision for disposition of property without delay when diligent effort to determine ownership is unsuccessful and after three months following receipt at designated storage point of property with fair market value of $25 or more, for former provision for disposition of property one year after receipt at designated storage point.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 322(c) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to property that comes into the custody or control of the Secretary of a military department or the Secretary of Transportation after the date of the enactment of this Act [Nov. 29, 1989].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5564; title 24 section 420; title 37 section 554.

§ 2576. Surplus military equipment: sale to State and local law enforcement and firefighting agencies

(a) The Secretary of Defense, under regulations prescribed by him, may sell to State and local law enforcement and firefighting agencies, at fair market value, pistols, revolvers, shotguns, rifles of a caliber not exceeding .30, ammunition for such firearms, gas masks, and protective body armor which (1) are suitable for use by such agencies in carrying out law enforcement and firefighting activities, and (2) have been determined to be surplus property under subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(b) Such surplus military equipment shall not be sold under the provisions of this section to a State or local law enforcement or firefighting agency unless request therefor is made by such agency, in such form and manner as the Secretary of Defense shall prescribe, and such request, with respect to the type and amount of equipment so requested, is certified as being necessary and suitable for the operation of such agency by the Governor (or such State official as he may designate) of the State in which such agency is located. Equipment sold to a State or local law enforcement or firefighting agency under this section shall not exceed, in quantity, the amount requested and certified for such agency and shall be for the exclusive use of such agency. Such equipment may not be sold, or otherwise transferred, by such agency to any individual or public or private organization or agency.

(Added Pub. L. 90–500, title IV, §403(a) Sept. 20, 1968, 82 Stat. 851; amended Pub. L. 96–513, title V,

§ 511(85), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 107–217, § 3(b)(10), Aug. 21, 2002, 116 Stat. 1296.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before '' the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''under'' for ''pursuant to'', and ''(40 U.S.C. 471 et seq.)'' for ''(68 Stat. 377), as amended''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

AUTHORITY TO SELL AIRCRAFT AND AIRCRAFT PARTS FOR USE IN RESPONDING TO OIL SPILLS

Pub. L. 106–181, title VII, § 740, Apr. 5, 2000, 114 Stat. 173, as amended by Pub. L. 107–296, title XVII, § 1704(e)(6), Nov. 25, 2002, 116 Stat. 2315; Pub. L. 107–314, div. A, title X, §§ 1051, 1062(i), Dec. 2, 2002, 116 Stat. 2648, 2651, provided that:

''(a) AUTHORITY.—

''(1) SALE OF AIRCRAFT AND AIRCRAFT PARTS.—Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may sell aircraft and aircraft parts referred to in paragraph (2) to a person or entity that provides oil spill response services (including the application of oil dispersants by air) pursuant to an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

''(2) AIRCRAFT AND AIRCRAFT PARTS THAT MAY BE SOLD.—The aircraft and aircraft parts that may be sold under paragraph (1) are aircraft and aircraft parts of the Department of Defense that are determined by the Secretary of Defense to be—

''(A) excess to the needs of the Department; and

''(B) acceptable for commercial sale.

''(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

''(1) shall have as their primary purpose usage for oil spill spotting, observation, and dispersant delivery and may not have any secondary purpose that would interfere with oil spill response efforts under an oil spill response plan; and

''(2) may not be flown outside of or removed from the United States except for the purpose of fulfilling an international agreement to assist in oil spill dispersing efforts, for immediate response efforts for an oil spill outside United States waters that has the potential to threaten United States waters, or for other purposes that are jointly approved by the Secretary of Defense and the Secretary of Homeland Security.

''(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Homeland Security certifies to the Secretary of Defense, in writing, before the sale, that the person or entity is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air, and that the overall system to be employed by that person or entity for the delivery and application of oil spill dispersants has been sufficiently tested to ensure that the person or entity is capable of being included in an oil spill response plan that has been approved by the Secretary of the Department in which the Coast Guard is operating.

''(d) REGULATIONS.—

''(1) ISSUANCE.—As soon as practicable after the date of the enactment of this Act [Apr. 5, 2000], the Secretary of Defense, in consultation with the Secretary of Homeland Security and the Administrator of General Services, shall prescribe regulations relating to the sale of aircraft and aircraft parts under this section.

''(2) CONTENTS.—The regulations shall—

''(A) ensure that the sale of the aircraft and aircraft parts is made at a fair market value, as determined by the Secretary of Defense, and, to the extent practicable, on a competitive basis;

''(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

''(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other operators in accordance with the conditions set forth in subsection (b) or pursuant to subsection (e); and

''(D) ensure, to the maximum extent practicable, that the Secretary of Defense consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

''(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of regulations prescribed under subsection (d).

''(f) REPORT.—Not later than March 31, 2006, the Secretary of Defense shall transmit to the Committees on Armed Services and Commerce, Science, and Transportation of the Senate and the Committees on National Security and Transportation and Infrastructure of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

''(1) the number and types of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

''(2) the persons or entities to which the aircraft were sold; and

''(3) an accounting of the current use of the aircraft sold.

''(g) STATUTORY CONSTRUCTION.—

''(1) AUTHORITY OF ADMINISTRATOR.—Nothing in this section may be construed as affecting the authority of the Administrator under any other provision of law.

''(2) CERTIFICATION REQUIREMENTS.—Nothing in this section may be construed to waive, with respect to an aircraft sold under the authority of this section, any requirement to obtain a certificate from the Administrator to operate the aircraft for any purpose (other than oil spill spotting, observation, and dispersant delivery) for which such a certificate is required.

''(h) PROCEEDS FROM SALE.—The net proceeds of any amounts received by the Secretary of Defense from the sale of aircraft and aircraft parts under this section shall be covered into the general fund of the Treasury as miscellaneous receipts.

''(i) EXPIRATION OF AUTHORITY.—The authority to sell aircraft and aircraft parts under this section expires on September 30, 2006.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Secu-

rity, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SALE OF AIRCRAFT FOR WILDFIRE SUPPRESSION PURPOSES

Pub. L. 104–307, Oct. 14, 1996, 110 Stat. 3811, as amended by Pub. L. 106–65, div. A, title X, §1067(23), Oct. 5, 1999, 113 Stat. 775; Pub. L. 106–398, §1 [[div. A], title III, §388], Oct. 30, 2000, 114 Stat. 1654, 1654A–89; Pub. L. 107–314, div. A, title X, §1062(k), Dec. 2, 2002, 116 Stat. 2651, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Wildfire Suppression Aircraft Transfer Act of 1996'.

''SEC. 2. AUTHORITY TO SELL AIRCRAFT AND PARTS FOR WILDFIRE SUPPRESSION PURPOSES.

''(a) AUTHORITY.—(1) Notwithstanding subchapter II of chapter 5 of title 40, United States Code, and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2005, sell the aircraft and aircraft parts referred to in paragraph (2) to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire.

''(2) Paragraph (1) applies to aircraft and aircraft parts of the Department of Defense that are determined by the Secretary to be—

''(A) excess to the needs of the Department; and

''(B) acceptable for commercial sale.

''(b) CONDITIONS OF SALE.—Aircraft and aircraft parts sold under subsection (a)—

''(1) may be used only for the provision of airtanker services for wildfire suppression purposes; and

''(2) may not be flown or otherwise removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression efforts or for other purposes jointly approved by the Secretary of Defense and the Secretary of Agriculture in writing in advance.

''(c) CERTIFICATION OF PERSONS AND ENTITIES.—The Secretary of Defense may sell aircraft and aircraft parts to a person or entity under subsection (a) only if the Secretary of Agriculture certifies to the Secretary of Defense, in writing, before the sale that the person or entity is capable of meeting the terms and conditions of a contract to deliver fire retardant by air.

''(d) REGULATIONS.—(1) As soon as practicable after October 14, 1996, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. The regulations prescribed under this paragraph shall be effective until the end of the period specified in subsection (a)(1).

''(2) The regulations shall—

''(A) ensure that the sale of the aircraft and aircraft parts is made at fair market value (as determined by the Secretary of Defense) and, to the extent practicable, on a competitive basis;

''(B) require a certification by the purchaser that the aircraft and aircraft parts will be used only in accordance with the conditions set forth in subsection (b);

''(C) establish appropriate means of verifying and enforcing the use of the aircraft and aircraft parts by the purchaser and other end users in accordance with the conditions set forth in subsections (b) and (e); and

''(D) ensure, to the maximum extent practicable, that the Secretary consults with the Administrator of General Services and with the heads of appropriate departments and agencies of the Federal Government regarding alternative requirements for such aircraft and aircraft parts before the sale of such aircraft and aircraft parts under this section.

''(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of Defense may require such other terms and conditions in connection with each sale of aircraft and aircraft parts under this section as the Secretary considers appropriate for such sale. Such terms and conditions shall meet the requirements of the regulations prescribed under subsection (d).

''(f) REPORT.—Not later than March 31, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the Secretary's exercise of authority under this section. The report shall set forth—

''(1) the number and type of aircraft sold under the authority, and the terms and conditions under which the aircraft were sold;

''(2) the persons or entities to which the aircraft were sold; and

''(3) an accounting of the current use of the aircraft sold.

''(g) CONSTRUCTION.—Nothing in this section may be construed as affecting the authority of the Administrator of the Federal Aviation Administration under any other provision of law.''

§ 2576a. Excess personal property: sale or donation for law enforcement activities

(a) TRANSFER AUTHORIZED.—(1) Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense may transfer to Federal and State agencies personal property of the Department of Defense, including small arms and ammunition, that the Secretary determines is—

(A) suitable for use by the agencies in law enforcement activities, including counter-drug and counter-terrorism activities; and

(B) excess to the needs of the Department of Defense.

(2) The Secretary shall carry out this section in consultation with the Attorney General and the Director of National Drug Control Policy.

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense may transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment; and

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient agency.

(d) PREFERENCE FOR CERTAIN TRANSFERS.—In considering applications for the transfer of personal property under this section, the Secretary shall give a preference to those applications indicating that the transferred property will be used in the counter-drug or counter-terrorism activities of the recipient agency.

(Added Pub. L. 104–201, div. A, title X, §1033(a)(1), Sept. 23, 1996, 110 Stat. 2639.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–189, div. A, title XII, §1208, Nov.

29, 1989, 103 Stat. 1566, as amended, which was set out as a note under section 372 of this title, prior to repeal by Pub. L. 104–201, § 1033(b)(1).

§ 2576b. Excess personal property: sale or donation to assist firefighting agencies

(a) TRANSFER AUTHORIZED.—Subject to subsection (b), the Secretary of Defense may transfer to a firefighting agency in a State any personal property of the Department of Defense that the Secretary determines is—

(1) excess to the needs of the Department of Defense; and

(2) suitable for use in providing fire and emergency medical services, including personal protective equipment and equipment for communication and monitoring.

(b) CONDITIONS FOR TRANSFER.—The Secretary of Defense may transfer personal property under this section only if—

(1) the property is drawn from existing stocks of the Department of Defense;

(2) the recipient firefighting agency accepts the property on an as-is, where-is basis;

(3) the transfer is made without the expenditure of any funds available to the Department of Defense for the procurement of defense equipment; and

(4) all costs incurred subsequent to the transfer of the property are borne or reimbursed by the recipient.

(c) CONSIDERATION.—Subject to subsection (b)(4), the Secretary may transfer personal property under this section without charge to the recipient firefighting agency.

(d) DEFINITIONS.—In this section:

(1) STATE.—The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

(2) FIREFIGHTING AGENCY.—The term ''firefighting agency'' means any volunteer, paid, or combined departments that provide fire and emergency medical services.

(Added Pub. L. 106–398, § 1 [[div. A], title XVII, § 1706(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–367.)

IDENTIFICATION OF DEFENSE TECHNOLOGIES SUITABLE FOR USE, OR CONVERSION FOR USE, IN PROVIDING FIRE AND EMERGENCY MEDICAL SERVICES

Pub. L. 106–398, § 1 [[div. A], title XVII, § 1707], Oct. 30, 2000, 114 Stat. 1654, 1654A–367, provided that:

''(a) APPOINTMENT OF TASK FORCE; PURPOSE.—The Secretary of Defense shall appoint a task force consisting of representatives from the Department of Defense and each of the seven major fire organizations identified in subsection (b) to identify defense technologies and equipment that—

''(1) can be readily put to civilian use by fire service and the emergency response agencies; and

''(2) can be transferred to these agencies using the authority provided by section 2576b of title 10, United States Code, as added by section 1706 of this Act.

''(b) PARTICIPATING MAJOR FIRE ORGANIZATIONS.—Members of the task force shall be appointed from each of the following:

''(1) The International Association of Fire Chiefs.

''(2) The International Association of Fire Fighters.

''(3) The National Volunteer Fire Council.

''(4) The International Association of Arson Investigators.

''(5) The International Society of Fire Service Instructors.

''(6) The National Association of State Fire Marshals.

''(7) The National Fire Protection Association.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Defense for activities of the task force $1,000,000 for fiscal year 2001.''

§ 2577. Disposal of recyclable materials

(a)(1) The Secretary of Defense shall prescribe regulations to provide for the sale of recyclable materials held by a military department or defense agency and for the operation of recycling programs at military installations. Such regulations shall include procedures for the designation by the Secretary of a military department (or by the Secretary of Defense with respect to facilities of a defense agency) of military installations that have established a qualifying recycling program for the purposes of subsection (b)(2).

(2) Any sale of recyclable materials by the Secretary of Defense or Secretary of a military department shall be in accordance with the procedures in sections 541–555 of title 40 for the sale of surplus property.

(b)(1) Proceeds from the sale of recyclable materials at an installation shall be credited to funds available for operations and maintenance at that installation in amounts sufficient to cover the costs of operations, maintenance, and overhead for processing recyclable materials at the installation (including the cost of any equipment purchased for recycling purposes).

(2) If after such funds are credited a balance remains available to a military installation and such installation has a qualifying recycling program (as determined by the Secretary of the military department concerned or the Secretary of Defense), not more than 50 percent of that balance may be used at the installation for projects for pollution abatement, energy conservation, and occupational safety and health activities. A project may not be carried out under the preceding sentence for an amount greater than 50 percent of the amount established by law as the maximum amount for a minor construction project.

(3) The remaining balance available to a military installation may be transferred to the nonappropriated morale and welfare account of the installation to be used for any morale or welfare activity.

(c) If the balance available to a military installation under this section at the end of any fiscal year is in excess of $2,000,000, the amount of that excess shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 97–214, § 6(b)(1), July 12, 1982, 96 Stat. 172; amended Pub. L. 98–525, title XIV, § 1405(37), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 107–217, § 3(b)(11), Aug. 21, 2002, 116 Stat. 1296.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–217 substituted ''sections 541–555 of title 40'' for ''section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484)''.

1984—Subsec. (a)(1). Pub. L. 98–525 substituted ''purposes'' for ''puposes''.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2578. Vessels: transfer between departments

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Homeland Security, and a vessel under the jurisdiction of the Department of Homeland Security may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Homeland Security, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

(Added Pub. L. 100–370, § 1(k)(1), July 19, 1988, 102 Stat. 848; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8012], Dec. 19, 1985, 99 Stat. 1185, 1204.

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 2579. War booty: procedures for handling and retaining battlefield objects

(a) POLICY.—The United States recognizes that battlefield souvenirs have traditionally provided military personnel with a valued memento of service in a national cause. At the same time, it is the policy and tradition of the United States that the desire for souvenirs in a combat theater not blemish the conduct of combat operations or result in the mistreatment of enemy personnel, the dishonoring of the dead, distraction from the conduct of operations, or other unbecoming activities.

(b) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations for the handling of battlefield objects that are consistent with the policies expressed in subsection (a) and the requirements of this section.

(2) When forces of the United States are operating in a theater of operations, enemy material captured or found abandoned shall be turned over to appropriate United States or allied military personnel except as otherwise provided in such regulations. A member of the armed forces (or other person under the authority of the armed forces in a theater of operations) may not (except in accordance with such regulations) take from a theater of operations as a souvenir an object formerly in the possession of the enemy.

(3) Such regulations shall provide that a member of the armed forces who wishes to retain as a souvenir an object covered by paragraph (2) may so request at the time the object is turned over pursuant to paragraph (2).

(4) Such regulations shall provide for an officer to be designated to review requests under paragraph (3). If the officer determines that the object may be appropriately retained as a war souvenir, the object shall be turned over to the member who requested the right to retain it.

(5) Such regulations shall provide for captured weaponry to be retained as souvenirs, as follows:

(A) The only weapons that may be retained are those in categories to be agreed upon jointly by the Secretary of Defense and the Secretary of the Treasury.

(B) Before a weapon is turned over to a member, the weapon shall be rendered unserviceable.

(C) A charge may be assessed in connection with each weapon in an amount sufficient to cover the full cost of rendering the weapon unserviceable.

(Added Pub. L. 103–160, div. A, title XI, § 1171(a)(1), Nov. 30, 1993, 107 Stat. 1765.)

REGULATIONS

Section 1171(b) of Pub. L. 103–160 provided that: ''The initial regulations required by section 2579 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 270 days after the date of enactment of this Act [Nov. 30, 1993]. Such regulations shall specifically address the following, consistent with section 2579 of title 10, United States Code, as added by subsection (a):

''(1) The general procedures for collection and disposition of weapons and other enemy material.

''(2) The criteria and procedures for evaluation and disposition of enemy material for intelligence, testing, or other military purposes.

''(3) The criteria and procedures for determining when retention of enemy material by an individual or a unit in the theater of operations may be appropriate.

''(4) The criteria and procedures for disposition of enemy material to a unit or other Department of Defense entity as a souvenir.

''(5) The criteria and procedures for disposition of enemy material to an individual as an individual souvenir.

''(6) The criteria and procedures for determining when demilitarization or the rendering unserviceable of firearms is appropriate.

''(7) The criteria and procedures necessary to ensure that servicemembers who have obtained battlefield souvenirs in a manner consistent with military customs, traditions, and regulations have a reasonable opportunity to obtain possession of such souvenirs, consistent with the needs of the service.''

§ 2580. Donation of excess chapel property

(a) AUTHORITY TO DONATE.—The Secretary of a military department may donate personal property specified in subsection (b) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is a religious organization in order to assist the organization in restoring or replacing property of the organization that has been damaged or destroyed as a result of an act of arson or terrorism, as determined pursuant to procedures prescribed by the Secretary of Defense.

(b) PROPERTY COVERED.—(1) The property authorized to be donated under subsection (a) is furniture and other personal property that—

(A) is in, or was formerly in, a chapel under the jurisdiction of the Secretary of a military department and closed or being closed; and

(B) is determined by the Secretary to be excess to the requirements of the armed forces.

(2) No real property may be donated under this section.

(c) DONEES NOT TO BE CHARGED.—No charge may be imposed by the Secretary of a military department on a donee of property under this section in connection with the donation. However, the donee shall agree to defray any expense for shipping or other transportation of property donated under this section from the location of the property when donated to any other location.

(Added Pub. L. 105–85, div. A, title X, § 1063(a), Nov. 18, 1997, 111 Stat. 1892.)

REFERENCES IN TEXT

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in subsec. (a), is classified to section 501(c)(3) of Title 26, Internal Revenue Code.

§ 2581. Excess UH–1 Huey and AH–1 Cobra helicopters: requirements for transfer to foreign countries

(a) REQUIREMENTS.—(1) Before an excess UH–1 Huey helicopter or AH–1 Cobra helicopter is transferred on a grant or sales basis to a foreign country for the purpose of flight operations by that country, the Secretary of Defense shall make all reasonable efforts to ensure that the helicopter receives, to the extent necessary, maintenance and repair equivalent to the depot-level maintenance and repair (as defined in section 2460 of this title) that the helicopter would need were the helicopter to remain in operational use with the armed forces. Any such maintenance and repair work shall be performed at no cost to the Department of Defense.

(2) The Secretary shall make all reasonable efforts to ensure that maintenance and repair work described in paragraph (1) is performed in the United States.

(b) EXCEPTION.—Subsection (a) does not apply with respect to salvage helicopters provided to the foreign country solely as a source for spare parts.

(Added Pub. L. 105–261, div. A, title XII, § 1234(a), Oct. 17, 1998, 112 Stat. 2156.)

§ 2582. Military equipment identified on United States munitions list: annual report of public sales

(a) REPORT REQUIRED.—The Secretary of Defense shall prepare an annual report identifying each public sale conducted by a military department or Defense Agency of military items that are—

(1) identified on the United States Munitions List maintained under section 121.1 of title 22, Code of Federal Regulations; and

(2) assigned a demilitarization code of ''B'' or its equivalent.

(b) ELEMENTS OF REPORT.—(1) A report under this section shall cover all public sales described in subsection (a) that were conducted during the preceding fiscal year.

(2) The report shall specify the following for each sale:

(A) The date of the sale.

(B) The military department or Defense Agency conducting the sale.

(C) The manner in which the sale was conducted.

(D) The military items described in subsection (a) that were sold or offered for sale.

(E) The purchaser of each item.

(F) The stated end-use of each item sold.

(c) SUBMISSION OF REPORT.—Not later than March 31 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate the report required by this section for the preceding fiscal year.

(Added Pub. L. 106–398, § 1 [[div. A], title III, § 381(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–84.)

CODIFICATION

Another section 2582 was renumbered section 2583 of this title.

§ 2583. Military working dogs: transfer and adoption at end of useful working life

(a) AVAILABILITY FOR ADOPTION.—The Secretary of Defense may make a military working dog of the Department of Defense available for adoption by a person or entity referred to in subsection (c) at the end of the dog's useful working life or when the dog is otherwise excess to the needs of the Department, unless the dog has been determined to be unsuitable for adoption under subsection (b).

(b) SUITABILITY FOR ADOPTION.—The decision whether a particular military working dog is suitable or unsuitable for adoption under this section shall be made by the commander of the last unit to which the dog is assigned before being declared excess. The unit commander shall consider the recommendations of the unit's veterinarian in making the decision regarding a dog's adoptability.

(c) AUTHORIZED RECIPIENTS.—Military working dogs may be adopted under this section by law enforcement agencies, former handlers of these dogs, and other persons capable of humanely caring for these dogs.

(d) CONSIDERATION.—The transfer of a military working dog under this section may be without charge to the recipient.

(e) LIMITATIONS ON LIABILITY FOR TRANSFERRED DOGS.—(1) Notwithstanding any other provision of law, the United States shall not be subject to any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or other economic loss) that results from, or is in any manner predicated upon, the act or omission of a former military working dog transferred under this section, including any training provided to the dog while a military working dog.

(2) Notwithstanding any other provision of law, the United States shall not be liable for any veterinary expense associated with a military working dog transferred under this section for a

condition of the military working dog before transfer under this section, whether or not such condition is known at the time of transfer under this section.

(f) ANNUAL REPORT.—The Secretary shall submit to Congress an annual report specifying the number of military working dogs adopted under this section during the preceding year, the number of these dogs currently awaiting adoption, and the number of these dogs euthanized during the preceding year. With respect to each euthanized military working dog, the report shall contain an explanation of the reasons why the dog was euthanized rather than retained for adoption under this section.

(Added Pub. L. 106–446, §1(a), Nov. 6, 2000, 114 Stat. 1932, §2582; renumbered §2583, Pub. L. 107–107, div. A, title X, §1048(a)(25), Dec. 28, 2001, 115 Stat. 1224.)

AMENDMENTS

2001—Pub. L. 107–107 renumbered section 2582 of this title as this section.

CHAPTER 155—ACCEPTANCE OF GIFTS AND SERVICES

Sec.
2601. General gift funds.
2602. American National Red Cross: cooperation and assistance.
2603. Acceptance of fellowships, scholarships, or grants.
2604. United Seamen's Service: cooperation and assistance.
2605. Acceptance of gifts for defense dependents' schools.
2606. Scouting: cooperation and assistance in foreign areas.
2607. Acceptance of gifts for the Defense Intelligence College.
2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account.
[2609. Repealed.]
2610. Competitions for excellence: acceptance of monetary awards.
2611. Asia-Pacific Center for Security Studies: acceptance of foreign gifts and donations.
2612. National Defense University: acceptance of gifts.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title IX, §931(b), Dec. 2, 2002, 116 Stat. 2625, added item 2612.

1999—Pub. L. 106–65, div. A, title IX, §915(b), Oct. 5, 1999, 113 Stat. 722, added item 2611.

1996—Pub. L. 104–201, div. A, title X, §1074(a)(15), Sept. 23, 1996, 110 Stat. 2659, struck out item 2609 ''Theater Missile Defense: acceptance of contributions from allies; Theater Missile Defense Cooperation Account''.

Pub. L. 104–106, div. A, title III, §377(b), Feb. 10, 1996, 110 Stat. 284, added item 2610.

1994—Pub. L. 103–337, div. A, title III, §353(c)(2), Oct. 5, 1994, 108 Stat. 2732, substituted ''schools'' for ''education system'' in item 2605.

1993—Pub. L. 103–160, div. A, title II, §242(f)(2), title XI, §1105(b)(3), Nov. 30, 1993, 107 Stat. 1605, 1750, inserted ''; Defense Cooperation Account'' in item 2608 and added item 2609.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(15), Dec. 5, 1991, 105 Stat. 1473, struck out ''and services'' after ''contributions'' in item 2608.

1990—Pub. L. 101–403, title II, §202(a)(2), Oct. 1, 1990, 104 Stat. 874, added item 2608.

1989—Pub. L. 101–193, title V, §502(b), Nov. 30, 1989, 103 Stat. 1708, added item 2607.

1988—Pub. L. 100–456, div. A, title III, §323(b), Sept. 29, 1988, 102 Stat. 1953, added item 2606.

1986—Pub. L. 99–661, div. A, title III, §314(b), Nov. 14, 1986, 100 Stat. 3854, added item 2605.

1970—Pub. L. 91–603, §3(2), Dec. 31, 1970, 84 Stat. 1675, added item 2604.

1962—Pub. L. 87–555, §1(2), July 27, 1962, 76 Stat. 244, added item 2603.

§ 2601. General gift funds

(a) The Secretary concerned may accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of his department. He may pay all necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest made under this subsection.

(b) Gifts and bequests of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the Treasury in the fund called—

(1) ''Department of the Army General Gift Fund'', in the case of deposits of that department;

(2) ''Department of the Navy General Gift Fund'', in the case of deposits of that department;

(3) ''Department of the Air Force General Gift Fund'', in the case of deposits of that department; and

(4) ''Coast Guard General Gift Fund'', in the case of deposits of the Secretary of Homeland Security.

The Secretary concerned may disburse funds deposited under this subsection for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.

(c) For the purposes of Federal income, estate, and gift taxes, property that is accepted under subsection (a) shall be considered as a gift, devise, or bequest to or for the use of the United States.

(d) The Secretary of the Treasury, upon the request of the Secretary of a military department, may retain money, securities, and the proceeds of the sale of securities, in the gift fund of the department concerned, and may invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The Secretary of the Treasury may do likewise with respect to the Coast Guard General Gift Fund. The interest and profits accruing from those securities shall be deposited to the credit of the gift fund of the department concerned and may be disbursed as provided in subsection (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 144; Pub. L. 96–513, title V, §511(86), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2601(a)	5:150q.	Mar. 11, 1948, ch. 107, 62 Stat. 71.
2601(b)	5:150r.	
2601(c)	5:150s.	
2601(d)	5:150t.	

In subsection (a), the words ''receive'' and ''administration'' are omitted as surplusage.
In subsection (b), the words ''and conditions'' and ''United States'' are omitted as surplusage.
In subsection (c), the words ''any gift, devise, or bequest of'' and ''real or personal'' are omitted as surplusage.
In subsection (d), the words ''or any part thereof deposited in the Treasury pursuant to section 150r of this title'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.
1980—Subsec. (b)(4). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2605, 2607, 2612, 4356, 7222 of this title.

§ 2602. American National Red Cross: cooperation and assistance

(a) Whenever the President finds it necessary, he may accept the cooperation and assistance of the American National Red Cross, and employ it under the armed forces under regulations to be prescribed by the Secretary of Defense.

(b) Personnel of the American National Red Cross who are performing duties in connection with its cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing, those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the American National Red Cross, except that where civilian employees of the armed forces are quartered without charge, employees of the American National Red Cross may also be quartered without charge; and

(3) available office space, warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the American National Red Cross for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the American National Red Cross, including gifts for the use of the armed forces, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance accepted under this section.

(e) For the purposes of this section, employees of the American National Red Cross may not be considered as employees of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 145.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2602(a)	36:17.	July 17, 1953, ch. 222, §§1, 2, 7, 67 Stat. 178, 179.
2602(b)	36:17a (less provisos).	
2602(c)	36:17a (1st proviso).	
2602(d)	36:17a (last proviso).	
2602(e)	36:17b.	

In subsection (a), the words ''finds it necessary'' are substituted for the words ''shall find the * * * to be necessary''. The words ''cooperation and assistance'' are substituted for the words ''cooperation and use * * * assistance * * * the same''. The words ''under regulations to be prescribed by the Secretary of Defense'' are substituted for 36:17 (last sentence). The words ''tendered by the said Red Cross'' are omitted as surplusage.
In subsection (b), the introductory clause is substituted for 36:17a (1st 33 words). In clause (1), the word ''expense'' is substituted for the words ''cost and charge''. The words ''traveling to and from, and while performing, those duties'' are substituted for the words ''proceeding to their place of duty, while serving thereat, and while returning therefrom''. In clause (2), the words ''at their expense or at the expense of'' are substituted for the words ''providing the cost thereof is borne by such personnel or by''. The words ''quartered without charge'' are substituted for the words ''furnished quarters on the same basis without cost''. In clause (3), the words ''when such facilities are'' are omitted as surplusage.
In subsection (c), the words ''for travel outside the United States to assume or perform'' are substituted for the words ''so serving or proceeding abroad to enter upon such service''.
In subsection (d), the word ''equipment'' is omitted as covered by the word ''supplies''. The words ''gifts for the use of'' are substituted for the words ''Red Cross supplies that may be tendered as a gift and accepted for use by''. The word ''expense'' is substituted for the words ''cost and charge''. The words ''rules and'' are omitted as surplusage.
In subsection (e), the words ''Federal Government of'' are omitted as surplusage.

REPORT ON ASSISTANCE TO RED CROSS FOR EMERGENCY COMMUNICATIONS SERVICES FOR MEMBERS OF ARMED FORCES AND FAMILIES

Pub. L. 103–377, div. A, title III, §383(b), Oct. 5, 1994, 108 Stat. 2740, provided that: ''Not later than November 30 in each of 1994, 1995, and 1996, the Secretary of Defense shall submit to Congress a report on whether it is necessary for the Department of Defense to support the emergency communications services of the American National Red Cross in order to provide such services for members of the Armed Forces and their families. The report shall include the following:

''(1) An estimate of the amount of funds necessary to provide such support.

''(2) A projection of the date upon which the American National Red Cross can assume full financial responsibility for providing such emergency communications services.

''(3) An assessment of the alternatives available to the Secretary for obtaining such emergency communications services, including the provision of such services by the Department of Defense.''

§ 2603. Acceptance of fellowships, scholarships, or grants

(a) Notwithstanding any other provision of law, a fellowship, scholarship, or grant may, under regulations to be prescribed by the President or his designee, be made by a corporation, fund, foundation, or educational institution that is organized and operated primarily for scientific, literary, or educational purposes to any member of the Armed Forces, and the benefits thereof may be accepted by him—

(1) in recognition of outstanding performance in his field;

(2) to undertake a project that may be of value to the United States; or

(3) for development of his recognized potential for future career service.

However, the benefits of such a fellowship, scholarship, or grant may be accepted by the member in addition to his pay and allowances only to the extent that those benefits would be conferred upon him if the education or training contemplated by that fellowship, scholarship, or grant were provided at the expense of the United States. In addition, if such a benefit, in cash or in kind, is for travel, subsistence, or other expenses, an appropriate reduction shall be made from any payment that is made for the same purpose to the member by the United States incident to his acceptance of the fellowship, scholarship, or grant.

(b) Each member of the Armed Forces who accepts a fellowship, scholarship, or grant in accordance with subsection (a) shall, before he is permitted to undertake the education or training contemplated by that fellowship, scholarship, or grant, agree in writing that, after he completes the education or training, he will serve on active duty for a period at least three times the length of the period of the education or training.

(Added Pub. L. 87–555, §1(1), July 27, 1962, 76 Stat. 244.)

EX. ORD. NO. 11079. REGULATIONS FOR ACCEPTANCE OF FELLOWSHIPS, SCHOLARSHIPS, OR GRANTS

Ex. Ord. No. 11079, Jan. 25, 1963, 28 F.R. 819, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 13286, §69, Feb. 28, 2003, 68 F.R. 10630, provided:
By virtue of the authority vested in me by section 2603 of Title 10, United States Code [this section], I hereby designate the Secretary of Defense, with respect to members of the Army, Navy, Air Force, and Marine Corps, the Secretary of Homeland Security, with respect to members of the Coast Guard when it is not operating as a service in the Navy, and the Secretary of Health and Human Services, with respect to commissioned officers of the Public Health Service, to prescribe regulations under which members of the Armed Forces and commissioned officers of the Public Health Service may accept fellowships, scholarships, or grants from corporations, funds, foundations, or educational institutions organized and operated primarily for scientific, literary, or educational purposes. To the extent practicable, such regulations shall be uniform.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 213a.

§ 2604. United Seamen's Service: cooperation and assistance

(a) Whenever the President finds it necessary in the interest of United States commitments abroad to provide facilities and services for United States merchant seamen in foreign areas, he may authorize the Secretary of Defense, under such regulations as the Secretary may prescribe, to cooperate with and assist the United Seamen's Service in establishing and providing those facilities and services.

(b) Personnel of the United Seamen's Service who are performing duties in connection with the cooperation and assistance under subsection (a) may be furnished—

(1) transportation, at the expense of the United States, while traveling to and from, and while performing those duties, in the same manner as civilian employees of the armed forces;

(2) meals and quarters, at their expense or at the expense of the United Seamen's Service, except that where civilian employees of the armed forces are quartered without charge, employees of the United Seamen's Service may also be quartered without charge; and

(3) available office space (including space for recreational activities for seamen), warehousing, wharfage, and means of communication, without charge.

(c) No fee may be charged for a passport issued to an employee of the United Seamen's Service for travel outside the United States to assume or perform duties under this section.

(d) Supplies of the United Seamen's Service, including gifts for the use of merchant seamen, may be transported at the expense of the United States, if it is determined under regulations prescribed under subsection (a) that they are necessary to the cooperation and assistance provided under this section.

(e) Where practicable, the President shall also make arrangements to provide for convertibility of local currencies for the United Seamen's Service, in connection with its activities under subsection (a).

(f) For the purposes of this section, employees of the United Seamen's Service may not be considered as employees of the United States.

(Added Pub. L. 91–603, §3(1), Dec. 31, 1970, 84 Stat. 1674.)

SHORT TITLE

Section 1 of Pub. L. 91–603 provided: ''That this Act [enacting this section, amending sections 1151, 1152, 1171, and 1223 of Title 46, Appendix, Shipping, and enacting provisions set out as a note under this section] may be cited as the 'Seamen's Service Act'.''

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Pub. L. 91–603 provided that: ''It is the purpose of this Act [enacting this section and amending sections 1151, 1152, 1171 and 1223 of Title 46, Appendix, Shipping], by authorizing appropriate departments and agencies of the United States Government to cooperate with the United Seamen's Service (a nonprofit, charitable organization incorporated under the laws of the State of New York) in the establishment and operation of facilities for United States merchant seamen in foreign areas, to promote the welfare of such seamen, essential to the overall inter-

ests of shipment of United States goods and supplies to such areas.''

§ 2605. Acceptance of gifts for defense dependents' schools

(a) The Secretary of Defense may accept, hold, administer, and spend any gift (including any gift of an interest in real property) made on the condition that it be used in connection with the operation or administration of a defense dependents' school. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''Department of Defense Dependents' Education Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of defense dependents' schools, subject to the terms of the gift.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the Department of Defense Dependents' Education Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section, the term ''gift'' includes a devise of real property or a bequest of personal property.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(g) In this section, the term ''defense dependents' school'' means the following:

(1) A school established as part of the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

(2) An elementary or secondary school established pursuant to section 2164 of this title.

(Added Pub. L. 99–661, div. A, title III, § 314(a), Nov. 14, 1986, 100 Stat. 3853; amended Pub. L. 103–337, div. A, title III, § 353(a)–(c)(1), Oct. 5, 1994, 108 Stat. 2731.)

REFERENCES IN TEXT

The Defense Dependents' Education Act of 1978, referred to in subsec. (g)(1), is title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§ 921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1994—Pub. L. 103–337, § 353(c)(1), substituted ''schools'' for ''education system'' in section catchline.

Subsec. (a). Pub. L. 103–337, § 353(a)(1), substituted ''a defense dependents' school'' for ''the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.)''.

Subsec. (b). Pub. L. 103–337, § 353(a)(2), substituted ''defense dependents' schools'' for ''the defense dependent's education system''.

Subsec. (g). Pub. L. 103–337, § 353(b), added subsec. (g).

§ 2606. Scouting: cooperation and assistance in foreign areas

(a) Subject to subsection (b), the Secretary concerned may cooperate with and assist qualified scouting organizations in establishing and providing facilities and services for members of the armed forces and their dependents, and civilian employees of the Department of Defense and their dependents, at locations outside the United States.

(b) Cooperation and assistance under subsection (a) shall be provided under regulations prescribed by the Secretary of Defense and may be provided only if the President determines that such cooperation and assistance is necessary in the interest of the morale, welfare, and recreation of members of the armed forces.

(c) Personnel of a qualified scouting organization, including officials certified by that organization as representing that organization, who are performing duties in connection with cooperation and assistance provided under subsection (a) may be furnished—

(1) transportation at the expense of the United States while traveling to and from, and while performing, such duties in the same manner as civilian employees of the United States; and

(2) available office space (including space for recreational activities for Boy Scouts and Girl Scouts), warehousing, utilities, and a means of communication, without charge.

(d) Supplies of a qualified scouting organization may be transported at the expense of the United States if the Secretary concerned determines, under regulations prescribed under subsection (b), that the supplies are necessary to the cooperation and assistance provided under this section.

(e) The Secretary concerned may reimburse a qualified scouting organization for all or part of the pay of an employee of that organization for any period during which the employee was performing services under subsection (a). Any such reimbursement may not be made from appropriated funds and shall be made under regulations prescribed under subsection (b).

(f) For the purposes of this section, employees of a qualified scouting organization performing services under subsection (a) may not be considered to be employees of the United States.

(g) In this section, the term ''qualified scouting organization'' means the Girl Scouts of the United States of America and the Boy Scouts of America.

(Added Pub. L. 100–456, div. A, title III, § 323(a), Sept. 29, 1988, 102 Stat. 1953.)

EX. ORD. NO. 12715. DETERMINATION FOR SUPPORT OF SCOUTING ACTIVITIES OVERSEAS

Ex. Ord. No. 12715, May 3, 1990, 55 F.R. 19051, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and pursuant to section 2606(b) of title 10, United States Code, with regard to support of scouting activities overseas, I hereby determine that the cooperation and assistance authorized by section 2606(a) of that title is necessary in the interest of the morale, welfare, and recreation of members of the armed forces. The Secretary of Defense, or his designee, shall issue regulations concerning such cooperation and support.

GEORGE BUSH.

§ 2607. Acceptance of gifts for the Defense Intelligence College

(a) The Secretary of Defense may accept, hold, administer, and use any gift (including any gift of an interest in real property) made for the purpose of aiding and facilitating the work of the Defense Intelligence College and may pay all necessary expenses in connection with the acceptance of such a gift.

(b) Money, and proceeds from the sale of property, received as a gift under subsection (a) shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary of Defense to the extent provided in annual appropriation Acts.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d) In this section, the term ''gift'' includes a bequest of personal property or a devise of real property.

(Added Pub. L. 101–193, title V, § 502(a), Nov. 30, 1989, 103 Stat. 1708.)

§ 2608. Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account

(a) ACCEPTANCE AUTHORITY.—The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money or real or personal property made by such person, foreign government, or international organization for use by the Department of Defense and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense.

(b) ESTABLISHMENT OF DEFENSE COOPERATION ACCOUNT.—(1) There is established in the Treasury of the United States a special account to be known as the ''Defense Cooperation Account''.

(2) Contributions of money and proceeds from the sale of any property accepted by the Secretary of Defense under subsection (a) shall be credited to the Defense Cooperation Account.

(c) USE OF THE DEFENSE COOPERATION ACCOUNT.—(1) Funds in the Defense Cooperation Account may be appropriated for a function described in section 114 of this title only to the extent that the appropriation of such funds for such purpose is authorized in accordance with that section.

(2) Funds in the Defense Cooperation Account shall not be made available for obligation or expenditure except to the extent and in the manner provided in subsequent appropriations Acts.

(d) USE OF PROPERTY.—Any contribution of property received under this section may be—

(1) retained and used by the Department of Defense in the form in which it was donated;

(2) sold or otherwise disposed of upon such terms and conditions and in accordance with such procedures as the Secretary determines appropriate; or

(3) converted into a form usable by the Department of Defense.

(e) REPORTING REQUIREMENT.—(1) Not later than 30 days after the end of each quarter of each fiscal year, the Secretary of Defense shall submit to Congress a report on contributions of property accepted by the Secretary under this section during the preceding quarter. The Secretary shall include in each such report a description of all property having a value of more than $1,000,000.

(2) In computing the value of any property referred to in paragraph (1), the Secretary shall aggregate the value of—

(A) similar items of property accepted by the Secretary during the quarter concerned; and

(B) components which, if assembled, would comprise all or a substantial part of an item of equipment or a facility.

(f) AUTHORITY TO USE PROPERTY.—Property accepted under subsection (a) may be used by the Secretary of Defense without specific authorization, except that such property may not be used in connection with any program, project, or activity if the use of such property would result in the violation of any prohibition or limitation otherwise applicable to such program, project, or activity.

(g) INVESTMENT OF MONEY.—(1) Upon request by the Secretary of Defense, the Secretary of the Treasury may invest money in the Defense Cooperation Account in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) Any interest or other income that accrues from investment in securities referred to in paragraph (1) shall be deposited to the credit of the Defense Cooperation Account.

(h) NOTIFICATION OF CONDITIONS.—The Secretary of Defense shall notify Congress of any condition imposed by the donor on the use of any contribution accepted by the Secretary under the authority of this section.

(i) PERIODIC AUDITS BY GAO.—The Comptroller General of the United States shall make periodic audits of money and property accepted under this section, at such intervals as the Comptroller General determines to be warranted. The Comptroller General shall submit to Congress a report on the results of each such audit.

(j) ITEMS INCLUDED AS CONTRIBUTIONS.—In this section, the term ''contribution'' includes a devise of real property or a bequest of personal property.

(k) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 101–403, title II, § 202(a)(1), Oct. 1, 1990, 104 Stat. 872; amended Pub. L. 102–190, div. A, title X, § 1061(a)(16), Dec. 5, 1991, 105 Stat. 1473;

Pub. L. 103–160, div. A, title XI, § 1105(b)(1), (2), Nov. 30, 1993, 107 Stat. 1750; Pub. L. 104–201, div. A, title X, § 1063, Sept. 23, 1996, 110 Stat. 2652.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 inserted before period at end ''and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense''.

1993—Pub. L. 103–160, § 1105(b)(2), inserted ''; Defense Cooperation Account'' in section catchline.

Subsec. (i). Pub. L. 103–160, § 1105(b)(1), substituted ''Periodic Audits'' for ''Annual Audit'' in heading and amended text generally. Prior to amendment, text read as follows: ''The Comptroller General of the United States shall conduct an annual audit of money and property accepted by the Secretary of Defense under this section and shall submit a copy of the results of each such audit to Congress.''

1991—Subsec. (g)(1). Pub. L. 102–190 inserted ''(1)'' before ''Upon request''.

[§ 2609. Repealed. Pub. L. 104–106, div. A, title II, § 253(9), Feb. 10, 1996, 110 Stat. 235]

Section, added Pub. L. 103–160, div. A, title II, § 242(f)(1), Nov. 30, 1993, 107 Stat. 1605, related to acceptance of contributions from allies for Theater Missile Defense programs and establishment and use of Theater Missile Defense Cooperation Account.

§ 2610. Competitions for excellence: acceptance of monetary awards

(a) ACCEPTANCE AUTHORIZED.—The Secretary of Defense may accept a monetary award given to the Department of Defense by a nongovernmental entity as a result of the participation of the Department in a competition carried out to recognize excellence or innovation in providing services or administering programs.

(b) DISPOSITION OF AWARDS.—A monetary award accepted under subsection (a) shall be credited to one or more nonappropriated fund accounts supporting morale, welfare, and recreation activities for the command, installation, or other activity that is recognized for the award. Amounts so credited may be expended only for such activities.

(c) INCIDENTAL EXPENSES.—Subject to such limitations as may be provided in appropriation Acts, appropriations available to the Department of Defense may be used to pay incidental expenses incurred by the Department to participate in a competition described in subsection (a) or to accept a monetary award under this section.

(d) REGULATIONS AND REPORTING.—(1) The Secretary shall prescribe regulations to determine the disposition of monetary awards accepted under this section and the payment of incidental expenses under subsection (c).

(2) At the end of each year, the Secretary shall submit to Congress a report for that year describing the disposition of monetary awards accepted under this section and the payment of incidental expenses under subsection (c).

(e) TERMINATION.—The authority of the Secretary under this section shall expire on February 10, 1998.

(Added Pub. L. 104–106, div. A, title III, § 377(a), Feb. 10, 1996, 110 Stat. 283; amended Pub. L. 104–201, div. A, title X, § 1074(a)(16), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–201 substituted ''on February 10, 1998'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

§ 2611. Asia-Pacific Center for Security Studies: acceptance of foreign gifts and donations

(a) AUTHORITY TO ACCEPT FOREIGN GIFTS AND DONATIONS.—(1) Subject to subsection (b), the Secretary of Defense may accept, on behalf of the Asia-Pacific Center, foreign gifts or donations in order to defray the costs of, or enhance the operation of, the Asia-Pacific Center.

(2) In this section, the term ''Asia-Pacific Center'' means the Department of Defense organization within the United States Pacific Command known as the Asia-Pacific Center for Security Studies.

(b) LIMITATION.—The Secretary may not accept a gift or donation under subsection (a) if the acceptance of the gift or donation would compromise or appear to compromise—

(1) the ability of the Department of Defense, any employee of the Department, or members of the armed forces to carry out any responsibility or duty of the Department in a fair and objective manner; or

(2) the integrity of any program of the Department of Defense or of any person involved in such a program.

(c) CRITERIA FOR ACCEPTANCE.—The Secretary shall prescribe written guidance setting forth the criteria to be used in determining whether the acceptance of a foreign gift or donation would have a result described in subsection (b).

(d) CREDITING OF FUNDS.—Funds accepted by the Secretary under subsection (a) shall be credited to appropriations available to the Department of Defense for the Asia-Pacific Center. Funds so credited shall be merged with the appropriations to which credited and shall be available to the Asia-Pacific Center for the same purposes and same period as the appropriations with which merged.

[(e) Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(17), Dec. 2, 2002, 116 Stat. 2645.]

(f) FOREIGN GIFT OR DONATION DEFINED.—For purposes of this section, a foreign gift or donation is a gift or donation of funds, materials (including research materials), property, or services (including lecture services and faculty services) from a foreign government, a foundation or other charitable organization in a foreign country, or an individual in a foreign country.

(Added Pub. L. 106–65, div. A, title IX, § 915(a), Oct. 5, 1999, 113 Stat. 721; amended Pub. L. 107–314, div. A, title X, § 1041(a)(17), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–314 struck out heading and text of subsec. (e). Text read as follows: ''If the total amount of funds accepted under subsection (a) in any fiscal year exceeds $2,000,000, the Secretary shall notify Congress of the amount of those donations for that fiscal year. Any such notice shall list each of the contributors of such amounts and the amount of each contribution in that fiscal year.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 184, 2612 of this title.

§ 2612. National Defense University: acceptance of gifts

(a) The Secretary of Defense may accept, hold, administer, and spend any gift, including a gift from an international organization and a foreign gift or donation (as defined in section 2611(f) of this title), that is made on the condition that it be used in connection with the operation or administration of the National Defense University. The Secretary may pay all necessary expenses in connection with the acceptance of a gift under this subsection.

(b) There is established in the Treasury a fund to be known as the ''National Defense University Gift Fund''. Gifts of money, and the proceeds of the sale of property, received under subsection (a) shall be deposited in the fund. The Secretary may disburse funds deposited under this subsection for the benefit or use of the National Defense University.

(c) Subsection (c) of section 2601 of this title applies to property that is accepted under subsection (a) in the same manner that such subsection applies to property that is accepted under subsection (a) of that section.

(d)(1) Upon request of the Secretary of Defense, the Secretary of the Treasury may—

(A) retain money, securities, and the proceeds of the sale of securities, in the National Defense University Gift Fund; and

(B) invest money and reinvest the proceeds of the sale of securities in that fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.

(2) The interest and profits accruing from those securities shall be deposited to the credit of the fund and may be disbursed as provided in subsection (b).

(e) In this section:

(1) the term ''gift'' includes a devise of real property or a bequest of personal property and any gift of an interest in real property.

(2) The term ''National Defense University'' includes any school or other component of the National Defense University specified under section 2165(b) of this title.

(f) The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 107–314, div. A, title IX, § 931(a), Dec. 2, 2002, 116 Stat. 2624.)

CHAPTER 157—TRANSPORTATION

Sec.
2631. Supplies: preference to United States vessels.
2631a. Contingency planning: sealift and related intermodal transportation requirements.
2632. Transportation to and from certain places of employment and on military installations.
2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department.
2634. Motor vehicles: transportation or storage for members on change of permanent station or extended deployment.
2635. Medical emergency helicopter transportation assistance and limitation of individual liability.
2636. Deductions from amounts due carriers.
2637. Transportation in certain areas outside the United States.
2638. Transportation of civilian clothing of enlisted members.
2639. Transportation to and from school for certain minor dependents.
2640. Charter air transportation of members of the armed forces.
2641. Transportation of certain veterans on Department of Defense aeromedical evacuation aircraft.
2641a. Transportation of American Samoa veterans on Department of Defense aircraft for certain medical care in Hawaii.
2642. Reimbursement rate for airlift services provided to Central Intelligence Agency.
2643. Commissary and exchange services: transportation overseas.
2644. Control of transportation systems in time of war.
2645. Indemnification of Department of Transportation for losses covered by vessel war risk insurance.
2646. Travel services: procurement for official and unofficial travel under one contract.
2647. Next-of-kin of persons unaccounted for from conflicts after World War II: transportation to annual meetings.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 574(b), Dec. 28, 2001, 115 Stat. 1122, added item 2647.

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1009(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–251, substituted ''Deductions from amounts due carriers'' for ''Deductions from carriers because of loss or damage to material in transit'' in item 2636.

1998—Pub. L. 105–262, title VIII, § 8121(b), Oct. 17, 1998, 112 Stat. 2332, added item 2641a.

Pub. L. 105–261, div. A, title VIII, § 813(b), Oct. 17, 1998, 112 Stat. 2087, added item 2646.

1996—Pub. L. 104–201, div. A, title III, § 368(a)(2)(B), title IX, § 906(d)(1), title X, § 1079(b)(2), Sept. 23, 1996, 110 Stat. 2498, 2620, 2670, substituted ''Motor vehicles: transportation or storage for members on change of permanent station or extended deployment'' for ''Motor vehicles: for members on change of permanent station'' in item 2634 and added items 2644 and 2645.

Pub. L. 104–106, div. A, title III, § 334(b), Feb. 10, 1996, 110 Stat. 262, added item 2643.

1993—Pub. L. 103–160, div. A, title XI, § 1173(b), Nov. 30, 1993, 107 Stat. 1767, added item 2631a.

1991—Pub. L. 102–88, title V, § 501(b), Aug. 14, 1991, 105 Stat. 435, added item 2642.

1990—Pub. L. 101–510, div. A, title III, § 326(a)(2), Nov. 5, 1990, 104 Stat. 1531, added item 2637.

1987—Pub. L. 100–180, div. A, title XII, § 1250(a)(2), Dec. 4, 1987, 101 Stat. 1168, added item 2641.

1986—Pub. L. 99–661, div. A, title XII, § 1204(a)(2), Nov. 14, 1986, 100 Stat. 3971, added item 2640.

Pub. L. 99–550, § 2(a)(2), Oct. 27, 1986, 100 Stat. 3070, struck out item 2637 ''Transportation between residence and place of work for senior defense officials''.

1984—Pub. L. 98–525, title VI, § 614(b), title XIV, § 1401(j)(2), Oct. 19, 1984, 98 Stat. 2540, 2620, added items 2637 to 2639.

1982—Pub. L. 97–258, § 2(b)(5)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2636.

1979—Pub. L. 96–125, title VIII, § 807(c)(2), Nov. 26, 1979, 93 Stat. 950, inserted ''and on military installations'' after ''places of employment'' in item 2632.

1973—Pub. L. 93–155, title VIII, § 814(b), Nov. 16, 1973, 87 Stat. 621, added item 2635.

1965—Pub. L. 89–101, § 1(2), July 30, 1965, 79 Stat. 425, substituted ''change of permanent station'' for ''permanent change of station'' in item 2634.

1962—Pub. L. 87–651, title I, § 111(c), Sept. 7, 1962, 76 Stat. 511, substituted ''Stevedoring and terminal serv-

ices: vessels carrying cargo or passengers sponsored by military department'' for ''Terminal Services, furnish to commercial steamship companies'' in item 2633, and added item 2634.

1957—Pub. L. 85–44, § 2, June 1, 1957, 71 Stat. 45, added item 2633.

§ 2631. Supplies: preference to United States vessels

(a) Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

(b)(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States).

(2) In paragraph (1), the term ''reflagging or repair work'' means work performed on a vessel—

(A) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(B) to convert the vessel to a more useful military configuration.

(3) The Secretary of Defense may waive the requirement described in paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately notify the Congress of any such waiver and the reasons for such waiver.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 103–160, div. A, title III, § 315(a), Nov. 30, 1993, 107 Stat. 1619.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2631	10:1365. 34:528.	Apr. 28, 1904, ch. 1766, 33 Stat. 518.

The word ''supplies'' is substituted for the words ''coal, provisions, fodder, or supplies of any description'', in 10:1365 and 34:528. The words ''pursuant to law'' and ''the use of'', in 10:1365 and 34:528, are omitted as surplusage. The words ''as otherwise provided by law'', in 10:1365 and 34:528, are used rather than the words ''under the law as it now exists'', in section 1 of the Act of April 28, 1904, ch. 1766, 33 Stat. 518. The word ''may'' is substituted for the word ''shall''. The words ''However, if'' are substituted for the words ''unless * * * in which case''. The words ''private persons'' are substituted for the words ''private parties or companies'', in 10:1365 and 34:528. The last sentence is substituted for the proviso of 10:1365 and 34:528.

AMENDMENTS

1993—Pub. L. 103–160 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 315(b) of Pub. L. 103–160 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to a vessel for which reflagging or repair work is necessary to be performed after the date of the enactment of this Act [Nov. 30, 1993].''

DELEGATION OF AUTHORITY UNDER THE CARGO PREFERENCE ACT

Memorandum of the President of the United States, Aug. 7, 1985, 50 F.R. 36565, provided:

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2350b, 2643 of this title; title 46 App. sections 1187a, 1187b, 1241s.

§ 2631a. Contingency planning: sealift and related intermodal transportation requirements

(a) CONSIDERATION OF PRIVATE CAPABILITIES.—The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are available from operators of privately owned United States flag merchant vessels.

(b) PRIVATE CAPACITIES PRESENTATIONS.—The Secretary shall afford each operator of a vessel referred to in subsection (a), not less often than annually, an opportunity to present to the Department of Defense information on its port-to-port and intermodal transportation capacities.

(Added Pub. L. 103–160, div. A, title XI, § 1173(a), Nov. 30, 1993, 107 Stat. 1767.)

§ 2632. Transportation to and from certain places of employment and on military installations

(a)(1) Whenever the Secretary of the military department concerned determines that it is necessary for the effective conduct of the affairs of his department, the Secretary may provide the transportation described in paragraph (2).

(2) Transportation that may be provided under this subsection is assured and adequate transportation by motor vehicle or water carrier as follows:

(A) Transportation among places on a military installation (including any subinstallation of a military installation).

(B) Transportation to and from their places of duty or employment on a military installation for persons covered by this subsection.

(C) Transportation to and from a military installation for persons covered by this subsection and their dependents, in the case of a military installation located in an area determined by the Secretary concerned not to be adequately served by regularly scheduled, and

timely, commercial or municipal mass transit services.

(D) Transportation to and from their places of employment for persons attached to, or employed in, a private plant that is manufacturing material for that department, but only during a war or a national emergency declared by Congress or the President.

(3) Except as provided under subsection (b)(3), transportation under this subsection shall be provided at reasonable rates of fare under regulations prescribed by the Secretary of Defense.

(4) Persons covered by this subsection, in the case of any military installation, are members of the armed forces, employees of the military department concerned, and other persons attached to that department who are assigned to or employed at that installation.

(b)(1) Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided unless the Secretary concerned, or an officer of the department concerned designated by the Secretary, determines that—

(A) other facilities are inadequate and cannot be made adequate;

(B) a reasonable effort has been made to induce operators of private facilities to provide the necessary transportation; and

(C) the service to be furnished will make proper use of transportation facilities and will supply the most efficient transportation to the persons concerned.

(2) The Secretary of Defense shall require that, in determining whether to provide transportation described in subsection (a)(2)(A) at any military installation, the Secretary of the military department concerned shall give careful consideration to the potential for saving energy and reducing air pollution.

(3) In providing transportation described in subsection (a)(2)(A) at any military installation, the Secretary concerned may not require a fare for the transportation of members of the armed forces if the transportation is incident to the performance of duty. In providing transportation described in subsection (a)(2)(C) to and from any military installation, the Secretary concerned (under regulations prescribed under subsection (a)(3)) may waive any requirement for a fare.

(4) The authority under subsection (a) to enter into contracts under which the United States is obligated to make outlays shall be effective for any fiscal year only to the extent that the budget authority for such outlays is provided in advance by appropriation Acts.

(c) To provide transportation under subsection (a), the department may—

(1) buy, lease, or charter motor vehicles or water carriers having a seating capacity of 12 or more passengers;

(2) maintain and operate that equipment by—

(A) enlisted members of the Army, Navy, Air Force, Marine Corps, or the Coast Guard, as the case may be;

(B) employees of the department concerned; and

(C) private persons under contract; and

(3) lease or charter the equipment to private or public carriers for operation under terms that are considered necessary by the Secretary or by an officer of the department designated by the Secretary, and that may provide for the pooling of Government-owned and privately owned equipment and facilities and for the reciprocal use of that equipment.

(d) Fares received under subsection (a), and proceeds of the leasing or chartering of equipment under subsection (c)(3), shall be covered into the Treasury as miscellaneous receipts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 95–362, Sept. 11, 1978, 92 Stat. 596; Pub. L. 96–125, title VIII, § 807(a)–(c)(1), Nov. 26, 1979, 93 Stat. 949, 950; Pub. L. 100–180, div. A, title III, § 318(a)–(c), Dec. 4, 1987, 101 Stat. 1076, 1077.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2632(a)	5:189c (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3). 5:415d (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3). 5:626n (introductory clause, words of clause 2 before semicolon, and 17 words before proviso of clause 3).	May 28, 1948, ch. 352, §1, 62 Stat. 276.
2632(b)	5:189c (clause 4). 5:415d (clause 4). 5:626n (clause 4).	
2632(c)	5:189c (clause 1; and clause 3, less 17 words before proviso). 5:415d (clause 1; and clause 3, less 17 words before proviso). 5:626n (clause 1; and clause 3, less 17 words before proviso).	
2632(d)	5:189c (clause 2, less words before semicolon). 5:415d (clause 2, less words before semicolon). 5:626n (clause 2, less words before semicolon).	

In subsection (a), the words ''it is necessary * * * he may * * * provide assured and adequate transportation'' are substituted for the words ''requires assured and adequate transportation facilities * * * he is authorized * * * to provide such transportation''. The words ''in the absence of adequate private or other facilities'' are omitted as covered by subsection (b)(2). The words ''subject, however, to the following provisions and conditions'' are omitted, since the revised section states those conditions positively in the following subsections. The words ''at reasonable rates of fare'' are substituted for the first 23 words of clause 2 of 5:189c, 415d, and 626n. The words ''under regulations to be prescribed by him'' are substituted for the words ''under such regulations as the Secretary of the Army [Navy, Air Force] shall prescribe'' in clause 2, and the 17 words before the proviso of clause 3, of 5:189c, 415d, and 626n.

In subsection (b), the words ''Transportation * * * under subsection (a)'' are substituted for the words ''The authority granted in this section to the Secretary of the Army [Navy, Air Force]''. The words ''may not be provided'' are substituted for the words ''shall be exercised''. The word ''transportation'' is substituted for the word ''service''. The words ''in each case'', ''as the case may be, that existing private and'', and ''by other means'' are omitted as surplusage.

Subsection (b)(3) is substituted for the last 25 words of clause 4 of 5:189c, 415d, and 626n.

In subsection (c), the introductory clause is substituted for the words ''The equipment required to provide such transportation facilities may be either''. The words ''considered necessary'' are substituted for the words ''shall determine necessary and advisable under the existing circumstances''. The proviso of clause 3 of 5:189c, 415d, and 626n is stated as a positive rule in clause (3) of the revised subsection. The words ''for operation by the Department of the Army [Navy, Air Force], and when so obtained'', ''civil'', ''with such department'', ''Equipment so obtained'', ''and conditions'', and the first 25 words of clause 3 of 5:189c, 415d, and 626n are omitted as surplusage.

In subsection (d), the words ''Treasury as'' are substituted for the words ''Treasury of the United States to the credit of''.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–180, §318(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Whenever the Secretary of a military department determines that it is necessary for the effective conduct of the affairs of that department, he may, at reasonable rates of fare under regulations to be prescribed by the Secretary of Defense, provide assured and adequate transportation by motor vehicle or water carrier—

''(1) among places on any military installation (including any subinstallation thereof) under the jurisdiction of that department; and

''(2) to and from their places of employment—

''(A) for persons attached to, or employed in, that department; and

''(B) during a war or national emergency declared by the Congress or the President, for persons attached to, or employed in, a private plant that is manufacturing material for that department.''

Subsec. (b)(1). Pub. L. 100–180, §318(c)(1), substituted ''Transportation described in subparagraphs (B), (C), and (D) of subsection (a)(2) may not be provided'' for ''Transportation may not be provided under subsection (a)(2)''.

Subsec. (b)(2). Pub. L. 100–180, §318(b)(1), (c)(2), redesignated subpar. (A) as par. (2) and substituted ''transportation described in subsection (a)(2)(A) at any military installation'' for ''transportation at any military installation under subsection (a)(1)''. Subpar. (B) was struck out and replaced by par. (3) and subpar. (C) was redesignated par. (4).

Subsec. (b)(3). Pub. L. 100–180, §318(b)(2), substituted par. (3) for former subpar. (2)(B) which read as follows: ''In providing transportation at any military installation under such subsection, the Secretary of the military department concerned may not require any fare for the transportation of members of the armed forces if the transportation is incident to training or other operational activities on such installation.''

Subsec. (b)(4). Pub. L. 100–180, §318(b)(3), (c)(3), redesignated former par. (2)(C) as par. (4) and substituted ''subsection (a)'' for ''subsection (a)(1)''.

1979—Pub. L. 96–125, §807(c)(1), inserted ''and on military installations'' after ''places of employment'' in section catchline.

Subsec. (a). Pub. L. 96–125, §807(a), substituted reference to Secretary of a military department and to the Secretary of Defense for references to Secretary concerned and inserted reference to any military installation (including any subinstallation thereof) under the jurisdiction of that department.

Subsec. (b). Pub. L. 96–125, §807(b), designated existing provisions as par. (1) and cls. (1) to (3) as cls. (A) to (C), substituted ''subsection (a)(2)'' for ''subsection (a)'' and added par. (2).

1978—Subsec. (a). Pub. L. 95–362, §1(1), substituted ''concerned'' for ''of a military department'' and ''of his department'' for ''of that department''.

Subsec. (b). Pub. L. 95–362, §1(2), struck out ''of the military department'' before ''concerned''.

Subsec. (c)(2)(A). Pub. L. 95–362, §1(3), inserted reference to the Coast Guard.

REGULATIONS

Section 318(d) of Pub. L. 100–180 required that regulations to implement amendments to this section be prescribed not later than 90 days after Dec. 4, 1987.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2633. Stevedoring and terminal services: vessels carrying cargo or passengers sponsored by military department

(a) Notwithstanding section 1301(a) of title 31, the Secretary of a military department may, under such regulations as he may prescribe, furnish stevedoring and terminal services and facilities to vessels carrying cargo, or passengers, or both, sponsored by his department.

(b) The furnishing of services and facilities under this section shall be at fair and reasonable rates.

(c) The proceeds from furnishing services and facilities under this section shall be paid to the credit of the appropriation or fund out of which the services or facilities were supplied.

(Added Pub. L. 85–44, §1, June 1, 1957, 71 Stat. 45; amended Pub. L. 87–651, title I, §111(a), Sept. 7, 1962, 76 Stat. 510; Pub. L. 96–513, title V, §511(87), Dec. 12, 1980, 94 Stat. 2927; Pub. L. 97–258, §3(b)(7), Sept. 13, 1982, 96 Stat. 1063.)

HISTORICAL AND REVISION NOTES

1962 ACT

Section 2633 is restated, without substantive change, to conform to the style adopted for title 10.

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–258 substituted ''section 1301(a) of title 31'' for ''section 3678 of the Revised Statutes (31 U.S.C. 628)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 3678 of the Revised Statutes (31 U.S.C. 628)'' for ''section 628 of title 31''.

1962—Pub. L. 87–651 amended section generally without substantive change to conform to the style adopted for the revision of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2634. Motor vehicles: transportation or storage for members on change of permanent station or extended deployment

(a) When a member of an armed force is ordered to make a change of permanent station, one motor vehicle that is owned or leased by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned or leased by him (or a dependent of his) was transported in advance of that change of permanent station under section 406(h) of title 37, be transported, at the expense of the United States, to

his new station or such other place as the Secretary concerned may authorize—

(1) on a vessel owned, leased, or chartered by the United States;

(2) by privately owned American shipping services;

(3) by foreign-flag shipping services if shipping services described in clauses (1) and (2) are not reasonably available; or

(4) by other surface transportation if such means of transport does not exceed the cost to the United States of other authorized means.

When the Secretary concerned determines that a replacement for that motor vehicle is necessary for reasons beyond the control of the member and is in the interest of the United States, and he approves the transportation in advance, one additional motor vehicle of the member (or a dependent of the member) may be so transported.

(b)(1) When a member receives a vehicle storage qualifying order, the member may elect to have a motor vehicle described in subsection (a) stored at the expense of the United States at a location approved by the Secretary concerned. In the case of a vehicle storage qualifying order that is to make a change of permanent station, such storage is in lieu of transportation authorized by subsection (a).

(2) In this subsection, the term ''vehicle storage qualifying order'' means any of the following:

(A) An order to make a change of permanent station to a foreign country in a case in which the laws, regulations, or other restrictions imposed by the foreign country or by the United States either—

(i) preclude entry of a motor vehicle described in subsection (a) into that country; or

(ii) would require extensive modification of the vehicle as a condition to entry.

(B) An order to make a change of permanent station to a nonforeign area outside the continental United States in a case in which the laws, regulations, or other restrictions imposed by that area or by the United States either—

(i) preclude entry of a motor vehicle described in subsection (a) into that area; or

(ii) would require extensive modification of the vehicle as a condition to entry.

(C) An order under which a member is transferred or assigned in connection with a contingency operation to duty at a location other than the permanent station of the member for a period of more than 30 consecutive days but which is not considered a change of permanent station.

(3) Authorized expenses under this subsection include costs associated with the delivery of the motor vehicle for storage and removal of the vehicle for delivery to a destination approved by the Secretary concerned.

(4) Storage costs payable under this subsection may be paid in advance.

(c) When there has been a shipping error, or when orders directing a change of permanent station have been canceled, revoked, or modified after receipt by the member, a motor vehicle transported pursuant to this section may also be reshipped or transshipped in accordance with this section.

(d) When the Secretary concerned makes a determination under section 406(j) of title 37 that the dependents of a member on a permanent change of station are unable to accompany the member to an overseas duty station because of unexpected and uncontrollable circumstances, and the member shipped a motor vehicle pursuant to this section in anticipation of a dependent accompanying the member to the new duty station, the member may reship or transship such motor vehicle in accordance with this section.

(e) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) may prescribe regulations limiting those leased motor vehicles that may be transported pursuant to this section based upon the length of the lease and other terms and conditions of the lease that the Secretary considers appropriate.

(f) No carrier, port agent, warehouseman, freight forwarder, or other person involved in the transportation of property may have any lien on, or hold, impound, or otherwise interfere with, the movement of a motor vehicle being transported under this section.

(g) If a motor vehicle of a member (or a dependent of the member) that is transported at the expense of the United States under this section does not arrive at the authorized destination of the vehicle by the designated delivery date, the Secretary concerned shall reimburse the member for expenses incurred after that date to rent a motor vehicle for the member's use, or for the use of the dependent for whom the delayed vehicle was transported. The amount reimbursed may not exceed $30 per day, and the rental period for which reimbursement may be provided expires after 7 days or on the date on which the delayed vehicle arrives at the authorized destination (whichever occurs first).

(h) In this section:

(1) The term ''change of permanent station'' means the transfer or assignment of a member of the armed forces from a permanent station inside the continental United States to a permanent station outside the continental United States or from a permanent station outside the continental United States to another permanent station. It also includes the following:

(A) An authorized change in home port of a vessel.

(B) A transfer or assignment between two permanent stations in the continental United States when—

(i) the member cannot, because of injury or the conditions of the order, drive the motor vehicle between the permanent duty stations; or

(ii) the Secretary concerned determines that it is advantageous and cost-effective to the United States for one motor vehicle of the member to be transported between the permanent duty stations.

(2) The term ''continental United States'' does not include Alaska.

(3) The term ''nonforeign area outside the continental United States'' means any of the

following: the States of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and any possession of the United States.

(Added Pub. L. 87–651, title I, §111(b), Sept. 7, 1962, 76 Stat. 510; amended Pub. L. 88–431, §1(b), Aug. 14, 1964, 78 Stat. 439; Pub. L. 89–101, §1(1), July 30, 1965, 79 Stat. 425; Pub. L. 93–548, §§1, 2, Dec. 26, 1974, 88 Stat. 1743; Pub. L. 97–60, title II, §202, Oct. 14, 1981, 95 Stat. 1005; Pub. L. 99–661, div. A, title VI, §§611, 620(b)(2), Nov. 14, 1986, 100 Stat. 3878, 3883; Pub. L. 100–26, §7(j)(6), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. A, title VI, §616(a), Dec. 4, 1987, 101 Stat. 1096; Pub. L. 102–484, div. A, title VI, §622(b), Oct. 23, 1992, 106 Stat. 2422; Pub. L. 104–106, div. A, title VI, §642(a)(2), Feb. 10, 1996, 110 Stat. 368; Pub. L. 104–201, div. A, title III, §368(a)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2497; Pub. L. 105–261, div. A, title VI, §§631(b)(2), 653(a), Oct. 17, 1998, 112 Stat. 2044, 2051; Pub. L. 107–107, div. A, title V, §594(a), (b), Dec. 28, 2001, 115 Stat. 1126; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, §575(a), (b), Dec. 2, 2002, 116 Stat. 2558, 2559.)

HISTORICAL AND REVISION NOTES

The new section 2634 of title 10 combines sections 4748, 6157, and 9748 of this title and section 471a of title 14 (which are being repealed), and reflects the Act of May 28, 1956, ch. 325 (46 U.S.C. 1241(c)).

AMENDMENTS

2002—Subsec. (b)(1), (2). Pub. L. 107–314, §575(a), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) In lieu of transportation authorized by this section, if a member is ordered to make a change of permanent station to a foreign country and the laws, regulations, or other restrictions imposed by the foreign country or the United States preclude entry of a motor vehicle described in subsection (a) into that country, or would require extensive modification of the vehicle as a condition to entry, the member may elect to have the vehicle stored at the expense of the United States at a location approved by the Secretary concerned.

''(2) If a member is transferred or assigned in connection with a contingency operation to duty at a location other than the permanent station of the member for a period of more than 30 consecutive days, but the transfer or assignment is not considered a change of permanent station, the member may elect to have a motor vehicle described in subsection (a) stored at the expense of the United States at a location approved by the Secretary concerned.''

Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (h)(3). Pub. L. 107–314, §575(b), added par. (3).

2001—Subsec. (b)(4). Pub. L. 107–107, §594(a), added par. (4).

Subsec. (h)(1). Pub. L. 107–107, §594(b), substituted ''includes the following:'' and subpars. (A) and (B) for ''includes an authorized change in home port of a vessel, or a transfer or assignment between two permanent stations in the continental United States when the member cannot, because of injury or the conditions of the order, drive the motor vehicle between the permanent duty stations.''

1998—Subsec. (d). Pub. L. 105–261, §631(b)(2), substituted ''section 406(j)'' for ''section 406(k)''.

Subsecs. (g), (h). Pub. L. 105–261, §653(a), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Pub. L. 104–201, §368(a)(2)(A), substituted ''Motor vehicles: transportation or storage for members on change of permanent station or extended deployment'' for ''Motor vehicles: for members on change of permanent station'' in section catchline.

Subsec. (b). Pub. L. 104–201, §368(a)(1)(C), added subsec. (b). Former subsec. (b) redesignated (g).

Subsec. (d). Pub. L. 104–106 substituted ''section 406(k) of title 37'' for ''section 406(*l*) of title 37''.

Subsec. (g). Pub. L. 104–201, §368(a)(1)(A), (B), redesignated subsec. (b) as (g) and transferred it to end of section.

1992—Subsec. (f). Pub. L. 102–484 added subsec. (f).

1987—Subsec. (a). Pub. L. 100–180, §616(a)(1), inserted ''or leased'' after ''owned'' in two places in introductory text.

Subsec. (d). Pub. L. 100–26 redesignated subsec. (f) as (d).

Subsec. (e). Pub. L. 100–180, §616(a)(2), added subsec. (e).

Subsec. (f). Pub. L. 100–26 redesignated subsec. (f) as (d).

1986—Subsec. (a). Pub. L. 99–661, §611(a), substituted ''by other surface transportation'' for ''in the case of movement, the major portion of which is by shipping services described in clause (1) or (2), by other surface transportation between customary ports of embarkation and debarkation'' in par. (4), and struck out '', or his designee,'' after ''When the Secretary concerned'' in last sentence.

Subsec. (b). Pub. L. 99–661, §611(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In this section, 'change of permanent station' means the transfer or assignment of a member of the armed forces from one permanent station to another. It includes the change from home or from the place from which ordered to active duty to first station upon appointment, call to active duty, enlistment, or induction, and from last duty station to home or to the place from which ordered to active duty upon separation from the service, placement upon the temporary disability retired list, release from active duty, or retirement. It also includes an authorized change in home yard or home port of a vessel.''

Subsec. (f). Pub. L. 99–661, §620(b)(2), added subsec. (f).

1981—Subsec. (a). Pub. L. 97–60 substituted ''one motor vehicle that is owned by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned by him (or a dependent of his) was transported'' for ''one motor vehicle owned by him and for his personal use or the use of his dependents may, unless a motor vehicle owned by him was transported'' in provisions preceding par. (1) and, in provisions following par. (4), inserted ''(or a dependent of the member)'' after ''one additional motor vehicle of the member''.

1974—Subsec. (a)(4). Pub. L. 93–548, §1, added par. (4).

Subsec. (c). Pub. L. 93–548, §2, added subsec. (c).

1965—Pub. L. 89–101 substituted ''change of permanent station'' for ''permanent change of station'' in section catchline, designated existing provisions as subsec. (a), substituted ''change of permanent station'' for ''permanent change of station'' in two places, inserted ''or for the use of his dependents'' and ''or such other place as the Secretary concerned may authorize'', added cl. 3, provided for the transportation of one additional motor vehicle when replacement is necessary, and added subsec. (b).

1964—Pub. L. 88–431 inserted '', leased, or chartered'' and ''unless a motor vehicle owned by him was transported in advance of that permanent change of station under section 406(h) of title 37''.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title V, §575(c), Dec. 2, 2002, 116 Stat. 2559, provided that: ''The amendments made by this section [amending this section] apply to orders to make a change of permanent station to a nonforeign area outside the continental United States (as such term is defined in subsection (h)(3) of section 2634 of title 10, United States Code, as added by subsection (b)) that are issued on or after the date of the enactment of this Act [Dec. 2, 2002].''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of

Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §594(c), Dec. 28, 2001, 115 Stat. 1126, provided that: ''The amendments made by this section [amending this section] apply to orders to make a change of permanent station that are issued on or after the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title VI, §653(e), Oct. 17, 1998, 112 Stat. 2052, provided that:

''(1) Reimbursement for motor vehicle rental expenses may not be provided under the amendments made by this section [amending this section and sections 405a, 406, and 554 of Title 37, Pay and Allowances of the Uniformed Services] until after the date on which the Secretary of Defense submits to Congress a report containing a certification that the Department of Defense has in place and operational a system to recover the cost of providing such reimbursement from commercial carriers that are responsible for the delay in the delivery of the motor vehicles of members of the Armed Forces and their dependents. The Secretary of Defense shall prepare the report in consultation with the Secretary of Transportation, with respect to the Coast Guard.

''(2) The amendments shall apply with respect to rental expenses described in such amendments that are incurred on or after the date of the submission of the report. The report shall be submitted not later than six months after the date of the enactment of this Act [Oct. 17, 1998] and shall include, in addition to the certification, a description of the system to be used to recover from commercial carriers the costs incurred under such amendments.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 368(c) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and section 406 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on April 1, 1997.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661, applicable with respect to members whose dependents are unable to accompany them to an overseas permanent duty station because of circumstances arising on or after Nov. 14, 1986, see section 620(c)(2) of Pub. L. 99–661, set out as a note under section 406 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1965 AMENDMENT; REIMBURSEMENT OF EXPENSES

Section 3 of Pub. L. 89–101 provided that: ''This Act [amending this section and section 406 of title 37] shall be effective May 1, 1965. Any member who—

''(1) transported a motor vehicle at his personal expense after April 30, 1965, and before the enactment of this Act [July 30, 1965]; and

''(2) would have been entitled to the transportation of such motor vehicle at Government expense under the provisions of this Act;

shall be reimbursed for the allowable transportation cost actually expended by him. Appropriations available for permanent change of station travel shall be available for the reimbursements authorized by this Act.''

PUBLIC HEALTH SERVICE

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by this section in ''the Secretary concerned'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 3071 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071; title 37 sections 406, 406b, 406c; title 42 section 213a.

§ 2635. Medical emergency helicopter transportation assistance and limitation of individual liability

(a) The Secretary of Defense is authorized to assist the Department of Health and Human Services and the Department of Homeland Security in providing medical emergency helicopter transportation services to civilians. Any resources provided under this section shall be under such terms and conditions, including reimbursement, as the Secretary of Defense deems appropriate and shall be subject to the following specific limitations:

(1) Assistance may be provided only in areas where military units able to provide such assistance are regularly assigned, and military units shall not be transferred from one area to another for the purpose of providing such assistance.

(2) Assistance may be provided only to the extent that it does not interfere with the performance of the military mission.

(3) The provision of assistance shall not cause any increase in funds required for the operation of the Department of Defense.

(b) No individual (or his estate) who is authorized by the Department of Defense to perform services under a program established pursuant to subsection (a), and who is acting within the scope of his duties, shall be liable for injury to, or loss of property or personal injury or death which may be caused incident to providing such services.

(Added Pub. L. 93–155, title VIII, §814(a), Nov. 16, 1973, 87 Stat. 620; amended Pub. L. 96–513, title V, §511(88), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation'' in introductory provisions.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Department of Health and Human Services'' for ''Department of Health, Education, and Welfare''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 2636. Deductions from amounts due carriers

(a) AMOUNTS FOR LOSS OR DAMAGE.—An amount deducted from an amount due a carrier shall be credited as follows:

(1) If deducted because of loss of or damage to material in transit for a military department, the amount shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.

(2) If deducted as an administrative offset for an overpayment previously made to the carrier under any Department of Defense contract for transportation services or as liquidated damages due under any such contract, the amount shall be credited to the appropriation or account from which payments for the transportation services were made.

(b) SIMPLIFIED OFFSET FOR COLLECTION OF CLAIMS NOT IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD.—(1) In any case in which the total amount of a claim for the recovery of overpayments or liquidated damages under a contract described in subsection (a)(2) does not exceed the simplified acquisition threshold, the Secretary of Defense or the Secretary concerned, in exercising the authority to collect the claim by administrative offset under section 3716 of title 31, may apply paragraphs (2) and (3) of subsection (a) of that section with respect to that collection after (rather than before) the claim is so collected.

(2) Regulations prescribed by the Secretary of Defense under subsection (b) of section 3716 of title 31—

(A) shall include provisions to carry out paragraph (1); and

(B) shall provide the carrier for a claim subject to paragraph (1) with an opportunity to offer an alternative method of repaying the claim (rather than by administrative offset) if the collection of the claim by administrative offset has not already been made.

(3) In this subsection, the term ''simplified acquisition threshold'' has the meaning given that term in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(Added Pub. L. 97–258, § 2(b)(5)(B), Sept. 13, 1982, 96 Stat. 1053; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1009(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–250.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2636	31:489a.	June 25, 1956, ch. 442, § 1, 70 Stat. 336.

The words ''An amount deducted from an amount due'' are substituted for ''Moneys arising from deductions made from'' for clarity. The words ''military or naval'' and ''account of'' are omitted as surplus. The words ''a military department'' are substituted for ''the Departments of the Army, Navy, or Air Force'' because of 10:101(7). The Department of War was designated the Department of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Department of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488).

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text read as follows: ''An amount deducted from an amount due a carrier because of loss of or damage to material in transit for a military department shall be credited to the proper appropriation, account, or fund from which the same or similar material may be replaced.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title X, § 1009(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–251, provided that: ''Subsections (a)(2) and (b) of section 2636 of title 10, United States Code, as added by subsection (a)(1), shall apply with respect to contracts entered into after the date of the enactment of this Act [Oct. 30, 2000].''

§ 2637. Transportation in certain areas outside the United States

The Secretary of Defense may authorize the commander of a unified combatant command to use Government owned or leased vehicles to provide transportation in an area outside the United States for members of the uniformed services and Federal civilian employees under the jurisdiction of that commander, and for the dependents of such members and employees, if the commander determines that public or private transportation in such area is unsafe or not available. Such transportation shall be provided in accordance with regulations prescribed by the Secretary of Defense.

(Added Pub. L. 101–510, div. A, title III, § 326(a)(1), Nov. 5, 1990, 104 Stat. 1531.)

PRIOR PROVISIONS

A prior section 2637, added Pub. L. 98–525, title VI, § 614(a), Oct. 19, 1984, 98 Stat. 2540, related to use of passenger motor vehicles of United States for transportation between residences and places of work of senior defense officials, prior to repeal by Pub. L. 99–550, § 2(a)(1), Oct. 27, 1986, 100 Stat. 3070.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 31 section 1344.

§ 2638. Transportation of civilian clothing of enlisted members

The Secretary of the military department concerned may provide for the transportation of the civilian clothing of any person entering the armed forces as an enlisted member to the member's home of record.

(Added Pub. L. 98–525, title XIV, § 1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98–473, title I, § 101(h) [title VIII, § 8005], 98 Stat. 1904, 1922.

Dec. 8, 1983, Pub. L. 98–212, title VII, § 708, 97 Stat. 1438.

Dec. 21, 1982, Pub. L. 97–377, title I, § 101(c) [title VII, § 708], 96 Stat. 1833, 1850.

Dec. 29, 1981, Pub. L. 97–114, title VII, § 708, 95 Stat. 1579.

Dec. 15, 1980, Pub. L. 96–527, title VII, § 708, 94 Stat. 3081.

Dec. 21, 1979, Pub. L. 96–154, title VII, § 708, 93 Stat. 1152.

Oct. 13, 1978, Pub. L. 95–457, title VIII, § 808, 92 Stat. 1244.

Sept. 21, 1977, Pub. L. 95–111, title VIII, § 807, 91 Stat. 899.

Sept. 22, 1976, Pub. L. 94–419, title VII, § 707, 90 Stat. 1291.

Feb. 9, 1976, Pub. L. 94–212, title VII, §707, 90 Stat. 168.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §807, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §707, 87 Stat. 1038.
Oct. 26, 1972, Pub. L. 92–570, title VII, §707, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, §707, 85 Stat. 727.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §807, 84 Stat. 2030.
Dec. 29, 1969, Pub. L. 91–171, title VI, §607, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, §606, 81 Stat. 242.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2639. Transportation to and from school for certain minor dependents

Funds appropriated to the Department of Defense may be used to provide minor dependents of members of the armed forces and of civilian officers and employees of the Department of Defense with transportation to and from primary and secondary schools if the schools attended by the dependents are not accessible by regular means of transportation.

(Added Pub. L. 98–525, title XIV, §1401(j)(1), Oct. 19, 1984, 98 Stat. 2620.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following appropriation acts:
Oct. 12, 1984, Pub. L. 98–473, title I, §101(h) [title VIII, §8005], 98 Stat. 1904, 1922.
Dec. 8, 1983, Pub. L. 98–212, title VII, §708, 97 Stat. 1438.
Dec. 21, 1982, Pub. L. 97–377, title I, §101(c) [title VII, §708], 96 Stat. 1833, 1850.
Dec. 29, 1981, Pub. L. 97–114, title VII, §708, 95 Stat. 1579.
Dec. 15, 1980, Pub. L. 96–527, title VII, §708, 94 Stat. 3081.
Dec. 21, 1979, Pub. L. 96–154, title VII, §708, 93 Stat. 1152.
Oct. 13, 1978, Pub. L. 95–457, title VIII, §808, 92 Stat. 1244.
Sept. 21, 1977, Pub. L. 95–111, title VIII, §807, 91 Stat. 899.
Sept. 22, 1976, Pub. L. 94–419, title VII, §707, 90 Stat. 1291.
Feb. 9, 1976, Pub. L. 94–212, title VII, §707, 90 Stat. 168.
Oct. 8, 1974, Pub. L. 93–437, title VIII, §807, 88 Stat. 1225.
Jan. 2, 1974, Pub. L. 93–238, title VII, §707, 87 Stat. 1038.
Oct. 26, 1972, Pub. L. 92–570, title VII, §707, 86 Stat. 1196.
Dec. 18, 1971, Pub. L. 92–204, title VII, §707, 85 Stat. 727.
Jan. 11, 1971, Pub. L. 91–668, title VIII, §807, 84 Stat. 2030.
Dec. 29, 1969, Pub. L. 91–171, title VI, §607, 83 Stat. 480.
Oct. 17, 1968, Pub. L. 90–580, title V, §506, 82 Stat. 1129.
Sept. 29, 1967, Pub. L. 90–96, title VI, §606, 81 Stat. 242.
Oct. 15, 1966, Pub. L. 89–687, title VI, §606, 80 Stat. 991.
Sept. 29, 1965, Pub. L. 89–213, title VI, §606, 79 Stat. 873.
Aug. 19, 1964, Pub. L. 88–446, title V, §506, 78 Stat. 475.
Oct. 17, 1963, Pub. L. 88–149, title V, §506, 77 Stat. 264.
Aug. 9, 1962, Pub. L. 87–577, title V, §506, 76 Stat. 328.
Aug. 17, 1961, Pub. L. 87–144, title VI, §606, 75 Stat. 375.
July 7, 1960, Pub. L. 86–601, title V, §506, 74 Stat. 350.
Aug. 18, 1959, Pub. L. 86–166, title V, §606, 73 Stat. 378.
Aug. 22, 1958, Pub. L. 85–724, title VI, §606, 72 Stat. 724.
Aug. 2, 1957, Pub. L. 85–117, title VI, §607, 71 Stat. 323.
July 2, 1956, ch. 488, title VI, §607, 70 Stat. 468.
July 13, 1955, ch. 358, title VI, §609, 69 Stat. 315.
June 30, 1954, ch. 432, title VII, §709, 68 Stat. 351.
Aug. 1, 1953, ch. 305, title VI, §614, 67 Stat. 351.
July 10, 1952, ch. 630, title VI, §616, 66 Stat. 533.
Oct. 18, 1951, ch. 512, title VI, §616, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, §619, 64 Stat. 755.
Oct. 29, 1949, ch. 787, title VI, §625, 63 Stat. 1021.
June 24, 1948, ch. 632, §2, 62 Stat. 667.
July 30, 1947, ch. 357, title I, §2, 61 Stat. 569.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as a note under section 520b of this title.

§ 2640. Charter air transportation of members of the armed forces

(a) REQUIREMENTS.—(1) The Secretary of Defense may not enter into a contract with an air carrier for the charter air transportation of members of the armed forces unless the air carrier—

(A) meets, at a minimum, the safety standards established by the Secretary of Transportation under chapter 447 of title 49;

(B) has at least 12 months of experience operating services in air transportation that are substantially equivalent to the service sought by the Department of Defense; and

(C) undergoes a technical safety evaluation.

(2) For purposes of paragraph (1)(C), a technical safety evaluation—

(A) shall include inspection of a representative number of aircraft; and

(B) shall be conducted in accordance with regulations prescribed by the Secretary, after consultation with the Secretary of Transportation.

(b) INSPECTIONS.—The Secretary shall provide for inspections of each air carrier that contracts with the Department of Defense for the charter air transportation of members of the armed forces. The inspections shall be conducted in accordance with standards established by the Secretary, after consultation with the Secretary of Transportation, and shall include, at a minimum, the following:

(1) An on-site capability survey of the air carrier conducted at least once every two years.

(2) A performance evaluation of the air carrier conducted at least once every six months.

(3) A preflight safety inspection of each aircraft conducted at any time during the operation of, but not more than 72 hours before, each internationally scheduled charter mission departing the United States.

(4) A preflight safety inspection of each aircraft used for domestic charter missions conducted to the greatest extent practical.

(5) Operational check-rides on aircraft conducted periodically.

(c) COMMERCIAL AIRLIFT REVIEW BOARD.—The Secretary shall establish a Commercial Airlift Review Board within the Department of Defense. The Board shall consist of personnel from the Department of Defense and other Government personnel as may be appropriate. The duties of the Board shall be—

(1) to make recommendations to the Secretary on suspension and reinstatement of air carriers under subsection (d);

(2) to make recommendations to the Secretary on waivers under subsection (g); and

(3) to carry out such other duties and make recommendations on such other matters as the Secretary considers appropriate.

(d) SUSPENSION AND REINSTATEMENT.—(1) The Secretary shall establish guidelines for the suspension of air carriers under contract with the Department of Defense for the charter air transportation of members of the armed forces and for the reinstatement of air carriers that have been so suspended. The guidelines—

(A) shall require the immediate determination of whether to suspend an air carrier if an aircraft of the air carrier is involved in a fatal accident; and

(B) may require the suspension of an air carrier—

(i) if the carrier is in violation of any order, rule, regulation, or standard prescribed under chapter 447 of title 49; or

(ii) if an aircraft of the air carrier is involved in a serious accident.

(2) The Commercial Airlift Review Board shall make recommendations to the Secretary on suspension and reinstatement under this subsection.

(3) The Secretary shall include in each contract subject to this section the provisions on suspension and reinstatement established under this subsection.

(e) AUTHORITY TO LEAVE UNSAFE AIRCRAFT.—A representative of the Military Airlift Command, the Military Traffic Management Command, or such other agency as may be designated by the Secretary of Defense (or if there is no such representative reasonably available, the senior officer on board a chartered aircraft) may order members of the armed forces to leave a chartered aircraft if the representative (or officer) determines that a condition exists on the aircraft which may endanger the safety of the members.

(f) FAA INFORMATION.—The Secretary shall request the Secretary of Transportation to provide to the Secretary a report on each inspection performed by Federal Aviation Administration personnel, and the status of corrective actions taken, on each aircraft of an air carrier under contract with the Department of Defense for the charter air transportation of members of the armed forces.

(g) WAIVER.—After considering recommendations by the Commercial Airlift Review Board, the Secretary may waive any provision of this section in an emergency.

(h) AUTHORITY TO PROTECT SAFETY-RELATED INFORMATION VOLUNTARILY PROVIDED BY AN AIR CARRIER.—(1) Subject to paragraph (2), the Secretary of Defense may (notwithstanding any other provision of law) withhold from public disclosure safety-related information that is provided to the Secretary voluntarily by an air carrier for the purposes of this section.

(2) Information may be withheld under paragraph (1) from public disclosure only if the Secretary determines that—

(A) the disclosure of the information would inhibit an air carrier from voluntarily providing, in the future, safety-related information for the purposes of this section or for other air safety purposes involving the Department of Defense or another Federal agency; and

(B) the receipt of such information generally enhances the fulfillment of responsibilities under this section or other air safety responsibilities involving the Department of Defense or another Federal agency.

(3) If the Secretary provides to the head of another agency safety-related information described in paragraph (1) with respect to which the Secretary has made a determination described in paragraph (2), the head of that agency shall (notwithstanding any other provision of law) withhold the information from public disclosure unless the disclosure is specifically authorized by the Secretary.

(i) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section, including requirements and identification of inspecting personnel with respect to preflight safety inspections required by subsection (b)(3).

(j) DEFINITIONS.—In this section:

(1) The terms ''air carrier'', ''aircraft'', ''air transportation'', and ''charter air transportation'' have the meanings given such terms by section 40102(a) of title 49.

(2) The term ''members of the armed forces'' means members of the Army, Navy, Air Force, and Marine Corps.

(Added Pub. L. 99–661, div. A, title XII, § 1204(a)(1), Nov. 14, 1986, 100 Stat. 3969; amended Pub. L. 103–272, § 5(b)(1), July 5, 1994, 108 Stat. 1373; Pub. L. 105–85, div. A, title X, § 1075(a), Nov. 18, 1997, 111 Stat. 1911.)

AMENDMENTS

1997—Subsecs. (h) to (j). Pub. L. 105–85 added subsec. (h) and redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

1994—Subsecs. (a)(1)(A), (d)(1)(B)(i). Pub. L. 103–272, § 5(b)(1)(A), substituted ''chapter 447 of title 49'' for ''title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)''.

Subsec. (i)(1). Pub. L. 103–272, § 5(b)(1)(B), substituted ''section 40102(a) of title 49'' for ''sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1075(b) of Pub. L. 105–85 provided that: ''Subsection (h) of section 2640 of title 10, United States Code, as added by subsection (a), shall apply with respect to requests for information made on or after the date of the enactment of this Act [Nov. 18, 1997].''

EFFECTIVE DATE

Section 1204(c) of Pub. L. 99–661 provided that: ''Section 2640 of title 10, United States Code, as added by subsection (a), shall apply only to contracts which are entered into on or after the date on which the regulations required by subsection (b) are prescribed [set out below].''

REGULATIONS

Section 1204(b) of Pub. L. 99–661 required Secretary of Defense, not later than 120 days after Nov. 14, 1986, to prescribe regulations required by this section.

§ 2641. Transportation of certain veterans on Department of Defense aeromedical evacuation aircraft

(a) The Secretary of Defense may provide transportation on an aircraft operating under the aeromedical evacuation system of the Department of Defense for the purpose of transporting a veteran to or from a Department of Veterans Affairs medical facility or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place.

(b) Transportation under this section shall be provided in accordance with an agreement entered into between the Secretary of Defense and the Secretary of Veterans Affairs. Such an agreement shall provide that transportation may be furnished to a veteran (or for the remains of a veteran) on an aircraft referred to in subsection (a) only if—

(1) the Secretary of Veterans Affairs notifies the Secretary of Defense that the veteran needs or has been furnished medical care or services in a Department of Veterans Affairs facility and the Secretary of Veterans Affairs requests such transportation in connection with the travel of such veteran (or of the remains of such veteran) to or from the Department of Veterans Affairs facility where the care or services are to be furnished or were furnished to such veteran;

(2) there is space available for the veteran (or the remains of the veteran) on the aircraft; and

(3) there is an adequate number of medical and other service attendants to care for all persons being transported on the aircraft.

(c) A veteran is not eligible for transportation under this section unless the veteran is a primary beneficiary within the meaning of clause (A) of section 8111(g)(5) of title 38.

(d)(1) A charge may not be imposed on a veteran (or on the survivors of a veteran) for transportation provided to the veteran (or for the remains of the veteran) under this section.

(2) An agreement under subsection (b) shall provide that the Department of Veterans Affairs shall reimburse the Department of Defense for any costs incurred in providing transportation to veterans (or for the remains of veterans) under this section that would not otherwise have been incurred by the Department of Defense.

(e) In this section, the term ''veteran'' has the meaning given that term in section 101(2) of title 38.

(Added Pub. L. 100–180, div. A, title XII, §1250(a)(1), Dec. 4, 1987, 101 Stat. 1167; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(1), (2), (8), Nov. 29, 1989, 103 Stat. 1602, 1603; Pub. L. 103–337, div. A, title VI, §652(b), title X, §1070(e)(8), Oct. 5, 1994, 108 Stat. 2794, 2859.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §652(b)(1), inserted before period ''or of transporting the remains of a deceased veteran who died at such a facility after being transported to the facility under this subsection. Transportation of the remains of a deceased veteran under this subsection may be provided to the place from which the veteran was transported to the facility or to any other destination which is not farther away from the facility than such place''.

Subsec. (b). Pub. L. 103–337, §652(b)(2)(A)(i), inserted ''(or for the remains of a veteran)'' after ''furnished to a veteran'' in introductory provisions.

Subsec. (b)(1). Pub. L. 103–337, §652(b)(2)(A)(ii), inserted ''(or of the remains of such veteran)'' after ''of such veteran''.

Subsec. (b)(2). Pub. L. 103–337, §652(b)(2)(A)(iii), inserted ''(or the remains of the veteran)'' after ''for the veteran''.

Subsec. (c). Pub. L. 103–337, §1070(e)(8), substituted ''section 8111(g)(5) of title 38'' for ''section 5011(g)(5) of title 38''.

Subsec. (d)(1). Pub. L. 103–337, §652(b)(2)(B), inserted ''(or on the survivors of a veteran)'' after ''on a veteran'' and ''(or for the remains of the veteran)'' after ''to the veteran''.

Subsec. (d)(2). Pub. L. 103–337, §652(b)(2)(C), inserted ''(or for the remains of veterans)'' after ''to veterans''.

1989—Subsec. (a). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b). Pub. L. 101–189, §1621(a)(2), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' in introductory provisions and in par. (1).

Subsec. (b)(1). Pub. L. 101–189, §1621(a)(8), substituted ''the Secretary of Veterans Affairs requests'' for ''the Administrator requests''.

Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (d)(2). Pub. L. 101–189, §1621(a)(1), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

DEADLINE FOR ENTRY INTO TRANSPORTATION AGREEMENT

Section 1250(b) of Pub. L. 100–180 directed Secretary of Defense and Administrator of Veterans' Affairs to enter into an agreement required by this section not later than 60 days after Dec. 4, 1987.

§ 2641a. Transportation of American Samoa veterans on Department of Defense aircraft for certain medical care in Hawaii

(a) TRANSPORTATION AUTHORIZED.—The Secretary of Defense may provide transportation on Department of Defense aircraft for the purpose of transporting any veteran specified in subsection (b) between American Samoa and the State of Hawaii if such transportation is required in order to provide hospital care to such veteran as described in that subsection.

(b) VETERANS ELIGIBLE FOR TRANSPORT.—A veteran eligible for transport under subsection (a) is any veteran who—

(1) resides in and is located in American Samoa; and

(2) as determined by an official of the Department of Veterans Affairs designated for that purpose by the Secretary of Veterans Affairs, must be transported to the State of Hawaii in order to receive hospital care to which such veteran is entitled under chapter 17 of title 38 in facilities of such Department in the State of Hawaii.

(c) ADMINISTRATION.—(1) Transportation may be provided to veterans under this section only on a space-available basis.

(2) A charge may not be imposed on a veteran for transportation provided to the veteran under this section.

(Added Pub. L. 105–262, title VIII, § 8121(a), Oct. 17, 1998, 112 Stat. 2332; amended Pub. L. 106–65, div. A, title X, § 1066(a)(24), Oct. 5, 1999, 113 Stat. 771.)

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106–65, § 1066(a)(24)(A), struck out '', United States Code,'' after ''title 38''.

Subsec. (d). Pub. L. 106–65, § 1066(a)(24)(B), struck out heading and text of subsec. (d). Text read as follows: ''In this section:

''(1) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

''(2) The term 'hospital care' has the meaning given that term in section 1701(5) of title 38, United States Code.''

§ 2642. Reimbursement rate for airlift services provided to Central Intelligence Agency

(a) AUTHORITY.—The Secretary of Defense may authorize the use of the Department of Defense reimbursement rate for military airlift services provided by a component of the Department of Defense to the Central Intelligence Agency, if the Secretary of Defense determines that those military airlift services are provided for activities related to national security objectives.

(b) DEFINITION.—In this section, the term ''Department of Defense reimbursement rate'' means the amount charged a component of the Department of Defense by another component of the Department of Defense.

(Added Pub. L. 102–88, title V, § 501(a), Aug. 14, 1991, 105 Stat. 435.)

§ 2643. Commissary and exchange services: transportation overseas

The Secretary of Defense shall authorize the officials responsible for operation of commissaries and military exchanges to negotiate directly with private carriers for the most cost-effective transportation of commissary and exchange supplies by sea without relying on the Military Sealift Command or the Military Traffic Management Command. Section 2631 of this title, regarding the preference for vessels of the United States or belonging to the United States in the transportation of supplies by sea, shall apply to the negotiation of transportation contracts under the authority of this section.

(Added Pub. L. 104–106, div. A, title III, § 334(a), Feb. 10, 1996, 110 Stat. 261.)

§ 2644. Control of transportation systems in time of war

In time of war, the President, through the Secretary of Defense, may take possession and assume control of all or part of any system of transportation to transport troops, war material, and equipment, or for other purposes related to the emergency. So far as necessary, he may use the system to the exclusion of other traffic.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266, § 4742; renumbered § 2644 and amended Pub. L. 104–201, div. A, title IX, § 906(a), (b), Sept. 23, 1996, 110 Stat. 2620.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4742	10:1361.	Aug. 29, 1916, ch. 418 (last par. under ''Ordnance Department''), 39 Stat. 645.

The words ''as may be needful or desirable'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–201 renumbered section 4742 of this title as this section and substituted ''Secretary of Defense'' for ''Secretary of the Army''.

§ 2645. Indemnification of Department of Transportation for losses covered by vessel war risk insurance

(a) PROMPT INDEMNIFICATION REQUIRED.—(1) In the event of a loss that is covered by vessel war risk insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of a vessel, not later than 90 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the vessel war risk insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of a vessel that is (or may be) covered by vessel war risk insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such vessel. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the vessel to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the vessel war risk insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) SOURCE OF FUNDS FOR PAYMENT OF INDEMNITY.—The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to

the Secretary of Transportation for such purpose.

(c) DEPOSIT OF FUNDS.—Any amount transferred to the Secretary of Transportation under this section shall be deposited in, and merged with amounts in, the Vessel War Risk Insurance Fund as provided in the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(d) NOTICE TO CONGRESS.—In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $1,000,000, the Secretary of Defense shall submit to Congress—

(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the Government.

(e) IMPLEMENTING MATTERS.—(1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(f) CONSTRUCTION WITH OTHER TRANSFER AUTHORITY.—Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

(g) ANNUAL REPORT ON CONTINGENT LIABILITIES.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.).

(h) DEFINITIONS.—In this section:

(1) VESSEL WAR RISK INSURANCE.—The term ''vessel war risk insurance'' means insurance and reinsurance provided through policies issued by the Secretary of Transportation under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.), that is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) VESSEL WAR RISK INSURANCE FUND.—The term ''Vessel War Risk Insurance Fund'' means the insurance fund referred to in the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(3) LOSS.—The term ''loss'' includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the vessel war risk insurance.

(Added Pub. L. 104–201, div. A, title X, § 1079(b)(1), Sept. 23, 1996, 110 Stat. 2669; amended Pub. L. 105–85, div. A, title X, § 1073(a)(57), Nov. 18, 1997, 111 Stat. 1903.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 104–201, which was approved Sept. 23, 1996.

The Merchant Marine Act, 1936, referred to in subsecs. (g) and (h)(1), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XII of the Act is classified generally to subchapter XII (§ 1281 et seq.) of chapter 27 of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1245 of Title 46, Appendix, and Tables.

AMENDMENTS

1997—Subsec. (a)(1)(B). Pub. L. 105–85 struck out ''on which'' after ''after the date on which''.

§ 2646. Travel services: procurement for official and unofficial travel under one contract

(a) AUTHORITY.—The head of an agency may enter into a contract for travel-related services that provides for the contractor to furnish services for both official travel and unofficial travel.

(b) CREDITS, DISCOUNTS, COMMISSIONS, FEES.—(1) A contract entered into under this section may provide for credits, discounts, or commissions or other fees to accrue to the Department of Defense. The accrual and amounts of credits, discounts, or commissions or other fees may be determined on the basis of the volume (measured in the number or total amount of transactions or otherwise) of the travel-related sales that are made by the contractor under the contract.

(2) The evaluation factors applicable to offers for a contract under this section may include a factor that relates to the estimated aggregate value of any credits, discounts, commissions, or other fees that would accrue to the Department of Defense for the travel-related sales made under the contract.

(3) Commissions or fees received by the Department of Defense as a result of travel-related sales made under a contract entered into under this section shall be distributed as follows:

(A) For amounts relating to sales for official travel, credit to appropriations available for official travel for the fiscal year in which the amounts were charged.

(B) For amounts relating to sales for unofficial travel, deposit in nonappropriated fund accounts available for morale, welfare, and recreation programs.

(c) DEFINITIONS.—In this section:

(1) The term ''head of an agency'' has the meaning given that term in section 2302(1) of this title.

(2) The term ''official travel'' means travel at the expense of the Federal Government.

(3) The term ''unofficial travel'' means personal travel or other travel that is not paid for or reimbursed by the Federal Government out of appropriated funds.

(d) INAPPLICABILITY TO COAST GUARD AND NASA.—This section does not apply to the Coast

Guard when it is not operating as a service in the Navy, nor to the National Aeronautics and Space Administration.

(Added Pub. L. 105–261, div. A, title VIII, § 813(a), Oct. 17, 1998, 112 Stat. 2087.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2647. Next-of-kin of persons unaccounted for from conflicts after World War II: transportation to annual meetings

The Secretary of Defense may provide transportation for the next-of-kin of persons who are unaccounted for from the Korean conflict, the Cold War, Vietnam War era, or the Persian Gulf War to and from an annual meeting in the United States. Such transportation shall be provided under such regulations as the Secretary of Defense may prescribe.

(Added Pub. L. 107–107, div. A, title V, § 574(a), Dec. 28, 2001, 115 Stat. 1122.)

AVAILABILITY OF FUNDS FOR NEXT-OF-KIN OF VIETNAM ERA INDIVIDUALS

Pub. L. 107–117, div. A, title VIII, § 8018, Jan. 10, 2002, 115 Stat. 2251, provided that: ''Funds available in this Act [see Tables for classification] and hereafter may be used to provide transportation for the next-of-kin of individuals who have been prisoners of war or missing in action from the Vietnam era to an annual meeting in the United States, under such regulations as the Secretary of Defense may prescribe.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 106–259, title VIII, § 8018, Aug. 9, 2000, 114 Stat. 678.

Pub. L. 106–79, title VIII, § 8018, Oct. 25, 1999, 113 Stat. 1235.

Pub. L. 105–262, title VIII, § 8018, Oct. 17, 1998, 112 Stat. 2301.

Pub. L. 105–56, title VIII, § 8018, Oct. 8, 1997, 111 Stat. 1224.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8019], Sept. 30, 1996, 110 Stat. 3009–71, 3009–92.

Pub. L. 104–61, title VIII, § 8025, Dec. 1, 1995, 109 Stat. 657.

Pub. L. 103–335, title VIII, § 8031, Sept. 30, 1994, 108 Stat. 2625.

Pub. L. 103–139, title VIII, § 8034, Nov. 11, 1993, 107 Stat. 1447.

Pub. L. 102–396, title IX, § 9046, Oct. 6, 1992, 106 Stat. 1912.

Pub. L. 102–172, title VIII, § 8047, Nov. 26, 1991, 105 Stat. 1182.

Pub. L. 101–511, title VIII, § 8051, Nov. 5, 1990, 104 Stat. 1886.

Pub. L. 101–165, title IX, § 9065, Nov. 21, 1989, 103 Stat. 1143.

CHAPTER 159—REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

Sec.
2661. Miscellaneous administrative provisions relating to real property.
[2661a. Repealed.]
2662. Real property transactions: reports to congressional committees.
2663. Acquisition.
2664. Acquisition of property for lumber production.
2665. Sale of certain interests in land; logs.
2666. Acquisition: land purchase contracts; limitation on commission.
2667. Leases: non-excess property of military departments.
2667a. Leases: non-excess property of Defense agencies.
2668. Easements for rights-of-way.
2669. Easements for rights-of-way: gas, water, sewer pipe lines.
2670. Military installations: use by American National Red Cross; use as polling places.
2671. Military reservations and facilities: hunting, fishing, and trapping.
2672. Acquisition: interests in land when cost is not more than $500,000.
2672a. Acquisition: interests in land when need is urgent.
2673. Acquisition of certain interests in land: availability of funds.
2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region.
2675. Leases: foreign countries.
2676. Acquisition: limitation.
2677. Options: property required for military construction projects.
2678. Feral horses and burros: removal from military installations.
2679. Representatives of veterans' organizations: use of space and equipment.
2680. Leases: land for special operations activities.
2681. Use of test and evaluation installations by commercial entities.
2682. Facilities for defense agencies.
2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations.
2684. Cooperative agreements for management of cultural resources.
2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations.
2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities.
2686. Utilities and services: sale; expansion and extension of systems and facilities.
2687. Base closures and realignments.
2688. Utility systems: conveyance authority.
2689. Development of geothermal energy on military lands.
2690. Fuel sources for heating systems; prohibition on converting certain heating facilities.
2691. Restoration of land used by permit or lease.
2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials.
2693. Conveyance of certain property: Department of Justice correctional options program.
2694. Conservation and cultural activities.
2694a. Conveyance of surplus real property for natural resource conservation.
2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions.
2696. Screening of real property for further Federal use before conveyance.

HISTORICAL AND REVISION NOTES

1962 ACT

This section makes necessary clerical amendments to chapter analysis.

AMENDMENTS

2002—Pub. L. 107–314, div. B, title XXVIII, §§2811(b), 2812(a)(2), Dec. 2, 2002, 116 Stat. 2707, 2709, added items 2684a and 2694a.

2001—Pub. L. 107–107, div. A, title X, §1048(a)(26)(B)(ii), title XVI, §1607(b)(3), Dec. 28, 2001, 115 Stat. 1225, 1280, substituted ''Military installations: use by American National Red Cross; use as polling places'' for ''Licenses: military installations; erection and use of buildings; American National Red Cross'' in item 2670 and ''Conveyance of certain property: Department of Justice correctional options program'' for ''Conveyance of certain property'' in item 2693.

1998—Pub. L. 105–261, div. B, title XXVIII, §2812(b)(2), Oct. 17, 1998, 112 Stat. 2206, struck out ''from other agencies'' after ''lease'' in item 2691.

1997—Pub. L. 105–85, div. A, title III, §§343(g)(3), 371(c)(2), title X, §§1061(c)(2), 1062(b), div. B, title XXVIII, §§2811(b)(2), 2812(b), 2813(b), 2814(a)(2), Nov. 18, 1997, 111 Stat. 1688, 1705, 1891, 1892, 1992–1995, inserted ''of military departments'' after ''property'' in item 2667, added item 2667a, substituted ''$500,000'' for ''$200,000'' in item 2672, added items 2686 and 2688, substituted ''Storage, treatment, and'' for ''Storage and'' in item 2692, and added items 2695 and 2696.

1996—Pub. L. 104–201, div. A, title III, §§332(a)(2), 369(b)(2), div. B, title XXVIII, §2862(b), Sept. 23, 1996, 110 Stat. 2485, 2498, 2805, substituted ''of Pentagon Reservation and defense facilities in National Capital Region'' for ''of the Pentagon Reservation'' in item 2674 and added items 2684 and 2694.

1993—Pub. L. 103–160, div. A, title VIII, §846(b), Nov. 30, 1993, 107 Stat. 1723, added item 2681.

1992—Pub. L. 102–496, title IV, §403(a)(2)(B), Oct. 24, 1992, 106 Stat. 3185, substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in item 2662.

1991—Pub. L. 102–190, div. B, title XXVIII, §2863(a)(2), Dec. 5, 1991, 105 Stat. 1560, added item 2680.

1990—Pub. L. 101–647, title XVIII, §1802(b), Nov. 29, 1990, 104 Stat. 4850, added item 2693.

Pub. L. 101–510, div. A, title XIV, §1481(h)(2), div. B, title XXVIII, §2804(a)(2), Nov. 5, 1990, 104 Stat. 1708, 1785, added items 2674 and 2678.

1988—Pub. L. 100–370, §§1(*l*)(4), 2(b)(2), July 19, 1988, 102 Stat. 849, 854, added items 2661 and 2673 and struck out item 2693 ''Prohibition on contracts for performance of firefighting or security-guard functions''.

1987—Pub. L. 100–224, §5(b)(3), Dec. 30, 1987, 101 Stat. 1538, inserted ''; prohibition on converting certain heating facilities'' after ''systems'' in item 2690.

Pub. L. 100–180, div. A, title XI, §1112(b)(3), Dec. 4, 1987, 101 Stat. 1147, inserted ''or security-guard'' before ''functions'' in item 2693.

1986—Pub. L. 99–661, div. A, title XII, §§1205(a)(2), 1222(a)(2), Nov. 14, 1986, 100 Stat. 3972, 3976, substituted ''Fuel sources for heating systems'' for ''Restriction on fuel sources for new heating systems'' in item 2690 and added item 2693.

Pub. L. 98–115, title VIII, §807(c)(2), Oct. 11, 1983, 97 Stat. 789; Pub. L. 99–167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, struck out item 2667a ''Sale and replacement of nonexcess real property'', eff. Oct. 1, 1986.

1985—Pub. L. 99–167, title VIII, §810(b)(2), Dec. 3, 1985, 99 Stat. 990, substituted ''$200,000'' for ''$100,000'' in item 2672.

Pub. L. 99–145, title XII, §1224(c)(2), Nov. 8, 1985, 99 Stat. 729, inserted ''; minimum drinking age on military installations'' in item 2683.

1984—Pub. L. 98–407, title VIII, §§804(b), 805(b), Aug. 28, 1984, 98 Stat. 1519, 1521, added items 2691 and 2692.

1983—Pub. L. 98–115, title VIII, §807(a)(2), Oct. 11, 1983, 97 Stat. 788, added item 2667a.

1982—Pub. L. 97–321, title VIII, §805(b)(4), Oct. 15, 1982, 96 Stat. 1573, substituted in item 2689 ''Development of geothermal energy on military lands'' for ''Development of sources of energy on or for military installations''.

Pub. L. 97–295, §1(31)(B), Oct. 12, 1982, 96 Stat. 1296, struck out item 2661a ''Appropriations for advance planning of military public works''.

Pub. L. 97–258, §2(b)(6)(A), Sept. 13, 1982, 96 Stat. 1053, added item 2661a.

Pub. L. 97–214, §§6(c)(2), 10(a)(4), (5)(C), July 12, 1982, 96 Stat. 173, 175, struck out items 2661 ''Planning and construction of public works projects by military departments'', 2673 ''Restoration or replacement of facilities damaged or destroyed'', 2674 ''Minor construction projects'', 2678 ''Acquisition of mortgaged housing units'', 2681 ''Construction or acquisition of family housing and community facilities in foreign countries'', 2684 ''Construction of family quarters; limitations on space'', 2686 ''Leases: military family housing'', and 2688 ''Use of solar energy systems in new facilities'', substituted ''Options: property required for military construction projects'' for ''Options: property required for public works projects of military departments'' in item 2677, and added items 2689 and 2690.

1980—Pub. L. 96–513, title V, §511(89), Dec. 12, 1980, 94 Stat. 2928, struck out item 2680 ''Reimbursement of owners of property acquired for public works projects for moving expenses''.

Pub. L. 96–418, title VIII, §806(b), Oct. 10, 1980, 94 Stat. 1777, as amended by Pub. L. 97–22, §11(c), July 10, 1981, 95 Stat. 138, substituted ''$100,000'' for ''$50,000'' in item 2762.

1979—Pub. L. 96–125, title VIII, §804(a)(2), Nov. 26, 1979, 93 Stat. 948, added item 2688.

1977—Pub. L. 95–82, title V, §504(a)(2), title VI, §§608(b), 612(b), Aug. 1, 1977, 91 Stat. 371, 378, 380, substituted ''Minor construction projects'' for ''Establishment and development of military facilities and installations costing less than $400,000'' in item 2674 and added items 2686 and 2687.

1975—Pub. L. 94–107, title VI, §607(1), (9), (10), Oct. 7, 1975, 89 Stat. 566, 567, substituted ''$400,000'' for ''$300,000'' in item 2674, struck out ''; structures not on a military base'' in item 2675, and added item 2672a.

1974—Pub. L. 93–552, title VI, §611, Dec. 27, 1974, 88 Stat. 1765, added item 2685.

1973—Pub. L. 93–166, title V, §509(b), Nov. 29, 1973, 87 Stat. 677, added item 2684.

1971—Pub. L. 92–145, title VII, §707(2), Oct. 27, 1971, 85 Stat. 411, substituted ''$50,000'' for ''$25,000'' in item 2672.

1970—Pub. L. 91–511, title VI, §§607(1), 613(2), Oct. 26, 1970, 84 Stat. 1223, 1226, substituted ''$300,000'' for ''$200,000'' in item 2674, and added item 2683.

1963—Pub. L. 88–174, title VI, §609(a)(2), Nov. 7, 1963, 77 Stat. 329, added item 2682.

1962—Pub. L. 87–651, title I, §112(d), title II, §209(b), Sept. 7, 1962, 76 Stat. 512, 524, substituted ''$25,000'' for ''$5,000'' in item 2672 and added items 2679 to 2681.

1960—Pub. L. 86–500, title V, §511(2), June 8, 1960, 74 Stat. 187, substituted ''Reports to the Armed Services Committees'' for ''Agreement with Armed Services Committees; reports'' in item 2662.

1958—Pub. L. 85–861, §1(52), Sept. 2, 1958, 72 Stat. 1461, added items 2672 to 2678.

Pub. L. 85–337, §4(2), Feb. 28, 1958, 72 Stat. 29, added item 2671.

§ 2661. Miscellaneous administrative provisions relating to real property

(a) Appropriations for operation and maintenance of the active forces shall be available for the following:

(1) The repair of facilities.

(2) The installation of equipment in public and private plants.

(b) The Secretary of Defense and the Secretary of each military department may provide for the following:

(1) The leasing of buildings and facilities (including the payment of rentals for special purpose space at the seat of Government). Rental for such leases may be paid in advance in connection with—

(A) the conduct of field exercises and maneuvers; and

(B) the administration of the Act of July 9, 1942 (43 U.S.C. 315q).

(2) The maintenance of defense access roads which are certified to the Secretary of Transportation as important to the national defense under the provisions of section 210 of title 23.

(Added Pub. L. 100–370, § 1(*l*)(3), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

Subsection (a) of this section and sections 2241(a) and 2253(b) of this title are based on Pub. L. 98–212, title VII, § 735, Dec. 8, 1983, 97 Stat. 1444, as amended by Pub. L. 98–525, title XIV, §§ 1403(a)(2), 1404, Oct. 19, 1984, 98 Stat. 2621.

Subsection (b) is based on Pub. L. 99–190, § 101(b) [title VIII, § 8005(d), (f)], Dec. 19, 1985, 99 Stat. 1185, 1202.

PRIOR PROVISIONS

A prior section 2661, act Aug. 10, 1956, ch. 1041, 70A Stat. 147, related to planning and construction of public works projects by military departments, prior to repeal by Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

PILOT PROGRAM TO PROVIDE ADDITIONAL TOOLS FOR EFFICIENT OPERATION OF MILITARY INSTALLATIONS

Pub. L. 107–107, div. B, title XXVIII, § 2813, Dec. 28, 2001, 115 Stat. 1308, provided that:

''(a) INITIATIVE AUTHORIZED.—The Secretary of Defense may carry out a pilot program (to be known as the 'Pilot Efficient Facilities Initiative') for purposes of determining the potential for increasing the efficiency and effectiveness of the operation of military installations.

''(b) DESIGNATION OF PARTICIPATING MILITARY INSTALLATIONS.—(1) The Secretary of Defense may designate up to two military installations of each military department for participation in the Initiative.

''(2) Before designating a military installation under paragraph (1), the Secretary shall consult with employees at the installation and communities in the vicinity of the installation regarding the Initiative.

''(3) The Secretary shall transmit to Congress written notification of the designation of a military installation to participate in the Initiative not later than 30 days before taking any action to carry out the Initiative at the installation. The notification shall include a description of the steps taken by the Secretary to comply with paragraph (2).

''(c) MANAGEMENT PLAN.—(1) As part of the notification required under subsection (b), the Secretary of Defense shall submit a management plan for the Initiative at the military installation designated in the notification.

''(2) The management plan for a designated military installation shall include a description of—

''(A) each proposed lease of real or personal property located at the military installation;

''(B) each proposed disposal of real or personal property located at the installation;

''(C) each proposed leaseback of real or personal property leased or disposed of at the installation;

''(D) each proposed conversion of services at the installation from Federal Government performance to non-Federal Government performance, including performance by contract with a State or local government or private entity or performance as consideration for the lease or disposal of property at the installation; and

''(E) each other action proposed to be taken to improve mission effectiveness and reduce the cost of providing quality installation support at the installation.

''(3) With respect to each proposed action described under paragraph (2), the management plan shall include—

''(A) an estimate of the savings expected to be achieved as a result of the action;

''(B) each regulation not required by statute that is proposed to be waived to implement the action; and

''(C) each statute or regulation required by statute that is proposed to be waived to implement the action, including—

''(i) an explanation of the reasons for the proposed waiver; and

''(ii) a description of the action to be taken to protect the public interests served by the statute or regulation, as the case may be, in the event of the waiver.

''(4) The management plan shall include measurable criteria for the evaluation of the effects of the actions taken pursuant to the Initiative at the designated military installation.

''(d) WAIVER OF STATUTORY REQUIREMENTS.—The Secretary of Defense may waive any statute, or regulation required by statute, for purposes of carrying out the Initiative only if specific authority for the waiver of such statute or regulation is provided in a law that is enacted after the date of the enactment of this Act [Dec. 28, 2001].

''(e) INSTALLATION EFFICIENCY INITIATIVE FUND.—(1) There is established on the books of the Treasury a fund to be known as the 'Installation Efficiency Initiative Fund'.

''(2) There shall be deposited in the Fund all cash rents, payments, reimbursements, proceeds, and other amounts from leases, sales, or other conveyances or transfers, joint activities, and other actions taken under the Initiative.

''(3) To the extent provided in advance in authorization Acts and appropriations Acts, amounts in the Fund shall be available to the Secretary of Defense for purposes of managing capital assets and providing support services at military installations participating in the Initiative. Amounts in the Fund may be used for such purposes in addition to, or in combination with, other amounts authorized to be appropriated for such purposes. Amounts in the Fund shall be available for such purposes for five years.

''(4) Subject to applicable financial management regulations, the Secretary shall structure the Fund, and provide administrative policies and procedures, in order to provide proper control of deposits in and disbursements from the Fund.

''(f) REPORT.—Not later than December 31, 2004, the Secretary of Defense shall submit to Congress a report on the Initiative. The report shall contain a description of the actions taken under the Initiative and include such other information, including recommendations, as the Secretary considers appropriate regarding the Initiative.

''(g) DEFINITIONS.—In this section:

''(1) The term 'Initiative' means the Pilot Efficient Facilities Initiative.

''(2) The term 'Fund' means the Installation Efficiency Initiative Fund.

''(3) The term 'military installation' has the meaning given such term in section 2687(e) of title 10, United States Code.

''(h) TERMINATION.—The authority of the Secretary of Defense to carry out the Initiative shall terminate December 31, 2005.''

STUDY OF ESTABLISHMENT OF LAND MANAGEMENT AND TRAINING CENTER

Pub. L. 103–337, div. A, title III, § 329, Oct. 5, 1994, 108 Stat. 2715, directed Secretary of the Army to submit to Congress not later than May 1, 1996, a study and report on feasibility and advisability of establishing a center for land management activities and land management training activities of Department of Defense.

[§ 2661a. Repealed. Pub. L. 97–295, § 1(31)(A), Oct. 12, 1982, 96 Stat. 1296]

Section, added Pub. L. 97–258, § 2(b)(6)(B), Sept. 13, 1982, 96 Stat. 1054, authorized appropriations for advance design of military public works not otherwise authorized and for construction management of foreign government funded projects used primarily by United States armed forces, and required preliminary reports to Congress on military public works whose projected advance costs exceeded a specified level.

The repeal of this section by Pub. L. 97–295 reflected the effect of section 7(2) and (8) of the Military Construction Codification Act (Pub. L. 97–214, July 12, 1982, 96 Stat. 173), which repealed the source statutes of this section (subsec. (a) was based on acts Sept. 28, 1951, ch. 434, § 504, 65 Stat. 364; July 15, 1955, ch. 368, § 512, 69 Stat. 352; Dec. 23, 1981, Pub. L. 97–99, § 902, 95 Stat. 1381 (31 U.S.C. 723); and subsec. (b) was based on acts Sept. 12, 1966, Pub. L. 89–568, § 612, 80 Stat. 756; Dec. 27, 1974, Pub. L. 93–552, § 607, 88 Stat. 1763 (31 U.S.C. 723a)) subsequent to Apr. 15, 1982, the cut-off date prescribed by section 4(a) of Pub. L. 97–258, section 2(b)(6)(B) of which enacted this section.

§ 2662. Real property transactions: reports to congressional committees

(a) GENERAL NOTICE AND WAIT REQUIREMENTS.—The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives:

(1) An acquisition of fee title to any real property, if the estimated price is more than $500,000.

(2) A lease of any real property to the United States, if the estimated annual rental is more than $500,000.

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $500,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $500,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $500,000.

(6) Any termination or modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the use of the property by the military department.

If a transaction covered by clause (1) or (2) is part of a project, the report must include a summarization of the general plan for that project, including an estimate of the total cost of the lands to be acquired or leases to be made. The report required by this subsection concerning any report of excess real property described in clause (5) shall contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such property for other real property authorized to be acquired for military purposes and has determined that the property proposed to be declared excess is not suitable for such purpose.

(b) ANNUAL REPORTS ON CERTAIN MINOR TRANSACTIONS.—The Secretary of each military department shall submit annually to the congressional committees named in subsection (a) a report on transactions described in subsection (a) that involve an estimated value of more than the simplified acquisition threshold specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)), but not more than $500,000.

(c) GEOGRAPHIC SCOPE; EXCEPTED PROJECTS.—This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) STATEMENTS OF COMPLIANCE IN TRANSACTION INSTRUMENTS.—A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(e) NOTICE AND WAIT REGARDING LEASES OF SPACE FOR DoD BY GSA.—No element of the Department of Defense shall occupy any general purpose space leased for it by the General Services Administration at an annual rental in excess of $500,000 (excluding the cost of utilities and other operation and maintenance services), if the effect of such occupancy is to increase the total amount of such leased space occupied by all elements of the Department of Defense, until the expiration of thirty days from the date upon which a report of the facts concerning the proposed occupancy is submitted to the congressional committees named in subsection (a).

(f) REPORTS ON TRANSACTIONS INVOLVING INTELLIGENCE COMPONENTS.—Whenever a transaction covered by this section is made by or on behalf of an intelligence component of the Department of Defense or involves real property used by such a component, any report under this section with respect to the transaction that is submitted to the congressional committees named in subsection (a) shall be submitted concurrently to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(g) EXCEPTIONS FOR TRANSACTIONS FOR WAR AND CERTAIN EMERGENCY AND OTHER OPERATIONS.—(1) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection, and the reporting requirement set forth in subsection (e) shall not apply with respect to a real property transaction otherwise covered by that subsection, if the Secretary concerned determines that the transaction is made as a result of any of the following:

(A) A declaration of war.

(B) A declaration of a national emergency by the President pursuant to the National Emergencies Act (50 U.S.C. 1601 et seq.).

(C) A declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(D) The use of the militia or the armed forces after a proclamation to disperse under section 334 of this title.

(E) A contingency operation.

(2) The reporting requirement set forth in subsection (a) shall not apply with respect to a real property transaction otherwise covered by that subsection if the Secretary concerned determines that—

(A) an event listed in paragraph (1) is imminent; and

(B) the transaction is necessary for purposes of preparation for such event.

(3) Not later than 30 days after entering into a real property transaction covered by paragraph (1) or (2), the Secretary concerned shall submit to the committees named in subsection (a) a report on the transaction. The report shall set forth any facts or information which would otherwise have been submitted in a report on the transaction under subsection (a) or (e), as the case may be, but for the operation of paragraph (1) or (2).

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 86–70, § 6(c), June 25, 1959, 73 Stat. 142; Pub. L. 86–500, title V, § 511(1), June 8, 1960, 74 Stat. 186; Pub. L. 86–624, § 4(c), July 12, 1960, 74 Stat. 411; Pub. L. 92–145, title VII, § 707(5), Oct. 27, 1971, 85 Stat. 412; Pub. L. 92–545, title VII, § 709, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–552, title VI, § 610, Dec. 27, 1974, 88 Stat. 1765; Pub. L. 94–107, title VI, § 607(5), (6), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94–431, title VI, § 614, Sept. 30, 1976, 90 Stat. 1367; Pub. L. 96–418, title VIII, § 805, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 100–456, div. B, title XXVIII, § 2803, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–510, div. A, title XIII, § 1311(6), Nov. 5, 1990, 104 Stat. 1670; Pub. L. 102–496, title IV, § 403(a)(1), (2)(A), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, § 1502(a)(23), div. D, title XLIII, § 4321(b)(21), Feb. 10, 1996, 110 Stat. 505, 673; Pub. L. 105–261, div. B, title XXVIII, § 2811, Oct. 17, 1998, 112 Stat. 2204; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811], Oct. 30, 2000, 114 Stat. 1654, 1654A–416.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2662(a)	40:551.	Sept. 28, 1951, ch. 434, §§ 601–604, 65 Stat. 365, 366.
2662(b)	40:552.	
2662(c)	40:553.	
2662(d)	40:554.	

In subsection (a), the words ''must come to an agreement * * * before entering into any of the following transactions by or for the use of that department:'' are substituted for the words ''shall come into agreement * * * with respect to those real-estate actions by or for the use of the military departments * * * that are described in subsection (a)–(e) of this section, and in the manner therein described''. The last sentence is substituted for the last sentence of 40:551(a) and 40:551(b).

In subsection (a)(4), the words ''or another military department'' are substituted for the words ''including transfers between the military departments''. The words ''under the jurisdiction of the military departments'' are omitted as surplusage.

In subsection (b), the words ''more than $5,000 but not more than $25,000'' are substituted for the words ''between $5,000 and $25,000''. The words ''shall report'' are substituted for the words ''will, in addition, furnish * * * reports''.

In subsection (c), the words ''the United States, Alaska, Hawaii'' are substituted for the words ''the continental United States, the Territory of Alaska, the Territory of Hawaii'', since, as defined in section 101(1) of this title, ''United States'' includes the States and the District of Columbia; and ''Territories'' includes Alaska and Hawaii.

In subsection (d), the words ''A statement * * * that the requirements of this section have been met'' are substituted for the words ''A recital of compliance with this chapter * * * to the effect that the requirements of this chapter have been complied with''. The words ''in the alternative'', ''or lease'', and ''evidence thereof'' are omitted as surplusage.

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (g)(1)(B), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, referred to in subsec. (g)(1)(C), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811(a)], substituted ''$500,000'' for ''$200,000'' wherever appearing.

Subsec. (b). Pub. L. 106–398 substituted ''specified in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)),'' for ''under section 2304(g) of this title'' and ''$500,000'' for ''$200,000''.

Subsec. (e). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2811(a)], substituted ''$500,000'' for ''$200,000''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsecs. (a) to (f). Pub. L. 105–261, § 2811(b), inserted subsec. headings.

Subsec. (g). Pub. L. 105–261, § 2811(a), added subsec. (g).

1996—Subsec. (a). Pub. L. 104–106, § 1502(a)(23)(A), substituted ''the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''the Committees on Armed Services of the Senate and House of Representatives'' in introductory provisions and struck out ''to be submitted to the Committees on Armed Services of the Senate and House of Representatives'' after ''The report required by this subsection'' in concluding provisions.

Subsec. (b). Pub. L. 104–106, § 4321(b)(21), substituted ''simplified acquisition threshold'' for ''small purchase threshold''.

Pub. L. 104–106, § 1502(a)(23)(B), substituted ''shall submit annually to the congressional committees named in subsection (a) a report'' for ''shall report annually to the Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (e). Pub. L. 104–106, § 1502(a)(23)(C), substituted ''the congressional committees named in subsection (a)'' for ''the Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (f). Pub. L. 104–106, § 1502(a)(23)(D), substituted ''the congressional committees named in subsection (a) shall'' for ''the Committees on Armed Services of the Senate and the House of Representatives shall''.

1992—Pub. L. 102–496, §403(a)(2)(A), substituted ''reports to congressional committees'' for ''Reports to the Armed Services Committees'' in section catchline.

Subsec. (f). Pub. L. 102–496, §403(a)(1), added subsec. (f).

1990—Subsec. (b). Pub. L. 101–510 substituted ''the small purchase threshold under section 2304(g) of this title'' for ''$5,000''.

1988—Subsecs. (a), (b), (e). Pub. L. 100–456 substituted ''$200,000'' for ''$100,000'' wherever appearing.

1980—Subsecs. (a), (b), (e). Pub. L. 96–418 substituted ''$100,000'' for ''$50,000'' wherever appearing.

1976—Subsec. (a). Pub. L. 94–431 provided that the report on the excess property owned by the United States contain a certification by the Secretary concerned that he has considered the feasibility of exchanging such excess property for property suitable for military purposes and has determined such excess property not suitable for exchange.

1975—Subsec. (b). Pub. L. 94–107, §607(5), substituted requirement of annual reports for requirement of quarterly reports.

Subsec. (c). Pub. L. 94–107, §607(6), inserted provisions extending the applicability of the section to Guam, the American Samoa, and the Trust Territory of the Pacific Islands, and, in provisions relating to the inapplicability of the section, inserted reference to any real property acquisition specifically authorized in a Military Construction Authorization Act.

1974—Subsec. (a)(6). Pub. L. 93–552 added par. (6).

1972—Subsec. (e). Pub. L. 92–545 added subsec. (e).

1971—Subsec. (a)(3). Pub. L. 92–145 made the restriction applicable to a license of real property and substituted ''estimated annual fair market rental value'' for ''estimated annual rental''.

1960—Subsec. (a). Pub. L. 86–500 prohibited the Secretary of a military department, or his designee, from entering into any of the transactions listed in subsec. (a) until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and House of Representatives, and increased the amounts in pars. (1) to (5) from $25,000 to $50,000.

Subsec. (b). Pub. L. 86–500 substituted ''$50,000'' for ''$25,000''.

Subsec. (c). Pub. L. 86–624 and Pub. L. 86–500 struck out reference to Hawaii.

Subsec. (d). Pub. L. 86–500 reenacted subsection without change.

1959—Subsec. (c). Pub. L. 86–70 struck out reference to Alaska.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(21) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

REDUCTION OR REALIGNMENT OF TRAINING BASES

Pub. L. 95–485, title VI, §602, Oct. 20, 1978, 92 Stat. 1617, prohibited any action to implement any substantial reduction or force structure realignment of the composite of installations, posts, camps, stations, and bases that had as a primary or secondary mission the conduct of formal entry level, advanced individual, or specialty training as a part of the fiscal year 1979 Defense manpower program unless certain criteria were complied with.

CLOSING OF FACILITIES; CLOSURES OR REALIGNMENTS PUBLICLY ANNOUNCED AFTER SEPTEMBER 30, 1977

Pub. L. 95–82, title VI, §612(c), Aug. 1, 1977, 91 Stat. 380, provided that: ''Section 611 of the Military Construction Authorization Act, 1966 (Public Law 89–188; 10 U.S.C. 2662 note), and section 612 of the Military Construction Authorization Act, 1977 (Public Law 94–431; 90 Stat. 1366) [which was not classified to the Code], shall be inapplicable in the case of any closure of a military installation, and any realignment with respect to a military installation, which is first publicly announced after September 30, 1977.''

CLOSING OF FACILITIES; REPORTS TO CONGRESS

Pub. L. 89–188, title VI, §611, Sept. 16, 1965, 79 Stat. 818, as amended by Pub. L. 89–568, title VI, §613, Sept. 12, 1966, 80 Stat. 757, required a report to Congress and a waiting period in connection with the closing of Defense Department facilities, prior to repeal by Pub. L. 97–214, §7(7), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2667 of this title; title 42 section 3374.

§ 2663. Acquisition

(a) The Secretary of a military department may have proceedings brought in the name of the United States, in a court of proper jurisdiction, to acquire by condemnation any interest in land, including temporary use, needed for—

(1) the site, construction, or operation of fortifications, coast defenses, or military training camps;

(2) the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives or other munitions of war; or

(3) the development and transmission of power for the operation of plants under clause (2).

(b) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the land to the extent of the interest sought to be acquired.

(c) The Secretary of the military department concerned may contract for or buy any interest in land, including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and the Secretary considers that price to be reasonable.

(d) The Secretary of the military department concerned may accept for the United States a gift of any interest in land, including temporary use, for any purpose named in subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 147; Pub. L. 85–861, §33(a)(14), Sept. 2, 1958, 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2663(a)	50:171 (less provisos).	July 2, 1917, ch. 35; restated Apr. 11, 1918, ch. 51, 40 Stat. 518.
2663(b)	50:171 (last proviso).	
2663(c)	50:171 (1st proviso).	
2663(d)	50:171 (2d proviso). [50:171 is made applicable to the Navy by 50:171–1 (less 16th through 21st words)].	Oct. 25, 1951, ch. 563, §101 (less 22d through 43d words), 65 Stat. 641.

In subsection (a), the words ''brought * * * in a court of proper jurisdiction'' are substituted for the words

''instituted * * * in any court having jurisdiction of such proceedings''. The words ''any interest in land, including temporary use'' are substituted for the words ''any land, temporary use thereof or other interest therein, or right pertaining thereto''. The words ''relating to suits for the condemnation of property'' are omitted as surplusage. The last sentence is substituted for 50:171 (words between semicolon and first proviso). The Act of July 2, 1917, ch. 35, as restated by the Act of April 11, 1918, ch. 51 (last 77 words), are not contained in 50:171. They are also omitted from the revised section as executed.

In subsection (a)(1), the word ''location'' is omitted as surplusage. The words ''operation of'' are substituted for the words ''prosecution of works for''.

In subsection (b), the words ''That when such property is acquired'' are omitted as surplusage. The words ''under subsection (a)'' are substituted for the words ''of any land, temporary use thereof or other use therein or right pertaining thereto to be acquired for any of the purposes aforesaid''. The words ''take and use'' are substituted for the words ''possession thereof may be taken * * * and used for military purposes''.

In subsection (c), the words ''as soon as the owner fixes a price for it'' are substituted for the words ''That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same''. The word ''considers'' is substituted for the words ''which in the opinion''. The words ''contract for or buy'' are substituted for the words ''purchase or enter into a contract''. The words ''without further delay'' are omitted as surplusage.

In subsection (d), the words ''a gift of any interest in land * * * for any purpose named in subsection (a)'' are substituted for 50:171 (last 15 words of 2d proviso).

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–861 struck out provisions requiring proceedings under this subsection to be in accordance with the law of the State in which the suit is brought.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Procedure in condemnation proceedings, see rule 71A, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 2664. Acquisition of property for lumber production

(a) The Secretary of a military department, the Secretary of Transportation, or any one or more of them, may have proceedings brought in the name of the United States to acquire by condemnation any interest in property named in subsection (b), including temporary use, and needed for—

(1) the production of aircraft, vessels, dry docks, or equipment for them;

(2) the procurement of supplies for aircraft, vessels, and dry docks; or

(3) housing for persons employed by the United States in connection with functions of the Army, Navy, Air Force, or Marine Corps, or the functions transferred to the Secretary of Transportation under section 3 of the Maritime Act of 1981 (46 U.S.C. App. 1602).

(b) The kinds of property that may be acquired by condemnation under subsection (a) are—

(1) standing or fallen timber;

(2) sawmills;

(3) camps;

(4) machinery;

(5) logging roads;

(6) rights-of-way;

(7) supplies; and

(8) works, property, or appliances suitable for the production of lumber and timber products.

(c) Jurisdiction over condemnation proceedings under this section is vested in the United States District Court for the district in which the property, or any part of it, sought to be condemned is located, regardless of its value.

(d) In time of war or when war is imminent, the United States may, immediately upon the filing of a petition for condemnation under subsection (a), take and use the property to the extent of the interest sought to be acquired.

(e) A person named in subsection (a) may contract for or buy any interest in property named in subsection (b), including temporary use, needed for any purpose named in subsection (a), as soon as the owner fixes a price for it and that person considers that price to be reasonable.

(f) A person named in subsection (a) may accept for the United States a gift of any property named in subsection (b), including temporary use, for any purpose named in subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 148; Pub. L. 85–861, § 33(a)(15), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 96–513, title V, § 511(90), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–31, § 12(3)(A), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–295, § 1(32), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 100–26, § 7(d)(6), Apr. 21, 1987, 101 Stat. 281.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2664(a)	50:172 (1st par., less 26th through 56th words of 1st sentence; and less last sentence).	July 9, 1918, ch. 143, subch. XV, § 8 (2d par.), 40 Stat. 888.
2664(b)	50:172 (26th through 56th words of 1st sentence of 1st par.).	
2664(c)	50:172 (last sentence of 1st par.).	
2664(d)	[No source].	
2664(e)	[No source].	
2664(f)	[No source].	

In subsection (a), the introductory clause is substituted for 50:172 (1st 25 words, and 2d sentence). The words ''Secretary of Commerce'' and ''Chairman of the Federal Maritime Board'' are substituted for the words ''Chairman of the United States Maritime Commission'' and the words ''functions transferred to the Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273'' are substituted for the words ''[functions of] the United States Maritime Commission'', since the functions of the Chairman of the United States Maritime Commission and of the United States Maritime

Commission were transferred to the Secretary of Commerce and the Federal Maritime Board by that Reorganization Plan. The words ''or any one or more of them'' are substituted for the words ''individually or collectively'', to make it clear that any number of them may act and not necessarily one or all of them. The words ''equipment for them'' are substituted for the words ''their apparel or furniture''. The words ''manufacture, or building'' are omitted as covered by the word ''production''. 50:172 (1st 18 words of 3d sentence) is omitted as surplusage.

In subsection (a)(2), the word ''supplies'' is substituted for the words ''materials and equipment'', since the word ''supplies'' is defined in section 101(26) of this title to include material and equipment.

The last sentence of subsection (a) is based on the 27 words preceding the first proviso of 50:171, which is the source for section 2663(a) (last sentence) of this title, and which was incorporated into 50:172 by the cross reference in the first sentence thereof.

In subsection (b), the introductory clause is inserted for clarity. The words ''equipment, materials'' are omitted as covered by the word ''supplies'', since the word ''supplies'' is defined in section 101(26) of this title to include material and equipment.

In subsection (c), the words ''United States District Court for the district in which'' are substituted for the words ''district courts of the United States, where'' to conform to section 132 of title 28.

Subsections (d)–(f) are based on the provisos of 50:171, which are the source for section 2663(b)–(d) of this title, and which were incorporated into 50:172 by the cross reference in the first sentence thereof.

1958 ACT

The deletion of the last sentence of section 2663(a) and the last sentence of section 2664(a) reflects their implied repeal by Rule 71A of the Rules of Civil Procedure for the United States District Courts (see 28 U.S.C. 2072). (See letter from Assistant Attorney General (Lands Division), Department of Justice, August 1957, to General Counsel, Department of Defense.) The other changes conform section 2664 to section 2663, both of which were based on the same source statute (sec. 8 of the Act of July 9, 1918, ch. 143, subch. XV, 40 Stat. 888) and both of which include the temporary use of the kinds of property respectively covered.

1982 ACT

This corrects an error in an amendment to 10:2664(a) made by section 12(3)(A) of the Maritime Act of 1981 (Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 153).

AMENDMENTS

1987—Subsec. (a)(3). Pub. L. 100–26 inserted ''App.'' after ''46 U.S.C.''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''military department, the Secretary of Transportation, or any'' for ''military department'' and all that followed through ''or any'' in text preceding par. (1), substituted ''transferred to the Secretary of Transportation'' for ''transferred to the'' and all that followed in par. (3), clarifying the ambiguity created by the conflicting language of Pub. L. 96–513 and Pub. L. 97–31, and inserted reference to section 3 of the Maritime Act of 1981 (46 U.S.C. 1602).

1981—Subsec. (a). Pub. L. 97–31, in introductory text and par. (3), substituted references to Secretary of Transportation for references to Secretary of Commerce and Maritime Commission. Amendment was executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub. L. 96–513 which substituted different language than language contained in amendatory provisions of Pub. L. 97–31.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Federal Maritime Commission'' for ''Federal Maritime Board'' in two places, and substituted ''under Reorganization Plan No. 7 of 1961, effective August 12, 1961 (75 Stat. 840)'' for ''by 1950 Reorganization Plan No. 21, effective May 24, 1950 (64 Stat. 1273)''.

1958—Subsec. (a). Pub. L. 85–861, §33(a)(15)(A), (B), inserted '', including temporary use,'' after ''subsection (b)'', and struck out provisions requiring all proceedings under this subsection to be in accordance with the laws of the State in which the suit is brought.

Subsec. (e). Pub. L. 85–861, §33(a)(15)(C), inserted ''named in subsection (b), including temporary use,'' after ''property''.

Subsec. (f). Pub. L. 85–861, §33(a)(15)(B), inserted '', including temporary use,'' after ''subsection (b)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2665 of this title.

§ 2665. Sale of certain interests in land; logs

(a) The President, through an executive department, may sell to any person or foreign government any interest in land that is acquired under section 2664 of this title for the production of lumber or timber products, except land under the control of the Department of the Army or the Department of the Air Force.

(b) The President, through an executive department, may sell to any person or foreign government any forest products produced on land owned or leased by a military department or the Department in which the Coast Guard is operating.

(c) Sales under subsection (a) or (b) shall be at prices determined by the President acting through the selling agency.

(d) Appropriations of the Department of Defense may be reimbursed for all costs of production of forest products pursuant to this section from amounts received as proceeds from the sale of any such property.

(e)(1) Each State in which is located a military installation or facility from which forest products are sold in a fiscal year is entitled at the end of such year to an amount equal to 40 percent of (A) the amount received by the United States during such year as proceeds from the sale of forest products produced on such installation or facility, less (B) the amount of reimbursement of appropriations of the Department of Defense under subsection (d) during such year attributable to such installation or facility.

(2) The amount paid to a State pursuant to paragraph (1) shall be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the military installation or facility is situated.

(3) In a case in which a military installation or facility is located in more than one State or county, the amount paid pursuant to paragraph (1) shall be distributed in a manner proportional to the area of such installation or facility in each State or county.

(f)(1) There is in the Treasury a reserve account administered by the Secretary of Defense

for the purposes of this section. Balances in the account may be used for costs of the military departments—

(A) for improvements of forest lands;

(B) for unanticipated contingencies in the administration of forest lands and the production of forest products for which other sources of funds are not available in a timely manner; and

(C) for natural resources management that implements approved plans and agreements.

(2) There shall be deposited into the reserve account the total amount received by the United States as proceeds from the sale of forest products sold under subsections (a) and (b) less—

(A) reimbursements of appropriations made under subsection (d), and

(B) payments made to States under subsection (e).

(3) The reserve account may not exceed $4,000,000 on December 31 of any calendar year. Unobligated balances exceeding $4,000,000 on that date shall be deposited into the United States Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149; Pub. L. 95–82, title VI, § 610, Aug. 1, 1977, 91 Stat. 378; Pub. L. 96–513, title V, § 511(91), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–31, § 12(3)(B), Aug. 6, 1981, 95 Stat. 153; Pub. L. 97–99, title IX, § 910(a), Dec. 23, 1981, 95 Stat. 1386; Pub. L. 97–295, § 1(33), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 98–407, title VIII, § 809(a), Aug. 28, 1984, 98 Stat. 1522; Pub. L. 99–561, § 4, Oct. 27, 1986, 100 Stat. 3151; Pub. L. 107–296, title XVII, § 1704(b)(4), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2665(a)	50:172 (last par., less 36th through 64th, and 73d through 109th, words).	July 9, 1918, ch. 143, subch. XV, § 8 (last par.), 40 Stat. 888.
2665(b)	50:172 (36th through 64th words of last par.).	
2665(c)	50:172 (73d through 90th words of last par.).	
2665(d)	50:172 (91st through 109th words of last par.).	

In subsection (a), the words ''an executive department or the Federal Maritime Board'' are substituted for the words ''any department or the United States Maritime Commission'' to reflect an opinion of the Judge Advocate General of the Army (JAGA 1954/1723) and to name the successor of the United States Maritime Commission. The last 18 words are inserted to reflect that opinion (see the Act of February 20, 1931 (10 U.S.C. 1354)). The words ''and dispose of'' are omitted as surplusage.

In subsection (b), the words ''an executive department or the Federal Maritime Board'' are inserted for clarity and to name the successor of the United States Maritime Commission.

In subsections (a) and (b), the word ''person'' is substituted for the words ''individuals, corporations,'' since section 1 of title 1 defines the word ''person'' to cover both individuals and corporations. The words ''States or'' are omitted as surplusage.

In subsection (c), the words ''the selling agency'' are substituted for the words ''his above representatives selling or disposing of the same''.

1982 Act

This corrects an error in an amendment to 10:2665 made by section 12(3)(B) of the Maritime Act of 1981 (Pub. L. 97–31, Aug. 6, 1981, 95 Stat. 153).

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''Department in which the Coast Guard is operating'' for ''Department of Transportation''.

1986—Subsec. (d). Pub. L. 99–561, § 4(1), struck out ''available for operation and maintenance during a fiscal year'' after ''Defense'', substituted ''costs'' for ''expenses'', and struck out ''during such fiscal year'' after ''such property''.

Subsec. (e)(1). Pub. L. 99–561, § 4(2), struck out ''for all expenses of production of forest products'' after ''subsection (d)''.

Subsec. (f)(1). Pub. L. 99–561, § 4(3)(A), (B), substituted ''costs'' for ''expenses'' in provisions preceding subpar. (A) and amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''for expenses to enable operations of forest lands and the production of forest products to continue from the end of one fiscal year through the beginning of the next fiscal year without disruption.''

Subsec. (f)(2), (3). Pub. L. 99–561, § 4(3)(C), amended pars. (2) and (3) generally. Prior to amendment, pars. (2) and (3) read as follows:

''(2) Subject to paragraph (3), there shall be deposited into the reserve account not later than December 31 of each year, for credit to the preceding fiscal year, an amount equal to one-half of the amount (if any) remaining of the total amount received by the United States during that fiscal year as proceeds from the sale of forest products after (A) the reimbursement of appropriations of the Department of Defense under subsection (d) for expenses of production of forest products during that fiscal year, and (B) the payment to States under subsection (e) for that fiscal year.

''(3) The balance in the reserve account may not exceed $4,000,000. If a deposit under paragraph (2) would cause the balance in the account to exceed that amount, the deposit shall be made only to the extent the amount of the deposit would not cause the balance in the account to exceed $4,000,000.''

1984—Subsec. (b). Pub. L. 98–407, § 809(a)(1), substituted ''forest products produced on land owned or leased by a military department or the'' for ''logs wholly or partly manufactured by, or otherwise procured for, the Army, Navy, or Air Force, or''.

Subsec. (d). Pub. L. 98–407, § 809(a)(2), substituted ''forest products'' for ''lumber and timber products''.

Subsec. (e)(1). Pub. L. 98–407, § 809(a)(3), substituted ''forest products'' for ''timber and timber products'' in two places and ''40 percent'' for ''25 percent''.

Subsec. (f). Pub. L. 98–407, § 809(a)(4), added subsec. (f).

1982—Subsecs. (a), (b). Pub. L. 97–295 substituted ''executive department, may sell'' for ''executive department'' and all that followed through ''may sell'' in subsecs. (a) and (b), and substituted ''Air Force, or Department of Transportation.'' for ''Air Force'' and all that followed in subsec. (b), clarifying the ambiguity created by the conflicting language of Pub. L. 96–513 and Pub. L. 97–31.

1981—Subsecs. (a), (b). Pub. L. 97–31 struck out reference to Federal Maritime Commission in subsec. (a), and substituted ''or Department of Transportation'' for ''or Federal Maritime Commission'' and struck out ''or the Federal Maritime Commission'' after ''department'' in subsec. (b). Amendment was executed to text in accordance with the probable intent of Congress, notwithstanding amendment of section by Pub. L. 96–513 which substituted different language than language contained in amendatory provisions of Pub. L. 97–31.

Subsec. (e). Pub. L. 97–99 added subsec. (e).

1980—Subsecs. (a), (b). Pub. L. 96–513 substituted ''Federal Maritime Commission'' for ''Federal Maritime Board''.

1977—Subsec. (d). Pub. L. 95–82 substituted provisions relating to reimbursement of production expenses during any fiscal year from proceeds from sales for property during such fiscal year, for provisions requiring proceeds from sales under subsecs. (a) or (b) of this section to be credited to the appropriations under which the property concerned was procured.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 809(b) of Pub. L. 98–407 provided that:

''(b)(1) Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.

''(2) The amendment made by subsection (a)(2)(B) [probably should be '(a)(3)(B)', which amended subsec. (e)(1) of this section] shall apply with respect to payments to States for fiscal years beginning after September 30, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 910(b) of Pub. L. 97–99 provided that: ''Subsection (e) of section 2665 of title 10, United States Code, as added by subsection (a), shall apply with respect to timber and timber products sold after September 30, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 670a.

§ 2666. Acquisition: land purchase contracts; limitation on commission

The maximum amount payable as commission on a contract for the purchase of land from funds appropriated for the Department of Defense is 2 percent of the purchase price.

(Aug. 10, 1956, ch. 1041, 70A Stat. 149.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2666	5:174b.	Aug. 1, 1953, ch. 305, § 606, 67 Stat. 350.

§ 2667. Leases: non-excess property of military departments

(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is—

(1) under the control of that department; and

(2) not excess property, as defined by section 102 of title 40.

(b) A lease under subsection (a)—

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary; and

(5) may provide, notwithstanding section 1302 of title 40, or any other provision of law, for the alteration, repair, or improvement, by the lessee, of the property leased as the payment of part or all of the consideration for the lease.

(c)(1) In addition to any in-kind consideration accepted under subsection (b)(5), in-kind consideration accepted with respect to a lease under this section may include the following:

(A) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary concerned.

(B) Construction of new facilities for the Secretary concerned.

(C) Provision of facilities for use by the Secretary concerned.

(D) Facilities operation support for the Secretary concerned.

(E) Provision of such other services relating to activities that will occur on the leased property as the Secretary concerned considers appropriate.

(2) In-kind consideration under paragraph (1) may be accepted at any property or facilities under the control of the Secretary concerned that are selected for that purpose by the Secretary concerned.

(3) Sections 2662 and 2802 of this title shall not apply to any new facilities whose construction is accepted as in-kind consideration under this subsection.

(4) In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary concerned under this subsection is in-kind consideration with a value in excess of $500,000, the Secretary concerned may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.

(d)(1)(A) The Secretary of a military department shall deposit in a special account in the Treasury established for such military department the following:

(i) All money rentals received pursuant to leases entered into by that Secretary under this section.

(ii) All proceeds received pursuant to the granting of easements by that Secretary under sections 2668 and 2669 of this title.

(iii) All proceeds received by that Secretary from authorizing the temporary use of other property under the control of that military department.

(B) Subparagraph (A) does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished lessees by the Secretary of a military department pursuant to leases entered into under this section.

(ii) Money rentals referred to in paragraph (4) or (5).

(C) Subject to subparagraphs (D) and (E), the proceeds deposited in the special account of a military department pursuant to subparagraph (A) shall be available to the Secretary of that military department, in such amounts as provided in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Facilities operation support.

(D) At least 50 percent of the proceeds deposited in the special account of a military department under subparagraph (A) shall be available for activities described in subparagraph (C) only at the military installation where the proceeds were derived.

(E) The Secretary concerned may not expend under subparagraph (C) an amount in excess of $500,000 at a single installation until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

[(3) Repealed. Pub. L. 107–314, div. A, title X, § 1041(a)(18), Dec. 2, 2002, 116 Stat. 2645.]

(4) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary of a military department (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(5) Money rentals received by the United States from a lease under subsection (f) shall be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(f)(1) Notwithstanding subsection (a)(3)[1] or subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (to the extent subtitle I and title III are inconsistent with this subsection), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would—

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(g)(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, and the fair market value of the lease interest exceeds $100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary

[1] See References in Text note below.

concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

(3) Paragraph (1) does not apply to a renewal or extension of a lease by the Secretary of the Navy with a selected institution for operation of a ship within the University National Oceanographic Laboratory System if, under the lease, each of the following applies:

(A) Use of the ship is restricted to federally supported research programs and to non-Federal uses under specific conditions with approval by the Secretary of the Navy.

(B) Because of the anticipated value to the Navy of the oceanographic research and training that will result from the ship's operation, no monetary lease payments are required from the lessee under the initial lease or under any renewal or extension.

(C) The lessee is required to maintain the ship in a good state of repair, readiness, and efficient operating condition, conform to all applicable regulatory requirements, and assume full responsibility for the safety of the ship, its crew, and scientific personnel aboard.

(h) In this section:

(1) The term ''congressional defense committees'' means:

(A) The Committee on Armed Services and the Committee on Appropriations of the Senate.

(B) The Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(2) The term ''base closure law'' means the following:

(A) Section 2687 of this title.

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(C) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(3) The term ''military installation'' has the meaning given such term in section 2687(e)(1) of this title.

(i) This section does not apply to oil, mineral, or phosphate lands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 94–107, title VI, §607(7), Oct. 7, 1975, 89 Stat. 566; Pub. L. 94–412, title V, §501(b), Sept. 14, 1976, 90 Stat. 1258; Pub. L. 96–513, title V, §511(92), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 97–295, §1(34), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, §803, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 101–510, div. B, title XXVIII, §2806, Nov. 5, 1990, 104 Stat. 1787; Pub. L. 102–190, div. B, title XXVIII, §2862, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 102–484, div. B, title XXVIII, §2851, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–160, div. B, title XXIX, §2906, Nov. 30, 1993, 107 Stat. 1920; Pub. L. 104–106, div. A, title XV, §1502(a)(1), div. B, title XXVIII, §§2831(a), 2832, 2833, Feb. 10, 1996, 110 Stat. 502, 558, 559; Pub. L. 105–85, div. A, title III, §361(b)(2), title X, §1061(a)–(c)(1), Nov. 18, 1997, 111 Stat. 1701, 1891; Pub. L. 105–261, div. B, title XXVIII, §2821, Oct. 17, 1998, 112 Stat. 2208; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(a)–(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–416 to 1654A–418; Pub. L. 107–107, div. A, title X, §1013, Dec. 28, 2001, 115 Stat. 1212; Pub. L. 107–217, §3(b)(12), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, §1041(a)(18), Dec. 2, 2002, 116 Stat. 2645.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2667(a)	5:626s–3 (1st sentence). 10:1270 (1st sentence). 34:522a (1st sentence).	Aug. 5, 1947, ch. 493, §§1, 6, 61 Stat. 774, 775; Sept. 28, 1951, ch. 434.
2667(b)	5:626s–3 (2d through 6th sentences). 10:1270 (2d through 6th sentences). 34:522a (2d through 6th sentences).	§605 (as applicable to Act of Aug. 5, 1947, ch. 493, §1), 65 Stat. 366.
2667(c)	5:626s–3 (last sentence). 10:1270 (last sentence). 34:522a (last sentence).	
2667(d)	5:626s–3 (less 1st 6 sentences). 10:1270 (less 1st 6 sentences). 34:522a (less 1st 6 sentences).	
2667(e)	5:626s–6. 10:1270d. 34:522e.	

In subsection (a), the words ''considers * * * United States'' are substituted for the words ''shall deem * * * Government''. The words ''and conditions'' are omitted as surplusage. The words ''he considers'' are substituted for the words ''in his judgment''.

In subsection (a)(3), the words ''excess property, as defined by section 472 of title 40'' are substituted for the words ''surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]'', in 5:626s–3, 10:1270, and 34:522a, since the words ''excess property'' are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b)(2), the words ''may give'' are substituted for the first 12 words of the third sentence of 5:626s–3, 10:1270, and 34:522a. The words ''if the lease is revoked to allow the United States to sell the property'' are substituted for the words ''in the event of the revocation of the lease in order to permit sale thereof by the Government''. The words ''under any other provision of law'' are inserted for clarity. The words ''the first right to buy'' are substituted for the words ''a right of first refusal''. The words ''but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law'' are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b)(3), the words ''must permit'' are substituted for the words ''Each such lease shall contain a provision permitting''. The words ''from the lease'' are omitted as surplusage.

In subsection (b)(5), the words ''any such lease'' and ''of such property'' are omitted as surplusage.

In subsection (c), the words ''This section does'' are substituted for the words ''The authority herein granted shall''.

In subsection (e), the words ''of property'' are inserted for clarity. The words ''leased under'' are substituted for the words ''made or created pursuant to''. The words ''may be taxed by State or local governments'' are substituted for the words ''shall be made subject to State or local taxation''. The last sentence is substituted for the last sentence of 5:626s–6, 10:1270d, and 34:522e.

REFERENCES IN TEXT

Subsection (a)(3), referred to in subsec. (f)(1), was redesignated subsec. (a)(2) of this section by Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(a)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–416.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (f)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (f)(4)(A), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–217, §3(b)(12)(A), substituted ''section 102 of title 40'' for ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)''.

Subsec. (b)(5). Pub. L. 107–217, §3(b)(12)(B), substituted ''section 1302 of title 40'' for ''section 321 of the Act of June 30, 1932 (40 U.S.C. 303b)''.

Subsec. (d)(3). Pub. L. 107–314 struck out par. (3) which read as follows: ''Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which shall include—

''(A) an accounting of the receipt and use of all money rentals that were deposited and expended under this subsection during the fiscal year preceding the fiscal year in which the report is made; and

''(B) a detailed explanation of each lease entered into, and of each amendment made to existing leases, during such preceding fiscal year.''

Subsec. (f)(1). Pub. L. 107–217, §3(b)(12)(C), inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''subtitle I and title III are'' for ''such Act is''.

2001—Subsec. (g)(3). Pub. L. 107–107 added par. (3).

2000—Subsec. (a). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(a)], inserted ''and'' at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: ''not for the time needed for public use; and''.

Subsec. (b)(5). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(1)], substituted ''alteration, repair, or improvement,'' for ''improvement, maintenance, protection, repair, or restoration,'' and struck out '', or of the entire unit or installation where a substantial part of it is leased,'' after ''of the property leased''.

Subsec. (c). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(3)], added subsec. (c). Former subsec. (c) redesignated (i).

Subsec. (d)(1). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(c)], amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1)(A) All money rentals received pursuant to leases entered into by the Secretary of a military department under this section shall be deposited in a special account in the Treasury established for such military department, except—

''(i) amounts paid for utilities and services furnished lessees by the Secretary; and

''(ii) money rentals referred to in paragraph (4) or (5).

''(B) Sums deposited in a military department's special account pursuant to subparagraph (A) shall be available to such military department, as provided in appropriation Acts, as follows:

''(i) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the leased property is located.

''(ii) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department concerned.''

Subsec. (d)(3). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(d)(1)], substituted ''Not later than March 15 each year, the Secretary of Defense shall submit to the congressional defense committees a report which'' for ''As part of the request for authorizations of appropriations submitted to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives for each fiscal year, the Secretary of Defense'' in introductory provisions.

Subsec. (d)(3)(A). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(d)(2)], substituted ''report'' for ''request''.

Subsec. (f)(4), (5). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(4)], redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''The Secretary concerned may accept under subsection (b)(5) services of a lessee for an entire installation to be closed or realigned under a base closure law, or for any part of such installation, without regard to the requirement in subsection (b)(5) that a substantial part of the installation be leased.''

Subsec. (h). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(e)], amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''In this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) Section 2687 of this title.''

Subsec. (i). Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(b)(2)], redesignated subsec. (c) as (i).

1999—Subsec. (d)(3). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1998—Subsec. (f)(1). Pub. L. 105–261 inserted ''or the Federal Property and Administrative Services Act of 1949 (to the extent such Act is inconsistent with this subsection)''.

1997—Pub. L. 105–85, §1061(c)(1), inserted ''of military departments'' after ''property'' in section catchline.

Subsec. (b)(4). Pub. L. 105–85, §1061(a), struck out '', in the case of the lease of real property,'' after ''shall provide''.

Subsec. (d)(2). Pub. L. 105–85, §361(b)(2), inserted ''or working capital fund'' before ''from which''.

Subsecs. (g), (h). Pub. L. 105–85, §1061(b), added subsec. (g) and redesignated former subsec. (g) as (h).

1996—Subsec. (d)(1)(A)(ii). Pub. L. 104–106, §2831(a)(1), inserted ''or (5)'' after ''paragraph (4)''.

Subsec. (d)(3). Pub. L. 104–106, §1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

Subsec. (d)(5). Pub. L. 104–106, §2831(a)(2), added par. (5).

Subsec. (f)(4). Pub. L. 104–106, §2832, added par. (4).

Subsec. (f)(5). Pub. L. 104–106, §2833, added par. (5).

1993—Subsec. (f). Pub. L. 103–160, §2906(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if—

''(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

''(2) the Administrator of General Services concurs in the action.''

Subsec. (g). Pub. L. 103–160, §2906(b), added subsec. (g).

1992—Subsec. (b)(4). Pub. L. 102–484 inserted '', in the case of the lease of real property,'' after ''shall provide''.

1991—Subsec. (b)(3). Pub. L. 102–190, §2862(a)(1), substituted ''shall permit'' for ''must permit'' and struck out ''and'' at end.

Subsec. (b)(4). Pub. L. 102–190, § 2862(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(5). Pub. L. 102–190, § 2862(a)(2), (4), redesignated par. (4) as (5) and inserted ''improvement,'' before ''maintenance'' and ''the payment of'' before ''part or all''.

Subsec. (d)(3). Pub. L. 102–190, § 2862(b), redesignated subpar. (B) as par. (3), substituted ''As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year'' for ''As part of the request for authorizations of appropriations to such Committees for each fiscal year after fiscal year 1992'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''As part of the request for authorizations of appropriations for fiscal year 1992 to the Committees on Armed Services of the Senate and of the House of Representatives, the Secretary of Defense shall include an explanation of each lease from which money rentals will be received and deposited under this subsection during fiscal year 1991, together with an estimate of the amount to be received from each such lease and an explanation of the anticipated expenditures of such receipts.''

1990—Subsec. (d). Pub. L. 101–510 added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: ''Except as provided in paragraph (2), money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.''

1982—Subsec. (b)(4). Pub. L. 97–295 substituted ''of'' for ''entitled 'An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved'' after ''section 321 of the Act''.

Subsec. (d). Pub. L. 97–321 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), money'' for ''Money'', and added par. (2).

1980—Subsec. (a)(3). Pub. L. 96–513, § 511(92)(A), substituted ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)'' for ''section 472 of title 40''.

Subsec. (b)(4). Pub. L. 96–513, § 511(92)(B), substituted ''section 321 of the Act entitled 'An act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (40 U.S.C. 303b),'' for ''section 303b of title 40''.

Subsec. (e). Pub. L. 96–513, § 511(92)(C), substituted ''Act'' for ''act''.

Subsec. (f). Pub. L. 96–513, § 511(92)(D), substituted ''the Secretary'' for ''The Secretary'', and substituted ''the Administrator of General Services'' for ''The Administrator of the General Services Administration''.

1976—Subsec. (b)(4), (5). Pub. L. 94–412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975—Subsec. (f). Pub. L. 94–107 added subsec. (f).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SAVINGS PROVISION

Amendment by Pub. L. 94–412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

LEASING OF DEFENSE PROPERTY; NOTIFICATION OF CONGRESS; WAIVER; REPORT TO CONGRESS; DEFINITION

Pub. L. 96–533, title I, § 109(a)–(e), Dec. 16, 1980, 94 Stat. 3137, provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, prior to repeal by Pub. L. 97–113, title I, § 109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2306c, 2474, 2490a, 2668, 2669, 2814, 2878 of this title; title 16 section 670a; title 22 section 2796; title 40 section 572.

§ 2667a. Leases: non-excess property of Defense agencies

(a) LEASE AUTHORITY.—Whenever the Secretary of Defense considers it advantageous to the United States, the Secretary may lease to such lessee and upon such terms as the Secretary considers will promote the national defense or to be in the public interest, personal property that is—

(1) under the control of a Defense agency;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 102 of title 40.

(b) LIMITATION, TERMS, AND CONDITIONS.—A lease under subsection (a)—

(1) may not be for more than five years unless the Secretary of Defense determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless the Secretary determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary; and

(5) may provide, notwithstanding any other provision of law, for the improvement, maintenance, protection, repair, restoration, or replacement by the lessee, of the property leased as the payment of part or all of the consideration for the lease.

(c) COMPETITIVE SELECTION.—(1) If the term of a proposed lease under subsection (a) exceeds one year and the fair market value of the lease interest exceeds $100,000, as determined by the Secretary of Defense, the Secretary shall use competitive procedures to select the lessee.

(2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary shall submit to Congress a written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

(d) DISPOSITION OF MONEY RENT.—Money rentals received pursuant to a lease entered into by the Secretary of Defense under subsection (a) shall be deposited in a special account in the Treasury established for the Defense agency whose property is subject to the lease. Amounts in a Defense agency's special account shall be available, to the extent provided in appropriations Acts, solely for the maintenance, repair, restoration, or replacement of the leased property.

(Added Pub. L. 105–85, div. A, title X, §1062(a), Nov. 18, 1997, 111 Stat. 1891; amended Pub. L. 107–217, §3(b)(13), Aug. 21, 2002, 116 Stat. 1296.)

PRIOR PROVISIONS

A prior section 2667a, added Pub. L. 98–115, title VIII, §807(a)(1), Oct. 11, 1983, 97 Stat. 786, provided for sale and replacement of nonexcess real property, prior to repeal by Pub. L. 98–115, title VIII, §807(c), Oct. 11, 1983, 97 Stat. 789, as amended by Pub. L. 99–167, title VIII, §806(a), Dec. 3, 1985, 99 Stat. 988, effective Oct. 1, 1986.

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107–217 substituted ''section 102 of title 40'' for ''section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)''.

§ 2668. Easements for rights-of-way

(a) If the Secretary of a military department finds that it will not be against the public interest, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession, for—

(1) railroad tracks;
(2) oil pipe lines;
(3) substations for electric power transmission lines and pumping stations for gas, water, sewer, and oil pipe lines;
(4) canals;
(5) ditches;
(6) flumes;
(7) tunnels;
(8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;
(9) roads and streets;
(10) poles and lines for the transmission or distribution of electric power;
(11) poles and lines for the transmission or distribution of communications signals (including telephone and telegraph signals);
(12) structures and facilities for the transmission, reception, and relay of such signals; and
(13) any other purpose that he considers advisable, except a purpose covered by section 2669 of this title.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;
(2) nonuse for a two-year period; or
(3) abandonment.

(d) Copies of instruments granting easements over public lands under this section shall be furnished to the Secretary of the Interior.

(e) Subsection (d) of section 2667 of this title shall apply with respect to proceeds received by the Secretary of a military department in connection with an easement granted under this section in the same manner as such subsection applies to money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 98–525, title XIV, §1405(38), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–201, div. B, title XXVIII, §2861, Sept. 23, 1996, 110 Stat. 2804; Pub. L. 106–398, §1 [div. B, title XXVIII, §2812(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–418.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2668(a)	43:931b (less 2d and 3d provisos of 1st sentence, and less last sentence).	July 24, 1946, ch. 596, §7, 60 Stat. 643; Oct. 25, 1951, ch. 563, §101 (31st through 43d words), 65 Stat. 641.
2668(b)	43:931b (2d proviso of 1st sentence).	
2668(c)	43:931b (3d proviso of 1st sentence).	
2668(d)	43:931b (last sentence) [43:931b is made applicable to the Navy by 50:171–1 (16th through 21st words)].	

In subsection (a), the word ''conditions'' is omitted as covered by the word ''terms''. The description of the persons covered in the opening paragraph and the lands covered in clauses (1)–(10) is restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 1952). The exceptions to clause (10) make express the fact that the revised section does not cover certain easements authorized by earlier law. The word ''over'' includes the word ''across''. The words ''of the United States'', ''and empowered'', ''acquired lands'', ''jurisdiction and'', and ''municipality'' are omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico.

In subsection (b), the words ''for the easement'' are substituted for the words ''for the purpose for which granted''.

In subsections (b) and (c), the word ''easement'' is substituted for the word ''rights-of-way''.

In subsection (c), the word ''terminate'' is substituted for the words ''annulled and forfeited''. The words ''and conditions'' are omitted as covered by the word ''terms''. The words ''two-year period'' are substituted for the words ''a period of two consecutive years''. The words ''of rights granted under authority hereof'' are omitted as surplusage.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–398 added subsec. (e).

1996—Subsec. (a)(3). Pub. L. 104–201, §2861(b)(1), struck out '', telephone lines, and telegraph lines,'' after ''transmission lines''.

Subsec. (a)(9). Pub. L. 104–201, §2861(a)(1), struck out ''and'' at end.

Subsec. (a)(10) to (12). Pub. L. 104–201, §2861(a)(3), added pars. (10) to (12). Former par. (10) redesignated (13).

Subsec. (a)(13). Pub. L. 104–201, §2861(a)(2), (b)(2), redesignated par. (10) as (13) and struck out ''or by the Act of March 4, 1911 (43 U.S.C. 961)'' after ''2669 of this title''.

1984—Subsec. (a)(10). Pub. L. 98–525 substituted ''the Act of March 4, 1911 (43 U.S.C. 961)'' for ''section 961 of title 43''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2667 of this title.

§ 2669. Easements for rights-of-way: gas, water, sewer pipe lines

(a) If the Secretary of a military department finds that it will be in the public interest and will not substantially injure the interest of the United States in the property affected, he may grant, upon such terms as he considers advisable, easements for rights-of-way over, in, and upon public lands permanently withdrawn or reserved for the use of that department, and other lands under his control, for gas, water, and sewer pipe lines, to a State, Territory, Commonwealth, or possession, or political subdivision thereof, or to a citizen, association, partnership, or corporation of a State, Territory, Commonwealth, or possession.

(b) No easement granted under this section may include more land than is necessary for the easement.

(c) The Secretary of the military department concerned may terminate all or part of any easement granted under this section for—

(1) failure to comply with the terms of the grant;

(2) nonuse; or

(3) abandonment.

(d) The Secretary concerned shall include in his annual report to the President a complete statement of each easement granted under this section, including the name and address of the grantee, the purpose of the grant, and the benefits accruing to the United States or to the public.

(e) Subsection (d) of section 2667 of this title shall apply with respect to proceeds received by the Secretary of a military department in connection with an easement granted under this section in the same manner as such subsection applies to money rentals received pursuant to leases entered into by that Secretary under such section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2812(f)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–418.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2669(a)	10:1351 (less 2d and last provisos).	May 17, 1926, ch. 313, § 1, 44 Stat. 562; Oct. 25, 1951, ch. 563, § 101 (22d through 30th words), 65 Stat. 641.
2669(b)	[No source].	
2669(c)	10:1351 (2d proviso).	
2669(d)	10:1351 (last proviso).	

Section 101 of the Act of October 25, 1951, cited above, makes the Act of May 17, 1926, cited above, applicable to the Navy.

In subsection (a), the word ''conditions'' is omitted as covered by the word ''terms''. The descriptions of the lands and persons covered are restated to reflect an opinion of the Judge Advocate General of the Army (JAGR 1952/3179, 27 Mar. 52). The words ''and empowered'', ''of the United States'', ''across'', and ''military reservations and other'' are omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico.

Subsection (b) is inserted for clarity and is based on the above cited opinion.

In subsection (c), the words ''any easement'' are substituted for the words ''such rights-of-way''. The word ''terminate'' is substituted for the words ''annulled and forfeited''. The words ''and conditions'' are omitted as covered by the word ''terms''. The words ''of rights granted under the authority hereof'' are omitted as surplusage.

In subsection (d), the words ''a complete statement of each easement'' are substituted for the words ''a full and complete statement of each and all easements''.

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–398 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2667, 2668 of this title.

§ 2670. Military installations: use by American National Red Cross; use as polling places

(a) USE BY RED CROSS.—Under such conditions as he may prescribe, the Secretary of any military department may issue a revocable license to the American National Red Cross to—

(1) erect and maintain, on any military installation under his jurisdiction, buildings for the storage of supplies; or

(2) use, for the storage of supplies, buildings erected by the United States.

Supplies stored in buildings erected or used under this subsection are available to aid the civilian population in a serious national disaster.

(b) USE OF CERTAIN FACILITIES AS POLLING PLACES.—(1) Notwithstanding chapter 29 of title 18 (including sections 592 and 593 of such title) or any other provision of law, the Secretary of Defense or Secretary of a military department may not (except as provided in paragraph (3)) prohibit the designation or use of a qualifying facility under the jurisdiction of the Secretary as an official polling place for local, State, or Federal elections.

(2) A Department of Defense facility is a qualifying facility for purposes of this subsection if as of December 31, 2000—

(A) the facility is designated as an official polling place by a State or local election official; or

(B) the facility has been used as such an official polling place since January 1, 1996.

(3) The limitation in paragraph (1) may be waived by the Secretary of Defense or Secretary of the military department concerned with respect to a particular Department of Defense facility if the Secretary of Defense or Secretary concerned determines that local security conditions require prohibition of the designation or use of that facility as an official polling place for any election.

(Aug. 10, 1956, ch. 1041, 70A Stat. 151; Pub. L. 107–107, div. A, title XVI, § 1607(a)–(b)(2), Dec. 28, 2001, 115 Stat. 1279, 1280.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2670	36:12.	June 3, 1916, ch. 134, § 127a (5th par.); added June 4, 1920, ch. 227, subch. I, § 51 (5th par.); restated July 17, 1953, ch. 222, § 3, 67 Stat. 178.

The word ''issue'' is substituted for the words ''grant permission''. The word ''use'' is substituted for the words ''occupy for that purpose''.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''Military installations: use by American National Red Cross; use as polling places'' for ''Licenses: military installations; erection and use of buildings; American National Red Cross'' in section catchline, designated existing provisions as subsec. (a), inserted heading, substituted ''this subsection'' for ''this section'' in concluding provisions, and added subsec. (b).

§ 2671. Military reservations and facilities: hunting, fishing, and trapping

(a) GENERAL REQUIREMENTS FOR HUNTING, FISHING, AND TRAPPING.—The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory—

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive or otherwise modify the fish and game laws of a State or Territory otherwise applicable under subsection (a)(1) to hunting, fishing, or trapping at a military installation or facility if the Secretary determines that the application of such laws to such hunting, fishing, or trapping without modification could result in undesirable consequences for public health or safety at the installation or facility. The authority to waive such laws includes the authority to extend, but not reduce, the specified season for certain hunting, fishing, or trapping. The Secretary may not waive the requirements under subsection (a)(2) regarding a license for such hunting, fishing, or trapping or any fee imposed by a State or Territory to obtain such a license.

(2) If the Secretary determines that a waiver of fish and game laws of a State or Territory is appropriate under paragraph (1), the Secretary shall provide written notification to the appropriate State or Territory officials stating the reasons for, and extent of, the waiver. The notification shall be provided at least 30 days before implementation of the waiver.

(c) VIOLATIONS.—Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) RELATION TO TREATY RIGHTS.—This section does not modify any rights granted by the treaty or otherwise to any Indian tribe or to the members thereof.

(e) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 85–337, § 4(1), Feb. 28, 1958, 72 Stat. 29; amended Pub. L. 107–107, div. B, title XXVIII, § 2811, Dec. 28, 2001, 115 Stat. 1307.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, § 2811(b)(1), inserted heading.

Subsec. (b). Pub. L. 107–107, § 2811(a)(2), added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 107–107, § 2811(b)(2), inserted heading.

Subsec. (d). Pub. L. 107–107, § 2811(b)(3), inserted heading.

Subsec. (e). Pub. L. 107–107, § 2811(a)(1), redesignated subsec. (b) as (e), inserted heading, and transferred subsec. to end of section.

§ 2672. Acquisition: interests in land when cost is not more than $500,000

(a)(1) The Secretary of a military department may acquire any interest in land that—

(A) the Secretary determines is needed in the interest of national defense; and

(B) does not cost more than $500,000, exclusive of administrative costs and the amounts of any deficiency judgments.

(2) This section does not apply to the acquisition, as a part of the same project, of more than one parcel of land unless the parcels are noncontiguous, or, if contiguous, unless the total cost is not more than $500,000.

(b) The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise.

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, § 112(a), Sept. 7, 1962, 76 Stat. 511; Pub. L. 92–145, title VII, § 707(2), (3), Oct. 27, 1971, 85 Stat. 411; Pub. L. 96–418, title VIII, § 806(a), Oct. 10, 1980, 94 Stat. 1777; Pub. L. 99–167, title VIII, § 810(a), (b)(1), Dec. 3, 1985, 99 Stat. 989, 990; Pub. L. 99–661, div. A, title XIII, § 1343(a)(16), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–456, div. B, title XXVIII, § 2804, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 105–85, div. B, title XXVIII, § 2811(a), (b)(1), Nov. 18, 1997, 111 Stat. 1991.)

HISTORICAL AND REVISION NOTES
1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2672	50:171b.	Aug. 3, 1956, ch. 939, § 406, 70 Stat. 1015.

The word ''land'' is omitted as covered by the words ''any interest in land''. The words ''This section does not apply to the acquisition'' are substituted for the words ''The authority under this section may not, however, be used to acquire''. The words ''as a part of the same project'' are inserted for clarity.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2672	50:171b.	Aug. 20, 1958, Pub. L. 85–685, § 510, 72 Stat. 662.

This section effectuates the amendment to be source law by Pub. L. 85–685.

AMENDMENTS

1997—Pub. L. 105–85, § 2811(b)(1), substituted ''$500,000'' for ''$200,000'' in section catchline.

Subsec. (a)(1)(B), (2). Pub. L. 105–85, § 2811(a), substituted ''$500,000'' for ''$200,000''.

1988—Subsec. (a)(1). Pub. L. 100–456, § 2804(1), substituted ''The'' for ''Subject to subsection (b), the''.

Subsecs. (b), (c). Pub. L. 100–456, § 2804(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''The Secretary of a military department may not enter into a contract under this section for the acquisition of any interest in land the cost of which exceeds $100,000 unless—

''(1) the Secretary has notified the appropriate committees of Congress of his intent to acquire such interest, the cost of the interest, and the reasons for acquiring the interest; and

''(2) a period of 21 days has elapsed from the date the notification is received by the committees.''

1986—Pub. L. 99–661 substituted ''interests'' for ''interest'' in section catchline, designated first sentence of subsec. (a) as par. (1) and, in subpar. (A) of par. (1) as so designated, substituted ''the Secretary'' for ''he or his designate'', designated second sentence of subsec. (a) as par. (2), and designated third sentence of subsec. (a) as subsec. (c).

1985—Pub. L. 99–167 substituted ''interest in land when cost is not more than $200,000'' for ''interests in land when cost is not more than $100,000'' in section catchline and, in text, designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted ''Subject to subsection (b), the'' for ''The'', redesignated cls. (1) and (2) as (A) and (B), substituted ''$200,000'' for ''$100,000'' in two places, and added subsec. (b).

1980—Pub. L. 96–418 substituted ''$100,000'' for ''$50,000'' in section catchline and in text.

1971—Pub. L. 92–145 substituted ''$50,000'' for ''$25,000'' in section catchline and in two places in text, and included in the acquisition authority, the authority to make surveys and acquire interests in land (including temporary use) by gift, purchase, exchange of land owned by the United States, or otherwise, respectively.

1962—Pub. L. 87–651 substituted ''$25,000'' for ''$5,000'' in section catchline and in two places in text, and ''he or his designee determines is needed'' for ''he determines is urgently needed'' in cl. (1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2673 of this title.

§ 2672a. Acquisition: interests in land when need is urgent

(a) The Secretary of a military department may acquire any interest in land that—

(1) he or his designee determines is needed in the interest of national defense;

(2) is required to maintain the operational integrity of a military installation; and

(3) considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

(b) Appropriations available for military construction may be used for the purposes of this section. The authority to acquire an interest in land under this section includes authority to make surveys and acquire interests in land (including temporary use), by gift, purchase, exchange of land owned by the United States, or otherwise. The Secretary of a military department contemplating action under this section shall provide notice, in writing, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives at least 30 days in advance of any action being taken.

(Added Pub. L. 94–107, title VI, § 607(8), Oct. 7, 1975, 89 Stat. 566; amended Pub. L. 98–525, title XIV, § 1405(39), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1984—Subsec. (a). Pub. L. 98–525, § 1405(39)(A), (B), designated first sentence as subsec. (a) and substituted in par. (2) thereof ''operational'' for ''operation''.

Subsec. (b). Pub. L. 98–525, § 1405(39)(C), (D), designated second sentence as subsec. (b) and substituted ''this section shall'' for ''this provision will'' and ''Committees on Armed Services'' for ''Armed Services Committees''.

§ 2673. Acquisition of certain interests in land: availability of funds

Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of land or interests in land under section 2672 of this title and for the acquisition of interests in land under section 2675 of this title.

(Added Pub. L. 100–370, § 1(*l*)(1), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

This section and section 2828(h) of this title are based on Pub. L. 98–212, title VII, § 707, Dec. 8, 1983, 97 Stat. 1438.

PRIOR PROVISIONS

A prior section 2673, added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1459, related to restoration or replacement of facilities damaged or destroyed, prior to repeal

by Pub. L. 97–214, §7(1), July 12, 1982, 96 Stat. 173, eff. Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2854 of this title.

§ 2674. Operation and control of Pentagon Reservation and defense facilities in National Capital Region

(a)(1) Jurisdiction, custody, and control over, and responsibility for, the operation, maintenance, and management of the Pentagon Reservation is transferred to the Secretary of Defense.

(2) Before March 1 of each year, the Secretary of Defense shall transmit to the congressional committees specified in paragraph (3) a report on the state of the renovation of the Pentagon Reservation and a plan for the renovation work to be conducted in the fiscal year beginning in the year in which the report is transmitted.

(3) The committees referred to in paragraph (2) are—

(A) the Committee on Armed Services and the Committee on Environment and Public Works of the Senate; and

(B) the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives.

(b)(1) The Secretary may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied by, or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region. Such individuals—

(A) may be armed with appropriate firearms required for personal safety and for the proper execution of their duties, whether on Department of Defense property or in travel status; and

(B) shall have the same powers (other than the service of civil process) as sheriffs and constables upon the property referred to in the first sentence to enforce the laws enacted for the protection of persons and property, to prevent breaches of the peace and suppress affrays or unlawful assemblies, and to enforce any rules or regulations with respect to such property prescribed by duly authorized officials.

(2) For positions for which the permanent duty station is the Pentagon Reservation, the Secretary, in his sole and exclusive discretion, may without regard to the pay provisions of title 5, fix the rates of basic pay for such positions occupied by civilian law enforcement and security personnel appointed under the authority of this section so as to place such personnel on a comparable basis with personnel of other similar Federal law enforcement and security organizations within the vicinity of the Pentagon Reservation, not to exceed the basic pay for personnel performing similar duties in the United States Secret Service Uniformed Division or the United States Park Police.

(c)(1) The Secretary may prescribe such rules and regulations as the Secretary considers appropriate to ensure the safe, efficient, and secure operation of the Pentagon Reservation, including rules and regulations necessary to govern the operation and parking of motor vehicles on the Pentagon Reservation.

(2) Any person who violates a rule or regulation prescribed under this subsection is liable to the United States for a civil penalty of not more than $1,000.

(3) Any person who willfully violates any rule or regulation prescribed pursuant to this subsection commits a Class B misdemeanor.

(d) The Secretary of Defense may establish rates and collect charges for space, services, protection, maintenance, construction, repairs, alterations, or facilities provided at the Pentagon Reservation.

(e)(1) There is established in the Treasury of the United States a revolving fund to be known as the Pentagon Reservation Maintenance Revolving Fund (hereafter in this section referred to as the ''Fund''). There shall be deposited into the Fund funds collected by the Secretary for space and services and other items provided an organization or entity using any facility or land on the Pentagon Reservation pursuant to subsection (d).

(2) Monies deposited into the Fund shall be available, without fiscal year limitation, for expenditure for real property management, operation, protection, construction, repair, alteration and related activities for the Pentagon Reservation.

(f) In this section:

(1) The term ''Pentagon Reservation'' means that area of land (consisting of approximately 280 acres) and improvements thereon, located in Arlington, Virginia, on which the Pentagon Office Building, Federal Building Number 2, the Pentagon heating and sewage treatment plants, and other related facilities are located, including various areas designated for the parking of vehicles.

(2) The term ''National Capital Region'' means the geographic area located within the boundaries of (A) the District of Columbia, (B) Montgomery and Prince Georges Counties in the State of Maryland, (C) Arlington, Fairfax, Loudoun, and Prince William Counties and the City of Alexandria in the Commonwealth of Virginia, and (D) all cities and other units of government within the geographic areas of such District, Counties, and City.

(Added Pub. L. 101–510, div. B, title XXVIII, §2804(a)(1), Nov. 5, 1990, 104 Stat. 1784; amended Pub. L. 102–190, div. A, title X, §1061(a)(18), div. B, title XXVIII, §2864, Dec. 5, 1991, 105 Stat. 1473, 1561; Pub. L. 104–106, div. A, title XV, §1502(a)(24), Feb. 10, 1996, 110 Stat. 505; Pub. L. 104–201, div. A, title III, §369(a), (b)(1), Sept. 23, 1996, 110 Stat. 2498; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 107–107, div. A, title XI, §1101, Dec. 28, 2001, 115 Stat. 1234.)

PRIOR PROVISIONS

A prior section 2674, added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1459; amended Pub. L. 87–651, title I, §112(b), Sept. 7, 1962, 76 Stat. 511; Pub. L. 88–174, title VI, §608, Nov. 7, 1963, 77 Stat. 328; Pub. L. 89–188, title VI, §613, Sept. 16, 1965, 79 Stat. 819; Pub. L. 89–568, title VI, §608, Sept. 12, 1966, 80 Stat. 756; Pub. L. 91–511, title VI, §607(2)–(4), Oct. 26, 1970, 84 Stat. 1224; Pub. L. 92–145,

title VII, §707(1), Oct. 27, 1971, 85 Stat. 411; Pub. L. 93–166, title VI, §608(1), Nov. 29, 1973, 87 Stat. 682; Pub. L. 94–107, title VI, §607(2)–(4), Oct. 7, 1975, 89 Stat. 566; Pub. L. 95–82, title VI, §608(a), Aug. 1, 1977, 91 Stat. 377; Pub. L. 95–356, title VI, §603(h)(1), Sept. 8, 1978, 92 Stat. 582; Pub. L. 96–125, title VIII, §801, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–99, title IX, §907, Dec. 23, 1981, 95 Stat. 1385, related to minor construction projects, prior to repeal by Pub. L. 97–214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2805 of this title.

AMENDMENTS

2001—Subsec. (b). Pub. L. 107–107 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

1999—Subsec. (a)(3)(B). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Pub. L. 104–201, §369(b)(1), substituted ''of Pentagon Reservation and defense facilities in National Capital Region'' for ''of the Pentagon Reservation'' in section catchline.

Subsec. (a)(2). Pub. L. 104–106, §1502(a)(24)(A), substituted ''congressional committees specified in paragraph (3)'' for ''Committees on Armed Services of the Senate and the House of Representatives, the Committee on Environment and Public Works of the Senate, and the Committee on Public Works and Transportation of the House of Representatives''.

Subsec. (a)(3). Pub. L. 104–106, §1502(a)(24)(B), added par. (3).

Subsec. (b). Pub. L. 104–201, §369(a), substituted ''in the National Capital Region'' for ''at the Pentagon Reservation''.

1991—Subsec. (b)(2). Pub. L. 102–190, §2864, amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''shall have the same powers as sheriffs and constables to enforce the laws, rules, or regulations enacted for the protection of persons and property.''

Subsec. (c)(3). Pub. L. 102–190, §1061(a)(18), substituted ''misdemeanor'' for ''misdeameanor''.

TRANSFER OF FUNCTIONS

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

COST OF PENTAGON RENOVATION

Pub. L. 107–248, title VIII, §8056, Oct. 23, 2002, 116 Stat. 1549, provided that:

''(a) LIMITATION ON PENTAGON RENOVATION COSTS.—Not later than the date each year on which the President submits to Congress the budget under section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a certification that the total cost for the planning, design, construction, and installation of equipment for the renovation of wedges 2 through 5 of the Pentagon Reservation, cumulatively, will not exceed four times the total cost for the planning, design, construction, and installation of equipment for the renovation of wedge 1.

''(b) ANNUAL ADJUSTMENT.—For purposes of applying the limitation in subsection (a), the Secretary shall adjust the cost for the renovation of wedge 1 by any increase or decrease in costs attributable to economic inflation, based on the most recent economic assumptions issued by the Office of Management and Budget for use in preparation of the budget of the United States under section 1104 of title 31, United States Code.

''(c) EXCLUSION OF CERTAIN COSTS.—For purposes of calculating the limitation in subsection (a), the total cost for wedges 2 through 5 shall not include—

''(1) any repair or reconstruction cost incurred as a result of the terrorist attack on the Pentagon that occurred on September 11, 2001;

''(2) any increase in costs for wedges 2 through 5 attributable to compliance with new requirements of Federal, State, or local laws; and

''(3) any increase in costs attributable to additional security requirements that the Secretary of Defense considers essential to provide a safe and secure working environment.

''(d) CERTIFICATION COST REPORTS.—As part of the annual certification under subsection (a), the Secretary shall report the projected cost (as of the time of the certification) for—

''(1) the renovation of each wedge, including the amount adjusted or otherwise excluded for such wedge under the authority of paragraphs (2) and (3) of subsection (c) for the period covered by the certification; and

''(2) the repair and reconstruction of wedges 1 and 2 in response to the terrorist attack on the Pentagon that occurred on September 11, 2001.

''(e) DURATION OF CERTIFICATION REQUIREMENT.—The requirement to make an annual certification under subsection (a) shall apply until the Secretary certifies to Congress that the renovation of the Pentagon Reservation is completed.''

Similar provisions were contained in the following prior appropriation act:

Pub. L. 107–117, div. A, title VIII, §8060, Jan. 10, 2002, 115 Stat. 2260.

ESTABLISHMENT OF MEMORIAL TO VICTIMS OF TERRORIST ATTACK ON PENTAGON RESERVATION AND AUTHORITY TO ACCEPT MONETARY CONTRIBUTIONS FOR MEMORIAL AND REPAIR OF PENTAGON

Pub. L. 107–107, div. B, title XXVIII, §2864, Dec. 28, 2001, 115 Stat. 1333, provided that:

''(a) MEMORIAL AUTHORIZED.—The Secretary of Defense may establish a memorial at the Pentagon Reservation dedicated to the victims of the terrorist attack on the Pentagon that occurred on September 11, 2001. The Secretary shall use necessary amounts in the Pentagon Reservation Maintenance Revolving Fund established by section 2674(e) of title 10, United States Code, including amounts deposited in the Fund under subsection (c), to plan, design, construct, and maintain the memorial.

''(b) ACCEPTANCE OF CONTRIBUTIONS.—The Secretary of Defense may accept monetary contributions made for the purpose of assisting in—

''(1) the establishment of the memorial to the victims of the terrorist attack; and

''(2) the repair of the damage caused to the Pentagon Reservation by the terrorist attack.

''(c) DEPOSIT OF CONTRIBUTIONS.—The Secretary of Defense shall deposit contributions accepted under subsection (b) in the Pentagon Reservation Maintenance Revolving Fund. The contributions shall be available for expenditure only for the purposes specified in subsection (b).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 6 section 462.

§ 2675. Leases: foreign countries

The Secretary of a military department may acquire by lease in foreign countries structures and real property relating to structures that are needed for military purposes other than for military family housing. A lease under this section may be for a period of up to five years, and the rental for each yearly period may be paid from

funds appropriated to that military department for that year.

(Added Pub. L. 85–861, § 1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 91–511, title VI, § 608, Oct. 26, 1970, 84 Stat. 1224; Pub. L. 94–107, title VI, § 607(10), (11), Oct. 7, 1975, 89 Stat. 567; Pub. L. 95–82, title V, § 505(a), Aug. 1, 1977, 91 Stat. 371; Pub. L. 95–356, title V, § 503(b), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(b), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, § 504(b), Oct. 10, 1980, 94 Stat. 1765; Pub. L. 97–99, title VI, § 604, Dec. 23, 1981, 95 Stat. 1374; Pub. L. 97–214, § 8, July 12, 1982, 96 Stat. 174; Pub. L. 98–525, title XIV, § 1405(40), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 101–510, div. A, title XIII, § 1322(a)(11), Nov. 5, 1990, 104 Stat. 1671.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2675	5:171z–3.	Aug. 3, 1956, ch. 939, § 417, 70 Stat. 1018.

The words ''that are not located on a military base'' are substituted for the words ''off-base''.

AMENDMENTS

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary'' and struck out subsec. (b) which read as follows: ''A lease may not be entered into under this section for structures or related real property in any foreign country if the average estimated annual rental during the term of the lease if more than $250,000 until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed lease is submitted to the Committees on Armed Services of the Senate and House of Representatives.''

1984—Subsec. (b). Pub. L. 98–525 substituted ''30'' for ''thirty''.

1982—Subsec. (a). Pub. L. 97–214, § 8(a), substituted provisions that the Secretary of a military department may acquire by lease in foreign countries, structures and real property needed for military purposes other than for military family housing for up to a period of five years with the rental to be paid from funds appropriated to that military department for that year, for former provisions that had allowed such leases including leases for military family housing and in the latter case for a period of up to 10 years.

Subsec. (b). Pub. L. 97–214, § 8(b), struck out ''or any other provision of law'' after ''into under this section'', and '', family housing facilities,'' after ''for structures''.

Subsecs. (c), (d). Pub. L. 97–214, § 8(c), struck out subsec. (c) which provided that a statement in a lease that the requirements of this section have been met, or that the lease is not subject to this section is conclusive, and subsec. (d) which related to limitations on expenditures for the rental of family housing in foreign countries and limitations on the number of family housing units which may be leased in a foreign country at any one time.

1981—Subsec. (d)(1). Pub. L. 97–99, § 604(1), substituted ''250'' for ''150''.

Subsec. (d)(2). Pub. L. 97–99, § 604(2), substituted ''22,000'' for ''17,000''.

1980—Subsec. (d)(1). Pub. L. 96–418 substituted ''Expenditures for the rental of family housing in foreign countries (including the cost of utilities and maintenance and operation) may not exceed $1,115 per month for any unit'' for ''The average unit rental for Department of Defense family housing acquired by lease in foreign countries may not exceed $550 per month for the Department, and in no event shall the rental for any one unit exceed $970 per month, including the costs of operation, maintenance, and utilities''.

1979—Subsec. (d)(1). Pub. L. 96–125, § 502(b)(1), substituted ''$550'' for ''$485'' and ''$970'' for ''$850''.

Subsec. (d)(2). Pub. L. 96–125, § 502(b)(2), substituted ''17,000'' for ''18,000''.

1978—Subsec. (d)(1). Pub. L. 95–356, § 503(b)(1), substituted ''$485'' for ''$435'' and ''$850'' for ''$760''.

Subsec. (d)(2). Pub. L. 95–356, § 503(b)(2), substituted ''18,000'' for ''15,000''.

1977—Subsec. (a). Pub. L. 95–82, § 505(a)(1), inserted provisions relating to military family housing facilities and real property related thereto.

Subsec. (b). Pub. L. 95–82, § 505(a)(2), inserted ''or any other provision of law for structures, family housing facilities, or related real property in any foreign country,'' after ''section''.

Subsec. (d). Pub. L. 95–82, § 505(a)(3), added subsec. (d).

1975—Pub. L. 94–107 struck out reference to structures not on a military base in section catchline, and struck out ''that are not located on a military base and'' after ''structures and real property relating thereto'' in subsec. (a).

1970—Pub. L. 91–511 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 608 of Pub. L. 96–418 provided that: ''Titles I, II, III, IV, and V [enacting section 2775 of this title and section 1594h–3 of Title 42, The Public Health and Welfare, amending this section, section 2686 of this title, and sections 1594a–1 and 1594h–2 of Title 42, and repealing provisions set out as a note under section 4593 of this title] shall take effect on October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 505(c) of Pub. L. 95–82 provided that: ''The amendments made by subsection (a) [amending this section] and the repeal made by subsection (b) [repealing section 507(b) of Pub. L. 93–166, which was not classified to the Code] shall take effect October 1, 1977.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2673 of this title.

§ 2676. Acquisition: limitation

(a) No military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law. The foregoing limitation shall not apply to the acceptance by a military department of real property acquired under the authority of the Administrator of General Services to acquire property by the exchange of Government property pursuant to subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251 et seq.).

(b) Authority provided the Secretary of a military department by law to acquire an interest in real property (including a temporary interest) includes authority—

(1) to make surveys; and

(2) to acquire the interest in real property by gift, purchase, exchange of real property owned by the United States, or otherwise.

(c)(1) Except as provided in paragraph (2), the cost authorized for a land acquisition project may be increased by not more than 25 percent of the amount appropriated for the project by Congress or 200 percent of the amount specified by

law as the maximum amount for a minor military construction project, whichever is lesser, if the Secretary concerned determines (A) that such an increase is required for the sole purpose of meeting unusual variations in cost, and (B) that such variations in cost could not have been reasonably anticipated at the time the project was originally approved by Congress.

(2) A land acquisition project may not be placed under contract if, based upon the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land—

(A) the scope of the acquisition, as approved by Congress, is proposed to be reduced by more than 25 percent; or

(B) the agreed price for the land or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land, exceeds the amount appropriated for the project by more than (i) 25 percent, or (ii) 200 percent of the amount specified by law as the maximum amount for a minor military construction project, whichever is lesser,

until subsection (d) is complied with.

(d) The limitations on reduction in scope or increase in cost of a land acquisition in subsection (c) do not apply if the reduction in scope or the increase in cost, as the case may be, is approved by the Secretary concerned and a written notification of the facts relating to the proposed reduced scope or increased cost (including a statement of the reasons therefor) is submitted by the Secretary concerned to the appropriate committees of Congress. A contract for the acquisition may then be awarded only after a period of 21 days elapses from the date the notification is received by the committees.

(e) The Secretary concerned shall promptly pay any deficiency judgment against the United States awarded by a court in an action for condemnation of any interest in land or resulting from a final settlement of an action for condemnation of any interest in land. Payments under this subsection may be made from funds available to the Secretary concerned for military construction projects and without regard to the limitations of subsections (c) and (d).

(Added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 93–166, title VI, §608(2), Nov. 29, 1973, 87 Stat. 682; Pub. L. 97–214, §5, July 12, 1982, 96 Stat. 170; Pub. L. 98–407, title VIII, §802, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 99–661, div. A, title XIII, §1343(a)(17)(A), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 102–190, div. B, title XXVIII, §2870(1), Dec. 5, 1991, 105 Stat. 1562; Pub. L. 107–217, §3(b)(14), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title X, §1062(a)(11), Dec. 2, 2002, 116 Stat. 2650.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2676	[Uncodified].	July 27, 1954, ch. 579, §501(b) (less provisos), 68 Stat. 560.

The word ''property'' is substituted for the word ''estate''. The words ''not owned by the United States'' are substituted for the words ''not in Federal ownership''. The words ''or shall be'' are omitted as surplusage.

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314 inserted opening parenthesis before ''41 U.S.C.''.

Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1991—Subsec. (d). Pub. L. 102–190 struck out ''(1)'' after ''be awarded only'' and '', or (2) upon the approval of those committees, if before the end of that period each such committee approves the proposed reduced scope or increased cost'' before period at end.

1986—Subsec. (c)(2)(B). Pub. L. 99–661 amended generally language of subpar. (B) before ''exceeds the amount''. See 1984 Amendment note below.

1984—Subsec. (c)(2). Pub. L. 98–407, §802(1), inserted ''or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land'' in provisions preceding subpar. (A).

Subsec. (c)(2)(B). Pub. L. 98–407, §802(2), inserted ''or, in the case of land to be acquired by condemnation, the amount to be deposited with the court as just compensation for the land,''. Insertion of new language following ''the agreed price for the land'' was executed to text notwithstanding directory language of Pub. L. 98–407 that made a reference to a nonexistent comma following ''the agreed price for the land''. See 1986 Amendment note above.

Subsec. (e). Pub. L. 98–407, §802(3), added subsec. (e).

1982—Pub. L. 97–214 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

1973—Pub. L. 93–166 made limitation inapplicable to property acquired under authority of Administrator of General Services to acquire property by exchange of Government property.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1343(a)(17)(B) of Pub. L. 99–661 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of section 802(2) of the Military Construction Authorization Act, 1985 (Public Law 98–407; 98 Stat. 1519) [amending this section].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2677. Options: property required for military construction projects

(a) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(b) As consideration for an option acquired under subsection (a), the Secretary may pay, from funds available to his department for real property activities, an amount that is not more

than 12 percent of the appraised fair market value of the property.

(Added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460; amended Pub. L. 87–554, title VI, §607, July 27, 1962, 76 Stat. 242; Pub. L. 92–145, title VII, §707(4), Oct. 27, 1971, 85 Stat. 412; Pub. L. 94–273, §6(3), Apr. 21, 1976, 90 Stat. 377; Pub. L. 97–214, §10(a)(5)(A), (B), July 12, 1982, 96 Stat. 175; Pub. L. 97–375, title I, §104(b), Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98–407, title VIII, §803, Aug. 28, 1984, 98 Stat. 1519; Pub. L. 102–190, div. B, title XXVIII, §2861, Dec. 5, 1991, 105 Stat. 1559; Pub. L. 103–35, title II, §201(c)(9), May 31, 1993, 107 Stat. 98; Pub. L. 107–314, div. A, title X, §1062(a)(12), Dec. 2, 2002, 116 Stat. 2650.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2677	[Uncodified].	July 27, 1954, ch. 579, §501(b) (provisos), 68 Stat. 560.

In subsections (a) and (b), the word ''property'' is substituted for the word ''estate''.

In subsection (a), the words ''Before acquisition of a parcel of real property is authorized by law'' are substituted for the words ''prior to such authorization''. The word ''acquire'' is substituted for the word ''procure''. The words ''if he considers * * * likely to be needed'' are substituted for the words ''which in their judgment is * * * likely to be required''. The word ''prospective'' is omitted as surplusage.

In subsection (b), the words ''for each year the option is to continue, and proportionately for any other period'' are substituted for the words ''per annum'' for clarity. The words ''not more than 3 percent'' are substituted for the words ''not in excess of 3 per centum''.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 struck out subsec. (c) which read as follows:

''(c)(1) Before acquiring an option on real property under subsection (a), the Secretary of a military department shall review the most recent inventory of real property assets published by the Resolution Trust Corporation under section 21A(b)(11)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(F)) and determine whether any real property listed in the inventory is suitable for use by the military department for the purposes for which the real property is sought.

''(2) The requirement for the review referred to in paragraph (1) shall terminate on September 30, 1996.''

1993—Subsec. (c)(1). Pub. L. 103–35 substituted ''section 21A(b)(11)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(11)(F))'' for ''section 21A(b)(12)(F) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(12)(F))''.

1991—Subsec. (c). Pub. L. 102–190 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–407 substituted ''12 percent'' for ''5 percent''.

1982—Pub. L. 97–214, §10(a)(5)(B), substituted ''Options: property required for military construction projects'' for ''Options: property required for public works projects of military departments'' in section catchline.

Subsec. (b). Pub. L. 97–214, §10(a)(5)(A), substituted ''percent'' for ''per centum''.

Subsec. (c). Pub. L. 97–375 repealed subsec. (c) which provided that for each six-month period ending on September 30 or March 31, during which he acquired options under subsec. (a), the Secretary of each military department report those options to the Committees on Armed Services of the Senate and House of Representatives.

1976—Subsec. (c). Pub. L. 94–273 substituted ''September'' for ''June'' and ''March'' for ''December''.

1971—Subsec. (b). Pub. L. 92–145 struck out requirement that amount paid for option be credited to the purchase price if acquisition of real property is completed.

1962—Subsec. (a). Pub. L. 87–554 provided for acquisition of option after acquisition of real property is authorized by law and for need of option for military rather than public works project.

Subsec. (b). Pub. L. 87–554 struck out ''for each year the option is to continue, and proportionately for any other period'' after ''fair market value of the property'' and provided for credit to purchase price of the property if its acquisition is completed.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2678. Feral horses and burros: removal from military installations

When feral horses or burros are found on an installation under the jurisdiction of the Secretary of a military department, the Secretary may use helicopters and motorized equipment for their removal.

(Added Pub. L. 101–510, div. A, title XIV, §1481(h)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 101–165, title IX, §9030, Nov. 21, 1989, 103 Stat. 1135, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(h)(3).

A prior section 2678, added Pub. L. 85–861, §1(51), Sept. 2, 1958, 72 Stat. 1460, related to acquisition of mortgaged housing units, prior to repeal by Pub. L. 97–214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

§ 2679. Representatives of veterans' organizations: use of space and equipment

(a) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of that Secretary concerned that are on land and from which persons are discharged or released from active duty.

(b) The commanding officer of each of those military installations shall allow the representatives described in subsection (a) to use available space and equipment at that installation.

(c) The regulations prescribed to carry out this section that are in effect on January 1, 1958, remain in effect until changed by joint action of the Secretary concerned and the Secretary of Veterans Affairs.

(d) This section does not authorize the violation of measures of military security.

(Added Pub. L. 87–651, title I, §112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 101–189, div. A, title XVI, §1621(a)(9), Nov. 29, 1989, 103 Stat.

1603; Pub. L. 103–337, div. A, title X, §1070(e)(9), Oct. 5, 1994, 108 Stat. 2859.)

HISTORICAL AND REVISION NOTES

The new section 2679 of title 10 is transferred from section 1220 of title 10.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 substituted ''section 5902 of title 38'' for ''section 3402 of title 38''.

1989—Subsec. (a). Pub. L. 101–189, §1621(a)(9)(A), substituted ''the Secretary of Veterans Affairs, the Secretary concerned'' for ''the Administrator of Veterans' Affairs, the Secretary'', ''recognized by the Secretary of Veterans Affairs'' for ''recognized by the Administrator'', and ''of that Secretary concerned'' for ''of that Secretary''.

Subsec. (c). Pub. L. 101–189, §1621(a)(9)(B), substituted ''the Secretary of Veterans Affairs'' for ''the Administrator''.

§ 2680. Leases: land for special operations activities

(a) AUTHORITY TO ACQUIRE LEASEHOLDS.—The Secretary of Defense may acquire a leasehold interest in real property if the Secretary determines that the acquisition of such interest is necessary in the interests of national security to facilitate special operations activities of forces of the special operations command established pursuant to section 167 of this title.

(b) LIMITATIONS ON AUTHORITY.—(1) The Secretary may not acquire a leasehold interest in any real property under subsection (a) if the estimated annual rental cost of that real property exceeds $500,000.

(2) The Secretary may not acquire more than five leasehold interests in real property under subsection (a) during a fiscal year.

(3) The term of a leasehold interest acquired under this section shall not exceed one year.

(c) CONSTRUCTION OR MODIFICATION OF FACILITY ON LEASEHOLD.—The Secretary may provide in a lease entered into under this section for the construction or modification of any facility on the leased property in order to facilitate the activities referred to in subsection (a). The total cost of the construction or modification of such facility may not exceed $750,000 in any fiscal year.

(d) EXPIRATION OF AUTHORITY.—The authority of the Secretary of Defense to acquire a leasehold interest in real property under this section shall expire on September 30, 2005. The expiration of that authority shall not affect the validity of any contract entered into under this section on or before that date.

(e) REPORTS.—Not later than March 1 of each year, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report that—

(1) identifies each leasehold interest acquired during the previous fiscal year under subsection (a); and

(2) contains a discussion of each project for the construction or modification of facilities carried out pursuant to subsection (c) during such fiscal year.

(Added Pub. L. 102–190, div. B, title XXVIII, §2863(a)(1), Dec. 5, 1991, 105 Stat. 1560; amended Pub. L. 103–160, div. B, title XXVIII, §2807(a), Nov. 30, 1993, 107 Stat. 1887; Pub. L. 104–106, div. B, title XXVIII, §2820(a), (b), Feb. 10, 1996, 110 Stat. 556; Pub. L. 106–65, div. A, title X, §1067(1), div. B, title XXVIII, §2811, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 107–314, div. A, title X, §1062(a)(13), Dec. 2, 2002, 116 Stat. 2650.)

PRIOR PROVISIONS

A prior section 2680, added Pub. L. 87–651, title I, §112(c), Sept. 7, 1962, 76 Stat. 511; amended Pub. L. 89–718, §20, Nov. 2, 1966, 80 Stat. 1118, authorized reimbursement of moving expenses to owners of property acquired for public works projects, prior to repeal by Pub. L. 91–646, title II, §220(a)(3), Jan. 2, 1971, 84 Stat. 1903. See section 4601 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–314 struck out ''the'' before ''Armed Services of the Senate''.

1999—Subsec. (d). Pub. L. 106–65, §2811, substituted ''September 30, 2005'' for ''September 30, 2000''.

Subsec. (e). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1996—Subsec. (d). Pub. L. 104–106, §2820(a), substituted ''September 30, 2000'' for ''September 30, 1995''.

Subsec. (e). Pub. L. 104–106, §2820(b), added subsec. (e).

1993—Subsec. (d). Pub. L. 103–160 substituted ''September 30, 1995'' for ''September 30, 1993''.

REPORTING REQUIREMENT

Section 2863(b) of Pub. L. 102–190, as amended by Pub. L. 103–160, div. B, title XXVIII, §2807(b), Nov. 30, 1993, 107 Stat. 1887, required Secretary of Defense to submit reports for the years 1994, 1995, and 1996 to Congress identifying leasehold interest acquisitions and discussing projects for the construction or modification of facilities on leased property, prior to repeal by Pub. L. 104–106, div. B, title XXVIII, §2820(c), Feb. 10, 1996, 110 Stat. 556. See subsec. (e) of this section.

§ 2681. Use of test and evaluation installations by commercial entities

(a) CONTRACT AUTHORITY.—The Secretary of Defense may enter into contracts with commercial entities that desire to conduct commercial test and evaluation activities at a Major Range and Test Facility Installation.

(b) TERMINATION OR LIMITATION OF CONTRACT UNDER CERTAIN CIRCUMSTANCES.—A contract entered into under subsection (a) shall contain a provision that the Secretary of Defense may terminate, prohibit, or suspend immediately any commercial test or evaluation activity to be conducted at the Major Range and Test Facility Installation under the contract if the Secretary of Defense certifies in writing that the test or evaluation activity is or would be detrimental—

(1) to the public health and safety;

(2) to property (either public or private); or

(3) to any national security interest or foreign policy interest of the United States.

(c) CONTRACT PRICE.—A contract entered into under subsection (a) shall include a provision that requires a commercial entity using a Major Range and Test Facility Installation under the contract to reimburse the Department of Defense for all direct costs to the United States that are associated with the test and evaluation activities conducted by the commercial entity under the contract. In addition, the contract may include a provision that requires the commercial entity to reimburse the Department of

Defense for such indirect costs related to the use of the installation as the Secretary of Defense considers to be appropriate. The Secretary may delegate to the commander of the Major Range and Test Facility Installation the authority to determine the appropriateness of the amount of indirect costs included in such a contract provision.

(d) RETENTION OF FUNDS COLLECTED FROM COMMERCIAL USERS.—Amounts collected under subsection (c) from a commercial entity conducting test and evaluation activities at a Major Range and Test Facility Installation shall be credited to the appropriation accounts under which the costs associated with the test and evaluation activities of the commercial entity were incurred.

(e) REGULATIONS AND LIMITATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(f) DEFINITIONS.—In this section:

(1) The term ''Major Range and Test Facility Installation'' means a test and evaluation installation under the jurisdiction of the Department of Defense and designated as a Major Range and Test Facility Installation by the Secretary.

(2) The term ''direct costs'' includes the cost of—

(A) labor, material, facilities, utilities, equipment, supplies, and any other resources damaged or consumed during test or evaluation activities or maintained for a particular commercial entity; and

(B) construction specifically performed for a commercial entity to conduct test and evaluation activities.

(Added Pub. L. 103–160, div. A, title VIII, § 846(a), Nov. 30, 1993, 107 Stat. 1722; amended Pub. L. 105–85, div. A, title VIII, § 842, Nov. 18, 1997, 111 Stat. 1844; Pub. L. 105–261, div. A, title VIII, § 820, Oct. 17, 1998, 112 Stat. 2090.)

PRIOR PROVISIONS

A prior section, added Pub. L. 87–651, title II, § 209(a), Sept. 7, 1962, 76 Stat. 523; amended Pub. L. 88–174, title V, § 508, Nov. 7, 1963, 77 Stat. 326; Pub. L. 96–513, title V, § 511(93), Dec. 12, 1980, 94 Stat. 2928, related to construction or acquisition of family housing and community facilities in foreign countries, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date.

AMENDMENTS

1998—Subsec. (g). Pub. L. 105–261, § 820(a), struck out heading and text of subsec. (g). Text read as follows: ''The authority provided to the Secretary of Defense by subsection (a) shall terminate on September 30, 2002.''

Subsec. (h). Pub. L. 105–261, § 820(b), struck out heading and text of subsec. (h). Text read as follows: ''Not later than March 1, 1998, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives a report identifying existing and proposed procedures to ensure that the use of Major Range and Test Facility Installations by commercial entities does not compete with private sector test and evaluation services.''

1997—Subsec. (g). Pub. L. 105–85, § 842(a), substituted ''2002'' for ''1998''.

Subsec. (h). Pub. L. 105–85, § 842(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(h) REPORT.—Not later than January 1, 1998, the Secretary of Defense shall submit to Congress a report describing the number and purposes of contracts entered into under subsection (a) and evaluating the extent to which the authority under this section is exercised to open Major Range and Test Facility Installations to commercial test and evaluation activities.''

§ 2682. Facilities for defense agencies

The maintenance and repair of a real property facility for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense.

(Added Pub. L. 88–174, title VI, § 609(a)(1), Nov. 7, 1963, 77 Stat. 329; amended Pub. L. 97–214, § 10(a)(7), July 12, 1982, 96 Stat. 175.)

AMENDMENTS

1982—Pub. L. 97–214 substituted ''maintenance and repair'' for ''construction, maintenance, rehabilitation, repair, alteration, addition, expansion, or extension''.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 2683. Relinquishment of legislative jurisdiction; minimum drinking age on military installations

(a) Notwithstanding any other provision of law, the Secretary concerned may, whenever he considers it desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished (1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

(b) The authority granted by subsection (a) is in addition to and not instead of that granted by any other provision of law.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned shall establish and enforce as the minimum drinking age on a military installation located in a State the age established by the law of that State as the State minimum drinking age.

(2)(A) In the case of a military installation located—

(i) in more than one State; or

(ii) in one State but within 50 miles of another State or Mexico or Canada,

the Secretary concerned may establish and enforce as the minimum drinking age on that military installation the lowest applicable age.

(B) In subparagraph (A), the term ''lowest applicable age'' means the lowest minimum drinking age established by the law—

(i) of a State in which a military installation is located; or

(ii) of a State or jurisdiction of Mexico or Canada that is within 50 miles of such military installation.

(3)(A) The commanding officer of a military installation may waive the requirement of paragraph (1) if such commanding officer determines that the exemption is justified by special circumstances.

(B) The Secretary of Defense shall define by regulations what constitute special circumstances for the purposes of this paragraph.

(4) In this subsection:

(A) The term ''State'' includes the District of Columbia.

(B) The term ''minimum drinking age'' means the minimum age or ages established for persons who may purchase, possess, or consume alcoholic beverages.

(Added Pub. L. 91–511, title VI, §613(1), Oct. 26, 1970, 84 Stat. 1226; amended Pub. L. 92–545, title VIII, §707, Oct. 25, 1972, 86 Stat. 1154; Pub. L. 93–283, §3, May 14, 1974, 88 Stat. 141; Pub. L. 99–145, title XII, §1224(a), (b)(1), (c)(1), Nov. 8, 1985, 99 Stat. 728, 729; Pub. L. 99–661, div. A, title XIII, §1343(a)(18), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 100–526, title I, §106(b)(2), Oct. 24, 1988, 102 Stat. 2625.)

AMENDMENTS

1988—Subsec. (c)(2)(B). Pub. L. 100–526, §106(b)(2)(A), substituted ''the term 'lowest applicable age'" for "'lowest age'".

Subsec. (c)(4)(A). Pub. L. 100–526, §106(b)(2)(B)(i), substituted ''The term 'State'" for "'State'".

Subsec. (c)(4)(B). Pub. L. 100–526, §106(b)(2)(B)(ii), substituted ''The term 'minimum'" for "'Minimum'".

1986—Subsec. (b). Pub. L. 99–661 struck out ''this'' before ''subsection (a)''.

1985—Pub. L. 99–145, §1224(c)(1), inserted ''; minimum drinking age on military installations'' in section catchline.

Subsec. (b). Pub. L. 99–145, §1224(b)(1), substituted ''subsection (a)'' for ''section''.

Subsec. (c). Pub. L. 99–145, §1224(a), added subsec. (c).

1974—Subsec. (a). Pub. L. 93–283 substituted ''Secretary concerned'' for ''Secretary of a military department''.

1972—Subsec. (a). Pub. L. 92–545 provided for relinquishment of all or part of legislative jurisdiction of the United States over lands or interests to Commonwealths, territories, or possessions of the United States.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1224(d) of Pub. L. 99–145 provided that: ''The amendments made by this section [amending this section and section 473 of Title 50, Appendix, War and National Defense] shall take effect 90 days after the date of the enactment of this Act [Nov. 8, 1985].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 473.

§ 2684. Cooperative agreements for management of cultural resources

(a) AUTHORITY.—The Secretary of Defense or the Secretary of a military department may enter into a cooperative agreement with a State or local government or other entity for the preservation, management, maintenance, and improvement of cultural resources on military installations and for the conduct of research regarding the cultural resources. Activities under the cooperative agreement shall be subject to the availability of funds to carry out the cooperative agreement.

(b) APPLICATION OF OTHER LAWS.—Section 1535 and chapter 63 of title 31 shall not apply to a cooperative agreement entered into under this section.

(c) CULTURAL RESOURCE DEFINED.—In this section, the term ''cultural resource'' means any of the following:

(1) A building, structure, site, district, or object eligible for or included in the National Register of Historic Places maintained under section 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a)).

(2) Cultural items, as that term is defined in section 2(3) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(3)).

(3) An archaeological resource, as that term is defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)).

(4) An archaeological artifact collection and associated records covered by section 79 of title 36, Code of Federal Regulations.

(Added Pub. L. 104–201, div. B, title XXVIII, §2862(a), Sept. 23, 1996, 110 Stat. 2804; amended Pub. L. 105–85, div. A, title X, §1073(a)(58), Nov. 18, 1997, 111 Stat. 1903.)

PRIOR PROVISIONS

A prior section 2684, added Pub. L. 93–166, title V, §509(a), Nov. 29, 1973, 87 Stat. 677, related to construction of family quarters and limitations on space, prior to repeal by Pub. L. 97–214, §§7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2826 of this title.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 struck out '', United States Code,'' after ''title 31''.

§ 2684a. Agreements to limit encroachments and other constraints on military training, testing, and operations

(a) AGREEMENTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity described in subsection (b) to address the use or development of real property in the vicinity of a military installation for purposes of—

(1) limiting any development or use of the property that would be incompatible with the mission of the installation; or

(2) preserving habitat on the property in a manner that—

(A) is compatible with environmental requirements; and

(B) may eliminate or relieve current or anticipated environmental restrictions that

would or might otherwise restrict, impede, or otherwise interfere, whether directly or indirectly, with current or anticipated military training, testing, or operations on the installation.

(b) ELIGIBLE ENTITIES.—An agreement under this section may be entered into with any of the following:

(1) A State or political subdivision of a State.

(2) A private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal, as determined by the Secretary concerned.

(c) INAPPLICABILITY OF CERTAIN CONTRACT REQUIREMENTS.—Chapter 63 of title 31 shall not apply to any agreement entered into under this section.

(d) ACQUISITION AND ACCEPTANCE OF PROPERTY AND INTERESTS.—(1) An agreement with an eligible entity under this section may provide for—

(A) the acquisition by the entity of all right, title, and interest in and to any real property, or any lesser interest in the property, as may be appropriate for purposes of this section; and

(B) the sharing by the United States and the entity of the acquisition costs.

(2) Property or interests may not be acquired pursuant to the agreement unless the owner of the property or interests consents to the acquisition.

(3) The agreement shall require the entity to transfer to the United States, upon the request of the Secretary concerned, all or a portion of the property or interest acquired under the agreement or a lesser interest therein. The Secretary shall limit such transfer request to the minimum property or interests necessary to ensure that the property concerned is developed and used in a manner appropriate for purposes of this section.

(4) The Secretary concerned may accept on behalf of the United States any property or interest to be transferred to the United States under the agreement.

(5) For purposes of the acceptance of property or interests under the agreement, the Secretary concerned may accept an appraisal or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of section 301 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651) or section 3111 of title 40, if the Secretary concerned finds that the appraisal or title documents substantially comply with the requirements.

(e) ACQUISITION OF WATER RIGHTS.—The authority of the Secretary concerned to enter into an agreement under this section for the acquisition of real property (or an interest therein) includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of a military installation.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in an agreement under this section as the Secretary considers appropriate to protect the interests of the United States.

(g) FUNDING.—(1) Except as provided in paragraph (2), funds authorized to be appropriated for operation and maintenance of the Army, Navy, Marine Corps, Air Force, or Defense-wide activities may be used to enter into agreements under this section.

(2) In the case of a military installation operated primarily with funds authorized to be appropriated for research, development, test, and evaluation, funds authorized to be appropriated for the Army, Navy, Marine Corps, Air Force, or Defense-wide activities for research, development, test, and evaluation may be used to enter into agreements under this section with respect to the installation.

(h) DEFINITIONS.—In this section:

(1) The term ''Secretary concerned'' means the Secretary of Defense or the Secretary of a military department.

(2) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2811(a), Dec. 2, 2002, 116 Stat. 2705.)

§ 2685. Adjustment of or surcharge on selling prices in commissary stores to provide funds for construction and improvement of commissary store facilities

(a) ADJUSTMENT OR SURCHARGE AUTHORIZED.—Notwithstanding any other provision of law, the Secretary of Defense may, for the purposes of this section, provide for an adjustment of, or surcharge on, sales prices of goods and services sold in commissary store facilities.

(b) USE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1) The Secretary of Defense may use the proceeds from the adjustments or surcharges authorized by subsection (a) only—

(A) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

(B) to cover environmental evaluation and construction costs related to activities described in paragraph (1), including costs for surveys, administration, overhead, planning, and design.

(2) In paragraph (1), the term ''physical infrastructure'' includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

(c) ADVANCE OBLIGATION.—The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the adjustments or surcharges authorized by subsection (a) for any use specified in subsection (b) or (d), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in subsection (b) or (d).

(d) COOPERATION WITH NONAPPROPRIATED FUND INSTRUMENTALITIES.—(1) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of adjustments or surcharges authorized by subsection (a) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

(2) In paragraph (1), the term ''construction'', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

(e) OTHER SOURCES OF FUNDS FOR CONSTRUCTION AND IMPROVEMENTS.—Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in subsections (b), (c), and (d):

(1) Sale of recyclable materials.
(2) Sale of excess and surplus property.
(3) License fees.
(4) Royalties.
(5) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.

(Added Pub. L. 93–552, title VI, § 611, Dec. 27, 1974, 88 Stat. 1765; amended Pub. L. 95–82, title VI, § 614, Aug. 1, 1977, 91 Stat. 380; Pub. L. 97–321, title VIII, § 804, Oct. 15, 1982, 96 Stat. 1572; Pub. L. 103–337, div. B, title XXVIII, § 2851, Oct. 5, 1994, 108 Stat. 3072; Pub. L. 105–85, div. A, title III, § 374, Nov. 18, 1997, 111 Stat. 1707; Pub. L. 106–398, § 1 [[div. A], title III, § 333(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60.)

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(1)], substituted ''Secretary of Defense'' for ''Secretary of a military department, under regulations established by him and approved by the Secretary of Defense,''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 333(a)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The Secretary of a military department, under regulations established by him and approved by the Secretary of Defense, may use the proceeds from the adjustments or surcharges authorized by subsection (a) to acquire, construct, convert, expand, install, or otherwise improve commissary store facilities at defense installations and for related environmental evaluation and construction costs, including surveys, administration, overhead, planning, and design.''

Subsec. (c). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(2)], substituted ''Secretary of Defense, with the approval of'' for ''Secretary of a military department, with the approval of the Secretary of Defense and'' and ''Secretary determines'' for ''Secretary of the military department determines''.

Subsec. (d)(1). Pub. L. 106–398, § 1 [[div. A], title III, § 333(b)(3)], substituted ''Secretary of Defense'' for ''Secretary of a military department''.

1997—Subsecs. (a) to (d). Pub. L. 105–85, § 374(b), inserted subsec. headings.

Subsec. (e). Pub. L. 105–85, § 374(a), added subsec. (e).

1994—Subsec. (c). Pub. L. 103–337, § 2851(b), inserted ''or (d)'' after ''subsection (b)'' in two places.

Subsec. (d). Pub. L. 103–337, § 2851(a), added subsec. (d).

1982—Subsec. (c). Pub. L. 97–321 added subsec. (c).

1977—Subsec. (b). Pub. L. 95–82 struck out ''within the United States'' after ''defense installations''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title III, § 333(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–60, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2001.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2486 of this title.

§ 2686. Utilities and services: sale; expansion and extension of systems and facilities

(a) Under such regulations and for such periods and at such prices as he may prescribe, the Secretary concerned or his designee may sell or contract to sell to purchasers within or in the immediate vicinity of an activity of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of national defense or in the public interest:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural, manufactured, or mixed gas.
(7) Ice.
(8) Mechanical refrigeration.
(9) Telephone service.

(b) Proceeds of sales under subsection (a) shall be credited to the appropriation currently available for the supply of that utility or service.

(c) To meet local needs the Secretary concerned may make minor expansions and extensions of any distributing system or facility within an activity through which a utility or service is furnished under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 141, § 2481; Pub. L. 86–156, Aug. 14, 1959, 73 Stat. 338; renumbered § 2686, Pub. L. 105–85, div. A, title III, § 371(b)(1), Nov. 18, 1997, 111 Stat. 1705.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2481(a)	5:626s. 5:626s–1 (less words between semicolon and colon). 10:1269. 10:1269a (less words between semicolon and colon). 34:553a. 34:553b (less words between semicolon and colon).	July 30, 1947, ch. 394, 61 Stat. 675; Aug. 8, 1949, ch. 403, § 5, 63 Stat. 576.
2481(b)	5:626s–1 (words between semicolon and colon). 10:1269a (words between semicolon and colon). 34:553b (words between semicolon and colon).	
2481(c)	5:626s–2. 10:1269b. 34:553c.	

In subsection (a), the words ''within his establishment'', ''of time'', and the opening clauses of 5:626s–1, 10:1269a, and 34:553b, are omitted as surplusage. The words ''not available from another local source'' are

substituted for the words ''not otherwise available from local private or public sources''.

In subsection (b), the words ''of sales under subsection (a)'' are substituted for the words ''received for any such utilities and related services sold pursuant to the authority of said sections''. The words ''or appropriations'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 2686, added Pub. L. 95–82, title V, § 504(a)(1), Aug. 1, 1977, 91 Stat. 371; amended Pub. L. 95–356, title V, § 503(a), Sept. 8, 1978, 92 Stat. 579; Pub. L. 96–125, title V, § 502(a), Nov. 26, 1979, 93 Stat. 940; Pub. L. 96–418, title V, § 504(a), Oct. 10, 1980, 94 Stat. 1765, related to military family housing leases, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2828(a), (b) of this title.

AMENDMENTS

1997—Pub. L. 105–85 renumbered section 2481 of this title as this section.

1959—Subsec. (a). Pub. L. 86–156, § 1(1), substituted ''concerned'' for ''of a military department'' and inserted ''or Coast Guard,'' after ''Marine Corps,''.

Subsec. (c). Pub. L. 86–156, § 1(2), struck out ''of the military department'' after ''Secretary''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2814 of this title.

§ 2687. Base closures and realignments

(a) Notwithstanding any other provision of law, no action may be taken to effect or implement—

(1) the closure of any military installation at which at least 300 civilian personnel are authorized to be employed;

(2) any realignment with respect to any military installation referred to in paragraph (1) involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at such military installation at the time the Secretary of Defense or the Secretary of the military department concerned notifies the Congress under subsection (b) of the Secretary's plan to close or realign such installation; or

(3) any construction, conversion, or rehabilitation at any military facility other than a military installation referred to in clause (1) or (2) which will or may be required as a result of the relocation of civilian personnel to such facility by reason of any closure or realignment to which clause (1) or (2) applies,

unless and until the provisions of subsection (b) are complied with.

(b) No action described in subsection (a) with respect to the closure of, or a realignment with respect to, any military installation referred to in such subsection may be taken unless and until—

(1) the Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, as part of an annual request for authorization of appropriations to such Committees, of the proposed closing or realignment and submits with the notification an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such closure or realignment; and

(2) a period of 30 legislative days or 60 calendar days, whichever is longer, expires following the day on which the notice and evaluation referred to in clause (1) have been submitted to such committees, during which period no irrevocable action may be taken to effect or implement the decision.

(c) This section shall not apply to the closure of a military installation, or a realignment with respect to a military installation, if the President certifies to the Congress that such closure or realignment must be implemented for reasons of national security or a military emergency.

(d)(1) After the expiration of the period of time provided for in subsection (b)(2) with respect to the closure or realignment of a military installation, funds which would otherwise be available to the Secretary to effect the closure or realignment of that installation may be used by him for such purpose.

(2) Nothing in this section restricts the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title.

(e) In this section:

(1) The term ''military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

(2) The term ''civilian personnel'' means direct-hire, permanent civilian employees of the Department of Defense.

(3) The term ''realignment'' includes any action which both reduces and relocates functions and civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

(4) The term ''legislative day'' means a day on which either House of Congress is in session.

(Added Pub. L. 95–82, title VI, § 612(a), Aug. 1, 1977, 91 Stat. 379; amended Pub. L. 95–356, title VIII, § 805, Sept. 8, 1978, 92 Stat. 586; Pub. L. 97–214, § 10(a)(8), July 12, 1982, 96 Stat. 175; Pub. L. 98–525, title XIV, § 1405(41), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–145, title XII, § 1202(a), Nov. 8, 1985, 99 Stat. 716; Pub. L. 100–180, div. A, title XII, § 1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L.

101–510, div. B, title XXIX, §2911, Nov. 5, 1990, 104 Stat. 1819; Pub. L. 104–106, div. A, title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(1). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1990—Subsec. (e)(1). Pub. L. 101–510 inserted ''homeport facility for any ship,'' after ''center,'' and substituted ''under the jurisdiction of the Department of Defense, including any leased facility,'' for ''under the jurisdiction of the Secretary of a military department''.

1987—Subsec. (e). Pub. L. 100–180 inserted ''The term'' after each par. designation and revised first word in quotes in each par. to make initial letter of such word lowercase.

1985—Pub. L. 99–145 amended section generally, thereby applying the section only to closure of bases with more than 300 civilian personnel authorized to be employed and to realignments involving a reduction by more than 1,000, or by more than 50 percent, in the number of civilian personnel authorized to be employed at bases with more than 300 authorized civilian employees, striking out advance public notice required by the Secretary of Defense or the Secretary of the military department concerned when an installation is a candidate for closure or realignment, requiring that all base closure or realignment proposals be submitted to the Committee on Armed Services of the Senate and of the House of Representatives as part of the annual budget request and that such proposals contain an evaluation of the fiscal, local economic, budgetary, environmental, strategic, and operational consequences of such action, providing that no irrevocable action to implement the closure to realignment could be taken until the expiration of 30 legislative days or 60 calendar days, whichever is longer, and making explicit the authority of the Secretary to obtain architectural and engineering services under section 2807 of this title and to use funds that would otherwise be available to effect the closure or realignment after expiration of the notice period.

1984—Subsec. (a)(2). Pub. L. 98–525, §1405(41)(A), substituted ''1,000'' for ''one thousand''.

Subsec. (b)(2). Pub. L. 98–525, §1405(41)(B), inserted ''(42 U.S.C. 4321 et seq.)''.

Subsec. (b)(4). Pub. L. 98–525, §1405(41)(C), substituted ''60'' for ''sixty''.

Subsec. (d)(1)(B). Pub. L. 98–525, §1405(41)(D), substituted ''300'' for ''three hundred''.

1982—Subsec. (d)(1). Pub. L. 97–214 substituted ''a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department'' for ''any camp, post, station, base, yard, or other facility under the authority of the Department of Defense''.

1978—Subsec. (d)(1)(B). Pub. L. 95–356 substituted ''three hundred'' for ''five hundred''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 1202(b) of Pub. L. 99–145 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to closures and realignments completed on or after the date of the enactment of this Act [Nov. 8, 1985], except that any action taken to effect or implement any closure or realignment for which a public announcement was made pursuant to section 2687(b)(1) of title 10, United States Code, after April 1, 1985, and before the date of enactment of this Act shall be subject to the provisions of section 2687 of such title as in effect on the day before such date of enactment.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–526, §1, Oct. 24, 1988, 102 Stat. 2623, provided that: ''This Act [amending sections 1095a, 2324, 2683, and 4415 of this title, enacting provisions set out as notes under this section and sections 154 and 2306 of this title, and amending provisions set out as notes under section 2324 of this title] may be cited as the 'Defense Authorization Amendments and Base Closure and Realignment Act'.''

EFFECTIVE DATE OF 1994 AMENDMENTS BY SECTION 2813(d)(1) AND (2) OF PUB. L. 103–337

Pub. L. 103–337, div. B, title XXVIII, §2813(d)(3), Oct. 5, 1994, 108 Stat. 3055, provided that: ''The amendments made by paragraphs (1) and (2) [amending section 209(10) of Pub. L. 100–526 and section 2910(9) of Pub. L. 101–510, set out below] shall take effect as if included in the amendments made by section 2918 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 107 Stat. 1927).''

EFFECTIVE DATE OF 1991 AMENDMENTS BY SECTION 344 OF PUB. L. 102–190

Pub. L. 102–190, div. A, title III, §344(c), Dec. 5, 1991, 105 Stat. 1346, provided that: ''The amendments made by this section [amending provisions set out as notes below] shall apply with regard to the transfer or disposal of any real property or facility pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, set out below] or the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] occurring on or after the date of the enactment of this Act [Dec. 5, 1991].''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

REPORT ON CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 105–85, div. B, title XXVIII, §2824, Nov. 18, 1997, 111 Stat. 1998, as amended by Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(9), (f)(8)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, provided that:

''(a) REPORT.—(1) The Secretary of Defense shall prepare and submit to the congressional defense committees [Committees on Armed Services and Appropriations of Senate and House of Representatives] a report on the costs and savings attributable to the rounds of base closures and realignments conducted under the base closure laws and on the need, if any, for additional rounds of base closures and realignments.

''(2) For purposes of this section, the term 'base closure laws' means—

''(A) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note); and

''(B) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(b) ELEMENTS.—The report under subsection (a) shall include the following:

''(1) A statement, using data consistent with budget data, of the actual costs and savings (to the extent available for prior fiscal years) and the estimated costs and savings (in the case of future fiscal years) attributable to the closure and realignment of military installations as a result of the base closure laws.

''(2) A comparison, set forth by base closure round, of the actual costs and savings stated under paragraph (1) to the estimates of costs and savings submitted to the Defense Base Closure and Realignment Commission as part of the base closure process.

''(3) A comparison, set forth by base closure round, of the actual costs and savings stated under paragraph (1) to the annual estimates of costs and savings previously submitted to Congress.

''(4) A list of each military installation at which there is authorized to be employed 300 or more civilian personnel, set forth by Armed Force.

''(5) An estimate of current excess capacity at military installations, set forth—

''(A) as a percentage of the total capacity of the military installations of the Armed Forces with respect to all military installations of the Armed Forces;

''(B) as a percentage of the total capacity of the military installations of each Armed Force with respect to the military installations of such Armed Force; and

''(C) as a percentage of the total capacity of a type of military installations with respect to military installations of such type.

''(6) An assessment of the effect of the previous base closure rounds on military capabilities and the ability of the Armed Forces to fulfill the National Military Strategy.

''(7) A description of the types of military installations that would be recommended for closure or realignment in the event of one or more additional base closure rounds, set forth by Armed Force.

''(8) The criteria to be used by the Secretary in evaluating military installations for closure or realignment in such event.

''(9) The methodologies to be used by the Secretary in identifying military installations for closure or realignment in such event.

''(10) An estimate of the costs and savings that the Secretary believes will be achieved as a result of the closure or realignment of military installations in such event, set forth by Armed Force and by year.

''(11) An assessment of whether the costs and estimated savings from one or more future rounds of base closures and realignments, currently unauthorized, are already contained in the current Future Years Defense Plan, and, if not, whether the Secretary will recommend modifications in future defense spending in order to accommodate such costs and savings.

''(c) METHOD OF PRESENTING INFORMATION.—The statement and comparison required by paragraphs (1) and (2) of subsection (b) shall be set forth by Armed Force, type of facility, and fiscal year, and include the following:

''(1) Operation and maintenance costs, including costs associated with expanded operations and support, maintenance of property, administrative support, and allowances for housing at military installations to which functions are transferred as a result of the closure or realignment of other installations.

''(2) Military construction costs, including costs associated with rehabilitating, expanding, and constructing facilities to receive personnel and equipment that are transferred to military installations as a result of the closure or realignment of other installations.

''(3) Environmental cleanup costs, including costs associated with assessments and restoration.

''(4) Economic assistance costs, including—

''(A) expenditures on Department of Defense demonstration projects relating to economic assistance;

''(B) expenditures by the Office of Economic Adjustment; and

''(C) to the extent available, expenditures by the Economic Development Administration, the Federal Aviation Administration, and the Department of Labor relating to economic assistance.

''(5) To the extent information is available, unemployment compensation costs, early retirement benefits (including benefits paid under section 5597 of title 5, United States Code), and worker retraining expenses under the Priority Placement Program, the [sic] title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.], and any other federally funded job training program.

''(6) Costs associated with military health care.

''(7) Savings attributable to changes in military force structure.

''(8) Savings due to lower support costs with respect to military installations that are closed or realigned.

''(d) DEADLINE.—The Secretary shall submit the report under subsection (a) not later than the date on which the President submits to Congress the budget for fiscal year 2000 under section 1105(a) of title 31, United States Code.

''(e) REVIEW.—The Congressional Budget Office and the Comptroller General shall conduct a review of the report prepared under subsection (a).

''(f) PROHIBITION ON USE OF FUNDS.—Except as necessary to prepare the report required under subsection (a), no funds authorized to be appropriated or otherwise made available to the Department of Defense by this Act or any other Act may be used for the purposes of planning for, or collecting data in anticipation of, an authorization providing for procedures under which the closure and realignment of military installations may be accomplished, until the later of—

''(1) the date on which the Secretary submits the report required by subsection (a); and

''(2) the date on which the Congressional Budget Office and the Comptroller General complete a review of the report under subsection (e).

''(g) SENSE OF CONGRESS.—It is the sense of the Congress that—

''(1) the Secretary should develop a system having the capacity to quantify the actual costs and savings attributable to the closure and realignment of military installations pursuant to the base closure process; and

''(2) the Secretary should develop the system in expedient fashion, so that the system may be used to quantify costs and savings attributable to the 1995 base closure round.''

RETENTION OF CIVILIAN EMPLOYEE POSITIONS AT MILITARY TRAINING BASES TRANSFERRED TO NATIONAL GUARD

Pub. L. 104–201, div. A, title XVI, § 1602, Sept. 23, 1996, 110 Stat. 2734, provided that:

''(a) RETENTION OF EMPLOYEE POSITIONS.—In the case of a military training installation described in subsection (b), the Secretary of Defense shall retain civilian employee positions of the Department of Defense at the installation after transfer to the National Guard to facilitate active and reserve component training at the installation. The Secretary shall determine the extent to which positions at the installation are to be retained as positions of the Department of Defense in consultation with the Adjutant General of the National Guard of the State in which the installation is located.

''(b) MILITARY TRAINING INSTALLATIONS AFFECTED.—This section applies with respect to each military training installation that—

''(1) was approved for closure in 1995 under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note);

''(2) is scheduled for transfer to National Guard operation and control; and

''(3) will continue to be used, after such transfer, to provide training support to active and reserve components of the Armed Forces.

''(c) MAXIMUM POSITIONS RETAINED.—The number of civilian employee positions retained at an installation

under this section may not exceed 20 percent of the Federal civilian workforce employed at the installation as of September 8, 1995.

''(d) REMOVAL OF POSITION.—The requirement to maintain a civilian employee position at an installation under this section terminates upon the later of the following:

''(1) The date of the departure or retirement from that position by the civilian employee initially employed or retained in the position as a result of this section.

''(2) The date on which the Secretary certifies to Congress that the position is no longer required to ensure that effective support is provided at the installation for active and reserve component training.''

USE OF FUNDS TO IMPROVE LEASED PROPERTY

Section 2837(b) of Pub. L. 104–106 provided that: ''Notwithstanding any other provision of law, a department or agency of the Federal Government that enters into a lease of property under section 2905(b)(4)(C) [now 2905(b)(4)(E)] of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as amended by subsection (a), may improve the leased property using funds appropriated or otherwise available to the department or agency for such purpose.''

REGULATIONS TO CARRY OUT SECTION 204(e) OF PUB. L. 100–526 AND SECTION 2905(f) OF PUB. L. 101–510

Section 2840(c) of Pub. L. 104–106 provided that: ''Not later than nine months after the date of the enactment of this Act [Feb. 10, 1996], the Secretary of Defense shall prescribe any regulations necessary to carry out subsection (e) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (f) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by subsection (b).''

PROHIBITION ON OBLIGATION OF FUNDS FOR PROJECTS ON INSTALLATIONS CITED FOR REALIGNMENT

Pub. L. 104–6, title I, §112, Apr. 10, 1995, 109 Stat. 82, provided that: ''None of the funds made available to the Department of Defense for any fiscal year for military construction or family housing may be obligated to initiate construction projects upon enactment of this Act [Apr. 10, 1995] for any project on an installation that—

''(1) was included in the closure and realignment recommendations submitted by the Secretary of Defense to the Base Closure and Realignment Commission on February 28, 1995, unless removed by the Base Closure and Realignment Commission, or

''(2) is included in the closure and realignment recommendation as submitted to Congress in 1995 in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510) [part A of title XXIX of div. B of Pub. L. 101–510, set out below]:

Provided, That the prohibition on obligation of funds for projects located on an installation cited for realignment are only to be in effect if the function or activity with which the project is associated will be transferred from the installation as a result of the realignment: *Provided further*, That this provision will remain in effect unless the Congress enacts a Joint Resolution of Disapproval in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101–510).''

APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF PUB. L. 103–421

Pub. L. 103–421, §2(e), Oct. 25, 1994, 108 Stat. 4352, as amended by Pub. L. 104–106, div. A, title XV, §1505(f), Feb. 10, 1996, 110 Stat. 515; Pub. L. 107–107, div. A, title X, §1048(d)(5), Dec. 28, 2001, 115 Stat. 1227, provided that:

''(1)(A) Notwithstanding any provision of the 1988 base closure Act or the 1990 base closure Act, as such provision was in effect on the day before the date of the enactment of this Act [Oct. 25, 1994], and subject to subparagraphs (B) and (C), the use to assist the homeless of building and property at military installations approved for closure under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before such date shall be determined in accordance with the provisions of paragraph (7) of section 2905(b) of the 1990 base closure Act, as amended by subsection (a), in lieu of the provisions of the 1988 base closure Act or the 1990 base closure Act that would otherwise apply to the installations.

''(B)(i) The provisions of such paragraph (7) shall apply to an installation referred to in subparagraph (A) only if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after the date of the enactment of this Act.

''(ii) In the case of an installation for which no redevelopment authority exists on the date of the enactment of this Act, the chief executive officer of the State in which the installation is located shall submit the request referred to in clause (i) and act as the redevelopment authority for the installation.

''(C) The provisions of such paragraph (7) shall not apply to any buildings or property at an installation referred to in subparagraph (A) for which the redevelopment authority submits a request referred to in subparagraph (B) within the time specified in such subparagraph (B) if the buildings or property, as the case may be, have been transferred or leased for use to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act.

''(2) For purposes of the application of such paragraph (7) to the buildings and property at an installation, the date on which the Secretary receives a request with respect to the installation under paragraph (1) shall be treated as the date on which the Secretary of Defense completes the final determination referred to in subparagraph (B) of such paragraph (7).

''(3) Upon receipt under paragraph (1)(B) of a timely request with respect to an installation, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information describing the redevelopment authority for the installation.

''(4)(A) The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall not, during the 60-day period beginning on the date of the enactment of this Act [Oct. 25, 1994], carry out with respect to any military installation approved for closure under the 1988 base closure Act or the 1990 base closure Act before such date any action required of such Secretaries under the 1988 base closure Act or the 1990 base closure Act, as the case may be, or under section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

''(B)(i) Upon receipt under paragraph (1)(A) of a timely request with respect to an installation, the Secretary of Defense shall notify the Secretary of Housing and Urban Development and the Secretary of Health and Human Services that the disposal of buildings and property at the installation shall be determined under such paragraph (7) in accordance with this subsection.

''(ii) Upon receipt of a notice with respect to an installation under this subparagraph, the requirements, if any, of the Secretary of Housing and Urban Development and the Secretary of Health and Human Services with respect to the installation under the provisions of law referred to in subparagraph (A) shall terminate.

''(iii) Upon receipt of a notice with respect to an installation under this subparagraph, the Secretary of Health and Human Services shall notify each representative of the homeless that submitted to that Secretary an application to use buildings or property at the installation to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case

may be, that the use of buildings and property at the installation to assist the homeless shall be determined under such paragraph (7) in accordance with this subsection.

''(5) In preparing a redevelopment plan for buildings and property at an installation covered by such paragraph (7) by reason of this subsection, the redevelopment authority concerned shall—

''(A) consider and address specifically any applications for use of such buildings and property to assist the homeless that were received by the Secretary of Health and Human Services under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act [Oct. 25, 1994] and are pending with that Secretary on that date; and

''(B) in the case of any application by representatives of the homeless that was approved by the Secretary of Health and Human Services before the date of enactment of this Act, ensure that the plan adequately addresses the needs of the homeless identified in the application by providing such representatives of the homeless with—

''(i) properties, on or off the installation, that are substantially equivalent to the properties covered by the application;

''(ii) sufficient funding to secure such substantially equivalent properties;

''(iii) services and activities that meet the needs identified in the application; or

''(iv) a combination of the properties, funding, and services and activities described in clauses (i), (ii), and (iii).

''(6) In the case of an installation to which the provisions of such paragraph (7) apply by reason of this subsection, the date specified by the redevelopment authority for the installation under subparagraph (D) of such paragraph (7) shall be not less than 1 month and not more than 6 months after the date of the submittal of the request with respect to the installation under paragraph (1)(B).

''(7) For purposes of this subsection:

''(A) The term '1988 base closure Act' means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).''

PREFERENCE FOR LOCAL RESIDENTS

Pub. L. 103–337, div. A, title VIII, §817, Oct. 5, 1994, 108 Stat. 2820, provided that:

''(a) PREFERENCE ALLOWED.—In entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law, the Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.

''(b) DEFINITION.—In this section, the term 'base closure law' means the following:

''(1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(c) APPLICABILITY.—Any preference given under subsection (a) shall apply only with respect to contracts entered into after the date of the enactment of this Act [Oct. 5, 1994].

''(d) TERMINATION.—This section shall cease to be effective on September 30, 1997.''

GOVERNMENT RENTAL OF FACILITIES LOCATED ON CLOSED MILITARY INSTALLATIONS

Pub. L. 103–337, div. B, title XXVIII, §2814, Oct. 5, 1994, 108 Stat. 3056, as amended by Pub. L. 107–314, div. A, title X, §1062(*l*), Dec. 2, 2002, 116 Stat. 2652, provided that:

''(a) AUTHORIZATION TO RENT BASE CLOSURE PROPERTIES.—To promote the rapid conversion of military installations that are closed pursuant to a base closure law, the Administrator of the General Services may give priority consideration, when leasing space in accordance with chapter 5 or 33 of title 40, United States Code, to facilities of such an installation that have been acquired by a non-Federal entity.

''(b) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term 'base closure law' means each of the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).''

REPORT OF EFFECT OF BASE CLOSURES ON FUTURE MOBILIZATION OPTIONS

Pub. L. 103–337, div. B, title XXVIII, §2815, Oct. 5, 1994, 108 Stat. 3056, provided that:

''(a) REPORT REQUIRED.—The Secretary of Defense shall prepare a report evaluating the effect of base closures and realignments conducted since January 1, 1987, on the ability of the Armed Forces to remobilize to the end strength levels authorized for fiscal year 1987 by sections 401 [100 Stat. 3859], 403 [enacting provisions set out as a note under section 521 of this title], 411 [amending section 115 of this title and enacting provisions set out as a note under section 12001 of this title], 412 [enacting section 686 [now 12318] of this title], and 421 [100 Stat. 3863] of the National Defense Authorization Act for Fiscal Year 1987 (Public Law 99–661; 100 Stat. 3859). The report shall identify those military construction projects, if any, that would be necessary to facilitate such remobilization and any defense assets disposed of under a base closure or realignment, such as air space, that would be difficult to reacquire in the event of such remobilization.

''(b) TIME FOR SUBMISSION.—Not later than January 31, 1996, the Secretary shall submit to the congressional defense committees the report required by this section.''

CONGRESSIONAL FINDINGS WITH RESPECT TO BASE CLOSURE COMMUNITY ASSISTANCE

Pub. L. 103–160, div. B, title XXIX, §2901, Nov. 30, 1993, 107 Stat. 1909, provided that: ''Congress makes the following findings:

''(1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

''(2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.

''(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

''(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result

of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

''(5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a matter arising out of the closure of a military installation under a base closure law, or the reutilization and redevelopment of such an installation, designate for each installation to be closed an individual in such department or agency who shall provide information and assistance to the transition coordinator for the installation designated under section 2915 [set out below] on the assistance, programs, or other activities of such department or agency with respect to the closure or reutilization and redevelopment of the installation.

''(6) The Federal Government may also provide such assistance by accelerating environmental restoration at military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reutilization and redevelopment of such installations by such communities.

''(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value.''

CONSIDERATION OF ECONOMIC NEEDS AND COOPERATION WITH STATE AND LOCAL AUTHORITIES IN DISPOSING OF PROPERTY

Pub. L. 103–160, div. B, title XXIX, §2903(c), (d), Nov. 30, 1993, 107 Stat. 1915, provided that:

''(c) CONSIDERATION OF ECONOMIC NEEDS.—In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.

''(d) COOPERATION.—The Secretary of Defense shall cooperate with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation.''

REGULATIONS TO CARRY OUT SECTION 204 OF PUB. L. 100–526 AND SECTION 2905 OF PUB. L. 101–510

Pub. L. 103–160, div. B, title XXIX, §2908(c), Nov. 30, 1993, 107 Stat. 1924, provided that: ''Not later than nine months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Defense, in consultation with the Administrator of the Environmental Protection Agency, shall prescribe any regulations necessary to carry out subsection (d) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (e) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by subsection (b).''

COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS

Pub. L. 103–160, div. B, title XXIX, §2911, Nov. 30, 1993, 107 Stat. 1924, provided that: ''Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).''

PREFERENCE FOR LOCAL AND SMALL BUSINESSES IN CONTRACTING

Pub. L. 103–160, div. B, title XXIX, §2912, Nov. 30, 1993, 107 Stat. 1925, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(14), Oct. 5, 1994, 108 Stat. 2857, provided that:

''(a) PREFERENCE REQUIRED.—In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

''(b) DEFINITIONS.—In this section:

''(1) The term 'small business concern' means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

''(2) The term 'small disadvantaged business concern' means the business concerns referred to in section 8(d)(1) of such Act (15 U.S.C. 637(d)(1)).

''(3) The term 'base closure law' includes section 2687 of title 10, United States Code.''

TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY CLOSURE OF INSTALLATIONS

Pub. L. 103–160, div. B, title XXIX, §2915, Nov. 30, 1993, 107 Stat. 1926, as amended by Pub. L. 107–107, div. A, title X, §1048(d)(4), Dec. 28, 2001, 115 Stat. 1227, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall designate a transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (c).

''(b) TIMING OF DESIGNATION.—A transition coordinator shall be designated for an installation under subsection (a) as follows:

''(1) Not later than 15 days after the date of approval of closure of the installation.

''(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act [Nov. 30, 1993], not later than 15 days after such date of enactment.

''(c) RESPONSIBILITIES.—A transition coordinator designated with respect to an installation shall—

''(1) encourage, after consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the expeditious environmental cleanup and restoration of the installation by the Department of Defense;

''(2) assist the Secretary of the military department concerned in designating real property at the installation that has the potential for rapid and beneficial reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(3) assist such Secretary in identifying strategies for accelerating completion of environmental cleanup and restoration of the real property designated under paragraph (2);

''(4) assist such Secretary in developing plans for the closure of the installation that take into account the goals set forth in the redevelopment plan for the installation;

''(5) assist such Secretary in developing plans for ensuring that, to the maximum extent practicable, the Department of Defense carries out any activities at the installation after the closure of the installation in a manner that takes into account, and supports, the redevelopment plan for the installation;

''(6) assist the Secretary of Defense in making determinations with respect to the transferability of property at the installation under section 204(b)(5) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100–526; 10 U.S.C. 2687 note), as added by section 2904(a) of this Act, and under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by section 2904(b) of this Act, as the case may be;

''(7) assist the local redevelopment authority with respect to the installation in identifying real property or personal property at the installation that may have significant potential for reuse or redevelopment in accordance with the redevelopment plan for the installation;

''(8) assist the Office of Economic Adjustment of the Department of Defense and other departments and agencies of the Federal Government in coordinating the provision of assistance under transition assistance and transition mitigation programs with community redevelopment activities with respect to the installation;

''(9) assist the Secretary of the military department concerned in identifying property located at the installation that may be leased in a manner consistent with the redevelopment plan for the installation; and

''(10) assist the Secretary of Defense in identifying real property or personal property at the installation that may be utilized to meet the needs of the homeless by consulting with the Secretary of Housing and Urban Development and the local lead agency of the homeless, if any, referred to in section 210(b) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11320(b)) for the State in which the installation is located.''

DEFINITIONS FOR SUBTITLE A OF TITLE XXIX OF PUB. L. 103–160

Pub. L. 103–160, div. B, title XXIX, §2918(a), Nov. 30, 1993, 107 Stat. 1927, provided that: ''In this subtitle [subtitle A (§§2901 to 2918) of title XXIX of div. B of Pub. L. 103–160, amending sections 2391 and 2667 of this title, enacting provisions set out as notes under this section and section 9620 of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section]:

''(1) The term 'base closure law' means the following:

''(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

''(3) The term 'redevelopment authority', in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

''(4) The term 'redevelopment plan', in the case of an installation to be closed under a base closure law, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.''

LIMITATION ON EXPENDITURES FROM DEFENSE BASE CLOSURE ACCOUNT 1990 FOR MILITARY CONSTRUCTION IN SUPPORT OF TRANSFERS OF FUNCTIONS

Pub. L. 103–160, div. B, title XXIX, §2922, Nov. 30, 1993, 107 Stat. 1930, as amended by Pub. L. 104–106, div. A, title XV, §1502(c)(1), Feb. 10, 1996, 110 Stat. 506; Pub. L. 106–65, div. A, title X, §1067(7), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) LIMITATION.—If the Secretary of Defense recommends to the Defense Base Closure and Realignment Commission pursuant to section 2903(c) of the 1990 base closure Act [set out below] that an installation be closed or realigned, the Secretary identifies in documents submitted to the Commission one or more installations to which a function performed at the recommended installation would be transferred, and the recommended installation is closed or realigned pursuant to such Act, then, except as provided in subsection (b), funds in the Defense Base Closure Account 1990 may not be used for military construction in support of the transfer of that function to any installation other than an installation so identified in such documents.

''(b) EXCEPTION.—The limitation in subsection (a) ceases to be applicable to military construction in support of the transfer of a function to an installation on the 60th day following the date on which the Secretary submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a notification of the proposed transfer that—

''(1) identifies the installation to which the function is to be transferred; and

''(2) includes the justification for the transfer to such installation.

''(c) DEFINITIONS.—In this section:

''(1) The term '1990 base closure Act' means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'Defense Base Closure Account 1990' means the account established under section 2906 of the 1990 base closure Act [set out below].''

SENSE OF CONGRESS ON DEVELOPMENT OF BASE CLOSURE CRITERIA

Pub. L. 103–160, div. B, title XXIX, §2925, Nov. 30, 1993, 107 Stat. 1932, as amended by Pub. L. 104–106, div. A, title XV, §1502(c)(1), Feb. 10, 1996, 110 Stat. 506, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense consider, in developing in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510; 10 U.S.C. 2687 note) amended criteria, whether such criteria should include the direct costs of such closures and realignments to other Federal departments and agencies.

''(b) REPORT ON AMENDMENT.—(1) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives [now Committee on Armed Services of the House of Representatives] a report on any amended criteria developed by the Secretary under section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990 after the date of the enactment of this Act [Nov. 30, 1993]. Such report shall include a discussion of the amended criteria and include a justification for any decision not to propose a cri-

terion regarding the direct costs of base closures and realignments to other Federal agencies and departments.

''(2) The Secretary shall submit the report upon publication of the amended criteria in accordance with section 2903(b)(2)(B) of the Defense Base Closure and Realignment Act of 1990.''

MILITARY BASE CLOSURE REPORT

Pub. L. 102–581, title I, §107(d), Oct. 31, 1992, 106 Stat. 4879, provided that: ''Within 30 days after the date on which the Secretary of Defense recommends a list of military bases for closure or realignment pursuant to section 2903(c) of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510; [10] U.S.C. 2687 note), the Administrator of the Federal Aviation Administration shall submit to Congress and the Defense Base Closure and Realignment Commission a report on the effects of all those recommendations involving military airbases, including but not limited to, the effect of the proposed closures or realignments on civilian airports and airways in the local community and region; potential modifications and costs necessary to convert such bases to civilian aviation use; and in the case of air traffic control or radar coverage currently provided by the Department of Defense, potential installations or adjustments of equipment and costs necessary for the Federal Aviation Administration to maintain existing levels of service for the local community and region.''

INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY

Pub. L. 102–484, div. A, title III, §330, Oct. 23, 1992, 106 Stat. 2371, as amended by Pub. L. 103–160, div. A, title X, §1002, Nov. 30, 1993, 107 Stat. 1745, provided that:

''(a) IN GENERAL.—(1) Except as provided in paragraph (3) and subject to subsection (b), the Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law.

''(2) The persons and entities described in this paragraph are the following:

''(A) Any State (including any officer, agent, or employee of the State) that acquires ownership or control of any facility at a military installation (or any portion thereof) described in paragraph (1).

''(B) Any political subdivision of a State (including any officer, agent, or employee of the State) that acquires such ownership or control.

''(C) Any other person or entity that acquires such ownership or control.

''(D) Any successor, assignee, transferee, lender, or lessee of a person or entity described in subparagraphs (A) through (C).

''(3) To the extent the persons and entities described in paragraph (2) contributed to any such release or threatened release, paragraph (1) shall not apply.

''(b) CONDITIONS.—No indemnification may be afforded under this section unless the person or entity making a claim for indemnification—

''(1) notifies the Department of Defense in writing within two years after such claim accrues or begins action within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the Department of Defense;

''(2) furnishes to the Department of Defense copies of pertinent papers the entity receives;

''(3) furnishes evidence or proof of any claim, loss, or damage covered by this section; and

''(4) provides, upon request by the Department of Defense, access to the records and personnel of the entity for purposes of defending or settling the claim or action.

''(c) AUTHORITY OF SECRETARY OF DEFENSE.—(1) In any case in which the Secretary of Defense determines that the Department of Defense may be required to make indemnification payments to a person under this section for any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage referred to in subsection (a)(1), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

''(2) In any case described in paragraph (1), if the person to whom the Department of Defense may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this section.

''(d) ACCRUAL OF ACTION.—For purposes of subsection (b)(1), the date on which a claim accrues is the date on which the plaintiff knew (or reasonably should have known) that the personal injury or property damage referred to in subsection (a) was caused or contributed to by the release or threatened release of a hazardous substance, pollutant or contaminant, or petroleum or petroleum derivative as a result of Department of Defense activities at any military installation (or portion thereof) described in subsection (a)(1).

''(e) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed as affecting or modifying in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

''(f) DEFINITIONS.—In this section:

''(1) The terms 'facility', 'hazardous substance', 'release', and 'pollutant or contaminant' have the meanings given such terms under paragraphs (9), (14), (22), and (33) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, respectively (42 U.S.C. 9601(9), (14), (22), and (33)).

''(2) The term 'military installation' has the meaning given such term under section 2687(e)(1) of title 10, United States Code.

''(3) The term 'base closure law' means the following:

''(A) The Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510] (10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of the enactment of this Act [Oct. 23, 1992].''

DEMONSTRATION PROJECT FOR USE OF NATIONAL RELOCATION CONTRACTOR TO ASSIST DEPARTMENT OF DEFENSE

Pub. L. 102–484, div. B, title XXVIII, §2822, Oct. 23, 1992, 106 Stat. 2608, provided that:

''(a) USE OF NATIONAL RELOCATION CONTRACTOR.—Subject to the availability of appropriations therefor, the Secretary of Defense shall enter into a one-year contract with a private relocation contractor operating on a nationwide basis to test the cost-effectiveness of using national relocation contractors to administer the Homeowners Assistance Program. The contract shall be competitively awarded not later than 30 days after the date of the enactment of this Act [Oct. 23, 1992].

''(b) REPORT ON CONTRACT.—Not later than one year after the date on which the Secretary of Defense enters into the contract under subsection (a), the Comptroller General shall submit to Congress a report containing the Comptroller General's evaluation of the effectiveness of using the national contractor for administering the program referred to in subsection (a). The report

shall compare the cost and efficiency of such administration with the cost and efficiency of—

''(1) the program carried out by the Corps of Engineers using its own employees; and

''(2) the use of contracts with local relocation companies at military installations being closed or realigned.''

ENVIRONMENTAL RESTORATION REQUIREMENTS AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. A, title III, § 334, Dec. 5, 1991, 105 Stat. 1340, prescribed requirements for certain installations to be closed under 1989 or 1991 base closure lists by requiring that all draft final remedial investigations and feasibility studies related to environmental restoration activities at each such military installation be submitted to Environmental Protection Agency not later than 24 months after Dec. 5, 1991, for bases on 1989 closure list and not later than 36 months after such date for bases on 1991 closure list, prior to repeal by Pub. L. 104–201, div. A, title III, § 328, Sept. 23, 1996, 110 Stat. 2483.

WITHHOLDING INFORMATION FROM CONGRESS OR COMPTROLLER GENERAL

Pub. L. 102–190, div. B, title XXVIII, § 2821(i), Dec. 5, 1991, 105 Stat. 1546, provided that: ''Nothing in this section [enacting and amending provisions set out below] or in the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below] shall be construed to authorize the withholding of information from Congress, any committee or subcommittee of Congress, or the Comptroller General of the United States.''

CONSISTENCY IN BUDGET DATA

Pub. L. 102–190, div. B, title XXVIII, § 2822, Dec. 5, 1991, 105 Stat. 1546, as amended by Pub. L. 102–484, div. B, title XXVIII, § 2825, Oct. 23, 1992, 106 Stat. 2609, provided that:

''(a) MILITARY CONSTRUCTION FUNDING REQUESTS.—In the case of each military installation considered for closure or realignment or for comparative purposes by the Defense Base Closure and Realignment Commission, the Secretary of Defense shall ensure, subject to subsection (b), that the amount of the authorization requested by the Department of Defense for military construction relating to the closure or realignment of the installation in each of the fiscal years 1992 through 1999 for the following fiscal year does not exceed the estimate of the cost of such construction (adjusted as appropriate for inflation) that was provided to the Commission by the Department of Defense.

''(b) EXPLANATION FOR INCONSISTENCIES.—The Secretary may submit to Congress for a fiscal year a request for the authorization of military construction referred to in subsection (a) in an amount greater than the estimate of the cost of the construction (adjusted as appropriate for inflation) that was provided to the Commission if the Secretary determines that the greater amount is necessary and submits with the request a complete explanation of the reasons for the difference between the requested amount and the estimate.

''(c) INVESTIGATION.—(1) The Inspector General of the Department of Defense shall investigate the military construction for which the Secretary is required to submit an explanation to Congress under subsection (b) if the Inspector General determines (under standards prescribed by the Inspector General) that the difference between the requested amount and the estimate for such construction is significant.

''(2) The Inspector General shall submit to the congressional defense committees a report describing the results of each investigation conducted under paragraph (1).''

DISPOSITION OF FACILITIES OF DEPOSITORY INSTITUTIONS ON MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 102–190, div. B, title XXVIII, § 2825, Dec. 5, 1991, 105 Stat. 1549, as amended by Pub. L. 103–160, div. B, title XXIX, § 2928(a), (b)(1), (c), Nov. 30, 1993, 107 Stat. 1934, 1935, provided that:

''(a) AUTHORITY TO CONVEY FACILITIES.—(1) Subject to subsection (c) and notwithstanding any other provision of law, the Secretary of the military department having jurisdiction over a military installation being closed pursuant to a base closure law may convey all right, title, and interest of the United States in a facility located on that installation to a depository institution that—

''(A) conducts business in the facility; and

''(B) constructed or substantially renovated the facility using funds of the depository institution.

''(2) In the case of the conveyance under paragraph (1) of a facility that was not constructed by the depository institution but was substantially renovated by the depository institution, the Secretary shall require the depository institution to pay an amount determined by the Secretary to be equal to the value of the facility in the absence of the renovations.

''(b) AUTHORITY TO CONVEY LAND.—As part of the conveyance of a facility to a depository institution under subsection (a), the Secretary of the military department concerned shall permit the depository institution to purchase the land upon which that facility is located. The Secretary shall offer the land to the depository institution before offering such land for sale or other disposition to any other entity. The purchase price shall be not less than the fair market value of the land, as determined by the Secretary.

''(c) LIMITATION.—The Secretary of a military department may not convey a facility to a depository institution under subsection (a) if the Secretary determines that the operation of a depository institution at such facility is inconsistent with the redevelopment plan with respect to the installation.

''(d) BASE CLOSURE LAW DEFINED.—For purposes of this section, the term 'base closure law' means the following:

''(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 104 Stat. 1808; 10 U.S.C. 2687 note).

''(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627; 10 U.S.C. 2687 note).

''(3) Section 2687 of title 10, United States Code.

''(4) Any other similar law enacted after the date of the enactment of this Act [Dec. 5, 1991].

''(e) DEPOSITORY INSTITUTION DEFINED.—For purposes of this section, the term 'depository institution' has the meaning given that term in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).''

REPORT ON ENVIRONMENTAL RESTORATION COSTS FOR INSTALLATIONS TO BE CLOSED UNDER 1990 BASE CLOSURE LAW

Pub. L. 102–190, div. B, title XXVIII, § 2827(b), Dec. 5, 1991, 105 Stat. 1551, directed the Secretary of Defense to submit an annual report to Congress on the funding needed for environmental restoration activities at certain designated military installations for the fiscal year for which a budget was submitted and for each of the four following fiscal years, prior to repeal by Pub. L. 104–106, div. A, title X, § 1061(m), Feb. 10, 1996, 110 Stat. 443.

SENSE OF CONGRESS REGARDING JOINT RESOLUTION OF DISAPPROVAL OF 1991 BASE CLOSURE COMMISSION RECOMMENDATION

Pub. L. 102–172, title VIII, § 8131, Nov. 26, 1991, 105 Stat. 1208, provided that: ''It is the sense of the Congress that in acting on the Joint Resolution of Disapproval of the 1991 Base Closure Commission's recommendation, the Congress takes no position on whether there has been compliance by the Base Closure Commission, and the Department of Defense with the requirements of the Defense Base Closure and Realignment Act of 1990 [part A of title XXIX of div. B of Pub. L. 101–510, set out below]. Further, the vote on the reso-

lution of disapproval shall not be interpreted to imply Congressional approval of all actions taken by the Base Closure Commission and the Department of Defense in fulfillment of the responsibilities and duties conferred upon them by the Defense Base Closure and Realignment Act of 1990, but only the approval of the recommendations issued by the Base Closure Commission.''

REQUIREMENTS FOR BASE CLOSURE AND REALIGNMENT PLANS

Pub. L. 103–335, title VIII, §8040, Sept. 30, 1994, 108 Stat. 2626, which directed Secretary of Defense to include in any base closure and realignment plan submitted to Congress after Sept. 30, 1994, a complete review of expectations for the five-year period beginning on Oct. 1, 1994, including force structure and levels, installation requirements, a budget plan, cost savings to be realized through realignments and closures of military installations, and the economic impact on local areas affected, was from the Department of Defense Appropriations Act, 1995, and was not repeated in subsequent appropriation acts. Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–139, title VIII, §8045, Nov. 11, 1993, 107 Stat. 1450.

Pub. L. 102–396, title IX, §9060, Oct. 6, 1992, 106 Stat. 1915.

Pub. L. 102–172, title VIII, §8063, Nov. 26, 1991, 105 Stat. 1185.

Pub. L. 101–511, title VIII, §8081, Nov. 5, 1990, 104 Stat. 1894.

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Part A of title XXIX of div. B of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title III, §344(b)(1), div. B, title XXVIII, §§2821(a)–(h)(1), 2827(a)(1), (2), Dec. 5, 1991, 105 Stat. 1345, 1544–1546, 1551; Pub. L. 102–484, div. A, title X, §1054(b), div. B, title XXVIII, §§2821(b), 2823, Oct. 23, 1992, 106 Stat. 2502, 2607, 2608; Pub. L. 103–160, div. B, title XXIX, §§2902(b), 2903(b), 2904(b), 2905(b), 2907(b), 2908(b), 2918(c), 2921(b), (c), 2923, 2926, 2930(a), Nov. 30, 1993, 107 Stat. 1911, 1914, 1916, 1918, 1921, 1923, 1928–1930, 1932, 1935; Pub. L. 103–337, div. A, title X, §1070(b)(15), (d)(2), div. B, title XXVIII, §§2811, 2812(b), 2813(c)(2), (d)(2), (e)(2), Oct. 5, 1994, 108 Stat. 2857, 2858, 3053–3056; Pub. L. 103–421, §2(a)–(c), (f)(2), Oct. 25, 1994, 108 Stat. 4346–4352, 4354; Pub. L. 104–106, div. A, title XV, §§1502(d), 1504(a)(9), 1505(e)(1), div. B, title XXVIII, §§2831(b)(2), 2835, 2836, 2837(a), 2838, 2839(b), 2840(b), Feb. 10, 1996, 110 Stat. 508, 513, 514, 558, 560, 561, 564, 565; Pub. L. 104–201, div. B, title XXVIII, §§2812(b), 2813(b), Sept. 23, 1996, 110 Stat. 2789; Pub. L. 105–85, div. A, title X, §1073(d)(4)(B), div. B, title XXVIII, §2821(b), Nov. 18, 1997, 111 Stat. 1905, 1997; Pub. L. 106–65, div. A, title X, §1067(10), div. B, title XVIII, §§2821(a), 2822, Oct. 5, 1999, 113 Stat. 774, 853, 856; Pub. L. 106–398, §1 [[div. A], title X, §1087(g)(2), div. B, title XXVIII, §2821(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293, 1654A–419; Pub. L. 107–107, div. A, title X, §1048(d)(2), div. B, title XXVIII, §2821(b), title XXX, §§3001–3007, Dec. 28, 2001, 115 Stat. 1227, 1312, 1342–1351; Pub. L. 107–314, div. A, title X, §1062(f)(4), (m)(1)–(3), div. B, title XXVIII, §§2814(b), 2854, Dec. 2, 2002, 116 Stat. 2651, 2652, 2710, 2728, provided that:

''SEC. 2901. SHORT TITLE AND PURPOSE

''(a) SHORT TITLE.—This part may be cited as the 'Defense Base Closure and Realignment Act of 1990'.

''(b) PURPOSE.—The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

''SEC. 2902. THE COMMISSION

''(a) ESTABLISHMENT.—There is established an independent commission to be known as the 'Defense Base Closure and Realignment Commission'.

''(b) DUTIES.—The Commission shall carry out the duties specified for it in this part.

''(c) APPOINTMENT.—(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise [advice] and consent of the Senate.

''(B) The President shall transmit to the Senate the nominations for appointment to the Commission—

''(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

''(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

''(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

''(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with—

''(A) the Speaker of the House of Representatives concerning the appointment of two members;

''(B) the majority leader of the Senate concerning the appointment of two members;

''(C) the minority leader of the House of Representatives concerning the appointment of one member; and

''(D) the minority leader of the Senate concerning the appointment of one member.

''(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

''(d) TERMS.—(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

''(2) The Chairman of the Commission shall serve until the confirmation of a successor.

''(e) MEETINGS.—(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

''(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

''(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

''(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on Armed Services of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

''(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

''(f) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

''(g) PAY AND TRAVEL EXPENSES.—(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive

Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

''(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314 of title 5, United States Code.

''(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

''(h) DIRECTOR OF STAFF.—(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

''(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

''(i) STAFF.—(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

''(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS–18 of the General Schedule.

''(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

''(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

''(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

''(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

''(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may—

''(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

''(ii) review the preparation of such a report; or

''(iii) approve or disapprove such a report.

''(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

''(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

''(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

''(A) There may not be more than 15 persons on the staff at any one time.

''(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

''(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

''(j) OTHER AUTHORITY.—(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

''(2) The Commission may lease space and acquire personal property to the extent funds are available.

''(k) FUNDING.—(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

''(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100–526 [set out below]. Such funds shall remain available until expended.

''(3)(A) The Secretary may transfer not more than $300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

''(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(*l*) TERMINATION.—The Commission shall terminate on December 31, 1995.

''(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

''SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

''(a) FORCE-STRUCTURE PLAN.—(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

''(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan—

''(A) a description of the assessment referred to in paragraph (1);

''(B) a description (i) of the anticipated force structure during and at the end of each such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

''(C) a description of the anticipated implementation of such force-structure plan.

''(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

''(b) SELECTION CRITERIA.—(1) The Secretary shall, by no later than December 31, 1990, publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

''(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the Federal Register and

transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 15, 1991.

''(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the Federal Register, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

''(c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, March 15, 1993, and March 1, 1995, publish in the Federal Register and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

''(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

''(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

''(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

''(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning—

''(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

''(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

''(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

''(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

''(B) Subparagraph (A) applies to the following persons:

''(i) The Secretaries of the military departments.

''(ii) The heads of the Defense Agencies.

''(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

''(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

''(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath.

''(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

''(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

''(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

''(i) makes the determination required by subparagraph (B);

''(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

''(iii) publishes a notice of the proposed change in the Federal Register not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

''(iv) conducts public hearings on the proposed change.

''(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

''(i) add a military installation to the list of military installations recommended by the Secretary for closure;

''(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

''(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

''(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

''(3) The Commission shall explain and justify in its report submitted to the President pursuant to para-

graph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

''(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(5) The Comptroller General of the United States shall—

''(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (c); and

''(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

''(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

''(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

''(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

''(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

''(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

''SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''(a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

''(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

''(2) realign all military installations recommended for realignment by such Commission in each such report;

''(3) carry out the privatization in place of a military installation recommended for closure or realignment by the Commission in the 2005 report only if privatization in place is a method of closure or realignment of the military installation specified in the recommendations of the Commission in such report and is determined by the Commission to be the most cost-effective method of implementation of the recommendation;

''(4) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

''(5) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

''(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908, disapproving such recommendations of the Commission before the earlier of—

''(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

''(B) the adjournment of Congress sine die for the session during which such report is transmitted.

''(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain shall be excluded in the computation of a period.

''SEC. 2905. IMPLEMENTATION

''(a) IN GENERAL.—(1) In closing or realigning any military installation under this part, the Secretary may—

''(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

''(B) provide—

''(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

''(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation,

if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

''(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account;

''(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

''(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

''(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate

to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

''(A) the authority of the Administrator to utilize excess property under subchapter II of chapter 5 of title 40, United States Code;

''(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code;

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

''(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

''(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)]; and

''(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary may, with the concurrence of the Administrator of General Services—

''(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

''(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

''(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(3)(A) Not later than 6 months after the date of approval of the closure or realignment of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date of approval of the closure or realignment of the installation; or

''(IV) ninety days before the date of the closure or realignment of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure or realignment of an installation to be closed or realigned under this part as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed or realigned under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any personal property located at an installation to be closed or realigned under this part if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this part to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

''(B) With respect to military installations for which the date of approval of closure or realignment is after January 1, 2005, the Secretary shall seek to obtain consideration in connection with any transfer under this paragraph of property located at the installation in an amount equal to the fair market value of the property, as determined by the Secretary. The transfer of property of a military installation under subparagraph (A) may be without consideration if the redevelopment authority with respect to the installation—

''(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of

property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

''(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

''(i) Road construction.

''(ii) Transportation management facilities.

''(iii) Storm and sanitary sewer construction.

''(iv) Police and fire protection facilities and other public facilities.

''(v) Utility construction.

''(vi) Building rehabilitation.

''(vii) Historic property preservation.

''(viii) Pollution prevention equipment or facilities.

''(ix) Demolition.

''(x) Disposal of hazardous materials generated by demolition.

''(xi) Landscaping, grading, and other site or public improvements.

''(xii) Planning for or the marketing of the development and reuse of the installation.

''(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

''(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) A lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

''(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

''(II) firefighting or security-guard functions.

''(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

''(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

''(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

''(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

''(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, 10 U.S.C. 2687 note], with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d).

''(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

''(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

''(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000 [Oct. 5, 1999], at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

''(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed or realigned under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure or realignment of that installation.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to

in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment of the installation.

''(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this part as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997] and ending on July 31, 2001.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence [Oct. 25, 1994], see paragraph (7).

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified

in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

''(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

''(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

''(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

''(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

''(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

''(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

''(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

''(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

''(iii) In providing assistance under clause (ii), a redevelopment authority shall—

''(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

''(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

''(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure or realignment of the installation.

''(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

''(ii) The date specified under clause (i) shall be—

''(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after the date of publication of such determination in a newspaper of general circulation in the communities in the vicinity of the installation under subparagraph (B)(i)(IV); and

''(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

''(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

''(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

''(II) notify the Secretary of Defense of the date.

''(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

''(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

''(II) An assessment of the need for the program.

''(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

''(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

''(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

''(VI) An assessment of the time required in order to commence carrying out the program.

''(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

''(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

''(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

''(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

''(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

''(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

''(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall include in an application under clause (i) the following:

''(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

''(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

''(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

''(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

''(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

''(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

''(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless—

''(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

''(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

''(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

''(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

''(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

''(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

''(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

''(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

''(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

''(I) an explanation of that determination; and

''(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

''(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

''(I) revise the plan in order to address the determination; and

''(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

''(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

''(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

''(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

''(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

''(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

''(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

''(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter [probably means subchapter II (§ 47151 et seq.) of chapter 471 of Title 49, Transportation] (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a re-

vised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

''(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

''(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

''(III) request that each such representative submit to that Secretary the items described in clause (ii); and

''(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

''(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

''(I) A description of the program of such representative to assist the homeless.

''(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

''(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

''(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

''(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall—

''(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i)(IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

''(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H)(i).

''(iv)(I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and Urban Development and the redevelopment authority concerned.

''(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

''(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

''(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

''(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter [probably means subchapter II (§ 47151 et seq.) of Title 49, Transportation] (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

''(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

''(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

''(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure or realignment of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

''(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

''(P) For purposes of this paragraph, the term 'other interested parties', in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 550 of title 40, United States Code, or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

''(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

''(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider—

''(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

''(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

''(iii) military installations alternative to those recommended or selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

''(d) WAIVER.—The Secretary of Defense may close or realign military installations under this part without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

''(2) sections 2662 and 2687 of title 10, United States Code.

''(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed, or realigned or to be realigned, under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection. The real property and facilities referred to in subparagraph (A) are also the real property and facilities located at an installation approved for closure or realignment under this part after 2001 that are available for purposes other than to assist the homeless.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities otherwise to be paid by the Secretary with respect to the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) In the case of property or facilities covered by a certification under paragraph (2)(A), the Secretary may pay the recipient of such property or facilities an amount equal to the lesser of—

''(A) the amount by which the costs incurred by the recipient of such property or facilities for all environmental restoration, waste, management, and environmental compliance activities with respect to such property or facilities exceed the fair market value of such property or facilities as specified in such certification; or

''(B) the amount by which the costs (as determined by the Secretary) that would otherwise have been incurred by the Secretary for such restoration, management, and activities with respect to such property or facilities exceed the fair market value of such property or facilities as so specified.

''(4) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(5) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(6) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330, except in the case of releases or threatened releases not disclosed pursuant to paragraph (4).

''(f) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING.—(1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this part with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if—

''(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

''(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Sec-

retary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

''(3) Notwithstanding paragraph (2) of section 2906(a), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

''(4) The Secretary shall submit to the congressional defense committees a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 30-day period beginning on the date the congressional defense committees receive the report regarding the agreement.

''(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

''(g) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 2906. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 1990

''(a) IN GENERAL.—(1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account 1990' which shall be administered by the Secretary as a single account.

''(2) There shall be deposited into the Account—

''(A) funds authorized for and appropriated to the Account;

''(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;

''(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this part[,] the date of approval of closure or realignment of which is before January 1, 2005; and

''(D) proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code. Unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under subsection (c)(2).

''(b) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005, or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note). After July 13, 2001, the Account shall be the sole source of Federal funds for environmental restoration, property management, and other caretaker costs associated with any real property at military installations closed or realigned under this part or such title II.

''(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

''(c) REPORTS.—(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

''(B) The report for a fiscal year shall include the following:

''(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

''(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

''(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

''(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

''(I) any failure to carry out military construction projects that were so proposed; and

''(II) any expenditures for military construction projects that were not so proposed.

''(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is before January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

''(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

''(B) any amount remaining in the Account.

''(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED

FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is before January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

''(A) commissary stores; and

''(B) real property and facilities for nonappropriated fund instrumentalities.

''(4) As used in this subsection:

''(A) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(B) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(C) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except as provided in section 2906A(e) with respect to funds in the Department of Defense Base Closure Account 2005 under section 2906A and except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).

''SEC. 2906A. DEPARTMENT OF DEFENSE BASE CLOSURE ACCOUNT 2005.

''(a) IN GENERAL.—(1) If the Secretary makes the certifications required under section 2912(b), there shall be established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account 2005' (in this section referred to as the 'Account'). The Account shall be administered by the Secretary as a single account.

''(2) There shall be deposited into the Account—

''(A) funds authorized for and appropriated to the Account;

''(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees; and

''(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation that is closed or realigned under this part pursuant to a closure or realignment the date of approval of which is after January 1, 2005.

''(3) The Account shall be closed at the time and in the manner provided for appropriation accounts under section 1555 of title 31, United States Code. Unobligated funds which remain in the Account upon closure shall be held by the Secretary of the Treasury until transferred by law after the congressional defense committees receive the final report transmitted under subsection (c)(2).

''(b) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905 with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005.

''(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

''(c) REPORTS.—(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part using amounts in the Account, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

''(B) The report for a fiscal year shall include the following:

''(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

''(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

''(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

''(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

''(I) any failure to carry out military construction projects that were so proposed; and

''(II) any expenditures for military construction projects that were not so proposed.

''(2) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part with respect to military installations the date of approval of closure or realignment of which is after January 1, 2005, and no later than 60 days after the closure of the Account under subsection (a)(3), the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

''(A) all the funds deposited into and expended from the Account or otherwise expended under this part with respect to such installations; and

''(B) any amount remaining in the Account.

''(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part the date of approval of closure or realignment of which is after January 1, 2005, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 note).

''(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary.

''(3) The Secretary may use amounts in the reserve account, without further appropriation, for the purpose of acquiring, constructing, and improving—

''(A) commissary stores; and

''(B) real property and facilities for nonappropriated fund instrumentalities.

''(4) In this subsection, the terms 'commissary store funds', 'nonappropriated funds', and 'nonappropriated fund instrumentality' shall have the meaning given those terms in section 2906(d)(4).

''(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except as provided in section 2906(e) with respect to funds in the Department of Defense Base Closure Account 1990 under section 2906 and except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905(a)(1)(C). The prohibition in this subsection shall expire upon the closure of the Account under subsection (a)(3).

''SEC. 2907. REPORTS

''As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress—

''(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term 'joint resolution' means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on ———', the blank space being filled in with the appropriate date; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.'.

''(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A Member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred. All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect

to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

''(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on November 5, 1990, and ending on April 15, 2006, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

''(b) RESTRICTION.—Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)—

''(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an installation to be closed or realigned or as an installation under consideration for closure or realignment; or

''(2) to carry out any closure or realignment of a military installation inside the United States.

''(c) EXCEPTION.—Nothing in this part affects the authority of the Secretary to carry out—

''(1) closures and realignments under title II of Public Law 100–526 [set out below]; and

''(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

''SEC. 2910. DEFINITIONS

''As used in this part:

''(1) The term 'Account' means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

''(2) The term 'congressional defense committees' means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

''(3) The term 'Commission' means the Commission established by section 2902.

''(4) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

''(5) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

''(6) The term 'Secretary' means the Secretary of Defense.

''(7) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(8) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

''(9) The term 'redevelopment authority', in the case of an installation to be closed or realigned under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(10) The term 'redevelopment plan' in the case of an installation to be closed or realigned under this part, means a plan that—

''(A) is agreed to by the local redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure or realignment of the installation.

''(11) The term 'representative of the homeless' has the meaning given such term in section 501(i)(4) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

''SEC. 2911. CLARIFYING AMENDMENT

''[Amended this section.]

''SEC. 2912. 2005 ROUND OF REALIGNMENTS AND CLOSURES OF MILITARY INSTALLATIONS.

''(a) FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.—

''(1) PREPARATION AND SUBMISSION.—As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for fiscal year 2005, the Secretary shall include the following:

''(A) A force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the 20-year period beginning with fiscal year 2005, the probable end-strength levels and major military force units (including land force divisions, carrier and other major combatant vessels, air wings, and other comparable units) needed to meet these threats, and the anticipated levels of funding that will be available for national defense purposes during such period.

''(B) A comprehensive inventory of military installations world-wide for each military department, with specifications of the number and type of facilities in the active and reserve forces of each military department.

''(2) RELATIONSHIP OF PLAN AND INVENTORY.—Using the force-structure plan and infrastructure inventory prepared under paragraph (1), the Secretary shall prepare (and include as part of the submission of such plan and inventory) the following:

''(A) A description of the infrastructure necessary to support the force structure described in the force-structure plan.

''(B) A discussion of categories of excess infrastructure and infrastructure capacity.

''(C) An economic analysis of the effect of the closure or realignment of military installations to reduce excess infrastructure.

''(3) SPECIAL CONSIDERATIONS.—In determining the level of necessary versus excess infrastructure under paragraph (2), the Secretary shall consider the following:

''(A) The anticipated continuing need for and availability of military installations outside the United States, taking into account current restrictions on the use of military installations outside the United States and the potential for future prohibitions or restrictions on the use of such military installations.

''(B) Any efficiencies that may be gained from joint tenancy by more than one branch of the Armed Forces at a military installation.

''(4) REVISION.—The Secretary may revise the force-structure plan and infrastructure inventory. If the Secretary makes such a revision, the Secretary shall submit the revised plan or inventory to Congress as part of the budget justification documents submitted to Congress for fiscal year 2006.

''(b) CERTIFICATION OF NEED FOR FURTHER CLOSURES AND REALIGNMENTS.—

''(1) CERTIFICATION REQUIRED.—On the basis of the force-structure plan and infrastructure inventory prepared under subsection (a) and the descriptions and economic analysis prepared under such subsection, the Secretary shall include as part of the submission of the plan and inventory—

''(A) a certification regarding whether the need exists for the closure or realignment of additional military installations; and

''(B) if such need exists, a certification that the additional round of closures and realignments would result in annual net savings for each of the military departments beginning not later than fiscal year 2011.

''(2) EFFECT OF FAILURE TO CERTIFY.—If the Secretary does not include the certifications referred to in paragraph (1), the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(c) COMPTROLLER GENERAL EVALUATION.—

''(1) EVALUATION REQUIRED.—If the certification is provided under subsection (b), the Comptroller General shall prepare an evaluation of the following:

''(A) The force-structure plan and infrastructure inventory prepared under subsection (a) and the final selection criteria prepared under section 2913, including an evaluation of the accuracy and analytical sufficiency of such plan, inventory, and criteria.

''(B) The need for the closure or realignment of additional military installations.

''(2) SUBMISSION.—The Comptroller General shall submit the evaluation to Congress not later than 60 days after the date on which the force-structure plan and infrastructure inventory are submitted to Congress.

''(d) AUTHORIZATION OF ADDITIONAL ROUND; COMMISSION.—

''(1) APPOINTMENT OF COMMISSION.—Subject to the certifications required under subsection (b), the President may commence an additional round for the selection of military installations for closure and realignment under this part in 2005 by transmitting to the Senate, not later than March 15, 2005, nominations pursuant to section 2902(c) for the appointment of new members to the Defense Base Closure and Realignment Commission.

''(2) EFFECT OF FAILURE TO NOMINATE.—If the President does not transmit to the Senate the nominations for the Commission by March 15, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(3) MEMBERS.—Notwithstanding section 2902(c)(1), the Commission appointed under the authority of this subsection shall consist of nine members.

''(4) TERMS; MEETINGS; TERMINATION.—Notwithstanding subsections (d), (e)(1), and (*l*) of section 2902, the Commission appointed under the authority of this subsection shall meet during calendar year 2005 and shall terminate on April 15, 2006.

''(5) FUNDING.—If no funds are appropriated to the Commission by the end of the second session of the 108th Congress for the activities of the Commission in 2005, the Secretary may transfer to the Commission for purposes of its activities under this part in that year such funds as the Commission may require to carry out such activities. The Secretary may transfer funds under the preceding sentence from any funds available to the Secretary. Funds so transferred shall remain available to the Commission for such purposes until expended.

''SEC. 2913. SELECTION CRITERIA FOR 2005 ROUND.

''(a) PREPARATION OF PROPOSED SELECTION CRITERIA.—

''(1) IN GENERAL.—Not later than December 31, 2003, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the criteria proposed to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

''(2) PUBLIC COMMENT.—The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under this subsection.

''(b) MILITARY VALUE AS PRIMARY CONSIDERATION.—The selection criteria prepared by the Secretary shall ensure that military value is the primary consideration in the making of recommendations for the closure or realignment of military installations under this part in 2005. Military value shall include at a minimum the following:

''(1) Preservation of training areas suitable for maneuver by ground, naval, or air forces to guarantee future availability of such areas to ensure the readiness of the Armed Forces.

''(2) Preservation of military installations in the United States as staging areas for the use of the Armed Forces in homeland defense missions.

''(3) Preservation of military installations throughout a diversity of climate and terrain areas in the United States for training purposes.

''(4) The impact on joint warfighting, training, and readiness.

''(5) Contingency, mobilization, and future total force requirements at both existing and potential receiving locations to support operations and training.

''(c) SPECIAL CONSIDERATIONS.—The selection criteria for military installations shall also address at a minimum the following:

''(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

''(2) The economic impact on existing communities in the vicinity of military installations.

''(3) The ability of both existing and potential receiving communities' infrastructure to support forces, missions, and personnel.

''(4) The impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

''(d) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.—Any selection criteria proposed by the Secretary relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

''(e) FINAL SELECTION CRITERIA.—Not later than February 16, 2004, the Secretary shall publish in the Federal Register and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005. Such criteria shall be the final criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making such recommendations unless disapproved by an Act of Congress enacted on or before March 15, 2004.

''(f) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.

''SEC. 2914. SPECIAL PROCEDURES FOR MAKING RECOMMENDATIONS FOR REALIGNMENTS AND CLOSURES FOR 2005 ROUND; COMMISSION CONSIDERATION OF RECOMMENDATIONS.

''(a) RECOMMENDATIONS REGARDING CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.—If the Sec-

retary makes the certifications required under section 2912(b), the Secretary shall publish in the Federal Register and transmit to the congressional defense committees and the Commission, not later than May 16, 2005, a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and infrastructure inventory prepared by the Secretary under section 2912 and the final selection criteria prepared by the Secretary under section 2913.

''(b) PREPARATION OF RECOMMENDATIONS.—

''(1) IN GENERAL.—The Secretary shall comply with paragraphs (2) through (6) of section 2903(c) in preparing and transmitting the recommendations under this section. However, paragraph (6) of section 2903(c) relating to submission of information to Congress shall be deemed to require such submission within 48 hours.

''(2) CONSIDERATION OF LOCAL GOVERNMENT VIEWS.—(A) In making recommendations to the Commission in 2005, the Secretary shall consider any notice received from a local government in the vicinity of a military installation that the government would approve of the closure or realignment of the installation.

''(B) Notwithstanding the requirement in subparagraph (A), the Secretary shall make the recommendations referred to in that subparagraph based on the force-structure plan, infrastructure inventory, and final selection criteria otherwise applicable to such recommendations.

''(C) The recommendations shall include a statement of the result of the consideration of any notice described in subparagraph (A) that is received with respect to a military installation covered by such recommendations. The statement shall set forth the reasons for the result.

''(c) RECOMMENDATIONS TO RETAIN BASES IN INACTIVE STATUS.—In making recommendations for the closure or realignment of military installations, the Secretary may recommend that an installation be placed in an inactive status if the Secretary determines that—

''(1) the installation may be needed in the future for national security purposes; or

''(2) retention of the installation is otherwise in the interest of the United States.

''(d) COMMISSION REVIEW AND RECOMMENDATIONS.—

''(1) IN GENERAL.—Except as provided in this subsection, section 2903(d) shall apply to the consideration by the Commission of the recommendations transmitted by the Secretary in 2005. The Commission's report containing its findings and conclusions, based on a review and analysis of the Secretary's recommendations, shall be transmitted to the President not later than September 8, 2005.

''(2) AVAILABILITY OF RECOMMENDATIONS TO CONGRESS.—After September 8, 2005, the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

''(3) LIMITATIONS ON AUTHORITY TO ADD TO CLOSURE OR REALIGNMENT LISTS.—The Commission may not consider making a change in the recommendations of the Secretary that would add a military installation to the Secretary's list of installations recommended for closure or realignment unless, in addition to the requirements of section 2903(d)(2)(C)—

''(A) the Commission provides the Secretary with at least a 15-day period, before making the change, in which to submit an explanation of the reasons why the installation was not included on the closure or realignment list by the Secretary; and

''(B) the decision to add the installation for Commission consideration is supported by at least seven members of the Commission.

''(4) TESTIMONY BY SECRETARY.—The Commission shall invite the Secretary to testify at a public hearing, or a closed hearing if classified information is involved, on any proposed change by the Commission to the Secretary's recommendations.

''(5) SITE VISIT.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not recommend the closure of a military installation not recommended for closure by the Secretary under subsection (a) unless at least two members of the Commission visit the installation before the date of the transmittal of the report.

''(6) COMPTROLLER GENERAL REPORT.—The Comptroller General report required by section 2903(d)(5)(B) analyzing the recommendations of the Secretary and the selection process in 2005 shall be transmitted to the congressional defense committees not later than July 1, 2005.

''(e) REVIEW BY THE PRESIDENT.—

''(1) IN GENERAL.—Except as provided in this subsection, section 2903(e) shall apply to the review by the President of the recommendations of the Commission under this section, and the actions, if any, of the Commission in response to such review, in 2005. The President shall review the recommendations of the Secretary and the recommendations contained in the report of the Commission under subsection (d) and prepare a report, not later than September 23, 2005, containing the President's approval or disapproval of the Commission's recommendations.

''(2) COMMISSION RECONSIDERATION.—If the Commission prepares a revised list of recommendations under section 2903(e)(3) in 2005 in response to the review of the President in that year under paragraph (1), the Commission shall transmit the revised list to the President not later than October 20, 2005.

''(3) EFFECT OF FAILURE TO TRANSMIT.—If the President does not transmit to Congress an approval and certification described in paragraph (2) or (4) of section 2903(e) by November 7, 2005, the process by which military installations may be selected for closure or realignment under this part in 2005 shall be terminated.

''(4) EFFECT OF TRANSMITTAL.—A report of the President under this subsection containing the President's approval of the Commission's recommendations is deemed to be a report under section 2903(e) for purposes of sections 2904 and 2908.''

[Pub. L. 107–314, div. A, title X, §1062(f), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(f)(4) is effective as of Dec. 28, 2001, and as if included in Pub. L. 107–107 as enacted.]

[For effective date of amendment by section 2813(d)(2) of Pub. L. 103–337 to section 2910 of Pub. L. 101–510, set out above, see Effective Date of 1994 Amendments by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[Section 2902(c) of Pub. L. 103–160 provided that: ''For the purposes of section 2905(b)(3) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), the date of approval of closure of any installation approved for closure before the date of the enactment of this Act [Nov. 30, 1993] shall be deemed to be the date of the enactment of this Act.'']

[Section 2904(c) of Pub. L. 103–160 provided that: ''The Secretary of Defense shall make the determinations required under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, set out above], as added by subsection (b), in the case of installations approved for closure under such Act [part A of title XXIX of div. B of Pub. L. 101–510, set out above] before the date of the enactment of this Act [Nov. 30, 1993], not later than 6 months after the date of the enactment of this Act.'']

[Section 2930(b) of Pub. L. 103–160 provided that: ''The amendment made by this section [amending section 2903(d)(1) of Pub. L. 101–510 set out above] shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after the date of the enactment of this Act [Nov. 30, 1993].'']

[For effective date of amendments by section 344(b)(1) of Pub. L. 102–190 to section 2906 of Pub. L. 101–510, set

out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Section 2821(h)(2) of Pub. L. 102–190 provided that: ''The amendment made by paragraph (1) [amending section 2910 of Pub. L. 101–510 set out above] shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 [section 2910 of Pub. L. 101–510] on that date.'']

[Section 2827(a)(3) of Pub. L. 102–190 provided that: ''The amendments made by this subsection [amending sections 2905 and 2906 of Pub. L. 101–510 set out above] shall take effect on the date of the enactment of this Act [Dec. 5, 1991].'']

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

CLOSURE OF FOREIGN MILITARY INSTALLATIONS

Pub. L. 102–396, title IX, § 9047A, Oct. 6, 1992, 106 Stat. 1913, as amended by Pub. L. 104–106, div. A, title XV, § 1502(f)(2), Feb. 10, 1996, 110 Stat. 509, provided that: ''Notwithstanding any other provision of law, the Secretary of Defense may, by Executive Agreement, establish with host nation governments in NATO member states a separate account into which such residual value amounts negotiated in the return of United States military installations in NATO member states may be deposited, in the currency of the host nation, in lieu of direct monetary transfers to the United States Treasury: *Provided*, That such credits may be utilized only for the construction of facilities to support United States military forces in that host nation, or such real property maintenance and base operating costs that are currently executed through monetary transfers to such host nations: *Provided further*, That the Department of Defense's budget submission for each fiscal year shall identify such sums anticipated in residual value settlements, and identify such construction, real property maintenance or base operating costs that shall be funded by the host nation through such credits: *Provided further*, That all military construction projects to be executed from such accounts must be previously approved in a prior Act of Congress: *Provided further*, That each such Executive Agreement with a NATO member host nation shall be reported to the Committee on Appropriations and the Committee on Armed Services of the Senate and the Committee on Appropriations and the Committee on National Security [now Committee on Armed Services] of the House of Representatives thirty days prior to the conclusion and endorsement of any such agreement established under this provision.''

Similar provisions for specified fiscal years were contained in the following appropriation acts:

Pub. L. 107–248, title VIII, § 8018, Oct. 23, 2002, 116 Stat. 1540.

Pub. L. 107–117, div. A, title VIII, § 8019, Jan. 10, 2002, 115 Stat. 2251.

Pub. L. 106–259, title VIII, § 8019, Aug. 9, 2000, 114 Stat. 678.

Pub. L. 106–79, title VIII, § 8019, Oct. 25, 1999, 113 Stat. 1235.

Pub. L. 105–262, title VIII, § 8019, Oct. 17, 1998, 112 Stat. 2301.

Pub. L. 105–56, title VIII, § 8019, Oct. 8, 1997, 111 Stat. 1224.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8020], Sept. 30, 1996, 110 Stat. 3009–71, 3009–92.

Pub. L. 104–61, title VIII, § 8027, Dec. 1, 1995, 109 Stat. 657.

Pub. L. 103–335, title VIII, § 8033, Sept. 30, 1994, 108 Stat. 2625.

Pub. L. 103–139, title VIII, § 8036, Nov. 11, 1993, 107 Stat. 1448.

Section 2921 of Pub. L. 101–510, as amended by Pub. L. 102–190, div. A, title III, § 344(b)(2), Dec. 5, 1991, 105 Stat. 1345; Pub. L. 102–484, div. B, title XXVIII, §§ 2821(c), 2827, Oct. 23, 1992, 106 Stat. 2608, 2609; Pub. L. 103–160, div. B, title XXIX, § 2924(b), Nov. 30, 1993, 107 Stat. 1931; Pub. L. 103–337, div. A, title XIII, § 1305(c), div. B, title XXVIII, § 2817, Oct. 5, 1994, 108 Stat. 2891, 3057; Pub. L. 104–106, div. A, title X, § 1063(b), title XV, §§ 1502(c)(4)(D), 1505(e)(2), Feb. 10, 1996, 110 Stat. 444, 508, 515; Pub. L. 105–85, div. A, title X, § 1073(d)(4)(C), Nov. 18, 1997, 111 Stat. 1905; Pub. L. 106–65, div. A, title X, § 1067(10), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of the Congress that—

''(1) the termination of military operations by the United States at military installations outside the United States should be accomplished at the discretion of the Secretary of Defense at the earliest opportunity;

''(2) in providing for such termination, the Secretary of Defense should take steps to ensure that the United States receives, through direct payment or otherwise, consideration equal to the fair market value of the improvements made by the United States at facilities that will be released to host countries;

''(3) the Secretary of Defense, acting through the military component commands or the sub-unified commands to the combatant commands, should be the lead official in negotiations relating to determining and receiving such consideration; and

''(4) the determination of the fair market value of such improvements released to host countries in whole or in part by the United States should be handled on a facility-by-facility basis.

''(b) RESIDUAL VALUE.—(1) For each installation outside the United States at which military operations were being carried out by the United States on October 1, 1990, the Secretary of Defense shall transmit, by no later than June 1, 1991, an estimate of the fair market value, as of January 1, 1991, of the improvements made by the United States at facilities at each such installation.

''(2) For purposes of this section:

''(A) The term 'fair market value of the improvements' means the value of improvements determined by the Secretary on the basis of their highest use.

''(B) The term 'improvements' includes new construction of facilities and all additions, improvements, modifications, or renovations made to existing facilities or to real property, without regard to whether they were carried out with appropriated or nonappropriated funds.

''(c) ESTABLISHMENT OF SPECIAL ACCOUNT.—(1) There is established on the books of the Treasury a special account to be known as the 'Department of Defense Overseas Military Facility Investment Recovery Account'. Except as provided in subsection (d), amounts paid to the United States, pursuant to any treaty, status of forces agreement, or other international agreement to which the United States is a party, for the residual value of real property or improvements to real property used by civilian or military personnel of the Department of Defense shall be deposited into such account.

''(2) Money deposited in the Department of Defense Overseas Military Facility Investment Recovery Account shall be available to the Secretary of Defense for payment, as provided in appropriation Acts, of costs incurred by the Department of Defense in connection with—

''(A) facility maintenance and repair and environmental restoration at military installations in the United States; and

''(B) facility maintenance and repair and compliance with applicable environmental laws at military installations outside the United States that the Secretary anticipates will be occupied by the Armed Forces for a long period.

''(3) Funds in the Department of Defense Overseas Facility Investment Recovery Account shall remain available until expended.

''(d) AMOUNTS CORRESPONDING TO THE VALUE OF PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) In

the case of a payment referred to in subsection (c)(1) for the residual value of real property or improvements at an overseas military facility, the portion of the payment that is equal to the depreciated value of the investment made with nonappropriated funds shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526, set out below]. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance by appropriation Acts) for the purpose of acquiring, constructing, or improving commissary stores and nonappropriated fund instrumentalities.

''(2) As used in this subsection:

''(A) The term 'nonappropriated funds' means funds received from—

''(i) the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code; or

''(ii) a nonappropriated fund instrumentality.

''(B) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(e) NEGOTIATIONS FOR PAYMENTS-IN-KIND.—(1) Before the Secretary of Defense enters into negotiations with a host country regarding the acceptance by the United States of any payment-in-kind in connection with the release to the host country of improvements made by the United States at military installations in the host country, the Secretary shall submit to the appropriate congressional committees a written notice regarding the intended negotiations.

''(2) The notice shall contain the following:

''(A) A justification for entering into negotiations for payments-in-kind with the host country.

''(B) The types of benefit options to be pursued by the Secretary in the negotiations.

''(C) A discussion of the adjustments that are intended to be made in the future-years defense program or in the budget of the Department of Defense for the fiscal year in which the notice is submitted or the following fiscal year in order to reflect costs that it may no longer be necessary for the United States to incur as a result of the payments-in-kind to be sought in the negotiations.

''(3) For purposes of this subsection, the appropriate congressional committees are—

''(A) the Committee on Armed Services, the Committee on Appropriations, and the National Security Subcommittee of the Committee on Appropriations of the House of Representatives; and

''(B) the Committee on Armed Services, the Committee on Appropriations, and the Subcommittee on Defense of the Committee on Appropriations of the Senate.

''(f) OMB REVIEW OF PROPOSED SETTLEMENTS.—(1) The Secretary of Defense may not enter into an agreement of settlement with a host country regarding the release to the host country of improvements made by the United States to facilities at an installation located in the host country until 30 days after the date on which the Secretary submits the proposed settlement to the Director of the Office of Management and Budget. The prohibition set forth in the preceding sentence shall apply only to agreements of settlement for improvements having a value in excess of $10,000,000. The Director shall evaluate the overall equity of the proposed settlement. In evaluating the proposed settlement, the Director shall consider such factors as the extent of the United States capital investment in the improvements being released to the host country, the depreciation of the improvements, the condition of the improvements, and any applicable requirements for environmental remediation or restoration at the installation.

''(2) Each year, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on each proposed agreement of settlement that was not submitted by the Secretary to the Director of the Office of Management and Budget in the previous year under paragraph (1) because the value of the improvements to be released pursuant to the proposed agreement did not exceed $10,000,000.

''(g) CONGRESSIONAL OVERSIGHT OF PAYMENTS-IN-KIND.—(1) Not less than 30 days before concluding an agreement for acceptance of military construction or facility improvements as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

''(A) A description of the military construction project or facility improvement project, as the case may be.

''(B) A certification that the project is needed by United States forces.

''(C) An explanation of how the project will aid in the achievement of the mission of those forces.

''(D) A certification that, if the project were to be carried out by the Department of Defense, appropriations would be necessary for the project and it would be necessary to provide for the project in the next future-years defense program.

''(2) Not less than 30 days before concluding an agreement for acceptance of host nation support or host nation payment of operating costs of United States forces as a payment-in-kind, the Secretary of Defense shall submit to Congress a notification on the proposed agreement. Any such notification shall contain the following:

''(A) A description of each activity to be covered by the payment-in-kind.

''(B) A certification that the costs to be covered by the payment-in-kind are included in the budget of one or more of the military departments or that it will otherwise be necessary to provide for payment of such costs in a budget of one or more of the military departments.

''(C) A certification that, unless the payment-in-kind is accepted or funds are appropriated for payment of such costs, the military mission of the United States forces with respect to the host nation concerned will be adversely affected.''

[For effective date of amendment by section 344(b)(2) of Pub. L. 102–190 to section 2921 of Pub. L. 101–510, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

TASK FORCE REPORT

Pub. L. 102–380, §125, Oct. 5, 1992, 106 Stat. 1372, provided that:

''(a) The environmental response task force established in section 2923(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821) [set out below] shall reconvene and shall, until the date (as determined by the Secretary of Defense) on which all base closure activities required under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below] are completed—

''(1) monitor the progress of relevant Federal and State agencies in implementing the recommendations of the task force contained in the report submitted under paragraph (1) of such section; and

''(2) annually submit to the Congress a report containing—

''(A) recommendations concerning ways to expedite and improve environmental response actions at military installations (or portions of installations) that are being closed or subject to closure under such title;

''(B) any additional recommendations that the task force considers appropriate; and

''(C) a summary of the progress made by relevant Federal and State agencies in implementing the recommendations of the task force.

''(b) The task force shall consist of—

''(1) the individuals (or their designees) described in section 2923(c)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1821); and

''(2) a representative of the Urban Land Institute (or such representative's designee), appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate.''

Section 2923(c) of Pub. L. 101–510 provided that:

''(1) Not later than 12 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall submit to Congress a report containing the findings and recommendations of the task force established under paragraph (2) concerning—

''(A) ways to improve interagency coordination, within existing laws, regulations, and administrative policies, of environmental response actions at military installations (or portions of installations) that are being closed, or are scheduled to be closed, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [set out below]; and

''(B) ways to consolidate and streamline, within existing laws and regulations, the practices, policies, and administrative procedures of relevant Federal and State agencies with respect to such environmental response actions so as to enable those actions to be carried out more expeditiously.

''(2) There is hereby established an environmental response task force to make the findings and recommendations, and to prepare the report, required by paragraph (1). The task force shall consist of the following (or their designees):

''(A) The Secretary of Defense, who shall be chairman of the task force.

''(B) The Attorney General.

''(C) The Administrator of the General Services Administration.

''(D) The Administrator of the Environmental Protection Agency.

''(E) The Chief of Engineers, Department of the Army.

''(F) A representative of a State environmental protection agency, appointed by the head of the National Governors Association.

''(G) A representative of a State attorney general's office, appointed by the head of the National Association of Attorney Generals.

''(H) A representative of a public-interest environmental organization, appointed by the Speaker of the House of Representatives.''

COMMUNITY PREFERENCE CONSIDERATION IN CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Section 2924 of Pub. L. 101–510 provided that: ''In any process of selecting any military installation inside the United States for closure or realignment, the Secretary of Defense shall take such steps as are necessary to assure that special consideration and emphasis is given to any official statement from a unit of general local government adjacent to or within a military installation requesting the closure or realignment of such installation.''

CONTRACTS FOR CERTAIN ENVIRONMENTAL RESTORATION ACTIVITIES

Section 2926 of Pub. L. 101–510, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717; Pub. L. 107–314, div. A, title X, § 1062(m)(4), Dec. 2, 2002, 116 Stat. 2652, provided that:

''(a) ESTABLISHMENT OF MODEL PROGRAM.—Not later than 90 days after the date of enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall establish a model program to improve the efficiency and effectiveness of the base closure environmental restoration program.

''(b) ADMINISTRATOR OF PROGRAM.—The Secretary shall designate the Deputy Assistant Secretary of Defense for Environment as the Administrator of the model program referred to in subsection (a). The Deputy Assistant Secretary shall report to the Secretary of Defense through the Under Secretary of Defense for Acquisition, Technology, and Logistics.

''(c) APPLICABILITY.—This section shall apply to environmental restoration activities at installations selected by the Secretary pursuant to the provisions of subsection (d)(1).

''(d) PROGRAM REQUIREMENTS.—In carrying out the model program, the Secretary of Defense shall:

''(1) Designate for the model program two installations under his jurisdiction that have been designated for closure pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [see Short Title of 1988 Amendment note above] and for which preliminary assessments, site inspections, and Environmental Impact Statements required by law or regulation have been completed. The Secretary shall designate only those installations which have satisfied the requirements of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) [set out below].

''(2) Compile a prequalification list of prospective contractors for solicitation and negotiation in accordance with the procedures set forth in chapter 11 of title 40, United States Code. Such contractors shall satisfy all applicable statutory and regulatory requirements. In addition, the contractor selected for one of the two installations under this program shall indemnify the Federal Government against all liabilities, claims, penalties, costs, and damages caused by (A) the contractor's breach of any term or provision of the contract; and (B) any negligent or willful act or omission of the contractor, its employees, or its subcontractors in the performance of the contract.

''(3) Within 180 days after the date of enactment of this Act [Nov. 5, 1990], solicit proposals from qualified contractors for response action (as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)) at the installations designated under paragraph (1). Such solicitations and proposals shall include the following:

''(A) Proposals to perform response action. Such proposals shall include provisions for receiving the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies.

''(B) To the maximum extent possible, provisions offered by single prime contractors to perform all phases of the response action, using performance specifications supplied by the Secretary of Defense and including any safeguards the Secretary deems essential to avoid conflict of interest.

''(4) Evaluate bids on the basis of price and other evaluation criteria.

''(5) Subject to the availability of authorized and appropriated funds to the Department of Defense, make contract awards for response action within 120 days after the solicitation of proposals pursuant to paragraph (3) for the response action, or within 120 days after receipt of the necessary authorizations or approvals of the response action by appropriate Federal, State, or local agencies, whichever is later.

''(e) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the model program shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620).

''(f) EXPEDITED AGREEMENTS.—The Secretary shall, with the concurrence of the Administrator of the Environmental Protection Agency, assure compliance with all applicable Federal statutes and regulations and, in addition, take all reasonable and appropriate measures to expedite all necessary administrative decisions, agreements, and concurrences.

''(g) REPORT.—The Secretary of Defense shall include a description of the progress made during the preceding

fiscal year in implementing and accomplishing the goals of this section within the annual report to Congress required by section 2706 of title 10, United States Code.

''(h) APPLICABILITY OF EXISTING LAW.—Nothing in this section affects or modifies, in any way, the obligations or liability of any person under other Federal or State law, including common law, with respect to the disposal or release of hazardous substances or pollutants or contaminants as defined under section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).''

CONSIDERATION OF DEPARTMENT OF DEFENSE HOUSING FOR COAST GUARD

Pub. L. 101–225, title II, § 216, Dec. 12, 1989, 103 Stat. 1915, provided that: ''Notwithstanding any other provision of law, the Coast Guard is deemed to be an instrumentality within the Department of Defense for the purposes of section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act [Pub. L. 100–526] (10 U.S.C. 2687 [note]).''

FIVE-YEAR PLAN FOR ENVIRONMENTAL RESTORATION AT BASES TO BE CLOSED

Pub. L. 101–189, div. A, title III, § 353, Nov. 29, 1989, 103 Stat. 1423, directed Secretary of Defense to develop a comprehensive five-year plan for environmental restoration at military installations that would be closed or realigned during fiscal years 1991 through 1995, pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. 100–526, set out below, and, at same time President submits to Congress budget for fiscal year 1991 pursuant to 31 U.S.C. 1105, to submit to Congress a report on the five-year plan.

PROHIBITION ON REDUCING END STRENGTH LEVELS FOR MEDICAL PERSONNEL AS A RESULT OF BASE CLOSURES AND REALIGNMENTS

Pub. L. 101–189, div. A, title VII, § 723, Nov. 29, 1989, 103 Stat. 1478, provided that:

''(a) PROHIBITION.—The end strength levels for medical personnel for each component of the Armed Forces, and the number of civilian personnel of the Department of Defense assigned to military medical facilities, may not be reduced as a result of the closure or realignment of a military installation under section 2687 of title 10, United States Code, or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(b) MEDICAL PERSONNEL DEFINED.—For purposes of subsection (a), the term 'medical personnel' has the meaning given that term in subparagraph (D) of section 115(b)(1) of title 10, United States Code.''

USE OF CLOSED BASES FOR PRISONS AND DRUG TREATMENT FACILITIES

Pub. L. 101–189, div. B, title XXVIII, § 2832, Nov. 29, 1989, 103 Stat. 1660, provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the war on drugs is one of the highest priorities of the Federal Government;

''(2) to effectively wage the war on drugs, adequate penal and correctional facilities and a substantial increase in the number and capacity of drug treatment facilities are needed;

''(3) under the base closure process, authorized by title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below], 86 military bases are scheduled for closure; and

''(4) facilities rendered excess by the base closure process should be seriously considered for use as prisons and drug treatment facilities, as appropriate.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should, pursuant to the provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act, give priority to making real property (including the improvements thereon) of the Department of Defense rendered excess or surplus as a result of the recommendations of the Commission on Base Realignment and Closure available to another Federal agency or a State or local government for use as a penal or correctional facility or as a drug abuse prevention, treatment, or rehabilitation center.''

NOTICE TO LOCAL AND STATE EDUCATIONAL AGENCIES OF ENROLLMENT CHANGES DUE TO BASE CLOSURES AND REALIGNMENTS

Pub. L. 101–189, div. B, title XXVIII, § 2833, Nov. 29, 1989, 103 Stat. 1661, provided that:

''(a) IDENTIFICATION OF ENROLLMENT CHANGES.—(1) Not later than January 1 of each year in which any activities necessary to close or realign a military installation under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627) [set out below] are conducted, the Secretary of Defense shall identify, to the extent practicable, each local educational agency that will experience at least a 5-percent increase or at least a 10-percent reduction in the number of dependent children of members of the Armed Forces and of civilian employees of the Department of Defense enrolled in schools under the jurisdiction of such agency during the next academic year (compared with the number of such children enrolled in such schools during the preceding year) as a result of the closure or realignment of a military installation under that Act [Pub. L. 100–526, see Short Title of 1988 Amendment note above].

''(2) The Secretary shall carry out this subsection in consultation with the Secretary of Education.

''(b) NOTICE REQUIRED.—Not later than 30 days after the date on which the Secretary of Defense identifies a local educational agency under subsection (a), the Secretary shall transmit a written notice of the schedule for the closure or realignment of the military installation affecting that local educational agency to that local educational agency and to the State government education agency responsible for administering State government education programs involving that local educational agency.''

CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

Pub. L. 100–526, title II, Oct. 24, 1988, 102 Stat. 2627, as amended by Pub. L. 101–510, div. B, title XXIX, § 2923(b)(1), Nov. 5, 1990, 104 Stat. 1821; Pub. L. 102–190, div. A, title III, § 344(a), Dec. 5, 1991, 105 Stat. 1344; Pub. L. 102–484, div. B, title XXVIII, § 2821(a), Oct. 23, 1992, 106 Stat. 2606; Pub. L. 103–160, div. B, title XXIX, §§ 2902(a), 2903(a), 2904(a), 2905(a), 2907(a), 2908(a), 2918(b), 2921(a), Nov. 30, 1993, 107 Stat. 1909, 1912, 1915, 1916, 1921, 1922, 1928, 1929; Pub. L. 103–337, div. A, title X, § 1070(b)(13), div. B, title XXVIII, §§ 2812(a), 2813(a)–(c)(1), (d)(1), (e)(1), Oct. 5, 1994, 108 Stat. 2857, 3054, 3055; Pub. L. 103–421, § 2(f)(1), Oct. 25, 1994, 108 Stat. 4354; Pub. L. 104–106, div. A, title XV, §§ 1504(a)(9), 1505(e)(3), div. B, title XXVIII, §§ 2831(b)(1), 2839(a), 2840(a), Feb. 10, 1996, 110 Stat. 513, 515, 558, 563, 564; Pub. L. 104–201, div. B, title XXVIII, §§ 2811, 2812(a), 2813(a), Sept. 23, 1996, 110 Stat. 2788, 2789; Pub. L. 105–85, div. A, title X, § 1073(d)(6), div. B, title XXVIII, § 2821(a), Nov. 18, 1997, 111 Stat. 1906, 1996; Pub. L. 106–65, div. B, title XXVIII, § 2821(b), Oct. 5, 1999, 113 Stat. 855; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2821(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–419; Pub. L. 107–107, div. A, title X, § 1048(d)(3), div. B, title XXVIII, § 2821(a), Dec. 28, 2001, 115 Stat. 1227, 1311; Pub. L. 107–314, div. A, title X, § 1062(n), div. B, title XXVIII, § 2814(a), Dec. 2, 2002, 116 Stat. 2652, 2710, provided that:

''SEC. 201. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

''The Secretary shall—

''(1) close all military installations recommended for closure by the Commission on Base Realignment and Closure in the report transmitted to the Sec-

retary pursuant to the charter establishing such Commission;

''(2) realign all military installations recommended for realignment by such Commission in such report; and

''(3) initiate all such closures and realignments no later than September 30, 1991, and complete all such closures and realignments no later than September 30, 1995, except that no such closure or realignment may be initiated before January 1, 1990.

''SEC. 202. CONDITIONS

''(a) IN GENERAL.—The Secretary may not carry out any closure or realignment of a military installation under this title unless—

''(1) no later than January 16, 1989, the Secretary transmits to the Committees on Armed Services of the Senate and the House of Representatives a report containing a statement that the Secretary has approved, and the Department of Defense will implement, all of the military installation closures and realignments recommended by the Commission in the report referred to in section 201(1);

''(2) the Commission has recommended, in the report referred to in section 201(1), the closure or realignment, as the case may be, of the installation, and has transmitted to the Committees on Armed Services of the Senate and the House of Representatives a copy of such report and the statement required by section 203(b)(2); and

''(3) the Secretary of Defense has transmitted to the Commission the study required by section 206(b).

''(b) JOINT RESOLUTION.—The Secretary may not carry out any closure or realignment under this title if, within the 45-day period beginning on March 1, 1989, a joint resolution is enacted, in accordance with the provisions of section 208, disapproving the recommendations of the Commission. The days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of such 45-day period.

''(c) TERMINATION OF AUTHORITY.—(1) Except as provided in paragraph (2), the authority of the Secretary to carry out any closure or realignment under this title shall terminate on October 1, 1995.

''(2) The termination of authority set forth in paragraph (1) shall not apply to the authority of the Secretary to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''SEC. 203. THE COMMISSION

''(a) MEMBERSHIP.—The Commission shall consist of 12 members appointed by the Secretary of Defense.

''(b) DUTIES.—The Commission shall—

''(1) transmit the report referred to in section 201(1) to the Secretary no later than December 31, 1988, and shall include in such report a description of the Commission's recommendations of the military installations to which functions will be transferred as a result of the closures and realignments recommended by the Commission; and

''(2) on the same date on which the Commission transmits such report to the Secretary, transmit to Committees on Armed Services of the Senate and the House of Representatives—

''(A) a copy of such report; and

''(B) a statement certifying that the Commission has identified the military installations to be closed or realigned by reviewing all military installations inside the United States, including all military installations under construction and all those planned for construction.

''(c) STAFF.—Not more than one-half of the professional staff of the Commission shall be individuals who have been employed by the Department of Defense during calendar year 1988 in any capacity other than as an employee of the Commission.

''SEC. 204. IMPLEMENTATION

''(a) IN GENERAL.—In closing or realigning a military installation under this title, the Secretary—

''(1) subject to the availability of funds authorized for and appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance and the availability of funds in the Account, may carry out actions necessary to implement such closure or realignment, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from such military installation to another military installation;

''(2) subject to the availability of funds authorized for and appropriated to the Department of Defense for economic adjustment assistance or community planning assistance and the availability of funds in the Account, shall provide—

''(A) economic adjustment assistance to any community located near a military installation being closed or realigned; and

''(B) community planning assistance to any community located near a military installation to which functions will be transferred as a result of such closure or realignment,

if the Secretary determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate; and

''(3) subject to the availability of funds authorized for and appropriated to the Department of Defense for environmental restoration and the availability of funds in the Account, may carry out activities for the purpose of environmental restoration, including reducing, removing, and recycling hazardous wastes and removing unsafe buildings and debris.

''(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this title—

''(A) the authority of the Administrator to utilize excess property under subchapter II of chapter 5 of title 40, United States Code;

''(B) the authority of the Administrator to dispose of surplus property under subchapter III of chapter 5 of title 40, United States Code; and

''(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code.

''(2)(A) Subject to subparagraph (B), the Secretary shall exercise authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

''(i) all regulations in effect on the date of the enactment of this title [Oct. 24, 1988] governing utilization of excess property and disposal of surplus property under the Federal Property and Administrative Services Act of 1949 [now chapters 1 to 11 of Title 40, Public Buildings, Property, and Works and title III of the Act of June 30, 1949 (41 U.S.C. 251 et seq.)]; and

''(ii) all regulations in effect on the date of the enactment of this title governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

''(B) The Secretary, after consulting with the Administrator of General Services, may issue regulations that are necessary to carry out the delegation of authority required by paragraph (1).

''(C) The authority required to be delegated by paragraph (1) to the Secretary by the Administrator of General Services shall not include the authority to prescribe general policies and methods for utilizing excess property and disposing of surplus property.

''(D) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this title, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

''(E) Before any action may be taken with respect to the disposal of any surplus real property or facility lo-

cated at any military installation to be closed or realigned under this title, the Secretary shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

''(F) The provisions of this paragraph and paragraph (1) are subject to paragraphs (3) through (6).

''(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall—

''(i) inventory the personal property located at the installation; and

''(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

''(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

''(i) the local government in whose jurisdiction the installation is wholly located; or

''(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

''(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

''(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

''(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

''(III) twenty-four months after the date referred to in subparagraph (A); or

''(IV) ninety days before the date of the closure of the installation.

''(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

''(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

''(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

''(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

''(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property—

''(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

''(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

''(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

''(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

''(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

''(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

''(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed or realigned under this title to the redevelopment authority with respect to the installation for purposes of job generation on the installation.

''(B) The transfer of property of a military installation under subparagraph (A) shall be without consideration if the redevelopment authority with respect to the installation—

''(i) agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the redevelopment authority during at least the first seven years after the date of the initial transfer of property under subparagraph (A) shall be used to support the economic redevelopment of, or related to, the installation; and

''(ii) executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision or finding of no significant impact under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

''(C) For purposes of subparagraph (B), the use of proceeds from a sale or lease described in such subparagraph to pay for, or offset the costs of, public investment on or related to the installation for any of the following purposes shall be considered a use to support the economic redevelopment of, or related to, the installation:

''(i) Road construction.

''(ii) Transportation management facilities.

''(iii) Storm and sanitary sewer construction.

''(iv) Police and fire protection facilities and other public facilities.

''(v) Utility construction.

''(vi) Building rehabilitation.

''(vii) Historic property preservation.

''(viii) Pollution prevention equipment or facilities.

''(ix) Demolition.

''(x) Disposal of hazardous materials generated by demolition.

''(xi) Landscaping, grading, and other site or public improvements.

''(xii) Planning for or the marketing of the development and reuse of the installation.

''(D) The Secretary may recoup from a redevelopment authority such portion of the proceeds from a sale or lease described in subparagraph (B) as the Secretary determines appropriate if the redevelopment authority does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in subparagraph (B).

''(E)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this title (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

''(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

''(iii) A lease under clause (i) may not require rental payments by the United States.

''(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

''(v) Notwithstanding clause (iii), if a lease under clause (i) involves a substantial portion of the installation, the department or agency concerned may obtain facility services for the leased property and common area maintenance from the redevelopment authority or the redevelopment authority's assignee as a provision of the lease. The facility services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property. Facility services and common area maintenance covered by the lease shall not include—

''(I) municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge; or

''(II) firefighting or security-guard functions.

''(F) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of subchapters II and III of chapter 5 of title 40, United States Code, if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

''(G) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

''(H)(i) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into before April 21, 1999, the Secretary may modify the agreement, and in so doing compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States, if—

''(I) the Secretary determines that as a result of changed economic circumstances, a modification of the agreement is necessary;

''(II) the terms of the modification do not require the return of any payments that have been made to the Secretary;

''(III) the terms of the modification do not compromise, waive, adjust, release, or reduce any right, title, claim, lien, or demand of the United States with respect to in-kind consideration; and

''(IV) the cash consideration to which the United States is entitled under the modified agreement, when combined with the cash consideration to be received by the United States for the disposal of other real property assets on the installation, are as sufficient as they were under the original agreement to fund the reserve account established under paragraph (7)(C), with the depreciated value of the investment made with commissary store funds or nonappropriated funds in property disposed of pursuant to the agreement being modified, in accordance with section 2906(d) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510, 10 U.S.C. 2687 note].

''(ii) When exercising the authority granted by clause (i), the Secretary may waive some or all future payments if, and to the extent that, the Secretary determines such waiver is necessary.

''(iii) With the exception of the requirement that the transfer be without consideration, the requirements of subparagraphs (B), (C), and (D) shall be applicable to any agreement modified pursuant to clause (i).

''(I) In the case of an agreement for the transfer of property of a military installation under this paragraph that was entered into during the period beginning on April 21, 1999, and ending on the date of enactment of the National Defense Authorization Act for Fiscal Year 2000 [Oct. 5, 1999], at the request of the redevelopment authority concerned, the Secretary shall modify the agreement to conform to all the requirements of subparagraphs (B), (C), and (D). Such a modification may include the compromise, waiver, adjustment, release, or reduction of any right, title, claim, lien, or demand of the United States under the agreement.

''(J) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

''(5)(A) Except as provided in subparagraphs (B) and (C), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993], or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

''(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

''(C)(i) Before acquiring non-Federal real property as the location for a new or replacement Federal facility of any type, the head of the Federal agency acquiring the property shall consult with the Secretary regarding the feasibility and cost advantages of using Federal property or facilities at a military installation closed or realigned or to be closed or realigned under this title as the location for the new or replacement facility. In considering the availability and suitability of a specific military installation, the Secretary and the head of the Federal agency involved shall obtain the concurrence of the redevelopment authority with respect to the installation and comply with the redevelopment plan for the installation.

''(ii) Not later than 30 days after acquiring non-Federal real property as the location for a new or replacement Federal facility, the head of the Federal agency acquiring the property shall submit to Congress a report containing the results of the consultation under clause (i) and the reasons why military installations referred to in such clause that are located within the area to be served by the new or replacement Federal facility or within a 200-mile radius of the new or replacement facility, whichever area is greater, were considered to be unsuitable or unavailable for the site of the new or replacement facility.

''(iii) This subparagraph shall apply during the period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 [Nov. 18, 1997] and ending on July 31, 2001.

''(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

''(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall—

''(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

''(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

''(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

''(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

''(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

''(ii) notify the Secretary of Defense of the buildings and property that are so identified;

''(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act [42 U.S.C. 11411(c)(1)(B)]; and

''(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

''(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

''(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

''(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

''(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

''(iii) the Secretary of Health and Human Services—

''(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

''(II) approves the application under section 501(e) of such Act.

''(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

''(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

''(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

''(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

''(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

''(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

''(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

''(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

''(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

''(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act [42 U.S.C. 11411] while so available for a redevelopment authority.

''(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

''(7)(A) Except as provided in subparagraph (B) or (C), all proceeds—

''(i) from any transfer under paragraphs (3) through (6); and

''(ii) from the transfer or disposal of any other property or facility made as a result of a closure or realignment under this title,

shall be deposited into the Account established by section 207(a)(1).

''(B) In any case in which the General Services Administration is involved in the management or disposal of such property or facility, the Secretary shall reimburse the Administrator of General Services from the proceeds of such disposal, in accordance with section 1535 of title 31, United States Code, for any expenses incurred in such activities.

''(C)(i) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this title, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in a reserve account established in the Treasury to be administered by the Secretary. The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

''(I) commissary stores; and

''(II) real property and facilities for nonappropriated fund instrumentalities.

''(ii) The amount deposited under clause (i) shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

''(iii) As used in this subparagraph:

''(I) The term 'commissary store funds' means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

''(II) The term 'nonappropriated funds' means funds received from a nonappropriated fund instrumentality.

''(III) The term 'nonappropriated fund instrumentality' means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

''(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this title, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

''(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

''(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

''(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

''(c) APPLICABILITY OF OTHER LAW.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to—

''(A) the actions of the Commission, including selecting the military installations which the Commission recommends for closure or realignment under this title, recommending any military installation to receive functions from an installation to be closed or realigned, and making its report to the Secretary and the committees under section 203(b); and

''(B) the actions of the Secretary in establishing the Commission, in determining whether to accept the recommendations of the Commission, in selecting any military installation to receive functions from an installation to be closed or realigned, and in transmitting the report to the Committees referred to in section 202(a)(1).

''(2) The provisions of the National Environmental Policy Act of 1969 shall apply to the actions of the Secretary (A) during the process of the closing or realigning of a military installation after such military installation has been selected for closure or realignment but before the installation is closed or realigned and the functions relocated, and (B) during the process of the relocating of functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated. In applying the provisions of such Act, the Secretary shall not have to consider—

''(i) the need for closing or realigning a military installation which has been selected for closure or realignment by the Commission;

''(ii) the need for transferring functions to another military installation which has been selected as the receiving installation; or

''(iii) alternative military installations to those selected.

''(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), or with respect to any requirement of the Commission made by this title, of any action or failure to act by the Secretary during the closing, realigning, or relocating referred to in clauses (A) and (B) of paragraph (2), or of any action or failure to act by the Commission under this title, may not be brought later than the 60th day after the date of such action or failure to act.

''(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

''(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

''(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

''(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

''(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

''(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

''(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

''(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

''(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [Nov. 30, 1993].

''(e) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING.—(1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this title with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents.

''(2) A transfer of real property or facilities may be made under paragraph (1) only if—

''(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

''(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of

the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

''(3) Notwithstanding section 207(a)(7), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2883(a) of title 10, United States Code.

''(4) The Secretary shall submit to the appropriate committees of Congress a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 21-day period beginning on the date the appropriate committees of Congress receive the report regarding the agreement.

''(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

''(f) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this title, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this title, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

''(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

''(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

''(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

''(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

''SEC. 205. WAIVER

''The Secretary may carry out this title without regard to—

''(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriation or authorization Act; and

''(2) the procedures set forth in sections 2662 and 2687 of title 10, United States Code.

''SEC. 206. REPORTS

''(a) IN GENERAL.—As part of each annual budget request for the Department of Defense, the Secretary shall transmit to the appropriate committees of Congress—

''(1) a schedule of the closure and realignment actions to be carried out under this title in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

''(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

''(b) STUDY.—(1) The Secretary shall conduct a study of the military installations of the United States outside the United States to determine if efficiencies can be realized through closure or realignment of the overseas base structure of the United States. Not later than October 15, 1988, the Secretary shall transmit a report of the findings and conclusions of such study to the Commission and to the Committees on Armed Services of the Senate and the House of Representatives. In developing its recommendations to the Secretary under this title, the Commission shall consider the Secretary's study.

''(2) Upon request of the Commission, the Secretary shall provide the Commission with such information about overseas bases as may be helpful to the Commission in its deliberations.

''(3) The Commission, based on its analysis of military installations in the United States and its review of the Secretary's study of the overseas base structure, may provide the Secretary with such comments and suggestions as it considers appropriate regarding the Secretary's study of the overseas base structure.

''SEC. 207. FUNDING

''(a) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the 'Department of Defense Base Closure Account' which shall be administered by the Secretary as a single account.

''(2) There shall be deposited into the Account—

''(A) funds authorized for and appropriated to the Account with respect to fiscal year 1990 and fiscal years beginning thereafter;

''(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the appropriate committees of Congress; and

''(C) proceeds described in section 204(b)(4)(A).

''(3)(A) The Secretary may use the funds in the Account only for the purposes described in section 204(a).

''(B) When a decision is made to use funds in the Account to carry out a construction project under section 204(a)(1) and the cost of the project will exceed the maximum amount authorized by law for a minor construction project, the Secretary shall notify in writing the appropriate committees of Congress of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

''(4) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this title, the Secretary shall transmit a report to the appropriate committees of Congress of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 204(a) during such fiscal year.

''(5)(A) Except as provided in subparagraph (B), unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this title shall be held in the Account until transferred by law after the appropriate committees of Congress receive the report transmitted under paragraph (6).

''(B) The Secretary may, after the termination of authority referred to in subparagraph (A), use any unobligated funds referred to in that subparagraph that are not transferred in accordance with that subparagraph to carry out environmental restoration and waste management at, or disposal of property of, military installations closed or realigned under this title.

''(6) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this title, the Secretary shall transmit to the appropriate committees of Congress a report containing an accounting of—

''(A) all the funds deposited into and expended from the Account or otherwise expended under this title; and

''(B) any amount remaining in the Account.

''(7) Proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under this title shall be deposited directly into the Department of Defense Base Closure Account 1990 established by section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(b) BASE CLOSURE ACCOUNT TO BE EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—No funds appropriated to the Department of Defense may be used for purposes described in section 204(a)(3) except funds that have been authorized for and appropriated to the Account. The prohibition in the preceding sentence expires upon the termination of the authority of the Secretary to carry out a closure or realignment under this title.

''SEC. 208. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

''(a) TERMS OF THE RESOLUTION.—For purposes of section 202(b), the term 'joint resolution' means only a joint resolution which is introduced before March 15, 1989, and—

''(1) which does not have a preamble;

''(2) the matter after the resolving clause of which is as follows: 'That Congress disapproves the recommendations of the Commission on Base Realignment and Closure established by the Secretary of Defense as submitted to the Secretary of Defense on ', the blank space being appropriately filled in; and

''(3) the title of which is as follows: 'Joint resolution disapproving the recommendations of the Commission on Base Realignment and Closure.'.

''(b) REFERRAL.—A resolution described in subsection (a), introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

''(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such resolution (or an identical resolution) before March 15, 1989, such committee shall be, as of March 15, 1989, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution (but only on the day after the calendar day on which such Member announces to the House concerned the Member's intention to do so). All points of order against the resolution (and against consideration of the resolution) are waived. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

''(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(ii) the vote on final passage shall be on the resolution of the other House.

''(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

''(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

''SEC. 209. DEFINITIONS

''In this title:

''(1) The term 'Account' means the Department of Defense Base Closure Account established by section 207(a)(1).

''(2) The term 'appropriate committees of Congress' means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives.

''(3) The terms 'Commission on Base Realignment and Closure' and 'Commission' mean the Commission established by the Secretary of Defense in the charter signed by the Secretary on May 3, 1988, and as altered thereafter with respect to the membership and voting.

''(4) The term 'charter establishing such Commission' means the charter referred to in paragraph (3).

''(5) The term 'initiate' includes any action reducing functions or civilian personnel positions but does not include studies, planning, or similar activities carried out before there is a reduction of such functions or positions.

''(6) The term 'military installation' means a base, camp, post, station, yard, center, homeport facility

for any ship, or other activity under the jurisdiction of the Secretary of a military department.

''(7) The term 'realignment' includes any action which both reduces and relocates functions and civilian personnel positions.

''(8) The term 'Secretary' means the Secretary of Defense.

''(9) The term 'United States' means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

''(10) The term 'redevelopment authority', in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan.

''(11) The term 'redevelopment plan' in the case of an installation to be closed under this title, means a plan that—

''(A) is agreed to by the redevelopment authority with respect to the installation; and

''(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.''

[For effective date of amendment by section 2813(d)(1) of Pub. L. 103–337 to section 209 of Pub. L. 100–526, set out above, see Effective Date of Amendment by Section 2813(d)(1) and (2) of Pub. L. 103–337 note set out above.]

[For effective date of amendment by section 344(a) of Pub. L. 102–190 to sections 204 and 209 of Pub. L. 100–526, set out above, see Effective Date of 1991 Amendments by Section 344 of Pub. L. 102–190 note set out above.]

[Section 2923(b)(2) of Pub. L. 101–510 provided that: ''The amendment made by paragraph (1) [amending section 207 of Pub. L. 100–526 set out above] does not apply with respect to the availability of funds appropriated before the date of the enactment of this Act [Nov. 5, 1990].'']

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2667, 2694a, 2696, 2705, 2706, 2871 of this title; title 2 section 907c; title 5 sections 3341, 6304; title 40 sections 554, 572; title 42 section 9620; title 49 sections 47118, 47151.

§ 2688. Utility systems: conveyance authority

(a) CONVEYANCE AUTHORITY.—The Secretary of a military department may convey a utility system, or part of a utility system, under the jurisdiction of the Secretary to a municipal, private, regional, district, or cooperative utility company or other entity. The conveyance may consist of all right, title, and interest of the United States in the utility system or such lesser estate as the Secretary considers appropriate to serve the interests of the United States.

(b) SELECTION OF CONVEYEE.—(1) If more than one utility or entity referred to in subsection (a) notifies the Secretary concerned of an interest in a conveyance under such subsection, the Secretary shall carry out the conveyance through the use of competitive procedures.

(2) Notwithstanding paragraph (1), the Secretary concerned may use procedures other than competitive procedures, but only in accordance with subsections (c) through (f) of section 2304 of this title, to select the conveyee of a utility system (or part of a utility system) under subsection (a).

(3) With respect to the solicitation process used in connection with the conveyance of a utility system (or part of a utility system) under subsection (a), the Secretary concerned shall ensure that the process is conducted in a manner consistent with the laws and regulations of the State in which the utility system is located to the extent necessary to ensure that all interested regulated and unregulated utility companies and other interested entities receive an opportunity to acquire and operate the utility system to be conveyed.

(c) CONSIDERATION.—(1) The Secretary concerned shall require as consideration for a conveyance under subsection (a) an amount equal to the fair market value (as determined by the Secretary) of the right, title, or interest of the United States conveyed. The consideration may take the form of—

(A) a lump sum payment; or

(B) a reduction in charges for utility services provided by the utility or entity concerned to the military installation at which the utility system is located.

(2) If the utility services proposed to be provided as consideration under paragraph (1) are subject to regulation by a Federal or State agency, any reduction in the rate charged for the utility services shall be subject to establishment or approval by that agency.

(3) A contract for the receipt of utility services as consideration under paragraph (1), or any other contract for utility services entered into by the Secretary concerned in connection with the conveyance of a utility system under this section, may be for a period not to exceed 50 years.

(d) TREATMENT OF PAYMENTS.—(1) A lump sum payment received under subsection (c) shall be credited, at the election of the Secretary concerned—

(A) to an appropriation of the military department concerned available for the procurement of the same utility services as are provided by the utility system conveyed under this section;

(B) to an appropriation of the military department available for carrying out energy savings projects or water conservation projects; or

(C) to an appropriation of the military department available for improvements to other utility systems.

(2) Amounts so credited shall be merged with funds in the appropriation to which credited and shall be available for the same purposes, and subject to the same conditions and limitations, as the appropriation with which merged.

(e) NOTICE-AND-WAIT REQUIREMENT.—The Secretary concerned may not make a conveyance under subsection (a) until—

(1) the Secretary submits to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives an economic analysis (based upon accepted life-cycle costing procedures approved by the Secretary of Defense) demonstrating that—

(A) the long-term economic benefit of the conveyance to the United States exceeds the long-term economic cost of the conveyance to the United States; and

(B) the conveyance will reduce the long-term costs of the United States for utility services provided by the utility system concerned; and

(2) a period of 21 days has elapsed after the date on which the economic analysis is received by the committees.

(f) ADDITIONAL TERMS AND CONDITIONS.—(1) The Secretary concerned may require such additional terms and conditions in connection with a conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(2) The Secretary concerned shall require in any contract for the conveyance of a utility system (or part of a utility system) under subsection (a) that the conveyee manage and operate the utility system in a manner consistent with applicable Federal and State regulations pertaining to health, safety, fire, and environmental requirements.

(g) ASSISTANCE FOR CONSTRUCTION, REPAIR, OR REPLACEMENT OF UTILITY SYSTEMS.—In lieu of carrying out a military construction project to construct, repair, or replace a utility system, the Secretary concerned may use funds authorized and appropriated for the project to facilitate the conveyance of the utility system under this section by making a contribution toward the cost of construction, repair, or replacement of the utility system by the entity to which the utility system is being conveyed. The Secretary concerned shall consider any such contribution in the economic analysis required under subsection (e).

(h) UTILITY SYSTEM DEFINED.—(1) In this section, the term ''utility system'' means any of the following:

(A) A system for the generation and supply of electric power.

(B) A system for the treatment or supply of water.

(C) A system for the collection or treatment of wastewater.

(D) A system for the generation or supply of steam, hot water, and chilled water.

(E) A system for the supply of natural gas.

(F) A system for the transmission of telecommunications.

(2) The term ''utility system'' includes the following:

(A) Equipment, fixtures, structures, and other improvements utilized in connection with a system referred to in paragraph (1).

(B) Real property, easements, and rights-of-way associated with a system referred to in that paragraph.

(i) LIMITATION.—This section shall not apply to projects constructed or operated by the Army Corps of Engineers under its civil works authorities.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2812(a), Nov. 18, 1997, 111 Stat. 1992; amended Pub. L. 106–65, div. A, title X, § 1067(1), div. B, title XXVIII, § 2812, Oct. 5, 1999, 113 Stat. 774, 851; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(15), div. B, title XXVIII, § 2813], Oct. 30, 2000, 114 Stat. 1654, 1654A–291, 1654A–418.)

PRIOR PROVISIONS

A prior section 2688, added Pub. L. 96–125, title VIII, § 804(a)(1), Nov. 26, 1979, 93 Stat. 948; amended Pub. L. 96–418, title VIII, § 804, Oct. 10, 1980, 94 Stat. 1777; Pub. L. 97–22, § 11(a)(9), July 10, 1981, 95 Stat. 138; Pub. L. 97–99, title IX, § 901, Dec. 23, 1981, 95 Stat. 1381, related to use of solar energy systems in new facilities, prior to repeal by Pub. L. 97–214, §§ 7(1), 12(a), July 12, 1982, 96 Stat. 173, 176, effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date. See section 2857 of this title.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2813(a)], designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2813(b)], designated existing provisions as par. (1) and added par. (2).

Subsecs. (h) to (j). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(15)], redesignated subsecs. (i) and (j) as (h) and (i), respectively.

1999—Subsec. (c)(3). Pub. L. 106–65, § 2812(a), added par. (3).

Subsec. (e)(1). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (g). Pub. L. 106–65, § 2812(c)(2), added subsec. (g). Former subsec. (g) redesignated (i).

Subsec. (g)(2)(B). Pub. L. 106–65, § 2812(b), substituted ''Real property, easements,'' for ''Easements''.

Subsecs. (h) to (j). Pub. L. 106–65, § 2812(c)(1), redesignated subsecs. (g) and (h) as (i) and (j), respectively.

§ 2689. Development of geothermal energy on military lands

The Secretary of a military department may develop, or authorize the development of, any geothermal energy resource within lands under the Secretary's jurisdiction, including public lands, for the use or benefit of the Department of Defense if that development is in the public interest, as determined by the Secretary concerned, and will not deter commercial development and use of other portions of such resource if offered for leasing.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 172.)

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2394 of this title.

§ 2690. Fuel sources for heating systems; prohibition on converting certain heating facilities

(a)(1) The Secretary of the military department concerned shall provide that the primary fuel source to be used in any new heating system constructed on lands under the jurisdiction of the military department is the most cost effective fuel for that heating system over the life cycle of the system.

(2) The Secretary of Defense shall prescribe regulations for the determination of the life-cycle cost effectiveness of a fuel for the purposes of paragraph (1).

(b) The Secretary of a military department may not convert a heating facility at a United States military installation in Europe from a coal-fired facility to an oil-fired facility, or to any other energy source facility, unless the Secretary determines that the conversion—

(1) is required by the government of the country in which the facility is located; or

(2) is cost-effective over the life cycle of the facility.

(Added Pub. L. 97–214, § 6(c)(1), July 12, 1982, 96 Stat. 173; amended Pub. L. 99–661, div. A, title XII, § 1205(a)(1), Nov. 14, 1986, 100 Stat. 3971; Pub. L. 105–85, div. A, title X, § 1041(a), Nov. 18, 1997, 111 Stat. 1885.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''unless the Secretary determines that the conversion—'' for ''unless the Secretary—'' in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

''(1) determines that the conversion (A) is required by the government of the country in which the facility is located, or (B) is cost effective over the life cycle of the facility; and

''(2) submits to Congress notification of the proposed conversion and a period of 30 days has elapsed following the date on which Congress receives the notice.''

1986—Pub. L. 99–661 substituted ''Fuel sources for heating systems; prohibition on converting certain heating facilities'' for ''Restriction on fuel sources for new heating systems'' in section catchline and amended text generally. Prior to amendment, section read as follows:

''(a) Except as provided in subsection (b), a new heating system that requires a heat input rate of fifty million British thermal units per hour or more and that uses oil or gas (or a derivative of oil or gas) as fuel may not be constructed on lands under the jurisdiction of a military department.

''(b) The Secretary of the military department concerned may waive the provisions of subsection (a) in rare and unusual cases, but such a waiver may not become effective until after the Secretary has notified the appropriate committees of Congress in writing of the waiver.

''(c) The Secretary of the military department concerned may not provide service for a new heating system in increments in order to avoid the prohibition contained in subsection (a).''

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2691. Restoration of land used by permit or lease

(a) The Secretary of the military department concerned may remove improvements and take any other action necessary in the judgment of the Secretary to restore land used by that military department by permit or lease from another military department or Federal agency if the restoration is required by the permit or lease making that land available to the military department. The Secretary concerned may carry out this section using funds available for operations and maintenance or for military construction.

(b) Unless otherwise prohibited by law or the terms of the permit or lease, before restoration of any land under subsection (a) is begun, the Secretary concerned shall determine, under the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), whether another military department or Federal agency has a use for the land in its existing, improved state. During the period required to make such a determination, the Secretary may provide for maintenance and repair of improvements on the land to the standards established for excess property by the Administrator of General Services.

(c)(1) As a condition of any lease, permit, license, or other grant of access entered into by the Secretary of a military department with another Federal agency authorizing the agency to use lands under the control of the Secretary, the Secretary may require the agency to agree to remove any improvements and to take any other action necessary in the judgment of the Secretary to restore the land used by the agency to its condition before its use by the agency.

(2) In lieu of performing any removal or restoration work under paragraph (1), a Federal agency may elect, with the consent of the Secretary, to reimburse the Secretary for the costs incurred by the military department in performing such removal or restoration work.

(Added Pub. L. 98–407, title VIII, § 804(a), Aug. 28, 1984, 98 Stat. 1519; amended Pub. L. 99–145, title XIII, § 1303(a)(17), Nov. 8, 1985, 99 Stat. 739; Pub. L. 105–261, div. B, title XXVIII, § 2812(a), (b)(1), Oct. 17, 1998, 112 Stat. 2205; Pub. L. 107–217, § 3(b)(15), Aug. 21, 2002, 116 Stat. 1296.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

1998—Pub. L. 105–261, § 2812(b)(1), struck out ''from other agencies'' after ''lease'' in section catchline.

Subsec. (c). Pub. L. 105–261, § 2812(a), added subsec. (c).

1985—Pub. L. 99–145 substituted ''used by'' for ''used of'' in section catchline.

§ 2692. Storage, treatment, and disposal of nondefense toxic and hazardous materials

(a)(1) Except as otherwise provided in this section, the Secretary of Defense may not permit the use of an installation of the Department of Defense for the storage, treatment, or disposal of any material that is a toxic or hazardous material and that is not owned either by the Department of Defense or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation.

(2) The Secretary of Defense shall define by regulation what materials are hazardous or toxic materials for the purposes of this section,

including specification of the quantity of a material that serves to make it hazardous or toxic for the purposes of this section. The definition shall include materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of that Act (42 U.S.C. 9602) and shall include materials that are of an explosive, flammable, or pyrotechnic nature.

(b) Subsection (a) does not apply to the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with an activity of the Department of Defense or in connection with a service to be performed on an installation of the Department for the benefit of the Department.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a Department of Defense contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable Department of Defense regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of the Department of Defense, including the use of such a facility for testing materiel[1] or training personnel.

(10) The treatment and disposal of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(A) is consistent with the best interest of national defense and environmental security; and

(B) provides for the prospective user's continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by the Department of Defense if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on an installation of the Department of Defense or on other land controlled by the United States.

(c) The Secretary of Defense may grant exceptions to subsection (a) when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

(d)(1) The Secretary may assess a charge for any storage or disposal provided under this section. Any such charge shall be on a reimbursable cost basis.

(2) In the case of storage under this section authorized because of an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal authorized under this section, the storage or disposal authorized shall be terminated as determined by the Secretary.

(Added Pub. L. 98–407, title VIII, § 805(a), Aug. 28, 1984, 98 Stat. 1520; amended Pub. L. 102–484, div. B, title XXVIII, § 2852, Oct. 23, 1992, 106 Stat. 2625; Pub. L. 103–337, div. A, title III, § 325, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 105–85, div. A, title III, § 343(a)–(g)(2), Nov. 18, 1997, 111 Stat. 1686, 1687; Pub. L. 106–65, div. A, title X, § 1066(a)(25), Oct. 5, 1999, 113 Stat. 772.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''apply to the following:'' for ''apply to—'' in introductory provisions, ''The'' for ''the'' at the beginning of each of pars. (1) to (11), a period for the semicolon at the end of each of pars. (1) to (9), and a period for ''; and'' at the end of par. (10).

1997—Pub. L. 105–85, § 343(g)(2), substituted ''Storage, treatment, and'' for ''Storage and'' in section catchline.

Subsec. (a)(1). Pub. L. 105–85, § 343(g)(1), substituted ''storage, treatment, or disposal'' for ''storage or disposal''.

Pub. L. 105–85, § 343(a), substituted ''either by the Department of Defense or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation'' for ''by the Department of Defense''.

Subsec. (b)(1), (2). Pub. L. 105–85, § 343(b), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 105–85, § 343(b)(1), (c), redesignated par. (2) as (3) and substituted ''Federal, State, or

[1] So in original. Probably should be ''material''.

local law enforcement'' for ''Federal law enforcement'' and ''Federal, State, or local agency'' for ''Federal agency''. Former par. (3) redesignated (4).

Subsec. (b)(4) to (8). Pub. L. 105–85, § 343(b)(1), redesignated pars. (3) to (7) as (4) to (8), respectively. Former par. (8) redesignated (9).

Subsec. (b)(9). Pub. L. 105–85, § 343(b)(1), (d), redesignated par. (8) as (9) and substituted ''in connection with the authorized and compatible use of a'' for ''by a private person in connection with the authorized and compatible use by that person of an industrial-type'' and '', including the use of such a facility for testing materiel or training personnel;'' for ''; and''. Former par. (9) redesignated (10).

Subsec. (b)(10). Pub. L. 105–85, § 343(b)(1), (e), redesignated par. (9) as (10) and substituted ''in connection with the authorized and compatible use of a'' for ''by a private person in connection with the authorized and compatible commercial use by that person of an industrial-type'', ''or agreement with the prospective user'' for ''with that person'', ''for the prospective user's'' for ''for that person's'', and ''; and'' for period at end.

Subsec. (b)(11). Pub. L. 105–85, § 343(f), added par. (11).

1994—Subsec. (b)(9). Pub. L. 103–337 added par. (9).

1992—Subsec. (b)(8). Pub. L. 102–484 added par. (8).

SAVINGS PROVISION

Section 343(h) of Pub. L. 105–85 provided that: ''Nothing in the amendments made by this section [amending this section] is intended to modify environmental laws or laws relating to the siting of facilities.''

§ 2693. Conveyance of certain property: Department of Justice correctional options program

(a) Except as provided in subsection (b), before any real property or facility of the United States that is under the jurisdiction of any department, agency, or instrumentality of the Department of Defense is determined to be excess to the needs of such department, agency, or instrumentality, the Secretary of Defense shall—

(1) provide adequate notification of the availability of such real property or facility within the Department of Defense;

(2) if the real property or facility remains available after such notification, notify the Attorney General of its availability; and

(3) if the Attorney General certifies to the Secretary of Defense that a determination has been made by the Director of the Bureau of Justice Assistance within the Department of Justice to utilize the real property or facility under the correctional options program carried out under section 515 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3762a), convey the real property or facility, without reimbursement, to a public agency referred to in paragraph (1) or (3) of subsection (a) of such section for such utilization.

(b) The provisions of this section shall not apply—

(1) to real property and facilities to which title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526) is applicable; and

(2) during any portion of a fiscal year after four conveyances have been made under this section in such fiscal year.

(Added Pub. L. 101–647, title XVIII, § 1802(a), Nov. 29, 1990, 104 Stat. 4849; amended Pub. L. 107–107, div. A, title X, § 1048(a)(26)(A), (B)(i), Dec. 28, 2001, 115 Stat. 1224, 1225.)

REFERENCES IN TEXT

The Defense Authorization Amendments and Base Closure and Realignment Act, referred to in subsec. (b)(1), is Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of this title and Tables.

PRIOR PROVISIONS

A prior section 2693 was renumbered section 2465 of this title.

AMENDMENTS

2001—Pub. L. 107–107, § 1048(a)(26)(B)(i), substituted ''Conveyance of certain property: Department of Justice correctional options program'' for ''Conveyance of certain property'' in section catchline.

Subsec. (a). Pub. L. 107–107, § 1048(a)(26)(A)(i), inserted ''of Defense'' after ''Secretary'' in introductory provisions.

Subsec. (a)(3). Pub. L. 107–107, § 1048(a)(26)(A)(ii), inserted ''to the Secretary of Defense'' after ''Attorney General certifies'' and ''(42 U.S.C. 3762a)'' after ''Omnibus Crime Control and Safe Streets Act of 1968'' and substituted ''to a public agency referred to in paragraph (1) or (3) of subsection (a) of such section'' for ''to the public agencies referred to in section 515(a)(1) or 515(a)(3) of title I of such Act''.

TRANSFER OF FUNCTIONS

Effective Aug. 1, 2000, all functions of Director of Bureau of Justice Assistance, other than those enumerated in section 3742(3) to (6) of Title 42, The Public Health and Welfare, transferred to Assistant Attorney General for Office of Justice Programs, see section 1000(a)(1) [title I, § 108(b)] of Pub. L. 106–113, set out as a note under section 3741 of Title 42.

§ 2694. Conservation and cultural activities

(a) ESTABLISHMENT.—The Secretary of Defense may establish and carry out a program to conduct and manage in a coordinated manner the conservation and cultural activities described in subsection (b).

(b) ACTIVITIES.—(1) A conservation or cultural activity eligible for the program that the Secretary establishes under subsection (a) is any activity—

(A) that has regional or Department of Defense-wide significance and that involves more than one military department;

(B) that is necessary to meet legal requirements or to support military operations;

(C) that can be more effectively managed at the Department of Defense level; and

(D) for which no executive agency has been designated responsible by the Secretary.

(2) Such activities include the following:

(A) The development of ecosystem-wide land management plans.

(B) The conduct of wildlife studies to ensure the safety of military operations.

(C) The identification and return of Native American human remains and cultural items in the possession or control of the Department of Defense, or discovered on land under the jurisdiction of the Department, to the appropriate Native American tribes.

(D) The control of invasive species that may hinder military activities or degrade military training ranges.

(E) The establishment of a regional curation system for artifacts found on military installations.

(c) COOPERATIVE AGREEMENTS.—The Secretary may negotiate and enter into cooperative agreements with public and private agencies, organizations, institutions, individuals, or other entities to carry out the program established under subsection (a).

(d) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed or interpreted as preempting any otherwise applicable Federal, State, or local law or regulation relating to the management of natural and cultural resources on military installations.

(Added Pub. L. 104–201, div. A, title III, § 332(a)(1), Sept. 23, 1996, 110 Stat. 2484; amended Pub. L. 105–85, div. A, title X, § 1073(a)(59), Nov. 18, 1997, 111 Stat. 1903.)

AMENDMENTS

1997—Subsec. (b)(1)(D). Pub. L. 105–85 substituted ''executive agency'' for ''executive ageny''.

EFFECTIVE DATE

Section 332(b) of Pub. L. 104–201 provided that: ''Section 2694 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

§ 2694a. Conveyance of surplus real property for natural resource conservation

(a) AUTHORITY TO CONVEY.—The Secretary of a military department may convey to an eligible entity described in subsection (b) any surplus real property that—

(1) is under the administrative control of the Secretary;

(2) is suitable and desirable for conservation purposes;

(3) has been made available for public benefit transfer for a sufficient period of time to potential claimants; and

(4) is not subject to a pending request for transfer to another Federal agency or for conveyance to any other qualified recipient for public benefit transfer under the real property disposal processes and authorities under subtitle I of title 40.

(b) ELIGIBLE ENTITIES.—The conveyance of surplus real property under this section may be made to any of the following:

(1) A State or political subdivision of a State.

(2) A nonprofit organization that exists for the primary purpose of conservation of natural resources on real property.

(c) REVISIONARY INTEREST AND OTHER DEED REQUIREMENTS.—(1) The deed of conveyance of any surplus real property conveyed under this section shall require the property to be used and maintained for the conservation of natural resources in perpetuity. If the Secretary concerned determines at any time that the property is not being used or maintained for such purpose, then, at the option of the Secretary, all or any portion of the property shall revert to the United States.

(2) The deed of conveyance may permit the recipient of the property—

(A) to convey the property to another eligible entity, subject to the approval of the Secretary concerned and subject to the same covenants and terms and conditions as provided in the deed from the United States; and

(B) to conduct incidental revenue-producing activities on the property that are compatible with the use of the property for conservation purposes.

(3) The deed of conveyance may contain such additional terms, reservations, restrictions, and conditions as the Secretary concerned considers appropriate to protect the interests of the United States.

(d) RELEASE OF COVENANTS.—With the concurrence of the Secretary of Interior, the Secretary concerned may grant a release from a covenant included in the deed of conveyance of real property conveyed under this section, subject to the condition that the recipient of the property pay the fair market value, as determined by the Secretary concerned, of the property at the time of the release of the covenant. The Secretary concerned may reduce the amount required to be paid under this subsection to account for the value of the natural resource conservation benefit that has accrued to the United States during the period the covenant was in effect, if the benefit was not taken into account in determining the original consideration for the conveyance.

(e) CONGRESSIONAL NOTIFICATION.—The Secretary concerned may not approve of the reconveyance of real property under subsection (c) or grant the release of a covenant under subsection (d) until the Secretary notifies the appropriate committees of Congress of the proposed reconveyance or release and a period of 21 days elapses from the date the notification is received by the committees.

(f) LIMITATIONS.—The conveyance of real property under this section shall not be used as a condition of allowing any defense activity under any Federal, State, or local permitting or review process. The Secretary concerned may make the conveyance, with the restrictions specified in subsection (c), to establish a mitigation bank, but only if the establishment of the mitigation bank does not occur in order to satisfy any condition for permitting military activity under a Federal, State, or local permitting or review process.

(g) CONSIDERATION.—In fixing the consideration for the conveyance of real property under this section, or in determining the amount of any reduction of the amount to be paid for the release of a covenant under subsection (d), the Secretary concerned shall take into consideration any benefit that has accrued or may accrue to the United States from the use of such property for the conservation of natural resources.

(h) RELATION TO OTHER CONVEYANCE AUTHORITIES.—(1) The Secretary concerned may not make a conveyance under this section of any real property to be disposed of under a base closure law in a manner that is inconsistent with the requirements and conditions of the base closure law.

(2) In the case of real property on Guam, the Secretary concerned may not make a conveyance under this section unless the Government

of Guam has been first afforded the opportunity to acquire the real property as authorized by section 1 of Public Law 106–504 (114 Stat. 2309).

(i) DEFINITIONS.—In this section:

(1) The term ''appropriate committees of Congress'' has the meaning given such term in section 2801 of this title.

(2) The term ''base closure law'' means the following:

(A) Section 2687 of this title.

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (10 U.S.C. 2687 note).

(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(D) Any other similar authority for the closure or realignment of military installations that is enacted after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

(3) The term ''Secretary concerned'' means the Secretary of a military department.

(4) The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and the territories and possessions of the United States.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2812(a)(1), Dec. 2, 2002, 116 Stat. 2707.)

REFERENCES IN TEXT

Section 1 of Public Law 106–504 (114 Stat. 2309), referred to in subsec. (h)(2), is set out as a note under section 521 of Title 40, Public Buildings, Property, and Works.

The Defense Authorization Amendments and Base Closure and Realignment Act of 1988, referred to in subsec. (i)(2)(B), probably means the Defense Authorization Amendments and Base Closure and Realignment Act, Pub. L. 100–526, Oct. 24, 1988, 102 Stat. 2623, as amended. Title II of the Act is set out as a note under section 2687 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 2687 of this title and Tables.

The date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, referred to in subsec. (i)(2)(D), is the date of enactment of Pub. L. 107–314, which was approved Dec. 2, 2002.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2695 of this title.

§ 2695. Acceptance of funds to cover administrative expenses relating to certain real property transactions

(a) AUTHORITY TO ACCEPT.—In connection with a real property transaction referred to in subsection (b) with a non-Federal person or entity, the Secretary of a military department may accept amounts provided by the person or entity to cover administrative expenses incurred by the Secretary in entering into the transaction.

(b) COVERED TRANSACTIONS.—Subsection (a) applies to the following transactions involving real property under the control of the Secretary of a military department:

(1) The exchange of real property.

(2) The grant of an easement over, in, or upon real property of the United States.

(3) The lease or license of real property of the United States.

(4) The disposal of real property of the United States for which the Secretary will be the disposal agent.

(5) The conveyance of real property under section 2694a of this title.

(c) USE OF AMOUNTS COLLECTED.—Amounts collected under subsection (a) for administrative expenses shall be credited to the appropriation, fund, or account from which the expenses were paid. Amounts so credited shall be merged with funds in such appropriation, fund, or account and shall be available for the same purposes and subject to the same limitations as the funds with which merged.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2813(a), Nov. 18, 1997, 111 Stat. 1993; amended Pub. L. 106–65, div. B, title XXVIII, § 2813, Oct. 5, 1999, 113 Stat. 851; Pub. L. 107–314, div. B, title XXVIII, § 2812(b), Dec. 2, 2002, 116 Stat. 2709.)

AMENDMENTS

2002—Subsec. (b)(5). Pub. L. 107–314 added par. (5).

1999—Subsec. (b). Pub. L. 106–65 inserted ''involving real property under the control of the Secretary of a military department'' after ''transactions'' in introductory provisions and added par. (4).

ADMINISTRATIVE COSTS OF LAND CONVEYANCES

Pub. L. 106–541, title II, § 226, Dec. 11, 2000, 114 Stat. 2598, provided that: ''Notwithstanding any other provision of law, the administrative costs associated with the conveyance of property by the Secretary to a non-Federal governmental or nonprofit entity shall be limited to the extent that the Secretary determines that such limitation is necessary to complete the conveyance based on the entity's ability to pay.''

§ 2696. Screening of real property for further Federal use before conveyance

(a) SCREENING REQUIREMENT.—The Secretary concerned may not convey real property that is authorized or required to be conveyed, whether for or without consideration, by any provision of law enacted after December 31, 1997, unless the Administrator of General Services has screened the property for further Federal use in accordance with subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(b) TIME FOR SCREENING.—(1) Before the end of the 30-day period beginning on the date of the enactment of a provision of law authorizing or requiring the conveyance of a parcel of real property by the Secretary concerned, the Administrator of General Services shall complete the screening referred to in subsection (a) with regard to the real property and notify the Secretary concerned of the results of the screening. The notice shall include—

(A) the name of the Federal agency requesting transfer of the property;

(B) the proposed use to be made of the property by the Federal agency; and

(C) the fair market value of the property, including any improvements thereon, as estimated by the Administrator.

(2) If the Administrator fails to complete the screening and notify the Secretary concerned within such period, the Secretary concerned shall proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance.

(c) NOTICE OF FURTHER FEDERAL USE.—If the Administrator of General Services notifies the Secretary concerned under subsection (b) that further Federal use of a parcel of real property authorized or required to be conveyed by any provision of law is requested by a Federal agency, the Secretary concerned shall submit a copy of the notice to Congress.

(d) CONGRESSIONAL DISAPPROVAL.—If the Secretary concerned submits a notice under subsection (c) with regard to a parcel of real property, the Secretary concerned may not proceed with the conveyance of the real property as provided in the provision of law authorizing or requiring the conveyance if Congress enacts a law rescinding the conveyance authority or requirement before the end of the 180-day period beginning on the date on which the Secretary concerned submits the notice.

(e) EXCEPTED CONVEYANCE AUTHORITIES.—The screening requirements of this section shall not apply to real property authorized or required to be conveyed under any of the following provisions of law:

(1) Section 2687 of this title.

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(3) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(4) Any provision of law authorizing the closure or realignment of a military installation that is enacted after November 18, 1997.

(5) Chapter 5 of title 40.

(6) Any specific provision of law authorizing or requiring the transfer of administrative jurisdiction over a parcel of real property between Federal agencies.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2814(a)(1), Nov. 18, 1997, 111 Stat. 1994; amended Pub. L. 106–65, div. A, title X, § 1066(a)(26), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–217, § 3(b)(16), Aug. 21, 2002, 116 Stat. 1296.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217, § 3(b)(16)(A), inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

Subsec. (e)(5). Pub. L. 107–217, § 3(b)(16)(B), substituted ''Chapter 5 of title 40'' for ''Title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

1999—Subsec. (a). Pub. L. 106–65, § 1066(a)(26)(A), inserted ''enacted after December 31, 1997,'' after ''any provision of law''.

Subsec. (b)(1). Pub. L. 106–65, § 1066(a)(26)(B), substituted ''referred to in subsection (a)'' for ''required by paragraph (1)'' in introductory provisions.

Subsec. (e)(4). Pub. L. 106–65, § 1066(a)(26)(C), substituted ''November 18, 1997'' for ''the date of enactment of the National Defense Authorization Act for Fiscal Year 1998''.

EFFECTIVE DATE

Section 2814(b) of Pub. L. 105–85 provided that: ''Section 2696 of title 10, United States Code, as added by subsection (a) of this section, shall apply with respect to any real property authorized or required to be conveyed under a provision of law covered by such section that is enacted after December 31, 1997.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2814 of this title.

CHAPTER 160—ENVIRONMENTAL RESTORATION

Sec.
2700. Definitions.
2701. Environmental restoration program.
2702. Research, development, and demonstration program.
2703. Environmental restoration accounts.
2704. Commonly found unregulated hazardous substances.
2705. Notice of environmental restoration activities.
2706. Annual reports to Congress.
2707. Environmental restoration projects for environmental responses.
2708. Contracts for handling hazardous waste from defense facilities.
2709. Investment control process for environmental technologies.
2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges).

AMENDMENTS

2002—Pub. L. 107–314, div. A, title III, § 313(d)(1), Dec. 2, 2002, 116 Stat. 2508, added items 2700 and 2707 and struck out former item 2707 ''Definitions''.

2001—Pub. L. 107–107, div. A, title III, § 311(a)(2), Dec. 28, 2001, 115 Stat. 1051, added item 2710.

1999—Pub. L. 106–65, div. A, title III, § 323(b)(2), Oct. 5, 1999, 113 Stat. 563, added item 2709.

1996—Pub. L. 104–201, div. A, title III, § 322(a)(2), Sept. 23, 1996, 110 Stat. 2478, substituted ''accounts'' for ''transfer account'' in item 2703.

1991—Pub. L. 102–190, div. A, title III, § 331(a)(2), Dec. 5, 1991, 105 Stat. 1340, added item 2708.

Pub. L. 102–25, title VII, § 701(e)(6), Apr. 6, 1991, 105 Stat. 114, substituted ''Annual reports to Congress'' for ''Annual report to Congress'' in item 2706.

1989—Pub. L. 101–189, div. A, title III, § 357(a)(2)(B), Nov. 29, 1989, 103 Stat. 1427, which directed amendment of the item relating to section 2706 in the table of sections at the beginning of chapter 106 to read ''Annual reports to Congress'', could not be executed because item 2706 is in this chapter and not in chapter 106.

§ 2700. Definitions

In this chapter:

(1) The term ''CERCLA'' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(2) The terms ''environment'', ''facility'', ''hazardous substance'', ''person'', ''release'', ''removal'', ''response'', ''disposal'', and ''hazardous waste'' have the meanings given those terms in section 101 of CERCLA (42 U.S.C. 9601).

(3) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1725, § 2707; renumbered § 2700 and amended Pub. L. 107–314, div. A, title III, § 313(a)(1), (c)(1), Dec. 2, 2002, 116 Stat. 2507.)

REFERENCES IN TEXT

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in par. (1), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of Title 42 and Tables.

AMENDMENTS

2002—Pub. L. 107–314, § 313(c)(1), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

Pub. L. 107–314, § 313(a)(1), renumbered section 2707 of this title as this section.

§ 2701. Environmental restoration program

(a) ENVIRONMENTAL RESTORATION PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary. The program shall be known as the ''Defense Environmental Restoration Program''.

(2) APPLICATION OF SECTION 120 OF CERCLA.—Activities of the program described in subsection (b)(1) shall be carried out subject to, and in a manner consistent with, section 120 (relating to Federal facilities) of CERCLA.

(3) CONSULTATION WITH EPA.—The program shall be carried out in consultation with the Administrator of the Environmental Protection Agency.

(4) ADMINISTRATIVE OFFICE WITHIN OSD.—The Secretary shall identify an office within the Office of the Secretary which shall have responsibility for carrying out the program.

(b) PROGRAM GOALS.—Goals of the program shall include the following:

(1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, pollutants, and contaminants.

(2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.

(3) Demolition and removal of unsafe buildings and structures, including buildings and structures of the Department of Defense at sites formerly used by or under the jurisdiction of the Secretary.

(c) RESPONSIBILITY FOR RESPONSE ACTIONS.—

(1) BASIC RESPONSIBILITY.—The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following:

(A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary.

(B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances.

(C) Each vessel owned or operated by the Department of Defense.

(2) OTHER RESPONSIBLE PARTIES.—Paragraph (1) shall not apply to a removal or remedial action if the Administrator has provided for response action by a potentially responsible person in accordance with section 122 of CERCLA (relating to settlements).

(3) STATE FEES AND CHARGES.—The Secretary shall pay fees and charges imposed by State authorities for permit services for the disposal of hazardous substances on lands which are under the jurisdiction of the Secretary to the same extent that nongovernmental entities are required to pay fees and charges imposed by State authorities for permit services. The preceding sentence shall not apply with respect to a payment that is the responsibility of a lessee, contractor, or other private person.

(d) SERVICES OF OTHER ENTITIES.—

(1) IN GENERAL.—Subject to paragraph (3), the Secretary may enter into agreements on a reimbursable or other basis with any other Federal agency, any State or local government agency, any Indian tribe, or any nonprofit conservation organization to obtain the services of the agency, Indian tribe, or organization to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

(2) CROSS-FISCAL YEAR AGREEMENTS.—An agreement with an agency under paragraph (1) may be for a period that begins in one fiscal year and ends in another fiscal year so long as the period of the agreement does not exceed two years.

(3) LIMITATION ON REIMBURSABLE AGREEMENTS.—An agreement with an agency under paragraph (1) may not provide for reimbursement of the agency for regulatory enforcement activities.

(4) DEFINITIONS.—In this subsection:

(A) The term ''Indian tribe'' has the meaning given such term in section 101(36) of CERCLA (42 U.S.C. 9601(36)).

(B) The term ''nonprofit conservation organization'' means any non-governmental nonprofit organization whose primary purpose is conservation of open space or natural resources.

(e) RESPONSE ACTION CONTRACTORS.—The provisions of section 119 of CERCLA apply to response action contractors (as defined in that section) who carry out response actions under this section.

(f) USE OF APPROPRIATED FUNDS AT FORMER DOD SITES.—Appropriations available to the Department of Defense may be used at sites formerly used by the Department of Defense for removal of unsafe buildings or debris of the Department of Defense.

(g) REMOVAL OF UNSAFE BUILDINGS AND DEBRIS BEFORE RELEASE FROM FEDERAL CONTROL.—In the case of property formerly used by the Department of Defense which is to be released from Federal Government control and at which there are unsafe buildings or debris of the Department of Defense, all actions necessary to comply with regulations of the General Services Administration on the transfer of property in a safe condition shall be completed before the property is released from Federal Government control, except in the case of property to be conveyed to an entity of State or local government or to a native corporation.

(h) SURETY-CONTRACTOR RELATIONSHIP.—Any surety which provides a bid, performance, or payment bond in connection with any direct Federal procurement for a response action contract under the Defense Environmental Restoration Program and begins activities to meet its obligations under such bond, shall, in connection with such activities or obligations, be entitled to any indemnification and the same standard of liability to which its principal was entitled under the contract or under any applicable law or regulation.

(i) SURETY BONDS.—

(1) APPLICABILITY OF MILLER ACT.—If under sections 3131 and 3133 of title 40 surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program and are not waived pursuant to section 3134 of title 40, the surety bonds shall be issued in accordance with sections 3131 and 3133.

(2) LIMITATION OF ACCRUAL OF RIGHTS OF ACTION UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, no right of action shall accrue on the performance bond issued on such contract to or for the use of any person other than an obligee named in the bond.

(3) LIABILITY OF SURETIES UNDER BONDS.—If, under applicable Federal law, surety bonds are required for any direct Federal procurement of any response action contract under the Defense Environmental Restoration Program, unless otherwise provided for by the Secretary in the bond, in the event of a default, the surety's liability on a performance bond shall be only for the cost of completion of the contract work in accordance with the plans and specifications of the contract less the balance of funds remaining to be paid under the contract, up to the penal sum of the bond. The surety shall in no event be liable on bonds to indemnify or compensate the obligee for loss or liability arising from personal injury or property damage whether or not caused by a breach of the bonded contract.

(4) NONPREEMPTION.—Nothing in this section shall be construed as preempting, limiting, superseding, affecting, applying to, or modifying any State laws, regulations, requirements, rules, practices, or procedures. Nothing in this section shall be construed as affecting, applying to, modifying, limiting, superseding, or preempting any rights, authorities, liabilities, demands, actions, causes of action, losses, judgment, claims, statutes of limitation, or obligations under Federal or State law, which do not arise on or under the bond.

(j) APPLICABILITY.—(1) Subsections (h) and (i) shall not apply to bonds executed before December 5, 1991.

(2) Subsections (h) and (i) shall not apply to bonds to which section 119(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(g)) applies.

(k) UXO PROGRAM MANAGER.—(1) The Secretary of Defense shall establish a program manager who shall serve as the single point of contact in the Department of Defense for policy and budgeting issues involving the characterization, remediation, and management of explosive and related risks with respect to unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (as such terms are defined in section 2710 of this title) that pose a threat to human health or safety.

(2) The authority to establish the program manager may be delegated to the Secretary of a military department, who may delegate the authority to the Under Secretary of that military department. The authority may not be further delegated.

(3) The program manager may establish an independent advisory and review panel that may include representatives of the National Academy of Sciences, nongovernmental organizations with expertise regarding unexploded ordnance, discarded military munitions, or munitions constituents, the Environmental Protection Agency, States (as defined in section 2710 of this title), and tribal governments. If established, the panel shall report annually to Congress on progress made by the Department of Defense to address unexploded ordnance, discarded military munitions, or munitions constituents at defense sites and make such recommendations as the panel considers appropriate.

(Added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIV, §1481(i)(1), Nov. 5, 1990, 104 Stat. 1708; Pub. L. 102–190, div. A, title III, §336(a), Dec. 5, 1991, 105 Stat. 1342; Pub. L. 102–484, div. A, title III, §331(b), title X, §1052(35), Oct. 23, 1992, 106 Stat. 2373, 2501; Pub. L. 103–35, title II, §201(d)(6), May 31, 1993, 107 Stat. 99; Pub. L. 103–337, div. A, title III, §§322, 323, Oct. 5, 1994, 108 Stat. 2711; Pub. L. 104–106, div. A, title III, §321(a)(1), title XV, §1504(a)(1), div. D, title XLIII, §4321(b)(22), Feb. 10, 1996, 110 Stat. 251, 513, 673; Pub. L. 104–201, div. A, title III, §329, Sept. 23, 1996, 110 Stat. 2483; Pub. L. 107–107, div. A, title III, §314, Dec. 28, 2001, 115 Stat. 1053; Pub. L. 107–217, §3(b)(17), Aug. 21, 2002, 116 Stat. 1296; Pub. L. 107–314, div. A, title III, §§311, 312, 313(c)(2), div. B, title XXVIII, §2812(c), Dec. 2, 2002, 116 Stat. 2506, 2508, 2709.)

REFERENCES IN TEXT

Sections 119, 120, and 122 of CERCLA, referred to in subsecs. (a)(2), (c)(2), and (e), are classified to sections 9619, 9620, and 9622, respectively, of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (f) and (g) of this section were contained in Pub. L. 101–165, title IX, §9038, Nov. 21, 1989, 103 Stat. 1137, which was set out below, prior to repeal by Pub. L. 101–510, §1481(i)(2).

A prior section 2701 was renumbered section 2721 of this title.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–314, §313(c)(2), substituted ''CERCLA'' for ''the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (hereinafter in this chapter referred to as 'CERCLA') (42 U.S.C. 9601 et seq.)''.

Subsec. (d). Pub. L. 107–314, §2812(c)(1), substituted ''Entities'' for ''Agencies'' in heading.

Subsec. (d)(1). Pub. L. 107–314, §§311(1), 2812(c)(2), substituted ''paragraph (3)'' for ''paragraph (2)'', ''any State or local government agency, any Indian tribe, or any nonprofit conservation organization'' for ''with any State or local government agency, or with any Indian tribe,'', and ''the agency, Indian tribe, or organization'' for ''the agency''.

Subsec. (d)(2), (3). Pub. L. 107–314, §311(2), (3), added par. (2) and redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 107–314, §2812(c)(3), added par. (4) and struck out heading and text of former par. (4). Text read as follows: ''In this subsection, the term 'Indian tribe' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).''

Pub. L. 107–314, §311(2), redesignated par. (3) as (4).

Subsec. (i)(1). Pub. L. 107–217 substituted ''sections 3131 and 3133 of title 40'' for ''the Miller Act (40 U.S.C. 270a et seq.)'', ''section 3134 of title 40'' for ''the Act of April 29, 1941 (40 U.S.C. 270e–270f)'', and ''sections 3131 and 3133'' for ''the Miller Act''.

Subsec. (k). Pub. L. 107–314, §312, added subsec. (k).

2001—Subsec. (j)(1). Pub. L. 107–107 struck out '', or after December 31, 1999'' before period at end.

1996—Subsec. (d). Pub. L. 104–201 substituted '', with any State or local government agency, or with any Indian tribe,'' for '', or with any State or local government agency,'' in par. (1) and added par. (3).

Pub. L. 104–106, §1504(a)(1), made technical correction to directory language of Pub. L. 103–337, §322(1). See 1994 Amendment note below.

Pub. L. 104–106, §321(a)(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''SERVICES OF OTHER AGENCIES.—

''(1) IN GENERAL.—The Secretary may enter into agreements on a reimbursable basis with any other Federal agency, and on a reimbursable or other basis with any State or local government agency or any Indian tribe, to obtain the services of that agency to assist the Secretary in carrying out any of the Secretary's responsibilities under this section. Services which may be obtained under this subsection include the identification, investigation, and cleanup of any off-site contamination possibly resulting from the release of a hazardous substance or waste at a facility under the Secretary's jurisdiction.

''(2) DEFINITION.—In this subsection, the term 'Indian tribe' has the meaning given such term in section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).''

Subsec. (i)(1). Pub. L. 104–106, §4321(b)(22), substituted ''Miller Act (40 U.S.C. 270a et seq.)'' for ''Act of August 24, 1935 (40 U.S.C. 270a–270d), commonly referred to as the 'Miller Act','' and ''the Miller Act'' for ''such Act of August 24, 1935''.

1994—Subsec. (d). Pub. L. 103–337, §322(1), as amended by Pub. L. 104–106, §1504(a)(1), designated existing provisions as par. (1) and inserted par. (1) heading.

Subsec. (d)(1). Pub. L. 103–337, §322(2), inserted ''or any Indian tribe'' after ''any State or local government agency''.

Subsec. (d)(2). Pub. L. 103–337, §322(3), added par. (2).

Subsec. (j)(1). Pub. L. 103–337, §323, substituted ''December 31, 1999'' for ''December 31, 1995''.

1993—Subsec. (j)(2). Pub. L. 103–35 substituted ''(42 U.S.C. 9619(g)) applies'' for ''applies (42 U.S.C. 9619(g))''.

1992—Subsec. (j). Pub. L. 102–484, §1052(35), substituted ''December 5, 1991,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Years 1992 and 1993'' in par. (1).

Pub. L. 102–484, §331(b), substituted ''December 31, 1995'' for ''December 31, 1992'', designated existing provisions as par. (1), and added par. (2).

1991—Subsecs. (h) to (j). Pub. L. 102–190 added subsecs. (h) to (j).

1990—Subsecs. (f), (g). Pub. L. 101–510 added subsecs. (f) and (g).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1504(a) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Oct. 5, 1994, and as if included in Pub. L. 103–337 as enacted.

For effective date and applicability of amendment by section 4321(b)(22) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

FORMERLY UTILIZED SITES REMEDIAL ACTION PROGRAM

Pub. L. 106–398, §1 [div. C, title XXXI, §3138], Oct. 30, 2000, 114 Stat. 1654, 1654A–461, provided that:

''(a) CONTINGENT LIMITATION ON AVAILABILITY OF FUNDS FOR CERTAIN TRAVEL EXPENSES.—Effective November 1, 2001, but subject to subsection (b), no funds authorized to be appropriated or otherwise made available by this or any other Act for the Department of Energy or the Department of the Army may be obligated or expended for travel by—

''(1) the Secretary of Energy or any officer or employee of the Office of the Secretary of Energy; or

''(2) the Chief of Engineers.

''(b) EFFECTIVE DATE.—The limitation in subsection (a) shall not take effect if before November 1, 2001, both of the following certifications are submitted to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives]:

''(1) A certification by the Secretary of Energy that the Department of Energy is in compliance with the requirements of section 3131 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 925; 10 U.S.C. 2701 note).

''(2) A certification by the Chief of Engineers that the Corps of Engineers is in compliance with the requirements of that section.

''(c) TERMINATION.—If the limitation in subsection (a) takes effect, the limitation shall cease to be in effect when both certifications referred to in subsection (b) have been submitted to the congressional defense committees.''

Pub. L. 106–65, div. C, title XXXI, §3131, Oct. 5, 1999, 113 Stat. 925, provided that: ''Notwithstanding any other provision of law, no funds authorized to be appropriated or otherwise made available by this Act [see Tables for classification], or by any Act authorizing appropriations for the military activities of the Department of Defense or the defense activities of the Department of Energy for a fiscal year after fiscal year 2000, may be obligated or expended to conduct treatment, storage, or disposal activities at any site designated as a site under the Formerly Utilized Site Remedial Action Program as of the date of the enactment of this Act [Oct. 5, 1999].''

Pub. L. 106–60, title VI, §611, Sept. 29, 1999, 113 Stat. 502, provided that:

''(a) The Secretary of the Army, acting through the Chief of Engineers, in carrying out the program known as the Formerly Utilized Sites Remedial Action Program, shall undertake the following functions and activities to be performed at eligible sites where remediation has not been completed:

''(1) Sampling and assessment of contaminated areas.

''(2) Characterization of site conditions.

''(3) Determination of the nature and extent of contamination.

''(4) Selection of the necessary and appropriate response actions as the lead Federal agency.

''(5) Cleanup and closeout of sites.

''(6) Any other functions and activities determined by the Secretary of the Army, acting through the Chief of Engineers, as necessary for carrying out that program, including the acquisition of real estate interests where necessary, which may be transferred upon completion of remediation to the administrative jurisdiction of the Secretary of Energy.

''(b) Any response action under that program by the Secretary of the Army, acting through the Chief of Engineers, shall be subject to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) (in this section referred to as 'CERCLA'), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300).

''(c) Any sums recovered under CERCLA or other authority from a liable party, contractor, insurer, surety, or other person for any expenditures by the Army Corps of Engineers or the Department of Energy for response actions under that program shall be credited to the amounts made available to carry out that program and shall be available until expended for costs of response actions for any eligible site.

''(d) The Secretary of Energy may exercise the authority under section 168 of the Atomic Energy Act of 1954 (42 U.S.C. 2208) to make payments in lieu of taxes for federally owned property at which activities under that program are carried out, regardless of which Federal agency has administrative jurisdiction over the property and notwithstanding any reference to 'the activities of the Commission' in that section.

''(e) This section does not alter, curtail, or limit the authorities, functions, or responsibilities of other agencies under CERCLA or, except as stated in this section, under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

''(f) This section shall apply to fiscal year 2000 and each succeeding fiscal year.''

SETTLEMENT OF CLAIMS OF FOREIGN GOVERNMENTS FOR ENVIRONMENTAL CLEANUP OF OVERSEAS SITES FORMERLY USED BY DEPARTMENT OF DEFENSE

Pub. L. 105–261, div. A, title III, § 321, Oct. 17, 1998, 112 Stat. 1962, provided that:

''(a) NOTICE OF NEGOTIATIONS.—The President shall notify Congress before entering into any negotiations for the ex-gratia settlement of the claims of a government of another country against the United States for environmental cleanup of sites in that country that were formerly used by the Department of Defense.

''(b) AUTHORIZATION REQUIRED FOR USE OF FUNDS FOR PAYMENT OF SETTLEMENT.—No funds may be used for any payment under an ex-gratia settlement of any claims described in subsection (a) unless the use of the funds for that purpose is specifically authorized by law or international agreement, including a treaty.''

RECOVERY AND SHARING OF COSTS OF ENVIRONMENTAL RESTORATION AT DEPARTMENT OF DEFENSE SITES

Pub. L. 105–85, div. A, title III, § 348, Nov. 18, 1997, 111 Stat. 1689, provided that:

''(a) REGULATIONS.—Not later than March 1, 1998, the Secretary of Defense shall prescribe regulations containing the guidelines and requirements described in subsections (b) and (c).

''(b) GUIDELINES.—(1) The regulations prescribed under subsection (a) shall contain uniform guidelines for the military departments and defense agencies concerning the cost-recovery and cost-sharing activities of those departments and agencies.

''(2) The Secretary shall take appropriate actions to ensure the implementation of the guidelines.

''(c) REQUIREMENTS.—The regulations prescribed under subsection (a) shall contain requirements for the Secretaries of the military departments and the heads of defense agencies to—

''(1) obtain all data that is relevant for purposes of cost-recovery and cost-sharing activities; and

''(2) identify any negligence or other misconduct that may preclude indemnification or reimbursement by the Department of Defense for the costs of environmental restoration at a Department site or justify the recovery or sharing of costs associated with such restoration.

''(d) DEFINITION.—In this section, the term 'cost-recovery and cost-sharing activities' means activities concerning—

''(1) the recovery of the costs of environmental restoration at Department of Defense sites from contractors of the Department and other private parties that contribute to environmental contamination at such sites; and

''(2) the sharing of the costs of such restoration with such contractors and parties.''

PILOT PROGRAM FOR SALE OF AIR POLLUTION EMISSION REDUCTION INCENTIVES

Pub. L. 107–107, div. A, title III, § 316(b), Dec. 28, 2001, 115 Stat. 1053, provided that:

''(1) The Secretary of Defense shall prepare a report concerning the operation of the pilot program for the sale of economic incentives for the reduction of emission of air pollutants attributable to military facilities, as authorized by section 351 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 2701 note). The report shall—

''(A) detail all transactions that have been completed under the pilot program, the dollar amount of each transaction, and the number and type of air pollutants involved in each transaction;

''(B) evaluate the extent to which retention of the proceeds of sales under the pilot program, as required by subsection (c) of such section, has provided incentives for such sales;

''(C) evaluate the extent of any loss to the United States Treasury associated with the pilot program; and

''(D) evaluate the environmental impact of the pilot program.

''(2) Not later than March 1, 2003, the Secretary shall submit the report required by paragraph (1) to the Committee on Energy and Commerce and the Committee on Armed Services of the House of Representatives and the Committee on Environment and Public Works and the Committee on Armed Services of the Senate.''

Pub. L. 105–85, div. A, title III, § 351, Nov. 18, 1997, 111 Stat. 1692, as amended by Pub. L. 106–65, div. A, title III, § 325, Oct. 5, 1999, 113 Stat. 563; Pub. L. 107–107, div. A, title III, § 316(a), Dec. 28, 2001, 115 Stat. 1053, provided that:

''(a) AUTHORITY.—(1) The Secretary of Defense may, in consultation with the Administrator of General Services, carry out a pilot program to assess the feasibility and advisability of the sale of economic incentives for the reduction of emission of air pollutants attributable to a facility of a military department.

''(2) The Secretary may not carry out the pilot program after September 30, 2003.

''(b) INCENTIVES AVAILABLE FOR SALE.—(1) Under the pilot program, the Secretary may sell economic incentives for the reduction of emission of air pollutants attributable to a facility of a military department only if such incentives are not otherwise required for the activities or operations of the military department.

''(2) The Secretary may not, under the pilot program, sell economic incentives attributable to the closure or realignment of a military installation under a base closure law.

''(3) If the Secretary determines that additional sales of economic incentives are likely to result in amounts available for allocation under subsection (c)(2) in a fiscal year in excess of the limitation set forth in sub-

paragraph (B) of that subsection, the Secretary shall not carry out such additional sales in that fiscal year.

''(c) USE OF PROCEEDS.—(1) The proceeds of sale of economic incentives attributable to a facility of a military department shall be credited to the funds available to the facility for the costs of identifying, quantifying, or valuing economic incentives for the reduction of emission of air pollutants. The amount credited shall be equal to the cost incurred in identifying, quantifying, or valuing the economic incentives sold.

''(2)(A)(i) If after crediting under paragraph (1) a balance remains, the amount of such balance shall be available to the Department of Defense for allocation by the Secretary to the military departments for programs, projects, and activities necessary for compliance with Federal environmental laws, including the purchase of economic incentives for the reduction of emission of air pollutants.

''(ii) To the extent practicable, amounts allocated to the military departments under this subparagraph shall be made available to the facilities that generated the economic incentives providing the basis for the amounts.

''(B) The total amount allocated under this paragraph in a fiscal year from sales of economic incentives may not equal or exceed $500,000.

''(3) If after crediting under paragraph (1) a balance remains in excess of an amount equal to the limitation set forth in paragraph (2)(B), the amount of the excess shall be covered over into the Treasury as miscellaneous receipts.

''(4) Funds credited under paragraph (1) or allocated under paragraph (2) shall be merged with the funds to which credited or allocated, as the case may be, and shall be available for the same purposes and for the same period as the funds with which merged.

''(d) DEFINITIONS.—In this section:

''(1) The term 'base closure law' means the following:

''(A) Section 2687 of title 10, United States Code.

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'economic incentives for the reduction of emission of air pollutants' means any transferable economic incentives (including marketable permits and emission rights) necessary or appropriate to meet air quality requirements under the Clean Air Act (42 U.S.C. 7401 et seq.).''

AUTHORITY TO DEVELOP AND IMPLEMENT LAND USE PLANS FOR DEFENSE ENVIRONMENTAL RESTORATION PROGRAM

Section 325 of Pub. L. 104–201 provided that:

''(a) AUTHORITY.—The Secretary of Defense may, to the extent possible and practical, develop and implement, as part of the Defense Environmental Restoration Program provided for in chapter 160 of title 10, United States Code, a land use plan for any defense site selected by the Secretary under subsection (b).

''(b) SELECTION OF SITES.—The Secretary may select up to 10 defense sites, from among sites where the Secretary is planning or implementing environmental restoration activities, for which land use plans may be developed under this section.

''(c) REQUIREMENT TO CONSULT WITH REVIEW COMMITTEE OR ADVISORY BOARD.—In developing a land use plan under this section, the Secretary shall consult with a technical review committee established pursuant to section 2705(c) of title 10, United States Code, a restoration advisory board established pursuant to section 2705(d) of such title, a local land use redevelopment authority, or another appropriate State agency.

''(d) 50-YEAR PLANNING PERIOD.—A land use plan developed under this section shall cover a period of at least 50 years.

''(e) IMPLEMENTATION.—For each defense site for which the Secretary develops a land use plan under this section, the Secretary shall take into account the land use plan in selecting and implementing, in accordance with applicable law, environmental restoration activities at the site.

''(f) DEADLINES.—For each defense site for which the Secretary intends to develop a land use plan under this section, the Secretary shall develop a draft land use plan by October 1, 1997, and a final land use plan by March 15, 1998.

''(g) DEFINITION OF DEFENSE SITE.—For purposes of this section, the term 'defense site' means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft under the jurisdiction of the Department of Defense, or (B) any site or area under the jurisdiction of the Department of Defense where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

''(h) REPORT.—In the annual report required under section 2706(a) of title 10, United States Code, the Secretary shall include information on the land use plans developed under this section and the effect such plans have had on environmental restoration activities at the defense sites where they have been implemented. The annual report submitted in 1999 shall include recommendations on whether such land use plans should be developed and implemented throughout the Department of Defense.

''(i) SAVINGS PROVISIONS.—(1) Nothing in this section, or in a land use plan developed under this section with respect to a defense site, shall be construed as requiring any modification to a land use plan that was developed before the date of the enactment of this Act [Sept. 23, 1996].

''(2) Nothing in this section may be construed to affect statutory requirements for an environmental restoration or waste management activity or project or to modify or otherwise affect applicable statutory or regulatory environmental restoration and waste management requirements, including substantive standards intended to protect public health and the environment, nor shall anything in this section be construed to preempt or impair any local land use planning or zoning authority or State authority.''

FISCAL YEAR 1996 RESTRICTIONS ON REIMBURSEMENTS UNDER AGREEMENTS FOR SERVICES OF OTHER AGENCIES

Section 321(a)(2) of Pub. L. 104–106, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(1)(A), Nov. 18, 1997, 111 Stat. 1905, provided that:

''(A) Except as provided in subparagraph (B), the total amount of funds available for reimbursements under agreements entered into under section 2701(d) of title 10, United States Code, as amended by paragraph (1), in fiscal year 1996 may not exceed $10,000,000.

''(B) The Secretary of Defense may pay in fiscal year 1996 an amount for reimbursements under agreements referred to in subparagraph (A) in excess of the amount specified in that subparagraph for that fiscal year if—

''(i) the Secretary certifies to Congress that the payment of the amount under this subparagraph is essential for the management of the Defense Environmental Restoration Program under chapter 160 of title 10, United States Code; and

''(ii) a period of 60 days has expired after the date on which the certification is received by Congress.''

ENVIRONMENTAL EDUCATION AND TRAINING PROGRAM FOR DEFENSE PERSONNEL

Section 328 of Pub. L. 103–337 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish and conduct an education and training program for members of the Armed Forces and civilian employees of the Department of Defense whose responsibilities include planning or executing the environ-

mental mission of the Department. The Secretary shall conduct the program to ensure that such members and employees obtain and maintain the knowledge and skill required to comply with existing environmental laws and regulations.

''(b) IDENTIFICATION OF MILITARY FACILITIES WITH ENVIRONMENTAL TRAINING EXPERTISE.—As part of the program, the Secretary may identify military facilities that have existing expertise (or the capacity to develop such expertise) in conducting education and training activities in various environmental disciplines. In the case of a military facility identified under this subsection, the Secretary should encourage the use of the facility by members and employees referred to in subsection (a) who are not under the jurisdiction of the military department operating the facility.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE EDUCATION AND TRAINING IN ENVIRONMENTAL RESTORATION TO DISLOCATED DEFENSE WORKERS AND YOUNG ADULTS

Pub. L. 103–160, div. A, title XIII, §1333, Nov. 30, 1993, 107 Stat. 1798, as amended by Pub. L. 103–337, div. A, title X, §1070(b)(11), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 105–244, title I, §102(a)(2)(D), Oct. 7, 1998, 112 Stat. 1617; Pub. L. 105–277, div. A, §101(f) [title VIII, §405(d)(8), (f)(7)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430, provided that:

''(a) GRANT PROGRAM AUTHORIZED.—(1) The Secretary of Defense may establish a program to provide demonstration grants to institutions of higher education to assist such institutions in providing education and training in environmental restoration and hazardous waste management to eligible dislocated defense workers and young adults described in subsection (d). The Secretary shall award the grants pursuant to a merit-based selection process.

''(2) A grant provided under this subsection may cover a period of not more than three fiscal years, except that the payments under the grant for the second and third fiscal year shall be subject to the approval of the Secretary and to the availability of appropriations to carry out this section in that fiscal year.

''(b) APPLICATION.—To be eligible for a grant under subsection (a), an institution of higher education shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary may require. The application shall include the following:

''(1) An assurance by the institution of higher education that it will use the grant to supplement and not supplant non-Federal funds that would otherwise be available for the education and training activities funded by the grant.

''(2) A proposal by the institution of higher education to provide expertise, training, and education in hazardous materials and waste management and other environmental fields applicable to defense manufacturing sites and Department of Defense and Department of Energy defense facilities.

''(c) USE OF GRANT FUNDS.—(1) An institution of higher education receiving a grant under subsection (a) shall use the grant to establish a consortium consisting of the institution and one or more of each of the entities described in paragraph (2) for the purpose of establishing and conducting a program to provide education and training in environmental restoration and waste management to eligible individuals described in subsection (d). To the extent practicable, the Secretary shall authorize the consortium to use a military installation closed or selected to be closed under a base closure law in providing on-site basic skills training to participants in the program.

''(2) The entities referred to in paragraph (1) are the following:

''(A) Appropriate State and local agencies.

''(B) local [sic] workforce investment boards established under section 117 of the Workforce Investment Act of 1998 [29 U.S.C. 2832].

''(C) Community-based organizations (as defined in section 4(5) of such Act (29 U.S.C. 1503(5)).

''(D) Businesses.

''(E) Organized labor.

''(F) Other appropriate educational institutions.

''(d) ELIGIBLE INDIVIDUALS.—A program established or conducted using funds provided under subsection (a) may provide education and training in environmental restoration and waste management to—

''(1) individuals who have been terminated or laid off from employment (or have received notice of termination or lay off) as a consequence of reductions in expenditures by the United States for defense, the cancellation, termination, or completion of a defense contract, or the closure or realignment of a military installation under a base closure law, as determined in accordance with regulations prescribed by the Secretary; or

''(2) individuals who have attained the age of 16 but not the age of 25.

''(e) ELEMENTS OF EDUCATION AND TRAINING PROGRAM.—In establishing or conducting an education and training program using funds provided under subsection (a), the institution of higher education shall meet the following requirements:

''(1) The institution of higher education shall establish and provide a work-based learning system consisting of education and training in environmental restoration—

''(A) which may include basic educational courses, on-site basic skills training, and mentor assistance to individuals described in subsection (d) who are participating in the program; and

''(B) which may lead to the awarding of a certificate or degree at the institution of higher education.

''(2) The institution of higher education shall undertake outreach and recruitment efforts to encourage participation by eligible individuals in the education and training program.

''(3) The institution of higher education shall select participants for the education and training program from among eligible individuals described in paragraph (1) or (2) of subsection (d).

''(4) To the extent practicable, in the selection of young adults described in subsection (d)(2) to participate in the education and training program, the institution of higher education shall give priority to those young adults who—

''(A) have not attended and are otherwise unlikely to be able to attend an institution of higher education; or

''(B) have, or are members of families who have, received a total family income that, in relation to family size, is not in excess of the higher of—

''(i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2))); or

''(ii) 70 percent of the lower living standard income level.

''(5) To the extent practicable, the institution of higher education shall select instructors for the education and training program from institutions of higher education, appropriate community programs, and industry and labor.

''(6) To the extent practicable, the institution of higher education shall consult with appropriate Federal, State, and local agencies carrying out environmental restoration programs for the purpose of achieving coordination between such programs and the education and training program conducted by the consortium.

''(f) SELECTION OF GRANT RECIPIENTS.—To the extent practicable, the Secretary shall provide grants to institutions of higher education under subsection (a) in a manner which will equitably distribute such grants among the various regions of the United States.

''(g) LIMITATION ON AMOUNT OF GRANT TO A SINGLE RECIPIENT.—The amount of a grant under subsection (a) that may be made to a single institution of higher edu-

cation in a fiscal year may not exceed ⅓ of the amount made available to provide grants under such subsection for that fiscal year.

''(h) REPORTING REQUIREMENTS.—(1) The Secretary may provide a grant to an institution of higher education under subsection (a) only if the institution agrees to submit to the Secretary, in each fiscal year in which the Secretary makes payments under the grant to the institution, a report containing—

''(A) a description and evaluation of the education and training program established by the consortium formed by the institution under subsection (c); and

''(B) such other information as the Secretary may reasonably require.

''(2) Not later than 18 months after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall submit to the President and Congress an interim report containing—

''(A) a compilation of the information contained in the reports received by the Secretary from each institution of higher education under paragraph (1); and

''(B) an evaluation of the effectiveness of the demonstration grant program authorized by this section.

''(3) Not later than January 1, 1997, the Secretary shall submit to the President and Congress a final report containing—

''(A) a compilation of the information described in the interim report; and

''(B) a final evaluation of the effectiveness of the demonstration grant program authorized by this section, including a recommendation as to the feasibility of continuing the program.

''(i) DEFINITIONS.—For purposes of this section:

''(1) BASE CLOSURE LAW.—The term 'base closure law' means the following:

''(A) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(C) Section 2687 of title 10, United States Code.

''(D) Any other similar law enacted after the date of the enactment of this Act [Nov. 30, 1993].

''(2) ENVIRONMENTAL RESTORATION.—The term 'environmental restoration' means actions taken consistent with a permanent remedy to prevent or minimize the release of hazardous substances into the environment so that such substances do not migrate to cause substantial danger to present or future public health or welfare or the environment.

''(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].

''(4) SECRETARY.—The term 'Secretary' means the Secretary of Defense.

''(j) CONFORMING REPEAL.—Section 4452 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 10 U.S.C. 2701 note) is repealed.''

ENVIRONMENTAL EDUCATION OPPORTUNITIES PROGRAM

Pub. L. 103–160, div. A, title XIII, § 1334, Nov. 30, 1993, 107 Stat. 1801, as amended by Pub. L. 105–244, title I, § 102(a)(2)(E), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) AUTHORITY.—The Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, may establish a scholarship program in order to enable eligible individuals described in subsection (d) to undertake the educational training or activities relating to environmental engineering, environmental sciences, or environmental project management in fields related to hazardous waste management and cleanup described in subsection (b) at the institutions of higher education described in subsection (c).

''(b) EDUCATIONAL TRAINING OR ACTIVITIES.—(1) The program established under subsection (a) shall be limited to educational training or activities related to—

''(A) site remediation;

''(B) site characterization;

''(C) hazardous waste management;

''(D) hazardous waste reduction;

''(E) recycling;

''(F) process and materials engineering;

''(G) training for positions related to environmental engineering, environmental sciences, or environmental project management (including training for management positions); and

''(H) environmental engineering with respect to the construction of facilities to address the items described in subparagraphs (A) through (G).

''(2) The program established under subsection (a) shall be limited to educational training or activities designed to enable individuals to achieve specialization in the following fields:

''(A) Earth sciences.

''(B) Chemistry.

''(C) Chemical Engineering.

''(D) Environmental engineering.

''(E) Statistics.

''(F) Toxicology.

''(G) Industrial hygiene.

''(H) Health physics.

''(I) Environmental project management.

''(c) ELIGIBLE INSTITUTIONS OF HIGHER EDUCATION.—Scholarship funds awarded under this section shall be used by individuals awarded scholarships to enable such individuals to attend institutions of higher education associated with hazardous substance research centers to enable such individuals to undertake a program of educational training or activities described in subsection (b) that leads to an undergraduate degree, a graduate degree, or a degree or certificate that is supplemental to an academic degree.

''(d) ELIGIBLE INDIVIDUALS.—Individuals eligible for scholarships under the program established under subsection (a) are the following:

''(1) Any member of the Armed Forces who—

''(A) was on active duty or full-time National Guard duty on September 30, 1990;

''(B) during the 5-year period beginning on that date—

''(i) is involuntarily separated (as defined in section 1141 of title 10, United States Code) from active duty or full-time National Guard duty; or

''(ii) is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under section 1174a of title 10, United States Code, or the voluntary separation incentive program under section 1175 of that title; and

''(C) is not entitled to retired or retainer pay incident to that separation.

''(2) Any civilian employee of the Department of Energy or the Department of Defense (other than an employee referred to in paragraph (3)) who—

''(A) is terminated or laid off from such employment during the five-year period beginning on September 30, 1990, as a result of reductions in defense-related spending (as determined by the appropriate Secretary); and

''(B) is not entitled to retired or retainer pay incident to that termination or lay off.

''(3) Any civilian employee of the Department of Defense whose employment at a military installation approved for closure or realignment under a base closure law is terminated as a result of such closure or realignment.

''(e) AWARD OF SCHOLARSHIP.—(1)(A) The Secretary of Defense shall award scholarships under this section to such eligible individuals as the Secretary determines appropriate pursuant to regulations or policies promulgated by the Secretary.

''(B) In awarding a scholarship under this section, the Secretary shall—

''(i) take into consideration the extent to which the qualifications and experience of the individual applying for the scholarship prepared such individual for

the educational training or activities to be undertaken; and

''(ii) award a scholarship only to an eligible individual who has been accepted for enrollment in the institution of higher education described in subsection (c) and providing the educational training or activities for which the scholarship assistance is sought.

''(2) The Secretary of Defense shall determine the amount of the scholarships awarded under this section, except that the amount of scholarship assistance awarded to any individual under this section may not exceed—

''(A) $10,000 in any 12-month period; and

''(B) a total of $20,000.

''(f) APPLICATION; PERIOD FOR SUBMISSION.—(1) Each individual desiring a scholarship under this section shall submit an application to the Secretary of Defense in such manner and containing or accompanied by such information as the Secretary may reasonably require.

''(2) A member of the Armed Forces described in subsection (d)(1) who desires to apply for a scholarship under this section shall submit an application under this subsection not later than 180 days after the date of the separation of the member. In the case of members described in subsection (d)(1) who were separated before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these members submitted during the 180-day period beginning on the date of the enactment of this Act.

''(3) A civilian employee described in paragraph (2) or (3) of subsection (d) who desires to apply for a scholarship under this section, but who receives no prior notice of such termination or lay off, may submit an application under this subsection at any time after such termination or lay off. A civilian employee described in paragraph (1) or (2) of subsection (d) who receives a notice of termination or lay off shall submit an application not later than 180 days before the effective date of the termination or lay off. In the case of employees described in such paragraphs who were terminated or laid off before the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall accept applications from these employees submitted during the 180-day period beginning on the date of the enactment of this Act.

''(g) REPAYMENT.—(1) Any individual receiving scholarship assistance from the Secretary of Defense under this section shall enter into an agreement with the Secretary under which the individual agrees to pay to the United States the total amount of the scholarship assistance provided to the individual by the Secretary under this section, plus interest at the rate prescribed in paragraph (4), if the individual does not complete the educational training or activities for which such assistance is provided.

''(2) If an individual fails to pay to the United States the total amount required pursuant to paragraph (1), including the interest, at the rate prescribed in paragraph (4), the unpaid amount shall be recoverable by the United States from the individual or such individual's estate by—

''(A) in the case of an individual who is an employee of the United States, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method as is provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary of Defense may waive in whole or in part a required repayment under this subsection if the Secretary determines that the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of scholarship assistance provided to an individual under this section, for purposes of repayment under this subsection, shall bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(h) COORDINATION OF BENEFITS.—Any scholarship assistance provided to an individual under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq. [and 42 U.S.C. 2751 et seq.]).

''(i) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary of Defense, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit to the Congress a report describing the activities undertaken under the program authorized by subsection (a) and containing recommendations for future activities under the program.

''(j) FUNDING.—(1) To carry out the scholarship program authorized by subsection (a), the Secretary of Defense may use the unobligated balance of funds made available pursuant to section 4451(k) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 10 U.S.C. 2701 note) for fiscal year 1993 for environmental scholarship and fellowship programs for the Department of Defense.

''(2) The cost of carrying out the program authorized by subsection (a) may not exceed $8,000,000 in any fiscal year.

''(k) DEFINITIONS.—For purposes of this section:

''(1) The term 'base closure law' means the following:

''(A) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

''(2) The term 'hazardous substance research centers' means the hazardous substance research centers described in section 311(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(d)). Such term includes the Great Plains and Rocky Mountain Hazardous Substance Research Center, the Northeast Hazardous Substance Research Center, the Great Lakes and Mid-Atlantic Hazardous Substance Research Center, the South and Southwest Hazardous Substance Research Center, and the Western Region Hazardous Substance Research Center.

''(3) The term 'institution of higher education' has the same meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001].''

TRAINING AND EMPLOYMENT OF DEPARTMENT OF DEFENSE EMPLOYEES TO CARRY OUT ENVIRONMENTAL RESTORATION AT MILITARY INSTALLATIONS TO BE CLOSED

Pub. L. 103–160, div. A, title XIII, § 1335, Nov. 30, 1993, 107 Stat. 1804, provided that:

''(a) TRAINING PROGRAM.—The Secretary of Defense may establish a program to provide such training to eligible civilian employees of the Department of Defense as the Secretary considers to be necessary to qualify such employees to carry out environmental assessment, remediation, and restoration activities (including asbestos abatement) at military installations closed or to be closed.

''(b) EMPLOYMENT OF GRADUATES.—In the case of eligible civilian employees of the Department of Defense who successfully complete the training program established pursuant to subsection (a), the Secretary may—

''(1) employ such employees to carry out environmental assessment, remediation, and restoration activities at military installations referred to in subsection (a); or

''(2) require, as a condition of a contract for the private performance of such activities at such an installation, the contractor to be engaged in carrying out such activities to employ such employees.

''(c) ELIGIBLE EMPLOYEES.—Eligibility for selection to participate in the training program under subsection (a) shall be limited to those civilian employees of the Department of Defense whose employment would be terminated by reason of the closure of a military installation if not for the selection of the employees to participate in the training program.

''(d) PRIORITY IN TRAINING AND EMPLOYMENT.—The Secretary shall give priority in providing training and employment under this section to eligible civilian employees employed at a military installation the closure of which will directly result in the termination of the employment of at least 1,000 civilian employees of the Department of Defense.

''(e) EFFECT ON OTHER ENVIRONMENTAL REQUIREMENTS.—Nothing in this section shall be construed to revise or modify any requirement established under Federal or State law relating to environmental assessment, remediation, or restoration activities at military installations closed or to be closed.''

COOPERATIVE AGREEMENTS AND GRANTS TO IMPLEMENT LEGACY RESOURCE MANAGEMENT PROGRAM

Pub. L. 103–139, title II, Nov. 11, 1993, 107 Stat. 1422, provided in part: ''That notwithstanding the provisions of the Federal Cooperative Grant and Agreement Act of 1977 (31 U.S.C. 6303–6308), the Department of Defense may hereafter negotiate and enter into cooperative agreements and grants with public and private agencies, organizations, institutions, individuals or other entities to implement the purposes of the Legacy Resource Management Program''.

PILOT PROGRAM FOR EXPEDITED ENVIRONMENTAL RESPONSE ACTIONS

Section 323 of Pub. L. 102–484 provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a pilot program to expedite the performance of on-site environmental restoration at—

''(1) military installations scheduled for closure under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

''(2) military installations scheduled for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note); and

''(3) facilities for which the Secretary is responsible under the Defense Environmental Restoration Program established under section 2701 of title 10, United States Code.

''(b) SELECTION OF INSTALLATIONS AND FACILITIES.—(1) For participation in the pilot program, the Secretary shall select—

''(A) 2 military installations referred to in subsection (a)(1);

''(B) 4 military installations referred to in subsection (a)(2), consisting of—

''(i) 2 military installations scheduled for closure as of the date of the enactment of this Act [Oct. 23, 1992]; and

''(ii) 2 military installations included in the list transmitted by the Secretary no later than April 15, 1993, pursuant to section 2903(c)(1) of the Defense Base Closure and Realignment Act of 1990 [Pub. L. 101–510] (10 U.S.C. 2687 note) and recommended in a report transmitted by the President in that year pursuant to section 2903(e) of such Act and for which a joint resolution disapproving such recommendations is not enacted by the deadline set forth in section 2904(b) of such Act [10 U.S.C. 2687 note]; and

''(C) not less than 4 facilities referred to in subsection (a)(3) with respect to each military department.

''(2)(A) Except as provided in subparagraph (B), the selections under paragraph (1) shall be made not later than 60 days after the date of the enactment of this Act.

''(B) The selections under paragraph (1) of military installations described in subparagraph (B)(ii) of such paragraph shall be made not later than 60 days after the date on which the deadline (set forth in section 2904(b) of such Act) for enacting a joint resolution of disapproval with respect to the report transmitted by the President has passed.

''(3) The installations and facilities selected under paragraph (1) shall be representative of—

''(A) a variety of the environmental restoration activities required for facilities under the Defense Environmental Restoration Program and for military installations scheduled for closure under the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note) [see Short Title of 1988 Amendment note under 10 U.S.C. 2687] and the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687 note); and

''(B) the different sizes of such environmental restoration activities to provide, to the maximum extent practicable, opportunities for the full range of business sizes to enter into environmental restoration contracts with the Department of Defense and with prime contractors to perform activities under the pilot program.

''(c) EXECUTION OF PROGRAM.—Subject to subsection (d), and to the maximum extent possible, the Secretary shall, in order to eliminate redundant tasks and to accelerate environmental restoration at military installations, use the authorities granted in existing law to carry out the pilot program, including—

''(1) the development and use of innovative contracting techniques;

''(2) the use of all reasonable and appropriate methods to expedite necessary Federal and State administrative decisions, agreements, and concurrences; and

''(3) the use (including any necessary request for the use) of existing authorities to ensure that environmental restoration activities under the pilot program are conducted expeditiously, with particular emphasis on activities that may be conducted in advance of any final plan for environmental restoration.

''(d) PROGRAM PRINCIPLES.—The Secretary shall carry out the pilot program consistent with the following principles:

''(1) Activities of the pilot program shall be carried out subject to and in accordance with all applicable Federal and State laws and regulations.

''(2) Competitive procedures shall be used to select the contractors.

''(3) The experience and ability of the contractors shall be considered, in addition to cost, as a factor to be evaluated in the selection of the contractors.

''(e) PROGRAM RESTRICTIONS.—The pilot program established in this section shall not result in the delay of environmental restoration activities at other military installations and former sites of the Department of Defense.''

OVERSEAS ENVIRONMENTAL RESTORATION

Section 324 of Pub. L. 102–484 provided that:

''(a) SENSE OF CONGRESS.—It is the sense of the Congress that in carrying out environmental restoration activities at military installations outside the United States, the President should seek to obtain an equitable division of the costs of environmental restoration with the nation in which the installation is located.

''(b) REPORT.—The Secretary of Defense shall include in each Report on Allied Contributions to the Common Defense prepared under section 1003 of Public Law 98–525 (22 U.S.C. 1928 [note]) information, in classified and unclassified form, describing the efforts undertaken and the progress made by the President in carrying out subsection (a) during the period covered by the report.''

ENVIRONMENTAL SCHOLARSHIP AND FELLOWSHIP PROGRAMS FOR DEPARTMENT OF DEFENSE

Section 4451 of Pub. L. 102–484, as amended by Pub. L. 105–244, title I, § 102(a)(2)(F), Oct. 7, 1998, 112 Stat. 1617, provided that:

''(a) ESTABLISHMENT.—The Secretary of Defense (hereinafter in this section referred to as the 'Secretary') may conduct scholarship and fellowship programs for the purpose of enabling individuals to qualify

for employment in the field of environmental restoration or other environmental programs in the Department of Defense.

''(b) ELIGIBILITY.—To be eligible to participate in the scholarship or fellowship program, an individual must—

''(1) be accepted for enrollment or be currently enrolled as a full-time student at an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001]);

''(2) be pursuing a program of education that leads to an appropriate higher education degree in engineering, biology, chemistry, or another qualifying field related to environmental activities, as determined by the Secretary;

''(3) sign an agreement described in subsection (c);

''(4) be a citizen or national of the United States or be an alien lawfully admitted to the United States for permanent residence; and

''(5) meet any other requirements prescribed by the Secretary.

''(c) AGREEMENT.—An agreement between the Secretary and an individual participating in a scholarship or fellowship established in subsection (a) shall be in writing, shall be signed by the individual, and shall include the following provisions:

''(1) The agreement of the Secretary to provide the individual with educational assistance for a specified number of school years (not to exceed 5 years) during which the individual is pursuing a course of education in a qualifying field. The assistance may include payment of tuition, fees, books, laboratory expenses, and (in the case of a fellowship) a stipend.

''(2) The agreement of the individual to perform the following:

''(A) Accept such educational assistance.

''(B) Maintain enrollment and attendance in the educational program until completed.

''(C) Maintain, while enrolled in the educational program, satisfactory academic progress as prescribed by the institution of higher education in which the individual is enrolled.

''(D) Serve, upon completion of the educational program and selection by the Secretary under subsection (e), as a full-time employee in an environmental restoration or other environmental position in the Department of Defense for the applicable period of service specified in subsection (d).

''(d) PERIOD OF SERVICE.—The period of service required under subsection (c)(2)(D) is as follows:

''(1) For an individual who completes a bachelor's degree under a scholarship program established under subsection (a), a period of 12 months for each school year or part thereof for which the individual is provided a scholarship under the program.

''(2) For an individual who completes a master's degree or other post-graduate degree under a fellowship program established under subsection (a), a period of 24 months for each school year or part thereof for which the individual is provided a fellowship under the program.

''(e) SELECTION FOR SERVICE.—The Secretary shall annually review the number and performance under the agreement of individuals who complete educational programs during the preceding year under any scholarship and fellowship programs conducted pursuant to subsection (a). From among such individuals, the Secretary shall select individuals for environmental positions in the Department of Defense, based on the type and availability of such positions.

''(f) REPAYMENT.—(1) Any individual participating in a scholarship or fellowship program under this section shall agree to pay to the United States the total amount of educational assistance provided to the individual under the program, plus interest at the rate prescribed in paragraph (4), if—

''(A) the individual does not complete the educational program as agreed to pursuant to subsection (c)(2)(B), or is selected by the Secretary under subsection (e) but declines to serve, or fails to complete the service, in a position in the Department of Defense as agreed to pursuant to subsection (c)(2)(D); or

''(B) the individual is involuntarily separated for cause from the Department of Defense before the end of the period for which the individual has agreed to continue in the service of the Department of Defense.

''(2) If an individual fails to fulfill the agreement of the individual to pay to the United States the total amount of educational assistance provided under a program established under subsection (a), plus interest at the rate prescribed in paragraph (4), a sum equal to the amount of the educational assistance (plus such interest, if applicable) shall be recoverable by the United States from the individual or his estate by—

''(A) in the case of an individual who is an employee of the Department of Defense or other Federal agency, set off against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the United States; and

''(B) such other method provided by law for the recovery of amounts owing to the United States.

''(3) The Secretary may waive in whole or in part a required repayment under this subsection if the Secretary determines the recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

''(4) The total amount of educational assistance provided to an individual under a program established under subsection (a) shall, for purposes of repayment under this section, bear interest at the applicable rate of interest under section 427A(c) of the Higher Education Act of 1965 (20 U.S.C. 1077a(c)).

''(g) PREFERENCE.—In evaluating applicants for the award of a scholarship or fellowship under a program established under subsection (a), the Secretary shall give a preference to—

''(1) individuals who are, or have been, employed by the Department of Defense or its contractors and subcontractors who have been engaged in defense-related activities; and

''(2) individuals who are or have been members of the Armed Forces.

''(h) COORDINATION OF BENEFITS.—A scholarship or fellowship awarded under this section shall be taken into account in determining the eligibility of the individual for Federal student financial assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

''(i) AWARD OF SCHOLARSHIPS AND FELLOWSHIPS.—The Secretary may award to qualified applicants not more than 100 scholarships (for undergraduate students) and not more than 30 fellowships (for graduate students) in fiscal year 1993.

''(j) REPORT TO CONGRESS.—Not later than January 1, 1994, the Secretary shall submit to the Congress a report on activities undertaken under the programs established under subsection (a) and recommendations for future activities under the programs.

''(k) FUNDING FOR FISCAL YEAR 1993.—Of the amount authorized to be appropriated in section 301(5) [106 Stat. 2360]—

''(1) $7,000,000 shall be available to carry out the scholarship and fellowship programs established in subsection (a); and

''(2) $3,000,000 shall be available to provide training to Department of Defense personnel to obtain the skills required to comply with existing environmental statutory and regulatory requirements.''

GRANTS TO INSTITUTIONS OF HIGHER EDUCATION TO PROVIDE TRAINING IN ENVIRONMENTAL RESTORATION AND HAZARDOUS WASTE MANAGEMENT

Section 4452 of Pub. L. 102–484 authorized the Secretary of Defense to establish a program to assist institutions of higher education, as defined in former section 1141(a) of Title 20, Education, to provide education and training in environmental restoration and hazardous waste management and to award grants to such institutions, prior to repeal by Pub. L. 103–160, div. A, title XIII, §1333(j), Nov. 30, 1993, 107 Stat. 1800. See section 1333 of Pub. L. 103–160, set out above.

POLICIES AND REPORT ON OVERSEAS ENVIRONMENTAL COMPLIANCE

Section 342(b) of Pub. L. 101–510 provided that:

''(1) The Secretary of Defense shall develop a policy for determining applicable environmental requirements for military installations located outside the United States. In developing the policy, the Secretary shall ensure that the policy gives consideration to adequately protecting the health and safety of military and civilian personnel assigned to such installations.

''(2) The Secretary of Defense shall develop a policy for determining the responsibilities of the Department of Defense with respect to cleaning up environmental contamination that may be present at military installations located outside the United States. In developing the policy, the Secretary shall take into account applicable international agreements (such as Status of Forces agreements), multinational or joint use and operation of such installations, relative share of the collective defense burden, and negotiated accommodations.

''(3) The Secretary of Defense shall develop a policy and strategy to ensure adequate oversight of compliance with applicable environmental requirements and responsibilities of the Department of Defense determined under the policies developed under paragraphs (1) and (2). In developing the policy, the Secretary shall consider using the Inspector General of the Department of Defense to ensure active and forceful oversight.

''(4) At the same time the President submits to Congress his budget for fiscal year 1993 pursuant to section 1105 of title 31, United States Code, the Secretary of Defense shall submit to Congress a report describing the policies developed under paragraphs (1), (2), and (3). The report also shall include a discussion of the role of the Inspector General of the Department of Defense in overseeing environmental compliance at military installations outside the United States.

''(5) For purposes of this subsection, the term 'military installation' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located outside the United States and outside any territory, commonwealth, or possession of the United States.''

ENVIRONMENTAL EDUCATION PROGRAM FOR DEPARTMENT OF DEFENSE PERSONNEL

Section 344 of Pub. L. 101–510 directed Secretary of Defense to establish a program for the purpose of educating Department of Defense personnel in environmental management and, not later than date on which President submits budget for FY 1992 to Congress pursuant to 31 U.S.C. 1105(a), to submit to Congress recommendations regarding whether program should be continued after Sept. 30, 1991.

USE OF OZONE DEPLETING SUBSTANCES WITHIN DEPARTMENT OF DEFENSE

Section 325 of Pub. L. 102–484 provided that:

''(a) EVALUATION OF USE OF CLASS I SUBSTANCES.—The Director of the Defense Logistics Agency shall evaluate the use of class I substances by the military departments and Defense Agencies. In carrying out the evaluation, the Director shall—

''(1) determine the quantity of each class I substance that—

''(A) is held in the inventory of each military department and Defense Agency on December 31, 1992;

''(B) will be used by each military department and Defense Agency during 1992; and

''(C) will be used by each military department and Defense Agency in each of 1993, 1994, and 1995;

''(2) determine the quantity of each class I substance in the inventory of the military departments and Defense Agencies in each of 1993, 1994, and 1995 that can be reclaimed or recycled and reused by the military departments and Defense Agencies;

''(3) determine the type and quantity of class I substances whose use will be critical to the missions of the military departments and Defense Agencies after 1995;

''(4) determine the type and quantity of class I substances that must be stockpiled after 1995 in order to ensure the availability of such substances, including the availability of used, reclaimed, or recycled class I substances for the missions referred to in paragraph (3);

''(5) review the plans, if any, to reclaim, recycle, reuse, and maintain the stockpile referred to in paragraph (4); and

''(6) identify each specific site, facility, or vessel in connection with which the Secretary of Defense will seek an exemption pursuant to section 604(f) of the Clean Air Act (42 U.S.C. 7671c(f)) to permit the continued production or use of class I substances, and the type and quantity of each class I substance that will be produced or used in connection with the site, facility, or vessel.

''(b) EVALUATION OF USE OF CLASS II SUBSTANCES.—The Director of the Defense Logistics Agency shall evaluate the use of class II substances by the military departments and Defense Agencies. In carrying out the evaluation, the Director shall—

''(1) determine the quantity of each class II substance that—

''(A) is held in the inventory of each military department and Defense Agency on December 31, 1992;

''(B) will be used by each military department and Defense Agency during 1992; and

''(C) will be used by each military department and Defense Agency in each of 1993, 1994, and 1995; and

''(2) determine the quantity of each class II substance in the inventory of the military departments and Defense Agencies in each of 1993, 1994, and 1995 that can be reclaimed or recycled and reused by the military departments and Defense Agencies.

''(c) REPORT.—(1) The Director of the Defense Logistics Agency shall submit to the congressional defense committees a report on the status of the evaluation required under subsection (a) not later than April 1, 1993.

''(2) The Director of the Defense Logistics Agency shall submit to the congressional defense committees a report on the status of the evaluation required under subsection (b) not later than October 1, 1993.

''(d) DEFINITIONS.—In this section:

''(1) The term 'class I substance' means any substance listed under section 602(a) of the Clean Air Act (42 U.S.C. 7671a(a)).

''(2) The term 'class II substance' means any substance listed under section 602(b) of the Clean Air Act (42 U.S.C. 7671a(b)).''

Section 345 of Pub. L. 101–510 provided that:

''(a) DOD REQUIREMENTS FOR OZONE DEPLETING CHEMICALS OTHER THAN CFCs.—(1) In addition to the functions of the advisory committee established pursuant to section 356(c) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189] (10 U.S.C. 2701 note), it shall be the function of the Committee to study (A) the use of methyl chloroform, hydrochlorofluorcarbons (HCFCs), and carbon tetrachloride by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the costs and feasibility of using alternative compounds or technologies for methyl chloroform, HCFCs, and carbon tetrachloride.

''(2) Within 120 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of methyl chloroform, HCFCs, or carbon tetrachloride.

''(3) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of methyl chloroform, HCFCs, or carbon tetrachloride but cannot be met without the use of one or more of such substances.

''(b) REQUIREMENT.—In preparing the report required by section 356(d) of the National Defense Authorization

Act for Fiscal Years 1990 and 1991 [Pub. L. 101–189, set out below] and the report required by subsection (d) of this section, the Committee shall work closely with the Strategic Environmental Research and Development Program Council and shall provide to such Council such reports.

''(c) EXTENSION OF REPORTING DEADLINE FOR CFCs.—The deadline for submitting to Congress the report required by section 356(d) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 concerning the uses of CFCs is hereby extended to June 30, 1991.

''(d) REPORTING DEADLINE FOR METHYL CHLOROFORM, HCFCs, AND CARBON TETRACHLORIDE.—Not later than September 30, 1991, the Secretary shall submit to Congress a report containing the results of the study by the Committee required by subsection (a)(1) of this section.''

REQUIREMENT FOR DEVELOPMENT OF ENVIRONMENTAL DATA BASE

Pub. L. 101–189, div. A, title III, § 352, Nov. 29, 1989, 103 Stat. 1423, provided that:

''(a) ENVIRONMENTAL DATA BASE.—The Secretary of Defense shall develop and maintain a comprehensive data base on environmental activities carried out by the Department of Defense pursuant to, and environmental compliance obligations to which the Department is subject under, chapter 160 of title 10, United States Code, and all other applicable Federal and State environmental laws. At a minimum, the information in the data base shall include all the fines and penalties assessed against the Department of Defense pursuant to environmental laws and paid by the Department, all notices of violations of environmental laws received by the Department, and all obligations of the Department for compliance with environmental laws. The Secretary may include any other information he considers appropriate.

''(b) REPORT.—Not later than one year after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the progress in development of the data base required under subsection (a). The report shall include a summary of the information collected for the data base with respect to environmental activities during 1989.''

FUNDING FOR WASTE MINIMIZATION PROGRAMS FOR CERTAIN INDUSTRIAL-TYPE ACTIVITIES OF DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, § 354, Nov. 29, 1989, 103 Stat. 1424, as amended by Pub. L. 102–190, div. A, title III, § 332, Dec. 5, 1991, 105 Stat. 1340, provided that:

''(a) REQUIREMENT TO ESTABLISH WASTE MINIMIZATION PROGRAM.—The Secretary of Defense shall require the Secretary of each military department to establish a program for fiscal years 1992, 1993, and 1994 to reduce the volume of solid and hazardous wastes disposed of, and hazardous materials used by, each industrial-type activity within the department that is a depot maintenance installation and for which a working-capital fund has been established under section 2208 of title 10, United States Code.

''(b) FUNDING.—Funding for the waste minimization program in each military department shall come out of payments received by the working-capital funds established for industrial-type and commercial-type activities of the department. The level of funding for each of fiscal years 1992, 1993, and 1994 shall be not less than ½ of 1 percent of the amount of such payments received during fiscal year 1988 that were used for depot maintenance installation functions at industrial-type activities. The required level of funding for fiscal year 1992 may be reduced by amounts expended for waste minimization during fiscal years 1990 and 1991. In any case in which a military department fails to spend funds at the level required by this subsection for the waste minimization program, the Secretary concerned shall submit to Congress a report explaining the reasons for the failure.

''(c) NOTICE OF EXCLUDED ACTIVITIES.—Not later than 90 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to Congress the name of each industrial-type or commercial-type activity of each military department which is not covered by the waste minimization program because the activity does not carry out depot maintenance installation functions.

''(d) USE OF FUNDS.—Funds available for the waste minimization programs established pursuant to this section shall be used to carry out waste minimization projects at depot maintenance installations. The types of expenses for which such funds may be used include the following (if such expense is related to a waste minimization project):

''(1) Operating expenses (including salaries).

''(2) Equipment purchase expenses.

''(3) Facility modification expenses.

''(4) Process change expenses.

''(5) Product substitution expenses.

''(6) Military construction expenses.

''(7) Research, development, test, and evaluation expenses.

''(8) Expenses for the lease of equipment or facilities.

''(e) RECOVERY OF COSTS.—Each project carried out at an industrial-type activity as part of a waste minimization program established pursuant to this section shall be designed to achieve, over the expected useful life of the project, reductions in the cost of the disposal of solid and hazardous wastes generated by the activity in an amount which is not less than the cost of the project. The Secretary of a military department may provide funds for a project that does not meet the requirement of the preceding sentence if the Secretary certifies to Congress that—

''(1) the project will result in a reduction of solid or hazardous waste disposed of, or hazardous materials used by, the activity; or

''(2) the project will eliminate or reduce the likelihood of harm to human health or the environment.''

USE OF CHLOROFLUOROCARBONS AND HALONS IN DEPARTMENT OF DEFENSE

Pub. L. 101–189, div. A, title III, § 356, Nov. 29, 1989, 103 Stat. 1425, as amended by Pub. L. 103–160, div. A, title IX, § 904(f), Nov. 30, 1993, 107 Stat. 1729; Pub. L. 106–65, div. A, title IX, § 911(a)(1), Oct. 5, 1999, 113 Stat. 717, provided that:

''(a) CHLOROFLUOROCARBONS EMISSION REDUCTION.—The Secretary of Defense shall formulate and carry out, through the Under Secretary of Defense for Acquisition, Technology, and Logistics a program to reduce the unnecessary release of chlorofluorocarbons (hereinafter in this section referred to as 'CFCs') and halons into the atmosphere in connection with maintenance operations and training and testing practices of the Department of Defense.

''(b) REPORT.—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the program the Secretary proposes to carry out pursuant to subsection (a). The Secretary shall specify in the report the reduction goals that are attainable on the basis of known technology, including the use of refrigerant recovery systems currently available. The Secretary shall include in the report a schedule for meeting those goals. The Secretary shall also include in such report reduction goals that can be achieved only with the use of new technology and assess the technologies and investment that will be required to attain those goals within a five-year period.

''(2) Before the report required under paragraph (1) is submitted to the committees named in such paragraph, the Secretary shall transmit a copy of the report to the Administrator of the Environmental Protection Agency for comment.

''(c) DOD REQUIREMENTS FOR CFCS.—(1) Not later than 30 days after the date of the enactment of this Act [Nov. 29, 1989], the Secretary shall establish an advisory committee to be known as the 'CFC Advisory Committee' (hereinafter in this section referred to as the 'Committee'). The Committee shall be composed of not more than 15 members, with an equal number of representatives from the Department of Defense, the Environmental Protection Agency, and defense contractors. Members representing defense contractors shall be contractors that supply the Department of Defense with products or equipment that require the use of CFCs.

''(2) It shall be the function of the Committee to study (A) the use of CFCs by the Department of Defense and by contractors in the performance of contracts for the Department of Defense, and (B) the cost and feasibility of using alternative compounds for CFCs or using alternative technologies that do not require the use of CFCs.

''(3) Within 120 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that specify the use of CFCs.

''(4) Within 150 days after the date of the enactment of this Act, the Secretary shall provide the Committee with a list of all military specifications, standards, and other requirements that do not specify use of CFCs but cannot be met without the use of CFCs.

''(d) REPORT.—Not later than September 30, 1990, the Secretary shall submit to the committees named in subsection (b) a report containing the results of the study by the Committee. The report shall—

''(1) identify cases in which the Committee found that substitutes for CFCs could be made most expeditiously;

''(2) identify the feasibility and cost of substituting compounds or technologies for CFC uses referred to in subsection (c)(3) and estimate the time necessary for completing the substitution;

''(3) identify CFC uses referred to in subsection (c)(4) for which substitutes are not currently available and indicate the reasons substitutes are not available;

''(4) describe the types of research programs that should be undertaken to identify substitute compounds or technologies for CFC uses referred to in paragraphs (3) and (4) of subsection (c) and estimate the cost of the program;

''(5) recommend procedures to expedite the use of substitute compounds and technologies offered by contractors to replace CFC uses;

''(6) estimate the earliest date on which CFCs will no longer be required for military applications; and

''(7) estimate the cost of revising military specifications for the use of substitutes for CFCs, the additional costs resulting from modification of Department of Defense contracts to provide for the use of substitutes for CFCs, and the cost of purchasing new equipment and reverification necessitated by the use of substitutes for CFCs.''

REPORT ON ENVIRONMENTAL REQUIREMENTS AND PRIORITIES

Pub. L. 101–189, div. A, title III, §358, Nov. 29, 1989, 103 Stat. 1427, directed Secretary of Defense, not later than two years after Nov. 29, 1989, to submit to Congress a comprehensive report on the long-range environmental challenges and goals of the Department of Defense.

STUDY OF WASTE RECYCLING

Pub. L. 101–189, div. A, title III, §361, Nov. 29, 1989, 103 Stat. 1429, as amended by Pub. L. 101–510, div. A, title III, §343, Nov. 5, 1990, 104 Stat. 1538, provided that:

''(a) STUDY.—The Secretary of Defense shall conduct a study of the following:

''(1) Current practices and future plans for managing postconsumer waste at facilities of the Department of Defense at which such waste is generated, including commissary and exchange stores, cafeterias, and mess halls.

''(2) The feasibility of such Department of Defense facilities participating in programs at military installations or in local communities to recycle the postconsumer waste generated at the facilities.

''(b) POSTCONSUMER WASTE DEFINED.—For purposes of this section, the term 'postconsumer waste' means garbage and refuse, including items that have passed through their end use as consumer items.

''(c) REPORT.—Not later than March 1, 1991, the Secretary of Defense shall submit to Congress a report describing the findings and conclusions of the Secretary resulting from the study.''

USE OF DEPARTMENT OF DEFENSE APPROPRIATIONS FOR REMOVAL OF UNSAFE BUILDINGS OR DEBRIS

Pub. L. 101–165, title IX, §9038, Nov. 21, 1989, 103 Stat. 1137, which authorized appropriations available to the Department of Defense to be used at sites formerly used by the Department for removal of unsafe buildings or debris of the Department and required that removal be completed before the property is released from Federal Government control, was repealed and restated in subsecs. (f) and (g) of this section by Pub. L. 101–510, div. A, title XIV, §1481(i), Nov. 5, 1990, 104 Stat. 1708.

§ 2702. Research, development, and demonstration program

(a) PROGRAM.—As part of the Defense Environmental Restoration Program, the Secretary of Defense shall carry out a program of research, development, and demonstration with respect to hazardous wastes. The program shall be carried out in consultation and cooperation with the Administrator and the advisory council established under section 311(a)(5) of CERCLA. The program shall include research, development, and demonstration with respect to each of the following:

(1) Means of reducing the quantities of hazardous waste generated by activities and facilities under the jurisdiction of the Secretary.

(2) Methods of treatment, disposal, and management (including recycling and detoxifying) of hazardous waste of the types and quantities generated by current and former activities of the Secretary and facilities currently and formerly under the jurisdiction of the Secretary.

(3) Identifying more cost-effective technologies for cleanup of hazardous substances.

(4) Toxicological data collection and methodology on risk of exposure to hazardous waste generated by the Department of Defense.

(5) The testing, evaluation, and field demonstration of any innovative technology, processes, equipment, or related training devices which may contribute to establishment of new methods to control, contain, and treat hazardous substances, to be carried out in consultation and cooperation with, and to the extent possible in the same manner and standards as, testing, evaluation, and field demonstration carried out by the Administrator, acting through the office of technology demonstration of the Environmental Protection Agency.

(b) SPECIAL PERMIT.—The Administrator may use the authorities of section 3005(g) of the Solid Waste Disposal Act (42 U.S.C. 6925(g)) to issue a permit for testing and evaluation which receives support under this section.

(c) CONTRACTS AND GRANTS.—The Secretary may enter into contracts and cooperative agree-

ments with, and make grants to, universities, public and private profit and nonprofit entities, and other persons to carry out the research, development, and demonstration authorized under this section. Such contracts may be entered into only to the extent that appropriated funds are available for that purpose.

(d) INFORMATION COLLECTION AND DISSEMINATION.—

(1) IN GENERAL.—The Secretary shall develop, collect, evaluate, and disseminate information related to the use (or potential use) of the treatment, disposal, and management technologies that are researched, developed, and demonstrated under this section.

(2) ROLE OF EPA.—The functions of the Secretary under paragraph (1) shall be carried out in cooperation and consultation with the Administrator. To the extent appropriate and agreed upon by the Administrator and the Secretary, the Administrator shall evaluate and disseminate such information through the office of technology demonstration of the Environmental Protection Agency.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1721.)

REFERENCES IN TEXT

Section 311(a)(5) of CERCLA, referred to in subsec. (a), is classified to section 9660(a)(5) of Title 42, The Public Health and Welfare.

PARTNERSHIPS FOR INVESTMENT IN INNOVATIVE ENVIRONMENTAL TECHNOLOGIES

Pub. L. 105–85, div. A, title III, § 349, Nov. 18, 1997, 111 Stat. 1690, as amended by Pub. L. 106–65, div. A, title X, § 1067(4), Oct. 5, 1999, 113 Stat. 774, provided that:

''(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense may enter into a partnership with one or more private entities to demonstrate and validate innovative environmental technologies.

''(b) LIMITATIONS.—The Secretary of Defense may enter into a partnership with respect to an environmental technology under subsection (a) only if—

''(1) any private entities participating in the partnership are selected through the use of competitive procedures;

''(2) the partnership provides for parties other than the Department of Defense to provide at least 50 percent of the funding required (not including in-kind contributions or preexisting investments); and

''(3) the Secretary determines that—

''(A) the technology has clear potential to be of significant value to the Department of Defense in its environmental remediation activities at a substantial number of Department of Defense sites; and

''(B) the technology would not be developed without the commitment of Department of Defense funds.

''(c) EVALUATION GUIDELINES.—Before entering into a partnership with respect to an environmental technology under subsection (a), the Secretary of Defense shall give consideration to the following:

''(1) The potential for the technology to be used by the Department of Defense for environmental remediation.

''(2) The technical feasibility and maturity of the technology.

''(3) The adequacy of financial and management plans to demonstrate and validate the technology.

''(4) The costs and benefits to the Department of Defense of developing and using the technology.

''(5) The potential for commercialization of the technology.

''(6) The proposed arrangements for sharing the costs of the partnership through the use of resources outside the Department of Defense.

''(d) FUNDING.—Under a partnership entered into under subsection (a), the Secretary of Defense may provide funds to the partner or partners from appropriations available to the Department of Defense for environmental activities, for a period of up to five years.

''(e) REPORT.—In the annual report required under section 2706(a) of title 10, United States Code, the Secretary of Defense shall include the following information with respect to partnerships entered into under this section:

''(1) The number of such partnerships.

''(2) A description of the nature of the technology involved in each such partnership.

''(3) A list of all partners in such partnerships.

''(f) COORDINATION.—The Secretary of Defense shall ensure that the Department of Defense coordinates with the Administrator of the Environmental Protection Agency in any verification sponsored by the Department of technologies demonstrated and validated by a partnership entered into under this section.

''(g) PROCEDURES.—The Secretary of Defense shall develop appropriate procedures to ensure that all Department of Defense funds committed to a partnership entered into under this section are expended for the purpose authorized in the partnership agreement. The Secretary may not enter into a partnership under this section until 30 days after the date on which a copy of such procedures is provided to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

''(h) TERMINATION OF AUTHORITY.—The authority to enter into agreements under subsection (a) shall terminate three years after the date of the enactment of this Act [Nov. 18, 1997].''

AGREEMENTS FOR SERVICES OF OTHER AGENCIES IN SUPPORT OF ENVIRONMENTAL TECHNOLOGY CERTIFICATION

Pub. L. 105–85, div. A, title III, § 342(d), Nov. 18, 1997, 111 Stat. 1686, provided that: ''Not later than 90 days after the date of enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a report setting forth the guidelines established by the Secretary for reimbursement of State and local governments, and for cost-sharing between the Department of Defense, such governments, and vendors, under cooperative agreements entered into under such section 327 [section 327 of Pub. L. 104–201, set out below].''

Pub. L. 104–201, div. A, title III, § 327, Sept. 23, 1996, 110 Stat. 2483, as amended by Pub. L. 105–85, div. A, title III, § 342(a)–(c), Nov. 18, 1997, 111 Stat. 1686, provided that:

''(a) AUTHORITY.—Subject to subsection (b), the Secretary of Defense may enter into a cooperative agreement with an agency of a State or local government, or with an Indian tribe, to obtain assistance in certifying environmental technologies.

''(b) LIMITATIONS.—The Secretary of Defense may enter into a cooperative agreement with respect to an environmental technology under subsection (a) only if the Secretary determines—

''(1) that the technology has clear potential to be of significant value to the Department of Defense; and

''(2) that there is no reasonably available market in the private sector for the technology without a certification by the Department of Defense, the Environmental Protection Agency, or a State environmental agency.

''(c) TYPES OF ASSISTANCE.—The types of assistance that may be obtained under subsection (a) include the following:

''(1) Data collection and analysis.

''(2) Technical assistance in conducting a demonstration of an environmental technology, including the implementation of quality assurance and quality control programs.

''(d) REPORT.—In the annual report required under section 2706(a) of title 10, United States Code, the Secretary of Defense shall include the following information with respect to cooperative agreements entered into under this section:

''(1) The number of such agreements.

''(2) The number of States in which such agreements have been entered into.

''(3) A description of the nature of the technology involved in each such agreement.

''(4) The amount of funds obligated or expended by the Department of Defense for each such agreement during the year covered by the report.

''(5) A statement of the funding that will be required to meet commitments made to State and local governments and Indian tribes under such agreements entered into during the fiscal year preceding the fiscal year in which the report is submitted.

''(6) A description of any cost-sharing arrangement under any such agreements.

''(e) DEFINITION.—In this section, the term 'Indian tribe' has the meaning given that term by section 101(36) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(36)).

''(f) TERMINATION OF AUTHORITY.—The authority provided under subsection (a) shall terminate five years after the date of the enactment of this Act [Sept. 23, 1996].''

[Pub. L. 105–85, div. A, title III, § 342(e), Nov. 18, 1997, 111 Stat. 1686, provided that: ''The amendments made by this section [amending section 327 of Pub. L. 104–201, set out above] shall take effect 30 days after the date on which the report required by subsection (d) [set out above] is submitted to Congress.'']

§ 2703. Environmental restoration accounts

(a) ESTABLISHMENT OF ACCOUNTS.—There are hereby established in the Department of Defense the following accounts:

(1) An account to be known as the ''Environmental Restoration Account, Defense''.

(2) An account to be known as the ''Environmental Restoration Account, Army''.

(3) An account to be known as the ''Environmental Restoration Account, Navy''.

(4) An account to be known as the ''Environmental Restoration Account, Air Force''.

(5) An account to be known as the ''Environmental Restoration Account, Formerly Used Defense Sites''.

(b) PROGRAM ELEMENTS FOR ORDNANCE REMEDIATION.—The Secretary of Defense shall establish a program element for remediation of unexploded ordnance, discarded military munitions, and munitions constituents within each environmental restoration account established under subsection (a). The terms ''unexploded ordnance'', ''discarded military munitions'', and ''munitions constituents'' have the meanings given such terms in section 2710 of this title.

(c) OBLIGATION OF AUTHORIZED AMOUNTS.—(1) Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only—

(A) to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law; and

(B) to pay for the costs of permanently relocating a facility because of a release or threatened release of hazardous substances, pollutants, or contaminants from—

(i) real property on which the facility is located and that is currently under the jurisdiction of the Secretary of Defense or the Secretary of a military department; or

(ii) real property on which the facility is located and that was under the jurisdiction of the Secretary of Defense or the Secretary of a military department at the time of the actions leading to the release or threatened release.

(2) The authority provided by paragraph (1)(B) expires September 30, 2003. The Secretary of Defense or the Secretary of a military department may not pay the costs of permanently relocating a facility under such paragraph unless the Secretary—

(A) determines that permanent relocation—

(i) is the most cost effective method of responding to the release or threatened release of hazardous substances, pollutants, or contaminants from the real property on which the facility is located;

(ii) has the approval of relevant regulatory agencies; and

(iii) is supported by the affected community; and

(B) submits to Congress written notice of the determination before undertaking the permanent relocation of the facility, including a description of the response action taken or to be taken in connection with the permanent relocation and a statement of the costs incurred or to be incurred in connection with the permanent relocation.

(3) If relocation costs are to be paid under paragraph (1)(B) with respect to a facility located on real property described in clause (ii) of such paragraph, the Secretary of Defense or the Secretary of the military department concerned may use only fund transfer mechanisms otherwise available to the Secretary.

(4) Funds authorized for deposit in an account under subsection (a) shall remain available until expended. Not more than 5 percent of the funds deposited in an account under subsection (a) for a fiscal year may be used to pay relocation costs under paragraph (1)(B).

(d) BUDGET REPORTS.—In proposing the budget for any fiscal year pursuant to section 1105 of title 31, the President shall set forth separately the amounts requested for environmental restoration programs of the Department of Defense and of each of the military departments under this chapter and under any other Act.

(e) CREDIT OF AMOUNTS RECOVERED.—The following amounts shall be credited to the appropriate environmental restoration account:

(1) Amounts recovered under CERCLA for response actions.

(2) Any other amounts recovered from a contractor, insurer, surety, or other person to reimburse the Department of Defense or a military department for any expenditure for environmental response activities.

(f) PAYMENTS OF FINES AND PENALTIES.—None of the funds appropriated to the Environmental Restoration Account, Defense, for fiscal years 1995 through 2010, or to any environmental restoration account of a military department for fiscal years 1997 through 2010, may be used for the payment of a fine or penalty (including any supplemental environmental project carried out as part of such penalty) imposed against the Department of Defense or a military department unless the act or omission for which the fine or

penalty is imposed arises out of an activity funded by the environmental restoration account concerned and the payment of the fine or penalty has been specifically authorized by law.

(g) SOLE SOURCE OF FUNDS FOR OPERATION AND MONITORING OF ENVIRONMENTAL REMEDIES.—(1) The sole source of funds for all phases of an environmental remedy at a site under the jurisdiction of the Department of Defense or a formerly used defense site shall be the applicable environmental restoration account established under subsection (a).

(2) In this subsection, the term ''environmental remedy'' has the meaning given the term ''remedy'' in section 101 of CERCLA (42 U.S.C. 9601).

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 103–337, div. A, title III, § 321, Oct. 5, 1994, 108 Stat. 2710; Pub. L. 104–106, div. A, title III, § 322, Feb. 10, 1996, 110 Stat. 252; Pub. L. 104–201, div. A, title III, § 322(a)(1), Sept. 23, 1996, 110 Stat. 2477; Pub. L. 106–65, div. A, title III, § 321, title X, § 1066(a)(27), Oct. 5, 1999, 113 Stat. 560, 772; Pub. L. 106–398, § 1 [[div. A], title III, §§ 311, 312], Oct. 30, 2000, 114 Stat. 1654, 1654A–53, 1654A–54; Pub. L. 107–107, div. A, title III, § 312, Dec. 28, 2001, 115 Stat. 1051.)

AMENDMENTS

2001—Subsecs. (b) to (g). Pub. L. 107–107 added subsec. (b) and redesignated former subsecs. (b) to (f) as (c) to (g), respectively.

2000—Subsec. (a)(5). Pub. L. 106–398, § 1 [[div. A], title III, § 311(a)], added par. (5).

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title III, § 312], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''Funds authorized for deposit in an account under subsection (a) may be obligated or expended from the account only in order to carry out the environmental restoration functions of the Secretary of Defense and the Secretaries of the military departments under this chapter and under any other provision of law. Funds so authorized shall remain available until expended.''

Subsec. (f). Pub. L. 106–398, § 1 [[div. A], title III, § 311(b)], added subsec. (f).

1999—Subsec. (c). Pub. L. 106–65, § 1066(a)(27), struck out ''United States Code,'' after ''title 31,''.

Subsec. (e). Pub. L. 106–65, § 321, substituted ''through 2010,'' for ''through 1999,'' in two places.

1996—Pub. L. 104–201 substituted ''accounts'' for ''transfer account'' in section catchline and amended text generally. Prior to amendment, text consisted of subsecs. (a) to (f) establishing the Defense Environmental Restoration Account and providing for deposits into and withdrawals from the Account.

Subsec. (e). Pub. L. 104–106 amended subsec. (e) generally, substituting

''(e) AMOUNTS RECOVERED.—The following amounts shall be credited to the transfer account:

''(1) Amounts recovered under CERCLA for response actions of the Secretary.

''(2) Any other amounts recovered by the Secretary or the Secretary of the military department concerned from a contractor, insurer, surety, or other person to reimburse the Department of Defense for any expenditure for environmental response activities.'' for

''(e) AMOUNTS RECOVERED UNDER CERCLA.—Amounts recovered under section 107 of CERCLA for response actions of the Secretary shall be credited to the transfer account.''

1994—Subsec. (f). Pub. L. 103–337 added subsec. (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 322(e) of Pub. L. 104–201 provided that: ''The amendments made by this section [amending this section and section 2705 of this title] shall take effect on the later of—

''(1) October 1, 1996; or

''(2) the date of the enactment of this Act [Sept. 23, 1996].''

EFFECTIVE DATE

Section 211(c) of Pub. L. 99–499 provided that: ''Section 2703(a)(2) of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1986.''

REFERENCES TO DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Section 322(b) of Pub. L. 104–201 provided that: ''Any reference to the Defense Environmental Restoration Account in any Federal law, Executive Order, regulation, delegation of authority, or document shall be deemed to refer to the appropriate environmental restoration account established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).''

UNOBLIGATED BALANCES IN DEFENSE ENVIRONMENTAL RESTORATION ACCOUNT

Section 322(d) of Pub. L. 104–201 provided that: ''Any unobligated balances that remain in the Defense Environmental Restoration Account under section 2703(a) of title 10, United States Code, as of the effective date specified in subsection (e) [Oct. 1, 1996] shall be transferred on such date to the Environmental Restoration Account, Defense, established under section 2703(a)(1) of title 10, United States Code (as amended by subsection (a)(1)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2705, 2707 of this title.

§ 2704. Commonly found unregulated hazardous substances

(a) NOTICE TO HHS.—

(1) IN GENERAL.—The Secretary of Defense shall notify the Secretary of Health and Human Services of the hazardous substances which the Secretary of Defense determines to be the most commonly found unregulated hazardous substances at facilities under the Secretary's jurisdiction. The notification shall be of not less than the 25 most widely used such substances.

(2) DEFINITION.—In this subsection, the term ''unregulated hazardous substance'' means a hazardous substance—

(A) for which no standard, requirement, criteria, or limitation is in effect under the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, or the Clean Water Act; and

(B) for which no water quality criteria are in effect under any provision of the Clean Water Act.

(b) TOXICOLOGICAL PROFILES.—The Secretary of Health and Human Services shall take such steps as necessary to ensure the timely preparation of toxicological profiles of each of the substances of which the Secretary is notified under subsection (a). The profiles of such substances shall include each of the following:

(1) The examination, summary, and interpretation of available toxicological information and epidemiologic evaluations on a hazardous substance in order to ascertain the levels of

significant human exposure for the substance and the associated acute, subacute, and chronic health effects.

(2) A determination of whether adequate information on the health effects of each substance is available or in the process of development to determine levels of exposure which present a significant risk to human health of acute, subacute, and chronic health effects.

(3) Where appropriate, toxicological testing directed toward determining the maximum exposure level of a hazardous substance that is safe for humans.

(c) DOD SUPPORT.—The Secretary of Defense shall transfer to the Secretary of Health and Human Services such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary (1) for the preparation of toxicological profiles under subsection (b) or (2) for other health related activities under section 104(i) of CERCLA. The Secretary of Defense and the Secretary of Health and Human Services shall enter into a memorandum of understanding regarding the manner in which this section shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this section.

(d) EPA HEALTH ADVISORIES.—

(1) PREPARATION.—At the request of the Secretary of Defense, the Administrator shall, in a timely manner, prepare health advisories on hazardous substances. Such an advisory shall be prepared on each hazardous substance—

(A) for which no advisory exists;

(B) which is found to threaten drinking water; and

(C) which is emanating from a facility under the jurisdiction of the Secretary.

(2) CONTENT OF HEALTH ADVISORIES.—Such health advisories shall provide specific advice on the levels of contaminants in drinking water at which adverse health effects would not be anticipated and which include a margin of safety so as to protect the most sensitive members of the population at risk. The advisories shall provide data on one-day, 10-day, and longer-term exposure periods where available toxicological data exist.

(3) DOD SUPPORT FOR HEALTH ADVISORIES.—The Secretary of Defense shall transfer to the Administrator such toxicological data, such sums from amounts appropriated to the Department of Defense, and such personnel of the Department of Defense as may be necessary for the preparation of such health advisories. The Secretary and the Administrator shall enter into a memorandum of understanding regarding the manner in which this subsection shall be carried out, including the manner for transferring funds and personnel and for coordination of activities under this subsection.

(e) CROSS REFERENCE.—Section 104(i) of CERCLA applies to facilities under the jurisdiction of the Secretary of Defense in the manner prescribed in that section.

(f) FUNCTIONS OF HHS TO BE CARRIED OUT THROUGH ATSDR.—The functions of the Secretary of Health and Human Services under this section shall be carried out through the Administrator of the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services established under section 104(i) of CERCLA.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1722; amended Pub. L. 102–25, title VII, § 701(j)(10), Apr. 6, 1991, 105 Stat. 116.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in subsec. (a)(2)(A), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (a)(2)(A), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

The Clean Air Act, referred to in subsec. (a)(2)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 15B (§ 1857 et seq.) of Title 42. On enactment of Pub. L. 95–95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Clean Water Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Section 104(i) of CERCLA, referred to in subsecs. (c), (e), and (f), is classified to section 9604(i) of Title 42, The Public Health and Welfare.

AMENDMENTS

1991—Subsec. (f). Pub. L. 102–25 substituted ''Agency for Toxic Substances'' for ''Agency of Toxic Substances''.

§ 2705. Notice of environmental restoration activities

(a) EXPEDITED NOTICE.—The Secretary of Defense shall take such actions as necessary to ensure that the regional offices of the Environmental Protection Agency and appropriate State and local authorities for the State in which a facility under the Secretary's jurisdiction is located receive prompt notice of each of the following:

(1) The discovery of releases or threatened releases of hazardous substances at the facility.

(2) The extent of the threat to public health and the environment which may be associated with any such release or threatened release.

(3) Proposals made by the Secretary to carry out response actions with respect to any such release or threatened release.

(4) The initiation of any response action with respect to such release or threatened release and the commencement of each distinct phase of such activities.

(b) COMMENT BY EPA AND STATE AND LOCAL AUTHORITIES.—

(1) RELEASE NOTICES.—The Secretary shall ensure that the Administrator of the Environmental Protection Agency and appropriate State and local officials have an adequate opportunity to comment on notices under paragraphs (1) and (2) of subsection (a).

(2) PROPOSALS FOR RESPONSE ACTIONS.—The Secretary shall require that an adequate opportunity for timely review and comment be afforded to the Administrator and to appropriate State and local officials after making a proposal referred to in subsection (a)(3) and before undertaking an activity or action referred to in subsection (a)(4). The preceding sentence does not apply if the action is an emergency removal taken because of imminent and substantial endangerment to human health or the environment and consultation would be impractical.

(c) TECHNICAL REVIEW COMMITTEE.—Whenever possible and practical, the Secretary shall establish a technical review committee to review and comment on Department of Defense actions and proposed actions with respect to releases or threatened releases of hazardous substances at installations. Members of any such committee shall include at least one representative of the Secretary, the Administrator, and appropriate State and local authorities and shall include a public representative of the community involved.

(d) RESTORATION ADVISORY BOARD.—(1) In lieu of establishing a technical review committee under subsection (c), the Secretary may permit the establishment of a restoration advisory board in connection with any installation (or group of nearby installations) where the Secretary is planning or implementing environmental restoration activities.

(2)(A) The Secretary shall prescribe regulations regarding the establishment, characteristics, composition, and funding of restoration advisory boards pursuant to this subsection.

(B) The issuance of regulations under subparagraph (A) shall not be a precondition to the establishment of restoration advisory boards under this subsection.

(3) The Secretary may authorize the commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to pay routine administrative expenses of a restoration advisory board established for that installation. Such payments shall be made from funds available under subsection (g).

(e) TECHNICAL ASSISTANCE.—(1) The Secretary may, upon the request of the technical review committee or restoration advisory board for an installation, authorize the commander of the installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) to obtain for the committee or advisory board, as the case may be, from private sector sources technical assistance for interpreting scientific and engineering issues with regard to the nature of environmental hazards at the installation and the restoration activities conducted, or proposed to be conducted, at the installation. The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) shall use funds made available under subsection (g) for obtaining assistance under this paragraph.

(2) The commander of an installation (or, if there is no such commander, an appropriate official of the Department of Defense designated by the Secretary) may obtain technical assistance under paragraph (1) for a technical review committee or restoration advisory board only if—

(A) the technical review committee or restoration advisory board demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation, and available Department of Defense personnel, do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(B) the technical assistance—

(i) is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(ii) is likely to contribute to community acceptance of environmental restoration activities at the installation.

(f) INVOLVEMENT IN DEFENSE ENVIRONMENTAL RESTORATION PROGRAM.—If a technical review committee or restoration advisory board is established with respect to an installation (or group of installations), the Secretary shall consult with and seek the advice of the committee or board on the following issues:

(1) Identifying environmental restoration activities and projects at the installation or installations.

(2) Monitoring progress on these activities and projects.

(3) Collecting information regarding restoration priorities for the installation or installations.

(4) Addressing land use, level of restoration, acceptable risk, and waste management and technology development issues related to environmental restoration at the installation or installations.

(5) Developing environmental restoration strategies for the installation or installations.

(g) FUNDING.—The Secretary shall, to the extent provided in appropriations Acts, make funds available for administrative expenses and technical assistance under this section using funds in the following accounts:

(1) In the case of a military installation not approved for closure pursuant to a base closure law, the environmental restoration account concerned under section 2703(a) of this title.

(2) In the case of an installation approved for closure pursuant to such a law, the Department of Defense Base Closure Account 1990 established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(h) DEFINITION.—In this section, the term ''base closure law'' means the following:

(1) Title II of the Defense Authorization Amendments and Base Closure and Realign-

ment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(3) Section 2687 of this title.

(Added Pub. L. 99–499, title II, § 211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 103–337, div. A, title III, § 326(a)–(c), Oct. 5, 1994, 108 Stat. 2712, 2713; Pub. L. 104–106, div. A, title III, § 324(a)–(d)(1), (e), Feb. 10, 1996, 110 Stat. 252–254; Pub. L. 104–201, div. A, title III, § 322(c), Sept. 23, 1996, 110 Stat. 2479.)

AMENDMENTS

1996—Subsec. (d)(2). Pub. L. 104–106, § 324(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary shall prescribe regulations regarding the characteristics, composition, funding, and establishment of restoration advisory boards pursuant to this subsection. However, the issuance of regulations shall not be a precondition to the establishment of a restoration advisory board or affect the existence or operation of a restoration advisory board established before the date of the enactment of this section.''

Subsec. (d)(3). Pub. L. 104–106, § 324(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary may provide for the payment of routine administrative expenses of a restoration advisory board from funds available for the operation and maintenance of the installation (or installations) for which the board is established or from the funds available under subsection (e)(3).''

Subsec. (e). Pub. L. 104–106, § 324(c), added subsec. (e) and struck out former subsec. (e) which authorized Secretary to make technical assistance grants under section 9617(e) of title 42 in connection with installations containing facilities listed on the National Priorities List and to make funds available to facilitate participation on technical review committees and restoration advisory boards relating to environmental restoration activities at other installations.

Subsec. (g). Pub. L. 104–106, § 324(d)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 104–201 substituted ''the environmental restoration account concerned'' for ''the Defense Environmental Restoration Account established''.

Subsec. (h). Pub. L. 104–106, § 324(e), added subsec. (h).

1994—Subsecs. (d) to (f). Pub. L. 103–337 added subsecs. (d) to (f).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 322(e) of Pub. L. 104–201, set out as a note under section 2703 of this title.

IMPLEMENTATION REQUIREMENTS FOR RESTORATION ADVISORY BOARDS

Section 326(d) of Pub. L. 103–337 provided that: ''Not later than 180 days after the date on which the Secretary of Defense announces a decision to establish restoration advisory boards, the Secretary shall—

''(1) prescribe the regulations required under subsection (d)(2) of section 2705 of title 10, United States Code, as added by subsection (a); and

''(2) take appropriate actions to notify the public of the availability of funding under subsection (e) of such section, as added by subsection (b).''

REPORT ON RESTORATION ADVISORY BOARDS AND ASSISTANCE FOR CITIZEN PARTICIPATION ON COMMITTEES AND BOARDS

Section 326(e) of Pub. L. 103–337 directed Secretary of Defense to submit, not later than May 1, 1996, report regarding establishment of restoration advisory boards under subsections (d) and (e) of this section and the expenditure of funds for assistance for citizen participation on technical review committees under subsection (e) of this section.

RESTRICTIONS ON ADMINISTRATIVE AND TECHNICAL ASSISTANCE FUNDING

Section 324(d)(2) of Pub. L. 104–106 provided that:

''(2)(A) Subject to subparagraph (B), the total amount of funds made available under section 2705(g) of title 10, United States Code, as added by paragraph (1), for fiscal year 1996 may not exceed $6,000,000.

''(B) Amounts may not be made available under subsection (g) of such section 2705 after September 15, 1996, unless the Secretary of Defense publishes proposed final or interim final regulations required under subsection (d) of such section, as amended by subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2706 of this title.

§ 2706. Annual reports to Congress

(a) REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on the progress made by the Secretary in carrying out environmental restoration activities at military installations.

(2) Each such report shall include, with respect to environmental restoration activities for each military installation, the following:

(A) A statement of the number of sites at which a hazardous substance has been identified.

(B) A statement of the status of response actions proposed for or initiated at the military installation.

(C) A statement of the total cost estimated for such response actions.

(D) A statement of the amount of funds obligated by the Secretary for such response actions, and the progress made in implementing the response actions during the fiscal year preceding the year in which the report is submitted, including an explanation of—

(i) any cost overruns for such response actions, if the amount of funds obligated for those response actions exceeds the estimated cost for those response actions by the greater of 15 percent of the estimated cost or $10,000,000; and

(ii) any deviation in the schedule (including a milestone schedule specified in an agreement, order, or mandate) for such response actions of more than 180 days.

(E) A statement of the amount of funds allocated by the Secretary for, and the anticipated progress in implementing, such response actions during the fiscal year in which the report is submitted.

(F) A statement of the amount of funds requested for such response actions for the five fiscal years following the fiscal year in which the report is submitted, and the anticipated progress in implementing such response actions for the fiscal year for which the budget is submitted.

(G) A statement of the total costs incurred for such response actions as of the date of the submission of the report.

(H) A statement of the estimated cost of completing all environmental restoration activities required with respect to the military installation, including, where relevant, the estimated cost of such activities in each of the five fiscal years following the fiscal year in which the report is submitted.

(I) A statement of the estimated schedule for completing all environmental restoration activities at the military installation.

(J) A statement of the activities, if any, including expenditures for administrative expenses and technical assistance under section 2705 of this title, of the technical review committee or restoration advisory board established for the installation under such section during the preceding fiscal year.

(b) REPORT ON ENVIRONMENTAL QUALITY PROGRAMS AND OTHER ENVIRONMENTAL ACTIVITIES.—(1) The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on the progress made in carrying out activities under the environmental quality programs of the Department of Defense and the military departments.

(2) Each report shall include the following:

(A) A description of the environmental quality program of the Department of Defense, and of each of the military departments, during the period consisting of the four fiscal years preceding the fiscal year in which the report is submitted, the fiscal year in which the report is submitted, and the fiscal year following the fiscal year in which the report is submitted.

(B) For each of the major activities under the environmental quality programs:

(i) A specification of the amount expended, or proposed to be expended, in each fiscal year of the period covered by the report.

(ii) An explanation for any significant change in the aggregate amount to be expended in the fiscal year in which the report is submitted, and in the following fiscal year, when compared with the fiscal year preceding each such fiscal year.

(iii) An assessment of the manner in which the scope of the activities have changed over the course of the period covered by the report.

(C) A summary of the major achievements of the environmental quality programs and of any major problems with the programs.

(D) A list of the planned or ongoing projects necessary to support the environmental quality programs during the period covered by the report, the cost of which has exceeded or is anticipated to exceed $1,500,000. The list and accompanying material shall include the following:

(i) A separate listing of the projects inside the United States and of the projects outside the United States.

(ii) For each project commenced during the first four fiscal years of the period covered by the report (other than a project that was reported as fully executed in the report for a previous fiscal year), a description of—

(I) the amount specified in the initial budget request for the project;

(II) the aggregate amount allocated to the project through the fiscal year preceding the fiscal year for which the report is submitted; and

(III) the aggregate amount obligated for the project through that fiscal year.

(iii) For each project commenced or to be commenced in the fiscal year in which the report is submitted, a description of—

(I) the amount specified for the project in the budget for the fiscal year; and

(II) the amount allocated to the project in the fiscal year.

(iv) For each project to be commenced in the last fiscal year of the period, a description of the amount, if any, specified for the project in the budget for the fiscal year.

(v) If the anticipated aggregate cost of any project covered by the report will exceed by more than 25 percent the amount specified in the initial budget request for such project, a justification for that variance.

(E) A statement of the fines and penalties imposed or assessed against the Department of Defense and the military departments under Federal, State, or local environmental laws during the fiscal year in which the report is submitted and the four preceding fiscal years, which shall set forth the following:

(i) Each Federal environmental statute under which a fine or penalty was imposed or assessed during each such fiscal year.

(ii) With respect to each such Federal statute—

(I) the aggregate amount of fines and penalties imposed under the statute during each such fiscal year;

(II) the aggregate amount of fines and penalties paid under the statute during each such fiscal year; and

(III) the total amount required during such fiscal years for supplemental environmental projects in lieu of the payment of a fine or penalty under the statute and the extent to which the cost of such projects during such fiscal years has exceeded the original amount of the fine or penalty.

(iii) A trend analysis of fines and penalties imposed or assessed during each such fiscal year for military installations inside and outside the United States.

(F) A statement of the amounts expended, and anticipated to be expended, during the period covered by the report for any activities overseas relating to the environment, including amounts for activities relating to environmental remediation, compliance, conservation, pollution prevention, and environmental technology and amounts for conferences, meetings, and studies for pilot programs, and for travel related to such activities.

(c) REPORT ON ENVIRONMENTAL TECHNOLOGY PROGRAM.—(1) The Secretary of Defense shall submit to Congress each year, not later than 45 days after the date on which the President submits to Congress the budget for a fiscal year, a report on the progress made by the Department of Defense in achieving the objectives and goals

of its environmental technology program during the preceding fiscal year and an overall trend analysis for the program covering the previous four fiscal years.

(2) Each such report shall include, with respect to each project under the environmental technology program of the Department of Defense, the following:

(A) The performance objectives established for the project for the fiscal year and an assessment of the performance achieved with respect to the project in light of performance indicators for the project.

(B) A description of the extent to which the project met the performance objectives established for the project for the fiscal year.

(C) If a project did not meet the performance objectives for the project for the fiscal year—

(i) an explanation for the failure of the project to meet the performance objectives; and

(ii) a modified schedule for meeting the performance objectives or, if a performance objective is determined to be impracticable or infeasible to meet, a statement of alternative actions to be taken with respect to the project.

(d) DEFINITIONS.—In this section:

(1) The term ''military installation'' has the meaning given such term in section 2687(e) of this title, except that such term does not include a homeport facility for any ship and includes—

(A) each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary of Defense;

(B) each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances; and

(C) each facility or site at which the Secretary is conducting environmental restoration activities.

(2) The term ''environmental quality program'' means a program of activities relating to environmental compliance, conservation, pollution prevention, and such other activities relating to environmental quality as the Secretary concerned may designate for purposes of the program.

(3) The term ''major activities'', with respect to an environmental quality program, means the following activities under the program:

(A) Environmental compliance activities.

(B) Conservation activities.

(C) Pollution prevention activities.

(Added Pub. L. 99–499, title II, §211(a)(1)(B), Oct. 17, 1986, 100 Stat. 1724; amended Pub. L. 101–189, div. A, title III, §357(a)(1), (2)(A), Nov. 29, 1989, 103 Stat. 1426, 1427; Pub. L. 101–510, div. A, title III, §§341, 342(a), Nov. 5, 1990, 104 Stat. 1536, 1537; Pub. L. 103–160, div. A, title X, §1001(a)–(d), Nov. 30, 1993, 107 Stat. 1742–1744; Pub. L. 103–337, div. A, title X, §1070(b)(9), Oct. 5, 1994, 108 Stat. 2857; Pub. L. 104–106, div. A, title III, §324(f), Feb. 10, 1996, 110 Stat. 254; Pub. L. 104–201, div. A, title III, §321, Sept. 23, 1996, 110 Stat. 2477; Pub. L. 105–85, div. A, title III, §§344(a), 345, Nov. 18, 1997, 111 Stat. 1688; Pub. L. 105–261, div. A, title III, §325, Oct. 17, 1998, 112 Stat. 1965; Pub. L. 106–65, div. A, title III, §§322, 323(c)(1), Oct. 5, 1999, 113 Stat. 560, 563; Pub. L. 107–107, div. A, title III, §315, Dec. 28, 2001, 115 Stat. 1053.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107, §315(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows:

''(c) REPORT ON CONTRACTOR REIMBURSEMENT COSTS.—(1) The Secretary of Defense shall submit to the Congress each year, not later than 45 days after the date on which the President submits to the Congress the budget for a fiscal year, a report on payments made by the Secretary to defense contractors for the costs of environmental response actions.

''(2) Each such report shall include, for the fiscal year preceding the year in which the report is submitted, the following:

''(A) An estimate of the payments made by the Secretary to any defense contractor (other than a response action contractor) for the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.

''(B) A statement of the amount and current status of any pending requests by any defense contractor (other than a response action contractor) for payment of the costs of environmental response actions at facilities owned or operated by the defense contractor or at which the defense contractor is liable in whole or in part for the environmental response action.''

Subsec. (d). Pub. L. 107–107, §315(a)(2), (b), redesignated subsec. (e) as (d), struck out pars. (1) and (3) defining ''defense contractor'' and ''response action contractor'', respectively, and redesignated pars. (2), (4), and (5) as (1), (2), and (3), respectively. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 107–107, §315(a)(2), redesignated subsec. (e) as (d).

1999—Subsec. (b). Pub. L. 106–65, §322(a), amended heading and text of subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) and (2) relating to reports on environmental compliance activities.

Subsec. (d). Pub. L. 106–65, §323(c)(1), added subsec. (d).

Pub. L. 106–65, §322(b), struck out subsec. (d) which required the Secretary of Defense to submit annual reports to Congress on environmental activities of Department of Defense overseas.

Subsec. (e)(4), (5). Pub. L. 106–65, §322(c), added pars. (4) and (5).

1998—Subsecs. (a)(1), (b)(1), (c)(1), (d)(1). Pub. L. 105–261 substituted ''not later than 45 days'' for ''not later than 30 days''.

1997—Subsec. (b)(2)(H). Pub. L. 105–85, §344(a), added subpar. (H).

Subsecs. (d), (e). Pub. L. 105–85, §345, added subsec. (d) and redesignated former subsec. (d) as (e).

1996—Subsec. (a)(2)(J). Pub. L. 104–106 added subpar. (J).

Subsec. (d)(1)(A). Pub. L. 104–201 substituted ''20 entities'' for ''100 entities''.

1994—Subsec. (a). Pub. L. 103–337 made technical correction to Pub. L. 103–160, §1001(a). See 1993 Amendment note below.

1993—Subsec. (a). Pub. L. 103–160, §1001(a), as amended by Pub. L. 103–337, amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) REPORT ON PROGRESS IN IMPLEMENTATION.—The Secretary of Defense shall submit to Congress a report each fiscal year describing the progress made by the Secretary during the preceding fiscal year in implementing the requirements of this chapter.

''(2) Each such report shall include the following:

''(A) A statement for each installation under the jurisdiction of the Secretary of the number of individual facilities at which a hazardous substance has been identified.

''(B) The status of response actions contemplated or undertaken at each such facility.

''(C) The specific cost estimates and budgetary proposals involving response actions contemplated or undertaken at each such facility.

''(D) A report on progress on conducting response actions at facilities other than facilities on the National Priorities List.''

Subsec. (b). Pub. L. 103–160, § 1001(b), inserted ''Activities'' in heading and amended text generally, restating substance of former par. (1) in pars. (1) and (2) and deleting substance of former par. (2) which defined ''military installation''.

Subsecs. (c), (d). Pub. L. 103–160, § 1001(c), (d), added subsecs. (c) and (d).

1990—Subsec. (b). Pub. L. 101–510, § 342(a), added subpar. (G) at end of par. (1).

Pub. L. 101–510, § 341, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''ENVIRONMENTAL BUDGET REPORT.—(1) Each year, at the same time the President submits to Congress the budget for a fiscal year (pursuant to section 1105 of title 31), the Secretary of Defense shall submit to Congress a report on—

''(A) the funding levels required for the Department of Defense to comply with applicable environmental laws during the fiscal year for which the budget is submitted; and

''(B) the funding levels requested for such purposes in the budget as submitted by the President.

''(2) The Secretary shall include in the report an explanation of any differences in the funding level requirements and the funding level requests in the budget.''

1989—Pub. L. 101–189 substituted ''reports'' for ''report'' in section catchline, designated subsec. (a) as subsec. (a)(1), struck out subsec. (b) heading ''MATTERS TO BE INCLUDED'', redesignated subsec. (b) as subsec. (a)(2) and pars. (1) to (4) as subpars. (A) to (D), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 1070(b) of Pub. L. 103–337 provided that the amendment made by that section is effective as of Nov. 30, 1993, and as if included in the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160, as enacted.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 357(b) of Pub. L. 101–189 provided that: ''The first environmental budget report under subsection (b) of section 2706 of such title [10 U.S.C. 2706(b)] (as added by subsection (a)) shall be submitted at the same time the President submits the budget for fiscal year 1992.''

ASSESSMENT OF ENVIRONMENTAL REMEDIATION OF UNEXPLODED ORDNANCE, DISCARDED MILITARY MUNITIONS, AND MUNITIONS CONSTITUENTS

Pub. L. 107–107, div. A, title III, § 313, Dec. 28, 2001, 115 Stat. 1051, provided that:

''(a) INCLUSION IN 2003 REPORT ON ENVIRONMENTAL RESTORATION ACTIVITIES.—The Secretary of Defense shall include in the report submitted to Congress under section 2706(a) of title 10, United States Code, in 2003 a comprehensive assessment of unexploded ordnance, discarded military munitions, and munitions constituents located at current and former facilities of the Department of Defense. The assessment shall include, at a minimum, the following:

''(1) Separate estimates of the aggregate projected costs of the remediation of unexploded ordnance, discarded military munitions, and munitions constituents at—

''(A) all operational ranges; and

''(B) all other defense sites.

''(2) A comprehensive plan for addressing the remediation of unexploded ordinance [sic], discarded military munitions, and munitions constituents at defense sites, including an assessment of the funding required and the period of time over which such funding will be required.

''(3) An assessment of the technology currently available for the remediation of unexploded ordnance, discarded military munitions, and munitions constituents.

''(4) An assessment of the impact of improved technology on the cost of such remediation and a plan for the development and use of such improved technology.

''(b) REQUIREMENTS FOR COST ESTIMATES.—(1) The estimates of aggregate projected costs required by subsection (a)(1) shall—

''(A) be stated as a range of aggregate projected costs, including a low estimate and a high estimate;

''(B) set forth the differing assumptions underlying each such low estimate and high estimate, including—

''(i) any public uses for the operational ranges and other defense sites concerned that will be available after the remediation is completed;

''(ii) the extent of the remediation required to make the operational ranges and other defense sites concerned available for such uses; and

''(iii) the technologies to be applied to achieve such level of remediation; and

''(C) include, and identify separately, an estimate of the aggregate projected costs of the remediation of any ground water contamination that may be caused by unexploded ordnance, discarded military munitions, or munitions constituents at the operational ranges and other defense sites concerned.

''(2) The high estimate of the aggregate projected costs shall be based on the assumption that all unexploded ordnance, discarded military munitions, and munitions constituents at each operational range and other defense site will be addressed, regardless of whether there are any current plans to close the range or site or discontinue training at the range or site.

''(3) The estimate of the aggregate projected costs of remediation of ground water contamination under paragraph (1)(C) shall be based on a comprehensive assessment of the risk of such contamination and of the actions required to protect the ground water supplies concerned.

''(4) The standards for the report of liabilities of the Department of Defense shall not apply to the cost estimates required by subsection (a)(1).

''(c) INTERIM ASSESSMENT.—The report submitted to Congress under section 2706(a) of title 10, United States Code, in 2002 shall include the assessment required by subsection (a) to the extent that the information required to be provided as part of the assessment is available. The Secretary shall include an explanation of any limitations on the information available or qualifications on the information provided.

''(d) DEFINITIONS.—In this section, the terms 'unexploded ordnance', 'discarded military munitions', 'munitions constituents', 'operational range', and 'defense site' have the meanings given such terms in section 2710 of title 10, United States Code, as added by section 311.''

FIRST REPORT ON ENVIRONMENTAL TECHNOLOGY PROGRAM

Pub. L. 106–65, div. A, title III, § 323(c)(2), Oct. 5, 1999, 113 Stat. 563, provided that: ''The Secretary of Defense shall include in the first report submitted under section 2706(d) of title 10, United States Code, as added by this subsection, a description of the steps taken by the Secretary to ensure that the environmental technology investment control process for the Department of Defense satisfies the requirements of section 2709 of such title, as added by subsection (b).''

REPORT IN FISCAL YEAR 1998

Section 344(b) of Pub. L. 105–85 provided that: ''The statement submitted by the Secretary of Defense under subparagraph (H) of section 2706(b)(2) of title 10, United States Code, as added by subsection (a), in 1998 shall, to the maximum extent practicable, include the information required by that subparagraph for each of fiscal years 1994 through 1997.''

COMPLIANCE WITH ANNEX V TO THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973

Section 324(b), (c) of Pub. L. 104–201, as amended by Pub. L. 105–85, div. A, title X, §1073(c)(1), Nov. 18, 1997, 111 Stat. 1904, provided that:

''(b) SENSE OF CONGRESS.—(1) It is the sense of Congress that it should be an objective of the Navy to achieve full compliance with Annex V to the Convention as part of the Navy's development of ships that are environmentally sound.

''(2) In this subsection and subsection (c), the terms 'Convention' and 'ship' have the meanings given such terms in section 2(a) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)).

''(c) REPORT ON COMPLIANCE WITH ANNEX V TO THE CONVENTION.—The Secretary of Defense shall include in each report on environmental compliance activities submitted to Congress under section 2706(b) of title 10, United States Code, the following information:

''(1) A list of the ship types, if any, for which the Secretary of the Navy has made the determination referred to in paragraph (2)(C) of section 3(c) of the Act to Prevent Pollution from Ships [33 U.S.C. 1902(c)(2)(C)], as amended by subsection (a)(2) of this section.

''(2) A list of ship types which the Secretary of the Navy has determined can comply with Regulation 5 of Annex V to the Convention.

''(3) A summary of the progress made by the Navy in implementing the requirements of paragraphs (2) and (3) of such section 3(c), as so amended.

''(4) A description of any emerging technologies offering the potential to achieve full compliance with Regulation 5 of Annex V to the Convention.

''(5) The amount and nature of the discharges in special areas, not otherwise authorized under the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), during the preceding year from ships referred to in section 3(b)(1)(A) of such Act owned or operated by the Department of the Navy.''

REPORT ON SERVICES OBTAINED PURSUANT TO REIMBURSEMENT AGREEMENTS DURING FISCAL YEAR 1996

Section 321(b) of Pub. L. 104–106 provided that: ''The Secretary of Defense shall include in the report submitted to Congress with respect to fiscal year 1998 under section 2706(a) of title 10, United States Code, information on the services, if any, obtained by the Secretary during fiscal year 1996 pursuant to each agreement on a reimbursable basis entered into with a State or local government agency under section 2701(d) of title 10, United States Code, as amended by subsection (a). The information shall include a description of the services obtained under each agreement and the amount of the reimbursement provided for the services.''

TIME OF SUBMISSION OF REPORTS

Section 1001(e) of Pub. L. 103–160 provided that:

''(1) A report submitted in 1994 under subsection (a) of section 2706 of title 10, United States Code, as amended by subsection (a), and under subsection (b) of such section, as amended by subsection (b), shall be submitted not later than March 31, 1994.

''(2) A report under subsection (c) of section 2706 of such title, as added by subsection (c), shall be submitted for fiscal years beginning with fiscal year 1993. Any such report that is submitted for fiscal year 1993 or fiscal year 1994 shall be submitted not later than February 1, 1995.''

§ 2707. Environmental restoration projects for environmental responses

(a) ENVIRONMENTAL RESTORATION PROJECTS AUTHORIZED.—The Secretary of Defense or the Secretary of a military department may carry out an environmental restoration project if that Secretary determines that the project is necessary to carry out a response under this chapter or CERCLA.

(b) TREATMENT OF PROJECT.—Any construction, development, conversion, or extension of a structure, and any installation of equipment, that is included in an environmental restoration project under this section may not be considered military construction (as that term is defined in section 2801(a) of this title).

(c) SOURCE OF FUNDS.—Funds authorized for deposit in an account established by section 2703(a) of this title shall be the only source of funds to conduct an environmental restoration project under this section.

(d) ENVIRONMENTAL RESTORATION PROJECT DEFINED.—In this section, the term ''environmental restoration project'' includes any construction, development, conversion, or extension of a structure, or installation of equipment, in direct support of a response.

(Added Pub. L. 107–314, div. A, title III, §313(a)(2), Dec. 2, 2002, 116 Stat. 2507.)

PRIOR PROVISIONS

A prior section 2707 was renumbered section 2700 of this title.

§ 2708. Contracts for handling hazardous waste from defense facilities

(a) REIMBURSEMENT REQUIREMENT.—(1) Each contract or subcontract to which this section applies shall provide that, upon receipt of hazardous wastes properly characterized pursuant to applicable laws and regulations, the contractor or subcontractor will reimburse the Federal Government for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by, the Government that are caused by—

(A) the contractor's or subcontractor's breach of any term or provision of the contract or subcontract; and

(B) any negligent or willful act or omission of the contractor or subcontractor, or the employees of the contractor or subcontractor, in the performance of the contract or subcontract.

(2) Not later than 30 days after such a contract or subcontract is awarded, the contractor or subcontractor shall demonstrate that the contractor or subcontractor will reimburse the Federal Government as provided in paragraph (1).

(b) APPLICABILITY.—(1) Except as provided in paragraph (2), this section applies to each contract entered into by the Secretary of Defense or the Secretary of a military department, and any subcontract under any such contract, with an owner or operator of a hazardous waste treatment or disposal facility during fiscal years 1992 through 1996 for the offsite treatment or disposal of hazardous wastes from a facility under the jurisdiction of the Secretary of Defense.

(2) This section does not apply to—

(A) any contract or subcontract to perform remedial action or corrective action under the Defense Environmental Restoration Program, other programs or activities of the Department of Defense, or authorized State hazardous waste programs;

(B) any contract or subcontract under which the generation of the hazardous waste to be disposed of is incidental to the performance of the contract; or

(C) any contract or subcontract to dispose of ammunition or solid rocket motors.

(c) EXCEPTION TO REIMBURSEMENT REQUIREMENT.—Notwithstanding subsection (a), in the case of any contract to which this section applies, if the Secretary of Defense or the Secretary of the military department concerned determines that—

(1) there is only one responsible offeror or there is no responsible offeror willing to provide the reimbursement required by subsection (a) for such contract; or

(2) failure to award the contract would place the facility concerned in violation of any requirement of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),

then the contract may be awarded without including the reimbursement provision required by subsection (a).

(d) DEFINITIONS.—In this section:

(1) The term ''hazardous waste'' has the meaning given that term by section 1004(5) of the Solid Waste Disposal Act (42 U.S.C. 6903(5)), except that such term also includes polychlorinated biphenyls.

(2) The term ''remedial action'' has the meaning given that term by section 101(24) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(24)).

(3) The term ''corrective action'' has the meaning given that term under section 3004(u) of the Solid Waste Disposal Act (42 U.S.C. 6924(u)).

(4) The term ''polychlorinated biphenyls'' has the meaning given that term under section 6(e) of the Toxic Substances Control Act (15 U.S.C. 2605(e)).

(e) EFFECT ON LIABILITY.—Nothing in this section shall affect the liability of the Federal Government under any Federal or State law or under common law.

(Added Pub. L. 102–190, div. A, title III, § 331(a)(1), Dec. 5, 1991, 105 Stat. 1339; amended Pub. L. 102–484, div. A, title III, § 321, title X, § 1052(36), Oct. 23, 1992, 106 Stat. 2365, 2501; Pub. L. 103–160, div. A, title X, § 1004, Nov. 30, 1993, 107 Stat. 1748.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–160 substituted ''fiscal years 1992 through 1996'' for ''fiscal years 1992 and 1993''.

1992—Subsec. (b)(1). Pub. L. 102–484, § 1052(36)(A), substituted ''each contract'' for ''all contracts'' and ''any subcontract under any such contract'' for ''all subcontracts under such contracts''.

Pub. L. 102–484, § 321, substituted ''fiscal years 1992 and 1993'' for ''fiscal year 1992''.

Subsec. (d). Pub. L. 102–484, § 1052(36)(B), substituted ''In'' for ''For purposes of'' in introductory provisions.

EFFECTIVE DATE

Section 331(b) of Pub. L. 102–190 provided that: ''Section 2708 of title 10, United States Code, shall apply with respect to contracts entered into after the expiration of the 60-day period beginning on the date of the enactment of this Act [Dec. 5, 1991].''

§ 2709. Investment control process for environmental technologies

(a) INVESTMENT CONTROL PROCESS.—The Secretary of Defense shall ensure that the technology planning process developed to implement section 2501 of this title and section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2469) provides for an investment control process for the selection, prioritization, management, and evaluation of environmental technologies by the Department of Defense, the military departments, and the Defense Agencies.

(b) PLANNING AND EVALUATION.—The environmental technology investment control process required by subsection (a) shall provide, at a minimum, for the following:

(1) The active participation by end-users of environmental technology, including the officials responsible for the environmental security programs of the Department of Defense and the military departments, in the selection and prioritization of environmental technologies.

(2) The development of measurable performance goals and objectives for the management and development of environmental technologies and specific mechanisms for assuring the achievement of the goals and objectives.

(3) Annual performance reviews to determine whether the goals and objectives have been achieved and to take appropriate action in the event that they are not achieved.

(Added Pub. L. 106–65, div. A, title III, § 323(b)(1), Oct. 5, 1999, 113 Stat. 562.)

REFERENCES IN TEXT

Section 270(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2469), referred to in subsec. (a), is set out as a note under section 2501 of this title.

PURPOSES OF SECTION 323 OF PUB. L. 106–65

Pub. L. 106–65, div. A, title III, § 323(a), Oct. 5, 1999, 113 Stat. 562, provided that: ''The purposes of this section [enacting this section, amending section 2706 of this title, and enacting provisions set out as a note under section 2706 of this title] are—

''(1) to hold the Department of Defense and the military departments accountable for achieving performance-based results in the management of environmental technology by providing a connection between program direction and the achievement of specific performance-based results;

''(2) to assure the identification of end-user requirements for environmental technology within the military departments;

''(3) to assure results, quality of effort, and appropriate levels of service and support for end-users of environmental technology within the military departments; and

''(4) to promote improvement in the performance of environmental technologies by establishing objectives for environmental technology programs, measuring performance against such objectives, and making public reports on the progress made in such performance.''

§ 2710. Inventory of unexploded ordnance, discarded military munitions, and munitions constituents at defense sites (other than operational ranges)

(a) INVENTORY REQUIRED.—(1) The Secretary of Defense shall develop and maintain an inventory of defense sites that are known or suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents.

(2) The information in the inventory for each defense site shall include, at a minimum, the following:

(A) A unique identifier for the defense site.

(B) An appropriate record showing the location, boundaries, and extent of the defense site, including identification of the State and political subdivisions of the State in which the defense site is located and any Tribal lands encompassed by the defense site.

(C) Known persons and entities, other than a military department, with any current ownership interest or control of lands encompassed by the defense site.

(D) Any restrictions or other land use controls currently in place at the defense site that might affect the potential for public and environmental exposure to the unexploded ordnance, discarded military munitions, or munitions constituents.

(b) SITE PRIORITIZATION.—(1) The Secretary shall develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each defense site a relative priority for response activities related to unexploded ordnance, discarded military munitions, and munitions constituents based on the overall conditions at the defense site. After public notice and comment on the proposed protocol, the Secretary shall issue a final protocol and shall apply the protocol to defense sites listed on the inventory. The level of response priority assigned the site shall be included with the information required by subsection (a)(2).

(2) In assigning the response priority for a defense site on the inventory, the Secretary shall primarily consider factors relating to safety and environmental hazard potential, such as the following:

(A) Whether there are known, versus suspected, unexploded ordnance, discarded military munitions, or munitions constituents on all or any portion of the defense site and the types of unexploded ordnance, discarded military munitions, or munitions constituents present or suspected to be present.

(B) Whether public access to the defense site is controlled, and the effectiveness of these controls.

(C) The potential for direct human contact with unexploded ordnance, discarded military munitions, or munitions constituents at the defense site and evidence of people entering the site.

(D) Whether a response action has been or is being undertaken at the defense site under the Formerly Used Defense Sites program or other program.

(E) The planned or mandated dates for transfer of the defense site from military control.

(F) The extent of any documented incidents involving unexploded ordnance, discarded military munitions, or munitions constituents at or from the defense site, including incidents involving explosions, discoveries, injuries, reports, and investigations.

(G) The potential for drinking water contamination or the release of munitions constituents into the air.

(H) The potential for destruction of sensitive ecosystems and damage to natural resources.

(3) The priority assigned to a defense site included on the inventory shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems at the defense site.

(c) UPDATES AND AVAILABILITY.—(1) The Secretary shall annually update the inventory and site prioritization list to reflect new information that becomes available. The inventory shall be available in published and electronic form.

(2) The Secretary shall work with communities adjacent to a defense site to provide information concerning conditions at the site and response activities. At a minimum, the Secretary shall provide the site inventory information and site prioritization list to appropriate Federal, State, tribal, and local officials, and, to the extent the Secretary considers appropriate, to civil defense or emergency management agencies and the public.

(d) EXCEPTIONS.—This section does not apply to the following:

(1) Any locations outside the United States.

(2) The presence of military munitions resulting from combat operations.

(3) Operating storage and manufacturing facilities.

(4) Operational ranges.

(e) DEFINITIONS.—In this section:

(1) The term ''defense site'' applies to locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions.

(2) The term ''discarded military munitions'' means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations.

(3)(A) The term ''military munitions'' means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof.

(B) The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) have been completed.

(4) The term ''munitions constituents'' means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions.

(5) The term ''operational range'' means a military range that is used for range activities, or a military range that is not currently being used, but that is still considered by the Secretary to be a range area, is under the jurisdiction, custody, or control of the Department of Defense, and has not been put to a new use that is incompatible with range activities.

(6) The term ''possessions'' includes Johnston Atoll, Kingman Reef, Midway Island, Nassau Island, Palmyra Island, and Wake Island.

(7) The term ''Secretary'' means the Secretary of Defense.

(8) The term ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions.

(9) The term ''unexploded ordnance'' means military munitions that—

(A) have been primed, fused, armed, or otherwise prepared for action;

(B) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(C) remain unexploded either by malfunction, design, or any other cause.

(10) The term ''United States'', in a geographic sense, means the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States.

(Added Pub. L. 107–107, div. A, title III, § 311(a)(1), Dec. 28, 2001, 115 Stat. 1048.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (e)(3)(B), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

INITIAL INVENTORY

Pub. L. 107–107, div. A, title III, § 311(b), Dec. 28, 2001, 115 Stat. 1051, provided that: ''The requirements of section 2710 of title 10, United States Code, as added by subsection (a), shall be implemented as follows:

''(1) The initial inventory required by subsection (a) of such section shall be completed not later than May 31, 2003.

''(2) The proposed prioritization protocol required by subsection (b) of such section shall be available for public comment not later than November 30, 2002.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2701, 2703 of this title.

CHAPTER 161—PROPERTY RECORDS AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY

Sec.
2721. Property records: maintenance on quantitative and monetary basis.
2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury.
2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title X, § 1042(b), Oct. 5, 1999, 113 Stat. 760, added item 2723.

1991—Pub. L. 102–190, div. A, title X, § 1061(a)(17)(B), Dec. 5, 1991, 105 Stat. 1473, substituted ''Property records: maintenance on quantitative and monetary basis'' for ''Basis'' in item 2721.

1990—Pub. L. 101–510, div. A, title XIII, § 1331(7), Nov. 5, 1990, 104 Stat. 1673, substituted ''Basis'' for ''Basis: reports'' in item 2721.

1988—Pub. L. 100–456, div. A, title III, § 344(b)(1), Sept. 29, 1988, 102 Stat. 1962, inserted ''AND REPORT OF THEFT OR LOSS OF CERTAIN PROPERTY'' in chapter heading and added item 2722.

1986—Pub. L. 99–499, title II, § 211(a)(3), Oct. 17, 1986, 100 Stat. 1725, redesignated item 2701 as item 2721.

§ 2721. Property records: maintenance on quantitative and monetary basis

(a) Under regulations prescribed by him, the Secretary of Defense shall have the records of the fixed property, installations, major equipment items, and stored supplies of the military

departments maintained on both a quantitative and a monetary basis, so far as practicable.

(b) The regulations prescribed pursuant to subsection (a) shall include a requirement that the records maintained under such subsection—

(1) to the extent practicable, provide up-to-date information on all items in the inventory of the Department of Defense;

(2) indicate whether the inventory of each item is sufficient or excessive in relation to the needs of the Department for that item; and

(3) permit the Secretary of Defense to include in the budget submitted to Congress under section 1105 of title 31 for each fiscal year, information relating to—

(A) the amounts proposed for each appropriation account in such budget for inventory purchases of the Department of Defense; and

(B) the amounts obligated for such inventory purchases out of the corresponding appropriations account for the preceding fiscal year.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152, § 2701; renumbered § 2721, Pub. L. 99–499, title II, § 211(a)(1)(A), Oct. 17, 1986, 100 Stat. 1719; amended Pub. L. 101–510, div. A, title XIII, § 1322(a)(12), Nov. 5, 1990, 104 Stat. 1671; Pub. L. 102–190, div. A, title III, § 347(b), title X, § 1061(a)(17)(A), Dec. 5, 1991, 105 Stat. 1347, 1473.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2701(a)	5:172i (less last sentence).	July 26, 1947, ch. 343, § 410; added Aug. 10, 1949, ch. 412, § 11(410), 63 Stat. 590.
2701(b)	5:172i (last sentence).	

In subsection (a), the words ''equipment'' and ''materials'' are omitted, since the word ''supplies'', as defined in section 101(26) of this title, includes equipment and materials. The word ''stored'' is substituted for the words ''held in store by the armed services''.

In subsection (b), the words ''on property records maintained under this section'' are substituted for the word ''thereon''.

AMENDMENTS

1991—Pub. L. 102–190, § 1061(a)(17)(A), substituted section catchline for one which read ''Basis: reports''.

Pub. L. 102–190, § 347(b), designated existing provisions as subsec. (a) and added subsec. (b).

1990—Pub. L. 101–510 struck out ''(a)'' before ''Under regulations'' and struck out subsec. (b) which read as follows: ''The Secretary shall report once a year to Congress and the President on property records maintained under this section.''

IMPLEMENTATION OF 1991 AMENDMENT

Section 347(c) of Pub. L. 102–190 provided that: ''The Secretary of Defense shall establish the uniform system of valuation described in section 2458(a)(3) of title 10, United States Code (as added by subsection (a)), and prescribe the regulations required by section 2721(b) of such title (as added by subsection (b)), not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991].''

INVENTORY INVESTIGATIONS

Section 343 of Pub. L. 100–456 provided that:

''(a) UNDERCOVER INVESTIGATIONS.—(1) Congress finds that the use of undercover investigative techniques by the Department of Defense enhances the ability of the Department of Defense to detect and investigate theft of Government property (including munitions) from the Department of Defense supply system.

''(2) The Secretary of Defense is urged to continue to conduct undercover investigations to detect and investigate thefts referred to in paragraph (1).

''(b) INVENTORY SECURITY INCIDENT REPOSITORY.—The Secretary of Defense shall establish and maintain a centralized computer system for recording and organizing information on theft, fraud, and breach of security and incidents involving the loss of Department of Defense supplies (including munitions).''

§ 2722. Theft or loss of ammunition, destructive devices, and explosives: report to Secretary of the Treasury

(a) IN GENERAL.—The Secretary of Defense shall report the theft or other loss of any ammunition, destructive device, or explosive material from the stocks of the Department of Defense to the Secretary of the Treasury within 72 hours, if possible, after the discovery of such theft or loss.

(b) EXCLUSION FOR CERTAIN ITEMS.—The Secretary of Defense may exclude from the reporting requirement under subsection (a) any item referred to in that subsection if—

(1) the Secretary determines that the item represents a low risk of danger to the public and would be of minimal utility to any person who may illegally receive such item; and

(2) the exclusion of such item is specified as being excluded from the reporting requirement in a memorandum of agreement between the Secretary of Defense and the Secretary of the Treasury.

(c) DEFINITIONS.—In this section:

(1) The term ''explosive material'' means explosives, blasting agents, and detonators.

(2) The terms ''destructive device'' and ''ammunition'' have the meanings given those terms by paragraphs (4) and (17), respectively, of section 921 of title 18.

(Added Pub. L. 100–456, div. A, title III, § 344(a), Sept. 29, 1988, 102 Stat. 1961.)

EFFECTIVE DATE

Section 344(c) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect with respect to thefts and losses discovered more than 180 days after the date of the enactment of this Act [Sept. 29, 1988].''

§ 2723. Notice to congressional committees of certain security and counterintelligence failures within defense programs

(a) REQUIRED NOTIFICATION.—The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a notification of each security or counterintelligence failure or compromise of classified information relating to any defense operation, system, or technology of the United States that the Secretary considers likely to cause significant harm or damage to the national security interests of the United States. The Secretary shall consult with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, as appropriate, before submitting any such notification.

(b) MANNER OF NOTIFICATION.—Notification of a failure or compromise of classified informa-

tion under subsection (a) shall be provided, in accordance with the procedures established pursuant to subsection (c), not later than 30 days after the date on which the Department of Defense determines that the failure or compromise has taken place.

(c) PROCEDURES.—The Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives shall each establish such procedures as may be necessary to protect from unauthorized disclosure classified information, information relating to intelligence sources and methods, and sensitive law enforcement information that is submitted to those committees pursuant to this section and that are otherwise necessary to carry out the provisions of this section.

(d) STATUTORY CONSTRUCTION.—(1) Nothing in this section shall be construed as authority to withhold any information from the Committees on Armed Services of the Senate and House of Representatives on the grounds that providing the information to those committees would constitute the unauthorized disclosure of classified information, information relating to intelligence sources and methods, or sensitive law enforcement information.

(2) Nothing in this section shall be construed to modify or supersede any other requirement to report information on intelligence activities to the Congress, including the requirement under section 501 of the National Security Act of 1947 (50 U.S.C. 413).

(Added Pub. L. 106–65, div. A, title X, §1042(a), Oct. 5, 1999, 113 Stat. 759.)

CHAPTER 163—MILITARY CLAIMS

Sec.
2731. Definition.
2732. Payment of claims: availability of appropriations.
2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force.
2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries.
2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements.
2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements.
2735. Settlement: final and conclusive.
2736. Property loss; personal injury or death: advance payment.
2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law.
2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action.
2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations.

AMENDMENTS

1998—Pub. L. 105–261, div. A, title X, §1010(a)(2), Oct. 17, 1998, 112 Stat. 2117, added item 2739.

1994—Pub. L. 103–337, div. A, title V, §557(b), Oct. 5, 1994, 108 Stat. 2776, added item 2738.

1990—Pub. L. 101–510, div. A, title XIV, §1481(j)(2), Nov. 5, 1990, 104 Stat. 1708, added item 2732.

1984—Pub. L. 98–525, title XIV, §1405(42)(B), Oct. 19, 1984, 98 Stat. 2625, substituted ''in foreign countries'' for '': foreign countries'' in item 2734a.

1968—Pub. L. 90–521, §2, Sept. 26, 1968, 82 Stat. 874, substituted ''advance payment'' for ''incident to aircraft or missile operation'' in item 2736.

1966—Pub. L. 89–718, §21(b), Nov. 2, 1966, 80 Stat. 1118, substituted ''2737'' for ''2736'' as item number for ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

1964—Pub. L. 88–558, §5(2), Aug. 31, 1964, 78 Stat. 768, struck out item 2732 ''Property loss: incident to service; members of Army, Navy, Air Force, or Marine Corps and civilian employees'', effective two years after Aug. 31, 1964. Pub. L. 88–558, was itself repealed by Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068.

1962—Pub. L. 87–769, §1(1)(B), Oct. 9, 1962, 76 Stat. 768, added item 2736 ''Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law''.

Pub. L. 87–651, title I, §113(b), Sept. 7, 1962, 76 Stat. 513, added items 2734a and 2734b.

1961—Pub. L. 87–212, §1(2), Sept. 8, 1961, 75 Stat. 488, added item 2736 ''Property loss; personal injury or death: incident to aircraft or missile operation''.

1959—Pub. L. 86–223, §1(2), Sept. 1, 1959, 73 Stat. 454, substituted ''armed forces'' for ''Department of Army, Navy, or Air Force'' in item 2734.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 section 213a.

§ 2731. Definition

In this chapter, ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 152.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2731	[No source].	[No source].

The revised section is inserted for clarity and is based on usage in the source laws for this revised chapter.

REPORT ON DEPARTMENT POLICY ON PAYMENT OF CLAIMS FOR LOSS OF PERSONAL PROPERTY

Pub. L. 105–85, div. A, title X, §1013(b), Nov. 18, 1997, 111 Stat. 1874, provided that: ''The Secretary of Defense shall submit to Congress a report describing the Department of Defense policy regarding the payment of a claim by a member of the Armed Forces who is not assigned to quarters of the United States for losses and damage to personal property of the member incurred at the member's residence as a result of a natural disaster. The report shall include a description of the number of such claims received over the past 10 years, the number of claims paid, and the number of claims rejected. If the Secretary determines the Department of Defense should modify its policy in order to accept additional claims by members who are not assigned to quarters of the United States for losses and damage to personal property, the Secretary shall also include in the report any legislative changes that the Secretary considers necessary to enable the Secretary to implement the policy change.''

PUBLIC HEALTH SERVICE

Authority vested by this chapter in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officers of Public Health Service, by Secretary

of Health and Human Services or his designee, see section 213a of Title 42, The Public Health and Welfare.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Authority vested by sections 2731, 2732, and 2735 of this title in ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' to be exercised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 3071 of Title 33, Navigation and Navigable Waters.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071.

§ 2732. Payment of claims: availability of appropriations

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101–510, div. A, title XIV, §1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 100–463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270–35, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101–510, §1481(j)(3).

A prior section 2732, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85–861, §§1(53), 33(a)(16), 72 Stat. 1461, 1565; Sept. 15, 1965, Pub. L. 89–185, §1, 79 Stat. 789, related to settlement of property loss incident to service, prior to repeal by Pub. L. 88–558, §5(3), Aug. 31, 1964, 78 Stat. 768, effective two years from Aug. 31, 1964. See section 3701 et seq. of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2734, 2734a, 2734b of this title.

§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed $25,000. A decision of the officer or employee who makes a final settlement decision under this section

may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment or otherwise incident to noncombat activities of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 153; Pub. L. 85–729, §1, Aug. 23, 1958, 72 Stat. 813; Pub. L. 85–861, §1(54), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90–522, Sept. 26, 1968, 82 Stat. 875; Pub. L. 90–525, §§1, 3–5, Sept. 26, 1968, 82 Stat. 877, 878; Pub. L. 91–312, §2, July 8, 1970, 84 Stat. 412; Pub. L. 93–336, §1, July 8, 1974, 88 Stat. 291; Pub. L. 96–513, title V, §511(94), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98–564, §1, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 104–316, title II, §202(e), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733(a)	31:223b (1st sentence, less 52d through 62d, and 76th through 93d, words; and less proviso).	July 3, 1943, ch. 189, §1 (less 4th sentence), 57 Stat. 372; May 29, 1945, ch. 135, §4, 59 Stat. 225; June 28, 1946, ch. 514, §1, 60 Stat. 332; July 3, 1952, ch. 570, §2(c), 66 Stat. 334; Mar. 31, 1953, ch. 13 (as applicable to Act of July 3, 1952, ch. 570, §2(c)), 67 Stat. 18; June 30, 1953, ch. 172 (as applicable to Act of July 3, 1952, ch. 570, §2(c)), 67 Stat. 131. Aug. 2, 1946, ch. 753, §424(a) (4th clause), 60 Stat. 847. Dec. 28, 1945, ch. 597, §1, 59 Stat. 662; June 28, 1946, ch. 514, §2, 60 Stat. 333. Dec. 28, 1945, ch. 597, §6; added Mar. 20, 1946, ch. 104 (last par.), 60 Stat. 56.
2733(b)	[Uncodified: Aug. 2, 1946, ch. 753, §424(a) (4th clause), 60 Stat. 847]. 31:223b (76th through 93d words and proviso of 1st sentence; and 2d sentence).	
2733(c)	31:223b (3d sentence).	
2733(d)	31:223b (last sentence).	
2733(e)	31:223b (52d through 62d words of 1st sentence).	
2733(f)	31:222h. [31:223b is made applicable to the Navy by 31:223d and 223e].	

In subsection (a), the words ''a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be'' are substituted for the words ''military personnel or civilian employees of the Department of the Army or of the Army''. The words ''whether under a lease, express or implied'' are omitted as surplusage. The words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 2731 of this title. The words ''arising on or after May 27, 1941'' are omitted as executed, since, under revised subsection (b), a claim must be filed within one year after it accrues, or within one year after the war is terminated, if it accrues in time of war.

In subsection (a)(1), the words ''or loss'' are inserted before the word ''incident'', for clarity.

In subsection (b)(1), the words ''it accrues'' are substituted for the words ''the accident or incident out of which such claim arises shall have occurred'', in 31:223b. The words ''the claim accrues'' are substituted for the words ''That if such accident or incident occurs''. The words ''not later than'' are substituted for the words ''within'' to make it clear that a claim may be presented during a war. The words ''the war is terminated'' are substituted for the words ''after peace is established'', since the other time covered is ''time of war''. 31:223b (last 49 words of proviso of 2d sentence) is omitted as executed.

In subsection (b)(2), the words ''or section 2672 of title 28'' are substituted for the words ''claims cognizable under part 2 of this title'', to reflect the express amendment of 31:223b and 223c by the fourth clause of section 424(a) of the Federal Tort Claims Act, 60 Stat. 847. Section 424(a) of the Federal Tort Claims Act referred to ''claims cognizable under part 2 of this title''. Part 2 of that act consisted of sections 403 and 404 which were repealed by section 39 of the Act of June 25, 1948, ch. 646, 62 Stat. 1008, and replaced by sections 2672 and 2673 of title 28. The words ''or possessions thereof'' are omitted, since possessions of foreign countries are not specifically covered by the section to which the words refer.

In subsection (d), the words ''claim * * * that would otherwise be covered by this section'' are substituted for the words ''such claims''.

In subsection (e), the words ''and final settlement'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2733	31:223b.	Mar. 29, 1956, ch. 103, §§1–3, 70 Stat. 60, 61.

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

1984—Subsec. (a). Pub. L. 98–564, §1(1), substituted ''Chief Counsel'' for ''chief legal officer'' and ''$100,000'' for ''$25,000'' in provisions preceding par. (1).

Subsec. (d). Pub. L. 98–564, §1(2), amended subsec. (d) generally, substituting ''$100,000'' for ''$25,000'' and provisions requiring Secretary to report excess to the Comptroller General for provisions requiring reporting to Congress.

Subsec. (g). Pub. L. 98–564, §1(3), substituted provisions permitting officers and employees of Secretary concerned to settle claims not otherwise payable under this section in amounts not to exceed $25,000 and providing for an appeal to Secretary concerned or his designee for provisions which provided for delegation of claims settlement authority by Secretary for cases not to exceed $5,000 and for appeal therefrom.

1980—Subsec. (f). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1974—Subsec. (a). Pub. L. 93–336, §1(1), substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336, §1(2), substituted ''$25,000'' for ''$15,000'' wherever appearing.

Subsec. (g). Pub. L. 93–336, §1(3), substituted ''$5,000'' for ''$2,500''.

1970—Subsec. (a). Pub. L. 91–312, §2(a), substituted ''$15,000'' for ''$5,000''.

Subsec. (d). Pub. L. 91–312, §2(b), substituted ''$15,000'' for ''$5,000'' wherever appearing.

1968—Subsec. (a). Pub. L. 90–525, §1, substituted ''Secretary concerned'' for ''Secretary of a military department'', and authorized the Chief Legal Officer of the Coast Guard to settle claims, settlement of claims for damage or loss to personal property in possession of the Coast Guard, and settlements when the torts are caused by civilian officers or employees and members of the Coast Guard when acting within scope of employment or otherwise incident to noncombat activities of the Coast Guard.

Subsec. (b)(4). Pub. L. 90–522, §1(1), authorized application of local law in determining effect of claimant's contributory negligence.

Subsec. (d). Pub. L. 90–525, §5, struck out ''of the military department'' after ''Secretary''.

Subsec. (g). Pub. L. 90–525, §3, increased limitation on amount of settlement from $1,000 to $2,500, struck out ''military'' before ''department concerned'', and pro-

vided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force. See Pub. L. 90–522, §1(2), hereunder, for identical provision for appeals to Secretary concerned.

Pub. L. 90–522, §1(2), provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force.

Subsec. (h). Pub. L. 90–525, §4, added subsec. (h).

1966—Subsec. (f). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1958—Subsec. (a). Pub. L. 85–729, §1(1)(A), substituted ''the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than $5,000'' for ''any officer designated by him may settle, and pay in an amount not more than $1,000''.

Subsec. (b). Pub. L. 85–861, §1(54)(A), (B), in cl. (1), substituted ''two years'' for ''one year'' in three places and included claims accruing in time of armed conflict, and inserted sentence providing for the determination of dates of the beginning and ending of an armed conflict.

Subsec. (c). Pub. L. 85–861, §1(54)(C), substituted provisions prohibiting payment for reimbursement for medical, hospital, or burial services furnished at the expense of the United States for provisions which prohibited allowance of claims for personal injury or death for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

Subsec. (d). Pub. L. 85–729, §1(1)(B), substituted provisions authorizing partial payments on claims over $5,000 for provisions which authorized the Secretary of the military department concerned to report a claim for more than $1,000 to Congress for its consideration.

Subsec. (e). Pub. L. 85–729, §1(1)(B), substituted ''Except as provided in subsection (d), no claim may be paid under this section'' for ''No claim may be paid under subsection (a)''.

Subsec. (g). Pub. L. 85–729, §1(1)(C), added subsec. (g).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a Amendment note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

CLAIMS FOR INJURY OR DEATH ACCRUED BEFORE MARCH 30, 1956

Section 17 of Pub. L. 85–861 disallowed claims for personal injury or death under section 2733 of this title, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred if the claim accrued before March 30, 1956.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1588, 2735, 2736, 2738 of this title; title 5 section 5564; title 14 sections 821, 823a; title 31 section 1304; title 37 section 554.

§ 2734. Property loss; personal injury or death: incident to noncombat activities of the armed forces; foreign countries

(a) To promote and to maintain friendly relations through the prompt settlement of meritorious claims, the Secretary concerned, or an officer or employee designated by the Secretary, may appoint, under such regulations as the Secretary may prescribe, one or more claims commissions, each composed of one or more officers or employees or combination of officers or employees of the armed forces, to settle and pay in an amount not more than $100,000, a claim against the United States for—

(1) damage to, or loss of, real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy;

(2) damage to, or loss of, personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States; or

(3) personal injury to, or death of, any inhabitant of a foreign country;

if the damage, loss, personal injury, or death occurs outside the United States, or the Territories, Commonwealths, or possessions, and is caused by, or is otherwise incident to noncombat activities of, the armed forces under his jurisdiction, or is caused by a member thereof or by a civilian employee of the military department concerned or the Coast Guard, as the case may be. The claim of an insured, but not that of a subrogee, may be considered under this subsection. In this section, ''foreign country'' includes any place under the jurisdiction of the United States in a foreign country. An officer or employee may serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but shall perform his duties under regulations of the department appointing the commission.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented within two years after it accrues;

(2) in the case of a national of a country at war with the United States, or of any ally of that country, the claimant is determined by the commission or by the local military commander to be friendly to the United States; and

(3) it did not arise from action by an enemy or result directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

(c) The Secretary concerned may appoint any officer or employee under the jurisdiction of the Secretary to act as an approval authority for claims determined to be allowable under subsection (a) in an amount in excess of $10,000.

(d) If the Secretary concerned considers that a claim in excess of $100,000 is meritorious, and

the claim otherwise is payable under this section, the Secretary may pay the claimant $100,000 and report any meritorious amount in excess of $100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) Upon the request of the department concerned, a claim arising in that department and covered by subsection (a) may be settled and paid by a commission appointed under subsection (a) and composed of officers of an armed force under the jurisdiction of another department.

(g) Payment of claims against the Coast Guard arising while it is operating as a service in the Department of Homeland Security shall be made out of the appropriation for the operating expenses of the Coast Guard.

(h) The Secretary of Defense may designate any claims commission appointed under subsection (a) to settle and pay, as provided in this section, claims for damage caused by a civilian employee of the Department of Defense other than an employee of a military department. Payments of claims under this subsection shall be made from appropriations as provided in section 2732 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 154; Pub. L. 85–861, §1(55), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 86–223, §1(1), Sept. 1, 1959, 73 Stat. 453; Pub. L. 86–411, Apr. 8, 1960, 74 Stat. 16; Pub. L. 90–521, §§1, 3, Sept. 26, 1968, 82 Stat. 874; Pub. L. 91–312, §1, July 8, 1970, 84 Stat. 412; Pub. L. 93–336, §2, July 8, 1974, 88 Stat. 292; Pub. L. 96–513, title V, §511(95), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98–564, §2, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 101–510, div. A, title XIV, §1481(j)(4)(A), Nov. 5, 1990, 104 Stat. 1709; Pub. L. 104–316, title II, §202(e), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734(a)	31:224d (less 98th through 109th words and provisos).	Jan. 2, 1942, ch. 645, §§1 (less last proviso), 6, 7, 55 Stat. 880; restated Apr. 22, 1943, ch. 67, §§1 (less last proviso), 6, 7, 57 Stat. 66, 67.
2734(b)	31:224d (1st and 3d provisos).	
2734(c)	31:224d (2d proviso, less words after semicolon).	
2734(d)	31:224d (words of 2d proviso after semicolon).	
2734(e)	31:224d (98th through 109th words).	
2734(f)	31:224i.	
2734(g)	31:224h.	

In subsection (a), the words ''for such purposes'', ''or destruction'', ''public'', ''private'', ''Army * * * forces'', and ''whether under a lease, express or implied'' are omitted as surplusage. The words ''armed forces under his jurisdiction'' are substituted for the words ''Army, Air Force, Navy, or Marine Corps''. The same words are substituted for the words ''Army, Air Force, Navy, or Marine Corps forces'' to reflect the opinion of the Judge Advocate General of the Army (JAGD/D–55–51000, 17 Jan. 55). The word ''settle'' is substituted for the words ''consider, ascertain, adjust, determine'', since the word ''settle'', as defined in section 2731 of this title, includes those actions. The words ''a member thereof, or by a civilian employee of the department concerned'' are substituted for the words ''or individual members thereof, including military personnel and civilian employees''. The last sentence is substituted for the words ''including places located therein which are under the temporary or permanent jurisdiction of the United States''.

In subsection (a)(2), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the word ''accident'' is omitted as surplusage. The words ''except that claims arising out of accidents or incidents occurring after December 6, 1941, but prior to May 1, 1943, may be presented at any time prior to May 1, 1944'' are omitted as executed. Clauses (2) and (3) are substituted for 31:224d (3d proviso).

In subsection (c), the first 28 words of the second proviso of 31:224d and the words ''but does not exceed $5,000'' are omitted as covered by subsection (a). The words ''commanding officer or other'' are omitted as surplusage. The word ''commissioned'' is inserted for clarity. The word ''designated'' is substituted for the words ''may prescribe''.

In subsection (d), the word ''may'' is substituted for the words ''shall have authority, if he deems''. The words ''that would otherwise be covered by this section'' are inserted for clarity. The words ''to be meritorious'' and ''character of such'' are omitted as surplusage.

In subsection (f), the words ''a military department'' are substituted for the words ''service concerned'' after the words ''the request of the''. The words ''or Commissions'' and ''even though not'' are omitted as surplusage. The words ''an armed force under the jurisdiction of another military department'' are substituted for the words ''service concerned'' after the words ''officers of the''. 31:224i (last 19 words) is omitted, since all claims are paid from one appropriation made to the Department of Defense.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734(a)	31:224d.	July 28, 1956, ch. 769, §1, 70 Stat. 703.
2734(d)	31:224d.	
2734(f)	31:224i.	
2734(h)	31:224i–1.	

In subsections (a)(1) and (2), the words ''a foreign country'' are substituted for the words ''that country'' to make clear that damage to a political subdivision or an inhabitant of a foreign country need not have occurred in that country.

In subsection (h), the word ''settle'' is substituted for the words ''consider, ascertain, adjust, determine,'', since the word ''settle'', as defined in section 2731 of this title, includes those actions. The words ''as provided in this section'' are substituted for the words ''as described in section 224d of this title'' and 31:224i–1 (2d sentence).

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–296 substituted ''Department of Homeland Security'' for ''Department of Transportation''.

1996—Subsec. (d). Pub. L. 104–316 substituted ''Secretary of the Treasury'' for ''Comptroller General''.

1990—Subsec. (h). Pub. L. 101–510 substituted ''as provided in section 2732 of this title'' for ''available to the Office of the Secretary of Defense for the payment of claims''.

1984—Subsec. (a). Pub. L. 98–564, §2(1), substituted ''$100,000'' for ''$25,000'' and inserted provisions whereby employees as well as officers of the Secretary may settle claims in text preceding par. (1).

Pub. L. 98–564, §2(2), inserted ''or employee'' after ''An officer'' in last sentence.

Subsec. (c). Pub. L. 98–564, §2(3), substituted provisions whereby the Secretary may appoint officers and employees to act as approval authority for claims in

excess of $10,000 for provisions which provided that allowance of a claim for more than $2,500 may be subject to the approval of any commissioned officer designated by the Secretary concerned.

Subsec. (d). Pub. L. 98–564, §2(4), substituted provisions providing that if the Secretary considers a claim in excess of $100,000 meritorious, the Secretary may pay $100,000 and report any excess amount to the Comptroller General for provisions which provided that for claims in excess of $25,000 the Secretary may pay $25,000 and certify any excess to Congress as a legal claim to be paid from appropriations.

1980—Subsec. (g). Pub. L. 96–513 substituted ''Department of Transportation'' for ''Department of the Treasury''.

1974—Subsec. (a). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000''.

Subsec. (d). Pub. L. 93–336 substituted ''$25,000'' for ''$15,000'' in two places.

1970—Subsec. (d). Pub. L. 91–312 authorized the Secretary to pay, without certification to Congress, up to $15,000 towards the settlement of meritorious claims in excess of $15,000.

Subsec. (e). Pub. L. 91–312 excepted claims under subsec. (d) from requirement that all claims paid be accepted by the claimant in full satisfaction, and struck out provision limiting the application of such requirement to claims payable under subsec. (a) of this section.

1968—Subsec. (a). Pub. L. 90–521, §1, struck out ''under his jurisdiction'' after ''armed forces'' in text preceding cl. (1) and permitted an officer to serve on a claims commission under the jurisdiction of another armed force only with the consent of the Secretary of his department, or his designee, but required him to perform his duties under regulations of the department appointing the commission, respectively.

Subsec. (b)(3). Pub. L. 90–521, §3, provided for allowance of claim if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including the airborne ordnance, indirectly related to combat, and occurring while preparing for, going to, or returning from a combat mission.

1960—Subsec. (b). Pub. L. 86–411 substituted ''two years'' for ''one year'' in cl. (1).

1959—Pub. L. 86–223, §1(1)(A), substituted ''the armed forces'' for ''Department of Army, Navy, or Air Force'' in section catchline.

Subsec. (a). Pub. L. 86–223, §1(1)(B), substituted ''concerned'' and ''the military department concerned or the Coast Guard, as the case may be'' for ''of a military department'' and ''the department concerned'', respectively.

Subsecs. (c), (d). Pub. L. 86–223, §1(1)(C), struck out ''of the military department'' after ''Secretary''.

Subsec. (f). Pub. L. 86–223, §1(1)(D), substituted ''the department concerned'' for ''a military department'' and deleted ''military'' after ''another''.

Subsec. (g). Pub. L. 86–223, §1(1)(E), substituted provision for payment of claims against the Coast Guard arising while it is operating as a service in the Department of the Treasury out of the appropriation for the operating expenses of the Coast Guard for provisions excluding such claims unless they arise, are settled and paid while the Coast Guard is operating as a service of the Navy and authorizing Coast Guard officers to serve on claims commissions or to approve settlements, only for claims against the Coast Guard.

1958—Subsec. (a). Pub. L. 85–861, §1(55)(A)–(D), struck out ''arising in foreign countries'' after ''meritorious claims'', and substituted ''$15,000'' for ''$5,000'', ''outside the United States, or the Territories, Commonwealths, or possessions,'' for ''in that country'', and ''a foreign country'' for ''that country'' in cls. (1) and (2).

Subsec. (d). Pub. L. 85–861, §1(55)(A), substituted ''$15,000'' for ''$5,000''.

Subsec. (f). Pub. L. 85–861, §1(55)(E), substituted ''Upon'' for ''In time of war and upon''.

Subsec. (h). Pub. L. 85–861, §1(55)(F), added subsec. (h).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2733, 2735, 2736 of this title; title 31 section 1304; title 32 section 715; title 36 section 2110.

§ 2734a. Property loss; personal injury or death: incident to noncombat activities of armed forces in foreign countries; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication and cost sharing of claims against the United States arising out of the acts or omissions of a member or civilian employee of an armed force of the United States done in the performance of official duty, or arising out of any other act, omission, or occurrence for which an armed force of the United States is legally responsible under the law of another party to the international agreement, and causing damage in the territory of such party, the Secretary of Defense or the Secretary of Homeland Security or their designees may—

(1) reimburse the party to the agreement for the agreed pro rata share of amounts, including any authorized arbitration costs, paid by that party in satisfying awards or judgments on claims, in accordance with the agreement; or

(2) pay the party to the agreement the agreed pro rata share of any claim, including any authorized arbitration costs, for damage to property owned by it, in accordance with the agreement.

(b) A claim arising out of an act of an enemy of the United States or arising, directly or indirectly, from an act of the armed forces, or a member thereof, while engaged in combat may not be considered or paid under this section.

(c) A reimbursement or payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title except that payment of claims against the Coast Guard arising while it is operating as a service of the Department of Homeland Security shall be made out of the appropriations for the operating expenses of the Coast Guard. The appropriations referred to in this subsection may be used to buy foreign currencies required for the reimbursement or payment.

(d) Upon the request of the Secretary of Homeland Security or his designee, any payments made relating to claims arising from the activities of the Coast Guard and covered by subsection (a) may be reimbursed or paid to the foreign country concerned by the authorized representative of the Department of Defense out of appropriations as provided in section 2732 of this title, subject to reimbursement from the Department of Homeland Security.

(Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 90–521, § 4, Sept. 26, 1968, 82 Stat. 874; Pub. L. 94–390, § 1(1), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 98–525, title XIV, § 1405(42)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(B), Nov. 5, 1990, 104 Stat. 1709; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734a(a) ...	31:224i–2 (less proviso).	Aug. 31, 1954, ch. 1152, §§ 1 (less proviso, as applicable to § 2), 4 (as applicable to § 1), 68 Stat. 1006, 1007.
2734a(b) ...	31:224i–2 (proviso, as applicable to 31:224i–2).	
2734a(c) ...	31:224i–5 (as applicable to 31–224i–2).	

In subsection (a), the following substitutions are made: ''Under'' for ''Pursuant to the terms''; ''country'' for ''government''; ''under its laws and regulations'' for ''in accordance with the laws and regulations of such foreign government''; ''may'' for ''is authorized''; ''amounts'' for ''sums''; and ''spent'' for ''expended''. The words ''now or may hereafter be'' are omitted as surplusage.

In subsection (b), the following substitutions are made: ''act'' for ''action'' and ''may'' for ''shall''.

In subsection (c), the words ''pro rata'' are omitted as surplusage. The following substitutions are made: ''under this section'' for ''by the United States with respect to a settlement, award, or compromise made pursuant to sections 224i–2 to 224i–5 of this title''; ''to buy'' for ''for the purchase of''; and ''needed'' for ''necessary''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

2002—Subsecs. (a), (c), (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–510, § 1481(j)(4)(B)(i), substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

Subsec. (d). Pub. L. 101–510, § 1481(j)(4)(B)(ii), substituted ''appropriations as provided in section 2732 of this title'' for ''the appropriation for claims of the Department of Defense''.

1984—Pub. L. 98–525 substituted ''in foreign countries'' for ''; foreign coun-countries'' in section catchline.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing the Secretary of Defense or the Secretary of Transportation to reimburse or pay, including arbitration costs, claims arising under international agreements to which the United States is a party and providing for settlement or adjudication and cost sharing based on the responsibility of the United States under the law of the other party to the international agreement, for provisions authorizing the Secretary of Defense to reimburse or pay claims arising under international agreements to which the United States is a party and providing for adjudication by the other country under its laws and regulations.

1968—Subsec. (c). Pub. L. 90–521, § 4(a), provided for payment of claims against the Coast Guard arising while it is operating as a service of the Department of Transportation out of appropriations for operating expenses of the Coast Guard.

Subsec. (d). Pub. L. 90–521, § 4(b), added subsec. (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2735 of this title.

§ 2734b. Property loss; personal injury or death: incident to activities of armed forces of foreign countries in United States; international agreements

(a) When the United States is a party to an international agreement which provides for the settlement or adjudication by the United States under its laws and regulations, and subject to agreed pro rata reimbursement, of claims against another party to the agreement arising out of the acts or omissions of a member or civilian employee of an armed force of that party done in the performance of official duty, or arising out of any other act, omission, or occurrence for which that armed force is legally responsible under applicable United States law, and causing damage in the United States, or a territory, Commonwealth, or possession thereof; those claims may be prosecuted against the United States, or settled by the United States, in accordance with the agreement, as if the acts or omissions upon which they are based were the acts or omissions of a member or a civilian employee of an armed force of the United States.

(b) When a dispute arises in the settlement or adjudication of a claim under this section whether an act or omission was in the performance of official duty, or whether the use of a vehicle of the armed forces was authorized, the dispute shall be decided under the international agreement with the foreign country concerned. Such a decision is final and conclusive. The Secretary of Defense may pay that part of the cost of obtaining such a decision that is chargeable to the United States under that agreement.

(c) A claim arising out of an act of an enemy of the United States may not be considered or paid under this section.

(d) A payment under this section shall be made by the Secretary of Defense out of appropriations as provided in section 2732 of this title.

(Added Pub. L. 87–651, title I, § 113(a), Sept. 7, 1962, 76 Stat. 512; amended Pub. L. 94–390, § 1(2), Aug. 19, 1976, 90 Stat. 1191; Pub. L. 101–510, div. A, title XIV, § 1481(j)(4)(C), Nov. 5, 1990, 104 Stat. 1709.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2734b(a) ...	31:224i–3.	Aug. 31, 1954, ch. 1152, §§ 1 (proviso, less applicability to § 1), 2, 3, 4 (less applicability to § 1), 68 Stat. 1006, 1007.
2734b(b) ...	31:224i–4.	
2734b(c) ...	31:224i–2 (proviso, less applicability to 31:224i–2).	
2734b(d) ...	31:224i–5 (less applicability to 31:224i–2).	

In subsection (a), the following omissions as surplusage are made: ''the terms of'' and ''now or may hereafter be''. The following substitutions are made: ''country'' for ''government''; ''in the United States, or a Territory, Commonwealth, or possession'' for ''within the territory of the United States''; ''under'' for ''in accordance with''; ''upon which they are based were the acts or omissions of'' for ''were performed''.

In subsection (b), the following substitutions are made: ''under this section'' for ''asserted under section 224i–3 of this title''; ''the dispute'' for ''such disputed question or questions''; ''under'' for ''in accordance with the terms of''; and the last sentence for the last sentence of 31:224i–4. The following omissions as surplusage are made: ''of a civilian employee or military personnel of a foreign country'' and ''of the armed forces for such party''.

In subsection (c), the word ''act'' is substituted for the word ''action''.

In subsection (d), the words ''under this section'' are substituted for the words ''by the United States with respect to a settlement, award, or compromise made pursuant to section 224i–2 to 224i–5 of this title''. The words ''which appropriations are authorized'' are omitted as unnecessary.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–510 substituted ''as provided in section 2732 of this title'' for ''for that purpose''.

1976—Subsec. (a). Pub. L. 94–390 substituted provisions authorizing claims, for which another armed force is legally responsible under applicable United States law, to be prosecuted against the United States or settled by the United States in accordance with an international agreement providing for the settlement or adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were of a member or a civilian employee of an armed force of the United States, for provisions authorizing claims to be prosecuted against the United States or settled by the United States by adjudication by the United States under its laws and regulations as if the acts or omissions upon which the claims are based were the acts or omissions in the performance of official duty of a civilian employee or a member of an armed force.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2735 of this title.

§ 2735. Settlement: final and conclusive

Notwithstanding any other provision of law, the settlement of a claim under section 2733, 2734, 2734a, 2734b, or 2737 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Pub. L. 88–558, § 5(1), Aug. 31, 1964, 78 Stat. 768; Pub. L. 92–413, Aug. 29, 1972, 86 Stat. 649.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2735	31:222c (1st sentence of (e)). 31:223b (4th sentence). 31:224d (last proviso).	May 29, 1945, ch. 135, § 1 (e) (1st sentence); restated July 3, 1952, ch. 548, § 1 (1st sentence of last par.), 66 Stat. 323. July 3, 1943, ch. 189, § 1 (4th sentence), 57 Stat. 373. Jan. 2, 1942, ch. 645, § 1 (last proviso); restated Apr. 22, 1943, ch. 67, § 1 (last proviso), 57 Stat. 67.

The words ''for all purposes'' and ''to the contrary'', in each source credit; ''by the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Defense, or their designees'' and ''such regulations as they, respectively, may prescribe hereunder'', in 31:222c(e); ''by the Secretary of the Army, or his designee'' and ''such regulations as he may prescribe hereunder'', in 31:223b; and ''by such Commissions'', in 31:224d; are omitted as surplusage.

AMENDMENTS

1972—Pub. L. 92–413 inserted reference to sections 2734a, 2734b, and 2737 of this title.

1964—Pub. L. 88–558 struck out reference to section 2732.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 5(1) of Pub. L. 88–558 provided that the amendment made by that section is effective two years from Aug. 31, 1964.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 88–558, Aug. 31, 1964, 78 Stat. 767, cited as a credit to this section and in the Effective Date of 1964 Amendment note above, was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1068.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 3071.

§ 2736. Property loss; personal injury or death: advance payment

(a)(1) In the case of a person who is injured or killed, or whose property is damaged or lost, under circumstances for which the Secretary of a military department is authorized by law to allow a claim, the Secretary of the military department concerned may make a payment to or for the person, or the legal representatives of the person, in advance of the submission of such a claim or, if such a claim is submitted, in advance of the final settlement of the claim. The amount of such a payment may not exceed $100,000.

(2) Payments under this subsection are limited to payments which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.

(3) The Secretary of a military department may delegate the authority to make payments under this subsection to the Judge Advocate General of an armed force under the jurisdiction of the Secretary. The Secretary may delegate such authority to any other officer or employee under the jurisdiction of the Secretary, but only with respect to the payment of amounts of $25,000 or less.

(4) Payments under this subsection shall be made under regulations prescribed by the Secretary of the military department concerned.

(b) Any amount paid under subsection (a) shall be deducted from any amount that may be allowed under any other provision of law to the person, or his legal representative, for injury, death, damage, or loss attributable to the accident concerned.

(c) So far as practicable, regulations prescribed under this section shall be uniform for the military departments.

(d) Payment of an amount under subsection (a) is not an admission by the United States of liability for the accident concerned.

(Added Pub. L. 87–212, § 1(1), Sept. 8, 1961, 75 Stat. 488; amended Pub. L. 90–521, § 2, Sept. 26, 1968, 82 Stat. 874; Pub. L. 98–564, § 3, Oct. 30, 1984, 98 Stat. 2919; Pub. L. 100–456, div. A, title VII, § 735(a), Sept. 29, 1988, 102 Stat. 2005.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Under such regulations as the Secretary of a military department may prescribe, payment of an amount not in excess of $10,000 may be made in advance of the submission of a claim to or for any person, or his legal representatives, who was injured or killed, or whose property was damaged or lost, under circumstances for which allowance of a claim is authorized by law. Payments under this subsection are limited to those which would otherwise be payable under section 2733 or 2734 of this title or section 715 of title 32.''

1984—Subsec. (a). Pub. L. 98–564 substituted ''$10,000'' for ''$1,000''.

1968—Pub. L. 90–521 substituted ''advance payment'' for ''incident to aircraft or missile operation'' in section catchline.

Subsec. (a). Pub. L. 90–521 substituted ''under circumstances'' for ''as the result of an accident involving an aircraft or missile under the control of that department''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 735(b) of Pub. L. 100–456 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any claim which would otherwise be payable under section 2733 or 2734 of title 10, United States Code, or under section 715 of title 32, United States Code, and which has not been finally settled on or before the date of the enactment of this Act [Sept. 29, 1988].''

§ 2737. Property loss; personal injury or death: incident to use of property of the United States and not cognizable under other law

(a) Under such regulations as the Secretary concerned may prescribe, he or his designee may settle and pay, in an amount not more than $1,000, a claim against the United States, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of a military department or the Coast Guard, or a member of the armed forces, incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(b) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department with respect to a claim, not cognizable under any other provision of law, for—

(1) damage to, or loss of, property; or

(2) personal injury or death;

caused by a civilian official or employee of the Department of Defense not covered by subsection (a), incident to the use of a vehicle of the United States at any place, or any other property of the United States on a Government installation.

(c) A claim may not be allowed under subsection (a) or (b) if the damage to, or loss of, property, or the personal injury or death was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(d) A claim for personal injury or death under this section may not be allowed for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

(e) No claim may be allowed under this section unless it is presented in writing within two years after it accrues.

(f) A claim may not be paid under subsection (a) or (b) unless the amount tendered is accepted by the claimant in full satisfaction.

(g) No claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract, may be paid under this section. No subrogated claim may be paid under this section.

(h) So far as practicable, regulations prescribed under this section shall be uniform. Regulations prescribed under this section by the Secretaries of the military departments must be approved by the Secretary of Defense.

(Added Pub. L. 87–769, § 1(1)(A), Oct. 9, 1962, 76 Stat. 767, § 2736; renumbered § 2737, Pub. L. 89–718, § 21(a), Nov. 2, 1966, 80 Stat. 1118.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2735 of this title.

§ 2738. Property loss: reimbursement of members for certain losses of household effects caused by hostile action

(a) AUTHORITY TO REIMBURSE.—The Secretary concerned may reimburse a member of the armed forces in an amount not more than $100,000 for a loss described in subsection (b).

(b) COVERED LOSSES.—This section applies with respect to a loss of household effects sustained during a move made incident to a change of permanent station when, as determined by the Secretary, the loss was caused by a hostile action incident to war or a warlike action by a military force.

(c) LIMITATION.—The Secretary may provide reimbursement under this section for a loss described in subsection (b) only to the extent that the loss is not reimbursed under insurance or under the authority of another provision of law.

(d) APPLICABILITY OF OTHER AUTHORITIES AND REQUIREMENTS.—Subsections (b), (d), (e), (f), and (g) of section 2733 of this title shall apply to a request for a reimbursement under this section as if the request were a claim against the United States.

(Added Pub. L. 103–337, div. A, title V, § 557(a), Oct. 5, 1994, 108 Stat. 2775.)

EFFECTIVE DATE

Section 557(c) of Pub. L. 103–337 provided that:

''(1) Section 2738 of title 10, United States Code, as added by subsection (a), applies with respect to losses incurred after June 30, 1990.

''(2) In the case of a loss incurred after June 30, 1990, and before the date of the enactment of this Act [Oct. 5, 1994], a request for reimbursement shall be filed with the Secretary of the military department concerned not later than two years after such date of enactment.''

§ 2739. Amounts recovered from third parties for loss or damage to personal property shipped or stored at Government expense: crediting to appropriations

(a) CREDITING OF COLLECTIONS.—Any qualifying military department third-party collection shall be credited to the appropriate current appropriation. Amounts so credited shall be merged with the funds in that appropriation and shall be available for the same period and purposes as the funds with which merged.

(b) APPROPRIATE CURRENT APPROPRIATION.—For purposes of subsection (a), the appropriate current appropriation with respect to a qualifying military department third-party collection is the appropriation currently available, as of the date of the collection, for the payment of claims by that military department for loss or damage of personal property shipped or stored at Government expense.

(c) QUALIFYING MILITARY DEPARTMENT THIRD-PARTY COLLECTIONS.—For purposes of subsection (a), a qualifying military department third-party collection is any amount that a military department collects under sections 3711, 3716, 3717, and 3721 of title 31 from a third party for a loss or damage to personal property that occurred during shipment or storage of the property at Government expense and for which the Secretary of the military department paid the owner in settlement of a claim.

(Added Pub. L. 105–261, div. A, title X, §1010(a)(1), Oct. 17, 1998, 112 Stat. 2117.)

EFFECTIVE DATE

Pub. L. 105–261, div. A, title X, §1010(b), Oct. 17, 1998, 112 Stat. 2117, provided that: ''Section 2739 of title 10, United States Code, as added by subsection (a), applies with respect to amounts collected by a military department on or after the date of the enactment of this Act [Oct. 17, 1998].''

CHAPTER 165—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
2771. Final settlement of accounts: deceased members.
2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home.
2773. Designation, powers, and accountability of deputy disbursing officials.
2773a. Departmental accountable officials.
2774. Claims for overpayment of pay and allowances and of travel and transportation allowances.
2775. Liability of members assigned to military housing.
2776. Use of receipts of public money for current expenditures.
2777. Requisitions for advances and removal of charges outstanding in accounts of advances.
[2778. Repealed.]
2779. Use of funds because of fluctuations in currency exchange rates of foreign countries.
2780. Debt collection.
2781. Availability of appropriations: exchange fees; losses in accounts.
2782. Damage to real property: disposition of amounts recovered.
2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds.
2784. Management of purchase cards.
2784a. Management of travel cards.
2785. Remittance addresses: regulation of alterations.
2786. Department of Defense payments by electronic transfers of funds: exercise of authority for waivers.
2787. Reports of survey.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §§1005(b), 1006(a)(2), 1007(b)(2), 1008(b), Dec. 2, 2002, 116 Stat. 2632–2635, substituted ''purchase'' for ''credit'' in item 2784 and added items 2773a, 2784a, and 2787.

1999—Pub. L. 106–65, div. A, title IX, §933(a)(2), title X, §1008(a)(2), Oct. 5, 1999, 113 Stat. 730, 738, added items 2784 to 2786.

1996—Pub. L. 104–316, title I, §105(d), Oct. 19, 1996, 110 Stat. 3830, struck out item 2778 ''Accounts of the military departments''.

Pub. L. 104–106, div. B, title XXVIII, §2821(b), Feb. 10, 1996, 110 Stat. 556, added item 2782.

1993—Pub. L. 103–160, div. A, title XI, §1182(a)(8)(C), Nov. 30, 1993, 107 Stat. 1771, added item 2783.

1990—Pub. L. 101–510, div. A, title XIV, §1405(c)(2), title XV, §1533(a)(4)(B), Nov. 5, 1990, 104 Stat. 1680, 1734, substituted ''Retirement Home'' for ''retirement homes'' in item 2772 and struck out item 2782 ''Unobligated balances withdrawn from availability for obligation: limitations on restoration''.

1989—Pub. L. 101–189, div. A, title III, §342(a)(2), title XVI, §1603(a)(2), Nov. 29, 1989, 103 Stat. 1420, 1598, added items 2772 and 2782.

1988—Pub. L. 100–370, §1(m)(2), July 19, 1988, 102 Stat. 850, added item 2781.

1987—Pub. L. 100–26, §7(j)(7)(C), Apr. 21, 1987, 101 Stat. 283, substituted ''allowances and of'' for ''allowances, and'' in item 2774.

1986—Pub. L. 99–661, div. A, title XIII, §1309(b), Nov. 14, 1986, 100 Stat. 3983, added item 2780.

1985—Pub. L. 99–224, §2(b), Dec. 28, 1985, 99 Stat. 1742, substituted ''and'' for ''other than'' in item 2774.

Pub. L. 99–167, title VIII, §802(d)(2), Dec. 3, 1985, 99 Stat. 987, substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in item 2775.

1984—Pub. L. 98–407, title VIII, §801(a)(2), Aug. 28, 1984, 98 Stat. 1518, substituted ''members for damage to housing and related equipment and furnishings'' for ''member for damages to family housing, equipment, and furnishings'' in item 2775.

1982—Pub. L. 97–258, §2(b)(7)(A), (8)(A), Sept. 13, 1982, 96 Stat. 1054, substituted ''Designation, powers, and accountability of deputy disbursing officials'' for ''Accountability for public money: disbursing officers; agent officers'' in item 2773 and added items 2776, 2777, 2778, and 2779.

1980—Pub. L. 96–513, title V, §511(96), Dec. 12, 1980, 94 Stat. 2928, struck out item 2772 ''Withholding pay of officers''.

Pub. L. 96–418, title V, §506(b), Oct. 10, 1980, 94 Stat. 1766, added item 2775.

1972—Pub. L. 92–453, §1(2), Oct. 2, 1972, 86 Stat. 759, added item 2774.

1962—Pub. L. 87–480, §1(1)(B), June 8, 1962, 76 Stat. 94, added item 2773.

§ 2771. Final settlement of accounts: deceased members

(a) In the settlement of the accounts of a deceased member of the armed forces, an amount due from the armed force of which he was a member shall be paid to the person highest on the following list living on the date of death:

(1) Beneficiary designated by him in writing to receive such an amount, if the designation is received, before the deceased member's death, at the place named in regulations to be prescribed by the Secretary concerned.

(2) Surviving spouse.

(3) Children and their descendants, by representation.

(4) Father and mother in equal parts or, if either is dead, the survivor.

(5) Legal representative.

(6) Person entitled under the law of the domicile of the deceased member.

(b) Designations and changes of designation of beneficiaries under subsection (a)(1) are subject to regulations to be prescribed by the Secretary

concerned. So far as practicable, these regulations shall be uniform for the uniformed services.

(c) Payments under subsection (a) shall be made by the Secretary of Defense.

(d) A payment under this section bars recovery by any other person of the amount paid.

(Aug. 10, 1956, ch. 1041, 70A Stat. 155; Pub. L. 85–861, §1(56), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 86–641, July 12, 1960, 74 Stat. 473; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §511(97), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 103–160, div. A, title XI, §1182(a)(11), Nov. 30, 1993, 107 Stat. 1771; Pub. L. 104–316, title II, §202(f), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	10:868 (less proviso). 34:941a (less proviso).	June 30, 1906, ch. 3914, §1 (last par. under ''State or Territorial Homes for Disabled Soldiers and Sailors''); restated Dec. 7, 1944, ch. 519; restated Feb. 25, 1946, ch. 35, §4, 60 Stat. 30. Feb. 25, 1946, ch. 35, §1, 60 Stat. 30; Aug. 4, 1949, ch. 393, §18, 63 Stat. 560.
2771(b)	10:868 (proviso). 34:941a (proviso).	

In subsections (a) and (b), the words ''General Accounting Office'' are substituted for the words ''accounting officers'', for clarity.

In subsection (a), the word ''member'' is substituted for the words ''officers or enlisted persons'', in 10:868 and 34:941a. The words ''his legal representative'' are substituted for the words ''a duly appointed legal representative of the estate'', since an estate, being property and not an entity, has no representative. The words ''duly appointed'' are omitted as surplusage. The words ''highest on the following list'' are substituted for the words ''following order of precedence'', in 10:868 and 34:941a. Clauses (1)–(4) are substituted for the words between the first and second colons of 10:868 and 34:941a. The words ''Surviving spouse'' are substituted for the words ''widow or widower'' after the words ''First, to''.

In subsection (b), the words ''That this section shall not be so construed as to prevent'', ''or persons'', and ''actually'', in 10:868 and 34:941a, are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2771(a)	37:361. 37:362. 37:365.	July 12, 1955, ch. 328, §§1–3, 4 (less proviso), 5 (first sentence), 69 Stat. 295, 296.
2771(b)	37:364 (less proviso).	
2771(c)	37:363 (less last sentence).	
2771(d)	37:363 (last sentence).	

In subsection (a), the definition of the term ''Department'', in 37:361, is omitted as unnecessary, since the particular departments referred to are spelled out in the revised text. The definition of the term ''uniformed services'', in 37:361, is omitted as covered by the word ''member'' in this revised section and by sections 3 and 4 of the Act enacting this revised section. Clauses (1)–(6) are substituted for the last 5 clauses of 37:362. The words ''regulations to be prescribed by the Secretary concerned'' are substituted for the words ''regulations of the Department concerned'', since the ''Department'', as such, cannot issue regulations.

In subsection (a)(2), the words ''surviving spouse'' are substituted for the words ''widow or widower''. As defined in section 101(32), ''spouse'' includes a widower.

In subsection (b), the words ''are subject to'' are substituted for the words ''shall be made under''.

In subsection (c), the word ''Under'' is substituted for the words ''Subject to''. The words ''rules and'' are omitted as surplusage.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–316 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Under such regulations as the Comptroller General may prescribe, payments under subsection (a) shall be made by the military department concerned or the Department of Transportation, as the case may be. Payment under clause (6) of subsection (a) shall be made—

''(1) upon settlement by the General Accounting Office; or

''(2) as otherwise authorized by the Comptroller General.''

1993—Subsec. (a). Pub. L. 103–160, §1182(a)(11)(A), struck out ''who dies after December 31, 1955'' after ''armed forces'' in introductory provisions.

Subsec. (b). Pub. L. 103–160, §1182(a)(11)(B), substituted ''for the uniformed services'' for ''for the armed forces, the National Oceanic and Atmospheric Administration, and the Public Health Service''.

1980—Subsec. (b). Pub. L. 96–513, §511(97)(A), substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsec. (c). Pub. L. 96–513, §511(97)(B), substituted ''Department of Transportation'' for ''Department of the Treasury''.

1966—Subsec. (b). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

1960—Subsec. (c). Pub. L. 86–641 substituted provisions requiring payment under clause (6) of subsection (a) to be made upon settlement by the General Accounting Office or as otherwise authorized by the Comptroller General for provisions which permitted payments under clauses (2) to (6) of subsection (a) to be made only after settlement by the General Accounting Office.

1958—Subsec. (a). Pub. L. 85–861 amended subsec. (a) generally to restrict application of section to members of the armed forces who die after Dec. 31, 1955, and to permit payment to the designated beneficiaries, surviving spouse, children and their descendants, and to parents before payment to the legal representative.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designations and changes of designation of beneficiaries for provisions which authorized reimbursement of funeral expenses.

Subsecs. (c), (d). Pub. L. 85–861 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

FINAL SETTLEMENT OF ACCOUNTS OF MEMBERS WHO DIED BEFORE JANUARY 1, 1960

Section 29 of Pub. L. 85–861 provided that:

''(a) In the settlement of the accounts of a member of the Army, Navy, Air Force, or Marine Corps who died before January 1, 1956, if a demand is not made by his legal representative, the General Accounting Office may allow any amount due, to the person highest on the following list living on the date of settlement:

''(1) Surviving spouse.

''(2) Children and their issue, per stirpes.

''(3) Father and mother in equal parts or, if either is dead, the survivor.

''(4) Brothers and sisters, and their children, per stirpes.

''(b) Reimbursement for funeral expenses may be made from the amount due the decedent's estate, if the person who paid the expenses presents a claim for them before settlement by the General Accounting Office.''

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Section 31 of Pub. L. 85–861 provided that: ''The designation of a beneficiary made for the purposes of any six months' death gratuity, including the designation of a person whose right to the gratuity does not depend upon that designation, and received in the military department concerned, the Department of the Treasury, the Department of Commerce, or the Department of Health, Education, and Welfare, as the case may be, before January 1, 1956, is considered as the designation of a beneficiary for the purposes of section 2771 of title 10, United States Code [this section], section 714 of title 32, United States Code, and sections 3 and 4 of this Act [amending section 857a of Title 33, and section 213a of Title 42], in the absence of a designation under one of those sections, unless the member making the designation was missing, missing in action, in the hands of a hostile force, or interned in a foreign country any time after July 11, 1955, and before January 1, 1956.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1552 of this title; title 5 section 8316; title 24 section 420; title 32 section 714; title 33 section 3071; title 37 section 501; title 42 section 213a.

§ 2772. Share of fines and forfeitures to benefit Armed Forces Retirement Home

(a) DEPOSIT REQUIRED.—The Secretary of the military department concerned shall deposit in the Armed Forces Retirement Home Trust Fund a percentage (determined under subsection (b)) of the following amounts:

(1) The amount of forfeitures and fines adjudged against an enlisted member, warrant officer, or limited duty officer of the armed forces by sentence of a court martial or under authority of section 815 of this title (article 15) over and above any amount that may be due from the member, warrant officer, or limited duty officer for the reimbursement of the United States or any individual.

(2) The amount of forfeitures on account of the desertion of an enlisted member, warrant officer, or limited duty officer of the armed forces.

(b) DETERMINATION OF PERCENTAGE.—The Armed Forces Retirement Home Board shall determine, on the basis of the financial needs of the Armed Forces Retirement Home, the percentage of the amounts referred to in subsection (a) to be deposited in the trust fund referred to in such subsection.

(c) APPLICATION TO COAST GUARD.—In this section, the term ''armed forces'' does not include the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 101–189, div. A, title III, §342(a)(1), Nov. 29, 1989, 103 Stat. 1419; amended Pub. L. 101–510, div. A, title XV, §1533(a)(3), (4)(A), Nov. 5, 1990, 104 Stat. 1733.)

PRIOR PROVISIONS

A prior section 2772, act Aug. 10, 1956, ch. 1041, 70A Stat. 156, authorized withholding of pay of officers of the Army, Navy, Air Force, or Marine Corps, and is covered by section 1007 of Title 37, Pay and Allowances of the Uniformed Services, prior to repeal by Pub. L. 87–649, §14c(3), Sept. 7, 1962, 76 Stat. 501, effective Nov. 1, 1962.

AMENDMENTS

1990—Pub. L. 101–510, §1533(a)(4)(A), substituted ''Retirement Home'' for ''retirement homes'' in section catchline and amended text generally, substituting subsecs. (a) to (c) relating to shares of fines and forfeitures to benefit the Armed Forces Retirement Home for former subsecs. (a) and (b) relating to shares of fines and forfeitures to benefit the Soldiers' Home and the Naval Home.

Pub. L. 101–510, §1533(a)(3), inserted ''and forfeitures'' after ''fines'' in subsecs. (a)(1)(A) and (b)(1)(A) and substituted '', warrant officer, or limited duty officer'' for ''or warrant officer'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 1533(a)(3) of Pub. L. 101–510 provided that the amendment by that section was effective Nov. 5, 1990, prior to repeal by Pub. L. 107–107, div. A, title XIV, §1409, Dec. 28, 2001, 115 Stat. 1265.

Amendment by section 1533(a)(4)(A) of Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE

Section 342(b) of Pub. L. 101–189 provided that:

''(1) Subsection (a) of section 2772 of such title [10 U.S.C. 2772(a)], as added by subsection (a), shall apply with respect to fines and forfeitures adjudged after the date of the enactment of this Act [Nov. 29, 1989].

''(2) Subsection (b) of such section shall apply with respect to fines and forfeitures adjudged after May 31, 1990.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 24 section 419.

§ 2773. Designation, powers, and accountability of deputy disbursing officials

(a)(1) Subject to paragraph (3), a disbursing official of the Department of Defense may designate a deputy disbursing official—

(A) to make payments as the agent of the disbursing official;

(B) to sign checks drawn on disbursing accounts of the Secretary of the Treasury; and

(C) to carry out other duties required under law.

(2) The penalties for misconduct that apply to a disbursing official apply to a deputy disbursing official designated under this subsection.

(3) A disbursing official may make a designation under paragraph (1) only with the approval of the Secretary of Defense or, in the case of a

disbursing official of a military department, the Secretary of that military department.

(b)(1) If a disbursing official of the Department of Defense dies, becomes disabled, or is separated from office, a deputy disbursing official may continue the accounts and payments in the name of the former disbursing official until the last day of the 2d month after the month in which the death, disability, or separation occurs. The accounts and payments shall be allowed, audited, and settled as provided by law. The Secretary of the Treasury shall honor checks signed in the name of the former disbursing official in the same way as if the former disbursing official had continued in office.

(2) The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official, is liable for the actions of the deputy disbursing official under this subsection.

(Added Pub. L. 87–480, §1(1)(A), June 8, 1962, 76 Stat. 94; amended Pub. L. 97–258, §2(b)(7)(B), Sept. 13, 1982, 96 Stat. 1054; Pub. L. 104–106, div. A, title IX, §913(a)(2), Feb. 10, 1996, 110 Stat. 410.)

HISTORICAL AND REVISION NOTES
1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2773(a)	10:2773. 31:103a.	July 3, 1926, ch. 775, 44 Stat. 888; June 6, 1972, Pub. L. 92–310, §231(bb), 86 Stat. 212.
2773(b)	31:103b.	July 31, 1953, ch. 300, 67 Stat. 296; June 6, 1972, Pub. L. 92–310, §231(ff), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officer'' for consistency with other titles of the United States Code. The words ''Secretary of the Treasury'' are substituted for ''Treasurer of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated as section 321 of the revised title contained in section 1 of the bill. The text of 10:2773 is omitted as being superseded by 31:103a and 103b.

In subsection (a)(1), before clause (A), the words ''With the approval of a Secretary of a military department when the Secretary considers it necessary'' are substituted for ''When, in the opinion of the Secretary of the Army, Navy, or Air Force, the exigencies of the service so require . . . with the approval of the head of their executive department'' in 31:103a because of 10:101(7), to eliminate unnecessary words, and for consistency. The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). The words ''deputy disbursing official'' are substituted for ''deputies'' for clarity. In clause (A), the words ''to make payments'' are substituted for ''for the purpose of having them make disbursements'' to eliminate unnecessary words. In clause (C), the words ''to be performed by such disbursing officers'' are omitted as unnecessary.

In subsection (a)(2), the words ''deputy disbursing official'' are substituted for ''agent officer'' for clarity and consistency.

In subsection (b)(1), the word ''disabled'' is substituted for ''incapacity'' for consistency in the title. The word ''until'' is substituted for ''for a period of time not to extend beyond'' to eliminate unnecessary words.

In subsection (b)(2), the words ''The deputy disbursing official, and not the former disbursing official or the estate of the former disbursing official'' are substituted for ''The former disbursing officer or his estate . . . but the deputy disbursing officer shall be responsible therefor'' for clarity and because of the restatement. The word ''liable'' is substituted for ''subject to any legal liability or penalty'' to eliminate unnecessary words. The word ''actions'' is substituted for ''official acts and defaults''. The words ''in the name or in the place of the former disbursing officer'' are omitted as unnecessary.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106, §913(a)(2)(A)(i), substituted ''Subject to paragraph (3), a disbursing official of the Department of Defense'' for ''With the approval of a Secretary of a military department when the Secretary considers it necessary, a disbursing official of the military department''.

Subsec. (a)(3). Pub. L. 104–106, §913(a)(2)(A)(ii), added par. (3).

Subsec. (b)(1). Pub. L. 104–106, §913(a)(2)(B), substituted ''the Department of Defense'' for ''any military department''.

1982—Pub. L. 97–258 substituted provisions authorizing a disbursing official of a military department to designate a deputy disbursing official with the same duties and penalties for misconduct as those of the disbursing official and allowing a deputy disbursing official to continue the accounts and payments in the name of a former disbursing official for two months after the death, disability, or separation of the former disbursing official for provisions authorizing any officer of an armed force accountable for public money to entrust it to another officer of an armed force to make disbursement as his agent, with both officers pecuniarily responsible to the United States for that money.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 673.

§2773a. Departmental accountable officials

(a) DESIGNATION BY SECRETARY OF DEFENSE.—The Secretary of Defense may designate any civilian employee of the Department of Defense or member of the armed forces under the Secretary's jurisdiction who is described in subsection (b) as an employee or member who, in addition to any other potential accountability, may be held accountable through personal monetary liability for an illegal, improper, or incorrect payment made[1] the Department of Defense described in subsection (c). Any such designation shall be in writing. Any employee or member who is so designated may be referred to as a ''departmental accountable official''.

(b) COVERED EMPLOYEES AND MEMBERS.—An employee or member of the armed forces described in this subsection is an employee or member who—

(1) is responsible in the performance of the employee's or member's duties for providing to a certifying official of the Department of Defense information, data, or services that are directly relied upon by the certifying official in the certification of vouchers for payment; and

(2) is not otherwise accountable under subtitle III of title 31 or any other provision of law for payments made on the basis of such vouchers.

[1] So in original. Probably should be followed by ''by''.

(c) PECUNIARY LIABILITY.—(1) The Secretary of Defense may subject a departmental accountable official to pecuniary liability for an illegal, improper, or incorrect payment made by the Department of Defense if the Secretary determines that such payment—

(A) resulted from information, data, or services that that official provided to a certifying official and upon which that certifying official directly relies in certifying the voucher supporting that payment; and

(B) was the result of fault or negligence on the part of that departmental accountable official.

(2) Pecuniary liability under this subsection shall apply in the same manner and to the same extent as applies to an official accountable under subtitle III of title 31.

(3) Any pecuniary liability of a departmental accountable official under this subsection for a loss to the United States resulting from an illegal, improper, or incorrect payment is joint and several with that of any other officer or employee of the United States or member of the uniformed services who is pecuniarily liable for such loss.

(d) CERTIFYING OFFICIAL DEFINED.—In this section, the term ''certifying official'' means an employee who has the responsibilities specified in section 3528(a) of title 31.

(Added Pub. L. 107–314, div. A, title X, §1005(a), Dec. 2, 2002, 116 Stat. 2631.)

§ 2774. Claims for overpayment of pay and allowances and of travel and transportation allowances

(a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances, to or on behalf of a member or former member of the uniformed services, the collection of which would be against equity and good conscience and not in the best interest of the United States, may be waived in whole or in part by—

(1) the Director of the Office of Management and Budget; or

(2) the Secretary concerned, as defined in section 101(5) of title 37, when—

(A) the claim is in an amount aggregating not more than $1,500; and

(B) the waiver is made in accordance with standards which the Director of the Office of Management and Budget shall prescribe.

(b) The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or

(2) if application for waiver is received in his office after the expiration of three years immediately following the date on which the erroneous payment was discovered.

(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the department concerned at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that department for that refund within two years following the effective date of the waiver. The Secretary concerned shall pay from current applicable appropriations that refund in accordance with this section.

(d) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(e) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(f) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(Added Pub. L. 92–453, §1(1), Oct. 2, 1972, 86 Stat. 758; amended Pub. L. 96–513, title V, §511(98), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 99–224, §2(a), Dec. 28, 1985, 99 Stat. 1741; Pub. L. 100–26, §7(j)(7)(A), (B), Apr. 21, 1987, 101 Stat. 283; Pub. L. 102–190, div. A, title VI, §657(b), Dec. 5, 1991, 105 Stat. 1393; Pub. L. 104–316, title I, §105(b), Oct. 19, 1996, 110 Stat. 3830.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–316, §105(b)(1), substituted ''Director of the Office of Management and Budget'' for ''Comptroller General'' in par. (1), and in par. (2) inserted ''and'' at end of subpar. (A), redesignated subpar. (C) as (B) and substituted ''Director of the Office of Management and Budget'' for ''Comptroller General'', and struck out former subpar. (B) which read as follows ''the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official; and''.

Subsec. (b). Pub. L. 104–316, §105(b)(2), substituted ''Director of the Office of Management and Budget'' for ''Comptroller General''.

1991—Subsec. (a)(2)(A). Pub. L. 102–190 substituted ''$1,500'' for ''$500''.

1987—Pub. L. 100–26, §7(j)(7)(A), substituted ''allowances and of'' for ''allowances, and'' in section catchline.

Subsec. (a). Pub. L. 100–26, §7(j)(7)(B), struck out ''as defined in section 101(3) of title 37,'' after ''uniformed services,''.

1985—Pub. L. 99–224, §2(a)(1), substituted ''and'' for ''other than'' in section catchline.

Subsec. (a). Pub. L. 99–224, §2(a)(2), substituted ''made before, on, or after October 2, 1972, or arising out of an erroneous payment of travel and transportation allowances'' for '', other than travel and transportation allowances, made before or after October 2, 1972''.

Subsec. (b)(2). Pub. L. 99–224, §2(a)(3), struck out ''of pay or allowances, other than travel and transportation allowances,'' after ''payment''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''October 2, 1972'' for ''the effective date of this section''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–316 effective 60 days after Oct. 19, 1996, see section 101(e) of Pub. L. 104–316, set out as a note under section 130c of Title 2, The Congress.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–224 applicable to any claim arising out of an erroneous payment of travel and

transportation allowances made on or after Dec. 28, 1985, see section 4 of Pub. L. 99–224, set out as a note under section 5584 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CANCELLATION OF DEBTS UP TO $2,500 OF UNIFORMED SERVICE MEMBERS INCURRED IN CONNECTION WITH OPERATION DESERT SHIELD/STORM

Pub. L. 104–61, title VIII, §8052, Dec. 1, 1995, 109 Stat. 662, provided that: ''Notwithstanding any other provision of law, the Secretary of Defense may, when he considers it in the best interest of the United States, cancel any part of an indebtedness, up to $2,500, that is or was owed to the United States by a member or former member of a uniformed service if such indebtedness, as determined by the Secretary, was incurred in connection with Operation Desert Shield/Storm: *Provided*, That the amount of an indebtedness previously paid by a member or former member and cancelled under this section shall be refunded to the member.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8060, Sept. 30, 1994, 108 Stat. 2633.

Pub. L. 103–139, title VIII, §8071, Nov. 11, 1993, 107 Stat. 1457.

Pub. L. 102–396, title IX, §9100, Oct. 6, 1992, 106 Stat. 1926.

Pub. L. 102–172, title VIII, §8138, Nov. 26, 1991, 105 Stat. 1212.

§2775. Liability of members assigned to military housing

(a)(1) A member of the armed forces shall be liable to the United States for damage to any family housing unit or unaccompanied personnel housing unit, or damage to or loss of any equipment or furnishings of any family housing unit or unaccompanied personnel housing unit, assigned to or provided such member if (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) the damage or loss was caused by the abuse or negligence of the member (or a dependent of the member) or of a guest of the member (or a dependent of the member).

(2) A member of the armed forces—

(A) who is assigned or provided a family housing unit; and

(B) who fails to clean satisfactorily that housing unit (as determined under regulations prescribed by the Secretary of Defense or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy) upon termination of the assignment or provision of that housing unit,

shall be liable to the United States for the cost of cleaning made necessary as a result of that failure.

(b) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, may establish limitations on liability under this section, including (in the case of liability under subsection (a)(1)) different limitations based upon the degree of abuse or negligence involved, and may compromise or waive a claim of the United States under this section.

(c)(1) The Secretary concerned may deduct from a member's pay an amount sufficient to pay for the cost of any repair or replacement made necessary as the result of any abuse or negligence referred to in subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2), for which the member is liable. Regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means.

(2) The final determination of an amount to be deducted from the pay of an officer of an armed force in accordance with regulations prescribed under this section shall be deemed to be a special order authorizing such deduction for the purposes of section 1007 of title 37.

(d) Amounts received under this section shall be credited to the family housing operations and maintenance account, in the case of damage to a family housing unit (or the equipment or furnishings of a family housing unit) or failure to clean satisfactorily a family housing unit, or to the operations and maintenance account, in the case of damage to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit), of the military department or defense agency concerned, or the operating expenses account of the Coast Guard, as appropriate. Amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in those accounts.

(e) The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include—

(1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence for which a member is liable under subsection (a)(1);

(2) regulations for determining the cost of cleaning made necessary as a result of the failure to clean satisfactorily for which a member is liable under subsection (a)(2); and

(3) provisions for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.

(Added Pub. L. 96–418, title V, §506(a), Oct. 10, 1980, 94 Stat. 1765; amended Pub. L. 97–214, §10(a)(6), July 12, 1982, 96 Stat. 175; Pub. L. 98–407, title VIII, §801(a)(1), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 99–167, title VIII, §802(a)–(d)(1), Dec. 3, 1985, 99 Stat. 986; Pub. L. 99–661, div. A, title XIII, §1343(a)(19), Nov. 14, 1986, 100 Stat. 3993; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsecs. (a)(1), (2)(B), (b), (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1986—Subsec. (a)(1). Pub. L. 99–661, §1343(a)(19)(A), substituted ''(as determined under regulations prescribed by the Secretary of Defense or the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) the'' for ''it is determined, under regulations prescribed by the Secretary of Defense and the Secretary of Transportation

when the Coast Guard is not operating as a service in the Navy, that the''.

Subsec. (b). Pub. L. 99–661, §1343(a)(19)(B), inserted a comma after ''Secretary of Defense'', substituted ''with respect to the Coast Guard when it'' for ''when the Coast Guard'', and inserted a comma after ''Navy''.

Subsec. (e). Pub. L. 99–661, §1343(a)(19)(C), substituted ''with respect to the Coast Guard when it'' for ''when the Coast Guard''.

1985—Pub. L. 99–167, §802(d)(1), substituted ''assigned to military housing'' for ''for damage to housing and related equipment and furnishings'' in section catchline.

Subsec. (a). Pub. L. 99–167, §802(a), (b)(1), designated existing provisions as par. (1), and in par. (1) as so designated, inserted ''and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy'', and added par. (2).

Subsec. (b). Pub. L. 99–167, §802(b)(1), (c)(1), inserted ''and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy'' and ''(in the case of liability under subsection (a)(1))''.

Subsec. (c)(1). Pub. L. 99–167, §802(c)(2), substituted ''subsection (a)(1), or the cost of any cleaning made necessary by a failure to clean satisfactorily a family housing unit referred to in subsection (a)(2),'' for ''subsection (a)''.

Subsec. (d). Pub. L. 99–167, §802(b)(2), (c)(3), inserted ''or failure to clean satisfactorily a family housing unit'' and '', or the operating expenses account of the Coast Guard, as appropriate''.

Subsec. (e). Pub. L. 99–167, §802(c)(4), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''The Secretary of Defense shall prescribe regulations to carry out the provisions of this section, including (1) regulations for determining the cost of repairs and replacements made necessary as the result of abuse or negligence referred to in subsection (a), and (2) regulations providing for limitations of liability, the compromise or waiver of claims, and the collection of amounts owed under this section.''

1984—Pub. L. 98–407 substituted ''Liability of members for damage to housing and related equipment and furnishings'' for ''Liability of member for damages to family housing, equipment, and furnishings'' in section catchline.

Subsec. (a). Pub. L. 98–407 amended subsec. (a) generally, inserting references to unaccompanied personnel housing units, and expanding liability of members of the Armed Forces to include damages caused by the abuse or negligence of a guest of the member or of a dependent of the member.

Subsec. (b). Pub. L. 98–407 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98–407 redesignated former subsec. (b) as (c), in subsec. (c)(1) as so redesignated substituted reference to any abuse or negligence for which the member is liable for reference to any abuse or negligence on the part of such member or any dependent of such member, inserted provision that regulations implementing this section may also provide for the collection of amounts owed under this section by any other authorized means, and in subsec. (c)(2), as so redesignated, substituted reference to regulations prescribed under this section for reference to regulations issued under this section. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98–407 redesignated former subsec. (c) as (d) and substituted provisions requiring that amounts received under this section be credited either to the family housing operations and maintenance account of the department or agency concerned, (in the case of damage to family housing or equipment or furnishings therein) or the operations and maintenance account of the department or agency concerned (in the case of damage to an unaccompanied personnel housing unit or equipment or furnishings therein) for provisions that amounts deducted from members' pay under this section had to be credited to the Department of Defense Military Family Housing Management Account provided for in section 2831 of this title. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–407 redesignated former subsec. (d) as (e)(1), substituted reference to abuse or negligence referred to in subsec. (a) for reference to abuse or negligence on the part of a member or dependent of a member, and added par. (2).

1982—Subsec. (c). Pub. L. 97–214, §10(a)(6), substituted ''Military Family Housing Management Account provided for in section 2831 of this title'' for ''family housing management account established under section 501 of Public Law 87–554 (76 Stat. 236; 42 U.S.C. 1594a–1)''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 608 of title VI of Pub. L. 96–418, set out as an Effective Date of 1980 Amendment note under section 2675 of this title.

PROMULGATION OF REGULATIONS AND APPLICABILITY OF 1984 AMENDMENTS

Section 801(b) of Pub. L. 98–407 provided that:

''(1) Regulations shall be prescribed under subsection (e) of section 2775 of title 10, United States Code, as amended by subsection (a), not later than 180 days after the date of the enactment of this Act [Aug. 28, 1984]. That section shall apply with respect to the liability of a member under such section for damage or loss to an unaccompanied personnel housing unit (or the equipment or furnishings of an unaccompanied personnel housing unit) or for damage or loss caused by a guest of the member or of a dependent of the member to a family housing unit (or the equipment or furnishings of a family housing unit) only in the case of damage or loss caused on or after the date that such regulations take effect.

''(2) The authority of the Secretary of Defense under subsection (b) of such section is applicable to any claim of the United States under such section, whether such claim arose before, on, or after the date of the enactment of this Act [Aug. 28, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2782 of this title.

§ 2776. Use of receipts of public money for current expenditures

Without deposit to the credit of the Secretary of the Treasury and without withdrawal on money requisitions, a disbursing official of the Department of Defense may use receipts of public money charged in the disbursing official's accounts (except receipts to be credited to river, harbor, and flood control appropriations) for current expenditures, with necessary bookkeeping adjustments being made.

(Added Pub. L. 97–258, §2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2776	31:493a.	Aug. 1, 1953, ch. 305, §611, 67 Stat. 350.

The words ''disbursing official'' are substituted for ''officer . . . on disbursing duty'' for consistency with other titles of the United States Code. The words ''On and after August 1, 1953'' are omitted as executed. The words ''Secretary of the Treasury'' are substituted for ''Treasury of the United States'' because of section 1(a) of Reorganization Plan No. 26 of 1950 (eff. July 31, 1950, 64 Stat. 1280), restated in section 321 of the revised title contained in section 1 of the bill. The words ''from sales or other sources'' are omitted as surplus. The words ''with'' and ''being'' are added because of the restatement. The words ''of appropriations, funds, and accounts to be . . . in the settlement of their disbursing accounts'' are omitted as unnecessary.

PRIOR PROVISIONS

Act Aug. 1, 1953, cited as the source of this section in the Historical and Revision Notes above, is known as the Department of Defense Appropriation Act, 1954. Similar provisions were contained in the following appropriation acts:

July 10, 1952, ch. 630, title VI, § 613, 66 Stat. 532.
Oct. 18, 1951, ch. 512, title VI, § 613, 65 Stat. 446.
Sept. 6, 1950, ch. 896, Ch. X, title VI, § 615, 64 Stat. 753.
Oct. 29, 1949, ch. 787, title VI, § 618, 63 Stat. 1020.
June 24, 1948, ch. 632, 62 Stat. 651.
July 30, 1947, ch. 357, title I, § 1, 61 Stat. 551.
July 16, 1946, ch. 583, § 1, 60 Stat. 543.
July 3, 1945, ch. 265, § 1, 59 Stat. 386.
June 28, 1944, ch. 303, § 1, 58 Stat. 575.
July 1, 1943, ch. 185, § 1, 57 Stat. 349.
July 2, 1942, ch. 477, § 1, 56 Stat. 613.
June 30, 1941, ch. 262, § 1, 55 Stat. 369.
June 13, 1940, ch. 343, § 1, 54 Stat. 355.
Apr. 26, 1939, ch. 88, § 1, 53 Stat. 597.
June 11, 1938, ch. 347, § 1, 52 Stat. 646.
July 1, 1937, ch. 423, § 1, 50 Stat. 446.

§ 2777. Requisitions for advances and removal of charges outstanding in accounts of advances

(a) The Secretary of a military department may issue to a disbursing official or agent of the department a requisition for an advance of not more than the total appropriation for the department. The amount advanced shall be—

(1) under an ''account of advances'' for the department;

(2) on a proper voucher;

(3) only for obligations payable under specific appropriations;

(4) charged to, and within the limits of, each specific appropriation; and

(5) returned to the account of advances.

(b) A charge outstanding in an account of advances of a military department shall be removed by crediting the account of advances of the department and deducting the amount of the charge from an appropriation made available for advances to the department when—

(1) relief has been granted or may be granted later to a disbursing official or agent of the department operating under an account of advances and under a law having no provision for removing charges outstanding in an account of advances; or

(2) the charge has been—

(A) outstanding in the account of advances of the department for 2 complete fiscal years; and

(B) certified by the head of the department as uncollectable.

(c) Subsection (b) does not affect the financial liability of a disbursing official or agent.

(Added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055; amended Pub. L. 98–525, title XIV, § 1405(43), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 104–316, title I, § 105(c), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2777(a)	31:536, 537.	June 5, 1920, ch. 240 (1st, 2d pars. under heading ''Advances to Disbursing Officers''), 41 Stat. 975.
	31:539, 540.	June 19, 1878, ch. 312, §§ 1, 2, 20 Stat. 167.
2777(b), (c).	31:95b (related to Army, Navy, Air Force).	June 4, 1954, ch. 264, § 1 (related to Army, Navy, Air Force), 68 Stat. 175; June 6, 1972, Pub. L. 92–310, § 231(gg), 86 Stat. 213.

In the section, the words ''disbursing official'' are substituted for ''disbursing officers'' for consistency with other titles of the United States Code.

In subsection (a), before clause (1), the words ''Secretary of a military department'' are substituted for ''Secretary of the Army'' in 31:536 and for ''Secretary of the Navy'' in 31:539 because of 10:101(7). The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The Secretary of the Air Force is included because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). In clause (1), the word ''General'' in 31:539 is omitted as surplus. In clause (3), the words ''and 'Pay of the Navy' shall be used only for its legitimate purpose, as provided by law'' are omitted as unnecessary. In clause (5), the words ''by pay and counterwarrant'' in 31:537 and 540 are omitted as unnecessary.

In subsection (b), before clause (1), the word ''appropriate'' is omitted as surplus. The words ''deducting the amount of the charge from'' are substituted for ''debiting'' for clarity. In clause (2)(B), the word ''concerned'' is omitted as surplus.

In subsection (c), the words ''in any way'' and ''of the United States'' are omitted as surplus.

AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104–316 struck out ''to the Comptroller General'' after ''head of the department''.

1984—Subsec. (c). Pub. L. 98–525 struck out ''of this section'' after ''Subsection (b)''.

[§ 2778. Repealed. Pub. L. 104–316, title I, § 105(d), Oct. 19, 1996, 110 Stat. 3830]

Section, added Pub. L. 97–258, § 2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1055, related to management of accounts of military departments by Comptroller General.

§ 2779. Use of funds because of fluctuations in currency exchange rates of foreign countries

(a) TRANSFERS BACK TO FOREIGN CURRENCY FLUCTUATIONS APPROPRIATION.—(1) Funds transferred from the appropriation ''Foreign Currency Fluctuations, Defense'' may be transferred back to the appropriation—

(A) when the funds are not needed to pay obligations incurred because of fluctuations in currency exchange rates of foreign countries in the appropriation to which the funds were originally transferred; and

(B) because of subsequent favorable fluctuations in the rates or because other funds are, or become, available to pay the obligations.

(2) A transfer back to the Foreign Currency Fluctuations, Defense appropriation may not be made after the end of the second fiscal year after the fiscal year that the appropriation to which the funds were originally transferred is available for obligation.

(b) FUNDING FOR LOSSES IN MILITARY CONSTRUCTION AND FAMILY HOUSING.—(1) One hundred million dollars, plus $25,000,000 from Family Housing, Defense, are appropriated to the Secretary of Defense, to remain available until spent. The appropriation is available only to provide funds to eliminate losses in military construction or expenses of family housing for the Department of Defense caused by fluctuations in currency exchange rates of foreign countries that changed after a budget request was submitted to Congress.

(2) Funds provided under this subsection are merged with and are available for the same purpose and for the same time period as the appropriation to which they are applied. An authorization or limitation limiting the amount that may be obligated or spent is increased to the extent necessary to reflect fluctuations in exchange rates from those used in preparing the budget submission.

(3) An obligation payable in the currency of a foreign country may be recorded as an obligation based on exchange rates used in preparing a budget submission. A change reflecting fluctuations in the exchange rate may be recorded as a disbursement is made.

(c) TRANSFERS TO MILITARY PERSONNEL ACCOUNTS.—The Secretary of Defense may transfer funds to military personnel appropriations for a fiscal year out of funds available to the Department of Defense for that fiscal year under the appropriation ''Foreign Currency Fluctuations, Defense''.

(d) TRANSFERS TO FOREIGN CURRENCY FLUCTUATIONS ACCOUNT.—(1) The Secretary of Defense may transfer to the appropriation ''Foreign Currency Fluctuations, Defense'' unobligated amounts of funds appropriated for operation and maintenance and unobligated amounts of funds appropriated for military personnel.

(2) Any transfer from an appropriation under paragraph (1) shall be made not later than the end of the second fiscal year following the fiscal year for which the appropriation is provided.

(3) Any transfer made pursuant to the authority provided in this subsection shall be limited so that the amount in the appropriation ''Foreign Currency Fluctuations, Defense'' does not exceed $970,000,000 at the time the transfer is made.

(e) CONDITIONS OF AVAILABILITY FOR TRANSFERRED FUNDS.—Amounts transferred under subsection (c) or (d) shall be merged with and be available for the same purposes and for the same period as the appropriations to which transferred.

(Added Pub. L. 97–258, §2(b)(8)(B), Sept. 13, 1982, 96 Stat. 1056; amended Pub. L. 101–510, div. A, title XIII, §1301(15), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 104–106, div. A, title IX, §911(a)–(c), (e), Feb. 10, 1996, 110 Stat. 406, 407.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2779(a)	31:628–2.	July 25, 1979, Pub. L. 96–38, §100 (last par. under heading ''General Provisions''), 93 Stat. 100.
2779(b)	31:628–3.	Nov. 30, 1979, Pub. L. 96–130, §100 (par. under heading ''Foreign Currency Fluctuation, Construction, Defense''), 93 Stat. 1019.

In subsection (a)(1), before clause (A), the words ''during the current fiscal year or on and after July 25, 1979'' are omitted as executed. The words ''from an appropriation to which they were transferred'' are omitted as surplus. In clause (A), the words ''of foreign countries'' are added for consistency.

In subsection (a)(2), the words ''back to the Foreign Currency Fluctuations, Defense appropriation'' are substituted for ''authorized by this provision'' for clarity.

In subsection (b)(1), the words ''the sum of'', ''which shall be derived'', and ''to appropriations and funds'' are omitted as surplus. The word ''only'' is added for clarity. The words ''for those appropriations or funds'' are omitted as surplus. The words ''available during fiscal year 1980, or thereafter'' are omitted as executed. The words ''Department of Defense'' are substituted for ''military departments and Defense agencies'' because of 10:101(5).

In subsection (b)(2), the words ''or fund'' are omitted as surplus. The words ''now or on and after November 30, 1979'' are omitted as executed. The words ''contained within appropriations or other provisions of law'', ''hereby'', and ''applicable'' are omitted as surplus.

In subsection (b)(3), the words ''contracts or other . . . entered into'' are omitted as surplus.

PRIOR PROVISIONS

Provisions similar to those in subsec. (d) of this section were contained in Pub. L. 97–377, title I, §101(c) [title VII, §791], Dec. 21, 1982, 96 Stat. 1865, which was set out as a note under section 114 of this title, prior to repeal by Pub. L. 104–106, §911(d)(2).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, §911(e)(1), inserted heading.

Subsec. (a)(2). Pub. L. 104–106, §911(e)(2), substituted ''second fiscal year'' for ''2d fiscal year''.

Subsec. (b). Pub. L. 104–106, §911(e)(3), inserted heading.

Subsec. (c). Pub. L. 104–106, §911(a), added subsec. (c).

Subsec. (d). Pub. L. 104–106, §911(b), added subsec. (d).

Subsec. (e). Pub. L. 104–106, §911(c), added subsec. (e).

1990—Subsec. (b)(4). Pub. L. 101–510 struck out par. (4) which read as follows: ''The Secretary each year shall report to Congress on funds made available under this subsection.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 911(f) of Pub. L. 104–106 provided that: ''Subsections (c) and (d) of section 2779 of title 10, United States Code, as added by subsections (a) and (b), and the repeals made by subsection (d) [repealing provisions set out as a note under section 114 of this title], shall apply only with respect to amounts appropriated for a fiscal year after fiscal year 1995.''

§ 2780. Debt collection

(a)(1) Subject to paragraph (2), the Secretary of Defense shall enter into one or more contracts with a person for collection services to recover indebtedness owed to the United States (arising out of activities related to Department of Defense) that is delinquent by more than three months.

(2) The authority of the Secretary to enter into a contract under this section for any fiscal year is subject to the availability of appropriations.

(3) Any such contract shall provide that the person submit to the Secretary a status report on the person's success in collecting such debts at least once each six months. Section 3718 of title 31 shall apply to any such contract, to the extent not inconsistent with this subsection.

(b) The Secretary shall disclose to consumer reporting agencies, in accordance with paragraph (1) of section 3711(e) of title 31, information concerning any debt described in subsection (a) of more than $100 that is delinquent by more than 31 days.

(Added Pub. L. 99–661, div. A, title XIII, § 1309(a), Nov. 14, 1986, 100 Stat. 3982; amended Pub. L. 104–316, title I, § 115(g)(2)(C), Oct. 19, 1996, 110 Stat. 3835.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–316 substituted ''section 3711(e)'' for ''section 3711(f)''.

CONTRACTS FOR RECOVERY OF INDEBTEDNESS

Pub. L. 101–165, title IX, § 9019, Nov. 21, 1989, 103 Stat. 1133, provided that: ''During the current fiscal year and hereafter, the Department of Defense may enter into contracts to recover indebtedness to the United States pursuant to section 3718 of title 31, United States Code.''

§ 2781. Availability of appropriations: exchange fees; losses in accounts

Amounts appropriated to the Department of Defense may be used for—

(1) exchange fees; and

(2) losses in the accounts of disbursing officials and agents in accordance with law.

(Added Pub. L. 100–370, § 1(m)(1), July 19, 1988, 102 Stat. 849.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(c)], Dec. 19, 1985, 99 Stat. 1185, 1203.

§ 2782. Damage to real property: disposition of amounts recovered

Except as provided in section 2775 of this title, amounts recovered for damage caused to real property under the jurisdiction of the Secretary of a military department or, with respect to the Defense Agencies, under the jurisdiction of the Secretary of Defense shall be credited to the account available for the repair or replacement of the real property at the time of recovery. In such amounts as are provided in advance in appropriation Acts, amounts so credited shall be available for use for the same purposes and under the same circumstances as other funds in the account.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2821(a), Feb. 10, 1996, 110 Stat. 556.)

PRIOR PROVISIONS

A prior section 2782, added Pub. L. 101–189, div. A, title XVI, § 1603(a)(1), Nov. 29, 1989, 103 Stat. 1597, related to limits on restoration of unobligated balances withdrawn from availability for obligation, prior to repeal by Pub. L. 101–510, div. A, title XIV, § 1405(c)(1), Nov. 5, 1990, 104 Stat. 1680.

§ 2783. Nonappropriated fund instrumentalities: financial management and use of nonappropriated funds

(a) REGULATION OF MANAGEMENT AND USE OF NONAPPROPRIATED FUNDS.—The Secretary of Defense shall prescribe regulations governing—

(1) the purposes for which nonappropriated funds of a nonappropriated fund instrumentality of the United States within the Department of Defense may be expended; and

(2) the financial management of such funds to prevent waste, loss, or unauthorized use.

(b) PENALTIES FOR VIOLATIONS.—(1) A civilian employee of the Department of Defense who is paid from nonappropriated funds and who commits a substantial violation of the regulations prescribed under subsection (a) shall be subject to the same penalties as are provided by law for misuse of appropriations by a civilian employee of the Department of Defense paid from appropriated funds. The Secretary of Defense shall prescribe regulations to carry out this paragraph.

(2) The Secretary shall provide in regulations that a violation of the regulations prescribed under subsection (a) by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(c) NOTIFICATION OF VIOLATIONS.—(1) A civilian employee of the Department of Defense (whether paid from nonappropriated funds or from appropriated funds), and a member of the armed forces, whose duties include the obligation of nonappropriated funds, shall notify the Secretary of Defense of information which the person reasonably believes evidences—

(A) a violation by another person of any law, rule, or regulation regarding the management of such funds; or

(B) other mismanagement or gross waste of such funds.

(2) The Secretary of Defense shall designate civilian employees of the Department of Defense or members of the armed forces to receive a notification described in paragraph (1) and ensure the prompt investigation of the validity of information provided in the notification.

(3) The Secretary shall prescribe regulations to protect the confidentiality of a person making a notification under paragraph (1).

(Added Pub. L. 102–484, div. A, title III, § 362(a), Oct. 23, 1992, 106 Stat. 2379, § 2490a; renumbered § 2783 and amended Pub. L. 103–160, div. A, title XI, § 1182(a)(8)(A), Nov. 30, 1993, 107 Stat. 1771.)

AMENDMENTS

1993—Pub. L. 103–160 renumbered section 2490a of this title as this section.

Subsec. (b)(2). Pub. L. 103–160, § 1182(a)(8)(A)(i), substituted ''chapter 47 of this title'' for ''chapter 47 of title 10, United States Code'', ''Justice) is'' for ''Justice), is'', and ''section 892 of this title'' for ''section 892 of such title''.

Subsec. (c)(1). Pub. L. 103–160, § 1182(a)(8)(A)(ii), substituted ''armed forces'' for ''Armed Forces''.

STANDARDIZATION OF CERTAIN PROGRAMS AND ACTIVITIES OF MILITARY EXCHANGES

Section 361 of Pub. L. 102–484 provided that:

''(a) STANDARDIZATION OF EXCHANGES.—The Secretary of Defense shall standardize among the military departments the following programs and activities of the military exchanges of the military departments:

''(1) Accounting (including account titles and item descriptions).

''(2) Financial reporting formats.

''(3) Automatic data processing and telecommunications data in order to facilitate the transfer of information among military exchanges.

''(b) TIME AND MANNER.—The standardization of programs and activities required by subsection (a) shall be completed not later than March 31, 1994, and shall be carried out in the most efficient manner practicable.

''(c) REPORT.—Not later than March 31, 1993, the Secretary of Defense shall submit to the Congress a report on other programs and activities of the military exchanges, if any, that the Secretary determines can be economically and efficiently managed through standardization or consolidation under a single nonappropriated fund instrumentality.''

§ 2784. Management of purchase cards

(a) MANAGEMENT OF PURCHASE CARDS.—The Secretary of Defense shall prescribe regulations governing the use and control of all purchase cards and convenience checks that are issued to Department of Defense personnel for official use. Those regulations shall be consistent with regulations that apply Government-wide regarding use of purchase cards by Government personnel for official purposes.

(b) REQUIRED SAFEGUARDS AND INTERNAL CONTROLS.—Regulations under subsection (a) shall include safeguards and internal controls to ensure the following:

(1) That there is a record in the Department of Defense of each holder of a purchase card issued by the Department of Defense for official use, annotated with the limitations on amounts that are applicable to the use of each such card by that purchase card holder.

(2) That the holder of a purchase card and each official with authority to authorize expenditures charged to the purchase card are responsible for—

(A) reconciling the charges appearing on each statement of account for that purchase card with receipts and other supporting documentation; and

(B) forwarding that statement after being so reconciled to the designated disbursing office in a timely manner.

(3) That any disputed purchase card charge, and any discrepancy between a receipt and other supporting documentation and the purchase card statement of account, is resolved in the manner prescribed in the applicable Government-wide purchase card contract entered into by the Administrator of General Services.

(4) That payments on purchase card accounts are made promptly within prescribed deadlines to avoid interest penalties.

(5) That rebates and refunds based on prompt payment on purchase card accounts are properly recorded.

(6) That records of each purchase card transaction (including records on associated contracts, reports, accounts, and invoices) are retained in accordance with standard Government policies on the disposition of records.

(7) That periodic reviews are performed to determine whether each purchase card holder has a need for the purchase card.

(8) That the Inspector General of the Department of Defense, the Inspector General of the Army, the Naval Inspector General, and the Inspector General of the Air Force perform periodic audits to identify—

(A) potentially fraudulent, improper, and abusive uses of purchase cards;

(B) any patterns of improper card holder transactions, such as purchases of prohibited items; and

(C) categories of purchases that should be made by means other than purchase cards in order to better aggregate purchases and obtain lower prices.

(9) That appropriate training is provided to each purchase card holder and each official with responsibility for overseeing the use of purchase cards issued by the Department of Defense.

(10) That the Department of Defense has specific policies regarding the number of purchase cards issued by various organizations and categories of organizations, the credit limits authorized for various categories of card holders, and categories of employees eligible to be issued purchase cards, and that those policies are designed to minimize the financial risk to the Federal Government of the issuance of the purchase cards and to ensure the integrity of purchase card holders.

(c) PENALTIES FOR VIOLATIONS.—The regulations prescribed under subsection (a) shall—

(1) provide for appropriate adverse personnel actions or other punishment to be imposed in cases in which employees of the Department of Defense violate such regulations or are negligent or engage in misuse, abuse, or fraud with respect to a purchase card, including removal in appropriate cases; and

(2) provide that a violation of such regulations by a person subject to chapter 47 of this title (the Uniform Code of Military Justice) is punishable as a violation of section 892 of this title (article 92 of the Uniform Code of Military Justice).

(Added Pub. L. 106–65, div. A, title IX, § 933(a)(1), Oct. 5, 1999, 113 Stat. 728; amended Pub. L. 107–314, div. A, title X, § 1007(a), (b)(1), Dec. 2, 2002, 116 Stat. 2633, 2634.)

AMENDMENTS

2002—Pub. L. 107–314, § 1007(b)(1)(A), substituted ''purchase'' for '' credit'' in section catchline.

Subsec. (a). Pub. L. 107–314, § 1007(a)(1), (b)(1)(B), (C), substituted ''Purchase'' for ''Credit'' in heading and ''purchase'' for ''credit'' in two places in text and struck out '', acting through the Under Secretary of Defense (Comptroller),'' after ''Secretary of Defense''.

Subsec. (b)(1) to (6). Pub. L. 107–314, § 1007(b)(1)(C), substituted ''purchase'' for ''credit'' wherever appearing.

Subsec. (b)(7) to (10). Pub. L. 107–314, § 1007(a)(2), added pars. (7) to (10).

Subsec. (c). Pub. L. 107–314, § 1007(a)(2), added subsec. (c).

REGULATIONS

Pub. L. 106–65, div. A, title IX, § 933(b)(1), Oct. 5, 1999, 113 Stat. 730, provided that: ''Regulations under section 2784 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days

after the date of the enactment of this Act [Oct. 5, 1999].''

GOVERNMENT CHARGE CARD ACCOUNTS: LIMITATION ON NUMBER; REQUIREMENTS FOR ISSUANCE; DISCIPLINARY ACTION FOR MISUSE; REPORT

Pub. L. 107–248, title VIII, § 8149, Oct. 23, 2002, 116 Stat. 1572, provided that:

''(a) LIMITATION ON NUMBER OF GOVERNMENT CHARGE CARD ACCOUNTS DURING FISCAL YEAR 2003.—The total number of accounts for government purchase charge cards and government travel charge cards for Department of Defense personnel during fiscal year 2003 may not exceed 1,500,000 accounts.

''(b) REQUIREMENT FOR CREDITWORTHINESS FOR ISSUANCE OF GOVERNMENT CHARGE CARD.—(1) The Secretary of Defense shall evaluate the creditworthiness of an individual before issuing the individual a government purchase charge card or government travel charge card.

''(2) An individual may not be issued a government purchase charge card or government travel charge card if the individual is found not credit worthy as a result of the evaluation under paragraph (1).

''(c) DISCIPLINARY ACTION FOR MISUSE OF GOVERNMENT CHARGE CARD.—(1) The Secretary shall establish guidelines and procedures for disciplinary actions to be taken against Department personnel for improper, fraudulent, or abusive use of government purchase charge cards and government travel charge cards.

''(2) The guidelines and procedures under this subsection shall include appropriate disciplinary actions for use of charge cards for purposes, and at establishments, that are inconsistent with the official business of the Department or with applicable standards of conduct.

''(3) The disciplinary actions under this subsection may include—

''(A) the review of the security clearance of the individual involved; and

''(B) the modification or revocation of such security clearance in light of the review.

''(4) The guidelines and procedures under this subsection shall apply uniformly among the Armed Forces and among the elements of the Department.

''(d) REPORT.—Not later than June 30, 2003, the Secretary shall submit to the congressional defense committees a report on the implementation of the requirements and limitations in this section, including the guidelines and procedures established under subsection (c).''

§ 2784a. Management of travel cards

(a) DISBURSEMENT OF TRAVEL ALLOWANCES DIRECTLY TO CREDITORS.—(1) The Secretary of Defense may require that any part of a travel or transportation allowance of an employee of the Department of Defense or a member of the armed forces be disbursed directly to the issuer of a Defense travel card if the amount is disbursed to the issuer in payment of amounts of expenses of official travel that are charged by the employee or member on the Defense travel card.

(2) For the purposes of this subsection, the travel and transportation allowances referred to in paragraph (1) are amounts to which an employee of the Department of Defense is entitled under section 5702 of title 5 or a member of the armed forces is entitled under section 404 of title 37.

(b) OFFSETS FOR DELINQUENT TRAVEL CARD CHARGES.—(1) The Secretary of Defense may require that there be deducted and withheld from any basic pay payable to an employee of the Department of Defense or a member of the armed forces any amount that is owed by the employee or member to a creditor by reason of one or more charges of expenses of official travel of the employee or member on a Defense travel card issued by the creditor if the employee or member—

(A) is delinquent in the payment of such amount under the terms of the contract under which the card is issued; and

(B) does not dispute the amount of the delinquency.

(2) The amount deducted and withheld from pay under paragraph (1) with respect to a debt owed a creditor as described in that paragraph shall be disbursed to the creditor to reduce the amount of the debt.

(3) The amount of pay deducted and withheld from the pay owed to an employee or member with respect to a pay period under paragraph (1) may not exceed 15 percent of the disposable pay of the employee or member for that pay period, except that a higher amount may be deducted and withheld with the written consent of the employee or member.

(4) The Secretary of Defense shall prescribe procedures for deducting and withholding amounts from pay under this subsection. The procedures shall be substantially equivalent to the procedures under section 3716 of title 31.

(c) OFFSETS OF RETIRED PAY.—In the case of a former employee of the Department of Defense or a retired member of the armed forces who is receiving retired pay and who owes an amount to a creditor by reason of one or more charges on a Defense travel card that were made before the retirement of the employee or member, the Secretary may require amounts to be deducted and withheld from any retired pay of the former employee or retired member in the same manner and subject to the same conditions as the Secretary deducts and withholds amounts from basic pay payable to an employee or member under subsection (b).

(d) DEFINITIONS.—In this section:

(1) The term ''Defense travel card'' means a charge or credit card that—

(A) is issued to an employee of the Department of Defense or a member of the armed forces under a contract entered into by the Department of Defense with the issuer of the card; and

(B) is to be used for charging expenses incurred by the employee or member in connection with official travel.

(2) The term ''disposable pay'', with respect to a pay period, means the amount equal to the excess of the amount of basic pay or retired pay, as the case may be, payable for the pay period over the total of the amounts deducted and withheld from such pay.

(3) The term ''retired pay'' means—

(A) in the case of a former employee of the Department of Defense, any retirement benefit payable to that individual, out of the Civil Service Retirement and Disability Fund, based (in whole or in part) on service performed by such individual as a civilian employee of the Department of Defense; and

(B) in the case of a retired member of the armed forces or member of the Fleet Reserve or Fleet Marine Corps Reserve, retired or retainer pay to which the member is entitled.

(e) EXCLUSION OF COAST GUARD.—This section does not apply to the Coast Guard.

(Added Pub. L. 107–314, div. A, title X, §1008(a), Dec. 2, 2002, 116 Stat. 2634.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 2785. Remittance addresses: regulation of alterations

The Secretary of Defense, acting through the Under Secretary of Defense (Comptroller), shall prescribe regulations setting forth controls on alteration of remittance addresses. Those regulations shall ensure that—

(1) a remittance address for a disbursement that is provided by an officer or employee of the Department of Defense authorizing or requesting the disbursement is not altered by any officer or employee of the department authorized to prepare the disbursement; and

(2) a remittance address for a disbursement is altered only if the alteration—

(A) is requested by the person to whom the disbursement is authorized to be remitted; and

(B) is made by an officer or employee authorized to do so who is not an officer or employee referred to in paragraph (1).

(Added Pub. L. 106–65, div. A, title IX, §933(a)(1), Oct. 5, 1999, 113 Stat. 729.)

REGULATIONS

Pub. L. 106–65, div. A, title IX, §933(b)(2), Oct. 5, 1999, 113 Stat. 730, provided that: ''Regulations under section 2785 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].''

§ 2786. Department of Defense payments by electronic transfers of funds: exercise of authority for waivers

With respect to any Federal payment of funds covered by section 3332(f) of title 31 (relating to electronic funds transfers) for which payment is made or authorized by the Department of Defense, the waiver authority provided in paragraph (2)(A)(i) of that section shall be exercised by the Secretary of Defense. The Secretary of Defense shall carry out the authority provided under the preceding sentence in consultation with the Secretary of the Treasury.

(Added Pub. L. 106–65, div. A, title X, §1008(a)(1), Oct. 5, 1999, 113 Stat. 737.)

SAVINGS PROVISION

Pub. L. 106–65, div. A, title X, §1008(a)(3), Oct. 5, 1999, 113 Stat. 738, provided that: ''Any waiver in effect on the date of the enactment of this Act [Oct. 5, 1999] under paragraph (2)(A)(i) of section 3332(f) of title 31, United States Code, shall remain in effect until otherwise provided by the Secretary of Defense under section 2786 of title 10, United States Code, as added by paragraph (1).''

§ 2787. Reports of survey

(a) ACTION ON REPORTS OF SURVEY.—Under regulations prescribed pursuant to subsection (c), any officer of the Army, Navy, Air Force, or Marine Corps or any civilian employee of the Department of Defense designated in accordance with those regulations may act upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense.

(b) FINALITY OF ACTION.—(1) Action taken under subsection (a) is final except as provided in paragraph (2).

(2) An action holding a person pecuniarily liable for loss, spoilage, destruction, or damage is not final until approved by a person designated to do so by the Secretary of a military department, commander of a combatant command, or Director of a Defense Agency, as the case may be, who has jurisdiction of the person held pecuniarily liable. The person designated to provide final approval shall be an officer of an armed force, or a civilian employee, under the jurisdiction of the official making the designation.

(c) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out this section.

(Added Pub. L. 107–314, div. A, title X, §1006(a)(1), Dec. 2, 2002, 116 Stat. 2632.)

EFFECTIVE DATE

Pub. L. 107–314, div. A, title X, §1006(d), Dec. 2, 2002, 116 Stat. 2633, provided that: ''The amendments made by this section [enacting this section, amending section 1007 of Title 37, Pay and Allowances of the Uniformed Services, and repealing sections 4835 and 9835 of this title] shall apply with respect to the loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of the United States under the control of the Department of Defense occurring on or after the effective date of regulations prescribed pursuant to section 2787 of title 10, United States Code, as added by subsection (a).''

[CHAPTER 167—REPEALED]

[§ 2791. Repealed. Pub. L. 104–201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

Section, added Pub. L. 97–295, §1(50)(C), Oct. 12, 1982, 96 Stat. 1299, related to establishment and duties of Defense Mapping Agency.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 2792. Renumbered § 451]

[§ 2793. Renumbered § 452]

[§ 2794. Renumbered § 453]

[§ 2795. Renumbered § 454]

[§ 2796. Renumbered § 455]

[§ 2797. Repealed. Pub. L. 104–201, div. A, title XI, § 1121(b), Sept. 23, 1996, 110 Stat. 2687]

Section, added Pub. L. 103–337, div. A, title X, §1074(a), Oct. 5, 1994, 108 Stat. 2861, related to unauthor-

ized use of Defense Mapping Agency name, initials, or seal.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 193 of this title.

[§ 2798. Renumbered § 456]

CHAPTER 169—MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Subchapter		Sec.
I.	Military Construction	2801
II.	Military Family Housing	2821
III.	Administration of Military Construction and Military Family Housing.	2851
IV.	Alternative Authority for Acquisition and Improvement of Military Housing	2871

AMENDMENTS

1996—Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(2), Feb. 10, 1996, 110 Stat. 551, added item for subchapter IV.

SUBCHAPTER I—MILITARY CONSTRUCTION

Sec.	
2801.	Scope of chapter; definitions.
2802.	Military construction projects.
2803.	Emergency construction.
2804.	Contingency construction.
2805.	Unspecified minor construction.
2806.	Contributions for North Atlantic Treaty Organizations Security Investment.
2807.	Architectural and engineering services and construction design.
2808.	Construction authority in the event of a declaration of war or national emergency.
2809.	Long-term facilities contracts for certain activities and services.
[2810.	Repealed.]
2811.	Repair of facilities.
2812.	Lease-purchase of facilities.
2813.	Acquisition of existing facilities in lieu of authorized construction.
2814.	Special authority for development of Ford Island, Hawaii.
2815.	Joint use military construction projects: annual evaluation.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title III, § 313(d)(2), Dec. 2, 2002, 116 Stat. 2508, struck out item 2810 ''Construction projects for environmental response actions''.

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2801(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412, added item 2815.

1999—Pub. L. 106–65, div. B, title XXVIII, § 2802(a)(2), Oct. 5, 1999, 113 Stat. 848, added item 2814.

1996—Pub. L. 104–201, div. B, title XXVIII, § 2802(c)(2), Sept. 23, 1996, 110 Stat. 2787, substituted ''Organizations Security Investment'' for ''Organization Infrastructure'' in item 2806.

Pub. L. 104–106, div. A, title XV, § 1503(a)(31), Feb. 10, 1996, 110 Stat. 512, inserted period at end of item 2811.

1994—Pub. L. 103–337, div. B, title XXVIII, § 2801(b), Oct. 5, 1994, 108 Stat. 3050, substituted ''Repair'' for ''Renovation'' in item 2811.

1993—Pub. L. 103–160, div. B, title XXVIII, § 2805(a)(2), Nov. 30, 1993, 107 Stat. 1887, added item 2813.

1991—Pub. L. 102–190, div. B, title XXVIII, § 2805(a)(2), Dec. 5, 1991, 105 Stat. 1538, substituted ''Long-term facilities contracts for certain activities and services'' for ''Test of long-term facilities contracts'' in item 2809.

1989—Pub. L. 101–189, div. B, title XXVIII, § 2809(b), Nov. 29, 1989, 103 Stat. 1650, added item 2812.

1987—Pub. L. 100–26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281, redesignated item 2810 ''Renovation of facilities'' as item 2811.

1986—Pub. L. 99–661, div. A, title III, § 315(b), Nov. 14, 1986, 100 Stat. 3854, added item 2810 ''Renovation of facilities''.

Pub. L. 99–499, title II, § 211(b)(2), Oct. 17, 1986, 100 Stat. 1726, added item 2810 ''Construction projects for environmental response actions''.

1985—Pub. L. 99–167, title VIII, § 811(b), Dec. 3, 1985, 99 Stat. 991, added item 2809.

§ 2801. Scope of chapter; definitions

(a) The term ''military construction'' as used in this chapter or any other provision of law includes any construction, development, conversion, or extension of any kind carried out with respect to a military installation.

(b) A military construction project includes all military construction work, or any contribution authorized by this chapter, necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility (or to produce such portion of a complete and usable facility or improvement as is specifically authorized by law).

(c) In this chapter:

(1) The term ''facility'' means a building, structure, or other improvement to real property.

(2) The term ''military installation'' means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense.

(3) The term ''Secretary concerned'' includes the Secretary of Defense with respect to matters concerning the Defense Agencies.

(4) The term ''appropriate committees of Congress'' means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(d) This chapter (other than sections 2830 and 2835) does not apply to the Coast Guard or to civil works projects of the Army Corps of Engineers.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 153; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. A, title VI, § 632(b)(1), title XII, § 1231(15), div. B, subdiv. 3, title I, § 2306(b), Dec. 4, 1987, 101 Stat. 1105, 1160, 1216; Pub. L. 102–484, div. A, title X, § 1052(37), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 102–496, title IV, § 403(b), Oct. 24, 1992, 106 Stat. 3185; Pub. L. 104–106, div. A, title XV, § 1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

AMENDMENTS

1999—Subsec. (c)(4). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (c)(4). Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

1992—Subsec. (c)(4). Pub. L. 102–496 inserted before period at end ''and, with respect to any project to be carried out by, or for the use of, an intelligence component of the Department of Defense, the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate''.

Subsec. (d). Pub. L. 102–484 substituted ''sections 2830 and 2835'' for ''sections 2828(g) and 2830''.

1987—Subsec. (c). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (1), (2), and (4) and substituted lowercase letter.

Subsec. (c)(3). Pub. L. 100–180, §1231(15), substituted ''Defense Agencies'' for ''defense agencies''.

Subsec. (d). Pub. L. 100–180, §2306(b), substituted ''(other than sections 2828(g) and 2830)'' for ''(other than section 2830)''.

Pub. L. 100–180, §632(b)(1), inserted ''(other than section 2830)'' after ''This chapter''.

EFFECTIVE DATE

Section 12 of Pub. L. 97–214 provided:

''(a) Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1982 Amendment note below] shall take effect on October 1, 1982, and shall apply to military construction projects, and to construction and acquisition of military family housing, authorized before, on, or after such date.

''(b) The amendment made by section 4 [amending section 138(f)(1) [now 114(b)] of this title] shall apply with respect to funds appropriated for fiscal years beginning after September 30, 1983.''

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–214 provided that: ''This Act [see Tables for classification] may be cited as the 'Military Construction Codification Act'.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2208, 2306c, 2694a, 2707 of this title.

§ 2802. Military construction projects

(a) The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law.

(b) Authority provided by law to carry out a military construction project includes authority for—

(1) surveys and site preparation;

(2) acquisition, conversion, rehabilitation, and installation of facilities;

(3) acquisition and installation of equipment and appurtenances integral to the project;

(4) acquisition and installation of supporting facilities (including utilities) and appurtenances incident to the project; and

(5) planning, supervision, administration, and overhead incident to the project.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 154.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

DAMAGE TO AVIATION FACILITIES CAUSED BY ALKALI SILICA REACTIVITY

Pub. L. 106–398, §1 [[div. A], title III, §389], Oct. 30, 2000, 114 Stat. 1654, 1654A–89, provided that:

''(a) ASSESSMENT OF DAMAGE AND PREVENTION AND MITIGATION TECHNOLOGY.—The Secretary of Defense shall require the Secretaries of the military departments to assess—

''(1) the damage caused to aviation facilities of the Armed Forces by alkali silica reactivity; and

''(2) the availability of technologies capable of preventing, treating, or mitigating alkali silica reactivity in hardened concrete structures and pavements.

''(b) EVALUATION OF TECHNOLOGIES.—(1) Taking into consideration the assessment under subsection (a), the Secretary of each military department may conduct a demonstration project at a location selected by the Secretary concerned to test and evaluate the effectiveness of technologies intended to prevent, treat, or mitigate alkali silica reactivity in hardened concrete structures and pavements.

''(2) The Secretary of Defense shall ensure that the locations selected for the demonstration projects represent the diverse operating environments of the Armed Forces.

''(c) NEW CONSTRUCTION.—The Secretary of Defense shall develop specific guidelines for appropriate testing and use of lithium salts to prevent alkali silica reactivity in new construction of the Department of Defense.

''(d) COMPLETION OF ASSESSMENT AND DEMONSTRATION.—The assessment conducted under subsection (a) and the demonstration projects, if any, conducted under subsection (b) shall be completed not later than September 30, 2006.

''(e) DELEGATION OF AUTHORITY.—The authority to conduct the assessment under subsection (a) may be delegated only to the Chief of Engineers of the Army, the Commander of the Naval Facilities Engineering Command, and the Civil Engineer of the Air Force.

''(f) LIMITATION ON EXPENDITURES.—The Secretary of Defense and the Secretaries of the military departments may not expend more than a total of $5,000,000 to conduct both the assessment under subsection (a) and all of the demonstration projects under subsection (b).''

REPORTS RELATING TO MILITARY CONSTRUCTION FOR FACILITIES SUPPORTING NEW WEAPON SYSTEMS

Pub. L. 102–190, div. B, title XXVIII, §2868, Dec. 5, 1991, 105 Stat. 1562, provided that:

''(a) REQUIREMENT.—The Secretary of Defense shall submit to Congress with the budget submitted under section 1105 of title 31, United States Code, for the fiscal year in which the first construction of a facility for the permanent basing of a new weapon system is to be authorized a report describing—

''(1) the site or sites selected or planned for permanent basing of the planned force of that weapon system;

''(2) the rationale for selecting such site or sites; and

''(3) the military construction activities proposed for each such site.

''(b) NEW WEAPON SYSTEM DEFINED.—For purposes of this section, the term 'new weapon system' means any military aircraft or major naval combatant vessel for

which a complete permanent basing plan has not been publicly announced before the date of the enactment of this Act [Dec. 5, 1991].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2667 of this title.

§ 2803. Emergency construction

(a) Subject to subsections (b) and (c), the Secretary concerned may carry out a military construction project not otherwise authorized by law if the Secretary determines (1) that the project is vital to the national security or to the protection of health, safety, or the quality of the environment, and (2) that the requirement for the project is so urgent that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or the protection of health, safety, or environmental quality, as the case may be.

(b) When a decision is made to carry out a military construction project under this section, the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, (2) the justification for carrying out the project under this section, and (3) a statement of the source of the funds to be used to carry out the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(c)(1) The maximum amount that the Secretary concerned may obligate in any fiscal year under this section is $30,000,000.

(2) A project carried out under this section shall be carried out within the total amount of funds appropriated for military construction that have not been obligated.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 154; amended Pub. L. 102–190, div. B, title XXVIII, §§ 2803, 2870(2), Dec. 5, 1991, 105 Stat. 1537, 1562; Pub. L. 102–484, div. A, title X, § 1053(9), Oct. 23, 1992, 106 Stat. 2502.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–484 made technical amendment to directory language of Pub. L. 102–190, § 2870(2). See 1991 Amendment note below.

1991—Subsec. (a). Pub. L. 102–190, § 2803, substituted ''or to the protection of health, safety, or the quality of the environment, and'' for '', and'' in cl. (1) and inserted ''or the protection of health, safety, or environmental quality, as the case may be'' before period at end of cl. (2).

Subsec. (b). Pub. L. 102–190, § 2870(2), as amended by Pub. L. 102–484, struck out '', or after each such committee has approved the project, if the committee approves the project before the end of that period'' after ''by such committees''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1053(9) of Pub. L. 102–484 provided that the amendment made by that section is effective Dec. 5, 1991.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2804. Contingency construction

(a) Within the amount appropriated for such purpose, the Secretary of Defense may carry out a military construction project not otherwise authorized by law, or may authorize the Secretary of a military department to carry out such a project, if the Secretary of Defense determines that deferral of the project for inclusion in the next Military Construction Authorization Act would be inconsistent with national security or national interest.

(b) When a decision is made to carry out a military construction project under this section, the Secretary of Defense shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include (1) the justification for the project and the current estimate of the cost of the project, and (2) the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 102–190, div. B, title XXVIII, § 2870(3), Dec. 5, 1991, 105 Stat. 1563.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190 struck out before period at end '', or after each such committee has approved the project, if the committees approve the project before the end of that period''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2805. Unspecified minor construction

(a)(1) Except as provided in paragraph (2), within an amount equal to 125 percent of the amount authorized by law for such purpose, the Secretary concerned may carry out unspecified minor military construction projects not otherwise authorized by law. An unspecified minor military construction project is a military construction project that has an approved cost equal to or less than $1,500,000. However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, an unspecified minor military construction project may have an approved cost equal to or less than $3,000,000.

(2) A Secretary may not use more than $5,000,000 for exercise-related unspecified minor military construction projects coordinated or directed by the Joint Chiefs of Staff outside the United States during any fiscal year.

(b)(1) An unspecified minor military construction project costing more than $750,000 may not be carried out under this section unless approved in advance by the Secretary concerned. This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(2) When a decision is made to carry out an unspecified minor military construction project to which paragraph (1) is applicable, the Secretary

concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, and of the estimated cost of the project. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by the committees.

(c)(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may spend from appropriations available for operation and maintenance amounts necessary to carry out an unspecified minor military construction project costing not more than—

(A) $1,500,000, in the case of an unspecified minor military construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

(B) $750,000, in the case of any other unspecified minor military construction project.

(2) The authority provided in paragraph (1) may not be used with respect to any exercise-related unspecified minor military construction project coordinated or directed by the Joint Chiefs of Staff outside the United States.

(3) The limitations specified in paragraph (1) shall not apply to an unspecified minor military construction project if the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.

(d) Military family housing projects for construction of new housing units may not be carried out under the authority of this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 155; amended Pub. L. 99–167, title VIII, §809, Dec. 3, 1985, 99 Stat. 989; Pub. L. 99–661, div. B, title VII, §2702(a), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–180, div. B, subdiv. 3, title I, §2310, Dec. 4, 1987, 101 Stat. 1217; Pub. L. 101–510, div. A, title XIII, §1301(16), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–190, div. B, title XXVIII, §§2807, 2870(4), Dec. 5, 1991, 105 Stat. 1540, 1563; Pub. L. 104–106, div. B, title XXVIII, §§2811(a), 2812, Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, §2801(a), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 105–85, div. B, title XXVIII, §2801, Nov. 18, 1997, 111 Stat. 1989; Pub. L. 107–107, div. B, title XXVIII, §2801, Dec. 28, 2001, 115 Stat. 1305.)

AMENDMENTS

2001—Subsec. (b)(1). Pub. L. 107–107, §2801(a), substituted ''$750,000'' for ''$500,000''.

Subsec. (c)(1)(A). Pub. L. 107–107, §2801(b)(1), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (c)(1)(B). Pub. L. 107–107, §2801(b)(2), substituted ''$750,000'' for ''$500,000''.

1997—Subsec. (a)(1). Pub. L. 105–85, §2801(c)(1), substituted ''unspecified minor military construction projects'' for ''minor military construction projects'', ''An unspecified minor'' for ''A minor'', and ''an unspecified minor'' for ''a minor''.

Subsec. (b)(1). Pub. L. 105–85, §2801(c)(2), substituted ''An unspecified minor'' for ''A minor''.

Pub. L. 105–85, §2801(a), inserted at end ''This paragraph shall apply even though the project is to be carried out using funds made available to enhance the deployment and mobility of military forces and supplies.''

Subsec. (b)(2). Pub. L. 105–85, §2801(c)(3), substituted ''an unspecified minor'' for ''a minor''.

Subsec. (c)(1). Pub. L. 105–85, §2801(c)(4), substituted ''unspecified minor military'' for ''unspecified military'' wherever appearing.

Pub. L. 105–85, §2801(b)(1), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 105–85, §2801(c)(4), substituted ''unspecified minor military'' for ''unspecified military''.

Subsec. (c)(3). Pub. L. 105–85, §2801(b)(2), added par. (3).

1996—Subsec. (a)(1). Pub. L. 104–106, §2812, in second sentence, struck out ''(1) that is for a single undertaking at a military installation, and (2)'' after ''is a military construction project''.

Pub. L. 104–106, §2811(a)(1), inserted at end ''However, if the military construction project is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening, a minor military construction project may have an approved cost equal to or less than $3,000,000.''

Subsec. (c)(1). Pub. L. 104–106, §2811(a)(2), substituted ''not more than—'' for ''not more than $300,000.'' and added subpars. (A) and (B).

Subsec. (c)(1)(B). Pub. L. 104–201 substituted ''$500,000'' for ''$300,000''.

1991—Subsec. (a)(1). Pub. L. 102–190, §2807(a), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (b)(2). Pub. L. 102–190, §2870(4), in second sentence struck out ''(A)'' after ''carried out only'' and '', or (B) after each such committee approves the project, if the committees approve the project before the end of that period'' before period at end.

Subsec. (c)(1). Pub. L. 102–190, §2807(b), substituted ''$300,000'' for ''$200,000''.

1990—Subsec. (b)(3). Pub. L. 101–510 struck out par. (3) which read as follows: ''A project for the relocation of any activity from one installation to another that involves 25 or more full-time civilian employees of the Department of Defense but that is not subject to paragraph (1) may not be carried out under the authority of this section until the appropriate committees of Congress have been notified by the Secretary concerned of the intent to carry out such relocation under the authority of this section.''

1987—Subsec. (a). Pub. L. 100–180, §2310(b), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), within'' for ''Within'', and added par. (2).

Subsec. (c). Pub. L. 100–180, §2310(a), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), the'' for ''The'', and added par. (2).

1986—Subsec. (a). Pub. L. 99–661, §2702(a)(1), substituted ''$1,000,000'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (b)(1). Pub. L. 99–661, §2702(a)(2), substituted ''$500,000'' for ''50 percent of the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (c). Pub. L. 99–661, §2702(a)(3), substituted ''$200,000'' for ''20 percent of the amount specified by law as the maximum amount for a minor military construction project''.

1985—Subsec. (a). Pub. L. 99–167, §809(1), inserted ''an amount equal to 125 percent of''.

Subsec. (c). Pub. L. 99–167, §809(2), substituted ''The'' for ''Only funds authorized for minor construction projects may be used to accomplish unspecified minor construction projects, except that the''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM

Section 2892 of Pub. L. 104–106, as amended by Pub. L. 105–261, div. B, title XXVIII, §2871, Oct. 17, 1998, 112 Stat. 2225, provided that:

''(a) PROGRAM AUTHORIZED.—The Secretary of Defense may carry out a program (to be known as the 'Depart-

ment of Defense Laboratory Revitalization Demonstration Program') for the revitalization of Department of Defense laboratories. Under the program, the Secretary may carry out minor military construction projects in accordance with subsection (b) and other applicable law to improve Department of Defense laboratories covered by the program.

''(b) INCREASED MAXIMUM AMOUNTS APPLICABLE TO MINOR CONSTRUCTION PROJECTS.—For purpose of any military construction project carried out under the program—

''(1) the amount provided in the second sentence of subsection (a)(1) of section 2805 of title 10, United States Code, shall be deemed to be $3,000,000;

''(2) the amount provided in subsection (b)(1) of such section shall be deemed to be $1,500,000; and

''(3) the amount provided in subsection (c)(1)(B) of such section shall be deemed to be $1,000,000.

''(c) PROGRAM REQUIREMENTS.—(1) Not later than 30 days before commencing the program, the Secretary shall establish procedures for the review and approval of requests from Department of Defense laboratories for construction under the program.

''(2) The laboratories at which construction may be carried out under the program may not include Department of Defense laboratories that are contractor-owned.

''(d) REPORT.—Not later than February 1, 2003, the Secretary shall submit to Congress a report on the program. The report shall include the Secretary's conclusions and recommendation regarding the desirability of making the authority set forth under subsection (b) permanent.

''(e) EXCLUSIVITY OF PROGRAM.—Nothing in this section may be construed to limit any other authority provided by law for any military construction project at a Department of Defense laboratory covered by the program.

''(f) DEFINITIONS.—In this section:

''(1) The term 'laboratory' includes—

''(A) a research, engineering, and development center;

''(B) a test and evaluation activity owned, funded, and operated by the Federal Government through the Department of Defense; and

''(C) a supporting facility of a laboratory.

''(2) The term 'supporting facility', with respect to a laboratory, means any building or structure that is used in support of research, development, test, and evaluation at the laboratory.

''(g) EXPIRATION OF AUTHORITY.—The Secretary may not commence a construction project under the program after September 30, 2003.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $1,000,000 for unspecified minor military construction project under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(1) of Pub. L. 97–214, set out as a note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2208, 2806, 2853, 2867, 18233a of this title.

§ 2806. Contributions for North Atlantic Treaty Organizations Security Investment

(a) Within amounts authorized by law for such purpose, the Secretary of Defense may make contributions for the United States share of the cost of multilateral programs for the acquisition and construction of military facilities and installations (including international military headquarters) and for related expenses for the collective defense of the North Atlantic Treaty Area.

(b) Funds may not be obligated or expended in connection with the North Atlantic Treaty Organization Security Investment program in any year unless such funds have been authorized by law for such program.

(c)(1) The Secretary may make contributions in excess of the amount appropriated for contribution under subsection (a) if the amount of the contribution in excess of that amount does not exceed 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project.

(2) If the Secretary determines that the amount appropriated for contribution under subsection (a) in any fiscal year must be exceeded by more than the amount authorized under paragraph (1), the Secretary may make contributions in excess of such amount, but not in excess of 125 percent of the amount appropriated (A) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of the funds to be used for the increase, and (B) after a period of 21 days has elapsed from the date of receipt of the report.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 97–321, title VIII, § 805(b)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–661, div. B, title V, § 2503(a), Nov. 14, 1986, 100 Stat. 4039; Pub. L. 100–26, § 7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 102–190, div. B, title XXVIII, § 2870(5), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 104–201, div. B, title XXVIII, § 2802(a), (c)(1), Sept. 23, 1996, 110 Stat. 2787.)

AMENDMENTS

1996—Pub. L. 104–201, § 2802(c)(1), substituted ''Organizations Security Investment'' for ''Organization Infrastructure'' in section catchline.

Subsec. (b). Pub. L. 104–201, § 2802(a), substituted ''Security Investment program'' for ''Infrastructure program''.

1991—Subsec. (c)(2)(B). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased contribution''.

1987—Subsec. (c)(1). Pub. L. 100–26 substituted ''specified by section 2805(a)(2) of this title'' for ''specified by law''.

1986—Subsec. (a). Pub. L. 99–661 inserted ''and for related expenses'' after ''headquarters)''.

1982—Pub. L. 97–321 substituted ''Infrastructure'' for ''infrastructure'' in section catchline.

CHANGE OF NAME

Section 2802(b) of Pub. L. 104–201 provided that: ''Any reference to the North Atlantic Treaty Organization Infrastructure program in any Federal law, Executive order, regulation, delegation of authority, or document of or pertaining to the Department of Defense shall be deemed to refer to the North Atlantic Treaty Organization Security Investment program.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 2503(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to contributions made with funds appropriated for fiscal years after fiscal year 1986.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

RESTRICTION ON CERTAIN FUNDING

Section 2504 of Pub. L. 99–661 prohibited Secretary of Defense from obligating or expending any funds after fiscal year 1987 with respect to NATO infrastructure program under this section until Secretary submitted to Committees on Armed Services of Senate and House (1) a comprehensive master plan for establishing adequate active defenses for air bases in Europe at which operations of United States aircraft are planned, sites in Europe used by United States for logistic support of NATO or for prepositioned overseas matériel configured to unit sets, and (2) a report containing a certification by Secretary that sufficient funds have been budgeted by Department of Defense in fiscal year 1988 five-year defense plan to meet objectives of such comprehensive master plan.

§ 2807. Architectural and engineering services and construction design

(a) Within amounts appropriated for military construction and military family housing, the Secretary concerned may obtain architectural and engineering services and may carry out construction design in connection with military construction projects, family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are not otherwise authorized by law. Amounts available for such purposes may be used for construction management of projects that are funded by foreign governments directly or through international organizations and for which elements of the armed forces of the United States are the primary user.

(b) In the case of architectural and engineering services and construction design to be undertaken under subsection (a) for which the estimated cost exceeds $500,000, the Secretary concerned shall notify the appropriate committees of Congress of the scope of the proposed project and the estimated cost of such services not less than 21 days before the initial obligation of funds for such services.

(c) If the Secretary concerned determines that the amount authorized for activities under subsection (a) in any fiscal year must be increased the Secretary may proceed with activities at such higher level (1) after submitting a report in writing to the appropriate committees of Congress on such increase, including a statement of the reasons for the increase and a statement of the source of funds to be used for the increase, and (2) after a period of 21 days has elapsed from the date of receipt of the report.

(d) For architectural and engineering services and construction design related to military construction and family housing projects, the Secretaries of the military departments may incur obligations for contracts or portions of contracts using military construction and family housing appropriations from different fiscal years to the extent that those appropriations are available for obligation.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 156; amended Pub. L. 98–115, title VIII, §804, Oct. 11, 1983, 97 Stat. 785; Pub. L. 99–661, div. B, title VII, §§2702(b), 2712(a), Nov. 14, 1986, 100 Stat. 4040, 4041; Pub. L. 102–190, div. B, title XXVIII, §2870(6), Dec. 5, 1991, 105 Stat. 1563; Pub. L. 105–261, div. B, title XXVIII, §2801, Oct. 17, 1998, 112 Stat. 2202.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–261, §2801(a), substituted ''$500,000'' for ''$300,000''.

Subsec. (d). Pub. L. 105–261, §2801(b), substituted ''architectural and engineering services and construction design'' for ''study, planning, design, architectural, and engineering services''.

1991—Subsec. (c)(2). Pub. L. 102–190 substituted ''after'' for ''after either'' and struck out before period at end ''or after each such committee has indicated approval of the increased level of activity''.

1986—Subsec. (b). Pub. L. 99–661, §2702(b), substituted ''$300,000'' for ''the maximum amount specified by law for the purposes of this section''.

Subsec. (d). Pub. L. 99–661, §2712(a), added subsec. (d).

1983—Subsec. (a). Pub. L. 98–115 substituted ''Within amounts appropriated for military construction and military family housing'' for ''Within amounts appropriated for such purposes'' and inserted '', family housing projects, and projects undertaken in connection with the authority provided under section 2854 of this title that are'' after ''in connection with military construction projects''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 2712(b) of Pub. L. 99–661 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only to funds appropriated for fiscal years after fiscal year 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN CONTRACTS FOR MILITARY CONSTRUCTION PROJECTS

Pub. L. 98–212, title VII, §796, Dec. 8, 1983, 97 Stat. 1455, provided that: ''No funds appropriated for the Departments of Defense, Army, Navy, or the Air Force shall be obligated by their respective Secretaries for architectural and engineering services and construction design contracts for Military Construction projects in the amount of $85,000 and over, unless competition for such contracts is open to all firms regardless of size in accordance with 40 U.S.C. §541, et seq. [now chapter 11 of Title 40, Public Buildings, Property, and Works.]''

SMALL BUSINESS SET-ASIDE FOR ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION DESIGN

Section 806 of Pub. L. 98–115 provided that:

''(a) The Secretary of Defense shall conduct a comprehensive review of current policies and practices of the Department of Defense with regard to the award of contracts for architectural and engineering services and construction design for military construction projects. The Secretary shall conduct such review with a view to determining whether current policies and practices of the Department of Defense result in a reasonable distribution of such contracts to firms of all sizes throughout the architect-engineer community.

''(b) Upon the completion of such review, the Secretary shall modify current policies and practices of the Department to the extent necessary to ensure—

''(1) that small business concerns (as defined in section 3 of the Small Business Act [15 U.S.C. 632]) are assured of a reasonable share of such contracts; and

''(2) that large architect-engineer firms are not precluded from competing for such contracts when the estimated amount of such contracts is greater than a reasonable threshold amount prescribed by the Secretary.

''(c) Not later than March 1, 1984, the Secretary shall submit to the appropriate committees of Congress a written report on the results of the review required by subsection (a) and on any changes made to current policies and practices as required by subsection (b).

''(d) For the purposes of this section:

''(1) The term 'reasonable share' means an appropriate percentage share of all contracts referred to in subsection (a) as determined by the Secretary of Defense after consultation with the Admininstrator [sic] of the Small Business Administration and representatives of the architect-engineer community.

''(2) The term 'reasonable threshold amount' means an appropriate estimated contract dollar amount determined by the Secretary of Defense after consultation with the Administrator of the Small Business Administration and representatives of the architect-engineer community.''

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Amounts of $300,000 or more for contracts for architectural and engineering services or construction design subject to the reporting requirement under this section during the period beginning on Oct. 1, 1982, and ending on the date of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(2) of Pub. L. 97–214, set out as a note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 2687 of this title.

§ 2808. Construction authority in the event of a declaration of war or national emergency

(a) In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (50 U.S.C. 1601 et seq.) that requires use of the armed forces, the Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize the Secretaries of the military departments to undertake military construction projects, not otherwise authorized by law that are necessary to support such use of the armed forces. Such projects may be undertaken only within the total amount of funds that have been appropriated for military construction, including funds appropriated for family housing, that have not been obligated.

(b) When a decision is made to undertake military construction projects authorized by this section, the Secretary of Defense shall notify the appropriate committees of Congress of the decision and of the estimated cost of the construction projects, including the cost of any real estate action pertaining to those construction projects.

(c) The authority described in subsection (a) shall terminate with respect to any war or national emergency at the end of the war or national emergency.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157.)

REFERENCES IN TEXT

The National Emergencies Act (50 U.S.C. 1601 et seq.), referred to in subsec. (a), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97–99, title IX, § 903, Dec. 23, 1981, 95 Stat. 1382, which was set out as a note under section 140 [now 127] of this title, prior to repeal by Pub. L. 97–214, § 7(18).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

EX. ORD. NO. 12734. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 12734, Nov. 14, 1990, 55 F.R. 48099, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and 3 U.S.C. 301, I declared a national emergency by Executive Order No. 12722, dated August 2, 1990 [50 U.S.C. 1701 note], to deal with the threat to the national security and foreign policy of the United States caused by the invasion of Kuwait by Iraq. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

GEORGE BUSH.

EX. ORD. NO. 13235. NATIONAL EMERGENCY CONSTRUCTION AUTHORITY

Ex. Ord. No. 13235, Nov. 16, 2001, 66 F.R. 58343, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code, I declared a national emergency that requires the use of the Armed Forces of the United States, by Proclamation 7463 of September 14, 2001 [50 U.S.C. 1621 note], because of the terrorist attacks on the World Trade Center and the Pentagon, and because of the continuing and immediate threat to the national security of the United States of further terrorist attacks. To provide additional authority to the Department of Defense to respond to that threat, and in accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), I hereby order that the emergency construction authority at 10 U.S.C. 2808 is invoked and made available in accordance with its terms to the Secretary of Defense and, at the discretion of the Secretary of Defense, to the Secretaries of the military departments.

GEORGE W. BUSH.

§ 2809. Long-term facilities contracts for certain activities and services

(a) SUBMISSION AND AUTHORIZATION OF PROPOSED PROJECTS.—The Secretary concerned may enter into a contract for the procurement of services in connection with the construction, management, and operation of a facility on or near a military installation for the provision of an activity or service described in subsection (b) if—

(1) the Secretary concerned has identified the proposed project for that facility in the budget material submitted to Congress by the Secretary of Defense in connection with the

budget submitted pursuant to section 1105 of title 31 for the fiscal year in which the contract is proposed to be awarded;

(2) the Secretary concerned has determined that the services to be provided at that facility can be more economically provided through the use of a long-term contract than through the use of conventional means; and

(3) the project has been authorized by law.

(b) AUTHORIZED PURPOSES OF CONTRACT.—The activities and services referred to in subsection (a) are as follows:

(1) Child care services.

(2) Utilities, including potable and waste water treatment services.

(3) Depot supply activities.

(4) Troop housing.

(5) Transient quarters.

(6) Hospital or medical facilities.

(7) Other logistic and administrative services, other than depot maintenance.

(c) CONDITIONS ON OBLIGATION OF FUNDS.—A contract entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment given under the authority of this section does not constitute an obligation of the United States.

(d) COMPETITIVE PROCEDURES.—Each contract entered into under this section shall be awarded through the use of competitive procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary concerned shall solicit bids or proposals for a contract for each project that has been authorized by law.

(e) TERM OF CONTRACT.—A contract under this section may be for any period not in excess of 32 years, excluding the period for construction.

(f) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into under this section until—

(1) the Secretary concerned submits to the appropriate committees of Congress, in writing, a justification of the need for the facility for which the contract is to be awarded and an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost effective when compared with alternative means of furnishing the same facility; and

(2) a period of 21 calendar days has expired following the date on which the justification and the economic analysis are received by the committees.

(Added Pub. L. 99–167, title VIII, §811(a), Dec. 3, 1985, 99 Stat. 990; amended Pub. L. 99–661, div. A, title XIII, §1343(a)(20), div. B, title VII, §2711, Nov. 14, 1986, 100 Stat. 3994, 4041; Pub. L. 100–180, div. B, subdiv. 3, title I, §2302(a), (b), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 100–456, div. B, title XXVIII, §2801, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §2803, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, §2805(a)(1), Dec. 5, 1991, 105 Stat. 1537.)

AMENDMENTS

1991—Pub. L. 102–190 substituted section catchline for one which read ''Test of long-term facilities contracts'' and amended text generally, substituting present provisions for provisions authorizing contracts for construction, management, and operation of facilities on or near military installations for the provision of certain enumerated activities or services, setting out procedures, terms, and other limits for such contracts, providing that no more than 5 contracts may be entered into under this section other than contracts for child care centers, and providing that authority to enter into such contracts was to expire on Sept. 30, 1991.

1989—Subsec. (a)(1)(B)(ii). Pub. L. 101–189, §2803(1), substituted ''Utilities, including potable'' for ''Potable''.

Subsec. (b). Pub. L. 101–189, §2803(2), substituted ''activities and services described in clause (i) or (ii) of subsection (a)(1)(B)'' for ''child care centers''.

Subsec. (c). Pub. L. 101–189, §2803(3), substituted ''1991'' for ''1989''.

1988—Subsec. (a)(3). Pub. L. 100–456 substituted ''32'' for ''20''.

1987—Subsec. (a)(1)(B)(vi), (vii). Pub. L. 100–180, §2302(a), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (c). Pub. L. 100–180, §2302(b), substituted ''1989'' for ''1987''.

1986—Subsec. (a)(1). Pub. L. 99–661, §2711, amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary concerned may enter into a contract for the construction, management, and operation of a facility on or near a military installation in the United States for the provision of child care services, waste water treatment, or depot supply activities in a case in which the Secretary concerned determines that the facility can be more efficiently and more economically provided under a long-term contract than by other appropriate means.''

Pub. L. 99–661, §1343(a)(20)(A), substituted ''a contract'' for ''contracts'', ''a facility'' for ''facilities'', ''a military installation'' for ''military installations'', ''a case'' for ''cases'', ''facility'' for ''facilities'', and ''a long-term contract'' for ''long-term contracts'' and inserted a comma after ''waste water treatment''.

Subsec. (a)(2). Pub. L. 99–661, §1343(a)(20)(B), substituted ''this section'' for ''subsection (a)''.

Subsec. (a)(3). Pub. L. 99–661, §1343(a)(20)(C), substituted ''20'' for ''twenty''.

Subsec. (a)(4)(A). Pub. L. 99–661, §1343(a)(20)(D), struck out ''the'' before ''Congress''.

Subsec. (b). Pub. L. 99–661, §1343(a)(20)(E), struck out ''the authority of subsection (a) of'' after ''under''.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2805(b) of Pub. L. 102–190 provided that: ''Section 2809 of title 10, United States Code, as amended by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

DEMONSTRATION PROGRAM ON REDUCTION IN LONG-TERM FACILITY MAINTENANCE COSTS

Pub. L. 107–107, div. B, title XXVIII, §2814, Dec. 28, 2001, 115 Stat. 1310, as amended by Pub. L. 107–314, div.

B, title XXVIII, § 2813(a)–(d)(1), Dec. 2, 2002, 116 Stat. 2709, 2710, provided that:

''(a) AUTHORITY TO CARRY OUT PROGRAM.—The Secretary of Defense or the Secretary of a military department may conduct a demonstration program to assess the feasibility and desirability of including facility maintenance requirements in construction contracts for military construction projects for the purpose of determining whether such requirements facilitate reductions in the long-term facility maintenance costs of the military departments.

''(b) CONTRACTS.—(1) Not more than 12 contracts per military department may contain requirements referred to in subsection (a) for the purpose of the demonstration program.

''(2) The demonstration program may only cover contracts entered into on or after the date of the enactment of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 [Pub. L. 107–314, approved Dec. 2, 2002], except that the Secretary of the Army shall treat any contract containing requirements referred to in subsection (a) that was entered into under the authority in such subsection between that date and December 28, 2001, as a contract for the purpose of the demonstration program.

''(c) EFFECTIVE PERIOD OF REQUIREMENTS.—The effective period of a requirement referred to in subsection (a) that is included in a contract for the purpose of the demonstration program may not exceed five years.

''(d) REPORTING REQUIREMENTS.—Not later than January 31, 2005, the Secretary of Defense shall submit to Congress a report on the demonstration program, including the following:

''(1) A description of all contracts that contain requirements referred to in subsection (a) for the purpose of the demonstration program.

''(2) An evaluation of the demonstration program and a description of the experience of the Secretary with respect to such contracts.

''(3) Any recommendations, including recommendations for the termination, continuation, or expansion of the demonstration program, that the Secretary considers appropriate.

''(e) EXPIRATION.—The authority under subsection (a) to include requirements referred to in that subsection in contracts under the demonstration program shall expire on September 30, 2006.

''(f) FUNDING.—Amounts authorized to be appropriated for the military departments or defense-wide for a fiscal year for military construction shall be available for the demonstration program under this section in such fiscal year.''

[Pub. L. 107–314, div. B, title XXVIII, § 2813(d)(2), Dec. 2, 2002, 116 Stat. 2710, provided that: ''The amendment made by paragraph (1) [amending section 2814(f) of Pub. L. 107–107, set out above] shall not affect the availability for the purpose of the demonstration program under section 2814 of the Military Construction Authorization Act for Fiscal Year 2002, as amended by this section, of any amounts authorized to be appropriated before the date of the enactment of this Act [Dec. 2, 2002] for the Army for military construction that have been obligated for the demonstration program, but not expended, as of that date.'']

REPORT

Section 2302(c) of Pub. L. 100–180 directed each Secretary who has entered into a contract under this section to submit a report to Committees on Armed Services of Senate and House of Representatives by Feb. 15, 1989, containing date and duration of, other party to, and nature of activities carried out under each such contract, and recommendations, and reasons therefor, concerning whether authority to enter into contracts under this section should be extended.

[§ 2810. Repealed. Pub. L. 107–314, div. A, title III, § 313(b), Dec. 2, 2002, 116 Stat. 2507]

Section, added Pub. L. 99–499, title II, § 211(b)(1), Oct. 17, 1986, 100 Stat. 1725, related to military construction projects for environmental response actions.

§ 2811. Repair of facilities

(a) REPAIRS USING OPERATIONS AND MAINTENANCE FUNDS.—Using funds available to the Secretary concerned for operation and maintenance, the Secretary concerned may carry out repair projects for an entire single-purpose facility or one or more functional areas of a multipurpose facility.

(b) APPROVAL REQUIRED FOR MAJOR REPAIRS.—A repair project costing more than $5,000,000 may not be carried out under this section unless approved in advance by the Secretary concerned. In determining the total cost of a repair project, the Secretary shall include all phases of a multi-year repair project to a single facility. In considering a repair project for approval, the Secretary shall ensure that the project is consistent with force structure plans, that repair of the facility is more cost effective than replacement, and that the project is an appropriate use of operation and maintenance funds.

(c) PROHIBITION ON NEW CONSTRUCTION OR ADDITIONS.—Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.

(d) CONGRESSIONAL NOTIFICATION.—When a decision is made to carry out a repair project under this section with an estimated cost in excess of $10,000,000, the Secretary concerned shall submit to the appropriate committees of Congress a report containing—

(1) the justification for the repair project and the current estimate of the cost of the project; and

(2) the justification for carrying out the project under this section.

(e) REPAIR PROJECT DEFINED.—In this section, the term ''repair project'' means a project to restore a real property facility, system, or component to such a condition that it may effectively be used for its designated functional purpose.

(Added Pub. L. 99–661, div. A, title III, § 315(a), Nov. 14, 1986, 100 Stat. 3854, § 2810; renumbered § 2811, Pub. L. 100–26, § 7(e)(3), Apr. 21, 1987, 101 Stat. 281; amended Pub. L. 103–337, div. B, title XXVIII, § 2801(a), Oct. 5, 1994, 108 Stat. 3050; Pub. L. 105–85, div. B, title XXVIII, § 2802, Nov. 18, 1997, 111 Stat. 1990.)

AMENDMENTS

1997—Subsecs. (d), (e). Pub. L. 105–85 added subsecs. (d) and (e).

1994—Pub. L. 103–337 substituted ''Repair'' for ''Renovation'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary concerned may carry out renovation projects that combine maintenance, repair, and minor construction projects for an entire single-purpose facility, or one or more functional areas of a multipurpose facility, using funds available for operations and maintenance.

''(b) The amount obligated on such a renovation project may not exceed the maximum amount specified by law for a minor construction project under section 2805 of this title.

''(c) Construction of new facilities or additions to existing facilities may not be carried out under the authority of this section.''

§ 2812. Lease-purchase of facilities

(a)(1) The Secretary concerned may enter into an agreement with a private contractor for the

lease of a facility of the kind specified in paragraph (2) if the facility is provided at the expense of the contractor on a military installation under the jurisdiction of the Department of Defense.

(2) The facilities that may be leased pursuant to paragraph (1) are as follows:

(A) Administrative office facilities.

(B) Troop housing facilities.

(C) Energy production facilities.

(D) Utilities, including potable and waste water treatment facilities.

(E) Hospital and medical facilities.

(F) Transient quarters.

(G) Depot or storage facilities.

(H) Child care centers.

(I) Classroom and laboratories.

(b) Leases entered into under subsection (a)—

(1) may not exceed a term of 32 years;

(2) shall provide that, at the end of the term of the lease, title to the leased facility shall vest in the United States; and

(3) shall include such other terms and conditions as the Secretary concerned determines are necessary or desirable to protect the interests of the United States.

(c)(1) The Secretary concerned may not enter into a lease under this section until—

(A) the Secretary submits to the appropriate committees of Congress a justification of the need for the facility for which the proposed lease is being entered into and an economic analysis (based upon accepted life-cycle costing procedures) that demonstrates the cost effectiveness of the proposed lease compared with a military construction project for the same facility; and

(B) a period of 21 days has expired following the date on which the justification and economic analysis are received by the committees.

(2) Each Secretary concerned may, under this section, enter into—

(A) not more than three leases in fiscal year 1990; and

(B) not more than five leases in each of the fiscal years 1991 and 1992.

(d) Each lease entered into under this section shall include a provision that the obligation of the United States to make payments under the lease in any fiscal year is subject to the availability of appropriations for that purpose.

(Added Pub. L. 101–189, div. B, title XXVIII, § 2809(a), Nov. 29, 1989, 103 Stat. 1649; amended Pub. L. 101–510, div. B, title XXVIII, § 2864, Nov. 5, 1990, 104 Stat. 1806.)

AMENDMENTS

1990—Subsec. (a)(2)(I). Pub. L. 101–510 added subpar. (I).

§ 2813. Acquisition of existing facilities in lieu of authorized construction

(a) ACQUISITION AUTHORITY.—Using funds appropriated for a military construction project authorized by law for a military installation, the Secretary of the military department concerned may acquire an existing facility (including the real property on which the facility is located) at or near the military installation instead of carrying out the authorized military construction project if the Secretary determines that—

(1) the acquisition of the facility satisfies the requirements of the military department concerned for the authorized military construction project; and

(2) it is in the best interests of the United States to acquire the facility instead of carrying out the authorized military construction project.

(b) MODIFICATION OR CONVERSION OF ACQUIRED FACILITY.—(1) As part of the acquisition of an existing facility under subsection (a), the Secretary of the military department concerned may carry out such modifications, repairs, or conversions of the facility as the Secretary considers to be necessary so that the facility satisfies the requirements for which the military construction project was authorized.

(2) The costs of anticipated modifications, repairs, or conversions under paragraph (1) are required to remain within the authorized amount of the military construction project. The Secretary concerned shall consider such costs in determining whether the acquisition of an existing facility is—

(A) more cost effective than carrying out the authorized military construction project; and

(B) in the best interests of the United States.

(c) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the acquisition of a facility under subsection (a) until the end of the 30-day period beginning on the date the Secretary concerned transmits to the appropriate committees of Congress a written notification of the determination to acquire an existing facility instead of carrying out the authorized military construction project. The notification shall include the reasons for acquiring the facility.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2805(a)(1), Nov. 30, 1993, 107 Stat. 1886; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(25), Feb. 10, 1996, 110 Stat. 506.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives''.

EFFECTIVE DATE

Section 2805(b) of Pub. L. 103–160 provided that: ''Section 2813 of title 10, United States Code, as added by subsection (a), shall apply with respect to military construction projects authorized on or after the date of the enactment of this Act [Nov. 30, 1993].''

§ 2814. Special authority for development of Ford Island, Hawaii

(a) IN GENERAL.—(1) Subject to paragraph (2), the Secretary of the Navy may exercise any authority or combination of authorities in this section for the purpose of developing or facilitating the development of Ford Island, Hawaii, to the extent that the Secretary determines the development is compatible with the mission of the Navy.

(2) The Secretary of the Navy may not exercise any authority under this section until—

(A) the Secretary submits to the appropriate committees of Congress a master plan for the development of Ford Island, Hawaii; and

(B) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(b) CONVEYANCE AUTHORITY.—(1) The Secretary of the Navy may convey to any public or private person or entity all right, title, and interest of the United States in and to any real property (including any improvements thereon) or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is excess to the needs of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A conveyance under this subsection may include such terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

(c) LEASE AUTHORITY.—(1) The Secretary of the Navy may lease to any public or private person or entity any real property or personal property under the jurisdiction of the Secretary in the State of Hawaii that the Secretary determines—

(A) is not needed for current operations of the Navy and all of the other armed forces; and

(B) will promote the purpose of this section.

(2) A lease under this subsection shall be subject to section 2667(b)(1) of this title and may include such other terms as the Secretary considers appropriate to protect the interests of the United States.

(3) A lease of real property under this subsection may provide that, upon termination of the lease term, the lessee shall have the right of first refusal to acquire the real property covered by the lease if the property is then conveyed under subsection (b).

(4)(A) The Secretary may provide property support services to or for real property leased under this subsection.

(B) To the extent provided in appropriations Acts, any payment made to the Secretary for services provided under this paragraph shall be credited to the appropriation, account, or fund from which the cost of providing the services was paid.

(d) ACQUISITION OF LEASEHOLD INTEREST BY SECRETARY.—(1) The Secretary of the Navy may acquire a leasehold interest in any facility constructed under subsection (f) as consideration for a transaction authorized by this section upon such terms as the Secretary considers appropriate to promote the purpose of this section.

(2) The term of a lease under paragraph (1) may not exceed 10 years, unless the Secretary of Defense approves a term in excess of 10 years for purposes of this section.

(3) A lease under this subsection may provide that, upon termination of the lease term, the United States shall have the right of first refusal to acquire the facility covered by the lease.

(e) REQUIREMENT FOR COMPETITION.—The Secretary of the Navy shall use competitive procedures for purposes of selecting the recipient of real or personal property under subsection (b) and the lessee of real or personal property under subsection (c).

(f) CONSIDERATION.—(1) As consideration for the conveyance of real or personal property under subsection (b), or for the lease of real or personal property under subsection (c), the Secretary of the Navy shall accept cash, real property, personal property, or services, or any combination thereof, in an aggregate amount equal to not less than the fair market value of the real or personal property conveyed or leased.

(2) Subject to subsection (i), the services accepted by the Secretary under paragraph (1) may include the following:

(A) The construction or improvement of facilities at Ford Island.

(B) The restoration or rehabilitation of real property at Ford Island.

(C) The provision of property support services for property or facilities at Ford Island.

(g) NOTICE AND WAIT REQUIREMENTS.—The Secretary of the Navy may not carry out a transaction authorized by this section until—

(1) the Secretary submits to the appropriate committees of Congress a notification of the transaction, including—

(A) a detailed description of the transaction; and

(B) a justification for the transaction specifying the manner in which the transaction will meet the purposes of this section; and

(2) a period of 30 calendar days has elapsed following the date on which the notification is received by those committees.

(h) FORD ISLAND IMPROVEMENT ACCOUNT.—(1) There is established on the books of the Treasury an account to be known as the ''Ford Island Improvement Account''.

(2) There shall be deposited into the account the following amounts:

(A) Amounts authorized and appropriated to the account.

(B) Except as provided in subsection (c)(4)(B), the amount of any cash payment received by the Secretary for a transaction under this section.

(i) USE OF ACCOUNT.—(1) Subject to paragraph (2), to the extent provided in advance in appropriations Acts, funds in the Ford Island Improvement Account may be used as follows:

(A) To carry out or facilitate the carrying out of a transaction authorized by this section.

(B) To carry out improvements of property or facilities at Ford Island.

(C) To obtain property support services for property or facilities at Ford Island.

(2) To extent that the authorities provided under subchapter IV of this chapter are available to the Secretary of the Navy, the Secretary may not use the authorities in this section to acquire, construct, or improve family housing units, military unaccompanied housing units, or ancillary supporting facilities related to military housing.

(3)(A) The Secretary may transfer funds from the Ford Island Improvement Account to the following funds:

(i) The Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of this title.

(ii) The Department of Defense Military Unaccompanied Housing Improvement Fund established by section 2883(a)(2) of this title.

(B) Amounts transferred under subparagraph (A) to a fund referred to in that subparagraph shall be available in accordance with the provisions of section 2883 of this title for activities authorized under subchapter IV of this chapter at Ford Island.

(j) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—Except as otherwise provided in this section, transactions under this section shall not be subject to the following:

(1) Sections 2667 and 2696 of this title.

(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(3) Subchapter II of chapter 5 and sections 541–555 of title 40.

(k) SCORING.—Nothing in this section shall be construed to waive the applicability to any lease entered into under this section of the budget scorekeeping guidelines used to measure compliance with the Balanced Budget and Emergency Deficit Control Act of 1985.

(*l*) PROPERTY SUPPORT SERVICE DEFINED.—In this section, the term 'property support service' means the following:

(1) Any utility service or other service listed in section 2686(a) of this title.

(2) Any other service determined by the Secretary to be a service that supports the operation and maintenance of real property, personal property, or facilities.

(Added Pub. L. 106–65, div. B, title XXVIII, § 2802(a)(1), Oct. 5, 1999, 113 Stat. 845; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(16)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291; Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(18), Aug. 21, 2002, 116 Stat. 1296.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (k), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038, as amended, which enacted chapter 20 (§ 900 et seq.) and sections 654 to 656 of Title 2, The Congress, amended sections 602, 622, 631 to 642, and 651 to 653 of Title 2, sections 1104 to 1106, and 1109 of Title 31, Money and Finance, and section 911 of Title 42, The Public Health and Welfare, repealed section 661 of Title 2, enacted provisions set out as notes under section 900 of Title 2 and section 911 of Title 42, and amended provisions set out as a note under section 621 of Title 2. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

AMENDMENTS

2002—Subsec. (j)(3). Pub. L. 107–217 substituted ''Subchapter II of chapter 5 and sections 541–555 of title 40'' for ''Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484)''.

2001—Subsec. (j)(2). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

2000—Subsec. (k). Pub. L. 106–398 inserted ''and'' after ''Balanced Budget''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2883 of this title.

§ 2815. Joint use military construction projects: annual evaluation

(a) JOINT USE MILITARY CONSTRUCTION PROJECT DEFINED.—In this section, the term ''joint use military construction project'' means a military construction project for a facility intended to be used by—

(1) both the active and a reserve component of a single armed force; or

(2) two or more components (whether active or reserve components) of the armed forces.

(b) ANNUAL EVALUATION.—In the case of the budget submitted under section 1105 of title 31 for any fiscal year, the Secretary of Defense shall include in the budget justification materials submitted to Congress in support of the budget a certification by each Secretary concerned that, in evaluating military construction projects for inclusion in the budget for that fiscal year, the Secretary concerned evaluated the feasibility of carrying out the projects as joint use military construction projects.

(Added Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2801(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–412; amended Pub. L. 107–314, div. A, title X, § 1062(a)(14), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–314 substituted ''for any fiscal year'' for ''for fiscal year 2003 and each fiscal year thereafter''.

SUBCHAPTER II—MILITARY FAMILY HOUSING

Sec.
2821. Requirement for authorization of appropriations for construction and acquisition of military family housing.
2822. Requirement for authorization of number of family housing units.
2823. Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing.
2824. Authorization for acquisition of existing family housing in lieu of construction.
2825. Improvements to family housing units.
2826. Military family housing: local comparability of room patterns and floor areas.
2827. Relocation of military family housing units.
2828. Leasing of military family housing.
2829. Multi-year contracts for supplies and services.
2830. Occupancy of substandard family housing units.
2831. Military family housing management account.
2832. Homeowners assistance program.
2833. Family housing support.
2834. Participation in Department of State housing pools.
2835. Long-term leasing of military family housing to be constructed.
2836. Military housing rental guarantee program.
2837. Limited partnerships with private developers of housing.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2803(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, substituted ''Military family housing: local comparability of room patterns and floor areas'' for ''Limitations on space by pay grade'' in item 2826.

1994—Pub. L. 103–337, div. B, title XXVIII, § 2803(b), Oct. 5, 1994, 108 Stat. 3053, added item 2837.

1991—Pub. L. 102–190, div. B, title XXVIII, §§ 2806(a)(2), 2809(a)(2), Dec. 5, 1991, 105 Stat. 1540, 1543, added items 2835 and 2836.

1985—Pub. L. 99–167, title VIII, §§ 804(b)(2), 808(b), Dec. 3, 1985, 99 Stat. 987, 989, added items 2833 and 2834.

§ 2821. Requirement for authorization of appropriations for construction and acquisition of military family housing

(a) Except as provided in subsection (b), funds may not be appropriated for the construction, acquisition, leasing, addition, extension, expansion, alteration, relocation, or operation and maintenance of family housing under the jurisdiction of the Department of Defense unless the appropriation of such funds has been authorized by law.

(b) In addition to the funds authorized to be appropriated by law in any fiscal year for the purposes described in subsection (a), there are authorized to be appropriated such additional sums as may be necessary for increases in salary, pay, retirement, and other employee benefits authorized by law for civilian employees of the Department of Defense whose compensation is provided for by funds appropriated for the purposes described in such subsection.

(c) Amounts authorized by law for construction of military family housing units include amounts for (1) site preparation (including demolition), (2) installation of utilities, (3) ancillary supporting facilities, (4) shades, screens, ranges, refrigerators, and all other equipment and fixtures installed in such units, and (5) construction supervision, inspection, and overhead.

(d) Amounts authorized by law for construction and acquisition of military family housing and facilities include amounts for—

(1) minor construction;

(2) improvements to existing military family housing units and facilities;

(3) relocation of military family housing units under section 2827 of this title; and

(4) architectural and engineering services and construction design.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 157; amended Pub. L. 99–145, title XIII, § 1303(a)(18), Nov. 8, 1985, 99 Stat. 739; Pub. L. 99–167, title VIII, § 804(a), Dec. 3, 1985, 99 Stat. 987.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99–145 substituted ''such subsection'' for ''such paragraph''.

Subsec. (d). Pub. L. 99–167 added subsec. (d).

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

REPAIR AND MAINTENANCE OF FAMILY HOUSING UNITS

Pub. L. 107–249, § 127, Oct. 23, 2002, 116 Stat. 1586, provided that: ''Notwithstanding this or any other provision of law, funds appropriated in Military Construction Appropriations Acts for operations and maintenance of family housing shall be the exclusive source of funds for repair and maintenance of all family housing units, including general or flag officer quarters: *Provided*, That not more than $35,000 per unit may be spent annually for the maintenance and repair of any general or flag officer quarters without 30 days advance prior notification to the appropriate committees of Congress, except that an after-the-fact notification shall be submitted if the limitation is exceeded solely due to costs associated with environmental remediation that could not be reasonably anticipated at the time of the budget submission: *Provided further*, That the Under Secretary of Defense (Comptroller) is to report annually to the Committees on Appropriations all operations and maintenance expenditures for each individual general or flag officer quarters for the prior fiscal year.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–64, § 127, Nov. 5, 2001, 115 Stat. 482.

Pub. L. 106–246, div. A, § 127, July 13, 2000, 114 Stat. 518.

Pub. L. 106–52, § 128, Aug. 17, 1999, 113 Stat. 267.

PILOT PROGRAM FOR MILITARY FAMILY HOUSING

Pub. L. 100–180, div. B, subdiv. 3, title II, § 2321, Dec. 4, 1987, 101 Stat. 1218, required Secretary of Defense, using $1,000,000 of funds appropriated pursuant to authorization in subsection (a)(10)(B) of section 2145 of Pub. L. 100–180, to establish and carry out, during fiscal years 1988, 1989, and 1990, a pilot program for purpose of assisting units of general local government to increase amount of affordable family housing available to military personnel; required Secretary, establishing and carrying out such programs, to select at least five units of general local government severely impacted by presence of military bases and personnel; set forth criteria for selection of units of general local government, authority to make grants, cooperative agreements, etc., and uses of available funds; and required Secretary to report to Committees on Armed Services of Senate and House no later than Mar. 15 of 1988, 1989, 1990, and 1991 with respect to activities carried out under this section.

MILITARY HOUSING RENTAL GUARANTEE PROGRAM

Pub. L. 98–115, title VIII, § 802, Oct. 11, 1983, 97 Stat. 783, as amended by Pub. L. 98–407, title VIII, § 806(b), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, § 801(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. B, title VII, § 2713(a), Nov. 14, 1986, 100 Stat. 4042; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2307, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–189, div. B, title XXVIII, § 2801, Nov. 29, 1989, 103 Stat. 1646; Pub. L. 101–510, div. B, title XXVIII, § 2811, Nov. 5, 1990, 104 Stat. 1788, provided for agreements and contracts relating to military housing rental guarantee program, prior to repeal by Pub. L. 102–190, div. B, title XXVIII, § 2809(b), (c), Dec. 5, 1991, 105 Stat. 1543, such repeal not to affect the validity of any contract entered into before Dec. 5, 1991, under section 802 of Pub. L. 98–115 as in effect on Dec. 4, 1991. See section 2836 of this title.

FAMILY HOUSING CONSTRUCTED OVERSEAS

Pub. L. 98–115, title VIII, § 803, Oct. 11, 1983, 97 Stat. 784, as amended by Pub. L. 98–407, title VIII, § 812, Aug. 28, 1984, 98 Stat. 1524; Pub. L. 101–510, div. A, title XIII, § 1302(f), Nov. 5, 1990, 104 Stat. 1669, provided that any contract entered into for the construction of military family housing for the Department of Defense in a foreign country was to require the use of housing fabricated in the United States by a United States contractor or, in the case of concrete housing, the use of housing produced in a plant that was fabricated in the United States by a United States company, and for which the materials, fixtures, and equipment used in the construction (other than cement, sand, and aggregates) were manufactured in the United States, prior to repeal by Pub. L. 107–314, div. B, title XXVIII, § 2804, Dec. 2, 2002, 116 Stat. 2705.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 114 of this title.

§ 2822. Requirement for authorization of number of family housing units

(a) Except as otherwise provided in subsection (b) or as otherwise authorized by law, the Sec-

retary concerned may not construct or acquire military family housing units unless the number of units to be constructed or acquired has been specifically authorized by law.

(b) Subsection (a) does not apply to the following:

(1) Housing units acquired under section 404 of the Housing Amendments of 1955 (42 U.S.C. 1594a).

(2) Housing units leased under section 2828 of this title.

(3) Housing units acquired under the Homeowners Assistance Program referred to in section 2832 of this title.

(4) Housing units acquired without consideration.

(5) Replacement housing units constructed under section 2825(c) of this title.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 98–525, title XIV, §1405(44), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 100–180, div. B, subdiv. 3, title I, §2308, Dec. 4, 1987, 101 Stat. 1216; Pub. L. 101–510, div. A, title XIII, §1301(17), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 102–25, title VII, §701(j)(9), Apr. 6, 1991, 105 Stat. 116; Pub. L. 102–484, div. B, title XXVIII, §2802(b), Oct. 23, 1992, 106 Stat. 2606.)

AMENDMENTS

1992—Subsec. (b)(5). Pub. L. 102–484 added par. (5).

1991—Subsec. (b)(4). Pub. L. 102–25 realigned margin of par. (4).

1990—Subsec. (b)(4). Pub. L. 101–510 amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Housing units acquired without consideration, if—

''(A) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed acquisition; and

''(B) a period of 21 days elapses after the notification is received by those committees.''

1987—Subsec. (b)(4). Pub. L. 100–180 added par. (4).

1984—Subsec. (b)(3). Pub. L. 98–525 substituted ''section 2832'' for ''section 2833''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2823. Determination of availability of suitable alternative housing for acquisition in lieu of construction of new family housing

(a) Before entering into a contract for the construction of family housing units authorized by law to be constructed at a location within the United States, the Secretary concerned shall consult in writing with the Secretary of Housing and Urban Development as to the availability of suitable alternative housing at such location. The Secretary of Housing and Urban Development shall advise the Secretary concerned in writing as to the availability of such housing. If the Secretary of Housing and Urban Development does not advise the Secretary concerned as to the availability of such housing within 21 days of the date on which the request for such advice is made, the Secretary concerned may enter into a contract for the proposed construction.

(b) If the Secretary concerned and the Secretary of Housing and Urban Development agree that suitable alternative housing is available at a location at which military family housing units are authorized to be constructed, the Secretary may not proceed with such construction.

(c) The Secretary of Defense shall prescribe regulations to define what constitutes suitable alternative housing for the purposes of this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 158; amended Pub. L. 105–85, div. A, title X, §1041(b), Nov. 18, 1997, 111 Stat. 1885.)

AMENDMENTS

1997—Subsecs. (b) to (d). Pub. L. 105–85 redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which read as follows: ''If the Secretary concerned and the Secretary of Housing and Urban Development disagree with respect to the availability of suitable alternative housing at any location, the Secretary concerned shall notify the appropriate committees of Congress, in writing, of the disagreement, of the Secretary's decision to proceed with the construction, and of the justification for proceeding with the construction. A contract for construction of family housing units at such location may not then be entered into until the end of the 21-day period beginning on the date such committees receive the notification.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2824. Authorization for acquisition of existing family housing in lieu of construction

(a) In lieu of constructing any family housing units authorized by law to be constructed, the Secretary concerned may acquire sole interest in existing family housing units that are privately owned or that are held by the Department of Housing and Urban Development, except that in foreign countries the Secretary concerned may acquire less than sole interest in existing family housing units.

(b) When authority provided by law to construct military family housing units is used to acquire existing family housing units under subsection (a), the authority includes authority to acquire interests in land.

(c) The net floor area of a family housing unit acquired under the authority of this section may not exceed the applicable limitation specified in section 2826 of this title. The Secretary concerned may waive the limitation set forth in the preceding sentence to family housing units acquired under this section during the five-year period beginning on February 10, 1996.

(d) Family housing units may not be acquired under this section through the exercise of eminent domain authority.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 104–106, div. B, title XXVIII, §2813, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104–201, div. A, title X, §1074(a)(17), Sept. 23, 1996, 110 Stat. 2659.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

Pub. L. 104–106 inserted at end ''The Secretary concerned may waive the limitation set forth in the pre-

ceding sentence to family housing units acquired under this section during the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2825. Improvements to family housing units

(a)(1) Authority provided by law to improve existing military family housing units and ancillary family housing support facilities is authority to make alterations, additions, expansions, and extensions.

(2) In this section, the term ''improvement'' includes rehabilitation of a housing unit and major maintenance or repair work to be accomplished concurrently with an improvement project. Such term does not include day-to-day maintenance and repair work.

(b)(1) Funds may not be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units that are to be converted into or are to be used as a single family housing unit, if the cost per unit of such improvement will exceed (A) $50,000 multiplied by the area construction cost index as developed by the Department of Defense for the location concerned at the time of contract award, or (B) in the case of improvements necessary to make the unit suitable for habitation by a handicapped person, $60,000 multiplied by such index. The Secretary concerned may waive the limitations contained in the preceding sentence if (i) such Secretary determines that, considering the useful life of the structure to be improved and the useful life of a newly constructed unit and the cost of construction and of operation and maintenance of each kind of unit over its useful life, the improvement will be cost-effective, and (ii) a period of 21 days elapses after the date on which the appropriate committees of Congress receive a notice from such Secretary of the proposed waiver, together with an economic analysis demonstrating that the improvement will be cost effective.

(2) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of major maintenance or repair work undertaken in connection with the improvement.

(B) Any cost, other than the cost of activities undertaken beyond a distance of five feet from the unit or units concerned, in connection with—

(i) the furnishing of electricity, gas, water, and sewage disposal;

(ii) the construction or repair of roads, drives, and walks; and

(iii) grading and drainage work.

(3) In determining the applicability of the limitation contained in paragraph (1), the Secretary concerned shall not include as part of the cost of the improvement of the unit or units concerned the following:

(A) The cost of the installation of communications, security, or antiterrorism equipment required by an occupant of the unit or units to perform duties assigned to the occupant as a member of the armed forces.

(B) The cost of the maintenance or repair of equipment described in subparagraph (A) installed for the purpose specified in such subparagraph.

(4) The limitation contained in the first sentence of paragraph (1) does not apply to a project for the improvement of a family housing unit or units referred to in that sentence if the project (including the amount requested for the project) is identified in the budget materials submitted to Congress by the Secretary of Defense in connection with the submission to Congress of the budget for a fiscal year pursuant to section 1105 of title 31.

(c)(1) The Secretary concerned may construct replacement military family housing units in lieu of improving existing military family housing units if—

(A) the improvement of the existing housing units has been authorized by law;

(B) the Secretary determines that the improvement project is no longer cost-effective after a review of post-design or bid cost estimates;

(C) the Secretary submits to the committees referred to in subsection (b)(1) a notice containing—

(i) an economic analysis demonstrating that the improvement project would exceed 70 percent of the cost of constructing replacement housing units intended for members of the armed forces in the same pay grade or grades as those members who occupy the existing housing units; and

(ii) if the replacement housing units are intended for members of the armed forces in a different pay grade or grades, a justification of the need for the replacement housing units based upon the long-term requirements of the armed forces in the location concerned; and

(D) a period of 21 days elapses after the date on which the Secretary submits the notice required by subparagraph (C).

(2) The amount that may be expended to construct replacement military family housing units under this subsection may not exceed the amount that is otherwise available to carry out the previously authorized improvement project.

(d) This section does not apply to projects authorized for restoration or replacement of housing units that have been damaged or destroyed.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 99–661, div. B, title VII, § 2702(c), Nov. 14, 1986, 100 Stat. 4040; Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2305, Dec. 4, 1987, 101 Stat. 1215; Pub. L. 101–189, div. B, title XXVIII, § 2804, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 101–510, div. B, title XXVIII, § 2812, Nov. 5, 1990, 104 Stat. 1788; Pub. L. 102–484, div. B, title XXVIII, § 2802(a), Oct. 23, 1992, 106 Stat. 2605; Pub. L. 103–337, div. B, title XXVIII, § 2802, Oct. 5, 1994, 108 Stat. 3050; Pub. L. 104–106, div. A, title XV, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 104–201, div. B, title XXVIII, § 2803, Sept. 23,

1996, 110 Stat. 2788; Pub. L. 106–398, §1 [div. B, title XXVIII, §2802], Oct. 30, 2000, 114 Stat. 1654, 1654A–413.)

AMENDMENTS

2000—Subsec. (b)(3), (4). Pub. L. 106–398 added par. (3) and redesignated former par. (3) as (4).

1996—Subsec. (a)(2). Pub. L. 104–201, §2803(a), inserted ''major'' before ''maintenance or repair'' and ''Such term does not include day-to-day maintenance and repair work.'' at end.

Subsec. (b)(1). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives''.

Subsec. (b)(2). Pub. L. 104–201, §2803(b), added par. (2) and struck out former par. (2) which read as follows: ''In determining the applicability of the limitation contained in paragraph (1), there shall be included as part of the cost of the improvement the cost of repairs undertaken in connection with the improvement and any cost in connection with (A) the furnishing of electricity, gas, water and sewage disposal, (B) the construction or repair of roads and walks, and (C) grading and drainage work.''

1994—Subsec. (b)(3). Pub. L. 103–337 added par. (3).

1992—Subsecs. (c), (d). Pub. L. 102–484 added subsec. (c) and redesignated former subsec. (c) as (d).

1990—Subsec. (b)(1). Pub. L. 101–510 substituted ''$50,000'' for ''$40,000'' in cl. (A) and inserted at end sentence authorizing Secretary concerned to waive limitations contained in preceding sentence.

1989—Subsec. (b)(1). Pub. L. 101–189 inserted ''(A)'' after ''will exceed'' and added cl. (B).

1987—Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b)(1). Pub. L. 100–180 substituted ''$40,000'' for ''$30,000''.

1986—Subsec. (b)(1). Pub. L. 99–661 substituted ''$30,000'' for ''an amount specified by law for such purpose''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

INITIAL ESTABLISHMENT OF CERTAIN AMOUNTS REQUIRED TO BE SPECIFIED BY LAW

Maximum amount of $30,000 per unit for an improvement project for family housing units under this section during the period beginning Oct. 1, 1982, and ending on the date of the enactment of the Military Construction Authorization Act for fiscal year 1984 or Oct. 1, 1983, whichever is later, see section 11(3) of Pub. L. 97–214, set out as a note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2822 of this title.

§ 2826. Military family housing: local comparability of room patterns and floor areas

(a) LOCAL COMPARABILITY.—In the construction, acquisition, and improvement of military family housing, the Secretary concerned shall ensure that the room patterns and floor areas of military family housing in a particular locality (as designated by the Secretary concerned for purposes of this section) are similar to room patterns and floor areas of similar housing in the private sector in that locality.

(b) REQUESTS FOR AUTHORITY FOR MILITARY FAMILY HOUSING.—(1) In submitting to Congress a request for authority to carry out the construction, acquisition, or improvement of military family housing, the Secretary concerned shall include in the request information on the net floor area of each unit of military family housing to be constructed, acquired, or improved under the authority.

(2) In this subsection, the term ''net floor area'', in the case of a military family housing unit, means the total number of square feet of the floor space inside the exterior walls of the unit, excluding the floor area of an unfinished basement, an unfinished attic, a utility space, a garage, a carport, an open or insect-screened porch, a stairwell, and any space used for a solar-energy system.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 159; amended Pub. L. 100–26, §7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 102–190, div. B, title XXVIII, §2808, Dec. 5, 1991, 105 Stat. 1540; Pub. L. 104–106, div. B, title XXVIII, §§2814, 2815, Feb. 10, 1996, 110 Stat. 553; Pub. L. 104–201, div. A, title X, §1074(a)(17), Sept. 23, 1996, 110 Stat. 2659; Pub. L. 106–398, §1 [div. B, title XXVIII, §2803(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413.)

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, section consisted of subsecs. (a) to (i) which limited the net floor area allowed in the construction, acquisition, and improvement of military family housing units.

1996—Subsec. (e). Pub. L. 104–106, §2814, struck out at end ''The authority provided by this subsection shall expire on September 30, 1994.''

Subsec. (i). Pub. L. 104–106, §2815, added subsec. (i).

Subsec. (i)(1). Pub. L. 104–201 substituted ''February 10, 1996'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

1991—Subsecs. (d) to (h). Pub. L. 102–190 added subsecs. (d) and (e) and redesignated former subsecs. (d) to (f) as (f) to (h), respectively.

1987—Subsec. (f). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [div. B, title XXVIII, §2803(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–413, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall take effect on October 1, 2001, but the Secretary of Defense shall anticipate the requirements of section 2826 of title 10, United States Code, as added by such subsection, when preparing the budget request for new construction, acquisition, or improvement of military family housing for fiscal year 2002.

''(2) Section 2826 of title 10, United States Code, as in effect on September 30, 2001, shall continue to apply with respect to the construction, acquisition, or improvement of military family housing commenced on or before that date.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2824, 2880 of this title.

§ 2827. Relocation of military family housing units

(a) Subject to subsection (b), the Secretary concerned may relocate existing military family housing units from any location where the number of such units exceeds requirements for military family housing to any military installation where there is a housing shortage.

(b) A contract to carry out a relocation of military family housing units under subsection (a) may not be awarded until (1) the Secretary concerned has notified the appropriate committees of Congress of the proposed new locations of the housing units to be relocated and the estimated cost of and source of funds for the relocation, and (2) a period of 21 days has elapsed after the notification has been received by those committees.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 160.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2821 of this title.

§ 2828. Leasing of military family housing

(a)(1) Subject to paragraph (2), the Secretary of the military department concerned may lease housing facilities at or near a military installation in the United States, Puerto Rico, or Guam for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with fair market rental charge, as family housing to civilian employees of the Department of Defense stationed at such installation.

(2) A lease may only be made under paragraph (1) if the Secretary concerned finds that there is a shortage of adequate housing at or near such military installation and that—

(A) the requirement for such housing is temporary;

(B) leasing would be more cost effective than construction or acquisition of new housing;

(C) family housing is required for personnel attending service school academic courses on permanent change of station orders;

(D) construction of family housing at such installation has been authorized by law but is not yet completed; or

(E) a military construction authorization bill pending in Congress includes a request for authorization of construction of family housing at such installation.

(b)(1) Not more than 10,000 family housing units may be leased at any one time under subsection (a).

(2) Except as provided in paragraphs (3) and (4), expenditures for the rental of housing units under subsection (a) (including the cost of utilities, maintenance, and operation) may not exceed $12,000 per unit per year, as adjusted from time to time under paragraph (5).

(3) Not more than 500 housing units may be leased under subsection (a) for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation) exceeds the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5).

(4)(A) The Secretary of the Army may lease not more than eight housing units in the vicinity of Miami, Florida, for key and essential personnel, as designated by the Secretary, for the United States Southern Command for which the expenditure for the rental of such units (including the cost of utilities, maintenance, and operation, including security enhancements) exceeds the expenditure limitations in paragraphs (2) and (3).

(B) The amount of all leases under this paragraph may not exceed $280,000 per year, as adjusted from time to time under paragraph (6).

(C) The term of any lease under this paragraph may not exceed 5 years.

(5) At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for leases under paragraphs (2) and (3) for the previous fiscal year by the percentage (if any) by which the national average monthly cost of housing (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the national average monthly cost of housing (as so calculated) for the fiscal year before such preceding fiscal year.

(6) At the beginning of each fiscal year, the Secretary of the Army shall adjust the maximum aggregate amount for leases under paragraph (4) for the previous fiscal year by the percentage (if any) by which the annual average cost of housing for the Miami Military Housing Area (as calculated for purposes of determining rates of basic allowance for housing under section 403 of title 37) for the preceding fiscal year exceeds the annual average cost of housing for the Miami Military Housing Area (as so calculated) for the fiscal year before such preceding fiscal year.

(c) The Secretary concerned may lease housing facilities in foreign countries for assignment, without rental charge, as family housing to members of the armed forces and for assignment, with or without rental charge, as family housing to civilian employees of the Department of Defense—

(1) under circumstances specified in clause (A), (B), (D), or (E) of subsection (a)(2);

(2) for incumbents of special command positions (as determined by the Secretary of Defense);

(3) in countries where excessive costs of housing or other lease terms would cause undue hardship on Department of Defense personnel; and

(4) in countries that prohibit leases by individual military or civilian personnel of the United States.

(d)(1) Leases of housing units in foreign countries under subsection (c) for assignment as family housing may be for any period not in excess of ten years, and the costs of such leases for any year may be paid out of annual appropriations for that year.

(2) The Secretary may enter into an agreement under this paragraph in connection with a lease entered into under subsection (c). Such an agreement—

(A) shall be for the purpose of compensating a developer for any costs resulting from the termination of the lease during the construction of the housing units that are to be occupied pursuant to the lease;

(B) may be for a period not in excess of three years; and

(C) shall include a provision that the obligation of the United States to make payments under the agreement in any fiscal year is subject to the availability of appropriations.

(e)(1) Expenditures for the rental of family housing in foreign countries (including the costs of utilities, maintenance, and operation) may not exceed $20,000 per unit per year, except that 450 units may be leased in foreign countries for not more than $25,000 per unit per year. These maximum lease amounts may be waived by the Secretary concerned with respect to not more than a total of 350 such units that are leased for incumbents of special positions or for personnel assigned to Defense Attache Offices or that are leased in countries where excessive costs of housing would cause undue hardship on Department of Defense personnel.

(2) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Navy may lease not more than 2,000 units of family housing in Italy, and the Secretary of the Army may lease not more than 500 units of family housing in Italy, subject to that maximum lease amount.

(3) In addition to the 450 units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 1,175 units of family housing in Korea subject to that maximum lease amount.

(4) In addition to the units of family housing referred to in paragraph (1) for which the maximum lease amount is $25,000 per unit per year, the Secretary of the Army may lease not more than 2,400 units of family housing in Korea subject to a maximum lease amount of $35,000 per unit per year.

(5) The Secretary concerned shall adjust the maximum lease amounts provided for under paragraphs (1), (2), (3), and (4) for the previous fiscal year—

(A) for foreign currency fluctuations from October 1, 1987; and

(B) at the beginning of each fiscal year, by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.

(6) The maximum number of family housing units that may be leased in foreign countries under this section at any one time is 55,775.

(f) A lease for family housing facilities, or for real property related to family housing facilities, in a foreign country for which the average estimated annual rental during the term of the lease exceeds $500,000 may not be made under this section until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed lease, and (2) a period of 21 days elapses after the notification is received by those committees.

(g) Appropriations available to the Department of Defense for maintenance or construction may be used for the acquisition of interests in land under this section.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 161; amended Pub. L. 97–321, title VIII, §805(b)(2), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 98–115, title VIII, §801, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98–407, title VIII, §806(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 99–167, title VIII, §§801(b), 803, 805, Dec. 3, 1985, 99 Stat. 985, 987, 988; Pub. L. 99–661, div. B, title VII, §§2702(d)–(g), 2713(b), 2714, Nov. 14, 1986, 100 Stat. 4040–4042; Pub. L. 100–26, §7(j)(8), Apr. 21, 1987, 101 Stat. 283; Pub. L. 100–180, div. B, subdiv. 3, title I, §§2306(a), 2309, 2311, Dec. 4, 1987, 101 Stat. 1216, 1217; Pub. L. 100–370, §1(*l*)(2), July 19, 1988, 102 Stat. 849; Pub. L. 100–456, div. B, title XXVIII, §2802, Sept. 29, 1988, 102 Stat. 2115; Pub. L. 101–189, div. B, title XXVIII, §§2802, 2805, Nov. 29, 1989, 103 Stat. 1646, 1647; Pub. L. 102–190, div. B, title XXVIII, §2806(b), Dec. 5, 1991, 105 Stat. 1540; Pub. L. 103–35, title II, §201(d)(7), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. B, title XXVIII, §2801, Nov. 30, 1993, 107 Stat. 1883; Pub. L. 104–106, div. B, title XXVIII, §2816, Feb. 10, 1996, 110 Stat. 553; Pub. L. 105–85, div. B, title XXVIII, §2803, Nov. 18, 1997, 111 Stat. 1990; Pub. L. 105–261, div. B, title XXVIII, §2802, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–398, §1 [div. B, title XXVIII, §2804], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; Pub. L. 107–314, div. A, title X, §1062(a)(15), div. B, title XXVIII, §2801, Dec. 2, 2002, 116 Stat. 2650, 2702.)

HISTORICAL AND REVISION NOTES

1988 ACT

Subsection (h) of this section and section 2673 of this title are based on Pub. L. 98–212, title VII, §707, Dec. 8, 1983, 97 Stat. 1438.

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–314, §1062(a)(15), inserted ''time'' after ''from time to''.

Subsec. (e)(3). Pub. L. 107–314, §2801(a), substituted ''1,175 units'' for ''800 units''.

Subsec. (e)(4). Pub. L. 107–314, §2801(b)(2), added par. (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 107–314, §2801(b)(1), (3), redesignated par. (4) as (5) and substituted ''(3), and (4)'' for ''and (3)'' in introductory provisions. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 107–314, §2801(b)(1), (4), redesignated par. (5) as (6) and substituted ''55,775'' for ''53,000''.

2000—Subsec. (b)(2). Pub. L. 106–398, §1 [div. B, title XXVIII, §2804(c)(1)], inserted '', as adjusted from time to under paragraph (5)'' after ''per year''.

Subsec. (b)(3). Pub. L. 106–398, §1 [div. B, title XXVIII, §2804(c)(2)], substituted ''the maximum amount per unit per year in effect under paragraph (2) but does not exceed $14,000 per unit per year, as adjusted from time to time under paragraph (5)'' for ''$12,000 per unit per year but does not exceed $14,000 per unit per year''.

Subsec. (b)(4). Pub. L. 106–398, §1 [div. B, title XXVIII, §2804(a)], designated existing provisions as subpar. (A), struck out last sentence which read as follows: ''The total amount for all leases under this paragraph may not exceed $280,000 per year, and no lease on any individual housing unit may exceed $60,000 per year.'', and added subpars. (B) and (C).

Subsec. (b)(5), (6). Pub. L. 106–398, §1 [div. B, title XXVIII, §2804(b)], added pars. (5) and (6) and struck out former par. (5) which read as follows: ''At the beginning of each fiscal year, the Secretary concerned shall adjust the maximum lease amount provided for under paragraphs (2), (3), and (4) for the previous fiscal year

by the percentage (if any) by which the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, during the preceding fiscal year exceeds such Consumer Price Index for the fiscal year before such preceding fiscal year.''

1998—Subsec. (e)(2). Pub. L. 105–261, § 2802(a)(1), inserted '', and the Secretary of the Army may lease not more than 500 units of family housing in Italy,'' after ''family housing in Italy''.

Subsec. (e)(3). Pub. L. 105–261, § 2802(a)(3), added par. (3). Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 105–261, § 2802(b), substituted '', (2), and (3)'' for ''and (2)''.

Pub. L. 105–261, § 2802(a)(2), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (e)(5). Pub. L. 105–261, § 2802(a)(2), redesignated par. (4) as (5).

1997—Subsec. (b)(2). Pub. L. 105–85, § 2803(a)(1), substituted ''paragraphs (3) and (4)'' for ''paragraph (3)''.

Subsec. (b)(4). Pub. L. 105–85, § 2803(a)(3), added par. (4). Former par. (4) redesignated (5).

Subsec. (b)(5). Pub. L. 105–85, § 2803(b), substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Pub. L. 105–85, § 2803(a)(2), redesignated par. (4) as (5).

1996—Subsec. (e)(1). Pub. L. 104–106, § 2816(1), substituted ''450 units'' for ''300 units'' in first sentence and ''350 such units'' for ''220 such units'' in second sentence.

Subsec. (e)(2). Pub. L. 104–106, § 2816(2), substituted ''450 units'' for ''300 units''.

1993—Subsec. (b)(2), (3). Pub. L. 103–35 substituted ''per year'' for ''per annum'' in par. (2) and in two places in par. (3).

Subsec. (b)(4). Pub. L. 103–160, § 2801(a), added par. (4).

Subsec. (e)(1). Pub. L. 103–160, § 2801(b)(1), (2), substituted '', except that 300 units may be leased in foreign countries for not more than $25,000 per unit per year'' for ''as adjusted for foreign currency fluctuation from October 1, 1987'' in first sentence and ''These maximum lease amounts'' for ''That maximum lease amount'' in second sentence.

Pub. L. 103–35 substituted ''per year'' for ''per annum''.

Subsec. (e)(2) to (4). Pub. L. 103–160, § 2801(b)(3), (4), added pars. (2) and (3) and redesignated former par. (2) as (4).

1991—Subsecs. (g), (h). Pub. L. 102–190 redesignated subsec. (h) as (g) and struck out former subsec. (g) which authorized contracts for lease of family housing units on or near military installations at which there is a validated deficit in family housing. See section 2835 of this title.

1989—Subsec. (b)(2). Pub. L. 101–189, § 2802(1), substituted ''$12,000'' for ''$10,000''.

Subsec. (b)(3). Pub. L. 101–189, § 2802(2), substituted ''Not'' for ''(A) Except as provided in subparagraph (B), not'', ''$12,000'' for ''$10,000'', and ''$14,000'' for ''$12,000'' and struck out subpar. (B) which read as follows: ''During fiscal years 1986 and 1987, the number of housing units that may be leased pursuant to the provisions of subparagraph (A) may be increased by 500 units for each such fiscal year. The Secretary concerned shall provide written notification to the Committees on Armed Services of the Senate and House of Representatives concerning the location, purpose, and cost of the additional units permitted by this subparagraph. Such notification shall be made periodically as the leases are entered into.''

Subsec. (e)(1). Pub. L. 101–189, § 2802(3), inserted ''as adjusted for foreign currency fluctuation from October 1, 1987'' after ''$20,000 per unit per annum''.

Subsec. (e)(2). Pub. L. 101–189, § 2802(4), substituted ''53,000'' for ''38,000''.

Subsec. (g)(7). Pub. L. 101–189, § 2805(1), added par. (7) and struck out former par. (7) which provided that this subsection could only be implemented by a pilot program, and that in carrying out such program, the Secretary of each military department or the Secretary of Transportation with respect to the Coast Guard, could not enter into more than two contracts under this subsection, and any such contract could not be for more than 300 family housing units.

Subsec. (g)(8). Pub. L. 101–189, § 2805, redesignated par. (9) as (8), substituted ''1991'' for ''1989'', and struck out former par. (8) which authorized the Secretaries of the military departments and the Secretary of Transportation to enter into contracts for family housing units in addition to those authorized in par. (7).

Subsec. (g)(9), (10). Pub. L. 101–189, § 2805(2), redesignated par. (10) as (9). Former par. (9) redesignated (8).

1988—Subsec. (e)(2). Pub. L. 100–456 substituted ''38,000'' for ''36,000''.

Subsec. (h). Pub. L. 100–370 added subsec. (h).

1987—Subsec. (a)(1). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (b)(2). Pub. L. 100–180, § 2309(b)(1), inserted ''per unit per annum'' after ''$10,000''.

Subsec. (b)(3)(A). Pub. L. 100–180, § 2309(b)(2), substituted ''$10,000 per unit per annum but does not exceed $12,000 per unit per annum'' for ''$10,000 but does not exceed $12,000''.

Subsec. (c). Pub. L. 100–26 substituted ''armed forces'' for ''Armed Forces''.

Subsec. (e)(1). Pub. L. 100–180, § 2309(a)(1), substituted ''$20,000 per unit per annum'' for ''$16,800''.

Subsec. (e)(2). Pub. L. 100–180, § 2309(a)(2), substituted ''36,000'' for ''32,000''.

Subsec. (f). Pub. L. 100–180, § 2311, substituted ''$500,000'' for ''$250,000''.

Subsec. (g)(1). Pub. L. 100–180, § 2306(a)(1), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department'' and ''or rehabilitated to residential use'' after ''constructed''.

Subsec. (g)(7)(A). Pub. L. 100–180, § 2306(a)(2), inserted '', or the Secretary of Transportation with respect to the Coast Guard,'' after ''military department''.

Subsec. (g)(8)(C). Pub. L. 100–180, § 2306(a)(3), added subpar. (C).

Subsec. (g)(9). Pub. L. 100–180, § 2306(a)(4), substituted ''1989'' for ''1988''.

1986—Subsec. (b)(2). Pub. L. 99–661, § 2702(d)(1), substituted ''$10,000'' for ''the amount specified by law as the maximum annual domestic family housing unit lease amount''.

Subsec. (b)(3)(A). Pub. L. 99–661, § 2702(d)(2), substituted ''$10,000 but does not exceed $12,000'' for ''the maximum annual domestic family housing unit lease amount but does not exceed 120 percent of that amount''.

Subsec. (e)(1). Pub. L. 99–661, § 2714, substituted ''220'' for ''200''.

Pub. L. 99–661, § 2702(e), substituted ''$16,800'' for ''the amount specified by law as the maximum annual foreign family housing unit lease amount''.

Subsec. (e)(2). Pub. L. 99–661, § 2702(f), substituted ''is 32,000'' for ''shall be specified by law''.

Subsec. (f). Pub. L. 99–661, § 2702(g), substituted ''$250,000'' for ''the amount specified by law for such purpose''.

Subsec. (g)(8)(B). Pub. L. 99–661, § 2713(b)(1), substituted ''1,600'' for ''600''.

Subsec. (g)(9). Pub. L. 99–661, § 2713(b)(2), substituted ''September 30, 1988'' for ''September 30, 1986''.

Subsec. (g)(10). Pub. L. 99–661, § 2713(b)(3), added par. (10).

1985—Subsec. (b)(3). Pub. L. 9–167, § 805, designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), not'' for ''Not'', and added subpar. (B).

Subsec. (d). Pub. L. 99–167, § 803, designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(8). Pub. L. 99–167, § 801(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(9). Pub. L. 99–167, § 801(b)(1), substituted ''September 30, 1986'' for ''October 1, 1985''.

1984—Subsec. (g)(8), (9). Pub. L. 98–407 added par. (8) and redesignated former par. (8) as (9).

1983—Subsec. (g). Pub. L. 98–115 added subsec. (g).

1982—Subsec. (e)(1). Pub. L. 97–321 inserted ''the'' after ''may be waived by'' in second sentence.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2806(c) of Pub. L. 102–190 provided that: ''Section 2835 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b)(1) [amending this section] shall not affect the validity of any contract entered into before that date under section 2828(g) of such title, as in effect on the day before that date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Oct. 1, 1988, see section 2702 of Pub. L. 100–456, set out as a note under section 2391 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 806(c) of Pub. L. 98–407 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 2821 of this title] shall take effect on October 1, 1984.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2822, 2834 of this title; title 20 section 7703.

§ 2829. Multi-year contracts for supplies and services

The Secretary concerned may make contracts for periods of up to four years for supplies and services for the management, maintenance, and operation of military family housing and may pay the costs of such contracts for each year out of annual appropriations for that year.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2830. Occupancy of substandard family housing units

(a)(1) A member of the uniformed services with dependents may, without loss of the member's basic allowance for housing under section 403 of title 37, occupy a substandard family housing unit under the jurisdiction of the Secretary concerned.

(2) Occupancy of a family housing unit under paragraph (1) shall be subject to a charge against the member's basic allowance for housing in the amount of the fair rental value of the housing unit. However, such a charge may not be made in an amount in excess of 75 percent of the amount of such allowance.

(b)(1) The Secretary concerned may lease substandard family housing units to members of any of the uniformed services for occupancy by such members.

(2) The authority to enter into leases under paragraph (1) shall be exercised—

(A) in the case of a lease by the Secretary of a military department, subject to regulations prescribed by the Secretary of Defense; and

(B) in the case of a lease by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, subject to regulations prescribed by that Secretary.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 99–348, title III, § 304(a)(4), July 1, 1986, 100 Stat. 703; Pub. L. 100–180, div. A, title VI, § 632(a), Dec. 4, 1987, 101 Stat. 1105; Pub. L. 105–85, div. A, title VI, § 603(d)(2)(B), Nov. 18, 1997, 111 Stat. 1782; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (b)(2)(B). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1997—Subsec. (a)(1). Pub. L. 105–85, § 603(d)(2)(B)(i), substituted ''basic allowance for housing under section 403 of title 37'' for ''basic allowance for quarters''.

Subsec. (a)(2). Pub. L. 105–85, § 603(d)(2)(B)(ii), substituted ''basic allowance for housing'' for ''basic allowance for quarters''.

1987—Subsec. (a)(1). Pub. L. 100–180, § 632(a)(1), substituted ''Secretary concerned'' for ''Secretary of a military department''.

Subsec. (b). Pub. L. 100–180, § 632(a)(2), (3), designated existing provisions as par. (1), substituted ''The Secretary concerned'' for ''Subject to regulations prescribed by the Secretary of Defense, the Secretary of a military department'', and added par. (2).

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which defined ''uniformed services'' in this section to mean the armed forces and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration. See section 101 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2801 of this title.

§ 2831. Military family housing management account

(a) There is on the books of the Treasury an account known as the Department of Defense Military Family Housing Management Account (hereinafter in this section referred to as the ''account''). The account shall be used for the management and administration of funds appropriated or otherwise made available to the Department of Defense for military family housing programs.

(b) The account shall be administered as a single account. There shall be transferred into the account—

(1) appropriations made for the purpose of, or which are available for, the payment of costs arising in connection with the construction, acquisition, leasing, relocation, oper-

ation and maintenance, and disposal of military family housing, including the cost of principal and interest charges, and insurance premiums, arising in connection with the acquisition of such housing, and mortgage insurance premiums payable under section 222(c) of the National Housing Act (12 U.S.C. 1715m(c));

(2) proceeds from the rental of family housing and mobile home facilities under the control of a military department, reimbursements from the occupants of such facilities for services rendered (including utility costs), funds obtained from individuals as a result of losses, damages, or destruction to such facilities caused by the abuse or negligence of such individuals, and reimbursements from other Government agencies for expenditures from the account; and

(3) proceeds of the handling and the disposal of family housing of a military department (including related land and improvements), whether carried out by a military department or any other Federal agency, but less those expenses payable pursuant to section 572(a) of title 40.

(c) Amounts in the account shall remain available until spent.

(d) The Secretary concerned may make obligations against the account, in such amounts as may be specified from time to time in appropriation Acts, for the purpose of defraying, in the manner and to the extent authorized by law, the costs referred to in subsection (b).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 162; amended Pub. L. 107–217, § 3(b)(19), Aug. 21, 2002, 116 Stat. 1297.)

AMENDMENTS

2002—Subsec. (b)(3). Pub. L. 107–217 substituted ''section 572(a) of title 40'' for ''section 204(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485(b))''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2832. Homeowners assistance program

The Secretary of Defense may exercise the authority provided in section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 163; amended Pub. L. 101–189, div. B, title XXVIII, § 2831(a), Nov. 29, 1989, 103 Stat. 1660; Pub. L. 104–106, div. A, title XV, § 1502(a)(26), Feb. 10, 1996, 110 Stat. 506; Pub. L. 107–107, div. A, title X, § 1048(e)(11), Dec. 28, 2001, 115 Stat. 1228.)

AMENDMENTS

2001—Pub. L. 107–107 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows:

''(b)(1) Subject to paragraph (2) and notwithstanding subsection (i) of section 1013 of the Act referred to in subsection (a)—

''(A) the Secretary of Defense may transfer not more than $31,000,000 from the Department of Defense Base Closure Account, established by section 207 of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 102 Stat. 2627), to the fund established pursuant to subsection (d) of such section 1013 for use as part of such fund; and

''(B) any funds so transferred shall be available for obligation and expenditure for the same purposes that funds appropriated to such fund are available, except that such funds may not be obligated after September 30, 1991.

''(2) Amounts may be transferred under paragraph (1) only after the date on which the appropriate committees of Congress receive from the Secretary written notice of, and justification for, the transfer.''

1996—Subsec. (b)(2). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and the Committees on Appropriations of the Senate and of the House of Representatives''.

1989—Pub. L. 101–189 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 2831(b) of Pub. L. 101–189 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only to funds appropriated or transferred to, or otherwise deposited in, the Department of Defense Base Closure Account for, or during, fiscal years beginning after September 30, 1989.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2822 of this title.

§ 2833. Family housing support

Amounts authorized by law for support of military family housing include amounts for—

(1) operating expenses;

(2) leasing expenses;

(3) maintenance of real property expenses;

(4) payments of principal and interest on mortgage debts incurred; and

(5) payments of mortgage insurance premiums authorized under section 222 of the National Housing Act (12 U.S.C. 1715m).

(Added Pub. L. 99–167, title VIII, § 804(b)(1), Dec. 3, 1985, 99 Stat. 987.)

§ 2834. Participation in Department of State housing pools

(a) The Secretary concerned may enter into an agreement with the Secretary of State under which the Secretary of State agrees to provide housing and related services for personnel under the jurisdiction of the Secretary concerned who are assigned to duty in a foreign country if the Secretary concerned determines—

(1) that there is a shortage of adequate housing in the area of the foreign country in which such personnel are assigned to duty; and

(2) that participation in the Department of State housing pool is the most cost-effective means of providing housing for such personnel.

The Secretary concerned shall reimburse the Secretary of State, as provided in the agreement, for housing and related services furnished personnel under the jurisdiction of the Secretary concerned.

(b) The maximum lease amounts specified in section 2828(e)(1) of this title for the rental of family housing in foreign countries shall not

apply to housing made available to the Department of Defense under this section. To the extent that the lease amount for units of housing made available under this subsection exceeds such maximum lease amounts, such units shall not be counted in applying the limitation contained in such section on the number of units of family housing for which the Secretary concerned may waive such maximum lease amounts.

(Added Pub. L. 99–167, title VIII, § 808(a), Dec. 3, 1985, 99 Stat. 989; amended Pub. L. 101–510, div. A, title XIII, § 1301(18), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 103–160, div. B, title XXVIII, § 2806, Nov. 30, 1993, 107 Stat. 1887.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–160 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''In computing the number of leases for which the maximum lease amount may be waived by the Secretary concerned under the second sentence of section 2828(e)(1) of this title, housing made available to the Department of Defense under this section shall be included.''

1990—Subsecs. (b), (c). Pub. L. 101–510 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Agreements entered into with the Secretary of State under this section may not be executed until (1) the Secretary concerned provides to the appropriate committees of Congress written notification of the facts concerning the proposed agreement, and (2) a period of 21 days has elapsed after the day on which the notification is received by the committees.''

§ 2835. Long-term leasing of military family housing to be constructed

(a) BUILD AND LEASE AUTHORIZED.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a contract for the lease of family housing units to be constructed or rehabilitated to residential use near a military installation within the United States under the Secretary's jurisdiction at which there is a shortage of family housing. Housing units leased under this section shall be assigned, without rental charge, as family housing to members of the armed forces who are eligible for assignment to military family housing.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED LEASE CONTRACTS.—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into a lease contract under subsection (a) for such military housing as is authorized by law for the purposes of this section.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing projects for which lease contracts are proposed to be entered into under subsection (a) in such fiscal year.

(c) COMPETITIVE PROCESS.—Each contract under subsection (a) shall be awarded through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a contract for the lease of military housing authorized in accordance with subsection (b)(1). Such a contract may provide for the contractor of the housing facilities to operate and maintain such housing facilities during the term of the lease.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—A lease contract entered into for a military housing project under subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that project for that fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(4) A requirement that housing units constructed pursuant to the contract shall be constructed—

(A) to Department of Defense specifications, in the case of a Department of Defense contract; and

(B) to Department of Homeland Security specifications, in the case of a contract for the Coast Guard.

(e) LEASE TERM.—A contract under this section may be for any period not in excess of 20 years (excluding the period required for construction of the housing facilities).

(f) RIGHT OF FIRST REFUSAL TO ACQUIRE.—A contract under this section shall provide that, upon the termination of the lease period, the United States shall have the right of first refusal to acquire all right, title, and interest to the housing facilities constructed and leased under the contract.

(g) NOTICE AND WAIT REQUIREMENTS.—A contract may not be entered into for the lease of housing facilities under this section until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed contract is cost-effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(h) SUPPORT BUILDINGS.—A contract for the lease of family housing under this section may include provision for the lease of a child care center, civic center building, and similar type buildings constructed for the support of family housing.

(Added Pub. L. 102–190, div. B, title XXVIII, § 2806(a)(1), Dec. 5, 1991, 105 Stat. 1539; amended

Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in subsec. (g) of section 2828 of this title, prior to repeal by Pub. L. 102–190, § 2806(b)(1).

AMENDMENTS

2002—Subsecs. (a) to (c), (d)(4)(B), (g)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section applicable with respect to contracts entered into under this section on or after Dec. 5, 1991, see section 2806(c) of Pub. L. 102–190, set out as an Effective Date of 1991 Amendment note under section 2828 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2801 of this title.

§ 2836. Military housing rental guarantee program

(a) AUTHORITY.—Subject to subsection (b), the Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into an agreement to assure the occupancy of rental housing to be constructed or rehabilitated to residential use by a private developer or by a State or local housing authority on private land, on land owned by a State or local government, or on land owned by the United States, if the housing is to be located on or near a new military installation or an existing military installation that has a shortage of housing to meet the requirements of eligible members of the armed forces (with or without accompanying dependents). The authority provided under this subsection shall be exercised under uniform regulations prescribed by the Secretary of Defense.

(b) SUBMISSION AND AUTHORIZATION OF PROPOSED AGREEMENTS.—(1) The Secretary of a military department, or the Secretary of Homeland Security with respect to the Coast Guard, may enter into agreements pursuant to subsection (a) for such military housing rental guaranty projects as are authorized by law.

(2) The budget material submitted to Congress by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard, in connection with the budget submitted pursuant to section 1105 of title 31 for each fiscal year shall include materials that identify the military housing rental guaranty projects for which agreements are proposed to be entered into under subsection (a) in that fiscal year.

(c) CONTENT OF AGREEMENT.—An agreement under subsection (a)—

(1) may not assure the occupancy of more than 97 percent of the units constructed under the agreement;

(2) shall establish initial rental rates that are not more than rates for comparable rental dwelling units in the same general market area and may include an escalation clause;

(3) may apply to existing housing;

(4) shall require that the housing units be constructed—

(A) in the case of a Department of Defense agreement, to Department of Defense specifications or, at the discretion of the Secretary of the military department concerned, in compliance with the local building codes; and

(B) in the case of an agreement for the Coast Guard, to Department of Homeland Security specifications;

(5) may not be for a term in excess of 25 years;

(6) may not be renewed unless the project is located on government owned land, in which case the renewal period may not exceed the original contract term;

(7) may not assure more than an amount equivalent to the shelter rent of the housing units, determined on the basis of amortizing initial construction costs;

(8) may only be entered into to the extent that there is a shortage in military family housing;

(9) may only be entered into if existing military-controlled housing at all installations in the commuting area (except for a new installation or an installation for which there is projected a significant increase in the number of families due to an increase in the number of authorized personnel) has exceeded 97 percent use for a period of not less than 18 consecutive months immediately preceding the date on which the agreement is entered into, excluding units temporarily inactivated for major repair or improvements;

(10) shall provide for priority of occupancy for military families;

(11) shall include a provision authorizing the Secretary of the military department concerned, or the Secretary of Homeland Security with respect to the Coast Guard, to take such action as the Secretary considers appropriate to protect the interests of the United States, including rendering the agreement null and void if, in the opinion of the Secretary, the owner of the housing fails to maintain a satisfactory level of operation and maintenance;

(12) may provide in the agreement for the rental of a child care center, civic center building, and similar type buildings constructed for the support of family housing;

(13) may provide that utilities, trash collection, snow removal, and entomological services will be furnished by the Federal Government at no cost to the occupant to the same extent that these items are provided to occupants of housing owned by the Federal Government; and

(14) may require that rent collection and operation and maintenance services in connection with the housing be under the terms of a separate agreement or be carried out by personnel of the Federal Government.

(d) CONDITIONS ON OBLIGATION OF FUNDS.—An agreement entered into for a project pursuant to subsection (a) shall include the following provisions:

(1) A statement that the obligation of the United States to make payments under the agreement in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that project.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the agreement when and to the extent that funds are appropriated for such project for such fiscal year.

(3) A statement that such a commitment entered into under the authority of this section does not constitute an obligation of the United States.

(e) COMPETITIVE PROCESS.—An agreement under subsection (a) shall be made through the use of publicly advertised, competitively bid, or competitively negotiated, contracting procedures as provided in chapter 137 of this title. In accordance with such procedures, the Secretary of a military department, or the Secretary of Homeland Security, as the case may be, shall solicit bids or proposals for a guaranty agreement for each military housing rental guaranty project authorized in accordance with subsection (b).

(f) NOTICE AND WAIT REQUIREMENTS.—An agreement may not be entered into under subsection (a) until—

(1) the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard, submits to the appropriate committees of Congress, in writing, an economic analysis (based upon accepted life cycle costing procedures) which demonstrates that the proposed agreement is cost effective when compared with alternative means of furnishing the same housing facilities; and

(2) a period of 21 calendar days has expired following the date on which the economic analysis is received by those committees.

(g) DISPUTES.—The Secretary concerned may require that disputes arising under an agreement entered into under subsection (a) be decided in accordance with the procedures provided for by the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(Added Pub. L. 102–190, div. B, title XXVIII, § 2809(a)(1), Dec. 5, 1991, 105 Stat. 1541; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Contract Disputes Act of 1978, referred to in subsec. (g), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

PRIOR PROVISIONS

Similar provisions were contained in Pub. L. 98–115, title VIII, § 802, Oct. 11, 1983, 97 Stat. 783, as amended, which was set out as a note under section 2821 of this title, prior to repeal by Pub. L. 102–190, § 2809(b).

AMENDMENTS

2002—Subsecs. (a), (b), (c)(4)(B), (11), (e), (f)(1). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' wherever appearing.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section 2809(c) of Pub. L. 102–190 provided that: ''Section 2836 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts entered into under that section on or after the date of the enactment of this Act [Dec. 5, 1991]. The amendment made by subsection (b) [repealing provisions set out as a note under section 2821 of this title] shall not affect the validity of any contract entered into before that date under section 802 of the Military Construction Authorization Act, 1984 (10 U.S.C. 2821 note), as in effect on the day before that date.''

§ 2837. Limited partnerships with private developers of housing

(a) LIMITED PARTNERSHIPS.—(1) In order to meet the housing requirements of members of the armed forces, and the dependents of such members, at a military installation described in paragraph (2), the Secretary of a military department may enter into a limited partnership with one or more private developers to encourage the construction of housing and accessory structures within commuting distance of the installation. The Secretary may contribute not less than five percent, but not more than 35 percent, of the development costs under a limited partnership.

(2) Paragraph (1) applies to a military installation under the jurisdiction of the Secretary concerned at which there is a shortage of suitable housing to meet the requirements of members and dependents referred to in such paragraph.

(b) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned may also enter into collateral incentive agreements with private developers who enter into a limited partnership under subsection (a) to ensure that, where appropriate—

(1) a suitable preference will be afforded members of the armed forces in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the limited partnership; or

(2) the rental rates or sale prices, as the case may be, for some or all of such units will be affordable for such members.

(c) SELECTION OF INVESTMENT OPPORTUNITIES.—(1) The Secretary concerned shall use publicly advertised, competitively bid or competitively negotiated, contracting procedures, as provided in chapter 137 of this title, to enter into limited partnerships under subsection (a).

(2) When a decision is made to enter into a limited partnership under subsection (a), the Secretary concerned shall submit a report in writing to the appropriate committees of Congress on that decision. Each such report shall include the justification for the limited partnership, the terms and conditions of the limited partnership, a description of the development costs for projects under the limited partnership, and a description of the share of such costs to be incurred by the Secretary concerned. The Secretary concerned may then enter into the limited partnership only after the end of the 21-day

period beginning on the date the report is received by such committees.

(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the ''Defense Housing Investment Account''.

(2) There shall be deposited into the Account—

(A) such funds as may be authorized for and appropriated to the Account; and

(B) any proceeds received by the Secretary concerned from the repayment of investments or profits on investments of the Secretary under subsection (a).

(3) From such amounts as are provided in advance in appropriation Acts, funds in the Account shall be available to the Secretaries concerned in amounts determined by the Secretary of Defense for contracts, investments, and expenses necessary for the implementation of this section.

(4) The Secretary concerned may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless a sufficient amount of the unobligated balance of the funds in the Account is available to the Secretary, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.

[(e) Repealed. Pub. L. 104–106, div. B, title XXVIII, § 2802(d)(1), Feb. 10, 1996, 110 Stat. 552.]

(f) REPORT.—Not later than 60 days after the end of each fiscal year in which activities are carried out under this section, the Secretaries concerned shall jointly transmit to Congress a report specifying the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of all other expenditures made pursuant to such section during such fiscal year.

(g) TRANSFER OF LANDS PROHIBITED.—Nothing in this section shall be construed to permit the Secretary concerned, as part of a limited partnership entered into under this section, to transfer the right, title, or interest of the United States in any real property under the jurisdiction of the Secretary concerned.

(h) EXPIRATION AND TERMINATION OF AUTHORITY.—The authority of the Secretary concerned to enter into a limited partnership under this section shall expire on September 30, 2000.

(Added Pub. L. 103–337, div. B, title XXVIII, § 2803(a), Oct. 5, 1994, 108 Stat. 3051; amended Pub. L. 104–106, div. B, title XXVIII, § 2802, Feb. 10, 1996, 110 Stat. 551; Pub. L. 106–65, div. A, title X, § 1066(a)(28), oct. 5, 1999, 113 Stat. 772.)

AMENDMENTS

1999—Subsec. (d)(2). Pub. L. 106–65 inserted ''and'' at end of subpar. (A), substituted a period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''any unobligated balances which remain in the Navy Housing Investment Account as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996.''

1996—Subsec. (a)(1). Pub. L. 104–106, § 2802(b)(1), substituted ''the Secretary of a military department'' for ''the Secretary of the Navy''.

Pub. L. 104–106, § 2802(a)(1), substituted ''of the armed forces'' for ''of the naval service''.

Subsec. (a)(2). Pub. L. 104–106, § 2802(b)(2), substituted ''Secretary concerned'' for ''Secretary''.

Subsec. (b). Pub. L. 104–106, § 2802(b)(2), substituted ''Secretary concerned'' for ''Secretary''.

Subsec. (b)(1). Pub. L. 104–106, § 2802(a)(2), substituted ''of the armed forces'' for ''of the naval service''.

Subsec. (c). Pub. L. 104–106, § 2802(b)(2), substituted ''Secretary concerned'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 104–106, § 2802(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) ACCOUNT.—(1) There is hereby established on the books of the Treasury an account to be known as the 'Navy Housing Investment Account'.

''(2) There shall be deposited into the Account—

''(A) such funds as may be authorized for and appropriated to the Account; and

''(B) any proceeds received by the Secretary from the repayment of investments or profits on investments of the Secretary under subsection (a).

''(3) In such amounts as is provided in advance in appropriation Acts, the Account shall be available for contracts, investments, and expenses necessary for the implementation of this section.

''(4) The Secretary may not enter into a contract in connection with a limited partnership under subsection (a) or a collateral incentive agreement under subsection (b) unless the Account contains sufficient funds, as of the time the contract is entered into, to satisfy the total obligations to be incurred by the United States under the contract.''

Subsec. (e). Pub. L. 104–106, § 2802(d)(1), struck out subsec. (e) which related to establishment of Navy Housing Investment Board.

Subsec. (f). Pub. L. 104–106, § 2802(e), substituted ''activities are carried out'' for ''the Secretary carries out activities'' and ''the Secretaries concerned shall jointly'' for ''the Secretary shall''.

Subsec. (g). Pub. L. 104–106, § 2802(g), struck out ''Navy'' after ''Transfer of'' in heading.

Pub. L. 104–106, § 2802(b)(2), substituted ''Secretary concerned'' for ''Secretary'' in two places.

Subsec. (h). Pub. L. 104–106, § 2802(f), substituted ''September 30, 2000'' for ''September 30, 1999''.

Pub. L. 104–106, § 2802(d)(2), substituted ''Authority'' for ''Authorities'' in heading and struck out ''(1)'' before ''The authority'' and par. (2) which read as follows: ''The Navy Housing Investment Board shall terminate on November 30, 1999.''

Pub. L. 104–106, § 2802(b)(2), substituted ''Secretary concerned'' for ''Secretary'' in par. (1).

SUBCHAPTER III—ADMINISTRATION OF MILITARY CONSTRUCTION AND MILITARY FAMILY HOUSING

Sec.
2851. Supervision of military construction projects.
2852. Military construction projects: waiver of certain restrictions.
2853. Authorized cost variations.
2854. Restoration or replacement of damaged or destroyed facilities.
2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds.
2855. Law applicable to contracts for architectural and engineering services and construction design.
2856. Limitations on barracks space by pay grade.
2857. Use of renewable forms of energy in new facilities.
2858. Limitation on the use of funds for expediting a construction project.
2859. Transmission of annual military construction authorization request.
2860. Availability of appropriations.
[2861. Repealed.]
2862. Turn-key selection procedures.
2863. Payment of contractor claims.

Sec.
2864. Military construction contracts on Guam.
2865. Energy savings at military installations.
2866. Water conservation at military installations.
2867. Sale of electricity from alternate energy and cogeneration production facilities.
2868. Utility services: furnishing for certain buildings.

AMENDMENTS

2001—Pub. L. 107–107, div. B, title XXVIII, §2803(b), Dec. 28, 2001, 115 Stat. 1305, struck out item 2861 ''Annual report to Congress''.

1997—Pub. L. 105–85, div. A, title III, §371(c)(3), Nov. 18, 1997, 111 Stat. 1705, added items 2867 and 2868.

1996—Pub. L. 104–106, div. B, title XXVIII, §2818(a)(2), Feb. 10, 1996, 110 Stat. 555, added item 2854a.

1993—Pub. L. 103–160, div. B, title XXVIII, §2803(b), Nov. 30, 1993, 107 Stat. 1885, added item 2866.

1990—Pub. L. 101–510, div. B, title XXVIII, §2851(b), Nov. 5, 1990, 104 Stat. 1804, added item 2865.

1989—Pub. L. 101–189, div. B, title XXVIII, §2807(b), Nov. 29, 1989, 103 Stat. 1648, added item 2864.

1987—Pub. L. 100–180, div. B, subdiv. 3, title I, §2303(b), Dec. 4, 1987, 101 Stat. 1215, added item 2863.

1986—Pub. L. 99–661, div. A, title XIII, §1343(a)(21)(B), Nov. 14, 1986, 100 Stat. 3994, struck out ''for five years'' after ''Availability of appropriations'' in item 2860.

1985—Pub. L. 99–167, title VIII, §807(b), Dec. 3, 1985, 99 Stat. 988, added item 2862.

1982—Pub. L. 97–321, title VIII, §801(b)(3), Oct. 15, 1982, 96 Stat. 1571, substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in item 2857.

§ 2851. Supervision of military construction projects

(a) Each contract entered into by the United States in connection with a military construction project or a military family housing project shall be carried out under the direction and supervision of the Secretary of the Army (acting through the Chief of Engineers), the Secretary of the Navy (acting through the Commander of the Naval Facilities Engineering Command), or such other department or Government agency as the Secretary of Defense approves to assure the most efficient, expeditious, and cost-effective completion of the project.

(b) A military construction project for an activity or agency of the Department of Defense (other than a military department) financed from appropriations for military functions of the Department of Defense shall be accomplished by or through a military department designated by the Secretary of Defense.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 163.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

IDENTIFICATION OF REQUIREMENTS TO REDUCE BACKLOG IN MAINTENANCE AND REPAIR OF DEFENSE FACILITIES

Pub. L. 106–398, §1 [[div. A], title III, §374], Oct. 30, 2000, 114 Stat. 1654, 1654A–81, provided that:

''(a) REPORT TO ADDRESS MAINTENANCE AND REPAIR BACKLOG.—Not later than March 15, 2001, the Secretary of Defense shall submit to Congress a report identifying a list of requirements to reduce the backlog in maintenance and repair needs of facilities and infrastructure under the jurisdiction of the Department of Defense or a military department.

''(b) ELEMENTS OF REPORT.—At a minimum, the report shall include or address the following:

''(1) The extent of the work necessary to repair and revitalize facilities and infrastructure, or to demolish and replace unusable facilities, carried as backlog by the Secretary of Defense or the Secretary of a military department.

''(2) Measurable goals, over specified time frames, for addressing all of the identified requirements.

''(3) Expected funding for each military department and Defense Agency to address the identified requirements during the period covered by the most recent future-years defense program submitted to Congress pursuant to section 221 of title 10, United States Code.

''(4) The cost of the current backlog in maintenance and repair for each military department and Defense Agency, which shall be determined using the standard costs to standard facility categories in the Department of Defense Facilities Cost Factors Handbook, shown both in the aggregate and individually for each major military installation.

''(5) The total number of square feet of building space of each military department and Defense Agency to be demolished or proposed for demolition, shown both in the aggregate and individually for each major military installation.

''(6) The initiatives underway to identify facility and infrastructure requirements at military installations to accommodate new and developing weapons systems and to prepare installations to accommodate these systems.

''(c) ANNUAL UPDATES.—The Secretary of Defense shall update the report required under subsection (a) annually. The annual updates shall be submitted to Congress at or about the time that the budget is submitted to Congress for a fiscal year under section 1105(a) of title 31, United States Code.''

§ 2852. Military construction projects: waiver of certain restrictions

(a) The Secretary of Defense and the Secretaries of the military departments may carry out authorized military construction projects and authorized military family housing projects without regard to subsections (a) and (b) of section 3324 of title 31.

(b) Authority to carry out a military construction project or a military family housing project may be exercised on land not owned by the United States—

(1) before title to the land on which the project is to be carried out is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 97–295, §1(35), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 97–321, title VIII, §805(a)(1), Oct. 15, 1982, 96 Stat. 1573; Pub. L. 99–145, title XIII, §1303(a)(19), Nov. 8, 1985, 99 Stat. 739; Pub. L. 107–217, §3(b)(20), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

In 10:2852(a), the title 31 citation is substituted on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–217 substituted ''section 3111 of title 40'' for ''section 355 of the Revised Statutes (40 U.S.C. 255)''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

Subsec. (b). Pub. L. 97–321 substituted ''may be exercised on land not owned by the United States'' for ''on land not owned by the United States may be exercised'' in introductory text, redesignated former cl. (1) as par. (1), added par. (2), and struck out former cl. (2) which read as follows: ''even though the land is held temporarily''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2853. Authorized cost variations

(a) Except as provided in subsection (c) or (d), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a)(1), whichever is less, if the Secretary concerned determines that such an increase in cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was approved originally by Congress.

(b) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be reduced by not more than 25 percent from the amount approved for that project, construction, improvement, or acquisition by Congress.

(c) The limitation on cost increase in subsection (a) or the limitation on scope reduction in subsection (b) does not apply if—

(1) the increase in cost or reduction in scope is approved by the Secretary concerned;

(2) the Secretary concerned notifies the appropriate committees of Congress in writing of the increase or reduction and the reasons therefor; and

(3) a period of 21 days has elapsed after the date on which the notification is received by the committees.

(d) The limitation on cost increases in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 164; amended Pub. L. 98–407, title VIII, § 807, Aug. 28, 1984, 98 Stat. 1521; Pub. L. 100–26, § 7(f)(2), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–180, div. B, subdiv. 3, title I, §§ 2312, 2313, Dec. 4, 1987, 101 Stat. 1217, 1218; Pub. L. 101–189, div. B, title XXVIII, § 2808, Nov. 29, 1989, 103 Stat. 1648; Pub. L. 104–106, div. B, title XXVIII, § 2817, Feb. 10, 1996, 110 Stat. 553; Pub. L. 107–107, div. B, title XXVIII, § 2802, Dec. 28, 2001, 115 Stat. 1305.)

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–107 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The limitation on cost increases in subsection (a) does not apply to the settlement of a contractor claim under a contract.''

1996—Subsec. (d). Pub. L. 104–106 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The limitation on cost increases in subsection (a) does not apply to a within-scope modification to a contract or to the settlement of a contractor claim under a contract if the increase in cost is approved by the Secretary concerned, and the Secretary concerned promptly submits written notification of the facts relating to the proposed increase in cost to the appropriate committees of Congress.''

1989—Pub. L. 101–189 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) to (f).

1987—Subsec. (a)(1). Pub. L. 100–180, § 2312, substituted ''Except as provided in paragraph (2), the total cost authorized for military construction projects at an installation (including each project the cost of which is included in such total authorized cost and is less than the minor project ceiling) may be increased by not more than 25 percent of the total amount appropriated for such projects'' for ''Except as provided in paragraph (2), the cost authorized for a military construction project (other than a project for which the approved amount is less than the minor project ceiling (as defined in subsection (f))) may be increased by not more than 25 percent of the amount appropriated for the project''.

Pub. L. 100–26, § 7(f)(2)(A), substituted ''the minor project ceiling (as defined in subsection (f))'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (a)(2). Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' in two places.

Subsec. (b). Pub. L. 100–26, § 7(f)(2)(B), (C), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project'' and ''the amount of such ceiling'' for ''such maximum amount'' in two places.

Subsec. (c). Pub. L. 100–180, § 2313, substituted ''construction, improvement,'' for ''construction''.

Subsec. (e). Pub. L. 100–26, § 7(f)(2)(B), substituted ''the minor project ceiling'' for ''the amount specified by law as the maximum amount for a minor military construction project''.

Subsec. (f). Pub. L. 100–26, § 7(f)(2)(D), added subsec. (f).

1984—Subsec. (e). Pub. L. 98–407 inserted ''is more than the amount specified by law as the maximum amount for a minor military construction project and''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2854. Restoration or replacement of damaged or destroyed facilities

(a) Subject to subsection (b), the Secretary concerned may repair, restore, or replace a facil-

ity under his jurisdiction, including a family housing facility, that has been damaged or destroyed.

(b) When a decision is made to carry out construction under this section and the cost of the repair, restoration, or replacement is greater than the maximum amount for a minor construction project, the Secretary concerned shall notify in writing the appropriate committees of Congress of that decision, of the justification for the project, of the current estimate of the cost of the project, of the source of funds for the project, and of the justification for carrying out the project under this section. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 165; amended Pub. L. 102–190, div. B, title XXVIII, §2870(7), Dec. 5, 1991, 105 Stat. 1563.)

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–190 struck out ''(1)'' after ''carried out only'' and '', or (2) after each such committee has approved the project, if the committees approve the project before the end of that period'' before period at end.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 114, 2807 of this title.

§ 2854a. Conveyance of damaged or deteriorated military family housing; use of proceeds

(a) AUTHORITY TO CONVEY.—(1) The Secretary concerned may convey any family housing facility that, due to damage or deterioration, is in a condition that is uneconomical to repair. Any conveyance of a family housing facility under this section may include a conveyance of the real property associated with the facility conveyed.

(2) The authority of this section does not apply to family housing facilities located at military installations approved for closure under a base closure law or family housing facilities located at an installation outside the United States at which the Secretary of Defense terminates operations.

(3) The aggregate total value of the family housing facilities conveyed by the Department of Defense under the authority in this subsection in any fiscal year may not exceed $5,000,000.

(4) For purposes of this subsection, a family housing facility is in a condition that is uneconomical to repair if the cost of the necessary repairs for the facility would exceed the amount equal to 70 percent of the cost of constructing a family housing facility to replace such facility.

(b) CONSIDERATION.—(1) As consideration for the conveyance of a family housing facility under subsection (a), the person to whom the facility is conveyed shall pay the United States an amount equal to the fair market value of the facility conveyed, including any real property conveyed along with the facility.

(2) The Secretary concerned shall determine the fair market value of any family housing facility and associated real property that is conveyed under subsection (a). Such determination shall be final.

(c) NOTICE AND WAIT REQUIREMENTS.—The Secretary concerned may not enter into an agreement to convey a family housing facility under this section until—

(1) the Secretary submits to the appropriate committees of Congress, in writing, a justification for the conveyance under the agreement, including—

(A) an estimate of the consideration to be provided the United States under the agreement;

(B) an estimate of the cost of repairing the family housing facility to be conveyed; and

(C) an estimate of the cost of replacing the family housing facility to be conveyed; and

(2) a period of 21 calendar days has elapsed after the date on which the justification is received by the committees.

(d) INAPPLICABILITY OF CERTAIN PROPERTY DISPOSAL LAWS.—The following provisions of law do not apply to the conveyance of a family housing facility under this section:

(1) Subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(2) Title V of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411 et seq.).

(e) USE OF PROCEEDS.—(1) The proceeds of any conveyance of a family housing facility under this section shall be credited to the appropriate fund established under section 2883 of this title and shall be available—

(A) to construct family housing units to replace the family housing facility conveyed under this section, but only to the extent that the number of units constructed with such proceeds does not exceed the number of units of military family housing of the facility conveyed;

(B) to repair or restore existing military family housing; and

(C) to reimburse the Secretary concerned for the costs incurred by the Secretary in conveying the family housing facility.

(2) Notwithstanding section 2883(d) of this title, proceeds derived from a conveyance of a family housing facility under this section shall be available under paragraph (1) without any further appropriation.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of any family housing facility conveyed under this section, including any real property associated with such facility, shall be determined by such means as the Secretary concerned considers satisfactory, including by survey in the case of real property.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary concerned may require such additional terms and conditions in connection with the conveyance of family housing facilities under this section as the Secretary considers appropriate to protect the interests of the United States.

(Added Pub. L. 104–106, div. B, title XXVIII, §2818(a)(1), Feb. 10, 1996, 110 Stat. 553; amended

Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(21), Aug. 21, 2002, 116 Stat. 1297.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (d)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The McKinney-Vento Homeless Assistance Act, referred to in subsec. (d)(2), is Pub. L. 100–77, July 22, 1987, 101 Stat. 482, as amended. Title V of the Act is classified generally to subchapter V (§ 11411 et seq.) of chapter 119 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 11301 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (d)(1). Pub. L. 107–217 substituted ''Subtitle I of title 40 and title III of the'' for ''The'' and ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

2001—Subsec. (d)(2). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 572.

§ 2855. Law applicable to contracts for architectural and engineering services and construction design

(a) Contracts for architectural and engineering services and construction design in connection with a military construction project or a military family housing project shall be awarded in accordance with chapter 11 of title 40.

(b)(1) In the case of a contract referred to in subsection (a)—

(A) if the Secretary concerned estimates that the initial award of the contract will be in an amount greater than or equal to the threshold amount determined under paragraph (2), the contract may not be set aside exclusively for award to small business concerns; and

(B) if the Secretary concerned estimates that the initial award of the contract will be in an amount less than the threshold amount determined under paragraph (2), the contract shall be awarded in accordance with the set aside provisions of the Small Business Act (15 U.S.C. 631 et seq.).

(2) The initial threshold amount under paragraph (1) is $85,000. The Secretary of Defense may revise that amount in order to ensure that small business concerns receive a reasonable share of contracts referred to in subsection (a).

(3) This subsection does not restrict the award of contracts to small business concerns under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 98–407, title VIII, § 808(a), Aug. 28, 1984, 98 Stat. 1521; Pub. L. 107–217, § 3(b)(22), Aug. 21, 2002, 116 Stat. 1297.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (b)(1)(B), is Pub. L. 85–536, July 18, 1958, 72 Stat. 384, as amended, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217 substituted ''chapter 11 of title 40'' for ''title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)''.

1984—Pub. L. 98–407 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 808(b) of Pub. L. 98–407 provided that: ''Subsection (b) of section 2855 of title 10, United States Code, as added by subsection (a), shall apply with respect to contracts awarded after September 30, 1984, except that the authority of the Secretary of Defense under paragraph (2) of that subsection shall apply only with respect to contracts awarded after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2856. Limitations on barracks space by pay grade

The Secretary of Defense shall prescribe regulations establishing the maximum allowable net square feet per occupant for new permanent barracks construction. Such regulations shall be uniform for the armed forces under the jurisdiction of the Secretary of a military department.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 101–510, div. A, title XIII, § 1301(19), Nov. 5, 1990, 104 Stat. 1668.)

AMENDMENTS

1990—Pub. L. 101–510 struck out ''(a)'' before ''The Secretary of Defense'' and struck out subsec. (b) which read as follows: ''Before taking effect, any regulations under this section, and any modifications to such regulations, shall be submitted to the appropriate committees of Congress. Such regulations (including any modifications to such regulations) may not then take effect until 21 days after being received by such committees.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2880 of this title.

§ 2857. Use of renewable forms of energy in new facilities

(a) The Secretary of Defense shall encourage the use of energy systems using solar energy or other renewable forms of energy as a source of energy for military construction projects (including military family housing projects) where use of such form of energy would be practical and economically feasible.

(b)(1) The Secretary concerned shall require that the design of all new facilities (including family housing) shall include consideration of energy systems using solar energy or other renewable forms of energy in those cases in which use of such forms of energy has the potential for reduced energy costs.

(2) The Secretary concerned shall require that contracts for construction resulting from such design include a requirement that energy systems using solar energy or other renewable forms of energy be installed if such systems can be shown to be cost effective.

(c)(1) For the purposes of this section, an energy system using solar energy or other renewable forms of energy for a facility shall be considered to be cost effective if the difference between (A) the original investment cost of the energy system for the facility with such a system, and (B) the original investment cost of the energy system for the facility without such a system can be recovered over the expected life of the facility.

(2) A determination under paragraph (1) concerning whether a cost-differential can be recovered over the expected life of a facility shall be made using the life-cycle cost methods and procedures established pursuant to section 544(a) of the National Energy Conservation Policy Act (42 U.S.C. 8254(a)).

(d) In order to equip a military construction project (including a military family housing project) with heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy system using solar energy or other renewable forms of energy, the Secretary concerned may authorize an increase in any otherwise applicable limitation with respect to the number of square feet or the cost per square foot of the project by such amount as may be necessary for such purpose. Any such increase under this subsection shall be in addition to any other administrative increase in cost per square foot or variation in floor area authorized by law.

(Added Pub. L. 97–214, §2(a), July 12, 1982, 96 Stat. 166; amended Pub. L. 97–321, title VIII, §801(b)(1), (2), Oct. 15, 1982, 96 Stat. 1571; Pub. L. 98–525, title XIV, §1405(45)(A), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 101–218, §8(b), Dec. 11, 1989, 103 Stat. 1868; Pub. L. 101–510, div. B, title XXVIII, §2852(b), Nov. 5, 1990, 104 Stat. 1804; Pub. L. 102–25, title VII, §701(g)(2), Apr. 6, 1991, 105 Stat. 115.)

AMENDMENTS

1991—Subsec. (c)(2). Pub. L. 102–25 inserted ''(42 U.S.C. 8254(a))'' after ''Policy Act''.

1990—Subsec. (c)(2), (3). Pub. L. 101–510 added par. (2) and struck out former pars. (2) and (3) which read as follows:

''(2) A determination under paragraph (1) of whether a cost-differential can be recovered over the expected life of a facility shall be made using accepted life-cycle costing procedures and shall include—

''(A) the use of all capital expenses and all operating and maintenance expenses associated with the energy system with and without an energy system using solar energy or other renewable forms of energy over the expected life of the facility or during a period of 25 years, whichever is shorter;

''(B) the use of fossil fuel costs (and a rate of cost growth for fossil fuel costs) as determined by the Secretary of Defense; and

''(C) the use of a discount rate of 7 percent per year for all expenses of the energy system.

''(3) For the purpose of any life-cycle cost analysis under this subsection, the original investment cost of the energy system using solar energy or other renewable forms of energy shall be reduced by 10 percent to reflect an allowance for an investment cost credit.''

1989—Subsec. (b)(1). Pub. L. 101–218 substituted ''reduced energy costs'' for ''significant savings of fossil-fuel-derived energy''.

1984—Subsec. (b)(1). Pub. L. 98–525 substituted ''use of such forms of energy has the potential for'' for ''use of solar energy has the potential for''.

1982—Pub. L. 97–321, §801(b)(2), substituted ''renewable forms of energy in new facilities'' for ''solar energy systems'' in section catchline.

Subsec. (a). Pub. L. 97–321, §801(b)(1)(A), substituted ''energy systems using solar energy or other renewable forms of energy'' and ''such form of energy would'' for ''solar energy systems'' and ''solar energy would'', respectively.

Subsec. (b)(1). Pub. L. 97–321, §801(b)(1)(B), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems'' and directed that ''such form of energy has'' be substituted for ''a solar energy has'', but ''a solar energy has'' did not appear in par. (1). See 1984 Amendment note above.

Subsec. (b)(2). Pub. L. 97–321, §801(b)(1)(B)(i), substituted ''energy systems using solar energy or other renewable forms of energy'' for ''solar energy systems''.

Subsec. (c). Pub. L. 97–321, §801(b)(1)(C)–(E), substituted: in par. (1) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system'' before ''for a facility'' and in items (A) and (B) ''such a system'' for ''a solar energy system''; in par. (2)(A) ''an energy system using solar energy or other renewable forms of energy'' for ''a solar energy system''; and in par. (3) ''energy system using solar energy or other renewable forms of energy'' for ''solar energy system'', respectively.

Subsec. (d). Pub. L. 97–321, §801(b)(1)(F), substituted ''heating equipment, cooling equipment, or both heating and cooling equipment using solar energy or other renewable forms of energy or with a passive energy energy system using solar energy or other renewable forms of energy'' for ''solar heating equipment, solar cooling equipment, or both solar heating and solar cooling equipment, or with a passive solar energy system''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1405(45)(B) of Pub. L. 98–525 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if it had been included in the amendments made by section 801 of Public Law 97–321.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2394a of this title.

§ 2858. Limitation on the use of funds for expediting a construction project

Funds appropriated for military construction (including military family housing) may not be expended for additional costs involved in expediting a construction project unless the Secretary concerned (1) certifies that expenditures for such costs are necessary to protect the national interest, and (2) establishes a reasonable completion date for the project. In establishing such a completion date, the Secretary shall take into consideration the urgency of the requirement for completion of the project, the type and location of the project, the climatic and seasonal conditions affecting the construction involved, and the application of economical construction practices.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167.)

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2859. Transmission of annual military construction authorization request

The Secretary of Defense shall transmit to Congress the annual request for military construction authorization for a fiscal year during the first 10 days after the President transmits to Congress the Budget for that fiscal year pursuant to section 1105 of title 31.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 97–295, § 1(36), Oct. 12, 1982, 96 Stat. 1296.)

HISTORICAL AND REVISION NOTES

In 10:2859, the title 31 citation is substituted on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted title 31.

AMENDMENTS

1982—Pub. L. 97–295 substituted ''section 1105 of title 31'' for ''section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11)''.

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

§ 2860. Availability of appropriations

Funds appropriated to a military department or to the Secretary of Defense for a fiscal year for military construction or military family housing purposes may remain available for obligation beyond such fiscal year to the extent provided in appropriation Acts.

(Added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 99–167, title VIII, § 812(a), Dec. 3, 1985, 99 Stat. 991; Pub. L. 99–173, § 121(b), Dec. 10, 1985, 99 Stat. 1029; Pub. L. 99–661, div. A, title XIII, § 1343(a)(21)(A), Nov. 14, 1986, 100 Stat. 3994.)

AMENDMENTS

1986—Pub. L. 99–661 substituted ''to the Secretary of Defense'' for ''defense agency'', inserted ''for obligation'' after ''remains available'', and struck out ''the'' before ''appropriation Acts''.

1985—Pub. L. 99–173 substituted ''Availability of appropriations'' for ''Availability of appropriations for five years'' as section catchline, and amended text generally. Prior to amendment, text read as follows: ''Subject to the provisions of appropriation Acts, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project (1) are obligated from funds available for military construction projects, and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.''

Pub. L. 99–167 struck out subsection designation ''(a)'' and ''and except as otherwise provided under subsection (b)'' after ''provisions of appropriation Acts'', and struck out subsec. (b) which provided: ''Should a requirement develop to obligate funds for a military construction project after the end of the fourth fiscal year after the fiscal year for which such funds were appropriated, such obligation may be made after the end of the 21-day period beginning on the date on which the appropriate committees of Congress receive notification of the need for such obligation and the reasons therefor.''

EFFECTIVE DATE OF 1985 AMENDMENTS

Section 121(c) of Pub. L. 99–173 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to funds appropriated after the date of the enactment of Public Law 99–103 [Sept. 30, 1985].''

Section 812(b) of Pub. L. 99–167 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to funds appropriated after September 30, 1985.''

EFFECTIVE DATE

For effective date and applicability of section, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

AVAILABILITY OF APPROPRIATIONS FOR FIVE YEARS

Pub. L. 107–249, § 117, Oct. 23, 2002, 116 Stat. 1583, provided that: ''Notwithstanding any other provision of law, any funds appropriated to a military department or defense agency for the construction of military projects may be obligated for a military construction project or contract, or for any portion of such a project or contract, at any time before the end of the fourth fiscal year after the fiscal year for which funds for such project were appropriated if the funds obligated for such project: (1) are obligated from funds available for military construction projects; and (2) do not exceed the amount appropriated for such project, plus any amount by which the cost of such project is increased pursuant to law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–64, § 117, Nov. 5, 2001, 115 Stat. 479.

Pub. L. 106–246, div. A, § 117, July 13, 2000, 114 Stat. 516.

Pub. L. 106–52, § 117, Aug. 17, 1999, 113 Stat. 264.

Pub. L. 105–237, § 117, Sept. 20, 1998, 112 Stat. 1558.

Pub. L. 105–45, § 117, Sept. 30, 1997, 111 Stat. 1147.

Pub. L. 104–196, § 117, Sept. 16, 1996, 110 Stat. 2391.

Pub. L. 104–32, § 117, Oct. 3, 1995, 109 Stat. 289.

Pub. L. 103–307, § 118, Aug. 23, 1994, 108 Stat. 1664.

Pub. L. 103–110, § 118, Oct. 21, 1993, 107 Stat. 1043.

Pub. L. 102–380, § 119, Oct. 5, 1992, 106 Stat. 1371.

Pub. L. 102–136, § 119, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 101–519, § 119, Nov. 5, 1990, 104 Stat. 2246.

Pub. L. 101–148, § 121, Nov. 10, 1989, 103 Stat. 925.

Pub. L. 100–447, § 124, Sept. 27, 1988, 102 Stat. 1835.

TRANSFER OF FUNDS FOR FOREIGN CURRENCY FLUCTUATIONS

Pub. L. 107–249, § 118, Oct. 23, 2002, 116 Stat. 1584, provided that: ''During the 5-year period after appropriations available to the Department of Defense for military construction and family housing operation and maintenance and construction have expired for obligation, upon a determination that such appropriations will not be necessary for the liquidation of obligations or for making authorized adjustments to such appropriations for obligations incurred during the period of availability of such appropriations, unobligated balances of such appropriations may be transferred into the appropriation 'Foreign Currency Fluctuations, Construction, Defense' to be merged with and to be available for the same time period and for the same purposes as the appropriation to which transferred.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 107–64, § 118, Nov. 5, 2001, 115 Stat. 480.

Pub. L. 106–246, div. A, § 118, July 13, 2000, 114 Stat. 516.

Pub. L. 106–52, § 118, Aug. 17, 1999, 113 Stat. 264.
Pub. L. 105–237, § 118, Sept. 20, 1998, 112 Stat. 1559.
Pub. L. 105–45, § 118, Sept. 30, 1997, 111 Stat. 1147.
Pub. L. 104–196, § 118, Sept. 16, 1996, 110 Stat. 2392.
Pub. L. 104–32, § 118, Oct. 3, 1995, 109 Stat. 289.
Pub. L. 103–307, § 119, Aug. 23, 1994, 108 Stat. 1665.
Pub. L. 103–110, § 120, Oct. 21, 1993, 107 Stat. 1043.
Pub. L. 102–380, § 121, Oct. 5, 1992, 106 Stat. 1372.
Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643.

Pub. L. 99–500, § 101(k) [title I, § 121], Oct. 18, 1986, 100 Stat. 1783–287, 1783–293, and Pub. L. 99–591, § 101(k) [title I, § 121], Oct. 30, 1986, 100 Stat. 3341–287, 3341–293, as amended by Pub. L. 102–136, § 122, Oct. 25, 1991, 105 Stat. 643, provided that: ''For Transfer by the Secretary of Defense to and from appropriations and funds not merged pursuant to subsection 1552(a)(1) of title 31 of the United States Code and available for obligation or expenditure during fiscal year 1987 or thereafter, for military construction or expenses of family housing for the military departments and Defense agencies, in order to maintain the budgeted level of operations for such appropriations and thereby eliminate substantial gains and losses to such appropriations caused by fluctuations in foreign currency exchange rates that vary substantially from those used in preparing budget submissions, an appropriation, to remain available until expended: *Provided*, That funds transferred from this appropriation shall be merged with and be available for the same purpose, and for the same time period, as the appropriation or fund to which transferred, and funds transferred to this appropriation shall be merged with, and available for the purpose of this appropriation until expended: *Provided further*, That transfers may be made from time to time from this appropriation to the extent the Secretary of Defense determines it may be necessary to do so to reflect downward fluctuations in the currency exchange rates from those used in preparing the budget submissions for such appropriations, but transfers shall be made from such appropriations to this appropriation to reflect upward fluctuations in currency exchange rates to prevent substantial net gains in such appropriations: *Provided further*, That authorizations or limitations now or hereafter contained within appropriations or other provisions of law limiting the amounts that may be obligated or expended for military construction and family housing expenses are hereby increased to the extent necessary to reflect downward fluctuations in foreign currency exchange rates from those used in preparing the applicable budget submission: *Provided further*, That for the purposes of the appropriation 'Foreign Currency Fluctuations, Construction, Defense' the foreign currency rates used in preparing budget submissions shall be the foreign currency exchange rates as adjusted or modified, as reflected in applicable Committee reports on the Acts making appropriations for military construction for the Department of Defense: *Provided further*, That the Secretary of Defense shall provide an annual report to the Congress on all transfers made to or made from this appropriation: *Provided further*, That contracts or other obligations entered into payable in foreign currencies may be recorded as obligations based on the currency exchange rates used in preparing budget submissions and adjustments to reflect fluctuations in such rates may be recorded as disbursements are made: *Provided further*, That, at the discretion of the Secretary of Defense, any savings generated in the military construction and family housing programs may be transferred to this appropriation.''

[§ 2861. Repealed. Pub. L. 107–107, div. B, title XXVIII, § 2803(a), Dec. 28, 2001, 115 Stat. 1305]

Section, added Pub. L. 97–214, § 2(a), July 12, 1982, 96 Stat. 167; amended Pub. L. 100–26, § 7(f)(1), (j)(9), Apr. 21, 1987, 101 Stat. 281, 283; Pub. L. 104–106, div. B, title XXVIII, § 2811(b), Feb. 10, 1996, 110 Stat. 552; Pub. L. 104–201, div. B, title XXVIII, § 2802(d)(1), Sept. 23, 1996, 110 Stat. 2787, required the Secretary of Defense to submit an annual report to the appropriate committees of Congress with respect to military construction activities and military family housing activities.

§ 2862. Turn-key selection procedures

(a) AUTHORITY TO USE.—The Secretary concerned may use one-step turn-key selection procedures for the purpose of entering into contracts for the construction of authorized military construction projects.

(b) DEFINITION.—In this section, the term ''one-step turn-key selection procedures'' means procedures used for the selection of a contractor on the basis of price and other evaluation criteria to perform, in accordance with the provisions of a firm fixed-price contract, both the design and construction of a facility using performance specifications supplied by the Secretary concerned.

(Added Pub. L. 99–167, title VIII, § 807(a), Dec. 3, 1985, 99 Stat. 988; amended Pub. L. 100–26, § 7(k)(3), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–180, div. B, subdiv. 3, title I, § 2301, Dec. 4, 1987, 101 Stat. 1214; Pub. L. 101–189, div. B, title XXVIII, § 2806, Nov. 29, 1989, 103 Stat. 1647; Pub. L. 102–190, div. B, title XXVIII, § 2802, Dec. 5, 1991, 105 Stat. 1537.)

AMENDMENTS

1991—Pub. L. 102–190 redesignated par. (1) of subsec. (a) as entire subsec. (a) and inserted heading, redesignated par. (2) of subsec. (a) as (b), inserted heading, and struck out former subsecs. (b) and (c) which read as follows:

''(b) The Secretary of Defense, with respect to any Defense Agency, or the Secretary of a military department may not, during any fiscal year, enter into more than three contracts for military construction projects using procedures authorized by this section.

''(c) The authority under this section shall expire on October 1, 1991.''

1989—Subsec. (a)(1). Pub. L. 101–189, § 2806(1), struck out at end ''Such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.''

Subsec. (c). Pub. L. 101–189, § 2806(2), substituted ''1991'' for ''1990''.

1987—Subsec. (a)(1). Pub. L. 100–180, § 2301(1), substituted ''The Secretary concerned'' for ''The Secretaries of the military departments, with the approval of the Secretary of Defense,'' and inserted provision at end that such procedures may be used by the Secretary of a military department only with the approval of the Secretary of Defense.

Subsec. (a)(2). Pub. L. 100–26 inserted ''the term'' after ''In this section,''.

Subsec. (b). Pub. L. 100–180, § 2301(2), inserted ''Secretary of Defense, with respect to any Defense Agency, or the'' after ''The''.

EFFECTIVE DATE

Section 807(c) of Pub. L. 99–167 provided that: ''The amendments made by this section [enacting this section] shall take effect on October 1, 1986.''

§ 2863. Payment of contractor claims

Notwithstanding any other provision of law, the Secretary concerned may pay meritorious contractor claims that arise under military construction contracts or family housing contracts. The Secretary of Defense, with respect to a Defense Agency, or the Secretary of a military department may use for such purpose any unobligated funds appropriated to such department

and available for military construction or family housing construction, as the case may be.

(Added Pub. L. 100–180, div. B, subdiv. 3, title I, § 2303(a), Dec. 4, 1987, 101 Stat. 1215.)

§ 2864. Military construction contracts on Guam

(a) IN GENERAL.—Except as provided in subsection (b), funds appropriated for military construction may not be obligated or expended with respect to any contract for a military construction project on Guam if any work is carried out on such project by any person who is a nonimmigrant alien described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)).

(b) EXCEPTION.—In any case in which there is no acceptable bid made in response to a solicitation for bids on a contract for a military construction project on Guam and the Secretary concerned makes a determination that the prohibition contained in subsection (a) is a significant deterrent to obtaining bids on such contract, the Secretary concerned may make another solicitation for bids on such contract and the prohibition contained in subsection (a) shall not apply to such contract.

(Added Pub. L. 101–189, div. B, title XXVIII, § 2807(a), Nov. 29, 1989, 103 Stat. 1648; amended Pub. L. 104–106, div. A, title X, § 1062(g), Feb. 10, 1996, 110 Stat. 444.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 struck out ''after the 21-day period beginning on the date on which the Secretary concerned transmits to the Committees on Armed Services of the Senate and the House of Representatives a written notification of that determination'' before period at end.

EFFECTIVE DATE

Section 2807(c) of Pub. L. 101–189 provided that: ''The amendments made by this section [enacting this section] shall apply to contracts entered into, modified, or extended on or after the date of the enactment of this Act [Nov. 29, 1989].''

§ 2865. Energy savings at military installations

(a) ENERGY PERFORMANCE GOAL AND PLAN.—(1) The Secretary of Defense shall designate an energy performance goal for the Department of Defense for the years 1991 through 2000.

(2) To achieve the goal designated under paragraph (1), the Secretary shall develop a comprehensive plan to identify and accomplish energy conservation measures to achieve maximum cost-effective energy savings.

(3) For the purpose of implementing any energy performance plan, the Secretary shall provide that the selection of energy conservation measures, including energy efficient maintenance or water efficient maintenance, under such plan shall be limited to those with a positive net present value over a period of 10 years or less.

(4) In paragraph (3), the term ''energy efficient maintenance or water efficient maintenance'' includes—

(A) the repair by replacement of equipment or systems, such as lighting, heating, or cooling equipment or systems, industrial processes, or water efficiency applications, with technology that—

(i) will achieve the most cost-effective energy savings over the life-cycle of the equipment or system being repaired; and

(ii) will meet the same end needs as the equipment or system being repaired; and

(B) improvements in an operation or maintenance process, such as improved training or improved controls, that result in reduced costs through energy savings or water cost savings.

(b) USE OF ENERGY COST SAVINGS.—(1) Two-thirds of the portion of the funds appropriated to the Department of Defense for a fiscal year that is equal to the amount of energy cost savings realized by the Department, including financial benefits resulting from shared energy savings contracts, shall remain available for obligation under paragraph (2) until expended, without additional authorization or appropriation.

(2) The Secretary shall provide that the amount that remains available for obligation under paragraph (1) and section 2866(a)(3) of this title, and the funds made available under section 2867(b)(2) of this title, shall be used as follows:

(A) One-half of the amount shall be used for the implementation of additional energy conservation measures and for water conservation activities at such buildings, facilities, or installations of the Department of Defense as may be designated (in accordance with regulations prescribed by the Secretary of Defense) by the head of the department, agency, or instrumentality that realized the savings referred to in paragraph (1) or in section 2866(a)(3) of this title.

(B) One-half of the amount shall be used at the installation at which the savings were realized, as determined by the commanding officer of such installation consistent with applicable law and regulations, for—

(i) improvements to existing military family housing units;

(ii) any unspecified minor construction project that will enhance the quality of life of personnel; or

(iii) any morale, welfare, or recreation facility or service.

(3) Financial incentives received from gas or electric utilities under subsection (d)(2), and from utilities for management of water demand or water conservation under section 2866(a)(2) of this title, shall be credited to an appropriation designated by the Secretary of Defense. Amounts so credited shall be merged with the appropriation to which credited and shall be available for the same purposes and the same period as the appropriation with which merged.

(c) SHARED ENERGY SAVINGS CONTRACTS.—(1) The Secretary of Defense shall develop a simplified method of contracting for shared energy savings contract services that will accelerate the use of these contracts with respect to military installations and will reduce the administrative effort and cost on the part of the Department as well as the private sector.

(2)(A) In carrying out paragraph (1), the Secretary of Defense may—

(i) request statements of qualifications (as prescribed by the Secretary of Defense), in-

cluding financial and performance information, from firms engaged in providing shared energy savings contracting;

(ii) designate from the statements received, with an update at least annually, those firms that are presumptively qualified to provide shared energy savings services;

(iii) select at least three firms from the qualifying list to conduct discussions concerning a particular proposed project, including requesting a technical and price proposal from such selected firms for such project; and

(iv) select from such firms the most qualified firm to provide shared energy savings services pursuant to a contractual arrangement that the Secretary determines is fair and reasonable, taking into account the estimated value of the services to be rendered and the scope and nature of the project.

(B) In carrying out paragraph (1), the Secretary may also provide for the direct negotiation, by departments, agencies, and instrumentalities of the Department of Defense, of contracts with shared energy savings contractors that have been selected competitively and approved by any gas or electric utility serving the department, agency, or instrumentality concerned.

(d) ENERGY SAVING ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation or by any utility for water conservation activities.

(2) The Secretary of Defense may authorize any military installation to accept any financial incentive, goods, or services generally available from a gas or electric utility, to adopt technologies and practices that the Secretary determines are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into agreements with gas or electric utilities to design and implement cost-effective demand and conservation incentive programs (including energy management services, facilities alterations, and the installation and maintenance of energy saving devices and technologies by the utilities) to address the requirements and circumstances of the installation.

(4)(A) If an agreement under paragraph (3) provides for a utility to advance financing costs for the design or implementation of a program referred to in that paragraph to be repayed by the United States, the cost of such advance may be recovered by the utility under terms no less favorable than those applicable to its most favored customer.

(B) Subject to the availability of appropriations, repayment of costs advanced under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to any energy-saving device or technology installed at a military installation pursuant to the agreement vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(e) ENERGY CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for energy conservation, not previously authorized, using funds appropriated or otherwise made available for that purpose.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify in writing the appropriate committees of Congress of that decision. The project may then be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(f) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Defense shall transmit an annual report to the Congress containing a description of the actions taken to carry out this section, and the savings realized from such actions, during the fiscal year ending in the year in which the report is made. The Secretary shall also include in each report the types and amount of financial incentives received under subsection (d)(2) and section 2866(a)(2) of this title during the period covered by the report and the appropriation account or accounts to which the incentives were credited.

(Added Pub. L. 101–510, div. B, title XXVIII, §2851(a), Nov. 5, 1990, 104 Stat. 1803; amended Pub. L. 102–484, div. B, title XXVIII, §2801, Oct. 23, 1992, 106 Stat. 2604; Pub. L. 103–160, div. B, title XXVIII, §2804, Nov. 30, 1993, 107 Stat. 1885; Pub. L. 103–337, div. A, title X, §1070(a)(14), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XV, §1502(a)(27), div. B, title XXVIII, §2819, Feb. 10, 1996, 110 Stat. 506, 555; Pub. L. 105–85, div. A, title III, §371(d)(2), div. B, title XXVIII, §2804(a), Nov. 18, 1997, 111 Stat. 1706, 1990; Pub. L. 107–314, div. B, title XXVIII, §2805, Dec. 2, 2002, 116 Stat. 2705.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–314 substituted ''until expended'' for ''through the end of the fiscal year following the fiscal year for which the funds were appropriated''.

1997—Subsec. (b)(1). Pub. L. 105–85, §2804(a)(1)(A), struck out ''and financial incentives described in subsection (d)(2)'' after ''savings contracts''.

Subsec. (b)(2). Pub. L. 105–85, §2804(a)(1)(B), substituted ''section 2866(a)(3)'' for ''section 2866(b)'' in introductory provisions and in subpar. (A).

Pub. L. 105–85, §371(d)(2), substituted ''section 2867(b)(2)'' for ''section 2483(b)(2)'' in introductory provisions.

Subsec. (b)(3). Pub. L. 105–85, §2804(a)(1)(C), added par. (3).

Subsec. (f). Pub. L. 105–85, §2804(a)(2), inserted at end ''The Secretary shall also include in each report the types and amount of financial incentives received under subsection (d)(2) and section 2866(a)(2) of this title during the period covered by the report and the appropriation account or accounts to which the incentives were credited.''

1996—Subsec. (a)(3). Pub. L. 104–106, §2819(a), substituted ''energy efficient maintenance or water efficient maintenance'' for ''energy efficient maintenance''.

Subsec. (a)(4). Pub. L. 104–106, § 2819(b)(1), substituted ''energy efficient maintenance or water efficient maintenance'' for ''energy efficient maintenance'' in introductory provisions.

Subsec. (a)(4)(A). Pub. L. 104–106, § 2819(b)(2), substituted ''systems, industrial processes, or water efficiency applications,'' for ''systems or industrial processes,'' in introductory provisions.

Subsec. (a)(4)(B). Pub. L. 104–106, § 2819(b)(3), inserted before period at end ''or water cost savings''.

Subsec. (e)(2). Pub. L. 104–106, § 1502(a)(27), substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and Appropriations of the Senate and House of Representatives''.

1994—Subsec. (a)(4)(B). Pub. L. 103–337 inserted period at end.

1993—Subsec. (a)(3). Pub. L. 103–160, § 2804(a)(1), inserted '', including energy efficient maintenance,'' after ''conservation measures''.

Subsec. (a)(4). Pub. L. 103–160, § 2804(a)(2), added par. (4).

Subsec. (b)(1). Pub. L. 103–160, § 2804(b)(1), substituted ''Two-thirds'' for ''The Secretary shall provide that two-thirds'' and struck out ''for any fiscal year beginning after fiscal year 1990'' after ''described in subsection (d)(2),''.

Subsec. (b)(2). Pub. L. 103–160, § 2804(b)(2), added introductory provisions and subpar. (A) and struck out former introductory provisions and subpar. (A) which read as follows: ''The amount that remains available for obligation under paragraph (1) shall be utilized as follows:

''(A) One-half of the amount shall be used for the implementation of additional energy conservation measures at such buildings, facilities, or installations of the Department of Defense as the head of the department, agency, or instrumentality that realized the savings may designate in accordance with regulations prescribed by the Secretary of Defense.''

Subsec. (d)(1). Pub. L. 103–160, § 2804(c), inserted before period at end ''or by any utility for water conservation activities''.

1992—Subsec. (a). Pub. L. 102–484, § 2801(e)(1), inserted heading.

Subsec. (b). Pub. L. 102–484, § 2801(e)(2), inserted heading.

Subsec. (b)(1). Pub. L. 102–484, § 2801(c), substituted ''subsection (d)(2)'' for ''paragraph (3)(B)''.

Subsec. (b)(3). Pub. L. 102–484, § 2801(a)(1), struck out par. (3) which read as follows: ''The Secretary—

''(A) shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by any gas or electric utility for the management of electricity demand or for energy conservation; and

''(B) may authorize any military installation to accept any financial incentive, generally available from any such utility, to adopt technologies and practices that the Secretary determines are cost-effective for the Federal Government.''

Subsec. (c). Pub. L. 102–484, § 2801(e)(3), inserted heading.

Subsecs. (d), (e). Pub. L. 102–484, § 2801(a)(3), (b), added subsecs. (d) and (e). Former subsec. (d) redesignated (f).

Subsec. (f). Pub. L. 102–484, § 2801(a)(2), (d), (e)(4), redesignated subsec. (d) as (f), inserted heading, and substituted ''not later than December 31 of each year'' for ''Beginning with fiscal year 1991 and by no later than December 31, 1991, and of each year thereafter''.

DEPARTMENT OF DEFENSE ENERGY EFFICIENCY PROGRAM

Pub. L. 107–107, div. A, title III, § 317, Dec. 28, 2001, 115 Stat. 1054, provided that:

''(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should work to implement fuel efficiency reforms that allow for investment decisions based on the true cost of delivered fuel, strengthen the linkage between warfighting capability and fuel logistics requirements, provide high-level leadership encouraging fuel efficiency, target fuel efficiency improvements through science and technology investment, and include fuel efficiency in requirements and acquisition processes.

''(b) ENERGY EFFICIENCY PROGRAM.—The Secretary shall carry out a program to significantly improve the energy efficiency of facilities of the Department of Defense through 2010. The Secretary shall designate a senior official of the Department of Defense to be responsible for managing the program for the Department and a senior official of each military department to be responsible for managing the program for such department.

''(c) ENERGY EFFICIENCY GOALS.—The goal of the energy efficiency program shall be to achieve reductions in energy consumption by facilities of the Department of Defense as follows:

''(1) In the case of industrial and laboratory facilities, reductions in the average energy consumption per square foot of such facilities, per unit of production or other applicable unit, relative to energy consumption in 1990—

''(A) by 20 percent by 2005; and

''(B) by 25 percent by 2010.

''(2) In the case of other facilities, reductions in average energy consumption per gross square foot of such facilities, relative to energy consumption per gross square foot in 1985—

''(A) by 30 percent by 2005; and

''(B) by 35 percent by 2010.

''(d) STRATEGIES FOR IMPROVING ENERGY EFFICIENCY.—In order to achieve the goals set forth in subsection (c), the Secretary shall, to the maximum extent practicable—

''(1) purchase energy-efficient products, as so designated by the Environmental Protection Agency and the Department of Energy, and other products that are energy-efficient;

''(2) utilize energy savings performance contracts, utility energy-efficiency service contracts, and other contracts designed to achieve energy conservation;

''(3) use life-cycle cost analysis, including assessment of life-cycle energy costs, in making decisions about investments in products, services, construction, and other projects;

''(4) conduct energy efficiency audits for approximately 10 percent of all Department of Defense facilities each year;

''(5) explore opportunities for energy efficiency in industrial facilities for steam systems, boiler operation, air compressor systems, industrial processes, and fuel switching; and

''(6) retire inefficient equipment on an accelerated basis where replacement results in lower life-cycle costs.

''(e) REPORTING REQUIREMENTS.—Not later than January 1, 2002, and each January 1 thereafter through 2010, the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] the report required to be prepared by the Secretary pursuant to section 303 of Executive Order 13123 (64 Fed. Reg. 30851; 42 U.S.C. 8251 note) regarding the progress made toward achieving the energy efficiency goals of the Department of Defense.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2866, 2867 of this title.

§ 2866. Water conservation at military installations

(a) WATER CONSERVATION ACTIVITIES.—(1) The Secretary of Defense shall permit and encourage each military department, Defense Agency, and other instrumentality of the Department of Defense to participate in programs conducted by a

utility for the management of water demand or for water conservation.

(2) The Secretary of Defense may authorize a military installation to accept a financial incentive (including an agreement to reduce the amount of a future water bill), goods, or services generally available from a utility, for the purpose of adopting technologies and practices that—

(A) relate to the management of water demand or to water conservation; and

(B) as determined by the Secretary, are cost effective for the Federal Government.

(3) Subject to paragraph (4), the Secretary of Defense may authorize the Secretary of a military department having jurisdiction over a military installation to enter into an agreement with a utility to design and implement a cost-effective program that provides incentives for the management of water demand and for water conservation and that addresses the requirements and circumstances of the installation. Activities under the program may include the provision of water management services, the alteration of a facility, and the installation and maintenance by the utility of a water-saving device or technology.

(4)(A) If an agreement under paragraph (3) provides for a utility to pay in advance the financing costs for the design or implementation of a program referred to in that paragraph and for such advance payment to be repayed by the United States, the cost of such advance payment may be recovered by the utility under terms that are not less favorable than the terms applicable to the most favored customer of the utility.

(B) Subject to the availability of appropriations, a repayment of an advance payment under subparagraph (A) shall be made from funds available to a military department for the purchase of utility services.

(C) An agreement under paragraph (3) shall provide that title to a water-saving device or technology installed at a military installation pursuant to the agreement shall vest in the United States. Such title may vest at such time during the term of the agreement, or upon expiration of the agreement, as determined to be in the best interests of the United States.

(b) USE OF FINANCIAL INCENTIVES AND WATER COST SAVINGS.—(1) Financial incentives received under subsection (a)(2) shall be used as provided in section 2865(b)(3) of this title.

(2) Water cost savings realized under subsection (a)(3) shall be used as provided in section 2865(b)(2) of this title.

(c) WATER CONSERVATION CONSTRUCTION PROJECTS.—(1) The Secretary of Defense may carry out a military construction project for water conservation, not previously authorized, using funds appropriated or otherwise made available to the Secretary for water conservation.

(2) When a decision is made to carry out a project under paragraph (1), the Secretary of Defense shall notify the appropriate committees of Congress of that decision. Such project may be carried out only after the end of the 21-day period beginning on the date the notification is received by such committees.

(Added Pub. L. 103–160, div. B, title XXVIII, § 2803(a), Nov. 30, 1993, 107 Stat. 1884; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(27), Feb. 10, 1996, 110 Stat. 506; Pub. L. 105–85, div. B, title XXVIII, § 2804(b), Nov. 18, 1997, 111 Stat. 1991.)

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b) USE OF WATER COST SAVINGS.—Water cost savings realized under this section shall be used as provided in section 2865(b)(2) of this title.''

1996—Subsec. (c)(2). Pub. L. 104–106 substituted ''appropriate committees of Congress'' for ''Committees on Armed Services and Appropriations of the Senate and House of Representatives''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2865 of this title.

§ 2867. Sale of electricity from alternate energy and cogeneration production facilities

(a) The Secretary of a military department may sell, contract to sell, or authorize the sale by a contractor to a public or private utility company of electrical energy generated from alternate energy or cogeneration type production facilities which are under the jurisdiction (or produced on land which is under the jurisdiction) of the Secretary concerned. The sale of such energy shall be made under such regulations, for such periods, and at such prices as the Secretary concerned prescribes consistent with the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.).

(b)(1) Proceeds from sales under subsection (a) shall be credited to the appropriation account currently available to the military department concerned for the supply of electrical energy.

(2) Subject to the availability of appropriations for this purpose, proceeds credited under paragraph (1) may be used to carry out military construction projects under the energy performance plan developed by the Secretary of Defense under section 2865(a) of this title, including minor military construction projects authorized under section 2805 of this title that are designed to increase energy conservation.

(c) Before carrying out a military construction project described in subsection (b) using proceeds from sales under subsection (a), the Secretary concerned shall notify Congress in writing of the project, the justification for the project, and the estimated cost of the project. The project may be carried out only after the end of the 21-day period beginning on the date the notification is received by Congress.

(Added Pub. L. 98–407, title VIII, § 810(a), Aug. 28, 1984, 98 Stat. 1523, § 2483; amended Pub. L. 103–160, div. B, title XXVIII, § 2802, Nov. 30, 1993, 107 Stat. 1884; renumbered § 2867, Pub. L. 105–85, div. A, title III, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95–617, Nov. 9, 1978, 92 Stat. 3117, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16, Conservation, and Tables.

AMENDMENTS

1997—Pub. L. 105–85 renumbered section 2483 of this title as this section.

1993—Subsec. (b). Pub. L. 103–160, § 2802(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 103–160, § 2802(b), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2865 of this title.

§ 2868. Utility services: furnishing for certain buildings

Appropriations for the Department of Defense may be used for utility services for—

(1) buildings constructed at private cost, as authorized by law; and

(2) buildings on military reservations authorized by regulation to be used for morale, welfare, and recreational purposes.

(Added Pub. L. 100–370, § 1(j)(1), July 19, 1988, 102 Stat. 848, § 2490; renumbered § 2868, Pub. L. 105–85, div. A, title III, § 371(b)(2), Nov. 18, 1997, 111 Stat. 1705.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, § 101(b) [title VIII, § 8006(b)], Dec. 19, 1985, 99 Stat. 1185.

In two instances, the source section for provisions to be codified provides that defense appropriations may be used for ''welfare and recreation'' or ''welfare and recreational'' purposes. (Section 735 of Public Law 98–212 and section 8006(b) of Public Law 99–190, to be codified as 10 U.S.C. 2241(a)(1) and 2490(2), respectively). The committee added the term ''morale'' in both of these two instances to conform to the usual ''MWR'' usage for morale, welfare, and recreation activities.

AMENDMENTS

1997—Pub. L. 105–85 renumbered section 2490 of this title as this section.

SUBCHAPTER IV—ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING

Sec.
2871. Definitions.
2872. General authority.
2872a. Utilities and services.
2873. Direct loans and loan guarantees.
2874. Leasing of housing.
2875. Investments.
2876. Rental guarantees.
2877. Differential lease payments.
2878. Conveyance or lease of existing property and facilities.
[2879. Repealed.]
2880. Unit size and type.
2881. Ancillary supporting facilities.
2881a. Pilot projects for acquisition or construction of military unaccompanied housing.
2882. Assignment of members of the armed forces to housing units.
2883. Department of Defense Housing Funds.
2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units.
2884. Reports.
2885. Expiration of authority.

AMENDMENTS

2002—Pub. L. 107–314, div. B, title XXVIII, §§ 2802(b)(3), (c)(2), 2803(a)(2), Dec. 2, 2002, 116 Stat. 2703, 2705, struck out ''to be constructed'' after ''Leasing of housing'' in item 2874, struck out item 2879 ''Interim leases'', and added item 2881a.

2001—Pub. L. 107–107, div. B, title XXVIII, § 2804(b), Dec. 28, 2001, 115 Stat. 1306, added item 2883a.

2000—Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2805(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415, added item 2872a.

1999—Pub. L. 106–65, div. B, title XXVIII, § 2803(h)(2), Oct. 5, 1999, 113 Stat. 849, added item 2875 and struck out former item 2875 ''Investments in nongovernmental entities''.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2814 of this title; title 20 section 7703; title 42 sections 1758, 1786.

§ 2871. Definitions

In this subchapter:

(1) The term ''ancillary supporting facilities'' means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(2) The term ''base closure law'' means the following:

(A) Section 2687 of this title.

(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

(C) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(3) The term ''construction'' means the construction of military housing units and ancillary supporting facilities or the improvement or rehabilitation of existing units or ancillary supporting facilities.

(4) The term ''contract'' includes any contract, lease, or other agreement entered into under the authority of this subchapter.

(5) The term ''eligible entity'' means any private person, corporation, firm, partnership, company, State or local government, or housing authority of a State or local government.

(6) The term ''Fund'' means the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund established under section 2883(a) of this title.

(7) The term ''military unaccompanied housing'' means military housing intended to be occupied by members of the armed forces serving a tour of duty unaccompanied by dependents and transient housing intended to be occupied by members of the armed forces on temporary duty.

(8) The term ''United States'' includes the Commonwealth of Puerto Rico.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 544; amended Pub. L. 105–261, div. B, title XXVIII, § 2803, Oct. 17, 1998, 112 Stat. 2202; Pub. L. 106–65, div. B, title XXVIII, § 2803(a), Oct. 5, 1999, 113 Stat. 848; Pub. L. 107–314, div. B, title XXVIII, § 2803(b), Dec. 2, 2002, 116 Stat. 2705.)

AMENDMENTS

2002—Par. (7). Pub. L. 107–314 inserted ''and transient housing intended to be occupied by members of the armed forces on temporary duty'' before period at end.

1999—Pars. (5) to (8). Pub. L. 106–65 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1998—Par. (1). Pub. L. 105–261 inserted ''facilities to provide or support elementary or secondary education,'' after ''including''.

§ 2872. General authority

In addition to any other authority provided under this chapter for the acquisition or construction of military family housing or military unaccompanied housing, the Secretary concerned may exercise any authority or any combination of authorities provided under this subchapter in order to provide for the acquisition or construction by eligible entities of the following:

(1) Family housing units on or near military installations within the United States and its territories and possessions.

(2) Military unaccompanied housing units on or near such military installations.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(b), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''eligible entities'' for ''private persons'' in introductory provisions.

§ 2872a. Utilities and services

(a) AUTHORITY TO FURNISH.—The Secretary concerned may furnish utilities and services referred to in subsection (b) in connection with any military housing acquired or constructed pursuant to the exercise of any authority or combination of authorities under this subchapter if the military housing is located on a military installation.

(b) COVERED UTILITIES AND SERVICES.—The utilities and services that may be furnished under subsection (a) are the following:

(1) Electric power.
(2) Steam.
(3) Compressed air.
(4) Water.
(5) Sewage and garbage disposal.
(6) Natural gas.
(7) Pest control.
(8) Snow and ice removal.
(9) Mechanical refrigeration.
(10) Telecommunications service.
(11) Firefighting and fire protection services.
(12) Police protection services.

(c) REIMBURSEMENT.—(1) The Secretary concerned shall be reimbursed for any utilities or services furnished under subsection (a).

(2) The amount of any cash payment received under paragraph (1) shall be credited to the appropriation or working capital account from which the cost of furnishing the utilities or services concerned was paid. Amounts so credited to an appropriation or account shall be merged with funds in such appropriation or account, and shall be available to the same extent, and subject to the same terms and conditions, as such funds.

(Added Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2805(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–414; amended Pub. L. 107–314, div. B, title XXVIII, § 2802(a), Dec. 2, 2002, 116 Stat. 2703.)

AMENDMENTS

2002—Subsec. (b)(11), (12). Pub. L. 107–314 added pars. (11) and (12).

§ 2873. Direct loans and loan guarantees

(a) DIRECT LOANS.—(1) Subject to subsection (c), the Secretary concerned may make direct loans to an eligible entity in order to provide funds to the eligible entity for the acquisition or construction of housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The Secretary concerned shall establish such terms and conditions with respect to loans made under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the period and frequency for repayment of such loans and the obligations of the obligors on such loans upon default.

(b) LOAN GUARANTEES.—(1) Subject to subsection (c), the Secretary concerned may guarantee a loan made to an eligible entity if the proceeds of the loan are to be used by the eligible entity to acquire, or construct housing units that the Secretary determines are suitable for use as military family housing or as military unaccompanied housing.

(2) The amount of a guarantee on a loan that may be provided under paragraph (1) may not exceed the amount equal to the lesser of—

(A) the amount equal to 80 percent of the value of the project; or

(B) the amount of the outstanding principal of the loan.

(3) The Secretary concerned shall establish such terms and conditions with respect to guarantees of loans under this subsection as the Secretary considers appropriate to protect the interests of the United States, including the rights and obligations of obligors of such loans and the rights and obligations of the United States with respect to such guarantees.

(c) LIMITATION ON DIRECT LOAN AND GUARANTEE AUTHORITY.—Direct loans and loan guarantees may be made under this section only to the extent that appropriations of budget authority to cover their cost (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) are made in advance, or authority is otherwise provided in appropriation Acts. If such appropriation or other authority is provided, there may be established a financing account (as defined in section 502(7) of such Act (2 U.S.C. 661a(7))), which shall be available for the disbursement of direct loans or payment of claims for payment on loan guarantees under this section and for all other cash flows to and from the Government as a result of direct loans and guarantees made under this section.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 545; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(c), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Subsec. (a)(1). Pub. L. 106–65, § 2803(c)(1), substituted ''an eligible entity'' for ''persons in the private sector'' and ''the eligible entity'' for ''such persons''.

Subsec. (b)(1). Pub. L. 106–65, § 2803(c)(2), substituted ''an eligible entity'' for ''any person in the private sector'' and ''the eligible entity'' for ''the person''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2883 of this title.

§ 2874. Leasing of housing

(a) LEASE AUTHORIZED.—The Secretary concerned may enter into contracts for the lease of housing units that the Secretary determines are suitable for use as military family housing or military unaccompanied housing.

(b) USE OF LEASED UNITS.—The Secretary concerned shall utilize housing units leased under this section as military family housing or military unaccompanied housing, as appropriate.

(c) LEASE TERMS.—A contract under this section may be for any period that the Secretary concerned determines appropriate and may provide for the owner of the leased property to operate and maintain the property.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 107–314, div. B, title XXVIII, § 2802(b)(1), (2), Dec. 2, 2002, 116 Stat. 2703.)

AMENDMENTS

2002—Pub. L. 107–314, § 2802(b)(2), in section catchline struck out ''to be constructed'' after ''Leasing of housing''.

Subsec. (a). Pub. L. 107–314, § 2802(b)(1)(B), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: ''The Secretary concerned may enter into contracts for the lease of military family housing units or military unaccompanied housing units to be constructed under this subchapter.''

Subsecs. (b), (c). Pub. L. 107–314, § 2802(b)(1), added subsec. (b) and redesignated former subsec. (b) as (c).

§ 2875. Investments

(a) INVESTMENTS AUTHORIZED.—The Secretary concerned may make investments in an eligible entity carrying out projects for the acquisition or construction of housing units suitable for use as military family housing or as military unaccompanied housing.

(b) FORMS OF INVESTMENT.—An investment under this section may take the form of an acquisition of a limited partnership interest by the United States, a purchase of stock or other equity instruments by the United States, a purchase of bonds or other debt instruments by the United States, or any combination of such forms of investment.

(c) LIMITATION ON VALUE OF INVESTMENT.—(1) The cash amount of an investment under this section in an eligible entity may not exceed an amount equal to 33⅓ percent of the capital cost (as determined by the Secretary concerned) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(2) If the Secretary concerned conveys land or facilities to an eligible entity as all or part of an investment in the eligible entity under this section, the total value of the investment by the Secretary under this section may not exceed an amount equal to 45 percent of the capital cost (as determined by the Secretary) of the project or projects that the eligible entity proposes to carry out under this section with the investment.

(3) In this subsection, the term ''capital cost'', with respect to a project for the acquisition or construction of housing, means the total amount of the costs included in the basis of the housing for Federal income tax purposes.

(d) COLLATERAL INCENTIVE AGREEMENTS.—The Secretary concerned shall enter into collateral incentive agreements with eligible entities in which the Secretary makes an investment under this section to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or purchase, as the case may be, of a reasonable number of the housing units covered by the investment.

(e) CONGRESSIONAL NOTIFICATION REQUIRED.—Amounts in the Department of Defense Family Housing Improvement Fund or the Department of Defense Military Unaccompanied Housing Improvement Fund may be used to make a cash investment under this section in an eligible entity only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the investment to the appropriate committees of Congress.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 105–85, div. B, title XXVIII, § 2805, Nov. 18, 1997, 111 Stat. 1991; Pub. L. 106–65, div. B, title XXVIII, § 2803(d), (h)(1), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65, § 2803(h)(1), struck out ''in nongovernmental entities'' after ''Investments'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 2803(d)(1), substituted ''an eligible entity'' for ''nongovernmental entities''.

Subsec. (c). Pub. L. 106–65, § 2803(d)(2), substituted ''an eligible entity'' for ''a nongovernmental entity'' in pars. (1) and (2) and ''the eligible entity'' for ''the entity'' wherever appearing in pars. (1) and (2).

Subsec. (d). Pub. L. 106–65, § 2803(d)(3), substituted ''eligible'' for ''nongovernmental''.

Subsec. (e). Pub. L. 106–65, § 2803(d)(4), substituted ''an eligible entity'' for ''a nongovernmental entity''.

1997—Subsec. (e). Pub. L. 105–85 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2883 of this title.

§ 2876. Rental guarantees

The Secretary concerned may enter into agreements with eligible entities that acquire or construct military family housing units or military unaccompanied housing units under this subchapter in order to assure—

(1) the occupancy of such units at levels specified in the agreements; or

(2) rental income derived from rental of such units at levels specified in the agreements.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 546; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(e), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''eligible entities'' for ''private persons'' in introductory provisions.

§ 2877. Differential lease payments

Pursuant to an agreement entered into by the Secretary concerned and a lessor of military family housing or military unaccompanied housing to members of the armed forces, the Secretary may pay the lessor an amount in addition to the rental payments for the housing made by the members as the Secretary determines appropriate to encourage the lessor to make the housing available to members of the armed forces as military family housing or as military unaccompanied housing.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 106–65, div. B, title XXVIII, § 2803(f), Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 substituted ''a lessor'' for ''a private lessor''.

§ 2878. Conveyance or lease of existing property and facilities

(a) CONVEYANCE OR LEASE AUTHORIZED.—The Secretary concerned may convey or lease property or facilities (including ancillary supporting facilities) to eligible entities for purposes of using the proceeds of such conveyance or lease to carry out activities under this subchapter.

(b) INAPPLICABILITY TO PROPERTY AT INSTALLATION APPROVED FOR CLOSURE.—The authority of this section does not apply to property or facilities located on or near a military installation approved for closure under a base closure law.

(c) TERMS AND CONDITIONS.—(1) The conveyance or lease of property or facilities under this section shall be for such consideration and upon such terms and conditions as the Secretary concerned considers appropriate for the purposes of this subchapter and to protect the interests of the United States.

(2) As part or all of the consideration for a conveyance or lease under this section, the purchaser or lessor (as the case may be) shall enter into an agreement with the Secretary to ensure that a suitable preference will be afforded members of the armed forces and their dependents in the lease or sublease of a reasonable number of the housing units covered by the conveyance or lease, as the case may be, or in the lease of other suitable housing units made available by the purchaser or lessee.

(d) INAPPLICABILITY OF CERTAIN PROPERTY MANAGEMENT LAWS.—The conveyance or lease of property or facilities under this section shall not be subject to the following provisions of law:

(1) Section 2667 of this title.

(2) Subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(3) Section 1302 of title 40.

(4) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547; amended Pub. L. 105–85, div. A, title X, § 1073(a)(60), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. B, title XXVIII, § 2803(g), Oct. 5, 1999, 113 Stat. 849; Pub. L. 107–107, div. A, title X, § 1048(d)(1), Dec. 28, 2001, 115 Stat. 1227; Pub. L. 107–217, § 3(b)(23), Aug. 21, 2002, 116 Stat. 1297.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (d)(2), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (d)(2). Pub. L. 107–217, § 3(b)(23)(A), substituted ''Subtitle I of title 40 and title III of the'' for ''The'' and ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

Subsec. (d)(3). Pub. L. 107–217, § 3(b)(23)(B), substituted ''Section 1302 of title 40'' for ''Section 321 of the Act of June 30, 1932 (commonly known as the Economy Act) (40 U.S.C. 303b)''.

2001—Subsec. (d)(4). Pub. L. 107–107 substituted ''McKinney-Vento Homeless Assistance Act'' for ''Stewart B. McKinney Homeless Assistance Act''.

1999—Subsec. (a). Pub. L. 106–65 substituted ''eligible entities'' for ''private persons''.

1997—Subsec. (d)(4). Pub. L. 105–85 substituted ''11411'' for ''11401''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2881a, 2883, 2884 of this title.

[§ 2879. Repealed. Pub. L. 107–314, div. B, title XXVIII, § 2802(c)(1), Dec. 2, 2002, 116 Stat. 2703]

Section, added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 547, related to interim leases of completed units pending completion of a project to acquire or construct military family housing units or military unaccompanied housing units.

§ 2880. Unit size and type

(a) CONFORMITY WITH SIMILAR HOUSING UNITS IN LOCALE.—The Secretary concerned shall ensure that the room patterns and floor areas of military family housing units and military unaccompanied housing units acquired or constructed under this subchapter are generally comparable to the room patterns and floor areas of similar housing units in the locality concerned.

(b) INAPPLICABILITY OF LIMITATIONS ON SPACE BY PAY GRADE.—(1) Section 2826 of this title shall not apply to military family housing units acquired or constructed under this subchapter.

(2) The regulations prescribed under section 2856 of this title shall not apply to any military unaccompanied housing unit acquired or constructed under this subchapter unless the unit is located on a military installation.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548.)

§ 2881. Ancillary supporting facilities

(a) AUTHORITY TO ACQUIRE OR CONSTRUCT.—Any project for the acquisition or construction of military family housing units or military unaccompanied housing units under this subchapter may include the acquisition or construction of ancillary supporting facilities for the housing units concerned.

(b) RESTRICTION.—A project referred to in subsection (a) may not include the acquisition or

construction of an ancillary supporting facility if, as determined by the Secretary concerned, the facility is to be used for providing merchandise or services in direct competition with—

(1) the Army and Air Force Exchange Service;

(2) the Navy Exchange Service Command;

(3) a Marine Corps exchange;

(4) the Defense Commissary Agency; or

(5) any nonappropriated fund activity of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 106–65, div. B, title XXVIII, § 2804, Oct. 5, 1999, 113 Stat. 849.)

AMENDMENTS

1999—Pub. L. 106–65 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

§ 2881a. Pilot projects for acquisition or construction of military unaccompanied housing

(a) PILOT PROJECTS AUTHORIZED.—The Secretary of the Navy may carry out not more than three pilot projects under the authority of this section or another provision of this subchapter to use the private sector for the acquisition or construction of military unaccompanied housing in the United States, including any territory or possession of the United States.

(b) TREATMENT OF HOUSING; ASSIGNMENT OF MEMBERS.—The Secretary of the Navy may assign members of the armed forces without dependents to housing units acquired or constructed under the pilot projects, and such housing units shall be considered as quarters of the United States or a housing facility under the jurisdiction of the Secretary for purposes of section 403 of title 37.

(c) BASIC ALLOWANCE FOR HOUSING.—(1) The Secretary of Defense may prescribe and, under section 403(n) of title 37, pay for members of the armed forces without dependents in privatized housing acquired or constructed under the pilot projects higher rates of partial basic allowance for housing than the rates authorized under paragraph (2) of such section.

(2) The partial basic allowance for housing paid for a member at a higher rate under this subsection may be paid directly to the private sector source of the housing to whom the member is obligated to pay rent or other charge for residing in such housing if the private sector source credits the amount so paid against the amount owed by the member for the rent or other charge.

(d) FUNDING.—(1) The Secretary of the Navy shall use the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under the pilot projects.

(2) Subject to 90 days prior notification to the appropriate committees of Congress, such additional amounts as the Secretary of Defense considers necessary may be transferred to the Department of Defense Military Unaccompanied Housing Improvement Fund from amounts appropriated for construction of military unaccompanied housing in military construction accounts. The amounts so transferred shall be merged with and be available for the same purposes and for the same period of time as amounts appropriated directly to the Fund.

(e) REPORTS.—(1) The Secretary of the Navy shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition of military unaccompanied housing that the Secretary proposes to solicit under the pilot projects;

(B) each conveyance or lease proposed under section 2878 of this title in furtherance of the pilot projects; and

(C) the proposed partial basic allowance for housing rates for each contract as they vary by grade of the member and how they compare to basic allowance for housing rates for other contracts written under the authority of the pilot programs.

(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 90 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(f) EXPIRATION.—Notwithstanding section 2885 of this title, the authority of the Secretary of the Navy to enter into a contract under the pilot programs shall expire September 30, 2007.

(Added Pub. L. 107–314, div. B, title XXVIII, § 2803(a)(1), Dec. 2, 2002, 116 Stat. 2703.)

§ 2882. Assignment of members of the armed forces to housing units

(a) IN GENERAL.—The Secretary concerned may assign members of the armed forces to housing units acquired or constructed under this subchapter.

(b) EFFECT OF CERTAIN ASSIGNMENTS ON ENTITLEMENT TO HOUSING ALLOWANCES.—(1) Except as provided in paragraph (2), housing referred to in subsection (a) shall be considered as quarters of the United States or a housing facility under the jurisdiction of a uniformed service for purposes of section 403 of title 37.

(2) A member of the armed forces who is assigned in accordance with subsection (a) to a housing unit not owned or leased by the United States shall be entitled to a basic allowance for housing under section 403 of title 37.

(c) LEASE PAYMENTS THROUGH PAY ALLOTMENTS.—The Secretary concerned may require members of the armed forces who lease housing in housing units acquired or constructed under this subchapter to make lease payments for such housing pursuant to allotments of the pay of such members under section 701 of title 37.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 105–85, div. A, title VI, § 603(d)(2)(C), Nov. 18, 1997, 111 Stat. 1783.)

AMENDMENTS

1997—Subsec. (b)(1). Pub. L. 105–85, § 603(d)(2)(C)(i), substituted ''section 403'' for ''section 403(b)''.

Subsec. (b)(2). Pub. L. 105–85, § 603(d)(2)(C)(ii), substituted ''basic allowance for housing under section 403

of title 37'' for ''basic allowance for quarters under section 403 of title 37 and, if in a high housing cost area, a variable housing allowance under section 403a of that title''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

§ 2883. Department of Defense Housing Funds

(a) ESTABLISHMENT.—There are hereby established on the books of the Treasury the following accounts:

(1) The Department of Defense Family Housing Improvement Fund.

(2) The Department of Defense Military Unaccompanied Housing Improvement Fund.

(b) COMMINGLING OF FUNDS PROHIBITED.—(1) The Secretary of Defense shall administer each Fund separately.

(2) Amounts in the Department of Defense Family Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military family housing.

(3) Amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund may be used only to carry out activities under this subchapter with respect to military unaccompanied housing.

(c) CREDITS TO FUNDS.—(1) There shall be credited to the Department of Defense Family Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military family housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military family housing.

(D) Income derived from any activities under this subchapter with respect to military family housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(2) There shall be credited to the Department of Defense Military Unaccompanied Housing Improvement Fund the following:

(A) Amounts authorized for and appropriated to that Fund.

(B) Subject to subsection (f), any amounts that the Secretary of Defense transfers, in such amounts as provided in appropriation Acts, to that Fund from amounts authorized and appropriated to the Department of Defense for the acquisition or construction of military unaccompanied housing.

(C) Proceeds from the conveyance or lease of property or facilities under section 2878 of this title for the purpose of carrying out activities under this subchapter with respect to military unaccompanied housing.

(D) Income derived from any activities under this subchapter with respect to military unaccompanied housing, including interest on loans made under section 2873 of this title, income and gains realized from investments under section 2875 of this title, and any return of capital invested as part of such investments.

(E) Any amounts that the Secretary of the Navy transfers to that Fund pursuant to section 2814(i)(3) of this title, subject to the restrictions on the use of the transferred amounts specified in that section.

(d) USE OF AMOUNTS IN FUNDS.—(1) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Family Housing Improvement Fund to carry out activities under this subchapter with respect to military family housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(2) In such amounts as provided in appropriation Acts and except as provided in subsection (e), the Secretary of Defense may use amounts in the Department of Defense Military Unaccompanied Housing Improvement Fund to carry out activities under this subchapter with respect to military unaccompanied housing, including activities required in connection with the planning, execution, and administration of contracts entered into under the authority of this subchapter. The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.

(3) Amounts made available under this subsection shall remain available until expended. The Secretary of Defense may transfer amounts made available under this subsection to the Secretaries of the military departments to permit such Secretaries to carry out the activities for which such amounts may be used.

(e) LIMITATION ON OBLIGATIONS.—The Secretary may not incur an obligation under a contract or other agreement entered into under this subchapter in excess of the unobligated balance, at the time the contract is entered into, of the Fund required to be used to satisfy the obligation.

(f) NOTIFICATION REQUIRED FOR TRANSFERS.—A transfer of appropriated amounts to a Fund under paragraph (1)(B) or (2)(B) of subsection (c) may be made only after the end of the 30-day period beginning on the date the Secretary of Defense submits written notice of, and justification for, the transfer to the appropriate committees of Congress.

(g) LIMITATION ON AMOUNT OF BUDGET AUTHORITY.—The total value in budget authority of all contracts and investments undertaken using the authorities provided in this subchapter shall not exceed—

(1) $850,000,000 for the acquisition or construction of military family housing; and

(2) $150,000,000 for the acquisition or construction of military unaccompanied housing.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 548; amended Pub. L. 104–201, div. B, title XXVIII, § 2804, Sept. 23, 1996, 110 Stat. 2788; Pub. L. 106–65, div. B, title XXVIII, § 2802(b), Oct. 5, 1999, 113 Stat. 848.)

AMENDMENTS

1999—Subsec. (c)(1)(E). Pub. L. 106–65, § 2802(b)(1), added subpar. (E).

Subsec. (c)(2)(E). Pub. L. 106–65, § 2802(b)(2), added subpar. (E).

1996—Subsec. (d)(1), (2). Pub. L. 104–201 inserted at end ''The Secretary may also use for expenses of activities required in connection with the planning, execution, and administration of such contracts funds that are otherwise available to the Department of Defense for such types of expenses.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2814, 2854a, 2871, 2884 of this title.

§ 2883a. Funds for housing allowances of members of the armed forces assigned to certain military family housing units

(a) AUTHORITY TO TRANSFER FUNDS TO COVER HOUSING ALLOWANCES.—During the fiscal year in which a contract is awarded for the acquisition or construction of military family housing units under this subchapter that are not to be owned by the United States, the Secretary of Defense may transfer the amount determined under subsection (b) with respect to such housing from appropriations available for support of military housing for the armed force concerned for that fiscal year to appropriations available for pay and allowances of military personnel of that same armed force for that same fiscal year.

(b) AMOUNT TRANSFERRED.—The total amount authorized to be transferred under subsection (a) in connection with a contract under this subchapter may not exceed an amount equal to any additional amounts payable during the fiscal year in which the contract is awarded to members of the armed forces assigned to the acquired or constructed housing units as basic allowance for housing under section 403 of title 37 that would not otherwise have been payable to such members if not for assignment to such housing units.

(c) TRANSFERS SUBJECT TO APPROPRIATIONS.—The transfer of funds under the authority of subsection (a) is limited to such amounts as may be provided in advance in appropriations Acts.

(Added Pub. L. 107–107, div. B, title XXVIII, § 2804(a), Dec. 28, 2001, 115 Stat. 1305.)

§ 2884. Reports

(a) PROJECT REPORTS.—(1) The Secretary of Defense shall transmit to the appropriate committees of Congress a report describing—

(A) each contract for the acquisition or construction of family housing units or unaccompanied housing units that the Secretary proposes to solicit under this subchapter; and

(B) each conveyance or lease proposed under section 2878 of this title.

(2) The report shall describe the proposed contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease and provide a justification of such method of participation. The report shall be submitted not later than 30 days before the date on which the Secretary issues the contract solicitation or offers the conveyance or lease.

(b) ANNUAL REPORTS.—The Secretary of Defense shall include each year in the materials that the Secretary submits to Congress in support of the budget submitted by the President pursuant to section 1105 of title 31 the following:

(1) A report on the expenditures and receipts during the preceding fiscal year covering the Funds established under section 2883 of this title.

(2) A methodology for evaluating the extent and effectiveness of the use of the authorities under this subchapter during such preceding fiscal year.

(3) A description of the objectives of the Department of Defense for providing military family housing and military unaccompanied housing for members of the armed forces.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 550.)

FINAL REPORT

Section 2801(b) of Pub. L. 104–106 provided that: ''Not later than March 1, 2000, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and House of Representatives] a report on the use by the Secretary of Defense and the Secretaries of the military departments of the authorities provided by subchapter IV of chapter 169 of title 10, United States Code, as added by subsection (a). The report shall assess the effectiveness of such authority in providing for the construction and improvement of military family housing and military unaccompanied housing.''

§ 2885. Expiration of authority

The authority to enter into a contract under this subchapter shall expire on December 31, 2012.

(Added Pub. L. 104–106, div. B, title XXVIII, § 2801(a)(1), Feb. 10, 1996, 110 Stat. 551; amended Pub. L. 105–85, div. A, title X, § 1073(a)(61), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2806], Oct. 30, 2000, 114 Stat. 1654, 1654A–415; Pub. L. 107–107, div. B, title XXVIII, § 2805, Dec. 28, 2001, 115 Stat. 1306.)

AMENDMENTS

2001—Pub. L. 107–107 substituted ''2012'' for ''2004''.

2000—Pub. L. 106–398 substituted ''December 31, 2004'' for ''February 10, 2001''.

1997—Pub. L. 105–85 substituted ''on February 10, 2001'' for ''five years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2881a of this title.

[CHAPTER 171—REPEALED]

[§§ 2891, 2892. Repealed. Pub. L. 104–106, div. A, title X, § 1061(b)(1), Feb. 10, 1996, 110 Stat. 442]

Section 2891, added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1959; amended Pub. L. 102–484, div. A, title III, § 372, Oct. 23, 1992, 106 Stat. 2384, required Secretary of Defense to submit to Congress for each of fiscal years 1992, 1993, and 1994, a report regarding security and control of Department of Defense supplies.

Section 2892, added Pub. L. 100–456, div. A, title III, § 342(a)(1), Sept. 29, 1988, 102 Stat. 1960, directed Secretary of Defense to require investigations of discrepancies in accounting for Department supplies and to separate offices ordering supplies from offices receiving supplies.

CHAPTER 172—STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM

Sec.
2901. Strategic Environmental Research and Development Program.
2902. Strategic Environmental Research and Development Program Council.
2903. Executive Director.
2904. Strategic Environmental Research and Development Program Scientific Advisory Board.

§ 2901. Strategic Environmental Research and Development Program

(a) The Secretary of Defense shall establish a program to be known as the ''Strategic Environmental Research and Development Program''.

(b) The purposes of the program are as follows:

(1) To address environmental matters of concern to the Department of Defense and the Department of Energy through support for basic and applied research and development of technologies that can enhance the capabilities of the departments to meet their environmental obligations.

(2) To identify research, technologies, and other information developed by the Department of Defense and the Department of Energy for national defense purposes that would be useful to governmental and private organizations involved in the development of energy technologies and of technologies to address environmental restoration, waste minimization, hazardous waste substitution, and other environmental concerns, and to share such research, technologies, and other information with such governmental and private organizations.

(3) To furnish other governmental organizations and private organizations with data, enhanced data collection capabilities, and enhanced analytical capabilities for use by such organizations in the conduct of environmental research, including research concerning global environmental change.

(4) To identify technologies developed by the private sector that are useful for Department of Defense and Department of Energy defense activities concerning environmental restoration, hazardous and solid waste minimization and prevention, hazardous material substitution, and provide for the use of such technologies in the conduct of such activities.

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1751.)

§ 2902. Strategic Environmental Research and Development Program Council

(a) There is a Strategic Environmental Research and Development Program Council (hereinafter in this chapter referred to as the ''Council'').

(b) The Council is composed of 12 members as follows:

(1) The Deputy Under Secretary of Defense for Science and Technology.

(2) The Vice Chairman of the Joint Chiefs of Staff.

(3) The Deputy Under Secretary of Defense responsible for environmental security.

(4) The Assistant Secretary of Energy for Defense programs.

(5) The Assistant Secretary of Energy responsible for environmental restoration and waste management.

(6) The Director of the Department of Energy Office of Science.

(7) The Administrator of the Environmental Protection Agency.

(8) One representative from each of the Army, Navy, Air Force, and Coast Guard.

(9) The Executive Director of the Council (appointed pursuant to section 2903 of this title), who shall be a nonvoting member.

(c) The Secretary of Defense shall designate a member of the Council as chairman for each odd numbered fiscal year. The Secretary of Energy shall designate a member of the Council as chairman for each even-numbered fiscal year.

(d) The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the Strategic Environmental Research and Development Program.

(2) To enter into contracts, grants, and other financial arrangements, in accordance with other applicable law, to carry out the purposes of the Strategic Environmental Research and Development Program.

(3) To prepare an annual report that contains the following:

(A) A description of activities of the strategic environmental research and development program carried out during the fiscal year before the fiscal year in which the report is prepared.

(B) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

(C) A summary of projects continued from the fiscal year before the fiscal year in which the report is prepared and projects expected to be started during the fiscal year in which the report is prepared and during the following fiscal year.

(D) A summary of the actions of the Strategic Environmental Research and Development Program Scientific Advisory Board during the year preceding the year in which the report is submitted and any recommendations, including recommendations on program direction and legislation, that the Advisory Board considers appropriate regarding the program.

(4) To promote the maximum exchange of information, and to minimize duplication, re-

garding environmentally related research, development, and demonstration activities through close coordination with the military departments and Defense Agencies, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, other departments and agencies of the Federal Government or any State and local governments, including the National Science and Technology Council, and other organizations engaged in such activities.

(5) To ensure that research and development activities under the Strategic Environmental Research and Development Program do not duplicate other ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the National Aeronautics and Space Administration, or any other department or agency of the Federal Government.

(6) To ensure that the research and development programs identified for support pursuant to policies and procedures prescribed by the council utilize, to the maximum extent possible, the talents, skills, and abilities residing at the Federal laboratories, including the Department of Energy multiprogram and defense laboratories, the Department of Defense laboratories, and Federal contract research centers. To utilize the research capabilities of institutions of higher education and private industry to the extent practicable.

(e) In carrying out subsection (d)(1), the Council shall prescribe policies and procedures that—

(1) provide for appropriate access by Federal Government personnel, State and local government personnel, college and university personnel, industry personnel, and the general public to data under the control of, or otherwise available to, the Department of Defense that is relevant to environmental matters by—

(A) identifying the sources of such data;

(B) publicizing the availability and sources of such data by appropriately-targeted dissemination of information to such personnel and the general public, and by other means; and

(C) providing for review of classified data relevant to environmental matters with a view to declassifying or preparing unclassified summaries of such data;

(2) provide governmental and nongovernmental entities with analytic assistance, consistent with national defense missions, including access to military platforms for sensor deployment and access to computer capabilities, in order to facilitate environmental research;

(3) provide for the identification of energy technologies developed for national defense purposes (including electricity generation systems, energy storage systems, alternative fuels, biomass energy technology, and applied materials technology) that might have environmentally sound, energy efficient applications for other programs of the Department of Defense and the Department of Energy national security programs;

(4) provide for the identification and support of programs of basic and applied research, development, and demonstration in technologies useful—

(A) to facilitate environmental compliance, remediation, and restoration activities of the Department of Defense and at Department of Energy defense facilities;

(B) to minimize waste generation, including reduction at the source, by such departments; or

(C) to substitute use of nonhazardous, nontoxic, nonpolluting, and other environmentally sound materials and substances for use of hazardous, toxic, and polluting materials and substances by such departments;

(5) provide for the identification and support of research, development, and application of other technologies developed for national defense purposes which not only are directly useful for programs, projects, and activities of such departments, but also have useful applications for solutions to such national and international environmental problems as climate change and ozone depletion;

(6) provide for the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, in cooperation with other Federal and State agencies, as appropriate, to conduct joint research, development, and demonstration projects relating to innovative technologies, management practices, and other approaches for purposes of—

(A) preventing pollution from all sources;

(B) minimizing hazardous and solid waste, including recycling; and

(C) treating hazardous and solid waste, including the use of thermal, chemical, and biological treatment technologies;

(7) encourage transfer of technologies referred to in clauses (2) through (6) to the private sector under the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) and other applicable laws;

(8) provide for the identification of, and planning for the demonstration and use of, existing environmentally sound, energy-efficient technologies developed by the private sector that could be used directly by the Department of Defense;

(9) provide for the identification of military specifications that prevent or limit the use of environmentally beneficial technologies, materials, and substances in the performance of Department of Defense contracts and recommend changes to such specifications; and

(10) to ensure that the research and development programs identified for support pursuant to the policies and procedures prescribed by the Council are closely coordinated with, and do not duplicate, ongoing activities sponsored by the Department of Defense, the Department of Energy, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, or other Federal agencies.

(f) The Council shall be subject to the authority, direction, and control of the Secretary of Defense in prescribing policies and procedures under subsection (d)(1).

(g)(1) Not later than February 1 of each year, the Council shall submit to the Secretary of Defense the annual report prepared pursuant to subsection (d)(3).

(2) Not later than March 15 of each year, the Secretary of Defense shall submit such annual report to Congress, along with such comments as the Secretary considers appropriate.

(Added Pub. L. 101–510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1751; amended Pub. L. 102–190, div. A, title II, §257(a), title X, §1061(a)(19), Dec. 5, 1991, 105 Stat. 1331, 1473; Pub. L. 102–484, div. A, title X, §1052(38), Oct. 23, 1992, 106 Stat. 2501; Pub. L. 103–160, div. A, title II, §265(a), Nov. 30, 1993, 107 Stat. 1611; Pub. L. 104–106, div. A, title II, §203(a)–(b)(2), (c), Feb. 10, 1996, 110 Stat. 217, 218; Pub. L. 105–245, title III, §309(b)(2)(B), Oct. 7, 1998, 112 Stat. 1853; Pub. L. 106–65, div. A, title III, §324, Oct. 5, 1999, 113 Stat. 563; Pub. L. 106–398, §1 [[div. A], title III, §313(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55.)

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in subsec. (e)(7), is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, as amended, which is classified generally to chapter 63 (§3701 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of Title 15 and Tables.

AMENDMENTS

2000—Subsec. (d)(3)(D). Pub. L. 106–398 added subpar. (D).

1999—Subsec. (b)(1). Pub. L. 106–65 substituted ''Deputy Under Secretary of Defense for Science and Technology'' for ''Director of Defense Research and Engineering''.

1998—Subsec. (b)(6). Pub. L. 105–245 substituted ''Science'' for ''Energy Research''.

1996—Subsec. (b). Pub. L. 104–106, §203(a)(1), substituted ''12'' for ''thirteen'' in introductory provisions.

Subsec. (b)(3) to (7). Pub. L. 104–106, §203(a)(2), (3), redesignated pars. (4) to (8) as (3) to (7), respectively, and struck out former par. (3) which read as follows: ''The Assistant Secretary of the Air Force responsible for matters relating to space.''

Subsec. (b)(8). Pub. L. 104–106, §203(a)(3), (4), redesignated par. (9) as (8) and struck out '', who shall be nonvoting members'' after ''Coast Guard''. Former par. (8) redesignated (7).

Subsec. (b)(9), (10). Pub. L. 104–106, §203(a)(3), redesignated pars. (9) and (10) as (8) and (9), respectively.

Subsec. (d)(3). Pub. L. 104–106, §203(b)(1)(A), added par. (3) and struck out former par. (3) which read as follows: ''To prepare an annual five-year strategic environmental research and development plan that shall cover the fiscal year in which the plan is prepared and the four fiscal years following such fiscal year.''

Subsec. (d)(4). Pub. L. 104–106, §203(b)(1)(B), substituted ''National Science and Technology Council'' for ''Federal Coordinating Council on Science, Engineering, and Technology''.

Subsec. (e)(3). Pub. L. 104–106, §203(c), substituted ''national security programs'' for ''national security programs, particularly technologies that have the potential for industrial, commercial, and other governmental applications, and to support programs of research in and development of such applications''.

Subsecs. (f), (g). Pub. L. 104–106, §203(b)(2), added subsec. (g), redesignated former subsec. (g) as (f), and struck out former subsec. (f) which authorized Secretaries of Defense and Energy to submit to the Council proposals for conducting environmental research under this chapter.

Subsec. (h). Pub. L. 104–106, §203(b)(2)(A), struck out subsec. (h) which required Council to submit to Secretary of Defense and to Congress an annual report on annual five-year strategic environmental research and development plan.

1993—Subsec. (b)(1) to (4). Pub. L. 103–160, §265(a)(1)–(3), redesignated pars. (2) to (4) as (1) to (3), respectively, added par. (4), and struck out former par. (1) which read as follows: ''The Assistant Secretary of Defense responsible for matters relating to production and logistics.''

Subsec. (b)(6). Pub. L. 103–160, §265(a)(4), added par. (6) and struck out former par. (6) which read as follows: ''The Director of the Department of Energy Office of Environmental Restoration and Waste Management.''

1992—Subsec. (b)(9). Pub. L. 102–484 substituted ''nonvoting'' for ''non-voting''.

1991—Subsec. (b). Pub. L. 102–190, §257(a)(1), substituted ''thirteen'' for ''nine'' in introductory provisions.

Subsec. (b)(9), (10). Pub. L. 102–190, §257(a)(2), (3), added par. (9) and redesignated former par. (9) as (10).

Subsec. (f)(2)(A). Pub. L. 102–190, §1061(a)(19), substituted ''department's'' for ''Department's''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 203(b)(3) of Pub. L. 104–106 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to the annual report prepared during fiscal year 1997 and each fiscal year thereafter.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

FIRST ANNUAL REPORT OF STRATEGIC ENVIRONMENTAL RESEARCH AND DEVELOPMENT PROGRAM COUNCIL

Section 1801(c) of Pub. L. 101–510 provided that the first annual report required by former subsec. (h) of this section be submitted to Secretary of Defense, Secretary of Energy, and Administrator of the Environmental Protection Agency not later than Feb. 1, 1992, that the Strategic Environmental Research and Development Program Council conduct and include as part of report an assessment of advisability of, and various alternatives to, charging fees for information released, as required pursuant to section 2901(b)(3) of this title and subsecs. (e)(1), (2), and (g)(2)(I) [now (f)(2)(I)] of this section, to private sector entities operating for a profit, and that Secretary of Defense, Secretary of Energy, and Administrator of the Environmental Protection Agency submit to Congress any recommendations for changes in structure or personnel of Council that Secretaries and Administrator consider necessary to carry out environmental activities of strategic environmental research and development program.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2904 of this title.

§ 2903. Executive Director

(a) There shall be an Executive Director of the Council appointed by the Secretary of Defense after consultation with the Secretary of Energy.

(b) Subject to the authority, direction, and control of the Secretary of Defense, the Executive Director is responsible for the management

of the Strategic Environmental Research and Development Program in accordance with the policies established by the Council.

(c) The Executive Director may enter into contracts using competitive procedures. The Executive Director may enter into other agreements in accordance with applicable law. In either case, the Executive Director shall first obtain the approval of the Council for any contract or agreement in an amount equal to or in excess of $500,000 or such lesser amount as the Council may prescribe.

(d)(1) The Executive Director, with the concurrence of the Council, may appoint such professional and clerical staff as may be necessary to carry out the responsibilities and policies of the Council.

(2) The Executive Director, with the concurrence of the Council and without regard to the provisions of chapter 51 of title 5 and subchapter III of chapter 53 of such title, may establish the rates of basic pay for professional, scientific, and technical employees appointed pursuant to paragraph (1).

(Added Pub. L. 101–510, div. A, title XVIII, § 1801(a)(1), Nov. 5, 1990, 104 Stat. 1755; amended Pub. L. 102–25, title VII, § 701(h)(2), Apr. 6, 1991, 105 Stat. 115; Pub. L. 103–160, div. A, title II, § 265(b), Nov. 30, 1993, 107 Stat. 1611; Pub. L. 104–106, div. A, title II, § 203(d), (e)(1), Feb. 10, 1996, 110 Stat. 218.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106, § 203(d), substituted ''contracts using competitive procedures. The Executive Director may enter into'' for ''contracts or'' and ''law. In either case,'' for ''law, except that''.

Subsec. (d)(2). Pub. L. 104–106, § 203(e)(1), struck out at end ''The authority provided in the preceding sentence shall expire on September 30, 1995.''

1993—Subsec. (d)(2). Pub. L. 103–160 substituted ''September 30, 1995'' for ''November 5, 1992''.

1991—Subsec. (d)(2). Pub. L. 102–25 substituted ''on November 5, 1992'' for ''two years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1991''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 203(e)(2) of Pub. L. 104–106 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of September 29, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2902 of this title.

§ 2904. Strategic Environmental Research and Development Program Scientific Advisory Board

(a) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall jointly appoint a Strategic Environmental Research and Development Program Scientific Advisory Board (hereafter in this section referred to as the ''Advisory Board'') consisting of not less than six and not more than 14 members.

(b)(1) The following persons shall be permanent members of the Advisory Board:

(A) The Science Advisor to the President, or his designee.

(B) The Administrator of the National Oceanic and Atmospheric Administration, or his designee.

(2) Other members of the Advisory Board shall be appointed from among persons eminent in the fields of basic sciences, engineering, ocean and environmental sciences, education, research management, international and security affairs, health physics, health sciences, or social sciences, with due regard given to the equitable representation of scientists and engineers who are women or who represent minority groups. At least one member of the Advisory Board shall be a representative of environmental public interest groups and one member shall be a representative of the interests of State governments.

(3) The Secretary of Defense and the Secretary of Energy, in consultation with the Administrator of the Environmental Protection Agency, shall request—

(A) that the head of the National Academy of Sciences, in consultation with the head of the National Academy of Engineering and the head of the Institutes of Medicine of the National Academy of Sciences, nominate persons for appointment to the Advisory Board;

(B) that the Council on Environmental Quality nominate for appointment to the Advisory Board at least one person who is a representative of environmental public interest groups; and

(C) that the National Association of Governors nominate for appointment to the Advisory Board at least one person who is representative of the interests of State governments.

(4) Members of the Advisory Board shall be appointed for terms of not less than two and not more than four years.

(c) A member of the Advisory Board who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee, except for the purposes of chapter 81 of title 5 (relating to compensation for work-related injuries) and chapter 171 of title 28 (relating to tort claims).

(d) The Advisory Board shall prescribe procedures for carrying out its responsibilities. Such procedures shall define a quorum as a majority of the members, provide for annual election of the Chairman by the members of the Advisory Board, and require at least four meetings of the Advisory Board each year.

(e) The Council shall refer to the Advisory Board, and the Advisory Board shall review, each proposed research project including its estimated cost, for research in and development of technologies related to environmental activities in excess of $1,000,000. The Advisory Board shall make any recommendations to the Council that the Advisory Board considers appropriate regarding such project or proposal.

(f) The Advisory Board may make recommendations to the Council regarding technologies, research, projects, programs, activities, and, if appropriate, funding within the scope of the Strategic Environmental Research and Development Program.

(g) The Advisory Board shall assist and advise the Council in identifying the environmental data and analytical assistance activities that should be covered by the policies and procedures prescribed pursuant to section 2902(d)(1) of this title.

(h) Each member of the Advisory Board shall be required to file a financial disclosure report under title I of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(Added Pub. L. 101–510, div. A, title XVIII, §1801(a)(1), Nov. 5, 1990, 104 Stat. 1756; amended Pub. L. 102–190, div. A, title II, §257(b), Dec. 5, 1991, 105 Stat. 1331; Pub. L. 105–85, div. A, title III, §341, Nov. 18, 1997, 111 Stat. 1686; Pub. L. 106–398, §1 [[div. A], title III, §313(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–55.)

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (h), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. Title I of the Act is set out in the Appendix to Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5 and Tables.

AMENDMENTS

2000—Subsecs. (h), (i). Pub. L. 106–398 redesignated subsec. (i) as (h) and struck out former subsec. (h) which read as follows: ''Not later than March 15 of each year, the Advisory Board shall submit to the Congress an annual report setting forth its actions during the year preceding the year in which the report is submitted and any recommendations, including recommendations on projects, programs, and information exchange and recommendations for legislation, that the Advisory Board considers appropriate regarding the Strategic Environmental Research and Development Program.''

1997—Subsec. (b)(4). Pub. L. 105–85 substituted ''not less than two and not more than four'' for ''three years''.

1991—Subsec. (a). Pub. L. 102–190, §257(b)(1), substituted ''14 members'' for ''13 members''.

Subsec. (b)(1). Pub. L. 102–190, §257(b)(2), added par. (1) and struck out former par. (1) which read as follows: ''The Science Advisor to the President, or his designee, shall be a permanent member of the Advisory Board.''

INITIAL APPOINTMENTS OF ADVISORY BOARD MEMBERS

Section 1801(b) of Pub. L. 101–510 directed Secretary of Defense and Secretary of Energy to make the appointments required by 10 U.S.C. 2904(a) not later than 60 days after Nov. 5, 1990, and provided that up to one-half of the members originally appointed to the Strategic Environmental Research and Development Program Scientific Advisory Board could be appointed for terms of not more than six and not less than two years in order to provide for staggered expiration of the terms of members.

FIRST ANNUAL REPORT OF ADVISORY BOARD

Section 1801(d) of Pub. L. 101–510 directed that first annual report of the Strategic Environmental Research and Development Program Scientific Advisory Board be submitted not later than Mar. 15, 1992.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Subtitle B—Army

PART I—ORGANIZATION

Chap.		Sec.
301.	Definitions	3001
303.	Department of the Army	3011
305.	The Army Staff	3031
307.	The Army	3061

PART II—PERSONNEL

331.	Strength	3201
333.	Enlistments	3251
335.	Appointments in the Regular Army	3281
[337.	Repealed.]	
339.	Temporary Appointments	3441
341.	Active Duty	3491
343.	Special Appointments, Assignments, Details, and Duties	3531
345.	Rank and Command	3571
[347.	Repealed.]	
349.	Miscellaneous Prohibitions and Penalties	3631
[351.	Repealed.]	
353.	Miscellaneous Rights and Benefits	3681
355.	Hospitalization	3721
357.	Decorations and Awards	3741
[359.	Repealed.]	
[360.	Repealed.]	
[361.	Repealed.]	
[363.	Repealed.]	
[365.	Repealed.]	
367.	Retirement for Length of Service	3911
369.	Retired Grade	3961
371.	Computation of Retired Pay	3991
373.	Civilian Employees	4021

PART III—TRAINING

401.	Training Generally	4301
403.	United States Military Academy	4331
[405.	Repealed.]	
407.	Schools and Camps	4411

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

[431.	Repealed.]	
433.	Procurement	4531
434.	Armaments Industrial Base	4551
435.	Issue of Serviceable Material to Armed Forces	4561
437.	Utilities and Services	4591
439.	Sale of Serviceable Material	4621
441.	Issue of Serviceable Material Other Than to Armed Forces	4651
443.	Disposal of Obsolete or Surplus Material	4681
445.	Disposition of Effects of Deceased Persons; Captured Flags	4712
447.	Transportation	4741
449.	Real Property	4771
451.	Military Claims	4801
453.	Accountability and Responsibility	4831

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, added item for chapter 434.

1999—Pub. L. 106–65, div. A, title VII, §721(c)(7), Oct. 5, 1999, 113 Stat. 695, substituted ''Disposition'' for ''Inquests; Disposition'' and ''4712'' for ''4711'' in item for chapter 445.

1994—Pub. L. 103–337, div. A, title XVI, § 1672(a), Oct. 5, 1994, 108 Stat. 3015, struck out items for chapters 337 ''Appointments as Reserve Officers'', 361 ''Separation for Various Reasons'', and 363 ''Separation or Transfer to Retired Reserve''.

1993—Pub. L. 103–160, div. A, title VIII, § 828(b)(2), Nov. 30, 1993, 107 Stat. 1714, struck out item for chapter 431 ''Industrial Mobilization, Research, and Development''.

1987—Pub. L. 100–26, § 7(j)(10)(A), Apr. 21, 1987, 101 Stat. 283, substituted ''3011'' for ''3010'' as section number in item for chapter 303.

1980—Pub. L. 96–513, title V, §§ 502(1), 512(1), Dec. 12, 1980, 94 Stat. 2909, 2929, substituted ''3010'' for ''3011'' as section number in item for chapter 303, and struck out item for chapter 359 ''Separation from Regular Army for Substandard Performance of Duty'', item for chapter 360 ''Separation from Regular Army for Moral or Professional Dereliction or in Interests of National Security'', and item for chapter 365 ''Retirement for Age''.

1968—Pub. L. 90–377, § 3, July 5, 1968, 82 Stat. 288, struck out item for chapter 351 ''United States Disciplinary Barracks''.

Pub. L. 90–235, § 8(5), Jan. 2, 1968, 81 Stat. 764, struck out item for chapter 347 ''The Uniform''.

1964—Pub. L. 88–647, title III, § 301(11), Oct. 13, 1964, 78 Stat. 1072, struck out item for chapter 405 ''Reserve Officers' Training Corps''.

1960—Pub. L. 86–616, §§ 2(b), 3(b), July 12, 1960, 74 Stat. 388, 390, substituted ''Substandard Performance of Duty'' for ''Failure to Meet Standards'' in item for of chapter 359 and added item for chapter 360.

1958—Pub. L. 85–861, § 1(95), Sept. 2, 1958, 72 Stat. 1487, substituted ''3841'' for ''[No present sections]'' in item for chapter 363.

PART I—ORGANIZATION

Chap.		Sec.
301.	Definitions	3001
303.	Department of the Army	3011
305.	The Army Staff	3031
307.	The Army	3061

AMENDMENTS

1987—Pub. L. 100–26, § 7(j)(10)(A), Apr. 21, 1987, 101 Stat. 283, substituted ''3011'' for ''3010'' as section number in item for chapter 303.

1980—Pub. L. 96–513, title V, § 512(1), Dec. 12, 1980, 94 Stat. 2929, substituted ''3010'' for ''3011'' as section number in item for chapter 303.

CHAPTER 301—DEFINITIONS

Sec.
3001. Definitions.

§ 3001. Definitions

In this title, the term ''Army'' means the Army or Armies referred to in the Constitution of the United States, less that part established by law as the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 157; Pub. L. 100–26, § 7(k)(8), Apr. 21, 1987, 101 Stat. 284.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3001	5:181–3(a). 10:1a(a).	June 28, 1950, ch. 383, § 2(a), 64 Stat. 263.

The words ''Army of the United States'' and ''are synonymous and'' are omitted as surplusage, since the term ''Army'' is used throughout the revised title. 5:181–3(a) (last sentence) and 10:1a(a) (last sentence) are omitted as surplusage.

AMENDMENTS

1987—Pub. L. 100–26 inserted ''the term'' after ''In this title,''.

CHAPTER 303—DEPARTMENT OF THE ARMY

Sec.
3011. Organization.
3012. Department of the Army: seal.
3013. Secretary of the Army.
3014. Office of the Secretary of the Army.
3015. Under Secretary of the Army.
3016. Assistant Secretaries of the Army.
3017. Secretary of the Army: successors to duties.
3018. Administrative Assistant.
3019. General Counsel.
3020. Inspector General.
3021. Army Reserve Forces Policy Committee.
3022. Financial management.
3023. Chief of Legislative Liaison.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 504(c)(1)(B), Dec. 2, 2002, 116 Stat. 2532, added item 3023.

1988—Pub. L. 100–456, div. A, title VII, § 702(a)(3), Sept. 29, 1988, 102 Stat. 1994, added item 3022.

1986—Pub. L. 99–433, title V, § 501(b), Oct. 1, 1986, 100 Stat. 1039, amended analysis generally, substituting items 3011 to 3021 for former items 3010 to 3019.

1967—Pub. L. 90–168, § 2(17), Dec. 1, 1967, 81 Stat. 524, added item 3019.

1964—Pub. L. 88–426, title III, §§ 305(40)(B), 306(j)(2), Aug. 14, 1964, 78 Stat. 427, 431, struck out ''; compensation'' from item 3012, and struck out item 3018 ''Compensation of General Counsel''.

1962—Pub. L. 87–651, title II, § 210(b), Sept. 7, 1962, 76 Stat. 524, added item 3010.

1958—Pub. L. 85–861, § 1(59)(B), Sept. 2, 1958, 72 Stat. 1462, added item 3018.

[§ 3010. Renumbered § 3011]

§ 3011. Organization

The Department of the Army is separately organized under the Secretary of the Army. It operates under the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 87–651, title II, § 210(a), Sept. 7, 1962, 76 Stat. 524, § 3010; renumbered § 3011, Pub. L. 99–433, title V, § 501(a)(2), Oct. 1, 1986, 100 Stat. 1034.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3010	5:171a(c)(7) (1st sentence, as applicable to Department of Army).	July 26, 1947, ch. 343, § 202(c)(7) (1st sentence, as applicable, to Department of Army); added Aug. 6, 1958, Pub. L. 85–599, § 3(a) (1st sentence of 8th par., as applicable to Department of Army), 72 Stat. 516.

The word ''operates'' is substituted for the words ''shall function''.

PRIOR PROVISIONS

A prior section 3011 was renumbered section 3012 of this title.

§ 3012. Department of the Army: seal

The Secretary of the Army shall have a seal for the Department of the Army. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 157, § 3011; renumbered § 3012, Pub. L. 99–433, title V, § 501(a)(2), Oct. 1, 1986, 100 Stat. 1034.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3011	5:181–1(d).	July 26, 1947, ch. 343, §205(d), 61 Stat. 501.

The words ''of office'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 3012 was renumbered section 3013 of this title and subsequently repealed.

§ 3013. Secretary of the Army

(a)(1) There is a Secretary of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Army.

(2) A person may not be appointed as Secretary of the Army within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Army is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Army, including the following functions:

(1) Recruiting.
(2) Organizing.
(3) Supplying.
(4) Equipping (including research and development).
(5) Training.
(6) Servicing.
(7) Mobilizing.
(8) Demobilizing.
(9) Administering (including the morale and welfare of personnel).
(10) Maintaining.
(11) The construction, outfitting, and repair of military equipment.
(12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Army is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Army;
(2) the formulation of policies and programs by the Department of the Army that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;
(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Army;
(4) carrying out the functions of the Department of the Army so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;
(5) effective cooperation and coordination between the Department of the Army and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;
(6) the presentation and justification of the positions of the Department of the Army on the plans, programs, and policies of the Department of Defense; and
(7) the effective supervision and control of the intelligence activities of the Department of the Army.

(d) The Secretary of the Army is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Army may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Army may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Army and to the Assistant Secretaries of the Army. Officers of the Army shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Army may—

(1) assign, detail, and prescribe the duties of members of the Army and civilian personnel of the Department of the Army;
(2) change the title of any officer or activity of the Department of the Army not prescribed by law; and
(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub. L. 99–433, title V, §501(a)(5), Oct. 1, 1986, 100 Stat. 1035; amended Pub. L. 99–661, div. A, title V, §534, Nov. 14, 1986, 100 Stat. 3873.)

PRIOR PROVISIONS

A prior section 3013, acts Aug. 10, 1956, ch. 1041, 70A Stat. 157, §3012; Sept. 2, 1958, Pub. L. 85–861, §1(57), 72 Stat. 1462; Sept. 7, 1962, Pub. L. 87–651, title II, §211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§305(2), 306(j)(1), 78 Stat. 422, 431; Nov. 2, 1966, Pub. L. 89–718, §22, 80 Stat. 1118; renumbered §3013, Oct. 1, 1986, Pub. L. 99–433, title V, §501(a)(2), 100 Stat. 1034, related to Secretary of the Army, powers and duties, and delegations, prior to repeal by Pub. L. 99–433, §501(a)(5).

Another prior section 3013 was renumbered section 3014 of this title and subsequently repealed.

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–661 substituted ''five years'' for ''10 years''.

DEMONSTRATION PROJECT FOR USE OF ARMY INSTALLATIONS TO PROVIDE PRERELEASE EMPLOYMENT TRAINING TO NONVIOLENT OFFENDERS IN STATE PENAL SYSTEMS

Pub. L. 103–337, div. A, title X, §1065, Oct. 5, 1994, 108 Stat. 2849, provided that:

''(a) DEMONSTRATION PROJECT AUTHORIZED.—The Secretary of the Army may conduct a demonstration project to test the feasibility of using Army facilities to provide employment training to nonviolent offenders in a State penal system before their release from incarceration. The demonstration project shall be limited to not more than three military installations under the jurisdiction of the Secretary.

''(b) SOURCES OF TRAINING.—The Secretary may enter into a cooperative agreement with one or more private,

nonprofit organizations for purposes of providing at the military installations included in the demonstration project the prerelease employment training authorized under subsection (a) or may provide such training directly at such installations by agreement with the State concerned.

''(c) USE OF FACILITIES.—Under a cooperative agreement entered into under subsection (b), the Secretary may lease or otherwise make available to a nonprofit organization participating in the demonstration project at a military installation included in the demonstration project any real property or facilities at the installation that the Secretary considers to be appropriate for use to provide the prerelease employment training authorized under subsection (a). Notwithstanding section 2667(b)(4) of title 10, United States Code, the use of such real property or facilities may be permitted with or without reimbursement.

''(d) ACCEPTANCE OF SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept voluntary services provided by persons participating in the prerelease employment training authorized under subsection (a).

''(e) LIABILITY AND INDEMNIFICATION.—(1) The Secretary may not enter into a cooperative agreement under subsection (b) with a nonprofit organization for the participation of that organization in the demonstration project unless the agreement includes provisions that the nonprofit organization shall—

''(A) be liable for any loss or damage to Federal Government property that may result from, or in connection with, the provision of prerelease employment training by the organization under the demonstration project; and

''(B) hold harmless and indemnify the United States from and against any suit, claim, demand, action, or liability arising out of any claim for personal injury or property damage that may result from or in connection with the demonstration project.

''(2) The Secretary may not enter into an agreement under subsection (b) with the State concerned for the provision of prerelease employment training directly by the Secretary unless the agreement with the State concerned includes provisions that the State shall—

''(A) be liable for any loss or damage to Federal Government property that may result from, or in connection with, the provision of the training except to the extent that the loss or damage results from a wrongful act or omission of Federal Government personnel; and

''(B) hold harmless and indemnify the United States from and against any suit, claim, demand, action, or liability arising out of any claim for personal injury or property damage that may result from, or in connection with, the provision of the training except to the extent that the personal injury or property damage results from a wrongful act or omission of Federal Government personnel.

''(f) REPORT.—Not later than two years after the date of the enactment of this Act [Oct. 5, 1994], the Secretary shall submit to Congress a report evaluating the success of the demonstration project and containing such recommendations with regard to the termination, continuation, or expansion of the demonstration project as the Secretary considers appropriate.''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Army, see Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907, set out as a note under section 3345 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 162, 3033, 10171 of this title; title 32 section 113.

§ 3014. Office of the Secretary of the Army

(a) There is in the Department of the Army an Office of the Secretary of the Army. The function of the Office is to assist the Secretary of the Army in carrying out his responsibilities.

(b) The Office of the Secretary of the Army is composed of the following:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries of the Army.

(3) The Administrative Assistant to the Secretary of the Army.

(4) The General Counsel of the Department of the Army.

(5) The Inspector General of the Army.

(6) The Chief of Legislative Liaison.

(7) The Army Reserve Forces Policy Committee.

(8) Such other offices and officials as may be established by law or as the Secretary of the Army may establish or designate.

(c)(1) The Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Army shall establish or designate a single office or other entity within the Office of the Secretary of the Army to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Army Staff to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff and to the Army Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Army of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Army (including the Army Staff) from providing advice or assistance to the Chief of Staff or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Army.

(5) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Army shall have sole responsibility within the Office of the Secretary and the Army Staff for the function of research and development.

(2) The Secretary of the Army may assign to the Army Staff responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Army to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Army and to the Army Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Army shall ensure that the Office of the Secretary of the Army and the Army Staff do not duplicate specific functions for which the Secretary has assigned responsibility to the other.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Army assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 3,105.

(2) Not more than 1,865 officers of the Army on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Army and on the Army Staff may not exceed 67.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Army or on the Army Staff.

(Added Pub. L. 99–433, title V, § 501(a)(5), Oct. 1, 1986, 100 Stat. 1036; amended Pub. L. 100–180, div. A, title XIII, § 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title III, § 325(a), Sept. 29, 1988, 102 Stat. 1955; Pub. L. 101–189, div. A, title VI, § 652(a)(4), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 107–107, div. A, title X, § 1048(a)(27), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title V, § 504(c)(2), Dec. 2, 2002, 116 Stat. 2532.)

PRIOR PROVISIONS

A prior section 3014, acts Aug. 10, 1956, ch. 1041, 70A Stat. 158, § 3013; Aug. 6, 1958, Pub. L. 85–599, § 8(a), 72 Stat. 519; Sept. 2, 1958, Pub. L. 85–861, § 1(58), 72 Stat. 1462; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(3), 78 Stat. 422; Dec. 1, 1967, Pub. L. 90–168, § 2(12), 81 Stat. 523; Dec. 31, 1970, Pub. L. 91–611, title II, § 211(a), 84 Stat. 1829; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 820(b), 93 Stat. 819; Sept. 24, 1983, Pub. L. 98–94, title XII, § 1212(c)(1), 97 Stat. 687; renumbered § 3014, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(2), 100 Stat. 1034, related to Under Secretary and Assistant Secretaries of the Army, appointment, and duties, prior to repeal by Pub. L. 99–433, § 501(a)(5). See sections 3015 and 3016 of this title.

Another prior section 3014 was renumbered section 3015 of this title and subsequently repealed.

AMENDMENTS

2002—Subsec. (b)(6) to (8). Pub. L. 107–314 added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

2001—Subsec. (f)(3). Pub. L. 107–107 substituted ''67'' for ''the number equal to 85 percent of the number of general officers assigned or detailed to such duty on the date of the enactment of this subsection''.

1989—Subsec. (f)(5). Pub. L. 101–189 struck out par. (5) which read as follows: ''The limitations in paragraphs (1), (2), and (3) do not apply before October 1, 1988.''

1988—Subsec. (c)(5). Pub. L. 100–456 added par. (5).

1987—Subsec. (f)(4). Pub. L. 100–180 inserted ''the President or'' after ''declared by''.

EFFECTIVE DATE OF 1988 AMENDMENT

Requirements of subsec. (c)(5) of this section applicable with respect to any person appointed on or after Sept. 29, 1988, as head of office or other entity designated for conducting auditing function in a military department, see section 325(d)(1) of Pub. L. 100–456, set out as a note under section 5014 of this title.

EFFECTIVE DATE

Section 532(a) of Pub. L. 99–433 provided that: ''The provisions of subsections (c) and (d) of each of sections 3014, 5014, and 8014 of title 10, United States Code, as added by sections 501, 511, and 521, respectively, shall be implemented not later than 180 days after the date of the enactment of this Act [Oct. 1, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3023, 3032 of this title.

§ 3015. Under Secretary of the Army

(a) There is an Under Secretary of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Army may prescribe.

(Added Pub. L. 99–433, title V, § 501(a)(5), Oct. 1, 1986, 100 Stat. 1037.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3013 of this title prior to enactment of Pub. L. 99–433.

A prior section 3015, acts Aug. 10, 1956, ch. 1041, 70A Stat. 158, § 3014; renumbered § 3015, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(2), 100 Stat. 1034, related to Comptroller and Deputy Comptroller of the Army, powers and duties, and appointment, prior to repeal by Pub. L. 99–433, § 501(a)(5).

Another prior section 3015 was renumbered section 3040 of this title and subsequently repealed.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Army, see Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907, set out as a note under section 3345 of Title 5.

§ 3016. Assistant Secretaries of the Army

(a) There are five Assistant Secretaries of the Army. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Army may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Army.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Civil Works. He shall have as his principal duty the overall supervision of the functions of the Department of the Army relating to programs for conservation and development of the national water resources, including flood control, navigation, shore protection, and related purposes.

(4) One of the Assistant Secretaries shall be the Assistant Secretary of the Army for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Army, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Army and shall advise the Secretary of the Army on financial management.

(Added Pub. L. 99–433, title V, § 501(a)(5), Oct. 1, 1986, 100 Stat. 1038; amended Pub. L. 100–456, div. A, title VII, § 702(a)(1), Sept. 29, 1988, 102 Stat. 1992.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3013 of this title prior to enactment of Pub. L. 99–433.

A prior section 3016 was renumbered section 3018 of this title.

AMENDMENTS

1988—Subsec. (b)(4). Pub. L. 100–456 added par. (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 702(e)(1) of Pub. L. 100–456 provided that: ''The amendments made by subsections (a) and (b) [enacting sections 3022 and 5025 of this title and amending this section and section 5016 of this title] shall take effect on January 20, 1989.''

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Army, see Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907, set out as a note under section 3345 of Title 5.

§ 3017. Secretary of the Army: successors to duties

If the Secretary of the Army dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347[1] of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Army.

(2) The Assistant Secretaries of the Army, in the order prescribed by the Secretary of the Army and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Army.

(4) The Chief of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 159; Pub. L. 89–718, § 23, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 90–235, § 4(a)(7), Jan. 2, 1968, 81 Stat. 759; Pub. L. 99–433, title V, § 501(a)(6), Oct. 1, 1986, 100 Stat. 1038; Pub. L. 103–337, div. A, title IX, § 902(a), Oct. 5, 1994, 108 Stat. 2823.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3017(a)	5:181–5(b).	June 28, 1950, ch. 383, § 102 (less (a)), 64 Stat. 265.
3017(b)	5:181–5(c).	

In subsection (a), the word ''person'' is substituted for the words ''officer of the United States''. The words ''until a successor is appointed'' are omitted as surplusage.

Subsection (b) is substituted for 5:181–5(c) and states the effect of section 3544(b) of this title.

REFERENCES IN TEXT

Section 3347 of title 5, referred to in text, was repealed and a new section 3347 was enacted by Pub. L. 105–277, div. C, title I, § 151(b), Oct. 21, 1998, 112 Stat. 2681–611, and, as so enacted, no longer contains provisions authorizing the President to direct temporary successors to duties. See section 3345 of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Pars. (3), (4). Pub. L. 103–337 added par. (3) and redesignated former par. (3) as (4).

1986—Pub. L. 99–433 struck out subsec. (a) designation, substituted '', in the order prescribed by the Secretary of the Army and approved by the Secretary of Defense'' for ''in order of their length of service as such'' in par. (2), and struck out subsec. (b) which read as follows: ''Performance of the duties of the Secretary by the Chief of Staff or any officer of the Army designated under section 3347 of title 5 shall not be considered as the holding of a civil office within the meaning of section 973(b) of this title.''

1968—Subsec. (b). Pub. L. 90–235 substituted ''section 973(b) of this title'' for ''section 3544(b) of this title''.

1966—Pub. L. 89–718 substituted ''section 3347 of title 5'' for ''section 6 of title 5'' wherever appearing.

ORDER OF SUCCESSION

For order of succession in event of death, disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Army, see Ex. Ord. No. 12908, Apr. 22, 1994, 59 F.R. 21907, set out as a note under section 3345 of Title 5.

§ 3018. Administrative Assistant

(a) There is an Administrative Assistant in the Department of the Army. The Administrative Assistant shall be appointed by the Secretary of the Army and shall perform duties that the Secretary considers appropriate.

(b) During a vacancy in the office of Secretary, the Administrative Assistant has charge and custody of all records, books, and papers of the Department of the Army.

(c) The Secretary may authorize the Administrative Assistant to sign, during the temporary

[1] See References in Text note below.

absence of the Secretary, any paper requiring his signature. In such a case, the Administrative Assistant's signature has the same effect as the Secretary's signature.

(Aug. 10, 1956, ch. 1041, 70A Stat. 159, § 3016; renumbered § 3018, Pub. L. 99–433, title V, § 501(a)(3), Oct. 1, 1986, 100 Stat. 1034.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3016(a)	5:185.	R.S. 215; Feb. 27, 1877, ch. 69 (2d par.), 19 Stat. 241.
3016(b)	5:186.	
3016(c)	5:187.	Mar. 4, 1874, ch. 44, 18 Stat. 19.

Although 5:185, 186, and 187 are omitted from the United States Code as covered by 5:181–5, they are not so superseded and are restated in this revised section.

In subsections (a), (b), and (c), the title ''Administrative Assistant'' is substituted for the title ''Assistant and Chief Clerk'', to accord with present usage. R.S. 215 (less last sentence) is not contained in 5:185 and 186. It is also omitted from the revised section as obsolete.

In subsection (a), the words ''an inferior officer'' are omitted, since the Secretary's authority to appoint the Administrative Assistant makes the office an inferior office within the meaning of the Constitution. The words ''perform duties that the Secretary considers appropriate'' are substituted for the words ''to be employed therein as he shall deem proper''.

In subsection (b), the words ''During a vacancy in the office of Secretary * * * has'' are substituted for the words ''whenever the Secretary of the Army shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy have the''. The word ''of'' is substituted for the words ''appertaining to''.

In subsection (c), the words ''during the temporary absence of the Secretary'' are substituted for the words ''When, from illness or other cause, the Secretary of War is temporarily absent from the War Department''. The words ''requisitions upon the Treasury Department'' are omitted as surplusage. The last sentence is substituted for 5:187 (words after semicolon).

PRIOR PROVISIONS

A prior section 3018, added Pub. L. 85–861, § 1(59)(A), Sept. 2, 1958, 72 Stat. 1462, prescribed compensation of General Counsel of Department of the Army, prior to repeal by Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427, eff. first day of first pay period beginning on or after July 1, 1964.

§ 3019. General Counsel

(a) There is a General Counsel of the Department of the Army, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Army may prescribe.

(Added Pub. L. 99–433, title V, § 501(a)(7), Oct. 1, 1986, 100 Stat. 1038; amended Pub. L. 100–456, div. A, title VII, § 703(a), Sept. 29, 1988, 102 Stat. 1996.)

PRIOR PROVISIONS

A prior section 3019 was renumbered section 3038 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 inserted '', by and with the advice and consent of the Senate'' before period at end.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 703(c) of Pub. L. 100–456 provided that: ''The amendments made by this section [amending this section and sections 5019 and 8019 of this title] shall apply to appointments made under sections 3019, 5019, and 8019, respectively, of title 10, United States Code, on and after the date of the enactment of this Act [Sept. 29, 1988].''

§ 3020. Inspector General

(a) There is an Inspector General of the Army who shall be detailed to such position by the Secretary of the Army from the general officers of the Army. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

(b) When directed by the Secretary or the Chief of Staff, the Inspector General shall—

(1) inquire into and report upon the discipline, efficiency, and economy of the Army; and

(2) perform any other duties prescribed by the Secretary or the Chief of Staff.

(c) The Inspector General shall periodically propose programs of inspections to the Secretary of the Army and shall recommend additional inspections and investigations as may appear appropriate.

(d) The Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Army.

(e) The Inspector General shall have such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary.

(Added Pub. L. 99–433, title V, § 501(a)(7), Oct. 1, 1986, 100 Stat. 1038.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (d), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3039 of this title prior to enactment of Pub. L. 99–433.

§ 3021. Army Reserve Forces Policy Committee

There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The functions, membership, and organization of that committee are set forth in section 10302 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(b)(4)(A), Oct. 5, 1994, 108 Stat. 2982.)

PRIOR PROVISIONS

Prior section 3021 was renumbered section 10302 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 3022. Financial management

(a) The Secretary of the Army shall provide that the Assistant Secretary of the Army for Financial Management shall direct and manage financial management activities and operations of the Department of the Army, including ensuring that financial management systems of the Department of the Army comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Army and otherwise carry out, with respect to the Department of the Army, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Army; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Army, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Army (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Army proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Army for Financial Management shall transmit to the Secretary of the Army a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Army financial management.

(Added Pub. L. 100–456, div. A, title VII, § 702(a)(2), Sept. 29, 1988, 102 Stat. 1993; amended Pub. L. 103–337, div. A, title X, § 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XV, § 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''section 135(c)'' for ''section 137(c)''.

EFFECTIVE DATE

Section effective Jan. 20, 1989, see section 702(e)(1) of Pub. L. 100–456, set out as an Effective Date of 1988 Amendment note under section 3016 of this title.

§ 3023. Chief of Legislative Liaison

(a) There is a Chief of Legislative Liaison in the Department of the Army. An officer assigned to that position shall be an officer in the grade of major general.

(b) The Chief of Legislative Liaison shall perform legislative affairs functions as specified for the Office of the Secretary of the Army by section 3014(c)(1)(F) of this title.

(Added Pub. L. 107–314, div. A, title V, § 504(c)(1)(A), Dec. 2, 2002, 116 Stat. 2531.)

CHAPTER 305—THE ARMY STAFF

Sec.
3031. The Army Staff: function; composition.
3032. The Army Staff: general duties.
3033. Chief of Staff.
3034. Vice Chief of Staff.
3035. Deputy Chiefs of Staff and Assistant Chiefs of Staff.
3036. Chiefs of branches: appointment; duties.
3037. Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties.
3038. Office of Army Reserve: appointment of Chief.
3039. Deputy and assistant chiefs of branches.
[3040. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title IX, § 904(b)(2), Oct. 5, 1994, 108 Stat. 2827, struck out item 3040 ''Chief of National Guard Bureau: appointment; acting chief''.

1986—Pub. L. 99–433, title V, § 502(g)(2), Oct. 1, 1986, 100 Stat. 1042, amended analysis generally, substituting items 3031 to 3040 for former items 3031 to 3040.

1980—Pub. L. 96–513, title V, § 512(2), Dec. 12, 1980, 94 Stat. 2929, substituted ''Deputy Chiefs'' for ''Deputy Chief'' in item 2035, and substituted ''appointment'' for ''appointments'' in item 3036.

1966—Pub. L. 89–718, § 25(b), Nov. 2, 1966, 80 Stat. 1119, struck out item 3038 ''Chief of Engineers: additional duties''.

§ 3031. The Army Staff: function; composition

(a) There is in the executive part of the Department of the Army an Army Staff. The function of the Army Staff is to assist the Secretary of the Army in carrying out his responsibilities.

(b) The Army Staff is composed of the following:

(1) The Chief of Staff.

(2) The Vice Chief of Staff.

(3) The Deputy Chiefs of Staff.
(4) The Assistant Chiefs of Staff.
(5) The Chief of Engineers.
(6) The Surgeon General of the Army.
(7) The Judge Advocate General of the Army.
(8) The Chief of Chaplains of the Army.
(9) The Chief of Army Reserve.
(10) Other members of the Army assigned or detailed to the Army Staff.
(11) Civilian employees of the Department of the Army assigned or detailed to the Army Staff.

(c) Except as otherwise specifically prescribed by law, the Army Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Pub. L. 93–547, Dec. 26, 1974, 88 Stat. 1742; Pub. L. 93–608, §1(6), Jan. 2, 1975, 88 Stat. 1968; Pub. L. 98–525, title V, §515, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–433, title V, §502(a), Oct. 1, 1986, 100 Stat. 1039.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3031(a)	10:21a(a).	June 28, 1950, ch. 383, §201, 64 Stat. 265.
3031(b)	10:21a(b).	
3031(c)	10:21a(c).	
3031(d)	10:21a(d).	

In subsection (a), the words ''an Army Staff consisting of—'' are substituted for the words ''a staff, which shall be known as the Army Staff, and which shall consist of—''. The words ''under regulations prescribed by the Secretary of the Army'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (c), the third sentence is substituted for 10:21a(c) (1st 13 words and 1st proviso). The words ''officers and employees * * * or under the jurisdiction of'' are omitted as surplusage.

In subsections (c) and (d), the word ''hereafter'' is omitted, since all wars and emergencies declared by Congress before June 24, 1950, have been terminated.

In subsection (d), the second sentence is substituted for 10:21a(d) (last 31 words of 1st sentence). The third sentence is substituted for 10:21a(d) (2d sentence). 10:21a(d) (1st 13 words of last sentence) is omitted as executed. The words ''This subsection does not apply'' are substituted for the words ''and shall be in applicable''.

AMENDMENTS

1986—Pub. L. 99–433 amended section generally, substituting ''The Army Staff: function; composition'' for ''Composition: assignment and detail of members of Army and civilians'' in section catchline and substituting in text provisions relating to establishment and composition of the Army Staff and authorizing the Secretary to prescribe the organization, duties, and titles of the Army Staff for provisions relating to establishment and composition of the Army Staff, authorizing the Secretary to prescribe the organization, duties, and titles of the Army Staff and authorizing part of the Army Staff to be designated as the Army General Staff, and limiting the number of officers who may be assigned or detailed to permanent duty in the executive part of the Department of the Army and on or with the Army General Staff.

1984—Subsec. (d). Pub. L. 98–525 struck out subsec. (d) which provided that no commissioned officer who was assigned or detailed to duty in the executive part of the Department of the Army could serve for a tour of duty of more than four years, but that the Secretary could extend such a tour of duty if he made a special finding that the extension was necessary in the public interest, that no officer could be assigned or detailed to duty in the executive part of the Department of the Army within two years after relief from that duty, except upon a special finding by the Secretary that the assignment or detail was necessary in the public interest, and that the subsection did not apply in time of war, or of national emergency declared by Congress.

1975—Subsec. (c). Pub. L. 93–608 struck out requirement of quarterly report to Congress on the number of officers in the executive part of the Department of the Army and the number of commissioned officers on or with the Army General Staff and the justification therefor.

1974—Subsec. (a)(3). Pub. L. 93–547 increased the number of Deputy Chiefs of Staff from three to four.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 515 of Pub. L. 98–525 provided that the amendment made by that section is effective Oct. 1, 1984.

§ 3032. The Army Staff: general duties

(a) The Army Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Army and to the Chief of Staff of the Army.

(b) Under the authority, direction, and control of the Secretary of the Army, the Army Staff shall—

(1) subject to subsections (c) and (d) of section 3014 of this title, prepare for such employment of the Army, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Army), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Army, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Army and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Staff, coordinate the action of organizations of the Army; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161; Pub. L. 85–599, §4(g), Aug. 6, 1958, 72 Stat. 517; Pub. L. 99–433, title V, §502(b), Oct. 1, 1986, 100 Stat. 1040.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3032(a)	10:21e(a).	June 28, 1950, ch. 383, §205, 64 Stat. 266.
3032(b)	10:21e(b).	

In subsection (a), the word ''furnish'' is substituted for the word ''render''.

In subsection (b)(1), the words ''power, duty, or function of'' are substituted for the words ''power vested in, duty imposed upon, or function assigned to''.

In subsection (b)(2), the words ''all questions affecting'' and ''state of'' are omitted as surplusage.

AMENDMENTS

1986—Pub. L. 99–433, §502(b)(3), substituted ''The Army Staff: general duties'' for ''General duties'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 502(b)(1), inserted ''and to the Chief of Staff of the Army''.

Subsec. (b). Pub. L. 99–433, § 502(b)(2), substituted ''authority, direction, and control of the Secretary of the Army'' for ''direction and control of the Secretary'' in introductory provisions, inserted ''subject to subsections (c) and (d) of section 3014 of this title,'' and substituted ''(including those aspects of research and development assigned by the Secretary of the Army), training, servicing, mobilizing, demobilizing, administering, and maintaining'' for '', training, serving, mobilizing, and demobilizing'' in cl. (1), substituted ''to support military operations by combatant commands'' for ''for military operations'' in cl. (2), and amended cl. (4) generally. Prior to amendment, cl. (4) read as follows: ''act as agent of the Secretary and the Chief of Staff in coordinating the action of all organizations of the Department of the Army; and''.

1958—Subsec. (b)(1). Pub. L. 85–599 substituted ''prepare for such employment of the Army'' for ''prepare such plans for the national security, for employment of the Army for that purpose, both separately and in conjunction with the naval and air forces''.

§ 3033. Chief of Staff

(a)(1) There is a Chief of Staff of the Army, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Army. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Chief of Staff only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his permanent grade.

(c) Except as otherwise prescribed by law and subject to section 3013(f) of this title, the Chief of Staff performs his duties under the authority, direction, and control of the Secretary of the Army and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Army, the Chief of Staff shall—

(1) preside over the Army Staff;

(2) transmit the plans and recommendations of the Army Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Army Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Army as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Army.

(e)(1) The Chief of Staff shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Staff in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Staff shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Army.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Staff shall keep the Secretary of the Army fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162, § 3034; Pub. L. 85–599, § 4(a), Aug. 6, 1958, 72 Stat. 516; Pub. L. 87–651, title I, § 114, Sept. 7, 1962, 76 Stat. 513; Pub. L. 90–22, title IV, § 401, June 5, 1967, 81 Stat. 53; Pub. L. 96–513, title V, § 502(2), Dec. 12, 1980, 94 Stat. 2909; Pub. L. 97–22, § 10(b)(4), July 10, 1981, 95 Stat. 137; renumbered § 3033 and amended Pub. L. 99–433, title V, § 502(c), Oct. 1, 1986, 100 Stat. 1040; Pub. L. 100–456, div. A, title V, § 519(a)(3), Sept. 29, 1988, 102 Stat. 1972.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3034(a)	10:21b (1st sentence).	June 28, 1950, ch. 383, §§ 202, 204, 64 Stat. 266.
3034(b)	10:21b (less 1st sentence).	
3034(c)	10:21d(a) (1st 9 words). 10:21d(b) (2d sentence). 10:21d(c).	June 3, 1916, ch. 134, § 5 (last par.), added June 15, 1933, ch. 87, § 2 (last par.), 48 Stat. 154.
3034(d)	10:21d(a) (less 1st 9 words). 10:21d(b) (less 2d sentence). 10:38 (last par.).	

In subsection (a), the words ''not for'' are substituted for the words ''no person shall serve as Chief of Staff for a term of''.

In subsection (b), the words ''so serving'' are substituted for the words ''holding office as such''. The words ''regular or reserve'' are substituted for the word ''permanent'', since there are no other ''permanent'' grades. The words ''in the Army'' are omitted as surplusage. The words ''and shall take rank as prescribed by law'' are omitted as covered by section 743 of this title. The words ''He shall receive the compensation prescribed by law'' are omitted as covered by the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.).

In subsection (c), the provisions of 10:21d relating to the direction of the Secretary of the Army over the Chief of Staff are combined. The words ''and of subsection (c) of this section'' and ''state of'' are omitted as surplusage.

In subsection (d), 10:38 (last par.) is omitted as covered by 10:21d(a). The words ''by sections 1a–1g, 19, 21a–21h, 61–1, 81–1, 231a and 316–1 of this title and section 181–3 to 181–5 of Title 5'' are omitted as covered by the words ''other provisions of law''.

1962 ACT

The changes correct references to section 202(j) of the National Security Act of 1947, which is now set out as section 124 of title 10.

PRIOR PROVISIONS

A prior section 3033 was renumbered section 10302 of this title.

AMENDMENTS

1988—Subsec. (a)(2)(B). Pub. L. 100–456 substituted ''full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''joint duty assignment''.

1986—Pub. L. 99–433 renumbered section 3034 of this title as this section, substituted ''Chief of Staff'' for ''Chief of Staff: appointment; duties'' in section catchline, and amended text generally. Prior to amendment, text read as follows:

''(a) The Chief of Staff shall be appointed by the President, by and with the advice and consent of the Senate, for a period of four years, from the general officers of the Army. He serves during the pleasure of the President. In time of war or national emergency, declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

''(b) The Chief of Staff, while so serving, has the grade of general without vacating his regular or reserve grade.

''(c) Except as otherwise prescribed by law and subject to section 3012(c) and (d) of this title, the Chief of Staff performs his duties under the direction of the Secretary of the Army, and is directly responsible to the Secretary for the efficiency of the Army, its preparedness for military operations, and plans therefor.

''(d) The Chief of Staff shall—

''(1) preside over the Army Staff;

''(2) send the plans and recommendations of the Army Staff to the Secretary, and advise him with regard thereto;

''(3) after approval of the plans or recommendations of the Army Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

''(4) exercise supervision over such of the members and organizations of the Army as the Secretary of the Army determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title;

''(5) perform the duties described for him by sections 141 and 171 of this title and other provisions of law; and

''(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President.''

1981—Subsec. (b). Pub. L. 97–22 struck out a comma after ''regular or reserve grade''.

1980—Subsec. (b). Pub. L. 96–513 struck out provision under which the Chief of Staff is counted as one of the officers authorized to serve in a grade above lieutenant general under section 3066 of this title.

1967—Subsec. (a). Pub. L. 90–22 changed requirement that Chief of Staff be reappointed only with advice and consent of Senate by providing for his reappointment for a term of not more than four years by President without such advice and consent in a time of war or national emergency as declared by Congress.

1962—Subsec. (d)(4). Pub. L. 87–651 substituted ''under section 124 of this title'' for ''pursuant to section 202(j) of the National Security Act of 1947, as amended''.

1958—Subsec. (d)(4). Pub. L. 85–599 required Chief of Staff to exercise supervision only as Secretary of the Army determines and in a manner consistent with full operational command vested in unified or specified combatant commanders.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 405 of title IV of Pub. L. 90–22 provided that: ''The amendments made by this title [amending sections 3034 [now 3033], 5081, 5201, and 8034 [now 8033] of this title] shall take effect as of January 1, 1969.''

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

Pub. L. 99–433, title V, § 532(c), Oct. 1, 1986, 100 Stat. 1063, as amended by Pub. L. 100–26, § 11(b), Apr. 21, 1987, 101 Stat. 289; Pub. L. 100–180, div. A, title XIII, § 1314(a)(3), Dec. 4, 1987, 101 Stat. 1175, provided that the President may waive, on a case-by-case basis, requirements for appointment as Service Chief provided for in sections 3033(a)(2), 5033(a)(2), 5043(a)(2), and 8033(a)(2) of this title, for a period of four years after Oct. 1, 1986.

§ 3034. Vice Chief of Staff

(a) There is a Vice Chief of Staff of the Army, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Army.

(b) The Vice Chief of Staff of the Army, while so serving, has the grade of general without vacating his permanent grade.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Army as the Chief of Staff, with the approval of the Secretary of the Army, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff.

(d) When there is a vacancy in the office of Chief of Staff or during the absence or disability of the Chief of Staff—

(1) the Vice Chief of Staff shall perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Staff or the Vice Chief of Staff is absent or disabled, unless the President directs otherwise, the most senior officer of the Army in the Army Staff who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Staff until a successor to the Chief of Staff or the Vice Chief of Staff is appointed or until the absence or disability of the Chief of Staff or Vice Chief of Staff ceases, whichever occurs first.

(Aug. 10, 1956, ch. 1041, 70A Stat. 162, § 3035; Pub. L. 85–599, § 6(a), Aug. 6, 1958, 72 Stat. 519; renumbered § 3034 and amended Pub. L. 99–433, title V, § 502(d), Oct. 1, 1986, 100 Stat. 1041.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3035(a)	10:21c (1st sentence).	June 28, 1950, ch. 383, § 203, 64 Stat. 266.
3035(b)	10:21c (less 1st sentence).	

In subsection (a), the words ''of the Army'' are omitted as surplusage.

In subsection (b), the words ''If the Chief of Staff is absent or disabled or if that office is vacant'' are substituted for 10:21c (1st 18 words of last sentence). The words ''the officer who is highest on the following list and'' are inserted for clarity. The words ''until his successor is appointed'' are omitted as surplusage.

PRIOR PROVISIONS

A prior section 3034 was renumbered section 3033 of this title.

AMENDMENTS

1986—Pub. L. 99–433, § 502(d), renumbered section 3035 of this title as this section.

Pub. L. 99–433, § 502(d)(3), substituted ''Vice Chief of Staff'' for ''Vice Chief of Staff, Deputy Chiefs of Staff, and Assistant Chiefs of Staff: succession to duties of Chief of Staff'' in section catchline.

Subsecs. (a), (b). Pub. L. 99–433, § 502(d)(1), amended subsecs. (a) and (b) generally. Prior to amendment, subsecs. (a) and (b) read as follows:

''(a) The Vice Chief of Staff, the Deputy Chiefs of Staff, and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

''(b) If the Chief of Staff is absent or disabled or if that office is vacant, the officer who is highest on the following list and who is not absent or disabled shall, unless otherwise directed by the President, perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases:

''(1) The Vice Chief of Staff.

''(2) The Deputy Chiefs of Staff in order of seniority.''

Subsec. (d). Pub. L. 99–433, § 502(d)(2), added subsec. (d).

1958—Subsec. (c). Pub. L. 85–599 added subsec. (c).

§ 3035. Deputy Chiefs of Staff and Assistant Chiefs of Staff

(a) The Deputy Chiefs of Staff and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) The number of Deputy Chiefs of Staff and Assistant Chiefs of Staff shall be prescribed by the Secretary, except that—

(1) there may not be more than five Deputy Chiefs of Staff; and

(2) there may not be more than three Assistant Chiefs of Staff.

(Added Pub. L. 99–433, title V, § 502(e), Oct. 1, 1986, 100 Stat. 1042.)

PRIOR PROVISIONS

A prior section 3035 was renumbered section 3034 of this title.

§ 3036. Chiefs of branches: appointment; duties

(a) There are in the Army the following officers:

(1) Chief of Engineers.

(2) Surgeon General.

(3) Judge Advocate General.

(4) Chief of Chaplains.

(b) Each officer named in subsection (a), except the Judge Advocate General, shall be appointed by the President, by and with the advice and consent of the Senate, from officers above the grade of major who—

(1) have shown by extensive duty in the branch concerned, or by similar duty, that they are qualified for the appointment; and

(2) have been recommended by a board under subsection (e).

Each officer covered by the preceding sentence, except the Surgeon General, shall be appointed in the regular grade of major general. The Surgeon General may be appointed from officers in any corps of the Army Medical Department and, while so serving, has the grade of lieutenant general. The Judge Advocate General shall be appointed as prescribed in section 3037 of this title.

(c) An officer appointed under subsection (b) normally holds office for four years. However, the President may terminate or extend the appointment at any time.

(d)(1) Each officer named in subsection (a) shall perform duties prescribed by the Secretary of the Army and by law.

(2) Under the supervision of the Secretary, the Chief of Engineers may accept orders to provide services to another department, agency, or instrumentality of the United States or to a State or political subdivision of a State. The Chief of Engineers may provide any part of those services by contract. Services may be provided to a State, or to a political subdivision of a State, only if—

(A) the work to be undertaken on behalf of non-Federal interests involves Federal assistance and the head of the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers; and

(B) the services are provided on a reimbursable basis.

(3) In this subsection, the term ''State'' includes the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, territories and possessions of the United States, and Indian tribes.

(e) For each office to be filled under subsection (b), the Secretary shall select a board of five general officers, including the incumbent, if any, of the office, and at least two officers, if available, in a grade above major general who have had extensive service in the branch concerned. The Secretary shall give the board a list of the officers to be considered and shall specify the number of officers, not less than three, to be recommended. The list shall include—

(1) the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is colonel;

(2) the name of each officer whose regular grade is above colonel, who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment;

(3) to the extent that the Secretary determines advisable, the name of each officer of the Regular Army who is appointed in, or assigned to, that branch, and whose regular grade is lieutenant colonel, in the order in which their names appear on the applicable promotion lists; and

(4) to the extent that the Secretary considers advisable, the name of each regular or reserve officer on active duty in a grade above lieutenant colonel who has shown by extensive duty in that branch, or by similar duty, that he is qualified for the appointment.

From these officers, the board shall recommend by name the number prescribed by the Secretary, and the President may appoint any officer so recommended. If the President declines to appoint any of the recommended officers, or if the officer nominated cannot be appointed because of advice by the Senate, the Secretary shall convene a board to recommend additional

officers. An officer who is recommended but not appointed shall be considered not to have been recommended. This does not affect his eligibility for selection and recommendations for the grade of brigadier general or major general under section 3306 or 3307 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 163; Pub. L. 89–288, §1, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 89–718, §24, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 97–295, §1(38), Oct. 12, 1982, 96 Stat. 1296; Pub. L. 99–662, title IX, §922, Nov. 17, 1986, 100 Stat. 4194; Pub. L. 100–26, §7(a)(10), Apr. 21, 1987, 101 Stat. 278; Pub. L. 102–580, title II, §211, Oct. 31, 1992, 106 Stat. 4831; Pub. L. 104–106, div. A, title V, §506(a), Feb. 10, 1996, 110 Stat. 296; Pub. L. 104–201, div. A, title X, §1074(a)(18), Sept. 23, 1996, 110 Stat. 2660.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3036(a)	10:21f(a).	June 28, 1950, ch. 383, §206, 64 Stat. 267.
3036(b)	10:21f(b).	
	10:181 (1st 17 words).	June 3, 1916, ch. 134, §11 (1st 17 words); restated June 4, 1920, ch. 227, subch. I, §11 (1st 17 words), 41 Stat. 768.
	10:559g(a) (less 3d and 5th sentences).	
3036(c)	10:559g(a) (3d sentence).	
3036(d)	10:21f(c).	
3036(e)	10:559g(b).	Aug. 7, 1947, ch. 512, §513(a) (less 5th sentence), (b), 61 Stat. 901.

In subsection (b), all references to the appointment of assistant chiefs are omitted as covered by sections 3037 and 3040 of this title. All references to the grade of brigadier general are omitted, since 10:21f(b) specifies the grade of major general for the offices. 10:559g(a) (4th sentence) is omitted as surplusage, since the appointment is to a permanent grade. 10:559g(a) (6th and 7th sentences) is omitted as executed. 10:559g(a) (last sentence) is omitted, since the revised section applies only to the officers named in subsection (a). The words ''except the Judge Advocate General'' are inserted for clarity. The eight words before clause (1), and clauses (1) and (2), are substituted for the words ''as prescribed in section 559g of this title'', in 10:21f(b), and 10:559g(a) (1st sentence). The second sentence is substituted for 10:559g(a) (2d sentence) and 10:21f(b) (1st 15 words). The words ''selected and'', in 10:21f(b), are omitted as surplusage. The words ''arms, or services'', in 10:559g(a) are omitted as obsolete, since sections 3063 and 3064 of this title designate the former arms and services as ''branches''.

In subsection (c), the words ''normally holds office'' are substituted for the words ''shall normally continue in that assignment for a tour of duty''. The words ''appointment'' and ''office'' are substituted for the words ''assignment'' and ''tour of duty'' whenever they are used in that sense.

In subsection (e), the introductory clause is substituted for 10:559g(b) (words before colon of 1st sentence). The words ''in a grade above major general'' are substituted for the words ''of a rank above that of the position for which selections are to be made'', since all the positions are in the grade of major general. The word ''select'' is substituted for the word ''appoint'', since the filling of the offices is not appointment to an office in the constitutional sense. The word ''extensive'' is substituted for the word ''extended'', except where it refers to ''extended'' active duty, in which case the word ''extended'' is omitted as surplusage. The words ''the name of'' are inserted for clarity. The words ''appointed in, or assigned to'' are substituted for the words ''of the'', and ''in the'', before the words ''that branch'', to conform to sections 3063 and 3064 of this title. The word ''regular'' is substituted for the word ''permanent''. The words ''each regular or reserve officer'' are substituted for the words ''of officers of any component of the Army of the United States''. The words ''these officers'' are substituted for the words ''among those recommended by such board''. The words ''This does not affect'' are substituted for the words ''but this shall in no way prejudice''. The words ''to be filled'', ''by it'', ''other'', ''which number shall'', ''to be considered'', ''and may in addition thereto and'', and ''in the position concerned'' are omitted as surplusage.

1982 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3036(d) (1st sentence).	10:3036(d).	
3036(d) (last sentence).	10:3036 (note).	Oct. 27, 1965, Pub. L. 89–298, §219, 79 Stat. 1089.

The first sentence is restated to clarify that the Secretary concerned is the Secretary of the Army. The word ''services'' is substituted for ''work or services'' because it is inclusive. The word ''instrumentality'' is added for clarity.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 inserted ''may be appointed from officers in any corps of the Army Medical Department and'' after ''The Surgeon General'' in concluding provisions.

Subsec. (d)(3). Pub. L. 104–201 substituted ''In this subsection'' for ''For purposes of this subsection''.

1992—Subsec. (d)(3). Pub. L. 102–580 added par. (3).

1987—Subsec. (d). Pub. L. 100–26 designated existing first sentence requiring each officer named in subsec. (a) to perform prescribed duties as par. (1), designated existing second sentence permitting the Chief of Engineers to accept orders to provide services to another department, agency, or governmental instrumentality as par. (2), and substituted ''United States or to a State or political subdivision of a State. The Chief of Engineers may provide any part of those services by contract. Services may be provided to a State, or to a political subdivision of a State, only if—

''(A) the work to be undertaken on behalf of non-Federal interests involves Federal assistance and the head of the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers; and

''(B) the services are provided on a reimbursable basis.'' for ''United States and, on a reimbursable basis, to a State or political subdivision thereof. Services provided to a State or political subdivision thereof shall be undertaken only on condition that—

''(1) the work to be undertaken on behalf of non-Federal interests involves Federal assistance; and

''(2) the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers.[,]

any part of those services by contract.''

1986—Subsec. (d). Pub. L. 99–662 substituted ''and, on a reimbursable basis, to a State or political subdivision thereof. Services provided to a State or political subdivision thereof shall be undertaken only on condition that—

''(1) the work to be undertaken on behalf of non-Federal interests involves Federal assistance; and

''(2) the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers.''

for ''and may provide'', which resulted in the creation of an incomplete sentence.

1982—Subsec. (d). Pub. L. 97–295 substituted ''Secretary of the Army'' for ''Secretary'' and inserted provision that, under the supervision of the Secretary, the Chief of Engineers may accept orders to provide services to another department, agency, or instrumentality of the United States and may provide any part of those services by contract.

1966—Subsec. (a). Pub. L. 89–718 struck out cls. (2) to (8) naming the Chief Signal Officer, Adjutant General,

Quartermaster General, Chief of Finance, Chief of Ordnance, Chief Chemical Officer, and Chief of Transportation respectively, and redesignated cls. (9) to (11) as (2) to (4), respectively.

1965—Subsec. (b). Pub. L. 89–288 provided Surgeon General, while so serving, with grade of lieutenant general.

CHIEF OF ENGINEERS; WORK OR SERVICES FOR OTHER FEDERAL DEPARTMENTS AND AGENCIES

Pub. L. 89–298, title II, § 219, Oct. 27, 1965, 79 Stat. 1089, which provided that the Chief of Engineers, under the supervision of the Secretary of the Army, was authorized to accept orders from other Federal departments and agencies for work or services and to perform all or any part of such work or services by contract, was repealed and restated in subsec. (d) of this section by Pub. L. 97–295, §§ 1(38), 6(b), Oct. 12, 1982, 96 Stat. 1296, 1314.

DEPARTMENT OF DEFENSE REORGANIZATION ORDER

January 10, 1962

REORGANIZATION OF THE DEPARTMENT OF THE ARMY

By virtue of the authority vested in me by section 202(c) of the National Security Act of 1947, as amended (72 Stat. 514; 5 U.S.C. 171a(c)), and as Secretary of Defense, it is hereby ordered as follows:

SECTION 1. *Abolition of officers and transfer of functions.* The following officers named in section 3036, Title 10, United States Code, are hereby abolished and their functions transferred to the Secretary of the Army:

(a) Chief Signal Officer;
(b) Adjutant General;
(c) Quartermaster General;
(d) Chief of Finance;
(e) Chief of Ordnance;
(f) Chief Chemical Officer, and
(g) Chief of Transportation.

SEC. 2. *Transfer of functions from Chief of Engineers.* The functions vested in the Chief of Engineers by sections 3038 and 3533, Title 10, United States Code, are hereby transferred to the Secretary of the Army.

SEC. 3. *Performance of transferred functions.* The Secretary of the Army may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any office, agency, or employee of the Department of the Army of any function transferred to the Secretary by the provisions of this order.

SEC. 4. *Transitional provisions.* In order to assist in the orderly transfer of functions and to promote continuity of operation, the Secretary of the Army may, if he considers it necessary, delay beyond the effective date of this order the abolition of any office or transfer of any function.

SEC. 5. *Effective date.* The provisions of this order shall take effect on the date determined under section 202(c) of the National Security Act of 1947, as amended (72 Stat. 514; 5 U.S.C. 171a(c)), or the 16th day of February 1962, whichever is later.

J. C. LAMBERT,
Major General, U.S. Army,
THE ADJUTANT GENERAL.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3039, 12009 of this title.

§ 3037. Judge Advocate General, Assistant Judge Advocate General, and general officers of Judge Advocate General's Corps: appointment; duties

(a) The President, by and with the advice and consent of the Senate, shall appoint the Judge Advocate General, the Assistant Judge Advocate General, and general officers of the Judge Advocate General's Corps, from officers of the Judge Advocate General's Corps, who are recommended by the Secretary of the Army. An officer appointed as the Judge Advocate General or Assistant Judge Advocate General normally holds office for four years. However, the President may terminate or extend the appointment at any time. If an officer who is so appointed holds a lower regular grade, he shall be appointed in the regular grade of major general.

(b) The Judge Advocate General shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General, in addition to other duties prescribed by law—

(1) is the legal adviser of the Secretary of the Army and of all officers and agencies of the Department of the Army;

(2) shall direct the members of the Judge Advocate General's Corps in the performance of their duties; and

(3) shall receive, revise, and have recorded the proceedings of courts of inquiry and military commissions.

(d) Under regulations prescribed by the Secretary of Defense, the Secretary of the Army, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or Assistant Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 164; Pub. L. 85–861, § 33(a)(18), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 103–337, div. A, title V, § 504(a), Oct. 5, 1994, 108 Stat. 2750.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3037(a)	10:21h(c). 10:61a.	June 28, 1950, ch. 383, § 208(c), 64 Stat. 267.
3037(b)	50:741.	June 24, 1948, ch. 625, §§ 248, 249, 62 Stat. 643.
3037(c)	10:62. 10:62a. 10:63.	May 5, 1950, ch. 169, § 13, 64 Stat. 147. R.S. 1199. June 23, 1874, ch. 458, § 2, 18 Stat. 244. R.S. 1201.

In subsection (a), the words ''Notwithstanding any other provision of law'' and ''for such positions'' are omitted as surplusage. The last sentence is substituted for 10:61a (last sentence). 10:21h(c) is omitted as covered by 10:61a.

In subsection (b), the words ''Hereafter'' and ''exclusive of the present incumbents'' are omitted as surplusage.

In subsection (c), the words ''In addition to duties elsewhere prescribed for him by law'', in 10:62, are omitted as surplusage. The words ''and perform such other duties as may be prescribed by the Secretary of the Army'', in 10:62, are omitted as superseded by sections 3012(e) and 3036(d) of this title. Clause (2) is substituted for 10:62a (words after semicolon) and 63. The Act of June 23, 1874, ch. 458, § 2 (words before semicolon of 1st sentence, and last sentence), 18 Stat. 244, are not con-

tained in 10:62. They are also omitted from the revised section as superseded by sections 3037(a) and 3211 of this title.

1958 ACT

The change corrects an inadvertence. The source statute for section 3036(c) of title 10 (the third sentence of sec. 513(a) of the Officer Personnel Act of 1947, 61 Stat. 901), providing for a 4-year term of office, applied also to the Judge Advocate General and the Assistant Judge Advocate General. As restated in section 3036(c), it now applies only to the officers named in section 3036(b), which excludes the two officers named. For this reason, the effect of the source statute with respect to those officers is added to section 3037(a), relating to their appointment.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–337 added subsec. (d).

1958—Subsec. (a). Pub. L. 85–861 provided that the Judge Advocate General or Assistant Judge Advocate General shall normally hold office for four years, and empowered the President to terminate or extend the appointment at any time.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3036, 3039 of this title.

§ 3038. Office of Army Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Army an Office of the Army Reserve which is headed by a chief who is the adviser to the Chief of Staff on Army Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Army Reserve from general officers of the Army Reserve who have had at least 10 years of commissioned service in the Army Reserve.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Army Reserve unless the officer—

(A) is recommended by the Secretary of the Army; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Army Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2004, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Army Reserve if the Secretary of the Army requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Army Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Army Reserve may be reappointed for one additional four-year period.

(2) The Chief of Army Reserve, while so serving, holds the grade of lieutenant general.

(d) BUDGET.—The Chief of Army Reserve is the official within the executive part of the Department of the Army who, subject to the authority, direction, and control of the Secretary of the Army and the Chief of Staff, is responsible for justification and execution of the personnel, operation and maintenance, and construction budgets for the Army Reserve. As such, the Chief of Army Reserve is the director and functional manager of appropriations made for the Army Reserve in those areas.

(e) FULL TIME SUPPORT PROGRAM.—The Chief of Army Reserve manages, with respect to the Army Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) ANNUAL REPORT.—(1) The Chief of Army Reserve shall submit to the Secretary of Defense, through the Secretary of the Army, an annual report on the state of the Army Reserve and the ability of the Army Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Army and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Army Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 90–168, § 2(16), Dec. 1, 1967, 81 Stat. 523, § 3019; renumbered § 3038 and amended Pub. L. 99–433, title V, §§ 501(a)(4), 502(g)(1), Oct. 1, 1986, 100 Stat. 1034, 1042; Pub. L. 103–337, div. A, title XVI, § 1672(c)(1), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 104–201, div. A, title XII, § 1212(a), Sept. 23, 1996, 110 Stat. 2691; Pub. L. 106–65, div. A, title V, § 554(b), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, § 1 [[div. A], title V, § 507(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102; Pub. L. 107–314, div. A, title V, § 501(a), Dec. 2, 2002, 116 Stat. 2529.)

PRIOR PROVISIONS

A prior section 3038, act Aug. 10, 1956, ch. 1041, 70A Stat. 164, charged Chief of Engineers with responsibility for Army construction, real estate acquisition and management, and the operation of water, gas, electric, and sewer utilities, prior to repeal by Pub. L. 89–718, § 25(a), Nov. 2, 1966, 80 Stat. 1119.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–314 substituted ''December 31, 2004'' for ''October 1, 2003'' in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The President, by and with the advice and consent of the Senate, shall appoint the Chief of Army Reserve from officers of the Army Reserve not on active duty, or on active duty under section 10211 of this title, who—

''(1) have had at least 10 years of commissioned service in the Army Reserve;

''(2) are in grade of brigadier general and above; and

''(3) have been recommended by the Secretary of the Army.''

Subsec. (c). Pub. L. 106–398 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Chief of Army Reserve holds office for four years but may be removed for cause at any time. He is eligible to succeed himself. If he holds a lower reserve grade, he shall be appointed in the grade of major general for service in the Army Reserve. However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.''

1999—Subsec. (c). Pub. L. 106–65 inserted at end ''However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.''

1996—Subsecs. (d) to (f). Pub. L. 104–201 added subsecs. (d) to (f).

1994—Subsec. (b). Pub. L. 103–337 substituted ''10211'' for ''265''.

1986—Pub. L. 99–433, § 501(a)(4), renumbered section 3019 of this title as this section.

Subsec. (c). Pub. L. 99–433, § 502(g)(1), substituted ''service'' for ''services''.

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Pub. L. 106–65, div. A, title V, § 554(g), (h), Oct. 5, 1999, 113 Stat. 617, provided that:

''(g) EFFECTIVE DATE.—The amendments made by this section [enacting section 12505 of this title and amending this section and sections 5143, 5144, 8038, and 10506 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 5, 1999].

''(h) APPLICABILITY TO INCUMBENTS.—(1) If an officer who is a covered position incumbent is appointed under the amendments made by this section to the grade of lieutenant general or vice admiral, the term of service of that officer in that covered position shall not be extended by reason of such appointment.

''(2) For purposes of this subsection:

''(A) The term 'covered position incumbent' means a reserve component officer who on the effective date specified in subsection (g) is serving in a covered position.

''(B) The term 'covered position' means a position specified in section 12505 of title 10, United States Code, as added by subsection (a).''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective on first day of first calendar month following date of enactment of Pub. L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as an Effective Date of 1967 Amendment note under section 138 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

§ 3039. Deputy and assistant chiefs of branches

(a) Each officer named in section 3036 of this title shall have, in addition to the assistants prescribed by subsections (b) and (c) and by section 3037 of this title, such deputies and assistants as the Secretary of the Army may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Army for a tour of duty of not more than four years, under a procedure prescribed by the Secretary similar to that prescribed in section 3036 of this title.

(b) There is an Assistant Surgeon General appointed from the officers of the Dental Corps, as prescribed in section 3036 of this title. The Assistant Surgeon General is Chief of the Dental Corps and is responsible for making recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on all matters concerning dentistry and the dental health of the Army. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(c) There are two assistants to the Chief of Engineers appointed as prescribed in section 3036 of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 165, § 3040; Pub. L. 95–485, title VIII, § 805(a), Oct. 20, 1978, 92 Stat. 1621; renumbered § 3039 and amended Pub. L. 99–433, title V, § 502(f)(2), Oct. 1, 1986, 100 Stat. 1042.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3040(a)	10:21h(a).	June 28, 1950, ch. 383, § 208 (less (c)), 64 Stat. 268.
3040(b)	10:21h(b).	
3040(c)	10:181 (18th through 25th words).	June 3, 1916, ch. 134, § 11 (18th through 25th words); restated June 4, 1920, ch. 227, subch. I, § 11 (18th through 25th words), 41 Stat. 768.
	10:181a (14th through 30th words).	June 26, 1936, ch. 839 (16th through 31st words), 49 Stat. 1974.

In subsection (a), the words ''in addition to the assistants prescribed by subsections (b) and (c) and section 3037 of this title'' are substituted for the words ''Except as prescribed in subsections (b) and (c) of this section''. The words ''selected and'', ''which procedure shall be'', and 10:21h(a) (last 21 words) are omitted as surplusage.

In subsection (b), the words ''appointed from the officers of the Dental Corps'' are substituted for the words ''who shall be an officer of the Dental Corps, and who shall be selected and appointed''. The last sentence is substituted for the words ''with the rank of major general''.

Subsection (c) is based on section 11 of the National Defense Act, as amended by the Act of June 26, 1936, ch. 839, 49 Stat. 1974 (10:181 and 181a), which provides for two assistants to the Chief of Engineers with the rank of brigadier general, and as impliedly amended by section 513(a) and 513(b) of the Officer Personnel Act of 1947 (10:559g), which provides the method of selection of assistant chiefs of branches, and prescribes that assistant chiefs be promoted to the grade held as such in the Regular Army if they hold a lower grade in the Regular Army. Section 404(f) of the Army Organization Act of 1950, 64 Stat. 274, exempts these two positions from the operation of section 208(a) of that act (10:21h(a)).

PRIOR PROVISIONS

A prior section 3039, act Aug. 10, 1956, ch. 1041, 70A Stat. 164, related to Inspector General and Provost Marshal General, prior to repeal by Pub. L. 99–433, § 502(f)(1). See section 3020 of this title.

AMENDMENTS

1986—Pub. L. 99–433 renumbered section 3040 of this title as this section and substituted ''section 3036'' for ''sections 3036 and 3039'' in subsec. (a).

1978—Subsec. (b). Pub. L. 95–485 inserted provision establishing the Assistant Surgeon General as Chief of

the Dental Corps and making him responsible for recommendations to the Surgeon General and through the Surgeon General to the Chief of Staff on all matters concerning dentistry and dental health of the Army.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3081 of this title.

[§ 3040. Repealed. Pub. L. 103–337, div. A, title IX, § 904(b)(1), Oct. 5, 1994, 108 Stat. 2827]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 159, § 3015; Aug. 6, 1958, Pub. L. 85–599, § 12, 72 Stat. 521; renumbered § 3040, Oct. 1, 1986, Pub. L. 99–433, title V, § 501(a)(1), 100 Stat. 1034; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to National Guard Bureau, Chief of Bureau, appointment and acting Chief. See sections 10501, 10502, and 10505 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective at end of 90-day period beginning on Oct. 5, 1994, see section 904(d) of Pub. L. 103–337, set out as an Effective Date note under section 10501 of this title.

CHAPTER 307—THE ARMY

Sec.
3061. Regulations.
3062. Policy; composition; organized peace establishment.
3063. Basic branches.
3064. Special branches.
3065. Assignment and detail: officers assigned or detailed to basic and special branches.
[3066. Repealed.]
3067. Army Medical Department.
3068. Medical Service Corps: organization; Chief and assistant chiefs.
3069. Army Nurse Corps: composition; Chief and assistant chief; appointment; grade.
3070. Army Medical Specialist Corps: organization; Chief and assistant chiefs.
[3071. Repealed.]
3072. Judge Advocate General's Corps.
3073. Chaplains.
3074. Commands: territorial organization; engineer tactical units.
3075. Regular Army: composition.
[3076 to 3080. Repealed.]
3081. Dental Corps: Chief, functions.
[3082. Renumbered.]
3083. Public Affairs Specialty.
3084. Chief of Veterinary Corps: grade.[1]

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 504(b)(2), Dec. 2, 2002, 116 Stat. 2531, added item 3084.

1997—Pub. L. 105–85, div. A, title V, § 596(b), Nov. 18, 1997, 111 Stat. 1766, added item 3083.

1996—Pub. L. 104–201, div. A, title V, § 502(c)(1), Sept. 23, 1996, 110 Stat. 2511, substituted ''Chief and assistant chief; appointment; grade'' for ''chief and assistant chief; appointment'' in item 3069.

1994—Pub. L. 103–337, div. A, title X, § 1070(a)(16), title XVI, § 1672(b)(1), Oct. 5, 1994, 108 Stat. 2856, 3015, struck out items 3076 ''Army Reserve: composition'', 3077 ''Army National Guard of United States: composition'', 3078 ''Army National Guard: when a component of Army'', 3079 ''Army National Guard of United States: status when not in Federal service'', and 3080 ''Army National Guard of the United States: authority of officers with respect to Federal status'', struck out ''3082.'' before ''Army'' in item 3082, and then struck out item 3082 ''Army National Guard combat readiness reform: annual report''.

1993—Pub. L. 103–160, div. A, title V, § 521(b), Nov. 30, 1993, 107 Stat. 1655, added item 3082.

1980—Pub. L. 96–513, title V, § 502(3), Dec. 12, 1980, 94 Stat. 2909, struck out item 3066 ''Generals and lieutenant generals''.

1978—Pub. L. 95–485, title VIII, §§ 805(b)(2), 820(b), Oct. 20, 1978, 92 Stat. 1622, 1627, struck out item 3071 ''Women's Army Corps: Director; Deputy Director; other positions'' and added item 3081.

1968—Pub. L. 90–329, June 4, 1968, 82 Stat. 170, substituted ''Army Medical Department'' for ''Army Medical Service'' in item 3067.

1967—Pub. L. 90–130, § 1(8)(D), Nov. 8, 1967, 81 Stat. 375, substituted ''composition; chief and assistant chief'' for ''Chief'' in item 3069.

1960—Pub. L. 86–603, § 1(2)(B), July 7, 1960, 74 Stat. 357, added item 3080.

1957—Pub. L. 85–155, title I, § 101(3), Aug. 21, 1957, 71 Stat. 376, substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' in item 3070.

§ 3061. Regulations

The President may prescribe regulations for the government of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 165.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3061	10:16.	July 15, 1870, ch. 294, § 20, 16 Stat. 319; Mar. 1, 1875, ch. 115, 18 Stat. 337.

The word ''prescribe'' is substituted for the words ''make and publish''. 10:16 (last 35 words) is omitted as surplusage.

§ 3062. Policy; composition; organized peace establishment

(a) It is the intent of Congress to provide an Army that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) In general, the Army, within the Department of the Army, includes land combat and service forces and such aviation and water transport as may be organic therein. It shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations on land. It is responsible for the preparation of land forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Army to meet the needs of war.

(c) The Army consists of—

(1) the Regular Army, the Army National Guard of the United States, the Army National Guard while in the service of the United States and the Army Reserve; and

(2) all persons appointed or enlisted in, or conscripted into, the Army without component.

[1] So in original. Does not conform to section catchline.

(d) The organized peace establishment of the Army consists of all—

(1) military organizations of the Army with their installations and supporting and auxiliary elements, including combat, training, administrative, and logistic elements; and

(2) members of the Army, including those not assigned to units;

necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3062(a)	10:20.	July 10, 1950, ch. 454, § 2, § 101, 64 Stat. 321.
3062(b)	5:181–1(e).	July 26, 1947, ch. 343, § 205(e), 61 Stat. 501.
3062(c)	10:1b.	June 28, 1950, ch. 383, § 301, 64 Stat. 268; July 9, 1952, ch. 608, § 807(b), 66 Stat. 508.
3062(d)	10:20i.	July 9, 1952, ch. 608, § 301, 66 Stat. 498.
	50:1021.	

In subsection (a), 10:20 (1st 19 words) is omitted as surplusage. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico. The words ''any areas occupied by the United States'' are substituted for the words ''occupied areas wherever located''.

In subsection (c), the words ''consists of'' are substituted for the word ''includes''.

In subsection (c)(1), the words ''the Army National Guard while in the service of the United States'' are substituted for the words ''all persons serving in the Army under call * * * under any provision of law, including members of the National Guard of the several States, Territories, and the District of Columbia when in the service of the United States pursuant to call as provided by law''. 10:1b (words between 1st and 3d semicolons) and 50:1021 (last sentence) are omitted, since the components listed include their members.

In subsection (c)(2), the words ''or inducted'' are omitted as covered by the word ''conscripted''.

In subsection (d), 10:20i (8th through 38th words) is omitted as surplusage. The words ''consists of all'' are substituted for the words ''shall include all of''. The words ''members of the Army'' are substituted for the word ''personnel''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

§ 3063. Basic branches

(a) The Secretary of the Army may assign members of the Army to its basic branches. The basic branches are—

(1) Infantry;
(2) Armor;
(3) Artillery;
(4) Corps of Engineers;
(5) Signal Corps;
(6) Adjutant General's Corps;
(7) Quartermaster Corps;
(8) Finance Corps;
(9) Ordnance Corps;
(10) Chemical Corps;
(11) Transportation Corps;
(12) Military Police Corps; and
(13) such other basic branches as the Secretary considers necessary.

(b) The Secretary may discontinue or consolidate basic branches of the Army for the duration of any war, or of any national emergency declared by Congress.

(c) The Secretary may not assign to a basic branch any commissioned officer appointed in a special branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 166.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3063(a)	10:1g(a) (less words of 1st sentence after semicolon, and less last sentence).	June 28, 1950, ch. 383, § 306(a), 64 Stat. 269.
3063(b)	10:1g(a) (last sentence).	
3063(c)	10:1g(a) (words of 1st sentence after semicolon).	

In subsection (a), the words ''The basic branches are'' are substituted for the words ''There shall be in the Army certain branches, which shall be known as basic branches of the Army'' and ''The basic branches of the Army shall be''.

In subsection (b), the words ''enumerated in this subsection'' are omitted as surplusage. The word ''hereafter'' is omitted, since all wars and emergencies declared by Congress before June 29, 1950, have been terminated.

In subsection (c), the words ''and commissioned'' are omitted as covered by the word ''appointed''. The words ''specified in subsection (b) of this section'' are omitted as surplusage. The word ''commissioned'' is inserted before the word ''officer'', for clarity.

PHILIPPINE SCOUTS

Section 42 of act Aug. 10, 1956, provided that: ''The President is authorized to form the Philippine Scouts into such branches and tactical units as he may deem expedient, within the limit of strength prescribed by law, organized similarly to those of the Regular Army.''

§ 3064. Special branches

(a) The special branches of the Army consist of commissioned officers of the Regular Army appointed therein, other members of the Army assigned thereto by the Secretary of the Army, and the sections prescribed in this chapter. The special branches are—

(1) each corps of the Army Medical Department;
(2) the Judge Advocate General's Corps;
(3) the Chaplains; and
(4) such other special branches as may be established by the Secretary of the Army under subsection (b).

(b) The Secretary of the Army may establish special branches for the Army and may assign commissioned officers (other than officers of the Regular Army) and members to such branches.

(c) Commissioned officers of the Regular Army may be appointed in a special branch, but the Secretary may not assign any officer of the Regular Army to a special branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 167; Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title II, § 231, Dec. 12, 1980, 94 Stat. 2886; Pub. L. 97–22, § 5(a), July 10, 1981, 95 Stat. 128.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3064(a)	10:1g(b) (less words of 1st sentence after semicolon).	June 28, 1950, ch. 383, § 306(b), 64 Stat. 269.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3064(b)	10:1g(b) (words of 1st sentence after semicolon).	

In subsection (a), the words ''The special branches of the Army'' are substituted for the words ''There shall be in the Army certain branches, which shall be known as special branches, and which shall''. The words ''authorized by sections 61–1, 81–1, and 231a of this title'' are omitted as surplusage. The words ''and the sections prescribed in this chapter'' are inserted, since some of the corps of the Army Medical Service consist of members and sections. Clauses (1), (2), and (3) are substituted for 10:1g(b) (last sentence).

In subsection (b), the words ''who has been appointed and commissioned in some other special branch, or * * * without specification of branch'' are omitted as surplusage.

AMENDMENTS

1981—Subsec. (b). Pub. L. 97–22, §5(a)(1), substituted ''may assign commissioned officers (other than officers of the Regular Army) and members to such branches'' for ''may appoint commissioned officers in, and may assign members to, such branches''.

Subsec. (c). Pub. L. 97–22, §5(a)(2), substituted ''Commissioned officers of the Regular Army may be appointed in a special branch, but the Secretary'' for ''The Secretary''.

1980—Subsec. (a)(4). Pub. L. 96–513, §231(1), added cl. (4).

Subsecs. (b), (c). Pub. L. 96–513, §231(2), (3), added subsec. (b) and redesignated former subsec. (b) as (c).

1968—Subsec. (a)(1). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 3065. Assignment and detail: officers assigned or detailed to basic and special branches

(a) Commissioned officers of the Army may be detailed as general staff officers and as inspectors general.

(b) Members of the Army may be detailed to duty in particular fields specified by the Secretary, including intelligence, counter-intelligence, and military government.

(c) Members of the Army appointed in or assigned to one branch may be detailed for duty with any other branch.

(d) Members of the Army while not on active duty may be assigned to any basic or special branch, or to such other branches or groups, and to such organizations, as the Secretary considers appropriate.

(e) No officer of the Army may be assigned to perform technical, scientific, or other professional duties unless he is qualified to perform those duties and meets professional qualifications at least as strict as those in effect on June 28, 1950. If the duties to which an officer is assigned involve professional work that is the same as or is similar to that usually performed in civil life by a member of a learned profession, such as engineering, law, medicine, or theology, the officer must have the qualifications, by education, training, or experience, equal to or similar to those usually required of members of that profession, unless the exigencies of the situation prevent.

(Aug. 10, 1956, ch. 1041, 70A Stat. 167.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3065(a)	10:1g(c) (1st 27 words).	June 28, 1950, ch. 383, §306 (less (a) and (b)), §404(e), 64 Stat. 269, 274.
3065(b)	10:1g(c) (less 1st 27 words).	
3065(c)	10:1g(d).	
3065(d)	10:1g(e).	
3065(e)	10:1g(f).	
	[Uncodified: June 28, 1950, ch. 383, §404(e), 64 Stat. 274].	

In subsections (a) and (c)–(e), the words ''Under such regulations as the Secretary of the Army may prescribe'' and ''under [Under] regulations prescribed by the Secretary of the Army'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (b), the word ''specified'' is substituted for the words ''designated from time to time'', in 10:1g(c). The words ''but not limited to'', in 10:1g(c), are omitted as surplusage.

In subsection (d), the words ''basic or special branch'' are substituted for the words ''branches of the Army provided for in this section''. The word ''considers'' is substituted for the words ''may deem to be''.

In subsection (e), the words ''No officer * * * may be * * * unless he is'' are substituted for the words ''officers of the Army * * * shall * * * possess''. The last 16 words of the first sentence are substituted for the Act of June 28, 1950, ch. 383, Title IV, §404(e), 64 Stat. 274. The last sentence is substituted for 10:1g(f) (1st 9 words).

[§ 3066. Repealed. Pub. L. 96–513, title II, § 201, Dec. 12, 1980, 94 Stat. 2878]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 167; Sept. 2, 1958, Pub. L. 85–861, §33(a)(19), 72 Stat. 1565, authorized President, by and with consent of Senate, to make temporary appointments in grades of general and lieutenant general from officers of Army on active duty in any grade above brigadier general and specified number of positions in each such grade. See section 601 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3067. Army Medical Department

There is an Army Medical Department in the Army. The Army Medical Department consists of—

(1) the Surgeon General;
(2) the Assistant Surgeons General;
(3) the Medical Corps;
(4) the Dental Corps;
(5) the Veterinary Corps;
(6) the Medical Service Corps;
(7) the Army Nurse Corps; and
(8) the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Pub. L. 85–861, §1(60), Sept. 2, 1958, 72 Stat. 1462; Pub. L. 90–329, June 4, 1968, 82 Stat. 170.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3067	10:81–1 (less last sentence).	June 28, 1950, ch. 383, § 307 (less last sentence), 64 Stat. 270.

The words ''authorized by sections 21f and 21h, respectively, of this title'' are omitted as surplusage. 10:81–1 (2d sentence) is omitted as covered by section 3064 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3067(8)	10 App.:81–1.	Aug. 9, 1955, ch. 654, § 3(a), 69 Stat. 579.

AMENDMENTS

1968—Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

1958—Pub. L. 85–861 substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' in cl. (8).

AUGMENTATION OF ARMY MEDICAL DEPARTMENT BY DETAILING RESERVE OFFICERS OF PUBLIC HEALTH SERVICE

Pub. L. 106–398, § 1 [[div. A], title VII, § 755(a), (b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–197, provided that:

''(a) AUTHORITY.—The Secretary of the Army and the Secretary of Health and Human Services may jointly conduct a program to augment the Army Medical Department by exercising any authorities provided to those officials in law for the detailing of reserve commissioned officers of the Public Health Service not in an active status to the Army Medical Department for that purpose.

''(b) AGREEMENT.—The Secretary of the Army and the Secretary of Health and Human Services shall enter into an agreement governing any program conducted under subsection (a).''

§ 3068. Medical Service Corps: organization; Chief and assistant chiefs

There is a Medical Service Corps in the Army. The Medical Service Corps consists of—

(1) the Chief of the Medical Service Corps, who shall be appointed by the Secretary of the Army from among the officers of the Medical Service Corps whose regular grade is above captain;

(2) the assistant chiefs of the Medical Service Corps, who shall be designated by the Surgeon General from officers in that Corps and who shall be his consultants on activities relating to their sections;

(3) commissioned officers of the Regular Army appointed therein;

(4) other members of the Army assigned thereto by the Secretary of the Army; and

(5) the following sections—

(A) the Pharmacy, Supply, and Administration Section;

(B) the Medical Allied Sciences Section;

(C) the Sanitary Engineering Section;

(D) the Optometry Section; and

(E) other sections considered necessary by the Secretary of the Army.

(Added Pub. L. 89–603, § 1(1), Sept. 24, 1966, 80 Stat. 846; amended Pub. L. 97–295, § 1(37), Oct. 12, 1982, 96 Stat. 1296.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3068(a)	10:81–1 (last sentence, less 5th through 14th words). 10:156a (less 2d sentence).	June 28, 1950, ch. 383, § 307 (last sentence, less 5th through 14th words), 64 Stat. 270.
3068(b)	10:156b.	Aug. 4, 1947, ch. 459, §§ 101 (less 2d sentence), 102(a), (b), 61 Stat. 734, 735; Mar. 23, 1954, ch. 103, 68 Stat. 30.
3068(c)	10:156d.	

In subsection (a), 10:156a (1st 20 words) is omitted as superseded by section 3067 of this title, which establishes the Medical Service Corps in the Army Medical Service. 10:156a (last 16 words of 1st sentence) is omitted as superseded by section 3012(e) of this title, which authorizes the Secretary of the Army to prescribe the duties of members of the Army. 10:81–1 (last sentence, less 5th through 14th words) is omitted as surplusage.

In subsection (b), the words ''of the Regular Army in that corps whose regular grade is above captain'' are substituted for the words ''commissioned in the Medical Service Corps, Regular Army, in the permanent grade of major or above''. The words ''If he holds a lower regular grade'' are substituted for the words ''if commissioned in permanent grade below colonel''. The words ''is entitled'' are substituted for the words ''shall * * * have''. The words ''ranks above'' are substituted for the words ''shall be superior in rank''.

In subsection (c), the words ''is the Surgeon General's consultant'' are substituted for the words ''who shall be consultants to him''.

PRIOR PROVISIONS

A prior section 3068, acts Aug. 10, 1956, ch. 1041, 70A Stat. 168; Sept. 7, 1962, Pub. L. 87–649, § 6(a)(1), 76 Stat. 494, contained substantially the same provisions as the present section but placed the upper limit for the rank of officers of the Medical Service Corps at colonel, prior to repeal by Pub. L. 89–603.

AMENDMENTS

1982—Par. (5). Pub. L. 97–295 redesignated cls. (a), (b), (c), (d), and (e) as subpars. (A), (B), (C), (D), and (E), respectively.

§ 3069. Army Nurse Corps: composition; Chief and assistant chief; appointment; grade

(a) The Army Nurse Corps consists of the Chief and assistant chief of that corps and other officers in grades prescribed by the Secretary of the Army.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed to the same position.

(c) The Surgeon General shall appoint the assistant chief from the officers of the Regular Army in that corps whose regular grade is above lieutenant colonel. The assistant chief serves during the pleasure of the Surgeon General, but not for more than four years and may not be reappointed to the same position.

(Aug. 10, 1956, ch. 1041, 70A Stat. 168; Pub. L. 85–155, title I, § 101(1), Aug. 21, 1957, 71 Stat. 375; Pub. L. 87–649, § 6(b)(1), Sept. 7, 1962, 76 Stat. 494; Pub. L. 89–609, § 1(1), Sept. 30, 1966, 80 Stat. 852; Pub. L. 90–130, § 1(8)(A), Nov. 8, 1967, 81 Stat. 374;

Pub. L. 104–201, div. A, title V, § 502(a), Sept. 23, 1996, 110 Stat. 2511; Pub. L. 107–314, div. A, title V, § 504(a)(1), Dec. 2, 2002, 116 Stat. 2531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3069	10:81–1 (5th through 8th words of last sentence). 10:166(a) (words of last sentence before proviso). 10:166(b).	June 28, 1950, ch. 383, § 307 (5th through 8th words of last sentence), 64 Stat. 270. Apr. 16, 1947, ch. 38 §§ 101(a) (words of last sentence before proviso), 101(b), 61 Stat. 41.

The words ''officers of the Regular Army in that corps'' are substituted for the words ''officers permanently commissioned in such Army Nurse Corps''. The words ''but not for more than'' are substituted for the words ''for a term not to exceed'', in 10:166(a). The words ''vacating her regular grade'' are substituted for the words ''vacation of her permanent grade''.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–314 substituted ''major general'' for ''brigadier general''.

1996—Pub. L. 104–201, § 502(a)(3), inserted ''; grade'' at end of section catchline.

Subsec. (b). Pub. L. 104–201, § 502(a)(1), substituted ''lieutenant colonel'' for ''major'' in first sentence, inserted ''An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general.'' after first sentence, and inserted ''to the same position'' before period at end of last sentence.

Subsec. (c). Pub. L. 104–201, § 502(a)(2), substituted ''lieutenant colonel'' for ''major''.

1967—Pub. L. 90–130 divided existing provisions into subsecs. (a), (b), and (c), made minor changes in phraseology, inserted provision for the appointment and service of an assistant chief, struck out limitation restricting membership in the Corps to grades of second lieutenant through colonel, and struck out provision entitling the Chief to the temporary grade of colonel while serving as Chief.

1966—Pub. L. 89–609 combined third and fourth sentences, substituting '', and'' for period at end of third sentence and introductory word ''She'' to fourth sentence, and substituted ''the regular grade held, the Chief'' for ''her regular grade, she'' in fifth sentence.

1962—Pub. L. 87–649 struck out provisions which authorized the pay and allowances of a colonel for Chief of the Army Nurse Corps.

1957—Pub. L. 85–155 substituted ''second lieutenant through colonel'' for ''second lieutenant through lieutenant colonel'', ''major'' for ''captain'', and ''entitled to the temporary grade and the pay and allowances of a colonel while so serving and ranks above all other colonels in that corps'' for ''entitled to the rank, pay and allowances of a colonel so serving''.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SHORT TITLE

Section 105 of title I of Pub. L. 85–155 provided that: ''This title [amending this section and sections 3070, 3206, 3207, 3288, 3291, 3296 to 3299, 3304, 3305, 3888, 3915, 3916, 3927, and 3991 of this title] may be cited as the 'Army Nurse and Medical Specialist Act of 1957'.''

SAVINGS PROVISION

Section 104 of Pub. L. 85–155 provided that:

''(a) This Act [amending this section and sections 3070, 3206, 3207, 3288, 3291, 3296 to 3299, 3304, 3305, 3888, 3915, 3916, 3927, 3991, 5140, 5444, 5449, 5702, 5707, 5708, 5753, 5762, 5773, 5775, 5776, 5782, 6377 to 6379, 6381, 6388, 6395, 6396, 8206, 8207, 8212, 8285 to 8288, 8297, 8298 to 8301, 8303, 8305, 8888, 8915, 8927 and 8991 of this title, and repealing sections 3881, 3882, 3887, 3912, 3928, 8291, 8304, 8881, 8882, 8887, 8912 and 8928 of this title] does not affect the appointment of an officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, on the active list on the effective date of this Act [Aug. 21, 1957].

''(b) This Act does not affect the retired status or retired pay of a person retired under section 108, Army-Navy Nurses Act of 1947, as amended, or any other law.

''(c) An officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, on the active list on the effective date of this Act [Aug. 21, 1957] does not lose any years of service creditable to her on that date for promotion, computation of basic pay, or other purposes, by the enactment of this Act.

''(d) Notwithstanding any other provision of law, an officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, who is on a recommended list for promotion to a higher regular grade on the effective date of this Act [Aug. 21, 1957] may, if nominated by the President and confirmed by the Senate, be promoted to that grade.

''(e) Notwithstanding any other provision of law, an officer of the Army Nurse Corps, Regular Army, or the Army Medical Specialist Corps, Regular Army, who, on the effective date of this Act [Aug. 21, 1957], has been nominated by the President and confirmed by the Senate for appointment to any regular grade, may be appointed in that grade.''

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OR TRANSFER FROM ACTIVE STATUS

Section 4(a) of Pub. L. 90–130 authorized the Secretary of the Army to suspend the operation of any provision of law relating to the mandatory retirement, discharge, separation, or transfer from an active status of an officer of the Army Nurse Corps, Army Medical Specialist Corps, or Woman's Army Corps for a period of five years following Nov. 8, 1967.

AUTHORITY OF MILITARY DEPARTMENT SECRETARIES TO CONVENE BOARDS TO RECOMMEND DEFERMENT OF RETIREMENT OR SEPARATION OF NURSES

Section 4(f) of Pub. L. 90–130. Nov. 8, 1967, 81 Stat. 384, authorized until July 1, 1972, when the needs of the service required, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force to convene annually boards of officers to consider officers of the Army Nurse Corps, officers of the Navy Nurse Corps, or Air Force nurses, respectively, who otherwise would be required to be retired or separated under this Act within the calendar or fiscal year in which the board is convened. Upon the recommendation of such a board, the Secretary concerned could defer the separation or retirement of such an officer for a term of not more than five years, unless recommended for further deferment by a subsequent board of officers, and in any case not beyond the month following her attaining age sixty or July 1, 1976, whichever was earlier.

§ 3070. Army Medical Specialist Corps: organization; Chief and assistant chiefs

(a) The Army Medical Specialist Corps consists of the Chief and assistant chiefs of that corps, other officers in grades prescribed by the Secretary of the Army, and the following sections:

(1) The Dietitian Section.
(2) The Physical Therapist Section.
(3) The Occupational Therapist Section.
(4) The Physician Assistant Section.
(5) The Chiropractic Section.

(b) The Secretary of the Army shall appoint the Chief from the officers of the Regular Army in that corps whose regular grade is above captain and who are recommended by the Surgeon General. The Chief serves during the pleasure of the Secretary, but not for more than four years, and may not be reappointed.

(c) The Surgeon General shall appoint up to five assistant chiefs from officers of the Regular Army in that corps whose regular grade is above captain. Each assistant chief is the chief of a section of that corps. An assistant chief serves during the pleasure of the Surgeon General, but not for more than four years, and may not be reappointed to the same position.

(d) Chiropractors who are qualified under regulations prescribed by the Secretary of the Army may be appointed as commissioned officers in the Chiropractic Section of the Army Medical Specialist Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169; Pub. L. 85–155, title I, §101(2), Aug. 21, 1957, 71 Stat. 375; Pub. L. 87–649, §6(b)(2), (3), Sept. 7, 1962, 76 Stat. 494; Pub. L. 89–609, §1(2), (3), Sept. 30, 1966, 80 Stat. 852; Pub. L. 90–130, §1(8)(B), Nov. 8, 1967, 81 Stat. 374; Pub. L. 102–190, div. A, title V, §551(a), Dec. 5, 1991, 105 Stat. 1370; Pub. L. 102–484, div. A, title V, §505(a), Oct. 23, 1992, 106 Stat. 2404.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3070(a)	10:81–1 (9th through 14th words of last sentence). 10:166a(a) (less 2d sentence; and less last sentence, as applicable to strength).	June 28, 1950, ch. 383, §307 (9th through 14th words of last sentence), 64 Stat. 270. Apr. 16, 1947, ch. 38, §§102(a) (less 2d sentence; and less last sentence, as applicable to strength), 102(b), 61 Stat. 42.
3070(b)	10:166a(b).	

In subsection (a), 10:166a(a) (1st 20 words of 1st sentence) is omitted as superseded by section 3067 of this title, which establishes the Women's Medical Specialist Corps in the Army Medical Service. 10:166a(a) (last 16 words of 1st sentence) is omitted as superseded by section 3012(e) of this title, which authorizes the Secretary of the Army to prescribe the duties of members of the Army.

In subsection (b), the words ''officers of the Regular Army in that corps'' are substituted for the words ''officers permanently commissioned in such Women's Medical Specialist Corps''. The words ''vacating her regular grade'' are substituted for the words ''vacation of her permanent grade''.

AMENDMENTS

1992—Subsec. (a)(5). Pub. L. 102–484, §505(a)(1), added par. (5).

Subsec. (c). Pub. L. 102–484, §505(a)(2), substituted ''up to five assistant chiefs'' for ''four assistant chiefs''.

Subsec. (d). Pub. L. 102–484, §505(a)(3), added subsec. (d).

1991—Subsec. (a). Pub. L. 102–190, §551(a)(1), (2), substituted ''sections:'' for ''sections—'', substituted ''The'' for ''the'' and a period for the concluding semicolon in par. (1), substituted ''The'' for ''the'' and a period for ''; and'' in par. (2), substituted ''The'' for ''the'' in par. (3), and added par. (4).

Subsec. (c). Pub. L. 102–190, §551(a)(3), substituted ''four assistant chiefs'' for ''three assistant chiefs'' in first sentence.

1967—Subsec. (a). Pub. L. 90–130 removed limitation restricting membership in the Corps to officers in grades of second lieutenant through colonel and inserted provisions authorizing the Secretary of the Army to prescribe the grades of officers comprising the Corps.

Subsec. (b). Pub. L. 90–130 struck out provision entitling the Chief to the temporary grade of colonel while serving, ranking above all other colonels in the Corps.

Subsec. (c). Pub. L. 90–130 struck out provisions entitling each assistant chief to the temporary grade of lieutenant colonel while so serving, ranking above all other lieutenant colonels in the section.

1966—Subsec. (b). Pub. L. 89–609, §1(2), combined second and third sentences, substituting '', and'' for period at end of second sentence and introductory word ''She'' to third sentence, and substituted ''the regular grade held, the Chief'' for ''her regular grade, she'' in fourth sentence.

Subsec. (c). Pub. L. 89–609, §1(3), combined second and third sentences, substituting '', and'' for period at end of second sentence and introductory word ''She'' to third sentence, substituted ''An assistant chief'' for ''She'' in fourth sentence, and in fifth sentence substituted ''the regular grade held'' and ''in the section'' for ''her regular grade'' and ''in her section'', respectively, and struck out ''and the pay and allowances'' before ''of a lieutenant colonel''.

1962—Subsec. (b). Pub. L. 87–649, §6(b)(2), struck out provisions which authorized the pay and allowances of a colonel for Chief of the Army Medical Specialist Corps.

Subsec. (c). Pub. L. 87–649, §6(b)(3), struck out provisions which authorized the pay and allowances of a lieutenant colonel for each assistant chief of the Army Medical Specialist Corps.

1957—Pub. L. 85–155 substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' in section catchline.

Subsec. (a). Pub. L. 85–155 substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' and ''colonel'' for ''major''.

Subsec. (b). Pub. L. 85–155 struck out provisions which related to assistant chiefs which are now covered by subsec. (c) of this section, substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'', required the chief to be above the regular grade of captain, prohibited service for more than four years and reappointment, and provided that the chief shall rank above all other colonels in the corps.

Subsec. (c). Pub. L. 85–155 added subsec. (c). Former provisions which related to assistant chiefs were contained in subsec. (b) of this section.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

REGULATIONS

Section 505(d) of Pub. L. 102–484 provided that: ''The regulations required to be prescribed by the amendments made by this section [enacting section 5139 of this title and amending this section and section 8067 of this title] shall be prescribed not later than 180 days after the date of the enactment of this Act [Oct. 23, 1992].''

APPOINTMENT OF ASSISTANT CHIEF

Section 551(b) of Pub. L. 102–190 provided that: ''Notwithstanding the requirement in subsection (c) of section 3070 of title 10, United States Code, as amended by subsection (a), with respect to the appointment of officers of the Regular Army as chiefs of sections of the Army Medical Specialist Corps, a warrant officer of the Army who is appointed as a reserve commissioned officer and assigned to the Army Medical Specialist Corps for service in the Physician Assistant Section of that Corps during the five-year period beginning on the date of the enactment of this Act [Dec. 5, 1991] may be ap-

pointed as an assistant chief of that Corps and chief of the Physician Assistant Section.''

RETIREMENT OF OFFICERS SERVING IN PHYSICIAN ASSISTANT SECTION

Section 551(c) of Pub. L. 102–190 provided that: ''A member of the Army who on the date of the enactment of this Act [Dec. 5, 1991] is a warrant officer serving on active duty (other than for training) as a physician assistant and who is subsequently appointed as a commissioned officer in, or is assigned to, the Physician Assistant Section of the Army Medical Specialist Corps may elect at the time of the officer's retirement after 20 years or more of active service that could be credited to the officer under section 511 of the Career Compensation Act of 1949, as amended [act Oct. 12, 1949, ch. 681, title V, § 511, 63 Stat. 829, as amended, set out as a note under section 580 of this title]—

''(1) to revert to the highest warrant officer grade in which the officer served on active duty (other than for training) satisfactorily (as determined by the Secretary of the Army) for a period of more than 30 days; and

''(2) to be retired under chapter 65 of title 10, United States Code.''

CONSTRUCTIVE CREDIT FOR DETERMINATION OF GRADE AND RANK OF OFFICERS IN ARMY MEDICAL SPECIALIST CORPS

Section 551(d) of Pub. L. 102–190 provided that:

''(1) For the purpose of determining the grade and rank within grade of a person who is appointed as a commissioned officer in the Army Medical Specialist Corps for service in the Physician Assistant Section, or who is assigned to the Army Medical Specialist Corps for service as a physician assistant, and who on the date of the enactment of this Act [Dec. 5, 1991] is a warrant officer and a physician assistant on active duty or in an active reserve status, the Secretary of the Army shall credit that person at the time of such appointment with any service on active duty, or in an active reserve status, as a physician assistant performed as a member of the Armed Forces before that appointment.

''(2) The Secretary of Defense shall prescribe regulations to carry out this subsection.''

AUTHORITY TO SUSPEND MANDATORY RETIREMENT, DISCHARGE, SEPARATION, OR TRANSFER FROM ACTIVE STATUS

Section 4(a) of Pub. L. 90–130 authorized Secretary of the Army to suspend operation of any provision of law relating to mandatory retirement, discharge, separation, or transfer from an active status of an officer of Army Nurse Corps, Army Medical Specialist Corps, or Woman's Army Corps for a period of five years following Nov. 8, 1967.

[§ 3071. Repealed. Pub. L. 95–485, title VIII, § 820(b), Oct. 20, 1978, 92 Stat. 1627]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 169; Sept. 7, 1962, Pub. L. 87–649, § 6(a)(2), (3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, § 1(8)(C), 81 Stat. 374, prescribed composition of Women's Army Corps and provided for a Director, a Deputy Director, and other positions for Women's Army Corps.

§ 3072. Judge Advocate General's Corps

There is a Judge Advocate General's Corps in the Army. The Judge Advocate General's Corps consists of—

(1) the Judge Advocate General;

(2) the Assistant Judge Advocate General;

(3) three officers in the grade of brigadier general;

(4) commissioned officers of the Regular Army appointed therein; and

(5) other members of the Army assigned thereto by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 169.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3072	10:61–1 (1st sentence, less applicability to strength).	June 28, 1950, ch. 383, § 308 (1st sentence, less applicability to strength), 64 Stat. 270.

The words ''authorized by sections 21f and 21h, respectively, of this title'' are omitted as surplusage. The word ''grade'' is substituted for the word ''rank''. The words ''but the Secretary shall not assign to the Judge Advocate General's Corps any officer who has been appointed and commissioned in some other special branch or in the Regular Army without specification of branch'' are omitted as covered by section 3064 of this title.

§ 3073. Chaplains

There are chaplains in the Army. The Chaplains include—

(1) the Chief of Chaplains;

(2) commissioned officers of the Regular Army appointed as chaplains; and

(3) other officers of the Army appointed as chaplains in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3073	10:231a.	June 28, 1950, ch. 383, § 309, 64 Stat. 270.

The words ''authorized by section 21f of this title'', ''as now or hereafter provided by law'', and ''and commissioned * * * or in any component thereof'' are omitted as surplusage.

§ 3074. Commands: territorial organization; engineer tactical units

(a) Except as otherwise prescribed by law or by the Secretary of Defense, the Army shall be divided into such commands, forces, and organizations as may be prescribed by the Secretary of the Army.

(b) For Army purposes, the United States, the Territories, Commonwealths, and possessions, and other places in which the Army is stationed or is operating may be divided into such areas as may be directed by the Secretary. Officers of the Army may be assigned to command Army activities, installations, and personnel in those areas. In the discharge of the Army's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(c) Such part of the Corps of Engineers as the President directs shall be formed into tactical units organized as he prescribes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Pub. L. 99–433, title V, § 503, Oct. 1, 1986, 100 Stat. 1042.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3074(a)	10:1d.	June 28, 1950, ch. 383, §§303, 304, 64 Stat. 268.
3074(b)	10:1e.	
3074(c)	10:181 (less 1st 39 words).	June 3, 1916, ch. 134, §11 (less 1st 41 words); restated June 4, 1920, ch. 227, subch. I, §11 (less 1st 41 words), 41 Stat. 768.

In subsection (b), the words ''have the duties and powers'' are substituted for the words ''shall perform such duties and exercise such powers''. The words ''of America'', ''other provisions'', and ''so assigned'' are omitted as surplusage. The word ''Commonwealths'' is inserted to reflect the present status of Puerto Rico.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–433 inserted reference to Secretary of Defense.

ARMY RESERVE COMMAND

Pub. L. 101–510, div. A, title IX, §903, Nov. 5, 1990, 104 Stat. 1620, as amended by Pub. L. 102–25, title VII, §704(a)(7), Apr. 6, 1991, 105 Stat. 118; Pub. L. 103–160, div. A, title IX, §941, Nov. 30, 1993, 107 Stat. 1736, related to establishment of United States Army Reserve Command and assignment of forces to Army Reserve Command, prior to repeal by Pub. L. 104–201, div. A, title XII, §1211(b), Sept. 23, 1996, 110 Stat. 2691. See section 10171 of this title.

§ 3075. Regular Army: composition

(a) The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Army.

(b) The Regular Army includes—

(1) the officers and enlisted members of the Regular Army;

(2) the professors, director of admissions, and cadets of the United States Military Academy; and

(3) the retired officers and enlisted members of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 170; Pub. L. 85–600, §1(1), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95–551, §2, Oct. 30, 1978, 92 Stat. 2069; Pub. L. 97–295, §1(39), Oct. 12, 1982, 96 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3075(a)	10:1c(a).	June 28, 1950, ch. 383, §302, 64 Stat. 268.
3075(b)	10:1c (less (a)).	

In subsection (b), the words ''holding appointments or enlisted in the Regular Army as now or hereafter provided by law'', ''and such other persons as are now or may hereafter be specified by law'', and ''commissioned * * * warrant officers'' are omitted as surplusage, since the revised section lists all persons in the Regular Army. 10:1c (last sentence) is omitted as executed.

AMENDMENTS

1982—Subsec. (b)(2). Pub. L. 97–295 inserted a comma after ''professors''.

1978—Subsec. (b)(2). Pub. L. 95–551 substituted ''director of admissions'' for ''registrar''.

1958—Subsec. (b)(2). Pub. L. 85–600 included the registrar of the Military Academy.

[§§ 3076 to 3080. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section 3076, act Aug. 10, 1956, ch. 1041, 70A Stat. 170, related to composition of Army Reserve. See section 10104 of this title.

Section 3077, act Aug. 10, 1956, ch. 1041, 70A Stat. 170, related to composition of Army National Guard of United States. See section 10105 of this title.

Section 3078, act Aug. 10, 1956, ch. 1041, 70A Stat. 171, provided that Army National Guard is a component of Army while in service of United States. See section 10106 of this title.

Section 3079, act Aug. 10, 1956, ch. 1041, 70A Stat. 171, related to status of Army National Guard of United States when not in Federal service. See section 10107 of this title.

Section 3080, added Pub. L. 86–603, §1(2)(A), July 7, 1960, 74 Stat. 357, related to authority of officers of Army National Guard of United States with respect to Federal status. See section 10215 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 3081. Dental Corps: Chief, functions

(a) The Chief of the Dental Corps shall be an officer of that corps appointed as prescribed in section 3039 of this title.

(b) Under such regulations as the Secretary of the Army may prescribe, all dental functions of the Army shall be under the direction of the Chief of the Dental Corps. All matters relating to dentistry shall be referred to the Chief of the Dental Corps.

(c) The Chief of the Dental Corps shall—

(1) establish professional standards and policies for dental practice;

(2) initiate and recommend action pertaining to organization requirements and utilization of the Dental Corps and dental auxiliary strength, appointments, advancement, training assignments, and transfer of dental personnel; and

(3) serve as the adviser to the Office of the Surgeon General on all matters relating directly to dentistry.

(d) Under such regulations as the Secretary of the Army may prescribe, dental and dental auxiliary personnel throughout the Army shall be organized into units commanded by a designated Dental Corps Officer. Such officer will be directly responsible to the commander of installations, organizations, and activities for all professional and technical matters and such administrative matters as may be prescribed by regulation.

(Added Pub. L. 95–485, title VIII, §805(b)(1), Oct. 20, 1978, 92 Stat. 1621; amended Pub. L. 99–433, title V, §502(f)(3), Oct. 1, 1986, 100 Stat. 1042.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–433 substituted ''section 3039'' for ''section 3040''.

[§ 3082. Renumbered § 10542]

§ 3083. Public Affairs Specialty

There is a career field in the Army known as the Public Affairs Specialty. Members of the Army with the Public Affairs Specialty are—

(1) the Chief of Public Affairs;

(2) commissioned officers of the Army in the grade of major or above who are selected and specifically educated, trained, and experienced to perform as professional public affairs officers for the remainder of their careers; and

(3) other members of the Army assigned to public affairs positions by the Secretary of the Army.

(Added Pub. L. 105–85, div. A, title V, § 596(a), Nov. 18, 1997, 111 Stat. 1765.)

§ 3084. Chief of Veterinary Corps; grade

The Chief of the Veterinary Corps of the Army serves in the grade of brigadier general. An officer appointed to that position who holds a lower grade shall be appointed in the grade of brigadier general.

(Added Pub. L. 107–314, div. A, title V, § 504(b)(1), Dec. 2, 2002, 116 Stat. 2531.)

PART II—PERSONNEL

Chap.		Sec.
331.	Strength	3201
333.	Enlistments	3251
335.	Appointments in the Regular Army	3281
[337.	Repealed.]	
339.	Temporary Appointments	3441
341.	Active Duty	3491
343.	Special Appointments, Assignments, Details, and Duties	3531
345.	Rank and Command	3571
[347.	Repealed.]	
349.	Miscellaneous Prohibitions and Penalties	3631
[351.	Repealed.]	
353.	Miscellaneous Rights and Benefits	3681
355.	Hospitalization	3721
357.	Decorations and Awards	3741
[359.	Repealed.]	
[360.	Repealed.]	
[361.	Repealed.]	
[363.	Repealed.]	
[365.	Repealed.]	
367.	Retirement for Length of Service	3911
369.	Retired Grade	3961
371.	Computation of Retired Pay	3991
373.	Civilian Employees	4021

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1672(a), Oct. 5, 1994, 108 Stat. 3015, struck out items for chapters 337 ''Appointments as Reserve Officers'', 361 ''Separation for Various Reasons'', and 363 ''Separation or Transfer to Retired Reserve''.

1980—Pub. L. 96–513, title V, § 502(1), Dec. 12, 1980, 94 Stat. 2909, struck out item for chapter 359 ''Separation from Regular Army for Substandard Performance of Duty'', item for chapter 360 ''Separation from Regular Army for Moral or Professional Dereliction or in Interests of National Security'', and item for chapter 365 ''Retirement for Age''.

1968—Pub. L. 90–377, § 3, July 5, 1968, 82 Stat. 288, struck out item for chapter 351 ''United States Disciplinary Barracks''.

Pub. L. 90–235, § 8(5), Jan. 2, 1968, 81 Stat. 764, struck out item for chapter 347 ''The Uniform''.

1960—Pub. L. 86–616, §§ 2(b), 3(b), July 12, 1960, 74 Stat. 388, 390, substituted ''Substandard Performance of Duty'' for ''Failure to Meet Standards'' in item for chapter 359 and added item for chapter 360.

1958—Pub. L. 85–861, § 1(95), Sept. 2, 1958, 72 Stat. 1487, substituted ''3841'' for ''[No present sections]'' in item for chapter 363.

CHAPTER 331—STRENGTH

Sec.
3201. Officers on active duty: minimum strength based on requirements.
[3202 to 3207, 3209. Repealed.]
3210. Regular Army: strength in grade; general officers.
[3211 to 3225, 3230. Repealed.]

AMENDMENTS

1996—Pub. L. 104–106, div. A, title V, § 505(a)(2), Feb. 10, 1996, 110 Stat. 296, added item 3201.

1994—Pub. L. 103–337, div. A, title XVI, § 1672(b)(2), Oct. 5, 1994, 108 Stat. 3015, struck out items 3212 ''Army Reserve; Army National Guard of the United States: strength in grade; temporary increases'', 3217 ''Reserves: commissioned officers in active status'', 3218 ''Reserves: strength in grade; general officers in active status'', 3219 ''Reserves: strength in grade; commissioned officers in grades below brigadier general in active status'', 3220 ''Reserve officers: distribution'', 3221 ''Army Reserve'', 3222 ''Army Reserve, exclusive of members on active duty'', 3223 ''Army Reserve: warrant officers'', 3224 ''Army National Guard of United States'', and 3225 ''Army National Guard and Army National Guard of United States, exclusive of members on active duty''.

1990—Pub. L. 101–510, div. A, title IV, § 403(b)(1)(B), Nov. 5, 1990, 104 Stat. 1545, struck out item 3202 ''Army: strength in grade; general officers''.

1980—Pub. L. 96–513, title V, § 502(4), Dec. 12, 1980, 94 Stat. 2909, struck out item 3201 ''Army: members on active duty'', substituted ''strength in grade; general officers'' for ''officers in certain commissioned grades'' in item 3202, struck out items 3203 ''Regular Army: members on active duty'', 3204 ''Regular Army: commissioned officers on active list'', 3205 ''Regular Army: commissioned officers on active list, exclusive of certain categories'', 3206 ''Regular Army: commissioned officers on active list; Army Nurse Corps'', 3207 ''Regular Army: commissioned officers on active list; Army Medical Specialist Corps'', 3209 ''Regular Army: commissioned officers on active list; other branches'', and 3211 ''Regular Army: strength in grade; promotion-list officers'', substituted ''Army Reserve; Army National Guard of the United States: strength in grade; temporary increases'' for ''Regular Army; Army Reserve; Army National Guard of United States: strength in grade; temporary increases'' in item 3212, and struck out items 3213 ''Regular Army: warrant officers on active list'', 3214 ''Regular Army: enlisted members on active duty'', 3216 ''Corps of Engineers: enlisted members on active duty'', and 3230 ''Personnel detailed outside Department of Defense''.

1978—Pub. L. 95–485, title VIII, § 820(c)(5), Oct. 20, 1978, 92 Stat. 1627, substituted ''other branches'' for ''other branches; Women's Army Corps'' in item 3209 and struck out item 3215 ''Regular Army: Women's Army Corps; warrant officers on active list; enlisted members on active duty''.

1958—Pub. L. 85–861, § 1(70), Sept. 2, 1958, 72 Stat. 1464, inserted ''; Army Reserve; Army National Guard of United States'' in item 3212, and added items 3217 to 3220 and 3230.

1957—Pub. L. 85–155, title I, § 101(6), Aug. 21, 1957, 71 Stat. 376, substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' in item 3207.

§ 3201. Officers on active duty: minimum strength based on requirements

(a) The Secretary of the Army shall ensure that (beginning with fiscal year 1999) the strength at the end of each fiscal year of officers on active duty is sufficient to enable the Army to meet at least that percentage of the programmed manpower structure for officers for the active component of the Army that is pro-

vided for in the most recent Defense Planning Guidance issued by the Secretary of Defense.

(b) The number of officers on active duty shall be counted for purposes of this section in the same manner as applies under section 115(a)(1) of this title.

(c) In this section:

(1) The term ''programmed manpower structure'' means the aggregation of billets describing the full manpower requirements for units and organizations in the programmed force structure.

(2) The term ''programmed force structure'' means the set of units and organizations that exist in the current year and that is planned to exist in each future year under the then-current Future-Years Defense Program.

(Added Pub. L. 104–106, div. A, title V, §505(a)(1), Feb. 10, 1996, 110 Stat. 295.)

PRIOR PROVISIONS

A prior section 3201, acts Aug. 10, 1956, ch. 1041, 70A Stat. 172; Sept. 2, 1958, Pub. L. 85–861, §1(62), 72 Stat. 1462; Oct. 13, 1964, Pub. L. 88–647, title III, §301(4), 78 Stat. 1071, prescribed the authorized strength of the Army in members on active duty, exclusive of certain categories, and the authorized daily average strength of the Army in members on active duty during the fiscal year, exclusive of certain categories, prior to repeal by Pub. L. 96–513, title II, §202, title VII, §701, Dec. 12, 1980, 94 Stat. 2878, 2955, effective Sept. 15, 1981.

ASSISTANCE IN ACCOMPLISHING REQUIREMENT

Section 505(b) of Pub. L. 104–106 provided that: ''The Secretary of Defense shall provide to the Army sufficient personnel and financial resources to enable the Army to meet the requirement specified in section 3201 of title 10, United States Code, as added by subsection (a).''

[§3202. Repealed. Pub. L. 101–510, div. A, title IV, §403(b)(1)(A), Nov. 5, 1990, 104 Stat. 1545]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 172; Sept. 2, 1958, Pub. L. 85–861, §1(63), 72 Stat. 1463; Dec. 28, 1967, Pub. L. 90–228, §1(1), (2), 81 Stat. 745; Dec. 12, 1980, Pub. L. 96–513, title II, §203(a), 94 Stat. 2878, related to authorized strength of Army in general officers on active duty.

[§§3203 to 3207. Repealed. Pub. L. 96–513, title II, §202, Dec. 12, 1980, 94 Stat. 2878]

Section 3203, acts Aug. 10, 1956, ch. 1041, 70A Stat. 173; Sept. 2, 1958, Pub. L. 85–861, §1(64), 72 Stat. 1463, prescribed authorized strength of Regular Army in members on active duty, exclusive of officers candidates.

Section 3204, acts Aug. 10, 1956, ch. 1041, 70A Stat. 173, Aug. 6, 1958, Pub. L. 85–600, §1(2), 72 Stat. 522; Oct. 30, 1978, Pub. L. 95–551, §2, 92 Stat. 2069, prescribed authorized strength of Regular Army in commissioned officers of active list. See section 522 of this title.

Section 3205, acts Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 6, 1958, Pub. L. 85–600, §1(3), 72 Stat. 522; Sept. 2, 1958, Pub. L. 85–861, §1(60), (65), 72 Stat. 1462, 1463; Oct. 30, 1978, Pub. L. 95–551, §2, 92 Stat. 2069, prescribed authorized strength of Regular Army in commissioned officers on active list, exclusive of certain categories. See section 522 of this title.

Section 3206, acts Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 21, 1957, Pub. L. 85–155, title I, §101(4), 71 Stat. 376; Nov. 8, 1967, Pub. L. 90–130, §1(9)(A), (B), 81 Stat. 375, prescribed authorized strength of Regular Army Nurse Corps in commissioned officers on active list of Regular Army. See section 522 of this title.

Section 3207, acts Aug. 10, 1956, ch. 1041, 70A Stat. 173; Aug. 21, 1957, Pub. L. 85–155, title I, §101(5), 71 Stat. 376; Nov. 8, 1967, Pub. L. 90–130, §1(9)(C), (D), 81 Stat. 375, prescribed authorized strength of Army Medical Specialist Corps in commissioned officers on active list of Regular Army. See section 522 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§3209. Repealed. Pub. L. 96–513, title II, §202, Dec. 12, 1980, 94 Stat. 2878]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 174; Sept. 2, 1958, Pub. L. 85–861, §1(60), 72 Stat. 1462; Nov. 8, 1967, Pub. L. 90–130, §1(9)(E), 81 Stat. 375; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(c)(1), (2), 92 Stat. 1627, prescribed, with exception of Army Nurse Corps and Army Medical Specialist Corps, the authorized strength of each branch in commissioned officers on active list of Regular Army. See section 522 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§3210. Regular Army: strength in grade; general officers

(a) Subject to section 526 of this title, the authorized strength of the Regular Army in general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Army in commission officers on the active-duty list.

(b) The authorized strength of each of the following branches—

(1) each corps of the Army Medical Department; and

(2) the Chaplains;

in general officers on the active-duty list of the Regular Army is 5/1,000 of the authorized strength of the branch concerned in commissioned officers on the active-duty list of the Regular Army. Not more than one-half of the authorized strength in general officers in such a branch may be in a regular grade above brigadier general.

(c) When the application of the percentages and ratios specified in this section results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 174; Pub. L. 85–861, §1(66), Sept. 2, 1958, 72 Stat. 1463; Pub. L. 89–603, §1(2), Sept. 24, 1966, 80 Stat. 846; Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title V, §502(5), Dec. 12, 1980, 94 Stat. 2909; Pub. L. 97–22, §5(b), July 10, 1981, 95 Stat. 128; Pub. L. 102–190, div. A, title X, §1061(a)(20)(A), Dec. 5, 1991, 105 Stat. 1473.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3210(a)	10:506a(a) (words before 1st semicolon).	Aug. 7, 1947, ch. 512, §503(a), 61 Stat. 885.
3210(b)	10:506a(a) (less words before 1st semicolon, and less provisos).	June 28, 1950, ch. 383, §308 (1st sentence, as applicable to strength), 64 Stat. 270.
3210(c)	10:61–1 (1st sentence, as applicable to strength). 10:506a(a) (1st, 2d, and 3d provisos).	

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3210(d)	10:506a(a) (4th proviso).	
3210(e)	10:506a(a) (last proviso).	

As enacted, section 503(a) of the Officer Personnel Act of 1947 (10:506a(a)), provided, subject to certain percentage limitations, for the following authorized strength of the Regular Army in general officers on the active list:

Medical Corps	16
Dental Corps	4
Veterinary Corps	1
The Chaplains	2
Army, exclusive of the above	334
Total	357

Under section 208(e) of the National Security Act of 1947 (5 U.S.C. 626c(e)), allocations of those authorized strengths were made between the Army and the Air Force as follows:

	Army	*Air Force*
Medical Corps	12	4
Dental Corps	3	1
Veterinary Corps	1	0
The Chaplains	1	1
Army and Air Force, exclusive of the above	184	150
Total	201	156

After the enactment of the Officer Personnel Act of 1947, section 308 of the Army Organization Act of 1950 (10:61–1) provided for an Assistant Judge Advocate General and three brigadier generals in the Judge Advocate General's Corps of the Army. The creation of these four general officer spaces served to increase the mentioned authorized strength figure from 357 to 361, and the figure 201 to 205. The opinion of the Judge Advocate General of the Army (JAGA 1948/5806, 2 Sept. 1948) is in accord with that conclusion.

The revised section reflects the authorized strength of the Regular Army in general officers on the active list resulting from the mentioned allocation to the Air Force and the addition of four general officer spaces in the Judge Advocate General's Corps.

That allocation, and those mentioned in the explanation of [former] subsection (c), below, have had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change these allocations, expired.

The word ''regular'' is substituted for the word ''permanent'' throughout the revised section.

In subsection (c), 10:506a(a) (1st proviso) is omitted, since there is no authority to appoint to a Regular grade above major general. 10:506a(a) (last 65 words of 2d proviso) is omitted as executed by the declaration of a national emergency on December 16, 1950.

In subsection (c)(1), the figures ''12'' and ''6'' result from the allocation of the original figures ''16'' and ''8''.

In subsection (c)(2), the figures ''3'' and ''2'' result from the allocation of the original figures ''4'' and ''2''.

In subsection (c)(3), the figure ''1'' results from the allocation of the original figure ''1''. None was allocated to the Air Force.

In subsection (c)(4), the figure ''1'' results from the allocation of the original figures ''2'' and ''1''. (The major general was allocated to the Army, the brigadier general to the Air Force.)

In subsection (c)(5), the figures ''188'' and ''94'' result from the allocation of the original figures ''334'' and ''167''. The allocation of 188 corresponds to the allotment made by the Secretary of War between the Air Corps and the Army exclusive of the Air Corps, the Medical Department, and the Chaplains, under 10:506a(a) (3d proviso). That proviso is omitted as executed.

In subsection (e), the words ''by law to hold any civil office under the United States'' are substituted for the words ''by Acts of Congress to hold appointments in the Diplomatic or Consular Service of the Government or to hold any civil office under the Government''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3210(a)	10 App.:506a(a)(1) (less 3d, 4th, 5th, and last sentences).	July 20, 1956, ch. 646, §302 (1st par.), 70 Stat. 587.
3210(b)	10 App.:506a(a)(1) (3d and 4th sentences).	
3210(c)	10 App.:506a(a)(1) (5th sentence).	
3210(d)	10 App.:506a(a)(1) (last sentence).	

In subsection (a), the words ''Subject to section 3202(a) of this title'' are inserted for clarity.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 526'' for ''section 3202(a)''.

1981—Subsec. (a). Pub. L. 97–22 substituted ''general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Army in commissioned officers on the active-duty list'' for ''general officers on the active-duty list, exclusive of the number authorized for the Army Medical Department and the Chaplains, is 75/10,000 of the authorized strength of the Regular Army in commissioned officers on the active-duty list, exclusive of the number of commissioned officers on the active-duty list authorized for the Army Medical Department and the Chaplains''.

1980—Subsec. (a). Pub. L. 96–513, §502(5)(A), (B), substituted ''active-duty list'' for ''active list'' wherever appearing and struck out provisions that, of the authorized strength, not more than one-half could be in a regular grade above brigadier general.

Subsec. (b). Pub. L. 96–513, §502(5)(A), (C), substituted ''active-duty list'' for ''active list'' wherever appearing and substituted paragraphed references to ''(1) each corps of the Army Medical Department'' and ''(2) the Chaplains'' for former paragraphed references to ''(1) The Medical Corps'', ''(2) the Dental Corps'', ''(3) the Veterinary Corps'', and ''(4) the Chaplains''.

Subsecs. (d), (e). Pub. L. 96–513, §502(5)(D), struck out subsec. (d) which provided that general officers on the active list of the Regular Army who were specifically authorized by law to hold a civil office under the United States or any instrumentality thereof were not counted in determining authorized strength under this section and subsec. (e) which had provided that the authorized strength of the Medical Service Corps in general officers on the active list of the Regular Army was one commissioned officer in the regular grade of brigadier general.

1968—Subsec. (a). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

1966—Subsec. (e). Pub. L. 89–603 added subsec. (e).

1958—Subsec. (a). Pub. L. 85–861, §1(66)(A), substituted ''Subject to section 3202(a) of this title, the'' for ''The''.

Subsecs. (c) to (e). Pub. L. 85–861, §1(66)(B), struck out subsec. (c) which prescribed the number of general officers authorized for the active list of the Regular Army, and redesignated subsecs. (d) and (e) as (c) and (d), respectively.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 3211. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85–861, § 1(67), 72 Stat. 1463; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(F), 81 Stat. 375, prescribed authorized strength of Regular Army in officers in each regular grade on promotion lists set forth in section 3296 of this title. See section 521 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3212. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 175; Sept. 2, 1958, Pub. L. 85–861, § 1(68), 72 Stat. 1463; June 30, 1960, Pub. L. 86–559, § 1(6), 74 Stat. 265; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(G), 81 Stat. 375; Dec. 12, 1980, Pub. L. 96–513, title V, § 502(6), 94 Stat. 2909, related to temporary increases in authorized strength in grades of Army Reserve and Army National Guard of United States. See section 12009 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§§ 3213, 3214. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section 3213, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, prescribed authorized strength of Regular Army in warrant officers on active list.

Section 3214, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Sept. 2, 1958, Pub. L. 85–861, § 1(64), 72 Stat. 1463, prescribed authorized strength of Regular Army in enlisted members on active duty, exclusive of officer candidates.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3215. Repealed. Pub. L. 95–485, title VIII, § 820(c)(3), Oct. 20, 1978, 92 Stat. 1627]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Nov. 8, 1967, Pub. L. 90–130, § 1(9)(H), 81 Stat. 375, authorized strength of Women's Army Corps of Regular Army in warrant officers on active list and in enlisted members on active duty to be prescribed by Secretary.

[§ 3216. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, prescribed authorized strength of Corps of Engineers in enlisted members on active duty.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 3217 to 3225. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section 3217, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1463, related to authorized strength of Army in reserve commissioned officers in active status. See section 12003 of this title.

Section 3218, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1463; amended Pub. L. 96–107, title III, § 302(a), Nov. 9, 1979, 93 Stat. 806; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 102–190, div. A, title X, § 1061(a)(20)(B), Dec. 5, 1991, 105 Stat. 1473, related to authorized strength of Army in reserve general officers in active status. See section 12004 of this title.

Section 3219, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1464, related to authorized strength of Army in reserve commissioned officers in active status in grades below brigadier general. See section 12005(a) of this title.

Section 3220, added Pub. L. 85–861, § 1(69)(A), Sept. 2, 1958, 72 Stat. 1464; amended Pub. L. 95–485, title VIII, § 820(c)(4), Oct. 20, 1978, 92 Stat. 1627, related to distribution of reserve commissioned officers by Secretary of the Army. See section 12007 of this title.

Section 3221, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, related to authorized strength of Army Reserve. See section 12001 of this title.

Section 3222, acts Aug. 10, 1956, ch. 1041, 70A Stat. 176; Dec. 12, 1980, Pub. L. 96–513, title V, § 502(7), 94 Stat. 2909, related to authorized strength of Army Reserve, exclusive of members on active duty. See section 12002(a) of this title.

Section 3223, act Aug. 10, 1956, ch. 1041, 70A Stat. 176, related to authorized strength of Army Reserve in warrant officers. See section 12008 of this title.

Section 3224, act Aug. 10, 1956, ch. 1041, 70A Stat. 177, related to authorized strength of Army National Guard of United States. See section 12001 of this title.

Section 3225, acts Aug. 10, 1956, ch. 1041, 70A Stat. 177; Dec. 12, 1980, Pub. L. 96–513, title V, § 502(7), 94 Stat. 2909; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to authorized strength of Army National Guard and Army National Guard of United States, exclusive of members on active duty. See section 12002 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 3230. Repealed. Pub. L. 96–513, title II, § 232, Dec. 12, 1980, 94 Stat. 2886]

Section, added Pub. L. 85–861, § 1(69)(B), Sept. 2, 1958, 72 Stat. 1464, provided that members of Army who are detailed for duty with agencies of United States outside Department of Defense on a reimbursable basis not be counted in computing strengths under any law.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 333—ENLISTMENTS

Sec.
3251. Definition.
[3252. Repealed.]
3253. Army: persons not qualified.
[3254 to 3256. Repealed.]
3258. Regular Army: reenlistment after service as an officer.
[3259 to 3261. Repealed.]
3262. Army: percentage of high-school graduates.
[3263, 3264. Repealed.]

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 531(c), Dec. 2, 2002, 116 Stat. 2544, struck out item 3264 ''18-month enlistment pilot program''.

2001—Pub. L. 107–107, div. A, title V, § 541(a)(2), Dec. 28, 2001, 115 Stat. 1110, added item 3264.

1994—Pub. L. 103–337, div. A, title XVI, § 1672(b)(3), Oct. 5, 1994, 108 Stat. 3015, struck out items 3259 ''Army Reserve: transfer from Army National Guard of United

States'', 3260 ''Army Reserve: transfer to upon withdrawal as member of Army National Guard'', and 3261 ''Army National Guard of United States''.

1986—Pub. L. 99–661, div. A, title IV, §402(b), Nov. 14, 1986, 100 Stat. 3859, added item 3262.

1968—Pub. L. 90–235, §2(a)(2)(C), Jan. 2, 1968, 81 Stat. 756, struck out item 3252 ''Temporary enlistments'', item 3254 ''Army: during war or emergency'', item 3255 ''Regular Army: recruiting campaigns'', item 3256 ''Regular Army: qualifications, term, grade'', item 3262 ''Extension of enlistment for members needing medical care or hospitalization'', and item 3263 ''Voluntary extension of enlistment''.

1958—Pub. L. 85–861, §1(71)(C), Sept. 2, 1958, 72 Stat. 1465, added item 3263.

§ 3251. Definition

In this chapter, the term ''enlistment'' means original enlistment or reenlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 100–180, div. A, title XII, §1231(19)(A), Dec. 4, 1987, 101 Stat. 1161.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3251	[No source].	[No source].

The revised section is inserted for clarity.

AMENDMENTS

1987—Pub. L. 100–180 inserted '', the term'' after ''In this chapter''.

[§ 3252. Repealed. Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 177, provided that temporary enlistments could be made only in the Army without specification of component.

§ 3253. Army: persons not qualified

In time of peace, no person may be accepted for original enlistment in the Army unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(Aug. 10, 1956, ch. 1041, 70A Stat. 177; Pub. L. 87–143, §1(1), Aug. 17, 1961, 75 Stat. 364; Pub. L. 90–235, §2(a)(2)(A), Jan. 2, 1968, 81 Stat. 756; Pub. L. 96–513, title V, §512(3), Dec. 12, 1980, 94 Stat. 2929.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3253(a)	10:622.	R.S. 1118; Feb. 27, 1877, ch. 69 (17th par.), 19 Stat. 242; July 29, 1941, ch. 325, 55 Stat. 606. R.S. 1998; restated Aug. 22, 1912, ch. 336, §1, 37 Stat. 356; Oct. 14, 1940, ch. 876, §504 (9th clause), 54 Stat. 1172. Aug. 1, 1894, ch. 179, §2, 28 Stat. 216; June 14, 1920, ch. 286, 41 Stat. 1077.
3253(b)	10:623. 10:624.	
3253(c)	10:625.	

In subsection (a), the words ''an armed force'' are substituted for the words ''the military service of the United States''. The words ''and no person'' are omitted as surplusage. The last sentence is substituted for 10:622 (proviso). The words ''by regulations or otherwise'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. Since the authority to enlist deserters ''in meritorious cases'', granted to the Secretary by 10:622, is equivalent to or broader than his authority to do so under 10:624, the applicability of 10:624 to 10:622 is omitted as surplusage.

In subsection (b), the word ''soldier'', in 10:623, is omitted as covered by the word ''person''. The last sentence is substituted for 10:624.

In subsections (b) and (c), the first 15 words and the proviso of section 2 of the Act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10:623 or 625. They are also omitted from the revised section, since the first 15 words are superseded by section 3256(a) of this title, and the proviso is executed.

In subsection (c), the words ''(except an Indian)'', in section 2 of the Act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10:625. They are also omitted from the revised section, since section 201(b) of the Act of October 14, 1940, ch. 876, 54 Stat. 1138 (8 U.S.C. 601), provides that Indians are citizens and nationals of the United States. The words ''may be accepted for original'' are substituted for the words ''shall be enlisted for the first''.

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' for ''chapter 12 of title 8''.

1968—Pub. L. 90–235 struck out provisions formerly set out as subsec. (a) disqualifying insane persons, intoxicated persons, deserters and convicted felons from Army service, and provisions formerly set out as subsec. (b) disqualifying from reenlistment in the Army persons whose service during their last term of enlistment was not honest and faithful, and redesignated as entire section provisions formerly set out as subsec. (c).

1961—Subsec. (c). Pub. L. 87–143 substituted ''a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8'' for '', or has made a legal declaration of intention to become, a citizen of the United States''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ENLISTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS IN ARMED FORCES OF UNITED STATES; TERMINATION OF PERIOD WITHIN WHICH TO ENLIST

Pub. L. 96–351, Sept. 15, 1980, 94 Stat. 1161, which authorized, notwithstanding the provisions of sections 3253 and 8253 of this title and in accordance with a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved on Mar. 24, 1976, by Pub. L. 94–241, 48 U.S.C. 1801 note, a citizen of the Northern Mariana Islands who indicated in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States upon full implementation of such Covenant, and who was otherwise qualified for military service under applicable laws and regulations, could enlist in the Armed Forces, expired Nov. 3, 1986, upon establishment of the Commonwealth of the Northern Mariana Islands.

ENLISTMENTS BETWEEN JUNE 30, 1955, AND JULY 24, 1957

Section 3 of Pub. L. 85–116, July 24, 1957, 71 Stat. 311, provided that enlistments under the Act of June 30, 1950, as amended, made after June 30, 1955 and before July 24, 1957 were deemed to have been made under a suspension of (1) the prohibition of section 2 of the Act of Aug. 1, 1894, as amended, which stated that in time of peace no person who is not a citizen of the United States or who has not made a legal declaration of intent to become a citizen could be enlisted for the first enlistment in the Army or (2) section 3253(c) of Title 10, Armed Forces, as the case may be.

ENLISTMENTS BETWEEN JULY 24, 1957, AND JULY 1, 1959

Section 2 of Pub. L. 85–116, July 24, 1957, 71 Stat. 311, provided that subsection (c) of this section did not apply to enlistments made under the act of June 30, 1950, on and after July 24, 1957, and before July 1, 1959.

[§§ 3254 to 3256. Repealed. Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

Section 3254, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, provided for temporary enlistments in the Army during war or emergency.

Section 3255, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, provided for recruiting campaigns to obtain enlistments in the Regular Army.

Section 3256, act Aug. 10, 1956, ch. 1041, 70A Stat. 178, set forth qualifications for and term of enlistments in the Regular Army and the grade in which such enlistments were made.

MEMBERS OF ARMY AND AIR FORCE SERVING UNDER ENLISTMENTS FOR UNSPECIFIED PERIODS ON JAN. 2, 1968; CONTINUANCE IN STATUS; DISCHARGE

Section 3(c) of Pub. L. 90–235 provided that: ''Members of the Army or the Air Force who, on the effective date of this Act [Jan. 2, 1968], are serving under enlistments for unspecified periods under sections 3256(b) and 8256(b) of title 10, United States Code, shall continue in that status and shall be discharged therefrom in accordance with laws applicable to such discharges on the day before the effective date of this Act.''

§ 3258. Regular Army: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Army who has served on active duty as a Reserve officer of the Army, or who was discharged as an enlisted member to accept a temporary appointment as an officer of the Army, is entitled to be reenlisted in the Regular Army in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Army prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if—

(1) the person was discharged or released from active duty as a Reserve officer on the basis of a determination of—

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the Reserve commission held by that person during the active duty from which the person was released or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 179; Pub. L. 85–603, § 1(1), Aug. 8, 1958, 72 Stat. 526; Pub. L. 102–484, div. A, title V, § 520(a), Oct. 23, 1992, 106 Stat. 2408.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3258	10:631a (less last proviso).	July 14, 1939, ch. 267, § 1 (less last proviso); restated May 29, 1954, ch. 249, § 19(b) (less last proviso), 68 Stat. 166.

The words ''former'' and ''as an enlisted member'' are inserted for clarity. The words ''credit for service'' are substituted for the words ''of service''. The words ''in his grade'' are substituted for the words ''in the appropriate enlisted grade''. The words ''he applies'' are substituted for the words ''application * * * shall be made''. The words ''Hereafter'' and ''while on active duty'' are omitted as surplusage.

AMENDMENTS

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), added subsec. (b), and struck out at end of subsec. (a) ''However, if his service as an officer terminated by a general discharge, he may, under regulations to be prescribed by the Secretary of the Army, be so reenlisted.''

1958—Pub. L. 85–603 limited entitlement to be reenlisted in enlisted grade to those officers whose service terminated by an honorable discharge and those relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and provided that persons whose service terminated by a general discharge, may, under regulations to be prescribed by the Secretary of the Army, be so reenlisted.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 520(c) of Pub. L. 102–484 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 8258 of this title] shall apply to persons discharged or released from active duty as commissioned officers in the Army Reserve or the Air Force Reserve, respectively, after the date of the enactment of this Act [Oct. 23, 1992].''

[§§ 3259 to 3261. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(b)(3), Oct. 5, 1994, 108 Stat. 2990]

Section 3259, acts Aug. 10, 1956, ch. 1041, 70A Stat. 179; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to transfers in grade of enlisted members of Army National Guard of United States to Army Reserve. See section 12105 of this title.

Section 3260, act Aug. 10, 1956, ch. 1041, 70A Stat. 179, provided that enlisted members of Army National Guard of United States are transferred to Army Reserve upon withdrawal as members of Army National Guard. See section 12106 of this title.

Section 3261, acts Aug. 10, 1956, ch. 1041, 70A Stat. 179; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(20), 72 Stat. 1565; Oct. 4, 1961, Pub. L. 87–378, § 3, 75 Stat. 808, related to enlistment in Army National Guard of United States. See section 12107 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 3262. Army: percentage of high-school graduates

Notwithstanding section 520(b) of this title, of the males with no prior military service who are enlisted or inducted into the Army during any fiscal year, the number who are not high-school graduates may not exceed, as of the end of the fiscal year, 35 percent of all such persons.

(Added Pub. L. 99–661, div. A, title IV, § 402(a), Nov. 14, 1986, 100 Stat. 3859; amended Pub. L. 100–370, § 1(a)(2), July 19, 1988, 102 Stat. 840.)

HISTORICAL AND REVISION NOTES

1988 ACT

Amendment of section is based on Pub. L. 93–307, title IV, § 401, June 8, 1974, 88 Stat. 234, as amended by Pub. L. 93–365, title VII, § 705, Aug. 5, 1974, 88 Stat. 406.

PRIOR PROVISIONS

A prior section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 180; Sept. 2, 1958, Pub. L. 85–861, § 1(71), 72 Stat. 1464, provided for extension of enlistment of members of the Army needing medical care or hospitalization, prior to repeal by Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756.

AMENDMENTS

1988—Pub. L. 100–370 substituted ''Notwithstanding section 520(b) of this title, of'' for ''Of''.

[§ 3263. Repealed. Pub. L. 90–235, § 2(a)(2)(B), Jan. 2, 1968, 81 Stat. 756]

Section, Pub. L. 85–861, § 1(71)(B), Sept. 2, 1958, 72 Stat. 1465; Pub. L. 87–649, § 14c(4), Sept. 7, 1962, 76 Stat. 501, provided for voluntary extension of enlistments in the Army.

[§ 3264. Repealed. Pub. L. 107–314, div. A, title V, § 531(c), Dec. 2, 2002, 116 Stat. 2544]

Section, added Pub. L. 107–107, div. A, title V, § 541(a)(1), Dec. 28, 2001, 115 Stat. 1109, related to an 18-month enlistment pilot program to increase participation of prior service persons in Selected Reserve and to provide assistance in building pool of participants in Individual Ready Reserve.

CHAPTER 335—APPOINTMENTS IN THE REGULAR ARMY

Sec.
3281. Commissioned officer grades.
3282. General officers: title of office.
3283. Commissioned officers: appointment without specification of branch; transfer between branches.
[3284 to 3309. Repealed.]
3310. Warrant officers: original appointment; qualifications.
[3311 to 3314. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, § 502(8), Dec. 12, 1980, 94 Stat. 2909, struck out items 3284 ''Commissioned officers: appointment, how made'', 3285 ''Commissioned officers: original appointment; qualifications'', 3286 ''Commissioned officers: original appointment; age limitations'', 3287 ''Commissioned officers: original appointment; service credit'', 3288 ''Commissioned officers: original appointment; determination of grade'', 3289 ''Commissioned officers; Medical Corps: original appointment; professional examination'', 3290 ''Commissioned officers; Medical Service Corps: original appointment; additional qualifications, grade'', 3291 ''Commissioned officers: Army Nurse Corps and Army Medical Specialist Corps: original appointment; additional qualifications, grade'', 3292 ''Commissioned officers; Judge Advocate General's Corps: original appointment; additional qualifications, grade'', 3293 ''Commissioned officers; Chaplains: original appointment; examination'', 3294 ''Commissioned officers; Medical and Dental Corps: original appointment'', 3295 ''Commissioned officers: original appointment; determination of place on promotion list'', 3296 ''Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion'', 3297 ''Selection boards'', 3298 ''Commissioned officers: promotion to first lieutenant; effect of failure of promotion'', 3299 ''Commissioned officers: promotion to captain, major, or lieutenant colonel'', 3300 ''Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure'', 3302 ''Commissioned officers: Medical, Dental, and Veterinary Corps: promotion to captain, major, or lieutenant colonel; professional examination'', 3303 ''Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel'', 3305 ''Commissioned officers: promotion to colonel'', 3306 ''Commissioned officers: promotion to brigadier general'', 3307 ''Commissioned officers: promotion to major general'', 3308 ''Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate'', 3309 ''Commissioned officers: physical examination for promotion'', 3312 ''Officers: acceptance of promotion'', 3313 ''Suspension of laws for promotion or mandatory retirement or separation during war or emergency'', and 3314 ''Commissioned officers: promotion not to be delayed by another appointment''.

1978—Pub. L. 95–485, title VIII, § 820(d)(5), Oct. 20, 1978, 92 Stat. 1627, struck out item 3311 ''Officers: female; limitations on appointment''.

1967—Pub. L. 90–130, § 1(10)(C), (E), Nov. 8, 1967, 81 Stat. 375, struck out item 3304 ''Commissioned officers; Army Nurse Corps and Army Medical Specialist: promotion to lieutenant colonel or colonel'', and struck out ''other than officers in Army Nurse Corps and Army Medical Specialist Corps'' after ''Commissioned officers'' in item 3305.

1958—Pub. L. 85–861, § 1(79)(B), Sept. 2, 1958, 72 Stat. 1468, added item 3314.

1957—Pub. L. 85–155, title I, § 101(9), (15), (17), Aug. 21, 1957, 71 Stat. 377, 379, substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' in item 3291, ''Army Medical Specialist'' for ''Women's Medical Specialist Corps'' and ''promotion to lieutenant colonel or colonel'' for ''promotion to first lieutenant, captain, major, or lieutenant colonel'' in item 3304, and ''Commissioned officers other than officers in Army Nurse Corps and Army Medical Specialist Corps'' for ''Commissioned officers'' in item 3305.

§ 3281. Commissioned officer grades

The commissioned grades in the Regular Army are:

(1) Major general.
(2) Brigadier general.
(3) Colonel.
(4) Lieutenant colonel.
(5) Major.
(6) Captain.
(7) First lieutenant.
(8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3281	10:506(a) (last 24 words).	Aug. 7, 1947, ch. 512, §502(a) (last 24 words), 61 Stat. 884.

§ 3282. General officers: title of office

An officer holding an appointment as a general officer in the Regular Army may be called a general officer in the Regular Army. In addition, a general officer of the Regular Army in the Medical Corps, Dental Corps, Veterinary Corps, Judge Advocate General's Corps, or the Chaplains, may be called a general officer of that branch.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3282	10:506(b) (less 2d sentence).	Aug. 7, 1947, ch. 512, §502(b) (less 2d sentence), 61 Stat. 884.

The words ''may be called'' are substituted for the words ''shall be known as'' and ''may be specifically referred to''. The words ''of that branch'' are substituted for the enumeration of branches.

§ 3283. Commissioned officers: appointment without specification of branch; transfer between branches

(a) Appointments in commissioned grades in the Regular Army shall be made without specification of branch except in each of the special branches and as professors or director of admissions of the United States Military Academy.

(b) Commissioned officers appointed in the Regular Army without specification of branch shall be assigned, and may be transferred and reassigned, by the Secretary of the Army to branches other than the special branches, according to their professional qualifications and the needs of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 181; Pub. L. 85–600, §1(4), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95–485, title VIII, §820(d)(1), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 95–551, §2, Oct. 30, 1978, 92 Stat. 2069.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3283(a)	10:506(b) (2d sentence). 10:506(c) (1st sentence).	Aug. 7, 1947, ch. 512, §502(b) (2d sentence), (c) (less proviso), 61 Stat. 884; June 12, 1948, ch. 449, §104(d)(1), 62 Stat. 358.
3283(b)	10:506(c) (less 1st sentence and less proviso).	

Subsection (a) is substituted for 10:506(b) (2d sentence) and 506(c) (1st sentence). The words ''in each of the special branches'' are substituted for the enumeration of branches in 10:506(b) (2d sentence) and for the words ''each of the several corps of the Army Medical Service, as chaplains'', in 10:506(c).

In subsection (b), the words ''other than the special branches and the Women's Army Corps'' are substituted for 10:506(c) (words between 3d and 4th parentheses). The word ''their'' is substituted for the words ''of the officers concerned''. The words ''of the Army'' are substituted for the words ''of the branches, arms, and services''. The words ''from time to time'' and ''arms, and services'' are omitted as surplusage.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–551 substituted ''director of admissions'' for ''registrar''.

Pub. L. 95–485 struck out '', in the Women's Army Corps,'' after ''special branches''.

Subsec. (b). Pub. L. 95–485 struck out ''and the Women's Army Corps'' after ''special branches''.

1958—Subsec. (a). Pub. L. 85–600 inserted reference to registrar of the Military Academy.

[§§ 3284 to 3300. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 3284, act Aug. 10, 1956, ch. 1041, 70A Stat. 181, provided that appointments in commissioned grades in Regular Army be made by President, by and with the advice and consent of Senate. See section 531 of this title.

Section 3285, acts Aug. 10, 1956, ch. 1041, 70A Stat. 181; Sept. 2, 1958, Pub. L. 85–861, §1(72), 72 Stat. 1465, prescribed eligibility requirements for original appointment in a commissioned grade in Regular Army, except in Medical Corps or Dental Corps and except a graduating cadet. See section 532 of this title.

Section 3286, acts Aug. 10, 1956, ch. 1041, 70A Stat. 181; Sept. 2, 1958, Pub. L. 85–861, §1(73), 72 Stat. 1465, prescribed age limitations for original appointment in a commissioned grade in Regular Army, except in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 532 of this title.

Section 3287, acts Aug. 10, 1956, ch. 1041, 70A Stat. 182; Sept. 2, 1958, Pub. L. 85–861, §1(74), 72 Stat. 1466, provided service credit, in the discretion of the Secretary of the Army, for a person originally appointed in a commissioned grade in the Regular Army, except the Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps, for the purpose of determining grade, position on a promotion list, seniority in his grade in the Regular Army, and eligibility for promotion, with appointment and service credit restrictions on persons who were cadets at the United States Military, Naval, or Air Force Academies but were not graduated, and a disallowance of service credits under this section for persons who graduated from one of these Academies. See section 533 of this title.

Section 3288, acts Aug. 10, 1956, ch. 1041, 70A Stat. 183; Aug. 21, 1957, Pub. L. 85–155, title I, §101(7), 71 Stat. 376; Sept. 2, 1958, Pub. L. 85–861, §1(75), 72 Stat. 1466, provided for determination of grade of a person originally appointed as a commissioned officer in Regular Army, except in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 533 of this title.

Section 3289, act Aug. 10, 1956, ch. 1041, 70A Stat. 183, provided that no person be originally appointed as a first lieutenant in Regular Army in Medical Corps until he passes an examination of his professional fitness before an examining board composed of at least three officers of Medical Corps designated by Secretary of the Army. See section 532 of this title.

Section 3290, act Aug. 10, 1956, ch. 1041, 70A Stat. 183, provided that an original appointment in Regular Army in Medical Service Corps be made only in grade of second lieutenant and from members of Regular Army, reserves not in an inactive status, or graduates of an accredited school of pharmacy or optometry, or of a school or college who hold a degree in a science allied to medicine or any other degree approved by Surgeon General. See section 532 of this title.

Section 3291, acts Aug. 10, 1956, ch. 1041, 70A Stat. 183; Aug. 21, 1957, Pub. L. 85–155, title I, §101(8), 71 Stat. 376; Sept. 30, 1966, Pub. L. 89–609, §1(4), 80 Stat. 852, prescribed eligibility requirements for an original appointment in Regular Army in Army Nurse Corps or Army Medical Specialist Corps in grade of second lieutenant, first lieutenant, and captain and provided for determination of years of service creditable for promotion. See section 532 of this title.

Section 3292, act Aug. 10, 1956, ch. 1041, 70A Stat. 184, provided that original appointments in commissioned grades in Regular Army in Judge Advocate General's Corps be made from officers of Regular Army in other branches, reserve commissioned officers assigned to Judge Advocate General's Corps, or qualified civilian graduates of accredited law schools. See section 532 of this title.

Section 3293, act Aug. 10, 1956, ch. 1041, 70A Stat. 184, provided that no person in civil life be originally appointed as a chaplain in Regular Army unless he has passed an examination prescribed by President as to his morale, mental, and physical qualifications. See section 532 of this title.

Section 3294, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Sept. 2, 1958, Pub. L. 85–861, §1(77), 72 Stat. 1467, provided that original appointments in Regular Army be made in grades of first lieutenant through colonel in Medical Corps or Dental Corps as the Army requires, from qualified doctors of medicine, osteopathy, or dentistry who are citizens of the United States and have such other qualifications as the Secretary of the Army prescribes, with specific additional eligibility requirements for a doctor of osteopathy, and that officers so appointed receive service credit for determining grade, position on a promotion list, seniority in grade in Regular Army, and eligibility for promotion. See section 532 of this title.

Section 3295, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Sept. 2, 1958, Pub. L. 85–861, §1(78), 72 Stat. 1467, provided for determination of the place on a promotion list of name of each person who is originally appointed in a commissioned grade in Regular Army and whose name is to be carried on a promotion list, other than persons appointed in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 624 of this title.

Section 3296, acts Aug. 10, 1956, ch. 1041, 70A Stat. 184; Aug. 21, 1957, Pub. L. 85–155, title I, §101(10), 71 Stat. 377; Aug. 6, 1958, Pub. L. 85–600, §1(5), 72 Stat. 522; June 4, 1968, Pub. L. 90–329, 82 Stat. 170; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(d)(2), 92 Stat. 1627; Oct. 30, 1978, Pub. L. 95–551, §2, 92 Stat. 2069, provided for promotion lists in Regular Army for all commissioned officers in grades below brigadier general on active list, with exceptions, which officers are known as ''promotion-list officers'', a separate list for Chaplains and each of the several branches of Army Medical Department, and determination of place on list upon transfer or promotion. See section 624 of this title.

Section 3297, acts Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85–155, title I, §101(11), 71 Stat. 377; July 12, 1960, Pub. L. 86–616, §1(1), 74 Stat. 386; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(d)(3), 92 Stat. 1627, provided for selection boards to recommend promotion-list officers and brigadier generals of Regular Army for promotion in Regular Army. See section 611 et seq. of this title.

Section 3298, acts Aug. 10, 1956, ch. 1041, 70A Stat. 185; Aug. 21, 1957, Pub. L. 85–155, title I, §101(12), 71 Stat. 377; Nov. 8, 1967, Pub. L. 90–130, §1(10)(A), 81 Stat. 375, provided for promotion from grade of second lieutenant to first lieutenant after 3 years of service, discharge under section 3814 of this title upon failure of promotion, and filling vacancies for first lieutenants with second lieutenants prior to completion of 3 years of service. See section 630 of this title.

Section 3299, acts Aug. 10, 1956, ch. 1041, 70A Stat. 186; Aug. 21, 1957, Pub. L. 85–155, title I, §101(13), 71 Stat. 377; Sept. 2, 1958, Pub. L. 85–861, §33(a)(21), 72 Stat. 1565; Nov. 8, 1967, Pub. L. 90–130, §1(10)(B), 81 Stat. 375, provided that promotion-list officers be promoted to regular grades of captain, major, and lieutenant colonel, after specified length of service or without regard to length of service in view of actual or anticipated vacancies if Secretary of the Army so directs, or be eliminated from active list under section 3303 of this title and a promotion-list officer who has twice been considered and not recommended for promotion to any one regular grade not be again considered for promotion under this section. See sections 631 and 632 of this title.

Section 3300, acts Aug. 10, 1956, ch. 1041, 70A Stat. 186; July 12, 1960, Pub. L. 86–616, §1(2), 74 Stat. 386, provided for selection board procedure when promotion-list officers in regular grade of first lieutenant, captain, or major are to be considered for promotion under section 3299 of this title. See section 611 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 3302, 3303. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 3302, act Aug. 10, 1956, ch. 1041, 70A Stat. 187, related to promotion to captain, major, or lieutenant colonel of commissioned officers of Medical Corps, Dental Corps, and Veterinary Corps upon examination of professional fitness and effect upon failure of promotion. See sections 631 and 632 of this title.

Section 3303, acts Aug. 10, 1956, ch. 1041, 70A Stat. 188; July 12, 1960, Pub. L. 86–616, §1(3), 74 Stat. 386; June 28, 1962, Pub. L. 87–509, §4(a), 76 Stat. 121, related to effect of failure of a promotion-list officer considered for promotion to grade of captain, major, or lieutenant colonel under section 3299 of this title to be recommended for promotion, which officer was to be known as a ''deferred officer''. See sections 631 and 632 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3304. Repealed. Pub. L. 90–130, § 1(10)(C), Nov. 8, 1967, 81 Stat 375]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 189; Aug. 21, 1957, Pub. L. 85–155, title I, §101(14), 71 Stat. 378, covered promotion of officers in the Army Nurse Corps and the Army Medical Specialists Corps to colonel and lieutenant colonel, set out the requirements of officers on the promotion lists, and provided for the procedure to be followed in determining the order of promotion.

[§§ 3305 to 3309. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 3305, acts Aug. 10, 1956, ch. 1041, 70A Stat. 189; Aug. 21, 1957, Pub. L. 85–155, title I, §101(16), 71 Stat. 379; Nov. 8, 1967, Pub. L. 90–130, §1(10)(D), (E), 81 Stat. 375, related to promotion of officers in regular grade of lieutenant colonel to grade of colonel. See section 619 et seq. of this title.

Section 3306, act Aug. 10, 1956, ch. 1041, 70A Stat. 190, related to promotion of officers in regular grade of colonel to grade of brigadier general. See section 619 et seq. of this title.

Section 3307, act Aug. 10, 1956, ch. 1041, 70A Stat. 191, related to promotion of officers in regular grade of brigadier general to grade of major general. See section 619 et seq. of this title.

Section 3308, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, related to effect of removal from recommended list by President of name of any promotion-list officer or brigadier general of Regular Army who in President's opinion is not qualified for promotion or who is not confirmed by Senate. See section 629 of this title.

Section 3309, act Aug. 10, 1956, ch. 1041, 70A Stat. 192, provided that President prescribe a system of physical examination for all commissioned officers of Regular Army in grades below brigadier general to determine their fitness for promotion in Regular Army. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Army shall be made from persons who have served on active duty at least one year in the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 192.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3310	10:591. [Uncodified: June 3, 1916, ch. 134, § 4a (less 3d and last sentences); added June 4, 1920, ch. 227, subch. I, § 4 (3d par., less 3d and last sentences), 41 Stat. 761].	June 3, 1916, ch. 134, § 4a (less 3d and last sentences); added June 4, 1920, ch. 227, subch. I, § 4 (3d par., less 3d and last sentences), 41 Stat. 761. Aug. 21, 1941, ch. 384, § 2; restated May 29, 1954, ch. 249, § 19(c), 68 Stat. 166.

The first sentence of section 4a of the Act of June 3, 1916, cited above, is omitted as superseded by section 3213 of this title. The second sentence, less first nine words, of section 4a of that act, is omitted as superseded by 10:591.

[§ 3311. Repealed. Pub. L. 95–485, title VIII, § 820(d)(4), Oct. 20, 1978, 92 Stat. 1627]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 192; Sept. 2, 1958, Pub. L. 85–861, § 1(60), 72 Stat. 1462, provided that with the exception of those appointed as commissioned officers in Medical Corps, Dental Corps, Medical Service Corps, Veterinary Corps, Army Nurse Corps, or Army Medical Specialist Corps, women be appointed as commissioned officers in Regular Army only in Women's Army Corps.

[§§ 3312 to 3314. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 3312, act Aug. 10, 1956, ch. 1041, 70A Stat. 193, provided that an officer who is promoted in Regular Army is considered to have accepted his promotion on date of the order announcing it, unless he expressly declines it, without the need to take oath of office upon promotion if his service since last taking it has been continuous. See section 626 of this title.

Section 3313, act Aug. 10, 1956, ch. 1041, 70A Stat. 193, provided that in time of war or national emergency declared by Congress or President, President may suspend operation of provision of law relating to promotion, mandatory retirement, or separation of commissioned officers of the Regular Army. See section 123(a) and (b) of this title.

Section 3314, added Pub. L. 85–861, § 1(79)(A), Sept. 2, 1958, 72 Stat. 1467, provided that promotion to a higher grade of a commissioned officer of Regular Army who is on a recommendation list awaiting promotion not be withheld or delayed because of original appointment of any other person to a commissioned grade in Regular Army and that this section does not apply to appointments in Medical Corps, Dental Corps, Army Nurse Corps, or Army Medical Specialist Corps. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 337—REPEALED]

[§ 3351. Renumbered § 12211]

[§ 3352. Renumbered § 12213]

[§§ 3353, 3354. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 3353, added Pub. L. 85–861, § 1(80)(B), Sept. 2, 1958, 72 Stat. 1468; amended Pub. L. 86–559, § 1(8), June 30, 1960, 74 Stat. 265; Pub. L. 96–513, title II, § 205(a), Dec. 12, 1980, 94 Stat. 2881; Pub. L. 97–22, § 5(c), July 10, 1981, 95 Stat. 128; Pub. L. 98–94, title X, § 1007(c)(3), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, § 714(b), Dec. 4, 1987, 101 Stat. 1112; Pub. L. 103–160, div. A, title V, § 509(b), Nov. 30, 1993, 107 Stat. 1647, related to service credit upon original appointment as reserve commissioned officer in Army. See section 12207 of this title.

Section 3354, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 1(80)(C), 72 Stat. 1468, related to appointment of warrant officers and enlisted members of Army National Guard of United States as reserve officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 3355. Repealed. Pub. L. 88–647, title III, § 301(5), Oct. 13, 1964, 78 Stat. 1071]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(22), 72 Stat. 1565, related to appointment of graduates of Reserve Officers' Training Corps as reserve commissioned officers. See section 2106 of this title.

[§§ 3357 to 3390. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 3357, acts Aug. 10, 1956, ch. 1041, 70A Stat. 194; Sept. 2, 1958, Pub. L. 85–861, § 1(60), (80)(D), 72 Stat. 1462, 1468, related to eligibility for appointment as reserve officer for service in Army Reserve in Army Nurse Corps or Army Medical Specialist Corps.

Section 3359, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 98–94, title X, § 1014(a), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98–525, title V, § 521(a), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–145, title V, § 521(a), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, § 502(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, § 503(a), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, § 519(a), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, § 514(a), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, § 511(a), Feb. 10, 1996, 110 Stat. 298, related to determination of grade upon original appointment as reserve officer of Army. See section 12201 et seq. of this title.

Section 3360, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1469; amended Pub. L. 86–559, § 1(9), June 30, 1960, 74 Stat. 266; Pub. L. 96–513, title V, §§ 502(10), 512(4), Dec. 12, 1980, 94 Stat. 2910, 2929; Pub. L. 98–94, title X, § 1016(b), Sept. 24, 1983, 97 Stat. 668, related to service required for promotion of Reserve commissioned officers. See section 14001 et seq. of this title.

Section 3362, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86–559, § 1(10), June 30, 1960, 74 Stat. 266, related to convening of selection boards to consider Reserve commissioned officers for promotion. See section 14101 et seq. of this title.

Section 3363, added Pub. L. 85–861, § 1(80)(E), Sept. 2, 1958, 72 Stat. 1470; amended Pub. L. 86–559, § 1(11), June 30, 1960, 74 Stat. 266; Pub. L. 95–485, title VIII, § 820(e)(1), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 100–456, div. A, title

XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to requirements and procedures for promotion of officers in reserve grades. See section 14301 et seq. of this title.

Section 3364, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1471; amended Pub. L. 86–559, §1(12), June 30, 1960, 74 Stat. 266; Pub. L. 95–485, title VIII, §820(e)(2)–(4), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 98–525, title V, §512, Oct. 19, 1984, 98 Stat. 2521; Pub. L. 100–456, div. A, title XII, §1234(a)(4), Sept. 29, 1988, 102 Stat. 2059, related to commissioned reserve officers' selection for promotion, order of promotion, zone of consideration lists, and declinations of promotion. See section 14301 et seq. of this title.

Section 3365, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1472, related to promotion of second lieutenants of Army Reserve. See section 14301 et seq. of this title.

Section 3366, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1472; amended Pub. L. 86–559, §1(13), June 30, 1960, 74 Stat. 267; Pub. L. 90–130, §1(11)(A), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve or Army National Guard of United States. See section 14301 et seq. of this title.

Section 3367, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1473; amended Pub. L. 86–559, §1(14), June 30, 1960, 74 Stat. 268; Pub. L. 90–130, §1(11)(B), Nov. 8, 1967, 81 Stat. 375, related to promotion of first lieutenants, captains, and majors of Army Reserve to fill vacancies. See section 14301 et seq. of this title.

Section 3368, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to second consideration for promotion of first lieutenants, captains, and majors of Army Reserve. See section 14301 et seq. of this title.

Section 3369, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474, related to first promotion of reserve officers not assigned to unit after transfer from unit or from Army National Guard of United States.

Section 3370, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1474; amended Pub. L. 86–559, §1(15), June 30, 1960, 74 Stat. 269; Nov. 8, 1967, Pub. L. 90–130, §1(11)(C), (D), 81 Stat. 375; Pub. L. 100–456, div. A, title XII, §1234(a)(5), Sept. 29, 1988, 102 Stat. 2059, related to promotion of officers to grade of colonel to fill vacancies. See section 14301 et seq. of this title.

Section 3371, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to promotion of brigadier generals and colonels not assigned to units. See section 14301 et seq. of this title.

Section 3375, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1475, related to transfer or discharge of reserve generals ceasing to occupy commensurate positions. See section 14314(a) of this title.

Section 3378, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of reserve commissioned officers removed from active status. See section 14317(a) of this title.

Section 3380, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476; amended Pub. L. 98–94, title X, §1015(a)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99–145, title V, §521(b), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, §502(b)(1), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, §503(b)(1), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, §519(b), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, §514(b), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, §511(b), Feb. 10, 1996, 110 Stat. 298, related to promotion of reserve commissioned officers on active duty and not on the active duty list. See section 14311(e) of this title.

Section 3382, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1476, related to promotion of second lieutenants of Army Reserve assigned to units. See section 14301 et seq. of this title.

Section 3383, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1477; amended Pub. L. 86–559, §1(16), June 30, 1960, 74 Stat. 270; Pub. L. 88–620, §2, Oct. 3, 1964, 78 Stat. 999; Pub. L. 90–130, §1(11)(E), Nov. 8, 1967, 81 Stat. 376; Pub. L. 95–485, title VIII, §820(e)(5), Oct. 20, 1978, 92 Stat. 1627, related to promotion of officers of Army Reserve to grades of first lieutenant, captain, major, lieutenant colonel, and colonel to fill vacancies. See section 14301 et seq. of this title.

Section 3384, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1477, related to promotion of officers of Army Reserve to grades of brigadier general or major general to fill vacancies. See section 14315 of this title.

Section 3385, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1477, related to promotion of officers of Army National Guard of United States upon Federal recognition. See section 14308(f) of this title.

Section 3386, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478, related to promotion of reserve commissioned officers upon release from active duty. See section 14301 et seq. of this title.

Section 3388, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478, related to effect of commissioned officer of Army Reserve entering upon active duty while eligible for promotion. See section 14301 et seq. of this title.

Section 3389, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478; amended Pub. L. 86–559, §1(17), June 30, 1960, 74 Stat. 270, related to promotion of commissioned officers of Army Reserve or Army National Guard of United States to higher reserve grades after temporary appointments. See section 14301 et seq. of this title.

Section 3390, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1478; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to procedure for promotion to higher reserve grade of officer of Army National Guard of United States after temporary appointment. See section 14301 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 3391. Repealed. Pub. L. 90–130, § 1(11)(F), Nov. 8, 1967, 81 Stat. 376]

Section, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1479; Pub. L. 86–559, §1(18), June 30, 1960, 74 Stat. 270, prohibited promotion of reserve officers of Army Nurse Corps or Army Medical Specialist Corps to reserve grades above colonel and prohibited promotion of reserve officers of Women's Army Corps to reserve grades above lieutenant colonel.

[§§ 3392 to 3396. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 3392, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1479; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to appointment of adjutants general or assistant adjutants general as reserve officers of Army. See section 12215(a) of this title.

Section 3393, added Pub. L. 85–861, §1(80)(E), Sept. 2, 1958, 72 Stat. 1479, provided that sea or foreign service not be made condition for promotion of reserve commissioned officers in reserve grades.

Section 3394, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, related to acceptance of promotion by officers of Army National Guard of United States or Army Reserve. See section 14309 of this title.

Section 3395, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, related to appointment of reserve officers in time of war. See section 14301 et seq. of this title.

Section 3396, added Pub. L. 96–513, title II, §206(a), Dec. 12, 1980, 94 Stat. 2884, provided that chapter, except section 3353, did not apply to reserve officers on active-duty list.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 339—TEMPORARY APPOINTMENTS

Sec.
[3441 to 3445. Repealed.]
3446. Retention on active duty.
[3447 to 3452. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, § 502(11), Dec. 12, 1980, 94 Stat. 2910, struck out items 3441 ''General rule'', 3442 ''Commissioned officers; regular and reserve components: appointment in higher grade'', 3444 ''Commissioned officers: during war or emergency'', 3445 ''Officers: additional appointments during war or emergency'', 3447 ''Appointments in commissioned grade: how made; how terminated'', 3448 ''Warrant officers: grades, appointment'', 3449 ''Warrant officers: promotion'', 3451 ''Officers: acceptance of appointment in higher grade'', and 3452 ''Officers; Medical and Dental Corps: temporary promotion to captain''.

1968—Pub. L. 90–235, § 3(b)(2), Jan. 2, 1968, 81 Stat. 758, struck out item 3450 ''Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency''.

1958—Pub. L. 85–861, § 1(81)(F), (G), Sept. 2, 1958, 72 Stat. 1480, struck out item 3443 ''Commissioned officers; Reserves; appointment in higher or lower grade'' and added item 3452.

[§§ 3441, 3442. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section 3441, act Aug. 10, 1956, ch. 1041, 70A Stat. 195, provided that temporary appointments be made only in the Army without specification of component.

Section 3442, act Aug. 10, 1056, ch. 1041, 70A Stat. 195, provided that a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed, based upon ability and efficiency with regard being given to seniority and age, in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. See section 601 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3443. Repealed. Pub. L. 85–861, § 36B(6), Sept. 2, 1958, 72 Stat. 1570]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 196, related to grade of appointment of reserve commissioned officers on active duty.

[§§ 3444, 3445. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section 3444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1(81)(A), 72 Stat. 1480, authorized the President, in time of war or national emergency, to appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary grade, provided for vacation of the appointment, and permitted, for purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, an officer of the Medical Corps or Dental Corps who is appointed in a temporary grade to be credited, when he enters active duty, with constructive service authorized by section 3294(b) of this title. See section 603 of this title.

Section 3445, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, § 1(81)(B), 72 Stat. 1480, provided that in addition to the temporary appointments authorized, in time of war or national emergency, a regular officer or a reserve warrant officer may be appointed in any temporary grade higher than his regular or reserve grade, without vacating that grade, or a person who holds no commissioned grade in the Regular Army be appointed in any temporary commissioned grade. See section 603 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3446. Retention on active duty

The President may retain on active duty a disabled officer until—

(1) the physical condition of the officer is such that the officer will not be further benefited by retention in a military hospital or a medical facility of the Department of Veterans Affairs; or

(2) the officer is processed for physical disability benefits provided by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 196; Pub. L. 85–861, § 1(81)(C), Sept. 2, 1958, 72 Stat. 1480; Pub. L. 101–189, div. A, title XVI, § 1621(a)(10), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 102–25, title VII, § 701(j)(6), Apr. 6, 1991, 105 Stat. 116.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3446	10:499.	June 19, 1948, ch. 511, 62 Stat. 489.

The word ''shall'' is substituted for the words ''authorized and directed''. The words ''on active duty'' are substituted for the words ''in service''. The words ''warrant officers, and flight officers'' are omitted, since the definition of ''officer'' in section 101(14) of this title covers commissioned, warrant, and flight officers. The words ''who has only a temporary appointment'' are substituted for the words ''of the Army * * * of the United States''. The words ''his physical condition is such that he'' are substituted for the words ''their treatment for physical reconstruction has reached a point where they''. The words ''in the Army'' are substituted for the words ''in the military service''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3446	10 App.:499.	June 15, 1956, ch. 388, 70 Stat. 282.

The words ''commissioned officers and warrant'' are omitted as covered by the definition of the word ''officer'' in section 101(14) of this title. The words ''condition is such that'' are substituted for the words ''reconstruction has reached a point where''.

AMENDMENTS

1991—Par. (2). Pub. L. 102–25 struck out ''as'' before ''provided by law''.

1989—Pub. L. 101–189 amended section generally. Prior to amendment, section read as follows: ''Notwithstanding any other provision of law, the President may retain on active duty a disabled officer until his physical condition is such that he will not be further benefited by retention in a military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law.''

1958—Pub. L. 85–861 substituted ''may retain on active duty a disabled officer'' for ''shall retain on active duty any disabled officer who has only a temporary appointment'', and ''military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law'' for ''military hospital or in the Army''.

[§§ 3447 to 3449. Repealed. Pub. L. 96–513, title II, §§ 207, 208, Dec. 12, 1980, 94 Stat. 2884]

Section 3447, acts Aug. 10, 1956, ch. 1041, 70A Stat. 196; Sept. 2, 1958, Pub. L. 85–861, §1(81)(D), 72 Stat. 1480; Sept. 28, 1971, Pub. L. 92–129, title VI, §602, 85 Stat. 361, provided that temporary appointment of a person be made without reference to any other appointment that he may hold in the Army, temporary appointments of commissioned officers in the Regular Army be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades of lieutenant colonel and above, temporary appointments of commissioned officers in the reserve components of the Army be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades above major, and that the President may vacate at any time a temporary appointment in a commissioned grade. See section 601 of this title.

Section 3448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 197; Aug. 8, 1958, Pub. L. 85–603, §1(2), 72 Stat. 526, authorized the Secretary of the Army, upon his determination of need, to appoint qualified persons as warrant officers, with such appointments to continue at the pleasure of the Secretary, and such warrant officers entitled to count all periods of active duty under the appointment as warrant or enlisted service for all purposes and to the benefits of all laws and regulations applicable to the retirement, pensions, and disability of members of the Army on active duty. See section 602 of this title.

Section 3449, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that temporary promotions in warrant officer grades be governed by such regulations as the Secretary of the Army prescribe. See section 602 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3450. Repealed. Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided for suspension of laws for promotion or mandatory retirement or separation during war or emergency of temporary warrant officers of the Army.

[§§ 3451, 3452. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section 3451, act Aug. 10, 1956, ch. 1041, 70A Stat. 197, provided that an officer who is promoted to a temporary grade is considered to have accepted his promotion on the date of the order announcing it, unless he expressly declines the promotion.

Section 3452, added Pub. L. 85–861, §1(81)(E), Sept. 2, 1958, 72 Stat. 1480, provided that, notwithstanding any other provision of law, an officer of Medical Corps or Dental Corps may be promoted to temporary grade of captain at any time after first anniversary of date upon which he graduated from a medical, osteopathic, or dental school.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 341—ACTIVE DUTY

Sec.
3491. Non-regular officers: status.
[3492 to 3502. Repealed.]
3503. Retired commissioned officers: status.
[3504. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1672(b)(4), Oct. 5, 1994, 108 Stat. 3015, struck out items 3495 ''Army National Guard of United States: status'', 3496 ''Army National Guard of United States: commissioned officers; duty in National Guard Bureau'', 3497 ''Army National Guard of United States: members; status in which ordered into Federal service'', 3498 ''Army National Guard of United States: mobilization; maintenance of organization'', 3499 ''Army National Guard in Federal service: status'', 3500 ''Army National Guard in Federal service: call'', 3501 ''Army National Guard in Federal service: period of service; apportionment'', and 3502 ''Army National Guard in Federal service: physical examination''.

1980—Pub. L. 96–513, title V, §502(12), Dec. 12, 1980, 94 Stat. 2910, struck out item 3494 ''Commissioned officers: grade in which ordered to active duty'' and item 3504 ''Retired members: limitations; grade''.

1968—Pub. L. 90–235, §1(a)(3), (b), Jan. 2, 1968, 81 Stat. 753, struck out item 3492 ''Members: service extension during war'', and item 3493 ''Army Reserve: commissioned officers with Corps of Engineers''.

1958—Pub. L. 85–861, §1(82)(B), Sept. 2, 1958, 72 Stat. 1481, added item 3494.

§ 3491. Non-regular officers: status

A commissioned officer of the Army, other than of the Regular Army, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Army Reserve—

(1) whose reserve grade is that in which the officer not of the Regular Army is serving;

(2) who has the same length of service as the officer not of the Regular Army; and

(3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 198.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3491	10:506d(h).	Aug. 7, 1947, ch. 512, §515(h), 61 Stat. 908.

The first 12 words are substituted for 10:506d(h) (1st 11 words). The words ''has the rights and privileges, and is entitled to the benefits'' are substituted for the words ''shall be entitled * * * to the same rights, privileges, and benefits''. Clause (1) is substituted for the words ''in a grade the same as such 'active-duty grade' ''. The words ''as the officer not of the Regular Army'' are substituted for the words ''holding appointment in the Army Reserve''. The words ''his reserve grade'' are substituted for the words ''the grade held in the Army Reserve''.

[§§ 3492, 3493. Repealed. Pub. L. 90–235, § 1(a)(2), (b), Jan. 2, 1968, 81 Stat. 753]

Section 3492, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided for extension of active service of Army members during war. See section 671a of this title.

Section 3493, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, empowered the President to order commissioned officers of the Army Reserve to active duty with the Corps of Engineers.

[§ 3494. Repealed. Pub. L. 96–513, title II, § 209(a), Dec. 12, 1980, 94 Stat. 2884]

Section, added Pub. L. 85–861, §1(82)(A), Sept. 2, 1958, 72 Stat. 1481; amended Pub. L. 86–559, §1(20), June 30, 1960, 74 Stat. 271, provided that a reserve commissioned officer who is ordered to active duty be ordered to that duty in his reserve grade unless the Secretary of the Army orders him to active duty, other than for training, in a higher temporary grade and authorized a re-

serve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college to be ordered, upon his request, to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade. See section 12320 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 3495 to 3502. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(f)(2), Oct. 5, 1994, 108 Stat. 2994]

Section 3495, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, provided that members of Army National Guard of United States were not in active Federal service except when ordered thereto under law. See section 12401 of this title.

Section 3496, act Aug. 10, 1956, ch. 1041, 70A Stat. 198, authorized President to order commissioned officers of Army National Guard of United States to active duty in National Guard Bureau. See section 12402(a), (b)(1) of this title.

Section 3497, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, provided that members of Army National Guard of United States ordered to active duty were to be ordered to duty as Reserves of Army. See section 12403 of this title.

Section 3498, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, related to organization during initial mobilization of units of Army National Guard of United States ordered into active Federal service. See section 12404 of this title.

Section 3499, act Aug. 10, 1956, ch. 1041, 70A Stat. 199, related to application of laws governing Army to members of Army National Guard called into Federal service. See section 12405 of this title.

Section 3500, acts Aug. 10, 1956, ch. 1041, 70A Stat. 199; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), (3), 102 Stat. 2059, authorized President to call Army National Guard units and members into Federal service. See section 12406 of this title.

Section 3501, acts Aug. 10, 1956, ch. 1041, 70A Stat. 199; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to period of service and apportionment of members and units of Army National Guard called into Federal service. See section 12407 of this title.

Section 3502, act Aug. 10, 1956, ch. 1041, 70A Stat. 200, related to physical examinations of members of Army National Guard called into Federal service. See section 12408 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 3503. Retired commissioned officers: status

A retired commissioned officer of the Army who is on active duty is considered, for all purposes except promotion, to be an officer of the branch or organization to which he is assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 200.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3503	10:999.	July 9, 1918, ch. 143, subch. XX (2d par.), 40 Stat. 893.

The words ''and shall be an extra number therein'' are omitted, since, in the opinion of the Judge Advocate General of the Army (JAG 210.85, Feb. 21, 1923), they were repealed by the Act of July 31, 1935, ch. 422, 49 Stat. 505. The words ''in the discretion of the President, employed * * * assigned to duty'' are omitted as surplusage. The word ''branch'' is substituted for the words ''arms, corps, department'' to conform to sections 3063 and 3064 of this title.

[§ 3504. Repealed. Pub. L. 96–513, title II, § 210, Dec. 12, 1980, 94 Stat. 2884]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 200; Sept. 2, 1958, Pub. L. 85–861, § 1(83), 72 Stat. 1481, authorized the President to order any retired member of the Regular Army to active duty and assign him duties considered necessary in the interests of national defense and provided that, when ordered to active duty, a retired commissioned officer of the Army any part of whose service was in the Corps of Engineers be eligible to fill any position required by law to be filled by a commissioned officer of the Corps of Engineers and that any officer who served four years as Chief of the Medical Service Corps, any officer who served two and one-half years as Chief of the Army Nurse Corps or as Chief or an assistant chief of the Women's Medical Specialist Corps or the Army Medical Specialist Corps, or any officer who served two and one-half years as Director or Deputy Director of the Women's Army Corps be ordered to active duty in his retired grade. See section 688 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 343—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
[3531, 3532. Repealed.]
3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions.
3534. Corps of Engineers: detail of officers to assist Mayor of District of Columbia.
[3535. Repealed.]
3536. Leader of Army Band: appointment.
[3538 to 3542. Repealed.]
3543. Aides: detail; number authorized.
[3544 to 3546. Repealed.]
3547. Duties: chaplains; assistance required of commanding officers.
3548. Duties: warrant officers; limitations.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1672(b)(5), Oct. 5, 1994, 108 Stat. 3015, struck out items 3541 ''National Guard Bureau: assignment of officers of regular or reserve components'' and 3542 ''Chief and assistant chief of staff of divisions of Army National Guard in Federal service: detail''.

1980—Pub. L. 96–513, title V, §§ 502(13), 512(5)(C), Dec. 12, 1980, 94 Stat. 2910, 2929, struck out items 3531 ''Chief of Staff to President: appointment'', 3532 ''Assistant to Comptroller of Department of Defense: detail, grade'', and 3535 ''Assistant to Chief of Engineers'', and in item 3534 substituted ''Mayor'' for ''Commissioner''.

1968—Pub. L. 90–623, § 2(6), Oct. 22, 1968, 82 Stat. 1314, substituted ''Corps of Engineers: detail of officers to assist Commissioner of District of Columbia'' for ''Engineer Commissioner of the District of Columbia; assistants; detail'' in item 3534.

Pub. L. 90–235, § 4(a)(3), (10), (b)(2), Jan. 2, 1968, 81 Stat. 759, 760, struck out item 3538 ''Geological Survey: detail of officers of Ordinance Corps'', item 3539 ''American National Red Cross: detail of officers of Army Medical Service'', item 3544 ''Duties: regular officers; performance of civil functions restricted'', and item 3545 ''Duties: officers; superintendence of cooking for enlisted members''.

1964—Pub. L. 88–647, title III, § 301(8), Oct. 13, 1964, 78 Stat. 1071, struck out item 3540 ''Educational institutions: detail of members of regular or reserve components as professors and instructors in military science and tactics''.

1958—Pub. L. 85–861, § 1(84), Sept. 2, 1958, 72 Stat. 1481, struck out item 3546 ''Duties: officers of Medical Corps, contract surgeons; attendance on families of members''.

[§§ 3531, 3532. Repealed. Pub. L. 96–513, title II, §§ 233(a), 234, Dec. 12, 1980, 94 Stat. 2887]

Section 3531, act Aug. 10, 1956, ch. 1041, 70A Stat. 201, authorized the President, by and with the consent of the Senate, to appoint a general officer of the Army as the Chief of Staff to the President, which officer, unless entitled to the rank, pay, and allowances of a grade above lieutenant general under another provision of law, is entitled to the rank, pay, and allowances of a general, and is in addition to the numbers otherwise authorized for that grade.

Section 3532, act Aug. 10, 1956, ch. 1041, 70A Stat. 201, provided that a colonel on the active list of the Regular Army who is detailed as special assistant to the Comptroller of the Department of Defense, has the grade of brigadier general while so serving, unless he is entitled to a higher grade.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3533. Corps of Engineers: assignment or transfer of officers to duties involving civil functions

Officers of the Corps of Engineers may be assigned or transferred to and from duties involving the civil functions of the Corps of Engineers only with the approval of the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Pub. L. 89–718, § 26, Nov. 2, 1966, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3533	10:506(c) (proviso).	Aug. 7, 1947, ch. 512, § 502(c) (proviso), 61 Stat. 883.

The words ''and reassignments'' are omitted as surplusage.

AMENDMENTS

1966—Pub. L. 89–718 struck out provisions requiring the recommendation of the Chief of Engineers in order to transfer officers of the Corps of Engineers to or from the civil functions of the Corps of Engineers.

§ 3534. Corps of Engineers: detail of officers to assist Mayor of District of Columbia

The President may detail not more than three officers assigned to the Corps of Engineers to assist the Mayor of the District of Columbia in discharging his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Pub. L. 90–623, § 2(5), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title V, § 512(5)(A), (B), Dec. 12, 1980, 94 Stat. 2929.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3534(a)	10:189 (less 1st sentence).	June 11, 1878, ch. 180, § 2 (48th through 56th words of 1st sentence, and 2d sentence), 20 Stat. 103.
3534(b)	10:190.	June 11, 1878, ch. 180, § 5 (last sentence); restated Aug. 7, 1894, ch. 232 (proviso under ''For Engineer's Office''), 28 Stat. 246.
		Mar. 3, 1881, ch. 134 (words after last semicolon of 1st par. under ''General Expenses''), 21 Stat. 460.
		Dec. 24, 1890, J. Res. 7 (last sentence), 26 Stat. 1113.

In subsection (a), the words ''whose grade is above first lieutenant'' are substituted for the words ''from among the captains or officers of higher grade''. The words ''in the discretion of'' and ''from time to time, from the Corps of Engineers, by the President, for this duty'' are omitted as surplusage. 10:189 (last sentence) is omitted as obsolete.

In subsections (a) and (b), the words ''assigned to'' are substituted for the word ''of'', since, under section 3063 of this title, officers are assigned to, rather than commissioned in, the Corps of Engineers.

In subsection (b), the words ''assist that officer'' are substituted for the words ''act as assistants to said engineer commissioner''. The words ''his duties'' are substituted for the words ''the special duties imposed upon him''.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''Mayor'' for ''Commissioner'' in section catchline and text.

1968—Pub. L. 90–623 substituted ''Corps of Engineers: detail of officers to assist Commissioner of District of Columbia'' for ''Engineer Commissioner of the District of Columbia; assistants: detail'' as section catchline and struck out provisions for the appointment of an Engineer Commissioner of the District of Columbia.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

[§ 3535. Repealed. Pub. L. 96–513, title II, § 235, Dec. 12, 1980, 94 Stat. 2887]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 201, provided that an officer assigned as Assistant to the Chief of Engineers in charge of civil works, including river and harbor and flood control improvements, be entitled to the rank, pay, and allowances of a brigadier general while so serving.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3536. Leader of Army Band: appointment

(a) The Secretary of the Army may appoint the leader of the Army band from the warrant officers of the Regular Army. The leader serves

during the pleasure of the Secretary and may be returned to his former status in the discretion of the Secretary.

[(b) Repealed. Pub. L. 87–649, § 14c(5), Sept. 7, 1962, 76 Stat. 501.]

(c) Upon retirement, the leader of the Army band has the grade of warrant officer, with the retired pay to which he would have been entitled had he not been appointed leader.

(Aug. 10, 1956, ch. 1041, 70A Stat. 201; Pub. L. 87–649, § 14c(5), Sept. 7, 1962, 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3536(a)	10:11 (1st sentence, less last 85 words; and 2d sentence).	Mar. 3, 1925, ch. 412, 43 Stat. 1100.
3536(b)	10:11 (last 85 words of 1st sentence).	
3536(c)	10:11 (less 1st and 2d sentences).	

In subsection (a), the word ''may'' is substituted for the words ''is authorized''. The first nine words of the second sentence are substituted for 10:11 (1st 15 words of 2d sentence).

In subsection (b), the word ''basic'' is substituted for the word ''base'' to conform to the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''pay and allowances of a captain, and is entitled to be credited for pay purposes with all service which may be credited under section 233 of title 37'' are substituted for 10:11 (last 64 words of 1st sentence). The words ''in lieu of any and all pay and allowances as a warrant officer'' are omitted as surplusage.

In subsection (c), 10:11 (1st proviso of last sentence) is omitted as executed. 10:11 (last proviso of last sentence) and the words ''and received the pay and allowances of'' are omitted as surplusage.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–649 repealed subsec. (b) which related to the basic pay and allowances of the leader of the Army band, and is now covered by sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§§ 3538, 3539. Repealed. Pub. L. 90–235, § 4(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

Section 3538, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, provided for detail of officers of Ordinance Corps of the Army to serve with the Geological Survey.

Section 3539, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, provided for detail of officers of Army Medical Service for duty with the Service to Armed Forces Division of American National Red Cross and for detail of an officer of Medical Corps of the Army to be in charge of first-aid department of American National Red Cross. See section 711a of this title.

[§ 3540. Repealed. Pub. L. 88–647, title III, § 301(7), Oct. 13, 1964, 78 Stat. 1071]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, related to detail of members of regular or reserve components as professors and instructors in military science and tactics to educational institutions, and is covered by section 2111 of this title.

[§§ 3541, 3542. Repealed. Pub. L. 103–337, div. A, title XVI, §§ 1661(c)(2), 1662(g)(2), Oct. 5, 1994, 108 Stat. 2982, 2996]

Section 3541, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, authorized President to assign regular and reserve Army officers to National Guard Bureau. See section 10507 of this title.

Section 3542, act Aug. 10, 1956, ch. 1041, 70A Stat. 202, authorized President to detail certain officers as chief and assistant chief of staff of divisions of Army National Guard in Federal service. See section 12502(a) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 3543. Aides: detail; number authorized

(a) Each major general of the Army is entitled to three aides selected by him from commissioned officers of the Army in any grade below major.

(b) Each brigadier general of the Army is entitled to two aides selected by him from commissioned officers of the Army in any grade below captain.

(Aug. 10, 1956, ch. 1041, 70A Stat. 202.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3543(a)	10:498 (1st 20 words).	R.S. 1098.
3543(b)	10:498 (less 1st 20 words).	

In subsection (a), the words ''commissioned officers * * * in any grade below major'' are substituted for the words ''captains or lieutenants''.

In subsections (a) and (b), the words ''is entitled to'' are substituted for the words ''shall have''.

In subsection (b), the words ''commissioned officers in any grade below captain'' are substituted for the word ''lieutenants''.

[§§ 3544, 3545. Repealed. Pub. L. 90–235, § 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

Section 3544, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, restricted performance of civil functions by commissioned officers of Regular Army. See section 973 of this title.

Section 3545, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, provided that cooking for enlisted members of Army should be superintended by officers of organizations to which members belonged.

[§ 3546. Repealed. Pub. L. 85–861, § 36B(7), Sept. 2, 1958, 72 Stat. 1570]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 203, required officers of the Medical Corps and contract surgeons to attend families of members of the Army.

§ 3547. Duties: chaplains; assistance required of commanding officers

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Army who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3547(a)	10:238.	R.S. 1125.
3547(b)	10:239.	R.S. 1127.
	[Uncodified: Feb. 2, 1901, ch. 192, §12 (last sentence), 31 Stat. 750].	Feb. 2, 1901, ch. 192, §12 (last sentence), 31 Stat. 750.

In subsection (a), the words ''members of the Army'' are substituted for the words ''officers and soldiers''.

In subsection (b), the words ''regiments, hospitals, and posts'', in 10:239, are omitted, since at the time of the enactment of section 1127 of the Revised Statutes, chaplains were authorized only for regiments, hospitals, and posts. The revised section preserves the broad coverage of the original statute. The words ''Each commanding officer shall'' are substituted for the words ''It shall be the duty of commanders'', in 10:239. The word ''furnish'' is substituted for the words ''to afford'', in 10:239. The words ''including necessary transportation'' are substituted for the last sentence of section 12 of the Act of February 2, 1901, ch. 192, 31 Stat. 750. The words ''his command'' are substituted for the words ''the same'', in 10:239. The words ''to assist'' are substituted for the words ''as may aid them'', in 10:239.

§ 3548. Duties: warrant officers; limitations

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 203.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3548	10:593 (1st sentence).	Aug. 21, 1941, ch. 384, §4 (1st sentence), 55 Stat. 653.

10:593 (1st sentence, less provisos) is omitted as superseded by section 3012(e) of this title. 10:593 (last proviso) is omitted as covered by section 936(a)(4) of this title (article 136(a)(4) of the Uniform Code of Military Justice). The words ''may be assigned'' are substituted for the words ''shall be vested with power to''.

CHAPTER 345—RANK AND COMMAND

Sec.
[3571. Repealed.]
3572. Rank: commissioned officers serving under temporary appointments.
[3573, 3574. Repealed.]
3575. Rank: warrant officers.
[3576, 3578. Repealed.]
3579. Command: commissioned officers of Army Medical Department.
[3580. Repealed.]
3581. Command: chaplains.
[3582. Repealed.]
3583. Requirement of exemplary conduct.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, §507(a)(2), Nov. 18, 1997, 111 Stat. 1727, added item 3583.

1980—Pub. L. 96–513, title V, §502(14), Dec. 12, 1980, 94 Stat. 2910, struck out items 3571 ''Rank: commissioned officers on active duty'', 3573 ''Rank: commissioned officers in regular grades of brigadier general and major general; seniority list'', 3574 ''Rank; commissioned officers in regular grades below brigadier general'', and 3582 ''Command: retired officers''.

1978—Pub. L. 95–485, title VIII, §820(f), Oct. 20, 1978, 92 Stat. 1627, struck out item 3580 ''Command: commissioned officers of Women's Army Corps''.

1968—Pub. L. 90–329, June 4, 1968, 82 Stat. 170, substituted ''Army Medical Department'' for ''Army Medical Service'' in item 3579.

Pub. L. 90–235, §5(a)(3), Jan. 2, 1968, 81 Stat. 761, struck out item 3576 ''Command: when different commands of Army and Marine Corps join'', and item 3578 ''Command: commissioned officers of Army in same grade on duty at same place''.

[§ 3571. Repealed. Pub. L. 96–513, title II, § 211, Dec. 12, 1980, 94 Stat. 2885]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 204; Sept. 2, 1958, Pub. L. 85–861, §1(85), 72 Stat. 1481; June 30, 1960, Pub. L. 86–559, §1(21), 74 Stat. 271, provided that commissioned officers of the Army on active duty in the same grade rank among themselves according to date of rank and specified procedures for determining date of rank. See section 741 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3572. Rank: commissioned officers serving under temporary appointments

The President may, in accordance with the needs of the Army, adjust dates of rank of commissioned officers of the Army serving in temporary grades.

(Aug. 10, 1956, ch. 1041, 70A Stat. 204.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3572	10:506d(c) (last sentence).	Aug. 7, 1947, ch. 512, §515(c) (last sentence), 61 Stat. 907.

The word ''commissioned'' is inserted for clarity, since the source statute related only to commissioned officers. The words ''in his discretion, from time to time'' are omitted as surplusage.

[§§ 3573, 3574. Repealed. Pub. L. 96–513, title II, § 211, Dec. 12, 1980, 94 Stat. 2885]

Section 3573, act Aug. 10, 1956, ch. 1041, 70A Stat. 204, specified the date of rank of an officer whose regular grade is brigadier general and the date of rank of an officer whose regular grade is major general and provided that the names of general officers of the Regular Army be carried on a seniority list in the order of seniority in both regular grade and date of rank. See section 741 of this title.

Section 3574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 205; Sept. 2, 1958, Pub. L. 85–861, §§1(86), 33(a)(24), 72 Stat. 1481, 1565, provided for determination of rank of commissioned officers of the same grade in the Regular Army who are on the same promotion list, rank of commissioned officers of the same grade in the Regular Army who are not on the same promotion list or not on a promotion list, and rank among graduates of each class at the United States Military, Naval, or Air Force Academies who, upon graduation, are appointed to the Regular Army. See section 741 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3575. Rank: warrant officers

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 205.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3575	10:593 (less 1st sentence).	Aug. 21, 1941, ch. 384, § 4 (less 1st sentence), 55 Stat. 653; May 29, 1954, ch. 249, § 19(e), 68 Stat. 167.

10:593 (2d sentence) is omitted as executed. The words ''within each warrant officer grade'' are inserted for clarity, since section 745 of this title covers rank between warrant officers in different warrant officer grades.

[§ 3576. Repealed. Pub. L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when different commands of the Army and Marine Corps joined or served together. See section 747 of this title.

[§ 3578. Repealed. Pub. L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 205, provided for command when two or more commissioned officers of the Army in the same grade were on duty at the same place. See section 749 of this title.

§ 3579. Command: commissioned officers of Army Medical Department

(a) Except as provided in subsection (b), a commissioned officer of the Army Medical Department is not entitled to exercise command because of his rank, except within the Army Medical Department.

(b) An officer of the Medical Service Corps may exercise command of troops that are not part of the Army Medical Department whenever authorized by the Secretary of the Army. The Secretary of the Army may delegate such authority to appropriate commanders as the interest of the Army may require.

(Aug. 10, 1956, ch. 1041, 70A Stat. 206; Pub. L. 85–861, § 1(60), (87), Sept. 2, 1958, 72 Stat. 1462, 1482; Pub. L. 87–142, Aug. 17, 1961, 75 Stat. 364; Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title II, § 212(a), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 98–525, title XIV, § 1405(46), Oct. 19, 1984, 98 Stat. 2625.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3579(a)	10:82.	R.S. 1169.
3579(b)	10:166e (less 1st sentence).	Apr. 16, 1947, ch. 38, § 106 (less 1st sentence), 61 Stat. 44.

In subsection (a), the word ''commissioned'' is inserted for clarity. The words ''Except as provided in section 94 of this title'', not contained in section 1169 of the Revised Statutes, but contained in 10:94, are omitted as surplusage, since 10:94 deals exclusively with assignments. The words ''except within the Army Medical Service'' are substituted for the words ''in the line or in other staff corps''. Officers of the Army Nurse Corps and Women's Medical Specialist Corps are not covered by subsection (a), since their command authority is specifically stated in subsection (b).

In subsection (b), 10:166e (last 22 words of 1st sentence) is omitted as superseded by sections 3012(e) and 3065 of this title. The words ''may exercise command only'' are substituted for the words ''shall not be entitled * * * to command except''. The words ''by virtue of their rank'' and ''by competent authority'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3579(a)	10 App.:376(b).	Aug. 9, 1955, ch. 654, § 2, 69 Stat. 579.

The amendment of subsec. (b) also reflects the authority contained in section 3357 of this title to appoint males as reserve officers of the Corps concerned.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–525 substituted ''subsection (b)'' for ''subsection (c)''.

1980—Subsec. (a). Pub. L. 96–513, § 212(a)(1), struck out '', other than an officer of the Army Nurse Corps or Army Medical Specialist Corps,'' after ''officer of the Army Medical Department''.

Subsecs. (b), (c). Pub. L. 96–513, § 212(a)(2), (3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which provided that an officer of the Army Nurse Corps or the Army Medical Specialist Corps exercise command only within his branch, or over persons placed under his charge.

1968—Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service'' in section catchline and in subsecs. (a) and (c).

1961—Subsec. (a). Pub. L. 87–142, § 1(1), substituted ''Except as provided in subsection (c), a'' for ''A''.

Subsec. (c). Pub. L. 87–142, § 1(2), added subsec. (c).

1958—Subsec. (a). Pub. L. 85–861, § 1(60), substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps''.

Subsec. (b). Pub. L. 85–861, § 1(60), (87), substituted ''Army Medical Specialist Corps'' for ''Women's Medical Specialist Corps'' and ''his'' for ''her own'' and ''her''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 3580. Repealed. Pub. L. 95–485, title VIII, § 820(f), Oct. 20, 1978, 92 Stat. 1627]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that the Secretary of the Army prescribe the military authority that commissioned officers of the Women's Army Corps may exercise.

§ 3581. Command: chaplains

A chaplain has rank without command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 206.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3581	10:235.	R.S. 1122.

The words ''and shall be on the same footing with other officers of the Army, as to tenure of office, retirement, and pensions'' are omitted as obsolete, since there is no distinction between the status of a chaplain as an officer and the status of other officers of the Army.

[§ 3582. Repealed. Pub. L. 96–513, title II, § 211, Dec. 12, 1980, 94 Stat. 2885]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that a retired officer has no right to command except when on active duty. See section 750 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3583. Requirement of exemplary conduct

All commanding officers and others in authority in the Army are required—

(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and

(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Added Pub. L. 105–85, div. A, title V, § 507(a)(1), Nov. 18, 1997, 111 Stat. 1726.)

[CHAPTER 347—REPEALED]

[§§ 3611, 3612. Repealed. Pub. L. 90–235, § 8(2), Jan. 2, 1968, 81 Stat. 764]

Section 3611, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided that President could prescribe the uniform of the Army.

Section 3612, act Aug. 10, 1956, ch. 1041, 70A Stat. 206, provided for disposition of uniforms of enlisted members of Army who were discharged and for disposition of uniforms of and issuance of civilian clothing to enlisted members of Army who were discharged otherwise than honorably.

CHAPTER 349—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[3631 to 3633. Repealed.]
3634. Army band: may not be paid for performance outside Army post.
[3635 to 3638. Repealed.]
3639. Enlisted members: officers not to use as servants.

AMENDMENTS

1980—Pub. L. 96–513, title V, § 512(6), Dec. 12, 1980, 94 Stat. 2929, struck out item 3632 ''Members of Army: forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs'', item 3633 ''Commissioned officers: forfeiture of pay when dropped from rolls'', and item 3636 ''Enlisted members: pay and allowances not to accrue during suspended sentence of dishonorable discharge''.

1968—Pub. L. 90–235, §§ 6(a)(8), 7(b)(2), Jan. 2, 1968, 81 Stat. 762, 763, struck out item 3631 ''Dealing in quartermaster supplies prohibited'', item 3635 ''Enlisted members: restriction on civilian employment'', and item 3637 ''Enlisted members: forfeiture of right to pension by deserters''.

1958—Pub. L. 85–861, § 1(88), Sept. 2, 1958, 72 Stat. 1482, struck out item 3638.

[§ 3631. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, prohibited officers of the Quartermaster Corps of the Army and officers performing duties of officers of that branch from dealing in quartermaster supplies.

[§§ 3632, 3633. Repealed. Pub. L. 87–649, § 14c(6), (7), Sept. 7, 1962, 76 Stat. 501]

Sections, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, provided for forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs, and for forfeiture when dropped from rolls, and are now covered by sections 802 and 803 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 3634. Army band: may not be paid for performance outside Army post

(a) PROHIBITION.—Except as provided in subsection (b), no Army band or member thereof may receive remuneration for furnishing music outside the limits of an Army post in competition with local civilian musicians.

(b) RECORDINGS.—(1) Any Army band designated as a special band may produce recordings for commercial sale.

(2) Amounts received as proceeds from the sale of any such recordings may be credited to applicable appropriations of the Department of the Army for expenses of Army bands.

(3) The Secretary of the Army shall prescribe regulations governing the accounting of such proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 207; Pub. L. 101–510, div. A, title III, § 327(a), Nov. 5, 1990, 104 Stat. 1531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3634	10:905.	May 11, 1908, ch. 163, 35 Stat. 110.

The last six words are substituted for 10:905 (last 14 words).

AMERICAN REVOLUTION BICENTENNIAL; RECORDINGS FOR COMMERCIAL SALE

Pub. L. 93–571, Dec. 31, 1974, 88 Stat. 1868, authorized United States Army, Navy, Air Force, and Marine Bands to participate in production of a collection of recordings for commercial sale, in conjunction with American Revolution Bicentennial, and Secretary of Defense to enter into contracts for production and sale of collection of recordings.

AMENDMENTS

1990—Pub. L. 101–510 designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b), no'' for ''No'', and added subsec. (b).

[§ 3635. Repealed. Pub. L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 207, set forth restrictions on civilian employment for enlisted

members of Army on active duty. See section 974 of this title.

[§ 3636. Repealed. Pub. L. 87–649, § 14c(8), Sept. 7, 1962, 76 Stat. 501]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that pay and allowances do not accrue to an enlisted member of Army who is in confinement under sentence of dishonorable discharge, while execution of sentence to discharge is suspended. See section 858b of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 3637. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided that an enlisted member of the Army who deserted forfeited all right to a pension.

[§ 3638. Repealed. Pub. L. 85–861, § 36B(8), Sept. 2, 1958, 72 Stat. 1570]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, required enlisted members to make up time lost. See section 972(a) of this title.

§ 3639. Enlisted members: officers not to use as servants

No officer of the Army may use an enlisted member of the Army as a servant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 208.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3639	10:608.	R.S. 1232.

The words ''in any case whatever'' are omitted as surplusage.

[CHAPTER 351—REPEALED]

[§§ 3661 to 3663. Repealed. Pub. L. 90–377, § 6(1), July 5, 1968, 82 Stat. 288]

Section 3661, act Aug. 10, 1956, ch. 1041, 70A Stat. 208, provided for organization and administration of United States Disciplinary Barracks.

Section 3662, act Aug. 10, 1956, ch. 1041, 70A Stat. 209, provided for military training, organization, and equipping of prisoners who have been sent to United States Disciplinary Barracks.

Section 3663, act Aug. 10, 1956, ch. 1041, 70A Stat. 209, authorized Secretary of the Army to parole or remit sentence and restore to duty offenders who are confined in United States Disciplinary Barracks.

CHAPTER 353—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
3681. Presentation of United States flag upon retirement.
[3682, 3683. Repealed.]
3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
[3685 to 3690. Repealed.]
3691. Flying officer rating: qualifications.
[3692, 3693. Repealed.]

AMENDMENTS

1998—Pub. L. 105–261, div. A, title VI, § 644(a)(2), Oct. 17, 1998, 112 Stat. 2048, added item 3681.

1994—Pub. L. 103–337, div. A, title XVI, § 1672(b)(6), Oct. 5, 1994, 108 Stat. 3015, struck out item 3686 ''Members of Army National Guard of United States: credit for service as members of Army National Guard''.

1986—Pub. L. 99–661, div. A, title VI, § 604(f)(1)(B)(i), Nov. 14, 1986, 100 Stat. 3877, struck out item 3687 ''Compensation: members of Army other than of Regular Army; when same as that provided for members of Regular Army''.

1985—Pub. L. 99–145, title XIII, § 1301(b)(1)(B), Nov. 8, 1985, 99 Stat. 735, struck out item 3683 ''Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted''.

1980—Pub. L. 96–513, title V, § 512(7), Dec. 12, 1980, 94 Stat. 2929, struck out item 3689 ''Assignments and allotments of pay''.

1971—Pub. L. 92–168, § 1(2), Nov. 24, 1971, 85 Stat. 489, struck out item 3692 ''Pilot rating in time of peace: qualifications''.

1968—Pub. L. 90–235, §§ 6(a)(3), 7(a)(4), (b)(3), Jan. 2, 1968, 81 Stat. 762, 763, struck out item 3682 ''Service credit: officers; service as cadet not counted'', item 3685 ''Regular Army; Army Reserve: female members; definition of 'dependents' '', item 3690 ''Exemption from arrest for debt: enlisted members'', and item 3693 ''Replacement of certificate of discharge''.

1958—Pub. L. 85–861, § 1(91), Sept. 2, 1958, 72 Stat. 1482, struck out items 3681 ''Army Register: regular officers; service to be listed'' and 3688 ''Death Gratuity''.

§ 3681. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Army from active duty for retirement, the Secretary of the Army shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 105–261, div. A, title VI, § 644(a)(1), Oct. 17, 1998, 112 Stat. 2048; amended Pub. L. 106–65, div. A, title VI, § 652(e), Oct. 5, 1999, 113 Stat. 666.)

PRIOR PROVISIONS

A prior section 3681, act Aug. 10, 1956, ch. 1041, 70A Stat. 210, related to service listed in the official Army Register, prior to repeal by Pub. L. 85–861, § 36B(9), Sept. 2, 1958, 72 Stat. 1570. See section 122 of this title.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.'' for ''under this section or section 6141 or 8681 of this title or section 516 of title 14.''

EFFECTIVE DATE

Pub. L. 105–261, div. A, title VI, § 644(e), Oct. 17, 1998, 112 Stat. 2049, provided that: ''Sections 3681, 6141, and 8681 of title 10, United States Code (as added by this section), and section 516 of title 14, United States Code (as added by subsection (d)), shall apply with respect to releases from active duty described in those sections on or after October 1, 1998.''

[§ 3682. Repealed. Pub. L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 210, provided that in computing length of service, no commissioned officer of the Army could be credited with service as a cadet at the Military Academy or as a midshipman at the Naval Academy, if he was appointed as a cadet or midshipman after Aug. 24, 1912. See section 971 of this title.

[§ 3683. Repealed. Pub. L. 99–145, title XIII, § 1301(b)(1)(A), Nov. 8, 1985, 99 Stat. 735]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 210; Aug. 25, 1959, Pub. L. 86–197, § 1(4), 73 Stat. 426, related to service credit for certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department.

PERSON PERFORMING ACTIVE SERVICE ON DAY BEFORE REPEAL OF SECTION

Section 1301(b)(1)(C) of Pub. L. 99–145 provided that: ''The repeal made by subparagraph (A) [repealing this section] shall not apply in the case of a person who performed active service described in section 3683 of title 10, United States Code, as such section was in effect on the day before the date of the enactment of this Act [Nov. 8, 1985].''

§ 3684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Army is entitled to count active service as an officer in the Army as enlisted service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 211.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3684	10:631a (last proviso).	July 14, 1939, ch. 267, § 1 (last proviso); restated May 29, 1954, ch. 249, § 19(b) (last proviso), 68 Stat. 166.

[§ 3685. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 211; Sept. 2, 1958, Pub. L. 85–861, § 1(89), 72 Stat. 1482, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Army, Army National Guard of the United States or Army Reserve.

[§ 3686. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 211; Sept. 24, 1980, Pub. L. 96–357, § 5(a), 94 Stat. 1182; Oct. 19, 1984, Pub. L. 98–525, title IV, § 414(a)(7)(A), 98 Stat. 2519, related to credit to members of Army National Guard of United States for service as members of Army National Guard. See section 12602 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 3687. Repealed. Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 212; Sept. 2, 1958, Pub. L. 85–861, § 1(90), 72 Stat. 1482; Sept. 7, 1962, Pub. L. 87–649, § 6(d), 76 Stat. 494, related to compensation for members of Army other than of Regular Army.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as an Effective Date of 1986 Amendment note under section 1074a of this title.

[§ 3688. Repealed. Pub. L. 85–861, § 36B(10), Sept. 2, 1958, 72 Stat. 1570]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 212, related to payment of death gratuity to survivors of members of the Army. See section 1475 et seq. of this title.

[§ 3689. Repealed. Pub. L. 87–649, § 14c(9), Sept. 7, 1962, 76 Stat. 501]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 213; Sept. 26, 1961, Pub. L. 87–304, § 9(c), 75 Stat. 665, related to assignments and allotments of pay. See section 701 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 3690. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 213, exempted enlisted members of the Army, while on active duty, from arrest for any debt, unless it was contracted before enlistment and amounted to at least $20 when first contracted.

§ 3691. Flying officer rating: qualifications

Only officers of the Army in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 213.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3691	10:291c. 10:291c-1. 10:291e.	June 3, 1916, ch. 134, § 13a (8th, 9th, and 11th provisos); added July 2, 1926, ch. 721, § 2 (4th sentence, less 2d proviso), 44 Stat. 781; June 16, 1936, ch. 587, § 3, 49 Stat. 1524; Oct. 4, 1940, ch. 742 (last proviso), 54 Stat. 963. June 24, 1948, ch. 632 (2d proviso under ''Finance Department''), 62 Stat. 650.

10:291c (proviso) and the words ''after June 30, 1948'', in 10:291c–1, are omitted as executed. The definition of the term ''flying officer'', in 10:291c, originally was a definition of the term ''flying officer in time of peace''

as provided by section 2 of the Act of July 2, 1926, ch. 721, 44 Stat. 781. Section 1 of the Act of October 4, 1940, ch. 742, 54 Stat. 963, eliminated the words ''in time of peace''. As a consequence of that amendment, 10:291e (1st 26 words) is omitted as surplusage. Clause (2) is substituted for 10:291c–1 (less last 10 words). The words ''commissioned officers or warrant'', in 10:291c–1, are omitted as surplusage. In clause (4), the last 12 words are substituted for the words ''any other''.

[§ 3692. Repealed. Pub. L. 92–168, § 1(1), Nov. 24, 1971, 85 Stat. 489]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 213, provided qualifications to receive a rating as a pilot in time of peace. See section 2003 of this title.

[§ 3693. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 214, provided for replacement of a lost or destroyed certificate of discharge from Army. See section 1040 of this title.

CHAPTER 355—HOSPITALIZATION

Sec.
[3721, 3722. Repealed.]
3723. When Secretary may require.

AMENDMENTS

1986—Pub. L. 99–661, div. A, title VI, § 604(f)(1)(B)(ii), Nov. 14, 1986, 100 Stat. 3877, struck out item 3721 ''Members of Army, other than of Regular Army'' and item 3722 ''Members of C.M.T.C.; members of Army not covered by section 3721 of this title.''

1958—Pub. L. 85–861, § 1(92)(D), Sept. 2, 1958, 72 Stat. 1482, substituted ''Members of C.M.T.C.'' for ''Members of R.O.T.C. and C.M.T.C.'' in item 3722.

[§§ 3721, 3722. Repealed. Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

Section 3721, acts Aug. 10, 1956, ch. 1041, 70A Stat. 214; Sept. 2, 1958, Pub. L. 85–861, § 1(92)(A), 72 Stat. 1482, related to hospital benefits for members of Army, other than of Regular Army.

Section 3722, acts Aug. 10, 1956, ch. 1041, 70A Stat. 214; Sept. 2, 1958, Pub. L. 85–861, § 1(92)(B), (C), 72 Stat. 1482, related to hospital and related benefits for members of a Citizens' Military Training Camp and for members of Army not covered by section 3721 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as an Effective Date of 1986 Amendment note under section 1074a of this title.

§ 3723. When Secretary may require

The Secretary of the Army may order the hospitalization, medical and surgical treatment, and domiciliary care, for as long as necessary, of any member of the Army on active duty, and may incur obligations with respect thereto, whether or not the member incurred an injury, illness, or disease in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; Pub. L. 99–661, div. A, title VI, § 604(f)(1)(D), Nov. 14, 1986, 100 Stat. 3878; Pub. L. 100–180, div. A, title XII, § 1231(16), Dec. 4, 1987, 101 Stat. 1161.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3723	10:455e. 32:164d.	July 15, 1939, ch. 282; restated Oct. 14, 1940, ch. 875, § 5, 54 Stat. 1137.

The words ''under such regulations as he may prescribe'', in 10:455e and 32:164d, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The reference to 10:455a–455d and 32:164a–164c, and the words ''nor any other law of the United States shall be construed as limiting the power and authority'', are omitted, since the revised section makes explicit the authority of the Secretary to require the prescribed hospitalization and care. The words ''or in training, under the provisions of section 62—'' are omitted as covered by the words ''active duty''. The words ''in the active military service'' are omitted as surplusage. With the exception of 32:62 (4th proviso of last sentence), the references to 32:62–65, 144–146, 183, and 186, in 10:455e and 32:164d, do not refer to members of the Army National Guard of the United States and are therefore omitted from the revised section. 10:455e (1st proviso) and 32:164d (1st proviso) are omitted since they apply only to the National Guard and are covered by section 320 of title 32.

CODIFICATION

Pub. L. 100–26, § 7(j)(11), Apr. 21, 1987, 101 Stat. 283, which directed that section 4723 of this title, as amended by section 604(f)(1)(D) of Pub. L. 99–661, be amended by striking out the comma after ''disease'', could not be executed because no section 4723 of this title has been enacted. The probable intent of Congress was to amend section 3723 of this title. Pub. L. 100–180, § 1231(16), cited as a credit to section 3723 above, made an identical amendment to section 3723.

AMENDMENTS

1987—Pub. L. 100–180 struck out the comma after ''disease''.

1986—Pub. L. 99–661, substituted ''incurred an injury, illness, or disease'' for ''was injured, or contracted a disease''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CHAPTER 357—DECORATIONS AND AWARDS

Sec.
3741. Medal of honor: award.
3742. Distinguished-service cross: award.
3743. Distinguished-service medal: award.
3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award.
3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award.
3746. Silver star: award.
3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement.
3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
3749. Distinguished flying cross: award; limitations.
3750. Soldier's Medal: award; limitations.
3751. Service medals: issue; replacement; availability of appropriations.
3752. Medals: posthumous award and presentation.

Sec.
3753. Civil War battle streamers.
3754. Medal of honor: duplicate medal.
3755.[1] Medal of honor: presentation of Medal of Honor Flag.
3755.[1] Korea Defense Service Medal.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 543(b)(2), Dec. 2, 2002, 116 Stat. 2549, added item 3755 ''Korea Defense Service Medal''.

Pub. L. 107–248, title VIII, § 8143(c)(1)(B), Oct. 23, 2002, 116 Stat. 1570, added item 3755 ''Medal of honor: presentation of Medal of Honor Flag''.

2001—Pub. L. 107–107, div. A, title V, § 553(a)(1)(B), Dec. 28, 2001, 115 Stat. 1116, added item 3754.

EXTENSION OF TIME FOR AWARD OF DECORATION

Pub. L. 93–469, Oct. 24, 1974, 88 Stat. 1422, authorized award, not later than Oct. 24, 1976, of a decoration or device in lieu of decoration which, prior to Oct. 24, 1974, has been authorized by Congress to be awarded to any person for an act, achievement, or service performed while on active duty in Armed Forces of United States, or while serving with such forces, for any such act or service performed in direct support of military operations in Southeast Asia between July 1, 1958, and Mar. 28, 1973, inclusive, if written recommendation for award of decoration, or device in lieu of decoration, was made not later than Oct. 24, 1975.

Act Aug. 2, 1956, ch. 877, 70 Stat. 933, authorized award, not later than Aug. 2, 1957, of a decoration or device in lieu of decoration which, prior to Aug. 2, 1956, has been authorized by Congress to be awarded to any person for an act or service performed while on active duty in military or naval forces of United States, or while serving with such forces, for any such act or service performed between June 27, 1950, and July 27, 1953, inclusive, if written recommendation for decoration or device in lieu of decoration has been submitted to appropriate office in a military department at seat of Government before Aug. 2, 1956.

§ 3741. Medal of honor: award

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who while a member of the Army, distinguished himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; Pub. L. 88–77, § 1(1), July 25, 1963, 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3741	10:1403.	July 9, 1918, ch. 143 (8th par. under ''Ordnance Department''), 40 Stat. 870.

The words ''That the provisions of existing law relating to the award of medals of honor to officers, noncommissioned officers, and privates of the Army be, and they hereby are, amended so that'', in the Act of July 9, 1918, ch. 143 (8th par. under ''Ordnance Department''), 40 Stat. 870, are not contained in 10:1403. They are also omitted from the revised section as surplusage. The word ''member'' is substituted for the words ''officer or enlisted man''. The word ''only'' is omitted as surplusage. The word ''award'' is inserted for clarity, since the President determines the recipient of the medal in addition to presenting it.

AMENDMENTS

1963—Pub. L. 88–77 enlarged authority to award medal of honor, which was limited to those cases in which persons distinguished themselves in action involving actual conflict with an enemy, to permit its award for distinguished service while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

REVIEW REGARDING AWARD OF MEDAL OF HONOR TO CERTAIN JEWISH AMERICAN AND HISPANIC AMERICAN WAR VETERANS

Pub. L. 107–107, div. A, title V, § 552, Dec. 28, 2001, 115 Stat. 1115, provided that:

''(a) REVIEW REQUIRED.—The Secretary of each military department shall review the service records of each Jewish American war veteran or Hispanic American war veteran described in subsection (b) to determine whether that veteran should be awarded the Medal of Honor.

''(b) COVERED JEWISH AMERICAN WAR VETERANS AND HISPANIC AMERICAN WAR VETERANS.—The Jewish American war veterans and Hispanic American war veterans whose service records are to be reviewed under subsection (a) are the following:

''(1) Any Jewish American war veteran or Hispanic American war veteran who was awarded the Distinguished Service Cross, the Navy Cross, or the Air Force Cross before the date of the enactment of this Act [Dec. 28, 2001].

''(2) Any other Jewish American war veteran or Hispanic American war veteran whose name is submitted to the Secretary concerned for such purpose before the end of the one-year period beginning on the date of the enactment of this Act.

''(c) CONSULTATIONS.—In carrying out the review under subsection (a), the Secretary of each military department shall consult with the Jewish War Veterans of the United States of America and with such other veterans service organizations as the Secretary considers appropriate.

''(d) RECOMMENDATION BASED ON REVIEW.—If the Secretary concerned determines, based upon the review under subsection (a) of the service records of any Jewish American war veteran or Hispanic American war veteran, that the award of the Medal of Honor to that veteran is warranted, the Secretary shall submit to the President a recommendation that the President award the Medal of Honor to that veteran.

''(e) AUTHORITY TO AWARD MEDAL OF HONOR.—A Medal of Honor may be awarded to a Jewish American war veteran or Hispanic American war veteran in accordance with a recommendation of the Secretary concerned under subsection (d).

''(f) WAIVER OF TIME LIMITATIONS.—An award of the Medal of Honor may be made under subsection (e) without regard to—

''(1) section 3744, 6248, or 8744 of title 10, United States Code, as applicable; and

''(2) any regulation or other administrative restriction on—

''(A) the time for awarding the Medal of Honor; or

''(B) the awarding of the Medal of Honor for service for which a Distinguished Service Cross, Navy Cross, or Air Force Cross has been awarded.

[1] So in original. Two sections 3755 have been enacted.

''(g) DEFINITION.—For purposes of this section, the term 'Jewish American war veteran' means any person who served in the Armed Forces during World War II or a later period of war and who identified himself or herself as Jewish on his or her military personnel records.''

REVIEW REGARDING UPGRADING OF DISTINGUISHED-SERVICE CROSSES AND NAVY CROSSES AWARDED TO ASIAN-AMERICANS AND NATIVE AMERICAN PACIFIC ISLANDERS FOR WORLD WAR II SERVICE

Pub. L. 104–106, div. A, title V, § 524, Feb. 10, 1996, 110 Stat. 312, provided that:

''(a) REVIEW REQUIRED.—(1) The Secretary of the Army shall review the records relating to each award of the Distinguished-Service Cross, and the Secretary of the Navy shall review the records relating to each award of the Navy Cross, that was awarded to an Asian-American or a Native American Pacific Islander with respect to service as a member of the Armed Forces during World War II. The purpose of the review shall be to determine whether any such award should be upgraded to the Medal of Honor.

''(2) If the Secretary concerned determines, based upon the review under paragraph (1), that such an upgrade is appropriate in the case of any person, the Secretary shall submit to the President a recommendation that the President award the Medal of Honor to that person.

''(b) WAIVER OF TIME LIMITATIONS.—A Medal of Honor may be awarded to a person referred to in subsection (a) in accordance with a recommendation of the Secretary concerned under that subsection without regard to—

''(1) section 3744, 6248, or 8744 of title 10, United States Code, as applicable; and

''(2) any regulation or other administrative restriction on—

''(A) the time for awarding the Medal of Honor; or

''(B) the awarding of the Medal of Honor for service for which a Distinguished-Service Cross or Navy Cross has been awarded.

''(c) DEFINITION.—For purposes of this section, the term 'Native American Pacific Islander' means a Native Hawaiian and any other Native American Pacific Islander within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1074h, 3748, 3755 of this title; title 18 section 704.

§ 3742. Distinguished-service cross: award

The President may award a distinguished-service cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 215; Pub. L. 88–77, § 1(2), July 25, 1963, 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3742	10:1406.	July 9, 1918, ch. 143 (9th par. under ''Ordnance Department''), 40 Stat. 870.

The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words ''since the 6th day of April, 1917'' are omitted as executed. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words ''or herself'' are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words ''or who shall hereafter distinguish'' are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 enlarged authority to award the distinguished-service cross, which was limited to those cases in which persons distinguished themselves in connection with military operations against an armed enemy, to permit its award for extraordinary heroism not justifying award of a medal of honor, while engaged in an action against an enemy of United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which United States is not a belligerent party.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3743. Distinguished-service medal: award

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Army, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3743	10:1407.	July 9, 1918, ch. 143 (10th par., less words after 1st semicolon, under ''Ordnance Department''), 40 Stat. 870.

The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words ''since the 6th day of April, 1917'' are omitted as executed. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words ''or herself'' are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words ''or who shall distinguish'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3744. Medal of honor; distinguished-service cross; distinguished-service medal: limitations on award

(a) No more than one medal of honor, distinguished-service cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Army that the person is entitled to the award.

(c) No medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Army determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, distinguished-service cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; Pub. L. 86–582, §1(1), July 5, 1960, 74 Stat. 320.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3744(a)	10:1411.	July 9, 1918, ch. 143 (12th par., less words after 2d semicolon, under ''Ordnance Department''); restated Jan. 24, 1920, ch. 55, §1 (less last sentence), 41 Stat. 398.
3744(b)	10:1409 (words before 1st semicolon).	
3744(c)	10:1409 (words after 2d semicolon).	July 9, 1918, ch. 143 (less words between 1st and 2d semicolons of 15th par. under ''Ordnance Department''), 40 Stat. 871.

In subsection (a), the words ''may be awarded to a person'' are substituted for the words ''shall be issued to any one person'' to conform to the other subsections of the revised section.

In subsection (b), the word ''thereof'' is substituted for the words ''of either of said medal or of said cross''. The words ''Except as otherwise prescribed in this section'', ''at the time of'', ''specific'', ''official'', and ''has so distinguished himself as'' are omitted as surplusage.

In subsection (c), 10:1409 (words after 3d semicolon) is omitted as executed. The words ''hereinbefore authorized'' are omitted as surplusage.

AMENDMENTS

1960—Subsec. (b). Pub. L. 86–582, §1(1)(A), substituted ''Except as provided in subsection (d), no'' for ''No.''

Subsec. (d). Pub. L. 86–582, §1(1)(B), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3745. Medal of honor; distinguished-service cross; distinguished-service medal: delegation of power to award

The President may delegate his authority to award the medal of honor, distinguished-service cross, and distinguished-service medal, to a commanding general of a separate army or higher unit in the field.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3745	10:1410.	July 9, 1918, ch. 143 (16th par., less words after semicolon, under ''Ordnance Department''), 40 Stat. 872.

The words ''under such conditions, regulations, and limitations as he shall prescribe'' are omitted as surplusage. The words ''his authority'' are substituted for the words ''the power conferred upon him by sections 1403, 1406–1408, 1409–1412, 1416, 1420, 1422, 1423, and 1424 of this title''.

§ 3746. Silver star: award

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Army, is cited for gallantry in action that does not warrant a medal of honor or distinguished-service cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; Pub. L. 88–77, §1(3), July 25, 1963, 77 Stat. 93.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3746	10:1412.	July 9, 1918, ch. 143 (words after 2d semicolon of 12th par. under ''Ordnance Department''); restated Jan. 24, 1920, ch. 55, §1 (last sentence); restated Dec. 15, 1942, ch. 736, 56 Stat. 1052.

The words ''may award'' are inserted to conform to other sections of this chapter. The words ''if the person earned'' are inserted for clarity. The words ''commanded by'' are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 substituted provisions permitting the issuance of a silver star for gallantry while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, and requiring it to be of appropriate design, for provisions which authorized the issuance of the silver star for gallantry in action and which required that the silver star be three-six-

teenths of an inch in diameter, the citation thereof be published in orders issued from the headquarters of a force that is the appropriate command of a general officer, and that it be worn as directed by the President.

EXECUTIVE ORDER NO. 9419

Ex. Ord. No. 9419, Feb. 4, 1944, 9 F.R. 1495, which authorized award of Bronze Star Medal, was superseded by Ex. Ord. No. 11046, Aug. 24, 1962, 27 F.R. 8575, as amended, set out below.

EX. ORD. NO. 11046. BRONZE STAR MEDAL

Ex. Ord. No. 11046, Aug. 24, 1962, 27 F.R. 8575, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247, as amended by Ex. Ord. No. 13286, § 70, Feb. 28, 2003, 68 F.R. 10630, provided:

By virtue of the authority vested in me as President of the United States and as Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

1. The Bronze Star Medal, with accompanying ribbons and appurtenances, which was first established by Executive Order No. 9419 of February 4, 1944, may be awarded by the Secretary of a military department or the Secretary of Homeland Security with regard to the Coast Guard when not operating as a service in the Navy, or by such military commanders, or other appropriate officers as the Secretary concerned may designate, to any person who, while serving in any capacity in or with the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, after December 6, 1941, distinguishes, or has distinguished, himself by heroic or meritorious achievement or service not involving participation in aerial flight—

(a) while engaged in an action against an enemy of the United States;

(b) while engaged in military operations involving conflict with an opposing foreign force; or

(c) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

2. The Bronze Star Medal and appurtenances thereto shall be of appropriate design approved by the Secretary of Defense, and shall be awarded under such regulations as the Secretary concerned may prescribe. Such regulations shall, so far as practicable, be uniform, and those of the military departments shall be subject to the approval of the Secretary of Defense.

3. No more than one Bronze Star Medal shall be awarded to any one person, but for each succeeding heroic or meritorious achievement or service justifying such an award a suitable device may be awarded to be worn with the medal as prescribed by appropriate regulations.

4. The Bronze Star Medal or device may be awarded posthumously and, when so awarded, may be presented to such representative of the deceased as may be deemed appropriate by the Secretary of the department concerned.

5. This order shall supersede Executive Order No. 9419 of February 4, 1944, entitled ''Bronze Star Medal''. However, existing regulations prescribed under that order shall, so far as they are not inconsistent with this order, remain in effect until modified or revoked by regulations prescribed under this order by the Secretary of the department concerned.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title.

§ 3747. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: replacement

Any medal of honor, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is stolen, lost, or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 216; Pub. L. 107–107, div. A, title V, § 553(a)(2), Dec. 28, 2001, 115 Stat. 1116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3747	10:1416.	July 9, 1918, ch. 143 (14th par. under ''Ordnance Department''), 40 Stat. 871.

The words ''issued for wear with or in place of any of them'' are inserted for clarity. The words ''presented under the provisions of this title'' and ''such medal, cross, bar, ribbon, rosette, or device'' are omitted as surplusage.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''stolen, lost, or destroyed'' for ''lost or destroyed''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3748 of this title; title 18 section 704.

§ 3748. Medal of honor; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

The Secretary of the Army may spend, from any appropriation for contingent expenses of the Department of the Army, amounts necessary to provide medals and devices under sections 3741, 3742, 3743, 3744, 3746, 3747, and 3752 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3748	10:1424.	July 9, 1918, ch. 143 (13th par. under ''Ordnance Department''), 40 Stat. 871.

The word ''amounts'' is substituted for the words ''so much as may be''. The word ''provide'' is substituted for the words ''defray the cost of''. The words ''medals and devices under'' are substituted for the words ''medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices provided for in''. The words ''from time to time'' are omitted as surplusage.

§ 3749. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Army, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3749(a)	10:1429 (less 2d and last sentences).	July 2, 1926, ch. 721, §12 (less 1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, §4, 50 Stat. 549.
3749(b)	10:1429 (2d sentence).	
3749(c)	10:1429 (last sentence, less 1st 49 words).	

Although 10:1429 refers to persons serving ''with the Air Corps of the Army'', and the functions of the Army Air Corps have been transferred to the Air Force under section 208(b) of the National Security Act of 1947 (5 U.S.C. 626c(b)), members of the Army continue to participate in aerial flights and are eligible for the award of the distinguished flying cross.

In subsection (a), the words ''Under such rules and regulations as he may prescribe'' are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal. The words ''since the 6th day of April, 1917, has distinguished, or who, after July 2, 1926'' and 10:1429 (proviso of 1st sentence) are omitted as executed.

§ 3750. Soldier's Medal: award; limitations

(a)(1) The President may award a decoration called the ''Soldier's Medal'', of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Army, distinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Soldier's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217; Pub. L. 105–85, div. A, title V, §574(a), Nov. 18, 1997, 111 Stat. 1758.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3750(a)	10:1428 (less last sentence).	July 2, 1926, ch. 721, §11, 44 Stat. 789.
3750(b)	10:1428 (last sentence).	

In subsection (a), the words ''Under such rules and regulations as he may prescribe'' are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal. The words ''a decoration called'' are substituted for the words ''a medal to be known as''. The words ''including the National Guard and the Organized Reserves'' are omitted as surplusage. The words ''or herself'' are omitted, since under section 1 of title 1, words importing the masculine gender include the feminine. The words ''after July 2, 1926'' are omitted as executed.

In subsection (b), the words ''that would otherwise justify'' are substituted for the words ''sufficient to''.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

§ 3751. Service medals: issue; replacement; availability of appropriations

(a) The Secretary of the Army shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Army after May 12, 1928, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use, without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Army or the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Army, amounts necessary to provide medals and devices under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3751(a)	10:1415a (less 21st through 30th words, and less clauses (a) through (n)).	May 12, 1928, ch. 528, §§1 (less 25th through 34th words, and less clauses (a) through (n)), 2 (less applicability to §1 clauses (a) through (n)), 3 (less applicability to §1 (clauses (a) through (n)), 45 Stat. 500.
3751(b)	10:1415b (less applicability to 10:1415a (clauses (a) through (n)).	
3751(c)	10:1415c (less applicability to 10:1415a (clauses (a) through (n)).	

In subsection (a), 10:1415a (proviso) is omitted as surplusage, since the revised section is not limited to persons who are members of the Army at the time of the issue.

In subsection (b), the words ''member of the Army or the Air Force'' are substituted for the words ''persons in the military service of the United States''.

In subsection (c), the last 16 words are substituted for 10:1415c (last 16 words).

ISSUANCE OF CERTAIN OTHER MEDALS AND DEVICES

Section 33 of act Aug. 10, 1956, provided that:

''(a) The Secretary of the Army shall procure, and issue without charge to any person entitled thereto, the following service medals, and any ribbon, clasp, star, or similar device prescribed as a part of that medal:

''(1) Civil War campaign medal;
''(2) Indian campaign medal;
''(3) Spanish campaign medal;
''(4) Spanish War service medal;
''(5) Cuban occupation medal;
''(6) Puerto Rico occupation medal;
''(7) Philippine campaign medal;
''(8) Philippine Congressional medal;
''(9) China campaign medal;
''(10) Cuban pacification medal;
''(11) Mexican service medal;
''(12) Mexican border service medal;
''(13) Victory medal and clasps; and
''(14) fourragere as an individual decoration.

''(b) Under regulations prescribed by the Secretary, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use, with-

out fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Army or the Air Force, the medal or device may be replaced without charge.

''(c) The Secretary may spend, from any appropriation for the support of the Army, amounts necessary to provide medals and devices under this section.

''(d) If a person dies before a medal or device is presented to him under subsection (a), it may be presented to his family.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3752 of this title.

§ 3752. Medals: posthumous award and presentation

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 3751 of this title, it shall be presented to his family.

(Aug. 10, 1956, ch. 1041, 70A Stat. 217; Pub. L. 85–861, § 33(a)(23), Sept. 2, 1958, 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3752(a)	10:1409 (words between 1st and 2d semicolons).	July 9, 1918, ch. 143 (words between 1st and 2d semicolons of 15th par. under ''Ordnance Department''), 40 Stat. 871.
	10:1429 (1st 49 words of last sentence).	July 2, 1926, ch. 721, § 12 (1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.
3752(b)	10:1415a (21st through 30th words, less applicability to clauses (a) through (n)).	May 12, 1928, ch. 528, § 1 (25th through 34th words, less applicability to clauses (a) through (n)), 45 Stat. 500.

In subsection (a), the words ''If a person'' are substituted for the words ''In case an individual * * * dies'', in 10:1409, and ''In case an individual * * * shall have died'', in 10:1429. The words ''within three years from the date'', in 10:1409, are omitted as covered by section 3744 of this title. The words ''who shall distinguish himself'', in 10:1409, and ''who distinguishes himself'', in 10:1429, are omitted as covered by the words ''the award * * * to which he is entitled''.

1958 ACT

The change reflects the fact that the source statute for these sections (sec. 1 of the Act of May 12, 1928, ch. 528, 45 Stat. 500) was mandatory and not merely permissive.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 substituted ''it shall be presented'' for ''it may be presented''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3748, 3755 of this title.

§ 3753. Civil War battle streamers

If, under regulations prescribed by the Secretary of the Army, it is determined that a regiment or other unit of the Army is entitled to that honor, the regiment or unit may carry any appropriate Civil War battle streamer with its colors or standards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 218.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3753	[Uncodified].	Mar. 9, 1948, ch. 104, 62 Stat. 71.

The words ''it is determined'' are substituted for the words ''upon verification in the War Department that it is entitled to such honors''.

§ 3754. Medal of honor: duplicate medal

A person awarded a medal of honor shall, upon written application of that person, be issued, without charge, one duplicate medal of honor with ribbons and appurtenances. Such duplicate medal of honor shall be marked, in such manner as the Secretary of the Army may determine, as a duplicate or for display purposes only.

(Added Pub. L. 107–107, div. A, title V, § 553(a)(1)(A), Dec. 28, 2001, 115 Stat. 1115.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 704.

§ 3755.[1] Medal of honor: presentation of Medal of Honor Flag

The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 3741 of this title after October 23, 2002. Presentation of the flag shall be made at the same time as the presentation of the medal under section 3741 or 3752(a) of this title.

(Added Pub. L. 107–248, title VIII, § 8143(c)(1)(A), Oct. 23, 2002, 116 Stat. 1570; amended Pub. L. 107–314, div. A, title X, § 1062(a)(16), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Pub. L. 107–314 substituted ''October 23, 2002'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 36 section 903.

§ 3755.[1] Korea Defense Service Medal

(a) The Secretary of the Army shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Army served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

(b) In this section, the term ''KDSM eligibility period'' means the period beginning on July 28,

[1] Another section 3755 is set out after this section.

[1] Another section 3755 is set out preceding this section.

1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

(c) The Secretary of the Army shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.

(Added Pub. L. 107–314, div. A, title V, §543(b)(1), Dec. 2, 2002, 116 Stat. 2549.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 107–314, which was approved Dec. 2, 2002.

FINDINGS

Pub. L. 107–314, div. A, title V, §543(a), Dec. 2, 2002, 116 Stat. 2549, provided that: ''Congress makes the following findings:

''(1) More than 40,000 members of the United States Armed Forces have served in the Republic of Korea or the waters adjacent thereto each year since the signing of the cease-fire agreement in July 1953 ending the Korean War.

''(2) An estimated 1,200 members of the United States Armed Forces have died as a direct result of their service in Korea since the cease-fire agreement in July 1953.''

AWARD FOR SERVICE BEFORE DATE OF ENACTMENT

Pub. L. 107–314, div. A, title V, §543(e), Dec. 2, 2002, 116 Stat. 2550, provided that: ''The Secretary of the military department concerned shall take appropriate steps to provide in a timely manner for the issuance of the Korea Defense Service Medal, upon application therefor, to persons whose eligibility for that medal is by reason of service in the Republic of Korea or the waters adjacent thereto before the date of the enactment of this Act [Dec. 2, 2002].''

[CHAPTER 359—REPEALED]

[§§ 3781 to 3787. Repealed. Pub. L. 96–513, title II, § 213, Dec. 12, 1980, 94 Stat. 2885]

Section 3781, acts Aug. 10, 1956, ch. 1041, 70A Stat. 218; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 386, authorized Secretary of the Army to convene at any time a board of officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of substandard performance of duty, to show cause for his retention on active list. See section 1181(a) of this title.

Section 3782, acts Aug. 10, 1956, ch. 1041, 70A Stat. 218; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 387, provided for boards of inquiry, composed of three or more officers, to be convened at such places as Secretary of the Army prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3781 of this title, should be retained on active list of Regular Army. See section 1182 of this title.

Section 3783, acts Aug. 10, 1956, ch. 1041, 70A Stat. 218; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 387, provided for boards of review, composed of three or more officers, to be convened by Secretary of the Army, at such places as he prescribes, to review records of cases of officers recommended by boards of inquiry for removal from active list of Regular Army.

Section 3784, acts Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 387, authorized Secretary of the Army to remove an officer from active list of Regular Army if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive. See section 1184 of this title.

Section 3785, acts Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 387, provided that each officer under consideration for removal from active list of Regular Army under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before a board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceeding. See section 1185 of this title.

Section 3786, acts Aug. 10, 1956, ch. 1041, 70A Stat. 219; July 12, 1960, Pub. L. 86–616, §2(a), 74 Stat. 387, authorized Secretary of the Army, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Army, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 3787, added Pub. L. 96–616, §2(a), July 12, 1960, 74 Stat. 388, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 360—REPEALED]

[§§ 3791 to 3797. Repealed. Pub. L. 96–513, title II, § 213, Dec. 12, 1980, 94 Stat. 2885]

Section 3791, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 388, authorized Secretary of the Army to convene at any time a board of general officers to review record of any commissioned officer on active list of Regular Army to determine whether he should be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with interests of national security, to show cause for his retention on active list. See section 1181(b) of this title.

Section 3792, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 388, provided for boards of inquiry, composed of three or more general officers, to be convened at such places as Secretary of the Army prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 3791 of this title, should be retained on active list of Regular Army. See section 1182 of this title.

Section 3793, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 389, provided for boards of review, composed of three or more general officers, to be convened by Secretary of the Army, at such places as he prescribes, to review records of cases of officers recommended by boards of inquiry for removal from active list of Regular Army.

Section 3794, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 389, authorized Secretary of the Army to remove an officer from active list of Regular Army if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive. See section 1184 of this title.

Section 3795, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 389, provided that each officer under consideration for removal from active list of Regular Army under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on ac-

tive list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of proceedings, except records that Secretary determines be withheld in interests of national security, in which case, a summary, to extent national security permits, be furnished. See section 1185 of this title.

Section 3796, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 389, authorized Secretary of the Army, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Army, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 3797, added Pub. L. 86–616, §3(a), July 12, 1960, 74 Stat. 390, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 361—REPEALED]

[§§ 3811 to 3813. Repealed. Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

Section 3811, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for discharge of enlisted members of Army and limitations thereon, and for issuance of discharge certificates. See section 1169 of this title.

Section 3812, act Aug. 1956, ch. 1041, 70A Stat. 220, provided for the discharge of members of the Army enlisted during war or emergency. See section 1172 of this title.

Section 3813, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for dependency discharges for enlisted members of the Army.

[§ 3814. Repealed. Pub. L. 96–513, title II, § 214, Dec. 12, 1980, 94 Stat. 2885]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, authorized Secretary of the Army to discharge a regular commissioned officer who has less than three years of continuous service as a commissioned officer therein, provided that such officer not be dismissed because of his marriage, unless marriage occurred within one year after date of his original appointment. See section 630 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3814a. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(2), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 93–558, §1, Dec. 30, 1974, 88 Stat. 1793, related to discharge, during a reduction in force, of regular commissioned officers, second lieutenants, first lieutenants, and captains, and expired three years after its effective date, Dec. 30, 1974, in accordance with section 2 of Pub. L. 93–558.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§§ 3815, 3816. Repealed. Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

Section 3815, act Aug. 10, 1956, ch. 1041, 70A Stat. 220, provided for resignation of regular enlisted members of Army enlisted on a career basis and limitations thereon.

Section 3816, act Aug. 10, 1956, ch. 1041, 70A Stat. 221, provided for minority discharges for regular enlisted members of Army. See section 1170 of this title.

[§ 3818. Repealed. Pub. L. 96–513, title II, § 236, Dec. 12, 1980, 94 Stat. 2887]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 221; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(g), 92 Stat. 1627, authorized Secretary of the Army to terminate appointment of a female commissioned officer of Regular Army, other than by dismissal, under regulations prescribed by President, or to terminate the appointment of a female warrant officer or enlistment of a female member of Regular Army by discharge from the Army.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 3819, 3820. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(2), Oct. 5, 1994, 108 Stat. 2963]

Section 3819, added Pub. L. 85–861, §1(93)(A), Sept. 2, 1958, 72 Stat. 1482; amended Pub. L. 98–525, title V, §528(b), Oct. 19, 1984, 98 Stat. 2526, related to discharge of Army Reserve officers for failure of promotion to first lieutenant. See section 14503 of this title.

Section 3820, acts Aug. 10, 1956, ch. 1041, 70A Stat. 221; Sept. 2, 1958, Pub. L. 85–861, §1(93)(B), 72 Stat. 1482, related to discharge and withdrawal of Federal recognition of officers of Army National Guard of United States absent without leave. See section 14907 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[CHAPTER 363—REPEALED]

[§§ 3841, 3842. Repealed. Pub. L. 86–559, § 1(22), June 30, 1960, 74 Stat. 271]

Section 3841, added Pub. L. 85–861, §1(94), Sept. 2, 1958, 72 Stat. 1483, related to separation or transfer to retired reserve of reserve nurses and medical specialists at age 50 if in a reserve grade below major.

Section 3842, added Pub. L. 85–861, §1(94), Sept. 2, 1958, 72 Stat. 1483, related to separation or transfer to Retired Reserve of Reserve nurses and medical specialists at age 55 if in a Reserve grade above captain.

[§§ 3843 to 3846. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 3843, added Pub. L. 85–861, §1(94), Sept. 2, 1958, 72 Stat. 1483; amended Pub. L. 86–559, §1(23), June 30, 1960, 74 Stat. 271; Pub. L. 99–145, title XIII, §1303(a)(20)(A), Nov. 8, 1985, 99 Stat. 739, related to transfer or discharge of reserve commissioned officers below grade of major general. See sections 14509 and 14510 of this title.

Section 3844, added Pub. L. 85–861, §1(94), Sept. 2, 1958, 72 Stat. 1484; amended Pub. L. 86–559, §1(24), June 30, 1960, 74 Stat. 271, related to transfer or discharge of certain reserve major generals and brigadier generals who are 62 years old. See section 14511 of this title.

Section 3845, added Pub. L. 85–861, §1(94), Sept. 2, 1958, 72 Stat. 1484; amended Pub. L. 100–456, div. A, title XII,

§ 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of certain officers of Army National Guard of United States who are 64 years of age. See section 14512(a) of this title.

Section 3846, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484, related to transfer or discharge of reserve first lieutenants, captains, and majors not recommended for promotion by two selection boards. See section 14501 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 3847. Repealed. Pub. L. 90–130, § 1(12)(A), Nov. 8, 1967, 81 Stat. 376]

Section, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1484; Pub. L. 86–559, § 1(25), June 30, 1960, 74 Stat. 272, provided for transfer to Retired Reserve or discharge from his reserve appointment, after July 1, 1960, of each officer in a reserve grade below lieutenant colonel with 25 years service assigned to Army Nurse Corps, Army Medical Specialist Corps, or Women's Army Corps who had not been recommended for promotion to reserve grade of lieutenant colonel or who has not remained on active duty since such a recommendation.

[§ 3848. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 3848, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 86–559, § 1(26), June 30, 1960, 74 Stat. 272; Pub. L. 90–130, § 1(12)(B), Nov. 8, 1967, 81 Stat. 376; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 95–485, title VIII, § 820(h), Oct. 20, 1978, 92 Stat. 1627; Pub. L. 96–513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 99–145, title V, § 522(a)(1), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve first lieutenants, captains, majors, and lieutenant colonels with 28 years of service. See section 14501 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 3849. Repealed. Pub. L. 86–559, § 1(27), June 30, 1960, 74 Stat. 272]

Section, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485, related to separation or transfer to retired reserve of officers in the reserve grade of lieutenant colonel assigned to the Women's Army Corps upon completion of 28 years of service.

[§§ 3850 to 3855. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(a)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 3850, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1485; amended Pub. L. 104–106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer or discharge of excessive reserve commissioned officers in active status with thirty or more years of service. See sections 14514 and 14704 of this title.

Section 3851, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(28), June 30, 1960, 74 Stat. 272; Pub. L. 90–486, § 9(1), Aug. 13, 1968, 82 Stat. 760; Pub. L. 96–513, title V, § 512(8), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98–525, title V, § 513, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–145, title V, § 522(a)(2), title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 631, 739; Pub. L. 99–661, div. A, title XIII, § 1342(g), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve colonels and brigadier generals with 30 years of service or five years in grade. See section 14508(a), (c) of this title.

Section 3852, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(29), June 30, 1960, 74 Stat. 272; Pub. L. 99–145, title V, § 523, title XIII, § 1303(a)(20)(B), Nov. 8, 1985, 99 Stat. 632, 739; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve major generals with 35 years of service or five years in grade. See section 14508(b), (d) of this title.

Section 3853, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486; amended Pub. L. 86–559, § 1(30), June 30, 1960, 74 Stat. 273; Pub. L. 86–651, title I, § 115, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96–513, title V, § 512(9), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 98–94, title X, § 1016(a), Sept. 24, 1983, 97 Stat. 668; Pub. L. 103–337, div. A, title XVI, § 1635(a), Oct. 5, 1994, 108 Stat. 2968, related to computation of years of service. See section 14706 of this title.

Section 3854, added Pub. L. 85–861, § 1(94), Sept. 2, 1958, 72 Stat. 1486, authorized Secretary of the Army to prescribe regulations to carry out this chapter.

Section 3855, added Pub. L. 86–559, § 1(31), June 30, 1960, 74 Stat. 273; amended Pub. L. 96–107, title IV, § 403(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96–513, title II, § 215(a), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 100–180, div. A, title VII, § 717(a), (d)(1)(A), Dec. 4, 1987, 101 Stat. 1113, 1114; Pub. L. 101–189, div. A, title VII, §§ 710(a), 711(a), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status of certain reserve officers. See section 14703(a)(1), (b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[CHAPTER 365—REPEALED]

[§§ 3881, 3882. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section 3881, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized Secretary of the Army to retire regular commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is below major.

Section 3882, act Aug. 10, 1956, ch. 1041, 70A Stat. 222, authorized Secretary of the Army to retire regular commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps whose regular grade is above captain.

[§§ 3883 to 3886. Repealed. Pub. L. 96–513, title II, § 216, Dec. 12, 1980, 94 Stat. 2886]

Section 3883, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85–600, § 1(6), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Oct. 30, 1978, Pub. L. 95–551, § 2, 92 Stat. 2069, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the director of admissions of the United States Military Academy, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3884, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under cl. (1) of that section, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3885, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date or unless retained under section 3923(2) of this title, each commissioned officer whose regular grade is major gen-

eral be retired when he becomes 62 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 3886, acts Aug. 10, 1956, ch. 1041, 70A Stat. 222; Aug. 6, 1958, Pub. L. 85–600, § 1(7), 72 Stat. 522; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115; Oct. 30, 1978, Pub. L. 95–551, § 2, 92 Stat. 2069, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 3923 of this title has been deferred under cl. (2) of that section, and each permanent professor and the director of admissions of the United States Military Academy, be retired when he becomes 64 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3887. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 223, related to computation of years of service of commissioned officers of Army Nurse Corps or Women's Medical Specialist Corps for purposes of retirement under former sections 3881 or 3882 of this title, or retirement pay under section 3991 of this title.

[§§ 3888, 3889. Repealed. Pub. L. 96–513, title II, § 216, Dec. 12, 1980, 94 Stat. 2886]

Section 3888, acts Aug. 10, 1956, ch. 1041, 70A Stat. 223; Aug. 21, 1957, Pub. L. 85–155, title I, § 101(18), 71 Stat. 379; May 20, 1958, Pub. L. 85–422, § 11(a)(3), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1(96), 72 Stat. 1487, related to computation of service for determining retired pay of a commissioned officer of Regular Army retired under section 3883, 3884, 3885, or 3886 of this title. See section 1405 of this title.

Section 3889, act Aug. 10, 1956, ch. 1041, 70A Stat. 224, provided that a member of Army retired under this chapter be entitled to retired pay computed under chapter 371 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 367—RETIREMENT FOR LENGTH OF SERVICE

Sec.
3911. Twenty years or more: regular or reserve commissioned officers.
[3912, 3913. Repealed.]
3914. Twenty to thirty years: enlisted members.
[3915, 3916. Repealed.]
3917. Thirty years or more: regular enlisted members.
3918. Thirty years or more: regular commissioned officers.
[3919. Repealed.]
3920. More than thirty years: permanent professors and the Director of Admissions of the United States Military Academy.
3921. Mandatory retirement: Superintendent of the United States Military Academy.
[3922, 3923. Repealed.]
3924. Forty years or more: Army officers.
3925. Computation of years of service: voluntary retirement; enlisted members.
3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[3927, 3928. Repealed.]
3929. Computation of retired pay: law applicable.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 532(a)(4)(A), Oct. 5, 1999, 113 Stat. 603, added item 3921.

1996—Pub. L. 104–106, div. A, title V, § 509(a)(2), Feb. 10, 1996, 110 Stat. 298, substituted ''permanent professors and the Director of Admissions of the United States Military Academy'' for ''permanent professors of United States Military Academy'' in item 3920.

1981—Pub. L. 97–22, § 10(b)(5), July 10, 1981, 95 Stat. 137, struck out item 3922 ''Thirty years or five years in grade: regular brigadier generals''.

1980—Pub. L. 96–513, title V, § 502(16), Dec. 12, 1980, 94 Stat. 2910, struck out item 3913 ''Twenty years or more: deferred officers not recommended for promotion'', item 3916 ''Twenty-eight years: promotion-list lieutenant colonels'', item 3919 ''Thirty years or more: regular commissioned officers; excessive number'', item 3921 ''Thirty years or five years in grade: promotion-list colonels'', item 3923 ''Thirty-five years or five years in grade: regular major generals'', and item 3927 ''Computation of years of service: mandatory retirement; regular commissioned officers''.

Pub. L. 96–343, § 9(a)(3), Sept. 8, 1980, 94 Stat. 1128, struck out ''regular'' before ''enlisted members'' in items 3914 and 3925.

1967—Pub. L. 90–130, § 1(13), Nov. 8, 1967, 81 Stat. 376, struck out item 3915 ''Twenty-five years: regular majors; Women's Army Corps, Army Nurse Corps and Army Medical Specialist Corps''.

1957—Pub. L. 85–155, title I, § 101(20), title IV, § 401(3), Aug. 21, 1957, 71 Stat. 380, 390, included the Army Nurse Corps and the Army Medical Specialist Corps within item 3915, and struck out item 3912 ''Twenty years or more: regular commissioned officers; Army Nurse Corps and Women's Medical Specialist Corps'' and item 3928 ''Computation of years of service: voluntary retirement; regular commissioned officers; Army Nurse Corps and Women's Medical Specialist Corps''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 12741 of this title.

§ 3911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Army may, upon the officer's request, retire a regular or reserve commissioned officer of the Army who has at least 20 years of service computed under section 3926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b) The Secretary of Defense may authorize the Secretary of the Army, during the period beginning on October 1, 1990, and ending on December 31, 2001, to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Army) of not less than eight years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 224; Pub. L. 101–510, div. A, title V, § 523(a), Nov. 5, 1990, 104 Stat. 1562; Pub. L. 103–160, div. A, title V, § 561(c), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, § 561(e), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, § 1 [[div. A], title V, § 571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3911	10:943a. 10:971b (1st 100 words).	July 31, 1935, ch. 422, § 5 (1st 101 words); restated June 13, 1940, ch. 344, § 3 (1st 45 words), 54 Stat. 380; June 29, 1948, ch. 708, § 202 (1st 105 words), 62 Stat. 1084; July 16, 1953, ch. 203, 67 Stat. 175.

The words ''a regular or reserve commissioned officer of the Army'' are substituted for the words ''any officer on the active list of the Regular Army * * * or any officer of the reserve components of the Army of the United States''. The words ''Philippine Scouts'' are omitted as obsolete. The words ''has at least 20'' are substituted for the words ''shall have completed not less than twenty''. The words ''upon the officer's request'' are substituted for the words ''upon his own application''. The words ''service computed under section 3926 of this title'' are substituted for the words ''active Federal service in the armed forces of the United States'', since that revised section makes explicit the service covered.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (b). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990.''

1993—Subsec. (b). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1990—Pub. L. 101–510 designated existing provisions as subsec. (a) and added subsec. (b).

TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Army, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting ''at least 15 years'' for ''at least 20 years'' in subsec. (a) of this section, see section 4403 of Pub. L. 102–484, set out as a note under section 1293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 637, 638, 638a, 688, 1370, 1406, 3926, 10154, 12646 of this title.

[§ 3912. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 225, permitted the Secretary of the Army, upon the officer's request, to retire a commissioned officer of the Regular Army in the Army Nurse Corps or Women's Medical Specialist Corps who has at least 20 years of service computed under former section 3928 of this title.

[§ 3913. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 225; July 12, 1960, Pub. L. 86–616, § 4, 74 Stat. 390; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of deferred officers not recommended for promotion after twenty years or more of service, except as provided in section 8301 of title 5. See section 627 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3914. Twenty to thirty years: enlisted members

Under regulations to be prescribed by the Secretary of the Army, an enlisted member of the Army who has at least 20, but less than 30, years of service computed under section 3925 of this title may, upon his request, be retired.

(Aug. 10, 1956, ch. 1041, 70A Stat. 225; Pub. L. 85–861, § 33(a)(25), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 96–343, § 9(a)(1), Sept. 8, 1980, 94 Stat. 1128; Pub. L. 103–337, div. A, title V, § 515(a), Oct. 5, 1994, 108 Stat. 2753.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3914	10:948 (1st sentence). 10:948a.	Oct. 6, 1945, ch. 393, § 4 (1st sentence); restated Aug. 10, 1946, ch. 952, § 6(a) (1st sentence), 60 Stat. 996. Aug. 10, 1946, ch. 952, § 7, 60 Stat. 996.

The words ''now or hereafter'', in 10:948a, are omitted as surplusage. The words ''computed under section 3925 of this title'' are substituted for the words ''active Federal service'', in 10:948, and ''active Federal military service'', in 10:948a, since that revised section makes explicit the service covered. The words ''be retired'' are substituted for the words ''will be placed on the retired list of'', in 10:948. The words ''completed a minimum'', in 10:948; and ''the period of'', ''be subject to'', ''periods of'', and ''now or after August 10, 1946'', in 10:948a; are omitted as surplusage.

1958 ACT

The change makes clear that the Secretary of the Army is required to prescribe regulations in this case, and conforms this section to section 8914, its Air Force counterpart.

AMENDMENTS

1994—Pub. L. 103–337 struck out at end ''A regular enlisted member then becomes a member of the Army Reserve. A member retired under this section shall perform such active duty as may be prescribed by law until his service computed under section 3925 of this title, plus his inactive service as a member of the Army Reserve, equals 30 years.''

1980—Pub. L. 96–343 struck out ''regular'' before ''enlisted members'' in section catchline and substituted in section ''an enlisted member'' for ''a regular enlisted member'', ''A regular enlisted member'' for ''He'', and ''Army Reserve. A member retired under this section'' for ''Army Reserve, and''.

1958—Pub. L. 85–861 substituted ''regulations to be prescribed'' for ''regulations prescribed''.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 9(c) of Pub. L. 96–343 provided that: ''The amendments made by this section [amending this section and sections 3925, 8914, and 8925 of this title] shall apply with respect to retired pay payable for months beginning after the date of the enactment of this Act [Sept. 8, 1980].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Army, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to an enlisted member with at least 15 but less than 20 years of serv-

ice by substituting ''at least 15'' for ''at least 20'', see section 4403 of Pub. L. 102–484, set out as a note under section 1293 of this title.

DOUBLE CREDITS FOR FOREIGN SERVICE BY ENLISTED MEN

Acts May 26, 1900, ch. 586, 31 Stat. 209; Mar. 2, 1903, ch. 975, 32 Stat. 933; Apr. 23, 1904, ch. 1485, 33 Stat. 264; Aug. 24, 1912, ch. 391, §1, 37 Stat. 575; May 17, 1932, ch. 190, 47 Stat. 158, provided that: ''In computing length of service for retirement, credit shall be given soldiers for double the time of their actual service in China, Puerto Rico, Cuba, the Philippine Islands, the Island of Guam, Alaska, and Panama, but double credit shall not be given for service rendered subsequent to April 23, 1904, in Puerto Rico or the Territory of Hawaii, nor shall credit for double time for foreign service be given to those who enlisted after August 24, 1912: *Provided*, That nothing herein shall be so construed as to forfeit credit for double time accrued prior to August 24, 1912.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 688, 1176, 1402, 1402a, 1406, 1407, 3963 of this title.

[§ 3915. Repealed. Pub. L. 90–130, § 1(13), Nov. 8, 1967, 81 Stat. 376]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 225; Aug. 21, 1967, Pub. L. 85–155, title I, §101(19), 71 Stat. 379; Sept. 30, 1966, Pub. L. 89–609, §1(5), 80 Stat. 852; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115, provided for retirement after 25 years' service of regular majors in Women's Army Corps, Army Nurse Corps, and Army Medical Specialist Corps.

[§ 3916. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 226; Aug. 21, 1957, Pub. L. 85–155, title I, §101(21), 71 Stat. 380; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115; Oct. 20, 1978, Pub. L. 95–485, title VIII, §820(i), 92 Stat. 1628, provided for retirement of a promotion-list lieutenant colonel, except as provided by section 8301 of title 5, on 30th day after he completes 28 years of service, with authority for Secretary of the Army to defer retirement in certain cases. See section 633 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3917. Thirty years or more: regular enlisted members

A regular enlisted member of the Army who has at least 30 years of service computed under section 3925 of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3917	10:947 (less proviso). 10:947a (less last 11 words).	Mar. 2, 1907, ch. 2515, §1 (1st 35 words), 34 Stat. 1217. Feb. 14, 1885, ch. 67 (less 43d through 53d words); restated Sept. 30, 1890, ch. 1125 (less 43d through 53d words), 26 Stat. 504.

The word ''regular'' is inserted to conform to an opinion of the Judge Advocate General of the Army (JAGA, 1953/2301, 23 Mar. 1953). The words ''upon his request'' are substituted for the words ''upon making application to the President'', in 10:947, and ''by application to the President'', in 10:947a. The words ''either as a private or noncommissioned officer, or both'', in 10:947a, are omitted as surplusage. The words ''shall be retired'' are substituted for the words ''be placed upon the retired list'', in 10:947, and ''be placed on the retired list heretofore created'', in 10:947a. The words ''computed under section 3925 of this title'' are inserted for clarity. The 21 words before the proviso and the proviso of the Act of February 14, 1885, as restated, are not contained in 10:947a. They are also omitted from the revised section, since the proviso is executed and the 21 words before the proviso are omitted as covered by formula E of section 3991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 3925 of this title.

§ 3918. Thirty years or more: regular commissioned officers

A regular commissioned officer of the Army who has at least 30 years of service computed under section 3926 of this title may be retired upon his request, in the discretion of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3918	10:943.	R.S. 1243; Dec. 16, 1930, ch. 14, §1 (as applicable to R.S. 1243), 46 Stat. 1028.

The word ''commissioned'' is inserted, since the retirement of warrant officers for length of service is covered by section 1293 of this title. The word ''regular'' is inserted, since 10:943 is applicable historically only to officers of the Regular Army. The words ''and placed on the retired list'' are omitted as surplusage. The words ''computed under section 3926 of this title'' are inserted for clarity.

DELEGATION OF FUNCTIONS

Functions of the President under this section to approve the request of a regular commissioned officer of the Army to retire after at least 30 years of service delegated to the Secretary of Defense to perform, without approval, ratification, or other action of the President, and with authority for the Secretary to redelegate, see Ex. Ord. No. 12396, §§1(f), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 3926 of this title.

[§ 3919. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 226, authorized Secretary of the Army, when he determined that there were too many commissioned officers on active list of Regular Army in any grade who have at least 30 years of service, to convene a board of at least five general officers of Regular Army to make recommendations for retirement and to retire any officer so recommended.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3920. More than thirty years: permanent professors and the Director of Admissions of the United States Military Academy

(a) The Secretary of the Army may retire an officer specified in subsection (b) who has more than 30 years of service as a commissioned officer.

(b) Subsection (a) applies in the case of the following officers:

(1) Any permanent professor of the United States Military Academy.

(2) The Director of Admissions of the United States Military Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 226; Pub. L. 104–106, div. A, title V, § 509(a)(1), Feb. 10, 1996, 110 Stat. 297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3920	10:1079a(c) (proviso).	Aug. 7, 1947, ch. 512, § 520(c) (proviso), 61 Stat. 912.

The word ''retire'' is substituted for the words ''direct the retirement of''. The words ''as a commissioned officer'' are substituted for the word ''commissioned''.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''permanent professors and the Director of Admissions of the United States Military Academy'' for ''permanent professors of United States Military Academy'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of the Army may retire any permanent professor of the United States Military Academy who has more than 30 years of service as a commissioned officer.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 3921. Mandatory retirement: Superintendent of the United States Military Academy

Upon the termination of the detail of an officer to the position of Superintendent of the United States Military Academy, the Secretary of the Army shall retire the officer under any provision of this chapter under which that officer is eligible to retire.

(Added Pub. L. 106–65, div. A, title V, § 532(a)(1)(A), Oct. 5, 1999, 113 Stat. 602.)

PRIOR PROVISIONS

A prior section 3921, acts Aug. 10, 1956, ch. 1041, 70A Stat. 226; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a promotion-list colonel, except as provided by section 8301 of title 5, on the 30th day after he completes 30 years of service or the 5th anniversary of the date of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2955, effective Sept. 15, 1981. See section 634 of this title.

APPLICATION OF SECTION TO SUPERINTENDENTS SERVING ON OCTOBER 5, 1999

Pub. L. 106–65, div. A, title V, § 532(a)(5), Oct. 5, 1999, 113 Stat. 604, provided that: ''The amendments made by this subsection [enacting this section and sections 4333a, 6371, 6951a, 8921, and 9333a of this title] shall not apply to an officer serving on the date of the enactment of this Act [Oct. 5, 1999] in the position of Superintendent of the United States Military Academy, Superintendent of the United States Naval Academy, or Superintendent of the United States Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service.''

[§§ 3922, 3923. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section 3922, acts Aug. 10, 1956, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a regular grade brigadier general, other than a professor of the United States Military Academy, except as provided by section 8301 of title 5, on the 30th day after he completes 30 years of service or the 5th anniversary of the date of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases. See section 635 of this title.

Section 3923, acts Aug. 10, 1956, ch. 1041, 70A Stat. 227; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a regular grade major general, except as provided by section 8301 of title 5, on the 30th day after he completes 35 years of service or the 5th anniversary of his appointment in that regular grade, whichever is later, with authority for the Secretary of the Army to defer retirement in certain cases. See section 636 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 3924. Forty years or more: Army officers

(a) Except as provided in section 1186 of this title, a commissioned officer of the Army who has at least 40 years of service computed under section 3926 of this title shall be retired upon his request.

(b) Any warrant officer of the Army who has at least 40 years of service computed under section 3926(a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 227; Pub. L. 96–513, title V, § 502(17), Dec. 12, 1980, 94 Stat. 2910.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3924(a)	10:942 (as applicable to commissioned officers).	June 30, 1882, ch. 254 (last 21 words of 3d proviso under ''Pay Department''), 22 Stat. 118.
3924(b)	10:942 (less applicability to commissioned officers).	

In subsection (a), the words ''except as provided in section 3786 of this title'' are inserted, since, under that revised section, when board proceedings are pending against a commissioned officer, his right to retire under this revised section, which is otherwise absolute, is discretionary with the Secretary under that revised section.

In subsections (a) and (b), the words ''or volunteer service, or both'' are omitted as obsolete in accordance with an opinion of the Attorney General, 22 Ops. Atty. Gen. 199, August 30, 1898, holding that such words refer to volunteer service in the Civil War. The words ''upon his request'' are substituted for the words ''if he make application therefor to the President''.

In subsection (b), the applicability of 10:942 to warrant officers is based on an opinion of the Judge Advocate General of the Army (JAGA 1950/6951, 4 Jan. 1951), which holds that 10:594 (less provisos) makes 10:942 applicable to warrant officers.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''1186'' for ''3786''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513, effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 3926 of this title.

§ 3925. Computation of years of service: voluntary retirement; enlisted members

(a) For the purpose of determining whether an enlisted member of the Army may be retired under section 3914 or 3917 of this title, his years of service are computed by adding all active service in the armed forces and service computed under section 3683[1] of this title.

(b) Time required to be made up under section 972(a) of this title may not be counted in determining years of service under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 228; Pub. L. 85–861, § 1(97), Sept. 2, 1958, 72 Stat. 1488; Pub. L. 96–343, § 9(a)(2), Sept. 8, 1980, 94 Stat. 1128; Pub. L. 99–348, title II, § 202(c), July 1, 1986, 100 Stat. 695; Pub. L. 103–337, div. A, title VI, § 635(a)(1), Oct. 5, 1994, 108 Stat. 2788; Pub. L. 104–106, div. A, title V, § 561(d)(2)(A), Feb. 10, 1996, 110 Stat. 322.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3925(a)	10:947 (proviso). 10:958.	Mar. 2, 1907, ch. 2515, § 1 (proviso), 34 Stat. 1218.
3925(b)	[No source].	Aug. 10, 1946, ch. 952, § 6(b), 60 Stat. 996.

In subsection (a), the words ''active service'' are substituted for the word ''service'', in 10:947, and ''active Federal service performed'', in 10:958, for uniformity. The words ''service computed under section 3683 of this title'' are inserted, since a person entitled to count service under that revised section might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

Subsection (b) is inserted because of section 3638 of this title and in accordance with long-standing interpretation of the effect of 10:629 upon the computation of years of service for retirement.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3925	[No source].	[No source].

The amendment reflects the repeal of section 3638 of this title and the enactment of a similar provision in section 972 of this title.

REFERENCES IN TEXT

Section 3683 of this title, referred to in subsec. (a), was repealed (subject to a savings clause) by Pub. L. 99–145, title XIII, § 1301(b)(1)(A), (C), Nov. 8, 1985, 99 Stat. 735.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 972(a)'' for ''section 972''.

1994—Subsec. (a). Pub. L. 103–337, § 635(a)(1)(A), struck out ''and of computing his retired pay under section 3991 of this title,'' after ''3917 of this title,''.

Subsec. (c). Pub. L. 103–337, § 635(a)(1)(B), struck out subsec. (c) which read as follows: ''In determining a member's years of service under subsection (a) for the purpose of computing the member's retired pay under section 3991 of this title—

''(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

''(2) any remaining fractional part of a year shall be disregarded.''

1986—Subsec. (c). Pub. L. 99–348 added subsec. (c).

1980—Pub. L. 96–343, § 9(a)(2)(A), struck out ''regular'' before ''enlisted members'' in section catchline.

Subsec. (a). Pub. L. 96–343, § 9(a)(2)(B), substituted ''an enlisted'' for ''a regular enlisted''.

1958—Subsec. (b). Pub. L. 85–861 substituted ''section 972 of this title'' for ''section 3638 of this title''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–343 effective with respect to retired pay payable for months beginning after Sept. 8, 1980, see section 9(c) of Pub. L. 96–343, set out as a note under section 3914 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3914, 3917 of this title.

§ 3926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

(a) For the purpose of determining whether an officer of the Army may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force;

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement;

(3) all service computed under section 3683[1] of this title; and

(4) if an officer of the Regular Army, all active service performed as an officer of the Philippine Constabulary.

(b) For the purpose of determining whether a commissioned officer of the Regular Army in the Medical Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a con-

[1] See References in Text note below.

[1] See References in Text note below.

tract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a commissioned officer of the Regular Army in the Dental Corps may be retired under section 3911, 3918, or 3924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) For the purpose of determining whether a commissioned officer of the Army Nurse Corps or the Army Medical Specialist Corps may be retired under section 3911 of this title, all service computed under section 3683[1] of this title shall be treated as if it were service as a commissioned officer.

(e) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 228; Pub. L. 86–197, §1(5), Aug. 25, 1959, 73 Stat. 426; Pub. L. 104–106, div. A, title V, §561(d)(2)(B), Feb. 10, 1996, 110 Stat. 322.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3926(a)	10:951 (less applicability to 10:166g(a)). 10:951a. 10:951b (less applicability to 10:166g(a)). [Uncodified: June 18, 1878, ch. 263, §7 (less applicability to 10:166g(a)), 20 Stat. 150].	June 3, 1916, ch. 134, §127a (6th par., less 1st 13 words, and less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended); added June 4, 1920, ch. 227, subch. I, §51 (6th par., less 1st 13 words, and less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended), 41 Stat. 785. May 23, 1928, ch. 716, 45 Stat. 720. June 15, 1935, ch. 257 (less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended), 49 Stat. 377. June 18, 1878, ch. 263, §7 (less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended), 20 Stat. 150. May 29, 1928, ch. 902, 45 Stat. 996; Jan. 29, 1938, ch. 12, §2, 52 Stat. 8.
3926(b)	10:953a (1st sentence).	
3926(c)	10:953a (less 1st sentence).	

Subsection (a) consolidates the various service computation provisions applicable to voluntary retirement of commissioned officers. Clause (1) is substituted for 10:951. Clause (2) is substituted for 10:951b. The words ''pay period and'', in 10:951a, are omitted as superseded by section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U.S.C. 233). The words ''longevity pay and'', in section 7 of the act of June 18, 1878, ch. 263, 20 Stat. 150, are omitted for the same reason. The last sentence of section 7 of that act is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the act of June 29, 1948, ch. 708, 62 Stat. 1084. Clause (3) is inserted, since a person entitled to count service under section 3683 of this title might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

In subsection (b), the words ''as a member of the Medical Reserve Corps'', in 10:953a, are omitted as covered by subsection (a)(1). The words ''are computed by adding to his service under subsection (a)'' are substituted for the words ''shall be credited to the same extent as service under a Regular Army commission''.

Subsection (c) is substituted for 10:953a (less 1st sentence).

REFERENCES IN TEXT

Section 3683 of this title, referred to in subsecs. (a)(3) and (d), was repealed (subject to a savings clause) by Pub. L. 99–145, title XIII, §1301(b)(1)(A), (C), Nov. 8, 1985, 99 Stat. 735.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–106 added subsec. (e).
1959—Subsec. (d). Pub. L. 86–197 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3911, 3918, 3924 of this title.

[§ 3927. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 228; Aug. 21, 1957, Pub. L. 85–155, title I, §101(22), 71 Stat. 380; May 20, 1958, Pub. L. 85–422, §11(a)(4), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, §1(98), 72 Stat. 1488, related to computation of years of service for determining whether a regular commissioned officer should be retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title and for determining the retired pay of officers of the Regular Army retired under section 3913, 3915, 3916, 3919, 3921, 3922, or 3923 of this title. See section 1405 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 3928. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 229, related to computation of years of service of commissioned officers of the Army Nurse Corps or Women's Medical Specialist Corps for the purposes of retirement under former section 3912 of this title, or retirement pay under section 3991 of this title.

§ 3929. Computation of retired pay: law applicable

A member of the Army retired under this chapter is entitled to retired pay computed under chapter 371 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3929	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 369—RETIRED GRADE

Sec.
3961. General rule.
3962. Higher grade for service in special positions.
3963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.

Sec.
3964. Higher grade after 30 years of service: warrant officers and enlisted members.
3965. Restoration to former grade: retired warrant officers and enlisted members.
3966. Retired lists.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title V, § 532(a)(2), Sept. 23, 1996, 110 Stat. 2518, added item 3963.

1988—Pub. L. 100–456, div. A, title XII, § 1233(i)(1)(B), Sept. 29, 1988, 102 Stat. 2058, substituted ''retired'' for ''regular'' in item 3965.

1987—Pub. L. 100–180, div. A, title V, § 512(e)(1), Dec. 4, 1987, 101 Stat. 1091, substituted ''warrant officers and enlisted members'' for ''Army warrant officers; regular enlisted members'' in item 3964.

1985—Pub. L. 99–145, title XIII, § 1301(b)(2)(B), Nov. 8, 1985, 99 Stat. 735, struck out item 3963 ''Higher grade for service during certain periods: regular and reserve commissioned officers''.

1980—Pub. L. 96–343, § 13(a)(4), Sept. 8, 1980, 94 Stat. 1131, substituted ''positions'' for ''positions: regular commissioned officers'' in item 3962.

§ 3961. General rule

(a) The retired grade of a regular commissioned officer of the Army who retires other than for physical disability, and the retired grade of a reserve commissioned officer of the Army who retires other than for physical disability, is determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Army not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230; Pub. L. 96–513, title V, § 502(18), Dec. 12, 1980, 94 Stat. 2910; Pub. L. 103–337, div. A, title XVI, § 1672(c)(2), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 106–398, § 1 [[div. A], title V, § 506(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3961	10:941a(a)(3) (31st through 42d words; and proviso, as applicable to retired grade). 10:941a(e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade). 10:947a (last 11 words). 10:1025. 10:1026 (proviso).	Aug. 7, 1947, ch. 512, §§ 514(a)(3) (31st through 42d words; and proviso, as applicable to retired grade), 514(e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade), 61 Stat. 893, 902. Feb. 14, 1885, ch. 67 (43d through 53d words); restated Sept. 30, 1890, ch. 1125 (43d through 53d words), 26 Stat. 504. R.S. 1254. June 3, 1916, ch. 134, § 4c (proviso); added June 29, 1945, ch. 197 (proviso); restated Aug. 7, 1947, ch. 512, § 513(c) (proviso), 61 Stat. 902.

The applicability of the rule stated in the revised section to situations not expressly covered by the laws named in the source credits above is necessarily implied from laws providing for retirement in higher grade in those situations.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398 struck out ''or for nonregular service under chapter 1223 of this title'' before '', is determined''.

1994—Subsec. (a). Pub. L. 103–337 substituted ''chapter 1223'' for ''chapter 67''.

1980—Pub. L. 96–513 added subsec. (a), designated existing provisions as subsec. (b), and inserted ''not covered by subsection (a)'' after ''Regular or Reserve of the Army''.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 506(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 8961 of this title] shall apply to Reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion by a board convened under chapter 36 or 1403 of title 10, United States Code, or having been found qualified for Federal recognition in a higher grade under chapter 3 of title 32, United States Code, after October 1, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 3962. Higher grade for service in special positions

Upon retirement, any permanent professor of the United States Military Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 230; Pub. L. 85–861, § 1(99), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 89–288, § 2, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 96–343, § 13(a)(1)–(3), Sept. 8, 1980, 94 Stat. 1131; Pub. L. 96–513, title V, § 502(19), Dec. 12, 1980, 94 Stat. 2910; Pub. L. 97–22, § 10(a)(2)(B), July 10, 1981, 95 Stat. 136; Pub. L. 104–106, div. A, title V, § 502(c), (d)(1), Feb. 10, 1996, 110 Stat. 293.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3962(a)	10:506b(d) (less 1st and last provisos).	Aug. 4, 1947, ch. 459, § 102(c) (1st 6, and 9th through 43d, words), 61 Stat. 735.
3962(b)	10:156c (1st 6, and 9th through 43d, words). 10:1026 (less 24 words before proviso, and less proviso).	June 3, 1916, ch. 134, § 4c (less 24 words before proviso, and less proviso); added June 4, 1920, ch. 227, § 4 (less last 18 words of 4th sentence of 7th par.); June 6, 1924, ch. 275, § 2; July 2, 1926, ch. 721, § 7; Apr. 22, 1938, ch. 167; May 12, 1939, ch. 127 (less 75th through 91st words); Oct. 14, 1940, ch. 858, § 1 (less last 26 words); restated June 29, 1945, ch. 197 (less 24 words before proviso, and less proviso); restated Aug. 7, 1947, ch. 512, § 513(c) (less 24 words before proviso, and less proviso), 61 Stat. 902.
3962(c)	10:166g(b) (1st 5, and 8th through 76th, words; and proviso). 10:316b(b) (1st 6, and 9th through 54th, words).	
3962(d)	10:1079a(b) (less proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		Aug. 7, 1947, ch. 512, §§504(d) (less 1st and last provisos), 520(b) (less proviso), 61 Stat. 888, 912. Apr. 16, 1947, ch. 38, §108(b) (1st 5, and 8th through 76th, words; and proviso); restated May 16, 1950, ch. 186, §3(d)(b) (1st 5, and 8th through 76th, words; and proviso), 64 Stat. 161. June 12, 1948, ch. 449, §103(b) (1st 6, and 9th through 54th, words), 62 Stat. 357.

In subsection (a), the words ''who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Army, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 3066 of this title'' are substituted for the words ''while serving in accordance with the provisions of subsection (b) or (c) of this section''.

In subsection (b), or 10:156c (1st 6, and 9th through 43d, words) is omitted as covered by 10:1026 (less 24 words before proviso, and less proviso), since the Medical Service Corps is a branch of the Army. The references to the Commanding General of the General Headquarters Air Force are omitted as executed.

In subsection (c), 10:166g(b) (proviso) is omitted as executed.

In subsection (d), the words ''Upon retirement'' are substituted for the words ''When * * * is retired''. The word ''allowances'' is omitted, since retired officers are not entitled to allowances. The words ''grade is below brigadier general'' are inserted, since any permanent professor who has the grade of brigadier general retires in that grade under section 4335 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3962	[No source].	[No source].

The amendment reflects section 1 of the Act of May 31, 1956, ch. 348 (70 Stat. 222), which in effect amended section 3963 of this title to cover regular officers covered by section 3962(c).

AMENDMENTS

1996—Pub. L. 104–106 designated subsec. (b) as entire section and struck out subsec. (a) which read as follows: ''Upon retirement, a commissioned officer of the Army who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Army, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) as Surgeon General of the Army in the grade of lieutenant general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade in which he served on active duty.''

1980—Pub. L. 96–343, §13(a)(3), substituted ''positions'' for ''positions: regular commissioned officers'' in section catchline.

Subsec. (a). Pub. L. 96–513, §502(19)(A), as amended by Pub. L. 97–22, struck out cl. (4) which had referred to service in a position of importance and responsibility designated by the President to carry out the grade of general or lieutenant general under section 3066 of this title, and redesignated cl. (5) as (4).

Pub. L. 96–343, §13(a)(1), substituted ''Army who has'' for ''Regular Army who has'' and ''in which he served on active duty'' for ''held by him at any time on the active list''.

Subsec. (b). Pub. L. 96–513, §502(19)(B), (C), redesignated subsec. (c) as (b). Former subsec. (b), which provided that, upon retirement, a commissioned officer of the Army who had served at least four years as chief or assistant chief of a branch was entitled to retire in the highest grade, prescribed for such an office, that he had held while so serving, was struck out.

Pub. L. 96–343, §13(a)(2), struck out ''Regular'' before ''Army''.

Subsec. (c). Pub. L. 96–513, §502(19)(C), redesignated subsec. (c) as (b).

1965—Subsec. (a). Pub. L. 89–288 added the Surgeon General of the Army to the list of commissioned officers who may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him at any time on the active list.

1958—Subsecs. (c), (d). Pub. L. 85–861 redesignated former subsec. (d) as (c) and repealed former subsec. (c) which related to retirement of commissioned officers who served as Director or Deputy Director of the Women's Army Corps, Chief of the Army Nurse Corps, or Chief or assistant chief of the Women's Medical Specialist Corps.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

APPOINTMENT BY PRESIDENT OF RETIRED COMMISSIONED OFFICER OF RESERVE COMPONENT TO HIGHER RETIRED GRADE; RECALCULATION OF PAY

Section 13(c) of Pub. L. 96–343 provided that:

''(1) The President may, by and with the advice and consent of the Senate, appoint any commissioned officer of a reserve component of the Armed Forces who retired after December 31, 1967, to the retired grade in which such officer could have been retired had such officer retired on or after the date of the enactment of this Act [Sept. 8, 1980].

''(2) The retired pay of any retired officer who is appointed to a higher retired grade under paragraph (1) shall be recalculated as if such officer had retired in the grade to which appointed, but any increase in such retired pay by virtue of such appointment or this subsection shall be effective only with respect to periods beginning on or after the date on which such appointment is made.''

RETIRED GRADE FOR CERTAIN GENERAL OFFICERS

Section 38 of act Aug. 10, 1956, provided that the President, by and with the advice and consent of the Senate, could extend privilege granted by former sections 3962(a) and 8962(a) of this title to retired officers who served in grade of general or lieutenant general after Dec. 7, 1941, and before July 1, 1946.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 3963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A Reserve enlisted member of the Army described in subsection (b) who is retired under section 3914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Army.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of retirement is serving on active duty (or, in the case of a member of the

National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Army.

(c) This section applies with respect to Reserve enlisted members who are retired under section 3914 of this title after September 30, 1996.

(Added Pub. L. 104–201, div. A, title V, § 532(a)(1), Sept. 23, 1996, 110 Stat. 2518.)

PRIOR PROVISIONS

A prior section 3963, acts Aug. 10, 1956, ch. 1041, 70A Stat. 230; Sept. 2, 1958, Pub. L. 85–861, § 1(60), (100), 72 Stat. 1462, 1489; Dec. 12, 1980, Pub. L. 96–513, title V, § 502(20), 94 Stat. 2910, related to higher grade for service during certain periods for regular and reserve commissioned officers, prior to repeal by Pub. L. 99–145, title XIII, § 1301(b)(2)(A), (C), Nov. 8, 1985, 99 Stat. 735, with such repeal not applicable in the case of a member of the Regular Army described in section 3963 of this title, as such section was in effect on the day before Nov. 8, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3991 of this title.

§ 3964. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Army covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Army.

(b) This section applies to—

(1) warrant officers of the Army;

(2) enlisted members of the Regular Army; and

(3) reserve enlisted members of the Army who, at the time of retirement, are serving on active duty (or, in the case of members of the National Guard, on full-time National Guard duty).

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Pub. L. 85–861, § 1(100), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 98–525, title V, § 533(c), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 100–180, div. A, title V, § 512(a), Dec. 4, 1987, 101 Stat. 1089.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3964	10:594 (1st proviso, less last 39 words; and last proviso). 10:1004 (less 30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (1st proviso, less last 39 words; and last proviso); restated June 29, 1948, ch. 708, § 203(c) (1st proviso, less last 39 words; and last proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19(f), 68 Stat. 167. June 29, 1948, ch. 708, § 203(e) (less 30 words before proviso), 62 Stat. 1086.

The words ''when his active service plus his service on the retired list totals 30 years'' are substituted for the words ''upon the completion of thirty years' [years of] service, to include the sum of his active service and his service on the retired list'', in 10:594 and 1004. The words ''under any provision of law'', in 10:594 and 1004; ''officer, flight officer, or warrant officer'', in 10:594; and ''commissioned, warrant, or enlisted'', in 10:1004; are omitted as surplusage. 10:594 (last proviso) and 1004 (proviso) are omitted as superseded by section 1372 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3964	10 App.:1004.	May 31, 1956, ch. 348, § 1, 70 Stat. 222.

AMENDMENTS

1987—Pub. L. 100–180 substituted ''warrant officers and enlisted members'' for ''Army warrant officers; regular enlisted members'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Each warrant officer of the Army, and each enlisted member of the Regular Army, who is retired before or after this title is enacted is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Army.''

1984—Pub. L. 98–525 substituted ''highest grade'' for ''highest temporary grade''.

1958—Pub. L. 85–861 struck out '', after September 8, 1940 and before July 1, 1946'' after ''Secretary of the Army''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 512(f) of Pub. L. 100–180 provided that: ''The amendments made by subsections (a) and (c) [amending this section and section 8964 of this title] shall apply to any reserve enlisted member who completes 30 years of service in the Armed Forces before, on, or after the date of the enactment of this Act [Dec. 4, 1987]. No person may be paid retired pay at a higher rate by reason of the enactment of this Act [Pub. L. 100–180, see Tables for classification] for any period before the date of the enactment of this Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3965, 3992 of this title.

§ 3965. Restoration to former grade: retired warrant officers and enlisted members

Each retired warrant officer or enlisted member of the Army who has been advanced on the retired list to a higher commissioned grade under section 3964 of this title, and who applies to the Secretary of the Army within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Pub. L. 100–180, div. A, title V, § 512(d)(1), Dec. 4, 1987, 101 Stat. 1090; Pub. L. 100–456, div. A, title XII, § 1233(i)(1)(A), Sept. 29, 1988, 102 Stat. 2058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3965	10:1006.	June 29, 1948, ch. 708, § 204, 62 Stat. 1086.

The words ''hereafter'', ''rank or'', and ''shall thereafter be deemed to be enlisted or warrant officer per-

sonnel, as appropriate, for all purposes'' are omitted as surplusage. The words ''three months from June 29, 1948'' and ''whichever is later'' are omitted as executed.

AMENDMENTS

1988—Pub. L. 100–456 substituted ''retired'' for ''regular'' in section catchline.

1987—Pub. L. 100–180 struck out ''Regular'' before ''Army who''.

§ 3966. Retired lists

(a) The Secretary of the Army shall maintain a retired list containing the name of each retired commissioned officer of the Regular Army.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Army, other than of the Regular Army; and

(2) each retired warrant officer or enlisted member of the Army who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Army.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 231; Pub. L. 85–861, § 1(101), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 100–180, div. A, title V, § 512(d)(1), Dec. 4, 1987, 101 Stat. 1090.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3966(a)	10:1001.	June 29, 1948, ch. 708, §§ 201, 301(a), 62 Stat. 1084, 1087.
3966(b)	10:1036.	
3966(c)	[No source].	
3966(d)	[No source].	

In subsections (a), (b), (c) and (d), the word ''maintain'' is substituted for the word ''establish'', since the lists have been established and are published annually.

In subsection (a), the words ''Effective upon June 29, 1948'' are omitted as executed. 10:1001 (last 12 words of 1st sentence, and last sentence) is omitted as no longer required, since, upon enactment of this title laws referring to the limited or unlimited retired list will be expressly repealed.

Subsection (b)(1) is substituted for the words ''all commissioned officers and former commissioned officers of the Army of the United States * * * other than those of the Regular Army * * * heretofore or hereafter granted retirement pay under sections 456, 456a, and 1036a of this title, or any law hereafter enacted to provide retirement pay for commissioned officers other than those of the Regular Army''.

In subsection (b)(2), the words ''who is advanced to a commissioned grade'' are substituted for the words ''heretofore or hereafter retired under any provision of law who, by reason of service in temporary commissioned grades in the Army of the United States * * * or in any of the respective components thereof, are entitled to be retired with commissioned rank or grade''.

Subsections (c) and (d) are inserted, since sections 3964 and 3965 of this title refer to service on the retired list as a warrant officer or enlisted member.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3966(a)	10 App.:1001.	July 24, 1956, ch. 677, § 2(f), (g), 70 Stat. 623.
3966(b)	10 App.:1036.	

AMENDMENTS

1987—Subsec. (b)(2). Pub. L. 100–180 struck out ''Regular'' before ''Army''.

1958—Pub. L. 85–861 struck out provisions in subsecs. (a) and (b) which required annual publication in the official Army Register of the retired list.

CHAPTER 371—COMPUTATION OF RETIRED PAY

Sec.
3991. Computation of retired pay.
3992. Recomputation of retired pay to reflect advancement on retired list.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3929 of this title.

§ 3991. Computation of retired pay

(a) COMPUTATION.—

(1) FORMULA.—The monthly retired pay of a member entitled to such pay under this subtitle is computed by multiplying—

(A) the member's retired pay base (as computed under section 1406(c) or 1407 of this title), by

(B) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(2) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—If a member who is retired under section 3914 of this title has been credited by the Secretary of the Army with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under paragraph (1) (but to not more than 75 percent of the retired pay base upon which the computation of such retired pay is based). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(b) GENERAL RULES.—

(1) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula in subsection (a) or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him.

(2) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (a), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(c) SPECIAL RULE FOR RETIRED RESERVE ENLISTED MEMBERS COVERED BY SECTION 3963.—In the case of a Reserve enlisted member retired under section 3914 of this title whose retired grade is determined under section 3963 of this title and who first became a member of a uniformed service before September 8, 1980, the retired pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the member's retired grade (determined based upon the rates of basic pay applicable on the date of the member's retirement), and that amount shall be used for the purposes of subsection (a)(1)(A) rather than the amount computed under section 1406(c) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 232; Pub. L. 85–155, title I, § 101(23), Aug. 21, 1957, 71 Stat. 380; Pub. L. 85–422, §§ 6(1), (8), 11(a)(5), May 20, 1958, 72 Stat. 129, 131; Pub. L. 85–861, § 1(101A), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 88–132, § 5(h)(2), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90–207, § 3(2), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96–342, title VIII, § 813(c), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, §§ 502(21), (22), 512(10), Dec. 12, 1980, 94 Stat. 2910, 2929; Pub. L. 98–94, title IX, §§ 922(a)(7), 923(a)(1), (2)(F), Sept. 24, 1983, 97 Stat. 641, 642; Pub. L. 99–348, title II, § 202(a), July 1, 1986, 100 Stat. 694; Pub. L. 103–337, div. A, title VI, § 635(a)(2), Oct. 5, 1994, 108 Stat. 2788; Pub. L. 104–201, div. A, title V, § 532(d)(1), Sept. 23, 1996, 110 Stat. 2520.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3991 Introductory paragraph.	10:156c (7th and 8th words). 10:166g(b) (7th word). 10:316b(b) (7th and 8th words). 10:941a(a)(3) (proviso, less applicability to retired grade). 10:941a(e) (1st proviso of clause (1), less applicability to retired grade).	R.S. 1274. Mar. 2, 1907, ch. 2515, § 1 (less 1st 35 words, and less proviso), 34 Stat. 1217. June 3, 1916, ch. 134, § 4c (24 words before proviso); added June 4, 1920, ch. 227, § 4 (last 18 words of 4th sentence of 7th par.); May 12, 1939, ch. 127 (75th through 91st words); Oct. 14, 1940, ch. 858, § 1 (last 26 words); restated June 29, 1945, ch. 197 (21 words before proviso); restated Aug. 7, 1947, ch. 512, § 513(c) (24 words before proviso), 61 Stat. 902.
3991(A)	10:166g(a) (less 1st 49 words; less 1st proviso; and less 1st 84 words of last proviso). 10:941a(a)(3) (less 31st through 42d words, and less proviso).	
3991(B)	10:941a(e) (clause (1), less 1st 25, and 59th through 113th, words; and less 1st proviso).	
3991(C)	10:971. 10:971b (less 1st 100 words, and less 1st and 3d provisos).	July 31, 1935, ch. 422, § 5 (less 1st 101 words, and less 3d proviso); restated June 13, 1940, ch. 344, § 3 (less 1st 45 words, and less 2d proviso), 54 Stat. 380; Aug. 7, 1947, ch. 512, §§ 514(g), 521(a), 61 Stat. 906, 912; June 29, 1948, ch. 708, § 202 (less 1st 105 words), 62 Stat. 1084.
3991(D)	10:948 (less 1st sentence, and less 1st and last provisos of last sentence).	
3991(E)	10:980.	
3991 Footnote 1.	10:506b(d) (1st proviso). 10:1079a(b) (proviso).	
3991 Footnote 2.	10:156c (less 1st 43, and last 13, words). 10:166g(b) (less 1st 76 words, less 20 words before proviso, and less proviso). 10:316b(b) (less 1st 54, and last 13, words). 10:1002 (34 words before proviso, and proviso). 10:1003 (last 40 words). 10:1026 (24 words before proviso).	Oct. 6, 1945, ch. 393, § 4 (less 1st sentence); restated Aug. 10, 1946, ch. 952, § 6(a) (less 1st sentence), 60 Stat. 996. Aug. 10, 1946, ch. 952, § 6(c), 60 Stat. 996. Apr. 16, 1947, ch. 38, § 108(a) (less 1st 49 words, and less 1st 84 words of last proviso), 61 Stat. 44.
3991 Footnote 3.	[No source].	Apr. 16, 1947, ch. 38, § 108(b) (less 1st 5, and 8th through 76th, words; less 20 words before proviso; and less proviso); restated May 16, 1950, ch. 186, § 3(d)(b) (less 1st 5, and 8th through 76th, words; less 20 words before proviso; and less proviso), 64 Stat. 161. Aug. 4, 1947, ch. 459, § 102(c) (less 1st 6, 9th through 43d, and last 13, words), 61 Stat. 735.
3991 Footnote 4.	10:166g(a) (1st proviso). 10:941a(e) (94th through 113th words of clause (1). 10:948 (last proviso of last sentence). 10:971b (1st proviso). 37:272(d) (1st proviso).	
3991 Footnote 5.	10:948 (1st proviso of last sentence).	

HISTORICAL AND REVISION NOTES—CONTINUED
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		Aug. 7, 1947, ch. 512, §§ 504(d) (1st proviso), 514(a)(3) (less 31st through 42d words; and less proviso, less applicability to retired grade), 514(e) (clause (1), less 1st 25, and 59th through 93d, words; and less 1st proviso, as applicable to retired grade), 520(b) (proviso), 61 Stat. 888, 902, 905, 912. June 12, 1948, ch. 449, § 103(b) (less 1st 6, 9th through 54th, and last 13, words), 62 Stat. 357. June 29, 1948, ch. 708, §§ 203(a) (34 words before proviso, and proviso), 203(d) (last 40 words), 62 Stat. 1085.

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula B, the words ''basic pay'' are substituted for the words ''base and longevity pay'' to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''his retired grade'' are substituted for the words ''permanent grade held at time of retirement'' to reflect the right to higher retired grade when qualified under other provisions of law. 10:941a(e) (last proviso of clause (1)) is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U.S.C. 233), the active duty pay of all members of the Army is based upon years of service.

In formula C, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words ''basic pay'' are substituted for the words ''active duty base and longevity pay'', and the words ''in determining his basic pay'' are substituted for the words ''for longevity pay purposes'', to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''Monthly basic pay of member's retired grade'' are substituted for the words ''the rank upon which they are retired'', in 10:971, and ''rank with which retired'', in 10:971b, to reflect their right to advancement on the retired list. 10:971 now applies only when the retiring officer has 30 or more years of service which may be credited in computing his retired pay. 10:971b (2d proviso) is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U.S.C. 233), the pay of all members is based upon cumulative years of service. 10:971b (4th proviso) is omitted as executed. 10:971b (last proviso) is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the act of June 29, 1948, ch. 708, 62 Stat. 1084. Sections 3918, 3920, and 3924 are included under this formula, since it achieves the same result as is reached on a basis of 30 years multiplied by 2½ percent, and simplifies the table.

In formulas D and E, the words ''credited under section 3925'' are substituted for the words ''active Federal service'', since that revised section makes explicit the service covered. The act of August 10, 1946, ch. 952, § 6(c), 60 Stat. 996, is not contained in 10:948. It is also omitted from the revised section as executed. 10:980 now applies only when the retiring enlisted member has at least 30 years of service which may be credited in computing his retired pay. However, as noted above, 10:980 is the only provision of law applicable to cases in which the retiring member has at least 30 years of service. The act of June 16, 1942, ch. 413, § 19 (63d through 75th words of 2d par.), 56 Stat. 369, repealed so much of

the act of March 2, 1907, ch. 2513, 34 Stat. 1217, as provided allowances for enlisted men on the retired list. The repeal of section 19 of the act of June 16, 1942, by section 531(b)(34) of the Career Compensation Act of 1949, 63 Stat. 839, did not revive that portion of the act of March 2, 1907, which had been repealed by the act of June 16, 1942. Accordingly, the act of March 2, 1907, as thus modified by the act of June 16, 1942, is used as the basis for formula E.

Footnote 2 reflects the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. Except in cases covered by formula C the pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were themselves enacted after the provisions authorizing higher retired grade. The provisos of 10:1002 and 1005 are omitted as surplusage, since no formula for the computation of retired pay includes inactive service on the retired list as a credit.

The words ''at rates applicable on date of retirement and adjust to reflect later changes in permanent rates'', in footnote 2; and all of footnote 4; are based on the source statutes incorporated in the formulas to which footnotes 2 and 4 apply.

In footnote 4, the words ''and disregard a part of a year that is less than six months'' are made applicable to formulas A—E although this part of the rule is expressed only as to formula B, in 10:941a(e)(1). The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, first session, p. 313, July 6, 1949) indicates that the provisions, upon which formulas A and C—E are based, should be construed to require that a part of a year that is less than six months be disregarded.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3991	[No source].	[No source].

The amendment reflects section 1(99) of the bill [amending section 3962 of Title 10].

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

1994—Subsec. (a)(1). Pub. L. 103–337, §635(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) contained table which provided two formulas for computing retired pay for cases covered under sections 3911, 3914, 3917, 3918, 3920, and 3924 of this title.

Subsec. (b)(1). Pub. L. 103–337, §635(a)(2)(B)(i), struck out ''of the table'' after ''than one formula''.

Subsec. (b)(3). Pub. L. 103–337, §635(a)(2)(B)(ii), struck out heading and text of par. (3). Text read as follows: ''Section references in the table in subsection (a) are to sections of this title.''

1986—Pub. L. 99–348 amended section generally by completely revising the formula for computation of retired pay to provide that the retired pay base as computed under section 1406(c) or 1407 be multiplied by the retired pay multiplier prescribed in section 1409 for years of service credited under section 1405 for sections 3911, 3918, 3920, and 3924 and for the years of service credited under section 3925 for sections 3914 and 3917, eliminated monthly basic pay of a member's retired grade or to which a member was entitled on the day before he retired multiplied by 2½ percent of the years of service credited, subject to footnotes 1 to 4, as the basis for computing retired pay, incorporated provisions of column 3 and footnote 5 into subsec. (a)(2), struck out column 4, which provided that the excess over 75% of pay upon which the computation is based be subtracted, struck out footnotes 1 to 4, and added subsec. (b).

1983—Pub. L. 98–94, §922(a)(7), inserted ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Pub. L. 98–94, §923(a)(1), (2)(F), in footnote 4 to table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1980—Pub. L. 96–513, §512(10), in heading for column 1 of the table substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981''.

Pub. L. 96–342 in heading for column 1 of the table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

Pub. L. 96–513, §502(21), in table struck out Formula A and redesignated Formulas B, C, and D as A, B, and C, respectively.

Pub. L. 96–513, §502(22), in footnote numbered 1 to the table substituted ''3962(b)'' for ''3962(c)''.

1967—Pub. L. 90–207 inserted '', or if the member has served as sergeant major of the Army, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater'' after ''retirement'' in footnote 3 of the table.

1963—Pub. L. 88–132 substituted in column 1 of Formula A in table ''Monthly basic pay of member's retired grade'' for ''Monthly basic pay to which member would be entitled if he were on active duty in his retired grade'' and eliminated from footnote 2 to such table ''and adjust to reflect later changes in applicable permanent rates. However, if member's retired grade is determined under section 3963(a) or 3963(b), or if member has served 4 years as Chief of the Medical Service Corps, use pay to which member would be entitled if he were on active duty in his retired grade'' after ''date of retirement.''

1958—Pub. L. 85–861 substituted ''section 3962(c)'' for ''section 3962(d)'' in footnote 1, and ''3963(a)'' for ''3962(c), 3963(a)'' in footnote 2.

Formula B. Pub. L. 85–422, §11(a)(5), substituted ''credited to him under section 1405 of this title'' for ''credited to him in determining basic pay'' in Column 2.

Formula C. Pub. L. 85–422, §6(8), substituted ''Monthly basic pay to which member was entitled on day before he retired'' for ''Monthly basic pay to which member was entitled on date when he applied for retirement'' in Column 1.

Formula D. Pub. L. 85–422, §6(8), substituted ''monthly basic pay to which member was entitled on day before he retired'' for ''Monthly basic pay of member's retired grade'' in Column 1.

Footnote 1. Pub. L. 85–422, §6(1), struck out provisions which related to inapplicability of section 3962(a), and inserted provisions permitting computation at the highest rates of basic pay applicable to an officer who has served as Chief of Staff while he served in that office.

1957—Pub. L. 85–155 redesignated formulas ''B'' to ''E'' of the table as formulas ''A'' to ''D''. Former formula ''A'', which related to computation of retirement pay for persons retired under former sections 3881, 3882, and 3912 of this title, was repealed by Pub. L. 85–155.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or

after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 502(21), (22) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 512(10) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

Section 6, last paragraph, of Pub. L. 85–422, provided that: ''The amendments made by clauses (1)–(3), (6), (7), (8), and (9) of this section [to Formulas 1 and 2 and footnote 4 of section 1401, Formulas C and D and footnote 1 of this section, sections 5083, 5201, and 6326, and Formulas C and D and footnote 1 of section 8991 of this title] do not apply to any person who is retired, or to whom retired pay (including temporary disability retired pay) is granted, before the effective date of this Act [June 1, 1958].''

COMPUTATION OF RETIRED PAY FOR CERTAIN ENLISTED MEMBERS RETIRED PRIOR TO JUNE 1, 1958

Pub. L. 87–537, July 18, 1962, 76 Stat. 168, provided that members retired prior to June 1, 1958, pursuant to section 4 of Armed Forces Voluntary Recruitment Act of 1945, as amended by section 6(a) of the Act of Aug. 10, 1946 (60 Stat. 995), may include active service performed to date of retirement as creditable service in computation of basic pay upon which retired pay is based.

RECOMPUTATION OF RETIRED PAY OF GENERALS AND LIEUTENANT GENERALS

Officers entitled to retired pay on May 31, 1958, who served on active duty before that day in the grade of general or lieutenant general for a period of at least 180 days, authorized to recompute retired pay, see section 7(b), (c) of Pub. L. 85–422, May 20, 1958, 72 Stat. 130.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 3992. Recomputation of retired pay to reflect advancement on retired list

(a) ENTITLEMENT TO RECOMPUTATION.—An enlisted member or warrant officer of the Army who is advanced on the retired list under section 3964 of this title is entitled to recompute his retired pay in accordance with this section.

(b) FORMULA.—The monthly retired pay of a member entitled to recompute that pay under this section is computed by multiplying—

(1) the member's retired pay base (as computed under section 1406(c) or 1407 of this title), by

(2) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(c) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (b), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 233; Pub. L. 96–342, title VIII, § 813(c), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, § 512(10), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 97–295, § 1(40), Oct. 12, 1982, 96 Stat. 1297; Pub. L. 98–94, title IX, §§ 922(a)(8), 923(a)(1), (2)(G), Sept. 24, 1983, 97 Stat. 641–643; Pub. L. 99–348, title II, § 202(b), July 1, 1986, 100 Stat. 695; Pub. L. 103–337, div. A, title VI, § 635(a)(3), Oct. 5, 1994, 108 Stat. 2788.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3992	10:594 (last 39 words of 1st proviso). 10:1004 (30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (last 39 words of 1st proviso); restated June 29, 1948, ch. 708, § 203(c) (last 39 words of 1st proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19(f), 68 Stat. 167. June 29, 1948, ch. 708, § 203(e) (30 words before proviso), 62 Stat. 1086.

The words ''basic pay * * * as the case may be'' are inserted to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''at the rate prescribed by law for his length of service'', in 10:1004, are omitted as covered by the words ''base and longevity pay''. The words ''base and longevity pay'' are retained to cover the cases of members retired before the enactment of the Career Compensation Act of 1949, and advanced on the retired list after the enactment of that act. The words ''and disregard a part of a year that is less than six months'' are inserted to conform to footnote 4 of section 3991 of this title.

1982 ACT

This amends 10:3992 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. For further details, see the explanation for amendment of 10:1405 made by section 1(17).

AMENDMENTS

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section contained table with two formulas for recomputing retired pay of enlisted members and warrant officers of Army to reflect advancement on retired list.

1986—Pub. L. 99–348 revised table generally by striking out provision in column 1 that for a person who first became a member of a uniformed service, as defined in section 1407(a)(2), after Sept. 7, 1980, one multiplier is the monthly retired pay base as computed under section 1407(c), substituting in formulas A and B provision that the retired pay base as computed under section 1406(c) or 1407 of this title be multiplied by the retired pay multiplier prescribed in section 1409 of this title for the number of years credited for provisions that the monthly basic pay or base and longevity pay, as the case may be, subject to footnote 1, of the grade to which the member is advanced on the retired list be

multiplied by 2½% of years of service credited, subject to footnote 2, and have subtracted from it the excess over 75% of pay upon which the computation is based, struck out footnote 1, which provided that the computation be at the rate applicable on the date of retirement, and redesignated footnote 2 as 1 and substituted ''In determining retired pay multiplier'' for ''Before applying percentage factor'' and ''1/12'' for ''one-twelfth''.

1983—Pub. L. 98–94, §922(a)(8), inserted ''The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

Pub. L. 98–94, §923(a)(1), (2)(G), in footnote 2 of table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

1982—Pub. L. 97–295 added formula B, applicable to warrant officers.

1980—Pub. L. 96–513 in heading for column 1 of table substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981''.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons becoming members after the date of the enactment of the Department of Defense Authorization Act, 1981.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

CHAPTER 373—CIVILIAN EMPLOYEES

Sec.
4021. Army War College and United States Army Command and General Staff College: civilian faculty members.
[4022, 4023. Repealed.]
4024. Expert accountant for Inspector General.
4025. Production of supplies and munitions: hours and pay of laborers and mechanics.
4027. Civilian special agents of the Criminal Investigation Command: authority to execute warrants and make arrests.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §554(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126, added item 4027.

1989—Pub. L. 101–189, div. A, title XI, §1124(b)(2), Nov. 29, 1989, 103 Stat. 1559, added item 4021.

1983—Pub. L. 98–94, title IX, §932(b)(2), Sept. 24, 1983, 97 Stat. 650, struck out item 4022 ''Contract surgeons''.

1962—Pub. L. 87–651, title I, §116(2), Sept. 7, 1962, 76 Stat. 513, struck out item 4023 ''Service club and library services''.

1958—Pub. L. 85–861, §1(102), Sept. 2, 1958, 72 Stat. 1489, struck out item 4021 ''Appointment: professional and scientific services''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

§ 4021. Army War College and United States Army Command and General Staff College: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at the Army War College or the United States Army Command and General Staff College after the end of the 90-day period beginning on November 29, 1989.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at the Army War College or the United States Army Command and General Staff College if the duration of the principal course of instruction offered at the college involved is less than 10 months.

(Added Pub. L. 101–189, div. A, title XI, §1124(b)(1), Nov. 29, 1989, 103 Stat. 1558; amended Pub. L. 107–107, div. A, title X, §1048(c)(12), Dec. 28, 2001, 115 Stat. 1226.)

PRIOR PROVISIONS

A prior section 4021, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to appointments in professional and scientific service, prior to repeal by Pub. L. 85–861, §36B(11), Sept. 2, 1958, 72 Stat. 1570.

AMENDMENTS

2001—Subsec. (c)(1). Pub. L. 107–107 substituted ''November 29, 1989'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

[§ 4022. Repealed. Pub. L. 98–94, title IX, § 932(b)(1), Sept. 24, 1983, 97 Stat. 650]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to employment of contract surgeons in an emergency. See section 1091 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1983, but with contracts entered into under the authority of this section before Oct. 1, 1983, which are in effect on Oct. 1, 1983, to remain in effect in accordance with the terms of such contracts, see section 932(f) of Pub. L. 98–94, set out as an Effective Date note under section 1091 of this title.

[§ 4023. Repealed. Pub. L. 87–651, title I, § 116(1), Sept. 7, 1962, 76 Stat. 513]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 233, related to employment of civilians in service club and library services.

§ 4024. Expert accountant for Inspector General

The Secretary of the Army shall appoint an expert accountant to perform duties under the Inspector General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4024	10:52.	Feb. 24, 1891, ch. 284 (7th clause under ''Miscellaneous''), 26 Stat. 773.

The words ''in case of vacancy'' are omitted as surplusage.

§ 4025. Production of supplies and munitions: hours and pay of laborers and mechanics

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Army producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Army these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

(Aug. 10, 1956, ch. 1014, 70A Stat. 234.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4025	5:189a.	July 2, 1940, ch. 508, § 4(b), 54 Stat. 714.

The words ''Notwithstanding the provisions of any other law'' are omitted as surplusage. The word ''producing'' is substituted for the words ''who are engaged in the manufacture or production''. The last sentence is substituted for 5:189a (last 34 words).

§ 4027. Civilian special agents of the Criminal Investigation Command: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of the Army may authorize any Department of the Army civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any employee of the Department of the Army who is a special agent of the Army Criminal Investigation Command (or a successor to that command) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Army.

(c) GUIDELINES FOR EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Army and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Army, the Secretary of Defense, or the Attorney General.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 554(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126.)

PART III—TRAINING

Chap.		Sec.
401.	Training Generally	4301
403.	United States Military Academy	4331
[405.	Repealed.]	
407.	Schools and Camps	4411

AMENDMENTS

1964—Pub. L. 88–647, title III, § 301(11), Oct. 13, 1964, 78 Stat. 1072, struck out item for chapter 405 ''Reserve Officers' Training Corps''.

CHAPTER 401—TRAINING GENERALLY

Sec.
4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.
4302. Enlisted members of Army: schools.
4303. Army Ranger training: instructor staffing; safety.
4306. Service schools: leaves of absence for instructors.
[4307, 4308. Repealed.]
4309. Rifle ranges: availability for use by members and civilians.
[4310 to 4313. Repealed.]
4314. United States Army Command and General Staff College degree.
4315. The Judge Advocate General's School: master of laws in military law.
4316. Reporting requirements.
4317. Military history fellowships.
4318. Drill sergeant trainees: human relations training.
4319. Recruit basic training: separate housing for male and female recruits.
4320. Recruit basic training: privacy.
4321. United States Army War College: master of strategic studies degree.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 542(b), Oct. 5, 1999, 113 Stat. 607, added item 4321.

1998—Pub. L. 105–261, div. A, title V, §§ 521(a)(2), 522(a)(2), Oct. 17, 1998, 112 Stat. 2010, 2012, added items 4319 and 4320.

Pub. L. 105–225, § 6(b), Aug. 12, 1998, 112 Stat. 1499, repealed items 4312 ''National rifle and pistol matches: small-arms firing school'' and 4313 ''National Matches and small-arms school: expenses''.

1997—Pub. L. 105–85, div. A, title V, § 557(a)(2), Nov. 18, 1997, 111 Stat. 1750, added item 4318.

1996—Pub. L. 104–106, div. A, title V, § 562(a)(2), title XVI, § 1624(a)(2), Feb. 10, 1996, 110 Stat. 324, 522, added item 4303 and struck out items 4307 ''Director of civilian marksmanship: detail'', 4308 ''Promotion of civilian marksmanship: authority of the Secretary of the Army'', 4310 ''Rifle instruction: detail of members of Army'', and 4311 ''Rifle instruction: issue of rifles and ammunition''.

1993—Pub. L. 103–35, title II, § 201(b)(2)(B), (g)(10)(B), May 31, 1993, 107 Stat. 98, 100, substituted ''National Matches and small-arms school'' for ''Promotion of ci-

vilian marksmanship'' in item 4313, struck out item 4316 ''Military history fellowships'', and added item 4317.

1992—Pub. L. 102–484, div. A, title III, §380(a)(2), (b)(2), (d)(2), title X, §1076(b), Oct. 23, 1992, 106 Stat. 2390, 2391, 2512, added items 4308 and 4309 and struck out former items 4308 and 4309, resulting in no change in item 4308 and in substituting ''availability'' for ''available'' in item 4309, and added two items 4316.

Pub. L. 102–484, div. A, title III, §380(c)(2), Oct. 23, 1992, 106 Stat. 2391, which directed amendment of item 4313 by striking out ''rifle'', could not be executed because the word did not appear subsequent to amendment by Pub. L. 101–510. See 1990 Amendment note below.

1990—Pub. L. 101–510, div. A, title III, §328(g)(2), Nov. 5, 1990, 104 Stat. 1534, added items 4308, 4309, and 4313 and struck out former items 4308 ''Civilian rifle ranges: establishment; instruction'', 4309 ''Rifle ranges: recommendations to Congress; regulations'', and 4313 ''National rifle matches and small-arms school: expenses''.

1987—Pub. L. 100–180, div. A, title V, §504(b), Dec. 4, 1987, 101 Stat. 1086, added item 4315.

1974—Pub. L. 93–365, title VII, §708(a)(2), Aug. 5, 1974, 88 Stat. 407, added item 4314.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 925.

§ 4301. Members of Army: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Army may detail members of the Army as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Army on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Army may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Army National Guard of the United States, without the approval of the governor or other appropriate authority of the State or Territory, Puerto Rico, or the District of Columbia of whose Army National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Army under subsection (a) during one enlistment may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Army, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Army, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 234; Pub. L. 93–169, Nov. 29, 1973, 87 Stat. 689; Pub. L. 96–513, title V, §502(23), Dec. 12, 1980, 94 Stat. 2910; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4301(a)	10:535 (1st 75 words).	June 3, 1916, ch. 134, §127a (13th par.); added June 4, 1920, ch. 227, subch. I, §51 (13th par.); restated June 8, 1926, ch. 495; May 13, 1941, ch. 113; June 30, 1941, ch. 262 (4th proviso under ''Finance Department''); restated June 19, 1948, ch. 501, §1, 62 Stat. 477.
4301(b)	10:535 (less 1st 75 words, and less provisos).	
4301(c)	10:535 (1st proviso).	
4301(d)	10:535 (words of 2d proviso before semicolon).	
4301(e)	10:535 (words of 2d proviso after semicolon).	
4301(f)	10:535 (last proviso).	June 19, 1948, ch. 501, §2, 62 Stat. 478.
4301(g)	10:535a.	

In subsection (a), the words ''members of the Army'' are substituted for the words ''personnel of the Army of the United States, without regard to component''.

In subsection (b), the words ''is detailed under subsection (a)'' are substituted for the words ''receives such instruction''. The words ''as long as the detail'' are substituted for the words ''equal to the duration of his period of instruction''. The words ''However, if the detail is for'' are substituted for the words ''except that where the duration of such training is''. The words ''other than one of the Regular Army on the active list'' are inserted, since members of the Regular Army on the active list are on continuous active duty. The word ''additional'' is inserted, since the detail under this section is active duty. The words ''the officer may be ordered to that additional duty'' are substituted for the words ''such subsequent active duty may * * * the officer concerned''.

In subsection (c), the words ''of whose Army National Guard he is a member'' are substituted for the words ''whichever is concerned''.

In subsection (d), the words ''as a condition of a detail under subsection (a)'' are substituted for the words ''prior to his detail pursuant to the provisions of this paragraph''. The words ''accept a discharge'' are substituted for the words ''be discharged''.

In subsection (e), the words ''during one enlistment'' are inserted for clarity.

In subsection (f), the last sentence is substituted for 10:535 (words within parentheses of last proviso).

In subsection (g), the words ''under this section'' are substituted for 10:535a (9th through 41st words).

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''active-duty list'' for ''active list'' in first sentence.

1973—Subsec. (b). Pub. L. 93–169 struck out provisions which limited to four years the maximum period for which an officer detailed for additional active duty upon termination of detail is required to serve.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

DETAIL OF PERSONNEL OF ALL COMPONENTS OF ARMY DURING WORLD WAR II

Act Feb. 6, 1942, ch. 40, 56 Stat. 50, as amended by act Mar. 6, 1943, ch. 13, 57 Stat. 14, provided for the detail of all components of the Army during World War II.

§ 4302. Enlisted members of Army: schools

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Army with the approval of the President, enlisted members of the Army shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Army officers in this instruction.

(b) Schools for the instruction of enlisted members of the Army in the common branches of education, including United States history shall be maintained at all posts at which members of the Army are stationed. The Secretary may detail members of the Army to carry out this subsection. The commander of each post where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4302(a)	10:1176.	June 3, 1916, ch. 134, § 27 (last par.), 39 Stat. 186.
4302(b)	10:1172.	R.S. 1231.

In subsection (a), the first 12 words are substituted for 10:1176 (1st 5, and last 18, words). The words ''and the Secretary of the Army shall have the power at all times to suspend, increase, or decrease the amount of such instruction offered'' are omitted as surplusage.

In subsection (b), the words ''garrisons, and permanent camps'' are omitted as covered by the word ''posts''. The word ''including'' is substituted for the words ''and especially in''. The word ''members'' is substituted for the words ''officers and enlisted men''. The words ''as may be necessary'', ''It * * * be the duty'', and ''or garrison'' are omitted as surplusage.

DELEGATION OF FUNCTIONS

Function of the President under subsec. (a) of this section delegated to the Secretary of Defense, see section 1(6) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 4303. Army Ranger training: instructor staffing; safety

(a) LEVELS OF PERSONNEL ASSIGNED.—(1) The Secretary of the Army shall ensure that at all times the number of officers, and the number of enlisted members, permanently assigned to the Ranger Training Brigade (or other organizational element of the Army primarily responsible for Ranger student training) are not less than 90 percent of the required manning spaces for officers, and for enlisted members, respectively, for that brigade.

(2) In this subsection, the term ''required manning spaces'' means the number of personnel spaces for officers, and the number of personnel spaces for enlisted members, that are designated in Army authorization documents as the number required to accomplish the missions of a particular unit or organization.

(b) TRAINING SAFETY CELLS.—(1) The Secretary of the Army shall establish and maintain an organizational entity known as a ''safety cell'' as part of the organizational elements of the Army responsible for conducting each of the three major phases of the Ranger Course. The safety cell in each different geographic area of Ranger Course training shall be comprised of personnel who have sufficient continuity and experience in that geographic area of such training to be knowledgeable of the local conditions year-round, including conditions of terrain, weather, water, and climate and other conditions and the potential effect on those conditions on Ranger student training and safety.

(2) Members of each safety cell shall be assigned in sufficient numbers to serve as advisers to the officers in charge of the major phase of Ranger training and shall assist those officers in making informed daily ''go'' and ''no-go'' decisions regarding training in light of all relevant conditions, including conditions of terrain, weather, water, and climate and other conditions.

(Added Pub. L. 104–106, div. A, title V, § 562(a)(1), Feb. 10, 1996, 110 Stat. 323.)

ACCOMPLISHMENT OF REQUIRED MANNING LEVELS; GAO ASSESSMENT

Section 562(b), (c) of Pub. L. 104–106 provided that:

''(b) ACCOMPLISHMENT OF REQUIRED MANNING LEVELS.—(1) If, as of the date of the enactment of this Act [Feb. 10, 1996], the number of officers, and the number of enlisted members, permanently assigned to the Army Ranger Training Brigade are not each at (or above) the requirement specified in subsection (a) of section 4303 of title 10, United States Code, as added by subsection (a), the Secretary of the Army shall—

''(A) take such steps as necessary to accomplish that requirement within 12 months after such date of enactment; and

''(B) submit to Congress, not later than 90 days after such date of enactment, a plan to achieve and maintain that requirement.

''(2) The requirement specified in subsection (a) of section 4303 of title 10, United States Code, as added by subsection (a), shall expire two years after the date (on or after the date of the enactment of this Act) on which the required manning levels referred to in paragraph (1) are first attained.

''(c) GAO ASSESSMENT.—(1) Not later than one year after the date of the enactment of this Act [Feb. 10, 1996], the Comptroller General shall submit to Congress a report providing a preliminary assessment of the implementation and effectiveness of all corrective actions taken by the Army as a result of the February 1995 accident at the Florida Ranger Training Camp, including an evaluation of the implementation of the required manning levels established by subsection (a) of section 4303 of title 10, United States Code, as added by subsection (a).

''(2) At the end of the two-year period specified in subsection (b)(2), the Comptroller General shall submit to Congress a report providing a final assessment of the matters covered in the preliminary report under paragraph (1). The report shall include the Comptroller General's recommendation as to the need to continue required statutory manning levels as specified in subsection (a) of section 4303 of title 10, United States Code, as added by subsection (a).''

§ 4306. Service schools: leaves of absence for instructors

The officer in charge of an Army service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without reduction of pay or allowances, to any officer on duty exclusively as an instructor at the school.

(Aug. 10, 1956, ch. 1041, 70A Stat. 235.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4306	10:843.	Mar. 23, 1910, ch. 115 (proviso under ''United States Service Schools''), 36 Stat. 244.

The words ''The provisions of section 1144 of this title, authorizing leaves of absence to certain officers of the Military Academy * * * are hereby, extended to include'' are omitted as surplusage.

[§§ 4307, 4308. Repealed. Pub. L. 104–106, div. A, title XVI, § 1624(a)(1), Feb. 10, 1996, 110 Stat. 522]

Section 4307, act Aug. 10, 1956, ch. 1041, 70A Stat. 235, permitted President to detail commissioned officer of the Army or of the Marine Corps as director of civilian marksmanship.

Section 4308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 236; Nov. 14, 1986, Pub. L. 99–661, div. A, title III, § 318(a), 100 Stat. 3855; Nov. 5, 1990, Pub. L. 101–510, div. A, title III, § 328(b)–(d), (g)(1), 104 Stat. 1533, 1534; Oct. 23, 1992, Pub. L. 102–484, div. A, title III, § 380(a)(1), 106 Stat. 2389; Nov. 30, 1993, Pub. L. 103–160, div. A, title III, § 372, 107 Stat. 1635, related to authority of Secretary of the Army to promote civilian marksmanship. See section 40701 et seq. of Title 36, Patriotic and National Observances, Ceremonies, and Organizations.

EFFECTIVE DATE OF REPEAL

Repeal effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of [former] Title 36, Patriotic Societies and Observances, or Oct. 1, 1996, see section 1624(c) of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 4316 of this title.

§ 4309. Rifle ranges: availability for use by members and civilians

(a) RANGES AVAILABLE.—All rifle ranges constructed in whole or in part with funds provided by the United States may be used by members of the armed forces and by persons capable of bearing arms.

(b) MILITARY RANGES.—(1) In the case of a rifle range referred to in subsection (a) that is located on a military installation, the Secretary concerned may establish reasonable fees for the use by civilians of that rifle range to cover the material and supply costs incurred by the armed forces to make that rifle range available to civilians.

(2) Fees collected pursuant to paragraph (1) in connection with the use of a rifle range shall be credited to the appropriation available for the operation and maintenance of that rifle range and shall be available for the operation and maintenance of that rifle range.

(3) Use of a rifle range referred to in paragraph (1) by civilians may not interfere with the use of the range by members of the armed forces.

(c) REGULATIONS.—Regulations to carry out this section with respect to a rifle range shall be prescribed, subject to the approval of the Secretary concerned, by the authorities controlling the rifle range.

(Aug. 10, 1956, ch. 1041, 70A Stat. 236; Pub. L. 99–145, title XIII, § 1301(b)(3)(A), Nov. 8, 1985, 99 Stat. 735; Pub. L. 101–510, div. A, title III, § 328(e), Nov. 5, 1990, 104 Stat. 1533; Pub. L. 102–484, div. A, title III, § 380(b)(1), Oct. 23, 1992, 106 Stat. 2390.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4309(a)	32:186 (1st sentence).	June 3, 1916, ch. 134, § 113 (1st 2 sentences), 39 Stat. 211.
4309(b)	32:186 (less 1st sentence).	

In subsection (a), the words ''such a comprehensive * * * as will ultimately result in'' are omitted as surplusage.

In subsection (b), the words ''United States'' are substituted for the word ''Congress''. The words ''members of the armed forces'' are substituted for the words ''those in any branch of the military or naval service''. The words ''of the United States'' are omitted as surplusage.

AMENDMENTS

1992—Pub. L. 102–484 amended section generally. Prior to amendment section read as follows:

''(a) RANGES AVAILABLE.—(1) All rifle ranges constructed in whole or in part with funds provided by the United States may be used by members of the armed forces and by able-bodied persons capable of bearing arms.

''(b) MILITARY RANGES.—(1) In the case of a rifle range referred to in subsection (a) located on a military installation, the Secretary of the Army shall establish reasonable fees for the use by civilians of that rifle range to cover any costs incurred by the Army to make that rifle range available to civilians.

''(2) Use of a rifle range referred to in paragraph (1) by civilians may not interfere with the use of those ranges by members of the armed forces.

''(c) REGULATIONS.—Regulations to carry out this section shall be prescribed by the authorities controlling the rifle range, subject to the approval of the Secretary of the Army.''

1990—Pub. L. 101–510 substituted ''Rifle ranges: available for use by members and civilians'' for ''Rifle ranges: recommendations to Congress; regulations'' in section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary of the Army shall submit annually to Congress recommendations and estimates for the establishment and maintenance of indoor and outdoor rifle ranges under a plan to provide facilities for rifle practice in all sections of the country.

''(b) All rifle ranges established under subsection (a) and all rifle ranges already constructed, in whole or in part with funds provided by the United States, may be used by members of the armed forces and by all able-bodied persons capable of bearing arms, under regulations prescribed by the authorities controlling those ranges and approved by the Secretary.''

1985—Subsec. (b). Pub. L. 99–145 substituted ''persons'' for ''males''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 380(e) of Pub. L. 102–484 provided that:

''(1) This section [enacting section 4316 of this title and amending this section and sections 4308 and 4313 of this title] and the amendments made by this section shall take effect on the earlier of—

''(A) the date of the enactment of this Act [Oct. 23, 1992]; or

''(B) October 1, 1992.

''(2) If under paragraph (1) the amendments made by this section take effect before October 1, 1992, the amendments made by section 328 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1533) shall not take effect.

''(3) If under paragraph (1) the amendments made by this section take effect on October 1, 1992, the amendments made by this section shall be considered executed immediately following the amendments made by section 328 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1533).''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 328(h) of Pub. L. 101–510 provided that: ''The amendments made by this section [amending this section and sections 4308, 4311, and 4313 of this title] shall take effect on October 1, 1992.''

[§§ 4310, 4311. Repealed. Pub. L. 104–106, div. A, title XVI, § 1624(a)(1), Feb. 10, 1996, 110 Stat. 522]

Section 4310, act Aug. 10, 1956, ch. 1041, 70A Stat. 236, permitted President and Secretary of the Army to detail members of Army as rifle instructors for civilians.

Section 4311, acts Aug. 10, 1956, ch. 1041, 70A Stat. 237; Nov. 5, 1990, Pub. L. 101–510, div. A, title III, § 328(f), 104 Stat. 1534, permitted Secretary of the Army to provide for issue of military rifles and sale of ammunition for use in rifle instruction for civilians.

EFFECTIVE DATE OF REPEAL

Repeal effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of [former] Title 36, Patriotic Societies and Observances, or Oct. 1, 1996, see section 1624(c) of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 4316 of this title.

[§§ 4312, 4313. Repealed. Pub. L. 105–225, § 6(b), Aug. 12, 1998, 112 Stat. 1499]

Section 4312, act Aug. 10, 1956, ch. 1041, 70A Stat. 237, related to National rifle and pistol matches and small-arms firing school.

Section 4313, act Aug. 10, 1956, ch. 1041, 70A Stat. 237; Pub. L. 99–145, title XIII, § 1301(b)(3)(B), Nov. 8, 1985, 99 Stat. 735; Pub. L. 99–661, div. A, title III, § 318(b), Nov. 14, 1986, 100 Stat. 3855; Pub. L. 101–510, div. A, title III, § 328(a), Nov. 5, 1990, 104 Stat. 1533; Pub. L. 102–484, div. A, title III, § 380(c)(1), Oct. 23, 1992, 106 Stat. 2391; Pub. L. 103–35, title II, § 201(g)(10)(A), May 31, 1993, 107 Stat. 100; Pub. L. 104–106, div. A, title XVI, § 1624(b)(1), Feb. 10, 1996, 110 Stat. 522, related to expenses of National Matches and small-arms school.

§ 4314. United States Army Command and General Staff College degree

Under regulations prescribed by the Secretary of the Army, and with the approval of a nationally recognized civilian accrediting association approved by the Secretary of Education, the Commandant of the United States Army Command and General Staff College may upon recommendation by the faculty confer the degree of master of military art and science upon graduates of the college who have fulfilled the following degree requirements: a minimum of thirty semester hours of graduate credit, including a masters thesis of six to eight semester hours, and a demonstration of competence in the discipline of military art and science as evidenced by satisfactory performance on a general comprehensive examination. These requirements may be altered only with the approval of such association.

(Added Pub. L. 93–365, title VII, § 708(a)(1), Aug. 5, 1974, 88 Stat. 407; amended Pub. L. 96–513, title V, § 512(11), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 101–510, div. A, title XIII, § 1322(a)(13), Nov. 5, 1990, 104 Stat. 1671.)

AMENDMENTS

1990—Pub. L. 101–510 struck out at end ''The Secretary of the Army shall report annually to the Committees on Armed Services of the Senate and House of Representatives the following information: (1) the criteria which must be met to entitle a student to award of the degree, (2) whether such criteria have changed in any respect during the reporting year, (3) the number of students in the most recent resident course graduating class, (4) the number of such students who were enrolled in the master of military art and science program, and (5) the number of students successfully completing the master of military art and science program.''

1980—Pub. L. 96–513 substituted ''Secretary of Education'' for ''Commissioner of Education, Department of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

RETROACTIVE DEGREE CONFERRAL; MAXIMUM AMOUNT

Section 708(b) of Pub. L. 93–365 provided that: ''The Commandant of the United States Army Command and General Staff College may confer the degree of master of military art and science upon graduates of the college who have completed the requirements for that degree since 1964 but prior to the enactment of this Act [Aug. 5, 1974]; but the number of such degrees awarded for such period may not exceed two hundred.''

§ 4315. The Judge Advocate General's School: master of laws in military law

Under regulations prescribed by the Secretary of the Army, the Commandant of the Judge Advocate General's School of the Army may, upon recommendation by the faculty of such school, confer the degree of master of laws (LL.M.) in military law upon graduates of the school who have fulfilled the requirements for that degree.

(Added Pub. L. 100–180, div. A, title V, § 504(a), Dec. 4, 1987, 101 Stat. 1086.)

§ 4316. Reporting requirements

The Secretary of the Army shall biennially submit to the Congress a report that specifies the overall expenditures for programs and activities under this chapter and any progress made with respect to achieving financial self-sufficiency of the programs and activities.

(Added Pub. L. 102–484, div. A, title III, § 380(d)(1), Oct. 23, 1992, 106 Stat. 2391; amended Pub. L. 104–106, div. A, title XVI, § 1624(b)(2), Feb. 10, 1996, 110 Stat. 522.)

CODIFICATION

Another section 4316 was renumbered section 4317 of this title.

AMENDMENTS

1996—Pub. L. 104–106 struck out '', including fees charged and amounts collected pursuant to subsections (b) and (c) of section 4308,'' after ''under this chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1624(c) of Pub. L. 104–106 provided that: ''The amendments made by this section [amending this section, section 4313 of this title, and section 925 of Title 18, Crimes and Criminal Procedure, and repealing sections 4307, 4308, 4310, and 4311 of this title] shall take effect on the earlier of—

''(1) the date on which the Secretary of the Army submits a certification in accordance with section 1623 [former 36 U.S.C. 5523]; or

''(2) October 1, 1996.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 380(e) of Pub. L. 102–484, set out as an Effective Date of 1992 Amendment note under section 4309 of this title.

§ 4317. Military history fellowships

(a) FELLOWSHIPS.—The Secretary of the Army shall prescribe regulations under which the Secretary may award fellowships in military history of the Army to the persons described in subsection (b).

(b) ELIGIBLE PERSONS.—The persons eligible for awards of fellowships under this section are citizens and nationals of the United States who—

(1) are graduate students in United States military history;

(2) have completed all requirements for a doctoral degree other than preparation of a dissertation; and

(3) agree to prepare a dissertation in a subject area of military history determined by the Secretary.

(c) REGULATIONS.—The regulations prescribed under this section shall include—

(1) the criteria for award of fellowships;

(2) the procedures for selecting recipients;

(3) the basis for determining the amount of a fellowship; and

(4) the total amount that may be awarded as fellowships during an academic year.

(Added Pub. L. 102–484, div. A, title X, § 1076(a), Oct. 23, 1992, 106 Stat. 2511, § 4316; renumbered § 4317, Pub. L. 103–35, title II, § 201(b)(2)(A), May 31, 1993, 107 Stat. 98.)

AMENDMENTS

1993—Pub. L. 103–35 renumbered section 4316 of this title as this section.

§ 4318. Drill sergeant trainees: human relations training

(a) HUMAN RELATIONS TRAINING REQUIRED.—The Secretary of the Army shall include as part of the training program for drill sergeants a course in human relations. The course shall be a minimum of two days in duration.

(b) RESOURCES.—In developing a human relations course under this section, the Secretary shall use the capabilities and expertise of the Defense Equal Opportunity Management Institute (DEOMI).

(Added Pub. L. 105–85, div. A, title V, § 557(a)(1), Nov. 18, 1997, 111 Stat. 1750.)

EFFECTIVE DATE

Section 557(b) of Pub. L. 105–85, as amended by Pub. L. 106–65, div. A, title X, § 1066(c)(1), Oct. 5, 1999, 113 Stat. 773, provided that: ''Section 4318 of title 10, United States Code, as added by subsection (a), shall apply with respect to drill sergeant trainee classes that begin after the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 18, 1997].''

REFORM OF ARMY DRILL SERGEANT SELECTION AND TRAINING PROCESS

Section 556 of Pub. L. 105–85 provided that:

''(a) IN GENERAL.—The Secretary of the Army shall reform the process for selection and training of drill sergeants for the Army.

''(b) MEASURES TO BE TAKEN.—As part of such reform, the Secretary shall undertake the following measures (unless, in the case of any such measure, the Secretary determines that that measure would not result in improved effectiveness and efficiency in the drill sergeant selection and training process):

''(1) Review the overall process used by the Department of the Army for selection of drill sergeants to determine—

''(A) whether that process is providing drill sergeant candidates in sufficient quantity and quality to meet the needs of the training system; and

''(B) whether duty as a drill sergeant is a career-enhancing assignment (or is seen by potential drill sergeant candidates as a career-enhancing assignment) and what steps could be taken to ensure that such duty is in fact a career-enhancing assignment.

''(2) Incorporate into the selection process for all drill sergeants the views and recommendations of the officers and senior noncommissioned officers in the chain of command of each candidate for selection (particularly those of senior noncommissioned officers) regarding the candidate's suitability and qualifications to be a drill sergeant.

''(3) Establish a requirement for psychological screening for each drill sergeant candidate.

''(4) Reform the psychological screening process for drill sergeant candidates to improve the quality, depth, and rigor of that screening process.

''(5) Revise the evaluation system for drill sergeants in training to provide for a so-called 'whole person' assessment that gives insight into the qualifications and suitability of a drill sergeant candidate beyond the candidate's ability to accomplish required performance tasks.

''(6) Revise the Army military personnel records system so that, under conditions and circumstances to be specified in regulations prescribed by the Secretary, a drill sergeant trainee who fails to complete the training to be a drill sergeant and is denied graduation will not have the fact of that failure recorded in those personnel records.

''(7) Provide each drill sergeant in training with the opportunity, before or during that training, to work with new recruits in initial entry training and to be evaluated on that opportunity.

''(c) REPORT.—Not later than March 31, 1998, the Secretary shall submit to the Committee on National Security of the House of Representatives and the Committee on Armed Services of the Senate a report of the reforms adopted pursuant to this section or, in the case of any measure specified in any of paragraphs (1) through (7) of subsection (b) that was not adopted, the rationale why that measure was not adopted.''

§ 4319. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Army shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Army shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Army shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term 'basic training' means the initial entry training program of the Army that constitutes the basic training of new recruits.

(Added Pub. L. 105–261, div. A, title V, § 521(a)(1), Oct. 17, 1998, 112 Stat. 2009.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, § 521(a)(3), Oct. 17, 1998, 112 Stat. 2010, provided that: ''The Secretary of the Army shall implement section 4319 of title 10, United States Code, as added by paragraph (1), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.''

§ 4320. Recruit basic training: privacy

The Secretary of the Army shall require that access by drill sergeants and other training personnel to a living area in which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to drill sergeants and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added Pub. L. 105–261, div. A, title V, § 522(a)(1), Oct. 17, 1998, 112 Stat. 2012.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, § 522(a)(3), Oct. 17, 1998, 112 Stat. 2012, provided that: ''The Secretary of the Army shall implement section 4320 of title 10, United States Code, as added by paragraph (1), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.''

§ 4321. United States Army War College: master of strategic studies degree

Under regulations prescribed by the Secretary of the Army, the Commandant of the United States Army War College, upon the recommendation of the faculty and dean of the college, may confer the degree of master of strategic studies upon graduates of the college who have fulfilled the requirements for that degree.

(Added Pub. L. 106–65, div. A, title V, § 542(a), Oct. 5, 1999, 113 Stat. 607.)

CHAPTER 403—UNITED STATES MILITARY ACADEMY

Sec.
4331. Establishment; Superintendent; faculty.
4332. Departments and professors: titles.
4333. Superintendent; faculty: appointment and detail.
4333a. Superintendent: condition for detail to position.
4334. Command and supervision.
4335. Dean of Academic Board.
4336. Permanent professors; director of admissions.
4337. Chaplain.
4338. Civilian faculty: number; compensation.
[4339. Repealed.]
4340. Quartermaster.
4341. Faculty and other officers: leaves of absence.
4341a. Cadets: appointment by the President.
4342. Cadets: appointment; numbers, territorial distribution.
4343. Cadets: appointment; to bring Corps to full strength.
4344. Selection of persons from foreign countries.
4345. Exchange program with foreign military academies.
4346. Cadets: requirements for admission.
4347. Cadets; nominees: effect of redistricting of States.
4348. Cadets: agreement to serve as officer.
4349. Cadets: organization of Corps; service; instruction.
4350. Cadets: clothing and equipment.
4351. Cadets: deficiencies in conduct or studies; effect of failure on successor.
4352. Cadets: hazing.
4353. Cadets: degree and commission on graduation.
4354. Buildings and grounds: memorial hall; buildings for religious worship.
4355. Board of Visitors.
4356. Use of certain gifts.
4357. Acceptance of guarantees with gifts for major projects.
4358. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 532(a)(4)(B), div. B, title XXVIII, § 2871(a)(2), Oct. 5, 1999, 113 Stat. 603, 873, added items 4333a and 4357.

1998—Pub. L. 105–261, div. A, title X, § 1063(a)(2), Oct. 17, 1998, 112 Stat. 2130, added item 4358.

1997—Pub. L. 105–85, div. A, title V, § 542(a)(2), Nov. 18, 1997, 111 Stat. 1741, added item 4345.

1996—Pub. L. 104–106, div. A, title V, § 533(a)(2), Feb. 10, 1996, 110 Stat. 315, struck out item 4357 ''Athletics program: athletic director; nonappropriated fund account''.

1994—Pub. L. 103–337, div. A, title V, § 556(a)(2), Oct. 5, 1994, 108 Stat. 2774, added item 4357.

1993—Pub. L. 103–160, div. A, title V, § 533(a)(2), Nov. 30, 1993, 107 Stat. 1658, added item 4338.

1983—Pub. L. 98–94, title X, § 1004(a)(3), Sept. 24, 1983, 97 Stat. 658, substituted ''from foreign countries'' for ''from Canada and American Republics'' in item 4344, and struck out item 4345 ''Selection of Filipinos''.

1982—Pub. L. 97–295, § 1(41)(B), Oct. 12, 1982, 96 Stat. 1298, added item 4356.

1981—Pub. L. 97–60, title II, §203(a)(2)(B), Oct. 14, 1981, 95 Stat. 1006, added item 4341a.

1978—Pub. L. 95–551, §4(b), Oct. 30, 1978, 92 Stat. 2069, substituted ''Establishment; Superintendent; faculty'' for ''Superintendent; faculty; adjutant; chaplain'' in item 4331, ''director of admissions'' for ''registrar'' in item 4336, and struck out item 4338 ''Director of music''.

1968—Pub. L. 90–623, §2(7), Oct. 22, 1968, 82 Stat. 1314, struck out item 4339 ''Organist and choirmaster; civilian instructors in departments of foreign languages and tactics: quarters, fuel, and light''.

1958—Pub. L. 85–600, §1(12), Aug. 6, 1958, 72 Stat. 523, inserted '', registrar'' in item 4336.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 37 section 209.

§ 4331. Establishment; Superintendent; faculty

(a) There is in the Department of the Army a United States Military Academy, at West Point, New York (hereinafter in this chapter referred to as the ''Academy''), for the instruction and preparation for military service of selected persons called ''cadets''. The organization of the Academy shall be prescribed by the Secretary of the Army.

(b) There shall be at the Academy the following:

(1) A Superintendent.

(2) A Dean of the Academic Board, who is a permanent professor.

(3) A Commandant of Cadets.

(4) Twenty-two permanent professors.

(5) A chaplain.

(6) A director of admissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238; Pub. L. 85–600, §1(8), Aug. 6, 1958, 72 Stat. 522; Pub. L. 85–723, Aug. 21, 1958, 72 Stat. 711; Pub. L. 95–551, §1, Oct. 30, 1978, 92 Stat. 2069; Pub. L. 96–513, title V, §512(12), Dec. 12, 1980, 94 Stat. 2929; Pub. L. 102–484, div. A, title V, §523(a), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 103–160, div. A, title V, §533(a)(3), Nov. 30, 1993, 107 Stat. 1658.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4331(a)	10:1061. 10:1071. 10:1077. 10:1077a. 10:1078a. 10:1087 (less proviso). 10:1088. 10:1089 (1st 20 words).	R.S. 1309; Feb. 18, 1896, ch. 22 (less proviso), 29 Stat. 8. June 23, 1879, ch. 35, §4 (less last 30 words), 21 Stat. 34. June 8, 1926, ch. 492 (1st par., less 1st proviso), 44 Stat. 703. Apr. 19, 1910, ch. 174 (1st and 2d provisos under ''Permanent Establishment''), 36 Stat. 312; June 8, 1926, ch. 492 (1st proviso of 1st par.), 44 Stat. 703. Apr. 19, 1910, ch. 174 (8th par. under ''Permanent Establishment''), 36 Stat. 312. May 26, 1934, ch. 353, 48 Stat. 806. June 26, 1946, ch. 495, §§1 (less proviso), 2, 3 (1st 20 words), 60 Stat. 312.
4331(b)	10:1073.	

In subsection (a), reference to the senior instructors of artillery, cavalry, and infantry, and the master of the sword, in 10:1061, are omitted as obsolete. The duties of the former master of the sword are presently performed by the director of physical education, detailed to that duty by the superintendent of the Academy from officers assigned to duty at that installation by the Secretary under section 3012(e) of this title. The words ''and one assistant professor'', in 10:1061, are omitted as superseded by section 4333 of this title. The words ''shall be constituted'' are omitted as surplusage. The Act of June 8, 1926, ch. 492 (last proviso of 1st par.), 44 Stat. 703, is not contained in 10:1077a. It is also omitted from the revised section as executed.

The word ''permanent'' is inserted in subsection (a)(4), pursuant to 10:1087, which, by adding one permanent professor for each of the subjects of instruction named in clauses (A)–(I), inclusive, implies that there already was a permanent professor for each of those subjects. The subjects of instruction set forth in clauses (A)–(I), inclusive, are those for which a professor was authorized before the enactment of the source statute for 10:1087. The names of the subjects to be taught at the Academy are changed, where necessary, to conform to the names of those presently taught, pursuant to regulations and orders issued under the general authority for the change of titles of departments of instruction, contained in section 4332 of this title. These changes, published in general orders by authority of the Secretary of War and the Secretary of the Army, are as follows:

In clause (4)(A), the word ''Electricity'' is substituted for the words ''chemistry, mineralogy, and geology'', in 10:1061, pursuant to General Orders 38, Hq USMA, 29 June 1946.

In clause (4)(C), the word ''Foreign'' is substituted for the word ''modern'', in 10:1071, pursuant to General Orders No. 6, Hq USMA, 14 February 1949. The Act of June 23, 1879, ch. 35, §4 (1st 47 words) is not contained in 10:1071. It is also omitted from the revised section as executed.

In clause (4)(E), the word ''Mechanics'' is substituted for the words ''natural and experimental philosophy'', in 10:1061, pursuant to General Orders No. 3, Hq USMA, 11 February 1943.

In clause (4)(F), the words ''Military Art and Engineering'' are substituted for the words ''civil and military engineering'', in 10:1061, pursuant to General Orders No. 3, Hq USMA, 11 February 1943.

In clause (4)(G), the words ''Military Topography and Graphics'' are substituted for the word ''drawing'', in 10:1061, pursuant to General Orders No. 3, Hq USMA, 11 February 1943.

In clause (4)(H), the words ''Physics and Chemistry'' are substituted for the word ''physics'', in 10:1078a, pursuant to General Orders No. 38, Hq USMA, 29 June 1946.

In clause (4)(I), the words ''Social Sciences'' are substituted for the words ''economics, government, and history'', in 10:1077a, pursuant to General Orders No. 13, Hq USMA, 22 April 1947.

In clause (4)(B) and (I), the provisions of 10:1077 and 1077a relating to the appointment of a civilian in the department of English, and a professor of economics, government, and history, by the President, by and with the advice and consent of the Senate, are omitted as executed. The provisions of 10:1077a relating to the establishment of a Department of Economics, Government, and History are omitted as executed.

Subsection (a)(8) is inserted to complete the listing of the appointed officials of the Academy.

In subsection (a)(9), the word ''director'' is substituted for the word ''teacher'' to conform to section 4338 of this title.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–160 struck out subsec. (c) which read as follows:

''(1) The Secretary of the Army may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

''(2) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

''(3) The Secretary may delegate the authority conferred by this subsection to any person in the Department of the Army to the extent the Secretary considers proper. Such delegation may be made with or without the authority to make successive redelegations.''

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

1980—Pub. L. 96–513 substituted ''New York (hereinafter in this chapter referred to as the 'Academy')'' for ''New York, in this chapter called the 'Academy' ''.

1978—Pub. L. 95–551 substituted ''Establishment; Superintendent; faculty'' for ''Superintendent; faculty; adjutant; chaplain'' in section catchline.

Subsec. (a). Pub. L. 95–551 substituted provision establishing in the Department of the Army a Military Academy located at West Point, New York, for instruction and preparation of cadets for military service and providing that the organization of the Academy be prescribed by the Secretary of the Army for provision describing the faculty of the Academy as consisting of a Superintendent, a Dean of the Academic Board, a Commandant of Cadets, two permanent professors in each of nine enumerated academic fields, one permanent professor in each of the fields of Law, Ordnance, and Physical education, a professor of Military Hygiene, an adjutant, a registrar, a chaplain, and a director of music.

Subsec. (b). Pub. L. 95–551 substituted provision describing the faculty of the Academy as consisting of a Superintendent, a Dean of the Academic Board, a Commandant of Cadets, twenty-two permanent professors, a chaplain, and a director of admissions for provision making an officer, upon becoming the senior commissioned officer of the Medical Corps on active duty at the Academy, the professor of Military Hygiene.

1958—Subsec. (a)(5). Pub. L. 85–723 authorized a permanent professor of physical education.

Subsec. (a)(8) to (10). Pub. L. 85–600 added par. (8) and redesignated existing pars. (8) and (9) as (9) and (10), respectively.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

PROHIBITION ON IMPOSITION OF ADDITIONAL CHARGES OR FEES FOR ATTENDANCE AT CERTAIN ACADEMIES

Pub. L. 103–337, div. A, title V, § 553, Oct. 5, 1994, 108 Stat. 2772, as amended by Pub. L. 107–314, div. A, title X, § 1041(b), Dec. 2, 2002, 116 Stat. 2646, provided that:

''(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at an academy named in subsection (c) may be imposed unless the charge or fee is specifically authorized by a law enacted after the date of the enactment of this Act [Oct. 5, 1994].

''(b) EXCEPTION.—The prohibition specified in subsection (a) shall not apply with respect to any item or service provided to cadets or midshipmen at an academy named in subsection (c) for which a charge or fee is imposed as of the date of the enactment of this Act.

''(c) COVERED ACADEMIES.—This section applies to the following:

''(1) The United States Military Academy.

''(2) The United States Naval Academy.

''(3) The United States Air Force Academy.

''(4) The United States Coast Guard Academy.

''(5) The United States Merchant Marine Academy.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

TEST PROGRAM TO EVALUATE USE OF PRIVATE PREPARATORY SCHOOLS FOR SERVICE ACADEMY PREPARATORY SCHOOL MISSION

Section 536 of Pub. L. 103–160 required Secretary of Defense to conduct test program to determine efficiency and cost effectiveness of using schools in private sector as alternative to existing schools used for mission of operating military preparatory school program for one or more of the service academies, prior to repeal by Pub. L. 104–106, div. A, title V, § 534, Feb. 10, 1996, 110 Stat. 315.

COLONEL THOMAS HAWKINS JOHNSON VISITING SCHOLAR PROGRAM AND LECTURE SERIES

Pub. L. 101–510, div. A, title XIV, § 1466, Nov. 5, 1990, 104 Stat. 1700, provided that:

''(a) VISITING SCHOLAR PROGRAM.—(1) The Secretary of the Army shall establish a visiting scholar program at the United States Military Academy to be known as the 'Thomas Hawkins Johnson Visiting Scholar Program'. The Secretary shall select not more than two scholars to participate in the program for an academic year. A person selected to participate in the program shall serve as an instructor at the Academy for two weeks during the academic year and perform such duties as the Secretary may assign.

''(2) There is authorized to be appropriated to the Secretary of the Army $25,000 for each fiscal year to carry out this subsection.

''(b) LECTURE SERIES.—(1) The Secretary of Defense shall establish a lecture series at the National Defense University to be known as the 'Thomas Hawkins Johnson Lecture Series'. The Secretary shall use the lecture series to bring prominent persons to the National Defense University to deliver lectures on topics relating to public policy, national security, and science.

''(2) There is authorized to be appropriated to the Secretary of Defense $25,000 for each fiscal year to carry out this subsection.''

§ 4332. Departments and professors: titles

(a) The Secretary of the Army may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(b) Upon becoming the senior professor in a department, a permanent professor thereby becomes the head of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4332(a)	10:1061a.	Dec. 14, 1942, ch. 729, 56 Stat. 1049.
4332(b)	10:1087 (proviso).	June 26, 1946, ch. 495, § 1 (proviso), 60 Stat. 312.

In subsection (a), the words ''now or after December 14, 1942, established at'' are omitted as surplusage. The word ''precedence'' is omitted as covered by the word ''rank''. The words ''pay, allowances'' are omitted, since they are determined by the grade held. The words ''from time to time'', ''shall be known'', and ''operate in any case or on any account'' are omitted as surplusage.

§ 4333. Superintendent; faculty: appointment and detail

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from any branch of the Army. Other officers on duty at the Academy, except the permanent professors, may be detailed from any branch of the Army.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(d) Any officer of the Regular Army in a grade above captain may be detailed to perform the duties of director of admissions without being appointed as director of admissions. Such a detail does not affect his position on the active-duty list.

(e) No graduate of the Academy may be appointed or detailed to serve at the Academy as a professor or instructor, or as an assistant to a professor or instructor, within two years after his graduation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 238; Pub. L. 85–600, §1(9), Aug. 6, 1958, 72 Stat. 522; Pub. L. 95–551, §2, Oct. 30, 1978, 92 Stat. 2069; Pub. L. 96–513, title V, §502(24), Dec. 12, 1980, 94 Stat. 2910.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4333(a)	10:1062.	R.S. 1313.
	10:1063 (1st sentence, and 1st 26 words of last sentence).	R.S. 1314 (words before semicolon).
4333(b)	10:1063 (last sentence, less 1st 26 words).	July 26, 1894, ch. 167 (words after semicolon in 7th clause), 28 Stat. 151.
4333(c)	10:1064.	

In subsection (a), the word ''detailed'' is substituted for the word ''selected'', in 10:1062, and for the word ''appointed'', in 10:1063, since historically the offices of superintendent and commandant of cadets have been filled by detail. The words ''assistant professors, acting assistant professors, and the adjutant'', in 10:1063, are omitted as covered by the word ''officers'', in 10:1062. The words ''except the permanent professors'' are inserted to conform to 10:1062.

In subsection (b), the words ''by and with the advice and consent of the Senate'' are inserted, since many of the statutes establishing particular permanent professorships from time to time have so provided, and historically it has been the uniform practice to make these appointments in this manner. 10:1063 (last 14 words) is omitted as obsolete and as covered by section 4349(b) of this title.

In subsection (c), the word ''appointed'' is substituted for the word ''assigned''.

AMENDMENTS

1980—Subsec. (d). Pub. L. 96–513 struck out ''regular or temporary'' in first sentence, and substituted ''active-duty list'' for ''applicable promotion list'' in second sentence.

1978—Subsecs. (c), (d). Pub. L. 95–551 substituted ''director of admissions'' for ''registrar'' wherever appearing.

1958—Subsecs. (c) to (e). Pub. L. 85–600 added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

DETAIL OF RETIRED OFFICER AS LIBRARIAN

Provisions authorizing the performance of the duties of the librarian at the United States Military Academy by a retired officer detailed on active duty, which were contained in Pub. L. 85–724, title III, Aug. 22, 1958, 72 Stat. 714, the Department of Defense Appropriation Act, 1959, were not contained in subsequent appropriation acts. Similar provisions were contained in the following prior acts:

Aug. 2, 1957, Pub. L. 85–117, title III, 71 Stat. 313.
July 2, 1956, ch. 488, title III, 70 Stat. 456.
July 13, 1955, ch. 358, title III, 69 Stat. 303.
June 30, 1954, ch. 432, title IV, 68 Stat. 339.
Aug. 1, 1953, ch. 305, title III, 67 Stat. 338.
July 10, 1952, ch. 630, title III, 66 Stat. 520.
Oct. 18, 1951, ch. 512, title III, 65 Stat. 427.
Sept. 6, 1950, ch. 896, Ch. X, title III, 64 Stat. 733.
Oct. 29, 1949, ch. 787, title III, 63 Stat. 998.
June 24, 1948, ch. 632, 62 Stat. 660.
July 30, 1947, ch. 357, title I, 61 Stat. 563.
July 16, 1946, ch. 583, 60 Stat. 555.
July 3, 1945, ch. 265, 59 Stat. 398.
June 28, 1944, ch. 303, 58 Stat. 588.
July 1, 1943, ch. 185, 57 Stat. 361.
July 2, 1942, ch. 477, 56 Stat. 624.
June 30, 1941, ch. 262, 55 Stat. 384.
June 13, 1940, ch. 343, 54 Stat. 370.
Apr. 26, 1939, ch. 88, 53 Stat. 610.
June 11, 1938, ch. 347, 52 Stat. 659.
July 1, 1937, ch. 423, 50 Stat. 460.
May 15, 1936, ch. 404, 49 Stat. 1297.
Apr. 9, 1935, ch. 54, title I, 49 Stat. 138.
Apr. 26, 1934, ch. 165, title I, 48 Stat. 631.

§ 4333a. Superintendent: condition for detail to position

As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired.

(Added Pub. L. 106–65, div. A, title V, §532(a)(1)(B), Oct. 5, 1999, 113 Stat. 603.)

APPLICATION OF SECTION TO SUPERINTENDENTS SERVING ON OCTOBER 5, 1999

Section not applicable to an officer serving on Oct. 5, 1999, in the position of Superintendent of the United States Military Academy, Naval Academy, or Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service, see section 532(a)(5) of Pub. L. 106–65, set out as a note under section 3921 of this title.

§ 4334. Command and supervision

(a) The supervision and charge of the Academy is in the Department of the Army, under officers of the Army detailed to that duty by the Secretary of the Army.

(b) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post at West Point.

(c) The Commandant of Cadets is the immediate commander of the Corps of Cadets, and is in charge of the instruction of the Corps in tactics.

(d) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 85–600, §1(10), Aug. 6, 1958, 72 Stat. 523; Pub. L. 95–551, §2, Oct. 30, 1978, 92 Stat. 2069.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4334(a)	10:1041.	R.S. 1331.
4334(b)	10:1042.	R.S. 1311.
4334(c)	10:1065.	R.S. 1312.
4334(d)	10:1079.	June 28, 1902, ch. 1300 (1st proviso under ''Permanent Establishment''), 32 Stat. 409.

In subsection (a), the word ''detailed'' is substituted for the word ''assign'' to conform to section 4333 of this title.

In subsection (b), the words ''and, in his absence, the next in rank'' are omitted as surplusage.

In subsection (c), the words ''Corps of Cadets'' are substituted for the words ''battalion of cadets'' to conform to section 4349 of this title and present terminology. The words ''of artillery, cavalry, and infantry'' are omitted as surplusage.

In subsection (d), reference to assimilated rank is omitted as superseded by section 4336 of this title. The words ''and the associate professor'' are omitted as obsolete.

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–551 substituted ''director of admissions'' for ''registrar''.

1958—Subsec. (d). Pub. L. 85–600 inserted ''and the registrar'' after ''professors''.

§ 4335. Dean of Academic Board

(a) The Dean of the Academic Board shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) The Dean of the Academic Board shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Army.

(c) While serving as Dean of the Academic Board, an officer of the Army who holds a grade lower than brigadier general shall hold the grade of brigadier general, if appointed to that grade by the President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the limitation in section 526(a) of this title on general officers of the Army on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 85–861, § 33(a)(46)(A), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 99–661, div. A, title V, § 508(a), Nov. 14, 1986, 100 Stat. 3866; Pub. L. 102–484, div. A, title V, § 521(a), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 106–65, div. A, title V, § 533(a), Oct. 5, 1999, 113 Stat. 604.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4335(a)	10:1089 (2d sentence).	June 26, 1946, ch. 495, § 3 (less 1st 20 words), 60 Stat. 312.
4335(b)	10:1089 (less 1st 20 words, and less 2d sentence).	

In subsection (b), the word ''grade'' is substituted for the word ''rank''. The words ''pay, allowances'' are omitted, since they are determined by the grade held. The words ''retirement rights'' are omitted as covered by the word ''benefits''. The words ''There is authorized'', ''from time to time'', and ''statutory'' are omitted as surplusage.

1958 ACT

The word ''regular'' is deleted [in sections 4335 and 4336] to make clear that a Dean or professor of the United States Military Academy holds only the office of ''Dean'' or ''professor'' and not the office of ''brigadier general'' or ''colonel'', as the case may be, even though he is entitled to the pay and allowances of that grade.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

1992—Subsec. (c). Pub. L. 102–484 struck out subsec. (c) which read as follows: ''The Dean of the Academic Board has the grade of brigadier general while serving in such position, with the benefits authorized for regular brigadier generals of the Army, if appointed to that grade by the President, by and with the advice and consent of the Senate. However, the retirement age of an officer so appointed is that of a permanent professor of the Academy.''

1986—Subsec. (b). Pub. L. 99–661, § 508(a)(1), struck out ''The Dean has the grade of brigadier general while serving as such, with the benefits authorized for regular brigadier generals of the Army, except that his retirement age is that of a permanent professor of the Academy.'' See subsec. (c).

Subsec. (c). Pub. L. 99–661, § 508(a)(2), added subsec. (c).

1958—Subsec. (b). Pub. L. 85–861 substituted ''the grade of brigadier general'' for ''the regular grade of brigadier general''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to appointments or details made on or after Nov. 14, 1986, see section 508(f) of Pub. L. 99–661, set out as an Effective Date note under section 12210 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 4336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Academic Board, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Army has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Army has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 85–600, § 1(11), Aug. 6, 1958, 72 Stat. 523; Pub. L. 85–861, § 33(a)(46)(B), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 95–551, §§ 2, 4(a), Oct. 30, 1978, 92 Stat. 2069; Pub. L. 96–513, title II, § 218(a), title V, § 502(25), Dec. 12, 1980, 94 Stat. 2886, 2911; Pub. L. 98–525, title V, § 533(d)(1), Oct. 19, 1984, 98 Stat. 2528.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4336	10:1079a(a).	Aug. 7, 1947, ch. 512, §520(a), 61 Stat. 912.

The word ''grade'' is substituted for the word ''rank''. The words ''pay, and allowances'' are omitted, since they are determined by the grade held. 10:1079a (a) (last proviso), and the words ''Hereafter each of'', ''who have been or may hereafter be'', and ''and appointed in'' are omitted as surplusage.

1958 ACT

The word ''regular'' is deleted [in sections 4335 and 4336] to make clear that a Dean or professor of the United States Military Academy holds only the office of ''Dean'' or ''professor'' and not the office of ''brigadier general'' or ''colonel'', as the case may be, even though he is entitled to the pay and allowances of that grade.

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98–525 substituted ''on which he would have been promoted had he been selected for promotion from among officers in the promotion zone,'' for ''when a regular officer, junior to him on the promotion list or active-duty list on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel,''.

1980—Subsecs. (a), (b). Pub. L. 96–513, §502(25), substituted ''a regular officer'' for ''a promotion-list officer'', and inserted ''or active-duty list'' after ''on the promotion list''.

Subsec. (c). Pub. L. 96–513, §218(a), struck out subsec. (c) which provided that, unless he is serving in a higher grade, an officer detailed to perform the duties of director of admissions has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel.

1978—Pub. L. 95–551, §4(a), substituted ''director of admissions'' for ''registrar'' in section catchline.

Subsecs. (b), (c). Pub. L. 95–551, §2, substituted ''director of admissions'' for ''registrar'' wherever appearing.

1958—Pub. L. 85–600, §1(11)(C), inserted ''; registrar'' in section catchline.

Subsec. (a). Pub. L. 85–861 substituted ''has the grade of colonel'' for ''has the regular grade of colonel'' in two places, and ''have the grade of lieutenant colonel'' for ''have the regular grade of lieutenant colonel''.

Pub. L. 85–600 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 218(a) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 502(25) of Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SERVICE PERFORMED AS REGISTRAR PRIOR TO AUG. 6, 1958

Section 2 of Pub. L. 85–600 provided that: ''No increase in pay or allowances accrues by reason of the enactment of this Act [amending this section and sections 3075, 3204, 3205, 3283, 3296, 3883, 3886, 4331, 4333, 4334, 8075, 8204, 8205, 8296, 8883, 8886, 9331, 9333, 9334, and 9336 of this title] for service performed before this Act takes effect [Aug. 6, 1958].''

§ 4337. Chaplain

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to a monthly housing allowance in the same amount as the basic allowance for housing allowed to a lieutenant colonel, and to fuel and light for quarters in kind. The chaplain may be reappointed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 239; Pub. L. 87–651, title I, §117, Sept. 7, 1962, 76 Stat. 513; Pub. L. 107–107, div. A, title V, §540(a), Dec. 28, 2001, 115 Stat. 1109.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4337	10:1083. 10:1137.	Feb. 18, 1896, ch. 22 (proviso), 29 Stat. 8; May 16, 1928, ch. 579, 45 Stat. 573; June 2, 1945, ch. 172, 59 Stat. 230.

The words ''The chaplain may be reappointed'' are substituted for the words ''and said chaplain shall be eligible for reappointment for an additional term or terms''. The figures ''$5,482.80'' and ''$6,714'' are substituted for the figures ''$4,000'' and ''$5,000'' to reflect increases in the rates of salary of that office effected by the Federal Employees Pay Act of 1945, 59 Stat. 295, the Federal Employees Pay Act of 1946, 60 Stat. 216, the Postal Rate Revision and Federal Employees Salary Act of 1948, 62 Stat. 1260, and the Classification Act of 1949, 63 Stat. 954.

1962 ACT

The change reflects the opinion of the Assistant General Counsel, Civil Service Commission (GC: JHF:fz, May 4, 1959), that those parts of section 4337 and 9337 of title 10 that relate to the salaries of the chaplains at the United States Military Academy and the United States Air Force Academy were superseded by the Classification Act of 1949 (5 U.S.C. 1071 et seq.). While the positions of chaplain at those Academies are not specifically covered by the Act, the Act has been determined to apply to those positions in accordance with section 203 thereof (5 U.S.C. 1083).

AMENDMENTS

2001—Pub. L. 107–107 substituted ''a monthly housing allowance in the same amount as the basic allowance for housing allowed to a lieutenant colonel'' for ''the same allowances for public quarters as are allowed to a captain''.

1962—Pub. L. 87–651 struck out provisions which prescribed the salary of chaplain on appointment and reappointment.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §540(b), Dec. 28, 2001, 115 Stat. 1109, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act [Dec. 28, 2001].''

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(5) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 4338. Civilian faculty: number; compensation

(a) The Secretary of the Army may employ as many civilians as professors, instructors, and

lecturers at the Academy as the Secretary considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Army may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(Added Pub. L. 103–160, div. A, title V, § 533(a)(1), Nov. 30, 1993, 107 Stat. 1658; amended Pub. L. 106–65, div. A, title XI, § 1107(a), Oct. 5, 1999, 113 Stat. 778.)

PRIOR PROVISIONS

A prior section 4338, acts Aug. 10, 1956, ch. 1041, 70A Stat. 239; Sept. 7, 1962, Pub. L. 87–649, § 4, 76 Stat. 493, provided that the director of music, who was also leader of the Military Academy Band, have the rank prescribed by the Secretary of the Army, that at such time as the President directs, the director of music be retired in the grade equal to the highest rank in which he served on active duty satisfactorily for at least six months and with the retired pay of an officer of the Army with the same grade and length of service, and that the dependents of the director of music be entitled to pensions, death gratuity, and other benefits provided for the dependents of a Regular Army officer with corresponding grade and length of service, prior to repeal by Pub. L. 95–551, § 3(a), Oct. 30, 1978, 92 Stat. 2069.

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

[§ 4339. Repealed. Pub. L. 89–716, § 1, Nov. 2, 1966, 80 Stat. 1114]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 240, authorized public quarters and fuel and light therefor for the organist and choirmaster of the Academy and for civilian instructors in the departments of foreign languages and tactics.

QUARTERS FOR ORGANIST, CHOIRMASTER AND CERTAIN CIVILIAN INSTRUCTORS APPOINTED PRIOR TO JAN. 17, 1963

Section 2 of Pub. L. 89–716 provided that the organist and choirmaster and the civilian instructors in departments of foreign languages and tactics at United States Military Academy who were serving under appointments made prior to Jan. 17, 1963, were entitled to public quarters without charge, and to fuel and light without charge when they occupy public quarters.

§ 4340. Quartermaster

The Secretary of the Army shall detail a commissioned officer of the Army as quartermaster for the Corps of Cadets. The quartermaster shall—

(1) buy and issue all supplies for the cadets;

(2) buy and issue all provisions for the mess; and

(3) supervise the mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4340	10:1067.	Aug. 7, 1876, ch. 255 (last par.), 19 Stat. 126.

The words ''buy and issue all provisions for the mess'' and ''supervise the mess'' are substituted for the words ''all the duties of purveying and supervision for the mess''. The word ''commissary'' is omitted as obsolete. The words ''and all supplies of all kinds and descriptions shall be furnished to the cadets at actual cost, without any commission or advance over said cost'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (61 Stat. 495), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses.

§ 4341. Faculty and other officers: leaves of absence

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4341	10:1144.	R.S. 1330.

The words ''under regulations prescribed by the Secretary of the Army'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

§ 4341a. Cadets: appointment by the President

Cadets at the Academy shall be appointed by the President alone. An appointment is conditional until the cadet is admitted.

(Added Pub. L. 97–60, title II, § 203(a)(2)(A), Oct. 14, 1981, 95 Stat. 1006.)

EFFECTIVE DATE

Section 203(d) of Pub. L. 97–60 provided that: ''The amendments made by this section [enacting this section and section 9341a of this title and amending sections 4342, 6953, 6954, and 9342 of this title] shall take effect with respect to nominations for appointment to the first class admitted to each Academy after the date of the enactment of this Act [Oct. 14, 1981].''

§ 4342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of the Corps of Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Army under subsection (j). Subject to that limitation, cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examinations from the children of members of the armed forces who were killed in action or died of, or have a

service-connected disability rated at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a ''missing status'' as defined in section 551(2) of title 37, and children of civilian employees who are in ''missing status'' as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Army.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Two cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Two cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Army from enlisted members of the Regular Army.

(3) 85 nominated by the Secretary of the Army from enlisted members of reserve components of the Army.

(4) 20 nominated by the Secretary of the Army, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Army in order of merit (prescribed pursuant to section 4343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of the Corps of Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b)(1), (2), (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Army may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy, as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a)(3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a)(3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Secretary of the Army shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Corps of Cadets, the Secretary of the Army may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Army may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the cadet strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Army Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Army Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term ''cadet strength limit'' means the authorized maximum strength of the Corps of Cadets of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 240; Pub. L. 85–861, § 33(a)(26), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 87–663, § 1(1), (2), Sept. 14, 1962, 76 Stat. 547; Pub. L. 88–276, § 1(1), Mar. 3, 1964, 78 Stat. 148; Pub. L. 89–650, § 1(1)–(4), Oct. 13, 1966, 80 Stat. 896; Pub. L. 90–374, July 5, 1968, 82 Stat. 283; Pub. L. 90–623, § 2(8), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91–405, title II, § 204(c), Sept. 22, 1970, 84 Stat. 852; Pub. L. 92–365, § 1(1), Aug. 7, 1972, 86 Stat. 505; Pub. L. 93–171, § 1(1)–(4), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94–106, title VIII, § 803(b)(1), Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, § 512(13), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 96–600, § 2(a), Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–60, title II, § 203(a)(1), Oct. 14, 1981, 95 Stat. 1006; Pub. L. 98–94, title X, § 1005(a)(1), (b)(1), Sept. 24, 1983, 97 Stat. 660; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, § 532(a)(1), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 103–160, div. A, title V, § 531, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 103–337, div. A, title XVI, § 1672(c)(3), Oct. 5, 1994, 108 Stat. 3015; Pub. L. 104–106, div. A, title V, § 532(a), title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 314, 502; Pub. L. 105–85, div. A, title X, § 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. A, title V, § 531(b)(1), title X, § 1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Pub. L. 106–398, § 1 [[div. A], title V, § 531(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–109; Pub. L. 107–314, div. A, title V, § 532(a), (f), Dec. 2, 2002, 116 Stat. 2545, 2547.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4342(a)	10:1092a (1st par., less clauses (a) through (e)). 10:1092a (clause (a), less 14th through 52d words after 4th semicolon; and less last 32 words). 10:1092a (1st 13 words of clause (b)). 10:1092a (1st 26 words of clause (c)). 10:1092a (clause (d)). 10:1092a (clause (e), less last 53 words).	R.S. 1317. June 30, 1950, ch. 421, §§1, 2 (last proviso), 64 Stat. 303, 304; June 3, 1954, ch. 251, § 2, 68 Stat. 169.
4342(b)	10:1092a (last par.). 10:1098.	
4342(c)	10:1092a (14th through 52d words after 4th semicolon of clause (a)). 10:1092b (last proviso).	
4342(d)	10:1092a (last 32 words of clause (a)).	
4342(e)	10:1092a (clause (b), less 1st 13 words, and less 1st proviso).	
4342(f)	10:1092a (1st proviso of clause (b)).	
4342(g)	10:1092a (clause (c), less 1st 26 words).	
4342(h)	10:1092a (last 53 words of clause (e)).	

In subsection (a), the words ''the authorized strength * * * is as follows—'' are substituted for the words ''shall be authorized and consist of the following''. The words ''at large'' and ''which totals two thousand four hundred and ninety-six'', and 10:1092a (clause (d)) are omitted as surplusage.

In subsection (b), the words ''from whatever source of admission'', in 10:1092a, are omitted as surplusage. 10:1098 (words before last semicolon) is omitted as obsolete.

In subsection (c), the first 15 words are substituted for the words ''all of which cadets shall be''. The words ''domiciled in'' are substituted for the words ''actual residents of'' to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J.A.G. 351.11, Feb. 10, 1925).

In subsection (e)(4), the words ''armed forces'' are substituted for the description of the land or naval

forces. The date February 1, 1955, fixed by Proclamation No. 3080 (Jan. 7, 1955; 20 F.R. 173), is substituted for the words ''such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress under section 745 of title 38''. The words ''including male and female members of * * * and all components thereof'' are omitted as surplusage.

In subsection (f), the words ''whether a death is service-connected'' are substituted for the words ''as to the service connection of the cause of death''.

In subsection (g), the words ''(National Guard of the United States, the Air National Guard of the United States, the Army Reserve, and the Air Force Reserve)'', ''Regular components'', ''by members of the National Guard of the United States and the Air National Guard of the United States'' and ''established at the competitive entrance examination'' are omitted as surplusage. The word ''grades'' is substituted for the words ''proficiency averages''.

In subsection (h), the words ''or shall hereafter be'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, §532(a)(1), inserted before period at end of first sentence ''or such higher number as may be prescribed by the Secretary of the Army under subsection (j)''.

Subsec. (i). Pub. L. 107–314, §532(f), struck out ''(beginning with the 2001–2002 academic year)'' after ''any year''.

Subsec. (j). Pub. L. 107–314, §532(a)(2), added subsec. (j).

2000—Subsec. (b)(1)(B). Pub. L. 106–398, §1 [[div. A], title V, §531(a)(1)], struck out '', other than those granted retired pay under section 12731 of this title (or under section 1331 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' after ''retired or retainer pay''.

Subsec. (b)(1)(C), (D). Pub. L. 106–398, §1 [[div. A], title V, §531(a)(2)], added subpars. (C) and (D).

1999—Subsec. (a). Pub. L. 106–65, §531(b)(1)(A), substituted ''(determined for any year as of the day before the last day of the academic year) is 4,000. Subject to that limitation, cadets are selected as follows:'' for ''is as follows:'' in introductory provisions.

Subsec. (g). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (i). Pub. L. 106–65, §531(b)(1)(B), added subsec. (i).

1997—Subsec. (a)(10). Pub. L. 105–85 substituted ''Mariana'' for ''Marianas''.

1996—Subsec. (a)(10). Pub. L. 104–106, §532(a), added par. (10).

Subsec. (g). Pub. L. 104–106, §1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(1)(B). Pub. L. 103–337 substituted ''section 12731 of this title (or under section 1331 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''section 1331 of this title''.

1993—Subsec. (a). Pub. L. 103–160 in concluding provisions substituted ''10 persons'' for ''a principal candidate and nine alternates'' and inserted at end ''Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.''

1990—Subsec. (a)(8) to (10). Pub. L. 101–510, §532(a)(1)(A), redesignated cls. (9) and (10) as (8) and (9), respectively, and struck out former cl. (8) which read as follows: ''One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States.''

Subsec. (d). Pub. L. 101–510, §532(a)(1)(B), substituted ''clauses (2) through (9)'' for ''clauses (2)–(7), (9), or (10)''.

Subsec. (f). Pub. L. 101–510, §532(a)(1)(C), substituted ''clauses (3) through (9)'' for ''clauses (3)–(7), (9) and (10)''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1983—Subsec. (a)(8). Pub. L. 98–94, §1005(b)(1), substituted ''One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States'' for ''One cadet nominated by the Governor of the Panama Canal from the children of civilians residing in the Canal Zone or the children of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama''.

Subsec. (a)(10). Pub. L. 98–94, §1005(a)(1), substituted '', nominated by the Delegate in Congress from American Samoa'' for ''nominated by the Secretary of the Army upon recommendation of the Governor of Samoa''.

1981—Subsec. (d). Pub. L. 97–60 substituted provisions authorizing the Superintendent to nominate for appointment each year 50 persons from the country at large for provisions that all cadets were to be appointed by the President and that all such appointments were conditional until the cadet was admitted. See section 4341a of this title.

1980—Subsec. (a)(6), (9). Pub. L. 96–600 substituted ''Two cadets'' for ''One cadet''.

Subsec. (h). Pub. L. 96–513 substituted ''The'' for ''Effective beginning with nominations for appointment to the Academy in the calendar year 1964, the''.

1975—Subsecs. (a)(1), (8), (b)(1), (c). Pub. L. 94–106 substituted ''children'' for ''sons'' wherever appearing.

1973—Subsec. (a)(6). Pub. L. 93–171, §1(1), substituted ''One cadet from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands'' for ''Five cadets from each Territory, nominated by the Delegate in Congress from the Territory''.

Subsec. (a)(9). Pub. L. 93–171, §1(2), struck out reference to Guam and Virgin Islands.

Subsec. (a)(10). Pub. L. 93–171, §1(3), added cl. (10).

Subsec. (f). Pub. L. 93–171, §1(4), substituted '', (9) and (10) of subsection (a)'' for ''and (9) of subsection (a)'' and struck out reference to Territory.

1972—Subsec. (a)(1). Pub. L. 92–365 increased the number of cadets from 40 to 65 and added sons of members who are in a missing status and sons of civilian employees who are in missing status as eligible for the competitive examination.

1970—Subsec. (a)(5). Pub. L. 91–405 substituted ''Delegate to the House of Representatives from the District of Columbia'' for ''Commissioner of that District''.

1968—Subsec. (a). Pub. L. 90–374 increased from five to nine the number of alternates for each vacancy each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate.

Subsec. (a)(5). Pub. L. 90–623 substituted ''Commissioner'' for ''Commissioners''.

1966—Subsec. (a)(1). Pub. L. 89–650, §1(1), provided for selection of cadets to the Military Academy from sons of members of the armed forces who have a 100 per centum service-connected disability and removed the limitation to active service during World War I or World War II or after June 26, 1950, and before Feb. 1, 1955.

Subsec. (a)(2). Pub. L. 89–650, §1(2), provided for nominations to the Military Academy by the President pro tempore of the Senate if there is no Vice President.

Subsec. (b)(1). Pub. L. 89–650, §1(3), increased the number of Presidential appointments to the Military Academy from 75 to 100, provided for selection of eligible persons as stated in items (A) and (B), previously

chosen from sons of members of regular components, and declared persons eligible under subsec. (a)(1) ineligible under subsec. (b)(1) of this section.

Subsec. (b)(3). Pub. L. 89–650, §1(4), substituted ''reserve components of the Army'' for ''the Army Reserve''.

1964—Pub. L. 88–276 amended section generally, and among other changes, in the noncompetitive appointments, increased the number of cadets nominated by the Vice President from three to five, each Senator, Representative, and Delegate from 4 to 5, and the Commissioner of Puerto Rico from 4 to 5, authorized the Governor of Puerto Rico to appoint one cadet, each Senator, Representative and Delegate to nominate a principal and five alternates for each vacancy, and, in the competitive appointments, permitted the President to appoint 75 cadets annually from the sons of members of the Regular components, instead of a cumulative total of 89, the Secretary of the Army to appoint 85 cadets annually from enlisted members of the Regular Army, instead of a cumulative total of 90, 85 annually from enlisted members of the Army Reserve, instead of a cumulative total of 90, 20 annually from honor graduates of designated honor schools and the R.O.T.C., instead of a cumulative total of 40 from honor schools only, 150 annually, in order of merit, from among the qualified alternates nominated by members of Congress, and when the quota of cadets selected under subsecs. (b)(1), (2), (3) is not filled, to fill the vacancies by appointing those best qualified from any of the three sources, decreased the number of cadets nominated by the Commissioners of the District of Columbia from 6 to 5, and by the Governor of the Panama Canal from 2 to 1, limited appointments to the number that can be adequately accommodated at the Academy, within the limitation that congressional appointments cannot be limited to less than four, and if limited, a priority of selection is established for the other categories, and, beginning in 1964, the Secretary may upon request of a Member of Congress, furnish him the name of any nominating authority responsible for the nomination of any identified person to the Academy.

1962—Subsec. (a)(10). Pub. L. 87–663, §1(1), added cl. (10).

Subsec. (c). Pub. L. 87–633, §1(2), inserted references to American Samoa, Guam, and the Virgin Islands, and substituted ''clauses (1)–(5) and (10)'' for ''clauses (1)–(5).''

1958—Subsec. (c). Pub. L. 85–861 inserted a comma after ''district''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–60 effective with respect to nominations for appointment to the first class admitted to each Academy after Oct. 14, 1981, see section 203(d) of Pub. L. 97–60, set out as an Effective Date note under section 4341a of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2(d) of Pub. L. 96–600 provided that: ''The amendments made by this section [amending this section and sections 6954 and 9342 of this title] shall be effective beginning with the nominations for appointment to the service academies for academic years beginning more than one year after the date of enactment of this Act [Dec. 24, 1980].''

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 4 of Pub. L. 93–171 provided that: ''The amendments made by this Act [amending this section and sections 4343, 6954, 6956, 6958, 9342, and 9343 of this title] shall be effective beginning with the nominations for appointments to the service academies in the calendar year 1974.''

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

STRENGTH LIMITATIONS AT UNITED STATES MILITARY ACADEMY

Pub. L. 106–65, div. A, title V, §531(a), Oct. 5, 1999, 113 Stat. 601, provided that:

''(1) The Secretary of the Army shall take such action as necessary to ensure that the United States Military Academy is in compliance with the USMA cadet strength limit not later than the day before the last day of the 2001–2002 academic year.

''(2) The Secretary of the Army may provide for a variance to the USMA cadet strength limit—

''(A) as of the day before the last day of the 1999–2000 academic year of not more than 5 percent; and

''(B) as of the day before the last day of the 2000–2001 academic year of not more than 2½ percent.

''(3) For purposes of this subsection—

''(A) the USMA cadet strength limit is the maximum of 4,000 cadets established for the Corps of Cadets at the United States Military Academy by section 511 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; [former] 10 U.S.C. 4342 note), reenacted in section 4342(a) of title 10, United States Code, by the amendment made by subsection (b)(1); and

''(B) the last day of an academic year is graduation day.''

LIMITATION ON NUMBER OF CADETS AND MIDSHIPMEN AUTHORIZED TO ATTEND SERVICE ACADEMIES

Pub. L. 102–190, div. A, title V, §511(a)–(d), Dec. 5, 1991, 105 Stat. 1359, 1360, provided that authorized strength of Corps of Cadets of United States Military Academy, Air Force Cadets of United States Air Force Academy, and brigade of midshipmen of United States Naval Academy could not exceed 4,000 for each service academy for class years beginning after 1994, and contained provisions concerning effect of class reductions on certain appointments and requiring Comptroller General to make determinations and reports, prior to repeal by Pub. L. 106–65, div. A, title V, §531(b)(4), Oct. 5, 1999, 113 Stat. 602.

Section 531 of Pub. L. 101–510, which required that number of appointments made for class entering service academy in 1991 not exceed the number 100 less than the number entering service academy in 1990, and that number of such appointments not exceed 1,000 in 1995, was repealed by Pub. L. 102–190, div. A, title V, §511(e), Dec. 5, 1991, 105 Stat. 1360.

ELIGIBILITY OF FEMALE INDIVIDUALS FOR APPOINTMENT AND ADMISSION TO SERVICE ACADEMIES; UNIFORM APPLICATION OF ACADEMIC AND OTHER STANDARDS TO MALE AND FEMALE INDIVIDUALS

Section 803(a) of Pub. L. 94–106 provided that: ''Notwithstanding any other provision of law, in the admin-

istration of chapter 403 of title 10, United States Code [this chapter] (relating to the United States Military Academy), chapter 603 of such title (relating to the United States Naval Academy), and chapter 903 of such title (relating to the United States Air Force Academy), the Secretary of the military department concerned shall take such action as may be necessary and appropriate to insure that (1) female individuals shall be eligible for appointment and admission to the service academy concerned, beginning with appointments to such academy for the class beginning in calendar year 1976, and (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals.''

SECRETARY TO IMPLEMENT POLICY OF EXPEDITIOUS ADMISSION OF WOMEN TO THE ACADEMY

Section 803(c) of Pub. L. 94–106 provided that: ''It is the sense of Congress that, subject to the provisions of subsection (a) [note set out above], the Secretaries of the military departments shall, under the direction of the Secretary of Defense, continue to exercise the authority granted them in chapters 403, 603 and 903 of title 10, United States Code, but such authority must be exercised within a program providing for the orderly and expeditious admission of women to the academies, consistent with the needs of the services, with the implementation of such program upon enactment of this Act [Oct. 7, 1975].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4343, 4344 of this title.

§ 4343. Cadets: appointment; to bring Corps to full strength

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Army may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2) through (8) of section 4342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 88–276, § 1(2), Mar. 3, 1964, 78 Stat. 150; Pub. L. 93–171, § 1(5), Nov. 29, 1973, 87 Stat. 690; Pub. L. 102–25, title VII, § 701(f)(5), Apr. 6, 1991, 105 Stat. 115.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4343	10:1092d.	June 30, 1950, ch. 421, § 4, 64 Stat. 305.

The words ''If it is determined'' are substituted for the words ''When upon determination''. The words ''within his discretion'' are omitted as covered by the word ''may''. The words ''within the capacity of the Academy'', ''from the remaining sources of admission authorized by law'', and ''to be admitted in such class'' are omitted as surplusage. The words ''by the persons named in clauses (1)–(6) of section 4342(a), and clause (2) of section 4342(e), of this title'' are substituted for the words ''by the Vice President, Members of the Senate and House of Representatives of the United States, Delegates and Resident Commissioners, the Commissioners of the District of Columbia, and the Governor of the Canal Zone''. The words ''under any other provision of law'' are substituted for the words ''from sources authorized by law other than those holding such alternate appointments''.

AMENDMENTS

1991—Pub. L. 102–25 substituted ''clauses (2) through (8)'' for ''clauses (2)–(9)''.

1973—Pub. L. 93–171 substituted ''clauses (2)–(9) of section 4342(a)'' for ''clauses (2)–(8) of section 4342(a)''.

1964—Pub. L. 88–276, among other changes, increased the percentage of nominees to be selected from two-thirds to three-fourths, and struck out ''as are necessary to meet the needs of the Army and Air Force, but not more than the authorized strength of the Corps of Cadets'' after ''Academic Board''.

EFFECTIVE DATE OF 1973 AMENDMENT

Effective date of amendment by Pub. L. 93–171, see section 4 of Pub. L. 93–171, set out as a note under section 4342 of this title.

NUMBER OF ALTERNATE-APPOINTEES FROM CONGRESSIONAL SOURCES NOT TO BE REDUCED BECAUSE OF ADDITIONAL PRESIDENTIAL APPOINTMENTS

Pub. L. 89–650, § 2, Oct. 13, 1966, 80 Stat. 896, provided that: ''Notwithstanding any other provision of law, none of the additional appointments authorized in sections 4342(b)(1), 6954(b)(1) and 9342(b)(1) of this title as provided by this Act shall serve to reduce or diminish the number of qualified alternates from congressional sources who would otherwise be appointed by the appropriate service Secretary under the authority contained in sections 4343, 6956, and 9343 of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4342 of this title.

§ 4344. Selection of persons from foreign countries

(a)(1) The Secretary of the Army may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.

(2) The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Army shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Army shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a cadet under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Army determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 4346(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 98–94, title X, §1004(a)(1), Sept. 24, 1983, 97 Stat. 657; Pub. L. 105–85, div. A, title V, §543(a), Nov. 18, 1997, 111 Stat. 1743; Pub. L. 106–65, div. A, title V, §534(a), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106–398, §1 [[div. A], title V, §532(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–107, div. A, title V, §533(a)(1), (2), Dec. 28, 2001, 115 Stat. 1105.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4344(a)	10:1093c (less 3d and last sentences).	June 26, 1946, ch. 493, §1, 60 Stat. 311; June 1, 1948, ch. 357, §2, 62 Stat. 280.
4344(b)	10:1093c (3d sentence).	
4344(c)	10:1093c (last sentence, less proviso).	
4344(d)	10:1093c (proviso of last sentence).	

In subsection (a), the words ''at West Point, New York'' are omitted as surplusage.

In subsection (b), the words ''is entitled to'' are substituted for the words ''shall receive''. The words ''performed in proceeding'' are omitted as surplusage. The words ''continental limits'' are omitted, since section 101(1) of this title defines the United States to include only the States and the District of Columbia.

In subsection (c), the words ''to any office or position'' are omitted as surplusage.

In subsection (d), the words ''and 1101'' are omitted, since section 1321 of the Revised Statutes, previously codified in 10:1101, was repealed by section 6(b) of the Act of June 30, 1950, ch. 421, 64 Stat. 305.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107, §533(a)(1), substituted ''60'' for ''40''.

Subsec. (b)(2). Pub. L. 107–107, §533(a)(2)(A), struck out ''unless a written waiver of reimbursement is granted by the Secretary of Defense'' before period at end of first sentence.

Subsec. (b)(3). Pub. L. 107–107, §533(a)(2)(B), added par. (3) and struck out former par. (3) which read as follows: ''The amount of reimbursement waived under paragraph (2) may not exceed 50 percent of the per-person reimbursement amount otherwise required to be paid by a foreign country under such paragraph, except in the case of not more than 20 persons receiving instruction at the Academy under this section at any one time.''

2000—Subsec. (a)(3). Pub. L. 106–398 added par. (3).

1999—Subsec. (b)(3). Pub. L. 106–65 substituted ''50 percent'' for ''35 percent'' and ''20 persons'' for ''five persons''.

1997—Subsec. (b)(2). Pub. L. 105–85, §543(a)(1), inserted before period at end '', except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States''.

Subsec. (b)(3). Pub. L. 105–85, §543(a)(2), added par. (3).

1983—Pub. L. 98–94 substituted ''persons from foreign countries'' for ''persons from Canada and American Republics'' in section catchline.

Subsec. (a)(1). Pub. L. 98–94 substituted ''The Secretary of the Army may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy'' for ''Upon designation by the President, the Secretary of the Army may permit not more than 20 persons at any one time from Canada and the American Republics, other than the United States, to receive instruction at the Academy'' as the first sentence of existing subsec. (a), redesignated that first sentence as par. (1), and in par. (1) as so redesignated inserted second sentence providing that such persons shall be in addition to the authorized strength of the Corps of the Cadets of the Academy under section 4342 of this title.

Subsec. (a)(2). Pub. L. 98–94 substituted ''The Secretary of the Army, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country'' for ''However, not more than three persons from any one of those republics or from Canada may receive instruction under this section at any one time'' as the second sentence of existing subsec. (a), redesignated that second sentence as par. (2), and in par. (2) as so redesignated inserted second sentence providing that the Secretary of the Army may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

Subsec. (b)(1). Pub. L. 98–94 redesignated first sentence of existing subsec. (b) as par. (1) thereof.

Subsec. (b)(2). Pub. L. 98–94 substituted ''Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1) unless a written waiver of reimbursement is granted by the Secretary of Defense'' for ''However, the mileage allowance payable to that person for travel to the Academy for initial admission is not limited to mileage for travel within the United States'' as second sentence of existing subsec. (b), redesignated that second sentence as

par. (2) and inserted second sentence providing that the Secretary of the Army shall prescribe the rates for reimbursement under this paragraph.

Subsec. (c)(1). Pub. L. 98–94 redesignated first sentence of existing subsec. (c) as par. (1) and inserted second sentence providing that the Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

Subsec. (c)(2). Pub. L. 98–94 redesignated second sentence of existing subsec. (c) as par. (2) and substituted ''appointment in an armed force of the United States'' for ''appointment in the United States Army''.

Subsec. (d). Pub. L. 98–94 reenacted subsec. (d) without change.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §533(a)(3), Dec. 28, 2001, 115 Stat. 1105, provided that: ''The amendments made by paragraph (2) [amending this section] shall not apply with respect to any person who entered the United States Military Academy to receive instruction under section 4344 of title 10, United States Code, before the date of the enactment of this Act [Dec. 28, 2001].''

Pub. L. 107–107, div. A, title V, §533(d), Dec. 28, 2001, 115 Stat. 1106, provided that: ''The amendments made by this section [amending this section and sections 6957 and 9344 of this title] shall not apply with respect to any academic year that began before the date of the enactment of this Act [Dec. 28, 2001].''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, §1 [[div. A], title V, §532(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110, provided that: ''The amendments made by this section [amending this section and sections 6957 and 9344 of this title] shall apply with respect to academic years that begin after October 1, 2000.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §534(d), Oct. 5, 1999, 113 Stat. 605, provided that: ''The amendments made by this section [amending this section and sections 6957 and 9344 of this title] apply with respect to students from a foreign country entering the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy on or after May 1, 1999.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 543(d) of Pub. L. 105–85 provided that: ''The amendments made by this section [amending this section and sections 6957 and 9344 of this title] apply with respect to students from a foreign country entering the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy on or after May 1, 1998.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1004(d) of Pub. L. 98–94 provided that:

''Sections 4344(b)(2), 6957(b)(2), and 9344(b)(2) of title 10, United States Code, as added by this section, do not apply to the cost of providing instruction to a person who, before the effective date of this section, entered the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy under section 4344, 4345, 6957, 9344, or 9345 of such title, as in effect on the day before such date. Any such person shall be counted against the maximum of 40 persons who may attend the Academy concerned at any time under any of those sections.

''The amendments made by subsections (a), (b), and (c) [amending this section and sections 6957 and 9344 of this title and repealing sections 4345 and 9345 of this title] shall take effect one year after the date of the enactment of this Act [Sept. 24, 1983] and shall apply to each person entering the United States Military Academy, the United States Naval Academy, or the United States Air Force Academy after that effective date.''

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM: SERVICE ACADEMY INSTRUCTION; BENEFITS, LIMITATIONS, RESTRICTIONS, AND REGULATIONS; OATH OF TRAINEES

Pub. L. 89–802, Nov. 9, 1966, 80 Stat. 1518, provided that:

''(a) Notwithstanding any other provision of law, upon designation by the President, the Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force, respectively, may permit persons from foreign countries to receive instruction at the Military Academy, the Naval Academy, and the Air Force Academy.

''(b) A person may not be admitted to an Academy for instruction under this Act unless his country at the time of his admission is assisting the United States in Vietnam by the provision of manpower or bases.

''(c) Not more than four persons may receive instruction under this Act at any one Academy at any one time.

''(d) No person may be admitted to an Academy under this Act after October 1, 1970.

''(e) A person receiving instruction under this Act is entitled to the pay, allowances, and emoluments of a cadet or midshipman appointed from the United States and from the same appropriations.

''(f) Except as the Secretary determines, a person receiving instruction under this Act is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal and graduation as a cadet or midshipman appointed from the United States. However, a person receiving instruction under this Act is not entitled to an appointment in the Armed Forces of the United States by reason of his graduation from an Academy.

''(g) A person receiving instruction under this Act is not subject to section 4346(d) of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4345 of this title; title 20 section 221a.

§ 4345. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Army may permit a student enrolled at a military academy of a foreign country to receive instruction at the Academy in exchange for a cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 4344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 24 cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of

a cadet by reason of attendance at the Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged cadet in that foreign country.

(3) The Academy shall bear all costs of the exchange program from funds appropriated for the Academy. Expenditures in support of the exchange program may not exceed $120,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 4344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added Pub. L. 105–85, div. A, title V, §542(a)(1), Nov. 18, 1997, 111 Stat. 1740; amended Pub. L. 106–65, div. A, title V, §535(a), Oct. 5, 1999, 113 Stat. 605.)

PRIOR PROVISIONS

A prior section 4345, act Aug. 10, 1956, ch. 1041, 70A Stat. 242, related to selection of Filipinos for instruction at the Military Academy, prior to repeal by Pub. L. 98–94, title X, §1004(a)(2), (d), Sept. 24, 1983, 97 Stat. 658, 660, effective one year after Sept. 24, 1983. See section 4344 of this title.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65, §535(a)(1), substituted ''24 cadets'' for ''10 cadets''.

Subsec. (c)(3). Pub. L. 106–65, §535(a)(2), substituted ''$120,000'' for ''$50,000''.

§4346. Cadets: requirements for admission

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Army, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to the following oath—

''I, _____, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the Uniform Code of Military Justice.''

If a candidate for admission refuses to take this oath, his appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 242; Pub. L. 104–201, div. A, title V, §555(b), Sept. 23, 1996, 110 Stat. 2527.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4346(a)	10:1092b (less provisos).	June 30, 1950, ch. 421, §2 (less provisos), 64 Stat. 304.
4346(b)	10:1096.	R.S. 1319; restated Mar. 2, 1901, ch. 804 (1st proviso under ''Permanent Establishment''), 31 Stat. 911.
4346(c)	10:1095.	Aug. 9, 1912, ch. 275 (2d proviso under ''Permanent Establishment''), 37 Stat. 252.
4346(d)	10:1099.	R.S. 1320.

In subsection (a), the words ''Effective January 1, 1951'' are omitted as executed. The word ''Calendar'' is omitted as surplusage. The words ''must not have passed his twenty-second birthday'' are substituted for the words ''not more than twenty-two years of age'', to make it clear that a person whose twenty-second birthday falls on July 1 of the year of admission is eligible (see opinion of the Judge Advocate General of the Army (JAGA 1952/7083, 2 Sept. 1952)).

In subsection (b), the words ''To be'' are substituted for the words ''before they shall be''. The words ''must show * * * that he is qualified'' are substituted for the words ''shall be required to be well versed''. The words ''from time to time'' are omitted as surplusage.

In subsection (c), the word ''shall'' is substituted for the word ''may'', since the nominee is required to appear for the examination. The word ''appear'' is substituted for the words ''present himself''. The words ''at a place'' are substituted for the words ''at West Point, New York, or other prescribed places''.

In subsection (d), the word ''county'' is omitted as surplusage. The words ''Uniform Code of Military Justice'' are substituted for the words ''rules and articles governing the armies of the United States'', since the Articles of War have been superseded by the Uniform Code of Military Justice. The words ''his appointment is terminated'' are substituted for the words ''shall be dismissed from the service'', since a cadet who has not taken the oath is not yet a member.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 substituted ''twenty-third birthday'' for ''twenty-second birthday''.

AUTHORITY TO WAIVE MAXIMUM AGE LIMITATION ON ADMISSION TO SERVICE ACADEMIES FOR CERTAIN ENLISTED MEMBERS WHO SERVED DURING PERSIAN GULF WAR

Pub. L. 102–190, div. A, title V, §514, Dec. 5, 1991, 105 Stat. 1361, provided that:

''(a) WAIVER AUTHORITY.—The Secretary of the military department concerned may waive the maximum age limitation in section 4346(a), 6958(a)(1), or 9346(a) of title 10, United States Code, in the case of any enlisted member of the Armed Forces who—

''(1) becomes 22 years of age while serving on active duty in the Persian Gulf area of operations in connection with Operation Desert Storm during the Persian Gulf War; or

''(2) was a candidate for admission to the service academy under the jurisdiction of such Secretary in 1990, was prevented from being admitted to the academy during that year by reason of the service of such person on active duty in the Persian Gulf area of operations in connection with Operation Desert Storm, and became 22 years of age after July 1, 1990, and before the end of such service in that area of operations.

''(b) DEFINITIONS.—For purposes of this section:

''(1) The term 'Operation Desert Storm' has the meaning given such term in section 3(1) of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (Public Law 102–25; 105 Stat. 77; 10 U.S.C. 101 note).

''(2) The term 'Persian Gulf War' has the meaning given such term in section 101(33) of title 38, United States Code.''

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM; SERVICE ACADEMY INSTRUCTION: OATH OF TRAINEES

Exemption from oath requirement of subsec. (d) of this section of appointees to the Military Academy, the Naval Academy, and the Air Force Academy from countries assisting U.S. in Vietnam, see Pub. L. 89–802, §1(g), Nov. 9, 1966, 80 Stat. 1519, set out as a note under section 4344 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4344 of this title.

§ 4347. Cadets; nominees: effect of redistricting of States

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4347	10:1091–1.	July 7, 1943, ch. 193, 57 Stat. 383.

The word ''domicile'' is substituted for the words ''place of residence'' to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J.A.G. 351.11, Feb. 10, 1925). The words ''a * * * other than that from which he was nominated'' are substituted for the word ''another''. The words ''were appointed with respect to'', ''of the former district'', ''as additional numbers'', ''at such academy for the Representative'', ''temporarily'', and ''in attendance at such academy under an appointment from such former district'' are omitted as surplusage. The words ''the district in which his domicile so falls'' are substituted for the words ''of the latter district''. The words ''to include him'' are substituted for 10:1091–1 (18 words before proviso). The words ''However, the number as so increased'' are substituted for 10:1091–1 (1st 13 words of proviso). The words ''if he fails to become a cadet'' are inserted for clarity.

§ 4348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Army or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(b)(1) The Secretary of the Army may transfer to the Army Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Army Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Army shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, the term ''commissioned service obligation'', with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may

sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243; Pub. L. 88–276, § 5(a), Mar. 3, 1964, 78 Stat. 153; Pub. L. 88–647, title III, § 301(9), Oct. 13, 1964, 78 Stat. 1072; Pub. L. 98–525, title V, §§ 541(a), 542(b), Oct. 19, 1984, 98 Stat. 2529; Pub. L. 99–145, title V, § 512(a), Nov. 8, 1985, 99 Stat. 623; Pub. L. 101–189, div. A, title V, § 511(b), title XVI, § 1622(e)(5), Nov. 29, 1989, 103 Stat. 1439, 1605; Pub. L. 104–106, div. A, title V, § 531(a), Feb. 10, 1996, 110 Stat. 314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4348	10:1092c.	June 30, 1950, ch. 421, § 3, 64 Stat. 304.

The word ''agreement'' is substituted for the word ''articles''. The words ''Hereafter'', ''appointed to the United States Military Academy'', ''engage'', and 10:1092c (1st 25 words of clause (2)) are omitted as surplusage. The word ''separated'' is substituted for the words ''discharged by competent authority''. The words ''if he is permitted to resign'' are substituted for the words ''in the event of the acceptance of his resignation'', since a resignation is effective only when accepted. The first 31 words of clause (3) are substituted for 10:1092c (last 29 words of clause (3)). The last sentence is substituted for the words ''with the consent of his parents or guardian if he be a minor, and if any he have''.

AMENDMENTS

1996—Subsec. (a)(2)(B). Pub. L. 104–106 substituted ''five years'' for ''six years''.

1989—Subsec. (a)(2)(B). Pub. L. 101–189, § 511(b), substituted ''six years'' for ''five years''.

Subsec. (d). Pub. L. 101–189, § 1622(e)(5), inserted ''the term'' after ''In this section,''.

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows:

''(a) Each cadet who is a citizen or national of the United States shall sign an agreement that he will—

''(1) unless sooner separated from the Academy, complete the course of instruction at the Academy;

''(2) accept an appointment and, unless sooner separated from the service, serve as a commissioned officer of the Regular Army or the Regular Air Force for at least the five years immediately after graduation; and

''(3) accept an appointment as a commissioned officer as a Reserve for service in the Army Reserve or the Air Force Reserve and, unless sooner separated from the service, remain therein until at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary of his graduation, if an appointment in the regular component of that armed force is not tendered to him, or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the cadet is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

''(b) A cadet who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Army to the Army Reserve in an appropriate enlisted grade and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade for such period of time as the Secretary prescribes but not for more than four years.''

1984—Subsec. (a). Pub. L. 98–525, § 541(a), struck out '', unless sooner separated,'' in introductory text before ''he will''; inserted in cl. (1) ''unless sooner separated from the Academy,''; and inserted '', unless sooner separated from the service,'' in cls. (2) and (3).

Subsec. (a)(3). Pub. L. 98–525, § 524(b), substituted ''at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary'' for ''the sixth anniversary''.

1964—Pub. L. 88–647 designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a)(2). Pub. L. 88–276 substituted ''five'' for ''three''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 531(e) of Pub. L. 104–106 provided that: ''The amendments made by this section [amending this section and sections 6959 and 9348 of this title] apply to persons first admitted to the United States Military Academy, United States Naval Academy, and United States Air Force Academy after December 31, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 511(b) of Pub. L. 101–189 applicable to persons who are first admitted to one of the military service academies after Dec. 31, 1991, see section 511(e) of Pub. L. 101–189, as amended, set out as a note under section 2114 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 512(e) of Pub. L. 99–145 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and sections 6959 and 9348 of this title] (other than with respect to the authority of the Secretary of a military department to prescribe regulations)—

''(1) shall take effect with respect to each military department on the date on which regulations prescribed by the Secretary of that military department in accordance with subsection (d) [set out below] take effect; and

''(2) shall apply with respect to each agreement entered into under sections 4348, 6959, and 9348, respectively, of title 10, United States Code, that is entered into on or after the effective date of such regulations and shall apply with respect to each such agreement that was entered into before the effective date of such regulations by an individual who is a cadet or midshipman on such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 541(d) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this section and sections 6959 and 9348 of this title] shall apply with respect to agreements entered into under section 4348, 6959, or 9348 of title 10, United States Code, before, on, or after the date of the enactment of this Act [Oct. 19, 1984].''

EFFECTIVE DATE OF 1964 AMENDMENT; OBLIGATED PERIOD OF SERVICE

Section 5(c) of Pub. L. 88–276 provided that: ''The amendments made by this section [amending this section, sections 6959 and 9348 of this title, and section 182 of Title 14, Coast Guard] shall apply only with respect to cadets and midshipmen appointed to the service academies and the Coast Guard Academy after the date of enactment of this Act [Mar. 3, 1964], and shall not affect the obligated period of service of any cadet or midshipman appointed to one of the service academies or the Coast Guard Academy on or before the date of enactment of this Act.''

REGULATIONS IMPLEMENTING 1985 AMENDMENT

Section 512(d) of Pub. L. 99–145 provided that: ''The Secretary of each military department shall prescribe the regulations required by section 4348(c), 6959(c), or 9348(c), as appropriate, of title 10, United States Code (as added by the amendments made by subsections (a), (b), and (c)) not later than the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 8, 1985].''

§ 4349. Cadets: organization of Corps; service; instruction

(a) The Corps of Cadets shall be divided into companies, as directed by the Superintendent, for the purpose of military instruction. Each company shall be commanded by a commissioned officer of the Army.

(b) A cadet shall perform duties at such places and of such type as the President may direct.

(c) The course of instruction at the Academy is four years.

(d) The Secretary of the Army shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(e) The Corps of Cadets shall be trained in the duties of members of the Army, shall be encamped at least three months in each year, and shall be trained in all duties incident to a camp.

(Aug. 10, 1956, ch. 1041, 70A Stat. 243.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4349(a)	10:1105 (less last sentence).	R.S. 1322. R.S. 1323.
4349(b)	10:1102.	Mar. 30, 1920, ch. 112 (1st par., less provisos, under ''Miscellaneous''), 41 Stat. 548.
4349(c)	10:1043.	
4349(d)	10:1044.	
4349(e)	10:1105 (last sentence).	R.S. 1324.

In subsection (a), the word ''commissioned'' is inserted for clarity; 10:1105 (2d sentence) is omitted as obsolete.

In subsection (b), the word ''perform'' is substituted for the words ''be subject at all times to do''. The words ''of such type'' are substituted for the words ''on such service''.

In subsection (e), the words ''members of the Army'' are substituted for the words ''private soldier, noncommissioned officer, and officer''. The words ''taught and'' are omitted as surplusage.

§ 4350. Cadets: clothing and equipment

(a) The Secretary of the Army may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4350(a)	10:1149a.	Aug. 31, 1918, ch. 166, § 9 (17th through 22d words), 40 Stat. 957.
4350(b)	10:1106.	Aug. 22, 1951, ch. 340, § 1, 65 Stat. 196.

In subsection (a), the words ''while owing the United States for pay advanced for the purchase of'' are substituted for the words ''who is indebted to the United States on account of advances of pay to purchase''. The words ''as is necessary to repay the amount advanced'' are substituted for the words ''to the extent required to discharge such indebtedness''.

In subsection (b), the word ''accouterments'' is omitted as surplusage. The words ''by the Government'' and ''such restrictions and'' are omitted as surplusage. The words ''at cost'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 4351. Cadets: deficiencies in conduct or studies; effect of failure on successor

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academic Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Academic Board within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4351(a)	10:1104.	Aug. 11, 1916, ch. 314 (3d, 4th, and 5th provisos under ''Permanent Establishment''), 39 Stat. 493.
4351(b)	10:1103.	R.S. 1325.
4351(c)	10:1092b (1st proviso).	June 30, 1950, ch. 421, § 2 (1st proviso), 64 Stat. 304.

In subsection (a), 10:1104 (last 20 words) is omitted as superseded by section 3287(d) of this title.

In subsection (b), the words ''is entitled to'' are substituted for the words ''shall have the right to apply''. The words ''of equal scope and difficulty in that subject'' are substituted for the words ''by compliance with the requirements existing at the time of the first examination''.

In subsection (c), the words ''by reason of sickness, or deficiency in his studies, or other cause'' are omitted as surplusage.

§ 4352. Cadets: hazing

(a) Subject to the approval of the Secretary of the Army, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed to the Corps of Cadets, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class.

(Aug. 10, 1956, ch. 1041, 70A Stat. 244.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4352(a)	10:1163 (1st par.).	Mar. 2, 1901, ch. 804 (2d proviso under ''Permanent Establishment''); restated Apr. 19, 1910, ch. 174 (38th par. under ''Buildings and Grounds''), 36 Stat. 323.
4352(b)	10:1163 (1st 32 words of last par.).	
4352(c)	10:1163 (last par., less 1st 32 words).	

In subsection (a), the word ''violations'' is substituted for the words ''infractions of the same''. The words ''to embody a clear'' are omitted as surplusage.

In subsection (b), the words ''the penalty for which is or may be'' are substituted for the words ''which would involve''. The words ''may not be dismissed for that offense except under sentence of such a court'' are substituted for the words ''shall be granted''.

In subsection (c), the words ''a regular component'' are inserted, since the source statute historically applied only to the regular components.

§ 4353. Cadets: degree and commission on graduation

(a) Under such conditions as the Secretary of the Army may prescribe, the Superintendent of the Academy may confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Army under section 531 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245; Pub. L. 85–861, § 1(103), Sept. 2, 1958, 72 Stat. 1489; Pub. L. 96–513, title V, § 502(26), Dec. 12, 1980, 94 Stat. 2911.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4353(a)	10:486a (less last sentence).	May 25, 1933, ch. 37 (less last sentence); restated Aug. 9, 1946, ch. 932 (less last sentence); restated Aug. 4, 1949, ch. 393, § 13; restated Aug. 18, 1949, ch. 476 (less last sentence), 63 Stat. 615.
4353(b)	10:506c(f) (1st sentence, less last 43 words).	Aug. 7, 1947, ch. 512, § 506(f) (1st sentence, less last 43 words), 61 Stat. 892.

In subsection (a), the last 27 words are substituted for 10:486a (last sentence). The words ''rules and'' and ''from and after the date of the accrediting of said Academy'' are omitted as surplusage. The word ''conditions'' is substituted for the words ''rules and regulations''.

In subsection (b), the words ''except section 541 of this title'' are inserted to reflect the authority to appoint graduates of one service academy as officers of another service.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4353(b)	10 App.:506c–4(c) (1st sentence).	July 20, 1956, ch. 646, § 103(c) (1st sentence), 70 Stat. 583.

It is unnecessary to include a reference to section 541, since that section does not derogate from the authority granted in this section.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–513 inserted ''under section 531 of this title'' after ''Regular Army''.

1958—Subsec. (b). Pub. L. 85–861 struck out ''except section 541 of this title'' after ''provision of law''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

DEGREES FOR PERSONS WHO GRADUATED BEFORE ACCREDITING OF MILITARY ACADEMY

Section 35 of act Aug. 10, 1956, provided in part that, under conditions prescribed by the Secretary of the Army, the Superintendent of the United States Military Academy may confer the degree of bachelor of science upon living graduates of the Academy who were graduated before the date of accrediting of the Academy and who have met the requirements of the Academy for that degree.

§ 4354. Buildings and grounds: memorial hall; buildings for religious worship

(a) The memorial hall at the Academy is a repository for statues, busts, mural tablets, portraits of distinguished and deceased officers and graduates of the Academy, paintings of battle scenes, trophies of war, and other objects that may tend to elevate the military profession. No object may be placed in this hall without the approval of two-thirds of the members of the Academic Board of the Academy by a recorded vote taken by ayes and nays.

(b) The Secretary of the Army may authorize any denomination, sect, or religious body to erect a building for religious worship on the West Point Military Reservation, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without other expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4354(a)	10:1125.	July 23, 1892, ch. 237, § 6, 27 Stat. 263.
4354(b)	10:1126.	July 8, 1898, ch. 636, 30 Stat. 722.

In subsection (a), the words ''and to prevent the introduction of unworthy subjects into this hall'' and ''entire'' are omitted as surplusage.

In subsection (b), the words ''in his discretion'' and ''Government of'' are omitted as surplusage. The words ''United States'' are substituted for the word ''Government''.

§ 4355. Board of Visitors

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Army, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 245; Pub. L. 96–579, §13(a), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 104–106, div. A, title X, §1061(e)(2), title XV, §1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4355(a)	10:1055. 10:1056 (1st sentence).	June 29, 1948, ch. 714, §§1–6, 62 Stat. 1094; June 30, 1954, ch. 432, §732, 68 Stat. 356.
4355(b)	10:1056 (less 1st sentence).	
4355(c)	10:1057.	
4355(d)	10:1058.	
4355(e)	10:1059(a).	
4355(f)	10:1059(b).	
4355(g)	10:1059(c).	
4355(h)	10:1060.	

In subsections (a) and (b), the word ''designated'' is substituted for the word ''appointed'' to make it clear that the positions described are not constitutional offices.

Subsection (b) is substituted for 10:1056(e) (2d sentence).

In subsection (c), the words ''during the term for which such member was appointed'' and ''Such successor shall be appointed * * * who died or resigned'' are omitted as surplusage.

In subsection (g), the words ''as it may deem necessary or advisable effectuate the duties imposed upon it by the provisions of sections 1055–1060 of this title'' are omitted as surplusage.

In subsection (h), the words ''called for consultation by the Board in connection with the business of the Board'' are omitted as surplusage.

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–65, substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (a)(3). Pub. L. 104–106, §1502(a)(12), substituted ''National Security'' for ''Armed Services''.

Subsec. (h). Pub. L. 104–106, §1061(e)(2), struck out ''is entitled to not more than $5 a day and'' after ''each adviser''.

1980—Subsec. (b). Pub. L. 96–579 required member whose term of office had expired to continue service until appointment of a successor.

§ 4356. Use of certain gifts

Under regulations prescribed by the Secretary of the Army, the Superintendent of the Academy may (without regard to section 2601 of this title) accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of $20,000 or less made to the United States on the condition that such gift, devise, or bequest be used for the benefit of the Academy or any entity thereof. The Secretary may pay or authorize the payment of all reasonable and necessary expenses in connection with the conveyance or transfer of a gift, devise, or bequest under this section.

(Added Pub. L. 97–295, §1(41)(A), Oct. 12, 1982, 96 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4356	10:4334 (note).	Sept. 8, 1982, Pub. L. 97–252, §1133(a), 96 Stat. 761.

The word ''Academy'' is substituted for ''United States Military Academy'' for consistency in title 10.

APPLICABILITY OF SECTION

Pub. L. 97–252, title XI, §1133, Sept. 8, 1982, 96 Stat. 761, provided that:

''(a) [Repealed and reenacted as section 4356 of this title by Pub. L. 97–295, §§1(41)(A), 6(b), Oct. 12, 1982, 96 Stat. 1297, 1315.]

''(b) This section [section 4356 of this title] applies with respect to any gift, devise, or bequest made on or after the date of the enactment of this Act [Sept. 8, 1982] for the purpose described in subsection (a) [section 4356 of this title] and applies to any such gift, devise, or bequest, or devise made before the date of the enactment of this Act with respect to which the Secretary of the Army has approved application of this section rather than section 2601 of title 10, United States Code.''

§ 4357. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Army may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Army may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Army may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term ''major project'' means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least $1,000,000.

(2) QUALIFIED GUARANTEE.—The term ''qualified guarantee'', with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Army, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term ''qualified account control agreement'', with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Army, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term ''major United States commercial bank'' means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Army to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term ''major United States investment management firm'' means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Army to qualify the firm as a major investment management firm.

(Added Pub. L. 106–65, div. B, title XXVIII, § 2871(a)(1), Oct. 5, 1999, 113 Stat. 871; amended

Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

PRIOR PROVISIONS

A prior section 4357, added Pub. L. 103–337, div. A, title V, § 556(a)(1), Oct. 5, 1994, 108 Stat. 2774, related to position of athletic director of Academy and to administration of nonappropriated fund account for athletics program of Academy, prior to repeal by Pub. L. 104–106, div. A, title V, § 533(a)(1), Feb. 10, 1996, 110 Stat. 315.

AMENDMENTS

2000—Subsec. (e)(5). Pub. L. 106–398 inserted a closing parenthesis after ''80b–2)''.

§ 4358. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Army may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Army shall prescribe regulations for the administration of this section.

(Added Pub. L. 105–261, div. A, title X, § 1063(a)(1), Oct. 17, 1998, 112 Stat. 2130.)

[CHAPTER 405—REPEALED]

[§§ 4381 to 4387. Repealed. Pub. L. 88–647, title III, § 301(10), Oct. 13, 1964, 78 Stat. 1072]

Sections, act Aug. 10, 1956, ch. 1041, 70A Stat. 246–248, related to the Reserve Officers' Training Corps and defined ''advanced training'', provided for its establishment and composition, admission and training of medical, dental pharmacy and veterinary students, set out courses of training, authorized the operation and maintenance of training camps, provided for supplies and uniforms and for advanced training and compensation therefor. See chapter 103 of this title.

Section 4384 was amended by Pub. L. 85–861, § 1(104), Sept. 2, 1958, 72 Stat. 1489.

CHAPTER 407—SCHOOLS AND CAMPS

Sec.
4411. Establishment: purpose.
4412. Operation.
4413. Transportation and subsistence during travel.
4414. Quartermaster and ordnance property: sales.
[4415. Repealed.]
4416. Academy of Health Sciences: admission of civilians in physician assistant training program.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 911(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–228, struck out item 4415 ''United States Army School of the Americas''.

1997—Pub. L. 105–85, div. A, title VII, § 741(a)(2), Nov. 18, 1997, 111 Stat. 1817, added item 4416.

1987—Pub. L. 100–180, div. A, title III, § 319(a)(2), Dec. 4, 1987, 101 Stat. 1077, added item 4415.

§ 4411. Establishment: purpose

The Secretary of the Army may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Army and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Army Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4411	10:442 (words before 1st semicolon of 1st sentence).	June 3, 1916, ch. 134, § 47d (words before 1st semicolon of 1st sentence); added June 4, 1920, ch. 227, subch. I, § 34 (words before 1st semicolon of 1st sentence of last par.), 41 Stat. 779.

The words ''upon military reservations or elsewhere'' are omitted as surplusage. The words ''or enlistment as'' are inserted for clarity. The words ''of the Army'' are inserted for clarity.

AUTHORIZATION FOR INSTRUCTION OF CIVILIAN STUDENTS AT FOREIGN LANGUAGE CENTER OF DEFENSE LANGUAGE INSTITUTE

Pub. L. 103–337, div. A, title V, § 559, Oct. 5, 1994, 108 Stat. 2776, as amended by Pub. L. 104–201, div. A, title III, § 371, Sept. 23, 1996, 110 Stat. 2499; Pub. L. 105–85, div. A, title X, § 1073(c)(3), Nov. 18, 1997, 111 Stat. 1904, provided that:

''(a) ADMISSION OF CIVILIANS AS STUDENTS.—(1) The Secretary of the Army may enter into an agreement with an accredited institution of higher education (or a consortium of such institutions) under which students enrolled at an institution of higher education that is a party to the agreement may receive instruction at the Foreign Language Center of the Defense Language Institute on a space-available basis.

''(2) The Secretary may also permit other persons who would benefit from the instruction provided at the Center, as determined by the Secretary, to receive instruction at the Center on a cost-reimbursable, space-available basis.

''(b) SELECTION AND ATTENDANCE.—(1) The Secretary shall select the persons who will be permitted to receive instruction at the Center pursuant to subsection (a). In the case of agreements under subsection (a)(1), the Secretary shall consult with the other parties to the agreements to establish qualifications and methods of selection for persons to receive instruction at the Center.

''(2) Except as the Secretary determines necessary, a person who receives instruction at the Center pursuant to subsection (a) shall be subject to the same regulations governing attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

''(c) REIMBURSEMENT OPTIONS FOR CERTAIN INSTRUCTION.—In the case of instruction provided to students described in subsection (a)(1), the Secretary may provide the instruction on a cost-reimbursable basis, a reimbursement-in-kind basis, or a combination of both options. Regardless of the reimbursement option, the value of the reimbursement received under this subsection may not be less than the amount charged for providing language instruction to Federal employees who are not Department of Defense employees. The Secretary may not delegate the authority to accept an offer for in-kind reimbursement below the level of the Assistant Secretary of the Army.

''(d) RETENTION OF FUNDS.—Amounts collected under subsection (a) or (c) to reimburse the Center for the costs of providing instruction to students under subsection (a) shall be credited to funds available for compensation of instructors at the Center and to defray direct civilian student costs to the school.

''(e) CENTER DEFINED.—For purposes of this section, the term 'Center' means the Foreign Language Center of the Defense Language Institute.

''(f) EXPIRATION OF AUTHORITY.—No student may be admitted to the Center under subsection (a) to commence a program of instruction beginning after September 30, 1997.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4412, 4413, 4414 of this title.

§ 4412. Operation

In maintaining schools and camps established under section 4411 of this title, the Secretary of the Army may—

(1) prescribe the periods during which they will be operated;

(2) prescribe regulations for their administration;

(3) prescribe the courses to be taught;

(4) detail members of the Regular Army to designated duties relating to the camps;

(5) use necessary supplies and transportation;

(6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camps; and

(7) authorize necessary expenditures from proper Army funds for—

(A) water;

(B) fuel;

(C) light;

(D) temporary structures, except barracks and officers' quarters;

(E) screening;

(F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 249.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4412	10:442 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence).	June 3, 1916, ch. 134, § 47d (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence); added June 4, 1920, ch. 227, subch. I, § 34 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence of last par.), 41 Stat. 779.

The word ''supplies'' is substituted for the words ''such arms, ammunition, accoutrements, equipments, tentage, field equipage'', since, under the definition of the word ''supplies'', in section 101(26) of this title, those words are covered by the word ''supplies''. The words ''belonging to the United States'', ''and imparting military instruction and training thereat'', ''during the period of their attendance'', ''theoretical and practical instruction'', ''persons attending the camps authorized by this section'', and ''as he may deem'' are omitted as surplusage. The word ''detail'' is substituted for the word ''employ''. The word ''members'' is substituted for the words ''officers, warrant officers, and enlisted men''.

§ 4413. Transportation and subsistence during travel

(a) There may be furnished to a person attending a school or camp established under section 4411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Army may prescribe, from the authorized starting point to the school or camp and return.

(Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4413	10:442 (words between 1st and 3d semicolons, less 47 words after 1st semicolon and less 72 words before 3d semicolon, of 1st sentence).	June 3, 1916, ch. 134, § 47d (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence); added June 4, 1920, ch. 227, § 34 (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence of last par.), 41 Stat. 779; Mar. 9, 1928, ch. 161, 45 Stat. 251.

In subsection (a), the introductory clause is inserted for clarity. The words ''at the option of the Secretary of the Army'' are omitted as surplusage.

In subsection (b), the words ''of the actual performance of the same'' are omitted as surplusage.

Subsection (c) is substituted for the words ''the most usual and direct route within such limits as to terri-

tory as the Secretary of the Army may prescribe * * * for the distance by the shortest usually traveled route from the places from which they are authorized to proceed to the camp, and for the return travel thereto''.

§ 4414. Quartermaster and ordnance property: sales

The Secretary of the Army may sell to a person attending a school or camp established under section 4411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 250.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4414	10:442 (words after 3d semicolon of 1st sentence; and 2d sentence).	June 3, 1916, ch. 134, § 47d (words after 3d semicolon of 1st sentence; and 2d sentence); added June 4, 1920, ch. 227, § 34 (words after 3d semicolon of 1st sentence; and 2d sentence of last par.), 41 Stat. 779.

10:442 (2d sentence) is omitted, as superseded by section 10 of the Act of June 26, 1934, ch. 756, 48 Stat. 1229 (31 U.S.C. 725i), which limits credits to the replacing account to the actual cost of the items sold. The words ''necessary for his proper equipment'' are substituted for 10:442 (last 22 words of 1st sentence). The words ''and at cost price, plus 10 per centum'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

[§ 4415. Repealed. Pub. L. 106–398, § 1 [[div. A], title IX, § 911(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–228]

Section, added Pub. L. 100–180, div. A, title III, § 319(a)(1), Dec. 4, 1987, 101 Stat. 1077; amended Pub. L. 100–526, title I, § 106(c), Oct. 24, 1988, 102 Stat. 2625, related to United States Army School of the Americas.

§ 4416. Academy of Health Sciences: admission of civilians in physician assistant training program

(a) IN GENERAL.—The Secretary of the Army may, pursuant to an agreement entered into with an accredited institution of higher education—

(1) permit students of the institution to attend the didactic portion of the physician assistant training program conducted by the Army Medical Department at the Academy of Health Sciences at Fort Sam Houston, Texas; and

(2) accept from the institution academic services to support the physician assistant training program at the Academy.

(b) AGREEMENT FOR EXCHANGE OF SERVICES.—An agreement entered into with an institution of higher education under this section shall require the institution, in exchange for services provided under paragraph (1) of subsection (a), to provide academic services described in paragraph (2) of such subsection that the Secretary and authorized representatives of the institution consider appropriate.

(c) SELECTION OF STUDENTS.—In consultation with the authorized representatives of the institution of higher education concerned, the Secretary shall prescribe the qualifications and methods of selection for students of the institution to receive instruction at the Academy under this section. The qualifications shall be comparable to those generally required for admission to the physician assistant training program at the Academy.

(d) RULES OF ATTENDANCE.—Except as the Secretary determines necessary, a student who receives instruction at the Academy under this section shall be subject to the same regulations governing attendance, discipline, discharge, and dismissal as apply to other persons attending the Academy.

(e) LIMITATIONS.—The Secretary shall ensure the following:

(1) That the Army Medical Department, in carrying out an agreement under this section, does not incur costs in excess of the costs that the department would incur to obtain, by means other than the agreement, academic services that are comparable to those provided by the institution pursuant to the agreement.

(2) That attendance of civilian students at the Academy under this section does not cause a decrease in the number of members of the armed forces enrolled in the physician assistant training program at the Academy.

(Added Pub. L. 105–85, div. A, title VII, § 741(a)(1), Nov. 18, 1997, 111 Stat. 1816; amended Pub. L. 107–314, div. A, title X, § 1041(a)(19), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–314 struck out heading and text of subsec. (f). Text read as follows:

''(1) Each year, the Secretary shall submit to Congress a report on the exchange of services under this section during the year. The report shall contain the following:

''(A) The number of civilian students who receive instruction at the Academy under this section.

''(B) An assessment of the benefits derived by the United States.

''(2) Reports are required under paragraph (1) only for years during which an agreement is in effect under this section.''

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
[431.	Repealed.]	
433.	Procurement	4531
434.	Armaments Industrial Base	4551
435.	Issue of Serviceable Material to Armed Forces	4561
437.	Utilities and Services	4591
439.	Sale of Serviceable Material	4621
441.	Issue of Serviceable Material Other Than to Armed Forces	4651
443.	Disposal of Obsolete or Surplus Material	4681
445.	Disposition of Effects of Deceased Persons; Captured Flags	4712
447.	Transportation	4741
449.	Real Property	4771
451.	Military Claims	4801
453.	Accountability and Responsibility	4831

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §344(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, added item for chapter 434.

1999—Pub. L. 106–65, div. A, title VII, §721(c)(7), Oct. 5, 1999, 113 Stat. 695, substituted ''Disposition'' for ''Inquests; Disposition'' and ''4712'' for ''4711'' in item for chapter 445.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(2), Nov. 30, 1993, 107 Stat. 1714, struck out item for chapter 431 ''Industrial Mobilization, Research, and Development''.

[CHAPTER 431—REPEALED]

[§§ 4501 to 4508. Repealed. Pub. L. 103–160, div. A, title VIII, §§ 822(a)(2), (b)(3), (c)(2), 823(1), 827(c), 828(c)(6), Nov. 30, 1993, 107 Stat. 1705–1707, 1713, 1714]

Section 4501, act Aug. 10, 1956, ch. 1041, 70A Stat. 251, related to industrial mobilization by the President in time of war. See section 2538 of this title.

Section 4502, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, related to maintenance by Secretary of the Army of lists of plants equipped to manufacture arms or ammunition and of plants convertible into ammunition factories and provided for a Board on Mobilization of Industries Essential for Military Preparedness. See sections 2539 and 2539a of this title.

Section 4503, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, related to research and development programs of the Army.

Section 4504, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, related to procurement of ordnance, signal, and chemical warfare supplies for experimental purposes by Secretary of the Army. See section 2373 of this title.

Section 4505, act Aug. 10, 1956, ch. 1041, 70A Stat. 252, related to procurement by Secretary of the Army of production equipment.

Section 4506, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, related to sale, loan, or gift of samples, drawings, and information to contractors.

Section 4507, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, related to sale of ordnance and ordnance stores to designers.

Section 4508, acts Aug. 10, 1956, ch. 1041, 70A Stat. 253; Nov. 2, 1966, Pub. L. 89–718, §27, 80 Stat. 1119, related tests of iron, steel, and other materials.

CHAPTER 433—PROCUREMENT

Sec.
[4531. Repealed.]
4532. Factories and arsenals: manufacture at; abolition of.
[4533 to 4535. Repealed.]
4536. Equipment: post bakeries, schools, kitchens, and mess halls.
[4537 to 4539. Repealed.]
4540. Architectural and engineering services.
4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs.
4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception.
4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §342(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–65, added item 4541.

1993—Pub. L. 103–160, div. A, title I, §158(a)(2), title VIII, §828(a)(5), Nov. 30, 1993, 107 Stat. 1582, 1713, struck out items 4531 ''Authorization'', 4533 ''Army ration'', 4534 ''Subsistence supplies: contract stipulations; place of delivery on inspection'', 4535 ''Exceptional subsistence supplies: purchase without advertising'', 4537 ''Military surveys and maps: assistance of United States mapping agencies'', 4538 ''Unserviceable ammunition: exchange and reclamation'', and 4541 ''Gratuitous services of officers of the Army Reserve'' and added item 4543.

1986—Pub. L. 99–500, §101(c) [title IX, §9036(b)(2)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–108, and Pub. L. 99–591, §101(c) [title IX, §9036(b)(2)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–108; Pub. L. 99–661, div. A, title XII, §1203(a)(2), Nov. 14, 1986, 100 Stat. 3969, amended analysis identically adding item 4542.

1982—Pub. L. 97–258, §2(b)(9)(A), Sept. 13, 1982, 96 Stat. 1056, added item 4541.

1970—Pub. L. 91–482, §2A, Oct. 21, 1970, 84 Stat. 1082, struck out item 4539 ''Horses and mules''.

[§ 4531. Repealed. Pub. L. 103–160, div. A, title VIII, § 823(2), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 253, authorized Secretary of the Army to procure materials and facilities necessary to maintain and support the Army.

§ 4532. Factories and arsenals: manufacture at; abolition of

(a) The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States, so far as those factories or arsenals can make those supplies on an economical basis.

(b) The Secretary may abolish any United States arsenal that he considers unnecessary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4532(a)	5:181–4(e).	June 28, 1950, ch. 383, §101(e), 64 Stat. 264.
4532(b)	50:55.	R.S. 1666.

The words ''Except as otherwise provided by law'', in 5:181–4(e), are omitted, since there is no law within the scope of the exception. The word ''made'' is substituted for the words ''manufactured or produced''. The words ''United States'' are substituted for the word ''Government'', in 5:181–4(e). The words ''which he considers'' are substituted for the words ''as, in his judgment'', in 50:55. The words ''useless or'', in 50:55, are omitted as surplusage.

SALE OF ARSENAL

Act Mar. 3, 1875, ch. 174, 18 Stat. 510, authorized the sale of the arsenal at Detroit, Michigan.

[§§ 4533 to 4535. Repealed. Pub. L. 103–160, div. A, title VIII, § 823(3)–(5), Nov. 30, 1993, 107 Stat. 1707]

Section 4533, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, related to purchases of army rations.

Section 4534, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, related to subsistence supplies, contract stipulations, and place of delivery on inspection.

Section 4535, act Aug. 10, 1956, ch. 1041, 70A Stat. 254, provided that exceptional subsistence supplies could be purchased without advertising.

§ 4536. Equipment: post bakeries, schools, kitchens, and mess halls

Money necessary for the following items for the use of enlisted members of the Army may be spent from appropriations for regular supplies:

(1) Equipment for post bakeries.

(2) Furniture, textbooks, paper, and equipment for post schools.

(3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 254.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4536	10:1334.	June 13, 1890, ch. 423 (1st proviso under ''Quartermaster's Department''), 26 Stat. 152.

The words ''Money necessary * * * may be spent'' are substituted for the words ''There may be expended * * * the amounts required''. The word ''bakeries'' is substituted for the words ''bake house to carry on post bakeries''. The words ''each and all'' are omitted as surplusage.

[§§ 4537, 4538. Repealed. Pub. L. 103–160, div. A, title VIII, § 823(6), (7), Nov. 30, 1993, 107 Stat. 1707]

Section 4537, acts Aug. 10, 1956, ch. 1041, 70A Stat. 254; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96–513, title V, § 512(14), 94 Stat. 2930, authorized Secretary of the Army to obtain assistance of United States mapping agencies in making and developing military surveys and maps.

Section 4538, acts Aug. 10, 1956, ch. 1041, 70A Stat. 255; Dec. 12, 1980, Pub. L. 96–513, title V, § 512(15), 94 Stat. 2930, related to exchange and reclamation of unserviceable ammunition.

[§ 4539. Repealed. Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 255, provided for purchase of horses and mules in open market at Army posts, within maximum prices prescribed by Secretary of the Army.

§ 4540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Army are inadequate, the Secretary of the Army may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255; Pub. L. 89–718, § 28, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 95–454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), Oct. 13, 1978, 92 Stat. 1217, 1222; Pub. L. 96–513, title V, § 512(16), Dec. 12, 1980, 94 Stat. 2930.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4540(a)	5:221 (1st sentence, less last 15 words).	Aug. 7, 1939, ch. 511, § 2, 53 Stat. 1240.
4540(b)	5:221 (less 1st sentence).	
4540(c)	5:221 (last 15 words of 1st sentence).	

In subsection (a), the words ''and providing that in the opinion'' are omitted as covered by the words ''whenever he considers''. The words ''needed for'' are substituted for the words ''required for the accomplishment of''.

In subsection (c), reference is made in substance to the Classification Act of 1949, instead of the Classification Act of 1923 referred to in the source statute, since section 1106(a) of the Classification Act of 1949, 63 Stat. 972, provides that all references in other acts to the Classification Act of 1923 should be considered to refer to the Classification Act of 1949.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–513 substituted ''and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5'' for ''5101–5115, 5331–5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of title 5''.

1978—Subsec. (c). Pub. L. 95–454, § 801(a)(3)(I), inserted reference to subchapter VI of chapter 53 of title 5.

Pub. L. 95–454, § 703(c)(3), substituted ''7204'' for ''7154''.

1966—Subsec. (c). Pub. L. 89–718 substituted ''Sections 305, 3324, 5101–5115, 5331–5338, 5341, 5342, and 7154 of title 5'' for ''Sections 1071–1153 of title 5''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of Title 5.

§ 4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs

(a) ESTIMATE OF COSTS.—The Secretary of the Army shall include in the budget justification documents submitted to Congress in support of the President's budget for a fiscal year submitted under section 1105 of title 31 an estimate of the funds to be required in that fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals.

(b) USE OF FUNDS.—Funds appropriated to the Secretary of the Army for a fiscal year to cover

unutilized and underutilized plant-capacity costs at Army arsenals shall be used in such fiscal year only for such costs.

(c) TREATMENT OF COSTS.—(1) The Secretary of the Army shall not include unutilized and underutilized plant-capacity costs when evaluating the bid of an Army arsenal for purposes of the arsenal's contracting to provide a good or service to a Government agency.

(2) When an Army arsenal is serving as a subcontractor to a private-sector entity with respect to a good or service to be provided to a Government agency, the cost charged by the arsenal shall not include unutilized and underutilized plant-capacity costs that are funded by a direct appropriation.

(d) DEFINITIONS.—In this section:

(1) The term ''Army arsenal'' means a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both.

(2) The term ''unutilized and underutilized plant-capacity costs'' means the costs associated with operating and maintaining the facilities and equipment of an Army arsenal that the Secretary of the Army determines are required to be kept for mobilization needs, in those months in which the facilities and equipment are not used or are used only 20 percent or less of available work days.

(Added Pub. L. 106–398, §1 [[div. A], title III, §342(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64.)

PRIOR PROVISIONS

A prior section 4541, added Pub. L. 97–258, §2(b)(9)(B), Sept. 13, 1982, 96 Stat. 1056, authorized Secretary of the Army to accept gratuitous services of officers of the Army Reserve, prior to repeal by Pub. L. 103–160, div. A, title VIII, §822(d)(2), Nov. 30, 1993, 107 Stat. 1707. See section 10212 of this title.

§ 4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception

(a) GENERAL RULE.—Funds appropriated to the Department of Defense may not be used—

(1) to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal; or

(2) to assist a foreign country in producing such a defense item.

(b) EXCEPTION.—The Secretary of the Army may use funds appropriated to the Department of Defense to transfer a technical data package, or to provide assistance, described in subsection (a) if—

(1) the transfer or provision of assistance is to a friendly foreign country (as determined by the Secretary of Defense in consultation with the Secretary of State);

(2) the Secretary of the Army determines that such action—

(A) would have a clear benefit to the preservation of the production base for the production of cannon at the arsenal concerned; and

(B) would not transfer technology (including production techniques) considered unique to the arsenal concerned, except as provided in subsection (e); and

(3) the Secretary of Defense enters into an agreement with the country concerned described in subsection (c) or (d).

(c) COPRODUCTION AGREEMENTS.—An agreement under this subsection shall be in the form of a Government-to-Government Memorandum of Understanding and shall include provisions that—

(1) prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that production by the participating foreign country of the defense item to which the technical data package or assistance relates be shared with the arsenal concerned;

(3) subject to such exceptions as may be approved under subsection (f), prohibit transfer by the participating foreign country to a third party or country of—

(A) any defense article, technical data package, technology, or assistance provided by the United States under the agreement; and

(B) any defense article produced by the participating foreign country under the agreement; and

(4) require the Secretary of Defense to monitor compliance with the agreement and the participating foreign country to report periodically to the Secretary of Defense concerning the agreement.

(d) COOPERATIVE PROJECT AGREEMENTS.—An agreement under this subsection is a cooperative project agreement under section 27 of the Arms Export Control Act (22 U.S.C. 2767) which includes provisions that—

(1) for development phases describe the technical data to be transferred and for the production phase prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that at least the United States production of the defense item to which the technical data package or assistance relates be carried out by the arsenal concerned; and

(3) require the Secretary of Defense to monitor compliance with the agreement.

(e) LICENSING FEES AND ROYALTIES.—The limitation in subsection (b)(2)(B) shall not apply if the technology (or production technique) transferred is subject to nonexclusive license and payment of any negotiated licensing fee or royalty that reflects the cost of development, implementation, and prove-out of the technology or production technique. Any negotiated license fee or royalty shall be placed in the operating fund of the arsenal concerned for the purpose of capital investment and technology development at that arsenal.

(f) TRANSFERS TO THIRD PARTIES.—A transfer described in subsection (c)(3) may be made if—

(1) the defense article, technical data package, or technology to be transferred is a product of a cooperative research and development program or a cooperative project in which the United States and the participating foreign country were partners; or

(2) the President—

(A) complies with all requirements of section 3(d) of the Arms Export Control Act (22 U.S.C. 2753(d)) with respect to such transfer; and

(B) certifies to Congress, before the transfer, that the transfer would provide a clear benefit to the production base of the United States for large-caliber cannon.

(g) NOTICE AND REPORTS TO CONGRESS.—(1) The Secretary of the Army shall submit to Congress a notice of each agreement entered into under this section.

(2) The Secretary shall submit to Congress a semi-annual report on the operation of this section and of agreements entered into under this section.

(h) ARSENAL DEFINED.—In this section, the term ''arsenal'' means a Government-owned, Government-operated defense plant that manufactures large-caliber cannon.

(Added Pub. L. 99–500, §101(c) [title IX, §9036(b)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–107, and Pub. L. 99–591, §101(c) [title IX, §9036(b)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–107; Pub. L. 99–661, div. A, title XII, §1203(a)(1), Nov. 14, 1986, 100 Stat. 3968; amended Pub. L. 101–189, div. A, title VIII, §806, Nov. 29, 1989, 103 Stat. 1489; Pub. L. 102–190, div. A, title X, §§1061(a)(24), 1086, Dec. 5, 1991, 105 Stat. 1473, 1483.)

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500. Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 added identical sections.

AMENDMENTS

1991—Subsec. (b)(1). Pub. L. 102–190, §1086(a), substituted ''friendly foreign country'' for ''member nation of the North Atlantic Treaty Organization or a country designated as a major non-NATO ally''.

Subsec. (c)(3). Pub. L. 102–190, §§1061(a)(24)(A), 1086(b)(1), amended par. (3) identically, substituting ''subsection (f)'' for ''subsection (d)'' in introductory provisions.

Subsec. (f). Pub. L. 102–190, §§1061(a)(24)(B), 1086(b)(2), amended subsec. identically, substituting ''subsection (c)(3)'' for ''subsection (b)(3)'' in introductory provisions.

1989—Subsec. (b)(1). Pub. L. 101–189, §806(a)(1), substituted ''a member nation of the North Atlantic Treaty Organization or a country designated as a major non-NATO ally'' for ''a friendly foreign country''.

Subsec. (b)(2)(B). Pub. L. 101–189, §806(a)(2), inserted '', except as provided in subsection (e)'' after ''arsenal concerned''.

Subsec. (b)(3). Pub. L. 101–189, §806(a)(3), inserted ''or (d)'' after ''subsection (c)''.

Subsecs. (d), (e). Pub. L. 101–189, §806(b)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 101–189, §806(b)(1), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (f)(1). Pub. L. 101–189, §806(c), inserted ''or a cooperative project'' after ''cooperative research and development program''.

Subsecs. (g), (h). Pub. L. 101–189, §806(b)(1), redesignated subsecs. (e) and (f) as (g) and (h), respectively.

EFFECTIVE DATE

Section 101(c) [title IX, §9036(c)] of Pub. L. 99–500 and Pub. L. 99–591, and section 1203(b) of Pub. L. 99–661 provided that: ''Section 4542 of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years after fiscal year 1986.''

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

For rule of construction for certain duplicate provisions of Public Laws 99–500, 99–591, and 99–661, see Pub. L. 100–26, §6, Apr. 21, 1987, 101 Stat. 274, set out as a note under section 2302 of this title.

§ 4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—Regulations under section 2208(h) of this title shall authorize a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if—

(1) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern—

(A) for use in developing new products;

(B) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(C) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with, a friendly foreign government; or

(D) for use in commercial products;

(2) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(3) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense;

(4) in the case of services, the services are related to an article authorized to be sold under this section and are to be performed in the United States for the purchaser;

(5) the Secretary of the Army determines that the articles or services are not available from a commercial source located in the United States;

(6) the purchaser of an article or service agrees to hold harmless and indemnify the United States, except in a case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the article or service;

(7) the article to be sold can be manufactured, or the service to be sold can be substantially performed, by the industrial facility with only incidental subcontracting;

(8) it is in the public interest to manufacture such article or perform such service; and

(9) the sale will not interfere with performance of the military mission of the industrial facility.

(b) ADDITIONAL REQUIREMENTS.—The regulations shall also—

(1) require that the authority to sell articles or services under the regulations be exercised

at the level of the commander of the major subordinate command of the Army with responsibility over the facility concerned;

(2) authorize a purchaser of articles or services to use advance incremental funding to pay for the articles or services; and

(3) in the case of a sale of commercial articles or commercial services in accordance with subsection (a) by a facility that manufactures large caliber cannons, gun mounts, or recoil mechanisms, or components thereof, authorize such facility—

(A) to charge the buyer, at a minimum, the variable costs that are associated with the commercial articles or commercial services sold;

(B) to enter into a firm, fixed-price contract or, if agreed by the buyer, a cost reimbursement contract for the sale; and

(C) to develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the commercial articles or commercial services sold.

(c) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(d) DEFINITIONS.—In this section:

(1) The term ''commercial article'' means an article that is usable for a nondefense purpose.

(2) The term ''commercial service'' means a service that is usable for a nondefense purpose.

(3) The term ''advance incremental funding'', with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the production of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(4) The term ''variable costs'', with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103–160, div. A, title I, §158(a)(1), Nov. 30, 1993, 107 Stat. 1581; amended Pub. L. 103–337, div. A, title I, §141, Oct. 5, 1994, 108 Stat. 2688.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 struck out ''nondefense-related commercial'' after ''sell manufactured'' in introductory provisions and added pars. (5) to (9).

REGULATIONS

Section 158(c) of Pub. L. 103–160 provided that: ''Regulations under subsection (b) of section 4543 of title 10, United States Code, as added by subsection (a), shall be prescribed not later than 30 days after the date of the enactment of this Act [Nov. 30, 1993].''

PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES WITHOUT REGARD TO AVAILABILITY FROM DOMESTIC SOURCES

Pub. L. 107–314, div. A, title I, §111(c), Dec. 2, 2002, 116 Stat. 2473, provided that: ''The Inspector General of the Department of Defense shall review the experience under the pilot program carried out under such section 141 [section 141 of Pub. L. 105–85, set out as a note below] and, not later than July 1, 2003, submit to Congress a report on the results of the review. The report shall contain the views, information, and recommendations called for under subsection (d) of such section (as redesignated by subsection (b)(2)). In carrying out the review and preparing the report, the Inspector General shall take into consideration the report submitted to Congress under such subsection (as so redesignated).''

Pub. L. 105–85, div. A, title I, §141, Nov. 18, 1997, 111 Stat. 1652, as amended by Pub. L. 106–65, div. A, title I, §115, Oct. 5, 1999, 113 Stat. 533; Pub. L. 107–107, div. A, title I, §112, Dec. 28, 2001, 115 Stat. 1029; Pub. L. 107–314, div. A, title I, §111(a), (b), Dec. 2, 2002, 116 Stat. 2473, provided that:

''(a) PILOT PROGRAM REQUIRED.—During fiscal years 1998 through 2004, the Secretary of the Army shall carry out a pilot program to test the efficacy and appropriateness of selling manufactured articles and services of Army industrial facilities under section 4543 of title 10, United States Code, without regard to the availability of the articles and services from United States commercial sources. In carrying out the pilot program, the Secretary may use articles manufactured at, and services provided by, not more than three Army industrial facilities, except that during fiscal year 2002 the Secretary may only use articles manufactured at, and services provided by, not more than one Army industrial facility.

''(b) TEMPORARY WAIVER OF REQUIREMENT FOR DETERMINATION OF UNAVAILABILITY FROM DOMESTIC SOURCE.—Under the pilot program, the Secretary of the Army is not required under section 4543(a)(5) of title 10, United States Code, to determine whether an article or service is available from a commercial source located in the United States in the case of any of the following sales for which a solicitation of offers is issued during the period during which the pilot program is being conducted:

''(1) A sale of articles to be incorporated into a weapon system being procured by the Department of Defense.

''(2) A sale of services to be used in the manufacture of a weapon system being procured by the Department of Defense.

''(c) TRANSFER OF CERTAIN SUMS.—For each Army industrial facility participating in the pilot program that sells manufactured articles and services in a total amount in excess of $20,000,000 in any fiscal year, the amount equal to one-half of one percent of such total amount shall be transferred from the sums in the Army Working Capital Fund for unutilized plant capacity to appropriations available for the following fiscal year for the demilitarization of conventional ammunition by the Army.

''(d) REVIEW BY INSPECTOR GENERAL.—The Inspector General of the Department of Defense shall review the experience under the pilot program under this section and, not later than July 1, 1999, submit to Congress a report on the results of the review. The report shall contain the following:

''(1) The Inspector General's views regarding the extent to which the waiver under subsection (b) enhances the opportunity for United States manufacturers, assemblers, developers, and other concerns to enter into or participate in contracts and teaming arrangements with Army industrial facilities under weapon system programs of the Department of Defense.

''(2) The Inspector General's views regarding the extent to which the waiver under subsection (b) enhances the opportunity for Army industrial facilities referred to in section 4543(a) of title 10, United States Code, to enter into or participate in contracts and teaming arrangements with United States manufacturers, assemblers, developers, and other concerns under weapon system programs of the Department of Defense.

''(3) The Inspector General's views regarding the effect of the waiver under subsection (b) on the ability of small businesses to compete for the sale of manufactured articles or services in the United States in competitions to enter into or participate in contracts and teaming arrangements under weapon system programs of the Department of Defense.

''(4) Specific examples under the pilot program that support the Inspector General's views.

''(5) Any other information that the Inspector General considers pertinent regarding the effects of the waiver of section 4543(a)(5) of title 10, United States Code, under the pilot program on opportunities for United States manufacturers, assemblers, developers, or other concerns, and for Army industrial facilities, to enter into or participate in contracts and teaming arrangements under weapon system programs of the Department of Defense.

''(6) Any recommendations that the Inspector General considers appropriate regarding continuation or modification of the policy set forth in section 4543(a)(5) of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2208, 2563 of this title.

CHAPTER 434—ARMAMENTS INDUSTRIAL BASE

Sec.
4551. Definitions.
4552. Policy.
4553. Armament Retooling and Manufacturing Support Initiative.
4554. Property management contracts and leases.
4555. ARMS Initiative loan guarantee program.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2522 of this title.

§ 4551. Definitions

In this chapter:

(1) The term ''ARMS Initiative'' means the Armament Retooling and Manufacturing Support Initiative authorized by this chapter.

(2) The term ''eligible facility'' means a Government-owned, contractor-operated ammunition manufacturing facility of the Department of the Army that is in an active, inactive, layaway, or caretaker status.

(3) The term ''property manager'' includes any person or entity managing an eligible facility made available under the ARMS Initiative through a property management contract.

(4) The term ''property management contract'' includes facility use contracts, site management contracts, leases, and other agreements entered into under the authority of this chapter.

(5) The term ''Secretary'' means the Secretary of the Army.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–67.)

ARSENAL SUPPORT PROGRAM INITIATIVE

Pub. L. 106–398, §1 [[div. A], title III, §343], Oct. 30, 2000, 114 Stat. 1654, 1654A–65, as amended by Pub. L. 107–314, div. A, title III, §362, Dec. 2, 2002, 116 Stat. 2519, provided that:

''(a) DEMONSTRATION PROGRAM REQUIRED.—To help maintain the viability of the Army manufacturing arsenals and the unique capabilities of these arsenals to support the national security interests of the United States, the Secretary of the Army shall carry out a demonstration program under this section during fiscal years 2001 through 2004 at each manufacturing arsenal of the Department of the Army.

''(b) PURPOSES OF DEMONSTRATION PROGRAM.—The purposes of the demonstration program are as follows:

''(1) To provide for the utilization of the existing skilled workforce at the Army manufacturing arsenals by commercial firms.

''(2) To provide for the reemployment and retraining of skilled workers who, as a result of declining workload and reduced Army spending on arsenal production requirements at these Army arsenals, are idled or underemployed.

''(3) To encourage commercial firms, to the maximum extent practicable, to use these Army arsenals for commercial purposes.

''(4) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use these Army arsenals for those purposes.

''(5) To maintain in the United States a work force having the skills in manufacturing processes that are necessary to meet industrial emergency planned requirements for national security purposes.

''(6) To demonstrate innovative business practices, to support Department of Defense acquisition reform, and to serve as both a model and a laboratory for future defense conversion initiatives of the Department of Defense.

''(7) To the maximum extent practicable, to allow the operation of these Army arsenals to be rapidly responsive to the forces of free market competition.

''(8) To reduce or eliminate the cost of Government ownership of these Army arsenals, including the costs of operations and maintenance, the costs of environmental remediation, and other costs.

''(9) To reduce the cost of products of the Department of Defense produced at these Army arsenals.

''(10) To leverage private investment at these Army arsenals through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the demonstration program for the following activities:

''(A) Recapitalization of plant and equipment.

''(B) Environmental remediation.

''(C) Promotion of commercial business ventures.

''(D) Other activities approved by the Secretary of the Army.

''(11) To foster cooperation between the Department of the Army, property managers, commercial interests, and State and local agencies in the implementation of sustainable development strategies and investment in these Army arsenals.

''(c) CONTRACT AUTHORITY.—(1) In the case of each Army manufacturing arsenal, the Secretary of the Army may enter into contracts with commercial firms to authorize the contractors, consistent with section 4543 of title 10, United States Code—

''(A) to use the arsenal, or a portion of the arsenal, and the skilled workforce at the arsenal to manufacture weapons, weapon components, or related products consistent with the purposes of the program; and

''(B) to enter into subcontracts for the commercial use of the arsenal consistent with such purposes.

''(2) A contract under paragraph (1) shall require the contractor to contribute toward the operation and maintenance of the Army manufacturing arsenal covered by the contract.

''(3) In the event an Army manufacturing arsenal is converted to contractor operation, the Secretary may enter into a contract with the contractor to authorize the contractor, consistent with section 4543 of title 10, United States Code—

''(A) to use the facility during the period of the program in a manner consistent with the purposes of the program; and

''(B) to enter into subcontracts for the commercial use of the facility consistent with such purposes.

''(d) LOAN GUARANTEES.—(1) Subject to paragraph (2), the Secretary of the Army may guarantee the repayment of any loan made to a commercial firm to fund, in whole or in part, the establishment of a commercial activity at an Army manufacturing arsenal under this section.

''(2) Loan guarantees under this subsection may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required by section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

''(3) The Secretary of the Army may enter into agreements with the Administrator of the Small Business Administration or the Administrator of the Farmers Home Administration, the Administrator of the Rural Development Administration, or the head of other appropriate agencies of the Department of Agriculture, under which such Administrators may, under this subsection—

''(A) process applications for loan guarantees;

''(B) guarantee repayment of loans; and

''(C) provide any other services to the Secretary of the Army to administer this subsection.

''(4) An Administrator referred to in paragraph (3) may guarantee loans under this section to commercial firms of any size, notwithstanding any limitations on the size of applicants imposed on other loan guarantee programs that the Administrator administers. To the extent practicable, each Administrator shall use the same procedures for processing loan guarantee applications under this subsection as the Administrator uses for processing loan guarantee applications under other loan guarantee programs that the Administrator administers.

''(e) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under subsection (d) may not exceed—

''(1) $20,000,000, with respect to any single borrower; and

''(2) $320,000,000 with respect to all borrowers.

''(f) TRANSFER OF FUNDS.—The Secretary of the Army may transfer to an Administrator providing services under subsection (d), and the Administrator may accept, such funds as may be necessary to administer loan guarantees under such subsection.

''(g) REPORTING REQUIREMENTS.—(1) Not later than July 1 of each year in which a guarantee issued under subsection (d) is in effect, the Secretary of the Army shall submit to Congress a report specifying the amounts of loans guaranteed under such subsection during the preceding calendar year. No report is required after fiscal year 2004.

''(2) Not later than July 1, 2003, the Secretary of the Army shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the results of the demonstration program since its implementation, including the Secretary's views regarding the benefits of the program for Army manufacturing arsenals and the Department of the Army and the success of the program in achieving the purposes specified in subsection (b). The report shall contain a comprehensive review of contracting at the Army manufacturing arsenals covered by the program and such recommendations as the Secretary considers appropriate regarding changes to the program.''

§ 4552. Policy

It is the policy of the United States—

(1) to encourage, to the maximum extent practicable, commercial firms to use Government-owned, contractor-operated ammunition manufacturing facilities of the Department of the Army;

(2) to use such facilities for supporting programs, projects, policies, and initiatives that promote competition in the private sector of the United States economy and that advance United States interests in the global marketplace;

(3) to increase the manufacture of products inside the United States;

(4) to support policies and programs that provide manufacturers with incentives to assist the United States in making more efficient and economical use of eligible facilities for commercial purposes;

(5) to provide, as appropriate, small businesses (including socially and economically disadvantaged small business concerns and new small businesses) with incentives that encourage those businesses to undertake manufacturing and other industrial processing activities that contribute to the prosperity of the United States;

(6) to encourage the creation of jobs through increased investment in the private sector of the United States economy;

(7) to foster a more efficient, cost-effective, and adaptable armaments industry in the United States;

(8) to achieve, with respect to armaments manufacturing capacity, an optimum level of readiness of the national technology and industrial base within the United States that is consistent with the projected threats to the national security of the United States and the projected emergency requirements of the armed forces; and

(9) to encourage facility use contracting where feasible.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–67.)

§ 4553. Armament Retooling and Manufacturing Support Initiative

(a) AUTHORITY FOR INITIATIVE.—The Secretary may carry out a program to be known as the ''Armament Retooling and Manufacturing Support Initiative''.

(b) PURPOSES.—The purposes of the ARMS Initiative are as follows:

(1) To encourage commercial firms, to the maximum extent practicable, to use eligible facilities for commercial purposes.

(2) To increase the opportunities for small businesses (including socially and economically disadvantaged small business concerns and new small businesses) to use eligible facilities for those purposes.

(3) To maintain in the United States a work force having the skills in manufacturing processes that are necessary to meet industrial emergency planned requirements for national security purposes.

(4) To demonstrate innovative business practices, to support Department of Defense acquisition reform, and to serve as both a model and a laboratory for future defense conversion initiatives of the Department of Defense.

(5) To the maximum extent practicable, to allow the operation of eligible facilities to be rapidly responsive to the forces of free market competition.

(6) To reduce or eliminate the cost of Government ownership of eligible facilities, including the costs of operations and maintenance, the costs of environmental remediation, and other costs.

(7) To reduce the cost of products of the Department of Defense produced at eligible facilities.

(8) To leverage private investment at eligible facilities through long-term facility use contracts, property management contracts, leases, or other agreements that support and advance the policies and purposes of this chapter, for the following activities:

(A) Recapitalization of plant and equipment.

(B) Environmental remediation.

(C) Promotion of commercial business ventures.

(D) Other activities approved by the Secretary.

(9) To foster cooperation between the Department of the Army, property managers, commercial interests, and State and local agencies in the implementation of sustainable development strategies and investment in eligible facilities made available for purposes of the ARMS Initiative.

(10) To reduce or eliminate the cost of asset disposal that would be incurred if property at an eligible facility was declared excess to the needs of the Department of the Army.

(c) AVAILABILITY OF FACILITIES.—The Secretary may make any eligible facility available for the purposes of the ARMS Initiative.

(d) CONSIDERATION FOR LEASES.—Section 321 of the Act of June 30, 1932 (40 U.S.C. 303b)[1], shall not apply to uses of property or facilities in accordance with the ARMS Initiative.

(e) PROGRAM SUPPORT.—(1) Funds appropriated for purposes of the ARMS Initiative may be used for administrative support and management.

(2) A full annual accounting of such expenses for each fiscal year shall be provided to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives not later than March 30 of the following fiscal year.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–68.)

REFERENCES IN TEXT

Section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), referred to in subsec. (d), is section 321 of act June 30, 1932, ch. 314, 47 Stat. 412, which was classified to section 303b of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as section 1302 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107–217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

§ 4554. Property management contracts and leases

(a) IN GENERAL.—In the case of each eligible facility that is made available for the ARMS Initiative, the Secretary—

(1) shall make full use of facility use contracts, leases, and other such commercial contractual instruments as may be appropriate;

(2) shall evaluate, on the basis of efficiency, cost, emergency mobilization requirements, and the goals and purposes of the ARMS Initiative, the procurement of services from the property manager, including maintenance, operation, modification, infrastructure, environmental restoration and remediation, and disposal of ammunition manufacturing assets, and other services; and

(3) may, in carrying out paragraphs (1) and (2)—

(A) enter into contracts, and provide for subcontracts, for terms up to 25 years, as the Secretary considers appropriate and consistent with the needs of the Department of the Army and the goals and purposes of the ARMS Initiative; and

(B) use procedures that are authorized to be used under section 2304(c)(5) of this title when the contractor or subcontractor is a source specified in law.

(b) CONSIDERATION FOR USE.—(1) To the extent provided in a contract entered into under this section for the use of property at an eligible facility that is accountable under the contract, the Secretary may accept consideration for such use that is, in whole or in part, in a form other than—

(A) rental payments; or

(B) revenue generated at the facility.

(2) Forms of consideration acceptable under paragraph (1) for a use of an eligible facility or any property at an eligible facility include the following:

(A) The improvement, maintenance, protection, repair, and restoration of the facility, the property, or any property within the boundaries of the installation where the facility is located.

(B) Reductions in overhead costs.

(C) Reductions in product cost.

(3) The authority under paragraph (1) may be exercised without regard to section 3302(b) of title 31 and any other provision of law.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–69.)

IMPLEMENTATION REPORT

Pub. L. 106–398, §1 [[div. A], title III, §344(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–71, provided that: ''Not later than July 1, 2001, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the procedures and controls implemented to carry out section 4554 of title 10, United States Code, as added by subsection (a).''

§ 4555. ARMS Initiative loan guarantee program

(a) PROGRAM AUTHORIZED.—Subject to subsection (b), the Secretary may carry out a loan guarantee program to encourage commercial firms to use eligible facilities under this chapter. Under any such program, the Secretary may guarantee the repayment of any loan made to a commercial firm to fund, in whole or in part, the establishment of a commercial activity to use an eligible facility under this chapter.

[1] See References in Text note below.

(b) ADVANCED BUDGET AUTHORITY.—Loan guarantees under this section may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required by section 504 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661c).

(c) PROGRAM ADMINISTRATION.—(1) The Secretary may enter into an agreement with any of the officials named in paragraph (2) under which that official may, for the purposes of this section—

(A) process applications for loan guarantees;

(B) guarantee repayment of loans; and

(C) provide any other services to the Secretary to administer the loan guarantee program.

(2) The officials referred to in paragraph (1) are as follows:

(A) The Administrator of the Small Business Administration.

(B) The head of any appropriate agency in the Department of Agriculture, including—

(i) the Administrator of the Farmers Home Administration; and

(ii) the Administrator of the Rural Development Administration.

(3) Each official authorized to do so under an agreement entered into under paragraph (1) may guarantee loans under this section to commercial firms of any size, notwithstanding any limitations on the size of applicants imposed on other loan guarantee programs that the official administers.

(4) To the extent practicable, each official processing loan guarantee applications under this section pursuant to an agreement entered into under paragraph (1) shall use the same processing procedures as the official uses for processing loan guarantee applications under other loan guarantee programs that the official administers.

(d) LOAN LIMITS.—The maximum amount of loan principal guaranteed during a fiscal year under this section may not exceed—

(1) $20,000,000, with respect to any single borrower; and

(2) $320,000,000 with respect to all borrowers.

(e) TRANSFER OF FUNDS.—The Secretary may transfer to an official providing services under subsection (c), and that official may accept, such funds as may be necessary to administer the loan guarantee program under this section.

(Added Pub. L. 106–398, §1 [[div. A], title III, §344(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–70.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2474 of this title.

CHAPTER 435—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.
4561. Rations.
4562. Clothing.
4563. Clothing: replacement when destroyed to prevent contagion.
4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army.
4565. Colors, standards, and guidons of demobilized organizations: disposition.

§ 4561. Rations

(a) The President may prescribe the components, and the quantities thereof, of the Army ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Army so require.

(b) Under the direction of the Secretary of the Army, the branch, office, or officer designated by him shall issue the components of the Army ration.

(c) An enlisted member of the Army on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(d) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations prescribed by the Surgeon General and approved by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4561(a)	10:724.	R.S. 1141 (as applicable to issue); June 28, 1950, ch. 383, §402(a), 64 Stat. 272.
4561(b)	10:1195a (as applicable to issue).	
4561(c)	10:716b.	Feb. 2, 1901, ch. 192, §40, 31 Stat. 758.
	10:725.	R.S. 1293; July 16, 1892, ch. 195 (last 15 words before proviso under ''Subsistence of the Army''), 27 Stat. 178.
4561(d)	10:726.	Mar. 2, 1907, ch. 2511 (1st proviso under ''Subsistence Department''), 34 Stat. 1165.
		R.S. 1175.

In subsection (a), the words ''the components, and the quantities thereof'' are substituted for the words ''the kinds and quantities of the component articles''. The words ''substitutive'' and ''a due regard'' are omitted as surplusage.

In subsection (b), the words ''the components of the Army ration'' are substituted for the words ''such supplies as enter into the composition of the ration''.

In subsection (c), the words ''on active duty'' are inserted for clarity. The words ''under such regulations as may be prescribed by the Secretary of the Army'', in 10:725, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words ''or reserve'', ''prescribed for use on emergent occasions'', and ''furnished'', in 10:725, are omitted as surplusage.

In subsection (d), the words ''Such quantities of'' and ''may be allowed'' are omitted as surplusage.

DELEGATION OF AUTHORITY

Authority of President under subsec. (a) of this section to prescribe uniform military ration applicable to Army delegated to Secretary of Defense by section 3(a) of Ex. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

§ 4562. Clothing

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4562	10:831.	R.S. 1296 (less 1st 9 words).

The words ''members of the Army'' are substituted for the words ''troops of the United States''.

§ 4563. Clothing: replacement when destroyed to prevent contagion

Upon the recommendation of the Surgeon General, the Secretary of the Army may order a gratuitous issue of clothing to any enlisted member of the Army who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of an officer of the Medical Corps to prevent contagion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4563	10:834.	R.S. 1298.

The words ''enlisted member'' are substituted for the word ''soldiers''. The words ''any articles of their'' are omitted as surplusage. The words ''while he had that disease'' are inserted for clarity. The words ''an officer of the Medical Corps'' are substituted for the words ''proper medical officers''.

§ 4564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Army

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Army, the officer of the Army designated by the Secretary of the Army shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4564	10:1259d. 10:1259e. 34:541.	R.S. 1143; June 28, 1950, ch. 383, § 402(a), 64 Stat. 272. R.S. 1135; June 28, 1950, ch. 383, § 402(a), 64 Stat. 272.

The words ''While * * * on shore duty'' are substituted for the words ''under orders to act on shore'', in 10:1259d and 1259e, and 34:541. The words ''branch, office, or'' and ''during the time such detachment is so acting or proceeding to act'', in 10:1259d and 1259e, and 34:541, are omitted as surplusage. The words ''their baggage, provisions, and cannon'', in 10:1259e and 34:541, are omitted as surplusage. The words ''and shall furnish the naval officer commanding any such detachment, and his necessary aides, with horses, accouterments, and forage'', in 10:1259e and 34:541, are omitted as obsolete.

§ 4565. Colors, standards, and guidons of demobilized organizations: disposition

(a) The Secretary of the Army may dispose of colors, standards, and guidons of demobilized organizations of the Army, as follows:

(1) Those brought into Federal service by the Army National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary for such national use as the Secretary may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Army remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 256; Pub. L. 89–718, § 29, Nov. 2, 1966, 80 Stat. 1119.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4565(a)	5:202 (less 3d and last sentences).	Mar. 4, 1921, ch. 166, § 2, 41 Stat. 1438.
4565(b)	5:202 (3d sentence).	
4565(c)	5:202 (last sentence).	

In subsection (a), the words ''Any which were used during their service by such organizations and'' are omitted as surplusage. The first 15 words of the last sentence are substituted for 5:202 (1st 45 words of 2d sentence).

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted the Secretary of the Army for the Quartermaster General as the officer to accept delivery of colors, standards, and guidons of demobilized organizations of the Army which cannot be disposed of under clauses (1) and (2).

CHAPTER 437—UTILITIES AND SERVICES

Sec.
4591. Utilities: proceeds from overseas operations.
4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
4593. Quarters: heat and light.
4594. Furnishing of heraldic services.
4595. Army Military History Institute: fee for providing historical information to the public.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1085(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–288, added item 4595.

1957—Pub. L. 85–263, § 1(2), Sept. 2, 1957, 71 Stat. 589, added item 4594.

§ 4591. Utilities: proceeds from overseas operations

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Corps of Engineers in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4591	10:1287.	July 9, 1918, ch. 143, subch. XX (1st par.), 40 Stat. 893; May 29, 1928, ch. 901 (par. 37), 45 Stat. 989; Aug. 1, 1953, ch. 305, Title VI, § 645 (7th clause), 67 Stat. 357.

§ 4592. Radiograms and telegrams: forwarding charges due connecting commercial facilities

In the operation of telegraph lines, cables, or radio stations, members of the Signal Corps may, in the discretion of the Secretary of the Army, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing official for payment of the forwarding charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257; Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052; Pub. L. 104–316, title I, § 105(e), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4592	10:1319.	May 12, 1917, ch. 12 (proviso under ''Washington-Alaska Military Cable and Telegraph System''), 40 Stat. 43.

The words ''members of'' are inserted for clarity. The words ''Government'', ''and to this end'', ''as may be'', and ''amount of such'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–316 substituted ''of the forwarding'' for '', or may file a claim with the General Accounting Office for the forwarding'' in second sentence.

1982—Pub. L. 97–258 substituted ''official'' for ''officer''.

§ 4593. Quarters: heat and light

The heat and light necessary for the authorized quarters of members of the Army shall be furnished at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4593	10:723.	Mar. 2, 1907, ch. 2511 (1st proviso under ''Quartermaster's Department''), 34 Stat. 1167.

The word ''members'' is substituted for the words ''officers and enlisted men''. The words ''under such regulations as the Secretary of the Army may prescribe'', are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory function.

CHARGES FOR EXCESS ENERGY CONSUMPTION; DEPOSIT OF PROCEEDS; APPLICABILITY; IMPLEMENTATION

Pub. L. 95–82, title V, § 507, Aug. 1, 1977, 91 Stat. 372, provided for assessment of charges upon occupants of military family housing facilities for excessive use of energy, prior to repeal by Pub. L. 96–418, title V, § 509, title VI, § 608, Oct. 10, 1980, 94 Stat. 1767, 1774, eff. Oct. 1, 1980.

§ 4594. Furnishing of heraldic services

(a) Under regulations to be prescribed by the Secretary of the Army, an authority designated by him may, upon the request of, and subject to approval by, the Secretary of another military department, design flags, insignia, badges, medals, seals, decorations, guidons, streamers, finial pieces for flagstaffs, buttons, buckles, awards, trophies, marks, emblems, rosettes, scrolls, braids, ribbons, knots, tabs, cords, and similar items for the requesting department.

(b) Upon request the Secretary of the Army may advise other departments and agencies of the United States on matters of heraldry.

(c) The Secretary of the Army may prescribe regulations providing for reimbursement for services furnished under this section.

(Added Pub. L. 85–263, § 1(1), Sept. 2, 1957, 71 Stat. 589.)

EFFECTIVE DATE

Section 2 of Pub. L. 85–263 provided that: ''This Act [enacting this section] takes effect on the first day of the first month after the month in which it is enacted [September 1957].''

§ 4595. Army Military History Institute: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Army may charge a person a fee for providing the person with information from the United States Army Military History Institute that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) LIMITATION ON AMOUNT.—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) RETENTION OF FEES.—Amounts received under subsection (a) for providing information in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from the United States Army Military History Institute during that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term ''United States Army Military History Institute'' means the archive for historical records and materials of the Army that the Secretary of the Army designates as the primary archive for such records and materials.

(2) The terms ''officer of the United States'' and ''employee of the United States'' have the meanings given the terms ''officer'' and ''employee'', respectively, in sections 2104 and 2105, respectively, of title 5.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1085(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–287.)

CHAPTER 439—SALE OF SERVICEABLE MATERIAL

Sec.
4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices.
4622. Rations: commissioned officers in field.
[4623. Repealed.]
4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home.
4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans.
4626. Aircraft supplies and services: foreign military or air attaché.
4627. Supplies: educational institutions.
4628. Airplane parts and accessories: civilian flying schools.
4629. Proceeds: disposition.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title XV, §1533(a)(5)(C), Nov. 5, 1990, 104 Stat. 1734, amended item 4624 generally, substituting ''Armed Forces Retirement Home'' for ''Soldiers' and Airmen's Home''.

1980—Pub. L. 96–513, title V, §512(18)(C), Dec. 12, 1980, 94 Stat. 2930, inserted ''and Airmen's'' after ''Soldiers'''' in item 4624.

1970—Pub. L. 91–482, §2B, Oct. 21, 1970, 84 Stat. 1082, struck out item 4623 ''Tobacco: enlisted members of Army''.

§ 4621. Quartermaster supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) The Secretary of the Army shall procure and sell, for cash or credit—

(1) articles specified by the Secretary of the Army or a person designated by him, to members of the Army; and

(2) items of individual clothing and equipment, to officers of the Army, under such restrictions as the Secretary may proscribe.

An account of sales on credit shall be kept and the amount due reported to any branch, office, or officer designated by the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Army.

(c) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Army.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Army.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Army honorably or under honorable conditions, at the prices at which like articles are sold to members of the Army. This subsection does not modify section 772 or 773 of this title.

(f) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any branch of the Army or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash or by commercial credit.

(g) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to officers and employees inside the United States may be made only to those residing within military installations.

(h) Appropriations for subsistence of the Army may be applied to the purchase of subsistence supplies for sale to members of the Army on active duty for the use of themselves and their families.

(Aug. 10, 1956, ch. 1041, 70A Stat. 257; Pub. L. 87–651, title I, §118, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96–513, title V, §512(17), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 100–180, div. A, title III, §313(c), Dec. 4, 1987, 101 Stat. 1074; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title III, §375(b)(1), Feb. 10, 1996, 110 Stat. 283.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4621(a)	10:904. 10:1231. 10:1237. 32:156.	Aug. 31, 1918, ch. 166, §9 (less 17th through 22d words), 40 Stat. 957. R.S. 1144; June 28, 1950, ch. 383, §402(a), 64 Stat. 272.
4621(b)	10:1238.	
4621(c)	10:1233.	
4621(d)	10:1234. 34:539	June 3, 1916, ch. 134, §109; restated June 4, 1920, ch. 227, subch. I, §47; restated June 3, 1924, ch. 244, §3; restated Oct. 14, 1940, ch. 875, §3, 54 Stat. 1136; Mar. 25, 1948, ch. 157, §5(b), 62 Stat. 91; Oct. 12, 1949, ch. 681, §501(f)(2) and (3) (as applicable to §109 of the Act of June 3, 1916, ch. 134), 63 Stat. 827; July 9, 1952, ch. 608, §803 (12th par.), 66 Stat. 505.
4621(e)	10:1235.	
4621(f)	10:1395 (less last sentence).	
4621(g)	10:1253.	
4621(h)	10:1241.	
4621(i)	10:1196.	June 30, 1922, ch. 253, Title I (last proviso under ''Clothing and Equipage''), 42 Stat. 729.

HISTORICAL AND REVISION NOTES—CONTINUED
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		July 5, 1884, ch. 217 (proviso under ''Subsistence of the Army''), 23 Stat. 108. Aug. 29, 1916, ch. 418 (words before semicolon of 3d proviso under ''Subsistence of the Army''), 39 Stat. 630. Mar. 4, 1915, ch. 143 (last proviso under ''Clothing, and Camp and Garrison Equipage''), 38 Stat. 1079; June 28, 1950, ch. 383, § 402(k), 64 Stat. 273. June 5, 1920, ch. 240 (par. under ''Purchase of Army Stores by Discharged Receiving Treatment from the Public Health Service''), 41 Stat. 976. Feb. 14, 1927, ch. 134 (less last sentence), 44 Stat. 1096. Mar. 3, 1911, ch. 209 (last par. under ''Subsistence Department''), 36 Stat. 1047. Aug. 8, 1953, ch. 390, § 1, 67 Stat. 499. Mar. 3, 1875, ch. 131 (proviso of 1st sentence of 1st par. under ''War Department''), 18 Stat. 410.

In subsection (a), the word ''members'' is substituted for the words ''officers and enlisted men'' in 10:1237. Clause (2) is substituted for 10:904. 32:156 is omitted as covered by 10:904, since the words ''officers of the Army'' necessarily cover all persons named in 32:156. The words ''the Secretary of the Army or a person designated by him'' are substituted for the words ''by whatever branch, office, or officers of the Army the Secretary of the Army may from time to time designate'', inserted by the Editors of the United States Code. R.S. 1114 which provided that this function should be invested in the Inspector General was not amended in this respect by section 402(a) of the Army Organization Act of 1950 (64 Stat. 272). However, these functions have now been transferred to the Secretary of the Army or a person designated by him. (See memorandum of the Secretary of Defense, dated October 29, 1954, subject ''Transfer of Authority from the Inspector General to the Secretary of the Army to Designate Subsistence Articles for Sale,'' and opinion of the Judge Advocate General of the Army (JAGA 1954/9712, 2 December 1954).) The words ''Except for articles and items acquired through the use of working capital funds under sections 172–172j of title 5'' are inserted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (b), the first sentence states expressly the rule which is implicit in 10:1238. The word ''members'' is substituted for the words ''officers and enlisted men''. The words ''shall be understood, in all cases of such sales'' are omitted as surplusage. The last sentence is inserted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Deputy General Counsel of the Office of the Secretary of Defense, March 28, 1956.)

In subsection (c), the word ''members'' is substituted for the words ''officers and enlisted men''. The words ''prices at which like property is sold to'' are substituted for the words ''same price as is charged the''.

In subsections (c) and (d), the words ''other armed forces'' are substituted for the words ''Navy and Marine Corps'', since such sales are authorized to members of the Coast Guard by section 144(b) of title 14.

In subsection (d), the words ''other than subsistence supplies'' are inserted, since the sale of subsistence supplies is covered by subsection (c).

In subsection (e), the words ''a person who has been discharged'' are substituted for the words ''discharged officers and enlisted men''. The words ''Navy * * * or Marine Corps'', omitted from the 1952 Edition of the United States Code, are inserted to conform to the source statute. The words ''may buy'' are substituted for the words ''shall * * * be permitted to purchase''. The words ''at the prices at which like property is sold'' are substituted for the words ''at the same price as charged''. The word ''member'' is substituted for the words ''officers and enlisted men''. The words ''while undergoing such care and treatment'' are omitted as surplusage.

In subsection (f), the words ''person who has been discharged'' are substituted for the words ''former members * * * who have been separated therefrom''. The words ''at the prices at which like articles are sold to members'' are inserted to conform to the last sentence of subsection (a) and subsection (e).

In subsection (g), the words ''regulations to be prescribed by the Secretary'' are substituted for the words ''Army Regulations''. The words ''of the Government'' are omitted as surplusage. 10:1253 (last 22 words of 1st sentence) is omitted as surplusage. The words ''or to another executive department of the Government'' are omitted as superseded by section 7 of the Act of May 21, 1920, ch. 194, as amended (31 U.S.C. 686). The provisions of 10:1253 relating to computation of costs are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (h), the word ''outside'' is substituted for the words ''beyond the continental limitations''. The words ''or in Alaska'' are omitted, since, under section 101(1) of this title, the words ''United States'' are defined to include only the States and the District of Columbia. The word ''continental'', after the words ''within the'', is omitted for the same reason. The last sentence is substituted for 10:1241 (proviso).

In subsection (i), 10:1196 (last 30 words) is omitted as superseded by the Act of April 27, 1914, ch. 72 (last proviso under ''Subsistence of the Army''), 38 Stat. 361. The words ''So much of the'' and ''as may be necessary'' are omitted as surplusage. The words ''members * * * on active duty, for the use of themselves and their families'' are substituted for the words ''officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations'', to conform to 10:1237 and 1238. Those sections provide the basic authority for procurement and sale of subsistence supplies to all members. This interpretation conforms to established administrative practice under those sections. The word ''supplies'' is substituted for the word ''stores''.

1962 ACT

The change corrects an internal reference.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, § 375(b)(1)(A), substituted ''The Secretary of the Army'' for ''The branch, office, or officer designated by the Secretary of the Army''.

Subsecs. (b), (c). Pub. L. 104–106, § 375(b)(1)(B), substituted ''The Secretary'' for ''The branch, office, or officer designated by the Secretary''.

Subsec. (f). Pub. L. 104–106, § 375(b)(1)(C), inserted ''or by commercial credit'' before period at end.

1989—Subsec. (d). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1987—Subsecs. (b) to (i). Pub. L. 100–180 redesignated subsecs. (c) to (i) as subsecs. (b) to (h), respectively, and struck out former subsec. (b) which read as follows: ''Subsistence supplies may be sold to members of the Army. The selling price of each article sold under this subsection is the invoice price of the last lot of that article that the officer making the sale received before the first day of the month in which the sale is made. Activities conducted under this subsection shall be consistent with section 2208 of this title.''

1980—Subsec. (f). Pub. L. 96–513 struck out reference to section 3612 of this title.

1962—Subsecs. (a), (b). Pub. L. 87–651 substituted ''section 2208 of this title'' for ''sections 172–172j of title 5''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

PRICES CHARGED PERSONNEL OF CIVILIAN AGENCIES IN GERMANY

Act June 20, 1956, ch. 414, title I, § 101, 70 Stat. 300, provided in part: ''When the Department of the Army, under the authority of the Act of March 3, 1911, as amended, furnishes subsistence supplies to personnel of civilian agencies of the United States Government serving in Germany, payment therefor by such personnel shall be made at the same rate as is paid by civilian personnel of the Department of the Army serving in Germany.'' Similar provisions were contained in acts Oct. 6, 1949, ch. 621, title I, § 101, 63 Stat. 713; Sept. 6, 1950, ch. 896, ch. XI, title III, § 301, 64 Stat. 763; Nov. 1, 1951, ch. 664, ch. IX, § 901, 65 Stat. 750; July 15, 1952, ch. 758, ch. XI, title II, 66 Stat. 652; Aug. 7, 1953, ch. 340, ch. X, 67 Stat. 433; Aug. 26, 1954, ch. 935, ch. XI, 68 Stat. 823; July 7, 1955, ch. 279, title I, § 101, 69 Stat. 269.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title; title 37 section 1007.

§ 4622. Rations: commissioned officers in field

Commissioned officers of the Army serving in the field may buy rations for their own use, on credit, from any officer designated by the Secretary of the Army. Amounts due for these purchases shall be reported monthly to the officer of the Army designated by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 258.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4622	10:1232.	R.S. 1145; June 28, 1950, ch. 383, § 402(a), 64 Stat. 272.

The words ''at cost prices'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

[§ 4623. Repealed. Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 258, provided that the Quartermaster Corps sell not more than 16 ounces of tobacco a month to an enlisted member of the Army on active duty who requests it.

§ 4624. Medical supplies: civilian employees of the Army; American National Red Cross; Armed Forces Retirement Home

(a) Under regulations to be prescribed by the Secretary of the Army, a civilian employee of the Department of the Army who is stationed at an Army post may buy necessary medical supplies from the Army when they are prescribed by an officer of the Medical Corps on active duty.

(b) With the approval of the Secretary, the Army Medical Department may sell medical supplies to the American National Red Cross for cash.

(c) Any branch, office, or officer designated by the Secretary may sell medical and hospital supplies to the Armed Forces Retirement Home.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259; Pub. L. 90–329, June 4, 1968, 82 Stat. 170; Pub. L. 96–513, title V, § 512(18)(A), (B), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 101–510, div. A, title XV, § 1533(a)(5)(A), (B), Nov. 5, 1990, 104 Stat. 1734.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4624(a) ..... 4624(b) ..... 4624(c)	10:1236. 10:1254. 24:58.	Apr. 23, 1904, ch. 1485 (last proviso under ''Medical Department''), 33 Stat. 273; Mar. 2, 1905, ch. 1307 (last proviso under ''Medical Department''), 33 Stat. 839. Mar. 4, 1915, ch. 143 (2d proviso under ''Medical Department''), 38 Stat. 1080. June 4, 1897, ch. 2 (par. under ''Soldiers' Home, District of Columbia''), 30 Stat. 54; June 28, 1950, ch. 383, § 402(d), 64 Stat. 272.

In subsection (a) the words ''an officer of the Medical Corps'' are substituted for the words ''medical officer''. The words ''on active duty'' are inserted for clarity.

In subsection (b) the words ''rates of charge'', ''to cover the cost of purchase, inspection, and so forth'', and ''as can be spared without detriment to the military service'' are omitted as surplusage. The words ''the contract prices paid therefor'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.) The word ''equipments'' is omitted as covered by the word ''supplies''.

In subsection (c), the words ''in the District of Columbia'' are omitted as surplusage, since there is only one Soldiers' Home. The words ''Upon proper application therefor'' are omitted as surplusage. The words ''its contract prices'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel

(Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

AMENDMENTS

1990—Pub. L. 101–510, §1533(a)(5)(B), substituted ''Armed Forces Retirement Home'' for ''Soldiers' and Airmen's Home'' in section catchline.

Subsec. (c). Pub. L. 101–510, §1533(a)(5)(A), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home''.

1980—Pub. L. 96–513, §512(18)(B), inserted ''and Airmen's'' after ''Soldiers' '' in section catchline.

Subsec. (c). Pub. L. 96–513, §512(18)(A), substituted ''United States Soldiers' and Airmen's'' for ''Soldiers' ''.

1968—Subsec. (b). Pub. L. 90–329 substituted ''Army Medical Department'' for ''Army Medical Service''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 4625. Ordnance property: officers of armed forces; civilian employees of Army; American National Red Cross; educational institutions; homes for veterans' orphans

(a) Any branch, office, or officer designated by the Secretary of the Army may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as those articles are sold to officers of the Army.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Army and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4625(a)	34:540. 50:70.	Mar. 3, 1909, ch. 252 (5th par. under ''National Trophy and Medals for Rifle Contest''), 35 Stat. 750.
4625(b)	50:71.	Mar. 3, 1909, ch. 252 (8th par. under ''National Trophy and Medals for Rifle Contests''), 35 Stat. 751; June 28, 1950, ch. 383, §402(h), 64 Stat. 273.
4625(c)	50:63.	May 11, 1908, ch. 163 (4th par. under ''National Trophy and Medals for Rifle Contests''), 35 Stat. 125.

In subsection (a), the words ''other armed forces'' are substituted for the words ''the Navy and Marine Corps'', in 34:540 and 50:70, since those sales may be made to officers of the Coast Guard under section 114(c) of title 14.

§ 4626. Aircraft supplies and services: foreign military or air attaché

Under such conditions as he may prescribe, the Secretary of the Army may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4626	22:259 (less last sentence).	May 31, 1939, ch. 161 (less last sentence), 53 Stat. 795.

The last sentence is substituted for the words ''except for shelter for which no charge shall be made''. The words ''and equipment'' are omitted as covered by the word ''supplies''. 22:259 (last 22 words of 2d sentence) is omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title.

§ 4627. Supplies: educational institutions

Under such regulations as the Secretary of the Army may prescribe, supplies and military publications procured for the Army may be sold to any educational institution to which an officer of the Army is detailed as professor of military science and tactics, for the use of its military students. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4627	10:1179 (less proviso).	July 17, 1914, ch. 149 (less proviso), 38 Stat. 512.

The words ''procured for'' are substituted for the words ''as are furnished to''. The words ''stores * * * matériel of war'' are omitted as covered by the word ''supplies''. The words ''the price listed to the Army'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4629 of this title.

§ 4628. Airplane parts and accessories: civilian flying schools

The Secretary of the Army may sell, to civilian flying schools at which personnel of the Department of the Army or the Department of the Air Force are receiving flight training under

contracts requiring these schools to maintain and repair airplanes of the Army furnished to them for flight training, the spare parts and accessories needed for those repairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 259.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4628	10:298c.	Feb. 12, 1940, ch. 27, Title I (proviso under ''Air Corps''), 54 Stat. 25.

The words ''under the provisions of the Act of Apr. 3, 1939, ch. 35, 53 Stat. 555'' are omitted as obsolete, since training formerly performed under that act is now performed under section 4301 of this title. The words ''personnel of the Department of the Army or the Department of the Air Force'' are substituted for the words ''flying cadets'', since the authority is reciprocal, and to conform to section 4656 of this title. The words ''flying cadet'' are omitted as obsolete. 10:298c (last 28 words) is omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 4629. Proceeds: disposition

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

(1) Exterior articles of uniform sold under section 4621 of this title.

(2) Supplies and military publications sold to educational institutions under section 4627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attache sold under section 4626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4629	10:1179 (proviso). 10:1395 (last sentence). 22:259 (last sentence).	Feb. 14, 1927, ch. 134 (last sentence), 44 Stat. 1096. July 17, 1914, ch. 149 (proviso), 38 Stat. 512. May 31, 1939, ch. 161 (last sentence), 53 Stat. 796.

CHAPTER 441—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.

4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.
4652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
4653. Ordnance and ordnance stores: District of Columbia high schools.
4654. Quartermaster supplies: military instruction camps.
4655. Arms and ammunition: agencies and departments of the United States.
4656. Aircraft and equipment: civilian aviation schools.
4657. Sale of ammunition for avalanche-control purposes.

Sec.

AMENDMENTS

1984—Pub. L. 98–525, title XV, § 1538(a)(2), Oct. 19, 1984, 98 Stat. 2636, added item 4657.

§ 4651. Arms, tentage, and equipment: educational institutions not maintaining units of R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Army may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260; Pub. L. 99–145, title XIII, § 1301(b(3)(C), Nov. 8, 1985, 99 Stat. 736.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4651	10:1180.	June 3, 1916, ch. 134, § 55c (words before semicolon); added June 4, 1920, ch. 227, subch. I, § 35 (words of last par. before semicolon), 41 Stat. 780.

The reference to schools ''other than those provided for in section 381 of this title'' is omitted as covered by the descriptions of the educational institutions.

AMENDMENTS

1985—Pub. L. 99–145 struck out ''male'' before ''students''.

§ 4652. Rifles and ammunition for target practice: educational institutions having corps of cadets

(a) The Secretary of the Army may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 260.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4652(a) ..... 4652(b) ..... 4652(c)	10:1185 (1st par.). 10:1185 (last par., less 1st 22, and last 19, words). 10:1185 (1st 22, and last 19, words of last par.).	Apr. 27, 1914, ch. 72 (last proviso and last par. under ''Manufacture of Arms''), 38 Stat. 370.

In subsection (a), the words ''and carrying on military training'' and ''the maintenance of'' are omitted as surplusage. In clause (2), the words ''suitable to said arm'' are omitted as surplusage.

In subsection (b), the words ''shall use it for target practice'' are substituted for the words ''insuring the designed use of the property issued''. The words ''take proper care of it'' are substituted for the words ''providing against loss to the United States through lack of proper care''.

§ 4653. Ordnance and ordnance stores: District of Columbia high schools

The Secretary of the Army, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. The Secretary shall require a bond in double the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4653	10:1183.	Feb. 5, 1891, J. Res. 9, 26 Stat. 1113.

The words ''at his discretion and'', ''belonging to the Government, and which can be spared for that purpose'', and ''in each case'' are omitted as surplusage. The words ''high schools of the'' are substituted for the words ''High School of Washington'' since the various high schools of the District of Columbia have succeeded the Washington High School that existed at the time the statute was enacted. The words ''except for property properly expended'' are inserted for clarity.

§ 4654. Quartermaster supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Army may issue, to any educational institution at which an Army officer is detailed as professor of military science and tactics, such quartermaster supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4654	10:1182.	May 18, 1916, ch. 124, 39 Stat. 123.

The words ''at his discretion and'' and ''belonging to the Government, and which can be spared for that purpose, as may appear to be'' are omitted as surplusage. The words ''except for property properly expended'' are inserted for clarity. The word ''stores'' is omitted as covered by the word ''supplies''.

§ 4655. Arms and ammunition: agencies and departments of the United States

(a) Whenever required for the protection of public money and property, the Secretary of the Army may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Army. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Army to cover the costs of—

(1) ammunition issued;

(2) replacing arms and accouterments that have been lost or destroyed, or cannot be repaired;

(3) repairing arms and accouterments returned to the Department of the Army; and

(4) making and receiving shipments by the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4655(a)	50:61 (less proviso).	Mar. 3, 1879, ch. 183 (2d par. under ''Miscellaneous''); restated Apr. 14, 1937, ch. 79, 50 Stat. 63.
4655(b)	50:61 (proviso).	

In subsection (a), the word ''lend'' is substituted for the word ''issue'', with respect to arms and accouterments, since the property must be returned when the necessity for its use has expired. The words ''and not properly expended'' are inserted for clarity. The words ''United States'' are substituted for the word ''Government''. The word ''their'' is substituted for the words ''suitable * * * for use therewith''. The words ''it is no longer needed'' are substituted for the words ''the necessity for their use has expired''.

In subsection (b), the words ''hereafter'', ''borrowed'', and ''under the authority of this section'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2238.

§ 4656. Aircraft and equipment: civilian aviation schools

The Secretary of the Army, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Army or the Department of the Air Force are pursuing a course of instruction and training under detail by competent orders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 261; Pub. L. 97–295, § 1(42), Oct. 12, 1982, 96 Stat. 1298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4656	10:298b.	Apr. 3, 1939, ch. 35, § 4, 53 Stat. 556.

The words ''in his discretion and'', ''rules'', ''limitations'', and ''on hand and belonging to the Government,

such articles as may appear to be'' are omitted as surplusage. The words ''Department of the Army or the Department of the Air Force'' are substituted for the words ''Military Establishment'', since the authority is reciprocal.

AMENDMENTS

1982—Pub. L. 97–295 struck out '', and at least one of which is designated by the Civil Aeronautics Authority for the training of Negro air pilots'' after ''competent orders''.

§ 4657. Sale of ammunition for avalanche-control purposes

Subject to the needs of the Army, the Secretary of the Army may sell ammunition for military weapons which are used for avalanche-control purposes to any State (or entity of a State) or to any other non-Federal entity that has been authorized by a State to use those weapons in that State for avalanche-control purposes. Sales of ammunition under this section shall be on a reimbursable basis and shall be subject to the condition that the ammunition be used only for avalanche-control purposes.

(Added Pub. L. 98–525, title XV, §1538(a)(1), Oct. 19, 1984, 98 Stat. 2636.)

EFFECTIVE DATE

Section 1538(b) of Pub. L. 98–525 provided that: ''Section 4657 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1984.''

CHAPTER 443—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
4681. Surplus war material: sale to States and foreign governments.
4682. Obsolete or excess material: sale to National Council of Boy Scouts of America.
4683. Excess M–1 rifles: loan or donation for funeral and other ceremonial purposes.
4684. Surplus obsolete ordnance: sale to patriotic organizations.
4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes.
4686. Obsolete ordnance: gift to State homes for soldiers and sailors.
4687. Sale of excess, obsolete, or unserviceable ammunition and ammunition components.
4688. Armor-piercing ammunition and components: condition on disposal.
4689. Transfer of material and equipment to the Architect of the Capitol.

AMENDMENTS

2002—Pub. L. 107–217, §2(2), Aug. 21, 2002, 116 Stat. 1295, added item 4689.

2000—Pub. L. 106–398, §1 [[div. A], title III, §382(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85, added item 4688.

1999—Pub. L. 106–65, div. A, title III, §381(d)(2), Oct. 5, 1999, 113 Stat. 583, substituted ''Excess M–1 rifles: loan or donation for funeral and other ceremonial purposes'' for ''Obsolete or condemned rifles: loan to local units of recognized veterans' organizations'' in item 4683.

1997—Pub. L. 105–85, div. A, title X, §1065(a)(2), Nov. 18, 1997, 111 Stat. 1895, added item 4687.

§ 4681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 121 of title 40, the Secretary of the Army may sell surplus war material and supplies, except food, of the Department of the Army, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Pub. L. 96–513, title V, §512(19), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 107–217, §3(b)(24), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4681	10:1262.	June 5, 1920, ch. 240 (2d proviso under ''Contingencies of the Army''), 41 Stat. 949; Oct. 31, 1951, ch. 654, §2(8), 65 Stat. 707.

The word ''may'' is substituted for the words ''is authorized in his discretion to''. The words ''war material'' are substituted for the word ''matériel''. The words ''or equipment'' are omitted as covered by the word ''supplies''. The words ''of the Department of the Army'' are substituted for the words ''pertaining to the Military Establishment''. The words ''which are not needed for military purposes'' are omitted as covered by the word ''surplus''. The words ''as or may be found to be'' are omitted as surplusage.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 4682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section 121 of title 40, the Secretary of the Army, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Army, including packing, handling, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Pub. L. 96–513, title V, §512(19), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 107–217, §3(b)(25), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4682	10:1259.	May 15, 1937, ch. 193, 50 Stat. 167; Oct. 31, 1951, ch. 654, §2(7), 65 Stat. 707.

The words ''obsolete or excess material'' are substituted for the words ''such obsolete material as may not be needed by the Department of the Army, and such other material as may be spared'' to conform to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.). The words ''in his discretion'' are omitted as surplusage.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 4683. Excess M–1 rifles: loan or donation for funeral and other ceremonial purposes

(a) AUTHORITY TO LEND OR DONATE.—(1) The Secretary of the Army, under regulations prescribed by the Secretary, may conditionally lend or donate excess M–1 rifles (not more than 15), slings, and cartridge belts to any eligible organization for use by that organization for funeral ceremonies of a member or former member of the armed forces, and for other ceremonial purposes.

(2) If the rifles to be loaned or donated under paragraph (1) are to be used by the eligible organization for funeral ceremonies of a member or former member of the armed forces, the Secretary may issue and deliver the rifles, together with the necessary accoutrements and blank ammunition, without charge.

(b) RELIEF FROM LIABILITY.—The Secretary may relieve an eligible organization to which materials are lent or donated under subsection (a), and the surety on its bond, from liability for loss or destruction of the material lent or donated, if there is conclusive evidence that the loss or destruction did not result from negligence.

(c) CONDITIONS ON LOAN OR DONATION.—In lending or donating rifles under subsection (a), the Secretary shall impose such conditions on the use of the rifles as may be necessary to ensure security, safety, and accountability. The Secretary may impose such other conditions as the Secretary considers appropriate.

(d) ELIGIBLE ORGANIZATION DEFINED.—In this section, the term ''eligible organization'' means—

(1) a unit or other organization of honor guards recognized by the Secretary of the Army as honor guards for a national cemetery;

(2) a law enforcement agency; or

(3) a local unit of any organization that, as determined by the Secretary of the Army, is a nationally recognized veterans' organization.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 106–65, div. A, title III, § 381(a)–(d)(1), Oct. 5, 1999, 113 Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4683(a)	50:62.	Feb. 10, 1920, ch. 64; restated June 5, 1920, ch. 240 (par. under ''Rifles and Accessories for Organizations of War Veterans''); restated May 26, 1952, ch. 364, 66 Stat. 94.
4683(b)	50:62b.	Dec. 15, 1926, ch. 10, 44 Stat. 922.

In subsection (a), the words ''rules, limitations'' and ''in suitable amounts'' are omitted as surplusage. The words ''(not more than 10)'' are substituted for 50:62 (proviso). The words ''any local unit'' are substituted for the words ''posts or camps'', before the words ''of national''. The words ''that unit'' are substituted for the word ''them''. The words ''those units'' are substituted for the words ''such posts and camps''. The words ''a member or former member of the armed forces'' are substituted for the words ''soldiers, sailors, and marines''. Clause (2) is substituted for 50:62 (words between semicolon and colon).

In subsection (b), the words ''a unit to which materials are lent under subsection (a)'' are substituted for the description of the posts or camps covered. The words ''the material lent'' are substituted for the words ''obsolete or condemned Army rifles, slings, and cartridge belts loaned by the Secretary of the Army under authority of section 62 of this title''.

AMENDMENTS

1999—Pub. L. 106–65, § 381(d)(1), substituted ''Excess M–1 rifles: loan or donation for funeral and other ceremonial purposes'' for ''Obsolete or condemned rifles: loan to local units of recognized veterans' organizations'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 381(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary of the Army, under regulations to be prescribed by him, may—

''(1) lend obsolete or condemned rifles (not more than 10), slings, and cartridge belts to any local unit of any national veterans' organization recognized by the Department of Veterans Affairs, for use by that unit for funeral ceremonies of a member or former member of the armed forces, and for other ceremonial purposes; and

''(2) issue and deliver to those units blank ammunition for those rifles—

''(A) without charge, if it is to be used for ceremonies at national cemeteries; and

''(B) without charge, except for packing, handling, and transportation, if it is to be used for other ceremonies.''

Subsec. (b). Pub. L. 106–65, § 381(c), inserted heading, substituted ''an eligible organization'' for ''a unit'' and ''lent or donated'' for ''lent'' in two places.

Subsecs. (c), (d). Pub. L. 106–65, § 381(b), added subsecs. (c) and (d).

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

REPORT ON IMPLEMENTATION

Pub. L. 106–65, div. A, title III, § 381(e), Oct. 5, 1999, 113 Stat. 583, provided that: ''Not later than two years after the date of the enactment of this Act [Oct. 5, 1999], the Comptroller General shall review the exercise of authority under section 4683 of title 10, United States Code, as amended by this section, and submit to Congress a report on the findings resulting from the review.''

§ 4684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section 121 of title 40, any branch, office, or officer designated by the Secretary of the Army may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 262; Pub. L. 96–513, title V, § 512(19), Dec. 12, 1980, 94 Stat.

2930; Pub. L. 107–217, §3(b)(26), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4684	50:64. 50:68.	May 28, 1908, ch. 215, §14, 35 Stat. 443; June 28, 1950, ch. 383, §402(g), 64 Stat. 273; Oct. 31, 1951, ch. 654, §2(26), 65 Stat. 707. Mar. 4, 1909, ch. 319, §47, 35 Stat. 1075; June 28, 1950, ch. 383, §402(i), 64 Stat. 273; Oct. 31, 1951, ch. 654, §2(28), 65 Stat. 707.

50:64 (proviso) and 50:68 (proviso) are omitted as surplusage.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' in introductory provisions.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 921; title 26 section 5845.

§ 4685. Obsolete ordnance: loan to educational institutions and State soldiers and sailors' orphans' homes

(a) Upon the recommendation of the governor of the State or Territory concerned, the Secretary of the Army, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State and Territorial educational institutions and to State soldiers and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 263.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4685(a) ..... 4685(b)	50:62a (1st par. and proviso of last par.). 50:62a (last par., less proviso).	June 30, 1906, ch. 3938, 34 Stat. 817.

In subsection (a), the words ''at his discretion'' and ''as may be available'' are omitted as surplusage. The word ''lend'' is substituted for the word ''issue'' to reflect the intent of the section. 50:62a (1st 13 words of proviso) is omitted as surplusage. The words ''and which is still in effect'' are inserted for clarity.

In subsection (b), the words ''to the United States'' are omitted as surplusage. The words ''except property properly expended'' are inserted for clarity.

The words ''subject to such regulations as he may prescribe'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words ''to any of the 'National Homes for Disabled Volunteer Soldiers' already established or hereafter established and'', in the Act of February 8, 1889, ch. 116, 25 Stat. 657, are not contained in 50:66 (1st sentence). They are also omitted from the revised section, since the National Homes for Disabled Volunteer Soldiers were dissolved by the Act of July 3, 1930, ch. 863, 46 Stat. 1016. The Acts of March 3, 1899, ch. 643 (1st proviso under ''Ordnance Department''), 30 Stat. 1073; and May 26, 1900, ch. 586 (1st proviso under ''Ordnance Department''), 31 Stat. 216, as amended, relating to disposal of ordnance to ''Homes for Disabled Volunteer Soldiers'' by the Chief of Ordnance, became inoperative when the Homes were dissolved. Although section 402(e) of the Army Organization Act of 1950, ch. 383, 64 Stat. 273, amended the Act of May 26, 1900, it did not have the effect of reviving that act. The word ''give'' is substituted for the word ''deliver'' to express more clearly the intent of the section. The words ''serviceable'' and ''as may be on hand undisposed of'' are omitted as surplusage. The word ''may'' is substituted for the words ''is authorized and directed'', since section 4684 of this title provides an alternative method for the disposal of obsolete cannon.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 921; title 26 section 5845.

§ 4686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section 121 of title 40, the Secretary of the Army may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 263; Pub. L. 96–513, title V, §512(19), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 107–217, §3(b)(27), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4686	50:66.	Feb. 8, 1889, ch. 116, 25 Stat. 657; Oct. 31, 1951, ch. 654, §2(27), 65 Stat. 707. Mar. 3, 1899, ch. 423 (1st proviso under ''Ordnance Department''), 30 Stat. 1073; May 26, 1900, ch. 586 (1st proviso under ''Ordnance Department''), 31 Stat. 216; June 28, 1950, ch. 383, §402(e), 64 Stat. 273.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 921; title 26 section 5845.

§ 4687. Sale of excess, obsolete, or unserviceable ammunition and ammunition components

(a) AUTHORITY TO SELL OUTSIDE DOD.—The Secretary of the Army may sell to an eligible purchaser described in subsection (c) ammunition or ammunition components that are excess, obsolete, or unserviceable and have not been demilitarized if—

(1) the purchaser enters into an agreement, in advance, with the Secretary—

(A) to demilitarize the ammunition or components; and

(B) to reclaim, recycle, or reuse the component parts or materials; or

(2) the Secretary, or an official of the Department of the Army designated by the Secretary, approves the use of the ammunition or components proposed by the purchaser as being consistent with the public interest.

(b) METHOD OF SALE.—The Secretary shall use competitive procedures to sell ammunition and ammunition components under this section, except that the Secretary may use procedures other than competitive procedures in any case in which the Secretary determines that there is only one potential buyer of the items being offered for sale.

(c) ELIGIBLE PURCHASERS.—To be eligible to purchase excess, obsolete, or unserviceable ammunition or ammunition components under this section, the purchaser shall be a licensed manufacturer (as defined in section 921(10) of title 18) that, as determined by the Secretary, has a capability to modify, reclaim, transport, and either store or sell the ammunition or ammunition components sought to be purchased.

(d) HOLD HARMLESS AGREEMENT.—The Secretary shall require a purchaser of ammunition or ammunition components under this section to agree to hold harmless and indemnify the United States from any claim for damages for death, injury, or other loss resulting from a use of the ammunition or ammunition components, except in a case of willful misconduct or gross negligence of a representative of the United States.

(e) VERIFICATION OF DEMILITARIZATION.—The Secretary shall establish procedures for ensuring that a purchaser of ammunition or ammunition components under this section demilitarizes the ammunition or ammunition components in accordance with any agreement to do so under subsection (a)(1). The procedures shall include onsite verification of demilitarization activities.

(f) CONSIDERATION.—The Secretary may accept ammunition, ammunition components, or ammunition demilitarization services as consideration for ammunition or ammunition components sold under this section. The fair market value of any such consideration shall be equal to or exceed the fair market value or, if higher, the sale price of the ammunition or ammunition components sold.

(g) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—Nothing in this section shall be construed to affect the applicability of section 38 of the Arms Export Control Act (22 U.S.C. 2778) to sales of ammunition or ammunition components on the United States Munitions List.

(h) DEFINITIONS.—In this section:

(1) The term ''excess, obsolete, or unserviceable'', with respect to ammunition or ammunition components, means that the ammunition or ammunition components are no longer necessary for war reserves or for support of training of the Army or production of ammunition or ammunition components.

(2) The term ''demilitarize'', with respect to ammunition or ammunition components—

(A) means to destroy the military offensive or defensive advantages inherent in the ammunition or ammunition components; and

(B) includes any mutilation, scrapping, melting, burning, or alteration that prevents the use of the ammunition or ammunition components for the military purposes for which the ammunition or ammunition components was designed or for a lethal purpose.

(Added Pub. L. 105–85, div. A, title X, § 1065(a)(1), Nov. 18, 1997, 111 Stat. 1893.)

REVIEW OF INITIAL SALES

Section 1065(b) of Pub. L. 105–85 provided that:

''(1) For each of the first three fiscal years during which the Secretary of the Army sells ammunition or ammunition components under the authority of section 4687 of title 10, United States Code, as added by subsection (a), the Director of the Army Audit Agency shall conduct a review of sales under such section to ensure that—

''(A) purchasers that enter into an agreement under subsection (a)(1) of such section to demilitarize the purchased ammunition or ammunition components fully comply with the agreement; and

''(B) purchasers that are authorized under subsection (a)(2) of such section to use the purchased ammunition or ammunition components actually use the ammunition or ammunition components in the manner proposed.

''(2) Not later than 180 days after the end of each fiscal year in which the review is conducted, the Secretary of the Army shall submit to Congress a report containing the results of the review for the fiscal year covered by the report.''

§ 4688. Armor-piercing ammunition and components: condition on disposal

(a) LIMITATION ON RESALE OR OTHER TRANSFER.—Except as provided in subsection (b), whenever the Secretary of the Army carries out a disposal (by sale or otherwise) of armor-piercing ammunition, or a component of armor-piercing ammunition, the Secretary shall require as a condition of the disposal that the recipient agree in writing not to sell or otherwise transfer any of the ammunition (reconditioned or otherwise), or any armor-piercing component of that ammunition, to any purchaser in the United States other than a law enforcement or other governmental agency.

(b) EXCEPTION.—Subsection (a) does not apply to a transfer of a component of armor-piercing ammunition solely for the purpose of metal reclamation by means of a destructive process such as melting, crushing, or shredding.

(c) SPECIAL RULE FOR NON-ARMOR-PIERCING COMPONENTS.—A component of the armor-pierc-

ing ammunition that is not itself armor-piercing and is not subjected to metal reclamation as described in subsection (b) may not be used as a component in the production of new or remanufactured armor-piercing ammunition other than for sale to a law enforcement or other governmental agency or for a government-to-government sale or commercial export to a foreign government under the Arms Export Control Act (22 U.S.C. 2751).

(d) DEFINITION.—In this section, the term ''armor-piercing ammunition'' means a center-fire cartridge the military designation of which includes the term ''armor penetrator'' or ''armor-piercing'', including a center-fire cartridge designated as armor-piercing incendiary (API) or armor-piercing incendiary-tracer (API–T).

(Added Pub. L. 106–398, §1 [[div. A], title III, §382(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (c), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title III, §382(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–85, provided that: ''Section 4688 of title 10, United States Code, as added by subsection (a), shall apply with respect to any disposal of ammunition or components referred to in that section after the date of the enactment of this Act [Oct. 30, 2000].''

§ 4689. Transfer of material and equipment to the Architect of the Capitol

The Secretary of the Army is authorized to transfer, without payment, to the Architect of the Capitol, such material and equipment, not required by the Department of the Army, as the Architect may request for use at the Capitol power plant, the Capitol Building, and the Senate and House Office Buildings.

(Added Pub. L. 107–217, §2(1), Aug. 21, 2002, 116 Stat. 1294.)

CHAPTER 445—DISPOSITION OF EFFECTS OF DECEASED PERSONS; CAPTURED FLAGS

Sec.
[4711. Repealed.]
4712. Disposition of effects of deceased persons by summary court-martial.
[4713. Repealed.]
4714. Collection of captured flags, standards, and colors.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, §721(c)(3), (5), Oct. 5, 1999, 113 Stat. 694, 695, substituted ''DISPOSITION'' for ''INQUESTS; DISPOSITION'' in chapter heading and struck out item 4711 ''Inquests''.

1990—Pub. L. 101–510, div. A, title XV, §1533(a)(7)(B), Nov. 5, 1990, 104 Stat. 1734, struck out item 4713 ''Disposition of effects of deceased persons by Soldiers' and Airmen's Home''.

1980—Pub. L. 96–513, title V, §512(21)(C), Dec. 12, 1980, 94 Stat. 2930, inserted ''and Airmen's'' after ''Soldiers'' '' in item 4713.

[§ 4711. Repealed. Pub. L. 106–65, div. A, title VII, § 721(b), Oct. 5, 1999, 113 Stat. 694]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 263, related to inquests.

§ 4712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Army; or

(2) a resident of the Armed Forces Retirement Home who dies in an Army hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then in camp or quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then in camp or quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Army.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabres, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects, and articles not permitted to be sold, to the executive part of the Department of the Army. The Secretary of the Army shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Army under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 264; Pub. L. 89–718, § 30, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 96–513, title V, § 512(20), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 99–145, title XIII, § 1301(b)(4)(A), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101–510, div. A, title XV, § 1533(a)(6), Nov. 5, 1990, 104 Stat. 1734; Pub. L. 104–316, title II, § 202(g), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4712(a)	5:150j (words before 1st semicolon of 1st par.; and last par.).	June 4, 1920, ch. 227, subch. II, § 1 (Art. 112), 41 Stat. 809; May 5, 1950, ch. 169, § 6(c), 64 Stat. 145.
4712(b)	5:150j (22 words after 1st semicolon of 1st par.).	
4712(c)	5:150j (words between 1st and 2d semicolons of 1st par., less 1st 22 words).	
4712(d)	5:150j (words between 2d and 3d semicolons of 1st par.).	
4712(e)	5:150j (words between 3d and 4th semicolons of 1st par.).	
4712(f)	5:150j (1st par., less words before 4th semicolon, and less last 40 words).	
4712(g)	5:150j (last 40 words of 1st par.).	

In subsection (a), the words ''the court-martial jurisdiction of the Army or the Air Force at a place or command under the jurisdiction of the Army'' are substituted for the words ''military law'', to reflect the creation of a separate Air Force. Clause (2) is substituted for 5:150j (last par.).

In subsections (a), (b), and (d), the words ''surviving spouse'' are substituted for the word ''widow''.

In subsection (c), the word ''may'' is substituted for the words ''shall have authority to''. The words ''to the extent permitted'' are substituted for the words ''in so far as * * * will permit''. The words ''under this article'' and ''upon its transactions'' are omitted as surplusage.

In subsection (d), the words ''through the Quartermaster Corps'' are omitted, since the functions are no longer lodged in the Quartermaster Corps. The words ''if such be found by said court'' are omitted as surplusage. The words ''United States'' are substituted for the word ''Government''. 5:150j (19 words before 3d semicolon of 1st par.) is omitted as covered by subsection (g).

In subsection (e), the first 37 words are substituted for 5:150j (33 words after 3d semicolon of 1st par.). The word ''may'' is substituted for the words ''shall have the authority''.

In subsection (f), the words ''Soldiers' Home'' are inserted, since, as provided in section 4713 of this title, the Home is now the place where the mentioned articles are sent.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–316 struck out subsec. (g) which read as follows: ''The summary court-martial shall make a full report of the transactions under this section, with respect to the deceased, to the Department of the Army for transmission to the General Accounting Office for action authorized in the settlement of accounts of deceased members of the Army.''

1990—Subsec. (a)(2). Pub. L. 101–510, § 1533(a)(6)(A), substituted ''a resident of the Armed Forces Retirement Home'' for ''an inmate of the United States Soldiers' and Airmen's Home''.

Subsec. (f). Pub. L. 101–510, § 1533(a)(6)(B), struck out ''for transmission to the United States Soldiers' and Airmen's Home'' after ''Department of the Army'' and inserted at end ''The Secretary of the Army shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Army under this subsection.''

1985—Subsec. (d). Pub. L. 99–145 substituted new pars. (1) to (6) for former pars. (1) to (9) which read as follows:

''(1) Surviving spouse or legal representative.

''(2) Son.

''(3) Daughter.

''(4) Father, if he has not abandoned the support of his family.

''(5) Mother.

''(6) Brother.

''(7) Sister.

''(8) Next of kin.

''(9) Beneficiary named in the will of the deceased.''

1980—Subsecs. (a)(2), (f). Pub. L. 96–513 substituted ''United States Soldiers' and Airmen's Home'' for ''Soldiers' Home''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''military law'' for ''the court-martial jurisdiction of the Army or the Air Force''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2575 of this title; title 5 section 5564; title 24 section 420; title 37 section 554.

[§ 4713. Repealed. Pub. L. 101–510, div. A, title XV, § 1533(a)(7)(A), Nov. 5, 1990, 104 Stat. 1734]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 265; Dec. 12, 1980, Pub. L. 96–513, title V, § 512(21)(A), (B), 94 Stat. 2930; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1301(b)(4)(B), 99 Stat. 736; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602, related to disposition of effects of deceased persons by Soldiers' and Airmen's Home.

EFFECTIVE DATE OF REPEAL

Repeal effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

§ 4714. Collection of captured flags, standards, and colors

The Secretary of the Army shall have sent to him all flags, standards, and colors taken by the Army from enemies of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4714	5:198.	R.S. 218.

The words ''from time to time'', ''collected'', and ''at the seat of government'' are omitted as surplusage.

CHAPTER 447—TRANSPORTATION

Sec.
4741. Control and supervision.
[4742. Renumbered.]
4743. Officers: use of transportation.
4744. Persons and supplies: sea transportation.
4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service.

Sec.
4746. Civilian personnel in Alaska.
4747. Passengers and merchandise to Guam: sea transport.
[4748. Repealed.]
4749. Property: for United States surveys.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title IX, §906(d)(2), Sept. 23, 1996, 110 Stat. 2620, struck out item 4742 ''Control of transportation systems in time of war''.

1962—Pub. L. 87–651, title I, §119(2), Sept. 7, 1962, 76 Stat. 513, struck out item 4748 ''Motor vehicles: for members on permanent change of station''.

§ 4741. Control and supervision

The transportation of members, munitions of war, equipment, military property, and stores of the Army throughout the United States shall be under the immediate control and supervision of the Secretary of the Army and agents appointed or designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4741	10:1363.	R.S. 220.

[§ 4742. Renumbered § 2644]

§ 4743. Officers: use of transportation

Under such conditions as the Secretary of the Army may prescribe, officers of the Army may, in the performance of their duties, use means of transportation provided for the Army and its supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4743	10:749.	Mar. 3, 1911, ch. 209 (5th proviso under ''Transportation of the Army and Its Supplies''), 36 Stat. 1051.

Since its legislative history shows that it was enacted because the Comptroller of the Treasury had disallowed certain accounts for travel expenses (46 Congressional Record, pp. 905–913, 4643–4645), the source statute is restated to preclude future disallowances. The words ''official and military'' are omitted as surplusage.

§ 4744. Persons and supplies: sea transportation

Whenever the Secretary of the Army considers that space is available, the following persons and supplies may be transported on vessels operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels operated by any military transport agency of the Department of Defense:

(1) Members of the Navy, Marine Corps, or Coast Guard.

(2) Officers and employees of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Coast Guard.

(3) Supplies of the Department of the Navy.

(4) Members of Congress.

(5) Other officers of the United States traveling on official business.

(6) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.

(7) Officers and employees of the Commonwealth of Puerto Rico on official business.

(8) The families of persons described in clauses (1), (2), (4), (5), and (7).

However, a person described in clause (7) or (8) may be so transported only if the transportation is without expense to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 266; Pub. L. 86–624, §4(d), July 12, 1960, 74 Stat. 411.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4744	10:1369. 10:1370. 10:1371 (less last 29 words).	Mar. 2, 1907, ch. 2511 (6th proviso, less last 29 words under ''Transportation of the Army and Its Supplies''), 34 Stat. 1170. June 30, 1921, ch. 33 (8th proviso under ''Transportation of the Army and Its Supplies''), 42 Stat. 81. Mar. 3, 1911, ch. 209 (3d proviso under ''Transportation of the Army and Its Supplies''), 36 Stat. 1051.

Reference to the Philippine government, contained in the source statute for 10:1371, is omitted, since the Philippine Republic now has the status of a foreign country and only possessions of the United States are intended to be covered by the source statute. The words ''Armed Services Department'' are substituted for the words ''Army and Navy Department'', in 10:1370, to reflect the present name of that Department of the Young Men's Christian Association. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

1960—Pub. L. 86–624 struck out cl. (6) which authorized transportation of officers and employees of the Territory of Hawaii, redesignated cls. (7) to (9) as (6) to (8), respectively, and substituted ''clauses (1), (2), (4), (5), and (7)'' for ''clauses (1), (2), (4), (5), (6), and (8)'' in redesignated cl. (8), and ''clause (7) or (8)'' for ''clause (8) or (9)'' in closing sentence.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 4745. Civilian passengers and commercial cargoes: transports in trans-Atlantic service

(a) Whenever space is unavailable on commercial lines and is available (1) on vessels operated by Army transport agencies, or (2) within bulk space allocations made to the Department of the Army on vessels operated by any transport agency of the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of the Army and the Secretary of Homeland Security, be transported

on those vessels. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service.

(b) Amounts received under this section shall be covered into the Treasury as miscellaneous receipts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267; Pub. L. 96–513, title V, § 512(22), Dec. 12, 1980, 94 Stat. 2930; Pub. L. 97–31, § 12(3)(C), Aug. 6, 1981, 95 Stat. 154; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4745(a)	10:1367 (less last 20 words).	June 5, 1920, ch. 240 (6th proviso under ''Transportation of the Army and Its Supplies''), 41 Stat. 960.
4745(b)	10:1367 (last 20 words).	

In subsection (a), the words ''Federal Maritime Board'' are substituted for the words ''United States Maritime Commission'', since the functions of the chairman of that commission were transferred to the chairman of the Board by 1950 Reorganization Plan No. 21, effective May 24, 1950, 64 Stat. 1273. The words ''the same kinds of service'' are substituted for the words ''the same class of accommodations''. The words ''shipments of'' and ''between the same ports'' are omitted as surplusage. (See also third sentence of revision note for section 4746 of this title, below.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1981—Subsec. (a). Pub. L. 97–31 substituted ''Secretary of Transportation'' for ''Secretary of Commerce''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Commerce'' for ''Chairman of the Federal Maritime Board''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 4746. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on vessels or airplanes operated by Army transport agencies or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Army considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air—

(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267; Pub. L. 98–443, § 9(k), Oct. 4, 1984, 98 Stat. 1708.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4746	10:1371a.	Nov. 21, 1941, ch. 483; restated July 25, 1947, ch. 321, 61 Stat. 423.

Before the enactment of the National Security Act of 1947, the transport functions covered by this section were performed only by the Army. Under section 2(a)(3) of the National Security Act (as it existed before August 10, 1949), the sea and air transportation functions of the Army, Navy, and Air Force were respectively consolidated into the ''Military Sea Transportation Service'', under the Department of the Navy, and the ''Military Air Transport Service'', under the Department of the Air Force. Instead of having space on its own transport vessels and airplanes, the Army is now allotted bulk space on vessels and airplanes operated by those transport services. The words ''or, within bulk space allocations made to the Department of the Army, on vessels or airplanes operated by any military transport agency of the Department of Defense'' are inserted, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1953/5885, 22 July 1953), to make clear that the rule applicable to Army vessels and airplanes applies to the bulk space allocated to the Army. Since the authority to perform transportation functions could again be transferred as between the military departments, the reference to ''vessels or airplanes of Army transport agencies'' is retained. The word ''considers'' is substituted for the words ''in the opinion of''. The words ''Persons residing in Alaska who are and have been employed there by the United States'' are substituted for the words ''employees of the United States, residing in Alaska, who have been in such employment''. The word ''commercial'' is substituted for the word ''civil'' for clarity. The words ''from and after November 21, 1941'', ''and the carriage of all such air traffic shall be terminated'', ''dire'', ''the privilege herein granted'', and ''as to each eligible individual'' are omitted as surplusage. The words ''the continental'' are omitted, since section 101(1) of this title defines the United States as ''the States and the District of Columbia''.

AMENDMENTS

1984—Par. (4)(A). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

§ 4747. Passengers and merchandise to Guam: sea transport

Whenever space is available, passengers, and merchandise produced in the United States, or the Territories, Commonwealths, and possessions, and consigned to residents and mercantile firms of Guam, may be transported to Guam on vessels operated by Army transport agencies or,

within bulk space allocations made to the Department of the Army, on vessels operated by any transport agency of the Department of Defense, under regulations and at rates to be prescribed by the Secretary of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 267.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4747	10:1368. 10:1371 (last 29 words).	Mar. 3, 1911, ch. 209 (4th proviso under ''Transportation of the Army and Its Supplies''), 36 Stat. 1051. Mar. 2, 1907, ch. 2511 (last 29 words of 6th proviso under ''Transportation of the Army and Its Supplies''), 34 Stat. 1171.

The words ''without displacing military supplies'' and ''of the island of'', in 10:1368 and 1371, are omitted as surplusage. The words ''produced in the United States, or the Territories, Commonwealths, and possessions'' are substituted for the words ''of American production''.

[§ 4748. Repealed. Pub. L. 87–651, title I, § 119(1), Sept. 7, 1962, 76 Stat. 513]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 268, related to transportation of motor vehicles for members on permanent change of station. See section 2634 of this title.

§ 4749. Property: for United States surveys

Under regulations governing the transportation of Army supplies, any branch, office, or officer designated by the Secretary of the Army shall receive, transport, and be responsible for property turned over by the officers or agents of any United States survey, for the National Museum or for a department of the United States or field office thereof. The amount paid by the Army for transportation under this section shall be refunded to the Army by the National Museum or the department to which the property is consigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4749	10:1377.	July 5, 1884, ch. 217 (9th proviso under ''Quartermaster's Department''), 23 Stat. 111; June 28, 1950, ch. 383, § 402(b), 64 Stat. 272.

The words ''a department of the United States or a field office thereof'' are substituted for the words ''the civil or naval departments of the Government, in Washington or elsewhere''. The words ''National Museum or the department to which the property is consigned'' are substituted for the words ''bureau to which such property or stores pertain''. The words ''United States'' are substituted for the word ''Government''. The words ''wherever stationed'' are omitted as surplusage.

CHAPTER 449—REAL PROPERTY

Sec.
4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[4772 to 4775. Repealed.]
4776. Emergency construction: fortifications.
4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
4779. Use of public property.
4780. Acquisition of buildings in District of Columbia.

AMENDMENTS

1982—Pub. L. 97–295, § 1(43)(B), Oct. 12, 1982, 96 Stat. 1298, struck out item 4772 ''Reservation and use for air base or testing field''.

Pub. L. 97–214, § 10(a)(9)(A), July 12, 1982, 96 Stat. 175, struck out item 4774 ''Construction: limitations''.

1973—Pub. L. 93–166, title V, § 509(c), Nov. 29, 1973, 87 Stat. 677, substituted ''Construction: limitations'' for ''Construction of quarters: limitations on space and cost'' in item 4774.

1971—Pub. L. 92–145, title V, § 509(a), Oct. 27, 1971, 85 Stat. 408, struck out item 4775 ''Quarters: officers''.

1958—Pub. L. 85–861, § 1(105)(B), Sept. 2, 1958, 72 Stat. 1490, added item 4780.

§ 4771. Acceptance of donations: land for mobilization, training, supply base, or aviation field

The Secretary of the Army may accept for the United States a gift of—

(1) land that he considers suitable and desirable for a permanent mobilization, training, or supply station; and

(2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 268.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4771	10:1342. 10:1344.	Aug. 29, 1916, ch. 418 (6th and 8th pars. under ''Office of the Chief Signal Officer''), 39 Stat. 622, 623.

10:1344 (last 40 words) is omitted as executed. The words ''tract or tracts'', in 10:1342 and 1344, are omitted as surplusage. The words ''and remount station'', in 10:1342, are omitted, since the property and civilian personnel of the Remount Service of the Quartermaster Corps were transferred to the Department of Agriculture by the Act of April 21, 1948, ch. 224, 62 Stat. 197 (7 U.S.C. 436–438). The words ''by the United States for any purpose'' are substituted for the words ''for any other service of the United States which may hereafter appear desirable'', in 10:1342. The words ''from any person'', in 10:1344, are omitted as surplusage.

[§ 4772. Repealed. Pub. L. 97–295, § 1(43)(A), Oct. 12, 1982, 96 Stat. 1298]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 268, had provided that, when ordered by the President, unappropriated public land could be reserved from entry for an air base, or a field for tests and experiments, for the Army, and that such land and other property of the United States could be designed and used for either of those purposes.

[§ 4774. Repealed. Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 269; Aug. 30, 1957, Pub. L. 85–241, title IV, § 404(a), 71 Stat.

555; Aug. 10, 1959, Pub. L. 86–149, title IV, § 410(a), 73 Stat. 321; July 27, 1962, Pub. L. 87–554, title V, § 504(a), (c), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91–142, title V, § 510(b), 83 Stat. 312; Oct. 27, 1971, Pub. L. 92–145, title V, § 508(a), (c), 85 Stat. 408; Nov. 29, 1973, Pub. L. 93–166, title V, § 509(c), 87 Stat. 677, related to limitations on construction.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

[§ 4775. Repealed. Pub. L. 92–145, title V, § 509(a), Oct. 27, 1971, 85 Stat. 408]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 269, authorized assignment of quarters belonging to United States at a post or station by post quartermaster to officers, grade lieutenant general down to second lieutenant, 10 to 2 rooms, respectively, and prohibited other assignment where quarters existed.

§ 4776. Emergency construction: fortifications

If in an emergency the President considers it urgent, a temporary fort or fortification may be built on private land if the owner consents in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 91–393, § 5, Sept. 1, 1970, 84 Stat. 835.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4776	50:178.	Apr. 11, 1898, J. Res. 21, 30 Stat. 737.

The word ''important'' is omitted as covered by the word ''urgent''. The words ''upon which such work is to be placed'' are omitted as surplusage.

AMENDMENTS

1970—Pub. L. 91–393 struck out ''In such a case, section 175 of title 50 does not apply.''

§ 4777. Permits: military reservations; landing ferries, erecting bridges, driving livestock

Whenever the Secretary of the Army considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

(1) the landing of ferries at a military reservation;

(2) the erection of bridges on a military reservation; and

(3) the driving of livestock across a military reservation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 96–513, title V, § 512(23), Dec. 12, 1980, 94 Stat. 2930.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4777	10:1348.	July 5, 1884, ch. 214, § 6, 23 Stat. 104.

The words ''may permit'' are substituted for the words ''shall have authority, in his discretion, to permit''. The words ''to permit the extension of State, county, and Territorial roads across military reservations'' are omitted as superseded by section 2668 of this title. In clause (3), the word ''livestock'' is substituted for the words ''cattle, sheep or other stock animals''.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''reservations'' for ''reservation'' in section catchline.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 4778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association

Under such conditions as he may prescribe, the Secretary of the Army may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain on military reservations, inside the United States and the Territories, Commonwealths, and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Army on those reservations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4778	10:1346.	May 31, 1902, ch. 943, 32 Stat. 282.

The words ''may issue'' are substituted for the words ''Authority is given to * * * in his discretion, to grant permission''. The words ''Under such conditions as he may prescribe'' are substituted for the words ''under such regulations as the Secretary of the Army may impose''. The words ''members of the Army'' are substituted for the word ''garrisons''. The words ''the Territories, Commonwealths, and possessions'' are substituted for the words ''or its island possessions'' for clarity.

§ 4779. Use of public property

(a) When the economy of the Army so requires, the Secretary of the Army shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) No money appropriated for the support of the Army may be spent for post gardens or Army exchanges. However, this does not prevent Army exchanges from using public buildings or public transportation that, in the opinion of the office or officer designated by the Secretary, are not needed for other purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 99–661, div. B, title VII, § 2721, Nov. 14, 1986, 100 Stat. 4042.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4779(a)	10:1332.	June 23, 1879, ch. 35, § 8, 21 Stat. 35.
4779(b)	10:1345.	
4779(c)	10:1335.	Aug. 1, 1914, ch. 223 (2d par. under ''Quartermaster Corps''), 38 Stat. 629.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		July 16, 1892, ch. 195 (last proviso under ''Quartermaster's Department''), 27 Stat. 178; June 28, 1950, ch. 383, § 402(c), 64 Stat. 227.

In subsection (a), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''suitable space'' are substituted for the words ''proper and suitable room or rooms''. The words ''there is a'' are substituted for the words ''have been established''.

AMENDMENTS

1986—Subsecs. (b), (c). Pub. L. 99–661 redesignated subsec. (c) as (b) and struck out former subsec. (b) which directed the Secretary to assign suitable space for postal purposes at each military post where there was a post office.

§ 4780. Acquisition of buildings in District of Columbia

(a) In time of war or when war is imminent, the Secretary of the Army may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Army, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

(1) a dwelling house occupied as such;

(2) a building occupied by any other agency of the United States; or

(3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Army, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use.

(Added Pub. L. 85–861, § 1(105)(A), Sept. 2, 1958, 72 Stat. 1489.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4780(a)	40:37.	July 9, 1918, ch. 143 (3d proviso under ''Barracks and Quarters''), 40 Stat. 861.
4780(b)	40:41.	July 8, 1918, ch. 139 (2d par. under ''War Department''), 40 Stat. 826.

In subsection (a), the words ''may acquire by lease'' are substituted for the words ''is authorized, in his discretion, to rent or lease''. The word ''needed'' is substituted for the word ''required''.

In subsection (b), the words ''At any time'' are inserted for clarity. The word ''may'' is substituted for the words ''is authorized''. The word ''agency'' is substituted for the word ''branch''. Clause (3) is inserted for clarity. The word ''determine'' is substituted for the word ''ascertain''. The words ''out of funds appropriated for the payment of rent by'' are substituted for the words ''within the limits of the appropriations for rent made by any act making appropriations for''. The word ''is'' is substituted for the word ''be''. The words ''so ascertained'' and ''in the manner provided by sections 41(20) and 250 of Title 28'' are omitted as surplusage, since those sections were repealed in 1948 and replaced by sections 1346, 1491, 1496, 1501, 1503, 2401, 2402, and 2501 of that title.

CHAPTER 451—MILITARY CLAIMS

Sec.
4801. Definition.
4802. Admiralty claims against the United States.
4803. Admiralty claims by United States.
4804. Salvage claims by United States.
[4805. Repealed.]
4806. Settlement or compromise: final and conclusive.

AMENDMENTS

1972—Pub. L. 92–417, § 1(2), Aug. 29, 1972, 86 Stat. 654, substituted ''Admiralty claims against the United States'' for ''Damage by United States vessels; towage and salvage of United States vessels'' in item 4802.

1960—Pub. L. 86–533, § 1(8)(B), June 29, 1960, 74 Stat. 247, struck out item 4805 ''Reports to Congress''.

§ 4801. Definition

In this chapter, the term ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 270; Pub. L. 100–180, div. A, title XII, § 1231(19)(B), Dec. 4, 1987, 101 Stat. 1161.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4801	[No source].	[No source].

The revised section is inserted for clarity, and is based on usage in the source laws for this revised chapter.

AMENDMENTS

1987—Pub. L. 100–180 inserted ''the term'' after ''In this chapter,''.

§ 4802. Admiralty claims against the United States

(a) The Secretary of the Army may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Army or by other property under the jurisdiction of the Department of the Army;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Army or to other property under the jurisdiction of the Department of the Army; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Army or by property under the jurisdiction of the Department of the Army.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Army may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $100,000, the Secretary of the Army may delegate his authority under subsection (a) to any person in the Department of the Army designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 92–417, §1(1), Aug. 29, 1972, 86 Stat. 654; Pub. L. 101–189, div. A, title XVI, §1633, Nov. 29, 1989, 103 Stat. 1608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4802(a)	10:1861 (less 35 words before 1st proviso, and less last proviso).	Oct. 20, 1951, ch. 524, §§1 (less 35 words before 1st proviso), 6 (as applicable to §1), 65 Stat. 572, 573.
4802(b)	10:1861 (last proviso).	
4802(c)	10:1866 (as applicable to 10:1861).	

In subsection (a), the words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 4801 of this title. 10:1861 (1st proviso) is omitted as unnecessary, since other applicable claims laws are restated in this title. 10:1861 (2d proviso) is omitted as surplusage.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''$100,000'' for ''$10,000''.

1972—Subsec. (a). Pub. L. 92–417 substituted ''Admiralty claims against the United States'' for ''Damage by United States vessels, towage and salvage of United States vessels'' in section catchline, in text preceding par. (1), struck out requirement that the Secretary of the Army discharge his functions under the direction of the Secretary of Defense, in par. (1) inserted ''or by other property under the jurisdiction of the Department of the Army,'' in par. (2) inserted ''or to other property under the jurisdiction of the Department of the Army; or,'' and added par. (3).

1965—Subsec. (c). Pub. L. 89–67 substituted ''$10,000'' for ''$1,000''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4806 of this title.

§ 4803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Army or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Army may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $100,000, the Secretary of the Army may delegate his authority under subsections (a) and (b) to any person in the Department of the Army designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 101–189, div. A, title XVI, §1633, Nov. 29, 1989, 103 Stat. 1608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4803(a)	10:1862 (1st sentence; 2d sentence, less last 32 words; and provisos of last sentence).	Oct. 20, 1951, ch. 524, §§2 (less last 32 words of 2d sentence), 6 (less applicability to §1), 65 Stat. 572, 573.
4803(b)	10:1862 (3d sentence; and last sentence, less provisos).	
4803(c)	10:1866 less applicability to 10:1861).	

In subsection (a), the words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 4801 of this title. The words ''receive payment'' are substituted for 10:1862 (2d sentence, less last 32 words). The words ''of a kind that is within the admiralty jurisdiction'' are substituted for the words ''cognizable in admiralty''. Clause (2) is substituted for 10:1862 (last proviso of last sentence). 10:1862 (1st proviso of last sentence) is omitted as unnecessary, since other applicable claims laws are restated in this title. The words ''by contract or otherwise'' are omitted as surplusage.

In subsection (b), the words ''of the United States as miscellaneous receipts'' and ''to deliver'' are omitted as surplusage.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''$100,000'' for ''$10,000''.

1965—Subsec. (c). Pub. L. 89–67 substituted ''$10,000'' for ''$1,000''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4806 of this title.

§ 4804. Salvage claims by United States

(a) The Secretary of the Army may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Army. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Army may delegate his authority under subsection (a) to any person designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 271; Pub. L. 92–417, §1(3), Aug. 29, 1972, 86 Stat. 654.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4804	10:1863.	Oct. 20, 1951, ch. 524, §3, 65 Stat. 573.

The words ''under this section'' are substituted for the words ''for salvage services rendered''. The words ''consider, ascertain, adjust, determine'' are omitted as

covered by the word ''settle'', as defined in section 4801 of this title. The words ''and receive payment of'' are inserted for clarity and to conform to section 4803 of this title. The words ''as miscellaneous receipts'' are omitted as surplusage.

AMENDMENTS

1972—Pub. L. 92–417 designated existing provisions as subsec. (a), struck out requirement that the Secretary of the Army discharge his functions under the direction of the Secretary of Defense, and added subsec. (b).

[§ 4805. Repealed. Pub. L. 86–533, § 1(8)(A), June 29, 1960, 74 Stat. 247]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 271, related to reports to Congress with respect to claims under sections 4802, 4803, and 4804 of this title.

§ 4806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 4802 or 4803 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4806	10:1861 (35 words before 1st proviso). 10:1862 (last 32 words of 2d sentence).	Oct. 20, 1951, ch. 524, §§1 (35 words before 1st proviso), 2 (last 32 words of 2d sentence), 65 Stat. 572, 573.

The words ''for all purposes'' and ''to the contrary'', in 10:1861 and 1862; ''by the claimant and not until then'', in 10:1861; and ''but not until then'', in 10:1862; are omitted as surplusage.

CHAPTER 453—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
4831. Custody of departmental records and property.
4832. Property accountability: regulations.
[4833 to 4835. Repealed.]
4836. Individual equipment: unauthorized disposition.
4837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members.
4838. Settlement of accounts: affidavit of company commander.
4839. Settlement of accounts: oaths.
4840. Final settlement of officer's accounts.
4841. Payment of small amounts to public creditors.
4842. Settlement of accounts of line officers.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1006(c)(2), Dec. 2, 2002, 116 Stat. 2633, struck out item 4835 ''Reports of survey''.

1982—Pub. L. 97–258, §2(b)(10)(A), Sept. 13, 1982, 96 Stat. 1056, added items 4841 and 4842.

1980—Pub. L. 96–513, title V, §512(24)(C), Dec. 12, 1980, 94 Stat. 2931, substituted ''remission or cancellation of indebtedness of enlisted members'' for ''deductions from pay'' in item 4837.

1972—Pub. L. 92–310, title II, §204(b), June 6, 1972, 86 Stat. 202, struck out item 4834 ''Fidelity bonds: accountable officers; Quartermaster Corps''.

1962—Pub. L. 87–480, §1(3), June 8, 1962, 76 Stat. 94, struck out item 4833 ''Accountability for public money: disbursing officers; agent officers''.

§ 4831. Custody of departmental records and property

The Secretary of the Army has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Army.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4831	5:191.	R.S. 217.

The words ''under the lawful control of the executive part of the Department of the Army'' are substituted for the words ''appertaining to the Department''.

§ 4832. Property accountability: regulations

The Secretary of the Army may prescribe regulations for the accounting for Army property and the fixing of responsibility for that property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 272.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4832	10:1301.	Aug. 29, 1916, ch. 418 (3d proviso under ''Clothing and Camp and Garrison Equipage''), 39 Stat. 635.

The word ''supplies'' is omitted as covered by the word ''property''.

[§ 4833. Repealed. Pub. L. 87–480, § 1(2), June 8, 1962, 76 Stat. 94]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 272, related to accountability of Army officers for public money. See section 2773 of this title.

[§ 4834. Repealed. Pub. L. 92–310, title II, § 204(a), June 6, 1972, 86 Stat. 202]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 272; Nov. 2, 1966, Pub. L. 89–718, §31, 80 Stat. 1119, required commissioned officers of the Quartermaster Corps to give fidelity bonds.

[§ 4835. Repealed. Pub. L. 107–314, div. A, title X, § 1006(c)(1), Dec. 2, 2002, 116 Stat. 2633]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 273; Pub. L. 103–160, div. A, title III, §362, Nov. 30, 1993, 107 Stat. 1628, related to actions taken upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of or damage to property of the United States under the control of the Department of the Army.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of United States under control of Department of Defense occurring on or after effective date of regulations prescribed pursuant to section 2787 of this title, see section 1006(d) of Pub. L. 107–314, set out as an Effective date note under section 2787 of this title.

§ 4836. Individual equipment: unauthorized disposition

(a) No enlisted member of the Army may sell, lend, pledge, barter, or give any clothing, arms,

or equipment furnished him by the United States to any person other than a member of the Army, or an officer of the United States, authorized to receive it.

(b) If a member of the Army has disposed of property in violation of subsection (a) and it is in the possession of a person who is neither a member of the Army, nor an officer of the United States, authorized to receive it, that person has no right to or interest in the property, and any civil or military officer of the United States may seize it, wherever found. Possession of such property furnished by the United States to a member of the Army, by a person who is neither a member of the Army nor an officer of the United States, is prima facie evidence that it has been disposed of in violation of subsection (a).

(c) If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, he shall deliver it to a person who is authorized to retain it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4836(a)	10:1316 (words before semicolon of 1st sentence). 10:1317 (words before semicolon of 1st sentence).	R.S. 1242; R.S. 3748.
4836(b)	10:1316 (less words before semicolon, and less last 16 words, of 1st sentence). 10:1317 (less words before semicolon of 1st sentence, and less last 16 words of last sentence).	
4836(c)	10:1316 (last 16 words of 1st sentence). 10:1317 (last 16 words of last sentence).	

In subsection (a), the word ''equipment'' is substituted for the words ''military outfits, and accouterments'', in 10:1316 and 1317. The word ''exchanged'' is omitted as surplusage. The last 21 words are inserted to reflect various provisions authorizing transfer of the numerated items of property.

In subsections (a) and (b), the words ''enlisted member'' and ''member'' are substituted for the word ''soldier'', in 10:1316 and 1317.

In subsection (b), the first 15 words of the first sentence are inserted for clarity. The words ''authorized to receive it'' are substituted for the words ''duly authorized'', in 10:1316. The words ''such property furnished by the United States'' are substituted for the words ''any such clothes, arms, military outfits, or accouterments'', in 10:1316.

In subsection (c), the first 19 words are inserted for clarity. The words ''person who is authorized to retain it'' are substituted for the words ''quartermaster [,], or other officers authorized to receive the same'', in 10:1316 and 1317.

§4837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 273; Pub. L. 85–861, §33(a)(27), Sept. 2, 1958, 72 Stat. 1566; Pub. L. 87–649, §14c(10), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96–513, title V, §512(24)(A), (B), Dec. 12, 1980, 94 Stat. 2930.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4837(a)	10:875. 10:875b.	R.S. 1300. R.S. 1301.
4837(b)	10:875a (less 3d and last provisos).	May 22, 1928, ch. 676, 45 Stat. 698; June 26, 1934, ch. 751, 48 Stat. 1222.
4837(c)	10:875a (last proviso).	
4837(d)	10:875a (3d proviso).	
4837(e)	10:871.	R.S. 1303.
4837(f)	10:872.	R.S. 1304.
4837(g)	10:875c.	R.S. 1299.

In subsection (a), the words ''sold to the member on credit under section 4621(a)(1) of this title'' are substituted for the words ''articles designated by the inspectors general of the Army, and sold to him on credit by officers of the Quartermaster Corps'', in 10:875. The words ''at cost prices'' are omitted to reflect section 4623 of this title.

In subsection (b), the last sentence is substituted for 10:875a (1st and 2d provisos). The words ''on current payrolls'' are omitted as surplusage.

In subsection (c), the words ''Subject to subsection (b)'' are substituted for the words ''in the proportions hereinbefore indicated''.

In subsection (d), the words ''If he considers it in the best interest of the United States'' are substituted for the words ''when in his opinion the interests of the Government are best served by such action''. The words ''before, or at the time of'' are substituted for the words ''either on * * * or prior thereto''.

In subsection (e), the words ''member'' and ''his'' are substituted for the words ''officer or soldier''. The words ''or implement'' are omitted as surplusage.

In subsection (f), the words ''or if an article of military supply with whose issue a commissioned officer is charged is damaged'' are substituted for 10:872 (last sentence). The words ''that he was not at fault'' are substituted for the words ''that said deficiency [such damage] was not occasioned by any fault on his part''.

In subsection (g), the words ''bought on credit under section 4621(a)(1) of this title'' are substituted for the words ''designated by the officers of the Inspector-General's Department of the Army and purchased on credit from commissaries of subsistence''.

1958 ACT

The change [in subsec. (b)] reflects the opinion of the Judge Advocate General of the Air Force (June 10, 1957) that the term ''rate of pay'', as used in the source law for section 4837(b) (Act of May 22, 1928, ch. 676 (45 Stat. 698), as amended), included special pay and incentive pay.

The change [in subsec. (f)] reflects the opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense (July 19, 1957), that section 1304, Revised Statutes (formerly 10 U.S.C. 872), the source law for this section, applied to warrant officers as well as to commissioned officers.

AMENDMENTS

1980—Pub. L. 96–513, substituted ''remission or cancellation of indebtedness of enlisted members'' for ''deductions from pay'' in section catchline, and in text substituted ''If he'' for ''(d) If he''.

1962—Pub. L. 87–649 repealed subsecs. (a) to (c) and (e) to (g) which related to deductions from pay. See subsecs. (b) to (g), respectively, of section 1007 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (b). Pub. L. 85–861, §33(a)(27)(A), substituted ''his pay for that month'' for ''his basic pay for that month''.

Subsec. (f). Pub. L. 85–861, §33(a)(27)(B), substituted ''an officer'' for ''a commissioned officer'' in two places.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5514.

§ 4838. Settlement of accounts: affidavit of company commander

In the settlement of the accounts of the commanding officer of a company for clothing and other military supplies, his affidavit may be received to show—

(1) that vouchers or company books were lost;

(2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or

(3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Army to be just and proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4838	10:1302.	R.S. 225 (less 1st sentence); added Feb. 27, 1877, ch. 69 (3d par.), 19 Stat. 241.

The word ''anything'' is substituted for the words ''any matter or circumstance''. The words ''properly used'' are substituted for the words ''legally used and appropriated''. The words ''of the case'' are omitted as surplusage.

§ 4839. Settlement of accounts: oaths

The Secretary of the Army may detail any employee of the Department of the Army to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4839	10:1303.	R.S. 225 (1st sentence).

The words ''and other military supplies'' are substituted for the words ''camp and garrison equipage, quartermaster's stores, and ordnance'' to conform to section 4838 of this title. The words ''person to whom administered'' are substituted for the words ''parties taking them''. The words ''for the purpose of'' are omitted as surplusage.

§ 4840. Final settlement of officer's accounts

Before final payment upon discharge may be made to an officer of the Army who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 274.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4840	10:878.	Jan. 12, 1899, ch. 46, §2, 30 Stat. 784.

The words ''Before final payment upon discharge may be made'' are substituted for the words ''shall warrant their final payment''. The words ''at any time'' are omitted as surplusage. The word ''must'' is substituted for the words ''shall be required * * * to''. The words ''He must also make'' are substituted for the words ''accompanied by''. The words ''from each officer to whom he was accountable or responsible for property'' are substituted for the words ''from only such of the bureaus of the Department of the Army to which the property for which they were accountable or responsible pertains'', since there is no longer a bureau structure within the Department of the Army. The words ''that he is not accountable or responsible for property to any other officer'' are substituted for the words ''accompanied by the affidavits of officers, of nonaccountability or nonresponsibility to other bureaus of the Department of the Army'', for the same reason. The reference to certificates from the General Accounting Office is omitted as obsolete. The last sentence is substituted for 10:878 (last 18 words). The last proviso of section 2 of the act of January 12, 1899, ch. 46, 30 Stat. 784, is not contained in 10:878. It is also omitted from the revised section, since it related to authority of mustering officers to administer oaths and the general authority to administer oaths is now contained in section 936 of this title (article 136 of the Uniform Code of Military Justice).

§ 4841. Payment of small amounts to public creditors

When authorized by the Secretary of the Army, a disbursing official of Army subsistence funds may keep a limited amount of those funds in the personal possession and at the risk of the disbursing official to pay small amounts to public creditors.

(Added Pub. L. 97–258, §2(b)(10)(B), Sept. 13, 1982, 96 Stat. 1056.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4841	31:493.	Mar. 2, 1907, ch. 251 (proviso on p. 1166), 34 Stat. 1166.

The title of Secretary of War was changed to Secretary of the Army by section 205(a) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501), and by sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 676). The word ''When'' is substituted for ''as shall from time to time be'' to eliminate unnecessary words. The words ''disbursing official'' are substituted for ''Officers intrusted with the disbursement'' for consistency.

§ 4842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Army for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satisfied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war.

(Added Pub. L. 97–258, § 2(b)(10)(B), Sept. 13, 1982, 96 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
4842	31:44 (1st sentence).	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24.
	31:95.	R.S. § 278.

The words ''Comptroller General'' are substituted for ''General Accounting Office'' for consistency. The words ''audit and'' are omitted as surplus. The words ''for their services as such'' and ''by the affidavit of the officer or otherwise'' are omitted as surplus. The words ''to account for property or make a report or return'' are added for clarity. The words ''in the hands of the enemy'' are omitted as surplus.

Subtitle C—Navy and Marine Corps

PART I—ORGANIZATION

Chap.		Sec.
501.	Definitions	5001
503.	Department of the Navy	5011
505.	Office of the Chief of Naval Operations	5031
506.	Headquarters, Marine Corps	5041
507.	Composition of the Department of the Navy	5061
[509.	Repealed.]	
[511.	Repealed.]	
513.	Bureaus; Office of the Judge Advocate General	5131
[515.	Repealed.]	
[516.	Repealed.]	
[517.	Repealed.]	
[519.	Repealed.]	

PART II—PERSONNEL

[531.	Repealed.]	
533.	Distribution in Grade	5441
535.	Grade and Rank of Officers	5501
537.	Enlistments	5531
539.	Original Appointments	5571
[541.	Repealed.]	
[543.	Repealed.]	
544.	Temporary Appointments	5721
[545.	Repealed.]	
[547.	Repealed.]	
[549.	Repealed.]	
551.	Officers in Command	5941
553.	Special Assignments and Details	5981
555.	Administration	6011
557.	Rations	6081
559.	Miscellaneous Prohibitions and Penalties	6111
561.	Miscellaneous Rights and Benefits	6141
563.	Hospitalization and Medical Care	6201
565.	Bands	6221
567.	Decorations and Awards	6241
569.	Discharge of Enlisted Members	6291
571.	Voluntary Retirement	6321
573.	Involuntary Retirement, Separation, and Furlough	6371
575.	Recall to Active Duty	6481
577.	Death Benefits; Care of the Dead	6521

PART III—EDUCATION AND TRAINING

601.	Officer Procurement Programs	6901
602.	Training Generally	6931
603.	United States Naval Academy	6951
605.	United States Naval Postgraduate School	7041
607.	Retirement of Civilian Members of the Teaching Staffs of the United States Naval Academy and United States Naval Postgraduate School	7081
609.	Professional Military Education Schools	7101

PART IV—GENERAL ADMINISTRATION

631.	Secretary of the Navy: Miscellaneous Powers and Duties	7201
633.	Naval Vessels	7291
[635.	Repealed.]	
637.	Salvage Facilities	7361
639.	United States Naval Observatory	7395
641.	Naval Petroleum Reserves	7420
643.	Civilian Employees	7471
645.	Procurement of Supplies and Services	7521
647.	Disposal of Obsolete or Surplus Material	7541
649.	Quarters, Utilities, and Services	7571
651.	Ships' Stores and Commissary Stores	7601
653.	Claims	7621
655.	Prize	7651
657.	Stay of Judicial Proceedings	7721
659.	Naval Militia	7851
661.	Accountability and Responsibility	7861
663.	Names and Insignia	7881
665.	National Oceanographic Partnership Program	7901

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1085(b)(3)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–289, struck out ''Related'' after ''Quarters, Utilities, and'' in item for chapter 649.

1998—Pub. L. 105–261, div. A, title V, § 521(b)(2), Oct. 17, 1998, 112 Stat. 2011, added item for chapter 602.

1996—Pub. L. 104–201, div. A, title II, § 282(a)(2), Sept. 23, 1996, 110 Stat. 2473, added item for chapter 665.

1994—Pub. L. 103–337, div. A, title XVI, § 1673(a)(1), Oct. 5, 1994, 108 Stat. 3015, struck out items for chapters 519 ''Naval Reserve and Marine Corps Reserve'', 531 ''Strength of Naval Reserve and Marine Corps Reserve'', 541 ''Running Mates for Reserve Officers'', and 549 ''Reserve Promotions''.

1993—Pub. L. 103–160, div. A, title VIII, § 828(b)(3), Nov. 30, 1993, 107 Stat. 1714, struck out item for chapter 635 ''Naval Aircraft''.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(27)(B), Dec. 5, 1991, 105 Stat. 1474, substituted ''Education'' for ''Educational'' in item for chapter 609.

1990—Pub. L. 101–510, div. A, title IX, §912(b), Nov. 5, 1990, 104 Stat. 1627, added item for chapter 609.

1986—Pub. L. 99–433, title V, §514(d)(1), Oct. 1, 1986, 100 Stat. 1055, substituted ''Office of the Chief of Naval Operations'' for ''Secretary, Under Secretary, and Assistant Secretaries of the Navy'' in item for chapter 505, added item for chapter 506, substituted ''Composition of the Department of the Navy'' for ''Office of the Comptroller of the Navy'' in item for chapter 507, struck out item for chapter 509 ''Office of the Chief of Naval Operations'', struck out ''; Office of Naval Research'' after ''General'' in item for chapter 513, and struck out item for chapter 515 ''Commandant of the Marine Corps; Headquarters, Marine Corps''.

1984—Pub. L. 98–525, title XIV, §1405(48), title XV, §1532(a)(2), Oct. 19, 1984, 98 Stat. 2625, 2631, substituted ''Responsibility'' for ''responsibility'' in item for chapter 661 and added item for chapter 663.

1982—Pub. L. 97–295, §1(50)(G), Oct. 12, 1982, 96 Stat. 1300, substituted ''United States Naval Observatory'' for ''United States Naval Oceanographic Office and Naval Observatory'' in item for chapter 639.

Pub. L. 97–295, §1(51)(A), Oct. 12, 1982, 96 Stat. 1300, which directed substitution of ''Responsibility'' for ''responsibility'' in item for chapter 659, was executed to item for chapter 661 as the probable intent of Congress.

Pub. L. 97–258, §2(b)(12)(A), Sept. 13, 1982, 96 Stat. 1057, added item for chapter 661.

1980—Pub. L. 96–513, title V, §§503(1), 513(1), Dec. 12, 1980, 94 Stat. 2911, 2931, struck out item for chapter 517 ''Fleet Commands and other High Positions'', inserted ''of Naval Reserve and Marine Corps Reserve'' after ''Strength'' in item for chapter 531, inserted ''for Reserve Officers'' after ''Running Mates'' in item for chapter 541, struck out item for chapter 543 ''Selection Boards'', added item for chapter 544, and struck out items for chapter 545 ''Promotions'' and for chapter 547 ''Examinations for Promotion'', and in item for chapter 641 substituted ''7420'' for ''7421''

1977—Pub. L. 95–82, title VI, §611(b), Aug. 1, 1977, 91 Stat. 378, struck out item for chapter 516 ''Naval Districts''.

1967—Pub. L. 90–110, title X, §1001(2), Oct. 21, 1967, 81 Stat. 310, added item for chapter 516.

1966—Pub. L. 89–718, §34(b), Nov. 2, 1966, 80 Stat. 1119, struck out item for chapter 511 ''Office of the Chief of Naval Material''.

1962—Pub. L. 87–533, §2, July 10, 1962, 76 Stat. 155, substituted ''United States Naval Oceanographic'' for ''Hydrographic'' in item for chapter 639.

1958—Pub. L. 85–861, §1(134), Sept. 2, 1958, 72 Stat. 1507, added item for chapter 549.

PART I—ORGANIZATION

Chap.		Sec.
501.	Definitions	5001
503.	Department of the Navy	5011
505.	Office of the Chief of Naval Operations	5031
506.	Headquarters, Marine Corps	5041
507.	Composition of the Department of the Navy	5061
[509.	Repealed.]	
[511.	Repealed.]	
513.	Bureaus: Office of the Judge Advocate General	5131
[515.	Repealed.]	
[516.	Repealed.]	
[517.	Repealed.]	
[519.	Repealed.]	

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1673(a)(2), Oct. 5, 1994, 108 Stat. 3015, struck out item for chapter 519 ''Naval Reserve and Marine Corps Reserve''.

1986—Pub. L. 99–433, title V, §514(d)(1), Oct. 1, 1986, 100 Stat. 1055, substituted ''Office of the Chief of Naval Operations'' for ''Secretary, Under Secretary, and Assistant Secretaries of the Navy'' in item for chapter 505, added item for chapter 506, substituted ''Composition of the Department of the Navy'' for ''Office of the Comptroller of the Navy'' in item for chapter 507, struck out item for chapter 509 ''Office of the Chief of Naval Operations'', struck out ''; Office of Naval Research'' after ''General'' in item for chapter 513, and struck out item for chapter 515 ''Commandant of the Marine Corps; Headquarters, Marine Corps''.

1980—Pub. L. 96–513, title V, §503(2), Dec. 12, 1980, 94 Stat. 2911, struck out item for chapter 517 ''Fleet Commands and other High Positions''.

1977—Pub. L. 95–82, title VI, §611(b), Aug. 1, 1977, 91 Stat. 378, struck out item for chapter 516 ''Naval Districts''.

1967—Pub. L. 90–110, title X, §1001(2), Oct. 21, 1967, 81 Stat. 310, added item for chapter 516.

1966—Pub. L. 89–718, §34(b), Nov. 2, 1966, 80 Stat. 1119, struck out item for chapter 511 ''Office of the Chief of Naval Material''.

CHAPTER 501—DEFINITIONS

Sec.
5001. Definitions.

§ 5001. Definitions

(a) In this subtitle:

(1) The term ''Navy'' means the United States Navy. It includes the Regular Navy, the Fleet Reserve, and the Naval Reserve.

(2) The term ''Marine Corps'' means the United States Marine Corps. It includes the Regular Marine Corps, the Fleet Marine Corps Reserve, and the Marine Corps Reserve.

(3) The term ''member of the naval service'' means a person appointed or enlisted in, or inducted or conscripted into, the Navy or the Marine Corps.

(4) The term ''enlisted member'' means a member of the naval service serving in an enlisted grade or rating. It excludes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(5) The term ''officer'' means a member of the naval service serving in a commissioned or warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(6) The term ''commissioned officer'' means a member of the naval service serving in a grade above warrant officer, W–1. It includes, unless otherwise specified, a member who holds a permanent enlisted grade or the permanent grade of warrant officer, W–1, and a temporary appointment in a grade above warrant officer, W–1.

(7) The term ''warrant officer'' means a member of the naval service serving in a warrant officer grade. It includes, unless otherwise specified, a member who holds a permanent enlisted grade and a temporary appointment in a warrant officer grade.

(8) The term ''officer restricted in the performance of duty'' means an officer of the Navy designated for engineering duty, aeronautical engineering duty, special duty, or limited duty, or an officer of the Marine Corps designated for limited duty.

(b) For the purposes of this subtitle, a member of the naval service who holds a temporary appointment in a grade higher than his permanent grade is considered, unless otherwise specified, to be serving in the higher grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 276; Pub. L. 87–123, § 5(1), Aug. 3, 1961, 75 Stat. 264; Pub. L. 96–513, title III, § 371, title V, § 513(2), Dec. 12, 1980, 94 Stat. 2903, 2931; Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (3) to (8) and substituted lowercase letter.

1980—Subsec. (a)(3). Pub. L. 96–513, § 513(2), struck out '', male or female,'' after ''person''.

Subsec. (a)(9), (10). Pub. L. 96–513, § 371, struck out pars. (9) and (10) which defined the active lists of the Navy and the Marine Corps, respectively. See section 101 of this title.

1961—Subsec. (a)(8). Pub. L. 87–123 struck out provisions which related to Marine Corps officers designated for supply duty.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 371 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

Amendment by section 513(2) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5143, 5144 of this title.

CHAPTER 503—DEPARTMENT OF THE NAVY

Sec.
5011. Organization.
5012. Department of the Navy: seal.
5013. Secretary of the Navy.
5013a. Secretary of the Navy: powers with respect to Coast Guard.
5014. Office of the Secretary of the Navy.
5015. Under Secretary of the Navy.
5016. Assistant Secretaries of the Navy.
5017. Secretary of the Navy: successors to duties.
5018. Administrative Assistant.
5019. General Counsel.
5020. Naval Inspector General: detail; duties.
[5021. Repealed.]
5022. Office of Naval Research: duties.
5023. Office of Naval Research: appropriations; time limit.
5024. Naval Research Advisory Committee.
5025. Financial management.
5026. Consultation with Commandant of the Marine Corps on major decisions directly concerning Marine Corps aviation.
5027. Chief of Legislative Affairs.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 504(d)(1)(B), Dec. 2, 2002, 116 Stat. 2532, added item 5027.

1998—Pub. L. 105–261, div. A, title IX, § 935(b), Oct. 17, 1998, 112 Stat. 2110, added item 5026.

1990—Pub. L. 101–510, div. A, title IX, § 910(b)(2), Nov. 5, 1990, 104 Stat. 1625, struck out item 5021 ''Office of Naval Research: Chief; appointment, term, emoluments; Assistant Chief; succession to duties''.

1988—Pub. L. 100–456, div. A, title VII, § 702(b)(3), Sept. 29, 1988, 102 Stat. 1995, added item 5025.

1986—Pub. L. 99–433, title V, § 511(f), Oct. 1, 1986, 100 Stat. 1048, amended analysis generally, substituting items 5011 to 5024 for former items 5011 to 5014.

1964—Pub. L. 88–426, title III, § 305(40)(B), Aug. 14, 1964, 78 Stat. 427, struck out item 5014 ''Compensation of General Counsel''.

1958—Pub. L. 85–861, § 1(106)(B), Sept. 2, 1958, 72 Stat. 1490, added item 5014.

§ 5011. Organization

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 277; Pub. L. 87–651, title II, § 212, Sept. 7, 1962, 76 Stat. 524; Pub. L. 99–433, title V, § 511(b)(2), (c)(1), Oct. 1, 1986, 100 Stat. 1043.)

HISTORICAL AND REVISION NOTES

1956 ACT

The Act of July 26, 1947, ch. 343, as amended (5 U.S.C. 411a(a)) which is the National Security Act of 1947, defined ''Department of the Navy''. The Acts of Mar. 5, 1948, ch. 98 (5 U.S.C. 423a(a)), and Aug. 2, 1946, ch. 756 (5 U.S.C. 421g) defined ''Naval Establishment''. The terms ''Department of the Navy'' and ''Naval Establishment'' are considered to be synonymous. All three definitions were considered, but the phraseology adopted is that of the National Security Act of 1947. The phrase ''as a service in the Navy'' is substituted for ''as a part of the Navy'' to conform to the provisions of title 14.

1962 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5011	5:171a(c)(7) (1st sentence, less applicability to Departments of Army and Air Force).	July 26, 1947, ch. 343, § 202(c)(7) (1st sentence, less applicability to Departments of Army and Air Force); added Aug. 6, 1958, Pub. L. 85–599, § 3(a) (1st sentence of 8th par., less applicability to Departments of Army and Air Force), 72 Stat. 516.

The words ''to include naval aviation and the United States Marine Corps'' are omitted as covered by the first sentence of section 5011. The word ''operates'' is substituted for the words ''shall function''.

AMENDMENTS

1986—Pub. L. 99–433, § 511(c)(1), substituted ''Organization'' for ''Composition'' in section catchline.

Pub. L. 99–433, § 511(b)(2), struck out the last two sentences which read as follows: ''It is composed of the executive part of the Department of the Navy; the Headquarters, United States Marine Corps; the entire operating forces, including naval aviation, of the United States Navy and of the United States Marine Corps, and the reserve components of those operating forces; and all field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy. It includes the United States Coast Guard when it is operating as a service in the Navy.'' See section 5061 of this title.

1962—Pub. L. 87–651 inserted sentences providing that the Department of the Navy is separately organized under the Secretary of the Navy, and that it operates under the authority, direction, and control of the Secretary of Defense.

§ 5012. Department of the Navy: seal

The Secretary of the Navy shall have a seal for the Department of the Navy. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Added Pub. L. 99–433, title V, § 511(c)(2), Oct. 1, 1986, 100 Stat. 1043.)

PRIOR PROVISIONS

A prior section 5012 was renumbered section 5062 of this title.

§ 5013. Secretary of the Navy

(a)(1) There is a Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Navy.

(2) A person may not be appointed as Secretary of the Navy within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Navy is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Navy, including the following functions:

(1) Recruiting.
(2) Organizing.
(3) Supplying.
(4) Equipping (including research and development).
(5) Training.
(6) Servicing.
(7) Mobilizing.
(8) Demobilizing.
(9) Administering (including the morale and welfare of personnel).
(10) Maintaining.
(11) The construction, outfitting, and repair of military equipment.
(12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Navy is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Navy;
(2) the formulation of policies and programs by the Department of the Navy that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;
(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Navy;
(4) carrying out the functions of the Department of the Navy so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;
(5) effective cooperation and coordination between the Department of the Navy and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;
(6) the presentation and justification of the positions of the Department of the Navy on the plans, programs, and policies of the Department of Defense; and
(7) the effective supervision and control of the intelligence activities of the Department of the Navy.

(d) The Secretary of the Navy is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Navy may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Navy may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Navy and to the Assistant Secretaries of the Navy. Officers of the Navy and the Marine Corps shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Navy may—

(1) assign, detail, and prescribe the duties of members of the Navy and Marine Corps and civilian personnel of the Department of the Navy;
(2) change the title of any officer or activity of the Department of the Navy not prescribed by law; and
(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub. L. 99–433, title V, § 511(c)(2), Oct. 1, 1986, 100 Stat. 1043; amended Pub. L. 99–661, div. A, title V, § 534, Nov. 14, 1986, 100 Stat. 3873.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5031 of this title prior to enactment of Pub. L. 99–433.

A prior section 5013 was renumbered section 5063 of this title.

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–661 substituted ''five years'' for ''10 years''.

NAVY HIGHER EDUCATION PILOT PROGRAM REGARDING ADMINISTRATION OF BUSINESS RELATIONSHIPS BETWEEN GOVERNMENT AND PRIVATE SECTOR

Pub. L. 105–85, div. A, title XI, § 1108, Nov. 18, 1997, 111 Stat. 1926, provided that:

''(a) PILOT PROJECT AUTHORIZED.—During fiscal years 1998 through 2002, the Secretary of the Navy may establish and conduct a pilot program of graduate-level higher education regarding the administration of business relationships between the Government and the private sector.

''(b) PURPOSE.—The purpose of the pilot program is to make available to employees of the Naval Undersea Warfare Center, employees of the Naval Sea Systems Command, and employees of the Acquisition Center for Excellence of the Navy (upon establishment of such Acquisition Center), a curriculum of graduate-level higher education leading to the award of a graduate degree designed to prepare participants effectively to meet the challenges of administering Government contracting and other business relationships between the United States and private sector businesses in the context of constantly changing or newly emerging industries, technologies, governmental organizations, policies, and procedures (including governmental organizations, policies, and procedures recommended in the National Performance Review).

''(c) PARTNERSHIP WITH INSTITUTION OF HIGHER EDUCATION.—(1) The Secretary of the Navy may enter into

an agreement with an institution of higher education to assist the Naval Undersea Warfare Center with the development of the curriculum for the pilot program, to offer courses and provide instruction and materials to participants to the extent provided for in the agreement, to provide such other assistance in support of the program as may be provided for in the agreement, and to award a graduate degree under the program.

''(2) To be eligible to enter into an agreement under paragraph (1), an institution of higher education must have an established program of graduate-level education that is relevant to the purpose of the pilot program.

''(d) CURRICULUM.—The curriculum offered under the pilot program shall—

''(1) be designed specifically to achieve the purpose of the pilot program; and

''(2) include courses that are—

''(A) typically offered under curricula leading to award of the degree of Master of Business Administration by institutions of higher education; and

''(B) necessary for meeting educational qualification requirements for certification as an acquisition program manager.

''(e) DISTANCE LEARNING OPTION.—The Secretary of the Navy may include as part of the pilot program policies and procedures for offering distance learning instruction by means of telecommunications, correspondence, or other methods for off-site receipt of instruction.

''(f) REPORT.—Not later than 90 days after the termination of the pilot program, the Secretary of the Navy shall submit to Congress a report containing—

''(1) an assessment by the Secretary of the value of the program for meeting the purpose of the program and the desirability of permanently establishing a similar program for other employees of the Department of Defense; and

''(2) such other information and recommendations regarding the program as the Secretary considers appropriate.

''(g) LIMITATION ON FUNDING SOURCE.—Any funds required for the pilot program for a fiscal year shall be derived only from the appropriation 'Operation and Maintenance, Navy' for that fiscal year.''

USE OF NAVAL INSTALLATIONS FOR EMPLOYMENT TRAINING OF NONVIOLENT OFFENDERS IN STATE PENAL SYSTEMS

Pub. L. 103–160, div. A, title XIII, § 1374, Nov. 30, 1993, 107 Stat. 1821, as amended by Pub. L. 103–337, div. A, title X, § 1064, Oct. 5, 1994, 108 Stat. 2848, provided that:

''(a) DEMONSTRATION PROJECT AUTHORIZED.—The Secretary of the Navy may conduct a demonstration project to test the feasibility of using Navy facilities to provide employment training to nonviolent offenders in a State penal system prior to their release from incarceration. The demonstration project shall be limited to not more than three military installations under the jurisdiction of the Secretary.

''(b) SOURCES OF TRAINING.—The Secretary may enter into a cooperative agreement with one or more private, nonprofit organizations for purposes of providing at the military installations included in the demonstration project the prerelease employment training authorized under subsection (a) or may provide such training directly at such installations by agreement with the State concerned.

''(c) USE OF FACILITIES.—Under a cooperative agreement entered into under subsection (b), the Secretary may lease or otherwise make available to a nonprofit organization participating in the demonstration project at a military installation included in the demonstration project any real property or facilities at the installation that the Secretary considers to be appropriate for use to provide the prerelease employment training authorized under subsection (a). Notwithstanding section 2667(b)(4) of title 10, United States Code, the use of such real property or facilities may be permitted with or without reimbursement.

''(d) ACCEPTANCE OF SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept voluntary services provided by persons participating in the prerelease employment training authorized under subsection (a).

''(e) LIABILITY AND INDEMNIFICATION.—(1) The Secretary may not enter into a cooperative agreement under subsection (b) with a nonprofit organization for the participation of that organization in the demonstration project unless the agreement includes provisions that the nonprofit organization shall—

''(A) be liable for any loss or damage to Federal Government property that may result from, or in connection with, the provision of prerelease employment training by the organization under the demonstration project; and

''(B) hold harmless and indemnify the United States from and against any suit, claim, demand, action, or liability arising out of any claim for personal injury or property damage that may result from or in connection with the demonstration project.

''(2) The Secretary may not enter into an agreement under subsection (b) with the State concerned for the provision of prerelease employment training directly by the Secretary unless the agreement with the State concerned includes provisions that the State shall—

''(A) be liable for any loss or damage to Federal Government property that may result from, or in connection with, the provision of the training except to the extent that the loss or damage results from a wrongful act or omission of Federal Government personnel; and

''(B) hold harmless and indemnify the United States from and against any suit, claim, demand, action, or liability arising out of any claim for personal injury or property damage that may result from, or in connection with, the provision of the training except to the extent that the personal injury or property damage results from a wrongful act or omission of Federal Government personnel.

''(f) REPORT.—Not later than two years after the date of the enactment of this Act [Nov. 30, 1993], the Secretary shall submit to Congress a report evaluating the success of the demonstration project and containing such recommendations with regard to the termination, continuation, or expansion of the demonstration project as the Secretary considers to be appropriate.''

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Navy, see Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, set out as a note under section 3345 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 162, 5033, 5043, 10172, 10173 of this title.

§ 5013a. Secretary of the Navy: powers with respect to Coast Guard

(a) Whenever the Coast Guard operates as a service in the Navy under section 3 of title 14, the Secretary of the Navy has the same powers and duties with respect to the Coast Guard as the Secretary of Homeland Security has when the Coast Guard is not so operating.

(b) While operating as a service in the Navy, the Coast Guard is subject to the orders of the Secretary of the Navy, who may order changes in Coast Guard operations to make them uniform, to the extent he considers advisable, with Navy operations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 279, § 5032; Pub. L. 96–513, title V, § 513(3), Dec. 12, 1980, 94 Stat. 2931; renumbered § 5013a, Pub. L. 99–433, title V, § 511(c)(3), Oct. 1, 1986, 100 Stat. 1045; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Subsection (a) is derived from 14 U.S.C. 5, and subsection (b) from the second sentence of 14 U.S.C. 3. These provisions are duplicated in this title for the purpose of producing a statement of the general powers of the Secretary of the Navy in this important area.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 5014. Office of the Secretary of the Navy

(a) There is in the Department of the Navy an Office of the Secretary of the Navy. The function of the Office is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Office of the Secretary of the Navy is composed of the following:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries of the Navy.

(3) The General Counsel of the Department of the Navy.

(4) The Judge Advocate General of the Navy.

(5) The Naval Inspector General.

(6) The Chief of Legislative Affairs.

(7) The Chief of Naval Research.

(8) Such other offices and officials as may be established by law or as the Secretary of the Navy may establish or designate.

(c)(1) The Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Navy shall establish or designate a single office or other entity within the Office of the Secretary of the Navy to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Office of the Chief of Naval Operations or the Headquarters, Marine Corps, to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall—

(A) prescribe the relationship of each office or other entity established or designated under paragraph (2)—

(i) to the Chief of Naval Operations and the Office of the Chief of Naval Operations; and

(ii) to the Commandant of the Marine Corps and the Headquarters, Marine Corps; and

(B) ensure that each such office or entity provides the Chief of Naval Operations and the Commandant of the Marine Corps such staff support as each considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Navy of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Navy (including the Office of the Chief of Naval Operations and the Headquarters, Marine Corps) from providing advice or assistance to the Chief of Naval Operations and the Commandant of the Marine Corps or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Navy.

(5)(A) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(B) The position of regional director within such office or entity, and any other position within such office or entity the primary responsibilities of which are to carry out supervisory functions, may not be held by a member of the armed forces on active duty.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Navy shall have sole responsibility within the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, for the function of research and development.

(2) The Secretary of the Navy may assign to the Office of the Chief of Naval Operations and the Headquarters, Marine Corps, responsibility for those aspects of the function of research and development relating to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Navy to conduct the function specified in paragraph (1).

(4) The Secretary shall—

(A) prescribe the relationship of the office or other entity established or designated under paragraph (3)—

(i) to the Chief of Naval Operations and the Office of the Chief of Naval Operations; and

(ii) to the Commandant of the Marine Corps and the Headquarters, Marine Corps; and

(B) ensure that each such office or entity provides the Chief of Naval Operations and the Commandant of the Marine Corps such staff support as each considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Navy shall ensure that the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, do not duplicate specific functions for which the Secretary has assigned responsibility to another of such offices.

(f)(1) The total number of members of the armed forces and civilian employees of the Department of the Navy assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 2,866.

(2) Not more than 1,720 officers of the Navy and Marine Corps on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps.

(3) The total number of general and flag officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, and the Headquarters, Marine Corps, may not exceed 74.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Navy, the Office of the Chief of Naval Operations, or the Headquarters, Marine Corps.

(Added Pub. L. 99–433, title V, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1045; amended Pub. L. 100–180, div. A, title XIII, § 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title III, § 325(b), Sept. 29, 1988, 102 Stat. 1955; Pub. L. 101–189, div. A, title VI, § 652(a)(4), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 107–107, div. A, title X, § 1048(a)(28), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title V, § 504(d)(2), Dec. 2, 2002, 116 Stat. 2532.)

PRIOR PROVISIONS

A prior section 5014, added Pub. L. 85–861, § 1(106)(A), Sept. 2, 1958, 72 Stat. 1490, prescribed compensation of General Counsel of Department of the Navy, prior to repeal by Pub. L. 88–426, title III, § 305(40)(A), Aug. 14, 1964, 78 Stat. 427, eff. first day of first pay period beginning on or after July 1, 1964. See section 5316 of Title 5, Government Organization and Employees.

AMENDMENTS

2002—Subsec. (b)(6) to (8). Pub. L. 107–314 added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

2001—Subsec. (f)(3). Pub. L. 107–107 substituted ''74'' for ''the number equal to 85 percent of the number of general and flag officers assigned or detailed to such duty on the date of the enactment of this subsection''.

1989—Subsec. (f)(5). Pub. L. 101–189 struck out par. (5) which read as follows: ''The limitations in paragraphs (1), (2), and (3) do not apply before October 1, 1988.''

1988—Subsec. (c)(5). Pub. L. 100–456 added par. (5).

1987—Subsec. (f)(4). Pub. L. 100–180 inserted ''the President or'' after ''declared by''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 325(d) of Pub. L. 100–456 provided that:

''(1) The requirements of sections 3014(c)(5), 5014(c)(5)(A), and 8014(c)(5) of title 10, United States Code (as added by subsections (a), (b), and (c), respectively), shall apply with respect to any person appointed on or after the date of the enactment of this Act [Sept. 29, 1988] as the head of the office or other entity designated for conducting the auditing function in a military department.

''(2) Subparagraph (B) of section 5014(c)(5) of title 10, United States Code (as added by subsection (b)), shall take effect at the end of the one-year period beginning on the date of the enactment of this Act.''

EFFECTIVE DATE

Subsecs. (c) and (d) of this section to be implemented not later than 180 days after Oct. 1, 1986, see section 532(a) of Pub. L. 99–433, set out as a note under section 3014 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5027, 5032, 5042 of this title.

§ 5015. Under Secretary of the Navy

(a) There is an Under Secretary of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe.

(Added Pub. L. 99–433, title V, § 511(c)(4), Oct. 1, 1986, 100 Stat. 1047.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5033 of this title prior to enactment of Pub. L. 99–433.

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Navy, see Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, set out as a note under section 3345 of Title 5.

§ 5016. Assistant Secretaries of the Navy

(a) There are four Assistant Secretaries of the Navy. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Navy may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Navy.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Navy for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Navy, including financial management functions. The Assistant Secretary shall be responsible for all financial management activi-

ties and operations of the Department of the Navy and shall advise the Secretary of the Navy on financial management.

(Added Pub. L. 99–433, title V, §511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended Pub. L. 100–456, div. A, title VII, §702(b)[(1)], Sept. 29, 1988, 102 Stat. 1994.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5034 of this title prior to enactment of Pub. L. 99–433.

AMENDMENTS

1988—Subsec. (b)(3). Pub. L. 100–456 added par. (3).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 effective Jan. 20, 1989, see section 702(e)(1) of Pub. L. 100–456, set out as a note under section 3016 of this title.

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Navy, see Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, set out as a note under section 3345 of Title 5.

§ 5017. Secretary of the Navy: successors to duties

If the Secretary of the Navy dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347[1] of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries of the Navy, in the order prescribed by the Secretary of the Navy and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Navy.

(4) The Chief of Naval Operations.

(5) The Commandant of the Marine Corps.

(Added Pub. L. 99–433, title V, §511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended Pub. L. 103–337, div. A, title IX, §902(b), Oct. 5, 1994, 108 Stat. 2823.)

REFERENCES IN TEXT

Section 3347 of title 5, referred to in text, was repealed and a new section 3347 was enacted by Pub. L. 105–277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681–611, and, as so enacted, no longer contains provisions authorizing the President to direct temporary successors to duties. See section 3345 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5036 of this title prior to enactment of Pub. L. 99–433.

AMENDMENTS

1994—Pars. (3) to (5). Pub. L. 103–337 added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

[1] See References in Text note below.

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Navy, see Ex. Ord. No. 12879, Nov. 8, 1993, 58 F.R. 59929, set out as a note under section 3345 of Title 5.

§ 5018. Administrative Assistant

The Secretary of the Navy may appoint an Administrative Assistant in the Office of the Secretary of the Navy. The Administrative Assistant shall perform such duties as the Secretary may prescribe.

(Added Pub. L. 99–433, title V, §511(c)(4), Oct. 1, 1986, 100 Stat. 1047.)

§ 5019. General Counsel

(a) There is a General Counsel of the Department of the Navy, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Navy may prescribe.

(Added Pub. L. 99–433, title V, §511(c)(4), Oct. 1, 1986, 100 Stat. 1047; amended Pub. L. 100–456, div. A, title VII, §703(a), Sept. 29, 1988, 102 Stat. 1996.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 inserted ‘‘, by and with the advice and consent of the Senate’’ before period at end.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable to appointments made under this section on and after Sept. 29, 1988, see section 703(c) of Pub. L. 100–456, set out as a note under section 3019 of this title.

§ 5020. Naval Inspector General: detail; duties

(a) There is in the Office of the Secretary of the Navy the Office of the Naval Inspector General. The Naval Inspector General shall be detailed from officers on the active-duty list in the line of the Navy serving in grades above captain.

(b) The Naval Inspector General, when directed, shall inquire into and report upon any matter that affects the discipline or military efficiency of the Department of the Navy. He shall make such inspections, investigations, and reports as the Secretary of the Navy or the Chief of Naval Operations directs.

(c) The Naval Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Navy.

(d) The Naval Inspector General shall periodically propose programs of inspections to the Secretary of the Navy and shall recommend additional inspections and investigations as may appear appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 283, §5088; Pub. L. 96–513, title V, §503(7), Dec. 12, 1980, 94 Stat.

2911; renumbered § 5020 and amended Pub. L. 99–433, title V, § 511(c)(5), Oct. 1, 1986, 100 Stat. 1047.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5088(a), (b), (c).	5 U.S.C. 423f.	Mar. 5, 1948, ch. 98, § 6, 62 Stat. 68.
5088(d)	5 U.S.C. 423k (as applicable to the Naval Inspector General).	Mar. 5, 1948, ch. 98, § 11, 62 Stat. 69 (as applicable to the Naval Inspector General).

In subsection (a) the words ''In addition to the divisions herein created'' are omitted as surplusage. The word ''detailed'' is added in order to show that the position of the Inspector General is not an appointive office.

In subsection (c) the words ''from time to time'' are omitted as surplusage.

Subsection (d) is worded to make clear that the Naval Inspector General may be designated, under 34 U.S.C. 211d, as an officer who performs unusual or special duty, and, if so designated, is entitled to the grade, pay, and retirement privilege accompanying the special designation. The words ''under section 5231 of this title'' are substituted for the words ''grade, rank, pay, and allowances provided under any provision of law heretofore or hereafter enacted which authorizes such grade, rank, pay, and allowances for officers so designated''.

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (c), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–433, § 511(c)(5)(A), substituted ''Office of the Secretary of Navy'' for ''Office of the Chief of Naval Operations''.

Subsec. (c). Pub. L. 99–433, § 511(c)(5)(B), (C), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 99–433, § 511(c)(5)(B), redesignated former subsec. (c) as (d) and substituted ''Secretary of the Navy'' for ''Chief of Naval Operations''.

1980—Subsec. (a). Pub. L. 96–513, § 503(7)(A), substituted ''active-duty list'' for ''active list''.

Subsec. (d). Pub. L. 96–513, § 503(7)(B), struck out subsec. (d) which authorized the President to designate the Naval Inspector General as an officer who performs special or unusual duty or duty of great importance and responsibility under section 5231 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 5021. Repealed. Pub. L. 101–510, div. A, title IX, § 910(a), Nov. 5, 1990, 104 Stat. 1625]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 290, § 5150; Sept. 7, 1962, Pub. L. 87–649, § 14(c)(22), (23), 76 Stat. 501; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(12), 94 Stat. 2912; renumbered § 5021, Oct. 1, 1986, Pub. L. 99–433, title V, § 511(d), 100 Stat. 1048, related to Office of Naval Research in Office of Secretary of the Navy headed by Chief of Naval Research, appointment to, term, and emoluments of such office, prerequisite for designation as Assistant Chief of Naval Research, and succession of duties of such office.

§ 5022. Office of Naval Research: duties

(a)(1) There is in the Office of the Secretary of the Navy an Office of Naval Research.

(2) Unless appointed to higher grade under another provision of law, an officer, while serving in the Office of Naval Research as Chief of Naval Research, has the rank of rear admiral.

(b) The Office of Naval Research shall perform such duties as the Secretary of the Navy prescribes relating to—

(1) the encouragement, promotion, planning, initiation, and coordination of naval research;

(2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the bureaus and other agencies and offices of the Department of the Navy;

(3) the supervision, administration, and control of activities within or for the Department relating to patents, inventions, trademarks, copyrights, and royalty payments, and matters connected therewith; and

(4) the execution of, and management responsibility for, programs for which funds are provided in the basic and applied research and advanced technology categories of the Department of the Navy research, development, test, and evaluation budget in such a manner that will foster the transition of science and technology to higher levels of research, development, test, and evaluation.

(c) Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Office of Naval Research to assist it in coordinating naval research and carrying out its other duties.

(d) The Office of Naval Research shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 291, § 5151; renumbered § 5022, Pub. L. 99–433, title V, § 511(d), Oct. 1, 1986, 100 Stat. 1048; amended Pub. L. 101–510, div. A, title IX, § 910(b)(1), Nov. 5, 1990, 104 Stat. 1625; Pub. L. 104–201, div. A, title V, § 501(a), Sept. 23, 1996, 110 Stat. 2510; Pub. L. 106–398, § 1 [[div. A], title IX, § 904(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–225; Pub. L. 107–314, div. A, title V, § 504(f), Dec. 2, 2002, 116 Stat. 2533.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5151(a)	5 U.S.C. 475 (20th through 111th words).	Aug. 1, 1946, ch. 727, § 1 (22d through 114th words), 60 Stat. 779.
5151(b)	5 U.S.C. 475d(a) (2d sentence).	Aug. 1, 1946, ch. 727, § 5(a) (2d sentence), 60 Stat. 780.
5151(c)	5 U.S.C. 475 (2d sentence).	Aug. 1, 1946, ch. 727, § 1 (2d sentence), 60 Stat. 779.

In subsection (c) the words ''shall have full force and effect as such'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–314 struck out ''(upper half)'' after ''rear admiral''.

2000—Subsec. (b)(4). Pub. L. 106–398 added par. (4).

1996—Subsec. (a). Pub. L. 104–201 designated existing provisions as par. (1) and added par. (2).

1990—Pub. L. 101–510 added subsec. (a) and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 501(b) of Pub. L. 104–201 provided that: ''Paragraph (2) of section 5022(a) of title 10, United States Code, as added by subsection (a), shall take effect upon the occurrence of the first vacancy in the position of Chief of Naval Research after the date of the enactment of this Act [Sept. 23, 1996].''

DEMONSTRATION PROJECT TO INCREASE SMALL BUSINESS AND UNIVERSITY PARTICIPATION IN OFFICE OF NAVAL RESEARCH EFFORTS TO EXTEND BENEFITS OF SCIENCE AND TECHNOLOGY RESEARCH TO FLEET

Pub. L. 107–107, div. A, title II, § 262, Dec. 28, 2001, 115 Stat. 1044, provided that:

''(a) PROJECT REQUIRED.—The Secretary of the Navy, acting through the Chief of Naval Research, shall carry out a demonstration project to increase access to Navy facilities of small businesses and universities that are engaged in science and technology research beneficial to the fleet.

''(b) PROJECT ELEMENTS.—In carrying out the demonstration project, the Secretary shall—

''(1) establish and operate a Navy Technology Extension Center at a location to be selected by the Secretary;

''(2) permit participants in the Small Business Innovation Research Program (SBIR) and Small Business Technology Transfer Program (STTR) that are awarded contracts by the Office of Naval Research to access and use Navy Major Range Test Facilities Base (MRTFB) facilities selected by the Secretary for purposes of carrying out such contracts, and charge such participants for such access and use at the same established rates that Department of Defense customers are charged; and

''(3) permit universities, institutions of higher learning, and federally funded research and development centers collaborating with participants referred to in paragraph (2) to access and use such facilities for such purposes, and charge such entities for such access and use at such rates.

''(c) PERIOD OF PROJECT.—The demonstration project shall be carried out during the three-year period beginning on the date of the enactment of this Act [Dec. 28, 2001].

''(d) REPORT.—Not later than February 1, 2004, the Secretary shall submit to Congress a report on the demonstration project. The report shall include a description of the activities carried out under the demonstration project and any recommendations for the improvement or expansion of the demonstration project that the Secretary considers appropriate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5023 of this title.

§ 5023. Office of Naval Research: appropriations; time limit

(a) Sums appropriated for the Office of Naval Research may be used to pay the cost of performing its duties under section 5022 of this title including the cost of—

(1) administration;

(2) conduct of research and development work in Government facilities; and

(3) conduct of research and development work under contracts with individuals, corporations, and educational or scientific institutions.

(b) Sums appropriated for the purposes of this section, if obligated during the fiscal year for which appropriated, remain available for expenditure for four years after the end of that fiscal year. Any balance not spent after that four-year period shall be carried to the surplus fund and covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 291, § 5152; renumbered § 5023 and amended Pub. L. 99–433, title V, §§ 511(d), 514(c)(2), Oct. 1, 1986, 100 Stat. 1048, 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5152	5 U.S.C. 475d(a) (less 2d sentence). 5 U.S.C. 475d(b).	Aug. 1, 1946, ch. 727, § 5 (a) (less 2d sentence), 60 Stat. 780. Aug. 1, 1946, ch. 727, § 5 (b), 60 Stat. 780.

The authorization to make appropriations for the Office of Naval Research is omitted as unnecessary. The word ''administration'' is substituted for the words ''administrative expenses'' for brevity.

AMENDMENTS

1986—Pub. L. 99–433, § 511(d), renumbered section 5152 of this title as this section.

Subsec. (a). Pub. L. 99–433, § 514(c)(2), substituted ''section 5022'' for ''section 5151''.

§ 5024. Naval Research Advisory Committee

(a) The Secretary of the Navy may appoint a Naval Research Advisory Committee consisting of not more than 15 civilians preeminent in the fields of science, research, and development work. One member of the Committee must be from the field of medicine. Each member serves for such term as the Secretary specifies.

(b) The Committee shall meet at such times as the Secretary specifies to consult with and advise the Chief of Naval Operations and the Chief of Naval Research.

(c) No law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States applies to members of the Committee solely by reason of their membership on the Committee.

(Aug. 10, 1956, ch. 1041, 70A Stat. 291, § 5153; Pub. L. 97–60, title II, § 205, Oct. 14, 1981, 95 Stat. 1007; renumbered § 5024 and amended Pub. L. 99–433, title V, §§ 511(d), 514(d)(2), Oct. 1, 1986, 100 Stat. 1048, 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5153	5 U.S.C. 475c.	Aug. 1, 1946, ch. 727, § 4, 60 Stat. 779; Sept. 3, 1954, ch. 1263, § 12, 68 Stat. 1229.

In subsection (c) the words ''in the amount'' are omitted as unnecessary.

In subsection (d) references to sections of title 18 and to R.S. 190 are omitted as unnecessary and the words ''No law'' are substituted for the words ''Nothing * * * in any other provision of Federal law''.

AMENDMENTS

1986—Pub. L. 99–433, § 511(d), renumbered section 5153 of this title as this section.

Subsec. (c). Pub. L. 99–433, § 514(d)(2), substituted ''claim, proceeding,'' for ''claim proceeding''.

1981—Subsecs. (c), (d). Pub. L. 97–60 redesignated subsec. (d) as (c). Former subsec. (c), which allowed each member of the Committee compensation of $50 for each day or part of a day that the member attended any reg-

ularly called meeting of the Committee and also allowed that member reimbursement for all travel expenses incident to that attendance, was struck out.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5025. Financial management

(a) The Secretary of the Navy shall provide that the Assistant Secretary of the Navy for Financial Management shall direct and manage financial management activities and operations of the Department of the Navy, including ensuring that financial management systems of the Department of the Navy comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Navy and otherwise carry out, with respect to the Department of the Navy, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Navy; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Navy, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Navy (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Navy proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Navy for Financial Management shall transmit to the Secretary of the Navy a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Navy financial management.

(Added Pub. L. 100–456, div. A, title VII, § 702(b)(2), Sept. 29, 1988, 102 Stat. 1994; amended Pub. L. 103–337, div. A, title X, § 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XV, § 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''135(c)'' for ''137(c)''.

EFFECTIVE DATE

Section effective Jan. 20, 1989, see section 702(e)(1) of Pub. L. 100–456, set out as an Effective Date of 1988 Amendment note under section 3016 of this title.

§ 5026. Consultation with Commandant of the Marine Corps on major decisions directly concerning Marine Corps aviation

The Secretary of the Navy shall ensure that the views of the Commandant of the Marine Corps are given appropriate consideration before a major decision is made by an element of the Department of the Navy outside the Marine Corps on a matter that directly concerns Marine Corps aviation.

(Added Pub. L. 105–261, div. A, title IX, § 935(a), Oct. 17, 1998, 112 Stat. 2109.)

§ 5027. Chief of Legislative Affairs

(a) There is a Chief of Legislative Affairs in the Department of the Navy. An officer assigned to that position shall be an officer in the grade of rear admiral.

(b) The Chief of Legislative Affairs shall perform legislative affairs functions as specified for the Office of the Secretary of the Navy by section 5014(c)(1)(F) of this title.

(Added Pub. L. 107–314, div. A, title V, § 504(d)(1)(A), Dec. 2, 2002, 116 Stat. 2532.)

CHAPTER 505—OFFICE OF THE CHIEF OF NAVAL OPERATIONS

Sec.
5031. Office of the Chief of Naval Operations: function; composition.
5032. Office of the Chief of Naval Operations: general duties.
5033. Chief of Naval Operations.
[5034. Repealed.]
5035. Vice Chief of Naval Operations.
5036. Deputy Chiefs of Naval Operations.
5037. Assistant Chiefs of Naval Operations.
5038. Director for Expeditionary Warfare.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title V, § 502(d)(2), Feb. 10, 1996, 110 Stat. 293, struck out item 5034 ''Chief of Naval Operations: retirement''.

1992—Pub. L. 102–484, div. A, title IX, §935(b)(2), Oct. 23, 1992, 106 Stat. 2478, added item 5038.

1986—Pub. L. 99–433, title V, §512(b), Oct. 1, 1986, 100 Stat. 1048, inserted heading for new chapter 505 relating to the Office of The Chief of Naval Operations, and items 5031 to 5037. The heading for former chapter 505 relating to Secretary, Under Secretary, and Assistant Secretaries of the Navy, and former items 5031 to 5036 were struck out as part of the repeal of former chapter 505 by Pub. L. 99–433, title V, §511(e), Oct. 1, 1986, 100 Stat. 1048.

§ 5031. Office of the Chief of Naval Operations: function; composition

(a) There is in the executive part of the Department of the Navy an Office of the Chief of Naval Operations. The function of the Office of the Chief of Naval Operations is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Office of the Chief of Naval Operations is composed of the following:

(1) The Chief of Naval Operations.

(2) The Vice Chief of Naval Operations.

(3) The Deputy Chiefs of Naval Operations.

(4) The Assistant Chiefs of Naval Operations.

(5) The Surgeon General of the Navy.

(6) The Chief of Naval Personnel.

(7) The Chief of Chaplains of the Navy.

(8) Other members of the Navy and Marine Corps assigned or detailed to the Office of the Chief of Naval Operations.

(9) Civilian employees in the Department of the Navy assigned or detailed to the Office of the Chief of Naval Operations.

(c) Except as otherwise specifically prescribed by law, the Office of the Chief of Naval Operations shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Added Pub. L. 99–433, title V, §512(b), Oct. 1, 1986, 100 Stat. 1048.)

PRIOR PROVISIONS

A prior section 5031, acts Aug. 10, 1956, ch. 1041, 70A Stat. 278; Sept. 2, 1958, Pub. L. 85–861, §1(107), 72 Stat. 1490; Sept. 7, 1962, Pub. L. 87–651, title II, §211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§305(4), 306(j)(3), 78 Stat. 422, 431; Oct. 14, 1981, Pub. L. 97–60, title II, §204(a)(1), 95 Stat. 1007, related to Secretary of the Navy and responsibilities of Secretary, prior to repeal by Pub. L. 99–433, §511(e). See section 5013 of this title.

§ 5032. Office of the Chief of Naval Operations: general duties

(a) The Office of the Chief of Naval Operations shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Navy and to the Chief of Naval Operations.

(b) Under the authority, direction, and control of the Secretary of the Navy, the Office of the Chief of Naval Operations shall—

(1) subject to subsections (c) and (d) of section 5014 of this title, prepare for such employment of the Navy, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Navy), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Navy, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Naval Operations;

(2) investigate and report upon the efficiency of the Navy and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Naval Operations, coordinate the action of organizations of the Navy; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Added Pub. L. 99–433, title V, §512(b), Oct. 1, 1986, 100 Stat. 1049.)

PRIOR PROVISIONS

A prior section 5032 was renumbered section 5013a of this title.

§ 5033. Chief of Naval Operations

(a)(1) There is a Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate. The Chief of Naval Operations shall be appointed for a term of four years, from officers on the active-duty list in the line of the Navy who are eligible to command at sea and who hold the grade of rear admiral or above. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as the Chief of Naval Operations only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a flag officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade. In the performance of his duties within the Department of the Navy, the Chief of Naval Operations takes precedence above all other officers of the naval service.

(c) Except as otherwise prescribed by law and subject to section 5013(f) of this title, the Chief of Naval Operations performs his duties under the authority, direction, and control of the Secretary of the Navy and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Navy, the Chief of Naval Operations shall—

(1) preside over the Office of the Chief of Naval Operations;

(2) transmit the plans and recommendations of the Office of the Chief of Naval Operations to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Office of the Chief of Naval

Operations by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Navy and the Marine Corps as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

(e)(1) The Chief of Naval Operations shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Naval Operations in the performance of his duties as a member of the Joint Chiefs of Staff, the Chief of Naval Operations shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Naval Operations shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Added Pub. L. 99–433, title V, § 512(b), Oct. 1, 1986, 100 Stat. 1049; amended Pub. L. 100–456, div. A, title V, § 519(a)(3), Sept. 29, 1988, 102 Stat. 1972.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 5081 and 5082 of this title prior to enactment of Pub. L. 99–433.

A prior section 5033, acts Aug. 10, 1956, ch. 1041, 70A Stat. 279; Sept. 2, 1958, Pub. L. 85–861, § 1(108), 72 Stat. 1490; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(5), 306(j)(5), 78 Stat. 422, 432, related to appointment and duties of Under Secretary of the Navy, prior to repeal by Pub. L. 99–433, § 511(e). See section 5015 of this title.

AMENDMENTS

1988—Subsec. (a)(2)(B). Pub. L. 100–456 substituted ''full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''joint duty assignment''.

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For provisions giving President temporary authority to waive requirements in subsec. (a)(2) of this section, see section 532(c) of Pub. L. 99–433, formerly set out as a note under section 3033 of this title.

[§ 5034. Repealed. Pub. L. 104–106, div. A, title V, § 502(c), Feb. 10, 1996, 110 Stat. 293]

Section, added Pub. L. 99–433, title V, § 512(b), Oct. 1, 1986, 100 Stat. 1050; amended Pub. L. 102–190, div. A, title V, § 505(a), Dec. 5, 1991, 105 Stat. 1358, related to retirement of Chief of Naval Operations.

A prior section 5034, acts Aug. 10, 1956, ch. 1041, 70A Stat. 279; Aug. 6, 1958, Pub. L. 85–599, § 8(b)(1), 72 Stat. 519; Dec. 1, 1967, Pub. L. 90–168, § 2(13), (14), 81 Stat. 523; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 820(c), 93 Stat. 819; Sept. 24, 1983, Pub. L. 98–94, title XII, § 1212(c)(2), 97 Stat. 687, related to appointment and duties of Assistant Secretaries of the Navy, prior to repeal by Pub. L. 99–433, § 511(e). See section 5016 of this title.

§ 5035. Vice Chief of Naval Operations

(a) There is a Vice Chief of Naval Operations, appointed by the President, by and with the advice and consent of the Senate, from officers on the active-duty list in the line of the Navy serving in grades above captain and eligible to command at sea.

(b) The Vice Chief of Naval Operations, while so serving, has the grade of admiral without vacating his permanent grade.

(c) The Vice Chief of Naval Operations has such authority and duties with respect to the Department of the Navy as the Chief of Naval Operations, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Vice Chief of Naval Operations in performing such duties have the same effect as those issued by the Chief of Naval Operations.

(d) When there is a vacancy in the office of Chief of Naval Operations or during the absence or disability of the Chief of Naval Operations—

(1) the Vice Chief of Naval Operations shall perform the duties of the Chief of Naval Operations until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Naval Operations or the Vice Chief of Naval Operations is absent or disabled, unless the President directs otherwise, the most senior officer of the Navy in the Office of the Chief of Naval Operations who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Naval Operations until a successor to the Chief of Naval Operations or the Vice Chief of Naval Operations is appointed or until the absence or disability of the Chief of Naval Operations or Vice Chief of Naval Operations ceases, whichever occurs first.

(Added Pub. L. 99–433, title V, § 512(b), Oct. 1, 1986, 100 Stat. 1050.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5085 of this title prior to enactment of Pub. L. 99–433.

A prior section 5035, act Aug. 10, 1956, ch. 1041, 70A Stat. 279, authorized an Assistant Secretary of the Navy for Air, provided for his appointment and duties, and prescribed his compensation, prior to repeal by Pub. L. 85–599, § 8(b)(2), Aug. 6, 1958, 72 Stat. 519, eff. six months after Aug. 6, 1958. Subsec. (c) was also repealed by Pub. L. 85–861, § 36B(12), Sept. 2, 1958, 72 Stat. 1571.

§ 5036. Deputy Chiefs of Naval Operations

(a) There are in the Office of the Chief of Naval Operations not more than five Deputy Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list in the line of the Navy serving in grades above captain.

(b) The Deputy Chiefs of Naval Operations are charged, under the direction of the Chief of Naval Operations, with the execution of the functions of their respective divisions. Orders is-

sued by the Deputy Chiefs of Naval Operations in performing the duties assigned them are considered as coming from the Chief of Naval Operations.

(Added Pub. L. 99–433, title V, § 512(b), Oct. 1, 1986, 100 Stat. 1051.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5086 of this title prior to enactment of Pub. L. 99–433.

A prior section 5036, acts Aug. 10, 1956, ch. 1041, 70A Stat. 280; Nov. 2, 1966, Pub. L. 89–718, § 32, 80 Stat. 1119; Jan. 2, 1968, Pub. L. 90–235, § 4(a)(8), 81 Stat. 759; Dec. 12, 1980, Pub. L. 96–513, title V, § 513(4), 94 Stat. 2931, related to succession to duties of Secretary of the Navy, prior to repeal by Pub. L. 99–433, § 511(e). See section 5017 of this title.

§ 5037. Assistant Chiefs of Naval Operations

(a) There are in the Office of the Chief of Naval Operations not more than three Assistant Chiefs of Naval Operations, detailed by the Secretary of the Navy from officers on the active-duty list in the line of the Navy and officers on the active-duty list of the Marine Corps.

(b) The Assistant Chiefs of Naval Operations shall perform such duties as the Secretary of the Navy prescribes.

(Added Pub. L. 99–433, title V, § 512(b), Oct. 1, 1986, 100 Stat. 1051.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5087 of this title prior to enactment of Pub. L. 99–433.

§ 5038. Director for Expeditionary Warfare

(a) One of the Directors within the office of the Deputy Chief of Naval Operations with responsibility for warfare requirements and programs shall be the Director for Expeditionary Warfare who shall be detailed from officers on the active-duty list of the Marine Corps.

(b) An officer assigned to the position of Director for Expeditionary Warfare, while so serving, has the grade of major general.

(c) The principal duty of the Director for Expeditionary Warfare shall be to supervise the performance of all staff responsibilities of the Chief of Naval Operations regarding expeditionary warfare, including responsibilities regarding amphibious lift, mine warfare, naval fire support, and other missions essential to supporting expeditionary warfare.

(d) The Chief of Naval Operations shall transfer duties, responsibilities, and staff from other personnel within the Office of the Chief of Naval Operations as necessary to fully support the Director for Expeditionary Warfare.

(Added Pub. L. 102–484, div. A, title IX, § 935(b)(1), Oct. 23, 1992, 106 Stat. 2478; amended Pub. L. 103–35, title II, § 201(c)(10), May 31, 1993, 107 Stat. 98; Pub. L. 103–160, div. A, title IX, § 944, Nov. 30, 1993, 107 Stat. 1737; Pub. L. 107–107, div. A, title IX, § 932, Dec. 28, 2001, 115 Stat. 1200.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''office of the Deputy Chief of Naval Operations with responsibility for warfare requirements and programs'' for ''Office of the Deputy Chief of Naval Operations for Resources, Warfare Requirements, and Assessments''.

1993—Subsec. (e). Pub. L. 103–160 struck out subsec. (e) which read as follows: ''This section shall cease to apply on November 1, 1997.''

Pub. L. 103–35 substituted ''section'' for ''subsection''.

CHAPTER 506—HEADQUARTERS, MARINE CORPS

Sec.
5041. Headquarters, Marine Corps: function; composition.
5042. Headquarters, Marine Corps: general duties.
5043. Commandant of the Marine Corps.
5044. Assistant Commandant of the Marine Corps.
5045. Deputy Commandants.
5046. Staff Judge Advocate to the Commandant of the Marine Corps.
5047. Legislative Assistant to the Commandant.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 504(d)(3)(B), Dec. 2, 2002, 116 Stat. 2532, added item 5047.

2000—Pub. L. 106–398, § 1 [[div. A], title IX, § 902(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–224, substituted ''Deputy Commandants'' for ''Chief of Staff; Deputy and Assistant Chiefs of Staff'' in item 5045.

1986—Pub. L. 99–661, div. A, title V, § 509(a)(2), Nov. 14, 1986, 100 Stat. 3868, added item 5046.

§ 5041. Headquarters, Marine Corps: function; composition

(a) There is in the executive part of the Department of the Navy a Headquarters, Marine Corps. The function of the Headquarters, Marine Corps, is to assist the Secretary of the Navy in carrying out his responsibilities.

(b) The Headquarters, Marine Corps, is composed of the following:

(1) The Commandant of the Marine Corps.

(2) The Assistant Commandant of the Marine Corps.

(3) The Deputy Commandants.

(4) Other members of the Navy and Marine Corps assigned or detailed to the Headquarters, Marine Corps.

(5) Civilian employees in the Department of the Navy assigned or detailed to the Headquarters, Marine Corps.

(c) Except as otherwise specifically prescribed by law, the Headquarters, Marine Corps, shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Added Pub. L. 99–433, title V, § 513(b), Oct. 1, 1986, 100 Stat. 1052; amended Pub. L. 106–398, § 1 [[div. A], title IX, § 902(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–224.)

AMENDMENTS

2000—Subsec. (b)(3) to (7). Pub. L. 106–398 added par. (3), redesignated pars. (6) and (7) as (4) and (5), respectively, and struck out former pars. (3) to (5) which read as follows:

''(3) The Chief of Staff of the Marine Corps.

''(4) The Deputy Chiefs of Staff.

''(5) The Assistant Chiefs of Staff.''

§ 5042. Headquarters, Marine Corps: general duties

(a) The Headquarters, Marine Corps, shall furnish professional assistance to the Secretary,

the Under Secretary, and the Assistant Secretaries of the Navy and to the Commandant of the Marine Corps.

(b) Under the authority, direction, and control of the Secretary of the Navy, the Headquarters, Marine Corps, shall—

(1) subject to subsections (c) and (d) of section 5014 of this title, prepare for such employment of the Marine Corps, and for such recruiting, organizing, supplying, equipping (including research and development), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Marine Corps, as will assist in the execution of any power, duty, or function of the Secretary or the Commandant;

(2) investigate and report upon the efficiency of the Marine Corps and its preparation to support military operations by combatant commanders;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Commandant, coordinate the action of organizations of the Marine Corps; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Added Pub. L. 99–433, title V, §513(b), Oct. 1, 1986, 100 Stat. 1052.)

§5043. Commandant of the Marine Corps

(a)(1) There is a Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate. The Commandant shall be appointed for a term of four years from officers on the active-duty list of the Marine Corps not below the grade of colonel. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Commandant of the Marine Corps only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Commandant of the Marine Corps, while so serving, has the grade of general without vacating his permanent grade.

[(c) Repealed. Pub. L. 104–106, div. A, title V, §502(c), Feb. 10, 1996, 110 Stat. 293.]

(d) Except as otherwise prescribed by law and subject to section 5013(f) of this title, the Commandant performs his duties under the authority, direction, and control of the Secretary of the Navy and is directly responsible to the Secretary.

(e) Subject to the authority, direction, and control of the Secretary of the Navy, the Commandant shall—

(1) preside over the Headquarters, Marine Corps;

(2) transmit the plans and recommendations of the Headquarters, Marine Corps, to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Headquarters, Marine Corps, by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Marine Corps and the Navy as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Navy.

(f)(1) The Commandant shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Commandant in the performance of his duties as a member of the Joint Chiefs of Staff, the Commandant shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Navy.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Commandant shall keep the Secretary of the Navy fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Added Pub. L. 99–433, title V, §513(b), Oct. 1, 1986, 100 Stat. 1052; amended Pub. L. 100–456, div. A, title V, §519(a)(3), Sept. 29, 1988, 102 Stat. 1972; Pub. L. 102–190, div. A, title V, §505(b), Dec. 5, 1991, 105 Stat. 1358; Pub. L. 104–106, div. A, title V, §502(c), Feb. 10, 1996, 110 Stat. 293.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5201 of this title prior to enactment of Pub. L. 99–433.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106 struck out subsec. (c) which read as follows: ''An officer who is retired while serving as Commandant of the Marine Corps, or who, after serving at least two and one-half years as Commandant, is retired after completion of that service while serving in a lower grade than general, may, in the discretion of the President and by and with the advice and consent of the Senate, be retired with the grade of general.''

1991—Subsec. (c). Pub. L. 102–190 inserted ''and by and with the advice and consent of the Senate'' after ''President''.

1988—Subsec. (a)(2)(B). Pub. L. 100–456 substituted ''full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''joint duty assignment''.

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For provisions giving President temporary authority to waive requirements in subsec. (a)(2) of this section,

see section 532(c) of Pub. L. 99–433, formerly set out as a note under section 3033 of this title.

§ 5044. Assistant Commandant of the Marine Corps

(a) There is an Assistant Commandant of the Marine Corps, appointed by the President, by and with the advice and consent of the Senate, from officers on the active-duty list of the Marine Corps not restricted in the performance of duty.

(b) The Assistant Commandant of the Marine Corps, while so serving, has the grade of general without vacating his permanent grade.

(c) The Assistant Commandant has such authority and duties with respect to the Marine Corps as the Commandant, with the approval of the Secretary of the Navy, may delegate to or prescribe for him. Orders issued by the Assistant Commandant in performing such duties have the same effect as those issued by the Commandant.

(d) When there is a vacancy in the office of Commandant of the Marine Corps, or during the absence or disability of the Commandant—

(1) the Assistant Commandant of the Marine Corps shall perform the duties of the Commandant until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Assistant Commandant of the Marine Corps or the Assistant Commandant is absent or disabled, unless the President directs otherwise, the most senior officer of the Marine Corps in the Headquarters, Marine Corps, who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Commandant until a successor to the Commandant or the Assistant Commandant is appointed or until the absence or disability of the Commandant or Assistant Commandant ceases, whichever occurs first.

(Added Pub. L. 99–433, title V, §513(b), Oct. 1, 1986, 100 Stat. 1054.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5202 of this title prior to enactment of Pub. L. 99–433.

§ 5045. Deputy Commandants

There are in the Headquarters, Marine Corps, not more than six Deputy Commandants, detailed by the Secretary of the Navy from officers on the active-duty list of the Marine Corps.

(Added Pub. L. 99–433, title V, §513(b), Oct. 1, 1986, 100 Stat. 1054; amended Pub. L. 106–398, §1 [[div. A], title IX, §902(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–224; Pub. L. 107–314, div. A, title IX, §934, Dec. 2, 2002, 116 Stat. 2626.)

AMENDMENTS

2002—Pub. L. 107–314 substituted ''six'' for ''five''.

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, text read as follows: ''There are in the Headquarters, Marine Corps, a Chief of Staff, not more than five Deputy Chiefs of Staff, and not more than three Assistant Chiefs of Staff, detailed by the Secretary of the Navy from officers on the active-duty list of the Marine Corps.''

§ 5046. Staff Judge Advocate to the Commandant of the Marine Corps

(a) An officer of the Marine Corps who is a judge advocate and a member of the bar of a Federal court or the highest court of a State or territory and who has had at least eight years of experience in legal duties as a commissioned officer may be detailed as Staff Judge Advocate to the Commandant of the Marine Corps. If an officer appointed as the Staff Judge Advocate to the Commandant of the Marine Corps holds a lower regular grade, the officer shall be appointed in the regular grade of brigadier general.

(b) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Staff Judge Advocate to the Commandant of the Marine Corps, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(Added Pub. L. 99–661, div. A, title V, §509(a)(1), Nov. 14, 1986, 100 Stat. 3868; amended Pub. L. 103–337, div. A, title V, §504(b)(4), Oct. 5, 1994, 108 Stat. 2751.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337, §504(b)(4)(A), added second sentence and struck out former second sentence which read as follows: ''While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general if appointed to that grade by the President, by and with the advice and consent of the Senate.''

Subsec. (b). Pub. L. 103–337, §504(b)(4)(B), added subsec. (b) and struck out former subsec. (b) which read as follows: ''An officer retiring from the position of Staff Judge Advocate to the Commandant of the Marine Corps, after serving at least three years in that position, shall be retired in the highest grade in which that officer served on active duty satisfactorily, as determined by the Secretary of the Navy.''

EFFECTIVE DATE

Section 509(b) of Pub. L. 99–661 provided that: ''Section 5046 of title 10, United States Code, as added by subsection (a), shall apply only with respect to appointments as Staff Judge Advocate to the Commandant of the Marine Corps made on or after the date of the enactment of this Act [Nov. 14, 1986].''

TRANSITION PROVISION FOR RETIREMENT OF STAFF JUDGE ADVOCATES

Section 509(d) of Pub. L. 99–661 provided that: ''Notwithstanding section 1370(a)(2) of title 10, United States Code, an officer serving in the position of Staff Judge Advocate to the Commandant of the Marine Corps, or an equivalent position, on the day before the date of the enactment of this Act [Nov. 14, 1986], if retired after having served in such position (or equivalent position) at least three years, including any service in such position (or its equivalent) before such date, shall be retired in the highest grade in which the officer served on active duty satisfactorily, as determined by the Secretary of the Navy.''

§ 5047. Legislative Assistant to the Commandant

There is in the Marine Corps a Legislative Assistant to the Commandant. An officer assigned to that position shall be in a grade above colonel.

(Added Pub. L. 107–314, div. A, title V, § 504(d)(3)(A), Dec. 2, 2002, 116 Stat. 2532.)

CHAPTER 507—COMPOSITION OF THE DEPARTMENT OF THE NAVY

Sec.
5061. Department of the Navy: composition.
5062. United States Navy: composition; functions.
5063. United States Marine Corps: composition; functions.

AMENDMENTS

1986—Pub. L. 99–433, title V, § 511(b)(1), Oct. 1, 1986, 100 Stat. 1042, inserted heading for new chapter 507 relating to composition of the Department of the Navy, and items 5061 to 5063. The heading for former chapter 507, relating to Office of the Comptroller of the Navy, and former items 5061 to 5064 were struck out as part of the repeal of former chapter 507 by Pub. L. 99–433, title V, § 511(a), Oct. 1, 1986, 100 Stat. 1042.

§ 5061. Department of the Navy: composition

The Department of the Navy is composed of the following:

(1) The Office of the Secretary of the Navy.

(2) The Office of the Chief of Naval Operations.

(3) The Headquarters, Marine Corps.

(4) The entire operating forces, including naval aviation, of the Navy and of the Marine Corps, and the reserve components of those operating forces.

(5) All field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the Secretary of the Navy.

(6) The Coast Guard when it is operating as a service in the Navy.

(Added Pub. L. 99–433, title V, § 511(b)(1), Oct. 1, 1986, 100 Stat. 1043.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5011 of this title prior to enactment of Pub. L. 99–433.

A prior section 5061, act Aug. 10, 1956, ch. 1041, 70A Stat. 280, related to appointment and functions of Comptroller of the Navy, prior to repeal by Pub. L. 99–433, § 511(a).

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 5062. United States Navy: composition; functions

(a) The Navy, within the Department of the Navy, includes, in general, naval combat and service forces and such aviation as may be organic therein. The Navy shall be organized, trained, and equipped primarily for prompt and sustained combat incident to operations at sea. It is responsible for the preparation of naval forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war.

(b) All naval aviation shall be integrated with the naval service as part thereof within the Department of the Navy. Naval aviation consists of combat and service and training forces, and includes land-based naval aviation, air transport essential for naval operations, all air weapons and air techniques involved in the operations and activities of the Navy, and the entire remainder of the aeronautical organization of the Navy, together with the personnel necessary therefor.

(c) The Navy shall develop aircraft, weapons, tactics, technique, organization, and equipment of naval combat and service elements. Matters of joint concern as to these functions shall be coordinated between the Army, the Air Force, and the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 277, § 5012; renumbered § 5062 and amended Pub. L. 99–433, title V, § 511(b)(3), (4), Oct. 1, 1986, 100 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5012	5 U.S.C. 411a(b).	July 26, 1947, ch. 343, § 206(b), 61 Stat. 501.

PRIOR PROVISIONS

A prior section 5062, act Aug. 10, 1956, ch. 1041, 70A Stat. 281, prescribed the pay and allowances of the Deputy Comptroller, prior to repeal by Pub. L. 87–649, § 14c(11), Sept. 7, 1962, 76 Stat. 501, eff. Nov. 1, 1962.

AMENDMENTS

1986—Pub. L. 99–433, § 511(b)(3), renumbered section 5012 of this title as this section.

Subsec. (a). Pub. L. 99–433, § 511(b)(4)(A), substituted ''assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Navy to meet the needs of war'' for ''assigned and is generally responsible for naval reconnaissance, antisubmarine warfare, and protection of shipping''.

Subsec. (d). Pub. L. 99–433, § 511(b)(4)(B), struck out subsec. (d) which related to responsibility for expansion of peacetime naval components to meet the needs of war.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

§ 5063. United States Marine Corps: composition; functions

(a) The Marine Corps, within the Department of the Navy, shall be so organized as to include not less than three combat divisions and three air wings, and such other land combat, aviation, and other services as may be organic therein. The Marine Corps shall be organized, trained, and equipped to provide fleet marine forces of combined arms, together with supporting air components, for service with the fleet in the seizure or defense of advanced naval bases and for the conduct of such land operations as may be essential to the prosecution of a naval campaign. In addition, the Marine Corps shall provide detachments and organizations for service on armed vessels of the Navy, shall provide security detachments for the protection of naval property at naval stations and bases, and shall

perform such other duties as the President may direct. However, these additional duties may not detract from or interfere with the operations for which the Marine Corps is primarily organized.

(b) The Marine Corps shall develop, in coordination with the Army and the Air Force, those phases of amphibious operations that pertain to the tactics, technique, and equipment used by landing forces.

(c) The Marine Corps is responsible, in accordance with integrated joint mobilization plans, for the expansion of peacetime components of the Marine Corps to meet the needs of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 278, §5013; renumbered §5063, Pub. L. 99–433, title V, §511(b)(3), Oct. 1, 1986, 100 Stat. 1043.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5013	5 U.S.C. 411a(c) (less last 32 words of 1st sentence).	July 26, 1947, ch. 343, §206(c) (less last 32 words of 1st sentence), 61 Stat. 502; as amended June 28, 1952, ch. 479, §1, 66 Stat. 282.

PRIOR PROVISIONS

A prior section 5063, act Aug. 10, 1956, ch. 1041, 70A Stat. 281, related to establishment and duties of Office of Budget and Reports, prior to repeal by Pub. L. 99–433, §511(a).

A prior section 5064, acts Aug. 10, 1956, ch. 1041, 70A Stat. 281; Sept. 7, 1962, Pub. L. 87–649, §14(c)(12), (13), 76 Stat. 501; Dec. 12, 1980, Pub. L. 96–513, title III, §341, title V, §503(3), 94 Stat. 2901, 2911, related to Director and Assistant of Office of Budget and Reports, prior to repeal by Pub. L. 99–433, §511(a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

[CHAPTER 509—REPEALED]

[§§ 5081 to 5087. Repealed. Pub. L. 99–433, title V, §512(a), Oct. 1, 1986, 100 Stat. 1048]

Section 5081, acts Aug. 10, 1956, ch. 1041, 70A Stat. 281; Aug. 6, 1958, Pub. L. 85–599, §4(b), 72 Stat. 516; Sept. 7, 1962, Pub. L. 87–651, title I, §§114, 120, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, §402, 81 Stat. 53; Dec. 12, 1980, Pub. L. 96–513, title V, §503(3), 94 Stat. 2911, related to appointment, term of office, rank, and functions of Chief of Naval Operations. See section 5033 of this title.

Section 5082, acts Aug. 10, 1956, ch. 1041, 70A Stat. 282; Sept. 7, 1962, Pub. L. 87–651, title I, §121, 76 Stat. 513; Nov. 2, 1966, Pub. L. 89–718, §33, 80 Stat. 1119, related to coordinating duties of Chief of Naval Operations. See section 5032 of this title.

Section 5083, acts Aug. 10, 1956, ch. 1041, 70A Stat. 282; May 20, 1958, Pub. L. 85–422, §6(2), 72 Stat. 129; July 1, 1986, Pub. L. 99–348, title I, §104(c)(1), 100 Stat. 691, related to retirement of Chief of Naval Operations.

Section 5084, act Aug. 10, 1956, ch. 1041, 70A Stat. 282, related to quarters for Chief of Naval Operations.

Section 5085, acts Aug. 10, 1956, ch. 1041, 70A Stat. 283; Aug. 6, 1958, Pub. L. 85–599, §6(b), 72 Stat. 519; Dec. 12, 1980, Pub. L. 96–513, title V, §503(4), 94 Stat. 2911, related to appointment, powers, and duties of Vice Chief of Naval Operations. See section 5035 of this title.

Section 5086, acts Aug. 10, 1956, ch. 1041, 70A Stat. 283; Dec. 12, 1980, Pub. L. 96–513, title V, §503(5), 94 Stat. 2911, related to detail and duties of Deputy Chiefs of Naval Operations. See section 5036 of this title.

Section 5087, acts Aug. 10, 1956, ch. 1041, 70A Stat. 283; Dec. 12, 1980, Pub. L. 96–513, title V, §503(6), 94 Stat. 2911, related to detail and duties of Assistant Chiefs of Naval Operations. See section 5037 of this title.

[§ 5088. Renumbered § 5020]

[CHAPTER 511—REPEALED]

[§§ 5111, 5112. Repealed. Pub. L. 89–718, § 34(a), Nov. 2, 1966, 80 Stat. 1119]

Section 5111, acts Aug. 10, 1956, ch. 1041, 70A Stat. 284; Sept. 7, 1962, Pub. L. 87–649, §14(c)(14), 76 Stat. 501, created an Office of Naval Material, established position of Chief of Naval Material, and set out powers and duties of Chief of Naval Materials.

Section 5112, act Aug. 10, 1956, ch. 1041, 70A Stat. 284, provided for detailing of an officer as Vice Chief of Naval Material to serve in event of absence or disability of Chief of Naval Material.

DEPARTMENT OF DEFENSE REORGANIZATION ORDER

Eff. May 1, 1966, 31 F.R. 7188

REORGANIZATION OF THE DEPARTMENT OF THE NAVY

By virtue of the authority vested in me by section 125 of title 10 of the United States Code, and as Secretary of Defense, it is hereby ordered as follows:

SECTION 1. *Abolition of Office of Naval Material and Transfer of Functions.*—The Office of Naval Material and the offices of Chief of Naval Material and Vice Chief of Naval Material named in sections 5111 and 5112, title 10, United States Code, are hereby abolished and their functions, including those functions described in sections 5111 and 5082(a)(2), title 10, United States Code, are transferred to the Secretary of the Navy.

SEC. 2. *Abolition of Certain Bureaus and Transfer of Functions.*—The following bureaus, named in chapter 513 of title 10, United States Code, and the offices of the chiefs, deputy chiefs, and other officials of such bureaus are hereby abolished and all their functions are transferred to the Secretary of the Navy:

(a) Bureau of Naval Weapons;
(b) Bureau of Ships;
(c) Bureau of Supplies and Accounts; and
(d) Bureau of Yards and Docks.

SEC. 3. *Performance of Transferred Functions.*—Subject to the provisions of sections 5012 and 5013, title 10, United States Code, the Secretary of the Navy may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any office, agency, or employee, of the Department of the Navy of any function transferred to the Secretary by the provisions of this order, or assigning any such function to any other officer, or to any office, agency, or employee, of the Department of the Navy.

SEC. 4. *Transitional Provisions.*—In order to assist in the orderly transfer of functions and to promote continuity of operations, the Secretary of the Navy may, if he considers it necessary, delay beyond the effective date of this order the abolition of any office or the transfer of any function.

SEC. 5. *Effective Date.*—The provisions of this order shall take effect on the date determined under section 125, title 10, United States Code, or the first day of May 1966, whichever is later.

ROBERT S. MCNAMARA.

CHAPTER 513—BUREAUS; OFFICE OF THE JUDGE ADVOCATE GENERAL

Sec.
5131. Bureaus: names; location.
5132. Bureaus: distribution of business; orders; records; expenses.
5133. Bureau Chiefs: rank; pay and allowances; retirement.
[5134. Repealed.]
5135. Bureau Chiefs: succession to duties.
[5136. Repealed.]
5137. Bureau of Medicine and Surgery: Chief; Deputy Chief.

Sec.
5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions.
5139. Appointment of chiropractors in the Medical Service Corps.
[5140. Repealed.]
5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel.
5142. Chaplain Corps and Chief of Chaplains.
5142a. Deputy Chief of Chaplains.
5143. Office of Naval Reserve: appointment of Chief.
5144. Office of Marine Forces Reserve: appointment of Commander.
[5145 to 5147. Repealed.]
5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties.
5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General.
5150. Staff Corps of the Navy.
[5151 to 5153. Renumbered.]
[5154. Repealed.]
[5155. Renumbered.]

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XII, §1212(b)(2), (c)(2), Sept. 23, 1996, 110 Stat. 2692, 2693, added items 5143 and 5144.

1994—Pub. L. 103–337, div. A, title V, §504(b)(5), Oct. 5, 1994, 108 Stat. 2751, struck out ''and Judge Advocate General'' after ''Chiefs'' in item 5133.

1992—Pub. L. 102–484, div. A, title V, §505(b)(2), Oct. 23, 1992, 106 Stat. 2404, added item 5139.

1986—Pub. L. 99–433, title V, §514(a)(1), (3), Oct. 1, 1986, 100 Stat. 1054, struck out ''; OFFICE OF NAVAL RESEARCH'' after ''GENERAL'' in chapter heading, struck out items 5150 ''Office of Naval Research: Chief, appointment, term, emoluments; Assistant Chief; succession to duties'', 5151 ''Office of Naval Research: duties'', 5152 ''Office of Naval Research: appropriations; time limit'', and 5153 ''Naval Research Advisory Committee'', and redesignated item 5155 as item 5150.

1980—Pub. L. 96–513, title V, §§503(8), 513(6), Dec. 12, 1980, 94 Stat. 2911, 2931, struck out items 5134 ''Deputy Bureau Chiefs: pay'', 5139 ''Bureau of Medicine and Surgery: Medical Service Corps, Chief'', 5140 ''Bureau of Medicine and Surgery: Nurse Corps, Director'', and 5143 ''Bureau of Naval Personnel: Assistant Chief of Women'', and added item 5155.

Pub. L. 96–343, §11(b), Sept. 8, 1980, 94 Stat. 1130, substituted ''Chaplain Corps and'' for ''Bureau of Naval Personnel:'' in item 5142 and added item 5142a.

1967—Pub. L. 90–179, §2(3), Dec. 8, 1967, 81 Stat. 547, inserted reference to Judge Advocate General's Corps in item 5148 and inserted reference to Deputy Judge Advocate General and substituted ''Advocates General'' for ''Advocate General; succession to duties'' after ''Assistant Judge'' in item 5149.

1966—Pub. L. 89–718, §§35(2), (5), 36, Nov. 2, 1966, 80 Stat. 1120, inserted ''and Judge Advocate General'' after ''Bureau Chiefs'' in item 5133, struck out items 5145, 5146, 5147, and 5154 which related to Bureau of Ships and the Chief, Deputy Chief, and Division Heads thereof, Bureau of Supplies and Accounts and the Chief and Deputy Chief thereof, Bureau of Yards and Docks and the Chief and Deputy Chief thereof, and Bureau of Naval Weapons and the Chief and Deputy Chief thereof, respectively, and struck out ''pay,'' in item 5149.

1959—Pub. L. 86–174, §§1(3), 2(4), Aug. 18, 1959, 73 Stat. 395, 396, added item 5154 and eliminated items 5136 and 5144.

§ 5131. Bureaus: names; location

There are in the executive part of the Department of the Navy the following bureaus:

(1) Bureau of Medicine and Surgery.
(2) Bureau of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Pub. L. 86–174, §§1(1), 2(1), Aug. 18, 1959, 73 Stat. 395; Pub. L. 89–718, §35(1), Nov. 2, 1966, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5131	5 U.S.C. 429 (less applicability to distribution of business among bureaus).	R.S. 419 (less applicability to distribution of business among bureaus); July 19, 1892, ch. 206, 27 Stat. 243 (6th par.); June 30, 1914, ch. 130, 38 Stat. 408 (4th par.); July 12, 1921, ch. 44, §8 (1st 17 words of 1st par.), 42 Stat. 140; June 20, 1940, ch. 400, §1(a), (b), 54 Stat. 492; May 13, 1942, ch. 303, §1, 56 Stat. 276.

The bureaus are listed alphabetically for convenience. This listing has no effect on the precedence of the bureaus.

AMENDMENTS

1966—Pub. L. 89–718 struck out cls. (3) to (6) which related to the Bureau of Naval Weapons, the Bureau of Ships, the Bureau of Supplies and Accounts, and the Bureau of Yards and Docks, respectively.

1959—Pub. L. 86–174 inserted reference to Bureau of Naval Weapons and struck out reference to Bureau of Aeronautics and Bureau of Ordnance.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86–174 provided that the amendment of this section and section 5133 of this title and the repeal of sections 5136 and 5144 of this title shall be effective on July 1, 1960, or on any earlier date on which the Secretary of the Navy makes a formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance have been transferred to the Bureau of Naval Weapons or elsewhere.

BUREAU OF NAVAL WEAPONS; TRANSFER OF FUNDS

Section 3 of Pub. L. 86–174 provided that: ''The unexpended balances of appropriations and funds available for use in connection with the exercise of any function transferred to the Bureau of Naval Weapons shall be transferred in the manner provided by section 407 of the National Security Act of 1947, as amended (5 U.S.C. 172f) [10 U.S.C. 126], for use in connection with the transferred functions.''

§ 5132. Bureaus: distribution of business; orders; records; expenses

(a) Except as otherwise provided by law, the business of the executive part of the Department of the Navy shall be distributed among the bureaus as the Secretary of the Navy considers expedient and proper.

(b) Each bureau shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(c) Under the Secretary, each bureau has custody and charge of its records and accounts.

(d) Each bureau shall furnish to the Secretary estimates for its specific, general, and contingent expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5132(a)	5 U.S.C. 429 (as applicable to distribution of business among bureaus).	R.S. 419 (as applicable to distribution of business among bureaus).
	5 U.S.C. 455 (1st 23 words).	July 12, 1921, ch. 44, §8 (1st par., 1st 37 words), 42 Stat. 140.
5132(b)	5 U.S.C. 430 (last 39 words).	R.S. 420 (last 39 words).
	5 U.S.C. 430b.	June 20, 1940, ch. 400, §1(b) (2d sentence), 54 Stat. 493.
	5 U.S.C. 455 (less 1st 23 words).	July 12, 1921, ch. 44, §8 (1st par., less 1st 37 words), 42 Stat. 140.
5132(c)	5 U.S.C. 430 (less last 39 words).	R.S. 420 (less last 39 words).
5132(d)	5 U.S.C. 431.	R.S. 430.

In subsection (a) the phrase ''Except as otherwise provided by law'' is added to preserve provisions directing that the Chief of Naval Operations and other statutory offices and boards share in the business of the executive part of the Department of the Navy. The words ''The Bureau of Aeronautics shall be charged with matters pertaining to naval aeronautics'' in 5 U.S.C. 455 are omitted as implied in the name of the bureau and covered by the authority granted to the Secretary to distribute the business of the Department.

In subsection (b) the words ''and shall have full force and effect as such'' are omitted as surplusage.

In subsection (c) the words ''Under the Secretary'' are inserted to make the provisions of 5 U.S.C. 413 and 5 U.S.C. 430, the latter of which is here codified, harmonious and to give meaning to each provision.

TRANSFER OF FUNCTIONS

Transfer of functions of bureaus and reorganization, see note set out under section 5111 of this title.

§ 5133. Bureau Chiefs: rank; pay and allowances; retirement

(a) Unless appointed to a higher grade under another provision of law, an officer of the Navy, while serving as a chief of bureau, has the rank of rear admiral.

(b) Except for an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, an officer who is retired while serving as a chief of bureau, or who, after serving at least two and one-half years as chief of bureau, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the grade of rear admiral, and with retired pay based on that grade. An officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title may, upon retirement, be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list or active-duty list and with retired pay based on that grade.

(c) Except in time of war, any officer of a staff corps who has served as a chief of bureau for a full term is exempt from sea duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 285; Pub. L. 86–174, §2(2), Aug. 18, 1959, 73 Stat. 396; Pub. L. 87–649, §14c(15), Sept. 7, 1962, 76 Stat. 501; Pub. L. 89–288, §3, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 89–718, §35(2)–(4), Nov. 2, 1966, 80 Stat. 1120; Pub. L. 96–513, title V, §503(9), Dec. 12, 1980, 94 Stat. 2911; Pub. L. 103–337, div. A, title V, §504(b)(3), (5), Oct. 5, 1994, 108 Stat. 2751.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5133(a)	5 U.S.C. 441 (less applicability to JAG).	July 1, 1918, ch. 114, 40 Stat. 717 (1st sentence on p. 717, less applicability to JAG).
	5 U.S.C. 441a (as applicable to rank, pay and allowances).	June 20, 1940, ch. 400, §1(c) (2d sentence, less applicability to retirement), 54 Stat. 493.
	5 U.S.C. 439 (last 39 words).	July 12, 1921, ch. 44, §8 (2d par., last 42 words), 42 Stat. 140.
5133(b)	5 U.S.C. 425a (as applicable to Chiefs of Bureaus).	June 22, 1938, ch. 567, 52 Stat. 839 (as applicable to Chiefs of Bureaus).
	5 U.S.C. 441a (as applicable to retirement).	June 20, 1940, ch. 400, §1(c) (2d sentence as applicable to retirement), 54 Stat. 493.
5133(c)	34 U.S.C. 225.	R.S. 1436.

In subsection (a), the language that incorporates the rank, pay, and allowances of chiefs of bureaus of the War Department for chiefs of bureaus is executed. Creation of the Department of the Air Force by the National Security Act of 1947, and the saving provisions in §305 of that act, would relate chiefs of bureaus of the Navy to the corresponding officers of both the other military departments. Since there is now positive organizational law for both of those departments providing the grades of the departmental officers, and, since in the reorganization of the departments, there is no precise counterpart of the chief of a Navy bureau, it is inappropriate to continue the incorporation by reference. Subsection (a), therefore, provides that bureau chiefs are entitled to have the rank of rear admiral with pay and allowances of a rear admiral in the upper half, which, under §516 of the Officer Personnel Act of 1947, corresponds with major general. The subsection also recognizes the possibility of appointing an officer of the Marine Corps as Chief of the Bureau of Aeronautics by providing that such an appointee has the rank, pay, and allowances of a major general.

AMENDMENTS

1994—Pub. L. 103–337, §504(b)(5), struck out ''and Judge Advocate General'' after ''Chiefs'' in section catchline.

Subsec. (a). Pub. L. 103–337, §504(b)(3)(A), struck out ''or the Judge Advocate General'' after ''chief of bureau'' and struck out at end ''Unless appointed to a higher grade under another provision of law, an officer of the Marine Corps, while serving as Judge Advocate General, has the rank of major general.''

Subsec. (b). Pub. L. 103–337, §504(b)(3)(B), struck out ''or the Judge Advocate General'' after ''chief of bureau'' in two places and ''or major general, as appropriate'' after ''grade of rear admiral''.

1980—Subsec. (b). Pub. L. 96–513 struck out second sentence relating to retired pay of an officer retired in the grade of rear admiral, and inserted ''or active-duty list'' after ''active list'' in third sentence.

1966—Pub. L. 89–718 inserted reference to the Judge Advocate General in section catchline, substituted ''Judge Advocate General'' for ''Chief of the Bureau of Naval Weapons'', inserted ''or the Judge Advocate General'' after ''chief of bureau'' in subsec. (a), and ''or the Judge Advocate General'' after ''chief of bureau'' in subsec. (b).

1965—Subsec. (b). Pub. L. 89–288 permitted an officer who is serving or has served in the grade of vice admiral under section 5137(a) of this title, upon retirement, to be appointed by the President, by and with the advice and consent of the Senate, to the highest grade held by him while on the active list and with the retired pay based on that grade.

1962—Subsec. (a). Pub. L. 87–649 repealed provisions which prescribed the pay and allowances of a chief of bureau and of the Chief of the Bureau of Naval Weapons, in the Marine Corps. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

1959—Pub. L. 86–174 substituted ''Bureau of Naval Weapons'' for ''Bureau of Aeronautics''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1959 AMENDMENT

For effective date of amendment by Pub. L. 86–174 see note set out under section 5131 of this title.

TRANSFER OF FUNCTIONS

Transfer of functions of Offices of Bureau Chiefs, see note set out under section 5111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5138, 5142 of this title.

[§ 5134. Repealed. Pub. L. 87–649, § 14c(16), Sept. 7, 1962, 76 Stat. 501]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 286, prescribed pay of deputy chiefs of bureaus. See Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5135. Bureau Chiefs: succession to duties

(a) When there is a vacancy in the office of chief of a bureau, or during the absence or disability of the chief of a bureau, the deputy chief of that bureau, unless otherwise directed by the President, shall perform the duties of the chief until a successor is appointed or the absence or disability ceases.

(b) When subsection (a) cannot be complied with because of the absence or disability of the deputy chief of the bureau, the heads of the major divisions of the bureau, in the order directed by the Secretary of the Navy, shall perform the duties of the chief, unless otherwise directed by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5135(a)	5 U.S.C. 445 (less 1st 43 words).	Aug. 29, 1916, ch. 417, 39 Stat. 558 (3d par., 45th through 95th words).
	5 U.S.C. 446 (last 49 words).	Mar. 3, 1893, ch. 212, 27 Stat. 717 (1st par., last 53 words); May 13, 1942, ch. 303, §1, 56 Stat. 276.
	5 U.S.C. 447 (25th through 74th words).	May 4, 1898, ch. 234, §1, 30 Stat. 373 (12th par., 41st through 92d words).
	5 U.S.C. 448a.	June 20, 1940, ch. 400, §1(f), 54 Stat. 493.
	5 U.S.C. 449 (last 51 words).	July 26, 1894, ch. 165, §1, 28 Stat. 132 (3d par., last 56 words); July 11, 1919, ch. 9, 41 Stat. 147 (1st proviso).
	5 U.S.C. 452 (less 1st 35 words).	July 12, 1921, ch. 44, §8 (3d par., less 1st 35 words), 42 Stat. 140.
5135(b)	5 U.S.C. 432a (less applicability to JAG).	Feb. 3, 1942, ch. 35, §1 (less applicability to JAG), 56 Stat. 47.

HISTORICAL AND REVISION NOTES—CONTINUED

In subsection (a) all the provisions covering succession in case of the absence of the chiefs of the various bureaus are integrated and uniformly stated.

That part of 5 U.S.C. 448a, enacted in the Act of June 20, 1940, ch. 400, §1(f), 54 Stat. 493, relating to the succession by heads of major divisions of the Bureau of Ships is superseded by the Act of Feb. 3, 1942, ch. 35, §1 (5 U.S.C. 432a).

TRANSFER OF FUNCTIONS

Transfer of functions of Offices of Bureau Chiefs, see note set out under section 5111 of this title.

[§ 5136. Repealed. Pub. L. 86–174, § 2(3), Aug. 18, 1959, 73 Stat. 396]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 286, related to appointment, qualifications and term of Chief of Bureau of Aeronautics, and authorized detail of an officer as Deputy Chief of Bureau.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1960, or any earlier date on which the Secretary of the Navy makes formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance have been transferred to the Bureau of Naval Weapons or elsewhere, see note set out under section 5131 of this title.

§ 5137. Bureau of Medicine and Surgery: Chief; Deputy Chief

(a) The Chief of the Bureau of Medicine and Surgery shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active-duty list of the Navy in any corps of the Navy Medical Department. He has the title of Surgeon General. The Surgeon General, while so serving has the grade of vice admiral.

(b) An officer on the active-duty list of the Navy who is qualified to be the Chief of the Bureau of Medicine and Surgery may be detailed as Deputy Chief of the Bureau of Medicine and Surgery.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Pub. L. 89–288, §4, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 96–513, title V, §503(10), Dec. 12, 1980, 94 Stat. 2912; Pub. L. 104–106, div. A, title V, §506(b), Feb. 10, 1996, 110 Stat. 296.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5137(a)	5 U.S.C. 432.	R.S. 421.
	5 U.S.C. 438.	R.S. 426.
	5 U.S.C. 440 (less applicability to Paymaster General).	R.S. 1471 (less applicability to Paymaster General); June 20, 1940, ch. 400, §1(a), 54 Stat. 492.
5137(b)	5 U.S.C. 451 (less last 10 words).	R.S. 1375 (less last 10 words); Feb. 27, 1877, ch. 69, §1, 19 Stat. 244.

In subsection (a) the words ''from officers on the active list of the Navy in the Medical Corps'' are substituted for the words ''from the list of Surgeons of the Navy'' to conform to present statutory terminology, and the words ''or from officers having the rank of captain in the staff corps of the Navy'' are omitted as obsolete in view of the subsequent changes in staff corps

grades and the establishment of grades and ranks higher than captain in the staff corps. R.S. 421 and 426 were derived from the Act of July 5, 1862, ch. 134, 12 Stat. 510, and the Act of Mar. 3, 1871, ch. 117, § 10, 16 Stat. 537. The Act of July 5, 1862, provided that the Chief of the Bureau of Medicine and Surgery should be appointed from the list of surgeons in the Navy. At that time the senior medical officers were ''surgeons'' who ''ranked with'' commanders. Next junior to them were ''surgeons'' who ''ranked with'' lieutenants. The rank of lieutenant commander did not exist. The Act of Mar. 3, 1871, established five grades in the Medical Corps of which two, medical director and medical inspector, were higher than the grade of surgeon. Medical directors were given the relative rank of captain, medical inspectors the relative rank of commander, and surgeons the relative rank of lieutenant commander or lieutenant. The 1871 Act further provided that chiefs of bureaus might be appointed from officers having the relative rank of captain in the staff corps. This provision was probably intended to insure that the assignment of new grades and titles to senior staff corps officers should not be construed as a bar to their appointment as bureau chiefs. However, it was interpreted by the Commissioners who drafted the Revised Statutes as setting up a new category of officers from which bureau chiefs could be appointed, and it was therefore stated, in R.S. 421, as an alternative to each of the other categories specified for the various Bureaus in the 1862 Act and reenacted in R.S. 422–426. Thus the Chief of the Bureau of Medicine and Surgery could be appointed from surgeons, who had the relative rank of lieutenant commander or lieutenant in the Medical Corps, or from officers having the relative rank of captain in the Medical Corps, Pay Corps, or Engineer Corps. Section 405 of the Officer Personnel Act of 1947 (34 U.S.C. 10a) abolished the grade of surgeon and other staff corps grades and replaced them with grades having the same titles as the grades and ranks in the line. Officers who were ''surgeons'' are now ''lieutenant commanders and lieutenants in the Medical Corps.'' If this literal translation is made in R.S. 426 and the eligibility of all staff corps captains, as stated in R.S. 421, is retained, an absurd result is reached; i.e., lieutenants, lieutenant commanders, and captains in the Medical Corps are eligible for appointment as Chief of the Bureau of Medicine and Surgery; but commanders and rear admirals in that corps are ineligible; captains, but not rear admirals, in other staff corps are eligible by virtue of their rank alone, regardless of their lack of training in medicine. It appears, therefore, that the only reasonable meaning that can be given to R.S. 421 and 426 at the present time is that the Chief of the Bureau of Medicine and Surgery must be an officer of the Medical Corps.

In subsection (b) the words ''Deputy Chief of the Bureau'' are substituted for the words ''assistant to the Bureau'' for uniformity. The words ''An officer on the active list of the Navy in the Medical Corps'' are substituted for the words ''A surgeon, assistant surgeon, or passed assistant surgeon'' to conform to present statutory terminology and to describe clearly the class of officers eligible for detail under this subsection. When the source statute was enacted there was no class of officers exactly corresponding to officers of the present Naval Reserve, and retired officers could be called to active duty only in time of war, so that the detailing of an officer not on the active list as assistant to the bureau chief was probably not contemplated. Further, since the assistant or deputy must at times perform the duties of the chief, it is reasonable to assume that he was intended to be in the same category of officers. Later statutes relating to the Assistant Chiefs of the Bureau of Aeronautics and the Bureau of Ships, enacted at a time when there were Reserve officers and when retired officers could be called to duty at any time with their consent, specify that the assistant chiefs shall be officers on the active list.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, § 506(b)(1), substituted ''in any corps of the Navy Medical Department'' for ''in the Medical Corps''.

Subsec. (b). Pub. L. 104–106, § 506(b)(2), substituted ''who is qualified to be the Chief of the Bureau of Medicine and Surgery'' for ''in the Medical Corps''.

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list'' wherever appearing.

1965—Subsec. (a). Pub. L. 89–288 provided the Surgeon General, while so serving, with the grade of vice admiral.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5133 of this title.

§ 5138. Bureau of Medicine and Surgery: Dental Division; Chief; functions

(a) There is a Dental Division in the Bureau of Medicine and Surgery. An officer of the Dental Corps not below the grade of rear admiral (lower half) shall be detailed as Chief of the Dental Division.

(b) The Chief of the Dental Division is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(c) The dental functions of the Bureau of Medicine and Surgery shall be so defined and prescribed by Bureau directives, and if necessary by regulations of the Secretary of the Navy, that all such functions will be under the direction of the Dental Division. All matters relating to dentistry shall be referred to that Division.

(d) The Dental Division shall—

(1) establish professional standards and policies for dental practice;

(2) conduct inspections and surveys for maintenance of such standards;

(3) initiate and recommend action pertaining to complements, appointments, advancement, training assignment, and transfer of dental personnel; and

(4) serve as the advisory agency for the Bureau on all matters relating directly to dentistry.

(Aug. 10, 1956, ch. 1041, 70A Stat. 286; Pub. L. 87–649, § 14c(17), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96–513, title III, § 342, Dec. 12, 1980, 94 Stat. 2901; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5138	5 U.S.C. 456b.	Dec. 28, 1945, ch. 604, § 2, 59 Stat. 666.
	5 U.S.C. 456c.	Dec. 28, 1945, ch. 604, § 3, 59 Stat. 666; Aug. 7, 1947, ch. 512, § 427, 61 Stat. 880; Oct. 18, 1951, ch. 513, 65 Stat. 450.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (a). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''not below the grade of commodore admiral'' for ''in the grade of rear admiral''.

1962—Subsec. (b). Pub. L. 87–649 struck out ''pay, allowances, and'' after ''entitled to the same''. See Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§5139. Appointment of chiropractors in the Medical Service Corps

Chiropractors who are qualified under regulations prescribed by the Secretary of the Navy may be appointed as commissioned officers in the Medical Service Corps of the Navy.

(Added Pub. L. 102–484, div. A, title V, §505(b)(1), Oct. 23, 1992, 106 Stat. 2404.)

PRIOR PROVISIONS

A prior section 5139, acts Aug. 10, 1956, ch. 1041, 70A Stat. 287; Sept. 7, 1962, Pub. L. 87–649, §6(c)(1), 76 Stat. 494, established position of Chief of Medical Service Corps within Bureau of Medicine and Surgery, prior to repeal by Pub. L. 96–513, title III, §352(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2902, 2955, eff. Sept. 15, 1981.

REGULATIONS

Regulations required to be prescribed by amendment made by section 505 of Pub. L. 102–484 to be prescribed not later than 180 days after Oct. 23, 1992, see section 505(d) of Pub. L. 102–484, set out as a note under section 3070 of this title.

[§5140. Repealed. Pub. L. 96–513, title III, §352(a), Dec. 12, 1980, 94 Stat. 2902]

Section, acts Aug. 10 1956, ch. 1041, 70A Stat. 287; Aug. 21, 1957, Pub. L. 85–155, title II, §201(23), 71 Stat. 385; Sept. 7, 1962, Pub. L. 87–649, §6(c)(2), 76 Stat. 494; Sept. 30, 1966, Pub. L. 89–609, §1(6), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(14)(A), 81 Stat. 376, established position of Director of Nurse Corps within Bureau of Medicine and Surgery.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§5141. Bureau of Naval Personnel: Chief of Naval Personnel; Deputy Chief of Naval Personnel

(a) The Chief of the Bureau of Naval Personnel shall be known as the Chief of Naval Personnel. The Chief of Naval Personnel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years, from officers on the active-duty list in the line of the Navy not below the grade of commander.

(b) The Deputy Chief of the Bureau of Naval Personnel shall be known as the Deputy Chief of Naval Personnel. An officer on the active-duty list in the line of the Navy not below the grade of commander may be detailed as Deputy Chief of Naval Personnel.

(Aug. 10, 1956, ch. 1041, 70A Stat. 287; Pub. L. 96–513, title V, §503(11), Dec. 12, 1980, 94 Stat. 2912.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5141(a)	5 U.S.C. 432. 5 U.S.C. 434 (less applicability to Chief of BuOrd).	R.S. 421. R.S. 422 (less applicability to Chief of BuOrd, Bureau of Equipment and Recruiting, and BuDocks); May 13, 1942, ch. 303, §1, 56 Stat. 276.
5141(b)	5 U.S.C. 446 (less last 49 words).	Mar. 3, 1893, ch. 212 (1st par., less last 53 words), 27 Stat. 717; May 13, 1942, ch. 303, §1, 56 Stat. 276.

In subsection (a) the words ''from officers on the active list in the line of the Navy'' are substituted for the words ''from the list of officers of the Navy'' to conform to current terminology. Line officers alone had the ''grade'' of commander when the source statute was enacted. The words ''or from officers having the rank of captain in the staff corps of the Navy'' are omitted as obsolete in view of subsequent changes in the staff corps and in the staff corps ranks and grades. These words were derived from the Act of Mar. 3, 1871, ch. 117, §10, 16 Stat. 537, which established new staff corps grades and assigned to officers in the highest grade the relative rank of captain. They were probably intended merely to assure the eligibility of senior staff corps officers for appointment as chiefs of appropriate staff bureaus. However, as incorporated in R.S. 421, they provide a category of eligible officers which is an alternative to each of the categories listed in R.S. 422–426. Thus R.S. 421 and R.S. 422, as originally enacted, provided that the chiefs of the four ''line'' bureaus, Yards and Docks, Navigation, Ordnance, and Equipment and Recruiting, could be appointed from line officers not below the grade of commander or from officers having the relative rank of captain in any staff corps. Pursuant to these sections the Attorney General held in 1898 that an officer having the relative rank of captain in the Civil Engineer Corps could legally be appointed as Chief of the Bureau of Yards and Docks (22 Op. Atty. Gen. 47, 17 Mar. 1898). There is some confusion in the opinion as to which corps was meant. The proposed appointee was a member of the Civil Engineer Corps, but the Corps of Engineers is the corps mentioned in the conclusion of the opinion. A provision in the Act of June 29, 1906, ch. 3590, 34 Stat. 564, requires that the Chief of the Bureau of Yards and Docks be selected from officers of the Civil Engineer Corps, so that there is no longer any question as to that bureau. The Bureau of Equipment and Recruiting has been abolished, leaving only the Bureau of Naval Personnel (formerly Navigation) and the Bureau of Ordnance of the four ''line'' bureaus originally listed in R.S. 422. The statutes establishing new ''line'' bureaus, the Bureau of Ships and the Bureau of Aeronautics, contain their own requirements as to the qualifications of the chiefs. The abolition of the Corps of Engineers and the Construction Corps, with the transfer of officers in those corps to the line, has eliminated the only staff corps whose members had duties closely related to those of line officers. The present staff corps, with the possible exception of the Supply Corps, are all highly specialized. Furthermore, in five of the seven corps, captain is no longer the highest grade. In view of these facts it is considered that the provision of R.S. 421 making staff corps captains eligible for appointment as Chief of the Bureaus of Naval Personnel and Ordnance is obsolete.

In subsection (b) the words ''An officer on the active list in the line of the Navy not below the grade of com-

mander'' are substituted for the words ''An officer of the Navy not below the rank of commander'' to conform to current terminology and for clarity. When the source statute was enacted only line officers had the actual rank of commander. The words ''on the active list'' are inserted for the reasons stated in the revision note on § 5137(b) of this title. The words ''Deputy Chief'' are substituted for the words ''assistant to the Chief'' for the reason stated in the revision note on § 5134 of this title.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 5142. Chaplain Corps and Chief of Chaplains

(a) The Chaplain Corps is a staff corps of the Navy and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the office of the Chief of Chaplains of the Navy. The Chief of Chaplains shall be appointed by the President, by and with the advice and consent of the Senate, from officers of the Chaplain Corps in the grade of commander or above who are serving on active duty and who have served on active duty in the Chaplain Corps for at least eight years.

(c) An officer appointed as the Chief of Chaplains shall be appointed for a term of four years. However, the President may terminate or extend the appointment at any time.

(d)(1) The Chief of Chaplains shall perform such duties as may be prescribed by the Secretary of the Navy and by law.

(2) The Chief of Chaplains shall, with respect to all duties pertaining to the procurement, distribution, and support of personnel of the Chaplain Corps, report to and be supported by the Chief of Naval Personnel.

(e) The Chief of Chaplains of the Navy is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.

(Added Pub. L. 96–343, § 11(a), Sept. 8, 1980, 94 Stat. 1130; amended Pub. L. 105–85, div. A, title V, § 504(c)(1), Nov. 18, 1997, 111 Stat. 1725.)

PRIOR PROVISIONS

A prior section 5142, acts Aug. 10, 1956, ch. 1041, 70A Stat. 288; Sept. 7, 1962, Pub. L. 87–649, § 14c(18), 76 Stat. 501, provided for a Chief of Chaplains in Bureau of Naval Personnel, detailed by Chief of Naval Personnel from officers on active list of the Navy in Chaplains Corps not below grade of rear admiral, prior to repeal by Pub. L. 96–343, § 11(a).

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 struck out '', who are not on the retired list,'' after ''serving on active duty''.

§ 5142a. Deputy Chief of Chaplains

The Secretary of the Navy may detail as the Deputy Chief of Chaplains an officer of the Chaplain Corps in the grade of commander or above who is on active duty and who has served on active duty in the Chaplain Corps for at least eight years.

(Added Pub. L. 96–343, § 11(a), Sept. 8, 1980, 94 Stat. 1130; amended Pub. L. 105–85, div. A, title V, § 504(c)(2), Nov. 18, 1997, 111 Stat. 1725.)

AMENDMENTS

1997—Pub. L. 105–85 struck out '', who is not on the retired list,'' after ''who is on active duty''.

§ 5143. Office of Naval Reserve: appointment of Chief

(a) ESTABLISHMENT OF OFFICE: CHIEF OF NAVAL RESERVE.—There is in the executive part of the Department of the Navy, on the staff of the Chief of Naval Operations, an Office of the Naval Reserve, which is headed by a Chief of Naval Reserve. The Chief of Naval Reserve—

(1) is the principal adviser on Naval Reserve matters to the Chief of Naval Operations; and

(2) is the commander of the Naval Reserve Force.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Naval Reserve from flag officers of the Navy (as defined in section 5001(1)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Naval Reserve unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Naval Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2004, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Naval Reserve if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Naval Reserve is appointed for a term determined by the Chief of Naval Operations, normally four years, but may be removed for cause at any time. An officer serving as Chief of Naval Reserve may be reappointed for one additional term of up to four years.

(2) The Chief of Naval Reserve, while so serving, holds the grade of vice admiral.

(d) BUDGET.—The Chief of Naval Reserve is the official within the executive part of the Department of the Navy who, subject to the authority, direction, and control of the Secretary of the Navy and the Chief of Naval Operations, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Naval

Reserve. As such, the Chief of Naval Reserve is the director and functional manager of appropriations made for the Naval Reserve in those areas.

(e) ANNUAL REPORT.—(1) The Chief of Naval Reserve shall submit to the Secretary of Defense, through the Secretary of the Navy, an annual report on the state of the Naval Reserve and the ability of the Naval Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Naval Operations and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Naval Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 104–201, div. A, title XII, §1212(b)(1), Sept. 23, 1996, 110 Stat. 2691; amended Pub. L. 106–65, div. A, title V, §554(c), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, §1 [[div. A], title V, §507(b), title X, §1087(a)(18)], Oct. 30, 2000, 114 Stat. 1654, 1654A–103, 1654A–291; Pub. L. 107–314, div. A, title V, §501(a), Dec. 2, 2002, 116 Stat. 2529.)

PRIOR PROVISIONS

A prior section 5143, acts Aug. 10, 1956, ch. 1041, 70A Stat. 288; Sept. 7, 1962, Pub. L. 87–649, §6(c)(3), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, §14(B), (C), 81 Stat. 376, established in Bureau of Naval Personnel the position of Assistant Chief of Naval Personnel for Women, prior to repeal by Pub. L. 96–513, title III, §344(a), title VII, §701, Dec. 12, 1980, 94 Stat. 2901, 2955, effective Sept. 15, 1981.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–314 substituted ''December 31, 2004'' for ''October 1, 2003'' in introductory provisions.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title V, §507(b)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The President, by and with the advice and consent of the Senate, shall appoint the Chief of Naval Reserve from officers who—

''(1) have had at least 10 years of commissioned service;

''(2) are in a grade above captain; and

''(3) have been recommended by the Secretary of the Navy.''

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title V, §507(b)], amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(c) GRADE.—(1) The Chief of Naval Reserve holds office for a term determined by the Chief of Naval Operations, normally four years, but may be removed for cause at any time. He is eligible to succeed himself.

''(2) The Chief of Naval Reserve, while so serving, has the grade of rear admiral, without vacating the officer's permanent grade. However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of vice admiral.''

Subsec. (c)(2). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(18)], substituted ''has the grade of'' for ''has a grade''.

1999—Subsec. (c)(2). Pub. L. 106–65 substituted ''rear admiral'' for ''above rear admiral (lower half)'' and inserted at end ''However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of vice admiral.''

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Amendment by Pub. L. 106–65 effective 60 days after Oct. 5, 1999, with special provision for an officer who is a covered position incumbent who is appointed under that amendment to the grade of lieutenant general or vice admiral, see section 554(g), (h) of Pub. L. 106–65, set out as a note under section 3038 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

§5144. Office of Marine Forces Reserve: appointment of Commander

(a) ESTABLISHMENT OF OFFICE; COMMANDER, MARINE FORCES RESERVE.—There is in the executive part of the Department of the Navy an Office of the Marine Forces Reserve, which is headed by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, is the principal adviser to the Commandant on Marine Forces Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Commander, Marine Forces Reserve, from general officers of the Marine Corps (as defined in section 5001(2)) who have had at least 10 years of commissioned service.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Commander, Marine Forces Reserve, unless the officer—

(A) is recommended by the Secretary of the Navy; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Commander, Marine Forces Reserve, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2004, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Commander, Marine Forces Reserve, if the Secretary of the Navy requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Commander, Marine Forces Reserve, is appointed for a term determined by the Commandant of the Marine Corps, normally four years, but may be removed for cause at any time. An officer serving as Commander, Marine Forces Reserve, may be reappointed for one additional term of up to four years.

(2) The Commander, Marine Forces Reserve, while so serving, holds the grade of lieutenant general.

(d) ANNUAL REPORT.—(1) The Commander, Marine Forces Reserve, shall submit to the Secretary of Defense, through the Secretary of the

Navy, an annual report on the state of the Marine Corps Reserve and the ability of the Marine Corps Reserve to meet its missions. The report shall be prepared in conjunction with the Commandant of the Marine Corps and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Commander, Marine Forces Reserve, under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 104–201, div. A, title XII, §1212(c)(1), Sept. 23, 1996, 110 Stat. 2692; amended Pub. L. 106–65, div. A, title V, §554(d), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, §1 [[div. A], title V, §507(c), title X, §1087(a)(19)], Oct. 30, 2000, 114 Stat. 1654, 1654A–103, 1654A–291; Pub. L. 107–314, div. A, title V, §501(a), Dec. 2, 2002, 116 Stat. 2529.)

PRIOR PROVISIONS

A prior section 5144, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, related to appointment and term of Chief of Bureau of Ordnance, and authorized detail of an officer as Deputy Chief of Bureau, prior to repeal by Pub. L. 86–174, §2(3), Aug. 18, 1959, 73 Stat. 396, effective July 1, 1960, or any earlier date on which the Secretary of the Navy made a formal finding that all the functions of the Bureau of Aeronautics and the Bureau of Ordnance had been transferred to the Bureau of Naval Weapons or elsewhere.

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–314 substituted ''December 31, 2004'' for ''October 1, 2003''.

2000—Subsec. (b). Pub. L. 106–398, §1 [[div. A], title V, §507(c)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: ''The President, by and with the advice and consent of the Senate, shall appoint the Commander, Marine Forces Reserve, from officers of the Marine Corps who—

''(1) have had at least 10 years of commissioned service;

''(2) are in a grade above colonel; and

''(3) have been recommended by the Secretary of the Navy.''

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title V, §507(c)], amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(c) TERM OF OFFICE; GRADE.—(1) The Commander, Marine Forces Reserve, holds office for a term determined by the Commandant of the Marine Corps, normally four years, but may be removed for cause at any time. He is eligible to succeed himself.

''(2) The Commander, Marine Forces Reserve, while so serving, has the grade of major general, without vacating the officer's permanent grade. However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.''

Subsec. (c)(2). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(19)], substituted ''has the grade of'' for ''has a grade''.

1999—Subsec. (c)(2). Pub. L. 106–65 substituted ''major general'' for ''above brigadier general'' and inserted at end ''However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.''

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Amendment by Pub. L. 106–65 effective 60 days after Oct. 5, 1999, with special provision for an officer who is a covered position incumbent who is appointed under that amendment to the grade of lieutenant general or vice admiral, see section 554(g), (h) of Pub. L. 106–65, set out as a note under section 3038 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

[§§ 5145 to 5147. Repealed. Pub. L. 89–718, § 35(5), Nov. 2, 1966, 80 Stat. 1120]

Section 5145, acts Aug. 10, 1956, ch. 1041, 70A Stat. 289; May 13, 1960, Pub. L. 86–454, 74 Stat. 103; Sept. 7, 1962, Pub. L. 87–649, §14(c)(19), 76 Stat. 501, provided for appointment of Chief of Bureau of Ships, detailing and rank of Deputy Chief, and detailing of heads of major divisions of Bureau of Ships.

Section 5146, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for appointment of Chief of Bureau of Supplies and Accounts and detailing of Deputy Chief.

Section 5147, act Aug. 10, 1956, ch. 1041, 70A Stat. 289, provided for appointment of Chief of Bureau of Yards and Docks and detailing of Deputy Chief.

§ 5148. Judge Advocate General's Corps: Office of the Judge Advocate General; Judge Advocate General; appointment, term, emoluments, duties

(a) The Judge Advocate General's Corps is a Staff Corps of the Navy, and shall be organized in accordance with regulations prescribed by the Secretary of the Navy.

(b) There is in the executive part of the Department of the Navy the Office of the Judge Advocate General of the Navy. The Judge Advocate General shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. He shall be appointed from judge advocates of the Navy or the Marine Corps who are members of the bar of a Federal court or the highest court of a State or Territory and who have had at least eight years of experience in legal duties as commissioned officers. If an officer appointed as the Judge Advocate General holds a lower regular grade, the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate.

(c) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(d) The Judge Advocate General of the Navy, under the direction of the Secretary of the Navy, shall—

(1) perform duties relating to legal matters arising in the Department of the Navy as may be assigned to him;

(2) perform the functions and duties and exercise the powers prescribed for the Judge Advocate General in chapter 47 of this title;

(3) receive, revise, and have recorded the proceedings of boards for the examination of officers of the naval service for promotion and retirement; and

(4) perform such other duties as may be assigned to him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 289; Pub. L. 87–649, §14c(20), Sept. 7, 1962, 76 Stat. 501; Pub. L. 90–179, §2(1), Dec. 8, 1967, 81 Stat. 546; Pub. L.

96–513, title III, §343, Dec. 12, 1980, 94 Stat. 2901; Pub. L. 103–337, div. A, title V, §504(b)(1), Oct. 5, 1994, 108 Stat. 2750.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5148	5 U.S.C. 428.	June 8, 1880, ch. 129, 21 Stat. 164; June 5, 1896, ch. 331, 29 Stat. 251.
	50 U.S.C. 741 (as applicable to Navy JAG).	May 5, 1950, ch. 169, §13 (as applicable to Navy JAG), 64 Stat. 147.
	5 U.S.C. 441 (as applicable to JAG).	July 1, 1918, ch. 114, 40 Stat. 717 (1st sentence on p. 717, as applicable to JAG).
	5 U.S.C. 425a (as applicable to JAG).	June 22, 1938, ch. 567 (as applicable to JAG), 52 Stat. 839.

In subsection (b) the rank, pay, allowances, and privileges of retirement of chiefs of bureaus of the Navy are incorporated. 5 U.S.C. 441 apparently relates the Judge Advocate General of the Navy to the Judge Advocate General of the Army, as well as to bureau chiefs. However, since the creation of the Department of the Air Force by the National Security Act of 1947, if the incorporation to the Army provision is retained, the saving provisions in the act require an incorporation also to the rank, etc., of the Judge Advocate General of the Air Force. The rank of the Judge Advocate General of each of the other departments is now specified in organizational law to be major general. Since it is possible that these ranks may at some future time not be the same, incorporation by reference to them is no longer appropriate. Instead, the section relates the Judge Advocate General's rank, pay, allowances, and privileges of retirement to those of bureau chiefs as does 5 U.S.C. 441, in part.

In subsection (c), clauses (1) and (4) are substituted for the words ''and perform such other duties as have heretofore been performed by the Solicitor and Naval Judge Advocate General'' to describe the duties of the Judge Advocate General directly instead of by reference to the duties performed by an officer whose office was abolished more than 75 years ago.

Subsection (c)(2) is substituted for the reference, in 5 U.S.C. 428, to courts-martial and courts of inquiry, since the Uniform Code of Military Justice has superseded prior law as to the duties of the Judge Advocates General relating to these courts.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–337, §504(b)(1)(A), added last sentence and struck out former last sentence which read as follows: ''While so serving, the Judge Advocate General of the Navy shall be entitled to the rank and grade of rear admiral or major general, as appropriate, unless entitled to a higher rank and grade under another provision of law.''

Subsec. (c). Pub. L. 103–337, §504(b)(1)(B), added subsec. (c) and struck out former subsec. (c) which read as follows: ''The Judge Advocate General of the Navy is entitled to the same rank and privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.''

1980—Subsec. (b). Pub. L. 96–513 inserted provision entitling Judge Advocate General of Navy to rank and grade of rear admiral or major general, as appropriate.

1967—Pub. L. 90–179, §2(1)(A), inserted reference to Judge Advocate General's Corps in section catchline.

Subsecs. (a) to (d). Pub. L. 90–179, §2(1)(B), (C), added subsec. (a), redesignated existing subsecs. (a) to (c) as (b) to (d), respectively, and in subsec. (b) as so redesignated substituted ''judge advocates'' for ''officers''.

1962—Subsec. (b). Pub. L. 87–649 struck out '', pay, allowances,'' after ''same rank''. See Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

REDESIGNATION OF NAVY LAW SPECIALISTS AS JUDGE ADVOCATES

Section 8 of Pub. L. 90–179 provided that:

''(a) In this section 'law specialist' means a line officer on the active or retired list of the Regular Navy or of the Naval Reserve designated for special duty (law) or a line officer of the Naval Reserve assigned a numerical designator indicating a special duty officer (law).

''(b) All law specialists in the Navy are redesignated as judge advocates in the Judge Advocate General's Corps of the Navy. Each law specialist of the Navy who is on a promotion list on the day before the effective date of this Act [Dec. 8, 1967] shall be placed on the appropriate promotion list for the Judge Advocate General's Corps and shall be eligible for promotion when the officer who is to be his running mate in the next higher grade becomes eligible for promotion in that grade.''

SAVINGS PROVISION

Section 10 of Pub. L. 90–179 provided that: ''This Act [enacting sections 5578a and 5587a of this title, amending this section, sections 801, 806, 815, 827, 865, 936, 5149, 5404, 5508, 5581, 5587, 5600, 5652a, 5702, 5708, 5753, 5762, 5896, 5897 and 6378 of this title, and section 202 of Title 37, and enacting provisions set out as notes under this section and section 5149 of this title] does not affect rights accrued, duties matured, or proceedings commenced before its effective date. Redesignation of an officer under section 8(b) of this Act [set out as a note under this section] shall not operate to change the computation of his service for any purpose.''

WOMEN OFFICERS IN JUDGE ADVOCATE GENERAL'S CORPS OF NAVY

Pub. L. 90–179, §11, Dec. 8, 1967, 81 Stat. 549, provided that all provisions of law applicable to male officers in the Navy Judge Advocate General's Corps, including Naval Reserve, were applicable to women Corps officers, prior to repeal by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5149 of this title.

§5149. Office of the Judge Advocate General: Deputy Judge Advocate General; Assistant Judge Advocates General

(a)(1) There is a Deputy Judge Advocate General of the Navy who is appointed by the President, by and with the advice and consent of the Senate, from among judge advocates of the Navy and Marine Corps who have the qualifications prescribed for the Judge Advocate General. If an officer appointed as the Deputy Judge Advocate General holds a lower regular grade, the officer shall be appointed in the regular grade of rear admiral or major general, as appropriate.

(2) Under regulations prescribed by the Secretary of Defense, the Secretary of the Navy, in selecting an officer for recommendation to the President for appointment as the Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(b) An officer of the Judge Advocate General's Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving, a judge advocate who holds a grade lower than rear admiral (lower half) shall hold the grade of rear admiral (lower half), if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of rear admiral (lower half). If he is retired as a rear admiral (lower half), he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(c) A judge advocate of the Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title may be detailed as Assistant Judge Advocate General of the Navy. While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general, if he is appointed to that grade by the President, by and with the advice and consent of the Senate. An officer who is retired while serving as Assistant Judge Advocate General of the Navy under this subsection or who, after serving at least twelve months as Assistant Judge Advocate General of the Navy, is retired after completion of that service while serving in a lower rank or grade, may, in the discretion of the President, be retired with the rank and grade of brigadier general. If he is retired as a brigadier general, he is entitled to the retired pay of that grade, unless entitled to higher pay under another provision of law.

(d) When there is a vacancy in the Office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(e) When subsection (d) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the Assistant Judge Advocates General, in the order directed by the Secretary of the Navy, shall perform the duties of the Judge Advocate General.

(Aug. 10, 1956, ch. 1041, 70A Stat. 290; Pub. L. 85–861, §33(a)(28), Sept. 2, 1958, 72 Stat. 1566; Pub. L. 87–649, §14c(21), Sept. 7, 1962, 76 Stat. 501; Pub. L. 89–718, §36, Nov. 2, 1966, 80 Stat. 1120; Pub. L. 90–179, §2(2), Dec. 8, 1967, 81 Stat. 546; Pub. L. 90–623, §2(9), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title V, §503(13), Dec. 12, 1980, 94 Stat. 2912; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 99–661, div. A, title V, §508(b), Nov. 14, 1986, 100 Stat. 3867; Pub. L. 103–337, div. A, title V, §504(b)(2), Oct. 5, 1994, 108 Stat. 2751.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5149(a)	5 U.S.C. 444 (less last 19 words).	Aug. 29, 1916, ch. 417 (3d par., 96th through 121st word), 39 Stat. 558.
	5 U.S.C. 453 (as applicable to Asst. JAG).	Mar. 4, 1925, ch. 536, §15 (as applicable to Asst. JAG), 43 Stat. 1275.
5149(b)	5 U.S.C. 444 (last 19 words).	Aug. 29, 1916, ch. 417 (3d par., 122d word to end of par.), 39 Stat. 558.
5149(c)	5 U.S.C. 432a (as applicable to JAG).	Feb. 3, 1942, ch. 35, §1 (as applicable to JAG), 56 Stat. 47.

Changes in phraseology are made to conform to the language used in §5135 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–337 designated existing provisions as par. (1), added second sentence, struck out former second and third sentences which read as follows: ''While so serving he is entitled to the grade of rear admiral or major general, as appropriate, unless entitled to a higher grade under another provision of law. The Deputy Judge Advocate General is entitled to the same privileges of retirement as provided for chiefs of bureaus in section 5133 of this title.'', and added par. (2).

1986—Subsec. (a). Pub. L. 99–661, §508(b)(1), substituted ''There is a Deputy Judge Advocate General of the Navy who is appointed by the President, by and with the advice and consent of the Senate, from among judge advocates of the Navy and Marine Corps who have the qualifications prescribed for the Judge Advocate General'' for ''A judge advocate of the Navy or Marine Corps who has the qualifications prescribed for the Judge Advocate General in section 5148(b) of this title shall be detailed as Deputy Judge Advocate General of the Navy'', and struck out ''rank and'' before ''grade of'' and struck out ''rank or'' before ''grade under'' in second sentence.

Subsec. (b). Pub. L. 99–661, §508(b)(2), substituted ''While so serving, a judge advocate who holds a grade lower than rear admiral (lower half) shall hold the grade of rear admiral (lower half), if he is appointed to that grade by the President, by and with the advice and consent of the Senate'' for ''While so serving he is entitled to the rank and grade of rear admiral (lower half), unless entitled to a higher rank or grade under another provision of law''.

Subsec. (c). Pub. L. 99–661, §508(b)(3), substituted ''While so serving, a judge advocate who holds a grade lower than brigadier general shall hold the grade of brigadier general, if he is appointed to that grade by the President, by and with the advice and consent of the Senate'' for ''While so serving he is entitled to the rank and grade of brigadier general, unless entitled to a higher rank or grade under another provision of law''.

1985—Subsec. (b). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore'' in three places.

1981—Subsec. (b). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral'' in three places.

1980—Subsec. (a). Pub. L. 96–513, §503(13)(A), struck out ''(upper half)'' after ''entitled to the rank and grade of rear admiral''.

Subsec. (b). Pub. L. 96–513, §503(13)(B), (C), substituted ''rank and grade of commodore admiral'' for ''rank and grade of rear admiral (lower half)'' in two places, ''retired as a commodore admiral'' for ''retired as a rear admiral'', and ''retired pay of that grade'' for ''retired pay in the lower half of that grade''.

1968—Subsec. (c). Pub. L. 90–623 substituted ''5148(b)'' for ''4158(b)''.

1967—Pub. L. 90–179 inserted reference to Deputy Judge Advocate General and substituted ''Advocates General'' for ''Advocate General; succession to duties'' after ''Assistant Judge'' in section catchline.

Subsec. (a). Pub. L. 90–179 substituted provisions relating to the detailing of a judge advocate of the Navy

or Marine Corps as Deputy Judge Advocate General of the Navy, his rank while so serving and retirement privileges for provisions relating to the detailing of an officer of the Navy or Marine Corps as Assistant Judge Advocate General.

Subsecs. (b) to (d). Pub. L. 90–179 added subsecs. (b) and (c), redesignated former subsecs. (b) and (c) as (d) and (e), respectively, and in subsec. (d), as so redesignated, substituted ''Deputy Judge Advocate General'' for ''Assistant Judge Advocate General, unless otherwise directed by the President,''.

Subsec. (e). Pub. L. 90–179 redesignated former subsec. (c) as (e) and in subsec. (e), as so redesignated, substituted provisions relating to the performance of the duties of the Judge Advocate General by the Assistant Judge Advocates General in the event of the absence or disability of the Deputy Judge Advocate General for provisions relating to the performance of such duties by the heads of the major divisions of the Office of the Judge Advocate General in the event of the absence or disability of the Assistant Judge Advocate General.

1966—Pub. L. 89–718 struck out ''pay,'' before ''succession'' in section catchline.

1962—Subsec. (a). Pub. L. 87–649 repealed last sentence which provided that a person detailed as Assistant Judge Advocate General is entitled to the highest pay of his rank. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (b). Pub. L. 85–861 substituted ''office'' for ''Office''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to appointments or details made on or after Nov. 14, 1986, see section 508(f) of Pub. L. 99–661, set out as an Effective Date note under section 12210 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(8) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

OFFICER SERVING AS DEPUTY AND ASSISTANT JUDGE ADVOCATE OF THE NAVY ON DEC. 7, 1967; RANK; RETIREMENT BENEFITS

Section 9 of Pub. L. 90–179 provided that: ''Nothing in this Act [enacting sections 5578a and 5587a of this title, amending this section, sections 801, 806, 815, 827, 865, 936, 5148, 5404, 5508, 5581, 5587, 5600, 5652a, 5702, 5708, 5753, 5762, 5896, 5897, and 6378 of this title, and section 202 of Title 37, and enacting provisions set out as notes under this section and section 5184 of this title] shall operate to terminate or reduce the term of an officer who was serving as Deputy and Assistant Judge Advocate General of the Navy on the day before the effective date of this Act [Dec. 8, 1967] or to deprive to him of the rank, pay, allowances, or retirement privileges to which he was then entitled. Notwithstanding any other provision of law, an officer who was so serving on the day before the effective date of this Act shall be deemed to be detailed as Deputy Judge Advocate General, pursuant to section 5149 of title 10, United States Code, as amended by this Act [this section], and in addition to rights and benefits then accrued, to be entitled to the rank and retirement benefits authorized by that section. For the purposes of determining his eligibility for the retirement benefits authorized by section 5149 of title 10, United States Code, as amended by this Act [this section], an officer who is serving as Deputy Judge Advocate General on the effective date of this Act shall be credited with all service performed under appointment or detail as Deputy and Assistant Judge Advocate General before the effective date of this Act.''

§ 5150. Staff corps of the Navy

(a) The staff corps of the Navy are—
(1) the Medical Corps;
(2) the Dental Corps;
(3) the Judge Advocate General's Corps;
(4) the Chaplain Corps; and
(5) such other staff corps as may be established by the Secretary of the Navy under subsection (b).

(b)(1) The Secretary of the Navy may establish staff corps of the Navy in addition to the Medical Corps, the Dental Corps, the Judge Advocate General's Corps, and the Chaplain Corps. The Secretary may designate commissioned officers in, and may assign members to, any such staff corps.

(2) Subject to subsection (c), the Secretary of the Navy may provide for the appointment of the chief of any staff corps established under this subsection.

(c) The Secretary of the Navy, whenever the needs of the service require, may convene a selection board under section 611(a) of this title to select an officer in the Nurse Corps or in the Medical Service Corps (if such corps has been established under subsection (a)) for promotion to the grade of rear admiral, in the case of an officer in the Nurse Corps, or rear admiral (lower half), in the case of an officer in the Medical Service Corps. An officer promoted pursuant to such a selection shall be appointed by the Secretary to the position of Director of the Nurse Corps or Director of the Medical Service Corps, respectively, for a term of four years, to serve at the pleasure of the Secretary. For the purpose of computing the total number of flag officers in the staff corps of the Navy under section 526 of this title, an officer so appointed shall be considered an additional number in grade.

(Added Pub. L. 96–513, title III, § 351, Dec. 12, 1980, 94 Stat. 2902, § 5155; amended Pub. L. 97–22, § 6(a), July 10, 1981, 95 Stat. 129; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; renumbered § 5150, Pub. L. 99–433, title V, § 514(a)(2), Oct. 1, 1986, 100 Stat. 1054; Pub. L. 99–661, div. A, title XIII, § 1343(a)(23), Nov. 14, 1986, 100 Stat. 3994; Pub. L. 100–26, § 3(7), Apr. 21, 1987, 101 Stat. 274; Pub. L. 102–190, div. A, title X, § 1061(a)(22)(A), Dec. 5, 1991, 105 Stat. 1473; Pub. L. 107–314, div. A, title V, § 504(a)(2), Dec. 2, 2002, 116 Stat. 2531.)

PRIOR PROVISIONS

A prior section 5150 was renumbered section 5021 of this title.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 substituted ''for promotion to the grade of rear admiral, in the case of an officer in the Nurse Corps, or rear admiral (lower half), in the case of an officer in the Medical Service Corps'' for ''for promotion to the grade of rear admiral (lower half)'' in first sentence.

1991—Subsec. (c). Pub. L. 102–190 substituted ''section 526'' for ''section 5444''.

1987—Subsec. (c). Pub. L. 100–26 made technical amendment to directory language of Pub. L. 99–661, § 1343(a)(23). See 1986 Amendment note below.

1986—Subsec. (c). Pub. L. 99–661, as amended by Pub. L. 100–26, substituted ''rear admiral (lower half)'' for ''commodore''.

1981—Subsec. (c). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

Pub. L. 97–22 substituted ''Nurse Corps or in the Medical Service Corps (if such corps has been established under subsection (a)) for promotion to the grade of commodore admiral'' for ''Nurse Corps or Medical Service Corps for promotion to the grade of commodore admiral or rear admiral, as appropriate'', substituted ''An officer promoted pursuant to such a selection shall be appointed by the Secretary to the position of Director of the Nurse Corps or Director of the Medical Service Corps, respectively, for a term of four years, to serve at the pleasure of the Secretary'' for ''An officer so selected shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years to serve in the position, respectively, of Director of the Nurse Corps or Director of the Medical Service Corps'', and inserted provision that for the purpose of computing the total number of flag officers in the staff corps of the Navy under section 5444 of this title, an officer so appointed shall be considered an additional number in grade.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–26 applicable as if included in Pub. L. 99–661 when enacted on Nov. 14, 1986, see section 12(a) of Pub. L. 100–26, set out as a note under section 776 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5589, 6027, 12004 of this title.

[§ 5151. Renumbered § 5022]

[§ 5152. Renumbered § 5023]

[§ 5153. Renumbered § 5024]

[§ 5154. Repealed. Pub. L. 89–718, § 35(5), Nov. 2, 1966, 80 Stat. 1120]

Section, added Pub. L. 86–174, § 1(2), Aug. 18, 1959, 73 Stat. 395, provided for appointment of Chief of the Bureau of Naval Weapons and detailing of Deputy Chief.

[§ 5155. Renumbered § 5150]

[CHAPTER 515—REPEALED]

[§§ 5201 to 5204. Repealed. Pub. L. 99–433, title V, § 513(a), Oct. 1, 1986, 100 Stat. 1051]

Section 5201, acts Aug. 10, 1956, ch. 1041, 70A Stat. 292; May 20, 1958, Pub. L. 85–422, § 6(3), 72 Stat. 129; Aug. 6, 1958, Pub. L. 85–599, § 4(c), 72 Stat. 517; Sept. 7, 1962, Pub. L. 87–651, title I, § 114, 76 Stat. 513; June 5, 1967, Pub. L. 90–22, title IV, § 404, 81 Stat. 53; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(15), 94 Stat. 2912; July 1, 1986, Pub. L. 99–348, title I, § 104(c)(1), 100 Stat. 691, related to appointment, term, etc., of the Commandant of the Marine Corps. See section 5043 of this title.

Section 5202, acts Aug. 10, 1956, ch. 1041, 70A Stat. 292; Aug. 6, 1958, Pub. L. 85–599, § 6(c), 72 Stat. 519; Sept. 7, 1962, Pub. L. 87–649, § 14c(24), 76 Stat. 501; May 2, 1969, Pub. L. 91–11, 83 Stat. 8; Mar. 4, 1976, Pub. L. 94–225, § 1, 90 Stat. 202; Dec. 12, 1980, Pub. L. 96–513, title V, §§ 503(15), 513(7)(B), 94 Stat. 2912, 2931, related to detail and duties of the Assistant Commandant of the Marine Corps. See section 5044 of this title.

Section 5203, act Aug. 10, 1956, ch. 1041, 70A Stat. 292, related to detail of the Director of Personnel of the Marine Corps.

Section 5204, acts Aug. 10, 1956, ch. 1041, 70A Stat. 292; Aug. 3, 1961, Pub. L. 87–123, § 5(2), 75 Stat. 264, related to detail of the Quartermaster General of the Marine Corps.

[§ 5205. Repealed. Pub. L. 87–123, § 5(3), Aug. 3, 1961, 75 Stat. 264]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 293, related to retirement of heads of Marine Corps staff departments, their retired grade and pay.

[§ 5206. Repealed. Pub. L. 96–513, title III, § 344(b), Dec. 12, 1980, 94 Stat. 2901]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 293; Sept. 7, 1962, Pub. L. 87–649, § 6(c)(4), 76 Stat. 494; Nov. 8, 1967, Pub. L. 90–130, § 1(15), 81 Stat. 376, established in Office of Commandant of Marine Corps the position of Director of Women Marines.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 516—REPEALED]

[§§ 5221, 5222. Repealed. Pub. L. 95–82, title VI, § 611(a), Aug. 1, 1977, 91 Stat. 378]

Section 5221, added Pub. L. 90–110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310, provided for inclusion of naval districts within organization of Department of the Navy.

Section 5222, added Pub. L. 90–110, title X, § 1001(1), Oct. 21, 1967, 81 Stat. 310, provided for detailing of officers of the Navy not below the grade of rear admiral as commandants of each of naval districts.

[CHAPTER 517—REPEALED]

[§§ 5231 to 5234. Repealed. Pub. L. 96–513, title III, § 331, Dec. 12, 1980, 94 Stat. 2896]

Section 5231, acts Aug. 10, 1956, ch. 1041, 70A Stat. 294; July 30, 1977, Pub. L. 95–79, title VIII, § 811(b)(1), (2), 91 Stat. 336; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 818(a), 92 Stat. 1626, related to designation by President of officers on active list of Navy above the grade of captain and, in time of war or national emergency, above the grade of commander for fleet commands and other high positions. See section 601 of this title.

Section 5232, acts Aug. 10, 1956, ch. 1041, 70A Stat. 295; July 30, 1977, Pub. L. 95–79, title VIII, § 811(b)(3), (4), 91 Stat. 336; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 818(b), 92 Stat. 1626, related to designation by President of officers on active list of Marine Corps above the grade of colonel and, in time of war or national emergency, above the grade of lieutenant colonel for appropriate higher commands or performance of duty of great importance and responsibility. See section 601 of this title.

Section 5233, acts Aug. 10, 1956, ch. 1041, 70A Stat. 295; May 20, 1958, Pub. L. 85–422, § 6(4), 72 Stat. 129; related to retirement of an officer serving or having served in a grade to which appointed under former sections 5231 or 5232 of this title. See section 601 of this title.

Section 5234, acts Aug. 10, 1956, ch. 1041, 70A Stat. 295; Apr. 21, 1976, Pub. L. 94–273, § 2(3), 90 Stat. 375, authorized President during time of war or national emergency to suspend any provision of former sections 5231 or 5232 of this title relating to distribution in grade.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 519—REPEALED]

[§§ 5251, 5252. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section 5251, act Aug. 10, 1956, ch. 1041, 70A Stat. 295, related to administration of Naval Reserve by Chief of Naval Operations and Naval Reserve Policy Board. See sections 10108 and 10303 of this title.

Section 5252, act Aug. 10, 1956, ch. 1041, 70A Stat. 296, related to administration of Marine Corps Reserve by Commandant of Marine Corps and Marine Corps Reserve Policy Board. See sections 10109 and 10304 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

PART II—PERSONNEL

Chap.		Sec.
[531.	Repealed.]	
533.	Distribution in Grade	5441
535.	Grade and Rank of Officers	5501
537.	Enlistments	5531
539.	Original Appointments	5571
[541.	Repealed.]	
[543.	Repealed.]	
544.	Temporary Appointments	5721
[545.	Repealed.]	
[547.	Repealed.]	
[549.	Repealed.]	
551.	Officers in Command	5941
553.	Special Assignments and Details	5981
555.	Administration	6011
557.	Rations	6081
559.	Miscellaneous Prohibitions and Penalties	6111
561.	Miscellaneous Rights and Benefits	6141
563.	Hospitalization and Medical Care	6201
565.	Bands	6221
567.	Decorations and Awards	6241
569.	Discharge of Enlisted Members	6291
571.	Voluntary Retirement	6321
573.	Involuntary Retirement, Separation, and Furlough	6371
575.	Recall to Active Duty	6481
577.	Death Benefits; Care of the Dead	6521

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1673(a)(3), Oct. 5, 1994, 108 Stat. 3015, struck out items for chapters 531 ''Strength of Naval Reserve and Marine Corps Reserve'', 541 ''Running Mates for Reserve Officers'', and 549 ''Reserve Promotions''.

1980—Pub. L. 96–513, title V, § 503(16), Dec. 12, 1980, 94 Stat. 2912, inserted ''of Naval Reserve and Marine Corps Reserve'' after ''Strength'' in item for chapter 531, inserted ''for Reserve Officers'' after ''Running Mates'' in item for chapter 541, struck out item for chapter 543 ''Selection Boards'', added item for chapter 544, and struck out items for chapter 545 ''Promotions'' and for chapter 547 ''Examinations for Promotion''.

1958—Pub. L. 85–861, § 1(134), Sept. 2, 1958, 72 Stat. 1507, added item for chapter 549.

SUSPENSION OF CERTAIN SECTIONS OF TITLE 10 AND AMENDMENTS TO OFFICER PERSONNEL ACT OF 1947

Section 48 of act Aug. 10, 1956, provided that:

''SEC. 48. (a) Except as they may apply to women officers of the Regular Navy or the Regular Marine Corps appointed under section 5590 of title 10, United States Code, enacted by section 1 of this Act, the following sections of title 10 cease to operate whenever the number of male officers serving on active duty in the grade of ensign or above in the line of the Navy does not exceed the number of male officers holding permanent appointments in the grade of ensign or above on the active list in the line of the Regular Navy: Sections 5505, 5508, 5596, 5651–5663, 5701–5703, 5705–5711, 5751, 5753–5759, 5761, 5762, 5764–5770, 5785, 5786, 5791, 6371–6384, 6386, 6407.

''(b) For the purposes of subsection (a), the following officers may not be considered officers serving on active duty:

''(1) Retired officers.

''(2) Officers of the Naval Reserve assigned to active duty for training.

''(3) Officers of the Naval Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, or drilling the Naval Reserve or the Marine Corps Reserve.

''(4) Officers of the Naval Reserve ordered to temporary active duty for the purpose of prosecuting special work.

''(c) Title IV of the Officer Personnel Act of 1947 (61 Stat. 869), as amended, is amended by adding the following new section at the end thereof:

''[SEC. 437. Repealed. Pub. L. 104–106, div. A, title XV, § 1505(a), Feb. 10, 1996, 110 Stat. 514.]''

[CHAPTER 531—REPEALED]

[§§ 5401 to 5409. Repealed. Pub. L. 96–513, title III, § 311(a), Dec. 12, 1980, 94 Stat. 2889]

Section 5401, act Aug. 10, 1956, ch. 1041, 70A Stat. 297, prescribed authorized strength of Regular Navy in enlisted members. See section 521 et seq. of this title.

Section 5402, act Aug. 10, 1956, ch. 1041, 70A Stat. 297, prescribed authorized strength of Regular Marine Corps. See section 521 et seq. of this title.

Section 5403, act Aug. 10, 1956, ch. 1041, 70A Stat. 297, prescribed authorized strength of active list of the Navy in line officers. See section 521 et seq. of this title.

Section 5404, acts Aug. 10, 1956, ch. 1041, 70A Stat. 297; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(12), 78 Stat.

1072; Dec. 8, 1967, Pub. L. 90–179, §3, 81 Stat. 547, prescribed authorized strength of active list of Navy in officers in Supply Corps and Civil Engineer Corps, directed Secretary of Navy to compute annually the authorized strength of active list of Navy in officers in Medical Corps, Dental Corps, Chaplain Corps, Medical Service Corps, and Nurse Corps, and to establish annually the authorized strength of active list of Navy in officers in Judge Advocate General's Corps. See section 521 et seq. of this title.

Section 5405, act Aug. 10, 1956, ch. 1041, 70A Stat. 298, prescribed authorized strength of active list of Marine Corps. See section 521 et seq. of this title.

Section 5406, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; July 5, 1968, Pub. L. 90–386, §1(1), 82 Stat. 293, limited actual number of officers on active list in line of Navy that could be designated for engineering duty. See section 521 et seq. of this title.

Section 5407, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; July 5, 1968, Pub. L. 90–386, §1(2), 82 Stat. 293, limited actual number of officers on active list in line of Navy that could be designated for aeronautical engineering duty. See section 521 et seq. of this title.

Section 5408, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; July 5, 1968, Pub. L. 90–386, §1(3), 82 Stat. 293, limited actual number of officers on the active list in line of Navy that could be designated for special duty. See section 521 et seq. of this title.

Section 5409, acts Aug. 10, 1956, ch. 1041, 70A Stat. 298; Aug. 3, 1961, Pub. L. 87–123, §5(5), 75 Stat. 264, prescribed number of officers of actual number of officers on active lists in the line of Navy and of Marine Corps, that could be designated for limited duty. See section 521 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 5410, 5411. Repealed. Pub. L. 90–130, § 1(16), Nov. 8, 1967, 81 Stat. 376]

Section 5410, act Aug. 10, 1956, ch. 1041, 70A Stat. 928, placed upper limits, stated in terms of percentages of the authorized strength of the Regular Navy and Regular Marine Corps in enlisted members, on the authorized strength of enlisted women in each.

Section 5411, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, placed upper limits, stated in terms of percentages of the authorized strength in enlisted women of the Regular Navy and Regular Marine Corps, on the authorized strength of the Regular Navy and Regular Marine Corps in women officers.

[§ 5412. Repealed. Pub. L. 96–513, title III, § 311(a), Dec. 12, 1980, 94 Stat. 2889]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, prescribed authorized strength of Regular Navy in enlisted members in Hospital Corps. See section 521 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 5413, 5414. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section 5413, act Aug. 10, 1956, ch. 1041, 70A Stat. 299, related to authorized strengths of Naval Reserve and Marine Corps Reserve. See section 12001(a) of this title.

Section 5414, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490; amended Pub. L. 86–559, §1(33), (34), June 30, 1960, 74 Stat. 273; Pub. L. 96–513, title V, §513(8)(B), Dec. 12, 1980, 94 Stat. 2931; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506, related to authorized strength of Naval Reserve and Marine Corps Reserve in officers in active status in grades above chief warrant officer, W–5. See section 12003 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§§ 5415 to 5417. Repealed. Pub. L. 96–513, title III, §§ 311(a), 312, Dec. 12, 1980, 94 Stat. 2889]

Section 5415, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490, excluded enlisted members of the Navy or Marine Corps serving as midshipmen or cadets in any of the military academies from computations of authorized strengths. See section 521 et seq. of this title.

Section 5416, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490, excluded members of the Navy or the Marine Corps, or of the Coast Guard when it is operating as a service in the Navy, detailed for duty with United States agencies outside the Department of Defense on a reimbursable basis, from computations of authorized strengths or numbers in grade. See section 521 et seq. of this title.

Section 5417, added Pub. L. 85–861, §1(110)(A), Sept. 2, 1958, 72 Stat. 1490, directed Secretary of Defense, with approval of President, to estimate annually, for each of five years following such estimate, the strengths of the Navy and the Marine Corps in officers on active lists exclusive of officers specifically authorized as additional numbers. See section 521 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 533—DISTRIBUTION IN GRADE

Sec.
5441. Prescribed number; vacancies.
[5442 to 5449. Repealed.]
5450. Regular Navy: retired flag officers on active duty.
5451. Suspension: preceding sections.
[5452 to 5458. Repealed.]

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, §1501(c)(20), Feb. 10, 1996, 110 Stat. 499, struck out item 5454 ''Computations: rule when fraction occurs in final result''.

1994—Pub. L. 103–337, div. A, title XVI, §1673(b)(1), Oct. 5, 1994, 108 Stat. 3016, struck out items 5456 ''Naval Reserve and Marine Corps Reserve'', 5457 ''Naval Reserve: officers in an active status in grades above chief warrant officer, W–5'', and 5458 ''Marine Corps Reserve: officers in an active status in grades above chief warrant officer, W–5''.

1991—Pub. L. 102–190, div. A, title XI, §1131(8)(B), Dec. 5, 1991, 105 Stat. 1506, substituted ''W–5'' for ''W–4'' in items 5457 and 5458.

1990—Pub. L. 101–510, div. A, title IV, §403(b)(2)(B), Nov. 5, 1990, 104 Stat. 1545, struck out items 5442 ''Navy: line officers on active duty; rear admirals (lower half) and rear admirals'', 5443 ''Marine Corps: officers on active duty; brigadier generals and major generals'', 5444 ''Navy: staff corps officers on active duty; rear admirals (lower half) and rear admirals'', and 5446 ''Application: sections 5442, 5443, 5444''.

1985—Pub. L. 99–145, title V, §514(b)(6)(B), (7)(B), Nov. 8, 1985, 99 Stat. 629, substituted ''rear admirals (lower half)'' for ''commodores'' in items 5442 and 5444.

1981—Pub. L. 97–86, title IV, §405(b)(6)(B), (7)(B), Dec. 1, 1981, 95 Stat. 1106, substituted ''commodores'' for ''commodore admirals'' in items 5442 and 5444.

Pub. L. 97–22, §10(b)(6)(B), July 10, 1981, 95 Stat. 137, struck out item 5455 ''Computations and determinations: effect on status of officers''.

1980—Pub. L. 96–513, title V, §§ 503(18), 513(9)(A), Dec. 12, 1980, 94 Stat. 2912, 2931, inserted ''; commodore admirals and rear admirals'' in item 5442, inserted ''; brigadier generals and major generals'' in item 5443, inserted ''; commodore admirals and rear admirals'' in item 5444, struck out items 5445 ''Suspension: sections 5442, 5443, 5444'', 5447 ''Navy: line officers on the active list; permanent grade'', 5448 ''Marine Corps: officers on the active list; permanent grade'', 5449 ''Navy: staff corps officers on the active list; permanent grade'', and 5452 ''Navy: women line officers on active duty; Marine Corps: women officers on active duty'', and substituted ''in grades'' for ''in permanent grades'' in items 5457 and 5458.

1967—Pub. L. 90–130, §1(17)(F), (H), Nov. 8, 1967, 81 Stat. 377, struck out item 5453 ''Marine Corps: women officers on the active list; permanent grade'', and substituted: ''Navy: women line officers on active duty; Marine Corps: women officers on active duty'' for ''Navy: women line officers on the active list; permanent grade'' in item 5452.

1958—Pub. L. 85–861, §1(113)(B), Sept. 2, 1958, 72 Stat. 1492, added items 5457 and 5458.

§ 5441. Prescribed number; vacancies

In this chapter, the term ''prescribed number'' or ''number . . . prescribed'' as applied to a grade, means the number of officers of a described corps, designation, or other category that shall be maintained in the grade concerned. Except as otherwise specifically provided, the actual number of officers in a grade may not exceed the prescribed number. Vacancies occur whenever, and to the extent that, the actual number falls below the prescribed number.

(Aug. 10, 1956, ch. 1041, 70A Stat. 299; Pub. L. 96–513, title III, §313(a), Dec. 12, 1980, 94 Stat. 2889; Pub. L. 101–189, div. A, title XVI, §1622(e)(8), Nov. 29, 1989, 103 Stat. 1605.)

HISTORICAL AND REVISION NOTES

This section is derived from the distribution-in-grade provisions of the Officers Personnel Act of 1947. It is inserted here to show clearly what is meant by the ''authorized number'' of officers in a grade as used in the distribution-in-grade sections of the Officer Personnel Act. ''Prescribed number'' is substituted for ''authorized number'' because the latter, as used in other provisions of law, means simply the maximum number of persons authorized to be in a designated category. As used in the distribution-in-grade provisions of the Officer Personnel Act the term means not only the maximum number of officers that may be in a particular grade, but also the number of officers that should be maintained in that grade. It places not only a ceiling but a floor on the number of officers for the grade concerned. This is accomplished by establishing vacancies when the actual number of officers in the grade concerned falls below the ''authorized'' or, as used here, the ''prescribed'' number. Where there is a prescribed number for a grade, an officer should, in the absence of other controlling provisions of law, be promoted to that grade to fill an existing vacancy, as of the date on which the vacancy occurred. In this manner, at least constructively, the prescribed number is maintained.

There is no source for the section because the Officer Personnel Act did not attempt specifically to define ''authorized number'' in this context. The meaning of the term is derived only from understanding the effect given it throughout the Officer Personnel Act and from the imperative requirements of sections 103, 203, and 303 of the act.

AMENDMENTS

1989—Pub. L. 101–189 inserted '', the term'' after ''In this chapter''.

1980—Pub. L. 96–513 struck out ''or combination of grades'' after ''to a grade'', after ''in the grade'', and after ''in a grade''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§§ 5442 to 5444. Repealed. Pub. L. 101–510, div. A, title IV, § 403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545]

Section 5442, acts Aug. 10, 1956, ch. 1041, 70A Stat. 300; Pub. L. 90–386, §1(4), July 5, 1968, 82 Stat. 293; Dec. 12, 1980, Pub. L. 96–513, title III, §313(b), 94 Stat. 2889; Dec. 1, 1981, Pub. L. 97–86, title IV, §405(b)(1), (3), (6)(A), 95 Stat. 1105, 1106; Nov. 8, 1985, Pub. L. 99–145, title V, §514(b)(1), (3), (6)(A), 99 Stat. 628; Nov. 14, 1986, Pub. L. 99–661, div. A, title XIII, §1343(a)(24), 100 Stat. 3994, set forth number of officers serving on active duty in Navy who may serve in grades of rear admiral (lower half) and rear admiral.

Section 5443, acts Aug. 10, 1956, ch. 1041, 70A Stat. 302; Aug. 3, 1961, Pub. L. 87–123, §5(6), 75 Stat. 265; Nov. 2, 1966, Pub. L. 89–731, §1, 80 Stat. 1160; Dec. 12, 1980, Pub. L. 96–513, title III, §313(c), 94 Stat. 2891, related to number of officers in Marine Corps on active duty who may serve in grades of brigadier general and major general.

Section 5444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 304; Aug. 21, 1957, Pub. L. 85–155, title II, §201(1)–(3), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, §1(17)(A), (B), 81 Stat. 376; Dec. 12, 1980, Pub. L. 96–513, title III, §302, title V, §503(19), 94 Stat. 2888, 2912; July 10, 1981, Pub. L. 97–22, §§6(b), 10(a)(3), 95 Stat. 130, 136; Dec. 1, 1981, Pub. L. 97–86, title IV, §405(b)(1)–(3), (7)(A), 95 Stat. 1105, 1106; Nov. 8, 1985, Pub. L. 99–145, title V, §514(b)(1)–(3), (7)(A), 99 Stat. 628, 629, related to total number of officers who may serve on active duty in Navy in grades of rear admiral (lower half) and rear admiral in staff corps.

[§ 5445. Repealed. Pub. L. 96–513, title III, § 313(d)(1), Dec. 12, 1980, 94 Stat. 2892]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 306, related to suspension of sections 5442, 5443, and 5444 of this title. See section 526 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5446. Repealed. Pub. L. 101–510, div. A, title IV, § 403(b)(2)(A), Nov. 5, 1990, 104 Stat. 1545]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 306; Dec. 12, 1980, Pub. L. 96–513, title III, §373(a), title V, §503(20), 94 Stat. 2903, 2912, related to applicability of sections 5442, 5443, and 5444 of this title.

[§§ 5447 to 5449. Repealed. Pub. L. 96–513, title III, § 313(d)(2)–(4), Dec. 12, 1980, 94 Stat. 2892]

Section 5447, acts Aug. 10, 1956, ch. 1041, 70A Stat. 307; July 5, 1968, Pub. L. 90–386, §1(4), 82 Stat. 293, related to permanent grade distribution of Navy line officers on active list. See section 521 et seq. of this title.

Section 5448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 309; Aug. 3, 1961, Pub. L. 87–123, §5(7), 75 Stat. 265, related to permanent grade distribution of Marine Corps officers on active list. See section 521 et seq. of this title.

Section 5449, acts Aug. 10, 1956, ch. 1041, 70A Stat. 311; Aug. 21, 1957, Pub. L. 85–155, title II, §201(4), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, §1(17)(C), (D), 81 Stat. 376, related to number of Navy staff corps officers on active list in permanent grade of rear admiral. See section 525 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 5450. Regular Navy: retired flag officers on active duty

Except in time of war or national emergency, not more than ten retired flag officers of the Regular Navy may be on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312; Pub. L. 96–513, title V, § 503(21), Dec. 12, 1980, 94 Stat. 2912.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5450	34 U.S.C. 211e.	Aug. 7, 1947, ch. 512, § 430, 61 Stat. 881; Sept. 3, 1954, ch. 1257, § 702(a), 68 Stat. 1188.

In subsection (a) the words ''In addition * * * to the number of rear admirals and above authorized by titles I, II, and III and by section 413 of this Act, a total of'' are omitted as surplusage. Titles I, II, and III, and section 413 of the Officer Personnel Act of 1947 prescribe the number of officers on the lineal list who may have the grade of rear admiral. Retired officers are excluded from the lineal lists and are not counted for any purpose in the computations under the cited titles and section. The source text does not affect the authorized numbers so computed; it sets up an authorized number for a category of officers not previously covered.

The limitation on reserve flag officers on active duty contained in section 430 of the Officer Personnel Act of 1947 was repealed by section 702(a) of the Reserve Officer Personnel Act of 1954.

AMENDMENTS

1980—Pub. L. 96–513 struck out designation ''(a)'' before ''Except in time of war or national emergency'', substituted ''flag officers of the Regular Navy'' for ''officers of the Regular Navy in the grade of rear admiral and above'', and struck out subsec. (b) which provided that this section did not apply to fleet admirals or to retired officers ordered to temporary duty to serve on boards convened under chapter 543 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 5451. Suspension: preceding sections

The President, during a war or national emergency, may suspend any provision of the preceding sections of this chapter. Such a suspension may not continue beyond September 30 of the fiscal year following that in which the war or national emergency ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 312; Pub. L. 94–273, § 2(3), Apr. 21, 1976, 90 Stat. 375; Pub. L. 96–513, title V, § 503(22), Dec. 12, 1980, 94 Stat. 2913; Pub. L. 102–190, div. A, title X, § 1061(a)(21), Dec. 5, 1991, 105 Stat. 1473.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5451(a)	34 U.S.C. 3e.	Aug. 7, 1947, ch. 512, § 426(c); added June 30, 1951, ch. 196, § 1(h), 65 Stat. 109.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5451(b)	34 U.S.C. 5a–1.	May 5, 1954, ch. 180, § 403 68 Stat. 70.

AMENDMENTS

1991—Pub. L. 102–190 substituted ''The President'' for ''(a) Except as provided in subsection (b), the President'' and struck out subsec. (b) which authorized President to suspend provisions of sections 5442, 5443, and 5444 of this title only during war or national emergency declared by Congress or President after May 5, 1954.

1980—Subsec. (b). Pub. L. 96–513 struck out ''relating to officers serving in grades above lieutenant in the Navy or captain in the Marine Corps'' after ''and 5444 of this title''.

1976—Subsec. (a). Pub. L. 94–273 substituted ''September'' for ''June''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 5452. Repealed. Pub. L. 96–513, title III, § 373(b), Dec. 12, 1980, 94 Stat. 2903]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 312; Sept. 2, 1958, Pub. L. 85–861, § 1(111), 72 Stat. 1491; Nov. 8, 1967, Pub. L. 90–130, § 1(17)(E), 81 Stat. 376, authorized Secretary of the Navy to prescribe number of women officers in line of Navy eligible to hold appointments in each grade above lieutenant (junior grade) and a similar number in Marine Corps eligible to hold appointments in each grade above first lieutenant.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5453. Repealed. Pub. L. 90–130, § 1(17)(F), Nov. 8, 1967, 81 Stat. 377]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 313; Sept. 2, 1958, Pub. L. 85–861, § 1(112), 72 Stat. 1491, placed upper limits on number of women officers on active list of Marine Corps holding permanent appointments in grades of lieutenant colonel and major and required the Secretary to make computations at least once annually of numbers of women officers authorized under this section to hold permanent appointments in such grades, with authority to make prescribed temporary increases. See section 5452 of this title.

[§ 5454. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 313, related to rule for computations under this chapter when fraction occurs in final result. See section 12010 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 5455. Repealed. Pub. L. 97–22, § 10(b)(6)(A), July 10, 1981, 95 Stat. 137]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 313; Nov. 8, 1967, Pub. L. 90–130, § 1(17)(G), 81 Stat. 377; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(23), (24), 94 Stat. 2913 as amended July 10, 1981, Pub. L. 97–22, § 10(a)(3), 95 Stat. 136, provided that no computation or determina-

tion under section 5447, 5448, 5449, or 5452 of this title could reduce the grade or pay of any officer or remove any officer from the active list.

EFFECTIVE DATE OF REPEAL

Section 10(b) of Pub. L. 97–22 provided that the repeal is effective Sept. 15, 1981.

[§§ 5456 to 5458. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section 5456, act Aug. 10, 1956, ch. 1041, 70A Stat. 313, related to authorized strengths of Naval Reserve and Marine Corps Reserve. See section 12001(b) of this title.

Section 5457, added Pub. L. 85–861, § 1(113)(A), Sept. 2, 1958, 72 Stat. 1491; amended Pub. L. 86–559, § 1(35), (36), June 30, 1960, 74 Stat. 273; Pub. L. 92–559, Oct. 25, 1972, 86 Stat. 1173; Pub. L. 96–107, title III, § 302(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title III, § 313(e), title V, § 513(9)(B), Dec. 12, 1980, 94 Stat. 2892, 2931; Pub. L. 97–86, title IV, § 405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 101–189, div. A, title VII, § 712, Nov. 29, 1989, 103 Stat. 1477; Pub. L. 102–190, div. A, title X, § 1061(a)(22)(B), title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1473, 1506, related to authorized strength of Naval Reserve in officers in active status in grades above chief warrant officer, W–5. See sections 12004(a), (c), and (e)(2) and 12005(b) and (d)(2) of this title.

Section 5458, added Pub. L. 85–861, § 1(113)(A), Sept. 2, 1958, 72 Stat. 1492; amended Pub. L. 86–559, § 1(37)–(39), June 30, 1960, 74 Stat. 273; Pub. L. 96–107, title III, § 302(c), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96–513, title V, § 513(9)(C), Dec. 12, 1980, 94 Stat. 2931; Pub. L. 102–190, div. A, title X, § 1061(a)(22)(C), title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1473, 1506, related to authorized strength of Marine Corps Reserve in officers in active status in grades above chief warrant officer, W–5. See sections 12004(a), (d), (e)(2) and 12005(c), (d)(2) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 535—GRADE AND RANK OF OFFICERS

Sec.
5501. Navy: grades above chief warrant officer, W–5.
5502. Marine Corps: grades above chief warrant officer, W–5.
5503. Navy and Marine Corps: warrant officer grades.
[5504 to 5507. Repealed.]
5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1673(d)(2), Oct. 5, 1994, 108 Stat. 3016, struck out item 5506 ''Naval Reserve and Marine Corps Reserve; officers: precedence''.

1991—Pub. L. 102–190, div. A, title XI, § 1131(8)(B), Dec. 5, 1991, 105 Stat. 1506, substituted ''W–5'' for ''W–4'' in items 5501 and 5502.

1980—Pub. L. 96–513, title V, §§ 503(25), 513(10), Dec. 12, 1980, 94 Stat. 2913, 2932, struck out items 5504 ''Lineal lists: maintenance'', 5505 ''Reserve officers: change of lineal position'', and 5507 ''Rear admirals: determination of upper half''.

1958—Pub. L. 85–861, § 1(114)(B), Sept. 2, 1958, 72 Stat. 1493, added item 5506.

§ 5501. Navy: grades above chief warrant officer, W–5

The commissioned grades in the Navy above the grade of chief warrant officer, W–5, are the following:

(1) Admiral.
(2) Vice admiral.
(3) Rear admiral.
(4) Rear admiral (lower half).
(5) Captain.
(6) Commander.
(7) Lieutenant commander.
(8) Lieutenant.
(9) Lieutenant (junior grade).
(10) Ensign.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Pub. L. 96–513, title III, § 301, Dec. 12, 1980, 94 Stat. 2887; Pub. L. 97–86, title IV, § 405(a), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 99–145, title V, § 514(a)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–190, div. A, title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5501(a)	34 U.S.C. 1.	R.S. 1362; Mar. 3, 1883, ch. 97, § 1 (2d par. on p. 472, as applicable to masters and junior grade lieutenants), 22 Stat. 472; Mar. 3, 1899, ch. 413, § 7 (1st sentence, less proviso), 30 Stat. 1005.
	34 U.S.C. 211d(a) (as applicable to grades of admiral and vice admiral).	Aug. 7, 1947, ch. 512, § 413(a) (as applicable to grades of admiral and vice admiral), 61 Stat. 875.
	34 U.S.C. 10a (1st sentence).	Aug. 7, 1947, ch. 512, § 405 (1st sentence), 61 Stat. 872.
5501(b)	34 U.S.C. 350e (1st sentence).	July 24, 1941, ch. 320, § 6 (1st sentence), 55 Stat. 604; Apr. 9, 1943, ch. 38, § 1, 57 Stat. 59; Oct. 12, 1949, ch. 681, § 531(b)(28), 63 Stat. 839.

The Act of July 24, 1941, ch. 320, as amended (34 U.S.C. 350 et seq.), and § 413 of the Officer Personnel Act of 1947 (34 U.S.C. 211d) provide for the temporary appointment of officers to grades up to and including admiral. Staff corps officers, women officers, and reserve officers are not excluded from the operation of the provisions of the 1941 Act. Since authority exists for the appointment of officers of any category in any grade in the Navy, the existence of every grade in the several staff corps and in the Naval Reserve is recognized, and the restriction of these grades to the active list of the line is removed.

The grade of Fleet Admiral is omitted inasmuch as the law authorizing appointments in this grade was limited.

In subsection (a) the words ''above the grade of chief warrant officer, W–4'' are inserted for clarity.

Subsection (c) is added to make clear the fact that an officer serving in a position, such as chief of bureau, which entitles him to the rank, pay, and allowances of a rear admiral of the upper half ranks rear admirals receiving the pay and allowances of the lower half even though he has not been appointed to the grade of rear admiral or, if so appointed, is in the lower half. A statement of this fact is necessary to give full effect to 5 U.S.C. 441 which provides that chiefs of bureaus of the Navy Department and the Judge Advocate General of the Navy, while so serving, shall have ''corresponding rank and shall receive the same pay and allowances * * * as * * * chiefs of bureaus of the War Department and the Judge Advocate General of the Army''. The rank so conferred, corresponding to the Army rank of major general, is rear admiral of the upper half. In §§ 5133 and 5148 of this title, based on 5 U.S.C. 441, the reference to the Army rank is eliminated and the corresponding Navy rank is substituted. The substitution is made because, as stated in the revision notes on those sections, the creation of the Department of the Air Force and the reorganization of the Department of

the Army make it impracticable to continue to relate Navy Department positions to former War Department positions. This treatment of 5 U.S.C. 441 does not, however, completely cover the question of the rank, in relation to other officers in the Navy and other services, of a captain or rear admiral of the lower half who by virtue of his position becomes entitled to the rank, pay, and allowances of a rear admiral of the upper half. Under 34 U.S.C. 241a officers holding *commissions* in the grade of rear admiral rank with major generals if entitled to the pay of the upper half and with brigadier generals if entitled to the pay of the lower half. Under 5 U.S.C. 441 bureau chiefs and the Judge Advocate General rank with major generals regardless of the grade in which they hold commissions and, therefore, also rank all officers of the Navy who are ranked by major generals. This fact, obscured by the substitution of Navy rank in the codification of 5 U.S.C. 441, is set out in subsection (c).

AMENDMENTS

1991—Pub. L. 102–190 substituted ''W–5'' for ''W–4'' in section catchline and text.

1985—Par. (4). Pub. L. 99–145 substituted ''Rear admiral (lower half)'' for ''Commodore''.

1981—Par. (4). Pub. L. 97–86 substituted ''Commodore'' for ''Commodore admiral''.

1980—Pub. L. 96–513 struck out subsec. (a) designation from provisions formerly classified as such and, as so redesignated, inserted commodore admiral in the listing of commissioned grades above the grade of chief warrant officer, W–4 and struck out former subsecs. (b) and (c) which related to the grades of commodore and rear admiral, respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION PROVISIONS OF DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For transition provisions relating to the new commodore admiral grade established in the Navy, see section 614 of Pub. L. 96–513, set out as a note under section 611 of this title.

§ 5502. Marine Corps: grades above chief warrant officer, W–5

The commissioned grades in the Marine Corps above the grade of chief warrant officer, W–5, are:

(1) General.
(2) Lieutenant general.
(3) Major general.
(4) Brigadier general.
(5) Colonel.
(6) Lieutenant colonel.
(7) Major.
(8) Captain.
(9) First lieutenant.
(10) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5502	34 U.S.C. 651. 34 U.S.C. 629. 34 U.S.C. 623b(a) (as applicable to grade of lieutenant general). 34 U.S.C. 622 (as applicable to grade of general).	R.S. 1603. July 1, 1918, ch. 114, 40 Stat. 715 (1st par.). Aug. 7, 1947, ch. 512, §415(a) (as applicable to grade of lieutenant general), 61 Stat. 876. Jan. 20, 1942, ch. 10, §1, 56 Stat. 10; Aug. 7, 1947, ch. 512, §429 (as applicable to grade of general), 61 Stat. 880.

R.S. 1603 provides that officers of the Marine Corps shall be on the same footing as officers of similar grades in the Army. Recognition is made of the grades existing in the Army for the purpose of listing the grades authorized for the Marine Corps.

The provisions of the Act of July 1, 1918, ch. 114, 40 Stat. 715 (1st par.), pertaining to the appointment of a major general in addition to the Major General Commandant and a temporary major general were superseded by the Act of May 29, 1934, ch. 367, §2, 48 Stat. 812, which in turn was repealed by §436(e) of the Officer Personnel Act of 1947, 61 Stat. 882.

AMENDMENTS

1991—Pub. L. 102–190 substituted ''W–5'' for ''W–4'' in section catchline and text.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

§ 5503. Navy and Marine Corps: warrant officer grades

The warrant officer grades in the Navy and the Marine Corps are:

(1) Chief warrant officer, W–5.
(2) Chief warrant officer, W–4.
(3) Chief warrant officer, W–3.
(4) Chief warrant officer, W–2.
(5) Warrant officer, W–1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 314; Pub. L. 102–190, div. A, title XI, §1131(9), Dec. 5, 1991, 105 Stat. 1506.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5503	34 U.S.C. 135a(a) (less last sentence).	May 29, 1954, ch. 249, §3(a) (less 3d and last sentence), 68 Stat. 157.

This section is included in subtitle C for completeness and clarity. In duplicates, in part, §§555 and 597 of this title, which cover, respectively, the ''permanent regular warrant officer grades'' and the ''permanent reserve warrant officer grades'' in the armed forces. The concept that regular grades differ from reserve grades and that a grade held under a permanent appointment differs from the grade of the same name held under a temporary appointment is foreign to the naval service. In the Navy and the Marine Corps, all officers serving, for example, in the grade of chief warrant officer, W–4, are considered to be serving in the same grade regardless of whether they are Regulars or Reserves and regardless of whether they are temporary or permanent officers holding temporary or permanent appointments in that grade. This section, therefore, lists the four warrant officer grades as applicable to all warrant officers of the naval service.

Reference to the pay grades corresponding to the military grades is omitted as unnecessary for the purpose of this section.

AMENDMENTS

1991—Pub. L. 102–190 added par. (1) and redesignated former pars. (1) to (4) as (2) to (5), respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

[§§ 5504, 5505. Repealed. Pub. L. 96–513, title III, § 314, Dec. 12, 1980, 94 Stat. 2892]

Section 5504, acts Aug. 10, 1956, ch. 1041, 70A Stat. 314; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(13), 78 Stat. 1072; Sept. 19, 1978, Pub. L. 95–377, § 5, 92 Stat. 721, related to maintenance of lineal lists of officers in line of Navy.

Section 5505, acts Aug. 10, 1956, ch. 1041, 70A Stat. 316; June 30, 1960, Pub. L. 86–559, § 1(40), 74 Stat. 273; Sept. 7, 1962, Pub. L. 87–649, § 14c(25), 76 Stat. 501, related to changes of position on lineal list of reserve officers of Naval Reserve and Marine Corps Reserve.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5506. Repealed. Pub. L. 103–337, div. A, title XVI, § 1673(d)(1), Oct. 5, 1994, 108 Stat. 3016]

Section, added Pub. L. 85–861, § 1(114)(A), Sept. 2, 1958, 72 Stat. 1492, and amended Pub. L. 96–513, title V, § 503(26), Dec. 12, 1980, 94 Stat. 2913, related to ranking of officers in active status in Naval Reserve and Marine Corps Reserve.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 5507. Repealed. Pub. L. 87–649, § 14c(26), Sept. 7, 1962, 76 Stat. 501]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 316, related to pay and allowances of rear admirals. See section 202 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 5508. Rank of line and staff corps officers of the Navy and officers of the Marine Corps

Except for an officer entitled to a rank higher than his grade, line and staff corps officers of the Navy serving in the same grade and officers of the Marine Corps serving in the corresponding grade rank among themselves according to their respective dates of rank in grade whether or not they are on an active-duty list.

(Aug. 10, 1956, ch. 1041, 70A Stat. 317; Pub. L. 90–179, § 4, Dec. 8, 1967, 81 Stat. 547; Pub. L. 96–513, title V, § 503(27), Dec. 12, 1980, 94 Stat. 2913.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5508	34 U.S.C. 306f(d)(2).	Aug. 7, 1947, ch. 512, § 311(d)(2), 61 Stat. 852; Aug. 5, 1949, ch. 402, § 1(c), 63 Stat. 568.

The word ''rank'' is substituted for the words ''take precedence'' throughout the section for uniformity of expression.

In subsection (a) the first sentence is broadened to include officers of the Marine Corps and officers not on a lineal list. Inclusion of the Marine Corps is possible because the sentence reflects the rule referred to by the Attorney General (25 Op. Atty. Gen. 517) as ''an unwritten law of the Army and Navy'' as to relative rank between officers in different services. Officers not on a lineal list may properly be included since the statement is consistent with the provisions for assigning lineal position to such officers when they become entitled to be placed on a list.

AMENDMENTS

1980—Pub. L. 96–513 struck out designation ''(a)'' before ''Except for an officer'', substituted ''an active-duty list'' for ''a lineal list'', struck out sentence which had provided that a staff corps officer with the same date of rank as his running mate ranked above all line and staff corps officers junior to his running mate, and struck out subsec. (b) which had provided for a hierarchy of 9 categories of officers of the Navy to be used in ranking officers of the Navy on active duty serving in the same grade and having the same date of rank in that grade.

1967—Subsec. (b). Pub. L. 90–179 added par. (6) and renumbered former pars. (6), (7), and (8) as pars. (7), (8), and (9), respectively.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

CHAPTER 537—ENLISTMENTS

Sec.
[5531 to 5539. Repealed.]
5540. Expiration: rights of member.

AMENDMENTS

1968—Pub. L. 90–235, § 2(a)(3), (b), Jan. 2, 1968, 81 Stat. 756, struck out item 5531 ''Recruiting campaigns: use of advertising agencies'', item 5532 ''Prohibited classes'', item 5533 ''Minors'', item 5534 ''Term: grade'', item 5535 ''Evidence of age required for certain enlistments of minors'', item 5537 ''Extension: during disability incident to service'', item 5538 ''Extension: during war or national emergency'', and item 5539 ''Extension: voluntary, period and benefits.''

1958—Pub. L. 85–861, § 1(115), Sept. 2, 1958, 72 Stat. 1493, struck out item 5536 ''Extension: time lost through misconduct or unauthorized absence''.

[§§ 5531 to 5535. Repealed. Pub. L. 90–235, § 2(a)(3), (b), Jan. 2, 1968, 81 Stat. 756]

Section 5531, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, provided for recruiting campaigns to obtain enlistments in the Regular Navy and the Regular Marine Corps.

Section 5532, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, set forth classes of persons prohibited from enlisting in the naval service.

Section 5533, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, provided for enlistment of minors in naval service.

Section 5534, act Aug. 10, 1956, ch. 1041, 70A Stat. 318, set forth term of enlistments in Regular Navy or Regular Marine Corps and provided that Secretary of Navy could prescribe grades or ratings in which such enlistments could be made.

Section 5535, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, required evidence of age for enlistment of minors in Regular Navy as seamen, seamen apprentices or seamen recruits.

[§ 5536. Repealed. Pub. L. 85–861, § 36B(13), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, related to extension of service by reason of time lost

through misconduct or unauthorized absence. See section 972(a) of this title.

[§§ 5537 to 5539. Repealed. Pub. L. 90–235, § 2(a)(3), Jan. 2, 1968, 81 Stat. 756]

Section 5537, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, provided for extension of naval service during disability incident to service.

Section 5538, act Aug. 10, 1956, ch. 1041, 70A Stat. 319, provided for extension of enlistments in Regular Navy or Regular Marine Corps during war or national emergency.

Section 5539, acts Aug. 10, 1956, ch. 1041, 70A Stat. 320; Sept. 2, 1958, Pub. L. 85–861, § 1(116), 72 Stat. 1493; Sept. 7, 1962, Pub. L. 87–649, § 14c(27), 76 Stat. 501, provided for voluntary extension or re-extension of enlistments in Regular Navy or Regular Marine Corps.

§ 5540. Expiration: rights of member

(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States.

(b) Each member retained under this section—

(1) shall be discharged not later than 30 days after his arrival in the United States; and

(2) except in time of war is entitled to an increase in basic pay of 25 percent.

(c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 320.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5540	34 U.S.C. 201.	R.S. 1422; Mar. 3, 1875, ch. 155, 18 Stat. 484.
	34 U.S.C. 201a.	Aug. 18, 1941, ch. 364, § 4, 55 Stat. 630.
	34 U.S.C. 201b.	Dec. 13, 1941, ch. 570, § 2, 55 Stat. 799.

In subsection (a) the words ''the senior officer present afloat'' are substituted for the words ''the commanding officer of any fleet, squadron, or vessel acting singly'' to modernize the terminology. At the time of the enactment of the Revised Statutes the word ''squadron'' meant an organization of any number of vessels more than one, so that all cases were covered by R.S. 1422. The concept of ''senior officer present afloat'', today, covers as nearly as possible the current equivalent of the concept in the original section. The words ''in foreign waters'' are inserted to conform to the interpretation of the Supreme Court in *Wilkes* v. *Dinsman*, 7 How. 89 (1849). The words ''on service'' are omitted, as they have no current ascertainable meaning. The words ''by Government or other transportation'' are substituted for the words ''in some public or other vessel'', since this provision is interpreted as directing transportation by either ship or aircraft. The words ''to the United States'' are substituted for the words ''to an Atlantic or to a Pacific port of the United States, as their enlistment may have occurred on either the Atlantic or Pacific coast, of the United States'' because aircraft now land at inland airports as well as coastal airports and the duty to return an enlisted member to the United States under this provision is considered complete upon the member's arrival in the United States. The extensive transportation system in the United States presently obviates the necessity of returning a member to a particular area. Furthermore, under 37 U.S.C. 253, the Government bears the cost of transporting the discharged member to his home or to the place from which he was called to active duty. The words ''enlisted member of the naval service'' are substituted for the words ''all petty officers and persons of inferior ratings'' in accordance with present terminology. Members of the Marine Corps are included because of interpretations of the Comptroller General, in construing the language of the statute. (14 Comp. Gen. 807, 808, May 1, 1935.) The reference to persons enlisted without the limits of the United States is omitted as unnecessary, since return to the United States is optional with the member and the basic rule applies irrespective of place of enlistment. The language requiring that persons who are detained or sent home be subject to the laws and regulations for the Government of the Navy is omitted as unnecessary in view of the Uniform Code of Military Justice. The provision referring to reentry to serve until the vessel returns to the United States is omitted because no law authorizes entry or reentry into the service for this restricted purpose.

In subsection (b) the words ''an increase in basic pay of 25 percent'' are substituted for the words ''an addition of one-fourth of their former pay'' in conformity with the Career Compensation Act of 1949. 34 U.S.C. 201b permanently suspended the detention pay increase in time of war and this effect is expressed in subsection (b)(2) by the words ''except in time of war''. 34 U.S.C. 201a, declaring that the pay addition authorized by this section does not apply to enlistments extended under other provisions of law, is omitted as unnecessary, since the increased pay provision is specifically limited to detentions under this section.

In subsection (c) the term ''enlistment contract'' is substituted for the term ''shipping-articles'' to conform to present terminology.

CHAPTER 539—ORIGINAL APPOINTMENTS

Sec.
[5571 to 5581. Repealed.]
5582. Regular Navy: transfers, line and staff corps.
[5583, 5584. Repealed.]
5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant.
[5586. Repealed.]
5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty.
5587a. Regular Marine Corps: judge advocates.
[5588. Repealed.]
5589. Regular Navy and Regular Marine Corps: officers designated for limited duty.
[5590 to 5595. Repealed.]
5596. Navy and Marine Corps: temporary appointments of officers designated for limited duty.
[5597 to 5601. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1673(b)(2), Oct. 5, 1994, 108 Stat. 3016, struck out item 5600 ''Naval Reserve and Marine Corps Reserve: service credit upon original appointment''.

1991—Pub. L. 102–190, div. A, title XI, § 1113(d)(2)(B), Dec. 5, 1991, 105 Stat. 1502, struck out ''warrant officers and'' before ''officers designated'' in item 5596.

1981—Pub. L. 97–22, § 10(b)(7), July 10, 1981, 95 Stat. 137, struck out item 5573a ''Regular Navy and Regular Marine Corps: from reserve and temporary officers'' and in item 5596 substituted ''Navy and Marine Corps: temporary appointments of warrant officers and officers designated for limited duty'' for ''Navy and Marine Corps: temporary appointments''.

1980—Pub. L. 96–513, title V, § 503(28), Dec. 12, 1980, 94 Stat. 2913, struck out items 5571 ''Regular Navy and

Regular Marine Corps: citizenship of officers'', 5572 ''Regular Navy and Regular Marine Corps: appointing power'' 5573 ''Regular Navy and Regular Marine Crops: from graduates of the Naval Academy'', 5574 ''Regular Navy: Medical Corps'', 5575 ''Regular Navy: Supply Corps,'' 5576 ''Regular Navy: Chaplain Corps'', 5577 ''Regular Navy: Civil Engineer Corps'', 5578 ''Regular Navy: Dental Corps'', 5578a ''Regular Navy: Judge Advocate General's Corps'', 5579 ''Regular Navy: Medical Service Corps'', 5580 ''Regular Navy: Nurse Corps'', 5581 ''Naval Reserve: Medical Corps, Dental Corps, Medical Service Corps: women'', 5583 ''Regular Marine Corps: from non-commissioned officers'', 5584 ''Regular Marine Corps: from former officers'', 5586 ''Regular Navy and Regular Marine Corps: from warrant officers and enlisted members'', 5590 ''Regular Navy and Regular Marine Corps: women'', 5591 ''Regular Navy: Supply Corps: maximum number of ensigns appointed annually'', 5592 ''Regular Navy: Civil Engineer Corps: maximum number of ensigns appointed annually'', 5593 ''Regular Navy: Medical Service Corps; maximum number of ensigns appointed annually'', 5594 ''Regular Navy: Nurse Corps: maximum number of ensigns appointed annually'', 5595 ''Regular Marine Corps: restriction on appointments of former midshipmen and cadets'', 5597 ''Navy and Marine Corps: temporary appointments in time of war or national emergency'', 5598 ''Naval Reserve and Marine Corps Reserve: temporary appointments in time of war or national emergency'', 5599 ''Medical Corps: acting appointments for temporary service'', and 5601 ''Naval Reserve: Nurse Corps: men''.

1967—Pub. L. 90–179, §5(5), Dec. 8, 1967, 81 Stat. 548, added items 5578a and 5587a.

1961—Pub. L. 87–123, §5(9), Aug. 3, 1961, 75 Stat. 265, struck out item 5588 ''Regular Marine Corps: officers designated for supply duty''.

1958—Pub. L. 85–861, §1(118)(B), (121)(B), Sept. 2, 1958, 72 Stat. 1493, 1495, added items 5573a, 5600, and 5601.

[§§ 5571, 5572. Repealed. Pub. L. 96–513, title III, § 321, Dec. 12, 1980, 94 Stat. 2892]

Section 5571, act Aug. 10, 1956, ch. 1041, 70A Stat. 321, prescribed a citizenship requirement for appointment as an officer in the Regular Navy or the Regular Marine Corps. See section 532 of this title.

Section 5572, acts Aug. 10, 1956, ch. 1041, 70A Stat. 321; Sept. 2, 1958, Pub. L. 85–861, §1(117), 72 Stat. 1493, required that each appointment to the active list of the Navy or to the active list of the Marine Corps be made by the President, by and with the advice and consent of the Senate. See section 531 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5573. Repealed. Pub. L. 96–513, title III, § 322, Dec. 12, 1980, 94 Stat. 2892]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 321, authorized appointment of graduates of the Naval Academy to the Regular Navy and the Regular Marine Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 5573a to 5580. Repealed. Pub. L. 96–513, title III, § 321, Dec. 12, 1980, 94 Stat. 2892]

Section 5573a, added Pub. L. 85–861, §1(118)(A), Sept. 2, 1958, 72 Stat. 1493, authorized appointments to the active list of the Navy in permanent grades not above lieutenant and to the active list of the Marine Corps in permanent grades not above captain from officers of the Naval Reserve or the Marine Corps Reserve and from officers of the Regular Navy or the Regular Marine Corps not holding permanent commissioned appointments therein.

Section 5574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 321; Sept. 2, 1958, Pub. L. 85–861, §1(119), 72 Stat. 1493, prescribed requirements for original appointments to the active list of the Navy in the Medical Corps. See section 532 of this title.

Section 5575, act Aug. 10, 1956, ch. 1041, 70A Stat. 322, prescribed requirements for original appointments to the active list of the Navy in the Supply Corps. See section 532 of this title.

Section 5576, act Aug. 10, 1956, ch. 1041, 70A Stat. 322, prescribed requirements for original appointments to the active list of the Navy in the Chaplain Corps. See section 532 of this title.

Section 5577, act Aug. 10, 1956, ch. 1041, 70A Stat. 322, prescribed requirements for original appointments to the active list of the Navy in the Civil Engineer Corps. See section 532 of this title.

Section 5578, acts Aug. 10, 1956, ch. 1041, 70A Stat 322; Sept. 2, 1958, Pub. L. 85–861, §1(120), 72 Stat. 1494, prescribed requirements for original appointments to the active list of the Navy in the Dental Corps. See section 532 of this title.

Section 5578a, added Pub. L. 90–179, §5(1), Dec. 8, 1967, 81 Stat. 547, prescribed requirements for original appointments to the active list of the Navy in the Judge Advocate General's Corps. See section 532 of this title.

Section 5579, act Aug. 10, 1956, ch. 1041, 70A Stat. 323, prescribed requirements for original appointments to the active list of the Navy in the Medical Service Corps. See section 532 of this title.

Section 5580, acts Aug. 10, 1956, ch 1041, 70A Stat. 323; Sept. 30, 1966, Pub. L. 89–609, §1(7)–(9), 80 Stat. 853, prescribed requirements for original appointments to the active list of the Navy in the Nurse Corps. See section 532 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5581. Repealed. Pub. L. 96–513, title III, § 373(c), Dec. 12, 1980, 94 Stat. 2903]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 323; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to the appointment of women in the Naval Reserve to the Medical Corps, the Dental Corps, and the Medical Services Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 5582. Regular Navy: transfers, line and staff corps

(a) A regular officer of the Navy in a staff corps in a grade not above lieutenant commander may be appointed in the line of the Navy to the same grade.

(b) A regular officer in the line of the Navy in a grade not above lieutenant commander may be appointed to the same grade in a staff corps under regulations prescribed by the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324; Pub. L. 96–513, title III, §373(d), Dec. 12, 1980, 94 Stat. 2903.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5582(a)	34 U.S.C. 14 (less statement of appointing authority).	July 22, 1935, ch. 402, §7 (less statement of appointing authority), 49 Stat. 490.
5582(b)	34 U.S.C. 13 (less statement of appointing authority).	July 22, 1935, ch. 402, §6 (less statement of appointing authority), 49 Stat. 490.

The words ''active list'' are inserted so that this section will apply only to officers of the Regular Navy holding permanent appointments in grades above commissioned warrant officer, as this was the intent of the source statute. The words ''same grade'' are substituted for the words ''corresponding rank and grade'' in subsection (a) and for the words ''corresponding grade'' in subsection (b), since, under §405 of the Officer Personnel Act of 1947 (34 U.S.C. 10a), the grades in the staff corps are the same as those in the line. The words ''transfer and'' and ''transferred and'' are omitted as surplusage.

In subsection (a) the words ''and precedence in the line'' are omitted as surplusage.

In subsection (b) reference to the Construction Corps is omitted because that corps was abolished by the Act of June 25, 1940, ch. 420, §1, 54 Stat. 528.

The word ''male'' is inserted in both subsections to limit their application to men. Authority to appoint women is covered in §5590 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''A regular officer'' for ''Any male officer on the active list'' and ''in the line'' for ''to the active list in the line'' and deleted provision assigning an officer so appointed the lineal position he would have held had he originally been appointed in and had he remained in the line and provision that such an officer was to be considered an additional number in each grade in which he served.

Subsec. (b). Pub. L. 96–513 substituted ''A regular officer'' for ''Any male officer on the active list'' and ''the same grade in a staff corps under regulations prescribed by the Secretary of Defense'' for ''the active list of the Navy in the Supply Corps or the Civil Engineer Corps, in the same grade, without regard to his age.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§§ 5583, 5584. Repealed. Pub. L. 96–513, title III, § 321, Dec. 12, 1980, 94 Stat. 2892]

Section 5583, act Aug. 10, 1956, ch. 1041, 70A Stat. 324, prescribed requirements for original appointments to the active list of the Marine Corps from noncommissioned officers of the Regular Marine Corps. See section 532 of this title.

Section 5584, act Aug. 10, 1956, ch. 1041, 70A Stat. 324, prescribed requirements for original appointments to the active list of the Marine Corps from former officers of the Marine Corps. See section 532 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 5585. Regular Marine Corps: order of filling vacancies in grade of second lieutenant

Vacancies on the active-duty list of the Marine Corps in the grade of second lieutenant shall be filled, so far as practicable, first, from members of the graduating class of the Naval Academy; second, from meritorious noncommissioned officers of the Regular Marine Corps; and third, from other persons.

(Aug. 10, 1956, ch. 1041, 70A Stat. 324; Pub. L. 96–513, title V, §503(29), Dec. 12, 1980, 94 Stat. 2913.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5585	34 U.S.C. 634.	Mar. 3, 1899, ch. 413, §19, 30 Stat. 1008; Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (1st proviso in 5th par., 48th word to end of proviso).

The words ''from other persons'' are substituted for the words ''from civil life'' because 34 U.S.C. 1020e authorizes the appointment of graduates of the NROTC program as well as of other persons in civil life. Such graduates are, properly, persons in ''civil life'', since they are members of the Naval Reserve who are not on active duty. However, since the status of members of the NROTC is not always clear, the statement of the class is expanded.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 5586. Repealed. Pub. L. 96–513, title III, § 321, Dec. 12, 1980, 94 Stat. 2892]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 324, prescribed requirements for original appointments to the active list of the Navy in the line or in any staff corps, except the Medical Service Corps and the Nurse Corps, in grades not above lieutenant and to the active list of the Marine Corps in grades not above captain from warrant officers and enlisted members of the Regular Navy and Regular Marine Corps. See section 532 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 5587. Regular Navy: officers designated for engineering duty, aeronautical engineering duty, and special duty

(a) Persons may be originally appointed in the line of the Navy as regular officers designated for engineering duty, aeronautical engineering duty, or special duty.

(b) With the approval of the Secretary, a regular officer in the line of the Navy may, upon his application, be designated for engineering duty, aeronautical engineering duty, or special duty.

(c) The types of engineering duty for which officers may be designated include ship engineering and ordnance engineering. The types of aeronautical engineering duty for which officers may be designated include aeronautical engineering and aviation maintenance. The types of special duty for which officers may be designated include communications, law, naval intelligence, photography, public affairs, psychology, geophysics, cryptography, and hydrography.

(d) Officers designated for engineering duty, aeronautical engineering duty, or special duty shall perform sea or shore duty appropriate to their special qualifications but may not succeed to command except on shore and then only as authorized by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 325; Pub. L. 90–179, § 5(2), Dec. 8, 1967, 81 Stat. 547; Pub. L. 90–386, § 1(5), July 5, 1968, 82 Stat. 293; Pub. L. 96–513, title III, § 324, Dec. 12, 1980, 94 Stat. 2893.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5587	34 U.S.C. 77 (less statement of appointing authority).	Aug. 7, 1947, ch. 512, § 408 (less statement of appointing authority), 61 Stat. 873.
	34 U.S.C. 71, 73.	Aug. 29, 1916, ch. 417, 39 Stat. 580 (words preceding 3d proviso of 1st par. under ''Officers for Engineering Duty Only''); May 11, 1928, ch. 522, 45 Stat. 498; Aug. 7, 1947, ch. 512, § 402(a), (c), 61 Stat. 870.
	34 U.S.C. 78 (less (b)).	Aug. 7, 1947, ch. 512, § 403 (less (b)), 61 Stat. 870.
	34 U.S.C. 211b (less (b)).	Aug. 7, 1947, ch. 512, § 401 (less (b)), 61 Stat. 869.

In subsection (a) the word ''annually'' and the words ''and regularly commission'' are omitted as surplusage. The word ''male'' is inserted in subsection (a) to limit the application of the appointing authority in this subsection to men. Authority to appoint women is covered in § 5590 of this title.

In subsection (b) the words ''on the active list'' are inserted in order to exclude reserve and temporary officers, which is the intention of Congress determined from the use of the words ''additional numbers in grade'' and ''percentage of officers on the active list'' which apply only to regular officers holding permanent appointments. In the same subsection and in subsections (c) and (d) the provisions of the law that these officers are assigned to a certain duty and then ''described and known as officers designated'' for that duty have been written simply as providing that these officers may be ''designated'' for that duty. This is done as there is no apparent reason for any distinction between these officers and those appointed under subsection (a). In subsection (c) the words ''specialized duties in the fields of'' are omitted as surplusage.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513, § 324(a), substituted provision allowing the appointment of ''persons'' in the line of the Navy as regular officers for provision allowing the appointment of males only to the active list in the line of the Navy as officers, struck out provision specifying the rank designation of appointees, and struck out provision limiting the number of appointments under subsec. (a) to the number of vacancies that the Secretary of the Navy estimated would occur in a particular fiscal year in the grades and designations concerned.

Subsec. (b). Pub. L. 96–513, § 324(b), substituted ''a regular officer'' for ''any officer on the active list''.

Subsec. (c). Pub. L. 96–513, § 324(c), substituted ''public affairs, psychology, geophysics, cryptography'' for ''public information, psychology''.

Subsec. (d). Pub. L. 96–513, § 324(d), struck out ''are additional numbers in grade. They'' after ''special duty''.

1968—Subsec. (c). Pub. L. 90–386 enumerated the types of engineering duty and aeronautical engineering duty for which officers may be designated.

1967—Subsec. (c). Pub. L. 90–179 struck out ''law,'' after ''communications,''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 5587a. Regular Marine Corps: judge advocates

With the approval of the Secretary of the Navy, any regular officer on the active-duty list of the Marine Corps who is qualified under section 827(b) of this title may, upon his application, be designated as a judge advocate.

(Added Pub. L. 90–179, § 5(3), Dec. 8, 1967, 81 Stat. 548; amended Pub. L. 96–513, title V, § 503(30), Dec. 12, 1980, 94 Stat. 2913.)

AMENDMENTS

1980—Pub. L. 96–513 struck out designation ''(a)'' before ''With the approval of the Secretary'', substituted ''active-duty list'' for ''active list'', and struck out subsec. (b) which provided that, for the purposes of determining lineal position, permanent grade, seniority in permanent grade, and eligibility for promotion, a person appointed to the active list of the Marine Corps with a view to designation as a judge advocate could be credited with the amount of service prescribed by the Secretary of the Navy, but not more than three years.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 5588. Repealed. Pub. L. 87–123, § 5(8), Aug. 3, 1961, 75 Stat. 265]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 326, related to designation of Marine Corps officers for supply duty.

§ 5589. Regular Navy and Regular Marine Corps: officers designated for limited duty

(a) Original appointments as regular officers of the Navy in a grade below lieutenant commander in the line and in staff corps established by the Secretary of the Navy under section 5150(b) of this title and designated by the Secretary for the purposes of this section may be made from—

(1) warrant officers;
(2) chief petty officers; and
(3) first-class petty officers;

in the Regular Navy, for the performance of duty in the technical fields indicated by their warrants or ratings.

(b) Original appointments as regular officers of the Marine Corps in a grade below major may be made from—

(1) warrant officers;
(2) master sergeants; and
(3) technical sergeants;

in the Regular Marine Corps, for the performance of duty in the technical fields in which they are proficient.

(c)(1) An officer described in paragraph (2) may be given an original appointment as a regular officer of the Navy or the Marine Corps, as the case may be, in the grade, and with the date of rank in that grade, in which the officer is serving on the day before such original appointment.

(2) This subsection applies to an officer of the Navy and Marine Corps who—

(A) is on the active-duty list;

(B) holds a permanent enlisted or warrant officer grade;

(C) is designated for limited duty under subsection (a) of section 5596 of this title; and

(D) is serving in the grade of lieutenant commander or commander, or in the grade of major or lieutenant colonel, under a temporary appointment under subsection (d) of section 5596 of this title.

(d) To be eligible for an appointment under this section a member must have the qualifications specified in section 532(a) of this title and have completed at least 10 years of active naval service, excluding active duty for training in a reserve component.

(e) Each officer appointed under this section is known as an officer designated for limited duty. He may not suffer any reduction in the pay and allowances to which he was entitled at the time of his appointment because of his former permanent status.

(f) Any officer designated for limited duty, upon his application and upon determination by the Secretary of the Navy that he is qualified, may—

(1) if he is in the line of the Navy, be designated for engineering duty, aeronautical engineering duty, or special duty, or be assigned to unrestricted performance of duty;

(2) if he is in a staff corps of the Navy, be assigned to unrestricted performance of duty in that corps; or

(3) if he is in the Marine Corps, be assigned to unrestricted performance of duty.

When an officer is so designated or assigned, his status as an officer designated for limited duty terminates.

(g) The Secretary shall prescribe regulations for the appointment, designation, and assignment of officers under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 326; Pub. L. 87–123, §5(10), Aug. 3, 1961, 75 Stat. 265; Pub. L. 96–513, title III, §325, Dec. 12, 1980, 94 Stat. 2893; Pub. L. 99–433, title V, §514(c)(3), Oct. 1, 1986, 100 Stat. 1055; Pub. L. 103–337, div. A, title V, §502, Oct. 5, 1994, 108 Stat. 2748.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5589	34 U.S.C. 211c ((a) (less statement of appointing authority), and less (e)–(h)).	Aug. 7, 1947, ch. 512, §404 ((a) (less statement of appointing authority), and less (e)–(h)), 61 Stat. 870; Aug. 5, 1949, ch. 402, §1(f), 63 Stat. 568.

In subsections (a) and (b) the authority to make appointments under this section is confined to appointments in the grades of ensign and second lieutenant, since the authority in the source statute to make appointments in higher grades was limited and has been completely executed. The words ''commissioned warrant officers'' are omitted as surplusage, since the term ''warrant officers'' includes commissioned warrant officers.

The word ''male'' is inserted to limit the application of the section to men. Authority to appoint women is covered in §5590 of this title.

AMENDMENTS

1994—Subsecs. (c) to (g). Pub. L. 103–337 added subsec. (c) and redesignated former subsecs. (c) to (f) as (d) to (g), respectively.

1986—Subsec. (a). Pub. L. 99–433 substituted ''section 5150(b)'' for ''section 5155(b)''.

1980—Subsec. (a). Pub. L. 96–513, §325(1), substituted ''as regular officers of the Navy in a grade below lieutenant commander in the line and in staff corps established by the Secretary of the Navy under section 5155(b) of this title and designated by the Secretary for the purposes of this section may be made from'' for ''to the active list of the Navy in the grade of ensign in the line, in the Supply Corps, and in the Civil Engineer Corps may be made from male''.

Subsec. (b). Pub. L. 96–513, §325(2), substituted ''as regular officers of the Marine Corps in a grade below major may be made from'' for ''to the active list of the Marine Corps in the grade of second lieutenant may be made from male''.

Subsec. (c). Pub. L. 96–513, §325(3), inserted ''the qualifications specified in section 532(a) of this title and have''.

1961—Subsec. (e)(3). Pub. L. 87–123 struck out ''be designated for supply duty or'' before ''be assigned to''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions relating to Regular Navy or Regular Marine Corps officers designated as limited-duty officers under this section prior to September 15, 1981, see section 616 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 532, 5596, 6221 of this title.

[§ 5590. Repealed. Pub. L. 96–513, title III, § 373(e), Dec. 12, 1980, 94 Stat. 2903]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 327, authorized appointments of women to the Regular Navy and Regular Marine Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 5591 to 5595. Repealed. Pub. L. 96–513, title III, § 323, Dec. 12, 1980, 94 Stat. 2893]

Section 5591, act Aug. 10, 1956, ch. 1041, 70A Stat. 327, prescribed maximum number of appointments that could be made annually to active list of Navy in Supply Corps in grade of ensign.

Section 5592, act Aug. 10, 1956, ch. 1041, 70A Stat. 327, prescribed maximum number of appointments that could be made annually to active list of Navy in Civil Engineer Corps in grade of ensign.

Section 5593, act Aug. 10, 1956, ch. 1041, 70A Stat. 328, prescribed maximum number of appointments that could be made annually to active list of Navy in Medical Service Corps in grade of ensign.

Section 5594, act Aug. 10, 1956, ch. 1041, 70A Stat. 328, prescribed maximum number of appointments that could be made annually to active list of Navy in Nurse Corps in grade of ensign.

Section 5595, act Aug. 10, 1956, ch. 1041, 70A Stat. 328, restricted appointment of a former midshipman at Naval Academy or a former cadet at Military Academy

to a commissioned grade in Regular Marine Corps until after graduation of class of which he was a member.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 5596. Navy and Marine Corps: temporary appointments of officers designated for limited duty

(a) Under such regulations as he may prescribe, the Secretary of the Navy may make temporary appointments of officers designated for limited duty in the Regular Navy in grades not above lieutenant and in the Regular Marine Corps in grades not above captain from sources authorized under section 5589 of this title. Such appointments shall be made by warrant if in the grade of warrant officer, W–1, and by commission if in a higher grade.

(b) Temporary appointments under this section do not change the permanent, probationary, or acting status of members so appointed, prejudice them in regard to promotion or appointment, or abridge their rights or benefits. A person receiving a temporary appointment under this section may not suffer any reduction in the pay and allowances to which he was entitled because of his permanent status at the time of his temporary appointment, or any reduction in the pay and allowances to which he was entitled under a prior temporary appointment in a lower grade.

(c) The following members of the naval service are ineligible for temporary appointments under this section:

(1) Retired members.

(2) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty for training.

(3) Members of the Naval Reserve and the Marine Corps Reserve ordered to active duty in connection with organizing, administering, recruiting, instructing, training, or drilling the Naval Reserve or the Marine Corps Reserve.

(4) Members of the Naval Reserve and the Marine Corps Reserve ordered to temporary active duty to prosecute special work.

(d) Officers designated for limited duty under subsection (a) may be temporarily appointed by the Secretary of the Navy in a higher grade not above commander in the Regular Navy or lieutenant colonel in the Regular Marine Corps under such regulations as the Secretary may prescribe. Regulations prescribed under this section shall to the greatest extent practicable conform to the procedures prescribed in chapter 36 of this title for selection for promotion and promotion to higher permanent grades.

(e) The Secretary of the Navy may terminate any appointment made under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 328; Pub. L. 96–513, title III, § 326, Dec. 12, 1980, 94 Stat. 2894; Pub. L. 102–190, div. A, title XI, § 1113(c), (d)(2)(A), Dec. 5, 1991, 105 Stat. 1502.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5596(a)	34 U.S.C. 3d.	Aug. 7, 1947, ch. 512, § 301, 61 Stat. 829; June 30, 1951, ch. 196, § 1(b), 65 Stat. 108.
5596(b)	34 U.S.C. 3c(c).	Aug. 7, 1947, ch. 512, § 302(c), 61 Stat. 830.
5596(c)	34 U.S.C. 3c(h) (less 14th through 53d words).	Aug. 7, 1947, ch. 512, § 302(h) (less 14th through 53d words), 61 Stat. 830.
5596(d)	34 U.S.C. 135a(a) (last sentence as applicable to temporary appointments).	May 29, 1954, ch. 249, § 3(a) (3d sentence as applicable to temporary appointments), 68 Stat. 158.
	34 U.S.C. 135c(a) (last sentence as applicable to temporary appointments).	May 29, 1954, ch. 249, § 5(a) (last sentence as applicable to temporary appointments), 68 Stat. 159.
	34 U.S.C. 330 (last sentence as applicable to temporary promotions).	May 29, 1954, ch. 249, § 7 (last sentence as applicable to temporary promotions), 68 Stat. 159.
5596(e)	34 U.S.C. 3c(g).	Aug. 7, 1947, ch. 512, § 302(g), 61 Stat. 830.
	34 U.S.C. 626–1(a).	Aug. 7, 1947, ch. 512, § 314(a), 61 Stat.863.
5596(f)	34 U.S.C. 3c(e).	Aug. 7, 1947, ch. 512, § 302(e), 61 Stat. 830.
	34 U.S.C. 135a(b).	May 29, 1954, ch. 249, § 3(b), 68 Stat. 158.
5596(g)	34 U.S.C. 105j.	June 12, 1948, ch. 449, § 215, 62 Stat. 370.
	34 U.S.C. 625h(a).	June 12, 1948, ch. 449, § 213(a), 62 Stat. 369.
	34 U.S.C. 3c(a) (as applicable to meaning of word ''officers'').	Aug. 7, 1947, ch. 512, § 302(a) (as applicable to meaning of word ''officers''), 61 Stat. 829.
	34 U.S.C. 3c(h) (14th through 53d words).	Aug. 7, 1947, ch. 512, § 302(h) (14th through 53d words), 61 Stat. 830.
5596(h)	34 U.S.C. 306h (as applicable to temporary appointments under 34 U.S.C. 3c(c)).	Aug. 7, 1947, ch. 512, § 316(d) (as applicable to temporary appointments under § 302(c)), 61 Stat. 867.

Since appointments under this section are either made, or not made, in the discretion of the President, the proviso of 34 U.S.C. 3d, authorizing the President to suspend the operation of this section with respect to lieutenants (junior grade) and lieutenants in the Navy and first lieutenants and captains in the Marine Corps, is omitted from subsection (a) as unnecessary.

In subsections (b) and (c) the words ''and above'' have been executed by naming the grades they imply, to wit, chief petty officers and master and technical sergeants. In the statement of the grades to which appointments may be made, the words ''including the grades of warrant officer and commissioned warrant officer'' are omitted as surplusage. In the list of persons who may be appointed, reference to commissioned warrant officers is omitted because they are included within the term ''warrant officers''.

In subsection (f) the words ''do not change the * * * status'' are substituted for the words ''appointments * * * shall not be vacated.'' The word ''advancement'', the words ''in accordance with laws relating to the Regular Navy or Marine Corps'', and the words ''privileges and gratuities'' are omitted as surplusage. The first proviso is omitted as unnecessary in view of the Career Compensation Act of 1949.

In subsection (g)(2) that portion of 34 U.S.C. 3c(a) which excludes officers on the retired list from the definition of the word ''officers'' is treated as precluding the appointment of such officers under this section. There is no express statement of law making retired enlisted members ineligible for such appointments; however, the context indicates this to be the intent of Congress. In subsection (g)(3) that portion of 34 U.S.C. 3c(a) which excludes officers on active duty for training from the definition of the word ''officers'' is treated as precluding the appointment of persons on training duty under this section. While there is no statement of law

making enlisted members of the Naval Reserve and the Marine Corps Reserve on active duty for training ineligible for appointments under this section, the context indicates this to be the intent of Congress and clause (3) is thus written. The exception as to the Fleet Reserve is omitted as unnecessary inasmuch as, pursuant to the Armed Forces Reserve Act of 1952, the Fleet Reserve is no longer a part of the Naval Reserve but is a separate and distinct component of the Navy.

AMENDMENTS

1991—Pub. L. 102–190, §1113(d)(2)(A), struck out ''warrant officers and'' before ''officers designated'' in section catchline.

Subsec. (a). Pub. L. 102–190, §1113(c)(1), reorganized subsec. (a), striking out par. (1) relating to warrant officer grades, and striking out par. (2) designation.

Subsec. (d). Pub. L. 102–190, §1113(c)(2), substituted ''subsection (a)'' for ''subsection (a)(2)''.

1980—Subsec. (a). Pub. L. 96–513 substituted provisions authorizing the Secretary of the Navy to make temporary appointments in warrant officer grades and of certain officers designated for limited duty for provisions authorizing such appointments only when the number of male officers serving on active duty in the grade of ensign and above in the line of the Navy exceeded the number of male officers on the active list in the line of the Navy.

Subsec. (b). Pub. L. 96–513 redesignated subsec. (f) as (b) and struck out former subsec. (b) which described persons eligible for temporary appointments in the Regular Navy, except in the Nurse Corps, in grades not above lieutenant and in the Regular Marine Corps in grades not above captain.

Subsec. (c). Pub. L. 96–513 redesignated subsec. (g) as (c), struck out provision restricting temporary appointments to male members of the naval service, and struck out former subsec. (c) which described persons eligible for temporary appointments in the Naval Reserve, except in the Nurse Corps, in grades not above lieutenant and in the Marine Corps Reserve in grades not above captain.

Subsec. (d). Pub. L. 96–513 substituted provisions authorizing the Secretary of the Navy to temporarily appoint officers designated for limited duty under subsec. (a)(2) in a higher grade not above commander in the Regular Navy or lieutenant colonel in the Regular Marine Corps for provisions authorizing the Secretary to make temporary appointments in warrant officer grades.

Subsec. (e). Pub. L. 96–513 redesignated subsec. (h) as (e), substituted ''Secretary of the Navy'' for ''President'', and struck out former subsec. (e) which provided that the number of persons appointed in the Regular Navy under this section in grades above chief warrant officer, W–4, could not exceed the difference between the actual number of officers on the active list of the Navy in the line or in the staff corps concerned and the authorized number of such officers.

Subsecs. (f) to (h). Pub. L. 96–513 redesignated subsecs. (f), (g), and (h) as (b), (c), and (e), respectively.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Defense of authority vested in President by section 3c(g) of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, set out as a note under section 301 of Title 3, The President.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 532, 631, 632, 633, 5589, 6221, 6383 of this title.

[§§ 5597 to 5599. Repealed. Pub. L. 96–513, title III, § 327, Dec. 12, 1980, 94 Stat. 2894]

Section 5597, acts Aug. 10, 1956, ch. 1041, 70A Stat. 330; Sept. 7, 1962, Pub. L. 87–649, §§5(a), 14c(28), 76 Stat. 493, 501; Sept. 28, 1971, Pub. L. 92–129, title VI, §603(a), 85 Stat. 362, authorized temporary appointments in Navy and Marine Corps in times of war or national emergency. See section 603 of this title.

Section 5598, act Aug. 10, 1956, ch. 1041, 70A Stat. 331, authorized temporary appointments in Naval Reserve and Marine Corps Reserve in times of war or national emergency. See section 603 of this title.

Section 5599, act Aug. 10, 1956, ch. 1041, 70A Stat. 331, provided that the President alone could make appointments for temporary service in Medical Corps in grade of lieutenant (junior grade). See section 603 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5600. Repealed. Pub. L. 104–106, div. A, title XV, § 1501(c)(26), Feb. 10, 1996, 110 Stat. 499]

Section, added Pub. L. 85–861, §1(121)(A), Sept. 2, 1958, 72 Stat. 1494; amended Pub. L. 86–559, §1(41), June 30, 1960, 74 Stat. 273; Pub. L. 90–179, §5(4), Dec. 8, 1967, 81 Stat. 548; Pub. L. 96–513, title III, §328, Dec. 12, 1980, 94 Stat. 2895; Pub. L. 97–22, §6(c), July 10, 1981, 95 Stat. 130; Pub. L. 98–94, title X, §1007(c)(4), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(c), Dec. 4, 1987, 101 Stat. 1113; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–160, div. A, title V, §509(c), Nov. 30, 1993, 107 Stat. 1648, related to service credit upon original appointment as commissioned officer in Naval Reserve or Marine Corps Reserve. See section 12207 of this title.

EFFECTIVE DATE OF REPEAL

Section 1501(c)(26) of Pub. L. 104–106 provided that the repeal made by that section is effective on the effective date specified in section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 5601. Repealed. Pub. L. 89–609, § 1(10), Sept. 30, 1966, 80 Stat. 853]

Section, added Pub. L. 85–861, §1(121)(A), Sept. 2, 1958, 72 Stat. 1495, authorized appointment of men in the Naval Reserve in the Nurse Corps.

[CHAPTER 541—REPEALED]

[§§ 5651 to 5664. Repealed. Pub. L. 96–513, title III, § 332, Dec. 12, 1980, 94 Stat. 2897]

Section 5651, act Aug. 10, 1956, ch. 1041, 70A Stat. 332, related to eligibility of officers to be running mates.

Section 5652, acts Aug. 10, 1956, ch. 1041, 70A Stat. 332; Sept. 2, 1958, Pub. L. 85–861, §1(122), 72 Stat. 1495, relat-

ed, except as provided in sections 5652a, 5652b, 5652c, 5653, and 5654 of this title, to assignment of running mates from among eligible line officers to staff corps officers serving in grade of lieutenant (junior grade) on active list of Navy.

Section 5652a, added Pub. L. 85–861, §1(123)(A), Sept. 2, 1958, 72 Stat. 1495, and amended Pub. L. 90–179, §12, Dec. 8, 1967, 81 Stat. 549, related to assignment of running mates to officers appointed to active list of Navy in grade of lieutenant (junior grade) in Medical Corps, Judge Advocate General's Corps, or Dental Corps.

Section 5652b, added Pub. L. 85–861, §1(123)(A), Sept. 2, 1958, 72 Stat. 1495, and amended Pub. L. 88–647, title III, §301(14)(B), Oct. 13, 1964, 78 Stat. 1072, related to assignment of running mates to certain officers originally appointed as ensigns to active list of Navy and serving as staff corps officers at time of promotion to grade of lieutenant (junior grade).

Section 5652c, added Pub. L. 85–861, §1(123)(A), Sept. 2, 1958, 72 Stat. 1496, related to assignment of running mates to officers appointed to active list of Navy in a staff corps under section 5573a of this title.

Section 5653, acts Aug. 10, 1056, ch. 1041, 70A Stat. 333; Sept. 2, 1958, Pub. L. 85–861, §1(124), 72 Stat. 1496, related to assignment of running mates to officers originally appointed to active list of Navy in a staff corps in a grade of lieutenant or above.

Section 5654, act Aug. 10, 1956, ch. 1041, 70A Stat. 333, related to assignment of running mates to officers on active list in line of Navy transferred to a staff corps in grade of lieutenant (junior grade) or above.

Section 5655, act Aug. 10, 1956, ch. 1041, 70A Stat. 333, related to assignment of running mates to officers of Naval Reserve in a staff corps ordered to active duty and placed on a lineal list.

Section 5656, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer on active duty where originally assigned running mate was separated from active list, was released from active duty, or lost numbers.

Section 5657, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer on active duty where such staff corps officer was promoted after selection.

Section 5658, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer on active duty where running mate of staff corps officer was promoted to a higher grade without staff corps officer being so promoted.

Section 5659, act Aug. 10, 1956, ch. 1041, 70A Stat. 334, related to reassignment of a running mate to a staff corps officer where such staff corps officer was not restricted in performance of duty and was serving on active duty in grade of lieutenant (junior grade) or above and lost numbers in grade.

Section 5660, act Aug. 10, 1956, ch. 1041, 70A Stat. 335, related to reassignment of a running mate to a staff corps officer on active duty where running mate originally assigned to such staff corps officer was advanced in numbers or in grade.

Section 5661, act Aug. 10, 1956, ch. 1041, 70A Stat. 335, related to reassignment of a running mate to a staff corps officer where staff corps officer was not restricted in performance of duty, was serving on active duty in grade of lieutenant (junior grade) or above, and was advanced in numbers in his grade.

Section 5662, acts Aug. 10, 1956, ch. 1041, 70A Stat. 335; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President to suspend any provisions of sections 5651 to 5661 of this title during times of war or national emergency or during certain other times when specified conditions were found to exist.

Section 5663, act Aug. 10, 1956, ch. 1041, 70A Stat. 335, excluded from application of sections 5651 to 5662 of this title certain women officers, women reserve officers, retired officers, and officers of Naval Reserve.

Section 5664, act Aug. 10, 1956, ch. 1041, 70A Stat. 336, related to assignment of running mates to women officers on active list of Navy appointed under section 5590 of this title in any staff corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5665. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(b)(1), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 85–861, §1(125)(A), Sept. 2, 1958, 72 Stat. 1496; amended Pub. L. 96–513, title III, §332, Dec. 12, 1980, 94 Stat. 2897; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506, related to running mates for Naval Reserve and Marine Corps Reserve active status officers in permanent grades above chief warrant officer, W–5. See section 14306 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 5666. Repealed. Pub. L. 96–513, title III, § 332, Dec. 12, 1980, 94 Stat. 2897]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 336, provided that appointments for limited duration would not be considered for purposes of the chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 543—REPEALED]

[§§ 5701 to 5711. Repealed. Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897]

Section 5701, acts Aug. 10, 1956, ch. 1041, 70A Stat. 336; Feb. 26, 1970, Pub. L. 91–199, §1, 84 Stat. 16, related to convening by Secretary of Navy at least annually of selection boards to recommend male officers in line of Navy for promotion and continuation on active list. See section 611 of this title.

Section 5702, acts Aug. 10, 1956, ch. 1041, 70A Stat. 337; Aug. 21, 1957, Pub. L. 85–155, title II, §201(5), 71 Stat. 381; Nov. 8, 1967, Pub. L. 90–130, §1(18)(A)–(H), 81 Stat. 377; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to convening of selection boards to recommend staff corps officers, other than women officers appointed under former section 5590 of this title, for promotion and continuation on active list. See section 611 of this title.

Section 5703, acts Aug. 10, 1956, ch. 1041, 70A Stat. 338; Aug. 3, 1961, Pub. L. 87–123, §5(11), 75 Stat. 265; Sept. 19, 1978, Pub. L. 95–377, §10(a), 92 Stat. 721; Sept. 8, 1980, Pub. L. 96–343, §10(d), 94 Stat. 1130, related to convening at least annually by Secretary of Navy of selection boards to recommend male officers of Marine Corps for promotion and for continuation on active list. See section 611 of this title.

Section 5704, acts Aug. 10, 1956, ch. 1041, 70A Stat. 339; Nov. 8, 1967, Pub. L. 90–130, §1(18)(I)–(K), 81 Stat. 377, relating to convening by Secretary of Navy at least annually of selection boards to recommend women officers in line of Navy for promotion to grades of captain, commander, lieutenant commander, and lieutenant. See section 611 of this title.

Section 5705, act Aug. 10, 1956, ch. 1041, 70A Stat. 340, related to oath of selection board members. See section 613 of this title.

Section 5706, acts Aug. 10, 1956, ch. 1041, 70A Stat. 340; Aug. 3, 1961, Pub. L. 87–123, §5(12), 75 Stat. 265, related to information furnished selection boards by Secretary of Navy. See section 615 of this title.

Section 5707, acts Aug. 10, 1956, ch. 1041, 70A Stat. 341; Aug. 21, 1957, Pub. L. 85–155, title II, §201(6), 71 Stat. 382; Aug. 3, 1961, Pub. L. 87–123, §5(13), 75 Stat. 265; Nov. 8, 1967, Pub. L. 90–130, §1(18)(L), 81 Stat. 377, related to of-

ficers to be recommended for promotion or continuation by selection boards. See section 616 of this title.

Section 5708, acts Aug. 10, 1956, ch. 1041, 70A Stat. 342; Aug. 21, 1957, Pub. L. 85–155, title II, §201(7), 71 Stat. 382; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to required certification of selection board reports. See section 617 of this title.

Section 5709, acts Aug. 10, 1956, ch. 1041, 70A Stat. 344; Aug. 3, 1961, Pub. L. 87–123, §5(14), 75 Stat. 265, related to retention of rear admirals in Navy and major generals in Marine Corps on active list. See section 611 of this title.

Section 5710, act Aug. 10, 1956, ch. 1041, 70A Stat. 344, directed submission of selection board reports to either Secretary of Navy or President. See section 617 of this title.

Section 5711, acts Aug. 10, 1956, ch. 1041, 70A Stat. 345; Nov. 8, 1967, Pub. L. 90–130, §1(18)(M), 81 Stat. 377; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized suspension of specific provisions of sections 5701 to 5710 of this title under certain circumstances by President and excluded specific categories of officers from consideration by selection boards. See section 123(a), (b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 544—TEMPORARY APPOINTMENTS

Sec.
5721. Temporary promotions of certain Navy lieutenants.

§ 5721. Temporary promotions of certain Navy lieutenants

(a) PROMOTION AUTHORITY FOR CERTAIN OFFICERS WITH CRITICAL SKILLS.—An officer in the line of the Navy in the grade of lieutenant who—

(1) has a skill in which the Navy has a critical shortage of personnel (as determined by the Secretary of the Navy); and

(2) is serving in a position (as determined by the Secretary of the Navy) which (A) is designated to be held by a lieutenant commander, and (B) requires that an officer serving in such position have the skill possessed by such officer,

may be temporarily promoted to the grade of lieutenant commander under regulations to be prescribed by the Secretary of the Navy. Appointments under this section shall be made by the President, by and with the advice and consent of the Senate.

(b) STATUS OF OFFICERS APPOINTED.—(1) An appointment under this section does not change the position on the active-duty list or the permanent, probationary, or acting status of the officer so appointed, prejudice the officer in regard to other promotions or appointments, or abridge the rights or benefits of the officer.

(2) For the purposes of section 523 of this title, an officer holding an appointment under this section is considered as serving in the grade of lieutenant commander.

(c) BOARD RECOMMENDATION REQUIRED.—A temporary promotion under this section may be made only upon the recommendation of a board of officers convened by the Secretary of the Navy for the purpose of recommending officers for such promotions.

(d) ACCEPTANCE AND EFFECTIVE DATE OF APPOINTMENT.—Each appointment under this section, unless expressly declined, is, without formal acceptance, regarded as accepted on the date such appointment is made, and a member so appointed is entitled to the pay and allowances of the grade of lieutenant commander from the date the appointment is made.

(e) TERMINATION OF APPOINTMENT.—Unless sooner terminated, an appointment under this section terminates—

(1) on the date the officer who received the appointment is promoted to the permanent grade of lieutenant commander; or

(2) on the date the officer is detached from a position described in subsection (a)(2), unless the officer is on a promotion list to the permanent grade of lieutenant commander, in which case the appointment terminates on the date the officer is promoted to that grade.

(f) LIMITATION ON NUMBER OF ELIGIBLE POSITIONS.—An appointment under this section may only be made for service in a position designated by the Secretary of the Navy for purposes of this section. The number of positions so designated may not exceed 325.

(Added Pub. L. 96–513, title III, §334, Dec. 12, 1980, 94 Stat. 2897; amended Pub. L. 98–94, title IV, §403, Sept. 24, 1983, 97 Stat. 629; Pub. L. 98–525, title V, §514, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–661, div. A, title V, §503, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 100–180, div. A, title V, §501(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, §512(a), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 102–484, div. A, title V, §507, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103–160, div. A, title V, §508(a), Nov. 30, 1993, 107 Stat. 1647; Pub. L. 104–106, div. A, title V, §508(a), (b), (d), Feb. 10, 1996, 110 Stat. 296, 297; Pub. L. 104–201, div. A, title V, §503, Sept. 23, 1996, 110 Stat. 2511; Pub. L. 107–314, div. A, title X, §1041(a)(20), Dec. 2, 2002, 116 Stat. 2645.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107–314 struck out par. (1) designation and struck out par. (2) which read as follows: ''Whenever the Secretary makes a change to the positions designated under paragraph (1), the Secretary shall submit notice of the change in writing to Congress.''

1996—Subsec. (a). Pub. L. 104–201, §503(a), (c), substituted ''Officers'' for ''Officer'' in heading and ''the President, by and with the advice and consent of the Senate'' for ''the President alone'' in concluding provisions.

Pub. L. 104–106, §508(d)(1), inserted heading.

Subsecs. (b) to (e). Pub. L. 104–106, §508(d)(2)–(5), inserted headings.

Subsec. (f). Pub. L. 104–106, §508(b)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 104–106, §508(a), substituted ''September 30, 1996'' for ''September 30, 1995''.

Subsec. (g). Pub. L. 104–201, §503(b), struck out subsec. (g) which read as follows: ''TERMINATION OF APPOINTMENT AUTHORITY.—The authority to make appointments under this section terminates on September 30, 1996.''

Pub. L. 104–106, §508(d)(6), inserted heading.

Pub. L. 104–106, §508(b)(1), redesignated subsec. (f) as (g).

1993—Subsec. (f). Pub. L. 103–160 substituted ''September 30, 1995'' for ''September 30, 1993''.

1992—Subsec. (f). Pub. L. 102–484 substituted ''September 30, 1993'' for ''September 30, 1992''.

1989—Subsec. (f). Pub. L. 101–189 substituted ''September 30, 1992'' for ''September 30, 1989''.

1987—Subsec. (f). Pub. L. 100–180 substituted ''September 30, 1989'' for ''September 30, 1987''.
1986—Subsec. (f). Pub. L. 99–661 substituted ''September 30, 1987'' for ''September 30, 1986''.
1984—Subsec. (f). Pub. L. 98–525 substituted ''September 30, 1986'' for ''September 30, 1984''.
1983—Subsec. (f). Pub. L. 98–94 substituted ''September 30, 1984'' for ''September 30, 1983''.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 508(e) of Pub. L. 104–106 provided that: ''Subsection (f) of section 5721 of title 10, United States Code, as added by subsection (b)(2), shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to any appointment under that section after the end of such period.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 508(b) of Pub. L. 103–160 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of September 30, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 507 of Pub. L. 102–484 provided that the amendment made by that section is effective Sept. 29, 1992.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

SAVINGS PROVISION

Section 512(b) of Pub. L. 101–189 provided that:
''(1) The Secretary of the Navy shall provide, in the case of an officer appointed to the grade of lieutenant commander on or after the date of the enactment of this Act [Nov. 29, 1989] under an appointment described in paragraph (2), that the date of rank of such officer under that appointment shall be the date of rank that would have applied to the appointment had the authority referred to in that paragraph not lapsed.
''(2) An appointment referred to in paragraph (1) is an appointment under 5721 of title 10, United States Code, that (as determined by the Secretary of the Navy) would have been made during the period beginning on October 1, 1989, and ending on the date of the enactment of this Act had the authority to make appointments under that section not lapsed during such period.''

Similar provisions were contained in the following prior authorization act:
Pub. L. 100–180, div. A, title V, §501(b), Dec. 4, 1987, 101 Stat. 1085.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) to make certain temporary appointments to grade of lieutenant commander delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(d), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provision that any officer who on September 15, 1981 holds a temporary appointment in the grade of lieutenant commander under former section 5787d of this title, shall on and after that date be considered to be serving in such grade as if the appointment had been made under this section, see section 617 of Pub. L. 96–513, set out as a note under section 611 of this title.

[CHAPTER 545—REPEALED]

[§§ 5751 to 5758. Repealed. Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897]

Section 5751, acts Aug. 10, 1956, ch. 1041, 70A Stat. 346; Aug. 3, 1961, Pub. L. 87–123, §5(16), 75 Stat. 266, related to eligibility for consideration by a selection board for promotion of male officers in line of Navy and male officers in Marine Corps. See section 619 of this title.

Section 5752, acts Aug. 10, 1956, ch. 1041, 70A Stat. 347; Sept. 2, 1958, Pub. L. 85–861, §1(126), 72 Stat. 1497; Nov. 8, 1967, Pub. L. 90–130, §1(19)(A)–(C), 81 Stat. 378, related to eligibility for consideration by a selection board for promotion of women officers in line of Navy and women officers in Marine Corps. See section 619 of this title.

Section 5753, acts Aug. 10, 1956, ch. 1041, 70A Stat. 347; Aug. 21, 1957, Pub. L. 85–155, title II, §201(8), 71 Stat. 382; Nov. 7, 1967, Pub. L. 90–130, §1(19)(D), 81 Stat. 378; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to eligibility of Navy staff corps officers for consideration for promotion by a selection board. See section 619 of this title.

Section 5754, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, prescribed general conditions for eligibility for consideration by a selection board for promotion. See section 619 of this title.

Section 5755, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, related to communications between a selection board and an officer eligible for consideration for promotion by such board. See section 614 of this title.

Section 5756, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, directed Secretary of Navy to furnish appropriate selection board with number of male officers in line of Navy or of Marine Corps that could be recommended for promotion to next highest grade and prescribed a formula for arriving at such number. See section 622 of this title.

Section 5757, act Aug. 10, 1956, ch. 1041, 70A Stat. 348, directed Secretary of Navy to furnish appropriate selection board with number of male officers in line of Navy or of Marine Corps designated for limited duty that could be recommended for promotion to next highest grade and prescribed a formula for arriving at such number. See section 622 of this title.

Section 5758, act Aug. 10, 1956, ch. 1041, 70A Stat. 349, directed Secretary of Navy to furnish appropriate selection board with numbers of officers designated for engineering, aeronautical engineering, and special duty that could be recommended for promotion to grade of rear admiral and numbers of male officers designated for such duty that could be recommended for promotion to a grade below rear admiral and prescribed formulas for arriving at such numbers. See section 622 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

SELECTION BOARDS CONVENED BETWEEN JULY 10, 1981, AND SEPTEMBER 15, 1981; SERVICE IN GRADE REQUIREMENTS; REGULATIONS

Pub. L. 97–22, §9, July 10, 1981, 95 Stat. 136, provided that for selection boards convened on or after July 10, 1981, and before Sept. 15, 1981, service in grade requirements shall be established under regulations prescribed by Secretary of the Navy for eligibility for consideration for promotion of female officers in the line of the Navy to grade of lieutenant commander and female officers in the Marine Corps to grade of major.

[§ 5759. Repealed. Pub. L. 87–123, § 5(17), Aug. 3, 1961, 75 Stat. 266]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 349, required Secretary to furnish selection boards with number of Marine Corps officers designated for supply duty that could be recommended for promotion.

[§§ 5760 to 5773. Repealed. Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897]

Section 5760, acts Aug. 10, 1056, ch. 1041, 70A Stat. 350; Nov. 8, 1967, Pub. L. 90–130, §1(19)(E), (F), 81 Stat. 378, directed Secretary of Navy to furnish appropriate selection board with number of women officers in the line of Navy that could be recommended for promotion to grade of lieutenant, captain, commander, or lieutenant commander and number of women officers of Marine Corps that could be recommended for promotion to grade of captain, colonel, lieutenant colonel, or major. See section 622 of this title.

Section 5761, act Aug. 10, 1956, ch. 1041, 70A Stat. 350, directed Secretary of Navy to furnish appropriate selection board with number of officers in any staff corps that could be recommended for promotion to grade of rear admiral. See section 622 of this title.

Section 5762, acts Aug. 10, 1956, ch. 1041, 70A Stat. 351; Aug. 21, 1957, Pub. L. 85–155, title II, §201(9), 71 Stat. 383; Nov. 8, 1967, Pub. L. 90–130, §1(19)(G), (H), 81 Stat. 378; Dec. 8, 1967, Pub. L. 90–179, §6, 81 Stat. 548, directed Secretary of Navy to furnish appropriate selection boards with number of staff corps officers that could be recommended for promotion to grades below rear admiral. See section 622 of this title.

Section 5763, acts Aug. 10, 1956, ch. 1041, 70A Stat. 352; Sept. 2, 1958, Pub. L. 85–861, §1(127), 72 Stat. 1497; Nov. 8, 1967, Pub. L. 90–130, §1(19)(I), 81 Stat. 378, directed Secretary of Navy to furnish appropriate selection boards with number of certain women officers in a staff corps of Navy that could be recommended for promotion to grade of captain, commander, or lieutenant commander. See section 622 of this title.

Section 5764, acts Aug. 10, 1956, ch. 1041, 70A Stat. 353; Nov. 8, 1967, Pub. L. 90–130, §1(19)(J), (K), 81 Stat. 378, related to establishment of promotion zones in each grade in line of Navy. See section 623 of this title.

Section 5765, acts Aug. 10, 1956, ch. 1041, 70A Stat. 354; Aug. 3, 1961, Pub. L. 87–123, §5(19), 75 Stat. 266; Nov. 8, 1967, Pub. L. 90–130, §1(19)(J), (L), 81 Stat. 378, related to establishment of promotion zones in each grade of Marine Corps. See section 623 of this title.

Section 5766, acts Aug. 10, 1956, ch. 1041, 70A Stat. 355; Nov. 8, 1967, Pub. L. 90–130, §1(19)(M), 81 Stat. 378, specified Navy staff corps officers considered to be in promotion zones for purposes of boards of selection.

Section 5767, acts Aug. 10, 1956, ch. 1041, 70A Stat. 355; Nov. 8, 1967, Pub. L. 90–130, §1(19)(N), 81 Stat. 379, related to promotion to flag or general officer grade of officers in Navy or Marine Corps qualified for specific duties. See section 619 et seq. of this title.

Section 5768, act Aug. 10, 1956, ch. 1041, 70A Stat. 356, prescribed normal terms of service for male officers in line of Navy and of Marine Corps.

Section 5769, acts Aug. 10, 1956, ch. 1041, 70A Stat. 356; Aug. 3, 1961, Pub. L. 87–123, §5(20), 75 Stat. 266; Oct. 22, 1970, Pub. L. 91–491, §1, 84 Stat. 1089, related to eligibility for promotion of male line officers in Navy and male officers in Marine Corps. See section 619 of this title.

Section 5770, act Aug. 10, 1956, ch. 1041, 70A Stat. 357, prescribed a sea or foreign service requirement for promotion of male officers on the active list in line of Navy.

Section 5771, acts Aug. 10, 1956, ch. 1041, 70A Stat. 358; Nov. 8, 1967, Pub. L. 90–130, §1(19)(O), (P), 81 Stat. 379, related to eligibility for promotion of women officers on active list in line of Navy and women officers on active list of Marine Corps. See section 619 of this title.

Section 5772, act Aug. 10, 1956, ch. 1041, 70A Stat. 358, related to eligibility of Navy staff corps officers for promotion to grade of rear admiral. See section 619 of this title.

Section 5773, acts Aug. 10, 1956, ch. 1041, 70A Stat. 359; Aug. 21, 1957, Pub. L. 85–155, title II, §201(10), 71 Stat. 383; Sept. 30, 1966, Pub. L. 89–609, §1(11), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(19)(Q)–(S), 81 Stat. 379, related to eligibility of Navy staff corps officers for promotion to grades below rear admiral. See section 619 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5774. Repealed. Pub. L. 90–130, § 1(19)(T), Nov. 8, 1967, 81 Stat. 379]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 359, made women officers on active list of Navy in staff corps, appointed under section 5590 of this title, who were recommended for promotion to a grade above lieutenant (junior grade) in approved report of a selection board convened under chapter 543 of this title eligible for promotion when line officer who was to be her running mate in higher grade became eligible for promotion to that grade.

[§ 5775. Repealed. Pub. L. 87–649, § 14c(293), Sept. 7, 1962, 76 Stat. 501]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 359; Aug. 21, 1957, Pub. L. 85–155, title II, §201(11), 71 Stat. 383; Aug. 3, 1961, Pub. L. 87–123, §5(21), 75 Stat. 266, related to date of entitlement to pay and allowances of grade to which an officer is promoted. See section 904 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§§ 5776 to 5793. Repealed. Pub. L. 96–513, title III, § 333, Dec. 12, 1980, 94 Stat. 2897]

Section 5776, acts Aug. 10, 1956, ch. 1041, 70A Stat. 361; Aug. 21, 1957, Pub. L. 85–155, title II, §201(12), 71 Stat. 383; Aug. 3, 1961, Pub. L. 87–123, §5(22), 75 Stat. 266; Sept. 30, 1966, Pub. L. 89–609, §1(12), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(19)(U)–(W), 81 Stat. 379, related to failure of selection. See section 627 of this title.

Section 5777, act Aug. 10, 1956, ch. 1041, 70A Stat. 361, related to removal of an officer's name from a promotion list. See section 629 of this title.

Section 5778, acts Aug. 10, 1956, ch. 1041, 70A Stat. 362; Nov. 8, 1967, Pub. L. 90–130, §1(19)(X), 81 Stat. 379, related to temporary and permanent natures of appointments under certain of the provisions of former sections 5751 to 5777 of this title.

Section 5779, act Aug. 10, 1956, ch. 1041, 70A Stat. 362, authorized President to terminate temporary promotions at any time.

Section 5780, act Aug. 10, 1956, ch. 1041, 70A Stat. 362, related to permanent promotions of male line officers in Regular Navy and male officers in Regular Marine Corps. See section 619 et seq. of this title.

Section 5781, act Aug. 10, 1956, ch. 1041, 70A Stat. 363, related to permanent promotions of Regular Navy staff corps officers to grade of rear admiral. See section 619 et seq. of this title.

Section 5782, acts Aug. 10, 1956, ch. 1041, 70A Stat. 363; Aug. 21, 1957, Pub. L. 85–155, title II, §201(13), 71 Stat. 383; Sept. 30, 1966, Pub. L. 89–609, §1(13), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(19)(Y), 81 Stat. 379, related to permanent promotions of Regular Navy staff corps officers to grades below rear admiral. See section 619 et seq. of this title.

Section 5783, act Aug. 10, 1956, ch. 1041, 70A Stat. 364, related to permanent promotions of Naval Reserve and Marine Corps Reserve officers. See section 619 et seq. of this title.

Section 5784, act Aug. 10, 1956, ch. 1041, 70A Stat. 365, related to temporary promotions of ensigns in Navy to grade of lieutenant (junior grade) and second lieutenants in Marine Corps to grade of first lieutenant. See section 603 of this title.

Section 5785, acts Aug. 10, 1956, ch. 1041, 70A Stat. 365; Sept. 2, 1958, Pub. L. 85–861, §33(a)(29), 72 Stat. 1566; Apr.

21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President to suspend any of the provisions of former sections 5751 to 5784 of this title relating to officers in Navy or Marine Corps except women officers appointed under former section 5590 of this title. See section 123(a), (b) of this title.

Section 5786, acts Aug. 10, 1956, ch. 1041, 70A Stat. 366; Nov. 8, 1967, Pub. L. 90–130, §1(19)(Z), 81 Stat. 379; Sept. 19, 1978, Pub. L. 95–377, §6(a), 92 Stat. 721, specified certain categories of officers as ineligible for promotion and provided that officers serving in grades to which they were appointed for periods of limited duration or to which they were temporarily appointed were to be considered for purposes of former sections 5751 to 5785 of this title as serving in the grade they would have held were it not for such temporary appointments. See section 641 of this title.

Section 5787, acts Aug. 10, 1956, ch. 1041, 70A Stat. 366; Sept. 7, 1962, Pub. L. 87–649, §§5(b), 14c(30), 76 Stat. 493, 501; Sept. 28, 1971, Pub. L. 92–129, title VI, §603(b), 85 Stat. 362, related to temporary promotions in times of war or national emergency. See sections 602 and 603 of this title.

Section 5787a, added Pub. L. 85–861, §1(128)(A), Sept. 2, 1958, 72 Stat. 1497, authorized temporary promotion of an officer in Medical or Dental Corps to grade of lieutenant at any time after first anniversary of date upon which he graduated from medical, dental, or osteopathic school. See section 603 of this title.

Section 5787b, added Pub. L. 85–861, §1(128)(A), Sept. 2, 1958, 72 Stat. 1497; amended Pub. L. 87–649, §14c(31), Sept. 7, 1962, 76 Stat. 501, authorized temporary promotion of women officers serving on active duty in grade of ensign in Navy or second lieutenant in Marine Corps. See section 603 of this title.

Section 5787c, added Pub. L. 85–861, §33(a)(30)(A), Sept. 2, 1958, 72 Stat. 1566; amended Pub. L. 95–377, §11(a), Sept. 19, 1978, 92 Stat. 721; Pub. L. 96–343, §10(e), Sept. 8, 1980, 94 Stat. 1130, related to temporary promotion of warrant officers and officers designated for limited duty in Navy and Marine Corps. See section 602 of this title.

Section 5787d, added Pub. L. 95–377, §4(a), Sept. 19, 1978, 92 Stat. 720; amended Pub. L. 96–343, §10(e), Sept. 8, 1980, 94 Stat. 1130, authorized temporary promotion under certain circumstances of Navy lieutenants as lieutenant commanders. See section 603 of this title.

Section 5788, acts Aug. 10, 1956, ch. 1041, 70A Stat. 367; Sept. 7, 1962, Pub. L. 87–649, §14c(32), 76 Stat. 501, related to eligibility for promotion of Navy ensigns and Marine Corps second lieutenants. See section 619 of this title.

Section 5789, act Aug. 10, 1956, ch. 1041, 70A Stat. 367, authorized promotion of officers in the line of the Navy or of the Marine Corps upon receipt of the thanks of Congress. See section 619 et seq. of this title.

Section 5790, act Aug. 10, 1956, ch. 1041, 70A Stat. 368, authorized advancement in rank of officers of Navy or of Marine Corps by not more than 30 numbers on lineal list for conduct in battle or extraordinary heroism. See section 619 et seq. of this title.

Section 5791, acts Aug. 10, 1956, ch. 1041, 70A Stat. 368; Sept. 28, 1971, Pub. L. 92–129, title VI, §603(c), 85 Stat. 362; Sept. 19, 1978, Pub. L. 95–377, §6(b), 92 Stat. 721, vested power to make appointments under former sections 5751 to 5793, except for former sections 5787 and 5787d, of this title in President, by and with advice and consent of Senate. See section 624 of this title.

Section 5792, acts Aug. 10 1956, ch. 1041, 70A Stat. 368; Nov. 2, 1966, Pub. L. 89–718, §4, 80 Stat. 1115, dispensed with need for an oath of office upon promotion to a higher grade in the case of an officer of the naval service who had served continuously since subscribing to the oath of office prescribed in section 3331 of title 5. See section 626 of this title.

Section 5793, added Pub. L. 90–228, §1(3)(A), Dec. 28, 1967, 81 Stat. 745, related to authorized strengths in grade and promotions of Medical Corps and Dental Corps officers. See section 521 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 547—REPEALED]

[§§ 5861, 5862. Repealed. Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897]

Section 5861, acts Aug. 10, 1956, ch. 1041, 70A Stat. 368; Sept. 2, 1958, Pub. L. 85–861, §1(129), 72 Stat. 1497, required an officer of Regular Navy or of Regular Marine Corps to pass a physical examination as prescribed by Secretary of Navy in order to qualify for promotion to a grade above ensign in Navy or second lieutenant in Marine Corps. See section 624 of this title.

Section 5862, acts Aug. 10, 1956, ch. 1041, 70A Stat. 369; Sept. 2, 1958, Pub. L. 85–861, §1(131), 72 Stat. 1498, related to mental, moral, and professional qualifications required to be demonstrated by officers on active list of Navy or Marine Corps in order to be promoted to grades of lieutenant (junior grade) or above in Navy or first lieutenant or above in Marine Corps. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5863. Repealed. Pub. L. 85–861, §36B(14), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 369, related to procedure before examining boards.

[§§ 5864, 5865. Repealed. Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897]

Section 5864, act Aug. 10, 1956, ch. 1041, 70A Stat. 370, related to discharge of officers not morally qualified. See section 630 of this title.

Section 5865, act Aug. 10, 1956, ch. 1041, 70A Stat. 370, related to effect of a failure to qualify professionally. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 5866. Repealed. Pub. L. 85–861, §36B(15), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 371, related to delegation of power by President to Secretary of Navy.

[§ 5867. Repealed. Pub. L. 96–513, title III, §333, Dec. 12, 1980, 94 Stat. 2897]

Section, added Pub. L. 85–861, §1(132)(A), Sept. 2, 1958, 72 Stat. 1498, required moral, professional, and physical examinations before officers of the Naval or Marine Corps Reserves could be promoted to the next higher grades. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 549—REPEALED]

[§§ 5891 to 5906. Repealed. Pub. L. 103–337, div. A, title XVI, §1629(b)(2), Oct. 5, 1994, 108 Stat. 2963]

Section 5891, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1499; amended Pub. L. 90–130, §1(20)(A),

Nov. 8, 1967, 81 Stat. 379; Pub. L. 96–513, title V, §503(32), Dec. 12, 1980, 94 Stat. 2913; Pub. L. 98–525, title V, §533(e), Oct. 19, 1984, 98 Stat. 2528, related to officers in active status in Naval Reserve and Marine Corps Reserve who could be promoted under this chapter. See section 14301 et seq. of this title.

Section 5892, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1500; amended Pub. L. 96–513, title V, §503(33), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 104–106, div. A, title XV, §1501(c)(27), Feb. 10, 1996, 110 Stat. 500, related to numbers of officers in each grade in Naval Reserve and Marine Corps Reserve that could be promoted. See section 14001 et seq. of this title.

Section 5893, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1500; amended Pub. L. 91–199, §2, Feb. 26, 1970, 84 Stat. 16, related to composition and procedures of selection boards. See sections 14102 and 14108(b) of this title.

Section 5894, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1501, required members of selection boards to take oaths. See section 14103 of this title.

Section 5895, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1501, related to information to be furnished to selection boards. See section 14107 of this title.

Section 5896, added Pub. L. 99–661, div. A, title V, §507(a), Nov. 14, 1986, 100 Stat. 3865, related to recommendations for promotion by selection boards. See section 14108 of this title.

A prior section 5896, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1501; amended Pub. L. 90–130, §1(20)(B), Nov. 8, 1967, 81 Stat. 379; Pub. L. 90–179, §12, Dec. 8, 1967, 81 Stat. 549; Pub. L. 96–513, title V, §503(34), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, §10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to officers recommended for promotion by selection boards, prior to repeal by Pub. L. 99–661, §507(a).

Section 5897, added Pub. L. 99–661, div. A, title V, §507(a), Nov. 14, 1986, 100 Stat. 3865, related to reports by selection boards listing officers recommended for promotion. See section 14109(a), (b) of this title.

A prior section 5897, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1502; amended Pub. L. 90–179, §12, Dec. 8, 1967, 81 Stat. 549; Pub. L. 96–513, title V, §503(34), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, §10(b)(10)(B), July 10, 1981, 95 Stat. 137; Pub. L. 98–525, title XIV, §1405(47), Oct. 19, 1984, 98 Stat. 2625, related to reports and certifications by selection boards, prior to repeal by Pub. L. 99–661, §507(a).

Section 5898, added Pub. L. 99–661, div. A, title V, §507(a), Nov. 14, 1986, 100 Stat. 3865, related to action on reports of selection boards. See sections 14104, 14110(b), 14111(a), (b), and 14112 of this title.

A prior section 5898, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1503; amended Pub. L. 96–513, title V, §503(34), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, §10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to submission of reports of selection boards to the President, prior to repeal by Pub. L. 99–661, §507(a).

Section 5899, added Pub. L. 99–661, div. A, title V, §507(a), Nov. 14, 1986, 100 Stat. 3866, related to eligibility of running mates for consideration for promotion. See section 14306(b) of this title.

A prior section 5899, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1503; amended Pub. L. 86–559, §1(42), June 30, 1960, 74 Stat. 274; Pub. L. 89–275, §§1, 2, Oct. 20, 1965, 79 Stat. 1010; Pub. L. 89–609, §1(14), Sept. 30, 1966, 80 Stat. 853; Pub. L. 90–130, §1(20)(C), Nov. 8, 1967, 81 Stat. 379; Pub. L. 96–513, title V, §503(35), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 97–22, §10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to eligibility of officers in promotion zones for consideration by selection boards, prior to repeal by Pub. L. 99–661, §507(a).

Section 5900, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1504, related to right of officer eligible for consideration for promotion to send communication to selection board. See section 14106 of this title.

Section 5901, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1504; amended Pub. L. 96–513, title V, §503(36), Dec. 12, 1980, 94 Stat. 2914, related to numbers of officers that a selection board may recommend for promotion. See section 14307 of this title.

Section 5902, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1504; amended Pub. L. 86–559, §1(43), June 30, 1960, 74 Stat. 274; Pub. L. 89–731, §§3–5, Nov. 2, 1966, 80 Stat. 1160; Pub. L. 96–513, title V, §503(37), Dec. 12, 1980, 94 Stat. 2914, related to promotion lists, eligibility of officers of Naval Reserve and Marine Corps Reserve for promotion, and date of rank. See sections 14308(a), (d) and 14311(a) of this title.

Section 5903, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1505; amended Pub. L. 90–130, §1(20)(D), Nov. 8, 1967, 81 Stat. 380; Pub. L. 99–661, div. A, title V, §507(b)(2), Nov. 14, 1986, 100 Stat. 3866, related to failure of officers of Naval Reserve and Marine Corps Reserve of selection for promotion. See section 14501 et seq. of this title.

Section 5904, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1505, related to effect of erroneous omission of name from list furnished to selection board. See section 14502 of this title.

Section 5905, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1505; amended Pub. L. 96–513, title V, §503(38), Dec. 12, 1980, 94 Stat. 2914; Pub. L. 99–661, div. A, title V, §507(b)(3), Nov. 14, 1986, 100 Stat. 3866; Pub. L. 100–456, div. A, title V, §502(a), Sept. 29, 1988, 102 Stat. 1966, related to removal of reserve officers from promotion list. See section 14310 of this title.

Section 5906, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1506; amended Pub. L. 96–513, title V, §503(39), Dec. 12, 1980, 94 Stat. 2914, related to promotion of reserve officers transferred to inactive status list. See section 14317(a) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 5907. Repealed. Pub. L. 87–649, § 14c(33), Sept. 7, 1962, 76 Stat. 501]

Section, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1506; Pub. L. 86–559, §1(44), June 30, 1960, 74 Stat. 274, related to pay and allowances of reserve officers promoted to a grade above lieutenant (junior grade) in the Naval Reserve or above first lieutenant in the Marine Corps Reserve, and is covered by section 905 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Section repealed effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§§ 5908 to 5912. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(b)(2), Oct. 5, 1994, 108 Stat. 2963]

Section 5908, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1506; amended Pub. L. 87–649, §14c(34), Sept. 7, 1962, 76 Stat. 501, related to eligibility of ensigns in Naval Reserve and second lieutenants in Marine Corps Reserve for promotion. See section 14001 et seq. of this title.

Section 5909, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1506, provided that sea or foreign service not be required for promotion of reserve officers under this chapter.

Section 5910, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1506; amended Pub. L. 96–513, title V, §503(40), Dec. 12, 1980, 94 Stat. 2914, provided that officers in Naval Reserve and Marine Corps Reserve could be promoted under regulations prescribed by Secretary of the Navy. See section 14301 et seq. of this title.

Section 5911, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1507; amended Pub. L. 86–559, §1(45), June

30, 1960, 74 Stat. 274, related to promotions of reserve officers by temporary and permanent appointments. See section 14301 et seq. of this title.

Section 5912, added Pub. L. 85–861, §1(133), Sept. 2, 1958, 72 Stat. 1507; amended Pub. L. 92–129, title VI, §603(d), Sept. 28, 1971, 85 Stat. 362, related to President's power to make appointments under this chapter of officers in Naval Reserve and Marine Corps Reserve. See section 14301 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 551—OFFICERS IN COMMAND

Sec.
[5941. Repealed.]
5942. Aviation commands: eligibility.
5943. Naval shipyards.
5944. Marine Corps officers: limitation on power to command.
5945. Staff corps officers: limitation on power to command.
5946. Precedence accorded commanding officers.
5947. Requirement of exemplary conduct.
5948. Consular powers: senior officer present afloat.
5949. Policy as to leave and liberty.
[5950. Repealed.]
5951. Continuation of authority after loss of vessel or aircraft.
5952. Marine Corps organizations on vessels: authority of officers.
[5953 to 5955. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, §503(41), Dec. 12, 1980, 94 Stat. 2914, struck out item 5955 ''Retired officers withdrawn from command''.

1968—Pub. L. 90–235, §5(a)(4), (b)(2), Jan. 2, 1968, 81 Stat. 761, struck out item 5941 ''Assignment to command: regulations'', item 5950 ''Exemption from Supply Corps duties'', item 5953 ''Executive officer: assignment; authority'', and item 5954 ''Command: when different commands of Marine Corps and Army or Air Force join''.

[§ 5941. Repealed. Pub. L. 90–235, § 5(b)(1), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 371, authorized President to prescribe regulations governing the assignment of officers to command fleets, subdivisions of fleets, and vessels.

§ 5942. Aviation commands: eligibility

(a) To be eligible to command an aircraft carrier or an aircraft tender, an officer must be an officer in the line of the Navy who is designated as a naval aviator or naval flight officer and who is otherwise qualified.

(b) To be eligible to command a naval aviation school, a naval air station, or a naval aviation unit organized for flight tactical purposes, an officer must be an officer in the line of the Navy designated as a naval aviator or naval flight officer.

(c) To be eligible to command a Marine Corps aviation school, a Marine Corps air station, or a Marine Corps aviation unit organized for flight tactical purposes, an officer must be an officer of the Marine Corps designated as a naval aviator or naval flight officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371; Pub. L. 91–198, §1(1), Feb. 26, 1970, 84 Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5942(a)	34 U.S.C. 735 (5th par.).	June 24, 1926, ch. 668, §3 (5th par.), 44 Stat. 767.
5942(b)	34 U.S.C. 735 (4th par.).	June 24, 1926, ch. 668, §3 (4th par.), 44 Stat. 767.
5942(c)	34 U.S.C. 735 (7th par.).	June 24, 1926, ch. 668, §3 (7th par.), 44 Stat. 767.

The last proviso of §8 of the Act of July 12, 1921, ch. 44 (34 U.S.C. 734), was superseded by paragraphs 4, 5, and 7 of §3 of the Act of June 24, 1926, ch. 668 (34 U.S.C. 735), insofar as ships and activities mentioned in those paragraphs are concerned. The requirements of this section are stated as conditions of eligibility for clarity.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–198 substituted ''naval flight officer'' for ''naval aviation observer''.

Subsecs. (b), (c). Pub. L. 91–198 inserted ''or naval flight officer'' after ''naval aviator''.

§ 5943. Naval shipyards

Commanders of naval shipyards may be selected by the President from officers of the Navy not below the grade of commander.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5943	34 U.S.C. 501.	R.S. 1542.

The words ''Commanders of naval shipyards'' are substituted for the words ''commandants of the several navy yards'' to conform to present terminology. The words ''of the Navy'' are inserted for clarity.

§ 5944. Marine Corps officers: limitation on power to command

Officers of the Marine Corps may not command vessels or naval shipyards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5944	34 U.S.C. 713.	R.S. 1617.

The words ''of the United States'' are omitted as surplusage. The word ''command'' is substituted for the words ''exercise command over any''.

§ 5945. Staff corps officers: limitation on power to command

An officer in a staff corps may command only such activities as are appropriate to his corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 371; Pub. L. 90–130, §1(21), Nov. 8, 1967, 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5945	34 U.S.C. 253.	R.S. 1488; Mar. 3, 1899, ch. 413, §7 (3d proviso of 2d sentence, and 3d sentence), 30 Stat. 1006; June 24, 1910, ch. 378, 36 Stat. 614 (3d proviso).
	34 U.S.C. 30h (1st 23 words).	Aug. 4, 1947, ch. 459, §207 (1st 23 words), 61 Stat. 738; renumbered §206, Aug. 7, 1947, ch. 512, §433(b), 61 Stat. 881.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34 U.S.C. 43d (proviso).	Apr. 16, 1947, ch. 38, § 205 (proviso), 61 Stat. 48.

The provision of § 7 of the Act of March 3, 1899 (supra), relating to relative rank is omitted as executed. The provision that the rank conferred upon staff corps officers shall not change their titles is omitted because these titles were abolished by § 405 of the Officer Personnel Act of 1947 (34 U.S.C. 10a) and the corresponding line grades substituted. The cited proviso in the Act of June 24, 1910 (34 U.S.C. 253 (proviso)) is omitted as obsolete because the officers referred to were officers of the Construction Corps which has been abolished.

The first sentence of this section is phrased so as to reflect the accepted meaning of the cited provision. 34 U.S.C. 253, as worded, if interpreted literally, could be held to prohibit, for example, the assignment of members of the Medical Service Corps, Nurse Corps, and Hospital Corps to duty under officers of the Medical Corps, despite the fact that all of these corps were established by law within the Medical Department of the Navy. The provision is not so interpreted. It is understood to restrict only the types of activities that staff corps officers may command, and not to restrict to a single corps the personnel who may be assigned to an activity commanded by a staff corps officer.

AMENDMENTS

1967—Pub. L. 90–130 struck out provision that an officer in the Nurse Corps may not exercise command.

§ 5946. Precedence accorded commanding officers

The commanding officer of a vessel or of a naval station takes precedence over all officers under his command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5946	34 U.S.C. 246.	R.S. 1468.

The word ''placed'' is omitted as surplusage. The words ''of war'' are omitted to avoid an erroneous implication that the section does not apply to the commanding officers of noncombatant ships of the Navy. As of the date of enactment of R.S. 1468, all vessels of the Navy were ''vessels of war''; the elimination of the words, therefore, preserves the purpose of the statute.

§ 5947. Requirement of exemplary conduct

All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5947	34 U.S.C. 265.	May 5, 1950, ch. 169, § 7(c), 64 Stat. 146.

§ 5948. Consular powers: senior officer present afloat

In any foreign port where there is no resident consul of the United States, or on the high seas, the senior officer present afloat has the powers of a consul in relation to mariners of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5948	34 U.S.C. 217.	R.S. 1433.

The words ''the senior officer present afloat'' are substituted for the words ''The commanding officer of any fleet, squadron, or vessel acting singly''. At the time of enactment of the Revised Statutes, the word ''squadron'' meant any number of vessels more than one. Today the concept of ''senior officer present afloat'' covers as nearly as possible the current equivalent of the original statute.

§ 5949. Policy as to leave and liberty

The commanding officer of a vessel shall favor the faithful and obedient in granting leave and liberty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5949	34 U.S.C. 220.	R.S. 1431.

The words ''to exercise carefully a discrimination in'' are omitted as surplusage. The words ''leave and liberty'' are substituted for ''temporary leave of absence and liberty on shore'' to conform to modern terminology.

[§ 5950. Repealed. Pub. L. 90–235, § 5(b)(1), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 372, provided that the commanding officer of a vessel could not be required to perform the duties of an officer in the Supply Corps.

§ 5951. Continuation of authority after loss of vessel or aircraft

If the crew of any naval vessel or naval aircraft are separated from their vessel or aircraft because of its wreck, loss, or destruction, all the command and authority given to the officers of the vessel or aircraft remain in full force until the crew are discharged or reassigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5951	34 U.S.C. 264.	May 5, 1950, ch. 169, § 7(a), 64 Stat. 145.

The word ''officers'' is substituted for the word ''officer'' since the cited subsection of the Act of May 5,

1950, was intended to reenact the substance of Article 21 of the Articles for the Government of the Navy (R.S. 1624; 34 U.S.C. 1200), in which the word ''officers'' was used. The words ''regularly'' and ''by competent authority'' are omitted as surplusage.

§ 5952. Marine Corps organizations on vessels: authority of officers

When an organization of the Marine Corps is embarked in any vessel, not as part of the authorized complement of the vessel, the authority of the officers of that organization is the same as though the organization were serving at a naval station. However, this section does not impair the paramount authority of the commanding officer of a vessel over the vessel and all persons embarked in it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 372.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5952	34 U.S.C. 623c.	May 5, 1950, ch. 169, § 7(b), 64 Stat. 145.

The words ''organization of the Marine Corps'' are substituted for ''force of marines'' for clarity. The words ''or vessels'', ''and powers'', ''on shore'', and ''under his command'' are omitted as surplusage.

[§§ 5953, 5954. Repealed. Pub. L. 90–235, § 5(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 761]

Section 5953, act Aug. 10, 1956, ch. 1041, 70A Stat. 372, provided for the assignment and authority of executive officers of vessels or naval stations.

Section 5954, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, provided for command when different commands of the Marine Corps and the Army or the Marine Corps and the Air Force joined or served together. See section 747 of this title.

[§ 5955. Repealed. Pub. L. 96–513, title III, § 361(a), Dec. 12, 1980, 94 Stat. 2902]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, directed that retired officers of the Navy be withdrawn from command. See section 750 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 553—SPECIAL ASSIGNMENTS AND DETAILS

Sec.
[5981, 5982. Repealed.]
5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries.
[5984. Repealed.]
5985. Nautical Schools: detail of naval officers as superintendents or instructors.
5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture.
[5987. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, § 503(42), Dec. 12, 1980, 94 Stat. 2914, struck out item 5982 ''Ships and squadrons: detail of retired officers to command''.

1970—Pub. L. 91–482, § 2C, Oct. 21, 1970, 84 Stat. 1082, struck out item 5981 ''Squadrons: detail of officers on active list to command''.

1968—Pub. L. 90–235, § 4(a)(4), (b)(3), Jan. 2, 1968, 81 Stat. 759, 760, struck out item 5984 ''Military institutions and colleges: details as superintendents and instructors'', and item 5987 ''American National Red Cross: detail of officers in the Medical Corps''.

[§ 5981. Repealed. Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, provided that the President could select any officer on the active list of the Navy not below the grade of commander and assign him to the command of a squadron, with the rank and title of a flag officer.

[§ 5982. Repealed. Pub. L. 96–513, title III, § 361(b), Dec. 12, 1980, 94 Stat. 2902]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 373, authorized a detail of retired officers to command ships and squadrons in time of war. See section 688 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 5983. State Department: assignment of enlisted members as custodians of buildings in foreign countries

Upon the request of the Secretary of State, the Secretary of the Navy may assign enlisted members of the naval service to serve as custodians under the supervision of the principal officer at any embassy, legation, or consulate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5983	22 U.S.C. 957.	Aug. 13, 1946, ch. 957, § 562, 60 Stat. 1011.

[§ 5984. Repealed. Pub. L. 90–235, § 4(b)(1), Jan. 2, 1968, 81 Stat. 760]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 374, provided for detail to military institutions and colleges that gave instruction and drill in military tactics of officers of the Navy as superintendents or professors and retired officers and petty officers of the Navy, with their consent, as instructors in military drill and tactics.

§ 5985. Nautical Schools: detail of naval officers as superintendents or instructors

The President may detail officers of the Navy as superintendents or instructors of institutions receiving benefits under section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c), when in his opinion it can be done without detriment to the naval service. Officers so detailed shall be recalled from an institution if it is discontinued or if the good of the naval service requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374; Pub. L. 99–145, title XIII, § 1303(a)(21), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5985	34 U.S.C. 1123 (less 1st proviso as applicable to vessels, and less 2d proviso).	Mar. 4, 1911, ch. 265, §3 (less 1st proviso as applicable to vessels, and less 2d proviso), 36 Stat. 1353.

The words ''naval service'' are substituted for the words ''public service'' for uniformity within the section. The citation of the act establishing the nautical institutions is substituted for the words ''such schools'' for clarity. The word ''proper'' is omitted as surplusage.

AMENDMENTS

1985—Pub. L. 99–145 substituted ''section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c)'' for ''the Act of March 4, 1911, ch. 265, 36 Stat. 1353, as amended''.

§ 5986. Technical institutions: detail of naval officers to promote knowledge of naval engineering and naval architecture

(a) To promote a knowledge of naval engineering and naval architecture, the President, upon the application of any established scientific school or college in the United States, the Territories, Commonwealths, or possessions, may detail a qualified officer of the Navy as a professor in that school or college. The number of officers detailed under this section may not exceed 25 at any one time.

(b) The President may prescribe regulations for detailing such officers and may recall them when the public interest requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 374.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
5986	34 U.S.C. 1126.	Feb. 26, 1879, ch. 105, 20 Stat. 322.

In subsection (a) the words ''To promote'' are substituted for the words ''For the purposes of promoting'' for brevity and the words ''among the young men of the United States'' are omitted as surplusage. The words ''naval engineering'' are substituted for the words ''steam engineering'' and the words ''naval architecture'' are substituted for the words ''iron-ship building'' to conform to current terminology and to express more clearly the intent of the statute. The words ''the Territories, Commonwealths, or possessions'' are inserted, since the words ''United States'' in the source statute are considered to have included all areas under the United States flag.

Section 1 of the Act of March 3, 1899, ch. 413, 30 Stat. 1004, transferred officers of the Engineer Corps of the Navy to the line of the Navy; therefore, in subsection (a) the words ''qualified officer'' are substituted for the words ''engineer officer'' to preserve the meaning of the section and to include any officer possessing adequate background and training in engineering duties.

In subsection (b) the word ''regulations'' is substituted for the word ''rules'', and the words ''public interest'' are substituted for the words ''public service'' to conform to current terminology.

[§ 5987. Repealed. Pub. L. 90–235, § 4(a)(2), Jan. 2, 1968, 81 Stat. 759]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 374, provided for the detail of officers in the Medical Corps of the Navy for duty with the Services to the Armed Forces Division of the American National Red Cross. See section 711a of this title.

CHAPTER 555—ADMINISTRATION

Sec.
6011. Navy Regulations.
6012. Additional regulations for Marine Corps.
6013. Enlisted grades and ratings: authority to establish.
6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy.
[6015 to 6018. Repealed.]
6019. Citizenship of officers of vessels.
[6020. Repealed.]
6021. Aviation duties: number of personnel assigned.
6022. Aviation training facilities.
[6023. Repealed.]
6024. Aviation designations: naval flight officer.
[6025, 6026. Repealed.]
6027. Medical Department: composition.
[6028. Repealed.]
6029. Dental services: responsibilities of senior dental officer.
[6030. Repealed.]
6031. Chaplains: divine services.
6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases.
[6033, 6034. Repealed.]
6035. Female members: congressional review period for assignment to duty on submarines or for reconfiguration of submarines.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §573(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136, added item 6035.

1994—Pub. L. 103–337, div. A, title XVI, §1673(b)(3), Oct. 5, 1994, 108 Stat. 3016, struck out items 6017 ''Retired list for Reserve members entitled to retired pay'' and 6034 ''Regulations for retired pay based on service in the Reserve''.

1993—Pub. L. 103–160, div. A, title V, §541(b), Nov. 30, 1993, 107 Stat. 1659, struck out item 6015 ''Women members: duty; qualifications; restrictions''.

1980—Pub. L. 96–513, title V, §503(43), Dec. 12, 1980, 94 Stat. 2914, struck out items 6018 ''Naval officers: shore duty; limitations'' and 6028 ''Medical Service Corps: composition''.

1972—Pub. L. 92–310, title II, §204(c), June 6, 1972, 86 Stat. 203, struck out item 6026 ''Supply Corps officers: bonds''.

1971—Pub. L. 92–168, §2(3), Nov. 24, 1971, 85 Stat. 489, struck out items 6023 ''Aviation designations: naval aviator,'' and 6025 ''Aviation designations: aviation pilot''.

1970—Pub. L. 91–198, §1(3), Feb. 26, 1970, 84 Stat. 15, substituted ''naval flight officer'' for ''naval aviation observer'' in item 6024.

1968—Pub. L. 90–235, §7(a)(5), Jan. 2, 1968, 81 Stat. 763, struck out item 6033 ''Woman member: definition of dependents''.

1967—Pub. L. 90–130, §1(22), Nov. 8, 1967, 81 Stat. 380, struck out item 6030 ''Nurse Corps officers: authority''.

1961—Pub. L. 87–123, §5(24), Aug. 3, 1961, 75 Stat. 266, struck out item 6020 ''Marine Corps officers: detail to duty in Supply Department''.

1958—Pub. L. 85–861, §1(135), Sept. 2, 1958, 72 Stat. 1507, struck out item 6016 ''Retired officers carried on Navy Register''.

§ 6011. Navy Regulations

United States Navy Regulations shall be issued by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375; Pub. L. 97–60, title II, §204(a)(2), Oct. 14, 1981, 95 Stat. 1007.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6011	34 U.S.C. 591.	R.S. 1547.

So much as pertains to the ''orders, regulations, and instructions issued by the Secretary of the Navy prior to July 14, 1862'' and the alterations thereto is omitted as executed, and the section is worded to preserve the remaining requirement that Navy Regulations must be issued with Presidential approval. The words ''United States Navy Regulations'' are substituted for the words ''regulations of the Navy'' to preserve the distinction between the permanent regulations of general applicability falling within this statute and the many other regulations issued by the Secretary alone under specific statutes and under his power to administer the Department.

AMENDMENTS

1981—Pub. L. 97–60 struck out ''with the approval of the President'' after ''Secretary of the Navy''.

NAVY REGULATIONS ISSUED BEFORE OCTOBER 14, 1981

Section 204(b) of Pub. L. 97–60 provided that: ''United States Navy regulations issued under section 6011 of title 10, United States Code, before the date of the enactment of this Act [Oct. 14, 1981] shall remain in effect in accordance with their terms until amended or revoked by the Secretary of the Navy.''

DELEGATION OF FUNCTIONS

For delegation to Secretary of Defense of authority vested in President by section 591 of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, set out as a note under section 301 of Title 3, The President.

§ 6012. Additional regulations for Marine Corps

The President may prescribe military regulations for the discipline of the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6012	34 U.S.C. 714.	R.S. 1620.

The words ''such'' and ''as he may deem expedient'' are omitted as surplusage.

§ 6013. Enlisted grades and ratings: authority to establish

The Secretary of the Navy may establish such enlisted grades and ratings as are necessary for the proper administration of the Navy and the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6013	34 U.S.C. 176. 34 U.S.C. 34 (less 1st sentence, and less proviso of 2d sentence).	June 4, 1920, ch. 228, § 7 (proviso), 41 Stat. 836. Aug. 29, 1916, ch. 417 (1st par. under ''Hospital Corps'', less 1st sentence, and less proviso of 2d sentence), 39 Stat. 572; Aug. 4, 1947, ch. 459, § 301(a), 61 Stat. 738.

The words ''in his discretion'' and ''of the enlisted personnel'' are omitted as surplusage. The words ''Navy and the Marine Corps'' are substituted for the words ''naval service''.

§ 6014. Enlisted members: authority for transfer between Marine Corps and Hospital Corps of the Navy

Under regulations prescribed by the Secretary of the Navy, enlisted members of the Marine Corps are eligible for transfer to the Hospital Corps of the Navy, and enlisted members of the Hospital Corps are eligible for transfer to the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 375.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6014	34 U.S.C. 34 (proviso of 2d sentence). 34 U.S.C. 34a.	Aug. 29, 1916, ch. 417 (proviso of 2d sentence in 1st paragraph under ''Hospital Corps''), 39 Stat. 572; Aug. 4, 1947, ch. 459, § 301(a), 61 Stat. 738. Aug. 4, 1947, ch. 459, § 302, 61 Stat. 738.

The authority to transfer Navy personnel to the Hospital Corps and personnel of that Corps to other branches or designations in the Navy is omitted as unnecessary because transfers within the Navy are permitted under provisions which authorize the Secretary of the Navy to establish grades and ratings (34 U.S.C. 176) and to administer the Department (5 U.S.C. 171a(c)).

The saving provision of 34 U.S.C. 34a which provided that no person would suffer any reduction in grade, rating, or pay, is omitted as executed. It pertained to personnel who, when the Hospital Corps was reorganized under the Act of August 4, 1947, ch. 459, §§ 301, 302, 61 Stat. 738, were in grades and ratings prescribed by prior laws.

[§ 6015. Repealed. Pub. L. 103–160, div. A, title V, § 541(a), Nov. 30, 1993, 107 Stat. 1659]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 375; Oct. 20, 1978, Pub. L. 95–485, title VIII, § 808, 92 Stat. 1623; Dec. 12, 1980, Pub. L. 96–513, title V, § 503(44), 94 Stat. 2914; Dec. 5, 1991, Pub. L. 102–190, div. A, title V, § 531(b), 105 Stat. 1365, related to women members, duties, qualifications, and restrictions.

[§ 6016. Repealed. Pub. L. 85–861, § 36B(16), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, required names of retired officers to be carried on Navy Register.

[§ 6017. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, related to Naval Reserve Retired List for Reserve members entitled to retired pay. See section 12774(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 6018. Repealed. Pub. L. 96–513, title III, § 372, Dec. 12, 1980, 94 Stat. 2903]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 376; Aug. 1, 1958, Pub. L. 85–588, 72 Stat. 488, related to assignment of Regular Navy officers to shore duty.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6019. Citizenship of officers of vessels

The officers of vessels of the United States shall in all cases by citizens of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6019	34 U.S.C. 211.	R.S. 1428.

[§ 6020. Repealed. Pub. L. 87–123, § 5(23), Aug. 3, 1961, 75 Stat. 266]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 376, provided for detail of Marine Corps officers for duty in supply department for a period of four years.

§ 6021. Aviation duties: number of personnel assigned

The number of officers and enlisted members of the Navy and the Marine Corps detailed to duty involving flying and to other duties in connection with aircraft shall be in accordance with the requirements of naval aviation as determined by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6021	34 U.S.C. 732.	July 12, 1921, ch. 44, § 8 (last par., less provisos), 42 Stat. 141.
	34 U.S.C. 732a.	July 22, 1935, ch. 402, § 8, 49 Stat. 490.

The provisions cited as source are consolidated in this section. The second sentence of § 8 of the Act of July 22, 1935, is omitted as executed.

§ 6022. Aviation training facilities

The President may maintain facilities to provide flight training for 16,000 members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 376.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6022	34 U.S.C. 736.	June 15, 1940, ch. 375, § 1 (2d sentence), 54 Stat. 400.

The proviso to the effect that the section does not affect the responsibility of the Secretary of the Navy under 34 U.S.C. 732 is omitted as unnecessary. The words ''as may, in his judgment, be necessary'' are omitted as surplusage. The words ''members of the naval service'' are substituted for ''naval aviators'' to avoid the implication that trainees are naval aviators while undergoing the training. The designation depends on successful completion of flight training.

[§ 6023. Repealed. Pub. L. 92–168, § 2(1), Nov. 24, 1971, 85 Stat. 489]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 376; Oct. 13, 1964, Pub. L. 88–647, title III, § 301(15), 78 Stat. 1072, provided qualifications to receive aviation designation of naval aviator. See section 2003 of this title.

§ 6024. Aviation designations: naval flight officer

Any officer of the naval service may be designated a naval flight officer if he has successfully completed the course prescribed for naval flight officers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377; Pub. L. 91–198, § 1(2), Feb. 26, 1970, 84 Stat. 15.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6024	34 U.S.C. 735 (par. 3).	June 24, 1926, ch. 668, § 3 (par. 3), 44 Stat. 767.

The phrase ''by competent authority'' is omitted as surplusage. The definition form of 34 U.S.C. 735 is not followed.

AMENDMENTS

1970—Pub. L. 91–198 substituted ''naval flight officer'' for ''naval aviation observer'' and ''naval flight officers'' for ''naval aviation observers,'' and struck out requirement that such officer have been in the air at least 100 hours.

[§ 6025. Repealed. Pub. L. 92–168, § 2(2), Nov. 24, 1971, 85 Stat. 489]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 377, provided qualifications to receive aviation designation of aviation pilot. See section 2003 of this title.

[§ 6026. Repealed. Pub. L. 92–310, title II, § 204(a), June 6, 1972, 86 Stat. 202]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 377, required officers in Supply Corps to give good and sufficient bonds to account for all public money and property that they receive.

§ 6027. Medical Department: composition

The Medical Corps and Dental Corps, and such other staff corps as the Secretary of the Navy may establish under section 5150(b) of this title and designate to be in the Medical Department of the Navy, are in the Medical Department of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377; Pub. L. 96–513, title III, § 353, Dec. 12, 1980, 94 Stat. 2902; Pub. L. 99–433, title V, § 514(c)(3), Oct. 1, 1986, 100 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6027	34 U.S.C. 30a (1st 20 words of 1st sentence).	Aug. 4, 1947, ch. 459, § 201 (1st 20 words of 1st sentence), 61 Stat. 736.
	34 U.S.C. 43 (less 2d sentence).	Apr. 16, 1947, ch. 38, § 201 (less 2d sentence), 61 Stat. 47; Aug. 7, 1947, ch. 512, § 434(a), 61 Stat. 882.
	34 U.S.C. 32.	Aug. 29, 1916, ch. 417, 39 Stat. 573 (30th through 44th words of 6th par. under ''Hospital Corps'').
	34 U.S.C. 51 (26th through 37th words).	Aug. 29, 1916, ch. 417 (1st par. under ''Naval Dental Corps'', 75th word to end of 1st sentence); added July 1, 1918, ch. 114, 40 Stat. 708 (4th par.).

There is no provision of law specifically stating that the Medical Corps is in the Medical Department. It was the first corps to have duties relating to medical and

sanitary matters and so long as it was the only corps having such duties there was no need for the departmental concept. The subsequent establishment of other corps with related duties ''in the Medical Department'' indicates clearly that the Medical Corps is in that Department.

The words ''effective August 4, 1947'' and the words ''establishing the Medical Service Corps'' in 34 U.S.C. 30a are omitted as executed. The words ''is created and established as a Staff Corps of the United States Navy'' in 34 U.S.C. 43 are omitted as executed.

AMENDMENTS

1986—Pub. L. 99–433 substituted ''section 5150(b)'' for ''section 5155(b)''.

1980—Pub. L. 96–513 authorized the Secretary of the Navy to designate staff corps as being in the Medical Department of the Navy and deleted specific references to the Medical Service Corps, the Nurse Corps, and the Hospital Corps as being in such Medical Department.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For provisions to prevent extinction or premature termination of rights, duties, penalties, or proceedings that existed or were begun prior to the effective date of Pub. L. 96–513 and otherwise to allow for an orderly transition to the system of officer personnel management put in place under Pub. L. 96–513, see section 601 et seq. of Pub. L. 96–513, set out as a note under section 611 of this title.

[§ 6028. Repealed. Pub. L. 96–513, title III, § 352(b), Dec. 12, 1980, 94 Stat. 2902]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 377, related to the composition of the Medical Service Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6029. Dental services: responsibilities of senior dental officer

(a) The Secretary of the Navy shall prescribe regulations for dental services on ships and at shore stations. Such services shall be under the senior dental officer, who is responsible to the commanding officer of the ship or station for all professional, technical, and administrative matters concerning dental services.

(b) This section does not impose any administrative requirements that would interfere with the proper functioning of battle organizations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 377.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6029	5 U.S.C. 456d.	Dec. 28, 1945, ch. 604, § 4, 59 Stat. 667.

The words ''for establishing'' are omitted as executed and unnecessary.

The last sentence of § 4 of the Act of December 28, 1945, ch. 604, 59 Stat. 667, was a repealing clause and savings provision. It is omitted from this section.

[§ 6030. Repealed Pub. L. 90–130, § 1(22), Nov. 8, 1967, 81 Stat. 380]

Section, act Aug. 10, 1956, ch. 1040, 70A Stat. 378, gave officers in the Nurse Corps authority in medical and sanitary matters and other work within the line of their professional duties in activities of the Medical Department after officers in the Medical Corps, Dental Corps, and Medical Service Corps and authorized officers in the Nurse Corps to exercise such military authority, other than command, as the Secretary of the Navy prescribed.

§ 6031. Chaplains: divine services

(a) An officer in the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member.

(b) The commanders of vessels and naval activities to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God.

(c) All persons in the Navy and in the Marine Corps are enjoined to behave themselves in a reverent and becoming manner during divine service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 378; Pub. L. 86–140, Aug. 7, 1959, 73 Stat. 288.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6031(a)	34 U.S.C. 95.	R.S. 1397.
6031(b)	34 U.S.C. 266 (1st sentence).	May 5, 1950, ch. 169, § 7(d), 64 Stat. 146.
6031(c)	34 U.S.C. 266 (2d sentence).	May 5, 1950, ch. 169, § 7(e), 64 Stat. 146.
6031(d)	34 U.S.C. 96.	R.S. 1398.

In subsection (c) the words ''and in the Marine Corps'' are added to execute the definition of ''Navy'' in section 1, article 1, of the Act of May 5, 1950, ch. 169, 64 Stat. 146.

AMENDMENTS

1959—Subsec. (d). Pub. L. 86–140 repealed subsec. (d) which required each chaplain to report annually to the Secretary of the Navy the official services performed by him.

§ 6032. Indebtedness to Marine Corps Exchanges: payment from appropriated funds in certain cases

Under regulations prescribed by the Secretary of the Navy, appropriations for the pay of the Marine Corps are available to pay any indebtedness to Marine Corps Exchanges of members of the Marine Corps who are discharged, who desert, or who are sentenced to prison.

(Aug. 10, 1956, ch. 1041, 70A Stat. 378.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6032	34 U.S.C. 725.	Aug. 2, 1946, ch. 756, § 28, 60 Stat. 857.

The words ''while in debt to the United States'' are omitted as surplusage and to avoid the erroneous interpretation that the provision authorizes the payment,

out of appropriations, of debts other than to Marine Corps Exchanges.

[§ 6033. Repealed Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 378; Sept. 7, 1962, Pub. L. 87–649, § 6(f)(5), 76 Stat. 494; Sept. 7, 1962, Pub. L. 87–651, title I, § 122, 76 Stat. 513, set forth restrictions on the consideration of a husband or child as the dependent of a female member of the Regular Navy, Regular Marine Corps, Fleet Reserve, Fleet Marine Corps Reserve, Naval Reserve or Marine Corps Reserve.

[§ 6034. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(j)(8), Oct. 5, 1994, 108 Stat. 3005]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 379, authorized Secretary of Navy to prescribe regulations for Navy and Marine Corps relating to retired pay based on service in the Reserve. See section 12731 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 6035. Female members: congressional review period for assignment to duty on submarines or for reconfiguration of submarines

(a) No change in the Department of the Navy policy limiting service on submarines to males, as in effect on May 10, 2000, may take effect until—

(1) the Secretary of Defense submits to Congress written notice of the proposed change; and

(2) a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) expires following the date on which the notice is received.

(b) No funds available to the Department of the Navy may be expended to reconfigure any existing submarine, or to design any new submarine, to accommodate female crew members until—

(1) the Secretary of Defense submits to Congress written notice of the proposed reconfiguration or design; and

(2) a period of 30 days of continuous session of Congress (excluding any day on which either House of Congress is not in session) expires following the date on which the notice is received.

(c) For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die.

(Added Pub. L. 106–398, §1 [[div. A], title V, § 573(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–136.)

CHAPTER 557—RATIONS

Sec.
6081. Navy ration: persons entitled to.
6082. Rations.
6083. Fixing cost on certain vessels and stations.
6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess.
6085. Flight rations.
6086. Subsistence in hospital messes; hospital ration.
6087. Sale of meals by general messes.

AMENDMENTS

1991—Pub. L. 102–25, title VII, § 701(e)(7), Apr. 6, 1991, 105 Stat. 115, inserted a period after ''6082'' in item 6082.

1990—Pub. L. 101–510, div. A, title V, § 557(b), Nov. 5, 1990, 104 Stat. 1571, amended item 6082 generally, substituting ''Rations'' for ''Navy ration: composition'' in item 6082.

§ 6081. Navy ration: persons entitled to

(a) Each enlisted member of the naval service is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(b) Each midshipman is entitled to a Navy ration for each day that he is on active duty, including each day that he is on leave.

(c) The Secretary of the Navy may prescribe regulations stating the conditions under which the ration shall be allowed under subsection (b).

(Aug. 10, 1956, ch. 1041, 70A Stat. 379; Pub. L. 87–649, § 5(c), Sept. 7, 1962, 76 Stat. 494; Pub. L. 105–85, div. A, title VI, § 602(b)(2), Nov. 18, 1997, 111 Stat. 1772.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6081	34 U.S.C. 901a (1st 2 sentences).	Aug. 2, 1946, ch. 756, § 17(a) (1st 2 sentences), 60 Stat. 855.
	5 U.S.C. 421g (b).	Aug. 2, 1946, ch. 756, § 40(b), 60 Stat. 858.

So much of 34 U.S.C. 901a as authorizes a commuted ration for enlisted members of the naval service under conditions and at rates prescribed by the Secretary of the Navy is superseded by § 301 of the Career Compensation Act of 1949 (37 U.S.C. 251). That section established a basic allowance for subsistence for enlisted members entitled to basic pay who are not subsisting at Government expense and prescribes the conditions under which the basic allowance for subsistence shall be paid and the amount of the allowance. Pursuant to Executive Order No. 10119, March 30, 1950, 15 F.R. 1757, the Secretary of Defense is authorized to make supplemental regulations to carry out the provisions of § 301. The words ''or to a per diem in place of subsistence'' are inserted to reflect the subsistence allowance authorized by § 303(a) of the Career Compensation Act of 1949 (37 U.S.C. 253a) to members in travel status.

In subsection (a) reference to the Coast and Geodetic Survey is omitted since there are no enlisted personnel in that service, and reference to the Coast Guard is omitted as covered by 14 U.S.C. 478.

In subsections (a) and (b) the words ''or furlough therefrom'' are omitted as surplusage, and the words ''for each day'' are inserted to make clear the fact that a ration is a daily allowance of food and that, in subsection (b), the commuted ration is credited on a daily basis. The words ''and cadets'' are omitted as there are no cadets in the Navy or Marine Corps entitled to a Navy ration. Aviation cadets are entitled to the basic allowance for subsistence prescribed for officers (34 U.S.C. 850c).

In subsection (c) the words ''prescribed by law'' and ''in accordance with law'' are omitted as surplusage.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''Each enlisted member'' for ''Except when entitled to a basic allowance for subsistence or to a per diem in place of subsistence, each enlisted member''.

1962—Subsec. (b). Pub. L. 87–649 struck out provisions which permitted payment of the commuted value of the

ration in money. See section 422(b) of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87–649 struck out provisions which permitted the Secretary to prescribe regulations for the allowance of the commuted value of the ration. See section 422(b) of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 602(g) of Pub. L. 105–85, set out as a note under section 402 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6082. Rations

(a) The President may prescribe the components and quantities of the Navy ration. The President may direct the issuance of equivalent articles in place of the prescribed components of the ration if the President determines that economy and the health and comfort of the members of the naval service require such action.

(b) An enlisted member of the naval service on active duty is entitled to one ration daily. If an emergency ration is issued, it is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick and injured in hospitals shall be provided under regulations prescribed by the Secretary of the Navy.

(d) The Secretary of the Navy may increase the quantity of daily rations for members of the naval service on a vessel or at a station that has an authorized complement of less than 150 members if the President determines that the vessel or station is operating under conditions that warrant an increase in rations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 379; Pub. L. 101–510, div. A, title V, § 557(a), Nov. 5, 1990, 104 Stat. 1570.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6082(a)	34 U.S.C. 902a.	Mar. 2, 1933, ch. 184, § 1 (2d sentence), 47 Stat. 1423; Feb. 21, 1942, ch. 106, 56 Stat. 97.
6082(b)	34 U.S.C. 902b.	Mar. 2, 1933, ch. 184, § 2, 47 Stat. 1423.
6082(c)	34 U.S.C. 902c.	Mar. 2, 1933, ch. 184, § 3, 47 Stat. 1423.

In subsection (a) the words ''issued to each person entitled thereto'' are omitted as surplusage. In clause (2) the words ''or fresh'' and in clause (6) the words ''together with'' are omitted as surplusage.

AMENDMENTS

1990—Pub. L. 101–510 substituted ''Rations'' for ''Navy ration: composition'' in section catchline and amended text generally, substituting subsecs. (a) to (d) for former subsecs. (a) to (c) which specified the contents and quantities of the Navy ration in detail, authorized issuance of articles in addition to the authorized quantities, and provided for increases in the daily allowance of provisions on certain vessels or at certain stations.

DELEGATION OF AUTHORITY

Authority of President under subsecs. (a) and (d) of this section to prescribe uniform military ration applicable to Navy delegated to Secretary of Defense by section 3(a) of Ex. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6083 of this title.

§ 6083. Fixing cost on certain vessels and stations

If the Secretary of the Navy considers that it is undesirable to administer the mess on any ship or at any station under the quantity allowance prescribed in section 6082 of this title, he may fix the cost of each ration for that mess.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6083	34 U.S.C. 902d.	Mar. 2, 1933, ch. 184, § 4, 47 Stat. 1423; Aug. 3, 1951, ch. 287, 65 Stat. 151.

The words ''the cost of each ration for that mess'' are substituted for the words ''the monetary limit of the cost of ration aboard such ships and at such stations'' to make it clear that the figure fixed by the Secretary of the Navy under this section is the amount the mess may spend per day for food for each man subsisting at the mess.

§ 6084. Enlisted members assigned to mess: basic allowance for subsistence paid to mess

Under such regulations as the Secretary of the Navy prescribes, the basic allowance for subsistence of enlisted members of the naval service assigned to duty with and subsisting in an officers' or other mess, afloat or ashore, may be paid to the mess to which they are assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6084	34 U.S.C. 908.	July 1, 1902, ch. 1368, 32 Stat. 680 (4th par.); Mar. 14, 1940, ch. 53, 54 Stat. 50.

The words ''basic allowance for subsistence'' are substituted for the words ''money accruing from the commuted rations'' to conform to the terminology of § 301 of the Career Compensation Act of 1949 (37 U.S.C. 251). Section 301 of the Career Compensation Act of 1949 supersedes the authority of the Secretary of the Navy to commute the rations of enlisted members and authorizes in lieu thereof a basic allowance for subsistence. The words ''enlisted members of the naval service'' are substituted for the words ''enlisted men'' for uniformity of expression and for clarity. The word ''legally'' is omitted as surplusage. The words ''and subsisting in'' are inserted to make it clear that the mess must actually subsist the enlisted members assigned before the basic allowance of the members may be paid to the mess. The words ''to which they are assigned'' are inserted for clarity.

§ 6085. Flight rations

An aircraft flight ration chargeable to the proper Navy or Marine Corps appropriation may

be furnished to members of the naval service and to civilian employees of the Department of the Navy while engaged in flight operations. The flight ration is supplementary to any ration or subsistence allowance to which the members or employees are otherwise entitled. However, the flight ration may not be furnished without charge to any person in a travel status or to any person to whom a per diem allowance is granted in place of subsistence.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6085	34 U.S.C. 909.	June 5, 1942, ch. 327, 56 Stat. 308.

The words ''members of the naval service and to civilian employees of the Department of the Navy'' are substituted for the words ''officers, enlisted men, and civilian employees of the Navy and Marine Corps'' for uniformity. The words ''in kind'' and the word ''aircraft'' are omitted as surplusage.

§ 6086. Subsistence in hospital messes: hospital ration

(a) Enlisted members of the naval service on duty in hospitals and enlisted members of the naval service, including retired members and members of the Fleet Reserve and the Fleet Marine Corps Reserve, when sick in hospitals, may be subsisted in hospital messes. When subsistence is furnished under this subsection, the appropriation chargeable with the maintenance of the hospital mess shall be credited at the rate prescribed by the Secretary of the Navy as the value of the hospital ration.

(b) Under such regulations as the Secretary prescribes, officers in the Nurse Corps may be subsisted in hospital messes. Each officer so subsisted shall pay for her subsistence at the rate fixed by the regulations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6086	34 U.S.C. 901a (less 1st and 2d sentences).	Aug. 2, 1946, ch. 756, §17(a) (less 1st and 2d sentences), 60 Stat. 855.
	34 U.S.C. 43h(a) (1st 21 words of 2d proviso).	Apr. 16, 1947, ch. 38, §208(a) (1st 25 words of 2d proviso), 61 Stat. 50.

In subsection (a) the words ''active duty'' before the words ''enlisted personnel'' are omitted as surplusage since there is no authority to hospitalize an enlisted member in a naval hospital under conditions where he would not be entitled to a hospital ration. The words ''active and inactive'' before the words ''retired enlisted personnel'' are omitted as surplusage. The word ''members'' is substituted for the word ''personnel'' for uniformity. The words ''the Fleet Marine Corps Reserve'' are inserted for clarity since the term ''Fleet Reserve'' in the source statute is used in a generic sense and includes members of the Fleet Marine Corps Reserve.

In subsection (b) the words ''that nothing contained in this section shall deprive such nurses of allowances for subsistence now or after August 2, 1946, provided by law'' are omitted as surplusage. Section 301 of the Career Compensation Act of 1949 (37 U.S.C. 251) authorizes a basic allowance for subsistence for all officers entitled to basic pay.

§ 6087. Sale of meals by general messes

Under such regulations as the Secretary of the Navy prescribes, meals may be sold by general messes afloat and ashore.

(Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6087	34 U.S.C. 915b(c).	Aug. 2, 1946, ch. 756, §16(c), 60 Stat. 855.

CHAPTER 559—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[6111, 6112. Repealed.]
6113. Loans: Supply Corps officers.
[6114 to 6116. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, §513(12), Dec. 12, 1980, 94 Stat. 2932, struck out item 6111 ''Pay: withheld during absence due to use of drugs or alcohol''.

1968—Pub. L. 90–235, §6(a)(4), (9), Jan. 2, 1968, 81 Stat. 762, struck out item 6114 ''Civilian employment: enlisted members'', and item 6116 ''Service credit: officers; service as midshipman or cadet not counted''.

1967—Pub. L. 90–83, §3(5), Sept. 11, 1967, 81 Stat. 220, struck out item 6112 ''Pay: officers; withheld while employed by certain contractors''.

1958—Pub. L. 85–861, §1(136), Sept. 2, 1958, 72 Stat. 1507, struck out item 6115 ''Drill pay; uniform gratuity: time limit for filing claim''.

[§ 6111. Repealed. Pub. L. 87–649, § 14c(35), Sept. 7, 1962, 76 Stat. 501]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 381, related to withholding of pay during absence due to use of alcohol or drugs, and is covered by section 802 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 6112. Repealed. Pub. L. 87–649, § 14c(36), Sept. 7, 1962, 76 Stat. 501]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 381; Oct. 9, 1962, Pub. L. 87–777, §1, 76 Stat. 777, prohibited employment of officers of the Regular Navy and Regular Marine Corps, other than a retired officer, from being employed by any person furnishing naval supplies or war materials to the United States under pain of loss of payment from the United States during that employment.

Section was also repealed by Pub. L. 89–718, §75(6), (7), Nov. 2, 1966, 80 Stat. 1124.

§ 6113. Loans: Supply Corps officers

Except as otherwise provided by law, an officer in the Supply Corps on active duty may not advance or lend any sum of money, public or private, or any article or commodity and may not extend credit to any officer of the naval service on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 381.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6113	34 U.S.C. 67.	R.S. 1389.

The words ''paymaster, passed assistant paymaster, or assistant paymaster'' are omitted because those titles no longer exist, and the words ''officer in the Supply Corps'' are substituted therefor.

The words ''except as otherwise provided by law'' are added because the Act of Oct. 5, 1949, ch. 600 (34 U.S.C. 875a), authorizes advances of pay to personnel upon permanent changes of station or where such personnel are on distant duty stations where disbursements of pay and allowances cannot be regularly made, and §303(a) of the Career Compensation Act of 1949 (37 U.S.C. 253) authorizes advance payments of travel and transportation allowances. The words ''on active duty'' are supplied since the section has application to officers accountable for public funds or property. Officers not on active duty are not accountable officers.

[§6114. Repealed. Pub. L. 90–235, §6(a)(7), Jan. 2, 1968, 81 Stat. 762]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 381, set forth restrictions on civilian employment for enlisted members of the naval service on active duty. See section 974 of this title.

[§6115. Repealed. Pub. L. 85–861, §36B(17), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, prescribed a time limit for filing claims for drill pay and for the uniform gratuity. Section was also amended by Pub. L. 85–861, §33(a)(31), which amended catchline by substituting ''uniform gratuity'' for ''unform gratuity''.

[§6116. Repealed. Pub. L. 90–235, §6(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, provided that in computing length of service, no officer of the Navy or Marine Corps could be credited with service as a midshipman at the Naval Academy or as a cadet at the Military Academy, if he was appointed as a midshipman or cadet after Mar. 4, 1913. See section 971 of this title.

CHAPTER 561—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
6141. Presentation of United States flag upon retirement.
[6142 to 6150. Repealed.]
6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments.
6152. Emergency shore duty: advance of funds.
6153. Shore patrol duty: payment of expenses.
6154. Mileage books; commutation tickets.
6155. Uniforms, accouterments, and equipment: sale at cost.
6156. Uniform: sale to former members of the naval service.
[6157 to 6159. Repealed.]
6160. Pension to persons serving ten years.
6161. Remission of indebtedness of enlisted members upon discharge.

HISTORICAL AND REVISION NOTES

1962 AMENDMENT

See explanation of section 111(b) [set out as 1962 Amendment in Historical and Revision Notes under section 2634 of this title].

AMENDMENTS

1998—Pub. L. 105–261, div. A, title VI, §644(b)(2), Oct. 17, 1998, 112 Stat. 2049, added item 6141.

1986—Pub. L. 99–661, div. A, title VI, §604(f)(1)(B)(iii), Nov. 14, 1986, 100 Stat. 3877, struck out item 6148 ''Disability and death benefits: Naval Reserve and Marine Corps Reserve''.

1980—Pub. L. 96–513, title V, §513(13), Dec. 12, 1980, 94 Stat. 2932, struck out items 6141 ''Pay: officers; date of commencement'', 6142 ''Pay: assignments'', 6143 ''Pay: sale to be discouraged by commanding officer'', 6144 ''Pay accounts: settlement when lost with vessel'', 6145 ''Pay accounts: settlement; fixing date of loss of vessel'', 6146 ''Allotments: officers'', and 6147 ''Allowances: prisoners''.

1970—Pub. L. 91–482, §2D, Oct. 21, 1970, 84 Stat. 1082, struck out item 6159 ''Half rating to disabled naval enlisted personnel serving twenty years''.

1968—Pub. L. 90–235, §7(b)(4), Jan. 2, 1968, 81 Stat. 763, struck out item 6158 ''Exemption from arrest for debt: enlisted members of Marine Corps''.

1963—Pub. L. 88–132, §5(h)(3), Oct. 2, 1963, 77 Stat. 214, struck out item 6149 ''Retired pay: computed on basis of rates of pay for officers on the active list''.

1962—Pub. L. 87–651, title I, §123(c), Sept. 7, 1962, 76 Stat. 514, struck out item 6157 ''Motor vehicles: transportation on permanent change of station''.

1960—Pub. L. 86–511, §1(b), June 11, 1960, 74 Stat. 207, added item 6161.

1959—Pub. L. 86–155, §9(a)(2), Aug. 11, 1959, 73 Stat. 337, struck out item 6150 ''Higher retired grade for officers specially commended''.

1958—Pub. L. 85–861, §1(139)(B), Sept. 2, 1958, 72 Stat. 1508, substituted ''who serve satisfactorily under temporary appointments'' for ''temporarily appointed or promoted during World War II'' in item 6151.

1957—Pub. L. 85–56, title XXII, §2201(31)(D), June 17, 1957, 71 Stat. 162, eff. Jan. 1, 1958, added items 6159 and 6160.

§6141. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Navy or Marine Corps from active duty for retirement or transfer to the Fleet Reserve or the Fleet Marine Corps Reserve, the Secretary of the Navy shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 105–261, div. A, title VI, §644(b)(1), Oct. 17, 1998, 112 Stat. 2048; amended Pub. L. 106–65, div. A, title VI, §652(e), Oct. 5, 1999, 113 Stat. 666.)

PRIOR PROVISIONS

A prior section 6141, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, related to date of commencement of pay of officers of Regular Navy or Regular Marine Corps, prior to repeal by Pub. L. 87–649, §14c(37), Sept. 7, 1962, 76 Stat. 501. See section 905 of Title 37, Pay and Allowances of the Uniformed Services.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''under this section or any other provision of law providing for

the presentation of a United States flag incident to release from active service for retirement.'' for ''under this section or section 3681 or 8681 of this title or section 516 of title 14.''

EFFECTIVE DATE

Section applicable with respect to releases from active duty described in this section, sections 3681 and 8681 of this title, and section 516 of Title 14, Coast Guard, on or after Oct. 1, 1998, see section 644(e) of Pub. L. 105–261, set out as a note under section 3681 of this title.

[§§ 6142 to 6147. Repealed. Pub. L. 87–649, § 14c(38–43), Sept. 7, 1962, 76 Stat. 501]

Section 6142, act Aug. 10, 1956, ch. 1041, 70A Stat. 382, provided for assignments of pay due to enlisted members. See section 705 of Title 37.

Section 6143, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to discouragement of sale of pay. See section 805 of Title 37.

Section 6144, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, provided for settlement of pay accounts when lost with vessel. See section 902 of Title 37.

Section 6145, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to fixing date of loss of a vessel for purpose of settling accounts of persons aboard other than officers. See section 902 of Title 37.

Section 6146, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, provided for allotments by officers. See section 702 of Title 37.

Section 6147, act Aug. 10, 1956, ch. 1041, 70A Stat. 383, related to allowances for prisoners. See section 426 of Title 37.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 6148. Repealed. Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 383; Sept. 2, 1958, Pub. L. 85–861, §§ 1(137), 36B(18), 72 Stat. 1507, 1571; Sept. 7, 1962, Pub. L. 87–649, § 6(e), 76 Stat. 494; Sept. 7, 1962, Pub. L. 87–651, title I, § 123(a), 76 Stat. 514; Oct. 19, 1984, Pub. L. 98–525, title VI, § 631(b), 98 Stat. 2543; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1303(a)(22), 99 Stat. 739, related to disability and death benefits for members of Naval Reserve and Marine Corps Reserve.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

[§ 6149. Repealed. Pub. L. 88–132, § 5(h)(3), Oct. 2, 1963, 77 Stat. 214]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 385, related to computation of retired pay on basis of rates of pay for officers on the active list.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 6150. Repealed. Pub. L. 86–155, § 9(a)(1), Aug. 11, 1959, 73 Stat. 337]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 385; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(32), 72 Stat. 1566, authorized advancement to a higher retired grade for officers specially commended.

EFFECTIVE DATE OF REPEAL

Section 9(b) of Pub. L. 86–155 provided that the repeal is effective on Nov. 1, 1959.

§ 6151. Higher retired grade and pay for members who serve satisfactorily under temporary appointments

(a) Unless otherwise entitled to a higher retired grade and subject to sections 689 and 1370 of this title, each member, other than a retired member, of the Navy or the Marine Corps shall, when retired, be advanced on the retired list to the highest officer grade in which he served satisfactorily under a temporary appointment as determined by the Secretary of the Navy.

(b) Each member (other than a former member of the Fleet Reserve or the Fleet Marine Corps Reserve) who is advanced on the retired list under this section is (unless otherwise entitled to higher retired pay) entitled to retired pay determined in accordance with the following table. References in the table are to sections of this title.

Column 1 Take	Column 2 Multiply by
Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.

(c) Each former member of the Fleet Reserve or the Fleet Marine Corps Reserve who is advanced on the retired list under this section is entitled to retired pay determined in accordance with the following table. References in the table are to sections of this title.

Column 1 Take	Column 2 Multiply by
Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the number of years of service creditable for his retainer pay at the time of retirement.

(d) A member who is advanced on the retired list under this section from the grade of warrant officer, W–1, or from an enlisted grade to a commissioned grade, and who applies to the Secretary within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted grade, as the case may be. A member who is restored to his former grade under this subsection is thereafter considered for all purposes as a warrant officer, W–1, or an enlisted member, as the case may be.

(e) Retired pay computed under subsection (b) or (c), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 385; Pub. L. 85–422, § 11(a)(6)(A), May 20, 1958, 72 Stat. 131; Pub. L. 85–861, § 1(138), (139)(A), Sept. 2, 1958, 72 Stat. 1507, 1508; Pub. L. 88–132, § 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96–342, title VIII, § 813(d)(13), Sept. 8, 1980, 94 Stat. 1108; Pub. L. 96–512, title V, §§ 503(45), 513(17), Dec. 12, 1980, 94 Stat. 2914, 2932; Pub. L. 98–94, title IX, §§ 922(a)(9), 923(c)(1), Sept. 24, 1983, 97 Stat. 641, 643; Pub. L. 99–348, title II, § 203(c), July 1, 1986,

100 Stat. 696; Pub. L. 104–201, div. A, title V, §521(d), Sept. 23, 1996, 110 Stat. 2517.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6151	34 U.S.C. 350i(b)(2), (e).	July 24, 1941, ch. 320, §10(b)(2), (e), 55 Stat. 605; Feb. 21, 1946, ch. 34, §8(a), 60 Stat. 28.
	34 U.S.C. 410c(a), (b), (c).	Feb. 21, 1946, ch. 34, §7(a) (less 1st proviso), (b), (c), 60 Stat. 27; Aug. 7, 1947, ch. 512, §432(a), 61 Stat. 881.
	34 U.S.C. 43g(c).	Apr. 16, 1947, ch. 38, §207(d), 61 Stat. 49; redesignated (c), Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882; May 16, 1950, ch. 186, §3(h), 64 Stat. 162.
	34 U.S.C. 43g(f), (g).	Apr. 16, 1947, ch. 38, §207(g), (h), 61 Stat. 47; redesignated (f), (g), Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882.
	34 U.S.C. 410r(a), (g), (h).	June 12, 1948, ch. 449, §207(a), (g), (h), 62 Stat. 366.
	34 U.S.C. 625h(a).	June 12, 1948, ch. 449, §213(a), 62 Stat. 369.
	34 U.S.C. 993c.	June 19, 1948, ch. 540, §3, 62 Stat. 505.

Subsections (b) and (c) are worded to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The second and third provisos in 34 U.S.C. 410c(a), relating to the computation of retired pay for officers whose pay on the active list was not based on years of service, are omitted as obsolete, since under the Career Compensation Act of 1949, the active-duty pay of all officers is based on years of service.

In subsection (d) the words ''A retired member who is advanced * * * from the grade of warrant officer, W–1, or from an enlisted grade'' are substituted for the words ''Enlisted men and warrant officers * * * advanced'' and the words ''as a warrant officer, W–1, or an enlisted member'' are substituted for the words ''to be enlisted or warrant officer personnel'' because the Warrant Officer Act of 1954 established the grade of warrant officer, W–1, in lieu of the old warrant officer (as distinguished from commissioned warrant officer) grades. The words ''rank or'' are omitted as unnecessary. The words ''within three months of the date of the approval of this Act'' and ''whichever is the later'' are omitted as executed.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6151(a)	34 App.:350i(b)(2).	May 31, 1956, ch. 348, §3, 70 Stat. 222.

Reference to the provisions of law under which temporary appointments in officer grades were made is omitted as unnecessary, since the provisions cited comprise all existing authority for such appointments.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 substituted ''sections 689'' for ''sections 688''.

1986—Subsec. (b). Pub. L. 99–348 amended subsec. (b) generally, substituting provision that retired pay be determined in accordance with the table for provision that retired pay, in the case of a member who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay of the grade to which advanced or, in the case of a member who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at a rate of 2½ percent of the monthly retired pay base computed under section 1407(d), which rates were to be multiplied by the number of years of service credited under section 1405, but such retired pay was not to be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay was based and, in determining the number of years to be used as a multiplier, each additional full month of service was to be counted as one-twelfth of a year and any remaining fractional part of a month was to be disregarded.

Subsec. (c). Pub. L. 99–348 amended subsec. (c) generally, substituting provision that retired pay of a former member be determined in accordance with the table for provision that retired pay, in the case of a former member who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at a rate of 2½ percent of the basic pay of the grade to which advanced, determined by the same period of service used to determine the basic pay of the grade upon which his retainer pay was based, multiplied by the number of years of creditable service for his retainer pay at the time of retirement, but such retired pay was not to be more than 75 percent of the basic pay upon the computation of retired pay was based, or in the case of a former member who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, that retired pay be at a rate of 2½ percent of the monthly retired pay base computed under section 1407(d), multiplied by the number of years of creditable service for his retainer pay at the time of retirement, but such retired pay was not to be more than 75 percent of the monthly retired pay base upon which the computation of retired pay was based.

1983—Subsec. (b)(2). Pub. L. 98–94, §923(c)(1), substituted ''each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded''.

Subsec. (e). Pub. L. 98–94, §922(a)(9), added subsec. (e).

1980—Subsec. (a). Pub. L. 96–513, §503(45), inserted ''and subject to sections 688 and 1370 of this title'' after ''retired grade''.

Subsec. (b). Pub. L. 96–513, §513(17), substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342 amended subsec. (b) generally, designating existing provisions as pars. (1) and (2) and, as so amended, in par. (1) designated existing provisions as subpar. (A), as so designated, inserted provision limiting applicability to members who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

Subsec. (c). Pub. L. 96–513, §513(17), substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342 designated existing provisions as par. (1), inserted provision limiting applicability to members who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added par. (2).

1963—Subsec. (b). Pub. L. 88–132 substituted ''of'' for ''to which he would be entitled if serving on active duty in'' after ''2½ percent of the basic pay.''

1958—Pub. L. 85–861, §1(139)(A), substituted ''who serve satisfactorily under temporary appointments'' for ''temporarily appointed or promoted during World War II'' in section catchline.

Subsec. (a). Pub. L. 85–861, §1(138), struck out provisions which restricted application of section to members of the Navy or the Marine Corps who were appointed or promoted under the act of July 24, 1941, ch. 320, 55 Stat. 603.

Subsec. (b). Pub. L. 85–422 substituted ''that may be credited to him under section 1405 of this title'' for ''creditable for basic pay''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Sept. 30, 1997, see section 521(b) of this title, set out as an Effective Date note under section 688 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 503(45) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 513(17) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 6152. Emergency shore duty: advance of funds

Under such regulations as the President approves, the Secretary of the Navy may, to meet necessary expenses, advance funds to members of the naval service detailed on emergency shore duty. The funds advanced may not exceed the reasonable estimate of expenses to be incurred for which reimbursement is authorized.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6152	34 U.S.C. 885.	May 22, 1928, ch. 688, 45 Stat. 712.

The words ''public'', ''actual'', and ''by law'' are omitted as surplusage.

DELEGATION OF FUNCTIONS

For delegation to the Secretary of Defense of authority vested in the President by section 885 of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, set out as a note under section 301 of Title 3, The President.

§ 6153. Shore patrol duty: payment of expenses

An officer, midshipman, or cadet of the naval service who is assigned to shore patrol duty away from his vessel or other duty station may be paid his actual services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6153	37 U.S.C. 306 (less applicability to Coast Guard).	Oct. 12, 1949, ch. 681, § 506 (less applicability to Coast Guard), 63 Stat. 828.

§ 6154. Mileage books: commutation tickets

The Secretary of the Navy may buy such mileage books, commutation tickets, and other similar transportation tickets as he considers necessary, and he may furnish them to persons ordered to perform travel on official business. Payment for those tickets before the travel is performed is not an advance of public money within the meaning of subsections (a) and (b) of section 3324 of title 31.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386; Pub. L. 97–258, § 3(b)(8), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 98–525, title XIV, § 1405(56)(A), Oct. 19, 1984, 98 Stat. 2626.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6154	34 U.S.C. 891.	Apr. 27, 1904, ch. 1630, 33 Stat. 403 (6th par., 2d sentence).

The words ''to continue'' and the words ''upon their receipt in accordance with commercial usage'' are omitted as surplusage. The word ''persons'' is substituted for the words ''officers and others''.

AMENDMENTS

1984—Pub. L. 98–525 substituted ''subsections (a) and (b) of section 3324'' for ''section 3324(a) and (b)''.

1982—Pub. L. 97–258 substituted ''section 3324(a) and (b)'' for ''section 529''.

§ 6155. Uniforms, accouterments, and equipment: sale at cost

Under such regulations as the Secretary of the Navy prescribes, uniforms, accouterments, and equipment shall be sold by the United States at cost to officers and midshipmen of the naval service and, when the Coast Guard is operating as a service in the Navy, to officers of the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6155	34 U.S.C. 537.	Jan. 12, 1919, ch. 8, 40 Stat. 1054; Aug. 4, 1949, ch. 393, § 9, 63 Stat. 559.

The words ''officers and midshipmen of the naval service'' are substituted for the words ''any officer of the Navy or any officer of the Marine Corps'' and ''any midshipman''. The words ''at the Naval Academy'' are omitted. The statute is interpreted as covering all midshipmen, including the reserve category created by subsequent statute. The word ''sold'' is substituted for the word ''furnished'' for directness of expression.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 6156. Uniform: sale to former members of the naval service

(a) Under such regulations as the Secretary of the Navy prescribes, exterior articles of uniform

may be sold to a person who has been discharged from the naval service honorably or under honorable conditions. This section does not modify section 772 or 773 of this title.

(b) Money received from sales under this section shall be covered into the Treasury to the credit of the appropriation out of which the articles were purchased.

(Aug. 10, 1956, ch. 1041, 70A Stat. 386.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6156	34 U.S.C. 608.	Feb. 14, 1927, ch. 134, 44 Stat. 1096.

The word ''person'' is substituted for the words ''former members of the naval service''.

[§ 6157. Repealed. Pub. L. 87–651, title I, § 123(b), Sept. 7, 1962, 76 Stat. 514]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 387, related to transportation of motor vehicles on permanent change of station. See section 2634 of this title.

[§ 6158. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 387, exempted enlisted members of the Marine Corps, while on active duty, from personal arrest for debt or contract.

[§ 6159. Repealed. Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

Section, added Pub. L. 85–56, title XXII, § 2201(31)(C), June 17, 1957, 71 Stat. 161, provided for a pension to disabled naval enlisted personnel serving 20 years or more, equal to one-half the pay of enlisted man's rating at the time of his discharge.

PENSION CONTINUATION PROVISION

Section 3 of Pub. L. 91–482 provided that: ''Notwithstanding the first section of this Act [repealing sections 4539, 4623, 5981, 6159, and 6406 of this title and section 208 of Title 37], a person who is entitled to a pension under section 6159 of title 10, United States Code, on the day before the date of enactment of this Act [which was approved Oct. 21, 1970] shall continue to be entitled to that pension on and after that date of enactment.''

§ 6160. Pension to persons serving ten years

(a) Every disabled person who has served in the Navy or Marine Corps as an enlisted member or petty officer, or both, for ten or more years, and has not been discharged for misconduct, may apply to the Secretary of the Navy for aid.

(b) Upon receipt of an application under subsection (a), the Secretary of the Navy may convene a board of not less than three naval officers (one of whom shall be a surgeon) to examine into the condition of the applicant, and to recommend a suitable amount for his relief, and for a specified time. If the Secretary of the Navy approves the recommendation, he shall so certify to the Secretary of Veterans Affairs, who shall pay a pension in such amount monthly to the applicant.

(c) No naval pension under this section shall be paid at a rate in excess of the rate payable to a veteran of World War I for permanent and total non-service-connected disability, unless the applicant's disability is service-connected, in which case the naval pension payable to him shall not exceed the rate of disability compensation payable for total disability to a veteran of any war, or of peacetime service, as the case may be. In the case of any initial award of naval pension granted before July 14, 1943, where the person granted the naval pension is also entitled to pension or compensation under laws administered by the Secretary of Veterans Affairs, such naval pension shall not exceed one-fourth of such pension or compensation.

(Added Pub. L. 85–56, title XXII, § 2201(31)(C), June 17, 1957, 71 Stat. 161; amended Pub. L. 85–857, § 13(v)(4), Sept. 2, 1958, 72 Stat. 1268; Pub. L. 99–145, title XIII, § 1301(c)(1), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101–189, div. A, title XVI, § 1621(a)(2), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 101–510, div. A, title XIV, § 1484(j)(4), Nov. 5, 1990, 104 Stat. 1719.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–510 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1989—Subsec. (b). Pub. L. 101–189 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1985—Subsec. (a). Pub. L. 99–145 substituted ''enlisted member'' for ''enlisted man''.

1958—Pub. L. 85–857 limited naval pensions granted before July 14, 1943 to not more than one-fourth of any pension or compensation which the person is entitled to receive under laws administered by the Veterans' Administration.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 13(v)(4) of Pub. L. 85–857 provided that the amendment made by that section is effective as of Jan. 1, 1958.

EFFECTIVE DATE

Section effective Jan. 1, 1958, see section 2301 of Pub. L. 85–56.

§ 6161. Remission of indebtedness of enlisted members upon discharge

If he considers it in the best interest of the United States, the Secretary of the Navy may have remitted or canceled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of that member's honorable discharge.

(Added Pub. L. 86–511, § 1(a), June 11, 1960, 74 Stat. 207.)

CHAPTER 563—HOSPITALIZATION AND MEDICAL CARE

Sec.
6201. Members of the naval service in other United States hospitals.
6202. Insane members of the naval service.
6203. Emergency medical treatment: reimbursement for expense.

§ 6201. Members of the naval service in other United States hospitals

(a) When appropriate naval hospital facilities are unavailable, the Secretary of the Navy may provide for the care and treatment of members of the naval service, entitled to treatment in naval hospitals, in other United States hos-

pitals, if the agencies controlling the other hospitals consent. Expenses incident to such care and treatment are chargeable to the same appropriation as would be chargeable for care and treatment in a naval hospital.

(b) The deduction authorized by section 4812 of the Revised Statutes (24 U.S.C. 16) shall be made from accounts of members hospitalized under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387; Pub. L. 85–861, § 36B(19), Sept. 2, 1958, 72 Stat. 1571; Pub. L. 96–513, title V, § 513(14), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6201(a), (b).	24 U.S.C. 31.	Jan. 19, 1929, ch. 85, 45 Stat. 1090.
6201(c)	34 U.S.C. 854f.	June 25, 1938, ch. 690, § 207, 52 Stat. 1180.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words ''members of the naval service'' are substituted for the words ''naval patients on the active or retired list and members of the Naval Reserve or Marine Corps Reserve''. The definition of ''member of the naval service'' makes the terms coextensive. Reference to St. Elizabeths Hospital is omitted in view of Reorganization Plan No. 3 of 1946, § 201, 60 Stat. 1098, which transferred the functions of that hospital pertaining to members of the naval service to the Secretary of the Navy. For the purposes of this section, St. Elizabeths is now in the same category as other United States hospitals.

In subsection (b) reference to R.S. 4813 (24 U.S.C. 6) is omitted because the Administrator of Veterans' Affairs held in Decision Number 571 (July 27, 1944) that R.S. 4813 was repealed by implication. Since this decision is binding on the Secretary of the Navy (see 38 U.S.C. 11a–2), the deductions from pension accounts authorized by R.S. 4813 may not be made.

In subsection (c) the words ''each retired enlisted member of the naval service'' are substituted for the words ''retired enlisted men'' and the words ''is entitled to'' are substituted for the words ''shall receive'' to conform to terminology used throughout this title. The words ''equal in value to the hospital ration'' are substituted for the words ''prescribed by law for enlisted men of the Regular Navy'' to show that the amount of the allowance is the value of the hospital ration. The words ''for each day'' are inserted to make it clear that the ration allowance is credited on a daily basis. The words ''under this section'' are substituted for the words ''in a Federal hospital in accordance with law'' because this section is the only authority for the hospitalization of members of the Fleet Reserve and Fleet Marine Corps Reserve and retired enlisted members of the naval service in Federal hospitals, other than naval hospitals, under conditions entitling the members to a ration allowance. The subsistence of a member of the Fleet Reserve or Fleet Marine Corps Reserve or a retired enlisted member of the naval service while hospitalized in naval hospitals is covered by § 6086 of this title.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–513 substituted ''section 4812 of the Revised Statutes (24 U.S.C. 16)'' for ''section 16 of title 24''.

1958—Subsec. (c). Pub. L. 85–861 repealed subsec. (c) which related to a ration allowance for members of the Fleet Reserve of the Fleet Marine Corps Reserve and retired enlisted members of the naval service.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 6202. Insane members of the naval service

A member of the naval service who becomes insane may be placed in the hospital for the insane that, in the opinion of the Secretary of the Navy, is most convenient and will provide the most beneficial treatment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6202	34 U.S.C. 595.	R.S. 1551; July 1, 1916, ch. 209, § 1, 39 Stat. 309.

The words ''that * * * will provide the most beneficial treatment'' are substituted for the words ''best calculated to promise a restoration of reason'' for clarity. The second sentence of 34 U.S.C. 595 is omitted as superseded. It provided a method by which the Secretary of the Navy, in his discretion, could compensate other agencies for expenses involved in hospitalizing insane naval patients. Other provisions of law, principally 24 U.S.C. 31, 31 U.S.C. 686, and 37 U.S.C. 284, and regulations, principally Executive Order 10122, of April 14, 1950, establish the method currently used.

§ 6203. Emergency medical treatment: reimbursement for expense

The Secretary of the Navy shall prescribe regulations for reimbursing members of the naval service for expenses of emergency or necessary medical service, including hospitalization and medicines, when the member was in a duty status at the time he received the service and the service was not available from a Federal source. For the purpose of this section, a member on leave or liberty is in a duty status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 387.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6203	34 U.S.C. 921a.	May 4, 1948, ch. 254, § 2, 62 Stat. 208.
	34 U.S.C. 921b.	May 4, 1948, ch. 254, § 3, 62 Stat. 208.

The word ''shall'' is substituted for the words ''authorized and directed to''. The word ''members'' is substituted for the word ''persons''. The words ''from civilian sources'' are omitted as surplusage. The word ''hospitalization'' is substituted for the words ''hospital service''. In the second sentence, the word ''authorized'' is omitted as surplusage.

CHAPTER 565—BANDS

Sec.
6221. United States Navy Band; officer in charge.
6222. United States Marine Band: composition; director; assistant director.
6223. Competition with civilian musicians prohibited.
[6224. Repealed.]

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, § 510(b), Dec. 28, 2001, 115 Stat. 1091, inserted ''; officer in charge'' after ''Navy Band'' in item 6221.

1980—Pub. L. 96–513, title V, § 513(15), Dec. 12, 1980, 94 Stat. 2932, struck out ''; leader's pay and allowances'' after ''Band'' in item 6221, and struck out item 6224 ''United States Navy Band; United States Marine Corps Band; concert tours''.

1958—Pub. L. 85–861, § 1(141), Sept. 2, 1958, 72 Stat. 1509, substituted ''United States Marine Band'' for ''United States Marine Corps Band'', and ''director; assistant director'' for ''Pay and allowances of leader and second leader'' in item 6222.

§ 6221. United States Navy Band; officer in charge

(a) There is a Navy band known as the United States Navy Band.

(b)(1) An officer of the Navy designated for limited duty under section 5589 or 5596 of this title who is serving in a grade above lieutenant may be detailed by the Secretary of the Navy as Officer in Charge of the United States Navy Band.

(2) While serving as Officer in Charge of the United States Navy Band, an officer shall hold the grade of captain if appointed to that grade by the President, by and with the advice and consent of the Senate. Such an appointment may be made notwithstanding section 5596(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Pub. L. 87–649, § 14c(44), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96–513, title V, § 513(16), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 107–107, div. A, title V, § 510(a), Dec. 28, 2001, 115 Stat. 1091.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6221	34 U.S.C. 596 (less 3d proviso).	Mar. 4, 1925, ch. 536, § 17 (less 3d proviso), 43 Stat. 1275.

Subsection (a) is set forth to preserve the legal authority for the title of the band, but the first 30 words of the Act of March 4, 1925, ch. 536, § 17, 43 Stat. 1275, are omitted as executed. To conform to the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.), the word ''basic'' is inserted before ''pay'' in subsection (b) and the words ''and is entitled to be credited for pay purposes with all service which may be credited under section 202 of the Career Compensation Act of 1949 (37 U.S.C. 233)'' are substituted for the words ''*Provided*, That all service as an enlisted man in the naval service shall be counted in computing longevity increases for pay of this leader''.

The second proviso is omitted as executed.

AMENDMENTS

2001—Pub. L. 107–107 amended section catchline and text generally. Prior to amendment, text read as follows: ''There is a Navy band known as the United States Navy Band.''

1980—Pub. L. 96–513 in section catchline struck out ''; leader's pay and allowances'' after ''Band'', and in text struck out designation ''(a)''.

1962—Subsec. (b). Pub. L. 87–649 repealed subsec. (b) which related to the pay and allowances of the leader of the United States Navy Band. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6222. United States Marine Band: composition; director; assistant director

(a) The band of the Marine Corps shall be composed of one director, two assistant directors, and other personnel in such numbers and grades as the Secretary of the Navy determines to be necessary.

(b) The Secretary shall designate the director and assistant directors of the Marine Band from among qualified members of the Marine Corps. Upon the recommendation of the Secretary, a member so designated may be appointed by the President, by and with the advice and consent of the Senate, to a commissioned grade in the Regular Marine Corps.

(c) The initial appointment to a commissioned grade of a member designated as director of the Marine Band shall be in the grade of captain, except that a member who, at the time of his designation, holds an appointment in a higher grade may be appointed in that higher grade, but not above lieutenant colonel. The initial appointment of a member designated as assistant director shall be in a grade below captain.

(d) The Secretary shall prescribe regulations for the promotion of members designated as director or assistant director of the Marine Band, and the President, by and with the advice and consent of the Senate, may from time to time appoint them to higher grades.

(e) Unless otherwise entitled to higher retired grade and retired pay, a member who holds, or has held, an appointment under this section is entitled, when retired, to be retired in, and with retired pay based on, the highest grade held under this section in which the Secretary determines that he served satisfactorily.

(f) The Secretary may revoke any designation as director or assistant director of the Marine Band. When a member's designation is revoked, his appointment to commissioned grade under this section terminates and he is entitled, at his option—

(1) to be discharged from the Marine Corps; or

(2) to revert to the grade and status he held at the time of his designation as director or assistant director.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Pub. L. 85–861, § 1(140), Sept. 2, 1958, 72 Stat. 1508; Pub. L. 87–649, § 14c(45), Sept. 7, 1962, 76 Stat. 501; Pub. L. 91–197, Feb. 24, 1970, 84 Stat. 15; Pub. L. 96–513, title V, § 513(18), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6222	34 U.S.C. 701 (less proviso).	Mar. 4, 1925, ch. 536, § 11 (less proviso), 43 Stat. 1274; June 29, 1946, ch. 523, § 1(c), 60 Stat. 343; Oct. 12, 1949, ch. 681, § 517(a), 63 Stat. 833.

In subsection (b) the second sentence is substituted for the two references to the Career Compensation Act

of 1949 and for the words ''and with the same number of cumulative years of service''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6222(a)	34 App.:701.	July 24, 1956, ch. 686, 70 Stat. 628.
6222(b)	34 App.:701–1(a).	
6222(c)	34 App.:701–1(b).	
6222(d)	34 App.:701–2.	
6222(e)	34 App.:701–3.	
6222(f)	34 App.:701–4.	
6222(g)	34 App.:701–5.	

In subsection (a), the words ''and appropriate'' are omitted as covered by the word ''necessary''. The words ''and ranks'' are omitted as covered by the word ''grades''. The second sentence of 34 App.:701 is omitted as covered by section 6224 of this title.

In subsection (b), the words ''United States'' and ''or the United States Marine Corps Reserve'' are omitted as unnecessary in view of the definition of ''Marine Corps'' in section 5001(a)(2) of this title. The words ''as authorized by sections 701 to 701–5 of this title'' are omitted as surplusage.

In subsection (e), the words ''from the United States . . . as provided by law'' are omitted as surplusage.

In subsection (f), the words ''a member who holds, or has held'' are substituted for the words ''Directors and assistant directors of the Marine Band and former directors and assistant directors who have held''.

AMENDMENTS

1980—Subsecs. (e) to (g). Pub. L. 96–513 redesignated subsecs. (f) and (g) as (e) and (f), respectively.

1970—Subsec. (d). Pub. L. 91–197 struck out provision that the grade of the director be no higher than lieutenant colonel and that the grades of the assistant directors be no higher than captain.

1962—Subsec. (e). Pub. L. 87–649 repealed subsec. (e) which related to pay and allowances of members who accepted a commission under this section. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Pub. L. 85–861 substituted ''United States Marine Band'' for ''United States Marine Corps Band'', and ''director; assistant director'' for ''pay and allowances of leader and second leader'' in section catchline.

Subsec. (a). Pub. L. 85–861 authorized one director and two assistant directors instead of one leader and one second leader.

Subsec. (b). Pub. L. 85–861 substituted provisions relating to designation of director and assistant directors for provisions which prescribed the pay and allowances of the leader and second leader.

Subsecs. (c) to (g). Pub. L. 85–861 added subsecs. (c) to (g).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 sections 207, 424.

§ 6223. Competition with civilian musicians prohibited

(a) NAVY BANDS AND MEMBERS.—No Navy band, except the United States Naval Academy Band, and no member of any Navy band may receive remuneration for furnishing music outside a military installation when the furnishing of such music involves competition with local civilian musicians.

(b) MEMBERS OF THE UNITED STATES MARINE CORPS BAND.—No member of the United States Marine Corps Band, as an individual, may furnish music in competition with any civilian musician or receive remuneration for furnishing music except under special circumstances when authorized by the President.

(c) EXCEPTION FOR COMMERCIAL RECORDINGS.—(1) Notwithstanding any limitation contained in subsection (a) or (b), any Navy band or Marine Corps band designated as a special band may produce recordings for commercial sale.

(2) Amounts received as proceeds from the sale of any such recordings may be credited to applicable appropriations of the Department of the Navy for expenses of Navy and Marine Corps bands.

(3) The Secretary of the Navy shall prescribe regulations governing the accounting of such proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 388; Pub. L. 101–510, div. A, title III, § 327(b), Nov. 5, 1990, 104 Stat. 1532; Pub. L. 102–25, title VII, § 701(j)(7), Apr. 6, 1991, 105 Stat. 116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6223(a)	[None].	May 13, 1908, ch. 166, 35 Stat. 153 (2d par.).
6223(b)	34 U.S.C. 702.	Aug. 29, 1916, ch. 417, 39 Stat. 612 (proviso of 4th par.).

In subsection (a) the phrase ''at Annapolis, Maryland,'' is omitted as surplusage.

In subsection (b) the phrases ''or accept an engagement to furnish music, when such furnishing of music places him'', ''or musicians'', and ''accept or'' are omitted as surplusage.

AMENDMENTS

1991—Subsec. (b). Pub. L. 102–25 substituted ''The United States Marine Corps Band'' for ''Marine Corps Bands'' in heading.

1990—Subsec. (a). Pub. L. 101–510, § 327(b)(2)(A), inserted heading.

Subsec. (b). Pub. L. 101–510, § 327(b)(2)(B), inserted heading.

Subsec. (c). Pub. L. 101–510, § 327(b)(1), added subsec. (c).

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section delegated to Secretary of Defense, see section 1(13) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

AMERICAN REVOLUTION BICENTENNIAL; RECORDINGS FOR COMMERCIAL SALE

Authorization for Navy Band to participate in the production of a collection of recordings for commercial sale in connection with the American Revolution Bicentennial, and for Secretary of Defense to enter into contracts for the production and sale of the collection of recordings, see Pub. L. 93–571, Dec. 31, 1974, 88 Stat. 1868, set out as a note under section 3634 of this title.

[§ 6224. Repealed. Pub. L. 87–649, § 14c(46), Sept. 7, 1962, 76 Stat. 501]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 388, provided that members of the United States Navy Band

and the United States Marine Corps Band shall lose no allowances while on concert tours approved by the President. See section 425 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CHAPTER 567—DECORATIONS AND AWARDS

Sec.
6241. Medal of honor.
6242. Navy cross.
6243. Distinguished-service medal.
6244. Silver star medal.
6245. Distinguished flying cross.
6246. Navy and Marine Corps Medal.
6247. Additional awards.
6248. Limitations of time.
6249. Limitation of honorable service.
6250. Posthumous awards.
6251. Delegation of power to award.
6252. Regulations.
6253. Replacement.
6254. Availability of appropriations.
6255. Commemorative or special medals: facsimiles and ribbons.
6256. Medal of honor: duplicate medal.
6257.[1] Medal of honor: presentation of Medal of Honor Flag.
6257.[1] Korea Defense Service Medal.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 543(c)(2), Dec. 2, 2002, 116 Stat. 2550, added item 6257 ''Korea Defense Service Medal''.

Pub. L. 107–248, title VIII, § 8143(c)(2)(B), Oct. 23, 2002, 116 Stat. 1570, added item 6257 ''Medal of honor: presentation of Medal of Honor Flag''.

2001—Pub. L. 107–107, div. A, title V, § 553(b)(1)(B), Dec. 28, 2001, 115 Stat. 1116, added item 6256.

EXTENSION OF TIME FOR AWARD OF DECORATION

For extension of time for the award of decorations, or devices in lieu of decorations, for acts or services performed in direct support of military operations in Southeast Asia between July 1, 1958, and Mar. 28, 1973, see Pub. L. 93–469, Oct. 24, 1974, 88 Stat. 1422, set out as a note preceding section 3741 of this title.

§ 6241. Medal of honor

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the naval service, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; Pub. L. 88–77, § 2(1), July 25, 1963, 77 Stat. 93; Pub. L. 104–106, div. A, title XV, § 1503(b)(2), Feb. 10, 1996, 110 Stat. 512.)

[1] So in original. Two sections 6257 have been enacted.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6241	34 U.S.C. 354.	Feb. 4, 1919, ch. 14, § 1, 40 Stat. 1056; Aug. 7, 1942, ch. 551, § 1, 56 Stat. 743.

In subsection (a) the word ''award'' is added for clarity since the President determines the recipient, in addition to presenting the medal in the name of Congress. The words ''a member of the naval service'' are substituted for the words ''in the naval service of the United States'' for uniformity. The word ''distinguishes'' is substituted for the words ''shall * * * distinguish'' for uniformity.

In subsection (b) the words ''of the medal of honor authorized on August 8, 1942'' are substituted for the words ''adopted pursuant to the Act approved December 21, 1861 (12 Stat. 330)'' for the reason that the 1861 Act does not establish the design, and the date of formal adoption of the design of the medal is obscure. The effect of the subsection is to continue the design recognized by 34 U.S.C. 354.

AMENDMENTS

1996—Par. (2). Pub. L. 104–106 inserted ''or'' after ''an opposing foreign force;''.

1963—Pub. L. 88–77 enlarged the authority to award the medal of honor, which was limited to those cases in which persons distinguished themselves in action involving actual conflict with an enemy, or in the line of his profession, and without detriment to the mission of his command or to the command to which attached, to permit its award for distinguished service while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, and substituted the requirement that it be of appropriate design, with ribbons and appurtenances, for the requirement that it be the same as that authorized on August 8, 1942.

MERITORIOUS SERVICE MEDAL

Establishment of, see Ex. Ord. No. 11448, set out as a note preceding section 1121 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1074h, 6257 of this title; title 18 section 704.

§ 6242. Navy cross

The President may award a Navy cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; Pub. L. 88–77, § 2(2), July 25, 1963, 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6242	34 U.S.C. 356.	Feb. 4, 1919, ch. 14, §3, 40 Stat. 1056; renumbered §2 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 743.

The word ''award'' is substituted for the word ''present'' to cover the determination of the recipient as well as the actual presenting of the decoration. The words ''but not in the name of Congress'' are omitted, since a decoration is presented in the name of Congress only if the law so directs. The words ''Navy or the Marine Corps'' are substituted for the words ''naval service of the United States'' for clarity. To be eligible for the award, a person need not be a member of the naval service, but only serving in some capacity either with the Navy or with the Marine Corps.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the Navy cross, which was limited to those cases in which persons distinguished themselves in connection with military operations against an armed enemy, to permit its award for extraordinary heroism not justifying the award of a medal of honor, while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

§ 6243. Distinguished-service medal

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6243	34 U.S.C. 355.	Feb. 4, 1919, ch. 14, §2, 40 Stat. 1056; renumbered §3 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 743.

The word ''award'' is substituted for the word ''present'' to cover the determination of the recipient as well as the actual presenting of the decoration. The words ''but not in the name of Congress'' are omitted as surplusage, since a decoration is presented in the name of Congress only if Congress so directs. The words ''Navy or the Marine Corps'' are substituted for the words ''Navy of the United States'' because the provision is interpreted as authorizing the award of the medal to persons serving with the Marine Corps as well as with the Navy. The words ''since the sixth day of April 1917 has distinguished'' are omitted as executed. The words ''United States'' are substituted for the word ''Government'' for uniformity.

§ 6244. Silver star medal

The President may award a silver star medal of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Navy or Marine Corps, is cited for gallantry in action that does not warrant a medal of honor or Navy cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 389; Pub. L. 88–77, §2(3), July 25, 1963, 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6244	34 U.S.C. 356a.	Feb. 4, 1919, ch. 14, §4; added Aug. 7, 1942, ch. 551, §1, 56 Stat. 743.

The word ''award'' is substituted for the word ''present'' to cover the determination of the recipient as well as the actual presenting of the decoration. The words ''but not in the name of Congress'' are omitted as surplusage, since a decoration is presented in the name of Congress only if the law so directs. The words ''Navy or the Marine Corps'' are substituted for the words ''Navy of the United States'' because the provision is interpreted as authorizing the award of the medal to persons serving with the Marine Corps. The words ''since December 6, 1941, has distinguished himself'' are omitted as executed.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award a silver star medal, which was limited to those cases in which persons distinguished themselves in action, to permit its award for gallantry while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

§ 6245. Distinguished flying cross

The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6245	34 U.S.C. 364a (1st sentence, less 1st 9 words, and less 2d and 3d sentences).	July 2, 1926, ch. 721, §12 (1st sentence, less 1st 9 words, and less 2d and 3d sentences), 44 Stat. 789; July 30, 1937, ch. 545, §4, 50 Stat. 549.

The word ''award'' is substituted for the word ''present'' to cover the determination of the recipient as well as the actual presenting of the decoration. The words ''but not in the name of Congress'' are omitted as surplusage, since a decoration is presented in the name of Congress only if the law so directs. The proviso of the first sentence of 34 U.S.C. 364a is omitted as executed. The words ''Navy or the Marine Corps'' are substituted for the words ''United States Navy'' because the provision is interpreted as authorizing the award of the decoration to persons serving with the Marine Corps as well as with the Navy. The words ''and not-

withstanding the provisions of section 14 of this Act,'' which are not now contained in title 34, are omitted as unnecessary. The words ''since the 6th day of April, 1917, has distinguished, or who, after July 2, 1926,'' are omitted as executed.

§ 6246. Navy and Marine Corps Medal

(a) The President may award a medal called the ''Navy and Marine Corps Medal'' of appropriate design with accompanying ribbon, together with a rosette or other device to be worn in place thereof—

(1) to any person who, while serving in any capacity with the Navy or the Marine Corps, distinguishes himself by heroism not involving actual conflict with an enemy; or

(2) to any person to whom the Secretary of the Navy, before August 7, 1942, awarded a letter of commendation for heroism, and who applies for that medal, regardless of the date of the act of heroism.

(b) The authority in subsection (a) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390; Pub. L. 105–85, div. A, title V, § 574(b), Nov. 18, 1997, 111 Stat. 1758.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6246	34 U.S.C. 356b.	Feb. 4, 1919, ch. 14, § 5; added Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The word ''award'' is substituted for the word ''present'' to cover the determination of the recipient as well as the actual presenting of the award. The words ''but not in the name of Congress'' are omitted since a decoration is presented in the name of Congress only if the law so directs. The words ''including the Naval Reserve and Marine Corps Reserve'' are omitted as covered by the definitions of the Navy and the Marine Corps. The last sentence, relating to additional pay, is omitted for the reason that, under the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.), there is no additional pay authorized for any medal. The words ''since December 6, 1941'' are omitted as executed. The words ''or herself'' are omitted as covered by the rules of construction in 1 U.S.C. 1.

AMENDMENTS

1997—Pub. L. 105–85 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6248 of this title.

§ 6247. Additional awards

Not more than one medal of honor, Navy cross, distinguished-service medal, silver star medal, distinguished flying cross, or Navy and Marine Corps Medal may be awarded to a person. However, for each succeeding act or service that would otherwise justify the award of such a medal or cross, the President may award a suitable bar, emblem, or insignia to be worn with the decoration and corresponding rosette or other device.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6247	34 U.S.C. 358.	Feb. 4, 1919, ch. 14, § 5, 40 Stat. 1056; renumbered § 7 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.
	34 U.S.C. 364a (2d sentence).	July 2, 1926, ch. 721, § 12 (2d sentence), 44 Stat. 789; July 30, 1937, ch. 545, § 4, 50 Stat. 549.

The word ''awarded'' is substituted for the word ''issued'' for uniformity. The words ''that would otherwise justify'' are substituted for the words ''sufficient to justify'' for clarity. The word ''service'' is substituted for the word ''achievement'' for uniformity. The words ''as he shall direct'' are omitted as surplusage.

§ 6248. Limitations of time

(a) Except as provided in section 6246 of this title or subsection (b), no medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof may be awarded to a person unless—

(1) the award is made within five years after the date of the act or service justifying the award; and

(2) a statement setting forth the act or distinguished service and recommending official recognition of it was made by his superior through official channels within three years from the date of that act or service.

(b) If the Secretary of the Navy determines that—

(1) a statement setting forth the act or distinguished service and recommending official recognition of it was made by the person's superior through official channels within three years from the date of that act or service and was supported by sufficient evidence within that time; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Navy cross, distinguished-service medal, silver star medal, Navy and Marine Corps Medal, or bar, emblem, or insignia in place thereof, as the case may be, may be awarded to the person within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390; Pub. L. 86–582, § 1(2), July 5, 1960, 74 Stat. 320.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6248	34 U.S.C. 360.	Feb. 4, 1919, ch. 14, § 7, 40 Stat. 1056; renumbered § 9 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The words ''Except as provided in section 6246 of this title'' are substituted for the words ''That except as otherwise prescribed herein'' to identify the only exception. The words ''may be awarded to a person'' are substituted for the words ''shall be issued to any person'' for uniformity. The words ''specific'', ''or report distinctly'', and ''at the time of'' are omitted as surplusage. The words ''bar, emblem, or insignia'' are substituted for the words ''or bar or other suitable emblem or insignia'' for uniformity. The words ''from the date

of that act or service'' are substituted for the word ''thereafter''.

AMENDMENTS

1960—Pub. L. 86–582 designated existing provisions as subsec. (a), inserted ''or subsection (b)'' after ''title'', and added subsec. (b).

§ 6249. Limitation of honorable service

No medal, cross, or bar, or associated emblem or insignia may be awarded or presented to any person or to his representative if his service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6249	34 U.S.C. 362.	Feb. 4, 1919, ch. 14, §8 (1st proviso), 40 Stat. 1057; renumbered §10 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 745.
	34 U.S.C. 364a (last 31 words of 3d sentence).	July 2, 1926, ch. 721, §12 (last 31 words of 3d sentence), 44 Stat. 789, July 30, 1937, ch. 545, §4, 50 Stat. 549.

The word ''associated'' is substituted for the word ''other'' to relate the medal or cross to its emblem or insignia. The word ''entire'' is omitted as surplusage.

§ 6250. Posthumous awards

If a person who distinguishes himself dies before an award to which he is entitled is made, the award may be made and the medal, cross, or bar, or associated emblem or insignia may be presented, within five years from the date of the act or service justifying the award, to his representative as designated by the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 390.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6250	34 U.S.C. 363.	Feb. 4, 1919, ch. 14, §8 (less 1st and 2d provisos), 40 Stat. 1057; renumbered §10 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 745.
	34 U.S.C. 364a (3d sentence, less last 31 words).	July 2, 1926, ch. 721, §12 (3d sentence, less last 31 words), 44 Stat. 789; July 30, 1937, ch. 545, §4, 50 Stat. 549.

The word ''associated'' is substituted for the word ''other'' to relate the medal or cross to its emblem or insignia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6257 of this title.

§ 6251. Delegation of power to award

The President may delegate, under such conditions as he prescribes, to flag and general officers who are commanders-in-chief or commanding on important independent duty, his authority to award the Navy cross, the distinguished-service medal, the silver star medal, or the Navy and Marine Corps Medal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6251	34 U.S.C. 364 (less 10th, and last 47 words).	Feb. 4, 1919, ch. 14, §9 (less applicability to regulations), 40 Stat. 1057; renumbered §11 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 745.

The term ''flag officers'' is used generically in 34 U.S.C. 364. Officers of the Marine Corps who meet the duty requirements, if in the equivalent grades, are, therefore, within its terms and the authority to make the awards has been delegated to such officers.

§ 6252. Regulations

The President may prescribe regulations for the administration of the preceding sections of this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6252	34 U.S.C. 364 (10th, and last 47 words).	Feb. 4, 1919, ch. 14, §9 (as applicable to regulations), 40 Stat. 1057; renumbered §11 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 745.
	34 U.S.C. 364a (1st 9 words of 1st sentence).	July 2, 1926, ch. 721, §12 (1st 9 words of 1st sentence), 44 Stat. 789; July 30, 1937, ch. 545, §4, 50 Stat. 549.

The words ''further'', ''from time to time any and all rules'', ''orders which he shall deem necessary'', and ''to execute full purpose and intention thereof'' are omitted as surplusage.

§ 6253. Replacement

The Secretary of the Navy may replace without charge any medal of honor, Navy cross, distinguished-service medal, silver star medal, or Navy and Marine Corps Medal, or any associated bar, emblem, or insignia awarded under this chapter that is stolen, lost, or destroyed or becomes unfit for use without fault or neglect on the part of the person to whom it was awarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391; Pub. L. 107–107, div. A, title V, §553(b)(2), Dec. 28, 2001, 115 Stat. 1116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6253	34 U.S.C. 359 (proviso).	Feb. 4, 1919, ch. 14, §6 (proviso), 40 Stat. 1056; renumbered §8 and amended Aug. 7, 1942, ch. 551, §1, 56 Stat. 744.

The words ''Secretary of the Navy may replace'' are substituted for the words ''*Provided*, That such replacement shall be made only in those cases where''.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''stolen, lost, or destroyed'' for ''lost or destroyed''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 704.

§ 6254. Availability of appropriations

The Secretary of the Navy may spend from appropriations for the pay of the Navy or the Marine Corps, as appropriate, amounts necessary to provide and replace medals of honor, Navy crosses, distinguished-service medals, silver star medals, and Navy and Marine Corps Medals, and associated bars, emblems, and insignia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6254	34 U.S.C. 359 (less proviso).	Feb. 4, 1919, ch. 14, § 6 (less proviso), 40 Stat. 1056; renumbered § 8 and amended Aug. 7, 1942, ch. 551, § 1, 56 Stat. 744.

The words ''the appropriations for the pay of the Navy or the Marine Corps, as appropriate'', are substituted for the words ''the appropriation 'Pay, subsistence, and transportation of naval personnel' '', to identify by a general description, rather than by the specific appropriation title, the appropriation authorized to be used. Specific appropriation titles vary from one appropriation act to the next. The permanent authority contained in 34 U.S.C. 359 for the Secretary of the Navy to use appropriations available for the pay of the Navy and the Marine Corps is not affected by a change in the titles of those appropriations nor is it affected by a specific authorization in an appropriation act to use, during the life of the act, a different type of appropriation.

§ 6255. Commemorative or special medals: facsimiles and ribbons

Under regulations prescribed by the Secretary of the Navy, members of the naval service may wear, in place of commemorative or special medals awarded to them, miniature facsimiles of such medals and ribbons symbolic of the awards.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6255	34 U.S.C. 358a.	Apr. 25, 1935, ch. 82, 49 Stat. 162.

The words ''members of the naval service may'' are substituted for the words ''That authority is hereby granted to personnel of the Navy and Marine Corps'' for clarity.

§ 6256. Medal of honor: duplicate medal

A person awarded a medal of honor shall, upon written application of that person, be issued, without charge, one duplicate medal of honor with ribbons and appurtenances. Such duplicate medal of honor shall be marked, in such manner as the Secretary of the Navy may determine, as a duplicate or for display purposes only.

(Added Pub. L. 107–107, div. A, title V, § 553(b)(1)(A), Dec. 28, 2001, 115 Stat. 1116.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 704.

§ 6257.[1] Medal of honor: presentation of Medal of Honor Flag

The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 6241 of this title after October 23, 2002. Presentation of the flag shall be made at the same time as the presentation of the medal under section 6241 or 6250 of this title.

(Added Pub. L. 107–248, title VIII, § 8143(c)(2)(A), Oct. 23, 2002, 116 Stat. 1570; amended Pub. L. 107–314, div. A, title X, § 1062(a)(16), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Pub. L. 107–314 substituted ''October 23, 2002'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 36 section 903.

§ 6257.[1] Korea Defense Service Medal

(a) The Secretary of the Navy shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Navy or Marine Corps served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

(b) In this section, the term ''KDSM eligibility period'' means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

(c) The Secretary of the Navy shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.

(Added Pub. L. 107–314, div. A, title V, § 543(c)(1), Dec. 2, 2002, 116 Stat. 2549.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 107–314, which was approved Dec. 2, 2002.

CHAPTER 569—DISCHARGE OF ENLISTED MEMBERS

Sec.
[6291. Repealed.]
6292. Minors enlisted upon false statement of age.
[6293 to 6298. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, § 503(46), Dec. 12, 1980, 94 Stat. 2914, struck out item 6294 ''Women in the Regular Navy and Regular Marine Corps: termination of enlistment''.

1968—Pub. L. 90–235, §§ 3(a)(4), (b)(4), 8(4), Jan. 2, 1968, 81 Stat. 758, 764, struck out item 6291 ''Honorable discharges'', item 6293 ''Minors enlisted without consent

[1] Another section 6257 is set out after this section.

[1] Another section 6257 is set out preceding this section.

of parent or guardian'', item 6295 ''Regular Navy: early discharge'', item 6296 ''Furlough without pay'', item 6297 ''Disposition of uniform; clothing allowance; emergency funds'', and item 6298 ''Authority to live at a receiving station after honorable discharge''.

[§ 6291. Repealed. Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 391, provided for honorable discharges for enlisted members of the naval service.

§ 6292. Minors enlisted upon false statement of age

(a) The Secretary of the Navy, under regulations prescribed by him, may discharge or release from the naval service, with pay and allowances and form of discharge certificate appropriate for his service after enlistment, any enlisted member who, as the result of a false statement of age on his application for enlistment, was enlisted while under the minimum statutory or administrative age limit. A member so discharged or released is entitled to transportation in kind and subsistence from the place of discharge to his home.

(b) Appropriations available for pay and allowances, subsistence, and transportation of enlisted members of the naval service are available for payments under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 391.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6292(a)	34 U.S.C. 900a.	Sept. 24, 1945, ch. 385, §1, 59 Stat. 536.
6292(b)	34 U.S.C. 900a (note).	Sept. 24, 1945, ch. 385, §3, 59 Stat. 537.

The word ''member'' is substituted for the word ''person'' and the words ''naval service'' are substituted for the words ''Navy, Marine Corps, and the Reserve components thereof''. The words ''form of'' are added for clarity. Reference to the date ''September 24, 1945'' is omitted as unnecessary. The words ''is entitled to'' are substituted for the words ''shall be furnished'' for uniformity. The decision of the Comptroller General of December 23, 1949 (B–91297), has not been overlooked. That decision, without passing on a case in which the point was involved, indicated that the transportation entitlement in 34 U.S.C. 900a might be impliedly repealed by the Career Compensation Act of 1949. The editors of the United States Code Annotated, apparently on the basis of this decision, have omitted 34 U.S.C.A. 900a from the 1954 pocket part. A conclusion that the section is repealed, however, defeats the specific purpose of the provision, which, as indicated in the legislative hearings, was to insure that underage dischargees would be transported home and not simply released at the place of discharge.

[§ 6293. Repealed. Pub. L. 90–235, § 3(a)(2), Jan. 2, 1968, 81 Stat. 757]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for discharges for minors enlisted in the naval service or in the Regular Navy as seamen, seamen apprentices or seamen recruits. See section 1170 of this title.

[§ 6294. Repealed. Pub. L. 96–513, title III, § 373(g), Dec. 12, 1980, 94 Stat. 2903]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, authorized Secretary of Navy to terminate enlistment of and discharge any enlisted woman in Regular Navy or Regular Marine Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 6295 to 6298. Repealed. Pub. L. 90–235, §§ 3(a)(2), (b)(1), 8(3), Jan. 2, 1968, 81 Stat. 757, 758, 764]

Section 6295, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for early discharges from the Regular Navy. See section 1171 of this title.

Section 6296, act Aug. 10, 1956, ch. 1041, 70A Stat. 392, provided for furlough without pay for any enlisted member of the Regular Navy for the unexpired term of his enlistment.

Section 6297, act Aug. 10, 1956, ch. 1041, 70A Stat. 393, provided for disposition of uniforms of enlisted members of the naval service who were discharged and for disposition of uniforms of and clothing allowance and emergency funds for enlisted members of the naval service who were discharged other than honorably.

Section 6298, act Aug. 10, 1956, ch. 1041, 70A Stat. 393, authorized Secretary of Navy to permit any person honorably discharged from the naval service to live at any naval receiving station while he was eligible for a reenlistment bonus.

CHAPTER 571—VOLUNTARY RETIREMENT

Sec.
6321. Officers: 40 years.
6322. Officers: 30 years.
6323. Officers: 20 years.
6324. Officers: creditable service.
6325. Officers: retired grade and pay.
6326. Enlisted members: 30 years.
6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay.
6328. Computation of years of service: voluntary retirement.
6329. Officers not to be retired for misconduct.
6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay.
6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay.
6332. Conclusiveness of transfers.
6333. Computation of retired and retainer pay.
6334. Higher grade after 30 years of service: warrant officers and enlisted members.
6335. Restoration to former grade: warrant officers and enlisted members.
6336. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title V, §532(b)(2), Sept. 23, 1996, 110 Stat. 2519, added item 6336.

Pub. L. 104–106, div. A, title V, §561(d)(3)(B), Feb. 10, 1996, 110 Stat. 323, added item 6328.

1987—Pub. L. 100–180, div. A, title V, §512(e)(2), Dec. 4, 1987, 101 Stat. 1091, added items 6334 and 6335.

1986—Pub. L. 99–348, title III, §304(b)(3), July 1, 1986, 100 Stat. 704, struck out item 6328 ''Treatment of fractions of years of service in computing retired pay'' and substituted ''Computation of'' for ''Treatment of fractions of dollar amounts in computing'' in item 6333.

1983—Pub. L. 98–94, title IX, §922(a)(10)(B), Sept. 24, 1983, 97 Stat. 641, added item 6333.

1967—Pub. L. 90–130, §1(23)(B), Nov. 8, 1967, 81 Stat. 380, struck out ''Nurse Corps'' before ''Officers'' in item 6324.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6371, 12741 of this title.

§ 6321. Officers: 40 years

(a) Each officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W–1, or above who applies for retirement after completing 40 or more years of active service shall be retired by the Secretary of the Navy.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 393.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6321	34 U.S.C. 381.	R.S. 1443; June 17, 1948, ch. 497, § 1(a), 62 Stat. 477.
	34 U.S.C. 879 (less applicability to enlisted men).	June 4, 1920, ch. 228, § 3 (3d proviso, less applicability to enlisted men), 41 Stat. 835.
	34 U.S.C. 626–1(a) (1st sentence).	Aug. 7, 1947, ch. 512, § 314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words ''Regular'' and ''holding a permanent appointment in the grade of warrant officer, W–1, or above'' are inserted for clarity. The word ''shall'' is substituted for the word ''may'' because the Attorney General has construed R.S. 1443 as conferring a right to retirement upon officers who apply for it after 40 years of service (30 Op. Atty. Gen. 406). The words ''from active service'' are omitted as surplusage. The words ''after completing 40 or more years of active service'' are substituted for the words ''has been forty years in the service of the United States'' for clarity.

In subsection (b) the accepted meaning of the words ''service of the United States'' is spelled out for clarity. They have been consistently interpreted to include active service in the armed forces as defined in this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

§ 6322. Officers: 30 years

(a) An officer of the Regular Navy or the Regular Marine Corps holding a permanent appointment in the grade of warrant officer, W–1, or above who applies for retirement after completing 30 or more years of active service may, in the discretion of the Secretary of the Navy, be retired.

(b) For the purpose of this section, an officer's years of active service are computed by adding all his active service in the armed forces.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 96–342, title VIII, § 813(d)(1), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, § 513(17), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 99–348, title II, § 203(b)(1), July 1, 1986, 100 Stat. 696.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6322	34 U.S.C. 383.	May 13, 1908, ch. 166, 35 Stat. 128 (8th sentence, less proviso); June 17, 1948, ch. 497, § 1(d), 62 Stat. 477.
	34 U.S.C. 879 (less applicability to enlisted men).	June 4, 1920, ch. 228, § 3 (3d proviso, less applicability to enlisted men), 41 Stat. 835.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34 U.S.C. 626–1(a) (1st sentence).	Aug. 7, 1947, ch. 512, § 314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

In subsection (a) the words ''Regular'' and ''holding a permanent appointment in the grade of warrant officer, W–1, or above'' are inserted for clarity. The words ''after completing 30 or more years of active service'' are substituted for the words ''has been thirty years in the service'' for clarity. The words ''retired from active service'' are omitted as surplusage.

Subsection (b) is added to clarify the word ''service''. It has been consistently interpreted to include active service in the armed forces as defined in this title.

In subsection (c) the words ''is entitled to retired pay at the rate of 75 percent of the highest basic pay of the grade in which retired'' are substituted for the words ''with three-fourths of the highest pay of his grade'' for clarity and uniformity of expression.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–348 struck out subsec. (c) which provided that each officer retired under this section be entitled to retired pay, in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, at the rate of 75 percent of the highest basic pay of the grade in which retired, and in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, at the rate of 75 percent of the monthly retired pay base computed under section 1407(d).

1980—Subsec. (c). Pub. L. 96–513 substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342 designated existing provisions as par. (1), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added par. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6325 of this title.

§ 6323. Officers: 20 years

(a)(1) An officer of the Navy or the Marine Corps who applies for retirement after completing more than 20 years of active service, of which at least 10 years was service as a commissioned officer, may, in the discretion of the President, be retired on the first day of any month designated by the President.

(2) The Secretary of Defense may authorize the Secretary of the Navy, during the period beginning on October 1, 1990, and ending on December 31, 2001, to reduce the requirement under paragraph (1) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary) of not less than eight years.

(b) For the purposes of this section—

(1) an officer's years of active service are computed by adding all his active service in the armed forces; and

(2) his years of service as a commissioned officer are computed by adding all his active

service in the armed forces under permanent or temporary appointments in grades above warrant officer, W–1.

(c) The retired grade of an officer retired under this section is the grade determined under section 1370 of this title.

(d) A warrant officer who retires under this section may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title. If the pay of that highest grade is less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay shall be based on the higher pay.

(e) Unless otherwise entitled to higher pay, an officer retired under this section is entitled to retired pay computed under section 6333 of this title.

(f) Officers of the Naval Reserve and the Marine Corps Reserve who were transferred to the Retired Reserve from an honorary retired list under section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), or are transferred to the Retired Reserve under section 6327 of this title, may be retired under this section, notwithstanding their retired status, if they are otherwise eligible.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 85–861, §1(142), Sept. 2, 1958, 72 Stat. 1509; Pub. L. 88–132, §5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96–342, title VIII, §813(d)(2), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, §§503(47)(A), 513(17), Dec. 12, 1980, 94 Stat. 2914, 2932; Pub. L. 99–348, title II, §203(b)(2), July 1, 1986, 100 Stat. 696; Pub. L. 101–510, div. A, title V, §523(b), Nov. 5, 1990, 104 Stat. 1562; Pub. L. 103–160, div. A, title V, §561(c), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, §561(e), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, §1 [[div. A], title V, §571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6323(a), (b).	34 U.S.C. 410b.	Feb. 21, 1946, ch. 34, §6, 60 Stat. 27.
6323(c)	34 U.S.C. 410b–1.	Apr. 14, 1949, ch. 52, §1 (less applicability to Act of June 29, 1948, ch. 708, §301(b), 62 Stat. 1087), 63 Stat. 47.

In subsection (b) the words ''or the Reserve Components thereof'' are omitted because the terms ''Navy'', ''Marine Corps'', and ''Coast Guard'' include the reserve components. The words ''including active duty for training'' are omitted because the term ''active duty'' is defined in this title as including training duty.

The Act of April 14, 1949 (34 U.S.C. 410b–1), extending the benefits of 34 U.S.C. 410b to officers on the honorary retired lists, was enacted because the Comptroller General had held that these officers, being already in a retired status, could not be retired under 34 U.S.C. 410b (U.S. Code Congressional Service, 1949, p. 1179). The provisions of the Naval Reserve Act of 1938 relating to the honorary retired lists were repealed by §803 of the Armed Forces Reserve Act of 1952, but insofar as they provided for retirement and retired pay they were reenacted, for a period of 20 years, in §413 of that act (50 U.S.C. 1052). Persons on the honorary retired lists when the Armed Forces Reserve Act of 1952 was passed were transferred to the appropriate Retired Reserve under §213 of the Act. Persons qualifying for retirement under §413 are likewise placed in the Retired Reserve. The purpose of Congress in enacting §413 was to preserve the accrued rights of persons who were members of reserve components on January 1, 1953, the effective date of the Act (U.S. Code Congressional and Administrative News, 1952, p. 3584). One of their rights was the right to apply for retirement under 34 U.S.C. 410b upon completion of the required service, notwithstanding the fact that, before qualifying for retirement under that section, they had already acquired a retired status. Subsection (c) is worded accordingly.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6323(a), (b).	34 App.:410b.	Aug. 4, 1955, ch. 553, §1, 69 Stat. 493; Aug. 9, 1955, ch. 678, §1(a), (b), 69 Stat. 614.
6323(c), (e)	[No source].	[No source].
6323(d)	[No source].	[No source].
6323(f)	[No source].	[No source].

In subsection (b), the words ''armed forces'' are substituted for the words ''Navy, Marine Corps, Army, Air Force, or Coast Guard, or the Reserve Components thereof'' because ''armed forces'', as defined in this title, is a collective term for these elements.

Subsections (c) and (e) state rules, formerly stated in section 6325, with respect to officers retired under this section.

Subsection (d) states a rule, formerly stated in section 6325, with respect to warrant officers retired under this section.

In subsections (c) and (e), the words ''Unless otherwise entitled to a higher grade'' and ''Unless otherwise entitled to higher pay'' are substituted for 34 App.:410c(b).

In subsection (d), the second and third provisos of 34 App.:410b, relating to officers whose basic pay is not based on years of service, is omitted as obsolete. Under the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.), the basic pay of all officers is based on years of service. The subsection is worded to conform to the terminology of the Career Compensation Act of 1949 and to make clear the fact that the amount of retired pay is not permanently fixed at the time of retirement but is subject to change when rates of basic pay are changed, as provided in 34 App.:410q.

Subsection (f) was formerly subsection (c).

REFERENCES IN TEXT

Section 213(b) of the Armed Forces Reserve Act of 1952 (66 Stat. 485), referred to in subsec. (f), was classified to section 933 of Title 50, War and National Defense, and was repealed by section 53 of act Aug. 10, 1956.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (a)(2). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

1993—Subsec. (a)(2). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1990—Subsec. (a). Pub. L. 101–510 designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (e). Pub. L. 99–348 substituted provision that retired pay be computed under section 6333 for provision that retired pay, in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay of the grade in which retired, or in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d), which rates were to be mul-

tiplied by the number of years of service credited under section 1405, but such retired pay was not to be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay was based.

1980—Subsec. (c). Pub. L. 96–513, § 503(47)(A), substituted provisions that the retired grade of an officer retired under this section is the grade determined under section 1370 of this title for provisions that had set the grade of officers retired under this section at the highest grade, permanent or temporary, in which he had served satisfactorily on active duty as determined by the Secretary of the Navy; or, if the Secretary determined that he had not served satisfactorily in his highest temporary grade, in the next lower grade in which he had served, but not lower than his permanent grade.

Subsec. (e). Pub. L. 96–513, § 513(17), substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342 designated existing provisions as par. (1), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added par. (2).

1963—Subsec. (e). Pub. L. 88–132 substituted ''of'' for ''to which he would be entitled if serving on active duty in'' after ''2½ percent of the basic pay''.

1958—Subsec. (a). Pub. L. 85–861 substituted ''first day of any month'' for ''first day of the month''.

Subsec. (b). Pub. L. 85–861 inserted provisions in cl. (2).

Subsecs. (c) to (f). Pub. L. 85–861 added subsecs. (c) to (e) and redesignated former subsec. (c) as (f).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 503(47) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 513(17) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) to approve application of an officer of Navy or Marine Corps for retirement after completion of more than 20 years of active service and to designate month in which such retirements shall become effective delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with authority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(e), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

For delegation to Secretary of Homeland Security of authority vested in President, see section 2(g) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Navy, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to an officer with at least 15 but less than 20 years of service by substituting ''at least 15 years'' for ''at least 20 years'' in subsec. (a) of this section, see section 4403 of Pub. L. 102–484, set out as a note under section 1293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 637, 638, 638a, 688, 1370, 1406, 6325, 6333, 6383, 10154, 12646 of this title.

§ 6324. Officers: creditable service

For the purpose of this chapter, service as a nurse in the armed forces before April 16, 1947, is considered as commissioned service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 86–197, § 1(6), Aug. 25, 1959, 73 Stat. 426; Pub. L. 89–609, § 1(15), Sept. 30, 1966, 80 Stat. 853; Pub. L. 90–130, § 1(23)(A), Nov. 8, 1967, 81 Stat. 380.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6324	34 U.S.C. 43g(h).	Apr. 16, 1947, ch. 38, § 207(i), 61 Stat. 50; redesignated (h), Aug. 7, 1947, ch. 512, § 434(d), 61 Stat. 882.

The words ''or the reserve components thereof'' are omitted because ''Army'', ''Navy'', and ''Air Force'', as defined in this title, include the reserve components.

AMENDMENTS

1967—Pub. L. 90–130 substituted provision reciting simply that service as a nurse in the armed forces before April 16, 1947, is considered as commissioned service for purposes of this chapter for provisions making specific reference to service under an appointment or contract or as a commissioned officer in the Nurse Corps of the Army or the Navy or as a commissioned officer of the Air Force designated as an Air Force Nurse.

1966—Pub. L. 89–609 substituted ''the person's'' for ''her'' in introductory text in two places.

1959—Pub. L. 86–197 substituted ''a regular officer or a reserve officer'' for ''an officer''.

AUTHORITY OF MILITARY DEPARTMENT SECRETARIES TO CONVENE BOARDS TO RECOMMEND DEFERMENT OF RETIREMENT OR SEPARATION OF NURSES

Secretaries authorized until July 1, 1972, to convene boards of officers to consider and recommend deferment of separation or retirement of officers of the Army Nurse Corps, officers of the Navy Nurse Corps, and Air Force nurses, as needs of the service require, see section 4(f) of Pub. L. 90–130, set out as a note under section 3069 of this title.

§ 6325. Officers: retired grade and pay

(a) Except as provided in subsection (b) or section 1370 of this title, each officer who is retired under section 6321 or 6322 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which he was serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(b) Each officer who is retired while serving in the grade of admiral, vice admiral, general, or lieutenant general by virtue of an appointment under section 601 of this title or who is retired while serving in a grade to which he was appointed or promoted under section 603 of this title or promoted under section 602[1] (as in effect before February 1, 1992) or section 5721 of this title—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade he would hold if he had not received such an appointment; and

[1] See References in Text note below.

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(c) A warrant officer who retires under section 6321, 6322, or 6323 of this title may elect to be placed on the retired list in the highest grade and with the highest retired pay to which he is entitled under any provision of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 394; Pub. L. 85–422, §11(a)(6)(B), May 20, 1958, 72 Stat. 131; Pub. L. 85–861, §1(143), Sept. 2, 1958, 72 Stat. 1509; Pub. L. 88–132, §5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 95–377, §7, Sept. 19, 1978, 92 Stat. 721; Pub. L. 96–342, title VIII, §813(d)(3), Sept. 8, 1980, 94 Stat. 1104; Pub. L. 96–513, title V, §§503(47)(B), 513(17), Dec. 12, 1980, 94 Stat. 2914, 2932; Pub. L. 97–22, §10(b)(8), July 10, 1981, 95 Stat. 137; Pub. L. 99–348, title I, §104(c)(2), title II, §203(b)(3), July 1, 1986, 100 Stat. 691, 696; Pub. L. 102–484, div. A, title X, §1052(39), Oct. 23, 1992, 106 Stat. 2501.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6325	34 U.S.C. 410m.	Aug. 7, 1947, ch. 512, §316(j), 61 Stat. 868.
	34 U.S.C. 626–1(a) (1st sentence).	Aug. 7, 1947, ch. 512, §314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, §205, 68 Stat. 68.
	34 U.S.C. 389 (1st sentence as applicable to grade).	R.S. 1457 (1st sentence as applicable to grade).
	34 U.S.C. 410c(a) (as applicable to retired pay of officers retired under 34 U.S.C. 410b).	Feb. 21, 1946, ch. 34, §7(a) (as applicable to retired pay of officers retired under §6), 60 Stat. 27; Aug. 7, 1947, ch. 512, §432(a), 61 Stat. 881.
	34 U.S.C. 43g(d).	Apr. 16, 1947, ch. 38, §207(e), 61 Stat. 49; redesignated (d), Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882; May 16, 1950, ch. 186, §3(i), 64 Stat. 162.
	34 U.S.C. 43g(f).	Apr. 16, 1947, ch. 38, §207(g), 61 Stat. 49; redesignated (f), Aug. 7, 1947, ch. 512, §434(d), 61 Stat. 882.
	34 U.S.C. 410r(a), (g).	June 12, 1948, ch. 449, §207(a), (g), 62 Stat. 366.
	34 U.S.C. 625h(a).	June 12, 1948, ch. 449, §213(a), 62 Stat. 369.
	34 U.S.C. 430(f) (as applicable to officers retired under 34 U.S.C. 381, 34 U.S.C. 383, and 34 U.S.C. 410b).	May 29, 1954, ch. 249, §14(f), 68 Stat. 163 (as applicable to officers retired under R.S. 1443, Act of May 13, 1908, ch. 166, 35 Stat. 128 (8th sentence, less proviso), and Act of Feb. 21, 1946, ch. 34, §6, 60 Stat. 27).

Title III of the Officer Personnel Act of 1947 authorizes temporary promotions to the grades of lieutenant through rear admiral. The purpose of §316(j) of that act (34 U.S.C. 410m) was to insure that each officer who is temporarily promoted under that Title, and who retires before he receives a permanent appointment in the grade in which he is serving, will be considered, for the purposes of the laws relating to retired grade and pay, to be serving in the grade he holds pursuant to his temporary appointment. Since §5001 of this title provides that an officer who holds a permanent appointment in one grade and a temporary appointment in a higher grade is considered as serving in the higher grade, a restatement of the substance of §316(j) is unnecessary and is omitted from subsection (a). The words ''retired other than by reason of physical disability incurred in line of duty'', in 34 U.S.C. 43g(d) and (f) and 34 U.S.C. 410r(g), are omitted as unnecessary, since this section relates only to officers who are voluntarily retired under this chapter. The words ''basic pay to which he would be entitled if serving on active duty in the grade in which retired'' are substituted for the words ''active-duty pay with longevity credit of the rank with which retired'' in 34 U.S.C. 410c(a), for the words ''active-duty pay to which entitled at the time of retirement'' in 34 U.S.C. 43g(d), and for the words ''active-duty pay to which she would be entitled if serving, at the time of retirement, on active duty in the rank in which placed upon the retired list'' in 34 U.S.C. 43g(f) and 34 U.S.C. 410r(g), to make clear the fact that the amount of retired pay is not permanently fixed at the time of retirement but is subject to change when rates of basic pay are changed, as provided in 34 U.S.C. 410q. The words ''basic pay'' are substituted for the words ''active-duty pay'' and the words ''creditable for basic pay'' are substituted for the words ''for which entitled to credit in the computation of her active-duty pay'', and for the words ''for which entitled to credit in the computation of their pay while on active duty'' to conform to the terminology used in the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.)

Unlike provisions of law authorizing retirement on various other grounds, R.S. 1443, which provides for the retirement of officers on their own application after 40 years of service, contains no provisions as to retired pay. R.S. 1588 provided, inter alia, that officers so retired should received retired pay at the rate of 75 percent of the sea pay of their respective grades, but that section was expressly repealed by §531(a)(7) of the Career Compensation Act of 1949, leaving no specific provision for the retired pay of officers retired under R.S. 1443. It would be absurd to assume, however, that Congress intended that an officer having 40 years of service should be retired without pay, when he could have been retired with pay at any time within the preceding 20 years. By the repeal of R.S. 1588 Congress intended merely to remove obsolete and superseded provisions as to retirement at age 62 and retirement after 45 years of service, references to sea pay, and provisions, inconsistent with later law, for half pay for officers retired for other reasons. Congress intended the retired pay of officers retired after 40 years of service to be computed according to the formula prescribed generally for retired officers, other than for officers retired by reason of physical disability, and this section is worded accordingly.

Subsection (b) is added for clarity. With respect to officers appointed under §§5231 or 5232 of this title it represents a necessary inference from 34 U.S.C. 410*o* and 623b(e), codified in §5233 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6325	[No source].	[No source].

The reference to section 6323 is deleted, since it is no longer appropriate to include in this section officers retired under section 6323.

REFERENCES IN TEXT

Section 602 of this title, referred to in subsec. (b), was repealed by Pub. L. 102–190, div. A, title XI, §1113(a), Dec. 5, 1991, 105 Stat. 1502.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–484 substituted ''section 602 (as in effect before February 1, 1992) or section 5721'' for ''section 602 or 5721''.

1986—Subsec. (a)(2). Pub. L. 99–348, §203(b)(3), substituted provision that retired pay be computed under section 6333 for provision that retired pay, in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay of the grade in which he retired, or in the case of an officer

who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d), which rates were to be multiplied by the number of years of service credited under section 1405, but such retired pay was not to be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay was based.

Subsec. (b)(2). Pub. L. 99–348, § 203(b)(3), substituted provision that retired pay be computed under section 6333 for provision that retired pay, in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay of the grade he would have held if he had not received an appointment, or in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d), which rates were to be multiplied by the number of years of service credited under section 1405, but such retired pay was not to be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay was based.

Subsec. (c). Pub. L. 99–348, § 104(c)(2), struck out provision that if the pay of that highest grade was less than the pay of any warrant grade satisfactorily held by him on active duty, his retired pay would be based on the higher pay.

1981—Subsec. (b). Pub. L. 97–22, in provisions preceding par. (1), substituted ''appointed or promoted under section 603 of this title or promoted under section 602 or 5721 of this title'' for ''appointed under section 5597 of this title or promoted under section 5787 or 5787d of this title''.

1980—Subsec. (a). Pub. L. 96–513, § 503(47)(B)(i), inserted ''or section 1370 of this title'' after ''subsection (b)''.

Subsec. (a)(2). Pub. L. 96–513, § 513(17), substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342, § 813(d)(3)(A), designated existing provisions as subpar. (A), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

Subsec. (b). Pub. L. 96–513, § 503(47)(B)(ii), substituted ''601'' for ''5231 or 5232''.

Subsec. (b)(2). Pub. L. 96–513, § 513(17), substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342, § 813(d)(3)(B), designated existing provisions as subpar. (A), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

1978—Subsec. (b). Pub. L. 95–377 inserted ''or 5787d'' after ''5787''.

1963—Subsecs. (a)(2), (b)(2). Pub. L. 88–132 substituted ''of'' for ''to which he would be entitled if serving on active duty in'' following ''2½ percent of the basic pay''.

1958—Subsec. (a). Pub. L. 85–861 substituted ''or 6322'' for '', 6322, or 6323''.

Subsecs. (a)(2), (b)(2). Pub. L. 85–422 substituted ''that may be credited to him under section 1405 of this title'' for ''creditable for basic pay''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 503(47) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 513(17) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

RECOMPUTATION OF RETIRED PAY OF ADMIRALS AND VICE ADMIRALS

Officers entitled to retired pay on May 31, 1958, who served on active duty before that day in the grade of admiral or vice admiral for a period of at least 180 days, authorized to recompute retired pay, see section 7(b), (c) of Pub. L. 85–422.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 6333 of this title.

§ 6326. Enlisted members: 30 years

(a) Each enlisted member of the Regular Navy or the Regular Marine Corps who applies for retirement after completing 30 or more years of active service in the armed forces shall be retired by the President.

(b) For the purpose of subsection (a), ''enlisted member'' includes a member of the Regular Navy or the Regular Marine Corps who holds a permanent enlisted grade and a temporary appointment in a commissioned or warrant officer grade.

(c) Each person retired under this section—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade in which serving at the time of retirement; and

(2) unless otherwise entitled to higher pay, is entitled to retired pay computed under section 6333 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; Pub. L. 85–422, § 6(9), May 20, 1958, 72 Stat. 129; Pub. L. 85–861, § 36B(20), Sept. 2, 1958, 72 Stat. 1571; Pub. L. 88–132, § 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90–207, § 3(3), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96–342, title VIII, § 813(d)(4), Sept. 8, 1980, 94 Stat. 1105; Pub. L. 96–513, title V, § 513(17), (19), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 99–348, title II, § 203(b)(4), July 1, 1986, 100 Stat. 696.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6326	34 U.S.C. 431.	Mar. 3, 1899, ch. 413, § 17, 30 Stat. 1008; Mar. 2, 1907, ch. 2515, § 1, 34 Stat. 1217.
	34 U.S.C. 432.	Mar. 3, 1899, ch. 413, § 17, 30 Stat. 1008; June 22, 1906, ch. 3518, 34 Stat. 451; Mar. 2, 1907, ch. 2515, § 1, 34 Stat. 1217; June 4, 1920, ch. 228, § 3 (3d proviso as applicable to enlisted men), 41 Stat. 835.
	34 U.S.C. 879 (as applicable to enlisted men).	June 4, 1920, ch. 228, § 3 (3d proviso as applicable to enlisted men), 41 Stat. 835.
	34 U.S.C. 3c(e).	Aug. 7, 1947, ch. 512, § 302(e), 61 Stat. 829.
	34 U.S.C. 350f(a) (less provisos).	July 24, 1941, ch. 320, § 7(a) (less provisos), 55 Stat. 604; Nov. 30, 1942, ch. 643, 56 Stat. 1023.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34 U.S.C. 410m.	Aug. 7, 1947, ch. 512, §316(j), 61 Stat. 868.
	34 U.S.C. 350i(e).	July 24, 1941, ch. 320, §10(e), 55 Stat. 605; Feb. 21, 1946, ch. 34, §8(a), 60 Stat. 28.

In subsection (a) the word ''Regular'' is inserted before the words ''Navy'' and ''Marine Corps'' to reflect the longstanding interpretation that 34 U.S.C. 431 applies only to members of the Regular Navy and Regular Marine Corps. So much of the Act of March 2, 1907, ch. 2515, §1 (34 U.S.C. 431), as pertains to allowances and rations was expressly repealed by the Act of June 16, 1942, ch. 413, 56 Stat. 369. The words ''active service in the armed forces'' are substituted for 34 U.S.C. 432 for brevity. The reference to the former Revenue Cutter Service in 34 U.S.C. 432 is omitted as obsolete, inasmuch as that Service was absorbed by the Coast Guard in 1915. If there are any enlisted men not yet retired who served in the Revenue Cutter Service, their right to count that service for the purpose of this section is protected by the saving provisions accompanying this title. The reference to active service in the Civil or Spanish-American War in 34 U.S.C. 432 is omitted as obsolete.

Subsection (b) is inserted to cover into the section permanent enlisted members who are temporarily appointed to commissioned or warrant grades.

In subsection (c) the word ''grade'' is substituted for the words ''rating or rank'' and the words ''is entitled to retired pay at the rate of 75 percent of the basic pay to which he would be entitled if serving on active duty in the grade in which retired'' are substituted for the words ''and with 75 per centum of the pay of the said rating or rank'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.).

Subsection (d) is substituted for 34 U.S.C. 350i(e) as that section pertains to voluntary retirement of enlisted members with 30 years of active service.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–348 substituted provision that retired pay be computed under section 6333 for provision that retired pay, in the case of a person who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 75 percent of the basic pay of the pay grade in which he was serving on the day before retirement or, if he served as master chief petty officer of the Navy or as sergeant major of the Marine Corps, 75 percent of the highest basic pay to which he was entitled while so serving, if that rate was higher, or in the case of a person who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be computed by multiplying the monthly retired pay base computed under section 1407(d) by 75 percent.

1980—Subsec. (c)(2). Pub. L. 96–513 substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing, and ''master chief petty officer'' for ''senior enlisted advisor''.

Pub. L. 96–342 designated existing provisions as subpar. (A), inserted provision limiting applicability to persons who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

1967—Subsec. (c)(2). Pub. L. 90–207 inserted '', or if he has served as senior enlisted advisor of the Navy or as sergeant major of the Marine Corps, he shall be entitled to retired pay at the rate of 75 percent of the highest basic pay to which he was entitled while so serving, if that rate is higher'' after ''retirement''.

1963—Subsec. (c)(2). Pub. L. 88–132 substituted ''of'' for ''to which he would be entitled is serving on active duty in'' after ''75 percent of the basic pay''.

1958—Subsec. (c)(2). Pub. L. 85–422 substituted ''pay grade in which he was serving on the day before retirement'' for ''grade in which retired''.

Subsec. (d). Pub. L. 85–861 repealed subsec. (d) which related to grade of members serving in a grade to which they were appointed under section 5597 or promoted under section 5787 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

Amendment by Pub. L. 85–422 inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see note set out under section 3991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 6333 of this title.

§ 6327. Officers and enlisted members of the Naval Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay

(a) A member of the Naval Reserve or the Marine Corps Reserve may be transferred to the Retired Reserve upon his request if he has completed—

(1) at least 30 years of active service in the armed forces, other than active duty for training; or

(2) at least 20 years of active service in the armed forces other than active duty for training, the last 10 of which he served in the 11-year period immediately preceding his transfer to the Retired Reserve.

(b) Each member who is transferred to the Retired Reserve under subsection (a) is entitled, when not on active duty, to retired pay at the rate of 50 percent of the basic pay of the grade in which retired.

(c) This section applies only to persons who were members of the Naval Reserve or the Marine Corps Reserve on January 1, 1953.

(d) This section terminates on January 1, 1973. However, its termination will not affect any accrued rights to retired pay.

(e) A member who is eligible for retirement under this section, and who is also eligible for retirement under another provision or for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title, is entitled to elect which of these benefits he is to receive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 395; Pub. L. 85–583, §1(1), Aug. 1, 1958, 72 Stat. 480; Pub. L. 88–132, §5(h)(5), Oct. 2, 1963, 77 Stat. 214.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6327	50 U.S.C. 1052(a), (b), (d), (e), (f).	July 9, 1952, ch. 608, § 413(a), (b), (d), (e), (f), 66 Stat. 499.

In subsection (a) the word ''Federal'' is omitted and the words ''in the armed forces, other than active duty for training'' are inserted. The words ''active Federal service'' are not defined in 50 U.S.C. 1052. Section 310 of the Naval Reserve Act of 1938, which 50 U.S.C. 1052 replaced, specifies active service in the ''Army, Navy, Marine Corps, Coast Guard, Naval Auxiliary Service, Naval Reserve Force, Naval Militia in Federal status, National Naval Volunteers, Naval Reserve, Marine Corps Reserve Force, and Marine Corps Reserve.'' 50 U.S.C. 1052 was intended to preserve the rights of persons who, on January 1, 1953, were members of reserve components, so that they would not be prejudiced by the repeal of § 310 of the Naval Reserve Act of 1938 (U.S. Code Congressional and Administrative News, 1952, p. 3584). To effect that purpose, the service that was creditable under the 1938 Act must be creditable under 50 U.S.C. 1052. The words ''active service in the armed forces, other than active duty for training'' cover all creditable service. The Judge Advocate General of the Navy, in an opinion dated August 27, 1954 (JAG II:2:WGA:CA:mk), held that active duty for training was not creditable under the 1938 Act and is, therefore, not creditable under the 1952 Act.

AMENDMENTS

1963—Subsec. (b). Pub. L. 88–132 substituted ''of the grade in which retired'' for ''to which he would be entitled if on active duty'' after ''50 percent of the basic pay''.

1958—Subsec. (e). Pub. L. 85–583 entitled eligible members of Naval Reserve or Marine Corps Reserve to elect to transfer to Fleet Reserve or Fleet Marine Corps Reserve.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6323 of this title.

§ 6328. Computation of years of service: voluntary retirement

(a) ENLISTED MEMBERS.—Time required to be made up under section 972(a) of this title after February 10, 1996, may not be counted in computing years of service under this chapter.

(b) OFFICERS.—Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this chapter any time identified with respect to that officer under that section.

(Added Pub. L. 104–106, div. A, title V, § 561(d)(3)(A), Feb. 10, 1996, 110 Stat. 322; amended Pub. L. 107–107, div. A, title X, § 1048(c)(13), Dec. 28, 2001, 115 Stat. 1226.)

PRIOR PROVISIONS

A prior section 6328, acts Aug. 10, 1956, ch. 1041, 70A Stat. 396; Sept. 24, 1983, Pub. L. 98–94, title IX, § 923(c)(2), 97 Stat. 643, related to treatment of fractions of years of service in computing retired pay, prior to repeal by Pub. L. 99–348, title II, § 203(b)(5), July 1, 1986, 100 Stat. 696.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 substituted ''February 10, 1996,'' for ''the date of the enactment of this section''.

EFFECTIVE DATE

Section effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 972 of this title.

§ 6329. Officers not to be retired for misconduct

No officer of the Navy or the Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6329	34 U.S.C. 385. 34 U.S.C. 626–1(a) (1st sentence).	R.S. 1456. Aug. 7, 1947, ch. 512, § 314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.

The words ''for which trial by court-martial would be appropriate'' are substituted for the words ''but he shall be brought to trial by court-martial for such misconduct''. The peremptory command in the source text is at variance with the theory of the Uniform Code of Military Justice and conflicts with the provisions of articles 30, 32, and 34. The substituted words are in accord with the interpretation placed on R.S. 1456 in *Denby* v. *Berry*, 263 U.S. 29, 36 (Nov. 12, 1923).

§ 6330. Enlisted members: transfer to Fleet Reserve and Fleet Marine Corps Reserve; retainer pay

(a) The Fleet Reserve and the Fleet Marine Corps Reserve are composed of members of the naval service transferred thereto under this section.

(b) An enlisted member of the Regular Navy or the Naval Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Reserve. An enlisted member of the Regular Marine Corps or the Marine Corps Reserve who has completed 20 or more years of active service in the armed forces may, at his request, be transferred to the Fleet Marine Corps Reserve.

(c)(1) Each member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section is entitled, when not on active duty, to retainer pay computed under section 6333 of this title.

(2) A member may recompute his retainer pay under section 1402 or 1402a of this title, as appropriate, to reflect active duty after transfer.

(3) If the member has been credited by the Secretary of the Navy with extraordinary heroism in the line of duty, which determination by the Secretary is final and conclusive for all purposes, his retainer pay shall be increased by 10 percent.

(d)(1) For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(2) In determining a member's eligibility for transfer to the Fleet Reserve or the Fleet Marine Corps Reserve under subsection (b)—

(A) a completed minority enlistment of the member is counted as four years of active service, if creditable to the member for such purpose before December 31, 1977; and

(B) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term, if creditable to the member for such purpose before December 31, 1977.

(3)(A) Subject to subparagraph (B), in determining a member's years of active service for the computation of retainer pay under subsection (c)—

(i) a completed minority enlistment of the member is counted as four years of active service; and

(ii) an enlistment of the member terminated within three months before the end of the term of enlistment is counted as active service for the full term.

(B) In the case of a member who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section after December 30, 1977, service attributable under subparagraph (A) to time which, after December 31, 1977, is not actually served by the member may not be counted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 396; Pub. L. 85–583, §1(2), (3), Aug. 1, 1958, 72 Stat. 480; Pub. L. 90–207, §3(4), Dec. 16, 1967, 81 Stat. 653; Pub. L. 96–342, title VIII, §813(d)(5), Sept. 8, 1980, 94 Stat. 1105; Pub. L. 96–513, title V, §513(17), (19), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 98–94, title IX, §923(c)(3), Sept. 24, 1983, 97 Stat. 643; Pub. L. 99–348, title II, §203(b)(6), title III, §305(a)(1), July 1, 1986, 100 Stat. 696, 704; Pub. L. 101–189, div. A, title VI, §652(a)(5), Nov. 29, 1989, 103 Stat. 1461.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6330	34 U.S.C. 854 (less proviso).	June 25, 1938, ch. 690, §201 (less proviso), 52 Stat. 1178.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, §803 (2d sentence of 1st par.), 66 Stat. 505.
	34 U.S.C. 854c (less 4th, 5th, 6th (as applicable to 34 U.S.C. 854b) and 7th provisos).	June 25, 1938, ch. 690, §204 (less 4th, 5th, 6th (as applicable to §203 of the Naval Reserve Act of 1938), and 7th provisos), 52 Stat. 1170; Aug. 10, 1946, ch. 952, §2, 60 Stat. 993.
	34 U.S.C. 854a (less provisos).	June 25, 1938, ch. 690, §202 (less provisos), 52 Stat. 1178.

In subsection (a) the words ''officers'' and ''assigned'' are omitted, since they are applicable only to the proviso in 34 U.S.C. 854, which is recommended for repeal as obsolete. (See Table 2A.) The words ''including (a) those former members of the Fleet Reserve who were transferred * * * but before the expiration of three months following discharge'', appearing in §803 of the Armed Forces Reserve Act of 1952, 66 Stat. 505 (34 U.S.C. 854 (note)) are omitted as surplusage. These words merely illustrate the class of persons transferred to the Fleet Reserve under the Naval Reserve Act of 1938, 52 Stat. 1178, as referred to in the section from which these words were taken, and in no way limit that class or impose a citizenship requirement for membership in it. (See the opinion of the Judge Advocate General of the Navy, JAG:II:1:JFG:imz of February 17, 1953.)

In subsection (b) reference to the date July 1, 1925, is omitted, since members who were in the naval service on or before that date may, if they are qualified and so elect, be transferred to the Fleet Reserve or to the Fleet Marine Corps Reserve under 34 U.S.C. 854c instead of under 34 U.S.C. 854b, as provided in the fifth proviso of 34 U.S.C. 854c. That proviso and the provisions of 34 U.S.C. 854b, which are applicable only to persons who were in the naval service in 1925, are not codified because they relate to a small closed class and are therefore of limited interest. They are not repealed, however. (See Table 2D.)

In subsections (b) and (c) the term ''active service in the armed forces'' is substituted for the term ''active Federal service'' to execute the definition in the last sentence of 34 U.S.C. 854c.

In subsection (c) the words ''is entitled, when not on active duty, to retainer pay at the rate of 2½ percent of the basic pay that he received at the time of transfer'' are substituted for the words ''except when on active duty, shall be paid at the annual rate of 2½ per centum of the annual base and longevity pay they are receiving at the time of transfer'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.).

Subsection (d) states the rule as to the method of counting minority and short-term enlistments, in connection with determining active service, in accordance with *White v. United States*, 97 F. Supp. 698.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 substituted ''under this section.'' for ''under—

''(1) Title II of the Naval Reserve Act of 1938 (52 Stat. 1178), as amended; or

''(2) this section.''

1986—Subsec. (c)(1). Pub. L. 99–348, §203(b)(6)(A), substituted provision that retainer pay be computed under section 6333 for provision that retainer pay, in the case of a member who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay that he received at the time of transfer or, in the case of a member who served as master chief petty officer of the Navy or sergeant major of the Marine Corps, of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer, or in the case of a member who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retainer pay base computed under section 1407(d), which rates were to be multiplied by the number of years of active service in the armed forces.

Subsec. (c)(4). Pub. L. 99–348, §203(b)(6)(B), struck out par. (4) which provided that in no case could a member's retainer pay be more than 75 percent of the basic pay or monthly retainer pay base upon which computation of retainer pay was based.

Subsec. (d). Pub. L. 99–348, §305(a)(1), designated existing provisions as par. (1), struck out provision that a completed minority enlistment be counted as four years of active service and an enlistment terminated within three months before the end of the term be counted as active service for the full term, and added pars. (2) and (3).

1983—Subsec. (d). Pub. L. 98–94 substituted ''For the purposes of subsection (c), each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''For the purposes of subsections (b) and (c), a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded''.

1980—Subsec. (c). Pub. L. 96–513 substituted ''September 8, 1980'' for ''the date of the enactment of the De-

partment of Defense Authorization Act, 1981'' wherever appearing, and ''master chief petty officer'' for ''senior enlisted advisor''.

Pub. L. 96–342 amended subsec. (c) generally, designating existing provisions as pars. (1) to (4) and, as so amended, in par. (1) designated existing provisions as subpar. (A), as so designated, inserted provision limiting applicability to persons who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B), in par. (2) inserted reference to section 1402a of this title, and in par. (4) added applicability to monthly retainer pay base.

1967—Subsec. (c). Pub. L. 90–207 inserted '', except that in the case of a member who has served as senior enlisted advisor of the Navy or sergeant major of the Marine Corps, retainer pay shall be computed on the basis of the highest basic pay to which he was entitled while so serving, if that basic pay is higher than the basic pay received at the time of transfer'' after ''armed forces''.

1958—Subsec. (a). Pub. L. 85–583, §1(2), substituted ''naval service'' for ''Regular Navy and the Regular Marine Corps, respectively,''.

Subsec. (b). Pub. L. 85–583, §1(3), inserted ''or the Naval Reserve'' after ''Regular Navy'' and ''or the Marine Corps Reserve'' after ''Regular Marine Corps''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Navy, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to an enlisted member of the Navy or Marine Corps with at least 15 but less than 20 years of service by substituting ''15 or more years'' for ''20 or more years'' in the first sentence of subsection (a) [probably should be (b)] of this section and in the second sentence of subsec. (b) of this section, see section 4403 of Pub. L. 102–484, set out as a note under section 1293 of this title.

RETAINER PAY OF ENLISTED MEMBERS OF REGULAR NAVY, NAVAL RESERVE, REGULAR MARINE CORPS, OR MARINE CORPS RESERVE TRANSFERRED TO FLEET RESERVE OR FLEET MARINE CORPS RESERVE

Pub. L. 98–473, title I, §101(h) [title VIII, §8039], Oct. 12, 1984, 98 Stat. 1904, 1930, limited the use of assets of the Department of Defense Military Retirement Fund to pay the retainer pay of enlisted members of the Regular Navy, the Naval Reserve, the Regular Marine Corps, or the Marine Corps Reserve who were transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under this section on or after Dec. 31, 1977, prior to repeal by Pub. L. 99–348, title III, §305(a)(2), July 1, 1986, 100 Stat. 704. See section 6330(d)(2) and (3) of this title.

TRANSFER OF FORMER MEMBERS OF NAVY OR MARINE CORPS TO FLEET RESERVE OR FLEET MARINE CORPS RESERVE; TRANSFER TO RETIRED LIST

Act July 24, 1956, ch. 683, 70 Stat. 626, provided: ''Upon application by any former member of the Navy or Marine Corps—

''(1) who was discharged prior to August 10, 1946, under honorable conditions, and

''(2) who, at the time of his discharge, had at least twenty years' active Federal service,

the Secretary of the Navy shall appoint such former member in the Fleet Reserve or Fleet Marine Corps Reserve, as may be appropriate, in the rank held by him at the time of such discharge.

''SEC. 2. Each person appointed to the Fleet Reserve or Fleet Marine Corps Reserve under the first section of this Act shall be transferred to the appropriate retired list (1) on the first day of the first calendar month beginning after such appointment, if his last discharge occurred ten or more years prior to the date of such appointment, and (2) in the case of individuals appointed under such section before the expiration of ten years from their last discharge, on the first day of the first calendar month, beginning after the expiration of ten years from the date of such discharge.

''SEC. 3. Each former member transferred to a retired list under clauses (1) and (2) of section 2 shall receive retired pay at the annual rate of 2½ per centum of the annual base and longevity pay he was receiving at the time of his last discharge, multiplied by the number of his years of active Federal service at such time (not to exceed thirty), and adjusted to reflect the percentage increases made since such discharge in the retired pay of persons retired from the Armed Forces prior to October 12, 1949.

''SEC. 4. For the purposes of this Act, all active service in the Army of the United States, the Navy, the Marine Corps, the Coast Guard, or any component thereof, shall be deemed to be active Federal service.

''SEC. 5. No pay shall accrue to the benefit of any person appointed under the provisions of this Act prior to the date such person is actually appointed under the provisions of this Act and in no event prior to the first day of the first month following enactment of this Act [July 24, 1956].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1176, 1177, 1406, 1407, 1409, 1447, 6327, 6333, 6336 of this title.

§ 6331. Members of the Fleet Reserve and Fleet Marine Corps Reserve: transfer to the retired list; retired pay

(a) When he has completed 30 years of service, or when he is found not physically qualified in an examination under section 6485 of this title, a member of the Fleet Reserve or the Fleet Marine Corps Reserve shall be transferred—

(1) to the retired list of the Regular Navy or the Regular Marine Corps, as appropriate, if he was a member of the Regular Navy or the Regular Marine Corps at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve; or

(2) to the appropriate Retired Reserve, if he was a member of the Naval Reserve or the Marine Corps Reserve at the time of his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) For the purpose of subsection (a), a member's years of service are computed by adding—

(1) the years of service credited to him upon his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve;

(2) his years of active and inactive service in the armed forces before his transfer to the Fleet Reserve or the Fleet Marine Corps Reserve not credited to him upon that transfer; and

(3) his years of service, active and inactive, in the Fleet Reserve or the Fleet Marine Corps Reserve.

(c) Unless otherwise entitled to higher pay, each member transferred to the retired list or the Retired Reserve under this section is entitled to retired pay at the same rate as the retainer pay to which he was entitled at the time of his transfer to the retired list or the Retired Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 397; Pub. L. 85–583, §1(4–6), Aug. 1, 1958, 72 Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6331	34 U.S.C. 854c (4th proviso).	June 25, 1938, ch. 690, §204 (4th proviso), 52 Stat. 1179; Aug. 10, 1946, ch. 952, §2, 60 Stat. 993.
	34 U.S.C. 854e (2d and 4th provisos).	June 25, 1938, ch. 690, §206 (2d and 4th provisos), 52 Stat. 1179; Apr. 25, 1940, ch. 153, 54 Stat. 162.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, §803 (3d sentence), 66 Stat. 505.

In subsection (a) the words ''transferred * * * in accordance with the provisions of this section and of sections 853 and 854b of this title'', in the fourth proviso of 34 U.S.C. 854c, and the words ''transferred after sixteen years' or more service in the Regular Navy'', and ''men coming under the cognizance of sections 853 and 854b of this title'', in the second proviso of 34 U.S.C. 854e, are omitted as surplusage since the classes designated by these phrases comprise all members of the Fleet Reserve and Fleet Marine Corps Reserve.

Subsection (b) is worded so as to cover all members of the Fleet Reserve and the Fleet Marine Corps Reserve regardless of the law under which they attained that status. A member transferring under 34 U.S.C. 854b may count only active naval service in computing the service required for that transfer, but in determining his eligibility for retirement he may add to his active naval service all previous active or inactive service in the Army, Navy, Marine Corps, Air Force, or Coast Guard, and his time in the Fleet Reserve. A member transferring to the Fleet Reserve under 34 U.S.C. 854c may count active service in any armed force toward that transfer, and he determines his eligibility for retirement by adding to the service credited to him at the time of transfer any previous inactive service in the armed forces and his time in the Fleet Reserve. As to the latter member the words ''active service'' in clause (2) are superfluous, since such service would have been credited to him upon his transfer to the Fleet Reserve, but they are needed in the case of a member transferred under 34 U.S.C. 854b.

In subsection (c) references to the ''allowances to which enlisted men of the Navy are entitled on retirement after thirty years' service'', in the second and fourth provisos of 34 U.S.C. 854e, are omitted because of the repeal, by §19 of the Pay Readjustment Act of 1942, 56 Stat. 369, of the laws authorizing such allowances.

AMENDMENTS

1958—Subsec. (a). Pub. L. 85–583, §1(4), provided for the transfer to the appropriate Retired Reserve of those members of the Fleet Reserve or the Fleet Marine Corps Reserve who had transferred thereto from the Naval Reserve or the Marine Corps Reserve.

Subsec. (b). Pub. L. 85–583, §1(5), struck out ''of clause (2)''.

Subsec. (c). Pub. L. 85–583, §1(6), inserted ''or the Retired Reserve'' after ''retired list'' wherever appearing.

§ 6332. Conclusiveness of transfers

When a member of the naval service is transferred by the Secretary of the Navy—

(1) to the Fleet Reserve;

(2) to the Fleet Marine Corps Reserve;

(3) from the Fleet Reserve to the retired list of the Regular Navy or the Retired Reserve; or

(4) from the Fleet Marine Corps Reserve to the retired list of the Regular Marine Corps or the Retired Reserve;

the transfer is conclusive for all purposes. Each member so transferred is entitled, when not on active duty, to retainer pay or retired pay from the date of transfer in accordance with his grade and number of years of creditable service as determined by the Secretary. The Secretary may correct any error or omission in his determination as to a member's grade and years of creditable service. When such a correction is made, the member is entitled, when not on active duty, to retainer pay or retired pay in accordance with his grade and number of years of creditable service, as corrected, from the date of transfer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 397; Pub. L. 85–583, §1(7), Aug. 1, 1958, 72 Stat. 480; Pub. L. 85–861, §33(a)(33), Sept. 2, 1958, 72 Stat. 1566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6332	34 U.S.C. 854a (provisos).	June 25, 1938, ch. 690, §202 (provisos), 52 Stat. 1178.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, §803 (3d sentence), 66 Stat. 505.

The words ''when not on active duty, to retainer pay or retired pay'' are substituted for the words ''pay and allowances''. The pay and allowances of a member on active duty are covered by the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). When not on active duty a member of the Fleet Reserve receives retainer pay and a retired member receives retired pay without allowances, the provision for allowances for retired members having been repealed as pointed out in the note on the preceding section. In the last sentence the words ''from the date of transfer'' are added to make it clear that a correction is retroactive to that date. The Court of Claims has so held (*Dugan v. United States* (1943), 100 Ct. Cl. 7).

AMENDMENTS

1958—Pub. L. 85–861 substituted ''to retainer pay or retired pay in accordance'' for ''to retain pay or retired pay in accordance''.

Pub. L. 85–583 inserted ''or the Retired Reserve'' after ''Navy'' in cl. (3) and after ''Marine Corps'' in cl. (4).

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 6333. Computation of retired and retainer pay

(a) The monthly retired pay or retainer pay of a member entitled to such pay under this chapter or under section 6383 of this title is computed in accordance with the following table.

Formula	For sections	Column 1 Take	Column 2 Multiply by
A	6325(a) 6326	Retired pay base computed under section 1406(d) or 1407.	75 percent.

Formula	For sections	Column 1 Take	Column 2 Multiply by
B	6323 6325(b) 6383	Retired pay base computed under section 1406(d) or 1407.	Retired pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.
C	6330	Retainer pay base computed under section 1406(d) or 1407.	Retainer pay multiplier prescribed under section 1409 for the years of service that may be credited to him under section 1405.

(b)(1) Retired pay or retainer pay computed under this section, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(2) References in the table in subsection (a) are to sections of this title.

(c) In the case of a Reserve enlisted member whose grade upon transfer to the Fleet Reserve or Fleet Marine Corps Reserve is determined under section 6336 of this title and who first became a member of a uniformed service before September 8, 1980, the retainer pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the grade in which the member is so transferred (determined based upon the rates of basic pay applicable on the date of the member's transfer), and that amount shall be used for the purposes of the table in subsection (a) rather than the amount computed under section 1406(d) of this title.

(Added Pub. L. 98–94, title IX, § 922(a)(10)(A), Sept. 24, 1983, 97 Stat. 641; amended Pub. L. 99–348, title II, § 203(a), July 1, 1986, 100 Stat. 695; Pub. L. 103–337, div. A, title VI, § 635(b), Oct. 5, 1994, 108 Stat. 2789; Pub. L. 104–106, div. A, title XV, § 1503(b)(3), Feb. 10, 1996, 110 Stat. 512; Pub. L. 104–201, div. A, title V, § 532(d)(2), Sept. 23, 1996, 110 Stat. 2520.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106 struck out first period after ''section 1405'' in Formula C under Column 2 in table.

Subsec. (c). Pub. L. 104–201 added subsec. (c).

1994—Subsec. (a). Pub. L. 103–337 substituted ''the years of service that may be credited to him under section 1405.'' for ''his years of active service in the armed forces'' in Formula C under Column 2 in table.

1986—Pub. L. 99–348 amended section generally, designating existing provision as subsec. (b)(1), substituting ''under this section'' for ''under this chapter'', and adding subsecs. (a) and (b)(2).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as an Effective Date of 1983 Amendment note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 6323, 6325, 6326, 6330, 6383 of this title.

§ 6334. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each member of the naval service covered by subsection (b) who, after December 4, 1987, is retired with less than 30 years of active service or is transferred to the Fleet Reserve or Fleet Marine Corps Reserve is entitled, when his active service plus his service on the retired list or his service in the Fleet Reserve or the Fleet Marine Corps Reserve totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to—

(1) warrant officers of the naval service;

(2) enlisted members of the Regular Navy and Regular Marine Corps; and

(3) reserve enlisted members of the Navy and Marine Corps who, at the time of retirement or transfer to the Fleet Reserve or Fleet Marine Corps Reserve, are serving on active duty.

(c) An enlisted member of the naval service who is advanced on the retired list under this section is entitled to recompute his retired or retainer pay under formula A of the following table, and a warrant officer of the naval service so advanced is entitled to recompute his retired pay under formula B of that table. The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

Formula	Column 1 Take	Column 2 Multiply by
A	Retired pay base as computed under section 1406(d) or 1407 of this title.	The retired pay multiplier prescribed in section 1409 of this title for the number of years creditable for his retainer or retired pay at the time of retirement.[1]
B	Retired pay base as computed under section 1406(d) of this title.	The retired pay multiplier prescribed in section 1409 of this title for the number of years credited to him under section 1405 of this title.

[1] In determining the retired pay multiplier, credit each full month of service that is in addition to the number of full years of service creditable to the member as 1/12 of a year and disregard any remaining fractional part of a month.

(Added Pub. L. 100–180, div. A, title V, § 512(b), Dec. 4, 1987, 101 Stat. 1089; amended Pub. L. 101–189, div. A, title XVI, § 1622(g), Nov. 29, 1989, 103 Stat. 1605.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 substituted ''December 4, 1987'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 6335 of this title.

§ 6335. Restoration to former grade: warrant officers and enlisted members

Each retired warrant officer or enlisted member of the naval service who has been advanced on the retired list to a higher commissioned

grade under section 6334 of this title, and who applies to the Secretary of the Navy within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant officer or enlisted status, as the case may be.

(Added Pub. L. 100–180, div. A, title V, §512(b), Dec. 4, 1987, 101 Stat. 1090.)

§ 6336. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A member of the Naval Reserve or Marine Corps Reserve described in subsection (b) who is transferred to the Fleet Reserve or the Fleet Marine Corps Reserve under section 6330 of this title shall be transferred in the highest enlisted grade in which the member served on active duty satisfactorily, as determined by the Secretary of the Navy.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of transfer to the Fleet Reserve or Fleet Marine Corps Reserve is serving on active duty in a grade lower than the highest enlisted grade held by the member while on active duty; and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Navy.

(c) This section applies with respect to enlisted members of the Naval Reserve and Marine Corps Reserve who are transferred to the Fleet Reserve or the Fleet Marine Corps Reserve after September 30, 1996.

(Added Pub. L. 104–201, div. A, title V, §532(b)(1), Sept. 23, 1996, 110 Stat. 2519.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6333 of this title.

CHAPTER 573—INVOLUNTARY RETIREMENT, SEPARATION, AND FURLOUGH

Sec.
6371. Mandatory retirement: Superintendent of the United States Naval Academy.
[6372 to 6382. Repealed.]
6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay.
[6384 to 6388. Repealed.]
6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service.
[6390 to 6403. Repealed.]
6404. Treatment of fractions of years of service in computing retired pay and separation pay.
[6405 to 6407. Repealed.]
6408. Navy and Marine Corps; warrant officers, W–1: limitation on dismissal.
[6409, 6410. Repealed.]

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, §532(a)(4)(C), Oct. 5, 1999, 113 Stat. 604, added item 6371.

1994—Pub. L. 103–337, div. A, title XVI, §1673(b)(4), Oct. 5, 1994, 108 Stat. 3016, struck out items 6391 ''Naval Reserve and Marine Corps Reserve; officers: retirement at age 62'', 6392 ''Retention in active status of certain officers'', 6397 ''Naval Reserves; officers in the Nurse Corps: elimination from active status'', 6403 ''Naval Reserve and Marine Corps Reserve; women officers: elimination from active status'', and 6410 ''Naval Reserve and Marine Corps Reserve; officers: elimination from active status to provide a flow of promotion''.

1987—Pub. L. 100–180, div. A, title VII, §717(b)(2), Dec. 4, 1987, 101 Stat. 1114, added item 6392.

1980—Pub. L. 96–513, title V, §503(48), Dec. 12, 1980, 94 Stat. 2915, struck out items 6371 ''Regular Navy; line rear admirals not restricted in performance of duty; continuation on active list; retirement'', 6372 ''Regular Navy; line rear admirals restricted in performance of duty and staff corps rear admirals: retention on active list; retirement'', 6373 ''Regular Marine Corps; major generals: retention on active list; retirement'', 6374 ''Regular Marine Corps: brigadier generals: retirement for failures of selection for promotion'', 6376 ''Regular Navy, line captains not restricted in performance of duty; Regular Marine Corps, colonels: retirement for length of service'', 6377 ''Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders; Regular Marine Corps, colonels designated for supply duty; retirement for length of service'', 6378 ''Regular Navy, line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders: continuation on active list; retirement'', 6379 ''Regular Navy, commanders; Regular Marine Corps. lieutenant colonels: retirement for length of service and failures of selection for promotion'', 6380 ''Regular Navy, lieutenant commanders; Regular Marine Corps, majors: retirement for length of service and failures of selection for promotion'', 6381 ''Officers retired under preceding sections; retired grade and pay; general rule'', and 6382 ''Regular Navy, lieutenants and lieutenants (junior grade); Regular Marine Corps, captains and first lieutenants: discharge for failures of selection for promotion; severance pay'', substituted ''retired pay'' for ''retired or severance pay'' in item 6383, struck out items 6384 ''Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge for unsatisfactory performance of duty; severance pay; reversion of limited duty officers to prior status'', 6385 ''Officers appointed under sections 5231, 5232, 5787, or 5787d of this title; grade for purpose of preceding sections'', 6386 ''Suspension: preceding sections'', 6387 ''Regular Navy, male line officers: Regular Marine Corps, male officers: computation of total commissioned service'', 6388 ''Regular Navy; certain staff corps officers: computation of total commissioned service'', 6390 ''Regular Navy and Regular Marine Corps; officers: retirement at age 62'', 6392 ''Regular Navy and Regular Marine Corps, officers having less than three years of service: revocation of appointments; reversion of certain officers to prior status'', 6393 ''Regular Navy and Regular Marine Corps; women officers: termination of appointments'', 6394 ''Regular Navy, rear admirals and commodores; Regular Marine Corps, major generals and brigadier generals: retirement on recommendation of board'', 6395 ''Regular Navy and Regular Marine Corps; officers having less than 20 years of service: discharge during war or emergency for unsatisfactory performance of duty'', 6396 ''Regular Navy; officers in Nurse Corps in grades below commander: retirement or discharge'', 6398 ''Regular Navy; women captains and commanders; Regular Marine Corps; women colonels and lieutenant colonels: retirement for length of service: retired grade and pay'', 6400 ''Regular Navy, women lieutenant commanders; Regular Marine Corps, women majors: retirement for length of service; retired grade and pay'', 6401 ''Regular Navy, women lieutenants; Regular Marine Corps, women captains: discharge for length of service; severance pay'', and 6402 ''Regular Navy, women lieutenants (junior grade); Regular Marine Corps, women first lieutenants: discharge for length of service; severance pay'', substituted ''separation pay'' for ''severance pay'' in item 6404, and struck out item 6407 ''Communication with selection board''.

1978—Pub. L. 95–377, §8(d), Sept. 19, 1978, 92 Stat. 721, inserted reference to section 5787d in item 6385.

1970—Pub. L. 91–482, §2E, Oct. 21, 1970, 84 Stat. 1082, struck out item 6406 ''Regular Navy and Regular Marine Corps; officers: furlough; furlough pay''.

1968—Pub. L. 90–235, §§3(b)(5), 4(a)(13), Jan. 2, 1968, 81 Stat. 758, 760, struck out item 6405 ''Effect of acceptance of appointment in Foreign Service'', and item 6409 ''Navy and Marine Corps; warrant officers: suspension of laws for mandatory retirement and separation during war or emergency''.

1967—Pub. L. 90–130, §1(24)(B), (G), (H), Nov. 8, 1967, 81 Stat. 380, 382 struck out ''or for age'' after ''length of service'' in item 6377, substituted ''officers in Nurse Corps in grades below commander: retirement or discharge'' for ''officers in Nurse Corps: retirement for age or length of service; retired grade and pay'' in item 6396, substituted ''Regular Navy; women captains and commanders; Regular Marine Corps; women colonels and lieutenant colonels: retirement for length of service; retired grade and pay'' for ''Regular Navy, women commanders; Regular Marine Corps, women lieutenant colonels: retirement for age of length or service; retired grade and pay'' in item 6398, and eliminated item 6399 which read: ''Regular Navy, women lieutenant commanders and below; Regular Marine Corps, women majors and below: retirement at age 50; retired grade and pay''.

1961—Pub. L. 87–123, §5(30), Aug. 3, 1961, 75 Stat. 267, struck out ''not restricted in performance of duty'' after ''brigadier generals'' and ''colonels'' in items 6374 and 6376, respectively, ''; Regular Marine Corps, colonels designated for supply duty'' after ''Nurse Corps commanders;'' in items 6377 and 6378, and struck out item 6375 ''Regular Marine Corps; brigadier generals designated for supply duty: retention on active list; retirement''.

1958—Pub. L. 85–861, §1(144)(G), Sept. 2, 1958, 72 Stat. 1512, added items 6389, 6391, 6397, 6403, 6410.

1957—Pub. L. 85–155, title II, §201(14), Aug. 21, 1957, 71 Stat. 383, included Nurse Corps commanders and retirement for age in item 6377, and included Nurse Corps commanders in item 6378.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 12645, 12646, 12647 of this title.

§6371. Mandatory retirement: Superintendent of the United States Naval Academy

Upon the termination of the detail of an officer to the position of Superintendent of the United States Naval Academy, the Secretary of the Navy shall retire the officer under any provision of chapter 571 of this title under which the officer is eligible to retire.

(Added Pub. L. 106–65, div. A, title V, §532(a)(2)(A), Oct. 5, 1999, 113 Stat. 603.)

PRIOR PROVISIONS

A prior section 6371, act Aug. 10, 1956, ch. 1041, 70A Stat. 399, related to consideration for continuation on active list of Regular Navy line rear admirals not restricted in performance of duty, prior to repeal by Pub. L. 96–513, title III, §335, title VII, §701, Dec. 12, 1980, 94 Stat. 2898, 2955, effective Sept. 15, 1981.

APPLICATION OF SECTION TO SUPERINTENDENTS SERVING ON OCTOBER 5, 1999

Section not applicable to an officer serving on Oct. 5, 1999, in the position of Superintendent of the United States Military Academy, Naval Academy, or Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service, see section 532(a)(5) of Pub. L. 106–65, set out as a note under section 3921 of this title.

[§§ 6372 to 6374. Repealed. Pub. L. 96–513, title III, §335, Dec. 12, 1980, 94 Stat. 2898]

Section 6372, act Aug. 10, 1956, ch. 1041, 70A Stat. 400, related to retirement and possible retention on active list of line rear admirals restricted in performance of duty and staff corps rear admirals in Regular Navy. See section 637 of this title.

Section 6373, act Aug. 10, 1956, ch. 1041, 70A Stat. 400, related to retirement and possible retention on active list of major generals in Regular Marine Corps. See section 637 of this title.

Section 6374, acts Aug. 10, 1956, ch. 1041, 70A Stat. 401; Aug. 3, 1961, Pub. L. 87–123, §5(25), 75 Stat. 266, related to retirement for failures of selection for promotion of brigadier generals in Regular Marine Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§6375. Repealed. Pub. L. 87–123, §5(26), Aug. 3, 1961, 75 Stat. 266]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 401, provided for retirement of Marine Corps brigadier generals designated for supply duty after specified years of service, their retention on active list with board approval and computation of their years of service in grade.

[§§ 6376 to 6382. Repealed. Pub. L. 96–513, title III, §335, Dec. 12, 1980, 94 Stat. 2898]

Section 6376, acts Aug. 10, 1956, ch. 1041, 70A Stat. 402; Aug. 3, 1961, Pub. L. 87–123, §5(27), 75 Stat. 266; Nov. 8, 1967, Pub. L. 90–130, §1(24)(A), 81 Stat. 380, related to retirement for length of service of Regular Navy line captains not restricted in performance duty and Regular Marine Corps colonels. See section 634 of this title.

Section 6377, acts Aug. 10, 1956, ch. 1041, 70A Stat. 402; Aug. 21, 1957, Pub. L. 85–155, title II, §201(15), 71 Stat. 384; Aug. 3, 1961, Pub. L. 87–123, §5(28), 75 Stat. 266; Sept. 30, 1966, Pub. L. 89–609, §1(16), (17), 80 Stat. 853; Nov. 8, 1967, Pub. L. 90–130, §1(24)(B), (C), 81 Stat. 380, related to retirement for length of service of Regular Navy line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders. See sections 633 and 634 of this title.

Section 6378, acts Aug. 10, 1956, ch. 1041, 70A Stat. 403; Aug. 21, 1957, Pub. L. 85–155, title II, §201(16), 71 Stat. 384; Aug. 3, 1961, Pub. L. 87–123, §5(29), 75 Stat. 267; Dec. 8, 1967, Pub. L. 90–179, §12, 81 Stat. 549, related to consideration for continuation on active list of Regular Navy line captains restricted in performance of duty, staff corps captains, and Nurse Corps commanders. See section 637 of this title.

Section 6379, acts Aug. 10, 1956, ch. 1041, 70A Stat. 404; Aug. 21, 1957, Pub. L. 85–155, title II, §201(17), 71 Stat. 384; Nov. 8, 1967, Pub. L. 90–130, §1(24)(D), 81 Stat. 380, related to retirement for length of service and for failures of selection for promotion of Regular Navy commanders and Regular Marine Corps lieutenant colonels. See section 633 of this title.

Section 6380, act Aug. 10, 1956, ch. 1041, 70A Stat. 404, related to retirement for length of service and for failures of selection for promotion of Regular Navy lieutenant commanders and Regular Marine Corps majors. See section 632 of this title.

Section 6381, acts Aug. 10, 1956, ch. 1041, 70A Stat. 404; Aug. 21, 1957, Pub. L. 85–155, title II, §201(18), 71 Stat. 384; May 20, 1958, Pub. L. 85–422, §11(a)(6)(C), 71 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, §5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, §813(d)(6), 94 Stat. 1106, related to retirement grade and pay of officers retired under former sections 6371 to 6380 of this title. See section 642 of this title.

Section 6382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 405; Aug. 21, 1957, Pub. L. 85–155, title II, §201(19), 71 Stat. 384; July 12, 1960, Pub. L. 86–616, §5(1), 74 Stat. 390; June

28, 1962, Pub. L. 87–509; § 4(b), 76 Stat. 121, related to discharge for failures of selection for promotion of Regular Navy lieutenant and lieutenants (junior grade) and Regular Marine Corps captains and first lieutenants. See section 631 and section 632 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6383. Regular Navy and Regular Marine Corps; officers designated for limited duty: retirement for length of service or failures of selection for promotion; discharge for failures of selection for promotion; reversion to prior status; retired grade; retired pay

(a) MANDATORY RETIREMENT.—(1) Except as provided in subsection (k), each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer designated for limited duty shall be retired on the last day of the month following the month in which he completes 30 years of active naval service, exclusive of active duty for training in a reserve component.

(2) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of commander, has failed of selection for promotion to the grade of captain for the second time, and is not on a list of officers recommended for promotion to the grade of captain shall—

(A) if eligible for retirement as a commissioned officer under any provision of law, be retired under that provision of law on the date requested by the officer and approved by the Secretary of the Navy, except that the date of retirement may not be later than the first day of the seventh month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed for promotion to the grade of captain for a second time; or

(B) if not eligible for retirement as a commissioned officer, be retired on the date requested by the officer and approved by the Secretary of the Navy after the officer becomes eligible for retirement as a commissioned officer, except that the date of retirement may not be later than the first day of the seventh calendar month beginning after the month in which the officer becomes eligible for retirement as a commissioned officer.

(3) Except as provided in subsection (k), if not retired earlier, a regular officer of the Navy designated for limited duty who is serving in the grade of commander and is not on a list of officers recommended for promotion to the grade of captain shall be retired on the last day of the month following the month in which the officer completes 35 years of active naval service, exclusive of active duty for training in a reserve component.

(4) Except as provided in subsection (k), each regular officer of the Navy designated for limited duty who is serving in the grade of captain shall, if not retired sooner, be retired on the last day of the month following the month in which the officer completes 38 years of active naval service, exclusive of active duty for training in a reserve component.

(b) LIEUTENANT COMMANDERS AND MAJORS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant commander who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of major who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel, respectively, for the second time and whose name is not on a promotion list shall be retired, if eligible to retire, or be discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of commander or lieutenant colonel for the second time.

(c) RETIRED GRADE AND RETIRED PAY.—Each officer retired under subsection (a) or (b)—

(1) unless otherwise entitled to a higher grade, shall be retired in the grade determined under section 1370 of this title; and

(2) is entitled to retired pay computed under section 6333 of this title.

(d) NAVY LIEUTENANTS AND MARINE CORPS CAPTAINS WHO TWICE FAIL OF SELECTION FOR PROMOTION.—Except as provided in subsections (f) and (k), each regular officer on the active-duty list of the Navy serving in the grade of lieutenant who is an officer designated for limited duty, and each regular officer on the active duty list of the Marine Corps serving in the grade of captain who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time and whose name is not on a list of officers recommended for promotion shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

(e) OFFICERS IN PAY GRADES O–2 AND O–1 WHO TWICE FAIL OF SELECTION FOR PROMOTION OR ARE FOUND NOT QUALIFIED FOR PROMOTION.—(1) Each regular officer on the active-duty list of the Navy serving in the grade of lieutenant (junior grade) who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of first lieutenant who is an officer designated for limited duty, who is considered as having failed of selection for promotion to the grade of lieutenant (in the case of an officer of the Navy) or captain (in the case of an officer of the Marine Corps) for the second time shall be honorably discharged on the date requested by the officer

and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the selection board in which the officer is considered as having failed of selection for promotion to the grade of lieutenant or captain, respectively, for the second time.

(2) Each regular officer on the active-duty list of the Navy serving in the grade of ensign who is an officer designated for limited duty, and each regular officer on the active-duty list of the Marine Corps serving in the grade of second lieutenant who is an officer designated for limited duty, who is found not qualified for promotion to the grade of lieutenant (junior grade) (in the case of an officer of the Navy) or first lieutenant (in the case of an officer of the Marine Corps) shall be honorably discharged on the date requested by the officer and approved by the Secretary of the Navy, but not later than the first day of the seventh calendar month beginning after the month in which the officer was found not qualified for promotion.

(f) 18-YEAR RETIREMENT SANCTUARY.—If an officer subject to discharge under subsection (b), (d), or (e) is (as of the date on which the officer is to be discharged) not eligible for retirement under any provision of law but is within two years of qualifying for retirement under section 6323 of this title, the officer shall be retained on active duty as an officer designated for limited duty until becoming qualified for retirement under that section and shall then be retired under that section, unless the officer is sooner retired or discharged under another provision of law or the officer reverts to a warrant officer grade pursuant to subsection (h).

(g) REENLISTMENT FOR LDOS APPOINTED FROM ENLISTED GRADES.—(1) An officer subject to discharge under subsection (b), (d), or (e) who is described in paragraph (2) may, upon the officer's request and in the discretion of the Secretary of the Navy, be enlisted in a grade prescribed by the Secretary upon the officer's discharge pursuant to such subsection.

(2) An officer described in this paragraph is an officer who—

(A) is not eligible for retirement under any provision of law;

(B) is not covered by subsection (f); and

(C) was in an enlisted grade when first appointed as an officer designated for limited duty.

(h) REVERSION TO WARRANT OFFICER GRADE FOR LDOS APPOINTED FROM WARRANT OFFICER GRADES.—An officer subject to discharge under subsection (b), (d), or (e) (including an officer otherwise subject to retention under subsection (f)) who is not eligible for retirement under any provision of law and who had the permanent status of a warrant officer when first appointed as an officer designated for limited duty may, at the officer's option, revert to the warrant officer grade and status that the officer would hold if the officer had not been appointed as an officer designated for limited duty.

(i) DETERMINATION OF GRADE AND STATUS OF OFFICERS REVERTING TO PRIOR STATUS.—In any computation to determine the grade and status to which an officer may revert under this section, all active service as an officer designated for limited duty or as a temporary or reserve officer is included.

(j) SEPARATION PAY FOR OFFICERS DISCHARGED.—An officer discharged under this section is entitled, if eligible therefor, to separation pay under section 1174(a)(1) of this title.

(k) SELECTIVE RETENTION BOARDS FOR LDOS.—Under such regulations as he may prescribe, whenever the needs of the service require, the Secretary of the Navy may defer the retirement under subsection (a) or (b) or the discharge under subsection (b) or (d) of any officer designated for limited duty upon recommendation of a board of officers convened under section 611(b) of this title and with the consent of the officer concerned. An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier.

(*l*) APPLICABILITY OF SECTION ONLY TO PERMANENT LDOS.—This section does not apply to officers designated for limited duty under section 5596 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 405; Pub. L. 85–422, § 11(a)(6)(D), May 20, 1958, 72 Stat. 131; Pub. L. 86–616, § 5(2), July 12, 1960, 74 Stat. 390; Pub. L. 87–509, § 4(b), June 28, 1962, 76 Stat. 121; Pub. L. 88–132, § 5(h)(4), Oct. 2, 1963, 77 Stat. 214; Pub. L. 96–342, title VIII, § 813(d)(7), Sept. 8, 1980, 94 Stat. 1106; Pub. L. 96–513, title III, § 336, title V, § 513(17), Dec. 12, 1980, 94 Stat. 2898, 2932; Pub. L. 98–94, title IX, § 922(a)(11), Sept. 24, 1983, 97 Stat. 642; Pub. L. 98–525, title V, § 529(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99–348, title II, § 203(b)(7), July 1, 1986, 100 Stat. 696; Pub. L. 101–510, div. A, title V, § 501(f)(2), Nov. 5, 1990, 104 Stat. 1551; Pub. L. 102–484, div. A, title V, § 504(c), (d), Oct. 23, 1992, 106 Stat. 2403, 2404; Pub. L. 103–160, div. A, title V, § 561(e), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 103–337, div. A, title V, § 503, Oct. 5, 1994, 108 Stat. 2749; Pub. L. 105–261, div. A, title V, § 504(c), (d), Oct. 17, 1998, 112 Stat. 2004.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6383(a)–(h)	34 U.S.C. 410j(a).	Aug. 7, 1947, ch. 512, § 312(a), 61 Stat. 858.
	34 U.S.C. 626–1(a) (1st sentence).	Aug. 7, 1947, ch. 512, § 314(a) (1st sentence), 61 Stat. 863; May 5, 1954, ch. 180, § 205, 68 Stat. 68.
	34 U.S.C. 626–1(*o*).	Aug. 7, 1947, ch. 512, § 314(*o*), 61 Stat. 865.
	34 U.S.C. 3c(b) (1st sentence).	Aug. 7, 1947, ch. 512, § 302(b) (1st sentence), 61 Stat. 829.
6383(a)	34 U.S.C. 410j(d).	Aug. 7, 1947, ch. 512, § 312(d), 61 Stat. 859.
6383(b)	34 U.S.C. 410j(f) (less provisos).	Aug. 7, 1947, ch. 512, § 312(f) (less provisos), 61 Stat. 859.
6383(c)	34 U.S.C. 389 (1st sentence as applicable to grade).	R.S. 1457 (1st sentence as applicable to grade).
	34 U.S.C. 410j(g) (less provisos).	Aug. 7, 1947, ch. 512, § 312(g) (less provisos), 61 Stat. 860.
	34 U.S.C. 3c(j).	Aug. 7, 1947, ch. 512, § 312(j), 61 Stat. 831.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6383(d), (e), (f).	34 U.S.C. 410j(h) (as applicable to officers designated for limited duty who fail of selection, less provisos).	Aug. 7, 1947, ch. 512, §312(h) (as applicable to officers designated for limited duty who fail of selection less provisos), 61 Stat. 860.
	34 U.S.C. 410j(m) (less applicability to persons discharged under 34 U.S.C. 410j(*l*)).	Aug. 7, 1947, ch. 512, §312(m); added June 18, 1954, ch. 311, (b) (less applicability to persons discharged under §312(*l*)), 68 Stat. 257.
6383(g), (h).	34 U.S.C. 410j(f) (provisos).	Aug. 7, 1947, ch. 512, §312(f) (provisos), 61 Stat. 859.
	34 U.S.C. 410j(h) (2d proviso as applicable to officers designated for limited duty who fail of selection).	Aug. 7, 1947, ch. 512, §312(h) (2d proviso as applicable to officers designated for limited duty who fail of selection), 61 Stat. 860.

In subsection (a) the words ''if not otherwise retired pursuant to law'' are omitted as surplusage.

In subsection (c) the pay provisions are worded so as to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.).

The second proviso in §312(g) of the Officer Personnel Act of 1947 (34 U.S.C. 410j(g)), relating to the retired pay of officers commissioned in the Regular Navy under the Act of April 18, 1946, ch. 141, as amended (34 U.S.C. 15), and officers commissioned in the Regular Navy while serving on active duty as officers of the Naval Reserve, is not codified in this section because it is inapplicable to officers designated for limited duty. The only authority to appoint limited duty officers is §404(a) of the Officer Personnel Act of 1947 (34 U.S.C. 211c(a)). Naval Reserve officers are not eligible for such appointments. Hence there can be no limited duty officers in the categories mentioned in the proviso.

In subsection (f) the words ''to which he would otherwise become entitled'' are omitted as surplusage and the words ''based on the service for which he has received payment'' are substituted for the words ''attributable to the active service in respect of which lumpsum payment shall have been made to him''.

The second proviso in §312(f) of the Officer Personnel Act of 1947 (34 U.S.C. 410j(f)), which provides that officers who exercise their option to revert to a warrant officer grade shall be retired upon completing 30 years of active naval service, is omitted as superseded by §14(b)(2) of the Warrant Officer Act of 1954 (34 U.S.C. 430(b)(2)), codified in §1305 of this title.

AMENDMENTS

1998—Subsec. (a)(5). Pub. L. 105–261, §504(c), struck out par. (5) which read as follows: ''Paragraphs (2) through (4) shall be effective only during the period beginning on July 1, 1993, and ending on October 1, 1999.''

Subsec. (k). Pub. L. 105–261, §504(d), struck out at end ''During the period beginning on July 1, 1993, and ending on October 1, 1999, an officer of the Navy in the grade of commander or captain whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond age 62 or, if earlier, 28 years of active commissioned service if in the grade of commander or 30 years of active commissioned service if in the grade of captain.''

1994—Subsec. (a). Pub. L. 103–337, §503(c)(1), (d)(1), inserted heading and substituted ''Except as provided in subsection (k)'' for ''Except as provided in subsection (i)'' in pars. (1) to (4).

Subsec. (b). Pub. L. 103–337, §503(c)(2), (d)(2), inserted heading and substituted ''Except as provided in subsections (f) and (k)'' for ''Except as provided in subsection (i)''.

Subsec. (c). Pub. L. 103–337, §503(d)(3), inserted heading.

Subsec. (d). Pub. L. 103–337, §503(c)(2), (d)(4), inserted heading and substituted ''Except as provided in subsections (f) and (k)'' for ''Except as provided in subsection (i)''.

Subsec. (e). Pub. L. 103–337, §503(d)(5), inserted heading.

Subsec. (f). Pub. L. 103–337, §503(a)(2), added subsec. (f) and struck out former subsec. (f) which read as follows: ''If any officer subject to discharge under subsection (d) or (e) had the permanent status of a warrant officer when first appointed as an officer designated for limited duty, he has the option, instead of being discharged, of reverting to the grade and status he would hold if he had not been so appointed. If any such officer had a permanent grade below the grade of warrant officer, W–1, when first so appointed, he has the option, instead of being discharged, of reverting to the grade and status he would hold if he had not been so appointed but had instead been appointed a warrant officer, W–1.''

Subsecs. (g), (h). Pub. L. 103–337, §503(a)(2), added subsecs. (g) and (h). Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 103–337, §503(a)(1), (d)(6), redesignated subsec. (g) as (i) and inserted heading. Former subsec. (i) redesignated (k).

Subsec. (j). Pub. L. 103–337, §503(a)(1), (d)(7), redesignated subsec. (h) as (j) and inserted heading. Former subsec. (j) redesignated (*l*).

Subsec. (k). Pub. L. 103–337, §503(a)(1), (b), (d)(8), redesignated subsec. (i) as (k), inserted heading, and substituted ''or the discharge under subsection (b) or (d)'' for ''or the discharge under subsection (d)''.

Subsec. (*l*). Pub. L. 103–337, §503(a)(1), (d)(9), redesignated subsec. (j) as (*l*) and inserted heading.

1993—Subsecs. (a)(5), (i). Pub. L. 103–160 substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Subsec. (a). Pub. L. 102–484, §504(c), designated existing provisions as par. (1) and added pars. (2) to (5).

Subsec. (i). Pub. L. 102–484, §504(d), inserted at end ''During the period beginning on July 1, 1993, and ending on October 1, 1995, an officer of the Navy in the grade of commander or captain whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond age 62 or, if earlier, 28 years of active commissioned service if in the grade of commander or 30 years of active commissioned service if in the grade of captain.''

1990—Subsec. (h). Pub. L. 101–510 substituted ''section 1174(a)(1)'' for ''section 1174(a)''.

1986—Subsec. (c)(2). Pub. L. 99–348, §203(b)(7)(A), substituted provision that retired pay be computed under section 6333 for provision that retired pay, in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), before Sept. 8, 1980, be at the rate of 2½ percent of the basic pay to which he would have been entitled if serving on active duty in the grade in which he retired, or in the case of an officer who first became a member of a uniformed service, as defined in section 1407(a)(2), on or after Sept. 8, 1980, be at the rate of 2½ percent of the monthly retired pay base computed under section 1407(d), which rates were to be multiplied by the number of years of service credited under section 1405, but such retired pay was not to be more than 75 percent of the basic pay or monthly retired pay base upon which the computation of retired pay was based.

Subsec. (k). Pub. L. 99–348, §203(b)(7)(B), struck out subsec. (k) which provided that retired pay computed under subsec. (c), if not a multiple of $1, was to be rounded to the next lower multiple of $1.

1984—Subsec. (a). Pub. L. 98–525, §529(c)(1), substituted ''each regular officer of the Navy who is an officer designated for limited duty and who is serving in a grade below the grade of commander and each regular officer of the Marine Corps who is an officer'' for ''each regular officer of the Navy or Marine Corps''.

Subsec. (d). Pub. L. 98–525, §529(c)(2), substituted ''Except as provided in subsection (i), each'' for ''Each''.

Subsec. (i). Pub. L. 98–525, §529(c)(3), inserted ''or the discharge under subsection (d)'' after ''the retirement under subsection (a) or (b)'' and substituted ''An officer

whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 20 years active commissioned service, if in the grade of lieutenant or captain, beyond 24 years active commissioned service, if in the grade of lieutenant commander or major, or beyond 28 years active commissioned service, if in the grade of lieutenant colonel, or beyond age 62, whichever is earlier'' for ''An officer whose retirement is deferred under this subsection and who is not subsequently promoted may not be continued on active duty beyond 24 years active commissioned service, if in the grade of lieutenant commander or major or 28 years active commissioned service, if in the grade of commander or lieutenant colonel, or beyond age 62, whichever is earlier''.

1983—Subsec. (k). Pub. L. 98–94 added subsec. (k).

1980—Pub. L. 96–513, §336(i), struck out ''or severance'' before ''pay'' in section catchline.

Subsec. (a). Pub. L. 96–513, §336(a), substituted ''Except as provided in subsection (i), each regular officer of the Navy or Marine Corps designated for limited duty'' for ''Each officer designated for limited duty on the active list of the Navy or Marine Corps''.

Subsec. (b). Pub. L. 96–513, §336(b), authorized the discharge of certain officers considered as having failed of selection for promotion and provided that in cases of retirement such retirements were to occur on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which such officer was considered as having failed of selection.

Subsec. (c)(1). Pub. L. 96–513, §336(c), substituted ''determined under section 1370 of this title'' for ''in which he was serving at the time of retirement''.

Subsec. (c)(2). Pub. L. 96–513, §513(17), substituted ''September 8, 1980'' for ''the date of the enactment of the Department of Defense Authorization Act, 1981'' wherever appearing.

Pub. L. 96–342, designated existing provisions as subpar. (A), inserted provision limiting applicability to officers who became members of the uniformed services before the date of the enactment of the Department of Defense Authorization Act, 1981, and added subpar. (B).

Subsec. (d). Pub. L. 96–513, §336(d), provided that Navy lieutenants designated for limited duty and Marine Corps captains similarly designated who were considered as having failed of selection for promotion were to be honorably discharged on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which he was considered as having failed of selection.

Subsec. (e). Pub. L. 96–513, §336(d), designated existing provisions as par. (1), provided that Navy lieutenants (junior grade) designated for limited duty and Marine Corps first lieutenants similarly designated who were considered as having failed of selection for promotion were to be honorably discharged on a date requested by the officer concerned and approved by the Secretary of the Navy but not later than the first day of the seventh calendar month beginning after the month in which the President approved the report of the selection board rather than on June 30th of the fiscal year in which he was considered as having failed of selection, and added par. (2).

Subsec. (f). Pub. L. 96–513, §336(e), (f), redesignated subsec. (g) as (f), substituted ''discharge under subsection (d)'' for ''retirement or discharge under subsections (b), (d)'' and ''instead of being discharged'' for ''instead of being retired or discharged'' in two places, and struck out former subsec. (f) authorizing a lump-sum severance payment to certain discharged officers.

Subsecs. (g) to (j). Pub. L. 96–513, §336(f)–(h), added subsecs. (h) to (j) and redesignated existing subsecs. (g) and (h) as (f) and (g), respectively.

1963—Subsec. (c)(2). Pub. L. 88–132 substituted ''of'' for ''to which he would be entitled if serving on active duty in'' after ''2½ percent of the basic pay''.

1962—Subsec. (f). Pub. L. 87–509 limited the lump-sum payment to not more than $15,000.

1960—Subsec. (d). Pub. L. 86–616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant commander or major for the second time.

Subsec. (e). Pub. L. 86–616 permits an officer, if he so requests, to be honorably discharged at any time during the fiscal year in which he is considered as having failed of selection for promotion to the grade of lieutenant or captain for the second time.

1958—Subsec. (c)(2). Pub. 85–422 substituted ''that may be credited to him under section 1405 of this title'' for ''creditable for basic pay''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 336 of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, and amendment by section 513(17) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

TRANSITION PROVISIONS UNDER DEFENSE OFFICER PERSONNEL MANAGEMENT ACT

For transition provisions relating to limited-duty officers of the Regular Navy or Regular Marine Corps, see section 616 of Pub. L. 96–513, set out as a note under section 611 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 633, 634, 1174, 1406, 6333 of this title.

[§§ 6384 to 6388. Repealed. Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section 6384, acts Aug. 10, 1956, ch. 1041, 70A Stat. 407; July 12, 1960, Pub. L. 86–616, §5(3), 74 Stat. 390; June 28, 1962, Pub. L. 87–509, §4(b), 76 Stat. 121; Sept. 30, 1966, Pub. L. 89–609, §1(18), (19), 80 Stat. 853; Sept. 19, 1978, Pub. L. 95–377, §8(a), 92 Stat. 721, related to discharge of Regular Navy and Regular Marine Corps officers having less than 20 years service for unsatisfactory performance of duty. See section 1181 et seq. of this title.

Section 6385, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Sept. 19, 1978, Pub. L. 95–377, §8(b), (c), 92 Stat. 721, provided that for purposes of involuntary retirement, separation, or furlough, an officer serving in a grade to which he was appointed under former sections 5231, 5232, 5787 or 5787d of this title was to be considered as serving in a grade he would have held had it not been for such appointment. See section 627 et seq. of this title.

Section 6386, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Apr. 21, 1976, Pub. L. 94–273, §2(3), 90 Stat. 375, authorized President to suspend certain provisions relating to officers serving in grades of lieutenant and lieutenant

(junior grade) in Navy or in grades of captain and first lieutenant in Marine Corps. See section 123(a), (b) of this title.

Section 6387, acts Aug. 10, 1956, ch. 1041, 70A Stat. 408; Aug. 11, 1959, Pub. L. 86–155, §6, 73 Stat. 337; June 30, 1960, Pub. L. 86–558, 74 Stat. 263; Oct. 13, 1964, Pub. L. 88–647, title III, §301(16), 78 Stat. 1072, related to computation of total commissioned service for regular Navy male line officers and regular Marine Corps male officers.

Section 6388, acts Aug. 10, 1956, ch. 1041, 70A Stat. 409; Aug. 21, 1957, Pub. L. 85–155, title II, §201(20), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89–609, §1(20), (21), 80 Stat. 853; Sept. 20, 1968, Pub. L. 90–502, §1, 82 Stat. 852; Dec. 24, 1970, Pub. L. 91–582, §1, 84 Stat. 1574, related to computation of total commissioned service for certain Regular Navy staff corps officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6389. Naval Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service

(a) Subject to section 12645 of this title, an officer in an active status in the Naval Reserve in the permanent grade of lieutenant or lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of captain or first lieutenant, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list may, in the discretion of the Secretary of the Navy, be eliminated from an active status or released from active duty and placed on the reserve active-status list.

(b) An officer who is to be eliminated from an active status under subsection (a) shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if he requests it, shall be so transferred. If he is not so transferred, he shall, in the discretion of the Secretary, be transferred to the appropriate inactive status list or be discharged from the Naval Reserve or the Marine Corps Reserve.

(c)(1) An officer in an active status in the Naval Reserve in the permanent grade of lieutenant commander or commander, and an officer in an active status in the Marine Corps Reserve in the permanent grade of major or lieutenant colonel, who is considered as having twice failed of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve. If he is not so transferred, he shall be discharged from the Naval Reserve or the Marine Corps Reserve if he has completed a period of total commissioned service equal to that specified below for the permanent grade in which he is serving:

Grade		*Total commissioned service*
Navy	*Marine Corps*	
Commander	Lieutenant colonel.	28 years.
Lieutenant commander	Major	20 years.

(2) Notwithstanding the first sentence of paragraph (1), the Secretary may defer the retirement or discharge of such number of officers serving in the grade of lieutenant commander as are necessary to maintain the authorized officer strength of the Ready Reserve, but the duration of such deferment for any individual officer may not be in excess of five years.

(3) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of an officer serving in the permanent grade of lieutenant commander or commander in the Naval Reserve or in the permanent grade of major or lieutenant colonel in the Marine Corps Reserve for a period of time which does not exceed the amount of service in an active status which was credited to the officer at the time of his original appointment or thereafter under any provision of law, if the officer can complete at least 20 years of service as computed under section 12732 of this title during the period of such deferment.

(4) Notwithstanding paragraph (1), the Secretary may defer the retirement or discharge under this subsection of such number of officers serving in the permanent grade of commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve as are necessary to provide for mobilization requirements.

(d) For the purposes of subsection (c), the total commissioned service of an officer who has served continuously in the Naval Reserve or the Marine Corps Reserve following appointment therein in the permanent grade of ensign or second lieutenant, as the case may be, shall be computed from June 30 of the fiscal year in which he accepted the appointment. Each other officer is considered to have for this purpose as much total commissioned service as the years of active commissioned service of any regular officer on the active-duty list of the Navy not restricted in the performance of duty, or any regular officer on the active-duty list of the Marine Corps not restricted in the performance of duty, as appropriate, who has served continuously since original appointment as an ensign on the active-duty list of the Navy or as a second lieutenant on the active-duty list of the Marine Corps, has not lost numbers or precedence, and is, or has been after September 6, 1947, junior to that other officer. However, the total commissioned service that the other officer is considered to have may not be less than the actual number of years he has served as a commissioned officer in a grade above chief warrant officer, W–5.

(Added Pub. L. 85–861, §1(144)(A), Sept. 2, 1958, 72 Stat. 1509; amended Pub. L. 86–559, §1(46), June 30, 1960, 74 Stat. 274; Pub. L. 96–513, title III, §337(a), Dec. 12, 1980, 94 Stat. 2900; Pub. L. 97–86, title IV, §405(b)(1), Dec. 1, 1981, 95 Stat. 1105; Pub. L. 98–525, title V, §528(c), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 99–145, title V, §514(b)(1), Nov. 8, 1985, 99 Stat. 628; Pub. L. 102–190, div. A, title XI, §1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 103–337, div. A, title XVI, §§1628, 1673(c)(1), Oct. 5, 1994, 108 Stat. 2962, 3016; Pub. L. 104–106, div. A, title XV, §1501(c)(25), Feb. 10, 1996, 110 Stat. 499.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6389(a)	50:1311(c) (1st sentence).	Sept. 3, 1954, ch. 1257, § 411(c) (1st sentence), 68 Stat. 1170.
6389(b)	50:1311(a) (as applicable to 1311(c)).	Sept. 3, 1954, ch. 1257, § 411(a) (as applicable to 411(c)), 68 Stat. 1169.
6389(c)	50:1311(c) (2d sentence).	Sept. 3, 1954, ch. 1257, § 411(c) (2d sentence), 68 Stat. 1170.
6389(d)	50:1311(c) (less 1st and 2d sentences).	Sept. 3, 1954, ch. 1257, § 411(c) (less 1st and 2d sentences), 68 Stat. 1170.
6389(e)	[No source].	[No source].

In subsection (a), the words ''who is considered as having twice failed of selection for promotion'' are substituted for the words ''after failing of selection for promotion * * * a second time'' to conform to similar statements in this title. (See the revision note on section 5776.) The words ''may be retained in'' are omitted as surplusage, since the authority to eliminate such officers from an active status is discretionary with the Secretary.

Subsection (e) is added to avoid conflict with 50:1311(d) and (e), codified in sections 6397 and 6403 of this title. 50:1311(d) and (e) contain special provisions for ''women officers'' and officers in the Nurse Corps, respectively, so that officers in these categories must be excepted from this section. Women officers appointed under the act of June 24, 1952, ch. 457 (66 Stat. 155; 34 U.S.C. 21e) (codified in section 5581 of this title), are not ''women officers'' within the meaning of 50:1311(d), however, but are required to be promoted, retired, or eliminated from active status as if they were men. (See the revision note on section 5665 of this title.) The application of this section to these officers is therefore made explicit.

Both men and women are eligible for appointment as reserve officers in the Nurse Corps and are subject to the special provisions relating to that corps.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–106 substituted ''section 12732'' for ''section 1332''.

1994—Subsec. (a). Pub. L. 103–337, § 1673(c), substituted ''12645'' for ''1005''.

Pub. L. 103–337, § 1628(1), inserted ''while on the active-duty list'' after ''to the next higher grade'' and ''or released from active duty and placed on the reserve active-status list'' after ''from an active status''.

Subsec. (b). Pub. L. 103–337, § 1628(2), struck out ''or (f)'' after ''subsection (a)''.

Subsec. (c). Pub. L. 103–337, § 1628(3)(H), designated last sentence as par. (4) and in that sentence substituted ''paragraph (1)'' for ''the first two sentences of this subsection'' and struck out ''captain or'' after ''permanent grade of''.

Pub. L. 103–337, § 1628(3)(G), designated 4th sentence as par. (3) and in that sentence substituted ''paragraph (1)'' for ''the first two sentences of this subsection''.

Pub. L. 103–337, § 1628(3)(F), designated sentence after table as par. (2) and in that sentence substituted ''the first sentence of paragraph (1)'' for ''the first sentence of this subsection''.

Pub. L. 103–337, § 1628(3)(E), in table struck out line relating to grades of captain in Navy and colonel in Marine Corps and substituted ''28 years'' for ''26 years''.

Pub. L. 103–337, § 1628(3)(D), inserted ''while on the active-duty list'' after ''to the next higher grade'' in first sentence.

Pub. L. 103–337, § 1628(3)(C), substituted ''major or lieutenant colonel'' for ''major or above'' in two places.

Pub. L. 103–337, § 1628(3)(B), substituted ''lieutenant commander or commander'' for ''lieutenant commander or above'' in two places.

Pub. L. 103–337, § 1628(3)(A), inserted ''(1)'' after ''(c)''.

Subsec. (e). Pub. L. 103–337, § 1628(4), struck out subsec. (e) which read as follows: ''This section does not apply to women reserve officers or to reserve officers in the Nurse Corps.''

Subsec. (f). Pub. L. 103–337, § 1628(4), struck out subsec. (f) which provided for transfer or discharge of rear admirals (lower half) in Naval Reserve and brigadier generals in Marine Corps Reserve on completion of 30 years service or five years in grade and for rear admirals in Naval Reserve and major generals in Marine Corps Reserve on completion of 35 years service or five years in grade and provided that rear admirals (lower half) and rear admirals in Naval Reserve and brigadier generals and major generals in Marine Corps Reserve could be considered for early retirement by continuation board. See sections 14508 and 14705 of this title.

Subsec. (g). Pub. L. 103–337, § 1628(4), struck out subsec. (g) which read as follows: ''An officer in an active status in the Naval Reserve in the permanent grade of ensign who is found not qualified for promotion to the grade of lieutenant (junior grade), and an officer in an active status in the Marine Corps Reserve in the permanent grade of second lieutenant who is found not qualified for promotion to the grade of first lieutenant, may (unless he is sooner promoted) be eliminated from an active status.''

1991—Subsec. (d). Pub. L. 102–190 substituted ''W–5'' for ''W–4''.

1985—Subsec. (f)(1), (3). Pub. L. 99–145 substituted ''rear admiral (lower half)'' for ''commodore''.

1984—Subsec. (g). Pub. L. 98–525 added subsec. (g).

1981—Subsec. (f)(1), (3). Pub. L. 97–86 substituted ''commodore'' for ''commodore admiral''.

1980—Subsec. (b). Pub. L. 96–513, § 337(a)(1), substituted ''subsection (a) or (f)'' for ''subsection (a)''.

Subsec. (d). Pub. L. 96–513, § 337(a)(2), substituted ''as the years of active commissioned service of any regular officer on the active-duty'' for ''as any officer in the line on the active'' and ''or any regular officer on the active-duty list of the Marine Corps'' for ''or any officer on the active list of the Marine Corps''.

Subsec. (e). Pub. L. 96–513, § 337(a)(3), substituted ''does not apply to'' for ''applies to women officers appointed under section 5581 of this title, but not to other''.

Subsec. (f). Pub. L. 96–513, § 337(a)(4), added subsec. (f).

1960—Subsec. (c). Pub. L. 86–559 empowered the Secretary to defer the retirement or discharge of officers serving in the grade of lieutenant commander in the Ready Reserve, in the permanent grade of lieutenant commander or above in the Naval Reserve, in the permanent grade of major or above in the Marine Corps Reserve, and in the permanent grade of captain or commander in the Medical Corps, Chaplain Corps, or Dental Corps in the Naval Reserve.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(c) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Dec. 1, 1994, and as if included as an amendment made by the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as originally enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1673(c)(1) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1628 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–86 effective Sept. 15, 1981, see section 405(f) of Pub. L. 97–86, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the

amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12646 of this title.

[§ 6390. Repealed. Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(E), 71 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(8), 94 Stat. 1107, related to the retirement at age 62 of officers on the active list of the Navy and officers of the Marine Corps. See section 1251 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 6391, 6392. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 6391, added Pub. L. 85–861, § 1(144)(B), Sept. 2, 1958, 72 Stat. 1510; amended Pub. L. 86–559, § 1(47), June 30, 1960, 74 Stat. 275; Pub. L. 102–190, div. A, title XI, § 1131(8)(A), Dec. 5, 1991, 105 Stat. 1506; Pub. L. 104–106, div. A, title XV, § 1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer to Retired Reserve of officers in Naval Reserve or Marine Corps Reserve above chief warrant officer, W–5, on becoming 62 years of age with provisions for deferral of retirement until age 64. See section 14512(b) of this title.

Section 6392, added Pub. L. 100–180, div. A, title VII, § 717(b)(1), Dec. 4, 1987, 101 Stat. 1114; amended Pub. L. 101–189, div. A, title VII, §§ 710(b), 711(b), Nov. 29, 1989, 103 Stat. 1476, 1477, related to retention in active status of certain reserve officers. See section 14703(a)(2), (b) of this title.

A prior section 6392, act Aug. 10, 1956, ch. 1041, 70A Stat. 410, related to revocation of appointments of Regular Navy and Marine Corps officers with less than three years service, prior to repeal effective Sept. 15, 1981, by Pub. L. 96–513, title III, § 335, title VII, § 701, Dec. 12, 1980, 94 Stat. 2898, 2955.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 6393. Repealed. Pub. L. 96–513, title III, § 373(h), Dec. 12, 1980, 94 Stat. 2903]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 410, authorized Secretary of Navy to terminate appointment of any woman officer in Regular Navy or Regular Marine Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 6394 to 6396. Repealed. Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section 6394, acts Aug. 10, 1956, ch. 1041, 70A Stat. 410; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(F), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, § 1(144)(C), 72 Stat. 1511; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(4), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(9), 94 Stat. 1107, related to the retirement upon board recommendation of Regular Navy rear admirals and commodores and Regular Marine Corps major generals and brigadier generals.

Section 6395, acts Aug. 10, 1956, ch. 1041, 70A Stat. 411; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(21), 71 Stat. 385; Sept. 30, 1966, Pub. L. 89–609, § 1(22), 80 Stat. 853, related to discharge during time of war and national emergency of Regular Navy and Regular Marine Corps officers with less than 20 years of service for unsatisfactory performance of duty. See section 1181 et seq. of this title.

Section 6396, acts Aug. 10, 1956, ch. 1041, 70A Stat. 413; Aug. 21, 1957, Pub. L. 85–155, title II, § 201(22), 71 Stat. 385; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(G), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Sept. 30, 1966, Pub. L. 89–609 § 1(23)–(26), 80 Stat. 853, 854; Nov. 8, 1967, Pub. L. 90–130, § 1(24)(E), 81 Stat. 380; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(10), 94 Stat. 1107, related to retirement or discharge of Regular Navy officers in Nurse Corps in grades below commander.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 6397. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 85–861, § 1(144)(D), Sept. 2, 1958, 72 Stat. 1511; amended Pub. L. 89–609, § 1(27), Sept. 30, 1966, 80 Stat. 854; Pub. L. 96–513, title III, § 338, Dec. 12, 1980, 94 Stat. 2901, related to elimination from active status of officers of Naval Reserve in Nurse Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 6398. Repealed. Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 413; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(H), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Nov. 8, 1967, Pub. L. 90–130, § 1(24)(F), 81 Stat. 381; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(11), 94 Stat. 1108, related to retirement for length of service of Regular Navy women captains and commanders and Regular Marine Corps women colonels and lieutenant colonels and their respective grades and pay. See sections 633 and 634 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 6399. Repealed. Pub. L. 90–130, § 1(24)(G), Nov. 8, 1967, 81 Stat. 382]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 414; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(I), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214, provided for retirement of women lieutenant commanders and below of Regular Navy and women majors and below of Regular Marine Corps at age 50 and their retired grade and pay.

[§§ 6400 to 6402. Repealed. Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section 6400, acts Aug. 10, 1956, ch. 1041, 70A Stat. 414; May 20, 1958, Pub. L. 85–422, § 11(a)(6)(J), 72 Stat. 131; Oct. 2, 1963, Pub. L. 88–132, § 5(h)(6), 77 Stat. 214; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(d)(12), 94 Stat. 1108, related to retirement for length of service of Regular Navy women lieutenant commanders and Regular Marine Corps women majors.

Section 6401, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; July 12, 1960, Pub. L. 86–616, § 5(4), 74 Stat. 390; June 28,

1962, Pub. L. 87–509, § 4(b), 76 Stat. 121, related to discharge for length of service of Regular Navy women lieutenants and Regular Marine Corps women captains.

Section 6402, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; July 12, 1960, Pub. L. 86–616, § 5(5), 74 Stat. 390, related to discharge for length of service of Regular Navy women lieutenants (junior grade) and Regular Marine Corps women first lieutenants.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 6403. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 85–861, § 1(144)(E), Sept. 2, 1958, 72 Stat. 1511; amended Pub. L. 96–513, title V, § 503(49), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 97–22, § 10(b)(10)(B), July 10, 1981, 95 Stat. 137, related to elimination from active status of women officers in Naval Reserve and Marine Corps Reserve.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 6404. Treatment of fractions of years of service in computing retired pay and separation pay

In determining the total number of years of service to be used as a multiplier in computing retired pay and separation pay on discharge under this chapter, each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(Aug. 10, 1956, ch. 1041, 70A Stat. 415; Pub. L. 96–513, title V, § 503(50), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 98–94, title IX, § 923(c)(4), Sept. 24, 1983, 97 Stat. 643.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6404	34 U.S.C. 410c(a) (1st proviso).	Feb. 21, 1946, ch. 34, § 7 (a) (1st proviso), 60 Stat. 27; Aug. 7, 1947, ch. 512, § 432(a), 61 Stat. 881.
	34 U.S.C. 410j(g) (1st proviso).	Aug. 7, 1947, ch. 512, § 312(g) (1st proviso), 61 Stat. 860.
	34 U.S.C. 410d (1st proviso).	Feb. 21, 1946, ch. 34, § 9 (1st proviso), 60 Stat. 28; Aug. 7, 1947, ch. 512, § 432(b), 61 Stat. 881.
	34 U.S.C. 410j(h) (1st proviso).	Aug. 7, 1947, ch. 512, § 312(h) (1st proviso), 61 Stat. 860.
	34 U.S.C. 410r(h).	June 12, 1948, ch. 449, § 207(h), 62 Stat. 368.
	34 U.S.C. 410r(j) (proviso).	June 12, 1948, ch. 449, § 207(j) (proviso), 62 Stat. 366.
	34 U.S.C. 43g(g).	Apr. 16, 1947, ch. 38, § 207(h), 61 Stat. 50; redesignated (g), Aug. 7, 1947, ch. 512, § 434(d), 61 Stat. 882; May 16, 1950, ch. 186, § 3(j), 64 Stat. 162.
	34 U.S.C. 625h(a).	June 12, 1948, ch. 449, § 213(a), 62 Stat. 369.

The words ''and a part of a year that is less than six months is disregarded'' are added for clarity. The legislative history of the Career Compensation Act of 1949, which contains a provision identical to those codified in this section, indicates that all of these provisions are construed as requiring a fractional year of less than six months to be disregarded (hearing before the Committee on Armed Services of the Senate on H.R. 5007, 81st Cong., 1st sess., p. 313, July 6, 1949).

AMENDMENTS

1983—Pub. L. 98–94 substituted ''each full month of service that is in addition to the number of full years of service creditable to a member is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded''.

1980—Pub. L. 96–513 substituted ''separation pay'' for ''severance pay'' in section catchline and substituted ''separation pay'' for ''lump-sum payments'' in text.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 6405. Repealed. Pub. L. 90–235, § 4(a)(12), Jan. 2, 1968, 81 Stat. 760]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 415, provided that an officer of Regular Navy, other than a retired officer, who accepted an appointment in the Foreign Service was considered as having resigned from the Navy. See section 973 of this title.

[§ 6406. Repealed. Pub. L. 91–482, § 1(a), Oct. 21, 1970, 84 Stat. 1082]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 415; Pub. L. 87–649, § 14c(47), Sept. 6, 1962, 76 Stat. 501, authorized Secretary of Navy to furlough any officer of Regular Navy or Regular Marine Corps, other than a retired officer.

[§ 6407. Repealed. Pub. L. 96–513, title III, § 335, Dec. 12, 1980, 94 Stat. 2898]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, related to communication with selection boards by officers eligible for consideration for continuation on active list. See section 614 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6408. Navy and Marine Corps; warrant officers, W–1: limitation on dismissal

(a) No officer who holds the grade of warrant officer, W–1, may be dismissed from the Navy or the Marine Corps except in time of war, by order of the President.

(b) The President may drop from the rolls of the Navy or the Marine Corps any officer who holds the grade of warrant officer, W–1, who—

(1) has been absent without authority for at least three months; or

(2) is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Aug. 10, 1956, ch. 1041, 70A Stat. 416.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6408	50 U.S.C. 739 (as applicable to warrant officers, W–1, of the Navy and the Marine Corps).	May 5, 1950, ch. 169, §10 (as applicable to warrant officers, W–1, of the Navy and the Marine Corps), 64 Stat. 146.

This section reflects the opinion of the Judge Advocate General of the Navy (JAG:I:2:ERS:cmr, dtd. 13 April 1954) that 50 U.S.C. 739 applies to warrant officers (now warrant officers, W–1), of the Navy and the Marine Corps. The Warrant Officer Act of 1954 established the grade of warrant officer, W–1, in lieu of the former warrant officer (as distinguished from commissioned warrant officer) grades. 50 U.S.C. 739, as applicable to officers above the grade of warrant officer, W–1, is codified in §1161 of this title.

In subsection (a) the words ''by sentence of a general court-martial, or in commutation thereof'' are omitted since the separation from the service of a warrant officer, W–1, by sentence of court-martial is effected by dishonorable discharge.

In subsection (b) the words ''from his place of duty'' are omitted as surplusage. The words ''at least'' are substituted for the words ''or more''. The words ''by a court other than a court-martial or other military court'' are substituted for the words ''by the civil authorities''.

[§ 6409. Repealed. Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, provided for suspension of laws for mandatory retirement or separation during war or emergency of temporary warrant officers of Navy and Marine Corps.

[§ 6410. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(b)(3), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 85–861, §1(144)(F), Sept. 2, 1958, 72 Stat. 1512; amended Pub. L. 104–106, div. A, title XV, §1501(c)(28), Feb. 10, 1996, 110 Stat. 500, related to elimination from active status of officers in Naval Reserve and Marine Corps Reserve to provide a flow of promotion.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 575—RECALL TO ACTIVE DUTY

Sec.
[6481, 6482. Repealed.]
6483. Retired members: grade.
6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty.
6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall.
6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty.
[6487, 6488. Repealed.]

AMENDMENTS

1984—Pub. L. 98–525, title V, §533(f)(2), Oct. 19, 1984, 98 Stat. 2528, struck out item 6482 ''Retired enlisted members of the Regular Navy and Regular Marine Corps: authority to recall.''

1980—Pub. L. 96–513, title V, §503(51), Dec. 12, 1980, 94 Stat. 2915, struck out items 6481 ''Retired officers of the Regular Navy and Regular Marine Corps: authority to recall'', 6487 ''Retired rear admirals: retired pay after two years of active duty'', and 6488 ''Wartime appointments or promotions: retention of grade upon release from active duty''.

[§ 6481. Repealed. Pub. L. 96–513, title III, § 362(a), Dec. 12, 1980, 94 Stat. 2903]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 416, related to authority to recall retired officers of Regular Navy and Regular Marine Corps. See section 688 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 6482. Repealed. Pub. L. 98–525, title V, § 533(f)(1), Oct. 19, 1984, 98 Stat. 2528]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 417, provided that in time of war or national emergency Secretary of Navy could order to active duty any retired enlisted member of Regular Navy or Regular Marine Corps.

§ 6483. Retired members: grade

An officer who has been advanced on the retired list or in the Retired Reserve under former section 6150 of this title to a grade above captain in the Navy or above colonel in the Marine Corps, when recalled to active duty, may, in the discretion of the Secretary of the Navy, be recalled either in the grade he holds on the retired list or in the Retired Reserve or in the grade from which he was advanced.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; Pub. L. 85–422, §6(5), May 20, 1958, 72 Stat. 129; Pub. L. 88–132, §5(m), Oct. 2, 1963, 77 Stat. 215; Pub. L. 90–623, §2(10), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title III, §363, Dec. 12, 1980, 94 Stat. 2903.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6483	34 U.S.C. 410n (1st proviso).	Aug. 7, 1947, ch. 512, §412(a) (1st proviso), 61 Stat. 874; Oct. 12, 1949, ch. 681, §522(a), 63 Stat. 835.
	50 U.S.C. 1052(c) (2d sentence).	July 9, 1952, ch. 608, §413(c) (2d sentence), 66 Stat. 500.

Subsection (a) states the general rule that a retired officer, when recalled to active duty, shall be recalled in the grade he holds on the retired list. The rule is derived, not from a specific provision of law, but from the fact that special legislative authority is required to recall a retired officer in any other grade.

The desirability of including a positive statement of the rule is pointed up by the legislative history of the Act of February 21, 1946, ch. 34, §8(a), 60 Stat. 28, amending the Act of July 24, 1941, ch. 320, §10(d), 55 Stat. 605 (34 U.S.C. 350i(d)). The 1946 amendment states the rule, but only as to a limited class of retired personnel, namely persons temporarily appointed or promoted under the 1941 Act while on the retired list. The amendment provided that such persons, when released to inactive duty, should be given the highest grade in which they had served satisfactorily and, if subsequently recalled to active duty, should be recalled in the grade so accorded them. The legislative history shows that the bill (S. 1405, 79th Cong., 1st sess.), originally was written so as to provide that retired personnel should be recalled in their prior permanent grades or ratings instead of in the higher grades accorded them on the retired list while on inactive duty. When a member of the Naval Affairs Committee of the House

of Representatives suggested an amendment to allow retired personnel to be recalled in the higher grades, the Navy spokesman pointed out that no law was required to permit this; in fact, retired personnel would be *required* to be recalled in the grades they hold on the retired list in the absence of any law to the contrary. Thus the result desired by the committee member could be achieved, simply by deleting the provision instead of amending it. After some discussion, however, it was decided to adopt the suggested amendment in order not to ''leave things to inference'' (H. Rept. No. 158, December 6, 1945, pp. 2290–2292).

Section 412(a) of the Officer Personnel Act of 1947 (34 U.S.C. 410n) (codified, except for the first proviso, in § 6150 of this title), supplies a further reason why a positive statement of the rule is desirable. That section provides that an officer who has been specially commended for the performance of duty in actual combat shall, when retired, be placed on the retired list in the grade next higher than that in which serving at the time of retirement. The first proviso, codified in subsection (b) of this section, provided further that an officer advanced under § 412(a) to a flag or general officer grade could be recalled either in the advanced grade or in the grade from which advanced. The law was silent as to the grade in which other officers advanced under § 412(a) should be recalled. It was understood that they would be recalled in the advanced grade accorded them on the retired list, because there was no authority to recall them in any other grade. However, the Comptroller General raised a question as to their right to the pay of the higher grade when recalled. Although the final decision of the Comptroller General was in favor of the higher pay (30 Comp. Gen. 242, December 20, 1950), the fact that the question was raised indicates the confusion that results from leaving the rule to inference.

It appears that the rule was never in doubt until after the enactment of the two recent laws cited above, one applying the rule to a limited class, and one stating a discretionary exception without stating the rule itself. These two laws make it more difficult than it was formerly to derive the correct conclusion by inference alone.

AMENDMENTS

1980—Pub. L. 96–513 struck out provisions formerly set out as subsec. (a) which authorized each retired member of the naval service, when called to active duty, to be recalled in the grade held by him on the retired list and deleted subsec. (b) designation from remaining provisions.

1968—Subsec. (b). Pub. L. 90–623 inserted ''former'' before ''section 6150''.

1963—Subsec. (c). Pub. L. 88–132 repealed subsec. (c) which provided for recomputation of retired pay of retired members of the naval service, recalled to active duty in the higher grade for officers specially commended and released from such duty, on basis of the then monthly basic pay of the grade held on the retired list after continuous 2-year period of service. See section 1402 of this title.

1958—Subsec. (c). Pub. L. 85–422 added subsec. (c).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective June 1, 1958, see section 9 of Pub. L. 85–422.

§ 6484. Promotion of retired members to higher enlisted grades: retention of grade upon release from active duty

When on active duty, retired enlisted members of the Navy or the Marine Corps are eligible for promotion to higher enlisted grades or ratings. When released from active duty, they shall, unless entitled to a higher grade under another provision of law, retain the grades or ratings they hold at the time of their release.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6484	34 U.S.C. 434.	July 1, 1918, ch. 114, 40 Stat. 719 (1st 9 lines of 2d par.).

The words ''who has been ordered into active service since April 6, 1917'' are omitted as executed. The words ''to higher enlisted grades or ratings'' are inserted for clarity. The eligibility of retired enlisted men for appointments to warrant and commissioned grades is covered by chapter 539 of this title where the requirements for these appointments are set forth. The words ''unless entitled to a higher grade under another provision of law'' are inserted to make it clear that retired enlisted members are not precluded by this section from obtaining the benefits of other provisions of law that may give a higher grade to them on their release from active duty.

The provision relating to pay, allowances, and benefits is omitted because it was superseded by §§ 514 and 516 of the Career Compensation Act of 1949 (37 U.S.C. 314 and 316).

§ 6485. Members of the Fleet Reserve and Fleet Marine Corps Reserve: authority to recall

(a) A member of the Fleet Reserve or the Fleet Marine Corps Reserve may be ordered by competent authority to active duty without his consent—

(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter;

(2) in time of national emergency declared by the President; or

(3) when otherwise authorized by law.

(b) In time of peace any member of the Fleet Reserve or the Fleet Marine Corps Reserve may be required to perform not more than two months' active duty for training in each four-year period.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417; Pub. L. 95–79, title VIII, § 805, July 30, 1977, 91 Stat. 333.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6485	34 U.S.C. 854d (1st 87 words of 2d proviso).	June 25, 1938, ch. 690, § 205 (1st 87 words of 2d proviso), 52 Stat. 1179; July 9, 1952, ch. 608, § 808, 66 Stat. 508.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34 U.S.C. 854e (less 2d through 5th provisos).	June 25, 1938, ch. 690, § 206 (less 2d through 5th provisos), 52 Stat. 1179; Apr. 25, 1940, ch. 153, 54 Stat. 162.
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words ''A member of the Fleet Reserve or the Fleet Marine Corps Reserve'' are substituted for the words ''That men so transferred to the Fleet Reserve * * * or other provision of law'' for clarity. It is clear from the legislative history of the Armed Forces Reserve Act of 1952 that the amendment to the second proviso of 34 U.S.C. 854d made by that Act was intended to cover all members of the Fleet Reserve and Fleet Marine Corps Reserve.

In subsection (b) the word ''enlisted'' is omitted as surplusage since only enlisted members may transfer to the Fleet Reserve and Fleet Marine Corps Reserve. The words ''after 16 years' or more service'' are omitted as surplusage since all the members of the Fleet Reserve and Fleet Marine Corps Reserve are in that category. The words ''If any member fails to report for the physical examination'' are substituted for the words ''upon failure * * * of such member to report for inspection'' to reflect the true meaning of the section. The words ''Under such conditions as may be prescribed by the Secretary of the Navy'' are omitted as unnecessary since the authority to order a forfeiture is entirely within the Secretary's discretion.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–79 struck out requirements relating to physical examinations for members of the Fleet Reserve and Fleet Marine Corps Reserve.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6331 of this title.

§ 6486. Members of the Fleet Reserve and Fleet Marine Corps Reserve: release from active duty

(a) Except as provided in subsection (b), the Secretary of the Navy may, at any time, release any member of the Fleet Reserve or the Fleet Marine Corps Reserve from active duty.

(b) In time of war or national emergency declared by Congress or by the President after January 1, 1953, a member of the Fleet Reserve or the Fleet Marine Corps Reserve, without his consent, may be released from active duty other than from active duty for training only if—

(1) a board of officers convened at his request by an authority designated by the Secretary recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply during a period of demobilization or reduction in strength of the Navy or the Marine Corps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 417.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6486	34 U.S.C. 854d (3d proviso).	June 25, 1938, ch. 690, § 205 (3d proviso); added July 9, 1952, ch. 608, § 808, 66 Stat. 508.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
	34 U.S.C. 854 (note).	July 9, 1952, ch. 608, § 803 (3d sentence), 66 Stat. 505.

In subsection (a) the words ''or active duty for training'' are omitted as covered by the term ''active duty'' as used in this revised title.

In subsection (b) the words ''other than from active duty for training'' are inserted since the term ''active duty'' as used in 34 U.S.C. 854d (3d proviso) does not include active duty for training. Clause (3) is inserted, since other provisions of law are necessarily exceptions to the general rule here stated. The words ''or the Marine Corps'' are inserted in the last sentence of subsection (b) to reflect the applicability of the section to the Fleet Marine Corps Reserve.

[§§ 6487, 6488. Repealed. Pub. L. 96–513, title III, § 362(b), (c), Dec. 12, 1980, 94 Stat. 2903]

Section 6487, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to retirement pay of certain rear admirals who retire after serving two years on active duty in time of war or national emergency.

Section 6488, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to retention of certain wartime appointments or promotions upon release from active duty. See section 1370 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 577—DEATH BENEFITS; CARE OF THE DEAD

Sec.
[6521. Repealed.]
6522. Disposition of effects.

AMENDMENTS

1958—Pub. L. 85–861, § 1(145), Sept. 2, 1958, 72 Stat. 1512, struck out item 6521 ''Allowance to dependents: designation of beneficiary''.

[§ 6521. Repealed. Pub. L. 85–861, § 36B(21), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 418, related to allowances to dependents, and to designation of beneficiary. See sections 1475 et seq. of this title.

§ 6522. Disposition of effects

(a) If money or other personal property of a deceased member of the naval service is in the custody of the Department of the Navy, the Secretary of the Navy shall keep it in safe custody and make a diligent effort to determine and locate the heirs or next of kin of the deceased member. Property remaining unclaimed two years after the death of the member shall be sold, and the proceeds, together with any of his money held in custody, shall be covered into the Treasury.

(b) Within five years after the date the money and proceeds are covered into the Treasury, any claim that is presented therefor supported by competent proof shall be certified to Congress for consideration.

(c) The Secretary shall prescribe regulations for the administration of this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 419.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6522	34 U.S.C. 942.	Mar. 29, 1918, ch. 31, 40 Stat. 499.

In subsection (a) the word ''shall'' is substituted for the words ''authorized and directed''; the word ''effort'' is substituted for the word ''inquiry''; the words ''determine and locate'' are substituted for the words ''ascertain the whereabouts''; the words ''personal property'' are substituted for the words ''all articles of value, papers, keepsakes, and other similar effects''. The phrase ''to the credit of the Navy pension fund'' is omitted since this fund was abolished by §9 of the Act of June 26, 1934, ch. 756, 48 Stat. 1229. The application of this section is confined to the money and other personal property of the deceased member in the custody of the Department of the Navy to make it clear that disposition is made only of property held by the Department of the Navy and not of property which may be under other custody, over which the Department of the Navy would have no control.

In subsection (b) the word ''covered'' is substituted for the word ''deposited''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2575 of this title; title 5 section 5564; title 37 section 554.

PART III—EDUCATION AND TRAINING

Chap.		Sec.
601.	Officer Procurement Programs	6901
602.	Training Generally	6931
603.	United States Naval Academy	6951
605.	United States Naval Postgraduate School	7041
607.	Retirement of Civilian Members of the Teaching Staffs of the United States Naval Academy and United States Naval Postgraduate School	7081
609.	Professional Military Education Schools	7101

AMENDMENTS

1998—Pub. L. 105–261, div. A, title V, §521(b)(2), Oct. 17, 1998, 112 Stat. 2011, added item for chapter 602.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(27)(B), Dec. 5, 1991, 105 Stat. 1474, substituted ''Education'' for ''Educational'' in item for chapter 609.

1990—Pub. L. 101–510, div. A, title IX, §912(b), Nov. 5, 1990, 104 Stat. 1627, added item for chapter 609.

CHAPTER 601—OFFICER PROCUREMENT PROGRAMS

Sec.
[6901 to 6910. Repealed.]
6911. Aviation cadets: grade; procurement; transfer.
6912. Aviation cadets: benefits.
6913. Aviation cadets: appointment as reserve officers.
[6914. Repealed.]
6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade.

AMENDMENTS

1980—Pub. L. 96–513, title V, §503(52), Dec. 12, 1980, 94 Stat. 2915, struck out items 6909 ''Direct procurement: qualifications; retention or transfer to Reserve'' and 6914 ''Reserve naval aviators: appointment in Regular Navy and Regular Marine Corps; eligibility; grade; rank''.

1964—Pub. L. 88–647, title III, §301(18), Oct. 13, 1964, 78 Stat. 1072, struck out items 6901 ''Naval Reserve Officers' Training Corps: administration'', 6902 ''Transfer of graduates of Naval Reserve Officers' Training Corps to Regular Navy'', 6903 ''Officer candidate training program: administration; qualifications for enrollment'', 6904 ''Officer candidate training program: members enrolled from Naval Reserve Officers' Training Corps; appointment as midshipmen; pay; allowances; commissioning'', 6905 ''Officer candidate training program: members enrolled as naval aviation officer candidates; instruction; pay; allowances'', 6906 ''Officer candidate training program: naval aviation candidates; appointment as midshipmen; flight training; appointment as ensigns'', 6908 ''Officer candidate training program: naval aviators; retention or transfer to Reserve'', 6910 ''Payment of expenses''.

1961—Pub. L. 87–100, §1(2), July 21, 1961, 75 Stat. 218, struck out item 6907 ''Officer candidate training program: officers other than naval aviators; retention or transfer to Reserve''.

1958—Pub. L. 85–861, §1(147)(B), Sept. 2, 1958, 72 Stat. 1513, substituted ''benefits'' for ''pay and allowances'' in item 6912.

[§§6901 to 6906. Repealed. Pub. L. 88–647, title III, §301(17), Oct. 13, 1964, 78 Stat. 1072]

Section 6901, acts Aug. 10, 1956, ch. 1041, 70A Stat. 420; Sept. 2, 1958, Pub. L. 85–861, §1(146), 72 Stat. 1512, related to administration of Naval Reserve Officers' Training Corps.

Sections 6902, 6903, act Aug. 10, 1956, ch. 1041, 70A Stat. 420, 421, related to transfer of graduates of Naval Reserve Officers' Training Corps to Regular Navy, administration of officer candidate training program, and to qualifications for enrollment. See sections 2104 and 2106 of this title.

Sections 6904 to 6906, acts Aug. 10, 1956, ch. 1041, 70A Stat. 421, 422, 423; Sept. 7, 1962, Pub. L. 87–649, §14c(48)–(50), 76 Stat. 501, related to officer candidate training program and qualifications and training of members. See chapters 102 and 103 of this title.

[§6907. Repealed. Pub. L. 87–100, §1(1), July 21, 1961, 75 Stat. 218]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 424, related to retention or transfer to Reserve of officers other than naval aviators under officer candidate training program.

[§6908. Repealed. Pub. L. 88–647, title III, §301(17), Oct. 13, 1964, 78 Stat. 1072]

Section, act Aug. 10, 1956, 1041, 70A Stat. 424, related to selection of naval aviators for retention of transfer to the Reserve.

[§6909. Repealed. Pub. L. 96–513, title III, §329, Dec. 12, 1980, 94 Stat. 2896]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 425, related to direct procurement of ensigns and second lieutenants.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§6910. Repealed. Pub. L. 88–647, title III, §301(17), Oct. 13, 1964, 78 Stat. 1072]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 426, authorized payment of expenses of officer procurement program.

§6911. Aviation cadets: grade; procurement; transfer

(a) The grade of aviation cadet is a special enlisted grade in the naval service. Under such

regulations as the Secretary of the Navy prescribes, citizens in civil life may be enlisted as, and enlisted members of the naval service with their consent may be designated as, aviation cadets.

(b) Except in time of war or emergency declared by Congress, 20 percent of the aviation cadets procured in each fiscal year shall be procured from qualified enlisted members of the Regular Navy and the Regular Marine Corps.

(c) No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, and will serve on active duty as such for at least three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(d) Under such regulations as the Secretary prescribes, an aviation cadet may be transferred to another enlisted grade or rating in the naval service, released from active duty, or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 426; Pub. L. 85–578, July 31, 1958, 72 Stat. 456; Pub. L. 96–513, title III, §373(f), Dec. 12, 1980, 94 Stat. 2903.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6911(a), (c), (d).	34 U.S.C. 850a, 850b.	Aug. 4, 1942, ch. 547, §§2, 3, 56 Stat.737.
6911(b)	34 U.S.C. 735b.	June 13, 1949, ch. 199, §3, 63 Stat. 175.

In subsection (a) the words ''in civil life'' are added to indicate that regular enlisted members, to be eligible, must be discharged as is required by subsection (b).

In subsection (b) the words before the first proviso are omitted as executed. The words ''after June 13, 1949'' in the first proviso, relating to a declaration of emergency by Congress, are omitted as executed. The emergencies existing on June 13, 1949, have expired, as indicated in the Act of July 3, 1952, ch. 570, 66 Stat. 333. The word ''Regular'' is inserted before ''Navy'' and ''Marine Corps'' to preserve the meaning of this provision which distinguishes members of the reserve components from members of the Navy and the Marine Corps. The words ''who are discharged for the purpose of enlisting as aviation cadets'' are added. Since discharge from a regular component must precede enlistment in a reserve component, the designation language of 34 U.S.C. 735b, although appropriate to the Air Force counterpart to which it also applies, is inappropriate to this section.

Subsection (c) is written as a condition precedent to enlistment or transfer, and not as a requirement, to conform with interpretation of the provision.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 struck out ''male'' before ''citizens'' and ''enlisted''.

1958—Subsec. (a). Pub. L. 85–578 substituted ''naval service'' for ''Naval Reserve and the Marine Corps Reserve'', made changes in phraseology including the substitution of ''designated'' for ''transferred'', and specified consent as requisite for designation as aviation cadet.

Subsec. (b). Pub. L. 85–578 struck out ''at least'' before ''20 percent'' and ''who, with their consent, are discharged for the purpose of enlisting as aviation cadets'' after ''Regular Marine Corps''.

Subsec. (c). Pub. L. 85–578 designated existing provisions as cls. (1) and (2), made phraseological changes including the substitution of ''designated'' for ''transferred'', and prescribed consent for one under 21 years of age instead of one described as minor and active duty service with commissioned status for minimum three year period instead of maximum four year period and unspecified grade.

Subsec. (d). Pub. L. 85–578 substituted ''naval service'' for ''Naval Reserve or the Marine Corps Reserve'' and struck out ''as appropriate'' after such term.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 301a.

§ 6912. Aviation cadets: benefits

Except as provided in section 402(a) and (b) of title 37, aviation cadets or their beneficiaries are entitled to the same allowances, pensions, gratuities, and other benefits as are provided for enlisted members in pay grade E–4. While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 426; Pub. L. 85–861, §1(147)(A), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 87–649, §6(f)(6), Sept. 7, 1962, 76 Stat. 494.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6912(a), (b).	34 U.S.C. 850c.	Aug. 4, 1942, ch. 547, §4, 56 Stat. 737; Oct. 12, 1949, ch. 681, §527, 63 Stat. 837; May 19, 1952, ch. 310, §1(e) (as applicable to §527), 66 Stat. 80.
6912(c)	34 U.S.C. 850e.	Aug. 4, 1942, ch. 547, §6, 56 Stat. 738.

In subsection (b) the words ''and at the same rates'' are omitted as covered by the words ''on the same basis''.

In subsection (c) the words ''enlisted members in pay grade E–4'' are substituted for ''enlisted men of the fourth pay grade'' to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.). The words ''by law or regulation'' are omitted as surplusage. The words ''and the premiums on their life insurance'' are omitted as impliedly repealed by §10 of the Insurance Act of 1951, 65 Stat. 37, which provided that such premium payments shall not be made by the Government.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6912	[No source].	[No source].

Section 6912 is amended by eliminating subsections (a) (less clause (4)) and (b) and by substituting a reference to section 301 of the Career Compensation Act of 1949 for the reference to subsection (a) in former subsection (c). The substance of former subsections (a) (less clause (4)) and (b) is covered by the Career Compensation Act, as amended by the Act of March 31, 1955 (69 Stat. 19) and section 10 of this Act.

AMENDMENTS

1962—Pub. L. 87–649 substituted ''section 402(a) and (b) of title 37'' for ''section 251(a) of title 37''.

1958—Pub. L. 85–861 substituted ''benefits'' for ''pay and allowances'' in section catchline, and struck out provisions which prescribed the rate of pay of cadets, which authorized them to receive the same allowances for subsistence as prescribed for officers, which related to the furnishing of quarters, medical care and hospitalization, and which authorized transportation and expenses while traveling under orders.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 6913. Aviation cadets: appointment as reserve officers

(a) An aviation cadet who fulfills the requirements of section 2003 of this title may be appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve and designated a naval aviator.

(b) Aviation cadets who complete their training at approximately the same time are considered for all purposes to have begun their commissioned service on the same date, and the decision of the Secretary of the Navy in this regard is conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 427; Pub. L. 96–513, title V, § 513(20), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6913(a)	34 U.S.C. 850f.	Aug. 4, 1942, ch. 547, § 7, 56 Stat. 738.
6913(b)	34 U.S.C. 850g.	Aug. 4, 1942, ch. 547, § 8, 56 Stat. 738.

In subsection (a) the proviso is omitted as unnecessary. Section 1 of the Act of April 28, 1950, ch. 120, 64 Stat. 90, terminated service credit for lump-sum payments granted under § 12 of the Act of August 4, 1942, ch. 547, 56 Stat. 738, and thereby removed the only consequences of the proviso. The words ''section 6023(b) of this title'' are substituted for the words ''law for designation or appointment as naval aviators'' to provide specific reference to those requirements. The words ''and designated a naval aviator'' are added for clarity and to authorize specifically the designation, which is implied in 34 U.S.C. 850f.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 2003'' for ''section 6023(b)''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 6914. Repealed. Pub. L. 96–513, title III, § 374, Dec. 12, 1980, 94 Stat. 2904]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 427, authorized President to appoint Naval Reserve aviators to Regular Navy and Regular Marine Corps.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 6915. Reserve student aviation pilots; reserve aviation pilots: appointments in commissioned grade

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the Naval Reserve and the Marine Corps Reserve may be designated as student aviation pilots.

(b) A member who is not a qualified civilian aviator may not be designated as a student aviation pilot unless he agrees in writing, with the consent of his parent or guardian if he is a minor, to serve on active duty for a period of two years after successfully completing flight training, unless sooner released. Such a student aviation pilot may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(c) If he is a qualified civilian aviator, a student aviation pilot may be given a brief refresher course in flight training.

(d) While he is in flight training, a student aviation pilot shall have uniforms and equipment issued to him at Government expense.

(e) Under regulations prescribed by the Secretary, a student aviation pilot of the Naval Reserve or the Marine Corps Reserve may be designated an aviation pilot upon successfully completing flight training.

(f) In time of peace, an aviation pilot who is obligated under subsection (b) to serve on active duty for a period of two years may serve, with his consent, for an additional period of not more than two years.

(g) An aviation pilot of the Naval Reserve or the Marine Corps Reserve may be released from active duty or discharged at any time by any administrative authority prescribed by the Secretary.

(h) An aviation pilot of the Naval Reserve or the Marine Corps Reserve may, if qualified under regulations prescribed by the Secretary, be appointed an ensign in the Naval Reserve or a second lieutenant in the Marine Corps Reserve, as appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 427; Pub. L. 87–649, § 14c(51), Sept. 7, 1962, 76 Stat. 501; Pub. L. 96–513, title V, § 513(21), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6915	34 U.S.C. 841a–841e.	Nov. 5, 1941, ch. 468, §§ 1–5, 55 Stat. 759.
	34 U.S.C. 841h.	Nov. 5, 1941, ch. 468, § 8; added Aug. 4, 1942, ch. 547, § 15(h), 56 Stat. 740.

In subsection (a) the authority to designate student aviation pilots is expressly set forth.

The portion of 34 U.S.C. 841h that provides that student aviation pilots who are qualified civilian aviators shall be given a brief refresher course in flight training is contained in subsection (c). The remainder of 34 U.S.C. 841h, which provides that such pilots shall not be considered as having been designated pursuant to 34 U.S.C. 841a–841h, is reflected in subsection (b) by making that subsection applicable only to student aviation pilots who are not qualified civilian aviators. No other consequences attach to designation as student aviation pilots under the particular provisions. In subsection (b) the word ''continuous'' is omitted as covered by the word ''period'', and the subsection is written as a condi-

tion precedent to designation, because it is so interpreted.

In subsection (c) the words ''enlisted in or transferred to pilot ratings'' are omitted as surplusage.

Subsection (e) states expressly the authority to designate aviation pilots, which is implied in 34 U.S.C. 841a, 841b, and 841d.

In subsection (f) the words ''pay grade E–5'' are substituted for the words ''third grade'' in 34 U.S.C. 841b to conform to the terminology of the Career Compensation Act of 1949 (37 U.S.C. 231 et seq.).

In subsection (h) the words ''of the Naval Reserve or the Marine Corps Reserve'' are substituted for the words ''designated as such in accordance with sections 841a and 841b of this title'' for uniformity.

AMENDMENTS

1980—Subsecs. (f) to (i). Pub. L. 96–513 redesignated subsecs. (g), (h), and (i) as (f), (g), and (h), respectively.

1962—Subsec. (f). Pub. L. 87–649 repealed subsec. (f) which provided that while on active duty, an aviation pilot of the Naval Reserve or the Marine Corps Reserve is entitled to the pay of an enlisted member in pay grade E–5 or that of his grade, whichever is greater. See section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

CHAPTER 602—TRAINING GENERALLY

Sec.
6931. Recruit basic training: separate housing for male and female recruits.
6932. Recruit basic training: privacy.

AMENDMENTS

1998—Pub. L. 105–261, div. A, title V, §522(b)(2), Oct. 17, 1998, 112 Stat. 2013, added item 6932.

§ 6931. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Navy shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2), the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Navy shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Navy shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term ''basic training'' means the initial entry training programs of the Navy and Marine Corps that constitute the basic training of new recruits.

(Added Pub. L. 105–261, div. A, title V, §521(b)(1), Oct. 17, 1998, 112 Stat. 2010.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, §521(b)(3), Oct. 17, 1998, 112 Stat. 2011, provided that: ''The Secretary of the Navy shall implement section 6931 of title 10, United States Code, as added by paragraph (1), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.''

§ 6932. Recruit basic training: privacy

The Secretary of the Navy shall require that access by recruit division commanders and other training personnel to a living area in which Navy recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to recruit division commanders and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added Pub. L. 105–261, div. A, title V, §522(b)(1), Oct. 17, 1998, 112 Stat. 2012.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, §522(b)(3), Oct. 17, 1998, 112 Stat. 2013, provided that: ''The Secretary of the Navy shall implement section 6932 of title 10, United States Code, as added by paragraph (1), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.''

CHAPTER 603—UNITED STATES NAVAL ACADEMY

Sec.
6951. Location.
6951a. Superintendent.
6952. Civilian teachers: number; compensation.
6953. Midshipmen: appointment.
6954. Midshipmen: number.
6955. Midshipmen: allotment upon redistricting of Congressional Districts.
6956. Midshipmen: nomination and selection to fill vacancies.
6957. Selection of persons from foreign countries.
6957a. Exchange program with foreign military academies.
6958. Midshipmen: qualifications for admission.

Sec.
6959. Midshipmen: agreement for length of service.
6960. Midshipmen: clothing and equipment; uniform allowance.
6961. Midshipmen: dismissal for best interests of the service.
6962. Midshipmen: discharge for unsatisfactory conduct or inaptitude.
6963. Midshipmen: discharge for deficiency.
6964. Hazing: definition; prohibition.
6965. Failure to report violation; dismissal.
6966. Course of study.
6967. Degree on graduation.
6968. Board of Visitors.
6969. Band: composition.
[6970. Repealed.]
6971. Midshipmen's store, trade shops, dairy, and laundry: nonappropriated fund instrumentality and accounts.
6972. Chapel: crypt and window spaces.
6973. Gifts, bequests, and loans of property: acceptance for benefit and use of Naval Academy.
6974. United States Naval Academy Museum Fund: references to Fund.
6975. Acceptance of guarantees with gifts for major projects.
6976. Operation of Naval Academy dairy farm.
6977. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title IX, §942(e)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–242, added items 6973 and 6974 and struck out former items 6973 ''Gifts and bequests: acceptance for benefit of Naval Academy'' and 6974 ''Gifts and bequests: acceptance for benefit of museum''.

1999—Pub. L. 106–65, div. A, title V, §532(a)(4)(D), div. B, title XXVIII, §2871(b)(2), Oct. 5, 1999, 113 Stat. 604, 875, added items 6951a and 6975.

1998—Pub. L. 105–261, div. A, title X, §1063(b)(2), Oct. 17, 1998, 112 Stat. 2131, added item 6977.

1997—Pub. L. 105–85, div. A, title V, §542(b)(2), div. B, title XXVIII, §2871(a)(2), Nov. 18, 1997, 111 Stat. 1742, 2015, added items 6957a and 6976.

1996—Pub. L. 104–201, div. A, title III, §370(d), Sept. 23, 1996, 110 Stat. 2499, struck out item 6970 ''Storekeeper: detail; returns; inspection of accounts'' and substituted ''trade shops, dairy, and laundry: nonappropriated fund instrumentality and accounts'' for ''laundry, barber shop, cobbler shop, tailor shop, and dairy: disposition of funds'' in item 6971.

1994—Pub. L. 103–337, div. A, title V, §556(b)(2), Oct. 5, 1994, 108 Stat. 2775, which amended analysis by adding item 6975 ''Athletics program: athletic director; nonappropriated fund account'', was repealed by Pub. L. 104–106, div. A, title V, §533(b), Feb. 10, 1996, 110 Stat. 315, as amended by Pub. L. 105–85, div. A, title X, §1073(d)(1)(C), Nov. 18, 1997, 111 Stat. 1905.

1983—Pub. L. 98–94, title X, §1004(b)(2), Sept. 24, 1983, 97 Stat. 659, substituted ''Selection of persons from foreign countries'' for ''Admission of foreigners for instruction: restrictions, conditions'' in item 6957.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 37 section 209.

§ 6951. Location

The United States Naval Academy shall be located at Annapolis, Maryland.

(Aug. 10, 1956, ch. 1041, 70A Stat. 428.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6951	34 U.S.C. 1021.	R.S. 1511.

The words ''United States'' are inserted before the words ''Naval Academy'' to state the full title. The word ''established'' is omitted as executed. The words ''in the State of'' are omitted as surplusage.

§ 6951a. Superintendent

(a) There is a Superintendent of the United States Naval Academy. The immediate governance of the Naval Academy is under the Superintendent.

(b) The Superintendent shall be detailed to that position by the President. As a condition for detail to that position, an officer shall acknowledge that upon termination of that detail the officer shall be retired.

(Added Pub. L. 106–65, div. A, title V, §532(a)(2)(B), Oct. 5, 1999, 113 Stat. 603.)

APPLICATION OF SECTION TO SUPERINTENDENTS SERVING ON OCTOBER 5, 1999

Section not applicable to an officer serving on Oct. 5, 1999, in the position of Superintendent of the United States Military Academy, Naval Academy, or Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service, see section 532(a)(5) of Pub. L. 106–65, set out as a note under section 3921 of this title.

§ 6952. Civilian teachers: number; compensation

(a) The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at the Naval Academy as he considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Navy may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(d) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 428; Pub. L. 106–65, div. A, title XI, §1107(b), Oct. 5, 1999, 113 Stat. 778.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6952	34 U.S.C. 1071 (as applicable to Naval Academy). 5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, §7(a) (as applicable to Naval Academy), 60 Stat. 854. Aug. 2, 1946, ch. 756, §39, 60 Stat. 858.

The words ''for the proper instruction of naval personnel'' and the words ''be paid out of naval appropriations'' are omitted as surplusage.

In subsection (c) the words ''except the authority to prescribe regulations'' are omitted, since 34 U.S.C. 1071

contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1999—Subsecs. (c), (d). Pub. L. 106–65 added subsec. (c) and redesignated former subsec. (c) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 6953. Midshipmen: appointment

Midshipmen at the Naval Academy shall be appointed by the President alone. An appointment is conditional until the midshipman is admitted.

(Aug. 10, 1956, ch. 1041, 70A Stat. 429; Pub. L. 97–60, title II, § 203(b)(1), Oct. 14, 1981, 95 Stat. 1006.)

HISTORICAL AND REVISION NOTES

This section is included in this chapter without specific reference to statutory source to resolve the ambiguities and conflicts existing in the statutes relating to the appointment of midshipmen at the Naval Academy. The word ''appoint'' has been used in various statutes when the intent of Congress was to provide authority in the persons named to ''choose,'' ''select,'' or ''nominate'' for the office of midshipman. These statutes have been collected and codified in § 6954 of this title, which reflects the various sources of nominees for ''appointment'' as midshipmen and the persons who may so ''nominate'' them. The actual appointing power resides in the President and this implied authority is herein expressed for clarity and for the purpose of uniformity of expression.

AMENDMENTS

1981—Pub. L. 97–60 inserted provision that an appointment is conditional until the midshipman is admitted.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–60 effective with respect to nominations for appointment to the first class admitted to each Academy after Oct. 14, 1981, see section 203(d) of Pub. L. 97–60, set out as an Effective Date note under section 4341a of this title.

§ 6954. Midshipmen: number

(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Navy under subsection (h). Subject to that limitation, midshipmen are selected as follows:

(1) 65 selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability at not less than 100 per centum resulting from, wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a ''missing status'' as defined in section 551(2) of title 37, and children of civilian employees who are in ''missing status'' as defined in section 5561(5) of title 5. The determination of the Department of Veterans Affairs as to service connection of the cause of death or disability is rated, is binding upon the Secretary of the Navy.

(2) Five nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten from each State, five of whom are nominated by each Senator from that State.

(4) Five nominated by each Representative in Congress.

(5) Five from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Two from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Two from Guam, nominated by the Delegate in Congress from Guam.

(9) One from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition there may be appointed each year at the Academy midshipmen as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Navy from enlisted members of the Regular Navy and the Regular Marine Corps.

(3) 85 nominated by the Secretary of the Navy from enlisted members of the Naval Reserve and the Marine Corps Reserve.

(4) 20 nominated by the Secretary of the Navy, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of

the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Naval Reserve Officer's Training corps.

(5) 150 selected by the Secretary of the Navy in order of merit (prescribed pursuant to section 6956 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as midshipmen at the Academy children of persons who have been awarded the medal of honor for acts performed while in the armed forces.

(d) The Superintendent of the Naval Academy may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of midshipmen at the Naval Academy to exceed the authorized number.

(e) The Secretary of the Navy may limit the number of midshipmen appointed under subsection (b)(5). When he does so, if the total number of midshipmen, upon admission of a new class at the Academy, will be more than 3,737, no appointments may be made under subsection (b)(2) or (3) of this section or section 6956 of this title.

(f) The Secretary of the Navy shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(g) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of the Brigade of Midshipmen, the Secretary of the Navy may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(h)(1) Beginning with the 2003–2004 academic year, the Secretary of the Navy may prescribe annual increases in the midshipmen strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 midshipmen or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the midshipmen strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

(2) Any increase in the midshipmen strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under section 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the midshipmen strength limit and the new midshipmen strength limit, as so increased, and the amount of the increase in Senior Navy Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the midshipmen strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of midshipmen enrolled in the Navy Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term ''midshipmen strength limit'' means the authorized maximum strength of the Brigade of Midshipmen.

(Aug. 10, 1956, ch. 1041, 70A Stat. 429; Pub. L. 87–651, title I, § 124, Sept. 7, 1962, 76 Stat. 514; Pub. L. 87–663, § 1(3), Sept. 14, 1962, 76 Stat. 547; Pub. L. 88–276, § 2, Mar. 3, 1964, 78 Stat. 150; Pub. L. 89–650, § 1(1)–(3), Oct. 13, 1966, 80 Stat. 896; Pub. L. 90–374, July 5, 1968, 82 Stat. 283; Pub. L. 90–623, § 2(8), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91–405, title II, § 204(c), Sept. 22, 1970, 84 Stat. 852; Pub. L. 92–365, § 1(2), Aug. 7, 1972, 86 Stat. 505; Pub. L. 93–171, § 2(1)–(3), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94–106, title VIII, § 803(b)(1), Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–600, § 2(b), Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–60, title II, § 203(b)(2), Oct. 14, 1981, 95 Stat. 1006; Pub. L. 97–295, § 1(44), Oct. 12, 1982, 96 Stat. 1298; Pub. L. 98–94, title X, § 1005(a)(2), (b)(2), Sept. 24, 1983, 97 Stat. 660; Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, § 532(b)(1), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 103–160, div. A, title V, § 531, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 103–337, div. A, title XVI, § 1673(c), Oct. 5, 1994, 108 Stat. 3016; Pub. L. 104–106, div. A, title V, § 532(b), Feb. 10, 1996, 110 Stat. 314; Pub. L. 105–85, div. A, title X, § 1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. A, title V, § 531(b)(2), Oct. 5, 1999, 113 Stat. 602; Pub. L. 106–398, § 1 [[div. A], title V, § 531(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–109; Pub. L. 107–107, div. A, title X, § 1048(g)(1), Dec. 28, 2001, 115 Stat. 1228; Pub. L. 107–314, div. A, title V, § 532(b), Dec. 2, 2002, 116 Stat. 2545.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6954(a)(1)	34 U.S.C. 1036a.	June 8, 1926, ch. 492, par. 2, 44 Stat. 703; Dec. 1, 1942, ch. 650, 56 Stat. 1024; Nov. 24, 1945, ch. 493, 59 Stat. 586; June 30, 1950, ch. 421, § 6(c), 64 Stat. 305; June 3, 1954, ch. 251, § 1, 68 Stat. 168.
6954(a)(2)	34 U.S.C. 1037.	May 28, 1928, ch. 820, 45 Stat. 788.
6954(a)(3)–(7).	34 U.S.C. 1032 (1st 31 words).	Dec. 20, 1917, ch. 5, § 1 (1st 31 words), 40 Stat. 430; Aug. 13, 1946, ch. 962, § 16, 60 Stat. 1061; May 16, 1947, ch. 77, § 1(*o*), 61 Stat. 100.
6954(a)(7)	34 U.S.C. 1034.	Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (2d par.).
6954(a)(8)	34 U.S.C. 1035a.	June 8, 1939, ch. 195, 53 Stat. 814.
6954(b)(1)	34 U.S.C. 1039.	Aug. 13, 1946, ch. 962, § 16(a), 60 Stat. 1061; May 16, 1947, ch. 77, § 1(*o*), 61 Stat. 100; June 30, 1950, ch. 421, § 5, 64 Stat. 305.
6954(b)(2), (3).	34 U.S.C. 1032 (32d to 70th words).	Dec. 20, 1917, ch. 5, § 1 (32d to 70th words), 40 Stat. 430; Aug. 13, 1946, ch. 962, § 16, 60 Stat. 1061.
6954(b)(4)	34 U.S.C. 1033a.	Feb. 27, 1936, ch. 89, 49 Stat. 1144; June 6, 1941, ch. 175, 55 Stat. 246.

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6954(c)	34 U.S.C. 1038.	Nov. 24, 1945, ch. 492, 59 Stat. 586.

All provisions of law authorizing appointments to the Naval Academy from various sources are collected in this section. The language is extensively changed to meet the needs of this organization of the source material. In those provisions that now authorize ''appointments'' by other than the President, the language is changed to indicate that the process is one of selection where the law requires selection by competitive examination, and to show that other candidates are nominated. The manner of appointing the selectees and nominees, in all cases, is covered in §6953 of this title. In the case of nominees from States, the District of Columbia, Territories, and from Puerto Rico, the qualification that the nominees must be from the political subdivisions from which nominated is indicated. The requirement that the nominees be actual residents of the political subdivisions is contained in §6958(b) of this title.

In subsection (a)(1) the words ''armed forces'' are substituted for the description of the land and naval forces. The words ''including male and female members of'' and ''of all components thereof'' are omitted as surplusage.

In subsection (a)(1)(B), the date February 1, 1955, fixed by Proclamation No. 3080 (Jan. 7, 1955; 20 F.R. 173), is substituted for the words ''such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress under section 745 of title 38''.

In subsection (b)(1) the qualification that appointees must be from the sons of members of the various ''regular'' components of the armed forces is added, as ''Army, Navy, Air Force, Marine Corps, and Coast Guard'' are so interpreted in this statute.

In subsection (c) the proviso ''That all such appointees are otherwise qualified for admission'' is omitted as covered by §6958 of this title setting forth qualifications of all candidates.

The applicability to the United States Military Academy in the Act of June 8, 1926, ch. 492, as amended (34 U.S.C. 1036a; 10 U.S.C. 1091a), was repealed by section 6(c) of the Act of June 30, 1950, ch. 421, 64 Stat. 305.

1962 ACT

The change reflects the change of the name of the Panama Railroad Company to the Panama Canal Company by section 2(a)(2) of the Act of September 26, 1950 (64 Stat. 1038).

1982 ACT

In 10:6954(f), the word ''The'' is substituted for ''Effective beginning with the nominations for appointment to the Academy in the calendar year 1964, the'' to eliminate executed words.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, §532(b)(1), inserted before period at end of first sentence ''or such higher number as may be prescribed by the Secretary of the Navy under subsection (h)''.

Subsec. (h). Pub. L. 107–314, §532(b)(2), added subsec. (h).

2001—Subsec. (a). Pub. L. 107–107 amended directory language of Pub. L. 106–65, §531(b)(2)(A). See 1999 Amendment note below.

2000—Subsec. (b)(1)(B). Pub. L. 106–398, §1 [[div. A], title V, §531(b)(1)], struck out '', other than those granted retired pay under section 12731 of this title (or under section 1331 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' after ''retired or retainer pay''.

Subsec. (b)(1)(C), (D). Pub. L. 106–398, §1 [[div. A], title V, §531(b)(2)], added subpars. (C) and (D).

1999—Subsec. (a). Pub. L. 106–65, §531(b)(2)(A), as amended by Pub. L. 107–107, §1048(g)(1), substituted ''(a) The authorized strength of the Brigade of Midshipmen (determined for any year as of the day before the last day of the academic year) is 4,000. Subject to that limitation, midshipmen are selected as follows:'' for ''(a) There may be at the Naval Academy at any one time midshipmen as follows:'' in introductory provisions.

Subsec. (g). Pub. L. 106–65, §531(b)(2)(B), added subsec. (g).

1997—Subsec. (a)(10). Pub. L. 105–85 substituted ''Mariana'' for ''Marianas''.

1996—Subsec. (a)(10). Pub. L. 104–106 added par. (10).

1994—Subsec. (b)(1)(B). Pub. L. 103–337 substituted ''section 12731 of this title (or under section 1331 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''section 1331 of this title''.

1993—Subsec. (a). Pub. L. 103–160, in concluding provisions, substituted ''10 persons'' for ''a principal candidate and nine alternates'' and inserted at end ''Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.''

1990—Subsec. (a)(8) to (10). Pub. L. 101–510, §532(b)(1)(A), redesignated cls. (9) and (10) as (8) and (9), respectively, and struck out former cl. (8) which read as follows: ''One nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States residing in the Republic of Panama who are citizens of the United States.''

Subsec. (d). Pub. L. 101–510, §532(b)(1)(B), substituted ''clauses (2) through (9)'' for ''clauses (2)–(7), (9), or (10)''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1983—Subsec. (a)(8). Pub. L. 98–94, §1005(b)(2), substituted ''One nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States residing in the Republic of Panama who are citizens of the United States'' for ''One nominated by the Governor of the Panama Canal from the children of civilians residing in the Canal Zone or the children of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama''.

Subsec. (a)(10). Pub. L. 98–94, §1005(a)(2), substituted ''One from American Samoa, nominated by the Delegate in Congress from American Samoa'' for ''One from American Samoa nominated by the Secretary of the Navy upon recommendation of the Governor of American Samoa''.

1982—Subsec. (f). Pub. L. 97–295 substituted ''The'' for ''Effective beginning with the nominations for appointment to the Academy in the calendar year 1964, the''.

1981—Subsecs. (d) to (f). Pub. L. 97–60 added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1980—Subsec. (a)(6), (9). Pub. L. 96–600 substituted ''Two'' for ''One''.

1975—Subsecs. (a)(1), (8), (b)(1), (c). Pub. L. 94–106 substituted ''children'' for ''sons'' wherever appearing.

1973—Subsec. (a)(6). Pub. L. 93–171, §2(1), substituted ''One from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands'' for ''Five from each Territory, nominated by the Delegate in Congress from that Territory''.

Subsec. (a)(9). Pub. L. 93–171, §2(2), struck out reference to American Samoa and Virgin Islands.

Subsec. (a)(10). Pub. L. 93–171, §2(3), added cl. (10).

1972—Subsec. (a)(1). Pub. L. 92–365 increased the number of midshipmen from 40 to 65 and added sons of members who are in missing status and sons of civilian em-

ployees who are in missing status as eligible for competitive examination.

1970—Subsec. (a)(5). Pub. L. 91–405 substituted ''Delegate to the House of Representatives from the District of Columbia'' for ''Commissioner of that District''.

1968—Subsec. (a). Pub. L. 90–374 increased from five to nine the number of alternates for each vacancy each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate.

Subsec. (a)(5). Pub. L. 90–623 substituted ''Commissioner'' for ''Commissioners''.

1966—Subsec. (a)(1). Pub. L. 89–650, §1(1), provided for selection of cadets to the Naval Academy from sons of members of the armed forces who have a 100 per centum service-connected disability and removed the limitation to active service during World War I or World War II or after June 26, 1950, and before Feb. 1, 1955.

Subsec. (a)(2). Pub. L. 89–650, §1(2), provided for nominations to the Naval Academy by the President pro tempore of the Senate if there is no Vice President.

Subsec. (b)(1). Pub. L. 89–650, §1(3), increased the number of Presidential appointments to the Naval Academy from 75 to 100, provided for selection of eligible persons as stated in items (A) and (B), previously chosen from sons of members of regular components, and declared persons eligible under subsec. (a)(1) ineligible under subsec. (b)(1) of this section.

1964—Subsec. (a). Pub. L. 88–276, §2(1), inserted ''Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate a principal candidate and five alternates for each vacancy that is available to him under this section''.

Subsec. (b)(2), (3), (5). Pub. L. 88–276, §2(2), reduced the number of nominees in cls. (2) and (3) from 160 to 85 and added cl. (5).

Subsecs. (d), (e). Pub. L. 88–276, §2(3), added subsecs. (d) and (e).

1962—Subsec. (a). Pub. L. 87–663 added cl. (9).

Pub. L. 87–651 substituted ''Panama Canal Company'' for ''Panama Railroad Company'' in cl. (8).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title X, §1048(g), Dec. 28, 2001, 115 Stat. 1228, provided that the amendment made by section 1048(g)(1) is effective as of Oct. 5, 1999, and as if included in Pub. L. 106–65 as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–60 effective with respect to nominations for appointment to the first class admitted to each Academy after Oct. 14, 1981, see section 203(d) of Pub. L. 97–60, set out as an Effective Date note under section 4341a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–600 effective beginning with nominations for appointment to the service academies for academic years beginning more than one year after Dec. 24, 1980, see section 2(d) of Pub. L. 96–600 set out as a note under section 4342 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–171 effective beginning with the nominations for appointment to the service academies in the calendar year 1974, see section 4 of Pub. L. 93–171, set out as a note under section 4342 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

LIMITATION ON NUMBER OF CADETS AND MIDSHIPMEN AUTHORIZED TO ATTEND SERVICE ACADEMIES

Authorized strength of service academies not to exceed 4,000 per academy for class years beginning after 1994, and any reduction in number of appointments not to be achieved by reduction in number of appointments under subsec. (a) of this section, see section 511 of Pub. L. 102–190, set out as a note under section 4342 of this title.

ELIGIBILITY OF FEMALE INDIVIDUALS FOR APPOINTMENT AND ADMISSION TO SERVICE ACADEMIES; UNIFORM APPLICATION OF ACADEMIC AND OTHER STANDARDS TO MALE AND FEMALE INDIVIDUALS

Secretary to take such action as may be necessary and appropriate to insure that (1) female individuals shall be eligible for appointment and admission to the United States Naval Academy, beginning with appointments to such academy for the class beginning in calendar year 1976, and (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals, see section 803(a) of Pub. L. 94–106, set out as a note under section 4342 of this title.

SECRETARY TO IMPLEMENT POLICY OF EXPEDITIOUS ADMISSION OF WOMEN TO THE ACADEMY

Secretary to continue to exercise the authority granted under this chapter and chapters 403 and 903 of this title, but such authority to be exercised within a program providing for the orderly and expeditious admission of women to the Academy, consistent with the needs of the services, see section 803(c) of Pub. L. 94–106, set out as a note under section 4342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6956, 6957, 6958 of this title.

§ 6955. Midshipmen: allotment upon redistricting of Congressional Districts

If as a result of redistricting a State the domicile of a midshipman, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of midshipmen otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a midshipman or when he is finally separated from the Naval Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 430.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6955	34 U.S.C. 1032–1.	July 7, 1943, ch. 193, 57 Stat. 383.

The word ''domicile'' is substituted for the words ''place of residence'' to conform to the long-standing

interpretation of this section (see also opinions of the Judge Advocate General of the Army R. 29, 83; J.A.G. 351.11, Feb. 10, 1925). The words ''a congressional district other than that from which he was nominated'' are substituted for the word ''another''. The words ''were appointed with respect to'', ''of the former district'', ''as additional numbers'', ''at such academy for the Representative'', ''temporarily'', and ''in attendance at either academy under an appointment from such former district'' are omitted as surplusage. The words ''the district in which his domicile so falls'' are substituted for the words ''of the latter district''. The words ''to include him'' are substituted for 34 U.S.C. 1032–1 (18 words before proviso). The words ''However, the number as so increased'' are substituted for 34 U.S.C. 1032–1 (1st 13 words of proviso). The words ''if he fails to become a midshipman'' are inserted for clarity.

§ 6956. Midshipmen: nomination and selection to fill vacancies

(a) If the annual quota of midshipmen from—

(1) enlisted members of the Regular Navy and the Regular Marine Corps;

(2) enlisted members of the Naval Reserve and the Marine Corps Reserve; or

(3) at large by the President;

is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(b) If it is determined that, upon the admission of a new class to the Academy, the number of midshipmen at the Academy will be below the authorized number, the Secretary may fill the vacancies by nominating additional midshipmen from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academic Board. At least three-fourths of those nominated under this subsection shall be from qualified alternates under clauses (2) through (8) of section 6954(a) of this title, and the remainder shall be from qualified candidates who competed for appointment under any other provision of law. An appointment of a nominee under this subsection is an additional appointment and is not in place of an appointment otherwise authorized by law.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the appointment of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 430; Pub. L. 88–276, §3, Mar. 3, 1964, 78 Stat. 151; Pub. L. 90–374, July 5, 1968, 82 Stat. 283; Pub. L. 93–171, §2(4), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94–106, title VIII, §803(b)(2), Oct. 7, 1975, 89 Stat. 538; Pub. L. 97–60, title II, §206, Oct. 14, 1981, 95 Stat. 1007; Pub. L. 101–510, div. A, title V, §532(b)(2), title XIII, §1322(a)(14), Nov. 5, 1990, 104 Stat. 1563, 1671.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6956(a), (b), (c).	34 U.S.C. 1041.	June 29, 1906, ch. 3590, 34 Stat. 578 (last par.).
6956(d)	34 U.S.C. 1040.	Aug. 13, 1946, ch. 962, §14, 60 Stat. 1061.
6956(e)	34 U.S.C. 1049.	June 30, 1950, ch. 421, §4, 64 Stat. 305.
6956(f)	34 U.S.C. 1047 (1st proviso).	June 30, 1950, ch. 421, §2 (1st proviso), 64 Stat. 304.

The section is worded to indicate that all appointments are made by the President, and that, before appointment, prospective midshipmen are ''nominees'' or ''candidates'', as appropriate.

In subsection (b) the provision authorizing the Secretary of the Navy to nominate candidates in the event nominations to fill vacancies under subsection (a) are not made by March fourth is omitted as covered by subsection (e), the purpose of which was to assure the entrance of a full class each year.

Reference in subsection (e) to the strength of the ''brigade of midshipmen'' is dropped, since there is no statutory requirement that the midshipmen at the Academy be so organized, and the term is a recognition of current organization only. The language authorizing the Secretary, in his discretion, to nominate additional midshipmen to meet the needs of the armed services but not to exceed the authorized strength of the Academy is changed to authorize the Secretary to ''fill the vacancies by nominating additional midshipmen''. In exercising his discretion under this subsection, these factors are necessarily considered by the Secretary, irrespective of a specific provision so instructing him.

In subsection (f) the word ''admission'' is changed to the word ''appointment'', since the admission of a person is a consequence of, and follows automatically from, his appointment. The statement of reasons for failure to complete the course is omitted as unnecessary.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–510, §1322(a)(14), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ''The Secretary of the Navy shall, as soon as possible after the first of June of each year, notify in writing each Senator, Representative, and delegate in Congress of any vacancy that will exist at the Naval Academy because of graduation in the following year, or that may occur for other reasons, for which the member or delegate is entitled to nominate a candidate and nine alternates.''

Subsec. (b). Pub. L. 101–510, §1322(a)(14)(B), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (c). Pub. L. 101–510, §1322(a)(14)(B), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Pub. L. 101–510, §532(b)(2), substituted ''clauses (2) through (8)'' for ''clauses (2)–(9)''.

Subsec. (d). Pub. L. 101–510, §1322(a)(14)(B), redesignated subsec. (d) as (c).

1981—Subsecs. (b) to (d). Pub. L. 97–60 redesignated subsecs. (d), (e), and (f) as (b), (c), and (d), respectively. Former subsec. (b) providing that a nomination following notification under subsection (a) be made by the fourth of March of the year following that in which notice of the vacancy was given and that, if the candidate died or declined the nomination, or if the nomination could not be made by reason of a vacancy in the membership of the Senate or the House of Representatives, the nomination could be made, as determined by the Secretary, not later than the date of the final entrance examination for that year, and former subsec. (c) providing that the nomination of candidates to fill vacancies for the District of Columbia, and selection of all candidates at large, be made by the fourth of March of the year in which the candidates were to enter the Academy, were struck out.

1975—Subsec. (d). Pub. L. 94–106 substituted ''enlisted members'' for ''enlisted men'' in pars. (1) and (2).

1973—Subsec. (e). Pub. L. 93–171 substituted reference to clauses (2)–(9) of section 6954(a) for reference to clauses (2)–(8) of section 6954(a).

1968—Subsec. (a). Pub. L. 90–374 substituted ''nine alternates'' for ''five alternates''.

1964—Subsec. (a). Pub. L. 88–276, §3(1), substituted ''five alternates'' for ''one or more alternates''.

Subsec. (e). Pub. L. 88–276, §3(2), substituted ''three-fourths of those nominated'' for ''two-thirds of those nominated''.

EFFECTIVE DATE OF 1973 AMENDMENT

For effective date of amendment by Pub. L. 93–171, see section 4 of Pub. L. 93–171, set out as a note under section 4342 of this title.

NUMBER OF ALTERNATE-APPOINTEES FROM CONGRESSIONAL SOURCES NOT TO BE REDUCED BECAUSE OF ADDITIONAL PRESIDENTIAL APPOINTMENTS

Nonreduction of number of appointees from congressional sources under this section because of additional presidential appointments under section 6954(b)(1) of this title, see note set out under section 4343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6954 of this title.

§ 6957. Selection of persons from foreign countries

(a)(1) The Secretary of the Navy may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the midshipmen under section 6954 of this title.

(2) The Secretary of the Navy, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Navy may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Navy shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a midshipman is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Navy shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a midshipman appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a midshipman under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Navy determines, a person receiving instruction under this section is subject to the same regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a midshipman at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 6958(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Pub. L. 98–94, title X, § 1004(b)(1), Sept. 24, 1983, 97 Stat. 658; Pub. L. 105–85, div. A, title V, §§ 541(b), 543(b), Nov. 18, 1997, 111 Stat. 1740, 1743; Pub. L. 106–65, div. A, title V, § 534(b), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106–398, § 1 [[div. A], title V, § 532(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–107, div. A, title V, § 533(b)(1), (2), Dec. 28, 2001, 115 Stat. 1106.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6957(a)	34 U.S.C. 1036.	June 29, 1906, ch. 3590, 34 Stat. 577 (1st par.).
6957(b), (c), (d).	34 U.S.C. 1036–1.	July 14, 1941, ch. 292, 55 Stat. 589; June 1, 1948, ch. 357, § 1, 62 Stat. 279.
	34 U.S.C. 1036–2.	June 24, 1948, ch. 616, 62 Stat. 583.

In subsections (a) and (b) the location of the Academy is omitted as surplusage.

In subsection (b) the words ''from the Republic of the Philippines'' are substituted for the word ''Filipinos'' to indicate the proper designation of that country.

In subsection (c) reference to ''emoluments'' is omitted, as that term has no present significance with reference to midshipmen.

In subsection (d) the words ''rules and'' and ''any office or position'' are omitted as surplusage and the provision is extended to cover specifically the Marine Corps, since ''Navy'' in this context is so interpreted.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107, § 533(b)(1), substituted ''60'' for ''40''.

Subsec. (b)(2). Pub. L. 107–107, § 533(b)(2)(A), struck out ''unless a written waiver of reimbursement is granted by the Secretary of Defense'' before period at end of first sentence.

Subsec. (b)(3). Pub. L. 107–107, § 533(b)(2)(B), added par. (3) and struck out former par. (3) which read as follows: ''The amount of reimbursement waived under paragraph (2) may not exceed 50 percent of the per-person reimbursement amount otherwise required to be paid by a foreign country under such paragraph, except in the case of not more than 20 persons receiving instruction at the Naval Academy under this section at any one time.''

2000—Subsec. (a)(3). Pub. L. 106–398 added par. (3).

1999—Subsec. (b)(3). Pub. L. 106–65 substituted ''50 percent'' for ''35 percent'' and ''20 persons'' for ''five persons''.

1997—Subsec. (b)(2). Pub. L. 105–85, § 543(b)(1), substituted '', except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a midshipman appointed from the United States.'' for period at end.

Subsec. (b)(3). Pub. L. 105–85, § 543(b)(2), added par. (3).

Subsec. (d). Pub. L. 105–85, § 541(b), added subsec. (d).

1983—Pub. L. 98–94 substituted ''Selection of persons from foreign countries'' for ''Admission of foreigners

for instruction: restrictions; conditions'' in section catchline.

Subsec. (a). Pub. L. 98–94 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''No person from a foreign country may be permitted to receive instruction at the Naval Academy except as authorized by this section.''

Subsec. (b). Pub. L. 98–94 amended subsec. (b) generally, redesignating former subsec. (c) as par. (1) and in par. (1), as so redesignated, substituted ''pay, allowances, and emoluments of a midshipman appointed from the United States, and from the same appropriations'' for ''same pay and allowances, to be paid from the same appropriations, as midshipmen'', and added par. (2). Former subsec. (b), relating to the authority of the Secretary of the Navy to limit the numbers of foreigners studying at the Academy, was struck out.

Subsec. (c). Pub. L. 98–94 amended subsec. (c) generally, designating first sentence of former subsec. (d) as par. (1) and in par. (1), as so designated, substituted ''as a midshipman at the Academy appointed from the United States'' for ''as a midshipman'', and inserted sentence authorizing the Secretary to prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a midshipman at the Academy appointed from the United States; and designating the second sentence of former subsec. (d) as par. (2) and in par. (2), as so designated, substituted ''A person'' for ''However, a person'' and ''an armed force of the United States'' for ''the Navy or the Marine Corps''. Former subsec. (c) was redesignated (b)(1).

Subsec. (d). Pub. L. 98–94, as part of the general amendment of this section, omitted subsec. (d) and incorporated its provisions into subsec. (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §533(b)(3), Dec. 28, 2001, 115 Stat. 1106, provided that: ''The amendments made by paragraph (2) [amending this section] shall not apply with respect to any person who entered the United States Naval Academy to receive instruction under section 6957 of title 10, United States Code, before the date of the enactment of this Act [Dec. 28, 2001].''

Amendment by Pub. L. 107–107 inapplicable with respect to any academic year that began before Dec. 28, 2001, see section 533(d) of Pub. L. 107–107, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–398 applicable with respect to academic years that begin after Oct. 1, 2000, see section 1 [[div. A], title V, §532(d)] of Pub. L. 106–398, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 applicable with respect to students from a foreign country entering the United States Military Academy, Naval Academy, or Air Force Academy on or after May 1, 1999, see section 534(d) of Pub. L. 106–65, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 543(b) of Pub. L. 105–85 applicable with respect to students from foreign country entering United States Military Academy, United States Naval Academy, or United States Air Force Academy on or after May 1, 1998, see section 543(d) of Pub. L. 105–85, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective one year after Sept. 24, 1983, and applicable to persons entering the Academy after such date, with subsec. (b)(2) of this section, as amended, not to apply to the cost of providing instruction to a person who, before such date, entered the Academy, see section 1004(d) of Pub. L. 98–94, set out as a note under section 4344 of this title.

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM: NAVAL ACADEMY INSTRUCTION; BENEFITS, LIMITATIONS, RESTRICTIONS, AND REGULATIONS; OATH OF TRAINEES

Naval Academy instruction of persons from countries assisting U.S. in Vietnam, numerical limitation, prohibition against appointment of graduates to the Armed Forces, exemption from oath, etc., see Pub. L. 89–802, Nov. 9, 1966, 80 Stat. 1518, set out as a note under section 4344 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6957a of this title.

§ 6957a. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Navy may permit a student enrolled at a military academy of a foreign country to receive instruction at the Naval Academy in exchange for a midshipman receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 6957 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 24 midshipmen and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Naval Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of a midshipman by reason of attendance at the Naval Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged midshipman in that foreign country.

(3) The Naval Academy shall bear all costs of the exchange program from funds appropriated for the Academy. Expenditures in support of the exchange program may not exceed $120,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 6957 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending

the Naval Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added Pub. L. 105–85, div. A, title V, § 542(b)(1), Nov. 18, 1997, 111 Stat. 1741; amended Pub. L. 106–65, div. A, title V, § 535(b), Oct. 5, 1999, 113 Stat. 605.)

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65, § 535(b)(1), substituted ''24 midshipmen'' for ''10 midshipmen''.

Subsec. (c)(3). Pub. L. 106–65, § 535(b)(2), substituted ''$120,000'' for ''$50,000''.

§ 6958. Midshipmen: qualifications for admission

(a) Each candidate for admission to the Naval Academy—

(1) must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the calendar year in which he enters the Academy; and

(2) shall be examined according to such regulations as the Secretary of the Navy prescribes, and if rejected at one examination may not be examined again for admission to the same class unless recommended by the Academic Board.

(b) Each candidate for admission nominated under clauses (3) through (9) of section 6954(a) of this title must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(c) Each candidate nominated under clause (2) or (3) of section 6954(b) of this title—

(1) must be a citizen of the United States;

(2) must have passed the required physical examination; and

(3) shall be appointed in the order of merit from candidates who have, in competition with each other, passed the required mental examination.

(d) To be admitted to the Naval Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Navy. If a candidate for admission refuses to take and subscribe to the prescribed oath, the candidate's appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 431; Pub. L. 87–663, § 1(4), Sept. 14, 1962, 76 Stat. 547; Pub. L. 93–171, § 2(5), Nov. 29, 1973, 87 Stat. 690; Pub. L. 101–510, div. A, title V, § 532(b)(3), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 102–190, div. A, title V, § 512, Dec. 5, 1991, 105 Stat. 1360; Pub. L. 104–201, div. A, title V, § 555(c), Sept. 23, 1996, 110 Stat. 2527; Pub. L. 105–85, div. A, title V, § 541(a), Nov. 18, 1997, 111 Stat. 1740.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6958(a)(1)	34 U.S.C. 1047 (less 1st proviso).	June 30, 1950, ch. 421, § 2 (less 1st proviso), 64 Stat. 304.
6958(a)(2)	34 U.S.C. 1043.	R.S. 1515.
6958(b)	34 U.S.C. 1047 (2d proviso).	June 30, 1950, ch. 421, § 2 (2d proviso), 64 Stat. 304.
6958(c)	34 U.S.C. 1042.	Mar. 4, 1917, ch. 180, 39 Stat. 1182 (1st par.).
	34 U.S.C. 1032 (less 1st 70 words).	Dec. 20, 1917, ch. 5, § 1 (less 1st 70 words), 40 Stat. 430; Aug. 13, 1946, ch. 962, § 16, 60 Stat. 1061; May 16, 1947, ch. 77, § 1(*o*), 61 Stat. 100.

In subsection (a) the effective date is omitted as executed. The words ''at least 17 years of age and must not have passed his twenty-second birthday'' are substituted for the words ''not less than seventeen years of age and not more than twenty-two years of age'' to remove ambiguity, and for uniformity of treatment of provisions of this type. The reference to time of examination is omitted as being included within the Secretary's authority to prescribe regulations, which is stated in the subsection. The words ''Academic Board'' are substituted for the words ''board of examiners''.

In subsection (b) the words ''domiciled in'' are substituted for the words ''actual resident of'' since this term has been so interpreted.

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–85 added subsec. (d).

1996—Subsec. (a)(1). Pub. L. 104–201 substituted ''twenty-third birthday'' for ''twenty-second birthday''.

1991—Subsec. (c)(2) to (4). Pub. L. 102–190 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which required candidates to have served at least one year as enlisted members on date of entrance.

1990—Subsec. (b). Pub. L. 101–510 substituted ''clauses (3) through (9)'' for ''clauses (3)–(7), (9) and (10)''.

1973—Subsec. (b). Pub. L. 93–171 substituted '', (9) and (10) of section 6954(a)'' for ''and (9) of section 6954(a)'' and struck out ''or Territory''.

1962—Subsec. (b). Pub. L. 87–663 inserted references to American Samoa, Guam, and the Virgin Islands, and substituted ''clauses (3)–(7) and (9)'' for ''clauses (3)–(7)''.

EFFECTIVE DATE OF 1973 AMENDMENT

For effective date of amendment by Pub. L. 93–171, see section 4 of Pub. L. 93–171, set out as a note under section 4342 of this title.

AUTHORITY TO WAIVE MAXIMUM AGE LIMITATION ON ADMISSION TO SERVICE ACADEMIES FOR CERTAIN ENLISTED MEMBERS WHO SERVED DURING PERSIAN GULF WAR

For authority to waive maximum age limitation in subsec. (a)(1) of this section on basis of service on active duty in connection with Operation Desert Storm, see section 514 of Pub. L. 102–190, set out as a note under section 4346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6957 of this title.

§ 6959. Midshipmen: agreement for length of service

(a) Each midshipman shall sign an agreement with respect to the midshipman's length of service in the armed forces. The agreement shall provide that the midshipman agrees to the following:

(1) That the midshipman will complete the course of instruction at the Naval Academy.

(2) That upon graduation from the Naval Academy the midshipman—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the midshipman is permitted to resign as a regular officer before completion of the commissioned service obligation of the midshipman, the midshipman—

(A) will accept an appointment as a commissioned officer in the Naval Reserve or the Marine Corps Reserve or as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the midshipman.

(b)(1) The Secretary of the Navy may transfer to the Naval Reserve or the Marine Corps Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a midshipman who breaches an agreement under subsection (a). The period of time for which a midshipman is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A midshipman who is transferred to the Naval Reserve or Marine Corps Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a midshipman shall be considered to have breached an agreement under subsection (a) if the midshipman is separated from the Naval Academy under circumstances which the Secretary determines constitute a breach by the midshipman of the midshipman's agreement to complete the course of instruction at the Naval Academy and accept an appointment as a commissioned officer upon graduation from the Naval Academy.

(c) The Secretary of the Navy shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection (b).

(d) In this section, ''commissioned service obligation'', with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a midshipman who is not a citizen or national of the United States.

(2) In the case of a midshipman who is a minor and who has parents or a guardian, the midshipman may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432; Pub. L. 88–276, §5(a), Mar. 3, 1964, 78 Stat. 153; Pub. L. 88–647, title III, §301(19), Oct. 13, 1964, 78 Stat. 1072; Pub. L. 98–525, title V, §§541(b), 542(c), Oct. 19, 1984, 98 Stat. 2529; Pub. L. 99–145, title V, §512(b), Nov. 8, 1985, 99 Stat. 624; Pub. L. 101–189, div. A, title V, §511(c), Nov. 29, 1989, 103 Stat. 1439; Pub. L. 104–106, div. A, title V, §531(b), Feb. 10, 1996, 110 Stat. 314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6959	34 U.S.C. 1048.	June 30, 1950, ch. 421, §3, 64 Stat. 304.

The words ''Hereafter'' and ''appointed to the United States Naval Academy'' are omitted as surplusage. The words ''an agreement that * * * he will'' are substituted for the words ''articles * * * by which he shall engage''. The word ''separated'' is substituted for the words ''discharged by competent authority''. The words ''if tendered an appointment'', ''upon graduation from the United States Naval Academy'', and ''consecutive'' are omitted as surplusage. The words ''if he is permitted to resign'' are substituted for the words ''in the event of the acceptance of his resignation'', since a resignation is effective only if accepted. The first 43 words of clause (3) are substituted for 34 U.S.C. 1048 (last 30 words of clause (3)). The last sentence is substituted for the words ''with the consent of his parents or guardian if he be a minor, and if any he have.''

AMENDMENTS

1996—Subsec. (a)(2)(B). Pub. L. 104–106 substituted ''five years'' for ''six years''.

1989—Subsec. (a)(2)(B). Pub. L. 101–189 substituted ''six years'' for ''five years''.

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows:

''(a) Each midshipman who is a citizen or national of the United States shall sign an agreement that he will—

''(1) unless sooner separated from the Naval Academy, complete the course of instruction at the Naval Academy;

''(2) accept an appointment and, unless sooner separated from the naval service, serve as a commissioned officer of the Regular Navy, the Regular Marine Corps, or the Regular Air Force for at least five years immediately after graduation; and

''(3) accept an appointment as a commissioned officer in the reserve component of the Navy or the Marine Corps or as a Reserve in the Air Force for service in the Air Force Reserve and, unless sooner separated from the naval service, remain therein until at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary of his graduation if an appointment in the regular component of that armed force is not tendered to him or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the midshipman is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

''(b) A midshipman who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Navy to the Naval Reserve or the Marine Corps Reserve in an appropriate enlisted grade or rating, and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade or rating for such period of time as the Secretary prescribes but not for more than four years.''

1984—Subsec. (a). Pub. L. 98–525, §541(b), struck out '', unless sooner separated,'' in introductory text pre-

ceding ''he will''; inserted in cl. (1) ''unless sooner separated from the Naval Academy,''; and inserted '', unless sooner separated from the naval service,'' in cls. (2) and (3).

Subsec. (a)(3). Pub. L. 98–525, § 542(c), substituted ''at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary'' for ''the sixth anniversary''.

1964—Pub. L. 88–647 designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a)(2). Pub. L. 88–276 substituted ''five'' for ''three''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 applicable to persons first admitted to United States Military Academy, United States Naval Academy, and United States Air Force Academy after Dec. 31, 1991, see section 531(e) of Pub. L. 104–106, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–189 applicable to persons who are first admitted to one of the military service academies after Dec. 31, 1991, see section 511(e) of Pub. L. 101–189, as amended, set out as a note under section 2114 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 (other than with respect to the authority of the Secretary of the Navy to prescribe regulations) effective on the date on which regulations prescribed by the Secretary take effect and applicable to agreements entered into under this section on or after the effective date of such regulations and also with respect to each such agreement that was entered into before the effective date of such regulations by an individual who is a midshipman on such date, see section 512(e) of Pub. L. 99–145, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(b) of Pub. L. 98–525 applicable with respect to agreements entered into under this section before, on, or after Oct. 19, 1984, see section 541(d) of Pub. L. 98–525, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT; OBLIGATED PERIOD OF SERVICE

For effective date of amendment by Pub. L. 88–276, see section 5(c) of Pub. L. 88–276, set out as a note under section 4348 of this title.

REGULATIONS IMPLEMENTING 1985 AMENDMENT

Secretary of the Navy to prescribe regulations required by subsec. (c) of this section as added by Pub. L. 99–145 not later than the end of the 90-day period beginning on Nov. 8, 1985, see section 512(d) of Pub. L. 99–145, set out as a note under section 4348 of this title.

§ 6960. Midshipmen: clothing and equipment; uniform allowance

The Secretary of the Navy may prescribe the amount to be credited to a midshipman, upon original admission to the Naval Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a midshipman is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in as much of his clothing and equipment of a distinctively military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6960	34 U.S.C. 1052a.	Aug. 22, 1951, ch. 340, §1, 65 Stat. 196.

The word ''new'' before ''midshipmen'' and the word ''subsequently'' after ''deducted'' are omitted as surplusage. The words ''while owing the United States for pay advanced for the purchase of'' are substituted for the words ''who is indebted to the United States on account of advances of pay to purchase''.

§ 6961. Midshipmen: dismissal for best interests of the service

(a) Whenever the Superintendent of the Naval Academy believes that the continued presence of any midshipman at the Academy is contrary to the best interest of the service, he shall report in writing to the Secretary of the Navy a full statement of the facts upon which his belief is based. If the Secretary determines from the report that the Superintendent's belief is well founded, the Secretary shall serve a copy of the report on the midshipman. Within such time as the Secretary considers reasonable, the midshipman shall show cause in writing why he should not be dismissed from the Academy. The Secretary, after consideration of any cause so shown, and with the written approval of the President, may dismiss the midshipman from the Academy and from the naval service.

(b) The truth of any issue of fact raised under subsection (a), except as to the record of demerits, shall be determined by a court of inquiry convened by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6961	34 U.S.C. 1062.	Apr. 9, 1906, ch. 1370, §1, 34 Stat. 104.

The words ''court of inquiry'' are substituted for the words ''board of inquiry'' to conform to the terminology of the Uniform Code of Military Justice. The words ''under the rules and regulations for the government of the Navy'' are omitted as unnecessary.

DELEGATION OF FUNCTIONS

For delegation to Secretary of Defense of authority vested in President by section 1062 of former Title 34, see Ex. Ord. No. 10621, July 1, 1955, 20 F.R. 4759, set out as a note under section 301 of Title 3, The President.

§ 6962. Midshipmen: discharge for unsatisfactory conduct or inaptitude

(a) The Superintendent of the Naval Academy shall submit to the Secretary of the Navy in writing a full report of the facts—

(1) whenever the Superintendent determines that the conduct of a midshipman is unsatisfactory; or

(2) whenever the Academic Board unanimously determines that midshipman possesses insufficient aptitude to become a commissioned officer in the naval service.

(b) A midshipman upon whom a report is made under subsection (a) shall be given an opportunity to examine the report and submit a written statement thereon. If the Secretary believes, on the basis of the report and statement, that the determination of the Superintendent or of the Academic Board is reasonable and well founded, he may discharge the midshipman from the Naval Academy and from the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 432.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6962	34 U.S.C. 1062a.	Dec. 11, 1945, ch. 562, 59 Stat. 605.

§ 6963. Midshipmen: discharge for deficiency

Midshipmen found deficient at any examination shall, unless the Academic Board recommends otherwise, be discharged from the Naval Academy and from the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6963	34 U.S.C. 1053.	R.S. 1519; restored Oct. 22, 1921, ch. 113, §2, 42 Stat. 207.

§ 6964. Hazing: definition; prohibition

(a) In this chapter, the term ''hazing'' means any unauthorized assumption of authority by a midshipman whereby another midshipman suffers or is exposed to any cruelty, indignity, humiliation, hardship, or oppression, or the deprivation or abridgement of any right.

(b) The Superintendent of the Naval Academy shall prescribe regulations, to be approved by the Secretary of the Navy, to prevent hazing.

(c) Hazing is an offense that may be dealt with as an offense against good order and discipline or as a violation of the regulations of the Naval Academy. However, no midshipman may be dismissed for a single act of hazing except by sentence of a court-martial.

(d) The finding and sentence of a court-martial of a midshipman for hazing shall be reviewed in the manner prescribed for general court-martial cases.

(e) A midshipman who is sentenced to imprisonment for hazing may not be confined with persons who have been convicted of crimes or misdemeanors.

(f) A midshipman who is dismissed from the Academy for hazing may not be reappointed as a midshipman or be appointed as a commissioned officer in the Army, Navy, Air Force, or Marine Corps until two years after the graduation of the class of which he was a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433; Pub. L. 99–145, title XIII, §1301(c)(2), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101–189, div. A, title XVI, §1622(e)(8), Nov. 29, 1989, 103 Stat. 1605.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6964(a)	34 U.S.C. 1064.	Apr. 9, 1906, ch. 1370, §4, 34 Stat. 105.
6964(b)	34 U.S.C. 1063.	Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (1st 28 words of 1st proviso).
6964(c)	34 U.S.C. 1065.	Apr. 9, 1906, ch. 1370, §2 (last 54 words), 34 Stat. 104.
6964(d), (e).	34 U.S.C. 1066.	June 23, 1874, ch. 453, 18 Stat. 203; Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (29th to 49th word of 1st proviso); Apr. 9, 1906, ch. 1370, §3, 34 Stat. 104; May 5, 1950, ch. 169, §11, 64 Stat. 146.
6964(f)	34 U.S.C. 1067.	Mar. 3, 1903, ch. 1010, 32 Stat. 1198 (last 43 words of 1st proviso).

In subsection (a) the words ''privilege, or advantage to which he shall legally be entitled'' are omitted as surplusage, since they are covered by the word ''right''. The definition in this subsection is made applicable throughout the chapter to cover §6965 of this title, since the reference in that section to hazing was also derived from the act which is the source for this subsection.

In subsection (b) the words ''prescribe regulations * * * to prevent hazing'' are substituted for the words ''make such rules * * * as will effectually prevent the practice of hazing''.

In subsection (c) the words ''dealt with'' are substituted for the words ''proceeded against, dealt with, and punished''. The word ''regulations'' is substituted for the word ''rules'' for uniformity and the words ''and breaches'' are omitted as surplusage. The words ''except by sentence of a court-martial'' are substituted for the words ''except under the provisions of section three of this Act'' because §3 of the source statute provided for a Naval Academy court-martial with special provisions for handling cases involving hazing. The enactment of the Uniform Code of Military Justice made midshipmen at the Naval Academy subject to the same military law which applies generally to the naval service, thereby superseding the special type of court-martial for midshipmen. A court-martial under the Uniform Code of Military Justice has the power to sentence anyone convicted by it to dismissal if authorized by the Table of Maximum Punishments.

In subsections (d) and (e) all that part of the source text preceding the proviso is omitted as superseded by the Uniform Code of Military Justice. The words ''in a military or naval prison or elsewhere'' are omitted as surplusage.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 inserted '', the term'' after ''In this chapter''.

1985—Subsec. (e). Pub. L. 99–145 substituted ''persons'' for ''men''.

§ 6965. Failure to report violation: dismissal

(a) Each officer stationed at the Naval Academy, each midshipman officer, each midshipman petty officer, and each civilian member of the teaching staff of the Academy shall report promptly to the Superintendent of the Naval Academy any fact that tends to show the commission of hazing or any violation of an Academy regulation by a midshipman.

(b) An officer of the naval service who fails to make a report required by subsection (a) shall be tried by court-martial and if convicted shall be dismissed from the naval service.

(c) A civilian member of the teaching staff of the Academy who fails to make a report re-

quired by subsection (a) shall, with the approval of the Secretary of the Navy, be dismissed by the Superintendent.

(Aug. 10, 1956, ch. 1041, 70A Stat. 433.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6965	34 U.S.C. 1068.	Apr. 9, 1906, ch. 1370, §5, 34 Stat. 105.

In subsection (a) the words ''each officer stationed at the Naval Academy, each midshipman officer, each midshipman petty officer, and each civilian member of the teaching staff of the Academy shall'' are substituted for the words ''it shall be the duty of every professor, assistant professor, academic officer, or any cadet officer or cadet petty officer, or instructor, as well as every other officer stationed at the United States Naval Academy to'' to state the current applicability of the provision. The words ''commission of hazing'' are substituted for the words ''violation * * * of any of the provisions of this Act''.

In subsection (b) the words ''for neglect of duty'' are omitted inasmuch as the Uniform Code of Military Justice sets out the offenses for which persons subject to the Code may be tried.

§ 6966. Course of study

(a) The course at the Naval Academy is four years.

(b) The Secretary of the Navy shall arrange the course so that classes will not be held on Sunday.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6966(a)	34 U.S.C. 1054.	Mar. 7, 1912, ch. 53 (1st 11 words), 37 Stat. 73.
6966(b)	34 U.S.C. 1056.	R.S. 1526.

In subsection (b) the words ''of studies and the order of recitations'' are omitted as surplusage. The words ''classes will not be held on Sunday'' are substituted for the words ''students in said institution shall not be required to pursue their studies on Sunday''.

§ 6967. Degree on graduation

Under regulations prescribed by the Secretary of the Navy, the Superintendent of the Naval Academy may confer the degree of bachelor of science upon graduates of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6967	34 U.S.C. 1057a (less last sentence).	May 25, 1933, ch. 37, 48 Stat. 73 (less last sentence); Aug. 9, 1946, ch. 932, 60 Stat. 968; Aug. 4, 1949, ch. 393, §13, 63 Stat. 559; Aug. 18, 1949, ch. 476, 63 Stat. 614.

The word ''regulations'' is substituted for the words ''such rules and regulations''. Since the Naval Academy is now accredited, the words ''from and after the date of accrediting of said Academy'' are omitted as executed.

DEGREES FOR PERSONS WHO GRADUATED BEFORE ACCREDITING OF NAVAL ACADEMY

Section 35 of act Aug. 10, 1956, provided in part that, under conditions prescribed by the Secretary of the Navy, the Superintendent of the United States Naval Academy may confer the degree of bachelor of science upon living graduates of the Academy who were graduated before the date of accrediting of the Academy and who meet the requirements of the Academy for that degree.

§ 6968. Board of Visitors

(a) A Board of Visitors to the Naval Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Navy, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 434; Pub. L. 96–579, §13(b), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 104–106, div. A, title X, §1061(e)(2), title XV, §1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub.

L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6968(a), (b).	34 U.S.C. 1083.	June 29, 1948, ch. 714, § 1, 62 Stat. 1094.
	34 U.S.C. 1084.	June 29, 1948, ch. 714, § 2, 62 Stat. 1094.
6968(c)	34 U.S.C. 1085.	June 29, 1948, ch. 714, § 3, 62 Stat. 1094.
6968(d)	34 U.S.C. 1086.	June 29, 1948, ch. 714, § 4, 62 Stat. 1094; June 30, 1954, ch. 432, § 732, 68 Stat. 356.
6968(e), (f), (g).	34 U.S.C. 1087.	June 29, 1948, ch. 714, § 5, 62 Stat. 1094.
6968(h)	34 U.S.C. 1088.	June 29, 1948, ch. 714, § 6, 62 Stat. 1094.

In subsection (a) the words ''A Board of Visitors to the Naval Academy is constituted annually'' are substituted for the words ''There shall be appointed * * * every year a Board of Visitors'', since appointments, in the strict sense, are not involved.

In subsection (b) the language establishing staggered terms is eliminated as executed, and the existence of such terms is recognized by the use of the words ''two persons shall be designated by him each year to succeed the members whose terms expire that year''. No effect is given to the language ''the nine Presidential appointees''. The hearings indicate that one of the bills considered provided for nine such ''appointees'', and it appears that the number nine was inadvertently retained. The provision specifically authorizes only six Presidential designees.

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (a)(3). Pub. L. 104–106, § 1502(a)(12), substituted ''National Security'' for ''Armed Services''.

Subsec. (h). Pub. L. 104–106, § 1061(e)(2), struck out ''is entitled to not more than $5 a day and'' after ''each adviser''.

1980—Subsec. (b). Pub. L. 96–579 required member whose term of office had expired to continue service until appointment of a successor.

§ 6969. Band: composition

(a) The Naval Academy Band shall be composed of one leader, one second leader, and such enlisted members of the Navy as may be assigned.

(b) In determining years of service for the purpose of retirement, and in determining eligibility for reenlistment bonus, the members who are assigned as leader and second leader shall be treated as if they had not been so assigned.

(c) The enlisted members assigned to the Naval Academy Band shall be distributed in grade substantially the same as in the United States Navy Band.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435; Pub. L. 87–649, § 14c(52), Sept. 7, 1962, 76 Stat. 501.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6969	34 U.S.C. 1091a.	Feb. 14, 1931, ch. 184, 46 Stat. 1111; July 17, 1953, ch. 226, § 2, 67 Stat. 181.

In subsection (a) the words ''of the Navy'' are supplied since the requirement that the distribution in ratings be similar to that in the United States Navy Band indicates that the Naval Academy Band should not include members of the Marine Corps, and it is so interpreted.

In subsection (b) the words ''an officer in the grade of warrant officer, W–1,'' are substituted for the words ''a warrant officer'' because the Warrant Officer Act of 1954 established the grade of warrant officer, W–1, in lieu of all the former warrant officer (as distinguished from commissioned warrant officer) grades. The second sentence covers that part of the second proviso which relates to pay and makes reference to the Career Compensation Act of 1949, since it is that Act which governs entitlement to basic pay and the computation of cumulative years of creditable service. Retirement rights and reenlistment bonuses referred to in the second proviso are covered in the third sentence of this subsection, giving recognition to the fact that the status of the members who are assigned as leader and second leader of the band remains unchanged in these respects.

AMENDMENTS

1962—Subsec. (b). Pub. L. 87–649 repealed first and second sentences which related to pay and allowances for the leader and second leader of the Naval Academy Band, and to crediting of service for pay purposes. See sections 207 and 424 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

PERMANENT GRADE OF PRESENT LEADER OF BAND

Section 3 of act July 17, 1953, ch. 226, 67 Stat. 180, authorized President to appoint present leader of United States Navy Band to permanent commissioned grade of commander in the Navy, and that such appointment shall be deemed to be not in the line of the Navy or in any staff corps of the Navy.

[§ 6970. Repealed. Pub. L. 104–201, div. A, title III, § 370(c), Sept. 23, 1996, 110 Stat. 2499]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 435; Nov. 2, 1966, Pub. L. 89–718, § 37, 80 Stat. 1120, related to detailing and duties of storekeeper at the Naval Academy.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 370(e) of Pub. L. 104–201, set out as an Effective Date of 1996 Amendment note under section 2105 of Title 5, Government Organization and Employees.

§ 6971. Midshipmen's store, trade shops, dairy, and laundry: nonappropriated fund instrumentality and accounts

(a) OPERATION AS NONAPPROPRIATED FUND INSTRUMENTALITY.—The Superintendent of the Naval Academy shall operate the Naval Academy activities referred to in subsection (b) as a nonappropriated fund instrumentality under the jurisdiction of the Navy.

(b) COVERED ACTIVITIES.—The nonappropriated fund instrumentality required under subsection (a) shall consist of the following Naval Academy activities:

(1) The midshipmen's store.
(2) The barber shop.
(3) The cobbler shop.
(4) The tailor shop.
(5) The dairy (if any).
(6) The laundry.

(c) NONAPPROPRIATED FUND ACCOUNTS.—The Superintendent of the Naval Academy shall ad-

minister a separate nonappropriated fund account for each of the Naval Academy activities included in the nonappropriated fund instrumentality required under subsection (a).

(d) CREDITING OF REVENUE.—The Superintendent shall credit all revenue received from a Naval Academy activity referred to in subsection (b) to the account administered with respect to that activity under subsection (c), and amounts so credited shall be available for operating expenses of that activity.

(e) REGULATIONS.—This section shall be carried out under regulations prescribed by the Secretary of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435; Pub. L. 89–718, § 38, Nov. 2, 1966, 80 Stat. 1120; Pub. L. 103–337, div. A, title III, § 376, Oct. 5, 1994, 108 Stat. 2736; Pub. L. 104–201, div. A, title III, § 370(a), Sept. 23, 1996, 110 Stat. 2498; Pub. L. 105–85, div. B, title XXVIII, § 2871(c)(1), Nov. 18, 1997, 111 Stat. 2015.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6971(a)	34 U.S.C. 1108b (less last proviso).	July 26, 1946, ch. 675, § 2 (less last proviso), 60 Stat. 704.
6971(b)	34 U.S.C. 1106.	Aug. 5, 1939, ch. 448, § 1, 53 Stat. 1210.

In subsection (a) the second listing of the activities is omitted for brevity.

In subsection (b) the words ''including midshipmen'' are omitted as surplusage. The words ''are available for the maintenance of'' are substituted for the words ''are appropriated for the purpose of providing and maintaining''.

AMENDMENTS

1997—Subsec. (b)(5). Pub. L. 105–85 inserted ''(if any)'' before period at end.

1996—Pub. L. 104–201 substituted ''trade shops, dairy, and laundry: nonappropriated fund instrumentality and accounts'' for ''laundry, barber shop, cobbler shop, tailor shop, and dairy: disposition of funds'' in section catchline and amended text generally. Prior to amendment, text consisted of one undesignated par. providing for deposit and expenditure of funds from operation of midshipmen's store, including barber shop, cobbler shop, and tailor shop at Naval Academy, Academy dairy, and Academy laundry.

1994—Pub. L. 103–337 struck out ''(a)'' before ''Funds collected from the operation of the midshipmen's'', substituted ''the Academy dairy, and the Academy laundry'' for ''and the Academy dairy'', and struck out subsec. (b) which read as follows: ''Funds collected from the operation of the Academy laundry shall be accounted for as public funds and are available for the maintenance of necessary laundry service for Academy activities and personnel.''

1966—Subsec. (a). Pub. L. 89–718 substituted ''person designated by the Secretary of the Navy under section 6970(b) of this title'' for ''Bureau of Supplies and Accounts''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 370(e) of Pub. L. 104–201, set out as a note under section 2105 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6976 of this title.

§ 6972. Chapel: crypt and window spaces

The crypt and window spaces of the Naval Academy Chapel may be used only for memorials to officers of the Navy who have successfully commanded a fleet or squadron in battle or who have received the thanks of Congress for conspicuously distinguished services in time of war. No memorial to an officer may be accepted for, or installed in, the crypt or window spaces until at least five years after the death of that officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 435.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6972	34 U.S.C. 1111.	Mar. 3, 1909, ch. 255, 35 Stat. 773 (2d par.).

The words ''United States'' in connection with the chapel, the words ''of the United States'' in connection with naval officers and with Congress, and the words ''or may receive'' are omitted as surplusage. The proviso is omitted as executed.

§ 6973. Gifts, bequests, and loans of property: acceptance for benefit and use of Naval Academy

(a) The Secretary of the Navy may accept, hold, administer, and spend any gift or bequest of personal property, and may accept, hold, and administer any loan of personal property other than money, that is made on the condition that it be used for the benefit of, or for use in connection with, the Naval Academy or the Naval Academy Museum, its collection, or its services. Gifts and bequests of money and the proceeds from the sales of property received as gifts shall be deposited in the Treasury in the fund called ''United States Naval Academy Gift and Museum Fund''. The Secretary may disburse funds deposited under this subsection for the benefit or use of the Naval Academy (including the Naval Academy Museum) subject to the terms of the gift or bequest.

(b) The Secretary shall prescribe written guidelines to be used for determinations of whether the acceptance of money, any personal property, or any loan of personal property under subsection (a) would reflect unfavorably on the ability of the Department of the Navy or any officer or employee of the Department of the Navy to carry out responsibilities or duties in a fair and objective manner, or would compromise either the integrity or the appearance of the integrity of any program of the Department of the Navy or any officer or employee of the Department of the Navy who is involved in any such program.

(c) For the purpose of Federal income, estate, and gift taxes, property that is accepted under this section is considered as a gift or bequest to or for the use of the United States.

(d) Upon the request of the Secretary of the Navy, the Secretary of the Treasury may invest, reinvest, or retain investments of money or securities comprising any part of the United States Naval Academy Gift and Museum Fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from those securities shall be deposited to the credit of the United States Naval Academy Gift and Museum Fund and may be disbursed as provided in this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 436; Pub. L. 106–398, §1 [[div. A], title IX, §942(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–241.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6973(a)	34 U.S.C. 1115.	Mar. 31, 1944, ch. 147, §1, 58 Stat. 135.
	34 U.S.C. 1115a.	Mar. 31, 1944, ch. 147, §2, 58 Stat. 135.
6973(b)	34 U.S.C. 1115b.	Mar. 31, 1944, ch. 147, §3, 58 Stat. 135.
6973(c)	34 U.S.C. 1115c.	Mar. 31, 1944, ch. 147, §4, 58 Stat. 135.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title IX, §942(c)(4)], substituted ''Gifts, bequests, and loans of property: acceptance for benefit and use of Naval Academy'' for ''Gifts and bequests: acceptance for benefit of Naval Academy'' as section catchline.

Subsec. (a). Pub. L. 106–398, §1 [[div. A], title IX, §942(c)(1)], in first sentence, substituted ''any gift or bequest of personal property, and may accept, hold, and administer any loan of personal property other than money, that is'' for ''gifts and bequests of personal property'' and inserted ''or the Naval Academy Museum, its collection, or its services'' before period at end, in second sentence, substituted ''United States Naval Academy Gift and Museum Fund'' for ''United States Naval Academy general gift fund'', and, in last sentence, inserted ''(including the Naval Academy Museum)'' after ''the Naval Academy''.

Subsecs. (b), (c). Pub. L. 106–398, §1 [[div. A], title IX, §942(c)(2)], added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title IX, §942(c)(3)], substituted ''United States Naval Academy Gift and Museum Fund'' for ''United States Naval Academy general gift fund'' in two places.

Pub. L. 106–398, §1 [[div. A], title IX, §942(c)(2)(A)], redesignated subsec. (c) as (d).

TEMPORARY AUTHORITY TO DISPOSE OF GIFT PREVIOUSLY ACCEPTED FOR NAVAL ACADEMY

Pub. L. 106–398, §1 [[div. A], title IX, §943], Oct. 30, 2000, 114 Stat. 1654, 1654A–243, provided that: ''Notwithstanding section 6973 of title 10, United States Code, during fiscal year 2001 the Secretary of the Navy may dispose of a gift accepted before the date of the enactment of this Act [Oct. 30, 2000] for the United States Naval Academy by disbursing from the United States Naval Academy general gift fund to an entity designated by the donor of the gift the amount equal to the current cash value of that gift.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6974 of this title; title 26 sections 170, 2055.

§ 6974. United States Naval Academy Museum Fund: references to Fund

Any reference in a law, regulation, document, paper, or other record of the United States to the United States Naval Academy Museum Fund formerly maintained under this section shall be deemed to refer to the United States Naval Academy Gift and Museum Fund maintained under section 6973 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 436; Pub. L. 106–398, §1 [[div. A], title IX, §942(d)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–242.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
6974(a)	34 U.S.C. 1118.	Mar. 26, 1938, ch. 52, §3, 52 Stat. 119.
6974(b)	34 U.S.C. 1119.	Mar. 26, 1938, ch. 52, §4, 52 Stat. 119.
6974(c)	34 U.S.C. 1120.	Mar. 26, 1938, ch. 52, §5, 52 Stat. 119.

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, section related to acceptance and administration of gifts, bequests, and loans for the benefit of the Naval Academy Museum.

CONSOLIDATION OF NAVAL ACADEMY GENERAL GIFT FUND AND NAVAL ACADEMY MUSEUM FUND

Pub. L. 106–398, §1 [[div. A], title IX, §942(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–241, provided that:

''(1) The Secretary of the Navy shall transfer all amounts in the United States Naval Academy Museum Fund established by section 6974 of title 10, United States Code, to the gift fund maintained for the benefit and use of the United States Naval Academy under section 6973 of such title. Upon completing the transfer, the Secretary shall close the United States Naval Academy Museum Fund.

''(2) Amounts transferred under this subsection shall be merged with other amounts in the gift fund to which transferred and shall be available for the purposes for which amounts in that gift fund are available.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 2055.

§ 6975. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Navy may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Naval Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Navy may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Navy may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term ''major project'' means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least $1,000,000.

(2) QUALIFIED GUARANTEE.—The term ''qualified guarantee'', with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Navy, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Naval Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term ''qualified account control agreement'', with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Navy, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Naval Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term ''major United States commercial bank'' means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Navy to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term ''major United States investment management firm'' means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Navy to qualify the firm as a major investment management firm.

(Added Pub. L. 106–65, div. B, title XXVIII, § 2871(b)(1), Oct. 5, 1999, 113 Stat. 873; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

PRIOR PROVISIONS

A prior section 6975, added Pub. L. 103–337, div. A, title V, § 556(b)(1), Oct. 5, 1994, 108 Stat. 2774, related to position of athletic director of Naval Academy and to administration of nonappropriated fund account for athletics program of Naval Academy, prior to repeal by Pub. L. 104–106, div. A, title V, § 533(b), Feb. 10, 1996, 110 Stat. 315; Pub. L. 105–85, div. A, title X, § 1073(d)(1)(C), Nov. 18, 1997, 111 Stat. 1905, effective Oct. 5, 1994.

AMENDMENTS

2000—Subsec. (e)(5). Pub. L. 106–398 inserted a closing parenthesis after ''80b–2)'' in introductory provisions.

§ 6976. Operation of Naval Academy dairy farm

(a) DISCRETION REGARDING CONTINUED OPERATION.—(1) Subject to paragraph (2), the Secretary of the Navy may terminate or reduce the dairy or other operations conducted at the Naval Academy dairy farm located in Gambrills, Maryland.

(2) Notwithstanding the termination or reduction of operations at the Naval Academy dairy farm under paragraph (1), the real property containing the dairy farm (consisting of approximately 875 acres)—

(A) may not be declared to be excess real property to the needs of the Navy or transferred or otherwise disposed of by the Navy or any Federal agency; and

(B) shall be maintained in its rural and agricultural nature.

(b) LEASE AUTHORITY.—(1) Subject to paragraph (2), to the extent that the termination or reduction of operations at the Naval Academy dairy farm permit, the Secretary of the Navy may lease the real property containing the dairy farm, and any improvements and personal property thereon, to such persons and under such terms as the Secretary considers appropriate. In leasing any of the property, the Secretary may give a preference to persons who will continue dairy operations on the property.

(2) Any lease of property at the Naval Academy dairy farm shall be subject to a condition

that the lessee maintain the rural and agricultural nature of the leased property.

(c) LEASE PROCEEDS.—All money received from a lease entered into under subsection (b) shall be retained by the Superintendent of the Naval Academy and shall be available to cover expenses related to the property described in subsection (a), including reimbursing nonappropriated fund instrumentalities of the Naval Academy.

(d) EFFECT OF OTHER LAWS.—Nothing in section 6971 of this title shall be construed to require the Secretary of the Navy or the Superintendent of the Naval Academy to operate a dairy farm for the Naval Academy in Gambrills, Maryland, or any other location.

(Added Pub. L. 105–85, div. B, title XXVIII, § 2871(a)(1), Nov. 18, 1997, 111 Stat. 2014; amended Pub. L. 106–65, div. B, title XXVIII, § 2814, Oct. 5, 1999, 113 Stat. 851.)

AMENDMENTS

1999—Subsecs. (c), (d). Pub. L. 106–65 added subsec. (c) and redesignated former subsec. (c) as (d).

§ 6977. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Navy may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Navy shall prescribe regulations for the administration of this section.

(Added Pub. L. 105–261, div. A, title X, § 1063(b)(1), Oct. 17, 1998, 112 Stat. 2130.)

CHAPTER 605—UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7041. Function.
7042. Superintendent; assistants.
7043. Academic Dean.
7044. Civilian teachers: number; compensation.
7045. Officers of the other armed forces; enlisted members: admission.
7046. Officers of foreign countries: admission.
7047. Students at institutions of higher education: admission.
7048. Conferring of degrees on graduates.
7049. Defense industry civilians: admission to defense product development program.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title V, § 535(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–113, added item 7049.

1997—Pub. L. 105–85, div. A, title V, § 551(b)(2), Nov. 18, 1997, 111 Stat. 1748, substituted ''Officers of the other armed forces; enlisted members:'' for ''Officers of Army, Air Force, and Coast Guard:'' in item 7045.

1992—Pub. L. 102–484, div. A, title X, § 1073(b), Oct. 23, 1992, 106 Stat. 2511, added item 7047 and redesignated former item 7047 as 7048.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

§ 7041. Function

There is a United States Naval Postgraduate School for the advanced instruction and technical education of commissioned officers of the naval service in their practical and theoretical duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7041	34 U.S.C. 1076.	July 31, 1947, ch. 420, § 1, 61 Stat. 705.

The words ''There is a'' are substituted for the words ''That the Secretary of the Navy is hereby authorized and directed to establish the'', as the Postgraduate School is in operation. The words ''technical education'' are substituted for the word ''training'' to describe more aptly the higher level of instruction at the Postgraduate School. The words ''naval service'' are substituted for the words ''Regular Navy and Marine Corps and the reserve components thereof''. The word ''their'' is substituted for the words ''of commissioned officers''.

§ 7042. Superintendent; assistants

(a) The Secretary of the Navy shall detail as Superintendent of the Naval Postgraduate School an officer on the active-duty list in the line of the Navy eligible for command at sea not below the grade of captain. The Superintendent has military command of the Postgraduate School.

(b) The Secretary shall detail officers of the Navy and the Marine Corps of appropriate grades and qualifications to assist the Superintendent in—

(1) the advanced instruction and technical education of students; and

(2) the administration of the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 96–513, title V, § 503(53), Dec. 12, 1980, 94 Stat. 2915.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7042	34 U.S.C. 1076a.	July 31, 1947, ch. 420, §2, 61 Stat. 705.

In subsection (a) the word ''Regular'' is omitted as covered by the term ''active list''.

In subsection (b) the words ''line and staff'' and ''as may be necessary'' are omitted as surplusage. The word ''grades'' is substituted for the word ''ranks''. The words ''advanced instruction and technical education'' are substituted for the words ''training * * * in the practical and theoretical duties of commissioned naval officers''.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 7043. Academic Dean

(a) There is at the Naval Postgraduate School the civilian position of Academic Dean. The Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy upon the recommendation of the Postgraduate School Council consisting of the Superintendent, the Deputy Superintendent, and the directors of the Technical, Administrative, and Professional Divisions of the school.

(b) The Academic Dean is entitled to such compensation for his services as the Secretary prescribes, but not more than the rate of compensation authorized for level IV of the Executive Schedule.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 85–861, §1(148), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 89–536, Aug. 11, 1966, 80 Stat. 346; Pub. L. 96–513, title V, §513(22), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 105–85, div. A, title V, §551(c), Nov. 18, 1997, 111 Stat. 1748.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7043	34 U.S.C. 1074 (1st 98 words). 34 U.S.C. 1076c.	June 10, 1946, ch. 298 (1st 98 words), 60 Stat. 236. July 31, 1947, ch. 420, §4, 61 Stat. 706.

The words ''of the Naval Academy'' following ''Postgraduate School'' are dropped as a result of §4 of the Act of July 31, 1947 (supra). This Act created the Postgraduate School and in effect transferred the position of Academic Dean of the Postgraduate School of the Naval Academy to the newly created Postgraduate School.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7043	34 App.:1076c (less last sentence).	Aug. 9, 1955, ch. 669, §1 (less last sentence), 69 Stat. 607.

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b), is set out in section 5315 of Title 5, Government Organization and Employees.

AMENDMENTS

1997—Subsec. (b). Pub. L. 105–85 substituted ''level IV of the Executive Schedule'' for ''grade GS–18 of the General Schedule under section 5332 of title 5''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''authorized for grade GS–18 of the General Schedule under section 5332 of title 5'' for ''provided for grade 18 of the general schedule of the Classification Act of 1949, as amended''.

1966—Subsec. (b). Pub. L. 89–536 substituted for a limit of $13,500 per annum a rate of compensation comparable to grade 18 of the general schedule of the Classification Act of 1949, as amended.

1958—Pub. L. 85–861, among other changes, increased the maximum compensation of the Academic Dean from $12,000 to $13,500 a year.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 7044. Civilian teachers: number; compensation

The Secretary of the Navy may employ as many civilians as he considers necessary to serve at the Naval Postgraduate School under the direction of the Superintendent as senior professors, professors, associate professors, assistant professors, and instructors. The Secretary shall prescribe the compensation of those persons.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7044	34 U.S.C. 1076b (less last sentence).	July 31, 1947, ch. 420, §3 (less last sentence), 61 Stat. 706; Aug. 30, 1954, ch. 1076, §1(21), 68 Stat. 968.

The words ''as many * * * as he considers necessary'' are substituted for the words ''such number * * * as in his opinion may be necessary for the proper instruction of students in the theoretical, academic, and scientific subjects pertaining to the technical and practical aspects of the naval profession'' for brevity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 7045. Officers of the other armed forces; enlisted members: admission

(a)(1) The Secretary of the Navy may permit officers of the Army, Air Force, and Coast Guard to receive instruction at the Naval Postgraduate School. The numbers and grades of such officers shall be as agreed upon by the Secretary of the Navy with the Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security, respectively.

(2) The Secretary may permit an enlisted member of the armed forces who is assigned to the Naval Postgraduate School or to a nearby command to receive instruction at the Naval Postgraduate School. Admission of enlisted members for instruction under this paragraph shall be on a space-available basis.

(b) The Department of the Army, the Department of the Air Force, and the Department of

Homeland Security shall bear the cost of the instruction received by officers detailed for that instruction by the Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security, respectively. In the case of an enlisted member permitted to receive instruction at the Postgraduate School, the Secretary of the Navy shall charge that member only for such costs and fees as the Secretary considers appropriate (taking into consideration the admission of enlisted members on a space-available basis).

(c) While receiving instruction at the Postgraduate School, members of the Army, Air Force, and Coast Guard are subject to such regulations, as determined appropriate by the Secretary of the Navy, as apply to students who are members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 437; Pub. L. 96–513, title V, §513(23), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 105–85, div. A, title V, §551(a), (b)(1), Nov. 18, 1997, 111 Stat. 1747; Pub. L. 105–261, div. A, title X, §1069(a)(6), Oct. 17, 1998, 112 Stat. 2136; Pub. L. 107–296, title XVII, §1704(b)(5), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7045	34 U.S.C. 1076e.	July 31, 1947, ch. 420, §6, 61 Stat. 706.

The section is enlarged to cover officers of the Air Force under authority of §305(a) of the National Security Act of 1947, as amended (5 U.S.C. 171e).

In subsection (a) the words ''at the request of the Secretary of the Army and the Secretary of the Treasury'' are omitted as surplusage. The words ''to receive instruction'' are inserted after the listing of the services and the words ''attendance and'' are omitted. The word ''grades'' is substituted for the word ''ranks''.

In subsection (c) the words ''rules and'' are omitted. The words ''who are officers of the naval service'' are substituted for the words ''of the United States Navy'', since officers of the Marine Corps are occasionally ordered to attend the Postgraduate School on the same basis as officers of the Navy.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–296, §1704(b)(5)(A), substituted ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security'' for ''Secretaries of the Army, Air Force, and Transportation''.

Subsec. (b). Pub. L. 107–296, §1704(b)(5), substituted ''Department of Homeland Security'' for ''Department of Transportation'' and ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security'' for ''Secretaries of the Army, Air Force, and Transportation''.

1998—Subsec. (c). Pub. L. 105–261 struck out ''the'' after ''are subject to''.

1997—Pub. L. 105–85, §551(b)(1), substituted ''Officers of the other armed forces; enlisted members:'' for ''Officers of Army, Air Force, and Coast Guard:'' in section catchline.

Subsec. (a). Pub. L. 105–85, §551(a)(1), designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 105–85, §551(a)(2), substituted ''officers detailed'' for ''the students detailed'' and inserted at end ''In the case of an enlisted member permitted to receive instruction at the Postgraduate School, the Secretary of the Navy shall charge that member only for such costs and fees as the Secretary considers appropriate (taking into consideration the admission of enlisted members on a space-available basis).''

Subsec. (c). Pub. L. 105–85, §551(a)(3), substituted ''members'' for ''officers'' in two places and ''such regulations, as determined appropriate by the Secretary of the Navy,'' for ''same regulations''.

1980—Subsec. (a). Pub. L. 96–513, §513(23), substituted references to Transportation Department and Secretary for references to Treasury Department and Secretary, respectively.

Subsec. (b). Pub. L. 96–513, §513(23)(A), substituted reference to Transportation Secretary for reference to Treasury Secretary.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 7046. Officers of foreign countries: admission

(a) The Secretary of the Navy, upon authorization of the President, may permit commissioned officers of the military services of foreign countries to receive instruction at the Naval Postgraduate School.

(b) Officers receiving instruction under this section are subject to the same regulations governing attendance, discipline, discharge, and standards of study as apply to students who are officers of the United States naval service.

(c) No officer of a foreign country is entitled to an appointment in the Navy or the Marine Corps by reason of his completion of the prescribed course of study at the Postgraduate School.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7046	34 U.S.C. 1076d.	July 31, 1947, ch. 420, §5, 61 Stat. 706.

In subsection (b) the words ''rules and'' are omitted. The words ''United States naval service'' are substituted for the words ''United States Navy'' for uniformity.

In subsection (c) the words ''to any office or position'' are omitted as surplusage. The words ''or Marine Corps'' are inserted, as the word ''Navy'' in this context has been interpreted to include officers of the Marine Corps.

§ 7047. Students at institutions of higher education: admission

(a) ADMISSION PURSUANT TO RECIPROCAL AGREEMENT.—The Secretary of the Navy may enter into an agreement with an accredited institution of higher education to permit a student described in subsection (b) enrolled at that institution to receive instruction at the Naval Postgraduate School on a tuition-free basis. In exchange for the admission of the student, the institution of higher education shall be required to permit an officer of the armed forces to attend on a tuition-free basis courses offered by that institution corresponding in length to the

instruction provided to the student at the Naval Postgraduate School.

(b) ELIGIBLE STUDENTS.—A student enrolled at an institution of higher education that is party to an agreement under subsection (a) may be admitted to the Naval Postgraduate School pursuant to that agreement if—

(1) the student is a citizen of the United States or lawfully admitted for permanent residence in the United States; and

(2) the Secretary of the Navy determines that the student has a demonstrated ability in a field of study designated by the Secretary as related to naval warfare and national security.

(Added Pub. L. 102–484, div. A, title X, § 1073(a)(2), Oct. 23, 1992, 106 Stat. 2510.)

PRIOR PROVISIONS

A prior section 7047 was renumbered section 7048 of this title.

§ 7048. Conferring of degrees on graduates

(a) The Superintendent of the Naval Postgraduate School, under regulations prescribed by the Secretary of the Navy, may confer on any qualified graduate a bachelor's, master's, or doctor's degree in engineering or a related field.

(b) A degree may not be conferred under this section unless the curriculum leading to that degree is accredited by the appropriate professional authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438, § 7047; renumbered § 7048, Pub. L. 102–484, div. A, title X, § 1073(a)(1), Oct. 23, 1992, 106 Stat. 2510.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7047	34 U.S.C. 1076f.	Dec. 7, 1945, ch. 559, 59 Stat. 603; July 31, 1947, ch. 420, § 7, 61 Stat. 706.

In subsection (a) the words ''of science'' are omitted as surplusage since the curriculum is in engineering and related fields.

In subsection (b) the words ''from time to time'' are omitted as surplusage.

AMENDMENTS

1992—Pub. L. 102–484 renumbered section 7047 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7049 of this title.

§ 7049. Defense industry civilians: admission to defense product development program

(a) AUTHORITY FOR ADMISSION.—The Secretary of the Navy may permit eligible defense industry employees to receive instruction at the Naval Postgraduate School in accordance with this section. Any such defense industry employee may only be enrolled in, and may only be provided instruction in, a program leading to a master's degree in a curriculum related to defense product development. No more than 10 such defense industry employees may be enrolled at any one time. Upon successful completion of the course of instruction in which enrolled, any such defense industry employee may be awarded an appropriate degree under section 7048 of this title.

(b) ELIGIBLE DEFENSE INDUSTRY EMPLOYEES.—For purposes of this section, an eligible defense industry employee is an individual employed by a private firm that is engaged in providing to the Department of Defense significant and substantial defense-related systems, products, or services. A defense industry employee admitted for instruction at the school remains eligible for such instruction only so long as that person remains employed by the same firm.

(c) ANNUAL CERTIFICATION BY THE SECRETARY OF THE NAVY.—Defense industry employees may receive instruction at the school during any academic year only if, before the start of that academic year, the Secretary of the Navy determines, and certifies to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, that providing instruction to defense industry employees under this section during that year—

(1) will further the military mission of the school;

(2) will enhance the ability of the Department of Defense and defense-oriented private sector contractors engaged in the design and development of defense systems to reduce the product and project lead times required to bring such systems to initial operational capability; and

(3) will be done on a space-available basis and not require an increase in the size of the faculty of the school, an increase in the course offerings of the school, or an increase in the laboratory facilities or other infrastructure of the school.

(d) PROGRAM REQUIREMENTS.—The Secretary of the Navy shall ensure that—

(1) the curriculum for the defense product development program in which defense industry employees may be enrolled under this section is not readily available through other schools and concentrates on defense product development functions that are conducted by military organizations and defense contractors working in close cooperation; and

(2) the course offerings at the school continue to be determined solely by the needs of the Department of Defense.

(e) TUITION.—The Superintendent of the school shall charge tuition for students enrolled under this section at a rate not less than the rate charged for employees of the United States outside the Department of the Navy.

(f) STANDARDS OF CONDUCT.—While receiving instruction at the school, students enrolled under this section, to the extent practicable, are subject to the same regulations governing academic performance, attendance, norms of behavior, and enrollment as apply to Government civilian employees receiving instruction at the school.

(g) USE OF FUNDS.—Amounts received by the school for instruction of students enrolled under this section shall be retained by the school to defray the costs of such instruction. The source, and the disposition, of such funds shall be specifically identified in records of the school.

(Added Pub. L. 106–398, § 1 [[div. A], title V, § 535(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–112.)

PROGRAM EVALUATION AND REPORT

Pub. L. 106–398, §1 [[div. A], title V, §535(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–113, provided that:

''(1) Before the start of the fourth year of instruction, but no earlier than the start of the third year of instruction, of defense industry employees at the Naval Postgraduate School under section 7049 of title 10, United States Code, as added by subsection (a), the Secretary of the Navy shall conduct an evaluation of the admission of such students under that section. The evaluation shall include the following:

''(A) An assessment of whether the authority for instruction of nongovernment civilians at the school has resulted in a discernible benefit for the Government.

''(B) Determination of whether the receipt and disposition of funds received by the school as tuition for instruction of such civilians at the school have been properly identified in records of the school.

''(C) A summary of the disposition and uses made of those funds.

''(D) An assessment of whether instruction of such civilians at the school is in the best interests of the Government.

''(2) Not later than 30 days after completing the evaluation referred to in paragraph (1), the Secretary of the Navy shall submit to the Secretary of Defense a report on the program under such section. The report shall include—

''(A) the results of the evaluation under paragraph (1);

''(B) the Secretary's conclusions and recommendation with respect to continuing to allow nongovernment civilians to receive instruction at the Naval Postgraduate School as part of a program related to defense product development; and

''(C) any proposals for legislative changes recommended by the Secretary.

''(3) Not later than 60 days after receiving the report of the Secretary of the Navy under paragraph (2), the Secretary of Defense shall submit the report, together with any comments that the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.''

CHAPTER 607—RETIREMENT OF CIVILIAN MEMBERS OF THE TEACHING STAFFS OF THE UNITED STATES NAVAL ACADEMY AND UNITED STATES NAVAL POSTGRADUATE SCHOOL

Sec.
7081. Civilian member; definition; exceptions.
7082. Deferred annuity policy required.
7083. Annuity premium to be paid by monthly installments; government reimbursement.
7084. Age of retirement.
7085. Computation of life annuity.
7086. Physical disability retirement.
7087. Election of annuity for self and beneficiary.
7088. Regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

§ 7081. Civilian member: definition; exceptions

(a) In this chapter, the term ''civilian member'' means a civilian member of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School. It includes the Academic Dean of the Postgraduate School, senior professors, professors, associate professors, assistant professors, chief instructors, assistant chief instructors, and instructors.

(b) This chapter does not apply to any civilian member who was employed at the Naval Academy or the Postgraduate School on January 16, 1936, and who did not elect to participate in the benefits provided by the Act of January 16, 1936, ch. 3 (49 Stat. 1092).

(c) This chapter does not apply to any person who was a civilian member after September 30, 1956.

(Aug. 10, 1956, ch. 1041, 70A Stat. 438; Pub. L. 85–861, §1(149), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 101–189, div. A, title XVI, §1622(e)(8), Nov. 29, 1989, 103 Stat. 1605.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7081(a)	34 U.S.C. 1073d.	Jan. 16, 1936, ch. 3, §5, 49 Stat. 1093; Nov. 28, 1943, ch. 331, §2, 57 Stat. 595.
	34 U.S.C. 1074 (less 1st 98 words).	June 10, 1946, ch. 298 (less 1st 98 words), 60 Stat. 236.
	34 U.S.C. 1076b (last sentence).	July 31, 1947, ch. 420, §3 (last sentence), 61 Stat. 760; Aug. 30, 1954, ch. 1076, §1(21), 68 Stat. 968.
7081(b)	34 U.S.C. 1073c.	Jan. 16, 1936, ch. 3, §4, 49 Stat. 1092.
	34 U.S.C. 1073c–1 (2d proviso).	Jan. 16, 1936, ch. 3, §4A (2d proviso); added Nov. 28, 1943, ch. 331, §1, 57 Stat. 594.

Section 4 of the Act of January 16, 1936, ch. 3, 49 Stat. 1092, provided that persons who were then members of the teaching staff should have the right to participate in benefits under the Act if they requested such participation within 60 days. Members who were then under the civil-service retirement system were required to choose whether they would remain under it or would participate in the system established by the 1936 Act. They could not come under both. The section also authorized the Secretary of the Navy to supplement the retired income of members who elected to come under the 1936 Act and whose age in 1936 was such that they could not purchase adequate annuities before retiring. The provisions whereby members could elect to participate were temporary and are executed. The provisions relating to retired income are superseded by §4A, added by the Act of November 28, 1943, ch. 331, 57 Stat. 594. The only remaining effect of §4 and the second proviso of §4A is to exclude from the benefits and requirements of the 1936 Act persons who were members of the teaching staff in 1936 and did not elect to participate.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7081(c)	[No source].	[No source].

Subsection (c) is added to reflect the effect on chapter 607 of this title of the Act of July 31, 1956, ch. 804, §402(a) (70 Stat. 760) which brought the civilian faculties of the Naval Academy and Naval Postgraduate School under the Civil Service Retirement Act effective October 1, 1956, and provided that on and after that date the Act of January 16, 1936, ch. 3 (49 Stat. 1092) would no longer apply to civilians employed at those schools on or after that date.

REFERENCES IN TEXT

Act of January 16, 1936, ch. 3 (49 Stat. 1092), referred to in subsec. (b), was classified to sections 1073 to 1073f of former Title 34, Navy, and was repealed by act Aug. 10, 1956, ch. 1041, §53, 70A Stat. 641. See section 7081 et seq. of this title.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–189 inserted '', the term'' after ''In this chapter''.

1958—Subsec. (c). Pub. L. 85–861 added subsec. (c).

§ 7082. Deferred annuity policy required

Each civilian member, as a part of his contract of employment, shall carry, during his employment, a deferred annuity policy, having no cash surrender or loan provision, in a joint-stock life insurance corporation that is incorporated under the laws of a State and has a charter restriction that its business must be conducted without profit to its stockholders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7082	34 U.S.C. 1073.	Jan. 16, 1936, ch. 3, §1, 49 Stat. 1092.

The words ''whose employment commences from and after the date of approval of this act'' are omitted as surplusage. Under §4 of the Act, members already employed when the Act was approved were given 60 days in which to decide whether or not they wished to participate in the benefits provided by the Act. Those who chose not to participate are excluded from the application of this chapter by §7081 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7085, 7086 of this title.

§ 7083. Annuity premium to be paid by monthly installments; government reimbursement

Each civilian member shall make a monthly allotment in an amount equal to 10 percent of his monthly basic salary toward the purchase of his deferred annuity policy. For each month the allotment is in force, the pay account of the civilian member shall be credited monthly from appropriations made for this purpose with an additional amount equal to 5 percent of his monthly basic salary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439; Pub. L. 89–718, §39, Nov. 2, 1966, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7083	34 U.S.C. 1073a.	Jan. 16, 1936, ch. 3, §2, 49 Stat. 1092.

The words ''Chief, Field Branch, Bureau of Supplies and Accounts'' are substituted for the words ''Navy Allotment Office, Navy Department, Washington, District of Columbia'', to designate the agency through which allotments are now made.

AMENDMENTS

1966—Pub. L. 89–718 removed requirement that the 10 percent monthly allotment be made through the Chief, Field Branch, Bureau of Supplies and Accounts.

§ 7084. Age of retirement

A civilian member may be retired at any time after his sixty-fifth birthday, and shall be retired by June 30 following that birthday. However, in any special case the Secretary of the Navy may defer the retirement of a member until a date not later than the member's seventieth birthday.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7084	34 U.S.C. 1073b.	Jan. 16, 1936, ch. 3, §3, 49 Stat. 1092.

The words ''individual and'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7085 of this title.

§ 7085. Computation of life annuity

Each civilian member who retires under section 7084 of this title is entitled to a life annuity computed by multiplying his average annual compensation during any five consecutive years of allowable service, at his option, by his number of years of service, not exceeding 35, and dividing the product by 70. The retirement annuity payable to a retired civilian member under a policy required by section 7082 of this title is counted as part of the retirement annuity provided in this section. Any difference between the amount received by the retired civilian member under his annuity policy and the total annual amount to which he is entitled under this section shall be paid to him by the Secretary of the Navy from appropriations made for this purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7085	34 U.S.C. 1073c–1 (less 2d proviso).	Jan. 16, 1936, ch. 3, §4A (less 2d proviso); added Nov. 28, 1943, ch. 331, §1, 57 Stat. 594.

The words ''terminable on his death at the rate of the following total annual amount'' are omitted as surplusage, since they are covered by the words ''life annuity''.

The words ''basic salary, pay, or'' are omitted as surplusage, since they are covered by the word ''compensation''. The first proviso is omitted as unnecessary, since all existing rights and benefits of persons affected by this title are protected by a general saving provision.

INCREASE IN ANNUITIES OF CIVILIAN MEMBERS WHO RETIRED BEFORE APRIL 1, 1948

Section 30 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1563, provided that:

''(a) A retired civilian member of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School who retired before April 1, 1948, is entitled to be paid, out of applicable current appropriations, $300 a year in addition to the annuity to which he is entitled under section 7085 of title 10 [this section].

''(b) A retired civilian member whose annuity, when increased by $300 under subsection (a), is less than $1,860 is entitled to be paid an additional $300 a year out of applicable current appropriations.

''(c) Additions to the annuities of retired civilian members under subsection (b) do not increase the annuities payable to the survivors of those members.''

INCREASE OF ANNUITIES—1957

Pub. L. 85–40, May 31, 1957, 71 Stat. 42, provided: ''That the annuities, payable under chapter 607 of title 10, United States Code [this chapter], to civilian members of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School are increased as follows: That portion of an an-

nuity which is not in excess of $1,500 is increased by 12 per centum, and that portion of an annuity which is in excess of $1,500 is increased by 8 per centum. These increases shall not exceed the sum necessary to increase the annuity to $4,104, and are in addition to the increases authorized by Public Law 371, Eighty-fourth Congress. The monthly installments of each annuity shall be fixed at the nearest dollar.

''SEC. 2. The increases provided by section 1, when added to the annuities of retired civilian members of the teaching staff of the United States Naval Academy or the United States Naval Postgraduate School, do not increase the annuities of their survivors. The annuity of any such survivor, however, who is entitled to or becomes entitled to an annuity under chapter 607 of title 10, United States Code [this chapter], shall be increased in accordance with the following schedule:

''If annuity commences between—	*Portion of annuity not in excess of $1,500 shall be increased by—*	*Portion of annuity in excess of $1,500 shall be increased by—*
	per centum	*per centum*
Jan. 16, 1936, and June 30, 1955	12	8
July 1, 1955, and Dec. 31, 1955	10	7
Jan. 1, 1956, and June 30, 1956	8	6
July 1, 1956, and Dec. 31, 1956	6	4
Jan. 1, 1957, and June 30, 1957	4	2
July 1, 1957, and Dec. 31, 1957	2	1

''SEC. 3. Any provision of law, enacted after the effective date of this Act [May 31, 1957], which increases the annuities of retired employees and their survivors who are entitled to annuities under the Civil Service Retirement Act of May 29, 1930, as amended (5 U.S.C. 691 et seq.) [now covered by section 8331 et seq. 30 of Title 5], shall be applicable in like manner and to the same extent to civilian members of the teaching staff of the United States Naval Academy and of the United States Naval Postgraduate School and their survivors who are entitled to annuities under chapter 607 of title 10, United States Code [this chapter].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7086, 7087 of this title.

§ 7086. Physical disability retirement

(a) Each civilian member who has served not less than five years, and who, before reaching the age of 65, becomes totally disabled for useful and efficient service in his position, by reason of disease or injury not due to his own vicious habits, intemperance, or willful misconduct shall, upon his application or upon the request of the Secretary of the Navy, be retired with a life annuity computed under section 7085 of this title.

(b) The amount that the Secretary shall pay annually under this section is the difference between the total amount to which the retired member is entitled under subsection (a) and the immediate life annuity to which he is entitled at the time of his disability retirement under the annuity policy required by section 7082 of this title.

(c) Each civilian member retired under this section, unless the disability for which he was retired is permanent in character, shall be examined by a board of medical officers designated by the Superintendent of the Naval Academy or of the Postgraduate School, as appropriate, one year after his retirement and annually thereafter, until he becomes 65 years of age.

(d) Payments by the Secretary under this section shall be terminated if the retired civilian member is found to be sufficiently recovered for useful and efficient service in his former position and is offered reemployment in that position by the Superintendent.

(e) If a civilian member retired under this section is later reemployed by the United States, the payments by the Secretary shall be terminated.

(f) Each civilian member retired under this section who is reemployed as a civilian member of the teaching staff of the Naval Academy or the Naval Postgraduate School shall, upon his later retirement, be paid annually by the Secretary the difference between the total annual amount computed under section 7085 of this title and the immediate life annuity which the total premiums paid on his annuity contracts would buy.

(g) No person may receive payments from the Secretary of the Navy under this chapter and, for the same period of time, compensation under chapter 81 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 439; Pub. L. 89–718, § 40, Nov. 2, 1966, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7086	34 U.S.C. 1073c–2.	Jan. 16, 1936, ch. 3, § 4B; added Aug. 2, 1946, ch. 740, 60 Stat. 804.

In subsection (a) the words ''reaching the age of 65'' are substituted for the words ''becoming eligible for retirement under the conditions defined in the preceding sections hereof'', since a civilian member's 65th birthday is the date on which he becomes eligible for retirement under this chapter.

In subsection (c) the words ''or the Postgraduate School, as appropriate'' are inserted because the Postgraduate School and the Naval Academy are now two separate institutions.

In subsection (f) the words ''or the Naval Postgraduate School'' are inserted for the same reason.

In subsection (g) the words ''Federal Employees Compensation Act of September 7, 1916, as amended (5 U.S.C. 751 et seq.),'' are substituted for the words ''Act of Sept. 7, 1916, entitled 'An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes' ''. Authority for referring to this Act as the Federal Employees Compensation Act is contained in the Federal Employees Compensation Act Amendments of 1949, 63 Stat. 854. The words ''but this provision shall not bar the right of any claimant to the greater benefit conferred by either Act for any part of the same period'' are omitted as unnecessary.

AMENDMENTS

1966—Subsec. (g). Pub. L. 89–718 substituted ''chapter 81 of title 5'' for ''sections 751–756, 757–791, and 793 of title 5''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7087 of this title.

§ 7087. Election of annuity for self and beneficiary

(a) At the time of his retirement, a civilian member retiring under this chapter may elect to receive instead of the amount payable annually by the Secretary of the Navy under section 7085 or 7086 of this title a reduced annuity for his life and an annuity payable after his death to his beneficiary in either—

(1) an amount equal to his reduced annuity; or

(2) an amount equal to 50 percent of his reduced annuity.

The annuities payable to principal and beneficiary, under either election, shall be in amounts that have, on the date of the retirement of the civilian member, a combined actuarial value equal to the actuarial value of the annuity payable by the Secretary under section 7085 or 7086 of this title, as determined under actuarial tables prepared by the Director of the Office of Personnel Management.

(b) If the civilian member elects to take a reduced annuity under this section, he shall, at the time of his retirement, designate the beneficiary in writing and file the designation with the Secretary.

(c) The annuity payable under this section to the beneficiary of a deceased civilian member shall be terminated upon the death of the beneficiary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 440; Pub. L. 97–295, §1(45), Oct. 12, 1982, 96 Stat. 1298.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7087	34 U.S.C. 1073c–3.	Jan. 16, 1936, ch. 3, §4C; added Aug. 2, 1946, ch. 740, 60 Stat. 805.

In subsection (a) the words ''under actuarial tables prepared by the Civil Service Commission'' are substituted for the words ''under the provisions of the Civil Service Retirement Act'' because that Act, as amended in 1948, no longer provides for the computation of actuarial values. The Secretary of the Navy, in administering the provisions of law codified in this section, uses tables prepared by the Civil Service Commission prior to the 1948 amendment.

1982 ACT

This amends 10:7087(a) to reflect the transfer of functions from the Civil Service Commission to the Director of the Office of Personnel Management under section 102 of Reorganization Plan No. 2 of 1978 (eff. Jan. 1, 1979, 92 Stat. 3783).

AMENDMENTS

1982—Subsec. (a). Pub. L. 97–295 substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

§7088. Regulations

The Secretary of the Navy shall prescribe regulations for the administration of this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 441.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7088	34 U.S.C. 1073e.	Jan. 16, 1936, ch. 3, §6, 49 Stat. 1093.

The appropriations authorization in the second sentence of the source is omitted as unnecessary.

CHAPTER 609—PROFESSIONAL MILITARY EDUCATION SCHOOLS

Sec.
7101. Naval War College: master of arts in national security and strategic studies.
7102. Marine Corps University: masters degrees; board of advisors.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, §532(b)(3)(B), Dec. 28, 2001, 115 Stat. 1105, substituted ''masters degrees; board of advisors'' for ''master of military studies'' in item 7102.

1994—Pub. L. 103–337, div. A, title IX, §911(a)(2), Oct. 5, 1994, 108 Stat. 2828, added item 7102.

§7101. Naval War College: master of arts in national security and strategic studies

(a) AUTHORITY.—Upon the recommendation of the faculty of the Naval War College, the President of the college may confer the degree of master of arts in national security and strategic studies upon graduates of the college who fulfill the requirements for the degree.

(b) REGULATIONS.—The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of the Navy.

(c) NAVAL WAR COLLEGE DEFINED.—In this section, the term ''Naval War College'' means the College of Naval Warfare and the College of Naval Command and Staff.

(Added Pub. L. 101–510, div. A, title IX, §912(a), Nov. 5, 1990, 104 Stat. 1626.)

§7102. Marine Corps University: masters degrees; board of advisors

(a) AUTHORITY.—Upon the recommendation of the Director and faculty of the Command and Staff College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of military studies upon graduates of the Command and Staff College who fulfill the requirements for that degree.

(b) MARINE CORPS WAR COLLEGE.—Upon the recommendation of the Director and faculty of the Marine Corps War College of the Marine Corps University, the President of the Marine Corps University may confer the degree of master of strategic studies upon graduates of the Marine Corps War College who fulfill the requirements for that degree.

(c) REGULATIONS.—The authority provided by subsections (a) and (b) shall be exercised under regulations prescribed by the Secretary of the Navy.

(d) BOARD OF ADVISORS.—The Secretary of the Navy shall establish a board of advisors for the Marine Corps University. The Secretary shall ensure that the board is established so as to meet all requirements of the appropriate regional accrediting association.

(Added Pub. L. 103–337, div. A, title IX, §911(a)(1), Oct. 5, 1994, 108 Stat. 2828; amended Pub. L. 107–107, div. A, title V, §532(a)–(b)(3)(A), (c)(1), Dec. 28, 2001, 115 Stat. 1104, 1105.)

AMENDMENTS

2001—Pub. L. 107–107, §532(b)(3)(A), substituted ''masters degrees; board of advisors'' for ''master of military studies'' in section catchline.

Subsec. (a). Pub. L. 107–107, §532(b)(1), substituted ''upon graduates of the Command and Staff College who fulfill the requirements for that degree'' for ''upon graduates of the college who fulfill the requirements for the degree''.

Subsec. (b). Pub. L. 107–107, §532(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–107, §532(b)(2), substituted ''subsections (a) and (b)'' for ''subsection (a)''.

Pub. L. 107–107, §532(a)(1), redesignated subsec. (b) as (c).

Subsec. (d). Pub. L. 107–107, §532(c)(1), added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §532(d), Dec. 28, 2001, 115 Stat. 1105, provided that: ''The authority to confer the degree of master of strategic studies under section 7102(b) of title 10, United States Code (as added by subsection (a)) may not be exercised until the Secretary of Education determines, and certifies to the President of the Marine Corps University, that the requirements established by the Marine Corps War College of the Marine Corps University for that degree are in accordance with generally applicable requirements for a degree of master of arts. Upon receipt of such a certification, the President of the University shall promptly transmit a copy of the certification to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives.''

EFFECTIVE DATE

Section 911(b) of Pub. L. 103–337 provided that: ''The authority provided by section 7102(a) of title 10, United States Code, as added by subsection (a), shall become effective on the date on which the Secretary of Education determines that the requirements established by the Command and Staff College of the Marine Corps University for the degree of master of military studies are in accordance with generally applicable requirements for a degree of master of arts.''

BOARD OF ADVISORS FOR MARINE CORPS UNIVERSITY

Pub. L. 103–337,div. A, title IX, §912, Oct. 5, 1994, 108 Stat. 2828, which authorized the Secretary of the Navy to establish a board of advisors for the Marine Corps University and to ensure that the board met all requirements of the appropriate regional accrediting association, was repealed and restated in subsec. (d) of this section by Pub. L. 107–107, div. A, title V, §532(c), Dec. 28, 2001, 115 Stat. 1105.

PART IV—GENERAL ADMINISTRATION

Chap.		Sec.
631.	Secretary of the Navy: Miscellaneous Powers and Duties	7201
633.	Naval Vessels	7291
[635.	Repealed.]	
637.	Salvage Facilities	7361
639.	United States Naval Observatory	7395
641.	Naval Petroleum Reserves	7420
643.	Civilian Employees	7471
645.	Procurement of Supplies and Services	7521
647.	Disposal of Obsolete or Surplus Material	7541
649.	Quarters, Utilities, and Services	7571
651.	Ships' Stores and Commissary Stores	7601
653.	Claims	7621
655.	Prize	7651
657.	Stay of Judicial Proceedings	7721
659.	Naval Militia	7851
661.	Accountability and Responsibility	7861
663.	Names and Insignia	7881
665.	National Oceanographic Partnership Program	7901

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1085(b)(3)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A–289, struck out ''Related'' after ''Quarters, Utilities, and'' in item for chapter 649.

1996—Pub. L. 104–201, div. A, title II, §282(a)(2), Sept. 23, 1996, 110 Stat. 2473, added item for chapter 665.

1993—Pub. L. 103–160, div. A, title VIII, §828(b)(3), Nov. 30, 1993, 107 Stat. 1714, struck out item for chapter 635 ''Naval Aircraft''.

1984—Pub. L. 98–525, title XV, §1532(a)(2), Oct. 19, 1984, 98 Stat. 2631, added item for chapter 663.

1982—Pub. L. 97–295, §1(50)(H), Oct. 12, 1982, 96 Stat. 1300, struck out ''Naval Oceanographic Office and'' after ''United States'' in item for chapter 639.

Pub. L. 97–295, §1(51)(B), Oct. 12, 1982, 96 Stat. 1300, added item for chapter 661.

1980—Pub. L. 96–513, title V, §513(1), Dec. 12, 1980, 94 Stat. 2931, substituted ''7420'' for ''7421'' in item for chapter 641.

1962—Pub. L. 87–533, §2, July 10, 1962, 76 Stat. 155, substituted ''United States Naval Oceanographic'' for ''Hydrographic'' in item for chapter 639.

CHAPTER 631—SECRETARY OF THE NAVY: MISCELLANEOUS POWERS AND DUTIES

Sec.
[7201 to 7203. Repealed.]
7204. Schools near naval activities: financial aid.
7205. Promotion of health and prevention of accidents.
[7206. Repealed.]
7207. Administration of liberated and occupied areas.
[7208 to 7210. Repealed.]
7211. Attendance at meetings of technical, professional, or scientific organizations.
7212. Employment of outside architects and engineers.
[7213. Repealed.]
7214. Apprehension of deserters and prisoners; operation of shore patrols.
[7215. Repealed.]
7216. Collection, preservation, and display of captured flags.
[7217, 7218. Repealed.]
7219. Leases of waterfront property from States or municipalities.
7220. Gifts for welfare of enlisted members.
7221. Acceptance and care of gifts to vessels.
7222. Naval Historical Center Fund: references to Fund.
7223. Acquisition of land for radio stations and for other purposes.
7224. Transportation on naval vessels during wartime.
7225. Naval Reserve flag.
7226. Naval Reserve yacht pennant.
7227. Foreign naval vessels and aircraft: supplies and services.
7228. Merchant vessels: supplies.
7229. Purchase of fuel.
[7230. Repealed.]
7231. Accounting for expenditures for obtaining information.
7233. Auxiliary vessels: extended lease authority.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title IX, §942(e)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–243, substituted ''Naval Historical Center Fund: references to Fund'' for ''Naval Historical Center Fund'' in item 7222.

1999—Pub. L. 106–65, div. A, title X, §1014(a)(2), Oct. 5, 1999, 113 Stat. 742, added item 7233.

1996—Pub. L. 104–201, div. A, title X, §1073(b)(2)(B), Sept. 23, 1996, 110 Stat. 2657, substituted ''Naval Historical Center Fund'' for ''Office of Naval Records and History gift fund'' in item 7222.

1994—Pub. L. 103–355, title III, §3025(b), Oct. 13, 1994, 108 Stat. 3334, struck out item 7203 ''Scientific investigation and research''.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(6), Nov. 30, 1993, 107 Stat. 1713, struck out items 7201 ''Guided missiles: research and development, procurement, and

construction'', 7210 ''Purchase of patents, patent applications, and licenses'', 7213 ''Relief of contractors and their employees from losses by enemy action'', and 7230 ''Sale of degaussing equipment''.

1990—Pub. L. 101–510, div. A, title XIII, §1331(8), Nov. 5, 1990, 104 Stat. 1673, struck out item 7217 ''Annual report to Congress: appropriations''.

1988—Pub. L. 100–370, §1(e)(3)(B), July 19, 1988, 102 Stat. 845, struck out item 7209 ''Rewards for recovery of missing naval property''.

1984—Pub. L. 98–525, title XIV, §1401(d)(3)(B), (j)(3)(B), Oct. 19, 1984, 98 Stat. 2616, 2620, struck out ''; transportation of dependents'' at end of item 7204 and struck out item 7208 ''Latin American cooperation''.

1982—Pub. L. 97–258, §2(b)(11)(A), Sept. 13, 1982, 96 Stat. 1057, added item 7231.

1975—Pub. L. 94–106, title VIII, §804(b), Oct. 7, 1975, 89 Stat. 538, struck out item 7202 ''Emergency and extraordinary expenses''.

1968—Pub. L. 90–377, §4, July 5, 1968, 82 Stat. 288, struck out item 7215 ''Naval prisons, prison farms, and prisoners''.

1966—Pub. L. 89–529, §1(4), Aug. 11, 1966, 80 Stat. 339, struck out item 7218 ''Recognition for accomplishments, special service, and good conduct''.

1959—Pub. L. 86–55, §2, June 23, 1959, 73 Stat. 89, inserted ''and aircraft'' in item 7227.

1958—Pub. L. 85–861, §1(150), Sept. 2, 1958, 72 Stat. 1513, struck out item 7206 ''Minor construction and extension of structures''.

1957—Pub. L. 85–43, §1(2), May 31, 1957, 71 Stat. 45, added item 7230.

[§ 7201. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(1), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 442, authorized Secretary of the Navy to conduct research and development relating to guided missiles and to procure and construct guided missiles.

[§ 7202. Repealed. Pub. L. 94–106, title VIII, § 804(b), Oct. 7, 1975, 89 Stat. 538]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 442, related to authority of Secretary of the Navy to provide for emergency and extraordinary expenses and to delegation of such authority to other persons in the Department of the Navy. See section 127 of this title.

[§ 7203. Repealed. Pub. L. 103–355, title III, § 3025(a), Oct. 13, 1994, 108 Stat. 3334]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 442; Sept. 2, 1958, Pub. L. 85–861, §33(a)(34), 72 Stat. 1566, authorized Secretary of the Navy to make expenditures for scientific investigations and research from any naval appropriation available for those purposes and to delegate this authority within Navy.

§ 7204. Schools near naval activities: financial aid

(a) The Secretary of the Navy may contribute, out of funds specifically appropriated for the purpose, to the support of schools in any locality where a naval activity is located if he finds that the schools available in the locality are inadequate for the welfare of the dependents of—

(1) members of the naval service;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy;

who are stationed at the activity.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 442; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §513(24), Dec. 12, 1980, 94 Stat. 2932; Pub. L. 98–525, title XIV, §1401(j)(3)(A), (B), Oct. 19, 1984, 98 Stat. 2620; Pub. L. 99–145, title XIII, §1303(a)(23), Nov. 8, 1985, 99 Stat. 739.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7204	5 U.S.C. 421d.	Aug. 2, 1946, ch. 756, §13, 60 Stat. 854.
	5 U.S.C. 421g(b), (c).	Aug. 2, 1946, ch. 756, §40(b), (c), 60 Stat. 858.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, §39, 60 Stat. 858.

In subsection (b) the words ''except the authority to prescribe regulations'' are omitted, since 5 U.S.C. 421d contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–145 ran in ''contribute, out of'' after ''Secretary of the Navy may'', and realigned margins of cls. (1) to (4) and provision following cl. (4).

1984—Pub. L. 98–525, §1401(j)(3)(B), struck out ''; transportation of dependents'' in section catchline.

Subsec. (a). Pub. L. 98–525, §1401(j)(3)(A), substituted ''The Secretary of the Navy may'' for ''The Secretary of the Navy may—'', struck out ''(1)'' before ''contribute out of'', thereby eliminating paragraph designation, redesignated cls. (A) to (D) as (1) to (4), respectively, substituted ''the activity.'' for ''the activity; and'', and struck out par. (2), which provided for transportation between the schools and the activity when the schools are not accessible by regular means of transportation.

1980—Subsec. (a)(1)(D). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Subsec. (a)(1)(D). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7205. Promotion of health and prevention of accidents

(a) The Secretary of the Navy may make such expenditures as he considers appropriate to prevent accidents and to promote the safety and occupational health of—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy.

The expenditures may include payments for clothing, equipment, and other materials necessary for the purposes of this section. Any appropriation available for the activities in which the personnel are engaged shall be available for these purposes.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 443; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 513(24), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7205	5 U.S.C. 421e(b).	Aug. 2, 1946, ch. 756, § 24(b), 60 Stat. 856.
	5 U.S.C. 421g(b), (c).	Aug. 2, 1946, ch. 756, § 40(b), (c), 60 Stat. 858.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (a) the word ''maintenance'' is omitted as surplusage.

In subsection (b) the words ''except the authority to prescribe regulations'' are omitted, since 5 U.S.C. 421e(b) contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1980—Subsec. (a)(4). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Subsec. (a)(4). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

[§ 7206. Repealed. Pub. L. 85–861, § 36B(22), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 443, related to minor construction and extension of structures.

§ 7207. Administration of liberated and occupied areas

(a) The Secretary of the Navy may, out of any appropriation made for the purpose, provide for the administration of liberated and occupied areas by the Department of the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 443.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7207	5 U.S.C. 421f (as applicable to administration of liberated and occupied areas).	Aug. 2, 1946, ch. 756, § 38 (as applicable to administration of liberated and occupied areas), 60 Stat. 858.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words ''except the authority to prescribe regulations'' are omitted, since 5 U.S.C. 421f contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

[§ 7208. Repealed. Pub. L. 98–525, title XIV, § 1401(d)(3)(A), Oct. 19, 1984, 98 Stat. 2616]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 443, authorized the Secretary of the Navy to pay the travel, subsistence, special compensation, and other expenses of officers and students of Latin American countries that the Secretary considers necessary for Latin American cooperation. See section 1050 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 1404 of Pub. L. 98–525, set out as an Effective Date note under section 520b of this title.

[§ 7209. Repealed. Pub. L. 100–370, § 1(e)(3)(A), July 19, 1988, 102 Stat. 845]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 444, related to rewards for recovery of missing naval property. See section 2252 of this title.

[§ 7210. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(2), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 444, authorized Secretary of the Navy to purchase patents, patent applications, and licenses.

§ 7211. Attendance at meetings of technical, professional, or scientific organizations

(a) The Secretary of the Navy may authorize—

(1) members of the naval service on active duty;

(2) civilian officers and employees of the Department of the Navy;

(3) members of the Coast Guard when it is operating as a service in the Navy; and

(4) members of the National Oceanic and Atmospheric Administration serving with the Navy;

to attend meetings of technical, professional, scientific, and similar organizations, if the Secretary believes that their attendance will benefit the Department. The personnel may be reimbursed for their expenses at the rates prescribed by law.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 444; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 513(24), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7211	5 U.S.C. 421c.	Aug. 2, 1946, ch. 756, § 1, 60 Stat. 853.
	5 U.S.C. 421g(b), (c).	Aug. 2, 1946, ch. 756, § 40(b), (c), 60 Stat. 858.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words ''except the authority to prescribe regulations'' are omitted, since 5 U.S.C. 421c contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

AMENDMENTS

1980—Subsec. (a)(4). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Subsec. (a)(4). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7212. Employment of outside architects and engineers

(a) Whenever the Secretary of the Navy believes that the existing facilities of the Department of the Navy are inadequate and he considers it advantageous to national defense, he may employ, by contract or otherwise, without advertising and without reference to sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5, architectural or engineering corporations, or firms, or individual architects or engineers, to produce designs, plans, drawings, and specifications for the accomplishment of any naval public works or utilities project or for the construction of any vessel or aircraft, or part thereof.

(b) The fee for any service under this section may not exceed 6 percent of the estimated cost, as determined by the Secretary, of the project to which the fee applies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 444; Pub. L. 89–718, § 28, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 95–454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), Oct. 13, 1978, 92 Stat. 1217, 1222; Pub. L. 96–513, title V, § 513(25), Dec. 12, 1980, 94 Stat. 2932.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7212	34 U.S.C. 556.	Apr. 25, 1939, ch. 87, § 3, 53 Stat. 591.

In subsection (a) the word ''outside'' is omitted as surplusage and the words ''architects or engineers'' are inserted for clarity. The words ''without advertising'' are substituted for the reference to R.S. 3609, for brevity and clarity.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of'' for ''5101–5115, 5331–5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such''.

1978—Subsec. (a). Pub. L. 95–454, § 801(a)(3)(I), inserted reference to subchapter VI of chapter 53 of title 5.

Pub. L. 95–454, § 703(c)(3), substituted ''7204'' for ''7154''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''sections 305, 3324, 5101–5115, 5331–5338, 5341, 5342, and 7154 of title 5'' for ''sections 1071–1153 of title 5''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of Title 5.

[§ 7213. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(3), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 445, related to relief of contractors and their employees from losses by enemy action.

§ 7214. Apprehension of deserters and prisoners; operation of shore patrols

(a) The Secretary of the Navy may make such expenditures out of available appropriations as he considers necessary to—

(1) apprehend and deliver deserters, stragglers, and prisoners; and

(2) operate shore patrols.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7214	34 U.S.C. 606.	Aug. 2, 1946, ch. 756, §22, 60 Stat. 856.
	5 U.S.C. 421g(d).	Aug. 2, 1946, ch. 756, §40(d), 60 Stat. 858.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, §39, 60 Stat. 858.

In subsection (a) the word ''naval'' is omitted as surplusage.

In subsection (b) the words ''except the authority to prescribe regulations'' are omitted, since 34 U.S.C. 606 contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

[§ 7215. Repealed. Pub. L. 90–377, § 6(2), July 5, 1968, 82 Stat. 288]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 445, authorized Secretary of the Navy to maintain and operate naval prisons and prison farms and to provide for subsistence, welfare, recreation, and education of naval prisoners.

§ 7216. Collection, preservation, and display of captured flags

The Secretary of the Navy shall collect all flags, standards, and colors taken by the Navy or the Marine Corps from enemies of the United States. These flags, standards, and colors shall be delivered to the President. Under his direction they shall be preserved and displayed in any public place he considers proper.

(Aug. 10, 1956, ch. 1041, 70A Stat. 445.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7216	5 U.S.C. 418.	R.S. 428; R.S. 1554; R.S. 1555.

The words ''from time to time cause to be'', ''transmitted to him'', and ''for the purpose of being'' are omitted as surplusage. The words ''Marine Corps'' are inserted for clarity, since the provision is interpreted as applicable thereto.

[§ 7217. Repealed. Pub. L. 101–510, div. A, title XIII, § 1322(a)(15), Nov. 5, 1990, 104 Stat. 1672]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 445, related to reports to Congress concerning appropriations for Department of the Navy.

[§ 7218. Repealed. Pub. L. 89–529, § 1(3), Aug. 11, 1966, 80 Stat. 339; Pub. L. 97–295, § 1(46), Oct. 12, 1982, 96 Stat. 1298]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 445, authorized Secretary of Navy to give special recognition to members of naval service for excellence, special service and good conduct in naval service. Subsec. (b) of this section was amended by Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, subsequent to repeal of this section by Pub. L. 89–529, and as so amended had provided that the Secretary had the same power with respect to members of Coast Guard when the Coast Guard was operating as a service in the Navy and to members of Environmental Science Services Administration serving with the Navy. Pub. L. 97–295, § 1(46), repealed subsec. (b). Pub. L. 89–718, § 8(a), was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

§ 7219. Leases of waterfront property from States or municipalities

In leasing waterfront property from a State or municipality, the Secretary of the Navy may provide in the lease, where it is required by state law or municipal charter, that, as part or all of the consideration, any improvements placed upon the property by the United States become the property of the lessor when the lease, including any renewal, ends.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7219	34 U.S.C. 521.	July 1, 1918, ch. 114, 40 Stat. 705 (2d par.).

§ 7220. Gifts for welfare of enlisted members

The Secretary of the Navy may accept gifts for use in providing recreation, amusement, and contentment for enlisted members of the naval service. The fund ''Ships' Stores Profits, Navy'' shall be credited with these gifts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7220	5 U.S.C. 419a.	June 30, 1932, ch. 318, 47 Stat. 424 (2d proviso).

The words ''and contributions from organizations, individuals, or others'' are omitted as surplusage.

§ 7221. Acceptance and care of gifts to vessels

The Secretary of the Navy may accept and care for such gifts of silver, colors, books, or other articles of equipment or furniture as, in accordance with custom, are made to vessels of the Navy. Necessary expenses incident to the care of gifts that are accepted shall be paid from the appropriation for the maintenance and operation of vessels.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7221	5 U.S.C. 419.	May 20, 1908, ch. 182, 35 Stat. 171.

The words ''in the form'' and ''by States, municipalities, or otherwise'' are omitted as surplusage. The words ''the appropriation for the maintenance and operation of vessels'' are substituted for the words ''the appropriation 'Equipment of Vessels' '' to identify by a general description, rather than by a specific appropriation title, the appropriation authorized to be used.

§ 7222. Naval Historical Center Fund: references to Fund

Any reference in a law, regulation, document, paper, or other record of the United States to

the Naval Historical Center Fund formerly maintained under this section shall be deemed to refer to the Department of the Navy General Gift Fund maintained under section 2601 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 446; Pub. L. 104–201, div. A, title X, § 1073(b)(1), (2)(A), Sept. 23, 1996, 110 Stat. 2657; Pub. L. 106–398, § 1 [[div. A], title IX, § 942(d)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–242.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7222	5 U.S.C. 419b.	Mar. 4, 1937, ch. 26, 50 Stat. 25.

In subsection (a) the word ''receive'' and the words ''from individuals or others'' and ''of the United States'' are omitted as surplusage. The title of the ''Office of Naval Records and Library, Navy Department'' is changed to ''Office of Naval Records and History'', in accordance with a directive of the Secretary of the Navy dated March 10, 1949.

Subsection (b) is rewritten for clarity and to conform to a similar statement appearing in 5 U.S.C. 150s.

AMENDMENTS

2000—Pub. L. 106–398 amended section catchline and text generally. Prior to amendment, section related to acceptance and administration of gifts, bequests, and loans for the benefit of the Naval Historical Center.

1996—Pub. L. 104–201, § 1073(b)(2)(A), substituted ''Naval Historical Center Fund'' for ''Office of Naval Records and History gift fund'' in section catchline.

Subsecs. (a), (c). Pub. L. 104–201, § 1073(b)(1), substituted ''Naval Historical Center'' for ''Office of Naval Records and History'' wherever appearing.

MERGER OF NAVAL HISTORICAL CENTER FUND INTO DEPARTMENT OF THE NAVY GENERAL GIFT FUND

Pub. L. 106–398, § 1 [[div. A], title IX, § 942(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–241, provided that:

''(1) The Secretary of the Navy shall transfer all amounts in the Naval Historical Center Fund maintained under section 7222 of title 10, United States Code, to the Department of the Navy General Gift Fund maintained under section 2601 of such title. Upon completing the transfer, the Secretary shall close the Naval Historical Center Fund.

''(2) Amounts transferred to the Department of the Navy General Gift Fund under this subsection shall be merged with other amounts in that Fund and shall be available for the purposes for which amounts in that Fund are available.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 2055.

§ 7223. Acquisition of land for radio stations and for other purposes

Land of the United States that is under the control of any department or agency of the United States may be mutually selected as a site for a naval radio station by the Secretary of the Navy and the head of the department or agency having control of the land. By direction of the President, land so selected may be transferred to and placed under the jurisdiction of the Department of the Navy for use as a naval radio station or for any other naval purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7223	34 U.S.C. 523.	Aug. 29, 1916, ch. 417, 39 Stat. 606 (3d proviso).

The word ''agency'' is substituted for the word ''branch'' to conform to present terminology. The words ''by the Secretary of the Navy and the head of the department or agency having control of the land'' are added to identify the officials who ''mutually'' select the site.

§ 7224. Transportation on naval vessels during wartime

In time of war or during a national emergency declared by the President, such persons as the Secretary of the Navy authorizes by regulation may be transported and subsisted on naval vessels at Government expense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7224	34 U.S.C. 474.	Aug. 2, 1946, ch. 756, § 18, 60 Stat. 855.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 474 of former Title 34, the date July 25, 1947, should be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

The state of war with Japan ended on Apr. 28, 1952, by the coming into effect of the Treaty of Peace with Japan on that date. The state of war with Germany ended on Oct. 19, 1951. See notes preceding section 1 of Appendix to Title 50, War and National Defense.

§ 7225. Naval Reserve flag

The Secretary of the Navy shall prescribe a suitable flag to be known as the Naval Reserve flag. This flag may be flown by a seagoing merchant vessel if—

(1) the vessel is documented under the laws of the United States;

(2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and

(3) the master or commanding officer and at least half of the other licensed officers of the vessel are members of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7225	50 U.S.C. 1048.	July 9, 1952, ch. 608, § 409, 66 Stat. 499.

In clause (3) the words ''at least half'' are substituted for the words ''not less than 50 per centum''. The words ''or Naval Reserve'' are omitted as surplusage, since the Navy includes the Naval Reserve.

§ 7226. Naval Reserve yacht pennant

The Secretary of the Navy shall prescribe a suitable pennant to be known as the Naval Re-

serve yacht pennant. This pennant may be flown by a yacht or similar vessel if—

(1) the vessel is documented under the laws of the United States;

(2) the vessel has been designated by the Secretary, under such regulations as he prescribes, as suitable for service as a naval auxiliary in time of war; and

(3) the captain or owner of the vessel is a member of the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7226	50 U.S.C. 1049.	July 9, 1952, ch. 608, §410, 66 Stat. 499.

In clause (3) the words ''or Naval Reserve'' are omitted as surplusage, since the Navy includes the Naval Reserve.

§ 7227. Foreign naval vessels and aircraft: supplies and services

(a) The Secretary of the Navy, under such regulations as he prescribes, may authorize any United States naval vessel or activity to furnish any of the following supplies or services, when in the best interests of the United States, on a reimbursable basis without an advance of funds if similar supplies and services are furnished on a like basis to naval vessels and military aircraft of the United States by the foreign country concerned:

(1) Routine port services in territorial waters of the United States or in waters under United States control, including pilotage, tugs, garbage removal, line-handling, and utilities, to naval vessels of foreign countries.

(2) Routine airport services, including landing and takeoff assistance, use of runways, parking and servicing, to military aircraft of foreign countries.

(3) Miscellaneous supplies, including fuel, provisions, spare parts, and general stores, but not including ammunition, to naval vessels and military aircraft of foreign countries.

(4) Overhauls, repairs, and alterations together with necessary equipment and its installation required in connection therewith, to naval vessels and military aircraft of foreign countries.

(b)(1) Routine port and airport services may be furnished under this section at no cost to the foreign country concerned where such services are provided by United States naval personnel and equipment without direct cost to the Navy.

(2) When furnishing routine port services under this section to naval vessels of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine port services to naval vessels of the United States without reimbursement. When furnishing routine airport services under this section to military aircraft of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine airport services to military aircraft of the United States without reimbursement.

(3) If routine port or airport services are furnished under this section by a working-capital fund activity of the Navy established under section 2208 of this title and such activity is not reimbursed directly for the costs incurred by the activity in furnishing those services by reason of paragraph (2), the working-capital fund activity shall be reimbursed for such costs out of operating funds currently available to the Navy.

(c) Payments for supplies and services furnished under this section may be credited to current appropriations so as to be available for the same purpose as the appropriation initially charged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 447; Pub. L. 86–55, §1, June 23, 1959, 73 Stat. 89; Pub. L. 98–94, title XII, §1219(a), Sept. 24, 1983, 97 Stat. 691; Pub. L. 98–525, title XIV, §1405(49), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 102–190, div. A, title X, §1048, Dec. 5, 1991, 105 Stat. 1468.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7227	34 U.S.C. 555d, 34 U.S.C. 555e.	May 27, 1953, ch. 67, 67 Stat. 34.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190, §1048(a), struck out ''friendly'' before ''foreign country'' in introductory provisions and ''friendly'' before ''foreign countries'' in pars. (1) to (4).

Subsec. (b)(2). Pub. L. 102–190, §1048(b), struck out subpar. (A) designation, substituted ''naval vessels of a foreign country'' for ''naval vessels of an allied country'', inserted after first sentence ''When furnishing routine airport services under this section to military aircraft of a foreign country, the Secretary may furnish such services without reimbursement if such services are provided under an agreement that provides for the reciprocal furnishing by such country of routine airport services to military aircraft of the United States without reimbursement.'', designated last sentence relating to furnishing of routine services by a working-capital fund activity of the Navy as par. (3), and struck out former subpar. (B) which defined ''allied country''.

Subsec. (b)(3). Pub. L. 102–190, §1048(b)(5), designated last sentence of par. (2) relating to furnishing of routine services by a working-capital fund activity of the Navy as par. (3) and substituted ''port or airport services'' for ''port services'' and ''paragraph (2)'' for ''this paragraph''.

1984—Subsec. (a)(1), (2). Pub. L. 98–525, §1405(49)(A), (C), in cls. (1) and (2), substituted ''Routine'' for ''routine'' and a period for the semicolon at the end.

Subsec. (a)(3). Pub. L. 98–525, §1405(49)(B), (D), substituted ''Miscellaneous'' for ''miscellaneous'' and a period for ''; and''.

1983—Subsec. (b). Pub. L. 98–94 designated existing provisions as par. (1) and added par. (2).

1959—Pub. L. 86–55 authorized supplies and services to be furnished by any United States naval vessel or activity, and the furnishing of supplies and services to aircraft, eliminated provisions which limited the furnishing of supplies on a reimbursable basis to ships of foreign countries that had entered into a prior reciprocal agreement, and which permitted services, including overhauling, repairs, alterations and installation of equipment, to be furnished only if funds to cover the estimated cost thereof were advanced, and permitted the furnishing of routine port and airport services at no

cost where such services are without direct cost to the Navy.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1219(b) of Pub. L. 98–94 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1983.''

§ 7228. Merchant vessels: supplies

(a) The Secretary of the Navy, under such regulations as he prescribes, may sell to a merchant ship such fuel and other supplies as may be required to meet its necessities if the ship is unable—

(1) to procure the supplies from other sources at its present location; and

(2) to proceed to the nearest port where they may be obtained without endangering the safety of the ship, the health and comfort of its personnel, or the safe condition of the property carried on it.

(b) Sales under this section shall be at such prices as the Secretary considers reasonable. Payment shall be made on a cash basis or on such other basis as will reasonably assure prompt payment. Amounts received from such a sale shall, unless otherwise directed by another provision of law, be credited to the current appropriation concerned and are available for the same purposes as that appropriation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7228	34 U.S.C. 555f.	June 4, 1954, ch. 264, §3, 68 Stat. 176.

§ 7229. Purchase of fuel

In buying fuel, the Secretary of the Navy may, in any manner he considers proper, buy the kind of fuel that is best adapted to the purpose for which it is to be used.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7229	34 U.S.C. 580.	R.S. 3728.

The first sentence is omitted as covered by §2 of the Act of Mar. 3, 1933, ch. 212 (41 U.S.C. 10a). The words ''for the Navy, or for naval stations and yards'' are omitted, since R.S. 3728 has been interpreted as authorizing the Armed Services Petroleum Purchasing Agency to negotiate contracts for the purchase of fuel, not only when acting as a procuring activity for the Navy, but also when filling the consolidated fuel requirements of the armed forces. The word ''may'' is substituted for the words ''shall have the power to'' for uniformity. The words ''discriminate and'' are omitted as surplusage.

[§ 7230. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(4), Nov. 30, 1993, 107 Stat. 1707]

Section, added Pub. L. 85–43, §1(1), May 31, 1957, 71 Stat. 44; amended Pub. L. 87–651, title I, §125, Sept. 7, 1962, 76 Stat. 514, related to sale of degaussing equipment.

§ 7231. Accounting for expenditures for obtaining information

When the Secretary of the Navy decides that an expenditure by the Department of the Navy from an appropriation for obtaining information from anywhere in the world may be made public, the expenditure shall be accounted for specifically. When the Secretary decides that an expenditure should not be made public, the Secretary shall make a certificate on the amount of the expenditure. The certificate is a sufficient voucher for the amount stated to have been spent.

(Added Pub. L. 97–258, §2(b)(11)(B), Sept. 13, 1982, 96 Stat. 1057.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7231	31:108.	Aug. 29, 1916, ch. 417 (2d proviso under heading ''Pay, Miscellaneous''), 39 Stat. 557.

The words ''anywhere in the world'' are substituted for ''abroad and at home'', and the words ''decides that an expenditure should not be made public'' are substituted for ''may think it advisable not to specify'', for clarity and consistency.

§ 7233.[1] Auxiliary vessels: extended lease authority

(a) AUTHORIZED CONTRACTS.—Subject to subsection (b), the Secretary of the Navy may enter into contracts with private United States shipyards for the construction of new surface vessels to be acquired on a long-term lease basis by the United States from the shipyard or other private person for any of the following:

(1) The combat logistics force of the Navy.

(2) The strategic sealift force of the Navy.

(3) Other auxiliary support vessels for the Department of Defense.

(b) CONTRACTS REQUIRED TO BE AUTHORIZED BY LAW.—A contract may be entered into under subsection (a) with respect to a specific vessel only if the Secretary is specifically authorized by law to enter into such a contract with respect to that vessel. As part of a request to Congress for enactment of any such authorization by law, the Secretary of the Navy shall provide to Congress the Secretary's findings under subsection (g).

(c) TERM OF CONTRACT.—In this section, the term ''long-term lease'' means a lease, bareboat charter, or conditional sale agreement with respect to a vessel the term of which (including any option period) is for a period of 20 years or more.

(d) OPTION TO BUY.—A contract entered into under subsection (a) may include options for the United States to purchase one or more of the vessels covered by the contract at any time during, or at the end of, the contract period (including any option period) upon payment of an amount equal to the lesser of (1) the unamortized portion of the cost of the vessel plus amounts incurred in connection with the termination of the financing arrangements associated

[1] So in original. No section 7232 has been enacted.

with the vessel, or (2) the fair market value of the vessel.

(e) DOMESTIC CONSTRUCTION.—The Secretary shall require in any contract entered into under this section that each vessel to which the contract applies—

(1) shall have been constructed in a shipyard within the United States; and

(2) upon delivery, shall be documented under the laws of the United States.

(f) VESSEL OPERATION.—(1) The Secretary may operate a vessel held by the Secretary under a long-term lease under this section through a contract with a United States corporation with experience in the operation of vessels for the United States. Any such contract shall be for a term as determined by the Secretary.

(2) The Secretary may provide a crew for any such vessel using civil service mariners only after an evaluation taking into account—

(A) the fully burdened cost of a civil service crew over the expected useful life of the vessel;

(B) the effect on the private sector manpower pool; and

(C) the operational requirements of the Department of the Navy.

(g) CONTINGENT WAIVER OF OTHER PROVISIONS OF LAW.—(1) The Secretary may waive the applicability of subsections (e)(2) and (f) of section 2401 of this title to a contract authorized by law as provided in subsection (b) if the Secretary makes the following findings with respect to that contract:

(A) The need for the vessels or services to be provided under the contract is expected to remain substantially unchanged during the contemplated contract or option period.

(B) There is a reasonable expectation that throughout the contemplated contract or option period the Secretary of the Navy (or, if the contract is for services to be provided to, and funded by, another military department, the Secretary of that military department) will request funding for the contract at the level required to avoid contract cancellation.

(C) The timeliness of consideration of the contract by Congress is such that such a waiver is in the interest of the United States.

(2) The Secretary shall submit a notice of any waiver under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(h) SOURCE OF FUNDS FOR TERMINATION LIABILITY.—If a contract entered into under this section is terminated, the costs of such termination may be paid from—

(1) amounts originally made available for performance of the contract;

(2) amounts currently available for operation and maintenance of the type of vessels or services concerned and not otherwise obligated; or

(3) funds appropriated for those costs.

(Added Pub. L. 106–65, div. A, title X, §1014(a)(1), Oct. 5, 1999, 113 Stat. 741.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title X, §1014(c), Oct. 5, 1999, 113 Stat. 742, provided that: ''Section 7233 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1999.''

CHAPTER 633—NAVAL VESSELS

Sec.
7291. Classification.
7292. Naming.
7293. Number in service in time of peace.
7294. Suspension of construction in case of treaty.
7295. Vessels: under-age.
7296. Combatant surface vessels: notice before reduction in number; preservation of surge capability.
7297. Changing category or type: limitations.
[7298. Repealed.]
7299. Contracts: applicability of Walsh-Healey Act.
7299a. Construction of combatant and escort vessels and assignment of vessel projects.
7300. Contracts for nuclear ships: sales of naval shipyard articles and services to private shipyards.
[7301, 7302. Repealed.]
7303. Model basin; investigation of hull designs.
7304. Examination of vessels; striking of vessels from Naval Vessel Register.
7305. Vessels stricken from Naval Vessel Register: sale.
7306. Vessels stricken from Naval Vessel Register; captured vessels: transfer by gift or otherwise.
7306a. Vessels stricken from Naval Vessel Register: use for experimental purposes.
7307. Disposals to foreign nations.
7308. Chief of Naval Operations: certification required for disposal of combatant vessels.
7309. Construction of vessels in foreign shipyards: prohibition.
7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions.
7311. Repair or maintenance of naval vessels: handling of hazardous waste.
[7312. Repealed.]
7313. Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work.
7314. Overhaul of naval vessels: competition between public and private shipyards.
7315. Preservation of Navy shipbuilding capability.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1021(b)(2), Dec. 2, 2002, 116 Stat. 2639, added item 7296.

1999—Pub. L. 106–65, div. A, title X, §1016(b), Oct. 5, 1999, 113 Stat. 744, added item 7300.

1997—Pub. L. 105–85, div. A, title X, §1027(a)(2), Nov. 18, 1997, 111 Stat. 1879, added item 7315.

1996—Pub. L. 104–106, div. A, title VIII, §815(b), Feb. 10, 1996, 110 Stat. 396, added item 7299.

1994—Pub. L. 103–355, title II, §2001(j)(3)(A), title III, §§3023(b), 3024(b), Oct. 13, 1994, 108 Stat. 3303, 3333, 3334, struck out items 7299 ''Contracts: application of Public Contracts Act'', 7302 ''Construction on Pacific Coast'', and 7312 ''Repair or maintenance of naval vessels: progress payments under certain contracts''.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(7), (c)(7), Nov. 30, 1993, 107 Stat. 1713, 1714, struck out items 7296 ''Appropriations: available for other purposes'', 7298 ''Conversion of combatants and auxiliaries'', and 7301 ''Bids on construction: estimates required'', substituted ''Examination of vessels; striking of vessels'' for ''Examination by board: unfit vessel stricken'' in item 7304, ''Vessels stricken from Naval Vessel Register: sale'' for ''Sale of vessel stricken from Naval Vessel Register'' in item 7305, and ''Vessels stricken from Naval Vessel Register; captured vessels: transfer by gift or otherwise'' for ''Use for experimental purposes'' in item 7306, added item 7306a, substituted ''Disposals to foreign nations'' for ''Restriction on disposal'' in item 7307, ''Chief of Naval Operations: certification required

for disposal of combatant vessels'' for ''Transfer or gift of obsolete, condemned, or captured vessels'' in item 7308, ''Construction of vessels in foreign shipyards: prohibition'' for ''Restrictions on construction or repair of vessels in foreign shipyards'' in item 7309, and ''Overhaul, repair, etc. of vessels in foreign shipyards: restrictions'' for ''Policy in constructing combatant vessels'' in item 7310.

1989—Pub. L. 101–189, div. A, title XVI, §1622(a), Nov. 29, 1989, 103 Stat. 1604, redesignated item 7313 ''Overhaul of naval vessels: competition between public and private shipyards'' as 7314.

1988—Pub. L. 100–456, div. A, title XII, §§1224(b)(2), 1225(a)(2), Sept. 29, 1988, 102 Stat. 2054, 2055, substituted ''Restrictions on construction or repair'' for ''Restriction on construction'' in item 7309 and added item 7313 ''Overhaul of naval vessels: competition between public and private shipyards''.

Pub. L. 100–370, §1(n)(2), July 19, 1988, 102 Stat. 850, added item 7313 ''Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work''.

1987—Pub. L. 100–180, div. A, title XI, §1102(a)(2), Dec. 4, 1987, 101 Stat. 1145, added item 7312.

1986—Pub. L. 99–661, div. A, title XII, §1202(b), Nov. 14, 1986, 100 Stat. 3968, added item 7311.

1985—Pub. L. 99–145, title XIII, §1303(a)(24)(B), Nov. 8, 1985, 99 Stat. 740, struck out ''naval'' before ''vessels'' in item 7309.

1982—Pub. L. 97–295, §1(48)(B), Oct. 12, 1982, 96 Stat. 1298, added item 7299a.

Pub. L. 97–295, §1(49)(B), Oct. 12, 1982, 96 Stat. 1299, added item 7310.

Pub. L. 97–252, title XI, §1127(b), Sept. 8, 1982, 96 Stat. 759, added item 7309.

1981—Pub. L. 97–86, title IX, §911(b)(2), Dec. 1, 1981, 95 Stat. 1122, struck out item 7300 ''Contracts for construction: profit limitation''.

§ 7291. Classification

The President may establish, and from time to time modify, as the needs of the service require, a classification of naval vessels.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7291	34 U.S.C. 451 (as applicable to classification of vessels).	Mar. 3, 1901, ch. 852 (last par. as applicable to classification of vessels), 31 Stat. 1133.

VESSEL SCRAPPING PILOT PROGRAM

Pub. L. 105–262, title VIII, §8124, Oct. 17, 1998, 112 Stat. 2333, provided that: ''The Secretary of the Navy may carry out a competitively awarded vessel scrapping pilot program during fiscal years 1999 and 2000 using funds made available in this Act under the heading 'Operation and Maintenance, Navy' [112 Stat. 2282]: *Provided*, That the Secretary of the Navy shall define the program scope sufficient to gather data on the cost of scrapping Government vessels and to demonstrate cost-effective technologies and techniques to scrap such vessels in a manner that is protective of worker safety and health and the environment.''

CONSIDERATION OF VESSEL LOCATION FOR AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS

Pub. L. 102–484, div. A, title III, §375, Oct. 23, 1992, 106 Stat. 2385, provided that:

''(a) CONSIDERATION OF VESSEL LOCATION IN THE AWARD OF LAYBERTH CONTRACTS.—As a factor in the evaluation of bids and proposals for the award of contracts to layberth sealift vessels of the Department of the Navy, the Secretary of the Navy shall include the location of the vessels, including whether the vessels should be layberthed at locations where—

''(1) members of the Armed Forces are likely to be loaded onto the vessels; and

''(2) layberthing the vessels maximizes the ability of the vessels to meet mobility and training needs of the Department of Defense.

''(b) ESTABLISHMENT OF LOCATION AS A MAJOR CRITERION.—In the evaluation of bids and proposals referred to in subsection (a), the Secretary of the Navy shall give the same level of consideration to the location of the vessels as the Secretary gives to other major factors established by the Secretary.

''(c) APPLICABILITY.—Subsection (a) shall apply to any solicitation for bids or proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act [Oct. 23, 1992].''

REVITALIZATION OF UNITED STATES SHIPBUILDING INDUSTRY

Pub. L. 102–484, div. A, title X, §1031, Oct. 23, 1992, 106 Stat. 2489, provided that:

''(a) IN GENERAL.—The Secretary of Defense shall require that all sealift ships built under the fast sealift program established in section 1424 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1683) [set out below] shall be constructed and designed to commercial specifications.

''(b) INTERAGENCY WORKING GROUP TO FORMULATE A PROGRAM TO PRESERVE SHIPYARD INDUSTRIAL BASE.—(1) Not later than March 1, 1993, the President shall establish an interagency working group for the sole purpose of developing and implementing a comprehensive plan to enable and ensure that domestic shipyards can compete effectively in the international shipbuilding market.

''(2) The working group shall include representatives from all appropriate agencies, including the Department of Defense, the Department of State, the Department of Commerce, the Department of Transportation, the Department of Labor, the Office of the United States Trade Representative, and the Maritime Administration.

''(3) The President shall submit to Congress the comprehensive plan developed by the working group not later than October 1, 1993.

''(c) REPORT ON SHIP DUMPING PRACTICES.—The Secretary of Transportation shall prepare a report on the countries that provide subsidies for the construction or repair of vessels in foreign shipyards or that engage in ship dumping practices.

''(d) REPORT ON DEFENSE CONTRACTS.—The Secretary of Defense shall prepare a report on—

''(1) the amount of Department of Defense contracts that were awarded to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d) for the most recent year for which data is available; and

''(2) the effect on defense programs of a prohibition of awarding contracts to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d).

''(e) REPORT ON ADEQUACY OF UNITED STATES SHIPBUILDING INDUSTRY.—The Secretary of Defense shall prepare a report on—

''(1) the adequacy of United States shipbuilding industry to meet military requirements, including sealift, during the period of 1994 through 1999; and

''(2) the causes of any inadequacy identified and actions that could be taken to correct such inadequacies.

''(f) SUBMISSION OF REPORTS.—The reports under subsections (c), (d), and (e) shall be submitted to Congress with the President's budget for fiscal year 1994.

''(g) PENALTY FOR FAILURE TO COMPLY.—(1) Except as provided in paragraph (2), if the President fails to submit to Congress a comprehensive plan as required by subsection (b) by October 1, 1993, no funds appropriated to the Department of Defense for fiscal year 1994 may be used to enter into a contract for the construction,

repair, or purchase of any product or service with any company that has headquarters in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

''(2) Paragraph (1) shall not apply if the President—

''(A) notifies Congress that he is unable to submit the plan by the time required under subsection (c); and

''(B) includes with the notice a brief explanation of the reasons for the delay and a statement that the plan will be submitted by April 15, 1994.

''(h) DEFINITIONS.—For purposes of subsection (c):

''(1) The term 'foreign shipyard' includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

''(2) The term 'subsidy' includes any of the following:

''(A) Officially supported export credits and development assistance.

''(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

''(i) grants;

''(ii) loans and loan guarantees other than those available on the commercial market;

''(iii) forgiveness of debt;

''(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

''(v) preferential provision of goods and services; and

''(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

''(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

''(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

''(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

''(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

''(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

''(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

''(3) The term 'vessel' means any self-propelled, seagoing vessel—

''(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

''(B) not exempt from entry under section 441 of the Tariff Act of 1930 (19 U.S.C. 1431).''

FAST SEALIFT PROGRAM

Pub. L. 102–484, div. A, title X, §1021, Oct. 23, 1992, 106 Stat. 2485, provided that:

''(a) ACQUISITION AND CONVERSION OF U.S. BUILT VESSELS.—Notwithstanding any other provision of law, the Secretary of the Navy may use funds available for the Fast Sealift Program—

''(1) to acquire vessels for the program from among available vessels built in United States shipyards; and

''(2) to convert in United States shipyards vessels built in United States shipyards.

''(b) ACQUISITION OF FIVE FOREIGN-BUILT VESSELS.—Notwithstanding any other provision of law, funds available for the Fast Sealift Program may be used for the acquisition of five vessels built in foreign shipyards and for conversion of those vessels in United States shipyards if the Secretary of the Navy determines that acquisition of those vessels is necessary to expedite the availability of vessels for sealift.''

Pub. L. 101–510, div. A, title XIV, §1424, Nov. 5, 1990, 104 Stat. 1683, as amended by Pub. L. 102–190, div. A, title X, §1015, Dec. 5, 1991, 105 Stat. 1458; Pub. L. 102–484, div. A, title X, §1022, Oct. 23, 1992, 106 Stat. 2485; Pub. L. 103–337, div. A, title I, §125, Oct. 5, 1994, 108 Stat. 2683, provided that:

''(a) ESTABLISHMENT OF PROGRAM.—The Secretary of the Navy shall establish a program for the construction and operation, or conversion and operation, of cargo vessels that incorporate features essential for military use of the vessels.

''(b) PROGRAM REQUIREMENTS.—The program under this section shall be carried out as follows:

''(1) The Secretary of the Navy shall establish the design requirements for vessels to be constructed or converted under the program.

''(2) In establishing the design requirements for vessels to be constructed or converted under the program, the Secretary shall use commercial design standards and shall consult with the Administrator of the Maritime Administration.

''(3) Construction or conversion of the vessels shall be accomplished in private United States shipyards.

''(4) The vessels constructed or converted under the program shall incorporate propulsion systems whose main components (that is, the engines, reduction gears, and propellers) are manufactured in the United States.

''(5) The vessels constructed or converted under the program shall incorporate bridge and machinery control systems and interior communications equipment which—

''(A) are manufactured in the United States; and

''(B) have more than half of their value, in terms of cost, added in the United States.

''(6) The Secretary of Defense may waive the requirement of paragraph (5) with respect to a system or equipment described in that paragraph if—

''(A) the system or equipment is not available; or

''(B) the costs of compliance would be unreasonable compared to the costs of purchase from a foreign manufacturer.

''(c) CHARTER OF VESSELS CONSTRUCTED.—(1) Except when the Secretary determines that having a vessel immediately available with a full or partial crew is in the national interest, the Secretary, in consultation with the Administrator of the Maritime Administration, shall charter each vessel constructed before October 1, 1995, under the program for commercial operation. Any such charter—

''(A) shall not permit the operation of the vessel other than in the foreign commerce of the United States;

''(B) may be made only with an individual or entity that is a citizen of the United States (which, in the case of a corporation, partnership, or association,

shall be determined in the manner specified in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)) [46 App. U.S.C. 802, 803]; and

''(C) shall require that the vessel be documented (and remain documented) under the laws of the United States.

''(2) The Secretary may enter into a charter under paragraph (1) only through the use of competitive bidding procedures that ensure that the highest charter rates are obtained by the United States consistent with good business practice, except that the Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces during a time of war or national emergency and at other times when the Administrator of the Maritime Administration determines that that operation would not unfairly compete with another United States-flag vessel.

''(3) If the Secretary determines that a vessel previously chartered under the program no longer has commercial utility, the Secretary may transfer the vessel to the National Defense Reserve Fleet.

''(4) A contract for the charter of a vessel under paragraph (1) shall include a provision that the charter may be terminated for national security reasons without cost to the United States.

''(d) REPORTS TO CONGRESS.—(1) Not later than six months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of the Navy shall submit to Congress a report describing the Secretary's plan for implementing the fast sealift program authorized by this section.

''(2) Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the implementation of the plan described in the report submitted under paragraph (1). The report shall include a description of vessels built or under contract to be built pursuant to this section, the use of such vessels, and the operating experience and manning of such vessels.

''(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Administrator of the Maritime Administration.

''(e) AVAILABILITY OF FUNDS.—Amounts appropriated to the Department of Defense for any fiscal year for acquisition of fast sealift vessels may be used for the program under this section.''

FUNDING FOR SHIP PRODUCTION ENGINEERING

Pub. L. 101–189, div. A, title XVI, §1613, Nov. 29, 1989, 103 Stat. 1601, provided that:

''(a) CATEGORY FOR FUNDING.—Any request submitted to Congress for appropriations for ship production engineering necessary to support the procurement of any ship included (at the time the request is submitted) in the five-year shipbuilding and conversion plan of the Navy shall be set forth in the Shipbuilding and Conversion account of the Navy (rather than in research and development accounts).

''(b) APPLICABILITY.—Subsection (a) shall apply only with respect to appropriations for a fiscal year after fiscal year 1990.''

DEPOT-LEVEL MAINTENANCE OF SHIPS

Pub. L. 101–189, div. A, title XVI, §1614(a), (b), Nov. 29, 1989, 103 Stat. 1601, directed Secretary of the Navy to require that, to the extent feasible and consistent with policies of the Navy regarding family separations, not less than one-half of the depot-level maintenance work for naval vessels that was scheduled as of Oct. 1, 1989, to be carried out in Japan during fiscal years 1990, 1991, and 1992, was to be carried out in shipyards in the United States. Similar provisions were contained in Pub. L. 100–456, div. A, title XII, §1226, Sept. 29, 1988, 102 Stat. 2055, which was repealed by Pub. L. 101–189, div. A, title XVI, §1614(c), Nov. 29, 1989, 103 Stat. 1601.

REPORTS ON EFFECTS OF NAVAL SHIPBUILDING PLANS ON MARITIME INDUSTRIES

Pub. L. 100–456, div. A, title XII, §1227, Sept. 29, 1988, 102 Stat. 2055, directed Secretary of Defense to submit to Congress in 1989, 1990, and 1991 a report on how, under the current Five-Year Defense Program of Department of Defense, programs for naval shipbuilding and conversion, for naval vessel repair, and for procurement of support equipment for naval vessels could be expected to affect private-sector shipbuilding and ship repair industries of United States in terms of effectiveness and preparedness of those industries for mobilization in their role in the sealift component of the conventional deterrent of the United States.

REPAIR OF VESSELS IN FOREIGN SHIPYARDS

Pub. L. 99–500, §101(c) [title IX, §9101], Oct. 18, 1986, 100 Stat. 1783–82, 1783–118, and Pub. L. 99–591, §101(c) [title IX, §9101], Oct. 30, 1986, 100 Stat. 3341–82, 3341–118, provided that: ''No naval vessel or any vessel owned and operated by the Department of Defense homeported in the United States may be overhauled, repaired, or maintained in a foreign owned and operated shipyard located outside of the United States, except for voyage repairs.''

ENCOURAGEMENT OF CONSTRUCTION IN UNITED STATES SHIPYARDS OF COMBATANT VESSELS FOR UNITED STATES ALLIES

Pub. L. 99–145, title XIV, §1455, Nov. 8, 1985, 99 Stat. 761, provided that:

''(a) IN GENERAL.—The Secretary of the Navy shall take such steps as necessary—

''(1) to encourage United States shipyards to construct combatant vessels for nations friendly to the United States, subject to the requirement to safeguard sensitive warship technology; and

''(2) to ensure that no effort is made by any element of the Department of the Navy to inhibit, delay, or halt the provision of any United States naval system to a nation allied with the United States if that system is approved for export to a foreign nation, unless approval of such system for export is withheld solely for the purpose of safeguarding sensitive warship technology;

''(3) if opportunities arise to construct combatant vessels (including diesel submarines) outside the United States in a shipyard of a friendly foreign nation, with some or all of the costs provided by United States funds—

''(A) to encourage United States firms to participate in such construction to the maximum extent possible, subject to the requirement to safeguard sensitive warship technology; and

''(B) to ensure, whenever practicable, that at least 51 percent of the dollar value of such construction is provided by United States firms.

''(b) DEFINITION.—For the purposes of this section, the term 'sensitive warship technology' means technology relating to the design or construction of a combatant naval vessel that is determined by the Secretary of Defense to be vital to United States security.''

SIX-HUNDRED-SHIP GOAL FOR NAVY; SENSE OF CONGRESS

Pub. L. 97–114, title VII, §791, Dec. 29, 1981, 95 Stat. 1593, provided that: ''It is the sense of the Congress that—

''(1) A larger and stronger American Navy is needed as an essential ingredient of our Armed Forces, in order to fulfill its basic missions of (A) protecting the sea lanes to preserve the safety of the free world's commerce, (B) assuring continued access to raw materials essential to the well-being of the free world, (C) enhancing our capacity to project effective American forces into regions of the world where the vital interests of the United States must be protected, (D) engaging the Navy of the Soviet Union or any other potential adversary successfully, (E) continuing to serve as a viable leg of our strategic triad, and (F) providing visible evidence of American diplomatic, economic and military commitments throughout the world.

''(2) In order to conduct the numerous and growing missions of the modern American Navy, a goal of a naval inventory of approximately six hundred active ships of various types by the end of the century at the latest, is highly desirable, the exact figure to be flexible to accommodate new designs as the specific details of our naval missions evolve to meet various contingencies.

''(3) The Secretary of Defense comply with section 808 of Public Law 94–106, the Department of Defense Appropriation Authorization Act of 1976 [set out as a note under this section], in order that the Congress may more properly appropriate the funds necessary to reach a six hundred-ship goal at least by the end of the present century.''

CONSTRUCTION OF ADVANCED, VERSATILE, SURVIVABLE, AND COST-EFFECTIVE COMBATANT SHIPS; PLANS AND PROGRAMS; PRESIDENTIAL CONCLUSIONS AND RECOMMENDATIONS TO ACCOMPANY SHIP AUTHORIZATION REQUESTS

Pub. L. 95–485, title VIII, §810(a), (b), Oct. 20, 1978, 92 Stat. 1623, which declared it the policy of the United States to construct more survivable, less costly, and more combat effective ships, and directed the President to include in any request for authorization of a ship his conclusions on the ship's possession of the above qualities and whether and why the ship should be nuclear powered, was repealed and reenacted as section 7310 of this title by Pub. L. 97–295, §§1(49)(A), 6(b), Oct. 12, 1982, 96 Stat. 1298, 1315.

CONVERSION, OVERHAUL, OR REPAIR WORK UNDER SERVICE LIFE EXTENSION PROGRAM OR DDG–2 DESTROYER MODERNIZATION PROGRAM; USE OF PUBLIC OR PRIVATE SHIPYARDS; ADDITIONAL PERSONNEL; LEAST-COST APPROACH STUDY; REPORT TO CONGRESS; ADVANCED PLANNING OR PURCHASING LONG LEAD ITEMS

Pub. L. 95–485, title VIII, §811, Oct. 20, 1978, 92 Stat. 1624, prohibited Secretary of the Navy, with certain exceptions, from taking any action with respect to the use of either public shipyards or private shipyards for conversion, overhaul, or repair work under Service Life Extension Program (SLEP) or under program for modernization of DDG–2 class guided missile destroyers, or for the employment of additional personnel for, or the transfer of additional personnel to, any public shipyard as a part of the necessary buildup of manpower for carrying out either such program, until a comprehensive least-cost approach study was conducted and a written report of such study was submitted after Oct. 20, 1978, to Congress.

NAVAL SHIP NEW CONSTRUCTION AND CONVERSION PROGRAM; REPORTS TO CONGRESSIONAL COMMITTEES

Pub. L. 94–106, title VIII, §808, Oct. 7, 1975, 89 Stat. 539, directed Secretary of Defense to submit a five-year naval ship new construction and conversion program with President's budget for fiscal year beginning Oct. 1, 1976, and to report annually thereafter on changes in the program, prior to repeal by Pub. L. 101–510, div. A, title XIII, §1322(g), Nov. 5, 1990, 104 Stat. 1672.

NUCLEAR POWERED MAJOR COMBATANT VESSELS; CONSTRUCTION; DEFINITIONS; REPORT TO CONGRESS BY SECRETARY OF DEFENSE; LIMITATIONS ON AUTHORIZATION OR APPROPRIATION REQUESTS: REPORT TO CONGRESS BY PRESIDENT OF ALTERNATE PROGRAM

Pub. L. 93–365, title VIII, §§801–804, Aug. 5, 1974, 88 Stat. 408, 409, authorized construction of nuclear powered major combatant vessels for the strike forces of the United States Navy and an adequate industrial base for research, design, maintenance, etc., of these vessels, defined the term ''major combatant vessels for the strike forces of the United States Navy'', required the Secretary of Defense to report to Congress each calendar year on the application of nuclear propulsion to these vessels, and provided all requests for authorizations or appropriations for these vessels be for the construction of nuclear powered vessels unless the President advises Congress that such construction would not be in the national interest and includes for consideration by Congress an alternate program of nuclear powered ships, prior to repeal by Pub. L. 95–485, title VIII, §810(c), Oct. 20, 1978, 92 Stat. 1623.

TONNAGE BALANCE FOR CONSTRUCTION OF SHIPS; REPEAL

Pub. L. 89–37, title III, §301, June 11, 1965, 79 Stat. 128, provided that: ''Outstanding tonnage balances remaining in law for construction of Navy ships are hereby repealed.''

CONSTRUCTION OF ALTERNATE VESSELS IN GOVERNMENT NAVY YARDS; PUBLIC INTERESTS

Pub. L. 89–37, title III, §302, June 11, 1965, 79 Stat. 128, which provided that construction of warships and escort vessels follow alternate vessel Navy yard construction requirement of Act of Mar. 27, 1934, 48 Stat. 503, except in any year President finds it inconsistent with public interests, was repealed and restated as section 7299a(a) of this title by Pub. L. 97–295, §§1(48)(A), 6(b), Oct. 12, 1982, 96 Stat. 1298, 1314.

CONVERSION, ALTERATION, AND REPAIR PROJECTS; CONSIDERATIONS AND REQUIREMENTS

Pub. L. 89–37, title III, §303, June 11, 1965, 79 Stat. 128, which provided that assignment of naval ship conversion, alteration, and repair projects would be made on basis of economic and military considerations and would not be restricted by requirements that certain portions of such naval shipwork be assigned to particular types of shipyards or to particular geographical areas or by similar requirements, was repealed and restated as section 7299a(b) of this title by Pub. L. 97–295, §§1(48)(A), 6(b), Oct. 12, 1982, 96 Stat. 1298, 1314.

§ 7292. Naming

(a) Not more than one vessel of the Navy may have the same name.

(b) Each battleship shall be named for a State. However, if the names of all the States are in use, a battleship may be named for a city, place, or person.

(c) The Secretary of the Navy may change the name of any vessel bought for the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 448.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7292(a)	34 U.S.C. 462.	R.S. 1532.
7292(b)	34 U.S.C. 461.	May 4, 1898, ch. 234, 30 Stat. 390 (2d sentence under ''Armor and Armament''); May 13, 1908, ch. 166, 35 Stat. 159; June 29, 1949, ch. 278, 63 Stat. 300 (6th par.).
7292(c)	34 U.S.C. 463.	R.S. 1533.

In subsection (a) the words ''care shall be taken that'' are omitted as surplusage.

In subsection (b) the words ''first class'' are omitted as obsolete.

In subsection (c) the words ''by authority of law'' are omitted as surplusage.

§ 7293. Number in service in time of peace

In time of peace, the President may keep in service such vessels of the Navy as are required and keep the rest in reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7293	34 U.S.C. 452.	R.S. 1534.

The words ''vessels of the Navy'' are substituted for the words ''of the public armed vessels''. The words ''actual'', ''in his opinion'', and ''by the nature of the service'' are omitted as surplusage. The words ''in reserve'' are substituted for the words ''to be laid up in ordinary in convenient ports'' to conform to modern terminology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6939d.

§ 7294. Suspension of construction in case of treaty

In case of a treaty for the limitation of naval armament to which the United States is a signatory, the President may suspend so much of the authorized naval construction as is necessary to bring the naval vessels of the United States within the limitations agreed upon. Such a suspension does not apply to vessels under construction at the time the suspension is made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7294	34 U.S.C. 498h (as applicable to vessels).	May 17, 1938, ch. 243, §9 (as applicable to vessels), 52 Stat. 403.

The words ''the United States would welcome and support an international conference for naval limitations'' are omitted as a declaration of purpose without permanent or general significance. The word ''further'' is omitted since there is no such agreement in existence today. The word ''international'' is omitted as unnecessary since the word ''treaty'' necessarily involves an international understanding. The word ''may'' is substituted for the words ''is hereby authorized and empowered to'' for brevity.

§ 7295. Vessels: under-age

Vessels of the following types are considered under-age for the period after completion indicated below:

(1) Battleships—26 years.

(2) Aircraft carriers—20 years.

(3) Cruisers—20 years.

(4) Submarines—13 years.

(5) Other combatant surface vessels—16 years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7295	34 U.S.C. 498g–1.	June 14, 1940, ch. 364, §7, 54 Stat. 395.

§ 7296. Combatant surface vessels: notice before reduction in number; preservation of surge capability

(a) NOTICE-AND-WAIT BEFORE REDUCTIONS.—(1) A reduction described in paragraph (2) in the number of combatant surface vessels may only be carried out after—

(A) the Secretary of the Navy submits to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a written notification of the proposed reduction; and

(B) a period of 90 days has expired after the date on which such notification is received.

(2) A reduction described in this paragraph in the number of combatant surface vessels is a reduction—

(A) from 116, or a number greater than 116, to a number less than 116; or

(B) from a number less than 116 to a lesser number.

(3) Any notification under paragraph (1)(A) shall include the following:

(A) The schedule for the proposed reduction.

(B) The number of vessels that are to comprise the force of combatant surface vessels after the reduction.

(C) A risk assessment for a force of combatant surface vessels of the number specified under subparagraph (B) that is based on the same assumptions as were applied in the QDR 2001 combatant surface force risk assessment.

(b) PRESERVATION OF SURGE CAPABILITY.—Whenever the number of combatant surface vessels is less than 116, the Secretary of the Navy shall maintain on the Naval Vessel Register a sufficient number of combatant surface vessels to enable the Navy to regain a force of combatant surface vessels numbering not less than 116 within 120 days after the date of any decision by the President to increase the number of combatant surface vessels.

(c) DEFINITIONS.—In this section:

(1) The term ''combatant surface vessels'' means cruisers, destroyers, and frigates that are in active service in the Navy or in active reserve service in the Navy.

(2) The term ''QDR 2001 combatant surface force risk assessment'' means the risk assessment associated with a force of combatant surface vessels numbering 116 that is set forth in the report on the quadrennial defense review submitted to Congress on September 30, 2001, under section 118 of this title.

(Added Pub. L. 107–314, div. A, title X, §1021(b)(1), Dec. 2, 2002, 116 Stat. 2638.)

PRIOR PROVISIONS

A prior section 7296, act Aug. 10, 1956, ch. 1041, 70A Stat. 449, related to availability for other purposes of appropriations for construction or conversion of vessels, prior to repeal by Pub. L. 103–160, div. A, title VIII, §824(a)(5), Nov. 30, 1993, 107 Stat. 1707.

EFFECTIVE DATE

Pub. L. 107–314, div. A, title X, §1021(c), Dec. 2, 2002, 116 Stat. 2639, provided that: ''The provisions of subparagraph (B) of subsection (a)(1) of section 7296 of title 10, United States Code, as added by subsection (b)(1) of this section, shall apply only with respect to notifications submitted under subparagraph (A) of that subsection on or after January 15, 2003.''

§ 7297. Changing category or type: limitations

Unless they have been specifically made available for the purpose, funds appropriated for the repair or alteration of naval vessels may not be

used to make repairs or alterations of any vessel that would change its category or type.

(Aug. 10, 1956, ch. 1041, 70A Stat. 449.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7297	34 U.S.C. 490.	June 12, 1948, ch. 452, §2, 62 Stat. 382.

[§ 7298. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(6), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 449, related to conversion of combatant and auxiliary naval vessels.

§ 7299. Contracts: applicability of Walsh-Healey Act

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to the Walsh-Healey Act (41 U.S.C. 35 et seq.) unless the President determines that this requirement is not in the interest of national defense.

(Added Pub. L. 104–106, div. A, title VIII, § 815(a), Feb. 10, 1996, 110 Stat. 396.)

REFERENCES IN TEXT

The Walsh-Healey Act, referred to in text, is act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, which is classified generally to sections 35 to 45 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See, also, section 262 of Title 29, Labor.

PRIOR PROVISIONS

A prior section 7299, acts Aug. 10, 1956, ch. 1041, 70A Stat. 449; Aug. 25, 1958, Pub. L. 85–747, 72 Stat. 839; Dec. 12, 1980, Pub. L. 96–513, title V, § 513(26), 94 Stat. 2932; Oct. 12, 1982, Pub. L. 97–295, § 1(47), 96 Stat. 1298, directed that each contract for construction, alteration, furnishing, or equipping of naval vessel was subject to the Walsh-Healey Act, unless President determined that such requirement was not in interest of national defense, prior to repeal by Pub. L. 103–355, title III, § 3023(a), Oct. 13, 1994, 108 Stat. 3333.

§ 7299a. Construction of combatant and escort vessels and assignment of vessel projects

(a) The assignment of naval vessel conversion, alteration, and repair projects shall be based on economic and military considerations and may not be restricted by a requirement that certain parts of naval shipwork be assigned to a particular type of shipyard or geographical area or by a similar requirement.

(b) In evaluating bids or proposals for a contract for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall, in determining the cost or price of work to be performed in an area outside the area of the homeport of the vessel, consider foreseeable costs of moving the vessel and its crew from the homeport to the outside area and from the outside area back to the homeport at the completion of the contract.

(c)(1) Before issuing a solicitation for a contract for short-term work for the overhaul, repair, or maintenance of a naval vessel, the Secretary of the Navy shall determine if there is adequate competition available among firms able to perform the work at the homeport of the vessel. If the Secretary determines that there is adequate competition among such firms, the Secretary—

(A) shall issue such a solicitation only to firms able to perform the work at the homeport of the vessel; and

(B) may not award such contract to a firm other than a firm that will perform the work at the homeport of the vessel.

(2) Paragraph (1) applies notwithstanding subsection (a) or any other provision of law.

(3) Paragraph (1) does not apply in the case of voyage repairs.

(4) In this subsection, the term ''short-term work'' means work that will be for a period of six months or less.

(Added Pub. L. 97–295, § 1(48)(A), Oct. 12, 1982, 96 Stat. 1298; amended Pub. L. 99–661, div. A, title XII, § 1201(a), Nov. 14, 1986, 100 Stat. 3967; Pub. L. 100–180, div. A, title XI, § 1101, Dec. 4, 1987, 101 Stat. 1145; Pub. L. 101–510, div. A, title XIV, § 1422, Nov. 5, 1990, 104 Stat. 1682; Pub. L. 102–484, div. A, title X, § 1016, Oct. 23, 1992, 106 Stat. 2485.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7299a	10:7291 (note).	June 11, 1965, Pub. L. 89–37, §§ 302, 303, 79 Stat. 128.

In subsection (a), the words ''combatant vessels'' are substituted for ''warships'' for consistency in title 10 and because of 1:3. The words ''for which appropriations are authorized by this Act and hereafter'' are omitted as unnecessary.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–484, § 1016(a), (b)(1), redesignated subsec. (b) as (a) and struck out former subsec. (a) which read as follows: ''The distribution of assignments and contracts for the construction of combatant vessels and escort vessels is subject to the Act of March 27, 1934 (ch. 95, 48 Stat. 503), requiring that the first and each succeeding alternate vessel be constructed in a Navy yard. However, the President may direct that a vessel be constructed in a Navy or private yard if the requirement of this subsection is inconsistent with the public interest.''

Subsec. (b). Pub. L. 102–484, § 1016(b)(1), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 102–484, § 1016(b), redesignated subsec. (d) as (c) and substituted ''subsection (a)'' for ''subsection (b)'' in par. (2). Former subsec. (c) redesignated (b).

1990—Subsec. (d)(3). Pub. L. 101–510 substituted ''apply in the case of voyage repairs.'' for ''apply—

''(A) in the case of voyage repairs; or

''(B) in the case of a vessel that is assigned to the Naval Reserve force and homeported on the West Coast of the United States.''

1987—Subsec. (d). Pub. L. 100–180 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) Notwithstanding subsections (b) and (c), the Secretary may award a contract for short-term work for the overhaul, repair, or maintenance of a naval vessel only to a contractor that is able to perform the work at the homeport of the vessel, if the Secretary determines that adequate competition is available among firms able to perform the work at the homeport of the vessel.

''(2) In this subsection, the term 'short-term work' means work that will be for a period of six months or less.''

1986—Subsecs. (c), (d). Pub. L. 99–661 added subsecs. (c) and (d).

DELEGATION OF AUTHORITY

For delegation of authority of President under subsec. (a) of this section, see section 2 of Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

§ 7300. Contracts for nuclear ships: sales of naval shipyard articles and services to private shipyards

The conditions set forth in section 2208(j)(1)(B) of this title and subsections (a)(1) and (c)(1)(A) of section 2563 of this title shall not apply to a sale by a naval shipyard of articles or services to a private shipyard that is made at the request of the private shipyard in order to facilitate the private shipyard's fulfillment of a Department of Defense contract with respect to a nuclear ship. This section does not authorize a naval shipyard to construct a nuclear ship for the private shipyard, to perform a majority of the work called for in a contract with a private entity, or to provide articles or services not requested by the private shipyard.

(Added Pub. L. 106–65, div. A, title X, § 1016(a), Oct. 5, 1999, 113 Stat. 744; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1033(c)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–261.)

PRIOR PROVISIONS

A prior section 7300, act Aug. 10, 1956, ch. 1041, 70A, Stat. 450, related to profit limitations on contracts for construction of naval vessels, prior to repeal by Pub. L. 97–86, title IX, § 911(b)(1), Dec. 1, 1981, 95 Stat. 1122.

AMENDMENTS

2000—Pub. L. 106–398 substituted ''section 2563'' for ''section 2553''.

[§ 7301. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(7), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 450, related to estimates required for bids on construction of naval vessels.

[§ 7302. Repealed. Pub. L. 103–355, title III, § 3024(a), Oct. 13, 1994, 108 Stat. 3334]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 451, directed Department of the Navy to construct on U.S. Pacific Coast such vessels as President determined necessary to maintain shipyard facilities there adequate to meet requirements of national defense.

§ 7303. Model Basin; investigation of hull designs

(a) An office or agency in the Department of the Navy designated by the Secretary of the Navy shall conduct at the David W. Taylor Model Basin, Carderock, Maryland, investigations to determine the most suitable shapes and forms for United States vessels and aircraft and investigations of other problems of their design.

(b) The Secretary of the Navy may authorize experiments to be made at the Model Basin for private persons. The costs of experiments made for private persons shall be paid by those persons under regulations prescribed by the Secretary. The results of private experiments are confidential and may not be divulged without the consent of the persons for whom they are made. However, the data obtained from such experiments may be used by the Secretary for governmental purposes, subject to the patent laws of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 451; Pub. L. 89–718, § 41, Nov. 2, 1966, 80 Stat. 1120.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7303	5 U.S.C. 430a.	May 6, 1936, ch. 333, 49 Stat. 1263; June 20, 1940, ch. 400, § 1(a), (b), 54 Stat. 492.

In subsection (a) the authority to purchase a site and construct the model basin is omitted as executed. The words ''David W. Taylor Model Basin, Carderock, Maryland'' are inserted to designate the model basin established under this authority. The words ''investigations to determine'' are substituted for the words ''work of investigating and determining.'' The phrase ''vessels, including aircraft'' is changed to read ''vessels and aircraft'', and the words ''their design'' are substituted for ''ship design''.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–718 substituted ''An officer or agency of the Department of the Navy designated by the Secretary of the Navy'' for ''The Bureau of Ships''.

§ 7304. Examination of vessels; striking of vessels from Naval Vessel Register

(a) BOARDS OF OFFICERS TO EXAMINE NAVAL VESSELS.—The Secretary of the Navy shall designate boards of naval officers to examine naval vessels, including unfinished vessels, for the purpose of making a recommendation to the Secretary as to which vessels, if any, should be stricken from the Naval Vessel Register. Each vessel shall be examined at least once every three years if practicable.

(b) ACTIONS BY BOARD.—A board designated under subsection (a) shall submit to the Secretary in writing its recommendations as to which vessels, if any, among those it examined should be stricken from the Naval Vessel Register.

(c) ACTION BY SECRETARY.—If the Secretary concurs with a recommendation by a board that a vessel should be stricken from the Naval Vessel Register, the Secretary shall strike the name of that vessel from the Naval Vessel Register.

(Added Pub. L. 103–160, div. A, title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1708.)

PRIOR PROVISIONS

A prior section 7304, act Aug. 10, 1956, ch. 1041, 70A Stat. 451, related to examination of vessels by board and striking of unfit vessels from Naval Vessel Register, prior to repeal by Pub. L. 103–160, § 824(b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7305 of this title; title 42 section 6939d.

§ 7305. Vessels stricken from Naval Vessel Register: sale

(a) APPRAISAL OF VESSELS STRICKEN FROM NAVAL VESSEL REGISTER.—The Secretary of the Navy shall appraise each vessel stricken from the Naval Vessel Register under section 7304 of this title.

(b) AUTHORITY TO SELL VESSEL.—If the Secretary considers that the sale of the vessel is in the national interest, the Secretary may sell the vessel. Any such sale shall be in accordance with regulations prescribed by the Secretary for the purposes of this section.

(c) PROCEDURES FOR SALE.—(1) A vessel stricken from the Naval Vessel Register and not subject to disposal under any other law may be sold under this section.

(2) In such a case, the Secretary may—

(A) sell the vessel to the highest acceptable bidder, regardless of the appraised value of the vessel, after publicly advertising the sale of the vessel for a period of not less than 30 days; or

(B) subject to paragraph (3), sell the vessel by competitive negotiation to the acceptable offeror who submits the offer that is most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(3) Before entering into negotiations to sell a vessel under paragraph (2)(B), the Secretary shall publish notice of the intention to do so in the Commerce Business Daily sufficiently in advance of initiating the negotiations that all interested parties are given a reasonable opportunity to prepare and submit proposals. The Secretary shall afford an opportunity to participate in the negotiations to all acceptable offerors submitting proposals that the Secretary considers as having the potential to be the most advantageous to the United States (taking into account price and such other factors as the Secretary determines appropriate).

(d) APPLICABILITY.—This section does not apply to a vessel the disposal of which is authorized by subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), if it is to be disposed of under subtitle I of title 40 and title III.

(Added Pub. L. 103–160, div. A, title VIII, §824(b), Nov. 30, 1993, 107 Stat. 1708; amended Pub. L. 105–85, div. A, title X, §1021, Nov. 18, 1997, 111 Stat. 1875; Pub. L. 107–217, §3(b)(28), Aug. 21, 2002, 116 Stat. 1297.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (d), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 7305, acts Aug. 10, 1956, ch. 1041, 70A Stat. 451; Dec. 12, 1980, Pub. L. 96–513, title V, §513(27), 94 Stat. 2933, related to sale of vessels stricken from Naval Vessel Register, prior to repeal by Pub. L. 103–160, §824(b).

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–217 inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)'' and ''subtitle I of title 40 and title III'' for ''that Act''.

1997—Subsec. (c). Pub. L. 105–85 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(c) PROCEDURES FOR SALE.—(1) A vessel stricken from the Naval Vessel Register and not subject to disposal under any other law may be sold under this section. In such a case, the Secretary may sell the vessel to the highest acceptable bidder, regardless of the appraised value of the vessel, after the vessel is publicly advertised for sale for a period of not less than 30 days.

''(2) If the Secretary determines that the bid prices for a vessel received after advertising under paragraph (1) are not acceptable and that readvertising will serve no useful purpose, the Secretary may sell the vessel by negotiation to the highest acceptable bidder if—

''(A) each responsible bidder has been notified of intent to negotiate and has been given a reasonable opportunity to negotiate; and

''(B) the negotiated price is—

''(i) higher than the highest rejected price of any responsible bidder; or

''(ii) reasonable and in the national interest.''

EXECUTIVE ORDER NO. 11765

Ex. Ord. No. 11765, Jan. 21, 1974, 39 F.R. 2577, related to sale of vessels of the Navy stricken from Naval Vessel Register pursuant to section 7304 of this title regardless of their appraised value under authority of former subsec. (*l*) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6939d.

§ 7306. Vessels stricken from Naval Vessel Register; captured vessels: transfer by gift or otherwise

(a) AUTHORITY TO MAKE TRANSFER.—Subject to section 113 of title 40, the Secretary of the Navy may transfer, by gift or otherwise, any vessel stricken from the Naval Vessel Register, or any captured vessel, to—

(1) any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof;

(2) the District of Columbia; or

(3) any not-for-profit or nonprofit entity.

(b) VESSEL TO BE MAINTAINED IN CONDITION SATISFACTORY TO SECRETARY.—An agreement for the transfer of a vessel under subsection (a) shall include a requirement that the transferee will maintain the vessel in a condition satisfactory to the Secretary.

(c) TRANSFERS TO BE AT NO COST TO UNITED STATES.—Any transfer of a vessel under this section shall be made at no cost to the United States.

(d) CONGRESSIONAL NOTICE-AND-WAIT PERIOD.—(1) A transfer under this section may not take effect until—

(A) the Secretary submits to Congress notice of the proposed transfer; and

(B) 30 days of a session of Congress have expired following the date on which the notice is sent to Congress.

(2) For purposes of paragraph (1)(B)—

(A) the period of a session of Congress is broken only by an adjournment of Congress sine die at the end of the final session of a Congress; and

(B) any day on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain, or because of an adjournment sine die at the end

of the first session of a Congress, shall be excluded in the computation of such 30-day period.

(Added Pub. L. 103–160, div. A, title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1709; amended Pub. L. 106–65, div. A, title X, § 1011, Oct. 5, 1999, 113 Stat. 739; Pub. L. 107–217, § 3(b)(29), Aug. 21, 2002, 116 Stat. 1297.)

PRIOR PROVISIONS

A prior section 7306, acts Aug. 10, 1956, ch. 1041, 70A Stat. 452; Nov. 8, 1965, Pub. L. 89–348, § 1(10), 79 Stat. 1311; Nov. 2, 1966, Pub. L. 89–718, § 42, 80 Stat. 1120; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1616, 103 Stat. 1602, related to use of vessels stricken from the Naval Vessel Register for experimental purposes, prior to repeal by Pub. L. 103–160, § 824(b). See section 7306a of this title.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217 substituted ''section 113 of title 40'' for ''subsections (c) and (d) of section 602 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474)''.

1999—Subsec. (d). Pub. L. 106–65 amended heading and text of subsec. (d) generally. Text read as follows:

''(1) No transfer under this section takes effect unless—

''(A) notice of the proposal to make the transfer is sent to Congress; and

''(B) 60 days of continuous session of Congress have expired following the date on which such notice is sent to Congress.

''(2) For purposes of paragraph (1)(B), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6939d.

§ 7306a. Vessels stricken from Naval Vessel Register: use for experimental purposes

(a) AUTHORITY.—The Secretary of the Navy may use for experimental purposes any vessel stricken from the Naval Vessel Register.

(b) STRIPPING VESSEL.—(1) Before using a vessel for an experimental purpose pursuant to subsection (a), the Secretary shall carry out such stripping of the vessel as is practicable.

(2) Amounts received as proceeds from the stripping of a vessel pursuant to this subsection shall be credited to appropriations available for the procurement of scrapping services needed for such stripping. Amounts received which are in excess of amounts needed for procuring such services shall be deposited into the general fund of the Treasury.

(Added Pub. L. 103–160, div. A, title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1709.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 7306 of this title prior to repeal by Pub. L. 103–160.

§ 7307. Disposals to foreign nations

(a) LARGER OR NEWER VESSELS.—A naval vessel that is in excess of 3,000 tons or that is less than 20 years of age may not be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) unless the disposition of that vessel is approved by law enacted after August 5, 1974. A lease or loan of such a vessel under such a law may be made only in accordance with the provisions of chapter 6 of the Arms Export Control Act (22 U.S.C. 2796 et seq.) or chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.).

(b) OTHER VESSELS.—(1) A naval vessel not subject to subsection (a) may be disposed of to another nation (whether by sale, lease, grant, loan, barter, transfer, or otherwise) in accordance with applicable provisions of law, but only after—

(A) the Secretary of the Navy notifies the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives in writing of the proposed disposition; and

(B) 30 days of continuous session of Congress have expired following the date on which such notice is sent to those committees.

(2) For purposes of paragraph (1)(B), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 30-day period.

(Added Pub. L. 103–160, div. A, title VIII, § 824(b), Nov. 30, 1993, 107 Stat. 1709; amended Pub. L. 104–106, div. A, title XV, § 1502(a)(1), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (a), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended. Chapter 6 of that Act is classified generally to subchapter VI (§ 2796 et seq.) of chapter 39 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 2 of part II of that Act is classified generally to part II (§ 2311 et seq.) of subchapter II of chapter 32 of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

PRIOR PROVISIONS

A prior section 7307, acts Aug. 10, 1956, ch. 1041, 70A Stat. 452; Aug. 5, 1974, Pub. L. 93–365, title VII, § 702, 88 Stat. 405; Oct. 5, 1976, Pub. L. 94–457, § 2, 90 Stat. 1938; Dec. 12, 1980, Pub. L. 96–513, title V, § 513(28), 94 Stat. 2933; Aug. 8, 1985, Pub. L. 99–83, title I, § 122, 99 Stat. 204; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, § 1484(b)(4), 104 Stat. 1716, related to restrictions on disposal of certain Navy ships, prior to repeal by Pub. L. 103–160, § 824(b).

AMENDMENTS

1999—Subsec. (b)(1)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b)(1)(A). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2433 of this title; title 22 section 2793; title 42 section 6939d; title 50 section 415.

§ 7308. Chief of Naval Operations: certification required for disposal of combatant vessels

Notwithstanding any other provision of law, no combatant vessel of the Navy may be sold, transferred, or otherwise disposed of unless the Chief of Naval Operations certifies that it is not essential to the defense of the United States.

(Added Pub. L. 103–160, div. A, title VIII, §824(b), Nov. 30, 1993, 107 Stat. 1710.)

PRIOR PROVISIONS

A prior section 7308, acts Aug. 10, 1956, ch. 1041, 70A Stat. 453; Dec. 12, 1980, Pub. L. 96–513, title V, §513(29), 94 Stat. 2933; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1234(a)(6), 102 Stat. 2059; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIV, §1427, 104 Stat. 1685, related to transfer or gift of obsolete, condemned, and captured vessels, prior to repeal by Pub. L. 103–160, §824(b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6939d.

§ 7309. Construction of vessels in foreign shipyards: prohibition

(a) PROHIBITION.—Except as provided in subsection (b), no vessel to be constructed for any of the armed forces, and no major component of the hull or superstructure of any such vessel, may be constructed in a foreign shipyard.

(b) PRESIDENTIAL WAIVER FOR NATIONAL SECURITY INTEREST.—(1) The President may authorize exceptions to the prohibition in subsection (a) when the President determines that it is in the national security interest of the United States to do so.

(2) The President shall transmit notice to Congress of any such determination, and no contract may be made pursuant to the exception authorized until the end of the 30-day period beginning on the date on which the notice of the determination is received by Congress.

(c) EXCEPTION FOR INFLATABLE BOATS.—An inflatable boat or a rigid inflatable boat, as defined by the Secretary of the Navy, is not a vessel for the purpose of the restriction in subsection (a).

(Added Pub. L. 103–160, div. A, title VIII, §824(b), Nov. 30, 1993, 107 Stat. 1710.)

PRIOR PROVISIONS

A prior section 7309, added Pub. L. 97–252, title XI, §1127(a), Sept. 8, 1982, 96 Stat. 758; amended Pub. L. 98–473, title I, §101(h)[title VIII, §8095], Oct. 12, 1984, 98 Stat. 1904, 1941; Pub. L. 99–145, title XIII, §1303(a)(24)(A), Nov. 8, 1985, 99 Stat. 740; Pub. L. 100–180, div. A, title XI, §1103, Dec. 4, 1987, 101 Stat. 1146; Pub. L. 100–456, div. A, title XII, §1224(a), (b)(1), Sept. 29, 1988, 102 Stat. 2054; Pub. L. 101–189, div. A, title XVI, §1622(c)(8), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 102–190, div. A, title X, §1017, Dec. 5, 1991, 105 Stat. 1459; Pub. L. 102–484, div. A, title X, §1012, Oct. 23, 1992, 106 Stat. 2483, related to restrictions on construction and repair of vessels in foreign shipyards, prior to repeal by Pub. L. 103–160, §824(b).

DELEGATION OF AUTHORITY

For delegation of authority of President under subsec. (b) of this section, see section 3 of Ex. Ord. No. 12765, June 11, 1991, 56 F.R. 27401, set out as a note under section 113 of this title.

§ 7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions

(a) VESSELS WITH HOMEPORT IN UNITED STATES.—A naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) the homeport of which is in the United States may not be overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.

(b) VESSEL CHANGING HOMEPORTS.—(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled—

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

(Added and amended Pub. L. 103–160, div. A, title III, §367, title VIII, §824(b), Nov. 30, 1993, 107 Stat. 1632, 1710; Pub. L. 104–106, div. A, title X, §1017, Feb. 10, 1996, 110 Stat. 425.)

PRIOR PROVISIONS

A prior section 7310, added Pub. L. 97–295, §1(49)(A), Oct. 12, 1982, 96 Stat. 1298, related to policy for constructing combatant vessels, prior to repeal by Pub. L. 103–160, §824(a)(8).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106 inserted ''or Guam'' after ''outside the United States''.

1993—Subsec. (b). Pub. L. 103–160, §367, amended subsec. (b) generally, designating existing provisions as par. (1) and adding par. (2).

§ 7311. Repair or maintenance of naval vessels: handling of hazardous waste

(a) CONTRACTUAL PROVISIONS.—The Secretary of the Navy shall ensure that each contract entered into for work on a naval vessel (other than new construction) includes the following provisions:

(1) IDENTIFICATION OF HAZARDOUS WASTES.—A provision in which the Navy identifies the types and amounts of hazardous wastes that are required to be removed by the contractor from the vessel, or that are expected to be generated, during the performance of work under the contract, with such identification by the Navy to be in a form sufficient to enable the contractor to comply with Federal and State laws and regulations on the removal, handling, storage, transportation, or disposal of hazardous waste.

(2) COMPENSATION.—A provision specifying that the contractor shall be compensated under the contract for work performed by the contractor for duties of the contractor specified under paragraph (3).

(3) STATEMENT OF WORK.—A provision specifying the responsibilities of the Navy and of the contractor, respectively, for the removal (including the handling, storage, transportation, and disposal) of hazardous wastes.

(4) ACCOUNTABILITY FOR HAZARDOUS WASTES.—(A) A provision specifying the following:

(i) In any case in which the Navy is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the Navy pursuant to applicable law.

(ii) In any case in which the contractor is the sole generator of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear a generator identification number issued to the contractor pursuant to applicable law.

(iii) In any case in which both the Navy and the contractor are generators of hazardous waste that is removed, handled, stored, transported, or disposed of by the contractor in the performance of the contract, all contracts, manifests, invoices, and other documents related to the removal, handling, storage, transportation, or disposal of such hazardous waste shall bear both a generator identification number issued to the Navy and a generator identification number issued to the contractor pursuant to applicable law.

(B) A determination under this paragraph of whether the Navy is a generator, a contractor is a generator, or both the Navy and a contractor are generators, shall be made in the same manner provided under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) and regulations promulgated under that subtitle.

(b) RENEGOTIATION OF CONTRACT.—The Secretary of the Navy shall renegotiate a contract described in subsection (a) if—

(1) the contractor, during the performance of work under the contract, discovers hazardous wastes different in type or amount from those identified in the contract; and

(2) those hazardous wastes originated on, or resulted from material furnished by the Government for, the naval vessel on which the work is being performed.

(c) REMOVAL OF WASTES.—The Secretary of the Navy shall remove known hazardous wastes from a vessel before the vessel's arrival at a contractor's facility for performance of a contract, to the extent such removal is feasible.

(d) RELATIONSHIP TO SOLID WASTE DISPOSAL ACT.—Nothing in this section shall be construed as altering or otherwise affecting those provisions of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that relate to generators of hazardous waste. For purposes of this section, any term used in this section for which a definition is provided by the Solid Waste Disposal Act (or regulations promulgated pursuant to such Act) has the meaning provided by that Act or regulations.

(Added Pub. L. 99–661, div. A, title XII, § 1202(a), Nov. 14, 1986, 100 Stat. 3967; amended Pub. L. 101–189, div. A, title XVI, § 1611(a), Nov. 29, 1989, 103 Stat. 1599.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (a)(4)(B) and (d), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

AMENDMENTS

1989—Pub. L. 101–189 amended section generally, substituting subsecs. (a) to (d) for former subsecs. (a) relating to contractual provisions, and (b) relating to renegotiation of contract.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1611(b) of Pub. L. 101–189 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to any contract for work on a naval vessel (other than new construction) entered into after the end of the 90-day period beginning on the date of the enactment of this Act [Nov. 29, 1989].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 6939d.

[§ 7312. Repealed. Pub. L. 103–355, title II, § 2001(j)(1), Oct. 13, 1994, 108 Stat. 3303]

Section, added Pub. L. 100–180, div. A, title XI, § 1102(a)(1), Dec. 4, 1987, 101 Stat. 1145; amended Pub. L. 100–456, div. A, title XII, § 1223, Sept. 29, 1988, 102 Stat. 2054; Pub. L. 101–189, div. A, title XVI, § 1612, Nov. 29, 1989, 103 Stat. 1601, related to progress payments under certain contracts for repair or maintenance of naval vessels. See section 2307(g) of this title.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355 set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 7313. Ship overhaul work: availability of appropriations for unusual cost overruns and for changes in scope of work

(a) UNUSUAL COST OVERRUNS.—(1) Appropriations available to the Department of Defense for a fiscal year may be used for payment of unusual cost overruns incident to ship overhaul, maintenance, and repair for a vessel inducted into an industrial-fund activity or contracted for during a prior fiscal year.

(2) The Secretary of Defense shall notify Congress promptly before an obligation is incurred for any payment under paragraph (1).

(b) CHANGES IN SCOPE OF WORK.—An appropriation available to the Department of Defense for a fiscal year may be used after the otherwise-ap-

plicable expiration of the availability for obligation of that appropriation—

(1) for payments to an industrial-fund activity for amounts required because of changes in the scope of work for ship overhaul, maintenance, and repair, in the case of work inducted into the industrial-fund activity during the fiscal year; and

(2) for payments under a contract for amounts required because of changes in the scope of work, in the case of a contract entered into during the fiscal year for ship overhaul, maintenance, and repair.

(Added Pub. L. 100–370, §1(n)(1), July 19, 1988, 102 Stat. 850.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99–190, §101(b) [title VIII, §8005(j), (k)], Dec. 19, 1985, 99 Stat. 1185, 1203.

In two instances, the source law to be codified by the bill includes provisions that on their face require that the Department of Defense notify Congress of certain actions. These notification requirements were terminated by section 602 of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99–433), which terminated all recurring reporting requirements applicable to the Department of Defense except for those requirements that were specifically exempted in that section. The source law sections are sections 8009(c) and 8005(j) (proviso) of the FY86 defense appropriations Act (Public Law 99–190), enacted December 19, 1985, which would be codified as section 2201 of title 10 (by section 1(d) of the bill) and section 7313(a) of title 10 (by section 1(n) of the bill). In codifying the authorities provided the Department of Defense by these two provisions of law, the committee believes that it is appropriate to reinstate the congressional notification requirements that go with those authorities. These sections were recurring annual appropriation provisions for many years and were made permanent only months before the enactment of the 1986 Reorganization Act. It is the committee's belief that the failure to exempt these provisions from the general reports termination provision was inadvertent and notes that the notification provisions had in fact previously applied to the Department of Defense for many years. The action of the committee restores the status quo as it existed before the Reorganization Act.

CODIFICATION

Another section 7313 of this title was renumbered section 7314.

§ 7314. Overhaul of naval vessels: competition between public and private shipyards

The Secretary of the Navy should ensure, in any case in which the Secretary awards a project for repair, alteration, overhaul, or conversion of a naval vessel following competition between public and private shipyards, that each of the following criteria is met:

(1) The bid of any public shipyard for the award includes—

(A) the full costs to the United States associated with future retirement benefits of civilian employees of that shipyard consistent with computation methodology established by Office of Management and Budget Circular A–76; and

(B) in a case in which equal access to the Navy supply system is not allowed to public and private shipyards, a pro rata share of the costs of the Navy supply system.

(2) Costs applicable to oversight of the contract by the appropriate Navy supervisor of shipbuilding, conversion, and repair are added to the bid of any private shipyard for the purpose of comparability analysis.

(3) The award is made using the results of the comparability analysis.

(Added Pub. L. 100–456, div. A, title XII, §1225(a)(1), Sept. 29, 1988, 102 Stat. 2054, §7313; renumbered §7314, Pub. L. 101–189, div. A, title XVI, §1622(a), Nov. 29, 1989, 103 Stat. 1604.)

AMENDMENTS

1989—Pub. L. 101–189 renumbered section 7313 of this title as this section.

EFFECTIVE DATE

Section 1225(b) of Pub. L. 100–456 provided that: ''Section 7313 [now 7314] of title 10, United States Code, as added by subsection (a), applies to any award by the Secretary of the Navy made after the end of the 30-day period beginning on the date of the enactment of this Act [Sept. 29, 1988] for repair, alteration, overhaul, or conversion of a naval vessel following competition between public and private shipyards.''

§ 7315. Preservation of Navy shipbuilding capability

(a) SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS.—The Secretary of the Navy may enter into an agreement, to be known as a ''shipbuilding capability preservation agreement'', with a shipbuilder under which the cost reimbursement rules described in subsection (b) shall be applied to the shipbuilder under a Navy contract for the construction of a ship. Such an agreement may be entered into in any case in which the Secretary determines that the application of such cost reimbursement rules would facilitate the achievement of the policy objectives set forth in section 2501(b) of this title.

(b) COST REIMBURSEMENT RULES.—The cost reimbursement rules applicable under an agreement entered into under subsection (a) are as follows:

(1) The Secretary of the Navy shall, in determining the reimbursement due a shipbuilder for its indirect costs of performing a contract for the construction of a ship for the Navy, allow the shipbuilder to allocate indirect costs to its private sector work only to the extent of the shipbuilder's allocable indirect private sector costs, subject to paragraph (3).

(2) For purposes of paragraph (1), the allocable indirect private sector costs of a shipbuilder are those costs of the shipbuilder that are equal to the sum of the following:

(A) The incremental indirect costs attributable to such work.

(B) The amount by which the revenue attributable to such private sector work exceeds the sum of—

(i) the direct costs attributable to such private sector work; and

(ii) the incremental indirect costs attributable to such private sector work.

(3) The total amount of allocable indirect private sector costs for a contract covered by the agreement may not exceed the amount of indirect costs that a shipbuilder would have allocated to its private sector work during the period covered by the agreement in accordance with the shipbuilder's established accounting practices.

(c) AUTHORITY TO MODIFY COST REIMBURSEMENT RULES.—The cost reimbursement rules set forth in subsection (b) may be modified by the Secretary of the Navy for a particular agreement if the Secretary determines that modifications are appropriate to the particular situation to facilitate achievement of the policy set forth in section 2501(b) of this title.

(d) APPLICABILITY.—(1) An agreement entered into with a shipbuilder under subsection (a) shall apply to each of the following Navy contracts with the shipbuilder:

(A) A contract that is in effect on the date on which the agreement is entered into.

(B) A contract that is awarded during the term of the agreement.

(2) In a shipbuilding capability preservation agreement applicable to a shipbuilder, the Secretary may agree to apply the cost reimbursement rules set forth in subsection (b) to allocations of indirect costs to private sector work performed by the shipbuilder only with respect to costs that the shipbuilder incurred on or after November 18, 1997, under a contract between the shipbuilder and a private sector customer of the shipbuilder that became effective on or after January 26, 1996.

(Added Pub. L. 105–85, div. A, title X, §1027(a)(1), Nov. 18, 1997, 111 Stat. 1878; amended Pub. L. 106–65, div. A, title X, §1066(a)(29), Oct. 5, 1999, 113 Stat. 772.)

AMENDMENTS

1999—Subsec. (d)(2). Pub. L. 106–65 substituted ''November 18, 1997,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998''.

PROCEDURES FOR APPLICATIONS AND FOR CONSIDERATION OF AGREEMENTS

Section 1027(b) of Pub. L. 105–85 provided that: ''Not later than 30 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of the Navy shall establish application procedures and procedures for expeditious consideration of shipbuilding capability preservation agreements as authorized by section 7315 of title 10, United States Code, as added by subsection (a).''

[CHAPTER 635—REPEALED]

[§§ 7341 to 7345. Repealed. Pub. L. 103–160, div. A, title VIII, § 824(a)(9), Nov. 30, 1993, 107 Stat. 1708]

Section 7341, act Aug. 10, 1956, ch. 1041, 70A Stat. 453, related to authorized number of naval airplanes and lighter-than-air crafts.

Section 7342, act Aug. 10, 1956, ch. 1041, 70A Stat. 454, related to percentage of naval aircraft required to be constructed or manufactured in United States plants.

Section 7343, act Aug. 10, 1956, ch. 1041, 70A Stat. 454, related to manufacture of naval aircraft at plants owned by United States under certain circumstances.

Section 7344, act Aug. 10, 1956, ch. 1041, 70A Stat. 454, related to suspension of naval aircraft construction in case of treaty for limitation of naval armament.

Section 7345, added Pub. L. 101–189, div. A, title I, §153(a)(1), Nov. 29, 1989, 103 Stat. 1387, related to submission of annual reports to Armed Services and Appropriations Committees of Senate and House of Representatives addressing aircraft requirements of the Navy.

CHAPTER 637—SALVAGE FACILITIES

Sec.
7361. Authority to provide for necessary salvage facilities.
7362. Acquisition and transfer of vessels and equipment.
7363. Settlement of claims.
7364. Disposition of receipts.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title X, §1015, Feb. 10, 1996, 110 Stat. 424, amended analysis generally, adding items 7361 to 7364 and striking out former items 7361 ''Naval salvage facilities: contracts for commercial facilities'', 7362 ''Commercial use of naval facilities'', 7363 ''Transfer of equipment: contract provisions'', 7365 ''Settlement of claims'', and 7367 ''Disposition of receipts''.

1994—Pub. L. 103–355, title II, §2001(j)(3)(B), Oct. 13, 1994, 108 Stat. 3303, struck out item 7364 ''Advancement of funds for salvage operations''.

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(8), Nov. 30, 1993, 107 Stat. 1713, struck out item 7366 ''Limitation on appropriations''.

§ 7361. Authority to provide for necessary salvage facilities

(a) AUTHORITY.—The Secretary of the Navy may provide, by contract or otherwise, necessary salvage facilities for public and private vessels.

(b) COORDINATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall submit to the Secretary of Homeland Security for comment each proposed contract for salvage facilities that affects the interests of the Department of Homeland Security.

(c) LIMITATION.—The Secretary of the Navy may enter into a term contract under subsection (a) only if the Secretary determines that available commercial salvage facilities are inadequate to meet the requirements of national defense.

(d) PUBLIC NOTICE.—The Secretary may not enter into a contract under subsection (a) until the Secretary has provided public notice of the intent to enter into such a contract.

(Added Pub. L. 104–106, div. A, title X, §1015, Feb. 10, 1996, 110 Stat. 424; amended Pub. L. 107–296, title XVII, §1704(b)(1), (6), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

A prior section 7361, acts Aug. 10, 1956, ch. 1041, 70A Stat. 455; Aug. 6, 1981, Pub. L. 97–31, §12(3)(D), 95 Stat. 154, authorized Secretary of the Navy to provide for necessary salvage facilities for public and private vessels, prior to the general amendment of this chapter by Pub. L. 104–106.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in heading and in two places in text.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 7362. Acquisition and transfer of vessels and equipment

(a) AUTHORITY.—The Secretary of the Navy may acquire or transfer for operation by private

salvage companies such vessels and equipment as the Secretary considers necessary.

(b) AGREEMENT ON USE.—Before any salvage vessel or salvage gear is transferred by the Secretary to a private party, the private party must agree in writing with the Secretary that the vessel or gear will be used to support organized offshore salvage facilities for a period of as many years as the Secretary considers appropriate.

(c) REFERENCE TO AUTHORITY TO ADVANCE FUNDS FOR IMMEDIATE SALVAGE OPERATIONS.—For authority for the Secretary of the Navy to advance to private salvage companies such funds as the Secretary considers necessary to provide for the immediate financing of salvage operations, see section 2307(g)(2) of this title.

(Added Pub. L. 104–106, div. A, title X, §1015, Feb. 10, 1996, 110 Stat. 424.)

PRIOR PROVISIONS

A prior section 7362, act Aug. 10, 1956, ch. 1041, 70A Stat. 455, related to commercial use of naval facilities, prior to the general amendment of this chapter by Pub. L. 104–106.

§ 7363. Settlement of claims

The Secretary of the Navy may settle any claim by the United States for salvage services rendered by the Department of the Navy and may receive payment of any such claim.

(Added Pub. L. 104–106, div. A, title X, §1015, Feb. 10, 1996, 110 Stat. 425.)

PRIOR PROVISIONS

A prior section 7363, act Aug. 10, 1956, ch. 1041, 70A Stat. 455, related to contract provisions for transfer of Navy equipment to private parties, prior to the general amendment of this chapter by Pub. L. 104–106.

§ 7364. Disposition of receipts

Amounts received under this chapter shall be credited to appropriations for maintaining naval salvage facilities. However, any amount received under this chapter in any fiscal year in excess of naval salvage costs incurred by the Navy during that fiscal year shall be deposited into the general fund of the Treasury.

(Added Pub. L. 104–106, div. A, title X, §1015, Feb. 10, 1996, 110 Stat. 425.)

PRIOR PROVISIONS

A prior section 7364, act Aug. 10, 1956, ch. 1041, 70A Stat. 455, related to advancement of funds by the Secretary of the Navy to private companies for salvage operations, prior to repeal by Pub. L. 103–355, title II, §2001(j)(1), Oct. 13, 1994, 108 Stat. 3303. See section 2307(g) of this title.

A prior section 7365, acts Aug. 10, 1956, ch. 1041, 70A Stat. 456; Aug. 29, 1972, Pub. L. 92–417, §1(4), 86 Stat. 654, related to settlement of claims, prior to the general amendment of this chapter by Pub. L. 104–106. See section 7363 of this title.

A prior section 7366, act Aug. 10, 1956, ch. 1041, 70A Stat. 456, related to limitation on appropriations for naval salvage facilities, prior to repeal by Pub. L. 103–160, div. A, title VIII, §824(a)(10), Nov. 30, 1993, 107 Stat. 1708.

A prior section 7367, act Aug. 10, 1956, ch. 1041, 70A Stat. 456, related to disposition of receipts, prior to the general amendment of this chapter by Pub. L. 104–106. See section 7364 of this title.

CHAPTER 639—UNITED STATES NAVAL OBSERVATORY

Sec.

[7391 to 7394. Repealed.]
7395. Naval Observatory: administration.
7396. Naval Observatory: exchange of information with foreign offices.

AMENDMENTS

1982—Pub. L. 97–295, §1(50)(F), Oct. 12, 1982, 96 Stat. 1300, struck out ''NAVAL OCEANOGRAPHIC OFFICE AND'' from chapter heading.

Pub. L. 97–295, §1(50)(B), Oct. 12, 1982, 96 Stat. 1299, struck out items 7391 ''United States Naval Oceanographic Office: establishment and duties'', 7392 ''United States Naval Oceanographic Office: maps, charts and books'', 7393 ''United States Naval Oceanographic Office: pilot charts'', and 7394 ''Price of maps, charts, and navigational publications''.

1964—Pub. L. 88–436, §1(b), Aug. 14, 1964, 78 Stat. 436, substituted ''navigational publications'' for ''nautical books'' in item 7394.

1962—Pub. L. 87–533, §1(a)(1), (b), July 10, 1962, 76 Stat. 154, 155, substituted ''United States Naval Oceanographic'' for ''Hydrographic'' in chapter heading and in items 7391 to 7393.

[§§ 7391 to 7394. Repealed. Pub. L. 97–295, § 1(50)(A), Oct. 12, 1982, 96 Stat. 1299]

Section 7391, acts Aug. 10, 1956, ch. 1041, 70A Stat. 456; July 10, 1962, Pub. L. 87–533, §1(a)(2), 76 Stat. 154, provided for a United States Naval Oceanographic Office attached to the Office of the Chief of Naval Operations which would provide navigational aids, charts, books, and manuals, and was reenacted as former section 2791 of this title.

Section 7392, acts Aug. 10, 1956, ch. 1041, 70A Stat. 456; July 10, 1962, Pub. L. 87–533, §1(a)(3), 76 Stat. 154, provided that the Secretary of the Navy may have the United States Naval Oceanographic Office prepare navigational aids, charts, and books, and that he may publish and distribute such materials and buy copyrights of existing navigational aids, charts, and books, and was reenacted as section 451 of this title.

Section 7393, acts Aug. 10, 1956, ch. 1041, 70A Stat. 456; July 10, 1962, Pub. L. 87–533, §1(a)(4), 76 Stat. 154, directed that certain identifying information be printed on United States Naval Oceanographic pilot charts, and that the Department of Commerce's Weather Bureau provide the Naval Oceanographic Office with data necessary for their preparation, and was reenacted as section 452 of this title.

Section 7394, acts Aug. 10, 1956, ch. 1041, 70A Stat. 457; July 10, 1962, Pub. L. 87–533, §1(a)(5), 76 Stat. 154; Aug. 14, 1964, Pub. L. 88–436, §1(a), 78 Stat. 443, directed that publications by the Naval Oceanographic Office be sold under regulations of the Secretary of the Navy, and that proceeds be covered into the Treasury, and was reenacted as section 453 of this title.

§ 7395. Naval Observatory: administration

(a) The Naval Observatory shall be attached to the Office of the Chief of Naval Operations.

(b) The Superintendent of the Naval Observatory shall be detailed from officers in the line of the Navy serving in the grade of captain or above.

(c) The Secretary of the Navy may detail any officer of the Navy, competent for that duty, to supervise the Nautical Almanac.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7395	5 U.S.C. 133y–16 (note).	Reorganization Plan No. 3 of 1946, Part III, § 301, 60 Stat. 1099.
	5 U.S.C. 461.	Mar. 3, 1901, ch. 852, 31 Stat. 1122 (2d par., last sentence).
	5 U.S.C. 463.	R.S. 436; June 29, 1949, ch. 278, 63 Stat. 300 (2d par.).

In subsection (a) the words ''together with their respective functions, are hereby transferred from the Bureau of Naval Personnel, Department of the Navy'' are omitted as executed. The words ''attached to'' are substituted for the words ''and shall be administered, subject to the direction and control of the Secretary of the Navy, under the Chief of Naval Operations'' for brevity. All orders issued by the Chief of Naval Operations in performing the duties assigned to him are issued under the authority of the Secretary of the Navy.

In subsection (b) the words ''until further legislation by Congress'' are omitted as surplusage.

In subsection (c) the word ''detail'' is substituted for the word ''place''. The words ''in charge'' are omitted as surplusage. The word ''duty'' is substituted for the word ''service'' for clarity.

§ 7396. Naval Observatory: exchange of information with foreign offices

(a) The Secretary of the Navy may arrange to exchange data with foreign almanac offices to reduce the duplication of work in preparing the different national nautical and astronomical almanacs and make available for publication a larger amount of data useful to navigators and astronomers. Each such arrangement shall be made terminable on one year's notice.

(b) The work of the Nautical Almanac Office shall be so conducted that in an emergency the part of the work intended for the use of navigators may be computed by the force of the office without foreign cooperation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457; Pub. L. 95–357, Sept. 8, 1978, 92 Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7396	5 U.S.C. 464.	Aug. 22, 1912, ch. 335, 37 Stat. 342 (2d par.).

In subsection (a) the words ''as he may from time to time deem desirable with a view'' are omitted as surplusage. The words ''a larger amount of data useful'' are substituted for the words ''increase the total data which may be of use'' for clarity.

In subsection (b) the words ''during the continuance of any such arrangement'' are omitted as surplusage. The third proviso of 5 U.S.C. 464 is omitted as obsolete.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–357 struck out ''in the American Ephemeris and Nautical Almanac'' after ''for publication''.

CHAPTER 641—NAVAL PETROLEUM RESERVES

Sec.
7420. Definitions.
7421. Jurisdiction and control.
7422. Administration.
7423. Periodic re-examination of production requirements.
7424. Protection of oil reserves; contracts for conservation.
7425. Acquisition by condemnation and purchase.
[7426. Repealed.]
7427. Cooperative or unit plans in the naval petroleum reserves.
7428. Agreements and leases: provision for change.
7429. Re-lease of certain lands: lessee's preferential right.
7430. Disposition of products.
7431. Requirements as to consultation and approval.
7432. Authorizations of appropriations.
7433. Disposition of royalties.
[7434. Repealed.]
7435. Foreign interest.
7436. Regulations.
7437. Violations by lessee.
7438. Rifle, Colorado, plant; possession, use, and transfer of.
7439. Certain oil shale reserves: transfer of jurisdiction and petroleum exploration, development, and production.

AMENDMENTS

2000—Pub. L. 106–398, §1 [div. C, title XXXIV, § 3402(b)(3)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484, struck out item 7426 ''Cooperative or unit plans affecting Naval Petroleum Reserve Numbered 1''.

1997—Pub. L. 105–85, div. C, title XXXIV, § 3404(b), Nov. 18, 1997, 111 Stat. 2061, added item 7439.

1996—Pub. L. 104–201, div. A, title X, § 1074(a)(19), Sept. 23, 1996, 110 Stat. 2660, struck out item 7434 ''Annual report to congressional committees''.

Pub. L. 104–106, div. A, title XV, §§ 1502(a)(28)(B), 1503(b)(4), Feb. 10, 1996, 110 Stat. 506, 513, substituted ''Agreements'' for ''Agreement'' in item 7428 and ''congressional committees'' for ''Armed Services Committees'' in item 7434.

1990—Pub. L. 101–510, div. A, title XIII, § 1331(9), Nov. 5, 1990, 104 Stat. 1673, amended item 7434 generally, substituting ''Annual report'' for ''Quarterly reports''.

1980—Pub. L. 96–513, title V, § 513(32)(C), Dec. 12, 1980, 94 Stat. 2933, substituted ''Naval Petroleum Reserve Numbered'' for ''naval petroleum reserve numbered'' in item 7426.

1979—Pub. L. 96–137, § 3(b)(2), Dec. 12, 1979, 93 Stat. 1062, substituted ''Authorizations of appropriations'' for ''Naval petroleum reserve special account'' in item 7432.

1976—Pub. L. 94–258, title II, § 201(20), Apr. 5, 1976, 90 Stat. 313, added item 7420 and substituted ''Naval petroleum reserve special account'' for ''Expenditures; appropriations chargeable'' in item 7432.

1962—Pub. L. 87–796, § 1(13), Oct. 11, 1962, 76 Stat. 906, substituted ''Rifle, Colorado, plant; possession, use, and transfer of'' for ''Exclusion of naval oil shale reserves'' in item 7438.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 30 section 353; title 42 sections 7156, 7235.

§ 7420. Definitions

In this chapter:

(1) The term ''national defense'' includes the needs of, and the planning and preparedness to meet, essential defense, industrial, and military emergency energy requirements relative to the national safety, welfare, and economy, particularly resulting from foreign military or economic actions.

(2) The term ''naval petroleum reserves'' means the naval petroleum and oil shale reserves established by this chapter, including Naval Petroleum Reserve Numbered 1 (Elk

Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912; Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912; Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915; Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919; Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

(3) The term ''petroleum'' includes crude oil, gases (including natural gas), natural gasoline, and other related hydrocarbons, oil shale, and the products of any of such resources.

(4) The term ''Secretary'' means the Secretary of Energy.

(5) The term ''small refiner'' means an owner of a refinery or refineries (including refineries not in operation) who qualifies as a small business refiner under the rules and regulations of the Small Business Administration.

(6) The term ''maximum efficient rate'' means the maximum sustainable daily oil or gas rate from a reservoir which will permit economic development and depletion of that reservoir without detriment to the ultimate recovery.

(Added Pub. L. 94–258, title II, §201(1), Apr. 5, 1976, 90 Stat. 307; amended Pub. L. 96–513, title V, §513(30), Dec. 12, 1980, 94 Stat. 2933; Pub. L. 100–26, §7(k)(5), Apr. 21, 1987, 101 Stat. 284.)

AMENDMENTS

1987—Pub. L. 100–26 substituted colon for dash at end of introductory provisions, inserted ''The term'' in each par., substituted periods for semicolons in pars. (1) to (4) and period for ''; and'' in par. (5).

1980—Pub. L. 96–513 in introductory text struck out ''(a)'' before ''In'', in par. (2) struck out provisions relating to Naval Petroleum Reserve Numbered 4, and in par. (4) substituted ''Energy'' for ''the Navy''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DISPOSAL OF NAVAL PETROLEUM RESERVES

Pub. L. 105–261, div. C, title XXXIV, Oct. 17, 1998, 112 Stat. 2265, as amended by Pub. L. 106–398, §1 [div. C, title XXXIV, §3403(a), (c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484, 1654A–489, provided that:

''SEC. 3401. DEFINITIONS.

''In this title:

''(1) The term 'naval petroleum reserves' has the meaning given the term in section 7420(2) of title 10, United States Code.

''(2) The term 'Naval Petroleum Reserve Numbered 2' means the naval petroleum reserve, commonly referred to as the Buena Vista unit, that is located in Kern County, California, and was established by Executive order of the President, dated December 13, 1912.

''(3) The term 'Naval Petroleum Reserve Numbered 3' means the naval petroleum reserve, commonly referred to as the Teapot Dome unit, that is located in the State of Wyoming and was established by Executive order of the President, dated April 30, 1915.

''(4) The term 'Oil Shale Reserve Numbered 2' means the naval petroleum reserve that is located in the State of Utah and was established by Executive order of the President, dated December 6, 1916.

''(5) The term 'antitrust laws' has the meaning given the term in section 1(a) of the Clayton Act (15 U.S.C. 12(a)), except that the term also includes—

''(A) the Act of June 19, 1936 (15 U.S.C. 13 et seq.; commonly known as the Robinson-Patman Act); and

''(B) section 5 of the Federal Trade Commission Act (15 U.S.C. 45), to the extent that such section applies to unfair methods of competition.

''(6) The term 'petroleum' has the meaning given the term in section 7420(3) of title 10, United States Code.

''SEC. 3402. AUTHORIZATION OF APPROPRIATIONS.

''(a) AMOUNT.—There are hereby authorized to be appropriated to the Secretary of Energy $22,500,000 for fiscal year 1999 for the purpose of carrying out—

''(1) activities under chapter 641 of title 10, United States Code, relating to the naval petroleum reserves;

''(2) closeout activities at Naval Petroleum Reserve Numbered 1 upon the sale of that reserve under subtitle B of title XXXIV of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 7420 note); and

''(3) activities under this title relating to the disposition of Naval Petroleum Reserve Numbered 2, Naval Petroleum Reserve Numbered 3, and Oil Shale Reserve Numbered 2.

''(b) PERIOD OF AVAILABILITY.—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

''SEC. 3403. DISPOSAL OF NAVAL PETROLEUM RESERVE NUMBERED 2.

''(a) DISPOSAL OF FORD CITY LOTS AUTHORIZED.—(1) Subject to section 3406, the Secretary of Energy may dispose of the portion of Naval Petroleum Reserve Numbered 2 that is located within the town lots in Ford City, California, which are identified as 'Drill Sites Numbered 3A, 4, 6, 9A, 20, 22, 24, and 26' and described in the document entitled 'Ford City Drill Site Locations—NPR–2,' and accompanying maps on file in the office of the Deputy Assistant Secretary for Naval Petroleum and Oil Shale Reserves of the Department of Energy.

''(2) The Secretary of Energy shall carry out the disposal authorized by paragraph (1) by competitive sale or lease consistent with commercial practices, by transfer to another Federal agency or a public or private entity, or by such other means as the Secretary considers appropriate. Any competitive sale or lease under this subsection shall provide for the disposal of all right, title, and interest of the United States in the property to be conveyed. The Secretary of Energy may use the authority provided by the Act of June 14, 1926 (43 U.S.C. 869 et seq.; commonly known as the Recreation and Public Purposes Act), in the same manner and to the same extent as the Secretary of the Interior, to dispose of the portion of Naval Petroleum Reserve Numbered 2 described in paragraph (1).

''(3) Section 2696(a) of title 10, United States Code, regarding the screening of real property for further Federal use before disposal, shall apply to the disposal authorized by paragraph (1).

''(b) TRANSFER OF ADMINISTRATIVE JURISDICTION AUTHORIZED.—(1) The Secretary of Energy shall continue to administer Naval Petroleum Reserve Numbered 2 (other than the portion of the reserve authorized for disposal under subsection (a)) in accordance with chapter 641 of title 10, United States Code, until such time as the Secretary makes a determination to abandon oil

and gas operations in Naval Petroleum Reserve Numbered 2 in accordance with commercial operating practices.

''(2) After oil and gas operations are abandoned in Naval Petroleum Reserve Numbered 2, the Secretary of Energy may transfer to the Secretary of the Interior administrative jurisdiction and control over all public domain lands included within Naval Petroleum Reserve Numbered 2 (other than the portion of the reserve authorized for disposal under subsection (a)) for management in accordance with the general land laws.

''(c) RELATIONSHIP TO ANTITRUST LAWS.—This section does not modify, impair, or supersede the operation of the antitrust laws.

''SEC. 3404. DISPOSAL OF NAVAL PETROLEUM RESERVE NUMBERED 3.

''(a) ADMINISTRATION PENDING TERMINATION OF OPERATIONS.—The Secretary of Energy shall continue to administer Naval Petroleum Reserve Numbered 3 in accordance with chapter 641 of title 10, United States Code, until such time as the Secretary makes a determination to abandon oil and gas operations in Naval Petroleum Reserve Numbered 3 in accordance with commercial operating practices.

''(b) DISPOSAL AUTHORIZED.—After oil and gas operations are abandoned in Naval Petroleum Reserve Numbered 3, the Secretary of Energy may dispose of the reserve as provided in this subsection. Subject to section 3406, the Secretary shall carry out any such disposal of the reserve by sale or lease or by transfer to another Federal agency. Any sale or lease shall provide for the disposal of all right, title, and interest of the United States in the property to be conveyed and shall be conducted in accordance with competitive procedures consistent with commercial practices, as established by the Secretary.

''(c) RELATIONSHIP TO ANTITRUST LAWS.—This section does not modify, impair, or supersede the operation of the antitrust laws.

''SEC. 3405. DISPOSAL OF OIL SHALE RESERVE NUMBERED 2.

''(a) DEFINITIONS.—In this section:

''(1) NOSR–2.—The term 'NOSR–2' means Oil Shale Reserve Numbered 2, as identified on a map on file in the Office of the Secretary of the Interior.

''(2) MOAB SITE.—The term 'Moab site' means the Moab uranium milling site located approximately three miles northwest of Moab, Utah, and identified in the Final Environmental Impact Statement issued by the Nuclear Regulatory Commission in March 1996 in conjunction with Source Materials License No. SUA–917.

''(3) MAP.—The term 'map' means the map depicting the boundaries of NOSR–2, to be kept on file and available for public inspection in the offices of the Department of the Interior.

''(4) TRIBE.—The term 'Tribe' means the Ute Indian Tribe of the Uintah and Ouray Indian Reservation.

''(5) TRUSTEE.—The term 'Trustee' means the Trustee of the Moab Mill Reclamation Trust.

''(b) CONVEYANCE.—(1) Except as provided in paragraph (2) and subsection (e), all right, title, and interest of the United States in and to all Federal lands within the exterior boundaries of NOSR–2 (including surface and mineral rights) are hereby conveyed to the Tribe in fee simple. The Secretary of Energy shall execute and file in the appropriate office a deed or other instrument effectuating the conveyance made by this section.

''(2) The conveyance under paragraph (1) does not include the following:

''(A) The portion of the bed of Green River contained entirely within NOSR–2, as depicted on the map.

''(B) The land (including surface and mineral rights) to the west of the Green River within NOSR–2, as depicted on the map.

''(C) A ¼ mile scenic easement on the east side of the Green River within NOSR–2.

''(c) CONDITIONS ON CONVEYANCE.—(1) The conveyance under subsection (b) is subject to valid existing rights in effect on the day before the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000].

''(2) On completion of the conveyance under subsection (b), the United States relinquishes all management authority over the conveyed land, including tribal activities conducted on the land.

''(3) The land conveyed to the Tribe under subsection (b) shall not revert to the United States for management in trust status.

''(4) The reservation of the easement under subsection (b)(2)(C) shall not affect the right of the Tribe to use and maintain access to the Green River through the use of the road within the easement, as depicted on the map.

''(5) Each withdrawal that applies to NOSR–2 and that is in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000] is revoked to the extent that the withdrawal applies to NOSR–2.

''(6) Notwithstanding that the land conveyed to the Tribe under subsection (b) shall not be part of the reservation of the Tribe, such land shall be deemed to be part of the reservation of the Tribe for the purposes of criminal and civil jurisdiction.

''(d) ADMINISTRATION OF UNCONVEYED LAND AND INTERESTS IN LAND.—(1) The land and interests in land excluded by subparagraphs (A) and (B) of subsection (b)(2) from conveyance under subsection (b) shall be administered by the Secretary of the Interior in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

''(2) Not later than three years after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], the Secretary of the Interior shall submit to Congress a land use plan for the management of the land and interests in land referred to in paragraph (1).

''(3) There are authorized to be appropriated to the Secretary of the Interior such sums as are necessary to carry out this subsection.

''(e) ROYALTY.—(1) Notwithstanding the conveyance under subsection (b), the United States retains a nine percent royalty interest in the value of any oil, gas, other hydrocarbons, and all other minerals that are produced, saved, and sold from the conveyed land during the period beginning on the date of the conveyance and ending on the date the Secretary of Energy releases the royalty interest under subsection (i).

''(2) The royalty payments shall be made by the Tribe or its designee to the Secretary of Energy during the period that the oil, gas, hydrocarbons, or minerals are being produced, saved, sold, or extracted. The Secretary of Energy shall retain and use the payments in the manner provided in subsection (i)(3).

''(3) The royalty interest retained by the United States under this subsection does not include any development, production, marketing, and operating expenses.

''(4) The Tribe shall submit to the Secretary of Energy and to Congress an annual report on resource development and other activities of the Tribe concerning the conveyance under subsection (b).

''(5) Not later than five years after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], and every five years thereafter, the Tribe shall obtain an audit of all resource development activities of the Tribe concerning the conveyance under subsection (b), as provided under chapter 75 of title 31, United States Code. The results of each audit under this paragraph shall be included in the next annual report submitted under paragraph (4).

''(f) RIVER MANAGEMENT.—(1) The Tribe shall manage, under Tribal jurisdiction and in accordance with ordinances adopted by the Tribe, land of the Tribe that is adjacent to, and within ¼ mile of, the Green River in a manner that—

''(A) maintains the protected status of the land; and

''(B) is consistent with the government-to-government agreement and in the memorandum of understanding dated February 11, 2000, as agreed to by the Tribe and the Secretary of the Interior.

''(2) An ordinance referred to in paragraph (1) shall not impair, limit, or otherwise restrict the management and use of any land that is not owned, controlled, or subject to the jurisdiction of the Tribe.

''(3) An ordinance adopted by the Tribe and referenced in the government-to-government agreement may not be repealed or amended without the written approval of both the Tribe and the Secretary of the Interior.

''(g) PLANT SPECIES.—(1) In accordance with a government-to-government agreement between the Tribe and the Secretary of the Interior, in a manner consistent with levels of legal protection in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], the Tribe shall protect, under ordinances adopted by the Tribe, any plant species that is—

''(A) listed as an endangered species or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533); and

''(B) located or found on the NOSR–2 land conveyed to the Tribe.

''(2) The protection described in paragraph (1) shall be performed solely under tribal jurisdiction.

''(h) HORSES.—(1) The Tribe shall manage, protect, and assert control over any horse not owned by the Tribe or tribal members that is located or found on the NOSR–2 land conveyed to the Tribe in a manner that is consistent with Federal law governing the management, protection, and control of horses in effect on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000].

''(2) The management, control, and protection of horses described in paragraph (1) shall be performed solely—

''(A) under tribal jurisdiction; and

''(B) in accordance with a government-to-government agreement between the Tribe and the Secretary of the Interior.

''(i) REMEDIAL ACTION AT MOAB SITE.—(1)(A) The Secretary of Energy shall prepare a plan for remediation, including ground water restoration, of the Moab site in accordance with title I of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7911 et seq.). The Secretary of Energy shall enter into arrangements with the National Academy of Sciences to obtain the technical advice, assistance, and recommendations of the National Academy of Sciences in objectively evaluating the costs, benefits, and risks associated with various remediation alternatives, including removal or treatment of radioactive or other hazardous materials at the site, ground water restoration, and long-term management of residual contaminants. If the Secretary prepares a remediation plan that is not consistent with the recommendations of the National Academy of Sciences, the Secretary shall submit to Congress a report explaining the reasons for deviation from the National Academy of Sciences' recommendations.

''(B) The remediation plan required by subparagraph (A) shall be completed not later than one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], and the Secretary of Energy shall commence remedial action at the Moab site as soon as practicable after the completion of the plan.

''(C) The license for the materials at the Moab site issued by the Nuclear Regulatory Commission shall terminate one year after the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, unless the Secretary of Energy determines that the license may be terminated earlier. Until the license is terminated, the Trustee, subject to the availability of funds appropriated specifically for a purpose described in clauses (i) through (iii) or made available by the Trustee from the Moab Mill Reclamation Trust, may carry out—

''(i) interim measures to reduce or eliminate localized high ammonia concentrations in the Colorado River, identified by the United States Geological Survey in a report dated March 27, 2000;

''(ii) activities to dewater the mill tailings at the Moab site; and

''(iii) other activities related to the Moab site, subject to the authority of the Nuclear Regulatory Commission and in consultation with the Secretary of Energy.

''(D) As part of the remediation plan for the Moab site required by subparagraph (A), the Secretary of Energy shall develop, in consultation with the Trustee, the Nuclear Regulatory Commission, and the State of Utah, an efficient and legal means for transferring all responsibilities and title to the Moab site and all the materials therein from the Trustee to the Department of Energy.

''(2) The Secretary of Energy shall limit the amounts expended in carrying out the remedial action under paragraph (1) to—

''(A) amounts specifically appropriated for the remedial action in an appropriation Act; and

''(B) other amounts made available for the remedial action under this subsection.

''(3)(A) The royalty payments received by the Secretary of Energy under subsection (e) shall be available to the Secretary, without further appropriation, to carry out the remedial action under paragraph (1) until such time as the Secretary determines that all costs incurred by the United States to carry out the remedial action (other than costs associated with long-term monitoring) have been paid.

''(B) Upon making the determination referred to in subparagraph (A), the Secretary of Energy shall transfer all remaining royalty amounts to the general fund of the Treasury and release to the Tribe the royalty interest retained by the United States under subsection (e).

''(4)(A) Funds made available to the Department of Energy for national security activities shall not be used to carry out the remedial action under paragraph (1), except that the Secretary of Energy may use such funds for program direction directly related to the remedial action.

''(B) There are authorized to be appropriated to the Secretary of Energy to carry out the remedial action under paragraph (1) such sums as are necessary.

''(5) If the Moab site is sold after the date on which the Secretary of Energy completes the remedial action under paragraph (1), the seller shall pay to the Secretary of Energy, for deposit in the general fund of the Treasury, the portion of the sale price that the Secretary determines resulted from the enhancement of the value of the Moab site as a result of the remedial action. The enhanced value of the Moab site shall be equal to the difference between—

''(A) the fair market value of the Moab site on the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [Oct. 30, 2000], based on information available on that date; and

''(B) the fair market value of the Moab site, as appraised on completion of the remedial action.

''SEC. 3406. ADMINISTRATION.

''(a) PROTECTION OF EXISTING RIGHTS.—At the discretion of the Secretary of Energy, the disposal of property under this title shall be subject to any contract related to the United States ownership interest in the property in effect at the time of disposal, including any lease agreement pertaining to the United States interest in Naval Petroleum Reserve Numbered 2.

''(b) DEPOSIT OF RECEIPTS.—Notwithstanding any other law, all monies received by the United States from the disposal of property under this title, including any monies received from a lease entered into under

review of, and approve or disapprove, the draft contract or contracts not later than 12 months after the effective date.

''(f) SOLICITATION OF OFFERS.—(1) Not later than 13 months after the effective date, the Secretary shall publish the solicitation of offers for Naval Petroleum Reserve Numbered 1.

''(2) Not later than 18 months after the effective date, the Secretary shall identify the highest responsible offer or offers for purchase of the interest of the United States in Naval Petroleum Reserve Numbered 1 that, in total, meet or exceed the minimum acceptable price determined under subsection (d)(3).

''(3) The Secretary shall take such action immediately after the effective date as is necessary to obtain from an independent petroleum engineer within 10 months after that date a reserve report prepared in a manner consistent with commercial practices. The Secretary shall use the reserve report in support of the preparation of the solicitation of offers for the reserve.

''(g) FUTURE LIABILITIES.—To effectuate the sale of the interest of the United States in Naval Petroleum Reserve Numbered 1, the Secretary may extend such indemnities and warranties as the Secretary considers reasonable and necessary to protect the purchaser from claims arising from the ownership in the reserve by the United States.

''(h) MAINTAINING PRODUCTION.—Until the sale of Naval Petroleum Reserve Numbered 1 is completed under this section, the Secretary shall continue to produce the reserve at the maximum daily oil or gas rate from a reservoir, which will permit maximum economic development of the reservoir consistent with sound oil field engineering practices in accordance with section 3 of the unit plan contract.

''(i) NONCOMPLIANCE WITH DEADLINES.—At any time during the two-year period beginning on the effective date, if the Secretary determines that the actions necessary to complete the sale of the reserve within that period are not being taken or timely completed, the Secretary shall transmit to the appropriate congressional committees a written notification of that determination together with a plan setting forth the actions that will be taken to ensure that the sale of the reserve will be completed within that period. The Secretary shall consult with the Director of the Office of Management and Budget in preparing the plan for submission to the committees.

''(j) OVERSIGHT.—The Comptroller General shall monitor the actions of the Secretary relating to the sale of the reserve and report to the appropriate congressional committees any findings on such actions that the Comptroller General considers appropriate to report to the committees.

''(k) ACQUISITION OF SERVICES.—The Secretary may enter into contracts for the acquisition of services required under this section under the authority of paragraph (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)), except that the notification required under subparagraph (B) of such paragraph for each contract shall be submitted to Congress not less than 7 days before the award of the contract.

''SEC. 3413. EFFECT OF SALE OF RESERVE.

''(a) EFFECT ON EXISTING CONTRACTS.—(1) In the case of any contract, in effect on the effective date, for the purchase of production from any part of the United States' share of Naval Petroleum Reserve Numbered 1, the sale of the interest of the United States in the reserve shall be subject to the contract for a period of three months after the closing date of the sale or until termination of the contract, whichever occurs first. The term of any contract entered into after the effective date for the purchase of the production shall not exceed the anticipated closing date for the sale of the reserve.

''(2) The Secretary shall exercise the termination procedures provided in the contract between the United States and Bechtel Petroleum Operation, Inc., Contract Number DE–ACO1–85FE60520 so that the contract terminates not later than the date of closing of the sale of Naval Petroleum Reserve Numbered 1 under section 3412.

''(3) The Secretary shall exercise the termination procedures provided in the unit plan contract so that the unit plan contract terminates not later than the date of closing of the sale of reserve.

''(b) EFFECT ON ANTITRUST LAWS.—Nothing in this subtitle shall be construed to alter the application of the antitrust laws of the United States to the purchaser or purchasers (as the case may be) of Naval Petroleum Reserve Numbered 1 or to the lands in the reserve subject to sale under section 3412 upon the completion of the sale.

''(c) PRESERVATION OF PRIVATE RIGHT, TITLE, AND INTEREST.—Nothing in this subtitle shall be construed to adversely affect the ownership interest of any other entity having any right, title, and interest in and to lands within the boundaries of Naval Petroleum Reserve Numbered 1 and which are subject to the unit plan contract.

''(d) TRANSFER OF OTHERWISE NONTRANSFERABLE PERMIT.—The Secretary may transfer to the purchaser or purchasers (as the case may be) of Naval Petroleum Reserve Numbered 1 the incidental take permit regarding the reserve issued to the Secretary by the United States Fish and Wildlife Service and in effect on the effective date if the Secretary determines that transfer of the permit is necessary to expedite the sale of the reserve in a manner that maximizes the value of the sale to the United States. The transferred permit shall cover the identical activities, and shall be subject to the same terms and conditions, as apply to the permit at the time of the transfer.

''SEC. 3414. CONDITIONS ON SALE PROCESS.

''(a) NOTICE REGARDING SALE CONDITIONS.—The Secretary may not enter into any contract for the sale of Naval Petroleum Reserve Numbered 1 under section 3412 until the end of the 31-day period beginning on the date on which the Secretary submits to the appropriate congressional committees a written notification—

''(1) describing the conditions of the proposed sale; and

''(2) containing an assessment by the Secretary of whether it is in the best interests of the United States to sell the reserve under such conditions.

''(b) AUTHORITY TO SUSPEND SALE.—(1) The Secretary may suspend the sale of Naval Petroleum Reserve Numbered 1 under section 3412 if the Secretary and the Director of the Office of Management and Budget jointly determine that—

''(A) the sale is proceeding in a manner inconsistent with achievement of a sale price that reflects the full value of the reserve; or

''(B) a course of action other than the immediate sale of the reserve is in the best interests of the United States.

''(2) Immediately after making a determination under paragraph (1) to suspend the sale of Naval Petroleum Reserve Numbered 1, the Secretary shall submit to the appropriate congressional committees a written notification describing the basis for the determination and requesting a reconsideration of the merits of the sale of the reserve.

''(c) EFFECT OF RECONSIDERATION NOTICE.—After the Secretary submits a notification under subsection (b), the Secretary may not complete the sale of Naval Petroleum Reserve Numbered 1 under section 3412 or any other provision of law unless the sale of the reserve is authorized in an Act of Congress enacted after the date of the submission of the notification.

''SEC. 3415. TREATMENT OF STATE OF CALIFORNIA CLAIM REGARDING RESERVE.

''(a) RESERVATION OF FUNDS.—After the costs incurred in the conduct of the sale of Naval Petroleum Reserve Numbered 1 under section 3412 are deducted, nine percent of the remaining proceeds from the sale of the reserve shall be reserved in a contingent fund in the

Treasury for payment to the State of California for the Teachers' Retirement Fund of the State in the event that, and to the extent that, the claims of the State against the United States regarding production and proceeds of sale from Naval Petroleum Reserve Numbered 1 are—

''(1) settled by agreement with the United States under subsection (c); or

''(2) finally resolved in favor of the State by a court of competent jurisdiction, if a settlement agreement is not reached.

''(b) DISPOSITION OF FUNDS.—In such amounts as may be provided in appropriation Acts, amounts in the contingent fund shall be available for paying a claim described in subsection (a). After final disposition of the claims, any unobligated balance in the contingent fund shall be credited to the general fund of the Treasury. If no payment is made from the contingent fund within 10 years after the effective date, amounts in the contingent fund shall be credited to the general fund of the Treasury.

''(c) SETTLEMENT OFFER.—Not later than 30 days after the date of the sale of Naval Petroleum Reserve Numbered 1 under section 3412, the Secretary shall offer to settle all claims of the State of California against the United States with respect to lands in the reserve located in sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California, and production or proceeds of sale from the reserve, in order to provide proper compensation for the State's claims. The Secretary shall base the amount of the offered settlement payment from the contingent fund on the fair value for the State's claims, including the mineral estate, not to exceed the amount reserved in the contingent fund.

''(d) RELEASE OF CLAIMS.—Acceptance of the settlement offer made under subsection (c) shall be subject to the condition that all claims against the United States by the State of California for the Teachers' Retirement Fund of the State be released with respect to lands in Naval Petroleum Reserve Numbered 1, including sections 16 and 36 of township 30 south, range 23 east, Mount Diablo Principal Meridian, California, or production or proceeds of sale from the reserve.

''SEC. 3416. STUDY OF FUTURE OF OTHER NAVAL PETROLEUM RESERVES.

''(a) STUDY REQUIRED.—The Secretary of Energy shall conduct a study to determine which of the following options, or combinations of options, regarding the naval petroleum reserves (other than Naval Petroleum Reserve Numbered 1) would maximize the value of the reserves to the United States:

''(1) Retention and operation of the naval petroleum reserves by the Secretary under chapter 641 of title 10, United States Code.

''(2) Transfer of all or a part of the naval petroleum reserves to the jurisdiction of another Federal agency for administration under chapter 641 of title 10, United States Code.

''(3) Transfer of all or a part of the naval petroleum reserves to the Department of the Interior for leasing in accordance with the Mineral Leasing Act (30 U.S.C. 181 et seq.) and surface management in accordance with the Federal Land Policy and Management Act [of 1976] (43 U.S.C. 1701 et seq.).

''(4) Sale of the interest of the United States in the naval petroleum reserves.

''(b) CONDUCT OF STUDY.—The Secretary shall retain an independent petroleum consultant to conduct the study.

''(c) CONSIDERATIONS UNDER STUDY.—An examination of the value to be derived by the United States from the transfer or sale of the naval petroleum reserves shall include an assessment and estimate of the fair market value of the interest of the United States in the naval petroleum reserves. The assessment and estimate shall be made in a manner consistent with customary property valuation practices in the oil and gas industry.

''(d) REPORT AND RECOMMENDATIONS REGARDING STUDY.—Not later than June 1, 1996, the Secretary shall submit to Congress a report describing the results of the study and containing such recommendations (including proposed legislation) as the Secretary considers necessary to implement the option, or combination of options, identified in the study that would maximize the value of the naval petroleum reserves to the United States.''

§ 7421. Jurisdiction and control

(a) The Secretary shall take possession of all properties inside the naval petroleum reserves that are or may become subject to the control of and use by the United States for national defense purposes, except as otherwise provided in this chapter.

(b) The Secretary has exclusive jurisdiction and control over those lands inside Naval Petroleum Reserves Numbered 1 and 2 that are covered by leases granted under sections 181–184, 185–188, 189–194, 201, 202–209, 211–214, 223, 224–226, 226d, 226e, 227–229a, 241, 251, and 261–263 of title 30, and shall administer those leases.

(Aug. 10, 1956, ch. 1041, 70A Stat. 457; Pub. L. 87–796, §1(1), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94–258, title II, §201(2), Apr. 5, 1976, 90 Stat. 307; Pub. L. 98–525, title XIV, §1405(50), Oct. 19, 1984, 98 Stat. 2625.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7421(a)	34 U.S.C. 524 (1st 36 words of 1st par.).	June 4, 1920, ch. 228 (1st par., 1st 36 words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1253; June 17, 1944, ch. 262, 58 Stat. 280.
7421(b)	34 U.S.C. 524 (293d word to end of 1st par.).	June 4, 1920, ch. 228 (1st par., 294th word to end, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280.
	34 U.S.C. 524a.	Feb. 25, 1928, ch. 104, 45 Stat. 148.

In subsection (b) the reference to the transfer of jurisdiction and administration is omitted as executed.

REFERENCES IN TEXT

Section 194 of title 30, referred to in subsec. (b), was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 644.

Section 204 of title 30, included within the reference to sections 202–209 in subsec. (b), was repealed by Pub. L. 94–377, §13(a), Aug. 4, 1976, 90 Stat. 1090, subject to valid existing rights.

Sections 226d and 226e of title 30, referred to in subsec. (b), were omitted from the Code. See section 226 of Title 30, Mineral Lands and Mining.

Section 227 of title 30, referred to in subsec. (b), was omitted from the Code.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–525 substituted ''Naval Petroleum Reserves Numbered'' for ''naval petroleum reserves numbered''.

1976—Subsec. (a). Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary'', ''and oil shale'' after ''naval petroleum'', and substituted ''for national defense purposes'' for ''for naval purposes'', and ''this chapter'' for ''section 7438 hereof''.

1962—Subsec. (a). Pub. L. 87–796 empowered the Secretary to take possession of all properties inside the oil shale reserves, and inserted the exception clause.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7422. Administration

(a) The Secretary, directly or by contract, lease, or otherwise, shall explore, prospect, conserve, develop, use, and operate the naval petroleum reserves in his discretion, subject to the provisions of subsection (c) and the other provisions of this chapter; except that no petroleum leases shall be granted at Naval Petroleum Reserves Numbered 1 and 3.

(b) Except as otherwise provided in this chapter, particularly subsection (c), the naval petroleum reserves shall be used and operated for—

(1) the protection, conservation, maintenance, and testing of those reserves; or

(2) the production of petroleum whenever and to the extent that the Secretary, with the approval of the President, finds that such production is needed for national defense purposes and the production is authorized by a joint resolution of Congress.

(c)(1) In administering Naval Petroleum Reserves Numbered 1, 2, and 3, the Secretary is authorized and directed—

(A) to further explore, develop, and operate such reserves;

(B) to produce, during any extension of a period under paragraph (2), such reserves—

(i) at the maximum efficient rate consistent with sound engineering practices; or

(ii) at a lesser rate consistent with sound engineering practices and the protection, conservation, maintenance, and testing of such reserves if the Secretary determines that the minimum price described in section 7430(b)(2) of this title cannot be attained for the United States share of petroleum (other than natural gas liquids) produced from such Reserves;

(C) during such production period or any extension thereof to sell or otherwise dispose of the United States share of such petroleum produced from such reserves as provided in section 7430 of this title; and

(D) to construct, acquire, or contract for the use of storage and shipping facilities on and off the reserves and pipelines and associated facilities on and off the reserves for transporting petroleum from such reserves to the points where the production from such reserves will be refined or shipped.

Any pipeline in the vicinity of a naval petroleum reserve not otherwise operated as a common carrier may be acquired by the Secretary by condemnation, if necessary, if the owner thereof refuses to accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserve. With the approval of the Secretary, rights-of-way for new pipelines and associated facilities may be acquired by the exercise of the right of eminent domain in the appropriate United States district court. Such rights-of-way may be acquired in the manner set forth in sections 3114–3116 and 3118 of title 40, and the prospective holder of the right-of-way is ''the authority empowered by law to acquire the lands'' within the meaning of that Act. Such new pipelines shall accept, convey, and transport without discrimination and at reasonable rates any petroleum produced at such reserves as a common carrier.

(2) After April 5, 1982, the President may extend the period of production in the case of any naval petroleum reserve for additional periods of not to exceed three years each—

(A) after the President requires an investigation to be made, in the case of each extension, to determine the necessity for continued production from such naval petroleum reserve;

(B) after the President submits to the Congress, at least 180 days before the expiration of the current production period prescribed by this section, or any extension thereof, a copy of the report made to him on such investigation together with a certification by him that continued production from such naval petroleum reserve is in the national interest; and

(C) if neither House of Congress within ninety days after receipt of such report and certification adopts a resolution disapproving further production from such naval petroleum reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 87–599, §1, Aug. 24, 1962, 76 Stat. 401; Pub. L. 87–796, §1(2), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94–258, title II, §201(3), Apr. 5, 1976, 90 Stat. 307; Pub. L. 96–137, §3(a), Dec. 12, 1979, 93 Stat. 1061; Pub. L. 96–513, title V, §513(31), Dec. 12, 1980, 94 Stat. 2933; Pub. L. 98–525, title XIV, §1405(51), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 99–413, §1(a), Aug. 29, 1986, 100 Stat. 944; Pub. L. 100–202, §101(g) [title II, §201], Dec. 22, 1987, 101 Stat. 1329–213, 1329–242; Pub. L. 101–189, div. A, title XVI, §1622(f)(2), Nov. 29, 1989, 103 Stat. 1605; Pub. L. 107–217, §3(b)(30), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7422	34 U.S.C. 524 (1st par., 37th through 62d words, and 123d through 185th words).	June 4, 1920, ch. 228 (1st par., 37th through 62d words, and 123d through 185th words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280.

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–217 substituted ''sections 3114–3116 and 3118 of title 40'' for ''the Act of February 26, 1931 (40 U.S.C. 258a–258e)'' in concluding provisions.

1989—Subsec. (c)(2)(B). Pub. L. 101–189 substituted ''180 days before'' for ''one hundred eighty days prior to''.

1987—Subsec. (c)(1)(B)(ii). Pub. L. 100–202 inserted ''(other than natural gas liquids)'' after ''petroleum''.

1986—Subsec. (c)(1)(B). Pub. L. 99–413, §1(a)(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''to produce such reserves at the maximum efficient rate consistent with sound engineering practices for a period ending not later than April 5, 1982;''.

Subsec. (c)(3). Pub. L. 99–413, §1(a)(2), struck out par. (3) which conditioned the production authorization for Naval Petroleum Reserve Numbered 1 upon private owners' agreements with the Secretary to continue operations of such reserve under a unitized plan contract that protected the public interest.

1984—Subsec. (b). Pub. L. 98–525 struck out ''of this section'' after ''subsection (c)'' in provisions preceding par. (1).

1980—Subsec. (c)(1). Pub. L. 96–513, § 513(31)(A)–(D), in cl. (B) substituted provisions respecting termination on April 5, 1982, for provisions respecting commencement and termination, respectively, ninety days after date of enactment of the Naval Petroleum Reserves Production Act of 1976, and not to exceed six years after such date, in cl. (C) substituted ''provided in section 7430 of this title'' for ''hereinafter provided'', and in text following cl. (D) substituted ''discrimination'' for ''discrimiation'', and ''(40 U.S.C. 258a–258e)'' for '', chapter 307 (46 Stat. 1421; 40 U.S.C. 258(a))''.

Subsec. (c)(2). Pub. L. 96–513, § 513(31)(E), substituted ''After April 5, 1982,'' for ''At the conclusion of the six-year production period authorized by paragraph (1)(B) of this subsection''.

Subsec. (c)(3). Pub. L. 96–513, § 513(31)(F), substituted ''by July 4, 1976'' for ''within ninety days after the date of enactment of the Naval Petroleum Reserves Production Act of 1976''.

1979—Subsec. (c)(1). Pub. L. 96–137 struck out in text following subpar. (D), provision requiring that pipelines and associated facilities constructed at or procured for Naval Petroleum Reserve Numbered 1 pursuant to this subsection have adequate capacity to accommodate not less than three hundred fifty thousand barrels of oil per day and be fully operable as soon as possible, but not later than three years after the date of enactment of the Naval Petroleum Reserves Production Act of 1976.

1976—Subsec. (a). Pub. L. 94–258 substituted provisions authorizing the Secretary to explore, etc., the naval petroleum reserves in his discretion, subject to subsec. (c) of this section and this chapter and excepting specified Reserves from leasing arrangements, for provisions authorizing the Secretary of the Navy, except as provided in section 7438 hereof, to explore, etc., the naval petroleum preserves and oil shale reserves in his discretion, subject to Presidential approval.

Subsec. (b). Pub. L. 94–258 in introductory cl. substituted provisions authorizing use and operation of naval petroleum reserves except as otherwise provided in this chapter and in particular subsec. (c) of this section, for provisions authorizing use and operation of naval petroleum and oil shale reserves and lands outside naval petroleum reserve numbered 1 covered by contracts under section 7426 of this title and in cl. (2) struck out reference to gas, oil shale and products thereof.

Subsec. (c). Pub. L. 94–258 substituted provisions setting forth manner of administration by Secretary of Naval Petroleum Reserves Numbered 1, 2, and 3, authorizing President to extend period of production of any naval petroleum reserve, and conditioning production authorization for Reserve Numbered 1, for provisions authorizing the Secretary to develop naval petroleum reserve numbered 4, South Barrow gas field, and to supply gas to government installations at or near Point Barrow and to the native village of Barrow.

1962—Subsec. (a). Pub. L. 87–796 substituted ''Except as otherwise provided in section 7438 hereof, the Secretary'' for ''The Secretary'', and included oil shale reserves.

Subsec. (b). Pub. L. 87–796 included oil shale reserves in the opening provisions, and substituted ''petroleum, gas, oil shale and products thereof whenever'' for ''petroleum whenever'' in cl. (2).

Subsec. (c). Pub. L. 87–599 added subsec. (c).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

AVAILABILITY OF REVENUES FROM SALE OF NATURAL GAS FOR USE IN GAS PROTECTION ACTIVITY

Pub. L. 101–512, title II, Nov. 5, 1990, 104 Stat. 1947, provided in part: ''That, notwithstanding any other provision of law, revenues received from the sale of natural gas after the date of enactment of this Act [Nov. 5, 1990] from wells drilled or communitized in fiscal year 1990 and thereafter as part of gas protection activity at the Naval Oil Shale Reserves shall be deposited in this account, to remain available until expended, for use in further gas protection activity''.

CONNECTIONS TO PIPELINE IN SOUTH BARROW GAS FIELD

Section 3 of Pub. L. 87–599 provided that: ''The Federal agency or agencies in control of any pipeline between gas wells in the South Barrow gas field and the town of Barrow may authorize purchasers of the gas or carriers of the gas to install connections to such pipeline.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7423, 7430, 7431 of this title; title 43 section 1601.

§ 7423. Periodic re-examination of production requirements

The Secretary shall from time to time reexamine the need for the production of petroleum from oil shale for national defense when that production is authorized under section 7422 of this title. If he finds that the authorized quantity is no longer needed, he shall reduce production to the amount currently needed for national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 87–796, § 1(3), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94–258, title II, § 201(4), Apr. 5, 1976, 90 Stat. 309.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7423	34 U.S.C. 524 (186th through 243d words of 1st par.).	June 4, 1920, ch. 228 (1st par., 186th through 243d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 280.

AMENDMENTS

1976—Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary'' and ''or products'' after ''petroleum''.

1962—Pub. L. 87–796 directed the Secretary to reexamine, from time to time, the need for production of products from oil shale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7424. Protection of oil reserves; contracts for conservation

(a) To consolidate and protect the oil lands owned by the United States, the Secretary may—

(1) contract with owners and lessees of land inside or adjoining naval petroleum reserves for—

(A) conservation of oil and gas; and

(B) compensation for estimated drainage in lieu of drilling or operating offset wells; and

(2) acquire privately owned lands or leases inside Naval Petroleum Reserve Numbered 1 by exchange of—

(A) lands of the United States inside Naval Petroleum Reserve Numbered 1;

(B) the right to royalty production from any of the naval petroleum reserves; and

(C) the right to any money due the United States as a result of the wrongful extraction of petroleum products from lands inside Naval Petroleum Reserve Numbered 1.

(b) The Secretary shall report annually to Congress all agreements under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 87–796, §1(4), Oct. 11, 1962, 76 Stat. 904; Pub. L. 94–258, title II, §201(5), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96–513, title V, §513(32)(A), Dec. 12, 1980, 94 Stat. 2933.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7424	34 U.S.C. 524 (4th par., less 1st proviso).	June 4, 1920, ch. 228 (4th par., less 1st proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''Naval Petroleum Reserve Numbered 1'' for ''naval petroleum reserve numbered 1'' wherever appearing.

1976—Subsec. (a). Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary'', ''and oil shale'' after ''petroleum'' in par. (1), and ''in the ground'' after ''conservation'' in subpar. (A) of par. (1).

1962—Subsec. (a). Pub. L. 87–796 inserted provisions in cl. (1) empowering the Secretary to contract with owners and lessees of land inside or adjoining oil shale reserves.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7425 of this title; title 43 section 1601.

§ 7425. Acquisition by condemnation and purchase

(a) Whenever the Secretary is unable to make arrangements he considers satisfactory for exchanges of land or agreements for conservation authorized by section 7424 of this title, the Secretary may acquire, with the approval of the President, such privately owned lands and leases—

(1) by purchase, inside the naval petroleum reserves, or outside those reserves on the same geologic structure; and

(2) by condemnation, inside Naval Petroleum Reserve Numbered 1, or, if there is substantial drainage, outside that reserve on the same geologic structure.

(b) The Secretary shall report annually to Congress all proceedings for purchase and condemnation under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 458; Pub. L. 94–258, title II, §201(6), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96–513, title V, §513(32)(A), Dec. 12, 1980, 94 Stat. 2933; Pub. L. 106–398, §1 [div. C, title XXXIV, §3402(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7425	34 U.S.C. 524 (5th par., 1st 123 words, and 169th through 193d words).	June 4, 1920, ch. 228 (5th par., 1st 123 words, and 169th through 193d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

The words ''Whenever the Secretary of the Navy is unable'' are substituted for the words ''In the event of the inability of the Secretary of the Navy'' for brevity.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398 substituted ''for exchanges of land or agreements for conservation authorized by section 7424 of this title, the Secretary may acquire'' for ''for—

''(1) exchanges of land or agreements for conservation authorized by section 7424 of this title; or

''(2) contracts for joint, unit, or other cooperative plans with respect to lands or leases authorized by section 7426 of this title;

he may acquire''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Naval Petroleum Reserve Numbered 1'' for ''naval petroleum reserve numbered 1''.

1976—Subsec. (a). Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

[§ 7426. Repealed. Pub. L. 106–398, §1 [div. C, title XXXIV, §3402(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 459; Pub. L. 94–258, title II, §201(7), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96–513, title V, §513(32)(A), (B), Dec. 12, 1980, 94 Stat. 2933; Pub. L. 98–525, title XIV, §1405(52), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774, related to cooperative or unit plans affecting Naval Petroleum Reserve Numbered 1.

SAVINGS PROVISION

Pub. L. 106–398, §1 [div. C, title XXXIV, §3402(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484, provided that: ''The repeal of section 7426 of title 10, United States Code, shall not affect the validity of contracts that are in effect under such section on the day before the date of the enactment of this Act [Oct. 30, 2000]. No such contract may be extended or renewed on or after the date of the enactment of this Act.''

§ 7427. Cooperative or unit plans in the naval petroleum reserves

The Secretary, with the consent of the President, may make agreements, with respect to lands inside the naval petroleum reserves, of the same type as the Secretary of the Interior may make under section 17(m) of the Act of February 25, 1920 (30 U.S.C. 226(m)). No such agreement made by the Secretary may extend the term of any lease unless the agreement so provides.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 94–258, title II, §201(8), Apr. 5, 1976, 90 Stat. 309;

Pub. L. 96–513, title V, § 513(33), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 100–456, div. A, title XII, § 1233(g)(3), Sept. 29, 1988, 102 Stat. 2058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7427	30 U.S.C. 236b (last 46 words).	Aug. 8, 1946, ch. 916, § 13 (29th through 85th words) 60 Stat. 958.

AMENDMENTS

1988—Pub. L. 100–456 substituted ''section 17(m)'' for ''section 17(j)'' and ''30 U.S.C. 226(m)'' for ''30 U.S.C. 226(j)''.

1980—Pub. L. 96–513 substituted ''section 17(j) of the Act of February 25, 1920 (30 U.S.C. 226(j))'' for ''section 226e of title 30''.

1976—Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EX. ORD. NO. 12929. DELEGATION OF AUTHORITY REGARDING NAVAL PETROLEUM AND OIL SHALE RESERVES

Ex. Ord. No. 12929, Sept. 29, 1994, 59 F.R. 50473, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3 and sections 7427 and 7428 of title 10, United States Code, and in order to meet the goals and requirements of the Naval Petroleum and Oil Shale Reserves, it is hereby ordered as follows:

The functions vested in the President by sections 7427 and 7428 of title 10 of the United States Code are delegated to the Secretary of Energy.

WILLIAM J. CLINTON.

Temporary delegations of functions of President under this section were contained in the following prior Executive Orders:

Ex. Ord. No. 12784, Dec. 19, 1991, 56 F.R. 66339.

Ex. Ord. No. 12659, Dec. 15, 1988, 53 F.R. 50911.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7428. Agreements and leases: provision for change

Every unit or cooperative plan of development and operation and every lease affecting lands owned by the United States within Naval Petroleum Reserve Numbered 2 and the oil shale reserves shall contain a provision authorizing the Secretary, subject to approval by the President and to any limitation in the plan or lease, to change from time to time the rate of prospecting and development on, and the quantity and rate of production from, lands of the United States under the plan or lease, notwithstanding any other provision of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 87–796, § 1(5), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94–258, title II, § 201(9), Apr. 5, 1976, 90 Stat. 309; Pub. L. 106–398, § 1 [div. C, title XXXIV, § 3402(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–484.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7428	34 U.S.C. 524 (proviso of 6th par.).	June 4, 1920, ch. 228 (6th par., proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

The words ''entered into after July 1, 1937'' and ''entered into subsequent to July 1, 1937'' are omitted as surplusage. The words ''in his discretion'' are omitted as surplusage.

AMENDMENTS

2000—Pub. L. 106–398 struck out '', except a plan authorized by section 7426 of this title,'' after ''development and operation''.

1976—Pub. L. 94–258 substituted ''within Naval Petroleum Reserve Numbered 2 and the oil shale reserves shall contain a provision authorizing the Secretary'' for ''within the naval petroleum and oil shale reserves shall contain a provision authorizing the Secretary of the Navy''.

1962—Pub. L. 87–796 included leases affecting lands within oil shale reserves.

DELEGATION OF FUNCTIONS

Functions of the President under this section were delegated to the Secretary of Energy by Ex. Ord. No. 12929, Sept. 29, 1994, 59 F.R. 50473, set out as a note under section 7427 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7429. Re-lease of certain lands: lessee's preferential right

The Secretary, on terms prescribed by him, may re-lease lands in the naval petroleum reserves that were covered by leases made before July 1, 1936, and terminated by law at the expiration of their initial twenty-year periods. If any such land is to be re-leased, the Secretary shall give to the former lessee preferential rights to the new lease.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 94–258, title II, § 201(10), Apr. 5, 1976, 90 Stat. 309.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7429	34 U.S.C. 524 (6th par., less proviso).	June 4, 1920, ch. 228 (6th par., less proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1253; June 17, 1944, ch. 262, 58 Stat. 282.

The source law provided that leases of lands of the United States within the naval petroleum reserves in existence before July 1, 1936, except leases that had become part of an approved unit or cooperative plan and agreement, should terminate at the end of their initial 20-year period, and that the lands covered by these leases could then be re-leased by the Secretary of the Navy. All of the leases covered by this provision have terminated as provided therein. Thus the provision for the termination of the leases is executed and the only remaining effect of the source is to authorize the release of the lands formerly covered by the terminated leases. This section is worded accordingly. Reference to the classes of leases that were excepted from the termi-

nation is omitted as unnecessary because these leases were, of course, not terminated. They are not affected, since this section refers only to leases that were ''terminated by law''. The word ''conditions'' is omitted as included in the word ''terms''.

AMENDMENTS

1976—Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7430. Disposition of products

(a) In administering the naval petroleum reserves under this chapter, the Secretary shall use, store, or sell the petroleum produced from the naval petroleum reserves and lands covered by joint, unit, or other cooperative plans.

(b)(1) Subject to paragraph (2) and notwithstanding any other provision of law, each sale of the United States share of petroleum shall be made by the Secretary at public sale to the highest qualified bidder, at such time, in such amounts, and after such advertising as the Secretary considers proper and without regard to Federal, State, or local regulations controlling sales or allocation of petroleum products. Each sale of the United States share of petroleum shall be for periods of not more than one year, except that a sale of natural gas may be made for a period of more than one year.

(2) The Secretary may not sell any part of the United States share of petroleum produced from Naval Petroleum Reserves Numbered 2 and 3 at a price less than the current sales price, as estimated by the Secretary, of comparable petroleum in the same area.

(3) For purposes of paragraph (2), the term ''petroleum'' does not include natural gas liquids.

(c) In no event shall the Secretary permit the award of any contract which would result in any person obtaining control, directly or indirectly, over more than 20 percent of the estimated annual United States share of petroleum produced from Naval Petroleum Reserve Numbered 1.

(d) Each proposal for sale under this title shall provide that the terms of every sale of the United States share of petroleum from the naval petroleum reserves shall be so structured as to give full and equal opportunity for the acquisition of petroleum by all interested persons, including major and independent oil producers and refiners alike. When the Secretary, in consultation with the Secretary of the Interior, determines that the public interests will be served by the sale of petroleum to small refiners not having their own adequate sources of supply of petroleum, the Secretary is authorized and directed to set aside a portion of the United States share of petroleum produced for sale to such refiners under the provisions of this section for processing or use in such refineries, except that—

(1) none of the production sold to small refiners may be resold in kind;

(2) production must be sold at a cost of not less than the prevailing local market price of comparable petroleum;

(3) the set-aside portion may not exceed 25 percent of the estimated annual United States share of the total production from all producing naval petroleum reserves; and

(4) notwithstanding the provisions of subsection (b), the Secretary may, at his discretion if he deems it to be in the public interest, prorate such petroleum among such refiners for sale, without competition, at not less than the prevailing local market price of comparable petroleum.

(e) Any petroleum produced from the naval petroleum reserves, except such petroleum which is either exchanged in similar quantities for convenience or increased efficiency or transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and, in addition, before any petroleum subject to this section may be exported under the limitations and licensing requirement and penalty and enforcement provisions of the Export Administration Act of 1979, the President must make and publish an express finding that such exports will not diminish the total quality or quantity of petroleum available to the United States and that such exports are in the national interest and are in accord with the Export Administration Act of 1979.

(f) During the period of production or any extension thereof authorized by section 7422(c) of this title, the consultation and approval requirements of section 7431(a)(3) of this title are waived.

(g)(1) Prior to the promulgation of any rules and regulations, plans of development and amendments thereto, and in the entering and making of contracts and operating agreements relating to the development, production, or sale of petroleum in or from the reserves, the Secretary shall consult with and give due consideration to the views of the Attorney General of the United States with respect to matters which may affect competition.

(2) No contract or operating agreement may be made, issued, or executed under this chapter until at least 15 days after the Secretary notifies the Attorney General of the proposed contract or operating agreement. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary as to whether such contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws. If, within such 15-day period, the Attorney General advises the Secretary that a contract or operating agreement may create or maintain a situation inconsistent with the antitrust laws, then the Secretary may not make, issue, or execute that contract or operating agreement.

(h) Nothing in this chapter shall be deemed to confer on any person immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(i) In this section, the term ''antitrust laws'' means—

(1) the Sherman Act (15 U.S.C. 1 et seq.);

(2) the Clayton Act (15 U.S.C. 12 et seq.);

(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and

(5) sections 2, 3, and 4 of the Act of June 19, 1936 (commonly referred to as the ''Robinson-Patman Act'') (15 U.S.C. 13a, 13b, and 21a).

(j) Any pipeline which accepts, conveys, or transports any petroleum produced from Naval Petroleum Reserves Numbered 1 or Numbered 3 shall accept, convey, and transport without discrimination and at reasonable rates any such petroleum as a common carrier insofar as petroleum from such reserves is concerned. Every contract entered into by the Secretary for the sale of any petroleum owned by the United States which is produced from such reserves shall contain provisions implementing the requirements of the preceding sentence if the contractor owns a controlling interest in any pipeline or any company operating any pipeline, or is the operator of any pipeline, which carries any petroleum produced from such naval petroleum reserves. The Secretary may promulgate rules and regulations for the purpose of carrying out the provisions of this section and he, or the Secretary of the Interior where the authority extends to him, may declare forfeit any contract, operating agreement, right-of-way, permit, or easement held by any person violating any such rule or regulation. This section shall not apply to any natural gas common carrier pipeline operated by any person subject to regulation under the Natural Gas Act (15 U.S.C. 717 et seq.) or any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(k)(1) With respect to all or any part of the United States share of petroleum produced from the naval petroleum reserves, the President may direct that the Secretary—

(A) place that petroleum in the Strategic Petroleum Reserve as authorized by sections 151 through 166 of the Energy Policy and Conservation Act (42 U.S.C. 6231–6246); or

(B) exchange, directly or indirectly, that petroleum for other petroleum to be placed in the Strategic Petroleum Reserve under such terms and conditions and by such methods as the Secretary determines to be appropriate, without regard to otherwise applicable Federal procurement statutes and regulations.

(2) The requirements of section 159 of the Energy Policy and Conservation Act (42 U.S.C. 6239) do not apply to actions taken under this subsection.

(*l*)(1) Notwithstanding any other provision of this chapter (but subject to paragraph (2)), during any period in which the production of petroleum is authorized from Naval Petroleum Reserves Numbered 1, 2, or 3, the Secretary, at the request of the Secretary of Defense, may provide any portion of the United States share of petroleum so produced to the Department of Defense for its use, exchange, or sale in order to meet petroleum product requirements of the Department of Defense.

(2) Petroleum may be provided to the Department of Defense under paragraph (1) either directly or by such exchange as the Secretary deems appropriate. Appropriate reimbursement reasonably reflecting the fair market value shall be provided by the Secretary of Defense for petroleum provided under this subsection.

(3) Any exchange made pursuant to this subsection may be made without regard to otherwise applicable Federal procurement statutes and regulations.

(4) Paragraph (1) does not apply to any petroleum set aside for small refiners under subsection (d) or placed in the Strategic Petroleum Reserve under subsection (k).

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 87–599, § 2, Aug. 24, 1962, 76 Stat. 401; Pub. L. 87–796, § 1(6), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94–258, title II, § 201(11), Apr. 5, 1976, 90 Stat. 309; Pub. L. 96–294, title VIII, § 804, June 30, 1980, 94 Stat. 777; Pub. L. 96–513, title V, § 513(34), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 97–22, § 11(a)(10), July 10, 1981, 95 Stat. 138; Pub. L. 98–525, title XIV, § 1405(53), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 99–413, § 1(b), (c), Aug. 29, 1986, 100 Stat. 944, 945; Pub. L. 100–26, § 7(k)(9), Apr. 21, 1987, 101 Stat. 284; Pub. L. 100–202, § 101(g) [title II, § 201], Dec. 22, 1987, 101 Stat. 1329–213, 1329–242; Pub. L. 100–456, div. A, title XII, § 1233(e)(2), Sept. 29, 1988, 102 Stat. 2057; Pub. L. 106–398, § 1 [div. C, title XXXIV, § 3401], Oct. 30, 2000, 114 Stat. 1654, 1654A–484; Pub. L. 107–107, div. A, title X, § 1048(e)(12), Dec. 28, 2001, 115 Stat. 1228.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7430(a)	34 U.S.C. 524 (244th through 293d words of 1st par.).	June 4, 1920, ch. 228 (1st par., 244th through 293d words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.
7430(b)	34 U.S.C. 524 (2d sentence of 3d par.).	June 4, 1920, ch. 228 (3d par., 2d sentence, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words ''subject to the applicable limitations and restrictions of this Act'' are omitted as surplusage and the words ''in administering'' are inserted.

In subsection (b) the words ''under this section'' are substituted for the words ''from the naval reserves'' to make it clear that the requirements of this subsection apply to sales of petroleum, gas, and other hydrocarbons from lands outside petroleum reserve numbered 1 covered by joint, unit, or other cooperative plans as well as the sale of those products from the naval reserves proper. Subsection (a) is the only authority for the sale of petroleum, gas, and other hydrocarbons from the naval petroleum reserves.

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (e), is Pub. L. 96–72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Sherman Act, referred to in subsec. (i)(1), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, which is classified to sections 1 to 7 of Title 15, Commerce and

Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Clayton Act, referred to in subsec. (i)(2), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Federal Trade Commission Act, referred to in subsec. (i)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of Title 15. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Sections 73 and 74 of the Wilson Tariff Act, referred to in subsec. (i)(4), are sections 73 and 74 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, which enacted sections 8 and 9, respectively, of Title 15.

Act of June 19, 1936, referred to in subsec. (i)(5), is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15 and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 13 of Title 15 and Tables.

The Natural Gas Act, referred to in subsec. (j), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§717 et seq.) of Title 15. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107–107 substituted ''at a price less than the current sales price'' for ''at a price less than the higher of— (A) the current sales price'', substituted a period for ''; or'' after ''petroleum in the same area'', and struck out subpar. (B) which read as follows: ''the price of petroleum being purchased for the Strategic Petroleum Reserve, minus the cost of transporting petroleum from the naval petroleum reserve concerned to the nearest storage area of the Strategic Petroleum Reserve, with adjustments for the difference in the quality of the petroleum being purchased for the Strategic Petroleum Reserve and petroleum being produced from the naval petroleum reserve concerned.''

2000—Subsec. (b)(2). Pub. L. 106–398 substituted ''Naval Petroleum Reserves Numbered 2 and 3'' for ''Naval Petroleum Reserves Numbered 1, 2, and 3'' in introductory provisions and struck out ''90 percent of'' before ''the current sales price'' in subpar. (A).

1988—Subsec. (b)(3). Pub. L. 100–456 realigned margin of par. (3) and substituted a period for comma at end.

1987—Subsec. (b)(3). Pub. L. 100–202 added par. (3).

Subsec. (i). Pub. L. 100–26 substituted ''In'' for ''As used in''.

1986—Subsec. (b). Pub. L. 99–413, §1(b), designated existing provisions as par. (1), substituted ''Subject to paragraph (2) and notwithstanding'' for ''Notwithstanding'', and added par. (2).

Subsec. (g)(2). Pub. L. 99–413, §1(c), substituted ''15 days'' for ''30 days'' and ''15-day'' for ''30-day''.

1984—Subsec. (d)(4). Pub. L. 98–525, §1405(53)(A), struck out ''of this section'' after ''subsection (b)''.

Subsec. (g)(2). Pub. L. 98–525, §1405(53)(B), substituted ''30 days'' for ''thirty days'' and ''30-day'' for ''thirty day''.

Subsec. (*l*)(4). Pub. L. 98–525, §1405(53)(C), struck out ''of this section'' after ''subsection (d)'' and ''subsection (k)''.

1981—Subsec. (e). Pub. L. 97–22 substituted ''Export Administration Act of 1979'' for ''Export Administration Act of 1969'' in three places.

1980—Subsec. (b). Pub. L. 96–294, §804(a), struck out ''for periods of not more than one year,'' after ''qualified bidder,'' and inserted last sentence limiting sales of the United States share of petroleum to periods of not more than one year, except for sales of natural gas.

Subsecs. (c), (d)(3). Pub. L. 96–513(34)(A), substituted ''percent'' for ''per centum''.

Subsec. (e). Pub. L. 96–513, §513(34)(B), substituted ''(50 U.S.C. App. 2401 et seq.)'' for ''(83 Stat. 841)''.

Subsec. (f). Pub. L. 96–513, §513(34)(C), inserted references to this title wherever appearing.

Subsec. (i). Pub. L. 96–513, §513(34)(D), substituted ''(1) the Sherman Act (15 U.S.C. 1 et seq.);'', ''(2) the Clayton Act (15 U.S.C. 12 et seq.);'', ''(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);'', ''(4) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8 and 9); and'', and ''(5) sections 2, 3, and 4 of the Act of June 19, 1936 (commonly referred to as the 'Robinson-Patman Act') (15 U.S.C. 13a, 13b, and 21a).'' for ''(1) the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;'' ''(2) the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;'' ''(3) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;'' ''(4) sections 73 and 74 of the Act entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes', approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or'', and ''(5) sections 2, 3, and 4 of the Act of June 19, 1936, chapter 592 (15 U.S.C. 13a, 13b, and 21a)'', respectively.

Subsec. (j). Pub. L. 96–513, §513(34)(E), inserted ''(15 U.S.C. 717 et seq.)''.

Subsec. (k). Pub. L. 96–294, §804(b), amended subsec. (k) generally, inserting references to the Secretary, provision authorizing the exchange of petroleum under terms and conditions determined appropriate without regard to Federal procurement statutes and regulations, and provision making 42 U.S.C. 6239 inapplicable.

Subsec. (*l*). Pub. L. 96–294, §804(c), added subsec. (*l*).

1976—Subsec. (a). Pub. L. 94–258 substituted provisions setting forth requirements for Secretary in administering naval petroleum reserves under this chapter, for provisions setting forth requirements for Secretary of the Navy in administering naval petroleum and oil shale reserves under this chapter.

Subsec. (b). Pub. L. 94–258 inserted ''Notwithstanding any other provision of law'' before ''each sale'', reference to United States share of petroleum, provision relating to periods of sale, and provision exempting Federal, State, or local regulations controlling sales or allocation of petroleum products, and struck out applicability to sales of gas, other hydrocarbons, oil shale, or products therefrom.

Subsecs. (c) to (k). Pub. L. 94–258 added subsecs. (c) to (k).

1962—Subsec. (a). Pub. L. 87–796 included provision for administration of oil shale reserves, required the Secretary of the Navy to use, store, sell, or exchange oil shale and products therefrom produced from oil shale reserves for other petroleum or refined products, and deleted provision which required the Secretary to use, store, sell, or exchange gas products from lands in the South Barrow gas field of naval petroleum reserve numbered 4 for other petroleum or refined products.

Pub. L. 87–599 required the Secretary of the Navy to use, store, sell, or exchange gas products from lands in the South Barrow gas field of naval petroleum reserve numbered 4 for other petroleum or refined products.

Subsec. (b). Pub. L. 87–796 included sale of oil shale and products from petroleum, gas, other hydrocarbons, and oil shale.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

DELEGATION OF FUNCTIONS

Functions vested in President by subsec. (k) of this section delegated to Secretary of Energy by section 1–102 of Ex. Ord. No. 12231, Aug. 4, 1980, 45 F.R. 52139, set

out as a note under section 6240 of Title 42, The Public Health and Welfare.

MINIMUM SELLING PRICE OF UNITED STATES SHARE OF PETROLEUM

Pub. L. 106–291, title II, Oct. 11, 2000, 114 Stat. 976, provided in part: ''That the requirements of 10 U.S.C. 7430(b)(2)(B) shall not apply to fiscal year 2001 and any fiscal year thereafter''.

Similar provisions were contained in the following appropriation and authorization acts:

Pub. L. 106–113, div. B, §1000(a)(3) [title II], Nov. 29, 1999, 113 Stat. 1535, 1501A–179.

Pub. L. 105–277, div. A, §101(e) [title II], Oct. 21, 1998, 112 Stat. 2681–231, 2681–276.

Pub. L. 105–85, div. C, title XXXIV, §3402, Nov. 18, 1997, 111 Stat. 2059.

Pub. L. 105–83, title II, Nov. 14, 1997, 111 Stat. 1580.

Pub. L. 104–208, div. A, title I, §101(d) [title II], Sept. 30, 1996, 110 Stat. 3009–181, 3009–210.

Pub. L. 104–201, div. C, title XXXIV, §3402, Sept. 23, 1996, 110 Stat. 2858.

Pub. L. 104–134, title I, §101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–187; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

Pub. L. 104–106, div. C, title XXXIV, §3402, Feb. 10, 1996, 110 Stat. 631.

Pub. L. 103–337, div. C, title XXXV, §3502, Oct. 5, 1994, 108 Stat. 3111.

Pub. L. 103–332, title II, Sept. 30, 1994, 108 Stat. 2525.

Pub. L. 103–138, title II, Nov. 11, 1993, 107 Stat. 1405.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7422 of this title; title 42 section 6506; title 43 section 1601.

§ 7431. Requirements as to consultation and approval

(a) The Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives must be consulted and the President's approval must be obtained before any condemnation proceedings may be started under this chapter and before any of the following transactions authorized by this chapter may be effective:

(1) A lease of any part of the naval petroleum reserves.

(2) A contract to alienate from the United States the use, control, or possession of any part of the naval petroleum reserves (except that consultation and Presidential approval are not required in connection with the issuance of permits, licenses, easements, grazing and agricultural leases, rights-of-way, and similar contracts pertaining to use of the surface area of the naval petroleum reserves).

(3) A contract to sell the petroleum (other than royalty oil and gas) produced from any part of the naval petroleum reserves.

(4) A contract for conservation or for compensation for estimated drainage.

(5) An agreement to exchange land, the right to royalty production, or the right to any money due the United States.

(b)(1) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration, development, and production of the naval petroleum reserves.

(2) All plans or substantial amendments submitted to the Congress pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or amendments on competition. Such plans or amendments shall not be implemented until sixty days after such plans or amendments have been submitted to such committees.

(c) During the period of production authorized by section 7422(c) of this title, the Secretary shall submit annual reports as of the first day of the fiscal year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and such committees shall cause such reports to be printed as a Senate or House document, as appropriate. The Secretary shall include in such reports, with respect to each naval petroleum reserve, an explanation in detail of the following:

(1) The status of the exploration, development, and production programs.

(2) The production that has been achieved, including the disposition of such production and the proceeds realized therefrom.

(3) The status of pipeline construction and procurement and problems related to the availability of transportation facilities.

(4) A summary of future plans for exploration, development, production, disposal, and transportation of the production from the naval petroleum reserves.

(5) Such other information regarding the reserve as the Secretary deems appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 460; Pub. L. 87–796, §1(7), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94–258, title II, §201(12), Apr. 5, 1976, 90 Stat. 311; Pub. L. 98–525, title XIV, §1405(52), Oct. 19, 1984, 98 Stat. 2625; Pub. L. 99–145, title XIII, §1303(a)(25), Nov. 8, 1985, 99 Stat. 740; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7431	34 U.S.C. 524 (1st proviso of 4th par.).	June 4, 1920, ch. 228 (4th par., 1st proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 282.

AMENDMENTS

1999—Subsecs. (a), (b)(1), (c). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsecs. (a), (b)(1), (c). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1985—Subsec. (c). Pub. L. 99–145 in pars. (1) to (3) substituted ''The'' for ''the'' at beginning and periods for the semicolons at end, in par. (4) substituted ''A summary'' for ''a summary'' and a period for ''; and'', and in par. (5) substituted ''Such'' for ''such''.

1984—Subsecs. (b)(1), (c). Pub. L. 98–525 inserted ''of this title'' after ''section 7422(c)''.

1976—Pub. L. 94–258 designated existing provisions as subsec. (a), struck out ''or oil shale'' in pars. (1) and (2) before ''reserves'', struck out ''and oil shale'' in pars.

(2) and (3), before ''reserves'' substituted ''petroleum (other than royalty oil and gas)'' for ''oil and gas (other than royalty oil and gas), oil shale, and products therefrom'' in par. (3), and added subsecs. (b) and (c).

1962—Pub. L. 87–796 included oil shale reserves in cls. (1) and (2), inserted provisions in cl. (2) excepting consultation and Presidential approval in connection with issuance of permits, licenses, easements, grazing and agricultural leases, rights-of-way, and similar contracts pertaining to use of surface area of naval petroleum and oil shale reserves, and included oil shale, and products therefrom produced from any part of oil shale reserves.

CONTRACT FOR STUDIES OF POTENTIAL TRANSFER OUT OF FEDERAL CONTROL OF FACILITIES AND FUNCTIONS AT ELK HILLS AND TEAPOT DOME; RESTRICTIONS

Pub. L. 101–45, title I, §501, June 30, 1989, 103 Stat. 103, provided that no funds appropriated or made available under Pub. L. 101–45 or any other Act were to be used by the executive branch to contract with organizations outside Department of Energy to perform studies of potential transfer out of Federal ownership, management or control by sale, lease, or other disposition, in whole or in part, of facilities and functions of Naval Petroleum Reserve Numbered 1 (Elk Hills) and Naval Petroleum Reserve Numbered 3 (Teapot Dome), and prohibited negotiation of changes to unit plan contract with Chevron which governed operation of Elk Hills, where purpose of changes was to prepare for divestiture of the Reserve, prior to repeal by Pub. L. 104–134, title I, §101(c) [title II], Apr. 26, 1996, 110 Stat. 1321–156, 1321–187; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7430 of this title; title 43 section 1601.

§ 7432. Authorizations of appropriations

(a) Funds for the following purposes may not be appropriated unless such appropriations have been specifically authorized by law:

(1) Exploration, prospecting, conservation, development, use, operations, and production of the naval petroleum reserves as authorized by this chapter.

(2) Production (including preparation for production) as authorized by this chapter or as may be authorized after April 5, 1976.

(3) The construction and operation of facilities both within and outside the naval petroleum reserves incident to the production and the delivery of petroleum, including pipelines and shipping terminals.

Sums appropriated for such purposes shall remain available until expended.

(b) Contracts under this chapter providing for the obligation of funds may be entered into for a period of five years, renewable for an additional five-year period; however, such contracts may obligate funds only to the extent that such funds are made available in appropriation Acts.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 87–796, §1(8), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94–258, title II, §201(13), Apr. 5, 1976, 90 Stat. 312; Pub. L. 96–137, §3(b)(1), Dec. 12, 1979, 93 Stat. 1061; Pub. L. 96–513, title V, §513(35), Dec. 12, 1980, 94 Stat. 2934.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7432	34 U.S.C. 524 (3d par., less 2d sentence; 5th par., 124th through 168th words).	June 4, 1920, ch. 228 (3d par., less 2d sentence; 5th par., 124th through 168th words, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1252; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words ''by the Congress'' are omitted as surplusage.

In subsection (b) the words ''There is authorized to be appropriated'' are omitted as surplusage.

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96–513 substituted a period for the semicolon at the end.

1979—Pub. L. 96–137 struck out provisions relating to the naval petroleum reserves special account.

1976—Pub. L. 94–258 substituted ''Naval petroleum reserves special account'' for ''Expenditures: appropriations chargeable'' in section catchline.

Subsec. (a). Pub. L. 94–258 substituted provisions establishing a special account on the books of the Treasury Department to be designated as the ''naval petroleum reserves special account'', and authorizing to be credited proceeds resulting from the sale or exchange of the United States share of petroleum, refined petroleum products, appropriation funds, royalties, or other revenue from the operation of the reserves, for provisions authorizing the expenditure of funds from available appropriations for expenses incurred in the administration of the reserves.

Subsec. (b). Pub. L. 94–258 substituted provisions which made funds in the naval petroleum reserve special account available in sums specified in annual appropriations acts for enumerated expense items, for provisions which authorized expenditures to be made under the direction of the President and requiring the President to submit an estimate of expenditures necessary to carry out the purposes of this chapter.

Subsecs. (c), (d). Pub. L. 94–258 added subsecs. (c) and (d).

1962—Subsec. (a). Pub. L. 87–796 substituted ''with respect to the naval petroleum and oil shale reserves shall be paid from appropriations made available for the purposes specified in this chapter'' for ''in exploring, prospecting, conserving, developing, using and operating lands owned or controlled by the United States in the naval petroleum reserves, and in producing petroleum, and the share of the United States of expenses incurred under any contract entered into under this chapter, shall be paid from appropriations made available for those purposes''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ABOLITION OF NAVAL PETROLEUM RESERVES SPECIAL ACCOUNT

Section 3(c) of Pub. L. 96–137 provided that: ''The naval petroleum reserves special account established by section 7432 of title 10, United States Code, as in existence on the day before the date of the enactment of this Act [Dec. 12, 1979], is abolished. Unappropriated balances of funds in the naval petroleum reserves special account on the date of the enactment of this Act shall be transferred on the books of the Treasury into miscellaneous receipts, and all moneys accruing to the United States after such date under chapter 641 of title 10, United States Code, shall be covered into the Treasury as miscellaneous receipts.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7433. Disposition of royalties

(a) Any oil, gas, gasoline or other substance accruing to the United States as royalty from any lease under this chapter shall be delivered to the United States, or shall be paid for in money, as the Secretary elects.

(b) All money accruing to the United States from lands in the naval petroleum reserves shall be covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 87–796, § 1(9), Oct. 11, 1962, 76 Stat. 905; Pub. L. 94–258, title II, § 201(14), (15), Apr. 5, 1976, 90 Stat. 313.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7433	34 U.S.C. 524 (10th par.).	June 4, 1920, ch. 228 (10th par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words ''or all'' are omitted as surplusage. The words ''under this chapter'' are substituted for the words ''of lands within the naval petroleum reserves or other naval fuel reserves under the authority of this section'' for brevity. The words ''be delivered to the United States, or shall be paid for in money'' are substituted for the words ''be paid for in money or be paid in kind'' for clarity. Neither gas, oil, gasoline, nor hydrocarbon can be ''paid'', but any one of them may be delivered.

In subsection (b) the words ''except as otherwise provided in this section'' are omitted as surplusage. There is no exception within the chapter to the rule stated in subsection (b). The word ''paid'' is substituted for the words ''which may accrue'' for clarity. The words ''under this chapter'' are substituted for the words ''under the provisions of this section or of sections * * * on account of the petroleum products extracted therefrom'' for brevity. The two terms are coextensive. The sections of 30 U.S.C. that are cited in 34 U.S.C. 524 (10th par.) comprise the entire Act of Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended. The application of that Act to the Navy is covered in § 7427 of this title. The words ''as miscellaneous receipts'' are omitted as surplusage.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–258, § 201(14), struck out ''of the Navy'' after ''Secretary''.

Subsec. (b). Pub. L. 94–258, § 201(15), struck out ''and oil shale'' after ''petroleum''.

1962—Subsec. (a). Pub. L. 87–796 substituted ''or other substance'' for ''or other hydrocarbon substance''.

Subsec. (b). Pub. L. 87–796 substituted ''All money accruing to the United States from lands in the naval petroleum and oil shale reserves'' for ''Money paid to the United States for petroleum products under this chapter''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 470h; title 30 section 191; title 43 section 1601.

[§ 7434. Repealed. Pub. L. 104–66, title I, § 1051(g), Dec. 21, 1995, 109 Stat. 716]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 461; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(35), 72 Stat. 1566; Oct. 11, 1962, Pub. L. 87–796, § 1(10), 76 Stat. 906; Apr. 5, 1976, Pub. L. 94–258, title II, § 201(16), 90 Stat. 313; Dec. 12, 1980, Pub. L. 96–513, title V, § 513(36), 94 Stat. 2934; Nov. 5, 1990, Pub. L. 101–510, div. A, title XIII, § 1311(7), 104 Stat. 1670, directed Secretary to submit annual report to Congress on production from naval petroleum reserves during the preceding year. Pub. L. 104–106, div. A, title XV, § 1502(a)(28)(A), Feb. 10, 1996, 110 Stat. 506, which directed the general amendment of this section, could not be executed because of prior repeal by Pub. L. 104–66.

§ 7435. Foreign interest

(a) If the laws, customs, or regulations of any foreign country deny the privilege of leasing public lands to citizens or corporations of the United States, citizens of that foreign country, or corporations controlled by citizens of that country, may not, by contract made after July 1, 1937, or by stock ownership, holding, or control, acquire or own any interest in, or right to any benefit from, any lease of land in the naval petroleum, naval oil shale, or other naval fuel reserves made under sections 181–184, 185–188, 189–194, 201, 202–209, 211–214, 223, 224–226, 226d, 226e, 227–229a, 241, 251, and 261–263 of title 30, or under this chapter.

(b) The Secretary may cancel any lease for any violation of this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 87–796, § 1(11), Oct. 11, 1962, 76 Stat. 906; Pub. L. 94–258, title II, § 201(17), Apr. 5, 1976, 90 Stat. 313.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7435	34 U.S.C. 524 (8th par.).	June 4, 1920, ch. 228 (8th par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, § 1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words ''foreign country'' are substituted for the words ''another country'' for clarity.

In subsection (b) the word ''for'' is substituted for the words ''in the event of'' for brevity.

REFERENCES IN TEXT

Section 194 of title 30, referred to in subsec. (a), was repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 644.

Section 204 of title 30, referred to in subsec. (a), was repealed by Pub. L. 94–377, § 13(a), Aug. 4, 1976, 90 Stat. 1090, subject to valid existing rights.

Sections 226d and 226e of title 30, referred to in subsec. (a), were omitted from the Code. See section 226 of Title 30, Mineral Lands and Mining.

Section 227 of title 30, referred to in subsec. (a), was omitted from the Code.

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary''.

1962—Subsec. (a). Pub. L. 87–796 substituted ''land in the naval petroleum, naval oil shale, or other naval fuel reserves'' for ''land in the naval petroleum or other naval fuel reserves''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7436. Regulations

(a) The Secretary may prescribe regulations and take any proper action to accomplish the purposes of this chapter.

(b) All statements, reports, and representations required by the regulations shall be under

oath, unless otherwise specified, and in such form as the Secretary requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461; Pub. L. 94–258, title II, §201(18), Apr. 5, 1976, 90 Stat. 313.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7436	34 U.S.C. 524 (9th par.).	June 4, 1920, ch. 228 (9th par. of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words ''necessary rules and'' are omitted as surplusage, and the words ''to take any proper action'' are substituted for the words ''to do any and all things necessary or proper'' for brevity.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–258 struck out ''of the Navy, subject to approval by the President,'' after ''Secretary''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7437 of this title; title 43 section 1601.

§ 7437. Violations by lessee

(a) If a lessee fails to comply with any provision of this chapter, of his lease, or of regulations issued under section 7436 of this title that are in force on the date of his lease, the lease may be forfeited and cancelled by an appropriate proceeding in the United States district court for the district in which any part of the property is located.

(b) The lease may provide appropriate methods for the settlement of disputes and remedies for breach of specified conditions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 461.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7437	34 U.S.C. 524 (11th par., less proviso).	June 4, 1920, ch. 228 (11th par., less proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

In subsection (a) the words ''the district in which any part of the property is located'' are substituted for the words ''the district in which the property, or some part thereof, is located,'' for brevity.

In subsection (b) the words ''for resort to'' and ''for'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 1601.

§ 7438. Rifle, Colorado, plant; possession, use, and transfer of

(a) The Secretary shall take possession of the experimental demonstration facility near Rifle, Colorado, which was constructed and operated by the Department of the Interior on lands on or near the naval oil shale reserves under the Act of April 5, 1944 (30 U.S.C. 321 et seq.).

(b) The Secretary, subject to the approval of the President, shall by contract, lease, or otherwise encourage the use of the facility described in subsection (a) in research, development, test, evaluation, and demonstration work. For such purposes the Secretary may use or lease for use by institutions, organizations, or individuals, public or private, the facility described in subsection (a) and may construct, install, and operate, or lease for operation additional experimental facilities on such lands. The Secretary may, after consultation with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, mine and remove, or authorize the mining and removal, of any oil shale or products therefrom from lands in the naval oil shale reserves that may be needed for such experimentation.

(c) Nothing in this chapter shall be construed—

(1) to authorize the commercial development and operation of the naval oil shale reserves by the Government in competition with private industry; or

(2) in diminution of the responsibility of the Secretary in providing oil shale and products therefrom for needs of national defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462; Pub. L. 87–796, §1(12), Oct. 11, 1962, 76 Stat. 906; Pub. L. 94–258, title II, §201(19), Apr. 5, 1976, 90 Stat. 313; Pub. L. 96–513, title V, §513(37), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7438	34 U.S.C. 524 (proviso of 11th par.).	June 4, 1920, ch. 228 (11th par., proviso, of amended 3d and 4th provisos), 41 Stat. 813; June 30, 1938, ch. 851, §1, 52 Stat. 1254; June 17, 1944, ch. 262, 58 Stat. 281.

The words ''this chapter does not authorize'' are substituted for the words ''nothing herein contained shall be construed to permit'' for brevity.

REFERENCES IN TEXT

Act April 5, 1944, referred to in subsec. (a), is act Apr. 5, 1944, ch. 172, 58 Stat. 190, as amended, which is classified generally to chapter 6 (§321 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code see Tables.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1980—Subsec. (a). Pub. L. 96–513, §513(37)(A), substituted provisions relating to authority of the Secretary under the specified statute, for provisions relating to authority of the Administrator of the Energy Research and Development Administration under the specified statute.

Subsec. (b). Pub. L. 96–513, §513(37)(B), substituted provisions relating to authorities of the Secretary, for provisions relating to authorities of the Administrator

of the Energy Research and Development Administration.

Subsec. (c). Pub. L. 96–513, § 513(37)(C), substituted ''in this chapter'' for ''herein contained''.

1976—Subsec. (a). Pub. L. 94–258 substituted ''Administrator of the Energy Research and Development Administration'' for ''Secretary of the Interior''.

Subsec. (b). Pub. L. 94–258 substituted ''Administrator of the Energy Research and Development Administration'' for ''Secretary of the Interior'' wherever appearing therein and struck out ''of the Navy'' after ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 94–258 struck out ''of the Navy'' after ''Secretary''.

1962—Pub. L. 87–796 amended section generally by substituting provisions relating to the possession, use, and transfer of the experimental demonstration facility near Rifle, Colorado, for provisions which stated that this chapter does not authorize the development or operation of the naval oil-shale reserves.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7421, 7422 of this title; title 43 section 1601.

§ 7439. Certain oil shale reserves: transfer of jurisdiction and petroleum exploration, development, and production

(a) TRANSFER REQUIRED.—(1) Upon the enactment of this section, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over all public domain lands included within Oil Shale Reserve Numbered 1 and those public domain lands included within the undeveloped tracts of Oil Shale Reserve Numbered 3.

(2) Not later than November 18, 1998, the Secretary of Energy shall transfer to the Secretary of the Interior administrative jurisdiction over those public domain lands included within the developed tract of Oil Shale Reserve Numbered 3, which consists of approximately 6,000 acres and 24 natural gas wells, together with pipelines and associated facilities.

(3) Notwithstanding the transfer of jurisdiction, the Secretary of Energy shall continue to be responsible for all environmental restoration, waste management, and environmental compliance activities that are required under Federal and State laws with respect to conditions existing on the lands at the time of the transfer.

(4) Upon the transfer to the Secretary of the Interior of jurisdiction over public domain lands under this subsection, the other provisions of this chapter shall cease to apply with respect to the transferred lands.

(b) AUTHORITY TO LEASE.—(1) Beginning on November 18, 1997, or as soon thereafter as practicable, the Secretary of the Interior shall enter into leases with one or more private entities for the purpose of exploration for, and development and production of, petroleum (other than in the form of oil shale) located on or in public domain lands in Oil Shale Reserves Numbered 1 and 3 (including the developed tract of Oil Shale Reserve Numbered 3). Any such lease shall be made in accordance with the requirements of the Mineral Leasing Act (30 U.S.C. 181 et seq.) regarding the lease of oil and gas lands and shall be subject to valid existing rights.

(2) Notwithstanding the delayed transfer of the developed tract of Oil Shale Reserve Numbered 3 under subsection (a)(2), the Secretary of the Interior shall enter into a lease under paragraph (1) with respect to the developed tract before November 18, 1998.

(c) MANAGEMENT.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management, shall manage the lands transferred under subsection (a) in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and other laws applicable to the public lands.

(d) TRANSFER OF EXISTING EQUIPMENT.—The lease of lands by the Secretary of the Interior under this section may include the transfer, at fair market value, of any well, gathering line, or related equipment owned by the United States on the lands transferred under subsection (a) and suitable for use in the exploration, development, or production of petroleum on the lands.

(e) COST MINIMIZATION.—The cost of any environmental assessment required pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) in connection with a proposed lease under this section shall be paid out of unobligated amounts available for administrative expenses of the Bureau of Land Management.

(f) TREATMENT OF RECEIPTS.—(1) Notwithstanding section 35 of the Mineral Leasing Act (30 U.S.C. 191), all moneys received during the period specified in paragraph (2) from a lease under this section (including moneys in the form of sales, bonuses, royalties (including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.)), and rentals) shall be covered into the Treasury of the United States and shall not be subject to distribution to the States pursuant to subsection (a) of such section 35.

(2) The period referred to in this subsection is the period beginning on November 18, 1997, and ending on the date on which the Secretary of Energy and the Secretary of the Interior jointly certify to Congress that the sum of the moneys deposited in the Treasury under paragraph (1) is equal to the total of the following:

(A) The cost of all environmental restoration, waste management, and environmental compliance activities incurred by the United States with respect to the lands transferred under subsection (a).

(B) The cost to the United States to originally install wells, gathering lines, and related equipment on the transferred lands and any other cost incurred by the United States with respect to the lands.

(g) USE OF RECEIPTS.—(1) The Secretary of the Interior may use, without further appropriation, not more than $1,500,000 of the moneys covered into the Treasury under subsection (f)(1) to cover the cost of any additional analysis, site characterization, and geotechnical studies deemed necessary by the Secretary to support environmental restoration, waste management, or environmental compliance with respect to Oil Shale Reserve Numbered 3. Upon the completion of such studies, the Secretary of the Interior shall submit to Congress a report containing—

(A) the results and conclusions of such studies; and

(B) an estimate of the total cost of the Secretary's preferred alternative to address environmental restoration, waste management, and environmental compliance needs at Oil Shale Reserve Numbered 3.

(2) If the cost estimate required by paragraph (1)(B) does not exceed the total of the moneys covered into the Treasury under subsection (f)(1) and remaining available for obligation as of the date of submission of the report under paragraph (1), the Secretary of the Interior may access such moneys, beginning 60 days after submission of the report and without further appropriation, to cover the costs of implementing the preferred alternative to address environmental restoration, waste management, and environmental compliance needs at Oil Shale Reserve Numbered 3. If the cost estimate exceeds such available moneys, the Secretary of the Interior may only access such moneys as authorized by subsequent Act of Congress.

(Added Pub. L. 105–85, div. C, title XXXIV, §3404(a), Nov. 18, 1997, 111 Stat. 2059; amended Pub. L. 107–107, div. A, title X, §1048(c)(14), Dec. 28, 2001, 115 Stat. 1226; Pub. L. 107–345, §1, Dec. 17, 2002, 116 Stat. 2894.)

REFERENCES IN TEXT

The Mineral Leasing Act, referred to in subsec. (b)(1), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to chapter 3A (§181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

The Federal Land Policy and Management Act of 1976, referred to in subsec. (c), is Pub. L. 94–579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (e), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Federal Oil and Gas Royalty Management Act of 1982, referred to in subsec. (f)(1), is Pub. L. 97–451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (§1701 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 30 and Tables.

AMENDMENTS

2002—Subsec. (f)(1). Pub. L. 107–345, §1(1), struck out after first sentence: ''Subject to a specific authorization and appropriation for this purpose, such moneys may be used for reimbursement of environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the lands transferred under subsection (a).''

Subsec. (g). Pub. L. 107–345, §1(2), added subsec. (g).

2001—Subsec. (a)(2). Pub. L. 107–107, §1048(c)(14)(A), substituted ''November 18, 1998'' for ''one year after the date of the enactment of this section''.

Subsec. (b)(1). Pub. L. 107–107, §1048(c)(14)(B), substituted ''November 18, 1997,'' for ''the date of the enactment of this section,''.

Subsec. (b)(2). Pub. L. 107–107, §1048(c)(14)(C), substituted ''November 18, 1998'' for ''the end of the one-year period beginning on the date of the enactment of this section''.

Subsec. (f)(2). Pub. L. 107–107, §1048(c)(14)(D), substituted ''November 18, 1997,'' for ''the date of the enactment of this section''.

CHAPTER 643—CIVILIAN EMPLOYEES

Sec.
[7471. Repealed.]
7472. Physical examination: employees engaged in hazardous occupations.
7473. Employment of aliens.
[7474, 7475. Repealed.]
7476. Administration of oaths by clerks and employees.
7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation.
7478. Naval War College and Marine Corps University: civilian faculty members.
7479. Civil service mariners of Military Sealift Command: release of drug test results to Coast Guard.
7480. Special agents of the Naval Criminal Investigative Service: authority to execute warrants and make arrests.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §554(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127, added item 7480.

1998—Pub. L. 105–261, div. A, title XI, §1103(b), Oct. 17, 1998, 112 Stat. 2141, added item 7479.

1997—Pub. L. 105–85, div. A, title XI, §1109(b)(2), Nov. 18, 1997, 111 Stat. 1927, substituted ''Marine Corps University'' for ''Marine Corps Command and Staff College'' in item 7478.

1989—Pub. L. 101–189, div. A, title XI, §1124(c)(2), Nov. 29, 1989, 103 Stat. 1559, substituted ''Naval War College and Marine Corps Command and Staff College: civilian faculty members'' for ''Naval War College: employment of civilian professors; compensation'' in item 7478.

1966—Pub. L. 89–718, §43, Nov. 2, 1966, 80 Stat. 1120, struck out item 7474 ''Wage rates: establishment''.

1959—Pub. L. 86–148, §1(2), Aug. 7, 1959, 73 Stat. 302, struck out item 7475 ''Force at naval activities not to be increased before elections''.

1958—Pub. L. 85–861, §1(151), Sept. 2, 1958, 72 Stat. 1513, struck out item 7471 ''Appointments: professional and scientific services''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

[§ 7471. Repealed. Pub. L. 85–861, §36B(23), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 462, related to appointments in professional and scientific service.

§ 7472. Physical examination: employees engaged in hazardous occupations

(a) The Secretary of the Navy may provide for physical examination by civilians of employees engaged in hazardous occupations, where the professional services of the Medical Department are not available. The Secretary may compensate these civilians for their services, on a contract or fee basis, at the rates customary in the locality.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7472	5 U.S.C. 415c. 5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, § 2, 60 Stat. 853. Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.

In subsection (b) the words ''except the authority to prescribe regulations'' are omitted, since 5 U.S.C. 415c contains no authority for the Secretary of the Navy to prescribe regulations for the administration of that section.

§ 7473. Employment of aliens

Laws prohibiting payment of compensation to a person who is not a citizen of the United States do not apply to a person whose employment by the Department of the Navy is determined by the Secretary of the Navy to be necessary to obtain for the armed forces the benefits of the special technical or scientific knowledge or experience possessed by that person and not readily obtainable from a citizen.

(Aug. 10, 1956, ch. 1041, 70A Stat. 462.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7473	5 U.S.C. 415b.	Feb. 26, 1946, ch. 36, 60 Stat. 31.

The word ''Laws'' is substituted for the words ''Statutory provisions'' for clarity. The words ''armed forces'' are substituted for the words ''military services of the United States'' for uniformity. The words ''of the United States'' at the end of the section are omitted as surplusage.

[§ 7474. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 663]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 463, related to establishment of wage rates for employees by Secretary of Navy.

[§ 7475. Repealed. Pub. L. 86–148, § 1(1), Aug. 7, 1959, 73 Stat. 302]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 463, restricted increasing of forces at naval activities prior to national elections.

§ 7476. Administration of oaths by clerks and employees

(a) Chief clerks and inspectors attached to any office of inspector of naval material, chief clerks attached to the field service of the Department of the Navy, to naval shipyards and stations, and to Marine Corps posts and stations, and such other clerks and employees attached to those activities as the Secretary of the Navy designates, may administer—

(1) oaths required by law or regulation relating to claims against, or applications to, the United States of officers and of employees of the Department; and

(2) oaths of office to officers and employees of the Department.

(b) There may be no compensation for the administration of oaths under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7476	34 U.S.C. 217b.	Apr. 25, 1935, ch. 83, 49 Stat. 162.

§ 7477. Transportation of dependents and household effects of civilian personnel stationed outside the United States: payment in lieu of transportation

(a) When civilian employees of the Department of the Navy are located at duty stations outside the United States, the dependents and household effects of such personnel may be transported—

(1) from the locations outside the United States to locations designated by such personnel or their dependents; and

(2) from those designated locations to the duty stations to which the personnel are ordered.

The Secretary of the Navy may determine the civilian employees whose dependents and household effects may be transported under this section.

(b) Authority to transport household effects under this section includes authority to pack and unpack those effects.

(c) Transportation of dependents and household effects is authorized under this section either before or after orders are issued relieving the civilian concerned from the duty station outside the United States. The transportation may be by Government or commercial facilities.

(d) In place of the transportation in kind authorized for dependents, the Secretary may authorize the payment, after the travel has been completed, of an amount equal to the commercial transportation costs, including taxes if paid, of all parts of the travel for which transportation in kind was not furnished.

(e) Current appropriations available for travel and transportation may be used for expenditures under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 463.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7477	37 U.S.C. 112c.	Feb. 18, 1946, ch. 30 (3d par.), 60 Stat. 20; Oct. 12, 1949, ch. 681, § 524, 63 Stat. 836.

In subsection (a) the words ''without regard to rank or grade'' and ''or subsequent to the discharge or release of such personnel from active service'' are omitted as applicable only to members of the naval service. The Act of February 18, 1946, 60 Stat. 20, applied to both civilian and naval personnel and was amended by the Act of October 12, 1949, ch. 681, § 524, by deleting therefrom all reference to naval personnel. The words ''the continental limits of'' and ''or in Alaska'' are omitted as covered by the term ''outside the United States''.

§ 7478. Naval War College and Marine Corps University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at a school of the Naval War College or of the Marine Corps University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Naval War College or of the Marine Corps University if the duration of the principal course of instruction offered at the school or college involved is less than 10 months.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464; Pub. L. 101–189, div. A, title XI, §1124(c)(1), Nov. 29, 1989, 103 Stat. 1559; Pub. L. 105–85, div. A, title XI, §1109(a), (b)(1), Nov. 18, 1997, 111 Stat. 1927.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7478	34 U.S.C. 1071 (less applicability to Naval Academy). 5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, §7(a) (less applicability to Naval Academy), 60 Stat. 854. Aug. 2, 1946, ch. 756, §39, 60 Stat. 858.

In subsection (a) the words ''for the proper instruction of naval personnel'' and in subsection (b) the words ''out of naval appropriations'' are omitted as surplusage.

In subsection (c) the words ''except the authority to prescribe regulations'' are omitted, since 34 U.S.C. 1071 contains no authority for the Secretary to prescribe regulations.

AMENDMENTS

1997—Pub. L. 105–85, §1109(b)(1), substituted ''Marine Corps University'' for ''Marine Corps Command and Staff College'' in section catchline.

Subsecs. (a), (c). Pub. L. 105–85, §1109(a), substituted ''of the Marine Corps University'' for ''at the Marine Corps Command and Staff College''.

1989—Pub. L. 101–189 substituted ''Naval War College and Marine Corps Command and Staff College: civilian faculty members'' for ''Naval War College: employment of civilian professors; compensation'' as section catchline and amended text generally. Prior to amendment, text read as follows:

''(a) The Secretary of the Navy may employ as many civilians as professors, instructors, and lecturers at the Naval War College as he considers necessary.

''(b) The compensation of persons employed under this section is as prescribed by the Secretary.

''(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section to any person in the Department of the Navy, with or without the authority to make successive redelegations.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 7479. Civil service mariners of Military Sealift Command: release of drug test results to Coast Guard

(a) RELEASE OF DRUG TEST RESULTS TO COAST GUARD.—The Secretary of the Navy may release to the Commandant of the Coast Guard the results of a drug test of any employee of the Department of the Navy who is employed in any capacity on board a vessel of the Military Sealift Command. Any such release shall be in accordance with the standards and procedures applicable to the disclosure and reporting to the Coast Guard of drug tests results and drug test records of individuals employed on vessels documented under the laws of the United States.

(b) WAIVER.—The results of a drug test of an employee may be released under subsection (a) without the prior written consent of the employee that is otherwise required under section 503(e) of the Supplemental Appropriations Act, 1987 (5 U.S.C. 7301 note).

(Added Pub. L. 105–261, div. A, title XI, §1103(a), Oct. 17, 1998, 112 Stat. 2141.)

REFERENCES IN TEXT

Section 503(e) of the Supplemental Appropriations Act, 1987, referred to in subsec. (b), is section 503(e) of Pub. L. 100–71 which is set out as a note under section 7301 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7480. Special agents of the Naval Criminal Investigative Service: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of the Navy may authorize any Department of the Navy civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any employee of the Department of the Navy who is a special agent of the Naval Criminal Investigative Service (or any successor to that service) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Navy.

(c) GUIDELINES FOR EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Navy and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Navy, the Secretary of Defense, or the Attorney General.

(Added Pub. L. 106–398, §1 [[div. A], title V, §554(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–126.)

CHAPTER 645—PROCUREMENT OF SUPPLIES AND SERVICES

Sec.

[7521. Repealed.]
7522. Contracts for research.
7523. Tolls and fares: payment or reimbursement.
7524. Marine mammals: use for national defense purposes.

AMENDMENTS

1994—Pub. L. 103–355, title II, § 2001(j)(3)(C), Oct. 13, 1994, 108 Stat. 3303, struck out item 7521 ''Progress payment for work done; lien based on payment''.

1986—Pub. L. 99–661, div. A, title XIII, § 1354(b), Nov. 14, 1986, 100 Stat. 3996, added item 7524.

[§ 7521. Repealed. Pub. L. 103–355, title II, § 2001(j)(1), Oct. 13, 1994, 108 Stat. 3303]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 464, authorized Secretary of the Navy to make partial payments during progress of work done under contract, and directed that paramount lien on thing contracted for accrues to United States on account of payments so made. See section 2307(g) of this title.

EFFECTIVE DATE OF REPEAL

For effective date and applicability of repeal, see section 10001 of Pub. L. 103–355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

§ 7522. Contracts for research

(a) The Secretary of the Navy and, by direction of the Secretary, the Chief of Naval Research and the chiefs of bureaus may, without advertising, make contracts or amendments or modifications of contracts for services and materials necessary to conduct research and to make or secure reports, tests, models, or apparatus. A contractor supplying such services or materials need not be required to furnish a bond.

(b) This section does not authorize the use of the cost-plus-a-percentage-of-cost system of contracting.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464; Pub. L. 96–513, title V, § 513(38), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 97–258, § 3(b)(9), Sept. 13, 1982, 96 Stat. 1064; Pub. L. 98–525, title XIV, § 1405(56)(B), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 103–355, title II, § 2001(j)(2), Oct. 13, 1994, 108 Stat. 3303.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7522	5 U.S.C. 475e.	Aug. 1, 1946, ch. 727, § 6, 60 Stat. 780.

In subsection (a) reference to R.S. 3718, 3719, 3720, and 3722 (34 U.S.C. 561, 562, 563, and 572) is omitted because these sections were expressly repealed by § 11(a) of the Act of February 19, 1948, ch. 65, 62 Stat. 25. The words ''without advertising'' are substituted for the reference to R.S. 3709 (41 U.S.C. 5) for brevity and clarity. The sentence ''A contractor supplying such services or materials need not be required to furnish a bond'' is substituted for the words ''without performance or other bonds'' for clarity, since the provision is interpreted as a discretionary authority in the Secretary to waive bond.

In subsection (c) the words ''This section does not authorize'' are substituted for the words ''nothing in this section shall be construed to authorize''.

AMENDMENTS

1994—Subsecs. (b), (c). Pub. L. 103–355 redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: ''Subsections (a) and (b) of section 3324 of title 31 do not apply to advance, progress, or other payments made with respect to a contract under this section.''

1984—Subsec. (b). Pub. L. 98–525 substituted ''Subsections (a) and (b) of section 3324 of title 31 do'' for ''Section 3324(a) and (b) of title 31 does''.

1982—Subsec. (b). Pub. L. 97–258 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''Section 3648 of the Revised Statutes (31 U.S.C. 529)'' for ''Section 529 of title 31''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 7523. Tolls and fares: payment or reimbursement

Naval appropriations chargeable for transportation or travel are available for the payment or reimbursement of ferry, bridge, and similar tolls and of streetcar, bus, and similar fares.

(Aug. 10, 1956, ch. 1041, 70A Stat. 464.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7523	34 U.S.C. 899a.	Aug. 2, 1946, ch. 756, § 23, 60 Stat. 856.

§ 7524. Marine mammals: use for national defense purposes

(a) AUTHORITY.—Subject to subsection (c), the Secretary of Defense may authorize the taking of not more than 25 marine mammals each year for national defense purposes. Any such authorization may be made only with the concurrence of the Secretary of Commerce and after consultation with the Marine Mammal Commission established by section 201 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1401).

(b) HUMANE TREATMENT REQUIRED.—A mammal taken under this section shall be captured, supervised, cared for, transported, and deployed in a humane manner consistent with conditions established by the Secretary of Commerce.

(c) PROTECTION FOR ENDANGERED SPECIES.—A mammal may not be taken under this section if the mammal is determined to be a member of an endangered or threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).

(d) APPLICATION OF OTHER ACT.—This section applies without regard to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

(Added Pub. L. 99–661, div. A, title XIII, § 1354(a), Nov. 14, 1986, 100 Stat. 3996.)

REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in subsec. (d), is Pub. L. 92–522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (§ 1361 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of Title 16 and Tables.

CHAPTER 647—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League.
7541a. Uniform clothing: sale to Naval Sea Cadet Corps.
7542. Excess clothing: sale for distribution to needy.
7543. Useless ordnance material: disposition of proceeds on sale.
7544. Devices and trophies: transfer to other agencies.
7545. Obsolete material and articles of historical interest: loan or gift.
7546. Loan or gift of articles to ships' sponsors and donors.
7547. Equipment for instruction in seamanship: loan to military schools.

AMENDMENTS

1975—Pub. L. 93–628, §1(b), Jan. 3, 1975, 88 Stat. 2148, inserted ", Naval Sea Cadet Corps and Young Marines of the Marine Corps League" in item 7541.

1965—Pub. L. 89–266, §1(2), Oct. 19, 1965, 79 Stat. 990, added item 7541a.

§ 7541. Obsolete and other material: gift or sale to Boy Scouts of America, Naval Sea Cadet Corps and Young Marines of the Marine Corps League

Subject to regulations under section 121 of title 40, the Secretary of the Navy may—

(1) give obsolete material not needed for naval purposes; and

(2) sell other material that may be spared at a price representing its fair value;

to the Boy Scouts of America for the sea scouts, to the Naval Sea Cadet Corps for the sea cadets, and to the Young Marines of the Marine Corps League for the young marines. The cost of transportation and delivery of material given or sold under this section shall be charged to the Boy Scouts of America, to the Naval Sea Cadets, or to the Young Marines of the Marine Corps League, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465; Pub. L. 93–628, §1, Jan. 3, 1975, 88 Stat. 2147; Pub. L. 96–513, title V, §513(39), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 107–217, §3(b)(31), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7541	34 U.S.C. 546b.	Mar. 1, 1929, ch. 429, 45 Stat. 1430; Oct. 31, 1951, ch. 654, §2(21), 65 Stat. 707.

The word "give" is substituted for the words "dispose of without charge"; the words "naval purposes" are substituted for the words "the Navy"; and the word "sell" is substituted for the words "dispose of * * * at prices". The words "to the Navy" are omitted as surplusage. Since the corporate name of the organization is "Boy Scouts of America", that name is used to designate the transferee in lieu of words "sea scout department", and the words "for the sea scouts" are added.

AMENDMENTS

2002—Pub. L. 107–217 substituted "section 121 of title 40" for "section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)" in introductory provisions.

1980—Pub. L. 96–513 substituted "section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)" for "section 486 of title 40".

1975—Pub. L. 93–628 inserted "Naval Sea Cadet Corps and Young Marines of the Marine Corps League" in section catchline, and authorized the Secretary of the Navy to gift obsolete materials and to sell surplus materials to the Naval Sea Cadet Corps and the Young Marines of the Marine Corps League with the requirement that the cost of transportation and delivery of such materials be charged to the recipient.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Pub. L. 93–628 provided that: "The amendments made by the first section [amending this section] shall take effect on the date of the enactment of this Act [Jan. 3, 1975]."

§ 7541a. Uniform clothing: sale to Naval Sea Cadet Corps

Subject to regulations under section 121 of title 40, the Secretary of the Navy, under regulations prescribed by him, may sell any item of enlisted naval uniform clothing that may be spared, at a price representing its fair value, to the Naval Sea Cadet Corps for the sea cadets and to any Federal or State maritime academy having a department of naval science for the maritime cadets and midshipmen. The cost of transportation and delivery of items sold under this section shall be charged to the Naval Sea Cadet Corps and to such Federal and State maritime academies.

(Added Pub. L. 89–266, §1(1), Oct. 19, 1965, 79 Stat. 990; amended Pub. L. 96–513, title V, §513(39), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 107–217, §3(b)(32), Aug. 21, 2002, 116 Stat. 1297.)

AMENDMENTS

2002—Pub. L. 107–217 substituted "section 121 of title 40" for "section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)".

1980—Pub. L. 96–513 substituted "section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)" for "section 486 of title 40".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 7542. Excess clothing: sale for distribution to needy

(a) Subject to regulations under section 121 of title 40, the Secretary of the Navy, under regulations prescribed by him, may sell, at nominal prices, to recognized charitable organizations, to States and subdivisions thereof, and to municipalities nonregulation and excess clothing that may be available for distribution to the needy. The clothing may be sold only if the purchaser agrees not to resell it but to give it to the needy.

(b) A fair proportionate allotment of clothing to be sold under this section shall be set aside for distribution in each State and the District of

Columbia. An allotment so set aside may not be sold for other distribution until at least 30 days after the allotment was made.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465; Pub. L. 96–513, title V, § 513(39), Dec. 12, 1980, 94 Stat. 2934; Pub. L. 107–217, § 3(b)(33), Aug. 21, 2002, 116 Stat. 1297.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7542	34 U.S.C. 546d.	Dec. 23, 1932, ch. 8, 47 Stat. 751; Oct. 31, 1951, ch. 654, § 2(22), 65 Stat. 707.

In subsection (a) the words ''absolutely free'' are omitted as surplusage.

In subsection (b) the words ''for other distribution'' are substituted for the words ''distribution within any other State''. The words ''at least'' are added for clarity.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 7543. Useless ordnance material: disposition of proceeds on sale

The net proceeds of sales of useless ordnance material by the Department of the Navy shall be covered into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7543	50 U.S.C. 74.	Jan. 22, 1923, ch. 28, 42 Stat. 1142 (last 24 words of 5th par.).

The words ''as miscellaneous receipts'' are omitted as surplusage.

§ 7544. Devices and trophies: transfer to other agencies

(a) The Secretary of the Navy may, without reimbursement, transfer to the Secretary of the Treasury devices and trophies for the promotion of the sale of war bonds or victory bonds. The Secretary of the Treasury may sell or donate the devices and trophies for the promotion of the sale of such bonds.

(b) The Secretary of the Navy may, without reimbursement, transfer to any agency of the United States devices and trophies for scientific, experimental, monumental, or display purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 465.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7544	34 U.S.C. 546i.	Aug. 7, 1946, ch. 804, § 4, 60 Stat. 898.

The words ''such * * * as he may in his discretion determine'' are omitted as surplusage.

§ 7545. Obsolete material and articles of historical interest: loan or gift

(a) AUTHORITY TO MAKE LOANS AND GIFTS.—The Secretary of the Navy may lend or give, without expense to the United States, items described in subsection (b) that are not needed by the Department of the Navy to any of the following:

(1) A State, Territory, Commonwealth, or possession of the United States, or political subdivision or municipal corporation thereof.

(2) The District of Columbia.

(3) A library.

(4) A historical society.

(5) An educational institution whose graduates or students fought in a foreign war.

(6) A servicemen's monument association.

(7) A State museum.

(8) A museum or memorial operated and maintained for educational purposes only, whose charter denies it the right to operate for profit.

(9) A post of the Veterans of Foreign Wars of the United States.

(10) A post of the American Legion.

(11) Any other recognized war veterans' association.

(12) A post of the Sons of Veterans Reserve.

(b) ITEMS ELIGIBLE FOR DISPOSAL.—This section applies to the following types of property held by the Department of the Navy:

(1) Captured, condemned, or obsolete ordnance material.

(2) Captured, condemned, or obsolete combat or shipboard material.

(c) REGULATIONS.—A loan or gift made under this section shall be subject to regulations prescribed by the Secretary and to regulations under section 121 of title 40.

(d) MAINTENANCE OF THE RECORDS OF THE GOVERNMENT.—Records of the Government as defined in section 3301 of title 44 may not be disposed of under this section.

(e) ALTERNATIVE AUTHORITIES TO MAKE GIFTS OR LOANS.—If any disposition is authorized by this section and section 2572 of this title, the Secretary may make the gift or loan under either section.

(f) AUTHORITY TO TRANSFER A PORTION OF A VESSEL.—The Secretary may lend, give, or otherwise transfer any portion of the hull or superstructure of a vessel stricken from the Naval Vessel Register and designated for scrapping to a qualified organization specified in subsection (a). The terms and conditions of an agreement for the transfer of a portion of a vessel under this section shall include a requirement that the transferee will maintain the material conveyed in a condition that will not diminish the historical value of the material or bring discredit upon the Navy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466; Pub. L. 96–513, title V, § 513(39), (40), Dec. 12, 1980, 94 Stat. 2934, 2935; Pub. L. 104–106, div. A, title X, § 1061(i), Feb. 10, 1996, 110 Stat. 443; Pub. L. 107–107, div. A, title X, § 1043(a)–(c), Dec. 28, 2001, 115 Stat. 1218, 1219; Pub. L. 107–217, § 3(b)(34), Aug. 21, 2002, 116

Stat. 1298; Pub. L. 107–314, div. A, title X, §1062(e)(2), Dec. 2, 2002, 116 Stat. 2651.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7545	34 U.S.C. 546g.	Aug. 7, 1946, ch. 804, §2, 60 Stat. 897; Oct. 31, 1951, ch. 654, §2(23), 65 Stat. 707.
	34 U.S.C. 546h (last sentence as applicable to 34 U.S.C. 546g).	Aug. 7, 1946, ch. 804, §3 (last sentence as applicable to §2), 60 Stat. 897.
	34 U.S.C. 546k (1st sentence as applicable to 34 U.S.C. 546g, and 3d sentence).	Aug. 7, 1946, ch. 804, §6 (1st sentence as applicable to §2, and 3d sentence), 60 Stat. 898.

In subsection (a) the words, ''ordnance material'' are substituted for the words ''ordnance, guns, projectiles''. Posts of the Grand Army of the Republic are omitted from the list of authorized donees because there are no surviving members of that organization. The word ''Commonwealth'' is inserted to reflect the present status of Puerto Rico. Specific reference to the Canal Zone is omitted as unnecessary, since the Zone is a ''possession of the United States'' as defined in section 101 of this title and is therefore covered by clause (1).

Subsection (d) is added to note the existence of a later act, codified in §2572 of this title, which provides similar disposal authority, and to give effect to §2 of the Act of February 27, 1948, ch. 76, 62 Stat. 37, which is not now contained in the U.S. Code, and which saves this section despite the apparent implied repeal.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–217, as amended by Pub. L. 107–314, substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

2001—Subsec. (a). Pub. L. 107–107, §1043(a)(1), inserted heading and substituted introductory provisions for provisions which read as follows: ''Subject to regulations under section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486), the Secretary of the Navy, under regulations prescribed by him, may lend or give, without expense to the United States, captured, condemned, or obsolete ordnance material, books, manuscripts, works of art, drawings, plans, and models, other condemned or obsolete material, trophies, and flags, and other material of historic interest not needed by the Department of the Navy, to—''.

Subsec. (a)(1) to (12). Pub. L. 107–107, §1043(a)(2), capitalized the first letter after the paragraph designation in each of pars. (1) to (12), substituted a period for a semicolon at end of pars. (1) to (10) and a period for ''; or'' at end of par. (11), substituted ''a foreign war'' for ''World War I or World War II'' in par. (5) and ''servicemen's monument'' for ''soldiers' monument'' in par. (6), and inserted ''or memorial'' after ''museum'' in par. (8).

Subsecs. (b), (c). Pub. L. 107–107, §1043(b)(2), added subsecs. (b) and (c). Former subsecs. (b) and (c) redesignated (d) and (e), respectively.

Subsec. (d). Pub. L. 107–107, §1043(b)(1), (c)(1), redesignated subsec. (b) as (d) and inserted heading.

Subsec. (e). Pub. L. 107–107, §1043(b)(1), (c)(2), redesignated subsec. (c) as (e) and inserted heading.

Subsec. (f). Pub. L. 107–107, §1043(b)(3), added subsec. (f).

1996—Subsecs. (c), (d). Pub. L. 104–106 redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''No loan or gift under this section may be made unless—

''(1) notice of the proposal to make the loan or gift is sent to Congress;

''(2) 30 calendar days of continuous session of Congress have expired after the notice was sent to Congress; and

''(3) during that 30-day period Congress does not pass a concurrent resolution stating in substance that it does not favor the proposed loan or gift.''

1980—Subsec. (a). Pub. L. 96–513, §513(39), substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486),'' for ''section 486 of title 40''.

Subsec. (b). Pub. L. 96–513, §513(40), substituted ''section 3301'' for ''section 366''.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title X, §1062(e), Dec. 2, 2002, 116 Stat. 2651, provided that the amendment made by section 1062(e)(2) is effective as if included in Pub. L. 107–217 as originally enacted.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7546 of this title.

§ 7546. Loan or gift of articles to ships' sponsors and donors

The Secretary of the Navy, under regulations prescribed by him and without expense to the United States, may lend or give—

(1) to the sponsor of a vessel the name plate or any small article of negligible or sentimental value from that vessel; and

(2) to any State, group, or organization named in section 7545 of this title any article, material, or equipment, including silver service, given by it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7546	34 U.S.C. 546h (less applicability to 34 U.S.C. 546g).	Aug. 7, 1946, ch. 804, §3 (less applicability to §2), 60 Stat. 898.

The words ''the sponsor'' are substituted for the words ''any individual who sponsored'' for brevity. The word ''ship'' and the word ''person'' are omitted as surplusage. The words ''the loans or gifts described in this section shall be made'' are omitted as unnecessary, and the words ''under regulations prescribed by him'' are substituted for the words ''subject to such rules and regulations as may be prescribed by the Secretary of the Navy'' for brevity.

§ 7547. Equipment for instruction in seamanship: loan to military schools

(a) Upon the application of the governor of any State having a seacoast or bordering on any of the Great Lakes, the President may direct the Secretary of the Navy to lend to one well-established military school in that State that desires to instruct its cadets in elementary seamanship one fully equipped cutter for every 25 cadets attending the school, and such other equipment adequate for instruction in elementary seamanship as may be spared.

(b) To be eligible for a loan under this section a school must—

(1) have adequate facilities for cutter drill;

(2) have at least 75 cadets—

(A) at least 15 years of age;

(B) in uniform;

(C) receiving military instruction; and

(D) quartered in barracks under military regulations; and

(3) have the capacity to quarter and educate 150 cadets at one time.

(c) Whenever a loan is made under this section, the Secretary shall require a bond in double the value of the property for its care and return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 466.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7547	34 U.S.C. 1128.	Mar. 3, 1901, ch. 863, 31 Stat. 1440; June 29, 1906, ch. 3612, 34 Stat. 620; June 24, 1910, ch. 378, 36 Stat. 613 (1st par.).

In subsection (a) the word ''lend'' is substituted for the word ''furnish'' because of the provision for return of the equipment. The words ''man-of-war's'' are omitted as obsolete. The words ''attending the school'' are substituted for the words ''in actual attendance''.

In subsection (b) the words ''To be eligible for a loan under this section'' are added, and the subsection is phrased as a condition.

CHAPTER 649—QUARTERS, UTILITIES, AND SERVICES

Sec.
7571. Quarters or other accommodations: to whom furnished.
7572. Quarters: accommodations in place of for members on sea duty.
7573. Quarters: temporary; transient members.
[7574, 7575. Repealed.]
7576. Quarters: extension telephones.
7577. Quarters: Nurse Corps officers; assignment in hospitals.
[7578. Repealed.]
7579. Officers' messes and quarters: limitations on employment of enlisted members.
7580. Heat and light for Young Men's Christian Association buildings.
7581. Marine Corps post laundries: disposition of receipts.
7582. Naval and Marine Corps Historical Centers: fee for providing historical information to the public.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title X, §1085(b)(2), (3)(A)], Oct. 30, 2000, 114 Stat. 1654, 1654A–288, 1654A–289, struck out ''**RELATED**'' before ''**SERVICES**'' in chapter heading and added item 7582.

1996—Pub. L. 104–106, div. A, title XV, §1503(b)(5), Feb. 10, 1996, 110 Stat. 513, substituted ''officers'' for ''Officers'' in item 7577.

1973—Pub. L. 93–166, title V, §509(d), Nov. 29, 1973, 87 Stat. 678, struck out items 7574 ''Quarters: limitations on size'' and 7575 ''Quarters: exemptions from cost limitations''.

1958—Pub. L. 85–861, §1(155), Sept. 2, 1958, 72 Stat. 1513, struck out item 7578 ''Tableware and kitchen utensils: limitations on furnishing''.

§ 7571. Quarters or other accommodations: to whom furnished

(a) Under such regulations as the Secretary of the Navy prescribes, public quarters including heat, light, water, and refrigeration may be furnished for personnel in the following categories who are on active duty:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the National Oceanic and Atmospheric Administration serving with the Navy.

If public quarters are not available for any such member, the Secretary may provide lodging accommodations for him. Lodging accommodations so provided may not be occupied by the member's dependents.

(b) The Secretary may determine in any case whether public quarters are available within the meaning of any provision of law relating to the assignment of or commutation for public quarters.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a), except the authority to prescribe regulations, to any person in the Department of the Navy, with or without authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 467; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, §513(41), Dec. 12, 1980, 94 Stat. 2935.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7571(a)	34 U.S.C. 911a (less applicability to members on sea duty).	Aug. 2, 1946, ch. 756, §15 (less applicability to members on sea duty), 60 Stat. 854.
	5 U.S.C. 421g(b).	Aug. 2, 1946, ch. 756, §40(b), 60 Stat. 858.
7571(b)	34 U.S.C. 911.	July 1, 1918, ch. 114, 40 Stat. 718 (4th par.).
7571(c)	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, §39, 60 Stat. 858.

In subsection (a) the words ''including members of the Nurse Corps'' are omitted as surplusage, and the definition of ''naval personnel'' in 5 U.S.C. 421g, which is applicable to this subsection, is executed.

In subsection (b) the words ''in any case whether public quarters are available'' are substituted for the words ''where and when there are no public quarters''. The words ''for persons in the Navy and Marine Corps, or serving therewith'' are omitted, since these classes of personnel for whom the Secretary makes the determination of availability are the same as those who may be furnished quarters under subsection (a).

AMENDMENTS

1980—Subsec. (a)(3). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Subsec. (a)(3). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities

and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHARGES FOR EXCESS ENERGY CONSUMPTION; DEPOSIT OF PROCEEDS; APPLICABILITY; IMPLEMENTATION

Assessment of members for excess energy consumption in military family housing facilities, see section 507 of Pub. L. 95–82, title V, Aug. 1, 1977, 91 Stat. 372, set out as a note under section 4593 of this title.

§ 7572. Quarters: accommodations in place of for members on sea duty

(a) If public quarters are not available, the Secretary of the Navy may provide lodging accommodations for any—

(1) member of the naval service;

(2) member of the Coast Guard when it is operating as a service in the Navy; or

(3) member of the National Oceanic and Atmospheric Administration serving with the Navy;

on sea duty who is deprived of his quarters on board ship because of repairs or because of other conditions that make his quarters uninhabitable. Lodging accommodations so provided may not be occupied by the member's dependents.

[(b) Repealed. Pub. L. 105–261, div. A, title X, §1069(a)(7), Oct. 17, 1998, 112 Stat. 2136.]

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by subsection (a) to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(d)(1) After the expiration of the authority provided in subsection (b), an officer of the naval service on sea duty who is deprived of quarters on board ship because of repairs or because of other conditions that make the officer's quarters uninhabitable may be reimbursed for expenses incurred in obtaining quarters if it is impracticable to furnish the officer with accommodations under subsection (a).

(2) The total amount that an officer may be reimbursed under this subsection may not exceed an amount equal to the basic allowance for quarters of an officer of that officer's grade.

(3) This subsection shall not apply to an officer who is entitled to basic allowance for quarters.

(4) The Secretary may prescribe regulations to carry out this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 468; Pub. L. 89–718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–357, §3, Sept. 24, 1980, 94 Stat. 1182; Pub. L. 96–513, title V, §513(41), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 97–60, title II, §207(b), Oct. 14, 1981, 95 Stat. 1007; Pub. L. 98–94, title IX, §912(a), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98–525, title VI, §§602(d)(3), 603(a), title XIV, §1405(54), Oct. 19, 1984, 98 Stat. 2536, 2537, 2625; Pub. L. 99–145, title VI, §606(a), Nov. 8, 1985, 99 Stat. 638; Pub. L. 99–661, div. A, title VI, §603(a), Nov. 14, 1986, 100 Stat. 3874; Pub. L. 102–190, div. A, title VI, §607(a), (b), Dec. 5, 1991, 105 Stat. 1375; Pub. L. 105–85, div. A, title VI, §603(d)(2)(D), Nov. 18, 1997, 111 Stat. 1783; Pub. L. 105–261, div. A, title X, §1069(a)(7), Oct. 17, 1998, 112 Stat. 2136.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7572(a)	34 U.S.C. 911a (as applicable to members on sea duty).	Aug. 2, 1946, ch. 756, §15 (as applicable to members on sea duty), 60 Stat. 854.
	5 U.S.C. 421g(b).	Aug. 2, 1946, ch. 756, §40(b), 60 Stat. 858.
7572(b)	34 U.S.C. 915.	June 19, 1942, ch. 419, §1, 56 Stat. 371.
7572(c)	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, §39, 60 Stat. 858.

In subsection (a) the word ''public'' is substituted for the words ''possessed by the United States'' and the subsection is phrased in terms of availability, as it is so interpreted. The itemization of personnel categories for whom quarters may be furnished is inserted to execute the definition of ''naval personnel'', made applicable to this section by 5 U.S.C. 421g. The requirement in that definition that personnel be on active duty is omitted since this subsection applies only to personnel on sea duty.

In subsection (b) the words ''and who is not entitled to basic allowance for quarters'' are inserted to make it clear that the entitlement under this subsection, as interpreted, is not in addition to basic allowance for quarters. The words ''in obtaining quarters'' are inserted for clarity. The words ''basic allowance for quarters of an officer of his grade'' are substituted for the words ''his quarters allowance'' because, under the Career Compensation Act of 1949, members without dependents are not entitled to a quarters allowance when on sea duty, and the limitation must be based upon the allowance of an officer of the same grade who is entitled thereto.

In subsection (c) the words ''except the authority to prescribe regulations'' are omitted, since subsection (a) does not contain such authority.

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–261 struck out subsec. (b) which authorized reimbursements to members of a uniformed service on sea duty who are deprived of quarters on board because of repairs or because of other conditions, and provided that such authority expire on Sept. 30, 1992.

1997—Subsec. (b)(1). Pub. L. 105–85, §603(d)(2)(D)(i), substituted ''the basic allowance for housing payable under section 403 of title 37 to a member of the same pay grade without dependents for the period during which the member is deprived of quarters on board ship.'' for ''the total of—

''(A) the basic allowance for quarters payable to a member of the same pay grade without dependents for the period during which the member is deprived of quarters on board ship; and

''(B) the variable housing allowance that could be paid to a member of the same pay grade under section 403a of title 37 at the location where the member is deprived of quarters on board ship for the period during which the member is deprived of quarters on board ship.''

Subsec. (b)(2). Pub. L. 105–85, §603(d)(2)(D)(ii), substituted ''basic allowance for housing'' for ''basic allowance for quarters''.

1991—Subsec. (b). Pub. L. 102–190, §607(a), amended subsec. to read as in effect on Sept. 30, 1991, in par. (3) struck out ''$1,421,000 for fiscal year 1986 and'' after ''may not exceed'' and substituted ''1992'' for ''1991'', and added par. (4).

Subsec. (d). Pub. L. 102–190, §607(b), added subsec. (d).

1986—Subsec. (b)(3). Pub. L. 99–661 substituted ''$1,421,000 for fiscal year 1986 and $1,657,000 for each of the fiscal years 1987 through 1991'' for ''$9,000,000 for fiscal year 1981, $6,300,000 for fiscal year 1982, $1,700,000 for fiscal year 1983, $1,300,000 for fiscal year 1984, $1,421,000 for fiscal year 1985, and $1,421,000 for fiscal year 1986''.

1985—Subsec. (b)(3). Pub. L. 99–145 added limit of $1,421,000 for fiscal year 1986.

1984—Subsec. (b)(1)(B). Pub. L. 98–525, § 1405(54), substituted ''on board'' for ''onboard''.

Pub. L. 98–525, § 602(d)(3), substituted ''section 403a'' for ''section 403''.

Subsec. (b)(3). Pub. L. 98–525, § 603(a), added limit of $1,421,000 for fiscal year 1985.

1983—Subsec. (b)(3). Pub. L. 98–94 added limits of $1,700,000, and $1,300,000 for fiscal years 1983 and 1984, respectively.

1981—Subsec. (b). Pub. L. 97–60 amended subsec. (b) generally, dividing existing provisions into numbered paragraphs (1), (2), and (3), inserting in par. (1), provisions relating to the variable housing allowance that could be paid to a member of the same pay grade under section 403 of title 37 at the location where the member is deprived of quarters onboard ship for the period during which the member is deprived of quarters on board ship and, in par. (3), inserting provision setting a limit of $6,300,000 on the total amount of reimbursement for fiscal year 1982.

1980—Subsec. (a)(3). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

Subsec. (b). Pub. L. 96–357 substituted reimbursement provision when conditions make uninhabitable quarters aboard ship for member of uniformed services on sea duty limited to basic allowance for quarters of member of same grade without dependents for prior such provision for officer of naval service on sea duty so deprived of quarters and not entitled to basic allowance for quarters and limited to basic allowance for quarters of an officer of his grade, made the member able to reside with dependents ineligible for reimbursement, and limited reimbursements for fiscal year 1981 to $9,000,000.

1966—Subsec. (a)(3). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 607(c) of Pub. L. 102–190 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to members of the uniformed services who perform sea duty on or after October 1, 1991.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 603(a) of Pub. L. 99–661 provided that the amendment made by that section is effective Oct. 1, 1986.

EFFECTIVE DATE OF 1985 AMENDMENT

Pub. L. 99–190, § 101(b) [title VIII, § 8102], Dec. 19, 1985, 99 Stat. 1185, 1220, provided that: ''The amendments made to section 7572(b)(3) of title 10, United States Code, and to section 3 of Public Law 96–357 (10 U.S.C. 7572 note) by section 606 of the Department of Defense Authorization Act, 1986 [Pub. L. 99–145], shall apply to reimbursement of expenses incurred on or after October 1, 1985, by a member of a uniformed service on sea duty.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602(d)(3) of Pub. L. 98–525 effective Jan. 1, 1985, with exceptions, see section 602(f) of Pub. L. 98–525, set out as a note under section 403 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 207(c) of Pub. L. 97–60 provided that: ''The amendments made by this section [amending this section] shall take effect as of October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96–357, as amended by Pub. L. 97–60, title II, § 207(a), Oct. 14, 1981, 95 Stat. 1007; Pub. L. 98–94, title IX, § 912(b), Sept. 24, 1983, 97 Stat. 640; Pub. L. 98–525, title VI, § 603(b), Oct. 19, 1984, 98 Stat. 2537; Pub. L. 99–145, title VI, § 606(b), Nov. 8, 1985, 99 Stat. 639; Pub. L. 99–661, div. A, title VI, § 603(b), Nov. 14, 1986, 100 Stat. 3874, eff. Oct. 1, 1986, provided that the amendment made by that section is effective only for the period beginning Oct. 1, 1980, and ending Sept. 30, 1991.

Pub. L. 99–500, § 101(c) [title IX, § 9107], Oct. 18, 1986, 100 Stat. 1783–82, 1783–119, and Pub. L. 99–591, § 101(c) [title IX, § 9107], Oct. 30, 1986, 100 Stat. 3341–82, 3341–119, provided that authority for reimbursement provided pursuant to section 3 of Public Law 96–357 (see above) is extended through Sept. 30, 1987, at an amount not to exceed $1,657,000.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7573. Quarters: temporary; transient members

Temporary quarters may be furnished on a rental basis to transient members of the naval service with their dependents, for periods not exceeding 60 days, without loss of entitlement to basic allowance for housing under section 403 of title 37.

(Aug. 10, 1956, ch. 1041, 70A Stat. 468; Pub. L. 105–85, div. A, title VI, § 603(d)(2)(E), Nov. 18, 1997, 111 Stat. 1783.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7573	[None].	April 4, 1944, ch. 165 (3d proviso on p. 190), 58 Stat. 190.

The words ''That effective December 13, 1943'' are omitted as executed. The word ''quarters'' is substituted for the word ''housing'' for uniformity. The words ''basic allowance for quarters'' are substituted for the words ''rental allowance or money allowance for quarters'' to conform to the terminology of § 302 of the Career Compensation Act of 1949 (37 U.S.C. 252).

AMENDMENTS

1997—Pub. L. 105–85 substituted ''basic allowance for housing under section 403 of title 37'' for ''basic allowance for quarters''.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective Jan. 1, 1998, see section 603(e) of Pub. L. 105–85, set out as a note under section 5561 of Title 5, Government Organization and Employees.

[§§ 7574, 7575. Repealed. Pub. L. 93–166, title V, § 509(d), Nov. 29, 1973, 87 Stat. 678]

Section 7574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 468; Aug. 30, 1957, Pub. L. 85–241, title IV, § 404(b), 71 Stat. 556; Aug. 10, 1959, Pub. L. 86–149, title IV, § 410(b), 73 Stat. 321; July 27, 1962, Pub. L. 87–554, title V, § 504(b), (d), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91–142, title V, § 510(a), 83 Stat. 312; Oct. 27, 1971, Pub. L. 92–145, title V, § 508(b), (c), 85 Stat. 408, related to quarters: limitations on size. See section 2684 of this title.

Section 7575, act Aug. 10, 1956, ch. 1041, 70A Stat. 469, related to quarters: exemptions from cost limitations.

§ 7576. Quarters: extension telephones

(a) Under regulations prescribed by the Secretary of the Navy appropriated funds may be used to pay the cost of installation and use, other than for personal long distance calls, of extension telephones connecting public quarters occupied by personnel in the following categories with the switchboards of their official stations:

(1) Members of the naval service.

(2) Members of the Coast Guard when it is operating as a service in the Navy.

(3) Members of the National Oceanic and Atmospheric Administration serving with the Navy.

(b) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469; Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 96–513, title V, § 513(41), Dec. 12, 1980, 94 Stat. 2935.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7576	34 U.S.C. 915a.	Aug. 2, 1946, ch. 756, § 4, 60 Stat. 853.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.
	5 U.S.C. 421g(d).	Aug. 2, 1946, ch. 756, § 40(d), 60 Stat. 858.

In subsection (a) the words ''appropriated funds'' are substituted for the words ''naval appropriations'', and the definition of ''naval personnel'' in 5 U.S.C. 421g, which is applicable to this section, is executed. In executing this definition the words ''while on active duty'' are omitted as unnecessary, since a member not on active duty would not have an official station within the meaning of this section.

AMENDMENTS

1980—Subsec. (a)(3). Pub. L. 96–513 substituted ''National Oceanic and Atmospheric Administration'' for ''Environmental Science Services Administration''.

1966—Subsec. (a)(3). Pub. L. 89–718 substituted ''Environmental Science Services Administration'' for ''Coast and Geodetic Survey''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 89–718, § 8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97–295, § 6(b), Oct. 12, 1982, 96 Stat. 1314.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7577. Quarters: Nurse Corps officers; assignment in hospitals

Under such regulations as the Secretary of the Navy prescribes, officers in the Nurse Corps may be assigned quarters in naval hospitals.

(Aug. 10, 1956, ch. 1041, 70A Stat. 469.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7577	34 U.S.C. 43h(a) (2d proviso, less 1st 21 words).	Apr. 16, 1947, ch. 38, § 208(a) (2d proviso, less 1st 25 words), 61 Stat. 50.

[§ 7578. Repealed. Pub. L. 85–861, § 36B(24), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 469, related to limitations on furnishing of tableware and kitchen utensils.

§ 7579. Officers' messes and quarters: limitations on employment of enlisted members

(a) Under such regulations as the Secretary of the Navy prescribes, enlisted members of the naval service and enlisted members of the Coast Guard when it is operating as a service in the Navy may be assigned to duty in a service capacity in officers' messes and public quarters where the Secretary finds that this use of the members is desirable for military reasons.

(b) Notwithstanding any other provision of law, retired enlisted members of the naval service and members of the Fleet Reserve and the Fleet Marine Corps Reserve may, when not on active duty, be voluntarily employed in any service capacity in officers' messes and public quarters without additional expense to the United States.

(c) The Secretary, to the extent he considers proper, may delegate the authority conferred by this section, except the authority to prescribe regulations, to any person in the Department of the Navy, with or without the authority to make successive redelegations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7579	34 U.S.C. 915b(b).	Aug. 2, 1946, ch. 756, § 16(b), 60 Stat. 855.
	5 U.S.C. 412a.	Aug. 2, 1946, ch. 756, § 39, 60 Stat. 858.
	5 U.S.C. 421g(b).	Aug. 2, 1946, ch. 756, § 40(b), 60 Stat. 858.

In subsection (a) the words ''enlisted members of the naval service and enlisted members of the Coast Guard

when it is operating as a service in the Navy'' are substituted for the words ''enlisted naval personnel'' to execute the definition of ''naval personnel'' made applicable to this section by 5 U.S.C. 421g. The definition in that section also covers personnel of the Coast and Geodetic Survey, but since that service has no enlisted members reference to it is unnecessary. In executing this definition the words ''while on active duty'' are omitted as unnecessary, since members not on active duty would not be subject to assignment by the Secretary of the Navy.

In subsection (b) the word ''transferred'' before the words ''member of the Fleet Reserve'' is omitted as unnecessary, since the categories of such members other than ''transferred'' have not been administratively used, and authority for them is omitted in this title. The words ''and the Fleet Marine Corps Reserve'' are added, as the words ''Fleet Reserve'' are used in a generic sense to cover such members. The words ''when not on active duty'' are added. When the personnel concerned are on active duty, they are treated in the same manner as others on active duty.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7580. Heat and light for Young Men's Christian Association buildings

The Secretary of the Navy may furnish, without charge, heat and light to any building of the Young Men's Christian Association located at a naval activity.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7580	34 U.S.C. 527.	Mar. 4, 1911, ch. 239, 36 Stat. 1274 (2d proviso).

The words ''naval activity'' are substituted for the words ''navy yards and stations'' to use present terminology and provide the same coverage.

§ 7581. Marine Corps post laundries: disposition of receipts

(a) Money received for laundry work performed by Marine Corps post laundries shall be used to pay the cost of maintenance and operation of those laundries. Any amount remaining at the end of the fiscal year after the cost has been so paid shall be deposited in the Treasury to the credit of the appropriation from which the cost of operating the laundries is paid.

(b) The receipts and expenditures of Marine Corps post laundries shall be accounted for as public funds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7581	34 U.S.C. 724.	July 11, 1919, ch. 9, 41 Stat. 155 (proviso).

In subsection (a) the words ''Marine Corps'' are inserted before the words ''post laundries'' for clarity. The words ''maintenance and'' are added to the first sentence and the words ''maintenance and operation'' are omitted from the second sentence.

§ 7582. Naval and Marine Corps Historical Centers: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Navy may charge a person a fee for providing the person with information from the United States Naval Historical Center or the Marine Corps Historical Center that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) LIMITATION ON AMOUNT.—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) RETENTION OF FEES.—Amounts received under subsection (a) for providing information from the United States Naval Historical Center or the Marine Corps Historical Center in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from that historical center during that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term ''United States Naval Historical Center'' means the archive for historical records and materials of the Navy that the Secretary of the Navy designates as the primary archive for such records and materials.

(2) The term ''Marine Corps Historical Center'' means the archive for historical records and materials of the Marine Corps that the Secretary of the Navy designates as the primary archive for such records and materials.

(3) The terms ''officer of the United States'' and ''employee of the United States'' have the meanings given the terms ''officer'' and ''employee'', respectively, in sections 2104 and 2105, respectively, of title 5.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1085(b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–288.)

CHAPTER 651—SHIPS' STORES AND COMMISSARY STORES

Sec.
7601. Sales: members of the naval service and Coast Guard; widows and widowers; civilian employees and other persons.
7602. Sales: members of Army and Air Force; prices.
7603. Sales: veterans under treatment.
7604. Ships' stores: sale of goods and services.
7605. Acceptance of Government checks outside the United States.
7606. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title III, § 375(a)(2), Feb. 10, 1996, 110 Stat. 283, added item 7606.

1990—Pub. L. 101–510, div. A, title III, §329(a)(2), Nov. 5, 1990, 104 Stat. 1534, amended item 7604 generally, substituting ''Ships' stores: sale of goods and services'' for ''Profits: ships' stores''.

1985—Pub. L. 99–145, title XIII, §1301(c)(3)(C), Nov. 8, 1985, 99 Stat. 736, inserted ''the'' before ''naval service'' and ''and widowers'' after ''widows'' in item 7601.

§ 7601. Sales: members of the naval service and Coast Guard; widows and widowers; civilian employees and other persons

(a) Such stores as the Secretary of the Navy designates may be procured and sold to members of the naval service, members of the Coast Guard, and widows and widowers of such members.

(b) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of naval activities.

However, sales to civilian officers and employees inside the United States may be made only to those residing within military installations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 470; Pub. L. 99–145, title XIII, §1301(c)(3)(A), (B), Nov. 8, 1985, 99 Stat. 736.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7601(a)	34 U.S.C. 533.	Mar. 3, 1909, ch. 255, 35 Stat. 768 (1st proviso); Apr. 14, 1937, ch. 78, 50 Stat. 63; June 10, 1939, ch. 196, 53 Stat. 814; Jan. 23, 1942, ch. 15, 56 Stat. 13; Apr. 9, 1943, ch. 39, 57 Stat. 60; Aug. 8, 1953, ch. 390, §2, 67 Stat. 499.
7601(b)	34 U.S.C. 533a.	Aug. 8, 1953, ch. 390, §1 (as applicable to Secretary of the Navy), 67 Stat. 499.

In subsection (a) the words ''members of the naval service'' are substituted for the words ''officers and enlisted men of the Navy, Marine Corps''.

In subsection (b) the word ''outside'' is substituted for the words ''beyond the continental limitations''. The words ''or in Alaska'' are omitted, since, in section 101(1) of this title, the words, ''United States'' are defined to include only the States and the District of Columbia. The word ''continental'', after the words ''within the'', is omitted for the same reason. The last sentence is substituted for 34 U.S.C. 533a (proviso).

AMENDMENTS

1985—Pub. L. 99–145, §1301(c)(3)(B), inserted ''the'' before ''naval service'' and ''and widowers'' after ''widows'' in section catchline.

Subsec. (a). Pub. L. 99–145, §1301(c)(3)(A), inserted ''and widowers'' after ''widows''.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7602. Sales: members of Army and Air Force; prices

The Navy and the Marine Corps shall sell subsistence supplies to any member of the Army or the Air Force at prices charged members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7602	34 U.S.C. 538.	Aug. 29, 1916, ch. 418, §1, 39 Stat. 630 (less words before semicolon of 3d proviso under ''Subsistence of the Army'').

This section is expanded to cover sales to members of the Air Force, as authorized by §305(a) of the National Security Act of 1947, as amended (5 U.S.C. 171*l*).

§ 7603. Sales: veterans under treatment

A person who has been separated honorably or under honorable conditions from the Army, the Navy, the Air Force, or the Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, from the Navy and the Marine Corps at prices charged members of the naval service.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7603	34 U.S.C. 536.	June 5, 1920, ch. 240 (par. under ''Purchase of Army Stores by Discharged Receiving Treatment from the Public Health Service''), 41 Stat. 976.

The word ''separated'' is substituted for the word ''discharged''. The words ''under honorable conditions'' are added since this provision is interpreted as benefiting personnel discharged under honorable conditions. The words ''Air Force'' are supplied under the authority of §305(a) of the National Security Act of 1947, as amended (5 U.S.C. 171*l*). The words ''Veterans' Administration'' are added under the authority of the Act of August 9, 1921, ch. 57, 42 Stat. 148, which transferred care of veterans to the Veterans' Bureau, the Act of June 7, 1924, ch. 320, 43 Stat. 610, which transferred all hospitals under the jurisdiction of the Public Health Service to the Veterans' Bureau, and the Act of July 3, 1930, ch. 863, §1, 46 Stat. 1016, under which the President by Executive Order No. 5398, July 21, 1930, transferred the Veterans' Bureau to the Veterans' Administration. The words ''while undergoing such care and treatment'' are omitted as surplusage.

AMENDMENTS

1989—Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

§ 7604. Ships' stores: sale of goods and services

(a) IN GENERAL.—Under such regulations and at such prices as the Secretary of the Navy may prescribe, the Secretary may provide for the sale of goods and services from ships' stores to members of the naval service and to such other persons as provided by law.

(b) INCIDENTAL SERVICES.—The Secretary of the Navy may provide financial services, space, utilities, and labor to ships' stores on a nonreimbursable basis.

(c) ITEMS SOLD.—Merchandise sold by ship stores afloat shall include items in the following categories:

(1) Health, beauty, and barber items.

(2) Prerecorded music and videos.

(3) Photographic batteries and related supplies.

(4) Appliances and accessories.

(5) Uniform items, emblematic and athletic clothing, and equipment.

(6) Luggage and leather goods.

(7) Stationery, magazines, books, and supplies.

(8) Sundry, games, and souvenirs.

(9) Beverages and related food and snacks.

(10) Laundry, tailor, and cleaning supplies.

(11) Tobacco products.

(Added Pub. L. 101–510, div. A, title III, § 329(a)(1), Nov. 5, 1990, 104 Stat. 1534; amended Pub. L. 103–160, div. A, title III, § 371(a), formerly § 371(c), Nov. 30, 1993, 107 Stat. 1635, renumbered § 371(a), Pub. L. 104–106, div. A, title III, § 340(a)(2), Feb. 10, 1996, 110 Stat. 265.)

PRIOR PROVISIONS

A prior section 7604, acts Aug. 10, 1956, ch. 1041, 70A Stat. 471; Nov. 2, 1966, Pub. L. 89–718, § 44, 80 Stat. 1120, related to profit on sales from ships' stores, prior to repeal by Pub. L. 101–510, § 329(a)(1).

AMENDMENTS

1993—Pub. L. 103–160 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 371(b), formerly section 371(d) of Pub. L. 103–160, renumbered § 371(b) by Pub. L. 104–106, div. A, title III, § 340(a)(2), Feb. 10, 1996, 110 Stat. 265; as amended by Pub. L. 103–337, div. A, title III, § 374(b), Oct. 5, 1994, 108 Stat. 2736, provided that: ''Subsections (b) and (c) of section 7604 of title 10, United States Code, as added by subsection (c) [now (a)], shall take effect on October 1, 1994.''

REGULATIONS

Section 329(a)(3) of Pub. L. 101–510 provided that: ''The regulations required to be prescribed under section 7604 of title 10, United States Code (as amended by paragraph (1)), shall be first prescribed not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990].''

CONVERSION OF SHIPS' STORES TO OPERATION AS NONAPPROPRIATED FUND INSTRUMENTALITIES; TRANSFER OF FUNDS

Section 371(a), (b) of Pub. L. 103–160, as amended by Pub. L. 103–337, div. A, title III, § 374(a), Oct. 5, 1994, 108 Stat. 2736, provided that not later than Dec. 31, 1995, Secretary of the Navy was to convert operation of all ships' stores from operation as activity funded by direct appropriations to operation by Navy Exchange Service Command as activity funded from sources other than appropriated funds, prior to repeal by Pub. L. 104–106, div. A, title III, § 340(a)(1), Feb. 10, 1996, 110 Stat. 265.

§ 7605. Acceptance of Government checks outside the United States

Notwithstanding section 3302(a) of title 31, the Secretary of the Navy may authorize the officer in charge of any commissary store or ship's store ashore located outside the United States to—

(1) accept any Government check tendered by a retired member of the Navy or the Marine Corps, a member of the Naval Reserve or the Marine Corps Reserve, or a member of the Fleet Reserve or the Fleet Marine Corps Reserve, if the member is the payee of the check and the check is tendered in payment of amounts due from the member to the store; and

(2) refund in cash any difference between the amount due and the amount of the tendered check.

(Aug. 10, 1956, ch. 1041, 70A Stat. 471; Pub. L. 96–513, title V, § 513(42), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 97–258, § 3(b)(10), Sept. 13, 1982, 96 Stat. 1064.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7605	34 U.S.C. 552.	July 15, 1939, ch. 285, 53 Stat. 1043.

Since the authority of this section to refund any cash balance extends only to the payee of a check, the section is written to authorize only the payee to cash it. The Fleet Reserve and the Fleet Marine Corps Reserve were parts of the Naval Reserve and the Marine Corps Reserve, respectively, when the source statute was enacted but were removed therefrom by the Armed Forces Reserve Act of 1952. The words ''or a member of the Fleet Reserve or the Fleet Marine Corps Reserve'' are inserted in clause (1) to give this section the same applicability as the source.

AMENDMENTS

1982—Pub. L. 97–258 substituted ''section 3302(a) of title 31'' for ''sections 3639 and 3651 of the Revised Statutes (31 U.S.C. 521 and 543)''.

1980—Pub. L. 96–513 substituted ''sections 3639 and 3651 of the Revised Statutes (31 U.S.C. 521 and 543)'' for ''sections 521 and 543 of title 31''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 7606. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a)(1) The Secretary of the Navy shall procure and sell, for cash or credit—

(A) articles designated by the Secretary to members of the Navy and Marine Corps; and

(B) items of individual clothing and equipment to members of the Navy and Marine Corps, under such restrictions as the Secretary may prescribe.

(2) An account of sales on credit shall be kept and the amount due reported to the Secretary.

Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Navy and Marine Corps.

(c) The Secretary may sell serviceable supplies, other than subsistence supplies, to members of other armed forces for the buyers' use in the service. The prices at which the supplies are sold shall be the same prices at which like property is sold to members of the Navy and Marine Corps.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to members of the Navy and Marine Corps.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged honorably or under honorable conditions from the Navy or Marine Corps, at the prices at which like articles are sold to members of the Navy or Marine Corps. This subsection does not modify section 772 or 773 of this title.

(f) Under regulations prescribed by the Secretary, payment for subsistence supplies shall be made in cash or by commercial credit.

(g)(1) The Secretary may provide for the procurement and sale of stores designated by the Secretary to such civilian officers and employees of the United States, and such other persons, as the Secretary considers proper—

(A) at military installations outside the United States; and

(B) subject to paragraph (2), at military installations inside the United States where the Secretary determines that it is impracticable for those civilian officers, employees, and persons to obtain such stores from commercial enterprises without impairing the efficient operation of military activities.

(2) Sales to civilian officers and employees inside the United States may be made under paragraph (1) only to civilian officers and employees residing within military installations.

(h) Appropriations for subsistence of the Navy or Marine Corps may be applied to the purchase of subsistence supplies for sale to members of the Navy and Marine Corps on active duty for the use of such members and their families.

(Added Pub. L. 104–106, div. A, title III, §375(a)(1), Feb. 10, 1996, 110 Stat. 281; amended Pub. L. 105–85, div. A, title X, §1073(a)(63), Nov. 18, 1997, 111 Stat. 1903.)

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–85 substituted ''section'' for ''sections''.

CHAPTER 653—CLAIMS

Sec.
7621. Definitions.
7622. Admiralty claims against the United States.
7623. Admiralty claims by the United States.
[7624, 7625. Repealed.]

AMENDMENTS

1962—Pub. L. 87–769, §1(2)(B), Oct. 9, 1962, 76 Stat. 768, struck out item 7625 ''Claims against the United States: private property; loss or damage''.

1960—Pub. L. 86–533, §1(10)(B), June 29, 1960, 74 Stat. 247, struck out item 7624 ''Reports to Congress''.

§ 7621. Definitions

(a) In this chapter ''vessel in the naval service'' means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(b) In this chapter ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7621	46 U.S.C. 793.	July 3, 1944, ch. 399, §3, 58 Stat. 724.

In subsection (a) the words ''vessel in the naval service'' are substituted for the words ''vessels of the Navy or in the naval service''. The defined term is used throughout the chapter, and by definition includes vessels of the Navy. The words ''when the Coast Guard is operating as a service in the Navy'' are substituted for the words ''the Coast Guard when operating as a part of the Navy'' to conform to the terminology of 14 U.S.C. 3.

Subsection (b) is inserted for clarity, and is based on the source laws for this revised chapter.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7622. Admiralty claims against the United States

(a) The Secretary of the Navy may settle, or compromise, and pay in an amount not more than $15,000,000 an admiralty claim against the United States for—

(1) damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel in the naval service or to other property under the jurisdiction of the Department of the Navy; or

(3) damage caused by a maritime tort committed by any agent or employee of the De-

partment of the Navy or by property under the jurisdiction of the Department of the Navy.

(b) If a claim under this section is settled or compromised for more than $15,000,000, the Secretary shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $1,000,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the claimant, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 92–417, §1(5), Aug. 29, 1972, 86 Stat. 654; Pub. L. 101–189, div. A, title XVI, §1633, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 107–107, div. A, title X, §1014(a), Dec. 28, 2001, 115 Stat. 1212.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7622	46 U.S.C. 797.	July 3, 1944, ch. 399, §7, 58 Stat. 726.
	46 U.S.C. 799.	July 3, 1944, ch. 399, §9; added Aug. 2, 1946, ch. 739, 60 Stat. 803.

In subsection (a) the words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in §7621(b) of this title. The words ''vessel in the naval service'' are substituted for the words ''vessels of the Navy or in the naval service'', in view of the definition in §7621(a) of this title. The words ''pay in an amount not more than $1,000,000, a claim'' are substituted for the words ''pay the amount of any claim, so determined, compromised, or settled'' and for the words ''the payment of any claim on which a net amount exceeding $1,000,000 is determined to be due from the United States, or which is compromised or settled at a net amount exceeding $1,000,000 payable by the United States, shall not be authorized by this section''.

In subsection (c) the words ''In any case where the amount to be paid is not more than'' are substituted for the words ''When the net amount paid in settlement does not exceed'' for clarity, since the delegation necessarily precedes payment. The words ''the Secretary may delegate his authority'' are substituted for the words ''the authority of the Secretary of the Navy * * * may be exercised by'' for clarity.

In subsection (d) the words ''but not until then'', ''for all purposes'', and ''to the contrary'' are omitted as surplusage.

The first proviso in 46 U.S.C. 797, stating that this section is supplementary to, and not in lieu of, other laws authorizing the settlement of claims, is omitted as unnecessary, since the other applicable claims laws are restated in this title. The second proviso, forbidding consideration of claims for more than $3,000 if they accrued before Sept. 8, 1939, is omitted as obsolete. It was designed to avoid reviving stale claims upon enactment of the source law on July 3, 1944. However, as a matter of practice, no claims are settled under this authority which are more than two years old, in line with the two-year statute of limitations contained in the Suits in Admiralty Act and the Public Vessels Act. This limitation has been officially publicized in the Federal Register for May 22, 1947, p. 3296, and in 32 C.F.R. 752. The third proviso in 46 U.S.C. 797 is omitted as unnecessary, since the appropriation named therein no longer exists, and the payments are now made from appropriations for the Department of Defense.

AMENDMENTS

2001—Subsecs. (a), (b). Pub. L. 107–107, §1014(a)(1), substituted ''$15,000,000'' for ''$1,000,000''.

Subsec. (c). Pub. L. 107–107, §1014(a)(2), substituted ''$1,000,000'' for ''$100,000''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''$100,000'' for ''$10,000''.

1972—Subsec. (a). Pub. L. 92–417 substituted ''an admiralty claim against the United States'' for ''a claim against the United States'' in text preceding par. (1), in par. (1) inserted ''or by other property under the jurisdiction of the Department of the Navy'', in par. (2) inserted ''or to other property under the jurisdiction of the Department of the Navy'', and added par. (3).

1965—Subsec. (c). Pub. L. 89–67 substituted ''$10,000'' for ''$1,000''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title X, §1014(c), Dec. 28, 2001, 115 Stat. 1212, provided that: ''The amendments made by this section [amending this section and section 7623 of this title] shall apply with respect to any claim accruing on or after February 1, 2001.''

§ 7623. Admiralty claims by the United States

(a) The Secretary of the Navy may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Navy or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the net amount to be received by the United States is not more than $15,000,000.

(b) In exchange for payment of an amount found to be due the United States under this section, the Secretary may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $1,000,000, the Secretary may delegate his authority under this section to any person designated by him.

(d) Upon acceptance of payment by the Secretary, the settlement or compromise of a claim under this section is final and conclusive notwithstanding any other provision of law.

(e) This section does not apply to any claim while there is pending as to that claim a suit filed by or against the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 472; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 101–189, div. A, title XVI, §1633, Nov. 29, 1989, 103 Stat. 1608; Pub. L. 107–107, div. A, title X, §1014(b), Dec. 28, 2001, 115 Stat. 1212.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7623	34 U.S.C. 600a.	Dec. 5, 1945, ch. 555, §1, 59 Stat. 596.
	34 U.S.C. 600d.	Dec. 5, 1945, ch. 555, §4; added Aug. 2, 1946, ch. 742, 60 Stat. 806.
	34 U.S.C. 600c.	Dec. 5, 1945, ch. 555, §3, 59 Stat. 596.

In subsection (a) the words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 7621(b) of this title. The

words ''of the United States'' (following the word ''property''), ''by contract or otherwise'', and ''thereto'' are omitted as surplusage. The words ''of a kind that is within the admiralty jurisdiction of'' are substituted for the words ''cognizable in admiralty in''. The words ''receive payment of a claim * * * if the net amount to be received by the United States is not more than $1,000,000'' are substituted for the words ''receive in payment of any such claim the amount due the United States pursuant to determination, compromise, or settlement as herein authorized * * * *Provided, further*, That no settlement or compromise where there is involved a payment in the net amount of over $1,000,000 shall be authorized by this Act''.

In subsection (b) the words ''and to deliver'' are omitted as covered by the word ''execute''. The words ''Amounts received under this section'' are substituted for the words ''All such payments'' for clarity and uniformity. The words ''of the United States as miscellaneous receipts'' are omitted as surplusage.

In subsection (c) the words ''In any case where the amount to be received by the United States is not more than'' are substituted for the words ''Where the net amount received in settlement does not exceed'' for clarity, since the delegation of authority necessarily precedes receipt of payment. The words ''the Secretary may delegate his authority'' are substituted for the words ''the authority of the Secretary of the Navy * * * may be exercised'' for clarity.

In subsection (d) the words ''but not until then'', ''for all purposes'', and ''to the contrary'' are omitted as surplusage.

Subsection (e) is worded to insure that the effect of a suit pending at any time is preserved and that the provision is not interpreted to apply only to suits that are pending on the date of enactment of this title.

The first proviso of 34 U.S.C. 600a, stating that this section is supplementary to, and not in lieu of, other laws authorizing the settlement of claims, is omitted as unnecessary, since the other applicable claims laws are restated in this title.

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–107, §1014(b)(1), substituted ''$15,000,000'' for ''$1,000,000''.

Subsec. (c). Pub. L. 107–107, §1014(b)(2), substituted ''$1,000,000'' for ''$100,000''.

1989—Subsec. (c). Pub. L. 101–189 substituted ''$100,000'' for ''$10,000''.

1965—Subsec. (c). Pub. L. 89–67 substituted ''$10,000'' for ''$1,000''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 applicable with respect to any claim accruing on or after Feb. 1, 2001, see section 1014(c) of Pub. L. 107–107, set out as a note under section 7622 of this title.

[§ 7624. Repealed. Pub. L. 86–533, § 1(10)(A), June 29, 1960, 74 Stat. 247]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 473, related to reports to Congress with respect to amounts paid or received under sections 7622 and 7623 of this title.

[§ 7625. Repealed. Pub. L. 87–769, § 1(2)(A), Oct. 9, 1962, 76 Stat. 768]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 473, related to settlement of claims for damage to or loss of privately owned property. See section 2736 of this title.

CHAPTER 655—PRIZE

Sec.
7651. Scope of chapter.
7652. Jurisdiction.
7653. Court in which proceedings brought.
7654. Effect of failure to start proceedings.
7655. Appointment of prize commissioners and special prize commissioners.
7656. Duties of United States attorney.
7657. Duties of commanding officer of capturing vessel.
7658. Duties of prize master.
7659. Libel and proceedings by United States attorney.
7660. Duties of prize commissioners.
7661. Interrogation of witnesses by prize commissioners.
7662. Duties of marshal.
7663. Prize property appropriated for the use of the United States.
7664. Delivery of property on stipulation.
7665. Sale of prize.
7666. Mode of making sale.
7667. Transfer of prize property to another district for sale.
7668. Disposition of prize money.
7669. Security for costs.
7670. Costs and expenses a charge on prize property.
7671. Payment of costs and expenses from prize fund.
7672. Recaptures: award of salvage, costs, and expenses.
7673. Allowance of expenses to marshals.
7674. Payment of witness fees.
7675. Commissions of auctioneers.
7676. Compensation of prize commissioners and special prize commissioners.
7677. Accounts of clerks of district courts.
7678. Interfering with delivery, custody, or sale of prize property.
7679. Powers of district court over prize property notwithstanding appeal.
7680. Appeals and amendments in prize causes.
7681. Reciprocal privileges to cobelligerent.

§ 7651. Scope of chapter

(a) This chapter applies to all captures of vessels as prize during war by authority of the United States or adopted and ratified by the President. However, this chapter does not affect the right of the Army or the Air Force, while engaged in hostilities, to capture wherever found and without prize procedure—

(1) enemy property; or

(2) neutral property used or transported in violation of the obligations of neutrals under international law.

(b) As used in this chapter—

(1) ''vessel'' includes aircraft; and

(2) ''master'' includes the pilot or other person in command of an aircraft.

(c) Property seized or taken upon the inland waters of the United States by its naval forces is not maritime prize. All such property shall be delivered promptly to the proper officers of the courts.

(d) Nothing in this chapter may be construed as contravening any treaty of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7651(a)	34 U.S.C. 1131 (less 1st proviso). 34 U.S.C. 1159 (as applicable to capture).	R.S. 4613 (less 1st proviso); June 24, 1941, ch. 232, 55 Stat. 261. Aug. 18, 1942, ch. 553, §1 (as applicable to capture), 56 Stat. 746; July 1, 1944, ch. 370, §1, 58 Stat. 678; Nov. 14, 1945, ch. 472, §1, 59 Stat. 581.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7651(b)	34 U.S.C. 1131 (1st proviso).	R.S. 4613 (1st proviso); June 24, 1941, ch. 232, 55 Stat. 261.
	34 U.S.C. 1132.	R.S. 4614; June 24, 1941, ch. 232, 55 Stat. 261.
7651(c)	50 U.S.C. 214.	R.S. 5310.
7651(d)	34 U.S.C. 1158 (last sentence).	R.S. 4652 (last sentence).

In subsection (a) the words ''including aircraft'' are omitted as covered by subsection (b). The section is written to make the words ''during war'' applicable to the entire chapter. These words appear in 34 U.S.C. 1159, but not in 34 U.S.C. 1131. Prize is historically and uniformly treated as a war-time matter, so no substantive change results from the extension. The words ''this chapter does not affect'' are substituted for the words ''nothing herein contained shall be construed as affecting, or in any way impairing''. The words ''Air Force'' are added under authority of § 305(a) of the National Security Act of 1947, as amended (5 U.S.C. 171*l*), to provide the same applicability as formerly provided by the word ''Army''. The word ''legal'' is omitted as surplusage.

In subsection (b) the definition of the term ''ship'' is omitted as covered by the term ''vessel''. All of 34 U.S.C. 1132 except that part which includes ''aircraft'' within the term ''vessels'' is omitted as unnecessary since the defined term ''vessels of the Navy'' does not appear in the provisions to which the definition is made applicable. The last sentence of 34 U.S.C. 1158 applies only to Title LIV (Prize) of the Revised Statutes. In subsection (d) it is broadened to cover the entire body of statutory prize law. Additions to the prize law made by the Act of August 18, 1942, ch. 553, 56 Stat. 746, as amended, operated only to extend the jurisdiction of courts of the United States to certain cases in which the prizes are not brought into the territorial waters of the United States. Relations of this country with other countries are not affected by the 1942 Act except when jurisdiction is exercised by American courts over prizes brought into cobelligerent ports. As that Act provides that the consent of the cobelligerent is necessary to the exercise of such jurisdiction, the rule against contravention of treaties is properly applied to it.

§ 7652. Jurisdiction

(a) The United States district courts have original jurisdiction, exclusive of the courts of the States, of each prize and each proceeding for the condemnation of property taken as prize, if the prize is—

(1) brought into the United States, or the Territories, Commonwealths, or possessions;

(2) brought into the territorial waters of a cobelligerent;

(3) brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States; or

(4) appropriated for the use of the United States.

(b) The United States district courts, exclusive of the courts of the States, also have original jurisdiction of a prize cause in which the prize property—

(1) is lost or entirely destroyed; or

(2) cannot be brought in for adjudication because of its condition.

(c) The jurisdiction conferred by this section of prizes brought into the territorial waters of a cobelligerent may not be exercised, nor may prizes be appropriated for the use of the United States within those territorial waters, unless the government having jurisdiction over those waters consents to the exercise of the jurisdiction or to the appropriation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7652(a)	34 U.S.C. 1159 (less applicability to capture).	Aug. 18, 1942, ch. 553, § 1 (less applicability to capture), 56 Stat. 746; July 1, 1944, ch. 370, § 1, 58 Stat. 678; Nov. 14, 1945, ch. 472, § 1, 59 Stat. 581.
	34 U.S.C. 1164 (2d sentence).	Aug. 18, 1942, ch. 553, § 6 (less 1st sentence), 56 Stat. 747.
7652(c)	34 U.S.C. 1166.	Aug. 18, 1942, ch. 553, § 8, 56 Stat. 747.
	34 U.S.C. 1161.	Aug. 18, 1942, ch. 553, § 3, 56 Stat. 746.

Subsection (a) reflects 28 U.S.C. 1333 by restating the basic prize jurisdiction of that section over prizes brought into the United States, and by providing that the extension of prize jurisdiction conferred by 34 U.S.C. 1159 on the United States district courts is exclusive of the courts of the States. 34 U.S.C. 1166 and the second sentence of 34 U.S.C. 1164 are executed in the single jurisdictional statement of this section and the consolidation of the Act of August 18, 1942, ch. 553, 56 Stat. 746 (34 U.S.C. 1159–1166) with the earlier prize provisions. The words ''during war'' in 34 U.S.C. 1159 are omitted as covered in § 7651 of this title. In clause (1) the words ''or the Territories, Commonwealths, or possessions'' are added, since ''United States'' in this title is geographically limited to the 48 States and the District of Columbia, whereas the term here is intended to include all places within the jurisdiction of the district courts.

In clause (4) the words ''taken or'' preceding the words ''appropriated for the use of the United States'' are omitted as surplusage and in order to avoid confusion between the two meanings of the word ''taken'' in prize law. In both the Revised Statutes and the 1942 Act the phrase ''taken or appropriated'' means no more than ''appropriated'' alone, whereas ''taken'', in the phrase ''taken as prize'' means ''captured''.

Subsection (b) is included to make the statement of jurisdiction complete. It is derived by implication from the first sentence of R.S. 4625 (34 U.S.C. 1141) which is the source of subsection (c) of § 7653 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7681 of this title.

§ 7653. Court in which proceedings brought

(a) If a prize is brought into a port of the United States, or the Territories, Commonwealths, or possessions, proceedings for the adjudication of the prize cause shall be brought in the district in which the port is located.

(b) If a prize is brought into the territorial waters of a cobelligerent, or is brought into a locality in the temporary or permanent possession of, or occupied by, the armed forces of the United States, or is appropriated for the use of the United States, before proceedings are started, the venue of the proceedings for adjudication of the cause shall be in the judicial district selected by the Attorney General, or his designee, for the convenience of the United States.

(c) If the prize property is lost or entirely destroyed or if, because of its condition, no part of it has been or can be sent in for adjudication, proceedings for adjudication of the cause may be brought in any district designated by the Sec-

retary of the Navy. In such cases the proceeds of anything sold shall be deposited with the Treasurer of the United States or public depositary in or nearest the district designated by the Secretary, subject to the orders of the court for that district.

(Aug. 10, 1956, ch. 1041, 70A Stat. 474.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7653(b)	34 U.S.C. 1160.	Aug. 18, 1942, ch. 553, §2, 56 Stat. 746.
7653(c)	34 U.S.C. 1141 (less last sentence).	R.S. 4625 (less last sentence).

Subsection (a) is inserted in order to present a complete statement of the subject matter of the section. Its substance is not specifically set out in the Revised Statutes but is strongly implied in 34 U.S.C. 1135 which requires the United States attorney for the district in which the port is located to file a libel.

In subsection (b) the requisites for jurisdiction conferred under the 1942 Act are substituted for the words ''brought under the jurisdiction conferred by this Act''. The substituted words are the same as those used in clauses (2), (3), and (4) of the preceding section except that the words ''before proceedings are started'' are added following the words ''appropriated for the use of the United States'' for clarity. An appropriation can take place before or after proceedings are commenced, but in the latter case there is no occasion for the Attorney General to determine venue.

In subsection (c) the words ''or if because the whole has been appropriated to the use of the United States'' and the words ''or the value of anything taken or appropriated for the use of the United States'' are omitted. The provision in the 1942 Act which empowers the Attorney General to decide the venue of proceedings when the prize property has been appropriated is incompatible with the provision in R.S. 4625 which authorizes the Secretary of the Navy to select the judicial district in such cases. Hence the 1942 Act superseded R.S. 4625 with respect to cases of this type. Deposit of the value of prize property appropriated by the United States is adequately covered in §7663 of this title and is not mentioned here. The second sentence of 34 U.S.C. 1141 (R.S. 4625), relating to proceedings by captors, is omitted because it was rendered inoperative by the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, which repealed all laws authorizing the distribution of prize money to captors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7655 of this title.

§ 7654. Effect of failure to start proceedings

If a vessel is captured as prize and no proceedings for adjudication are started within a reasonable time, any party claiming the captured property may, in any district court as a court of prize—

(1) move for a monition to show cause why such proceedings shall not be started; or

(2) bring an original suit for restitution.

The monition issued in either case shall be served on the United States Attorney for the district, on the Secretary of the Navy, and on such other persons as are designated by order of the court.

(Aug. 10, 1956. ch. 1041, 70A Stat. 475.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7654	34 U.S.C. 1141 (last sentence).	R.S. 4625 (last sentence).

§ 7655. Appointment of prize commissioners and special prize commissioners

(a) In each judicial district there may be not more than three prize commissioners, one of whom is the naval prize commissioner. They shall be appointed by the district court for service in connection with any prize cause in which proceedings are brought under section 7653(a) or (c) of this title. The naval prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary of the Navy. The naval prize commissioner shall protect the interests of the Department of the Navy in the prize property. At least one of the other commissioners must be a member of the bar of the court, of not less than three years' standing, who is experienced in taking depositions.

(b) A district court may appoint special prize commissioners to perform abroad, in connection with any prize cause in which proceedings are brought under section 7653(b) of this title, the duties prescribed for prize commissioners, and, in connection with those causes, to exercise anywhere such additional powers and perform such additional duties as the court considers proper, including the duties prescribed by this chapter for United States marshals. The court may determine the number and qualifications of the special prize commissioners it appoints, except that for each cause there shall be at least one naval special prize commissioner. The naval special prize commissioner must be an officer of the Navy whose appointment is approved by the Secretary. The naval special prize commissioner shall protect the interests of the Department of the Navy in the prize property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7655(a)	34 U.S.C. 1137 (less applicability to compensation of the naval prize commissioner).	R.S. 4621 (less applicability to compensation of the naval prize commissioner); Nov. 14, 1945, ch. 472, §2, 59 Stat. 581.
7655(b)	34 U.S.C. 1163 (less applicability to compensation of the naval special prize commissioner).	Aug. 18, 1942, ch. 553, §5 (less applicability to compensation of the naval special prize commissioner), 56 Stat. 746.

The first sentence of subsection (a) is reworded to make it clear that the limitation as to number applies to the number of prize commissioners who may serve in each judicial district at any one time and that the court is not precluded from making additional appointments to fill vacancies. The words ''for service in connection with any prize cause in which proceedings are brought under section 7653(a) or (c) of this title'' are added to distinguish the prize commissioners from the special prize commissioners mentioned in subsection (b). The words ''officer of the Navy'' in subsections (a) and (b) are substituted for the words ''naval officer, active or retired'' because an officer of the Navy does not lose his status as such upon retirement, and to retain these words would open to question the many other

provisions in this subtitle treating retired officers as officers.

In subsection (b) the words ''in connection with any prize cause in which proceedings are brought under section 7653(b) of this title'' are substituted for the words ''in cases arising under this Act'' for accuracy of reference. The words ''including the duties prescribed by this chapter for United States marshals'' are added for clarity. Section 7662 of this title prescribes the duties of marshals. Most of these duties could not be performed by the marshals if the prize was not brought into a United States port. In such cases occurring during World War II the courts, under the authority of the 1942 Act, required the special prize commissioners to perform the duties ordinarily performed by the marshals. The words ''without regard for the requirements of section 7367 of this title'' are omitted as unnecessary, since that section is codified in subsection (a), and language distinguishing the prize commissioners from the special prize commissions is included in each subsection.

§ 7656. Duties of United States attorney

(a) The interests of the United States in a prize cause shall be represented by the United States attorney for the judicial district in which the prize cause is adjudicated. The United States attorney shall protect the interests of the United States and shall examine all fees, costs, and expenses sought to be charged against the prize fund.

(b) In a judicial district where one or more prize causes are pending the United States attorney shall send to the Secretary of the Navy, at least once every three months, a statement of all such causes in the form and covering the particulars required by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 475.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7656	34 U.S.C. 1136.	R.S. 4619.

The Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, which repealed all laws authorizing the distribution of prize money to captors, rendered inoperative parts of R.S. 4619 relative to protection of captors' interest. These parts are omitted from 34 U.S.C. 1136 and from the revised section.

§ 7657. Duties of commanding officer of capturing vessel

(a) The commanding officer of a vessel making a capture shall—

(1) secure the documents of the captured vessel, including the log, and the documents of cargo, together with all other documents and papers, including letters, found on board;

(2) inventory and seal all the documents and papers;

(3) send the inventory and documents and papers to the court in which proceedings are to be had, with a written statement—

(A) that the documents and papers sent are all the papers found, or explaining the reasons why any are missing; and

(B) that the documents and papers sent are in the same condition as found, or explaining the reasons why any are in different condition;

(4) send as witnesses to the prize court the master, one or more of the other officers, the supercargo, purser, or agent of the prize, and any other person found on board whom he believes to be interested in or to know the title, national character, or destination of the prize, and if any of the usual witnesses cannot be sent, send the reasons therefor to the court; and

(5) place a competent prize master and a prize crew on board the prize and send the prize, the witnesses, and all documents and papers, under charge of the prize master, into port for adjudication.

(b) In the absence of instructions from higher authority as to the port to which the prize shall be sent for adjudication, the commanding officer of the capturing vessel shall select the port that he considers most convenient in view of the interests of probable claimants.

(c) If the captured vessel, or any part of the captured property, is not in condition to be sent in for adjudication, the commanding officer of the capturing vessel shall have a survey and an appraisal made by competent and impartial persons. The reports of the survey and the appraisal shall be sent to the court in which proceedings are to be had. Property so surveyed and appraised, unless appropriated for the use of the United States, shall be sold under authority of the commanding officer present. Proceeds of the sale shall be deposited with the Treasurer of the United States or in the public depositary most accessible to the court in which proceedings are to be had and subject to its order in the cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7657	34 U.S.C. 1133.	R.S. 4615.

As does 34 U.S.C. 1133, the revised section reflects the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, and the Act of May 29, 1920, ch. 214, §1, 41 Stat. 654, which, respectively, abolished the interest of captors in prize property and substituted ''Treasurer of the United States or public depositary'' for ''assistant treasurer of the United States''.

§ 7658. Duties of prize master

The prize master shall take the captured vessel to the selected port. On arrival he shall—

(1) deliver immediately to a prize commissioner the documents and papers and the inventory thereof;

(2) make affidavit that the documents and papers and the inventory thereof and the prize property are the same and are in the same condition as delivered to him, or explaining any loss or absence or change in their condition;

(3) report all information respecting the prize and her capture to the United States attorney;

(4) deliver the persons sent as witnesses to the custody of the United States marshal; and

(5) retain the prize in his custody until it is taken therefrom by process from the prize court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 476.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7658	34 U.S.C. 1134.	R.S. 4617.

The word ''diligently'' is omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7659, 7660 of this title.

§ 7659. Libel and proceedings by United States attorney

(a) Upon receiving the report of the prize master directed by section 7658 of this title, the United States attorney for the district shall promptly—

(1) file a libel against the prize property;

(2) obtain a warrant from the court directing the marshal to take custody of the prize property; and

(3) proceed to obtain a condemnation of the property.

(b) In connection with the condemnation proceedings the United States attorney shall insure that the prize commissioners—

(1) take proper preparatory evidence; and

(2) take depositions de bene esse of the prize crew and of other transient persons who know any facts bearing on condemnation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7659	34 U.S.C. 1135.	R.S. 4618.

As does 34 U.S.C. 1135, the revised section reflects the Act of March 3, 1899, ch. 413, § 13, 30 Stat. 1007, which repealed all laws authorizing distribution of prize proceeds to captors.

§ 7660. Duties of prize commissioners

One or more of the prize commissioners shall—

(1) receive from the prize master the documents and papers of the captured vessel and the inventory thereof;

(2) take the affidavit of the prize master required by section 7658 of this title;

(3) take promptly, in the manner prescribed by section 7661 of this title, the testimony of the witnesses sent in;

(4) take, at the request of the United States attorney, on interrogatories prescribed by the court, the depositions de bene esse of the prize crew and others;

(5) examine and inventory the prize property;

(6) apply to the court for an order to the marshal to unload the cargo, if this is necessary to that examination and inventory;

(7) report to the court, and notify the United States attorney, whether any of the prize property requires immediate sale in the interest of all parties;

(8) report to the court, from time to time, any matter relating to the condition, custody, or disposal of the prize property requiring action by the court;

(9) return to the court sealed and secured from inspection—

(A) the documents and papers received, duly scheduled and numbered;

(B) the preparatory evidence;

(C) the evidence taken de bene esse; and

(D) their inventory of the prize property; and

(10) report to the Secretary of the Navy, if, in their judgment, any of the prize property is useful to the United States in the prosecution of war.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7660	34 U.S.C. 1138 (less applicability to procedure for interrogating witnesses).	R.S. 4622 (less applicability to procedure for interrogating witnesses).

The words ''but the custody of the property shall be in the marshal only'' are omitted as surplusage, since this fact is made clear in § 7662 of this title.

§ 7661. Interrogation of witnesses by prize commissioners

Witnesses before the prize commissioners shall be questioned separately, on interrogatories prescribed by the court, in the manner usual in prize courts. Without special authority from the court, the witnesses may not see the interrogatories, documents, or papers, or consult with counsel or with other persons interested in the cause. Witnesses who have the rights of neutrals shall be discharged as soon as practicable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 477.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7661	34 U.S.C. 1138 (as applicable to procedure for interrogating witnesses).	R.S. 4622 (as applicable to procedure for interrogating witnesses).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7660 of this title.

§ 7662. Duties of marshal

The marshal shall—

(1) keep in his custody all persons found on board a prize and sent in as witnesses, until they are released by the prize commissioners or the court;

(2) keep safely in his custody all prize property under warrant from the court;

(3) report to the court any cargo or other property that he thinks should be unloaded and stored or sold;

(4) insure the prize property, if in his judgment it is in the interest of all concerned;

(5) have charge of the sale of the property, if a sale is ordered, and be responsible for the conduct of the sale in the manner required by the court, for the collection of the gross proceeds, and for their immediate deposit with the Treasurer of the United States or public depositary nearest the place of sale, subject to the order of the court in the cause; and

(6) submit to the Secretary of the Navy, at such times as the Secretary designates, a full

statement of the condition of the prize and of the disposal made thereof.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7662	34 U.S.C. 1139.	R.S. 4623.

In clause (2) the words ''in his custody'' are inserted to make clear the fact that the marshal has custody of the prize property.

In clause (5) the words ''and be responsible for'' are inserted for clarity, since 34 U.S.C. 1144 provides that the sale and deposit of the proceeds shall be made by the auctioneer and his agent rather than by the marshal, although the marshal supervises them. The words ''Treasurer of the United States or public depositary'' are substituted for ''assistant treasurer'' to reflect the Act of May 29, 1920, ch. 214, 41 Stat. 654.

§ 7663. Prize property appropriated for the use of the United States

(a) Any officer or agency designated by the President may appropriate for the use of the United States any captured vessel, arms, munitions, or other material taken as prize. The department or agency for whose use the prize property is appropriated shall deposit the value of the property with the Treasurer of the United States or with the public depositary nearest to the court in which the proceedings are to be had, subject to the orders of the court.

(b) Whenever any captured vessel, arms, munitions, or other material taken as prize is appropriated for the use of the United States before that property comes into the custody of the prize court, it shall be surveyed, appraised, and inventoried by persons as competent and impartial as can be obtained, and the survey, appraisal, and inventory sent to the court in which the proceedings are to be had. If the property is appropriated after it comes into the custody of the court, sufficient notice shall be given to enable the court to have the property appraised for the protection of the rights of the claimants.

(c) Notwithstanding subsections (a) and (b), in any case where prize property is appropriated for the use of the United States, a prize court may adjudicate the cause on the basis of an inventory and survey and an appropriate undertaking by the United States to respond for the value of the property, without either an appraisal or a deposit of the value of the prize with the Treasurer of the United States or a public depositary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 478.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7663	34 U.S.C. 1162.	Aug. 18, 1942, ch. 553, §4, 56 Stat. 746; July 1, 1944, ch. 370, §2, 58 Stat. 678.
	34 U.S.C. 1140.	R.S. 4624; Nov. 14, 1945, ch. 472, §3, 59 Stat. 581.

In subsection (a) the words ''may appropriate'' are substituted for the words ''the power to take or appropriate * * * may be exercised'', in 34 U.S.C. 1162, for clarity and uniformity of statement. Under the Revised Statutes it was implied and understood that the Navy could appropriate prizes on behalf of the United States for use by the Navy. Use by other government agencies was not contemplated. The 1942 Act enabled the Navy to turn prize vessels over to the War Shipping Administration without bringing them back to United States ports. Reference to that Administration in subsection (a) is omitted since the Administration has been abolished and these functions have not been specifically vested in its successors. It is surplusage as well, because the authority to appropriate is given to any officer or agency designated by the President.

The proviso added to R.S. 4624 (34 U.S.C. 1140) by the 1945 amendment is identical with the proviso added to the 1942 Act (34 U.S.C. 1162) by the 1944 amendment. The 1945 Act completed the process of making the procedure under the Revised Statutes the same as that in effect for causes over which the courts were given jurisdiction by the World War II legislation, and its single statement in subsection (c) is therefore justified.

34 U.S.C. 1140 and the revised section reflect the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, which repealed laws authorizing distribution of prize proceeds to captors, and the Act of May 29, 1920, ch. 214, 41 Stat. 654, which requires substitution of ''Treasurer of the United States or public depositary'' for ''assistant treasurer''.

§ 7664. Delivery of property on stipulation

(a) Prize property may be delivered to a claimant on stipulation, deposit, or other security, if—

(1) the claimant satisfies the court that the property has a peculiar and intrinsic value to him, independent of its market value;

(2) the court is satisfied that the rights and interests of the United States or of other claimants will not be prejudiced;

(3) an opportunity is given to the United States attorney and the naval prize commissioner or the naval special prize commissioner to be heard as to the appointment of appraisers; and

(4) a satisfactory appraisal is made.

(b) Money collected on a stipulation, or deposited instead of it, that does not represent costs shall be deposited with the Treasurer of the United States or a public depositary in the same manner as proceeds of a sale.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7664	34 U.S.C. 1142.	R.S. 4626.

34 U.S.C. 1142 and this section reflect the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, which repealed laws authorizing distribution of prize proceeds to captors, and the Act of May 29, 1920, ch. 214, §1, 41 Stat. 654, which requires substitution of ''Treasurer of the United States or public depositary'' for ''assistant treasurer''.

§ 7665. Sale of prize

(a) The court shall order a sale of prize property if—

(1) the property has been condemned;

(2) the court finds, at any stage of the proceedings, that the property is perishable, liable to deteriorate, or liable to depreciate in value; or

(3) the cost of keeping the property is disproportionate to its value.

(b) The court may order a sale of the prize property if, after the return-day on the libel, all

the parties in interest who have appeared in the cause agree to it.

(c) An appeal does not prevent the order of a sale under this section or the execution of such an order.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7665	34 U.S.C. 1143.	R.S. 4627.

In subsection (a) the word ''perishing'' is omitted as surplusage. The words ''in value'' are added after ''depreciate'' for clarity.

In subsection (c) the words ''An appeal does not prevent'' are substituted for the words ''no appeal shall operate to prevent''.

§ 7666. Mode of making sale

(a) If a sale of prize property is ordered by the court, the marshal shall—

(1) prepare and circulate full catalogues and schedules of the property to be sold and return a copy of each to the court;

(2) advertise the sale fully and conspicuously by posters and in newspapers ordered by the court;

(3) give notice to the naval prize commissioner at least five days before the sale; and

(4) keep the goods open for inspection for at least three days before the sale.

(b) An auctioneer of known skill in the business to which the sale pertains shall be employed by the Secretary of the Navy to make the sale. The auctioneer, or his agent, shall collect and deposit the gross proceeds of the sale. The auctioneer and his agent are responsible to the marshal for the conduct of the sale and the collection and deposit of the gross proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7666	34 U.S.C. 1144.	R.S. 4628.

The statement in subsection (b) of the responsibility of the auctioneer and agent to the marshal in the collection and deposit of proceeds is inserted to clarify the marshal's functions. It is derived from 34 U.S.C. 1139, and appears in § 7662 of this title.

§ 7667. Transfer of prize property to another district for sale

(a) In the case of any prize property ordered to be sold, if the court believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, the court may direct the marshal to transfer the property to the district selected by the court for the sale, and to insure it. In such a case the court shall give the marshal proper orders as to the time and manner of conducting the sale.

(b) When so ordered the marshal shall transfer the property and keep it safely. He is responsible for its sale in the same manner as if the property were in his own district and for the deposit of the gross proceeds with the Treasurer of the United States or public depositary nearest to the place of sale, subject to the order of the court for the district where the adjudication is pending.

(c) The necessary expenses of insuring, transferring, receiving, keeping, and selling the property are a charge upon it and upon the proceeds. Whenever any such expense is paid in advance by the marshal, any amount not repaid to him from the proceeds shall be allowed to him as in the case of expenses incurred in suits in which the United States is a party.

(d) If the Secretary of the Navy believes that it will be in the interest of all parties to have the property sold in a judicial district other than the one in which the proceedings are pending, he may, either by a general regulation or by a special direction in the cause, require the marshal to transfer the property from the district in which the judicial proceedings are pending to any other district for sale. In such a case proceedings shall be had as if the transfer had been made by order of the court.

(Aug. 10, 1956, ch. 1041, 70A Stat. 479.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7667	34 U.S.C. 1145.	R.S. 4629.

34 U.S.C. 1145 and this section reflect the Act of May 29, 1920, ch. 214, §1, 41 Stat. 654, which requires substitution of ''Treasurer of the United States or public depositary'' for ''assistant treasurer''.

In subsection (b) the words ''He is responsible for its sale'' are substituted for the words ''It shall be the duty of the marshal to * * * sell the same'', because, as shown in § 7666 of this title, the marshal does not sell the property himself but supervises the auctioneer who conducts the sale.

§ 7668. Disposition of prize money

The net proceeds of all property condemned as prize shall be decreed to the United States and shall be ordered by the court to be paid into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7668	34 U.S.C. 1151.	R.S. 4630; R.S. 4641.

R.S. 4630 provided that in some circumstances the captors were to receive the net proceeds of prize property and in other circumstances they were to receive half and the United States was to receive the other half. The Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, repealed ''all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize''. Thus the only part of R.S. 4630 that remains in effect, as is indicated in 34 U.S.C. 1151, is that part which provides that proceeds shall be decreed to the United States. The section is so worded. R.S. 4641 stated how proceeds decreed to captors should be divided among them. These provisions were eliminated by the Act of March 3, 1899, supra. All that remains of R.S. 4641, as is indicated in 34 U.S.C. 1151, is the provision that proceeds decreed to the United States shall be paid into the Treasury, and the section is worded accordingly.

§ 7669. Security for costs

The court may require any party to give security for costs at any stage of the cause and upon filing an appeal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7669	34 U.S.C. 1148.	R.S. 4638.

The word ''filing'' is substituted for the word ''claiming''.

§ 7670. Costs and expenses a charge on prize property

(a) Costs and expenses allowed by the court incident to the bringing in, custody, preservation, insurance, and sale or other disposal of prize property are a charge upon the property and shall be paid from the proceeds thereof, unless the court decrees restitution free from such a charge.

(b) Charges for work and labor, materials furnished, or money paid must be supported by affidavit or vouchers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7670(a)	34 U.S.C. 1149.	R.S. 4639.
7670(b)	34 U.S.C. 1150 (2d sentence).	R.S. 4640 (2d sentence).

§ 7671. Payment of costs and expenses from prize fund

(a) Payment may not be made from a prize fund except upon the order of the court. The court may, at any time, order the payment, from the deposit made with the Treasurer or public depositary in the cause, or costs or charges accrued and allowed.

(b) When the cause is finally disposed of, the court shall order the Treasurer or public depositary to pay the costs and charges allowed and unpaid. If the final decree is for restitution, or if there is no money subject to the order of the court in the cause, costs or charges allowed by the court and not paid by the claimants shall be paid out of the fund for paying the expenses of suits in which the United States is a party or is interested.

(Aug. 10, 1956, ch. 1041, 70A Stat. 480.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7671	34 U.S.C. 1150 (less 2d sentence).	R.S. 4640 (less 2d sentence).

In subsection (b) the words ''or orders'' after ''order'' are omitted as surplusage. The words ''a charge upon and'' are omitted as surplusage.

§ 7672. Recaptures: award of salvage, costs, and expenses

(a) If a vessel or other property that has been captured by a force hostile to the United States is recaptured, and the court believes that the property had not been condemned as prize by competent authority before its recapture, the court shall award an appropriate sum as salvage.

(b) If the recaptured property belonged to the United States, it shall be restored to the United States, and costs and expenses ordered to be paid by the court shall be paid from the Treasury.

(c) If the recaptured property belonged to any person residing within or under the protection of the United States, the court shall restore the property to its owner upon his claim and on payment of such sum as the court may award as salvage, costs, and expenses.

(d) If the recaptured property belonged to any person permanently residing within the territory and under the protection of any foreign government in amity with the United States, and, by the law or usage of that government, the property of a citizen of the United States would be restored under like circumstances of recapture, the court shall, upon the owner's claim, restore the property to him under such terms as the law or usage of that government would require of a citizen of the United States under like circumstances. If no such law or usage is known, the property shall be restored upon the payment of such salvage, costs, and expenses as the court orders.

(e) Amounts awarded as salvage under this section shall be paid to the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7672	34 U.S.C. 1158 (less last sentence).	R.S. 4652 (less last sentence).

In subsection (c) the words ''restore the property'' are substituted for the words ''adjudge to be restored.'' A similar substitution is made in subsection (d).

In subsection (d) the words ''foreign government'' are substituted for the words ''foreign prince, government, or state''.

Subsection (e) is derived from the next to the last sentence of R.S. 4652 which, when enacted, read:

''The whole amount awarded as salvage shall be decreed to the captors and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize.''

The Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, repealed all laws authorizing the distribution of prize money to captors. Accordingly, 34 U.S.C. 1158 states:

''The whole amount awarded as salvage shall be disposed of as in the case of proceeds of property condemned as prize.''

As shown in §7668 of this title, the net proceeds of property condemned as prize must be decreed to the United States. Subsection (e) is phrased so as to state directly, instead of by reference, the fact that the amount awarded as salvage is paid to the government. While this is apparently inconsistent with R.S. 4652 as originally enacted, it is consistent with the intent expressed by Congress in the provision of the Act of March 3, 1899 (supra), which repealed provisions relating to the distribution of prize money and bounty to crews. This act, it is true, did not mention salvage; and salvage money is still occasionally awarded to crews of naval vessels. However, such occasions are rare, and it is the general policy of the Department of the Navy not to claim salvage on behalf of its personnel. No case appears in which salvage derived from prize has been claimed for such personnel. Prize salvage is more close-

ly related to prize money than it is to other salvage. The determination by Congress that captors should not share in the proceeds of prizes is, therefore, as in 34 U.S.C. 1158, carried through the revised section to salvage derived from prize. The word ''amounts'' is substituted for the words ''the whole amount''.

§ 7673. Allowance of expenses to marshals

The marshal shall be allowed his actual and necessary expenses for the custody, care, preservation, insurance, and sale or other disposal of the prize property, and for executing any order of the court in the prize cause. Charges of the marshal for expenses or disbursements shall be allowed only upon his oath that they have been necessarily incurred for the purpose stated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7673	34 U.S.C. 1153.	R.S. 4645.

34 U.S.C. 1153 and the revised section reflect the Act of May 28, 1896, ch. 252, §6, 29 Stat. 179, which provided that marshals should receive annual salaries in lieu of the fees and emoluments previously allowed them.

§ 7674. Payment of witness fees

If the court allows fees to any witness in a prize cause, or fees for taking evidence out of the district in which the court sits, and there is no money subject to its order in the cause, the marshal shall pay the fees. He shall be repaid from any money deposited to the order of the court in the cause. Any amount not so repaid to the marshal shall be allowed him as witness fees paid by him in cases in which the United States is a party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7674	34 U.S.C. 1157.	R.S. 4651.

§ 7675. Commissions of auctioneers

(a) The Secretary of the Navy may establish a scale of commissions to be paid to auctioneers employed to make sales of prize property. These commissions are in full satisfaction of expenses as well as services. The scale may in no case allow a commission in excess of—

(1) ½ of 1 percent on any amount exceeding $10,000 on the sale of a vessel; and

(2) 1 percent of any amount exceeding $10,000 on the sale of other prize property.

(b) If no such scale is established, auctioneers in prize causes shall be paid such compensation as the court considers just under the circumstances of each case.

(Aug. 10, 1956, ch. 1041, 70A Stat. 481.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7675	34 U.S.C. 1156.	R.S. 4650.

The word ''amount'' is substituted for the word ''sum''.

§ 7676. Compensation of prize commissioners and special prize commissioners

(a) Naval prize commissioners and naval special prize commissioners may not receive compensation for their services in prize causes other than that to which they are entitled as officers of the Navy.

(b) Prize commissioners and special prize commissioners, except naval prize commissioners and naval special prize commissioners, are entitled to just and suitable compensation for their services in prize causes. The amount of compensation in each cause shall be determined by the court and allowed as costs.

(c) Annually, on the anniversary of his appointment, each prize commissioner and special prize commissioner, except a naval prize commissioner or a naval special prize commissioner, shall submit to the Attorney General an account of all amounts received for his services in prize causes within the previous year. Of the amounts reported, each such commissioner may retain not more than $3,000, which is in full satisfaction for all his services in prize causes for that year. He shall pay any excess over that amount into the Treasury.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7676(a)	34 U.S.C. 1137 (as applicable to compensation of naval prize commissioner). 34 U.S.C. 1163 (as applicable to compensation of naval special prize commissioner).	R.S. 4621 (as applicable to compensation of naval prize commissioner); Nov. 14, 1945, ch. 472, §2, 59 Stat. 581. Aug. 18, 1942, ch. 553, §5 (as applicable to compensation of naval special prize commissioner), 56 Stat. 746.
7676(b)	34 U.S.C. 1154.	R.S. 4646.
7676(c)	34 U.S.C. 1155.	R.S. 4647.

In subsection (c) the words ''on the anniversary of his appointment'' are inserted for clarity, as ''year'' in the context of this section means a year of service as prize commissioner. The words ''and shall be credited to the fund for paying naval pensions'' are omitted because the Act of June 26, 1934, ch. 756, §9, 48 Stat. 1229, abolished the naval pension fund and provided that moneys previously required to be paid into it should be deposited in the Treasury as miscellaneous receipts. The words ''as miscellaneous receipts'' are omitted as surplusage. The word ''amounts'' is substituted for the word ''sums''.

34 U.S.C. 1154 and 1155 and this section reflect the Act of May 28, 1896, ch. 252, §6, 29 Stat. 179, 180, which provided that United States attorneys should receive fixed annual salaries in lieu of the fees and emoluments previously authorized.

§ 7677. Accounts of clerks of district courts

(a) The clerk of each district court, for the purpose of the final decree in each prize cause, shall keep account of—

(1) the amount deposited with the Treasurer or public depositary, subject to the order of the court in the cause; and

(2) the amounts ordered to be paid therefrom as costs and charges.

(b) The clerk shall draw the orders of the court for the payment of costs and allowances and for the disposition of the residue of the prize fund in each cause.

(c) The clerk shall send to the Secretary of the Treasury and the Secretary of the Navy—

(1) copies of final decrees in prize causes; and

(2) a semi-annual statement of the amounts allowed by the court, and ordered to be paid, within the preceding six months to the prize commissioners and special prize commissioners for their services.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7677	34 U.S.C. 1152.	R.S. 4644.

34 U.S.C. 1152 and this section reflect modifications of R.S. 4644 effected by—

(1) Act of May 28, 1896, ch. 252, §6, 29 Stat. 179, which provided for fixed annual salaries for United States attorneys and marshals;

(2) Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, which repealed all laws authorizing distribution of prize proceeds to captors;

(3) Act of February 26, 1919, ch. 49, §1, 40 Stat. 1182, which provided that clerks of United States district courts should receive fixed annual salaries; and

(4) Act of May 29, 1920, ch. 214, 41 Stat. 654, which abolished the offices of assistant treasurers and distributed their functions.

§ 7678. Interfering with delivery, custody, or sale of prize property

Whoever willfully does, or aids or advises in the doing of, any act relating to the bringing in, custody, preservation, sale, or other disposition of any property captured as prize, or relating to any documents or papers connected with the property or to any deposition or other document or paper connected with the proceedings, with intent to defraud, delay, or injure the United States or any claimant of that property, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(Aug. 10, 1956, ch. 1041, 70A Stat. 482.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7678	34 U.S.C. 1167.	Mar. 4, 1909, ch. 321, §38, 35 Stat. 1096.

The words ''captor or'' between ''any'' and ''claimant'' are omitted because the Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, repealed all laws authorizing the distribution of prize proceeds to captors. These words were apparently carried over inadvertently to §38 of the 1909 Act from the source of that section, namely R.S. 5441.

The section is worded in the style of Title 18, U.S. Code.

§ 7679. Powers of district court over prize property notwithstanding appeal

Notwithstanding an appeal, the district court may make and execute all necessary orders for the custody and disposal of prize property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7679	34 U.S.C. 1147.	R.S. 565; R.S. 4637.

34 U.S.C. 1147 and this section reflect—

(1) Act of March 3, 1899, ch. 413, §13, 30 Stat. 1007, which repealed all laws authorizing distribution of prize proceeds to captors;

(2) Acts of March 3, 1911, ch. 231, §128, 36 Stat. 1133, and February 13, 1925, ch. 229, §1, 43 Stat. 938, which defined the appellate jurisdiction of the United States circuit courts, and provided that the Supreme Court should not directly review district court decisions except in specified cases, not including prize cases; and

(3) Act of June 25, 1948, ch. 646, 62 Stat. 869, which repealed the Acts of February 13, 1925, and March 3, 1911, supra, but enacted similar provisions and changed the name of United States Circuit Courts of Appeals to United States Courts of Appeals for the several circuits.

Reference to the court is omitted from 34 U.S.C. 1147 and from the revised section in view of the 1948 Act.

§ 7680. Appeals and amendments in prize causes

(a) A United States Court of Appeals may allow an appeal in a prize cause if it appears that a notice of appeal was filed with the clerk of the district court within thirty days after the final decree in that cause.

(b) A United States Court of Appeals, if in its opinion justice requires it, may allow amendments in form or substance of any appeal in a prize cause.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7680	34 U.S.C. 1146.	R.S. 1006; R.S. 4636.

34 U.S.C. 1146 and this section reflect—

(1) Acts of March 3, 1911, ch. 231, §128, 36 Stat. 1133, and February 13, 1925, ch. 229, §1, 43 Stat. 938, which defined the appellate jurisdiction of the United States Circuit Courts of Appeals; and

(2) Act of June 25, 1948, ch. 646, 62 Stat. 869, which repealed the 1911 and 1925 Acts, but enacted similar provisions and changed the name of the circuit courts to United States Courts of Appeals for the several circuits.

The words ''or of intention to appeal'' are omitted as surplusage. Formerly ''notices of appeal'' were filed in some courts and ''notices of intention to appeal'' were filed in others. The difference was in terminology, not in substance. These notices are now known as ''notices of appeal''. The words ''next'' and ''the rendition of'' are omitted as surplusage.

§ 7681. Reciprocal privileges to cobelligerent

(a) A cobelligerent of the United States that consents to the exercise of jurisdiction conferred by section 7652(a) of this title with respect to any prize of the United States brought into the territorial waters of the cobelligerent or appropriated for the use of the United States within those territorial waters shall be given, upon proclamation by the President of the United States, like privileges with respect to any prize captured under the authority of that cobelligerent and brought into the territorial waters of the United States or appropriated for the use of the cobelligerent within the territorial waters of the United States.

(b) Reciprocal recognition shall be given to the jurisdiction acquired by courts of a cobelligerent under this section and full faith and credit shall be given to all proceedings had or judgments rendered in the exercise of that jurisdiction.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7681	34 U.S.C. 1165.	Aug. 18, 1942, ch. 553, §7, 56 Stat. 747.

The words ''taking or'' before ''appropriation'' and the words ''taken or'' before ''appropriated'' are omitted as surplusage.

RECIPROCAL PRIVILEGES

The Governments listed below are accorded like privileges with respect to prizes captured under authority of the said Governments and brought into the territorial waters of the United States or taken or appropriated in the territorial waters of the United States for the use of the said Governments, namely: Australia, Proc. No. 2617, Aug. 16, 1944, 9 F.R. 9969; Canada, Proc. No. 2594, Sept. 27, 1943, 8 F.R. 13217; India, Proc. No. 2601, Dec. 6, 1943, 8 F.R. 16351; New Zealand, Proc. No. 2582, Apr. 2, 1943, 8 F.R. 4275; United Kingdom, Proc. No. 2575, Feb. 2, 1944, 8 F.R. 1429.

CHAPTER 657—STAY OF JUDICIAL PROCEEDINGS

Sec.
7721. Scope of chapter.
7722. Stay of suit.
7723. Stay of proceedings for preserving evidence after stay of suit.
7724. Stay of proceedings for taking evidence before suit is filed.
7725. Stay extended or shortened.
7726. Reconsideration of stay.
7727. Duration of stay.
7728. Restricted certificate.
7729. Investigation before issue of certificate.
7730. Evidence admissible when witness is not available.

§ 7721. Scope of chapter

(a) This chapter applies to any suit against the United States under the Act of March 3, 1925 (commonly referred to as the ''Public Vessels Act'') (46 U.S.C. App. 781–790) for—

(1) damage caused by a vessel in the naval service; or

(2) compensation for towage or salvage services, including contract salvage, rendered to a vessel in the naval service.

(b) In this chapter, the term ''vessel in the naval service'' means—

(1) any vessel of the Navy, manned by the Navy, or chartered on bareboat charter to the Navy; or

(2) when the Coast Guard is operating as a service in the Navy, any vessel of the Coast Guard, manned by the Coast Guard, or chartered on bareboat charter to the Coast Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 483; Pub. L. 96–513, title V, §513(43), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 100–26, §7(k)(10), Apr. 21, 1987, 101 Stat. 284; Pub. L. 103–35, title II, §201(c)(11), May 31, 1993, 107 Stat. 98.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7721(a)	46 U.S.C. 791 (2d sentence).	July 3, 1944, ch. 399, §1 (2d sentence), 58 Stat. 723.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7721(b)	46 U.S.C. 793.	July 3, 1944, ch. 399, §3, 58 Stat. 724.

In subsection (a) the words ''wherein a claim is made'' are omitted as surplusage. The words ''vessel in the naval service'' are substituted for the words ''vessel in the Navy, or in the naval service'' for brevity. No change in meaning results, since the term used in subsection (a) is defined in subsection (b).

In subsection (b) the words ''service in'' are substituted for the words ''part of'' to conform to the terminology used in 14 U.S.C. 3.

REFERENCES IN TEXT

The Public Vessels Act, referred to in subsec. (a), is act Mar. 3, 1925, ch. 428, 43 Stat. 1112, as amended, which is classified generally to chapter 22 (§781 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–35 substituted ''(46 U.S.C. App. 781–790)'' for ''(46 U.S.C. 781–790)''.

1987—Subsec. (b). Pub. L. 100–26 inserted '', the term'' after ''In this chapter''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''the Act of March 3, 1925 (commonly referred to as the 'Public Vessels Act') (46 U.S.C. 781–790)'' for ''sections 781–790 of title 46''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7722, 7724 of this title.

§ 7722. Stay of suit

(a) Whenever in time of war the Secretary of the Navy certifies to a court, or to a judge of a court, in which a suit described in section 7721 of this title is pending, that the prosecution of the suit would tend to endanger the security of naval operations in the war, or would tend to interfere with those operations, all further proceedings in the suit shall be stayed.

(b) A stay under this section does not suspend the issue of process to take or preserve evidence to be used in the trial or prevent the completion of action under similar process issued before the stay.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7722(a)	46 U.S.C. 791 (1st sentence, less applicability to duration of stay).	July 3, 1944, ch. 399, §1 (1st sentence, less applicability to duration of stay), 58 Stat. 723.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7722(b)	46 U.S.C. 791 (less 1st and 2d sentences and less proviso).	July 3, 1944, ch. 399, §1 (less 1st and 2d sentences and less proviso), 58 Stat. 723.

In subsection (a) the word ''forthwith'' is omitted as surplusage.

In subsection (b) the words ''of proceedings in pending suits as provided'' are omitted as surplusage. The words ''does not suspend'' are substituted for the words ''shall not operate to suspend''. The words ''of the issues'' and ''the authority of'' are omitted as surplusage. The words ''issued before the stay'' are substituted for the words ''already issued at the time of such stay of suit''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7723 of this title.

§ 7723. Stay of proceedings for preserving evidence after stay of suit

If, at the time of certification under section 7722 of this title, or at any time before the termination of the stay based on the certificate, the Secretary of the Navy files with the court an additional certificate to the effect that the issue of any process to preserve evidence or the completion of action on process previously issued would tend to endanger the security of the United States or of any of its naval or military operations in the war, or would tend to interfere with those operations, then all proceedings for the taking or preserving of evidence to be used by either party in the trial shall be stayed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7723	46 U.S.C. 791 (proviso, less applicability to duration of stay).	July 3, 1944, ch. 399, §1 (proviso, less applicability to duration of stay), 58 Stat. 723.

The word ''stayed'' is substituted for the word ''suspended'' for uniformity and clarity.

§ 7724. Stay of proceedings for taking evidence before suit is filed

(a) If in time of war, with respect to any claim against the United States on which a suit described in section 7721 of this title would lie, the Secretary of the Navy certifies to the court, or to a judge of the court, in which proceedings are pending for—

(1) the granting of a dedimus potestatem to take depositions;

(2) a direction to take depositions in perpetuam rei memoriam; or

(3) the taking of depositions or production of evidence pursuant to such dedimus potestatem or direction, or pursuant to any other proceedings for the purpose;

that the proceedings would tend to endanger the security of the United States or any of its naval or military operations in the war, or would tend to interfere with those operations, then the proceedings may not be started or, if they have been started, they shall, when the certificate is filed, be stayed.

(b) The time during which a claimant may file suit of the type described in section 7721 of this title is computed by excluding the time during which a stay under this section or any extension of such a stay is in effect.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7724	46 U.S.C. 792 (less applicability to duration of stay). 46 U.S.C. 796.	July 3, 1944, ch. 399, §2 (less applicability to duration of stay), 58 Stat. 724. July 3, 1944, ch. 399, §6, 58 Stat. 726.

In subsection (b) the words ''upon a claim against the United States'' and ''as to any proceedings by or on behalf of such claimant for the taking of a deposition or the production of evidence in connection with or in relation to such claim'' are omitted as surplusage.

§ 7725. Stay extended or shortened

The Secretary of the Navy, when a stay under this chapter is in effect, may file with the court, or a judge of the court, a certificate extending or shortening the time stated in the prior certificate. The filing of such a new certificate extends or shortens the stay to the period specified in the new certificate or terminates the stay if the new certificate so states.

(Aug. 10, 1956, ch. 1041, 70A Stat. 484.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7725	46 U.S.C. 794 (1st, and 9th (less proviso), sentences).	July 3, 1944, ch. 399, §4 (1st, and 9th (less proviso), sentences), 58 Stat. 724.

The words ''or suspension'', ''either of prosecution of the suit or of the taking of testimony'', ''during which the prosecution of such suit or taking of such deposition or production of evidence would tend to endanger the security of the United States or of such operations in time of war, or to interfere therewith'', ''as the case may be'', and ''in relation to which it is made shall continue in effect'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7727 of this title.

§ 7726. Reconsideration of stay

(a) A claimant or party who considers himself adversely affected by a stay under this chapter may serve a written notice on the Secretary of the Navy at Washington, D.C., requesting him to reconsider the stay previously issued and to issue a new certificate. The notice shall identify the stay by means of an attached copy of the certificate of the Secretary or a sufficient description of the stay. The notice may not contain any recital of the facts or circumstances involved.

(b) Within ten days after receiving notice under this section, the Secretary or his designee shall hold a secret meeting at which the claimant or party, or his representative, may present any facts and arguments he thinks material.

(c) Within ten days after a hearing under this section, the Secretary shall file with the court that ordered the stay a new certificate stating

whether the stay is then to be terminated or for what period the stay is to continue in effect. If the Secretary fails to file a new certificate, the court, upon application by the claimant or party, shall issue an order directing the Secretary to file a new certificate within a specified time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7726(a)	46 U.S.C. 794 (2d, 3d, and 4th sentences).	July 3, 1944, ch. 399, § 4 (2d, 3d, and 4th sentences), 58 Stat. 724.
7726(b)	46 U.S.C. 794 (5th sentence).	July 3, 1944, ch. 399, § 4 (5th sentence), 58 Stat. 724.
7726(c)	46 U.S.C. 794 (6th and 7th sentences).	July 3, 1944, ch. 399, § 4 (6th and 7th sentences), 58 Stat. 724.

In subsection (a) the words ''then in effect'', ''upon which the stay is based'', and ''for its identification'' are omitted as surplusage.

In subsection (b) the words ''with respect to whether or not a stay should be issued or maintained'' are omitted as surplusage. The words ''his designee'' are substituted for the words ''some official designated by him'' for brevity.

In subsection (c) the words ''that ordered the stay'' are substituted for the words ''in which said stay is pending or the court in which the proceeding stayed was instituted'' for brevity and clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7727 of this title.

§ 7727. Duration of stay

A stay of proceedings under this chapter remains in effect for the period specified in the certificate upon which it was based unless the Secretary of the Navy issues a new certificate under section 7725 or 7726 of this title changing the termination date. However, a stay under this chapter may not remain in force longer than six months after the cessation of hostilities.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7727	46 U.S.C. 791 (1st sentence as applicable to duration of stay, and proviso as applicable to duration of stay). 46 U.S.C. 792 (as applicable to duration of stay). 646 U.S.C. 794 (8th sentence and proviso of 9th sentence).	July 3, 1944, ch. 399, § 1 (1st sentence as applicable to duration of stay, and proviso as applicable to duration of stay), 58 Stat. 723. July 3, 1944, ch. 399, § 2 (as applicable to duration of stay), 58 Stat. 724. July 3, 1944, ch. 399, § 4 (8th sentence and proviso of 9th sentence), 58 Stat. 724.

§ 7728. Restricted certificate

The Secretary of the Navy may restrict a certificate issued under this chapter so that it stays only the taking of testimony of certain witnesses or the production of evidence on certain subjects. The proceedings not stayed may continue.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7728	46 U.S.C. 794 (10th sentence).	July 3, 1944, ch. 399, § 4 (10th sentence), 58 Stat. 724.

The words ''The Secretary of the Navy may restrict a certificate'' are substituted for the words ''Any certificate * * * by the Secretary of the Navy * * * may, in his discretion, be restricted.'' The words ''the production of'' are inserted for clarity. The words ''in which event'' are omitted as surplusage.

§ 7729. Investigation before issue of certificate

The Secretary of the Navy may not issue a certificate under this chapter until he satisfies himself by investigation that it is necessary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7729	46 U.S.C. 794 (less 1st 10 sentences).	July 3, 1944, ch. 399, § 4 (less 1st 10 sentences), 58 Stat. 724.

§ 7730. Evidence admissible when witness is not available

Whenever the court is satisfied by appropriate evidence or by agreement of counsel that the United States or the claimant is unable after reasonable efforts to secure the testimony of a witness and—

(1) the United States or the claimant has been prevented by a stay under this chapter from examining the witness; or

(2) the United States establishes that it has refrained from bringing a suit or from taking the testimony of the witness in a pending suit to avoid endangering the security of naval operations or interfering with such operations;

the court shall receive in evidence in place of the testimony of the witness—

(1) the affidavit of the witness duly sworn to before a notary public or other authorized officer; or

(2) the statement or testimony of the witness before a court-martial, a court of inquiry, or an investigation; but the use of such statement or testimony does not, in any litigation, make the remainder of the record admissible or compel the United States to produce the remainder of the record.

The court shall give such weight to the affidavit, statement, or testimony as it considers proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 485.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7730	46 U.S.C. 795.	July 3, 1944, ch. 399, § 5, 58 Stat. 725.

The words ''naval'', ''board of investigation'', and ''Coast Guard investigation'' are omitted as surplusage.

CHAPTER 659—NAVAL MILITIA

Sec.
7851. Composition.

Sec.
7852. Appointment and enlistment in reserve components.
7853. Release from Militia duty upon order to active duty in reserve components.
7854. Availability of material for Naval Militia.

§ 7851. Composition

The Naval Militia consists of the Naval Militia of the States, the Territories, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7851	50 U.S.C. 1071.	July 9, 1952, ch. 608, § 501, 66 Stat. 500.

§ 7852. Appointment and enlistment in reserve components

In the discretion of the Secretary of the Navy, any member of the Naval Militia may be appointed or enlisted in the Naval Reserve or the Marine Corps Reserve in the grade for which he is qualified.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7852	50 U.S.C. 1072.	July 9, 1952, ch. 608, § 502, 66 Stat. 500.

This section is written to indicate that the Secretary of the Navy has discretion in authorizing the appointment or enlistment in the Naval Reserve of members of the Naval Militia but does not make such appointments or enlistments. Section 593 of this title, based on 50 U.S.C. 942, 943, provides the manner in which all reserve appointments are made, and § 510 of this title, based on 50 U.S.C. 941, 952, 956 provides the authority to enlist persons in the reserve components. As worded, this section removes the conflicting statement of appointing authority, and allows appointments and enlistments to be controlled by these other provisions. The words ''rank'' and ''or rating'' are omitted as covered by the word ''grade''.

§ 7853. Release from Militia duty upon order to active duty in reserve components

When ordered to active duty, a member of the Naval Reserve or the Marine Corps Reserve who is a member of the Naval Militia is relieved from all service and duty in the Naval Militia from the date of active duty specified in his orders until he is released from active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7853	50 U.S.C. 1073.	July 9, 1952, ch. 608, § 503, 66 Stat. 500.

The words ''in the service of the United States'' are omitted as covered by the definition of ''active duty'' in § 101 of this title. The words ''is relieved'' are substituted for the words ''shall stand relieved''.

§ 7854. Availability of material for Naval Militia

Under regulations prescribed by the Secretary of the Navy, vessels, material, armament, equipment, and other facilities of the Navy and the Marine Corps available to the Naval Reserve and the Marine Corps Reserve may also be made available for issue or loan to any State, any Territory, or the District of Columbia for the use of its Naval Militia if—

(1) at least 95 percent of the members of the portion or unit of the Naval Militia to which the facilities would be made available are members of the Naval Reserve or the Marine Corps Reserve; and

(2) the organization, administration, and training of the Naval Militia conform to standards prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 486.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7854	50 U.S.C. 1074.	July 9, 1952, ch. 608, § 504, 66 Stat. 500.

The words ''are or may be made'', before the word ''available'', are omitted as surplusage.

In clause (1) the word ''members'' is substituted for the word ''personnel''.

CHAPTER 661—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
7861. Custody of departmental records and property.
7862. Accounts of paymasters of lost or captured naval vessels.
7863. Disposal of public stores by order of commanding officer.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title IX, § 913(c)(3)(B)(ii), Feb. 10, 1996, 110 Stat. 411, substituted ''Disposal of public stores'' for ''Disbursements'' in item 7863.

1986—Pub. L. 99–433, title V, § 514(b)(2), Oct. 1, 1986, 100 Stat. 1054, renumbered items 7861 and 7862 as 7862 and 7863, respectively, and inserted item 7861.

1982—Pub. L. 97–295, § 1(51)(D), Oct. 12, 1982, 96 Stat. 1300, substituted ''naval'' for ''public'' in item 7861.

§ 7861. Custody of departmental records and property

The Secretary of the Navy has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Navy.

(Added Pub. L. 99–433, title V, § 514(b)(2), Oct. 1, 1986, 100 Stat. 1055.)

PRIOR PROVISIONS

A prior section 7861 was renumbered section 7862 of this title.

§ 7862. Accounts of paymasters of lost or captured naval vessels

When settling the account of a paymaster of a lost or captured naval vessel, the Comptroller General in settling money accounts, and the Secretary of the Navy in settling property accounts, shall credit the account of the paymaster for the amount of provisions, clothing, small stores, and money for which the paymaster is charged that the Comptroller General or Secretary believes was lost inevitably be-

cause of the loss or capture. The paymaster is then free of liability for the provisions, clothing, small stores, and money.

(Added Pub. L. 97–258, § 2(b)(12)(B), Sept. 13, 1982, 96 Stat. 1057, § 7861; amended Pub. L. 97–295, § 1(51)(C), Oct. 12, 1982, 96 Stat. 1300; renumbered § 7862, Pub. L. 99–433, title V, § 514(b)(1), Oct. 1, 1986, 100 Stat. 1054.)

PRIOR PROVISIONS

A prior section 7862 was renumbered section 7863 of this title.

AMENDMENTS

1982—Pub. L. 97–295 substituted ''naval'' for ''public'' in section catchline.

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7861	31:44 (1st sentence). 31:104.	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24. R.S. § 284; Feb. 18, 1875, ch. 80, § 1 (4th complete par. on p. 317), 18 Stat. 317.

The word ''naval'' is substituted for ''belonging to the Navy of the United States'' to eliminate unnecessary words. The words ''Secretary of the Navy'' are substituted for ''Paymaster General of the Navy'' because of section 1 of the Act of March 29, 1894 (ch. 49, 28 Stat. 47), and 10:5061. The words ''the account of the paymaster'' are substituted for ''him'' for clarity. The words ''such portion of the'', ''on their books'', and ''of a public vessel'' are omitted as surplus. The words ''free of'' are substituted for ''fully exonerated by such credit from all'' to eliminate unnecessary words. The words ''so proved to have been captured or lost'' are omitted as surplus.

§ 7863. Disposal of public stores by order of commanding officer

When settling an account of a disbursing official, the Comptroller General shall allow disposal of public stores the disbursing official made under an order of a commanding officer when presented with satisfactory evidence that the order was made and that the stores were disposed of as the order provided. The commanding officer is accountable for the disposal.

(Added Pub. L. 97–258, § 2(b)(12)(B), Sept. 13, 1982, 96 Stat. 1057, § 7862; renumbered § 7863, Pub. L. 99–433, title V, § 514(b)(1), Oct. 1, 1986, 100 Stat. 1054; amended Pub. L. 104–106, div. A, title IX, § 913(c)(3)(A), (B)(i), Feb. 10, 1996, 110 Stat. 411; Pub. L. 104–201, div. A, title X, § 1074(a)(20), Sept. 23, 1996, 110 Stat. 2660.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
7862	31:44 (1st sentence). 31:106.	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24. R.S. § 285.

The words ''disbursing official'' are substituted for ''disbursing officer'' for consistency with other titles of the United States Code. The words ''Comptroller General'' are substituted for ''General Accounting Office'' for consistency. The words ''of the Navy'' are omitted because of the restatement. The words ''when presented with'' are substituted for ''upon'' for clarity. The words ''by whose order such disbursement or disposal was made'' are omitted as surplus.

AMENDMENTS

1996—Pub. L. 104–201 inserted ''were'' after ''the stores'' in first sentence.

Pub. L. 104–106, § 913(c)(3)(B)(i), substituted ''Disposal of public stores'' for ''Disbursements'' in section catchline.

Pub. L. 104–106, § 913(c)(3)(A), in first sentence, struck out ''disbursements of public moneys or'' after ''Comptroller General shall allow'' and ''the money was paid or'' after ''the order was made and that'' and, in second sentence, struck out ''disbursement or'' after ''commanding officer is accountable for the''.

CHAPTER 663—NAMES AND INSIGNIA

Sec.
7881. Unauthorized use of Marine Corps insignia.

§ 7881. Unauthorized use of Marine Corps insignia

(a) The seal, emblem, and initials of the United States Marine Corps shall be deemed to be insignia of the United States.

(b) No person may, except with the written permission of the Secretary of the Navy, use or imitate the seal, emblem, name, or initials of the United States Marine Corps in connection with any promotion, goods, services, or commercial activity in a manner reasonably tending to suggest that such use is approved, endorsed, or authorized by the Marine Corps or any other component of the Department of Defense.

(c) Whenever it appears to the Attorney General of the United States that any person is engaged or is about to engage in an act or practice which constitutes or will constitute conduct prohibited by subsection (b), the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such act or practice. Such court may, at any time before final determination, enter such restraining orders or prohibitions, or take such other action as is warranted, to prevent injury to the United States or to any person or class of persons for whose protection the action is brought.

(Added Pub. L. 98–525, title XV, § 1532(a)(1), Oct. 19, 1984, 98 Stat. 2631.)

SAVINGS PROVISION

Section 1532(b) of Pub. L. 98–525 provided that: ''The amendments made by subsection (a) [enacting this chapter] shall not affect rights that vested before the date of the enactment of this Act [Oct. 19, 1984].''

CHAPTER 665—NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM

Sec.
7901. National Oceanographic Partnership Program.
7902. National Ocean Research Leadership Council.
7903. Ocean Research Advisory Panel.

§ 7901. National Oceanographic Partnership Program

(a) ESTABLISHMENT.—The Secretary of the Navy shall establish a program to be known as the ''National Oceanographic Partnership Program''.

(b) PURPOSES.—The purposes of the program are as follows:

(1) To promote the national goals of assuring national security, advancing economic development, protecting quality of life, and strengthening science education and communication through improved knowledge of the ocean.

(2) To coordinate and strengthen oceanographic efforts in support of those goals by—

(A) identifying and carrying out partnerships among Federal agencies, academia, industry, and other members of the oceanographic scientific community in the areas of data, resources, education, and communication; and

(B) reporting annually to Congress on the program.

(Added Pub. L. 104–201, div. A, title II, § 282(a)(1), Sept. 23, 1996, 110 Stat. 2470.)

CONGRESSIONAL FINDINGS

Section 281 of Pub. L. 104–201 provided that: ''Congress finds the following:

''(1) The oceans and coastal areas of the United States are among the Nation's most valuable natural resources, making substantial contributions to economic growth, quality of life, and national security.

''(2) Oceans drive global and regional climate. Hence, they contain information affecting agriculture, fishing, and the prediction of severe weather.

''(3) Understanding of the oceans through basic and applied research is essential for using the oceans wisely and protecting their limited resources. Therefore, the United States should maintain its world leadership in oceanography as one key to its competitive future.

''(4) Ocean research and education activities take place within Federal agencies, academic institutions, and industry. These entities often have similar requirements for research facilities, data, and other resources (such as oceanographic research vessels).

''(5) The need exists for a formal mechanism to coordinate existing partnerships and establish new partnerships for the sharing of resources, intellectual talent, and facilities in the ocean sciences and education, so that optimal use can be made of this most important natural resource for the well-being of all Americans.''

§ 7902. National Ocean Research Leadership Council

(a) COUNCIL.—There is a National Ocean Research Leadership Council (hereinafter in this chapter referred to as the ''Council'').

(b) MEMBERSHIP.—The Council is composed of the following members:

(1) The Secretary of the Navy.

(2) The Administrator of the National Oceanic and Atmospheric Administration.

(3) The Director of the National Science Foundation.

(4) The Administrator of the National Aeronautics and Space Administration.

(5) The Deputy Secretary of Energy.

(6) The Administrator of the Environmental Protection Agency.

(7) The Commandant of the Coast Guard.

(8) The Director of the United States Geological Survey of the Department of the Interior.

(9) The Director of the Defense Advanced Research Projects Agency.

(10) The Director of the Minerals Management Service of the Department of the Interior.

(11) The Director of the Office of Science and Technology.

(12) The Director of the Office of Management and Budget.

(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

(14) Other Federal officials the Council considers appropriate.

(c) CHAIRMAN AND VICE CHAIRMAN.—(1) Except as provided in paragraph (2), the chairman and vice chairman of the Council shall be appointed every two years by a selection committee of the Council composed of, at a minimum, the Secretary of the Navy, the Administrator of the National Oceanic and Atmospheric Administration, and the Director of the National Science Foundation. The term of office of the chairman and vice chairman shall be two years. A person who has previously served as chairman or vice chairman may be reappointed.

(2) The first chairman of the Council shall be the Secretary of the Navy. The first vice chairman of the Council shall be the Administrator of the National Oceanic and Atmospheric Administration.

(d) RESPONSIBILITIES.—The Council shall have the following responsibilities:

(1) To prescribe policies and procedures to implement the National Oceanographic Partnership Program.

(2) To review, select, and identify and allocate funds for partnership projects for implementation under the program, based on the following criteria:

(A) Whether the project addresses critical research objectives or operational goals, such as data accessibility and quality assurance, sharing of resources, education, or communication.

(B) Whether the project has, or is designed to have, broad participation within the oceanographic community.

(C) Whether the partners have a long-term commitment to the objectives of the project.

(D) Whether the resources supporting the project are shared among the partners.

(E) Whether the project has been subjected to adequate peer review.

(3) To assess whether there is a need for a facility (or facilities) to provide national centralization of oceanographic data, and to establish such a facility or facilities if determined necessary. In conducting the assessment, the Council shall review, at a minimum, the following:

(A) The need for a national oceanographic data center.

(B) The need for a national coastal data center.

(C) Accessibility by potential users of such centers.

(D) Preexisting facilities and expertise.

(e) ANNUAL REPORT.—Not later than March 1 of each year, the Council shall submit to Congress a report on the National Oceanographic Partnership Program. The report shall contain the following:

(1) A description of activities of the program carried out during the fiscal year before the

fiscal year in which the report is prepared, together with a list of the members of the Ocean Research Advisory Panel and any working groups in existence during the fiscal year covered.

(2) A general outline of the activities planned for the program during the fiscal year in which the report is prepared.

(3) A summary of projects continued from the fiscal year before the fiscal year in which the report is prepared and projects expected to be started during the fiscal year in which the report is prepared and during the following fiscal year.

(4) A description of the involvement of the program with Federal interagency coordinating entities.

(5) The amounts requested, in the budget submitted to Congress pursuant to section 1105(a) of title 31 for the fiscal year following the fiscal year in which the report is prepared, for the programs, projects, and activities of the program and the estimated expenditures under such programs, projects, and activities during such following fiscal year.

(f) PARTNERSHIP PROGRAM OFFICE.—(1) The Council shall establish a partnership program office for the National Oceanographic Partnership Program. The Council shall use competitive procedures in selecting an operator for the partnership program office.

(2) The Council shall assign the following duties to the partnership program office:

(A) To establish and oversee working groups to propose partnership projects to the Council and advise the Council on such projects.

(B) To manage the process for proposing partnership projects to the Council, including managing peer review of such projects.

(C) To submit to the Council an annual report on the status of all partnership projects and activities of the office.

(D) Any additional duties for the administration of the National Oceanographic Partnership Program that the Council considers appropriate.

(3) The Council shall supervise the performance of duties by the partnership program office.

(g) CONTRACT AND GRANT AUTHORITY.—The Council may authorize one or more of the departments or agencies represented on the Council to enter into contracts and make grants, using funds appropriated pursuant to an authorization of appropriations for the National Oceanographic Partnership Program, for the purpose of implementing the program and carrying out the responsibilities of the Council.

(h) ESTABLISHMENT AND FORMS OF PARTNERSHIP PROJECTS.—(1) A partnership project under the National Oceanographic Partnership Program may be established by any instrument that the Council considers appropriate, including a memorandum of understanding, a cooperative research and development agreement, and any similar instrument.

(2) Projects under the program may include demonstration projects.

(Added Pub. L. 104–201, div. A, title II, § 282(a)(1), Sept. 23, 1996, 110 Stat. 2470; amended Pub. L. 105–85, div. A, title II, § 241(a), title X, § 1073(a)(64), Nov. 18, 1997, 111 Stat. 1665, 1903; Pub. L. 106–65, div. A, title X, § 1066(a)(30), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–296, title XVII, § 1713, Nov. 25, 2002, 116 Stat. 2320.)

AMENDMENTS

2002—Subsec. (b)(13), (14). Pub. L. 107–296 added pars. (13) and (14).

1999—Subsec. (e)(5). Pub. L. 106–65 struck out ‘‘, United States Code,’’ after ‘‘title 31’’.

1997—Subsec. (b)(8). Pub. L. 105–85, § 1073(a)(64), inserted ‘‘United States’’ before ‘‘Geological Survey’’.

Subsec. (b)(11) to (13). Pub. L. 105–85, § 241(a)(1), redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: ‘‘The President of the National Academy of Sciences, the President of the National Academy of Engineering, and the President of the Institute of Medicine.’’

Subsec. (b)(14) to (17). Pub. L. 105–85, § 241(a)(1)(A), struck out pars. (14) to (17) which read as follows:

‘‘(14) One member appointed by the chairman from among individuals who will represent the views of ocean industries.

‘‘(15) One member appointed by the chairman from among individuals who will represent the views of State governments.

‘‘(16) One member appointed by the chairman from among individuals who will represent the views of academia.

‘‘(17) One member appointed by the chairman from among individuals who will represent such other views as the chairman considers appropriate.’’

Subsecs. (d) to (i). Pub. L. 105–85, § 241(a)(2), (3), redesignated subsecs. (e) to (i) as (d) to (h), respectively, and struck out former subsec. (d) which read as follows:

‘‘(d) TERM OF OFFICE.—The term of office of a member of the Council appointed under paragraph (14), (15), (16), or (17) of subsection (b) shall be two years, except that any person appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.’’

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 241(d) of Pub. L. 105–85 provided that: ‘‘The amendments made by subsections (a) and (b) [amending this section, section 7903 of this title, and provisions set out as a note under section 7903 of this title] shall be effective as of September 23, 1996, as if included in section 282 of Public Law 104–201.’’

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

INITIAL APPOINTMENTS OF COUNCIL MEMBERS

Section 282(b) of Pub. L. 104–201 directed Secretary of the Navy to make appointments required by subsec. (b) of this section, not later than Dec. 1, 1996, prior to repeal by Pub. L. 105–85, div. A, title II, § 241(c)(1), Nov. 18, 1997, 111 Stat. 1666.

FIRST ANNUAL REPORT OF COUNCIL

Section 282(c), formerly § 282(d), of Pub. L. 104–201, as renumbered by Pub. L. 105–85, div. A, title II, § 241(c)(2),

Nov. 18, 1997, 111 Stat. 1666, provided that: ''The first annual report required by section 7902(f) of title 10, United States Code, as added by subsection (a)(1), shall be submitted to Congress not later than March 1, 1997. The first report shall include, in addition to the information required by such section, information about the terms of office, procedures, and responsibilities of the Ocean Research Advisory Panel established by the Council.''

§ 7903. Ocean Research Advisory Panel

(a) ESTABLISHMENT.—The Council shall establish an Ocean Research Advisory Panel consisting of not less than 10 and not more than 18 members appointed by the chairman, including the following:

(1) One member who will represent the National Academy of Sciences.

(2) One member who will represent the National Academy of Engineering.

(3) One member who will represent the Institute of Medicine.

(4) Members selected from among individuals who will represent the views of ocean industries, State governments, academia, and such other views as the chairman considers appropriate.

(5) Members selected from among individuals eminent in the fields of marine science or marine policy, or related fields.

(b) RESPONSIBILITIES.—The Council shall assign the following responsibilities to the Advisory Panel:

(1) To advise the Council on policies and procedures to implement the National Oceanographic Partnership Program.

(2) To advise the Council on selection of partnership projects and allocation of funds for partnership projects for implementation under the program.

(3) To advise the Council on matters relating to national oceanographic data requirements.

(4) Any additional responsibilities that the Council considers appropriate.

(c) FUNDING.—The Secretary of the Navy annually shall make funds available to support the activities of the Advisory Panel.

(Added Pub. L. 104–201, div. A, title II, § 282(a)(1), Sept. 23, 1996, 110 Stat. 2473; amended Pub. L. 105–85, div. A, title II, § 241(b)(1), Nov. 18, 1997, 111 Stat. 1666.)

AMENDMENTS

1997—Pub. L. 105–85 amended text generally. Prior to amendment, text read as follows:

''(a) ESTABLISHMENT.—The Council shall establish an Ocean Research Advisory Panel consisting of not less than 10 and not more than 18 members appointed by the Council from among persons eminent in the fields of marine science or marine policy, or related fields, and who are representative, at a minimum, of the interests of government, academia, and industry.

''(b) RESPONSIBILITIES.—The Council shall assign to the Advisory Panel responsibilities that the Council considers appropriate.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 effective as of Sept. 23, 1996, as if included in section 282 of Pub. L. 104–201, see section 241(d) of Pub. L. 105–85, set out as a note under section 7902 of this title.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

INITIAL APPOINTMENTS OF PANEL MEMBERS

Section 282(b), formerly § 282(c), of Pub. L. 104–201, as renumbered and amended by Pub. L. 105–85, div. A, title II, § 241(b)(2), (c)(2), Nov. 18, 1997, 111 Stat. 1666, provided that: ''The National Ocean Research Leadership Council established by section 7902 of title 10, United States Code, as added by subsection (a)(1), shall make the appointments required by section 7903 of such title not later than January 1, 1998.''

Subtitle D—Air Force

PART I—ORGANIZATION

Chap.		Sec.
801.	Definitions. [No present sections.]	
803.	Department of the Air Force	8011
805.	The Air Staff	8031
807.	The Air Force	8061

PART II—PERSONNEL

831.	Strength	8201
833.	Enlistments	8251
835.	Appointments in the Regular Air Force	8281
[837.	Repealed.]	
839.	Temporary Appointments	8441
841.	Active Duty	8491
843.	Special Appointments, Assignments, Details, and Duties	8531
845.	Rank and Command	8571
[847.	Repealed.]	
849.	Miscellaneous Prohibitions and Penalties	8631
[851.	Repealed.]	
853.	Miscellaneous Rights and Benefits	8681
855.	Hospitalization	8721
857.	Decorations and Awards	8741
[859.	Repealed.]	
[860.	Repealed.]	
861.	Separation for Various Reasons	8811
[863.	Repealed.]	
[865.	Repealed.]	
867.	Retirement for Length of Service	8911
869.	Retired Grade	8961
871.	Computation of Retired Pay	8991
873.	Civilian Employees	9021

PART III—TRAINING

901.	Training Generally	9301
903.	United States Air Force Academy	9331
905.	Aviation Leadership Program	9381
907.	Schools and Camps	9411
909.	Civil Air Patrol	9441

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

931.	Civil Reserve Air Fleet	9511
933.	Procurement	9531
935.	Issue of Serviceable Material to Armed Forces	9561
937.	Utilities and Services	9591

939. Sale of Serviceable Material 9621
941. Issue of Serviceable Material other than to Armed Forces 9651
943. Disposal of Obsolete or Surplus Material 9681
945. Disposition of Effects of Deceased Persons 9712
947. Transportation 9741
949. Real Property 9771
951. Military Claims 9801
953. Accountability and Responsibility 9831

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, §721(c)(8), Oct. 5, 1999, 113 Stat. 695, substituted ''Disposition'' for ''Inquests; Disposition'' and ''9712'' for ''9711'' in item for chapter 945.

1996—Pub. L. 104–106, div. A, title XV, §1503(b)(6), Feb. 10, 1996, 110 Stat. 513, inserted comma after ''SUPPLY'' in heading for part IV.

1994—Pub. L. 103–337, div. A, title XVI, §1674(a), Oct. 5, 1994, 108 Stat. 3016, struck out items for chapters 837 ''Appointments as Reserve Officers'' and 863 ''Separation or Transfer to Retired Reserve''.

1993—Pub. L. 103–160, div. A, title VIII, §828(c)(8)(B), title XI, §1178(c), Nov. 30, 1993, 107 Stat. 1715, 1769, added item for chapter 905 and substituted ''Civil Reserve Air Fleet'' for ''Industrial Mobilization, Research, and Development'' and ''9511'' for ''9501'' in item for chapter 931.

1987—Pub. L. 100–26, §7(j)(10)(B), Apr. 21, 1987, 101 Stat. 283, substituted ''8011'' for ''8010'' in item for chapter 803.

1980—Pub. L. 96–513, title V, §§504(1), 514(1), Dec. 12, 1980, 94 Stat. 2915, 2935, substituted ''8010'' for ''8011'' in item for chapter 803 and struck out items for chapters 859 ''Separation from Regular Air Force for Substandard Performance of Duty'', 860 ''Separation from Regular Air Force for Moral or Professional Dereliction or in Interests of National Security'', and 865 ''Retirement for Age''.

1968—Pub. L. 90–377, §5, July 5, 1968, 82 Stat. 288, struck out item for chapter 851 ''United States Disciplinary Barracks''.

Pub. L. 90–235, §8(6), Jan. 2, 1968, 81 Stat. 764, struck out item for chapter 847 ''The Uniform''.

1964—Pub. L. 88–647, title III, §301(27), Oct. 13, 1964, 78 Stat. 1073, struck out item for chapter 905 ''Air Force Reserve Officers' Training Corps''.

1960—Pub. L. 86–616, §§7(b), 8(b), July 12, 1960, 74 Stat. 393, 395, substituted ''Substandard Performance of Duty'' for ''Failure to Meet Standards'' in item for chapter 859 and added item for chapter 860.

1958—Pub. L. 85–861, §1(193), Sept. 2, 1958, 72 Stat. 1538, substituted ''8841'' for ''[No present sections]'' in item for chapter 863.

PART I—ORGANIZATION

Chap. Sec.
801. Definitions. [No present sections.]
803. Department of the Air Force 8011
805. The Air Staff 8031
807. The Air Force 8061

AMENDMENTS

1987—Pub. L. 100–26, §7(j)(10)(B), Apr. 21, 1987, 101 Stat. 283, substituted ''8011'' for ''8010'' in item for chapter 803.

1980—Pub. L. 96–513, title V, §514(1), Dec. 12, 1980, 94 Stat. 2935, substituted ''8010'' for ''8011'' in item for chapter 803.

CHAPTER 801—DEFINITIONS

[No present sections]

CHAPTER 803—DEPARTMENT OF THE AIR FORCE

Sec.
8011. Organization.
8012. Department of the Air Force: seal.
8013. Secretary of the Air Force.
8014. Office of the Secretary of the Air Force.
8015. Under Secretary of the Air Force.
8016. Assistant Secretaries of the Air Force.
8017. Secretary of the Air Force: successors to duties.
8018. Administrative Assistant.
8019. General Counsel.
8020. Inspector General.
8021. Air Force Reserve Forces Policy Committee.
8022. Financial management.
8023. Chief of Legislative Liaison.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §504(e)(1)(B), Dec. 2, 2002, 116 Stat. 2532, added item 8023.

1988—Pub. L. 100–456, div. A, title VII, §702(c)(3), Sept. 29, 1988, 102 Stat. 1996, added item 8022.

1986—Pub. L. 99–433, title V, §521(b), Oct. 1, 1986, 100 Stat. 1060, amended analysis generally, substituting items 8011 to 8021 for former items 8010 to 8019.

1967—Pub. L. 90–168, §2(20), Dec. 1, 1967, 81 Stat. 525, added item 8019.

1964—Pub. L. 88–426, title III, §§305(40)(B), 306(j)(8), Aug. 14, 1964, 78 Stat. 427, 432, struck out ''; compensation'' from item 8012, and struck out item 8018 ''Compensation of General Counsel''.

1962—Pub. L. 87–651, title II, §213(b), Sept. 7, 1962, 76 Stat. 524, added item 8010.

1958—Pub. L. 85–861, §1(154)(B), Sept. 2, 1958, 72 Stat. 1513, added item 8018.

[§ 8010. Renumbered § 8011]

§ 8011. Organization

The Department of the Air Force is separately organized under the Secretary of the Air Force. It operates under the authority, direction, and control of the Secretary of Defense.

(Added Pub. L. 87–651, title II, §213(a), Sept. 7, 1962, 76 Stat. 524, §8010; renumbered §8011, Pub. L. 99–433, title V, §521(a)(1), Oct. 1, 1986, 100 Stat. 1055.)

HISTORICAL AND REVISION NOTES
1962 AMENDMENT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8010	5:171a(c)(7) (1st sentence, as applicable to Department of Air Force).	July 26, 1947, ch. 343, §202(c)(7) (1st sentence as applicable to Department of Air Force); added Aug. 6, 1958, Pub. L. 85–599, §3(a) (1st sentence of 8th par., as applicable to Department of Air Force), 72 Stat. 516.

The word ''operates'' is substituted for the words ''shall function''.

PRIOR PROVISIONS

A prior section 8011 was renumbered section 8012 of this title.

§ 8012. Department of the Air Force: seal

The Secretary of the Air Force shall have a seal for the Department of the Air Force. The

design of the seal must be approved by the President. Judicial notice shall be taken of the seal.

(Aug. 10, 1956, ch. 1041, 70A Stat. 488, § 8011; renumbered § 8012, Pub. L. 99–433, title V, § 521(a)(1), Oct. 1, 1986, 100 Stat. 1055.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8011	5:626(g).	July 26, 1947, ch. 343, § 207(g), 61 Stat 503.

The words ''of office'' are omitted as surplusage. The words ''a design'' are substituted for the words ''such device''.

PRIOR PROVISIONS

A prior section 8012 was renumbered section 8013 of this title and subsequently repealed.

EX. ORD. NO. 9902. SEAL FOR THE DEPARTMENT OF THE AIR FORCE

Ex. Ord. No. 9902, Nov. 1, 1947, 12 F.R. 7153, provided:

WHEREAS section 207(g) of the National Security Act of 1947, approved July 26, 1947 (Public Law 253, 80th Congress 1st Session) provides, in part, that the Secretary of the Air Force shall cause a seal of office to be made for the Department of the Air Force of such device as the President shall approve; and

WHEREAS the Secretary of the Air Force has caused to be made and has recommended that I approve a seal the design of which accompanies and is hereby made a part of this order, and which is described in heraldic terms as follows:

SHIELD: Per fess nebuly abased azure and argent, in chief a thunderbolt or inflamed proper.

CREST: On a wreath argent and azure an American bald eagle, wings displayed and partially elevated proper in front of a cloud argent.

Encircling the shield and crest an arc of thirteen stars and below the shield the inscription ''MCMXLVII''.

On a band encircling the whole the inscriptions ''Department of the Air Force'' and ''United States of America.''

When illustrating the seal in color the background shall be ultramarine blue, the shield a light blue and white, and the thunderbolt in gold with flames in natural color. The twists of the wreath shall be alternated white and blue, and the eagle shall be in natural color in front of a white cloud. The thirteen stars shall be white, and the Roman numerals shall be gold. The encircling band shall be white edged in gold with black letters.

AND WHEREAS it appears that such seal is of suitable design and is appropriate for establishment as the official seal of the Department of the Air Force:

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the said section 207(g) of the National Security Act of 1947, I hereby approve such seal as the official seal of the Department of the Air Force.

HARRY S. TRUMAN.

§ 8013. Secretary of the Air Force

(a)(1) There is a Secretary of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Secretary is the head of the Department of the Air Force.

(2) A person may not be appointed as Secretary of the Air Force within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Air Force is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Air Force, including the following functions:

(1) Recruiting.

(2) Organizing.

(3) Supplying.

(4) Equipping (including research and development).

(5) Training.

(6) Servicing.

(7) Mobilizing.

(8) Demobilizing.

(9) Administering (including the morale and welfare of personnel).

(10) Maintaining.

(11) The construction, outfitting, and repair of military equipment.

(12) The construction, maintenance, and repair of buildings, structures, and utilities and the acquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Air Force is also responsible to the Secretary of Defense for—

(1) the functioning and efficiency of the Department of the Air Force;

(2) the formulation of policies and programs by the Department of the Air Force that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;

(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Air Force;

(4) carrying out the functions of the Department of the Air Force so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;

(5) effective cooperation and coordination between the Department of the Air Force and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) the presentation and justification of the positions of the Department of the Air Force on the plans, programs, and policies of the Department of Defense; and

(7) the effective supervision and control of the intelligence activities of the Department of the Air Force.

(d) The Secretary of the Air Force is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Air Force may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Air Force may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of

the Air Force and to the Assistant Secretaries of the Air Force. Officers of the Air Force shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Air Force may—

(1) assign, detail, and prescribe the duties of members of the Air Force and civilian personnel of the Department of the Air Force;

(2) change the title of any officer or activity of the Department of the Air Force not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub. L. 99–433, title V, § 521(a)(3), Oct. 1, 1986, 100 Stat. 1055; amended Pub. L. 99–661, div. A, title V, § 534, Nov. 14, 1986, 100 Stat. 3873.)

PRIOR PROVISIONS

A prior section 8013, acts Aug. 10, 1956, ch. 1041, 70A Stat. 488, § 8012; Sept. 2, 1958, Pub. L. 85–861, § 1(152), 72 Stat. 1513; Sept. 7, 1962, Pub. L. 87–651, title II, § 211, 76 Stat. 524; Aug. 14, 1964, Pub. L. 88–426, title III, §§ 305(7), 306(j)(7), 78 Stat. 423, 432; renumbered § 8013, Oct. 1, 1986, Pub. L. 99–433, title V, § 521(a)(1), 100 Stat. 1055, related to Secretary of the Air Force, powers and duties, and delegations, prior to repeal by Pub. L. 99–433, § 521(a)(3).

Another prior section 8013 was renumbered section 8014 of this title and subsequently repealed.

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–661 substituted ''five years'' for ''10 years''.

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Air Force, see Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, set out as a note under section 3345 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 162, 8033, 10174 of this title.

§ 8014. Office of the Secretary of the Air Force

(a) There is in the Department of the Air Force an Office of the Secretary of the Air Force. The function of the Office is to assist the Secretary of the Air Force in carrying out his responsibilities.

(b) The Office of the Secretary of the Air Force is composed of the following:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force.

(3) The General Counsel of the Department of the Air Force.

(4) The Inspector General of the Air Force.

(5) The Chief of Legislative Liaison.

(6) The Air Reserve Forces Policy Committee.

(7) Such other offices and officials as may be established by law or as the Secretary of the Air Force may establish or designate.

(c)(1) The Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary and the Air Staff for the following functions:

(A) Acquisition.

(B) Auditing.

(C) Comptroller (including financial management).

(D) Information management.

(E) Inspector General.

(F) Legislative affairs.

(G) Public affairs.

(2) The Secretary of the Air Force shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct each function specified in paragraph (1). No office or other entity may be established or designated within the Air Staff to conduct any of the functions specified in paragraph (1).

(3) The Secretary shall prescribe the relationship of each office or other entity established or designated under paragraph (2) to the Chief of Staff and to the Air Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(4) The vesting in the Office of the Secretary of the Air Force of the responsibility for the conduct of a function specified in paragraph (1) does not preclude other elements of the executive part of the Department of the Air Force (including the Air Staff) from providing advice or assistance to the Chief of Staff or otherwise participating in that function within the executive part of the Department under the direction of the office assigned responsibility for that function in the Office of the Secretary of the Air Force.

(5) The head of the office or other entity established or designated by the Secretary to conduct the auditing function shall have at least five years of professional experience in accounting or auditing. The position shall be considered to be a career reserved position as defined in section 3132(a)(8) of title 5.

(d)(1) Subject to paragraph (2), the Office of the Secretary of the Air Force shall have sole responsibility within the Office of the Secretary and the Air Staff for the function of research and development.

(2) The Secretary of the Air Force may assign to the Air Staff responsibility for those aspects of the function of research and development that relate to military requirements and test and evaluation.

(3) The Secretary shall establish or designate a single office or other entity within the Office of the Secretary of the Air Force to conduct the function specified in paragraph (1).

(4) The Secretary shall prescribe the relationship of the office or other entity established or designated under paragraph (3) to the Chief of Staff of the Air Force and to the Air Staff and shall ensure that each such office or entity provides the Chief of Staff such staff support as the Chief of Staff considers necessary to perform his duties and responsibilities.

(e) The Secretary of the Air Force shall ensure that the Office of the Secretary of the Air Force and the Air Staff do not duplicate specific functions for which the Secretary has assigned responsibility to the other.

(f)(1) The total number of members of the armed forces and civilian employees of the De-

partment of the Air Force assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 2,639.

(2) Not more than 1,585 officers of the Air Force on the active-duty list may be assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff.

(3) The total number of general officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force and on the Air Staff may not exceed 60.

(4) The limitations in paragraphs (1), (2), and (3) do not apply in time of war or during a national emergency declared by the President or Congress. The limitation in paragraph (2) does not apply whenever the President determines that it is in the national interest to increase the number of officers assigned or detailed to permanent duty in the Office of the Secretary of the Air Force or on the Air Staff.

(Added Pub. L. 99–433, title V, § 521(a)(3), Oct. 1, 1986, 100 Stat. 1057; amended Pub. L. 100–180, div. A, title XIII, § 1314(b)(7), Dec. 4, 1987, 101 Stat. 1175; Pub. L. 100–456, div. A, title III, § 325(c), Sept. 29, 1988, 102 Stat. 1955; Pub. L. 101–189, div. A, title VI, § 652(a)(4), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 107–107, div. A, title X, § 1048(a)(29), Dec. 28, 2001, 115 Stat. 1225; Pub. L. 107–314, div. A, title V, § 504(e)(2), Dec. 2, 2002, 116 Stat. 2533.)

PRIOR PROVISIONS

A prior section 8014, acts Aug. 10, 1956, ch. 1041, 70A Stat. 489, § 8013; Aug. 6, 1958, Pub. L. 85–599, § 8(c), 72 Stat. 520; Sept. 2, 1958, Pub. L. 85–861, § 1(153), 72 Stat. 1513; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(8), 78 Stat. 423; Dec. 1, 1967, Pub. L. 90–168, § 2(15), 81 Stat. 523; Nov. 9, 1979, Pub. L. 96–107, title VIII, § 820(d), 93 Stat. 819; renumbered § 8014, Oct. 1, 1986, Pub. L. 99–433, title V, § 521(a)(1), 100 Stat. 1055, related to Under Secretary and Assistant Secretaries of the Air Force, appointment, and duties, prior to repeal by Pub. L. 99–433, § 521(a)(3).

Another prior section 8014 was renumbered section 8015 of this title and subsequently repealed.

AMENDMENTS

2002—Subsec. (b)(5) to (7). Pub. L. 107–314 added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

2001—Subsec. (f)(3). Pub. L. 107–107 substituted ''60'' for ''the number equal to 85 percent of the number of general officers assigned or detailed to such duty on the date of the enactment of this subsection''.

1989—Subsec. (f)(5). Pub. L. 101–189 struck out par. (5) which read as follows: ''The limitations in paragraphs (1), (2), and (3) do not apply before October 1, 1988.''

1988—Subsec. (c)(5). Pub. L. 100–456 added par. (5).

1987—Subsec. (f)(4). Pub. L. 100–180 inserted ''the President or'' after ''declared by''.

EFFECTIVE DATE OF 1988 AMENDMENT

Requirements of subsec. (c)(5) of this section applicable with respect to any person appointed on or after Sept. 29, 1988, as head of office or other entity designated for conducting auditing function in a military department, see section 325(d)(1) of Pub. L. 100–456, set out as a note under section 5014 of this title.

EFFECTIVE DATE

Subsecs. (c) and (d) of this section to be implemented not later than 180 days after Oct. 1, 1986, see section 532(a) of Pub. L. 99–433, set out as a note under section 3014 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8023, 8032 of this title.

§ 8015. Under Secretary of the Air Force

(a) There is an Under Secretary of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The Under Secretary shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(Added Pub. L. 99–433, title V, § 521(a)(3), Oct. 1, 1986, 100 Stat. 1058.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8013 of this title prior to enactment of Pub. L. 99–433.

A prior section 8015, acts Aug. 10, 1956, ch. 1041, 70A Stat. 489, § 8014; renumbered § 8015, Oct. 1, 1986, Pub. L. 99–433, title V, § 521(a)(1), 100 Stat. 1055, related to Comptroller and Deputy Comptroller of the Air Force, powers and duties, and appointment, prior to repeal by Pub. L. 99–433, § 521(a)(3).

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Air Force, see Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, set out as a note under section 3345 of Title 5.

§ 8016. Assistant Secretaries of the Air Force

(a) There are four Assistant Secretaries of the Air Force. They shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b)(1) The Assistant Secretaries shall perform such duties and exercise such powers as the Secretary of the Air Force may prescribe.

(2) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Manpower and Reserve Affairs. He shall have as his principal duty the overall supervision of manpower and reserve component affairs of the Department of the Air Force.

(3) One of the Assistant Secretaries shall be the Assistant Secretary of the Air Force for Financial Management. The Assistant Secretary shall have as his principal responsibility the exercise of the comptroller functions of the Department of the Air Force, including financial management functions. The Assistant Secretary shall be responsible for all financial management activities and operations of the Department of the Air Force and shall advise the Secretary of the Air Force on financial management.

(Added Pub. L. 99–433, title V, § 521(a)(3), Oct. 1, 1986, 100 Stat. 1058; amended Pub. L. 100–456, div. A, title VII, § 702(c)[(1)], (d), Sept. 29, 1988, 102 Stat. 1995, 1996.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3013 of this title prior to enactment of Pub. L. 99–433.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456, §702(d), substituted ''four'' for ''three''.

Subsec. (b)(3). Pub. L. 100–456, §702(c)[(1)], added par. (3).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 702(e)(2) of Pub. L. 100–456 provided that: ''The amendments made by subsections (c) and (d) [enacting section 8022 of this title and amending this section] shall take effect on July 1, 1989, except that such amendments shall take effect on such earlier date, but not before January 21, 1989, as may be prescribed by the President in advance by Executive order.''

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Air Force, see Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, set out as a note under section 3345 of Title 5.

§ 8017. Secretary of the Air Force: successors to duties

If the Secretary of the Air Force dies, resigns, is removed from office, is absent, or is disabled, the person who is highest on the following list, and who is not absent or disabled, shall perform the duties of the Secretary until the President, under section 3347[1] of title 5, directs another person to perform those duties or until the absence or disability ceases:

(1) The Under Secretary of the Air Force.

(2) The Assistant Secretaries of the Air Force, in the order prescribed by the Secretary of the Air Force and approved by the Secretary of Defense.

(3) The General Counsel of the Department of the Air Force.

(4) The Chief of Staff.

(Aug. 10, 1956, ch. 1041, 70A Stat. 489; Pub. L. 89–718, §23, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 90–235, §4(a)(9), Jan. 2, 1968, 81 Stat. 760; Pub. L. 99–433, title V, §521(a)(4), Oct. 1, 1986, 100 Stat. 1058; Pub. L. 103–337, div. A, title IX, §902(c), Oct. 5, 1994, 108 Stat. 2823.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8017(a)	5:626–1(b).	Sept. 19, 1951, ch. 407, §102 (less (a)), 65 Stat. 327.
8017(b)	5:626–1(c).	

In subsection (a), the word ''person'' is substituted for the words ''officer of the United States''. The words ''until a successor is appointed'' are omitted as surplusage.

Subsection (b) is substituted for 5:626–1(c) and states the effect of section 8544(b) of this title.

REFERENCES IN TEXT

Section 3347 of title 5, referred to in text, was repealed and a new section 3347 was enacted by Pub. L. 105–277, div. C, title I, §151(b), Oct. 21, 1998, 112 Stat. 2681–611, and, as so enacted, no longer contains provisions authorizing the President to direct temporary successors to duties. See section 3345 of Title 5, Government Organization and Employees.

[1] See References in Text note below.

AMENDMENTS

1994—Pars. (3), (4). Pub. L. 103–337 added par. (3) and redesignated former par. (3) as (4).

1986—Pub. L. 99–433 struck out subsec. (a) designation, substituted in par. (2) '', in the order prescribed by the Secretary of the Air Force and approved by the Secretary of Defense'' for ''in order of their length of service as such'', and struck out subsec. (b) which read as follows: ''Performance of the duties of the Secretary by the Chief of Staff or any officer of the Air Force designated under section 3347 of title 5 shall not be considered as the holding of a civil office within the meaning of section 973(b) of this title.''

1968—Subsec. (b). Pub. L. 90–235 substituted ''section 973(b) of this title'' for ''section 8544(b) of this title''.

1966—Pub. L. 89–718 substituted ''section 3347 of title 5'' for ''section 6 of title 5'' wherever appearing.

ORDER OF SUCCESSION

For order of succession in event of death, permanent disability, or resignation of Secretary of Defense, see Ex. Ord. No. 13000, Apr. 24, 1996, 61 F.R. 18483, set out as a note under section 3345 of Title 5, Government Organization and Employees.

For order of succession in event of death, permanent disability, or resignation of Secretary of the Air Force, see Ex. Ord. No. 12909, Apr. 22, 1994, 59 F.R. 21909, set out as a note under section 3345 of Title 5.

§ 8018. Administrative Assistant

The Secretary of the Air Force may appoint an Administrative Assistant in the Office of the Secretary of the Air Force. The Administrative Assistant shall perform such duties as the Secretary may prescribe.

(Added Pub. L. 99–433, title V, §521(a)(5), Oct. 1, 1986, 100 Stat. 1059.)

PRIOR PROVISIONS

A prior section 8018, added Pub. L. 85–861, §1(154)(A), Sept. 2, 1958, 72 Stat. 1513, prescribed compensation of General Counsel of Department of the Air Force, prior to repeal by Pub. L. 88–426, title III, §305(40)(A), Aug. 14, 1964, 78 Stat. 427, eff. first day of first pay period beginning on or after July 1, 1964. See section 5316 of Title 5, Government Organization and Employees.

§ 8019. General Counsel

(a) There is a General Counsel of the Department of the Air Force, appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) The General Counsel shall perform such functions as the Secretary of the Air Force may prescribe.

(Added Pub. L. 99–433, title V, §521(a)(5), Oct. 1, 1986, 100 Stat. 1059; amended Pub. L. 100–456, div. A, title VII, §703(a), Sept. 29, 1988, 102 Stat. 1996.)

PRIOR PROVISIONS

A prior section 8019 was renumbered section 8038 of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–456 inserted '', by and with the advice and consent of the Senate'' before period at end.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–456 applicable to appointments made under this section on and after Sept. 29, 1988, see section 703(c) of Pub. L. 100–456, set out as a note under section 3019 of this title.

§ 8020. Inspector General

(a) There is an Inspector General of the Air Force who shall be detailed to such position by the Secretary of the Air Force from the general officers of the Air Force. An officer may not be detailed to such position for a tour of duty of more than four years, except that the Secretary may extend such a tour of duty if he makes a special finding that the extension is necessary in the public interest.

(b) When directed by the Secretary or the Chief of Staff, the Inspector General shall—

(1) inquire into and report upon the discipline, efficiency, and economy of the Air Force; and

(2) perform any other duties prescribed by the Secretary or the Chief of Staff.

(c) The Inspector General shall periodically propose programs of inspections to the Secretary of the Air Force and shall recommend additional inspections and investigations as may appear appropriate.

(d) The Inspector General shall cooperate fully with the Inspector General of the Department of Defense in connection with the performance of any duty or function by the Inspector General of the Department of Defense under the Inspector General Act of 1978 (5 U.S.C. App. 3) regarding the Department of the Air Force.

(e) The Inspector General shall have such deputies and assistants as the Secretary of the Air Force may prescribe. Each such deputy and assistant shall be an officer detailed by the Secretary to that position from the officers of the Air Force for a tour of duty of not more than four years, under a procedure prescribed by the Secretary.

(Added Pub. L. 99–433, title V, § 521(a)(5), Oct. 1, 1986, 100 Stat. 1059.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (d), is Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 8021. Air Force Reserve Forces Policy Committee

There is in the Office of the Secretary of the Air Force an Air Force Reserve Forces Policy Committee. The functions, membership, and organization of that committee are set forth in section 10305 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(b)(4)(B), Oct. 5, 1994, 108 Stat. 2982.)

PRIOR PROVISIONS

A prior section 8021 was renumbered section 10305 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 8022. Financial management

(a) The Secretary of the Air Force shall provide that the Assistant Secretary of the Air Force for Financial Management shall direct and manage financial management activities and operations of the Department of the Air Force, including ensuring that financial management systems of the Department of the Air Force comply with subsection (b). The authority of the Assistant Secretary for such direction and management shall include the authority to—

(1) supervise and direct the preparation of budget estimates of the Department of the Air Force and otherwise carry out, with respect to the Department of the Air Force, the functions specified for the Under Secretary of Defense (Comptroller) in section 135(c) of this title;

(2) approve and supervise any project to design or enhance a financial management system for the Department of the Air Force; and

(3) approve the establishment and supervise the operation of any asset management system of the Department of the Air Force, including—

(A) systems for cash management, credit management, and debt collection; and

(B) systems for the accounting for the quantity, location, and cost of property and inventory.

(b)(1) Financial management systems of the Department of the Air Force (including accounting systems, internal control systems, and financial reporting systems) shall be established and maintained in conformance with—

(A) the accounting and financial reporting principles, standards, and requirements established by the Comptroller General under section 3511 of title 31; and

(B) the internal control standards established by the Comptroller General under section 3512 of title 31.

(2) Such systems shall provide for—

(A) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of department management;

(B) the development and reporting of cost information;

(C) the integration of accounting and budgeting information; and

(D) the systematic measurement of performance.

(c) The Assistant Secretary shall maintain a five-year plan describing the activities the Department of the Air Force proposes to conduct over the next five fiscal years to improve financial management. Such plan shall be revised annually.

(d) The Assistant Secretary of the Air Force for Financial Management shall transmit to the Secretary of the Air Force a report each year on the activities of the Assistant Secretary during the preceding year. Each such report shall include a description and analysis of the status of Department of the Air Force financial management.

(Added Pub. L. 100–456, div. A, title VII, § 702(c)(2), Sept. 29, 1988, 102 Stat. 1995; amended Pub. L. 103–337, div. A, title X, § 1070(a)(15), Oct. 5, 1994, 108 Stat. 2856; Pub. L. 104–106, div. A, title XV, § 1503(b)(1), Feb. 10, 1996, 110 Stat. 512.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''Under Secretary of Defense (Comptroller)'' for ''Comptroller of the Department of Defense''.

1994—Subsec. (a)(1). Pub. L. 103–337 substituted ''135(c)'' for ''137(c)''.

EFFECTIVE DATE

Section effective July 1, 1989, but with an earlier effective date, not before Jan. 21, 1989, if so prescribed by the President in advance by Executive order, see section 702(e)(2) of Pub. L. 100–456, set out as an Effective Date of 1988 Amendment note under section 8016 of this title.

§ 8023. Chief of Legislative Liaison

(a) There is a Chief of Legislative Liaison in the Department of the Air Force. An officer assigned to that position shall be an officer in the grade of major general.

(b) The Chief of Legislative Liaison shall perform legislative affairs functions as specified for the Office of the Secretary of the Air Force by section 8014(c)(1)(F) of this title.

(Added Pub. L. 107–314, div. A, title V, § 504(e)(1)(A), Dec. 2, 2002, 116 Stat. 2532.)

CHAPTER 805—THE AIR STAFF

Sec.
8031. The Air Staff: function; composition.
8032. The Air Staff: general duties.
8033. Chief of Staff.
8034. Vice Chief of Staff.
8035. Deputy Chiefs of Staff and Assistant Chiefs of Staff.
8036. Surgeon General: appointment; grade.
8037. Judge Advocate General, Deputy Judge Advocate General: appointment; duties.
8038. Office of Air Force Reserve: appointment of Chief.

AMENDMENTS

1986—Pub. L. 99–433, title V, § 522(g)(1), Oct. 1, 1986, 100 Stat. 1063, amended analysis generally, substituting items 8031 to 8038 for former items 8031 to 8036.

1965—Pub. L. 89–288, § 5(b), Oct. 22, 1965, 79 Stat. 1050, added item 8036.

§ 8031. The Air Staff: function; composition

(a) There is in the executive part of the Department of the Air Force an Air Staff. The function of the Air Staff is to assist the Secretary of the Air Force in carrying out his responsibilities.

(b) The Air Staff is composed of the following:

(1) The Chief of Staff.

(2) The Vice Chief of Staff.

(3) The Deputy Chiefs of Staff.

(4) The Assistant Chiefs of Staff.

(5) The Surgeon General of the Air Force.

(6) The Judge Advocate General of the Air Force.

(7) The Chief of the Air Force Reserve.

(8) Other members of the Air Force assigned or detailed to the Air Staff.

(9) Civilian employees in the Department of the Air Force assigned or detailed to the Air Staff.

(c) Except as otherwise specifically prescribed by law, the Air Staff shall be organized in such manner, and its members shall perform such duties and have such titles, as the Secretary may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Pub. L. 89–718, § 45, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 93–608, § 1(5), Jan. 2, 1975, 88 Stat. 1968; Pub. L. 98–525, title V, § 515, Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–433, title V, § 522(a), Oct. 1, 1986, 100 Stat. 1060.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8031(a)	10:1811(a).	Sept. 19, 1951, ch. 407, § 201, 65 Stat. 327.
8031(b)	10:1811(b).	
8031(c)	10:1811(c).	
8031(d)	10:1811(d).	

In subsection (a), the words ''an Air Staff consisting of—'' are substituted for the words ''a staff, which shall be known as the Air Staff, and which shall consist of—''. The words ''under regulations prescribed by the Secretary of the Air Force'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (b), 10:1811(b) (proviso) is omitted as superseded by section 264(c) of this title.

In subsection (c), the third sentence is substituted for 10:1811(c) (1st 13 words and 1st proviso). The words ''officers and employees * * * or under the jurisdiction of'' are omitted as surplusage.

In subsections (c) and (d), the word ''hereafter'' is omitted, since all wars and emergencies declared by Congress before September 19, 1951, have been terminated.

In subsection (d), the words ''now or hereafter'' are omitted as surplusage and as executed. The second sentence is substituted for 10:1811(d) (last 31 words of 1st sentence). The third sentence is substituted for 10:1811(d) (2d sentence). 10:1811(d) (1st 13 words of last sentence) is omitted as executed. The words ''This subsection does not apply'' are substituted for the words ''and shall be inapplicable''.

AMENDMENTS

1986—Pub. L. 99–433 amended section generally, substituting ''The Air Staff: function; composition'' for ''Composition: assignment and detail of members of Air Force and civilians'' in section catchline and substituting in text provisions relating to establishment and composition of the Air Staff and authorizing the Secretary to prescribe the organization, duties, and titles of the Air Staff for provisions relating to establishment and composition of the Air Staff, authorizing the Secretary to prescribe the organization, duties, and titles of the Air Staff, and limiting the number of officers who may be assigned or detailed to permanent duty in the executive part of the Department of the Air Force.

1984—Subsec. (d). Pub. L. 98–525 struck out subsec. (d) which had provided that no commissioned officer who was assigned or detailed to duty in the executive part of the Department of the Air Force could serve for a tour of duty of more than four years, but that the Secretary could extend such a tour of duty if he made a special finding that the extension was necessary in the public interest, that no officer could be assigned or detailed to duty in the executive part of the Department of the Air Force within two years after relief from that duty, except upon a special finding by the Secretary that the assignment or detail was necessary in the public interest, and that the subsection did not apply in time of war, or of national emergency declared by Congress.

1975—Subsec. (c). Pub. L. 93–608 struck out requirement of annual report to Congress on the number of officers in the executive part of the Department of the Air Force and the justification therefor.

1966—Subsec. (c). Pub. L. 89–718 changed the reporting requirement from quarterly to annually.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 515 of Pub. L. 98–525 provided in part that the repeal of subsec. (d) of this section is effective Oct. 1, 1984.

§ 8032. The Air Staff: general duties

(a) The Air Staff shall furnish professional assistance to the Secretary, the Under Secretary, and the Assistant Secretaries of the Air Force, and the Chief of Staff of the Air Force.

(b) Under the authority, direction, and control of the Secretary of the Air Force, the Air Staff shall—

(1) subject to subsections (c) and (d) of section 8014 of this title, prepare for such employment of the Air Force, and for such recruiting, organizing, supplying, equipping (including those aspects of research and development assigned by the Secretary of the Air Force), training, servicing, mobilizing, demobilizing, administering, and maintaining of the Air Force, as will assist in the execution of any power, duty, or function of the Secretary or the Chief of Staff;

(2) investigate and report upon the efficiency of the Air Force and its preparation to support military operations by combatant commands;

(3) prepare detailed instructions for the execution of approved plans and supervise the execution of those plans and instructions;

(4) as directed by the Secretary or the Chief of Staff, coordinate the action of organizations of the Air Force; and

(5) perform such other duties, not otherwise assigned by law, as may be prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 490; Pub. L. 85–599, § 4(h), Aug. 6, 1958, 72 Stat. 517; Pub. L. 99–433, title V, § 522(b), Oct. 1, 1986, 100 Stat. 1060.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8032(a)	10:1815(a).	Sept. 19, 1951, ch. 407, § 205, 65 Stat. 329.
8032(b)	10:1815(b).	

In subsection (a), the word ''furnish'' is substituted for the word ''render''.

In subsection (b)(1), the words ''power, duty, or function of'' are substituted for the words ''power vested in, duty imposed upon, or function assigned to''.

In subsection (b)(2), the words ''all questions affecting'' and ''state of'' are omitted as surplusage.

AMENDMENTS

1986—Pub. L. 99–433, § 522(b)(3), substituted ''The Air Staff: general duties'' for ''General duties'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 522(b)(1), inserted ''of the Air Force'' after ''Chief of Staff''.

Subsec. (b). Pub. L. 99–433, § 522(b)(2), substituted ''Under the authority, direction, and control of the Secretary of the Air Force, the Air Staff'' for ''The Air Staff'' before par. (1), inserted ''subject to subsections (c) and (d) of section 8014 of this title,'' and substituted ''(including those aspects of research and development assigned by the Secretary of the Air Force), training, servicing, mobilizing, demobilizing, administering, and maintaining'' for '', training, serving, mobilizing, and demobilizing'' in par. (1), substituted ''to support military operations by combatant commands'' for ''for military operations'' in par. (2), and amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''act as agent of the Secretary and the Chief of Staff in coordinating the action of all organizations of the Department of the Air Force; and''.

1958—Subsec. (b)(1). Pub. L. 85–599 substituted ''prepare for such employment of the Air Force'' for ''prepare such plans for the national security, for employment of the Air Force for that purpose, both separately and in conjunction with the land and naval forces''.

§ 8033. Chief of Staff

(a)(1) There is a Chief of Staff of the Air Force, appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. He serves at the pleasure of the President. In time of war or during a national emergency declared by Congress, he may be reappointed for a term of not more than four years.

(2) The President may appoint an officer as Chief of Staff only if—

(A) the officer has had significant experience in joint duty assignments; and

(B) such experience includes at least one full tour of duty in a joint duty assignment (as defined in section 664(f) of this title) as a general officer.

(3) The President may waive paragraph (2) in the case of an officer if the President determines such action is necessary in the national interest.

(b) The Chief of Staff, while so serving, has the grade of general without vacating his permanent grade.

(c) Except as otherwise prescribed by law and subject to section 8013(f) of this title, the Chief of Staff performs his duties under the authority, direction, and control of the Secretary of the Air Force and is directly responsible to the Secretary.

(d) Subject to the authority, direction, and control of the Secretary of the Air Force, the Chief of Staff shall—

(1) preside over the Air Staff;

(2) transmit the plans and recommendations of the Air Staff to the Secretary and advise the Secretary with regard to such plans and recommendations;

(3) after approval of the plans or recommendations of the Air Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

(4) exercise supervision, consistent with the authority assigned to commanders of unified or specified combatant commands under chapter 6 of this title, over such of the members and organizations of the Air Force as the Secretary determines;

(5) perform the duties prescribed for him by section 171 of this title and other provisions of law; and

(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President, the Secretary of Defense, or the Secretary of the Air Force.

(e)(1) The Chief of Staff shall also perform the duties prescribed for him as a member of the Joint Chiefs of Staff under section 151 of this title.

(2) To the extent that such action does not impair the independence of the Chief of Staff in the performance of his duties as a member of the

Joint Chiefs of Staff, the Chief of Staff shall inform the Secretary regarding military advice rendered by members of the Joint Chiefs of Staff on matters affecting the Department of the Air Force.

(3) Subject to the authority, direction, and control of the Secretary of Defense, the Chief of Staff shall keep the Secretary of the Air Force fully informed of significant military operations affecting the duties and responsibilities of the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492, § 8034; Pub. L. 85–599, § 4(d), (e), Aug. 6, 1958, 72 Stat. 517; Pub. L. 87–651, title I, § 114, Sept. 7, 1962, 76 Stat. 513; Pub. L. 90–22, title IV, § 403, June 5, 1967, 81 Stat. 53; Pub. L. 96–513, title V, § 504(2), Dec. 12, 1980, 94 Stat. 2915; Pub. L. 97–22, § 10(b)(9), July 10, 1981, 95 Stat. 137; renumbered § 8033 and amended Pub. L. 99–433, title V, § 522(c), Oct. 1, 1986, 100 Stat. 1061; Pub. L. 100–456, div. A, title V, § 519(a)(3), Sept. 29, 1988, 102 Stat. 1972.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8034(a)	10:1812 (1st sentence).	Sept. 19, 1951, ch. 407, §§ 202, 204, 65 Stat. 328.
8034(b)	10:1812 (less 1st sentence).	
8034(c)	10:1814(a) (1st 10 words). 10:1814(b) (2d sentence). 10:1814(c).	June 3, 1916, ch. 134, § 5 (last par.); added June 15, 1933, ch. 87, § 2 (last par.), 48 Stat. 154.
8034(d)	10:38 (last par.). 10:1814(a) (less 1st 10 words). 10:1814(b) (less 2d sentence).	

In subsection (a), the words ''not for'' are substituted for the words ''no person shall serve as Chief of Staff for a term of''.

In subsection (b), the words ''so serving'' are substituted for the words ''holding office as such''. The words ''regular or reserve'' are substituted for the word ''permanent'', since there are no other ''permanent'' grades in the Air Force. The words ''in the Air Force'' are omitted as surplusage. The words ''and shall take rank as prescribed by law'' are omitted as superseded by section 743 of this title. The words ''He shall receive the compensation prescribed by law'' are omitted as covered by the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.).

In subsection (c), the provisions of 10:1814 relating to the direction of the Secretary of the Air Force over the Chief of Staff are combined. The words ''and subsection (c) of this section'' and ''state of'' are omitted as surplusage.

In subsection (d), 10:38 (last par.) is omitted as covered by 10:1814(a). The words ''and other provisions of law'' are substituted for the words ''and by other laws''.

1962 ACT

The changes correct references to section 202(j) of the National Security Act of 1947, which is now set out as section 124 of title 10.

PRIOR PROVISIONS

A prior section 8033 was renumbered section 10305 of this title.

AMENDMENTS

1988—Subsec. (a)(2)(B). Pub. L. 100–456 substituted ''full tour of duty in a joint duty assignment (as defined in section 664(f) of this title)'' for ''joint duty assignment''.

1986—Pub. L. 99–433 renumbered section 8034 of this title as this section, substituted ''Chief of Staff'' for ''Chief of Staff: appointment; duties'' in section catchline, and amended text generally. Prior to amendment, text read as follows:

''(a) The Chief of Staff shall be appointed for a period of four years by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force. He serves during the pleasure of the President. In time of war or national emergency declared by the Congress after December 31, 1968, he may be reappointed for a term of not more than four years.

''(b) The Chief of Staff, while so serving, has the grade of general without vacating his regular or reserve grade.

''(c) Except as otherwise prescribed by law and subject to section 8012(c) and (d) of this title, the Chief of Staff performs his duties under the direction of the Secretary of the Air Force, and is directly responsible to the Secretary for the efficiency of the Air Force, its preparedness for military operations, and plans therefor.

''(d) The Chief of Staff shall—

''(1) preside over the Air Staff;

''(2) send the plans and recommendations of the Air Staff to the Secretary, and advise him with regard thereto;

''(3) after approval of the plans or recommendations of the Air Staff by the Secretary, act as the agent of the Secretary in carrying them into effect;

''(4) exercise supervision over such of the members and organizations of the Air Force as the Secretary of the Air Force determines. Such supervision shall be exercised in a manner consistent with the full operational command vested in unified or specified combatant commanders under section 124 of this title.

''(5) perform the duties prescribed for him by sections 141 and 171 of this title and other provisions of law; and

''(6) perform such other military duties, not otherwise assigned by law, as are assigned to him by the President.''

1981—Subsec. (b). Pub. L. 97–22 struck out the comma after ''his regular or reserve grade''.

1980—Subsec. (b). Pub. L. 96–513 struck out ''and is counted as one of the officers authorized to serve in a grade above lieutenant general under section 8066 of this title'' after ''without vacating his regular or reserve grade''.

1967—Subsec. (a). Pub. L. 90–22 changed the requirement that the Chief of Staff be reappointed only with the advice and consent of the Senate by providing for his reappointment for a term of not more than four years by the President without such advice and consent in a time of war or national emergency as declared by the Congress.

1962—Subsec. (d)(4). Pub. L. 87–651 substituted ''under section 124 of this title'' for ''pursuant to section 202(j) of the National Security Act of 1947, as amended''.

1958—Subsec. (d)(4) to (7). Pub. L. 85–599 redesignated pars. (5) to (7) as (4) to (6), respectively, and in par. (4), as redesignated, required the Chief of Staff to exercise supervision only as the Secretary of the Air Force determines and in a manner consistent with the full operational command vested in unified or specified combatant commanders. Former par. (4), which related to command over the air defense, strategic, tactical, and other major commands, was struck out.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 10(b) of Pub. L. 97–22 provided that the amendment made by that section is effective Sept. 15, 1981.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–22 effective Jan. 1, 1969, see section 405 of Pub. L. 90–22, set out as a note under section 3034 of this title.

WAIVER OF QUALIFICATIONS FOR APPOINTMENT AS SERVICE CHIEF

For provisions giving President temporary authority to waive requirements in subsec. (a)(2) of this section, see section 532(c) of Pub. L. 99–433, formerly set out as a note under section 3033 of this title.

§ 8034. Vice Chief of Staff

(a) There is a Vice Chief of Staff of the Air Force, appointed by the President, by and with the advice and consent of the Senate, from the general officers of the Air Force.

(b) The Vice Chief of Staff of the Air Force, while so serving, has the grade of general without vacating his permanent grade.

(c) The Vice Chief of Staff has such authority and duties with respect to the Department of the Air Force as the Chief of Staff, with the approval of the Secretary of the Air Force, may delegate to or prescribe for him. Orders issued by the Vice Chief of Staff in performing such duties have the same effect as those issued by the Chief of Staff.

(d) When there is a vacancy in the office of Chief of Staff or during the absence or disability of the Chief of Staff—

(1) the Vice Chief of Staff shall perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases; or

(2) if there is a vacancy in the office of the Vice Chief of Staff or the Vice Chief of Staff is absent or disabled, unless the President directs otherwise, the most senior officer of the Air Force in the Air Staff who is not absent or disabled and who is not restricted in performance of duty shall perform the duties of the Chief of Staff until a successor to the Chief of Staff or the Vice Chief of Staff is appointed or until the absence or disability of the Chief of Staff or Vice Chief of Staff ceases, whichever occurs first.

(Aug. 10, 1956, ch. 1041, 70A Stat. 492, § 8035; Pub. L. 85–599, § 6(d), Aug. 6, 1958, 72 Stat. 519; renumbered § 8034 and amended Pub. L. 99–433, title V, § 522(d), Oct. 1, 1986, 100 Stat. 1062.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8035(a)	10:1813(a) (1st sentence).	Sept. 19, 1951, ch. 407, § 203, 65 Stat. 328.
8035(b)	10:1813(a) (less 1st sentence).	
8035(c)	10:1813(b).	

In subsection (a), the words ''of the Air Force'' are omitted as surplusage.

In subsection (b), the words ''if the Chief of Staff is absent or disabled or if that office is vacant'' are substituted for 10:1813(a) (1st 18 words of last sentence). The words ''the officer who is highest on the following list and'' are inserted for clarity. The words ''until his successor is appointed'' are omitted as surplusage.

In subsection (c), the words ''If the Vice Chief of Staff is absent or disabled or if that office is vacant'' are substituted for 10:1813(b) (1st 19 words).

PRIOR PROVISIONS

A prior section 8034 was renumbered section 8033 of this title.

AMENDMENTS

1986—Pub. L. 99–433, § 522(d), renumbered section 8035 of this title as this section.

Pub. L. 99–433, § 522(d)(5), substituted ''Vice Chief of Staff'' for ''Vice Chief of Staff; Deputy Chiefs of Staff: succession to duties of Chief of Staff and Vice Chief of Staff'' in section catchline.

Subsecs. (a), (b). Pub. L. 99–433, § 522(d)(1), substituted subsecs. (a) and (b) for former subsecs. (a) and (b) which read as follows:

''(a) The Vice Chief of Staff and the Deputy Chiefs of Staff shall be general officers detailed to those positions.

''(b) If the Chief of Staff is absent or disabled or if that office is vacant, the officer who is highest on the following list and who is not absent or disabled shall, unless otherwise directed by the President, perform the duties of the Chief of Staff until a successor is appointed or the absence or disability ceases:

''(1) The Vice Chief of Staff.

''(2) The Deputy Chiefs of Staff in order of seniority.''

Subsec. (c). Pub. L. 99–433, § 522(d)(2), (3), redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''If the Vice Chief of Staff is absent or disabled or if that office is vacant, the senior Deputy Chief of Staff who is not absent or disabled shall, unless otherwise directed by the Secretary of the Air Force, perform the duties of the Vice Chief of Staff until a successor is designated or the absence or disability ceases.''

Subsec. (d). Pub. L. 99–433, § 522(d)(3), (4), added subsec. (d). Former subsec. (d) was redesignated (c).

1958—Subsec. (d). Pub. L. 85–599 added subsec. (d).

§ 8035. Deputy Chiefs of Staff and Assistant Chiefs of Staff

(a) The Deputy Chiefs of Staff and the Assistant Chiefs of Staff shall be general officers detailed to those positions.

(b) The number of Deputy Chiefs of Staff and Assistant Chiefs of Staff shall be prescribed by the Secretary, except that—

(1) there may not be more than five Deputy Chiefs of Staff; and

(2) there may not be more than three Assistant Chiefs of Staff.

(Added Pub. L. 99–433, title V, § 522(e), Oct. 1, 1986, 100 Stat. 1062.)

PRIOR PROVISIONS

A prior section 8035 was renumbered section 8034 of this title.

§ 8036. Surgeon General: appointment; grade

There is a Surgeon General of the Air Force who is appointed by the President by and with the advice and consent of the Senate from officers of the Air Force who are in the Air Force medical department. The Surgeon General, while so serving, has the grade of lieutenant general.

(Added Pub. L. 89–288, § 5(a), Oct. 22, 1965, 79 Stat. 1050; amended Pub. L. 99–433, title V, § 522(g)(2), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 104–106, div. A, title V, § 506(c), Feb. 10, 1996, 110 Stat. 296.)

AMENDMENTS

1996—Pub. L. 104–106 substituted ''in the Air Force medical department'' for ''designated as medical officers under section 8067(a) of this title''.

1986—Pub. L. 99–433 substituted a semicolon for the comma in section catchline.

§ 8037. Judge Advocate General, Deputy Judge Advocate General: appointment; duties

(a) There is a Judge Advocate General in the Air Force, who is appointed by the President, by

and with the advice and consent of the Senate, from officers of the Air Force. The term of office is four years, but may be sooner terminated or extended by the President. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general.

(b) The Judge Advocate General of the Air Force shall be appointed from those officers who at the time of appointment are members of the bar of a Federal court or the highest court of a State or Territory, and who have had at least eight years of experience in legal duties as commissioned officers.

(c) The Judge Advocate General shall, in addition to other duties prescribed by law—

(1) receive, revise, and have recorded the proceedings of courts of inquiry and military commissions; and

(2) perform such other legal duties as may be directed by the Secretary of the Air Force.

(d)(1) There is a Deputy Judge Advocate General in the Air Force, who is appointed by the President, by and with the advice and consent of the Senate, from officers of the Air Force who have the qualifications prescribed in subsection (b) for the Judge Advocate General. The term of office of the Deputy Judge Advocate General is four years, but may be sooner terminated or extended by the President. An officer appointed as Deputy Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.

(2) When there is a vacancy in the office of the Judge Advocate General, or during the absence or disability of the Judge Advocate General, the Deputy Judge Advocate General shall perform the duties of the Judge Advocate General until a successor is appointed or the absence or disability ceases.

(3) When paragraph (2) cannot be complied with because of the absence or disability of the Deputy Judge Advocate General, the heads of the major divisions of the Office of the Judge Advocate General, in the order directed by the Secretary of the Air Force, shall perform the duties of the Judge Advocate General, unless otherwise directed by the President.

(e) Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force, in selecting an officer for recommendation to the President under subsection (a) for appointment as the Judge Advocate General or under subsection (d) for appointment as the Deputy Judge Advocate General, shall ensure that the officer selected is recommended by a board of officers that, insofar as practicable, is subject to the procedures applicable to selection boards convened under chapter 36 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495, § 8072; Pub. L. 96–343, § 12(a), (b)(1), Sept. 8, 1980, 94 Stat. 1130, 1131; renumbered § 8037, Pub. L. 99–433, title V, § 522(f), Oct. 1, 1986, 100 Stat. 1063; Pub. L. 103–337, div. A, title V, § 504(c), Oct. 5, 1994, 108 Stat. 2751; Pub. L. 104–106, div. A, title V, § 507(a), Feb. 10, 1996, 110 Stat. 296.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8072(a)	10:1840(a).	Sept. 19, 1951, ch. 407, § 310(a), (b) (less 1st sentence), 65 Stat. 332.
8072(b)	50:741.	May 5, 1950, ch. 169, § 13 (as applicable to Air Force), 64 Stat. 147.
8072(c)	10:62, 10:1840(b) (last sentence).	R.S. 1199. June 23, 1874, ch. 458, § 2, 18 Stat. 244.

In subsection (a), the words ''subject to the provisions of section 741 of Title 50'' are omitted as surplusage. The words ''but may be sooner terminated, or extended, by the President'' are substituted for 10:1840(a) (last 11 words of 1st sentence, and 2d sentence). 10:1840(a) (1st 46 words of 3d sentence) is omitted as surplusage. 10:1840(a) (last sentence) is omitted as executed. The words ''by the President, by and with the advice and consent of the Senate'', as they relate to the appointment as a major general in the Regular Air Force, are omitted as covered by section 8284 of this title.

In subsection (b), the words ''Hereafter'' and ''exclusive of the present incumbents'' are omitted as surplusage. The words ''at least'' are substituted for the words ''not less than a total''.

In subsection (c), the Act of June 23, 1874, ch. 458, § 2 (words before semicolon of 1st sentence, and last sentence), 18 Stat. 244, are not contained in 10:62. They are also omitted from the revised section, since the Air Force does not have organic corps created by statute.

AMENDMENTS

1996—Subsec. (d)(1). Pub. L. 104–106 substituted ''four years'' for ''two years'' and ''An officer appointed as Deputy Judge Advocate General who holds a lower regular grade shall be appointed in the regular grade of major general.'' for ''An officer appointed as Deputy Judge Advocate General shall be appointed in a regular grade to be determined by the Secretary of Defense.''

1994—Subsec. (e). Pub. L. 103–337 added subsec. (e).

1980—Pub. L. 96–343, § 12(b)(1), substituted ''General, Deputy Judge Advocate General:'' for ''General:'' in section catchline.

Subsec. (d). Pub. L. 96–343, § 12(a), added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 507(b) of Pub. L. 104–106 provided that: ''The amendments made by subsection (a) [amending this section] apply to any appointment to the position of Deputy Judge Advocate General of the Air Force that is made after the date of the enactment of this Act [Feb. 10, 1996].''

§ 8038. Office of Air Force Reserve: appointment of Chief

(a) There is in the executive part of the Department of the Air Force an Office of Air Force Reserve which is headed by a chief who is the adviser to the Chief of Staff on Air Force Reserve matters.

(b) APPOINTMENT.—(1) The President, by and with the advice and consent of the Senate, shall appoint the Chief of Air Force Reserve from general officers of the Air Force Reserve who have had at least 10 years of commissioned service in the Air Force.

(2) The Secretary of Defense may not recommend an officer to the President for appointment as Chief of Air Force Reserve unless the officer—

(A) is recommended by the Secretary of the Air Force; and

(B) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with cri-

teria and as a result of a process established by the Chairman, to have significant joint duty experience.

(3) An officer on active duty for service as the Chief of Air Force Reserve shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(4) Until December 31, 2004, the Secretary of Defense may waive subparagraph (B) of paragraph (2) with respect to the appointment of an officer as Chief of Air Force Reserve if the Secretary of the Air Force requests the waiver and, in the judgment of the Secretary of Defense—

(A) the officer is qualified for service in the position; and

(B) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(c) TERM; REAPPOINTMENT; GRADE.—(1) The Chief of Air Force Reserve is appointed for a period of four years, but may be removed for cause at any time. An officer serving as Chief of Air Force Reserve may be reappointed for one additional four-year period.

(2) The Chief of Air Force Reserve, while so serving, holds the grade of lieutenant general.

(d) BUDGET.—The Chief of Air Force Reserve is the official within the executive part of the Department of the Air Force who, subject to the authority, direction, and control of the Secretary of the Air Force and the Chief of Staff, is responsible for preparation, justification, and execution of the personnel, operation and maintenance, and construction budgets for the Air Force Reserve. As such, the Chief of Air Force Reserve is the director and functional manager of appropriations made for the Air Force Reserve in those areas.

(e) FULL TIME SUPPORT PROGRAM.—The Chief of Air Force Reserve manages, with respect to the Air Force Reserve, the personnel program of the Department of Defense known as the Full Time Support Program.

(f) ANNUAL REPORT.—(1) The Chief of Air Force Reserve shall submit to the Secretary of Defense, through the Secretary of the Air Force, an annual report on the state of the Air Force Reserve and the ability of the Air Force Reserve to meet its missions. The report shall be prepared in conjunction with the Chief of Staff of the Air Force and may be submitted in classified and unclassified versions.

(2) The Secretary of Defense shall transmit the annual report of the Chief of Air Force Reserve under paragraph (1) to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113 of this title is submitted to Congress.

(Added Pub. L. 90–168, § 2(19), Dec. 1, 1967, 81 Stat. 524, § 8019; renumbered § 8038 and amended Pub. L. 99–433, title V, §§ 521(a)(2), 522(g)(3), Oct. 1, 1986, 100 Stat. 1055, 1063; Pub. L. 103–337, div. A, title XVI, § 1674(c)(1), Oct. 5, 1994, 108 Stat. 3016; Pub. L. 104–201, div. A, title XII, § 1212(d), Sept. 23, 1996, 110 Stat. 2693; Pub. L. 105–85, div. A, title X, § 1073(a)(65), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 106–65, div. A, title V, § 554(e), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, § 1 [[div. A], title V, § 507(d)], Oct. 30, 2000, 114 Stat. 1654, 1654A–104; Pub. L. 107–314, div. A, title V, § 501(a), Dec. 2, 2002, 116 Stat. 2529.)

AMENDMENTS

2002—Subsec. (b)(4). Pub. L. 107–314 substituted ''December 31, 2004'' for ''October 1, 2003''.

2000—Subsec. (b). Pub. L. 106–398 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The President, by and with the advice and consent of the Senate, shall appoint the Chief of Air Force Reserve from officers of the Air Force Reserve not on active duty, or on active duty under section 10211 of this title, who—

''(1) have had at least 10 years of commissioned service in the Air Force;

''(2) are in grade of brigadier general and above; and

''(3) have been recommended by the Secretary of the Air Force.''

Subsec. (c). Pub. L. 106–398 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Chief of Air Force Reserve holds office for four years, but may be removed for cause at any time. He is eligible to succeed himself. If he holds a lower reserve grade, he shall be appointed in the grade of major general for service in the Air Force Reserve. However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.''

1999—Subsec. (c). Pub. L. 106–65 inserted at end ''However, if selected in accordance with section 12505 of this title, he may be appointed in the grade of lieutenant general.''

1997—Subsec. (e). Pub. L. 105–85 struck out ''(1)'' before ''The Chief of Air Force''.

1996—Subsecs. (d) to (f). Pub. L. 104–201 added subsecs. (d) to (f).

1994—Subsec. (b). Pub. L. 103–337 substituted ''10211'' for ''265''.

1986—Subsec. (a). Pub. L. 99–433, § 522(g)(3), struck out the comma after ''Chief of Staff''.

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Amendment by Pub. L. 106–65 effective 60 days after Oct. 5, 1999, with special provision for an officer who is a covered position incumbent who is appointed under that amendment to the grade of lieutenant general or vice admiral, see section 554(g), (h) of Pub. L. 106–65, set out as a note under section 3038 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective on first day of first calendar month following date of enactment of Pub. L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as an Effective Date of 1967 Amendment note under section 138 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

CHAPTER 807—THE AIR FORCE

Sec.
8061. Regulations.
8062. Policy; composition; aircraft authorization.
[8066. Repealed.]
8067. Designation: officers to perform certain professional functions.
8069. Air Force nurses: Chief and assistant chief; appointment; grade.

Sec.
[8071. Repealed.]
[8072. Renumbered.]
8074. Commands: territorial organization.
8075. Regular Air Force: composition.
[8076 to 8080. Repealed.]
8081. Assistant Surgeon General for Dental Services.
8084. Officer career field for space.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title IX, §912(b), Dec. 28, 2001, 115 Stat. 1196, added item 8084.

1997—Pub. L. 105–85, div. A, title X, §1073(a)(66), Nov. 18, 1997, 111 Stat. 1904, substituted ''nurses'' for ''Nurse Corps'' in item 8069.

1996—Pub. L. 104–201, div. A, title V, §502(c)(2), Sept. 23, 1996, 110 Stat. 2511, added item 8069.

1994—Pub. L. 103–337, div. A, title XVI, §1674(b)(1), Oct. 5, 1994, 108 Stat. 3016, struck out items 8076 ''Air Force Reserve: composition'', 8077 ''Air National Guard of United States: composition'', 8078 ''Air National Guard: when a component of Air Force'', 8079 ''Air National Guard of United States: status when not in Federal service'', and 8080 ''Air National Guard of the United States: authority of officers with respect to Federal status''.

1986—Pub. L. 99–433, title V, §522(g)(4), Oct. 1, 1986, 100 Stat. 1063, struck out item 8072 ''Judge Advocate General, Deputy Judge Advocate General: appointment; duties''. See section 8037 of this title.

1980—Pub. L. 96–513, title V, §504(3), Dec. 12, 1980, 94 Stat. 2915, struck out item 8066 ''Generals and lieutenant generals''.

Pub. L. 96–343, §12(b)(2), Sept. 8, 1980, 94 Stat. 1131, substituted ''General, Deputy Judge Advocate General:'' for ''General:'' in item 8072.

1978—Pub. L. 95–485, title VIII, §805(c)(2), Oct. 20, 1978, 92 Stat. 1622, added item 8081.

1967—Pub. L. 90–130, §1(25), Nov. 8, 1967, 81 Stat. 382, struck out item 8071 ''Temporary grade of colonel in the Air Force: appointment of women.''

1960—Pub. L. 86–603, §1(3)(B), July 7, 1960, 74 Stat. 358, added item 8080.

§ 8061. Regulations

The President may prescribe regulations for the government of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 493.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8061	10:16.	July 15, 1870, ch. 294, §20, 16 Stat. 319; Mar. 1, 1875, ch. 115, 18 Stat. 337.

The word ''prescribe'' is substituted for the words ''make and publish''. 10:16 (last 35 words) is omitted as surplusage.

§ 8062. Policy; composition; aircraft authorization

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Territories, Commonwealths, and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

(b) There is a United States Air Force within the Department of the Air Force.

(c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.

(d) The Air Force consists of—

(1) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;

(2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and

(3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all members of the Air Force, including those not assigned to units; necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(e) Subject to subsection (f) of this section, chapter 831 of this title, and the strength authorized by law pursuant to section 115 of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.

(f) There are authorized for the Air Force 24,000 serviceable aircraft or 225,000 airframe tons of serviceable aircraft, whichever the Secretary of the Air Force considers appropriate to carry out this section. This subsection does not apply to guided missiles.

(Aug. 10, 1956, ch. 1041, 70A Stat. 493; Pub. L. 96–513, title V, §504(4), Dec. 12, 1980, 94 Stat. 2916; Pub. L. 99–433, title I, §110(g)(10), Oct. 1, 1986, 100 Stat. 1004; Pub. L. 100–26, §7(g)(3), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100–180, div. A, title XIII, §1314(b)(9), Dec. 4, 1987, 101 Stat. 1176.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8062(a)	10:20.	July 26, 1947, ch. 343, §208(a), (f), 61 Stat. 503; Aug. 10, 1949, ch. 412, §12(d), 63 Stat. 591.
8062(b)	5:626c(a).	
8062(c)	5:626c(f).	
8062(d)	10:20r(a).	
	10:1831.	
	50:1091.	July 10, 1950, ch. 454, §§2, 201, 203, 64 Stat. 321, 323, 324.
8062(e)	10:20r(b).	Sept. 19, 1951, ch. 407, §301, 65 Stat. 329.
8062(f)	10:20t.	July 9, 1952, ch. 608, §601, 66 Stat. 501.

In subsection (a), 10:20 (1st 19 words) is omitted as surplusage. The words ''any areas occupied by the United States'' are substituted for the words ''occupied areas wherever located''.

Subsection (b) is substituted for 5:626c(a) (1st sentence). 5:626c(a) (last sentence) is omitted as executed.

In subsection (d), the words ''consists of'' are substituted for the word ''includes''.

In subsection (d)(1), 10:20r(a) is omitted as superseded by 10:1831. The words ''all persons serving in the Air Force under call or * * * under any provision of law, including members of the Air National Guard of the several States, Territories, and the District of Columbia when in the service of the United States pursuant to call as provided by law'' are omitted as covered by the words ''the Air National Guard while in the service of the United States''. 50:1091 (last sentence) is omitted, since the components listed include their members.

In subsection (d)(2), the words ''or inducted'' are omitted as covered by the word ''conscripted''.

In subsection (e), the words ''Effective on July 10, 1950'' are omitted as executed. The words ''the limitations imposed by'' are omitted as surplusage. The words ''not to exceed'' are omitted as surplusage, since the revised section states the authorized number and any number over that would not be authorized. The words ''and chapter 31 of this title'' are substituted for the reference to 10:20s to make it clear that the authority for a 70 group Air Force is subject to all provisions which prescribe the authorized personnel strength of the Air Force.

In subsection (f), the word ''considers'' is substituted for the words ''may determine is more''. The words ''aggregate'' and ''amount'' are omitted as surplusage. The words ''carry out this section'' are substituted for the words ''fulfill the requirements of the Air Force of the United States for aircraft necessary to carry out the purposes of this chapter, section 481 of this title, and sections 235, 235a, 628, and 628a of title 5'', since the purposes to which the reference is made are stated in the revised section. The last sentence is substituted for 10:20t (proviso).

AMENDMENTS

1987—Subsec. (e). Pub. L. 100–26 and Pub. L. 100–180 amended subsec. (e) identically, substituting ''section 115'' for ''section 114''.

1986—Subsec. (e). Pub. L. 99–433 substituted ''section 114'' for ''section 138''.

1980—Subsec. (e). Pub. L. 96–513 substituted '', chapter 831 of this title, and the strength authorized by law pursuant to section 138'' for ''and chapter 831''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 125 of this title.

[§ 8066. Repealed. Pub. L. 96–513, title II, § 201, Dec. 12, 1980, 94 Stat. 2878]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 494; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(36), 72 Stat. 1566, authorized President, by and with consent of the Senate, to make temporary appointments in grades of general and lieutenant general from officers of Air Force on active duty in any grade above brigadier general and specified the number of positions in each such grade. See section 601 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8067. Designation: officers to perform certain professional functions

(a) Medical functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary of the Air Force and who are designated as medical officers.

(b) Dental functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as dental officers.

(c) Veterinary functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as veterinary officers.

(d) Medical service functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as medical service officers.

(e) Nursing functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as Air Force nurses.

(f) Biomedical science functions, including physician assistant functions and chiropractic functions, in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as biomedical science officers.

(g) Judge advocate functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as judge advocates.

(h) Chaplain functions in the Air Force shall be performed by commissioned officers of the Air Force who are qualified under regulations prescribed by the Secretary and who are designated as chaplains.

(i) Other functions in the Air Force requiring special training or experience shall be performed by members of the Air Force who are qualified under regulations prescribed by the Secretary, and who are designated as being in named categories.

(Aug. 10, 1956, ch. 1041, 70A Stat. 494; Pub. L. 85–861, § 1(156), Sept. 2, 1958, 72 Stat. 1513; Pub. L. 96–513, title V, § 504(5), Dec. 12, 1980, 94 Stat. 2916; Pub. L. 97–86, title IV, § 403, Dec. 1, 1981, 95 Stat. 1105; Pub. L. 102–484, div. A, title V, § 505(c), Oct. 23, 1992, 106 Stat. 2404.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8067(a)	10:1837(a) (as applicable to medical officers).	Sept. 19, 1951, ch. 407, § 307 (less (d)), 65 Stat. 330.
8067(b)	10:1837(a) (as applicable to dental officers).	June 24, 1952, ch. 457 (less 1st and last provisos), 66 Stat. 156.
8067(c)	10:1837(a) (as applicable to veterinary officers).	
8067(d)	10:1837(a) (as applicable to medical service officers).	
8067(e)	10:1837(a) (as applicable to nurses).	
8067(f)	10:1837(a) (as applicable to women medical specialists).	
8067(g)	10:1837(a) (as applicable to judge advocates).	
8067(h)	10:1837(a) (as applicable to chaplains).	
8067(i)	10:1837(a) (less categories covered by subsections (a)–(h)). 10:1837(b), (c). 10:81–2 (less 1st and last provisos).	

The references in clauses (4), (6), and (7) of 10:1837(a) are omitted, since the laws to which reference is made

deal with qualifications for appointment as commissioned officers and do not specify professional qualifications prerequisite to designation to duties requiring special training or experience. The reference in clause (8) is omitted as executed.

10:1837(b) and (c) are omitted, since, except in the case of a reference to a law not presently in effect, their substance is covered by including the laws referred to in various revised sections of this title (see the distribution tables). 10:81–2 (less 1st and last provisos) is omitted as unnecessary.

In subsections (a)–(d), (g), and (h), the words ''commissioned officers'' are substituted for the word ''members'', in 10:1837(a), since, under the laws to which reference is made, only commissioned officers may be designated to perform these functions.

In subsections (e) and (f), the words ''female commissioned officers'' are substituted for the word ''members'', in 10:1837(a), since, under the laws to which reference is made, only female commissioned officers may be designated to perform these functions.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8067(e), (f)	10 App.:166b–3. 10 App.:1837.	Aug. 9, 1955, ch. 654, §§1, 3(b), 69 Stat. 579.

The section is amended to reflect the authority contained in the source statute to appoint male reserve officers with a view to designation as Air Force nurses or medical specialists.

AMENDMENTS

1992—Subsec. (f). Pub. L. 102–484 inserted ''and chiropractic functions'' after ''physician assistant functions''.

1981—Subsec. (f). Pub. L. 97–86 inserted reference to physician assistant functions.

1980—Subsec. (a). Pub. L. 96–513, §504(5)(A), struck out ''in conformity with section 8289 or 8294 of this title,'' after ''Secretary of the Air Force''.

Subsec. (b). Pub. L. 96–513, §504(5)(B), struck out ''in conformity with section 8294 of this title,'' after ''prescribed by the Secretary''.

Subsec. (e). Pub. L. 96–513, §504(5)(C), struck out ''in conformity with section 8291 of this title,'' after ''prescribed by the Secretary''.

Subsec. (f). Pub. L. 96–513, §504(5)(D), substituted ''Biomedical science functions'' for ''Medical specialist functions'' and ''biomedical science officers'' for ''medical specialists''.

Subsec. (h). Pub. L. 96–513, §504(5)(E), struck out ''in conformity with section 8293 of this title,'' after ''prescribed by the Secretary''.

1958—Subsec. (e). Pub. L. 85–861 struck out ''female'' before ''commissioned officers''.

Subsec. (f). Pub. L. 85–861 struck out ''female'' before ''commissioned officers'', and ''women'' before ''medical specialists''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8081, 8579, 16201 of this title.

§ 8069. Air Force nurses: Chief and assistant chief; appointment; grade

(a) POSITIONS OF CHIEF AND ASSISTANT CHIEF.—There are a Chief and assistant chief of the Air Force Nurse Corps.

(b) CHIEF.—The Secretary of the Air Force shall appoint the Chief from the officers of the Regular Air Force designated as Air Force nurses whose regular grade is above lieutenant colonel and who are recommended by the Surgeon General. An appointee who holds a lower regular grade shall be appointed in the regular grade of major general. The Chief serves during the pleasure of the Secretary.

(c) ASSISTANT CHIEF.—The Surgeon General shall appoint the assistant chief from the officers of the Regular Air Force designated as Air Force nurses whose regular grade is above lieutenant colonel.

(Added Pub. L. 104–201, div. A, title V, §502(b), Sept. 23, 1996, 110 Stat. 2511; amended Pub. L. 105–261, div. A, title V, §505, Oct. 17, 1998, 112 Stat. 2004; Pub. L. 107–314, div. A, title V, §504(a)(3), Dec. 2, 2002, 116 Stat. 2531.)

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–314 substituted ''major general'' for ''brigadier general'' in second sentence.

1998—Subsec. (b). Pub. L. 105–261 struck out '', but not for more than three years, and may not be reappointed to the same position'' after ''pleasure of the Secretary''.

[§ 8071. Repealed. Pub. L. 90–130, §1(25), Nov. 8, 1967, 81 Stat. 382]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 495, provided for appointment of a female Air Force officer in temporary grade of colonel.

[§ 8072. Renumbered § 8037]

§ 8074. Commands: territorial organization

(a) Except as otherwise prescribed by law or by the Secretary of Defense, the Air Force shall be divided into such organizations as the Secretary of the Air Force may prescribe.

(b) For Air Force purposes, the United States, its Territories, its possessions, and other places in which the Air Force is stationed or is operating, may be divided into such areas as directed by the Secretary. Officers of the Air Force may be assigned to command Air Force activities, installations, and personnel in those areas. In the discharge of the Air Force's functions or other functions authorized by law, officers so assigned have the duties and powers prescribed by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 495; Pub. L. 85–599, §4(f), Aug. 6, 1958, 72 Stat. 517; Pub. L. 89–37, title III, §306(a), June 11, 1965, 79 Stat. 129; Pub. L. 99–433, title V, §523, Oct. 1, 1986, 100 Stat. 1063; Pub. L. 107–107, div. A, title IX, §931(b), Dec. 28, 2001, 115 Stat. 1200.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8074(a) ..... 8074(b) ..... 8074(c) ..... 8074(d)	10:1838(a)(1). 10:1838(a)(2). 10:1838(b). 10:1839.	Sept. 19, 1951, ch. 407, §§308, 309, 65 Stat. 332.

In subsection (b), the words ''from time to time'' are omitted as surplusage.

In subsection (d), the words ''have the duties and powers'' are substituted for the words ''shall perform such duties and exercise such powers''. The words ''of America'', ''elements of'', ''other provisions of'', and ''so assigned'' are omitted as surplusage.

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 struck out subsec. (c) which read as follows: ''The Military Air Transport Service is redesignated as the Military Airlift Command.''

1986—Subsec. (a). Pub. L. 99–433 substituted ''Except as otherwise prescribed by law or by the Secretary of Defense, the'' for ''The''.

1965—Subsec. (c). Pub. L. 89–37 added subsec. (c).

1958—Subsec. (a). Pub. L. 85–599, § 4(f)(1), substituted provisions permitting the Air Force to be divided into such organizations as the Secretary of the Air Force may prescribe for provisions which established an air-defense, a strategic, and a tactical command in the Air Force.

Subsecs. (b) to (d). Pub. L. 85–599, § 4(f)(2), redesignated subsec. (d) as (b), and repealed former subsecs. (b) and (c) which permitted the Secretary of the Air Force to establish additional commands and organizations in the interest of efficiency and economy of operation, and, for the duration of any war or national emergency, to establish new major commands or to discontinue or consolidate major commands.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 306(b) of Pub. L. 89–37 provided that: ''The amendment made by subsection (a) of this section [adding subsec. (c)] shall become effective January 1, 1966.''

§ 8075. Regular Air Force: composition

(a) The Regular Air Force is the component of the Air Force that consists of persons whose continuous service on active duty in both peace and war is contemplated by law, and of retired members of the Regular Air Force.

(b) The Regular Air Force includes—

(1) the officers and enlisted members of the Regular Air Force;

(2) the professors, registrar, and cadets at the United States Air Force Academy; and

(3) the retired officers and enlisted members of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 496; Pub. L. 85–600, § 1(13), Aug. 6, 1958, 72 Stat. 523.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8075(a)	10:1832(a).	Sept. 19, 1951, ch. 407, § 302, 65 Stat. 329; Apr. 1, 1954, ch. 127, § 7, 68 Stat. 48.
8075(b)	10:1832 (less (a)).	

In subsection (b), the words ''holding appointments or enlisted in the Regular Air Force as now or hereafter provided by law'', ''and such other persons as are now or may hereafter be specified by law'', and ''commissioned * * * warrant officers'' are omitted as surplusage, since the revised section lists all persons in the Regular Air Force. 10:1832(b) (last sentence) is omitted as executed.

AMENDMENTS

1958—Subsec. (b)(2). Pub. L. 85–600 included the registrar of the Air Force Academy.

[§§ 8076 to 8080. Repealed. Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(A), Oct. 5, 1994, 108 Stat. 2980]

Section 8076, act Aug. 10, 1956, ch. 1041, 70A Stat. 496, related to composition of Air Force Reserve. See section 10110 of this title.

Section 8077, act Aug. 10, 1956, ch. 1041, 70A Stat. 496, related to composition of Air National Guard of United States. See section 10111 of this title.

Section 8078, act Aug. 10, 1956, ch. 1041, 70A Stat. 496, provided that Air National Guard is component of Air Force when in service of United States. See section 10112 of this title.

Section 8079, act Aug. 10, 1956, ch. 1041, 70A Stat. 496, related to status of Air National Guard of United States when not in Federal service. See section 10113 of this title.

Section 8080, added Pub. L. 86–603, § 1(3)(A), July 7, 1960, 74 Stat. 357, related to authority of officers of Air National Guard of United States with respect to Federal status. See section 10215 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 8081. Assistant Surgeon General for Dental Services

There is an Assistant Surgeon General for Dental Services in the Air Force who is appointed by the Secretary of the Air Force upon the recommendation of the Surgeon General from officers of the Air Force above the grade of lieutenant colonel who are designated as dental officers under section 8067(b) of this title. An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general. The Assistant Surgeon General for Dental Services serves at the pleasure of the Secretary.

(Added Pub. L. 95–485, title VIII, § 805(c)(1), Oct. 20, 1978, 92 Stat. 1622; amended Pub. L. 105–261, div. A, title V, § 506, Oct. 17, 1998, 112 Stat. 2004.)

AMENDMENTS

1998—Pub. L. 105–261 substituted ''lieutenant colonel'' for ''major'' and ''An appointee who holds a lower regular grade shall be appointed in the regular grade of brigadier general. The Assistant Surgeon General for Dental Services serves at the pleasure of the Secretary.'' for ''The term of office of the Assistant Surgeon General for Dental Services is four years but may be increased or decreased by the Secretary of the Air Force.''

§ 8084. Officer career field for space

The Secretary of the Air Force shall establish and implement policies and procedures to develop a career field for officers in the Air Force with technical competence in space-related matters to have the capabilty [1] to—

(1) develop space doctrine and concepts of space operations;

(2) develop space systems; and

(3) operate space systems.

(Added Pub. L. 107–107, div. A, title IX, § 912(a), Dec. 28, 2001, 115 Stat. 1196.)

PART II—PERSONNEL

Chap.		Sec.
831.	Strength	8201
833.	Enlistments	8251
835.	Appointments in the Regular Air Force	8281
[837.	Repealed.]	
839.	Temporary Appointments	8441
841.	Active Duty	8491
843.	Special Appointments, Assignments, Details, and Duties	8531
845.	Rank and Command	8571

[1] So in original. Probably should be ''capability''.

Chap. Sec.
[847. Repealed.]
849. Miscellaneous Prohibitions and Penalties 8631
[851. Repealed.]
853. Miscellaneous Rights and Benefits 8681
855. Hospitalization 8721
857. Decorations and Awards 8741
[859. Repealed.]
[860. Repealed.]
861. Separation for Various Reasons 8811
[863. Repealed.]
[865. Repealed.]
867. Retirement for Length of Service 8911
869. Retired Grade 8961
871. Computation of Retired Pay 8991
873. Civilian Employees 9021

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1674(a), Oct. 5, 1994, 108 Stat. 3016, struck out items for chapters 837 ''Appointments as Reserve Officers'' and 863 ''Separation or Transfer to Retired Reserve''.

1980—Pub. L. 96–513, title V, §504(1), Dec. 12, 1980, 94 Stat. 2915, struck out items for chapters 859 ''Separation from Regular Air Force for Substandard Performance of Duty'', 860 ''Separation from Regular Air Force for Moral or Professional Dereliction or in Interests of National Security'', and 865 ''Retirement for Age''.

1968—Pub. L. 90–377, §5, July 5, 1968, 82 Stat. 288, struck out item for chapter 851 ''United States Disciplinary Barracks''.

Pub. L. 90–235, §8(6), Jan. 2, 1968, 81 Stat. 764, struck out item for chapter 847 ''The Uniform''.

1960—Pub. L. 86–616, §§7(b), 8(b), July 12, 1960, 74 Stat. 393, 395, substituted ''Substandard Performance of Duty'' for ''Failure to Meet Standards'' in item for chapter 859 and added item for chapter 860.

1958—Pub. L. 85–861, §1(193), Sept. 2, 1958, 72 Stat. 1538, substituted ''8841'' for ''[No present sections]'' in item for chapter 863.

CHAPTER 831—STRENGTH

Sec.
[8201 to 8209. Repealed.]
8210. Regular Air Force: strength in grade; general officers.
[8211 to 8230. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1674(b)(2), Oct. 5, 1994, 108 Stat. 3016, struck out items 8212 ''Air Reserve; Air National Guard of the United States: strength in grade; temporary increases'', 8217 ''Reserves: commissioned officers in an active status'', 8218 ''Reserves: strength in grade; general officers in an active status'', 8219 ''Reserves: strength in grade; commissioned officers in grades below brigadier general in an active status'', 8221 ''Air Force Reserve'', 8222 ''Air Force Reserve, exclusive of members on active duty'', 8223 ''Air Force Reserve: warrant officers'', 8224 ''Air National Guard of United States'', and 8225 ''Air National Guard and Air National Guard of United States, exclusive of members on active duty''.

1990—Pub. L. 101–510, div. A, title IV, §403(b)(3)(B), Nov. 5, 1990, 104 Stat. 1545, struck out item 8202 ''Air Force: strength in grade; general officers''.

1985—Pub. L. 99–145, title XIII, §1303(a)(26), Nov. 8, 1985, 99 Stat. 740, inserted ''; general officers'' after ''grade'' in item 8202.

1980—Pub. L. 96–513, title V, §504(6), Dec. 12, 1980, 94 Stat. 2916, struck out item 8201 ''Air Force: members on active duty'', substituted ''strength in grade'' for ''officers in certain commissioned grades'' in item 8202, struck out items 8203 ''Regular Air Force: members on active duty'', 8204 ''Regular Air Force: commissioned officers on active list'', 8205 ''Regular Air Force: commissioned officers on active list, exclusive of certain categories'', 8206 ''Regular Air Force: commissioned officers on active list; Air Force nurses'', 8207 ''Regular Air Force: commissioned officers on active list; medical specialists'', 8208 ''Regular Air Force: commissioned officers on active list; female commissioned officers, other than those designated under section 8067 of this title to perform professional functions'', 8209 ''Regular Air Force: commissioned officers on active list; special categories'', and 8211 ''Regular Air Force: strength in grade; promotion-list officers'', substituted ''Air Reserve; Air National Guard of the United States: strength in grade; temporary increases'' for ''Regular Air Force; Air Force Reserve; Air National Guard of the United States: strength in grade; temporary increases'' in item 8212, and struck out items 8213 ''Regular Air Force: warrant officers on active list'', 8214 ''Regular Air Force: enlisted members on active duty'', 8215 ''Regular Air Force: female warrant officers on active list'', and 8230 ''Personnel detailed outside Department of Defense.''

1967—Pub. L. 90–130, §1(26)(F), Nov. 8, 1967, 81 Stat. 382, struck out ''; female enlisted members on active duty'' after ''female warrant officers on active list'' in item 8215.

1958—Pub. L. 85–861, §1(165), Sept. 2, 1958, 72 Stat. 1516, substituted ''Air Force medical specialists'' for ''women medical specialists'' in item 8207, inserted ''Air Force Reserve; Air National Guard of United States'' in item 8212, and added items 8217 to 8219 and 8230.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 8062 of this title.

[§ 8201. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 497; Sept. 2, 1958, Pub. L. 85–861, §1(157), 72 Stat. 1513; Oct. 13, 1964, Pub. L. 88–647, title III, §301(20), 78 Stat. 1073, prescribed authorized strength of Air Force in members on active duty, exclusive of certain categories, and authorized daily average strength of Air Force in members on active duty during fiscal year, exclusive of certain categories.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8202. Repealed. Pub. L. 101–510, div. A, title IV, § 403(b)(3)(A), Nov. 5, 1990, 104 Stat. 1545]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 498; Sept. 2, 1958, Pub. L. 85–861, §1(158), 72 Stat. 1514; Dec. 28, 1967, Pub. L. 90–228, §1(4), (5), 81 Stat. 745; Dec. 12, 1980, Pub. L. 96–513, title II, §203(b), 94 Stat. 2879, related to authorized strength of Air Force in general officers on active duty.

[§§ 8203 to 8209. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section 8203, acts Aug. 10, 1956, ch. 1041, 70A Stat. 498; Sept. 2, 1958, Pub. L. 85–861, §1(159), 72 Stat. 1514, prescribed authorized strength of Regular Air Force in members on active duty, exclusive of officer candidates and aviation cadets.

Section 8204, acts Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 6, 1958, Pub. L. 85–600, §1(14), 72 Stat. 523, prescribed authorized strength of Regular Air Force in commissioned officers on active list. See section 522 of this title.

Section 8205, acts Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 6, 1958, Pub. L. 85–600, §1(15), 72 Stat. 523; Sept. 2, 1958, Pub. L. 85–861, §1(160), 72 Stat. 1514, prescribed authorized strength of Regular Air Force in commissioned officers on active list, exclusive of certain categories. See section 522 of this title.

Section 8206, acts Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 21, 1957, Pub. L. 85–155, title III, §301(1), 71 Stat.

386; Nov. 8, 1967, Pub. L. 90–130, §1(26)(A), 81 Stat. 382, prescribed authorized strength of Air Force nurses in commissioned officers on active list of Regular Air Force. See section 522 of this title.

Section 8207, acts Aug. 10, 1956, ch. 1041, 70A Stat. 499; Aug. 21, 1957, Pub. L. 85–155, title III, §301(2), 71 Stat. 386; Nov. 8, 1967, Pub. L. 90–130, §1(26)(B), 81 Stat. 382, prescribed authorized strength of Air Force medical specialists in commissioned officers on active list of Regular Air Force. See section 522 of this title.

Section 8208, acts Aug. 10, 1956, ch. 1041, 70A Stat. 499; Nov. 8, 1967, Pub. L. 90–130, §1(26)(C), 81 Stat. 382, authorized prescribed strength in female commissioned officers on active list of Regular Air Force, other than those designated under section 8067 of this title to perform professional services. See section 522 of this title.

Section 8209, acts Aug. 10, 1956, ch. 1041, 70A Stat. 500; Sept. 2, 1958, Pub. L. 85–861, §1(156), 72 Stat. 1513; Nov. 8, 1967, Pub. L. 90–130, §1(26)(D), 81 Stat. 382, prescribed authorized strength of Regular Air Force in commissioned officers on active list in each of categories of officers designated under section 8067 of this title. See section 522 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8210. Regular Air Force: strength in grade; general officers

(a) Subject to section 526 of this title, the authorized strength of the Regular Air Force in general officers on the active-duty list is 75/10,000 of the authorized strength of the Regular Air Force in commissioned officers on the active-duty list. Of this authorized strength, not more than one-half may be in a regular grade above brigadier general.

(b) When the application of subsection (a) results in a fraction, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(c) General officers on the active-duty list of the Regular Air Force who are specifically authorized by law to hold a civil office under the United States, or an instrumentality thereof, are not counted in determining authorized strength under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 500; Pub. L. 85–861, §1(161), Sept. 2, 1958, 72 Stat. 1514; Pub. L. 96–513, title V, §504(7), Dec. 12, 1980, 94 Stat. 2916; Pub. L. 102–190, div. A, title X, §1061(a)(23)(A), Dec. 5, 1991, 105 Stat. 1473.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8210(a)	10:506a(a) (words before 1st semicolon).	Aug. 7, 1947, ch. 512, §503(a), 61 Stat. 885.
8210(b)	10:506a(a) (less words before 1st semicolon, and less provisos).	
8210(c)	10:506a(a) (1st, 2d, and 3d provisos).	
8210(d)	10:506a(a) (4th proviso).	
8210(e)	10:506a(a) (last proviso).	

As enacted, section 503(a) of the Officer Personnel Act of 1947 (10:506a(a)) provided, subject to certain percentage limitations, for the following authorized strength of the Regular Army in general officers on the active list:

Medical Corps	16
Dental Corps	4
Veterinary Corps	1
The Chaplains	2
Army, exclusive of the above	334
Total	357

Under section 208(e) of the National Security Act of 1947 (5 U.S.C. 626c(e)), allocations of those authorized strengths were made between the Army and the Air Force as follows:

	Army	*Air Force*
Medical Corps	12	4
Dental Corps	3	1
Veterinary Corps	1	0
The Chaplains	1	1
Army and Air Force, exclusive of the above	184	150
Total	201	156

After the enactment of the Officer Personnel Act of 1947, section 308 of the Army Organization Act of 1950 (10:61–1) provided for an Assistant Judge Advocate General and three brigadier generals in the Judge Advocate General's Corps of the Army. The creation of these four general officer spaces served to increase the mentioned authorized strength figure from 357 to 361, and the figure 201 to 205. The opinion of the Judge Advocate General of the Army (JAGA 1948/5806, 2 Sept. 1948) is in accord with that conclusion.

The revised section reflects the authorized strength of the Regular Air Force in general officers on the active list resulting from the mentioned allocation to the Air Force.

That allocation, and those mentioned in the explanation of subsection (c) below, have had the force of law since July 26, 1950, when the period for transfers, including the administrative authority to change these allocations, expired.

The word ''regular'' is substituted for the word ''permanent'' throughout the revised subsection.

In subsection (c), 10:506a(a) (1st proviso) is omitted, since there is no authority to appoint to a regular grade above major general. 10:506a(a) (last 65 words of 2d proviso) is omitted as executed by the declaration of a national emergency on December 16, 1950.

In subsection (c)(1), the figures ''4'' and ''2'' result from the allocation of the original figures ''16'' and ''8''.

In subsection (c)(2), the figure ''1'' results from the allocation of the original figures ''4'' and ''2''.

In subsection (c)(3), the figure ''1'' results from the allocation of the original figures ''2'' and ''1''. (The major general was allocated to the Army, the brigadier general to the Air Force.)

In subsection (c)(4), the figures ''150'' and ''75'' result from the allocation of the original figures ''334'' and ''167''. That allocation corresponds to the allotment made by the Secretary of War between the Air Corps and the Army exclusive of the Air Corps, the Medical Department, and the Chaplains, under 10: 506a(a) (3d proviso). That proviso is omitted as executed.

In subsection (e), the words ''by law to hold any civil office under the United States'' are substituted for the words ''by Acts of Congress to hold appointments in the Diplomatic or Consular Service of the Government or to hold any civil office under the Government''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8210(a)	10 App.:506a(a)(2) (less 4th and last sentences).	July 20, 1956, ch. 646, §302 (less 1st par.), 70 Stat. 587.
8210(b)	10 App.:506a(a)(2) (4th sentence).	
8210(c)	10 App.:506a(a)(2) (last sentence).	

In subsection (a), the words ''Subject to section 8202(a) of this title'' are substituted for 10 App.:506a(a)(2) (3d sentence).

AMENDMENTS

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 526'' for ''section 8202(a)''.

1980—Subsecs. (a), (c). Pub. L. 96–513 substituted ''active-duty list'' for ''active list'' wherever appearing.

1958—Subsec. (a). Pub. L. 85–861 inserted ''Subject to section 8202(a) of this title,'' before ''the'', and struck out provisions which excluded the number of commissioned officers on the active list authorized by former subsec. (b) of this section and medical service officers.

Subsec. (b). Pub. L. 85–861 redesignated subsec. (d) as (b), and struck out former subsec. (b) which prescribed the authorized strength of general officers as medical, dental, and veterinary officers, and as chaplains.

Subsec. (c). Pub. L. 85–861 redesignated subsec. (e) as (c), and struck out former subsec. (c) which prescribed the maximum number of general officers for the active list of the Regular Air Force.

Subsecs. (d), (e). Pub. L. 85–861 redesignated subsecs. (d) and (e) as (b) and (c), respectively.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 8211. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 501; Sept. 2, 1958, Pub. L. 85–861, § 1(162), 72 Stat. 1514, prescribed authorized strength of Regular Air Force in officers in each regular grade on each of promotion lists authorized by section 8296 of this title. See section 521 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8212. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 501; Aug. 21, 1957, Pub. L. 85–155, title III, § 301(3), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, § 1(163), 72 Stat. 1515; June 30, 1960, Pub. L. 86–559, § 1(48), 74 Stat. 275; Dec. 12, 1980, Pub. L. 96–513, title V, § 504(8), 94 Stat. 2916, related to temporary increases in authorized strength in grade of Air Reserve and Air National Guard of United States. See section 12009 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§§ 8213 to 8215. Repealed. Pub. L. 96–513, title II, § 202, Dec. 12, 1980, 94 Stat. 2878]

Section 8213, act Aug. 10, 1956, ch. 1041, 70A Stat. 501, prescribed authorized strength of Regular Air Force in warrant officers on active list.

Section 8214, acts Aug. 10, 1956, ch. 1041, 70A Stat. 501; Sept. 2, 1958, Pub. L. 85–861, § 1(159), 72 Stat. 1514, prescribed authorized strength of Regular Air Force in enlisted members on active duty, exclusive of officer candidates and aviation cadets.

Section 8215, acts Aug. 10, 1956, ch. 1041, 70A Stat. 502; Nov. 8, 1967, Pub. L. 90–130, § 1(26)(E), (F), 81 Stat. 382, prescribed authorized strength of Regular Air Force in female warrant officers on active list.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 8217 to 8225. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(a)(3), Oct. 5, 1994, 108 Stat. 2988]

Section 8217, added Pub. L. 85–861, § 1(164)(A), Sept. 2, 1958, 72 Stat. 1515, related to authorized strength of Air Force in reserve commissioned officers in active status. See section 12003 of this title.

Section 8218, added Pub. L. 85–861, § 1(164)(A), Sept. 2, 1958, 72 Stat. 1515; amended Pub. L. 96–107, title III, § 302(d), Nov. 9, 1979, 93 Stat. 806; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 102–190, div. A, title X, § 1061(a)(23)(B), Dec. 5, 1991, 105 Stat. 1473, related to authorized strength of Air Force in reserve general officers in active status. See section 12004 of this title.

Section 8219, added Pub. L. 85–861, § 1(164)(A), Sept. 2, 1958, 72 Stat. 1515, related to authorized strength of Air Force in reserve commissioned officers in grades below brigadier general in active status. See section 12005(a) of this title.

Section 8221, act Aug. 10, 1956, ch. 1041, 70A Stat. 502, related to authorized strength of Air Force Reserve. See section 12001 of this title.

Section 8222, acts Aug. 10, 1956, ch. 1041, 70A Stat. 502; Dec. 12, 1980, Pub. L. 96–513, title V, § 504(9), 94 Stat. 2916, related to authorized strength of Air Force Reserve, exclusive of members on active duty. See section 12002(a) of this title.

Section 8223, act Aug. 10, 1956, ch. 1041, 70A Stat. 502, related to authorized strength of Air Force Reserve in warrant officers. See section 12008 of this title.

Section 8224, act Aug. 10, 1956. ch. 1041, 70A Stat. 502, related to authorized strength of Air National Guard of United States. See section 12001 of this title.

Section 8225, acts Aug. 10, 1956, ch. 1041, 70A Stat. 503; Dec. 12, 1980, Pub. L. 96–513, title V, § 504(9), 94 Stat. 2916; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to authorized strength of Air National Guard and Air National Guard of United States, exclusive of members on active duty. See section 12002 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8230. Repealed. Pub. L. 96–513, title II, § 232, Dec. 12, 1980, 94 Stat. 2886]

Section, added Pub. L. 85–861, § 1(164)(B), Sept. 2, 1958, 72 Stat. 1515, provided that members of Air Force who are detailed for any duty with agencies of United States outside the Department of Defense on a reimbursable basis not be counted in computing strengths under any law.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 833—ENLISTMENTS

Sec.
8251. Definition.
8252. Regular Air Force: gender-free basis for acceptance of original enlistments.
8253. Air Force: persons not qualified.
[8254 to 8256. Repealed.]
8257. Regular Air Force: aviation cadets; qualifications, grade, limitations.
8258. Regular Air Force: reenlistment after service as an officer.
[8259 to 8263. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1674(b)(3), Oct. 5, 1994, 108 Stat. 3016, struck out items 8259 ''Air

Force Reserve: transfer from Air National Guard of United States'', 8260 ''Air Force Reserve: transfer to upon withdrawal as member of Air National Guard'', and 8261 ''Air National Guard of United States''.

1988—Pub. L. 100–456, div. A, title V, § 522(a)(2), Sept. 29, 1988, 102 Stat. 1973, added item 8252.

1968—Pub. L. 90–235, § 2(a)(4)(C), Jan. 2, 1968, 81 Stat. 756, struck out item 8252 ''Temporary enlistments'', item 8254 ''Air Force: during war or emergency'', item 8255 ''Regular Air Force: recruiting campaigns'', item 8256 ''Regular Air Force: qualifications, term, grade'', item 8262 ''Extension of enlistment for members needing medical care or hospitalization'', and item 8263 ''Voluntary extension of enlistment''.

1958—Pub. L. 85–861, § 1(166)(C), (D), Sept. 2, 1958, 72 Stat. 1516, struck out '': enlistment'' after ''United States'' in item 8261, and added item 8263.

§ 8251. Definition

In this chapter, the term ''enlistment'' means original enlistment or reenlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 503; Pub. L. 100–180, div. A, title XII, § 1231(19)(A), Dec. 4, 1987, 101 Stat. 1161.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8251	[No source].	[No source].

The revised section is inserted for clarity.

AMENDMENTS

1987—Pub. L. 100–180 inserted '', the term'' after ''In this chapter''.

WOMEN IN ARMED FORCES

Pub. L. 98–525, title V, § 551(a), Oct. 19, 1984, 98 Stat. 2530, as amended by Pub. L. 99–661, div. A, title V, § 504, Nov. 14, 1986, 100 Stat. 3864; Pub. L. 100–180, div. A, title V, § 506, Dec. 4, 1987, 101 Stat. 1086, which required the Secretary of the Air Force to provide that of all persons originally enlisting in the Regular Air Force during fiscal year 1989, not less than 22 percent be women, was repealed by Pub. L. 100–456, div. A, title V, § 522(d), Sept. 29, 1988, 102 Stat. 1974. See section 8252 of this title.

§ 8252. Regular Air Force: gender-free basis for acceptance of original enlistments

In accepting persons for original enlistment in the Regular Air Force, the Secretary of the Air Force may not—

(1) set a minimum or maximum percentage of persons who may be accepted for such an enlistment according to gender for skill categories or jobs; or

(2) in any other way base the acceptance of a person for such an enlistment on gender.

(Added Pub. L. 100–456, div. A, title V, § 522(a)(1), Sept. 29, 1988, 102 Stat. 1973; amended Pub. L. 102–484, div. A, title X, § 1052(40), Oct. 23, 1992, 106 Stat. 2501.)

PRIOR PROVISIONS

A prior section 8252, act Aug. 10, 1956, ch. 1041, 70A Stat. 503, provided that temporary enlistments could be made only in Air Force without specification of component, prior to repeal by Pub. L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756.

AMENDMENTS

1992—Pub. L. 102–484 substituted ''In'' for ''(a) Except as provided in subsection (b), in'' and struck out subsec. (b) which read as follows: ''Subsection (a) shall not apply with respect to an enlistment specified as being for training leading to designation in a skill category involving duty assignments to which, under section 8549 of this title, female members of the Air Force may not be assigned.''

EFFECTIVE DATE

Section 522(c) of Pub. L. 100–456 provided that: ''Such section [10 U.S.C. 8252] shall apply with respect to persons accepted for original enlistment in the Regular Air Force after September 30, 1989.''

IMPLEMENTATION

Section 522(b) of Pub. L. 100–456 provided that: ''The Secretary of the Air Force shall develop a methodology for implementing section 8252 of title 10, United States Code, as added by subsection (a), not later than October 1, 1989.''

§ 8253. Air Force: persons not qualified

In time of peace, no person may be accepted for original enlistment in the Air Force unless he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(Aug. 10, 1956, ch. 1041, 70A Stat. 503; Pub. L. 87–143, § 1(2), Aug. 17, 1961, 75 Stat. 364; Pub. L. 90–235, § 2(a)(4)(A), Jan. 2, 1968, 81 Stat. 756; Pub. L. 96–513, title V, § 514(2), Dec. 12, 1980, 94 Stat. 2935.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8253(a)	10:622.	R.S. 1118; Feb. 27, 1877, ch. 69 (17th par.), 19 Stat. 242; July 29, 1941, ch. 325, 55 Stat. 606.
8253(b)	10:623.	
	10:624.	
8253(c)	10:625.	R.S. 1998; restated Aug. 22, 1912, ch. 336, § 1, 37 Stat. 356; Oct. 14, 1940, ch. 876, § 504 (9th clause), 54 Stat. 1172.
		Aug. 1, 1894, ch. 179, § 2, 28 Stat. 216; June 14, 1920, ch. 286, 41 Stat. 1077.

In subsection (a), the words ''an armed force'' are substituted for the words ''the military service of the United States''. The words ''and no person'' are omitted as surplusage. The last sentence is substituted for 10:622 (proviso). The words ''by regulations or otherwise'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. Since the authority to enlist deserters ''in meritorious cases'', granted to the Secretary by 10:622 is equivalent to or broader than his authority to do so under 10:624, the applicability of 10:624 to 10:622 is omitted as surplusage.

In subsection (b), the word ''soldier'', in 10:623, is omitted as covered by the word ''person''. The last sentence is substituted for 10:624.

In subsections (b) and (c), the first 15 words and the proviso of section 2 of the Act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10:623 or 625. They are also omitted from the revised section, since the first 15 words are superseded by section 8256(a) of this title, and the proviso is executed.

In subsection (c), the words ''(except an Indian)'', in section 2 of the Act of August 1, 1894, ch. 179, 28 Stat. 216, are not contained in 10:625. They are also omitted from the revised section, since section 201(b) of the Act of October 14, 1940, ch. 876, 54 Stat. 1138 (8 U.S.C. 601), provides that Indians are citizens and nationals of the United States. The words ''may be accepted for origi-

nal'' are substituted for the words ''shall be enlisted for the first''.

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''the Immigration and Nationality Act (8 U.S.C 1101 et seq.)'' for ''chapter 12 of title 8''.

1968—Pub. L. 90–235 struck out provisions formerly set out as subsec. (a) disqualifying insane persons, intoxicated persons, deserters and convicted felons from service in the Air Force, and provisions formerly set out as subsec. (b) disqualifying from reenlistment in the Air Force persons whose service during their last term of enlistment was not honest and faithful, and redesignated as entire section provisions formerly set out as subsec. (c).

1961—Subsec. (c). Pub. L. 87–143 substituted ''a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the applicable provisions of chapter 12 of title 8'' for '', or has made a legal declaration of intention to become, a citizen of the United States''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

ENLISTMENT OF CITIZENS OF NORTHERN MARIANA ISLANDS IN ARMED FORCES OF UNITED STATES; TERMINATION OF PERIOD WITHIN WHICH TO ENLIST

For authorization, notwithstanding sections 3253 and 8253 of this title, of a citizen of the Northern Mariana Islands to enlist in the Armed Forces of the United States upon meeting certain requirements and for termination of the enlistment period, see Pub. L. 96–351, Sept. 15, 1980, 94 Stat. 1161, set out as a note under section 3253 of this title.

[§§ 8254 to 8256. Repealed. Pub. L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756]

Section 8254, act Aug. 10, 1956, ch. 1041, 70A Stat. 503, provided for temporary enlistments in Air Force during war or emergency.

Section 8255, act Aug. 10, 1956, ch. 1041, 70A Stat. 504, provided for recruiting campaigns to obtain enlistments in Regular Air Force.

Section 8256, act Aug. 10, 1956, ch. 1041, 70A Stat. 504, set forth qualifications for and term of enlistments in Regular Air Force and grade in which such enlistments were made.

MEMBERS OF ARMY AND AIR FORCE SERVING UNDER ENLISTMENTS FOR UNSPECIFIED PERIODS ON JAN. 2, 1968; CONTINUANCE IN STATUS; DISCHARGE

Members of Air Force serving under enlistments for unspecified periods on Jan. 2, 1968, continued in that status and discharged in accordance with laws applicable on Jan. 1, 1968, see section 3(c) of Pub. L. 90–235, set out as a note under section 3256 of this title.

§ 8257. Regular Air Force: aviation cadets; qualifications, grade, limitations

(a) The grade of aviation cadet is a special enlisted grade in the Regular Air Force.

(b) Any citizen of the United States may be enlisted as an aviation cadet, if he is otherwise qualified.

(c) Any enlisted member of the Regular Air Force who is otherwise qualified may be designated, with his consent, as an aviation cadet by the Secretary of the Air Force.

(d) Except in time of war or of emergency declared by Congress, at least 20 percent of the aviation cadets designated in each fiscal year shall be selected from members of the Regular Air Force or the Regular Army who are eligible and qualified. No person may be enlisted or designated as an aviation cadet unless—

(1) he agrees in writing that, upon his successful completion of the course of training as an aviation cadet, he will accept a commission as second lieutenant in the Air Force Reserve, and will serve on active duty as such for a period of three years, unless sooner released; and

(2) if under 21 years of age, he has the consent of his parent or guardian to his agreement.

(e) While on active duty, an aviation cadet is entitled to uniforms, clothing, and equipment at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 504; Pub. L. 85–861, § 33(a)(37), Sept. 2, 1958, 72 Stat. 1566; Pub. L. 96–513, title II, § 237, Dec. 12, 1980, 94 Stat. 2887.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8257(a)	10:297a.	June 3, 1941, ch. 165, §§1, 3 (1st and 2d sentences), 55 Stat. 239.
8257(b)	10:299 (1st sentence, less last 19 words).	
8257(c)	10:291f–2 (less 1st 55 words of 1st proviso). 10:299 (last 19 words of 1st sentence).	June 13, 1949, ch. 199, §3, 63 Stat. 175.
8257(d)	10:291f–2 (1st 55 words of 1st proviso). 10:299 (2d sentence).	

In subsection (b), the words ''Under such regulations as the Secretary of the Army may prescribe'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

In subsection (c), the words ''who is otherwise qualified'' and ''with his consent'' are substituted for 10:291f–2 (less 1st 55 words of 1st proviso).

In subsection (d), the first sentence is substituted for 10:291f–2 (proviso). The words ''after June 13, 1940'' (the date of enactment of the source statute) are substituted for the word ''hereafter'', in 10:291f–2. The words ''after June 13, 1949'', in 10:291f–2, are omitted as executed. The first 17 words of the last sentence are substituted for 10:299 (1st 20 words of 2d sentence). Clause (2) is substituted for 10:299 (proviso of 2d sentence).

1958 ACT

The new subsection (e) is necessary to reflect the last 11 words of the second sentence of section 4 of the Army Aviation Cadet Act (formerly 10 U.S.C. 304), which were omitted from the original military codification act, the Act of August 10, 1956, chapter 1041, as part of the source law for section 20(b) of that Act (70A Stat. 627). See Senate Report No. 2484, 84th Congress, 2d Session, page 738. Since the source law did not permit the payment of a money allowance to an aviation cadet in place of the issuance of uniforms, clothing, and equipment, as may be done for enlisted members generally, it is necessary to restate this provision separately. See Opinion of the Deputy General Counsel, Department of Defense, May 29, 1957.

AMENDMENTS

1980—Subsec. (b). Pub. L. 96–513 substituted ''Any citizen'' for ''Any male citizen''.

Subsec. (c). Pub. L. 96–513 substituted ''Any enlisted member'' for ''Any male enlisted member''.

1958—Subsec. (e). Pub. L. 85–861 added subsec. (e).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 8258. Regular Air Force: reenlistment after service as an officer

(a) Any former enlisted member of the Regular Air Force who has served on active duty as a reserve officer of the Air Force, or who was discharged as an enlisted member to accept a temporary appointment as an officer of the Air Force, is entitled to be reenlisted in the Regular Air Force in the enlisted grade that he held before his service as an officer, without loss of seniority or credit for service, regardless of the existence of a vacancy in his grade or of a physical disability incurred or having its inception in line of duty, if (1) his service as an officer is terminated by an honorable discharge or he is relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and (2) he applies for reenlistment within six months (or such other period as the Secretary of the Air Force prescribes for exceptional circumstances) after termination of that service.

(b) A person is not entitled to be reenlisted under this section if—

(1) the person was discharged or released from active duty as a Reserve officer on the basis of a determination of—

(A) misconduct;

(B) moral or professional dereliction;

(C) duty performance below prescribed standards for the grade held; or

(D) retention being inconsistent with the interests of national security; or

(2) the person's former enlisted status and grade was based solely on the participation by that person in a precommissioning program that resulted in the Reserve commission held by that person during the active duty from which the person was released or discharged.

(Aug. 10, 1956, ch. 1041, 70A Stat. 505; Pub. L. 85–603, §1(3), Aug. 8, 1958, 72 Stat. 526; Pub. L. 102–484, div. A, title V, §520(b), Oct. 23, 1992, 106 Stat. 2409.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8258	10:631a (less last proviso).	July 14, 1939, ch. 267, §1 (less last proviso); restated May 29, 1954, ch. 249, §19(b) (less last proviso), 68 Stat. 166.

The words ''former'' and ''as an enlisted member'' are inserted for clarity. The words ''credit for service'' are substituted for the words ''of service''. The words ''in his grade'' are substituted for the words ''in the appropriate enlisted grade''. The words ''he applies'' are substituted for the words ''application * * * shall be made''. The words ''Hereafter'' and ''while on active duty'' are omitted as surplusage.

AMENDMENTS

1992—Pub. L. 102–484 designated existing provisions as subsec. (a), added subsec. (b), and struck out at end of subsec. (a) ''However, if his service as an officer terminated by a general discharge, he may, under regulations to be prescribed by the Secretary of the Air Force, be so reenlisted.''

1958—Pub. L. 85–603 limited entitlement to be reenlisted in enlisted grade to those officers whose service terminated by an honorable discharge and those relieved from active duty for a purpose other than to await appellate review of a sentence that includes dismissal or dishonorable discharge, and provided that persons whose service terminated by a general discharge, may, under regulations to be prescribed by the Secretary of the Air Force, be so reenlisted.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–484 applicable to persons discharged or released from active duty as commissioned officers in the Air Force Reserve after Oct. 23, 1992, see section 520(c) of Pub. L. 102–484, set out as a note under section 3258 of this title.

[§§ 8259 to 8261. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(b)(3), Oct. 5, 1994, 108 Stat. 2990]

Section 8259, acts Aug. 10, 1956, ch. 1041, 70A Stat. 505; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1234(a)(1), 102 Stat. 2059, related to transfers in grade of members of Air National Guard of United States to Air Force Reserve. See section 12105 of this title.

Section 8260, act Aug. 10, 1956, ch. 1041, 70A Stat. 505, provided that enlisted members of Air National Guard of United States are transferred to Air Force Reserve upon withdrawal as members of Air National Guard. See section 12106 of this title.

Section 8261, acts Aug. 10, 1956, ch. 1041, 70A Stat. 505; Oct. 4, 1961, Pub. L. 87–378, §4, 75 Stat. 808, related to enlistment in Air National Guard of United States. See section 12107 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§§ 8262, 8263. Repealed. Pub. L. 90–235, § 2(a)(4)(B), Jan. 2, 1968, 81 Stat. 756]

Section 8262, acts Aug. 10, 1956, ch. 1041, 70A Stat. 506; Sept. 2, 1958, Pub. L. 85–861, §1(166)(A), 72 Stat. 1516, provided for extension of enlistment of members of the Air Force needing medical care or hospitalization.

Section 8263, added Pub. L. 85–861, §1(166)(B), Sept. 2, 1958, 72 Stat. 1516; Pub. L. 87–649, §14c(53), Sept. 7, 1962, 76 Stat. 501, provided for voluntary extension of enlistments in the Air Force.

CHAPTER 835—APPOINTMENTS IN THE REGULAR AIR FORCE

Sec.
8281. Commissioned officer grades.
[8284 to 8309. Repealed.]
8310. Warrant officers: original appointment; qualifications.
[8312 to 8314. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, §504(10), Dec. 12, 1980, 94 Stat. 2916, struck out items 8284 ''Commissioned offi-

cers: appointment, how made'', 8285 ''Commissioned officers: original appointment; qualifications'', 8286 ''Commissioned officers: original appointment; age limitations'', 8287 ''Commissioned officers: original appointment; service credit'', 8288 ''Commissioned officers: original appointment; determination of grade'', 8289 ''Commissioned officers: medical officers; original appointment; professional examination'', 8293 ''Commissioned officers; chaplains: original appointment; examination'', 8294 ''Commissioned officers: medical and dental officers: original appointment'', 8295 ''Commissioned officers: original appointment; determination of place on promotion list'', 8296 ''Promotion lists: promotion-list officer defined; determination of place upon transfer or promotion'', 8297 ''Selection boards'', 8298 ''Commissioned officers: promotion to first lieutenant; effect of failure of promotion'', 8299 ''Commissioned officers: promotion to captain, major, or lieutenant colonel'', 8300 ''Commissioned officers: promotion to captain, major, or lieutenant colonel; selection board procedure'', 8301 ''Commissioned officers: promotion to captain, major, or lieutenant colonel; officers with special qualifications'', 8302 ''Commissioned officers: medical, dental, and veterinary officers: promotion to captain, major, or lieutenant colonel; professional examination'', 8303 ''Commissioned officers: effect of failure of promotion to captain, major, or lieutenant colonel'', 8305 ''Commissioned officers: promotion to colonel'', 8306 ''Commissioned officers: promotion to brigadier general'', 8307 ''Commissioned officers: promotion to major general'', 8308 ''Commissioned officers: effect of removal from recommended list by President or failure of confirmation by Senate'', 8309 ''Commissioned officers: physical examination for promotion'', 8312 ''Officers: acceptance of promotion'', 8313 ''Suspension of laws for promotion or mandatory retirement or separation during war or emergency'', and 8314 ''Commissioned officers: promotion not be to delayed by another appointment''.

1958—Pub. L. 85–861, §§1(177)(B), 33(a)(38), Sept. 2, 1958, 72 Stat. 1520, 1566, substituted ''officers'' for ''Officers'' in item 8309, and added item 8314.

1957—Pub. L. 85–155, title III, §301(15), Aug. 21, 1957, 71 Stat. 388, struck out items 8291 ''Commissioned officers; Air Force nurses and women medical specialists: original appointment; additional qualifications, grade'' and 8304 ''Commissioned officers; Air Force nurses and women medical specialists: promotion to first lieutenant, captain, major, lieutenant colonel, or colonel''.

§ 8281. Commissioned officer grades

The commissioned grades in the Regular Air Force are:

(1) Major general.
(2) Brigadier general.
(3) Colonel.
(4) Lieutenant colonel.
(5) Major.
(6) Captain.
(7) First lieutenant.
(8) Second lieutenant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 507.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8281	10:506(a) (last 24 words).	Aug. 7, 1947, ch. 512, §502(a) (last 24 words), 61 Stat. 884.

[§§ 8284 to 8289. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 8284, act Aug. 10, 1956, ch. 1041, 70A Stat. 507, provided that appointments in commissioned grades in Regular Air Force be made by President, by and with advice and consent of Senate. See section 531 of this title.

Section 8285, acts Aug. 10, 1956, ch. 1041, 70A Stat. 507; Aug. 21, 1957, Pub. L. 85–155, title III, §301(4), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, §1(167), 72 Stat. 1516, prescribed eligibility requirements for original appointment in a commissioned grade in Regular Air Force, except designation as a medical or dental officer and except a graduating cadet. See section 532 of this title.

Section 8286, acts Aug. 10, 1956, ch. 1041, 70A Stat. 507; Aug. 21, 1957, Pub. L. 85–155, title III, §301(5), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, §1(168), 72 Stat. 1517, prescribed age limitations for original appointment in a commissioned grade in Regular Air Force, except designation as a medical or dental officer or as an Air Force nurse or medical specialist. See section 532 of this title.

Section 8287, acts Aug. 10, 1956, ch. 1041, 70A Stat. 508; Aug. 21, 1957, Pub. L. 85–155, title III, §301(6), 71 Stat. 386; Sept. 2, 1958, Pub. L. 85–861, §1(169), 72 Stat. 1517; Sept. 30, 1966, Pub. L. 89–609, §1(28), 80 Stat. 854, provided service credit for a person originally appointed in a commissioned grade in Regular Air Force, other than a person appointed as a medical or dental officer, for purpose of determining grade, position on a promotion list, seniority in his grade in Regular Air Force, and eligibility for promotion, with appointment and service credit restrictions on persons who were cadets at the United States Air Force, Military, or Naval Academies but were not graduated, and a disallowance of service credit under this section for persons who graduated from one of these Academies. See section 533 of this title.

Section 8288, acts Aug. 10, 1956, ch. 1041, 70A Stat. 508; Aug. 2, 1957, Pub. L. 85–155, title III, §301(7), 71 Stat. 387; Sept. 2, 1958, Pub. L. 85–861, §1(170), 72 Stat. 1518, provided for determination of grade of a person originally appointed as a commissioned officer in Regular Air Force, other than persons appointed as medical or dental officers. See section 533 of this title.

Section 8289, act Aug. 10, 1956, ch. 1041, 70A Stat. 509, provided that no person be originally appointed as a first lieutenant in Regular Air Force with a view to designation as a medical officer until he passes an examination of his professional fitness before an examining board composed of at least three medical officers designated by Secretary of Air Force. See section 532 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8291. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 509, related to original appointments in Regular Air Force of nurses or woman medical specialists, and prescribed qualifications for appointment as a nurse.

[§§ 8293 to 8303. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 8293, act Aug. 10, 1956, ch. 1041, 70A Stat. 509, provided that no person in civil life be originally appointed as a chaplain in Regular Air Force unless he has passed an examination prescribed by President as to his moral, mental, and physical qualifications. See section 532 of this title.

Section 8294, acts Aug. 10, 1956, ch. 1041, 70A Stat. 509; Sept. 2, 1958, Pub. L. 85–861, §1(173), 72 Stat. 1518, provided that original appointments in Regular Air Force be made in grades of first lieutenant through colonel for medical and dental officers as Air Force requires, from qualified doctors of medicine, osteopathy, or dentistry who are citizens of the United States and have such other qualifications as Secretary of Air Force prescribes, with specific additional eligibility requirements for a doctor of osteopathy, and that officers so

appointed receive service credit for determining grade, position on a promotion list, seniority in grade in Regular Air Force, and eligibility for promotion. See section 532 of this title.

Section 8295, acts Aug. 10, 1956, ch. 1041, 70A Stat. 510; Sept. 2, 1958, Pub. L. 85–861, §1(174), 72 Stat. 1519, provided for determination of place on a promotion list of the name of each person who is originally appointed in a commissioned grade in Regular Air Force and whose name is carried on a promotion list, other than persons appointed as medical or dental officers or as an Air Force nurse or medical specialist. See section 624 of this title.

Section 8296, acts Aug. 10, 1956, ch. 1041, 70A Stat. 510; Aug. 6, 1958, Pub. L. 85–600, §1(16), 72 Stat. 523; Sept. 2, 1958, Pub. L. 85–861, §1(156), (175), 72 Stat. 1513, 1519, provided for promotion lists in Regular Air Force for all commissioned officers in grades below brigadier general on active list, with exceptions, which officers are known as ''promotion-list officers'', a separate list for chaplains, judge advocates, medical officers, dental officers, veterinary officers, medical service officers, Air Force nurses, Air Force medical specialists, and any category established by Secretary of Air Force under section 8067(i) of this title, and determination of place on list upon transfer or promotion. See section 624 of this title.

Section 8297, acts Aug. 10, 1956, ch. 1041, 70A Stat. 510; Aug. 21, 1957, Pub. L. 85–155, title III, §301(8), 71 Stat. 387; July 12, 1960, Pub. L. 86–616, §6(1), 74 Stat. 391, provided for selection boards to recommend promotion-list officers and brigadier generals of Regular Air Force for promotion in Regular Air Force. See section 611 et seq. of this title.

Section 8298, acts Aug. 10, 1956, ch. 1041, 70A Stat. 511; Aug. 21, 1957, Pub. L. 85–155, title III, §301(9), title IV, §401(1), 71 Stat. 387, 390, provided for promotion from grade of second lieutenant to first lieutenant after three years of service, discharge under section 8814 of this title upon failure of promotion, and filling vacancies for first lieutenants with second lieutenants, except Air Force nurses and medical specialists, prior to completion of three years of service. See section 630 of this title.

Section 8299, acts Aug. 10, 1956, ch. 1041, 70A Stat. 511; Aug. 21, 1957, Pub. L. 85–155, title III, §301(10), title IV, §401(1), 71 Stat. 387, 390; Sept. 2, 1958, Pub. L. 85–861, §33(a)(21), 72 Stat. 1565; Sept. 30, 1966, Pub. L. 89–609, §1(29), 80 Stat. 854; Nov. 8, 1967, Pub. L. 90–130, §1(27)(A), 81 Stat. 382, provided that promotion-list officers be promoted to regular grades of captain, major, and lieutenant colonel, after specified length of service or without regard to length of service in view of actual or anticipated vacancies if Secretary of Air Force so directs, or be eliminated from active list under section 8303 of this title and a promotion-list officer who has twice been considered and not recommended for promotion to any one regular grade not be again considered for promotion under this section. See sections 631 and 632 of this title.

Section 8300, acts Aug. 10, 1956, ch. 1041, 70A Stat. 513; Aug. 21, 1957, Pub. L. 85–155, title III, §301(11), 71 Stat. 388; July 12, 1960, Pub. L. 86–616, §6(2), 74 Stat. 391; Nov. 8, 1967, Pub. L. 90–130, §1(27)(B), 81 Stat. 382, provided for selection board procedure when promotion-list officers in regular grade of first lieutenant, captain, or major are to be considered for promotion under section 8299 of this title. See section 611 et seq. of this title.

Section 8301, acts Aug. 10, 1956, ch. 1041, 70A Stat. 513; Aug. 21, 1957, Pub. L. 85–155, title III, §301(12), 71 Stat. 388; Nov. 8, 1967, Pub. L. 90–130, §1(27)(C), 81 Stat. 382, provided for, in addition to method prescribed in section 8300 of this title, promotion to captain, major, or lieutenant colonel of officers with special qualifications, whenever there are vacancies on Air Force promotion list in regular grade of captain, major, or lieutenant colonel and Secretary of Air Force considers that there are or will be too few officers in any of those grades with special qualifications.

Section 8302, act Aug. 10, 1956, ch. 1041, 70A Stat. 513, related to promotion to captain, major, or lieutenant colonel of commissioned medical, dental, or veterinary officers in Regular Air Force upon examination of professional fitness and effect upon failure of promotion. See sections 631 and 632 of this title.

Section 8303, acts Aug. 10, 1956, ch. 1041, 70A Stat. 514; Aug. 21, 1957, Pub. L. 85–155, title III, §301(13), 71 Stat. 388; July 12, 1960, Pub. L. 86–616, §6(3), 74 Stat. 391; June 28, 1962, Pub. L. 87–509, §4(a), 76 Stat. 121; Nov. 8, 1967, Pub. L. 90–130, §1(27)(D), 81 Stat. 382, related to effect of failure of a promotion-list officer considered for promotion to grade of captain, major, or lieutenant colonel under section 8299 of this title to be recommended for promotion, which officer was to be know as a ''deferred officer''. See sections 631 and 632 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8304. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 515, related to promotion of Air Force nurses or women medical specialists to grades of first lieutenant, captain, major, lieutenant colonel, or colonel.

[§§ 8305 to 8309. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 8305, acts Aug. 10, 1956, ch. 1041, 70A Stat. 516; Aug. 21, 1957, Pub. L. 85–155, title III, §301(14), 71 Stat. 388; Nov. 8, 1967, Pub. L. 90–130, §1(27)(E), 81 Stat. 382, related to promotion of officers in regular grade of lieutenant colonel to grade of colonel. See section 619 et seq. of this title.

Section 8306, act Aug. 10, 1956, ch. 1041, 70A Stat. 516, related to promotion of officers in regular grade of colonel to grade of brigadier general. See section 619 et seq. of this title.

Section 8307, act Aug. 10, 1956, ch. 1041, 70A Stat. 517, related to promotion of officers in regular grade of brigadier general to grade of major general. See section 619 et seq. of this title.

Section 8308, act Aug. 10, 1956, ch. 1041, 70A Stat. 518, related to effect of removal from recommended list by President of name of any promotion-list officer or brigadier general of Regular Air Force who in President's opinion is not qualified for promotion or who is not confirmed by Senate. See section 629 of this title.

Section 8309, act Aug. 10, 1956, ch. 1041, 70A Stat. 518, provided that President prescribe a system of physical examination for all commissioned officers of Regular Air Force in grades below brigadier general to determine their fitness for promotion in Regular Air Force. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8310. Warrant officers: original appointment; qualifications

Original appointments as warrant officers in the Regular Air Force shall be made from persons who have served on active duty at least one year in the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 518.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8310	10:591. [Uncodified: June 3, 1916, ch. 134, §4a (less 3d and last sentences); added June 4, 1920, ch. 227, subch. I, §4 (3d par., less 3d and last sentences), 41 Stat. 761].	June 3, 1916, ch. 134, §4a (less 3d and last sentences); added June 4, 1920. ch. 227, subch. I, §4 (3d par., less 3d and last sentences), 41 Stat. 761.] Aug. 21, 1941, ch. 384, §2; restated May 29, 1954, ch. 249, §19(c), 68 Stat. 166.

The first sentence of section 4a of the act of June 3, 1916, cited above, is omitted as superseded by section 8213 of this title. The second sentence, less first nine words, of section 4a of that act, is omitted as superseded by 10:591.

[§§ 8312 to 8314. Repealed. Pub. L. 96–513, title II, § 204, Dec. 12, 1980, 94 Stat. 2880]

Section 8312, act Aug. 10, 1956, ch. 1041, 70A Stat. 519, provided that an officer who is promoted in Regular Air Force is considered to have accepted his promotion on date of order announcing it, unless he expressly declines it, without need to take the oath of office upon promotion if his service since last taking it has been continuous. See section 626 of this title.

Section 8313, act Aug. 10, 1956, ch. 1041, 70A Stat. 519, provided that in time of war or national emergency declared by Congress or President, the President may suspend operation of any provision of law relating to promotion, mandatory retirement, or separation of commissioned officers of Regular Air Force. See section 123(a), (b) of this title.

Section 8314, added Pub. L. 85–861, §1(177)(A), Sept. 2, 1958, 72 Stat. 1519, provided that promotion to a higher grade of a commissioned officer of Regular Air Force who is on a recommendation list awaiting promotion not be withheld or delayed because of original appointment of any other person to a commissioned grade in Regular Air Force and that this section does not apply to appointments as medical or dental officers or Air Force nurses or medical specialists. See section 624 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 837—REPEALED]

[§ 8351. Renumbered § 12212]

[§ 8352. Renumbered § 12214]

[§§ 8353, 8354. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 8353, added Pub. L. 85–861, §1(178)(A), Sept. 2, 1958, 72 Stat. 1520; amended Pub. L. 86–559, §1(49), June 30, 1960, 74 Stat. 275; Pub. L. 96–513, title II, §205(b), Dec. 12, 1980, 94 Stat. 2882; Pub. L. 97–22, §7, July 10, 1981, 95 Stat. 131; Pub. L. 98–94, title X, §1007(c)(5), Sept. 24, 1983, 97 Stat. 662; Pub. L. 100–180, div. A, title VII, §714(d), Dec. 4, 1987, 101 Stat. 1113; Pub. L. 103–160, div. A, title V, §509(d), Nov. 30, 1993, 107 Stat. 1648, related to service credit upon original appointment as reserve commissioned officer in Air Force. See section 12207 of this title.

Section 8354, acts Aug. 10, 1956, ch. 1041, 70A Stat. 520; Sept. 2, 1958, Pub. L. 85–861, §1(178)(B), 72 Stat. 1520, related to appointment of warrant officers and enlisted members of Air National Guard of United States as reserve officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8355. Repealed. Pub. L. 88–647, title III, § 301(21), Oct. 13, 1964, 78 Stat. 1073]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 520; Sept. 2, 1958, Pub. L. 85–861, §33(a)(22), 72 Stat. 1565, related to appointment of graduates of junior or senior division of Air Force Reserve Officers' Training Corps as reserve commissioned officers.

[§ 8356. Repealed. Pub. L. 103–337, div. A, title XVI, § 1636(b), Oct. 5, 1994, 108 Stat. 2968]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 520, related to appointment and promotion of aviation cadets as commissioned officers in Air Force Reserve.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 10, 1996, see section 1501(f)(1) of Pub. L. 104–106, set out as an Effective Date of 1994 Amendment note under section 12213 of this title.

[§§ 8358 to 8368. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 8358, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1520, related to service credit upon original appointment as commissioned officer in grade below colonel. See section 12201 et seq. of this title.

Section 8359, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1521; amended Pub. L. 98–94, title X, §1014(b), Sept. 24, 1983, 97 Stat. 666; Pub. L. 98–525, title V, §521(b), Oct. 19, 1984, 98 Stat. 2522; Pub. L. 99–145, title V, §521(a), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, §502(a), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, §503(a), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, §519(a), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, §514(a), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, §511(a), Feb. 10, 1996, 110 Stat. 298, related to determination of grade upon original appointment as reserve officer of Air Force. See section 12201 et seq. of this title.

Section 8360, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1521; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 104–106, div. A, title XV, §1501(c)(30), Feb. 10, 1996, 110 Stat. 500, related to service required for promotion of reserve commissioned officers. See section 14001 et seq. of this title.

Section 8361, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1522; amended Pub. L. 86–559, §1(50), June 30, 1960, 74 Stat. 275, related to seniority for purposes of promotion of reserve commissioned officers. See section 14301 et seq. of this title.

Section 8362, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1522; amended Pub. L. 86–559, §1(51), June 30, 1960, 74 Stat. 275, related to convening of selection boards to consider reserve commissioned officers for promotion. See section 14101 et seq. of this title.

Section 8363, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1522; amended Pub. L. 86–559, §1(52), June 30, 1960, 74 Stat. 275; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to requirements and procedures for promotion of officers in reserve grades. See section 14301 et seq. of this title.

Section 8365, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1523, related to promotion of second lieutenants of Air Force Reserve. See section 14301 et seq. of this title.

Section 8366, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1523; amended Pub. L. 86–559, §1(53), June 30, 1960, 74 Stat. 275; Pub. L. 90–130, §1(28)(A), Nov. 8, 1967, 81 Stat. 382, related to promotion of first lieuten-

ants, captains, and majors of Air Force Reserve or Air National Guard of United States. See section 14301 et seq. of this title.

Section 8367, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1525; amended Pub. L. 86–559, §1(54), June 30, 1960, 74 Stat. 276, related to selection board procedures for promotion of first lieutenants, captains, and majors of Air Force Reserve or Air National Guard of United States. See section 14001 et seq. of this title.

Section 8368, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1525; amended Pub. L. 86–559, §1(55), June 30, 1960. 74 Stat. 276; Pub. L. 90–130, §1(28)(B), Nov. 8, 1967, 81 Stat. 382; Pub. L. 100–180, div. A, title XII, §1231(19)(B), Dec. 4, 1987, 101 Stat. 1161, related to effect of failure of promotion of reserve officers in grades of first lieutenant, captain, and major. See section 14301 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8370. Repealed. Pub. L. 90–130, § 1(28)(C), Nov. 8, 1967, 81 Stat. 382]

Section, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1526; Pub. L. 86–559, §1(56), June 30, 1960, 74 Stat. 276, placed restrictions on promotion consideration of Air Force nurses, medical specialists, and female officers being considered for promotion to the Reserve grades of lieutenant colonel and colonel.

[§§ 8371 to 8378. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 8371, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1527, related to promotion of officers to grade of colonel to fill vacancies in Air Force Reserve. See section 14301 et seq. of this title.

Section 8372, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1527; amended Pub. L. 86–559, §1(57), June 30, 1960, 74 Stat. 276, related to promotion of officers with special qualifications to grade of captain, major, lieutenant colonel, or colonel of Air Force Reserve. See section 14301 et seq. of this title.

Section 8373, added Pub. L. 89–172, §1, Sept. 8, 1965, 79 Stat. 662, related to promotion of officers to grades of brigadier general and major general of Air Force Reserve. See section 14315 of this title.

A prior section 8373, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528; amended Pub. L. 86–559, §1(58), June 30, 1960, 74 Stat. 277, containing similar subject matter, expired by its own terms on June 30, 1964.

Section 8374, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528, provided that promotion of reserve commissioned officers be effective upon Federal recognition in next higher grade of Air National Guard. See section 14308(f) of this title.

Section 8375, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528; amended Pub. L. 86–559, §1(59), June 30, 1960, 74 Stat. 277; Pub. L. 96–513, title V, §514(3), Dec. 12, 1980, 94 Stat. 2935, related to transfer or discharge of officers promoted to reserve grade of brigadier general or major general ceasing to occupy those positions. See section 14314(a), (c) of this title.

Section 8376, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1528; amended Pub. L. 86–559, §1(60), June 30, 1960, 74 Stat. 277, related to promotion of commissioned officers of Air Force Reserve or Air National Guard of United States to higher reserve grades after temporary appointments. See section 14301 et seq. of this title.

Section 8377, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1529; amended Pub. L. 86–559, §1(61), June 30, 1960, 74 Stat. 277, related to effect of removal of reserve commissioned officer from recommended promotion list by President. See section 14301 et seq. of this title.

Section 8378, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1530, related to promotion of reserve commissioned officers removed from active status. See section 14317(a) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8379. Repealed. Pub. L. 103–337, div. A, title XVI, § 1636(c), Oct. 5, 1994, 108 Stat. 2968]

Section, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1530, provided that appointing commissioned officers of Air National Guard was function of governors.

EFFECTIVE DATE OF REPEAL

Repeal effective Feb. 10, 1996, see section 1501(f)(1) of Pub. L. 104–106, set out as an Effective Date of 1994 Amendment note under section 12213 of this title.

[§§ 8380 to 8396. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(1), Oct. 5, 1994, 108 Stat. 2963]

Section 8380, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1530; amended Pub. L. 86–559, §1(62), June 30, 1960, 74 Stat. 277; Pub. L. 98–94, title X, §1015(b)(1), Sept. 24, 1983, 97 Stat. 667; Pub. L. 99–145, title V, §521(b), Nov. 8, 1985, 99 Stat. 631; Pub. L. 100–180, div. A, title V, §502(b)(1), Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, §503(b)(1), Nov. 29, 1989, 103 Stat. 1437; Pub. L. 102–484, div. A, title V, §519(b), Oct. 23, 1992, 106 Stat. 2408; Pub. L. 103–160, div. A, title V, §514(b), Nov. 30, 1993, 107 Stat. 1649; Pub. L. 104–106, div. A, title V, §511(b), title XV, §1501(c)(31), Feb. 10, 1996, 110 Stat. 298, 500, related to promotion of reserve commissioned officers on active duty and not on the active duty list. See section 14311(e) of this title.

Section 8381, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1531; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer, discharge, or withdrawal of Federal recognition of reserve officers ceasing to occupy position of adjutant general or assistant adjutant general. See section 14314(b), (c) of this title.

Section 8392, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1531; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to appointment of adjutant general or assistant adjutant general in reserve commissioned grade in which Federal recognition in Air National Guard was extended. See section 12215(b) of this title.

Section 8393, added Pub. L. 85–861, §1(178)(C), Sept. 2, 1958, 72 Stat. 1531, provided that sea or foreign service not to be required for promotion of reserve commissioned officers in reserve grades.

Section 8394, act Aug. 10, 1956, ch. 1041, 70A Stat. 521, related to acceptance of promotion by officers of Air National Guard of United States or Air Force Reserve. See section 14309 of this title.

Section 8395, act Aug. 10, 1956, ch. 1041, 70A Stat. 521, related to appointment of reserve officers in time of war. See section 14317(e) of this title.

Section 8396, added Pub. L. 96–513, title II, §206(b), Dec. 12, 1980, 94 Stat. 2884, provided that this chapter, except section 8353, did not apply to reserve officers on active-duty list.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 839—TEMPORARY APPOINTMENTS

Sec.

[8441 to 8445. Repealed.]

Sec.
8446. Retention on active duty.
[8447 to 8452. Repealed.]

AMENDMENTS

1980—Pub. L. 96–513, title V, §504(12), Dec. 12, 1980, 94 Stat. 2917, struck out items 8441 ''General rule'', 8442 ''Commissioned officers; regular and reserve components: appointment in higher grade'', 8444 ''Commissioned officers: during war or emergency'', 8445 ''Officers: additional appointments during war or emergency'', 8447 ''Appointments in commissioned grade: how made; how terminated'', 8448 ''Warrant officers: grades; appointment'', 8449 ''Warrant officers: promotion'', 8451 ''Officers: acceptance of appointment in higher grade'', and 8452 ''Medical and dental officers: temporary promotion to captain''.

1968—Pub. L. 90–235, §3(b)(6), Jan. 2, 1968, 81 Stat. 758, struck out item 8450 ''Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency''.

1958—Pub. L. 85–861, §1(180)(F), (G), Sept. 2, 1958, 72 Stat. 1532, struck out item 8443 ''Commissioned officers; Reserves; appointment in higher or lower grade'', and added item 8452.

[§§ 8441, 8442. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section 8441, act Aug. 10, 1956, ch. 1041, 70A Stat. 521, provided that temporary appointments be made only in the Air Force without specification of component.

Section 8442, act Aug. 10, 1956, ch. 1041, 70A Stat. 521, provided that a regular commissioned officer, or a reserve commissioned officer who is serving on active duty, may be appointed, based upon ability and efficiency with regard being given to seniority and age, in a temporary grade that is equal to or higher than his regular or reserve grade, without vacating any other grade held by him. See section 601 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8443. Repealed. Pub. L. 85–861, § 36B(25), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 522, related to grade of reserve commissioned officers ordered to active duty or serving on active duty.

[§§ 8444, 8445. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section 8444, acts Aug. 10, 1956, ch. 1041, 70A Stat. 522; Sept. 2, 1958, Pub. L. 85–861, §1(180)(A), 72 Stat. 1532, authorized President, in time of war or national emergency, to appoint any qualified person, including a person who is not a Regular or Reserve, in any temporary grade, provided for vacation of the appointment, and permitted, for purposes of determining grade, position on a promotion list, seniority in temporary grade, and eligibility for promotion, a medical or dental officer of the Air Force who is appointed in a temporary grade to be credited, when he enters active duty, with the constructive service authorized by section 8294(b) of this title. See section 603 of this title.

Section 8445, acts Aug. 10, 1956, ch. 1041, 70A Stat. 522; Sept. 2, 1958, Pub. L. 85–861, §1(180)(B), 72 Stat. 1532, provided that in addition to temporary appointments authorized, in time of war or national emergency, a regular officer or a reserve warrant officer may be appointed in any temporary grade higher than his regular or reserve grade, without vacating that grade, or a person who holds no commissioned grade in Regular Air Force be appointed in any temporary commissioned grade. See section 603 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8446. Retention on active duty

The President may retain on active duty a disabled officer until—

(1) the physical condition of the officer is such that the officer will not be further benefited by retention in a military hospital or a medical facility of the Department of Veterans Affairs; or

(2) the officer is processed for physical disability benefits provided by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 522; Pub. L. 85–861, §1(180)(C), Sept. 2, 1958, 72 Stat. 1532; Pub. L. 101–189, div. A, title XVI, §1621(a)(10), Nov. 29, 1989, 103 Stat. 1603; Pub. L. 102–25, title VII, §701(j)(6), Apr. 6, 1991, 105 Stat. 116.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8446	10:499.	June 19, 1948, ch. 511, 62 Stat. 489.

The word ''Shall'' is substituted for the words ''authorized and directed''. The words ''on active duty'' are substituted for the words ''in service''. The words ''warrant officers, and flight officers'' are omitted, since the definition of ''officer'' in section 101(14) of this title covers commissioned, warrant, and flight officers. The words ''who has only a temporary appointment'' are substituted for the words ''of the Air Force * * * of the United States''. The words ''his physical condition is such that he'' are substituted for the words ''their treatment for physical reconstruction has reached a point where they''. The words ''in the Air Force'' are substituted for the words ''in the military service''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8446	10 App.:499.	June 15, 1956, ch. 388, 70 Stat. 282.

The words ''commissioned officers and warrant'' are omitted as covered by the definition of the word ''officer'' in section 101(14) of this title. The words ''condition is such that'' are substituted for the words ''reconstruction has reached a point where''.

AMENDMENTS

1991—Par. (2). Pub. L. 102–25 struck out ''as'' before ''provided by law''.

1989—Pub. L. 101–189 amended section generally. Prior to amendment, section read as follows: ''Notwithstanding any other provision of law, the President may retain on active duty any disabled officer until his physical condition is such that he will not be further benefited by retention in a military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law.''

1958—Pub. L. 85–861 substituted ''may retain on active duty any disabled officer'' for ''shall retain on active duty any disabled officer who has only a temporary appointment'', and ''military or Veterans' Administration hospital or until he is processed for physical disability benefits provided by law'', for ''military hospital or in the Army''.

[§ 8447. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 523; Sept. 2, 1958, Pub. L. 85–861, § 1(180)(D), 72 Stat. 1532; Sept. 28, 1971, Pub. L. 92–129, title VI, § 604, 85 Stat. 362, provided that temporary appointment of a person be made without reference to any other appointment that he may hold in the Air Force, temporary appointments of commissioned officers in the Regular Air Force be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades of lieutenant colonel and above, temporary appointments of commissioned officers in the reserve components of the Air Force be made by the President alone in grades below lieutenant colonel and by the President, by and with the consent of the Senate, in grades above major, and that the President may vacate at any time a temporary appointment in a commissioned grade. See section 601 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 8448, 8449. Repealed. Pub. L. 96–513, title II, § 208, Dec. 12, 1980, 94 Stat. 2884]

Section 8448, acts Aug. 10, 1956, ch. 1041, 70A Stat. 523; Aug. 8, 1958, Pub. L. 85–603, § 1(4), 72 Stat. 526; Sept. 2, 1958, Pub. L. 85–861, § 33(a)(39), 72 Stat. 1566, authorized Secretary of the Air Force, upon his determination of need, to appoint qualified persons as warrant officers, with such appointments to continue at pleasure of Secretary, and such warrant officers entitled to count all periods of active duty under appointment as warrant or enlisted service for all purposes and to benefits of all laws and regulations applicable to retirement, pensions, and disability of members of Air Force on active duty. See section 602 of this title.

Section 8449, act Aug. 10, 1956, ch. 1041, 70A Stat. 523, provided that temporary promotions in warrant officer grades be governed by such regulations as the Secretary of the Air Force prescribe. See section 602 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8450. Repealed. Pub. L. 90–235, § 3(b)(1), Jan. 2, 1968, 81 Stat. 758]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 523, provided for suspension of laws for promotion or mandatory retirement or separation during war or emergency of temporary warrant officers of Air Force.

[§§ 8451, 8452. Repealed. Pub. L. 96–513, title II, § 207, Dec. 12, 1980, 94 Stat. 2884]

Section 8451, act Aug. 10, 1956, ch. 1041, 70A Stat. 524, provided that an officer who is promoted to a temporary grade is considered to have accepted his promotion on date of order announcing it, unless he expressly declines promotion.

Section 8452, added Pub. L. 85–861, § 1(180)(E), Sept. 2, 1958, 72 Stat. 1532, provided that, notwithstanding any other provision of law, a medical or dental officer may be promoted to temporary grade of captain at any time after first anniversary of date upon which he graduated from a medical, osteopathic, or dental school.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 841—ACTIVE DUTY

Sec.
8491. Non-regular officers: status.
[8492 to 8502. Repealed.]
8503. Retired commissioned officers: status.
[8504. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1674(b)(4), Oct. 5, 1994, 108 Stat. 3016, struck out items 8495 ''Air National Guard of United States: status'', 8496 ''Air National Guard of United States: commissioned officers; duty in National Guard Bureau'', 8497 ''Air National Guard of United States: members; status in which ordered into Federal service'', 8498 ''Air National Guard of United States: mobilization; maintenance of organization'', 8499 ''Air National Guard in Federal service: status'', 8500 ''Air National Guard in Federal service: call'', 8501 ''Air National Guard in Federal service: period of service; apportionment'', and 8502 ''Air National Guard in Federal service: physical examination''.

1980—Pub. L. 96–513, title V, § 504(13), Dec. 12, 1980, 94 Stat. 2917, struck out items 8494 ''Commissioned officers: grade in which ordered to active duty'' and 8504 ''Retired commissioned officers: status''.

1968—Pub. L. 90–235, § 1(a)(4), Jan. 2, 1968, 81 Stat. 753, struck out item 8492 ''Members: service extension during war''.

1967—Pub. L. 90–130, § 1(29)(B), Nov. 8, 1967, 81 Stat. 382, struck out '': limitations; grade'' after ''Retired members'' in item 8504.

1958—Pub. L. 85–861, § 1(181)(B), Sept. 2, 1958, 72 Stat. 1533, added item 8494.

§ 8491. Non-regular officers: status

A commissioned officer of the Air Force, other than of the Regular Air Force, who is on active duty in any commissioned grade has the rights and privileges, and is entitled to the benefits, provided by law for a commissioned officer of the Air Force Reserve—

(1) whose reserve grade is that in which the officer not of the Regular Air Force is serving;

(2) who has the same length of service as the officer not of the Regular Air Force; and

(3) who is on active duty in his reserve grade.

(Aug. 10, 1956, ch. 1041, 70A Stat. 524.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8491	10:506d(h).	Aug. 7, 1947, ch. 512, § 515(h), 61 Stat. 908.

The first 12 words are substituted for 10:506d(h) (1st 11 words). The words ''has the rights and privileges, and is entitled to the benefits'' are substituted for the words ''shall be entitled * * * to the same rights, privileges, and benefits''. Clause (1) is substituted for the words ''in a grade the same as such 'active-duty grade' ''. The words ''as the officer not of the Regular Air Force'' are substituted for the words ''holding appointment in the Army Reserve''. The words ''his reserve grade'' are substituted for the words ''the grade held in the Army''.

[§ 8492. Repealed. Pub. L. 90–235, § 1(a)(2), Jan. 2, 1968, 81 Stat. 753]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 524, provided for extension of active service of Air Force members during war. See section 671a of this title.

[§ 8494. Repealed. Pub. L. 96–513, title II, § 209(a), Dec. 12, 1980, 94 Stat. 2884]

Section, added Pub. L. 85–861, § 1(181)(A), Sept. 2, 1958, 72 Stat. 1532; amended Pub. L. 86–559, § 1(63), June 30,

1960, 74 Stat. 278, provided that a reserve commissioned officer who is ordered to active duty be ordered to that duty in his reserve grade unless the Secretary of the Air Force orders him to active duty, other than for training, in a higher temporary grade and authorized a reserve commissioned officer who is selected for participation in a program under which he will be ordered to active duty for at least one academic year at a civilian school or college to be ordered, upon his request, to that duty in a temporary grade that is lower than his reserve grade, without affecting his reserve grade. See section 12320 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 8495 to 8502. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(f)(2), Oct. 5, 1994, 108 Stat. 2994]

Section 8495, act Aug. 10, 1956, ch. 1041, 70A Stat. 524, provided that members of Air National Guard of United States were not in active Federal service except when ordered thereto under law. See section 12401 of this title.

Section 8496, act Aug. 10, 1956, ch. 1041, 70A Stat. 524, authorized President to order commissioned officers of Air National Guard of United States to active duty in National Guard Bureau. See section 12402(a), (b)(2) of this title.

Section 8497, act Aug. 10, 1956, ch. 1041, 70A Stat. 525, provided that members of Air National Guard of United States ordered to active duty were to be ordered to duty as Reserves of Air Force. See section 12403 of this title.

Section 8498, act Aug. 10, 1956, ch. 1041, 70A Stat. 525, related to organization during initial mobilization of units of Air National Guard of United States ordered into active Federal service. See section 12404 of this title.

Section 8499, act Aug. 10, 1956, ch. 1041, 70A Stat. 525, related to application of laws governing Air Force to members of Air National Guard called into Federal service. See section 12405 of this title.

Section 8500, acts Aug. 10, 1956, ch. 1041, 70A Stat. 525; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, authorized President to call Air National Guard units and members into Federal service. See section 12406 of this title.

Section 8501, acts Aug. 10, 1956, ch. 1041, 70A Stat. 525; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, § 1234(a)(1), 102 Stat. 2059, related to period of service and apportionment of members and units of Air National Guard called into Federal service. See section 12407 of this title.

Section 8502, act Aug. 10, 1956, ch. 1041, 70A Stat. 526, related to physical examinations of members of Air National Guard called into or mustered out of Federal service. See section 12408 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 8503. Retired commissioned officers: status

A retired commissioned officer of the Air Force who is on active duty is considered, for all purposes except promotion, to be an officer of the organization to which he is assigned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 526.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8503	10:999.	July 9, 1918, ch. 143, subch. XX (2d par.), 40 Stat. 893.

The words ''and shall be an extra number therein'' are omitted, since, in the opinion of the Judge Advocate General of the Army (JAG 210.85, Feb. 21, 1923), they were repealed by the Act of July 31, 1935, ch. 422, 49 Stat. 505. The words ''in the discretion of the President, employed * * * assigned to duty'' are omitted as surplusage. The words ''arms, corps, department'' are omitted, since the Air Force does not have organic corps created by statute.

[§ 8504. Repealed. Pub. L. 96–513, title II, § 210, Dec. 12, 1980, 94 Stat. 2884]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 526; Nov. 8, 1967, Pub. L. 90–130, § 1(29), 81 Stat. 382, authorized President to order any retired member of Regular Air Force to active duty and assign him duties considered necessary in interests of national defense. See section 688 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 843—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
[8531 to 8542. Repealed.]
8543. Aides: detail; number authorized.
[8544 to 8546. Repealed.]
8547. Duties: chaplains; assistance required of commanding officers.
8548. Duties: warrant officers; limitations.
[8549. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, § 1674(b)(5), Oct. 5, 1994, 108 Stat. 3016, struck out items 8541 ''National Guard Bureau: assignment of officers of regular or reserve components'' and 8542 ''Chief and assistant chief of staff of wings of Air National Guard in Federal service: detail''.

1991—Pub. L. 102–190, div. A, title V, § 531(a)(2), Dec. 5, 1991, 105 Stat. 1365, struck out item 8549 ''Duties: female members; limitations''.

1980—Pub. L. 96–513, title V, § 504(14), Dec. 12, 1980, 94 Stat. 2917, struck out item 8531 ''Chief of Staff to President: appointment''.

1968—Pub. L. 90–235, § 4(a)(11), (b)(4), Jan. 2, 1968, 81 Stat. 760, struck out item 8537 ''Department of Commerce: detail in aid of civil aviation'', item 8544 ''Duties: regular officers; performance of civil functions restricted'', and item 8545 ''Duties: officers; superintendence of cooking for enlisted members''.

1964—Pub. L. 88–647, title III, § 301(24), Oct. 13, 1964, 78 Stat. 1073, struck out item 8540 ''Educational institutions: detail of members of regular or reserve components as professors and instructors in air science and tactics''.

1958—Pub. L. 85–861, § 1(182), Sept. 2, 1958, 72 Stat. 1533, struck out item 8546 ''Duties: medical officers, contract surgeons; attendance on families of members''.

[§ 8531. Repealed. Pub. L. 96–513, title II, § 233(b), Dec. 12, 1980, 94 Stat. 2887]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 526, authorized President, by and with consent of Senate, to appoint a general officer of Air Force as Chief of Staff to President, which officer, unless entitled to rank,

pay, and allowances of a grade above lieutenant general under another provision of law, is entitled to rank, pay, and allowances of a general, and is in addition to number otherwise authorized for that grade.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8537. Repealed. Pub. L. 90–235, § 4(b)(1), Jan. 2, 1968, 81 Stat. 760]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 526, provided for detail of Air Force officers to duty under Secretary of Commerce in connection with promotion of civil aviation.

[§ 8540. Repealed. Pub. L. 88–647, title III, § 301(23), Oct. 13, 1964, 78 Stat. 1073]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 527, related to detail of members of regular or reserve components as professors and instructors in air science and tactics. See section 2111 of this title.

[§§ 8541, 8542. Repealed. Pub. L. 103–337, div. A, title XVI, §§ 1661(c)(2), 1662(g)(2), Oct. 5, 1994, 108 Stat. 2982, 2996]

Section 8541, act Aug. 10, 1956, ch. 1041, 70A Stat. 527, authorized President to assign regular and reserve Air Force officers to National Guard Bureau. See section 10507 of this title.

Section 8542, act Aug. 10, 1956, ch. 1041, 70A Stat. 527, authorized President to detail certain officers as chief and assistant chief of staff of wings of Air National Guard in Federal service. See section 12502(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 8543. Aides: detail; number authorized

(a) Each major general of the Air Force is entitled to three aides selected by him from commissioned officers of the Air Force in any grade below major.

(b) Each brigadier general of the Air Force is entitled to two aides selected by him from commissioned officers of the Air Force in any grade below captain.

(Aug. 10, 1956, ch. 1041, 70A Stat. 527.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8543(a)	10:498 (1st 20 words).	R.S. 1098.
8543(b)	10:498 (less 1st 20 words).	

In subsection (a), the words ''commissioned officers * * * in any grade below major'' are substituted for the words ''captains or lieutenants''.

In subsections (a) and (b), the words ''is entitled to'' are substituted for the words ''shall have''.

In subsection (b), the words ''commissioned officers in any grade below captain'' are substituted for the word ''lieutenants''.

[§§ 8544, 8545. Repealed. Pub. L. 90–235, § 4(a)(6), (b)(1), Jan. 2, 1968, 81 Stat. 759, 760]

Section 8544, act Aug. 10, 1956, ch. 1041, 70A Stat. 527, restricted performance of civil functions by commissioned officers of Regular Air Force. See section 973 of this title.

Section 8545, act Aug. 10, 1956, ch. 1041, 70A Stat. 528, provided that cooking for enlisted members of Air Force should be superintended by officers of organizations to which members belonged.

[§ 8546. Repealed. Pub. L. 85–861, § 36B(26), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 528, required medical officers and contract surgeons to attend families of members of Air Force.

§ 8547. Duties: chaplains; assistance required of commanding officers

(a) Each chaplain shall, when practicable, hold appropriate religious services at least once on each Sunday for the command to which he is assigned, and shall perform appropriate religious burial services for members of the Air Force who die while in that command.

(b) Each commanding officer shall furnish facilities, including necessary transportation, to any chaplain assigned to his command, to assist the chaplain in performing his duties.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8547(a)	10:238.	R.S. 1125.
8547(b)	10:239.	R.S. 1127.
	[Uncodified: Feb. 2, 1901, ch. 192, § 12 (last sentence), 31 Stat. 750].	Feb. 2, 1901, ch. 192, § 12 (last sentence), 31 Stat. 750.

In subsection (a), the words ''members of the Air Force'' are substituted for the words ''officers and soldiers''.

In subsection (b), the words ''regiments, hospitals, and posts'', in 10:239, are omitted, since at the time of the enactment of section 1127 of the Revised Statutes, chaplains were authorized only for regiments, hospitals, and posts. The revised section preserves the broad coverage of the original statute. The words ''each commanding officer shall'' are substituted for the words ''It shall be the duty of commanders'', in 10:239. The word ''furnish'' is substituted for the words ''to afford'', in 10:239. The words ''including necessary transportation'' are substituted for the last sentence of section 12 of the Act of February 2, 1901, ch. 192, 31 Stat. 750. The words ''his command'' are substituted for the words ''the same'', in 10:239. The words ''to assist'' are substituted for the words ''as may aid them'', in 10:239.

§ 8548. Duties: warrant officers; limitations

Under regulations prescribed by the President, a warrant officer may be assigned to perform duties that necessarily include those normally performed by a commissioned officer.

(Aug. 10, 1956, ch. 1041, 70A Stat. 528.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8548	10:593 (1st sentence).	Aug. 21, 1941, ch. 384, § 4 (1st sentence), 55 Stat. 653.

10:593 (1st sentence, less provisos) is omitted as superseded by section 8012(e) of this title. 10:593 (last proviso) is omitted as covered by section 936(a)(4) of this title (article 136(a)(4) of the Uniform Code of Military Justice). The words ''may be assigned'' are substituted for the words ''shall be vested with power to''.

[§ 8549. Repealed. Pub. L. 102–190, div. A, title V, § 531(a)(1), Dec. 5, 1991, 105 Stat. 1365]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 528, prohibited assignment of female members, except those designated under section 8067, to duty in aircraft engaged in combat missions.

CHAPTER 845—RANK AND COMMAND

Sec.
[8571. Repealed.]
8572. Rank: commissioned officers serving under temporary appointments.
[8573, 8574. Repealed.]
8575. Rank: warrant officers.
[8576 to 8578. Repealed.]
8579. Command: commissioned officers in certain designated categories.
[8580. Repealed.]
8581. Command: chaplains.
[8582. Repealed.]
8583. Requirement of exemplary conduct.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, § 507(b)(2), Nov. 18, 1997, 111 Stat. 1727, added item 8583.

1980—Pub. L. 96–513, title V, § 504(15), Dec. 12, 1980, 94 Stat. 2917, struck out items 8571 ''Rank: commissioned officers on active duty'', 8573 ''Rank: commissioned officers in regular grades of brigadier general and major general; seniority list'', 8574 ''Rank: commissioned officers in regular grades below brigadier general'', and 8582 ''Command: retired officers''.

1974—Pub. L. 93–525, Dec. 18, 1974, 88 Stat. 1695, struck out item 8577 ''Command: flying units''.

1968—Pub. L. 90–235, § 5(a)(5), Jan. 2, 1968, 81 Stat. 761, struck out items 8576 ''Command: when different commands of Air Force and Marine Corps join'', and 8578 ''Command, commissioned officers of Air Force in same grade on duty at same place''.

1967—Pub. L. 90–130, § 1(30), Nov. 8, 1967, 81 Stat. 382, struck out item 8580 ''Command: female members of Air Force''.

[§ 8571. Repealed. Pub. L. 96–513, title II, § 211, Dec. 12, 1980, 94 Stat. 2885]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 528; Sept. 2, 1958, Pub. L. 85–861, §§ 1(183), 33(a)(41), 72 Stat. 1533, 1566; June 30, 1960, Pub. L. 86–559, § 1(64), 74 Stat. 278, provided that commissioned officers of Air Force on active duty in same grade rank themselves according to date of rank and specified procedures for determining date of rank. See section 741 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8572. Rank: commissioned officers serving under temporary appointments

The President may, in accordance with the needs of the Air Force, adjust dates of rank of commissioned officers of the Air Force serving in temporary grades.

(Aug. 10, 1956, ch. 1041, 70A Stat. 529.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8572	10:506d(c) (last sentence).	Aug. 7, 1947, ch. 512, § 515(c) (last sentence), 61 Stat. 907.

The word ''commissioned'' is inserted for clarity, since the source statute related only to commissioned officers. The words ''in his discretion, from time to time'' are omitted as surplusage.

[§§ 8573, 8574. Repealed. Pub. L. 96–513, title II, § 211, Dec. 12, 1980, 94 Stat. 2885]

Section 8573, act Aug. 10, 1956, ch. 1041, 70A Stat. 529, specified date of rank of an officer whose regular grade is brigadier general and date of rank of an officer whose regular grade is major general and provided that names of general officers of Regular Air Force be carried on a seniority list in order of seniority in both regular grade and date of rank. See section 741 of this title.

Section 8574, acts Aug. 10, 1956, ch. 1041, 70A Stat. 530; Sept. 2, 1958, Pub. L. 85–861, §§ 1(184), 33(a)(24), 72 Stat. 1533, 1565, provided for determination of rank of commissioned officers of same grade in Regular Air Force who are on same promotion list, rank of commissioned officers of same grade in Regular Air Force who are not on same promotion list or not on a promotion list, and rank among graduates of each class at United States Military, Naval, or Air Force Academies who, upon graduation, are appointed to Regular Air Force. See section 741 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8575. Rank: warrant officers

Warrant officers rank next below second lieutenants and rank among themselves within each warrant officer grade under regulations to be prescribed by the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 530.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8575	10:593 (less 1st sentence).	Aug. 21, 1941, ch. 384, § 4 (less 1st sentence), 55 Stat. 653; May 29, 1954, ch. 249, § 19(e), 68 Stat. 167.

10:593 (2d sentence) is omitted as executed. The words ''within each warrant officer grade'' are inserted for clarity, since section 745 of this title covers rank between warrant officers in different warrant officer grades. The words ''they shall take precedence'' are omitted as surplusage.

[§ 8576. Repealed. Pub. L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 530, provided for command when different commands of Air Force and Marine Corps joined or served together. See section 747 of this title.

[§ 8577. Repealed. Pub. L. 93–525, Dec. 18, 1974, 88 Stat. 1695]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 530, provided for the command of flying units by commissioned officers of Air Force who had received aeronautical ratings as pilots of service types of aircraft.

[§ 8578. Repealed. Pub. L. 90–235, § 5(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 530, provided for command when two or more commissioned officers of Air Force in same grade were on duty at same place. See section 749 of this title.

§ 8579. Command: commissioned officers in certain designated categories

An officer designated as a medical, dental, veterinary, medical service, or biomedical sciences officer or as a nurse is not entitled to exercise command because of rank, except within the categories prescribed in subsection (a), (b), (c), (d), (e), (f), or (i) of section 8067 of this title, or over persons placed under his charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 531; Pub. L. 85–861, § 1(156), (185), Sept. 2, 1958, 72 Stat. 1513, 1533; Pub. L. 96–513, title II, § 212(b), Dec. 12, 1980, 94 Stat. 2885.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8579(a)	10:82.	R.S. 1169.
8579(b)	10:166e (less 1st sentence).	Apr. 16, 1947, ch. 38, § 106 (less 1st sentence), 61 Stat. 44.

In subsection (a), the words ''Except as provided in section 94 of this title'', not contained in section 1169 of the Revised Statutes, but contained in the United States Code, are omitted as surplusage, since 10:94 deals exclusively with assignments. The words ''except within the categories prescribed in section 8067(a)–(d) of this title'' are substituted for the words ''in the line or in other staff corps''. Air Force nurses and women medical specialists are not covered by subsection (a), since their command authority is specifically stated in subsection (b).

In subsection (b), the words ''may exercise command only'' are substituted for the words ''shall not be entitled * * * to command except''. The words ''by virtue of their rank'' and ''by competent authority'' are omitted as surplusage. 10:166(e) (last 22 words of last sentence) is omitted as superseded by section 8012(e) of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8579(b)	10 App.:166b–3.	Aug. 9, 1955, ch. 654, § 1, 69 Stat. 579.

This amendment reflects the authority contained in section 8067(e) and (f) of this title to appoint male reserve officers with a view to designation as Air Force nurses or medical specialists.

AMENDMENTS

1980—Pub. L. 96–513 substituted provision prohibiting an officer designated as a medical, dental, veterinary, medical service, or biomedical sciences officer or as a nurse from exercising command because of rank, except within the categories prescribed in section 8067(a) to (f) or (i) of this title, or over persons placed under his charge for provision prohibiting an officer designated as a medical, dental, veterinary, or medical service officer from exercising command because of rank, except within categories prescribed in section 8067(a) to (d) of this title, and authorizing an Air Force nurse or medical specialist to exercise command only within his category, or over persons placed under his charge.

1958—Subsec. (b). Pub. L. 85–861 struck out ''woman'' before ''medical specialist'', and substituted ''his'' for ''her'' in two places.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

[§ 8580. Repealed. Pub. L. 90–130, § 1(30), Nov. 8, 1967, 81 Stat. 382]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided that Secretary of Air Force should prescribe military authority that female members of Air Force, except those designated under section 8067 of this title to perform professional functions, might exercise.

§ 8581. Command: chaplains

An officer designated as a chaplain has rank without command.

(Aug. 10, 1956, ch. 1041, 70A Stat. 531.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8581	10:235.	R.S. 1122.

The words ''and shall be on the same footing with other officers of the Army, as to tenure of office, retirement, and pensions'' are omitted as obsolete, since there is no distinction between the status of a chaplain as an officer and the status of other officers of the Air Force.

[§ 8582. Repealed. Pub. L. 96–513, title II, § 211, Dec. 12, 1980, 94 Stat. 2885]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided that a retired officer has no right to command except when on active duty. See section 750 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8583. Requirement of exemplary conduct

All commanding officers and others in authority in the Air Force are required—

(1) to show in themselves a good example of virtue, honor, patriotism, and subordination;

(2) to be vigilant in inspecting the conduct of all persons who are placed under their command;

(3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Air Force, all persons who are guilty of them; and

(4) to take all necessary and proper measures, under the laws, regulations, and customs of the Air Force, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

(Added Pub. L. 105–85, div. A, title V, § 507(b)(1), Nov. 18, 1997, 111 Stat. 1727.)

[CHAPTER 847—REPEALED]

[§§ 8611, 8612. Repealed. Pub. L. 90–235, § 8(2), Jan. 2, 1968, 81 Stat. 764]

Section 8611, act Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided that President could prescribe uniform of Air Force.

Section 8612, act Aug. 10, 1956, ch. 1041, 70A Stat. 531, provided for disposition of uniforms of enlisted members of Air Force who were discharged and for disposition of uniforms of and issuance of civilian clothing to enlisted members of Air Force who were discharged otherwise than honorably.

CHAPTER 849—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[8631 to 8633. Repealed.]
8634. Air Force band: may not be paid for performance outside air base.
[8635 to 8638. Repealed.]
8639. Enlisted members: officers not to use as servants.

AMENDMENTS

1980—Pub. L. 96–513, title V, §514(4), Dec. 12, 1980, 94 Stat. 2935, struck out items 8632 ''Members of Air Force: forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs'', 8633 ''Commissioned officers: forfeiture of pay when dropped from rolls'', and 8636 ''Enlisted members: pay and allowances not to accrue during suspended sentence of dishonorable discharge''.

1968—Pub. L. 90–235, §§6(a)(10), 7(b)(5), Jan. 2, 1968, 81 Stat. 762, 763, struck out items 8631 ''Dealing in quartermaster supplies prohibited'', 8635 ''Enlisted members: restriction on civilian employment'', and 8637 ''Enlisted members: forfeiture of right to pension by deserters''.

1958—Pub. L. 85–861, §§1(186), 33(a)(40), Sept. 2, 1958, 72 Stat. 1533, 1566, substituted ''8632'' for ''8362'' in item 8632, and struck out item 8638 ''Enlisted members: required to make up time lost''.

[§ 8631. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 532, prohibited any officer of Air Force who was engaged in procurement or sale of quartermaster supplies from dealing in said supplies.

[§§ 8632, 8633. Repealed. Pub. L. 87–649, § 14c(54), (55), Sept. 7, 1962, 76 Stat. 501, 502]

Sections, act Aug. 10, 1946, ch. 1041, 70A Stat. 532, provided for forfeiture of pay during absence from duty due to disease from intemperate use of alcohol or drugs, and for forfeiture when dropped from rolls. See sections 802 and 803 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

§ 8634. Air Force band: may not be paid for performance outside air base

(a) PROHIBITION.—Except as provided in subsection (b), no Air Force band or member thereof may receive remuneration for furnishing music outside the limits of an air base in competition with local civilian musicians.

(b) RECORDINGS.—(1) Any Air Force band designated as a special band may produce recordings for commercial sale.

(2) Amounts received as proceeds from the sale of any such recordings may be credited to applicable appropriations of the Department of the Air Force for expenses of Air Force bands.

(3) The Secretary of the Air Force shall prescribe regulations governing the accounting of such proceeds.

(Aug. 10, 1956, ch. 1041, 70A Stat. 532; Pub. L. 101–510, div. A, title III, §327(c), Nov. 5, 1990, 104 Stat. 1532.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8634	10:905.	May 11, 1908, ch. 163, 35 Stat. 110.

The last six words are substituted for 10:905 (last 14 words).

AMENDMENTS

1990—Pub. L. 101–510 designated existing provisions as subsec. (a), inserted heading, substituted ''Except as provided in subsection (b), no'' for ''No'', and added subsec. (b).

AMERICAN REVOLUTION BICENTENNIAL; RECORDINGS FOR COMMERCIAL SALE

Authorization for Air Force Band to participate in the production of a collection of recordings for commercial sale in connection with the American Revolution Bicentennial, and for Secretary of Defense to enter into contracts for the production and sale of the collection of recordings, see Pub. L. 93–571, Dec. 31, 1974, 88 Stat. 1868, set out as a note under section 3634 of this title.

[§ 8635. Repealed. Pub. L. 90–235, § 6(a)(7), Jan. 2, 1968, 81 Stat. 762]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 532, set forth restrictions on civilian employment for enlisted members of Air Force on active duty. See section 974 of this title.

[§ 8636. Repealed. Pub. L. 87–649, § 14c(56), Sept. 7, 1962, 76 Stat. 502]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, provided that pay and allowances do not accrue to an enlisted member of Air Force who is in confinement under sentence of dishonorable discharge, while execution of sentence to discharge is suspended. See section 858b of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 8637. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, provided that an enlisted member of Air Force who deserted forfeited all rights to a pension.

[§ 8638. Repealed. Pub. L. 85–861, § 36B(27), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, required enlisted members to make up time lost. See section 972(a) of this title.

§ 8639. Enlisted members: officers not to use as servants

No officer of the Air Force may use an enlisted member of the Air Force as a servant.

(Aug. 10, 1956, ch. 1041, 70A Stat. 533.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8639	10:608.	R.S. 1232.

The words ''in any case whatever'' are omitted as surplusage.

[CHAPTER 851—REPEALED]

[§§ 8662, 8663. Repealed. Pub. L. 90–377, § 6(3), July 5, 1968, 82 Stat. 288]

Section 8662, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, provided for military training, organization, and equipping of prisoners who have been sent to United States Disciplinary Barracks.

Section 8663, act Aug. 10, 1956, ch. 1041, 70A Stat. 533, authorized Secretary of Air Force to parole or remit sentence and restore to duty offenders who are confined in the United States Disciplinary Barracks.

CHAPTER 853—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
8681. Presentation of United States flag upon retirement.
[8682, 8683. Repealed.]
8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service.
[8685 to 8690. Repealed.]
8691. Flying officer rating: qualifications.
[8692, 8693. Repealed.]

AMENDMENTS

1998—Pub. L. 105–261, div. A, title VI, § 644(c)(2), Oct. 17, 1998, 112 Stat. 2049, added item 8681.

1994—Pub. L. 103–337, div. A, title XVI, § 1674(b)(6), Oct. 5, 1994, 108 Stat. 3016, struck out item 8686 ''Members of Air National Guard of United States: credit for service as members of Air National Guard''.

1986—Pub. L. 99–661, div. A, title VI, § 604(f)(1)(B)(iv), Nov. 14, 1986, 100 Stat. 3877, struck out item 8687 ''Compensation: members of Air Force other than of regular Air Force; when same as that provided for members of Regular Air Force''.

1985—Pub. L. 99–145, title XIII, § 1301(d)(1)(B), Nov. 8, 1985, 99 Stat. 736, struck out item 8683 ''Service credit: certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department to be counted''.

1980—Pub. L. 96–513, title V, § 514(5), Dec. 12, 1980, 94 Stat. 2935, struck out item 8689 ''Assignments and allotments of pay''.

1971—Pub. L. 92–168, § 3(2), Nov. 24, 1971, 85 Stat. 489, struck out item 8692 ''Pilot rating in time of peace: qualifications''.

1968—Pub. L. 90–235, §§ 6(a)(5), 7(a)(6), (b)(6), Jan. 2, 1968, 81 Stat. 762, 763, struck out items 8682 ''Service credit: officers; service as cadet not counted'', 8685 ''Regular Air Force; Air Force Reserve: female members; definition of 'dependents' '', 8690 ''Exemption from arrest for debt: enlisted members'', and 8693 ''Replacement of certificates of discharge''.

1958—Pub. L. 85–861, § 1(189), Sept. 2, 1958, 72 Stat. 1534, struck out items 8681 ''Air Force Register: Regular Air Force officers; service to be listed'' and 8688 ''Death gratuity''.

§ 8681. Presentation of United States flag upon retirement

(a) PRESENTATION OF FLAG.—Upon the release of a member of the Air Force from active duty for retirement, the Secretary of the Air Force shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for a presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 105–261, div. A, title VI, § 644(c)(1), Oct. 17, 1998, 112 Stat. 2049; amended Pub. L. 106–65, div. A, title VI, § 652(e), Oct. 5, 1999, 113 Stat. 666.)

PRIOR PROVISIONS

A prior section 8681, act Aug. 10, 1956, ch. 1041, 70A Stat. 534, prescribed service to be listed in official Air Force Register, prior to repeal by Pub. L. 85–861, § 36B(28), Sept. 2, 1958, 72 Stat. 1571.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''under this section or any other provision of law providing for the presentation of a United States flag incident to release from active service for retirement.'' for ''under this section or section 3681 or 6141 of this title or section 516 of title 14.''

EFFECTIVE DATE

Section applicable with respect to releases from active duty described in this section, sections 3681 and 6141 of this title, and section 516 of Title 14, Coast Guard, on or after Oct. 1, 1998, see section 644(e) of Pub. L. 105–261, set out as a note under section 3681 of this title.

[§ 8682. Repealed. Pub. L. 90–235, § 6(a)(2), Jan. 2, 1968, 81 Stat. 761]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 535, provided that in computing length of service, no commissioned officer of Air Force could be credited with service as a cadet at the Military Academy or the Air Force Academy, or as a midshipman at the Naval Academy, if he was appointed as a cadet or midshipman after Aug. 24, 1912. See section 971 of this title.

[§ 8683. Repealed. Pub. L. 99–145, title XIII, § 1301(d)(1)(A), Nov. 8, 1985, 99 Stat. 736]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 535; Sept. 2, 1958, Pub. L. 85–861, § 1(156), 72 Stat. 1513; Aug. 25, 1959, Pub. L. 86–197, § 1(7), 73 Stat. 426, related to service credit for certain service as a nurse, woman medical specialist, or civilian employee of Army Medical Department.

PERSON PERFORMING ACTIVE SERVICE ON DAY BEFORE REPEAL OF SECTION

Section 1301(d)(1)(C) of Pub. L. 99–145 provided that: ''The repeal made by subparagraph (A) [repealing this section] shall not apply in the case of a person who performed active service described in section 8683 of title 10, United States Code, as such section was in effect on the day before the date of the enactment of this Act [Nov. 8, 1985].''

§ 8684. Service credit: regular enlisted members; service as an officer to be counted as enlisted service

An enlisted member of the Regular Air Force is entitled to count active service as an officer in the Air Force, and in the Army, as enlisted service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 535.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8684	10:631a (last proviso).	July 14, 1939, ch. 267, § 1 (last proviso); restated May 29, 1954, ch. 249, § 19(b) (last proviso), 68 Stat. 166.

[§ 8685. Repealed. Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 535; Sept. 2, 1958, Pub. L 85–861, §1(187), 72 Stat. 1534, set forth restrictions on consideration of a husband or child as dependent of a female member of Regular Air Force, Air National Guard of the United States or Air Force Reserve.

[§ 8686. Repealed. Pub. L. 103–337, div. A, title XVI, § 1662(g)(2), Oct. 5, 1994, 108 Stat. 2996]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 536; Sept. 24, 1980, Pub. L. 96–357, §5(a), 94 Stat. 1182; Oct. 19, 1984, Pub. L. 98–525, title IV, §414(a)(7)(B), 98 Stat. 2519, related to credit to members of Air National Guard of United States for service as members of Air National Guard. See section 12602 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8687. Repealed. Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 536; Sept. 2, 1958, Pub. L. 85–861, §1(188), 72 Stat. 1534; Sept. 7, 1962, Pub. L. 87–649, §6(d), 76 Stat. 494, related to compensation for members of Air Force other than Regular Air Force.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as an Effective Date of 1986 Amendment note under section 1074a of this title.

[§ 8688. Repealed. Pub. L. 85–861, § 36B(29), Sept. 2, 1958, 72 Stat. 1571]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 536, related to death gratuity payable to survivors of members of Air Force. See sections 1475 to 1480 of this title.

[§ 8689. Repealed. Pub. L. 87–649, § 14c(57), Sept. 7, 1962, 76 Stat. 502]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 537; Sept. 26, 1961, Pub. L. 87–304, §9(d), 75 Stat. 665, related to assignments and allotments of pay. See section 701 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

[§ 8690. Repealed. Pub. L. 90–235, § 7(b)(1), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 538, exempted enlisted members of Air Force, while on active duty, from arrest for any debt, unless it was contracted before enlistment and amounted to at least $20 when first contracted.

§ 8691. Flying officer rating: qualifications

Only officers of the Air Force in the following categories may be rated as flying officers:

(1) Officers who have aeronautical ratings as pilots of service types of aircraft or as aircraft observers.

(2) Flight surgeons.

(3) Officers undergoing flight training.

(4) Officers who are members of combat crews, other than pilots of service types of aircraft, aircraft observers, and observers.

(5) In time of war, officers who have aeronautical ratings as observers.

(Aug. 10, 1956, ch. 1041, 70A Stat. 538.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8691	10:291c. 10:291c–1. 10:291e.	June 3, 1916, ch. 134, §13a (8th, 9th, and 11th provisos); added July 2, 1926, ch. 721, §2 (4th sentence, less 2d proviso), 44 Stat. 781; June 16, 1936, ch. 587, §3, 49 Stat. 1524; Oct. 4, 1940, ch. 742 (last proviso), 54 Stat. 963. June 24, 1948, ch. 632 (2d proviso under ''Finance Department''), 62 Stat. 650.

10:291c (proviso) and the words ''after June 30, 1948'', in 10:291c–1, are omitted as executed. The definition of the term ''flying officer'', in 10:291c, originally was a definition of the term ''flying officer in time of peace'' as provided by section 2 of the Act of July 2, 1926, ch. 721, 44 Stat. 781. Section 1 of the Act of October 4, 1940, ch. 742, 54 Stat. 963, eliminated the words ''in time of peace''. As a consequence of that amendment, 10:291e (1st 26 words) is omitted as surplusage. Clause (2) is substituted for 10:291c–1 (less last 10 words). The words ''commissioned officers or warrant'', in 10:291c–1, are omitted as surplusage. In clause (4), the last 19 words are substituted for the words ''any other''.

[§ 8692. Repealed. Pub. L. 92–168, § 3(1), Nov. 24, 1971, 85 Stat. 489]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 538, provided qualifications to receive a rating of pilot in time of peace. See section 2003 of this title.

[§ 8693. Repealed Pub. L. 90–235, § 7(a)(3), Jan. 2, 1968, 81 Stat. 763]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 538, provided for replacement of a lost or destroyed certificate of discharge from Air Force. See section 1040 of this title.

CHAPTER 855—HOSPITALIZATION

Sec.
[8721, 8722. Repealed.]
8723. When Secretary may require.

AMENDMENTS

1986—Pub. L. 99–661, div. A, title VI, §604(f)(1)(B)(v), Nov. 14, 1986, 100 Stat. 3877, struck out item 8721 ''Members of Air Force, other than of Regular Air Force'' and item 8722 ''Members of C.A.T.C.; members of Air Force not covered by section 8721 of this title''.

1958—Pub. L. 85–861, §1(190)(D), Sept. 2, 1958, 72 Stat. 1534, struck out reference to members of the A.F.R.O.T.C. in item 8722.

[§§ 8721, 8722. Repealed. Pub. L. 99–661, div. A, title VI, § 604(f)(1)(A), Nov. 14, 1986, 100 Stat. 3877]

Section 8721, acts Aug. 10, 1956, ch. 1041, 70A Stat. 538; Sept. 2, 1958, Pub. L. 85–861, §1(190)(A), 72 Stat. 1534, related to hospital benefits for members of Air Force, other than of Regular Air Force.

Section 8722, acts Aug. 10, 1956, ch. 1041, 70A Stat. 539; Sept. 2, 1958, Pub. L. 85–861, §1(190)(B), (C), 72 Stat. 1534,

related to hospital and related benefits for members of a Citizens' Air Training Camp and for members of Air Force not covered by section 8721 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as an Effective Date of 1986 Amendment note under section 1074a of this title.

§ 8723. When Secretary may require

The Secretary of the Air Force may order the hospitalization, medical and surgical treatment, and domiciliary care for as long as necessary, of any member of the Air Force on active duty, and may incur obligations with respect thereto, whether or not the member incurred an injury, illness, or disease in line of duty, except in the case of a member treated in a private hospital, or by a civilian physician, while on leave of absence for more than 24 hours.

(Aug. 10, 1956, ch. 1041, 70A Stat. 539; Pub. L. 99–661, div. A, title VI, § 604(f)(1)(D), Nov. 14, 1986, 100 Stat. 3878; Pub. L. 100–26, § 7(j)(11), Apr. 21, 1987, 101 Stat. 283.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8723	10:455e. 32:164d.	July 15, 1939, ch. 282; restated Oct. 14, 1940, ch. 875, § 5, 54 Stat. 1137.

The words ''under such regulations as he may prescribe'', in 10:455e and 32:164d, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The references to 10:455a–455d and 32:164a–164c, and the words ''nor any other law of the United States shall be construed as limiting the power and authority'', are omitted, since the revised section makes explicit the authority of the Secretary to require the prescribed hospitalization and care. The words ''or in training, under the provisions of sections 62—'' are omitted as covered by the words ''active duty''. The words ''so long as any or all are necessary'' and ''in the active military service'' are omitted as surplusage. With the exception of 32:62 (4th proviso of last sentence), the references to 32:62–65, 144–146, 183, and 186, in 10:455e and 32:164d, do not refer to members of the Air National Guard of the United States and are therefore omitted from the revised section. 10:455e (1st proviso) and 32:164d (1st proviso) are omitted, since they apply only to the National Guard and are covered by section 320 of title 32.

AMENDMENTS

1987—Pub. L. 100–26 struck out comma after ''disease''.

1986—Pub. L. 99–661 substituted ''incurred an injury, illness, or disease'' for ''was injured, or contracted a disease''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99–661, set out as a note under section 1074a of this title.

CHAPTER 857—DECORATIONS AND AWARDS

Sec.
8741. Medal of honor: award.
8742. Air Force cross: award.
8743. Distinguished-service medal: award.
8744. Medal of honor; Air Force cross; distinguished-service medal: limitations on award.
8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award.
8746. Silver star: award.
8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement.
8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations.
8749. Distinguished flying cross: award; limitations.
8750. Airman's Medal: award; limitations.
8751. Service medals: issue; replacement; availability of appropriations.
8752. Medals: posthumous award and presentation.
8754. Medal of honor: duplicate medal.
8755.[1] Medal of honor: presentation of Medal of Honor Flag.
8755.[1] Korea Defense Service Medal.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 543(d)(2), Dec. 2, 2002, 116 Stat. 2550, added item 8755 ''Korea Defense Service Medal''.

Pub. L. 107–248, title VIII, § 8143(c)(3)(B), Oct. 23, 2002, 116 Stat. 1571, added item 8755 ''Medal of honor: presentation of Medal of Honor Flag''.

2001—Pub. L. 107–107, div. A, title V, § 553(c)(1)(B), Dec. 28, 2001, 115 Stat. 1116, added item 8754.

1960—Pub. L. 86–593, § 1(7), July 6, 1960, 74 Stat. 332, substituted ''Air Force cross'' for ''distinguished-service cross'' in items 8742, 8744, and 8745, inserted ''Air Force cross;'' in items 8747 and 8748, and substituted ''Airman's Medal'' for ''Soldier's Medal'' in item 8750.

EXTENSION OF TIME FOR AWARD OF DECORATION

For extension of time for award of decorations, or devices in lieu of decorations, for acts or services performed in direct support of military operations in Southeast Asia between July 1, 1958, and Mar. 28, 1973, see Pub. L. 93–469, Oct. 24, 1974, 88 Stat. 1422, set out as a note preceding section 3741 of this title.

For extension of time for award of decoration, or device in lieu of decoration, for an act or service performed while on active duty in military or naval forces, or while serving with such forces, between June 27, 1950, and July 27, 1953, see act Aug. 2, 1956, ch. 877, 70 Stat. 933, set out as a note preceding section 3741 of this title.

MERITORIOUS SERVICE MEDAL

Establishment of, see Ex. Ord. No. 11448, set out as a note preceding section 1121 of this title.

§ 8741. Medal of honor: award

The President may award, and present in the name of Congress, a medal of honor of appropriate design, with ribbons and appurtenances, to a person who, while a member of the Air Force, distinguishes himself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an oppos-

[1] So in original. Two sections 8755 have been enacted.

ing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; Pub. L. 88–77, § 3(1), July 25, 1963, 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8741	10:1403.	July 9, 1918, ch. 143, (8th par. under ''Ordnance Department''), 40 Stat. 870.

The words ''That the provisions of existing law relating to the award of medals of honor to officers, noncommissioned officers, and privates of the Army be, and they hereby are, amended so that'', in the Act of July 9, 1918, ch. 143 (8th par. under ''Ordnance Department''), 40 Stat. 870, are not contained in 10:1403. They are also omitted from the revised section as surplusage. The word ''member'' is substituted for the words ''officer or enlisted man''. The word ''only'' is omitted as surplusage. The word ''award'' is inserted for clarity, since the President determines the recipient of the medal in addition to presenting it.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the medal of honor, which was limited to those cases in which persons distinguished themselves in action involving actual conflict with an enemy, to permit its award for distinguished service while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1074h, 8748, 8755 of this title; title 18 section 704.

§ 8742. Air Force cross: award

The President may award an Air Force cross of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, distinguishes himself by extraordinary heroism not justifying the award of a medal of honor—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; Pub. L. 86–593, § 1(1), July 6, 1960, 74 Stat. 331; Pub. L. 88–77, § 3(2), July 25, 1963, 77 Stat. 94.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8742	10:1406.	July 9, 1918, ch. 143 (9th par. under ''Ordnance Department''), 40 Stat. 870.

The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words ''since the 6th day of April, 1917'' are omitted as executed. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words ''or herself'' are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words ''or who shall hereafter distinguish'' are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 enlarged the authority to award the Air Force cross, which was limited to those cases in which persons distinguished themselves in connection with military operations against an armed enemy, to permit its award for extraordinary heroism not justifying the award of a medal of honor, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

1960—Pub. L. 86–593 substituted ''Air Force cross'' for ''Distinguished-service cross'' in section catchline, and substituted ''an Air Force cross'' for ''a distinguished-service cross'' in text.

REFERENCES TO DISTINGUISHED-SERVICE CROSS AND SOLDIER'S MEDAL CONSIDERED MADE TO AIR FORCE CROSS AND AIRMAN'S MEDAL

Section 3 of Pub. L. 86–593 provided that: ''References that other laws, regulations, and orders make, with respect to the Air Force, to the distinguished-service cross and the Soldier's Medal shall be considered to be made to the Air Force cross and the Airman's Medal, respectively.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8743. Distinguished-service medal: award

The President may award a distinguished-service medal of appropriate design and a ribbon, together with a rosette or other device to be worn in place thereof, to a person who, while serving in any capacity with the Air Force, distinguishes himself by exceptionally meritorious service to the United States in a duty of great responsibility.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8743	10:1407.	July 9, 1918, ch. 143 (10th par., less words after 1st semicolon, under ''Ordnance Department''), 40 Stat. 870.

The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The words ''since the 6th day of April, 1917'' are omitted as executed. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal, and to conform to other sections of this chapter. The words ''or herself'' are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words ''or who shall distinguish'' are omitted as surplusage.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8744. Medal of honor; Air Force cross; distinguished-service medal: limitations on award

(a) No more than one medal of honor, Air Force cross, or distinguished-service medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal or cross, the President may award a suitable bar or other device to be worn as he directs.

(b) Except as provided in subsection (d), no medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded to a person unless—

(1) the award is made within three years after the date of the act justifying the award;

(2) a statement setting forth the distinguished service and recommending official recognition of it was made within two years after the distinguished service; and

(3) it appears from records of the Department of the Air Force that the person is entitled to the award.

(c) No medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(d) If the Secretary of the Air Force determines that—

(1) a statement setting forth the distinguished service and recommending official recognition of it was made and supported by sufficient evidence within two years after the distinguished service; and

(2) no award was made, because the statement was lost or through inadvertence the recommendation was not acted on;

a medal of honor, Air Force cross, distinguished-service medal, or device in place thereof, as the case may be, may be awarded to the person concerned within two years after the date of that determination.

(Aug. 10, 1956, ch. 1041, 70A Stat. 540; Pub. L. 86–582, §1(3), July 5, 1960, 74 Stat. 320; Pub. L. 86–593, §1(2), July 6, 1960, 74 Stat. 331.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8744(a)	10:1411.	July 9, 1918, ch. 143 (12th par., less words after 2d semicolon, under ''Ordnance Department''); restated Jan. 24, 1920, ch. 55, §1 (less last sentence), 41 Stat. 398.
8744(b)	10:1409 (words before 1st semicolon).	
8744(c)	10:1409 (words after 2d semicolon).	July 9, 1918, ch. 143 (less words between 1st and 2d semicolons of 15th par. under ''Ordnance Department''), 40 Stat. 871.

In subsection (a), the words ''may be awarded to a person'' are substituted for the words ''shall be issued to any one person'' to conform to the other subsections of the revised section.

In subsection (b), the word ''thereof'' is substituted for the words ''of either of said medal or of said cross''. The words ''Except as otherwise prescribed in this section'', ''at the time of'', ''specific'', ''official'', and ''has so distinguished himself as'' are omitted as surplusage.

In subsection (c), 10:1409 (words after 3d semicolon) is omitted as executed. The words ''hereinbefore authorized'' are omitted as surplusage.

AMENDMENTS

1960—Pub. L. 86–593 substituted ''Air Force cross'' for ''distinguished-service cross'' in section catchline and wherever appearing in subsecs. (a) to (d).

Subsec. (b). Pub. L. 86–582, §1(3)(A), substituted ''Except as provided in subsection (d), no'' for ''No''.

Subsec. (d). Pub. L. 86–582, §1(3)(B), added subsec. (d).

PERSONS AWARDED DISTINGUISHED-SERVICE CROSS OR SOLDIER'S MEDAL BEFORE JULY 6, 1960

Section 2 of Pub. L. 86–593 provided that: ''For the purposes of sections 8744(a) and 8750(b) of title 10, United States Code, a person who was awarded a distinguished-service cross or Soldier's Medal before the date of enactment of this Act [July 6, 1960] shall be treated as if he had not been awarded an Air Force cross or Airman's Medal, as the case may be.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8745. Medal of honor; Air Force cross; distinguished-service medal: delegation of power to award

The President may delegate his authority to award the medal of honor, Air Force cross, and distinguished-service medal, to a commanding general of a separate air force or higher unit in the field.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 86–593, §1(3), July 6, 1960, 74 Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8745	10:1410.	July 9, 1918, ch. 143 (16th par., less words after semicolon, under ''Ordnance Department''), 40 Stat. 872.

The words ''under such conditions, regulations, and limitations as he shall prescribe'' are omitted as surplusage. The words ''his authority'' are substituted for the words ''the power conferred upon him by sections 1403, 1406–1408, 1409–1412, 1416, 1420, 1422, 1423, and 1424 of this title''.

AMENDMENTS

1960—Pub. L. 86–593 substituted ''Air Force cross'' for ''distinguished-service cross'' in section catchline and in text.

§ 8746. Silver star: award

The President may award a silver star of appropriate design, with ribbons and appurtenances, to a person who, while serving in any capacity with the Air Force, is cited for gallantry in action that does not warrant a medal of honor or Air Force cross—

(1) while engaged in an action against an enemy of the United States;

(2) while engaged in military operations involving conflict with an opposing foreign force; or

(3) while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 88–77, §3(3), July 25, 1963, 77 Stat. 95.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8746	10:1412.	July 9, 1918, ch. 143 (words after 2d semicolon of 12th par. under ''Ordnance Department''); restated Jan. 24, 1920, ch. 55, §1 (last sentence); restated Dec. 15, 1942, ch. 736, 56 Stat. 1052.

The words ''may award'' are inserted to conform to other sections of this chapter. The words ''if the person earned'' are inserted for clarity. The words ''commanded by'' are omitted as surplusage.

AMENDMENTS

1963—Pub. L. 88–77 substituted provisions permitting the issuance of a silver star for gallantry while engaged in an action against an enemy of the United States, while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, and requiring it to be of appropriate design, for provisions which authorized the issuance of the silver star for gallantry in action and which required that the silver star be three-sixteenths of an inch in diameter, the citation thereof be published in orders issued from the headquarters of a force that is the appropriate command of a general officer, and that it be worn as directed by the President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title.

§ 8747. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: replacement

Any medal of honor, Air Force cross, distinguished-service cross, distinguished-service medal, or silver star, or any bar, ribbon, rosette, or other device issued for wear with or in place of any of them, that is stolen, lost, or destroyed, or becomes unfit for use, without fault or neglect of the person to whom it was awarded, shall be replaced without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 86–593, §1(4), July 6, 1960, 74 Stat. 332; Pub. L. 107–107, div. A, title V, §553(c)(2), Dec. 28, 2001, 115 Stat. 1116.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8747	10:1416.	July 9, 1918, ch. 143 (14th par. under ''Ordnance Department''), 40 Stat. 871.

The words ''issued for wear with or in place of any of them'' are inserted for clarity. The words ''presented under the provisions of this title'' and ''such medal, cross, bar, ribbon, rosette, or device'' are omitted as surplusage.

AMENDMENTS

2001—Pub. L. 107–107 substituted ''stolen, lost,'' for ''lost''.

1960—Pub. L. 86–593 inserted ''Air Force cross'' in section catchline and in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8748 of this title; title 18 section 704.

§ 8748. Medal of honor; Air Force cross; distinguished-service cross; distinguished-service medal; silver star: availability of appropriations

The Secretary of the Air Force may spend, from any appropriation for contingent expenses of the Department of the Air Force, amounts necessary to provide medals and devices under sections 8741, 8742, 8743, 8744, 8746, 8747, and 8752 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541; Pub. L. 86–593, §1(5), July 6, 1960, 74 Stat. 332.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8748	10:1424.	July 9, 1918, ch. 143 (13th par. under ''Ordnance Department''), 40 Stat. 871.

The word ''amounts'' is substituted for the words ''so much as may be''. The word ''provides'' is substituted for the words ''defray the cost of''. The words ''medals and devices under'' are substituted for the words ''medals of honor, distinguished-service crosses, distinguished-service medals, bars, rosettes, and other devices provided for in''. The words ''from time to time'' are omitted as surplusage.

AMENDMENTS

1960—Pub. L. 86–593 inserted ''Air Force cross'' in section catchline.

§ 8749. Distinguished flying cross: award; limitations

(a) The President may award a distinguished flying cross of appropriate design with accompanying ribbon to any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism or extraordinary achievement while participating in an aerial flight.

(b) Not more than one distinguished flying cross may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a cross, the President may award a suitable bar or other device to be worn as he directs.

(c) No distinguished flying cross, or device in place thereof, may be awarded or presented to a person whose service after he distinguished himself has not been honorable.

(Aug. 10, 1956, ch. 1041, 70A Stat. 541.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8749(a)	10:1429 (less 2d and last sentences).	July 2, 1926, ch. 721, §12 (less 1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, ch. 545, §4, 50 Stat. 549.
8749(b)	10:1429 (2d sentence).	
8749(c)	10:1429 (last sentence, less 1st 49 words).	

In subsection (a), the words ''under such rules and regulations as he may prescribe'' are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal. The words ''since the 6th day of April,

1917, has distinguished, or who, after July 2, 1926'' and 10:1429 (proviso of 1st sentence) are omitted as executed.

§ 8750. Airman's Medal: award; limitations

(a)(1) The President may award a decoration called the ''Airman's Medal'', of appropriate design with accompanying ribbon, to any person who, while serving in any capacity with the Air Force, distinguishes himself by heroism not involving actual conflict with an enemy.

(2) The authority in paragraph (1) includes authority to award the medal to a member of the Ready Reserve who was not in a duty status defined in section 101(d) of this title when the member distinguished himself by heroism.

(b) Not more than one Airman's Medal may be awarded to a person. However, for each succeeding act that would otherwise justify the award of such a medal, the President may award a suitable bar or other device to be worn as he directs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; Pub. L. 86–593, §1(6), July 6, 1960, 74 Stat. 332; Pub. L. 105–85, div. A, title V, §574(c), Nov. 18, 1997, 111 Stat. 1758.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8750(a)	10:1428 (less last sentence).	July 2, 1926, ch. 721, §11, 44 Stat. 789.
8750(b)	10:1428 (last sentence).	

The words ''Under such rules and regulations as he may prescribe'' are omitted, since the President has inherent authority to issue regulations appropriate to exercising his functions. The words ''but not in the name of Congress'' are omitted as surplusage, since a medal is presented in the name of Congress only if the law so directs. The word ''award'' is substituted for the word ''present'' to cover the determination of the recipients as well as the actual presentation of the medal. The words ''a decoration called'' are substituted for the words ''a medal to be known as''. The words ''including the National Guard and the Organized Reserves'' are omitted as surplusage. The words ''or herself'' are omitted, since, under section 1 of title 1, words importing the masculine gender include the feminine. The words ''after July 2, 1926'' are omitted as executed.

In subsection (b), the words ''that would otherwise justify'' are substituted for the words ''sufficient to''.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 designated existing provisions as par. (1) and added par. (2).

1960—Pub. L. 86–593 substituted ''Airman's Medal'' for ''Soldier's Medal'' in section catchline and wherever appearing in text.

§ 8751. Service medals: issue; replacement; availability of appropriations

(a) The Secretary of the Air Force shall procure, and issue without charge to any person entitled thereto, any service medal authorized for members of the Air Force after September 26, 1947, and any ribbon, clasp, star, or similar device prescribed as a part of that medal.

(b) Under such regulations as the Secretary may prescribe, any medal or other device issued under subsection (a) that is lost, destroyed, or becomes unfit for use without fault or neglect of the owner, may be replaced at cost. However, if the owner is a member of the Air Force, the medal or device may be replaced without charge.

(c) The Secretary may spend, from any appropriation for the support of the Air Force, amounts necessary to provide medals and devices under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8751(a)	10:1415a (less 21st through 30th words, and less clauses (a) through (n)).	May 12, 1928, ch. 528, §§1 (less 25th through 34th words, and less clauses (a) through (n)), 2 (less applicability to §1 (clauses (a) through (n))), 3 (less applicability to §1 (clauses (a) through (n))), 45 Stat. 500.
8751(b)	10:1415b (less applicability to 10:1415a (clauses (a) through (n))).	
8751(c)	10:1415c (less applicability to 10:1415a (clauses (a) through (n))).	

In subsection (a), the words ''authorized for members of the Air Force after September 26, 1947'' are substituted for the words ''hereafter authorized'', since, under Transfer Order 1, that date was the effective date of the transfer of personnel from the Army to the Air Force under section 208(e) of the National Security Act of 1947, as amended (5 U.S.C. 626c(e)). 10:1415a (proviso) is omitted as surplusage, since the revised section is not limited to persons who are members of the Air Force at the time of the issue.

In subsection (b), the words ''member of the Air Force'' are substituted for the words ''persons in the military service of the United States''.

In subsection (c), the last 16 words are substituted for 10:1415c (last 16 words).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8752 of this title.

§ 8752. Medals: posthumous award and presentation

(a) If a person dies before the award of a medal of honor, distinguished-service cross, distinguished-service medal, distinguished flying cross, or device in place thereof, to which he is entitled, the award may be made and the medal or device presented to his representative, as designated by the President.

(b) If a person dies before an authorized service medal or device prescribed as a part thereof is presented to him under section 8751 of this title, it shall be presented to his family.

(Aug. 10, 1956, ch. 1041, 70A Stat. 542; Pub. L. 85–861, §33(a)(23), Sept. 2, 1958, 72 Stat. 1565.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8752(a)	10:1409 (words between 1st and 2d semicolons).	July 9, 1918, ch. 143 (words between 1st and 2d semicolons of 15th par. under ''Ordnance Department''), 40 Stat. 871.
	10:1429 (1st 49 words of last sentence).	July 2, 1926, ch. 721, §12 (1st 49 words of last sentence), 44 Stat. 789; July 30, 1937, ch. 545, §4, 50 Stat. 549.
8752(b)	10:1415a (21st through 30th words, less applicability to clauses (a) through (n)).	May 12, 1928, ch. 528, §1 (25th through 34th words, less applicability to clauses (a) through (n)), 45 Stat. 500.

In subsection (a), the words ''If a person'' are substituted for the words ''In case an individual * * * dies'', in 10:1409, and ''In case an individual * * * shall

have died'', in 10:1429. The words ''within three years from the date'', in 10:1409, are omitted as covered by section 8744 of this title. The words ''who shall distinguish himself'', in 10:1409, and ''who distinguishes himself'', in 10:1429, are omitted as covered by the words ''the award * * * to which he is entitled''.

1958 ACT

The change reflects the fact that the source statute for these sections (sec. 1 of the Act of May 12, 1928, ch. 528, 45 Stat. 500) was mandatory and not merely permissive.

AMENDMENTS

1958—Subsec. (b). Pub. L. 85–861 substituted ''it shall be presented'' for ''it may be presented''.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8748, 8755 of this title.

§ 8754. Medal of honor: duplicate medal

A person awarded a medal of honor shall, upon written application of that person, be issued, without charge, one duplicate medal of honor with ribbons and appurtenances. Such duplicate medal of honor shall be marked, in such manner as the Secretary of the Air Force may determine, as a duplicate or for display purposes only.

(Added Pub. L. 107–107, div. A, title V, § 553(c)(1)(A), Dec. 28, 2001, 115 Stat. 1116.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 704.

§ 8755.[1] Medal of honor: presentation of Medal of Honor Flag

The President shall provide for the presentation of the Medal of Honor Flag designated under section 903 of title 36 to each person to whom a medal of honor is awarded under section 8741 of this title after October 23, 2002. Presentation of the flag shall be made at the same time as the presentation of the medal under section 8741 or 8752(a) of this title.

(Added Pub. L. 107–248, title VIII, § 8143(c)(3)(A), Oct. 23, 2002, 116 Stat. 1570; amended Pub. L. 107–314, div. A, title X, § 1062(a)(16), Dec. 2, 2002, 116 Stat. 2650.)

AMENDMENTS

2002—Pub. L. 107–314 substituted ''October 23, 2002'' for ''the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 36 section 903.

§ 8755.[1] Korea Defense Service Medal

(a) The Secretary of the Air Force shall issue a campaign medal, to be known as the Korea Defense Service Medal, to each person who while a member of the Air Force served in the Republic of Korea or the waters adjacent thereto during the KDSM eligibility period and met the service requirements for the award of that medal prescribed under subsection (c).

(b) In this section, the term ''KDSM eligibility period'' means the period beginning on July 28, 1954, and ending on such date after the date of the enactment of this section as may be determined by the Secretary of Defense to be appropriate for terminating eligibility for the Korea Defense Service Medal.

(c) The Secretary of the Air Force shall prescribe service requirements for eligibility for the Korea Defense Service Medal. Those requirements shall not be more stringent than the service requirements for award of the Armed Forces Expeditionary Medal for instances in which the award of that medal is authorized.

(Added Pub. L. 107–314, div. A, title V, § 543(d)(1), Dec. 2, 2002, 116 Stat. 2550.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (b), is the date of enactment of Pub. L. 107–314, which was approved Dec. 2, 2002.

[CHAPTER 859—REPEALED]

[§§ 8781 to 8787. Repealed. Pub. L. 96–513, title II, § 213, Dec. 12, 1980, 94 Stat. 2885]

Section 8781, acts Aug. 10, 1956, ch. 1041, 70A Stat. 542; July 12, 1960, Pub. L. 86–616, § 7(a), 74 Stat. 391, authorized Secretary of Air Force to convene at any time a board of officers to review record of any commissioned officer on active list of Regular Air Force to determine whether he should be required, because of substandard performance of duty, to show cause for his retention on active list. See section 1181(a) of this title.

Section 8782, acts Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86–616, § 7(a), 74 Stat. 391, provided for boards of inquiry, composed of three or more officers, to be convened at such places as Secretary of Air Force prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 8781 of this title, should be retained on active list of Regular Air Force. See section 1182 of this title.

Section 8783, acts Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86–616, § 7(a), 74 Stat. 391, provided for boards of review, composed of three or more officers, to be convened by Secretary of Air Force, at such places as he prescribes, to review records of cases of officers recommended by boards of inquiry for removal from active list of Regular Air Force.

Section 8784, acts Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86–616, § 7(a), 74 Stat. 392, authorized Secretary of Air Force to remove an officer from active list of Regular Air Force if his removal is recommended by a board of review and provided that decision of Secretary in such case is final and conclusive. See section 1184 of this title.

Section 8785, acts Aug. 10, 1956, ch. 1041, 70A Stat. 543; July 12, 1960, Pub. L. 86–616, § 7(a), 74 Stat. 392, provided that each officer under consideration for removal from active list of Regular Air Force under this chapter, be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before a board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceeding. See section 1185 of this title.

Section 8786, acts Aug. 10, 1956, ch. 1041, 70A Stat. 544; July 12, 1960, Pub. L. 86–616, § 7(a), 74 Stat. 392, authorized Secretary of Air Force, at any time during pro-

[1] Another section 8755 is set out after this section.

[1] Another section 8755 is set out preceding this section.

ceedings under this chapter and before removal of an officer from active list of Regular Air Force, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 8787, added Pub. L. 86–616, §7(a), July 12, 1960, 74 Stat. 392, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board and that no person be a member of more than one board convened under this chapter for same officer. See section 1187 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[CHAPTER 860—REPEALED]

[§§ 8791 to 8797. Repealed. Pub. L. 96–513, title II, § 213, Dec. 12, 1980, 94 Stat. 2885]

Section 8791, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 393, authorized Secretary of Air Force to convene at any time a board of general officers to review record of any commissioned officer on active list of Regular Air Force to determine whether he should be required, because of moral dereliction, professional dereliction, or because his retention is not clearly consistent with the interests of national security, to show cause for his retention on active list. See section 1181(b) of this title.

Section 8792, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 393, provided for boards of inquiry, composed of three or more general officers, to be convened at such places as Secretary of Air Force prescribes, to receive evidence and make findings and recommendations whether an officer, required to show cause under section 8791 of this title, should be retained on active list of the Regular Air Force. See section 1182 of this title.

Section 8793, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 393, provided for boards of review, composed of three or more general officers, to be convened by Secretary of Air Force, at such places as he prescribes, to review the records of cases of officers recommended by boards of inquiry for removal from active list of Regular Air Force.

Section 8794, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 394, authorized Secretary of Air Force to remove an officer from active list of Regular Air Force if his removal is recommended by a board of review and provided that decision of Secretary in such a case is final and conclusive. See section 1184 of this title.

Section 8795, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 394, provided that each officer under consideration for removal from active list of Regular Air Force under this chapter be given written notification, at least 30 days prior to a board of inquiry hearing, that he is being required to show cause for retention on active list, be allowed reasonable time to prepare a defense, be allowed to appear in person and by counsel at proceedings before the board of inquiry, and be allowed full access to, and furnished copies of, records relevant to his case at all stages of the proceedings, except records that the Secretary determines be withheld in interests of national security, in which case, a summary, to the extent national security permits, be furnished. See section 1185 of this title.

Section 8796, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 394, authorized Secretary of Air Force, at any time during proceedings under this chapter and before removal of an officer from active list of Regular Air Force, to grant that officer's request for voluntary retirement, if he is otherwise qualified therefor, or for honorable discharge with severance benefits. See section 1186 of this title.

Section 8797, added Pub. L. 86–616, §8(a), July 12, 1960, 74 Stat. 394, provided that no officer serve on a board under this chapter unless he holds a regular or temporary grade above lieutenant colonel, and is senior in regular grade to, and outranks, any officer considered by that board and that no person be a member of more than one board convened under this chapter for the same officer. See section 1187 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 861—SEPARATION FOR VARIOUS REASONS

Sec.
[8811 to 8816. Repealed.]
8817. Aviation cadets: discharge.
[8818 to 8820. Repealed.]

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1674(b)(7), Oct. 5, 1994, 108 Stat. 3016, struck out items 8819 ''Reserve officers: discharge for failure of promotion to first lieutenant'' and 8820 ''Air National Guard of United States officers: discharge''.

1980—Pub. L. 96–513, title V, §504(16), Dec. 12, 1980, 94 Stat. 2917, struck out items 8814 ''Regular commissioned officers: discharge during three-year probationary period'' and 8818 ''Regular female members: termination of appointment or enlistment''.

1968—Pub. L. 90–235, §3(a)(5), (b)(7), Jan. 2, 1968, 81 Stat. 758, struck out items 8811 ''Air Force enlisted members: discharge certificate; limitations on discharge'', 8812 ''Air Force enlisted members: during war or emergency; discharge'', 8813 ''Air Force enlisted members: dependency discharge'', 8815 ''Regular enlisted members: resignation of members enlisted on career basis; limitations'', and 8816 ''Regular enlisted members: minority discharge''.

1958—Pub. L. 85–861, §1(191)(B), Sept. 2, 1958, 72 Stat. 1534, added item 8819.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 113 of this title.

[§§ 8811 to 8813. Repealed. Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

Section 8811, act Aug. 10, 1956, ch. 1041, 70A Stat. 544, provided for discharge of enlisted members of Air Force and limitations thereon, and for issuance of discharge certificates. See section 1169 of this title.

Section 8812, act Aug. 10, 1956, ch. 1041, 70A Stat. 544, provided for discharge of members of Air Force enlisted during war or emergency. See section 1172 of this title.

Section 8813, act Aug. 10, 1956, ch. 1041, 70A Stat. 544, provided for dependency discharges for enlisted members of Air Force.

[§ 8814. Repealed. Pub. L. 96–513, title II, § 214, Dec. 12, 1980, 94 Stat. 2885]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 545, authorized Secretary of Air Force to discharge a regular commissioned officer who has less than three years of continuous service as a commissioned officer therein, provided that such officer not be dismissed because of his marriage, unless marriage occurred within one year after date of his original appointment. See section 630 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 8815, 8816. Repealed. Pub. L. 90–235, § 3(a)(2), (b)(1), Jan. 2, 1968, 81 Stat. 757, 758]

Section 8815, act Aug. 10, 1956, ch. 1041, 70A Stat. 545, provided for resignation of regular enlisted members of

Air Force enlisted on a career basis and limitations thereon.

Section 8816, act Aug. 10, 1956, ch. 1041, 70A Stat. 545, provided for minority discharges for regular enlisted members of Air Force. See section 1170 of this title.

§ 8817. Aviation cadets: discharge

The Secretary of the Air Force may discharge an aviation cadet at any time.

(Aug. 10, 1956, ch. 1041, 70A Stat. 545.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8817	10:299 (last sentence).	June 3, 1941, ch. 165, §3 (last sentence), 55 Stat. 239.

10:299 (last sentence, less 1st 14 words) is omitted as superseded by section 681 of this title.

[§ 8818. Repealed. Pub. L. 96–513, title II, § 236, Dec. 12, 1980, 94 Stat. 2887]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 545, authorized Secretary of Air Force, under regulations prescribed by President, to terminate appointment or enlistment of any female member of Regular Air Force, provided that appointment of a commissioned officer not be terminated by dismissal.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§§ 8819, 8820. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(2), Oct. 5, 1994, 108 Stat. 2963]

Section 8819, added Pub. L. 85–861, §1(191)(A), Sept. 2, 1958, 72 Stat. 1534; amended Pub. L. 86–559, §1(65), June 30, 1960, 74 Stat. 278; Pub. L. 98–525, title V, §528(d), Oct. 19, 1984, 98 Stat. 2526; Pub. L. 104–106, div. A, title XV, §1501(c)(32), (33), Feb. 10, 1996, 110 Stat. 500, related to discharge of officers of Air Force Reserve or Air National Guard of United States for failure of promotion to first lieutenant. See section 14503 of this title.

Section 8820, act Aug. 10, 1956, ch. 1041, 70A Stat. 546, related to discharge and withdrawal of Federal recognition of officers of Air National Guard of United States absent without leave. See section 14907 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[CHAPTER 863—REPEALED]

[§§ 8841, 8842. Repealed. Pub. L. 86–559, § 1(66), June 30, 1960, 74 Stat. 278]

Sections, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1535, related to separation or transfer to Retired Reserve of female reserve nurses and medical specialists at age 50 if in a Reserve grade below major and at age 55 if in a Reserve grade above captain.

[§§ 8843 to 8846. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 8843, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1535; amended Pub. L. 86–599, §1(67), June 30, 1960, 74 Stat. 278, related to transfer or discharge of reserve commissioned officers 60 years of age and below grade of major general. See section 14510 of this title.

Section 8844, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1535; amended Pub. L. 86–559, §1(68), June 30, 1960, 74 Stat. 279, related to transfer or discharge of certain reserve major generals who are 62 years of age. See section 14511 of this title.

Section 8845, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1535; amended Pub. L. 86–559, §1(69), June 30, 1960, 74 Stat. 279; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of certain reserve officers of Air Force who are 64 years of age. See section 14512(a) of this title.

Section 8846, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1536; amended Pub. L. 104–106, div. A, title XV, §1501(c)(32), Feb. 10, 1996, 110 Stat. 500, related to transfer or discharge of deferred officers.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8847. Repealed. Pub. L. 90–130, § 1(31)(A), Nov. 8, 1967, 81 Stat. 382]

Section, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1536; amended Pub. L. 86–559, §1(70), June 30, 1960, 74 Stat. 279, provided for mandatory retirement of female commissioned officers, Air Force nurses, and medical specialists on active duty in a Reserve grade below lieutenant colonel after completion of 25 years of service computed under section 8853.

[§ 8848. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(3), Oct. 5, 1994, 108 Stat. 2963]

Section, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1536; amended Pub. L. 86–559, §1(71), June 30, 1960, 74 Stat. 279; Pub. L. 90–130, §1(31)(B), Nov. 8, 1967, 81 Stat. 382; Pub. L. 90–486, §9(2), Aug. 13, 1968, 82 Stat. 760; Pub. L. 96–513, title V, §514(7), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 99–145, title V, §522(b)(1), title XIII, §1303(a)(27)(A), Nov. 8, 1985, 99 Stat. 632, 740, related to transfer or discharge of reserve first lieutenants, captains, majors, and lieutenant colonels with 28 years of service. See section 14501 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[§ 8849. Repealed. Pub. L. 86–559, § 1(72), June 30, 1960, 74 Stat. 279]

Section, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1536, related to separation or transfer to Retired Reserve of female reserve lieutenant colonels, except those designated under section 8067 of this title, upon completion of 28 years of service.

[§§ 8850 to 8855. Repealed. Pub. L. 103–337, div. A, title XVI, § 1629(c)(3), Oct. 5, 1994, 108 Stat. 2963]

Section 8850, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1537; amended Pub. L. 90–168, §2(22), Dec. 1, 1967, 81 Stat. 525; Pub. L. 104–106, div. A, title XV, §1501(c)(25), Feb. 10, 1996, 110 Stat. 499, related to transfer or discharge of excessive reserve commissioned officers in active status with 30 or more years of service. See sections 14514 and 14704 of this title.

Section 8851, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1537; amended Pub. L. 86–559, §1(73), June 30, 1960, 74 Stat. 280; Pub. L. 90–83, §3(6), Sept. 11, 1967, 81 Stat. 220; Pub. L. 90–486, §9(2), Aug. 13, 1968, 82 Stat. 760; Pub. L. 96–513, title V, §514(7), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 98–525, title XIV, §1405(55), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 99–145, title V, §522(b)(2), title XIII, §1303(a)(27)(B), Nov. 8, 1985, 99 Stat. 632, 740; Pub. L.

100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve lieutenant colonels, colonels, and brigadier generals with 30 years of service or five years in grade. See section 14508(a), (c) of this title.

Section 8852, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1537; amended Pub. L. 86–559, §1(74), June 30, 1960, 74 Stat. 280; Pub. L. 99–145, title XIII, §1303(a)(27)(B), Nov. 8, 1985, 99 Stat. 740; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059, related to transfer or discharge of reserve major generals and brigadier generals with 35 years of service or five years in grade. See section 14508(b), (d) of this title.

Section 8853, added Pub. L. 85–861, §1(192), Sept. 2, 1958, 72 Stat. 1538; amended Pub. L. 86–559, §1(75), June 30, 1960, 74 Stat. 280; Pub. L. 98–94, title X, §1016(c), Sept. 24, 1983, 97 Stat. 668, related to computation of years of service. See section 14706 of this title.

Section 8855, added Pub. L. 86–559, §1(76), June 30, 1960, 74 Stat. 280; amended Pub. L. 96–107, title IV, §403(b), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96–513, title II, §215(b), Dec. 12, 1980, 94 Stat. 2885; Pub. L. 100–180, div. A, title VII, §717(c), (d)(2)(A), Dec. 4, 1987, 101 Stat. 1114; Sept. 29, 1988, Pub. L. 100–456, div. A, title XII, §1233(*l*)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title VII, §710(c), Nov. 29, 1989, 103 Stat. 1477, related to retention in active status of certain reserve officers. See section 14703(a)(3), (b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

[CHAPTER 865—REPEALED]

[§§ 8881, 8882. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section 8881, act Aug. 10, 1956, ch. 1041, 70A Stat. 546, authorized Secretary of Air Force to retire Air Force nurses and woman medical specialists whose regular grade is below major.

Section 8882, act Aug. 10, 1956, ch. 1041, 70A Stat. 546, authorized Secretary of Air Force to retire Air Force nurses or woman medical specialists whose regular grade is above captain.

[§§ 8883 to 8886. Repealed. Pub. L. 96–513, title II, § 216, Dec. 12, 1980, 94 Stat. 2886]

Section 8883, acts Aug. 10, 1956, ch. 1041, 70A Stat. 546; Aug. 6, 1958, Pub. L. 85–600, §1(17), 72 Stat. 523; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is below major general, other than a professor or the registrar of the United States Air Force Academy, be retired when he becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 8884, acts Aug. 10, 1956, ch. 1041, 70A Stat. 547; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat 1115, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 8923 of this title has been deferred under cl. (1) of that section, be retired when be becomes 60 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 8885, acts Aug. 10, 1956, ch. 1041, 70A Stat. 547; Sept. 2, 1958, Pub. L. 85–861, §33(a)(42), 72 Stat. 1567; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date or unless retained under section 8923(2) of this title, each commissioned officer whose regular grade is major general be retired when he becomes 62 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

Section 8886, acts Aug. 10, 1956, ch. 1041, 70A Stat. 547; Aug. 6, 1958, Pub. L. 85–600, §1(18), 72 Stat. 523; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115, provided that, unless retired or separated at an earlier date, each commissioned officer whose regular grade is major general, and whose retirement under section 8923 of this title has been deferred under cl. (2) of that section, and each permanent professor and the registrar of the United States Air Force Academy, be retired when he becomes 64 years of age, except as provided by section 8301 of title 5. See section 1251 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8887. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 547, related to computation of years of service of Air Force nurses or woman medical specialists for purposes of retirement under former sections 8881 or 8882 of this title, or retirement pay under section 8991 of this title.

[§§ 8888, 8889. Repealed. Pub. L. 96–513, title II, § 216, Dec. 12, 1980, 94 Stat. 2886]

Section 8888, acts Aug. 10, 1956, ch. 1041, 70A Stat. 547; Aug. 21, 1957, Pub. L. 85–155, title III, §301(16), 71 Stat. 388; May 20, 1958, Pub. L. 85–422, §11(a)(7), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, §1(194), 72 Stat. 1538; Sept. 30, 1966, Pub. L. 89–609, §1(30), 80 Stat. 854, related to computation of years of service for determining retired pay of a commissioned officer of Regular Air Force retired under section 8883, 8884, 8885, or 8886 of this title. See section 1405 of this title.

Section 8889, act Aug. 10, 1956, ch. 1041, 70A Stat. 548, provided that a member of Air Force retired under this chapter be entitled to retired pay computed under chapter 871 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

CHAPTER 867—RETIREMENT FOR LENGTH OF SERVICE

Sec.
8911. Twenty years or more: regular or reserve commissioned officers.
[8912, 8913. Repealed.]
8914. Twenty to thirty years: enlisted members.
[8915, 8916. Repealed.]
8917. Thirty years or more: regular enlisted members.
8918. Thirty years or more: regular commissioned officers.
[8919. Repealed.]
8920. More than thirty years: permanent professors and the Director of Admissions of the United States Air Force Academy.
8921. Mandatory retirement: Superintendent of the United States Air Force Academy.
[8922, 8923. Repealed.]
8924. Forty years or more: Air Force officers.
8925. Computation of years of service: voluntary retirement; enlisted members.
8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers.
[8927, 8928. Repealed.]
8929. Computation of retired pay: law applicable.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, §532(a)(4)(E), Oct. 5, 1999, 113 Stat. 604, added item 8921.

1996—Pub. L. 104–106, div. A, title V, §509(b)(2), Feb. 10, 1996, 110 Stat. 298, substituted ''permanent profes-

sors and the Director of Admissions'' for ''professors'' in item 8920.

1980—Pub. L. 96–513, title V, §504(17), Dec. 12, 1980, 94 Stat. 2917, struck out items 8913 ''Twenty years or more: deferred officers not recommended for promotion'', 8915 ''Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major'', 8916 ''Twenty-eight years: promotion-list lieutenant colonels'', 8919 ''Thirty years or more: regular commissioned officers; excessive number'', 8921 ''Thirty years or five years in grade: promotion-list colonels'', 8922 ''Thirty years or five years in grade: regular brigadier generals'', 8923 ''Thirty-five years or five years in grade: regular major generals'', and 8927 ''Computation of years of service: mandatory retirement; regular commissioned officers''.

Pub. L. 96–343, §9(b)(3), Sept. 8, 1980, 94 Stat. 1129, struck out ''regular'' before ''enlisted members'' in items 8914 and 8925.

1967—Pub. L. 90–130, §1(32)(C), Nov. 8, 1967, 81 Stat. 383, substituted ''Twenty-eight years: deferred retirement of nurses and medical specialists in regular grade of major'' for ''Twenty-five years: female majors except those designated under section 8067(a)–(d) or (g)–(i) of this title; male majors designated under section 8067(e) or (f) of this title'' in item 8915.

1966—Pub. L. 89–609, §1(32), Sept. 30, 1966, 80 Stat. 854, inserted ''; male majors designated under section 8067(e) or (f) of this title'' in item 8915.

1957—Pub. L. 85–155, title III, §301(21), Aug. 21, 1957, 71 Stat. 389, struck out items 8912 and 8928, and substituted ''section 8067(a)–(d) or (g)–(i)'' for ''section 8067'' in item 8915.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 12741 of this title.

§ 8911. Twenty years or more: regular or reserve commissioned officers

(a) The Secretary of the Air Force may, upon the officer's request, retire a regular or reserve commissioned officer of the Air Force who has at least 20 years of service computed under section 8926 of this title, at least 10 years of which have been active service as a commissioned officer.

(b) The Secretary of Defense may authorize the Secretary of the Air Force, during the period beginning on October 1, 1990, and ending on December 31, 2001, to reduce the requirement under subsection (a) for at least 10 years of active service as a commissioned officer to a period (determined by the Secretary of the Air Force) of not less than eight years.

(Aug. 10, 1956, ch. 1041, 70A Stat. 549; Pub. L. 101–510, div. A, title V, §523(c), Nov. 5, 1990, 104 Stat. 1562; Pub. L. 103–160, div. A, title V, §561(c), Nov. 30, 1993, 107 Stat. 1667; Pub. L. 105–261, div. A, title V, §561(e), Oct. 17, 1998, 112 Stat. 2025; Pub. L. 106–398, §1 [[div. A], title V, §571(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–134.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8911	10:943a. 10:971b (1st 100 words).	July 31, 1935, ch. 422, §5 (1st 101 words); restated June 13, 1940, ch. 344, §3 (1st 45 words), 54 Stat. 380; June 29, 1948, ch. 708, §202 (1st 105 words), 62 Stat. 1084; July 16, 1953, ch. 203, 67 Stat. 175.

The words ''a regular or reserve commissioned officer of the Air Force'' are substituted for the words ''any officer on the active list of the * * * Regular Air Force * * * or any officer of the reserve components of the * * * Air Force of the United States''. The words ''Philippine Scouts'' are omitted as obsolete. The words ''has at least 20'' are substituted for the words ''shall have completed not less than twenty''. The words ''upon his request'' are substituted for the words ''upon his own application''. The words ''service computed under section 8926 of this title'' are substituted for the words ''active Federal service in the armed forces of the United States'', since that revised section makes explicit the service covered.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (b). Pub. L. 105–261 substituted ''during the period beginning on October 1, 1990, and ending on September 30, 2001'' for ''during the nine-year period beginning on October 1, 1990''.

1993—Subsec. (b). Pub. L. 103–160 substituted ''nine-year period'' for ''five-year period''.

1990—Pub. L. 101–510 designated existing provisions as subsec. (a) and added subsec. (b).

TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Air Force, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to a regular or reserve commissioned officer with at least 15 but less than 20 years of service by substituting ''at least 15 years'' for ''at least 20 years'' in subsec. (a) of this section, see section 4403 of Pub. L. 102–484, set out as a note under section 1293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 631, 632, 637, 638, 638a, 688, 1370, 1406, 8926, 10154, 12646 of this title.

[§ 8912. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 549, permitted Secretary of Air Force, upon officer's request, to retire an Air Force nurse, or a woman medical specialist, of Regular Air Force, who has at least 20 years of service computed under former section 8928 of this title.

[§ 8913. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 549; July 12, 1960, Pub. L. 86–616, §9, 74 Stat. 395; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115, provided for retirement of deferred officers not recommended for promotion after twenty years or more of service, except as provided in section 8301 of Title 5. See section 627 et seq. of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8914. Twenty to thirty years: enlisted members

Under regulations to be prescribed by the Secretary of the Air Force, an enlisted member of the Air Force who has at least 20, but less than 30, years of service computed under section 8925 of this title may, upon his request, be retired.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550; Pub. L. 96–343, §9(b)(1), Sept. 8, 1980, 94 Stat. 1128; Pub. L. 103–337, div. A, title V, §515(b), Oct. 5, 1994, 108 Stat. 2753.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8914	10:948 (1st sentence). 10:948a.	Oct. 6, 1945, ch. 393, §4 (1st sentence); restated Aug. 10, 1946, ch. 952, §6(a) (1st sentence), 60 Stat. 996. Aug. 10, 1946, ch. 952, §7, 60 Stat. 996.

The words ''now or hereafter'', in 10:948a, are omitted as surplusage. The words ''computed under section 8925 of this title'' are substituted for the words ''active Federal service'', in 10:948, and ''active Federal military service'', in 10:948a, since that revised section makes explicit the service covered. The words ''be retired from'' are substituted for the words ''will be placed on the retired list of'', in 10:948. The words ''completed a minimum'', in 10:948; and ''the period of'', ''be subject to'', ''period of'', and ''now or after August 10, 1946'', in 10:948a; are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 struck out at end ''A regular enlisted member then becomes a member of the Air Force Reserve. A member retired under this section shall perform such active duty as may be prescribed by law until his service computed under section 8925 of this title, plus his inactive service as a member of the Air Force Reserve, equals 30 years.''

1980—Pub. L. 96–343 struck out ''regular'' before ''enlisted members'' in section catchline and substituted in text ''an enlisted member'' for ''a regular enlisted member'', ''A regular enlisted member'' for ''He'', and ''Air Force Reserve. A member retired under this section'' for ''Air Force, and''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–343 effective with respect to retired pay payable for months beginning after Sept. 8, 1980, see section 9(c) of Pub. L. 96–343, set out as a note under section 3914 of this title.

TEMPORARY EARLY RETIREMENT AUTHORITY

For provisions authorizing the Secretary of the Air Force, during the period beginning Oct. 23, 1992, and ending Oct. 1, 1995, to apply this section to an enlisted member with at least 15 but less than 20 years of service by substituting ''at least 15'' for ''at least 20'', see section 4403 of Pub. L. 102–484, set out as a note under section 1293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 688, 1176, 1402, 1402a, 1406, 1407, 8925, 8963 of this title.

[§§ 8915, 8916. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section 8915, acts Aug. 10, 1956, ch. 1041, 70A Stat. 550; Aug. 21, 1957, Pub. L. 85–155, title III, §301(18), 71 Stat. 389; Sept. 30, 1966, Pub. L. 89–609, §1(31), 80 Stat. 854; Nov. 2, 1966, Pub. L. 89–718, §3, 80 Stat. 1115; Nov. 8, 1967, Pub. L. 90–130, §1(32)(A), 89 Stat. 382, authorized the Secretary of the Air Force to defer the retirement of any Air Force nurse or medical specialist in the regular grade of major until the 30th day after the officer completes 28 years of service. See section 632 of this title.

Section 8916, acts Aug. 10, 1956, ch. 1041, 70A Stat. 550; Aug. 21, 1957, Pub. L. 85–155, title III, §301(19), 71 Stat. 389, provided for retirement of a promotion-list lieutenant colonel, except as provided by section 8301 of title 5, on the 30th day after he completes 28 years of service, with authority for the Secretary of the Air Force to defer retirement in certain cases. See section 633 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8917. Thirty years or more: regular enlisted members

A regular enlisted member of the Air Force who has at least 30 years of service computed under section 8925 of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8917	10:947 (less proviso). 10:947a (less last 11 words).	Mar. 2, 1907, ch. 2515, §1 (1st 35 words), 34 Stat. 1217. Feb. 14, 1885, ch. 67 (less 43d through 53d words); restated Sept. 30, 1890, ch. 1125 (less 43d through 53d words), 26 Stat. 504.

The word ''regular'' is inserted to conform to an opinion of the Judge Advocate General of the Army (JAGA 1953/2301, 23 Mar. 1953). The words ''upon his request'' are substituted for the words ''upon making application to the President'', in 10:947, and ''by application to the President'', in 10:947a. The words ''either as a private or non-commissioned officer, or both'', in 10:947a, are omitted as surplusage. The words ''shall be retired'' are substituted for the words ''be placed upon the retired list'', in 10:947, and ''be placed on the retired list heretofore created'', in 10:947a. The words ''computed under section 8925 of this title'' are inserted for clarity. The 21 words before the proviso and the proviso of the Act of February 14, 1885, as restated, are not contained in 10:947a. They are also omitted from the revised section, since the proviso is executed and the 21 words before the proviso are omitted as covered by formula E of section 8991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 8925 of this title.

§ 8918. Thirty years or more: regular commissioned officers

A regular commissioned officer of the Air Force who has at least 30 years of service computed under section 8926 of this title may be retired upon his request, in the discretion of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 550.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8918	10:943.	R.S. 1243; Dec. 16, 1930, ch. 14, §1 (as applicable to R.S. 1243), 46 Stat. 1028.

The word ''commissioned'' is inserted, since the retirement of warrant officers for length of service is covered by section 1293 of this title. The word ''regular'' is inserted, since 10:943 is applicable historically only to officers of a regular component. The words ''and placed on the retired list'' are omitted as surplusage. The words ''computed under section 8926 of this title'' are inserted for clarity.

DELEGATION OF FUNCTIONS

Functions of President under this section to approve request of a regular commissioned officer of Air Force to retire after at least 30 years of service delegated to Secretary of Defense to perform, without approval, ratification, or other action by President, and with au-

thority for Secretary to redelegate, see Ex. Ord. No. 12396, §§1(f), 3, Dec. 9, 1982, 47 F.R. 55897, 55898, set out as a note under section 301 of Title 3, The President.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 8926 of this title.

[§ 8919. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, act Aug. 10, 1956, ch 1041, 70A Stat. 551, authorized Secretary of Air Force, when he determined that there were too many commissioned officers on active list of Regular Air Force in any grade who have at least 30 years of service, to convene a board of at least five general officers of the Regular Air Force to make recommendations for retirement and to retire any officer so recommended.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8920. More than thirty years: permanent professors and the Director of Admissions of the United States Air Force Academy

(a) The Secretary of the Air Force may retire an officer specified in subsection (b) who has more than 30 years of service as a commissioned officer.

(b) Subsection (a) applies in the case of the following officers:

(1) Any permanent professor of the United States Air Force Academy.

(2) The Director of Admissions of the United States Air Force Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 551; Pub. L. 104–106, div. A, title V, § 509(b)(1), Feb. 10, 1996, 110 Stat. 298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8920	10:1079a(c) (proviso).	Aug. 7, 1947, ch. 512, § 520(c) (proviso), 61 Stat. 912.

The word ''retire'' is substituted for the words ''direct the retirement of''. The words ''as a commissioned officer'' are substituted for the word ''commissioned''.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''permanent professors and the Director of Admissions'' for ''professors'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''The Secretary of the Air Force may retire any permanent professor of the United States Air Force Academy who has more than 30 years of service as a commissioned officer.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 8921. Mandatory retirement: Superintendent of the United States Air Force Academy

Upon the termination of the detail of an officer to the position of Superintendent of the United States Air Force Academy, the Secretary of the Air Force shall retire the officer under any provision of this chapter under which the officer is eligible to retire.

(Added Pub. L. 106–65, div. A, title V, § 532(a)(3)(A), Oct. 5, 1999, 113 Stat. 603.)

PRIOR PROVISIONS

A prior section 8921, acts Aug. 10, 1956, ch. 1041, 70A Stat. 551; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a promotion-list colonel, except as provided by section 8301 of title 5, on 30th day after he completes 30 years of service or 5th anniversary of date of his appointment in that regular grade, whichever is later, with authority for Secretary of Air Force to defer retirement in certain cases, prior to repeal by Pub. L. 96–513, title II, § 217(a), title VII, § 701, Dec. 12, 1980, 94 Stat. 2886, 2995, effective Sept. 15, 1981.

APPLICATION OF SECTION TO SUPERINTENDENTS SERVING ON OCTOBER 5, 1999

Section not applicable to an officer serving on Oct. 5, 1999, in the position of Superintendent of the United States Military Academy, Naval Academy, or Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service, see section 532(a)(5) of Pub. L. 106–65, set out as a note under section 3921 of this title.

[§§ 8922, 8923. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section 8922, acts Aug. 10, 1956, ch. 1041, 70A Stat. 551; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat. 1115, provided for retirement of a regular grade brigadier general, other than a professor of the United States Air Force Academy, except as provided by section 8301 of title 5, on 30th day after he completes 30 years of service or 5th anniversary of date of his appointment in that regular grade, whichever is later, with authority for Secretary of Air Force to defer retirement in certain cases. See section 635 of this title.

Section 8923, acts Aug. 10, 1956, ch. 1041, 70A Stat. 552; Nov. 2, 1966, Pub. L. 89–718, § 3, 80 Stat 1115, provided for retirement of a regular grade major general, except as provided by section 8301 of title 5, on 30th day after he completes 35 years of service or 5th anniversary of his appointment in that regular grade, whichever is later, with authority for Secretary of Air Force to defer retirement in certain cases. See section 636 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 8924. Forty years or more: Air Force officers

(a) Except as provided in section 1186 of this title, a commissioned officer of the Air Force who has at least 40 years of service computed under section 8926 of this title shall be retired upon his request.

(b) Any warrant officer of the Air Force who has at least 40 years of service computed under section 8926(a) of this title shall be retired upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Pub. L. 96–513, title V, § 504(18), Dec. 12, 1980, 94 Stat. 2917.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8924(a)	10:942 (as applicable to commissioned officers).	June 30, 1882, ch. 254 (last 21 words of 3d proviso under ''Pay Department''), 22 Stat. 118.
8924(b)	10:942 (less applicability to commissioned officers).	

In subsection (a), the words ''Except as provided in section 8786 of this title'' are inserted, since, under that revised section, when board proceedings are pending against a commissioned officer, his right to retire

under this revised section, which is otherwise absolute, is discretionary with the Secretary under that revised section.

In subsections (a) and (b), the words ''or volunteer service, or both'' are omitted as obsolete in accordance with an opinion of the Attorney General, 22 Ops. Atty. Gen. 199, Aug. 30, 1898, holding that such words refer to volunteer service in the Civil War. The words ''upon his request'' are substituted for the words ''if he make application therefor to the President''.

In subsection (b), the applicability of 10:942 to warrant officers is based on an opinion of the Judge Advocate General of the Army (JAGA 1950/6951, 4 Jan. 1951), which holds that 10:594 (less provisos) makes 10:942 applicable to warrant officers.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96–513 substituted ''section 1186'' for ''section 8786''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1406, 8926 of this title.

§ 8925. Computation of years of service: voluntary retirement; enlisted members

(a) For the purpose of determining whether an enlisted member of the Air Force may be retired under section 8914 or 8917 of this title, his years of service are computed by adding all active service in the armed forces.

(b) Time required to be made up under section 972(a) of this title may not be counted in computing years of service under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Pub. L. 85–861, § 1(195), Sept. 2, 1958, 72 Stat. 1540; Pub. L. 96–343, § 9(b)(2), Sept. 8, 1980, 94 Stat. 1129; Pub. L. 99–348, title II, § 204(c), July 1, 1986, 100 Stat. 698; Pub. L. 101–189, div. A, title VI, § 652(a)(6), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 103–337, div. A, title VI, § 635(c)(1), Oct. 5, 1994, 108 Stat. 2789; Pub. L. 104–106, div. A, title V, § 561(d)(4)(A), Feb. 10, 1996, 110 Stat. 323.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8925(a)	10:947 (proviso). 10:958.	Mar. 2, 1907, ch. 2515, § 1 (proviso), 34 Stat. 1218.
8925(b)	[No source].	Aug. 10, 1946, ch. 952, § 6(b), 60 Stat. 996.

In subsection (a), the words ''active service'' are substituted for the word ''service'', in 10:947, and ''active Federal service performed'', in 10:958, for uniformity. The words ''service computed under section 8683 of this title'' are inserted, since a person entitled to count service under that revised section might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

Subsection (b) is inserted because of section 8638 of this title and in accordance with long standing interpretation of the effect of 10:629 upon the computation of years of service for retirement.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8925	[No source].	[No source].

The amendment reflects the repeal of section 8638 of this title and the enactment of a similar provision in section 972 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''section 972(a)'' for ''section 972''.

1994—Subsec. (a). Pub. L. 103–337, § 635(c)(1)(A), struck out ''and of computing his retired pay under section 8991 of this title,'' after ''8917 of this title,''.

Subsec. (c). Pub. L. 103–337, § 635(c)(1)(B), struck out subsec. (c) which read as follows: ''In determining a member's years of service under subsection (a) for the purpose of computing the member's retired pay under section 8991 of this title—

''(1) each full month of service that is in addition to the number of full years of service creditable to the member shall be credited as 1/12 of a year; and

''(2) any remaining fractional part of a year shall be disregarded.''

1989—Subsec. (a). Pub. L. 101–189 struck out ''and service computed under section 8683 of this title'' before period at end.

1986—Subsec. (c). Pub. L. 99–348 added subsec. (c).

1980—Pub. L. 96–343, § 9(b)(2)(B), struck out ''regular'' before ''enlisted members'' in section catchline.

Subsec. (a). Pub. L. 96–343, § 9(b)(2)(A), substituted ''an enlisted'' for ''a regular enlisted''.

1958—Subsec. (b). Pub. L. 85–861 substituted ''section 972 of this title'' for ''section 8638 of this title''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–343 effective with respect to retired pay payable for months beginning after Sept. 8, 1980, see section 9(c) of Pub. L. 96–343, set out as a note under section 3914 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8914, 8917 of this title.

§ 8926. Computation of years of service: voluntary retirement; regular and reserve commissioned officers

(a) For the purpose of determining whether an officer of the Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding—

(1) all active service performed as a member of the Army or the Air Force; and

(2) all service in the Navy or Marine Corps that may be included in determining the eligibility of an officer of the Navy or Marine Corps for retirement.

(b) For the purpose of determining whether a medical officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service performed as a contract surgeon, acting assistant surgeon, or contract physician, under a contract to serve full time and to take and change station as ordered.

(c) For the purpose of determining whether a dental officer of the Regular Air Force may be retired under section 8911, 8918, or 8924 of this title, his years of service are computed by adding to his service under subsection (a) all service as a contract dental surgeon or acting dental surgeon.

(d) Section 972(b) of this title excludes from computation of an officer's years of service for purposes of this section any time identified with respect to that officer under that section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 552; Pub. L. 86–197, §1(8), Aug. 25, 1959, 73 Stat. 426; Pub. L. 101–189, div. A, title VI, §652(a)(7), Nov. 29, 1989, 103 Stat. 1461; Pub. L. 104–106, div. A, title V, §561(d)(4)(B), Feb. 10, 1996, 110 Stat. 323.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8926(a)	10:951 (less applicability to 10:166g(a)). 10:951a. 10:951b (less applicability to 10:166g(a)). [Uncodified June 18, 1878, ch. 263, §7 (less applicability to 10:166g(a)), 20 Stat. 150.]	June 3, 1916, ch. 134, §127a (6th par., less 1st 13 words, and less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended); added June 4, 1920, ch. 227, subch. I, §51 (6th par., less 1st 13 words, and less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended), 41 Stat. 785. May 23, 1928, ch. 716, 45 Stat. 720. June 15, 1935, ch. 257 (less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended), 49 Stat. 377. June 18, 1878, ch. 263, §7 (less applicability to §108(a) of the Act of Apr. 16, 1949, ch. 38, as amended), 20 Stat. 150. May 29, 1928, ch. 902, 45 Stat. 996; Jan. 29, 1938, ch. 12, §2, 52 Stat. 8.
8926(b)	10:953a (1st sentence).	
8926(c)	10:953a (less 1st sentence).	

Subsection (a) consolidates the various service computation provisions applicable to voluntary retirement of commissioned officers. Clause (1) is substituted for 10:951. Clause (2) is substituted for 10:951b. The words ''pay period and'', in 10:951a, are omitted as superseded by section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U.S.C. 233). The words ''longevity pay and'', in section 7 of the Act of June 18, 1878, ch. 263, 20 Stat. 150, are omitted for the same reason. The last sentence of section 7 of that act is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the Act of June 29, 1948, ch. 708, 62 Stat. 1084. Clause (3) is inserted, since a person entitled to count service under section 8683 of this title might cease to be a nurse or woman medical specialist and thereafter become entitled to retire under one of the revised sections referred to in subsection (a) of this revised section.

In subsection (b), the words ''as a member of the Medical Reserve Corps'', in 10:953a, are omitted as covered by subsection (a)(1). The words ''are computed by adding to his service under subsection (a)'' are substituted for the words ''shall be credited to the same extent as service under a Regular Army commission''.

Subsection (c) is substituted for 10:953a (less 1st sentence).

AMENDMENTS

1996—Subsec. (d). Pub. L. 104–106 added subsec. (d).

1989—Subsec. (a)(1). Pub. L. 101–189, §652(a)(7)(A)(i), inserted ''and'' after semicolon at end.

Subsec. (a)(2). Pub. L. 101–189, §652(a)(7)(A)(ii), substituted period for semicolon at end.

Subsec. (a)(3), (4). Pub. L. 101–189, §652(a)(7)(A)(iii), struck out pars. (3) and (4) which read as follows:

''(3) all service computed under section 8683 of this title; and

''(4) if an officer of the Regular Air Force, all active service performed as an officer of the Philippine Constabulary.''

Subsec. (d). Pub. L. 101–189, §652(a)(7)(B), struck out subsec. (d) which read as follows: ''For the purpose of determining whether an Air Force nurse or medical specialist may be retired under section 8911 of this title, all service computed under section 8683 of this title, shall be treated as if it was service as a commissioned officer.''

1959—Subsec. (d). Pub. L. 86–197 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective Feb. 10, 1996, and applicable to any period of time covered by section 972 of this title that occurs after that date, see section 561(e) of Pub. L. 104–106, set out as a note under section 972 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8911, 8918, 8924, 8928 of this title.

[§ 8927. Repealed. Pub. L. 96–513, title II, § 217(a), Dec. 12, 1980, 94 Stat. 2886]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 553; Aug. 21, 1957, Pub. L. 85–155, title III, §301(20), 71 Stat. 389; May 20, 1958, Pub. L. 85–422, §11(a)(8), 72 Stat. 131; Sept. 2, 1958, Pub. L. 85–861, §1(196), 72 Stat. 1540; Sept. 30, 1966, Pub. L. 89–609, §1(33), 80 Stat. 854, related to computation of years of service for determining whether a regular commissioned officer should be retired under section 8913, 8915, 8916, 8919, 8921, 8922, or 8923 of this title and for determining retired pay of officers of Regular Air Force retired under section 8913, 8915, 8916, 8919, 8921, 8922, or 8923 of this title. See section 1405 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

[§ 8928. Repealed. Pub. L. 85–155, title IV, § 401(1), Aug. 21, 1957, 71 Stat. 390]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 554, related to computation of years of service of Air Force Nurses or women medical specialists for purposes of retirement under former section 8912 of this title, or retirement pay under section 8991 of this title.

§ 8929. Computation of retired pay: law applicable

A member of the Air Force retired under this chapter is entitled to retired pay computed under chapter 871 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8929	[No source].	[No source].

The revised section is based on the various retirement provisions in this chapter and is inserted to make explicit the entitlement to retired pay upon retirement.

CHAPTER 869—RETIRED GRADE

Sec.
8961. General rule.
8962. Higher grade for service in special positions.
8963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct.
8964. Higher grade after 30 years of service: warrant officers and enlisted members.
8965. Restoration to former grade: retired warrant officers and enlisted members.
8966. Retired lists.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title V, § 532(c)(2), Sept. 23, 1996, 110 Stat. 2520, added item 8963.

1988—Pub. L. 100–456, div. A, title XII, § 1233(i)(2)(B), Sept. 29, 1988, 102 Stat. 2058, substituted ''retired'' for ''Regular Air Force'' in item 8965.

1987—Pub. L. 100–180, div. A, title V, § 512(e)(3), Dec. 4, 1987, 101 Stat. 1091, substituted ''warrant officers and enlisted members'' for ''Air Force warrant officers; regular enlisted members'' in item 8964.

1985—Pub. L. 99–145, title XIII, § 1301(d)(2)(B), Nov. 8, 1985, 99 Stat. 736, struck out item 8963 ''Higher grade for service during certain periods: regular and reserve commissioned officers''.

1980—Pub. L. 96–343, § 13(b)(3), Sept. 8, 1980, 94 Stat. 1131, substituted ''positions'' for ''positions: regular commissioned officers'' in item 8962.

§ 8961. General rule

(a) The retired grade of a regular commissioned officer of the Air Force who retires other than for physical disability, and the retired grade of a reserve commissioned officer of the Air Force who retires other than for physical disability, is determined under section 1370 of this title.

(b) Unless entitled to a higher retired grade under some other provision of law, a Regular or Reserve of the Air Force not covered by subsection (a) who retires other than for physical disability retires in the regular or reserve grade that he holds on the date of his retirement.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554; Pub. L. 96–513, title V, § 504(19), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 103–337, div. A, title XVI, § 1674(c)(2), Oct. 5, 1994, 108 Stat. 3016; Pub. L. 106–398, § 1 [[div. A], title V, § 506(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–102.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8961	10:941a(a)(3) (31st through 42d words; and proviso, as applicable to retired grade). 10:941a(e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade). 10:947a (last 11 words). 10:1025.	Aug. 7, 1947, ch. 512, §§ 514(a)(3) (31st through 42d words; and proviso, as applicable to retired grade), 514(e) (17th through 25th words of clause (1); and 1st proviso of clause (1), as applicable to retired grade), 61 Stat. 902, 905. Feb. 14, 1885, ch. 67 (43d through 53d words); restated Sept. 30, 1890, ch. 1125 (43d through 53d words), 26 Stat. 504. R.S. 1254.

The applicability of the rule stated in the revised section to situations not expressly covered by the laws named in the source credits above is necessarily implied from laws providing for retirement in higher grade in those situations.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–398 struck out ''or for nonregular service under chapter 1223 of this title'' before '', is determined''.

1994—Subsec. (a). Pub. L. 103–337 substituted ''chapter 1223'' for ''chapter 67''.

1980—Pub. L. 96–513 added subsec. (a), designated existing provisions as subsec. (b), and inserted ''not covered by subsection (a)'' after ''a Regular or Reserve of the Air Force''.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–398 applicable to Reserve commissioned officers who are promoted to a higher grade as a result of selection for promotion by a board convened under chapter 36 or 1403 of this title, or having been found qualified for Federal recognition in a higher grade under chapter 3 of Title 32, National Guard, after Oct. 1, 1996, see section 1 [[div. A], title V, § 506(c)] of Pub. L. 106–398, set out as a note under section 3961 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 8962. Higher grade for service in special positions

Upon retirement, any permanent professor of the United States Air Force Academy whose grade is below brigadier general, and whose service as such a professor has been long and distinguished, may, in the discretion of the President, be retired in the grade of brigadier general.

(Aug. 10, 1956, ch. 1041, 70A Stat. 554; Pub. L. 85–861, § 1(197), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 89–288, § 6, Oct. 22, 1965, 79 Stat. 1050; Pub. L. 96–343, § 13(b)(1), (2), Sept. 8, 1980, 94 Stat. 1131; Pub. L. 96–513, title V, § 504(20), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 104–106, div. A, title V, § 502(c), (d)(1), Feb. 10, 1996, 110 Stat. 293.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8962(a) ..... 8962(b) ..... 8962(c)	10:506b(d) (less 1st and last provisos). 5:627b(h) (1st 42 words of 3d proviso). 10:1079a(b) (less proviso).	Aug. 7, 1947, ch. 512, §§ 504(d) (less 1st and last provisos), 520(b) (less proviso), 61 Stat. 888, 912. June 12, 1948, ch. 449, § 303(h) (1st 42 words of 3d proviso), 62 Stat. 372.

In subsection (a), the words ''who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Air Force, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 8066 of this title'' are substituted for the words ''while serving in accordance with the provisions of subsection (b) or (c) of this section''.

In subsection (b), the words ''in that grade'' are substituted for the words ''in such higher temporary

grade''. The words ''under section 8071 of this title'' are inserted for clarity.

In subsection (c), the words ''Upon retirement'' are substituted for the words ''When * * * is retired''. The word ''allowances'' is omitted, since retired officers are not entitled to allowances. The words ''grade is below brigadier general'' are inserted, since any permanent professor who has the grade of brigadier general retires in that grade under section 9335 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8962	[No source].	[No source].

The amendment reflects section 1 of the Act of May 31, 1956, ch. 348 (70 Stat. 222), which in effect amended section 8963 of this title to cover regular and reserve officers covered by section 8962(b). As to temporary officers, section 8962(b) is obsolete. (See opinion of the Judge Advocate General of the Air Force, May 2, 1957.)

AMENDMENTS

1996—Pub. L. 104–106 designated subsec. (b) as entire section and struck out subsec. (a) which read as follows: ''Upon retirement, a commissioned officer of the Air Force who has served (1) as Chief of Staff to the President, (2) as Chief of Staff of the Air Force, (3) as a senior member of the Military Staff Committee of the United Nations, or (4) as Surgeon General of the Air Force in the grade of lieutenant general may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade in which he served on active duty.''

1980—Pub. L. 96–343, §13(b)(2), substituted ''positions'' for ''positions: regular commissioned officers'' in section catchline.

Subsec. (a). Pub. L. 96–513 substituted ''or (4)'' for ''(4) in a position of importance and responsibility designated by the President to carry the grade of general or lieutenant general under section 8066 of this title, or (5)''.

Pub. L. 96–343, §13(b)(1), substituted ''Air Force who has'' for ''Regular Air Force who has'' and ''in which he served on active duty'' for ''held by him at any time on the active list''.

1965—Subsec. (a). Pub. L. 89–288 added the Surgeon General of the Air Force to the list of commissioned officers who may, in the discretion of the President, be retired, by and with the advice and consent of the Senate, in the highest grade held by him at any time on the active list.

1958—Subsecs. (b), (c). Pub. L. 85–861 redesignated subsec. (c) as (b), and struck out former subsec. (b) which related to retirement grade of a woman Air Force officer who served at least two and one-half years on active duty in the temporary grade of colonel in the Air Force under section 8071 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

APPOINTMENT BY PRESIDENT OF RETIRED COMMISSIONED OFFICER OF RESERVE COMPONENT TO HIGHER RETIRED GRADE; RECALCULATION OF PAY

For authority of the President to appoint a retired commissioned officer of a reserve component to a higher retired grade and for recalculation of pay, see section 13(c) of Pub. L. 96–343, set out as a note under section 3962 of this title.

RETIRED GRADE FOR CERTAIN GENERAL OFFICERS

Extension of privilege granted by subsec. (a) of this section, to officers, heretofore or hereafter retired, who served in the grade of general or lieutenant general after Dec. 7, 1941, and before July 1, 1946, see section 38 of act Aug. 10, 1956, set out as a note under section 3962 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 8963. Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

(a) A Reserve enlisted member of the Air Force described in subsection (b) who is retired under section 8914 of this title shall be retired in the highest enlisted grade in which the member served on active duty satisfactorily (or, in the case of a member of the National Guard, in which the member served on full-time National Guard duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to a Reserve enlisted member who—

(1) at the time of retirement is serving on active duty (or, in the case of a member of the National Guard, on full-time National Guard duty) in a grade lower than the highest enlisted grade held by the member while on active duty (or full-time National Guard duty); and

(2) was previously administratively reduced in grade not as a result of the member's own misconduct, as determined by the Secretary of the Air Force.

(c) This section applies with respect to Reserve enlisted members who are retired under section 8914 of this title after September 30, 1996.

(Added Pub. L. 104–201, div. A, title V, §532(c)(1), Sept. 23, 1996, 110 Stat. 2519.)

PRIOR PROVISIONS

A prior section 8963, acts Aug. 10, 1956, ch. 1041, 70A Stat. 555; Sept. 2, 1958, Pub. L. 85–861, §1(156), (198), 72 Stat. 1513, 1541; Dec. 12, 1980, Pub. L. 96–513, title V, §504(21), 94 Stat. 2917, related to higher grade for service during certain periods for regular and reserve commissioned officers, prior to repeal by Pub. L. 99–145, title XIII, §1301(d)(2)(A), (C), Nov. 8, 1985, 99 Stat. 736, with such repeal not applicable in the case of an Air Force nurse or medical specialist described in section 8963 of this title, as such section was in effect on the day before Nov. 8, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8991 of this title.

§ 8964. Higher grade after 30 years of service: warrant officers and enlisted members

(a) Each retired member of the Air Force covered by subsection (b) who is retired with less than 30 years of active service is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the highest grade in which he served on active duty satisfactorily (or, in the case of a member of the National Guard, in which he served on full-time duty satisfactorily), as determined by the Secretary of the Air Force.

(b) This section applies to—

(1) warrant officers of the Air Force;

(2) enlisted members of the Regular Air Force; and

(3) reserve enlisted members of the Air Force who, at the time of retirement, are serving on

active duty (or, in the case of members of the National Guard, on full-time duty).

(Aug. 10, 1956, ch. 1041, 70A Stat. 555; Pub. L. 85–861, § 1(198A), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 98–525, title V, § 533(c), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 100–180, div. A, title V, § 512(c), Dec. 4, 1987, 101 Stat. 1090.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8964	10:594 (1st proviso, less last 39 words; and last proviso). 10:1004 (less 30 words before proviso).	Aug. 21, 1941, ch. 384, § 5 (1st proviso, less last 39 words; and last proviso); restated June 29, 1948, ch. 708, § 203 (c) (1st proviso, less last 39 words; and last proviso), 62 Stat. 1085; May 29, 1954, ch. 249, § 19(f), 68 Stat. 167. June 29, 1948, ch. 708, § 203(e) (less 30 words before proviso), 62 Stat. 1086.

The words ''when his active service plus his service on the retired list totals 30 years'' are substituted for the words ''upon the completion of thirty years' [years of] service, to include the sum of his active service and his service on the retired list'', in 10:594 and 1004. The words ''under any provision of law'', in 10:594 and 1004; ''officer, flight officer, or warrant officer'', in 10:594; and ''commissioned, warrant, or enlisted'', in 10:1004; are omitted as surplusage. 10:594 (last proviso) and 1004 (proviso) are omitted as superseded by section 1372 of this title.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8964	10 App.:1004.	May 31, 1956, ch. 348, § 1, 70 Stat. 222.

AMENDMENTS

1987—Pub. L. 100–180 substituted ''warrant officers and enlisted members'' for ''Air Force warrant officers; regular enlisted members'' in section catchline, and amended text generally. Prior to amendment, text read as follows: ''Each warrant officer of the Air Force, and each enlisted member of the Regular Air Force, who is retired before or after this title is enacted is entitled, when his active service plus his service on the retired list totals 30 years, to be advanced on the retired list to the grade that is equal to the highest grade in which he served on active duty satisfactorily, as determined by the Secretary of the Air Force.''

1984—Pub. L. 98–525 substituted ''highest grade'' for ''highest temporary grade''.

1958—Pub. L. 85–861 struck out ''after September 8, 1940 and before July 1, 1946'' after ''Secretary of the Air Force''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–180 applicable to any reserve enlisted member who completes 30 years of service in Armed Forces before, on, or after Dec. 4, 1987, and no person to be paid retired pay at higher rate by reason of enactment of Pub. L. 100–180 for any period before Dec. 4, 1987, see section 512(f) of Pub. L. 100–180, set out as a note under section 3964 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8965, 8992 of this title.

§ 8965. Restoration to former grade: retired warrant officers and enlisted members

Each retired warrant officer or enlisted member of the Air Force who has been advanced on the retired list to a higher commissioned grade under section 8964 of this title, and who applies to the Secretary of the Air Force within three months after his advancement, shall, if the Secretary approves, be restored on the retired list to his former warrant-officer or enlisted status, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 555; Pub. L. 100–180, div. A, title V, § 512(d)(3), Dec. 4, 1987, 101 Stat. 1090; Pub. L. 100–456, div. A, title XII, § 1233(i)(2)(A), Sept. 29, 1988, 102 Stat. 2058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8965	10:1006.	June 29, 1948, ch. 708, § 204, 62 Stat. 1086.

The words ''hereafter'', ''rank or'', and ''shall thereafter be deemed to be enlisted or warrant officer personnel, as appropriate, for all purposes'' are omitted as surplusage. The words ''three months from June 29, 1948'' and ''whichever is later'' are omitted as executed.

AMENDMENTS

1988—Pub. L. 100–456 substituted ''retired'' for ''Regular Air Force'' in section catchline.

1987—Pub. L. 100–180 struck out ''Regular'' before ''Air Force who''.

§ 8966. Retired lists

(a) The Secretary of the Air Force shall maintain a retired list containing the name of each retired commissioned officer of the Regular Air Force.

(b) The Secretary shall maintain a retired list containing the name of—

(1) each person entitled to retired pay under any law providing retired pay for commissioned officers of the Air Force, other than of the Regular Air Force; and

(2) each retired warrant officer or enlisted member of the Air Force who is advanced to a commissioned grade.

(c) The Secretary shall maintain a retired list containing the name of each retired warrant officer of the Air Force.

(d) The Secretary shall maintain a retired list containing the name of each retired enlisted member of the Regular Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; Pub. L. 85–861, § 1(199), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 100–180, div. A, title V, § 512(d)(3), Dec. 4, 1987, 101 Stat. 1090.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8966(a) ..... 8966(b) ..... 8966(c) ..... 8966(d)	10:1001. 10:1036. [No source]. [No source].	June 29, 1948, ch. 708, §§ 201, 301(a), 62 Stat. 1084, 1087.

In subsections (a), (b), and (d), the word ''maintain'' is substituted for the word ''establish'', and in subsection (c) the word ''maintain'' is substituted for the

word ''established'', since the lists have been established and are published annually.

In subsection (a), the words ''Effective upon June 29, 1948'' are omitted as executed. 10:1001 (last 12 words of 1st sentence, and last sentence) is omitted as no longer required, since, upon enactment of this title, laws referring to the limited or unlimited retired list will be expressly repealed.

In subsection (b), the word ''shall'' is substituted for the word ''may'', since 10:1036 further requires that such a list be published annually in the Register. The requirement as to publication necessarily implies that the list must be maintained.

Subsection (b)(1) is substituted for the words ''all commissioned officers and former commissioned officers * * * or the Air Force of the United States, as the case may be * * * or the Regular Air Force, heretofore or hereafter granted retirement pay under sections 456, 456a, and 1036a of this title, or any law hereafter enacted to provide retirement pay for commissioned officers * * * or the Regular Air Force''.

In subsection (b)(2), the words ''who is advanced to a commissioned grade'' are substituted for the words ''heretofore or hereafter retired under any provision of law who, by reason of service in temporary commissioned grades * * * or the Air Force of the United States, or in any of the respective components thereof, are entitled to be retired with commissioned rank or grade''.

Subsections (c) and (d) are inserted, since sections 8964 and 8965 of this title refer to service on the retired list as a warrant officer or enlisted member.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8966(a)	10 App.:1001.	July 24, 1956, ch. 677,
8966(b)	10 App.:1036.	§2(f), (g), 70 Stat. 623.

AMENDMENTS

1987—Subsec. (b)(2). Pub. L. 100–180 struck out ''Regular'' before ''Air Force''.

1958—Pub. L. 85–861 struck out provisions in subsecs. (a) and (b) which required annual publication in official Air Force Register of the retired list.

CHAPTER 871—COMPUTATION OF RETIRED PAY

Sec.
8991. Computation of retired pay.
8992. Recomputation of retired pay to reflect advancement on retired list.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 8929 of this title.

§ 8991. Computation of retired pay

(a) COMPUTATION.—

(1) FORMULA.—The monthly retired pay of a member entitled to such pay under this subtitle is computed by multiplying—

(A) the member's retired pay base (as computed under section 1406(e) or 1407 of this title), by

(B) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(2) ADDITIONAL 10 PERCENT FOR CERTAIN ENLISTED MEMBERS CREDITED WITH EXTRAORDINARY HEROISM.—If a member who is retired under section 8914 of this title has been credited by the Secretary of the Air Force with extraordinary heroism in the line of duty, the member's retired pay shall be increased by 10 percent of the amount determined under paragraph (1) (but to not more than 75 percent of the retired pay base upon which the computation of such retired pay is based). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(b) GENERAL RULES.—

(1) USE OF MOST FAVORABLE FORMULA.—If a person would otherwise be entitled to retired pay computed under more than one formula in subsection (a) or the table in section 1401 of this title, he is entitled to be paid under the applicable formula that is most favorable to him.

(2) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (a), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(c) SPECIAL RULE FOR RETIRED RESERVE ENLISTED MEMBERS COVERED BY SECTION 8963.—In the case of a Reserve enlisted member retired under section 8914 of this title whose retired grade is determined under section 8963 of this title and who first became a member of a uniformed service before September 8, 1980, the retired pay base of the member (notwithstanding section 1406(a)(1) of this title) is the amount of the monthly basic pay of the member's retired grade (determined based upon the rates of basic pay applicable on the date of the member's retirement), and that amount shall be used for the purposes of subsection (a)(1)(A) rather than the amount computed under section 1406(e) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 556; Pub. L. 85–155, title III, §301(22), Aug. 21, 1957, 71 Stat. 389; Pub. L. 85–422, §§6(6), (8), 11(a)(9), May 20, 1958, 72 Stat. 129, 131; Pub. L. 85–861, §1(199A), Sept. 2, 1958, 72 Stat. 1541; Pub. L. 87–651, title I, §127, Sept. 7, 1962, 76 Stat. 514; Pub. L. 88–132, §5(h)(2), Oct. 2, 1963, 77 Stat. 214; Pub. L. 90–207, §3(5), Dec. 16, 1967, 81 Stat. 654; Pub. L. 96–342, title VIII, §813(e), Sept. 8, 1980, 94 Stat. 1109; Pub. L. 96–513, title V, §§504(22), 514(8), Dec. 12, 1980, 94 Stat. 2917, 2935; Pub. L. 98–94, title IX, §§922(a)(12), 923(a)(1), (2)(H), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 99–348, title II, §204(a), July 1, 1986, 100 Stat. 697; Pub. L. 103–337, div. A, title VI, §635(c)(2), Oct. 5, 1994, 108 Stat. 2789; Pub. L. 104–201, div. A, title V, §532(d)(3), Sept. 23, 1996, 110 Stat. 2520.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8991 Introductory paragraph.	10:941a(a)(3) (proviso, less applicability to retired grade). 10:941a(e) (1st proviso of clause (1), less applicability to retired grade).	R.S. 1274. Mar. 2, 1907, ch. 2515, §1 (less 1st 35 words, and less proviso), 34 Stat. 1217.
8991(A)	10:166g(a) (less 1st 49 words; less 1st proviso; and less 1st 84 words of last proviso). 10:941a(a)(3) (less 31st through 42d words, and less proviso).	July 31, 1935, ch. 422, §5 (less 1st 101 words, and less 3d proviso); restated June 13, 1940, ch. 344, §3 (less 1st 45 words, and less 2d proviso), 54 Stat. 380; Aug. 7, 1947, ch. 512, §§514(g), 521(a), 61 Stat. 906, 912; June 29, 1948, ch. 708, §202 (less 1st 105 words), 62 Stat. 1084.
8991(B)	10:941a(e) (clause (1), less 1st 25, and 59th through 113th, words; and less 1st proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8991(C)	10:971. 10:971b (less 1st 100 words, and less 1st and 3d proviso).	Oct. 6, 1945, ch. 393, §4 (less 1st sentence); restated Aug. 10, 1946, ch. 952, §6(a) (less 1st sentence), 60 Stat. 996.
8991(D)	10:948 less (1st sentence, and less 1st and last provisos of last sentence).	Aug. 10, 1946, ch. 952, §6(c), 60 Stat. 996.
8991(E)	10:980.	Apr. 16, 1947, ch. 38, §108(a) (less 1st 49 words, and less 1st 84 words of last proviso), 61 Stat. 44.
8991 Footnote 1.	10:506b(d) (1st proviso). 10:1079a(b) (proviso).	
8991 Footnote 2.	5:627b(h) (3d proviso, less 1st 42, and last 13, words). 10:1002 (34 words before proviso and proviso). 10:1003 (last 40 words).	Aug. 7, 1947, ch. 512, §§504(d) (1st proviso), 514(a)(3) (less 31st through 42d words; and less proviso, less applicability to retired grade), 514(e) (clause (1), less 1st 25, and 59th through 93d, words; and less 1st proviso, as applicable to retired grade), 520(b) (proviso), 61 Stat. 888, 902, 905, 912.
8991 Footnote 3.	[No source].	
8991 Footnote 4.	10:166g(a) (1st proviso). 10:941a(e) (94th through 113th words of clause (1)). 10:948 (last proviso of last sentence). 10:971b (1st proviso). 37:272(d) (1st proviso).	
8991 Footnote 5.	10:948 (1st proviso of last sentence).	June 12, 1948, ch. 449, §303(h) (3d proviso, less 1st 42, and last 13, words), 62 Stat. 372. June 29, 1948, ch. 708, §§203(a) (34 words before proviso, and proviso), 203(d) (last 40 words), 62 Stat. 1085.

In the introductory paragraph, the applicability of the rule stated in the third sentence to situations not expressly covered by the laws named in the source statutes above is a practical construction that the rule must be reciprocally applied in all cases.

In formula B, the words ''basic pay'' are substituted for the words ''base and longevity pay'' to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''his retired grade'' are substituted for the words ''permanent grade held at time of retirement'' to reflect the right to higher retired grade when qualified under other provisions of law. 10:941a(e) (last proviso of clause (1)), is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U.S.C. 233), the active duty pay of all members of the Air Force is based upon years of service.

In formula C, the computation is based on monthly pay instead of annual pay to conform to the other formulas of the revised section. The words ''basic pay'' are substituted for the words ''active duty base and longevity pay'', and the words ''in determining his basic pay'' are substituted for the words ''for longevity pay purposes'', to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''Monthly basic pay of member's retired grade'' are substituted for the words ''the rank upon which they are retired'', in 10:971, and ''rank with which retired'', in 10:971b, to reflect their right to advancement on the retired list. 10:971 now applies only when the retiring officer has 30 or more years of service which may be credited in computing his retired pay. 10:971b (2d proviso) is omitted, since, under section 202 of the Career Compensation Act of 1949, 63 Stat. 807 (37 U.S.C. 233), the pay of all members is based upon cumulative years of service. 10:971b (4th proviso) is omitted as executed. 10:971b (last proviso) is omitted, since the distinction between limited and unlimited retired lists was abolished by section 201 of the Act of June 29, 1948, ch. 708, 62 Stat. 1084. Sections 8918, 8920, and 8924 are included under this formula, since it achieves the same result as is reached on a basis of 30 years multiplied by 2½ percent, and simplifies the table.

In formulas D and E the words ''credited under section 8925'' are substituted for the words ''active Federal service'', since that revised section makes explicit the service covered. The Act of August 10, 1946, ch. 952, §6(c), 60 Stat. 996, is not contained in 10:948. It is also omitted from the revised section as executed. 10:980 now applies only when the retiring enlisted member has at least 30 years of service which may be credited in computing his retired pay. However, as noted above, 10:980 is the only provision of law applicable to cases in which the retiring member has at least 30 years of service. The Act of June 16, 1942, ch. 413, §19 (63d through 75th words of 2d par.), 56 Stat. 369, repealed so much of the Act of March 2, 1907, ch. 2513, 34 Stat. 1217, as provided allowances for enlisted men on the retired list. The repeal of section 19 of the Act of June 16, 1942, by section 531(b)(34) of the Career Compensation Act of 1949, 63 Stat. 839, did not revive that portion of the Act of March 2, 1907, which had been repealed by the Act of June 16, 1942. Accordingly, the Act of March 2, 1907, as thus modified by the Act of June 16, 1942, is used as the basis for formula E.

Footnote 2 reflects the long-standing construction of those provisions dealing with computation of retired pay which do not specifically provide that the member is entitled to compute his retired pay on the basis of the monthly basic pay to which he would be entitled if he were on active duty in his retired grade. Except in cases covered by formula C, the pertinent basic computation provisions for such retirement either provide for computation of retired pay on the same basis as the provisions dealing with higher retired grade, or the basic retirement provisions were themselves enacted after the provisions authorizing higher retired grade. The provisos of 10:1002 and 1005 are omitted as surplusage, since no formula for the computation of retired pay includes inactive service on the retired list as a credit.

The words ''at rates applicable on date of retirement and adjust to reflect later changes in permanent rates'', in footnote 2; and all of footnote 4; are based on the source statutes incorporated in the formulas to which footnotes 2 and 4 apply.

In footnote 4, the words ''and disregard a part of a year that is less than six months'' are made applicable to formulas A–E, although this part of the rule is expressed only as to formula B, in 10:941a(4)(1). The legislative history of the Career Compensation Act of 1949 (Hearings before the Committee on Armed Services of the Senate on H.R. 5007, 81st Congress, first session, p. 313, July 6, 1949) indicates that the provisions, upon which formulas A and C–E are based, should be construed to require that a part of a year that is less than six months be disregarded.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8991	[No source].	[No source].

The amendment reflects section 1(197) of the bill [amendment of section 8962 of title 10].

1962 ACT

The change corrects a cross-reference error.

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

1994—Subsec. (a)(1). Pub. L. 103–337, §635(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) contained table which provided two formulas for computing retired pay for cases covered under sections 8911, 8914, 8917, 8918, 8920, and 8924 of this title.

Subsec. (b)(1). Pub. L. 103–337, §635(c)(2)(B)(i), struck out ''of the table'' after ''than one formula''.

Subsec. (b)(3). Pub. L. 103–337, §635(c)(2)(B)(ii), struck out heading and text of par. (3). Text read as follows: ''Section references in the table in subsection (a) are to sections of this title.''

1986—Pub. L. 99–348 amended section generally by completely revising the formula for computation of retired pay to provide that the retired pay base as com-

puted under section 1406(e) or section 1407 be multiplied by the retired pay multiplier prescribed in section 1409 for years of service credited under section 1405 for sections 8911, 8918, 8920, and 8924 and for the years of service credited under section 8925 for sections 8914 and 8917, eliminated monthly basic pay of a member's retired grade or to which a member was entitled on the day before he retired multiplied by 2½ percent of the years of service credited, subject to footnotes 1 to 4, as the basis for computing retired pay, incorporated provisions of column 3 and footnote 5 into subsec. (a)(2), struck out column 4, which provided that the excess over 75% of pay upon which the computation is based be subtracted, eliminated footnotes 1 to 4, and added subsec. (b).

1983—Pub. L. 98–94, §923(a)(1), (2)(H), in footnote 4 to table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Pub. L. 98–94, §922(a)(12), inserted ''The amount computed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

1980—Pub. L. 96–513, §514(8), in heading for column 1 of table substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981''.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons after date of enactment of Department of Defense Authorization Act, 1981.

Pub. L. 96–513, §504(22), in table struck out Formula A and redesignated Formulas B, C, and D as A, B, and C, respectively.

1967—Pub. L. 90–207 inserted '', or if the member has served as chief master sergeant of the Air Force, compute at the highest basic pay applicable to him while he so served, if such basic pay is greater'' after ''retirement'' in footnote 3 of the table.

1963—Pub. L. 88–132 substituted in column 1 of Formula A in table ''Monthly basic pay[2] of member's retired grade[1]'' for ''Monthly basic pay to which member would be entitled if he were on active duty in his retired grade[1]'' and eliminated from footnote 2 to such table ''and adjust to reflect later changes in applicable permanent rates. However, if member's retired grade is determined under section 3963(a) or 3963(b), use pay to which member would be entitled if he were on active duty in his retired grade'' after ''date of retirement''.

1962—Pub. L. 87–651 substituted ''section 8962(b)'' for ''section 8962(c)'' in footnote 1.

1958—Formula B. Pub. L. 85–422, §11(a)(9), substituted ''credited to him under section 1405 of this title'' for ''credited to him in determining basic pay'' in column 2.

Formula C. Pub. L. 85–422, §6(8), substituted ''Monthly basic pay to which member was entitled on day before he retired'' for ''Monthly basic pay to which member was entitled on date when he applied for retirement'' in column 1.

Formula D. Pub. L. 85–422, §6(8), substituted ''Monthly basic pay to which member was entitled on day before he retired'' for ''Monthly basic pay of member's retired grade'' in column 1.

Footnote 1. Pub. L. 85–422, §6(6), permitted in case of an officer who has served as Chief of Staff, computation at highest rates of basic pay applicable to him while he served in that office.

Footnote 2. Pub. L. 85–861 struck out reference to section 8962(b).

1957—Pub. L. 85–155 redesignated formulas ''B'' to ''E'' of table as formulas ''A'' to ''D''. Former formula ''A'', which related to computation of retirement pay for persons retired under former sections 8881, 8882, and 8912 of this title, was repealed by such Pub. L. 85–155.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 504(22) of Pub. L. 96–513 effective Sept. 15, 1981, and amendment by section 514(8) of Pub. L. 96–513 effective Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–207 effective Oct. 1, 1967, see section 7 of Pub. L. 90–207, set out as a note under section 203 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–422 effective on June 1, 1958, see section 9 of Pub. L. 85–422.

Amendment by Pub. L. 85–422 as inapplicable to retired persons or to persons to whom retired pay is granted before May 31, 1958, see note set out under section 3991 of this title.

COMPUTATION OF RETIRED PAY FOR CERTAIN ENLISTED MEMBERS RETIRED PRIOR TO JUNE 1, 1958

Members retired prior to June 1, 1958, authorized to include active service performed to the date of retirement as creditable service in computation of basic pay upon which retired pay is based, see Pub. L. 87–537, set out as a note under section 3991 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

§ 8992. Recomputation of retired pay to reflect advancement on retired list

(a) ENTITLEMENT TO RECOMPUTATION.—An enlisted member or warrant officer of the Air Force who is advanced on the retired list under section 8964 of this title is entitled to recompute his retired pay in accordance with this section.

(b) FORMULA.—The monthly retired pay of a member entitled to recompute that pay under this section is computed by multiplying—

(1) the member's retired pay base (as computed under section 1406(e) or 1407 of this title), by

(2) the retired pay multiplier prescribed in section 1409 of this title for the number of years credited to the member under section 1405 of this title.

(c) ROUNDING TO NEXT LOWER DOLLAR.—The amount computed under subsection (b), if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(Aug. 10, 1956, ch. 1041, 70A Stat. 557; Pub. L. 96–342, title VIII, §813(e), Sept. 8, 1980, 94 Stat. 1109; Pub. L. 96–513, title V, §514(8), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 97–295, §1(52), Oct. 12, 1982, 96 Stat. 1300; Pub. L. 98–94, title IX, §§922(a)(13), 923(a)(1), (2)(I), Sept. 24, 1983, 97 Stat. 642, 643; Pub. L. 99–348, title II, §204(b), July 1, 1986, 100 Stat. 698; Pub. L. 103–337, div. A, title VI, §635(c)(3), Oct. 5, 1994, 108 Stat. 2789.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8992	10:594 (last 39 words of 1st proviso). 10:1004 (30 words before proviso).	Aug. 21, 1941, ch. 384, §5 (last 39 words of 1st proviso); restated June 29, 1948, ch. 708, §203(c) (last 39 words of 1st proviso), 62 Stat. 1085; May 29, 1954, ch. 249, §19(f), 68 Stat. 167. June 29, 1948, ch. 708, §203(e) (30 words before proviso), 62 Stat. 1086.

The words ''basic pay * * * as the case may be'' are inserted to conform to the terminology of the Career Compensation Act of 1949, 63 Stat. 802 (37 U.S.C. 231 et seq.). The words ''at the rate prescribed by law for his length of service'', in 10:1004, are omitted as covered by the words ''base and longevity pay''. The words ''base and longevity pay'' are retained to cover the cases of members retired before the enactment of the Career Compensation Act of 1949, and advanced on the retired list after the enactment of that act. The words ''and disregard a part of a year that is less than six months'' are inserted to conform to footnote 4 of section 8991 of this title.

1982 ACT

This amends 10:8992 to correct an inadvertent error in the codification of title 10 in 1956 relating to retirement pay of warrant officers advanced on the retired list. For further details, see the explanation for amendment of 10:1405 made by section 1(17).

AMENDMENTS

1994—Pub. L. 103–337 amended section generally. Prior to amendment, section contained table with two formulas for recomputing retired pay of enlisted members and warrant officers of Air Force to reflect advancement on retired list.

1986—Pub. L. 99–348 revised table generally by striking out provision in column 1 that for a person who first became a member of a uniformed service, as defined in section 1407(a)(2), after Sept. 7, 1980, one multiplier is the monthly retired pay base as computed under section 1407(e), substituting in formulas A and B provision that the retired pay base as computed under section 1406(e) or 1407 of this title be multiplied by the retired pay multiplier prescribed in section 1409 of this title for the number of years credited for provisions that the monthly basic pay or base and longevity pay, as the case may be, subject to footnote 1, of the grade to which the member is advanced on the retired list be multiplied by 2½% of years of service credited, subject to footnote 2, and have subtracted from it the excess over 75% of pay upon which the computation is based, struck out footnote 1, which provided that the computation be at the rate applicable on the date of retirement, and redesignated footnote 2 as 1 and substituted ''In determining retired pay multiplier'' for ''Before applying percentage factor'' and ''1/12'' for ''one-twelfth''.

1983—Pub. L. 98–94, §923(a)(1), (2)(I), in footnote 2 to table, substituted ''Before applying percentage factor, credit each full month of service that is in addition to the number of full years of service creditable to the member as one-twelfth of a year and disregard any remaining fractional part of a month'' for ''Before applying percentage factor, credit a part of a year that is six months or more as a whole year, and disregard a part of a year that is less than six months''.

Pub. L. 98–94, §922(a)(13), inserted ''The amount recomputed, if not a multiple of $1, shall be rounded to the next lower multiple of $1.''

1982—Pub. L. 97–295 inserted ''enlisted'' before ''member of the Air Force'' and formula B relating to warrant officers.

1980—Pub. L. 96–513 in heading for column 1 of table substituted ''after September 7, 1980'' for ''on or after the date of the enactment of the Department of Defense Authorization Act, 1981''.

Pub. L. 96–342 in heading for column 1 of table inserted provisions respecting applicability to persons after date of enactment of Department of Defense Authorization Act, 1981.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 applicable to computation of retired pay of any enlisted member who retires on or after Oct. 5, 1994, to computation of retainer pay of any enlisted member who is transferred to Fleet Reserve or Fleet Marine Corps Reserve on or after Oct. 5, 1994, and to recomputation of retired pay of any enlisted member who is advanced on retired list on or after Oct. 5, 1994, see section 635(e) of Pub. L. 103–337, set out as a note under section 1405 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922 of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of this title.

Amendment by section 923 of Pub. L. 98–94 applicable with respect to (1) the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, and (2) the recomputation of retired pay under this section, of any individual who after Sept. 30, 1983, becomes entitled to recompute retired pay under this section, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1406 of this title.

CHAPTER 873—CIVILIAN EMPLOYEES

Sec.
9021. Air University: civilian faculty members.
[9022, 9023. Repealed.]
9025. Production of supplies and munitions: hours and pay of laborers and mechanics.
9027. Civilian special agents of the Office of Special Investigations: authority to execute warrants and make arrests.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §554(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127, added item 9027.

1989—Pub. L. 101–189, div. A, title XI, §1124(d)(2), Nov. 29, 1989, 103 Stat. 1560, added item 9021.

1983—Pub. L. 98–94, title IX, §932(c)(2), Sept. 24, 1983, 97 Stat. 650, struck out item 9022 ''Contract surgeons''.

1962—Pub. L. 87–651, title I, §128(2), Sept. 7, 1962, 76 Stat. 514, struck out item 9023 ''Service club and library services''.

1958—Pub. L. 85–861, §1(200), Sept. 2, 1958, 72 Stat. 1541, struck out item 9021 ''Appointment: professional and scientific services''.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1552 of this title.

§ 9021. Air University: civilian faculty members

(a) AUTHORITY OF SECRETARY.—The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at a school of the Air University as the Secretary considers necessary.

(b) COMPENSATION OF FACULTY MEMBERS.—The compensation of persons employed under this section shall be as prescribed by the Secretary.

(c) APPLICATION TO CERTAIN FACULTY MEMBERS.—(1) Except as provided in paragraph (2), this section shall apply with respect to persons who are selected by the Secretary for employment as professors, instructors, and lecturers at a school of the Air University after February 27, 1990.

(2) This section shall not apply with respect to professors, instructors, and lecturers employed at a school of the Air University if the duration of the principal course of instruction offered at that school is less than 10 months.

(Added Pub. L. 101–189, div. A, title XI, §1124(d)(1), Nov. 29, 1989, 103 Stat. 1559; amended Pub. L. 103–337, div. A, title X, §1070(a)(17), Oct. 5, 1994, 108 Stat. 2856.)

PRIOR PROVISIONS

A prior section 9021, act Aug. 10, 1956, ch. 1041, 70A Stat. 558, related to appointments in professional and scientific service, prior to repeal by Pub. L. 85–861, §36B(30), Sept. 2, 1958, 72 Stat. 1571.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–337 substituted ''after February 27, 1990'' for ''after the end of the 90-day period beginning on the date of the enactment of this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

[§ 9022. Repealed. Pub. L. 98–94, title IX, § 932(c)(1), Sept. 24, 1983, 97 Stat. 650]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 558, authorized Secretary of the Air Force to employ contract surgeons in an emergency. See section 1091 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1983, but with contracts entered into under the authority of this section before Oct. 1, 1983, which are in effect on Oct. 1, 1983, to remain in effect in accordance with the terms of such contracts, see section 932(f) of Pub. L. 98–94, set out as an Effective Date note under section 1091 of this title.

[§ 9023. Repealed. Pub. L. 87–651, title I, § 128(1), Sept. 7, 1962, 76 Stat. 514]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 558, related to employment of civilians in service club and library services.

§ 9025. Production of supplies and munitions: hours and pay of laborers and mechanics

During a national emergency declared by the President, the regular working hours of laborers and mechanics of the Department of the Air Force producing military supplies or munitions are 8 hours a day or 40 hours a week. However, under regulations prescribed by the Secretary of the Air Force these hours may be exceeded. Each laborer or mechanic who works more than 40 hours in a workweek shall be paid at a rate not less than one and one-half times the regular hourly rate for each hour in excess of 40.

(Aug. 10, 1956, ch. 1041, 70A Stat. 558.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9025	5:189a.	July 2, 1940, ch. 508, §4 (b), 54 Stat. 714.

The words ''Notwithstanding the provisions of any other law'' are omitted as surplusage. The word ''producing'' is substituted for the words ''who are engaged in the manufacture or production''. The last sentence is substituted for 5:189a (last 34 words).

§ 9027. Civilian special agents of the Office of Special Investigations: authority to execute warrants and make arrests

(a) AUTHORITY.—The Secretary of the Air Force may authorize any Department of the Air Force civilian employee described in subsection (b) to have the same authority to execute and serve warrants and other processes issued under the authority of the United States and to make arrests without a warrant as may be authorized under section 1585a of this title for special agents of the Defense Criminal Investigative Service.

(b) AGENTS TO HAVE AUTHORITY.—Subsection (a) applies to any employee of the Department of the Air Force who is a special agent of the Air Force Office of Special Investigations (or a successor to that office) whose duties include conducting, supervising, or coordinating investigations of criminal activity in programs and operations of the Department of the Air Force.

(c) GUIDELINES FOR EXERCISE OF AUTHORITY.—The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Secretary of the Air Force and approved by the Secretary of Defense and the Attorney General and any other applicable guidelines prescribed by the Secretary of the Air Force, the Secretary of Defense, or the Attorney General.

(Added Pub. L. 106–398, §1 [[div. A], title V, §554(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–127.)

PART III—TRAINING

Chap.		Sec.
901.	Training Generally	9301
903.	United States Air Force Academy	9331
905.	Aviation Leadership Program	9381
907.	Schools and Camps	9411
909.	Civil Air Patrol	9441

AMENDMENTS

1993—Pub. L. 103–160, div. A, title XI, §1178(c), Nov. 30, 1993, 107 Stat. 1769, added item for chapter 905.

1964—Pub. L. 88–647, title III, §301(27), Oct. 13, 1964, 78 Stat. 1073, struck out chapter 905.

CHAPTER 901—TRAINING GENERALLY

Sec.
9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.

Sec.
9302. Enlisted members of Air Force: schools.
9303. Aviation cadets and aviation students: schools.
9304. Aviation students: detail of enlisted members of Air Force.
9305. Civilian flying school instructors: instruction at Air Force training commands.
9306. Service schools: leaves of absence for instructors.
9314. United States Air Force Institute of Technology.
9315. Community College of the Air Force: associate degrees.
9316. Training and support for A–10 aircraft.
9317. Air University: graduate-level degrees.
9319. Recruit basic training: separate housing for male and female recruits.
9320. Recruit basic training: privacy.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, §543(b)(2), Oct. 5, 1999, 113 Stat. 607, substituted ''graduate-level degrees'' for ''master of airpower art and science'' in item 9317.

1998—Pub. L. 105–261, div. A, title V, §§521(c)(2), 522(c)(2), Oct. 17, 1998, 112 Stat. 2012, 2013, added items 9319 and 9320.

1994—Pub. L. 103–337, div. A, title IX, §913(a)(2), Oct. 5, 1994, 108 Stat. 2828, added item 9317.

1991—Pub. L. 102–190, div. A, title X, §1061(a)(25), Dec. 5, 1991, 105 Stat. 1474, struck out section symbol before ''9316'' in item 9316.

1990—Pub. L. 101–510, div. A, title XIV, §1439(d), Nov. 5, 1990, 104 Stat. 1689, added item 9316.

1985—Pub. L. 99–145, title V, §504(a)(2)(B), Nov. 8, 1985, 99 Stat. 622, struck out '': degrees'' after ''Technology'' in item 9314.

1976—Pub. L. 94–361, title VI, §602, July 14, 1976, 90 Stat. 928, added item 9315.

§9301. Members of Air Force: detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals

(a) The Secretary of the Air Force may detail members of the Air Force as students at such technical, professional, and other civilian educational institutions, or as students, observers, or investigators at such industrial plants, hospitals, and other places, as are best suited to enable them to acquire knowledge or experience in the specialties in which it is considered necessary that they perfect themselves.

(b) An officer, other than one of the Regular Air Force on the active-duty list, who is detailed under subsection (a) shall be ordered to additional active duty immediately upon termination of the detail, for a period at least as long as the detail. However, if the detail is for 90 days or less, the officer may be ordered to that additional duty only with his consent and in the discretion of the Secretary.

(c) No Reserve of the Air Force may be detailed as a student, observer, or investigator, or ordered to active duty under this section, without his consent and, if a member of the Air National Guard of the United States, without the approval of the governor or other appropriate authority of the State or Territory, Puerto Rico, or the District of Columbia of whose Air National Guard he is a member.

(d) The Secretary may require, as a condition of a detail under subsection (a), that an enlisted member accept a discharge and be reenlisted in his component for at least three years.

(e) The total length of details of an enlisted member of the Air Force under subsection (a) during one enlistment period may not exceed 50 percent of that enlistment.

(f) At no time may more than 8 percent of the authorized strength in commissioned officers, 8 percent of the authorized strength in warrant officers, or 2 percent of the authorized strength in enlisted members, of the Regular Air Force, or more than 8 percent of the actual strength in commissioned officers, 8 percent of the actual strength in warrant officers, or 2 percent of the actual strength in enlisted members, of the total of reserve components of the Air Force, be detailed as students under subsection (a). For the purposes of this subsection, the actual strength of each category of Reserves includes both members on active duty and those not on active duty.

(g) Expenses incident to the detail of members under this section shall be paid from any funds appropriated for the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 559; Pub. L. 93–169, Nov. 29, 1973, 87 Stat. 689; Pub. L. 96–513, title V, §504(23), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9301(a)	5:626q (1st 78 words).	June 3, 1916, ch. 134, §127a (13th par.); added June 4, 1920, ch. 227, subch. I, §51 (13th par.); restated June 8, 1926, ch. 495; May 13, 1941, ch. 113; June 30, 1941, ch. 262 (4th proviso under ''Finance Department''); restated June 19, 1948, ch. 501, §1, 62 Stat. 477. June 19, 1948, ch. 501, §§2, 3, 62 Stat. 478.
9301(b)	5:626q (less 1st 78 words, and less provisos).	
9301(c)	5:626q (1st proviso).	
9301(d)	5:626q (words of 2d proviso before semicolon).	
9301(e)	5:626q (words of 2d proviso after semicolon).	
9301(f).	5:626q (last proviso).	
9301(g)	5:626r.	

In subsection (a), the words ''members of the Air Force'' are substituted for the words ''personnel of the Air Force of the United States, without regard to component''.

In subsection (b), the words ''is detailed under subsection (a)'' are substituted for the words ''receives such instruction''. The words ''as long as the detail'' are substituted for the words ''equal to the duration of his period of instruction''. The words ''However, if the detail is for'' are substituted for the words ''except that where the duration of such training is''. The words ''other than one of the Regular Air Force on the active list'' are inserted, since members of the Regular Air Force on the active list are on continuous active duty. The word ''additional'' is inserted, since the detail under this section is active duty. The words ''the officer may be ordered to that additional duty'' are substituted for the words ''such subsequent active duty may * * * the officer concerned''.

In subsection (c), the words ''of whose Air National Guard he is a member'' are substituted for the words ''whichever is concerned''.

In subsection (d), the words ''as a condition of a detail under subsection (a)'' are substituted for the words ''prior to his detail pursuant to the provisions of this paragraph''. The words ''accept the discharge'' are substituted for the words ''be discharged''.

In subsection (e), the words ''during an enlistment'' are inserted for clarity.

In subsection (f), the last sentence is substituted for 5:626q (words within parentheses of last proviso).

In subsection (g), the words ''under this section'' are substituted for 5:626r (9th through 41st words).

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

1980—Subsec. (b). Pub. L. 96–513 substituted ''active-duty list'' for ''active list''.

1973—Subsec. (b). Pub. L. 93–169 struck out provisions which limited to four years the maximum period for which an officer detailed for additional active duty upon termination of detail is required to serve.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 9302. Enlisted members of Air Force: schools

(a) So far as consistent with the requirements of military training and service, and under regulations to be prescribed by the Secretary of the Air Force with the approval of the President, enlisted members of the Air Force shall be permitted to study and receive instruction to increase their military efficiency and to enable them to return to civilian life better equipped for industrial, commercial, and business occupations. Part of this instruction may be vocational education in agriculture or the mechanic arts. Civilian teachers may be employed to aid Air Force officers in this instruction.

(b) Schools for the instruction of enlisted members of the Air Force in the common branches of education, including United States history, shall be maintained at all air bases at which members of the Air Force are stationed. The Secretary may detail members of the Air Force to carry out this subsection. The commander of each air base where schools are maintained under this subsection shall provide a suitable room or building for school and religious purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9302(a)	10:1176.	June 3, 1916, ch. 134, § 27 (last par.), 39 Stat. 186. R.S. 1231.
9302(b)	10:1172.	

In subsection (a), the first 12 words are substituted for 10:1176 (1st 5, and last 18, words). The words ''and the Secretary of the Army shall have the power at all times to suspend, increase, or decrease the amount of such instruction offered'' are omitted as surplusage.

In subsection (b), the words ''garrisons, and permanent camps'' are omitted as covered by the word ''posts''. The word ''including'' is substituted for the words ''and especially in''. The word ''members'' is substituted for the words ''officers and enlisted men''. The words ''as may be necessary'', ''It * * * be the duty'', and ''or garrison'' are omitted as surplusage.

DELEGATION OF FUNCTIONS

Functions of President under subsec. (a) of this section delegated to Secretary of Defense, see section 1(6) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 9303. Aviation cadets and aviation students: schools

The Secretary of the Air Force shall establish and maintain—

(1) one or more schools for the training and instruction of aviation cadets; and

(2) courses of instruction for aviation students at one or more established flying schools.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9303	10:296. 10:296a.	July 11, 1919, ch. 8 (2d par. under ''Air Service''), 41 Stat. 109. June 3, 1941, ch. 165, § 2, 55 Stat. 239.

§ 9304. Aviation students: detail of enlisted members of Air Force

The Secretary of the Air Force may detail enlisted Regulars of the Air Force, and enlisted Reserves of the Air Force who are on active duty, for training and instruction as aviation students in their respective grades at schools selected by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9304	10:298a–1.	June 3, 1941, ch. 167, 55 Stat. 241.

The words ''under such regulations as he may prescribe'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. 10:298a–1 (1st proviso) is omitted as impliedly repealed by section 10 of the Insurance Act of 1951, ch. 39, 65 Stat. 36. 10:298a–1 (last proviso) is omitted as surplusage. The words ''active duty'' are substituted for the words ''active Federal service''.

§ 9305. Civilian flying school instructors: instruction at Air Force training commands

(a) The Secretary of the Air Force may provide for the instruction and training, at Air Force training commands, of civilians selected from the instructional staffs of civilian flying schools that are accredited by the Department of the Air Force for the education and training of members of the Air Force.

(b) The training of civilians under subsection (a) shall be without cost to the United States, except for supplies necessary for training purposes.

(c) A civilian undergoing training under subsection (a) may be treated in a Government hospital if he becomes sick or is injured. However, that treatment shall be without cost to the United States except for services of Government medical personnel and the use of hospital equipment other than medicine or supplies.

(d) No civilian who sustains a personal injury, and no dependent of a civilian who dies of disease or injury, while undergoing training under subsection (a), is entitled to any compensation, pension, or gratuity for that injury or death.

(Aug. 10, 1956, ch. 1041, 70A Stat. 560.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9305(a)	10:292c–1 (less provisos).	Apr. 3, 1939, ch. 35, § 3, 53 Stat. 556.
9305(b)	10:292c–1 (1st proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9305(c)	10:292c–1 (2d proviso).	
9305(d)	10:292c–1 (last proviso).	

In subsection (a), the words ''under such rules and regulations as he may prescribe'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words ''Air Force training commands'' are substituted for the words ''the Air Corps Training Center'', since those commands now perform the functions formerly performed by the Air Corps Training Center. The words ''in his discretion'', ''experience'', and ''upon their own applications'' are omitted as surplusage. The words ''and may provide for the instruction and training'' are substituted for the words ''is authorized to enroll as students * * * for the pursuit of such courses of instruction as may be prescribed therefor''.

In subsection (b), the words ''the furnishing of such'' are omitted as surplusage. The words ''matériel, or equipment'' are omitted as covered by the word ''supplies'', as defined in section 101(26) of this title.

In subsection (c), the word ''Government'' is substituted for the words ''Medical Department'' to conform to the first sentence of the revised subsection.

§ 9306. Service schools: leaves of absence for instructors

The officer in charge of an Air Force service school may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to any officer on duty exclusively as an instructor at the school.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9306	10:843.	Mar. 23, 1910, ch. 115 (proviso under ''United States Service Schools''), 36 Stat. 244.

The words ''The provisions of section 1144 of this title, authorizing leaves of absence to certain officers of the Military Academy * * * are hereby extended to include'' are omitted as surplusage.

§ 9314. United States Air Force Institute of Technology

(a) When the United States Air Force Institute of Technology is accredited by a nationally recognized accreditation association or authority, the Commander of the Air University may, under such regulations as the Secretary of the Air Force may prescribe, confer appropriate degrees upon persons who meet the requirements for those degrees in the Resident College of that Institute.

(b)(1) The Secretary of the Air Force may employ as many civilian faculty members at the United States Air Force Institute of Technology as is consistent with the needs of the Air Force and with Department of Defense personnel limits.

(2) The Secretary shall prescribe regulations determining—

(A) titles and duties of civilian members of the faculty; and

(B) pay of civilian members of the faculty, notwithstanding chapter 53 of title 5, but subject to the limitation set out in section 5373 of title 5.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Pub. L. 99–145, title V, § 504(a)(1), (2)(A), Nov. 8, 1985, 99 Stat. 622; Pub. L. 99–661, div. A, title V, § 510, Nov. 14, 1986, 100 Stat. 3868; Pub. L. 101–509, title V, § 529 [title I, § 106(b)(6)(C)], Nov. 5, 1990, 104 Stat. 1427, 1440; Pub. L. 105–261, div. A, title XI, § 1102, Oct. 17, 1998, 112 Stat. 2141.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9314	[Uncodified].	Aug. 31, 1954, ch. 1151, 68 Stat. 1006.

AMENDMENTS

1998—Subsec. (b)(2)(B). Pub. L. 105–261 substituted ''section 5373'' for ''section 5306(e)''.

1990—Subsec. (b)(2)(B). Pub. L. 101–509 substituted ''5306(e)'' for ''5308''.

1986—Subsec. (b)(2)(B). Pub. L. 99–661 struck out ''rates of basic'' before ''pay of civilian''.

1985—Pub. L. 99–145, § 504(a)(2)(A), struck out '': degrees'' after ''Technology'' in section catchline.

Subsecs. (a), (b). Pub. L. 99–145, § 504(a)(1), designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

CIVILIAN MEMBERS OF FACULTY OF AIR FORCE INSTITUTE OF TECHNOLOGY ON NOVEMBER 8, 1985

Subsec. (b)(2) of this section not applicable to persons who, on Nov. 8, 1985, were civilian members of the faculty of the Air Force Institute of Technology, were being paid a rate of basic pay under the General Schedule, and elected under procedures prescribed by the Secretary of the Air Force to continue to be paid under the General Schedule, see section 504(c) of Pub. L. 99–145, set out as a note under section 5102 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 9315. Community College of the Air Force: associate degrees

(a) ESTABLISHMENT AND MISSION.—There is in the Air Force a Community College of the Air Force. Such college, in cooperation with civilian colleges and universities, shall—

(1) prescribe programs of higher education for enlisted members described in subsection (b) designed to improve the technical, managerial, and related skills of such members and to prepare such members for military jobs which require the utilization of such skills; and

(2) monitor on a continuing basis the progress of members pursuing such programs.

(b) MEMBERS ELIGIBLE FOR PROGRAMS.—Subject to such other eligibility requirements as the Secretary concerned may prescribe, the following members of the armed forces are eligible to participate in programs of higher education under subsection (a)(1):

(1) Enlisted members of the Air Force.

(2) Enlisted members of the armed forces other than the Air Force who are serving as instructors at Air Force training schools.

(c) CONFERRAL OF DEGREES.—(1) Subject to paragraph (2), the commander of the Air Education and Training Command of the Air Force may confer an academic degree at the level of associate upon any enlisted member who has completed the program prescribed by the Community College of the Air Force.

(2) No degree may be conferred upon any enlisted member under this section unless (A) the Community College of the Air Force certifies to the commander of the Air Education and Training Command of the Air Force that such member has satisfied all the requirements prescribed for such degree, and (B) the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.

(Added Pub. L. 94–361, title VI, § 602, July 14, 1976, 90 Stat. 928; amended Pub. L. 96–513, title V, § 514(9), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 103–160, div. A, title XI, § 1182(a)(12), Nov. 30, 1993, 107 Stat. 1772; Pub. L. 104–106, div. A, title X, § 1078(a), Feb. 10, 1996, 110 Stat. 451; Pub. L. 105–85, div. A, title V, § 552(a), (b), Nov. 18, 1997, 111 Stat. 1748.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85, § 552(b)(1), inserted heading.

Subsec. (a)(1). Pub. L. 105–85, § 552(a)(1), substituted ''enlisted members described in subsection (b)'' for ''enlisted members of the Air Force''.

Subsec. (b). Pub. L. 105–85, § 552(a)(4), added subsec. (b). Former subsec. (b) redesignated subsec. (c)(1).

Subsec. (c). Pub. L. 105–85, § 552(a)(2), (3), (b)(2), redesignated subsec. (b) as subsec. (c)(1), inserted subsec. heading, substituted ''Subject to paragraph (2),'' for ''Subject to subsection (c),'', and redesignated former subsec. (c) as subsec. (c)(2) and pars. (1) and (2) of former subsec. (c) as subpars. (A) and (B), respectively, of subsec. (c)(2).

1996—Subsec. (a)(1). Pub. L. 104–106 substituted ''Air Force'' for ''armed forces''.

1993—Subsec. (b). Pub. L. 103–160, § 1182(a)(12)(A), substituted ''Air Education and Training Command'' for ''Air Training Command''.

Subsec. (c). Pub. L. 103–160, § 1182(a)(12)(B), substituted ''Air Education and Training Command of the Air Force'' for ''Air Force Training Command''.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Secretary of Education'' for ''Commissioner of Education of the Department of Health, Education, and Welfare''.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 552(c) of Pub. L. 105–85 provided that: ''Subsection (b) of section 9315 of such title, as added by subsection (a)(4), applies with respect to enrollments in the Community College of the Air Force after March 31, 1996.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1078(b) of Pub. L. 104–106 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to enrollments in the Community College of the Air Force after March 31, 1996.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 9316. Training and support for A–10 aircraft

The Secretary of the Air Force shall provide each military department with flight training, fleet support, and depot maintenance with respect to all A–10 aircraft assigned to each such department.

(Added Pub. L. 101–510, div. A, title XIV, § 1439(c), Nov. 5, 1990, 104 Stat. 1689.)

§ 9317. Air University: graduate-level degrees

(a) AUTHORITY.—Upon the recommendation of the faculty of the appropriate school of the Air University, the commander of the Air University may confer—

(1) the degree of master of strategic studies upon graduates of the Air War College who fulfill the requirements for that degree;

(2) the degree of master of military operational art and science upon graduates of the Air Command and Staff College who fulfill the requirements for that degree; and

(3) the degree of master of airpower art and science upon graduates of the School of Advanced Airpower Studies who fulfill the requirements for that degree.

(b) REGULATIONS.—The authority provided by subsection (a) shall be exercised under regulations prescribed by the Secretary of the Air Force.

(Added Pub. L. 103–337, div. A, title IX, § 913(a)(1), Oct. 5, 1994, 108 Stat. 2828; amended Pub. L. 106–65, div. A, title V, § 543(a), (b)(1), Oct. 5, 1999, 113 Stat. 607.)

AMENDMENTS

1999—Pub. L. 106–65, § 543(b)(1), substituted ''graduate-level degrees'' for ''master of airpower art and science'' in section catchline.

Subsec. (a). Pub. L. 106–65, § 543(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Upon the recommendation of the faculty of the School of Advanced Airpower Studies of the Air University, the Commander of the university may confer the degree of master of airpower art and science upon graduates of the school who fulfill the requirements for the degree.''

EFFECTIVE DATE

Section 913(b) of Pub. L. 103–337 provided that: ''The authority provided by section 9317(a) of title 10, United States Code, as added by subsection (a), shall become effective on the date on which the Secretary of Education determines that the requirements established by the School of Advanced Airpower Studies of the Air University for the degree of master of airpower art and science are in accordance with generally applicable requirements for a degree of master of arts or a degree of master of science.''

§ 9319. Recruit basic training: separate housing for male and female recruits

(a) PHYSICALLY SEPARATE HOUSING.—(1) The Secretary of the Air Force shall provide for housing male recruits and female recruits separately and securely from each other during basic training.

(2) To meet the requirements of paragraph (1), the sleeping areas and latrine areas provided for male recruits shall be physically separated from the sleeping areas and latrine areas provided for female recruits by permanent walls, and the areas for male recruits and the areas for female recruits shall have separate entrances.

(3) The Secretary shall ensure that, when a recruit is in an area referred to in paragraph (2),

the area is supervised by one or more persons who are authorized and trained to supervise the area.

(b) ALTERNATIVE SEPARATE HOUSING.—If male recruits and female recruits cannot be housed as provided under subsection (a) by October 1, 2001, at a particular installation, the Secretary of the Air Force shall require (on and after that date) that male recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for males and that female recruits in basic training at such installation be housed in barracks or other troop housing facilities that are only for females.

(c) CONSTRUCTION PLANNING.—In planning for the construction of housing to be used for housing recruits during basic training, the Secretary of the Air Force shall ensure that the housing is to be constructed in a manner that facilitates the housing of male recruits and female recruits separately and securely from each other.

(d) BASIC TRAINING DEFINED.—In this section, the term ''basic training'' means the initial entry training program of the Air Force that constitutes the basic training of new recruits.

(Added Pub. L. 105–261, div. A, title V, § 521(c)(1), Oct. 17, 1998, 112 Stat. 2011.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, § 521(c)(3), Oct. 17, 1998, 112 Stat. 2012, provided that: ''The Secretary of the Air Force shall implement section 9319 of title 10, United States Code, as added by paragraph (1), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.''

§ 9320. Recruit basic training: privacy

The Secretary of the Air Force shall require that access by military training instructors and other training personnel to a living area in which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to military training instructors and other training personnel who are of the same sex as the recruits housed in that living area or to superiors in the chain of command of those recruits who, if not of the same sex as the recruits housed in that living area, are accompanied by a member (other than a recruit) who is of the same sex as the recruits housed in that living area.

(Added Pub. L. 105–261, div. A, title V, § 522(c)(1), Oct. 17, 1998, 112 Stat. 2013.)

IMPLEMENTATION

Pub. L. 105–261, div. A, title V, § 522(c)(3), Oct. 17, 1998, 112 Stat. 2013, provided that: ''The Secretary of the Air Force shall implement section 9320 of title 10, United States Code, as added by paragraph (1), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.''

CHAPTER 903—UNITED STATES AIR FORCE ACADEMY

Sec.
9331. Establishment; Superintendent; faculty.
9332. Departments and professors: titles.
9333. Superintendent; faculty: appointment and detail.
9333a. Superintendent: condition for detail to position.
9334. Command and supervision.
9335. Dean of the Faculty.
9336. Permanent professors; director of admissions.
9337. Chaplain.
9338. Civilian faculty: number; compensation.
9341. Faculty and other officers: leaves of absence.
9341a. Cadets: appointment by the President.
9342. Cadets: appointment; numbers, territorial distribution.
9343. Cadets: appointment; to bring to full strength.
9344. Selection of persons from foreign countries.
9345. Exchange program with foreign military academies.
9346. Cadets: requirements for admission.
9347. Cadets; nominees: effect of redistricting of States.
9348. Cadets: agreement to serve as officer.
9349. Cadets: organization; service; instruction.
9350. Cadets: clothing and equipment.
9351. Cadets: deficiencies in conduct or studies; effect of failure on successor.
9352. Cadets: hazing.
9353. Cadets: degree and commission on graduation.
9354. Buildings and grounds: buildings for religious worship.
9355. Board of Visitors.
9356. Acceptance of guarantees with gifts for major projects.
9357. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 532(a)(4)(F), div. B, title XXVIII, § 2871(c)(2), Oct. 5, 1999, 113 Stat. 604, 877, added items 9333a and 9356.

1998—Pub. L. 105–261, div. A, title X, § 1063(c)(2), Oct. 17, 1998, 112 Stat. 2132, added item 9357.

1997—Pub. L. 105–85, div. A, title V, § 542(c)(2), Nov. 18, 1997, 111 Stat. 1743, added item 9345.

1996—Pub. L. 104–106, div. A, title V, § 533(c)(2), Feb. 10, 1996, 110 Stat. 315, struck out item 9356 ''Athletics program: athletic director; nonappropriated fund account''.

1994—Pub. L. 103–337, div. A, title V, § 556(c)(2), Oct. 5, 1994, 108 Stat. 2775, added item 9356.

1993—Pub. L. 103–160, div. A, title V, § 533(b)(2), Nov. 30, 1993, 107 Stat. 1658, added item 9338.

1989—Pub. L. 101–189, div. A, title V, § 515(b)(2), Nov. 29, 1989, 103 Stat. 1441, substituted ''director of admissions'' for ''registrar'' in item 9336.

1983—Pub. L. 98–94, title X, § 1004(c)(3), Sept. 24, 1983, 97 Stat. 660, substituted ''Selection of persons from foreign countries'' for ''Selection of persons from Canada and American Republics'' in item 9344, and struck out item 9345 ''Selection of Filipinos''.

1981—Pub. L. 97–60, title II, § 203(c)(2)(B), Oct. 14, 1981, 95 Stat. 1006, added item 9341a.

1958—Pub. L. 85–600, § 1(23), Aug. 6, 1958, 72 Stat. 524, inserted ''; registrar'' in item 9336.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 37 section 209.

§ 9331. Establishment; Superintendent; faculty

(a) There is in the Department of the Air Force an Air Force Academy (hereinafter in this chapter referred to as the ''Academy'') for the instruction and preparation for military service of selected persons called ''Air Force cadets''.

The organization of the Academy shall be prescribed by the Secretary of the Air Force.

(b) There shall be at the Academy the following:

(1) A Superintendent.

(2) A dean of the Faculty, who is a permanent professor.

(3) A Commandant of Cadets.

(4) 21 permanent professors.

(5) A chaplain.

(6) A director of admissions.

(Aug. 10, 1956, ch. 1041, 70A Stat. 561; Pub. L. 85–600, §1(19), Aug. 6, 1958, 72 Stat. 523; Pub. L. 96–513, title V, §514(10), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 101–189, div. A, title V, §515(a)(1), Nov. 29, 1989, 103 Stat. 1441; Pub. L. 102–484, div. A, title V, §523(b), Oct. 23, 1992, 106 Stat. 2410; Pub. L. 103–160, div. A, title V, §533(b)(3), Nov. 30, 1993, 107 Stat. 1658.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9331(a)	10:1851. 10:1854.	R.S. 1309; Feb. 18, 1896, ch. 22 (less proviso), 29 Stat. 8.
9331(b)	10:1061. 10:1087. 10:1089 (1st 20 words).	June 26, 1946, ch. 495, §§1, 3 (1st 20 words), 60 Stat. 312. Apr. 1, 1954, ch. 127, §§2, 5, 68 Stat. 47, 48.

In subsection (b), reference to the senior instructors of artillery, cavalry, and infantry, and the master of the sword, in 10:1061, are omitted as obsolete. The names of the other departments are omitted as inapplicable to the Air Force. The departmental names will be established under section 9332 of this title. The words ''and one assistant professor'', in 10:1061, are omitted as superseded by section 9333 of this title. 10:1061 (words before colon) is omitted as inapplicable to the Air Force. 10:1854 (less last sentence) is omitted as executed by the inclusion in this chapter of the laws applicable to the Air Force Academy. 10:1087 (proviso) is omitted as inapplicable to the Air Force.

Subsection (b)(3) is based on those laws establishing the various departments at the United States Military Academy (see revision note for section 4331 of this title).

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–160 struck out subsec. (c) which read as follows:

''(1) The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

''(2) The compensation of persons employed under this subsection shall be as prescribed by the Secretary.

''(3) The Secretary may delegate the authority conferred by this subsection to any person in the Department of the Air Force to the extent the Secretary considers proper. Such delegation may be made with or without the authority to make successive redelegations.''

1992—Subsec. (c). Pub. L. 102–484 added subsec. (c).

1989—Subsec. (b)(6). Pub. L. 101–189 substituted ''director of admissions'' for ''registrar''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''(hereinafter in this chapter referred to as the 'Academy')'' for '', in this chapter called the 'Academy',''.

1958—Subsec. (b)(6). Pub. L. 85–600 added par. (6).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

APPROPRIATIONS FOR THE AIR FORCE ACADEMY AFTER AUGUST 1, 1964; REQUIREMENT OF AUTHORIZATION IN SUBSEQUENT LEGISLATION; APPROPRIATIONS FOR ADVANCE PLANNING AND MINOR CONSTRUCTION

Pub. L. 88–390, title VI, §608, Aug. 1, 1964, 78 Stat. 364, provided that: ''Notwithstanding the provisions of section 9 of the Act of April 1, 1954 (Public Law 325) as amended [set out below], no funds may be appropriated after the date of enactment of this Act [Aug. 1, 1964] for construction at the Air Force Academy unless appropriation of such funds has been authorized in this Act [Military Construction Authorization Act, 1965] or any Act enacted after the date of enactment of this Act: *Provided*, That funds are authorized to be appropriated to accomplish advance planning and minor construction at the Air Force Academy in the same manner as for other projects under the Act of September 28, 1951, as amended (31 U.S.C. 723) [10 U.S.C. 2661a(a)], and title 10, United States Code, section 2674, as amended.''

APPROPRIATIONS FOR AIR FORCE ACADEMY

Act Apr. 1, 1954, ch. 127, 68 Stat. 47, which established the Air Force Academy, provided by section 9 of such act, as amended by act Aug. 3, 1956, ch. 939, title IV, §413(b), 70 Stat. 1018, and by Pub. L. 85–241, title V, §508, Aug. 30, 1957, 71 Stat. 559; Pub. L. 85–685, title III, §309, Aug. 20, 1958, 72 Stat. 659; Pub. L. 87–57, title III, §304, June 27, 1961, 75 Stat. 108; Pub. L. 90–408, title III, §304, July 21, 1968, 82 Stat. 385, that there was authorized to be appropriated not to exceed the sum of $141,978,000 to carry out the provisions of that Act, of which not to exceed $26,000,000 was to be the amount so appropriated for any such period, not to exceed $1,858,000 might be utilized for the purpose of section 4 of this Act [set out below].

TEMPORARY BUILDINGS AND FACILITIES

Section 4 of act Apr. 1, 1954, ch. 127, 68 Stat. 47, provided that for the purpose of providing temporary facilities and enabling early operation of the Academy, the Secretary of the Air Force was authorized to provide for the erection of the minimum additional number of temporary buildings and the modification of existing structures and facilities at an existing Air Force base and to provide for the proper functioning, equipping, maintaining, and repairing thereof; and to contract with civilian institutions for such operation or instruction as he deemed necessary.

§ 9332. Departments and professors: titles

The Secretary of the Air Force may prescribe the titles of each of the departments of instruction and the professors of the Academy. However, the change of the title of a department or officer does not affect the status, rank, or eligibility for promotion or retirement of, or otherwise prejudice, a professor at the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9332	10:1061a.	Dec. 14, 1942, ch. 729, 56 Stat. 1049.

The words ''now or after December 14, 1942, established at'' are omitted as surplusage. The word ''precedence'' is omitted as covered by the word ''rank''. The words ''pay, allowances'' are omitted, since they are determined by the grade held. The words ''from time to time'', ''shall be known'', and ''operate in any case or on any account'' are omitted as surplusage.

§9333. Superintendent; faculty: appointment and detail

(a) The Superintendent and the Commandant of Cadets of the Academy shall be detailed to those positions by the President from the officers of the Air Force.

(b) The permanent professors of the Academy shall be appointed by the President, by and with the advice and consent of the Senate.

(c) The director of admissions of the Academy shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Superintendent of the Academy may prescribe with the approval of the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85–600, §1(20), Aug. 6, 1958, 72 Stat. 523; Pub. L. 101–189, div. A, title V, §515(a)(2), Nov. 29, 1989, 103 Stat. 1441.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9333(a)	10:1062.	R.S. 1313.
9333(b)	10:1063.	R.S. 1314 (words before semicolon).

In subsection (a), the word ''detailed'' is substituted for the word ''selected'', since historically the offices of superintendent and commandant of cadets have been filled by detail. The words ''the officers of the Air Force'' are substituted for the words ''any arm of the service'', since the Air Force does not have statutory arms or corps. 10:1063 (1st sentence and 1st 26 words of last sentence) is omitted as covered by section 8012 of this title.

In subsection (b), the words ''by and with the advice and consent of the Senate'' are inserted, since many of the statutes establishing particular permanent professorships from time to time have so provided, and historically it has been the uniform practice to make these appointments in this manner. 10:1063 (last 14 words) is omitted as obsolete and as covered by section 9349(b) of this title.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''director of admissions'' for ''registrar''.

1958—Subsec. (c). Pub. L. 85–600 added subsec. (c).

§9333a. Superintendent: condition for detail to position

As a condition for detail to the position of Superintendent of the Academy, an officer shall acknowledge that upon termination of that detail the officer shall be retired.

(Added Pub. L. 106–65, div. A, title V, §532(a)(3)(B), Oct. 5, 1999, 113 Stat. 603.)

APPLICATION OF SECTION TO SUPERINTENDENTS SERVING ON OCTOBER 5, 1999

Section not applicable to an officer serving on Oct. 5, 1999, in the position of Superintendent of the United States Military Academy, Naval Academy, or Air Force Academy for so long as that officer continues on and after that date to serve in that position without a break in service, see section 532(a)(5) of Pub. L. 106–65, set out as a note under section 3921 of this title.

§9334. Command and supervision

(a) The immediate government of the Academy is under the Superintendent, who is also the commanding officer of the Academy and of the military post.

(b) The permanent professors and the director of admissions exercise command only in the academic department of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85–600, §1(21), Aug. 6, 1958, 72 Stat. 524; Pub. L. 101–189, div. A, title V, §515(a)(3), Nov. 29, 1989, 103 Stat. 1441.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9334(a)	10:1042.	R.S. 1311.
9334(b)	10:1079.	June 28, 1902, ch. 1300 (1st proviso under ''Permanent Establishment''), 32 Stat. 409.

In subsection (a), the words ''and, in his absence, the next in rank'' are omitted as surplusage.

In subsection (b), reference to assimilated rank is omitted as superseded by section 9336 of this title. The words ''and the associate professor'' are omitted as obsolete.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–189 substituted ''director of admissions'' for ''registrar''.

1958—Subsec. (b). Pub. L. 85–600 inserted reference to registrar.

§9335. Dean of the Faculty

(a) The Dean of the Faculty shall be appointed as an additional permanent professor from the permanent professors who have served as heads of departments of instruction at the Academy.

(b) While serving as Dean of the Faculty, an officer of the Air Force who holds a grade lower than brigadier general shall hold the grade of brigadier general, if appointed to that grade by the President, by and with the advice and consent of the Senate. The retirement age of an officer so appointed is that of a permanent professor of the Academy. An officer so appointed is counted for purposes of the limitation in section 526(a) of this title on general officers of the Air Force on active duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85–861, §33(a)(46)(A), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 99–661, div. A, title V, §508(c), Nov. 14, 1986, 100 Stat. 3867; Pub. L. 102–484, div. A, title V, §521(b), Oct. 23, 1992, 106 Stat. 2409; Pub. L. 106–65, div. A, title V, §533(b), Oct. 5, 1999, 113 Stat. 605.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9335(a)	10:1089 (2d sentence).	June 26, 1946, ch. 495, §3 (less 1st 20 words), 60 Stat. 312.
9335(b)	10:1089 (less 1st 20 words, and less 2d sentence).	

In subsection (b), the word ''grade'' is substituted for the word ''rank''. The words ''pay, allowances'' are omitted, since they are determined by the grade held. The words ''retirement rights'' are omitted as covered by the word ''benefits''. The words ''There is authorized'', ''from time to time'', and ''statutory'' are omitted as surplusage. So much of 10:1089 as relates to the duties of the Dean of the Faculty is omitted as covered by section 8012(e) of this title.

1958 ACT

The word ''regular'' is deleted [in sections 9335 and 9336] to make clear that a Dean or professor of the

United States Air Force Academy holds only the office of ''Dean'' or ''professor'' and not the office of ''brigadier general'' or ''colonel'', as the case may be, even though he is entitled to the pay and allowances of that grade.

AMENDMENTS

1999—Pub. L. 106–65 designated existing provisions as subsec. (a) and added subsec. (b).

1992—Pub. L. 102–484 designated subsec. (a) as entire section and struck out subsec. (b) which read as follows: ''The Dean has the grade of brigadier general while serving in such position, with the benefits authorized for regular brigadier generals of the Air Force, if appointed to that grade by the President, by and with the advice and consent of the Senate. However, the retirement age of an officer so appointed is that of a permanent professor of the Academy.''

1986—Subsec. (b). Pub. L. 99–661 amended subsec. (b) generally, substituting ''while serving in such position'' for ''while serving as such'' and ''if appointed to that grade by the President, by and with the advice and consent of the Senate. However, the retirement age of an officer so appointed'' for ''except that his retirement age''.

1958—Subsec. (b). Pub. L. 85–861 substituted ''the grade of brigadier general'' for ''the regular grade of brigadier general''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–661 applicable with respect to appointments or details made on or after Nov. 14, 1986, see section 508(f) of Pub. L. 99–661, set out as an Effective Date note under section 12210 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 9336. Permanent professors; director of admissions

(a) A permanent professor of the Academy, other than the Dean of the Faculty, who is the head of a department of instruction, or who has served as such a professor for more than six years, has the grade of colonel. However, a permanent professor appointed from the Regular Air Force has the grade of colonel after the date when he completes six years of service as a professor, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier. All other permanent professors have the grade of lieutenant colonel.

(b) A person appointed as director of admissions of the Academy has the regular grade of lieutenant colonel, and, after he has served six years as director of admissions, has the regular grade of colonel. However, a person appointed from the Regular Air Force has the regular grade of colonel after the date when he completes six years of service as director of admissions, or after the date on which he would have been promoted had he been selected for promotion from among officers in the promotion zone, whichever is earlier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 85–600, §1(22), Aug. 6, 1958, 72 Stat. 524; Pub. L. 85–861, §33(a)(46)(B), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 96–513, title II, §218(b), title V, §504(24), Dec. 12, 1980, 94 Stat. 2886, 2917; Pub. L. 98–525, title V, §533(d)(2), Oct. 19, 1984, 98 Stat. 2528; Pub. L. 101–189, div. A, title V, §515(a)(4), (b)(1), Nov. 29, 1989, 103 Stat. 1441.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9336	10:1079a(a).	Aug. 7, 1947, ch. 512, §520(a) 61 Stat. 912.

The word ''grade'' is substituted for the word ''rank''. The words ''pay, and allowances'' are omitted, since they are determined by the grade held. 10:1079a(a) (last proviso), and the words ''Hereafter each of'', ''who have been or may hereafter be'', and ''and appointed in'' are omitted as surplusage.

1958 ACT

The word ''regular'' is deleted [in sections 9335 and 9336] to make clear that a Dean or professor of the United States Air Force Academy holds only the office of ''Dean'' or ''professor'' and not the office of ''brigadier general'' or ''colonel'', as the case may be, even though he is entitled to the pay and allowances of that grade.

AMENDMENTS

1989—Pub. L. 101–189, §515(b), substituted ''director of admissions'' for ''registrar'' in section catchline.

Subsec. (b). Pub. L. 101–189, §515(a)(4), substituted ''director of admissions'' for ''registrar'' in three places.

1984—Subsecs. (a), (b). Pub. L. 98–525 substituted ''on which he would have been promoted had he been selected for promotion from among officers in the promotion zone,'' for ''when a regular officer, junior to him on the promotion list or active-duty list on which his name was carried before his appointment as a professor, is promoted to the regular grade of colonel,''.

1980—Subsecs. (a), (b). Pub. L. 96–513, §504(24), substituted ''after the date when a regular officer, junior to him on the promotion list or active-duty list on which his name was carried'' for ''after the date when a promotion-list officer, junior to him on the promotion list on which his name was carried''.

Subsec. (c). Pub. L. 96–513, §218(b), struck out subsec. (c) which provided that, unless he is serving in a higher grade, an officer detailed to perform the duties of registrar has, while performing those duties, the temporary grade of lieutenant colonel and, after performing those duties for a period of six years, has the temporary grade of colonel.

1958—Pub. L. 85–600, §1(22)(C), inserted ''; registrar'' in section catchline.

Subsec. (a). Pub. L. 85–861 substituted ''has the grade of colonel'' for ''has the regular grade of colonel'' in two places, and ''have the grade of lieutenant colonel'' for ''have the regular grade of lieutenant colonel''.

Pub. L. 85–600, §1(22)(A), designated existing provisions as subsec. (a).

Subsecs. (b), (c). Pub. L. 85–600, §1(22)(B), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 218(b) of Pub. L. 96–513 effective Sept. 15, 1981, but the authority to prescribe regulations under the amendment by Pub. L. 96–513 effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513.

Amendment by section 504(24) of Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective August 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SERVICE PERFORMED AS REGISTRAR PRIOR TO AUGUST 6, 1958

Prohibition against accrual of increase in pay or allowances for service performed prior to Aug. 6, 1958, see note set out under section 4336 of this title.

§ 9337. Chaplain

There shall be a chaplain at the Academy, who must be a clergyman, appointed by the President for a term of four years. The chaplain is entitled to the same allowances for public quarters as are allowed to a captain, and to fuel and light for quarters in kind. The chaplain may be reappointed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 562; Pub. L. 87–651, title I, § 117, Sept. 7, 1962, 76 Stat. 513.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9337	10:1083. 10:1137.	Feb. 18, 1896, ch. 22 (proviso), 29 Stat. 8; May 16, 1928, ch. 579, 45 Stat. 573; June 2, 1945, ch. 172, 59 Stat. 230.

The words ''The chaplain may be reappointed'' are substituted for the words ''and said chaplain shall be eligible for reappointment for an additional term or terms''. The figures ''$5,482.80'' and ''$6,714'' are substituted for the figures ''$4,000'' and ''$5,000'' to reflect increases in the rates of salary of that office effected by Federal Employees Pay Act of 1945, 59 Stat. 295, the Federal Employees Pay Act of 1946, 60 Stat. 216, the Postal Rate Revision and Federal Employees Salary Act of 1948, 62 Stat. 1260, and the Classification Act of 1949, 63 Stat. 954.

1962 ACT

The change reflects the opinion of the Assistant General Counsel, Civil Service Commission (GC:JHF:fz, May 4, 1959), that those parts of section 4337 and 9337 of title 10 that relate to the salaries of the chaplains at the United States Military Academy and the United States Air Force Academy were superseded by the Classification Act of 1949 (5 U.S.C. 1071 et seq.). While the positions of chaplain at those Academies are not specifically covered by the Act, the Act has been determined to apply to those positions in accordance with section 203 thereof (5 U.S.C. 1083).

AMENDMENTS

1962—Pub. L. 87–651 struck out provisions which prescribed salary of chaplain upon appointment and reappointment.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 1(5) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 9338. Civilian faculty: number; compensation

(a) The Secretary of the Air Force may employ as many civilians as professors, instructors, and lecturers at the Academy as the Secretary considers necessary.

(b) The compensation of persons employed under this section is as prescribed by the Secretary.

(c) The Secretary of the Air Force may, notwithstanding the provisions of subchapter V of chapter 55 of title 5 or section 6101 of such title, prescribe for persons employed under this section the following:

(1) The work schedule, including hours of work and tours of duty, set forth with such specificity and other characteristics as the Secretary determines appropriate.

(2) Any premium pay or compensatory time off for hours of work or tours of duty in excess of the regularly scheduled hours or tours of duty.

(Added Pub. L. 103–160, div. A, title V, § 533(b)(1), Nov. 30, 1993, 107 Stat. 1658; amended Pub. L. 106–65, div. A, title XI, § 1107(c), Oct. 5, 1999, 113 Stat. 778.)

AMENDMENTS

1999—Subsec. (c). Pub. L. 106–65 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5102.

§ 9341. Faculty and other officers: leaves of absence

The Superintendent of the Academy may grant a leave of absence for the period of the suspension of the ordinary academic studies, without deduction of pay or allowances, to a professor, assistant professor, instructor, or other officer of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 563.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9341	10:1144.	R.S. 1330.

The words ''under regulations prescribed by the Secretary of the Army'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

§ 9341a. Cadets: appointment by the President

Cadets at the Academy shall be appointed by the President alone. An appointment is conditional until the cadet is admitted.

(Added Pub. L. 97–60, title II, § 203(c)(2)(A), Oct. 14, 1981, 95 Stat. 1006.)

EFFECTIVE DATE

Section effective with respect to nominations for appointment to the first class admitted to each Academy after Oct. 14, 1981, see section 203(d) of Pub. L. 97–60, set out as a note under section 4341a of this title.

§ 9342. Cadets: appointment; numbers, territorial distribution

(a) The authorized strength of Air Force Cadets of the Academy (determined for any year as of the day before the last day of the academic year) is 4,000 or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j). Subject to that limitation, Air Force Cadets are selected as follows:

(1) 65 cadets selected in order of merit as established by competitive examination from the children of members of the armed forces who were killed in action or died of, or have a service-connected disability rated at not less than 100 per centum resulting from wounds or injuries received or diseases contracted in, or preexisting injury or disease aggravated by, active service, children of members who are in a ''missing status'' as defined in section 551(2) of title 37, and children of civilian employees who are in ''missing status'' as defined in section 5561(5) of title 5. The determination of the

Department of Veterans Affairs as to service connection of the cause of death or disability, and the percentage at which the disability is rated, is binding upon the Secretary of the Air Force.

(2) Five cadets nominated at large by the Vice President or, if there is no Vice President, by the President pro tempore of the Senate.

(3) Ten cadets from each State, five of whom are nominated by each Senator from that State.

(4) Five cadets from each congressional district, nominated by the Representative from the district.

(5) Five cadets from the District of Columbia, nominated by the Delegate to the House of Representatives from the District of Columbia.

(6) Two cadets from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands.

(7) Six cadets from Puerto Rico, five of whom are nominated by the Resident Commissioner from Puerto Rico and one who is a native of Puerto Rico nominated by the Governor of Puerto Rico.

(8) Two cadets from Guam, nominated by the Delegate in Congress from Guam.

(9) One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa.

(10) One cadet from the Commonwealth of the Northern Mariana Islands, nominated by the resident representative from the commonwealth.

Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate 10 persons for each vacancy that is available to him under this section. Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.

(b) In addition, there may be appointed each year at the Academy cadets as follows:

(1) one hundred selected by the President from the children of members of an armed force who—

(A) are on active duty (other than for training) and who have served continuously on active duty for at least eight years;

(B) are, or who died while they were, retired with pay or granted retired or retainer pay;

(C) are serving as members of reserve components and are credited with at least eight years of service computed under section 12733 of this title; or

(D) would be, or who died while they would have been, entitled to retired pay under chapter 1223 of this title except for not having attained 60 years of age;

however, a person who is eligible for selection under clause (1) of subsection (a) may not be selected under this clause.

(2) 85 nominated by the Secretary of the Air Force from enlisted members of the Regular Air Force.

(3) 85 nominated by the Secretary of the Air Force from enlisted members of reserve components of the Air Force.

(4) 20 nominated by the Secretary of the Air Force, under regulations prescribed by him, from the honor graduates of schools designated as honor schools by the Department of the Army, the Department of the Navy, or the Department of the Air Force, and from members of the Air Force Reserve Officers' Training Corps.

(5) 150 selected by the Secretary of the Air Force in order of merit (prescribed pursuant to section 9343 of this title) from qualified alternates nominated by persons named in clauses (3) and (4) of subsection (a).

(c) The President may also appoint as cadets at the Academy children of persons who have been awarded the Medal of Honor for acts performed while in the armed forces.

(d) The Superintendent may nominate for appointment each year 50 persons from the country at large. Persons nominated under this paragraph may not displace any appointment authorized under clauses (2) through (9) of subsection (a) and may not cause the total strength of Air Force Cadets to exceed the authorized number.

(e) If the annual quota of cadets under subsection (b)(1), (2), or (3) is not filled, the Secretary may fill the vacancies by nominating for appointment other candidates from any of these sources who were found best qualified on examination for admission and not otherwise nominated.

(f) Each candidate for admission nominated under clauses (3) through (9) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, or the Virgin Islands, if nominated from one of those places.

(g) The Secretary of the Air Force may limit the number of cadets authorized to be appointed under this section to the number that can be adequately accommodated at the Academy as determined by the Secretary after consulting with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, subject to the following:

(1) Cadets chargeable to each nominating authority named in subsection (a)(3) or (4) may not be limited to less than four.

(2) If the Secretary limits the number of appointments under subsection (a)(3) or (4), appointments under subsection (b)(1)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(1);

(B) 27 appointments under subsection (b)(2);

(C) 27 appointments under subsection (b)(3); and

(D) 13 appointments under subsection (b)(4).

(3) If the Secretary limits the number of appointments under subsection (b)(5), appointments under subsection (b)(2)–(4) are limited as follows:

(A) 27 appointments under subsection (b)(2);

(B) 27 appointments under subsection (b)(3); and

(C) 13 appointments under subsection (b)(4).

(4) The limitations provided for in this subsection do not affect the operation of subsection (e).

(h) The Secretary of the Air Force shall furnish to any Member of Congress, upon the written request of such Member, the name of the Congressman or other nominating authority responsible for the nomination of any named or identified person for appointment to the Academy.

(i) For purposes of the limitation in subsection (a) establishing the aggregate authorized strength of Air Force Cadets, the Secretary of the Air Force may for any year permit a variance in that limitation by not more than one percent. In applying that limitation, and any such variance, the last day of an academic year shall be considered to be graduation day.

(j)(1) Beginning with the 2003–2004 academic year, the Secretary of the Air Force may prescribe annual increases in the cadet strength limit in effect under subsection (a). For any academic year, any such increase shall be by no more than 100 cadets or such lesser number as applies under paragraph (3) for that year. Such annual increases may be prescribed until the cadet strength limit is 4,400. However, no increase may be prescribed for any academic year after the 2007–2008 academic year.

(2) Any increase in the cadet strength limit under paragraph (1) with respect to an academic year shall be prescribed not later than the date on which the budget of the President is submitted to Congress under sections 1105 of title 31 for the fiscal year beginning in the same year as the year in which that academic year begins. Whenever the Secretary prescribes such an increase, the Secretary shall submit to Congress a notice in writing of the increase. The notice shall state the amount of the increase in the cadet strength limit and the new cadet strength limit, as so increased, and the amount of the increase in Senior Air Force Reserve Officers' Training Corps enrollment under each of sections 2104 and 2107 of this title.

(3) The amount of an increase under paragraph (1) in the cadet strength limit for an academic year may not exceed the increase (if any) for the preceding academic year in the total number of cadets enrolled in the Air Force Senior Reserve Officers' Training Corps program under chapter 103 of this title who have entered into an agreement under section 2104 or 2107 of this title.

(4) In this subsection, the term ''cadet strength limit'' means the authorized maximum strength of Air Force Cadets of the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 563; Pub. L. 87–663, §1(5), (6), Sept. 14, 1962, 76 Stat. 547; Pub. L. 88–276, §4(1), Mar. 3, 1964, 78 Stat. 151; Pub. L. 89–650, §1(1)–(3), (5), Oct. 13, 1966, 80 Stat. 896; Pub. L. 90–374, July 5, 1968, 82 Stat. 283; Pub. L. 90–623, §2(8), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 91–405, title II, §204(c), Sept. 22, 1970, 84 Stat. 852; Pub. L. 92–365, §1(3), Aug. 7, 1972, 86 Stat. 505; Pub. L. 93–171, §3(1)–(4), Nov. 29, 1973, 87 Stat. 690; Pub. L. 94–106, title VIII, §803(b)(1), Oct. 7, 1975, 89 Stat. 538; Pub. L. 96–513, title V, §514(11), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 96–600, §2(c), Dec. 24, 1980, 94 Stat. 3493; Pub. L. 97–60, title II, §203(c)(1), Oct. 14, 1981, 95 Stat. 1006; Pub. L. 98–94, title X, §1005(a)(3), (b)(3), Sept. 24, 1983, 97 Stat. 660, 661; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 101–510, div. A, title V, §532(c)(1), Nov. 5, 1990, 104 Stat. 1563; Pub. L. 103–160, div. A, title V, §531, Nov. 30, 1993, 107 Stat. 1657; Pub. L. 103–337, div. A, title XVI, §1674(c)(3), Oct. 5, 1994, 108 Stat. 3017; Pub. L. 104–106, div. A, title V, §532(c), title XV, §1502(a)(1), Feb. 10, 1996, 110 Stat. 315, 502; Pub. L. 105–85, div. A, title X, §1073(a)(62), Nov. 18, 1997, 111 Stat. 1903; Pub. L. 106–65, div. A, title V, §531(b)(3), title X, §1067(1), Oct. 5, 1999, 113 Stat. 602, 774; Pub. L. 106–398, §1 [[div. A], title V, §531(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–314, div. A, title V, §532(c), Dec. 2, 2002, 116 Stat. 2546.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9342(a)	10:1092a (1st par., less clauses (a) through (e)). 10:1092a (clauses (a), less 14th through 52d words after 4th semicolon; and less last 32 words). 10:1092a (1st 13 words of clause (b)). 10:1092a (1st 26 words of clause (c)). 10:1092a (clause (d)). 10:1092a (clause (e), less last 53 words).	R.S. 1317. June 30, 1950, ch. 421, §§1, 2 (last proviso), 64 stat. 303, 304; June 3, 1954, ch. 251, §2, 68 Stat. 169.
9342(b)	10:1092a (last par.). 10:1098.	
9342(c)	10:1092a (14th through 52d words after 4th semicolon of clause (a)). 10:1092b (last proviso).	
9342(d)	10:1092a (last 32 words of clause (a)).	
9342(e)	10:1092a (clause (b), less 1st 13 words, and less 1st proviso).	
9342(f)	10:1092a (1st proviso of clause (b)).	
9342(g)	10:1092a (clause (c), less 1st 26 words).	
9342(h)	10:1092a (last 53 words of clause (e)).	

In subsection (a), the words ''the authorized strength * * * is as follows—'' are substituted for the words ''shall be authorized and consist of the following''. The words ''at large'' and ''which totals two thousand four hundred and ninety-six'', and 10:1092a (clause (d)) are omitted as surplusage.

In subsection (b), the words ''from whatever source of admission'', in 10:1092a, are omitted as surplusage. 10:1098 (words before last semicolon) is omitted as obsolete.

In subsection (c), the first 15 words are substituted for the words ''all of which cadets shall be''. The words ''domiciled in'' are substituted for the words ''actual residents of'' to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J.A.G. 351.11, Feb. 10, 1925).

In subsection (e)(4), the words ''armed forces'' are substituted for the description of the land or naval forces. The date February 1, 1955, fixed by Proclamation No. 3080 (Jan. 7, 1955; 20 F.R. 173), is substituted for the words ''such date as shall thereafter be determined by Presidential proclamation or concurrent resolution of the Congress under section 745 of title 38''. The words ''including male and female members of * * * and all components thereof'' are omitted as surplusage.

In subsection (f), the words ''whether a death is service-connected'' are substituted for the words ''as to the service connection of the cause of death''.

In subsection (g), the words ''(National Guard of the United States, the Air National Guard of the United States and Army Reserve, and the Air Force Reserve)'', ''Regular components'', ''by members of the National Guard of the United States, and the Air National Guard of the United States'', and ''established at the competitive entrance examination'' are omitted as surplusage. The word ''grades'' is substituted for the words ''proficiency averages''.

In subsection (h), the words ''or shall hereafter be'' are omitted as surplusage.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–314, §532(c)(1), inserted before period at end of first sentence ''or such higher number as may be prescribed by the Secretary of the Air Force under subsection (j)''.

Subsec. (j). Pub. L. 107–314, §532(c)(2), added subsec. (j).

2000—Subsec. (b)(1)(B). Pub. L. 106–398, §1 [[div. A], title V, §531(c)(1)], struck out '', other than those granted retired pay under section 12731 of this title (or under section 1331 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' after ''retired or retainer pay''.

Subsec. (b)(1)(C), (D). Pub. L. 106–398, §1 [[div. A], title V, §531(c)(2)], added subpars. (C) and (D).

1999—Subsec. (a). Pub. L. 106–65, §531(b)(3)(A), substituted ''(determined for any year as of the day before the last day of the academic year) is 4,000. Subject to that limitation, Air Force Cadets are selected as follows:'' for ''is as follows:'' in introductory provisions.

Subsec. (g). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

Subsec. (i). Pub. L. 106–65, §531(b)(3)(B), added subsec. (i).

1997—Subsec. (a)(10). Pub. L. 105–85 substituted ''Mariana'' for ''Marianas''.

1996—Subsec. (a)(10). Pub. L. 104–106, §532(c), added par. (10).

Subsec. (g). Pub. L. 104–106, §1502(a)(1), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and House of Representatives''.

1994—Subsec. (b)(1)(B). Pub. L. 103–337 substituted ''section 12731 of this title (or under section 1331 of this title as in effect before the effective date of the Reserve Officer Personnel Management Act)'' for ''section 1331 of this title''.

1993—Subsec. (a). Pub. L. 103–160, in concluding provisions, substituted ''10 persons'' for ''a principal candidate and nine alternates'' and inserted at end ''Nominees may be submitted without ranking or with a principal candidate and 9 ranked or unranked alternates. Qualified nominees not selected for appointment under this subsection shall be considered qualified alternates for the purposes of selection under other provisions of this chapter.''

1990—Subsec. (a)(8) to (10). Pub. L. 101–510, §532(c)(1)(A), redesignated cls. (9) and (10) as (8) and (9), respectively, and struck out former cl. (8) which read as follows: ''One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States.''

Subsec. (d). Pub. L. 101–510, §532(c)(1)(B), substituted ''clauses (2) through (9)'' for ''clauses (2)–(7), (9), or (10)''.

Subsec. (f). Pub. L. 101–510, §532(c)(1)(C), substituted ''clauses (3) through (9)'' for ''clauses (3)–(7), (9) and (10)''.

1989—Subsec. (a)(1). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1983—Subsec. (a)(8). Pub. L. 98–94, §1005(b)(3), substituted: ''One cadet nominated by the Administrator of the Panama Canal Commission from the children of civilian personnel of the United States Government residing in the Republic of Panama who are citizens of the United States'' for ''One cadet nominated by the Governor of the Panama Canal from the children of civilians residing in the Canal Zone or the children of civilian personnel of the United States Government, or the Panama Canal Company, residing in the Republic of Panama''.

Subsec. (a)(10). Pub. L. 98–94, §1005(a)(3), substituted ''One cadet from American Samoa, nominated by the Delegate in Congress from American Samoa'' for ''One cadet from American Samoa nominated by the Secretary of the Air Force upon recommendation of the Governor of American Samoa''.

1981—Subsec. (d). Pub. L. 97–60 substituted provisions authorizing the Superintendent to nominate for appointment each year 50 persons from the country at large for provisions that all cadets were to be appointed by the President and that all such appointments were conditional until the cadets were admitted. See section 9341a of this title.

1980—Subsec. (a)(6), (9). Pub. L. 96–600 substituted ''Two cadets'' for ''One cadet''.

Subsec. (h). Pub. L. 96–513 substituted ''The'' for ''Effective beginning with the nominations for appointment to the Academy in the calendar year 1964, the''.

1975—Subsecs. (a)(1), (8), (b)(1), (c). Pub. L. 94–106 substituted ''children'' for ''sons'' wherever appearing.

1973—Subsec. (a)(6). Pub. L. 93–171, §3(1), substituted ''One cadet from the Virgin Islands, nominated by the Delegate in Congress from the Virgin Islands'' for ''Five cadets from each Territory, nominated by the Delegate in Congress from that Territory''.

Subsec. (a)(9). Pub. L. 93–171, §3(2), struck out reference to American Samoa and Virgin Islands.

Subsec. (a)(10). Pub. L. 93–171, §3(3), added cl. (10).

Subsec. (f). Pub. L. 93–171, §3(4), substituted '', (9) and (10) of subsection (a)'' for ''and (9) of subsection (a)'' and struck out reference to Territory.

1972—Subsec. (a)(1). Pub. L. 92–365 increased number of Air Force Cadets from 40 to 65 and added sons of members who are in missing status and sons of civilian employees who are in missing status as eligible for competitive examination.

1970—Subsec. (a)(5). Pub. L. 91–405 substituted ''delegate to the House of Representatives from the District of Columbia'' for ''Commissioner of that District''.

1968—Subsec. (a). Pub. L. 90–374 increased from five to nine the number of alternates for each vacancy each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, is entitled to nominate.

Subsec. (a)(5). Pub. L. 90–623 substituted ''Commissioner'' for ''Commissioners''.

1966—Subsec. (a)(1). Pub. L. 89–650, §1(1), provided for selection of cadets to the Air Force Academy from sons of members of the armed forces who have a 100 per centum service-connected disability and removed the limitation to active service during World War I or World War II or after June 26, 1950, and before Feb. 1, 1955.

Subsec. (a)(2). Pub. L. 89–650, §1(2), provided for nominations to Air Force Academy by President pro tempore of Senate if there is no Vice President.

Subsec. (b)(1). Pub. L. 89–650, §1(3), increased number of Presidential appointments to Air Force Academy from 75 to 100, provided for selection of eligible persons as stated in items (A) and (B), previously chosen from sons of members of regular components, and declared persons eligible under subsec. (a)(1) ineligible under subsec. (b)(1) of this section.

Subsec. (b)(3). Pub. L. 89–650, §1(5), substituted ''reserve components of the Air Force'' for ''the Air Force Reserve''.

1964—Pub. L. 88–276 amended section generally, and among other changes, in the noncompetitive appointments, increased the number of cadets nominated by the Vice President from three to five, each Senator,

Representative and Delegate from 4 to 5, and the Commissioner of Puerto Rico from 4 to 5, authorized the Governor of Puerto Rico to appoint one cadet, each Senator, Representative and Delegate to nominate a principal and five alternates for each vacancy, and, in the competitive appointments, permitted the President to appoint 75 cadets annually from the sons of members of the Regular components, instead of a cumulative total of 89, the Secretary of the Air Force to appoint 85 cadets annually from enlisted members of the Regular Air Force, instead of a cumulative total of 90, 85 annually from enlisted members of the Air Force Reserve, instead of a cumulative total of 90, 20 annually from honor graduates of designated honor schools and the A.F.R.O.T.C., instead of a cumulative total of 40 from honor schools only, 150 annually, in order of merit, from among the qualified alternates nominated by Members of Congress, and when the quota of cadets selected under subsec. (b)(1), (2), (3) is not filled, to fill the vacancies by appointing those best qualified from any of the three sources, decreased the number of cadets nominated by the Commissioners of the District of Columbia from 6 to 5, and by the Governor of the Panama Canal from 2 to 1, limited appointments to the number that can be adequately accommodated at the Academy, within the limitation that congressional appointments cannot be limited to less than four, and if limited, a priority of selection is established for the other categories, and, beginning in 1964, the Secretary may upon request of a Member of Congress, furnish him the name of any nominating authority responsible for the nomination of any identified person to the Academy.

1962—Subsec. (a)(10). Pub. L. 87–663, §1(5), added cl. (10).

Subsec. (c). Pub. L. 87–663, §1(6), inserted references to American Samoa, Guam, and the Virgin Islands, and substituted ''Clauses (1)–(5) and (10)'' for ''clauses (1)–(5)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–60 effective with respect to nominations for appointment to the first class admitted to each Academy after Oct. 14, 1981, see section 203(d) of Pub. L. 97–60, set out as an Effective Date note under section 4341a of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–600 effective beginning with nominations for appointment to the service academies for academic years beginning more than one year after Dec. 24, 1980, see section 2(d) of Pub. L. 96–600, set out as a note under section 4342 of this title.

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–171 effective beginning with the nominations for appointment to the service academies in the calendar year 1974, see section 4 of Pub. L. 93–171, set out as a note under section 4342 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–405 effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as an Effective Date note under section 25a of Title 2, The Congress.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22, 1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

EFFECTIVE DATE; INTERIM SYSTEM FOR APPOINTMENT OF CADETS

Section 52(b) of act Aug. 10, 1956, as amended by Pub. L. 85–182, Aug. 28, 1957, 71 Stat. 463, provided that section 9342(a) of Title 10, Armed Forces would take effect four years after the entrance of the initial class at the United States Air Force Academy. However, for the four-year period beginning with the class of cadets entering in July 1959, not more than one quarter of the number of cadets authorized by clause (1), (2), (3), (4), (7), or (8) of that section could be appointed in any one academic year; two of the number of cadets authorized by clause (5) of that section could be appointed in the first and third years of that four-year period, and not more than one of the number authorized by it could be appointed in the second and fourth years of that period; and one cadet authorized by clause (6) of that section could be appointed in the first two years of that four-year period, and not more than one of the number authorized by it could be appointed in the second two years of that period. In addition, during that four-year period, the nominating authority named in clauses (1) to (6) of that section could select for each cadet allocated to him for the year concerned a principal candidate and not more than ten alternate candidates, or he could nominate as many candidates as the Secretary prescribed and authorize the Secretary to select the principal candidates in order of merit as determined by competitive examination. In carrying out section 9343 of Title 10, during that four-year period, only qualified alternates who were nominated by the authorities named in clauses (1) to (4) of section 9342(a) could be nominated for appointment as cadets. Not more than one qualified alternate nominated by any one authority named in those classes could be appointed as a cadet, after nomination under section 9343, during each year of that four-year period.

LIMITATION ON NUMBER OF CADETS AND MIDSHIPMEN AUTHORIZED TO ATTEND SERVICE ACADEMIES

Authorized strength of service academies not to exceed 4,000 per academy for class years beginning after 1994, and any reduction in number of appointments not to be achieved by reduction in number of appointments under subsec. (a) of this section, see section 511 of Pub. L. 102–190, set out as a note under section 4342 of this title.

ELIGIBILITY OF FEMALE INDIVIDUALS FOR APPOINTMENT AND ADMISSION TO SERVICE ACADEMIES; UNIFORM APPLICATION OF ACADEMIC AND OTHER STANDARDS TO MALE AND FEMALE INDIVIDUALS

Secretary required to take such action as may be necessary and appropriate to insure that (1) female individuals shall be eligible for appointment and admission to the United States Air Force Academy, beginning with appointments to such academy for the class beginning in calendar year 1976, and (2) the academic and other relevant standards required for appointment, admission, training, graduation, and commissioning of female individuals shall be the same as those required for male individuals, except for those minimum essential adjustments in such standards required because of physiological differences between male and female individuals, see section 803(a) of Pub. L. 94–106, set out as a note under section 4342 of this title.

SECRETARY TO IMPLEMENT POLICY OF EXPEDITIOUS ADMISSION OF WOMEN TO THE ACADEMY

Secretary to continue to exercise the authority granted under this chapter and chapters 403 and 603 of this title, but such authority to be exercised within a program providing for the orderly and expeditious admission of women to the Academy, consistent with the needs of the services, see section 803(c) of Pub. L. 94–106, set out as a note under section 4342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9343, 9344 of this title.

§ 9343. Cadets: appointment; to bring to full strength

If it is determined that, upon the admission of a new class to the Academy, the number of cadets at the Academy will be below the authorized number, the Secretary of the Air Force may fill the vacancies by nominating additional cadets from qualified candidates designated as alternates and from other qualified candidates who competed for nomination and are recommended and found qualified by the Academy Board. At least three-fourths of those nominated under this section shall be selected from qualified alternates nominated by the persons named in clauses (2) through (8) of section 9342(a) of this title, and the remainder from qualified candidates holding competitive nominations under any other provision of law. An appointment under this section is an additional appointment and is not in place of an appointment otherwise authorized by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 564; Pub. L. 88–276, § 4(2), Mar. 3, 1964, 78 Stat. 153; Pub. L. 89–718, § 46, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 93–171, § 3(5), Nov. 29, 1973, 87 Stat. 691; Pub. L. 101–510, div. A, title V, § 532(a)(2), (c)(2), Nov. 5, 1990, 104 Stat. 1563, 1564.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9343	10:1092d.	June 30, 1950, ch. 421, § 4, 64 Stat. 305.

The words ''If it is determined'' are substituted for the words ''When upon determination''. The words ''within his discretion'' are omitted as covered by the word ''may''. The words ''within the capacity of the Academy'', ''from the remaining sources of admission authorized by law'', and ''to be admitted in such class'' are omitted as surplusage. The words ''by the persons named in clauses (1)–(6) of section 9342(a), and clause (2) of section 9342(e), of this title'' are substituted for the words ''by the Vice President, Members of the Senate and House of Representatives of the United States, Delegates and Resident Commissioners, the Commissioners of the District of Columbia, and the Governor of the Canal Zone''. The words ''under any other provision of law'' are substituted for the words ''from sources authorized by law other than those holding such alternate appointments''.

AMENDMENTS

1990—Pub. L. 101–510, § 532(a)(2), (c)(2), amended section identically, substituting ''clauses (2) through (8)'' for ''clauses (2)–(9)''.

1973—Pub. L. 93–171 substituted ''clauses (2)–(9) of section 9342(a)'' for ''clauses (2)–(8) of section 9342(a)''.

1966—Pub. L. 89–718 substituted ''Academy Board'' for ''Faculty''.

1964—Pub. L. 88–276, among other changes, increased percentage of nominees to be selected from two-thirds to three-fourths, and struck out ''as are necessary to meet the needs of the Air Force, but not more than the authorized strength of Air Force cadets'' after ''the Faculty''.

EFFECTIVE DATE OF 1973 AMENDMENT

For effective date of amendment by Pub. L. 93–171, see section 4 of Pub. L. 93–171, set out as a note under section 4342 of this title.

NUMBER OF ALTERNATE APPOINTEES FROM CONGRESSIONAL SOURCES NOT TO BE REDUCED BECAUSE OF ADDITIONAL PRESIDENTIAL APPOINTMENTS

Nonreduction of number of appointees from congressional sources under this section because of additional Presidential appointments under section 9342(b) (1) of this title, see section 2 of Pub. L. 89–650, set out as a note under section 4343 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9342 of this title.

§ 9344. Selection of persons from foreign countries

(a)(1) The Secretary of the Air Force may permit not more than 60 persons at any one time from foreign countries to receive instruction at the Academy. Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title.

(2) The Secretary of the Air Force, upon approval by the Secretary of Defense, shall determine the countries from which persons may be selected for appointment under this section and the number of persons that may be selected from each country. The Secretary of the Air Force may establish entrance qualifications and methods of competition for selection among individual applicants under this section and shall select those persons who will be permitted to receive instruction at the Academy under this section.

(3) In selecting persons to receive instruction under this section from among applicants from the countries approved under paragraph (2), the Secretary of the Air Force shall give a priority to persons who have a national service obligation to their countries upon graduation from the Academy.

(b)(1) A person receiving instruction under this section is entitled to the pay, allowances, and emoluments of a cadet appointed from the United States, and from the same appropriations.

(2) Each foreign country from which a cadet is permitted to receive instruction at the Academy under this section shall reimburse the United States for the cost of providing such instruction, including the cost of pay, allowances, and emoluments provided under paragraph (1). The Secretary of the Air Force shall prescribe the rates for reimbursement under this paragraph, except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.

(3) The Secretary of Defense may waive, in whole or in part, the requirement for reimbursement of the cost of instruction for a cadet under paragraph (2). In the case of a partial waiver, the Secretary shall establish the amount waived.

(c)(1) Except as the Secretary of the Air Force determines, a person receiving instruction under this section is subject to the same regulations

governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as a cadet at the Academy appointed from the United States. The Secretary may prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States.

(2) A person receiving instruction under this section is not entitled to an appointment in an armed force of the United States by reason of graduation from the Academy.

(d) A person receiving instruction under this section is not subject to section 9346(d) of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 564; Pub. L. 98–94, title X, §1004(c)(1), Sept. 24, 1983, 97 Stat. 659; Pub. L. 105–85, div. A, title V, §543(c), Nov. 18, 1997, 111 Stat. 1744; Pub. L. 106–65, div. A, title V, §534(c), Oct. 5, 1999, 113 Stat. 605; Pub. L. 106–398, §1 [[div. A], title V, §532(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110; Pub. L. 107–107, div. A, title V, §533(c)(1), (2), Dec. 28, 2001, 115 Stat. 1106.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9344(a)	10:1093c (less 3d and last sentences).	June 26, 1946, ch. 493, §1, 60 Stat. 311; June 1, 1948, ch. 357, §2, 62 Stat. 280.
9344(b)	10:1093c (3d sentence).	
9344(c)	10:1093c (last sentence).	

In subsection (a), the words ''at West Point, New York'' are omitted as inapplicable to the Air Force.

In subsection (b), the words ''is entitled to'' are substituted for the words ''shall receive''. The words ''performed in proceeding'' are omitted as surplusage. The words ''continental limits'' are omitted, since section 101(1) of this title defines the United States to include only the States and the District of Columbia.

In subsection (c), the words ''to any office or position'' are omitted as surplusage; 10:1093c (proviso of last sentence) is omitted, since 10:1099 is inapplicable to the Air Force and section 1321 of the Revised Statutes, previously codified in 10:1101, was repealed by section 6(b) of the Act of June 30, 1950, ch. 421, 64 Stat. 305.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107, §533(c)(1), substituted ''60'' for ''40''.

Subsec. (b)(2). Pub. L. 107–107, §533(c)(2)(A), struck out ''unless a written waiver of reimbursement is granted by the Secretary of Defense'' before period at end of first sentence.

Subsec. (b)(3). Pub. L. 107–107, §533(c)(2)(B), added par. (3) and struck out former par. (3) which read as follows: ''The amount of reimbursement waived under paragraph (2) may not exceed 50 percent of the per-person reimbursement amount otherwise required to be paid by a foreign country under such paragraph, except in the case of not more than 20 persons receiving instruction at the Air Force Academy under this section at any one time.''

2000—Subsec. (a)(3). Pub. L. 106–398 added par. (3).

1999—Subsec. (b)(3). Pub. L. 106–65 substituted ''50 percent'' for ''35 percent'' and ''20 persons'' for ''five persons''.

1997—Subsec. (b)(2). Pub. L. 105–85, §543(c)(1), substituted '', except that the reimbursement rates may not be less than the cost to the United States of providing such instruction, including pay, allowances, and emoluments, to a cadet appointed from the United States.'' for period at end.

Subsec. (b)(3). Pub. L. 105–85, §543(c)(2), added par. (3).

1983—Pub. L. 98–94 substituted ''foreign countries'' for ''Canada and American Republics'' in section catchline.

Subsec. (a). Pub. L. 98–94 amended subsec. (a) generally, substituting ''The Secretary of the Air Force may permit not more than 40 persons at any one time from foreign countries to receive instruction at the Academy'' and ''Such persons shall be in addition to the authorized strength of the Air Force Cadets of the Academy under section 9342 of this title'' for ''Upon designation by the President, the Secretary of the Air Force may permit not more than 20 persons at any one time from Canada and the American Republics, other than the United States, to receive instruction at the Academy'' and ''However, not more than three persons from any one of those republics or from Canada may receive instruction under this section at any one time'' as the first two sentences of subsec. (a) and designating those sentences as par. (1), and adding par. (2).

Subsec. (b). Pub. L. 98–94 amended subsec. (b) generally, designating existing provisions as par. (1), striking out provisions that had directed that the mileage allowance payable to persons for travel to the Academy for initial admission was not limited to mileage for travel within the United States, and adding par. (2).

Subsec. (c). Pub. L. 98–94 amended subsec. (c) generally, designating first sentence of subsec. (c) as par. (1), inserting provisions authorizing the Secretary to prescribe regulations with respect to access to classified information by a person receiving instruction under this section that differ from the regulations that apply to a cadet at the Academy appointed from the United States, and designating the second sentence of subsec. (c) as par. (2).

Subsec. (d). Pub. L. 98–94, in amending section generally, added subsec. (d).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §533(c)(3), Dec. 28, 2001, 115 Stat. 1106, provided that: ''The amendments made by paragraph (2) [amending this section] shall not apply with respect to any person who entered the United States Air Force Academy to receive instruction under section 9344 of title 10, United States Code, before the date of the enactment of this Act [Dec. 28, 2001].''

Amendment by Pub. L. 107–107 inapplicable with respect to any academic year that began before Dec. 28, 2001, see section 533(d) of Pub. L. 107–107, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–398 applicable with respect to academic years that begin after Oct. 1, 2000, see section 1 [[div. A], title V, §532(d)] of Pub. L. 106–398, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–65 applicable with respect to students from a foreign country entering the United States Military Academy, Naval Academy, or Air Force Academy on or after May 1, 1999, see section 534(d) of Pub. L. 106–65, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–85 applicable with respect to students from foreign country entering United States Military Academy, United States Naval Academy, or United States Air Force Academy on or after May 1, 1998, see section 543(d) of Pub. L. 105–85, set out as a note under section 4344 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective one year after Sept. 24, 1983, and applicable to persons entering the Academy after such date, with subsec. (b)(2) of this section, as amended, not to apply to the cost of providing instruction to a person who, before such date, entered

the Academy, see section 1004(d) of Pub. L. 98–94, set out as a note under section 4344 of this title.

PERSONS FROM COUNTRIES ASSISTING U.S. IN VIETNAM; AIR FORCE ACADEMY INSTRUCTION; BENEFITS, LIMITATIONS, RESTRICTIONS, AND REGULATIONS; OATH OF TRAINEES

Air Force Academy instruction of persons from countries assisting U.S. in Vietnam, numerical limitation, prohibition against appointment of graduates to the Armed Forces, exemption from oath, etc., see Pub. L. 89–802, Nov. 9, 1966, 80 Stat. 1518, set out as a note under section 4344 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9345 of this title; title 20 section 221a.

§ 9345. Exchange program with foreign military academies

(a) EXCHANGE PROGRAM AUTHORIZED.—The Secretary of the Air Force may permit a student enrolled at a military academy of a foreign country to receive instruction at the Air Force Academy in exchange for an Air Force cadet receiving instruction at that foreign military academy pursuant to an exchange agreement entered into between the Secretary and appropriate officials of the foreign country. Students receiving instruction at the Academy under the exchange program shall be in addition to persons receiving instruction at the Academy under section 9344 of this title.

(b) LIMITATIONS ON NUMBER AND DURATION OF EXCHANGES.—An exchange agreement under this section between the Secretary and a foreign country shall provide for the exchange of students on a one-for-one basis each fiscal year. Not more than 24 Air Force cadets and a comparable number of students from all foreign military academies participating in the exchange program may be exchanged during any fiscal year. The duration of an exchange may not exceed the equivalent of one academic semester at the Air Force Academy.

(c) COSTS AND EXPENSES.—(1) A student from a military academy of a foreign country is not entitled to the pay, allowances, and emoluments of an Air Force cadet by reason of attendance at the Air Force Academy under the exchange program, and the Department of Defense may not incur any cost of international travel required for transportation of such a student to and from the sponsoring foreign country.

(2) The Secretary may provide a student from a foreign country under the exchange program, during the period of the exchange, with subsistence, transportation within the continental United States, clothing, health care, and other services to the same extent that the foreign country provides comparable support and services to the exchanged Air Force cadet in that foreign country.

(3) The Air Force Academy shall bear all costs of the exchange program from funds appropriated for the Academy. Expenditures in support of the exchange program may not exceed $120,000 during any fiscal year.

(d) APPLICATION OF OTHER LAWS.—Subsections (c) and (d) of section 9344 of this title shall apply with respect to a student enrolled at a military academy of a foreign country while attending the Air Force Academy under the exchange program.

(e) REGULATIONS.—The Secretary shall prescribe regulations to implement this section. Such regulations may include qualification criteria and methods of selection for students of foreign military academies to participate in the exchange program.

(Added Pub. L. 105–85, div. A, title V, § 542(c)(1), Nov. 18, 1997, 111 Stat. 1742; amended Pub. L. 106–65, div. A, title V, § 535(c), Oct. 5, 1999, 113 Stat. 606.)

PRIOR PROVISIONS

A prior section 9345, act Aug. 10, 1956, ch. 1041, 70A Stat. 565, related to selection of Filipinos for instruction at the Air Force Academy, prior to repeal by Pub. L. 98–94, title X, § 1004(c)(2), (d), Sept. 24, 1983, 97 Stat. 660, effective one year after Sept. 24, 1983.

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65, § 535(c)(1), substituted ''24 Air Force cadets'' for ''10 Air Force cadets''.

Subsec. (c)(3). Pub. L. 106–65, § 535(c)(2), substituted ''$120,000'' for ''$50,000''.

§ 9346. Cadets: requirements for admission

(a) To be eligible for admission to the Academy a candidate must be at least 17 years of age and must not have passed his twenty-third birthday on July 1 of the year in which he enters the Academy.

(b) To be admitted to the Academy, an appointee must show, by an examination held under regulations prescribed by the Secretary of the Air Force, that he is qualified in the subjects prescribed by the Secretary.

(c) A candidate designated as a principal or an alternate for appointment as a cadet shall appear for physical examination at a time and place designated by the Secretary.

(d) To be admitted to the Academy, an appointee must take and subscribe to an oath prescribed by the Secretary of the Air Force. If a candidate for admission refuses to take and subscribe to the prescribed oath, his appointment is terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565; Pub. L. 89–718, § 47, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 104–201, div. A, title V, § 555(d), Sept. 23, 1996, 110 Stat. 2527.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9346(a)	10:1092b (less provisos).	June 30, 1950, ch. 421, § 2 (less provisos), 64 Stat. 304.
9346(b)	10:1096.	R.S. 1319; restated Mar. 2, 1901, ch. 804 (1st proviso under ''Permanent Establishment''), 31 Stat. 911.
9346(c)	10:1095.	Aug. 9, 1912, ch. 275 (2d proviso under ''Permanent Establishment''), 37 Stat. 252.

In subsection (a), the words ''Effective January 1, 1951'' are omitted as executed. The word ''Calendar'' is omitted as surplusage. The words ''must not have passed his twenty-second birthday'' are substituted for the words ''not more than twenty-two years of age'', to make it clear that a person whose twenty-second birth-

day falls on July 1 of the year of admission is eligible (see opinion of the Judge Advocate General of the Army (JAGA 1952/7083, 2 Sept. 1952)).

In subsection (b), the words ''is qualified in'' are substituted for the words ''to be well versed in''. The words ''To be'' are substituted for the words ''before they shall be''. The words ''an appointee must show that he is qualified'' are substituted for the words ''shall be required to be well versed''. The words ''from time to time'' are omitted as surplusage.

In subsection (c), the word ''shall'' is substituted for the word ''may'', since the nominee is required to appear for the examination. The word ''appear'' is substituted for the words ''present himself''. The words ''at a place'' are substituted for the words ''at West Point, New York, or other prescribed places''.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 substituted ''twenty-third birthday'' for ''twenty-second birthday''.

1966—Subsec. (d). Pub. L. 89–718 added subsec. (d).

AUTHORITY TO WAIVE MAXIMUM AGE LIMITATION ON ADMISSION TO SERVICE ACADEMIES FOR CERTAIN ENLISTED MEMBERS WHO SERVED DURING PERSIAN GULF WAR

For authority to waive maximum age limitation in subsec. (a) of this section on basis of service on active duty in connection with Operation Desert Storm, see section 514 of Pub. L. 102–190, set out as a note under section 4346 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9344 of this title.

§ 9347. Cadets; nominees: effect of redistricting of States

If as a result of redistricting a State the domicile of a cadet, or a nominee, nominated by a Representative falls within a congressional district other than that from which he was nominated, he is charged to the district in which his domicile so falls. For this purpose, the number of cadets otherwise authorized for that district is increased to include him. However, the number as so increased is reduced by one if he fails to become a cadet or when he is finally separated from the Academy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9347	10:1091–1.	July 7, 1943, ch. 193, 57 Stat. 383.

The word ''domicile'' is substituted for the words ''place of residence'' and ''residence'' to conform to opinions of the Judge Advocate General of the Army (R. 29, 83; J.A.G. 351.11, Feb. 10, 1925). The words ''a * * * other than that from which he was nominated'' are substituted for the word ''another''. The words ''were appointed with respect to'', ''of the former district'', ''as additional numbers'', ''at such academy for the Representative'', ''temporarily'', and ''in attendance at such academy under an appointment from such former district'' are omitted as surplusage. The words ''the district in which his domicile so falls'' are substituted for the words ''of the latter district''. The words ''to include him'' are substituted for 10:1091–1 (18 words before proviso). The words ''but the number as so increased'' are substituted for 10:1091–1 (1st 13 words of proviso). The words ''if he fails to become a cadet'' are inserted for clarity.

§ 9348. Cadets: agreement to serve as officer

(a) Each cadet shall sign an agreement with respect to the cadet's length of service in the armed forces. The agreement shall provide that the cadet agrees to the following:

(1) That the cadet will complete the course of instruction at the Academy.

(2) That upon graduation from the Academy the cadet—

(A) will accept an appointment, if tendered, as a commissioned officer of the Regular Air Force; and

(B) will serve on active duty for at least five years immediately after such appointment.

(3) That if an appointment described in paragraph (2) is not tendered or if the cadet is permitted to resign as a regular officer before completion of the commissioned service obligation of the cadet, the cadet—

(A) will accept an appointment as a commissioned officer as a Reserve in the Air Force for service in the Air Force Reserve; and

(B) will remain in that reserve component until completion of the commissioned service obligation of the cadet.

(b)(1) The Secretary of the Air Force may transfer to the Air Force Reserve, and may order to active duty for such period of time as the Secretary prescribes (but not to exceed four years), a cadet who breaches an agreement under subsection (a). The period of time for which a cadet is ordered to active duty under this paragraph may be determined without regard to section 651(a) of this title.

(2) A cadet who is transferred to the Air Force Reserve under paragraph (1) shall be transferred in an appropriate enlisted grade or rating, as determined by the Secretary.

(3) For the purposes of paragraph (1), a cadet shall be considered to have breached an agreement under subsection (a) if the cadet is separated from the Academy under circumstances which the Secretary determines constitute a breach by the cadet of the cadet's agreement to complete the course of instruction at the Academy and accept an appointment as a commissioned officer upon graduation from the Academy.

(c) The Secretary of the Air Force shall prescribe regulations to carry out this section. Those regulations shall include—

(1) standards for determining what constitutes, for the purpose of subsection (b), a breach of an agreement under subsection (a);

(2) procedures for determining whether such a breach has occurred; and

(3) standards for determining the period of time for which a person may be ordered to serve on active duty under subsection(b).

(d) In this section, the term ''commissioned service obligation'', with respect to an officer who is a graduate of the Academy, means the period beginning on the date of the officer's appointment as a commissioned officer and ending on the sixth anniversary of such appointment or, at the discretion of the Secretary of Defense, any later date up to the eighth anniversary of such appointment.

(e)(1) This section does not apply to a cadet who is not a citizen or national of the United States.

(2) In the case of a cadet who is a minor and who has parents or a guardian, the cadet may sign the agreement required by subsection (a) only with the consent of a parent or guardian.

(Aug. 10, 1956, ch. 1041, 70A Stat. 565; Pub. L. 88–276, §5(a), Mar. 3, 1964, 78 Stat. 153; Pub. L. 88–647, title III, §301(25), Oct. 13, 1964, 78 Stat. 1073; Pub. L. 98–525, title V, §§541(c), 542(d), Oct. 19, 1984, 98 Stat. 2529; Pub. L. 99–145, title V, §512(c), Nov. 8, 1985, 99 Stat. 625; Pub. L. 101–189, div. A, title V, §511(d), title XVI, §1622(e)(5), Nov. 29, 1989, 103 Stat. 1439, 1605; Pub. L. 104–106, div. A, title V, §531(c), Feb. 10, 1996, 110 Stat. 314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9348	10:1092c.	June 30, 1950, ch. 421, §3, 64 Stat. 304.

The word ''agreement'' is substituted for the word ''articles''. The words ''Hereafter'', ''appointed to the United States Military Academy'', ''engage'', and 10:1092c (1st 25 words of clause (2) are omitted as surplusage. The word ''separated'' is substituted for the words ''discharged by competent authority''. The words ''if he is permitted to resign'' are substituted for the words ''in the event of the acceptance of his resignation'', since a resignation is effective only when accepted. The first 32 words of clause (3) are substituted for 10:1092c (last 29 words of clause (3)). The last sentence is substituted for the words ''with the consent of his parents or guardian if he be a minor, and if any he have''.

AMENDMENTS

1996—Subsec. (a)(2)(B). Pub. L. 104–106 substituted ''five years'' for ''six years''.

1989—Subsec. (a)(2)(B). Pub. L. 101–189, §511(d), substituted ''six years'' for ''five years''.

Subsec. (d). Pub. L. 101–189, §1622(e)(5), inserted ''the term'' after ''In this section,''.

1985—Pub. L. 99–145 amended section generally. Prior to amendment, section read as follows:

''(a) Each cadet who is a citizen or national of the United States shall sign an agreement that he will—

''(1) unless sooner separated from the Academy, complete the course of instruction at the Academy;

''(2) accept an appointment and, unless sooner separated from the service, serve as a commissioned officer of the Regular Air Force for at least the five years immediately after graduation; and

''(3) accept an appointment as a commissioned officer as a Reserve for service in the Air Force Reserve and, unless sooner separated from the service, remain therein until at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary of his graduation, if an appointment in the Regular Air Force is not tendered to him, or if he is permitted to resign as a commissioned officer of that component before that anniversary.

If the cadet is a minor and has parents or a guardian, he may sign the agreement only with the consent of the parents or guardian.

''(b) A cadet who does not fulfill his agreement under subsection (a) may be transferred by the Secretary of the Air Force to the Air Force Reserve in an appropriate enlisted grade and, notwithstanding section 651 of this title, may be ordered to active duty to serve in that grade for such period of time as the Secretary prescribes but not for more than four years.''

1984—Subsec. (a). Pub. L. 98–525, §541(c), struck out '', unless sooner separated,'' in introductory text before ''he will''; inserted in cl. (1) ''unless sooner separated from the Academy,''; and inserted '', unless sooner separated from the service,'' in cls. (2) and (3).

Subsec. (a)(3). Pub. L. 98–525, §542(d), substituted ''at least the sixth anniversary and, at the direction of the Secretary of Defense, up to the eighth anniversary'' for ''the sixth anniversary''.

1964—Pub. L. 88–647 designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a)(2). Pub. L. 88–276 substituted ''five'' for ''three''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 applicable to persons first admitted to United States Military Academy, United States Naval Academy, and United States Air Force Academy after Dec. 31, 1991, see section 531(e) of Pub. L. 104–106, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 511(d) of Pub. L. 101–189 applicable to persons who are first admitted to one of the military service academies after Dec. 31, 1991, see section 511(e) of Pub. L. 101–189, as amended, set out as a note under section 2114 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 (other than with respect to the authority of the Secretary of the Air Force to prescribe regulations) effective on the date on which regulations prescribed by the Secretary take effect and applicable to agreements entered into under this section on or after the effective date of such regulations and also with respect to each such agreement that was entered into before the effective date of such regulations by an individual who is a cadet on such date, see section 512(e) of Pub. L. 99–145, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(c) of Pub. L. 98–525 applicable with respect to agreements entered into under this section before, on, or after Oct. 19, 1984, see section 541(d) of Pub. L. 98–525, set out as a note under section 4348 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT; OBLIGATED PERIOD OF SERVICE

For effective date of amendment by Pub. L. 88–276, see section 5(c) of Pub. L. 88–276, set out as a note under section 4348 of this title.

REGULATIONS IMPLEMENTING 1985 AMENDMENT

Secretary of the Air Force to prescribe regulations required by subsec. (c) of this section as added by Pub. L. 99–145 not later than the end of the 90-day period beginning on Nov. 8, 1985, see section 512(d) of Pub. L. 99–145, set out as a note under section 4348 of this title.

§ 9349. Cadets: organization; service; instruction

(a) A cadet shall perform duties at such places and of such type as the President may direct.

(b) The course of instruction at the Academy is four years.

(c) The Secretary of the Air Force shall so arrange the course of studies at the Academy that cadets are not required to pursue their studies on Sunday.

(d) Cadets shall be trained in the duties of members of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9349(a)	10:1102.	R.S. 1322.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9349(b)	10:1043.	R.S. 1323.
9349(c)	10:1044.	Mar. 30, 1920, ch. 112 (1st par., less provisos, under ''Miscellaneous''), 41 Stat. 548.
9349(d)	10:1105.	R.S. 1324.

In subsection (a), the word ''commissioned'' is inserted for clarity. 10:1105 (2d sentence) is omitted as obsolete.

In subsection (b), the word ''perform'' is substituted for the words ''be subject at all times to do''. The words ''of such type'' are substituted for the words ''on such service''.

In subsection (e), the words ''members of the Air Force'' are substituted for the words ''private soldier, noncommissioned officer, and officer''. The words ''taught and'' are omitted as surplusage. 10:1105 (less 1st 18 words of last sentence) is omitted as inapplicable to the Air Force.

§ 9350. Cadets: clothing and equipment

(a) The Secretary of the Air Force may prescribe the amount to be credited to a cadet, upon original admission to the Academy, for the cost of his initial issue of clothing and equipment. That amount shall be deducted from his pay. If a cadet is discharged before graduation while owing the United States for pay advanced for the purchase of required clothing and equipment, he shall turn in so much of his clothing and equipment of a distinctive military nature as is necessary to repay the amount advanced. If the value of the clothing and equipment turned in does not cover the amount owed, the indebtedness shall be canceled.

(b) Under such regulations as the Secretary may prescribe, uniforms and equipment shall be furnished to a cadet at the Academy upon his request.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9350(a)	10:1149a.	Aug. 31, 1918, ch. 166, § 9 (17th through 22d words), 40 Stat. 957.
9350(b)	10:1106.	Aug. 22, 1951, ch. 340, § 1, 65 Stat. 196.

In subsection (a), the words ''while owing the United States for pay advanced for the purpose of'' are substituted for the words ''who is indebted to the United States on account of advances in pay to purchase''. The words ''as is necessary to repay the amount advanced'' are substituted for the words ''to the extent required to discharge such indebtedness''.

In subsection (b), the word ''accouterments'' is omitted as surplusage. The words ''by the Government'' and ''such restrictions and'' are omitted as surplusage. The words ''at cost'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 9351. Cadets: deficiencies in conduct or studies; effect of failure on successor

(a) A cadet who is reported as deficient in conduct or studies and recommended to be discharged from the Academy may not, unless recommended by the Academy Board, be returned or reappointed to the Academy.

(b) Any cadet who fails to pass a required examination because he is deficient in any one subject of instruction is entitled to a reexamination of equal scope and difficulty in that subject, if he applies in writing to the Superintendent within 10 days after he is officially notified of his failure. The reexamination shall be held within 60 days after the date of his application. If the cadet passes the reexamination and is otherwise qualified, he shall be readmitted to the Academy. If he fails, he may not have another examination.

(c) The failure of a member of a graduating class to complete the course with his class does not delay the admission of his successor.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9351(a)	10:1104.	Aug. 11, 1916, ch. 314 (3d, 4th, and 5th provisos under ''Permanent Establishment''), 39 Stat. 493.
9351(b)	10:1103.	R.S. 1325.
9351(c)	10:1092b (1st proviso).	June 30, 1950, ch. 421, § 2 (1st proviso), 64 Stat. 304.

In subsection (a), 10:1104 (last 20 words) is omitted as superseded by section 8287(d) of this title.

In subsection (b), the words ''is entitled to'' are substituted for the words ''shall have the right to apply''. The words ''of equal scope and difficulty in that subject'' are substituted for the words ''by compliance with the requirements existing at the time of the first examination''.

In subsection (c), the words ''by reason of sickness, or deficiency in his studies, or other cause'' are omitted as surplusage.

§ 9352. Cadets: hazing

(a) Subject to the approval of the Secretary of the Air Force, the Superintendent of the Academy shall issue regulations—

(1) defining hazing;

(2) designed to prevent that practice; and

(3) prescribing dismissal, suspension, or other adequate punishment for violations.

(b) If a cadet who is charged with violating a regulation issued under subsection (a), the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court.

(c) A cadet dismissed from the Academy for hazing may not be reappointed as an Air Force cadet, and is ineligible for appointment as a commissioned officer in a regular component of the Army, Navy, Air Force, or Marine Corps, until two years after the graduation of his class.

(Aug. 10, 1956, ch. 1041, 70A Stat. 566.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9352(a)	10:1163 (1st par.).	Mar. 2, 1901, ch. 804 (2d proviso under ''Permanent Establishment''); restated Apr. 19, 1910, ch. 174 (38th par. under ''Buildings and Grounds''), 36 Stat. 323.
9352(b)	10:1163 (1st 32 words of last par.).	
9352(c)	10:1163 (last par., less 1st 32 words).	

In subsection (a), the word ''violations'' is substituted for the words ''infractions of the same''. The words ''to embody a clear'' are omitted as surplusage.

In subsection (b), the words ''the penalty for which is or may be'' are substituted for the words ''which would involve''. The words ''may not be dismissed for that offense except under sentence of such a court'' are substituted for the words ''shall be granted''.

In subsection (c), the words ''a regular component'' are inserted, since the source statute historically applied only to the regular components.

§ 9353. Cadets: degree and commission on graduation

(a) The Superintendent of the Academy may, under such conditions as the Secretary of the Air Force may prescribe, confer the degree of bachelor of science upon graduates of the Academy.

(b) Notwithstanding any other provision of law, a cadet who completes the prescribed course of instruction may, upon graduation, be appointed a second lieutenant in the Regular Air Force under section 531 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567; Pub. L. 85–861, §§ 1(201), 33(a)(43), Sept. 2, 1958, 72 Stat. 1541, 1567; Pub. L. 96–513, title V, § 504(25), Dec. 12, 1980, 94 Stat. 2917; Pub. L. 105–85, div. A, title V, § 542(d), Nov. 18, 1997, 111 Stat. 1743.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9353(a)	10:486a (less last sentence).	May 25, 1933, ch. 37 (less last sentence); restated Aug. 9, 1946, ch. 932 (less last sentence); restated Aug. 4, 1949, ch. 393, § 13; restated Aug. 18, 1949, ch. 476 (less last sentence), 63 Stat. 615.
9353(b)	10:506c(f) (1st sentence, less last 43 words).	Aug. 7, 1947, ch. 512, § 506(f) (1st sentence, less last 43 words), 61 Stat. 892.

In subsection (a), the last 27 words are substituted for 10:486a (last sentence). The words ''rules and'' and ''from and after the date of the accrediting of said Academy'' are omitted as surplusage. The word ''conditions'' is substituted for the word ''regulations''.

In subsection (b), the words ''except section 541 of this title'' are inserted to reflect the authority to appoint graduates of one service academy as officers of another service.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9353(b)	10 App.:1850c(e) (1st sentence).	July 20, 1956, ch. 646, § 203(e) (1st sentence), 70 Stat. 585.

It is unnecessary to include a reference to section 541 of title 10, since that section does not derogate from the authority granted in this section.

The change reflects the opinion of the Judge Advocate General of the Air Force (July 19, 1957) that the words ''from and after the date of the accrediting of said academies'' in the source law for section 9353(a) (Act of May 25, 1933, ch. 37 (48 Stat. 73), as amended) were a condition precedent to the authority to grant degrees and should not have been omitted.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85 substituted ''The'' for ''After the date of the accrediting of the Academy, the''.

1980—Subsec. (b). Pub. L. 96–513 inserted ''under section 531 of this title'' after ''Regular Air Force''.

1958—Subsec. (a). Pub. L. 85–861, § 33(a)(43), permitted conferring of degrees only after date of accrediting of Academy.

Subsec. (b). Pub. L. 85–861, § 1(201), struck out ''except section 541 of this title'' after ''provision of law''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(a)(43) of Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

§ 9354. Buildings and grounds: buildings for religious worship

The Secretary of the Air Force may authorize any denomination, sect, or religious body to erect a building for religious worship at the Air Force Academy, if its erection will not interfere with the use of the reservation for military purposes and will be without expense to the United States. Such a building shall be removed, or its location changed, without compensation for it and without expense to the United States, by the denomination, sect, or religious body that erected it, whenever in the opinion of the Secretary public or military necessity so requires.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9354	10:1126.	July 8, 1898, ch. 636, 30 Stat. 722.

The words ''in his discretion'' and ''Government of'' are omitted as surplusage. The words ''United States'' are substituted for the word ''Government''.

§ 9355. Board of Visitors

(a) A Board of Visitors to the Academy is constituted annually of—

(1) the chairman of the Committee on Armed Services of the Senate, or his designee;

(2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate;

(3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee;

(4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and

(5) six persons designated by the President.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed. The President shall designate two persons each year to succeed the members whose terms expire that year.

(c) If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.

(d) The Board shall visit the Academy annually. With the approval of the Secretary of the Air Force, the Board or its members may make other visits to the Academy in connection with the duties of the Board or to consult with the Superintendent of the Academy.

(e) The Board shall inquire into the morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy which the Board decides to consider.

(f) Within 60 days after its annual visit, the Board shall submit a written report to the President of its action, and of its views and recommendations pertaining to the Academy. Any report of a visit, other than the annual visit, shall, if approved by a majority of the members of the Board, be submitted to the President within 60 days after the approval.

(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

(h) While performing his duties, each member of the Board and each adviser shall be reimbursed under Government travel regulations for his travel expenses.

(Aug. 10, 1956, ch. 1041, 70A Stat. 567; Pub. L. 96–579, § 13(c), Dec. 23, 1980, 94 Stat. 3369; Pub. L. 104–106, div. A, title X, § 1061(e)(2), title XV, § 1502(a)(12), Feb. 10, 1996, 110 Stat. 443, 503; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9355(a)	10:1055.	June 29, 1948, ch. 714, §§ 1–6, 62 Stat. 1094; June 30, 1954, ch. 432, § 732, 68 Stat. 356.
	10:1056 (1st sentence).	
9355(b)	10:1056 (less 1st sentence).	
9355(c)	10:1057.	
9355(d)	10:1058.	
9355(e)	10:1059(a).	
9355(f)	10:1059(b).	
9355(g)	10:1059(c).	
9355(h)	10:1060.	

In subsections (a) and (b), the word ''designated'' is substituted for the word ''appointed'' to make it clear that the positions described are not constitutional offices.

Subsection (b) is substituted for 10:1056(e) (less 1st sentence).

In subsection (c), the words ''during the term for which such member was appointed'' and ''Such successor shall be appointed * * * who died or resigned'' are omitted as surplusage.

In subsection (g), the words ''as it may deem necessary or advisable to effectuate the duties imposed upon it by the provisions of sections 1055–1060 of this title'' are omitted as surplusage.

In subsection (h), the words ''called for consultation by the Board in connection with the business of the Board'' are omitted as surplusage.

AMENDMENTS

1999—Subsec. (a)(3). Pub. L. 106–65 substituted ''Committee on Armed Services'' for ''Committee on National Security''.

1996—Subsec. (a)(3). Pub. L. 104–106, § 1502(a)(12), substituted ''National Security'' for ''Armed Services''.

Subsec. (h). Pub. L. 104–106, § 1061(e)(2), struck out ''is entitled to not more than $5 a day and'' after ''each adviser''.

1980—Subsec. (b). Pub. L. 96–579 required member whose term of office had expired to continue service until appointment of a successor.

§ 9356. Acceptance of guarantees with gifts for major projects

(a) ACCEPTANCE AUTHORITY.—Subject to subsection (c), the Secretary of the Air Force may accept from a donor or donors a qualified guarantee for the completion of a major project for the benefit of the Academy.

(b) OBLIGATION AUTHORITY.—The amount of a qualified guarantee accepted under this section shall be considered as contract authority to provide obligation authority for purposes of Federal fiscal and contractual requirements. Funds available for a project for which such a guarantee has been accepted may be obligated and expended for the project without regard to whether the total amount of the funds and other resources available for the project (not taking into account the amount of the guarantee) is sufficient to pay for completion of the project.

(c) NOTICE OF PROPOSED ACCEPTANCE.—The Secretary of the Air Force may not accept a qualified guarantee under this section for the completion of a major project until after the expiration of 30 days following the date upon which a report of the facts concerning the proposed guarantee is submitted to Congress.

(d) PROHIBITION ON COMMINGLING OF FUNDS.—The Secretary of the Air Force may not enter into any contract or other transaction involving the use of a qualified guarantee and appropriated funds in the same contract or transaction.

(e) DEFINITIONS.—In this section:

(1) MAJOR PROJECT.—The term ''major project'' means a project for the purchase or other procurement of real or personal property, or for the construction, renovation, or repair of real or personal property, the total cost of which is, or is estimated to be, at least $1,000,000.

(2) QUALIFIED GUARANTEE.—The term ''qualified guarantee'', with respect to a major project, means a guarantee that—

(A) is made by one or more persons in connection with a donation, specifically for the project, of a total amount in cash or securities that, as determined by the Secretary of the Air Force, is sufficient to defray a substantial portion of the total cost of the project;

(B) is made to facilitate or expedite the completion of the project in reasonable anticipation that other donors will contribute sufficient funds or other resources in amounts sufficient to pay for completion of the project;

(C) is set forth as a written agreement that provides for the donor to furnish in cash or securities, in addition to the donor's other

gift or gifts for the project, any additional amount that may become necessary for paying the cost of completing the project by reason of a failure to obtain from other donors or sources funds or other resources in amounts sufficient to pay the cost of completing the project; and

(D) is accompanied by—

(i) an irrevocable and unconditional standby letter of credit for the benefit of the Academy that is in the amount of the guarantee and is issued by a major United States commercial bank; or

(ii) a qualified account control agreement.

(3) QUALIFIED ACCOUNT CONTROL AGREEMENT.—The term ''qualified account control agreement'', with respect to a guarantee of a donor, means an agreement among the donor, the Secretary of the Air Force, and a major United States investment management firm that—

(A) ensures the availability of sufficient funds or other financial resources to pay the amount guaranteed during the period of the guarantee;

(B) provides for the perfection of a security interest in the assets of the account for the United States for the benefit of the Academy with the highest priority available for liens and security interests under applicable law;

(C) requires the donor to maintain in an account with the investment management firm assets having a total value that is not less than 130 percent of the amount guaranteed; and

(D) requires the investment management firm, at any time that the value of the account is less than the value required to be maintained under subparagraph (C), to liquidate any noncash assets in the account and reinvest the proceeds in Treasury bills issued under section 3104 of title 31.

(4) MAJOR UNITED STATES COMMERCIAL BANK.—The term ''major United States commercial bank'' means a commercial bank that—

(A) is an insured bank (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(B) is headquartered in the United States; and

(C) has net assets in a total amount considered by the Secretary of the Air Force to qualify the bank as a major bank.

(5) MAJOR UNITED STATES INVESTMENT MANAGEMENT FIRM.—The term ''major United States investment management firm'' means any broker, dealer, investment adviser, or provider of investment supervisory services (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) or section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)) or a major United States commercial bank that—

(A) is headquartered in the United States; and

(B) holds for the account of others investment assets in a total amount considered by the Secretary of the Air Force to qualify the firm as a major investment management firm.

(Added Pub. L. 106–65, div. B, title XXVIII, § 2871(c)(1), Oct. 5, 1999, 113 Stat. 875; amended Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(17)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

PRIOR PROVISIONS

A prior section 9356, added Pub. L. 103–337, div. A, title V, § 556(c)(1), Oct. 5, 1994, 108 Stat. 2775, related to position of athletic director of Academy and to administration of nonappropriated fund account for athletics program of Academy, prior to repeal by Pub. L. 104–106, div. A, title V, § 533(c)(1), Feb. 10, 1996, 110 Stat. 315.

AMENDMENTS

2000—Subsec. (e)(5). Pub. L. 106–398 inserted a closing parenthesis after ''80b–2)'' in introductory provisions.

§ 9357. Grants for faculty research for scientific, literary, and educational purposes: acceptance; authorized grantees

(a) ACCEPTANCE OF RESEARCH GRANTS.—The Secretary of the Air Force may authorize the Superintendent of the Academy to accept qualifying research grants under this section. Any such grant may only be accepted if the work under the grant is to be carried out by a professor or instructor of the Academy for a scientific, literary, or educational purpose.

(b) QUALIFYING GRANTS.—A qualifying research grant under this section is a grant that is awarded on a competitive basis by an entity referred to in subsection (c) for a research project with a scientific, literary, or educational purpose.

(c) ENTITIES FROM WHICH GRANTS MAY BE ACCEPTED.—A grant may be accepted under this section only from a corporation, fund, foundation, educational institution, or similar entity that is organized and operated primarily for scientific, literary, or educational purposes.

(d) ADMINISTRATION OF GRANT FUNDS.—The Secretary shall establish an account for administering funds received as research grants under this section. The Superintendent shall use the funds in the account in accordance with applicable regulations and the terms and conditions of the grants received.

(e) RELATED EXPENSES.—Subject to such limitations as may be provided in appropriations Acts, appropriations available for the Academy may be used to pay expenses incurred by the Academy in applying for, and otherwise pursuing, award of a qualifying research grant.

(f) REGULATIONS.—The Secretary of the Air Force shall prescribe regulations for the administration of this section.

(Added Pub. L. 105–261, div. A, title X, § 1063(c)(1), Oct. 17, 1998, 112 Stat. 2131.)

CHAPTER 905—AVIATION LEADERSHIP PROGRAM

Sec.
9381. Establishment of program.
9382. Supplies and clothing.
9383. Allowances.

§ 9381. Establishment of program

Under regulations prescribed by the Secretary of Defense, the Secretary of the Air Force may

establish and maintain an Aviation Leadership Program to provide undergraduate pilot training and necessary related training to personnel of the air forces of friendly, less-developed foreign nations. Training under this chapter shall include language training and programs to promote better awareness and understanding of the democratic institutions and social framework of the United States.

(Added Pub. L. 103–160, div. A, title XI, §1178(b), Nov. 30, 1993, 107 Stat. 1769.)

PRIOR PROVISIONS

A prior section 9381, act Aug. 10, 1956, ch. 1041, 70A Stat. 568, defined ''advanced training'', prior to repeal by Pub. L. 88–647, title III, §301(26), Oct. 13, 1964, 78 Stat. 1073. See section 2101 of this title.

CONGRESSIONAL FINDINGS

Section 1178(a) of Pub. L. 103–160 provided that: ''The Congress finds the following:

''(1) The training in the United States of pilots from the air forces of friendly foreign nations furthers the interests of the United States, promotes closer relations with such nations, and advances the national security.

''(2) Many friendly foreign nations cannot afford to reimburse the United States for the cost of such training.

''(3) It is in the interest of the United States that the Secretary of the Air Force establish a program to train in the United States pilots from the air forces of friendly, less developed foreign nations.''

§9382. Supplies and clothing

(a) The Secretary of the Air Force may, under such conditions as the Secretary may prescribe, provide to a person receiving training under this chapter—

(1) transportation incident to the training;

(2) supplies and equipment to be used during the training;

(3) flight clothing and other special clothing required for the training; and

(4) billeting, food, and health services.

(b) The Secretary of the Air Force may authorize such expenditures from the appropriations of the Air Force as the Secretary considers necessary for the efficient and effective maintenance of the Program in accordance with this chapter.

(Added Pub. L. 103–160, div. A, title XI, §1178(b), Nov. 30, 1993, 107 Stat. 1769.)

PRIOR PROVISIONS

A prior section 9382, acts Aug. 10, 1956, ch. 1041, 70A Stat. 568; Sept. 2, 1958, Pub. L. 85–861, §33(a)(44), 72 Stat. 1567, related to establishment and composition of Air Force Reserve Officers' Training Corps, prior to repeal by Pub. L. 88–647, title III, §301(26), Oct. 13, 1964, 78 Stat. 1073. See section 2102 of this title.

§9383. Allowances

The Secretary of the Air Force may pay to a person receiving training under this chapter a living allowance at a rate to be prescribed by the Secretary, taking into account the amount of living allowances authorized for a member of the armed forces under similar circumstances.

(Added Pub. L. 103–160, div. A, title XI, §1178(b), Nov. 30, 1993, 107 Stat. 1769.)

PRIOR PROVISIONS

Prior sections 9383 to 9387, act Aug. 10, 1956, ch. 1041, 70A Stat. 569, 570, related to Air Force Officers' Training Corps and admission and training of medical, dental, pharmacy and veterinary students, set out courses of training, authorized operation and maintenance of training camps, provided for supplies and uniforms and for advanced training and compensation therefor, prior to repeal by Pub. L. 88–647, title III, §301(26), Oct. 13, 1964, 78 Stat. 1073. See chapter 103 of this title.

Prior section 9384 was amended by act Sept. 2, 1958, Pub. L. 85–861, §1(202), 72 Stat. 1541.

CHAPTER 907—SCHOOLS AND CAMPS

Sec.
9411. Establishment: purpose.
9412. Operation.
9413. Transportation and subsistence during travel.
9414. Quartermaster and ordnance property: sales.
9415. Inter-American Air Forces Academy.

AMENDMENTS

1990—Pub. L. 101–510, div. A, title III, §330(b), Nov. 5, 1990, 104 Stat. 1535, added item 9415.

§9411. Establishment: purpose

The Secretary of the Air Force may maintain schools and camps for the military instruction and training of persons selected, upon their application, from warrant officers and enlisted members of the Air Force and civilians, to qualify them for appointment as reserve officers, or enlistment as reserve noncommissioned officers, for service in the Air Force Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9411	10:442 (words before 1st semicolon of 1st sentence).	June 3, 1916, ch. 134, §47d (words before 1st semicolon of 1st sentence); added June 4, 1920, ch. 227, subch. I, §34 (words before 1st semicolon of 1st sentence of last par.), 41 Stat. 779.

The words ''upon military reservations or elsewhere'' are omitted as surplusage. The words ''of the Air Force'' are inserted for clarity. The words ''or enlistment as'' are inserted for clarity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9412, 9413, 9414 of this title.

§9412. Operation

In maintaining camps established under section 9411 of this title, the Secretary of the Air Force may—

(1) prescribe the periods during which they will be operated;

(2) prescribe regulations for their administration;

(3) prescribe the courses to be taught;

(4) detail members of the Regular Air Force to designated duties relating to the camps;

(5) use necessary supplies and transportation;

(6) furnish uniforms, subsistence, and medical attendance and supplies to persons attending the camp; and

(7) authorize necessary expenditures from proper Air Force funds for—

(A) water;

(B) fuel;

(C) light;

(D) temporary structures, except barracks and officers' quarters;

(E) screening;

(F) damages resulting from field exercises;

(G) expenses incident to theoretical winter instruction of trainees; and

(H) other expenses incident to maintaining the camps.

(Aug. 10, 1956, ch. 1041, 70A Stat. 571.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9412	10:442 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence).	June 3, 1916, ch. 134, § 47d (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence); added June 4, 1920, ch. 227, subch. I, § 34 (47 words after 1st semicolon, and 72 words before 3d semicolon, of 1st sentence; and last sentence of last par.), 41 Stat. 779.

The word ''supplies'' is substituted for the words ''such arms, ammunition, accoutrements, equipments, tentage, field equipage'', since, under the definition of the word ''supplies'', in section 101(26) of this title, those words are covered by the word ''supplies''. The words ''belonging to the United States'', ''and imparting military instruction and training thereat'', ''during the period of their attendance'', ''theoretical and practical instruction'', ''persons attending the camps authorized by this section'', and ''as he may deem'' are omitted as surplusage. The word ''detail'' is substituted for the word ''employ''. The word ''members'' is substituted for the words ''officers, warrant officers, and enlisted men''.

§ 9413. Transportation and subsistence during travel

(a) There may be furnished to a person attending a school or camp established under section 9411 of this title, for travel to and from that school or camp—

(1) transportation and subsistence;

(2) transportation in kind and a subsistence allowance of one cent a mile; or

(3) a travel allowance of five cents a mile.

(b) The travel allowance for the return trip may be paid in advance.

(c) For the purposes of this section, distance is computed by the shortest usually traveled route, within such territorial limits as the Secretary of the Air Force may prescribe, from the authorized starting point to the school or camp and return.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9413(a), (b), (c).	10:442 (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence).	June 3, 1916, ch. 134, § 47d (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence); added June 4, 1920, ch. 227, § 34 (words between 1st and 3d semicolons, less 47 words after 1st semicolon, and less 72 words before 3d semicolon, of 1st sentence of last par.), 41 Stat. 779; Mar. 9, 1928, ch. 161, 45 Stat. 251.

In subsection (a), the introductory clause is inserted for clarity. The words ''at the option of the Secretary of the Army'' are omitted as surplusage.

In subsection (b), the words ''of the actual performance of the same'' are omitted as surplusage.

Subsection (c) is substituted for the words ''the most usual and direct route within such limits as to territory as the Secretary of the Army may prescribe * * * for the distance by the shortest usually traveled route from the places from which they are authorized to proceed to the camp, and for the return travel thereto''.

§ 9414. Quartermaster and ordnance property: sales

The Secretary of the Air Force may sell to a person attending a school or camp established under section 9411 of this title quartermaster and ordnance property necessary for his proper equipment. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 572.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9414	10:442 (words after 3d semicolon of 1st sentence; and 2d sentence).	June 3, 1916, ch. 134, § 47d (words after 3d semicolon of 1st sentence; and 2d sentence); added June 4, 1920, ch. 227, § 34 (words after 3d semicolon of 1st sentence; and 2d sentence of last par.), 41 Stat. 779.

10:442 (2d sentence) is omitted as superseded by section 10 of the Act of June 26, 1934, ch. 756, 48 Stat. 1229 (31 U.S.C. 725i), which limits credits to the replacing account to the actual cost of the items sold. The words ''quartermaster and ordnance property necessary for his proper equipment'' are substituted for 10:442 (last 26 words of 1st sentence). The words ''and at cost price, plus 10 per centum'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 9415. Inter-American Air Forces Academy

(a) OPERATION.—The Secretary of the Air Force may operate the Air Force education and training facility known as the Inter-American Air Forces Academy for the purpose of providing military education and training to military personnel of Central and South American countries, Caribbean countries, and other countries

eligible for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.).

(b) COSTS.—The fixed costs of operating and maintaining the Inter-American Air Forces Academy may be paid from funds available for operation and maintenance of the Air Force.

(Added Pub. L. 101–510, div. A, title III, § 330(a), Nov. 5, 1990, 104 Stat. 1535.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (a), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 5 of part II of such Act is classified generally to part V of subchapter II (§ 2347 et seq.) of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

CHAPTER 909—CIVIL AIR PATROL

Sec.
9441. Status as federally chartered corporation; purposes.
9442. Status as volunteer civilian auxiliary of the Air Force.
9443. Activities performed as federally chartered nonprofit corporation.
9444. Activities performed as auxiliary of the Air Force.
9445. Funds appropriated for the Civil Air Patrol.
9446. Miscellaneous personnel authorities.
9447. Board of Governors.
9448. Regulations.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–294, amended chapter heading and analysis generally, substituting items 9441 to 9448 for former items 9441 ''Status: support by Air Force; employment'' and 9442 ''Assistance by other agencies''.

§ 9441. Status as federally chartered corporation; purposes

(a) STATUS.—(1) The Civil Air Patrol is a nonprofit corporation that is federally chartered under section 40301 of title 36.

(2) Except as provided in section 9442(b)(2) of this title, the Civil Air Patrol is not an instrumentality of the Federal Government for any purpose.

(b) PURPOSES.—The purposes of the Civil Air Patrol are set forth in section 40302 of title 36.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

PRIOR PROVISIONS

A prior section 9441, acts Aug. 10, 1956, ch. 1041, 70A Stat. 572; Pub. L. 96–342, title X, § 1007(a), (b)(1), Sept. 8, 1980, 94 Stat. 1121, 1122; Pub. L 96–513, title V, § 514(12), Dec. 12, 1980, 94 Stat. 2935; Pub. L. 98–525, title XV, § 1533(a), Oct. 19, 1984, 98 Stat. 2632; Pub. L. 99–145, title XIII, § 1303(a)(28), title XIV, § 1458(a), Nov. 8, 1985, 99 Stat. 740, 763; Pub. L. 99–661, div. A, title XIII, § 1365(a), Nov. 14, 1986, 100 Stat. 4002; Pub. L. 103–337, div. A, title X, § 1062, Oct. 5, 1994, 108 Stat. 2847; Pub. L. 105–225, § 4(a)(3), Aug. 12, 1998, 112 Stat. 1499, related to Civil Air Patrol status, support by Air Force, and employment, prior to the general amendment of this chapter by Pub. L. 106–398.

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title X, § 1090(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–300, provided that: ''The amendments made by this section [enacting this section and sections 9442 to 9448 of this title and amending sections 40302 and 40303 of Title 36, Patriotic and National Observances, Ceremonies, and Organizations] shall take effect 120 days after the date of the enactment of this Act [Oct. 30, 2000].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8150.

§ 9442. Status as volunteer civilian auxiliary of the Air Force

(a) VOLUNTEER CIVILIAN AUXILIARY.—The Civil Air Patrol is a volunteer civilian auxiliary of the Air Force when the services of the Civil Air Patrol are used by any department or agency in any branch of the Federal Government.

(b) USE BY AIR FORCE.—(1) The Secretary of the Air Force may use the services of the Civil Air Patrol to fulfill the noncombat programs and missions of the Department of the Air Force.

(2) The Civil Air Patrol shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member of the Civil Air Patrol, in carrying out a mission assigned by the Secretary of the Air Force.

(Added Pub. L. 106–398, § 1 [[div. A], title X, § 1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

PRIOR PROVISIONS

A prior section 9442, added Pub. L. 98–525, title XV, § 1533(b)(1), Oct. 19, 1984, 98 Stat. 2632, related to assistance of Civil Air Patrol by other agencies, prior to the general amendment of this chapter by Pub. L. 106–398.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9441, 9448 of this title.

§ 9443. Activities performed as federally chartered nonprofit corporation

(a) USE OF FEDERALLY PROVIDED RESOURCES.—In its status as a federally chartered nonprofit corporation, the Civil Air Patrol may use equipment, supplies, and other resources, including aircraft, motor vehicles, computers, and communications equipment, provided to the Civil Air Patrol by a department or agency of the Federal Government or acquired by or for the Civil Air Patrol with appropriated funds (or with funds of the Civil Air Patrol, but reimbursed from appropriated funds)—

(1) to provide assistance requested by State or local governmental authorities to perform disaster relief missions and activities, other emergency missions and activities, and nonemergency missions and activities; and

(2) to fulfill its other purposes set forth in section 40302 of title 36.

(b) USE SUBJECT TO APPLICABLE LAWS.—The use of equipment, supplies, or other resources under subsection (a) is subject to the laws and regulations that govern the use by nonprofit corporations of federally provided assets or of assets purchased with appropriated funds, as the case may be.

(c) AUTHORITY NOT CONTINGENT ON REIMBURSEMENT.—The authority for the Civil Air Patrol to provide assistance under subsection (a)(1) is not

contingent on the Civil Air Patrol being reimbursed for the cost of providing the assistance. If the Civil Air Patrol elects to require reimbursement for the provision of assistance under such subsection, the Civil Air Patrol may establish the reimbursement rate at a rate less than the rates charged by private sector sources for equivalent services.

(d) LIABILITY INSURANCE.—The Secretary of the Air Force may provide the Civil Air Patrol with funds for paying the cost of liability insurance to cover missions and activities carried out under this section.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–295.)

§ 9444. Activities performed as auxiliary of the Air Force

(a) AIR FORCE SUPPORT FOR ACTIVITIES.—The Secretary of the Air Force may furnish to the Civil Air Patrol in accordance with this section any equipment, supplies, and other resources that the Secretary determines necessary to enable the Civil Air Patrol to fulfill the missions assigned by the Secretary to the Civil Air Patrol as an auxiliary of the Air Force.

(b) FORMS OF AIR FORCE SUPPORT.—The Secretary of the Air Force may, under subsection (a)—

(1) give, lend, or sell to the Civil Air Patrol without regard to subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.)—

(A) major items of equipment (including aircraft, motor vehicles, computers, and communications equipment) that are excess to the military departments; and

(B) necessary related supplies and training aids that are excess to the military departments;

(2) permit the use, with or without charge, of services and facilities of the Air Force;

(3) furnish supplies (including fuel, lubricants, and other items required for vehicle and aircraft operations) or provide funds for the acquisition of supplies;

(4) establish, maintain, and supply liaison officers of the Air Force at the national, regional, State, and territorial headquarters of the Civil Air Patrol;

(5) detail or assign any member of the Air Force or any officer, employee, or contractor of the Department of the Air Force to any liaison office at the national, regional, State, or territorial headquarters of the Civil Air Patrol;

(6) detail any member of the Air Force or any officer, employee, or contractor of the Department of the Air Force to any unit or installation of the Civil Air Patrol to assist in the training programs of the Civil Air Patrol;

(7) authorize the payment of travel expenses and allowances, at rates not to exceed those paid to employees of the United States under subchapter I of chapter 57 of title 5, to members of the Civil Air Patrol while the members are carrying out programs or missions specifically assigned by the Air Force;

(8) provide funds for the national headquarters of the Civil Air Patrol, including—

(A) funds for the payment of staff compensation and benefits, administrative expenses, travel, per diem and allowances, rent, utilities, other operational expenses of the national headquarters; and

(B) to the extent considered necessary by the Secretary of the Air Force to fulfill Air Force requirements, funds for the payment of compensation and benefits for key staff at regional, State, or territorial headquarters;

(9) authorize the payment of expenses of placing into serviceable condition, improving, and maintaining equipment (including aircraft, motor vehicles, computers, and communications equipment) owned or leased by the Civil Air Patrol;

(10) provide funds for the lease or purchase of items of equipment that the Secretary determines necessary for the Civil Air Patrol;

(11) support the Civil Air Patrol cadet program by furnishing—

(A) articles of the Air Force uniform to cadets without cost; and

(B) any other support that the Secretary of the Air Force determines is consistent with Air Force missions and objectives; and

(12) provide support, including appropriated funds, for the Civil Air Patrol aerospace education program to the extent that the Secretary of the Air Force determines appropriate for furthering the fulfillment of Air Force missions and objectives.

(c) ASSISTANCE BY OTHER AGENCIES.—(1) The Secretary of the Air Force may arrange for the use by the Civil Air Patrol of such facilities and services under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, or the head of any other department or agency of the United States as the Secretary of the Air Force considers to be needed by the Civil Air Patrol to carry out its mission.

(2) An arrangement for use of facilities or services of a military department or other department or agency under this subsection shall be subject to the agreement of the Secretary of the military department or head of the other department or agency, as the case may be.

(3) Each arrangement under this subsection shall be made in accordance with regulations prescribed under section 9448 of this title.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–296; amended Pub. L. 107–217, §3(b)(35), Aug. 21, 2002, 116 Stat. 1298.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(1), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–217, in introductory provisions, inserted ''subtitle I of title 40 and title III of'' before ''the Federal Property and Administrative Services Act of 1949'' and substituted ''(41 U.S.C. 251 et seq.)'' for ''(40 U.S.C. 471 et seq.)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9448 of this title.

§9445. Funds appropriated for the Civil Air Patrol

Funds appropriated for the Civil Air Patrol shall be available only for the exclusive use of the Civil Air Patrol.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–297.)

§9446. Miscellaneous personnel authorities

(a) USE OF RETIRED AIR FORCE PERSONNEL.—(1) Upon the request of a person retired from service in the Air Force, the Secretary of the Air Force may enter into a personal services contract with that person providing for the person to serve as an administrator or liaison officer for the Civil Air Patrol. The qualifications of a person to provide the services shall be determined and approved in accordance with regulations prescribed under section 9448 of this title.

(2) To the extent provided in a contract under paragraph (1), a person providing services under the contract may accept services on behalf of the Air Force.

(3) A person, while providing services under a contract authorized under paragraph (1), may not be considered to be on active duty or inactive-duty training for any purpose.

(b) USE OF CIVIL AIR PATROL CHAPLAINS.—The Secretary of the Air Force may use the services of Civil Air Patrol chaplains in support of the Air Force active duty and reserve component forces to the extent and under conditions that the Secretary determines appropriate.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–297.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9448 of this title.

§9447. Board of Governors

(a) GOVERNING BODY.—The Board of Governors of the Civil Air Patrol is the governing body of the Civil Air Patrol.

(b) COMPOSITION.—The Board of Governors is composed of 11 members as follows:

(1) Four members appointed by the Secretary of the Air Force, who may be active or retired officers of the Air Force (including reserve components of the Air Force), employees of the United States, or private citizens.

(2) Four members of the Civil Air Patrol, selected in accordance with the constitution and bylaws of the Civil Air Patrol.

(3) Three members appointed or selected as provided in subsection (c) from among personnel of any Federal Government agencies, public corporations, nonprofit associations, and other organizations that have an interest and expertise in civil aviation and the Civil Air Patrol mission.

(c) APPOINTMENTS FROM INTERESTED ORGANIZATIONS.—(1) Subject to paragraph (2), the members of the Board of Governors referred to in subsection (b)(3) shall be appointed jointly by the Secretary of the Air Force and the National Commander of the Civil Air Patrol.

(2) Any vacancy in the position of a member referred to in paragraph (1) that is not filled under that paragraph within 90 days shall be filled by majority vote of the other members of the Board.

(d) CHAIRMAN.—The Chairman of the Board of Governors shall be chosen by the members of the Board of Governors from among the members of the Board referred to in paragraphs (1) and (2) of subsection (b) and shall serve for a term of two years. The position of Chairman shall be held on a rotating basis between members of the Board appointed by the Secretary of the Air Force under paragraph (1) of subsection (b) and members of the Board selected under paragraph (2) of that subsection.

(e) POWERS.—(1) The Board of Governors shall, subject to paragraphs (2) and (3), exercise the powers granted to the Civil Air Patrol under section 40304 of title 36.

(2) Any exercise by the Board of the power to amend the constitution or bylaws of the Civil Air Patrol or to adopt a new constitution or bylaws shall be subject to approval by a majority of the members of the Board.

(3) Neither the Board of Governors nor any other component of the Civil Air Patrol may modify or terminate any requirement or authority set forth in this section.

(f) PERSONAL LIABILITY FOR BREACH OF A FIDUCIARY DUTY.—(1) Subject to paragraph (2), the Board of Governors may take such action as is necessary to limit the personal liability of a member of the Board of Governors to the Civil Air Patrol, or to any of its members, for monetary damages for a breach of fiduciary duty while serving as a member of the Board.

(2) The Board may not limit the liability of a member of the Board of Governors to the Civil Air Patrol, or to any of its members, for monetary damages for any of the following:

(A) A breach of the member's duty of loyalty to the Civil Air Patrol or its members.

(B) Any act or omission that is not in good faith or that involves intentional misconduct or a knowing violation of law.

(C) Participation in any transaction from which the member directly or indirectly derives an improper personal benefit.

(3) Nothing in this subsection shall be construed as rendering section 207 or 208 of title 18 inapplicable in any respect to a member of the Board of Governors who is a member of the Air Force on active duty, an officer on a retired list of the Air Force, or an employee of the United States.

(g) PERSONAL LIABILITY FOR BREACH OF A FIDUCIARY DUTY.—(1) Except as provided in paragraph (2), no member of the Board of Governors or officer of the Civil Air Patrol shall be personally liable for damages for any injury or death or loss or damage of property resulting from a tortious act or omission of an employee or member of the Civil Air Patrol.

(2) Paragraph (1) does not apply to a member of the Board of Governors or officer of the Civil Air Patrol for a tortious act or omission in which the member or officer, as the case may be, was personally involved, whether in breach of a civil duty or in commission of a criminal offense.

(3) Nothing in this subsection shall be construed to restrict the applicability of common law protections and rights that a member of the

Board of Governors or officer of the Civil Air Patrol may have.

(4) The protections provided under this subsection are in addition to the protections provided under subsection (f).

(Added Pub. L. 106–398, §1 [[div. A], title X, §1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–298.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 36 section 40303.

§ 9448. Regulations

(a) AUTHORITY.—The Secretary of the Air Force shall prescribe regulations for the administration of this chapter.

(b) REQUIRED REGULATIONS.—The regulations shall include the following:

(1) Regulations governing the conduct of the activities of the Civil Air Patrol when it is performing its duties as a volunteer civilian auxiliary of the Air Force under section 9442 of this title.

(2) Regulations for providing support by the Air Force and for arranging assistance by other agencies under section 9444 of this title.

(3) Regulations governing the qualifications of retired Air Force personnel to serve as an administrator or liaison officer for the Civil Air Patrol under a personal services contract entered into under section 9446(a) of this title.

(c) APPROVAL BY SECRETARY OF DEFENSE.—The regulations required by subsection (b)(2) shall be subject to the approval of the Secretary of Defense.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1090(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–299.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9444, 9446 of this title.

PART IV—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
931.	Civil Reserve Air Fleet	9511
933.	Procurement	9531
935.	Issue of Serviceable Material to Armed Forces	9561
937.	Utilities and Services	9591
939.	Sale of Serviceable Material	9621
941.	Issue of Serviceable Material other than to Armed Forces	9651
943.	Disposal of Obsolete or Surplus Material	9681
945.	Disposition of Effects of Deceased Persons	9712
947.	Transportation	9741
949.	Real Property	9771
951.	Military Claims	9801
953.	Accountability and Responsibility	9831

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, §721(c)(8), Oct. 5, 1999, 113 Stat. 695, substituted ''Disposition'' for ''Inquests; Disposition'' and ''9712'' for ''9711'' in item for chapter 945.

1993—Pub. L. 103–160, div. A, title VIII, §828(c)(8)(B), Nov. 30, 1993, 107 Stat. 1715, substituted ''Civil Reserve Air Fleet'' for ''Industrial Mobilization, Research, and Development'' and ''9511'' for ''9501'' in item for chapter 931.

CHAPTER 931—CIVIL RESERVE AIR FLEET

Sec.
9511. Definitions.
9512. Contracts for the inclusion or incorporation of defense features.
9513. Use of military installations by Civil Reserve Air Fleet contractors.
9514. Indemnification of Department of Transportation for losses covered by defense-related aviation insurance.

PRIOR PROVISIONS

Chapter was comprised of subchapter I, sections 9501 to 9507, and subchapter II, sections 9511 to 9513, prior to amendment by Pub. L. 103–160, div. A, title VIII, §828(a)(8)(A)(ii), Nov. 30, 1993, 107 Stat. 1714, which struck out headings for subchapters I and II.

Prior section 9501, act Aug. 10, 1956, ch. 1041, 70A Stat. 573, related to mobilization by the President in time of war, prior to repeal by Pub. L. 103–160, div. A, title VIII, §822(a)(2), Nov. 30, 1993, 107 Stat. 1705. See section 2538 of this title.

Prior section 9502, act Aug. 10, 1956, ch. 1041, 70A Stat. 574, related to maintenance by Secretary of the Air Force of lists of plants equipped to manufacture arms or ammunition and lists of plants convertible into ammunition factories, and provided for a Board on Mobilization of Industries Essential for Military Preparedness, prior to repeal by Pub. L. 103–160, div. A, title VIII, §822(a)(2), Nov. 30, 1993, 107 Stat. 1705. See sections 2539 and 2539a of this title.

Prior section 9503, act Aug. 10, 1956, ch. 1041, 70A Stat. 574, related to research and development programs of the Air Force, prior to repeal by Pub. L. 103–160, div. A, title VIII, §827(c), Nov. 30, 1993, 107 Stat. 1713.

Prior section 9504, act Aug. 10, 1956, ch. 1041, 70A Stat. 575, related to procurement of ordnance, signal, and chemical warfare supplies for experimental purposes by the Secretary of the Air Force, prior to repeal by Pub. L. 103–160, div. A, title VIII, §822(c)(2), Nov. 30, 1993, 107 Stat. 1707. See section 2373 of this title.

Prior section 9505, act Aug. 10, 1956, ch. 1041, 70A Stat. 575, related to procurement of production equipment by Secretary of the Air Force, prior to repeal by Pub. L. 103–160, div. A, title VIII, §823(1), Nov. 30, 1993, 107 Stat. 1707.

Prior section 9506, act Aug. 10, 1956, ch. 1041, 70A Stat. 575, related to sale, loan, or gift of samples, drawings, and information to contractors, prior to repeal by Pub. L. 103–160, div. A, title VIII, §822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

Prior section 9507, act Aug. 10, 1956, ch. 1041, 70A Stat. 575, related to sale of ordnance and ordnance stores to designers, prior to repeal by Pub. L. 103–160, div. A, title VIII, §822(b)(3), Nov. 30, 1993, 107 Stat. 1706.

AMENDMENTS

1996—Pub. L. 104–201, div. A, title X, §1079(a)(2), Sept. 23, 1996, 110 Stat. 2669, added item 9514.

1994—Pub. L. 103–355, title III, §3033(b), Oct. 13, 1994, 108 Stat. 3336, substituted ''Use of military installations by Civil Reserve Air Fleet contractors'' for ''Commitment of aircraft to the Civil Reserve Air Fleet'' in item 9513.

1993—Pub. L. 103–160, div. A, title VIII, §828(c)(8)(A), Nov. 30, 1993, 107 Stat. 1714, substituted ''CIVIL RESERVE AIR FLEET'' for ''INDUSTRIAL MOBILIZATION, RESEARCH, AND DEVELOPMENT'' in chapter heading, struck out subchapter analysis consisting of items for subchapter I ''General'' and subchapter II ''Civil Reserve Air Fleet'', struck out subchapter I heading ''GENERAL'', struck out items 9501 ''Industrial mobilization: orders; priorities; possession of manufacturing plants; violations'', 9502 ''Industrial mobilization: plants; lists; Board on Mobilization of Industries Essential for Military Preparedness'', 9503 ''Research and development programs'', 9504 ''Procurement for experimental purposes'', 9505 ''Procurement of pro-

duction equipment'', 9506 ''Sale, loan, or gift of samples, drawings, and information to contractors'', and 9507 ''Sale of ordnance and ordnance stores to designers'', and struck out heading for subchapter II ''CIVIL RESERVE AIR FLEET''.

1989—Pub. L. 101–189, div. A, title XVI, §1636(c)(2), Nov. 29, 1989, 103 Stat. 1610, substituted ''Contracts for the inclusion or incorporation of defense features'' for ''Contracts to modify aircraft: cargo-convertible features'' in item 9512 and ''Commitment'' for ''Contracts to modify aircraft: commitment'' in item 9513.

1981—Pub. L. 97–86, title IX, §915, Dec. 1, 1981, 95 Stat. 1125, added analysis of subchapters, subchapter headings ''SUBCHAPTER I—GENERAL'' and ''SUBCHAPTER II—CIVIL RESERVE AIR FLEET'', and the analysis of sections for subchapter II consisting of items 9511, 9512, and 9513.

§9511. Definitions

In this chapter:

(1) The terms ''aircraft'', ''citizen of the United States'', ''civil aircraft'', ''person'', and ''public aircraft'' have the meanings given those terms by section 40102(a) of title 49.

(2) The term ''passenger-cargo combined aircraft'' means a civil aircraft equipped so that its main deck can be used to carry both passengers and property (including mail) simultaneously.

(3) The term ''cargo-capable aircraft'' means a civil aircraft equipped so that all or substantially all of the aircraft's capacity can be used for the carriage of property or mail.

(4) The term ''passenger aircraft'' means a civil aircraft equipped so that its main deck can be used for the carriage of individuals and cannot be used principally, without major modification, for the carriage of property or mail.

(5) The term ''cargo-convertible aircraft'' means a passenger aircraft equipped or designed so that all or substantially all of the main deck of the aircraft can be readily converted for the carriage of property or mail.

(6) The term ''Civil Reserve Air Fleet'' means those aircraft allocated, or identified for allocation, to the Department of Defense under section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), or made available (or agreed to be made available) for use by the Department of Defense under a contract made under this title, as part of the program developed by the Department of Defense through which the Department of Defense augments its airlift capability by use of civil aircraft.

(7) The term ''contractor'' means a citizen of the United States (A) who owns or controls, or who will own or control, a new or existing aircraft and who contracts with the Secretary under section 9512 of this title to modify that aircraft by including or incorporating specified defense features in that aircraft and to commit that aircraft to the Civil Reserve Air Fleet, (B) who subsequently obtains ownership or control of a civil aircraft covered by such a contract and assumes all existing obligations under that contract, or (C) who owns or controls, or will own or control, new or existing aircraft and who, by contract, commits some or all of such aircraft to the Civil Reserve Air Fleet.

(8) The term ''existing aircraft'' means a civil aircraft other than a new aircraft.

(9) The term ''new aircraft'' means a civil aircraft that a manufacturer has not begun to assemble before the aircraft is covered by a contract under section 9512 of this title.

(10) The term ''Secretary'' means the Secretary of the Air Force.

(11) The term ''defense feature'' means equipment or design features included or incorporated in a civil aircraft which ensures the compatibility of such aircraft with the Department of Defense airlift system. Such term includes any equipment or design feature which enables such aircraft to be readily modified for use as an aeromedical aircraft or a cargo-convertible, cargo-capable, or passenger-cargo combined aircraft.

(Added Pub. L. 97–86, title IX, §915(2), Dec. 1, 1981, 95 Stat. 1125; amended Pub. L. 100–180, div. A, title XII, §1231(17), Dec. 4, 1987, 101 Stat. 1161; Pub. L. 100–456, div. A, title XII, §1233(k)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 101–189, div. A, title XVI, §1636(a), Nov. 29, 1989, 103 Stat. 1609; Pub. L. 103–272, §5(b)(2), July 5, 1994, 108 Stat. 1373; Pub. L. 103–355, title III, §3031, Oct. 13, 1994, 108 Stat. 3334.)

AMENDMENTS

1994—Pub. L. 103–355, §3031(c), substituted ''In this chapter:'' for ''In this subchapter:'' in introductory provisions.

Par. (1). Pub. L. 103–355, §3031(b)(1)(C), which directed substitution of ''section 40102 of title 49'' for ''section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)'', could not be executed because of the intervening amendment by Pub. L. 103–272 which substituted ''section 40102(a) of title 49'' for ''section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)'', see below.

Pub. L. 103–355, §3031(b)(1)(A), (B), inserted '' 'civil aircraft','' before '' 'person','' and substituted ''meanings'' for ''meaning''.

Pub. L. 103–272 substituted ''section 40102(a) of title 49'' for ''section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)''.

Par. (6). Pub. L. 103–355, §3031(b)(2), (3), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: ''The term 'civil aircraft' means an aircraft other than a public aircraft.''

Par. (7). Pub. L. 103–355, §3031(b)(3), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Par. (8). Pub. L. 103–355, §3031(b)(3), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Pub. L. 103–355, §3031(a)(1), inserted ''under section 9512 of this title'' after ''and who contracts with the Secretary'' in subpar. (A) and added subpar. (C).

Pars. (9), (10). Pub. L. 103–355, §3031(b)(3), redesignated pars. (10) and (11) as (9) and (10), respectively. Former par. (9) redesignated (8).

Par. (11). Pub. L. 103–355, §3031(b)(3), (4), redesignated par. (12) as (11), substituted ''compatibility'' for ''interoperability'', and inserted ''an aeromedical aircraft or'' before ''a cargo-convertible''. Former par. (11) redesignated (10).

Par. (12). Pub. L. 103–355, §3031(b)(3), redesignated par. (12) as (11).

1989—Par. (2). Pub. L. 101–189, §1636(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''The term 'cargo air service' means the carriage of property or mail on the main deck of a civil aircraft.''

Par. (5). Pub. L. 101–189, §1636(a)(2), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''The term 'cargo-convertible feature' means equipment or design features included or incorporated in a passenger aircraft that can readily enable all or substantially all of that aircraft's main deck to be used for the carriage of property or mail.''

Par. (8)(A). Pub. L. 101–189, §1636(a)(3), substituted ''a new or existing aircraft and who contracts with the Secretary to modify that aircraft by including or incorporating specified defense features'' for ''a civil aircraft and who contracts with the Secretary of the Air Force to modify that aircraft by including or incorporating cargo-convertible features suitable for defense purposes''.

Par. (12). Pub. L. 101–189, §1636(a)(4), added par. (12).

1988—Par. (1). Pub. L. 100–456 substituted ''The terms'' for ''The term''.

1987—Pars. (1) to (11). Pub. L. 100–180 inserted ''The term'' after each par. designation, and revised first word in quotes in pars. (1) to (6) and (8) to (10) to make initial letter of each word lowercase.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

§ 9512. Contracts for the inclusion or incorporation of defense features

(a) AUTHORITY TO CONTRACT.—Subject to the provisions of chapter 137 of this title, and to the extent that funds are otherwise available for obligation, the Secretary—

(1) may contract with any citizen of the United States for the inclusion or incorporation of defense features in any new or existing aircraft to be owned or controlled by that citizen; and

(2) may contract with United States aircraft manufacturers for the inclusion or incorporation of defense features in new aircraft to be operated by a United States air carrier.

(b) COMMITMENT TO CIVIL RESERVE AIR FLEET.—Each contract entered into under this section shall provide—

(1) that any aircraft covered by the contract shall be committed to the Civil Reserve Air Fleet;

(2) that, so long as the aircraft is owned or controlled by a contractor, the contractor shall operate the aircraft for the Department of Defense as needed during any activation of the Civil Reserve Air Fleet, notwithstanding any other contract or commitment of that contractor; and

(3) that the contractor operating the aircraft for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(c) TERMS AND REQUIRED REPAYMENT.—Each contract entered into under subsection (a) shall include a provision that requires the contractor to repay to the United States a percentage (to be established in the contract) of any amount paid by the United States to the contractor under the contract with respect to any aircraft if—

(1) the aircraft is destroyed or becomes unusable, as defined in the contract;

(2) the defense features specified in the contract are rendered unusable or are removed from the aircraft;

(3) control over the aircraft is transferred to any person that is unable or unwilling to assume the contractor's obligations under the contract; or

(4) the registration of the aircraft under section 44103 of title 49 is terminated for any reason not beyond the control of the contractor.

(d) AUTHORITY TO CONTRACT AND PAY DIRECTLY.—(1) A contract under subsection (a) for the inclusion or incorporation of defense features in an aircraft may include a provision authorizing the Secretary—

(A) to contract, with the concurrence of the contractor, directly with another person for the performance of the work necessary for the inclusion or incorporation of defense features in such aircraft; and

(B) to pay such other person directly for such work.

(2) A contract entered into pursuant to paragraph (1) may include such specifications for work and equipment as the Secretary considers necessary to meet the needs of the United States.

(e) EXCLUSIVITY OF COMMITMENT TO CIVIL RESERVE AIR FLEET.—Notwithstanding section 101 of the Defense Production Act of 1950 (50 U.S.C. App. 2071), each aircraft covered by a contract entered into under this section shall be committed exclusively to the Civil Reserve Air Fleet for use by the Department of Defense as needed during any activation of the Civil Reserve Air Fleet unless the aircraft is released from that use by the Secretary of Defense.

(Added Pub. L. 97–86, title IX, §915(2), Dec. 1, 1981, 95 Stat. 1126; amended Pub. L. 98–525, title XIV, §1405(57), Oct. 19, 1984, 98 Stat. 2626; Pub. L. 101–189, div. A, title XVI, §1636(b), Nov. 29, 1989, 103 Stat. 1609; Pub. L. 103–272, §5(b)(3), July 5, 1994, 108 Stat. 1373; Pub. L. 103–355, title III, §3032(1)–(8), Oct. 13, 1994, 108 Stat. 3334, 3335; Pub. L. 104–106, div. A, title X, §1087, Feb. 10, 1996, 110 Stat. 458.)

CODIFICATION

The text of subsecs. (a) and (b) of section 9513 of this title, which were redesignated as subsecs. (b) and (e) of this section by Pub. L. 103–355, §3032(4), (5), was based on Pub. L. 97–86, title IX, §915(2), Dec. 1, 1981, 95 Stat. 1128; amended Pub. L. 101–189, div. A, title XVI, §1636(c)(1), Nov. 29, 1989, 103 Stat. 1610.

AMENDMENTS

1996—Subsecs. (b)(2), (e). Pub. L. 104–106 struck out ''full'' before ''Civil Reserve Air Fleet''.

1994—Subsec. (a). Pub. L. 103–355, §3032(1), inserted heading.

Subsec. (b). Pub. L. 103–355, §3032(6), inserted heading and substituted ''entered into under this section'' for ''under section 9512 of this title'' in introductory provisions.

Pub. L. 103–355, §3032(4), redesignated subsec. (a) of section 9513 of this title as subsec. (b) of this section. Former subsec. (b) redesignated (c). See Codification note above.

Subsec. (b)(4). Pub. L. 103–272 substituted ''section 44103 of title 49'' for ''section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401)''.

Subsec. (c). Pub. L. 103–355, §3032(7), struck out ''the terms required by section 9513 of this title and'' before ''a provision that requires the contractor'' in introductory provisions.

Pub. L. 103–355, §3032(3), redesignated subsec. (b) as (c) and inserted heading. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–355, §3032(2), redesignated subsec. (c) as (d) and inserted heading.

Subsec. (e). Pub. L. 103–355, §3032(8), inserted heading and substituted ''entered into under this section'' for ''under section 9512 of this title''.

Pub. L. 103–355, §3032(5), redesignated subsec. (b) of section 9513 of this title as subsec. (e) of this section. See Codification note above.

1989—Pub. L. 101–189 substituted ''Contracts for the inclusion or incorporation of defense features'' for ''Contracts to modify aircraft: cargo-convertible features'' as section catchline and amended text generally, substituting subsecs. (a) to (c) for former subsecs. (a) to (e).

1984—Subsec. (b)(1). Pub. L. 98–525 substituted ''App. 1401'' for ''1401''.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9511 of this title.

§9513. Use of military installations by Civil Reserve Air Fleet contractors

(a) CONTRACT AUTHORITY.—(1) The Secretary of the Air Force—

(A) may, by contract entered into with any contractor, authorize such contractor to use one or more Air Force installations designated by the Secretary; and

(B) with the consent of the Secretary of another military department, may, by contract entered into with any contractor, authorize the contractor to use one or more installations, designated by the Secretary of the Air Force, that is under the jurisdiction of the Secretary of such other military department.

(2) The Secretary of the Air Force may include in the contract such terms and conditions as the Secretary determines appropriate to promote the national defense or to protect the interests of the United States.

(b) PURPOSES OF USE.—A contract entered into under subsection (a) may authorize use of a designated installation as a weather alternate, as a technical stop not involving the enplaning or deplaning of passengers or cargo, or, in the case of an installation within the United States, for other commercial purposes. Notwithstanding any other provision of the law, the Secretary may establish different levels and types of uses for different installations for commercial operations not required by the Department of Defense and may provide in contracts under subsection (a) for different levels and types of uses by different contractors.

(c) DISPOSITION OF PAYMENTS FOR USE.—Notwithstanding any other provision of law, amounts collected from the contractor for landing fees, services, supplies, or other charges authorized to be collected under the contract shall be credited to the appropriations of the armed forces having jurisdiction over the military installation to which the contract pertains. Amounts so credited to an appropriation shall be available for obligation for the same period as the appropriation to which credited.

(d) HOLD HARMLESS REQUIREMENT.—A contract entered into under subsection (a) shall provide that the contractor agrees to indemnify and hold harmless the United States from any action, suit, or claim of any sort resulting from, relating to, or arising out of any activities conducted, or services or supplies furnished, in connection with the contract.

(e) RESERVATION OF RIGHT TO EXCLUDE CONTRACTOR.—A contract entered into under subsection (a) shall provide that the Secretary concerned may, without providing prior notice, deny access to an installation designated under the contract when the Secretary determines that it is necessary to do so in order to meet military exigencies.

(Added Pub. L. 103–355, title III, §3033(a), Oct. 13, 1994, 108 Stat. 3335.)

PRIOR PROVISIONS

A prior section 9513, added Pub. L. 97–86, title IX, §915(2), Dec. 1, 1981, 95 Stat. 1128; amended Pub. L. 101–189, div. A, title XVI, §1636(c)(1), Nov. 29, 1989, 103 Stat. 1610, directed that each contract under section 9512 of this title be committed to Civil Reserve Air Fleet, prior to amendment by Pub. L. 103–355, §3032(4), (5), (9), which struck out section catchline and redesignated subsecs. (a) and (b) as subsecs. (b) and (e) of section 9512, respectively.

EFFECTIVE DATE

For effective date and applicability, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

§9514. Indemnification of Department of Transportation for losses covered by defense-related aviation insurance

(a) PROMPT INDEMNIFICATION REQUIRED.—(1) In the event of a loss that is covered by defense-related aviation insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of an aircraft hull, not later than 30 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the defense-related aviation insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of an aircraft hull that is (or may be) covered by defense-related aviation insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such aircraft. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the aircraft hull to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the aviation insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) SOURCE OF FUNDS FOR PAYMENT OF INDEMNITY.—The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) NOTICE TO CONGRESS.—In the event of a loss that is covered by defense-related aviation insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of $1,000,000, the Secretary of Defense shall submit to Congress—

(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of those funds, pending litigation, and estimated total cost to the Government.

(d) IMPLEMENTING MATTERS.—(1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(e) CONSTRUCTION WITH OTHER TRANSFER AUTHORITY.—Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

(f) ANNUAL REPORT ON CONTINGENT LIABILITIES.—Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the insurance program under chapter 443 of title 49.

(g) DEFINITIONS.—In this section:

(1) DEFENSE-RELATED AVIATION INSURANCE.—The term ''defense-related aviation insurance'' means aviation insurance and reinsurance provided through policies issued by the Secretary of Transportation under chapter 443 of title 49 that pursuant to section 44305(b) of that title is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) LOSS.—The term ''loss'' includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the defense-related aviation insurance.

(Added Pub. L. 104–201, div. A, title X, §1079(a)(1), Sept. 23, 1996, 110 Stat. 2667.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 104–201, which was approved Sept. 23, 1996.

CHAPTER 933—PROCUREMENT

Sec.
[9531. Repealed.]
9532. Factories, arsenals, and depots: manufacture at.
[9534, 9535. Repealed.]
9536. Equipment: bakeries, schools, kitchens, and mess halls.
[9537, 9538. Repealed.]
9540. Architectural and engineering services.
[9541. Repealed.]

AMENDMENTS

1993—Pub. L. 103–160, div. A, title VIII, §828(a)(9), Nov. 30, 1993, 107 Stat. 1713, struck out items 9531, ''Authorization'', 9534, ''Subsistence supplies: contract stipulations; place of delivery on inspection'', 9535, ''Exceptional subsistence supplies: purchases without advertising'', 9537, ''Military surveys and maps: assistance of United States mapping agencies'', 9538, ''Unserviceable ammunition: exchange and reclamation'', and 9541, ''Gratuitous services of officers of the Air Force Reserve''.

1982—Pub. L. 97–258, §2(b)(13)(A), Sept. 13, 1982, 96 Stat. 1058, added item 9541.

[§ 9531. Repealed. Pub. L. 103–160, div. A, title VIII, § 823(2), Nov. 30, 1993, 107 Stat. 1707]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 575, authorized Secretary of the Air Force to procure aircraft and equipment and facilities necessary for the maintenance and operation of the Air Force.

§ 9532. Factories, arsenals, and depots: manufacture at

The Secretary of the Air Force may have supplies needed for the Department of the Air Force made in factories, arsenals, or depots owned by the United States, so far as those factories, arsenals, or depots can make those supplies on an economical basis.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9532	5:626–2(e).	Sept. 19, 1951, ch. 407, §101(e), 65 Stat. 327.

The word ''made'' is substituted for the words ''manufactured or produced''. The words ''United States'' are substituted for the word ''Government''.

[§§ 9534, 9535. Repealed. Pub. L. 103–160, div. A, title VIII, § 823(4), (5), Nov. 30, 1993, 107 Stat. 1707]

Section 9534, act Aug. 10, 1956, ch. 1041, 70A Stat. 576, related to provisions in contracts for subsistence supplies.

Section 9535, act Aug. 10, 1956, ch. 1041, 70A Stat. 576, related to purchases without advertising of exceptional subsistence supplies.

§ 9536. Equipment: bakeries, schools, kitchens, and mess halls

Money necessary for the following items for the use of enlisted members of the Air Force may be spent from appropriations for regular supplies:

(1) Equipment for air base bakeries.

(2) Furniture, textbooks, paper, and equipment for air base schools.

(3) Tableware and mess furniture for kitchens and mess halls.

(Aug. 10, 1956, ch. 1041, 70A Stat. 576.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9536	10:1334.	June 13, 1890, ch. 423 (1st proviso under ''Quartermaster's Department''), 26 Stat. 152.

The words ''Money necessary * * * may be spent'' are substituted for the words ''There may be expended * * * the amounts required''. The word ''bakeries'' is substituted for the words ''bake house to carry on post bakeries''. The words ''each and all'' are omitted as surplusage.

[§§ 9537, 9538. Repealed. Pub. L. 103–160, div. A, title VIII, § 823(6), (7), Nov. 30, 1993, 107 Stat. 1707]

Section 9537, acts Aug. 10, 1956, ch. 1041, 70A Stat. 576; Nov. 2, 1966, Pub. L. 89–718, § 8(a), 80 Stat. 1117; Dec. 12, 1980, Pub. L. 96–513, title V, § 514(13), 94 Stat. 2936, related to assistance of United States mapping agencies in making and developing military surveys and maps.

Section 9538, acts Aug. 10, 1956, ch. 1041, 70A Stat. 576; Dec. 12, 1980, Pub. L. 96–513, title V, § 514(14), 94 Stat. 2936, related to exchange and reclamation of unserviceable ammunition by Secretary of the Air Force.

§ 9540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Air Force are inadequate, the Secretary of the Air Force may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577; Pub. L. 89–718, § 28, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 95–454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), Oct. 13, 1978, 92 Stat. 1217, 1222; Pub. L. 96–513, title V, § 514(15), Dec. 12, 1980, 94 Stat. 2936.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9540(a)	5:221 (1st sentence, less last 15 words).	Aug. 7, 1939, ch. 511, § 2, 53 Stat. 1240.
9540(b)	5:221 (less 1st sentence).	
9540(c)	5:221 (last 15 words of 1st sentence).	

In subsection (a), the words ''and providing that in the opinion'' are omitted as covered by the words ''whenever he considers''. The words ''needed for'' are substituted for the words ''required for the accomplishment of''.

In subsection (c), reference is made in substance to the Classification Act of 1949, instead of the Classification Act of 1923 referred to in the source statute, since section 1106(a) of the Classification Act of 1949, 63 Stat. 972, provides that all references in other acts to the Classification Act of 1923 should be considered to refer to the Classification Act of 1949.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–513 substituted ''and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5'' for ''5101–5115, 5331–5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of such title 5''.

1978—Subsec. (c). Pub. L. 95–454, § 801(a)(3)(I), inserted reference to subchapter VI of chapter 53 of title 5.

Pub. L. 95–454, § 703(c)(3), substituted ''7204'' for ''7154''.

1966—Subsec. (c). Pub. L. 89–718 substituted ''Sections 305, 3324, 5101–5115, 5331–5338, 5341, 5342, and 7154 of title 5'' for ''Sections 1071–1153 of title 5''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95–454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95–454, set out as an Effective Date note under section 5361 of Title 5.

[§ 9541. Repealed. Pub. L. 103–160, div. A, title VIII, § 822(d)(2), Nov. 30, 1993, 107 Stat. 1707]

Section, added Pub. L. 97–258, § 2(b)(13)(B), Sept. 13, 1982, 96 Stat. 1058, related to gratuitous services of officers of Air Force Reserve. See section 10212 of this title.

CHAPTER 935—ISSUE OF SERVICEABLE MATERIAL TO ARMED FORCES

Sec.
9561. Rations.
9562. Clothing.
9563. Clothing: replacement when destroyed to prevent contagion.
9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force.
9565. Colors, standards, and guidons of demobilized organizations: disposition.

§ 9561. Rations

(a) The President may prescribe the components, and the quantities thereof, of the Air Force ration. He may direct the issue of equivalent articles in place of the prescribed components whenever, in his opinion, economy and the health and comfort of the members of the Air Force so require.

(b) An enlisted member of the Air Force on active duty is entitled to one ration daily. The emergency ration, when issued, is in addition to the regular ration.

(c) Fresh or preserved fruits, milk, butter, and eggs necessary for the proper diet of the sick in hospitals shall be provided under regulations approved by the Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9561(a)	10:724.	Feb. 2, 1901, ch. 192 § 40, 31 Stat. 758.
9561(b)	10:716b. 10:725.	
9561(c)	10:726.	R.S. 1293, July 16, 1892, ch. 195 (last 15 words before proviso under ''Subsistence of the Army''), 27 Stat. 178. Mar. 2, 1907, ch. 2511 (1st proviso under ''Subsistence Department''), 34 Stat. 1165. R.S. 1175.

In subsection (a), the words ''the components, and the quantities thereof'' are substituted for the words ''the kinds and quantities of the component articles''. The words ''substitutive'' and ''a due regard'' are omitted as surplusage.

In subsection (b), the words ''on active duty'' are inserted for clarity. The words ''under such regulations as may be prescribed by the Secretary of the Army'', in 10:725, are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words ''or reserve'', ''prescribed for use on emergent occasions'', and ''furnished'', in 10:725, are omitted as surplusage.

In subsection (c), the words ''as the Surgeon General'' are omitted, since the Air Force does not have the statutory office of Surgeon General, and functions which, for the Army, are assigned by statute to subordinate officers of the Army are, for the Air Force, assigned to the Secretary of the Air Force. The words ''Such quantities of'' and ''may be allowed'' are omitted as surplusage.

DELEGATION OF AUTHORITY

Authority of President under subsec. (a) of this section to prescribe uniform military ration applicable to Air Force delegated to Secretary of Defense by section 3(a) of Ex. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

§ 9562. Clothing

The President may prescribe the quantity and kind of clothing to be issued annually to members of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9562	10:831.	R.S. 1296 (less 1st 9 words).

The words ''members of the Air Force'' are substituted for the words ''troops of the United States''.

§ 9563. Clothing: replacement when destroyed to prevent contagion

The Secretary of the Air Force may order a gratuitous issue of clothing to any enlisted member of the Air Force who has had a contagious disease, and to any hospital attendant who attended him while he had that disease, to replace clothing destroyed by order of a medical officer to prevent contagion.

(Aug. 10, 1956, ch. 1041, 70A Stat. 577.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9563	10:834	R.S. 1298.

The words ''enlisted member'' are substituted for the word ''soldiers''. The words ''any articles of their'' are omitted as surplusage. The words ''while he had that disease'' are inserted for clarity. The words ''a medical officer'' are substituted for the words ''proper medical officers''. The words ''on the recommendation of the Surgeon General'' are omitted, since the Air Force does not have the statutory office of Surgeon General, and functions which, for the Army, are assigned by statute to subordinate officers of the Army are, for the Air Force, assigned to the Secretary of the Air Force.

§ 9564. Navy and Marine Corps: camp equipment and transportation; when on shore duty with Air Force

While any detachment of the Navy or Marine Corps is on shore duty in cooperation with troops of the Air Force, the Secretary of the Air Force shall, upon the requisition of the officer of the Navy or Marine Corps in command of the detachment, issue rations and camp equipment, and furnish transportation, to that detachment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9564	10:1259d. 10:1259e. 34:541.	R.S. 1143; June 28, 1950, ch. 383, § 402(a), 64 Stat. 272. R.S. 1135; June 28, 1950, ch. 383, § 402(a), 64 Stat. 272.

The words ''While * * * on shore duty'' are substituted for the words ''under orders to act on shore'', in 10:1259d and 1259e, and 34:541. The words ''the Secretary of the Air Force'' are substituted for the words ''the branch, office, or officers of the Army, the Secretary of the Army may from time to time designate'', in 10:1259d and 1259e, and 34:541, since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force. The words ''during the time such detachment is so acting or proceeding to act'', in 10:1259d and 1259e, and 34:541, are omitted as surplusage. The words ''their baggage, provisions, and cannon'', in 10:1259e and 34:541, are omitted as surplusage. The words ''and shall furnish the naval officer commanding any such detachment, and his necessary aides, with horses, accouterments, and forage'', in 10:1259e and 34:541, are omitted as obsolete.

§ 9565. Colors, standards, and guidons of demobilized organizations: disposition

(a) The Secretary of the Air Force may dispose of colors, standards, and guidons of demobilized organizations of the Air Force, as follows:

(1) Those brought into Federal service by the Air National Guard of a State may be returned to that State upon the request of its governor.

(2) Those that cannot be returned under clause (1) may, upon the request of its governor, be sent to the State that, as determined by the Secretary, furnished the majority of members of the organization when it was formed.

Those that cannot be returned or sent under clause (1) or (2) of this subsection shall be delivered to the Secretary, for such national use as he may direct.

(b) Title to colors, standards, and guidons of demobilized organizations of the Air Force remains in the United States.

(c) No color, standard, or guidon may be disposed of under this section unless provision satisfactory to the Secretary has been made for its preservation and care.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9565(a)	5:202 (less 3d and last sentences).	Mar. 4, 1921, ch. 166, § 2, 41 Stat. 1438.
9565(b)	5:202 (3d sentence).	
9565(c)	5:202 (last sentence).	

In subsection (a), the words ''Any which were used during their service by such organizations and'' are omitted as surplusage. The first 15 words of the last sentence are substituted for 5:202 (1st 45 words of 2d sentence). The words ''the Quartermaster General'' are omitted, since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force.

CHAPTER 937—UTILITIES AND SERVICES

Sec.
9591. Utilities: proceeds from overseas operations.
9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities.
9593. Quarters: heat and light.
9594. Air Force Military History Institute: fee for providing historical information to the public.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title X, § 1085(c)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–289, added item 9594.

§ 9591. Utilities: proceeds from overseas operations

During actual or threatened hostilities, proceeds from operating a public utility in connection with operations of the Air Force in the field overseas are available for that utility until the close of the fiscal year following that in which they are received.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9591	10:1287.	July 9, 1918, ch. 143, subch. XX (1st par.), 40 Stat. 893; May 29, 1928, ch. 901 (par. 37), 45 Stat. 989; Aug. 1, 1953, ch. 305, § 645 (7th clause), 67 Stat. 357.

The words ''Air Force'' are substituted for the word ''Engineer'', since the Air Force does not have organic corps created by statute.

§ 9592. Radiograms and telegrams: forwarding charges due connecting commercial facilities

In the operation of telegraph lines, cables, or radio stations, members of the Air Force may, in the discretion of the Secretary of the Air Force, collect forwarding charges due connecting commercial telegraph or radio companies for sending radiograms or telegrams over their lines. Under such regulations as the Secretary may prescribe, they may present a voucher to a disbursing official for payment of the forwarding charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578; Pub. L. 97–258, § 2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052; Pub. L. 104–316, title I, § 105(e), Oct. 19, 1996, 110 Stat. 3830.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9592	10:1319.	May 12, 1917, ch. 12 (proviso under ''Washington-Alaska Military Cable and Telegraph System''), 40 Stat. 43.

The words ''members of the Air Force'' are substituted for the words ''Signal Corps'', since the Air Force does not have organic corps created by statute. The words ''Government'', ''and to this end'', ''as may be'', and ''amount of such'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–316 substituted ''of the forwarding'' for '', or may file a claim with the General Accounting Office for the forwarding'' in second sentence.

1982—Pub. L. 97–258 substituted ''official'' for ''officer''.

§ 9593. Quarters: heat and light

The heat and light necessary for the authorized quarters of members of the Air Force shall be furnished at the expense of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 578.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9593	10:723.	Mar. 2, 1907, ch. 2511 (1st proviso under ''Quartermaster's Department''), 34 Stat. 1167.

The word ''members'' is substituted for the words ''officers and enlisted men''. The words ''under such regulations as the Secretary of the Army may prescribe'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions.

CHARGES FOR EXCESS ENERGY CONSUMPTION; DEPOSIT OF PROCEEDS; APPLICABILITY; IMPLEMENTATION

Assessment of members for excess energy consumption in military family housing facilities, see section 507 of Pub. L. 95–82, title V, Aug. 1, 1977, 91 Stat. 372, set out as a note under section 4593 of this title.

§ 9594. Air Force Military History Institute: fee for providing historical information to the public

(a) AUTHORITY.—Except as provided in subsection (b), the Secretary of the Air Force may charge a person a fee for providing the person with information from the United States Air Force Military History Institute that is requested by that person.

(b) EXCEPTIONS.—A fee may not be charged under this section—

(1) to a person for information that the person requests to carry out a duty as a member of the armed forces or an officer or employee of the United States; or

(2) for a release of information under section 552 of title 5.

(c) LIMITATION ON AMOUNT.—A fee charged for providing information under this section may not exceed the cost of providing the information.

(d) RETENTION OF FEES.—Amounts received under subsection (a) for providing information in any fiscal year shall be credited to the appropriation or appropriations charged the costs of providing information to the public from the United States Air Force Military History Institute during that fiscal year.

(e) DEFINITIONS.—In this section:

(1) The term ''United States Air Force Military History Institute'' means the archive for historical records and materials of the Air Force that the Secretary of the Air Force designates as the primary archive for such records and materials.

(2) The terms ''officer of the United States'' and ''employee of the United States'' have the meanings given the terms ''officer'' and ''employee'', respectively, in sections 2104 and 2105, respectively, of title 5.

(Added Pub. L. 106–398, §1 [[div. A], title X, §1085(c)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–289.)

CHAPTER 939—SALE OF SERVICEABLE MATERIAL

Sec.
9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices.
9622. Rations: commissioned officers in field.
[9623. Repealed.]
9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home.
9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans.
9626. Aircraft supplies and services: foreign military or air attaché.
9627. Supplies: educational institutions.
9628. Airplane parts and accessories: civilian flying schools.
9629. Proceeds: disposition.

AMENDMENTS

1998—Pub. L. 105–261, div. A, title III, §366(b), Oct. 17, 1998, 112 Stat. 1987, struck out item 9623 ''Tobacco: enlisted members of Air Force''.

1990—Pub. L. 101–510, div. A, title XV, §1533(a)(8)(C), Nov. 5, 1990, 104 Stat. 1735, amended item 9624 generally, substituting ''Armed Forces Retirement Home'' for ''Soldiers' and Airmen's Home''.

1980—Pub. L. 96–513, title V, §514(17)(C), Dec. 12, 1980, 94 Stat. 2936, substituted ''Soldiers' and Airmen's Home'' for ''Soldiers' Home'' in item 9624.

§ 9621. Subsistence and other supplies: members of armed forces; veterans; executive or military departments and employees; prices

(a) The Secretary of the Air Force shall procure and sell, for cash or credit—

(1) articles designated by him, to members of the Air Force; and

(2) items of individual clothing and equipment, to officers of the Air Force, under such restrictions as the Secretary may prescribe.

An account of sales on credit shall be kept and the amount due reported to the Secretary. Except for articles and items acquired through the use of working capital funds under section 2208 of this title, sales of articles shall be at cost, and sales of individual clothing and equipment shall be at average current prices, including overhead, as determined by the Secretary.

(b) The Secretary shall sell subsistence supplies to members of other armed forces at the prices at which like property is sold to members of the Air Force.

(c) The Secretary may sell serviceable quartermaster property, other than subsistence supplies, to an officer of another armed force for his use in the service, in the same manner as these articles are sold to an officer of the Air Force.

(d) A person who has been discharged honorably or under honorable conditions from the Army, Navy, Air Force, or Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Department of Veterans Affairs may buy subsistence supplies and other supplies, except articles of uniform, at the prices at which like property is sold to a member of the Air Force.

(e) Under such conditions as the Secretary may prescribe, exterior articles of uniform may be sold to a person who has been discharged from the Air Force honorably or under honorable conditions, at the prices at which like articles are sold to members of the Air Force. This subsection does not modify section 772 or 773 of this title.

(f) Whenever, under regulations to be prescribed by the Secretary, subsistence supplies are furnished to any organization of the Air Force or sold to employees of any executive department other than the Department of Defense, payment shall be made in cash or by commercial credit.

(g) The Secretary may, by regulation, provide for the procurement and sale of stores designated by him to such civilian officers and employees of the United States, and such other persons, as he considers proper—

(1) at military installations outside the United States; and

(2) at military installations inside the United States where he determines that it is impracticable for those civilian officers, employees, and persons to obtain those stores from private agencies without impairing the efficient operation of military activities.

However, sales to those officers and employees inside the United States may be made only to those residing within military installations.

(h) Appropriations for subsistence of the Air Force may be applied to the purchase of subsistence supplies for sale to members of the Air Force on active duty for the use of themselves and their families.

(Aug. 10, 1956, ch. 1041, 70A Stat. 579; Pub. L. 87–651, title I, §118, Sept. 7, 1962, 76 Stat. 513; Pub. L. 96–513, title V, §514(16), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 97–22, §11(a)(11), July 10, 1981, 95 Stat. 138; Pub. L. 100–180, div. A, title III, §313(c), Dec. 4, 1987, 101 Stat. 1074; Pub. L. 101–189, div. A, title XVI, §1621(a)(1), Nov. 29, 1989, 103 Stat. 1602; Pub. L. 104–106, div. A, title III, §375(b)(2), Feb. 10, 1996, 110 Stat. 283.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9621(a)	10:904. 10:1231. 10:1237. 32:156.	Aug. 31, 1918, ch. 166, § 9 (less 17th through 22d words), 40 Stat. 957.
9621(b)	10:1238.	R.S. 1144; June 28, 1950, ch. 383, § 402(a), 64 Stat. 272.
9621(c)	10:1233.	June 3, 1916, ch. 134, § 109; restated June 4, 1920, ch. 227, subch. I, § 47; restated June 3, 1924, ch. 244, § 3; restated Oct. 14, 1940, ch. 875, § 3, 54 Stat. 1136; Mar. 25, 1948, ch. 157, § 5(b), 62 Stat. 91; Oct. 12, 1949, ch. 681, § 501(f)(2) and (3) (as applicable to § 109 of the Act of June 3, 1916, ch. 134), 63 Stat. 827; July 9, 1952, ch. 608, § 803 (12th par.), 66 Stat. 505.
9621(d)	10:1234. 34:539.	June 30, 1942, ch. 253, title I (last proviso under ''Clothing and Equipage''), 42 Stat. 729.
9621(e)	10:1235.	July 5, 1884, ch. 217 (proviso under ''Subsistence of the Army''), 23 Stat. 108.
9621(f)	10:1395 (less last sentence).	Aug. 29, 1916, ch. 418 (words before semicolon of 3d proviso under ''Subsistence of the Army''), 39 Stat. 630.
9621(g)	10:1253.	Mar. 4, 1915, ch. 143 (last proviso under ''Clothing, and Camp and Garrison Equipage''), 38 stat. 1079; June 28, 1950, ch. 383, § 402(k), 64 Stat. 273.
9621(h)	10:1241.	June 5, 1920, ch. 240 (par. under ''Purchase of Army Stores by Discharged Receiving Treatment from the Public Health Service''), 41 Stat. 976.
9621(i)	10:1196.	Feb. 14, 1927, ch. 134 (less last sentence), 44 Stat. 1096. Mar. 3, 1911, ch. 209 (last par. under ''Subsistence Department''), 36 Stat. 1047. Aug. 8, 1953, ch. 390, § 1, 67 Stat. 499. Mar. 3, 1875, ch. 131 (proviso of 1st sentence of 1st par. under ''War Department''), 18 Stat. 410.

In subsection (a), the word ''members'' is substituted for the words ''officers and enlisted men'', in 10:1237. Clause (2) is substituted for 10:904. Reference to the Secretary of the Air Force is substituted for reference to branch, office, or officers of the Army, in 10:1237, since the functions which, for the Army are assigned to subordinate officers, are, for the Air Force assigned to the Secretary of the Air Force. 32:156 is omitted as covered by 10:904, since the words ''officers of the Air Force'' necessarily cover all persons named in 32:156. The words ''Except for articles and items acquired through the use of working capital funds under sections 172–172j of title 5'' are inserted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (b), the first sentence states expressly the rule which is implicit in 10:1238. The word ''members'' is substituted for the words ''officers and enlisted men''. The words ''shall be understood, in all cases of such sales'' are omitted as surplusage. The last sentence is inserted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Deputy General Counsel of the Office of the Secretary of Defense, March 28, 1956.)

In subsection (c), the word ''members'' is substituted for the words ''officers and enlisted men''. The words ''prices at which like property is sold to'' are substituted for the words ''same price as is charged the''.

In subsections (c) and (d), the words ''other armed forces'' are substituted for the words ''Navy and Marine Corps'', since such sales are authorized to members of the Coast Guard by section 144(b) of Title 14.

In subsection (d), the words ''other than subsistence supplies'' are inserted, since the sale of subsistence supplies is covered by subsection (c).

In subsection (e), the words ''a person who has been discharged'' are substituted for the words ''discharged officers and enlisted men''. The words ''Navy * * * or Marine Corps'', omitted from the 1952 edition of the United States Code, are inserted to conform to the source statute. The words ''may buy'' are substituted for the words ''shall * * * be permitted to purchase''. The words ''at the prices at which like property is sold'' are substituted for the words ''at the same price as charged''. The word ''member'' is substituted for the words ''officers and enlisted men''. The words ''while undergoing such care and treatment'' are omitted as surplusage.

In subsection (f), the words ''person who has been discharged'' are substituted for the words ''former members * * * who have been separated therefrom''. The words ''at the prices at which like articles are sold to members'' are inserted to conform to the last sentence of subsection (a) and subsection (e).

In subsection (g), the words ''regulations to be prescribed by the Secretary'' are substituted for the words ''Army Regulations''. The words ''of the Government'' are omitted as surplusage. 10:1253 (last 22 words of 1st sentence) is omitted as surplusage. The words ''or to another executive department of the Government'' are omitted as superseded by section 7 of the act of May 21, 1920, ch. 194, as amended (31 U.S.C. 686). The provisions of 10:1253 relating to the computation of cost are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

In subsection (h), the word ''outside'' is substituted for the words ''beyond the continental limitations''. The words ''or in Alaska'' are omitted, since, under section 101(1) of this title, the words ''United States'' are defined to include only the States and the District of Columbia. The word ''continental'', after the words ''within the'', is omitted for the same reason. The last sentence is substituted for 10:1241 (proviso).

In subsection (i), 10:1196 (last 30 words) is omitted as superseded by the Act of April 27, 1914, ch. 72 (last proviso under ''Subsistence of the Army''), 38 Stat. 361. The words ''So much of the'' and ''as may be necessary'' are omitted as surplusage. The words ''members * * * on active duty, for the use of themselves and their families'' are substituted for the words ''officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations'', to conform to 10:1237 and 1238. Those sections provide the basic authority for procurement and sale of subsistence supplies to all members. This interpretation conforms to established administrative practice under those sections. The word ''supplies'' is substituted for the word ''stores''.

1962 ACT

The change corrects an internal reference.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106, § 375(b)(2)(A), substituted ''The Secretary shall'' for ''The Air Force shall''.

Subsec. (f). Pub. L. 104–106, § 375(b)(2)(B), inserted ''or by commercial credit'' before period at end.

1989—Subsec. (d). Pub. L. 101–189 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1987—Subsecs. (b) to (i). Pub. L. 100–180 redesignated subsecs. (c) to (i) as (b) to (h), respectively, and struck out former subsec. (b) which read as follows: ''Subsistence supplies may be sold to members of the Air Force. The selling price of each article sold under this subsection is the invoice price of the last lot of that article that the officer making the sale received before the first day of the month in which the sale is made. Activities conducted under this subsection shall be consistent with section 2208 of this title.''

1981—Subsec. (f). Pub. L. 97–22 struck out a comma after ''section 772''.

1980—Subsec. (f). Pub. L. 96–513 struck out reference to section 8612 of this title.

1962—Subsecs. (a), (b). Pub. L. 87–651 substituted ''section 2208 of this title'' for ''sections 172–172j of title 5''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title; title 37 section 1007.

§ 9622. Rations: commissioned officers in field

Commissioned officers of the Air Force serving in the field may buy rations for their own use, on credit. Amounts due for these purchases shall be reported monthly to the Secretary of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9622	10:1232.	R.S. 1145.

The words ''at cost prices'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

[§ 9623. Repealed. Pub. L. 105–261, div. A, title III, § 366(a), Oct. 17, 1998, 112 Stat. 1987]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 580, related to sale of tobacco by Air Force to enlisted members.

§ 9624. Medical supplies: civilian employees of the Air Force; American National Red Cross; Armed Forces Retirement Home

(a) Under regulations to be prescribed by the Secretary of the Air Force, a civilian employee of the Department of the Air Force who is stationed at an air base may buy necessary medical supplies from the Air Force when they are prescribed by a medical officer on active duty.

(b) The Secretary may sell medical supplies to the American National Red Cross for cash.

(c) The Secretary may sell medical and hospital supplies to the Armed Forces Retirement Home.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580; Pub. L. 96–513, title V, § 514(17)(A), (B), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 101–510, div. A, title XV, § 1533(a)(8)(A), (B), Nov. 5, 1990, 104 Stat. 1735.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9624(a) ..... 9624(b) ..... 9624(c)	10:1236. 10:1254. 24:58.	Apr. 23, 1904, ch. 1485 (last proviso under ''Medical Department''), 33 Stat. 273; Mar. 2, 1905, ch. 1307 (last proviso under ''Medical Department''), 33 Stat. 839. Mar. 4, 1915, ch. 143 (2d proviso under ''Medical Department''), 38 Stat. 1080. June 4, 1897, ch. 2 (par. under ''Soldiers' Home, District of Columbia''), 30 Stat. 54; June 28, 1950, ch. 383, § 402(d), 64 Stat. 272.

In subsection (a), the words ''on active duty'' are inserted for clarity.

In subsection (b), the words ''rates of charge'', ''to cover the cost of purchase, inspection, and so forth'', and ''as can be spared without detriment to the military service'' are omitted as surplusage. The words ''the contract prices paid therefor'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories, at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.) The word ''equipments'' is omitted as covered by the word ''supplies''.

In subsections (b) and (c), the words ''The Secretary'' are substituted for the words ''Medical Department of the Army'', since the functions which, for the Army, are assigned by statute to subordinate organizational units of the Army, are, for the Air Force, assigned to the Secretary of the Air Force.

In subsection (c), the words ''in the District of Columbia'' are omitted as surplusage, since there is only one Soldiers' Home. The words ''Upon proper application therefor'' are omitted as surplusage. The words ''its contract prices'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

AMENDMENTS

1990—Pub. L. 101–510, § 1533(a)(8)(B), substituted ''Armed Forces Retirement Home'' for ''Soldiers' and Airmen's Home'' in section catchline.

Subsec. (c). Pub. L. 101–510, § 1533(a)(8)(A), substituted ''Armed Forces Retirement Home'' for ''United States Soldiers' and Airmen's Home''.

1980—Pub. L. 96–513, § 514(17)(B), inserted ''the'' before ''Air'' and ''and Airmen's'' after ''Soldiers' '' in section catchline.

Subsec. (c). Pub. L. 96–513, § 514(17)(A), substituted ''United States Soldiers' and Airmen's'' for ''Soldiers' ''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, for-

merly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 9625. Ordnance property: officers of armed forces; civilian employees of Air Force; American National Red Cross; educational institutions; homes for veterans' orphans

(a) The Secretary of the Air Force may sell articles of ordnance property to officers of other armed forces for their use in the service, in the same manner as these articles are sold to officers of the Air Force.

(b) Under such regulations as the Secretary may prescribe, ordnance stores may be sold to civilian employees of the Air Force and to the American National Red Cross.

(c) Articles of ordnance property may be sold to educational institutions and to State soldiers' and sailors' orphans' homes for maintaining the ordnance and ordnance stores issued to those institutions and homes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 580.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9625(a)	34:540. 50:70.	Mar. 3, 1909, ch. 252 (5th par. under ''National Trophy and Medals for Rifle Contests''), 35 Stat. 750. Mar. 3, 1909, ch. 252 (8th par. under ''National Trophy and Medals for Rifle Contests''), 35 Stat. 751; June 28, 1950, ch. 383, § 402(h), 64 Stat. 273. May 11, 1908, ch. 163 (4th par. under ''National Trophy and Medals for Rifle Contests''), 35 Stat. 125.
9625(b)	50:71.	
9625(c)	50:63.	

In subsection (a), the words ''Secretary of the Air Force'' are substituted for the words ''Chief of Ordnance'', since the functions which, for the Army, are assigned to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force. The words ''other armed forces'' are substituted for the words ''the Navy and Marine Corps'', in 34:540 and 50:70, since those sales may be made to officers of the Coast Guard under section 114(c) of Title 14.

§ 9626. Aircraft supplies and services: foreign military or air attaché

Under such conditions as he may prescribe, the Secretary of the Air Force may provide for the sale of fuel, oil, and other supplies for use in aircraft operated by a foreign military or air attaché accredited to the United States, and for the furnishing of mechanical service and other assistance to such aircraft. Shelter may be furnished to such aircraft, but only without charge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9626	22:259 (less last sentence).	May 31, 1939, ch. 161 (less last sentence), 53 Stat. 795.

The last sentence is substituted for the words ''except for shelter for which no charge shall be made''. The words ''and equipment'' are omitted as covered by the word ''supplies''. 22:259 (last 22 words of 2d sentence) is omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title.

§ 9627. Supplies: educational institutions

Under such regulations as the Secretary of the Air Force may prescribe, supplies and military publications procured for the Air Force may be sold to any educational institution to which an officer of the Air Force is detailed as professor of air science and tactics, for the use of its military students. Sales under this section shall be for cash.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9627	10:1179 (less proviso).	July 17, 1914, ch. 149 (less proviso), 38 Stat. 512.

The words ''procured for'' are substituted for the words ''as are furnished to''. The words ''stores * * * matériel of war'' are omitted as covered by the word ''supplies''. The words ''the price listed to the Army'' are omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9629 of this title.

§ 9628. Airplane parts and accessories: civilian flying schools

The Secretary of the Air Force may sell, to civilian flying schools at which personnel of the Department of the Air Force or the Department of the Army are receiving flight training under contracts requiring these schools to maintain and repair airplanes of the Air Force furnished to them for flight training, the spare parts and accessories needed for those repairs.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9628	10:298c.	Feb. 12, 1940, ch. 27, Title I (proviso under ''Air Corps''), 54 Stat. 25.

The words ''under the provisions of the Act of April 3, 1939 (53 Stat. 555)'', are omitted as obsolete, since training formerly performed under that act is now performed under section 9301 of this title. The words ''personnel of the Departments'' are substituted for the words ''flying cadets'', since the authority is reciprocal, and to conform to section 9656 of this title. The

words ''flying cadet'' are omitted as obsolete. 10:298c (last 28 words) is omitted to reflect Title IV of the National Security Act of 1947, as amended (63 Stat. 585), which authorized the Secretary of Defense to prescribe regulations governing the use and sale of certain inventories at cost, including applicable administrative expenses. (See opinion of the Assistant General Counsel (Fiscal Matters) of the Office of the Secretary of Defense, January 4, 1955.)

§ 9629. Proceeds: disposition

The proceeds of sales of the following shall be paid into the Treasury to the credit of the appropriation out of which they were purchased, and are available for the purposes of that appropriation:

(1) Exterior articles of uniform sold under section 9621 of this title.

(2) Supplies, war material, and military publications sold to educational institutions under section 9627 of this title.

(3) Fuel, oil, other supplies, and services for aircraft of a foreign military or air attaché sold under section 9626 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9629	10:1179 (proviso). 10:1395 (last sentence). 22:259 (last sentence).	Feb. 14, 1927, ch. 134 (last sentence), 44 Stat. 1096. July 17, 1914, ch. 149 (proviso), 38 Stat. 512. May 31, 1939, ch. 161 (last sentence), 53 Stat. 796.

CHAPTER 941—ISSUE OF SERVICEABLE MATERIAL OTHER THAN TO ARMED FORCES

Sec.
9651. Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.
9652. Rifles and ammunition for target practice: educational institutions having corps of cadets.
9653. Ordnance and ordnance stores: District of Columbia high schools.
9654. Supplies: military instruction camps.
9655. Arms and ammunition: agencies and departments of United States.
9656. Aircraft and equipment: civilian aviation schools.

§ 9651. Arms, tentage, and equipment: educational institutions not maintaining units of A.F.R.O.T.C.

Under such conditions as he may prescribe, the Secretary of the Air Force may issue arms, tentage, and equipment that he considers necessary for proper military training, to any educational institution at which no unit of the Air Force Reserve Officers' Training Corps is maintained, but which has a course in military training prescribed by the Secretary and which has at least 100 physically fit students over 14 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 581; Pub. L. 99–145, title XIII, § 1301(d)(3), Nov. 8, 1985, 99 Stat. 736.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9651	10:1180.	June 3, 1916, ch. 134, § 55c (words before semicolon); added June 4, 1920, ch. 227, subch. I, § 35 (words of last par. before semicolon), 41 Stat. 780.

The reference to schools ''other than those provided for in section 381 of this title'' is omitted as covered by the descriptions of the educational institutions.

AMENDMENTS

1985—Pub. L. 99–145 struck out ''male'' before ''students''.

§ 9652. Rifles and ammunition for target practice: educational institutions having corps of cadets

(a) The Secretary of the Air Force may lend, without expense to the United States, magazine rifles and appendages that are not of the existing service models in use at the time, and that are not necessary for a proper reserve supply, to any educational institution having a uniformed corps of cadets of sufficient number for target practice. He may also issue 40 rounds of ball cartridges for each cadet for each range at which target practice is held, but not more than 120 rounds each year for each cadet participating in target practice.

(b) The institutions to which property is lent under subsection (a) shall use it for target practice, take proper care of it, and return it when required.

(c) The Secretary shall prescribe regulations to carry out this section, containing such other requirements as he considers necessary to safeguard the interests of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9652(a) ..... 9652(b) ..... 9652(c)	10:1185 (1st par.). 10:1185 (last par., less 1st 22, and last 19, words). 10:1185 (1st 22, and last 19, words of last par.).	Apr. 27, 1914, ch. 72 (last proviso and last par. under ''Manufacture of Arms''), 38 Stat. 370.

In subsection (a), the words, ''and carrying on military training'' and ''the maintenance of'' are omitted as surplusage. In clause (2), the words ''suitable to said arm'' are omitted as surplusage.

In subsection (b), the words ''shall use it for target practice'' are substituted for the words ''insuring the designed use of the property issued''. The words ''take proper care of it'' are substituted for the words ''providing against loss to the United States through lack of proper care''.

§ 9653. Ordnance and ordnance stores: District of Columbia high schools

The Secretary of the Air Force, under regulations to be prescribed by him, may issue to the high schools of the District of Columbia ordnance and ordnance stores required for military instruction and practice. The Secretary shall require a bond in double the value of the property issued under this section, for the care and safekeeping of that property and, except for prop-

erty properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9653	10:1183.	Feb. 5, 1891, J. Res. 9, 26 Stat. 1113.

The words ''at his discretion and'', ''belonging to the Government, and which can be spared for that purpose'', and ''in each case'' are omitted as surplusage. The words ''high schools of the'' are substituted for the words ''High School of Washington'', since the various high schools of the District of Columbia have succeeded the Washington High School that existed at the time the statute was enacted. The words ''except for property properly expended'' are inserted for clarity.

§ 9654. Supplies: military instruction camps

Under such conditions as he may prescribe, the Secretary of the Air Force may issue, to any educational institution at which an Air Force officer is detailed as professor of air science and tactics, such supplies as are necessary to establish and maintain a camp for the military instruction of its students. The Secretary shall require a bond in the value of the property issued under this section, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9654	10:1182.	May 18, 1916, ch. 124, 39 Stat. 123.

The words ''at his discretion and'' and ''belonging to the Government, and which can be spared for that purpose, as may appear to be'' are omitted as surplusage. The words ''except for property properly expended'' are inserted for clarity. The word ''stores'' is omitted as covered by the word ''supplies''.

§ 9655. Arms and ammunition: agencies and departments of United States

(a) Whenever required for the protection of public money and property, the Secretary of the Air Force may lend arms and their accouterments, and issue ammunition, to a department or independent agency of the United States, upon request of its head. Property lent or issued under this subsection may be delivered to an officer of the department or agency designated by the head thereof, and that officer shall account for the property to the Secretary of the Air Force. Property lent or issued under this subsection and not properly expended shall be returned when it is no longer needed.

(b) The department or agency to which property is lent or issued under subsection (a) shall transfer funds to the credit of the Department of the Air Force to cover the costs of—

(1) ammunition issued;

(2) replacing arms and accouterments that have been lost or destroyed or cannot be repaired;

(3) repairing arms and accouterments returned to the Department of the Air Force; and

(4) making and receiving shipments by the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 582.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9655(a)	50:61 (less proviso).	Mar. 3, 1879, ch. 183 (2d par. under ''Miscellaneous''); restated Apr. 14, 1937, ch. 79, 50 Stat. 63.
9655(b)	50:61 (proviso).	

In subsection (a), the word ''lend'' is substituted for the word ''issue'', with respect to arms and accouterments, since the property must be returned when the necessity for its use has expired. The words ''and not properly expended'' are inserted for clarity. The words ''United States'' are substituted for the word ''Government''. The word ''their'' is substituted for the words ''suitable * * * for use therewith''. The words ''it is no longer needed'' are substituted for the words ''the necessity for their use has expired''.

In subsection (b), the words ''hereafter'', ''borrowed'', and ''under the authority of this section'' are omitted as surplusage.

§ 9656. Aircraft and equipment: civilian aviation schools

The Secretary of the Air Force, under regulations to be prescribed by him, may lend aircraft, aircraft parts, and aeronautical equipment and accessories that are required for instruction, training, and maintenance, to accredited civilian aviation schools at which personnel of the Department of the Air Force or the Department of the Army are pursuing a course of instruction and training under detail by competent orders.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 97–295, § 1(53), Oct. 12, 1982, 96 Stat. 1301.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9656	10:298b.	Apr. 3, 1939, ch. 35, § 4, 53 Stat. 556.

The words ''in his discretion and'', ''rules'', ''limitations'', and ''on hand and belonging to the Government such articles as may appear to be'' are omitted as surplusage. The words ''Department of the Air Force or the Department of the Army'' are substituted for the words ''Military Establishment'', since the authority is reciprocal.

1982 ACT

In 10:9656, the words '', and at least one of which is designated by the Civil Aeronautics Authority for the training of Negro air pilots'' are stricken as obsolete.

AMENDMENTS

1982—Pub. L. 97–295 struck out '', and at least one of which is designated by the Civil Aeronautics Authority for the training of Negro air pilots'' after ''competent orders''.

CHAPTER 943—DISPOSAL OF OBSOLETE OR SURPLUS MATERIAL

Sec.
9681. Surplus war material: sale to States and foreign governments.
9682. Obsolete or excess material: sale to National Council of Boy Scouts of America.

Sec.
9684. Surplus obsolete ordnance: sale to patriotic organizations.
9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes.
9686. Obsolete ordnance: gift to State homes for soldiers and sailors.

§ 9681. Surplus war material: sale to States and foreign governments

Subject to regulations under section 121 of title 40, the Secretary of the Air Force may sell surplus war material and supplies, except food, of the Department of the Air Force, for which there is no adequate domestic market, to any State or to any foreign government with which the United States was at peace on June 5, 1920. Sales under this section shall be made upon terms that the Secretary considers expedient.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 96–513, title V, § 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107–217, § 3(b)(36), Aug. 21, 2002, 116 Stat. 1298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9681	10:1262.	June 5, 1920, ch. 240 (2d proviso under ''Contingencies of the Army''), 41 Stat. 949; Oct. 31, 1951, ch. 654, § 2(8), 65 Stat. 707.

The word ''may'' is substituted for the words ''is authorized in his discretion, to''. The words ''war material'' are substituted for the word ''matériel''. The words ''or equipment'' are omitted as covered by the word ''supplies''. The words ''of the Department of the Air Force'' are substituted for the words ''pertaining to the Military Establishment''. The words ''which are not needed for military purposes'' are omitted as covered by the word ''surplus''. The words ''as or may be found to be'' are omitted as surplusage.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 9682. Obsolete or excess material: sale to National Council of Boy Scouts of America

Subject to regulations under section 121 of title 40, the Secretary of the Air Force, under such conditions as he may prescribe, may sell obsolete or excess material to the National Council of the Boy Scouts of America. Sales under this section shall be at fair value to the Department of the Air Force, including packing, handling, and transportation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 96–513, title V, § 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107–217, § 3(b)(37), Aug. 21, 2002, 116 Stat. 1298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9682	10:1259.	May 15, 1937, ch. 193, 50 Stat. 167; Oct. 31, 1951, ch. 654, § 2(7), 65 Stat. 707.

The words ''obsolete or excess material'' are substituted for the words ''such obsolete material as may not be needed by the Department of the Army, and such other material as may be spared'' to conform to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.). The words ''in his discretion'' are omitted as surplusage.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 9684. Surplus obsolete ordnance: sale to patriotic organizations

Subject to regulations under section 121 of title 40, the Secretary of the Air Force may sell, without advertisement and at prices that he considers reasonable—

(1) surplus obsolete small arms and ammunition and equipment for them, to any patriotic organization for military purposes; and

(2) surplus obsolete brass or bronze cannons, carriages, and cannon balls, for public parks, public buildings, and soldiers' monuments.

(Aug. 10, 1956, ch. 1041, 70A Stat. 583; Pub. L. 96–513, title V, § 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107–217, § 3(b)(38), Aug. 21, 2002, 116 Stat. 1298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9684	50:64. 50:68.	May 28, 1908, ch. 215, § 14, 35 Stat. 443; June 28, 1950, ch. 383, § 402(g), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2(26), 65 Stat. 707. Mar. 4, 1909, ch. 319, § 47, 35 Stat. 1075; June 28, 1950, ch. 383, § 402(i), 64 Stat. 273; Oct. 31, 1951, ch. 654, § 2(28), 65 Stat. 707.

50:64 (proviso) and 50:68 (proviso) are omitted as surplusage.

The words ''the Chief of Ordnance'' are omitted, since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary of the Air Force.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' in introductory provisions.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 9685. Obsolete ordnance: loan to educational institutions and State soldiers' and sailors' orphans' homes

(a) Upon the recommendation of the Governor of the State or Territory concerned, the Secretary of the Air Force, under regulations to be prescribed by him and without cost to the United States for transportation, may lend obsolete ordnance and ordnance stores to State and Territorial educational institutions and to State soldiers' and sailors' orphans' homes, for drill and instruction. However, no loan may be made under this subsection to an institution to which ordnance or ordnance stores may be issued under any law that was in effect on June 30, 1906, and is still in effect.

(b) The Secretary shall require a bond from each institution or home to which property is lent under subsection (a), in double the value of the property lent, for the care and safekeeping of that property and, except for property properly expended, for its return when required.

(Aug. 10, 1956, ch. 1041, 70A Stat. 584.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9685(a)	50:62a (1st par. and proviso of last par.).	June 30, 1906, ch. 3938, 34 Stat. 817.
9685(b)	50:62a (last par., less proviso).	

In subsection (a), the words ''at his discretion'' and ''as may be available'' are omitted as surplusage. The word ''lend'' is substituted for the word ''issue'' to reflect the intent of the section. 50:62a (1st 13 words of proviso) is omitted as surplusage. The words ''and which is still in effect'' are inserted for clarity.

In subsection (b), the words ''to the United States'' are omitted as surplusage. The words ''except property properly expended'' are inserted for clarity.

§ 9686. Obsolete ordnance: gift to State homes for soldiers and sailors

Subject to regulations under section 121 of title 40, the Secretary of the Air Force may give not more than two obsolete bronze or iron cannons suitable for firing salutes to any home for soldiers or sailors established and maintained under State authority.

(Aug. 10, 1956, ch. 1041, 70A Stat. 584; Pub. L. 96–513, title V, § 514(18), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 107–217, § 3(b)(39), Aug. 21, 2002, 116 Stat. 1298.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9686	50:66.	Feb. 8, 1889, ch. 116, 25 Stat. 657; Oct. 31, 1951, ch. 654, § 2(27), 65 Stat. 707.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		Mar. 3, 1899, ch. 423 (1st proviso under ''Ordnance Department''), 30 Stat. 1073; May 26, 1900, ch. 586 (1st proviso under ''Ordnance Department''), 31 Stat. 216; June 28, 1950, ch. 383, § 402(e), 64 Stat. 273.

The words ''subject to such regulations as he may prescribe'' are omitted, since the Secretary has inherent authority to issue regulations appropriate to exercising his statutory functions. The words ''to any of the 'National Homes for Disabled Volunteer Soldiers' already established or hereafter established and'', in the Act of February 8, 1889, ch. 116, 25 Stat. 657, are not contained in 50:66 (2d sentence). They are also omitted from the revised section, since the National Homes for Disabled Volunteer Soldiers were dissolved by the Act of July 3, 1930, ch. 863, 46 Stat. 1016. The Acts of March 3, 1899, ch. 643 (1st proviso under ''Ordnance Department''), 30 Stat. 1073; and May 26, 1900, ch. 586 (1st proviso under ''Ordnance Department''), 31 Stat. 216, as amended, relating to disposal of ordnance to ''Homes for Disabled Volunteer Soldiers'' by the Chief of Ordnance of the Army, became inoperative when the Homes were dissolved. Although section 402(e) of the Army Organization Act of 1950, ch. 383, 64 Stat. 273, amended the Act of May 26, 1900, it did not have the effect of reviving that act. The word ''give'' is substituted for the word ''deliver'' to express more clearly the intent of the section. The words ''serviceable'' and ''as may be on hand undisposed of'' are omitted as surplusage. The word ''may'' is substituted for the words ''is authorized and directed'', since section 9684 of this title provides an alternative method for the disposal of obsolete cannon.

AMENDMENTS

2002—Pub. L. 107–217 substituted ''section 121 of title 40'' for ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)''.

1980—Pub. L. 96–513 substituted ''section 205 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486)'' for ''section 486 of title 40''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

CHAPTER 945—DISPOSITION OF EFFECTS OF DECEASED PERSONS

Sec.
[9711. Repealed.]
9712. Disposition of effects of deceased persons by summary court-martial.
[9713. Repealed.]

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, § 721(c)(4), (6), Oct. 5, 1999, 113 Stat. 695, substituted ''DISPOSITION'' for ''INQUESTS; DISPOSITION'' in chapter heading and struck out item 9711 ''Inquests''.

1990—Pub. L. 101–510, div. A, title XV, § 1533(a)(10)(B), Nov. 5, 1990, 104 Stat. 1735, struck out item 9713 ''Disposition of effects of deceased persons by Soldiers' and Airmen's Home''.

1980—Pub. L. 96–513, title V, § 514(20)(C), Dec. 12, 1980, 94 Stat. 2936, substituted ''Soldiers' and Airmen's Home'' for ''Soldiers' Home'' in item 9713.

[§ 9711. Repealed. Pub. L. 106–65, div. A, title VII, § 721(b), Oct. 5, 1999, 113 Stat. 694]

Section, Aug. 10, 1956, ch. 1041, 70A Stat. 584, related to inquests.

§ 9712. Disposition of effects of deceased persons by summary court-martial

(a) Upon the death of—

(1) a person subject to military law at a place or command under the jurisdiction of the Air Force; or

(2) a resident of the Armed Forces Retirement Home who dies in an Air Force hospital outside the District of Columbia when sent from the Home to that hospital for treatment;

the commanding officer of the place or command shall permit the legal representative or the surviving spouse of the deceased, if present, to take possession of the effects of the deceased that are then at the air base or in quarters.

(b) If there is no legal representative or surviving spouse present, the commanding officer shall direct a summary court-martial to collect the effects of the deceased that are then at the air base or in quarters.

(c) The summary court-martial may collect debts due the decedent's estate by local debtors, pay undisputed local creditors of the deceased to the extent permitted by money of the deceased in the court's possession, and shall take receipts for those payments, to be filed with the court's final report to the Department of the Air Force.

(d) As soon as practicable after the collection of the effects and money of the deceased, the summary court-martial shall send them at the expense of the United States to the living person highest on the following list who can be found by the court:

(1) The surviving spouse or legal representative.

(2) A child of the deceased.

(3) A parent of the deceased.

(4) A brother or sister of the deceased.

(5) The next-of-kin of the deceased.

(6) A beneficiary named in the will of the deceased.

(e) If the summary court-martial cannot dispose of the effects under subsection (d) because there are no persons in those categories or because the court finds that the addresses of the persons are not known or readily ascertainable, the court may convert the effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, into cash, by public or private sale, but not until 30 days after the date of death of the deceased.

(f) As soon as practicable after the effects have been converted into cash under subsection (e), the summary court-martial shall deposit all cash in the court's possession and belonging to the estate with the officer designated in regulations, and shall send a receipt therefor, together with any will or other papers of value, an inventory of the effects and articles not permitted to be sold, to the executive part of the Department of the Air Force. The Secretary of the Air Force shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Air Force under this subsection.

(Aug. 10, 1956, ch. 1041, 70A Stat. 585; Pub. L. 89–718, § 48, Nov. 2, 1966, 80 Stat. 1121; Pub. L. 96–513, title V, § 514(19), Dec. 12, 1980, 94 Stat. 2936; Pub. L. 99–145, title XIII, § 1301(d)(4)(A), Nov. 8, 1985, 99 Stat. 736; Pub. L. 101–510, div. A, title XV, § 1533(a)(9), Nov. 5, 1990, 104 Stat. 1735; Pub. L. 104–316, title II, § 202(g), Oct. 19, 1996, 110 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9712(a)	5:150j (words before 1st semicolon of 1st par.; and last par.).	June 4, 1920, ch. 227, subch. II, § 1 (Art. 112), 41 Stat. 809; May 5, 1950, ch. 169, § 6(c), 64 Stat. 145.
9712(b)	5:150j (22 words after 1st semicolon of 1st par.).	
9712(c)	5:150j (words between 1st and 2d semicolons of 1st par., less 1st 22 words).	
9712(d)	5:150j (words between 2d and 3d semicolons of 1st par.).	
9712(e)	5:150j (words between 3d and 4th semicolons of 1st par.).	
9712(f)	5:150j (1st par., less words before 4th semicolon, and less last 40 words).	
9712(g)	5:150j (last 40 words of 1st par.).	

In subsection (a), the words ''the court-martial jurisdiction of the Air Force or the Army at a place or command under the jurisdiction of the Air Force'' are substituted for the words ''military law'', to reflect the creation of a separate Air Force. Clause (2) is substituted for 5:150j (last par.).

In subsections (a), (b), and (c), the words ''surviving spouse'' are substituted for the word ''widow''.

In subsection (c), the word ''may'' is substituted for the words ''shall have authority to''. The words ''to the extent permitted'' are substituted for the words ''in so far as * * * will permit''. The words ''under this article'' and ''upon its transactions'' are omitted as surplusage.

In subsection (d), the words ''through the Quartermaster Corps'' are omitted, since the Air Force does not have organic corps created by statute. The words ''if such be found by said court'' are omitted as surplusage. The words ''United States'' are substituted for the word ''Government''. 5:150j (19 words before 3d semicolon of 1st par.) is omitted as covered by subsection (g).

In subsection (e), the first 37 words are substituted for 5:150j (33 words after 3d semicolon of 1st par.). The word ''may'' is substituted for the word ''shall have the authority''.

In subsection (f), the words ''Soldiers' Home'' are inserted, since, as provided in section 9713 of this title, the Home is now the place where the mentioned articles are sent.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–316 struck out subsec. (g) which read as follows: ''The summary court-martial shall make a full report of the transactions under this section, with respect to the deceased, to the Department of the Air Force for transmission to the General Accounting Office for action authorized in the settlement of accounts of deceased members of the Air Force.''

1990—Subsec. (a)(2). Pub. L. 101–510, § 1533(a)(9)(A), substituted ''a resident of the Armed Forces Retirement Home'' for ''an inmate of the United States Soldiers' and Airmen's Home''.

Subsec. (f). Pub. L. 101–510, § 1533(a)(9)(B), struck out ''for transmission to the United States Soldiers' and Airmen's Home'' after ''Department of the Air Force'' and inserted at end ''The Secretary of the Air Force shall deliver to the Armed Forces Retirement Home all items received by the executive part of the Department of the Air Force under this subsection.''

1985—Subsec. (d). Pub. L. 99–145 substituted pars. (1) to (6) for former pars. (1) to (9) which read as follows:

''(1) Surviving spouse or legal representative.
''(2) Son.
''(3) Daughter.
''(4) Father, if he has not abandoned the support of his family.
''(5) Mother.
''(6) Brother.
''(7) Sister.
''(8) Next of kin.
''(9) Beneficiary named in the will of the deceased.''

1980—Subsecs. (a)(2), (f). Pub. L. 96–513 substituted ''United States Soldiers' and Airmen's Home'' for ''Soldiers' Home''.

1966—Subsec. (a)(1). Pub. L. 89–718 substituted ''military law'' for ''the court-martial jurisdiction of the Air Force or the Army''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–510 effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2575 of this title; title 5 section 5564; title 24 section 420; title 37 section 554.

[§ 9713. Repealed. Pub. L. 101–510, div. A, title XV, § 1533(a)(10)(A), Nov. 5, 1990, 104 Stat. 1735]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 586; Dec. 12, 1980, Pub. L. 96–513, title V, § 514(20)(A), (B), 94 Stat. 2936; Nov. 8, 1985, Pub. L. 99–145, title XIII, § 1301(d)(4)(B), 99 Stat. 737; Nov. 29, 1989, Pub. L. 101–189, div. A, title XVI, § 1621(a)(1), 103 Stat. 1602, related to disposition of effects of deceased persons by Soldiers' and Airmen's Home.

EFFECTIVE DATE OF REPEAL

Repeal effective one year after Nov. 5, 1990, see section 1541 of Pub. L. 101–510, formerly set out as an Effective Date note under section 401 of Title 24, Hospitals and Asylums.

CHAPTER 947—TRANSPORTATION

Sec.
9741. Control and supervision.
[9742. Repealed.]
9743. Officers: use of transportation.
9746. Civilian personnel in Alaska.
[9748. Repealed.]

AMENDMENTS

1996—Pub. L. 104–201, div. A, title IX, § 906(d)(3), Sept. 23, 1996, 110 Stat. 2620, struck out item 9742 ''Control of transportation systems in time of war''.

1962—Pub. L. 87–651, title I, § 129(2), Sept. 7, 1962, 76 Stat. 514, struck out item 9748 ''Motor vehicles: for members on permanent change of station''.

§ 9741. Control and supervision

The transportation of members, munitions of war, equipment, military property, and stores of the Air Force throughout the United States shall be under the immediate control and supervision of the Secretary of the Air Force and agents appointed or designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9741	10:1363.	R.S. 220.

[§ 9742. Repealed. Pub. L. 104–201, div. A, title IX, § 906(c), Sept. 23, 1996, 110 Stat. 2620]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 587, authorized President, through Secretary of the Air Force, to assume control of any transportation system in time of war. See section 2644 of this title.

§ 9743. Officers: use of transportation

Under such conditions as the Secretary of the Air Force may prescribe, officers of the Air Force may, in the performance of their duties, use means of transportation provided for the Air Force and its supplies.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9743	10:749.	Mar. 3, 1911, ch. 209 (5th proviso under ''Transportation of The Army and Its Supplies''), 36 Stat. 1051.

Since its legislative history shows that it was enacted because the Comptroller of the Treasury had disallowed certain accounts for travel expenses (46 Congressional Record, pp. 905–913, 4643–4645), the source statute is restated to preclude future disallowances. The words ''official and military'' are omitted as surplusage.

§ 9746. Civilian personnel in Alaska

Persons residing in Alaska who are and have been employed there by the United States for at least two years, and their families, may be transported on airplanes operated by Air Force transport agencies or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense, if—

(1) the Secretary of the Air Force considers that accommodations are available;

(2) the transportation is without expense to the United States;

(3) the transportation is limited to one round trip between Alaska and the United States during any two-year period, except in an emergency such as sickness or death; and

(4) in case of travel by air—

(A) the Secretary of Transportation has not certified that commercial air carriers of the United States that can handle the transportation are operating between Alaska and the United States; and

(B) the transportation cannot be reasonably handled by a United States commercial air carrier.

(Aug. 10, 1956, ch. 1041, 70A Stat. 587; Pub. L. 98–443, § 9(k), Oct. 4, 1984, 98 Stat. 1708.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9746	10:1371a.	Nov. 21, 1941, ch. 483; restated July 25, 1947, ch. 321, 61 Stat. 423.

Before the enactment of the National Security Act of 1947, the transport functions covered by this section were performed only by the Army. Under Transfer

Order 26, 15 Oct. 1948, JAAF Bull. 42, 1948; JAAFAR 4–55–1, par. 2a(1)(f), 29 Oct. 1948; AR 96–15, AFR 76–7, 5 June 1951; AR 96–20, AFR 76–6, 11 June 1953, these transport functions also became the responsibility of the Secretary of the Air Force.

Under section 2(a)(3) of the National Security Act (as it existed before August 10, 1949), the sea transportation functions of the Army and Navy, and the air transportation functions of the Army, Navy, and Air Force were respectively consolidated into the ''Military Sea Transportation Service'', under the Department of the Navy, and the ''Military Air Transport Service'', under the Department of the Air Force. Instead of having space on transport vessels and airplanes operated by it for its sole use, the Air Force is allotted bulk space on vessels and airplanes operated by military transport agencies operating for the benefit of the Department of Defense as a whole. The words ''or, within bulk space allocations made to the Department of the Air Force, on vessels or airplanes operated by any military transport agency of the Department of Defense'' are inserted, in accordance with an opinion of the Judge Advocate General of the Army (JAGA 1953/5885, 22 July 1953), concurred in by the Judge Advocate General of the Air Force, to make clear that the rule applicable to vessels and airplanes applies to the bulk space allocated to the Air Force. Since the authority to perform transportation functions could again be transferred as between the military departments, the references to airplanes of Air Force transport agencies (as distinct from bulk space allocations thereon) is retained.

The word ''considers'' is substituted for the words ''in the opinion of''. The words ''Persons residing in Alaska who are and have been employed there by the United States'', are substituted for the words ''employees of the United States, residing in Alaska, who have been in such employment''. The word ''commercial'' is substituted for the word ''civil'' for clarity. The words ''from and after November 21, 1941'', ''and the carriage of all such air traffic shall be terminated'', ''dire'', ''the privilege herein granted'', and ''as to each eligible individual'' are omitted as surplusage. The words ''the continental'' are omitted, since section 101(1) of this title defines the United States as ''the States and the District of Columbia''.

AMENDMENTS

1984—Par. (4)(A). Pub. L. 98–443 substituted ''Secretary of Transportation'' for ''Civil Aeronautics Board''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98–443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

[§ 9748. Repealed. Pub. L. 87–651, title I, § 129(1), Sept. 7, 1962, 76 Stat. 514]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 588, related to transportation of motor vehicles for members on permanent change of station, and is now covered by section 2634 of this title.

CHAPTER 949—REAL PROPERTY

Sec.
9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field.
[9772. Repealed.]
9773. Acquisition and construction: air bases and depots.
[9774, 9775. Repealed.]
9776. Emergency construction: fortifications.
9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock.
9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association.
9779. Use of public property.
9780. Acquisition of buildings in District of Columbia.
9781. Disposition of real property at missile sites.
9782. Maintenance and repair of real property.
9783. Johnston Atoll: reimbursement for support provided to civil air carriers.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title III, §383(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–86, added item 9783.

1997—Pub. L. 105–85, div. A, title II, §242(b), Nov. 18, 1997, 111 Stat. 1667, added item 9782.

1987—Pub. L. 100–180, div. B, subdiv. 3, title II, §2325(b), Dec. 4, 1987, 101 Stat. 1221, added item 9781.

1982—Pub. L. 97–214, §10(a)(9)(B), July 12, 1982, 96 Stat. 175, struck out item 9774 ''Construction: limitations''.

1980—Pub. L. 96–513, title V, §514(21), Dec. 12, 1980, 94 Stat. 2936, struck out item 9772 ''Reservation and use for air base or testing field''.

1973—Pub. L. 93–166, title V, §509(e), Nov. 29, 1973, 87 Stat. 678, substituted ''Construction: limitations'' for ''Construction of quarters: limitations on space and cost'' in item 9774.

1971—Pub. L. 92–145, title V, §509(b), Oct. 27, 1971, 85 Stat. 408, struck out item 9775 ''Quarters: officers''.

1958—Pub. L. 85–861, §1(203)(B), Sept. 2, 1958, 72 Stat. 1542, added item 9780.

§ 9771. Acceptance of donations: land for mobilization, training, supply base, or aviation field

The Secretary of the Air Force may accept for the United States a gift of—

(1) land that he considers suitable and desirable for a permanent mobilization, training, or supply base; and

(2) land that he considers suitable and desirable for an aviation field, if the gift is from a citizen of the United States and its terms authorize the use of the property by the United States for any purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9771	10:1342. 10:1344.	Aug. 29, 1916, ch. 418 (6th and 8th pars. under ''Office of the Chief Signal Officer''), 39 Stat. 622, 623.

10:1344 (last 40 words) is omitted as executed. The words ''tract or tracts'', in 10:1342 and 1344, are omitted as surplusage. The words ''and remount station'', in 10:1342, are omitted, since the property and civilian personnel of the Remount Service of the Quartermaster Corps were transferred to the Department of Agriculture by the Act of April 21, 1948, ch. 224, 62 Stat. 197 (7 U.S.C. 436–438). The words ''by the United States for any purpose'' are substituted for the words ''for any other service of the United States which may hereafter appear desirable'', in 10:1342. The words ''from any person'', in 10:1344, are omitted as surplusage.

[§ 9772. Repealed. Pub. L. 94–579, title VII, § 704(a), Oct 21, 1976, 90 Stat. 2792]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 588, authorized unappropriated public land or other property of United States to be reserved or used for air bases or testing fields.

EFFECTIVE DATE OF REPEAL

Section 704(a) of Pub. L. 94–579 provided that this section is repealed effective on and after Oct. 21, 1976.

SAVINGS PROVISION

Repeal by Pub. L. 94–579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note under section 1701 of Title 43, Public Lands.

§ 9773. Acquisition and construction: air bases and depots

(a) The Secretary of the Air Force shall determine the sites of such additional permanent air bases and depots in all strategic areas of the United States and the Territories, Commonwealths, possessions, and holdings as he considers necessary. He shall determine when the enlargement of existing air bases and depots is necessary for the effective peacetime training of the Air Force.

(b) In determining the sites of new air bases and depots, the Secretary shall consider the following regions for the purposes indicated—

(1) the Atlantic northeast, for training in cold weather and in fog;

(2) the Atlantic southeast and Caribbean areas, for training in long-range operations, especially those incident to reinforcing the defenses of the Panama Canal;

(3) the southeastern United States, to provide a depot necessary to maintain the Air Force;

(4) the Pacific northwest, to establish and maintain air communication with Alaska;

(5) Alaska, for training under conditions of extreme cold;

(6) the Rocky Mountain area, to provide a depot necessary to maintain the Air Force, and for training in operations from fields in high altitudes; and

(7) other regions, for the establishment of intermediate air bases to provide for transcontinental movements of the Air Force for maneuvers.

(c) In selecting sites for air bases and depots covered by this section and in determining the alteration or enlargement of existing air bases or depots, the Secretary shall consider the need—

(1) to form the nucleus for concentration of Air Force units in time of war;

(2) to permit, in time of peace, training and effective planning in each strategic area for the use and expansion of commercial, municipal, and private flying installations in time of war;

(3) to locate, in each strategic area in which it is considered necessary, adequate storage facilities for munitions and other articles necessary to facilitate the movement, concentration, maintenance, and operation of the Air Force; and

(4) to afford the maximum warning against surprise attack by enemy aircraft upon aviation of the United States and its necessary installations consistent with maintaining, in connection with existing or contemplated landing fields, the full power of the Air Force for operations necessary in the defense of the United States, and in the defense and reinforcement of the Territories, Commonwealths, possessions, and holdings.

(d) In carrying out this section, the Secretary, on behalf of the United States, may acquire title, in fee simple and free of encumbrance, to any land that he considers necessary—

(1) by accepting title without cost to the United States;

(2) by exchanging military reservations or parts thereof for that land, upon the written approval of the President; or

(3) by purchase or condemnation, if acquisition by gift or exchange is impracticable.

(e) The Secretary may, by purchase, gift, lease, or otherwise, acquire at desired locations bombing and machine gun ranges necessary for practice by, and the training of, tactical units.

(f) At each air base or depot established under this section, the Secretary shall remove or remodel existing structures as necessary; do necessary grading; and provide buildings, utilities, communication systems, landing fields and mats, roads, walks, aprons, docks, runways, facilities for the storage and distribution of ammunition, fuel, oil, necessary protection against bombs, and all appurtenances to the foregoing.

(g) The Secretary may direct the transportation of personnel, and the purchase, renovation, and transportation of material, that he considers necessary to carry out this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 588.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9773(a)	10:1343a (1st sentence).	Aug. 12, 1935, ch. 511, §§1–3, 49 Stat. 610.
9773(b)	10:1343a (2d sentence).	
9773(c)	10:1343a (less 1st and 2d sentences).	
9773(d)	10:1343b.	
9773(e)	10:1343c (last sentence).	
9773(f)	10:1343c (1st sentence).	
9773(g)	10:1343c (2d sentence).	

In subsection (a), the word ''shall'' is substituted for the words ''is authorized and directed to''. The words ''Territories, Commonwealths,'' are substituted for the word ''Alaska'' to make it clear that the section covers all territory of the United States. The words ''Air Force'' are substituted for the words ''General Headquarters Air Force and the Air Corps components of our overseas garrisons''.

In subsection (b), the words ''to provide'', ''to permit'', ''in addition'', and ''incident to the concentration of'' are omitted as surplusage.

In subsection (c), the introductory clause is substituted for 10:1343a (1st 41 words of 3d sentence). The words ''to locate'' are substituted for the words ''there shall be provided''. The words ''aviation of the United States'' are substituted for the words ''our own aviation''. The words, ''Territories, Commonwealths,'' are inserted to conform to subsection (a). The words ''The stations shall be suitably located'', ''of the set-up'', ''by responsible personnel'', ''there shall be provided'', ''General Headquarters'', ''in peace and war'', ''such close and distant * * * over land and sea'', and ''The stations and depots shall be located with a view'', and 10:1343a (4th clause of 3d sentence) are omitted as surplusage.

In subsection (d), clause (3) is substituted for 10: 1343b (last 26 words). 10:1043b (24 words before 1st proviso) is omitted as surplusage.

In subsection (f), the word ''shall'' is substituted for the words ''is further authorized and directed to''. The word ''provide'' is substituted for the words ''construct, install, and equip, or complete the construction, installation, and equipment''. The words ''technical buildings and utilities'' are omitted as covered by the words ''buildings'' and ''utilities''. The words ''sewer, water, power, station and aerodrome lighting'' are omitted as

covered by the word ''utilities''. The words ''communication systems'' are substituted for the words ''telephone and signal communications''. The words ''appurtenances to the foregoing'' are substituted for the words ''other essentials''.

[§ 9774. Repealed. Pub. L. 97–214, § 7(1), July 12, 1982, 96 Stat. 173]

Section, acts Aug. 10, 1956, ch. 1041, 70A Stat. 590; Aug. 30, 1957, Pub. L. 85–241, title IV, § 404(c), 71 Stat. 556; Aug. 10, 1959, Pub. L. 86–149, title IV, § 410(c), 73 Stat. 322; July 27, 1962, Pub. L. 87–554, title V, § 504(a), (c), 76 Stat. 239; Nov. 7, 1963, Pub. L. 88–174, title V, § 503, 77 Stat. 325; Dec. 5, 1969, Pub. L. 91–142, title V, § 510(b), 83 Stat. 312; Oct. 27, 1971, Pub. L. 92–145, title V, § 508(a), (c), 85 Stat. 408; Nov. 29, 1973, Pub. L. 93–166, title V, § 509(e), 87 Stat. 678, related to limitations on construction.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

[§ 9775. Repealed. Pub. L. 92–145, title V, § 509(b), Oct. 27, 1971, 85 Stat. 408]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 590, authorized assignment of quarters belonging to United States at an air base or other Air Force installation to officers, grade lieutenant general down to second lieutenant, 10 to 2 rooms, respectively, and prohibited other assignment where quarters existed.

§ 9776. Emergency construction: fortifications

If in an emergency the President considers it urgent, a temporary air base or fortification may be built on private land if the owner consents in writing.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 91–393, § 5, Sept. 1, 1970, 84 Stat. 835.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9776	50:178.	Apr. 11, 1898, J. Res. 21, 30 Stat. 737.

The word ''important'' is omitted as covered by the word ''urgent''. The words ''upon which such work is to be placed'' are omitted as surplusage.

AMENDMENTS

1970—Pub. L. 91–393 struck out ''In such a case, section 175 of title 50 does not apply.''

§ 9777. Permits: military reservations; landing ferries, erecting bridges, driving livestock

Whenever the Secretary of the Air Force considers that it can be done without injury to the reservation or inconvenience to the military forces stationed there, he may permit—

(1) the landing of ferries at a military reservation;

(2) the erection of bridges on a military reservation; and

(3) the driving of livestock across a military reservation.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9777	10:1348.	July 5, 1884, ch. 214, § 6, 23 Stat. 104.

The words ''may permit'' are substituted for the words ''shall have authority, in his discretion, to permit''. The words ''to permit the extension of State, county, and Territorial roads across military reservations'' are omitted as superseded by section 2668 of this title. In clause (3), the word ''livestock'' is substituted for the words ''cattle, sheep or other stock animals''.

§ 9778. Licenses: military reservations; erection and use of buildings; Young Men's Christian Association

Under such conditions as he may prescribe, the Secretary of the Air Force may issue a revocable license to the International Committee of Young Men's Christian Associations of North America to erect and maintain, on military reservations within the United States and the Territories, Commonwealths, and possessions, buildings needed by that organization for the promotion of the social, physical, intellectual, and moral welfare of the members of the Air Force on those reservations.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9778	10:1346.	May 31, 1902, ch. 943, 32 Stat. 282.

The words ''may issue'' are substituted for the words ''Authority is given to * * * in his discretion, to grant permission''. The words ''Under such conditions as he may prescribe'' are substituted for the words ''under such regulations as the Secretary of the Army may impose''. The words ''members of the Air Force'' are substituted for the word ''garrisons''. The words ''the Territories, Commonwealths, and possessions'' are substituted for the words ''or its island possessions'', for clarity.

§ 9779. Use of public property

(a) When the economy of the Air Force so requires, the Secretary of the Air Force shall establish military headquarters in places where suitable buildings are owned by the United States.

(b) No money appropriated for the support of the Air Force may be spent for base gardens or Air Force exchanges. However, this does not prevent Air Force exchanges from using public buildings or public transportation that, in the opinion of the Secretary, are not needed for other purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 99–661, div. B, title VII, § 2721, Nov. 14, 1986, 100 Stat. 4042.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9779(a)	10:1332.	June 23, 1879, ch. 35, § 8, 21 Stat. 35.
9779(b)	10:1345.	Aug. 1, 1914, ch. 223 (2d par. under ''Quartermaster Corps''), 38 Stat. 629.
9779(c)	10:1335.	

HISTORICAL AND REVISION NOTES—CONTINUED

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
		July 16, 1892, ch. 195 (last proviso under ''Quartermaster's Department''), 27 Stat. 178; June 28, 1950, ch. 383, § 402(c), 64 Stat. 272.

In subsection (a), the words ''United States'' are substituted for the word ''Government''.

In subsection (b), the words ''suitable space'' are substituted for the words ''proper and suitable room or rooms''. The words ''there is a'' are substituted for the words ''have been established''.

In subsection (c), the words ''the Secretary'' are substituted for the words ''the Quartermaster General'', since the functions which, for the Army, are assigned by statute to subordinate officers of the Army, are, for the Air Force, assigned to the Secretary.

AMENDMENTS

1986—Subsecs. (b), (c). Pub. L. 99–661 redesignated subsec. (c) as (b) and struck out former subsec. (b) which directed the Secretary to assign suitable space for postal purposes at each air base where there was a post office.

§ 9780. Acquisition of buildings in District of Columbia

(a) In time of war or when war is imminent, the Secretary of the Air Force may acquire by lease any building, or part of a building, in the District of Columbia that may be needed for military purposes.

(b) At any time, the Secretary may, for the purposes of the Department of the Air Force, requisition the use and take possession of any building or space in any building, and its appurtenances, in the District of Columbia, other than—

(1) a dwelling house occupied as such;

(2) a building occupied by any other agency of the United States; or

(3) space in such a dwelling house or building.

The Secretary shall determine, and pay out of funds appropriated for the payment of rent by the Department of the Air Force, just compensation for that use. If the amount of the compensation is not satisfactory to the person entitled to it, the Secretary shall pay 75 percent of it to that person, and the claimant is entitled to recover by action against the United States an additional amount that, when added to the amount paid by the Secretary, is determined by the court to be just compensation for that use.

(Added Pub. L. 85–861, § 1(203)(A), Sept. 2, 1958, 72 Stat. 1542.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9780(a)	40:37.	July 9, 1918, ch. 143 (3d proviso under ''Barracks and Quarters''), 40 Stat. 861.
9780(b)	40:41.	July 8, 1918, ch. 139 (2d par. under ''War Department''), 40 Stat. 826.

In subsection (a), the words ''may acquire by lease'' are substituted for the words ''is authorized, in his discretion, to rent or lease''. The word ''needed'' is substituted for the word ''required''.

In subsection (b), the words ''At any time'' are inserted for clarity. The word ''may'' is substituted for the words ''is authorized''. The word ''agency'' is substituted for the word ''branch''. Clause (3) is inserted for clarity. The word ''determine'' is substituted for the word ''ascertain''. The words ''out of funds appropriated for the payment of rent by'' are substituted for the words ''within the limits of the appropriations for rent made by any act making appropriations for''. The word ''is'' is substituted for the word ''be''. The words ''so ascertained'' and ''in the manner provided by sections 41(20) and 250 of Title 28'' are omitted as surplusage, since those sections were repealed in 1948 and replaced by sections 1346, 1491, 1496, 1501, 1503, 2401, 2402, and 2501 of that title.

§ 9781. Disposition of real property at missile sites

(a)(1) The Administrator of General Services shall dispose of the interest of the United States in any tract of real property described in paragraph (2) or in any easement held in connection with any such tract of real property only as provided in this section.

(2) The real property referred to in paragraph (1) is any tract of land (including improvements thereon) owned by the Air Force that—

(A) is not required for the needs of the Air Force and the discharge of the responsibilities of the Air Force, as determined by the Secretary of the Air Force;

(B) does not exceed 25 acres;

(C) was used by the Air Force as a site for one or more missile launch facilities, missile launch control buildings, or other facilities to support missile launch operations; and

(D) is surrounded by lands that are adjacent to such tract and that—

(i) are owned in fee simple by one owner, either individually or by more than one person jointly, in common, or by the entirety; or

(ii) are owned separately by two or more owners.

(b)(1)(A) Whenever the interest of the United States in a tract of real property or easement referred to in subsection (a) is available for disposition under this section, the Administrator shall transmit a notice of the availability of the real property or easement to each person described in subsection (a)(2)(D)(i) who owns lands adjacent to that real property or easement.

(B) The Administrator shall convey, for fair market value, the interest of the United States in a tract of land referred to in subsection (a), or in any easement in connection with such a tract of land, to any person or persons described in subsection (a)(2)(D)(i) who, with respect to such land, are ready, willing, and able to purchase such interest for the fair market value of such interest.

(2)(A) In the case of a tract of real property referred to in subsection (a) that is surrounded by adjacent lands that are owned separately by two or more owners, the Administrator shall dispose of that tract of real property in accordance with this paragraph. In disposing of the real property, the Administrator shall satisfy the requirements specified in paragraph (1) regarding notice to owners, sale at fair market value, and

the determination of the qualifications of the purchaser.

(B) The Administrator shall dispose of such a tract of real property through a sealed bid competitive sale. The Administrator shall afford an opportunity to compete to acquire the interest of the United States in the real property to all of the persons described in subsection (a)(2)(D)(ii) who own lands adjacent to that real property. The Administrator shall restrict to these persons the opportunity to compete in the sealed bid competitive sale.

(C) Subject to subparagraph (D), the Administrator shall convey the interest of the United States in the tract of real property to the highest bidder.

(D) If all of the bids received by the Administrator in the sealed bid competitive sale of the tract of real property are less than the fair market value of the real property, the Administrator shall dispose of the real property in accordance with the provisions of chapter 5 of title 40.

(c) The Administrator shall determine the fair market value of the interest of the United States to be conveyed under this section.

(d) The requirement to determine whether any tract of land described in subsection (a)(2) is excess property or surplus property under chapter 5 of title 40 before disposing of such tract shall not be applicable to the disposition of such tract under this section.

(e) The disposition of a tract of land under this section to any person shall be subject to (1) any easement retained by the Secretary of the Air Force with respect to such tract, and (2) such additional terms and conditions as the Administrator considers necessary or appropriate to protect the interests of the United States.

(f) The exact acreage and legal description of any tract of land to be conveyed under this section shall be determined in any manner that is satisfactory to the Administrator. The cost of any survey conducted for the purpose of this subsection in the case of any tract of land shall be borne by the person or persons to whom the conveyance of such tract of land is made.

(g) If any real property interest of the United States described in subsection (a) is not purchased under the procedures provided in subsections (a) through (f), such tract may be disposed of only in accordance with subtitle I of title 40 and subtitle III[1] of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

(Added Pub. L. 100–180, div. B, subdiv. 3, title II, §2325(a), Dec. 4, 1987, 101 Stat. 1220; amended Pub. L. 103–160, div. B, title XXVIII, §2851, Nov. 30, 1993, 107 Stat. 1906; Pub. L. 107–217, §3(b)(40), Aug. 21, 2002, 116 Stat. 1298.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (g), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Subtitle III of the Act probably means title III of the Act which is classified generally to subchapter IV (§251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

[1] See References in Text note below.

AMENDMENTS

2002—Subsec. (b)(2)(D). Pub. L. 107–217, §3(b)(40)(A), substituted ''chapter 5 of title 40'' for ''title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

Subsec. (d). Pub. L. 107–217, §3(b)(40)(B), substituted ''chapter 5 of title 40'' for ''title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.)''.

Subsec. (g). Pub. L. 107–217, §3(b)(40)(C), inserted ''subtitle I of title 40 and subtitle III of'' before ''the Federal Property and Administrative Services Act of 1949'' and ''(41 U.S.C. 251 et seq.)'' at end.

1993—Subsec. (a)(1). Pub. L. 103–160, §2851(a)(1), substituted ''Administrator of General Services'' for ''Secretary of the Air Force''.

Subsec. (a)(2)(D). Pub. L. 103–160, §2851(b), added subpar. (D) and struck out former subpar. (D) which read as follows: ''is surrounded by lands that are adjacent to such tract and that are owned in fee simple by one owner or by more than one owner jointly, in common, or by the entirety.''

Subsec. (b). Pub. L. 103–160, §2851(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary shall convey, for fair market value, the interest of the United States in any tract of land referred to in subsection (a) or in any easement in connection with any such tract of land to any person or persons who, with respect to such tract of land, own lands referred to in paragraph (2)(D) of such subsection and are ready, willing, and able to purchase such interest for the fair market value of such interest. Whenever such interest of the United States is available for purchase under this section, the Secretary shall transmit a notice of the availability of such interest to each such person.''

Subsec. (c). Pub. L. 103–160, §2851(a)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (e). Pub. L. 103–160, §2851(a)(3), substituted ''Secretary of the Air Force with respect to such tract, and (2) such additional terms and conditions as the Administrator'' for ''Secretary with respect to such tract, and (2) such additional terms and conditions as the Secretary''.

Subsec. (f). Pub. L. 103–160, §2851(a)(4), substituted ''Administrator'' for ''Secretary''.

§ 9782. Maintenance and repair of real property

(a) ALLOCATION OF FUNDS.—The Secretary of the Air Force shall allocate funds authorized to be appropriated by a provision described in subsection (c) and a provision described in subsection (d) for maintenance and repair of real property at military installations of the Department of the Air Force without regard to whether the installation is supported with funds authorized by a provision described in subsection (c) or (d).

(b) MIXING OF FUNDS PROHIBITED ON INDIVIDUAL PROJECTS.—The Secretary of the Air Force may not combine funds authorized to be appropriated by a provision described in subsection (c) and funds authorized to be appropriated by a provision described in subsection (d) for an individual project for maintenance and repair of real property at a military installation of the Department of the Air Force.

(c) RESEARCH, DEVELOPMENT, TEST, AND EVALUATION FUNDS.—The provision described in this subsection is a provision of a national defense authorization Act that authorizes funds to be appropriated for a fiscal year to the Air Force for research, development, test, and evaluation.

(d) OPERATION AND MAINTENANCE FUNDS.—The provision described in this subsection is a provi-

sion of a national defense authorization Act that authorizes funds to be appropriated for a fiscal year to the Air Force for operation and maintenance.

(Added Pub. L. 105–85, div. A, title II, § 242(a), Nov. 18, 1997, 111 Stat. 1666.)

§ 9783. Johnston Atoll: reimbursement for support provided to civil air carriers

(a) AUTHORITY OF THE SECRETARY.—The Secretary of the Air Force may, under regulations prescribed by the Secretary, require payment by a civil air carrier for support provided by the United States to the carrier at Johnston Atoll that is either—

(1) requested by the civil air carrier; or

(2) determined under the regulations as being necessary to accommodate the civil air carrier's use of Johnston Atoll.

(b) AMOUNT OF CHARGES.—Any amount charged an air carrier under subsection (a) for support shall be equal to the total amount of the actual costs to the United States of providing the support. The amount charged may not include any amount for an item of support that does not satisfy a condition described in paragraph (1) or (2) of subsection (a).

(c) RELATIONSHIP TO LANDING FEES.—No landing fee shall be charged an air carrier for a landing of an aircraft of the air carrier at Johnston Atoll if the air carrier is charged under subsection (a) for support provided to the air carrier.

(d) DISPOSITION OF PAYMENTS.—(1) Amounts collected from an air carrier under this section shall be credited to appropriations available for the fiscal year in which collected, as follows:

(A) For support provided by the Air Force, to appropriations available for the Air Force for operation and maintenance.

(B) For support provided by the Army, to appropriations available for the Army for chemical demilitarization.

(2) Amounts credited to an appropriation under paragraph (1) shall be merged with funds in that appropriation and shall be available, without further appropriation, for the purposes and period for which the appropriation is available.

(e) DEFINITIONS.—In this section:

(1) The term ''civil air carrier'' means an air carrier (as defined in section 40102(a)(2) of title 49) that is issued a certificate of public convenience and necessity under section 41102 of such title.

(2) The term ''support'' includes fuel, fire rescue, use of facilities, improvements necessary to accommodate use by civil air carriers, police, safety, housing, food, air traffic control, suspension of military operations on the island (including operations at the Johnston Atoll Chemical Agent Demilitarization System), repairs, and any other construction, services, or supplies.

(Added Pub. L. 106–398, § 1 [[div. A], title III, § 383(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–86; amended Pub. L. 107–107, div. A, title X, § 1048(a)(30), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (e)(1). Pub. L. 107–107 substituted ''40102(a)(2)'' for ''40101(a)(2)''.

CHAPTER 951—MILITARY CLAIMS

Sec.
9801. Definition.
9802. Admiralty claims against the United States.
9803. Admiralty claims by United States.
9804. Salvage claims by United States.
[9805. Repealed.]
9806. Settlement or compromise: final and conclusive.

AMENDMENTS

1972—Pub. L. 92–417, § 1(7), Aug. 29, 1972, 86 Stat. 655, substituted ''Admiralty claims against the United States'' for ''Damage by United States vessels; towage and salvage of United States vessels'' in item 9802.

1960—Pub. L. 86–533, § 1(7)(B), June 29, 1960, 74 Stat. 247, struck out item 9805 ''Reports to Congress''.

§ 9801. Definition

In this chapter, the term ''settle'' means consider, ascertain, adjust, determine, and dispose of a claim, whether by full or partial allowance or by disallowance.

(Aug. 10, 1956, ch. 1041, 70A Stat. 591; Pub. L. 100–180, div. A, title XII, § 1231(19)(B), Dec. 4, 1987, 101 Stat. 1161.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9801	[No source].	[No source].

The revised section is inserted for clarity, and is based on usage in the source laws for this revised chapter.

AMENDMENTS

1987—Pub. L. 100–180 inserted ''the term'' after ''In this chapter,''.

§ 9802. Admiralty claims against the United States

(a) The Secretary of the Air Force may settle or compromise an admiralty claim against the United States for—

(1) damage caused by a vessel of, or in the service of, the Department of the Air Force or by other property under the jurisdiction of the Department of the Air Force;

(2) compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the Department of the Air Force or to other property under the jurisdiction of the Department of the Air Force; or

(3) damage caused by a maritime tort committed by any agent or employee of the Department of the Air Force or by property under the jurisdiction of the Department of the Air Force.

(b) If a claim under subsection (a) is settled or compromised for $500,000 or less, the Secretary of the Air Force may pay it. If it is settled or compromised for more than $500,000, he shall certify it to Congress.

(c) In any case where the amount to be paid is not more than $100,000, the Secretary of the Air

Force may delegate his authority under subsection (a) to any person in the Department of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 92–417, §1(6), Aug. 29, 1972, 86 Stat. 655; Pub. L. 101–189, div. A, title XVI, §1633, Nov. 29, 1989, 103 Stat. 1608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9802(a)	10:1861 (less 35 words before 1st proviso, and less last proviso).	Oct. 20, 1951, ch. 524, §§1 (less 35 words before 1st proviso), 6 (as applicable to §1), 65 Stat. 572, 573.
9802(b)	10:1861 (last proviso).	
9802(c)	10:1866 (as applicable to 10:1861).	

In subsection (a), the words ''consider, ascertain, adjust, determine, compromise'' are omitted as covered by the word ''settle'', as defined in section 9801 of this title. 10:1861 (1st proviso) is omitted as unnecessary, since other applicable claims laws are restated in this title. 10:1861 (2d proviso) is omitted as surplusage.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''$100,000'' for ''$10,000''.

1972—Subsec. (a). Pub. L. 92–417 substituted ''Admiralty claims against the United States'' for ''Damage by United States vessels, towage and salvage of United States vessels'' in section catchline, in text preceding par. (1), struck out requirement that the Secretary of the Air Force discharge his functions under the direction of the Secretary of Defense, in par. (1), inserted ''or by other property under the jurisdiction of the Department of the Air Force'', in par. (2), inserted ''or to other property under the jurisdiction of the Department of the Air Force'', and added par. (3).

1965—Subsec. (c). Pub. L. 89–67 substituted ''$10,000'' for ''$1,000''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9806 of this title.

§ 9803. Admiralty claims by United States

(a) Under the direction of the Secretary of Defense, the Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for damage to property under the jurisdiction of the Department of the Air Force or property for which the Department has assumed an obligation to respond for damage, if—

(1) the claim is—

(A) of a kind that is within the admiralty jurisdiction of a district court of the United States; or

(B) for damage caused by a vessel or floating object; and

(2) the amount to be received by the United States is not more than $500,000.

(b) In exchange for payment of an amount found to be due the United States under subsection (a), the Secretary of the Air Force may execute a release of the claim on behalf of the United States. Amounts received under this section shall be covered into the Treasury.

(c) In any case where the amount to be received by the United States is not more than $100,000, the Secretary of the Air Force may delegate his authority under subsections (a) and (b) to any person in the Department of the Air Force designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Pub. L. 89–67, July 7, 1965, 79 Stat. 212; Pub. L. 101–189, div. A, title XVI, §1633, Nov. 29, 1989, 103 Stat. 1608.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9803(a)	10:1862 (1st sentence; 2d sentence, less last 32 words; and provisos of last sentence).	Oct. 20, 1951, ch. 524, §§2 (less last 32 words of 2d sentence), 6 (less applicability to §1), 65 Stat. 572, 573.
9803(b)	10:1862 (3d sentence; and last sentence, less provisos).	
9803(c)	10:1866 (less applicability to 10:1861).	

In subsection (a), the words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 9801 of this title. The words ''receive payment'' are substituted for 10:1862 (2d sentence, less last 32 words). The words ''of a kind that is within the admiralty jurisdiction'' are substituted for the words ''cognizable in admiralty''. Clause (2) is substituted for 10:1862 (last proviso of last sentence). 10:1862 (1st proviso of last sentence) is omitted as unnecessary, since other applicable claims laws are restated in this title. The words ''by contract or otherwise'' are omitted as surplusage.

In subsection (b), the words ''of the United States as miscellaneous receipts'' and ''to deliver'' are omitted as surplusage.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–189 substituted ''$100,000'' for ''$10,000''.

1965—Subsec. (c). Pub. L. 89–67 substituted ''$10,000'' for ''$1,000''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9806 of this title.

§ 9804. Salvage claims by United States

(a) The Secretary of the Air Force may settle, or compromise, and receive payment of a claim by the United States for salvage services performed by the Department of the Air Force. Amounts received under this section shall be covered into the Treasury.

(b) In any case where the amount to be received by the United States is not more than $10,000, the Secretary of the Air Force may delegate his authority under subsection (a) to any person designated by him.

(Aug. 10, 1956, ch. 1041, 70A Stat. 592; Pub. L. 92–417, §1(8), Aug. 29, 1972, 86 Stat. 655.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9804	10:1863.	Oct. 20, 1951, ch. 524, §3, 65 Stat. 573.

The words ''under this section'' are substituted for the words ''for salvage services rendered''. The words ''consider, ascertain, adjust, determine'' are omitted as covered by the word ''settle'', as defined in section 9801 of this title. The words ''and receive payment of'' are inserted for clarity and to conform to section 9803 of this title. The words ''as miscellaneous receipts'' are omitted as surplusage.

AMENDMENTS

1972—Pub. L. 92–417 designated existing provisions as subsec. (a), and in subsec. (a) as so designated, elimi-

nated the requirement that the Secretary of the Air Force discharge his functions under the direction of the Secretary of Defense, and added subsec. (b).

[§ 9805. Repealed. Pub. L. 86–533, § 1(7)(A), June 29, 1960, 74 Stat. 246]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 592, related to reports to Congress with respect to claims under sections 9802, 9803, and 9804 of this title.

§ 9806. Settlement or compromise: final and conclusive

Notwithstanding any other provision of law, upon acceptance of payment the settlement or compromise of a claim under section 9802 or 9803 of this title is final and conclusive.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9806	10:861 (35 words before 1st proviso). 10:862 (last 32 words of 2d sentence).	Oct. 20, 1951, ch. 524, §§1 (35 words before 1st proviso), 2 (last 32 words of 2d sentence), 65 Stat. 572, 573.

The words ''for all purposes'' and ''to the contrary'', in 10:1861 and 1862; ''by the claimant and not until then'', in 10:1861; and ''but not until then'', in 10:1862; are omitted as surplusage.

CHAPTER 953—ACCOUNTABILITY AND RESPONSIBILITY

Sec.
9831. Custody of departmental records and property.
9832. Property accountability: regulations.
[9833, 9835. Repealed.]
9836. Individual equipment: unauthorized disposition.
9837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members.
9838. Settlement of accounts: affidavit of squadron commander.
9839. Settlement of accounts: oaths.
9840. Final settlement of officer's accounts.
9841. Payment of small amounts to public creditors.
9842. Settlement of accounts of line officers.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title X, §1006(c)(2), Dec. 2, 2002, 116 Stat. 2633, struck out item 9835 ''Reports of survey''.

1982—Pub. L. 97–258, §2(b)(14)(A), Sept. 13, 1982, 96 Stat. 1058, added items 9841 and 9842.

1980—Pub. L. 96–513, title V, §514(22)(C), Dec. 12, 1980, 94 Stat. 2937, substituted ''remission or cancellation of indebtedness of enlisted members'' for ''deductions from pay'' in item 9837.

1962—Pub. L. 87–480, §1(5), June 8, 1962, 76 Stat. 94, struck out item 9833 ''Accountability for public money; disbursing officers; agent officers''.

§ 9831. Custody of departmental records and property

The Secretary of the Air Force has custody and charge of all books, records, papers, furniture, fixtures, and other property under the lawful control of the executive part of the Department of the Air Force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9831	5:191.	R.S. 217.

The words ''under the lawful control of the executive part of the Department of the Air Force'' are substituted for the words ''appertaining to the Department''.

§ 9832. Property accountability: regulations

The Secretary of the Air Force may prescribe regulations for the accounting for Air Force property and the fixing of responsibility for that property.

(Aug. 10, 1956, ch. 1041, 70A Stat. 593.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9832	10:1301.	Aug. 29, 1916, ch. 418 (3d proviso under ''Clothing and Camp and Garrison Equipage''), 39 Stat. 635.

The word ''supplies'' is omitted as covered by the word ''property''.

[§ 9833. Repealed. Pub. L. 87–480, § 1(4), June 8, 1962, 76 Stat. 94]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 593, related to accountability of Air Force officers for public money. See section 2773 of this title.

[§ 9835. Repealed. Pub. L. 107–314, div. A, title X, § 1006(c)(1), Dec. 2, 2002, 116 Stat. 2633]

Section, act Aug. 10, 1956, ch. 1041, 70A Stat. 593, related to action upon reports of surveys and vouchers pertaining to the loss, spoilage, unserviceability, unsuitability, or destruction of or damage to property of the United States under the control of the Department of the Air Force.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to loss, spoilage, unserviceability, unsuitability, or destruction of, or damage to, property of United States under control of Department of Defense occurring on or after effective date of regulations prescribed pursuant to section 2787 of this title, see section 1006(d) of Pub. L. 107–314, set out as an Effective date note under section 2787 of this title.

§ 9836. Individual equipment: unauthorized disposition

(a) No enlisted member of the Air Force may sell, lend, pledge, barter, or give any clothing, arms, or equipment furnished him by the United States to any person other than a member of the Air Force, or an officer of the United States, authorized to receive it.

(b) If a member of the Air Force has disposed of property in violation of subsection (a) and it is in the possession of a person who is neither a member of the Air Force, nor an officer of the United States, authorized to receive it, that person has no right to or interest in the property, and any civil or military officer of the United States may seize it, wherever found. Possession of such property furnished by the United States to a member of the Air Force, by a person who

is neither a member of the Air Force nor an officer of the United States, is prima facie evidence that it has been disposed of in violation of subsection (a).

(c) If an officer who seizes property under subsection (b) is not authorized to retain it for the United States, he shall deliver it to a person who is authorized to retain it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 594.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9836(a)	10:1316 (words before semicolon of 1st sentence). 10:1317 (words before semicolon of 1st sentence).	R.S. 1242. R.S. 3748.
9836(b)	10:1316 (less words before semicolon, and less last 16 words of 1st sentence). 10:1317 (less words before semicolon of 1st sentence and less last 16 words of last sentence).	
9836(c)	10:1316 (last 16 words of 1st sentence). 10:1317 (last 16 words of last sentence).	

In subsection (a), the word ''equipment'' is substituted for the words ''military outfits, and accouterments'', in 10:1316 and 1317. The word ''exchanged'' is omitted as surplusage. The last 22 words are inserted to reflect various provisions authorizing transfer of the enumerated items of property.

In subsections (a) and (b), the words ''enlisted member'' and ''member'' are substituted for the word ''soldier'', in 10:1316 and 1317.

In subsection (b), the first 16 words of the first sentence are inserted for clarity. The words ''authorized to receive it'' are substituted for the words ''duly authorized'', in 10:1316. The words ''such property furnished by the United States'' are substituted for the words ''any such clothes, arms, military outfits, or accouterments'', in 10:1316.

In subsection (c), the first 19 words are inserted for clarity. The words ''person who is authorized to retain it'' are substituted for the words ''quartermaster [,] or other officer authorized to receive the same'', in 10:1316 and 1317.

§ 9837. Settlement of accounts: remission or cancellation of indebtedness of enlisted members

If he considers it in the best interest of the United States, the Secretary may have remitted or cancelled any part of an enlisted member's indebtedness to the United States or any of its instrumentalities remaining unpaid before, or at the time of, that member's honorable discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 594; Pub. L. 85–861, § 33(a)(45), Sept. 2, 1958, 72 Stat. 1567; Pub. L. 87–649, § 14c(58), Sept. 7, 1962, 76 Stat. 502; Pub. L. 96–513, title V, § 514(22)(A), (B), Dec. 12, 1980, 94 Stat. 2936.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9837(a)	10:875. 10:875b.	R.S. 1300. R.S. 1301.
9837(b)	10:875a (less 3d and last provisos).	May 22, 1928, ch. 676, 45 Stat. 698; June 26, 1934, ch. 751, 48 Stat. 1222.
9837(c)	10:875a (last proviso).	
9837(d)	10:875a (3d proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9837(e)	10:871.	R.S. 1303.
9837(f)	10:872.	R.S. 1304.
9837(g)	10:875c.	R.S. 1299.

In subsection (a), the words ''sold to the member on credit under section 9621(a)(1) of this title'' are substituted for the words ''articles designated by the inspectors general of the Army, and sold to him on credit by officers of the Quartermaster Corps'', in 10:875. The words ''at cost prices'' are omitted to reflect section 9623 of this title.

In subsection (b), the last sentence is substituted for 10:875a (1st and 2d provisos). The words ''on current payrolls'' are omitted as surplusage.

In subsection (c), the words ''Subject to subsection (b)'' are substituted for the words ''in the proportions hereinbefore indicated''.

In subsection (d), the words ''If he considers it in the best interests of the United States'' are substituted for the words ''when in his opinion the interests of the Government are best served by such action''. The words ''before, or at the time of'' are substituted for the words ''either on * * * or prior thereto''.

In subsection (e), the words ''member'' and ''his'' are substituted for the words ''officer or soldier''. The words ''or implement'' are omitted as surplusage.

In subsection (f), the words ''or if an article of military supply with whose issue a commissioned officer is charged is damaged'' are substituted for 10:872 (last sentence). The words ''that he was not at fault'' are substituted for the words ''that said deficiency [such damage] was not occasioned by any fault on his part''.

In subsection (g), the words ''bought on credit under section 9621(a)(1) of this title'' are substituted for the words ''designated by the officers of the Inspector-General's Department of the Army and purchased on credit from commissaries of subsistence''.

1958 ACT

The change [in subsec. (b)] reflects the opinion of the Judge Advocate General of the Air Force (June 10, 1957) that the term ''rate of pay'', as used in the source law for section 9837(b) (Act of May 22, 1928, ch. 676 (45 Stat. 698), as amended), included special pay and incentive pay.

The change [in subsec. (f)] reflects the opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense (July 19, 1957), that section 1304, Revised Statutes (formerly 10 U.S.C. 872), the source law for this section, applied to warrant officers as well as to commissioned officers.

AMENDMENTS

1980—Pub. L. 96–513 substituted ''remission or cancellation of indebtedness of enlisted members'' for ''deductions from pay'' in section catchline, and struck out designation ''(d)'' before ''If he''.

1962—Pub. L. 87–649 repealed subsecs. (a) to (c) and (e) to (g) which related to deductions from pay. See subsecs. (b) to (g) of section 1007 of Title 37, Pay and Allowances of the Uniformed Services.

1958—Subsec. (b). Pub. L. 85–861, § 33(a)(45)(A), substituted ''his pay for that month'' for ''his basic pay for that month''.

Subsec. (f). Pub. L. 85–861, § 33(a)(45)(B), substituted ''an officer'' for ''a commissioned officer'' in two places.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective on Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as a note preced-

ing section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 5514.

§ 9838. Settlement of accounts: affidavit of squadron commander

In the settlement of the accounts of the commanding officer of a squadron for clothing and other military supplies, his affidavit may be received to show—

(1) that vouchers or squadron books were lost;

(2) anything tending to prove that any apparent deficiency of those articles was caused by unavoidable accident, or by loss in actual service without his fault; or

(3) that all or part of the clothing and supplies was properly used.

The affidavit may be used as evidence of the facts set forth, with or without other evidence, as determined by the Secretary of the Air Force to be just and proper under the circumstances.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9838	10:1302.	R.S. 225 (less 1st sentence); added Feb. 27, 1877, ch. 69 (3d par.), 19 Stat. 241.

The word ''anything'' is substituted for the words ''any matter or circumstance''. The words ''properly used'' are substituted for the words ''legally used and appropriated''. The words ''of the case'' are omitted as surplusage.

§ 9839. Settlement of accounts: oaths

The Secretary of the Air Force may detail any employee of the Department of the Air Force to administer oaths required by law in the settlement of an officer's accounts for clothing and other military supplies. An oath administered under this section shall be without expense to the person to whom it is administered.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9839	10:1303.	R.S. 225 (1st sentence).

The words ''and other military supplies'' are substituted for the words ''camp and garrison equipage, quartermaster's stores, and ordnance'' to conform to section 9838 of this title. The words ''person to whom administered'' are substituted for the words ''parties taking them.'' The words ''for the purpose of'' are omitted as surplusage.

§ 9840. Final settlement of officer's accounts

Before final payment upon discharge may be made to an officer of the Air Force who has been accountable or responsible for public property, he must obtain a certificate of nonindebtedness to the United States from each officer to whom he was accountable or responsible for property. He must also make an affidavit, certified by his commanding officer to be correct, that he is not accountable or responsible for property to any other officer. An officer who has not been responsible for public property must make an affidavit of that fact, certified by his commanding officer. Compliance with this section warrants the final payment of the officer concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 595.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9840	10:878.	Jan. 12, 1899, ch. 46, § 2, 30 Stat. 784.

The words ''Before final payment upon discharge may be made'' are substituted for the words ''shall warrant their final payment''. The words ''at any time'' are omitted as surplusage. The word ''must'' is substituted for the words ''shall be required * * * to''. The words ''He must also make'' are substituted for the words ''accompanied by''. The words ''from each officer to whom he was accountable or responsible for property'' are substituted for the words ''from only such of the bureaus of the Department of the Army to which the property for which they were accountable or responsible pertains'', since the Air Force does not have organic bureaus created by statute. The words ''that he is not accountable or responsible for property to any other officer'' are substituted for the words ''accompanied by the affidavits of officers, of nonaccountability, or nonresponsibility to other bureaus of the Department of the Army'' for the same reason. The reference to certificates from the General Accounting Office is omitted as obsolete. The last sentence is substituted for 10:878 (last 18 words). The last proviso of section 2 of the Act of January 12, 1899, ch. 46, 30 Stat. 784, is not contained in 10:878. It is also omitted from the revised section, since it related to authority of mustering officers to administer oaths, and the general authority to administer oaths is now contained in section 936 of this title (article 136 of the Uniform Code of Military Justice).

§ 9841. Payment of small amounts to public creditors

When authorized by the Secretary of the Air Force, a disbursing official of Air Force subsistence funds may keep a limited amount of those funds in the personal possession and at the risk of the disbursing official to pay small amounts to public creditors.

(Added Pub. L. 97–258, § 2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9841	31:493.	Mar. 2, 1907, ch. 2511 (proviso on p. 1166), 34 Stat. 1166.

The words ''Secretary of the Air Force'' are substituted for ''Secretary of War'' because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and sections 1 and 53 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 157, 488, 676). For comparable provisions that apply to the Army, see the revision note for 10:4841.

§ 9842. Settlement of accounts of line officers

The Comptroller General shall settle the account of a line officer of the Air Force for pay due the officer even if the officer cannot account for property entrusted to the officer or cannot make a monthly report or return, when the Comptroller General is satisfied that the inability to account for property or make a report or return was the result of the officer having been a prisoner, or of an accident or casualty of war.

(Added Pub. L. 97–258, § 2(b)(14)(B), Sept. 13, 1982, 96 Stat. 1058.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
9842	31:44 (1st sentence).	June 10, 1921, ch. 18, § 304 (1st par. 1st sentence), 42 Stat. 24.
	31:95.	R.S. § 278.

The section is made applicable to the Air Force by section 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 502). For comparable provisions that apply to the Army, see the revision note for 10:4842.

Subtitle E—Reserve Components

PART I—ORGANIZATION AND ADMINISTRATION

Chap. Sec.
1001. Definitions 10001
1003. Reserve Components Generally 10101
1005. Elements of Reserve Components .. 10141
1006. Reserve Component Commands 10171
1007. Administration of Reserve Components 10201
1009. Reserve Forces Policy Boards and Committees 10301
1011. National Guard Bureau 10501
1013. Budget Information and Annual Reports to Congress 10541

PART II—PERSONNEL GENERALLY

1201. Authorized Strengths and Distribution in Grade 12001
1203. Enlisted Members 12101
1205. Appointment of Reserve Officers 12201
1207. Warrant Officers 12241
1209. Active Duty 12301
1211. National Guard Members in Federal Service 12401
1213. Special Appointments, Assignments, Details, and Duties 12501
1214. Ready Reserve Mobilization Income Insurance 12521
1215. Miscellaneous Prohibitions and Penalties 12551
1217. Miscellaneous Rights and Benefits 12601
1219. Standards and Procedures for Retention and Promotion 12641
1221. Separation 12681
1223. Retired Pay for Non-Regular Service 12731
1225. Retired Grade 12771

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

1401. Applicability and Reserve Active-Status Lists 14001
1403. Selection Boards 14101
1405. Promotions 14301
1407. Failure of Selection for Promotion and Involuntary Separation 14501
1409. Continuation of Officers on the Reserve-Active Status List and Selective Early Removal 14701
1411. Additional Provisions Relating to Involuntary Separation 14901

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

1601. Training Generally. [No present sections]
1606. Educational Assistance for Members of the Selected Reserve 16131
1608. Health Professions Stipend Program 16201
1609. Education Loan Repayment Programs 16301
1611. Other Educational Assistance Programs 16401

PART V—SERVICE, SUPPLY, AND PROCUREMENT

1801. Issue of Serviceable Material to Reserve Components. [No present sections]
1803. Facilities for Reserve Components 18231
1805. Miscellaneous Provisions 18501

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 551(a)(2), Oct. 5, 1999, 113 Stat. 614, added item for chapter 1611.

1997—Pub. L. 105–85, div. A, title V, § 515(b), Nov. 18, 1997, 111 Stat. 1733, substituted ''12551'' for ''[No present sections]'' in item for chapter 1215.

1996—Pub. L. 104–201, div. A, title XII, § 1211(a)(2), Sept. 23, 1996, 110 Stat. 2691, added item for chapter 1006.

Pub. L. 104–106, div. A, title V, § 512(a)(2), title XV, § 1501(b)(1), Feb. 10, 1996, 110 Stat. 305, 495, added item for chapter 1214 and substituted ''Repayment Programs'' for ''Repayments'' in item for chapter 1609.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1406 of this title.

PART I—ORGANIZATION AND ADMINISTRATION

Chap. Sec.
1001. Definitions 10001
1003. Reserve Components Generally 10101
1005. Elements of Reserve Components 10141
1006. Reserve Component Commands 10171
1007. Administration of Reserve Components 10201
1009. Reserve Forces Policy Boards and Committees 10301
1011. National Guard Bureau 10501
1013. Budget Information and Annual Reports to Congress 10541

AMENDMENTS

1996—Pub. L. 104–201, div. A, title XII, § 1211(a)(2), Sept. 23, 1996, 110 Stat. 2691, added item for chapter 1006.

CHAPTER 1001—DEFINITIONS

Sec.
10001. Definition of State.

§ 10001. Definition of State

In this subtitle, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2969.)

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–106, div. A, title XV, § 1501(f)(2), Feb. 10, 1996, 110 Stat. 501, as amended by Pub. L. 105–85, div. A, title X, § 1073(d)(1)(E)(ii), Nov. 18, 1997, 111 Stat. 1905, provided that: ''The amendments made by sections 1672(a), 1673(a) (with respect to chapters 541 and 549), 1673(b)(2), 1673(b)(4), 1674(a), and 1674(b)(7) of the Reserve Officer Personnel Management Act [Pub. L. 103–337, amending the tables of chapters for subtitle B, part II of subtitle B, subtitle C, part II of subtitle C, subtitle D, and part II of subtitle D of this title and the tables of sections for chapters 539, 573, and 861 of this title] shall take effect on the effective date specified in section 1691(b)(1) of the Reserve Officer Personnel Management Act [set out as a note below] (notwithstanding section 1691(a) of such Act [set out as a note below]).''

EFFECTIVE DATE

Section 1691 of title XVI of div. A of Pub. L. 103–337 provided that:

''(a) EFFECTIVE DATE FOR AMENDMENTS.—Except as provided in subsection (b), the amendment made by section 1611 [enacting heading and analysis of this subtitle and enacting part III of this subtitle] and the amendments made by subtitles C and D [subtitles C (§§ 1661 to 1665) and D (§§ 1671 to 1677) of title XVI of div. A of Pub. L. 103–337, see Tables for classification] shall take effect on December 1, 1994.

''(b) EFFECTIVE DATE FOR NEW RESERVE OFFICER PERSONNEL POLICIES.—(1) The provisions of part III of subtitle E of title 10, United States Code, as added by section 1611, shall become effective on October 1, 1996. The amendments made by part II [part II (§§ 1621 to 1630) of subtitle A of title XVI of div. A of Pub. L. 103–337, see Tables for classification], of subtitle A, by subtitle B [subtitle B (§§ 1631 to 1641) of title XVI of div. A of Pub. L. 103–337, see Tables for classification], and by section 1671(c)(2) [amending section 113 of this title] and paragraphs (2), (3)(B), (3)(C), and (4) of section 1675(d) [amending sections 12645 to 12647 of this title] shall take effect on October 1, 1996.

''(2) Any reference in subtitle E of this title to the effective date of this title is a reference to the effective date prescribed in paragraph (1).

''(3) The personnel policies applicable to Reserve officers under the provisions of law in effect on the day before the date prescribed in subsection (a) and replaced by the Reserve officer personnel policies prescribed in part III of subtitle E of title 10, United States Code, as added by section 1611, shall, notwithstanding the provisions of subsection (a), continue in effect until the effective date prescribed in paragraph (1).

''(4) The authority to prescribe regulations under the provisions of part III of subtitle E of title 10, United States Code, as added by section 1611, shall take effect on the date of the enactment of this Act [Oct. 5, 1994].''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–201, div. A, title XII, § 1201, Sept. 23, 1996, 110 Stat. 2689, provided that: ''This title [enacting chapter 1006 and sections 5143, 5144, and 10543 of this title, amending sections 113, 641, 3038, 8038, and 10216 of this title and section 404 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under this section and sections 10171 and 10543 of this title, and repealing provisions set out as a note under section 3074 of this title] may be cited as the 'Reserve Forces Revitalization Act of 1996'.''

SHORT TITLE

Section 1601 of title XVI of div. A of Pub. L. 103–337 provided that: ''This title [see Tables for classification] may be cited as the 'Reserve Officer Personnel Management Act'.''

CONGRESSIONAL STATEMENT OF PURPOSE

Pub. L. 104–201, div. A, title XII, § 1202, Sept. 23, 1996, 110 Stat. 2689, provided that: ''The purpose of this title [see Short Title of 1996 Amendment note above] is to revise the basic statutory authorities governing the organization and administration of the reserve components of the Armed Forces in order to recognize the realities of reserve component partnership in the Total Force and to better prepare the American citizen-soldier, sailor, airman, and Marine in time of peace for duties in war.''

PRESERVATION OF SUSPENDED STATUS OF LAWS SUSPENDED ON SEPTEMBER 30, 1996

Section 1692 of title XVI of div. A of Pub. L. 103–337 provided that: ''If a provision of law that is in a suspended status on the day before the effective date of this title under section 1691(b)(1) [set out above] is transferred or amended by this title [see Tables for classification], the suspended status of that provision is not affected by that transfer or amendment.''

PRESERVATION OF PRE-EXISTING RIGHTS, DUTIES, PENALTIES, AND PROCEEDINGS

Section 1693 of title XVI of div. A of Pub. L. 103–337 provided that: ''Except as otherwise provided in this title [see Tables for classification], the provisions of this title and the amendments made by this title do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this title under section 1691(b)(1) [set out above].''

CHAPTER 1003—RESERVE COMPONENTS GENERALLY

Sec.
10101. Reserve components named.
10102. Purpose of reserve components.
10103. Basic policy for order into Federal service.
10104. Army Reserve: composition.
10105. Army National Guard of the United States: composition.
10106. Army National Guard: when a component of the Army.
10107. Army National Guard of the United States: status when not in Federal service.
10108. Naval Reserve: administration.
10109. Marine Corps Reserve: administration.
10110. Air Force Reserve: composition.
10111. Air National Guard of the United States: composition.
10112. Air National Guard: when a component of the Air Force.
10113. Air National Guard of the United States: status when not in Federal service.
10114. Coast Guard Reserve.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(2)(B), Feb. 10, 1996, 110 Stat. 495, substituted ''into Federal service'' for ''of National Guard into Federal service'' in item 10103.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 261 of this title.

§ 10101. Reserve components named

The reserve components of the armed forces are:

(1) The Army National Guard of the United States.

(2) The Army Reserve.

(3) The Naval Reserve.

(4) The Marine Corps Reserve.

(5) The Air National Guard of the United States.

(6) The Air Force Reserve.

(7) The Coast Guard Reserve.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 261(a) of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PAY OF ADMINISTRATION, TRAINING, AND SUPPLY MAINTENANCE TECHNICIANS FOR ARMY RESERVE CONTINGENT UPON RESERVE STATUS

Pub. L. 104–61, title VIII, §8016, Dec. 1, 1995, 109 Stat. 654, provided that none of the funds appropriated for Department of Defense during and after fiscal year 1996 were to be obligated for pay of any individual who was initially employed after Dec. 1, 1995, as technician in administration and training of Army Reserve and maintenance and repair of supplies issued to Army Reserve unless such individual was also military member of Army Reserve troop program unit that he or she was employed to support, prior to repeal by Pub. L. 105–85, div. A, title V, §522(e), Nov. 18, 1997, 111 Stat. 1735.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8015, Sept. 30, 1994, 108 Stat. 2620.

Pub. L. 103–139, title VIII, §8016, Nov. 11, 1993, 107 Stat. 1440.

Pub. L. 102–396, title IX, §9019, Oct. 6, 1992, 106 Stat. 1904.

Pub. L. 102–172, title VIII, §8018, Nov. 26, 1991, 105 Stat. 1175.

Pub. L. 101–511, title VIII, §8018, Nov. 5, 1990, 104 Stat. 1878.

Pub. L. 101–165, title IX, §9027, Nov. 21, 1989, 103 Stat. 1135.

Pub. L. 100–463, title VIII, §8045, Oct. 1, 1988, 102 Stat. 2270–25.

Pub. L. 100–202, §101(b) [title VIII, §8055], Dec. 22, 1987, 101 Stat. 1329–43, 1329–72.

Pub. L. 99–500, §101(c) [title IX, §9054], Oct. 18, 1986, 100 Stat. 1783–82, 1783–111, and Pub. L. 99–591, §101(c) [title IX, §9054], Oct. 30, 1986, 100 Stat. 3341–82, 3341–111.

Pub. L. 99–190, §101(b) [title VIII, §8059], Dec. 19, 1985, 99 Stat. 1185, 1212.

Pub. L. 98–473, title I, §101(h) [title VIII, §8076], Oct. 12, 1984, 98 Stat. 1904, 1938.

Pub. L. 98–212, title VII, §783, Dec. 8, 1983, 97 Stat. 1453.

RETENTION IN ACTIVE STATUS OF NATIONAL GUARD OR RESERVE TECHNICIANS UNTIL AGE SIXTY

Pub. L. 104–61, title VIII, §8017, Dec. 1, 1995, 109 Stat. 655, provided that: ''Notwithstanding any other provision of law, during the current fiscal year and hereafter, the Secretaries of the Army and Air Force may authorize the retention in an active status until age sixty of any person who would otherwise be removed from an active status and who is employed as a National Guard or Reserve technician in a position in which active status in a reserve component of the Army or Air Force is required as a condition of that employment.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 103–335, title VIII, §8016, Sept. 30, 1994, 108 Stat. 2620.

Pub. L. 103–139, title VIII, §8018, Nov. 11, 1993, 107 Stat. 1441.

Pub. L. 102–396, title IX, §9022, Oct. 6, 1992, 106 Stat. 1905.

Pub. L. 102–172, title VIII, §8022, Nov. 26, 1991, 105 Stat. 1176.

Pub. L. 101–511, title VIII, §8022, Nov. 5, 1990, 104 Stat. 1879.

Pub. L. 101–165, title IX, §9032, Nov. 21, 1989, 103 Stat. 1136.

Pub. L. 100–463, title VIII, §8052, Oct. 1, 1988, 102 Stat. 2270–26.

Pub. L. 100–202, §101(b) [title VIII, §8064], Dec. 22, 1987, 101 Stat. 1329–43, 1329–73.

Pub. L. 99–500, §101(c) [title IX, §9063], Oct. 18, 1986, 100 Stat. 1783–82, 1783–112, and Pub. L. 99–591, §101(c) [title IX, §9063], Oct. 30, 1986, 100 Stat. 3341–82, 3341–112.

Pub. L. 99–190, §101(b) [title VIII, §8073], Dec. 19, 1985, 99 Stat. 1185, 1214.

Pub. L. 98–473, title I, §101(h) [title VIII, §8106], Oct. 12, 1984, 98 Stat. 1904, 1943.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title; title 5 sections 6323, 8456; title 20 sections 1078, 1087dd; title 26 section 219; title 42 section 12639.

§10102. Purpose of reserve components

The purpose of each reserve component is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever, during and after the period needed to procure and train additional units and qualified persons to achieve the planned mobilization, more units and persons are needed than are in the regular components.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 262 of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

§10103. Basic policy for order into Federal service

Whenever Congress determines that more units and organizations are needed for the national security than are in the regular components of the ground and air forces, the Army National Guard of the United States and the Air National Guard of the United States, or such parts of them as are needed, together with units of other reserve components necessary for a balanced force, shall be ordered to active duty and retained as long as so needed.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970; amended Pub. L. 104–106, div. A, title XV, §1501(b)(2)(A), Feb. 10, 1996, 110 Stat. 495.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 263 of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''into Federal service'' for ''of the National Guard and reserve components to active duty'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

ORDERING READY RESERVE TO ACTIVE DUTY DURING NATIONAL EMERGENCIES

For additional provisions authorizing ordering of Ready Reserve to active duty during national emergencies, see section 12303 of this title and notes thereunder.

§ 10104. Army Reserve: composition

The Army Reserve includes all Reserves of the Army who are not members of the Army National Guard of the United States.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3076 of this title, prior to repeal by Pub. L. 103–337, §1661(a)(3)(A).

§ 10105. Army National Guard of the United States: composition

The Army National Guard of the United States is the reserve component of the Army that consists of—

(1) federally recognized units and organizations of the Army National Guard; and

(2) members of the Army National Guard who are also Reserves of the Army.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3077 of this title, prior to repeal by Pub. L. 103–337, §1661(a)(3)(A).

ACTIVE COMPONENT SUPPORT FOR RESERVE TRAINING

Pub. L. 103–160, div. A, title V, §515, Nov. 30, 1993, 107 Stat. 1650, provided that:

''(a) REQUIREMENT TO ESTABLISH.—The Secretary of the Army shall, not later than September 30, 1995, establish one or more active-component units of the Army with the primary mission of providing training support to reserve units. Each such unit shall be part of the active Army force structure and shall have a commander who is on the active-duty list of the Army.

''(b) IMPLEMENTATION PLAN.—The Secretary of the Army shall during fiscal year 1994 submit to the Committees on Armed Services of the Senate and House of Representatives a plan to meet the requirement in subsection (a). The plan shall include a proposal for any statutory changes that the Secretary considers to be necessary for the implementation of the plan.''

TEST PROGRAM FOR RESERVE COMBAT MANEUVER UNIT INTEGRATION

Pub. L. 103–160, div. A, title V, §516, Nov. 30, 1993, 107 Stat. 1650, directed Secretary of the Army to prepare a plan for carrying out a test program to determine feasibility and advisability of applying the roundout and roundup models for integration of active and reserve component Army units at the battalion and company levels and submit to Congress not later than Mar. 31, 1994, a report that includes the plan for the test program.

ARMY NATIONAL GUARD COMBAT READINESS REFORM

Pub. L. 102–484, div. A, title XI, Oct. 23, 1992, 106 Stat. 2536, as amended by Pub. L. 103–35, title II, §202(a)(11), May 31, 1993, 107 Stat. 101; Pub. L. 103–160, div. A, title V, §520, Nov. 30, 1993, 107 Stat. 1651; Pub. L. 103–337, div. A, title V, §516, Oct. 5, 1994, 108 Stat. 2754; Pub. L. 104–106, div. A, title V, §§514, 515, title VII, §704(b), Feb. 10, 1996, 110 Stat. 307, 308, 372, provided that:

''SEC. 1101. SHORT TITLE.

''This title may be cited as the 'Army National Guard Combat Readiness Reform Act of 1992'.

''Subtitle A—Deployability Enhancements

''SEC. 1111. PRIOR ACTIVE-DUTY PERSONNEL.

''(a) ADDITIONAL PRIOR ACTIVE DUTY OFFICERS.—The Secretary of the Army shall increase the number of qualified prior active-duty officers in the Army National Guard by providing a program that permits the separation of officers on active duty with at least two, but less than three, years of active service upon condition that the officer is accepted for appointment in the Army National Guard. The Secretary shall have a goal of having not fewer than 150 officers become members of the Army National Guard each year under this section.

''(b) ADDITIONAL PRIOR ACTIVE DUTY ENLISTED MEMBERS.—The Secretary of the Army shall increase the number of qualified prior active-duty enlisted members in the Army National Guard through the use of enlistments as described in section 8020 of the Department of Defense Appropriations Act, 1994 (Public Law 103–139) [107 Stat. 1441]. The Secretary shall enlist not fewer than 1,000 new enlisted members each year under enlistments described in that section.

''(c) QUALIFIED PRIOR ACTIVE-DUTY PERSONNEL.—For purposes of this section, qualified prior active-duty personnel are members of the Army National Guard with not less than two years of active duty.

''SEC. 1112. SERVICE IN SELECTED RESERVE IN LIEU OF ACTIVE-DUTY SERVICE.

''(a) ACADEMY GRADUATES AND DISTINGUISHED ROTC GRADUATES TO SERVE IN SELECTED RESERVE FOR PERIOD OF ACTIVE-DUTY SERVICE OBLIGATION NOT SERVED ON ACTIVE DUTY.—(1) An officer who is a graduate of one of the service academies or who was commissioned as a distinguished Reserve Officers' Training Corps graduate and who is permitted to be released from active duty before the completion of the active-duty service obligation applicable to that officer shall serve the remaining period of such active-duty service obligation as a member of the Selected Reserve.

''(2) The Secretary concerned may waive paragraph (1) in a case in which the Secretary determines that there is no unit position available for the officer.

''(b) ROTC GRADUATES.—The Secretary of the Army shall provide a program under which graduates of the Reserve Officers' Training Corps program may perform their minimum period of obligated service by a combination of (A) two years of active duty, and (B) such additional period of service as is necessary to complete the remainder of such obligation, to be served in the Selected Reserve.

''SEC. 1113. REVIEW OF OFFICER PROMOTIONS BY COMMANDER OF ASSOCIATED ACTIVE DUTY UNIT.

''(a) REVIEW.—Whenever an officer in an Army Selected Reserve unit as defined in subsection (b) is recommended for a unit vacancy promotion to a grade above first lieutenant, the recommended promotion

shall be reviewed by the commander of the active duty unit associated with the Selected Reserve unit of that officer or another active-duty officer designated by the Secretary of the Army. The commander or other active-duty officer designated by the Secretary of the Army shall provide to the promoting authority, through the promotion board convened by the promotion authority to consider unit vacancy promotion candidates, before the promotion is made, a recommendation of concurrence or nonconcurrence in the promotion. The recommendation shall be provided to the promoting authority within 60 days after receipt of notice of the recommended promotion.

''(b) COVERAGE OF SELECTED RESERVE COMBAT AND EARLY DEPLOYING UNITS.—(1) Subsection (a) applies to officers in all units of the Selected Reserve that are designated as combat units or that are designated for deployment within 75 days of mobilization.

''(2) Subsection (a) shall take effect with respect to officers of the Army Reserve, and with respect to officers of the Army National Guard in units not subject to subsection (a) as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 1996 [Feb. 10, 1996], at the end of the 90-day period beginning on such date of enactment.

''(c) REPORT ON FEASIBILITY.—The Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report, not later than March 1, 1993, containing a plan for implementation of subsection (a). The Secretary may include with the report such proposals for legislation to clarify, improve, or modify the provisions of subsection (a) in order to better carry out the purposes of those provisions as the Secretary considers appropriate.

''SEC. 1114. NONCOMMISSIONED OFFICER EDUCATION REQUIREMENTS.

''(a) NONWAIVABILITY.—Any standard prescribed by the Secretary of the Army establishing a military education requirement for noncommissioned officers that must be met as a requirement for promotion to a higher noncommissioned officer grade may be waived only if the Secretary determines that the waiver is necessary in order to preserve unit leadership continuity under combat conditions.

''(b) AVAILABILITY OF TRAINING POSITIONS.—The Secretary of the Army shall ensure that there are sufficient training positions available to enable compliance with subsection (a).

''SEC. 1115. INITIAL ENTRY TRAINING AND NONDEPLOYABLE PERSONNEL ACCOUNT.

''(a) ESTABLISHMENT OF PERSONNEL ACCOUNT.—The Secretary of the Army shall establish a personnel accounting category for members of the Army Selected Reserve to be used for categorizing members of the Selected Reserve who have not completed the minimum training required for deployment or who are otherwise not available for deployment. The account shall be designed so that it is compatible with the decentralized personnel systems of the Army Guard and Reserve. The account shall be used for the reporting of personnel readiness and may not be used as a factor in establishing the level of Army Guard and Reserve force structure.

''(b) USE OF ACCOUNT.—Until a member of the Army Selected Reserve has completed the minimum training necessary for deployment, the member may not be assigned to fill a position in a Selected Reserve unit but shall be carried in the account established under subsection (a).

''(c) TIME FOR QUALIFICATION FOR DEPLOYMENT.—(1) If at the end of 24 months after a member of the Army Selected Reserve enters the Army Selected Reserve, the member has not completed the minimum training required for deployment, the member shall be discharged.

''(2) The Secretary of the Army may waive the requirement in paragraph (1) in the case of health care providers and in other cases determined necessary. The authority to make such a waiver may not be delegated.

''SEC. 1116. MINIMUM PHYSICAL DEPLOYABILITY STANDARDS.

''The Secretary of the Army shall transfer the personnel classification of a member of the Army Selected Reserve from the Selected Reserve unit of the member to the personnel account established pursuant to section 1115 if the member does not meet minimum physical profile standards required for deployment. Any such transfer shall be made not later than 90 days after the date on which the determination that the member does not meet such standards is made.

''[SECS. 1117, 1118. Repealed. Pub. L. 104–106, div. A, title VII, §704(b), Feb. 10, 1996, 110 Stat. 372.]

''SEC. 1119. COMBAT UNIT TRAINING.

''The Secretary of the Army shall establish a program to minimize the post-mobilization training time required for combat units of the Army National Guard. The program shall require—

''(1) that unit premobilization training emphasize—

''(A) individual soldier qualification and training;

''(B) collective training and qualification at the crew, section, team, and squad level; and

''(C) maneuver training at the platoon level as required of all Army units; and

''(2) that combat training for command and staff leadership include annual multi-echelon training to develop battalion, brigade, and division level skills, as appropriate.

''SEC. 1120. USE OF COMBAT SIMULATORS.

''The Secretary of the Army shall expand the use of simulations, simulators, and advanced training devices and technologies in order to increase training opportunities for members and units of the Army National Guard and the Army Reserve.

''Subtitle B—Assessment of National Guard Capability

''SEC. 1121. DEPLOYABILITY RATING SYSTEM.

''The Secretary of the Army shall modify the readiness rating system for units of the Army Reserve and Army National Guard to ensure that the rating system provides an accurate assessment of the deployability of a unit and those shortfalls of a unit that require the provision of additional resources. In making such modifications, the Secretary shall ensure that the unit readiness rating system is designed so—

''(1) that the personnel readiness rating of a unit reflects—

''(A) both the percentage of the overall personnel requirement of the unit that is manned and deployable and the fill and deployability rate for critical occupational specialties necessary for the unit to carry out its basic mission requirements; and

''(B) the number of personnel in the unit who are qualified in their primary military occupational specialty; and

''(2) that the equipment readiness assessment of a unit—

''(A) documents all equipment required for deployment;

''(B) reflects only that equipment that is directly possessed by the unit;

''(C) specifies the effect of substitute items; and

''(D) assesses the effect of missing components and sets on the readiness of major equipments items.

''SEC. 1122. INSPECTIONS.

''[Amended section 105 of Title 32, National Guard.]

''Subtitle C—Compatibility of Guard Units With Active Component Units

''SEC. 1131. ACTIVE DUTY ASSOCIATE UNIT RESPONSIBILITY.

''(a) ASSOCIATE UNITS.—The Secretary of the Army shall require—

''(1) that each ground combat maneuver brigade of the Army National Guard that (as determined by the

Secretary) is essential for the execution of the National Military Strategy be associated with an active-duty combat unit; and

''(2) that combat support and combat service support units of the Army Selected Reserve that (as determined by the Secretary) are essential for the execution of the National Military Strategy be associated with active-duty units.

''(b) RESPONSIBILITIES.—The commander (at a brigade or higher level) of the associated active duty unit for any National Guard unit or Army Selected Reserve unit that (as determined by the Secretary under subsection (a)) is essential for the execution of the National Military Strategy shall be responsible for—

''(1) approving the training program of that unit;

''(2) reviewing the readiness report of that unit;

''(3) assessing the manpower, equipment, and training resources requirements of that unit; and

''(4) validating, not less often than annually, the compatibility of that unit with the active duty forces.

''(c) IMPLEMENTATION.—The Secretary of the Army shall begin to implement subsection (a) during fiscal year 1993 and shall achieve full implementation of the plan not later than October 1, 1995.

''SEC. 1132. TRAINING COMPATIBILITY.

''[Amended section 414(c) of Pub. L. 102–190, set out as a note under section 12001 of this title.]

''SEC. 1133. SYSTEMS COMPATIBILITY.

''(a) COMPATIBILITY PROGRAM.—The Secretary of the Army shall develop and implement a program to ensure that Army personnel systems, Army supply systems, Army maintenance management systems, and Army finance systems are compatible across all Army components.

''(b) REPORT.—Not later than September 30, 1993, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report describing the program under subsection (a) and setting forth a plan for implementation of the program by the end of fiscal year 1997.

''SEC. 1134. EQUIPMENT COMPATIBILITY.

''[Amended section 115b(b) [now 10541(b)] of this title.]

''SEC. 1135. DEPLOYMENT PLANNING REFORM.

''(a) REQUIREMENT FOR PRIORITY SYSTEM.—The Secretary of the Army shall develop a system for identifying the priority for mobilization of Army reserve component units. The priority system shall be based on regional contingency planning requirements and doctrine to be integrated into the Army war planning process.

''(b) UNIT DEPLOYMENT DESIGNATORS.—The system shall include the use of Unit Deployment Designators to specify the post-mobilization training days allocated to a unit before deployment. The Secretary shall specify standard designator categories in order to group units according to the timing of deployment after mobilization.

''(c) USE OF DESIGNATORS.—(1) The Secretary shall establish procedures to link the Unit Deployment Designator system to the process by which resources are provided for National Guard units.

''(2) The Secretary shall develop a plan that allocates greater funding for training, full-time support, equipment, and manpower in excess of 100 percent of authorized strength to units assigned Unit Deployment Designators that allow fewer post-mobilization training days.

''(3) The Secretary shall establish procedures to identify the command level at which combat units would, upon deployment, be integrated with active component forces consistent with the Unit Deployment Designator system.

''SEC. 1136. QUALIFICATION FOR PRIOR-SERVICE ENLISTMENT BONUS.

''[Amended section 308i(c) of Title 37, Pay and Allowances of the Uniformed Services.]

''SEC. 1137. STUDY OF IMPLEMENTATION FOR ALL RESERVE COMPONENTS.

''The Secretary of Defense shall conduct an assessment of the feasibility of implementing the provisions of this title for all reserve components. Not later than December 31, 1993, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing a plan for such implementation.''

§ 10106. Army National Guard: when a component of the Army

The Army National Guard while in the service of the United States is a component of the Army.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2970.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3078 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10107. Army National Guard of the United States: status when not in Federal service

When not on active duty, members of the Army National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Army National Guard.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3079 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10108. Naval Reserve: administration

(a) The Naval Reserve is the reserve component of the Navy. It shall be organized, administered, trained, and supplied under the direction of the Chief of Naval Operations.

(b) The bureaus and offices of the executive part of the Department of the Navy have the same relation and responsibility to the Naval Reserve as they do to the Regular Navy.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5251(a), (b) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10109. Marine Corps Reserve: administration

(a) The Marine Corps Reserve is the reserve component of the Marine Corps. It shall be organized, administered, trained, and supplied under the direction of the Commandant of the Marine Corps.

(b) The departments and offices of Headquarters, Marine Corps have the same relation and responsibilities to the Marine Corps Reserve as they do to the Regular Marine Corps.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5252(a), (b) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10110. Air Force Reserve: composition

The Air Force Reserve is a reserve component of the Air Force to provide a reserve for active

duty. It consists of the members of the officers' section of the Air Force Reserve and of the enlisted section of the Air Force Reserve. It includes all Reserves of the Air Force who are not members of the Air National Guard of the United States.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8076 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10111. Air National Guard of the United States: composition

The Air National Guard of the United States is the reserve component of the Air Force that consists of—

(1) federally recognized units and organizations of the Air National Guard; and

(2) members of the Air National Guard who are also Reserves of the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8077 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10112. Air National Guard: when a component of the Air Force

The Air National Guard while in the service of the United States is a component of the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8078 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10113. Air National Guard of the United States: status when not in Federal service

When not on active duty, members of the Air National Guard of the United States shall be administered, armed, equipped, and trained in their status as members of the Air National Guard.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 8079 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10114. Coast Guard Reserve

As provided in section 701 of title 14, the Coast Guard Reserve is a component of the Coast Guard and is organized, administered, trained, and supplied under the direction of the Commandant of the Coast Guard. Laws applicable to the Coast Guard Reserve are set forth in chapter 21 of title 14 (14 U.S.C. 701 et seq.).

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2971.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

CHAPTER 1005—ELEMENTS OF RESERVE COMPONENTS

Sec.
10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories.
10142. Ready Reserve.
10143. Ready Reserve: Selected Reserve.
10144. Ready Reserve: Individual Ready Reserve.
10145. Ready Reserve: placement in.
10146. Ready Reserve: transfer from.
10147. Ready Reserve: training requirements.
10148. Ready Reserve: failure to satisfactorily perform prescribed training.
10149. Ready Reserve: continuous screening.
10150. Ready Reserve: transfer back from Standby Reserve.
10151. Standby Reserve: composition.
10152. Standby Reserve: inactive status list.
10153. Standby Reserve: status of members.
10154. Retired Reserve.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(3), Feb. 10, 1996, 110 Stat. 496, struck out ''generally'' after ''Reserve'' in item 10142.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 261 of this title.

§ 10141. Ready Reserve; Standby Reserve; Retired Reserve: placement and status of members; training categories

(a) There are in each armed force a Ready Reserve, a Standby Reserve, and a Retired Reserve. Each Reserve shall be placed in one of those categories.

(b) Reserves who are on the inactive status list of a reserve component, or who are assigned to the inactive Army National Guard or the inactive Air National Guard, are in an inactive status. Members in the Retired Reserve are in a retired status. All other Reserves are in an active status.

(c) As prescribed by the Secretary concerned, each reserve component except the Army National Guard of the United States and the Air National Guard of the United States shall be divided into training categories according to the degrees of training, including the number and duration of drills or equivalent duties to be completed in stated periods. The designation of training categories shall be the same for all armed forces and the same within the Ready Reserve and the Standby Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 267 and 2001 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A), (3)(A).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title.

§ 10142. Ready Reserve

(a) The Ready Reserve consists of units or Reserves, or both, liable for active duty as provided in sections 12301 and 12302 of this title.

(b) The authorized strength of the Ready Reserve is 2,900,000.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 268(a) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10143. Ready Reserve: Selected Reserve

(a) Within the Ready Reserve of each of the reserve components there is a Selected Reserve. The Selected Reserve consists of units, and, as designated by the Secretary concerned, of Reserves, trained as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32, as appropriate.

(b) The organization and unit structure of the Selected Reserve shall be approved—

(1) in the case of all reserve components other than the Coast Guard Reserve, by the Secretary of Defense based upon recommendations from the military departments as approved by the Chairman of the Joint Chiefs of Staff in accordance with contingency and war plans; and

(2) in the case of the Coast Guard Reserve, by the Secretary of Homeland Security upon the recommendation of the Commandant of the Coast Guard.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2972; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 268(b), (c) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

AMENDMENTS

2002—Subsec. (b)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12304, 16133 of this title; title 38 sections 2301, 3002, 3012, 3701.

§ 10144. Ready Reserve: Individual Ready Reserve

(a) Within the Ready Reserve of each of the reserve components there is an Individual Ready Reserve. The Individual Ready Reserve consists of those members of the Ready Reserve who are not in the Selected Reserve or the inactive National Guard.

(b)(1) Within the Individual Ready Reserve of each reserve component there is a category of members, as designated by the Secretary concerned, who are subject to being ordered to active duty involuntarily in accordance with section 12304 of this title. A member may not be placed in that mobilization category unless—

(A) the member volunteers for that category; and

(B) the member is selected for that category by the Secretary concerned, based upon the needs of the service and the grade and military skills of that member.

(2) A member of the Individual Ready Reserve may not be carried in such mobilization category of members after the end of the 24-month period beginning on the date of the separation of the member from active service.

(3) The Secretary shall designate the grades and military skills or specialities of members to be eligible for placement in such mobilization category.

(4) A member in such mobilization category shall be eligible for benefits (other than pay and training) as are normally available to members of the Selected Reserve, as determined by the Secretary of Defense.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 105–85, div. A, title V, § 511(a), Nov. 18, 1997, 111 Stat. 1728.)

AMENDMENTS

1997—Pub. L. 105–85 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1076a, 12304 of this title.

§ 10145. Ready Reserve: placement in

(a) Each person required under law to serve in a reserve component shall, upon becoming a member, be placed in the Ready Reserve of his armed force for his prescribed term of service, unless he is transferred to the Standby Reserve under section 10146(a) of this title.

(b) The units and members of the Army National Guard of the United States and of the Air National Guard of the United States are in the Ready Reserve of the Army and the Ready Reserve of the Air Force, respectively.

(c) All Reserves assigned to units organized to serve as units and designated as units in the Ready Reserve are in the Ready Reserve.

(d) Under such regulations as the Secretary concerned may prescribe, any qualified member of a reserve component or any qualified retired enlisted member of a regular component may, upon his request, be placed in the Ready Reserve. However, a member of the Retired Reserve entitled to retired pay or a retired enlisted member of a regular component may not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the Ready Reserve are

indispensable. The Secretary concerned may not delegate his authority under the preceding sentence.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 269(a)–(d) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10147 of this title.

§ 10146. Ready Reserve: transfer from

(a) Subject to subsection (c) and under regulations prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a member in the Ready Reserve may be transferred to the Standby Reserve.

(b) A Reserve who is qualified and so requests may be transferred to the Retired Reserve under regulations prescribed by the Secretary concerned and, in the case of the Secretary of a military department, approved by the Secretary of Defense.

(c) A member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve only with the consent of the governor or other appropriate authority of the State.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 269(e)–(g) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10145 of this title.

§ 10147. Ready Reserve: training requirements

(a) Except as specifically provided in regulations to be prescribed by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, each person who is enlisted, inducted, or appointed in an armed force, and who becomes a member of the Ready Reserve under any provision of law except section 513 or 10145(b) of this title, shall be required, while in the Ready Reserve, to—

(1) participate in at least 48 scheduled drills or training periods during each year and serve on active duty for training of not less than 14 days (exclusive of traveltime) during each year; or

(2) serve on active duty for training not more than 30 days during each year.

(b) A member who has served on active duty for one year or longer may not be required to perform a period of active duty for training if the first day of that period falls during the last 120 days of the member's required membership in the Ready Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2973; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 270(a) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation'' in introductory provisions.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

Section 1661(a)(5)(A) of Pub. L. 103–337 provided that: ''Section 10147(a) [10 U.S.C. 10147(a)], as added by paragraph (1), applies only to persons who were inducted, enlisted, or appointed in an armed force after August 9, 1955.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1063, 10143, 10148 of this title; title 5 section 5517; title 14 section 712; title 38 section 4312; title 50 App. section 456.

§ 10148. Ready Reserve: failure to satisfactorily perform prescribed training

(a) A member of the Ready Reserve covered by section 10147 of this title who fails in any year to perform satisfactorily the training duty prescribed in that section, as determined by the Secretary concerned under regulations prescribed by the Secretary of Defense, may be ordered without his consent to perform additional active duty for training for not more than 45 days. If the failure occurs during the last year of his required membership in the Ready Reserve, his membership is extended until he performs that additional active duty for training, but not for more than six months.

(b) A member of the Army National Guard of the United States or the Air National Guard of the United States who fails in any year to perform satisfactorily the training duty prescribed by or under law for members of the Army National Guard or the Air National Guard, as the case may be, as determined by the Secretary concerned, may, upon the request of the Governor of the State (or, in the case of the District of Columbia, the commanding general of the

District of Columbia National Guard) be ordered, without his consent, to perform additional active duty for training for not more than 45 days. A member ordered to active duty under this subsection shall be ordered to duty as a Reserve of the Army or as a Reserve of the Air Force, as the case may be.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 270(b), (c) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

Section 1661(a)(5)(B) of Pub. L. 103–337 provided that: ''Section 10148(b) [10 U.S.C. 10148(b)], as added by paragraph (1), applies only to persons who became members of the Army National Guard of the United States or the Air National Guard of the United States after October 4, 1961.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1201 of this title.

§ 10149. Ready Reserve: continuous screening

(a) Under regulations to be prescribed by the President, the Secretary concerned shall provide a system of continuous screening of units and members of the Ready Reserve to ensure the following:

(1) That there will be no significant attrition of those members or units during a mobilization.

(2) That there is a proper balance of military skills.

(3) That except for those with military skills for which there is an overriding requirement, members having critical civilian skills are not retained in numbers beyond the need for those skills.

(4) That with due regard to national security and military requirements, recognition will be given to participation in combat.

(5) That members whose mobilization in an emergency would result in an extreme personal or community hardship are not retained in the Ready Reserve.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Ready Reserve who is designated as a member not to be retained in the Ready Reserve as a result of screening under subsection (a) shall, as appropriate, be—

(1) transferred to the Standby Reserve;

(2) discharged; or

(3) if the member is eligible and applies therefor, transferred to the Retired Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2974; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 271 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EX. ORD. NO. 11190. SCREENING OF READY RESERVE

Ex. Ord. No. 11190, Dec. 29, 1964, 29 F.R. 19183, as amended by Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 13286, § 67, Feb. 28, 2003, 68 F.R. 10630, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States and Commander in Chief of the Armed Forces of the United States, it is ordered as follows:

SECTION 1. There is delegated to the Secretary of Defense (and to the Secretary of Homeland Security with regard to the United States Coast Guard) the authority vested in the President by section 271 [see 10149] of title 10 of the United States Code to prescribe regulations for the screening of units and members of the Ready Reserve of the Armed Forces.

SEC. 2. Executive Order No. 10651 of January 6, 1956, is revoked.

§ 10150. Ready Reserve: transfer back from Standby Reserve

Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a member of the Standby Reserve who has not completed his required period of service in the Ready Reserve may be transferred to the Ready Reserve when the reason for his transfer to the Standby Reserve no longer exists.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 272 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 10151. Standby Reserve: composition

The Standby Reserve consists of those units or members, or both, of the reserve components, other than those in the Ready Reserve or Retired Reserve, who are liable for active duty only as provided in sections 12301 and 12306 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 273(a) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10152. Standby Reserve: inactive status list

An inactive status list shall be maintained in the Standby Reserve. Whenever an authority designated by the Secretary concerned considers that it is in the best interest of the armed force concerned, a member in the Standby Reserve who is not required to remain a Reserve, and who cannot participate in prescribed training, may, if qualified, be transferred to the inactive status list under regulations to be prescribed by the Secretary concerned. These regulations shall fix the conditions under which such a member is entitled to be returned to an active status.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 273(b) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10153. Standby Reserve: status of members

While in an inactive status, a Reserve is not eligible for pay or promotion and (as provided in section 12734(a) of this title) does not accrue credit for years of service under chapter 1223 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 273(c) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10154. Retired Reserve

The Retired Reserve consists of the following Reserves:

(1) Reserves who are or have been retired under section 3911, 6323, or 8911 of this title or under section 291 of title 14.

(2) Reserves who have been transferred to the Retired Reserve, retain their status as Reserves, and are otherwise qualified.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2975; amended Pub. L. 107–107, div. A, title V, § 517(a), Dec. 28, 2001, 115 Stat. 1094.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 274 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

AMENDMENTS

2001—Par. (2). Pub. L. 107–107 struck out ''upon their request'' after ''Retired Reserve''.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 517(g), Dec. 28, 2001, 115 Stat. 1096, provided that: ''The amendments made by this section [enacting sections 12108 and 12244 of this title and amending this section and sections 14513 to 14515 of this title] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 28, 2001].

AUTHORITY TO ISSUE MILITARY IDENTIFICATION CARDS TO SO-CALLED HONORARY RETIREES OF THE NAVAL AND MARINE CORPS RESERVES

Section 377 of Pub. L. 103–337, as amended by Pub. L. 104–106, div. A, title XV, § 1501(d)(1), Feb. 10, 1996, 110 Stat. 500; Pub. L. 105–85, div. A, title X, § 1073(d)(1)(E)(i), Nov. 18, 1997, 111 Stat. 1905, provided that:

''(a) AUTHORITY.—The Secretary of the Navy may issue a military identification card to a member of the Retired Reserve described in subsection (b).

''(b) COVERED MEMBERS.—A member of the Retired Reserve referred to in subsection (a) is a member of the Naval Reserve or Marine Corps Reserve who transferred to the Retired Reserve under section 274(2) [see 10154(2)] of title 10, United States Code, without having completed the years of service required under section 1331(a)(2) [see 12731(a)(2)] of such title for eligibility for retired pay under chapter 67 [see 1223] of such title or who after November 30, 1994, transferred to the Retired Reserve under section 10154(2) of title 10, United States Code, without having completed the years of service required under section 12731(a)(2) of such title for eligibility for retired pay under chapter 1223 of such title.

''(c) EFFECT ON COMMISSARY AND EXCHANGE BENEFITS.—The issuance of a military identification card under subsection (a) to a member of the Retired Reserve does not confer eligibility for commissary and exchange benefits on that member.

''(d) LIMITATION ON COLOR AND FORMAT.—The Secretary shall ensure that the color and format in which a military identification card is issued under subsection (a) is not similar to the color and format in which a military identification card is issued by the Department of Defense to individuals other than members described in subsection (b).''

CHAPTER 1006—RESERVE COMPONENT COMMANDS

Sec.
10171. United States Army Reserve Command.
10172. Naval Reserve Force.
10173. Marine Forces Reserve.
10174. Air Force Reserve Command.

§ 10171. United States Army Reserve Command

(a) COMMAND.—The United States Army Reserve Command is a separate command of the Army commanded by the Chief of Army Reserve.

(b) CHAIN OF COMMAND.—Except as otherwise prescribed by the Secretary of Defense, the Secretary of the Army shall prescribe the chain of command for the United States Army Reserve Command.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Army—

(1) shall assign to the United States Army Reserve Command all forces of the Army Reserve in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Army specified in section 3013 of this title, shall assign all such forces of the Army Reserve to the commander of the United States Atlantic Command.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689.)

IMPLEMENTATION SCHEDULE FOR RESERVE COMPONENT COMMANDS

Section 1211(c) of Pub. L. 104–201 provided that: ''Implementation of chapter 1006 of title 10, United States Code, as added by subsection (a), shall begin not later than 90 days after the date of the enactment of this Act [Sept. 23, 1996] and shall be completed not later than one year after such date.''

§ 10172. Naval Reserve Force

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Navy, with the advice and assistance of the Chief of Naval Operations, shall establish a Naval Reserve Force. The Naval Reserve Force shall be operated as a separate command of the Navy.

(b) COMMANDER.—The Chief of Naval Reserve shall be the commander of the Naval Reserve Force. The commander of the Naval Reserve Force reports directly to the Chief of Naval Operations.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Navy—

(1) shall assign to the Naval Reserve Force specified portions of the Naval Reserve other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands all such forces assigned to the Naval Reserve Force under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2689.)

§ 10173. Marine Forces Reserve

(a) ESTABLISHMENT.—The Secretary of the Navy, with the advice and assistance of the Commandant of the Marine Corps, shall establish in the Marine Corps a command known as the Marine Forces Reserve.

(b) COMMANDER.—The Marine Forces Reserve is commanded by the Commander, Marine Forces Reserve. The Commander, Marine Forces Reserve, reports directly to the Commandant of the Marine Corps.

(c) ASSIGNMENT OF FORCES.—The Commandant of the Marine Corps—

(1) shall assign to the Marine Forces Reserve the forces of the Marine Corps Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Navy specified in section 5013 of this title, shall assign to the combatant commands (through the Marine Corps component commander for each such command) all such forces assigned to the Marine Forces Reserve under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

§ 10174. Air Force Reserve Command

(a) ESTABLISHMENT OF COMMAND.—The Secretary of the Air Force, with the advice and assistance of the Chief of Staff of the Air Force, shall establish an Air Force Reserve Command. The Air Force Reserve Command shall be operated as a separate command of the Air Force.

(b) COMMANDER.—The Chief of Air Force Reserve is the Commander of the Air Force Reserve Command. The commander of the Air Force Reserve Command reports directly to the Chief of Staff of the Air Force.

(c) ASSIGNMENT OF FORCES.—The Secretary of the Air Force—

(1) shall assign to the Air Force Reserve Command all forces of the Air Force Reserve stationed in the continental United States other than forces assigned to the unified combatant command for special operations forces established pursuant to section 167 of this title; and

(2) except as otherwise directed by the Secretary of Defense in the case of forces assigned to carry out functions of the Secretary of the Air Force specified in section 8013 of this title, shall assign to the combatant commands all such forces assigned to the Air Force Reserve Command under paragraph (1) in the manner specified by the Secretary of Defense.

(Added Pub. L. 104–201, div. A, title XII, § 1211(a)(1), Sept. 23, 1996, 110 Stat. 2690.)

CHAPTER 1007—ADMINISTRATION OF RESERVE COMPONENTS

Sec.
10201. Assistant Secretary of Defense for Reserve Affairs.
10202. Regulations.
10203. Reserve affairs: designation of general or flag officer of each armed force.
10204. Personnel records.
10205. Members of Ready Reserve: requirement of notification of change of status.
10206. Members: periodic physical examinations.
10207. Mobilization forces: maintenance.
10208. Annual mobilization exercise.
10209. Regular and reserve components: discrimination prohibited.
10210. Dissemination of information.
10211. Policies and regulations: participation of Reserve officers in preparation and administration.
10212. Gratuitous services of officers: authority to accept.
10213. Reserve components: dual membership prohibited.
10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard.
10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status.
10216. Military technicians (dual status).
10217. Non-dual status technicians.
10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, §§ 522(a)(2), 523(b), Oct. 5, 1999, 113 Stat. 597, 598, struck out ''military'' after ''status'' in item 10217 and added item 10218.

1997—Pub. L. 105–85, div. A, title V, §§ 522(h)(2), 523(a)(2), Nov. 18, 1997, 111 Stat. 1736, 1737, inserted ''(dual status)'' after ''technicians'' in item 10216 and added item 10217.

1996—Pub. L. 104–106, div. A, title V, § 513(c)(2), title XV, § 1501(b)(4), Feb. 10, 1996, 110 Stat. 306, 496, struck out ''Individual'' after ''Members of'' in item 10205, substituted ''Reserve'' for ''reserve'' in item 10211, and added item 10216.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 261 of this title.

§ 10201. Assistant Secretary of Defense for Reserve Affairs

As provided in section 138(b)(2) of this title, the official in the Department of Defense with responsibility for overall supervision of reserve component affairs of the Department of Defense is the Assistant Secretary of Defense for Reserve Affairs.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2976; amended Pub. L. 104–106, div. A, title IX, §903(f)(4), Feb. 10, 1996, 110 Stat. 402; Pub. L. 104–201, div. A, title IX, §901, Sept. 23, 1996, 110 Stat. 2617.)

AMENDMENTS

1996—Pub. L. 104–106, §903(a), (f)(4), which directed that this section be amended, eff. Jan. 31, 1997, to read ''The official in the Department of Defense with responsibility for overall supervision of reserve component affairs of the Department of Defense is the official designated by the Secretary of Defense to have that responsibility.'', was repealed by Pub. L. 104–201.

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 261 of this title.

§ 10202. Regulations

(a) Subject to standards, policies, and procedures prescribed by the Secretary of Defense, the Secretary of each military department shall prescribe such regulations as the Secretary considers necessary to carry out provisions of law relating to the reserve components under the Secretary's jurisdiction.

(b) The Secretary of Homeland Security, with the concurrence of the Secretary of the Navy, shall prescribe such regulations as the Secretary considers necessary to carry out all provisions of law relating to the reserve components insofar as they relate to the Coast Guard, except when the Coast Guard is operating as a service in the Navy.

(c) So far as practicable, regulations for all reserve components shall be uniform.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2976; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 280 of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 10203. Reserve affairs: designation of general or flag officer of each armed force

(a) The Secretary of the Army may designate a general officer of the Army to be directly responsible for reserve affairs to the Chief of Staff of the Army.

(b) The Secretary of the Navy may designate a flag officer of the Navy to be directly responsible for reserve affairs to the Chief of Naval Operations and a general officer of the Marine Corps to be directly responsible for reserve affairs to the Commandant of the Marine Corps.

(c) The Secretary of the Air Force may designate a general officer of the Air Force to be directly responsible for reserve affairs to the Chief of Staff of the Air Force.

(d) The Secretary of Homeland Security may designate a flag officer of the Coast Guard to be directly responsible for reserve affairs to the Commandant of the Coast Guard.

(e) This section does not affect the functions of the Chief of the National Guard Bureau, the Chief of Army Reserve, or the Chief of Air Force Reserve.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2976; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 264(a) of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 10204. Personnel records

(a) The Secretary concerned shall maintain adequate and current personnel records of each member of the reserve components under the Secretary's jurisdiction showing the following with respect to the member:

(1) Physical condition.
(2) Dependency status.
(3) Military qualifications.
(4) Civilian occupational skills.
(5) Availability for service.
(6) Such other information as the Secretary concerned may prescribe.

(b) Under regulations to be prescribed by the Secretary of Defense, the Secretary of each military department shall maintain a record of the number of members of each class of each reserve component who, during each fiscal year, have participated satisfactorily in active duty for training and inactive duty training with pay.

(Added Pub. L. 103–337, div. A, title XVI, §1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 275 of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

§ 10205. Members of Ready Reserve: requirement of notification of change of status

(a) Each member of the Ready Reserve shall notify the Secretary concerned of any change in the member's address, marital status, number of dependents, or civilian employment and of any change in the member's physical condition that would prevent the member from meeting the physical or mental standards prescribed for the member's armed force.

(b) This section shall be administered under regulations prescribed by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977; amended Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 652 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

§ 10206. Members: periodic physical examinations

(a) Each member of the Selected Reserve who is not on active duty shall—

(1) be examined as to the member's physical fitness every five years, or more often as the Secretary concerned considers necessary; and

(2) execute and submit annually to the Secretary concerned a certificate of physical condition.

(b) A member of the Individual Ready Reserve or inactive National Guard shall be examined for physical fitness as necessary to determine the member's physical fitness for—

(1) military duty or promotion;

(2) attendance at a school of the armed forces; or

(3) other action related to career progression.

(c) Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually to the Secretary concerned a certificate of physical condition.

(d) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977; amended Pub. L. 107–107, div. A, title V, § 516, Dec. 28, 2001, 115 Stat. 1094.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1004(a), (b) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(4)(A).

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, § 516(a)(1), (2), substituted ''Selected Reserve'' for ''Ready Reserve'' in introductory provisions and redesignated concluding provisions as subsec. (c).

Subsec. (a)(1). Pub. L. 107–107, § 516(b), substituted ''the member's physical fitness'' for ''his physical fitness''.

Subsec. (b). Pub. L. 107–107, § 516(a)(4), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 107–107, § 516(a)(2), redesignated concluding provisions of subsec. (a) as (c).

Subsec. (d). Pub. L. 107–107, § 516(a)(3), redesignated subsec. (b) as (d).

§ 10207. Mobilization forces: maintenance

(a) Whenever units or members of the reserve components are ordered to active duty (other than for training) during a period of partial mobilization, the Secretary concerned shall continue to maintain mobilization forces by planning and budgeting for the continued organization and training of the reserve components not mobilized, and make the fullest practicable use of the Federal facilities vacated by mobilized units, consistent with approved joint mobilization plans.

(b) In this section, the term ''partial mobilization'' means the mobilization resulting from action by Congress or the President, under any law, to bring units of any reserve component, and members not assigned to units organized to serve as units, to active duty for a limited expansion of the active armed forces.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2977.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 276 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10208. Annual mobilization exercise

(a) The Secretary of Defense shall conduct at least one major mobilization exercise each year. The exercise should be as comprehensive and as realistic as possible and should include the participation of associated active component and reserve component units.

(b) The Secretary shall maintain a plan to test periodically each active component and reserve component unit based in the United States and all interactions of such units, as well as the sustainment of the forces mobilized as part of the exercise, with the objective of permitting an evaluation of the adequacy of resource allocation and planning.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 98–525, title V, § 552(e), Oct. 19, 1984, 98 Stat. 2531, which was set out in a note under section 12001 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(B).

§ 10209. Regular and reserve components: discrimination prohibited

Laws applying to both Regulars and Reserves shall be administered without discrimination—

(1) among Regulars;
(2) among Reserves; and
(3) between Regulars and Reserves.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 277 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10210. Dissemination of information

The Secretary of Defense shall require the complete and current dissemination, to all Reserves and to the public, of information of interest to the reserve components.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 278 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10211. Policies and regulations: participation of Reserve officers in preparation and administration

Within such numbers and in such grades and assignments as the Secretary concerned may prescribe, each armed force shall have officers of its reserve components on active duty (other than for training) at the seat of government, and at headquarters responsible for reserve affairs, to participate in preparing and administering the policies and regulations affecting those reserve components. While so serving, such an officer is an additional number of any staff with which he is serving.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 265 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 12011, 12012 of this title.

§ 10212. Gratuitous services of officers: authority to accept

(a) Notwithstanding section 1342 of title 31, the Secretary of Defense may accept the gratuitous services of an officer of a reserve component (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States) in consultation upon matters relating to the armed forces.

(b) Notwithstanding section 1342 of title 31, the Secretary of a military department may accept the gratuitous services of an officer of a reserve component under the Secretary's jurisdiction (other than an officer of the Army National Guard of the United States or the Air National Guard of the United States)—

(1) in the furtherance of the enrollment, organization, and training of that officer's reserve component or the Reserve Officers' Training Corps; or

(2) in consultation upon matters relating to the armed forces.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2978; amended Pub. L. 103–355, title III, § 3021(a), Oct. 13, 1994, 108 Stat. 3333.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 279 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A), and in sections 4541 and 9541 of this title, prior to repeal by Pub. L. 103–160, § 822(d)(2).

AMENDMENTS

1994—Pub. L. 103–355 added subsec. (a) and designated existing provisions as subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 3021(b) of Pub. L. 103–355 provided that: ''Notwithstanding section 10001 [set out as a note under section 251 of Title 41, Public Contracts], the amendments made by subsection (a) [amending this section] shall take effect on December 1, 1994, immediately after the amendments made by the Reserve Officer Personnel Management Act [Pub. L. 103–337, see Tables for classification].''

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 10213. Reserve components: dual membership prohibited

Except as otherwise provided in this title, no person may be a member of more than one reserve component at the same time.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 261(b) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14317 of this title.

§ 10214. Adjutants general and assistant adjutants general: reference to other officers of National Guard

In any case in which, under the laws of a State, an officer of the National Guard of that jurisdiction, other than the adjutant general or an assistant adjutant general, normally performs the duties of that office, the references in sections 12004(b)(1), 12215, 12642(c), 14507(b), 14508(e), and 14512 of this title to the adjutant general or the assistant adjutant general shall be applied to that officer instead of to the adjutant general or assistant adjutant general.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 281 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(2)(A).

§ 10215. Officers of Army National Guard of the United States and Air National Guard of the United States: authority with respect to Federal status

(a)(1) Officers of the Army National Guard of the United States who are not on active duty—

(A) may order members of the Army National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Air Force, may order members of the Air National Guard of the United States to active duty for training under that section.

(2) Officers of the Air National Guard of the United States who are not on active duty—

(A) may order members of the Air National Guard of the United States to active duty for training under section 12301(d) of this title; and

(B) with the approval of the Secretary of the Army, may order members of the Army National Guard of the United States to active duty for training under that section.

(b) Officers of the Army National Guard of the United States or the Air National Guard of the United States who are not on active duty—

(1) may enlist, reenlist, or extend the enlistments of persons as Reserves of the Army or Reserves of the Air Force for service in the Army National Guard of the United States or the Air National Guard of the United States, as the case may be; and

(2) with respect to their Federal status, may promote or discharge persons enlisted or reenlisted as Reserves of the Army or Reserves of the Air Force for that service.

(c) This section shall be carried out under regulations prescribed by the Secretary of the Army, with respect to matters concerning the Army, and by the Secretary of the Air Force, with respect to matters concerning the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(a)(1), Oct. 5, 1994, 108 Stat. 2979.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3080 and 8080 of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

§ 10216. Military technicians (dual status)

(a) IN GENERAL.—(1) For purposes of this section and any other provision of law, a military technician (dual status) is a Federal civilian employee who—

(A) is employed under section 3101 of title 5 or section 709(b) of title 32;

(B) is required as a condition of that employment to maintain membership in the Selected Reserve; and

(C) is assigned to a civilian position as a technician in the administration and training of the Selected Reserve or in the maintenance and repair of supplies or equipment issued to the Selected Reserve or the armed forces.

(2) Military technicians (dual status) shall be authorized and accounted for as a separate category of civilian employees.

(b) PRIORITY FOR MANAGEMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) As a basis for making the annual request to Congress pursuant to section 115(g) of this title for authorization of end strengths for military technicians (dual status) of the Army and Air Force reserve components, the Secretary of Defense shall give priority to supporting authorizations for military technicians (dual status) in the following high-priority units and organizations:

(A) Units of the Selected Reserve that are scheduled to deploy no later than 90 days after mobilization.

(B) Units of the Selected Reserve that are or will deploy to relieve active duty peacetime operations tempo.

(C) Those organizations with the primary mission of providing direct support surface and aviation maintenance for the reserve components of the Army and Air Force, to the extent that the military technicians (dual status) in such units would mobilize and deploy in a skill that is compatible with their civilian position skill.

(2) For each fiscal year, the Secretary of Defense shall, for the high-priority units and organizations referred to in paragraph (1), seek to achieve a programmed manning level for military technicians (dual status) that is not less than 90 percent of the programmed manpower structure for those units and organizations for military technicians (dual status) for that fiscal year.

(3) Military technician (dual status) authorizations and personnel shall be exempt from any requirement (imposed by law or otherwise) for reductions in Department of Defense civilian personnel and shall only be reduced as part of military force structure reductions.

(c) INFORMATION REQUIRED TO BE SUBMITTED WITH ANNUAL END STRENGTH AUTHORIZATION REQUEST.—(1) The Secretary of Defense shall include as part of the budget justification documents submitted to Congress with the budget of the Department of Defense for any fiscal year the following information with respect to the end strengths for military technicians (dual status) requested in that budget pursuant to section 115(g) of this title, shown separately for each of the Army and Air Force reserve components:

(A) The number of military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(B) The number of technicians other than military technicians (dual status) in the high priority units and organizations specified in subsection (b)(1).

(C) The number of military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(D) The number of technicians other than military technicians (dual status) in other than high priority units and organizations specified in subsection (b)(1).

(2)(A) If the budget submitted to Congress for any fiscal year requests authorization for that fiscal year under section 115(g) of this title of a military technician (dual status) end strength for a reserve component of the Army or Air

Force in a number that constitutes a reduction from the end strength minimum established by law for that reserve component for the fiscal year during which the budget is submitted, the Secretary of Defense shall submit to the congressional defense committees with that budget a justification providing the basis for that requested reduction in technician end strength.

(B) Any justification submitted under subparagraph (A) shall clearly delineate the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those reductions).

(d) UNIT MEMBERSHIP REQUIREMENT.—(1) Unless specifically exempted by law, each individual who is hired as a military technician (dual status) after December 1, 1995, shall be required as a condition of that employment to maintain membership in—

(A) the unit of the Selected Reserve by which the individual is employed as a military technician; or

(B) a unit of the Selected Reserve that the individual is employed as a military technician to support.

(2) Paragraph (1) does not apply to a military technician (dual status) who is employed by the Army Reserve in an area other than Army Reserve troop program units.

(e) DUAL STATUS REQUIREMENT.—(1) Funds appropriated for the Department of Defense may not (except as provided in paragraph (2)) be used for compensation as a military technician of any individual hired as a military technician (dual status) after February 10, 1996, who is no longer a member of the Selected Reserve.

(2) Except as otherwise provided by law, the Secretary concerned may pay compensation described in paragraph (1) to an individual described in that paragraph who is no longer a member of the Selected Reserve for a period up to 12 months following the individual's loss of membership in the Selected Reserve if the Secretary determines that such loss of membership was not due to the failure of that individual to meet military standards.

(Added Pub. L. 104–106, div. A, title V, §513(c)(1), Feb. 10, 1996, 110 Stat. 306; amended Pub. L. 104–201, div. A, title IV, §413(b), (c), title XII, §1214, Sept. 23, 1996, 110 Stat. 2507, 2508, 2695; Pub. L. 105–85, div. A, title V, §522(a), (b), (f)–(h)(1), Nov. 18, 1997, 111 Stat. 1734–1736; Pub. L. 106–65, div. A, title V, §521, Oct. 5, 1999, 113 Stat. 595.)

AMENDMENTS

1999—Subsec. (a)(1)(A). Pub. L. 106–65, §521(a)(1), substituted ''section 709(b)'' for ''section 709''.

Subsec. (a)(1)(C). Pub. L. 106–65, §521(a)(2), inserted ''civilian'' after ''is assigned to a''.

Subsec. (e)(1). Pub. L. 106–65, §521(b)(1), inserted ''(dual status)'' after ''military technician'' the second place it appeared.

Subsec. (e)(2). Pub. L. 106–65, §521(b)(2), substituted ''Except as otherwise provided by law, the Secretary'' for ''The Secretary'' and ''up to 12 months'' for ''not to exceed six months''.

1997—Pub. L. 105–85, §522(h), inserted ''(dual status)'' after ''military technicians'' in section catchline.

Subsec. (a). Pub. L. 105–85, §522(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) IN GENERAL.—Military technicians are Federal civilian employees hired under title 5 and title 32 who are required to maintain dual-status as drilling reserve component members as a condition of their Federal civilian employment. Such employees shall be authorized and accounted for as a separate category of dual-status civilian employees, exempt as specified in subsection (b)(3) from any general or regulatory requirement for adjustments in Department of Defense civilian personnel.''

Subsec. (b). Pub. L. 105–85, §522(g)(1), inserted ''(DUAL STATUS)'' after ''MILITARY TECHNICIANS'' in heading.

Subsec. (b)(1). Pub. L. 105–85, §522(g)(2)(A), (B), in introductory provisions, inserted ''(dual status)'' after ''for military technicians'' and substituted ''military technicians (dual status)'' for ''dual status military technicians''.

Subsec. (b)(1)(C). Pub. L. 105–85, §522(g)(2)(C), inserted ''(dual status)'' after ''military technicians''.

Subsec. (b)(2). Pub. L. 105–85, §522(g)(3), inserted ''(dual status)'' after ''military technicians'' in two places.

Subsec. (b)(3). Pub. L. 105–85, §522(g)(4), inserted ''(dual status)'' after ''Military technician''.

Subsec. (c). Pub. L. 105–85, §522(g)(5)(A), inserted ''(dual status)'' after ''military technicians'' in introductory provisions.

Subsec. (c)(1)(A) to (D). Pub. L. 105–85, §522(f), (g)(5)(B), substituted ''subsection (b)(1)'' for ''subsection (a)(1)'' and ''military technicians (dual status)'' for ''dual-status technicians''.

Subsec. (c)(2)(A). Pub. L. 105–85, §522(g)(5)(C), inserted ''(dual status)'' after ''military technician''.

Subsec. (c)(2)(B). Pub. L. 105–85, §522(g)(5)(D), substituted ''delineate the specific force structure reductions'' for ''delineate—

''(i) in the case of a reduction that includes a reduction in technicians described in subparagraph (A) or (C) of paragraph (1), the specific force structure reductions forming the basis for such requested technician reduction (and the numbers related to those force structure reductions); and

''(ii) in the case of a reduction that includes reductions in technicians described in subparagraphs (B) or (D) of paragraph (1), the specific force structure reductions, Department of Defense civilian personnel reductions, or other reasons''.

Subsecs. (d), (e). Pub. L. 105–85, §522(b), added subsecs. (d) and (e) and struck out former subsec. (d) which read as follows:

''(d) DUAL-STATUS REQUIREMENT.—The Secretary of Defense shall require the Secretary of the Army and the Secretary of the Air Force to establish as a condition of employment for each individual who is hired after February 10, 1996, as a military technician that the individual maintain membership in the Selected Reserve (so as to be a so-called 'dual-status' technician) and shall require that the civilian and military position skill requirements of dual-status military technicians be compatible. No Department of Defense funds may be spent for compensation for any military technician hired after February 10, 1996, who is not a member of the Selected Reserve, except that compensation may be paid for up to six months following loss of membership in the Selected Reserve if such loss of membership was not due to the failure to meet military standards.''

1996—Subsec. (a). Pub. L. 104–201, §1214(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (a)(1). Pub. L. 104–201, §413(c)(1), substituted ''section 115(g)'' for ''section 115'' in introductory provisions.

Subsec. (b). Pub. L. 104–201, §1214(1), (3), redesignated subsec. (a) as (b) and struck out ''in high-priority units and organizations specified in paragraph (1)'' after ''authorizations and personnel'' in par. (3). Former subsec. (b) redesignated (c).

Pub. L. 104–201, §413(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–201, §1214(1), redesignated subsec. (b) as (c). Former subsec. (c) redesignated (d).

Pub. L. 104–201, §413(b)(1), (c)(2), redesignated subsec. (b) as (c) and substituted ''after February 10, 1996,'' for ''after the date of the enactment of this section'' in two places.

Subsec. (d). Pub. L. 104–201, §1214(1), redesignated subsec. (c) as (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 115a, 10217 of this title; title 5 sections 8337, 8401; title 32 section 709; title 37 section 1002.

§10217. Non-dual status technicians

(a) DEFINITION.—For the purposes of this section and any other provision of law, a non-dual status technician is a civilian employee of the Department of Defense serving in a military technician position who—

(1) was hired as a technician before November 18, 1997, under any of the authorities specified in subsection (b) and as of that date is not a member of the Selected Reserve or after such date has ceased to be a member of the Selected Reserve; or

(2) is employed under section 709 of title 32 in a position designated under subsection (c) of that section and when hired was not required to maintain membership in the Selected Reserve.

(b) EMPLOYMENT AUTHORITIES.—The authorities referred to in subsection (a) are the following:

(1) Section 10216 of this title.

(2) Section 709 of title 32.

(3) The requirements referred to in section 8401 of title 5.

(4) Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104–61; 109 Stat. 654), and any comparable provision of law enacted on an annual basis in the Department of Defense Appropriations Acts for fiscal years 1984 through 1995.

(5) Any memorandum of agreement between the Department of Defense and the Office of Personnel Management providing for the hiring of military technicians.

(c) PERMANENT LIMITATIONS ON NUMBER.—(1) Effective October 1, 2007, the total number of non-dual status technicians employed by the Army Reserve and Air Force Reserve may not exceed 175. If at any time after the preceding sentence takes effect the number of non-dual status technicians employed by the Army Reserve and Air Force Reserve exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(2) The total number of non-dual status technicians employed by the National Guard may not exceed 1,950. If at any time the number of non-dual status technicians employed by the National Guard exceeds the number specified in the limitation in the preceding sentence, the Secretary of Defense shall require that the Secretary of the Army or the Secretary of the Air Force, or both, take immediate steps to reduce the number of such technicians in order to comply with such limitation.

(Added Pub. L. 105–85, div. A, title V, §523(a)(1), Nov. 18, 1997, 111 Stat. 1736; amended Pub. L. 106–65, div. A, title V, §523, Oct. 5, 1999, 113 Stat. 598; Pub. L. 106–398, §1 [[div. A], title IV, §414(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94; Pub. L. 107–314, div. A, title IV, §414(d), Dec. 2, 2002, 116 Stat. 2527.)

REFERENCES IN TEXT

Section 8016 of the Department of Defense Appropriations Act, 1996 (Public Law 104–61; 109 Stat. 654), referred to in subsec. (b)(4), was set out as a note under section 10101 of this title prior to repeal by Pub. L. 105–85, div. A, title V, §522(e), Nov. 18, 1997, 111 Stat. 1735.

AMENDMENTS

2002—Subsec. (c)(2). Pub. L. 107–314 substituted ''The total number'' for ''Effective October 1, 2002, the total number'' in first sentence and struck out ''after the preceding sentence takes effect'' after ''If at any time'' in second sentence.

2000—Subsec. (c)(2). Pub. L. 106–398 substituted ''October 1, 2002'' for ''October 1, 2001''.

1999—Pub. L. 106–65, §523(b), struck out ''military'' after ''status'' in section catchline.

Subsec. (a). Pub. L. 106–65, §523(a)(1)(A), struck out ''military'' after ''non-dual status'' in introductory provisions.

Subsec. (a)(1), (2). Pub. L. 106–65, §523(a)(1)(B), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) was hired as a military technician before the date of the enactment of the National Defense Authorization Act for Fiscal Year 1998 under any of the authorities specified in subsection (c); and

''(2) as of the date of the enactment of that Act is not a member of the Selected Reserve or after such date ceased to be a member of the Selected Reserve.''

Subsec. (c). Pub. L. 106–65, §523(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §525, Oct. 5, 1999, 113 Stat. 600, provided that: ''The amendments made by sections 523 and 524 [amending this section and section 709 of Title 32, National Guard] shall take effect 180 days after the date of the receipt by Congress of the plan required by section 523(d) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 111 Stat. 1737) [set out below] [plan received by Congress from Under Secretary of Defense, Personnel and Readiness, see Cong. Rec., vol. 145, p. H8464, Daily Issue, Ex. Comm. 4276, Sept. 21, 1999] or a report by the Secretary of Defense providing an alternative proposal to the plan required by that section.''

PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS)

Section 523(d), (e) of Pub. L. 105–85 provided that:

''(d) PLAN FOR FULL UTILIZATION OF MILITARY TECHNICIANS (DUAL STATUS).—(1) Not later than 180 days after the date of the enactment of this Act [Nov. 18, 1997], the Secretary of Defense shall submit to Congress a plan for ensuring that, on and after September 30, 2007, all military technician positions are held only by military technicians (dual status).

''(2) The plan shall provide for achieving, by September 30, 2002, a 50 percent reduction, by conversion of positions or otherwise, in the number of non-dual status military technicians that are holding military technicians positions, as compared with the number of non-dual status technicians that held military technician positions as of September 30, 1997, as specified in the report under subsection (c) [111 Stat. 1737].

''(3) Among the alternative actions to be considered in developing the plan, the Secretary shall consider the feasibility and cost of each of the following:

''(A) Eliminating or consolidating technician functions and positions.

''(B) Contracting with private sector sources for the performance of functions performed by military technicians.

''(C) Converting non-dual status military technician positions to military technician (dual status) positions or to positions in the competitive service or, in the case of positions of the Army National Guard of the United States or the Air National Guard of the United States, to positions of State employment.

''(D) Use of incentives to facilitate attainment of the objectives specified for the plan in paragraphs (1) and (2).

''(4) The Secretary shall submit with the plan any recommendations for legislation that the Secretary considers necessary to carry out the plan.

''(e) DEFINITIONS FOR CATEGORIES OF MILITARY TECHNICIANS.—In this section [enacting this section]:

''(1) The term 'non-dual status military technician' has the meaning given that term in section 10217 of title 10, United States Code, as added by subsection (a).

''(2) The term 'military technician (dual status)' has the meaning given the term in section 10216(a) of such title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 709.

§ 10218. Army and Air Force Reserve technicians: conditions for retention; mandatory retirement under civil service laws

(a) SEPARATION AND RETIREMENT OF MILITARY TECHNICIANS (DUAL STATUS).—(1) An individual employed by the Army Reserve or the Air Force Reserve as a military technician (dual status) who after October 5, 1999, loses dual status is subject to paragraph (2) or (3), as the case may be.

(2) If a technician described in paragraph (1) is eligible at the time dual status is lost for an unreduced annuity and is age 60 or older at that time, the technician shall be separated not later than 30 days after the date on which dual status is lost.

(3)(A) If a technician described in paragraph (1) is not eligible at the time dual status is lost for an unreduced annuity or is under age 60 at that time, the technician shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

(I) in the case of a technician first hired as a military technician (dual status) on or before February 10, 1996, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and

(II) in the case of a technician first hired as a military technician (dual status) after February 10, 1996, not later than one year after the date on which dual status is lost.

(4) For purposes of this subsection, a military technician is considered to lose dual status upon—

(A) being separated from the Selected Reserve; or

(B) ceasing to hold the military grade specified by the Secretary concerned for the position held by the technician.

(b) NON-DUAL STATUS TECHNICIANS.—(1) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is eligible for an unreduced annuity and is age 60 or older shall be separated not later than April 5, 2000.

(2)(A) An individual who on October 5, 1999, is employed by the Army Reserve or the Air Force Reserve as a non-dual status technician and who on that date is not eligible for an unreduced annuity or is under age 60 shall be offered the opportunity to—

(i) reapply for, and if qualified be appointed to, a position as a military technician (dual status); or

(ii) apply for a civil service position that is not a technician position.

(B) If such a technician continues employment with the Army Reserve or the Air Force Reserve as a non-dual status technician, the technician—

(i) shall not be permitted, after October 5, 2000, to apply for any voluntary personnel action; and

(ii) shall be separated or retired—

(I) in the case of a technician first hired as a technician on or before February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than 30 days after becoming eligible for an unreduced annuity and becoming 60 years of age; and

(II) in the case of a technician first hired as a technician after February 10, 1996, and who on October 5, 1999, is a non-dual status technician, not later than one year after the date on which dual status is lost.

(3) An individual employed by the Army Reserve or the Air Force Reserve as a non-dual status technician who is ineligible for appointment to a military technician (dual status) position, or who decides not to apply for appointment to such a position, or who, during the period beginning on October 5, 1999, and ending on April 5, 2000, is not appointed to such a position, shall for reduction-in-force purposes be in a separate competitive category from employees who are military technicians (dual status).

(c) UNREDUCED ANNUITY DEFINED.—For purposes of this section, a technician shall be considered to be eligible for an unreduced annuity if the technician is eligible for an annuity under section 8336, 8412, or 8414 of title 5 that is not subject to a reduction by reason of the age or years of service of the technician.

(d) VOLUNTARY PERSONNEL ACTION DEFINED.—In this section, the term ''voluntary personnel action'', with respect to a non-dual status technician, means any of the following:

(1) The hiring, entry, appointment, reassignment, promotion, or transfer of the technician into a position for which the Secretary con-

cerned has established a requirement that the person occupying the position be a military technician (dual status).

(2) Promotion to a higher grade if the technician is in a position for which the Secretary concerned has established a requirement that the person occupying the position be a military technician (dual status).

(Added Pub. L. 106–65, div. A, title V, § 522(a)(1), Oct. 5, 1999, 113 Stat. 595; amended Pub. L. 106–398, § 1 [[div. A], title V, § 525(a), title X, § 1087(a)(20)], Oct. 30, 2000, 114 Stat. 1654, 1654A–108, 1654A–291.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section''.

Subsec. (a)(2). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(1)(A)], inserted ''and is age 60 or older at that time'' after ''unreduced annuity''.

Subsec. (a)(3)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(1)(B)], inserted ''or is under age 60 at that time'' after ''unreduced annuity'' in introductory provisions.

Subsec. (a)(3)(B)(i). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(B)], substituted ''October 5, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this subsection''.

Subsec. (a)(3)(B)(ii)(I). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(1)(C)], inserted ''and becoming 60 years of age'' after ''unreduced annuity''.

Subsec. (b)(1). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A), (C)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section'' and ''April 5, 2000'' for ''six months after the date of the enactment of this section''.

Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(2)(A)], inserted ''and is age 60 or older'' after ''unreduced annuity''.

Subsec. (b)(2)(A). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section'' in introductory provisions.

Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(2)(B)], inserted ''or is under age 60'' after ''unreduced annuity'' in introductory provisions.

Subsec. (b)(2)(B)(i). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(B)], substituted ''October 5, 2000'' for ''the end of the one-year period beginning on the date of the enactment of this subsection''.

Subsec. (b)(2)(B)(ii). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(A)], substituted ''October 5, 1999,'' for ''the date of the enactment of this section'' in subcls. (I) and (II).

Subsec. (b)(2)(B)(ii)(I). Pub. L. 106–398, § 1 [[div. A], title V, § 525(a)(2)(C)], inserted ''and becoming 60 years of age'' after ''unreduced annuity''.

Subsec. (b)(3). Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(20)(D)], substituted ''during the period beginning on October 5, 1999, and ending on April 5, 2000,'' for ''within six months of the date of the enactment of this section''.

TRANSITION PROVISION

Pub. L. 106–398, § 1 [[div. A], title V, § 525(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–109, as amended by Pub. L. 107–107, div. A, title X, § 1048(f)(1), Dec. 28, 2001, 115 Stat. 1228, provided that:

''(1) An individual who before the date of the enactment of this Act [Oct. 30, 2000] was involuntarily separated or retired from employment as an Army Reserve or Air Force Reserve technician under section 10218 of title 10, United States Code, and who would not have been so separated if the provisions of subsections (a) and (b) of that section, as amended by subsection (a), had been in effect at the time of such separation may, with the approval of the Secretary concerned, be reinstated to the technician status held by that individual immediately before that separation. The effective date of any such reinstatement is the date the employee resumes technician status.

''(2) The authority under paragraph (1) applies only to reinstatement for which an application is received by the Secretary concerned before the end of the one-year period beginning on the date of the enactment of this Act [Oct. 30, 2000].''

TEMPORARY PROVISION FOR EXTENSION OF TIME FOR SEPARATION OR RETIREMENT

Pub. L. 106–65, div. A, title V, § 522(a)(3), Oct. 5, 1999, 113 Stat. 597, provided that: ''During the six-month period beginning on the date of the enactment of this Act [Oct. 5, 1999], the provisions of subsections (a)(3)(B)(ii)(I) and (b)(2)(B)(ii)(I) of section 10218 of title 10, United States Code, as added by paragraph (1), shall be applied by substituting 'six months' for '30 days'.''

CHAPTER 1009—RESERVE FORCES POLICY BOARDS AND COMMITTEES

Sec.
10301. Reserve Forces Policy Board.
10302. Army Reserve Forces Policy Committee.
10303. Naval Reserve Policy Board.
10304. Marine Corps Reserve Policy Board.
10305. Air Force Reserve Forces Policy Committee.

§ 10301. Reserve Forces Policy Board

(a) There is in the Office of the Secretary of Defense a Reserve Forces Policy Board. The Board consists of the following:

(1) A civilian chairman appointed by the Secretary of Defense.

(2) The Assistant Secretary of the Army for Manpower and Reserve Affairs, the Assistant Secretary of the Navy for Manpower and Reserve Affairs, and the Assistant Secretary of the Air Force for Manpower and Reserve Affairs.

(3) An officer of the Regular Army designated by the Secretary of the Army.

(4) An officer of the Regular Navy and an officer of the Regular Marine Corps, each designated by the Secretary of the Navy.

(5) An officer of the Regular Air Force designated by the Secretary of the Air Force.

(6) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Army, two of whom must be members of the Army National Guard of the United States, and two of whom must be members of the Army Reserve.

(7) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy, two of whom must be members of the Naval Reserve, and two of whom must be members of the Marine Corps Reserve.

(8) Four reserve officers designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force, two of whom must be members of the Air National Guard of the United States, and two of whom must be members of the Air Force Reserve.

(9) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general officer or flag officer designated by the Chairman of the Board with the approval of the Secretary of Defense, and who serves without vote as military adviser to the Chairman and as executive officer of the Board.

(10) An officer of the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps serving in a position on the Joint Staff who is designated by the Chairman of the Joint Chiefs of Staff.

(b) Whenever the Coast Guard is not operating as a service in the Navy, the Secretary of Homeland Security may designate two officers of the Coast Guard, Regular or Reserve, to serve as voting members of the Board.

(c) The Board, acting through the Assistant Secretary of Defense for Reserve Affairs, is the principal policy adviser to the Secretary of Defense on matters relating to the reserve components.

(d) This section does not affect the committees on reserve policies prescribed within the military departments by sections 10302 through 10305 of this title.

(e) A member of a committee or board prescribed under a section listed in subsection (d) may, if otherwise eligible, be a member of the Reserve Forces Policy Board.

(f) The Board shall act on those matters referred to it by the Chairman and, in addition, on any matter raised by a member of the Board.

(Added Pub. L. 103–337, div. A, title XVI, §1661(b)(1), Oct. 5, 1994, 108 Stat. 2980; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 175 of this title, prior to amendment by Pub. L. 103–337, §1661(b)(3).

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 175, 641 of this title.

§ 10302. Army Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Army an Army Reserve Forces Policy Committee. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization preparedness of the Army. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Army and the Chief of Staff.

(b) The Committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Army on duty with the Army General Staff;

(2) five members of the Army National Guard of the United States not on active duty; and

(3) five members of the Army Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matter affecting both the Army National Guard of the United States and Army Reserve are being considered. However, when any matter solely affecting one of the reserve components of the Army is being considered, it shall be acted upon only by the Subcommittee on Army National Guard Policy or the Subcommittee on Army Reserve Policy, as appropriate.

(e) The Subcommittee on Army National Guard Policy consists of the members of the Committee other than the Army Reserve members.

(f) The Subcommittee on Army Reserve Policy consists of the members of the Committee other than the Army National Guard members.

(g) Membership on the Committee is determined by the Secretary of the Army and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Army, the Secretary of the Army, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Army National Guard of the United States and the Army Reserve on duty with the Army Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Army Staff while on that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 161, §3033; Pub. L. 85–861, §33(a)(17), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 90–168, §2(18), Dec. 1, 1967, 81 Stat. 524; renumbered §3021 and amended Pub. L. 99–433, title V, §501(a)(8), Oct. 1, 1986, 100 Stat. 1039; renumbered §10302, Pub. L. 103–337, div. A, title XVI, §1661(b)(2)(A), Oct. 5, 1994, 108 Stat. 2981.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3033(a)	10:38 (1st par., less last 37 words).	June 3, 1916, ch. 134, §5 (less last par.); June 4, 1920, ch. 227, subch. I, §5 (1st 7 pars.); Sept. 22, 1922, ch. 423, §1; July 2, 1926, ch. 721, §5; May 21, 1928, ch. 647; added June 15, 1933, ch. 87, §2 (less last par.), 48 Stat. 153; June 3, 1938, ch. 319; July 14, 1939, ch. 269; June 28, 1950, ch. 383, §401(b), 64 Stat. 271.
3033(b)	10:38 (last 37 words of 1st par.).	
3033(c)	10:38 (1st sentence, less proviso of 2d par.).	
3033(d)	10:38 (proviso of 1st sentence of 2d par.).	
3033(e)	10:38 (2d sentence, and 3d sentence less proviso, of 2d par.).	
3033(f)	10:38 (proviso of 3d sentence, and last sentence, of 2d par.).	

In subsection (a), the words ''the following subjects'' are inserted for clarity.

In subsections (a) and (c), the words ''of officers'', after the word ''committee'', are inserted for clarity. The words ''and of'' are substituted for the words ''to which shall be added''.

In subsection (e), the words ''For the purpose specified herein'' are omitted as surplusage. The words ''on that duty'' are substituted for the words ''so serving''.

1958 ACT

The change is necessary to make subsection (d) coextensive with subsection (c), to which it was a proviso in the source law, the Act of June 3, 1916, chapter 134, section 5 (1st sentence of 2d par.) (formerly 10 U.S.C. 38 (1st sentence of 2d par.)).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 3021 of this title as this section.

1986—Pub. L. 99–433, § 501(a)(8)(C), renumbered section 3033 of this title as this section, and substituted ''Army Reserve Forces Policy Committee'' for ''Reserve components of Army; policies and regulations for government of'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 501(a)(8)(A), substituted ''Office'' for ''office'' and ''Committee. The Committee'' for ''Committee which'', inserted ''and the mobilization preparedness'', and substituted ''Army. The'' for ''Army, and the'' and ''Secretary of the Army and the Chief of Staff'' for ''Chief of Staff and the Assistant Secretary responsible for reserve affairs''.

Subsec. (h). Pub. L. 99–433, § 501(a)(8)(B), struck out ''General'' before ''Staff'' in two places.

1967—Pub. L. 90–168 amended section generally, and restated with certain changes the existing authority relating to the Army Reserve Forces Policy Committee within the Office of the Secretary of the Army, reduced the membership of the Committee from 21 to 15, reduced the grade requirements so as to permit inclusion of colonels, and provided that the Committee review and comment upon all major policies affecting Army Reserve matters and that the Committee comments accompany any final submission to the Chief of Staff and Assistant Secretary responsible for Reserve Affairs.

1958—Subsec. (d). Pub. L. 85–861 substituted ''affecting the organization, distribution, training, appointment, assignment, promotion, or discharge of members of the Army Reserve and those of either'' for ''affecting the Army Reserve and either''.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–168 effective on first day of first calendar month following date of enactment of Pub. L. 90–168, which was approved Dec. 1, 1967, see section 7 of Pub. L. 90–168, set out as a note under section 138 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 3021, 10301, 12011 of this title; title 37 section 204.

§ 10303. Naval Reserve Policy Board

A Naval Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Naval Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5251(c) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 10301, 12011 of this title.

§ 10304. Marine Corps Reserve Policy Board

A Marine Corps Reserve Policy Board shall be convened at least once annually at the seat of government to consider, recommend, and report to the Secretary of the Navy on reserve policy matters. At least half of the members of the Board must be officers of the Marine Corps Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1661(b)(1), Oct. 5, 1994, 108 Stat. 2981.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5252(c) of this title, prior to repeal by Pub. L. 103–337, § 1661(a)(3)(A).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 10301, 12011 of this title.

§ 10305. Air Force Reserve Forces Policy Committee

(a) There is in the Office of the Secretary of the Air Force an Air Reserve Forces Policy Committee on Air National Guard and Air Force Reserve Policy. The Committee shall review and comment upon major policy matters directly affecting the reserve components and the mobilization preparedness of the Air Force. The Committee's comments on such policy matters shall accompany the final report regarding any such matters submitted to the Secretary of the Air Force and the Chief of Staff.

(b) The committee consists of officers in the grade of colonel or above, as follows:

(1) five members of the Regular Air Force on duty with the Air Staff;

(2) five members of the Air National Guard of the United States not on active duty; and

(3) five members of the Air Force Reserve not on active duty.

(c) The members of the Committee shall select the Chairman from among the members on the Committee not on active duty.

(d) A majority of the members of the Committee shall act whenever matters affecting both the Air National Guard of the United States and Air Force Reserve are being considered. However, when any matter solely affecting one of the Air Force Reserve components is being considered, it shall be acted upon only by the Subcommittee on Air National Guard Policy or the Subcommittee on Air Force Reserve Policy, as appropriate.

(e) The Subcommittee on Air National Guard Policy consists of the members of the Committee other than the Air Force Reserve members.

(f) The Subcommittee on Air Force Reserve Policy consists of the members of the Committee other than the Air National Guard members.

(g) Membership on the Air Staff Committee is determined by the Secretary of the Air Force and is for a minimum period of three years. Except in the case of members of the Committee from the Regular Air Force, the Secretary of the Air Force, when appointing new members, shall insure that among the officers of each component on the Committee there will at all times be two or more members with more than one year of continuous service on the Committee.

(h) There shall be not less than 10 officers of the Air National Guard of the United States and the Air Force Reserve on duty with the Air Staff, one-half of whom shall be from each of those components. These officers shall be considered as additional members of the Air Staff while on that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 491, § 8033; Pub. L. 85–861, § 33(a)(17), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 90–168, § 2(21), Dec. 1, 1967, 81 Stat. 525; renumbered § 8021 and amended Pub. L. 99–433, title V, § 521(a)(6), Oct. 1, 1986, 100 Stat. 1059; renumbered § 10305, Pub. L. 103–337, div. A, title XVI, § 1661(b)(2)(B), Oct. 5, 1994, 108 Stat. 2981.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8033(a)	10:38 (1st par., less last 37 words).	June 3, 1916, ch. 134, § 5 (less last par.); June 4, 1920, ch. 227, subch. I, § 5 (1st 7 pars.); Sept. 22, 1922, ch. 423, § 1, July 2, 1926, ch. 721, § 5; May 21, 1928, ch. 647; added June 15, 1933, ch. 87, § 2 (less last par.), 48 Stat. 153; June 3, 1938, ch. 319; July 14, 1939, ch. 269; June 28, 1950, ch. 383, § 401(b), 64 Stat. 271.
8033(b)	10:38 (last 37 words of 1st par.).	
8033(c)	10:38 (1st sentence, less proviso, of 2d par.).	
8033(d)	10:38 (proviso of 1st sentence of 2d par.).	
8033(e)	10:38 (2d sentence, and 3d sentence less proviso, of 2d par.).	
8033(f)	10:38 (proviso of 3d sentence, and last sentence, of 2d par.).	
8033(g)	5:626(f).	July 26, 1947, ch. 343, § 207(f), 61 Stat. 503.

In subsection (a), the words ''the following subjects'' are inserted for clarity.

In subsections (a) and (c), the words ''of officers'', after the word ''committee'', are inserted for clarity. The words ''and of'' are substituted for the words ''to which shall be added''.

In subsection (e), the words ''For the purpose specified herein'' are omitted as surplusage. The words ''on that duty'' are substituted for the words ''so serving''.

In subsection (g), the word ''perform'' is substituted for the words ''be charged with''. All of 5:626(f) except the first proviso of the first sentence is omitted as executed. The words ''Territories, Puerto Rico, the Canal Zone, and the District of Columbia'' are inserted to conform to other sections of this title which, in describing the National Guard, also include these jurisdictions.

1958 ACT

The change is necessary to make subsection (d) coextensive with subsection (c), to which it was a proviso in the source law, the Act of June 3, 1916, chapter 134, section 5 (1st sentence of 2d par.) (formerly 10 U.S.C. 38 (1st sentence of 2d par.)).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 8021 of this title as this section.

1986—Pub. L. 99–433, § 521(a)(6)(C), renumbered section 8033 of this title as this section, and substituted ''Air Force Reserve Forces Policy Committee'' for ''Reserve components of Air Force; policies and regulations for government of: functions of National Guard Bureau with respect to Air National Guard'' in section catchline.

Subsec. (a). Pub. L. 99–433, § 521(a)(6)(A), substituted ''Policy. The Committee'' for ''Policy which'', inserted ''and the mobilization preparedness'', and substituted ''Air Force. The'' for ''Air Force and the'' and ''Secretary of the Air Force and the Chief of Staff'' for ''Chief of Staff, and the Assistant Secretary responsible for reserve affairs''.

Subsec. (b)(2). Pub. L. 99–433, § 521(a)(6)(B), inserted ''and'' after the semicolon.

1967—Pub. L. 90–168 amended section generally, and among other changes, redesignated subsec. (e) as (h) and increased from seven to eight the number of subsecs. in the section and in such subsecs. (a)–(h) restated with certain changes the existing authority relating to the Staff Committee on Air Force Reserve Policy within the Office of the Secretary of the Air Force, reduced the membership of the Committee from 21 to 15, reduced the grade requirements so as to permit inclusion of colonels, and provided that the Committee review and comment on all major policies affecting Air Force Reserve matters and that the Committee comments accompany any final submission to the Chief of Staff and Assistant Secretary responsible for Reserve matters.

1958—Subsec. (d). Pub. L. 85–861 substituted ''affecting the organization, distribution, training, appointment, assignment, promotion, or discharge of members of the Air Force Reserve and those of either'' for ''affecting the Air Force Reserve and either''.

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90–168, see section 7 of Pub. L. 90–168, set out as a note under section 138 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 8021, 10301, 12011 of this title; title 37 section 204.

CHAPTER 1011—NATIONAL GUARD BUREAU

Sec.
10501. National Guard Bureau.
10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade.
10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force.
10504. Chief of National Guard Bureau: annual report.
10505. Vice Chief of the National Guard Bureau.
10506. Other senior National Guard Bureau officers.
10507. National Guard Bureau: assignment of officers of regular or reserve components.
[10508. Repealed.]

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(5), (7)(B), Feb. 10, 1996, 110 Stat. 496, inserted ''Sec.'' at top of column of section numbers and struck out item 10508 ''Definition''.

1994—Pub. L. 103–337, div. A, title XVI, § 1661(c)(1)(B), Oct. 5, 1994, 108 Stat. 2982, added item 10507.

§ 10501. National Guard Bureau

(a) NATIONAL GUARD BUREAU.—There is in the Department of Defense the National Guard Bureau, which is a joint bureau of the Department of the Army and the Department of the Air Force.

(b) PURPOSES.—The National Guard Bureau is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2824.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3040(a) of this title, prior to repeal by Pub. L. 103–337, § 904(b)(1).

EFFECTIVE DATE

Section 904(d) of Pub. L. 103–337, as amended by Pub. L. 104–106, div. A, title XV, § 1504(a)(6), Feb. 10, 1996, 110 Stat. 513, provided that: ''The provisions of chapter 1011 of title 10, United States Code, as added by subsection (a), shall become effective, and the repeal made by subsection (b) [repealing section 3040 of this title] and the amendment made by subsection (c) [amending section 108 of Title 32, National Guard] shall take effect, at the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 5, 1994].''

§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade

(a) APPOINTMENT.—There is a Chief of the National Guard Bureau, who is responsible for the organization and operations of the National Guard Bureau. The Chief of the National Guard Bureau is appointed by the President, by and with the advice and consent of the Senate. Such appointment shall be made from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(1) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(2) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(3) are in a grade above the grade of brigadier general.

(b) TERM OF OFFICE.—An officer appointed as Chief of the National Guard Bureau serves at the pleasure of the President for a term of four years. An officer may not hold that office after becoming 64 years of age. An officer may be reappointed as Chief of the National Guard Bureau. While holding that office, the Chief of the National Guard Bureau may not be removed from the reserve active-status list, or from an active status, under any provision of law that otherwise would require such removal due to completion of a specified number of years of service or a specified number of years of service in grade.

(c) ADVISER ON NATIONAL GUARD MATTERS.—The Chief of the National Guard Bureau is the principal adviser to the Secretary of the Army and the Chief of Staff of the Army, and to the Secretary of the Air Force and the Chief of Staff of the Air Force, on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

(d) GRADE.—The Chief of the National Guard Bureau shall be appointed to serve in the grade of lieutenant general.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2824.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3040(a)–(c) of this title, prior to repeal by Pub. L. 103–337, § 904(b)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title; title 37 section 204.

§ 10503. Functions of National Guard Bureau: charter from Secretaries of the Army and Air Force

The Secretary of the Army and the Secretary of the Air Force shall jointly develop and prescribe a charter for the National Guard Bureau. The charter shall cover the following matters:

(1) Allocating unit structure, strength authorizations, and other resources to the Army National Guard of the United States and the Air National Guard of the United States.

(2) Prescribing the training discipline and training requirements for the Army National Guard and the Air National Guard and the allocation of Federal funds for the training of the Army National Guard and the Air National Guard.

(3) Ensuring that units and members of the Army National Guard and the Air National Guard are trained by the States in accordance with approved programs and policies of, and guidance from, the Chief, the Secretary of the Army, and the Secretary of the Air Force.

(4) Monitoring and assisting the States in the organization, maintenance, and operation of National Guard units so as to provide well-trained and well-equipped units capable of augmenting the active forces in time of war or national emergency.

(5) Planning and administering the budget for the Army National Guard of the United States and the Air National Guard of the United States.

(6) Supervising the acquisition and supply of, and accountability of the States for, Federal property issued to the National Guard through the property and fiscal officers designated, detailed, or appointed under section 708 of title 32.

(7) Granting and withdrawing, in accordance with applicable laws and regulations, Federal recognition of (A) National Guard units, and (B) officers of the National Guard.

(8) Establishing policies and programs for the employment and use of National Guard technicians under section 709 of title 32.

(9) Supervising and administering the Active Guard and Reserve program as it pertains to the National Guard.

(10) Issuing directives, regulations, and publications consistent with approved policies of the Army and Air Force, as appropriate.

(11) Facilitating and supporting the training of members and units of the National Guard to meet State requirements.

(12) Such other functions as the Secretaries may prescribe.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2825.)

ANNUAL PREPARATION OF FUTURE YEARS DEFENSE PLAN

Pub. L. 104–196, § 123, Sept. 16, 1996, 110 Stat. 2392, provided that: ''The National Guard Bureau shall annually prepare a future years defense plan based on the requirement and priorities of the National Guard: *Provided*, That this plan shall be presented to the commit-

tees of Congress concurrent with the President's budget submission for each fiscal year.''

§ 10504. Chief of National Guard Bureau: annual report

(a) ANNUAL REPORT.—The Chief of the National Guard Bureau shall submit to the Secretary of Defense, through the Secretaries of the Army and the Air Force, an annual report on the state of the National Guard and the ability of the National Guard to meet its missions. The report shall be prepared in conjunction with the Secretary of the Army and the Secretary of the Air Force and may be submitted in classified and unclassified versions.

(b) SUBMISSION OF REPORT TO CONGRESS.—The Secretary of Defense shall transmit the annual report of the Chief of the National Guard Bureau to Congress, together with such comments on the report as the Secretary considers appropriate. The report shall be transmitted at the same time each year that the annual report of the Secretary under section 113(c) of this title is submitted to Congress.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2825.)

§ 10505. Vice Chief of the National Guard Bureau

(a) APPOINTMENT.—(1) There is a Vice Chief of the National Guard Bureau, selected by the Secretary of Defense from officers of the Army National Guard of the United States or the Air National Guard of the United States who—

(A) are recommended for such appointment by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard;

(B) have had at least 10 years of federally recognized commissioned service in an active status in the National Guard; and

(C) are in a grade above the grade of colonel.

(2) The Chief and Vice Chief of the National Guard Bureau may not both be members of the Army or of the Air Force.

(3)(A) Except as provided in subparagraph (B), an officer appointed as Vice Chief of the National Guard Bureau serves for a term of four years, but may be removed from office at any time for cause.

(B) The term of the Vice Chief of the National Guard Bureau shall end upon the appointment of a Chief of the National Guard Bureau who is a member of the same armed force as the Vice Chief.

(4) The Secretary of Defense may waive the restrictions in paragraph (2) and the provisions of paragraph (3)(B) for a limited period of time to provide for the orderly transition of officers appointed to serve in the positions of Chief and Vice Chief of the National Guard Bureau.

(b) DUTIES.—The Vice Chief of the National Guard Bureau performs such duties as may be prescribed by the Chief of the National Guard Bureau.

(c) GRADE.—The Vice Chief of the National Guard Bureau shall be appointed to serve in the grade of major general.

(d) FUNCTIONS AS ACTING CHIEF.—When there is a vacancy in the office of the Chief of the National Guard Bureau or in the absence or disability of the Chief, the Vice Chief of the National Guard Bureau acts as Chief and performs the duties of the Chief until a successor is appointed or the absence or disability ceases.

(e) SUCCESSION AFTER CHIEF AND VICE CHIEF.—When there is a vacancy in the offices of both Chief and Vice Chief of the National Guard Bureau or in the absence or disability of both the Chief and Vice Chief of the National Guard Bureau, or when there is a vacancy in one such office and in the absence or disability of the officer holding the other, the senior officer of the Army National Guard of the United States or the Air National Guard of the United States on duty with the National Guard Bureau shall perform the duties of the Chief until a successor to the Chief or Vice Chief is appointed or the absence or disability of the Chief or Vice Chief ceases, as the case may be.

(Added Pub. L. 103–337, div. A, title IX, § 904(a), Oct. 5, 1994, 108 Stat. 2826.)

PRIOR PROVISIONS

Provisions similar to those in subsecs. (d) and (e) of this section were contained in section 3040(d) of this title, prior to repeal by Pub. L. 103–337, § 904(b)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

§ 10506. Other senior National Guard Bureau officers

(a) ADDITIONAL GENERAL OFFICERS.—(1) In addition to the Chief and Vice Chief of the National Guard Bureau, there shall be assigned to the National Guard Bureau—

(A) two general officers selected by the Secretary of the Army from officers of the Army National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall serve as Director, Army National Guard, with the other serving as Deputy Director, Army National Guard; and

(B) two general officers selected by the Secretary of the Air Force from officers of the Air National Guard of the United States who have been nominated by their respective Governors or, in the case of the District of Columbia, the commanding general of the District of Columbia National Guard, the senior of whom shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall serve as Director, Air National Guard, with the other serving as Deputy Director, Air National Guard.

(2) The officers so selected shall assist the Chief of the National Guard Bureau in carrying out the functions of the National Guard Bureau as they relate to their respective branches.

(3)(A) The President, by and with the advice and consent of the Senate, shall appoint the Director, Army National Guard, from general officers of the Army National Guard of the United States and shall appoint the Director, Air Na-

tional Guard, from general officers of the Air National Guard of the United States.

(B) The Secretary of Defense may not recommend an officer to the President for appointment as Director, Army National Guard, or as Director, Air National Guard, unless the officer—

(i) is recommended by the Secretary of the military department concerned; and

(ii) is determined by the Chairman of the Joint Chiefs of Staff, in accordance with criteria and as a result of a process established by the Chairman, to have significant joint duty experience.

(C) An officer on active duty for service as the Director, Army National Guard, or the Director, Air National Guard, shall be counted for purposes of the grade limitations under sections 525 and 526 of this title.

(D) Until December 31, 2004, the Secretary of Defense may waive clause (ii) of subparagraph (B) with respect to the appointment of an officer as Director, Army National Guard, or as Director, Air National Guard, if the Secretary of the military department concerned requests the waiver and, in the judgment of the Secretary of Defense—

(i) the officer is qualified for service in the position; and

(ii) the waiver is necessary for the good of the service.

Any such waiver shall be made on a case-by-case basis.

(E) The Director, Army National Guard, and the Director, Air National Guard, are appointed for a period of four years, but may be removed for cause at any time. An officer serving as either Director may be reappointed for one additional four-year period.

(b) OTHER OFFICERS.—There are in the National Guard Bureau a legal counsel, a comptroller, and an inspector general, each of whom shall be appointed by the Chief of the National Guard Bureau. They shall perform such duties as the Chief may prescribe.

(Added Pub. L. 103–337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2827; amended Pub. L. 106–65, div. A, title V, §554(f), Oct. 5, 1999, 113 Stat. 617; Pub. L. 106–398, §1 [[div. A], title V, §507(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105; Pub. L. 107–314, div. A, title V, §501(a), Dec. 2, 2002, 116 Stat. 2529.)

AMENDMENTS

2002—Subsec. (a)(3)(D). Pub. L. 107–314 substituted ''December 31, 2004'' for ''October 1, 2003''.

2000—Subsec. (a)(1). Pub. L. 106–398, §1 [[div. A], title V, §507(e)(1)], substituted ''shall be appointed in accordance with paragraph (3), shall hold the grade of lieutenant general while so serving, and shall'' for ''while so serving shall hold the grade of major general or, if appointed to that position in accordance with section 12505(a)(2) of this title, the grade of lieutenant general, and'' in subpars. (A) and (B).

Subsec. (a)(3). Pub. L. 106–398, §1 [[div. A], title V, §507(e)(2)], added par. (3).

1999—Subsec. (a)(1)(A), (B). Pub. L. 106–65 inserted ''or, if appointed to that position in accordance with section 12505(a)(2) of this title, the grade of lieutenant general,'' after ''major general''.

EFFECTIVE DATE OF 1999 AMENDMENT; APPLICABILITY TO INCUMBENTS

Amendment by Pub. L. 106–65 effective 60 days after Oct. 5, 1999, with special provision for an officer who is a covered position incumbent who is appointed under that amendment to the grade of lieutenant general or vice admiral, see section 554(g), (h) of Pub. L. 106–65, set out as a note under section 3038 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

§ 10507. National Guard Bureau: assignment of officers of regular or reserve components

Except as provided in section 12402(b) of this title, the President may assign to duty in the National Guard Bureau as many regular or reserve officers of the Army or Air Force as he considers necessary.

(Added Pub. L. 103–337, div. A, title XVI, §1661(c)(1)(A), Oct. 5, 1994, 108 Stat. 2982; amended Pub. L. 104–106, div. A, title XV, §1501(b)(6), Feb. 10, 1996, 110 Stat. 496.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3541 and 8541 of this title, prior to repeal by Pub. L. 103–337, §1661(c)(2).

AMENDMENTS

1996—Pub. L. 104–106 substituted ''12402(b)'' for ''124402(b)'' and ''Air Force'' for ''Air Forces''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 641 of this title.

[§ 10508. Repealed. Pub. L. 104–106, div. A, title XV, §1501(b)(7)(A), Feb. 10, 1996, 110 Stat. 496]

Section, added Pub. L. 103–337, div. A, title IX, §904(a), Oct. 5, 1994, 108 Stat. 2827, defined ''State'' for purposes of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as an Effective Date of 1996 Amendment note under section 113 of this title.

CHAPTER 1013—BUDGET INFORMATION AND ANNUAL REPORTS TO CONGRESS

Sec.
10541. National Guard and reserve component equipment: annual report to Congress.
10542. Army National Guard combat readiness: annual report.
10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program.

Sec.

AMENDMENTS

1996—Pub. L. 104–201, title XII, § 1257(a)(2), Sept. 23, 1996, 110 Stat. 2699, added item 10543.

§ 10541. National Guard and reserve component equipment: annual report to Congress

(a) The Secretary of Defense shall submit to the Congress each year, not later than February 15, a written report concerning the equipment of the National Guard and the reserve components of the armed forces for each of the three succeeding fiscal years.

(b) Each report under this section shall include the following:

(1) Recommendations as to the type and quantity of each major item of equipment which should be in the inventory of the Selected Reserve of the Ready Reserve of each reserve component of the armed forces.

(2) A statement of the quantity and average age of each type of major item of equipment which is expected to be physically available in the inventory of the Selected Reserve of the Ready Reserve of each reserve component as of the beginning of each fiscal year covered by the report.

(3) A statement of the quantity and cost of each type of major item of equipment which is expected to be procured for the Selective Reserve of the Ready Reserve of each reserve component from commercial sources or to be transferred to each such Selected Reserve from the active-duty components of the armed forces.

(4) A statement of the quantity of each type of major item of equipment which is expected to be retired, decommissioned, transferred, or otherwise removed from the physical inventory of the Selected Reserve of the Ready Reserve of each reserve component and the plans for replacement of that equipment.

(5) A listing of each major item of equipment required by the Selected Reserve of the Ready Reserve of each reserve component indicating—

(A) the full war-time requirement of that component for that item, shown in accordance with deployment schedules and requirements over successive 30-day periods following mobilization;

(B) the number of each such item in the inventory of the component;

(C) a separate listing of each such item in the inventory that is a deployable item and is not the most desired item;

(D) the number of each such item projected to be in the inventory at the end of the third succeeding fiscal year; and

(E) the number of nondeployable items in the inventory as a substitute for a required major item of equipment.

(6) A narrative explanation of the plan of the Secretary concerned to provide equipment needed to fill the war-time requirement for each major item of equipment to all units of the Selected Reserve, including an explanation of the plan to equip units of the Selected Reserve that are short of major items of equipment at the outset of war.

(7) For each item of major equipment reported under paragraph (3) in a report for one of the three previous years under this section as an item expected to be procured for the Selected Reserve or to be transferred to the Selected Reserve, the quantity of such equipment actually procured for or transferred to the Selected Reserve.

(8) A statement of the current status of the compatibility of equipment between the Army reserve components and active forces of the Army, the effect of that level of incompatibility on combat effectiveness, and a plan to achieve full equipment compatibility.

(c) Each report under this section shall be expressed in the same format and with the same level of detail as the information presented in the annual Five Year Defense Program Procurement Annex prepared by the Department of Defense.

(Added Pub. L. 101–510, div. A, title XIV, § 1483(a), Nov. 5, 1990, 104 Stat. 1714, § 115b; amended Pub. L. 102–484, div. A, title XI, § 1134, Oct. 23, 1992, 106 Stat. 2541; renumbered § 10541 and amended Pub. L. 103–337, div. A, title XVI, § 1661(d)(2), Oct. 5, 1994, 108 Stat. 2982.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 115(a)(2), (3) of this title, prior to repeal by Pub. L. 101–510, § 1483(a).

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 115b of this title as this section and substituted ''National Guard and reserve component equipment: annual report to Congress'' for ''Annual report on National Guard and reserve component equipment'' as section catchline.

1992—Subsec. (b)(8). Pub. L. 102–484 added par. (8).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 10542. Army National Guard combat readiness: annual report

(a) IN GENERAL.—The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a detailed presentation concerning the Army National Guard, including particularly information relating to the implementation of the Army National Guard Combat Readiness Reform Act of 1992 (title XI of Public Law 102–484; 106 Stat. 2536) (hereinafter in this section referred to as ''ANGCRRA'').

(b) MATTERS TO BE INCLUDED IN REPORT.—Each presentation under subsection (a) shall include, with respect to the period covered by the report, the following information concerning the Army National Guard:

(1) The number and percentage of officers with at least two years of active-duty before becoming a member of the Army National Guard.

(2) The number and percentage of enlisted personnel with at least two years of active-duty before becoming a member of the Army National Guard.

(3) The number of officers who are graduates of one of the service academies and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, together with the reason for each waiver.

(4) The number of officers who were commissioned as distinguished Reserve Officers' Training Corps graduates and were released from active duty before the completion of their active-duty service obligation and, of those officers—

(A) the number who are serving the remaining period of their active-duty service obligation as a member of the Selected Reserve pursuant to section 1112(a)(1) of ANGCRRA; and

(B) the number for whom waivers were granted by the Secretary under section 1112(a)(2) of ANGCRRA, together with the reason for each waiver.

(5) The number of officers who are graduates of the Reserve Officers' Training Corps program and who are performing their minimum period of obligated service in accordance with section 1112(b) of ANGCRRA by a combination of (A) two years of active duty, and (B) such additional period of service as is necessary to complete the remainder of such obligation served in the National Guard and, of those officers, the number for whom permission to perform their minimum period of obligated service in accordance with that section was granted during the preceding fiscal year.

(6) The number of officers for whom recommendations were made during the preceding fiscal year for a unit vacancy promotion to a grade above first lieutenant and, of those recommendations, the number and percentage that were concurred in by an active-duty officer under section 1113(a) of ANGCRRA, shown separately for each of the three categories of officers set forth in section 1113(b) of ANGCRRA.

(7) The number of waivers during the preceding fiscal year under section 1114(a) of ANGCRRA of any standard prescribed by the Secretary establishing a military education requirement for noncommissioned officers and the reason for each such waiver.

(8) The number and distribution by grade, shown for each State, of personnel in the initial entry training and nondeployability personnel accounting category established under section 1115 of ANGCRRA for members of the Army National Guard who have not completed the minimum training required for deployment or who are otherwise not available for deployment.

(9) The number of members of the Army National Guard, shown for each State, that were discharged during the previous fiscal year pursuant to section 1115(c)(1) of ANGCRRA for not completing the minimum training required for deployment within 24 months after entering the National Guard.

(10) The number of waivers, shown for each State, that were granted by the Secretary during the previous fiscal year under section 1115(c)(2) of ANGCRRA of the requirement in section 1115(c)(1) of ANGCRRA described in paragraph (9), together with the reason for each waiver.

(11) The number of members, shown for each State, who were screened during the preceding fiscal year to determine whether they meet minimum physical profile standards required for deployment and, of those members—

(A) the number and percentage who did not meet minimum physical profile standards required for deployment; and

(B) the number and percentage who were transferred pursuant to section 1116 of ANGCRRA to the personnel accounting category described in paragraph (8).

(12) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a medical screening during the previous fiscal year as provided in section 1117 of ANGCRRA.

(13) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, who underwent a dental screening during the previous fiscal year as provided in section 1117 of ANGCRRA.

(14) The number of members, and the percentage of the total membership, of the Army National Guard, shown for each State, over the age of 40 who underwent a full physical examination during the previous fiscal year for purposes of section 1117 of ANGCRRA.

(15) The number of units of the Army National Guard that are scheduled for early deployment in the event of a mobilization and, of those units, the number that are dentally ready for deployment in accordance with section 1118 of ANGCRRA.

(16) The estimated post-mobilization training time for each Army National Guard combat unit, and a description, displayed in broad categories and by State, of what training would need to be accomplished for Army National Guard combat units in a post-mobilization period for purposes of section 1119 of ANGCRRA.

(17) A description of the measures taken during the preceding fiscal year to comply with the requirement in section 1120 of ANGCRRA to expand the use of simulations, simulators, and advanced training devices and technologies for members and units of the Army National Guard.

(18) Summary tables of unit readiness, shown for each State, and drawn from the unit readiness rating system as required by section 1121 of ANGCRRA, including the personnel readiness rating information and the equipment readiness assessment information required by that section, together with—

(A) explanations of the information shown in the table; and

(B) based on the information shown in the tables, the Secretary's overall assessment of the deployability of units of the Army National Guard, including a discussion of personnel deficiencies and equipment shortfalls in accordance with such section 1121.

(19) Summary tables, shown for each State, of the results of inspections of units of the Army National Guard by inspectors general or other commissioned officers of the Regular Army under the provisions of section 105 of title 32, together with explanations of the information shown in the tables, and including display of—

(A) the number of such inspections;

(B) identification of the entity conducting each inspection;

(C) the number of units inspected; and

(D) the overall results of such inspections, including the inspector's determination for each inspected unit of whether the unit met deployability standards and, for those units not meeting deployability standards, the reasons for such failure and the status of corrective actions.

(20) A listing, for each Army National Guard combat unit, of the active-duty combat unit associated with that Army National Guard unit in accordance with section 1131(a) of ANGCRRA, shown by State and to be accompanied, for each such National Guard unit, by—

(A) the assessment of the commander of that associated active-duty unit of the manpower, equipment, and training resource requirements of that National Guard unit in accordance with section 1131(b)(3) of ANGCRRA; and

(B) the results of the validation by the commander of that associated active-duty unit of the compatibility of that National Guard unit with active duty forces in accordance with section 1131(b)(4) of ANGCRRA.

(21) A specification of the active-duty personnel assigned to units of the Selected Reserve pursuant to section 414(c) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note), shown (A) by State, (B) by rank of officers, warrant officers, and enlisted members assigned, and (C) by unit or other organizational entity of assignment.

(Added Pub. L. 103–160, div. A, title V, §521(a), Nov. 30, 1993, 107 Stat. 1652, §3082; renumbered §10542 and amended Pub. L. 103–337, div. A, title XVI, §1661(d)(3), Oct. 5, 1994, 108 Stat. 2982; Pub. L. 104–106, div. A, title XV, §1501(b)(8), Feb. 10, 1996, 110 Stat. 496; Pub. L. 104–201, div. A, title X, §1074(a)(21), Sept. 23, 1996, 110 Stat. 2660.)

REFERENCES IN TEXT

The Army National Guard Combat Readiness Reform Act of 1992, referred to in text, is title XI (§§1101–1137) of div. A of Pub. L. 102–484, Oct. 23, 1992, 106 Stat. 2536, as amended, which is set out as a note under section 10105 of this title.

AMENDMENTS

1996—Subsec. (b)(21). Pub. L. 104–201 substituted ''10 U.S.C. 12001 note'' for ''10 U.S.C. 261 note''.

Subsec. (d). Pub. L. 104–106 struck out subsec. (d) which read as follows: ''DEFINITION.—In this section, the term 'State' includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.''

1994—Pub. L. 103–337 renumbered section 3082 of this title as this section, struck out ''reform'' after ''readiness'' in section catchline, and struck out heading and text of subsec. (c). Text read as follows: ''The requirement to include in a presentation required by subsection (a) information under any paragraph of subsection (b) shall take effect with respect to the year following the year in which the provision of ANGCRRA to which that paragraph pertains has taken effect. Before then, in the case of any such paragraph, the Secretary shall include any information that may be available concerning the topic covered by that paragraph.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§10543. National Guard and reserve component equipment procurement and military construction funding: inclusion in future-years defense program

(a) IN GENERAL.—The Secretary of Defense shall specify in each future-years defense program submitted to Congress under section 221 of this title the estimated expenditures and the proposed appropriations, for each fiscal year of the period covered by that program, for the procurement of equipment and for military construction for each of the reserve components of the armed forces.

(b) ASSOCIATED ANNEXES.—The associated annexes of the future-years defense program shall specify, at the same level of detail as is set forth in the annexes for the active components, the amount requested for—

(1) procurement of each item of equipment to be procured for each reserve component; and

(2) each military construction project to be carried out for each reserve component, together with the location of the project.

(c) REPORT.—(1) If the aggregate of the amounts specified in paragraphs (1) and (2) of subsection (b) for a fiscal year is less than the amount equal to 90 percent of the average authorized amount applicable for that fiscal year under paragraph (2), the Secretary of Defense shall submit to Congress a report specifying for each reserve component the additional items of equipment that would be procured, and the additional military construction projects that would be carried out, if that aggregate amount were an amount equal to such average authorized amount. The report shall be at the same level of detail as is required by subsection (b).

(2) In this subsection, the term ''average authorized amount'', with respect to a fiscal year, means the average of—

(A) the aggregate of the amounts authorized to be appropriated for the preceding fiscal

year for the procurement of items of equipment, and for military construction, for the reserve components; and

(B) the aggregate of the amounts authorized to be appropriated for the fiscal year preceding the fiscal year referred to in subparagraph (A) for the procurement of items of equipment, and for military construction, for the reserve components.

(3) A report required under paragraph (1) for a fiscal year shall be submitted not later than 15 days after the date on which the President submits to Congress the budget for such fiscal year under section 1105(a) of title 31.

(Added Pub. L. 104–201, div. A, title XII, § 1257(a)(1), Sept. 23, 1996, 110 Stat. 2699; amended Pub. L. 105–85, div. A, title X, § 1009(a), Nov. 18, 1997, 111 Stat. 1872; Pub. L. 106–398, § 1 [[div. A], title IX, § 931], Oct. 30, 2000, 114 Stat. 1654, 1654A–237.)

AMENDMENTS

2000—Subsec. (c)(3). Pub. L. 106–398 added par. (3).

1997—Pub. L. 105–85 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

EFFECTIVE DATE

Section 1257(b) of Pub. L. 104–201 provided that: ''Section 10543 of title 10, United States Code, as added by subsection (a), shall apply with respect to each future-years defense program submitted to Congress after the date of the enactment of this Act [Sept. 23, 1996].''

REQUIRED LEVEL OF DETAIL

Section 1009(b) of Pub. L. 105–85 provided that: ''The level of detail provided for procurement and military construction in the future-years defense programs for fiscal years after fiscal year 1998 may not be less than the level of detail provided for procurement and military construction in the future-years defense program for fiscal year 1998.''

PART II—PERSONNEL GENERALLY

Chap.		Sec.
1201.	Authorized Strengths and Distribution in Grade	12001
1203.	Enlisted Members	12101
1205.	Appointment of Reserve Officers	12201
1207.	Warrant Officers	12241
1209.	Active Duty	12301
1211.	National Guard Members in Federal Service	12401
1213.	Special Appointments, Assignments, Details, and Duties	12501
1214.	Ready Reserve Mobilization Income Insurance	12521
1215.	Miscellaneous Prohibitions and Penalties	12551
1217.	Miscellaneous Rights and Benefits	12601
1219.	Standards and Procedures for Retention and Promotion	12641
1221.	Separation	12681
1223.	Retired Pay for Non-Regular Service	12731
1225.	Retired Grade	12771

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, § 515(b), Nov. 18, 1997, 111 Stat. 1733, substituted ''12551'' for ''[No present sections]'' in item for chapter 1215.

1996—Pub. L. 104–106, div. A, title V, § 512(a)(2), Feb. 10, 1996, 110 Stat. 305, added item for chapter 1214.

CHAPTER 1201—AUTHORIZED STRENGTHS AND DISTRIBUTION IN GRADE

Sec.	
12001.	Authorized strengths: reserve components.
12002.	Authorized strengths: Army and Air Force reserve components, exclusive of members on active duty.
12003.	Authorized strengths: commissioned officers in an active status.
12004.	Strength in grade: reserve general and flag officers in an active status.
12005.	Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status.
12006.	Strength limitations: authority to waive in time of war or national emergency.
12007.	Reserve officers of the Army: distribution.
12008.	Army Reserve and Air Force Reserve: warrant officers.
12009.	Army and Air Force reserve components: temporary increases.
12010.	Computations for Naval Reserve and Marine Corps Reserve: rule when fraction occurs in final result.
12011.	Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard.
12012.	Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title X, § 1066(a)(31), Oct. 5, 1999, 113 Stat. 772, inserted ''in an'' after ''officers'' in item 12003.

§ 12001. Authorized strengths: reserve components

(a) Whenever the authorized strength of a reserve component (other than the Coast Guard Reserve) is not prescribed by law, it shall be prescribed by the President.

(b) Subject to the authorized strength of the reserve component concerned, the authorized strength of each reserve component (other than the Coast Guard Reserve) in members in each grade is that which the Secretary concerned determines to be necessary to provide for mobilization requirements. The Secretary shall review these determinations at least once each year and revise them if he considers it necessary. However, a member of the reserve component concerned may not, as a result of such a determination, be reduced in the member's reserve grade without the member's consent.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2983.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3221, 3224, 5413, 5456, 8221, and 8224 of this title, prior to repeal by Pub. L. 103–337, § 1662(a)(3).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relat-

ing thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

END STRENGTHS FOR SELECTED RESERVE AND FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF RESERVES

Pub. L. 107–314, div. A, title IV, §§411, 412, Dec. 2, 2002, 116 Stat. 2526, 2527, provided that:

''SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

''(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2003, as follows:

''(1) The Army National Guard of the United States, 350,000.

''(2) The Army Reserve, 205,000.

''(3) The Naval Reserve, 87,800.

''(4) The Marine Corps Reserve, 39,558.

''(5) The Air National Guard of the United States, 106,600.

''(6) The Air Force Reserve, 75,600.

''(7) The Coast Guard Reserve, 9,000.

''(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

''(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

''(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be proportionately increased by the total authorized strengths of such units and by the total number of such individual members.

''SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

''Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2003, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

''(1) The Army National Guard of the United States, 24,562.

''(2) The Army Reserve, 14,070.

''(3) The Naval Reserve, 14,572.

''(4) The Marine Corps Reserve, 2,261.

''(5) The Air National Guard of the United States, 11,727.

''(6) The Air Force Reserve, 1,498.''

Similar provisions were contained in the following prior authorization acts:

Pub. L. 107–107, div. A, title IV, §§411, 412, Dec. 28, 2001, 115 Stat. 1069, 1070.

Pub. L. 106–398, §1 [[div. A], title IV, §§411, 412], Oct. 30, 2000, 114 Stat. 1654, 1654A–93.

Pub. L. 106–65, div. A, title IV, §§411, 412, Oct. 5, 1999, 113 Stat. 585, 586.

Pub. L. 105–261, div. A, title IV, §§411, 412, Oct. 17, 1998, 112 Stat. 1997.

Pub. L. 105–85, div. A, title IV, §§411, 412, Nov. 18, 1997, 111 Stat. 1719, 1720.

Pub. L. 104–201, div. A, title IV, §§411, 412, Sept. 23, 1996, 110 Stat. 2506, 2507.

Pub. L. 104–106, div. A, title IV, §§411, 412, Feb. 10, 1996, 110 Stat. 287, 288.

Pub. L. 103–337, div. A, title IV, §§411, 412, Oct. 5, 1994, 108 Stat. 2746.

Pub. L. 103–160, div. A, title IV, §§411, 412, Nov. 30, 1993, 107 Stat. 1641, 1642.

Pub. L. 102–484, div. A, title IV, §§411, 412, Oct. 23, 1992, 106 Stat. 2399.

Pub. L. 102–190, div. A, title IV, §§411, 412, Dec. 5, 1991, 105 Stat. 1351.

Pub. L. 101–510, div. A, title IV, §§411(a)–(c), 412, Nov. 5, 1990, 104 Stat. 1546, 1547; Pub. L. 102–25, title II, §§201(a), 202, 205(a), Apr. 6, 1991, 105 Stat. 79, 80; Pub. L. 102–190, div. A, title IV, §414(e), Dec. 5, 1991, 105 Stat. 1353; Pub. L. 103–160, div. A, title V, §513, Nov. 30, 1993, 107 Stat. 1649.

Pub. L. 101–189, div. A, title IV, §§411, 412, Nov. 29, 1989, 103 Stat. 1432, as amended by Pub. L. 101–510, div. A, title IV, §411(d), Nov. 5, 1990, 104 Stat. 1547.

Pub. L. 100–456, div. A, title IV, §§411(a), 412, Sept. 29, 1988, 102 Stat. 1964.

Pub. L. 100–180, div. A, title IV, §§411, 412, Dec. 4, 1987, 101 Stat. 1082, 1083, as amended by Pub. L. 100–456, div. A, title IV, §411(b), Sept. 29, 1988, 102 Stat. 1964.

Pub. L. 99–661, div. A, title IV, §§411(a)–(c), 412(a), Nov. 14, 1986, 100 Stat. 3860, 3861.

Pub. L. 99–145, title IV, §§411, 412, Nov. 8, 1985, 99 Stat. 618, 619.

Pub. L. 98–525, title IV, §§411, 412, Oct. 19, 1984, 98 Stat. 2516, 2517.

Pub. L. 98–94, title V, §§501, 502, Sept. 24, 1983, 97 Stat. 630, 631.

Pub. L. 97–252, title V, §§501, 502, Sept. 8, 1982, 96 Stat. 726, as amended by Pub. L. 98–94, title V, §504(a), Sept. 24, 1983, 97 Stat. 631.

Pub. L. 97–86, title V, §§501, 502, Dec. 1, 1981, 95 Stat. 1107.

Pub. L. 96–342, title IV, §401, Sept. 8, 1980, 94 Stat. 1084.

Pub. L. 96–107, title IV, §401, Nov. 9, 1979, 93 Stat. 807.

Pub. L. 95–485, title IV, §401, Oct. 20, 1978, 92 Stat. 1613.

Pub. L. 95–79, title IV, §401, July 30, 1977, 91 Stat. 327.

Pub. L. 94–361, title IV, §401, July 14, 1976, 90 Stat. 926.

Pub. L. 94–106, title IV, §401, Oct. 7, 1975, 89 Stat. 532.

Pub. L. 93–365, title IV, §§401, 402, Aug. 5, 1974, 88 Stat. 402, 403.

Pub. L. 93–155, title IV, §§401, 402, Nov. 16, 1973, 87 Stat. 608.

Pub. L. 92–436, title IV, §§401, 402, Sept. 26, 1972, 86 Stat. 736.

Pub. L. 92–156, title III, §§301, 302, Nov. 17, 1971, 85 Stat. 425.

Pub. L. 91–441, title III, §§301, 302, Oct. 7, 1970, 84 Stat. 908.

Pub. L. 91–121, title III, §§301, 302, Nov. 19, 1969, 83 Stat. 206.

Pub. L. 90–500, title III, §§301, 302, Sept. 20, 1968, 82 Stat. 850.

RESERVE COMPONENT FORCE STRUCTURE

Pub. L. 102–484, div. A, title IV, §413, Oct. 23, 1992, 106 Stat. 2400, provided that:

''(a) REQUIREMENT TO PRESCRIBE RESERVE COMPONENT FORCE STRUCTURE.—The Secretary of each military department shall prescribe a force structure allowance for each reserve component under the jurisdiction of the Secretary. Each such force structure allowance for a reserve component—

''(1) shall be consistent with, but in no case include a number of personnel spaces that is less than, the authorized end strength for that component; and

''(2) shall be prescribed in accordance with historic service policies.

''(b) DEFINITION.—For purposes of this section, the term 'force structure allowance' means the number and types of units and organizations, and the number of authorized personnel spaces allocated to those units and organizations, in a military force.''

LIMITATION ON REDUCTION IN NUMBER OF RESERVE COMPONENT MEDICAL PERSONNEL

Pub. L. 102–484, div. A, title V, §518, Oct. 23, 1992, 106 Stat. 2407, as amended by Pub. L. 103–337, div. A, title

VII, § 716, Oct. 5, 1994, 108 Stat. 2803, prohibited Secretary of Defense from reducing number of medical personnel in any reserve component below number of such personnel in that component on Sept. 30, 1992, unless Secretary certified to Congress that number of such personnel to be reduced in particular military department was excess to current and projected needs for personnel in Selected Reserve of that department, and required that assessment of such needs be consistent with wartime requirements for Selected Reserve personnel identified in final report on comprehensive study of military medical care system prepared pursuant to section 733 of Pub. L. 102–190, formerly set out as a note under section 1071 of this title, prior to repeal by Pub. L. 104–106, div. A, title V, § 564(d)(3), Feb. 10, 1996, 110 Stat. 327.

PROGRAM FOR ACTIVE COMPONENT SUPPORT OF RESERVES

Pub. L. 103–160, div. A, title V, § 517(b), Nov. 30, 1993, 107 Stat. 1651, provided that:

''(1) The Secretary of the Army shall include in the annual report of the Secretary to Congress known as the Army Posture Statement a presentation relating to the implementation of the Pilot Program for Active Component Support of the Reserves under section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 10 U.S.C. 261 note [now set out below]), as amended by subsection (a).

''(2) Each such presentation shall include, with respect to the period covered by the report, the following information:

''(A) The promotion rate for officers considered for promotion from within the promotion zone who are serving as active component advisers to units of the Selected Reserve of the Ready Reserve (in accordance with that program) compared with the promotion rate for other officers considered for promotion from within the promotion zone in the same pay grade and the same competitive category, shown for all officers of the Army.

''(B) The promotion rate for officers considered for promotion from below the promotion zone who are serving as active component advisers to units of the Selected Reserve of the Ready Reserve (in accordance with that program) compared in the same manner as specified in subparagraph (A).''

Pub. L. 102–190, div. A, title IV, § 414(a)–(d), Dec. 5, 1991, 105 Stat. 1352, 1353, as amended by Pub. L. 102–484, div. A, title V, § 511(b), title XI, § 1132, Oct. 23, 1992, 106 Stat. 2405, 2541; Pub. L. 103–160, div. A, title V, § 517(a), Nov. 30, 1993, 107 Stat. 1650; Pub. L. 103–337, div. A, title IV, § 413, Oct. 5, 1994, 108 Stat. 2747; Pub. L. 104–106, div. A, title IV, § 413, Feb. 10, 1996, 110 Stat. 288; Pub. L. 104–201, div. A, title V, § 545(b), Sept. 23, 1996, 110 Stat. 2524; Pub. L. 106–65, div. A, title X, § 1066(d)(2), Oct. 5, 1999, 113 Stat. 773, provided that:

''(a) PROGRAM REQUIRED.—The Secretary of the Army shall carry out a program to provide active component advisers to combat units, combat support units, and combat service support units in the Selected Reserve of the Ready Reserve that have a high priority for deployment on a time-phased troop deployment list or have another contingent high priority for deployment. The advisers shall be assigned to full-time duty in connection with organizing, administering, recruiting, instructing, or training such units.

''(b) OBJECTIVES OF PROGRAM.—The objectives of the program are as follows:

''(1) To improve the readiness of units in the reserve components of the Army.

''(2) To increase substantially the number of active component personnel directly advising reserve component unit personnel.

''(3) To provide a basis for determining the most effective mix of reserve component personnel and active component personnel in organizing, administering, recruiting, instructing, or training reserve component units.

''(4) To provide a basis for determining the most effective mix of active component officer and enlisted personnel in advising reserve component units regarding organizing, administering, recruiting, instructing, or training reserve component units.

''(c) PERSONNEL TO BE ASSIGNED.—(1) The Secretary shall assign not less than 5,000 active component personnel to serve as advisers under the program.

''(2) The Secretary of Defense may count toward the number of active component personnel required under paragraph (1) to be assigned to serve as advisers under the program under this section any active component personnel who are assigned to an active component unit (A) that was established principally for the purpose of providing dedicated training support to reserve component units, and (B) the primary mission of which is to provide such dedicated training support.

''(d) ACTION ON THE BASIS OF PROGRAM RESULTS.—Based on the experience under the pilot program, the Secretary of the Army shall by April 1, 1993, submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the Secretary's evaluation of the program to that date. As part of the budget submission for fiscal year 1995, the Secretary shall submit any recommendations for expansion or modification of the program, together with a proposal for any statutory changes that the Secretary considers necessary to implement the program on a permanent basis. In no case may the number of active duty personnel assigned to the program decrease below the number specified for the pilot program.''

RESERVE FORCES READINESS

Pub. L. 98–525, title V, § 552(a)–(e), (g), Oct. 19, 1984, 98 Stat. 2530, as amended by Pub. L. 103–337, div. A, title XVI, § 1661(a)(3)(B), Oct. 5, 1994, 108 Stat. 2980, provided that:

''(a)(1) The Secretary of Defense shall conduct a review of the various systems used to measure the readiness of reserve units of the Armed Forces and shall implement a measurement system for the active and reserve components of the Armed Forces to provide an objective and uniform evaluation of the readiness of all units of the Armed Forces. The measurement system should be designed to produce information adequate to provide comparisons concerning the readiness of all units. The system for evaluation of the readiness of a unit of an active component should incorporate the performance of any unit of a reserve component affiliated with the active component unit, including the effect of the reserve component unit on the mobilization capability of the active component unit.

''(2) Not later than March 31, 1985, the Secretary shall submit a report to the Committees on Armed Services of the Senate and House of Representatives describing the results of the review under paragraph (1) and the measurement system implemented in accordance with that paragraph.

''(b)(1) The Secretary of Defense, acting through the Assistant Secretary of Defense for Reserve Affairs, shall conduct a study to evaluate the feasibility of allocating equipment to units of reserve components based on a measure of effectiveness of such units. The study should consider the effects of allocating equipment by comparing units with similar deployment times and similar capabilities in terms of training and equipment rather than by comparing all reserve component units with each other. The study should be integrated with an evaluation of the system for measuring unit effectiveness to be implemented in accordance with subsection (a).

''(2) As part of the report under subsection (a)(2), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the study carried out under paragraph (1).

''(c) It is the sense of Congress that the number of members of the Army Reserve and of the Army National Guard assigned to full-time manning duty should be increased to 14 percent of the total membership of

the Army Reserve and of the Army National Guard, respectively, by fiscal year 1989.

''(d)(1)(A) The Secretary of Defense, acting through the Assistant Secretary of Defense for Reserve Affairs, shall conduct a study of the benefits of a longer training program for certain units of the reserve components and shall conduct a test of such a program. The test program should begin at the earliest realistic date.

''(B) In developing training programs for the reserve components, the Secretary shall give increased attention to innovative training technologies, techniques, and schedules that recognize the limitations on time and the geographic dispersion of the reserve components.

''(2) Not later than March 31, 1985, the Secretary shall submit a report to the Committees on Armed Services of the Senate and House of Representatives describing the study under paragraph (1).

''(e) [Repealed. Pub. L. 103–337, div. A, title XVI, §1661(a)(3)(B), Oct. 5, 1994, 108 Stat. 2980.]

''(g) This section does not apply to the Coast Guard.''

§ 12002. Authorized strengths: Army and Air Force reserve components, exclusive of members on active duty

(a) The authorized strengths of the National Guard and the reserve components of the Army and the Air Force, exclusive of members who are included in the strengths authorized for members of the Army and Air Force, respectively, on active duty, are as follows:

Army National Guard and the Army National Guard of the United States	600,000
Army Reserve	980,000
Air National Guard and the Air National Guard of the United States	150,000
Air Force Reserve	500,000.

(b) The strength authorized by this section for the Army National Guard and the Army National Guard of the United States, and the strength authorized by this section for the Air National Guard and the Air National Guard of the United States, shall be allocated among the States.

(Added Pub. L. 103–337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2983.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3222, 3225, 8222, and 8225 of this title, prior to repeal by Pub. L. 103–337, §1662(a)(3).

§ 12003. Authorized strengths: commissioned officers in an active status

(a) The authorized strengths of the Army, Navy, Air Force, and Marine Corps in reserve commissioned officers, other than commissioned warrant officers and officers on an active-duty list, in an active status are as follows:

Army	275,000
Air Force	200,000
Navy	150,000
Marine Corps	24,500.

(b) The authorized strengths prescribed by subsection (a) may not be exceeded unless—

(1) the Secretary concerned determines that a greater number is necessary for planned mobilization requirements; or

(2) the excess results directly from the operation of a nondiscretionary provision of law.

(Added Pub. L. 103–337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2984.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3217, 5414, and 8217 of this title, prior to repeal by Pub. L. 103–337, §1662(a)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 123, 12005, 12006 of this title.

§ 12004. Strength in grade: reserve general and flag officers in an active status

(a) The authorized strengths of the Army, Air Force, and Marine Corps in reserve general officers in an active status, and the authorized strength of the Navy in reserve officers in the grades of rear admiral (lower half) and rear admiral in an active status, are as follows:

Army	207
Air Force	157
Navy	48
Marine Corps	10.

(b) The following Army and Air Force reserve officers shall not be counted for purposes of this section:

(1) Those serving as adjutants general or assistant adjutants general of a State.

(2) Those serving in the National Guard Bureau.

(3) Those counted under section 526 of this title.

(c)(1) The authorized strength of the Navy under subsection (a) is exclusive of officers counted under section 526 of this title. Of the number authorized under subsection (a), 39 are distributed among the line and the staff corps as follows:

Line	28
Medical Department staff corps	9
Chaplain Corps	1
Judge Advocate General's Corps	1

(2) The remaining authorizations for the Navy under subsection (a) shall be distributed among such other staff corps as are established by the Secretary of the Navy under the authority provided by section 5150(b) of this title, except that—

(A) if the Secretary has established a Supply Corps, the authorized strength for the Supply Corps shall be seven; and

(B) if the Secretary has established a Civil Engineering Corps, the authorized strength for the Civil Engineering Corps shall be two.

(3) Not more than 50 percent of the officers in an active status authorized under this section for the Navy may serve in the grade of rear admiral.

(4)(A) For the purposes of paragraph (1), the Medical Department staff corps referred to in the table are as follows:

(i) The Medical Corps.

(ii) The Dental Corps.

(iii) The Nurse Corps.

(iv) The Medical Service Corps.

(B) Each of the Medical Department staff corps is authorized one rear admiral (lower half) within the strength authorization distributed to the Medical Department staff corps under paragraph (1). The Secretary of the Navy shall dis-

tribute the remainder of the strength authorization for the Medical Department staff corps under that paragraph among those staff corps as the Secretary determines appropriate to meet the needs of the Navy.

(d) The authorized strength of the Marine Corps under subsection (a) is exclusive of those counted under section 526 of this title.

(e)(1) A reserve general officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of general officers authorized under subsection (a).

(2) An officer of the Naval Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added Pub. L. 103–337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2984; amended Pub. L. 104–106, div. A, title XV, §1501(b)(9), Feb. 10, 1996, 110 Stat. 496; Pub. L. 105–261, div. A, title IV, §415, Oct. 17, 1998, 112 Stat. 1998.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3218, 5457(a), 5458(a), and 8218 of this title, prior to repeal by Pub. L. 103–337, §1662(a)(3).

AMENDMENTS

1998—Subsec. (c)(1). Pub. L. 105–261, §415(1), in table, inserted item relating to Medical Department staff corps and struck out items relating to Medical Corps, Dental Corps, Nurse Corps, and Medical Service Corps.

Subsec. (c)(4). Pub. L. 105–261, §415(2), added par. (4).

1996—Subsec. (a). Pub. L. 104–106 substituted ''active status, are'' for ''active-status, are''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 12005, 12006 of this title.

§ 12005. Strength in grade: commissioned officers in grades below brigadier general or rear admiral (lower half) in an active status

(a)(1) Subject to paragraph (2), the authorized strength of the Army and the Air Force in reserve commissioned officers in an active status in each grade named in paragraph (2) is as prescribed by the Secretary of the Army or the Secretary of the Air Force, respectively. A vacancy in any grade may be filled by an authorized appointment in any lower grade.

(2) A strength prescribed by the Secretary concerned under paragraph (1) for a grade may not be higher than the percentage of the strength authorized for the Army or the Air Force, as the case may be, under section 12003 of this title that is specified for that grade as follows:

Grade	Army percentage	Air Force percentage
Colonel	2	1.8
Lieutenant colonel	6	4.6
Major	13	14.0
Captain	35	32.0
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	44	47.6

(3) Medical officers and dental officers shall not be counted for the purposes of this subsection.

(b)(1) The authorized strengths of the Naval Reserve in line officers in an active status in the grades of captain, commander, lieutenant commander, and lieutenant, and in the grades of lieutenant (junior grade) and ensign combined, are the following percentages of the total authorized number of those officers:

Captain	1.5 percent
Commander	7 percent
Lieutenant commander	22 percent
Lieutenant	37 percent
Lieutenant (junior grade) and ensign (when combined with the number authorized for flag officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of line officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(c)(1) The authorized strengths of the Marine Corps Reserve in officers in an active status in the grades of colonel, lieutenant colonel, major, and captain, and in the grades of first lieutenant and second lieutenant combined, are the following percentages of the total authorized number of those officers:

Colonel	2 percent
Lieutenant colonel	6 percent
Major	12 percent
Captain	35 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	32.5 percent.

(2) When the actual number of officers in an active status in any grade is less than the number authorized by paragraph (1) for that grade, the difference may be applied to increase the number authorized by that paragraph for any lower grade or grades.

(d)(1) An officer of the Army or Air Force may not be reduced in grade because of a reduction in the number of commissioned officers authorized for the officer's grade under this section.

(2) An officer of the Naval Reserve or the Marine Corps Reserve may not be reduced in permanent grade because of a reduction in the number authorized by this section for his grade.

(Added Pub. L. 103–337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2985; amended Pub. L. 106–398, §1 [[div. A], title IV, §423], Oct. 30, 2000, 114 Stat. 1654, 1654A–96.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3219, 5457(b)–(d), 5458(b)–(d), and 8219 of this title, prior to repeal by Pub. L. 103–337, § 1662(a)(3).

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106–398 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12006 of this title.

§ 12006. Strength limitations: authority to waive in time of war or national emergency

(a) In time of war, or of national emergency declared by Congress or the President, the President may suspend the operation of any provision of section 12003, 12004, or 12005 of this title. So long as any such war or national emergency continues, any such suspension may be extended by the President.

(b) Any suspension under subsection (a) shall, if not sooner ended, end on the last day of the two-year period beginning on the date on which the suspension (or the last extension thereof) takes effect or on the last day of the one-year period beginning on the date of the termination of the war or national emergency, whichever occurs first. With respect to the end of any such suspension, the preceding sentence supersedes the provisions of title II of the National Emergencies Act (50 U.S.C. 1621, 1622) which provide that powers or authorities exercised by reason of a national emergency shall cease to be exercised after the date of termination of the emergency.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (b), is Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title II of the Act is classified generally to subchapter II (§ 1621 et seq.) of chapter 34 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 50 and Tables.

DELEGATION OF AUTHORITY

Authority of President under this section as invoked by sections 2 and 3 of Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended, delegated to Secretary of Defense by section 4 of Ex. Ord. No. 13223, set out as a note under section 12302 of this title.

§ 12007. Reserve officers of the Army: distribution

The Secretary of the Army shall distribute the number of reserve commissioned officers, other than commissioned warrant officers, authorized in each commissioned grade between those assigned to reserve units organized to serve as units and those not assigned to such units. The Secretary shall distribute the number who are assigned to reserve units organized to serve as units among the units of each reserve component by prescribing appropriate tables of organization and tables of distribution. The Secretary shall distribute the number who are not assigned to such units between—

(1) each special branch; and

(2) all other branches taken together.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2986.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3220 of this title, prior to repeal by Pub. L. 103–337, § 1662(a)(3).

§ 12008. Army Reserve and Air Force Reserve: warrant officers

The Secretary of the Army may prescribe the authorized strength of the Army Reserve in warrant officers. The Secretary of the Air Force may prescribe the authorized strength of the Air Force Reserve in warrant officers.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3223 and 8223 of this title, prior to repeal by Pub. L. 103–337, § 1662(a)(3).

§ 12009. Army and Air Force reserve components: temporary increases

(a) The authorized strength in any reserve grade, as prescribed under this chapter, for any reserve component under the jurisdiction of the Secretary of the Army or the Secretary of the Air Force is automatically increased to the minimum extent necessary to give effect to each appointment made in that grade under section 1211(a), 3036, 14304(b), 14314, or 14317 of this title.

(b) An authorized strength so increased is increased for no other purpose. While an officer holds that grade, the officer whose appointment caused the increase is counted for the purpose of determining when other appointments, not under those sections, may be made in that grade.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3212 and 8212 of this title, prior to repeal by Pub. L. 103–337, § 1662(a)(3).

§ 12010. Computations for Naval Reserve and Marine Corps Reserve: rule when fraction occurs in final result

When there is a fraction in the final result of any computation under this chapter for the Naval Reserve or the Marine Corps Reserve, a fraction of one-half or more is counted as one, and a fraction of less than one-half is disregarded.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(a)(1), Oct. 5, 1994, 108 Stat. 2987.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5454 of this title, prior to repeal by Pub. L. 103–337, § 1662(a)(3).

§ 12011. Authorized strengths: reserve officers on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) LIMITATIONS.—(1) Of the total number of members of a reserve component who are serv-

ing on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of major, lieutenant colonel, and colonel may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of officers of that reserve component who may be serving in the grade of:		
	Major	Lieutenant Colonel	Colonel
Army Reserve:			
10,000	1,390	740	230
11,000	1,529	803	242
12,000	1,668	864	252
13,000	1,804	924	262
14,000	1,940	984	272
15,000	2,075	1,044	282
16,000	2,210	1,104	291
17,000	2,345	1,164	300
18,000	2,479	1,223	309
19,000	2,613	1,282	318
20,000	2,747	1,341	327
21,000	2,877	1,400	336
Army National Guard:			
20,000	1,500	850	325
22,000	1,650	930	350
24,000	1,790	1,010	370
26,000	1,930	1,085	385
28,000	2,070	1,160	400
30,000	2,200	1,235	405
32,000	2,330	1,305	408
34,000	2,450	1,375	411
36,000	2,570	1,445	411
38,000	2,670	1,515	411
40,000	2,770	1,580	411
42,000	2,837	1,644	411
Marine Corps Reserve:			
1,100	106	56	20
1,200	110	60	21
1,300	114	63	22
1,400	118	66	23
1,500	121	69	24
1,600	124	72	25
1,700	127	75	26
1,800	130	78	27
1,900	133	81	28
2,000	136	84	29
2,100	139	87	30
2,200	141	90	31
2,300	143	92	32
2,400	145	94	33
2,500	147	96	34
2,600	149	98	35
Air Force Reserve:			
500	83	85	50
1,000	155	165	95
1,500	220	240	135
2,000	285	310	170
2,500	350	369	203
3,000	413	420	220
3,500	473	464	230
4,000	530	500	240
4,500	585	529	247
5,000	638	550	254
5,500	688	565	261
6,000	735	575	268
7,000	770	595	280
8,000	805	615	290
10,000	835	635	300
Air National Guard:			
5,000	333	335	251
6,000	403	394	260
7,000	472	453	269
8,000	539	512	278
9,000	606	571	287
10,000	673	630	296
11,000	740	688	305
12,000	807	742	314
13,000	873	795	323
14,000	939	848	332
15,000	1,005	898	341
16,000	1,067	948	350
17,000	1,126	998	359
18,000	1,185	1,048	368
19,000	1,235	1,098	377
20,000	1,283	1,148	380.

(2) Of the total number of members of the Naval Reserve who are serving on full-time reserve component duty at the end of any fiscal year, the number of those members who may be serving in each of the grades of lieutenant commander, commander, and captain may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of Naval Reserve serving on full-time reserve component duty:	Number of officers who may be serving in the grade of:		
	Lieutenant commander	Commander	Captain
10,000	807	447	141
11,000	867	467	153
12,000	924	485	163
13,000	980	503	173
14,000	1,035	521	183
15,000	1,088	538	193
16,000	1,142	555	203
17,000	1,195	565	213
18,000	1,246	575	223
19,000	1,291	585	233
20,000	1,334	595	242
21,000	1,364	603	250
22,000	1,384	610	258
23,000	1,400	615	265
24,000	1,410	620	270.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on full-time reserve component duty is between any two consecutive numbers in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on full-time reserve component duty is more or less than the highest or lowest number, respectively, set forth in the first column of the appropriate table in paragraph (1) or (2) of subsection (a), the Secretary concerned shall fix the corresponding strengths

for the grades shown in that table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADES.—Whenever the number of officers serving in any grade for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve officers that may be on full-time reserve component duty for a reserve component in a grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for the grade in that table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term ''full-time reserve component duty'' means the following duty:

(1) Active duty described in sections 10211, 10302, 10303, 10304, 10305, 12310, or 12402 of this title.

(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32.

(3) Active duty described in section 708 of title 32.

(Added Pub. L. 96–513, title I, §103, Dec. 12, 1980, 94 Stat. 2844, §524; amended Pub. L. 97–86, title V, §503(b), Dec. 1, 1981, 95 Stat. 1108; Pub. L. 97–252, title V, §503(b), Sept. 8, 1982, 96 Stat. 727; Pub. L. 98–94, title V, §503(b), Sept. 24, 1983, 97 Stat. 631; Pub. L. 98–525, title IV, §§413(b), 414(a)(4)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2518, 2519; Pub. L. 99–145, title IV, §413(b), Nov. 8, 1985, 99 Stat. 619; Pub. L. 100–180, div. A, title IV, §413(b), Dec. 4, 1987, 101 Stat. 1083; Pub. L. 101–189, div. A, title IV, §413(b), Nov. 29, 1989, 103 Stat. 1433; Pub. L. 102–190, div. A, title IV, §413(b), Dec. 5, 1991, 105 Stat. 1352; Pub. L. 103–160, div. A, title IV, §413(b), Nov. 30, 1993, 107 Stat. 1642; renumbered §12011 and amended Pub. L. 103–337, div. A, title XVI, §1662(a)(2), Oct. 5, 1994, 108 Stat. 2988; Pub. L. 104–106, div. A, title IV, §414(a), Feb. 10, 1996, 110 Stat. 288; Pub. L. 105–261, div. A, title IV, §414(a), Oct. 17, 1998, 112 Stat. 1998; Pub. L. 106–65, div. A, title IV, §414(a), Oct. 5, 1999, 113 Stat. 586; Pub. L. 106–398, §1 [[div. A], title IV, §§415(a), 421(b), 424(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94 to 1654A–96; Pub. L. 107–107, div. A, title IV, §415(a), Dec. 28, 2001, 115 Stat. 1070.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted heading and amended text of subsec. (a) generally. Prior to amendment, text consisted of table setting out maximum number of reserve officers of the Army, Air Force, and Marine Corps who may be on active duty or full-time National Guard duty in each of the grades of major, lieutenant colonel, and colonel, and of the Navy who may be on active duty in each of the grades of lieutenant commander, commander, and captain.

Subsec. (b). Pub. L. 107–107 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''Whenever the number of officers serving in any grade is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for any lower grade.''

Subsec. (c). Pub. L. 107–107 inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: ''Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.''

Subsec. (d). Pub. L. 107–107 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''Upon increasing under subsection (c)(2) of section 115 of this title the end strength that is authorized under subsection (a)(1)(B) of that section for a fiscal year for active-duty personnel and full-time National Guard duty personnel of an armed force who are to be paid from funds appropriated for reserve personnel, the Secretary of Defense may increase for that fiscal year the limitation that is set forth in subsection (a) of this section for the number of officers of that armed force serving in any grade if the Secretary determines that such action is in the national interest. The percent of the increase may not exceed the percent by which the Secretary increases that end strength.''

Subsec. (e). Pub. L. 107–107 added subsec. (e).

2000—Subsec. (a). Pub. L. 106–398, §1 [[div. A], title IV, §415(a)], amended table generally, increasing the fiscal year limitation on number of reserve officers in the Army in grade of Major or Lieutenant Commander from 3,227 to 3,316, in grade of Lieutenant Colonel or Commander from 1,611 to 1,759, and in grade of Colonel or Navy Captain from 471 to 529, and in the Air Force in grade of Major or Lieutenant Commander from 860 to 948, in grade of Lieutenant Colonel or Commander from 777 to 852, and in grade of Colonel or Navy Captain from 297 to 317.

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title IV, §421(b)], added subsec. (c).

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title IV, §424(a)], added subsec. (d).

1999—Subsec. (a). Pub. L. 106–65 amended table generally, increasing the fiscal year limitation on number of reserve officers in the Army in grade of Major or Lieutenant Commander from 3,219 to 3,227, in grade of Lieutenant Colonel or Commander from 1,524 to 1,611, and in grade of Colonel or Navy Captain from 438 to 471, and in the Air Force in grade of Major or Lieutenant Commander from 791 to 860 and in grade of Lieutenant Colonel or Commander from 713 to 777.

1998—Subsec. (a). Pub. L. 105–261, in table, increased fiscal year limitation on number of reserve officers in the Army in grade of Colonel or Navy Captain from 412 to 438 and in the Air Force in grade of Major or Lieutenant Commander from 643 to 791, in grade of Lieutenant Colonel or Commander from 672 to 713, and in grade of Colonel or Navy Captain from 274 to 297.

1996—Subsec. (a). Pub. L. 104–106, in table, increased fiscal year limitation on number of reserve officers in the Army in grade of Colonel or Navy Captain from 372 to 412, in the Air Force in grade of Major or Lieutenant Commander from 575 to 643 and in grade of Lieutenant Colonel or Commander from 636 to 672, and in the Marine Corps in grade of Major or Lieutenant Commander from 110 to 140, in grade of Lieutenant Colonel or Commander from 75 to 90, and in grade of Colonel or Navy Captain from 25 to 30. All other figures remained unchanged.

1994—Pub. L. 103–337 renumbered section 524 of this title as this section and amended section catchline gen-

erally striking out at end ''in grades of major, lieutenant colonel, and colonel and Navy grades of lieutenant commander, commander, and captain''.

1993—Subsec. (a). Pub. L. 103–160, in table, increased fiscal year limitation on number of reserve officers in the Air Force in grade of Lieutenant Colonel or Commander from 595 to 636 and in grade of Colonel or Navy Captain from 227 to 274. Army, Navy, and Marine Corps figures remained unchanged.

1991—Subsec. (a). Pub. L. 102–190, in table, increased fiscal year limitation on number of reserve officers in the Army in grade of Colonel or Navy Captain from 364 to 372, and increased such limitation on number of reserve officers in the Air Force in grade of Lieutenant Colonel or Commander from 532 to 595 and in grade of Colonel or Navy Captain from 194 to 227. Navy and Marine Corps figures remained unchanged.

1989—Subsec. (a). Pub. L. 101–189, § 413(b)(2), in table, increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 3,219, 1,524, and 364 from 3,030, 1,448, and 351; Navy, to 1,071, 520, and 188 from 1,065, 520, and 188; Air Force, to 575, 532, and 194 from 575, 476, and 190. Marine Corps figures remained unchanged.

Pub. L. 101–189, § 413(b)(1), in table, increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 3,030, 1,448, and 351 from 2,600, 1,250, and 348; Navy, to 1,065, 520, and 188 from 875, 520, and 185; Air Force, to 575, 476, and 190 from 575, 322, and 190. Marine Corps figures remained unchanged.

1987—Subsec. (a). Pub. L. 100–180, § 413(b)(2), in table, increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,600, 1,250, and 348 from 2,550, 1,152, and 348; Navy, to 875, 520, and 185 from 850, 520, and 185; Air Force, to 575, 322, and 190 from 575, 322, and 184; and Marine Corps, to 110, 75, and 25 from 105, 70, and 25.

Pub. L. 100–180, § 413(b)(1), in table, changed fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,550, 1,152, and 348 from 2,317, 1,152, and 348; Navy, to 850, 520, and 185 from 850, 520, and 177; Air Force, to 575, 322, and 184 from 476, 318, and 189; and Marine Corps, to 105, 70, and 25 from 100, 60, and 25.

1985—Subsec. (a). Pub. L. 99–145 increased fiscal year limitation on number of reserve officers in grade of Major or Lieutenant Commander, Lieutenant Colonel or Commander, and Colonel or Navy Captain who may be on active duty to, respectively: Army, to 2,317, 1,152, and 348 from 2,261, 1,121, and 345; Navy, to 850, 520, and 177 from 823, 520, and 177; Air Force, to 476, 318, and 189, from 471, 293, and 172; and Marine Corps, to 100, 60, and 25 from 100, 50, and 25.

1984—Pub. L. 98–525, § 414(a)(4)(B)(i), inserted references to National Guard and to full-time National Guard duty in section catchline.

Subsec. (a). Pub. L. 98–525, § 414(a)(4)(A), inserted ''or full-time National Guard duty'' after ''Marine Corps who may be on active duty'' and inserted ''or full-time National Guard duty (other than for training) under section 502(f) of title 32''.

Pub. L. 98–525, § 413(b), increased fiscal year limitation on number of reserve officers in grade of major or lieutenant commander, lieutenant colonel or commander, and colonel or Navy captain who may be on active duty to, respectively: Army, to 2,261, 1,121, and 345 from 1,948, 967, and 338; Air Force, to 471, 293, and 172 from 408, 303, and 171; Marine Corps, to 100, 50, and 25 from 95, 48, and 23. Figures for the Navy remained unchanged.

1983—Subsec. (a). Pub. L. 98–94 increased fiscal year limitation on number of reserve officers in grade major or lieutenant commander; lieutenant colonel or commander; and colonel or Navy captain who may be on active duty to, respectively: Army, to 1,948, 967, and 338 from 1,351, 671, and 234; Navy, to 823, 520, and 177 from 823, 425, and 177; Air Force, to 408, 303, and 171 from 281, 267, and 170; Marine Corps, to 95, 48, and 23 from 95, 40, and 21.

1982—Subsec. (a). Pub. L. 97–252 increased numbers in columns headed ''Army'', ''Air Force'', and ''Marine Corps'' from 1,105, 189, and 51 in line for major or lieutenant commander to 1,351, 281, and 95, respectively, from 551, 194, and 35 in line for lieutenant colonel or commander to 671, 267, and 40, respectively, and from 171, 147, and 19 in line for colonel or Navy captain to 234, 170, and 21, respectively.

1981—Subsec. (a). Pub. L. 97–86 increased numbers in columns headed ''Army'' and ''Air Force'' from 821 and 170 in line for major or lieutenant commander to 1,105 and 189, respectively, from 503 and 183 in line for lieutenant colonel or commander to 551 and 194, respectively, and from 163 and 146 in line for colonel or Navy captain to 171 and 147, respectively.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title IV, § 415(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94, provided that: ''The amendments made by this section [amending this section and section 12012 of this title] shall take effect on October 1, 2000.''

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title IV, § 414(c), Oct. 17, 1998, 112 Stat. 1998, provided that: ''The amendments made by this section [amending this section and section 12012 of this title] shall take efffect [sic] on October 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 413(b)(2) of Pub. L. 101–189 provided that the amendment made by that section is effective Oct. 1, 1990.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 413(b)(2) of Pub. L. 100–180 provided that the amendment made by that section is effective Oct. 1, 1988.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–145 effective Oct. 1, 1985, see section 413(c) of Pub. L. 99–145, set out as a note under section 517 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective Oct. 1, 1984, see section 413(c) of Pub. L. 98–525, set out as a note under section 517 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–94 effective Oct. 1, 1983, see section 503(c) of Pub. L. 98–94, set out as a note under section 517 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12012, 14304, 14311 of this title; title 32 section 112.

§ 12012. Authorized strengths: senior enlisted members on active duty or on full-time National Guard duty for administration of the reserves or the National Guard

(a) LIMITATIONS.—Of the total number of members of a reserve component who are serving on

full-time reserve component duty at the end of any fiscal year, the number of those members in each of pay grades of E–8 and E–9 who may be serving on active duty under section 10211 or 12310, or on full-time National Guard duty under the authority of section 502(f) of title 32 (other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard may not, as of the end of that fiscal year, exceed the number determined in accordance with the following table:

Total number of members of a reserve component serving on full-time reserve component duty:	Number of members of that reserve component who may be serving in the grade of:	
	E–8	E–9
Army Reserve:		
10,000	1,052	154
11,000	1,126	168
12,000	1,195	180
13,000	1,261	191
14,000	1,327	202
15,000	1,391	213
16,000	1,455	224
17,000	1,519	235
18,000	1,583	246
19,000	1,647	257
20,000	1,711	268
21,000	1,775	278
Army National Guard:		
20,000	1,650	550
22,000	1,775	615
24,000	1,900	645
26,000	1,945	675
28,000	1,945	705
30,000	1,945	725
32,000	1,945	730
34,000	1,945	735
36,000	1,945	738
38,000	1,945	741
40,000	1,945	743
42,000	1,945	743
Naval Reserve:		
10,000	340	143
11,000	364	156
12,000	386	169
13,000	407	182
14,000	423	195
15,000	435	208
16,000	447	221
17,000	459	234
18,000	471	247
19,000	483	260
20,000	495	273
21,000	507	286
22,000	519	299
23,000	531	312
24,000	540	325
Marine Corps Reserve:		
1,100	50	11
1,200	55	12
1,300	60	13
1,400	65	14
1,500	70	15
1,600	75	16
1,700	80	17
1,800	85	18
1,900	89	19
2,000	93	20
2,100	96	21
2,200	99	22
2,300	101	23
2,400	103	24
2,500	105	25
2,600	107	26
Air Force Reserve:		
500	75	40
1,000	145	75
1,500	208	105
2,000	270	130
2,500	325	150
3,000	375	170
3,500	420	190
4,000	460	210
4,500	495	230
5,000	530	250
5,500	565	270
6,000	600	290
7,000	670	330
8,000	740	370
10,000	800	400
Air National Guard		
5,000	1,020	405
6,000	1,070	435
7,000	1,120	465
8,000	1,170	490
9,000	1,220	510
10,000	1,270	530
11,000	1,320	550
12,000	1,370	570
13,000	1,420	589
14,000	1,470	608
15,000	1,520	626
16,000	1,570	644
17,000	1,620	661
18,000	1,670	678
19,000	1,720	695
20,000	1,770	712.

(b) DETERMINATIONS BY INTERPOLATION.—If the total number of members of a reserve component serving on full-time reserve component duty is between any two consecutive numbers in the first column of the table in subsection (a), the corresponding authorized strengths for each of the grades shown in that table for that component are determined by mathematical interpolation between the respective numbers of the two strengths. If the total number of members of a reserve component serving on full-time reserve component duty is more or less than the highest or lowest number, respectively, set forth in the first column of the table in subsection (a), the Secretary concerned shall fix the corresponding strengths for the grades shown in the table at the same proportion as is reflected in the nearest limit shown in the table.

(c) REALLOCATIONS TO LOWER GRADE.—Whenever the number of members serving in pay grade E–9 for duty described in subsection (a) is less than the number authorized for that grade under this section, the difference between the two numbers may be applied to increase the number authorized under this section for pay grade E–8.

(d) SECRETARIAL WAIVER.—(1) Upon determining that it is in the national interest to do so, the Secretary of Defense may increase for a particular fiscal year the number of reserve en-

listed members that may be on active duty or full-time National Guard duty as described in subsection (a) for a reserve component in a pay grade referred to in a table in subsection (a) by a number that does not exceed the number equal to 5 percent of the maximum number specified for that grade and reserve component in the table.

(2) Whenever the Secretary exercises the authority provided in paragraph (1), the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives notice in writing of the adjustment made.

(e) FULL-TIME RESERVE COMPONENT DUTY DEFINED.—In this section, the term ''full-time reserve component duty'' has the meaning given the term in section 12011(e) of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1662(a)(1), Oct. 5, 1994, 108 Stat. 2987; amended Pub. L. 104–106, div. A, title IV, §414(b), title XV, §1501(b)(10), Feb. 10, 1996, 110 Stat. 288, 496; Pub. L. 105–261, div. A, title IV, §414(b), Oct. 17, 1998, 112 Stat. 1998; Pub. L. 106–65, div. A, title IV, §414(b), Oct. 5, 1999, 113 Stat. 586; Pub. L. 106–398, §1 [[div. A], title IV, §§415(b), 421(c), 424(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–94 to 1654A–96; Pub. L. 107–107, div. A, title IV, §415(b), Dec. 28, 2001, 115 Stat. 1073.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 517(b), (c) of this title, prior to amendment by Pub. L. 103–337, §1662(a)(4).

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted heading and amended text of subsec. (a) generally. Prior to amendment, text consisted of table setting out maximum number of enlisted members in pay grades E–8 and E–9 who may be on active duty (other than for training) or on full-time National Guard duty (other than for training) as of the end of any fiscal year in connection with organizing, administering, recruiting, instructing, or training the reserve components or the National Guard.

Subsec. (b). Pub. L. 107–107 inserted heading and amended text of subsec. (b) generally. Prior to amendment, text read as follows: ''Whenever the number of members serving in pay grade E–9 for duty described in subsection (a) is less than the number authorized for that grade under subsection (a), the difference between the two numbers may be applied to increase the number authorized under such subsection for pay grade E–8.''

Subsec. (c). Pub. L. 107–107 inserted heading and amended text of subsec. (c) generally. Prior to amendment, text read as follows: ''Whenever under section 527 of this title the President may suspend the operation of any provision of section 523, 525, or 526 of this title, the Secretary of Defense may suspend the operation of any provision of this section. Any such suspension shall, if not sooner ended, end in the manner specified in section 527 for a suspension under that section.''

Subsec. (d). Pub. L. 107–107 inserted heading and amended text of subsec. (d) generally. Prior to amendment, text read as follows: ''Upon increasing under subsection (c)(2) of section 115 of this title the end strength that is authorized under subsection (a)(1)(B) of that section for a fiscal year for active-duty personnel and full-time National Guard duty personnel of an armed force who are to be paid from funds appropriated for reserve personnel, the Secretary of Defense may increase for that fiscal year the limitation that is set forth in subsection (a) of this section for the number of enlisted members of that armed force serving in any grade if the Secretary determines that such action is in the national interest. The percent of the increase may not exceed the percent by which the Secretary increases that end strength.''

Subsec. (e). Pub. L. 107–107 added subsec. (e).

2000—Subsec. (a). Pub. L. 106–398, §1 [[div. A], title IV, §415(b)], amended table generally, increasing the fiscal year limitation on number of enlisted members in the Army in grade of E–9 from 645 to 764 and in grade of E–8 from 2,593 to 2,821, and in the Air Force in grade of E–9 from 405 to 502 and in grade of E–8 from 1,041 to 1,117.

Subsec. (c). Pub. L. 106–398, §1 [[div. A], title IV, §421(c)], added subsec. (c).

Subsec. (d). Pub. L. 106–398, §1 [[div. A], title IV, §424(b)], added subsec. (d).

1999—Subsec. (a). Pub. L. 106–65 amended table generally, increasing the fiscal year limitation on number of enlisted members in the Army in grade of E–9 from 623 to 645 and in grade of E–8 from 2,585 to 2,593, and in the Air Force in grade of E–9 from 395 to 405 and in grade of E–8 from 997 to 1,041.

1998—Subsec. (a). Pub. L. 105–261, in table, in grade E–9 increased figure for Army from 603 to 623 and for Air Force from 366 to 395, and in grade E–8 increased figure for Air Force from 890 to 997.

1996—Pub. L. 104–106, §1501(b)(10), substituted ''the National'' for ''National'' in section catchline.

Subsec. (a). Pub. L. 104–106, §414(b), in table, in grade E–9, increased figure for Army from 569 to 603, for Air Force from 328 to 366, and for Marine Corps from 14 to 20, and in grade E–8, increased figure for Air Force from 840 to 890 and for Marine Corps from 74 to 94. All other figures remained unchanged.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by section 1 [[div. A], title IV, §415(b)] of Pub. L. 106–398 effective Oct. 1, 2000, see section 1 [[div. A], title IV, §415(c)] of Pub. L. 106–398, set out as a note under section 12011 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–261 effective Oct. 1, 1998, see section 414(c) of Pub. L. 105–261, set out as a note under section 12011 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(10) of Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 112.

CHAPTER 1203—ENLISTED MEMBERS

Sec.
12101. Definition.
12102. Reserve components: qualifications.
12103. Reserve components: terms.
12104. Reserve components: transfers.
12105. Army Reserve and Air Force Reserve: transfer from Guard components.
12106. Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard.
12107. Army National Guard of United States; Air National Guard of the United States: enlistment in.
12108. Enlisted members: discharge or retirement for years of service or for age.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, §517(f)(2), Dec. 28, 2001, 115 Stat. 1096, added item 12108.

§ 12101. Definition

In this chapter, the term ''enlistment'' means original enlistment or reenlistment.

(Added Pub. L. 103–337, div. A, title XVI, §1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 12102. Reserve components: qualifications

(a) To become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by section 502 of this title, or be transferred to that component according to law. In addition, to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, he must meet the requirements of section 12107 of this title.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the enlistment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be enlisted as a Reserve unless—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be enlisted as a Reserve of any armed force under the jurisdiction of that Secretary.

(Aug. 10, 1956, ch. 1041, 70A Stat. 17, §510; Pub. L. 88–236, Dec. 23, 1963, 77 Stat. 474; Pub. L. 90–130, §1(2), Nov. 8, 1967, 81 Stat. 374; Pub. L. 90–623, §2(3), Oct. 22, 1968, 82 Stat. 1314; Pub. L. 96–513, title V, §511(13), Dec. 12, 1980, 94 Stat. 2921; renumbered §12102 and amended Pub. L. 103–337, div. A, title XVI, §§1631(a), 1662(b)(2), 1675(a), Oct. 5, 1994, 108 Stat. 2964, 2989, 3017; Pub. L. 104–106, div. A, title XV, §1501(a)(5)(A), Feb. 10, 1996, 110 Stat. 495.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
510(a)	50:952 (less proviso).	July 9, 1952, ch. 608, §§217 (less (c), as applicable to enlistments), 228 (less proviso), 232 (as applicable to enlistments), 66 Stat. 486, 488, 489.
510(b)	50:941(a) (as applicable to enlistments).	
510(c)	50:941(b) (as applicable to enlistments).	
510(d)	50:956 (as applicable to enlistments).	

In subsection (a), the last sentence is inserted to reflect sections 3261 and 8261 of this title.

In subsection (b), the word ''However'' is substituted for the words ''Subject to the limitation that''. The words ''as Reserves in the armed forces under his jurisdiction'' are substituted for the words ''of Reserve members of the Armed Forces of the United States''. The words ''its Territories'' are omitted as surplusage, since citizens of the Territories are citizens of the United States.

In subsection (c), the words ''armed force concerned'' are substituted for the words ''of the appropriate Armed Force of the United States''. The words ''in which she previously served satisfactorily'' are substituted for the words ''satisfactorily held by her''.

In subsection (d), the words ''under the jurisdiction of that Secretary'' are inserted for clarity. The words ''general or special'' are omitted as surplusage.

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

1996—Subsecs. (c), (d). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, §1631(a). See 1994 Amendment note below.

1994—Pub. L. 103–337, §1662(b)(2), renumbered section 510 of this title as this section.

Subsec. (a). Pub. L. 103–337, §1675(a), substituted ''12107'' for ''3261 or 8261''.

Subsecs. (c), (d). Pub. L. 103–337, §1631(a), as amended by Pub. L. 104–106, redesignated subsec. (d) as (c) and struck out former subsec. (c) which read as follows: ''Women may be enlisted as Reserves of the armed forces. Women are enlisted in the grades and ratings authorized for enlisted women of the regular component of the armed force concerned. Any female former enlisted member of an armed force may, if otherwise qualified, be enlisted as a Reserve of that armed force in the highest grade or rating in which she previously served satisfactorily on active duty (other than for training).''

1980—Subsec. (b)(1). Pub. L. 96–513 substituted ''the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' for ''chapter 12 of title 8''.

1968—Subsec. (a). Pub. L. 90–623 substituted ''section 502'' for ''section 501''.

1967—Subsec. (c). Pub. L. 90–130 struck out provision limiting the reserve components in which women may be enlisted as Reserves of the armed forces to the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve.

1963—Subsec. (b)(1). Pub. L. 88–236 substituted ''he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8'' for ''he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(b)(2) and 1675(a) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1631(a) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–623 intended to restate without substantive change the law in effect on Oct. 22,

1968, see section 6 of Pub. L. 90–623, set out as a note under section 5334 of Title 5, Government Organization and Employees.

TREATMENT OF SINGLE PARENTS ENLISTING IN RESERVE COMPONENTS OF THE ARMED FORCES

Pub. L. 99–661, div. A, title V, § 523, Nov. 14, 1986, 100 Stat. 3871, as amended by Pub. L. 100–180, div. A, title V, § 503, Dec. 4, 1987, 101 Stat. 1085; Pub. L. 101–189, div. A, title V, § 504, Nov. 29, 1989, 103 Stat. 1437, which provided that, in determining under section 510 [now 12102] of title 10 whether a person who is applying to enlist in a reserve component of the Armed Forces upon discharge or release from active duty is qualified for enlistment as a Reserve of an Armed Force, the Secretary concerned may not disqualify the person because the person is a single parent if the person is otherwise qualified for enlistment, the person became a single parent while serving on active duty, and the person's status as a single parent was not a factor in the person's discharge or release from active duty, with provision that the requirements imposed with respect to parenthood not be more stringent than those imposed on a member who becomes a single parent during the term of the member's enlistment, and with provision defining ''single parent'' as a person who is not married and who has custody of a child under the age of 18 pursuant to a court order, expired on Sept. 30, 1991.

§ 12103. Reserve components: terms

(a) Except as otherwise prescribed by law, enlistments as Reserves are for terms prescribed by the Secretary concerned. However, an enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency, and that would otherwise expire, continues in effect until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(b) Under regulations to be prescribed by the Secretary of Defense, and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a person who is qualified for enlistment for active duty in an armed force, and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), may be enlisted as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall serve—

(1) on active duty for a period of not less than two years; and

(2) the rest of his period of enlistment as a member of the Ready Reserve.

(c) In time of war or of national emergency declared by Congress the term of service of an enlisted member transferred to a reserve component according to law, that would otherwise expire, continues until the expiration of six months after the end of that war or emergency, whichever is later, unless sooner terminated by the Secretary concerned.

(d) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, a non-prior-service person who is qualified for induction for active duty in an armed force and who is not under orders to report for induction into an armed force under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), except as provided in section 6(c)(2)(A)(ii) and (iii) of such Act, may be enlisted in the Army National Guard or the Air National Guard, or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve, for a term of not less than six years nor more than eight years. Each person enlisted under this subsection shall perform an initial period of active duty for training of not less than twelve weeks to commence insofar as practicable within one year after the date of that enlistment.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, § 511; Pub. L. 85–861, § 1(8), Sept. 2, 1958, 72 Stat. 1439; Pub. L. 88–110, § 3, Sept. 3, 1963, 77 Stat. 135; Pub. L. 90–168, § 2(11), Dec. 1, 1967, 81 Stat. 523; Pub. L. 94–106, title VIII, § 802(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 95–485, title IV, § 405(c)(1), Oct. 20, 1978, 92 Stat. 1615; Pub. L. 96–107, title VIII, § 805(a), Nov. 9, 1979, 93 Stat. 812; Pub. L. 96–513, title V, § 511(14), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 97–252, title XI, § 1115(a), Sept. 8, 1982, 96 Stat. 750; Pub. L. 97–295, § 1(6), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98–94, title X, § 1022(a)(1), Sept. 24, 1983, 97 Stat. 670; renumbered § 12103, Pub. L. 103–337, div. A, title XVI, § 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 533(a), Dec. 2, 2002, 116 Stat. 2547.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
511(a)	50:951 (less (c)).	July 9, 1952, ch. 608, § 227, 66 Stat. 488.
511(b)	50:951(c).	

In subsection (a), the first sentence is substituted for 50:951(a). The words ''as Reserves in the Armed Forces of the United States'' and ''the existence of'' are omitted as surplusage.

In subsections (a) and (b), the word ''hereafter'' is omitted as surplusage. The words ''the expiration of'' are inserted for clarity.

In subsection (b), the word ''continues'' is substituted for the words ''shall * * * be extended''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
511(b)	50:1012.	Aug. 9, 1955, ch. 665, § 2(i) (1st 2 pars.), 69 Stat. 600.

In subsection (b), the words ''respectively, pursuant to the provisions of this section'' are omitted as surplusage. The words ''as a Reserve for service'' are inserted to reflect section 510 of this title. The last six words of the first sentence are substituted for 50:1012(b) (1st sentence).

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsecs. (b) and (d), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. Section 6 of the Act is classified to section 456 of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (d). Pub. L. 107–314 substituted ''one year'' for ''270 days'' in last sentence.

Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1994—Pub. L. 103–337 renumbered section 511 of this title as this section.

1983—Subsec. (b). Pub. L. 98–94, §1022(a)(1)(A), substituted ''not less than six years nor more than eight years'' for ''six years''.

Subsec. (d). Pub. L. 98–94, §1022(a)(1)(B), substituted ''not less than six years nor more than eight years'' for ''six years''.

1982—Subsec. (b). Pub. L. 97–295 substituted ''(50 U.S.C. App. 451 et seq.)'' for ''(50 U.S.C. App. 451–473)'' after ''Military Selective Service Act''.

Subsec. (d). Pub. L. 97–252 extended to 270 from 180 days requirement for commencement of initial period of active duty for training after date of enlistment.

1980—Subsec. (d). Pub. L. 96–513 substituted ''Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''Military Selective Service Act of 1967 (50 App. U.S.C. 451–473)''.

1979—Subsec. (d). Pub. L. 96–107 struck out requirement that a non-prior-service person be under 26 years of age.

1978—Subsec. (b). Pub. L. 95–485, in provision preceding cl. (1), substituted ''the Secretary of Defense, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy'' for ''the Secretary concerned'' and ''the Military Selective Service Act (50 U.S.C. App. 451–473)'' for ''sections 451–473 of title 50, appendix'', in cl. (1), substituted ''not less than two years; and'' for ''two years;'', struck out former cl. (2), requiring a person enlisted under this subsec. to serve satisfactorily as a member of the Ready Reserve for a period which when added to his active duty under cl. (1) totals five years, redesignated former cl. (3) as (2), and in cl. (2) as so redesignated, substituted ''Ready Reserve'' for ''Standby Reserve''.

1975—Subsec. (d). Pub. L. 94–106 reduced initial period of active duty for training for persons enlisted under this subsection from four months to twelve weeks.

1967—Subsec. (d). Pub. L. 90–168 substituted the Secretary of Transportation for the Secretary of the Treasury as the prescribing authority for regulations covering the Coast Guard when not operating as part of the Navy, inserted exception as provided in section 6(c)(2)(A)(ii) and (iii) of the Military Selective Service Act of 1967, added requirement that the initial period of four months' service commence insofar as practicable within 180 days after the date of enlistment, and struck out provision that the remainder of the period of service after the initial period of four months be served, subject to section 269(e)(4) of this title, as a member of the Ready Reserve.

1963—Subsec. (d). Pub. L. 88–110 added subsec. (d).

1958—Subsecs. (b), (c). Pub. L. 85–861, §1(8)(A), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title V, §533(b), Dec. 2, 2002, 116 Stat. 2547, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to enlistments under section 12103(d) of title 10, United States Code, after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 2, 2002].''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1022(a)(2) of Pub. L. 98–94 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply only with respect to persons who enlist under the authority of subsection (b) or (d) of section 511 [now 12103] of title 10, United States Code, 60 or more days after the date of the enactment of this Act [Sept. 24, 1983].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 1115(b) of Pub. L. 97–252 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to persons enlisting in a reserve component of the Armed Forces after the end of the ninety-day period beginning on the date of the enactment of this Act [Sept. 8, 1982].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 805(c) of Pub. L. 96–107 provided that: ''The amendments made by this section [amending this section and section 651 of this title] shall apply only to individuals who become members of an Armed Force after the date of the enactment of this Act [Nov. 9, 1979].''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 405(c)(2) of Pub. L. 95–485 provided that: ''The amendments made by paragraph (1) [amending this section] shall not apply with respect to a person who enlisted as a Reserve for service in the Armed Forces under section 511(b) [now 12103(b)] of title 10, United States Code, before the date of the enactment of this Act [Oct. 20, 1978].''

EFFECTIVE DATE OF 1967 AMENDMENT

For effective date of amendment by Pub. L. 90–168, see section 7 of Pub. L. 90–168, set out as a note under section 138 of this title.

TRANSITION

Pub. L. 107–314, div. A, title V, §533(c), Dec. 2, 2002, 116 Stat. 2547, provided that: ''In the case of a person who enlisted under section 12103(d) of title 10, United States Code, before the date of the enactment of this Act [Dec. 2, 2002] and who as of such date has not commenced the required initial period of active duty for training under that section, the amendment made by subsection (a) [amending this section] may be applied to that person, but only with the agreement of that person and the Secretary concerned.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 2108; title 14 section 713; title 37 section 205; title 38 sections 3002, 3202, 3452, 3501; title 50 App. section 456.

§ 12104. Reserve components: transfers

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be enlisted in any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be enlisted as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service

in the armed force in which he is so enlisted or in any other armed force in which he is later enlisted or appointed.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 18, § 512; Pub. L. 96–513, title V, § 511(15), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12104, Pub. L. 103–337, div. A, title XVI, § 1662(b)(2), Oct. 5, 1994, 108 Stat. 2989.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
512(a)	50:929(a) (less 2d sentence, as applicable to enlistments).	July 9, 1952, ch. 608, § 209 (as applicable to enlistments), 66 Stat. 484.
512(b)	50:929(a) (2d sentence, as applicable to enlistments).	
512(c)	50:929(b) (as applicable to enlistments).	

In subsection (a), the words ''is entitled * * * to be enlisted in any armed force that he chooses'' are substituted for the words ''shall * * * be permitted to enlist * * * in such Armed Force of the United States as he may elect''. The second sentence is substituted for 50:929(a) (words within parentheses). The words ''of an Armed Force of the United States'' are omitted as surplusage.

In subsection (b), the word ''rest'' is substituted for the words ''remaining period''. The words ''be required to'' are omitted as surplusage.

In subsection (c), the words ''This section does not'' are substituted for the words ''Nothing in this section shall be construed''. The word ''change'' is substituted for the words ''reduce, limit, or modify''. The words ''which any person may undertake to perform'' are omitted as surplusage.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 512 of this title as this section.

1980—Subsec. (a). Pub. L. 96–513 substituted ''the Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''sections 451–473 of title 50, appendix'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 12105. Army Reserve and Air Force Reserve: transfer from Guard components

(a) Under such regulations as the Secretary concerned may prescribe—

(1) an enlisted member of the Army National Guard of the United States may be transferred in grade to the Army Reserve; and

(2) an enlisted member of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Upon such a transfer, the member transferred is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if transferred under subsection (a)(1), or the Air Force, if transferred under subsection (a)(2), if his service has been honorable.

(c) A transfer under this section may only be made with the consent of the governor or other appropriate authority of the State concerned.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(b)(1), Oct. 5, 1994, 108 Stat. 2988.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3259 and 8259 of this title, prior to repeal by Pub. L. 103–337, § 1662(b)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 32 section 323.

§ 12106. Army and Air Force Reserve: transfer to upon withdrawal as member of National Guard

(a) An enlisted member of the Army National Guard of the United States who ceases to be a member of the Army National Guard becomes a member of the Army Reserve unless he is also discharged from his enlistment as a Reserve.

(b) An enlisted member of the Air National Guard of the United States who ceases to be a member of the Air National Guard becomes a member of the Air Force Reserve unless he is also discharged from his enlistment as a Reserve.

(c) An enlisted member who becomes a member of the Army Reserve or the Air Force Reserve under this section ceases to be a member of the Army National Guard of the United States or the Air National Guard of the United States, as the case may be.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(b)(1), Oct. 5, 1994, 108 Stat. 2989.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3260 and 8260 of this title, prior to repeal by Pub. L. 103–337, § 1662(b)(3).

§ 12107. Army National Guard of United States; Air National Guard of the United States: enlistment in

(a) Except as provided in subsection (c), to become an enlisted member of the Army National Guard of the United States or the Air National Guard of the United States, a person must—

(1) be enlisted in the Army National Guard or the Air National Guard, as the case may be;

(2) subscribe to the oath set forth in section 304 of title 32; and

(3) be a member of a federally recognized unit or organization of the Army National Guard or the Air National Guard, as the case may be, in the grade in which he is to be enlisted as a Reserve.

(b)(1) Under regulations to be prescribed by the Secretary of the Army, a person who enlists in the Army National Guard, or whose term of enlistment in the Army National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Army for service in the Army National Guard of the United States.

(2) Under regulations to be prescribed by the Secretary of the Air Force, a person who enlists in the Air National Guard, or whose term of enlistment in the Air National Guard is extended, shall be concurrently enlisted, or his term of enlistment shall be concurrently extended, as the case may be, as a Reserve of the Air Force for service in the Air National Guard of the United States.

(c)(1) A member of the Army Reserve who enlists in the Army National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Army National Guard, becomes a member of the Army National Guard of the United States and ceases to be a member of the Army Reserve.

(2) A member of the Air Force Reserve who enlists in the Air National Guard in his reserve grade, and is a member of a federally recognized unit or organization of the Air National Guard, becomes a member of the Air National Guard of the United States and ceases to be a member of the Air Force Reserve.

(Added Pub. L. 103–337, div. A, title XVI, §1662(b)(1), Oct. 5, 1994, 108 Stat. 2989.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3261 and 8261 of this title, prior to repeal by Pub. L. 103–337, §1662(b)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12102 of this title.

§ 12108. Enlisted members: discharge or retirement for years of service or for age

Each reserve enlisted member of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the member is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the member is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107–107, div. A, title V, §517(f)(1), Dec. 28, 2001, 115 Stat. 1095.)

EFFECTIVE DATE

Section effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 10154 of this title.

CHAPTER 1205—APPOINTMENT OF RESERVE OFFICERS

Sec.
12201. Reserve officers: qualifications for appointment.
12202. Commissioned officer grades.
12203. Commissioned officers: appointment, how made; term.
12204. Commissioned officers: original appointment; limitation.
12205. Commissioned officers: appointment; educational requirement.
12206. Commissioned officers: appointment of former commissioned officers.
12207. Commissioned officers: service credit upon original appointment.
12208. Officers: appointment upon transfer.
12209. Officer candidates: enlisted Reserves.
12210. Attending Physician to the Congress: reserve grade while so serving.
12211. Officers: Army National Guard of the United States.
12212. Officers: Air National Guard of the United States.
12213. Officers; Army Reserve: transfer from Army National Guard of the United States.
12214. Officers; Air Force Reserve: transfer from Air National Guard of the United States.
12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(11)(B), (13)(B), Feb. 10, 1996, 110 Stat. 496, substituted ''Reserve officers: qualifications'' for ''Qualifications'' in item 12201 and inserted ''the'' after ''National Guard of'' in items 12211, 12212, 12213, and 12214.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 591 of this title.

§ 12201. Reserve officers: qualifications for appointment

(a) To become an officer of a reserve component a person must be appointed as a Reserve of an armed force in a grade corresponding to a grade authorized for the regular component of the armed force concerned and subscribe to the oath prescribed by section 3331 of title 5. In addition, to become an officer of the Army National Guard of the United States or the Air National Guard of the United States, he must first be appointed to, and be federally recognized in, the same grade in the Army National Guard or the Air National Guard, as the case may be.

(b) Except as otherwise provided by law, the Secretary concerned shall prescribe physical, mental, moral, professional, and age qualifications for the appointment of persons as Reserves of the armed forces under his jurisdiction. However, no person may be appointed as a Reserve unless he is at least 18 years of age and—

(1) he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(2) he has previously served in the armed forces or in the National Security Training Corps.

(c) A person who is otherwise qualified, but who has a physical defect that the Secretary concerned determines will not interfere with the performance of the duties to which that person may be assigned, may be appointed as a Reserve of any armed force under the jurisdiction of that Secretary.

(d) In prescribing age qualifications under subsection (b) for the appointment of persons as Reserves of the armed forces under his jurisdiction,

the Secretary concerned may not prescribe a maximum age qualification of less than 47 years of age for the initial appointment of a person as a Reserve to serve in a health profession specialty which has been designated by the Secretary concerned as a specialty critically needed in wartime.

(Aug. 10, 1956, ch. 1041, 70A Stat. 24, §591; Pub. L. 85–861, §1(10)(A), Sept. 2, 1958, 72 Stat. 1440; Pub. L. 88–236, Dec. 23, 1963, 77 Stat. 474; Pub. L. 89–718, §4, Nov. 2, 1966, 80 Stat. 1115; Pub. L. 90–130, §1(3), Nov. 8, 1967, 81 Stat. 374; Pub. L. 96–513, title V §511(16), Dec. 12, 1980, 94 Stat. 2921; Pub. L. 100–180, div. A, title VII, §718(a), Dec. 4, 1987, 101 Stat. 1115; renumbered §12201 and amended Pub. L. 103–337, div. A, title XVI, §§1631(b), 1662(c)(2), Oct. 5, 1994, 108 Stat. 2964, 2990; Pub. L. 104–106, div. A, title XV, §1501(a)(5)(B), (b)(11)(A), Feb. 10, 1996, 110 Stat. 495, 496.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
591(a)	50:946.	July 9, 1952, ch. 608, §§217 (less (c), and less applicability to enlistments), 222, 232 (less applicability to enlistments), 66 Stat. 486, 487, 489.
591(b)	50:941(a) (less applicability to enlistments).	
591(c)	50:941(b) (less applicability to enlistments).	
591(d)	50:956 (less applicability to enlistments).	

In subsection (a), 50:946(a) (last 12 words of proviso) is omitted as covered by section 312 of title 32, 50:946(b) is omitted as covered by the revised subsection.

In subsection (b), the word ''However'' is substituted for the words ''Subject to the limitation that''. The exception as to section 4(i)(7) of the Universal Military Training and Service Act is inserted for clarity. The words ''as Reserves of the armed forces under his jurisdiction'' are substituted for the words ''of Reserve members of the Armed Forces of the United States''. The words ''unless he is at least 18 years of age'' are substituted for 50:941(a) (last sentence). The words ''its Territories'' are omitted as surplusage, since citizens of the Territories are citizens of the United States.

In subsection (c), the words ''armed force concerned'' are substituted for the words ''of the appropriate Armed Force of the United States''. The words ''in the grades corresponding to the grades authorized for female officers of the'' are substituted for the words ''in the same grades * * * as are authorized for women in the'', to conform to subsection (a). The words ''in which she previously served satisfactorily'' are substituted for the words ''satisfactorily held by her''.

In subsection (d), the words ''under the jurisdiction of that Secretary'' are inserted for clarity. The words ''general or special'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
591(c)	50:941(b).	July 30, 1956, ch. 789, §4(a), 70 Stat. 729.

The words ''Subject to section 946(a) of this title'' are omitted, since that section is restated in subsection (a) of the revised section and is applicable to all reserve appointments. 50:941(b) (last 2 sentences) is omitted as covered by sections 510 and 591 of this title.

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in subsec. (b)(1), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

AMENDMENTS

1996—Pub. L. 104–106, §1501(b)(11), substituted ''Reserve officers: qualifications for appointment'' for ''Reserve components: qualifications'' as section catchline.

Subsecs. (c) to (e). Pub. L. 104–106, §1501(a)(5)(B), made technical correction to directory language of Pub. L. 103–337, §1631(b). See 1994 Amendment note below.

1994—Pub. L. 103–337, §1662(c)(2), renumbered section 591 of this title as this section.

Subsecs. (c) to (e). Pub. L. 103–337, §1631(b), as amended by Pub. L. 104–106, §1501(a)(5)(B), redesignated subsecs. (d) and (e) as (c) and (d), respectively, and struck out former subsec. (c) which read as follows: ''Women may be appointed as Reserves of the armed forces for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, and Coast Guard Reserve. Women who are otherwise qualified may be appointed as Reserves of the armed forces with a view to serving in the Army National Guard of the United States or the Air National Guard of the United States. Women are appointed in grades corresponding to the grades authorized for female officers of the regular component of the armed force concerned. Any female former officer of an armed force may, if otherwise qualified, be appointed as a Reserve of that armed force in the highest grade in which she previously served satisfactorily on active duty (other than for training).''

1987—Subsec. (e). Pub. L. 100–180 added subsec. (e).

1980—Subsec. (b). Pub. L. 96–513 substituted ''the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)'' for ''chapter 12 of title 8'', and struck out reference to section 454(i)(7) of title 50, appendix.

1967—Subsec. (c). Pub. L. 90–130 struck out provision limiting areas of service of women in Army National Guard of the United States and Air National Guard of the United States to service as nurses or medical specialists.

1966—Subsec. (a). Pub. L. 89–718 substituted ''3331'' for ''16''.

1963—Subsec. (b) (1). Pub. L. 88–236 substituted ''he is a citizen of the United States or has been lawfully admitted to the United States for permanent residence under chapter 12 of title 8'' for ''he is, or has made a declaration of intention to become, a citizen of the United States or of a possession thereof''.

1958—Subsec. (c). Pub. L. 85–861 permitted appointment of women as Reserves of armed forces with a view to serving as nurses or medical specialists in Army National Guard of the United States or Air National Guard of the United States.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1631(b) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

BACCALAUREATE DEGREE REQUIRED FOR APPOINTMENT OR PROMOTION OF RESERVE COMPONENT OFFICERS TO GRADES ABOVE FIRST LIEUTENANT OR LIEUTENANT (JUNIOR GRADE)

Pub. L. 102–190, div. A, title V, §523, Dec. 5, 1991, 105 Stat. 1363, provided that after Sept. 30, 1995, no person

could be appointed to a grade above grade of first lieutenant in Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above grade of lieutenant (junior grade) in Naval Reserve, or be federally recognized in a grade above grade of first lieutenant as a member of Army National Guard or Air National Guard, unless that person had been awarded a baccalaureate degree by an accredited educational institution, prior to repeal by Pub. L. 103–35, title II, §203(a), May 31, 1993, 107 Stat. 102. See section 12205 of this title.

PRIORITY IN MAKING ORIGINAL APPOINTMENTS IN GUARD AND RESERVE COMPONENTS FOR ROTC SCHOLARSHIP PROGRAM GRADUATES

Pub. L. 102–190, div. A, title V, §524, Dec. 5, 1991, 105 Stat. 1363, provided that: ''In making appointments of persons as second lieutenants in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to the grade of ensign in the Naval Reserve, or in granting federal recognition in the grade of second lieutenant to members of the Army National Guard or Air National Guard, the Secretary of the military department concerned shall give preference to persons who have completed a post-secondary program of education pursued under a ROTC scholarship program at a college or university accredited to award baccalaureate degrees or pursued under a ROTC scholarship program at an accredited two-year or four-year military college.''

REPORT ON INITIAL APPOINTMENT OF ALL OFFICERS AS RESERVE OFFICERS AND ON APPROPRIATE ACTIVE DUTY OBLIGATION OF GRADUATES OF SERVICE ACADEMIES

Pub. L. 101–510, div. A, title V, §524, Nov. 5, 1990, 104 Stat. 1562, directed Secretary of Defense to submit to Congress a report on advantages, disadvantages, and desirability of initially appointing all persons commissioned as officers in the Army, Navy, Air Force, or Marine Corps as Reserve officers, and the appropriate active duty service obligation for graduates of the service academies, directed Secretary to submit report not later than 60 days after Nov. 5, 1990, and provided that if the report was not submitted by that date, all persons initially appointed as commissioned officers in the Army, Navy, Air Force, and Marine Corps after that date would be appointed as commissioned officers in a Reserve component of the Armed Forces, and all persons entering the service academies after that date would incur an obligation to serve on active duty for a period of five years.

DEADLINE FOR REGULATIONS IMPLEMENTING SUBSECTION (e) OF THIS SECTION

Section 718(b) of Pub. L. 100–180 provided that: ''The Secretary concerned shall prescribe regulations implementing subsection (e) of section 591 [now 12201(d)] of title 10, United States Code, as added by subsection (a), not later than 90 days after the date of the enactment of this Act [Dec. 4, 1987].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 591, 2130a of this title.

§ 12202. Commissioned officer grades

Except for commissioned warrant officers, the reserve commissioned officer grades in each armed force are those authorized for regular commissioned officers of that armed force.

(Added Pub. L. 85–861, §1(10)(B), Sept. 2, 1958, 72 Stat. 1440, §592; renumbered §12202, Pub. L. 103–337, div. A, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
592	50:1181(1) (as applicable to 50:1201). 50:1201.	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §211), 211, 68 Stat. 1149, 1153.

The words ''including those heretofore or hereafter transferred to the Retired Reserve'', ''permanent'', and ''pursuant to the Officer Personnel Act of 1947, as amended'' are omitted as surplusage. The rule as to the Coast Guard is consolidated with the rule applicable to the other armed forces, since 14:754 prescribes the same substantive result as that prescribed by 50:1201 for the other armed forces.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 592 of this title as this section.

§ 12203. Commissioned officers: appointment, how made; term

(a) Appointments of reserve officers in commissioned grades above lieutenant colonel and commander or below, except commissioned warrant officer, shall be made by the President alone. Appointments of reserve officers in commissioned grades above lieutenant colonel and commander shall be made by the President, by and with the advice and consent of the Senate, except as provided in section 624, 12213, or 12214 of this title.

(b) Appointments of Reserves in commissioned grades are for an indefinite term and are held during the pleasure of the President.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, §593; Pub. L. 85–861, §1(10)(C), Sept. 2, 1958, 72 Stat. 1440; Pub. L. 92–129, title VI, §601, Sept. 28, 1971, 85 Stat. 361; Pub. L. 96–513, title V, §501(7), Dec. 12, 1980, 94 Stat. 2907; renumbered §12203 and amended Pub. L. 103–337, div. A, title XVI, §§1632, 1662(c)(2), 1675(b)(1), Oct. 5, 1994, 108 Stat. 2965, 2990, 3017; Pub. L. 104–106, div. A, title XV, §1501(a)(6), Feb. 10, 1996, 110 Stat. 495.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
593(a) ..... 593(b)	50:942. 50:943. 50:945. 50:948 (less 3d and 4th sentences, as applicable to commissioned officers).	July 9, 1952, ch. 608, §§218, 219, 221, 224 (less 3d and 4th sentences, as applicable to commissioned officers), 66 Stat. 487.

In subsection (a), the word ''alone'' is inserted for clarity. The exception as to commissioned warrant officers is inserted to reflect section 597 of this title, since reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard are appointed by commission by the Secretary concerned.

In subsection (b), 50:948 (2d and last sentences) is omitted as executed.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
593(a)	[No source].	[No source].

The exception is inserted to reflect section 3352(b) of title 10, United States Code.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1632. See 1994 Amendment note below.

1994—Pub. L. 103–337, § 1662(c)(2), renumbered section 593 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1675(b), substituted ''12213, or 12214'' for ''3352, or 8352''.

Pub. L. 103–337, § 1632, as amended by Pub. L. 104–106, substituted ''reserve officers in commissioned grades of lieutenant colonel and commander or below'' for ''Reserves in commissioned grades below lieutenant colonel and commander'' and ''reserve officers in commissioned grades above lieutenant colonel and commander'' for ''Reserves in commissioned grades above major and lieutenant commander''.

1980—Subsec. (a). Pub. L. 96–513 inserted reference to section 624 of this title.

1971—Subsec. (a). Pub. L. 92–129 substituted ''below lieutenant colonel and commander'' for ''below general officer and flag officer'', ''in commissioned grades above major and lieutenant commander'' for ''as general and flag officers'', and ''section 3352 or 8352 of this title'' for ''section 3352 of this title''.

1958—Subsec. (a). Pub. L. 85–861 inserted '', except as provided in section 3352 of this title'' after ''consent of the Senate''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(c)(2) and 1675(b)(1) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1632 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

INDEFINITE APPOINTMENTS FOR CERTAIN RESERVE OFFICERS

Section 41 of act Aug. 10, 1956, provided that: ''Each person who was a reserve officer on July 9, 1952, and who did not hold an appointment for an indefinite term on that date, shall be given an appointment for an indefinite term in place of the appointment he then held, if after written notification by competent authority before July 2, 1953, the officer agrees in writing to have that appointment continued for an indefinite term. In the event such officer does not agree in writing, the term of his current appointment shall not be changed by this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14308 of this title; title 14 section 271; title 37 section 205.

§ 12204. Commissioned officers: original appointment; limitation

(a) No person may be appointed as a Reserve in a commissioned grade above major or lieutenant commander, unless—

(1) he was formerly a commissioned officer of an armed force; or

(2) such an appointment is recommended by a board of officers convened by the Secretary concerned.

(b) This section does not apply to adjutants general and assistant adjutants general of the several States and Territories, Puerto Rico, and the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, § 594; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered § 12204, Pub. L. 103–337, div. A, title XVI, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
594(a)	50:941(c) (less 1st 21 words).	July 9, 1952, ch. 608 § 217(c), 66 Stat. 487.
594(b)	50:941(c) (1st 21 words).	

In subsection (a), the words ''unless * * * he was formerly'' are substituted for the words ''has not held an appointment as''. The words ''or any component thereof'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 594 of this title as this section.

1988—Subsec. (b). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

§ 12205. Commissioned officers: appointment; educational requirement

(a) IN GENERAL.—No person may be appointed to a grade above the grade of first lieutenant in the Army Reserve, Air Force Reserve, or Marine Corps Reserve or to a grade above the grade of lieutenant (junior grade) in the Naval Reserve, or be federally recognized in a grade above the grade of first lieutenant as a member of the Army National Guard or Air National Guard, unless that person has been awarded a baccalaureate degree by a qualifying educational institution.

(b) EXCEPTIONS.—Subsection (a) does not apply to the following:

(1) The appointment to or recognition in a higher grade of a person who is appointed in or assigned for service in a health profession for which a baccalaureate degree is not a condition of original appointment or assignment.

(2) The appointment in the Naval Reserve or Marine Corps Reserve of a person appointed for service as an officer designated as a limited duty officer.

(3) The appointment in the Naval Reserve of a person appointed for service under the Naval Aviation Cadet (NAVCAD) program or the Seaman to Admiral program.

(4) The appointment to or recognition in a higher grade of any person who was appointed to, or federally recognized in, the grade of captain or, in the case of the Navy, lieutenant before October 1, 1995.

(5) Recognition in the grade of captain or major in the Alaska Army National Guard of a person who resides permanently at a location in Alaska that is more than 50 miles from each of the cities of Anchorage, Fairbanks, and Juneau, Alaska, by paved road and who is serving in a Scout unit or a Scout supporting unit.

(c) QUALIFYING EDUCATIONAL INSTITUTIONS.—(1) A qualifying educational institution for pur-

poses of this section is an educational institution that is accredited or that meets the requirements of paragraph (2).

(2)(A) An unaccredited educational institution shall be considered to be a qualifying educational institution for purposes of the appointment or recognition of a person who is a graduate of that institution if the Secretary concerned determines that (as of the year of the graduation of that person from that institution) at least three educational institutions that are accredited and that maintain Reserve Officers' Training Corps programs each generally grant baccalaureate degree credit for completion of courses of the unaccredited institution equivalent to the baccalaureate degree credit granted by the unaccredited institution for the completion of those courses.

(B) In order to assist the Secretary concerned in making determinations under subparagraph (A), any unaccredited institution that seeks to be considered to be a qualifying educational institution for purposes of this paragraph shall submit to the Secretary of Defense each year such information as the Secretary may require concerning the program of instruction at that institution.

(C) In the case of a person with a degree from an unaccredited institution that is a qualifying educational institution under this paragraph, the degree may not have been awarded more than eight years before the date on which the person is to be appointed to, or recognized in, the grade of captain or, in the case of the Naval Reserve, lieutenant, in order for that person to be considered for purposes of subsection (a) to have been awarded a baccalaureate degree by a qualifying educational institution.

(d) WAIVER AUTHORITY FOR ARMY OCS GRADUATES AND CERTAIN MARINE CORPS OFFICERS.—(1) The Secretary of the Army may waive the applicability of subsection (a) to any officer whose original appointment in the Army as a Reserve officer is through the Army Officer Candidate School program.

(2) The Secretary of the Navy may waive the applicability of subsection (a) to any officer whose original appointment in the Marine Corps as a Reserve officer is through the Marine Corps meritorious commissioning program.

(3) Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than two years after the waiver is granted. The Secretary concerned may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

(Added Pub. L. 102–484, div. A, title V, §515(a), Oct. 23, 1992, 106 Stat. 2406, §596; renumbered §12205 and amended Pub. L. 103–337, div. A, title V, §§519, 520, title XVI, §1662(c)(2), Oct. 5, 1994, 108 Stat. 2755, 2990; Pub. L. 104–201, div. A, title V, §§504, 505, title X, §1074(a)(22), Sept. 23, 1996, 110 Stat. 2512, 2660; Pub. L. 107–107, div. A, title V, §512(a), Dec. 28, 2001, 115 Stat. 1092.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 102–190, div. A, title V, §523, Dec. 5, 1991, 105 Stat. 1363, which was set out as a note under section 591 [now 12201] of this title, prior to repeal by Pub. L. 103–35, §203(a).

AMENDMENTS

2001—Subsec. (d). Pub. L. 107–107 added subsec. (d).

1996—Subsec. (a). Pub. L. 104–201, §1074(a)(22), substituted ''No person'' for ''After September 30, 1995, no person''.

Subsec. (b)(3). Pub. L. 104–201, §505, inserted ''or the Seaman to Admiral program'' after ''(NAVCAD) program''.

Subsec. (c)(2)(C). Pub. L. 104–201, §504, substituted ''eight years'' for ''three years''.

1994—Pub. L. 103–337, §1662(c)(2), renumbered section 596 of this title as this section.

Subsec. (a). Pub. L. 103–337, §519(1), substituted ''a qualifying educational institution'' for ''an accredited educational institution''.

Subsec. (b)(2), (3). Pub. L. 103–337, §520(b), substituted ''a person'' for ''an individual''.

Subsec. (b)(5). Pub. L. 103–337, §520(a), added par. (5).

Subsec. (c). Pub. L. 103–337, §519(2), added subsec. (c).

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, §512(b), Dec. 28, 2001, 115 Stat. 1092, provided that: ''Subsection (d) of section 12205 of title 10, United States Code, as added by subsection (a), shall apply with respect to officers appointed before, on, or after the date of the enactment of this Act [Dec. 28, 2001].''

AUTHORITY FOR TEMPORARY WAIVER FOR CERTAIN ARMY RESERVE OFFICERS OF BACCALAUREATE DEGREE REQUIREMENT FOR PROMOTION OF RESERVE OFFICERS

Pub. L. 105–261, div. A, title V, §516, Oct. 17, 1998, 112 Stat. 2008, provided that:

''(a) WAIVER AUTHORITY FOR ARMY OCS GRADUATES.—The Secretary of the Army may waive the applicability of section 12205(a) of title 10, United States Code, to any officer who before the date of the enactment of this Act [Oct. 17, 1998] was commissioned through the Army Officer Candidate School. Any such waiver shall be made on a case-by-case basis, considering the individual circumstances of the officer involved, and may continue in effect for no more than 2 years after the waiver is granted. The Secretary may provide for such a waiver to be effective before the date of the waiver, as appropriate in an individual case.

''(b) EXPIRATION OF AUTHORITY.—A waiver under this section may not be granted after September 30, 2000.''

§ 12206. Commissioned officers: appointment of former commissioned officers

Under regulations prescribed by the Secretary of Defense, a person who is a former commissioned officer may, if otherwise qualified, be appointed as a reserve officer of the Army, Navy, Air Force, or Marine Corps. A person so appointed—

(1) may be placed on the reserve active-status list of that armed force in the grade equivalent to the permanent regular or reserve grade, and in the same competitive category, in which the person previously served satisfactorily on active duty or in an active status; and

(2) may be credited for the purpose of determining date of rank under section 741(d) of this title with service in grade equal to that held by that person when discharged or separated.

(Added §596a and renumbered §12206, Pub. L. 103–337, div. A, title XVI, §§1633, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990.)

AMENDMENTS

1994—Pub. L. 103–337, § 1662(c)(2), renumbered section 596a of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 12207. Commissioned officers: service credit upon original appointment

(a)(1) For the purpose of determining the grade and the rank within grade of a person receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) in the Army, Navy, Air Force, or Marine Corps, the person shall be credited at the time of the appointment with any commissioned service (other than service as a commissioned warrant officer) performed before such appointment as a regular officer, or as a reserve officer in an active status, in any armed force, the National Oceanic and Atmospheric Administration, or the Public Health Service.

(2) The Secretary of Defense shall prescribe regulations, which shall apply uniformly among the Army, Navy, Air Force, and Marine Corps, to authorize the Secretary of the military department concerned to limit the amount of prior commissioned service with which a person receiving an original appointment may be credited under paragraph (1), or to deny any such credit, in the case of a person who at the time of such appointment is credited with constructive service under subsection (b).

(b)(1) Under regulations prescribed by the Secretary of Defense, a person who is receiving an original appointment as a reserve commissioned officer (other than a commissioned warrant officer) of the Army, Navy, Air Force, or Marine Corps, or a designation in, or an assignment to, an officer category in which advanced education or training is required and who has advanced education or training, shall be credited with constructive service for such education, training, or experience, as follows:

(A) One year for each year of advanced education beyond the baccalaureate degree level, for persons appointed or designated in, or assigned to, officer categories requiring such advanced education or an advanced degree as a prerequisite for such appointment, designation, or assignment. In determining the number of years of constructive service to be credited under this subparagraph to officers in any professional field, the Secretary concerned shall credit an officer with, but with not more than, the number of years of advanced education required by a majority of institutions that award degrees in that professional field for completion of the advanced education or award of the advanced degree.

(B)(i) Credit for any period of advanced education in a health profession (other than medicine and dentistry) beyond the baccalaureate degree level which exceeds the basic education criteria for such appointment, designation, or assignment, if such advanced education will be directly used by the armed force concerned.

(ii) Credit for experience in a health profession (other than medicine or dentistry), if such experience will be directly used by the armed force concerned.

(C) Additional credit of (i) not more than one year for internship or equivalent graduate medical, dental, or other formal health professional training required by the armed forces, and (ii) not more than one year for each additional year of such graduate-level training or experience creditable toward certification in a speciality required by the armed force concerned.

(D) Additional credit, in unusual cases, based on special experience in a particular field.

(E) Additional credit for experience as a physician or dentist, if appointed, assigned, or designated as a medical or dental officer.

(2) If the Secretary of Defense determines that the number of medical or dental officers serving in an active status in a reserve component of the Army, Navy, or Air Force in grades below major or lieutenant commander is critically below the number needed by such reserve component in such grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment for service as a medical or dental officer with a period of constructive credit in such amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Naval Reserve, lieutenant.

(3) Except as authorized by the Secretary concerned in individual cases and under regulations prescribed by the Secretary of Defense in the case of a medical or dental officer, the amount of constructive service credited an officer under this subsection may not exceed the amount required in order for the officer to be eligible for an original appointment as a reserve officer of the Army, Air Force, or Marine Corps in the grade of major or as a reserve officer of the Navy in the grade of lieutenant commander.

(4) Constructive service credited an officer under this subsection is in addition to any service credited that officer under subsection (a) and shall be credited at the time of the original appointment of the officer or assignment to or designation in an officer category in which advanced education or training or special experience is required.

(c) Constructive service may not be credited under subsection (b) for education, training, or experience obtained while serving as a commissioned officer (other than a warrant officer) on active duty or in an active status. However, in the case of an officer who completes advanced education or receives an advanced degree while on active duty or in an active status and in less than the number of years normally required to complete such advanced education or receive such advanced degree, constructive service may, subject to regulations prescribed under subsection (a)(2), be credited to the officer under subsection (b)(1)(A) to the extent that the number of years normally required to complete such advanced education or receive such advanced degree exceeds the actual number of years in which such advanced education or degree is obtained by the officer.

(d) If the Secretary of Defense determines that the number of qualified judge advocates serving on the active-duty list of the Army, Navy, Air Force, or Marine Corps in grades below lieutenant commander or major is critically below the number needed by that armed force in those grades, the Secretary of Defense may authorize the Secretary of the military department concerned to credit any person who is receiving an original appointment with a view to assignment to the Judge Advocate General's Corps of the Army or appointment to the Judge Advocate General's Corps of the Navy, or who is receiving an original appointment in the Air Force or Marine Corps with a view to designation as a judge advocate, with a period of constructive service in such an amount (in addition to any amount credited such person under subsection (b)) as will result in the grade of such person being that of captain or, in the case of the Navy, lieutenant, and the date of rank of such person being junior to that of all other officers of the same grade serving on the active-duty list.

(e) Constructive service credited an officer under subsection (b) or (d) shall be used only for determining the officer's—

(1) initial grade as a reserve officer;

(2) rank in grade; and

(3) service in grade for promotion eligibility.

(f) The grade and position on the reserve active-status list of a person receiving an appointment as a reserve officer who at the time of appointment is credited with service under this section shall be determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added § 596b and renumbered § 12207, Pub. L. 103–337, div. A, title XVI, §§ 1634, 1662(c)(2), Oct. 5, 1994, 108 Stat. 2965, 2990.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3353, 5600, and 8353 of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(1), (c)(1) and Pub. L. 104–106, § 1501(c)(26).

AMENDMENTS

1994—Pub. L. 103–337, § 1662(c)(2), renumbered section 596b of this title as this section.

EFFECTIVE DATE

Section effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2121, 12320 of this title.

§ 12208. Officers: appointment upon transfer

(a) A person who would otherwise be required to be transferred to a reserve component under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), is entitled, if he is qualified and accepted, to be appointed as an officer of any armed force that he chooses and to participate in the programs authorized for that armed force. However, unless the two Secretaries concerned consent, he may not be appointed as a Reserve of an armed force other than that from which he is transferred. All periods of his participation shall be credited against the total period of service required of him under section 651 of this title or under the Military Selective Service Act (50 U.S.C. App. 451 et seq.). However, no period may be credited more than once.

(b) A person covered by subsection (a) shall perform the rest of his required term of service in the armed force in which he is so appointed or in any other armed force in which he is later appointed or enlisted.

(c) This section does not change any term of service under an appointment, enlistment, or agreement, including an agreement made before or at the time when the member entered upon a program authorized by an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 25, § 595; Pub. L. 96–513, title V, § 511(17), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12208, Pub. L. 103–337, div. A, title XVI, § 1662(c)(2), Oct. 5, 1994, 108 Stat. 2990.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
595(a)	50:929(a) (less 2d sentence, less applicability to enlistments).	July 9, 1952, ch. 608, § 209 (less applicability to enlistments), 66 Stat. 484.
595(b)	50:929(a) (2d sentence, and less applicability to enlistments).	
595(c)	50:929(b) (less applicability to enlistments).	

In subsection (a), the words ''is entitled * * * to be appointed as an officer of any armed force that he chooses'' are substituted for the words ''shall be permitted to * * * accept an appointment in such armed force of the United States as he may elect''. The last sentence is substituted for 50:929(a) (words within parentheses). The words ''of an armed force of the United States'' are omitted as surplusage.

In subsection (b), the word ''rest'' is substituted for the words ''remaining period''. The words ''be required to'' are omitted as surplusage.

In subsection (c), the words ''This section does not'' are substituted for the words ''Nothing in this section shall be construed''. The word ''change'' is substituted for the words ''reduce, limit, or modify''. The words ''which any person may undertake to perform'' are omitted as surplusage.

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (a), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see note set out under section 451 of Title 50, Appendix, and Tables.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 595 of this title as this section.

1980—Subsec. (a). Pub. L. 96–513 substituted ''the Military Selective Service Act (50 U.S.C. App. 451 et seq.)'' for ''sections 451–473 of title 50, appendix'' wherever appearing.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 12209. Officer candidates: enlisted Reserves

(a) Within such numbers as the Secretary concerned may prescribe, enlisted Reserves may,

with their consent, be selected for training as officer candidates. Enlisted Reserves so selected shall be designated as officer candidates during that training. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be so selected or designated unless—

(1) he is on active duty; or

(2) the governor or other appropriate authority of the jurisdiction concerned consents.

(b) The enlistment or term of service of a Reserve who is designated as an officer candidate under this section is extended to include any period, beyond its normal expiration date, during which he is an officer candidate.

(c) While he is on active duty, other than active duty for training without pay, or performing authorized travel to and from that duty, an officer candidate designated under this section is entitled to the pay and allowances of his enlisted grade, but not less than those prescribed for pay grade E–2.

(d) An officer candidate designated under this section may not participate in the program of a reserve officer training corps of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 600; renumbered § 12209, Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104–106, div. A, title XV, § 1501(b)(12)(A), Feb. 10, 1996, 110 Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
600(a)	50:935(a).	July 9, 1952, ch. 608, §§ 215(a), 230, 242, 66 Stat. 486, 489, 492.
600(b)	50:954(a).	
600(c)	50:973.	
600(d)	50:954(b).	

In subsection (a), the words ''who is not in active Federal service'' are substituted for the words ''when not in the active military service of the United States''. The word ''during'' is substituted for the words ''for the period of''.

In subsection (c), the words ''active duty other than active duty for training without pay'' are substituted for the words ''active duty or active duty for training with pay''. The words ''enlisted members of the reserve components designated as'', ''enlisted'', and ''under the Career Compensation Act of 1949, as amended'' are omitted as surplusage.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''candidates: enlisted Reserves'' for ''candidates'' in section catchline.

1994—Pub. L. 103–337 renumbered section 600 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 14 section 705.

§ 12210. Attending Physician to the Congress: reserve grade while so serving

While serving as Attending Physician to the Congress, a Reserve who holds a reserve grade lower than major general or rear admiral shall hold the reserve grade of major general or rear admiral, as appropriate, if appointed to that grade by the President, by and with the advice and consent of the Senate.

(Added Pub. L. 99–661, div. A, title V, § 508(d)(1)(A), Nov. 14, 1986, 100 Stat. 3867, § 600a; renumbered § 12210, Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(12)(B), Feb. 10, 1996, 110 Stat. 496.)

AMENDMENTS

1996—Pub. L. 104–106 substituted ''Congress: reserve grade while so serving'' for ''Congress'' in section catchline.

1994—Pub. L. 103–337 renumbered section 600a of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE

Section 508(f) of Pub. L. 99–661 provided that: ''The amendments made by this section [enacting this section and amending sections 1374, 4335, 5149, and 9335 of this title] shall apply only with respect to appointments or details made on or after the date of the enactment of this Act [Nov. 14, 1986].''

§ 12211. Officers: Army National Guard of the United States

(a) Upon being federally recognized, an officer of the Army National Guard shall be appointed as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard. However, an officer of the Army Reserve who is federally recognized as an officer of the Army National Guard becomes an officer of the Army National Guard of the United States and ceases to be an officer of the Army Reserve. The acceptance of an appointment as a Reserve for service as a member of the Army National Guard of the United States by an officer of the Army National Guard does not vacate his office in the Army National Guard.

(b) When an officer of the Army National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Army National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Army National Guard of the United States is ordered to active duty, any officer of the Army National Guard who is not a Reserve of the Army may be appointed by the President as a Reserve for service as a member of the Army National Guard of the United States in the grade that he holds in the Army National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 193, § 3351; renumbered § 12211, Pub. L. 103–337, div. A, title XVI, § 1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104–106, div. A, title XV, § 1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3351(a)	50:1113 (less (a)). 50:1115(a) (last 39 words).	July 9, 1952, ch. 608, §§703 (less (a)), 704 (2d sentence), 705(a) (last 39 words), 713 (less (a)), 66 Stat. 502–504.
3351(b)	50:1114 (2d sentence).	
3351(c)	50:1123 (less (a)).	

In subsection (a), the words ''as a Reserve'' are substituted for the words ''as Reserve officers of the appropriate Armed Force of the United States'' and ''as a Reserve officer of the Armed Force of the United States concerned'', in 50:1113(b). The words ''federally recognized appointments'' and ''in the same grade and branch'', in 50:1113(b), are omitted as surplusage. The words ''those officers who do not hold appointments as Reserve officers of the appropriate Armed Force of the United States'', in 50:1113(b), are omitted as covered by the second sentence of the revised subsection.

In subsection (c), the words ''active duty'' are substituted for the words ''active military service of the United States''. The words ''and branch'' are omitted as surplusage. The words ''of the Army National Guard of the United States'' are inserted for clarity.

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' after ''National Guard of'' in section catchline.

1994—Pub. L. 103–337 renumbered section 3351 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 12212. Officers: Air National Guard of the United States

(a) Upon being federally recognized, an officer of the Air National Guard shall be appointed as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard. However, an officer of the Air Force Reserve who is federally recognized as an officer of the Air National Guard becomes an officer of the Air National Guard of the United States and ceases to be an officer of the Air Force Reserve. The acceptance of an appointment as a Reserve for service as a member of the Air National Guard of the United States by an officer of the Air National Guard does not vacate his office in the Air National Guard.

(b) When an officer of the Air National Guard to whom temporary Federal recognition has been extended is appointed as a Reserve for service as a member of the Air National Guard of the United States, his appointment shall bear the date of the temporary recognition and shall be considered to have been accepted and effective on that date.

(c) When the Air National Guard of the United States is ordered to active duty, any officer of the Air National Guard who is not a Reserve of the Air Force may be appointed by the President as a Reserve for service as a member of the Air National Guard of the United States in the grade that he holds in the Air National Guard.

(Aug. 10, 1956, ch. 1041, 70A Stat. 519, §8351; renumbered §12212, Pub. L. 103–337, div. A, title XVI, §1662(c)(3), Oct. 5, 1994, 108 Stat. 2990; Pub. L. 104–106, div. A, title XV, §1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8351(a)	50:1113 (less (a)). 50:1115(a) (last 39 words).	July 9, 1952, ch. 608, §§703 (less (a)), 704 (2d sentence), 705(a) (last 39 words), 713 (less (a)), 66 Stat. 502–504.
8351(b)	50:1114 (2d sentence).	
8351(c)	50:1123 (less (a)).	

In subsection (a), the words ''as a Reserve'' are substituted for the words ''as Reserve officers of the appropriate Armed Force of the United States'' and ''as a Reserve officer of the Armed Force of the United States concerned'' in 50:1113(b). The words ''federally recognized appointments'' and ''in the same grade and branch'', in 50:1113(b), are omitted as surplusage. The words ''those officers who do not hold appointments as reserve officers of the appropriate Armed Force of the United States'', in 50:1113(b), are omitted as covered by the second sentence of the revised subsection.

In subsection (c), the words ''active duty'' are substituted for the words ''active military service of the United States''. The words ''and branch'' are omitted as surplusage. The words ''of the Air National Guard of the United States'' are inserted for clarity.

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' after ''National Guard of'' in section catchline.

1994—Pub. L. 103–337 renumbered section 8351 of this title as this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 12213. Officers; Army Reserve: transfer from Army National Guard of the United States

(a) Under such regulations as the Secretary of the Army may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Army National Guard of the United States may be transferred in grade to the Army Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Army National Guard of the United States whose Federal recognition as a member of the Army National Guard is withdrawn becomes a member of the Army Reserve. An officer who so becomes a member of the Army Reserve ceases to be a member of the Army National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 194, §3352; Pub. L. 85–861, §1(80)(A), Sept. 2, 1958, 72 Stat. 1468; Pub. L. 86–559, §1(7), June 30, 1960, 74 Stat. 265; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered §12213 and amended Pub. L. 103–337, div. A, title XVI, §§1636(a), 1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2968, 2990, 3017; Pub. L. 104–106, div. A, title XV, §1501(b)(13)(A), (14), Feb. 10, 1996, 110 Stat. 496.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3352(a)	50:1116 (less last 15 words of 1st sentence, and less applicability to enlistments).	July 9, 1952, ch. 608, §§706 (less last 15 words of 1st sentence, and less applicability to enlistments), 707 (less applicability to enlistments), 66 Stat. 503.
3352(b)	50:1117 (less applicability to enlistments).	

In subsection (a), the words ''at any time'', ''of any person'', and ''from the National Guard of the United States or from the Air National Guard of the United States'' are omitted as surplusage. The words ''highest regular or reserve grade ever held by him in the Army'' are substituted for the words ''highest permanent grade previously held in the Army or any component thereof'', since ''permanent'' grades are held only in a component and there are no ''non-permanent'' grades held in a component.

In subsection (b), the words ''appointment as a Reserve'' are substituted for the words ''appointment or * * * as a Reserve officer or''. The words ''whose Federal recognition as a member * * * is withdrawn'' are substituted for the words ''ceases to hold a status as a federally recognized member''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
3352(a)	50:1254.	Sept. 3, 1954, ch. 1257, §322, 68 Stat. 1161.

AMENDMENTS

1996—Pub. L. 104–106, §1501(b)(13)(A), inserted ''the'' after ''National Guard of'' in section catchline.

Subsec. (a). Pub. L. 104–106, §1501(b)(14), substituted ''section 12203'' for ''section 593'' in last sentence.

1994—Pub. L. 103–337, §1662(c)(3), renumbered section 3352 of this title as this section.

Subsec. (a). Pub. L. 103–337, §1675(b), struck out ''or Territory, Puerto Rico, or the District of Columbia, whichever is'' after ''authority of the State''.

Pub. L. 103–337, §1636(a), struck out at end ''Notwithstanding any other provision of this chapter or section 12203 of this title, an officer who is transferred under this section shall be advanced to the highest temporary, regular, or reserve grade ever held by him in the Army, unless the Secretary determines that it is not in the best interests of the service.''

1988—Subsec. (a). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

1960—Subsec. (a). Pub. L. 86–559 authorized officers transferred under this section to be advanced to the highest temporary grade ever held in the Army.

1958—Subsec. (a). Pub. L. 85–861 substituted ''Notwithstanding any other provision of this chapter or section 593 of this title, an officer who is transferred under this section shall be advanced to the highest regular or reserve grade ever held by him in the Army, unless the Secretary determines that it is not in the best interests of the service'' for ''Upon transfer, he is eligible for promotion to the highest regular or reserve grade ever held by him in the Army, if his service has been honorable''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 1501(f)(1) of Pub. L. 104–106 provided that: ''Section 1636 of the Reserve Officer Personnel Management Act [Pub. L. 103–337, amending this section and repealing sections 8356 and 8379 of this title] shall take effect on the date of the enactment of this Act [Feb. 10, 1996].''

Amendment by sections 1662(c)(3) and 1675(b)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12203, 12683 of this title; title 32 section 323.

§ 12214. Officers; Air Force Reserve: transfer from Air National Guard of the United States

(a) Under such regulations as the Secretary of the Air Force may prescribe, and with the consent of the governor or other appropriate authority of the State concerned, an officer of the Air National Guard of the United States may be transferred in grade to the Air Force Reserve.

(b) Unless discharged from his appointment as a Reserve, an officer of the Air National Guard of the United States whose Federal recognition as a member of the Air National Guard is withdrawn becomes a member of the Air Force Reserve. An officer who so becomes a member of the Air Force Reserve ceases to be a member of the Air National Guard of the United States.

(Aug. 10, 1956, ch. 1041, 70A Stat. 520, §8352; Pub. L. 87–651, title I, §126, Sept. 7, 1962, 76 Stat. 514; Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered §12214 and amended Pub. L. 103–337, div. A, title XVI, §§1662(c)(3), 1675(b)(2), Oct. 5, 1994, 108 Stat. 2990, 3017; Pub. L. 104–106, div. A, title XV, §1501(b)(13)(A), Feb. 10, 1996, 110 Stat. 496.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
8352(a)	50:1116 (less last 15 words of 1st sentence, and less applicability to enlistments).	July 9, 1952, ch. 608, §§706 (less last 15 words of 1st sentence, and less applicability to enlistments), 707 (less applicability to enlistments), 66 Stat. 503.
8352(b)	50:1117 (less applicability to enlistments).	

In subsection (a), the words ''at any time'', ''of any person'', and ''from the National Guard of the United States or from the Air National Guard of the United States'' are omitted as surplusage. The words ''highest regular or reserve grade ever held by him in the Air Force'' are substituted for the words ''highest permanent grade previously held in * * * the Air Force or any component thereof'', since ''permanent'' grades are held only in a component and there are no ''nonpermanent'' grades held in a component.

In subsection (b), the words ''appointment as a Reserve'' are substituted for the words ''appointment or * * * as a Reserve officer or''. The words ''whose Federal recognition as a member * * * is withdrawn'' are substituted for the words ''ceases to hold a status as a federally recognized member''.

1962 ACT

The change reflects the implied repeal of the second sentence of section 8352(a) by section 502(a) of the Reserve Officer Personnel Act of 1954 (68 Stat. 1172).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' after ''National Guard of'' in section catchline.

1994—Pub. L. 103–337, §1662(c)(3), renumbered section 8352 of this title as this section.

Subsec. (a). Pub. L. 103–337, §1675(b)(2), struck out ''or Territory, Puerto Rico, or the District of Columbia, whichever is'' after ''authority of the State''.

1988—Subsec. (a). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

1962—Subsec. (a). Pub. L. 87–651 struck out sentence which provided that upon transfer, an officer is eligible for promotion to the highest regular or reserve grade ever held by him in the Air Force, if his service has been honorable.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12203, 12683 of this title; title 32 section 323.

§ 12215. Commissioned officers: reserve grade of adjutants general and assistant adjutants general

(a) The adjutant general or an assistant adjutant general of the Army National Guard of a State may, upon being extended Federal recognition, be appointed as a reserve officer of the Army as of the date on which he is so recognized.

(b) The adjutant general or an assistant adjutant general of the Air National Guard of a State may be appointed in the reserve commissioned grade in which Federal recognition in the Air National Guard is extended to him.

(Added Pub. L. 103–337, div. A, title XVI, §1662(c)(1), Oct. 5, 1994, 108 Stat. 2990.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3392 and 8392 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(1), (c)(1).

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10214 of this title.

CHAPTER 1207—WARRANT OFFICERS

Sec.
12241. Warrant officers: grades; appointment, how made; term.
12242. Warrant officers: promotion.
12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency.
12244. Warrant officers: discharge or retirement for years of service or for age.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, §517(e)(2), Dec. 28, 2001, 115 Stat. 1095, added item 12244.

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(15), Feb. 10, 1996, 110 Stat. 496, substituted ''promotion'' for ''promotions'' in item 12243.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 591 of this title.

§ 12241. Warrant officers: grades; appointment, how made; term

(a) The permanent reserve warrant officer grades in each armed force are those prescribed for regular warrant officers by section 571(a) of this title.

(b) Appointments made in the permanent reserve grade of warrant officer, W–1, shall be made by warrant by the Secretary concerned. Appointments made in a permanent reserve grade of chief warrant officer shall be made by commission by the Secretary concerned.

(c) Appointments as Reserves in permanent warrant officer grades are for an indefinite term and are held during the pleasure of the Secretary concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, §597; Pub. L. 99–145, title V, §531(b), Nov. 8, 1985, 99 Stat. 633; Pub. L. 102–190, div. A, title XI, §1131(2), Dec. 5, 1991, 105 Stat. 1505; renumbered §12241, Pub. L. 103–337, div. A, title XVI, §1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
597(a)	10:600a(a) (less 3d and last sentences, as applicable to permanent reserve appointments). 34:135a(a) (less last sentence, as applicable to permanent reserve appointments).	May 29, 1954, ch. 249, §§3(a) (less last sentence, as applicable to permanent reserve appointments), 5(a) (last sentence, as applicable to permanent reserve appointments), 68 Stat. 157, 159.
597(b)	10:600a(a) (3d sentence, as applicable to permanent reserve appointments). 10:600c(a) (last sentence, as applicable to permanent reserve appointments). 34:135a(a) (last sentence, as applicable to permanent reserve appointments). 34:135c(a) (last sentence, as applicable to permanent reserve appointments). 50:944.	July 9, 1952, ch. 608, §§220, 223, 224 (less 3d and 4th sentences, and less applicability to commissioned officers), 66 Stat. 487.
597(c)	50:947. 50:948 (less 3d and 4th sentences, and less applicability to commissioned officers).	

In subsection (b), the words ''W–4, W–3, and W–2'' and ''persons'' are omitted as surplusage.

In subsection (c), the words ''After July 9, 1952'' are omitted as executed. 50:948 (2d and last sentence) is omitted as executed.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 597 of this title as this section.

1991—Subsec. (a). Pub. L. 102–190 substituted ''section 571(a)'' for ''section 555(a)''.

1985—Subsec. (b). Pub. L. 99–145 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Reserve chief warrant officers of the Army and the Air Force shall be appointed in those grades, by warrant, by the Secretary concerned. Permanent reserve chief warrant officers of the Navy, Marine Corps, and Coast Guard shall be appointed in those grades, by commission, by the Secretary concerned. Permanent reserve warrant officers, W-1, shall be appointed in those grades, by warrant, by the Secretary concerned.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 531(d) of Pub. L. 99–145 provided that: ''This section [amending this section and section 555 of this title and enacting provisions set out below] takes effect six months after the date of the enactment of this Act [Nov. 8, 1985].''

TRANSITION PROVISIONS FOR 1985 AMENDMENT

Section 531(c) of Pub. L. 99–145 provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 555 of this title] apply to any appointment of a warrant officer or chief warrant officer on or after the effective date of this section [see Effective Date of 1985 Amendment note above].

''(2) An officer who on the effective date of this section is serving in a chief warrant officer grade under an appointment by warrant may be appointed in that grade by commission under section 555(b) or 597(b) [now 12241(b)] of title 10, United States Code, as appropriate. The date of rank of an officer who receives an appointment under this paragraph is the date of rank for the officer's appointment by warrant to that grade.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 591 of this title.

§ 12242. Warrant officers: promotion

The promotion of permanent reserve warrant officers not on the warrant officer active-duty list to permanent reserve warrant officer grades shall be governed by such regulations as the Secretary concerned may prescribe.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 598; Pub. L. 102–190, div. A, title XI, § 1131(3), Dec. 5, 1991, 105 Stat. 1505; renumbered § 12242, Pub. L. 103–337, div. A, title XVI, § 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
598	10:600e (last sentence, less applicability to temporary promotions). 34:330 (last sentence, less applicability to temporary promotions).	May 29, 1954, ch. 249, § 7 (last sentence, less applicability to temporary promotions), 68 Stat. 159.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 598 of this title as this section.

1991—Pub. L. 102–190 inserted ''not on the warrant officer active-duty list'' after ''reserve warrant officers''.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–190 effective Feb. 1, 1992, see section 1132 of Pub. L. 102–190, set out as a note under section 521 of this title.

§ 12243. Warrant officers: suspension of laws for promotion or mandatory retirement or separation during war or emergency

In time of war, or of emergency declared after May 29, 1954, by Congress or the President, the President may suspend the operation of any provision of law relating to promotion, or mandatory retirement or separation, of permanent reserve warrant officers of any armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 26, § 599; renumbered § 12243, Pub. L. 103–337, div. A, title XVI, § 1662(d)(2), Oct. 5, 1994, 108 Stat. 2991.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
599	10:600p (as applicable to reserve warrant officers). 34:330g (as applicable to reserve warrant officers). 34:430d (as applicable to reserve warrant officers).	May 29, 1954, ch. 249, § 18 (as applicable to reserve warrant officers), 68 Stat. 165.

The word ''may'' is substituted for the words ''is authorized, in his discretion''. The words ''any provision of law'' are substituted for the words ''all or any part or parts of the several provisions of law''.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 599 of this title as this section.

DELEGATION OF FUNCTIONS

Functions of the President under this section delegated to the Secretary of Defense, see section 1(4) of Ex. Ord. No. 11390, Jan. 22, 1968, 33 F.R. 841, set out as a note under section 301 of Title 3, The President.

§ 12244. Warrant officers: discharge or retirement for years of service or for age

Each reserve warrant officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and has reached the maximum years of service or age prescribed by the Secretary concerned shall—

(1) be transferred to the Retired Reserve if the warrant officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged if the warrant officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 107–107, div. A, title V, § 517(e)(1), Dec. 28, 2001, 115 Stat. 1095.)

EFFECTIVE DATE

Section effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as an Effective Date of 2001 Amendment note under section 10154 of this title.

CHAPTER 1209—ACTIVE DUTY

Sec.
12301. Reserve components generally.
12302. Ready Reserve.
12303. Ready Reserve: members not assigned to, or participating satisfactorily in, units.
12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency.
12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation.
12306. Standby Reserve.
12307. Retired Reserve.
12308. Retention after becoming qualified for retired pay.

Sec.
12309. Reserve officers: use of in expansion of armed forces.
12310. Reserves: for organizing, administering, etc., reserve components.
12311. Active duty agreements.
12312. Active duty agreements: release from duty.
12313. Reserves: release from active duty.
12314. Reserves: kinds of duty.
12315. Reserves: duty with or without pay.
12316. Payment of certain Reserves while on duty.
12317. Reserves: theological students; limitations.
12318. Reserves on active duty: duties; funding.
12319. Ready Reserve: muster duty.
12320. Reserve officers: grade in which ordered to active duty.
12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned.
12322. Active duty for health care.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title VII, §705(a)(2), Oct. 5, 1999, 113 Stat. 683, added item 12322.

1997—Pub. L. 105–85, div. A, title V, §511(e)(2), Nov. 18, 1997, 111 Stat. 1729, inserted ''and certain Individual Ready Reserve members'' after ''Selected Reserve'' in item 12304.

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(16), Feb. 10, 1996, 110 Stat. 496, substituted a semicolon for a colon in item 12304 and struck out ''on active duty'' after ''Retention'' in item 12308.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 672 of this title; title 37 section 205.

§ 12301. Reserve components generally

(a) In time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of a reserve component under the jurisdiction of that Secretary to active duty (other than for training) for the duration of the war or emergency and for six months thereafter. However a member on an inactive status list or in a retired status may not be ordered to active duty under this subsection unless the Secretary concerned, with the approval of the Secretary of Defense in the case of the Secretary of a military department, determines that there are not enough qualified Reserves in an active status or in the inactive National Guard in the required category who are readily available.

(b) At any time, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit, and any member not assigned to a unit organized to serve as a unit, in an active status in a reserve component under the jurisdiction of that Secretary to active duty for not more than 15 days a year. However, units and members of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor of the State (or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard).

(c) So far as practicable, during any expansion of the active armed forces that requires that units and members of the reserve components be ordered to active duty (other than for training), members of units organized and trained to serve as units who are ordered to that duty without their consent shall be so ordered with their units. However, members of those units may be reassigned after being ordered to active duty (other than for training).

(d) At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.

(e) The period of time allowed between the date when a Reserve ordered to active duty (other than for training) is alerted for that duty and the date when the Reserve is required to enter upon that duty shall be determined by the Secretary concerned based upon military requirements at that time.

(f) The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

(g)(1) A member of a reserve component may be ordered to active duty without his consent if the Secretary concerned determines that the member is in a captive status. A member ordered to active duty under this section may not be retained on active duty, without his consent, for more than 30 days after his captive status is terminated.

(2) The Secretary of Defense shall prescribe regulations to carry out this section. Such regulations shall apply uniformly among the armed forces under the jurisdiction of the Secretary. A determination for the purposes of this subsection that a member is in a captive status shall be made pursuant to such regulations.

(3) In this section, the term ''captive status'' means the status of a member of the armed forces who is in a missing status (as defined in section 551(2) of title 37) which occurs as the result of a hostile action and is related to the member's military status.

(h)(1) When authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a reserve component to active duty—

(A) to receive authorized medical care;

(B) to be medically evaluated for disability or other purposes; or

(C) to complete a required Department of Defense health care study, which may include an associated medical evaluation of the member.

(2) A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 27, § 672; Pub. L. 85–861, §§ 1(13), 33(a)(5), Sept. 2, 1958, 72 Stat. 1440, 1564; Pub. L. 96–357, § 6, Sept. 24, 1980, 94 Stat. 1182; Pub. L. 96–584, § 1, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 99–500, § 101(c) [title IX, § 9122], Oct. 18, 1986, 100 Stat. 1783–82, 1783–127, and Pub. L. 99–591, § 101(c) [title IX, § 9122], Oct. 30, 1986, 100 Stat. 3341–82, 3341–127; Pub. L. 99–661, div. A, title V, §§ 522, 524(a), Nov. 14, 1986, 100 Stat. 3871; Pub. L. 100–456, div. A, title XII, § 1234(a)(1), (2), Sept. 29, 1988, 102 Stat. 2059; renumbered § 12301 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(1), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 106–65, div. A, title V, § 512, Oct. 5, 1999, 113 Stat. 592.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
672(a)	50:961(a).	July 9, 1952, ch. 608, §§ 233 (less (b) and (f)), 234 (1st sentence), 66 Stat. 489, 490.
672(b)	50:961(c).	
672(c)	50:961(g).	
672(d)	50:961(d). 50:962 (1st sentence).	
672(e)	50:961(e).	

In subsection (a), the word ''hereafter'' is omitted as surplusage. The words ''there are not enough * * * who are'' are substituted for the words ''adequate numbers of * * * are not''. The words ''without the consent of the persons affected'' and ''under the jurisdiction of that Secretary'' are inserted for clarity. The words ''and the members thereof'' are omitted as surplusage.

In subsection (b), the words ''without the consent of the persons affected'' are substituted for the words ''without his consent'', since units as well as individuals are covered by the revised subsection. The words ''and the members thereof'', ''and required to perform'', ''or required to serve on'', and ''in the service of the United States'' are omitted as surplusage.

In subsections (b) and (d), the words ''active duty for training'' are omitted as covered by the words ''active duty''.

In subsection (c), the words ''to active duty'' are substituted for the words ''into the active military service of the United States'', in 50:961(g) (1st and last sentences). The words ''to serve'' are substituted for the words ''for the purpose of serving''. The words ''without their consent'' are substituted for the word ''involuntarily''. The words ''to that duty'' are substituted for the words ''into active duty''. The last sentence of the revised subsection is substituted for 50:961(g) (last sentence).

In subsection (d), the words ''the consent of that member'' are substituted for the words ''his consent''. The words ''under his jurisdiction'' are inserted for clarity. 50:962 (last 15 words of 1st sentence) is omitted as covered by 50:961(d).

In subsection (e), the words ''to active duty (other than for training)'' are substituted for the words ''into the active military service of the United States''. The words ''period of'' are omitted as surplusage. The word ''requirements'' is substituted for the word ''condition'' for clarity.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
672(a)	50:961(a).	Aug. 9, 1955, ch. 665, § 2(e), 69 Stat. 599.

The word ''hereafter'' is omitted as surplusage. The words ''there are not enough . . . who are'' are substituted for the words ''adequate numbers of . . . are not''. The words ''without the consent of the persons affected'' and ''under the jurisdiction of that Secretary'' are inserted for clarity.

The changes are necessary to reflect section 101(b) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 901(b)), which defines the term ''active duty'' to exclude active duty for training. This definition applied to the source law for these sections [sections 672 and 673], section 233(a), (b)(1), and (c) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 961(a), (b)(1), (c)).

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

AMENDMENTS

1999—Subsec. (h). Pub. L. 106–65 added subsec. (h).

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 672 of this title as this section.

Subsec. (b). Pub. L. 103–337, § 1675(c)(1)(A), substituted ''(or, in the case of the District of Columbia National Guard, the commanding general of the District of Columbia National Guard)'' for ''or Territory or Puerto Rico or the commanding general of the District of Columbia National Guard, as the case may be''.

Subsec. (d). Pub. L. 103–337, § 1675(c)(1)(B), struck out ''or Territory, Puerto Rico, or the District of Columbia, whichever is'' after ''authority of the State''.

1988—Subsec. (b). Pub. L. 100–456, § 1234(a)(2), substituted ''or Puerto Rico'' for '', Puerto Rico, or the Canal Zone,''.

Subsec. (d). Pub. L. 100–456, § 1234(a)(1), struck out ''the Canal Zone,'' after ''Puerto Rico,''.

1986—Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 9122], Pub. L. 99–661, § 522, amended section identically adding subsec. (f).

Subsec. (g). Pub. L. 99–661, § 524(a), added subsec. (g).

1980—Subsec. (a). Pub. L. 96–357 struck out cl. (1) designation for second sentence and cl. (2) prohibition against ordering a member of the Standby Reserve to active duty unless the Director of Selective Service determined that the member was available for active duty.

Subsec. (e). Pub. L. 96–584 substituted provisions respecting determination of the allowable time in terms of military requirements for provisions authorizing a reasonable time.

1958—Subsec. (a). Pub. L. 85–861, §§ 1(13), 33(a)(5), inserted ''(other than for training)'' after ''active duty'', substituted ''inactive National Guard'' for ''inactive Army National Guard or in the inactive Air National Guard'', and inserted provisions prohibiting a member of the Standby Reserve from being ordered to active duty under this subsection unless the Director of Selective Service determines that the member is available for active duty.

Subsec. (c). Pub. L. 85–861, § 33(a)(5), inserted ''(other than for training)'' after ''active duty''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 524(b) of Pub. L. 99–661 provided that: ''Section 672(g) [now 12301(g)] of title 10, United States Code, as added by subsection (a), does not authorize a member of a reserve component to be ordered to active duty for a period before the date of the enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(a)(5) of Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99–500, 99–591, AND 99–661

For rule of construction for certain duplicate provisions of Public Laws 99–500, 99–591, and 99–661, see Pub. L. 100–26, §6, Apr. 21, 1987, 101 Stat. 274, set out as a note under section 2302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 523, 582, 641, 672, 10142, 10151, 10215, 12305, 12306, 12307, 12310, 12408, 12686, 16131, 16133 of this title; title 5 section 6323; title 38 sections 3011, 3013, 3103, 3105, 3231, 3511, 3512, 4211, 4312; title 50 App. section 592.

§ 12302. Ready Reserve

(a) In time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty (other than for training) for not more than 24 consecutive months.

(b) To achieve fair treatment as between members in the Ready Reserve who are being considered for recall to duty without their consent, consideration shall be given to—

(1) the length and nature of previous service, to assure such sharing of exposure to hazards as the national security and military requirements will reasonably allow;

(2) family responsibilities; and

(3) employment necessary to maintain the national health, safety, or interest.

The Secretary of Defense shall prescribe such policies and procedures as he considers necessary to carry out this subsection. He shall report on those policies and procedures at least once a year to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(c) Not more than 1,000,000 members of the Ready Reserve may be on active duty (other than for training), without their consent, under this section at any one time.

(d) Whenever one or more units of the Ready Reserve are ordered to active duty, the President shall, on the first day of the second fiscal year quarter immediately following the quarter in which the first unit or units are ordered to active duty and on the first day of each succeeding six-month period thereafter, so long as such unit is retained on active duty, submit a report to the Congress regarding the necessity for such unit or units being ordered to and retained on active duty. The President shall include in each such report a statement of the mission of each such unit ordered to active duty, an evaluation of such unit's performance of that mission, where each such unit is being deployed at the time of the report, and such other information regarding each unit as the President deems appropriate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 28, §673; Pub. L. 85–861, §§1(14), 33(a)(5), Sept. 2, 1958, 72 Stat. 1441, 1564; Pub. L. 93–155, title III, §303(a), Nov. 16, 1973, 87 Stat. 607; renumbered §12302, Pub. L. 103–337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 104–106, div. A, title XV, §1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
673(a)	50:961(b)(1).	July 9, 1952, ch. 608, §233(b), 66 Stat. 489.
673(b)	50:961(b)(2).	

In subsection (a), the words ''after January 1, 1953'' are substituted for the word ''hereafter'', to reflect the effective date of the source statute. The words ''without the consent of the persons concerned'' are substituted for the word ''involuntarily''.

The words ''under the jurisdiction of that Secretary'' are inserted for clarity. The last sentence of the revised subsection is substituted for 50:961(b)(1) (proviso). The words ''and the members thereof'' and ''and required to perform'' are omitted as surplusage.

In subsection (b), the words ''to achieve'' are substituted for the words ''in the interest of''. The words ''without their consent'' are substituted for the word ''involuntarily''. The words ''who are being considered for'' are inserted for clarity. The words ''prescribe such policies and procedures'' are substituted for the words ''promulgate such policies and establish such procedures''. The words ''as he considers necessary'' are substituted for the words ''as may be required in his opinion''. The words ''this subsection'' are substituted for the words ''our intent here declared''. The words ''at least once a year'' are substituted for the words ''from time to time, and at least annually''. The words ''Senate and the House of Representatives'' are substituted for the word ''Congress''. 50:961(b)(2) (1st 18 words) is omitted as surplusage. The words ''with the objective'' and ''found to be'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
673(a)	50:961(b)(1) (less proviso).	Aug. 9, 1955, ch. 665, §2(f), 69 Stat. 599.
673(c)	50:961(b)(1) (proviso)	

In subsection (c), the words ''on active duty (other than for training)'' are substituted for the words ''may be required to perform active duty'' for clarity. The words ''without their consent'' are substituted for the word ''involuntarily''. The words ''of all reserve components'' and ''unless the Congress shall have authorized the exercise of the authority contained in this subsection'' are omitted as surplusage.

The changes are necessary to reflect section 101(b) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 901(b)), which defines the term ''active duty'' to exclude active duty for training. This definition applied to the source law for these sections [sections 672 and 673], section 233(a), (b)(1), and (c) of the Armed Forces Reserve Act of 1952 (50 U.S.C. 961(a), (b)(1), (c)).

AMENDMENTS

1999—Subsec. (b). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in concluding provisions.

1996—Subsec. (b). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1994—Pub. L. 103–337 renumbered section 673 of this title as this section.

1973—Subsec. (d). Pub. L. 93–155 added subsec. (d).

1958—Subsec. (a). Pub. L. 85–861, §§1(14)(A), 33(a)(5), inserted ''(other than for training)'' after ''active duty'', and struck out provisions that made subsection inapplicable unless Congress determined how many members of the reserve components were necessary, in the interest of national security, to be ordered to active duty.

Subsec. (c). Pub. L. 85–861, §1(14)(B), added subsec. (c).

EFFECTIVE DATE OF 1973 AMENDMENT

Section 303(b) of Pub. L. 93–155 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective with respect to any unit of the Ready Reserve ordered to active duty on or after the date of enactment of this Act [Nov. 16, 1973].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(a)(5) of Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

EX. ORD. NO. 12743. ORDERING READY RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12743, Jan. 18, 1991, 56 F.R. 2661, as amended by Ex. Ord. No. 13286, §35, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3 of the United States Code; in furtherance of Executive Order No. 12722, dated August 2, 1990 [50 U.S.C. 1701 note], which declared a national emergency to address the threat to the national security and foreign policy of the United States posed by the invasion of Kuwait by Iraq; and, in accordance with the requirements contained in section 301 of the National Emergencies Act, 50 U.S.C. 1631, I hereby order as follows:

SECTION 1. To provide additional authority to the Department of Defense and the Department of Homeland Security to respond to the continuing threat posed by Iraq's invasion of Kuwait, the authority under section 673 [now 12302] of title 10, United States Code, to order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty (other than for training) for not more than 24 consecutive months, is invoked and made available, according to its terms, to the Secretary concerned, subject, in the case of the Secretaries of the Army, Navy, and Air Force, to the direction of the Secretary of Defense. The term ''Secretary concerned'' is defined in section 101(8) [now 101(9)] of title 10, United States Code, to mean the Secretary of the Army with respect to the Army; the Secretary of the Navy with respect to the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy; the Secretary of the Air Force with respect to the Air Force; and, the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

SEC. 2. To allow for the orderly administration of personnel within the armed forces, the authority vested in the President by section 527 of title 10, United States Code, to suspend the operation of sections 523–526 [524 now 12011] of title 10, United States Code, regarding officer strength and officer distribution in grade, is invoked to the full extent provided by the terms thereof.

SEC. 3. To allow for the orderly administration of personnel within the armed forces, the authority vested in the President by section 644 [see 123] of title 10, United States Code, to suspend the operation of any provision of law relating to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, or Marine Corps, is invoked to the full extent provided by the terms thereof.

SEC. 4. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by sections 527 and 644 [see 123] of title 10, United States Code, as invoked by sections 2 and 3 of this order, to suspend the operation of certain provisions of law.

SEC. 5. The authorities delegated by sections 1 and 4 of this order may be redelegated and further subdelegated to civilian subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 6. This order is intended to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 7. This order is effective immediately, and shall be transmitted to the Congress and published in the Federal Register.

EX. ORD. NO. 13223. ORDERING THE READY RESERVE OF THE ARMED FORCES TO ACTIVE DUTY AND DELEGATING CERTAIN AUTHORITIES TO THE SECRETARY OF DEFENSE AND THE SECRETARY OF HOMELAND SECURITY

Ex. Ord. No. 13223, Sept. 14, 2001, 66 F.R. 48201, as amended by Ex. Ord. No. 13253, Jan. 16, 2002, 67 F.R. 2791; Ex. Ord. No. 13286, §9, Feb. 28, 2003, 68 F.R. 10622, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 301 of title 3, United States Code, and in furtherance of the proclamation of September 14, 2001, Declaration of National Emergency by Reason of Certain Terrorist Attacks [Proc. No. 7463, 50 U.S.C. 1621 note], which declared a national emergency by reason of the terrorist attacks on the World Trade Center, New York, New York, and the Pentagon, and the continuing and immediate threat of further attacks on the United States, I hereby order as follows:

SECTION 1. To provide additional authority to the Department of Defense and the Department of Transportation [Homeland Security] to respond to the continuing and immediate threat of further attacks on the United States, the authority under title 10, United States Code, to order any unit, and any member of the Ready Reserve not assigned to a unit organized to serve as a unit, in the Ready Reserve to active duty for not more than 24 consecutive months, is invoked and made available, according to its terms, to the Secretary concerned, subject in the case of the Secretaries of the Army, Navy, and Air Force, to the direction of the Secretary of Defense. The term ''Secretary concerned'' is defined in section 101(a)(9) of title 10, United States Code, to mean the Secretary of the Army with respect to the Army; the Secretary of the Navy with respect to the Navy, the Marine Corps, and the Coast Guard when it is operating as a service in the Navy; the Secretary of the Air Force with respect to the Air Force; and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy.

SEC. 2. To allow for the orderly administration of personnel within the armed forces, the following authorities vested in the President are hereby invoked to the full extent provided by the terms thereof: section 527 of title 10, United States Code, to suspend the operation of sections 523, 525, and 526 of that title, regarding officer and warrant officer strength and distribution; and sections 123, 123a, and 12006 of title 10, United States Code, to suspend certain laws relating to promotion, involuntary retirement, and separation of commissioned officers; end strength limitations; and Reserve component officer strength limitations.

SEC. 3. To allow for the orderly administration of personnel within the armed forces, the authorities vested in the President by sections 331, 359, and 367 of title 14, United States Code, relating to the authority to order to active duty certain officers and enlisted members of the Coast Guard and to detain enlisted members, are invoked to the full extent provided by the terms thereof.

SEC. 4. The Secretary of Defense is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in the President by sections 123, 123a, 527, and 12006 of title 10, United States Code, as invoked by sections 2 and 3 of this order.

SEC. 5. The Secretary of Homeland Security is hereby designated and empowered, without the approval, ratification, or other action by the President, to exercise the authority vested in sections 331, 359, and 367 of title 14, United States Code, when the Coast Guard is not serving as part of the Navy, as invoked by section 2 of this order, to recall any regular officer or enlisted member on the retired list to active duty and to detain any enlisted member beyond the term of his or her enlistment. The Secretary of Homeland Security is further designated and empowered, without the approval, ratification or any other action by the President, to exercise the authority vested in the President by sections 123 and 123a of title 10, United States Code, and sections 149 (detail members to assist foreign governments), 275(a) (suspension of provisions on selection, promotion, or involuntary separation of officers), and 722 (administration of reserve forces) of title 14, United States Code, as invoked by section 2 of Executive Order 13223.

SEC. 6. The authority delegated by this order to the Secretary of Defense and the Secretary of Homeland Security may be redelegated and further subdelegated to civilian subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 7. Based upon my determination under 10 U.S.C. 2201(c) that it is necessary to increase (subject to limits imposed by law) the number of members of the armed forces on active duty for the Department of Defense beyond the number for which funds are provided in the appropriation Act for the Department of Defense, which, by virtue of 14 U.S.C. 652, applies to the Department of Homeland Security with respect to the Coast Guard, the Secretary of Defense and the Secretary of Homeland Security may provide for the cost of such additional members under their respective jurisdictions as an excepted expense under section 11(a) of title 41, United States Code.

SEC. 8. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 9. This order is effective immediately and shall be promptly transmitted to the Congress and published in the Federal Register.

GEORGE W. BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 10142, 12304, 12305, 12318, 12408, 16131, 16133 of this title; title 38 sections 3011, 3013, 3103, 3105, 3231, 3511, 3512, 4211, 4312; title 50 App. section 592.

§ 12303. Ready Reserve; members not assigned to, or participating satisfactorily in, units

(a) Notwithstanding any other provision of law, the President may order to active duty any member of the Ready Reserve of an armed force who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) A member who is ordered to active duty under this section may be required to serve on active duty until his total service on active duty equals 24 months. If his enlistment or other period of military service would expire before he has served the required period under this section, it may be extended until he has served the required period.

(c) To achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this section, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

(Added Pub. L. 90–40, § 6(1), June 30, 1967, 81 Stat. 105, § 673a; renumbered § 12303, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 673a of this title as this section.

EX. ORD. NO. 11366. AUTHORIZATION TO ORDER READY RESERVE TO ACTIVE DUTY; EXTENSION OF MILITARY SERVICE

Ex. Ord. No. 11366, Aug. 4, 1967, 32 F.R. 11411, as amended by Ex. Ord. No. 13286, § 64, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by section 673a [now 12303] of title 10 of the United States Code, and by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Secretary of Defense is hereby authorized and empowered to exercise the authority vested in the President by section 673a [now 12303] of title 10 of the United States Code, to order to active duty any member of the Ready Reserve of an armed force (except the Coast Guard when not operating as a service in the Navy) who—

(1) is not assigned to, or participating satisfactorily in, a unit of the Ready Reserve;

(2) has not fulfilled his statutory reserve obligation; and

(3) has not served on active duty for a total of 24 months.

(b) In pursuance of the provisions of section 673a [now 12303] of title 10 of the United States Code, the Secretary of Defense is hereby authorized to require a member ordered to active duty under the authority of this Order to serve on active duty until his total service on active duty equals 24 months. If the enlistment or period of military service of a member of the Ready Reserve ordered to active duty under this authority would expire before he has served the required period of active duty prescribed herein, his enlistment or period of military service may be extended until he has served the required period.

(c) In pursuance of the provisions of section 673a [now 12303] of title 10 of the United States Code, and in order to achieve fair treatment among members of the Ready Reserve who are being considered for active duty under this authority, appropriate consideration shall be given to—

(1) family responsibilities; and

(2) employment necessary to maintain the national health, safety, or interest.

SEC. 2. The Secretary of Homeland Security is hereby authorized and empowered to exercise the authority vested in the President by section 673a [now 12303] of the title 10 of the United States Code, with respect to any member of the Ready Reserve of the Coast Guard when it is not operating as a service in the Navy, under the same conditions as such authority may be exercised by the Secretary of Defense under this Order with respect to any member of the Ready Reserve of any other armed force.

SEC. 3. (a) The Secretary of Defense may designate any of the Secretaries of the military departments of

the Department of Defense to exercise the authority vested in him by section 1 of this Order.

(b) The Secretary of Homeland Security may designate the Commandant of the United States Coast Guard to exercise the authority vested in him by section 2 of this Order.

SEC. 4. Executive Order No. 11327 of February 15, 1967, is superseded except with respect to members of the Ready Reserve ordered to active duty under the authority of that Order.

EX. ORD. NO. 11406. ASSIGNING AUTHORITY TO ORDER READY RESERVE TO ACTIVE DUTY

Ex. Ord. No. 11406, Apr. 10, 1968, 33 F.R. 5735, authorized Secretary of Defense and, when designated by him, any of Secretaries of military departments of Department of Defense to exercise authority vested in President until June 30, 1968 by paragraph (e) of title I of the Department of Defense Appropriation Act, 1967 (80 Stat. 981) to order any unit in the Ready Reserve to active duty for a period not to exceed 24 months.

§ 12304. Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

(a) AUTHORITY.—Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty (other than for training) for not more than 270 days.

(b) SUPPORT FOR RESPONSES TO CERTAIN EMERGENCIES.—The authority under subsection (a) includes authority to order a unit or member to active duty to provide assistance in responding to an emergency involving—

(1) a use or threatened use of a weapon of mass destruction; or

(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.

(c) LIMITATIONS.—(1) No unit or member of a reserve component may be ordered to active duty under this section to perform any of the functions authorized by chapter 15 or section 12406 of this title or, except as provided in subsection (b), to provide assistance to either the Federal Government or a State in time of a serious natural or manmade disaster, accident, or catastrophe.

(2) Not more than 200,000 members of the Selected Reserve and the Individual Ready Reserve may be on active duty under this section at any one time, of whom not more than 30,000 may be members of the Individual Ready Reserve.

(d) EXCLUSION FROM STRENGTH LIMITATIONS.—Members ordered to active duty under this section shall not be counted in computing authorized strength in members on active duty or members in grade under this title or any other law.

(e) POLICIES AND PROCEDURES.—The Secretary of Defense and the Secretary of Homeland Security shall prescribe such policies and procedures for the armed forces under their respective jurisdictions as they consider necessary to carry out this section.

(f) NOTIFICATION OF CONGRESS.—Whenever the President authorizes the Secretary of Defense or the Secretary of Homeland Security to order any unit or member of the Selected Reserve or Individual Ready Reserve to active duty, under the authority of subsection (a), he shall, within 24 hours after exercising such authority, submit to Congress a report, in writing, setting forth the circumstances necessitating the action taken under this section and describing the anticipated use of these units or members.

(g) TERMINATION OF DUTY.—Whenever any unit of the Selected Reserve or any member of the Selected Reserve not assigned to a unit organized to serve as a unit, or any member of the Individual Ready Reserve, is ordered to active duty under authority of subsection (a), the service of all units or members so ordered to active duty may be terminated by—

(1) order of the President, or

(2) law.

(h) RELATIONSHIP TO WAR POWERS RESOLUTION.—Nothing contained in this section shall be construed as amending or limiting the application of the provisions of the War Powers Resolution (50 U.S.C. 1541 et seq.).

(i) DEFINITIONS.—In this section:

(1) The term ''Individual Ready Reserve mobilization category'' means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.

(2) The term ''weapon of mass destruction'' has the meaning given that term in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

(Added Pub. L. 94–286, § 1, May 14, 1976, 90 Stat. 517, § 673b; amended Pub. L. 96–584, § 2, Dec. 23, 1980, 94 Stat. 3377; Pub. L. 97–295, § 1(9), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 99–661, div. A, title V, § 521, Nov. 14, 1986, 100 Stat. 3870; renumbered § 12304 and amended, Pub. L. 103–337, div. A, title V, § 511(a), title XVI, §§ 1662(e)(2), 1675(c)(2), Oct. 5, 1994, 108 Stat. 2752, 2992, 3017; Pub. L. 105–85, div. A, title V, § 511(b)–(e)(1), Nov. 18, 1997, 111 Stat. 1728, 1729; Pub. L. 105–261, div. A, title V, § 511(a), Oct. 17, 1998, 112 Stat. 2005; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title V, § 514(a), Dec. 2, 2002, 116 Stat. 2539.)

REFERENCES IN TEXT

The War Powers Resolution, referred to in subsec. (h), is Pub. L. 93–148, Nov. 7, 1973, 87 Stat. 555, which is classified generally to chapter 33 (§ 1541 et seq.) of Title 50, War and National Defense. For complete classification of this Resolution to the Code, see Short Title note set out under section 1541 of Title 50 and Tables.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (b). Pub. L. 107–314 substituted ''involving—

''(1) a use or threatened use of a weapon of mass destruction; or

''(2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.''

for ''involving a use or threatened use of a weapon of mass destruction.''

Subsecs. (e), (f). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1998—Subsec. (a). Pub. L. 105–261, §511(a)(1)(A), (3)(A), inserted heading and inserted ''or that it is necessary to provide assistance referred to in subsection (b)'' after ''operational mission'' in text.

Subsec. (b). Pub. L. 105–261, §511(a)(1)(D), added subsec. (b). Former subsec. (b) redesignated subsec. (c)(1).

Subsec. (c). Pub. L. 105–261, §511(a)(1)(B), (C), redesignated subsec. (b) as par. (1) of subsec. (c), inserted subsec. heading, substituted ''or, except as provided in subsection (b), to provide'' for '', or to provide'', and redesignated former subsec. (c) as par. (2).

Subsecs. (d) to (h). Pub. L. 105–261, §511(a)(3)(B)–(F), inserted headings.

Subsec. (i). Pub. L. 105–261, §511(a)(2), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''For purposes of this section, the term 'Individual Ready Reserve mobilization category' means, in the case of any reserve component, the category of the Individual Ready Reserve described in section 10144(b) of this title.''

1997—Pub. L. 105–85, §511(e)(1), inserted ''and certain Individual Ready Reserve members'' after ''Selected Reserve'' in section catchline.

Subsec. (a). Pub. L. 105–85, §511(b), inserted ''or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned,'' after ''of this title),''.

Subsec. (c). Pub. L. 105–85, §511(c), inserted ''and the Individual Ready Reserve'' after ''Selected Reserve'' and '', of whom not more than 30,000 may be members of the Individual Ready Reserve'' before period at end.

Subsec. (f). Pub. L. 105–85, §511(d)(1), inserted ''or Individual Ready Reserve'' after ''Selected Reserve''.

Subsec. (g). Pub. L. 105–85, §511(d)(2), inserted '', or any member of the Individual Ready Reserve,'' after ''to serve as a unit'' in introductory provisions.

Subsec. (i). Pub. L. 105–85, §511(d)(3), added subsec. (i).

1994—Pub. L. 103–337, §1662(e)(2), renumbered section 673b of this title as this section.

Subsec. (a). Pub. L. 103–337, §1675(c)(2)(A), (B), substituted ''12302(a)'' for ''673(a)'' and ''10143(a)'' for ''268(b)''.

Pub. L. 103–337, §511(a)(1), substituted ''270 days'' for ''90 days''.

Subsec. (b). Pub. L. 103–337, §1675(c)(2)(C), substituted ''12406'' for ''3500 or 8500''.

Subsec. (i). Pub. L. 103–337, §511(a)(2), struck out subsec. (i) which read as follows: ''When a unit of the Selected Reserve, or a member of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, is ordered to active duty under this section and the President determines that an extension of the service of such unit or member on active duty is necessary in the interests of national security, he may authorize the Secretary of Defense and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy to extend the period of such order to active duty for a period of not more than 90 additional days. Whenever the President exercises his authority under this subsection, he shall immediately notify Congress of such action and shall include in the notification a statement of reasons for the action. Nothing in this subsection shall be construed as limiting the authorities to terminate the service of units or members ordered to active duty under this section under subsection (g).''

1986—Subsec. (b). Pub. L. 99–661, §521(c)(1), substituted ''reserve component'' for ''Reserve component''.

Subsec. (c). Pub. L. 99–661, §521(a), substituted ''200,000'' for ''100,000''.

Subsec. (e). Pub. L. 99–661, §521(c)(2), substituted ''armed forces'' for ''Armed Forces''.

Subsec. (f). Pub. L. 99–661, §521(c)(3), substituted ''Congress'' for ''the Speaker of the House of Representatives and to the President pro tempore of the Senate''.

Subsec. (g)(2). Pub. L. 99–661, §521(c)(4), substituted ''law'' for ''a concurrent resolution of the Congress''.

Subsec. (i). Pub. L. 99–661, §521(b), added subsec. (i).

1982—Subsec. (h). Pub. L. 97–295 inserted ''(50 U.S.C. 1541 et seq.)'' after ''the War Powers Resolution''.

1980—Subsec. (c). Pub. L. 96–584 substituted ''100,000'' for ''50,000''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(e)(2) and 1675(c)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

ORDERS TO ACTIVE DUTY FOR SELECTED RESERVE COMBAT UNITS INVOLVED IN OPERATION DESERT SHIELD; EXTENSIONS OF TIME FOR FISCAL YEAR 1991

Pub. L. 101–511, title VIII, §8132, Nov. 5, 1990, 104 Stat. 1908, provided that, during fiscal year 1991, the President, in authorizing under this section the order to active duty of units and members of the Selected Reserve, could use that authority in the case of orders to active duty in support of operations in and around the Arabian Peninsula and Operation Desert Shield as if ''180'' were substituted for ''90'' in subsecs. (a) and (i) of this section.

EX. ORD. NO. 12727. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12727, Aug. 22, 1990, 55 F.R. 35027, as amended by Ex. Ord. No. 13286, §39, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b [now 12304] of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions in and around the Arabian Peninsula. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to order to active duty units and individual members not assigned to units, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted promptly to the Congress.

EX. ORD. NO. 12733. AUTHORIZING EXTENSION OF PERIOD OF ACTIVE DUTY OF PERSONNEL OF SELECTED RESERVE OF ARMED FORCES

Ex. Ord. No. 12733, Nov. 13, 1990, 55 F.R. 47837, as amended by Ex. Ord. No. 13286, §37, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b(i) [673b now 12304] of title 10 of the United States Code, I hereby determine that, in the interests of national security, ex-

tending the period of active duty is necessary for the following: units of the Selected Reserve, and members of the Selected Reserve not assigned to a unit organized to serve as a unit of the Selected Reserve, now serving on or hereafter ordered to active duty pursuant to section 673b(a) [now 12304(a)] of title 10 of the United States Code and Executive Order No. 12727 of August 22, 1990 [set out above]. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when the latter is not operating as a service in the Department of the Navy, to extend the period of active duty of such units and members of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted promptly to the Congress.

EX. ORD. NO. 12927. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12927, Sept. 15, 1994, 59 F.R. 47781, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 673b [now 12304] of title 10 of the United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operational missions to restore the civilian government in Haiti. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order is effective immediately and shall be published in the Federal Register and transmitted to the Congress.

WILLIAM J. CLINTON.

EX. ORD. NO. 12982. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 12982, Dec. 8, 1995, 60 F.R. 63895, as amended by Ex. Ord. No. 13286, § 21, Feb. 28, 2003, 68 F.R. 10624, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around former Yugoslavia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

This order shall be published in the Federal Register and transmitted to the Congress.

EX. ORD. NO. 13076. ORDERING SELECTED RESERVE OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 13076, Feb. 24, 1998, 63 F.R. 9719, as amended by Ex. Ord. No. 13286, § 17, Feb. 28, 2003, 68 F.R. 10623, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around Southwest Asia. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

EX. ORD. NO. 13120. ORDERING SELECTED RESERVE AND CERTAIN INDIVIDUAL READY RESERVE MEMBERS OF ARMED FORCES TO ACTIVE DUTY

Ex. Ord. No. 13120, Apr. 27, 1999, 64 F.R. 23007, as amended by Ex. Ord. No. 13286, § 14, Feb. 28, 2003, 68 F.R. 10623, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 121 and 12304 of title 10, United States Code, I hereby determine that it is necessary to augment the active armed forces of the United States for the effective conduct of operations in and around the former Yugoslavia related to the conflict in Kosovo. Further, under the stated authority, I hereby authorize the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, under their respective jurisdictions, to order to active duty any units, and any individual members not assigned to a unit organized to serve as a unit, of the Selected Reserve, or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, and to terminate the service of those units and members ordered to active duty.

This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 523, 582, 641, 10144, 12305, 12310, 12318, 12408, 16131, 16133 of this title; title 38 sections 1965, 3011, 3013, 3103, 3105, 3231, 3511, 3512, 4211, 4312; title 50 App. section 592.

§ 12305. Authority of President to suspend certain laws relating to promotion, retirement, and separation

(a) Notwithstanding any other provision of law, during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of section 12301, 12302, or 12304 of this title, the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States.

(b) A suspension made under the authority of subsection (a) shall terminate (1) upon release

from active duty of members of the reserve component ordered to active duty under the authority of section 12301, 12302, or 12304 of this title, as the case may be, or (2) at such time as the President determines the circumstances which required the action of ordering members of the reserve component to active duty no longer exist, whichever is earlier.

(c) Upon the termination of a suspension made under the authority of subsection (a) of a provision of law otherwise requiring the separation or retirement of officers on active duty because of age, length of service or length of service in grade, or failure of selection for promotion, the Secretary concerned shall extend by up to 90 days the otherwise required separation or retirement date of any officer covered by the suspended provision whose separation or retirement date, but for the suspension, would have been before the date of the termination of the suspension or within 90 days after the date of such termination.

(Added Pub. L. 98–94, title X, §1021(a), Sept. 24, 1983, 97 Stat. 670, §673c; amended Pub. L. 98–525, title XIV, §1405(16), Oct. 19, 1984, 98 Stat. 2622; renumbered §12305 and amended Pub. L. 103–337, div. A, title XVI, §§1662(e)(2), 1675(c)(3), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 107–107, div. A, title V, §508(a), Dec. 28, 2001, 115 Stat. 1090.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 added subsec. (c).

1994—Pub. L. 103–337, §1662(e)(2), renumbered section 673c of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, §1675(c)(3), substituted ''12301, 12302, or 12304'' for ''672, 673, or 673b''.

1984—Subsec. (b)(1). Pub. L. 98–525 inserted ''of this title'' after ''673b''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EX. ORD. NO. 12728. DELEGATING PRESIDENT'S AUTHORITY TO SUSPEND ANY PROVISION OF LAW RELATING TO PROMOTION, RETIREMENT, OR SEPARATION OF MEMBERS OF ARMED FORCES

Ex. Ord. No. 12728, Aug. 22, 1990, 55 F.R. 35029, as amended by Ex. Ord. No. 13286, §38, Feb. 28, 2003, 68 F.R. 10626, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 673c [now 12305] of title 10 of the United States Code and section 301 of title 3 of the United States Code, I hereby order:

SECTION 1. The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, are hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority vested in the President by section 673c [now 12305] of title 10 of the United States Code (1) to suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces determined to be essential to the national security of the United States, and (2) to determine, for the purposes of said section, that members of the armed forces are essential to the national security of the United States.

SEC. 2. The authority delegated to the Secretary of Defense and the Secretary of Homeland Security by this order may be redelegated and further subdelegated to subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate.

SEC. 3. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 1145 of this title; title 37 sections 302f, 909; title 38 section 4312.

§ 12306. Standby Reserve

(a) Units and members in the Standby Reserve may be ordered to active duty (other than for training) only as provided in section 12301 of this title.

(b) In time of emergency—

(1) no unit in the Standby Reserve organized to serve as a unit or any member thereof may be ordered to active duty (other than for training), unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough of the required kinds of units in the Ready Reserve that are readily available; and

(2) no other member in the Standby Reserve may be ordered to active duty (other than for training) as an individual without his consent, unless the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, determines that there are not enough qualified members in the Ready Reserve in the required category who are readily available.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, §674; Pub. L. 87–651, title I, §130, Sept. 7, 1962, 76 Stat. 514; renumbered §12306 and amended Pub. L. 103–337, div. A, title XVI, §§1662(e)(2), 1675(c)(4), Oct. 5, 1994, 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
674(a)	50:926(a) (less 1st 28 words).	July 9, 1952, ch. 608, §206 (less 1st 28 words of (a)), 66 Stat. 483.
674(b)	50:926(b).	

In subsection (b), the words ''to serve'' are substituted for the words ''for the purpose of serving''. The words ''there are not enough * * * that are'' are substituted for the words ''adequate numbers of * * * are not''. The words ''(other than for training)'' are inserted, since the words ''active duty'' were defined in the source statute cited above to exclude ''active duty for training''.

1962 ACT

The change is made to conform section 674(a) more closely to the source law for that section, section 206(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 483). Section 206(a) of that Act defined the Standby Reserve in terms of units and members of the reserve components according to their liability to be ordered to active duty. It did not provide authority to order units and members of the Standby Reserve to active duty. This authority was provided by section 233(a) of the Armed Forces Reserve Act of 1952 (66 Stat. 489), which is restated in section 672(a) of title 10. Since the present language of section 674(a) may be interpreted to provide independent authority to order units and members of the Standby Reserve to active duty, it is revised to

make clear that this is not the case and that section 672 is the authority for that action.

AMENDMENTS

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 674 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1675(c)(4), substituted ''12301'' for ''672''.

1962—Subsec. (a). Pub. L. 87–651 substituted ''only as provided in section 672 of this title'' for ''only in time of war, of national emergency declared by Congress, or when otherwise authorized by law''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10151 of this title; title 38 section 3011; title 50 App. section 592.

§ 12307. Retired Reserve

A member in the Retired Reserve may, if qualified, be ordered to active duty without his consent, but only as provided in section 688 or 12301(a) of this title. A member of the Retired Reserve (other than a member transferred to the Retired Reserve under section 12641(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 1223 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 675; Pub. L. 98–94, title X, § 1017(a), Sept. 24, 1983, 97 Stat. 669; Pub. L. 101–189, div. A, title VI, § 651(d), Nov. 29, 1989, 103 Stat. 1461; renumbered § 12307 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(5), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104–106, div. A, title XV, § 1501(b)(17), Feb. 10, 1996, 110 Stat. 497.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
675	50:927(c).	July 9, 1952, ch. 608, § 207(c), 66 Stat. 483.

AMENDMENTS

1996—Pub. L. 104–106 substituted ''Retired Reserve (other'' for ''Ready Reserve (other''.

1994—Pub. L. 103–337, § 1675(c)(5), substituted ''688 or 12301(a)'' for ''672(a) or 688'', ''12641(b)'' for ''1001(b)'', and ''1223'' for ''67''.

Pub. L. 103–337, § 1662(e)(2), renumbered section 675 of this title as this section.

1989—Pub. L. 101–189 inserted at end ''A member of the Ready Reserve (other than a member transferred to the Retired Reserve under section 1001(b) of this title) who is ordered to active duty or other appropriate duty in a retired status may be credited under chapter 67 of this title with service performed pursuant to such order. A member in a retired status is not eligible for promotion (or for consideration for promotion) as a Reserve.''

1983—Pub. L. 98–94 inserted reference to section 688.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 3011; title 50 App. section 592.

§ 12308. Retention after becoming qualified for retired pay

Any person who has qualified for retired pay under chapter 1223 of this title may, with his consent and by order of the Secretary concerned, be retained on active duty, or in service in a reserve component other than that listed in section 12732(b) of this title. A member so retained shall be credited with that service for all purposes.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 676; renumbered § 12308 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(6), Oct. 5, 1994, 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
676	10:1036a(e). 34:440i(e).	June 29, 1948, ch. 708, § 302(e), 62 Stat. 1088.

The words ''active duty, or in service, in a reserve component other than that listed in section 1332(b) of this title'' are inserted to reflect the words ''Federal service'', as used in Title III of the source statute. The words ''that service for all purposes'' are substituted for 10:1036a(e) (last 11 words) and 34:440i(e) (last 11 words). The words ''upon attaining the age of sixty years'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337, § 1675(c)(6), substituted ''1223'' for ''67'' and ''12732(b)'' for ''1332(b)''.

Pub. L. 103–337, § 1662(e)(2), renumbered section 676 of this title as this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12309. Reserve officers: use of in expansion of armed forces

When an expansion of the active armed forces requires that officers of the reserve components who are not members of units organized to serve as such be ordered as individuals to active duty (other than for training) without their consent, the services of qualified and available reserve officers in all grades shall be used, so far as practicable, according to the needs of the branches, grades, or specialties concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 29, § 677; renumbered § 12309, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
677	50:961(f).	July 9, 1952, ch. 608, §233(f), 66 Stat. 490.

The words ''without their consent'' are substituted for the word ''involuntarily''. The words ''it shall be the policy'' are omitted as surplusage. The words ''to active duty (other than for training)'' are substituted for the words ''into the active military service''.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 677 of this title as this section.

§ 12310. Reserves: for organizing, administering, etc., reserve components

(a) GRADE WHEN ORDERED TO ACTIVE DUTY.— A Reserve ordered to active duty under section 12301(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be ordered in his reserve grade. While so serving he continues to be eligible for promotion as a Reserve, if he is otherwise qualified.

(b) DUTIES.—A Reserve on active duty as described in subsection (a) may be assigned only duties in connection with the functions described in that subsection, which may include the following:

(1) Supporting operations or missions assigned in whole or in part to reserve components.

(2) Supporting operations or missions performed or to be performed by—

(A) a unit composed of elements from more than one component of the same armed force; or

(B) a joint forces unit that includes—

(i) one or more reserve component units; or

(ii) a member of a reserve component whose reserve component assignment is in a position in an element of the joint forces unit.

(3) Advising the Secretary of Defense, the Secretaries of the military departments, the Joint Chiefs of Staff, and the commanders of the unified combatant command regarding reserve component matters.

(c) DUTIES RELATING TO DEFENSE AGAINST WEAPONS OF MASS DESTRUCTION.—(1) Notwithstanding subsection (b), a Reserve on active duty as described in subsection (a), or a Reserve who is a member of the National Guard serving on full-time National Guard duty under section 502(f) of title 32 in connection with functions referred to in subsection (a), may, subject to paragraph (3), perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving—

(A) the use of a weapon of mass destruction (as defined in section 12304(i)(2) of this title); or

(B) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.

(2) The costs of the pay, allowances, clothing, subsistence, gratuities, travel, and related expenses for a Reserve performing duties under the authority of paragraph (1) shall be paid from the appropriation that is available to pay such costs for other members of the reserve component of that Reserve who are performing duties as described in subsection (a).

(3) A Reserve may perform duties described in paragraph (1)only while assigned to a reserve component rapid assessment element team and performing those duties within the geographical limits of the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(4) Reserves on active duty who are performing duties described in paragraph (1) shall be counted against the annual end strength authorizations required by section 115(a)(1)(B) and 115(a)(2) of this title. The justification material for the defense budget request for a fiscal year shall identify the number and component of the Reserves programmed to be performing duties described in paragraph (1) during that fiscal year.

(5) A reserve component rapid assessment element team, and any Reserve assigned to such a team, may not be used to respond to an emergency described in paragraph (1) unless the Secretary of Defense has certified to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that that team, or that Reserve, possesses the requisite skills, training, and equipment to be proficient in all mission requirements.

(6) If the Secretary of Defense submits to Congress any request for the enactment of legislation to modify the requirements of paragraph (3), the Secretary shall provide with the request—

(A) justification for each such requested modification; and

(B) the Secretary's plan for sustaining the qualifications of the personnel and teams described in paragraph (3)(B).

(d) TRAINING.—A Reserve on active duty as described in subsection (a) may be provided training consistent with training provided to other members on active duty, as the Secretary concerned sees fit.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, §678; renumbered §12310 and amended Pub. L. 103–337, div. A, title XVI, §§1662(e)(2), 1675(c)(7), Oct. 5, 1994, 108 Stat. 2992, 3017; Pub. L. 104–201, div. A, title V, §541, Sept. 23, 1996, 110 Stat. 2521; Pub. L. 105–261, div. A, title V, §511(b)(1), Oct. 17, 1998, 112 Stat. 2006; Pub. L. 106–65, div. A, title V, §§555(a), (b), 556, title X, §1067(1), Oct. 5, 1999, 113 Stat. 617–619, 774; Pub. L. 107–314, div. A, title V, §514(b), title IX, §933, Dec. 2, 2002, 116 Stat. 2539, 2626.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
678(a)	50:962 (2d sentence).	July 9, 1952, ch. 608, §234, (less 1st sentence), 66 Stat. 490.
678(b)	50:962 (less 1st and 2d sentences).	

In subsection (a), the words ''to active duty under section 672(d) of this title in connection with organizing, administering, recruiting, instructing, or training the reserve components'' are substituted for the words

''into the active military service of the United States under the provisions of this section''. The words ''his reserve grade'' are substituted for the words ''held by them in the Reserve of their Armed Force''. The words ''as a Reserve'', in the last sentence of the revised subsection, are substituted for the words ''in the Reserve of their Armed Force''. The word ''Hereafter'' is omitted as surplusage.

Subsection (b) is substituted for 50:962 (less 1st and 2d sentences).

AMENDMENTS

2002—Subsec. (c)(1). Pub. L. 107–314, § 514(b), substituted ''involving—

''(A) the use of a weapon of mass destruction (as defined in section 12304(i)(2) of this title); or

''(B) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property.''

for ''involving the use of a weapon of mass destruction (as defined in section 1403 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)))."

Subsec. (c)(3). Pub. L. 107–314, § 933, substituted ''only while assigned'' for ''only—

''(A) while assigned to the Department of Defense Consequence Management Program Integration Office; or

''(B) while assigned''.

1999—Subsec. (a). Pub. L. 106–65, § 555(b)(1), inserted heading.

Subsec. (b). Pub. L. 106–65, § 555(a)(2), added subsec. (b). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 106–65, § 555(b)(2), inserted heading.

Subsec. (c)(1). Pub. L. 106–65, § 555(b)(2), substituted ''Notwithstanding subsection (b), a Reserve'' for ''A Reserve''.

Subsec. (c)(4). Pub. L. 106–65, § 556(a), struck out first sentence which read as follows: ''The number of Reserves on active duty who are performing duties described in paragraph (1) at the same time may not exceed 228.''

Subsec. (c)(5). Pub. L. 106–65, § 1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (c)(6). Pub. L. 106–65, § 556(b), struck out ''or to increase the number of personnel authorized by paragraph (4)'' after ''requirements of paragraph (3)'' in introductory provisions and ''or for the requested additional personnel and explain the need for the increase in the context of existing or projected similar capabilities at the local, State, and Federal levels'' after ''modification'' in subpar. (A).

Subsec. (d). Pub. L. 106–65, § 555(a)(1), (b)(3), redesignated subsec. (b) as (d) and inserted heading.

1998—Subsec. (c). Pub. L. 105–261 added subsec. (c).

1996—Subsec. (b). Pub. L. 104–201 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To assure that a Reserve on duty under subsection (a) receives periodic refresher training in the categories for which he is qualified, the Secretary concerned may detail him to duty with any armed force, or otherwise as the Secretary sees fit.''

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 678 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1675(c)(7), substituted ''12301(d)'' for ''672(d)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

ADDITIONAL WEAPONS OF MASS DESTRUCTION CIVIL SUPPORT TEAMS

Pub. L. 107–314, div. A, title XIV, § 1403, Dec. 2, 2002, 116 Stat. 2676, provided that:

''(a) ESTABLISHMENT OF ADDITIONAL TEAMS.—The Secretary of Defense shall—

''(1) establish 23 additional teams designated as Weapons of Mass Destruction Civil Support Teams, for a total of 55 such teams; and

''(2) ensure that of such 55 teams, there is at least one team established in each State and territory.

''(b) PLAN.—Not later than 180 days after the date of the enactment of this Act [Dec. 2, 2002], the Secretary shall submit to Congress a plan, in furtherance of subsection (a), for establishing at least one Weapons of Mass Destruction Civil Support Team in each State and territory that does not have such a team as of the date of the enactment of this Act. The plan shall include the following:

''(1) A schedule and budget for manning, training, and equipping the new teams as rapidly as is possible without jeopardizing the attainment of full effectiveness by the new teams.

''(2) A discussion of whether the mission of the Weapons of Mass Destruction Civil Support Teams should be expanded and, if so, how.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'Weapons of Mass Destruction Civil Support Team' means a team of members of the reserve components of the Armed Forces that is established under section 12310(c) of title 10, United States Code, in support of emergency preparedness programs to prepare for or to respond to any emergency involving the use of a weapon of mass destruction.

''(2) The term 'State and territory' means each of the several States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12011, 12012, 12318 of this title.

§ 12311. Active duty agreements

(a) To provide definite terms of active duty (other than for training) for Reserves with their consent, the Secretary concerned may make a standard written agreement with any member of a reserve component under his jurisdiction requiring the member to serve for a period of active duty (other than for training) of not more than five years. When such an agreement expires, a new one may be made. This subsection does not apply in time of war declared by Congress.

(b) An agreement may not be made under subsection (a) unless the specified period of duty is at least 12 months longer than any period of active duty that the member is otherwise required to perform.

(c) Agreements made under subsection (a) shall be uniform so far as practicable, and are subject to such standards and policies as may be prescribed by the Secretary of Defense for the armed forces under his jurisdiction or by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(d) If an agreement made under subsection (a) expires during a war or during a national emergency declared by Congress or the President after January 1, 1953, the Reserve concerned may be kept on active duty, without his consent, as otherwise prescribed by law.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, § 679; Pub. L. 96–513, title V, § 511(19), Dec. 12, 1980, 94 Stat. 2921; renumbered § 12311, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
679(a)	50:963(a) (less last sentence). 50:963(c). 50:963(f).	July 9, 1952, ch. 608, §§235 (less last sentence of (a), and less (b)), 236, 66 Stat. 491.
679(b)	50:963(d).	
679(c)	50:963(e).	
679(d)	50:964.	

In subsection (a), the words ''To provide definite terms of active duty for'' are substituted for the words ''In order that * * * may remain on or be ordered to active duty * * * for terms of service of definite duration''. The words ''with their consent'' are substituted for the word ''voluntarily''. The words ''requiring the member to serve'' are substituted for 50:963(c). The words ''more than'' are substituted for the words ''to exceed''. The second sentence is substituted for 50:963(a) (2d sentence). The word ''hereafter'' is omitted as surplusage. 50:963(f) is omitted as executed. The words ''under his jurisdiction'' are inserted for clarity.

In subsection (b), the words ''is at least * * * longer'' are substituted for the words ''exceeds by at least''. The words ''active duty that the member is otherwise required to perform'' are substituted for the words ''obligated or involuntary active duty to which he is otherwise liable''.

In subsection (c), the words ''for the armed forces under his jurisdiction'' are inserted for clarity.

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1994—Pub. L. 103–337 renumbered section 679 of this title as this section.

1980—Subsec. (c). Pub. L. 96–513 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12312 of this title; title 14 section 41a.

§ 12312. Active duty agreements: release from duty

(a) Each agreement made under section 12311(a) of this title shall provide that the member may not be released from active duty without his consent during the period of the agreement—

(1) because of a reduction in the actual personnel strength of the armed force concerned, unless the release is in accordance with the recommendation of a board of officers appointed by an authority designated by the Secretary concerned to determine the members to be released from active duty under regulations prescribed by the Secretary; or

(2) for any other reason, without an opportunity to be heard by a board of officers before the release, unless he is (A) dismissed or discharged under the sentence of a court-martial, (B) released because of an unexplained absence without leave for at least three months, (C) released because he is convicted and sentenced to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or (D) released because he has been considered at least twice and has not been recommended for promotion to the next higher grade or because he is considered as having failed of selection for promotion to the next higher grade and has not been recommended for promotion to that grade, under conditions that would require the release or separation of a reserve officer who is not serving under such an agreement.

(b) A member who is released from active duty without his consent before the end of his agreement made under section 12311(a) of this title is entitled to an amount computed by multiplying the number of years and fractions of a year of his unexpired period of service under the agreement by the sum of one month's basic pay, special pay, and allowances to which he is entitled on the day of his release. The amount to which a member is entitled under this subsection is in addition to any pay and allowances to which he is otherwise entitled. For the purposes of this subsection, a fraction of a month of 15 days or more is counted as a whole month, and a fraction of a month of less than 15 days is disregarded. This subsection does not apply to a member if he is—

(1) released for a reason described in subsection (a)(2)(A)–(C);

(2) released because of a physical disability resulting from his intentional misconduct or wilful neglect;

(3) eligible for retired pay, separation pay, or severance pay under another provision of law;

(4) placed on a temporary disability retired list; or

(5) released to accept an appointment, or to be enlisted, in a regular component of an armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 30, §680; Pub. L. 87–509, §2, June 28, 1962, 76 Stat. 121; Pub. L. 98–525, title V, §533(b), title XIV, §1405(17), Oct. 19, 1984, 98 Stat. 2528, 2622; renumbered §12312 and amended Pub. L. 103–337, div. A, title XVI, §§1662(e)(2), 1675(c)(8), Oct. 5, 1994, 108 Stat. 2992, 3017.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
680(a)	50:963(a) (last sentence).	July 9, 1952, ch. 608, §235(a) (last sentence), (b), 66 Stat. 491.
680(b)	50:963(b).	

In subsections (a) and (b), the words ''without his consent'' are substituted for the word ''involuntary''.

In subsection (a)(1), the word ''because'' is substituted for the words ''by reason''. The words ''actual personnel strength'' are substituted for the words ''numerical strength of the military personnel''.

In subsection (a)(2), the words ''for any other reason'' are substituted for the words ''for reasons other than that prescribed in paragraph (1)''. The words ''dismissed or discharged'' are inserted for clarity. The words ''at least'' are substituted for the word ''duration''. The words ''is convicted and sentenced * * * and the sentence has become final'' are substituted for the words

''final conviction and sentence''. The words ''from active duty'' are omitted as surplusage.

In subsection (b), the words ''before the end of'' are substituted for the words ''prior to the expiration of the period of service under''. The words ''computed by multiplying * * * and fractions of a year of his unexpired period of service under the agreement by the sum of one month's * * * pay, and allowances'' are substituted for the words ''equal to one month's pay and allowances multiplied by * * * (including any pro rata part thereof) remaining as the unexpired period of his agreement for active duty''. The words ''basic * * * special pay * * * to which he is entitled on the day of his release'' are substituted for 50:963(b) (2d sentence). The third sentence is substituted for 50:963(b) (last sentence). The last sentence is substituted for 50:963(b) (words within 1st parentheses).

In subsection (b)(2), the words ''because of'' are substituted for the words ''when such release is due to''.

In subsection (b)(5), the words ''to accept'' are substituted for the words ''for the purpose of accepting''. The words ''of an armed force'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 680 of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, § 1675(c)(8), substituted ''12311(a)'' for ''679(a)''.

1984—Subsec. (a)(2)(D). Pub. L. 98–525, § 1405(17), substituted ''reserve officer'' for ''Reserve Officer''.

Subsec. (b)(3). Pub. L. 98–525, § 533(b), inserted '', separation pay,'' after ''retired pay''.

1962—Subsec. (a)(2)(D). Pub. L. 87–509 added cl. (D).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12313. Reserves: release from active duty

(a) Except as otherwise provided in this title, the Secretary concerned may at any time release a Reserve under his jurisdiction from active duty.

(b) In time of war or of national emergency declared by Congress or the President after January 1, 1953, a member of a reserve component may be released from active duty (other than for training) only if—

(1) a board of officers convened at his request by an authority designated by the Secretary concerned recommends the release and the recommendation is approved;

(2) the member does not request that a board be convened; or

(3) his release is otherwise authorized by law.

This subsection does not apply to an armed force during a period of demobilization or reduction in strength of that armed force.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, § 681; renumbered § 12313, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
681(a)	50:967(a).	July 9, 1952, ch. 608, § 239, 66 Stat. 492.
681(b)	50:967 (less (a)).	

In subsection (a), the word ''title'' is substituted for the word ''chapter''. The provisions of this title relating to active duty of Reserves are based on the Armed Forces Reserve Act of 1952. The words ''under his jurisdiction'' are inserted for clarity. The words ''or active duty for training'' are omitted as covered by the words ''active duty''.

Subsection (b) is substituted for 50:967(b). Clause (3) is inserted, since other provisions of law are necessarily exceptions to the general rule here stated.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 681 of this title as this section.

§ 12314. Reserves: kinds of duty

Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may, under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, § 682; renumbered § 12314, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
682	50:965.	July 9, 1952, ch. 608, § 237, 66 Stat. 492.

The words ''armed force concerned'' are substituted for the words ''Armed Forces of the United States''. The words ''now or hereafter'' and ''officers and enlisted'' are omitted as surplusage. The words ''other than for training'' are inserted, since the words ''active duty'' were defined in the source statute cited above to exclude active duty for training.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 682 of this title as this section.

§ 12315. Reserves: duty with or without pay

(a) Subject to other provisions of this title, any Reserve may be ordered to active duty or other duty—

(1) with the pay and allowances provided by law; or

(2) with his consent, without pay.

Duty without pay shall be considered for all purposes as if it were duty with pay.

(b) A Reserve who is kept on active duty after his term of service expires is entitled to pay and allowances while on that duty, except as they may be forfeited under the approved sentence of a court-martial or by non-judicial punishment by a commanding officer or when he is otherwise in a non-pay status.

(Aug. 10, 1956, ch. 1041, 70A Stat. 31, § 683; renumbered § 12315, Pub. L. 103–337, div. A, title XVI, § 1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
683(a)	50:971.	July 9, 1952, ch. 608, §§ 240, 241, 66 Stat. 492.
683(b)	50:972.	

In subsection (a), the word ''title'' is substituted for the word ''chapter''. The provisions of this title relating to active duty of reservists are based on the Armed Forces Reserve Act of 1952. The words ''shall be consid-

ered * * * as if it were'' are substituted for the words ''shall be counted * * * the same as like''.

In subsections (a) and (b), the words ''active duty for training'' are omitted as covered by the words ''active duty''.

In subsection (b), the word ''kept'' is substituted for the words ''retained or continued''. The words ''pursuant to law'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 683 of this title as this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

§ 12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection (b), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either—

(1) the payments to which he is entitled because of his earlier military service; or

(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(b) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(2), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(2). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(Added Pub. L. 85–861, §1(15), Sept. 2, 1958, 72 Stat. 1441, §684; amended Pub. L. 93–586, §1, Jan. 2, 1975, 88 Stat. 1920; renumbered §12316, Pub. L. 103–337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
684(a)	10 App.:369b (less proviso and last 3 sentences). 34 App.:853e–1 (less provisos and last 3 sentences).	Aug. 2, 1946, ch. 756, §10; restated Sept. 27, 1950, ch. 1053, §1, 64 Stat. 1067; July 12, 1955, ch. 337, §§1, 4, 69 Stat. 300, 301.
684(b)	10 App.:369b (proviso and last 3 sentences). 34 App.:853e–1 (provisos and last 3 sentences).	Sept. 27, 1950, ch. 1053, §2, 64 Stat. 1067; July 12, 1955, ch. 337, §§2, 4, 69 Stat. 301.

In subsections (a) and (b), the words ''retirement pay'' are omitted as covered by the words ''retired pay''.

In subsection (a), the words ''Except as provided by subsection (b)'' are inserted for clarity. The words ''who performs duty for which he is entitled to compensation, may elect to receive for that duty'' are substituted for the words ''may elect, with reference to periods of active duty, active duty for training, drill, training, instruction, or other duty for which they may be entitled to receive compensation pursuant to any provisions of law''. The words ''Notwithstanding the provisions of any other law'', in 10 App.:369b, and ''or relinquish'' are omitted as surplusage.

Subsection (a)(1) is substituted for clause (2) of 10 App.:369b, and clause (2) of 34 App.:853e–1.

In subsection (a)(2), the words ''pay and allowances authorized by law for the duty that he is performing'' are substituted for clause (1) of 10 App.:369b and 34 App.:853e–1.

In subsection (b), the word ''extended'', the next to the last sentence of 10 App.: 369b and of 34 App.: 853e–1, and the first proviso of 34 App.:853e–1, are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 684 of this title as this section.

1975—Subsecs. (a), (b). Pub. L. 93–586 inserted reference to Coast Guard.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 12317. Reserves: theological students; limitations

A Reserve may not be required to serve on active duty, or to participate in inactive duty training, while preparing for the ministry in a recognized theological or divinity school.

(Added Pub. L. 85–861, §1(15), Sept. 2, 1958, 72 Stat. 1441, §685; renumbered §12317, Pub. L. 103–337, div. A, title XVI, §1662(e)(2), Oct. 5, 1994, 108 Stat. 2992.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
686	50:961(h) (last sentence).	Aug. 9, 1955, ch. 665, §2(g) (last sentence), 69 Stat. 599.

The words ''active training and service, active duty for training'' are omitted as covered by the words ''active duty'' as defined in section 101(22) of this title.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 685 of this title as this section.

§ 12318. Reserves on active duty: duties; funding

(a) During a period that members of a reserve component are serving on active duty pursuant to an order under section 12302 or 12304 of this title, members of reserve components serving on active duty may perform duties in connection with either such section.

(b) Funds available for the pay and allowances of Reserves referred to section 12310 of this title shall be available for the pay and allowances of such Reserves who perform duties in connection with section 12302 or 12304 of this title under the authority of subsection (a).

(Added Pub. L. 99–661, div. A, title IV, § 412(b)(1), Nov. 14, 1986, 100 Stat. 3861, § 686; renumbered § 12318 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(9), Oct. 5, 1994, 108 Stat. 2992, 3017.)

AMENDMENTS

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 686 of this title as this section.

Pub. L. 103–337, § 1675(c)(9), substituted ''12302 or 12304'' for ''673 or 673b'' in subsecs. (a) and (b) and ''12310'' for ''678'' in subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12319. Ready Reserve: muster duty

(a) Under regulations prescribed by the Secretary of Defense, a member of the Ready Reserve may be ordered without his consent to muster duty one time each year. A member ordered to muster duty under this section shall be required to perform a minimum of two hours of muster duty on the day of muster.

(b) The period which a member may be required to devote to muster duty under this section, including round-trip travel to and from the location of that duty, may not total more than one day each calendar year.

(c) Except as specified in subsection (d), muster duty (and travel directly to and from that duty) under this section shall be treated as the equivalent of inactive-duty training (and travel directly to and from that training) for the purposes of this title and the provisions of title 37 (other than section 206(a)) and title 38, including provisions relating to the determination of eligibility for and the receipt of benefits and entitlements provided under those titles for Reserves performing inactive-duty training and for their dependents and survivors.

(d) Muster duty under this section shall not be credited in determining entitlement to, or in computing, retired pay under chapter 1223 of this title.

(Added Pub. L. 101–189, div. A, title V, § 502(a)(1), Nov. 29, 1989, 103 Stat. 1436, § 687; renumbered § 12319 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(e)(2), 1675(c)(10), Oct. 5, 1994, 108 Stat. 2992, 3018.)

AMENDMENTS

1994—Pub. L. 103–337, § 1662(e)(2), renumbered section 687 of this title as this section.

Subsec. (d). Pub. L. 103–337, § 1675(c)(10), substituted ''1223'' for ''67''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 433.

§ 12320. Reserve officers: grade in which ordered to active duty

A reserve officer who is ordered to active duty or full-time National Guard duty shall be ordered to active duty or full-time National Guard duty in his reserve grade, except that a reserve officer who is credited with service under section 12207 of this title and is ordered to active duty and placed on the active-duty list may be ordered to active duty in a reserve grade and with a date of rank and position on the active-duty list determined under regulations prescribed by the Secretary of Defense based upon the amount of service credited.

(Added Pub. L. 96–513, title I, § 106, Dec. 12, 1980, 94 Stat. 2868, § 689; amended Pub. L. 97–22, § 4(g), July 10, 1981, 95 Stat. 127; renumbered § 12320 and amended Pub. L. 103–337, div. A, title XVI, §§ 1625, 1662(e)(2), 1675(c)(11), Oct. 5, 1994, 108 Stat. 2962, 2992, 3018; Pub. L. 104–106, div. A, title XV, § 1501(a)(2), Feb. 10, 1996, 110 Stat. 495.)

AMENDMENTS

1996—Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1625. See 1994 Amendment note below.

1994—Pub. L. 103–337, § 1675(c)(11), substituted ''12207'' for ''3353, 5600, or 8353''.

Pub. L. 103–337, § 1662(e)(2), renumbered section 689 of this title as this section.

Pub. L. 103–337, § 1625, as amended by Pub. L. 104–106, inserted ''or full-time National Guard duty'' after ''who is ordered to active duty'' and after ''shall be ordered to active duty'' and inserted ''and placed on the active-duty list'' after ''and is ordered to active duty''.

1981—Pub. L. 97–22 inserted provision relating to a reserve officer who is credited with service under section 3353, 5600, or 8353 of this title and is ordered to active duty.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(e)(2) and 1675(c)(11) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1625 of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective Sept. 15, 1981, but the authority to prescribe regulations under this section effective on Dec. 12, 1980, see section 701 of Pub. L. 96–513, set out as an Effective Date of 1980 Amendment note under section 101 of this title.

§ 12321. Reserve Officer Training Corps units: limitation on number of Reserves assigned

The number of members of the reserve components serving on active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components who are assigned to duty with a unit of the Reserve Officer Training Corps program may not exceed 275.

(Added Pub. L. 101–510, div. A, title V, § 559(a)(1), Nov. 5, 1990, 104 Stat. 1571, § 687; renumbered § 690 and amended Pub. L. 102–25, title VII, § 704(a)(3)(A), (B), Apr. 6, 1991, 105 Stat. 118; Pub. L. 102–190, div. A, title X, § 1061(a)(4)(A), Dec. 5, 1991, 105 Stat. 1472; Pub. L. 102–484, div. A, title

V, §512, Oct. 23, 1992, 106 Stat. 2405; Pub. L. 103–160, div. A, title V, §512, Nov. 30, 1993, 107 Stat. 1649; renumbered §12321 and amended Pub. L. 103–337, div. A, title XVI, §1662(e)(2), (3), Oct. 5, 1994, 108 Stat. 2992.)

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 690 of this title as this section and substituted ''Reserve Officer Training Corps units: limitation on number of Reserves assigned'' for ''Limitation on duty with Reserve Officer Training Corps units'' as section catchline.

1993—Pub. L. 103–160 substituted ''may not exceed 275'' for ''may not exceed 200''.

1992—Pub. L. 102–484 substituted ''The number of members of the reserve components'' for ''A member of a reserve component'', ''who are assigned'' for ''may not be assigned'', and ''may not exceed 200.'' for period at end.

1991—Pub. L. 102–190 substituted ''Corps'' for ''Corp'' in section catchline.

Pub. L. 102–25, §704(a)(3)(B), renumbered section 687 of this title as this section.

Pub. L. 102–25, §704(a)(3)(A), made technical correction to directory language of Pub. L. 101–510, §559(a)(1), which enacted this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 704(e) of Pub. L. 102–25 provided that: ''The amendments made by this section [amending this section and sections 6686 and 7381b of Title 42, The Public Health and Welfare, and amending provisions set out as notes under this section, sections 1701, 1705, 1721, 1724, 1733, 2302, 2306a, 2432, and 3074 of this title, and section 1928 of Title 22, Foreign Relations and Intercourse] shall apply as if included in the enactment of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510).''

EFFECTIVE DATE

Section 559(b) of Pub. L. 101–510, as amended by Pub. L. 102–25, title VII, §704(a)(3)(C), Apr. 6, 1991, 105 Stat. 118, provided that: ''Section 690 [now 12321] of title 10, United States Code, as added by subsection (a), shall take effect on September 30, 1991.''

WAIVER OF PROHIBITION ON CERTAIN RESERVE SERVICE WITH ROTC PROGRAM

Section 525 of Pub. L. 102–190, as amended by Pub. L. 104–106, div. A, title XV, §1501(d)(2), Feb. 10, 1996, 110 Stat. 500, provided that: ''The Secretary of the military department concerned may waive the prohibition in section 12321 of title 10, United States Code, in the case of a member of a reserve component of the Armed Forces referred to in that section who is serving in an assignment to duty with a unit of the Reserve Officer Training Corps program on September 30, 1991, if the Secretary determines that the removal of the member from that assignment will cause a financial hardship for that member.''

§12322. Active duty for health care

A member of a uniformed service described in paragraph (1)(B) or (2)(B) of section 1074a(a) of this title may be ordered to active duty, and a member of a uniformed service described in paragraph (1)(A) or (2)(A) of such section may be continued on active duty, for a period of more than 30 days while the member is being treated for (or recovering from) an injury, illness, or disease incurred or aggravated in the line of duty as described in any of such paragraphs.

(Added Pub. L. 106–65, div. A, title VII, §705(a)(1), Oct. 5, 1999, 113 Stat. 683.)

CHAPTER 1211—NATIONAL GUARD MEMBERS IN FEDERAL SERVICE

Sec.
12401. Army and Air National Guard of the United States: status.
12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau.
12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service.
12404. Army and Air National Guard of the United States: mobilization; maintenance of organization.
12405. National Guard in Federal service: status.
12406. National Guard in Federal service: call.
12407. National Guard in Federal service: period of service; apportionment.
12408. National Guard in Federal service: physical examination.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(18)(A), Feb. 10, 1996, 110 Stat. 497, inserted ''the'' after ''Army and Air National Guard of'' in items 12401, 12402, 12403, and 12404.

§12401. Army and Air National Guard of the United States: status

Members of the Army National Guard of the United States and the Air National Guard of the United States are not in active Federal service except when ordered thereto under law.

(Added Pub. L. 103–337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3495 and 8495 of this title, prior to repeal by Pub. L. 103–337, §1662(f)(2).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§12402. Army and Air National Guard of the United States: commissioned officers; duty in National Guard Bureau

(a) The President may, with their consent, order commissioned officers of the Army National Guard of the United States and the Air National Guard of the United States to active duty in the National Guard Bureau.

(b)(1) The number of officers of the Army National Guard of the United States in grades below brigadier general who are ordered to active duty in the National Guard Bureau may not be more than 40 percent of the number of officers of the Army authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Army serving in that Bureau in any grade below brigadier general.

(2) The number of officers of the Air National Guard of the United States in grades below brigadier general who are ordered to active duty in

the National Guard Bureau may not be more than 40 percent of the number of officers of the Air Force authorized for duty in that Bureau and, to the extent practicable, shall not exceed 40 percent of the number of officers of the Air Force serving in that Bureau in any grade below brigadier general.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3496 and 8496 of this title, prior to repeal by Pub. L. 103–337, § 1662(f)(2).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 641, 10507, 12011 of this title; title 32 section 107; title 37 section 204.

§ 12403. Army and Air National Guard of the United States: members; status in which ordered into Federal service

Members of the Army National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Army. Members of the Air National Guard of the United States ordered to active duty shall be ordered to duty as Reserves of the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3497 and 8497 of this title, prior to repeal by Pub. L. 103–337, § 1662(f)(2).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 12404. Army and Air National Guard of the United States: mobilization; maintenance of organization

During an initial mobilization, the organization of a unit of the Army National Guard of the United States or of the Air National Guard of the United States ordered into active Federal service shall, so far as practicable, be maintained as it existed on the date of the order to duty.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(18)(B), Feb. 10, 1996, 110 Stat. 497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3498 and 8498 of this title, prior to repeal by Pub. L. 103–337, § 1662(f)(2).

AMENDMENTS

1996—Pub. L. 104–106 inserted ''the'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 12405. National Guard in Federal service: status

Members of the National Guard called into Federal service are, from the time when they are required to respond to the call, subject to the laws and regulations governing the Army or the Air Force, as the case may be, except those applicable only to members of the Regular Army or Regular Air Force, as the case may be.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2993.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3499 and 8499 of this title, prior to repeal by Pub. L. 103–337, § 1662(f)(2).

§ 12406. National Guard in Federal service: call

Whenever—

(1) the United States, or any of the Territories, Commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States;

the President may call into Federal service members and units of the National Guard of any State in such numbers as he considers necessary to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the commanding general of the National Guard of the District of Columbia.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(f)(1), Oct. 5, 1994, 108 Stat. 2994.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3500 and 8500 of this title, prior to repeal by Pub. L. 103–337, § 1662(f)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 12304 of this title; title 5 section 6323; title 38 section 4312.

§ 12407. National Guard in Federal service: period of service; apportionment

(a) Whenever the President calls the National Guard of a State into Federal service, he may

specify in the call the period of the service. Members and units called shall serve inside or outside the territory of the United States during the term specified, unless sooner relieved by the President. However, no member of the National Guard may be kept in Federal service beyond the term of his commission or enlistment.

(b) When the National Guard of a State is called into Federal service with the National Guard of another State, the President may apportion the total number called from the Army National Guard or from the Air National Guard, as the case may be, on the basis of the populations of the States affected by the call.

(Added Pub. L. 103–337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 104–106, div. A, title XV, §1501(b)(19), Feb. 10, 1996, 110 Stat. 497.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3501 and 8501 of this title, prior to repeal by Pub. L. 103–337, §1662(f)(2).

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''another State'' for ''another of those jurisdictions'' and ''States affected'' for ''jurisdictions affected''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 12408. National Guard in Federal service: physical examination

(a) Under regulations prescribed by the President, each member of the National Guard called into Federal service under section 12301(a), 12302, or 12304 of this title shall be examined as to physical fitness, without further commission or enlistment.

(b) Immediately before such a member is mustered out of Federal service, he shall be examined as to physical fitness. The record of this examination shall be retained by the United States.

(Added Pub. L. 103–337, div. A, title XVI, §1662(f)(1), Oct. 5, 1994, 108 Stat. 2994; amended Pub. L. 104–201, div. A, title V, §523, Sept. 23, 1996, 110 Stat. 2517.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3502 and 8502 of this title, prior to repeal by Pub. L. 103–337, §1662(f)(2).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–201 inserted ''under section 12301(a), 12302, or 12304 of this title'' after ''called into Federal service''.

CHAPTER 1213—SPECIAL APPOINTMENTS, ASSIGNMENTS, DETAILS, AND DUTIES

Sec.
12501. Reserve components: detail of members of regular and reserve components to assist.
12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail.
12503. Ready Reserve: funeral honors duty.
[12505. Repealed.]

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §507(f)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105, struck out item 12505 ''Selection of officers for certain senior reserve component positions''.

1999—Pub. L. 106–65, div. A, title V, §§554(a)(2), 578(k)(2)(B), Oct. 5, 1999, 113 Stat. 616, 631, added items 12503 and 12505.

§ 12501. Reserve components: detail of members of regular and reserve components to assist

The Secretary concerned shall detail such members of the regular and reserve components under his jurisdiction as are necessary to effectively develop, train, instruct, and administer those reserve components.

(Added Pub. L. 103–337, div. A, title XVI, §1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 715 of this title, prior to repeal by Pub. L. 103–337, §1662(g)(2).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 12502. Chief and assistant chief of staff of National Guard divisions and wings in Federal service: detail

(a) The President may detail a regular or reserve officer of the Army as chief of staff, and a regular or reserve officer or an officer of the Army National Guard as assistant to the chief of staff, of any division of the Army National Guard that is in Federal service as an Army National Guard organization.

(b) The President may detail a regular or reserve officer of the Air Force as chief of staff, and a regular or reserve officer or an officer of the Air National Guard as assistant to the chief of staff, of any wing of the Air National Guard that is in Federal service as an Air National Guard organization.

(Added Pub. L. 103–337, div. A, title XVI, §1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3542 and 8542 of this title, prior to repeal by Pub. L. 103–337, §1662(g)(2).

§ 12503. Ready Reserve: funeral honors duty

(a) ORDER TO DUTY.—A member of the Ready Reserve may be ordered to funeral honors duty, with the consent of the member, in preparation for or to perform funeral honors functions at the funeral of a veteran as defined in section 1491 of this title. Performance of funeral honors duty by a Reserve not on active duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.

(b) SERVICE CREDIT.—A member ordered to funeral honors duty under this section shall be re-

quired to perform a minimum of two hours of such duty in order to receive—

(1) service credit under section 12732(a)(2)(E) of this title; and

(2) as directed by the Secretary concerned, either—

(A) the allowance under section 435 of title 37; or

(B) compensation under section 206 of title 37.

(c) REIMBURSABLE EXPENSES.—A member who performs funeral honors duty under this section may be reimbursed for travel and transportation expenses incurred in conjunction with such duty as authorized under chapter 7 of title 37 if such duty is performed at a location 50 miles or more from the member's residence.

(d) REGULATIONS.—The exercise of authority under subsection (a) is subject to regulations prescribed by the Secretary of Defense.

(e) MEMBERS OF THE NATIONAL GUARD.—This section does not apply to members of the Army National Guard of the United States or the Air National Guard of the United States. The performance of funeral honors duty by those members is provided for in section 115 of title 32.

(Added Pub. L. 106–65, div. A, title V, § 578(g)(3), Oct. 5, 1999, 113 Stat. 628; amended Pub. L. 106–398, § 1 [[div. A], title V, § 575(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138; Pub. L. 107–107, div. A, title V, § 562(a), Dec. 28, 2001, 115 Stat. 1119.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107 inserted at end ''Performance of funeral honors duty by a Reserve not on active duty shall be treated as inactive-duty training (including with respect to travel to and from such duty) for purposes of any provision of law other than sections 206 and 435 of title 37.''

2000—Subsec. (b)(2). Pub. L. 106–398 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''if authorized by the Secretary concerned, the allowance under section 435 of title 37.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–107, div. A, title V, § 562(c), Dec. 28, 2001, 115 Stat. 1120, provided that: ''The amendments made by this section [amending this section and section 115 of Title 32, National Guard] shall apply to funeral honors duty performed on or after October 30, 2000.''

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title V, § 575(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–138, provided that: ''The amendments made by this section [amending this section, section 115 of Title 32, National Guard, and section 435 of Title 37, Pay and Allowances of the Uniformed Services] shall apply with respect to funeral honors duty performed on or after October 1, 2000.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1074a, 1076, 1204, 1206, 1481, 12552, 12732 of this title; title 5 section 6323; title 37 sections 204, 435; title 38 sections 4303, 4316.

[§ 12505. Repealed. Pub. L. 106–398, § 1 [[div. A], title V, § 507(f)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–105]

Section, added Pub. L. 106–65, div. A, title V, § 554(a)(1), Oct. 5, 1999, 113 Stat. 616, related to selection of officers for certain senior reserve component positions.

CHAPTER 1214—READY RESERVE MOBILIZATION INCOME INSURANCE

Sec.
12521. Definitions.
12522. Establishment of insurance program.
12523. Risk insured.
12524. Enrollment and election of benefits.
12525. Benefit amounts.
12526. Premiums.
12527. Payment of premiums.
12528. Reserve Mobilization Income Insurance Fund.
12529. Board of Actuaries.
12530. Payment of benefits.
12531. Purchase of insurance.
12532. Termination for nonpayment of premiums; forfeiture.
12533. Termination of program.

AMENDMENTS

1997—Pub. L. 105–85, div. A, title V, § 512(b), Nov. 18, 1997, 111 Stat. 1729, added item 12533.

§ 12521. Definitions

In this chapter:

(1) The term ''insurance program'' means the Ready Reserve Mobilization Income Insurance Program established under section 12522 of this title.

(2) The term ''covered service'' means active duty performed by a member of a reserve component under an order to active duty for a period of more than 30 days which specifies that the member's service—

(A) is in support of an operational mission for which members of the reserve components have been ordered to active duty without their consent; or

(B) is in support of forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

(3) The term ''insured member'' means a member of the Ready Reserve who is enrolled for coverage under the insurance program in accordance with section 12524 of this title.

(4) The term ''Secretary'' means the Secretary of Defense.

(5) The term ''Department'' means the Department of Defense.

(6) The term ''Board of Actuaries'' means the Department of Defense Education Benefits Board of Actuaries referred to in section 2006(e)(1) of this title.

(7) The term ''Fund'' means the Reserve Mobilization Income Insurance Fund established by section 12528(a) of this title.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 299.)

EFFECTIVE DATE

Section 512(b) of Pub. L. 104–106 provided that: ''The insurance program provided for in chapter 1214 of title 10, United States Code, as added by subsection (a), and the requirement for deductions and contributions for that program shall take effect on September 30, 1996, or on any earlier date declared by the Secretary and published in the Federal Register.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12529 of this title.

§ 12522. Establishment of insurance program

(a) ESTABLISHMENT.—The Secretary shall establish for members of the Ready Reserve (in-

cluding the Coast Guard Reserve) an insurance program to be known as the ''Ready Reserve Mobilization Income Insurance Program''.

(b) ADMINISTRATION.—The insurance program shall be administered by the Secretary. The Secretary may prescribe in regulations such rules, procedures, and policies as the Secretary considers necessary or appropriate to carry out the insurance program.

(c) AGREEMENT WITH SECRETARY OF HOMELAND SECURITY.—The Secretary and the Secretary of Homeland Security shall enter into an agreement with respect to the administration of the insurance program for the Coast Guard Reserve.

(Added Pub. L. 104–106, div. A, title V, §512(a)(1), Feb. 10, 1996, 110 Stat. 299; amended Pub. L. 107–296, title XVII, §1704(b)(1), (7), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–296 substituted ''Homeland Security'' for ''Transportation'' in heading and text.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12521 of this title.

§ 12523. Risk insured

(a) IN GENERAL.—The insurance program shall insure members of the Ready Reserve against the risk of being ordered into covered service.

(b) ENTITLEMENT TO BENEFITS.—(1) An insured member ordered into covered service shall be entitled to payment of a benefit for each month (and fraction thereof) of covered service that exceeds 30 days of covered service, except that no member may be paid under the insurance program for more than 12 months of covered service served during any period of 18 consecutive months.

(2) Payment shall be based solely on the insured status of a member and on the period of covered service served by the member. Proof of loss of income or of expenses incurred as a result of covered service may not be required.

(Added Pub. L. 104–106, div. A, title V, §512(a)(1), Feb. 10, 1996, 110 Stat. 300.)

§ 12524. Enrollment and election of benefits

(a) ENROLLMENT.—(1) Except as provided in subsection (f), upon first becoming a member of the Ready Reserve, a member shall be automatically enrolled for coverage under the insurance program. An automatic enrollment of a member shall be void if within 60 days after first becoming a member of the Ready Reserve the member declines insurance under the program in accordance with the regulations prescribed by the Secretary.

(2) Promptly after the insurance program is established, the Secretary shall offer to members of the reserve components who are then members of the Ready Reserve (other than members ineligible under subsection (f)) an opportunity to enroll for coverage under the insurance program. A member who fails to enroll within 60 days after being offered the opportunity shall be considered as having declined to be insured under the program.

(3) A member of the Ready Reserve ineligible to enroll under subsection (f) shall be afforded an opportunity to enroll upon being released from active duty in accordance with regulations prescribed by the Secretary if the member has not previously had the opportunity to be enrolled under paragraph (1) or (2). A member who fails to enroll within 60 days after being afforded that opportunity shall be considered as having declined to be insured under the program.

(b) ELECTION OF BENEFIT AMOUNT.—The amount of a member's monthly benefit under an enrollment shall be the basic benefit under subsection (a) of section 12525 of this title unless the member elects a different benefit under subsection (b) of such section within 60 days after first becoming a member of the Ready Reserve or within 60 days after being offered the opportunity to enroll, as the case may be.

(c) ELECTIONS IRREVOCABLE.—(1) An election to decline insurance pursuant to paragraph (1) or (2) of subsection (a) is irrevocable.

(2) The amount of coverage may not be increased after enrollment.

(d) ELECTION TO TERMINATE.—A member may terminate an enrollment at any time.

(e) INFORMATION TO BE FURNISHED.—The Secretary shall ensure that members referred to in subsection (a) are given a written explanation of the insurance program and are advised that they have the right to decline to be insured and, if not declined, to elect coverage for a reduced benefit or an enhanced benefit under subsection (b).

(f) MEMBERS INELIGIBLE TO ENROLL.—Members of the Ready Reserve serving on active duty (or full-time National Guard duty) are not eligible to enroll for coverage under the insurance program. The Secretary may define any additional category of members of the Ready Reserve to be excluded from eligibility to purchase insurance under this chapter.

(g) MEMBERS OF INDIVIDUAL READY RESERVE.—Notwithstanding any other provision of this section, and pursuant to regulations issued by the Secretary, a member of the Individual Ready Reserve who becomes a member of the Selected Reserve shall not be denied eligibility to purchase insurance under this chapter upon becoming a member of the Selected Reserve unless the member previously declined to enroll in the program of insurance under this chapter while a member of the Selected Reserve.

(Added Pub. L. 104–106, div. A, title V, §512(a)(1), Feb. 10, 1996, 110 Stat. 300; amended Pub. L. 104–201, div. A, title V, §542, Sept. 23, 1996, 110 Stat. 2521.)

AMENDMENTS

1996—Subsec. (g). Pub. L. 104–201 added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12521 of this title.

§ 12525. Benefit amounts

(a) BASIC BENEFIT.—The basic benefit for an insured member under the insurance program is $1,000 per month (as adjusted under subsection (d)).

(b) REDUCED AND ENHANCED BENEFITS.—Under the regulations prescribed by the Secretary, a person enrolled for coverage under the insurance program may elect—

(1) a reduced coverage benefit equal to one-half the amount of the basic benefit; or

(2) an enhanced benefit in the amount of $1,500, $2,000, $2,500, $3,000, $3,500, $4,000, $4,500, or $5,000 per month (as adjusted under subsection (d)).

(c) AMOUNT FOR PARTIAL MONTH.—The amount of insurance payable to an insured member for any period of covered service that is less than one month shall be determined by multiplying 1/30 of the monthly benefit rate for the member by the number of days of the covered service served by the member during such period.

(d) ADJUSTMENT OF AMOUNTS.—(1) The Secretary shall determine annually the effect of inflation on benefits and shall adjust the amounts set forth in subsections (a) and (b)(2) to maintain the constant dollar value of the benefit.

(2) If the amount of a benefit as adjusted under paragraph (1) is not evenly divisible by $10, the amount shall be rounded to the nearest multiple of $10, except that an amount evenly divisible by $5 but not by $10 shall be rounded to the next lower amount that is evenly divisible by $10.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12524 of this title.

§ 12526. Premiums

(a) ESTABLISHMENT OF RATES.—(1) The Secretary, in consultation with the Board of Actuaries, shall prescribe the premium rates for insurance under the insurance program.

(2) The Secretary shall prescribe a fixed premium rate for each $1,000 of monthly insurance benefit. The premium amount shall be equal to the share of the cost attributable to insuring the member and shall be the same for all members of the Ready Reserve who are insured under the insurance program for the same benefit amount. The Secretary shall prescribe the rate on the basis of the best available estimate of risk and financial exposure, levels of subscription by members, and other relevant factors.

(b) LEVEL PREMIUMS.—The premium rate prescribed for the first year of insurance coverage of an insured member shall be continued without change for subsequent years of insurance coverage, except that the Secretary, after consultation with the Board of Actuaries, may adjust the premium rate in order to fund inflation-adjusted benefit increases on an actuarially sound basis.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 301.)

§ 12527. Payment of premiums

(a) METHODS OF PAYMENT.—(1) The monthly premium for coverage of a member of the Selected Reserve under the insurance program shall be deducted and withheld from the insured member's pay for each month.

(2) The Secretary of Defense, in consultation with the Secretary of Homeland Security, shall prescribe regulations which specify the procedures for payment of premiums by members of the Individual Ready Reserve and other members who do not receive pay on a monthly basis.

(b) ADVANCE PAY FOR PREMIUM.—The Secretary concerned may advance to an insured member the amount equal to the first insurance premium payment due under this chapter. The advance may be paid out of appropriations for military pay. An advance to a member shall be collected from the member either by deducting and withholding the amount from basic pay payable for the member or by collecting it from the member directly. No disbursing or certifying officer shall be responsible for any loss resulting from an advance under this subsection.

(c) PREMIUMS TO BE DEPOSITED IN FUND.—Premium amounts deducted and withheld from the pay of insured members and premium amounts paid directly to the Secretary shall be credited monthly to the Fund.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 302; amended Pub. L. 104–201, div. A, title V, § 547, Sept. 23, 1996, 110 Stat. 2524; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a)(2). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1996—Subsec. (a)(1). Pub. L. 104–201, § 547(1), inserted ''of the Selected Reserve'' after ''a member''.

Subsec. (a)(2). Pub. L. 104–201, § 547(2), added par. (2) and struck out former par. (2) which read as follows: ''An insured member who does not receive pay on a monthly basis shall pay the Secretary directly the premium amount applicable for the level of benefits for which the member is insured.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12528 of this title.

§ 12528. Reserve Mobilization Income Insurance Fund

(a) ESTABLISHMENT.—There is established on the books of the Treasury a fund to be known as the ''Reserve Mobilization Income Insurance Fund'', which shall be administered by the Secretary of the Treasury. The Fund shall be used for the accumulation of funds in order to finance the liabilities of the insurance program on an actuarially sound basis.

(b) ASSETS OF FUND.—There shall be deposited into the Fund the following:

(1) Premiums paid under section 12527 of this title.

(2) Any amount appropriated to the Fund.

(3) Any return on investment of the assets of the Fund.

(c) AVAILABILITY.—Amounts in the Fund shall be available for paying insurance benefits under the insurance program.

(d) INVESTMENT OF ASSETS OF FUND.—The Secretary of the Treasury shall invest such portion of the Fund as is not in the judgment of the Secretary of Defense required to meet current liabilities. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary of Defense, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The income on such investments shall be credited to the Fund.

(e) ANNUAL ACCOUNTING.—At the beginning of each fiscal year, the Secretary, in consultation with the Board of Actuaries and the Secretary of the Treasury, shall determine the following:

(1) The projected amount of the premiums to be collected, investment earnings to be received, and any transfers or appropriations to be made for the Fund for that fiscal year.

(2) The amount for that fiscal year of any cumulative unfunded liability (including any negative amount or any gain to the Fund) resulting from payments of benefits.

(3) The amount for that fiscal year (including any negative amount) of any cumulative actuarial gain or loss to the Fund.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 302.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12521 of this title.

§ 12529. Board of Actuaries

(a) ACTUARIAL RESPONSIBILITY.—The Board of Actuaries shall have the actuarial responsibility for the insurance program.

(b) VALUATIONS AND PREMIUM RECOMMENDATIONS.—The Board of Actuaries shall carry out periodic actuarial valuations of the benefits under the insurance program and determine a premium rate methodology for the Secretary to use in setting premium rates for the insurance program. The Board shall conduct the first valuation and determine a premium rate methodology not later than six months after the insurance program is established.

(c) EFFECTS OF CHANGED BENEFITS.—If at the time of any actuarial valuation under subsection (b) there has been a change in benefits under the insurance program that has been made since the last such valuation and such change in benefits increases or decreases the present value of amounts payable from the Fund, the Board of Actuaries shall determine a premium rate methodology, and recommend to the Secretary a premium schedule, for the liquidation of any liability (or actuarial gain to the Fund) resulting from such change and any previous such changes so that the present value of the sum of the scheduled premium payments (or reduction in payments that would otherwise be made) equals the cumulative increase (or decrease) in the present value of such benefits.

(d) ACTUARIAL GAINS OR LOSSES.—If at the time of any such valuation the Board of Actuaries determines that there has been an actuarial gain or loss to the Fund as a result of changes in actuarial assumptions since the last valuation or as a result of any differences, between actual and expected experience since the last valuation, the Board shall recommend to the Secretary a premium rate schedule for the amortization of the cumulative gain or loss to the Fund resulting from such changes in assumptions and any previous such changes in assumptions or from the differences in actual and expected experience, respectively, through an increase or decrease in the payments that would otherwise be made to the Fund.

(e) INSUFFICIENT ASSETS.—If at any time liabilities of the Fund exceed assets of the Fund as a result of members of the Ready Reserve being ordered to active duty as described in section 12521(2) of this title, and funds are unavailable to pay benefits completely, the Secretary shall request the President to submit to Congress a request for a special appropriation to cover the unfunded liability. If appropriations are not made to cover an unfunded liability in any fiscal year, the Secretary shall reduce the amount of the benefits paid under the insurance program to a total amount that does not exceed the assets of the Fund expected to accrue by the end of such fiscal year. Benefits that cannot be paid because of such a reduction shall be deferred and may be paid only after and to the extent that additional funds become available.

(f) DEFINITION OF PRESENT VALUE.—The Board of Actuaries shall define the term ''present value'' for purposes of this subsection.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 303.)

§ 12530. Payment of benefits

(a) COMMENCEMENT OF PAYMENT.—An insured member who serves in excess of 30 days of covered service shall be paid the amount to which such member is entitled on a monthly basis beginning not later than one month after the 30th day of covered service.

(b) METHOD OF PAYMENT.—The Secretary shall prescribe in the regulations the manner in which payments shall be made to the member or to a person designated in accordance with subsection (c).

(c) DESIGNATED RECIPIENTS.—(1) A member may designate in writing another person (including a spouse, parent, or other person with an insurable interest, as determined in accordance with the regulations prescribed by the Secretary) to receive payments of insurance benefits under the insurance program.

(2) A member may direct that payments of insurance benefits for a person designated under paragraph (1) be deposited with a bank or other financial institution to the credit of the designated person.

(d) RECIPIENTS IN EVENT OF DEATH OF INSURED MEMBER.—Any insurance payable under the insurance program on account of a deceased member's period of covered service shall be paid, upon the establishment of a valid claim, to the beneficiary or beneficiaries which the deceased member designated in writing. If no such designation has been made, the amount shall be payable in accordance with the laws of the State of the member's domicile.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12531. Purchase of insurance

(a) PURCHASE AUTHORIZED.—The Secretary may, instead of or in addition to underwriting the insurance program through the Fund, purchase from one or more insurance companies a policy or policies of group insurance in order to provide the benefits required under this chapter. The Secretary may waive any requirement for full and open competition in order to purchase an insurance policy under this subsection.

(b) ELIGIBLE INSURERS.—In order to be eligible to sell insurance to the Secretary for purposes of subsection (a), an insurance company shall—

(1) be licensed to issue insurance in each of the 50 States and in the District of Columbia; and

(2) as of the most recent December 31 for which information is available to the Secretary, have in effect at least one percent of the total amount of insurance that all such insurance companies have in effect in the United States.

(c) ADMINISTRATIVE PROVISIONS.—(1) An insurance company that issues a policy for purposes of subsection (a) shall establish an administrative office at a place and under a name designated by the Secretary.

(2) For the purposes of carrying out this chapter, the Secretary may use the facilities and services of any insurance company issuing any policy for purposes of subsection (a), may designate one such company as the representative of the other companies for such purposes, and may contract to pay a reasonable fee to the designated company for its services.

(d) REINSURANCE.—The Secretary shall arrange with each insurance company issuing any policy for purposes of subsection (a) to reinsure, under conditions approved by the Secretary, portions of the total amount of the insurance under such policy or policies with such other insurance companies (which meet qualifying criteria prescribed by the Secretary) as may elect to participate in such reinsurance.

(e) TERMINATION.—The Secretary may at any time terminate any policy purchased under this section.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 304.)

§ 12532. Termination for nonpayment of premiums; forfeiture

(a) TERMINATION FOR NONPAYMENT.—The coverage of a member under the insurance program shall terminate without prior notice upon a failure of the member to make required monthly payments of premiums for two consecutive months. The Secretary may provide in the regulations for reinstatement of insurance coverage terminated under this subsection.

(b) FORFEITURE.—Any person convicted of mutiny, treason, spying, or desertion, or who refuses to perform service in the armed forces or refuses to wear the uniform of any of the armed forces shall forfeit all rights to insurance under this chapter.

(Added Pub. L. 104–106, div. A, title V, § 512(a)(1), Feb. 10, 1996, 110 Stat. 305.)

§ 12533. Termination of program

(a) IN GENERAL.—The Secretary shall terminate the insurance program in accordance with this section.

(b) TERMINATION OF NEW ENROLLMENTS.—The Secretary may not enroll a member of the Ready Reserve for coverage under the insurance program after November 18, 1997.

(c) TERMINATION OF COVERAGE.—(1) The enrollment under the insurance program of insured members other than insured members described in paragraph (2) is terminated as of November 18, 1997. The enrollment of an insured member described in paragraph (2) is terminated as of the date of the termination of the period of covered service of that member described in that paragraph.

(2) An insured member described in this paragraph is an insured member who on November 18, 1997, is serving on covered service for a period of service, or has been issued an order directing the performance of covered service, that satisfies or would satisfy the entitlement-to-benefits provisions of this chapter.

(d) TERMINATION OF PAYMENT OF BENEFITS.—The Secretary may not make any benefit payment under the insurance program after November 18, 1997, other than to an insured member who on that date (1) is serving on an order to covered service, (2) has been issued an order directing performance of covered service, or (3) has served on covered service before that date for which benefits under the program have not been paid to the member.

(e) TERMINATION OF INSURANCE FUND.—The Secretary shall close the Fund not later than 60 days after the date on which the last benefit payment from the Fund is made. Any amount remaining in the Fund when closed shall be covered into the Treasury as miscellaneous receipts.

(Added Pub. L. 105–85, div. A, title V, § 512(a), Nov. 18, 1997, 111 Stat. 1729; amended Pub. L. 107–107, div. A, title X, § 1048(c)(15), Dec. 28, 2001, 115 Stat. 1226.)

AMENDMENTS

2001—Subsecs. (b), (c)(1). Pub. L. 107–107, § 1048(c)(15)(A), substituted ''November 18, 1997.'' for ''the date of the enactment of this section.''

Subsecs. (c)(2), (d). Pub. L. 107–107, § 1048(c)(15)(B), substituted ''November 18, 1997,'' for ''the date of the enactment of this section''.

CHAPTER 1215—MISCELLANEOUS PROHIBITIONS AND PENALTIES

Sec.
[12551. Repealed.]
12552. Funeral honors functions at funerals for veterans.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, § 515(b), Dec. 2, 2002, 116 Stat. 2540, struck out item 12551 ''Prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions''.

1999—Pub. L. 106–65, div. A, title V, § 578(k)(2)(C), Oct. 5, 1999, 113 Stat. 631, substituted ''honors functions at funerals for veterans'' for ''honor guard functions: prohibition of treatment as drill or training'' in item 12552.

1998—Pub. L. 105–261, div. A, title V, § 567(c)(2), Oct. 17, 1998, 112 Stat. 2031, added item 12552.

1997—Pub. L. 105–85, div. A, title V, § 515(a), Nov. 18, 1997, 111 Stat. 1732, substituted table of sections consisting of item 12551 for ''[No present sections]''.

[§ 12551. Repealed. Pub. L. 107–314, div. A, title V, § 515(a), Dec. 2, 2002, 116 Stat. 2539]

Section, added Pub. L. 105–85, div. A, title V, § 515(a), Nov. 18, 1997, 111 Stat. 1732, related to prohibition of use of Air Force Reserve AGR personnel for Air Force base security functions.

§ 12552. Funeral honors functions at funerals for veterans

Performance by a Reserve of funeral honors functions at the funeral of a veteran (as defined in section 1491(h) of this title) may not be considered to be a period of drill or training, but may be performed as funeral honors duty under section 12503 of this title.

(Added Pub. L. 105–261, div. A, title V, § 567(c)(1), Oct. 17, 1998, 112 Stat. 2031; amended Pub. L. 106–65, div. A, title V, § 578(g)(4), Oct. 5, 1999, 113 Stat. 628; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(a)(21)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

AMENDMENTS

2000—Pub. L. 106–398 inserted period at end.

1999—Pub. L. 106–65 substituted ''honors functions at funerals for veterans'' for ''honor guard functions: prohibition of treatment as drill or training'' in section catchline and amended text generally. Prior to amendment, text read as follows: ''Performance by a Reserve of honor guard functions at the funeral of a veteran may not be considered to be a period of drill or training otherwise required.''

CHAPTER 1217—MISCELLANEOUS RIGHTS AND BENEFITS

Sec.
12601. Compensation: Reserve on active duty accepting from any person.
12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard.
12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates.
12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training.
12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay.

AMENDMENTS

2000—Pub. L. 106–398, § 1 [[div. A], title VI, § 663(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168, added item 12604.

1999—Pub. L. 106–65, div. A, title VI, § 652(a)(2), Oct. 5, 1999, 113 Stat. 665, added item 12605.

1998—Pub. L. 105–261, div. A, title VI, § 635(b), Oct. 17, 1998, 112 Stat. 2045, added item 12603.

§ 12601. Compensation: Reserve on active duty accepting from any person

Any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1033 of this title, prior to repeal by Pub. L. 103–337, § 1662(g)(2).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 12602. Members of Army National Guard of United States and Air National Guard of United States: credit for service as members of National Guard

(a) For the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Army;

(2) full-time National Guard duty performed by a member of the Army National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Army; and

(3) inactive-duty training performed by a member of the Army National Guard of the United States in his status as a member of the Army National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Army.

(b) For the purposes of laws providing benefits for members of the Air National Guard of the United States and their dependents and beneficiaries—

(1) military training, duty, or other service performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard for which he is entitled to pay from the United States shall be considered military training, duty, or other service, as the case may be, in Federal service as a Reserve of the Air Force;

(2) full-time National Guard duty performed by a member of the Air National Guard of the United States shall be considered active duty in Federal service as a Reserve of the Air Force; and

(3) inactive-duty training performed by a member of the Air National Guard of the United States in his status as a member of the Air National Guard, in accordance with regulations prescribed under section 502 of title 32 or other express provision of law, shall be considered inactive-duty training in Federal service as a Reserve of the Air Force.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(g)(1), Oct. 5, 1994, 108 Stat. 2995.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3686 and 8686 of this title, prior to repeal by Pub. L. 103–337, § 1662(g)(2).

§ 12603. Attendance at inactive-duty training assemblies: commercial travel at Federal supply schedule rates

(a) FEDERAL SUPPLY SCHEDULE TRAVEL.—Commercial travel under Federal supply schedules is authorized for the travel of a Reserve to the location of inactive duty training to be performed by the Reserve and from that location upon completion of the training.

(b) REGULATIONS.—The Secretary of Defense shall prescribe in regulations such requirements, conditions, and restrictions for travel under the authority of subsection (a) as the Secretary considers appropriate. The regulations shall include policies and procedures for preventing abuses of that travel authority.

(c) REIMBURSEMENT NOT AUTHORIZED.—A Reserve is not entitled to Government reimbursement for the cost of travel authorized under subsection (a).

(d) TREATMENT OF TRANSPORTATION AS USE BY MILITARY DEPARTMENTS.—For the purposes of section 501 of title 40, travel authorized under subsection (a) shall be treated as transportation for the use of a military department.

(Added Pub. L. 105–261, div. A, title VI, § 635(a), Oct. 17, 1998, 112 Stat. 2044; amended Pub. L. 107–217, § 3(b)(41), Aug. 21, 2002, 116 Stat. 1298.)

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–217 substituted ''section 501 of title 40'' for ''section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a))''.

§ 12604. Billeting in Department of Defense facilities: Reserves attending inactive-duty training

(a) AUTHORITY FOR BILLETING ON SAME BASIS AS ACTIVE DUTY MEMBERS TRAVELING UNDER ORDERS.—The Secretary of Defense shall prescribe regulations authorizing a Reserve traveling to inactive-duty training at a location more than 50 miles from that Reserve's residence to be eligible for billeting in Department of Defense facilities on the same basis and to the same extent as a member of the armed forces on active duty who is traveling under orders away from the member's permanent duty station.

(b) PROOF OF REASON FOR TRAVEL.—The Secretary shall include in the regulations the means for confirming a Reserve's eligibility for billeting under subsection (a).

(Added Pub. L. 106–398, § 1 [[div. A], title VI, § 663(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168.)

EFFECTIVE DATE

Pub. L. 106–398, § 1 [[div. A], title VI, § 663(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–168, provided that: ''Section 12604 of title 10, United States Code, as added by subsection (a), shall apply with respect to periods of inactive-duty training beginning more than 180 days after the date of the enactment of this Act [Oct. 30, 2000].''

§ 12605. Presentation of United States flag: members transferred from an active status or discharged after completion of eligibility for retired pay

(a) PRESENTATION OF FLAG.—Upon the transfer from an active status or discharge of a Reserve who has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the Secretary concerned shall present a United States flag to the member.

(b) MULTIPLE PRESENTATIONS NOT AUTHORIZED.—A member is not eligible for presentation of a flag under subsection (a) if the member has previously been presented a flag under this section or any provision of law providing for the presentation of a United States flag incident to release from active service for retirement.

(c) NO COST TO RECIPIENT.—The presentation of a flag under this section shall be at no cost to the recipient.

(Added Pub. L. 106–65, div. A, title VI, § 652(a)(1), Oct. 5, 1999, 113 Stat. 664.)

EFFECTIVE DATE

Pub. L. 106–65, div. A, title VI, § 652(d), Oct. 5, 1999, 113 Stat. 665, provided that: ''Section 12605 of title 10, United States Code (as added by subsection (a)), section 213 of the Public Health Service Act [42 U.S.C. 214] (as added by subsection (b)), and section 25 of the Coast and Geodetic Survey Commissioned Officers' Act of 1948 [33 U.S.C. 853v] (as added by subsection (c)) shall apply with respect to releases from service described in those sections on or after October 1, 1999.''

CHAPTER 1219—STANDARDS AND PROCEDURES FOR RETENTION AND PROMOTION

Sec.
12641. Standards and procedures: Secretary to prescribe.
12642. Standards and qualifications: result of failure to comply with.
12643. Boards for appointment, promotion, and certain other purposes: composition.
12644. Members physically not qualified for active duty: discharge or transfer to retired status.
12645. Commissioned officers: retention until completion of required service.
12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service.
12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1001 of this title.

§ 12641. Standards and procedures: Secretary to prescribe

(a) The Secretary concerned shall, by regulation, prescribe—

(1) standards and qualifications for the retention and promotion of members of the reserve components under his jurisdiction; and

(2) equitable procedures for the periodic determination of the compliance of each such Reserve with those standards and qualifications.

(b) If a Reserve fails to comply with the standards and qualifications prescribed under subsection (a), he shall—

(1) if qualified, be transferred to an inactive reserve status;

(2) if qualified, be retired without pay; or

(3) have his appointment or enlistment terminated.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, § 1001; renumbered § 12641 and amended Pub. L. 103–337,

div. A, title XVI, §1662(h)(2), (4)(A), Oct. 5, 1994, 108 Stat. 2996.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1001(a)	10:1036c (1st sentence). 34:440k (1st sentence).	June 29, 1948, ch. 708, §304 (less last sentence), 62 Stat. 1088.
1001(b)	10:1036c (2d sentence). 34:440k (2d sentence).	

In subsection (a), the words ''As soon as may be practicable after the effective date of sections 1036–1036i [440h–440q] of this title'' are omitted as executed. The words ''not inconsistent with said sections or any other Act'' and ''appropriate'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1001 of this title as this section and substituted ''Standards and procedures: Secretary to prescribe'' for ''Secretary to prescribe'' as section catchline.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1001, 12307, 12734 of this title.

§ 12642. Standards and qualifications: result of failure to comply with

(a) To be retained in an active status, a reserve commissioned officer must, in any applicable yearly period, attain the number of points under section 12732(a)(2) of this title prescribed by the Secretary concerned, with the approval of the Secretary of Defense in the case of a Secretary of a military department, and must conform to such other standards and qualifications as the Secretary concerned may prescribe. The Secretary may not prescribe a minimum of more than 50 points under this subsection.

(b) Subject to section 12645 of this title, a reserve commissioned officer who fails to attain the number of points, or to conform to the standards and qualifications, prescribed in subsection (a) shall—

(1) be transferred to the Retired Reserve if he is qualified and applies therefor;

(2) if he is not qualified or does not apply for transfer to the Retired Reserve, be transferred to an inactive status, if he is qualified therefor; or

(3) if he is not transferred to the Retired Reserve or an inactive status, be discharged from his reserve appointment.

(c) This section does not apply to commissioned warrant officers or to adjutants general or assistant adjutants general of States and Territories, Puerto Rico, and the District of Columbia.

(Added Pub. L. 85–861, §1(22)(A), Sept. 2, 1958, 72 Stat. 1443, §1002; amended Pub. L. 100–456, div. A, title XII, §1234(a)(1), Sept. 29, 1988, 102 Stat. 2059; renumbered §12642 and amended Pub. L. 103–337, div. A, title XVI, §§1662(h)(2), 1675(d)(1), Oct. 5, 1994, 108 Stat. 2996, 3018.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1002(a)	50:1192(b) (1st sentence, less 11th through 29th words). 50:1181(4).	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §202(b)), 102(4), 202(b), 68 Stat. 1149, 1150.
1002(b)	50:1192(b) (less 1st sentence).	
1002(c)	50:1181(1) (as applicable to 50:1192(b)). 50:1192(b) (11th through 29th words of 1st sentence).	

In subsection (a), the word ''minimum'' is omitted as surplusage. The last sentence is substituted for the words ''(not to exceed fifty)''.

AMENDMENTS

1994—Pub. L. 103–337, §1662(h)(2), renumbered section 1002 of this title as this section.

Subsec. (a). Pub. L. 103–337, §1675(d)(1)(A), substituted ''12732(a)(2)'' for ''1332(a)(2)''.

Subsec. (b). Pub. L. 103–337, §1675(d)(1)(B), substituted ''12645'' for ''1005''.

1988—Subsec. (c). Pub. L. 100–456 struck out ''the Canal Zone,'' after ''Puerto Rico,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10214 of this title.

§ 12643. Boards for appointment, promotion, and certain other purposes: composition

(a) Except as provided in section 612(a)(3) of this title and except for boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion.

(b) Each member of a board convened for the selection for promotion, or for the demotion or discharge, of Reserves must be senior in rank to the persons under consideration by that board. However, a member serving in a legal advisory capacity may be junior in rank to any person, other than a judge advocate or law specialist, being considered by that board; and a member serving in a medical advisory capacity may be junior in rank to any person, other than a medical officer, being considered by that board.

(Aug. 10, 1956, ch. 1041, 70A Stat. 11, §266; Pub. L. 96–513, title V, §501(4), Dec. 12, 1980, 94 Stat. 2907; Pub. L. 97–22, §2(c), July 10, 1981, 95 Stat. 124; renumbered §12643, Pub. L. 103–337, div. A, title XVI, §1662(h)(2), Oct. 5, 1994, 108 Stat. 2996.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
266(a)	50:1005(a).	July 9, 1952, ch. 608, §254, 66 Stat. 496.
266(b)	50:1005(b).	

In subsection (a), the words ''under * * * prescribed'' are substituted for the words ''in accordance * * * established''.

In subsection (b), the words ''in rank'' and ''by that board'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 266 of this title as this section.

1981—Subsec. (a). Pub. L. 97–22 substituted ''Except as provided in section 612(a)(3) of this title and except for Boards that may be convened to select Reserves for appointment in the Regular Army, Regular Navy, Regular Air Force, or Regular Marine Corps, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include at least one member of the Reserves, with the exact number of Reserves determined by the Secretary concerned in his discretion'' for ''Except as provided in section 612(a)(3) of this title, each board convened for the appointment, promotion, demotion, involuntary release from active duty, discharge, or retirement of Reserves shall include an appropriate number of Reserves, as prescribed by the Secretary concerned under standards and policies prescribed by the Secretary of Defense''.

1980—Subsec. (a). Pub. L. 96–513 substituted ''Except as provided in section 612(a)(3) of this title, each'' for ''Each''.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of this title.

§ 12644. Members physically not qualified for active duty: discharge or transfer to retired status

Except as otherwise provided by law, the Secretary concerned may provide for the honorable discharge or the transfer to a retired status of members of the reserve components under his jurisdiction who are found to be not physically qualified for active duty. However, no member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred under this subsection without the consent of the governor or other appropriate authority of the jurisdiction concerned.

(Aug. 10, 1956, ch. 1041, 70A Stat. 79, § 1004; Pub. L. 86–603, § 1(1), July 7, 1960, 74 Stat. 357; Pub. L. 103–160, div. A, title V, § 519, Nov. 30, 1993, 107 Stat. 1651; renumbered § 12644 and amended Pub. L. 103–337, div. A, title XVI, §§ 1661(a)(4), 1662(h)(2), (4)(B), Oct. 5, 1994, 108 Stat. 2980, 2996, 2997.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1004(a)	50:949.	July 9, 1952, ch. 608, §§ 225, 226, 66 Stat. 488.
1004(b)	50:950 (last sentence).	
1004(c)	50:950 (less last sentence).	

In subsection (a), the words ''Each * * * who is not on active duty'' are substituted for the words ''when not on active duty all''. The words ''examined as to his physical fitness'' are substituted for the words ''given physical examinations''. The words ''be required to'' are omitted as surplusage. The words ''execute and'' are inserted for clarity.

In subsection (c), the words ''under his jurisdiction'' are inserted for clarity.

AMENDMENTS

1994—Pub. L. 103–337, § 1662(h)(2), (4)(B), renumbered section 1004 of this title as this section and substituted ''Members physically not qualified for active duty: discharge or transfer to retired status'' for ''Physical examination'' as section catchline.

Pub. L. 103–337, § 1661(a)(4), struck out ''(c)'' before ''Except as otherwise provided'' and struck out subsecs. (a) and (b) which read as follows:

''(a) Each member of the Ready Reserve who is not on active duty shall—

''(1) be examined as to his physical fitness every five years, or more often as the Secretary concerned considers necessary; and

''(2) execute and submit annually a certificate of physical condition.

Each Reserve in an active status, or on an inactive status list, who is not on active duty shall execute and submit annually a certificate of physical condition.

''(b) The kind of duty to which a Reserve ordered to active duty may be assigned shall be considered in determining physical qualifications for active duty.''

1993—Subsec. (a)(1). Pub. L. 103–160 substituted ''five years'' for ''four years''.

1960—Subsec. (a). Pub. L. 86–603 limited the requirement for a physical examination every four years, and for the annual execution of a certificate of physical condition, to the Ready Reserve, and also required each Reserve in an active status, or on an inactive status list, who is not on active duty to execute and submit annually a certificate of physical condition.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12645. Commissioned officers: retention until completion of required service

(a) Except as provided in subsection (b), a reserve commissioned officer who has not completed the period of service required of him by section 651 of this title or any other provision of law may not be discharged or transferred from an active status under chapter 573, 1407, 1409, or 1411 of this title or chapter 21 of title 14. Unless, under regulations prescribed by the Secretary concerned, he is promoted to a higher reserve grade, he shall be retained in an active status in his reserve grade for the rest of his period of required service and shall be an additional number to the authorized strength of his grade.

(b) Subsection (a) does not prevent the discharge or transfer from an active status of—

(1) a commissioned warrant officer;

(2) an officer on the active-duty list or a reserve active-status list who is found not qualified for promotion to the grade of first lieutenant, in the case of an officer of the Army, Air Force, or Marine Corps, or lieutenant (junior grade), in the case of an officer of the Navy;

(3) an officer on the active-duty list or reserve active-status list who has failed of selection for promotion for the second time to the grade of captain, in the case of an officer of the Army, Air Force, or Marine Corps, or to the grade of lieutenant, in the case of an officer of the Navy; or

(4) an officer whose discharge or transfer from an active status is required by law.

(Added Pub. L. 85–861, § 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, § 1005; amended Pub. L. 93–586, § 2, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 98–525, title V,

§ 528(a), Oct. 19, 1984, 98 Stat. 2525; renumbered § 12645 and amended Pub. L. 103–337, div. A, title XVI, §§ 1627, 1662(h)(2), 1675(d)(2), Oct. 5, 1994, 108 Stat. 2962, 2996, 3018; Pub. L. 104–106, div. A, title XV, § 1501(a)(4), Feb. 10, 1996, 110 Stat. 495; Pub. L. 104–201, div. A, title V, § 544(b), Sept. 23, 1996, 110 Stat. 2523.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1005	50:1181(1) (as applicable to 50: 1194). 50:1194.	Sept. 3, 1954, ch. 1257, §§ 102(1) (as applicable to § 204), 204, 68 Stat. 1149, 1151.

The word ''subsequently'' is omitted as surplusage.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–201 inserted ''or a reserve active-status list'' after ''active-duty list''.

Subsec. (b)(3), (4). Pub. L. 104–106 made technical correction to directory language of Pub. L. 103–337, § 1627. See 1994 Amendment note below.

1994—Pub. L. 103–337, § 1662(h)(2), renumbered section 1005 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1675(d)(2), substituted ''573, 1407, 1409, or 1411'' for ''337, 361, 363, 573, 837, 861, or 863''.

Subsec. (b)(3), (4). Pub. L. 103–337, § 1627, as amended by Pub. L. 104–106, added pars. (3) and (4).

1984—Pub. L. 98–525 substituted ''(a) Except as provided in subsection (b), a reserve commissioned officer'' for ''A reserve commissioned officer, other than a commissioned warrant officer,'', struck out the comma before ''may'', and added subsec. (b).

1975—Pub. L. 93–586 inserted reference to chapter 21 of title 14.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1627 and 1675(d)(2) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6389, 12642, 14503, 14901 of this title.

§ 12646. Commissioned officers: retention of after completing 18 or more, but less than 20, years of service

(a) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 18, but less than 19, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, or 1409 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the third anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(b) If on the date prescribed for the discharge or transfer from an active status of a reserve commissioned officer he is entitled to be credited with at least 19, but less than 20, years of service computed under section 12732 of this title, he may not be discharged or transferred from an active status under chapter 573, 1407, or 1409 of this title or chapter 21 of title 14, without his consent before the earlier of the following dates—

(1) the date on which he is entitled to be credited with 20 years of service computed under section 12732 of this title; or

(2) the second anniversary of the date on which he would otherwise be discharged or transferred from an active status.

(c) An officer who is retained in an active status under subsection (a) or (b) is an additional number to those otherwise authorized.

(d) Subsections (a) and (b) do not apply to—

(1) officers who are discharged or transferred from an active status for physical disability, for cause, or because they have reached the age at which transfer from an active status or discharge is required by law; or

(2) commissioned warrant officers.

(e)(1) A reserve commissioned officer on active duty (other than for training) or full-time National Guard duty (other than full-time National Guard duty for training only) who, on the date on which the officer would otherwise be removed from an active status under section 6389, 14513, or 14514 of this title or section 740 of title 14, is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title may, in the discretion of the Secretary concerned and subject to paragraph (2), be retained on that duty for a period of not more than two years.

(2) An officer may be retained on active duty or full-time National Guard duty under paragraph (1) only if—

(A) at the end of the period for which the officer is retained the officer will be qualified for retirement under section 3911, 6323, or 8911 of this title; and

(B) the officer will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14.

(3) An officer who is retained on active duty or full-time National Guard duty under this section may not be removed from an active status while on that duty.

(Added Pub. L. 85–861, § 1(22)(B), Sept. 2, 1958, 72 Stat. 1444, § 1006; amended Pub. L. 86–559, § 1(3)(A), June 30, 1960, 74 Stat. 264; Pub. L. 87–651, title I, § 105, Sept. 7, 1962, 76 Stat. 508; Pub. L. 90–130, § 1(4), Nov. 8, 1967, 81 Stat. 374; Pub. L. 93–586, § 3, Jan. 2, 1975, 88 Stat. 1920; Pub. L. 96–322, § 2, Aug. 4, 1980, 94 Stat. 1015; Pub. L. 96–513, title V, § 511(30), Dec. 12, 1980, 94 Stat. 2922; renumbered § 12646 and amended Pub. L. 103–337, div. A, title XVI, §§ 1662(h)(2), 1675(d)(3), Oct. 5, 1994, 108 Stat. 2996, 3018.)

HISTORICAL AND REVISION NOTES
1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1006(a)	50:1195(a) (less last 30 words).	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §205), 205, 307(c), 503(c), 68 Stat. 1149, 1151, 1155, 1173; June 30, 1955, ch. 247, §1(b), 69 Stat. 218.
1006(b)	50:1195(b) (less last 30 words).	
1006(c)	50:1227(c). 50:1333(c).	
1006(d)	50:1181(1) (as applicable to 50:1195). 50:1195(a) (last 30 words). 50:1195(b) (last 30 words).	
1006(e)	50:1195(c).	

In subsections (a) and (b), the words ''Notwithstanding any other provisions of this chapter, except as provided in sections 1265 and 1279 of this title'' and ''has been credited with, or'' are omitted as surplusage. The words ''entitled to be'' in clause (1) are inserted for clarity.

In subsection (e), the words ''at the end of that period'' are substituted for the word ''then'' for clarity. The words ''before the end of that period'' are substituted for the word ''earlier'' for clarity.

1962 ACT

The change reflects the repeal of section 611 of the Reserve Officer Personnel Act of 1954, ch. 1257 (68 Stat. 1186), formerly section 1391 of title 50, and its restatement in section 787 of title 14 (see sections 5(2) and 36A of the Act of September 2, 1958, Pub. L. 85–861 (72 Stat. 1547 and 1569)).

AMENDMENTS

1994—Pub. L. 103–337, §1662(h)(2), renumbered section 1006 of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, §1675(d)(3)(B), substituted ''573, 1407, or 1409'' for ''337, 361, 363, 573, 837, 861, or 863''.

Pub. L. 103–337, §1675(d)(3)(A), substituted ''12732'' for ''1332'' wherever appearing.

Subsec. (e). Pub. L. 103–337, §1675(d)(3)(C), added subsec. (e) and struck out former subsec. (e) which read as follows: ''A reserve commissioned officer on active duty (other than for training) who, on the date on which he would otherwise be removed from an active status under section 3846, 3848, 3851, 3852, 6389, 6397, 6403, 6410, 8846, 8848, 8851, or 8852 of this title or section 740 of title 14, and who is within two years of qualifying for retirement under section 3911, 6323, or 8911 of this title, may, in the discretion of the Secretary concerned, be retained on active duty for a period of not more than two years, if at the end of that period he will be qualified for retirement under one of those sections and will not, before the end of that period, reach the age at which transfer from an active status or discharge is required by this title or title 14. An officer who is retained on active duty under this section may not be removed from an active status while he is on that duty. For officers covered by section 3846, 3848, 3851, or 3852 of this title, the ages at which transfer from an active status or discharge is required are those set forth in section 3843, 3844, or 3845 of this title, or section 21(e) of Public Law 85–861, as the case may be.''

1980—Subsec. (e). Pub. L. 96–513 substituted ''Public Law 85–861'' for ''the Act enacting this section''.

Pub. L. 96–322 substituted ''section 740 of title 14'' for ''section 787 of title 14''.

1975—Subsecs. (a), (b). Pub. L. 93–586, §3(1), inserted reference to chapter 21 of title 14.

Subsec. (c). Pub. L. 93–586, §3(2), substituted ''An officer who is retained'' for ''An officer of the Army or the Air Force who is retained''.

Subsec. (e). Pub. L. 93–586, §3(3), substituted ''discharge is required by this title or title 14'' for ''discharge is required by this title''.

1967—Subsec. (e). Pub. L. 90–130 struck out references to sections 3847 and 8847 of this title.

1962—Subsec. (e). Pub. L. 87—651 substituted ''section 787 of title 14'' for ''section 1391 of title 50''.

1960—Subsec. (e). Pub. L. 86–559 struck out references to sections 3849 and 8849 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 1662(h)(2) and 1675(d)(3)(A) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1675(d)(3)(B), (C) of of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14504, 14505, 14506, 14507 of this title; title 14 sections 740, 741.

§ 12647. Commissioned officers: retention in active status while assigned to Selective Service System or serving as United States property and fiscal officers

Notwithstanding chapters 573, 1407, and 1409 of this title, a reserve commissioned officer, other than a commissioned warrant officer, who is assigned to the Selective Service System or who is a property and fiscal officer appointed, designated, or detailed under section 708 of title 32, may be retained in an active status in that assignment or position until he becomes 60 years of age.

(Added Pub. L. 85–861, §1(22)(B), Sept. 2, 1958, 72 Stat. 1445, §1007; amended Pub. L. 86–559, §1(3)(B), June 30, 1960, 74 Stat. 265; renumbered §12647 and amended Pub. L. 103–337, div. A, title XVI, §§1662(h)(2), 1675(d)(4), Oct. 5, 1994, 108 Stat. 2996, 3018.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1007	50:1181(1) (as applicable to 50:1202). 50:1202.	Sept. 3, 1954, ch. 1257, §§102(1) (as applicable to §212), 212, 68 Stat. 1149, 1153.

The words ''this title'' are substituted for the words ''this chapter'', since the provisions of this title requiring transfer from an active status are based on the source statute for this section (the Reserve Officer Personnel Act of 1954).

AMENDMENTS

1994—Pub. L. 103–337, §1675(d)(4), substituted ''573, 1407, and 1409'' for ''337, 363, 573, 837, and 863''.

Pub. L. 103–337, §1662(h)(2), renumbered section 1007 of this title as this section.

1960—Pub. L. 86–559 inserted ''or serving as United States property and fiscal officers'' in section catchline, and inserted provisions in text authorizing retention of reserve commissioned officers who are property and fiscal officers, appointed, designated, or detailed under section 708 of title 32.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1675(d)(4) of Pub. L. 103–337 effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

CHAPTER 1221—SEPARATION

Sec.
12681. Reserves: discharge authority.

Sec.
12682. Reserves: discharge upon becoming ordained minister of religion.
12683. Reserve officers: limitation on involuntary separation.
12684. Reserves: separation for absence without authority or sentence to imprisonment.
12685. Reserves separated for cause: character of discharge.
12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty.
12687. Reserves under confinement by sentence of court-martial: separation after six months confinement.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title V, §563(a)(2)(B), Feb. 10, 1996, 110 Stat. 325, added item 12687.

§ 12681. Reserves: discharge authority

Subject to other provisions of this title, reserve commissioned officers may be discharged at the pleasure of the President. Other Reserves may be discharged under regulations prescribed by the Secretary concerned.

(Added Pub. L. 103–337, div. A, title XVI, §1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1162(a) of this title, prior to repeal by Pub. L. 103–337, §1662(i)(2).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

IMPLEMENTATION OF AGREEMENT ON RESTRUCTURING OF ARMY NATIONAL GUARD AND ARMY RESERVE

Pub. L. 103–335, title VIII, §8129, Sept. 30, 1994, 108 Stat. 2652, provided that:

''(a) FINDING.—Congress finds that the implementation of the off-site agreement may result in the loss to the Armed Forces of military personnel who have significant military experience and expertise.

''(b) REASSIGNMENT OF MEMBERS.—(1) To the maximum extent practicable, the Secretary of the Army shall ensure that members of the Armed Forces who would otherwise be separated from service as a result of the deactivation of military units of the Army National Guard and the Army Reserve under the off-site agreement be reassigned instead to units that are not being deactivated.

''(2) The reassignment of a member under paragraph (1) shall not affect the grade or rank in grade of the member.

''(c) REPORTS.—Not later than April 15 and October 15 of each calendar year while the off-site agreement is in effect, the Secretary of the Army shall submit to the congressional defense committees a semi-annual report on the number of members of the Armed Forces who were reassigned under subsection (b)(1) during the preceding six months.

''(d) DEFINITIONS.—In this section:

''(1) The term 'congressional defense committees' means the Committees on Armed Services and the Committees on Appropriations of the Senate and the House of Representatives.

''(2) The term 'off-site agreement' means the agreement on the restructuring of the Army National Guard and the Army Reserve.''

GUARD AND RESERVE TRANSITION INITIATIVES

Pub. L. 104–208, div. A, title I, §101(b) [title VIII, §8050], Sept. 30, 1996, 110 Stat. 3009–71, 3009–99, provided that: ''During the current fiscal year and hereafter, annual payments granted under the provisions of section 4416 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2714) [set out below] shall be made from appropriations in this Act [Pub. L. 104–208] which are available for the pay of reserve component personnel.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–61, title VIII, §8061, Dec. 1, 1995, 109 Stat. 664.

Pub. L. 103–335, title VIII, §8073, Sept. 30, 1994, 108 Stat. 2635.

Pub. L. 103–139, title VIII, §8087, Nov. 11, 1993, 107 Stat. 1459.

Pub. L. 102–484, div. D, title XLIV, subtitle B, Oct. 23, 1992, 106 Stat. 2712, as amended by Pub. L. 103–35, title II, §202(a)(17), May 31, 1993, 107 Stat. 102; Pub. L. 103–160, div. A, title V, §561(f)(1)–(3), Nov. 30, 1993, 107 Stat. 1667, 1668; Pub. L. 103–337, div. A, title V, §518(a), (b), Oct. 5, 1994, 108 Stat. 2754; Pub. L. 104–106, div. A, title XV, §1501(d)(3), Feb. 10, 1996, 110 Stat. 500; Pub. L. 105–261, div. A, title V, §561(*l*), (m), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, §1 [[div. A], title V, §571(*l*), (m)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–107, div. A, title X, §1048(h)(2), Dec. 28, 2001, 115 Stat. 1229, provided that:

''SEC. 4411. FORCE REDUCTION TRANSITION PERIOD DEFINED.

''In this subtitle [subtitle B (§§4411–4422) of title XLIV of div. D of Pub. L. 102–484], the term 'force reduction transition period' means the period beginning on October 1, 1991, and ending on December 31, 2001.

''SEC. 4412. MEMBER OF SELECTED RESERVE DEFINED.

''In this subtitle, the term 'member of the Selected Reserve' means—

''(1) a member of a unit in the Selected Reserve of the Ready Reserve; and

''(2) a Reserve designated pursuant to section 268(b) [see 10143(a)] of title 10, United States Code, who is assigned to an authorized position the performance of the duties of which qualify the member for basic pay or compensation for inactive-duty training or both.

''SEC. 4413. RESTRICTION ON RESERVE FORCE REDUCTION.

''(a) IN GENERAL.—During the force reduction transition period, a member of the Selected Reserve may not be involuntarily discharged from a reserve component of the Armed Forces, or involuntarily transferred from the Selected Reserve, before the Secretary of Defense has prescribed and implemented regulations that govern the treatment of members of the Selected Reserve assigned to such units and members of the Selected Reserve that are being subjected to such actions and a copy of such regulations has been transmitted to the Committees on Armed Services of the Senate and House of Representatives.

''(b) SAVINGS PROVISION.—Subsection (a) shall not apply to actions completed before the date of the enactment of this Act [Oct. 23, 1992].

''SEC. 4414. TRANSITION PLAN REQUIREMENTS.

''(a) PURPOSE OF PLAN.—The purpose of the regulations referred to in section 4413 shall be to ensure that the members of the Selected Reserve are treated with fairness, with respect for their service to their country, and with attention to the adverse personal consequences of Selected Reserve unit inactivations, involuntary discharges of such members from the reserve components of the Armed Forces, and involuntary transfers of such members from the Selected Reserve.

''(b) SCOPE OF PLAN.—The regulations shall include—

''(1) such provisions as are necessary to implement the provisions of this subtitle and the amendments made by this subtitle; and

''(2) such other policies and procedures for the recruitment of personnel for service in the Selected Re-

serve of the Ready Reserve, and for the reassignment, retraining, separation, and retirement of members of the Selected Reserve, as are appropriate for satisfying the needs of the Selected Reserve together with the purpose set out in subsection (a).

''(c) MINIMUM REQUIREMENTS FOR PLAN.—The regulations shall include the following:

''(1) The giving of a priority for enrollment in, or reassignment to, Selected Reserve units not being inactivated to—

''(A) personnel being separated from active-duty or full-time National Guard duty; and

''(B) members of the Selected Reserve whose units are inactivated.

''(2) The giving of a priority to such personnel for transfer among the reserve components of the Armed Forces in order to facilitate reassignment to such units.

''(3) A requirement that the Secretaries of the military departments take diligent actions to ensure that members of the reserve components of the Armed Forces are informed in easily understandable terms of the rights and benefits conferred upon such personnel by this subtitle, by the amendments made by this subtitle, and by such regulations.

''(4) Such other protections, preferences, and benefits as the Secretary of Defense considers appropriate.

''(d) UNIFORM APPLICABILITY.—The regulations shall apply uniformly to the Army, Navy, Air Force, and Marine Corps.

''SEC. 4415. INAPPLICABILITY TO CERTAIN DISCHARGES AND TRANSFERS.

''The protections, preferences, and benefits provided for in regulations prescribed in accordance with this subtitle do not apply with respect to a member of the Selected Reserve who is discharged from a reserve component of the Armed Forces or is transferred from the Selected Reserve to another category of the Ready Reserve, to the Standby Reserve, or to the Retired Reserve—

''(1) at the request of the member unless such request was made and approved under a provision of this subtitle or section 12731a of title 10, United States Code (as added by section 4417);

''(2) because the member no longer meets the qualifications for membership in the Selected Reserve set forth in any provision of law as in effect on the day before the date of the enactment of this Act [Oct. 23, 1992];

''(3) under adverse conditions, as characterized by the Secretary of the military department concerned; or

''(4) if the member—

''(A) is immediately eligible for retired pay based on military service under any provision of law;

''(B) is serving as a military technician, as defined in section 8401(30) of title 5, United States Code, and would be immediately eligible for an unreduced annuity under the provisions of subchapter III of chapter 83 of such title, relating to the Civil Service Retirement and Disability System, or the provisions of chapter 84 of such title, relating to the Federal Employees' Retirement System; or

''(C) is eligible for separation pay under section 1174 of title 10, United States Code.

''SEC. 4416. FORCE REDUCTION PERIOD RETIREMENTS.

''(a) TEMPORARY SPECIAL AUTHORITY FOR ELIMINATION OF OFFICERS FROM ACTIVE STATUS.—(1) During the force reduction transition period, the Secretary of the Army and the Secretary of the Air Force may, whenever the Secretary determines that such action is necessary, convene a board to recommend an appropriate number of officers in the reserve components of the Army or the Air Force, as the case may be, who (A) have met the age and service requirements specified in section 12731 of title 10, United States Code, for entitlement to retired pay for nonregular service except for not being at least 60 years of age, or (B) are immediately eligible for retired pay based on military service under any provision of law, for elimination from an active status.

''(2) An officer who is to be eliminated from an active status under this section, shall, if qualified, be given an opportunity to request transfer to the appropriate Retired Reserve and, if the officer requests it, shall be so transferred. If the officer is not transferred to the Retired Reserve, the officer shall, in the discretion of the Secretary concerned, be transferred to the appropriate inactive status list or be discharged.

''(3) A member of the Army National Guard of the United States or the Air National Guard of the United States may not be eliminated from an active status under this section without the consent of the Governor or other appropriate authority of the State or territory, Puerto Rico, or the District of Columbia, whichever is concerned.

''(b) TEMPORARY SPECIAL AUTHORITY.—During the force reduction transition period, the Secretary concerned may grant a member of the Selected Reserve under the age of 60 years the annual payments provided for under this section if—

''(1) as of October 1, 1991, that member has completed at least 20 years of service computed under section 1332 of title 10, United States Code, or after that date and before the end of the force reduction transition period, such member completes 20 years of service computed under that section or section 12732;

''(2) the member satisfies the requirements of paragraphs (3) and (4) of section 1331(a) or 12731(a) of title 10, United States Code; and

''(3) the member applies for transfer to the Retired Reserve.

''(c) [Repealed. Pub. L. 103–160, div. A, title V, § 561(f)(2)(B), Nov. 30, 1993, 107 Stat. 1667.]

''(d) ANNUAL PAYMENT PERIOD.—An annual payment granted to a member under this section shall be paid for a period of years prescribed by the Secretary concerned, except that if the member attains 60 years of age during that period the entitlement to the annual payment shall terminate on the member's 60th birthday. A period prescribed for purposes of this subsection may not be less than one year nor more than five years.

''(e) COMPUTATION OF ANNUAL PAYMENT.—(1) The annual payment for a member shall be equal to the amount determined by multiplying the product of 12 and the applicable percent under paragraph (2) by the monthly basic pay to which the member would be entitled if the member were serving on active duty as of the date the member is transferred to the Retired Reserve.

''(2)(A) Subject to subparagraph (B) the percent applicable to a member for purposes of paragraph (1) is 5 percent plus 0.5 percent for each full year of service, computed under section 12732 of title 10, United States Code, that a member has completed in excess of 20 years before transfer to the Retired Reserve.

''(B) The maximum percent applicable under this paragraph is 10 percent.

''(3) In the case of a member who will attain 60 years of age during the 12-month period following the date on which an annual payment is due, the payment shall be paid on a prorated basis of one-twelfth of the annual payment for each full month between the date on which the payment is due and the date on which the member attains age 60.

''(f) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary concerned may limit the applicability of this section to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

''(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

''(g) NONDUPLICATION OF BENEFITS.—A member transferred to the Retired Reserve under the authority of section 12731a of title 10, United States Code (as added by section 4417), may not be paid annual payments under this section.

''(h) FUNDING.—To the extent provided in appropriations Acts, payments under this section in a fiscal year shall be made out of amounts available to the Department of Defense for that fiscal year for the pay of reserve component personnel.

''SEC. 4417. RETIREMENT WITH 15 YEARS OF SERVICE.

''(a) AUTHORITY.—[Enacted section 1331a [now 12731a] of this title.]

''(b) CLERICAL AMENDMENT.—[Amended analysis of chapter 67 [now 1223] of this title.]

''SEC. 4418. SEPARATION PAY.

''(a) ELIGIBILITY.—Subject to section 4415, a member of the Selected Reserve who, after completing at least 6 years of service computed under section 12732 of title 10, United States Code, and before completing 15 years of service computed under that section, is involuntarily discharged from a reserve component of the Armed Forces or is involuntarily transferred from the Selected Reserve during the force reduction transition period is entitled to separation pay.

''(b) AMOUNT OF SEPARATION PAY.—(1) The amount of separation pay which may be paid to a person under this section is 15 percent of the product of—

''(A) the years of service credited to that person under section 12733 of title 10, United States Code; and

''(B) 62 times the daily equivalent of the monthly basic pay to which the person would have been entitled had the person been serving on active duty at the time of the person's discharge or transfer.

''(2) In the case of a person who receives separation pay under this section and who later receives basic pay, compensation for inactive duty training, or retired pay under any provision of law, such basic pay, compensation, or retired pay, as the case may be, shall be reduced by 75 percent until the total amount withheld through such reduction equals the total amount of the separation pay received by that person under this section.

''(c) RELATIONSHIP TO OTHER SERVICE-RELATED PAY.—Subsections (g) and (h) of section 1174 of title 10, United States Code, shall apply to separation pay under this section.

''(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations, which shall be uniform for the Army, Navy, Air Force, and Marine Corps, for the administration of this section.

''SEC. 4419. WAIVER OF CONTINUED SERVICE REQUIREMENT FOR CERTAIN RESERVISTS FOR MONTGOMERY GI BILL BENEFITS.

''(a) CHAPTER 106.—[Amended section 2133(b)(1) [now 16133(b)(1)] of this title.]

''(b) CHAPTER 30.—[Amended section 3012(b)(1)(B) of Title 38, Veterans' Benefits.]

''SEC. 4420. COMMISSARY AND EXCHANGE PRIVILEGES.

''The Secretary of Defense shall prescribe regulations to authorize a person who involuntarily ceases to be a member of the Selected Reserve during the force reduction transition period to continue to use commissary and exchange stores in the same manner as a member of the Selected Reserve for a period of two years beginning on the later of—

''(1) the date on which that person ceases to be a member of the Selected Reserve; or

''(2) the date of the enactment of this Act [Oct. 23, 1992].

''SEC. 4421. APPLICABILITY AND TERMINATION OF BENEFITS.

''(a) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) Subject to regulations prescribed by the Secretary of Defense, the Secretary of the military department concerned may limit the applicability of a benefit provided under sections 4418 through 4420 to any category of personnel defined by the Secretary concerned in order to meet a need of the armed force under the jurisdiction of the Secretary concerned to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

''(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a).

''(b) INAPPLICABILITY TO CERTAIN SEPARATIONS AND REASSIGNMENTS.—Sections 4418 through 4420 do not apply with respect to personnel who cease to be members of the Selected Reserve under adverse conditions, as characterized by the Secretary of the military department concerned.

''(c) TERMINATION OF BENEFITS.—The eligibility of a member of a reserve component of the Armed Forces (after having involuntarily ceased to be a member of the Selected Reserve) to receive benefits and privileges under sections 4418 through 4420 terminates upon the involuntary separation of such member from the Armed Forces under adverse conditions, as characterized by the Secretary of the military department concerned.

''SEC. 4422. READJUSTMENT BENEFITS FOR CERTAIN VOLUNTARILY SEPARATED MEMBERS OF THE RESERVE COMPONENTS.

''(a) SPECIAL SEPARATION BENEFITS.—[Amended section 1174a of this title.]

''(b) VOLUNTARY SEPARATION INCENTIVE.—[Amended section 1175 of this title.]''

[Section 518(c) of Pub. L. 103–337 provided that: ''The amendments made by this section [amending section 4416 of Pub. L. 102–484, set out above] shall apply only to payments to a member of the Armed Forces under subsection (b) of section 4416 of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484) that are granted by the Secretary of Defense to that member after the date of the enactment of this Act [Oct. 5, 1994].'']

§ 12682. Reserves: discharge upon becoming ordained minister of religion

Under regulations to be prescribed by the Secretary of Defense, a Reserve who becomes a regular or ordained minister of religion is entitled upon his request to a discharge from his reserve enlistment or appointment.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1162(b) of this title, prior to repeal by Pub. L. 103–337, § 1662(i)(2).

§ 12683. Reserve officers: limitation on involuntary separation

(a) An officer of a reserve component who has at least five years of service as a commissioned officer may not be separated from that component without his consent except—

(1) under an approved recommendation of a board of officers convened by an authority designated by the Secretary concerned; or

(2) by the approved sentence of a court-martial.

(b) Subsection (a) does not apply to any of the following:

(1) A separation under section 12684, 14901, or 14907 of this title.

(2) A dismissal under section 1161(a) of this title.

(3) A transfer under section 12213, 12214, 14514, or 14515 of this title.

(4) A separation of an officer who is in an inactive status in the Standby Reserve and who is not qualified for transfer to the Retired Reserve or is qualified for transfer to the Retired Reserve and does not apply for such a transfer.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2997; amended Pub. L. 105–85, div. A, title V, § 516, Nov. 18, 1997, 111 Stat. 1733; Pub. L. 105–261, div. A, title X, § 1069(a)(8), Oct. 17, 1998, 112 Stat. 2136.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(a) of this title, prior to repeal by Pub. L. 103–337, § 1662(i)(2).

AMENDMENTS

1998—Subsec. (b)(2). Pub. L. 105–261 substituted a period for ''; or'' at end.

1997—Subsec. (b). Pub. L. 105–85, § 516(a)(1), substituted ''apply to any of the following:'' for ''apply—'' in introductory provisions.

Subsec. (b)(1). Pub. L. 105–85, § 516(b)(1), (2), substituted ''A'' for ''to a'' and ''title.'' for ''title;''.

Subsec. (b)(2). Pub. L. 105–85, § 516(b)(3), which directed substitution of a period for ''; and'' at end of par. (2), could not be executed because ''; and'' did not appear in par. (2).

Pub. L. 105–85, § 516(b)(1), substituted ''A'' for ''to a''.

Subsec. (b)(3). Pub. L. 105–85, § 516(b)(1), substituted ''A'' for ''to a''.

Subsec. (b)(4). Pub. L. 105–85, § 516(a)(2), added par. (4).

§ 12684. Reserves: separation for absence without authority or sentence to imprisonment

The President or the Secretary concerned may drop from the rolls of the armed force concerned any Reserve—

(1) who has been absent without authority for at least three months;

(2) who may be separated under section 12687 of this title by reason of a sentence to confinement adjudged by a court-martial; or

(3) who is sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998; amended Pub. L. 104–106, div. A, title V, § 563(b)(2), Feb. 10, 1996, 110 Stat. 325.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(b) of this title, prior to repeal by Pub. L. 103–337, § 1662(i)(2).

AMENDMENTS

1996—Pub. L. 104–106 struck out ''or'' at end of par. (1), added par. (2), and redesignated former par. (2) as (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12683, 12685 of this title.

§ 12685. Reserves separated for cause: character of discharge

A member of a reserve component who is separated for cause, except under section 12684 of this title, is entitled to a discharge under honorable conditions unless—

(1) the member is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary concerned; or

(2) the member consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(c) of this title, prior to repeal by Pub. L. 103–337, § 1662(i)(2).

§ 12686. Reserves on active duty within two years of retirement eligibility: limitation on release from active duty

(a) LIMITATION.—Under regulations to be prescribed by the Secretary concerned, which shall be as uniform as practicable, a member of a reserve component who is on active duty (other than for training) and is within two years of becoming eligible for retired pay or retainer pay under a purely military retirement system, may not be involuntarily released from that duty before he becomes eligible for that pay, unless the release is approved by the Secretary.

(b) WAIVER.—With respect to a member of a reserve component who is to be ordered to active duty (other than for training) under section 12301 of this title pursuant to an order to active duty that specifies a period of less than 180 days and who (but for this subsection) would be covered by subsection (a), the Secretary concerned may require, as a condition of such order to active duty, that the member waive the applicability of subsection (a) to the member for the period of active duty covered by that order. In carrying out this subsection, the Secretary concerned may require that a waiver under the preceding sentence be executed before the period of active duty begins.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(i)(1), Oct. 5, 1994, 108 Stat. 2998; amended Pub. L. 104–201, div. A, title V, § 533, Sept. 23, 1996, 110 Stat. 2520.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1163(d) of this title, prior to repeal by Pub. L. 103–337, § 1662(i)(2).

AMENDMENTS

1996—Pub. L. 104–201 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14504, 14505, 14506, 14507 of this title.

§ 12687. Reserves under confinement by sentence of court-martial: separation after six months confinement

Except as otherwise provided in regulations prescribed by the Secretary of Defense, a Reserve sentenced by a court-martial to a period of confinement for more than six months may be separated from that Reserve's armed force at any time after the sentence to confinement has become final under chapter 47 of this title and the Reserve has served in confinement for a period of six months.

(Added Pub. L. 104–106, div. A, title V, §563(a)(2)(A), Feb. 10, 1996, 110 Stat. 325.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12684 of this title.

CHAPTER 1223—RETIRED PAY FOR NON-REGULAR SERVICE

Sec.
12731. Age and service requirements.
12731a. Temporary special retirement qualification authority.
12731b. Special rule for members with physical disabilities not incurred in line of duty.
12732. Entitlement to retired pay: computation of years of service.
12733. Computation of retired pay: computation of years of service.
12734. Time not creditable toward years of service.
12735. Inactive status list.
12736. Service credited for retired pay benefits not excluded for other benefits.
12737. Limitation on active duty.
12738. Limitations on revocation of retired pay.
12739. Computation of retired pay.
12740. Eligibility: denial upon certain punitive discharges or dismissals.
12741. Retirement from active reserve service performed after regular retirement.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title VI, §653(a)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, added item 12741.

1999—Pub. L. 106–65, div. A, title VI, §653(b)(2), Oct. 5, 1999, 113 Stat. 667, added item 12731b.

1996—Pub. L. 104–106, div. A, title VI, §632(a)(2), Feb. 10, 1996, 110 Stat. 365, added item 12740.

1994—Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, renumbered chapter 67 of this title as this chapter and amended analysis generally, renumbering items 1331 to 1338 as items 12731 to 12738, respectively, substituting ''Entitlement to retired pay: computation of years of service'' for ''Computation of years of service in determining entitlement to retired pay'' in item 12732 and ''Computation of retired pay: computation of years of service'' for ''Computation of years of service in computing retired pay'' in item 12733, and adding item 12739.

1992—Pub. L. 102–484, div. D, title XLIV, §4417(b), Oct. 23, 1992, 106 Stat. 2717, added item 1331a.

1986—Pub. L. 99–348, title III, §304(b)(1), July 1, 1986, 100 Stat. 703, added item 1338.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1053, 1064, 1065, 1076, 1076c, 1331, 1370, 1407, 1409, 1447, 1452, 1463, 4342, 6954, 9342, 10153, 12307, 12308, 12319, 12605, 14901, 14905 of this title; title 5 sections 8332, 8411, 9001; title 38 sections 1965, 2301, 2306, 2402; title 50 section 2082.

§ 12731. Age and service requirements

(a) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

(1) is at least 60 years of age;

(2) has performed at least 20 years of service computed under section 12732 of this title;

(3) performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight; and

(4) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

(b) Application for retired pay under this section must be made to the Secretary of the military department, or the Secretary of Homeland Security, as the case may be, having jurisdiction at the time of application over the armed force in which the applicant is serving or last served.

(c)(1) A person who, before August 16, 1945, was a Reserve of an armed force, or a member of the Army without component or other category covered by section 12732(a)(1) of this title except a regular component, is not eligible for retired pay under this chapter unless—

(A) the person performed active duty during World War I or World War II; or

(B) the person performed active duty (other than for training) during the Korean conflict, the Berlin crisis, or the Vietnam era.

(2) In this subsection:

(A) The term ''World War I'' means the period beginning on April 6, 1917, and ending on November 11, 1918.

(B) The term ''World War II'' means the period beginning on September 9, 1940, and ending on December 31, 1946.

(C) The term ''Korean conflict'' means the period beginning on June 27, 1950, and ending on July 27, 1953.

(D) The term ''Berlin crisis'' means the period beginning on August 14, 1961, and ending on May 30, 1963.

(E) The term ''Vietnam era'' means the period beginning on August 5, 1964, and ending on March 27, 1973.

(d) The Secretary concerned shall notify each person who has completed the years of service required for eligibility for retired pay under this chapter. The notice shall be sent, in writing, to the person concerned within one year after the person completes that service. The notice shall include notice of the elections available to such person under the Survivor Benefit Plan established under subchapter II of chapter 73 of this title and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter, and the effects of such elections.

(e) Notwithstanding section 8301 of title 5, the date of entitlement to retired pay under this section shall be the date on which the requirements of subsection (a) have been completed.

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, §1331; Pub. L. 85–704, Aug. 21, 1958, 72 Stat. 702; Pub. L.

85–861, §33(a)(8), Sept. 2, 1958, 72 Stat. 1564; Pub. L. 89–652, §1, Oct. 14, 1966, 80 Stat. 902; Pub. L. 90–485, §2, Aug. 13, 1968, 82 Stat. 754; Pub. L. 95–397, title II, §206, Sept. 30, 1978, 92 Stat. 847; Pub. L. 96–513, title V, §511(47), Dec. 12, 1980, 94 Stat. 2924; Pub. L. 98–94, title IX, §924(a), Sept. 24, 1983, 97 Stat. 644; Pub. L. 101–189, div. A, title XIV, §1404(b)(1), Nov. 29, 1989, 103 Stat. 1586; renumbered §12731 and amended Pub. L. 103–337, div. A, title VI, §636, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2790, 2999; Pub. L. 104–106, div. A, title XV, §1501(b)(20), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–261, div. A, title V, §561(n)(1), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, §1 [[div. A], title V, §571(n)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314; Pub. L. 107–314, div. A, title VI, §631(a), (b), Dec. 2, 2002, 116 Stat. 2571, 2572.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1331(a)	10:1036a(a) (less last proviso). 10:1036d (1st sentence). 34:440i(a) (less last proviso). 34:440*l* (1st sentence).	June 29, 1948, ch. 708, §§302(a), (d), 305 (1st sentence), 62 Stat. 1087–1089; July 12, 1952, ch. 698, 66 Stat. 590.
1331(b)	10:1036a(d). 34:440i(d).	
1331(c)	10:1036a(a) (last proviso). 34:440i(a) (last proviso).	

In subsection (a), the words ''is entitled'' are substituted for the words ''shall * * * be granted''. The words ''in the status of a commissioned officer, warrant officer, flight officer, or enlisted person'' and the references to reserve components are omitted as surplusage. Reference to the Army and the Air Force without component is inserted, since the words ''reserve component'', as used in 10:1036a(a), include all members of the Army and the Air Force except members of the regular components thereof. The words ''service, computed under section 1332 of this title'' are substituted for the words ''satisfactory Federal service'' to make it clear that some service that is not normally covered by the latter term may be counted in determining rights to retired pay under this chapter. Section 311 of the source statute, which made title III of that act applicable to the Coast Guard, was expressly repealed by the Act of August 4, 1949, ch. 393, §20, 63 Stat. 565, the act which codified Title 14 of the United States Code. 14 U.S.C. 755(e) provides for Coast Guard Reservists the same retirement benefits as those prescribed by law for the Naval Reserve, and, for this purpose, confers upon the Secretary of the Treasury the same authority as that conferred upon the Secretary of the Navy, when the Coast Guard is operating under the Treasury Department. Accordingly, the revised chapter is made expressly applicable to the Coast Guard.

In subsection (c), the words ''the Army without component or other category covered by section 1332(a)(1) of this title'' are inserted, since the words ''reserve component'', as used in 10:1036a(a), also cover members without component and members of the other special categories listed. The words ''annual training duty, or attendance at a school designated as a service school by law or by the Secretary of the appropriate military department'' are inserted since the words ''active Federal service'', as used in 10:1036a(a), also cover the additional service listed. The words ''active duty'' are substituted for the words ''active Federal service'' for uniformity.

1958 ACT

The change makes clear that in the determination of eligibility for retired pay for non–regular service, the service of a Regular serving in a temporary grade (that is, without component) may not be counted. See opinion of the Judge Advocate General of the Army, JAGA 1957/4463, May 13, 1957.

AMENDMENTS

2002—Subsec. (a)(3). Pub. L. 107–314, §631(a), substituted ''six years'' for ''eight years'' and inserted before semicolon '', except that in the case of a person who completed the service requirements of paragraph (2) before October 5, 1994, the number of years of such qualifying service under this paragraph shall be eight''.

Subsec. (b). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

Subsec. (f). Pub. L. 107–314, §631(b), struck out subsec. (f) which read as follows: ''In the case of a person who completes the service requirements of subsection (a)(2) during the period beginning on October 5, 1994, and ending on December 31, 2001, the provisions of subsection (a)(3) shall be applied by substituting 'the last six years' for 'the last eight years'.''

2000—Subsec. (f). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (f). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1996—Subsec. (f). Pub. L. 104–106 substituted ''October 5, 1994,'' for ''the date of the enactment of this subsection''.

1994—Pub. L. 103–337, §1662(j)(1), renumbered section 1331 of this title as this section and amended text generally, making changes in style and in references to other sections.

Subsec. (f). Pub. L. 103–337, §636, added subsec. (f) which read as follows: ''In the case of a person who completes the service requirements of subsection (a)(2) during the period beginning on the date of the enactment of this subsection and ending on September 30, 1999, the provisions of subsection (a)(3) shall be applied by substituting 'the last six years' for 'the last eight years'.''

1989—Subsec. (d). Pub. L. 101–189 inserted ''and the Supplemental Survivor Benefit Plan established under subchapter III of that chapter,'' after ''this title''.

1983—Subsec. (c). Pub. L. 98–94 substituted ''unless—

''(1) he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947; or

''(2) he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953, after August 13, 1961, and before May 31, 1963, or after August 4, 1964, and before March 28, 1973.'',

for ''unless he performed active duty after April 5, 1917, and before November 12, 1918, or after September 8, 1940, and before January 1, 1947, or unless he performed active duty (other than for training) after June 26, 1950, and before July 28, 1953''.

1980—Subsec. (b). Pub. L. 96–513, §511(47)(A), substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

Subsec. (e). Pub. L. 96–513, §511(47)(B), struck out ''United States Code,'' after ''title 5,''.

1978—Subsec. (d). Pub. L. 95–397 inserted provisions requiring that notice include notification of elections available under the Survivor Benefit Plan and the effects thereof.

1968—Subsec. (e). Pub. L. 90–485 added subsec. (e).

1966—Subsec. (d). Pub. L. 89–652 added subsec. (d).

1958—Subsec. (a)(3). Pub. L. 85–861 struck out provisions which related to service as a member of the Army or the Air Force without component.

Subsec. (c). Pub. L. 85–704 made persons who performed active duty (other than for training) after June 26, 1950, and before July 28, 1953, eligible for retired pay under this chapter.

EFFECTIVE DATE OF 2002 AMENDMENTS

Pub. L. 107–314, div. A, title VI, §631(c), Dec. 2, 2002, 116 Stat. 2572, provided that: ''The amendments made by subsection (a) [amending this section] shall take ef-

fect on October 1, 2002. No benefit shall accrue to any person for any period before that date by reason of the enactment of those amendments.''

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1662(j)(1) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 1404(b)(3) of Pub. L. 101–189, as amended by Pub. L. 101–510, div. A, title VI, §631(1), Nov. 5, 1990, 104 Stat. 1580, provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 3101 [now 5301] of Title 38, Veterans' Benefits] shall take effect on April 1, 1992.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 924(b) of Pub. L. 98–94 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to retired pay payable for months beginning after September 30, 1983, or the date of the enactment of this Act [Sept. 24, 1983], whichever is later.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–397 applicable to notifications after Sept. 30, 1978, see section 210(b) of Pub. L. 95–397, set out as a note under section 1447 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–485 effective Aug. 13, 1968, see section 6 of Pub. L. 90–485, set out as a note under section 1431 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

RESERVE RETIREMENT SYSTEM; REPORT TO CONGRESS

Pub. L. 99–348, title III, §302, July 1, 1986, 100 Stat. 702, directed Secretary of Defense to submit to Congress, not later than Feb. 1, 1988, a report on the retirement system provided under chapter 67 of this title for members of Armed Forces performing non-regular-service, including in the report any proposals of the Secretary for modifications to such system.

SURVIVOR ANNUITIES; EFFECTIVE DATE

Pub. L. 94–448, §1, Oct. 1, 1976, 90 Stat. 1499, provided: ''That for the purposes of survivor annuities under subchapter I of chapter 73 of title 10, United States Code [section 1431 et seq. of this title], and under prior corresponding provisions of law, the provisions of section 1331(e) [now 12731(e)] of such title 10, relating to the date of entitlement to retired pay under chapter 67 [now 1223] of such title 10, shall be effective as of November 1, 1953.''

PAYMENT OF SURVIVOR ANNUITIES BENEFITS PRIOR TO OCTOBER 1, 1976

Pub. L. 94–448, §2, Oct. 1, 1976, 90 Stat. 1499, provided that: ''No benefits shall be paid to any person for any period prior to the date of enactment of this Act [Oct. 1, 1976] as a result of the enactment of this Act.''

ENTITLEMENT TO RETIREMENT PAY AFTER OCTOBER 14, 1966; CONCLUSIVENESS

Notification of completion of requisite years of service as conclusive for entitlement to retirement pay if made after Oct. 14, 1966, see section 3 of Pub. L. 89–652, set out as a note under section 1406 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1331, 1370, 1405, 1406, 1407, 1408, 1447, 1448, 1482, 12731a, 12731b, 12732, 12738, 12741 of this title.

§ 12731a. Temporary special retirement qualification authority

(a) RETIREMENT WITH AT LEAST 15 YEARS OF SERVICE.—For the purposes of section 12731 of this title, the Secretary concerned may—

(1) during the period described in subsection (b), determine to treat a member of the Selected Reserve of a reserve component of the armed force under the jurisdiction of that Secretary as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member—

(A) as of October 1, 1991, has completed at least 15, and less than 20, years of service computed under section 12732 of this title; or

(B) after that date and before the end of the period described in subsection (b), completes 15 years of service computed under that section; and

(2) upon the request of the member submitted to the Secretary, transfer the member to the Retired Reserve.

(b) PERIOD OF AUTHORITY.—The period referred to in subsection (a)(1) is the period beginning on October 23, 1992, and ending on December 31, 2001.

(c) APPLICABILITY SUBJECT TO NEEDS OF THE SERVICE.—(1) The Secretary concerned may limit the applicability of subsection (a) to any category of personnel defined by the Secretary in order to meet a need of the armed force under the jurisdiction of the Secretary to reduce the number of members in certain grades, the number of members who have completed a certain number of years of service, or the number of members who possess certain military skills or are serving in designated competitive categories.

(2) A limitation under paragraph (1) shall be consistent with the purpose set forth in section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 106 Stat. 2713).

(3) Notwithstanding the provisions of section 4415(2) of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 12731(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the

member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.

(d) EXCLUSION.—This section does not apply to persons referred to in section 12731(c) of this title.

(e) REGULATIONS.—The authority provided in this section shall be subject to regulations prescribed by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard.

(Added Pub. L. 102–484, div. D, title XLIV, § 4417(a), Oct. 23, 1992, 106 Stat. 2716, § 1331a; amended Pub. L. 103–35, title II, § 201(f)(2), May 31, 1993, 107 Stat. 99; Pub. L. 103–160, div. A, title V, §§ 561(f)(4), 564(c), Nov. 30, 1993, 107 Stat. 1668, 1670; renumbered § 12731a and amended Pub. L. 103–337, div. A, title V, § 517, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2754, 2998, 3000; Pub. L. 104–106, div. A, title XV, § 1501(b)(21), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–261, div. A, title V, § 561(n)(2), Oct. 17, 1998, 112 Stat. 2026; Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

Section 4414(a) of the National Defense Authorization Act for Fiscal Year 1993 and section 4415(2) of the Defense Conversion, Reinvestment, and Transition Assistance Act of 1992, referred to in subsec. (c)(2), (3), are sections 4414(a) and 4415(2) of Pub. L. 102–484, which are set out in a note under section 12681 of this title.

AMENDMENTS

2002—Subsec. (e). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

2000—Subsec. (a)(1)(B). Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(2)(A)], substituted ''the end of the period described in subsection (b)'' for ''October 1, 2001''.

Subsec. (b). Pub. L. 106–398, § 1 [[div. A], title V, § 571(n)(2)(B)], substituted ''December 31, 2001'' for ''October 1, 2001''.

1998—Subsec. (a)(1)(B), (b). Pub. L. 105–261 substituted ''October 1, 2001'' for ''October 1, 1999''.

1996—Subsec. (c)(3). Pub. L. 104–106 inserted comma after ''Defense Conversion''.

1994—Pub. L. 103–337, § 1662(j)(1), renumbered section 1331a of this title as this section and amended text generally, changing references to other sections.

Subsec. (c)(3). Pub. L. 103–337, § 517, added par. (3) which read as follows: ''Notwithstanding the provisions of section 4415(2) of the Defense Conversion Reinvestment, and Transition Assistance Act of 1992 (division D of Public Law 102–484; 106 Stat. 2714), the Secretary concerned may, consistent with the other provisions of this section, provide the notification required by section 1331(d) of this title to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability. Such notification may not be made if the disability is the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned or was incurred during a period of unauthorized absence.''

1993—Subsec. (a). Pub. L. 103–160, § 564(c)(1), substituted ''Secretary concerned'' for ''Secretary of a military department'' in introductory provisions.

Subsec. (a)(1)(B). Pub. L. 103–160, § 561(f)(4)(A), substituted ''October 1, 1999'' for ''October 1, 1995''.

Subsec. (a)(2). Pub. L. 103–160, § 561(f)(4)(B), struck out ''within one year after the date of the notification referred to in paragraph (1)'' after ''to the Secretary''.

Subsec. (b). Pub. L. 103–160, § 561(f)(4)(C), substituted ''October 1, 1999'' for ''October 1, 1995''.

Pub. L. 103–35 substituted ''October 23, 1992,'' for ''the date of the enactment of the National Defense Authorization Act for Fiscal Year 1993''.

Subsec. (c)(1). Pub. L. 103–160, § 564(c)(2), struck out ''of the military department'' after ''The Secretary''.

Subsec. (e). Pub. L. 103–160, § 564(c)(3), inserted before period at end ''and by the Secretary of Transportation with respect to the Coast Guard''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1662(j)(1) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12731b. Special rule for members with physical disabilities not incurred in line of duty

(a) In the case of a member of the Selected Reserve of a reserve component who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of physical disability, the Secretary concerned may, for purposes of section 12731 of this title, determine to treat the member as having met the service requirements of subsection (a)(2) of that section and provide the member with the notification required by subsection (d) of that section if the member has completed at least 15, and less than 20, years of service computed under section 12732 of this title.

(b) Notification under subsection (a) may not be made if—

(1) the disability was the result of the member's intentional misconduct, willful neglect, or willful failure to comply with standards and qualifications for retention established by the Secretary concerned; or

(2) the disability was incurred during a period of unauthorized absence.

(Added Pub. L. 106–65, div. A, title VI, § 653(b)(1), Oct. 5, 1999, 113 Stat. 666.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1370 of this title.

§ 12732. Entitlement to retired pay: computation of years of service

(a) Except as provided in subsection (b), for the purpose of determining whether a person is entitled to retired pay under section 12731 of this title, the person's years of service are computed by adding the following:

(1) The person's years of service, before July 1, 1949, in the following:

(A) The armed forces.

(B) The federally recognized National Guard before June 15, 1933.

(C) A federally recognized status in the National Guard before June 15, 1933.

(D) The National Guard after June 14, 1933, if his service therein was continuous from the date of his enlistment in the National Guard, or his Federal recognition as an officer therein, to the date of his enlistment or appointment, as the case may be, in the National Guard of the United States, the Army National Guard of the United States, or the Air National Guard of the United States.

(E) The Naval Reserve Force.

(F) The Naval Militia that conformed to the standards prescribed by the Secretary of the Navy.

(G) The National Naval Volunteers.

(H) The Army Nurse Corps, the Navy Nurse Corps, the Nurse Corps Reserve of the Army, or the Nurse Corps Reserve of the Navy, as it existed at any time after February 2, 1901.

(I) The Army under an appointment under the Act of December 22, 1942 (ch. 805, 56 Stat. 1072).

(J) An active full-time status, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—

(i) in the dietetic or physical therapy categories, if the service was performed after April 6, 1917, and before April 1, 1943; or

(ii) in the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps or the Women's Medical Specialist Corps and before January 1, 1949, or before appointment in the Air Force before January 1, 1949, with a view to designation as an Air Force nurse or medical specialist.

(2) Each one-year period, after July 1, 1949, in which the person has been credited with at least 50 points on the following basis:

(A) One point for each day of—

(i) active service; or

(ii) full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

if that service conformed to required standards and qualifications.

(B) One point for each attendance at a drill or period of equivalent instruction that was prescribed for that year by the Secretary concerned and conformed to the requirements prescribed by law, including attendance under section 502 of title 32.

(C) Points at the rate of 15 a year for membership—

(i) in a reserve component of an armed force,

(ii) in the Army or the Air Force without component, or

(iii) in any other category covered by subsection (a)(1) except a regular component.

(D) Points credited for the year under section 2126(b) of this title.

(E) One point for each day on which funeral honors duty is performed for at least two hours under section 12503 of this title or section 115 of title 32, unless the duty is performed while in a status for which credit is provided under another subparagraph of this paragraph.

For the purpose of clauses (A), (B), (C), (D), and (E), service in the National Guard shall be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

(3) The person's years of active service in the Commissioned Corps of the Public Health Service.

(4) The person's years of active commissioned service in the National Oceanic and Atmospheric Administration (including active commissioned service in the Environmental Science Services Administration and in the Coast and Geodetic Survey).

(b) The following service may not be counted under subsection (a):

(1) Service (other than active service) in an inactive section of the Organized Reserve Corps or of the Army Reserve, or in an inactive section of the officers' section of the Air Force Reserve.

(2) Service (other than active service) after June 30, 1949, while on the Honorary Retired List of the Naval Reserve or of the Marine Corps Reserve.

(3) Service in the inactive National Guard.

(4) Service in a non-federally recognized status in the National Guard.

(5) Service in the Fleet Reserve or the Fleet Marine Corps Reserve.

(6) Service as an inactive Reserve nurse of the Army Nurse Corps established by the Act of February 2, 1901 (ch. 192, 31 Stat. 753), as amended, and service before July 1, 1938, as an inactive Reserve nurse of the Navy Nurse Corps established by the Act of May 13, 1908 (ch. 166, 35 Stat. 146).

(7) Service in any status other than that as commissioned officer, warrant officer, nurse, flight officer, aviation midshipman, appointed aviation cadet, or enlisted member, and that described in clauses (I) and (J) of subsection (a)(1).

(Aug. 10, 1956, ch. 1041, 70A Stat. 102, §1332; Pub. L. 85–861, §33(a)(9), Sept. 2, 1958, 72 Stat. 1565; Pub. L. 86–197, §1(1)–(3), Aug. 25, 1959, 73 Stat. 425; Pub. L. 88–636, §1, Oct. 8, 1964, 78 Stat. 1034; Pub. L. 93–545, §1, Dec. 26, 1974, 88 Stat. 1741; Pub. L. 96–513, title V, §511(48), Dec. 12, 1980, 94 Stat. 2924; renumbered §12732 and amended Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3000; Pub. L. 104–201, div. A, title V, §543(b)(1), Sept. 23, 1996, 110 Stat. 2522; Pub. L. 106–65, div. A, title V, §578(h)(1), Oct. 5, 1999, 113 Stat. 628.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1332(a)	10:1036a(b). 10:1036a(c). 10:1036e(a). 10:1036e(b). 10:1036e(c) (less applicability to determination of retired pay). 10:1036e(d) (less applicability to determination of retired pay). 34:440i(b). 34:440i(c). 34:440m(a). 34:440m(b). 34:440m(c) (less applicability to determination of retired pay). 34:440m(d) (less applicability to determination of retired pay).	June 29, 1948, ch. 708, §302(b), (c), 62 Stat. 1089; Sept. 7, 1949, ch. 547, §§1, 2, 63 Stat. 693. June 29, 1948, ch. 708, §306 (less (c) and (d), as applicable to determination of retired pay), 62 Stat. 1088.
1332(b)	10:1036e(e). 10:1036e(f). 34:440m(e). 34:440m(f).	

Subsection (a) consolidates the provisions of 10:1036a and 1036e(b)–(d), and 34:440i and 440m(b)–(d), relating to service that may be counted in determining eligibility for retired pay under this chapter. 10:1036e(a) and 34:440m(a) are omitted as covered by the enumeration of the service that may be counted for the purposes of the revised section.

In subsection (a)(1)(A)–(F), the requirement that the service must have been satisfactory is omitted as executed, since all service before July 1, 1949, has been found to have been satisfactory by the Secretaries concerned.

In subsection (a)(1)(A), the words ''the armed forces'' are substituted for clauses (1), (2), (5)–(7), (9), (10), and (13)–(16), of 10:1036e(c) and 34:440m(c), and so much of clause (8) of 10:1036e(c) and 34:440m(c) as relates to the Naval Reserve and the Naval Reserve Force as constituted after February 28, 1925, since the service covered by those clauses when added to service in the regular components, comprises all service in the armed forces.

In subsection (a)(1)(B)–(C), the words ''June 15'' are inserted to reflect the exact date of the change in National Guard status made by section 5 of the Act of June 15, 1933, ch. 87, 48 Stat. 155, which established the National Guard of the United States as a reserve component of the Army.

In subsection (a)(1)(D), 10:1036e(c)(8) (last 25 words), 10:1036e(c)(9) (last 22 words), 34:440m(c)(8) (last 25 words), and 34:440m(c)(9) (last 22 words) are omitted as covered by subsection (b)(5).

In subsection (a)(2)(A), the words ''service that conformed to required standards and qualifications'' are substituted for 10:1036e(b) and 34:440m(b). In clause (a)(2)(A), 10:1036e(d) and 34:440m(d), which make it clear that ''active Federal service'', in the sense in which that term is used in 10:1036a–e and 34:440i–m, includes annual training duty and attendance at service schools, are omitted as covered by sections 101(22) and 101(24) of this title.

In subsection (a)(2)(A) and (B), specific reference is made to National Guard service to reflect the opinion of the Judge Advocate General of the Army (JAGA, 1956/1908, 13 Feb. 1956).

In subsection (a)(2)(C), the words ''other than active Federal service'' are omitted, since the points for membership are not reduced by active duty (see opinion of the Judge Advocate General of the Army (JAGA, 1953/2016, 3 Mar. 1953)).

In subsections (a) and (b), the words ''active service'' are substituted for the words ''active Federal service'' for uniformity of expression. In clause (5), the words ''transferred thereto after completion of 16 or more years of active naval service'' are omitted, since other authorized fleet reserve categories have not been used and authority for them is omitted from this revised title as unnecessary.

Subsection (b)(1)–(4) is inserted because of 10:1036e(e) and (f) and 34:440m(e) and (f), which state that the service enumerated in those clauses may not be considered in determining eligibility for retired pay under this chapter. Clause (5) is based on the exclusions in 34:440m(c)(8)–(9).

Subsection (b)(6) is inserted for clarity since 10:1036a and 34:440i were limited in applicability to service in the status of a ''commissioned officer, warrant officer, flight officer, or enlisted person.''

1958 ACT

The word ''full-time'' is inserted for clarity. The other change reflects the opinion of the Judge Advocate General of the Army (JAGA 1956/1908, Feb. 13, 1956) that duty performed under section 92 of the National Defense Act, the source statute for section 502 of title 32, was creditable in determining entitlement to retired pay under section 302 of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1087), the source statute for section 1332 of title 10.

REFERENCES IN TEXT

Act of December 22, 1942, referred to in subsec. (a)(1)(I), is act Dec. 22, 1942, ch. 805, 56 Stat. 1072, which amended section 164 of former Title 10, Army and Air Force, and enacted provisions set out as notes under section 81 of former Title 10 and section 113 of former Title 37, Pay and Allowances, and was repealed as executed, by section 53 of act Aug. 10, 1956, ch. 1041 70A Stat. 641.

Women's Medical Specialist Corps, referred to in subsec. (a)(1)(J)(ii), redesignated Army Medical Specialist Corps by Pub. L. 85–155, Aug. 21, 1957, 71 Stat. 375. See section 3070 of this title. See, also, act Aug. 9, 1955, ch. 654, 69 Stat. 579.

AMENDMENTS

1999—Subsec. (a)(2). Pub. L. 106–65 added subpar. (E) and substituted '', (D), and (E)'' for '', and (D)'' in concluding provisions.

1996—Subsec. (a)(2). Pub. L. 104–201 added cl. (D) and substituted ''(C), and (D)'' for ''and (C)'' in concluding provisions.

1994—Pub. L. 103–337 renumbered section 1332 of this title as this section, substituted ''Entitlement to retired pay: computation of years of service'' for ''Computation of years of service in determining entitlement to retired pay'' as section catchline, and amended text generally, making changes in style, references to other sections and Acts, and the service in the Public Health Service and the National Oceanic and Atmospheric Administration that may be included in the computation of years of service in subsec. (a).

1980—Subsec. (a)(4). Pub. L. 96–513 inserted provisions relating to applicability to service in National Oceanic and Atmospheric Administration and Environmental Science Services Administration.

1974—Subsec. (b)(7). Pub. L. 93–545 inserted ''aviation midshipman,'' after ''flight officer,''.

1964—Subsec. (a)(3), (4). Pub. L. 88–636 added cls. (3) and (4).

1959—Subsec. (a). Pub. L. 86–197, §§(1), (2), redesignated cls. (D) to (F) as (E) to (G), and added cls. (D), (H), (I), and (J), and provisions requiring, for the purpose of cls. (A), (B), and (C), service in the National Guard to be treated as if it were service in a reserve component, if the person concerned was later appointed in the National Guard of the United States, the Army National Guard of the United States, the Air National Guard of the United States, or as a Reserve of the Army or the Air Force, and served continuously in the National Guard from the date of his Federal recognition to the date of that appointment.

Subsec. (b)(6), (7). Pub. L. 86–197, §1(3), added par. (6), redesignated former par. (6) as (7), and prohibited the

counting of service as a nurse, as an appointed aviation cadet, and that service described in cls. (I) and (J) of subsec. (a)(1) of this section.

1958—Subsec. (a). Pub. L. 85–861 substituted ''full-time service under'' for ''service under'', and inserted reference to section 502 of this title in cl. (2)(A)(ii).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 2 of Pub. L. 88–636 provided that: ''The amendments made by this Act [amending this section] shall apply to any period before enactment of this Act [Oct. 8, 1964] during which the Commissioned Corps of the Public Health Service has had the status of a military service, and to any period before enactment of this Act during which commissioned personnel of the Coast and Geodetic Survey were transferred to the service and jurisdiction of a military department.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33 (g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SAVINGS PROVISION

Section 3 of Pub. L. 86–197 provided that: ''This Act [amending this section and sections 3683, 3926, 6324, 8683 and 8926 of this title and enacting provisions set out as notes under sections 1431 and 3441 of this title] does not deprive any person of any service credit to which he was entitled on the day before the effective date of this Act [Aug. 25, 1959].''

TRACKING SYSTEM AND RECOMMENDATIONS TO CONGRESS RELATING TO AWARD OF RETIREMENT POINTS

Section 531(b), (c) of Pub. L. 104–201 provided that:

''(b) TRACKING SYSTEM FOR AWARD OF RETIREMENT POINTS.—To better enable the Secretary of Defense and Congress to assess the cost and the effect on readiness of the amendment made by subsection (a) [amending section 12733 of this title] and of other potential changes to the Reserve retirement system under chapter 1223 of title 10, United States Code, the Secretary of Defense shall require the Secretary of each military department to implement a system to monitor the award of retirement points for purposes of that chapter by categories in accordance with the recommendation set forth in the August 1988 report of the Sixth Quadrennial Review of Military Compensation.

''(c) RECOMMENDATIONS TO CONGRESS.—The Secretary shall submit to Congress, not later than one year after the date of the enactment of this Act [Sept. 23, 1996], the recommendations of the Secretary with regard to the adoption of the following Reserve retirement initiatives recommended in the August 1988 report of the Sixth Quadrennial Review of Military Compensation:

''(1) Elimination of membership points under subparagraph (C) of section 12732(a)(2) of title 10, United States Code, in conjunction with a decrease from 50 to 35 in the number of points required for a satisfactory year under that section.

''(2) Limitation to 60 in any year on the number of points that may be credited under subparagraph (B) of section 12732(a)(2) of such title at two points per day.

''(3) Limitation to 360 in any year on the total number of retirement points countable for purposes of section 12733 of such title.''

COAST GUARD WOMEN'S RESERVE; CONSTRUCTIVE SERVICE CREDIT: RETIREMENT BENEFITS; RETROACTIVE PAY

Pub. L. 87–482, June 12, 1962, 76 Stat. 95, provided: ''That any person who was a member of the Coast Guard Women's Reserve and who served on active duty therein for at least one year prior to July 25, 1947; who was separated therefrom under honorable conditions; and who also had membership therein for any period between November 1, 1949, and July 1, 1956, shall be deemed to have served on inactive duty with the Coast Guard Women's Reserve from July 25, 1947, to November 1, 1949, in the grade or rating satisfactorily held on active duty prior to July 25, 1947.

''SEC. 2. Creditable constructive service for a person qualified under section 1 hereof shall be applied when providing retirement benefits under the Army and Air Force Vitalization and Retirement Equalization Act of 1948, as amended, or any other Act under which the individual may be entitled to retirement from the Armed Forces.

''SEC. 3. Additional pay accruing to any person by virtue of increased creditable service resulting from the inclusion of constructive service creditable by application of section 1 hereof shall not be made for active or inactive duty for which pay is authorized by competent authority which is performed prior to the first day of the calendar quarter next succeeding the calendar quarter in which this Act becomes effective.''

ADDITIONAL CLERICAL SERVICE CREDITABLE UNDER THIS CHAPTER

Section 15 of Pub. L. 85–861 provided that:

''(a) Notwithstanding section 1332(b)(6) [now 12732(b)(7)] of title 10, United States Code, a person is entitled to count his service as an Army field clerk or as a field clerk, Quartermaster Corps, as active service in determining his entitlement to retired pay under chapter 67 [now 1223] of title 10, United States Code, and in computing his retired pay under that chapter.

''(b) notwithstanding section 1332(b)(6) [now 12732(b)(7)] of title 10, United States Code, a warrant officer is entitled to count classified service as an Army headquarters clerk or as a clerk of the Army Quartermaster Corps that he performed under any law in effect before August 29, 1916, as active service in determining his entitlement to retired pay under chapter 67 [now 1223] of title 10, United States Code, and in computing his retired pay under that chapter.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1063, 1176, 1209, 1482, 2126, 6389, 12308, 12503, 12642, 12646, 12731, 12731a, 12731b, 12733, 14704 of this title; title 5 section 3329; title 20 section 6673; title 32 section 115; title 37 section 203.

§ 12733. Computation of retired pay: computation of years of service

For the purpose of computing the retired pay of a person under this chapter, the person's years of service and any fraction of such a year are computed by dividing 360 into the sum of the following:

(1) The person's days of active service.

(2) The person's days of full-time service under sections 316, 502, 503, 504, and 505 of title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned.

(3) One day for each point credited to the person under clause (B), (C), or (D) of section 12732(a)(2) of this title, but not more than—

(A) 60 days in any one year of service before the year of service that includes September 23, 1996;

(B) 75 days in the year of service that includes September 23, 1996, and in any subsequent year of service before the year of service that includes October 30, 2000; and

(C) 90 days in the year of service that includes October 30, 2000, and in any subsequent year of service.

(4) One day for each point credited to the person under subparagraph (E) of section 12732(a)(2) of this title.

(5) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any other category covered by section 12732(a)(1) of this title, except a regular component.

(Aug. 10, 1956, ch. 1041, 70A Stat. 103, § 1333; Pub. L. 85–861, § 33(a)(10), Sept. 2, 1958, 72 Stat. 1565; renumbered § 12733 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3002; Pub. L. 104–201, div. A, title V, §§ 531(a), 543(b)(2), Sept. 23, 1996, 110 Stat. 2517, 2522; Pub. L. 105–85, div. A, title X, § 1073(a)(67), (c)(4), Nov. 18, 1997, 111 Stat. 1904; Pub. L. 106–65, div. A, title V, § 578(h)(2), Oct. 5, 1999, 113 Stat. 628; Pub. L. 106–398, § 1 [[div. A], title VI, § 652], Oct. 30, 2000, 114 Stat. 1654, 1654A–163; Pub. L. 107–107, div. A, title X, § 1048(c)(16), Dec. 28, 2001, 115 Stat. 1227.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1333	10:1036b (less 1st 91 words, and less 1st proviso). 10:1036e(c) (as applicable to determination of retired pay). 10:1036e(d) (as applicable to determination of retired pay). 34:440j (less 1st 91 words, and less 1st proviso). 34:440m(c) (as applicable to determination of retired pay). 34:440m(d) (as applicable to determination of retired pay).	June 29, 1948, ch. 708, §§ 303 (less 1st 91 words, and less 1st proviso), 306 ((c) and (d), as applicable to determination of retired pay), 62 Stat. 1088–1090; Sept. 7, 1949, ch. 547, § 3, 63 Stat. 693.

The revised section consolidates provisions of 10:1036b and 1036e, and 34:440j and 440m, relating to the years of service that may be counted in determining retired pay for persons entitled to that pay under this chapter.

Clause (1) is substituted for 10:1036b(i). In clause (3), the words ''and proportionately for each fraction of a year'' are inserted to make clear that parts of years must be counted. 10:1036e(d) and 34:440m(d) are omitted as covered by sections 101(22) and 101(24) of this title.

1958 ACT

The change is necessary so that active service and service described in section 1332(a)(2)(A)(ii) that was performed on or before July 1, 1949, may be counted in computing retired pay, as provided by the source law, section 303(i) of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1088) and in accordance with the opinion of the Judge Advocate General of the Army (JAGA 1956/1908, Feb. 13, 1956).

AMENDMENTS

2001—Par. (3)(B). Pub. L. 107–107, § 1048(c)(16)(A), substituted ''October 30, 2000'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

Par. (3)(C). Pub. L. 107–107, § 1048(c)(16)(B), substituted ''October 30, 2000,'' for ''the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001''.

2000—Par. (3). Pub. L. 106–398 substituted ''but not more than—'' and subpars. (A) to (C) for ''but not more than 60 days in any one year of service before the year of service that includes September 23, 1996, and not more than 75 days in any subsequent year of service.''

1999—Pars. (4), (5). Pub. L. 106–65 added par. (4) and redesignated former par. (4) as (5).

1997—Par. (3). Pub. L. 105–85, § 1073(c)(4), made technical correction to directory language of Pub. L. 104–201, § 531(a). See 1996 Amendment note below.

Pub. L. 105–85, § 1073(a)(67), inserted a comma after ''(B)'' and substituted ''that includes September 23, 1996,'' for ''in which the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 occurs''.

1996—Par. (3). Pub. L. 104–201, § 543(b)(2), substituted ''(C), or (D)'' for ''or (C)''.

Pub. L. 104–201, § 531(a), as amended by Pub. L. 105–85, § 1073(c)(4), inserted before period at end ''of service before the year of service in which the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997 occurs and not more than 75 days in any subsequent year of service''.

1994—Pub. L. 103–337 renumbered section 1333 of this title as this section, substituted ''Computation of retired pay: computation of years of service'' for ''Computation of years of service in computing retired pay'' as section catchline, and amended text generally, changing style and references to other sections.

1958—Pub. L. 85–861 added cls. (1) and (2), struck out former cl. (1) which permitted the addition of the days of service credited under section 1332(a)(2)(A) of this title, and redesignated former cls. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1073(c) of Pub. L. 105–85 provided that the amendment made by that section is effective as of Sept. 23, 1996, and as if included in the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, as enacted.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85–861, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1208, 1405, 1451, 2126, 4342, 6954, 9342, 12739 of this title.

§ 12734. Time not creditable toward years of service

(a) Service in an inactive status may not be counted in any computation of years of service under this chapter.

(b) Time spent after retirement (without pay) for failure to conform to standards and qualifications prescribed under section 12641 of this title may not be credited in a computation of years of service under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1334; Pub. L. 87–651, title I, § 108, Sept. 7, 1962, 76 Stat. 509;

renumbered § 12734 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1334(a)	10:1036c (last sentence, as applicable to inactive status). 10:1036g (last 41 words of 2d sentence). 34:440k (last sentence, as applicable to inactive status). 34:440*o* (last 41 words of 2d sentence). 50:931(b) (less 1st 16 words).	June 29, 1948, ch. 708, §§ 304 (last sentence), 308 (last 41 words of 2d sentence), 62 Stat. 1088, 1090. July 9, 1952, ch. 608, § 211(b) (less 1st 16 words), 66 Stat. 485.
1334(b)	10:1036c (last sentence, less applicability to inactive status). 34:440k (last sentence, less applicability to inactive status).	

Subsection (a) is substituted for 10:1036c (1st 17 words of last sentence, as applicable to inactive status), 10:1036g (last 41 words of 2d sentence), 34:440k (last 17 words of last sentence, as applicable to inactive status), and 34:440*o* (last 41 words of 2d sentence). 10:1036c (proviso of last sentence, as applicable to inactive status) and 34:440k (proviso of last sentence, as applicable to inactive status) are omitted as executed. 10:1036c (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) and 34:440k (last sentence, less 1st 17 words and less proviso, as applicable to inactive status) are omitted as surplusage.

In subsection (b), 10:1036c (proviso of last sentence, less applicability to inactive status) and 34:440k (proviso of last sentence, less applicability to inactive status) are omitted as executed. 10:1036c (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) and 34:440k (last sentence, less 1st 17 words and less proviso, less applicability to inactive status) are omitted as surplusage.

1962 ACT

The change conforms section 1334(b) of title 10 to the source law, the last sentence of section 304 of the Army and Air Force Vitalization and Retirement Equalization Act of 1948 (62 Stat. 1089). Section 305 makes the change retroactive to August 10, 1956, the date of repeal of the source law by the original military codification act of that date.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1334 of this title as this section and amended text generally, changing one section reference.

1962—Subsec. (b). Pub. L. 87–651 substituted ''retirement (without pay) for failure to conform to standards and qualifications prescribed under section 1001 of this title may not be credited in a computation'' for ''retirement or transfer to the Retired Reserve may not be credited in any computation.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 305 of Pub. L. 87–651 provided that: ''Section 108 of this Act [amending this section] is effective as of August 10, 1956, for all purposes. Section 304 of this Act is effective as of February 6, 1959.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 10153 of this title.

§ 12735. Inactive status list

(a) A member who would be eligible for retired pay under this chapter but for the fact that that member is under 60 years of age may be transferred, at his request and by direction of the Secretary concerned, to such inactive status list as may be established for members of his armed force, other than members of a regular component.

(b) While on an inactive status list under subsection (a), a member is not required to participate in any training or other program prescribed for his component.

(c) The Secretary may at any time recall to active status a member who is on an inactive status list under subsection (a).

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1335; renumbered § 12735 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1335(a)	10:1036g (1st sentence). 34:440*o* (1st sentence).	June 29, 1948, ch. 708, § 308 (less last 41 words of 2d sentence), 62 Stat. 1090.
1335(b)	10:1036g (2d sentence, less last 41 words). 34:440*o* (2d sentence, less last 41 words).	
1335(c)	10:1036g (less 1st and 2d sentences). 34:440*o* (less 1st and 2d sentences).	

In subsection (a), the words ''would be eligible but for the fact that he is under 60 years of age'' are substituted for the words ''has not attained the age of sixty years but is eligible in all other respects''. The words ''for members of his armed force, other than members of a regular component'' are substituted for the words ''for the reserve components of the Army of the United States or Air Force of the United States'', since the source statute applied to all members except members of the regular components. The words ''as has been, or'' and ''by law or regulation'' are omitted as surplusage.

In subsection (b), the words ''after the effective date of such transfer'' are omitted as surplusage.

In subsection (c), 10:1036g (last 32 words of last sentence) and 34:440*o* (last 32 words of last sentence) are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1335 of this title as this section and amended text generally, making changes in style.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1209 of this title.

§ 12736. Service credited for retired pay benefits not excluded for other benefits

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay under this chapter may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, under any other law, on account of civilian employ-

ment by the United States or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1336; renumbered § 12736 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1336	10:1036d (less 1st sentence). 34:440*l* (less 1st sentence).	June 29, 1948, ch. 708, § 305 (less 1st sentence), 62 Stat. 1089.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1336 of this title as this section and restated catchline and text without change.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12737. Limitation on active duty

A member of the armed forces may not be ordered to active duty solely for the purpose of qualifying the member for retired pay under this chapter.

(Aug. 10, 1956, ch. 1041, 70A Stat. 104, § 1337; renumbered § 12737 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
1337	10:1036h. 34:440p.	June 29, 1948, ch. 708, § 309, 62 Stat. 1090.

10:1036h (1st sentence) and 34:440p (1st sentence) are omitted as surplusage. The words ''member of the armed forces'' are substituted for the word ''person'', since only a member may be ''ordered to active duty''.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1337 of this title as this section and amended text generally, substituting ''the member'' for ''him''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 12738. Limitations on revocation of retired pay

(a) After a person is granted retired pay under this chapter, or is notified in accordance with section 12731(d) of this title that the person has completed the years of service required for eligibility for retired pay under this chapter, the person's eligibility for retired pay may not be denied or revoked on the basis of any error, miscalculation, misinformation, or administrative determination of years of service performed as required by section 12731(a)(2) of this title, unless it resulted directly from the fraud or misrepresentation of the person.

(b) The number of years of creditable service upon which retired pay is computed may be adjusted to correct any error, miscalculation, misinformation, or administrative determination and when such a correction is made the person is entitled to retired pay in accordance with the number of years of creditable service, as corrected, from the date the person is granted retired pay.

(Added Pub. L. 89–652, § 2(1), Oct. 14, 1966, 80 Stat. 902, § 1406; renumbered § 1338 and amended Pub. L. 99–348, title I, § 104(a), July 1, 1986, 100 Stat. 686; renumbered § 12738 and amended Pub. L. 103–337, div. A, title XVI, § 1662(j)(1), Oct. 5, 1994, 108 Stat. 2998, 3003.)

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 1338 of this title as this section and amended text generally, making changes in style and references to other sections.

1986—Pub. L. 99–348 renumbered section 1406 of this title as this section, designated first sentence as subsec. (a) and substituted ''this chapter'' for ''chapter 67 of this title'' in two places, and designated second sentence as subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

ENTITLEMENT TO RETIREMENT PAY AFTER OCTOBER 14, 1966; CONCLUSIVENESS

Section 3 of Pub. L. 89–652 provided that: ''Notwithstanding section 1406 [now 12738] of title 10, United States Code, as added by this Act—

''(1) the granting of retired pay to a person under chapter 67 [now 1223] of that title is conclusive as to that person's entitlement to such pay only if the payment of that retired pay is begun after the effective date of this Act [Oct. 14, 1966]; and

''(2) a notification that a person has completed the years of service required for eligibility for retired pay under chapter 67 [now 1223] of that title is conclusive as to the person's subsequent entitlement to such pay only if the notification is made after the effective date of this Act.''

§ 12739. Computation of retired pay

(a) The monthly retired pay of a person entitled to that pay under this chapter is the product of—

(1) the retired pay base for that person as computed under section 1406(b)(2) or 1407 of this title; and

(2) 2½ percent of the years of service credited to that person under section 12733 of this title.

(b) If a person entitled to retired pay under this chapter has been credited by the Secretary concerned with extraordinary heroism in the line of duty and if the highest grade held satisfactorily by that person at any time in the armed forces is an enlisted grade, the person's retired pay shall be increased by 10 percent of the amount determined under subsection (a). The Secretary's determination as to extraordinary heroism is conclusive for all purposes.

(c) The total amount of the monthly retired pay computed under subsections (a) and (b) may not exceed 75 percent of the retired pay base upon which the computation is based.

(d) Amounts computed under this section, if not a multiple of $1, shall be rounded down to the next lower multiple of $1.

(Added Pub. L. 103–337, div. A, title XVI, §1662(j)(1), Oct. 5, 1994, 108 Stat. 3004; amended Pub. L. 107–314, div. A, title VI, §632(a), (b), Dec. 2, 2002, 116 Stat. 2572.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in formula 3 of the table in section 1401(a) of this title, prior to amendment by Pub. L. 103–337, §1662(j)(2).

AMENDMENTS

2002—Subsec. (b). Pub. L. 107–314, §632(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–314, §632(a)(1), (b), redesignated subsec. (b) as (c) and substituted ''total amount of the monthly retired pay computed under subsections (a) and (b)'' for ''amount computed under subsection (a)''. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 107–314, §632(a)(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VI, §632(c), Dec. 2, 2002, 116 Stat. 2572, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to retired pay for months beginning on or after that date.''

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1209, 12731 of this title.

§ 12740. Eligibility: denial upon certain punitive discharges or dismissals

A person who—

(1) is convicted of an offense under the Uniform Code of Military Justice (chapter 47 of this title) and whose sentence includes death; or

(2) is separated pursuant to sentence of a court-martial with a dishonorable discharge, a bad conduct discharge, or (in the case of an officer) a dismissal,

is not eligible for retired pay under this chapter.

(Added Pub. L. 104–106, div. A, title VI, §632(a)(1), Feb. 10, 1996, 110 Stat. 365.)

EFFECTIVE DATE

Section 632(b) of Pub. L. 104–106 provided that: ''Section 12740 of title 10, United States Code, as added by subsection (a), shall apply with respect to court-martial sentences adjudged after the date of the enactment of this Act [Feb. 10, 1996].''

§ 12741. Retirement from active reserve service performed after regular retirement

(a) ELECTION OF RESERVE RETIRED PAY.—A person who, after becoming entitled to retired or retainer pay under chapter 65, 367, 571, or 867 of this title, serves in an active status in a reserve component is entitled to retired pay under this chapter if—

(1) the person would, but for paragraphs (3) and (4) of section 12731(a) of this title, otherwise be entitled to retired pay under this chapter;

(2) the person elects under this section to receive retired pay under this chapter; and

(3) the person's service in an active status after having become entitled to retired or retainer pay under that chapter is determined by the Secretary concerned to have been satisfactory.

(b) ACTIONS TO EFFECTUATE ELECTION.—As of the effective date of an election made by a person under subsection (a), the Secretary concerned shall—

(1) terminate the person's entitlement to retired or retainer pay under the applicable chapter of this title referred to in subsection (a); and

(2) in the case of a reserve commissioned officer, transfer the officer to the Retired Reserve.

(c) TIME AND FORM OF ELECTION.—An election under subsection (b) shall be made within such time and in such form as the Secretary concerned requires.

(d) EFFECTIVE DATE OF ELECTION.—An election made by a person under subsection (b) shall be effective—

(1) except as provided in paragraph (2)(B), as of the date on which the person attains 60 years of age, if the Secretary concerned receives the election in accordance with this section within 180 days after that date; or

(2) on the first day of the first month that begins after the date on which the Secretary concerned receives the election in accordance with this section, if—

(A) the date of the receipt of the election is more than 180 days after the date on which the person attains 60 years of age; or

(B) the person retires from service in an active status within that 180-day period.

(Added Pub. L. 106–398, §1 [[div. A], title VI, §653(a)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–164; amended Pub. L. 107–107, div. A, title X, §1048(a)(31), Dec. 28, 2001, 115 Stat. 1225.)

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–107 substituted ''receive'' for ''received''.

EFFECTIVE DATE

Pub. L. 106–398, §1 [[div. A], title VI, §653(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–165, provided that: ''Section 12741 of title 10, United States Code, as added by subsection (a), shall take effect 180 days after the date of the enactment of this Act [Oct. 30, 2000] and shall apply with respect to retired pay payable for months beginning on or after that effective date.''

CHAPTER 1225—RETIRED GRADE

Sec.

12771. Reserve officers: grade on transfer to Retired Reserve.
12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve.
12773. Limitation on accrual of increased pay or benefits.
12774. Retired lists.

§ 12771. Reserve officers: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned officer, other than a commissioned warrant officer, who is transferred to the Retired Reserve is entitled to be placed on the retired list established by section 12774(a) of this title in the highest grade in which he served satisfactorily, as determined by the Secretary concerned and in accordance with section 1370(d), in the armed force in which he is serving on the date of transfer.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(b), (f) of this title, prior to repeal by Pub. L. 103–337, § 1662(k)(2).

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12773 of this title.

§ 12772. Reserve commissioned officers who have served as Attending Physician to the Congress: grade on transfer to Retired Reserve

Unless entitled to a higher grade under another provision of law, a reserve commissioned officer who is transferred to the Retired Reserve after having served in the position of Attending Physician to the Congress is entitled to be placed on the retired list established by section 12774(a) of this title in the grade held by the officer while serving in that position.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(e) of this title, prior to repeal by Pub. L. 103–337, § 1662(k)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12773 of this title.

§ 12773. Limitation on accrual of increased pay or benefits

Unless otherwise provided by law, no person is entitled to increased pay or other benefits because of sections 12771 and 12772 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3005.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1374(d) of this title, prior to repeal by Pub. L. 103–337, § 1662(k)(2).

§ 12774. Retired lists

(a) Under regulations prescribed by the Secretary concerned, there shall be maintained retired lists containing the names of the Reserves of the armed forces under the Secretary's jurisdiction who are in the Retired Reserve.

(b) The Secretary of the Navy shall maintain a United States Naval Reserve Retired List containing the names of members of the Naval Reserve and the Marine Corps Reserve entitled to retired pay.

(Added Pub. L. 103–337, div. A, title XVI, § 1662(k)(1), Oct. 5, 1994, 108 Stat. 3006.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 1376(a) and 6017 of this title, prior to repeal by Pub. L. 103–337, § 1662(k)(2), (3)(A)(i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1431, 12771, 12772 of this title.

PART III—PROMOTION AND RETENTION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST

Chap.		Sec.
1401.	Applicability and Reserve Active-Status Lists	14001
1403.	Selection Boards	14101
1405.	Promotions	14301
1407.	Failure of Selection for Promotion and Involuntary Separation	14501
1409.	Continuation of Officers on the Reserve Active-Status List and Selective Early Removal	14701
1411.	Additional Provisions Relating to Involuntary Separation	14901

CHAPTER 1401—APPLICABILITY AND RESERVE ACTIVE-STATUS LISTS

Sec.	
14001.	Applicability of this part.
14002.	Reserve active-status lists: requirement for each armed force.
14003.	Reserve active-status lists: position of officers on the list.
14004.	Reserve active-status lists: eligibility for Reserve promotion.
14005.	Competitive categories.
14006.	Determination of years in grade.

§ 14001. Applicability of this part

This chapter and chapters 1403 through 1411 of this title apply, as appropriate, to all reserve officers of the Army, Navy, Air Force, and Marine Corps except warrant officers.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2922.)

EFFECTIVE DATE

Chapter effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

EFFECTS OF SELECTION FOR PROMOTION AND FAILURE OF SELECTION FOR ARMY AND AIR FORCE OFFICERS

Section 1682 of title XVI of div. A of Pub. L. 103–337 provided that:

''(a) PROMOTIONS TO FILL VACANCIES.—A reserve commissioned officer of the Army or Air Force (other than a commissioned warrant officer) who, on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title], is recommended for promotion to fill a vacancy in the Army

Reserve or the Air Force Reserve under section 3383, 3384, 8372, or 8373 of title 10, United States Code, as in effect on the day before the effective date of this title, in the next higher reserve grade shall be considered to have been recommended for promotion to that grade by a vacancy promotion board under section 14101(a)(2) of title 10, United States Code, as added by this title.

''(b) PROMOTIONS OTHER THAN TO FILL VACANCIES.—A reserve officer of the Army or Air Force who, on the day before the effective date of this title, is recommended for promotion under section 3366, 3367, 3370, 3371, 8366, or 8371 of title 10, United States Code, as in effect on the day before the effective date of this title, to a reserve grade higher than the grade in which the officer is serving shall be considered to have been recommended for promotion by a mandatory promotion board convened under section 14101(a)(1) of title 10, United States Code, as added by this title.

''(c) OFFICERS FOUND QUALIFIED FOR PROMOTION TO FIRST LIEUTENANT.—A reserve officer of the Army or Air Force who, on the effective date of this title, holds the grade of second lieutenant and has been found qualified for promotion to the grade of first lieutenant in accordance with section 3365, 3382, or 8365 of title 10, United States Code, as in effect on the day before the effective date of this title, shall be promoted to that grade on the date on which the officer would have been promoted under the provisions of chapter 337 or 837 of such title, as in effect on the day before the effective date of this title, unless sooner promoted under regulations prescribed by the Secretary of the Army or the Secretary of the Air Force under section 14308(b) of title 10, United States Code, as added by this title.

''(d) OFFICERS ONCE FAILED OF SELECTION.—(1) A reserve officer of the Army in the grade of first lieutenant, captain, or major who, on the day before the effective date of this title, has been considered once but not recommended for promotion to the next higher reserve grade under section 3366 or 3367 of title 10, United States Code, or a reserve officer of the Air Force in the grade of first lieutenant, captain, or major who, on the day before the effective date of this title, is a deferred officer within the meaning of section 8368 of such title, shall be considered to have been considered once but not selected for promotion by a board convened under section 14101(a)(1) of title 10, United States Code, as added by this title. If the officer is later considered for promotion by a selection board convened under that section and is not selected for promotion (or is selected for promotion but declines to accept the promotion), the officer shall be considered for all purposes to have twice failed of selection for promotion.

''(2) In the case of a reserve officer of the Army or Air Force in an active status who, on the day before the effective date of this title, is in the grade of first lieutenant, captain, or major and whose name has been removed, under the provisions of section 3363(f) of title 10, United States Code, from a list of officers recommended for promotion or who has previously not been promoted because the President declined to appoint the officer in the next higher grade under section 8377 of such title as in effect on the day before the effective date of this title, or whose name was removed from a list of officers recommended for promotion to the next higher grade because the Senate did not consent to the officer's appointment, if the officer is later considered for promotion by a selection board convened by section 14101(a)(1) of title 10, United States Code, as added by this title, and (A) is not selected for promotion, (B) is selected for promotion but removed from the list of officers recommended or approved for promotion, or (C) is selected for promotion but declines to accept the promotion, the officer shall be considered for all purposes to have twice failed of selection for promotion.

''(e) OFFICERS TWICE FAILED OF SELECTION.—A reserve officer of the Army or Air Force in an active status who, on the day before the effective date of this title, is in the grade of first lieutenant, captain, or major and on that date is subject to be treated as prescribed in section 3846 or 8846 of title 10, United States Code, shall continue to be governed by that section as in effect on the day before the effective date of this title.

''(f) OFFICERS WITH APPROVED PROMOTION DECLINATIONS IN EFFECT.—A reserve officer of the Army who, on the day before the effective date of this title, has declined a promotion under subsection (f) or (g) of section 3364 of title 10, United States Code, shall while carried on the reserve active status list be subject to the provisions of subsections (h), (i), and (j) of such section, as in effect on the day before the effective date of this title, except that the name of an officer to whom this section applies shall be placed on a promotion list under section 14308(a) of title 10, United States Code (as added by this title), and, at the end of the approved period of declination, shall be considered to have failed of promotion if the officer again declines to accept the promotion.

''(g) COVERED OFFICERS.—This section applies to reserve officers of the Army and Air Force who—

''(1) on the day before the effective date of this title are in an active status; and

''(2) on the effective date of this title are subject to placement on the reserve active-status list of the Army or the Air Force.''

EFFECTS OF SELECTION FOR PROMOTION AND FAILURE OF SELECTION FOR NAVY AND MARINE CORPS OFFICERS

Section 1683 of title XVI of div. A of Pub. L. 103–337 provided that:

''(a) RECOMMENDATIONS FOR PROMOTION.—An officer covered by this section who, on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title], has been recommended for promotion to a reserve grade higher than the grade in which the officer is serving shall be considered to have been recommended for promotion to that grade under section 14101(a) of title 10, United States Code, as added by this title.

''(b) FAILURES OF SELECTION.—An officer covered by this section who, on the day before the effective date of this title is considered to have failed of selection for promotion one or more times under chapter 549 of title 10, United States Code, to a grade below captain, in the case of a reserve officer of the Navy, or to a grade below colonel, in the case of a reserve officer of the Marine Corps, shall be subject to chapters 1405 and 1407 of title 10, United States Code, as added by this title, as if such failure or failures had occurred under the provisions of those chapters.

''(c) OFFICERS OTHER THAN COVERED OFFICERS RECOMMENDED FOR PROMOTION.—A reserve officer of the Navy or Marine Corps who on the day before the effective date of this title (1) has been recommended for promotion in the approved report of a selection board convened under chapter 549 of title 10, United States Code, and (2) was on the active-duty list of the Navy or Marine Corps may be promoted under that chapter, as in effect on the day before the effective date of this title.

''(d) OFFICERS FOUND QUALIFIED FOR PROMOTION TO LIEUTENANT (JUNIOR GRADE) OR FIRST LIEUTENANT.—A covered officer who, on the effective date of this title, holds the grade of second lieutenant and has been found qualified for promotion in accordance with section 5908 or 5910 of title 10, United States Code, as in effect on the day before the effective date of this title, shall be promoted on the date on which the officer would have been promoted under the provisions of chapter 549 of such title, as in effect on the day before the effective date of this title, unless sooner promoted under regulations prescribed by the Secretary of the Navy under section 14307(b) of such title, as added by this title.

''(e) OFFICERS WHOSE NAMES HAVE BEEN OMITTED FROM A LIST FURNISHED TO A SELECTION BOARD.—A covered officer whose name, as of the effective date of this title, had been omitted by administrative error from the list of officers furnished the most recent selection board to consider officers of the same grade and component, shall be considered by a special selection board

established under section 14502 of title 10, United States Code, as added by this title. If the officer is selected for promotion by that board, the officer shall be promoted as specified in section 5904 of title 10, United States Code, as in effect on the day before the effective date of this title.

''(f) COVERED OFFICERS.—Except as provided in subsection (c), this section applies to any reserve officer of the Navy or Marine Corps who (1) before the effective date of this title is in an active status, and (2) on the effective date of this title is subject to placement on the reserve active-status list of the Navy or Marine Corps.''

§ 14002. Reserve active-status lists: requirement for each armed force

(a) The Secretary of each military department shall maintain a single list, to be known as the reserve active-status list, for each armed force under the Secretary's jurisdiction. That list shall include the names of all reserve officers of that armed force who are in an active status other than those on an active-duty list described in section 620 of this title or warrant officers (including commissioned warrant officers).

(b) The reserve active-status list for the Army shall include officers in the Army Reserve and the Army National Guard of the United States. The reserve active-status list for the Air Force shall include officers in the Air Force Reserve and the Air National Guard of the United States. The Secretary of the Navy shall maintain separate lists for the Naval Reserve and the Marine Corps Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2922.)

ESTABLISHMENT OF RESERVE ACTIVE-STATUS LIST

Section 1686 of title XVI of div. A of Pub. L. 103–337 provided that:

''(a) SIX-MONTH DEADLINE.—Not later than six months after the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title], the Secretary of the military department concerned shall ensure that—

''(1) all officers of the Army, Navy, Air Force, and Marine Corps who are required to be placed on the reserve active-status list of their Armed Force under section 14002 of title 10, United States Code, as added by this title, shall be placed on the list for their armed force and in their competitive category; and

''(2) the relative seniority of those officers on each such list shall be established.

''(b) REGULATIONS.—The Secretary concerned shall prescribe regulations for the establishment of relative seniority. The Secretary of the Army and the Secretary of the Air Force shall, in prescribing such regulations, provide for the consideration of both promotion service established under section 3360(b) or 8360(e) of title 10, United States Code, as in effect on the day before the effective date of this title, and total commissioned service established under section 3360(c) or 8366(e) of such title, as in effect on the day before the effective date of this title. An officer placed on a reserve active-status list in accordance with this section shall be considered to have been on the list as of the effective date of this title.''

PRESERVATION OF RELATIVE SENIORITY UNDER INITIAL ESTABLISHMENT OF RESERVE ACTIVE-STATUS LIST

Section 1687 of title XVI of div. A of Pub. L. 103–337 provided that: ''In order to maintain the relative seniority among reserve officers of the Army, Navy, Air Force, or Marine Corps as determined under section 1686 [set out above], the Secretary of the military department concerned may, during the one-year period beginning on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title], adjust the date of rank of any reserve officer of such Armed Force who was in an active status but not on the active-duty list on such effective date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 101 of this title.

§ 14003. Reserve active-status lists: position of officers on the list

(a) POSITION ON LIST.—Officers shall be carried on the reserve active-status list of the armed force of which they are members in the order of seniority of the grade in which they are serving in an active status. Officers serving in the same grade shall be carried in the order of their rank in that grade.

(b) EFFECT ON POSITION HELD BY REASON OF TEMPORARY APPOINTMENT OR ASSIGNMENT.—An officer whose position on the reserve active-status list results from service under a temporary appointment or in a grade held by reason of assignment to a position has, when that appointment or assignment ends, the grade and position on that list that the officer would have held if the officer had not received that appointment or assignment.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2923; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(22), Feb. 10, 1996, 110 Stat. 497.)

AMENDMENTS

1996—Pub. L. 104–106 inserted ''lists'' in section catchline.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

§ 14004. Reserve active-status lists: eligibility for Reserve promotion

Except as otherwise provided by law, an officer must be on a reserve active-status list to be eligible under chapter 1405 of this title for consideration for selection for promotion or for promotion.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2923.)

§ 14005. Competitive categories

Each officer whose name appears on a reserve active-status list shall be placed in a competitive category. The competitive categories for each armed force shall be specified by the Secretary of the military department concerned under regulations prescribed by the Secretary of Defense. Officers in the same competitive category shall compete among themselves for promotion.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2923.)

§ 14006. Determination of years in grade

For the purpose of chapters 1403 through 1411 of this title, an officer's years of service in a

grade are computed from the officer's date of rank in grade as determined under section 741(d) of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2923.)

CHAPTER 1403—SELECTION BOARDS

Sec.
14101. Convening of selection boards.
14102. Selection boards: appointment and composition.
14103. Oath of members.
14104. Confidentiality of board proceedings.
14105. Notice of convening of promotion board.
14106. Communication with board by officers under consideration.
14107. Information furnished by the Secretary concerned to promotion boards.
14108. Recommendations by promotion boards.
14109. Reports of promotion boards: in general.
14110. Reports of promotion boards: review by Secretary.
14111. Reports of selection boards: transmittal to President.
14112. Dissemination of names of officers selected.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(23), Feb. 10, 1996, 110 Stat. 497, substituted ''promotion'' for ''selection'' in item 14105.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 14001, 14006, 14308, 14502 of this title.

§ 14101. Convening of selection boards

(a) PROMOTION BOARDS.—(1) Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned shall convene a selection board to recommend for promotion to the next higher grade, under chapter 1405 of this title, officers on the reserve active-status list of that armed force in a permanent grade from first lieutenant through brigadier general or, in the case of the Naval Reserve, lieutenant (junior grade) through rear admiral (lower half). A selection board convened under this subsection shall be known as a ''promotion board''.

(2) A promotion board convened to recommend reserve officers of the Army or reserve officers of the Air Force for promotion (A) to fill a position vacancy under section 14315 of this title, or (B) to the grade of brigadier general or major general, shall be known as a ''vacancy promotion board''. Any other promotion board convened under this subsection shall be known as a ''mandatory promotion board''.

(3) Paragraph (1) does not require the convening of a selection board in the case of officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) when the Secretary concerned recommends for promotion to the next higher grade under section 14308(b)(4) of this title all such officers whom the Secretary finds to be fully qualified for promotion.

(b) CONTINUATION BOARDS.—Whenever the needs of the Army, Navy, Air Force, or Marine Corps require, the Secretary concerned may convene a selection board to recommend officers of that armed force—

(1) for continuation on the reserve active-status list under section 14701 of this title;

(2) for selective early removal from the reserve active-status list under section 14704 of this title; or

(3) for selective early retirement under section 14705 of this title.

A selection board convened under this subsection shall be known as a ''continuation board''.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2924; amended Pub. L. 105–85, div. A, title V, §514(a), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 107–107, div. A, title V, §505(b)(3), Dec. 28, 2001, 115 Stat. 1087.)

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107–107 added par. (3).

1997—Subsec. (a)(2). Pub. L. 105–85 struck out ''(except in the case of a board convened to consider officers as provided in section 14301(e) of this title)'' before ''be known as a 'vacancy promotion board'.''

EFFECTIVE DATE

Chapter effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1558, 14102, 14103, 14104, 14105, 14106, 14107, 14108, 14109, 14110, 14301, 14304, 14305, 14306, 14307, 14308, 14312, 14315, 14316, 14317, 14501, 14502, 14504, 14701, 14704, 14705 of this title.

§ 14102. Selection boards: appointment and composition

(a) APPOINTMENT.—Members of selection boards convened under section 14101 of this title shall be appointed by the Secretary of the military department concerned in accordance with this section. Promotion boards and special selection boards shall consist of five or more officers. Continuation boards shall consist of three or more officers. All of the officers of any such selection board shall be of the same armed force as the officers under consideration by the board.

(b) COMPOSITION.—At least one-half of the members of such a selection board shall be reserve officers, to include at least one reserve officer from each reserve component from which officers are to be considered by the board. Each member of a selection board must hold a permanent grade higher than the grade of the officers under consideration by the board, and no member of a board may hold a grade below major or lieutenant commander.

(c) REPRESENTATION OF COMPETITIVE CATEGORIES.—(1) Except as provided in paragraph (2), a selection board shall include at least one officer from each competitive category of officers to be considered by the board.

(2) A selection board need not include an officer from a competitive category to be considered by the board if there is no officer of that competitive category on the reserve active-status list or the active-duty list in a permanent grade higher than the grade of the officers to be considered by the board and otherwise eligible to serve on the board. However, in such a case, the Secretary of the military department concerned, in his discretion, may appoint as a mem-

ber of the board a retired officer of that competitive category who is in the same armed force as the officers under consideration by the board who holds a higher grade than the grade of the officers under consideration.

(d) PROHIBITION OF SERVICE ON CONSECUTIVE PROMOTION BOARDS.—No officer may be a member of two successive promotion boards convened under section 14101(a) of this title for the consideration of officers of the same competitive category and grade if the second of the two boards is to consider any officer who was considered and not recommended for promotion to the next higher grade by the first of the two boards.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2924.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(b), (c), 5893(a), (b), and 8362(b), (c) of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14502, 14705 of this title.

§ 14103. Oath of members

Each member of a selection board convened under section 14101 of this title shall take an oath to perform the duties of a member of the board without prejudice or partiality, having in view both the special fitness of officers and the efficiency of the member's armed force.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(d), 5894, and 8362(d) of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14502 of this title.

§ 14104. Confidentiality of board proceedings

Except as otherwise authorized or required by law, the proceedings of a selection board convened under section 14101 of this title may not be disclosed to any person not a member of the board.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(e) of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14502 of this title.

§ 14105. Notice of convening of promotion board

(a) REQUIRED NOTICE.—At least 30 days before a promotion board is convened under section 14101(a) of this title to consider officers in a grade and competitive category for promotion to the next higher grade, the Secretary concerned shall either (1) notify in writing the officers eligible for consideration by the board for promotion regarding the convening of the board, or (2) issue a general written notice to the armed force concerned regarding the convening of the board.

(b) CONTENT OF NOTICE.—A notice under subsection (a) shall include the date on which the board is to convene and (except in the case of a vacancy promotion board) the name and date of rank of the junior officer, and of the senior officer, in the promotion zone as of the date of the notice.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

§ 14106. Communication with board by officers under consideration

Subject to regulations prescribed by the Secretary of the military department concerned, an officer eligible for consideration by a promotion board convened under section 14101(a) of this title who is in the promotion zone or above the promotion zone, or who is to be considered by a vacancy promotion board, may send a written communication to the board calling attention to any matter concerning the officer which the officer considers important to the officer's case. Any such communication shall be sent so as to arrive not later than the date on which the board convenes. The board shall give consideration to any timely communication under this section.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2925.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(f), 5900, and 8362(f) of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(1), (b)(2), (c)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14107 of this title.

§ 14107. Information furnished by the Secretary concerned to promotion boards

(a) INTEGRITY OF THE PROMOTION SELECTION BOARD PROCESS.—(1) The Secretary of Defense shall prescribe regulations governing information furnished to selection boards convened under section 14101(a) of this title. Those regulations shall apply uniformly among the military departments. Any regulations prescribed by the Secretary of a military department to supplement those regulations may not take effect without the approval of the Secretary of Defense in writing.

(2) No information concerning a particular eligible officer may be furnished to a selection board except for the following:

(A) Information that is in the officer's official military personnel file and that is provided to the selection board in accordance with the regulations prescribed by the Secretary of Defense pursuant to paragraph (1).

(B) Other information that is determined by the Secretary of the military department concerned, after review by that Secretary in ac-

cordance with standards and procedures set out in the regulations prescribed by the Secretary of Defense pursuant to paragraph (1), to be substantiated, relevant information that could reasonably and materially affect the deliberations of the promotion board.

(C) Subject to such limitations as may be prescribed in those regulations, information communicated to the board by the officer in accordance with this section, section 14106 of this title (including any comment on information referred to in subparagraph (A) regarding that officer), or other applicable law.

(D) A factual summary of the information described in subparagraphs (A), (B), and (C) that, in accordance with the regulations prescribed pursuant to paragraph (1) is prepared by administrative personnel for the purpose of facilitating the work of the selection board.

(3) Information provided to a promotion board in accordance with paragraph (2) shall be made available to all members of the board and shall be made a part of the record of the board. Communication of such information shall be in a written form or in the form of an audio or video recording. If a communication is in the form of an audio or video recording, a written transcription of the recording shall also be made a part of the record of the promotion board.

(4) Paragraphs (2) and (3) do not apply to the furnishing of appropriate administrative processing information to the promotion board by an administrative staff designated to assist the board, but only to the extent that oral communications are necessary to facilitate the work of the board.

(5) Information furnished to a promotion board that is described in subparagraph (B), (C), or (D) of paragraph (2) may not be furnished to a later promotion board unless—

(A) the information has been properly placed in the official military personnel file of the officer concerned; or

(B) the information is provided to the later selection board in accordance with paragraph (2).

(6)(A) Before information described in paragraph (2)(B) regarding an eligible officer is furnished to a selection board, the Secretary of the military department concerned shall ensure—

(i) that such information is made available to such officer; and

(ii) that the officer is afforded a reasonable opportunity to submit comments on that information to the promotion board.

(B) If an officer cannot be given access to the information referred to in subparagraph (A) because of its classification status, the officer shall, to the maximum extent practicable, be furnished an appropriate summary of the information.

(b) INFORMATION TO BE FURNISHED.—The Secretary of the military department concerned shall furnish to a promotion board convened under section 14101(a) of this title the following:

(1) In the case of a mandatory promotion board, the maximum number (as determined in accordance with section 14307 of this title) of officers in each competitive category under consideration that the board is authorized to recommend for promotion to the next higher grade.

(2) The name of each officer in each competitive category under consideration who is to be considered by the board for promotion.

(3) The pertinent records (as determined by the Secretary) of each officer whose name is furnished to the board.

(4) Information or guidelines relating to the needs of the armed force concerned for officers having particular skills, including (except in the case of a vacancy promotion board) guidelines or information relating to either a minimum number or a maximum number of officers with particular skills within a competitive category.

(5) Such other information or guidelines as the Secretary concerned may determine to be necessary to enable the board to perform its functions.

(c) LIMITATION ON MODIFYING FURNISHED INFORMATION.—Information or guidelines furnished to a selection board under subsection (a) may not be modified, withdrawn, or supplemented after the board submits its report to the Secretary of the military department concerned pursuant to section 14109(a) of this title. However, in the case of a report returned to a board pursuant to section 14110(a) of this title for further proceedings because of a determination by the Secretary of the military department concerned that the board acted contrary to law, regulation, or guidelines, the Secretary may modify, withdraw, or supplement such information or guidelines as part of a written explanation to the board as provided in that section.

(d) OFFICERS IN HEALTH-PROFESSIONS COMPETITIVE CATEGORIES.—The Secretary of each military department, under uniform regulations prescribed by the Secretary of Defense, shall include in guidelines furnished to a promotion board convened under section 14101(a) of this title that is considering officers in a health-professions competitive category for promotion to a grade below colonel or, in the case of officers of the Naval Reserve, captain, a direction that the board give consideration to an officer's clinical proficiency and skill as a health professional to at least as great an extent as the board gives to the officer's administrative and management skills.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2926.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in section 5895 of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14108, 14109, 14110 of this title.

§ 14108. Recommendations by promotion boards

(a) RECOMMENDATION OF BEST QUALIFIED OFFICERS.—A promotion board convened under section 14101(a) of this title shall recommend for promotion to the next higher grade those officers considered by the board whom the board considers best qualified for promotion within

each competitive category considered by the board or, in the case of a vacancy promotion board, among those officers considered to fill a vacancy. In determining those officers who are best qualified for promotion, the board shall give due consideration to the needs of the armed force concerned for officers with particular skills (as noted in the guidelines or information furnished the board under section 14107 of this title).

(b) MAJORITY REQUIRED.—A promotion board convened under section 14101(a) of this title may not recommend an officer for promotion unless—

(1) the officer receives the recommendation of a majority of the members of the board; and

(2) a majority of the members of the board finds that the officer is fully qualified for promotion.

(c) BOARD RECOMMENDATION REQUIRED FOR PROMOTION.—Except as otherwise provided by law, an officer on the reserve active-status list may not be promoted to a higher grade under chapter 1405 of this title unless the officer is considered and recommended for promotion to that grade by a promotion board convened under section 14101(a) of this title (or by a special selection board convened under section 14502 of this title).

(d) DISCLOSURE OF BOARD RECOMMENDATIONS.—The recommendations of a promotion board may be disclosed only in accordance with regulations prescribed by the Secretary of Defense. Those recommendations may not be disclosed to a person not a member of the board (or a member of the administrative staff designated by the Secretary concerned to assist the board) until the written report of the recommendations of the board, required by section 14109 of this title, is signed by each member of the board.

(e) PROHIBITION OF COERCION AND UNAUTHORIZED INFLUENCE OF ACTIONS OF BOARD MEMBERS.—The Secretary convening a promotion board under section 14101(a) of this title, and an officer or other official exercising authority over any member of a selection board, may not—

(1) censure, reprimand, or admonish the selection board or any member of the board with respect to the recommendations of the board or the exercise of any lawful function within the authorized discretion of the board; or

(2) attempt to coerce or, by any unauthorized means, influence any action of a promotion board or any member of a promotion board in the formulation of the board's recommendations.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2928.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3362(e), 5893(c), 5896, and 8362(e) of this title, prior to repeal by Pub. L. 103–337, §1629(a)(1), (b)(2), (c)(1).

§14109. Reports of promotion boards: in general

(a) REPORT OF OFFICERS RECOMMENDED FOR PROMOTION.—Each promotion board convened under section 14101(a) of this title shall submit to the Secretary of the military department concerned a report in writing containing a list of the names of the officers recommended by the board for promotion. The report shall be signed by each member of the board.

(b) CERTIFICATION.—Each report under subsection (a) shall include a certification—

(1) that the board has carefully considered the record of each officer whose name was furnished to the board; and

(2) that, in the case of a promotion board convened under section 14101(a) of this title, in the opinion of a majority of the members of the board, the officers recommended for promotion by the board are best qualified for promotion to meet the needs of the armed force concerned (as noted in the guidelines or information furnished the board under section 14107 of this title) among those officers whose names were furnished to the selection board.

(c) SHOW-CAUSE RECOMMENDATIONS.—(1) A promotion board convened under section 14101(a) of this title shall include in its report to the Secretary concerned the name of any reserve officer before it for consideration for promotion whose record, in the opinion of a majority of the members of the board, indicates that the officer should be required to show cause for retention in an active status.

(2) If such a report names an officer as having a record which indicates that the officer should be required to show cause for retention, the Secretary concerned may provide for the review of the record of that officer as provided under regulations prescribed under section 14902 of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2928.)

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 5897 of this title, prior to repeal by Pub. L. 103–337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14107, 14108, 14110, 14502 of this title.

§14110. Reports of promotion boards: review by Secretary

(a) REVIEW OF REPORT.—Upon receipt of the report of a promotion board submitted under section 14109(a) of this title, the Secretary of the military department concerned shall review the report to determine whether the board has acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title. Following that review, unless the Secretary concerned makes a determination as described in subsection (b), the Secretary shall submit the report as required by section 14111 of this title.

(b) RETURN OF REPORT FOR FURTHER PROCEEDINGS.—If, on the basis of a review of the report under subsection (a), the Secretary of the military department concerned determines that the board acted contrary to law or regulation or to guidelines furnished the board under section 14107(a) of this title, the Secretary shall return the report, together with a written explanation

of the basis for such determination, to the board for further proceedings. Upon receipt of a report returned by the Secretary concerned under this subsection, the selection board (or a subsequent selection board convened under section 14101(a) of this title for the same grade and competitive category) shall conduct such proceedings as may be necessary in order to revise the report to be consistent with law, regulation, and such guidelines and shall resubmit the report, as revised, to the Secretary in accordance with section 14109 of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2929.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(a) of this title, prior to repeal by Pub. L. 103–337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14107, 14111, 14502 of this title.

§ 14111. Reports of selection boards: transmittal to President

(a) TRANSMITTAL TO PRESIDENT.—The Secretary concerned, after final review of the report of a selection board under section 14110 of this title, shall submit the report with the Secretary's recommendations, to the Secretary of Defense for transmittal by the Secretary to the President for approval or disapproval. If the authority of the President to approve or disapprove the report of a promotion board is delegated to the Secretary of Defense, that authority may not be redelegated except to an official in the Office of the Secretary of Defense.

(b) REMOVAL OF NAME FROM BOARD REPORT.—The name of an officer recommended for promotion by a selection board may be removed from the report of the selection board only by the President.

(c) RECOMMENDATIONS FOR REMOVAL OF SELECTED OFFICERS FROM REPORT.—If the Secretary of a military department or the Secretary of Defense makes a recommendation under this section that the name of an officer be removed from the report of a promotion board and the recommendation is accompanied by information that was not presented to that promotion board, that information shall be made available to that officer. The officer shall then be afforded a reasonable opportunity to submit comments on that information to the officials making the recommendation and the officials reviewing the recommendation. If an eligible officer cannot be given access to such information because of its classification status, the officer shall, to the maximum extent practicable, be provided with an appropriate summary of the information.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2929.)

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in section 5898(b) and (c) of this title, prior to repeal by Pub. L. 103–337, §1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14110, 14501, 14502 of this title.

§ 14112. Dissemination of names of officers selected

(a) TIME FOR DISSEMINATION.—The names of the officers recommended for promotion in the report of a selection board shall be disseminated to the armed force concerned as follows:

(1) In the case of officers recommended for promotion to a grade below brigadier general or rear admiral (lower half), such names may be disseminated upon, or at any time after, the transmittal of the report to the President.

(2) In the case of officers recommended for promotion to a grade above colonel or, in the case of the Navy, captain, such names may be disseminated upon, or at any time after, the approval of the report by the President.

(3) In the case of officers whose names have not been sooner disseminated, such names shall be promptly disseminated—

(A) upon confirmation of the promotion of the officers by the Senate (in the case of promotions required to be submitted to the Senate for confirmation); or

(B) upon the approval of the report by the President (in the case of promotions not required to be submitted to the Senate for confirmation).

(b) NAMES NOT DISSEMINATED.—A list of names of officers disseminated under subsection (a) may not include—

(1) any name removed by the President from the report of the selection board containing that name, if dissemination is under the authority of paragraph (2) or (3)(B) of that subsection; or

(2) the name of any officer whose promotion the Senate failed to confirm, if dissemination is under the authority of paragraph (3)(A) of that subsection.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2930; amended Pub. L. 106–398, §1 [[div. A], title V, §503(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A–101.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5898(d) of this title, prior to repeal by Pub. L. 103–337, §1629(b)(2).

AMENDMENTS

2000—Pub. L. 106–398 amended text generally. Prior to amendment, text read as follows: ''Upon approval by the President of the report of a promotion board, the names of the officers recommended for promotion by the promotion board (other than any name removed by the President) may be disseminated to the armed force concerned. If those names have not been sooner disseminated, those names (other than the name of any officer whose promotion the Senate failed to confirm) shall be promptly disseminated to the armed force concerned upon confirmation by the Senate.''

CHAPTER 1405—PROMOTIONS

Sec.
14301. Eligibility for consideration for promotion: general rules.
14302. Promotion zones.
14303. Eligibility for consideration for promotion: minimum years of service in grade.
14304. Eligibility for consideration for promotion: maximum years of service in grade.
14305. Establishment of promotion zones: mandatory consideration for promotion.

Sec.
14306. Establishment of promotion zones: Naval Reserve and Marine Corps Reserve running mate system.
14307. Number of officers to be recommended for promotion.
14308. Promotions: how made.
14309. Acceptance of promotion; oath of office.
14310. Removal of officers from a list of officers recommended for promotion.
14311. Delay of promotion: involuntary.
14312. Delay of promotion: voluntary.
14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half).
14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general.
14315. Position vacancy promotions: Army and Air Force officers.
14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion.
14317. Officers in transition to and from the active-status list or active-duty list.

AMENDMENTS

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(24), Feb. 10, 1996, 110 Stat. 497, substituted ''Number'' for ''Numbers'' in item 14307, a semicolon for a colon in item 14309, and ''State'' for ''state'' in item 14314.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 14001, 14004, 14006, 14101, 14108 of this title; title 32 section 310; title 37 section 905.

§ 14301. Eligibility for consideration for promotion: general rules

(a) ONE-YEAR RULE.—An officer is eligible under this chapter for consideration for promotion by a promotion board convened under section 14101(a) of this title only if—

(1) the officer is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps; and

(2) during the one-year period ending on the date of the convening of the promotion board the officer has continuously performed service on either the reserve active-status list or the active-duty list (or on a combination of both lists).

(b) REQUIREMENT FOR CONSIDERATION OF ALL OFFICERS IN AND ABOVE THE ZONE.—Whenever a promotion board (other than a vacancy promotion board) is convened under section 14101(a) of this title for consideration of officers in a competitive category who are eligible under this chapter for consideration for promotion to the next higher grade, each officer in the promotion zone, and each officer above the promotion zone, for that grade and competitive category shall be considered for promotion.

(c) PREVIOUSLY SELECTED OFFICERS NOT ELIGIBLE TO BE CONSIDERED.—A promotion board convened under section 14101(a) of this title may not consider for promotion to the next higher grade any of the following officers:

(1) An officer whose name is on a promotion list for that grade as a result of recommendation for promotion to that grade by an earlier selection board convened under that section or section 14502 of this title or under chapter 36 of this title.

(2) An officer who is recommended for promotion to that grade in the report of an earlier selection board convened under a provision referred to in paragraph (1), in the case of such a report that has not yet been approved by the President.

(3) An officer who has been approved for Federal recognition by a board convened under section 307 of title 32 and nominated by the President for promotion to that grade as a reserve of the Army or of the Air Force as the case may be, if that nomination is pending before the Senate.

(4) An officer who has been nominated by the President for promotion to that grade under any other provision of law, if that nomination is pending before the Senate.

(5) An officer in the grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who is on an approved all-fully-qualified-officers list under section 14308(b)(4) of this title.

(d) OFFICERS BELOW THE ZONE.—The Secretary of the military department concerned may, by regulation, prescribe procedures to limit the officers to be considered by a selection board from below the promotion zone to those officers who are determined to be exceptionally well qualified for promotion. The regulations shall include criteria for determining which officers below the promotion zone are exceptionally well qualified for promotion.

(e) CERTAIN RESERVE OFFICERS OF THE AIR FORCE.—A reserve officer of the Air Force who (1) is in the Air National Guard of the United States and holds the grade of lieutenant colonel, colonel, or brigadier general, or (2) is in the Air Force Reserve and holds the grade of colonel or brigadier general, is not eligible for consideration for promotion by a mandatory promotion board convened under section 14101(a) of this title.

(f) NONCONSIDERATION OF OFFICERS SCHEDULED FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—The Secretary of the military department concerned may, by regulation, provide for the exclusion from consideration for promotion by a promotion board of any officer otherwise eligible to be considered by the board who has an established date for removal from the reserve active-status list that is not more than 90 days after the date on which the selection board for which the officer would otherwise be eligible is to be convened.

(g) BRIGADIER GENERALS.—(1) An officer who is a reserve component brigadier general of the Army or the Air Force who is not eligible for consideration for promotion under subsection (a) because the officer is not on the reserve active status list (as required by paragraph (1) of that subsection for such eligibility) is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) as of the date of the convening of the promotion board, the officer has been in an inactive status for less than one year; and

(B) immediately before the date of the officer's most recent transfer to an inactive

status, the officer had continuously served on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list) for at least one year.

(2) An officer who is a reserve component brigadier general of the Army or the Air Force who is on the reserve active status list but who is not eligible for consideration for promotion under subsection (a) because the officer's service does not meet the one-year-of-continuous-service requirement under paragraph (2) of that subsection is nevertheless eligible for consideration for promotion to the grade of major general by a promotion board convened under section 14101(a) of this title if—

(A) the officer was transferred from an inactive status to the reserve active status list during the one-year period preceding the date of the convening of the promotion board;

(B) immediately before the date of the officer's most recent transfer to an active status, the officer had been in an inactive status for less than one year; and

(C) immediately before the date of the officer's most recent transfer to an inactive status, the officer had continuously served for at least one year on the reserve active status list or the active-duty list (or a combination of the reserve active status list and the active-duty list).

(h) OFFICERS ON EDUCATIONAL DELAY.—An officer on the reserve active-status list is ineligible for consideration for promotion, but shall remain on the reserve active-status list, while the officer—

(1) is pursuing a program of graduate level education in an educational delay status approved by the Secretary concerned; and

(2) is receiving from the Secretary financial assistance in connection with the pursuit of that program of education while in that status.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2931; amended Pub. L. 105–85, div. A, title V, §§503(b), (c), 514(b), Nov. 18, 1997, 111 Stat. 1724, 1725, 1732; Pub. L. 105–261, div. A, title V, §514, Oct. 17, 1998, 112 Stat. 2008; Pub. L. 106–65, div. A, title V, §513(a), title X, §1066(a)(32), Oct. 5, 1999, 113 Stat. 593, 772; Pub. L. 107–107, div. A, title V, §505(c)(1)(B), Dec. 28, 2001, 115 Stat. 1087; Pub. L. 107–314, div. A, title V, §521, Dec. 2, 2002, 116 Stat. 2540.)

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–314 amended subsec. (g) generally. Prior to amendment, text read as follows: ''A reserve component brigadier general of the Army or the Air Force who is in an inactive status is eligible (notwithstanding subsection (a)) for consideration for promotion to major general by a promotion board convened under section 14101(a) of this title if the officer—

''(1) has been in an inactive status for less than one year as of the date of the convening of the promotion board; and

''(2) had continuously served for at least one year on the reserve active status list or the active duty list (or a combination of both) immediately before the officer's most recent transfer to an inactive status.''

2001—Subsec. (c)(5). Pub. L. 107–107 added par. (5).

1999—Subsec. (g)(1), (2). Pub. L. 106–65, §1066(a)(32), substituted ''one year'' for ''1 year''.

Subsec. (h). Pub. L. 106–65, §513(a), added subsec. (h).

1998—Subsec. (g). Pub. L. 105–261 added subsec. (g).

1997—Subsec. (c). Pub. L. 105–85, §503(b)(1), substituted ''grade any of the following officers:'' for ''grade—'' in introductory provisions.

Subsec. (c)(1). Pub. L. 105–85, §503(b)(2), (3), substituted ''An officer'' for ''an officer'' and ''title.'' for ''title;''.

Subsec. (c)(2). Pub. L. 105–85, §503(b)(6), added par. (2). Former par. (2) redesignated (3).

Pub. L. 105–85, §503(b)(2), (4), substituted ''An officer'' for ''an officer'' and ''be.'' for ''be; or''.

Subsec. (c)(3). Pub. L. 105–85, §503(c), inserted '', if that nomination is pending before the Senate'' before period at end.

Pub. L. 105–85, §503(b)(5), redesignated par. (2) as (3) and substituted ''that grade'' for ''the next higher grade''. Former par. (3) redesignated (4).

Pub. L. 105–85, §503(b)(2), substituted ''An officer'' for ''an officer''.

Subsec. (c)(4). Pub. L. 105–85, §503(c), inserted '', if that nomination is pending before the Senate'' before period at end.

Pub. L. 105–85, §503(b)(5), redesignated par. (3) as (4) and substituted ''that grade'' for ''the next higher grade''.

Subsecs. (e) to (g). Pub. L. 105–85, §514(b), redesignated subsecs. (f) and (g) as (e) and (f), respectively, and struck out former subsec. (e) which read as follows:

''(e) RESERVE OFFICERS OF THE ARMY; CONSIDERATION FOR BRIGADIER GENERAL AND MAJOR GENERAL.—In the case of officers of the Army, if the Secretary of the Army determines that vacancies are authorized or anticipated in the reserve grades of major general or brigadier general for officers who are on the reserve active-status list and who are not assigned to units organized to serve as a unit and the Secretary convenes a mandatory promotion board under section 14101(a) of this title to consider officers for promotion to fill such vacancies, the Secretary may limit the officers to be considered by that board to those determined to be exceptionally well qualified for promotion under such criteria and procedures as the Secretary may by regulation prescribe.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, §513(b), Oct. 5, 1999, 113 Stat. 593, provided that:

''(1) Subsection (h) of section 14301 of title 10, United States Code (as added by subsection (a)), shall apply with respect to boards convened under section 14101(a) of such title before, on, or after the date of the enactment of this Act [Oct. 5, 1999].

''(2) The Secretary of the military department concerned, upon receipt of request submitted in a form and manner prescribed by the Secretary, shall expunge from the military records of an officer any indication of a failure of selection of the officer for promotion by a board referred to in paragraph (1) while the officer was ineligible for consideration by that board by reason of section 14301(h) of title 10, United States Code.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 503(b), (c) of Pub. L. 105–85 effective Nov. 18, 1997, and applicable with respect to selection boards that are convened under section 611(a), 14101(a), or 14502 of this title on or after Nov. 18, 1997, see section 503(d) of Pub. L. 105–85, set out as a note under section 619 of this title.

EFFECTIVE DATE

Chapter effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14304 of this title.

§ 14302. Promotion zones

(a) PROMOTION ZONES GENERALLY.—For purposes of this chapter, a promotion zone is an eligibility category for the consideration of officers by a mandatory promotion board. A promotion zone consists of those officers on the reserve active-status list who are in the same grade and competitive category and who meet the requirements of both paragraphs (1) and (2) or the requirements of paragraph (3), as follows:

(1)(A) In the case of officers in grades below colonel, for reserve officers of the Army, Air Force, and Marine Corps, or captain, for officers of the Naval Reserve, those who have neither (i) failed of selection for promotion to the next higher grade, nor (ii) been removed from a list of officers recommended for promotion to that grade.

(B) In the case of officers in the grade of colonel or brigadier general, for reserve officers of the Army and Marine Corps, or in the grade of captain or rear admiral (lower half), for reserve officers of the Navy, those who have neither (i) been recommended for promotion to the next higher grade when considered in the promotion zone, nor (ii) been removed from a list of officers recommended for promotion to that grade.

(2) Those officers who are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to the next higher grade and the officer so designated.

(3) Those officers who—

(A) have been selected from below the zone for promotion to the next higher grade or by a vacancy promotion board, but whose names were removed from the list of officers recommended for promotion to that next higher grade resulting from that selection;

(B) have not failed of selection for promotion to that next higher grade; and

(C) are senior to the officer designated by the Secretary of the military department concerned to be the junior officer in the promotion zone eligible for consideration for promotion to that next higher grade and the officer so designated.

(b) OFFICERS ABOVE THE ZONE.—Officers on the reserve active-status list are considered to be above the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are senior to the senior officer in the promotion zone for that competitive category.

(c) OFFICERS BELOW THE ZONE.—Officers on the reserve active-status list are considered to be below the promotion zone for a grade and competitive category if they—

(1) are eligible for consideration for promotion to the next higher grade;

(2) are in the same grade as those officers in the promotion zone for that competitive category; and

(3) are junior to the junior officer in the promotion zone for that competitive category.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2932.)

§ 14303. Eligibility for consideration for promotion: minimum years of service in grade

(a) OFFICERS IN PAY GRADES O–1 AND O–2.—An officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and holds a permanent appointment in the grade of second lieutenant or first lieutenant as a reserve officer of the Army, Air Force, or Marine Corps, or in the grade of ensign or lieutenant (junior grade) as a reserve officer of the Navy, may not be promoted to the next higher grade, or granted Federal recognition in that grade, until the officer has completed the following years of service in grade:

(1) Eighteen months, in the case of an officer holding a permanent appointment in the grade of second lieutenant or ensign.

(2) Two years, in the case of an officer holding a permanent appointment in the grade of first lieutenant or lieutenant (junior grade).

(b) OFFICERS IN PAY GRADES O–3 AND ABOVE.—Subject to subsection (d), an officer who is on the reserve active-status list of the Army, Air Force, or Marine Corps and holds a permanent appointment in a grade above first lieutenant, or who is on the reserve active-status list of the Navy in a grade above lieutenant (junior grade), may not be considered for selection for promotion to the next higher grade, or examined for Federal recognition in the next higher grade, until the officer has completed the following years of service in grade:

(1) Three years, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of captain, major, or lieutenant colonel or in the case of a reserve officer of the Navy holding a permanent appointment in the grade of lieutenant, lieutenant commander, or commander.

(2) One year, in the case of an officer of the Army, Air Force, or Marine Corps holding a permanent appointment in the grade of colonel or brigadier general or in the case of a reserve officer of the Navy holding a permanent appointment in the grade of captain or rear admiral (lower half).

This subsection does not apply to an adjutant general or assistant adjutant general of a State or to an appointment in a higher grade which is based upon a specific provision of law.

(c) AUTHORITY TO LENGTHEN MINIMUM PERIOD IN GRADE.—The Secretary concerned may prescribe a period of service in grade for eligibility for promotion, in the case of officers to whom subsection (a) applies, or for eligibility for consideration for promotion, in the case of officers to whom subsection (b) applies, that is longer than the applicable period specified in that subsection.

(d) WAIVERS TO ENSURE TWO BELOW-THE-ZONE CONSIDERATIONS.—Subject to section 14307(b) of this title, the Secretary of the military department concerned may waive subsection (b) to the extent necessary to ensure that officers described in paragraph (1) of that subsection have at least two opportunities for consideration for

promotion to the next higher grade as officers below the promotion zone.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2933.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14305, 14315 of this title; title 32 sections 309, 310.

§ 14304. Eligibility for consideration for promotion: maximum years of service in grade

(a) CONSIDERATION FOR PROMOTION WITHIN SPECIFIED TIMES.—(1) Officers described in paragraph (3) shall be placed in the promotion zone for that officer's grade and competitive category, and shall be considered for promotion to the next higher grade by a promotion board convened under section 14101(a) of this title, far enough in advance of completing the years of service in grade specified in the following table so that, if the officer is recommended for promotion, the promotion may be effective on or before the date on which the officer will complete those years of service.

Current Grade	Maximum years of service in grade
First lieutenant or Lieutenant (junior grade)	5 years
Captain or Navy Lieutenant	7 years
Major or Lieutenant commander	7 years

(2) Paragraph (1) is subject to subsections (a), (b), and (c) of section 14301 of this title and applies without regard to vacancies.

(3) Paragraph (1) applies to an officer who is on the reserve active-status list of the Army, Navy, Air Force, or Marine Corps and who holds a permanent appointment in the grade of first lieutenant, captain, or major as a reserve of the Army, Air Force, or Marine Corps, or to an officer on the reserve active-status list of the Navy in the grade of lieutenant (junior grade), lieutenant, or lieutenant commander as a reserve of the Navy, and who, while holding that appointment, has not been considered by a selection board convened under section 14101(a) or 14502 of this title for promotion to the next higher grade.

(b) PROMOTION DATE.—An officer holding a permanent grade specified in the table in subsection (a) who is recommended for promotion to the next higher grade by a selection board the first time the officer is considered for promotion while in or above the promotion zone and who is placed on an approved promotion list established under section 14308(a) of this title shall (if not promoted sooner or removed from that list by the President or by reason of declination) be promoted, without regard to the existence of a vacancy, on the date on which the officer completes the maximum years of service in grade specified in subsection (a). The preceding sentence is subject to the limitations of section 12011 of this title.

(c) WAIVER AUTHORITY FOR NAVY AND MARINE CORPS RUNNING MATE SYSTEM.—If the Secretary of the Navy establishes promotion zones for officers on the reserve active-status list of the Navy or the Marine Corps Reserve in accordance with a running mate system under section 14306 of this title, the Secretary may waive the requirements of subsection (a) to the extent the Secretary considers necessary in any case in which the years of service for promotion, or for consideration for promotion, within those zones will exceed the maximum years of service in grade specified in subsection (a).

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2934.)

MINIMUM SERVICE QUALIFICATIONS FOR PROMOTION

Section 1685 of title XVI of div. A of Pub. L. 103–337 provided that: ''During the five-year period beginning on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title], the Secretary of the Army and the Secretary of the Air Force may waive the provisions of section 14304 of title 10, United States Code, as added by this title. The Secretary may, in addition, during any period in which such a waiver is in effect, establish minimum periods of total years of commissioned service an officer must have served to be eligible for consideration for promotion to the grade of captain, major, or lieutenant colonel by boards convened under section 14101(a) of title 10, United States Code, as added by this title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12009, 14305 of this title.

§ 14305. Establishment of promotion zones: mandatory consideration for promotion

(a) ESTABLISHMENT OF ZONE.—Before convening a mandatory promotion board under section 14101(a) of this title, the Secretary of the military department concerned shall establish a promotion zone for officers serving in each grade and competitive category to be considered by the board.

(b) NUMBER IN THE ZONE.—The Secretary concerned shall determine the number of officers in the promotion zone for officers serving in any grade and competitive category from among officers who are eligible for promotion in that grade and competitive category under the provisions of sections 14303 and 14304 of this title and who are otherwise eligible for promotion.

(c) FACTORS IN DETERMINING NUMBER IN THE ZONE.—The Secretary's determination under subsection (b) shall be made on the basis of an estimate of the following:

(1) The number of officers needed in that competitive category in the next higher grade in each of the next five years.

(2) In the case of a promotion zone for officers to be promoted to a grade to which the maximum years of in grade criteria established in section 14304 of this title apply, the number of officers in that competitive category who are required to be considered for selection for promotion to the next higher grade under that section.

(3) The number of officers that should be placed in the promotion zone in each of the next five years to provide to officers in those years relatively similar opportunities for promotion.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2935.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14306 of this title.

§ 14306. Establishment of promotion zones: Naval Reserve and Marine Corps Reserve running mate system

(a) AUTHORITY OF SECRETARY OF THE NAVY.—The Secretary of the Navy may by regulation implement section 14305 of this title by requiring that the promotion zone for consideration of officers on the reserve active-status list of the Navy or the Marine Corps for promotion to the next higher grade be determined in accordance with a running mate system as provided in subsection (b).

(b) ASSIGNMENT OF RUNNING MATES.—An officer to whom a running mate system applies shall be assigned as a running mate an officer of the same grade on the active-duty list of the same armed force. The officer on the reserve active-status list is in the promotion zone and is eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title when that officer's running mate is in or above the promotion zone established for that officer's grade under chapter 36 of this title.

(c) CONSIDERATION OF OFFICERS BELOW THE ZONE UNDER A RUNNING MATE SYSTEM.—If the Secretary of the Navy authorizes the selection of officers for promotion from below the promotion zone in accordance with section 14307 of this title, the number of officers to be considered from below the zone may be established through the application of the running mate system or otherwise as the Secretary determines to be appropriate to meet the needs of the Navy or Marine Corps.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2935.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (b) of this section were contained in section 5899 of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14304, 14308 of this title.

§ 14307. Number of officers to be recommended for promotion

(a) DETERMINATION OF MAXIMUM NUMBER.—Before convening a promotion board under section 14101(a) of this title for a grade and competitive category (other than a vacancy promotion board), the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, shall determine the maximum number of officers in that grade and competitive category that the board may recommend for promotion. The Secretary shall make the determination under the preceding sentence of the maximum number that may be recommended with a view to having on the reserve active-status list a sufficient number of officers in each grade and competitive category to meet the needs of the armed force concerned for officers on that list. In order to make that determination, the Secretary shall determine (1) the number of positions needed to accomplish mission objectives which require officers of such competitive category in the grade to which the board will recommend officers for promotion, (2) the estimated number of officers needed to fill vacancies in such positions during the period in which it is anticipated that officers selected for promotion will be promoted, (3) the number of officers authorized by the Secretary of the military department concerned to serve on the reserve active-status list in the grade and competitive category under consideration, and (4) any statutory limitation on the number of officers in any grade or category (or combination thereof) authorized to be on the reserve active-status list.

(b) BELOW-THE-ZONE SELECTIONS.—(1) The Secretary of the military department concerned may, when the needs of the armed force concerned require, authorize the consideration of officers in the grade of captain, major, or lieutenant colonel on the reserve active-status list of the Army or Air Force, in a grade above first lieutenant on the reserve active-status list of the Marine Corps, or in a grade above lieutenant (junior grade) on the reserve active-status list of the Navy, for promotion to the next higher grade from below the promotion zone.

(2) When selection from below the promotion zone is authorized, the Secretary shall establish the number of officers that may be recommended for promotion from below the promotion zone in each competitive category to be considered. That number may not exceed the number equal to 10 percent of the maximum number of officers that the board is authorized to recommend for promotion in such competitive category, except that the Secretary of Defense may authorize a greater number, not to exceed 15 percent of the total number of officers that the board is authorized to recommend for promotion, if the Secretary of Defense determines that the needs of the armed force concerned so require. If the maximum number determined under this paragraph is less than one, the board may recommend one officer for promotion from below the promotion zone.

(3) The number of officers recommended for promotion from below the promotion zone does not increase the maximum number of officers that the board is authorized to recommend for promotion under subsection (a).

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2936.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5901 of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14107, 14303, 14306 of this title.

§ 14308. Promotions: how made

(a) PROMOTION LIST.—When the report of a selection board convened under section 14101(a) or 14502 of this title is approved by the President, the Secretary of the military department concerned shall place the names of all officers selected for promotion within a competitive category on a single list for that competitive category, to be known as a promotion list, in the order of seniority of those officers on the reserve active-status list.

(b) PROMOTION; HOW MADE; ORDER.—(1) Officers on a promotion list for a competitive category shall be promoted in the manner specified in section 12203 of this title.

(2) Officers on a promotion list for a competitive category shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary of the military department concerned. Except as provided in section 14311, 14312, or 14502(e) of this title or in subsection (d) or (e), promotions shall be made in the order in which the names of officers appear on the promotion list and after officers previously selected for promotion in that competitive category have been promoted.

(3) Officers to be promoted to the grade of first lieutenant or lieutenant (junior grade) shall be promoted in accordance with regulations prescribed by the Secretary of the military department concerned.

(4)(A) Officers in the permanent grade of first lieutenant or, in the case of the Navy, lieutenant (junior grade) who are on an approved all-fully-qualified-officers list shall be promoted to the next higher grade in accordance with regulations prescribed by the Secretary concerned. Such promotions shall be in the manner specified in section 12203 of this title.

(B) An all-fully-qualified-officers list shall be considered to be approved for purposes of subparagraph (A) when the list is approved by the President. When so approved, such a list shall be treated in the same manner as a promotion list under this chapter and chapter 1403 of this title.

(C) The Secretary of a military department may make a recommendation to the President for approval of an all-fully-qualified-officers list only when the Secretary determines that all officers on the list are needed in the next higher grade to accomplish mission objectives.

(D) For purposes of this paragraph, an all-fully-qualified-officers list is a list of all officers on the reserve active-status list in a grade who the Secretary of the military department concerned determines—

(i) are fully qualified for promotion to the next higher grade; and

(ii) would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title upon the convening of such a board.

(c) DATE OF RANK.—(1) The date of rank of an officer appointed to a higher grade under this section is determined under section 741(d)(2) of this title.

(2) The date of rank of an officer appointed to a higher grade under this section may be adjusted in the same manner as an adjustment may be made under section 741(d)(4) of this title in the date of rank of an officer appointed to a higher grade under section 624(a) of this title. In any use of the authority under the preceding sentence, subparagraph (C)(ii) of such section shall be applied by substituting ''reserve active-status list'' for ''active-duty list''.

(3) Except as provided in paragraph (2) or as otherwise specifically authorized by law, a reserve officer is not entitled to additional pay or allowances if the effective date of the officer's promotion is adjusted to reflect a date earlier than the actual date of the officer's promotion.

(d) OFFICERS WITH RUNNING MATES.—An officer to whom a running mate system applies under section 14306 of this title and who is selected for promotion is eligible for promotion to the grade for which selected when the officer who is that officer's running mate becomes eligible for promotion under chapter 36 of this title. The effective date of the promotion of that officer shall be the same as that of the officer's running mate in the grade to which the running mate is promoted.

(e) ARMY RESERVE AND AIR FORCE RESERVE PROMOTIONS TO FILL VACANCIES.—Subject to this section and to section 14311(e) of this title, and under regulations prescribed by the Secretary of the military department concerned—

(1) an officer in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) of this title or a board convened under section 14502 or chapter 36 of this title may be promoted at any time to fill a vacancy in a position to which the officer is assigned; and

(2) an officer in a grade below colonel in the Army Reserve or the Air Force Reserve who is on a promotion list as a result of selection for promotion by a vacancy promotion board convened under section 14101(a) of this title may be promoted at any time to fill the vacancy for which the officer was selected.

(f) EFFECTIVE DATE OF PROMOTION AFTER FEDERAL RECOGNITION.—The effective date of a promotion of a reserve commissioned officer of the Army or the Air Force who is extended Federal recognition in the next higher grade in the Army National Guard or the Air National Guard under section 307 or 310 of title 32 shall be the date on which such Federal recognition in that grade is so extended.

(g) ARMY AND AIR FORCE GENERAL OFFICER PROMOTIONS.—A reserve officer of the Army or the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Army Reserve or the Air Force Reserve, as the case may be, in that grade.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2937; amended Pub. L. 105–85, div. A, title V, §514(c), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 107–107, div. A, title V, §§505(b)(1), 506(b), Dec. 28, 2001, 115 Stat. 1086, 1089.)

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a), (d), and (f) of this section were contained in sections 3385, 5902(a) to (c), and 8374 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(1), (b)(2), (c)(1).

AMENDMENTS

2001—Subsec. (b)(4). Pub. L. 107–107, §505(b)(1), added par. (4).

Subsec. (c)(2). Pub. L. 107–107, §506(b)(1)(B), added par. (2). Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 107–107, §506(b)(1)(A), (2), redesignated par. (2) as (3) and inserted ''provided in paragraph (2) or as otherwise'' after ''Except as''.

1997—Subsec. (e)(2). Pub. L. 105–85, §514(c)(1), inserted ''a grade below colonel in'' after ''an officer in''.

Subsec. (g). Pub. L. 105–85, §514(c)(2), inserted ''or the Air Force'' after ''A reserve officer of the Army'', substituted ''in the Army Reserve or the Air Force Reserve, as the case may be, in that grade'' for ''in that grade in a unit of the Army Reserve that is organized to serve as a unit and that has attained the strength prescribed by the Secretary of the Army'', and struck out at end ''A reserve officer of the Air Force who is on a promotion list for promotion to the grade of brigadier general or major general as a result of selection by a vacancy promotion board may be promoted to that grade only to fill a vacancy in the Air Force Reserve in that grade.''

EFFECTIVE DATE OF 2001 AMENDMENT

Subsec. (c)(2) of this section applicable with respect to any report of a selection board recommending officers for promotion to the next higher grade that is submitted to the Secretary of the military department concerned on or after Dec. 28, 2001, and Secretary of the military department concerned may apply subsec. (c)(2) of this section in the case of an appointment of an officer to a higher grade resulting from a report of a selection board submitted to the Secretary before Dec. 28, 2001, if the Secretary determines that such appointment would have been made on an earlier date that is on or after Oct. 1, 2001, and was delayed under the circumstances specified in section 741(d)(4) of this title, see section 506(c) of Pub. L. 107–107, set out as a note under section 741 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14101, 14301, 14304, 14502, 14504 of this title; title 32 section 310; title 37 section 905.

§14309. Acceptance of promotion; oath of office

(a) ACCEPTANCE.—An officer who is appointed to a higher grade under this chapter shall be considered to have accepted the appointment on the date on which the appointment is made unless the officer expressly declines the appointment or is granted a delay of promotion under section 14312 of this title.

(b) OATH.—An officer who has served continuously since taking the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this chapter.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2938.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3394 and 8394 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(1), (c)(1).

§14310. Removal of officers from a list of officers recommended for promotion

(a) REMOVAL BY PRESIDENT.—The President may remove the name of any officer from a promotion list at any time before the date on which the officer is promoted.

(b) REMOVAL FOR WITHHOLDING OF SENATE ADVICE AND CONSENT.—If the Senate does not give its advice and consent to the appointment to the next higher grade of an officer whose name is on a list of officers approved by the President for promotion (except in the case of promotions to a reserve grade to which appointments may be made by the President alone), the name of that officer shall be removed from the list.

(c) CONTINUED ELIGIBILITY FOR PROMOTION.—An officer whose name is removed from a list under subsection (a) or (b) continues to be eligible for consideration for promotion. If that officer is recommended for promotion by the next selection board convened for that officer's grade and competitive category and the officer is promoted, the Secretary of the military department concerned may, upon the promotion, grant the officer the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list, as the officer would have had if the officer's name had not been removed from the list.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2938.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5905 of this title, prior to repeal by Pub. L. 103–337, §1629(b)(2).

REMOVALS FROM PROMOTION LIST

Section 1684(b) of title XVI of div. A of Pub. L. 103–337, as amended by Pub. L. 104–106, div. A, title XV, §1501(a)(9), Feb. 10, 1996, 110 Stat. 495, provided that: ''An action that was initiated before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title] under the laws and regulations in effect before that date to remove the name of an officer from a promotion list or from a list of officers recommended or approved for promotion shall continue on and after such date as if such action had been initiated under section 14111(c) or 14310, as appropriate, of title 10, United States Code, as added by this title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14501 of this title.

§14311. Delay of promotion: involuntary

(a) DELAY DURING INVESTIGATIONS AND PROCEEDINGS.—(1) Under regulations prescribed by the Secretary of the military department concerned, the appointment of an officer to a higher grade may be delayed if any of the following applies before the date on which the appointment would otherwise be made:

(A) Sworn charges against the officer have been received by an officer exercising general court-martial jurisdiction over the officer and the charges have not been disposed of.

(B) An investigation is being conducted to determine whether disciplinary action of any kind should be brought against the officer.

(C) A board of officers has been convened under section 14903 of this title to review the record of the officer.

(D) A criminal proceeding in a Federal or State court of competent jurisdiction is pending against the officer.

(2) If disciplinary action is not taken against the officer, if the charges against the officer are withdrawn or dismissed, if the officer is not separated by the Secretary of the military department concerned as the result of having been required to show cause for retention, or if the officer is acquitted of the charges, as the case may be, then (unless action to delay the officer's appointment to the higher grade has been taken under subsection (b)) the officer shall be retained on the promotion list (including an ap-

proved all-fully-qualified-officers list, if applicable), list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade and shall, upon promotion to the next higher grade, have the same date of rank, the same effective date for the pay and allowances of the grade to which promoted, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(b) DELAY FOR LACK OF QUALIFICATIONS.—Under regulations prescribed by the Secretary of the military department concerned, the appointment of an officer to a higher grade may also be delayed if there is cause to believe that the officer is mentally, physically, morally, or professionally unqualified to perform the duties of the grade to which selected. If the Secretary concerned later determines that the officer is qualified for promotion to the higher grade, the officer shall be retained on the promotion list (including an approved all-fully-qualified-officers list, if applicable), the list of officers found qualified for Federal recognition, or list of officers nominated by the President to the Senate for appointment in a higher reserve grade, and shall, upon promotion to that grade, have the same date of rank, the same effective date for pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if no delay had intervened, unless the Secretary concerned determines that the officer was unqualified for promotion for any part of the delay. If the Secretary makes such a determination, the Secretary may adjust such date of rank, effective date of pay and allowances, and position on the reserve active-status list as the Secretary considers appropriate under the circumstances.

(c) NOTICE TO OFFICER.—(1) The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) unless the officer is given written notice of the grounds for the delay. The preceding sentence does not apply if it is impracticable to give the officer written notice before the date on which the appointment to the higher grade would otherwise take effect, but in such a case the written notice shall be given as soon as practicable.

(2) An officer whose promotion is delayed under subsection (a) or (b) shall be given an opportunity to make a written statement to the Secretary of the military department concerned in response to the action taken. The Secretary shall give consideration to any such statement.

(d) MAXIMUM LENGTH OF DELAY IN PROMOTION.—The appointment of an officer to a higher grade may not be delayed under subsection (a) or (b) for more than six months after the date on which the officer would otherwise have been promoted unless the Secretary concerned specifies a further period of delay. An officer's appointment may not be delayed more than 90 days after final action has been taken in any criminal case against the officer in a Federal or State court of competent jurisdiction or more than 90 days after final action has been taken in any court-martial case against the officer. Except for court action, a promotion may not be delayed more than 18 months after the date on which the officer would otherwise have been promoted.

(e) DELAY BECAUSE OF LIMITATIONS ON OFFICER STRENGTH IN GRADE OR DUTIES TO WHICH ASSIGNED.—(1) Under regulations prescribed by the Secretary of Defense, the promotion of a reserve officer on the reserve active-status list who is serving on active duty, or who is on full-time National Guard duty for administration of the reserves or the National Guard, to a grade to which the strength limitations of section 12011 of this title apply shall be delayed if necessary to ensure compliance with those strength limitations. The delay shall expire when the Secretary determines that the delay is no longer required to ensure such compliance.

(2) The promotion of an officer described in paragraph (1) shall also be delayed while the officer is on duty described in that paragraph unless the Secretary of the military department concerned, under regulations prescribed by the Secretary of Defense, determines that the duty assignment of the officer requires a higher grade than the grade currently held by the officer.

(3) The date of rank and position on the reserve active-status list of a reserve officer whose promotion to or Federal recognition in the next higher grade was delayed under paragraph (1) or (2) solely as the result of the limitations imposed under the regulations prescribed by the Secretary of Defense or contained in section 12011 of this title shall be the date on which the officer would have been promoted to or recognized in the higher grade had such limitations not existed.

(4) If an officer whose promotion is delayed under paragraph (1) or (2) completes the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may request release from active duty or full-time National Guard duty. If the request is granted, the officer's promotion shall be effective upon the officer's release from such duty. The date of rank and position on the reserve active-status list of the officer shall be the date the officer would have been promoted to or recognized in the higher grade had the limitations imposed under regulations prescribed by the Secretary of Defense contained in section 12011 of this title not existed. If an officer whose promotion is delayed under paragraph (1) or (2) has not completed the period of active duty or full-time National Guard duty that the officer is required by law or regulation to perform as a member of a reserve component, the officer may be retained on active duty or on full-time National Guard duty in the grade in which the officer was serving before the officer's being found qualified for Federal recognition or the officer's selection for the promotion until the officer completes that required period of duty.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2939; amended Pub. L.

107–107, div. A, title V, § 505(c)(2)(B), Dec. 28, 2001, 115 Stat. 1088.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3363(e), 3380(b), 5902(d), 8363(g), and 8380(b) of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(1), (b)(2), (c)(1).

AMENDMENTS

2001—Subsec. (a)(2). Pub. L. 107–107, § 505(c)(2)(B)(i), inserted ''(including an approved all-fully-qualified-officers list, if applicable)'' after ''on the promotion list''.

Subsec. (b). Pub. L. 107–107, § 505(c)(2)(B)(ii), inserted ''(including an approved all-fully-qualified-officers list, if applicable)'' after ''on the promotion list'' in second sentence.

DELAYS IN PROMOTIONS

Section 1684(a) of title XVI of div. A of Pub. L. 103–337 provided that:

''(1) A delay in a promotion that is in effect on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title] under the laws and regulations in effect on that date shall continue in effect on and after that date as if the promotion had been delayed under section 14311 of title 10, United States Code, as added by this title.

''(2) The delay of the promotion of a reserve officer of the Army or the Air Force which was in effect solely to achieve compliance with limitations set out in section 524 of title 10, United States Code, or with regulations prescribed by the Secretary of Defense with respect to sections 3380(c) and 8380(c) of title 10, United States Code, as in effect on the day before the effective date of this title, shall continue in effect as if the promotion had been delayed under section 14311(e) of such title, as added by this title.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14308, 14316 of this title.

§ 14312. Delay of promotion: voluntary

(a) AUTHORITY FOR VOLUNTARY DELAYS.—(1) The Secretary of the military department concerned may, by regulation, permit delays of a promotion of an officer who is recommended for promotion by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title at the request of the officer concerned. Such delays, in the case of any promotion, may extend for any period not to exceed three years from the date on which the officer would otherwise be promoted.

(2) Regulations under this section shall provide that—

(A) a request for such a delay of promotion must be submitted by the officer concerned before the delay may be approved; and

(B) denial of such a request shall not be considered to be a failure of selection for promotion unless the officer declines to accept a promotion under circumstances set forth in subsection (c).

(b) EFFECT OF APPROVAL OF REQUEST.—If a request for delay of a promotion under subsection (a) is approved, the officer's name shall remain on the promotion list during the authorized period of delay (unless removed under any other provision of law). Upon the end of the period of the authorized delay, or at any time during such period, the officer may accept the promotion, which shall be effective on the date of acceptance. Such an acceptance of a promotion shall be made in accordance with regulations prescribed under this section.

(c) EFFECT OF DECLINING A PROMOTION.—An officer's name shall be removed from the promotion list and, if the officer is serving in a grade below colonel or, in the case of the Navy, captain, the officer shall be considered to have failed of selection for promotion if any of the following applies:

(1) The Secretary concerned has not authorized voluntary delays of promotion under subsection (a) to the grade concerned and the officer declines to accept an appointment to a higher grade.

(2) The Secretary concerned has authorized voluntary delays of promotion under subsection (a), but has denied the request of the officer for a delay of promotion and the officer then declines to accept an appointment to a higher grade.

(3) The Secretary concerned has approved the request of an officer for a delay of promotion and, upon the end of the period of delay authorized in accordance with regulations prescribed under subsection (a), the officer then declines to accept an appointment to a higher grade.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2941.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14308, 14309 of this title.

§ 14313. Authority to vacate promotions to grade of brigadier general or rear admiral (lower half)

(a) AUTHORITY.—The President may vacate the appointment of a reserve officer to the grade of brigadier general or rear admiral (lower half) if the period of time during which the officer has served in that grade after promotion to that grade is less than 18 months.

(b) EFFECT OF PROMOTION BEING VACATED.—Except as provided in subsection (c), an officer whose promotion to the grade of brigadier general is vacated under this section holds the grade of colonel as a reserve of the armed force of which the officer is a member. An officer whose promotion to the grade of rear admiral (lower half) is vacated under this section holds the grade of captain in the Naval Reserve. Upon assuming the lower grade, the officer shall have the same position on the reserve active-status list as the officer would have had if the officer had not served in the higher grade.

(c) SPECIAL RULE FOR OFFICERS SERVING AS ADJUTANT GENERAL.—In the case of an officer serving as an adjutant general or assistant adjutant general whose promotion to the grade of brigadier general is vacated under this section, the officer then holds the reserve grade held by that officer immediately before the officer's appointment as adjutant general or assistant adjutant general.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2942.)

§ 14314. Army and Air Force commissioned officers: generals ceasing to occupy positions commensurate with grade; State adjutants general

(a) GENERAL OFFICERS.—Within 30 days after a reserve officer of the Army or the Air Force on the reserve active-status list in a general officer grade ceases to occupy a position commensurate with that grade (or commensurate with a higher grade), the Secretary concerned shall transfer or discharge the officer in accordance with whichever of the following the officer elects:

(1) Transfer the officer in grade to the Retired Reserve, if the officer is qualified and applies for the transfer.

(2) Transfer the officer in grade to the inactive status list of the Standby Reserve, if the officer is qualified.

(3) Discharge the officer from the officer's reserve appointment and, if the officer is qualified and applies therefor, appoint the officer in the reserve grade held by the officer as a reserve officer before the officer's appointment in a general officer grade.

(4) Discharge the officer from the officer's reserve appointment.

(b) ADJUTANTS GENERAL.—If a reserve officer who is federally recognized in the Army National Guard or the Air National Guard solely because of the officer's appointment as adjutant general or assistant adjutant general of a State ceases to occupy that position, the Secretary concerned, not later than 30 days after the date on which the officer ceases to occupy that position, shall—

(1) withdraw that officer's Federal recognition; and

(2) require that the officer—

(A) be transferred in grade to the Retired Reserve, if the officer is qualified and applies for the transfer;

(B) be discharged from the officer's reserve appointment and appointed in the reserve grade held by the officer as a reserve officer immediately before the appointment of that officer as adjutant general or assistant adjutant general, if the officer is qualified and applies for that appointment; or

(C) be discharged from the officer's reserve appointment.

(c) CREDIT FOR SERVICE IN GRADE.—An officer who is appointed under subsection (a)(3) or (b)(2)(B) shall be credited with an amount of service in the grade in which appointed that is equal to the amount of prior service in an active status in that grade and in any higher grade.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2942; amended Pub. L. 104–201, div. A, title V, §544(c), Sept. 23, 1996, 110 Stat. 2523.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3375, 8375, and 8381 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(1), (c)(1).

AMENDMENTS

1996—Subsec. (b)(2)(B). Pub. L. 104–201 struck out ''of the Air Force'' after ''reserve officer''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12009 of this title.

§ 14315. Position vacancy promotions: Army and Air Force officers

(a) OFFICERS ELIGIBLE FOR CONSIDERATION FOR VACANCY PROMOTIONS BELOW BRIGADIER GENERAL.—A reserve officer of the Army who is in the Army Reserve, or a reserve officer of the Air Force who is in the Air Force Reserve, who is on the reserve active-status list in the grade of first lieutenant, captain, major, or lieutenant colonel is eligible for consideration for promotion to the next higher grade under this section if each of the following applies:

(1) The officer is occupying or, as determined by the Secretary concerned, is available to occupy a position in the same competitive category as the officer and for which a grade higher than the one held by that officer is authorized.

(2) The officer is fully qualified to meet all requirements for the position as established by the Secretary of the military department concerned.

(3) The officer has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade.

(b) CONSIDERATION FOR VACANCY PROMOTION TO BRIGADIER GENERAL OR MAJOR GENERAL.—(1) A reserve officer of the Army who is in the Army Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade in the Army Reserve or is recommended for such an assignment under regulations prescribed by the Secretary of the Army, (B) has held the officer's present grade for the minimum period of service prescribed in section 14303 of this title for eligibility for consideration for promotion to the higher grade, and (C) meets the standards for consideration prescribed by the Secretary of the Army.

(2) A reserve officer of the Air Force who is in the Air Force Reserve and on the reserve active-status list in the grade of colonel or brigadier general may be considered for promotion to the next higher grade under this section if the officer (A) is assigned to the duties of a general officer of the next higher reserve grade or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force, and (B) meets the standards for consideration prescribed by the Secretary of the Air Force.

(c) VACANCY PROMOTION BOARDS.—Consideration for promotion under this section shall be by a vacancy promotion board convened under section 14101(a) of this title.

(d) EFFECT OF NONSELECTION.—An officer who is considered for promotion under this section and is not selected shall not be considered to have failed of selection for promotion.

(e) SPECIAL RULE FOR OFFICERS FAILED OF SELECTION.—A reserve officer of the Army or the

Air Force who is considered as failed of selection for promotion under section 14501 of this title to a grade may be considered for promotion under this section or, if selected, promoted to that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill the vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2943; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(25), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–85, div. A, title V, § 514(d), Nov. 18, 1997, 111 Stat. 1732; Pub. L. 106–398, § 1 [[div. A], title V, § 501], Oct. 30, 2000, 114 Stat. 1654, 1654A–98.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3384 and 8373 of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(1), (c)(1).

AMENDMENTS

2000—Subsec. (b)(1)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 501(1)], inserted ''or is recommended for such an assignment under regulations prescribed by the Secretary of the Army'' after ''Army Reserve''.

Subsec. (b)(2)(A). Pub. L. 106–398, § 1 [[div. A], title V, § 501(2)], inserted ''or is recommended for such an assignment under regulations prescribed by the Secretary of the Air Force'' after ''reserve grade''.

1997—Subsec. (b)(1)(A). Pub. L. 105–85 substituted ''duties of a general officer of the next higher reserve grade in the Army Reserve,'' for ''duties of a general officer of the next higher reserve grade in a unit of the Army Reserve organized to serve as a unit,''.

1996—Subsec. (a). Pub. L. 104–106 substituted ''or a reserve officer'' for ''or a Reserve officer'' in introductory provisions.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14101, 14317 of this title.

§ 14316. Army National Guard and Air National Guard: appointment to and Federal recognition in a higher reserve grade after selection for promotion

(a) OPPORTUNITY FOR PROMOTION TO FILL A VACANCY IN THE GUARD.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States is recommended by a mandatory selection board convened under section 14101(a) or a special selection board convened under section 14502 of this title for promotion to the next higher grade, an opportunity shall be given to the appropriate authority of the State to promote that officer to fill a vacancy in the Army National Guard or the Air National Guard of that jurisdiction.

(b) AUTOMATIC FEDERAL RECOGNITION.—An officer of the Army National Guard of the United States or the Air National Guard of the United States who is on a promotion list for promotion to the next higher grade as a result of selection for promotion as described in subsection (a) and who before the date of promotion is appointed in that higher grade to fill a vacancy in the Army National Guard or Air National Guard shall—

(1) be extended Federal recognition in that grade, without the examination prescribed in section 307 of title 32; and

(2) subject to section 14311(e) of this title, be promoted to that reserve grade effective on the date of the officer's appointment in that grade in the Army National Guard or Air National Guard.

(c) NATIONAL GUARD OFFICERS FAILED OF SELECTION.—An officer who is considered as failed of selection for promotion under section 14501 of this title to a grade may be extended Federal recognition in that grade only if the Secretary of the military department concerned finds that the officer is the only qualified officer available to fill a vacancy. The Secretary concerned may not delegate the authority under the preceding sentence.

(d) TRANSFER TO ARMY RESERVE OR AIR FORCE RESERVE.—If, on the date on which an officer of the Army National Guard of the United States or of the Air National Guard of the United States who is on a promotion list as described in subsection (a) is to be promoted, the officer has not been promoted to fill a vacancy in the higher grade in the Army National Guard or the Air National Guard, the officer's Federal recognition in the officer's reserve grade shall be withdrawn and the officer shall be promoted and transferred to the Army Reserve or the Air Force Reserve as appropriate.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2944.)

§ 14317. Officers in transition to and from the active-status list or active-duty list

(a) EFFECT OF TRANSFER TO INACTIVE STATUS OR RETIRED STATUS.—If a reserve officer on the reserve active-status list is transferred to an inactive status or to a retired status after having been recommended for promotion to a higher grade under this chapter or chapter 36 of this title, or after having been found qualified for Federal recognition in the higher grade under title 32, but before being promoted, the officer—

(1) shall be treated as if the officer had not been considered and recommended for promotion by the selection board or examined and been found qualified for Federal recognition; and

(2) may not be placed on a promotion list or promoted to the higher grade after returning to an active status,

unless the officer is again recommended for promotion by a selection board convened under chapter 36 of this title or section 14101(a) or 14502 of this title or examined for Federal recognition under title 32.

(b) EFFECT OF PLACEMENT ON ACTIVE-DUTY LIST.—A reserve officer who is on a promotion list as a result of selection for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title and who before being promoted is placed on the active-

duty list of the same armed force and placed in the same competitive category shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list for officers on the active-duty list established under chapter 36 of this title.

(c) OFFICERS ON A PROMOTION LIST REMOVED FROM ACTIVE-DUTY LIST.—An officer who is on the active-duty list and is on a promotion list as the result of selection for promotion by a selection board convened under chapter 36 of this title and who before being promoted is removed from the active-duty list and placed on the reserve active-status list of the same armed force and in the same competitive category (including a regular officer who on removal from the active-duty list is appointed as a reserve officer and placed on the reserve active-status list) shall, under regulations prescribed by the Secretary of Defense, be placed on an appropriate promotion list established under this chapter.

(d) OFFICERS SELECTED FOR POSITION VACANCIES.—If a reserve officer is ordered to active duty (other than active duty for training) or full-time National Guard duty (other than full-time National Guard duty for training only) after being recommended for promotion under section 14315 of this title to fill a position vacancy or examined for Federal recognition under title 32, and before being promoted to fill that vacancy, the officer shall not be promoted while serving such active duty or full-time National Guard duty unless the officer is ordered to active duty as a member of the unit in which the vacancy exists when that unit is ordered to active duty. If, under this subsection, the name of an officer is removed from a list of officers recommended for promotion, the officer shall be treated as if the officer had not been considered for promotion or examined for Federal recognition.

(e) OFFICERS ORDERED TO ACTIVE DUTY IN TIME OF WAR OR NATIONAL EMERGENCY.—Under regulations prescribed by the Secretary of the military department concerned, a reserve officer who is not on the active-duty list and who is ordered to active duty in time of war or national emergency may, if eligible, be considered for promotion by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502 of this title for not more than two years from the date the officer is ordered to active duty unless the President suspends the operation of this section under the provisions of section 123 or 10213 of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2945; amended Pub. L. 104–106, div. A, title XV, §1501(b)(26), Feb. 10, 1996, 110 Stat. 497; Pub. L. 105–85, div. A, title X, §1073(a)(68), Nov. 18, 1997, 111 Stat. 1904.)

PRIOR PROVISIONS

Provisions similar to those in subsec. (a) of this section were contained in sections 3378, 5906, and 8378 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(1), (b)(2), (c)(1).

AMENDMENTS

1997—Subsec. (d). Pub. L. 105–85 substituted ''section 14315'' for ''section 14314''.

1996—Subsec. (e). Pub. L. 104–106 inserted heading and substituted ''123 or 10213'' for ''10213 or 644''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 741, 12009 of this title.

CHAPTER 1407—FAILURE OF SELECTION FOR PROMOTION AND INVOLUNTARY SEPARATION

Sec.

14501. Failure of selection for promotion.
14502. Special selection boards: correction of errors.
14503. Discharge of officers with less than five years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade).
14504. Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy.
14505. Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy.
14506. Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy.
14507. Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy.
14508. Removal from the reserve active-status list for years of service: reserve general and flag officers.
14509. Separation at age 60: reserve officers in grades below brigadier general or rear admiral (lower half).
14510. Separation at age 60: reserve brigadier generals and rear admirals (lower half).
14511. Separation at age 62: major generals and rear admirals.
14512. Separation at age 64: officers holding certain offices.
14513. Failure of selection for promotion: transfer, retirement, or discharge.
14514. Discharge or retirement for years of service or after selection for early removal.
14515. Discharge or retirement for age.
14516. Separation to be considered involuntary.
14517. Entitlement of officers discharged under this chapter to separation pay.
14518. Continuation of officers to complete disciplinary action.
14519. Deferment of retirement or separation for medical reasons.

AMENDMENTS

2002—Pub. L. 107–314, div. A, title V, §522(b), Dec. 2, 2002, 116 Stat. 2541, added item 14519.

2001—Pub. L. 107–107, div. A, title V, §517(b)(2)(B), Dec. 28, 2001, 115 Stat. 1094, substituted ''Failure of selection for promotion: transfer, retirement, or discharge'' for ''Separation for failure of selection of promotion'' in item 14513.

1999—Pub. L. 106–65, div. A, title V, §511(b), Oct. 5, 1999, 113 Stat. 592, added item 14518.

1996—Pub. L. 104–106, div. A, title XV, §1501(b)(27), Feb. 10, 1996, 110 Stat. 497, inserted ''reserve'' after

''Marine Corps and'' in item 14506, ''reserve'' after ''Removal from the'' in item 14507, and ''in grades'' after ''reserve officers'' in item 14509.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 12645, 12646, 12647, 14001, 14006, 14703, 14706 of this title; title 32 section 323.

§ 14501. Failure of selection for promotion

(a) OFFICERS BELOW THE GRADE OF COLONEL OR NAVY CAPTAIN.—An officer on the reserve active-status list in a grade below the grade of colonel or, in the case of an officer in the Naval Reserve, captain who is in or above the promotion zone established for that officer's grade and competitive category and who (1) is considered but not recommended for promotion (other than by a vacancy promotion board), or (2) declines to accept a promotion for which selected (other than by a vacancy promotion board), shall be considered to have failed of selection for promotion.

(b) OFFICERS TWICE FAILED OF SELECTION.—An officer shall be considered for all purposes to have twice failed of selection for promotion if any of the following applies:

(1) The officer is considered but not recommended for promotion a second time by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) of this title.

(2) The officer declines to accept a promotion for which recommended by a mandatory promotion board convened under section 14101(a) or a special selection board convened under section 14502(a) or 14502(b) of this title after previously failing of selection or after the officer's name was removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation for promotion by an earlier selection board described in subsection (a).

(3) The officer's name has been removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title after recommendation by a mandatory promotion board convened under section 14101(a) or by a special selection board convened under section 14502(a) or 14502(b) of this title and—

(A) the officer is not recommended for promotion by the next mandatory promotion board convened under section 14101(a) or special selection board convened under section 14502(a) of this title for that officer's grade and competitive category; or

(B) the officer's name is again removed from the report of a selection board under section 14111(b) or from a promotion list under section 14310 of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2946; amended Pub. L. 104–106, div. A, title XV, §1501(b)(28), Feb. 10, 1996, 110 Stat. 498.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106 inserted heading.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE

Chapter effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

CONTINUATION ON RESERVE ACTIVE-STATUS LIST OF CERTAIN RESERVE COLONELS OF ARMY AND AIR FORCE

Section 1681 of title XVI of div. A of Pub. L. 103–337 provided that:

''(a) CONTINUATION UNDER OLD LAW.—Except as provided in subsection (b), a reserve officer of the Army or the Air Force who, on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title]—

''(1) is subject to placement on the reserve active-status list of the Army or the Air Force; and

''(2)(A) holds the reserve grade of colonel, (B) is on a list of officers recommended for promotion to the reserve grade of colonel, or (C) has been nominated by the President for appointment in the reserve grade of colonel,

shall continue to be subject to mandatory transfer to the Retired Reserve or discharge from the officer's reserve appointment under section 3851 or 8851 of title 10, United States Code, as in effect on the day before the effective date of this title.

''(b) EXEMPTION.—This section does not apply to an officer who is—

''(1) sooner transferred from an active status or discharged under some other provision of law;

''(2) promoted to a higher grade, unless the officer was on a list of officers recommended for promotion to the reserve grade of colonel before the effective date of this title; or

''(3) continued on the reserve active-status list under section 14701 of title 10, United States Code, as added by this title.''

MANDATORY SEPARATION FOR AGE FOR CERTAIN RESERVE OFFICERS OF NAVY AND MARINE CORPS

Section 1690 of title XVI of div. A of Pub. L. 103–337 provided that:

''(a) SAVINGS PROVISIONS FOR REQUIRED SEPARATION AGE.—A reserve officer of the Navy or the Marine Corps—

''(1) who—

''(A) on the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title] is in an active status, and

''(B) on the day before the effective date of this title was an officer described in section 6389(e), 6397(a), 6403(a), or 6403(b) of title 10, United States Code; and

''(2) who, on or after the effective date of this title is subject to elimination from an active status under any provision of such title,

is entitled to be treated as that officer would have been treated under section 6397 or 6403 as applicable, as in effect on the day before the effective date of this title, if that treatment would result in the date for the officer's separation from an active status being a later date than the date established under the law in effect on or after the effective date of this title.

''(b) SAVINGS PROVISIONS FOR MANDATORY SEPARATION FOR AGE.—An officer who was initially appointed in the Naval Reserve or the Marine Corps Reserve before January 1, 1953, and who cannot complete 20 years of service computed under section 12732 of this title before he becomes 62 years of age, but can complete this service by the time he becomes 64 years of age, may be retained in an active status not later than the date he becomes 64 years of age.

''(c) An officer who was initially appointed in the Naval Reserve or the Marine Corps Reserve before the

effective date of this title, and who cannot complete 20 years of service computed under section 12732 of this title before he becomes 60 years of age, but can complete this service by the time he becomes 62 years of age, may be retained in an active status not later than the date he becomes 62 years of age.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14315, 14316 of this title.

§ 14502. Special selection boards: correction of errors

(a) OFFICERS NOT CONSIDERED BECAUSE OF ADMINISTRATIVE ERROR.—(1) In the case of an officer or former officer who the Secretary of the military department concerned determines was not considered for selection for promotion from in or above the promotion zone by a mandatory promotion board convened under section 14101(a) of this title because of administrative error, or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) of this title because of administrative error, the Secretary concerned shall convene a special selection board under this subsection to determine whether such officer or former officer should be recommended for promotion. Any such board shall be convened under regulations prescribed by the Secretary of Defense and shall be appointed and composed in accordance with section 14102 of this title and shall include the representation of competitive categories required by that section. The members of a board convened under this subsection shall be required to take an oath in the same manner as prescribed in section 14103 of this title.

(2) A special selection board convened under this subsection shall consider the record of the officer or former officer as that record would have appeared to the promotion board that should have considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(3) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in a grade below the grade of colonel or, in the case of an officer or former officer of the Navy, captain, whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion.

(b) OFFICERS CONSIDERED BUT NOT SELECTED; MATERIAL ERROR.—(1) In the case of an officer or former officer who was eligible for promotion and was considered for selection for promotion from in or above the promotion zone under this chapter by a selection board but was not selected, the Secretary of the military department concerned may, under regulations prescribed by the Secretary of Defense, convene a special selection board under this subsection to determine whether the officer or former officer should be recommended for promotion, if the Secretary determines that—

(A) the action of the selection board that considered the officer or former officer was contrary to law or involved material error of fact or material administrative error; or

(B) the selection board did not have before it for its consideration material information.

(2) A special selection board convened under paragraph (1) shall be appointed and composed in accordance with section 14102 of this title (including the representation of competitive categories required by that section), and the members of such a board shall take an oath in the same manner as prescribed in section 14103 of this title.

(3) Such board shall consider the record of the officer or former officer as that record, if corrected, would have appeared to the selection board that considered the officer or former officer. That record shall be compared with a sampling of the records of those officers of the same grade and competitive category who were recommended for promotion and those officers of the same grade and competitive category who were not recommended for promotion by that board.

(4) If a special selection board convened under paragraph (1) does not recommend for promotion an officer or former officer in the grade of lieutenant colonel or commander or below whose name was referred to it for consideration, the officer or former officer shall be considered to have failed of selection for promotion by the board which did consider the officer but incurs no additional failure of selection for promotion from the action of the special selection board.

(c) REPORT.—Each special selection board convened under this section shall submit to the Secretary of the military department concerned a written report, signed by each member of the board, containing the name of each officer it recommends for promotion and certifying that the board has considered carefully the record of each officer whose name was referred to it.

(d) APPLICABLE PROVISIONS.—The provisions of sections 14104, 14109, 14110, and 14111 of this title apply to the report and proceedings of a special selection board convened under this section in the same manner as they apply to the report and proceedings of a promotion board convened under section 14101(a) of this title.

(e) APPOINTMENT OF OFFICERS RECOMMENDED FOR PROMOTION.—(1) An officer whose name is placed on a promotion list as a result of recommendation for promotion by a special selection board convened under this section, shall, as soon as practicable, be appointed to the next higher grade in accordance with the law and policies which would have been applicable had he been recommended for promotion by the board which should have considered or which did consider him.

(2) An officer who is promoted to the next higher grade as the result of the recommendation of a special selection board convened under this section shall, upon such promotion, have the same date of rank, the same effective date for the pay and allowances of that grade, and the same position on the reserve active-status list as the officer would have had if the officer had been recommended for promotion to that grade by the selection board which should have considered, or which did consider, the officer.

(3) If the report of a special selection board convened under this section, as approved by the

President, recommends for promotion to the next higher grade an officer not currently eligible for promotion or a former officer whose name was referred to it for consideration, the Secretary concerned may act under section 1552 of this title to correct the military record of the officer or former officer to correct an error or remove an injustice resulting from not being selected for promotion by the board which should have considered, or which did consider, the officer.

(f) TIME LIMITS FOR CONSIDERATION.—The Secretary of Defense may prescribe by regulation the circumstances under which consideration by a special selection board is contingent upon application for consideration by an officer or former officer and time limits within which an officer or former officer must make such application in order to be considered by a special selection board under this section.

(g) LIMITATION OF OTHER JURISDICTION.—No official or court of the United States shall have power or jurisdiction—

(1) over any claim based in any way on the failure of an officer or former officer of the armed forces to be selected for promotion by a selection board convened under chapter 1403 of this title until—

(A) the claim has been referred to a special selection board by the Secretary concerned and acted upon by that board; or

(B) the claim has been rejected by the Secretary without consideration by a special selection board; or

(2) to grant any relief on such a claim unless the officer or former officer has been selected for promotion by a special selection board convened under this section to consider the officer's claim.

(h) JUDICIAL REVIEW.—(1) A court of the United States may review a determination by the Secretary concerned under subsection (a)(1), (b)(1), or (e)(3) not to convene a special selection board. If a court finds the determination to be arbitrary or capricious, not based on substantial evidence, or otherwise contrary to law, it shall remand the case to the Secretary concerned, who shall provide for consideration of the officer or former officer by a special selection board under this section.

(2) If a court finds that the action of a special selection board which considers an officer or former officer was contrary to law or involved material error of fact or material administrative error, it shall remand the case to the Secretary concerned, who shall provide the officer or former officer reconsideration by a new special selection board.

(i) DESIGNATION OF BOARDS.—The Secretary of the military department concerned may designate a promotion board convened under section 14101(a) of this title as a special selection board convened under this section. A board so designated may function in both capacities.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2947; amended Pub. L. 107–107, div. A, title V, § 505(c)(3)(B), Dec. 28, 2001, 115 Stat. 1088.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5904 of this title, prior to repeal by Pub. L. 103–337, § 1629(b)(2).

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107–107 inserted ''or whose name was not placed on an all-fully-qualified-officers list under section 14308(b)(4) of this title because of administrative error,'' after ''because of administrative error,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1558, 14108, 14301, 14304, 14308, 14312, 14316, 14317, 14501 of this title.

§ 14503. Discharge of officers with less than five years of commissioned service or found not qualified for promotion to first lieutenant or lieutenant (junior grade)

(a) AUTHORIZED DISCHARGES.—The Secretary of the military department concerned may discharge any reserve officer who—

(1) has less than five years of service in an active status as a commissioned officer; or

(2) is serving in the grade of second lieutenant or ensign and has been found not qualified for promotion to the grade of first lieutenant or lieutenant (junior grade).

(b) TIME FOR DISCHARGE.—(1) An officer described in subsection (a)(2)—

(A) may be discharged at any time after being found not qualified for promotion; and

(B) if not sooner discharged, shall be discharged at the end of the 18-month period beginning on the date on which the officer is first found not qualified for promotion.

(2) Paragraph (1) shall not apply if the officer is sooner promoted.

(c) REGULATIONS.—Discharges under this section shall be made under regulations prescribed by the Secretary of Defense and may be made without regard to section 12645 of this title.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2949.)

PRIOR PROVISIONS

Provisions similar to those in subsecs. (a) and (b) of this section were contained in sections 3819(b) and 8819(c) of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(2), (c)(2).

RIGHTS FOR OFFICERS WITH OVER THREE YEARS SERVICE

Section 1689 of title XVI of div. A of Pub. L. 103–337 provided that: ''A reserve officer of the Army, Navy, Air Force, or Marine Corps who was in an active status on the day before the effective date of this title [Oct. 1, 1996, see section 1691(b)(1), (2) of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title] and who was subject to placement of the reserve active-status list on the effective date of this title may not be discharged under section 14503 of title 10, United States Code, as added by this title, until on or after the day on which that officer completes three years of continuous service as a reserve commissioned officer.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14703 of this title.

§ 14504. Effect of failure of selection for promotion: reserve first lieutenants of the Army, Air Force, and Marine Corps and reserve lieutenants (junior grade) of the Navy

(a) GENERAL RULE.—A first lieutenant on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant (junior grade) on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(b) EXCEPTIONS.—Subsection (a) does not apply (1) in the case of an officer retained as provided by regulation of the Secretary of the military department concerned in order to meet planned mobilization needs for a period not in excess of 24 months beginning with the date on which the President approves the report of the selection board which resulted in the second failure, or (2) as provided in section 12646 or 12686 of this title.

(c) OFFICERS IN GRADE OF FIRST LIEUTENANT OR LIEUTENANT (JUNIOR GRADE) FOUND NOT FULLY QUALIFIED FOR PROMOTION.—For the purposes of this chapter, an officer of the Army, Air Force, or Marine Corps on a reserve active-status list who holds the grade of first lieutenant, and an officer of the Navy on a reserve active-status list who holds the grade of lieutenant (junior grade), shall be treated as having failed of selection for promotion if the Secretary of the military department concerned determines that the officer would be eligible for consideration for promotion to the next higher grade by a selection board convened under section 14101(a) of this title if such a board were convened but is not fully qualified for promotion when recommending for promotion under section 14308(b)(4) of this title all fully qualified officers of the officer's armed force in such grade who would be eligible for such consideration.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2950; amended Pub. L. 107–107, div. A, title V, § 505(b)(2), Dec. 28, 2001, 115 Stat. 1087.)

AMENDMENTS

2001—Subsec. (c). Pub. L. 107–107 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14513, 14703 of this title.

§ 14505. Effect of failure of selection for promotion: reserve captains of the Army, Air Force, and Marine Corps and reserve lieutenants of the Navy

Unless retained as provided in section 12646 or 12686 of this title, a captain on the reserve active-status list of the Army, Air Force, or Marine Corps or a lieutenant on the reserve active-status list of the Navy who has failed of selection for promotion to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade and who has not been selected for continuation on the reserve active-status list under section 14701 of this title, shall be separated in accordance with section 14513 of this title not later than the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2950.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14513, 14701, 14703 of this title.

§ 14506. Effect of failure of selection for promotion: reserve majors of the Army, Air Force, and Marine Corps and reserve lieutenant commanders of the Navy

Unless retained as provided in section 12646, 12686, 14701, or 14702 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of major or lieutenant commander who has failed of selection to the next higher grade for the second time and whose name is not on a list of officers recommended for promotion to the next higher grade shall, if not earlier removed from the reserve active-status list, be removed from that list in accordance with section 14513 of this title on the later of (1) the first day of the month after the month in which the officer completes 20 years of commissioned service, or (2) the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104–106, div. A, title XV, § 1501(b)(29), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106–65, div. A, title V, § 514(a), Oct. 5, 1999, 113 Stat. 593.)

AMENDMENTS

1999—Pub. L. 106–65 inserted ''the later of (1)'' after ''in accordance with section 14513 of this title on'' and '', or (2) the first day of the seventh month after the month in which the President approves the report of the board which considered the officer for the second time'' before the period at end.

1996—Pub. L. 104–106 inserted comma after ''Force'' in section catchline.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–65, div. A, title V, § 514(b), Oct. 5, 1999, 113 Stat. 593, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to removals of reserve officers from reserve active-status lists under section 14506 of title 10, United States Code, on or after the date of the enactment of this Act [Oct. 5, 1999].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14513, 14701, 14702, 14703 of this title.

§ 14507. Removal from the reserve active-status list for years of service: reserve lieutenant colonels and colonels of the Army, Air Force, and Marine Corps and reserve commanders and captains of the Navy

(a) LIEUTENANT COLONELS AND COMMANDERS.—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Navy, Air Force, or Marine Corps who holds the grade of lieutenant colonel or commander and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 28 years of commissioned service.

(b) COLONELS AND NAVY CAPTAINS.—Unless continued on the reserve active-status list under section 14701 or 14702 of this title or retained as provided in section 12646 or 12686 of this title, each reserve officer of the Army, Air Force, or Marine Corps who holds the grade of colonel, and each reserve officer of the Navy who holds the grade of captain, and who is not on a list of officers recommended for promotion to the next higher grade shall (if not earlier removed from the reserve active-status list) be removed from that list under section 14514 of this title on the first day of the month after the month in which the officer completes 30 years of commissioned service. This subsection does not apply to the adjutant general or assistant adjutants general of a State.

(c) TEMPORARY AUTHORITY TO RETAIN CERTAIN OFFICERS DESIGNATED AS JUDGE ADVOCATES.—(1) Notwithstanding the provisions of subsections (a) and (b), the Secretary of the Air Force may retain on the reserve active-status list any reserve officer of the Air Force who is designated as a judge advocate and who obtained the first professional degree in law while on an educational delay program subsequent to being commissioned through the Reserve Officers' Training Corps.

(2) No more than 50 officers may be retained on the reserve active-status list under the authority of paragraph (1) at any time.

(3) No officer may be retained on the reserve active-status list under the authority of paragraph (1) for a period exceeding three years from the date on which, but for that authority, that officer would have been removed from the reserve active-status list under subsection (a) or (b).

(4) The authority of the Secretary of the Air Force under paragraph (1) expires on September 30, 2003.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104–201, div. A, title V, §508(a), Sept. 23, 1996, 110 Stat. 2513.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–201 added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 508(b) of Pub. L. 104–201 provided that: ''Subsection (c) of section 14507 of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 1996.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 14514, 14701, 14702 of this title.

§ 14508. Removal from the reserve active-status list for years of service: reserve general and flag officers

(a) THIRTY YEARS SERVICE OR FIVE YEARS IN GRADE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve officer of the Navy in the grade of rear admiral (lower half) who has not been recommended for promotion to rear admiral shall, 30 days after completion of 30 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of brigadier general or rear admiral (lower half), whichever is later, be separated in accordance with section 14514 of this title.

(b) THIRTY-FIVE YEARS SERVICE OR FIVE YEARS IN GRADE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general, and each reserve officer of the Navy in the grade of rear admiral, shall, 30 days after completion of 35 years of commissioned service or on the fifth anniversary of the date of the officer's appointment in the grade of major general or rear admiral, whichever is later, be separated in accordance with section 14514 of this title.

(c) RETENTION OF BRIGADIER GENERALS.—A reserve officer of the Army or Air Force in the grade of brigadier general who would otherwise be removed from an active status under subsection (a) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the last day of the month in which the officer becomes 60 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(d) RETENTION OF MAJOR GENERALS.—A reserve officer of the Army or Air Force in the grade of major general who would otherwise be removed from an active status under subsection (b) may, in the discretion of the Secretary of the Army or the Secretary of the Air Force, as the case may be, be retained in an active status, but not later than the date on which the officer becomes 62 years of age. Not more than 10 officers of the Army and not more than 10 officers of the Air Force may be retained under this subsection at any one time.

(e) EXCEPTION FOR STATE ADJUTANTS GENERAL AND ASSISTANT ADJUTANTS GENERAL.—This section does not apply to an officer who is the adjutant general or assistant adjutant general of a State.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2951; amended Pub. L. 104–106, div. A, title XV, §1501(b)(30), Feb. 10,

1996, 110 Stat. 498; Pub. L. 105–85, div. A, title V, §521(b), Nov. 18, 1997, 111 Stat. 1734.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3851, 3852, 6389(f)(1), (2), 8851, and 8852 of this title, prior to repeal by Pub. L. 103–337, §§1628(4), 1629(a)(3), (c)(3).

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–85 substituted ''not later than the last day of the month in which the officer becomes 60 years of age'' for ''not later than the date on which the officer becomes 60 years of age''.

1996—Subsecs. (c), (d). Pub. L. 104–106 struck out ''this'' after ''from an active status under''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 14514, 14702 of this title.

§14509. Separation at age 60: reserve officers in grades below brigadier general or rear admiral (lower half)

Each reserve officer of the Army, Navy, Air Force, or Marine Corps in a grade below brigadier general or rear admiral (lower half) who has not been recommended for promotion to the grade of brigadier general or rear admiral (lower half) and is not a member of the Retired Reserve shall, on the last day of the month in which that officer becomes 60 years of age, be separated in accordance with section 14515 of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2952.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14515, 14701 of this title.

§14510. Separation at age 60: reserve brigadier generals and rear admirals (lower half)

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of brigadier general who has not been recommended for promotion to the grade of major general, and each reserve rear admiral (lower half) of the Navy who has not been recommended for promotion to the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 60 years of age.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2952.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3843(a) and 8843 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14512, 14515 of this title.

§14511. Separation at age 62: major generals and rear admirals

Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, each reserve officer of the Army, Air Force, or Marine Corps in the grade of major general and each reserve officer of the Navy in the grade of rear admiral, except an officer covered by section 14512 of this title, shall be separated in accordance with section 14515 of this title on the last day of the month in which the officer becomes 62 years of age.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3844 and 8844 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14512, 14515 of this title.

§14512. Separation at age 64: officers holding certain offices

(a) ARMY AND AIR FORCE.—Unless retired, transferred to the Retired Reserve, or discharged at an earlier date, a reserve officer of the Army or Air Force who is Chief of the National Guard Bureau, an adjutant general, or if a reserve officer of the Army, commanding general of the troops of a State, shall on the last day of the month in which the officer becomes 64 years of age, be separated in accordance with section 14515 of this title.

(b) NAVY AND MARINE CORPS.—The Secretary of the Navy may defer the retirement under section 14510 or 14511 of a reserve officer of the Navy in a grade above captain or a reserve officer of the Marine Corps in a grade above colonel and retain the officer in an active status until the officer becomes 64 years of age. Not more than 10 officers may be so deferred at any one time, distributed between the Naval Reserve and the Marine Corps Reserve as the Secretary determines.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3845, 6391(b), and 8845 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(3), (b)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10214, 14510, 14511, 14515 of this title.

§14513. Failure of selection for promotion: transfer, retirement, or discharge

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and whose removal from an active status or from a reserve active-status list is required by section 14504, 14505, or 14506 of this title shall (unless the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the date specified in those sections—

(1) be transferred to an inactive status if the Secretary concerned determines that the officer has skills which may be required to meet the mobilization needs of the officer's armed force;

(2) be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(3) if the officer is not transferred to an inactive status or to the Retired Reserve, be discharged from the officer's reserve appointment.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 107–107, div. A, title V, §517(b)(1), (2)(A), Dec. 28, 2001, 115 Stat. 1094.)

AMENDMENTS

2001—Pub. L. 107–107, §517(b)(2)(A), substituted ''Failure of selection for promotion: transfer, retirement, or discharge'' for ''Separation for failure of selection of promotion'' in section catchline.

Par. (2). Pub. L. 107–107, §517(b)(1), substituted ''if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve'' for '', if the officer is qualified and applies for such transfer''.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as a note under section 10154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12646, 14504, 14505, 14506, 14516, 14517, 14701 of this title.

§14514. Discharge or retirement for years of service or after selection for early removal

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status and who is required to be removed from an active status or from a reserve active-status list, as the case may be, under section 14507, 14508, 14704, or 14705 of this title (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law), in accordance with those sections, shall—

(1) be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2953; amended Pub. L. 107–107, div. A, title V, §517(c), Dec. 28, 2001, 115 Stat. 1094.)

AMENDMENTS

2001—Par. (1). Pub. L. 107–107, §517(c)(1), substituted ''if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve'' for '', if the officer is qualified and applies for such transfer''.

Par. (2). Pub. L. 107–107, §517(c)(2), added par. (2) and struck out former par. (2) which read as follows: ''if the officer is not qualified or does not apply for such transfer, be discharged from the officer's reserve appointment.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as a note under section 10154 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12646, 12683, 14507, 14508, 14516, 14517, 14701, 14704, 14705 of this title.

§14515. Discharge or retirement for age

Each reserve officer of the Army, Navy, Air Force, or Marine Corps who is in an active status or on an inactive-status list and who reaches the maximum age specified in section 14509, 14510, 14511, or 14512 of this title for the officer's grade or position shall (unless the officer is sooner separated or the officer's separation is deferred or the officer is continued in an active status under another provision of law) not later than the last day of the month in which the officer reaches that maximum age—

(1) be transferred to the Retired Reserve if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve; or

(2) be discharged from the officer's reserve appointment if the officer is not qualified for transfer to the Retired Reserve or has requested (in accordance with regulations prescribed by the Secretary concerned) not to be so transferred.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2954; amended Pub. L. 104–106, div. A, title XV, §1501(b)(31), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–107, div. A, title V, §517(d), Dec. 28, 2001, 115 Stat. 1095.)

AMENDMENTS

2001—Par. (1). Pub. L. 107–107, §517(d)(1), substituted ''if the officer is qualified for such transfer and does not request (in accordance with regulations prescribed by the Secretary concerned) not to be transferred to the Retired Reserve'' for '', if the officer is qualified and applies for such transfer''.

Par. (2). Pub. L. 107–107, §517(d)(2), added par. (2) and struck out former par. (2) which read as follows: ''if the officer is not qualified or does not apply for transfer to the Retired Reserve, be discharged from the officer's reserve appointment.''

1996—Pub. L. 104–106 substituted ''inactive-status'' for ''inactive status'' in introductory provisions.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–107 effective on the first day of the first month that begins more than 180 days after Dec. 28, 2001, see section 517(g) of Pub. L. 107–107, set out as a note under section 10154 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title

XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12683, 14509, 14510, 14511, 14512, 14516, 14517 of this title.

§ 14516. Separation to be considered involuntary

The separation of an officer pursuant to section 14513, 14514, or 14515 of this title shall be considered to be an involuntary separation for purposes of any other provision of law.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2954.)

§ 14517. Entitlement of officers discharged under this chapter to separation pay

An officer who is discharged under section 14513, 14514, or 14515 of this title is entitled to separation pay under section 1174 of this title if otherwise eligible under that section.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2954.)

§ 14518. Continuation of officers to complete disciplinary action

The Secretary concerned may delay the separation or retirement under this chapter of an officer against whom an action has been commenced with a view to trying the officer by court-martial. Any such delay may continue until the completion of the disciplinary action against the officer.

(Added Pub. L. 106–65, div. A, title V, § 511(a), Oct. 5, 1999, 113 Stat. 592.)

§ 14519. Deferment of retirement or separation for medical reasons

(a) AUTHORITY.—If, in the case of an officer required to be retired or separated under this chapter or chapter 1409 of this title, the Secretary concerned determines that the evaluation of the physical condition of the officer and determination of the officer's entitlement to retirement or separation for physical disability require hospitalization or medical observation and that such hospitalization or medical observation cannot be completed with confidence in a manner consistent with the officer's well being before the date on which the officer would otherwise be required to retire or be separated, the Secretary may defer the retirement or separation of the officer.

(b) PERIOD OF DEFERMENT.—A deferral of retirement or separation under subsection (a) may not extend for more than 30 days after the completion of the evaluation requiring hospitalization or medical observation.

(Added Pub. L. 107–314, div. A, title V, § 522(a), Dec. 2, 2002, 116 Stat. 2540.)

CHAPTER 1409—CONTINUATION OF OFFICERS ON THE RESERVE ACTIVE-STATUS LIST AND SELECTIVE EARLY REMOVAL

Sec.
14701. Selection of officers for continuation on the reserve active-status list.
14702. Retention on reserve active-status list of certain officers until age 60.
14703. Authority to retain chaplains and officers in medical specialties until specified age.
14704. Selective early removal from the reserve active-status list.
14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps.
14706. Computation of total years of service.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 12645, 12646, 12647, 14001, 14006, 14519 of this title.

§ 14701. Selection of officers for continuation on the reserve active-status list

(a) CONSIDERATION FOR CONTINUATION.—(1) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is required to be removed from the reserve active-status list under section 14505, 14506, or 14507 of this title may, subject to the needs of the service and to section 14509 of this title, be considered for continuation on the reserve active-status list by a selection board convened under section 14101(b) of this title.

(2) A reserve officer who holds the grade of captain in the Army, Air Force, or Marine Corps or the grade of lieutenant in the Navy and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 20 years of commissioned service.

(3) A reserve officer who holds the grade of major or lieutenant commander and who is subject to separation under section 14513 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 24 years of commissioned service.

(4) A reserve officer who holds the grade of lieutenant colonel or commander and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 33 years of commissioned service.

(5) A reserve officer who holds the grade of colonel in the Army, Air Force, or Marine Corps or the grade of captain in the Navy and who is subject to separation under section 14514 of this title may not be continued on the reserve active-status list under this subsection for a period which extends beyond the last day of the month in which the officer completes 35 years of commissioned service.

(6) An officer who is selected for continuation on the reserve active-status list as a result of the convening of a selection board under section 14101(b) of this title but who declines to continue on that list shall be separated in accordance with section 14513 or 14514 of this title, as the case may be.

(7) Each officer who is continued on the reserve active-status list under this section, who is not subsequently promoted or continued on the active-status list, and whose name is not on

a list of officers recommended for promotion to the next higher grade shall (unless sooner separated under another provision of law) be separated in accordance with section 14513 or 14514 of this title, as appropriate, upon the expiration of the period for which the officer was continued on the reserve active-status list.

(b) APPROVAL OF SECRETARY CONCERNED.—Continuation of an officer on the reserve active-status list under this section pursuant to action of a continuation board convened under section 14101(b) of this title is subject to the approval of the Secretary of the military department concerned.

(c) INSTRUCTIONS TO CONTINUATION BOARDS.—A continuation board convened under section 14101(b) of this title to consider officers for continuation on the reserve active-status list under this section shall act in accordance with the instructions and directions provided to the board by the Secretary of the military department concerned.

(d) REGULATIONS.—The Secretary of Defense shall prescribe regulations for the administration of this section.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2954; amended Pub. L. 106–398, §1 [[div. A], title V, §522], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

AMENDMENTS

2000—Subsec. (a)(1). Pub. L. 106–398 substituted ''A reserve officer'' for ''Upon application, a reserve officer''.

EFFECTIVE DATE

Chapter effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1558, 14101, 14505, 14506, 14507 of this title.

§14702. Retention on reserve active-status list of certain officers until age 60

(a) RETENTION.—Notwithstanding the provisions of section 14506, 14507, or 14508 of this title, the Secretary of the military department concerned may, with the officer's consent, retain on the reserve active-status list an officer in the grade of major, lieutenant colonel, colonel, or brigadier general who is—

(1) an officer of the Army National Guard of the United States and assigned to a headquarters or headquarters detachment of a State; or

(2) a reserve officer of the Army or Air Force who, as a condition of continued employment as a National Guard or Reserve technician is required by the Secretary concerned to maintain membership in a Selected Reserve unit or organization.

(b) SEPARATION AT AGE 60.—An officer may be retained under this section only so long as the officer continues to meet the conditions of subsection (a)(1) or (a)(2). An officer may not be retained under this section after the last day of the month in which the officer becomes 60 years of age.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2955; amended Pub. L. 105–85, div. A, title V, §521(a), Nov. 18, 1997, 111 Stat. 1734.)

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–85, in introductory provisions, substituted ''section 14506, 14507, or 14508'' for ''section 14506 or 14507'' and ''colonel, or brigadier general'' for ''or colonel''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14506, 14507 of this title.

§14703. Authority to retain chaplains and officers in medical specialties until specified age

(a) RETENTION.—Notwithstanding any provision of chapter 1407 of this title and except for officers referred to in sections 14503, 14504, 14505, and 14506 of this title and under regulations prescribed by the Secretary of Defense—

(1) the Secretary of the Army may, with the officer's consent, retain in an active status any reserve officer assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Services Corps (if the officer has been designated as allied health officer or biomedical sciences officer in that Corps), the Optometry Section of the Medical Services Corps, the Chaplains, the Army Nurse Corps, or the Army Medical Specialists Corps;

(2) the Secretary of the Navy may, with the officer's consent, retain in an active status any reserve officer appointed in the Medical Corps, Dental Corps, Nurse Corps, or Chaplain Corps or appointed in the Medical Services Corps and designated to perform as a veterinarian, optometrist, podiatrist, allied health officer, or biomedical sciences officer; and

(3) the Secretary of the Air Force may, with the officer's consent, retain in an active status any reserve officer who is designated as a medical officer, dental officer, Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.

(b) SEPARATION AT SPECIFIED AGE.—An officer may not be retained in active status under this section later than the date on which the officer becomes 67 years of age.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2956; amended Pub. L. 106–65, div. A, title V, §516, Oct. 5, 1999, 113 Stat. 594; Pub. L. 106–398, §1 [[div. A], title V, §523], Oct. 30, 2000, 114 Stat. 1654, 1654A–108.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3855(a), (c)(1), 6392(a), (c)(1), and 8855(a), (c)(1) of this title, prior to repeal by Pub. L. 103–337, §1629(a)(3), (b)(3), (c)(3).

AMENDMENTS

2000—Subsec. (a)(3). Pub. L. 106–398 substituted ''Air Force nurse, Medical Service Corps officer, biomedical sciences officer, or chaplain.'' for ''veterinary officer, Air Force nurse, or chaplain or who is designated as a biomedical sciences officer and is qualified for service as a veterinarian, optometrist, or podiatrist.''

1999—Subsec. (b). Pub. L. 106–65 struck out ''(or, in the case of a reserve officer of the Army in the Chaplains or a reserve officer of the Air Force designated as a chaplain, 60 years of age)'' after ''67 years of age''.

§ 14704. Selective early removal from the reserve active-status list

(a) BOARDS TO RECOMMEND OFFICERS FOR REMOVAL FROM RESERVE ACTIVE-STATUS LIST.—Whenever the Secretary of the military department concerned determines that there are in any reserve component under the jurisdiction of the Secretary too many officers in any grade and competitive category who have at least 30 years of service computed under section 14706 of this title or at least 20 years of service computed under section 12732 of this title, the Secretary may convene a selection board under section 14101(b) of this title to consider all officers on that list who are in that grade and competitive category, and who have that amount of service, for the purpose of recommending officers by name for removal from the reserve active-status list, in the number specified by the Secretary by each grade and competitive category.

(b) SEPARATION OF OFFICERS SELECTED.—In the case of an officer recommended for separation in the report of a board under subsection (a), the Secretary may separate the officer in accordance with section 14514 of this title.

(c) REGULATIONS.—The Secretary of the military department concerned shall prescribe regulations for the administration of this section.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2956.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3850 and 8850 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(3), (c)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1558, 14101, 14514 of this title.

§ 14705. Selective early retirement: reserve general and flag officers of the Navy and Marine Corps

(a) AUTHORITY TO CONSIDER.—An officer in the Naval Reserve in an active status serving in the grade of rear admiral (lower half) or rear admiral and an officer in the Marine Corps Reserve in an active status serving in the grade of brigadier general or major general may be considered for early retirement whenever the Secretary of the Navy determines that such action is necessary.

(b) BOARDS.—(1) If the Secretary of the Navy determines that consideration of officers for early retirement under this section is necessary, the Secretary shall convene a continuation board under section 14101(b) of this title to recommend an appropriate number of officers for early retirement.

(2) In the case of such a board convened to consider officers in the grade of rear admiral or major general, the Secretary of the Navy may appoint the board without regard to section 14102(b) of this title. In doing so, however, the Secretary shall ensure that—

(A) each regular commissioned officer appointed to the board holds a grade higher than the grade of rear admiral or major general; and

(B) at least one member of the board is a reserve officer who holds the grade of rear admiral or major general.

(c) SEPARATION UNDER SECTION 14514.—An officer selected for early retirement under this section shall be separated in accordance with section 14514 of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2957; amended Pub. L. 105–261, div. A, title V, §515, Oct. 17, 1998, 112 Stat. 2008.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 6389(f)(3) of this title, prior to repeal by Pub. L. 103–337, §1628(4).

AMENDMENTS

1998—Subsec. (b). Pub. L. 105–261 designated existing provisions as par. (1), inserted ''of officers'' after ''consideration'' and ''continuation'' after ''shall convene a'', and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1558, 14101, 14514 of this title.

§ 14706. Computation of total years of service

(a) For the purpose of this chapter and chapter 1407 of this title, a Reserve officer's years of service include all service of the officer as a commissioned officer of a uniformed service other than the following:

(1) Service as a warrant officer.

(2) Constructive service.

(3) Service after appointment as a commissioned officer of a reserve component while in a program of advanced education to obtain the first professional degree required for appointment, designation, or assignment to a professional specialty, but only if that service occurs before the officer commences initial service on active duty or initial service in the Ready Reserve in the specialty that results from such a degree.

(b) The exclusion under subsection (a)(3) does not apply to service performed by an officer who previously served on active duty or participated as a member of the Ready Reserve in other than a student status for the period of service preceding the member's service in a student status.

(c) For purposes of subsection (a)(3), an officer shall be considered to be in a professional specialty if the officer is appointed or assigned to the Medical Corps, the Dental Corps, the Veterinary Corps, the Medical Service Corps, the Nurse Corps, or the Army Medical Specialists Corps or is designated as a chaplain or judge advocate.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2957; amended Pub. L. 106–65, div. A, title V, §515, Oct. 5, 1999, 113 Stat. 594.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3853 and 8853 of this title, prior to repeal by Pub. L. 103–337, §1629(a)(3), (c)(3).

AMENDMENTS

1999—Pub. L. 106–65 amended text generally. Prior to amendment, text read as follows: ''For the purpose of this chapter and chapter 1407 of this title, a reserve officer's years of service include all service, other than

constructive service, of the officer as a commissioned officer of any uniformed service (other than service as a warrant officer).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14704 of this title.

CHAPTER 1411—ADDITIONAL PROVISIONS RELATING TO INVOLUNTARY SEPARATION

Sec.
14901. Separation of chaplains for loss of professional qualifications.
14902. Separation for substandard performance and for certain other reasons.
14903. Boards of inquiry.
14904. Rights and procedures.
14905. Officer considered for removal: retirement or discharge.
14906. Officers eligible to serve on boards.
14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 617, 12645, 14001, 14006 of this title; title 32 section 323.

§ 14901. Separation of chaplains for loss of professional qualifications

(a) SEPARATION.—Under regulations prescribed by the Secretary of Defense, an officer on the reserve active-status list who is appointed or designated as a chaplain may, if the officer fails to maintain the qualifications needed to perform the professional function of a chaplain, be discharged. The authority under the preceding sentence applies without regard to the provisions of section 12645 of this title.

(b) EFFECT OF SEPARATION.—If an officer separated under this section is eligible for retirement, the officer may be retired. If the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title, the officer may be transferred to the Retired Reserve.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2957.)

EFFECTIVE DATE

Chapter effective Oct. 1, 1996, see section 1691(b)(1) of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12683 of this title.

§ 14902. Separation for substandard performance and for certain other reasons

(a) SUBSTANDARD PERFORMANCE OF DUTY.—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because that officer's performance has fallen below standards prescribed by the Secretary concerned, to show cause for retention in an active status.

(b) MISCONDUCT, ETC.—The Secretary of the military department concerned shall prescribe, by regulation, procedures for the review at any time of the record of any reserve officer to determine whether that officer should be required, because of misconduct, because of moral or professional dereliction, or because the officer's retention is not clearly consistent with the interests of national security, to show cause for retention in an active status.

(c) REGULATIONS.—The authority of the Secretary of a military department under this section shall be carried out subject to such limitations as the Secretary of Defense may prescribe by regulation.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2958.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14109, 14903, 14904, 14905 of this title.

§ 14903. Boards of inquiry

(a) CONVENING OF BOARDS.—The Secretary of the military department concerned shall convene a board of inquiry at such time and place as the Secretary may prescribe to receive evidence and review the case of any officer who has been required to show cause for retention in an active status under section 14902 of this title. Each board of inquiry shall be composed of not less than three officers who have the qualifications prescribed in section 14906 of this title.

(b) RIGHT TO FAIR HEARING.—A board of inquiry shall give a fair and impartial hearing to each officer required under section 14902 of this title to show cause for retention in an active status.

(c) RECOMMENDATIONS TO SECRETARY.—If a board of inquiry determines that the officer has failed to establish that the officer should be retained in an active status, the board shall recommend to the Secretary concerned that the officer not be retained in an active status.

(d) ACTION BY SECRETARY.—After review of the recommendation of the board of inquiry, the Secretary may—

(1) remove the officer from an active status; or

(2) determine that the case be closed.

(e) ACTION IN CASES WHERE CAUSE FOR RETENTION IS ESTABLISHED.—(1) If a board of inquiry determines that an officer has established that the officer should be retained in an active status or if the Secretary determines that the case be closed, the officer's case is closed.

(2) An officer who is required to show cause for retention under section 14902(a) of this title and whose case is closed under paragraph (1) may not again be required to show cause for retention under such subsection during the one-year period beginning on the date of that determination.

(3)(A) Subject to subparagraph (B), an officer who is required to show cause for retention under section 14902(b) of this title and whose case is closed under paragraph (1) may again be required to show cause for retention at any time.

(B) An officer who has been required to show cause for retention under section 14902(b) of this title and who is thereafter retained in an active

status may not again be required to show cause for retention under such section solely because of conduct which was the subject of the previous proceeding, unless the recommendations of the board of inquiry that considered the officer's case are determined to have been obtained by fraud or collusion.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2958; amended Pub. L. 104–106, div. A, title XV, §1501(b)(32), Feb. 10, 1996, 110 Stat. 498.)

AMENDMENTS

1996—Subsec. (b). Pub. L. 104–106 substituted ''title'' for ''chapter''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14311, 14905 of this title.

§ 14904. Rights and procedures

(a) PROCEDURAL RIGHTS.—Under regulations prescribed by the Secretary of Defense, an officer required under section 14902 of this title to show cause for retention in an active status—

(1) shall be notified in writing, at least 30 days before the hearing of the officer's case by a board of inquiry, of the reasons for which the officer is being required to show cause for retention in an active status;

(2) shall be allowed a reasonable time, as determined by the board of inquiry, to prepare for showing of cause for retention in an active status;

(3) shall be allowed to appear in person and to be represented by counsel at proceedings before the board of inquiry; and

(4) shall be allowed full access to, and shall be furnished copies of, records relevant to the case, except that the board of inquiry shall withhold any record that the Secretary concerned determines should be withheld in the interest of national security.

(b) SUMMARY OF RECORDS WITHHELD.—When a record is withheld under subsection (a)(4), the officer whose case is under consideration shall, to the extent that the interest of national security permits, be furnished a summary of the record so withheld.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2959.)

§ 14905. Officer considered for removal: retirement or discharge

(a) VOLUNTARY RETIREMENT OR DISCHARGE.—At any time during proceedings under this chapter with respect to the removal of an officer from an active status, the Secretary of the military department concerned may grant a request by the officer—

(1) for voluntary retirement, if the officer is qualified for retirement;

(2) for transfer to the Retired Reserve if the officer has completed the years of service required for eligibility for retired pay under chapter 1223 of this title and is otherwise eligible for transfer to the Retired Reserve; or

(3) for discharge in accordance with subsection (b)(3).

(b) REQUIRED RETIREMENT OR DISCHARGE.—An officer removed from an active status under section 14903 of this title shall—

(1) if eligible for voluntary retirement under any provision of law on the date of such removal, be retired in the grade and with the retired pay for which he would be eligible if retired under that provision;

(2) if eligible for transfer to the Retired Reserve and has completed the years of service required for retired pay under chapter 1223 of this title, be transferred to the Retired Reserve; and

(3) if ineligible for retirement or transfer to the Retired Reserve under paragraph (1) or (2) on the date of such removal—

(A) be honorably discharged in the grade then held, in the case of an officer whose case was brought under subsection (a) of section 14902 of this title; or

(B) be discharged in the grade then held, in the case of an officer whose case was brought under subsection (b) of section 14902 of this title.

(c) SEPARATION PAY.—An officer who is discharged under subsection (b)(3) is entitled, if eligible therefor, to separation pay under section 1174(c) of this title.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2959.)

§ 14906. Officers eligible to serve on boards

(a) COMPOSITION OF BOARDS.—Each board convened under this chapter shall consist of officers appointed as follows:

(1) Each member of the board shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

(2) Each member of the board shall hold a grade above major or lieutenant commander, except that at least one member of the board shall hold a grade above lieutenant colonel or commander.

(3) Each member of the board shall be senior in grade to any officer to be considered by the board.

(b) LIMITATION.—A person may not be a member of more than one board convened under this chapter to consider the same officer.

(Added Pub. L. 103–337, div. A, title XVI, §1611, Oct. 5, 1994, 108 Stat. 2960; amended Pub. L. 106–65, div. A, title V, §504(b), Oct. 5, 1999, 113 Stat. 591.)

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65 amended heading and text generally. Prior to amendment, text read as follows:

''(1) Each officer who serves on a board convened under this chapter shall be an officer of the same armed force as the officer being required to show cause for retention in an active status.

''(2) An officer may not serve on a board under this chapter unless the officer holds a grade above lieuten-

ant colonel or commander and is senior in grade and rank to any officer considered by the board.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14903 of this title.

§ 14907. Army National Guard of the United States and Air National Guard of the United States: discharge and withdrawal of Federal recognition of officers absent without leave

(a) AUTHORITY TO WITHDRAW FEDERAL RECOGNITION.—If an officer of the Army National Guard of the United States or the Air National Guard of the United States has been absent without leave for three months, the Secretary of the Army or the Secretary of the Air Force, as appropriate, may—

(1) terminate the reserve appointment of the officer; and

(2) withdraw the officer's Federal recognition as an officer of the National Guard.

(b) DISCHARGE FROM RESERVE APPOINTMENT.—An officer of the Army National Guard of the United States or the Air National Guard of the United States whose Federal recognition as an officer of the National Guard is withdrawn under section 323(b) of title 32 shall be discharged from the officer's appointment as a reserve officer of the Army or the Air Force, as the case may be.

(Added Pub. L. 103–337, div. A, title XVI, § 1611, Oct. 5, 1994, 108 Stat. 2960.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in sections 3820(a), (b) and 8820 of this title, prior to repeal by Pub. L. 103–337, § 1629(a)(2), (c)(2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12683 of this title.

PART IV—TRAINING FOR RESERVE COMPONENTS AND EDUCATIONAL ASSISTANCE PROGRAMS

Chap.		Sec.
1601.	Training Generally. [No present sections]	
1606.	Educational Assistance for Members of the Selected Reserve	16131
1608.	Health Professions Stipend Program	16201
1609.	Education Loan Repayment Programs	16301
1611.	Other Educational Assistance Programs	16401

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 551(a)(2), Oct. 5, 1999, 113 Stat. 614, added item for chapter 1611.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(1), Feb. 10, 1996, 110 Stat. 495, substituted ''Repayment Programs'' for ''Repayments'' in item for chapter 1609.

CHAPTER 1601—TRAINING GENERALLY

[No present sections]

CHAPTER 1606—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

Sec.
16131. Educational assistance program: establishment; amount.
16132. Eligibility for educational assistance.
16133. Time limitation for use of entitlement.
16134. Termination of assistance.
16135. Failure to participate satisfactorily; penalties.
16136. Administration of program.
16137. Biennial report to Congress.

AMENDMENTS

1999—Pub. L. 106–65, div. A, title V, § 548(b), Oct. 5, 1999, 113 Stat. 609, substituted ''Biennial report to Congress'' for ''Reports to Congress'' in item 16137.

1996—Pub. L. 104–106, div. A, title XV, § 1501(b)(33), Feb. 10, 1996, 110 Stat. 498, substituted ''limitation'' for ''limitations'' in item 16133.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 510, 2006, 2131 of this title; title 20 section 6674; title 26 section 25A; title 38 sections 3485, 3695.

§ 16131. Educational assistance program: establishment; amount

(a) To encourage membership in units of the Selected Reserve of the Ready Reserve, the Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security, under regulations prescribed by the Secretary with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program to provide educational assistance to members of the Selected Reserve of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned who agree to remain members of the Selected Reserve for a period of not less than six years.

(b)(1) Except as provided in subsections (d) through (f), each educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, to each person entitled to educational assistance under this chapter who is pursuing a program of education of an educational assistance allowance at the following rates:

(A) $251 (as increased from time to time under paragraph (2)) per month for each month of full-time pursuit of a program of education;

(B) $188 (as increased from time to time under paragraph (2)) per month for each month of three-quarter-time pursuit of a program of education;

(C) $125 (as increased from time to time under paragraph (2)) per month for each month of half-time pursuit of a program of education; and

(D) an appropriately reduced rate, as determined under regulations which the Secretary of Veterans Affairs shall prescribe, for each month of less than half-time pursuit of a program of education, except that no payment may be made to a person for less than half-time pursuit if tuition assistance is otherwise available to the person for such pursuit from the military department concerned.

(2) With respect to any fiscal year, the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1) equal to the percentage by which—

(A) the Consumer Price Index (all items, United States city average) for the 12-month

period ending on the June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).

(c)(1) Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

(2) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any person under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

(d)(1) Except as provided in paragraph (2), the amount of the monthly educational assistance allowance payable to a person pursuing a full-time program of apprenticeship or other on-the-job training under this chapter is—

(A) for each of the first six months of the person's pursuit of such program, 75 percent of the monthly educational assistance allowance otherwise payable to such person under this chapter;

(B) for each of the second six months of the person's pursuit of such program, 55 percent of such monthly educational assistance allowance; and

(C) for each of the months following the first 12 months of the person's pursuit of such program, 35 percent of such monthly educational assistance allowance.

(2) In any month in which any person pursuing a program of education consisting of a program of apprenticeship or other on-the-job training fails to complete 120 hours of training, the amount of the monthly educational assistance allowance payable under this chapter to the person shall be limited to the same proportion of the applicable full-time rate as the number of hours worked during such month, rounded to the nearest 8 hours, bears to 120 hours.

(3)(A) Except as provided in subparagraph (B), for each month that such person is paid a monthly educational assistance allowance under this chapter, the person's entitlement under this chapter shall be charged at the rate of—

(i) 75 percent of a month in the case of payments made in accordance with paragraph (1)(A);

(ii) 55 percent of a month in the case of payments made in accordance with paragraph (1)(B); and

(iii) 35 percent of a month in the case of payments made in accordance with paragraph (1)(C).

(B) Any such charge to the entitlement shall be reduced proportionately in accordance with the reduction in payment under paragraph (2).

(e)(1)(A) The amount of the educational assistance allowance payable under this chapter to a person who enters into an agreement to pursue, and is pursuing, a program of education exclusively by correspondence is an amount equal to 55 percent of the established charge which the institution requires nonveterans to pay for the course or courses pursued by such person.

(B) For purposes of subparagraph (A), the term ''established charge'' means the lesser of—

(i) the charge for the course or courses determined on the basis of the lowest extended time payment plan offered by the institution and approved by the appropriate State approving agency; or

(ii) the actual charge to the person for such course or courses.

(C) Such allowance shall be paid quarterly on a pro rata basis for the lessons completed by the person and serviced by the institution.

(2) In each case in which the amount of educational assistance is determined under paragraph (1), the period of entitlement of the person concerned shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to the individual as an educational assistance allowance.

(f)(1) Each individual who is pursuing a program of education consisting exclusively of flight training approved as meeting the requirements of section 16136(c) of this title shall be paid an educational assistance allowance under this chapter in the amount equal to 60 percent of the established charges for tuition and fees which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No educational assistance allowance may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of

the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The period of entitlement of an individual pursuing a program of education described in paragraph (1) shall be charged with one month for each amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned which is paid to that individual as an educational assistance allowance for such program.

(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.

(g)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

(i) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving individualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed $100 for any month, nor aggregate more than $1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of $600.

(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.

(h) A program of education in a course of instruction beyond the baccalaureate degree level shall be provided under this chapter, subject to the availability of appropriations.

(i)(1) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under subparagraphs (A) through (D) of subsection (b)(1) as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $350 per month.

(2) In the case of a person who has a skill or specialty designated by the Secretary concerned as a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit or, in the case of critical units, retain personnel, who is eligible for educational benefits under chapter 30 (other than section 3012) of title 38 and who meets the eligibility criteria specified in subparagraphs (A) and (B) of section 16132(a)(1) of this title, the Secretary concerned may increase the rate of the educational assistance allowance applicable to that person to such rate in excess of the rate prescribed under section 3015 of title 38 as the Secretary of Defense considers appropriate, but the amount of any such increase may not exceed $350 per month.

(3) The authority provided by paragraphs (1) and (2) shall be exercised by the Secretaries concerned under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 95–79, title IV, § 402(a), July 30, 1977, 91 Stat. 328, § 2131; amended Pub. L. 96–107, title IV, § 402(a), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96–342, title IX, § 906(a)(1), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 96–513, title V, § 511(68), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100–689, title I, §§ 110(a), 111(b)(1), Nov. 18, 1988, 102 Stat. 4170, 4172; Pub. L. 101–189, div. A, title VI, §§ 642(a), (b), 645(a)(1), (b)(1), Nov. 29, 1989, 103 Stat. 1456, 1458; Pub. L. 101–237, title IV, § 422(b)(2), Dec. 18, 1989, 103 Stat. 2089; Pub. L. 102–25, title III, § 337(b), Apr. 6, 1991, 105 Stat. 90; Pub. L. 102–127, § 2(d), Oct. 10, 1991, 105 Stat. 621; Pub. L. 102–568, title III, §§ 301(b), (d), 310(b), 318, 320(a)(1), Oct. 29, 1992, 106 Stat. 4326, 4330, 4334, 4335; Pub. L. 103–66, title XII, § 12009(b), Aug. 10, 1993, 107 Stat. 416; Pub. L. 103–160, div. A, title V, § 518, Nov. 30, 1993, 107 Stat. 1651; renumbered § 16131 and amended Pub. L. 103–337, div. A, title XVI, § 1663(b)(2), (3), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104–106, div. A, title X, § 1076, Feb. 10, 1996, 110 Stat. 450; Pub. L. 104–275, title I, § 105(d), Oct. 9, 1996, 110 Stat. 3327;

Pub. L. 105–85, div. A, title V, § 553(a), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105–178, title VIII, § 8203(b)(1)–(3), June 9, 1998, 112 Stat. 493, 494; Pub. L. 106–65, div. A, title X, § 1066(a)(33), Oct. 5, 1999, 113 Stat. 772; Pub. L. 107–296, title XVII, § 1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (b)(1). Pub. L. 106–65 inserted ''in'' after ''Except as provided'' in introductory provisions.

1998—Subsec. (b)(1). Pub. L. 105–178, § 8203(b)(3), struck out ''in paragraph (2) and'' after ''Except as provided'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 105–178, § 8203(b)(1)(A), substituted ''$251 (as increased from time to time under paragraph (2))'' for ''$190''.

Subsec. (b)(1)(B). Pub. L. 105–178, § 8203(b)(1)(B), substituted ''$188 (as increased from time to time under paragraph (2))'' for ''$143''.

Subsec. (b)(1)(C). Pub. L. 105–178, § 8203(b)(1)(C), substituted ''$125 (as increased from time to time under paragraph (2))'' for ''$95''.

Subsec. (b)(2). Pub. L. 105–178, § 8203(b)(2), in introductory provisions, substituted '', the Secretary shall provide a percentage increase (rounded to the nearest dollar) in the rates payable under subparagraphs (A), (B), and (C) of paragraph (1)'' for ''beginning on or after October 1, 1994, the Secretary shall continue to pay, in lieu of the rates payable under subparagraphs (A), (B), and (C) of paragraph (1), the monthly rates payable under this paragraph for the previous fiscal year and shall provide, for any such fiscal year, a percentage increase in such rates''.

1997—Subsec. (c)(3)(B)(i). Pub. L. 105–85 struck out '', in connection with the Persian Gulf War,'' after ''being ordered''.

1996—Subsec. (b)(1). Pub. L. 104–275, § 105(d)(2), substituted ''(f)'' for ''(g)''.

Subsecs. (e) to (i). Pub. L. 104–275, § 105(d)(1), redesignated subsecs. (f) to (j) as (e) to (i), respectively, and struck out former subsec. (e) which read as follows:

''(e)(1) The amount of the monthly educational assistance allowance payable to a person pursuing a cooperative program under this chapter shall be 80 percent of the monthly allowance otherwise payable to such person under this chapter.

''(2) For each month that a person is paid a monthly educational assistance allowance for pursuit of a cooperative program under this chapter, the person's entitlement under this chapter shall be charged at the rate of 80 percent of a month.''

Subsec. (j). Pub. L. 104–275, § 105(d)(1), redesignated subsec. (j) as (i).

Pub. L. 104–106 added subsec. (j).

1994—Pub. L. 103–337, § 1663(b)(2), renumbered section 2131 of this title as this section.

Subsec. (c)(3)(B)(i). Pub. L. 103–337, § 1663(b)(3)(A), substituted ''12301(a), 12301(d), 12301(g), 12302, or 12304'' for ''672(a), (d), or (g), 673, or 673b''.

Subsec. (g)(1). Pub. L. 103–337, § 1663(b)(3)(B), substituted ''16136(c)'' for ''2136(c)''.

1993—Subsec. (b)(2). Pub. L. 103–66 struck out subpar. (A), struck out subpar. (B) designation before ''With respect to'', redesignated former cls. (i) and (ii) as subpars. (A) and (B), respectively, and in subpar. (B) substituted ''subparagraph (A)'' for ''clause (i)''. Prior to amendment, subpar. (A) read as follows: ''With respect to the fiscal year beginning on October 1, 1993, the Secretary shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1) equal to the percentage by which the Consumer Price Index (all items, United States city average, published by the Bureau of Labor Statistics) for the 12-month period ending June 30, 1993, exceeds such Consumer Price Index for the 12-month period ending June 30, 1992.''

Subsec. (c)(1). Pub. L. 103–160, § 518(1), struck out ''other than a program of education in a course of instruction beyond the baccalaureate degree level'' after ''title 38''.

Subsec. (i). Pub. L. 103–160, § 518(2), added subsec. (i).

1992—Subsec. (b)(1). Pub. L. 102–568, § 301(b), substituted ''$190'' for ''$140'' in subpar. (A), ''$143'' for ''$105'' in subpar. (B), and ''$95'' for ''$70'' in subpar. (C).

Subsec. (b)(2)(A). Pub. L. 102–568, § 301(d)(1), (2), redesignated subpar. (B) as (A), substituted ''shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1)'' for ''may continue to pay, in lieu of the rates payable under subparagraphs (A), (B), and (C) of paragraph (1), the monthly rates payable under subparagraph (A) of this paragraph and may provide a percentage increase in such rates'', and struck out former subpar. (A) which read as follows: ''During the period beginning on October 1, 1991, and ending on September 30, 1993, the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1) shall be $170, $128, and $85, respectively.''

Subsec. (b)(2)(B), (C). Pub. L. 102–568, § 301(d)(3), redesignated subpar. (C) as (B) and substituted ''shall continue'' for ''may continue'' and ''shall provide'' for ''may provide'' in introductory provisions. Former subpar. (B) redesignated (A).

Subsec. (c)(2). Pub. L. 102–568, § 320(a)(1)(A), substituted ''section 3695 of title 38'' for ''section 1795 of title 38''.

Subsec. (c)(3)(B)(ii). Pub. L. 102–568, § 320(a)(1)(B), substituted '', the individual's'' for ''of this subparagraph, his or her''.

Subsec. (c)(3)(C). Pub. L. 102–568, § 320(a)(1)(C), struck out ''of this paragraph'' after ''subparagraph (B)(ii)''.

Subsec. (g)(1). Pub. L. 102–568, § 310(b)(1), struck out ''(other than tuition and fees charged for or attributable to solo flying hours)'' after ''tuition and fees''.

Subsec. (g)(4). Pub. L. 102–568, § 310(b)(2), added par. (4).

Subsec. (h). Pub. L. 102–568, § 318, added subsec. (h).

1991—Subsec. (b). Pub. L. 102–25, § 337(b)(1), designated existing provisions as par. (1) and substituted ''Except as provided in paragraph (2) and'' for ''Except as provided in'', redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2).

Subsec. (c)(3). Pub. L. 102–127 added par. (3).

Subsecs. (f)(2), (g)(3). Pub. L. 102–25, § 337(b)(2), (3), substituted ''amount equal to the amount of the monthly rate payable under subsection (b)(1)(A) for the fiscal year concerned'' for ''$140''.

1989—Subsec. (b). Pub. L. 101–237, § 422(b)(2)(A), in introductory provisions, substituted ''subsections (d) through (g)'' for ''subsections (d) through (f)''.

Pub. L. 101–189, § 645(b)(1), in introductory provisions, substituted ''of an educational assistance allowance'' for ''and educational assistance allowance''.

Pub. L. 101–189, § 642(b)(1), in introductory provisions, substituted ''Except as provided in subsections (d) through (f), each'' for ''Each'' and inserted '', through the Secretary of Veterans Affairs,'' after ''Secretary concerned''.

Subsec. (b)(4). Pub. L. 101–189, § 645(a)(1), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (c)(1). Pub. L. 101–189, § 642(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Educational assistance may only be provided under this chapter for pursuit of a program of education at an institution of higher learning and may not be provided to a person after the person has completed a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study.''

Subsecs. (d) to (f). Pub. L. 101–189, § 642(b)(2), added subsecs. (d) to (f).

Subsec. (g). Pub. L. 101–237, § 422(b)(2)(B), added subsec. (g).

1988—Subsec. (b)(4). Pub. L. 100–689, § 110(a), added par. (4).

Subsec. (c)(2). Pub. L. 100–689, § 111(b)(1), inserted ''(or the equivalent thereof in part-time educational assistance)'' before period at end.

1984—Pub. L. 98–525 amended section generally, substituting a schedule of payments at stated monthly rates for full-time, three-quarter-time, and half-time pursuit of an education program for former provisions which had set a maximum for any one member of $1,000 for any twelve-month period and $4,000 for the total assistance to any one member.

1980—Subsec. (a). Pub. L. 96–513, § 511(68)(A), substituted ''armed forces'' for ''armed force''.

Subsec. (b)(2). Pub. L. 96–513, § 511(68)(B), inserted ''of this title'' after ''2132''.

Subsec. (c). Pub. L. 96–342 substituted ''$1,000'' for ''$500'' and ''$4,000'' for ''$2,000''.

Subsec. (d). Pub. L. 96–513, § 511(68)(C), substituted ''Secretary of Education'' for ''Commissioner of Education, Department of Health, Education, and Welfare''.

1979—Subsec. (b)(1). Pub. L. 96–107 substituted ''100 percent'' for ''50 percent''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–178, title VIII, § 8203(b)(4), June 9, 1998, 112 Stat. 494, provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1998, and shall apply with respect to educational assistance allowances paid for months after September 1998. However, no adjustment in rates of educational assistance shall be made under paragraph (2) of section 16131(b) of title 10, United States Code, as amended by paragraph (2), for fiscal year 1999.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 301(e) of Pub. L. 102–568 provided that:

''(1) The amendments made by this section [amending this section and section 3015 of Title 38, Veterans' Benefits] shall take effect on April 1, 1993.

''(2) The amendments made by this section shall not be construed to change the account from which payment is made for that portion of a payment under chapter 30 of title 38, United States Code, or chapter 106 [now 1606] of title 10, United States Code, which is a Montgomery GI bill rate increase and a title III benefit is paid. For the purposes of this subsection, the terms 'Montgomery GI bill rate increase' and 'title III benefit' have the meanings provided in section 393 of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 [Pub. L. 102–25] (105 Stat. 99).''

Section 310(d) of Pub. L. 102–568 provided that: ''The amendments made by this section [amending this section and sections 3032 and 3231 of Title 38] shall apply to flight training received under chapters 30 and 32 of title 38, United States Code, and chapter 106 [now 1606] of title 10, United States Code, after September 30, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 422(d) of Pub. L. 101–237 provided that: ''The amendments made by this section [amending this section, section 2136 [now 16136] of this title, and sections 1432 [now 3032] and 1434 [now 3034] of Title 38, Veterans' Benefits] shall take effect on September 30, 1990.''

Section 642(d) of Pub. L. 101–189 provided that: ''The amendments made by this section [amending this section and section 2136 [now 16136] of this title] shall apply with respect to any person who after September 30, 1990, meets the requirements set forth in subparagraph (A) or (B) of section 2132(a)(1) [now 16132(a)(1)(A), (B)] of title 10, United States Code.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 705(b) of Pub. L. 98–525 provided that: ''The amendments made by this section [amending this chapter] shall take effect on July 1, 1985, and shall apply only to members of the Armed Forces who qualify for educational assistance under chapter 106 of title 10, United States Code, as amended by subsection (a), on or after such date.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

Section 906(a)(2) of Pub. L. 96–342 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1980.''

EFFECTIVE DATE OF 1979 AMENDMENT

Section 402(c) of Pub. L. 96–107 provided that: ''The amendments made by this section [amending sections 2131 and 2133 [now 16131 and 16133] of this title] shall apply only to individuals enlisting in the Reserves after September 30, 1979.''

1995 COST-OF-LIVING ADJUSTMENT IN RATES OF EDUCATIONAL ASSISTANCE

Section 12009(c) of Pub. L. 103–66 provided that: ''The fiscal year 1995 cost-of-living adjustments in the rates of educational assistance payable under chapter 30 of title 38, United States Code, and under chapter 106 [now 1606] of title 10, United States Code, shall be the percentage equal to 50 percent of the percentage by which such assistance would be increased under section 3015(g) of title 38, and under section 2131(b)(2) [now 16131(b)(2)] of title 10, United States Code, respectively, but for this section [amending this section and section 3015 of Title 38, Veterans' Benefits, and enacting provisions set out as a note under section 3015 of Title 38].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2131, 16132, 16135 of this title.

§ 16132. Eligibility for educational assistance

(a) A person who—

(1) after June 30, 1985—

(A) enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve for a period of not less than six years; or

(B) is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject; and

(2) before applying for benefits under this section, has completed the requirements of a secondary school diploma (or an equivalency certificate);

is entitled to educational assistance under section 16131 of this title.

(b) Educational assistance may not be provided to a member under this chapter until the member has completed the initial period of active duty for training required of the member.

(c) Each person who becomes entitled to educational assistance under subsection (a) shall at the time the person becomes so entitled be given a statement in writing summarizing the provisions of this chapter and stating clearly and

prominently the substance of sections 16134 and 16135 of this title as such sections may apply to the person. At the request of the Secretary of Veterans Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to that Secretary.

(d) A person who serves in the Selected Reserve may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall elect (in such form and manner as the Secretary of Veterans Affairs may prescribe) the program to which such service is to be credited. However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(a)(1)(B) of this title.

(Added Pub. L. 95–79, title IV, §402(a), July 30, 1977, 91 Stat. 329, §2132; amended Pub. L. 95–485, title IV, §402(a), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96–513, title V, §511(69), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2565; Pub. L. 100–48, §4, June 1, 1987, 101 Stat. 331; Pub. L. 100–689, title I, §§110(b), 111(b)(2)–(4), Nov. 18, 1988, 102 Stat. 4170, 4173; Pub. L. 101–189, div. A, title VI, §§643(a), 645(a), (b)(2), Nov. 29, 1989, 103 Stat. 1458; Pub. L. 102–25, title VII, §701(f)(6), Apr. 6, 1991, 105 Stat. 115; renumbered §16132 and amended Pub. L. 103–337, div. A, title XVI, §1663(b)(2), (4), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104–106, div. A, title XV, §1501(b)(34), Feb. 10, 1996, 110 Stat. 498; Pub. L. 106–419, title I, §102(d), Nov. 1, 2000, 114 Stat. 1825.)

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–419 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''before completing initial active duty for training has completed the requirements of a secondary school diploma (or an equivalency certificate), or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension;''.

1996—Subsec. (c). Pub. L. 104–106 substituted ''sections 16134'' for ''section 16134''.

1994—Pub. L. 103–337, §1663(b)(2), renumbered section 2132 of this title as this section.

Subsec. (a). Pub. L. 103–337, §1663(b)(4)(A), substituted ''16131'' for ''2131'' in concluding provisions.

Subsec. (c). Pub. L. 103–337, §1663(b)(4)(B), substituted ''section 16134 and 16135'' for ''sections 2134 and 2135''.

1991—Subsec. (d). Pub. L. 102–25 substituted ''section 115(a)(1)(B)'' for ''section 115(b)(1)(A)(ii)''.

1989—Subsec. (c). Pub. L. 101–189, §645(a), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' and ''to that Secretary'' for ''to the Administrator''.

Subsec. (d). Pub. L. 101–189, §645(a)(1), (b)(2), substituted ''A person'' for ''An individual'' and ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Pub. L. 101–189, §643(a), inserted at end ''However, a person may not receive credit under the program established by this chapter for service (in any grade) on full-time active duty or full-time National Guard duty for the purpose of organizing, administering, recruiting, instructing, or training the reserve components in a position which is included in the end strength required to be authorized each year by section 115(b)(1)(A)(ii) of this title.''

1988—Subsec. (a)(2). Pub. L. 100–689, §111(b)(2), substituted ''completed the requirements of'' for ''received'', and inserted before semicolon at end '', or in the case of an individual who reenlists or extends an enlistment as described in paragraph (1)(A) of this subsection, has completed such requirements at any time before such reenlistment or extension''.

Subsec. (b). Pub. L. 100–689, §110(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Educational assistance may not be provided to a member under this chapter until the member—

''(1) has completed the initial period of active duty for training required of the member; and

''(2) has completed 180 days of service in the Selected Reserve.''

Subsec. (c). Pub. L. 100–689, §111(b)(3), inserted at end ''At the request of the Administrator of Veterans' Affairs, the Secretary of Defense shall transmit a notice of entitlement for each such person to the Administrator.''

Subsec. (d). Pub. L. 100–689, §111(b)(4), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''A person who is entitled to educational assistance under chapter 30 of title 38 based on section 1412 of that title may not also be provided educational assistance under this chapter.''

1987—Subsec. (a)(1). Pub. L. 100–48 substituted ''after June 30, 1985'' for ''during the period beginning on July 1, 1985, and ending on June 30, 1988''.

1984—Pub. L. 98–525 amended section generally, updating provisions covering eligibility for educational assistance to cover the period beginning July 1, 1985, and ending June 30, 1988.

1980—Pub. L. 96–513 inserted ''of this title'' after ''section 2131'' wherever appearing.

1978—Subsec. (b)(1). Pub. L. 95–485 substituted ''not less than six years'' for ''automatically extended by two years'' and ''last day of the term'' for ''eighth anniversary''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as a note under section 16131 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

SAVINGS PROVISION

Section 643(b) of Pub. L. 101–189 provided that: ''The amendment made by subsection (a) [amending this section] shall not affect the eligibility for educational assistance of any person who before the date of the enactment of this Act [Nov. 29, 1989] is entitled to educational assistance under section 2131(a) [now 16131(a)] of title 10, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16131, 16135 of this title.

§ 16133. Time limitation for use of entitlement

(a) Except as provided in subsection (b), the period during which a person entitled to educational assistance under this chapter may use such person's entitlement expires (1) at the end of the 14-year period beginning on the date on which such person becomes entitled to such assistance, or (2) on the date the person is separated from the Selected Reserve, whichever occurs first.

(b)(1) In the case of a person—

(A) who is separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter; or

(B) who, on or after the date on which such person became entitled to educational assistance under this chapter ceases to be a member of the Selected Reserve during the period beginning on October 1, 1991, and ending on December 31, 2001, by reason of the inactivation of the person's unit of assignment or by reason of involuntarily ceasing to be designated as a member of the Selected Reserve pursuant to section 10143(a) of this title,

the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.

(2) The provisions of section 3031(f) of title 38 shall apply to the period of entitlement prescribed by subsection (a).

(3) The provisions of section 3031(d) of title 38 shall apply to the period of entitlement prescribed by subsection (a) in the case of a disability incurred in or aggravated by service in the Selected Reserve.

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title—

(A) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(B) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

(Added Pub. L. 95–79, title IV, § 402(a), July 30, 1977, 91 Stat. 329, § 2133; amended Pub. L. 96–107, title IV, § 402(b), Nov. 9, 1979, 93 Stat. 808; Pub. L. 96–513, title V, § 511(70), Dec. 12, 1980, 94 Stat. 2926; Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100–456, div. A, title XII, § 1233(g)(2), Sept. 29, 1988, 102 Stat. 2058; Pub. L. 100–689, title I, § 111(b)(5), Nov. 18, 1988, 102 Stat. 4173; Pub. L. 102–127, § 3, Oct. 10, 1991, 105 Stat. 622; Pub. L. 102–484, div. D, title XLIV, § 4419(a), Oct. 23, 1992, 106 Stat. 2717; Pub. L. 102–568, title III, § 320(a)(2), Oct. 29, 1992, 106 Stat. 4335; Pub. L. 103–160, div. A, title V, § 561(m), Nov. 30, 1993, 107 Stat. 1668; renumbered § 16133 and amended Pub. L. 103–337, div. A, title XVI, § 1663(b)(2), (5), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 105–85, div. A, title V, § 553(b), Nov. 18, 1997, 111 Stat. 1748; Pub. L. 105–261, div. A, title V, § 561(q), Oct. 17, 1998, 112 Stat. 2027; Pub. L. 106–398, § 1 [[div. A], title V, § 571(p)], Oct. 30, 2000, 114 Stat. 1654, 1654A–135; Pub. L. 107–314, div. A, title VI, § 641(a), Dec. 2, 2002, 116 Stat. 2576.)

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107–314 substituted ''14-year'' for ''10-year''.

2000—Subsec. (b)(1)(B). Pub. L. 106–398 substituted ''December 31, 2001'' for ''September 30, 2001''.

1998—Subsec. (b)(1)(B). Pub. L. 105–261 substituted ''September 30, 2001'' for ''September 30, 1999''.

1997—Subsec. (b)(4). Pub. L. 105–85 struck out ''(A)'' before ''In the case of'', redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, struck out '', during the Persian Gulf War,'' after ''Ready Reserve who'', and struck out former subpar. (B) which read as follows: ''For the purposes of this paragraph, the term 'Persian Gulf War' shall have the meaning given such term in section 101(33) of title 38.''

1994—Pub. L. 103–337, § 1663(b)(2), renumbered section 2133 of this title as this section.

Subsec. (b)(1)(B). Pub. L. 103–337, § 1663(b)(5)(A), substituted ''10143(a)'' for ''268(b)''.

Subsec. (b)(4)(A). Pub. L. 103–337, § 1663(b)(5)(B), substituted ''12301(a), 12301(d), 12301(g), 12302, or 12304'' for ''672(a), (d), or (g), 673, or 673b''.

1993—Subsec. (b)(1)(B). Pub. L. 103–160 substituted ''September 30, 1999'' for ''September 30, 1995''.

1992—Subsec. (b)(1). Pub. L. 102–484 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In the case of a person separated from the Selected Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, the period for using entitlement prescribed by subsection (a) shall be determined without regard to clause (2) of such subsection.''

Subsec. (b)(2), (3). Pub. L. 102–568 substituted ''section 3031(f) of title 38'' for ''section 1431(f) of title 38'' in par. (2) and ''section 3031(d) of title 38'' for ''section 1431(d) of title 38'' in par. (3).

1991—Subsec. (b)(4). Pub. L. 102–127 added par. (4).

1988—Subsec. (a). Pub. L. 100–689, § 111(b)(5)(A), substituted ''chapter'' for ''section''.

Subsec. (b). Pub. L. 100–689, § 111(b)(5)(B), added par. (1), redesignated existing pars. (1) and (2) as (2) and (3), respectively, and directed the substitution of ''1431(f)'' for ''1431(e)'' in par. (2) as redesignated, which could not be executed because such substitution was previously made by Pub. L. 100–456, prior to redesignation of par. (1) as (2), see below.

Pub. L. 100–456 substituted ''section 1431(f)'' for ''section 1431(e)'' in par. (1).

1984—Pub. L. 98–525 amended section generally, substituting provisions setting a time limit for the use of educational entitlement for provisions covering the termination of assistance and refund by members. See section 2134 of this title.

1980—Subsec. (a). Pub. L. 96–513 inserted ''of this title'' after ''2131'' and ''2107''.

1979—Subsec. (b). Pub. L. 96–107 redesignated existing provisions as par. (1), inserted provisions respecting agreement for term of enlistment, substituted provisions relating to computation under par. (2) for provisions relating to computation under section 2131, and added par. (2).

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–314, div. A, title VI, § 641(b), Dec. 2, 2002, 116 Stat. 2577, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2002, and shall apply with respect to periods of entitlement to educational assistance under chapter 1606 of title 10, United States Code, that begin on or after October 1, 1992.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L.

103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as a note under section 16131 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96–513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–107 applicable only to individuals enlisting in the Reserves after Sept. 30, 1979, see section 402(c) of Pub. L. 96–107, set out as a note under section 16131 of this title.

§ 16134. Termination of assistance

Educational assistance may not be provided under this chapter—

(1) to a member receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

(2) to a member who fails to participate satisfactorily in required training as a member of the Selected Reserve.

(Added Pub. L. 95–79, title IV, §402(a), July 30, 1977, 91 Stat. 330, §2134; amended Pub. L. 98–94, title XII, §1268(14), Sept. 24, 1983, 97 Stat. 707; Pub. L. 98–525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2566; renumbered §16134, Pub. L. 103–337, div. A, title XVI, §1663(b)(2), Oct. 5, 1994, 108 Stat. 3006.)

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2134 of this title as this section.

1984—Pub. L. 98–525 amended section generally, substituting provisions covering termination of educational assistance for provisions relating to reports to Congress. See section 16137 of this title.

1983—Pub. L. 98–94 struck out provision requiring the first report under this section to be submitted not later than Dec. 31, 1977.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as a note under section 16131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16132 of this title.

§ 16135. Failure to participate satisfactorily; penalties

(a)(1) A member of the Selected Reserve of the Ready Reserve of an armed force who fails to participate satisfactorily in required training as a member of the Selected Reserve during a term of enlistment or other period of obligated service that created entitlement of the member to educational assistance under this chapter, and during which the member has received such assistance, shall, at the option of the Secretary concerned—

(A) be ordered to active duty for a period of two years or the period of obligated service the person has remaining under section 16132 of this title, whichever is less; or

(B) be required to refund to the United States an amount determined under subsection (b).

(2) The Secretary concerned may waive the requirements of paragraph (1), or may reduce the amount of any refund under clause (B) of such paragraph, in the case of any individual member when the Secretary determines that the failure to participate satisfactorily was due to reasons beyond the control of the member.

(3) Any refund by a member under this section shall not affect the period of obligation of such member to serve as a Reserve in the Selected Reserve.

(b)(1) The amount of a refund under subsection (a) shall be the amount equal to the product of—

(A) the number of months of obligated service the person has remaining under the agreement entered into under section 16131(a) of this title divided by the original number of months of such obligation; and

(B) the total amount of educational assistance provided to the member under this chapter,

as increased by interest determined under paragraph (2).

(2) The amount computed under paragraph (1) shall bear interest at the rate equal to the highest rate being paid by the United States on the day on which the refund is determined to be due for securities having maturities of 90 days or less and shall accrue from the day on which the member is first notified of the amount due to the United States as a refund under this section.

(c)(1) Subject to subsection (a)(2), an obligation to pay a refund to the United States under subsection (a)(1)(B) in an amount determined under subsection (b) is, for all purposes, a debt owed to the United States.

(2) A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an enlistment or other agreement under this section does not discharge the person signing such enlistment or other agreement from a debt arising under the enlistment or agreement, respectively, under this subsection.

(Added Pub. L. 95–79, title IV, §402(a), July 30, 1977, 91 Stat. 330, §2135; amended Pub. L. 95–485, title IV, §402(b), Oct. 20, 1978, 92 Stat. 1613; Pub. L. 96–342, title IX, §906(b), Sept. 8, 1980, 94 Stat. 1117; Pub. L. 98–525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2566; Pub. L. 100–689, title I, §111(b)(6), Nov. 18, 1988, 102 Stat. 4173; renumbered §16135 and amended Pub. L. 103–337, div. A, title XVI, §1663(b)(2), (6), Oct. 5, 1994, 108 Stat. 3006, 3007; Pub. L. 104–106, div. A, title XV, §1501(b)(35), Feb. 10, 1996, 110 Stat. 498; Pub. L. 107–314, div. A, title VI, §642, Dec. 2, 2002, 116 Stat. 2577.)

AMENDMENTS

2002—Subsec. (c). Pub. L. 107–314 added subsec. (c).

1996—Subsec. (b)(1)(A). Pub. L. 104–106 substituted ''16131(a)'' for ''2131(a)''.

1994—Pub. L. 103–337, §1663(b)(2), renumbered section 2135 of this title as this section.

Subsec. (a)(1)(A). Pub. L. 103–337, §1663(b)(6)(A), substituted ''16132'' for ''2132''.

Subsec. (b)(1)(A). Pub. L. 103–337, §1663(b)(6)(B), which directed substitution of ''section 16132(a)'' for ''section 2132(a)'', could not be executed because ''section 2132(a)'' does not appear in subsec. (b)(1)(A).

1988—Subsec. (a)(1). Pub. L. 100–689, §111(b)(6)(A), inserted '', and during which the member has received such assistance,'' after ''chapter''.

Subsec. (b)(1)(A). Pub. L. 100–689, §111(b)(6)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the number of months of obligated service remaining under the agreement entered into under section 2132(a)(3) divided by the original number of months of such obligation; and''.

1984—Pub. L. 98–525 amended section generally, substituting provisions relating to the failure to participate satisfactorily and penalties for provisions which had designated Sept. 30, 1985, as the termination date for enlistments qualifying for educational assistance.

1980—Pub. L. 96–342 substituted ''1985'' for ''1980''.

1978—Pub. L. 95–485 substituted ''1980'' for ''1978''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–525 effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as a note under section 16131 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16132 of this title; title 38 section 3485.

§ 16136. Administration of program

(a) Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Homeland Security, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

(b) Except as otherwise provided in this chapter, the provisions of sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term ''eligible veteran'' and the term ''a person'', as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

(c) The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(2) the individual possesses a valid private pilot certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(Added Pub. L. 98–525, title VII, §705(a)(1), Oct. 19, 1984, 98 Stat. 2567, §2136; amended Pub. L. 101–189, div. A, title VI, §§642(c), 645(a)(1), Nov. 29, 1989, 103 Stat. 1457, 1458; Pub. L. 101–237, title IV, §§405(d)(3), 422(b)(1), Dec. 18, 1989, 103 Stat. 2081, 2089; Pub. L. 101–510, div. A, title XIV, §1484(j)(3), Nov. 5, 1990, 104 Stat. 1718; Pub. L. 102–16, §10(b), Mar. 22, 1991, 105 Stat. 56; Pub. L. 102–568, title III, §§313(a)(6), 319, 320(a)(3), Oct. 29, 1992, 106 Stat. 4333, 4335, 4336; renumbered §16136, Pub. L. 103–337, div. A, title XVI, §1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; Pub. L. 103–446, title VI, §601(c), Nov. 2, 1994, 108 Stat. 4670; Pub. L. 105–368, title II, §204(b), Nov. 11, 1998, 112 Stat. 3327; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (a). Pub. L. 107–296 substituted ''Secretary of Homeland Security'' for ''Secretary of Transportation''.

1998—Subsec. (c)(2). Pub. L. 105–245 substituted ''pilot certificate'' for ''pilot's license'' in two places and inserted '', on the day the individual begins a course of flight training,'' after ''meets''.

1994—Pub. L. 103–337 renumbered section 2136 of this title as this section.

Subsec. (c). Pub. L. 103–446 struck out ''(1)'' after ''(c)'', redesignated subpars. (A) to (C) as pars. (1) to (3), respectively, and struck out former par. (2) which read as follows: ''This subsection shall not apply to a course of flight training that commences on or after October 1, 1994.''

1992—Subsec. (b). Pub. L. 102–568, §320(a)(3), substituted ''sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692)'' for ''sections 1670, 1671, 1673, 1674, 1676, 1682(g), 1683, and 1685 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1786(a), 1787, and 1792)''.

Pub. L. 102–568, §319, struck out ''1780(c),'' after ''exception of sections''.

Subsec. (c)(1). Pub. L. 102–568, §313(a)(6), substituted ''section 3680A(b) of title 38'' for ''section 1673(b) of title 38''.

1991—Subsec. (b). Pub. L. 102–16 struck out ''1434(b), 1663,'' before ''1670,'' and ''1780(g),'' before ''1786(a),''.

1990—Subsec. (a). Pub. L. 101–510 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

1989—Subsec. (a). Pub. L. 101–189, §645(a)(1), substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

Subsec. (b). Pub. L. 101–237, §405(d)(3), inserted reference to section 1685 of title 38.

Pub. L. 101–189, §642(c), amended first sentence generally and substituted ''and the term 'a person', as used''

for '', as used'' in second sentence. Prior to amendment, first sentence read as follows: ''Except as otherwise provided in this chapter, the provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1682(g), and 1683 of chapter 34 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 1780(a)(5), 1780(b), 1786, 1787(b)(1), and 1792) shall be applicable to the provision of educational assistance under this chapter.''

Subsec. (c). Pub. L. 101–237, § 422(b)(1), added subsec. (c).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–368, title II, § 204(c), Nov. 11, 1998, 112 Stat. 3327, provided that: ''The amendments made by this section [amending this section and sections 3034 and 3241 of Title 38, Veterans' Benefits] shall apply with respect to courses of flight training beginning on or after October 1, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–446 effective Oct. 1, 1994, see section 601(d) of Pub. L. 103–446, set out as a note under section 3034 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 405(e) of Pub. L. 101–237 provided that: ''The amendments made by this section [amending this section and section 1685 [now 3485] of Title 38, Veterans' Benefits] shall take effect on May 1, 1990, and shall apply to services performed on or after that date.''

Amendment by section 422(b)(1) of Pub. L. 101–237 effective Sept. 30, 1990, see section 422(d) of Pub. L. 101–237, set out as a note under section 16131 of this title.

Amendment by section 642(c) of Pub. L. 101–189 applicable with respect to any person who after Sept. 30, 1990, meets the requirements set forth in section 2132(a)(1)(A) or (B) [16132(a)(1)(A), (B)] of this title, see section 642(d) of Pub. L. 101–189, set out as a note under section 16131 of this title.

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

SAVINGS PROVISION

Section 313(b) of Pub. L. 102–568 provided that: ''The amendments made by paragraphs (2) through (6) of subsection (a) of this section [enacting section 3680A of Title 38, Veterans' Benefits, amending this section and sections 3034 and 3241 of Title 38, and repealing section 3473 of Title 38] shall not apply to any person receiving educational assistance for pursuit of an independent study program in which the person was enrolled on the date of enactment of this section [Oct. 29, 1992] for as long as such person is continuously thereafter so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under title 38, United States Code, or title 10, United States Code, in effect on that date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 510, 16131 of this title.

§ 16137. Biennial report to Congress

The Secretary of Defense shall submit to Congress a report not later than March 1 of each odd-numbered year concerning the operation of the educational assistance program established by this chapter during the preceding two fiscal years. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during those fiscal years. The Secretary may submit the report more frequently and adjust the period covered by the report accordingly.

(Added Pub. L. 98–525, title VII, § 705(a)(1), Oct. 19, 1984, 98 Stat. 2567, § 2137; renumbered § 16137, Pub. L. 103–337, div. A, title XVI, § 1663(b)(2), Oct. 5, 1994, 108 Stat. 3006; amended Pub. L. 104–106, div. A, title X, § 1077, Feb. 10, 1996, 110 Stat. 451; Pub. L. 106–65, div. A, title V, § 548(a), Oct. 5, 1999, 113 Stat. 609.)

AMENDMENTS

1999—Pub. L. 106–65 amended section catchline and text generally. Prior to amendment, text read as follows: ''The Secretary of Defense shall submit to the Congress a report not later than March 1 of each year concerning the operation of the educational assistance program established by this chapter during the preceding fiscal year. Each such report shall include the number of members of the Selected Reserve of the Ready Reserve of each armed force receiving, and the number entitled to receive, educational assistance under this chapter during the preceding fiscal year.''

1996—Pub. L. 104–106 substituted ''March 1 of each year'' for ''December 15 of each year''.

1994—Pub. L. 103–337 renumbered section 2137 of this title as this section.

EFFECTIVE DATE

Section effective July 1, 1985, applicable only to members of the Armed Forces who qualify for educational assistance under this chapter on or after such date, see section 705(b) of Pub. L. 98–525, set out as an Effective Date of 1984 Amendment note under section 16131 of this title.

CHAPTER 1608—HEALTH PROFESSIONS STIPEND PROGRAM

Sec.
16201. Financial assistance: health-care professionals in reserve components.
16202. Reserve service: required active duty for training.
16203. Penalties and limitations.
16204. Regulations.

§ 16201. Financial assistance: health-care professionals in reserve components

(a) ESTABLISHMENT OF PROGRAM.—For the purpose of obtaining adequate numbers of commissioned officers in the reserve components who are qualified in health professions, the Secretary of each military department may establish and maintain a program to provide financial assistance under this chapter to persons engaged in training that leads to a degree in medicine or dentistry or training in a health professions specialty that is critically needed in wartime. Under such a program, the Secretary concerned may agree to pay a financial stipend to persons engaged in health care education and training in return for a commitment to subsequent service in the Ready Reserve.

(b) MEDICAL AND DENTAL SCHOOL STUDENTS.—(1) Under the stipend program under this chap-

ter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is eligible to be appointed as an officer in a reserve component;

(B) is enrolled or has been accepted for enrollment in an institution in a course of study that results in a degree in medicine or dentistry;

(C) signs an agreement that, unless sooner separated, the person will—

(i) complete the educational phase of the program;

(ii) accept a reappointment or redesignation within the person's reserve component, if tendered, based upon the person's health profession, following satisfactory completion of the educational and intern programs; and

(iii) participate in a residency program; and

(D) if required by regulations prescribed by the Secretary of Defense, agrees to apply for, if eligible, and accept, if offered, residency training in a health profession skill which has been designated by the Secretary of Defense as a critically needed wartime skill.

(2) Under the agreement—

(A) the Secretary of the military department concerned shall agree to pay the participant a stipend, in the amount determined under subsection (f), for the period or the remainder of the period that the student is satisfactorily progressing toward a degree in medicine or dentistry while enrolled in an accredited medical or dental school;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as an officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve in the Selected Reserve, upon successful completion of the program, for the period of service applicable under paragraph (3).

(3)(A) Subject to subparagraph (B), the period for which a participant is required to serve in the Selected Reserve under the agreement pursuant to paragraph (2)(D) shall be one year for each period of six months, or part thereof, for which the participant is provided a stipend pursuant to the agreement.

(B) In the case of a participant who enters into a subsequent agreement under subsection (c) and successfully completes residency training in a specialty designated by the Secretary of Defense as a specialty critically needed by the military department in wartime, the requirement to serve in the Selected Reserve may be reduced to one year for each year, or part thereof, for which the stipend was provided while enrolled in medical or dental school.

(c) PHYSICIANS AND DENTISTS IN CRITICAL WARTIME SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a graduate of a medical school or dental school;

(B) is eligible for appointment, designation, or assignment as a medical officer or dental officer in the Reserve of the armed force concerned or has been appointed as a medical or dental officer in the Reserve of the armed force concerned; and

(C) is enrolled or has been accepted for enrollment in a residency program for physicians or dentists in a medical or dental specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (f), for the period or the remainder of the period of the residency program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before appointment, designation, or assignment as a medical officer or dental officer for service in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, one year in the Ready Reserve for each six months, or part thereof, for which the stipend is provided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(d) REGISTERED NURSES IN CRITICAL SPECIALTIES.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) is a registered nurse;

(B) is eligible for appointment as—

(i) a Reserve officer for service in the Army Reserve in the Army Nurse Corps;

(ii) a Reserve officer for service in the Naval Reserve in the Navy Nurse Corps; or

(iii) a Reserve officer for service in the Air Force Reserve with a view to designation as an Air Force nurse under section 8067(e) of this title; and

(C) is enrolled or has been accepted for enrollment in an accredited program in nursing in a specialty designated by the Secretary concerned as a specialty critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend, in an amount determined under subsection (f), for the period or the remainder of the period of the nursing program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before being appointed as a Reserve officer for service in the Ready Reserve—

(i) in the Nurse Corps of the Army or Navy; or

(ii) as an Air Force nurse of the Air Force;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon successful completion of the program, one year in the Ready Reserve for each six months, or part thereof, for which the stipend is provided, to be served in the Selected Reserve or in the Individual Ready Reserve as specified in the agreement.

(e) BACCALAUREATE STUDENTS IN NURSING OR OTHER HEALTH PROFESSIONS.—(1) Under the stipend program under this chapter, the Secretary of the military department concerned may enter into an agreement with a person who—

(A) will, upon completion of the program, be eligible to be appointed, designated, or assigned as a Reserve officer for duty as a nurse or other health professional; and

(B) is enrolled, or has been accepted for enrollment in the third or fourth year of—

(i) an accredited baccalaureate nursing program; or

(ii) any other accredited baccalaureate program leading to a degree in a health-care profession designated by the Secretary concerned as a profession critically needed by that military department in wartime.

(2) Under the agreement—

(A) the Secretary shall agree to pay the participant a stipend of $100 per month for the period or the remainder of the period of the baccalaureate program in which the participant enrolls or is enrolled;

(B) the participant shall not be eligible to receive such stipend before enlistment in the Ready Reserve;

(C) the participant shall be subject to such active duty requirements as may be specified in the agreement and to active duty in time of war or national emergency as provided by law for members of the Ready Reserve; and

(D) the participant shall agree to serve, upon graduation from the baccalaureate program, one year in the Ready Reserve for each year, or part thereof, for which the stipend is paid.

(f) AMOUNT OF STIPEND.—The amount of a stipend under an agreement under subsection (b) or (c) shall be—

(1) the stipend rate in effect for participants in the Armed Forces Health Professions Scholarship Program under section 2121(d) of this title, if the participant has agreed to serve in the Selected Reserve; or

(2) one-half of that rate, if the participant has agreed to serve in the Individual Ready Reserve.

(Added Pub. L. 100–180, div. A, title VII, §711(a)(3), Dec. 4, 1987, 101 Stat. 1108, §2128; renumbered §16201 and amended Pub. L. 103–337, div. A, title XVI, §1663(c)(2), (5), Oct. 5, 1994, 108 Stat. 3007, 3008; Pub. L. 104–106, div. A, title VII, §736, Feb. 10, 1996, 110 Stat. 383; Pub. L. 107–107, div. A, title V, §539, Dec. 28, 2001, 115 Stat. 1108.)

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–107, §539(a), struck out ''specialties critically needed in wartime'' after ''qualified in health professions'' and substituted ''training that leads to a degree in medicine or dentistry or training in a health professions specialty that is critically needed in wartime'' for ''training in such specialties'' and ''health care education and training'' for ''training in certain health care specialties''.

Subsec. (b). Pub. L. 107–107, §539(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–107, §539(b)(1), (c)(1), redesignated subsec. (b) as (c) and inserted ''Wartime'' after ''Critical'' in heading. Former subsec. (c) redesignated (d).

Subsec. (c)(1)(B). Pub. L. 107–107, §539(c)(2), inserted ''or has been appointed as a medical or dental officer in the Reserve of the armed force concerned'' before semicolon at end.

Subsec. (c)(2)(A). Pub. L. 107–107, §539(e), substituted ''subsection (f)'' for ''subsection (e)''.

Subsec. (c)(2)(D). Pub. L. 107–107, §539(d), substituted ''one year in the Ready Reserve for each six months'' for ''two years in the Ready Reserve for each year''.

Subsec. (d). Pub. L. 107–107, §539(b)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(A). Pub. L. 107–107, §539(e), substituted ''subsection (f)'' for ''subsection (e)''.

Subsec. (d)(2)(D). Pub. L. 107–107, §539(d), substituted ''one year in the Ready Reserve for each six months'' for ''two years in the Ready Reserve for each year''.

Subsecs. (e), (f). Pub. L. 107–107, §539(b)(1), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

1996—Subsec. (b). Pub. L. 104–106, §736(1), inserted ''and Dentists'' in heading.

Subsec. (b)(1)(A). Pub. L. 104–106, §736(2), inserted ''or dental school'' after ''medical school''.

Subsec. (b)(1)(B). Pub. L. 104–106, §736(3), inserted ''or dental officer'' after ''medical officer''.

Subsec. (b)(1)(C). Pub. L. 104–106, §736(4), substituted ''physicians or dentists in a medical or dental specialty'' for ''physicians in a medical specialty''.

Subsec. (b)(2)(B). Pub. L. 104–106, §736(3), inserted ''or dental officer'' after ''medical officer''.

1994—Pub. L. 103–337, §1663(c)(2), renumbered section 2128 of this title as this section.

Subsecs. (a), (b)(1), (c)(1), (d)(1). Pub. L. 103–337, §1663(c)(5), substituted ''chapter'' for ''subchapter''.

Subsec. (f). Pub. L. 103–337, §1663(c)(2), struck out subsec. (f) which defined ''Individual Ready Reserve''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

PAYMENTS FOR PERIOD PRIOR TO DECEMBER 4, 1987

Section 711(e)(2) of Pub. L. 100–180 provided that: ''An agreement entered into by the Secretary of a military department under section 2128 [now 16201] of title 10, United States Code, as added by subsection (a), may not obligate the United States to make a payment for any period before the date of the enactment of this Act [Dec. 4, 1987].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16202 of this title.

§ 16202. Reserve service: required active duty for training

(a) SELECTED RESERVE.—A person who is required under an agreement under section 16201 of this title to serve in the Selected Reserve shall serve not less than 12 days of active duty for training each year during the period of service required by the agreement.

(b) IRR SERVICE.—A person who is required under an agreement under section 16201 of this

title to serve in the Individual Ready Reserve shall serve—

(1) not less than 30 days of initial active duty for training; and

(2) not less than five days of active duty for training each year during the period of service required by the agreement.

(Added Pub. L. 100–180, div. A, title VII, §711(a)(3), Dec. 4, 1987, 101 Stat. 1111, §2129; renumbered §16202 and amended Pub. L. 103–337, div. A, title XVI, §1663(c)(3), (6), Oct. 5, 1994, 108 Stat. 3007, 3008.)

AMENDMENTS

1994—Pub. L. 103–337, §1663(c)(3), renumbered section 2129 of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, §1663(c)(6), substituted ''16201'' for ''2128''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 16203. Penalties and limitations

(a) FAILURE TO COMPLETE PROGRAM OF TRAINING.—(1) A member of the program who, under regulations prescribed by the Secretary of Defense, is dropped from the program for deficiency in training, or for other reasons, shall be required, at the discretion of the Secretary concerned—

(A) to perform one year of active duty for each year (or part thereof) for which such person was provided financial assistance under this section; or

(B) to repay the United States an amount equal to the total amount paid to such person under the program.

(2) The Secretary of a military department, under regulations prescribed by the Secretary of Defense, may relieve a member participating in the program who is dropped from the program from any requirement that may be imposed under paragraph (1), but such relief shall not relieve him from any military obligation imposed by any other law.

(b) PROHIBITIONS OF DUPLICATE BENEFITS.—Financial assistance may not be provided under this section to a member receiving financial assistance under section 2107 of this title.

(Added Pub. L. 100–180, div. A, title VII, §711(a)(3), Dec. 4, 1987, 101 Stat. 1111, §2130; renumbered §16203 and amended Pub. L. 103–337, div. A, title XVI, §1663(c)(4), Oct. 5, 1994, 108 Stat. 3008.)

AMENDMENTS

1994—Pub. L. 103–337, §1663(c)(4), renumbered section 2130 of this title as this section and substituted ''Penalties and limitations'' for ''Penalties, limitations, and other administrative provisions'' as section catchline.

Subsec. (c). Pub. L. 103–337, §1663(c)(4)(A), struck out subsec. (c) which related to regulations. See section 16204 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

§ 16204. Regulations

This chapter shall be administered under regulations prescribed by the Secretary of Defense.

(Added Pub. L. 103–337, div. A, title XVI, §1663(c)(1), Oct. 5, 1994, 108 Stat. 3007.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2130(c) of this title, prior to amendment by Pub. L. 103–337, §1663(c)(4)(A).

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

CHAPTER 1609—EDUCATION LOAN REPAYMENT PROGRAMS

Sec.
16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties.
16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages.

§ 16301. Education loan repayment program: enlisted members of Selected Reserve with critical specialties

(a)(1) Subject to the provisions of this section, the Secretary of Defense may repay—

(A) any loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(B) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(C) any loan made under part E of such title (20 U.S.C. 1087aa et seq.).

Repayment of any such loan shall be made on the basis of each complete year of service performed by the borrower.

(2) The Secretary may repay loans described in paragraph (1) in the case of any person for service performed as an enlisted member of the Selected Reserve of the Ready Reserve of an armed force in a reserve component and military specialty specified by the Secretary of Defense. The Secretary may repay such a loan only if the person to whom the loan was made performed such service after the loan was made.

(b) The portion or amount of a loan that may be repaid under subsection (a) is 15 percent or $500, whichever is greater, for each year of service.

(c) If a portion of a loan is repaid under this section for any year, interest on the remainder of the loan shall accrue and be paid in the same manner as is otherwise required.

(d) Nothing in this section shall be construed to authorize refunding any repayment of a loan.

(e) A person who transfers from service making the person eligible for repayment of loans under this section (as described in subsection (a)(2)) to service making the person eligible for repayment of loans under section 2171 of this title (as described in subsection (a)(2) of that section) during a year shall be eligible to have repaid a portion of such loan determined by giv-

ing appropriate fractional credit for each portion of the year so served, in accordance with regulations of the Secretary concerned.

(f) The Secretary of Defense shall, by regulation, prescribe a schedule for the allocation of funds made available to carry out the provisions of this section and section 2171 of this title during any year for which funds are not sufficient to pay the sum of the amounts eligible for repayment under subsection (a) and section 2171(a) of this title.

(g) The Secretary of Homeland Security may repay loans described in subsection (a)(1) and otherwise administer this section in the case of members of the Selected Reserve of the Coast Guard Reserve when the Coast Guard is not operating as a service in the Navy.

(Added Pub. L. 103–337, div. A, title XVI, §1663(d)(1), Oct. 5, 1994, 108 Stat. 3008; amended Pub. L. 104–106, div. A, title X, §1079(b), Feb. 10, 1996, 110 Stat. 451; Pub. L. 106–65, div. A, title VI, §676, Oct. 5, 1999, 113 Stat. 676; Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B, D, and E of title IV of the Act are classified to parts B (§1071 et seq.), C (§1087a et seq.), and D (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2002—Subsec. (g). Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

1999—Subsec. (g). Pub. L. 106–65 added subsec. (g).

1996—Subsec. (a)(1). Pub. L. 104–106 struck out ''or'' at end of subpar. (A), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Section effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2171 of this title.

§ 16302. Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages

(a) Under regulations prescribed by the Secretary of Defense and subject to the other provisions of this section, the Secretary concerned may repay—

(1) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

(2) any loan made under part D of such title (the William D. Ford Federal Direct Loan Program, 20 U.S.C. 1087a et seq.); or

(3) a loan made under part E of such title (20 U.S.C. 1087aa et seq.) after October 1, 1975;

(4) a health professions education loan made or insured under part A of title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) or under part B of title VIII of such Act (42 U.S.C. 297 et seq.); and

(5) a loan made, insured, or guaranteed through a recognized financial or educational institution if that loan was used to finance education regarding a health profession that the Secretary of Defense determines to be critically needed in order to meet identified wartime combat medical skill shortages.

(b) The Secretary concerned may repay loans described in subsection (a) only in the case of a person who—

(1) performs satisfactory service as an officer in the Selected Reserve of an armed force; and

(2) possesses professional qualifications, or is enrolled in a program of education leading to professional qualifications, in a health profession that the Secretary of Defense has determined to be needed critically in order to meet identified wartime combat medical skill shortages.

(c)(1) The amount of any repayment of a loan made under this section on behalf of any person shall be determined on the basis of each complete year of service that is described in subsection (b)(1) and performed by the person after the date on which the loan was made.

(2) Subject to paragraph (3), the amount of a loan that may be repaid under this section on behalf of any person may not exceed $20,000 for each year of service described in paragraph (1).

(3) The total amount that may be repaid on behalf of any person under this section may not exceed $50,000.

(d) The authority provided in this section shall apply only in the case of a person first appointed as a commissioned officer before January 1, 2004.

(Added Pub. L. 99–145, title VI, §671(a)(1), Nov. 8, 1985, 99 Stat. 662, §2172; amended Pub. L. 100–180, div. A, title VII, §713, Dec. 4, 1987, 101 Stat. 1112; Pub. L. 101–189, div. A, title VII, §701(a)–(c), Nov. 29, 1989, 103 Stat. 1467; Pub. L. 102–484, div. A, title VI, §612(f), Oct. 23, 1992, 106 Stat. 2421; Pub. L. 103–160, div. A, title VI, §613(f), Nov. 30, 1993, 107 Stat. 1681; renumbered §16302 and amended Pub. L. 103–337, div. A, title VI, §613(e), title X, §1070(a)(9), title XVI, §1663(d)(2), Oct. 5, 1994, 108 Stat. 2783, 2855, 3009; Pub. L. 104–106, div. A, title VI, §613(h), title X, §1079(c), Feb. 10, 1996, 110 Stat. 360, 452; Pub. L. 104–201, div. A, title VI, §613(g), Sept. 23, 1996, 110 Stat. 2544; Pub. L. 105–85, div. A, title VI, §611(h), Nov. 18, 1997, 111 Stat. 1785; Pub. L. 105–261, div. A, title VI, §§611(h), 654, Oct. 17, 1998, 112 Stat. 2039, 2052; Pub. L. 106–65, div. A, title VI, §611(h), Oct. 5, 1999, 113 Stat. 650; Pub. L. 106–398, §1 [[div. A], title VI, §621(h)], Oct. 30, 2000, 114 Stat. 1654, 1654A–151; Pub. L. 107–107, div. A, title VI, §611(h), Dec. 28, 2001, 115 Stat. 1135; Pub. L. 107–314, div. A, title VI, §612(b), Dec. 2, 2002, 116 Stat. 2567.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1) to (3), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended. Parts B, D, and E of title IV of the

Act are classified to parts B (§1071 et seq.), C (§1087a et seq.), and D (§1087aa et seq.), respectively, of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Public Health Service Act, referred to in subsec. (a)(4), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Part A of title VII of the Act is classified generally to part A (§292 et seq.) of subchapter V of chapter 6A of Title 42, The Public Health and Welfare. Part B of title VIII of the Act is classified generally to part B (§297 et seq.) of subchapter VI of chapter 6A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (d). Pub. L. 107–314 substituted ''January 1, 2004'' for ''January 1, 2003''.

2001—Subsec. (d). Pub. L. 107–107 substituted ''January 1, 2003'' for ''January 1, 2002''.

2000—Subsec. (d). Pub. L. 106–398 substituted ''January 1, 2002'' for ''January 1, 2001''.

1999—Subsec. (d). Pub. L. 106–65 substituted ''January 1, 2001'' for ''January 1, 2000''.

1998—Subsec. (b)(2). Pub. L. 105–261, §654(a), inserted '', or is enrolled in a program of education leading to professional qualifications,'' after ''possesses professional qualifications''.

Subsec. (c)(2). Pub. L. 105–261, §654(b)(1), substituted ''$20,000'' for ''$3,000''.

Subsec. (c)(3). Pub. L. 105–261, §654(b)(2), substituted ''$50,000'' for ''$20,000''.

Subsec. (d). Pub. L. 105–261, §611(h), substituted ''January 1, 2000'' for ''October 1, 1999''.

1997—Subsec. (d). Pub. L. 105–85 substituted ''October 1, 1999'' for ''October 1, 1998''.

1996—Subsec. (a)(2) to (5). Pub. L. 104–106, §1079(c), added par. (2) and redesignated former pars. (2) to (4) as (3) to (5), respectively.

Subsec. (d). Pub. L. 104–201 substituted ''October 1, 1998'' for ''October 1, 1997''.

Pub. L. 104–106, §613(h), substituted ''October 1, 1997'' for ''October 1, 1996''.

1994—Pub. L. 103–337, §1663(d)(2), renumbered section 2172 of this title as this section and substituted ''Education loan repayment program: health professions officers serving in Selected Reserve with wartime critical medical skill shortages'' for ''Education loans for certain health professionals who serve in the Selected Reserve'' as section catchline.

Subsec. (a)(3). Pub. L. 103–337, §1070(a)(9), substituted ''health professions education loan'' for ''health education assistance loan'', ''part A'' for ''part C'', and ''42 U.S.C. 292'' for ''42 U.S.C. 294''.

Subsec. (d). Pub. L. 103–337, §613(e), substituted ''October 1, 1996'' for ''October 1, 1995''.

1993—Subsec. (d). Pub. L. 103–160 substituted ''October 1, 1995'' for ''October 1, 1993''.

1992—Subsec. (d). Pub. L. 102–484 substituted ''October 1, 1993'' for ''October 1, 1992''.

1989—Subsec. (a)(1). Pub. L. 101–189, §701(c)(1), struck out ''a portion of'' before ''a loan made''.

Subsec. (a)(4). Pub. L. 101–189, §701(a), added par. (4).

Subsec. (c)(2). Pub. L. 101–189, §701(c)(2), substituted ''amount of'' for ''portion of''.

Subsec. (d). Pub. L. 101–189, §701(b), substituted ''October 1, 1992'' for ''October 1, 1990''.

1987—Subsec. (a)(3). Pub. L. 100–180, §713(a), inserted ''or under part B of title VIII of such Act (42 U.S.C. 297 et seq.)''.

Subsec. (d). Pub. L. 100–180, §713(b), substituted ''October 1, 1990'' for ''October 1, 1988''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1663(d)(2) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section 671(b)(2) of Pub. L. 99–145 provided that: ''The authority provided under section 2172 [now 16302] of title 10, United States Code, as added by subsection (a), shall apply only—

''(A) in the case of a person who is first appointed as a commissioned officer of an Armed Force after September 30, 1985; and

''(B) with respect to service performed after that date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 1087cc–1.

CHAPTER 1611—OTHER EDUCATIONAL ASSISTANCE PROGRAMS

Sec.
16401. Marine Corps Platoon Leaders Class: college tuition assistance program.

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §533(g)], Oct. 30, 2000, 114 Stat. 1654, 1654A–112, substituted ''Class: college tuition assistance program'' for ''Class program: officer candidates pursuing degrees'' in item 16401.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 section 3695.

§ 16401. Marine Corps Platoon Leaders Class: college tuition assistance program

(a) AUTHORITY.—The Secretary of the Navy may provide financial assistance to an eligible member of the Marine Corps Reserve for expenses of the member while the member is pursuing on a full-time basis at an institution of higher education a program of education approved by the Secretary that leads to—

(1) a baccalaureate degree in less than five academic years; or

(2) a doctor of jurisprudence or bachelor of laws degree in not more than four academic years.

(b) ELIGIBILITY.—(1) To be eligible for financial assistance under this section, a member of the Marine Corps Reserve must—

(A) be a member of the Marine Corps Platoon Leaders Class program and have successfully completed one six-week (or longer) increment of military training required under that program;

(B) be enrolled on a full-time basis in a program of education referred to in subsection (a) at any institution of higher education; and

(C) enter into a written agreement with the Secretary described in paragraph (2).

(2) A written agreement referred to in paragraph (1)(C) is an agreement between the member and the Secretary in which the member agrees—

(A) to accept an appointment as a commissioned officer in the Marine Corps, if tendered by the President;

(B) to serve on active duty for at least five years; and

(C) under such terms and conditions as shall be prescribed by the Secretary, to serve in the Marine Corps Reserve until the eighth anniversary of the date of the appointment.

(c) COVERED EXPENSES.—Expenses for which financial assistance may be provided under this section are—

(1) tuition and fees charged by the institution of higher education involved;

(2) the cost of books; and

(3) in the case of a program of education leading to a baccalaureate degree, laboratory expenses.

(d) AMOUNT.—The amount of financial assistance provided to a member under this section shall be prescribed by the Secretary, but may not exceed $5,200 for any academic year.

(e) LIMITATIONS.—(1) Financial assistance may be provided to a member under this section only for three consecutive academic years.

(2) Not more than 1,200 members may participate in the financial assistance program under this section in any academic year.

(f) FAILURE TO COMPLETE PROGRAM.—(1) An enlisted member who receives financial assistance under this section may be ordered to active duty in the Marine Corps by the Secretary to serve in an appropriate enlisted grade for such period as the Secretary prescribes, but not for more than four years, and an officer who receives financial assistance under this section may be required to repay the full amount of financial assistance, if the member—

(A) completes the military and academic requirements of the Marine Corps Platoon Leaders Class program and refuses to accept an appointment as a commissioned officer in the Marine Corps when offered or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered;

(B) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program; or

(C) is disenrolled from the Marine Corps Platoon Leaders Class program for failure to maintain eligibility for an original appointment as a commissioned officer under section 532 of this title.

(2) The Secretary of the Navy may waive the requirements of paragraph (1) in the case of a person who—

(A) becomes unqualified to serve on active duty as an officer due to a circumstance not within the control of the person;

(B) is not physically qualified for appointment under section 532 of this title and later is determined by the Secretary of the Navy under section 505 of this title to be unqualified for service as an enlisted member of the Marine Corps due to a physical or medical condition that was not the result of misconduct or grossly negligent conduct; or

(C) fails to complete the military or academic requirements of the Marine Corps Platoon Leaders Class program due to a circumstance not within the control of the person.

(g) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term ''institution of higher education'' has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(Added Pub. L. 106–65, div. A, title V, §551(a)(1), Oct. 5, 1999, 113 Stat. 612; amended Pub. L. 106–398, §1 [[div. A], title V, §533(a)–(d), (f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–110, 1654A–111.)

AMENDMENTS

2000—Pub. L. 106–398, §1 [[div. A], title V, §533(f)(1)], substituted ''Class: college tuition assistance program'' for ''Class program: officer candidates pursuing degrees'' in section catchline.

Subsec. (a). Pub. L. 106–398, §1 [[div. A], title V, §533(a)(1), (f)(2)], struck out ''for Financial Assistance Program'' after ''Authority'' in heading and ''enlisted'' after ''an eligible'' in introductory provisions.

Subsec. (a)(2). Pub. L. 106–398, §1 [[div. A], title V, §533(c)], substituted ''four'' for ''three''.

Subsec. (b)(1). Pub. L. 106–398, §1 [[div. A], title V, §533(a)(2)(A)], substituted ''a member'' for ''an enlisted member'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 106–398, §1 [[div. A], title V, §533(a)(2)(B)], substituted ''a member of'' for ''an officer candidate in''.

Subsec. (b)(1)(B). Pub. L. 106–398, §1 [[div. A], title V, §533(b)(1)(A), (B)], redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''meet the applicable age requirement specified in paragraph (2);''.

Subsec. (b)(1)(C), (D). Pub. L. 106–398, §1 [[div. A], title V, §533(b)(1)(B), (C)], redesignated subpar. (D) as (C) and substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (b)(2), (3). Pub. L. 106–398, §1 [[div. A], title V, §533(b)(2)–(4)], redesignated par. (3) as (2), substituted ''paragraph (1)(C)'' for ''paragraph (1)(D)'' in introductory provisions, and struck out former par. (2) which read as follows:

''(2)(A) In the case of a member pursuing a baccalaureate degree, the member meets the age requirements of this paragraph if the member will be under 27 years of age on June 30 of the calendar year in which the member is projected to be eligible for appointment as a commissioned officer in the Marine Corps through the Marine Corps Platoon Leaders Class program, except that if the member has served on active duty, the member may, on such date, be any age under 30 years that exceeds 27 years by a number of months that is not more than the number of months that the member served on active duty.

''(B) In the case of a member pursuing a doctor of jurisprudence or bachelor of laws degree, the member meets the age requirements of this paragraph if the member will be under 31 years of age on June 30 of the calendar year in which the member is projected to be eligible for appointment as a commissioned officer in the Marine Corps through the Marine Corps Platoon Leaders Class program, except that if the member has served on active duty, the member may, on such date, be any age under 35 years that exceeds 31 years by a number of months that is not more than the number of months that the member served on active duty.''

Subsec. (f)(1). Pub. L. 106–398, §1 [[div. A], title V, §533(d)(1)(A), (B)], in introductory provisions, substituted ''An enlisted member who'' for ''A member who'' and inserted ''and an officer who receives financial assistance under this section may be required to repay the full amount of financial assistance,'' after ''for more than four years,''.

Subsec. (f)(1)(A). Pub. L. 106–398, §1 [[div. A], title V, §533(d)(1)(C)], inserted ''or, if already a commissioned officer in the Marine Corps, refuses to accept an assignment on active duty when offered'' after ''when offered''.

Subsec. (f)(2). Pub. L. 106–398, §1 [[div. A], title V, §533(d)(2)], added par. (2) and struck out former par. (2) which read as follows: ''The Secretary of the Navy may waive the obligated service under paragraph (1) of a person who is not physically qualified for appointment under section 532 of this title and later is determined by the Secretary of the Navy under section 505 of this title to be unqualified for service as an enlisted member of the Marine Corps due to a physical or medical condition that was not the result of misconduct or grossly negligent conduct.''

TRANSITION PROVISION

Pub. L. 106–65, div. A, title V, §551(d), Oct. 5, 1999, 113 Stat. 614, provided that:

''(1) An enlisted member of the Marine Corps Reserve selected for training as an officer candidate under section 12209 of title 10, United States Code, before implementation of a financial assistance program under section 16401 of such title (as added by subsection (a)) may, upon application, participate in the financial assistance program established under section 16401 of such title (as added by subsection (a)) if the member—

''(A) is eligible for financial assistance under such section 16401;

''(B) submits a request for the financial assistance to the Secretary of the Navy not later than 180 days after the date on which the Secretary establishes the financial assistance program; and

''(C) enters into a written agreement described in subsection (b)(3) of such section.

''(2) Section 205(f) of title 37, United States Code, as added by subsection (c), applies to a member referred to in paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 37 section 205.

PART V—SERVICE, SUPPLY, AND PROCUREMENT

Chap.		Sec.
1801.	Issue of Serviceable Material to Reserve Components. [No present sections]	
1803.	Facilities for Reserve Components	18231
1805.	Miscellaneous Provisions	18501

CHAPTER 1801—ISSUE OF SERVICEABLE MATERIAL TO RESERVE COMPONENTS

[No present sections]

CHAPTER 1803—FACILITIES FOR RESERVE COMPONENTS

Sec.
18231. Purpose.
18232. Definitions.
18233. Acquisition.
18233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds.
18234. Location and use.
18235. Administration; other use permitted by Secretary.
18236. Contributions to States; other use permitted by States.
18237. Supervision of construction: compliance with State law.
18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units.
18239. Waiver of certain restrictions.

AMENDMENTS

1994—Pub. L. 103–337, div. A, title XVI, §1664(b)(1), (3), Oct. 5, 1994, 108 Stat. 3010, renumbered chapter 133 as this chapter and renumbered items 2231 to 2239 as items 18231 to 18239, respectively.

1982—Pub. L. 97–214, §3(b)(2), (c)(2), July 12, 1982, 96 Stat. 169, 170, substituted ''Limitation on certain projects; authority to carry out small projects with operation and maintenance funds'' for ''Limitation'' in item 2233a, and added item 2239.

1958—Pub. L. 85–861, §1(42), Sept. 2, 1958, 72 Stat. 1457, inserted '': compliance with State law'' in item 2237.

Pub. L. 85–685, title VI, §601(4), Aug. 20, 1958, 72 Stat. 665, added item 2233a.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 114, 2231 of this title.

§ 18231. Purpose

The purpose of this chapter is to provide for—

(1) the acquisition, by purchase, lease, transfer, construction, expansion, rehabilitation, or conversion of facilities necessary for the proper development, training, operation, and maintenance of the reserve components of the armed forces, including troop housing and messing facilities;

(2) the joint use of those facilities by units of two or more of those reserve components, to the greatest practicable extent for efficiency and economy;

(3) the use of those facilities, in time of war or national emergency, by those units and other units of the armed forces, to the greatest practicable extent for efficiency and economy; and

(4) any other use of those facilities by the United States, in time of war or national emergency, to the greatest practicable extent for efficiency and economy.

(Aug. 10, 1956, ch. 1041, 70A Stat. 120, §2231; Pub. L. 85–215, §1, Aug. 29, 1957, 71 Stat. 489; renumbered §18231, Pub. L. 103–337, div. A, title XVI, §1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2231	50:881.	Sept. 11, 1950, ch. 945, §2, 64 Stat. 829.

In clause (1), the words ''units of'' are omitted as surplusage.

In clause (4), the words ''United States'' are substituted for the words ''Federal Government''.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2231 of this title as this section.

1957—Par. (1). Pub. L. 85–215 included troop housing and messing facilities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2231 of this title.

§ 18232. Definitions

In this chapter:

(1) The term ''State'' means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory and possession of the United States and includes political subdivisions and military units thereof and tax-supported agencies therein.

(2) The term ''facility'' includes any (A) interest in land, (B) armory, readiness center, or other structure, and (C) storage or other facility normally needed for the administration and training of any unit of the reserve components of the armed forces.

(3) The terms ''armory'' and ''readiness center'' mean a structure that houses one or more units of a reserve component and is used for training and administering those units. Such terms include a structure that is appurtenant to such a structure and houses equipment used for that training and administration.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, §2232; Pub. L. 85–861, §1(36), Sept. 2, 1958, 72 Stat. 1456; Pub.

L. 97–214, §3(d)(1), July 12, 1982, 96 Stat. 170; Pub. L. 100–26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; renumbered §18232, Pub. L. 103–337, div. A, title XVI, §1664(b)(2), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 106–398, §1 [div. B, title XXVIII, §2807(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2232	50:886.	Sept. 11, 1950, ch. 945, §7, 64 Stat. 831.

Clause (1) is substituted for 50:886(b). The words ''(2) Puerto Rico; and (3) the District of Columbia'' are omitted, since they are specifically included, where applicable, in the revised chapter. The words ''together with any improvement thereto'' and ''of the United States'' are omitted as surplusage. 50:886(c) is omitted, since the reserve components of the armed forces are named in section 261 of this title. 50:886(d) is omitted, since its subject matter is covered by other relevant sections of the revised chapter.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2232	50:886.	Aug. 9, 1955, ch. 662, §1(g), (h), 69 Stat. 594.

The last sentence of 50:886(b) is omitted as surplusage.

AMENDMENTS

2000—Par. (2)(B). Pub. L. 106–398, §1 [div. B, title XXVIII, §2807(b)(1)], substituted ''armory, readiness center, or other structure'' for ''armory or other structure''.

Par. (3). Pub. L. 106–398, §1 [div. B, title XXVIII, §2807(a)], substituted ''The terms 'armory' and 'readiness center' mean'' for ''The term 'armory' means'' and ''Such terms include'' for ''It includes''.

1994—Pub. L. 103–337 renumbered section 2232 of this title as this section.

1987—Pub. L. 100–26 inserted ''The term'' after each par. designation and struck out uppercase letter of first word after first quotation marks in pars. (2) and (3) and substituted lowercase letter.

1982—Cl. (1). Pub. L. 97–214 substituted provision defining ''State'' as any State of the United States, the District of Columbia, Puerto Rico, and each territory and possession of the United States including political subdivisions and military units thereof and tax-supported agencies therein for provision defining ''State'' and ''Territory'' as including political subdivisions and military units thereof and tax-supported agencies therein.

1958—Cl. (3). Pub. L. 85–861 added cl. (3).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 18233. Acquisition

(a) Subject to sections 18233a, 18234, 18235, 18236, and 18238 of this title and to subsection (c), the Secretary of Defense may—

(1) acquire by purchase, lease, or transfer, and construct, expand, rehabilitate, or convert and equip, such facilities as he determines to be necessary to carry out the purposes of this chapter;

(2) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it or by the United States for use jointly by units of two or more reserve components of the armed forces or to acquire or construct facilities for such use;

(3) contribute to any State such amounts as he determines to be necessary to expand, rehabilitate, or convert facilities owned by it (or to acquire, construct, expand, rehabilitate, or convert additional facilities) made necessary by the conversion, redesignation, or reorganization of units of the Army National Guard of the United States or the Air National Guard of the United States authorized by the Secretary of the military department concerned;

(4) contribute to any State such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by it of additional facilities as he determines to be required by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States;

(5) contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter; and

(6) contribute to any State such amounts for the construction, alteration, or rehabilitation of critical portions of facilities as the Secretary determines to be required to meet a change in Department of Defense construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility.

(b) Title to property acquired by the United States under subsection (a)(1) vests in the United States. Such property may be transferred to any State incident to the expansion, rehabilitation, or conversion of such property under subsection (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State within a Federal installation.

(c) The Secretary of Defense may delegate any of his authority or functions under this chapter to any department, agency, or officer of the Department of Defense.

(d) The expenses of leasing property under subsection (a)(1) may be paid from appropriations available for the payment of rent.

(e) The Secretary of Defense may procure, or contribute to any State such amounts as the Secretary determines to be necessary to procure, architectural and engineering services and construction design in connection with facilities to be established or developed under this chapter which are not otherwise authorized by law.

(f)(1) Authority provided by law to construct, expand, rehabilitate, convert, or equip any facility under this section includes authority to expend funds for surveys, administration, overhead, planning, design, and supervision incident to any such activity.

(2) Authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including tem-

porary interests) by purchase, gift, exchange of Government-owned land, or otherwise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, § 2233; Pub. L. 85–685, title VI, § 601(1), (2), Aug. 20, 1958, 72 Stat. 664; Pub. L. 85–861, § 1(37)–(39), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 96–125, title VII, § 703, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–99, title VIII, §§ 803, 804, Dec. 23, 1981, 95 Stat. 1380, 1381; Pub. L. 97–214, §§ 3(a), (d)(2), (e)(1), 10(a)(2), July 12, 1982, 96 Stat. 169, 170, 175; Pub. L. 98–407, title VII, § 703(a), Aug. 28, 1984, 98 Stat. 1517; Pub. L. 98–525, title XIV, § 1405(34), Oct. 19, 1984, 98 Stat. 2624; Pub. L. 99–167, title VII, § 702(a), Dec. 3, 1985, 99 Stat. 985; Pub. L. 102–190, div. B, title XXVIII, § 2801, Dec. 5, 1991, 105 Stat. 1537; renumbered § 18233 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (4), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 106–65, div. B, title XXVIII, § 2805, Oct. 5, 1999, 113 Stat. 850.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2233(a)	50:882.	Sept. 11, 1950, ch. 945, §§ 3, 4(c) (1st sentence), 5, 64 Stat. 830, 831.
2233(b)	50:883(c) (1st sentence).	
2233(c)	50:884.	

In subsection (a), the 16th through the 31st words are omitted as executed on July 1, 1955, the end of the 5-year period.

In subsection (a)(2), the words ''to the extent required'' are omitted as covered by the word ''necessary''. The words ''use jointly by units of two or more of the reserve components of the armed forces'' are substituted for the words ''joint utilization of such facilities'' to reflect 50:886(d).

In subsections (a)(2) and (3), the words ''Territory, Puerto Rico, or the District of Columbia'' are inserted to reflect 50:886(b).

In subsection (a)(3), the words ''to be required'' are substituted for the words ''to have been made essential''.

In subsection (b), the words ''real or personal'' are omitted as surplusage.

In subsection (c), the words ''all or * * * part'', ''conferred'', ''imposed'', ''without relieving himself of the responsibility therefor'', ''or officers'', and ''as he may designate from time to time'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2233(a)	50:882 (less 16th through 36th words and (a)).	Aug. 9, 1955, ch. 662, § 1(b), (d), 69 Stat. 593.
2233(b)	50:883(c) (2d sentence).	
2233(d)	50:882(a) (less last 12 words).	Aug. 3, 1956, ch. 939, § 414 (less last 12 words), 70 Stat. 1018.

In subsections (a)(2), (3), and (4), the words ''Territory, Puerto Rico, or the District of Columbia'' are inserted to reflect 50:886(c).

In subsection (d), 50:882(a) (1st 28 words) is omitted as covered by section 2233(a)(1) of this title.

CODIFICATION

Subsequent to enactment of this section, act Sept. 11, 1950 (cited in the Historical and Revision Notes above) was amended by acts Aug. 9, 1955, ch. 662, 69 Stat. 593; Aug. 3, 1956, ch. 939, title IV, § 414, 70 Stat. 1018; Aug. 29, 1957, Pub. L. 85–215, § 2, 71 Stat. 490. The amendments were later repealed and reenacted in sections 2233 and 2236 to 2238 [now 18233 and 18236 to 18238] of this title by Pub. L. 85–685, title VI, § 602, Aug. 20, 1958, 72 Stat. 665, and Pub. L. 85–861, §§ 1(37)–(39), 16, 36, Sept. 2, 1958, 72 Stat. 1456, 1558, 1568.

AMENDMENTS

1999—Subsec. (f)(1). Pub. L. 106–65 inserted ''design,'' after ''planning,''.

1994—Pub. L. 103–337, § 1664(b)(2), renumbered section 2233 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1664(b)(4), substituted ''18233a, 18234, 18235, 18236, and 18238'' for ''2233a, 2234, 2235, 2236, and 2238''.

1991—Subsec. (a)(2). Pub. L. 102–190 inserted before semicolon ''or to acquire or construct facilities for such use''.

1985—Subsec. (e). Pub. L. 99–167 amended subsec. (e) generally, inserting '', or contribute to any State such amounts as the Secretary determines to be necessary to procure,''.

1984—Subsec. (a). Pub. L. 98–525, § 1405(34)(A), substituted ''to subsection (c)'' for ''subsection (c) of this section''.

Subsec. (a)(6). Pub. L. 98–407 substituted ''critical portions of facilities'' for ''arms storage rooms'' and ''construction criteria or standards related to the execution of the Federal military mission assigned to the unit using the facility'' for ''standards related to the safekeeping of arms''.

Subsec. (b). Pub. L. 98–525, § 1405(34)(B), struck out ''or Territory, Puerto Rico, or the District of Columbia'' after ''State'' in two places. See section 18232(1) of this title.

1982—Subsec. (a)(2) to (4). Pub. L. 97–214, § 3(d)(2), struck out ''or Territory, Puerto Rico, or the District of Columbia'' after ''contribute to any State''.

Subsec. (a)(5). Pub. L. 97–214, § 3(e)(1), substituted ''contribute to any State amounts for the acquisition, construction, expansion, rehabilitation, and conversion by such State of such additional facilities as the Secretary determines to be required because of the failure of existing facilities to meet the purposes of this chapter'' for ''contribute to any State or Territory, Puerto Rico, or the District of Columbia, such amounts for the acquisition, construction, expansion, rehabilitation, or conversion by the failure of existing facilities to meet the purposes of this chapter'' and ''A contribution made for an armory may not be more than 75 percent of the cost of construction of which it is applied''.

Subsec. (a)(6). Pub. L. 97–214, § 3(d)(2), struck out ''or Territory, Puerto Rico, or the District of Columbia'' after ''contribute to any State''.

Subsec. (e). Pub. L. 97–214, § 10(a)(2), substituted ''architectural and engineering services and construction design'' for ''advance planning, construction design, and architectural services''.

Subsec. (f). Pub. L. 97–214, § 3(a), expanded subsec. (f) into pars. (1) and (2), and substituted provision that legal authority to construct, expand, rehabilitate, etc., any facility under this section, also includes the authority to expend funds for surveys, administration, overhead, planning, and supervision incident to any such activity and provisions that authority to acquire real property under this section includes authority to make surveys and to acquire interests in land (including temporary interests) by purchase, gift, exchange of Government-owned land, or otherwise, for provisions that facilities authorized by subsec. (a) could not be considered ''military public works'' under the military construction authorization acts that repeal prior authorizations for military public works.

1981—Subsec. (a)(2). Pub. L. 97–99, § 803(1), inserted ''or by the United States'' after ''or convert facilities owned by it''.

Subsec. (a)(6). Pub. L. 97–99, § 804, added par. (6).

Subsec. (b). Pub. L. 97–99, § 803(2), inserted provisions that such property may be transferred to any State or Territory, Puerto Rico, or the District of Columbia incident to the expansion, rehabilitation, or conversion of such property under subsec. (a)(2) so long as the transfer of such property does not result in the creation of an enclave owned by a State or Territory, Puerto Rico, or the District of Columbia within a Federal installation.

1979—Subsec. (a)(5). Pub. L. 96–125 added par. (5).

1958—Subsec. (a). Pub. L. 85–861, §1(37), substituted ''two or more reserve components'' for ''two or more of the reserve components'' in cl. (2), added cl. (3), and redesignated former cl. (3) as (4).

Pub. L. 85–685, §601(1), inserted reference to section 2233a of this title in opening provisions, and struck out provisions which required the Secretary of Defense to consult with the Committees on Armed Services of the Senate and House of Representatives.

Subsec. (b). Pub. L. 85–861, §1(38), inserted ''by the United States'' after ''property acquired''.

Subsec. (d). Pub. L. 85–861, §1(39), added subsec. (d).

Subsecs. (e), (f). Pub. L. 85–685, §601(2), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 703(b) of Pub. L. 98–407 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

OBLIGATION OF FUNDS BEFORE JULY 1, 1958

Section 16 of Pub. L. 85–861, Sept. 2, 1958, 72 Stat. 1558, provided that not more than $580,000,000 could be obligated for the purposes of this section before July 1, 1958, but with such limitation not applicable to the expenses for the leasing of property under subsec. (a)(1) of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18233a, 18234, 18235, 18236, 18237, 18239 of this title.

§ 18233a. Limitation on certain projects; authority to carry out small projects with operation and maintenance funds

(a)(1) Except as provided in paragraph (2), an expenditure or contribution in an amount in excess of $1,500,000 may not be made under section 18233 of this title for any facility until the Secretary of Defense has notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the location, nature, and estimated cost of the facility and a period of 21 days has passed after receipt of such notification.

(2) Paragraph (1) does not apply to expenditures or contributions for the following:

(A) Facilities acquired by lease.

(B) A project for a facility that has been authorized by Congress, if the location and purpose of the facility are the same as when authorized and if, based upon bids received—

(i) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and

(ii) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than (I) 25 percent, or (II) 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project, whichever is lesser.

(C) An unspecified minor military construction project (as defined in section 2805(a) of this title) that is intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening.

(b) Under such regulations as the Secretary of Defense may prescribe, the Secretary may spend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title costing not more than—

(1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

(2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.

(Added Pub. L. 85–685, title VI, §601(3), Aug. 20, 1958, 72 Stat. 665, §2233a; amended Pub. L. 87–554, title VII, §701, July 27, 1962, 76 Stat. 243; Pub. L. 93–552, title VII, §703, Dec. 27, 1974, 88 Stat. 1770; Pub. L. 94–107, title VII, §703, Oct. 7, 1975, 89 Stat. 569; Pub. L. 96–125, title VII, §704, Nov. 26, 1979, 93 Stat. 947; Pub. L. 97–214, §3(c)(1), July 12, 1982, 96 Stat. 169; Pub. L. 98–115, title VII, §702, Oct. 11, 1983, 97 Stat. 782; Pub. L. 98–407, title VII, §702, Aug. 28, 1984, 98 Stat. 1517; Pub. L. 100–26, §7(f)(1), Apr. 21, 1987, 101 Stat. 281; Pub. L. 100–180, div. B, subdiv. 3, title I, §2304(a), Dec. 4, 1987, 101 Stat. 1215; Pub. L. 102–190, div. B, title XXVIII, §2804, Dec. 5, 1991, 105 Stat. 1537; renumbered §18233a and amended Pub. L. 103–337, div. A, title XVI, §1664(b)(2), (5), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104–106, div. A, title XV, §1502(a)(10), Feb. 10, 1996, 110 Stat. 503; Pub. L. 104–201, div. B, title XXVIII, §2801(b), (c), Sept. 23, 1996, 110 Stat. 2787; Pub. L. 106–65, div. A, title X, §1067(1), div. B, title XXVIII, §2806, Oct. 5, 1999, 113 Stat. 774, 850; Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(22)], Oct. 30, 2000, 114 Stat. 1654, 1654A–291.)

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(22)(A)], substituted ''section 2805(c)(1)(A)'' for ''section 2805(c)(1)''.

Subsec. (b)(2). Pub. L. 106–398, §1 [[div. A], title X, §1087(a)(22)(B)], substituted ''section 2805(c)(1)(B)'' for ''section 2805(c)(2)''.

1999—Subsec. (a)(1). Pub. L. 106–65, §1067(1), substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

Subsec. (a)(2)(C). Pub. L. 106–65, §2806(a), added subpar. (C).

Subsec. (b). Pub. L. 106–65, §2806(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Under such regulations as the Secretary of Defense may prescribe, a project authorized under section 18233(a) of this title that costs $500,000 or less may be carried out with funds available for operations and maintenance.''

1996—Subsec. (a)(1). Pub. L. 104–201, §2801(c), substituted ''$1,500,000'' for ''$400,000''.

Pub. L. 104–106 substituted ''the Committee on Armed Services and the Committee on Appropriations of the

Senate and the Committee on National Security and the Committee on Appropriations of the'' for ''the Committees on Armed Services and on Appropriations of the Senate and''.

Subsec. (b). Pub. L. 104–201, § 2801(b), substituted ''$500,000'' for ''$300,000''.

1994—Pub. L. 103–337, § 1664(b)(2), renumbered section 2233a of this title as this section.

Subsec. (a)(1). Pub. L. 103–337, § 1664(b)(5)(A), substituted ''18233'' for ''2233''.

Subsec. (b). Pub. L. 103–337, § 1664(b)(5)(B), substituted ''18233(a)'' for ''2233(a)''.

1991—Subsec. (b). Pub. L. 102–190 substituted ''$300,000'' for ''$200,000''.

1987—Subsec. (a)(2)(B)(ii)(II). Pub. L. 100–26 substituted ''specified by section 2805(a)(2) of this title'' for ''specified by law''.

Subsec. (b). Pub. L. 100–180 substituted ''$200,000'' for ''$100,000''.

1984—Subsec. (b). Pub. L. 98–407 substituted ''$100,000'' for ''$50,000''.

1983—Subsec. (a)(1). Pub. L. 98–115 substituted ''$400,000'' for ''$200,000''.

1982—Pub. L. 97–214 substituted ''Limitation on certain projects; authority to carry out small projects with operation and maintenance funds'' for ''Limitation'' as section catchline and completely revised text. Before such revision section had provided that no expenditure or contribution of more than $175,000 could be made under section 2233 of this title for any facility until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notified the Senate and the House of Representatives of the location, nature, and estimated cost of such facility, but that such requirement did not apply to facilities acquired by lease, facilities acquired, constructed, expanded, rehabilitated, converted, or equipped to restore or replace facilities damaged or destroyed, where the Senate and the House of Representatives had been notified of that action, and that, under such regulations as the Secretary of Defense might prescribe, any project authorized pursuant to section 2233(a) which did not cost more than $50,000 could be accomplished from appropriations available for maintenance and operations.

1979—Par. (1). Pub. L. 96–125 substituted ''$175,000'' for ''$100,000''.

1975—Par. (2). Pub. L. 94–107 substituted ''$50,000'' for ''$25,000''.

1974—Par. (1). Pub. L. 93–552 substituted ''$100,000'' for ''$850,000''.

1962—Pub. L. 87–554 designated existing provisions as par. (1), substituted ''until after the expiration of thirty days from the date upon which the Secretary of Defense or his designee notifies the Senate and the House of Representatives of the location, nature, and estimated cost of such facility'' for ''that has not been authorized by a law authorizing appropriations for specific facilities for reserve forces'', and added par. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 2304(b) of Pub. L. 100–180 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to projects authorized under section 2233(a) [now 18233(a)] of title 10, United States Code, for which contracts are entered into on or after the date of the enactment of this Act [Dec. 4, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 702 of Pub. L. 98–407 provided that the amendment made by that section is effective Oct. 1, 1984.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 702 of Pub. L. 98–115 provided that the amendment made by that section is effective Oct. 1, 1983.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18234. Location and use

No expenditures or contribution may be made for a facility under section 18233 of this title, unless the Secretary of Defense determines that—

(1) the number of units of the reserve components of the armed forces located or to be located in the area within which the facility is to be provided is not and will not be larger than the number that can reasonably be expected to be maintained at authorized strength, considering the number of persons living in the area who are qualified for membership in those reserve units; and

(2) the plan under which the facility is to be provided makes provision for the greatest practicable use of the facility jointly by units of two or more of those components.

(Aug. 10, 1956, ch. 1041, 70A Stat. 121, § 2234; renumbered § 18234 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (6), Oct. 5, 1994, 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2234	50:883(a).	Sept. 11, 1950, ch. 945, § 4(a), 64 Stat. 830.

The word ''community'' is omitted as covered by the word ''area''. The word ''program'' is omitted as covered by the word ''plan''. The words ''use * * * jointly by units of two or more of those components'' are substituted for the words ''joint utilization'' to reflect 50:886(d). The words ''is not and will not be larger than'' are substituted for the words ''does not exceed''. The word ''considering'' is substituted for the words ''taking into account''.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2234 of this title as this section and substituted ''18233'' for ''2233'' in introductory provisions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18235. Administration; other use permitted by Secretary

(a) The Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives on matters of policy, may—

(1) administer, operate, maintain, and equip facilities constructed, expanded, rehabilitated,

or converted under section 18233 of this title or otherwise acquired and used for the purposes of this chapter;

(2) permit persons or organizations other than members and units of the armed forces to use those facilities under such leases or other agreements as he considers appropriate; and

(3) cover the payments received under those leases or agreements into the Treasury to the credit of the appropriation from which the cost of maintaining the facility, including its utilities and services, is paid.

(b) The Secretary may not permit any use or disposition to be made of a facility covered by subsection (a) that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122, § 2235; renumbered § 18235 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (7), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104–106, div. A, title XV, § 1502(a)(2), Feb. 10, 1996, 110 Stat. 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774.)

HISTORICAL AND REVISION NOTES

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2235(a)	50:883(c) (less 1st sentence, and less last 70 words of last sentence).	Sept. 11, 1950, ch. 945, § 4(c) (less 1st sentence), 64 Stat. 830.
2235(b)	50:883(c) (last 70 words of last sentence).	

In subsection (a), the words ''from time to time'' and ''or appropriations'' are omitted as surplusage.

In subsection (b), the words ''United States'' are substituted for the words ''Federal Government''. The words ''units of'' are omitted as surplusage. The words ''may not'' are substituted for the words ''shall at no time''.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security'' in introductory provisions.

1996—Subsec. (a). Pub. L. 104–106 substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

1994—Pub. L. 103–337, § 1664(b)(2), renumbered section 2235 of this title as this section.

Subsec. (a)(1). Pub. L. 103–337, § 1664(b)(7), substituted ''18233'' for ''2233(a)(1)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18236. Contributions to States; other use permitted by States

(a) Contributions under section 18233 of this title are subject to such terms as the Secretary of Defense, after consulting the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, considers necessary for the purposes of this chapter. Except as otherwise agreed when the contribution is made, a facility provided by a contribution under paragraph (3) or (4) of section 18233(a) of this title may be used jointly by units of two or more reserve components of the armed forces only to the extent that the State considers practicable.

(b) A contribution made for an armory or readiness center under paragraph (4) or (5) of section 18233(a) of this title may not exceed the sum of—

(1) 100 percent of the cost of architectural, engineering and design services (including advance architectural, engineering and design services under section 18233(e) of this title); and

(2) a percentage of the cost of construction (exclusive of the cost of architectural, engineering and design services) calculated so that upon completion of construction the total contribution (including the contribution for architectural, engineering and design services) equals 75 percent of the total cost of construction (including the cost of architectural, engineering and design services).

For the purpose of computing the cost of construction under this subsection, the amount contributed by a State may not include the cost or market value of any real property that it has contributed.

(c) If a State acquires, constructs, expands, rehabilitates, or converts a facility with amounts contributed under section 18233 of this title, it may—

(1) permit persons or organizations other than members and units of the armed forces to use the facility under such leases or other agreements as it considers appropriate; and

(2) apply amounts received under those leases or agreements to the cost of maintaining the facility.

(d) Except as otherwise agreed when the contribution is made, and except as the agreement is later changed, a State may not permit any use or disposition of the facility that would interfere with its use—

(1) for administering and training the reserve components of the armed forces; or

(2) in time of war or national emergency, by other units of the armed forces or by the United States for any other purpose.

(Aug. 10, 1956, ch. 1041, 70A Stat. 122, § 2236; Pub. L. 85–861, § 1(40), Sept. 2, 1958, 72 Stat. 1456; Pub. L. 97–214, § 3(d)(2), (3), (e)(2), July 12, 1982, 96 Stat. 170; Pub. L. 99–167, title VII, § 702(b), Dec. 3, 1985, 99 Stat. 985; Pub. L. 99–661, div. A, title XIII, § 1343(a)(11), Nov. 14, 1986, 100 Stat. 3993; renumbered § 18236 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (8), Oct. 5, 1994, 108 Stat. 3010; Pub. L. 104–106, div. A, title XV, §§ 1501(b)(36), 1502(a)(2), Feb. 10, 1996, 110 Stat. 498, 502; Pub. L. 106–65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106–398, § 1 [div. B, title XXVIII, § 2807(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–415.)

HISTORICAL AND REVISION NOTES

1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2236(a)	50:883(d) (1st sentence).	Sept. 11, 1950, ch. 945, §4(d), (e), 64 Stat. 830.
2236(b)	50:883(d) (less 1st sentence).	
2236(c)	50:883(e) (less last 87 words).	
2236(d)	50:883(e) (last 87 words).	

Appropriate references to the Territories, Puerto Rico, and the District of Columbia are inserted throughout the revised section to reflect 50:886(b).

In subsection (a), the words ''and conditions'' are omitted as covered by the word ''terms''. The words ''considers necessary for'' are substituted for the words ''shall deem necessary to accomplish''. The words ''used jointly by units of two or more reserve components of the armed forces'' are substituted for the words ''joint utilization'', to reflect 50:886(d).

In subsection (b), the words ''the construction to which it is to be applied'' are substituted for the words ''the additional or improved facilities to be constructed'', since, under section 2233 of this title, contributions may be made for other purposes as well as additions and improvements. The words ''may not include'' are substituted for the words ''shall be exclusive of''.

In subsection (c)(1), the words ''from time to time'' are omitted as surplusage.

In subsection (c)(2), the words ''defray in whole or in part'' are omitted as surplusage.

In subsection (d), the words ''except as the agreement is later changed'' are substituted for the words ''by subsequent modifications of the agreement.'' The words ''units of'' and ''at no time'' are omitted as surplusage. The words ''United States'' are substituted for the words ''Federal Government''.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2236(a)	50:883(d) (1st sentence).	Aug. 9, 1955, ch. 662, §1(e), 69 Stat. 593.
2236(b)	50:883(d) (less 1st sentence).	

In subsection (a), the words ''may be used jointly'' are substituted for the words ''shall be subject to joint utilization''. The words ''and conditions'' are omitted as surplusage.

AMENDMENTS

2000—Subsec. (b). Pub. L. 106–398 inserted ''or readiness center'' after ''armory'' in introductory provisions.

1999—Subsec. (a). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1996—Subsec. (a). Pub. L. 104–106, §1502(a)(2), substituted ''Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives'' for ''Committees on Armed Services of the Senate and the House of Representatives''.

Subsec. (b)(1). Pub. L. 104–106, §1501(b)(36), substituted ''18233(e)'' for ''2233(e)''.

1994—Pub. L. 103–337, §1664(b)(2), renumbered section 2236 of this title as this section.

Subsec. (a). Pub. L. 103–337, §1664(b)(8)(A), substituted ''18233'' for ''2233'' and ''paragraph (3) or (4) of section 18233(a)'' for ''section 2233(a)(3) or (4)''.

Subsec. (b). Pub. L. 103–337, §1664(b)(8)(B)(i), substituted ''paragraph (4) or (5) of section 18233(a)'' for ''clause (4) or (5) of section 2233(a)'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–337, §1664(b)(8)(B)(ii), which directed amendment of par. (2) by substituting ''section 18233(e)'' for ''section 2233(e)'', could not be executed because the words ''section 2233(e)'' did not appear in par. (2).

Subsec. (c). Pub. L. 103–337, §1664(b)(8)(C), substituted ''18233'' for ''2233'' in introductory provisions.

1986—Subsec. (b). Pub. L. 99–661 struck out '', territory, the Commonwealth of Puerto Rico, or the District of Columbia, as the case may be,'' after ''contributed by a State'' in last sentence.

1985—Subsec. (b). Pub. L. 99–167 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''A contribution made for an armory under section 2233(a)(4) or (5) of this title may not be more than 75 percent of the cost of the construction to which it is applied. For the purpose of computing the cost of construction under this subsection, the amount contributed by the State may not include the cost or market value of any real property that it has contributed.''

1982—Subsec. (a). Pub. L. 97–214, §3(d)(3), struck out ''or Territory, Puerto Rico, or the District of Columbia, whichever is concerned,'' after ''the State''.

Subsec. (b). Pub. L. 97–214, §3(d)(3), (e)(2), inserted ''or (5)'', and struck out ''or Territory, Puerto Rico, or the District of Columbia, whichever is concerned,'' after ''the State''.

Subsecs. (c), (d). Pub. L. 97–214, §3(d)(2), struck out ''or Territory, Puerto Rico, or the District of Columbia'' after ''a State''.

1958—Subsec. (a). Pub. L. 85–861 permitted joint use of facilities provided by contributions under section 2233(a)(4) of this title.

Subsec. (b). Pub. L. 85–861 substituted ''A contribution made for an armory under section 2233(a)(4) of this title may not be more than 75 percent of the cost of the construction to which it is applied'' for ''No contribution made for a facility under section 2233(a)(3) of this title may be more than 75 percent of the cost of the construction to which it is to be applied''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(36) of Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18237. Supervision of construction: compliance with State law

(a) Any construction, expansion, rehabilitation, or conversion under section 18233(a)(1) of this title may be performed under the supervision of the Chief of Engineers of the Army or the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate.

(b) The construction, expansion, rehabilitation, or conversion of facilities in a State under paragraph (2), (3), (4), (5), or (6) of section 18233(a) of this title shall be done according to the laws of that jurisdiction and under the supervision of its officials, subject to the inspection and approval of the Secretary of Defense.

(Aug. 10, 1956, ch. 1041, 70A Stat. 123, § 2237; Pub. L. 85–861, § 1(41), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 89–718, § 19, Nov. 2, 1966, 80 Stat. 1118; Pub. L. 97–214, § 3(d)(2), July 12, 1982, 96 Stat. 170; renumbered § 18237 and amended Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), (9), div. B, title XXVIII, § 2852, Oct. 5, 1994, 108 Stat. 3010, 3011, 3072; Pub. L. 104–106, div. A, title XV, § 1501(b)(37), Feb. 10, 1996, 110 Stat. 498.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2237	50:885.	Sept. 11, 1950, ch. 945, § 6, 64 Stat. 831.

The words ''of facilities'' are omitted as surplusage. The words ''Chief of Engineers'' are substituted for the words ''Chief, Corps of Engineers'' to conform to section 3036(a)(1) of this title. The words ''of the Army'' and ''of the Navy'' are inserted for clarity.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2237(a)	50:885(a).	Aug. 9, 1955, ch. 662, § 1(f), 69 Stat. 594.
2237(b)	50:885 (less (a)).	

In subsection (b), the words ''Territory, Puerto Rico, or the District of Columbia'' are inserted to reflect 50:886(c).

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–106, § 1501(37)(A), substituted ''18233(a)(1)'' for ''2233(a)(1)''.

Subsec. (b). Pub. L. 104–106, § 1501(37)(B), substituted ''18233(a)'' for ''2233(a)''.

1994—Pub. L. 103–337, § 1664(b)(2), renumbered section 2237 of this title as this section.

Subsec. (a). Pub. L. 103–337, § 1664(b)(9)(A), which directed amendment of subsec. (a) by substituting ''paragraph (2), (3), or (4) of section 18233(a)'' for ''section 2233(a)(2), (3) and (4)'', could not be executed because the words ''section 2233(a)(2), (3) and (4)'' did not appear subsequent to intervening amendment by Pub. L. 103–337, § 2852(a). See below.

Pub. L. 103–337, § 2852(a), substituted ''under section 2233(a)(1)'' for ''under any provision of this chapter except section 2233(a)(2), (3), and (4)''.

Subsec. (b). Pub. L. 103–337, § 1664(b)(9)(B), which directed amendment of subsec. (b) by substituting ''paragraph (2), (3), or (4) of section 18233(a)'' for ''section 2233(a)(2), (3) or (4)'', could not be executed because the words ''section 2233(a)(2), (3) or (4)'' did not appear subsequent to intervening amendment by Pub. L. 103–337, § 2852(b). See below.

Pub. L. 103–337, § 2852(b), substituted ''paragraph (2), (3), (4), (5), or (6) of section 2233(a)'' for ''section 2233(a)(2), (3), or (4)''.

1982—Subsec. (b). Pub. L. 97–214 struck out ''or Territory, Puerto Rico, or the District of Columbia'' after ''facilities in a State''.

1966—Subsec. (a). Pub. L. 89–718 substituted ''the head of such office or agency in the Department of the Navy as the Secretary of the Navy may designate'' for ''the Chief of the Bureau of Yards and Docks of the Navy''.

1958—Pub. L. 85–861 inserted '': compliance with State law'' in section catchline.

Subsec. (a). Pub. L. 85–861 designated existing provisions as subsec. (a) and substituted ''under any provision of this chapter except section 2233(a)(2), (3), and (4) of this title'' for ''under this chapter''.

Subsec. (b). Pub. L. 85–861 added subsec. (b).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–106 effective as if included in the Reserve Officer Personnel Management Act, title XVI of Pub. L. 103–337, as enacted on Oct. 5, 1994, see section 1501(f)(3) of Pub. L. 104–106, set out as a note under section 113 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1664(b)(2), (9) of Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

§ 18238. Army National Guard of United States; Air National Guard of United States: limitation on relocation of units

A unit of the Army National Guard of the United States or the Air National Guard of the United States may not be relocated or withdrawn under this chapter without the consent of the governor of the State or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia.

(Aug. 10, 1956, ch. 1041, 70A Stat. 123, § 2238; Pub. L. 85–861, § 1(43), Sept. 2, 1958, 72 Stat. 1457; Pub. L. 97–214, § 3(d)(4), July 12, 1982, 96 Stat. 170; renumbered § 18238, Pub. L. 103–337, div. A, title XVI, § 1664(b)(2), Oct. 5, 1994, 108 Stat. 3010.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2238	50:883(b).	Sept. 11, 1950, ch. 945, § 4(b), 64 Stat. 830.

The words ''from any community or area'' are omitted as surplusage. The word ''relocated'' is substituted for the words ''location * * * be changed''. The words ''Territory, or Puerto Rico, or the commanding general of the National Guard of the District of Columbia'' are inserted to reflect 50:886(b), since the source statute applied to the District of Columbia and there is no ''governor'' of the District of Columbia. The words ''as the case may be'' are substituted for the words ''within which such unit is situated''. The words ''with regard to such withdrawal or change of location'' are omitted as surplusage.

1958 ACT

Revised section	*Source (U.S. Code)*	*Source (Statutes at Large)*
2238	50:883(b).	Aug. 9, 1955, ch. 662, § 1(c), 69 Stat. 593.

The words ''shall have been consulted'' and ''such withdrawal or change of location'' are omitted as surplusage.

AMENDMENTS

1994—Pub. L. 103–337 renumbered section 2238 of this title as this section.

1982—Pub. L. 97–214 substituted ''or, in the case of the District of Columbia, the commanding general of the National Guard of the District of Columbia'' for ''or Territory, or Puerto Rico, or the commanding general of the District of Columbia, as the case may be''.

1958—Pub. L. 85–861 required the consent of the governor, or the commanding general of the National

Guard of the District of Columbia, prior to relocation or withdrawal.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–214 effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as an Effective Date note under section 2801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18233 of this title.

§ 18239. Waiver of certain restrictions

(a) The Secretary of Defense and the Secretary of each military department may make expenditures and contributions under section 18233 of this title without regard to section 3324(a) and (b) of title 31.

(b) Authority provided by law to place permanent or temporary improvements on land under section 18233 of this title may be exercised on land not owned by the United States—

(1) before title to the land on which the improvement is located (or is to be located) is approved under section 3111 of title 40; and

(2) even though the land will be held in other than a fee simple interest in a case in which the Secretary of the military department concerned determines that the interest to be acquired in the land is sufficient for the purposes of the project.

(Added Pub. L. 97–214, §3(b)(1), July 12, 1982, 96 Stat. 169, §2239; amended Pub. L. 97–295, §1(23), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 97–321, title VIII, §805(a)(2), Oct. 15, 1982, 96 Stat. 1573; renumbered §18239 and amended Pub. L. 103–337, div. A, title XVI, §1664(b)(2), (10), Oct. 5, 1994, 108 Stat. 3010, 3011; Pub. L. 107–217, §3(b)(42), Aug. 21, 2002, 116 Stat. 1298.)

AMENDMENTS

2002—Subsec. (b)(1). Pub. L. 107–217 substituted ''section 3111 of title 40'' for ''section 355 of the Revised Statutes (40 U.S.C. 255)''.

1994—Pub. L. 103–337, §1664(b)(2), renumbered section 2239 of this title as this section.

Subsecs. (a), (b). Pub. L. 103–337, §1664(b)(10), substituted ''18233'' for ''2233''.

1982—Subsec. (a). Pub. L. 97–295 substituted ''section 3324(a) and (b) of title 31'' for ''section 3648 of the Revised Statutes (31 U.S.C. 529)''.

Subsec. (b). Pub. L. 97–321, in introductory text, substituted ''on land'' for ''on lands'' and inserted ''on land not owned by the United States''; redesignated former cl. (1) as par. (1); added par. (2) and struck out former cl. (2) ''even though the land is held temporarily''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–337 effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as an Effective Date note under section 10001 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1982, and applicable to military construction projects, and to construction and acquisition of military family housing authorized before, on, or after such date, see section 12(a) of Pub. L. 97–214, set out as a note under section 2801 of this title.

CHAPTER 1805—MISCELLANEOUS PROVISIONS

Sec.
18501. Reserve components: personnel and logistic support by military departments.
18502. Reserve components: supplies, services, and facilities.
18505. Reserves traveling for inactive-duty training: space-required travel on military aircraft.

AMENDMENTS

2001—Pub. L. 107–107, div. A, title V, §518(b), Dec. 28, 2001, 115 Stat. 1096, struck out ''annual training duty or'' before ''inactive-duty training:'' in item 18505.

2000—Pub. L. 106–398, §1 [[div. A], title III, §384(b)(2)], Oct. 30, 2000, 114 Stat. 1654, 1654A–87, substituted ''Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft'' for ''Reserves traveling to inactive-duty training OCONUS: authority for space-required travel'' in item 18505.

1999—Pub. L. 106–65, div. A, title V, §517(a)(2), Oct. 5, 1999, 113 Stat. 595, added item 18505.

§ 18501. Reserve components: personnel and logistic support by military departments

The Secretary concerned is responsible for providing the personnel, equipment, facilities, and other general logistic support necessary to enable units and Reserves in the Ready Reserve of the reserve components under his jurisdiction to satisfy the training requirements and mobilization readiness requirements for those units and Reserves as recommended by the Secretary concerned and by the Chairman of the Joint Chiefs of Staff and approved by the Secretary of Defense, and as recommended by the Commandant of the Coast Guard and approved by the Secretary of Homeland Security when the Coast Guard is not operated as a service of the Navy.

(Added Pub. L. 103–337, div. A, title XVI, §1664(c)(1), Oct. 5, 1994, 108 Stat. 3011; amended Pub. L. 107–296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 264(b) of this title, prior to repeal by Pub. L. 103–337, §1661(a)(2)(A).

AMENDMENTS

2002—Pub. L. 107–296 substituted ''of Homeland Security'' for ''of Transportation''.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE

Chapter effective Dec. 1, 1994, except as otherwise provided, see section 1691 of Pub. L. 103–337, set out as a note under section 10001 of this title.

§ 18502. Reserve components: supplies, services, and facilities

(a) The Secretary concerned shall make available to the reserve components under his jurisdiction the supplies, services, and facilities of the armed forces under his jurisdiction that he considers necessary to support and develop those components.

(b) Whenever he finds it to be in the best interest of the United States, the Secretary concerned may issue supplies of the armed forces under his jurisdiction to the reserve components under his jurisdiction, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(c) Whenever he finds it to be in the best interest of the United States, the Secretary of the Army or the Secretary of the Air Force may issue to the Army National Guard or the Air National Guard, as the case may be, supplies of the armed forces under his jurisdiction that are in addition to supplies issued to that National Guard under section 702 of title 32 or charged against its appropriations under section 106 or 107 of title 32, without charge to the appropriations for those components for the cost or value of the supplies or for any related expense.

(d) Supplies issued under subsection (b) or (c) may be repossessed or redistributed as prescribed by the Secretary concerned.

(Added Pub. L. 103–337, div. A, title XVI, §1664(c)(1), Oct. 5, 1994, 108 Stat. 3012.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 2540 of this title, prior to repeal by Pub. L. 103–337, §1664(c)(2).

§18505. Reserves traveling for inactive-duty training: space-required travel on military aircraft

(a) A member of a reserve component traveling for inactive-duty training (including a place other than the place of the member's unit training assembly if the member is performing inactive-duty training in another location) may travel in a space-required status on aircraft of the armed forces between the member's home and the place of the inactive-duty training.

(b) A member traveling in a space-required status on any such aircraft under subsection (a) is not authorized to receive travel, transportation, or per diem allowances in connection with that travel.

(Added Pub. L. 106–65, div. A, title V, §517(a)(1), Oct. 5, 1999, 113 Stat. 594; amended Pub. L. 106–398, §1 [[div. A], title III, §384(a), (b)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–87; Pub. L. 107–107, div. A, title V, §518, Dec. 28, 2001, 115 Stat. 1096.)

AMENDMENTS

2001—Pub. L. 107–107, §518(b), struck out ''annual training duty or'' before ''inactive-duty training:'' in section catchline.

Subsec. (a). Pub. L. 107–107, §518(a), struck out ''annual training duty or'' before ''inactive-duty training'' wherever appearing.

2000—Pub. L. 106–398, §1 [[div. A], title III, §384(b)(1)], substituted ''Reserves traveling for annual training duty or inactive-duty training: space-required travel on military aircraft'' for ''Reserves traveling to inactive-duty training OCONUS: authority for space-required travel'' as section catchline.

Subsec. (a). Pub. L. 106–398, §1 [[div. A], title III, §384(a)], amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''In the case of a member of a reserve component whose place of inactive-duty training is outside the contiguous States (including a place other than the place of the member's unit training assembly if the member is performing the inactive-duty training in another location), the member may travel in a space-required status on aircraft of the armed forces between the member's home and the place of such training if there is no transportation between those locations by means of road or railroad (or a combination of road and railroad).''

EFFECTIVE DATE

Pub. L. 106–65, div. A, title V, §517(c), Oct. 5, 1999, 113 Stat. 595, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to travel commencing on or after the date of the enactment of this Act [Oct. 5, 1999].''